

HUNTSVILLE TOWN APPEALS AUTHORITY

Ogden Valley Library – 131 South 7500 East, Huntsville, UT 84317

September 12, 2022

6:00 p.m.

Appeals Authority: Brent Ahlstrom
John Bowen
Rod Layton
James Truett
Bill White

Clerk/Recorder: Beckki Endicott

Citizens: Allen Endicott, Rex Harris, Amanda Hessenauer, Jodi Richardson, Michael Hessenauer, Dan Davis, Jenny Clawson Peel, Sadie Timmreck, Luke Timmrick, Bruce Ahlstrom, Jennifer Sorensen, Bill Morris – Huntsville Town Attorney, Wade Budge – Attorney for Tom Freeman, Tom Freeman

Beckki Endicott welcome those in attendance and administered the Oath of Office for new Appeals Authority Members, Brent Ahlstrom, James Truett and Bill White.

Note: primary recording device failed. The backup device was started at this point in the proceedings.

Appeals Authority member John Bowen motioned to nominate James Truett to chair the Appeals Authority. Rod Layton seconded the motion.

Attorney Morris asked for any additional nominations. Bill White motioned to close the nominations. Rod Layton seconded the motion. All votes Aye. Motion passed.

Appeals Authority Chairman James Truett took over the agenda. Chairman Truett invited the attorney for Tom Freeman to present the argument for Tom Freeman. Attorney Wade Budge introduced himself. He gave the members of the appeals authority a copy of a power point presentation he put together. (See Attachment #1)

Attorney Budge stated that Tom Freeman is here today not to talk about what he has previously presented to the Planning Commission earlier in the year, which was a subdivision. What he wanted to present to the Appeals Authority was a recognition of an existing lot by this Appeals Authority body pursuant to Huntsville Town Code. He invited questions from the Appeals Authority.

Mr. Budge referred to the first slide which showed the parcel in question. Mr. Budge stated that this parcel is so old, that it is older than statehood. He stated the parcel was created in 1874. The parcel is older than the mining days, which Mr. Budge stated Utah has dealt with in Park City. In Wasatch County established lots during the mining days are seen regularly in Park City. Those lots were established in the 1890's. Similar lots from that time are regularly recognized by Wasatch County.

A plat map was shown to the Appeals Authority from the 1870's. Mr. Budge stated it shows Mr. Freeman's established parcel. Mr. Budge stated this is an important piece of evidence. He showed the AA a map from 1924 stating that the Town limits and boundaries were adjusting during this time. Most of the said parcel's life, the lot was existing outside the Town of Huntsville. The parcel was annexed into the Town of Huntsville with a group of parcels in 2015.

Mr. Budge stated access to this parcel has been established. Mr. Budge stated it is not the type of access that would be needed for a subdivision. Mr. Budge stated that if a subdivision was going to be established, Mr. Freeman would need a minimum frontage for the subdivision per the Huntsville Town Code. He states the frontage does not apply with a non-conforming lot or lot of record. Mr. Budge explained there are lots or parcels that exist which predate any subdivision ordinance. Subdivision ordinances did not exist in Utah until the 1960's and each city has its own cutoff date for when subdivision ordinances were established. In Huntsville Town that date was 1992.

Mr. Budge said that zoning for this parcel has varied from time to time. Before statehood, there was no zoning. The said parcel was then an agricultural lot. Mr. Budge stated that a parcel that is zoned agricultural is still to be recognized as a parcel and treated as such for purposes of lot record or non-conforming lot. Mr. Budge stated again Mr. Freeman is not petitioning for subdivision. If they were petitioning for subdivision, they would need the frontage required by the Huntsville Town Code. Instead, they are petitioning for the lot to be recognized as a lot of record. Huntsville Town Code 15.17.14.C states "A non-conforming lot shall be considered a legal building lot entitled to the same rights as a conforming lot, if the lot was created prior to July 1992." Mr. Budge states the only requirement of this lot is that it is existing prior to 1992. He stated this lot has existed long before 1992. and is a lot of record parcel that is preexisting.

Huntsville Town Code Definition 15-0-1.2 state that a "Lot, Non-Conforming: a lot or parcel of land that has less than the required minimum area or width as established by the zone in which it is located and provided that such lot or parcel was of record as a legally created lot on the effective date of this ordinance."

Mr. Budge addressed the issue of precedence. If someone else came to this body and presented evidence that their lot existed prior to 1992, then their lot would have to be considered a legal lot under the Town's own code. He stated that if the parcel was petitioned for subdivision, it should not be considered

because that would be a new lot created after 1992. This potential would require frontage. Mr. Freeman recognized that there is a prohibition on flag lots in the Huntsville Town Code.

The annexation resolution was shown to the Appeals Authority. Mr. Budge stated that the resolution acknowledges the parcel as a legal parcel in Weber County prior to the annexation. He addressed the question of why the lot should be recognized and given the acknowledgement under the Town Code if it was not annexed into the Town until 2014. Mr. Budge explained that the Huntsville Town code does not specify that only lots of record that were in the Town within a certain time frame enjoy the privileges of legally non-conforming lots because that would be contrary to how every other city in the entire state handles these types of lots. If the lots of records were established prior to the subdivision ordinance and there is a platting of that lot, then it is treated as a buildable lot.

Mr. Budge cited Park City's Empire Pass as an example of this application of the law. Before Empire Pass was annexed, 300 mining claims were located. Rather than having the risk of having a lot on every one of the mountain top areas, all the lots were aggregated and brought down into five development pods. One of the pods has a hotel, the Montage – Empire Pass and the other Red Cloud. The reason this was done is because the city in Summit County recognized that each one of those parcels were considered a lot of record or non-conforming lot. If a city does not recognize the non-conforming lot status, then that would result in a taking. The city would be denying the right for the land to be used for the purpose it was first created. Mr. Budge stated that the six lots brought in under the annexation agreement were not the complicated case such as the Empire Pass case.

In the Annexation Agreement section 3 it states, "The Town acknowledges and represents that its existing Town Ordinances, including without limitation its zoning ordinances and Building Code permit development of the Subject Property in the future." Mr. Budge stated that this agreement runs with the land and thus applies to Mr. Freeman. He stated at the time of this agreement there could have been a negotiation regarding the use of land at that time. He went on to summarize that Mr. Freeman is seeking one buildable lot, not a subdivision. He stated Mr. Freeman is exempt from the frontage requirements because this is a lot of record established prior to 1992.

James Truett asked for more clarification on the application of the buildable lot status even when the said lot was not annexed into the Town until 2015. Attorney Morris stated that any time you bring in a lot with annexation, you bring the history of that lot with the annexation. Mr. Budge stated the only way to overcome the history of the lot is with negotiation at the time of annexation. Because these lots were brought in together the histories could not be merged. If any lot could show establishment prior to 1992, then it applied to all of the lots.

Bill White asked for case law references or state law statutes that when a lot is annexed into a Town it would bring its own history instead of conforming to the jurisdiction of the Town. Mr. White stated when the applicants came to the Town with their petition to annex, they came to the Town with the

proposal to put in a road. It clearly stated that the road would provide the 130 feet of frontage and the 66-foot-wide Town right of way would go through Steve Johnson's property and they would put a cul de sac on the parcel in question. It was based on this proposal that all the parcels were allowed to annex. In addition, is it the Freeman's contention that a lot would not be subject to any of the other conditions and ordinances such as right of way and frontage?

Mr. Budge responded that the Seminole case for this vested rights case is Western Land Equities. When you have a parcel, you are vested to zoning at the time of application. Mr. Budge stated that in this case, no application was required prior to statehood. Bill White asked Mr. Budge if this case addresses the situation of annexation, where land that was annexed into the Town is entitled to being a lot of record and not subject to any ordinances of the jurisdiction being annexed into. Mr. Budge stated that Western Land only addressed vested rights.

Mr. White asked again for case law that addressed this specific issue. Bill White stated he understood vested rights, but he does not understand how applicants could come to the Town from the County with the commitment to bring a road and plan to abide by the ordinances of the municipality, suddenly the applicants then have rights that they acknowledge never existed prior to the application.

Mr. Budge stated that all he has is the annexation agreement that has been presented to him. He stated the development plan for the parcels being annexed were not a part of this agreement. Mr. Budge stated he could not be held to anything that might have been said or misrepresented back at the time of annexation. Mr. Budge did address the other part of the question. The parcel in question is not exempt from all ordinances of the Town. He stated that the parcel in question has to comply with all other requirements that do not fall into the category of configuration requirements.

Some examples of requirements the said parcel would have to comply with were given. Mr. Budge gave the example of zoning. He stated the parcel would need to comply with the zoning requirements. If the zoning was downzoned, it would result in a taking. Most cities have in their agricultural zoning an allowance of a detached single-family structure. He quoted Jody Burnett and stated, "you are vested in what?" Mr. Budge stated the case you have to go back to is the Western Lands Equities. Is Mr. Freeman vested in being able to develop outside the agricultural zone? No, all that can be done on the property is avoid the application of a configuration restriction. He gave examples of configuration restrictions: minimum size, width, and frontage of a lot. Mr. Budge stated there is recognition that as time moves forward the standards for "use" might change but owners rely on boundaries as giving them a buildable lot.

Utah State Code 10-9A-5 was given by Mr. Budge as the State Code addressing non-conforming lots. He also stated the State of Utah addressed lots coming from the County into incorporated cities last year. Mr. Budge also cited case law for Rock Manor Trust. The case talked about how the non-conforming

use continues in perpetuity. You can't change that use, but you are allowed to have the basic right when that was available when that was first available.

Mr. Budge stated the access must be allowed by the state fire statutes. When Mr. Freeman brings his building permit application to the Town, he will also bring approval for the fire access. Mr. Freeman knows he will only be able to have one structure. Mr. Budge acknowledged that last April and in prior years that owners have brought forth the idea of doing a subdivision. He referred to Bill White and acknowledged that he may have heard about ideas about a subdivision and cul-de-sac through these prior encounters.

Bill White corrected Mr. Budge. The idea of subdivision and cul-de-sacs were not proposed independently of the proposed annexation. Bill White stated Kristy Bennion and Steve Johnson came to the Planning Commission many years ago. Steve Johnson came and proposed the idea of annexation so a dedicated road would go through his property. Steve Johnson stated he had an agreement with Kristy Bennion to put a road that would give her access off 100 South to her property. After annexation, Kristy Bennion's attorney came to the Planning Commission and represented that a considerable sum of money had been paid by Kristy Bennion to Steve Johnson to purchase that right of way. This was all part of the idea to make this said parcel of Tom Freeman's a buildable lot. This was the understanding by the Planning Commission when the property owners petitioned for annexation.

Mr. Budge stated he had researched this case, but only understood that Kristy Bennion was only part of the larger effort to create subdivisions. Mr. Budge stated that if a property owner is trying to create additional parcels, then the requirements for frontage and such come into play. Mr. Budge stated they are only seeking one buildable lot.

Mr. White asked Mr. Budge why they came to the Appeals Authority and not the Planning Commission. Mr. White stated Mr. Freeman came to the Planning Commission earlier in the year to propose a subdivision. Instead of Mr. Freeman going back to the Planning Commission and requesting one single-family home, they are now leap frogging over the Planning Commission and the Town Council directly coming to the Appeals Authority. The Appeals Authority does not have the institutional knowledge that the Planning Commission has regarding the history of Steve Johnson and Kristy Bennion coming to the Planning Commission and proposing the annexation and promising a dedicated town road. Mr. Budge stated the Huntsville Town Code states that Appeal Authority makes the determination for lot status. Mr. Budge also stated that all the other history is not relevant to the 1992 case. He stated that none of that history existed prior to 1992. He stated that none of that information regarding the annexation applied to the lot or parcel in question.

Mr. White asked about the acreage. He stated Kristy Bennion annexed five acres into the town. Mr. Budge stated that the lot in question is 1.5 acres of the five acres that was annexed. He stated that this parcel clearly existed before statehood. Mr. White asked when the north lot was established. Mr. Budge

stated that he did not know the answer to that question. He had not done the research. He stated again that Mr. Freeman is only seeking one home on the lot of 1.5 acres. Mr. Budge stated the north lot is wet and not fit for building.

Mr. White asked about the deeds to the property. He wanted to know if the north lot and south lot were deeded separately. Mr. Budge stated that the lots were deeded separately and has been since the 1870's.

Mr. Truett asked about access to the property. Mr. Budge stated they have an easement of 20 feet which complies with the state statute for fire access. Mr. Truett asked if anyone has talked to Frank Clawson. Mr. Budge stated that when the lot is approved as a legal non-conforming lot, he will have to take drawings in for approval and get them signed by the fire chief. Mr. Truett asked if Mr. Budge had seen the letter written by Frank Clawson. Mr. Budge stated that the letter was best described as confusion. He believes that Frank Clawson would like to buy the property back (**Letter is attached**).

Jenny Clawson Peel spoke. She stated the easement was an 18-foot easement until the property owners agreed that they would develop the property together. The easement was then extended to a 20-foot easement. Tom Freeman spoke up and stated that the 20-foot easement was already established when he bought the property. Mr. Budge admitted there was a lot of trading happening prior to Mr. Freeman coming on the scene. He stated the only way that Mr. Freeman knew of all the trading was because they tried to resurrect some of the plans prior to the April 2022 Planning Commission meeting. When it was clear that the plans of the past were not going to come to fruition, Mr. Budge advised Mr. Freeman that he had one lot of record that they would seek to establish for building.

Mr. Truett asked Mr. Budge what changed their mind about developing three buildable lots and now going to one buildable lot. Mr. Budge stated that only one legal lot. Mr. Truett asked if anyone had approached Steve Johnson about building the roads. Mr. Budge stated he had not talked to Steve Johnson. Mr. Budge stated that the access will only be a driveway to a lot of record. They are not seeking anything beyond this one lot. He cited another case for Mr. White, the Gibbons v. Reed case (?).

Mr. White asked about lot of record claims that the cities have denied. He stated he is aware of cases in Emigration Canyon where the city denied the claims. Mr. Budge responded that the cities were probably not challenged because utilities were unable to be brought into those lots.

There were additional questions by the Appeals Authority members. They asked about the process for noticing the current meeting and then asked if they were able to ask for public comment. Beckki reviewed the posting of the notices for the meeting. Attorney Morris asked the Appeal Authority to give themselves some time to review all the materials and arguments provided. They have been given a binder of materials that also went to Mr. Freeman and his attorney. Mr. Morris asked the Appeal Authority to put together some findings regarding their decision. He also advised them he did not expect them to make this decision tonight.

In the Appeal Authority binder is the Huntsville Town Code regarding the Appeal Authority, title 15.3-15.5 & 15.4. Under section C it states that the Huntsville Town Appeal Authority may make the determination of lot status.

Huntsville Town Code 15.5.4 reviews the powers and duties of the Huntsville Town Appeal Authority.

A. An Appeal Authority shall:

- 1. Act in a quasi-judicial manner; and*
- 2. Serve as the final arbiter of issues involving the interpretation or application of Land Use Titles.*

B. The Huntsville Town Appeal Authority shall hear and decide:

- 1. Appeals from Land Use decisions applying the Land Use Titles;*
- 2. Special exceptions to the terms of the Land Use Titles; and*
- 3. Variances from the terms of the Land Use Titles.*

C. The Huntsville Town Appeal Authority may make determinations regarding the existence, expansion, or modification of nonconforming uses under the Huntsville Town Land Use Titles.

Mr. White asked Attorney Morris to talk about non-conforming versus non-complying when referring to letter C of 15.5.4. Mr. White explained that non-conforming would be when someone applies to put an oil rig on a residential lot. What Mr. Freeman is seeking a determination on a lot that is non-complying as to frontage and size. Mr. White states the Appeals Authority does not have the authority to look at this without the Planning Commission reviewing this petition. Attorney Morris stated he believes that this is a preexisting non-conforming lot. He stated all the Planning Commission could do is turn down the decision. Mr. White disagreed. If the lot was legally nonconforming, they could approve the land use permit. John Bowen stated he believed the Planning Commission also had the power to make that decision. Mr. Bowen stated that given the information that the Appeals Authority was given, they would have the information they need to make a decision. Mr. White added that the Planning Commission also has more information regarding the history of the lot.

Attorney Morris cited 10-9A-701 which states that applicants should not be subject to multiple appeals. Mr. White stated the applicants should be coming to the Appeals Authority as a last option. Attorney Morris stated that it is problematic to have applicants go through multiple applications. Mr. White wanted to clarify that the Huntsville Town Code was not out of step with the State Code 10-9A-701 which has been the State Code since 2018. Mr. White conceded that he is pushing back on these arguments.

Mr. White went on to explain that even if Mr. Freeman has a lot of record that is nonconforming, the lot is noncomplying with the regulations from the Huntsville Town Code. There is not frontage on the lot, the lot size is not compliant. Mr. Budge stated that the Huntsville Town Code uses the phraseology is nonconforming. Mr. White stated Mr. Freeman had been to the Planning Commission. Mr. Budge stated that he would have come to the Planning Commission if he was considering a subdivision.

Mr. White asked Attorney Morris how confident he was in the argument that Mr. Budge was making. Attorney Morris stated that this was the opportunity for Mr. Budge to present the case for Mr. Freeman. Attorney Morris stated Council Member Sandy Hunter made valid points that the maps used by Mr. Budge and Mr. Freeman needed to be verified in some way. There is a question about the validity of the maps. Attorney Morris stated the Appeals Authority needed a copy of the deed and a letter from the Fire Marshall talking about the access to the property. Is the access sufficient? The annexation document refers to responsibilities of the applicant. In section 5.4 of the annexation agreement, it states "the Applicants shall be responsible to provide access to the vacant parcels within the annexation if it is necessary. The Town shall have no obligation to provide access to these parcels."

The annexation agreement also stated in section 5.5 that the applicants are to bring source capacity and water rights for the lots. At the time of the annexation, the petitioners stated that they would not need water at the time of annexation. The petitioners agreed that when a building permit was filed in the future, they would bring that source capacity and water rights to the newly annexed properties. This includes secondary and culinary.

Attorney Morris addressed the public noticing requirements. He advised that Chairman Truett could entertain public comment at his discretion.

Mr. White stated the argument that any lot legally created prior to their inclusion in Huntsville Town are not subject to the same standards as all the other lots in Town. Attorney Morris stated the lots must follow health and safety standards. Mr. Budge stated that lots of record can not avoid all the code. He stated it is the standards as to the dimensions of the lot. In addition, because the lot is agricultural there is an allowance for a separate detached structure.

The 1873 map has many lots that were created prior to their inclusion in the Town of Huntsville. Mr. White asked Mr. Budge if it was his position if there is a parcel that did not have access on a frontage road because it was tucked in behind another parcel in 1960, when the state allowed cities to enact zoning laws, now becomes a legal building lot because at the time in 1873 when it was created there were no zoning laws. Mr. Budge stated that was not only his position but a widely held state practice. He stated that a government cannot take a parcel that has been created. He stated that all the parcels on the 1873 map should all have structures on them now. Mr. White stated that was not the case in Huntsville Town because there are many vacant lots here that do not have any frontage. Mr. Budge stated that if it was Huntsville's goal to control growth by zoning, that frontage was not the correct way to do it. Huntsville needs to either buy the vacant lots for themselves or take out the definition of a non-conforming lot and reference to 1992 as the standard. Taking out the definition of a non-conforming lot would have its own consequences according to Mr. Budge. Lots will have their own stories and the Appeals Board will be very busy. That would also be a unique position in Utah law.

Rod Layton wanted to ask about the 20-foot easement. Attorney Morris stated that the 20-foot easement is enough per the international fire code. However, the Fire Marshall will have to come out and look at the easement to make sure that it complies with surface structure. Mr. Layton wanted to know if the easement was Steve Johnson's property. It was confirmed that the land is Frank Clawson's. The easement is used by the new homeowners of Steve Johnson's property, to access their garage. The Frank Clawson easement also provides access to the Tom Freeman property. Mr. Truett asked how close the easement is to the Hessenhauer's side door of their home. The Hessenhouer's recently bought the Steve Johnson home. Michael Hessenhauer responded that the easement is just 13 feet from their door. Frank Clawson stated that the easement is just 10 feet from Hessenhauer's garage door. In addition, there is a small outbuilding the Johnson's built that is located only 5 feet from the easement. The building was built during the time that Steve Johnson was on the Planning Commission.

Frank Clawson referred to his letter that he submitted to the Appeals Authority. Mr. Truett asked Mr. Freeman if he had asked Mr. Johnson about accessing his property through the back of the Johnson property. Tom Freeman stated that he had talked to Steve Johnson about the construction of the road. They were working on a deal together to give Steve Johnson three buildable lots on the lot west of the old Johnson home. Mr. Johnson would provide the land and Mr. Freeman would improve the road. In addition, it would give Mr. Freeman access to his property. Mr. Freeman stated that as property values increased, Mr. Johnson changed his mind. At the time, Mr. Johnson was in agreement with the donation of land to build three lots and Mr. Freeman could build the road. Mr. Johnson would have had three lots. When property values increased, Mr. Johnson did not want to dedicate an acre of land to the deal in form of a road.

Mr. Truett asked Rex Harris about getting utilities back to the Freeman lot. Rex Harris introduced himself as an engineer for UDOT and former Town Engineer. He has worked with property owners on this piece of property for many years. In his opinion, this is not a conforming issue. In his opinion, the lot is conforming. The property was established prior to 1992 and was allowed to annex. The zone allows a home to be built. The issue is that this is a compliance issue. The home needs to comply with the regulation. Mr. Harris stated that the Town requires frontage on a dedicated Town road. He states this is a requirement or regulation. The Fire Marshall approval for health and safety is just one more regulation. There are many other regulations that need compliance. The parcel conforms, but does the structure comply. If the structure is not going to comply, then there is a variance process dictated by Huntsville Town code and State Code. Mr. Harris also stated that a parcel is not the same as a buildable lot. Just because the parcel of land was shown back in 1875 does not make the parcel a buildable lot. If that is true, a postage stamp parcel would be a buildable lot. There has to be compliance with septic, sewer, water.

Rex Harris commented regarding the utilities. There are regulations regarding the secondary and culinary water. The lines need to be a certain distance apart to not cross contaminate. He also stated that

Huntsville has two different sizes of road. He cited the recent lawsuit regarding another right of way in Town and was determined by the court to be a private right of way and not a Town road.

Attorney Morris suggested that on the list of requirements from applicant that an examination of the easement be required. Does the easement allow for the building of a home?

Chairman Truett asked to hear from the adjacent homeowners. Frank Clawson gave some history of the easement given. He stated he did not live here at the time the easement was established because he was in the Air Force. Originally the access was 18 feet. Later it was increased to 20 feet. When the easement was granted Kristy Bennion continued to use the lot as an agricultural lot, putting some horses on it for a time. He thought the parcel would qualify as a flag lot, but he is not aware of any approach to the Planning Commission regarding a flag lot parcel. Mr. Clawson states the easement is quiet at this time, but as he is the taxpayer for the easement, he would like those property owners who share the easement to do what it takes to maintain the easement. The Johnson's never provided any maintenance of the easement. The Clawson's have provided the maintenance and snow plowing. Frank Clawson is concerned about how the easement will be maintained going forward with more traffic on it and potential for a new home. Frank Clawson stated he has offered to purchase the property from Mr. Freeman at the price that he paid for the land.

Jenny Clawson Peel states she lives in the current Clawson home that retains the easement. She stated her concern is the danger of cars and traffic to small children. There is frequently traffic that goes back to the rear lot late at night. It's hard for her small children to play in the backyard while there is traffic going back and forth to the back lot.

Michael Hessenauer expressed his concerns about a house being put in the said parcel. They just purchased the lot that Mr. Johnson sold to them. They want to raise their family on the property. They are concerned with traffic that interferes with children playing outside and the noise that comes from the active easement when trying to work from home. Mr. Hessenauer stated that this is their primary home, and all these proceedings might just be for a second home owned by property owners that already have an additional second home in Huntsville Town. He hopes the Appeals Authority can prioritize needs for the families that live here as their primary residence.

Mr. Truett asked if Rex Harris had any additional comments regarding the lot. Mr. Harris stated he is concerned that there are multiple compliance issues with building a single-family home on the lot. Mr. Brent Ahlstrom commented that getting utilities back to the home is a major issue. Mr. Harris confirmed the utilities are a major issue.

Frank Clawson wanted to comment regarding the maintenance of the easement. It had been talked about graveling the easement to bring it up to compliance for the Fire Marshall. An issue that is problematic about the easement is the drain field from the easement into the Hessenhauer home. Frank Clawson

stated that if the easement was built up to meet the codes, the water would drain into the Hessenhauer's garage and possibly home. He would like to see that concern addressed. Attorney Morris stated this goes to the health and safety compliance issues.

Allen Endicott asked if Tom Freeman could construct on the property during the time that this appeal is pending. Mr. Freeman might want to construct a fence or a barn. Attorney Morris explained that the Appeals Authority will decide on the non-conforming lot status. They will look at the feasibility status of the lot. However, to build on the property, the Planning Commission will have to work with the Freeman's on complying with the regulations and Town ordinances.

Mr. White asked the Hessenhauers if they had written permission to use the easement as their driveway. Frank Clawson explained that the Petersons, then the Johnsons have used it as a driveway over the years. Because of the years of use, the Clawson's could not prevent the use of the easement for the Hessenhauers. Frank Clawson did state that there is an agreement that if the Hessenhauer's home burned down or a major remodel was done, that they arrange for a different driveway. Frank Clawson also explained that the current easement was the natural access to the back lots at the time of sale to Kristy Bennion. It was being used by the Clawson family to access the back of their property prior to them selling the property to Kristy Bennion.

Chairperson Truett motioned to table Tom Freeman's request for determination of a legal non-conforming lot status on parcel number 240140003, until Tom Freeman can provide the Appeals Authority with additional information. Mr. Brent Ahlstrom seconded the motion. Beckki restated the list of requested information to be provided:

- 1) Case law regarding the application of lots established prior to zoning ordinances being exempt from frontage and size requirements.
- 2) Validation of the maps Tom Freeman is using to establish the lot in question, veracity of the maps.
- 3) Letter from the Fire Marshall regarding the compliance of the road
- 4) Culinary and Secondary water shares and source capacity
- 5) Letter from utilities regarding feasibility of serving the lot in question
- 6) Explanation of the easement documents and deeds, whether the documents allow for and provides access for a single-family home

The above information will need to be provided to the Appeals Authority prior to them reconvening.

Roll call vote. All votes Aye. Motion passed.

Meeting adjourned at 7:30 p.m.

Minutes Approved:

Member: John Bowen Date: 11-21-22

Member: [Signature] Date: 11-21-22

Member: [Signature] Date: 11-21-22

Member: [Signature] Date: 11-21-22

Recorder: Beateki Eudicatt Date: 11-21-22

CHAIR: [Signature] 11-21-22