**Millcreek City Hall**
1330 East Chambers Ave
Millcreek, Utah 84106
millcreekut.gov

**Planning & Zoning**
(801) 214-2700
planner@millcreekut.gov

# LAND USE AND DEVELOPMENT APPLICATION

| | | | |
|---|---|---|---|
| **Property Address** | 3652 Aurora Circle | **Parcel No.** | 16-36-351-017 |
| **Name of Project** | Romero Residence Addition | **Project Size in SF** | 658 sqft |

**Please describe your request. Add additional pages if necessary.**

This application is to APPEAL the planning department determination and denial of Permit # 252009 for this project as it is believed to not be consistent with Title 18 as written. The attached APPEAL letter includes the full consisting of (93) ninety three pages. Based on the information contained in this application and appeal letter, the applicant is requesting the planning department reconsider their position and approve the permit as submitted.

**Administrative**

- ☐ ADU Approval
- ☐ Change of Use
- ☐ Conditional Use
- ☐ Eligible Facility Request
- ☐ Minor Site Plan Amendment
- ☐ Reasonable Accommodation
- ☐ Sign Permit
- ☐ Site Plan
- ☐ Temporary Use

**Subdivisions**

- ☐ Condominium
- ☐ Lot Line Adjustment
- ☐ Major Subdivision
- ☐ Minor Subdivision
- ☐ Parcel Line Adjustment
- ☐ PUE Vacation

**Other**

- ☐ General Plan Amendment
- ☐ Rezone
- ☐ Text Amendment
- ☐ Noncomplying Expansion
- ☐ Nonconformity Determination
- ☐ Variance
- ☐ Zoning Compliance Letter
- ☑ Other: APPEAL FOR RECONSIDE

**PLANNING REVIEW PERIOD**

**Each application is subject to a planning review period.** Upon payment of all applicable fees and submission of a complete land use application for an approval that requires a public meeting, planning staff will have a review period of fifteen business days to review the application for substantial compliance with all the requirements of applicable ordinances before scheduling the application for the first public meeting or hearing. If staff requires additional information, clarification or an updated application submittal as part of their review, the time to provide the additional information, clarification, or submittal will be in addition to the review period. Staff will schedule your application at the first available public meeting after the review period concludes.

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## APPLICANT'S INFO

First Joe Last Romero Initial

Address 3652 Aurora Circle City Millcreek State Utah ZIP 84124

Phone 801-808-0063 Email joe@rthreegroup.com

## PROPERTY OWNER(S) – Note: A signed affidavit is required of property owner(s).

☑ - Check here if applicant and property owner(s) are the same.

First Last Initial

Address City State ZIP

Phone Email

## PROFESSIONALS

____ Engineer ____ Architect APPE Other

Company Contact

Address City State ZIP

Phone Email

Applicant hereby authorizes Millcreek to reproduce this application, and all documents attached to the application for staff, officials, and the interested public. Applicant further authorizes city staff to access the property for inspections and assessments as required as part of an application review.

Applicant's Signature: Joe Romero Date: 1/23/2026

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**NCM-26-002**

# Request for Neighborhood Compatibility Modification (Lot Coverage) Decision

| | |
|---|---|
| **Date:** | **1/30/2026** |
| **Applicant:** | **Joe Romero** |
| **Parcel ID:** | **16-36-351-017** |
| **Property Address:** | **3652 E Aurora Cir** |
| **Zone:** | **R-1-8** |
| **Prepared By:** | **Carlos Estudillo, Planner** |
| **Denied By:** | **Francis Xavier Lilly, AICP, Assistant City Manager / Planning Director** |
| **Scope of Decision:** | **Administrative.** This is an administrative matter to be decided by the Millcreek Planning Director. |

## REQUEST AND SYNOPSIS

The applicant, Joe Romero ("Applicant"), has applied for a Neighborhood Compatibility application to modify lot coverage for the property ("Property") located at 3652 E Aurora Circle. The Applicant is requesting an exception to the lot coverage requirement, identified in Millcreek's Zoning Code Section 18.36.040 (Spatial requirement for Single-Household Residential), to facilitate the construction of an addition to the current main structure, which exceeds the maximum allowed lot coverage in the R-1-8 zone as set forth in Millcreek Code of Ordinances Table 18.36-2.

### 18.36.090 Neighborhood Compatibility Modification (NCM) For Lot Coverage

Millcreek Code of Ordinances section 18.36.090 Neighborhood Compatibility Modification (NCM) "allows modified standards from one or more spatial standards based on the compatibility of the proposed residential development application with other properties/dwellings in the proximate neighborhood." The NCM further provides as follows;

The Planning Director may approve an NCM request at time of site plan submittal, provided the following conditions are met:

1. Evidence. Compliance with the corresponding neighborhood conditions must be established by a survey from the proximate neighborhood, defined as a 200-foot radial distance from the property boundary. Survey submitted must be completed by a surveyor licensed to practice in the State of Utah.

2. Submittal. NCM requests shall be submitted on a separate form and shall include an additional review fee as set forth in the Millcreek Consolidated Fee Schedule.

3. Permissible Modifications. Building height, setbacks, and lot or parcel coverage modifications may be accommodated if the request does not exceed the allowances as set forth in Table 18.36-4 NCM Standards

4. Non-Permissible Modifications. Building envelope, mass and scale, and accessory structure modifications do not qualify under the NCM.

**Table 18.36-4 NCM Standards**

| *Zone* | *(H)* | *Lot or Parcel Coverage* | *Front Setback* | *Side Setback* | *Rear Setback* | *Max Height* |
|---|---|---|---|---|---|---|
| R-1-3 | 33' | 40% (1) | The average of all lots or parcels within the proximate neighborhood that fronts to the same street, road, or right-of way. | Combined side yard shall be at least twenty-five percent (25%) of the lot or parcel width, and no less than five feet (5') on each side. | The average rear yard setback that are on six lots or parcels of the applicant's choice within the proximate neighborhood, and no less than 15' | The maximum building height that may be approved by the Planning Director or designee under the NCM standards is the lesser of:<br>3. Three feet plus the average maximum ridge height of residential structures that are on six lots or parcels of the applicant's choice that are within the proximate neighborhood; and<br>4. The maximum height of the zone specified in column (H) of Table 18.36-4 NCM Standards. |
| R-1-4 | 33' | 40% (1) | | | | |
| R-1-5 | 33' | 40% (1) | | | | |
| R-1-6 | 33' | 40% (1) | | | | |
| R-1-8 | 33' | 38% (1) | | | | |
| R-1-10 | 35' | 36% (1) | | | | |
| R-1-15 | 37' | 30% (1) | | | | |
| R-1-21 | 37' | 30% (1) | | | | |

E. Table Notes

1: Lot or parcel coverage for all lots or parcels may not exceed more than 1.15 times the average coverage of proximate neighborhood lots or parcels.

## Analysis/Facts

- **Application.** The Property is located within the R-1-8 zone, which allows a maximum lot coverage of 33% of total lot area. The total lot area of the Property is 10,062 square feet (0.23 acres). The current lot coverage of the Property is 3,063 SF, roughly **30.4%** of the Property's lot area. The Applicant's proposal application would result in a lot coverage of 36.9% of the property's lot area.

- **Evidence.** The proximate neighborhood, defined as a 200-foot radial distance from the property boundary, includes eighteen (18) properties. Based on the Applicant's analysis, the Applicant has shown that within the proximate neighborhood, **only one** property exceeds the lot coverage requirements within the proximate neighborhood. That property's lot coverage is 33.73%.

- **Permissible Modifications/ Non-Permissible Modifications**. Pursuant to Table 18.36-4 in Section 18.36.090 of the Millcreek Code, in no case shall the lot coverage exceed 38% or 1.15 times the average coverage of proximate neighborhood lots or parcels. The Applicant proposes

a lot coverage of 36.9%, which is below the 38% coverage limitation but exceeds 1.15 times the average coverage limitation for proximate neighborhood lots or parcels. Based on the Applicant's submission (attached), the average lot coverage of all properties (18) within the proximate neighborhood (200 feet) exceeds 1.15 times the average coverage of proximate neighborhood lots or parcels. Staff computed this average by reproducing the Applicant's information in an Excel spreadsheet and using the "average" formula to derive the average from the lot coverages provided by the Applicant. Based on the data the applicant provided, the maximum lot coverage allowed based would be 23.6 percent (average coverage of the lots provided x 1.15), which falls below the maximum lot coverage allowed in the R-1-8 zone, which is 33 percent. In this case, the applicant is entitled to the lot coverage provided in the zone, which is 33 percent.

| LOT # | LOT AREA (sf) | COVERED AREA (sf) | % COVERED |
|---|---|---|---|
| 51 | 19747 | 3333 | 16.88% |
| 52 | 22408 | 2924 | 13.05% |
| 53 | 23462 | 4198 | 17.89% |
| 54 | 24340 | 3214 | 13.20% |
| 55 | 25218 | 4896 | 19.42% |
| 56 | 16847 | 3465 | 20.56% |
| 75 | 16919 | 2767 | 16.36% |
| 76 | 17426 | 2309 | 13.25% |
| 77 | 12290 | 1927 | 15.68% |
| 78 | 11098 | 2818 | 25.39% |
| 79 | 10062 | 2896 | 28.78% |
| 80 | 9725 | 3280 | 33.73% |
| 81 | 17479 | 3989 | 22.82% |
| 82 | 23769 | 3222 | 13.56% |
| 94 | 13877 | 3465 | 24.97% |
| 95 | 12334 | 3058 | 24.79% |
| 96 | 10573 | 2409 | 22.79% |
| 97 | 11533 | 3055 | 26.49% |
| Average Lot or Parcel Coverage | | | **20.53%** |

## Findings:

Based on the Analysis/Facts set forth above, the Planning Director finds as follows:

- The Property is located within the R-1-8 zone, which allows for a maximum lot coverage of 33% (of total lot area). The total lot area of the Property is 10,062 square feet (0.23 acres). The current lot coverage of the Property is 3,063 SF, roughly **30.4%** of the Property's lot area. The Applicant's proposal application would result in a lot coverage of 36.9% of the property's lot area.

- The proximate neighborhood is the area of a 200-foot radial distance from the Property's boundary

that includes eighteen (18) properties as illustrated in the drawing above.

As set forth in Table 18.36-4 E., applying the neighborhood compatibility modification would allow for a maximum lot coverage of 23.6 percent (average coverage of the lots provided x 1.15). The applicant is entitled to the lot coverage provided in the zone, which is 33 percent.

- Based on the Applicant's submission, the proposed lot coverage of the applicant's project exceeds 1.15 times the average coverage of the proximate neighborhood lots or parcels that the applicant identified. Staff computed this average by reproducing the Applicant's information in an Excel spreadsheet and using the "average" formula to derive the average from the lot coverages provided by the Applicant.

.

## Conclusion

The Applicant provided evidence that the proposed addition is within the proximate neighborhood, but the applicant's proposed site plan exceeds 1.15 times the average coverage of proximate neighborhood lots or parcels, and exceeds the lot or parcel coverage provided in the R-1-8 zone .

The Applicant **does not meet the approval criteria for a lot coverage Neighborhood Compatibility Modification (NCM),** and, based on the information submitted, the application is hereby **denied** by the Millcreek Planning Director.

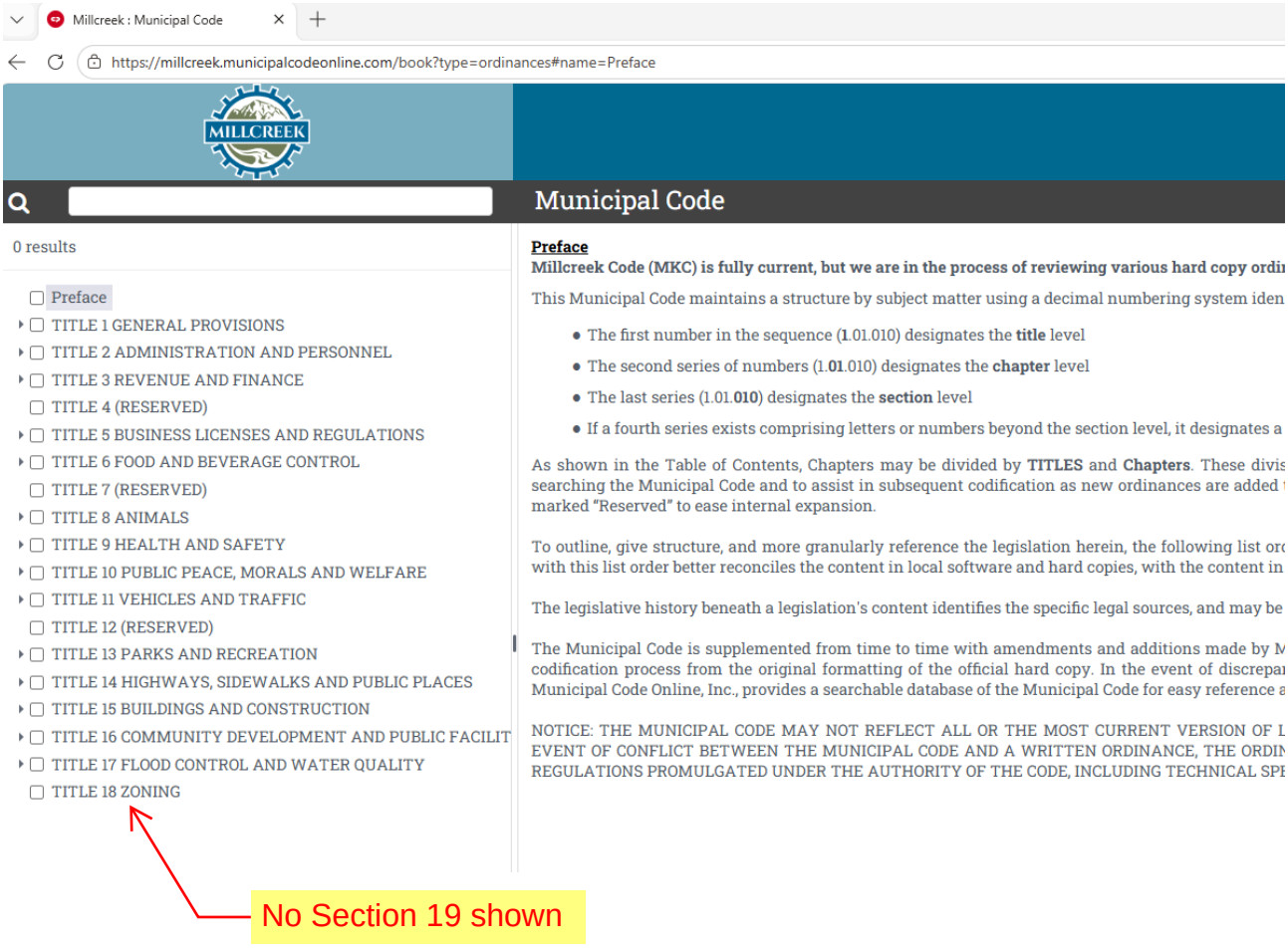
## Appeal of this Decision

Pursuant to §18.04.010 of the Millcreek Code, any person desiring a waiver or modification of the requirements of a land use ordinance as applied to a parcel of land they own, or any person adversely affected by a decision applying the land use ordinances, may file an appeal to the Land Use Hearing Officer. The party taking the appeal shall file the appeal with the City Recorder's Office within **ten** business days after the land use authority issues its written decision. The appeal must include filing an application and paying a fee as provided in the consolidated fee schedule.

If you have any questions regarding this letter, contact the Millcreek Planning & Zoning Department at 801-214-2700. Additionally, if you need information about building permits for this property, please contact Millcreek City Building Services at 801-214-2749.

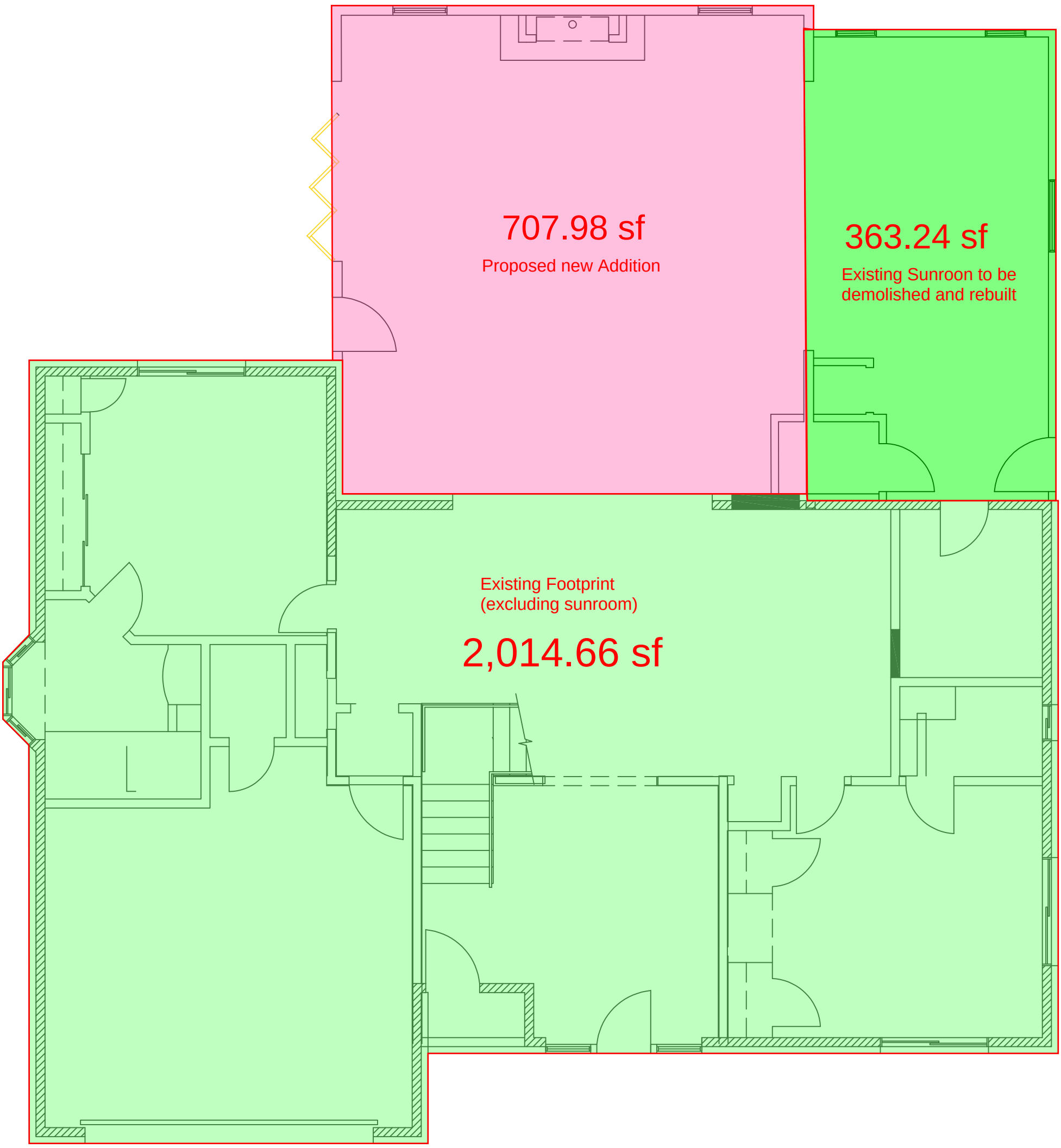
Francis Xavier Lilly, AICP
Assistant City Manager / Planning Director

# ATTACHMENT "A"




No Section 19 shown

# Attachment "B"




Existing Footprint (excluding sunroom) = 2,014 sqft

Existing Sun Room = 363 sqft

Proposed new Addition = 707 sqft

Total of Proposed Home after addition = 3,084 sqft

**SUPPLEMENTAL INFORMATION MEMORANDUM** **February 16, 2026**

**Appeal Date:** **February 5, 2026**

**Building Permit #** 252009 and NCM Permit No. 926020

**To:** Millcreek City Appeal Authority

**Applicant:** Joe Romero

3652 Aurora Circle

Millcreek, Utah 84124

**Re:** **SUPPLEMENTAL MEMORANDUM TO FORMAL APPEAL OF DENIAL**

## I. INTRODUCTION AND BASIS FOR APPEAL

This ***Supplemental Memorandum*** is submitted to provide additional factual, legal and evidentiary information for the Appeal filed February 5, 2026. All material facts related to this matter should be considered by the Appeal Authority.

The supplemental materials establish:

- The City's misinterpretation of Title 18 is structural and outcome-determinative
- The forced Neighborhood Compatibility Modification (NCM) process was unnecessary and improperly imposed
- The City's actions meet the statutory definition of arbitrary and capricious administrative conduct under Utah Law
- The record now contains objective licensed survey evidence conclusively demonstrating a larger lot size which contradicts Mr. Estudillo's initial rough calculations based on Millcreek GIS software.
- Even after NCM process, Mr. Romero submitted an informal letter regarding initial findings of the NCM (with GIS calculations) for cursory review by Millcreek City in order to receive further clarification from Mr. Lilly and Mr. Estudillo.

## II. THE FORCED NCM PROCESS CONFIRMS ACTUAL LOT SIZE

After refusing to apply Title 18 as written, Mr. Lilly and Mr. Estudillo directed Mr. Romero into the NCM process. The formal NCM application was submitted via Land Use Application on January 23, 2026 (***See ATTACHMENT "B"***). This comprehensive application included a stamped survey by Utah Licensed Professional Land Surveyor Chad Anderson (#7736336) including a drone-based roof coverage analysis of Mr. Romero's property along with the other (16) surrounding parcels within 200 feet.

The licensed survey established an "***actual***" lot size of ***10,062 square feet***.

Mr. Estudillo's initial November emails state he confirmed the lot size as being 9,583 as he confirmed which was in accordance with his take off of my plans. This initial calculation shown on the site plan was taken from SL County Parcel Information showing the parcel being .22 acres. Throughout this process, Mr. Lilly's lot size calculation differed from Mr. Estudillo's as Mr. Lilly determined the lot size to be 10,070 square feet. Although this is much closer to the actual surveyed lot size, this further demonstrates Mr. Lilly and Mr. Estudillo's calculations were rough estimates and not in accordance with actuals.

Additional clarity should be given as to why the licensed land surveyor utilized the inaccurate, non-compliant method of "edge of roof measurement" to calculate lot coverage as shown on his plan. This was also at the direction of Mr. Estudillo. In an email exchange initiated by Mr. Romero to Mr. Estudillo, Mr. Romero again wanted to clarify all requirements and offered 2 paths of approval.

However, prior to Mr. Romero submitting the formal Land Use Application for the NCM process, Mr. Romero crafted an email to Mr. Estudillo providing two paths for approval dated January 8, 2026 (***See ATTACHMENT "D"***). In his email, Mr. Romero's ***Path # 1*** again requested the original project by approved as it met the intent of the code. ***Path # 2*** outlined specific questions and concerns directed to Mr. Lilly and Mr. Estudillo regarding the concerns Mr. Romero had relating to his initial findings of adjacent parcels not aligning with the NCM process requirements. More specifically, Mr. Romero highlighted that the adjacent properties were well under the 33% maximum and demonstrated that using the NCM calculation of 1.15x in the final calculations would still demonstrate the project was not right and would not work for the NCM process.

- I have utilized Millcreek's GIS mapping system to complete initial analysis of lot coverages of (6) parcels within 200 feet of my property (See attached)
- A few questions I have for you and guidance requested if I must go down this process:
  - For the (6) properties around my parcel I conducted analysis on, ***ONLY (1) property EXCEEDS the 33%*** maximum lot coverage
  - The other (5) are below the 33%
  - On the GIS Mapping System, several of the properties are heavily wooded so I can not confirm if there are additional accessory buildings or sheds that would increase the lot coverage
  - The "*Average*" lot coverage for the six properties is 27.71%
  - Using the NCM calculation, the 27.71% x 1.15 only equals 31.86% which is already under the 33%.
- ***Will Millcreek City allow an NCM Approval to exceed the maximum 33% lot coverage if there is only (1) of the (6) properties exceeding the current maximum? For my Property, we would certainly be below the 38% NCM Max.***
- Lastly, If I am required to utilize Path # 2
  - I'd like to confirm that a Land Surveyor will be required to "stamp" all information and analysis and not just the survey of my existing home?
  - I'd like to provide accurate direction to the Land Surveyor so I can get an accurate quote before I decide to proceed with this method, if required.

After a brief discussion email exchange where Millcreek City wanted all (16) adjacent properties calculated and the written direction from Mr. Estudillo (in the Attachment "D" email) again directs Mr. Romero with inaccurate, non-compliant information that did not align with the plain text of Title 18. As such, utilizing the Millcreek GIS software data, Mr. Romero performed these calculations and submitted them in an informal NCM letter for cursory review by Mr. Lilly and Mr. Estudillo. (***See ATTACHMENT "A"***). This preliminary information was in accordance with the direction Mr. Lilly and Mr. Estudillo provided to Mr. Romero. The intent of Mr. Romero's informal submission was to request review of the lot coverage calculations of the surrounding (16) sixteen parcels within 200 feet of Mr. Romero's property. This submission and parcel calculation summary was very, very close to the formal NCM submission and stamped land survey Mr. Romero paid for.

Written documentation supports Mr. Romero again tried to engage in good-faith communications with Mr. Lilly and Mr. Estudillo regarding the process. It is Mr. Romero's opinion that based on the calculations shown in the initial, informal submittal (and subsequently proved in the formal NCM submittal), and email sent "highlighting" Mr. Romero's initial findings and concerns, that ***Mr. Lilly and Mr. Estudillo could have quickly identified that the NCM process was never going to be approved*** since the average lot coverage of the (16) parcels was only approximately 25-27% and the NCM only grants 1.15x that amount which was well below the Maximum Lot Coverage of 33%. Ultimately, this is the exact determination of denial Millcreek City made after requiring the full NCM submission and after waiting the nearly 15 full procedural days of the NCM

review process. It could be assumed that the Planning Director himself could have easily identified this condition and not required Mr. Romero to proceed with the formal NCM submission.

## III. MISINTERPRETATION OF TITLE 18 – LEGAL ANALYSIS

Plain language should control as Utah law requires land use ordinances to be interpreted according to their plain language. See the following case precedent:

- ***Carrier v. Salt Lake County*, 2004 UT 98**
- ***Foutz v. South Jordan*, 2004 UT 75**
- ***Brendle v. Draper City*, 937 P.2d 1047 (Utah Ct. App. 1997)**

Utah law prohibits municipalities from adding requirements not found in ordinance language.

## IV. AMBIGUITITIES MUST BE RESOLVED IN FAVOR OF THE PROPERTY OWNER

Utah appellate courts consistently hold that zoning restrictions are to be strictly construed, and ambiguities resolved in favor of the free use of property. See the following case precedent:

- ***Raps Invs. v. N. Logan City, 2025 UT App 55***
- ***Patterson v. Utah County Bd. of Adjustment*, 893 P.2d 602**
- ***Freeman v. Gee*, 18 Utah 2d 339**
- ***Brown v. Sandy City Board of Adjustment***

Additionally, Utah State Property Rights - Ombudsman - ***Advisory Opinion 104*** confirms that interpretations must be tied to objective criteria and provable facts, not subject to administrative preference.

## V. UTAH STATE PROPERTY RIGHTS OMBUDSMAN PROCESS AND EXISTING ADVISORY OPINIONS

Subsequent to filing the Appeal through Millcreek City Recorder's office, Mr. Romero submitted an application to the Utah State Property Rights – Ombudsman office requesting an Advisory Opinion (defined in §13-43-205 of the Utah Code) be issued for this matter. On February 6, 2026, Mr. Romero was

informed by Mr. Jordan Cullimore, Lead Attorney for the Ombudsman's Office, that his case was accepted and an Advisory Opinion (AO) will be issued. Millcreek City has since been formally notified.

Mr. Romero believes the pending Advisory Opinion will support Mr. Romero's beliefs and his appeal.

In addition, although Advisory Opinions are not always admissible in court, there are several previous Advisory Opinions that are very close, if not exactly dealing with the same issues Mr. Romero has brought up during his communications with Millcreek City. (AO#'s 104, 218, 250, 279, 289)

In fact, Millcreek City was highlighted in ***Advisory Report # 218*** which deals with Interpretation & Compliance of Land Use Ordinances. Based on this AO, it appears Millcreek City was previously found to be in violation of not interpreting the plain text of the its code's plain language as Millcreek City was using internal policy and requiring greater restrictions on property use. The conclusion of the report states the following:

**CONCLUSION**

Land use ordinances restricting the use of property are strictly construed, and provisions permitting property use are liberally construed in favor of the property owner. Moreover, a city must interpret its code according to the code's plain language, and not by internal policy.

In this case, the City has incorrectly treated its Design Standards as substantive requirements, and interpreted its provisions to require greater restrictions on property use. The City's Design Standards should be interpreted as providing purpose, as opposed to imposing greater restrictions than what the express provisions of the Municipal Code already require. Since Mr. Tippetts' proposed lot frontages comply with the express requirements of the Municipal Code, his application is entitled to approval.

It is Mr. Romer's opinion that this Advisory Opinion demonstrates that Millcreek City Planning Department has a history of continually misinterpreting their own Codes causing undue financial impacts and delays to the residents of their City. Mr. Romero firmly believes when his pending Advisory Report is issued, it will further demonstrate the City's malpractice.

## VI. ARBITRARY AND CAPRICIOUS ADMINISTRATIVE ACTION

Under Utah Code § 10-20-1109, courts review whether a land use decision is arbitrary, capricious, or illegal. A decision is arbitrary when it:

- Relies on non-existent code language.

- Applies inconsistent definitions.
- Ignores express exclusions.
- Is unsupported by substantial evidence.

The record already demonstrates:

- The GIS-based "rough estimates" were used by Mr. Estudillo instead of scaled architectural drawings and stamped land surveys.
- Express Title 18 exclusions were ignored
- Staff ceased communication after multiple written notices of interpretive error
- Mr. Romero was directed into a costly NCM process despite Mr. Lilly and Mr. Estudillo *having sufficient evidence to determine the outcome "in advance"* in addition to Mr. Romero's specific reminders in nearly every one of his written notifications.
- Both Mr. Lilly and Mr. Estudillo's lot size calculations and rough estimates were inaccurate and did not match the licensed land surveyor's results; demonstrating that all calculations they completed were non-compliant and should have errored in favor of Mr. Romero.
- Through Mr. Lilly and Mr. Estudillo's actions, they have caused a delay of (98) ninety-eight calendar days (and counting)

It is Mr. Romero's opinion that such conduct exceeds interpretative discretion and constitutes illegal ordinance expansion and that he continued to exhaust all possible remedies.

## VII. UNNECESSARY FINANCIAL BURDEN, UNRECOVERABLE SCHEDULE DELAYS TO PROJECT AND EQUITABLE RELIEF

As a direct result of Mr. Lilly and Mr. Estudillo misinterpreting Millcreek City's Title 18, Mr. Romero incurred significant additional costs and delays to the project to include, but not limited to:

- Fees associated with engagement of Licensed Land Surveyor
- Additional Land Use Application Fees & Appeal Submission Fees
- Increased cost of the project due to unforeseen and what Mr. Romero believes is an illegal delay of the project due to expanded administrative requirements by Mr. Lilly and Mr. Estudillo

- Since the initial Permit Submission on November 10, 2025, through the date of this letter, February 16, 2026, the project has been delayed up to 98 days and counting. Time is of the essence for this matter, and it is requested Millcreek City, Appeal Authority and the State Ombudsman Office act swiftly to reduce impacts to Mr. Romero.
- Mr. Romero has been informed by his subcontractors that due to the significant time delay due to permit issuance, the original bid costs of the project are likely to increase.
- The mild weather of December 2025 & January / February 2026 would have allowed construction if not but for the unforeseen and unnecessary delays by Millcreek City.

Under principles of administrative equity and fundamental fairness, Mr. Romero is requesting the Appeal Authority decide in his favor and should:

- Reverse the denial of Permit No. 252009 and immediate approval of the November 25, 2025 original plans with supplements already provided to Planning and Zoning.
- Determine that the NCM process was illegal and improperly required
- Order fee adjustment and reduction of the actual Plan Review and Building Permit Fees or actual costs reimbursement related to unnecessary NCM, land survey, additional land use application fees and appeal fee costs.

## VIII. REQUEST FOR SPECIFIC FINDINGS

Mr. Romero respectfully requests written findings addressing the following:

1. The precise Title 18 language relied upon to define “open porch”;
2. The legal authority permitting expansion of lot coverage to include excluded architectural features and open porches.
3. The evidentiary basis for disregarding scaled plans in favor of GIS estimates.
4. Whether the City acknowledges that the licensed survey materially altered lot coverage calculations.
5. Formal acknowledgement that the NCM process was not legally required
6. Equitable fee adjustment and reimbursement is justified

Absent specific findings grounded in ordinance text, the denial cannot withstand judicial review.

In conclusion, the Supplemental Information further supports Mr. Romero's belief that Title 18 was misapplied and that the NCM process was improperly imposed. In accordance with Utah law and Utah State Advisory Opinions, precedent should rule in favor of Mr. Romero.

Utah appellate courts have repeatedly held that municipal land use authorities and Boards of Adjustment are constrained to apply zoning ordinances according to their plain language and may not expand their authority through interpretation or discretion. Decisions must be supported by substantial evidence and consistent with the governing ordinance; otherwise, they are arbitrary, capricious, and illegal.

Nothing in this Supplemental Memorandum shall be construed as a waiver of Mr. Romero's rights. Mr. Romero expressly reserves the right to purse any and all additional administrative, judicial, or equitable remedies available under Utah law should the City continue to apply or enforce its land use regulations in a matter that is arbitrary, inconsistent with adopted standards, or in derogation of constitutionally protected property right.

Respectfully Submitted,



Joe Romero

Homeowner / Taxpayer / Voter

Millcreek City

Attachments to Supplemental Memorandum

- Attachment “A”:
    - Preliminary NCM Letter and Calculations created by Mr. Romero and sent to Millcreek City for cursory review.
- Attachment “B”:
    - Formal Neighborhood Compatibility Modification Application including letter, and stamped land survey
- Attachment “C”:
    - State of Utah Property Rights Ombudsman – Advisory Reports
- Attachment “D”
    - Email exchange between Mr. Romero and Mr. Estudillo dated January 8, 2026

# NCM Submittal Calculations

## Subject Property Lot Coverage Calculation

**Total Lot Area**: 10,077 sqft

**Total Roof Area**: 3,756 sqft - (including covered porch & shed)

**Total Surface Lot Coverage**: 37.2%

**(16) Neighboring Properties within 200' Radius**

Property 1: 3642 Aurora Circle 34.5% (Exceeds Max. 33%)
Property 2 3962 Jupiter Drive 31.3%
Property 3 4000 Jupiter Drive 28.3 %
Property 4 3629 Aurora Circle 25.4%
Property 5 3654 Jupiter Drive 23.5%
Property 6 3655 Aurora Circle 23.3%
Property 7 3632 Aurora Circle 23.2%
Property 8 3638 Jupiter Drive 13.4%
Property 9 3624 Jupiter Drive 18.3%
Property 10 3622 Aurora Circle 14.1%
Property 11 3615 Aurora Circle 25.3%
Property 12 3999 Jupiter Drive 18.0%
Property 13 3987 Jupiter Drive 19.2%
Property 14 3975 Jupiter Drive 12.0%
Property 15 3965 Jupiter Drive 19.0%
Property 16 3680 Juno Circle 20.0%

***Average Lot Coverage of (16) Properties within 200 Feet of Subject Property***: 21.80%

Attachment "A"

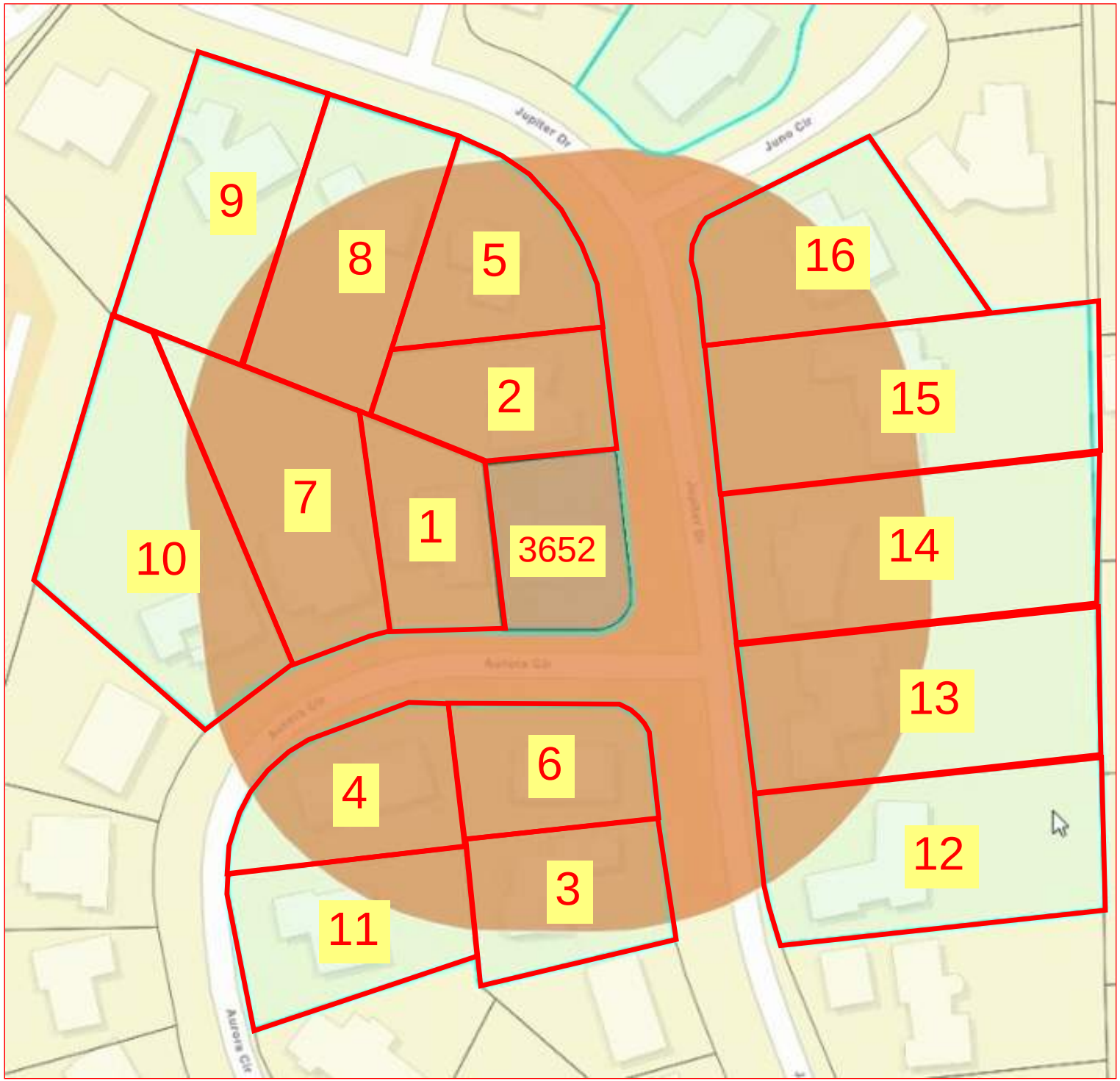
## Average Building Coverage Analysis

Subject Property: 3652 Aurora Circle: 3,759 sqft

Property 1: 3642 Aurora Circle: 3,358 sqft
Property 2 3962 Jupiter Drive 2,899 sqft
Property 3 4000 Jupiter Drive 3,263 sqft
Property 4 3629 Aurora Circle 3,129 sqft
Property 5 3654 Jupiter Drive 2,077 sqft
Property 6 3655 Aurora Circle 2,469 sqft
Property 7 3632 Aurora Circle 4,070 sqft
Property 8 3638 Jupiter Drive 2,344 sqft
Property 9 3624 Jupiter Drive 3,101 sqft
Property 10 3622 Aurora Circle 3,367 sqft
Property 11 3615 Aurora Circle 3,5,14 sqft
Property 12 3999 Jupiter Drive 4,036 sqft
Property 13 3987 Jupiter Drive 4,508 sqft
Property 14 3975 Jupiter Drive 2,936 sqft
Property 15 3965 Jupiter Drive 4,795 sqft
Property 16 3680 Juno Circle 3,523 sqft

***Average Building Area of (16) Properties within 200 Feet of Subject Property***: 3,336 sqft

# 200 Foot Radius Map to 3652 Aurora Circle



## 3642 Aurora Circle

## Lot Coverage Analysis

- Lot Size: 9,732 sqft

- Total Roof Area: 3,358 sqft

- Total Lot Coverage Calculation:

3,358 / 9,732 = 34.5%









**3962 Jupiter Drive**

**Lot Coverage Analysis**

- Lot Size: 9,235 sqft

- Total Roof Area: 2,899 sqft

- Total Lot Coverage Calculation:

2,899 / 9,235 = 31.3%

*** Due to trees, it is not known if other accessory buildings or sheds are on site***






## 4000 Jupiter Drive

## Lot Coverage Analysis

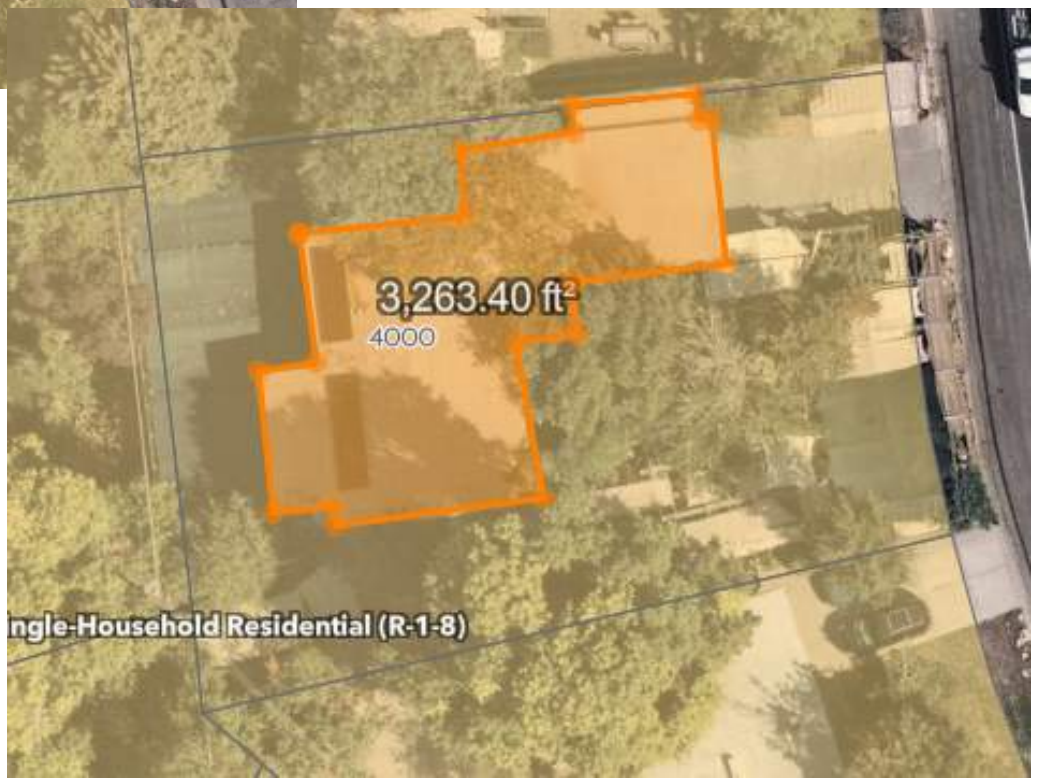
- Lot Size: 11,502 sqft

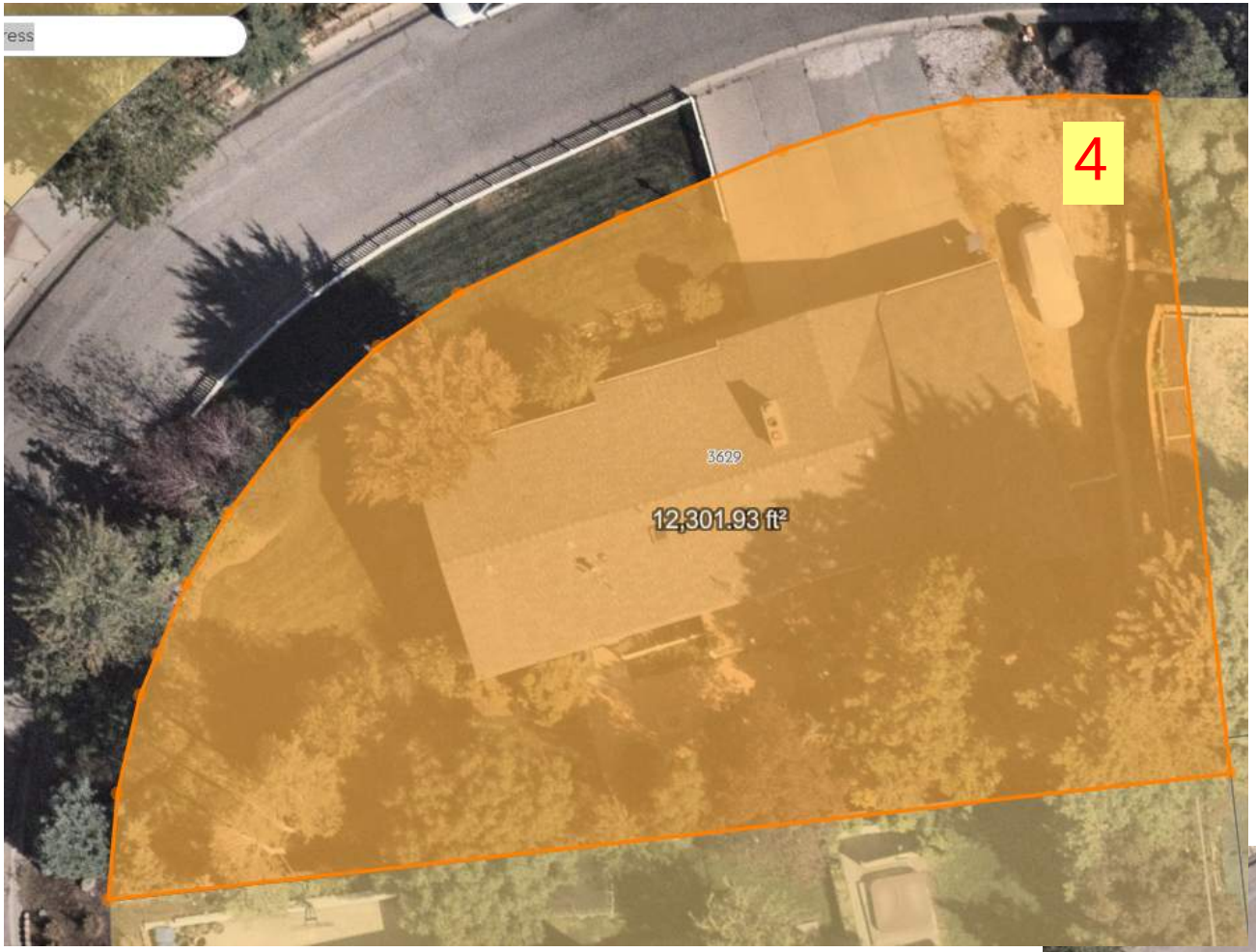
- Total Roof Area: 3,263 sqft

- Total Lot Coverage Calculation:

3,263 / 11,502 = 28.3%

*** Due to trees, it is not known if other accessory buildings or sheds are on site***






## 3629 Aurora Circle

## Lot Coverage Analysis

- Lot Size: 12,301 sqft

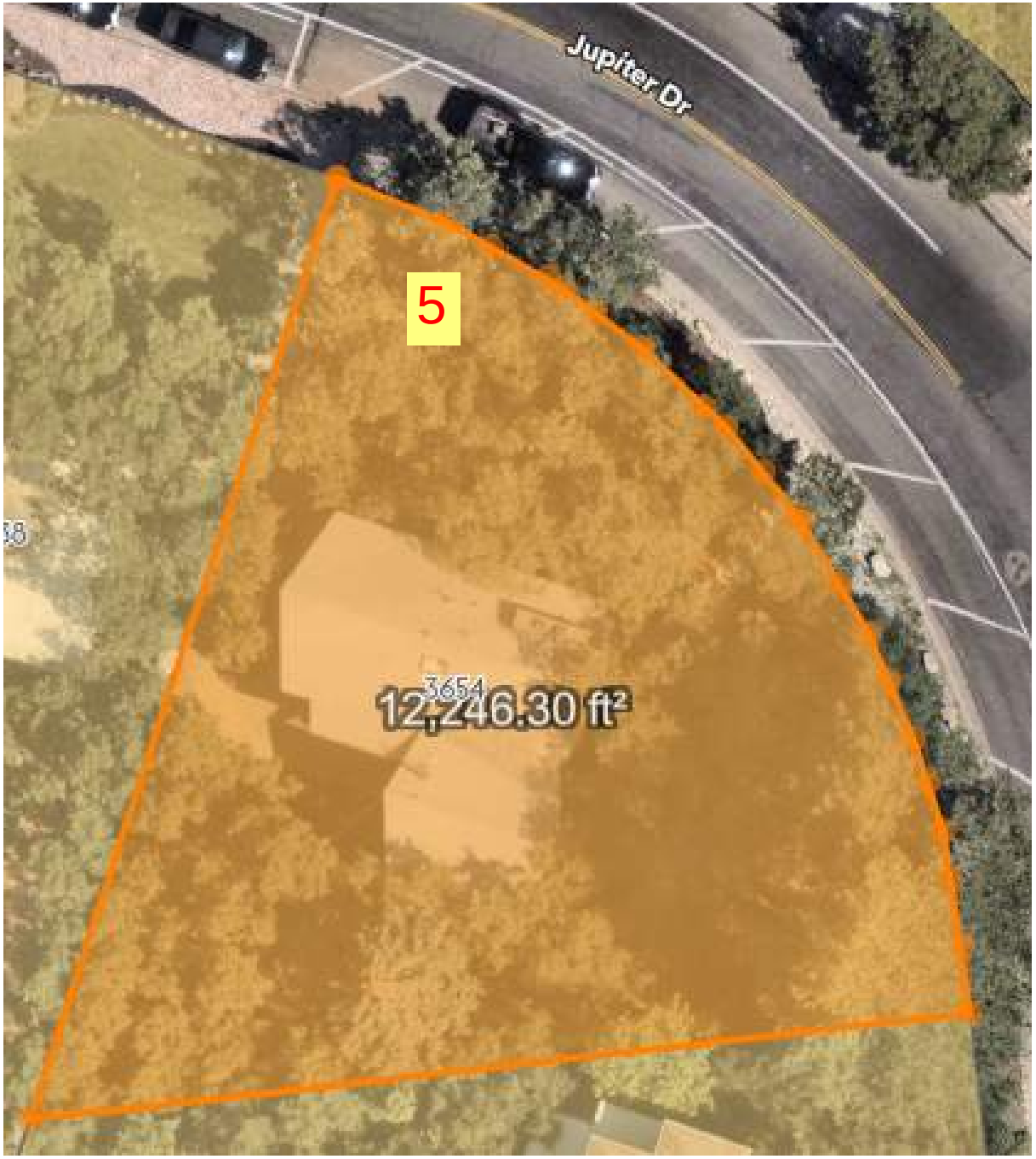
- Total Roof Area: 3,129 sqft

- Total Lot Coverage Calculation:

3,129 / 12,301 = 25.4%

*** Due to trees, it is not known if other accessory buildings or sheds are on site***






**3654 Jupiter Drive**

**Lot Coverage Analysis**

- Lot Size: 12,246 sqft

- Total Roof Area: 2,077 sqft

- Total Lot Coverage Calculation:

2,077 / 12,246 = 23.5%

*** Due to trees, it is not known if other accessory buildings or sheds are on site***






## 3655 Aurora Circle

## Lot Coverage Analysis

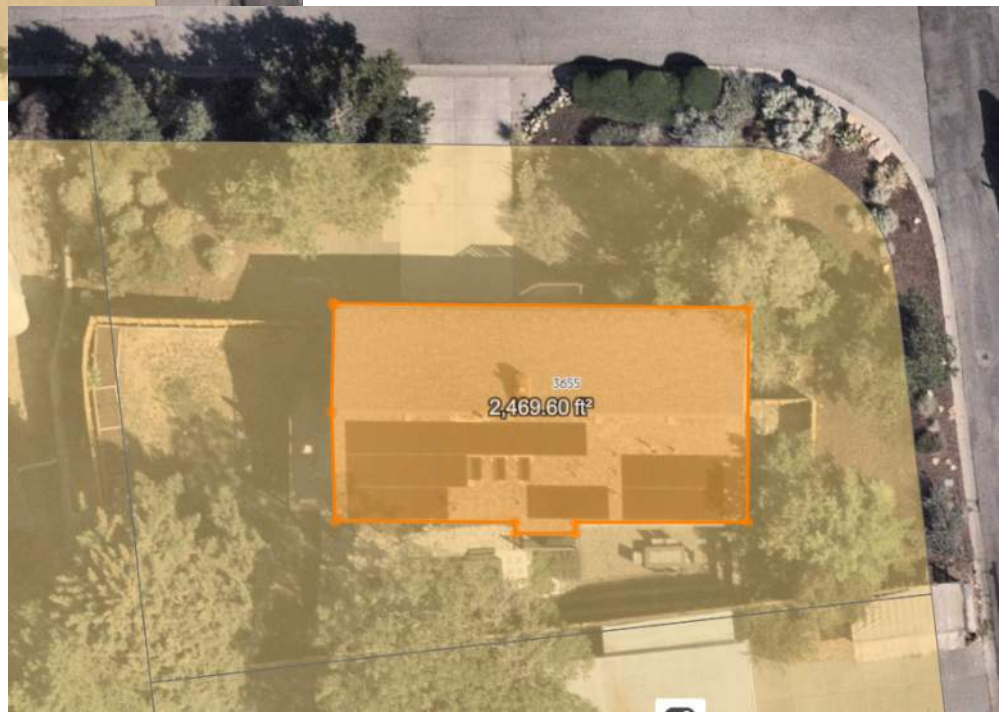
- Lot Size: 10,571 sqft

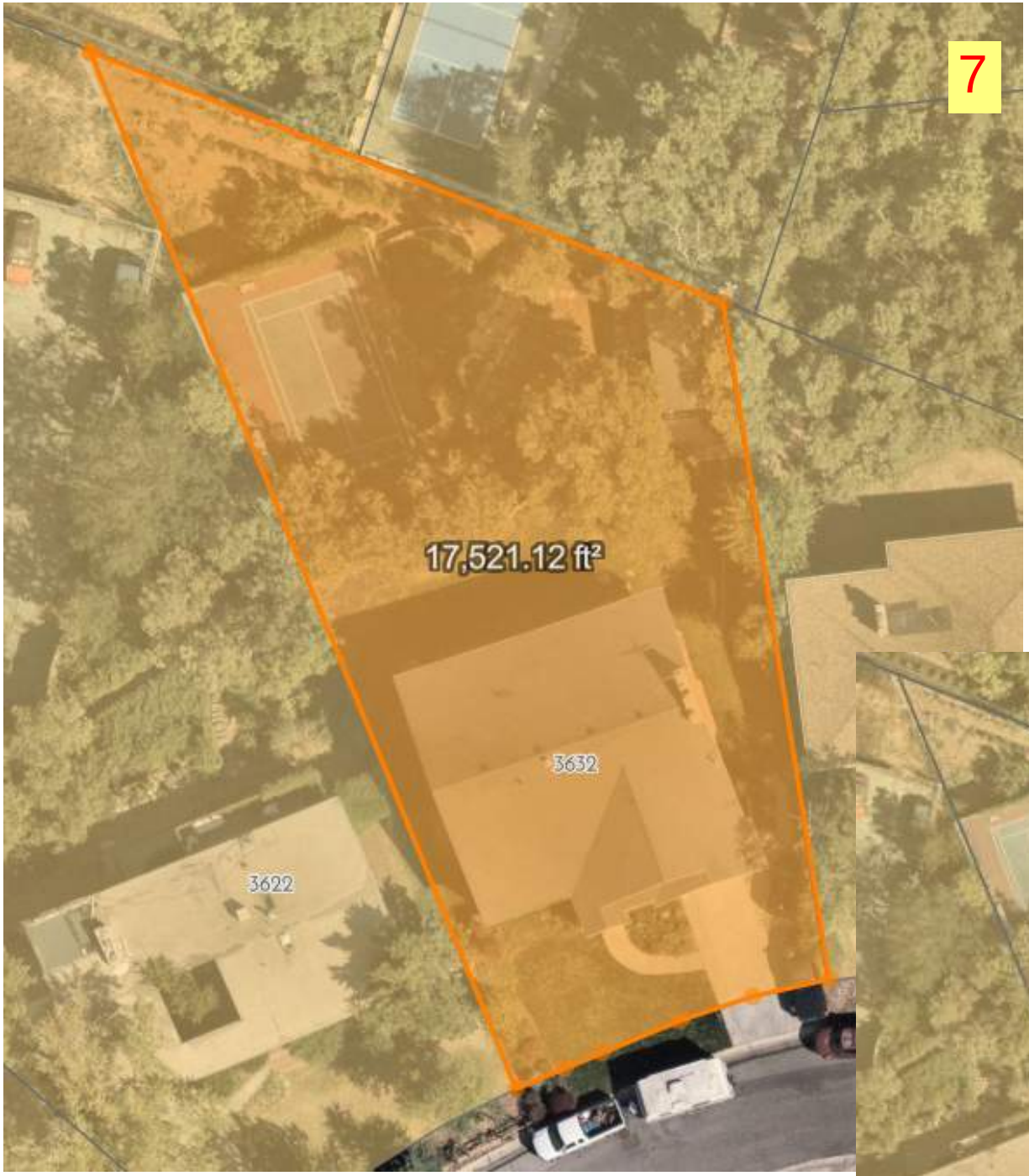
- Total Roof Area: 2,469 sqft

- Total Lot Coverage Calculation:

2,469 / 10,571 = 23.3%

*** Due to trees, it is not known if other accessory buildings or sheds are on site***






## 3632 Aurora Circle

## Lot Coverage Analysis

- Lot Size: 17,521 sqft

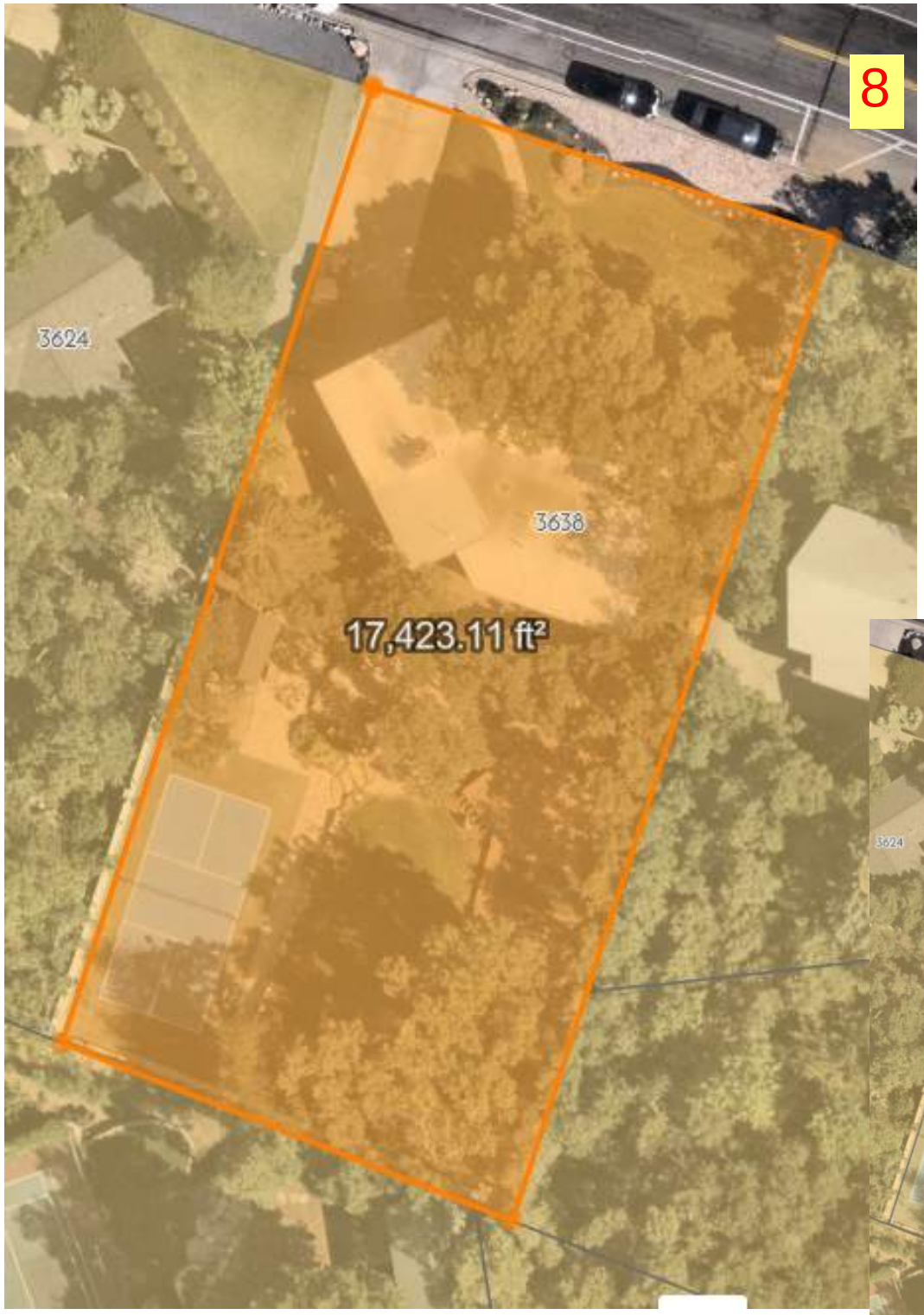
- Total House Area: 3,741 sqft
- Total Shed Area: 329 sqft
- Total Roof Area: 4,070 sqft

- Total Lot Coverage Calculation:

17,521 / 4,070 = 23.2%






## 3638 Jupiter Drive

## Lot Coverage Analysis

- Lot Size: 17,423 sqft

- Total House Area: 2,219 sqft
- Total Shed Area: 125 sqft
- Total Roof Area:  2,344 sqft

- Total Lot Coverage Calculation:

17,423 / 2,344 = 13.4%









**3624 Jupiter Drive**

**Lot Coverage Analysis**

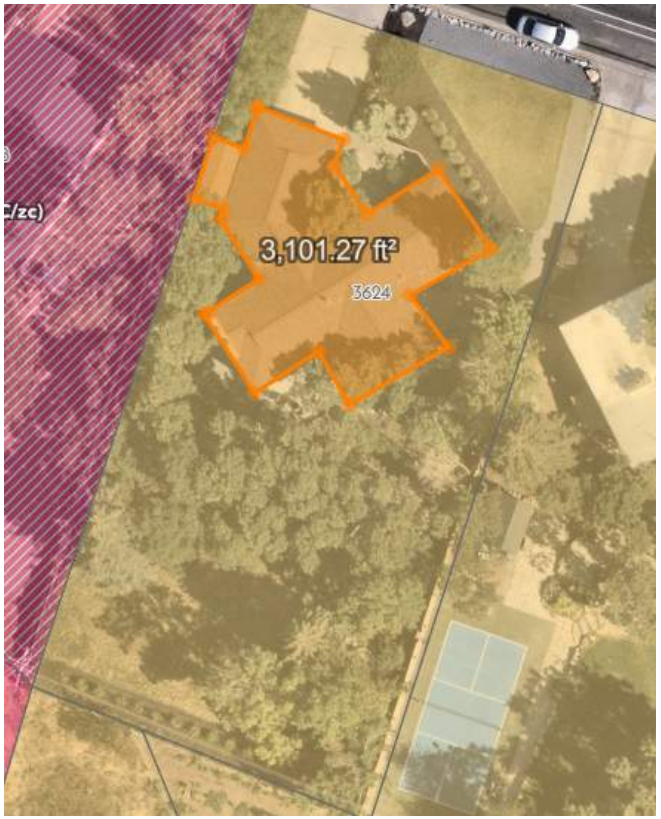
- Lot Size: 16,913 sqft

- Total Roof Area: 3,101 sqft

- Total Lot Coverage Calculation:

3,101 / 16,913 = 18.3%

*** Due to trees, it is not known if other accessory buildings or sheds are on site***



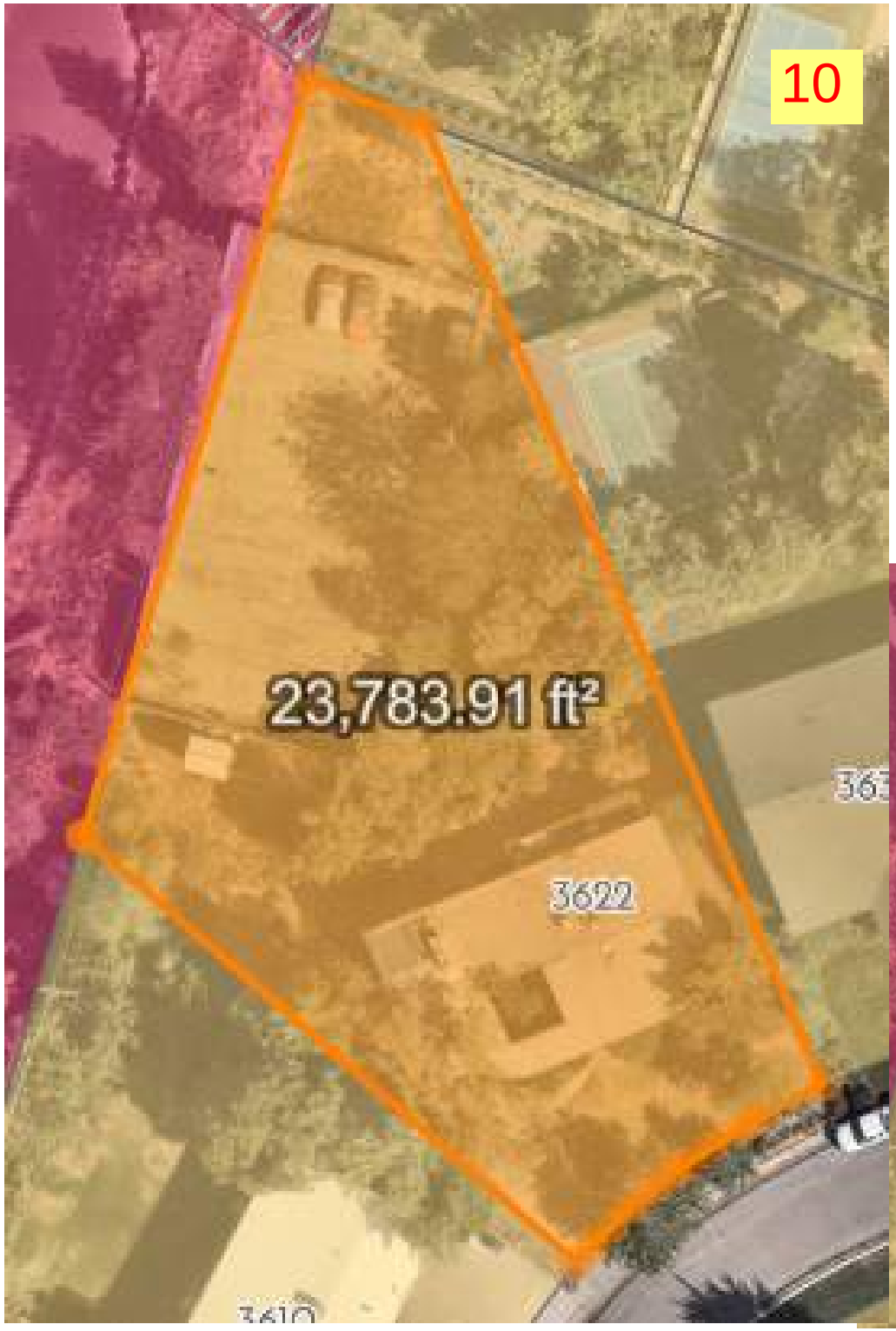
## 3622 Aurora Circle

## Lot Coverage Analysis

- Lot Size: 23,783 sqft

- Total House Area: 3,286 sqft
- Total Shed Area: 81 sqft
- Total Roof Area: 3,367

- Total Lot Coverage Calculation:
3,367 / 23,783 = 14.1%












## 3615 Aurora Circle

## Lot Coverage Analysis

- Lot Size: 13,849 sqft

- Total Roof Area: 3,514 sqft

- Total Lot Coverage Calculation: 3,514 / 13,849 = 25.3%

*** Due to trees, it is not known if other accessory buildings or sheds are on site***






## 3999 Jupiter Drive

## Lot Coverage Analysis

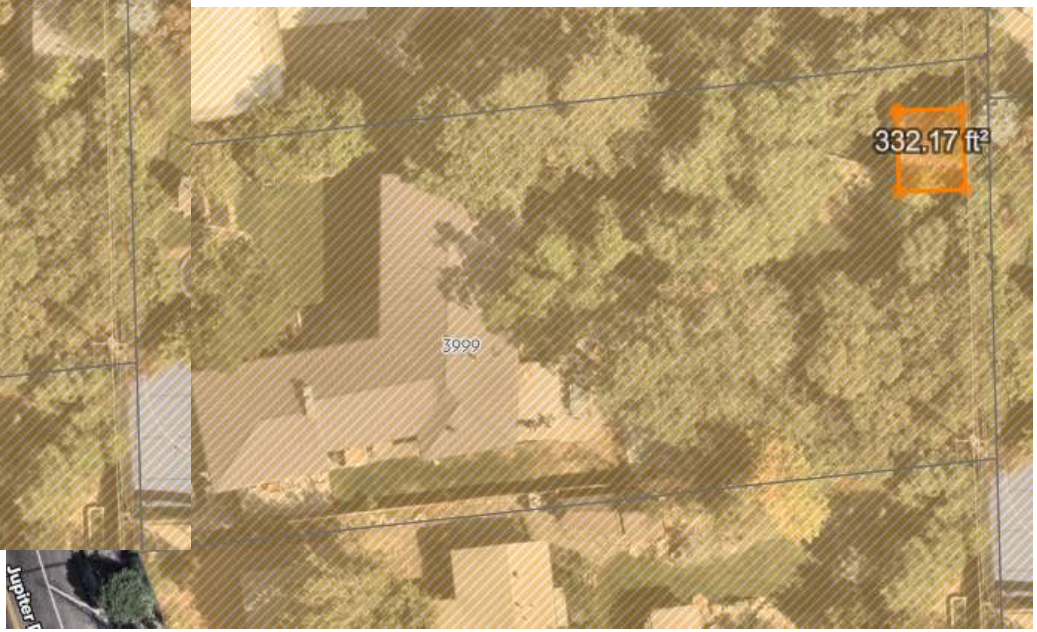
- Lot Size: 22,339 sqft
- Total House Area: 3704 sqft
- Total Shed Area 332 sqft

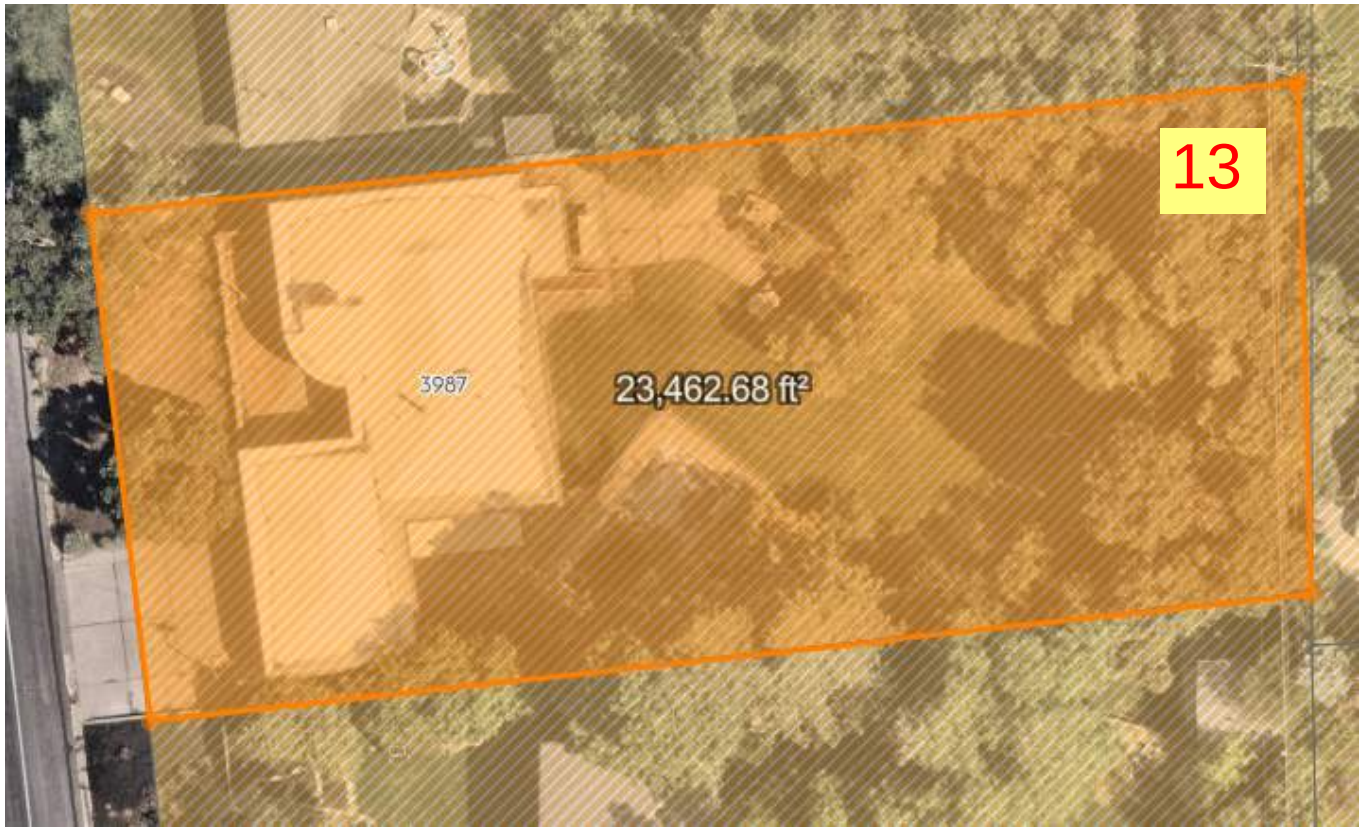
- Total Roof Area: 4,036 sqft

- Total Lot Coverage Calculation:
  4,036 / 22,339 = 18.0%

*** Due to trees, it is not known if other accessory buildings or sheds are on site***





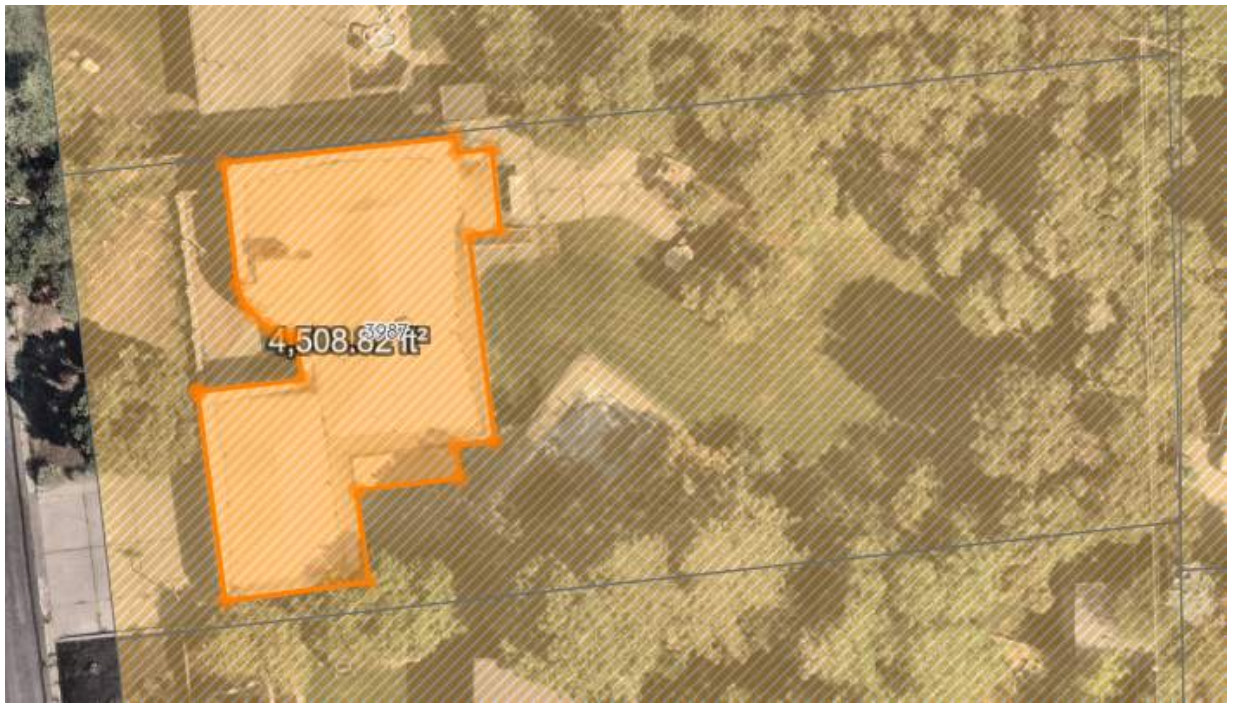

## 3987 Jupiter Drive

## Lot Coverage Analysis

- Lot Size: 23,462 sqft
- Total Roof Area: 4508 sqft

- Total Lot Coverage Calculation:
  4,508 / 23,462 = 19.2%

*** Due to trees, it is not known if other accessory buildings or sheds are on site***






## 3975 Jupiter Drive

## Lot Coverage Analysis

- Lot Size: 24,341 sqft
- Total Roof Area: 2,936 sqft

- Total Lot Coverage Calculation:
  2,936 / 24,341 = 12.0%

*** Due to trees, it is not known if other accessory buildings or sheds are on site***






## 3965 Jupiter Drive

## Lot Coverage Analysis

- Lot Size: 25,205 sqft
- Total Roof Area: 4,795 sqft

- Total Lot Coverage Calculation:
  4,795 / 25,205 = 19.0%

*** Due to trees, it is not known if other accessory buildings or sheds are on site***






## 3680 Juno Drive

## Lot Coverage Analysis

- Lot Size: 16,802 sqft
- Total Roof Area: 3,523 sqft

- Total Lot Coverage Calculation:
  3,523 / 16,802 = 20.9%

*** Due to trees, it is not known if other accessory buildings or sheds are on site***



**Millcreek City Hall**
1330 East Chambers Ave
Millcreek, Utah 84106
millcreekut.gov

**Planning & Zoning**
(801) 214-2700
planner@millcreekut.gov

Attachment "B"

# LAND USE AND DEVELOPMENT APPLICATION

| | | | |
|---|---|---|---|
| **Property Address** | 3652 Aurora Circle | **Parcel No.** | 16-36-351-017 |
| **Name of Project** | Romero Residence Addition | **Project Size in SF** | 658 sqft |

**Please describe your request. Add additional pages if necessary.**

This application is to APPEAL the planning department determination and denial of Permit # 252009 for this project as it is believed to not be consistent with Title 18 as written. The attached APPEAL letter includes the full consisting of (93) ninety three pages. Based on the information contained in this application and appeal letter, the applicant is requesting the planning department reconsider their position and approve the permit as submitted.

**Administrative**

- ☐ ADU Approval
- ☐ Change of Use
- ☐ Conditional Use
- ☐ Eligible Facility Request
- ☐ Minor Site Plan Amendment
- ☐ Reasonable Accommodation
- ☐ Sign Permit
- ☐ Site Plan
- ☐ Temporary Use

**Subdivisions**

- ☐ Condominium
- ☐ Lot Line Adjustment
- ☐ Major Subdivision
- ☐ Minor Subdivision
- ☐ Parcel Line Adjustment
- ☐ PUE Vacation

**Other**

- ☐ General Plan Amendment
- ☐ Rezone
- ☐ Text Amendment
- ☐ Noncomplying Expansion
- ☐ Nonconformity Determination
- ☐ Variance
- ☐ Zoning Compliance Letter
- ☑ Other: APPEAL FOR RECONSIDE

**PLANNING REVIEW PERIOD**

**Each application is subject to a planning review period.** Upon payment of all applicable fees and submission of a complete land use application for an approval that requires a public meeting, planning staff will have a review period of fifteen business days to review the application for substantial compliance with all the requirements of applicable ordinances before scheduling the application for the first public meeting or hearing. If staff requires additional information, clarification or an updated application submittal as part of their review, the time to provide the additional information, clarification, or submittal will be in addition to the review period. Staff will schedule your application at the first available public meeting after the review period concludes.

**Millcreek City Hall**
1330 East Chambers Ave
Millcreek, Utah 84106
millcreekut.gov




**Planning & Zoning**
(801) 214-2700
planner@millcreekut.gov

**APPLICANT'S INFO**

First Joe Last Romero Initial

Address 3652 Aurora Circle City Millcreek State Utah ZIP 84124

Phone 801-808-0063 Email joe@rthreegroup.com

**PROPERTY OWNER(S) – Note: A signed affidavit is required of property owner(s).**

☑ - Check here if applicant and property owner(s) are the same.

First Last Initial

Address City State ZIP

Phone Email

**PROFESSIONALS** ____ Engineer ____ Architect X Other

Company Contact Chad Anderson

Address City State ZIP

Phone Email

Applicant hereby authorizes Millcreek to reproduce this application, and all documents attached to the application for staff, officials, and the interested public. Applicant further authorizes city staff to access the property for inspections and assessments as required as part of an application review.

Applicant's Signature: Date: 1/23/2026

**January 23, 2026**

Mr. Francis Lilly
Planning Director
Millcreek City
3330 South 1300 East
Millcreek, Utah 84106

Mr. Carlos Estudillo
Planner II
Millcreek City
3330 South 1300 East
Millcreek, Utah 84106

Subject: **Request for Deviation from General Standards based on Neighborhood Compatibility Modification (NCM) Regarding Lot Coverage**

Dear Mr. Lilly & Mr. Estudillo,

This letter and supporting documentation are to request approval for a deviation from Millcreek General Zoning Standards outlined in ***18.35- Single-Household Residential (R-1) Zones*** and more specifically ***18.36.040 Spatial Requirements*** concerning Lot Coverage, which may be considered per ***18.36.090 – Neighborhood Compatibility Modification (NCM)*** of Millcreek's zoning ordinances. The NCM section states the Planning Director may approve an NCM request provided specific requirements are met. This letter, along with *Attachment "A"* is intended to provide sufficient documentation for this request to be approved.

| | |
|---|---|
| **Applicant**: | Joe Romero |
| **Parcel**: | 16-36-351-017 |
| **Address**: | 3652 Aurora Circle |
| **Zone**: | R-1-8 |
| **Building Permit #:** | 252009 |

***BACKGROUND INFORMATION:***

***18.36.040 Spatial Requirements*** state that the maximum lot or parcel coverage for an R-1-8 Zone shall not exceed 33%.

***18.36.090 Neighborhood Compatibility Modification (NCM)*** allows an increase in lot or parcel coverage not to exceed 38%, if approved.

- The table below outlines the requirements for the NCM submission along with the increased lot of parcel coverage allowance.

**18.36.090 Neighborhood Compatibility Modification (NCM)**

The Neighborhood Compatibility Modification (NCM) allows for modified standards from one or more of the spatial standards based upon the compatibility of the proposed residential application with other properties/dwellings in the proximate neighborhood. The Planning Director may approve an NCM request at time of site plan submittal provided the following conditio

A. Evidence. Compliance with the corresponding neighborhood conditions must be established by a survey from the proximate neighborhood, defined as a 200-foot radial distance from boundary. Survey submitted must be completed by a surveyor licensed to practice in the State of Utah.

B. Submittal. NCM requests shall be submitted on a separate form and shall include an additional review fee as set forth in the Millcreek Consolidated Fee Schedule.

C. Permissible Modifications. Building height, setbacks and lot or parcel coverage modifications may be accommodated if the request does not exceed the allowances as set forth in Table Standards.

D. Non-Permissible Modifications. Building envelope, mass and scale, and accessory structure modifications do not qualify under the NCM.

**Table 18.36-4 NCM Standards**

| *Zone* | *(H)* | *Lot or Parcel Coverage* | *Front Setback* | *Side Setback* | *Rear Setback* | *Max Height* |
|---|---|---|---|---|---|---|
| R-1-3 | 33' | 40% (1) | The average of all lots or parcels within the proximate neighborhood that fronts to the same street, road, or right-of way. | Combined side yard shall be at least twenty-five percent (25%) of the lot or parcel width, and no less than five feet (5') on each side. | The average rear yard setback that are on six lots or parcels of the applicant's choice within the proximate neighborhood, and no less than 15' | The maximum building height that may be approved by the Planning Director or designee under the NCM standards is the lesser of:<br>3. Three feet plus the average maximum ridge height of residential structures that are on six lots or parcels of the applicant's choice that are within the proximate neighborhood; and<br>4. The maximum height of the zone specified in column (H) of Table 18.36-4 NCM Standards. |
| R-1-4 | 33' | 40% (1) | | | | |
| R-1-5 | 33' | 40% (1) | | | | |
| R-1-6 | 33' | 40% (1) | | | | |
| R-1-8 | 33' | 38% (1) | | | | |
| R-1-10 | 35' | 36% (1) | | | | |
| R-1-15 | 37' | 30% (1) | | | | |
| R-1-21 | 37' | 30% (1) | | | | |

As noted above, the enclosed *Attachment "A"* includes the following required submittal documents for the Planning Director's consideration:

- AFFADAVIT – Property Owner – Signed and Notarized
- Sheet SD1_0A showing Existing Site Plan (without proposed addition) including Lot Coverage Calculations
- Updated Sheet SD1_0 showing Site Plan along with Proposed Lot Coverage Calculations (including addition)
- Elements Land Surveying Lot Coverage Analysis Plan with Lot Coverage calculations for (16) parcels within 200 Feet of Subject Property.
    - This plan has been stamped by Utah Licensed Surveyor, Chad Anderson #7736336

***FINDINGS:***

- Deviation from the maximum of 33% lot coverage standard is permissible, if approved by the Planning Director and via the NCM process.
- The applicant has filed separate application and paid additional fees in compliance with requirements
- The applicant has provided sufficient evidence to support approval and increase in lot coverage to 38%
- The Land Survey evidence provided by applicant has been provided by Licensed Professional Land Surveyor who has "stamped" their survey supporting this request.
- The average Lot Coverage of Buildings under roof for all lots (per land survey) 3,188 sqft.
- The applicant's current Lot Size (per land survey) is 10,062 sqt
- The applicant is proposing a Total lot coverage of 3,721 sqft
- The applicant is proposing a lot coverage of 36.9% with the new addition.

If there are any questions related to the documentation provided, please do not hesitate to contact me at your convenience.

Respectfully Submitted,

Joe R. Romero, LEED AP

Millcreek Planning & Zoning
1330 E Chambers Ave
Millcreek, Utah 84106
(801) 214-2700
millcreekut.gov

# AFFIDAVIT – Property Owner

**STATE OF UTAH** }
} ss
**COUNTY OF SALT LAKE** }

**I (we)** Joe Romero **being duly sworn, depose and say that**

**I (we) am (are) the owner(s) of the property(s) located at:**

3652 Aurora Circle, Millcreek Utah 84124.

**My (our) signature below attests that I (we) have reviewed the proposal by** Joe Romero

**requesting review and approval of** Neighborhood Compatibility Modification (NCM)

**and that I (we) consent to the statements and information provided in the attached plans and exhibits**

**and that all information presented is true and correct to the best of my (our) knowledge.**

**Property Owner** Joe Romero

**Property Owner** N/A

**Subscribed and sworn to me this** 23rd **day of** January, **20** 26.

MADISON SPEAKS
Notary Public - State of Utah
Comm. No. 746782
My Commission Expires on
Dec 23, 2029

**Notary:**

*Residing in Salt Lake County, Utah*

N

W E

S

| SYMBOL LEGEND | |
|---|---|
| | SUBDIVISION PLAT |
| | MEASURED ROOF COVERAGE |

## SURVEYOR'S CERTIFICATE

I, CHAD A. ANDERSON, DO HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR AND THAT I HOLD CERTIFICATE NO. 7736336, AS PRESCRIBED UNDER THE LAWS OF THE STATE OF UTAH. I HEREBY CERTIFY THAT I HAVE MADE A SURVEY OF THE HEREON DESCRIBED PARCEL AND THAT THIS PLAT IS A TRUE AND CORRECT REPRESENTATION OF SAID SURVEY.

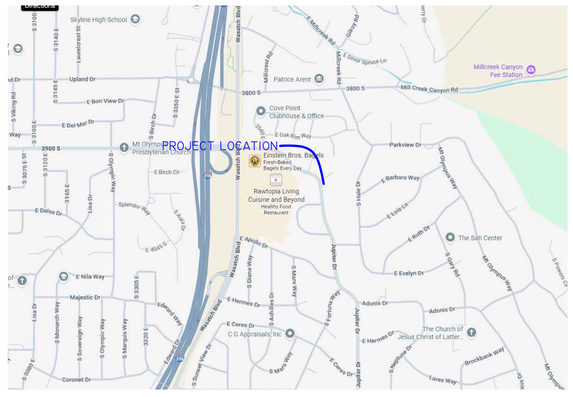
CHAD A ANDERSON - PLS DATE

PROFESSIONAL LAND SURVEYOR CHAD A. ANDERSON 01.08.25 7736336 STATE OF UTAH

## SURVEYOR'S NARRATIVE

THE PURPOSE OF THIS SURVEY IS TO INFORMATION ON THE AREA OF THE SUBJECT LOTS THAT IS COVERED BY STRUCTURES (WITH A ROOF). WE FOUND MULTIPLE PROPERTY CORNER MARKERS ONSITE TO ENSURE THE PLAT WAS CORRECTLY LOCATED. AERIAL CONTROL POINTS WERE SET AND THE SITE WAS FLOWN WITH A DRONE TO PROVIDE AN ACCURATE AERIAL OVERLAY WHERE WE WERE ABLE TO MEASURE THE ROOF COVERAGE FOR EACH LOT.

## VICINITY MAP




GRAPHIC SCALE

40 0 20 40 80 160

( IN FEET )
1 inch = 40 ft.




| LOT # | LOT AREA | COVERED AREA | % COVERED |
|---|---|---|---|
| 51 | 19,747 | 3,333 | 16.88% |
| 52 | 22,408 | 2,924 | 13.05% |
| 53 | 23,462 | 4,198 | 17.89% |
| 54 | 24,340 | 3,214 | 13.20% |
| 55 | 25,218 | 4,896 | 19.42% |
| 56 | 16,847 | 3,465 | 20.56% |
| 75 | 16,919 | 2,767 | 16.36% |
| 76 | 17,426 | 2,309 | 13.25% |
| 77 | 12,290 | 1,927 | 15.68% |
| 78 | 11,098 | 2,818 | 25.39% |
| 79 | 10,062 | 2,896 | 28.78% |
| 80 | 9,725 | 3,280 | 33.73% |
| 81 | 17,479 | 3,989 | 22.82% |
| 82 | 23,769 | 3,222 | 13.56% |
| 94 | 13,877 | 3,465 | 24.97% |
| 95 | 12,334 | 3,058 | 24.79% |
| 96 | 10,573 | 2,409 | 22.79% |
| 97 | 11,533 | 3,055 | 26.49% |


ELEMENT
LAND SURVEYING
WWW.ELEMENTSURVEYING.COM 169 W SADDLE VIEW LANE, MIDWAY UT 84049
801-592-5975 & 801-657-8748


# LOT COVERAGE ANALYSIS

SALT LAKE COUNTY

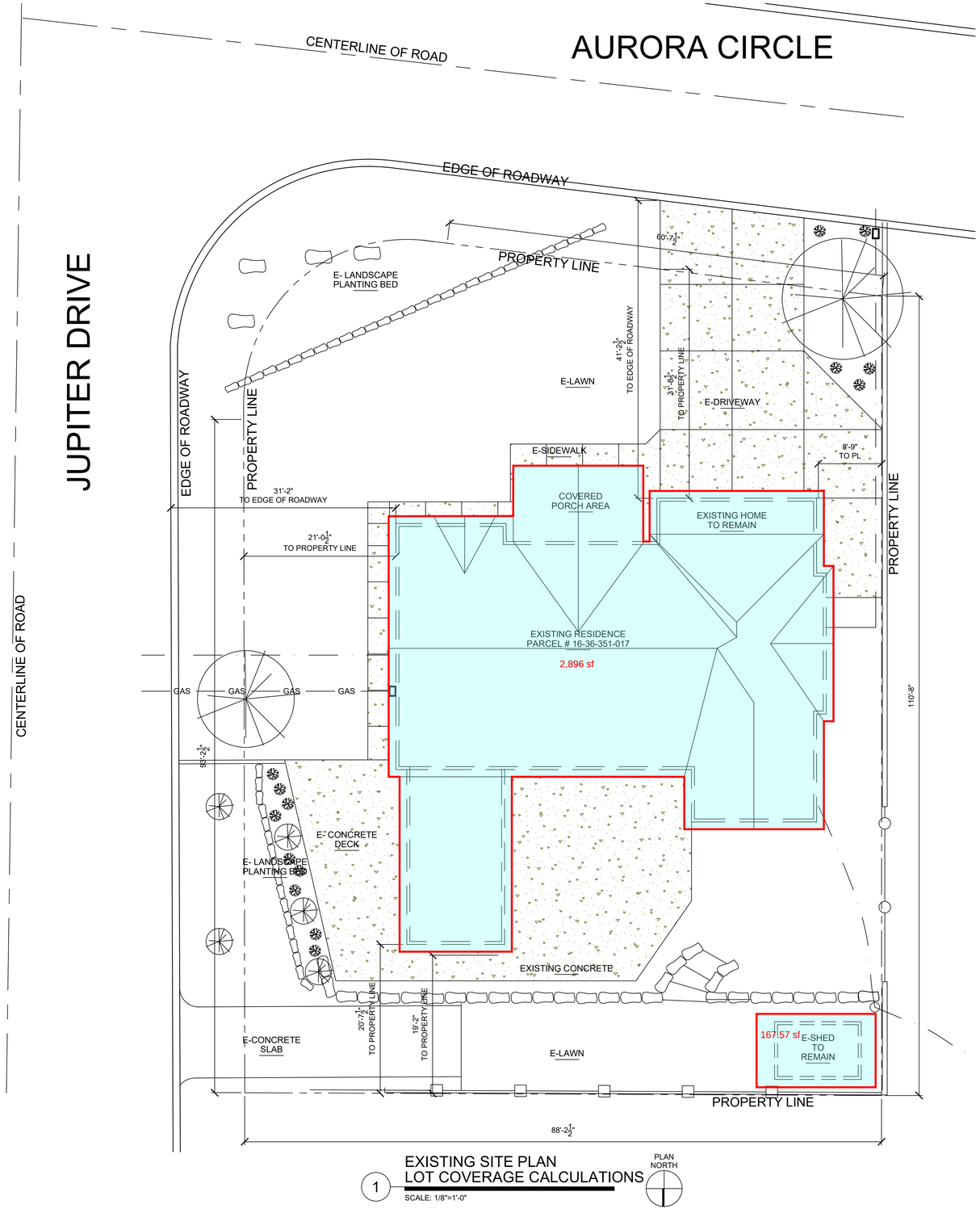
IN THE SOUTHWEST 1/4 OF SEC 36, T1S, R1E, SLB&M

PREPARED FOR: JOE ROMERO

PROJECT: MOUNT OLYMPUS ACRES

PROJECT NO. 26-01-028

SHEET 1 OF 1




1 EXISTING SITE PLAN
LOT COVERAGE CALCULATIONS
SCALE: 1/8"=1'-0"

**EXISTING CONDITIONS**
**LOT COVERAGE CALCULATIONS**

| | |
|---|---|
| TOTAL FOOTPRINT OF EXISTING HOME (PER LICENSED, STAMPED SURVEY) | 2,896 SQFT |
| TOTAL SHED AREA | 167 SQFT |
| TOTAL ROOFED AREA ON SITE | 3,063 SQFT |
| TOTAL SQFT OF PARCEL | 10,062 SQFT |
| **CALCULATION OF ACTUAL LOT COVERAGE (3,063 / 10,062 = 30.4%)** | **30.4%** |

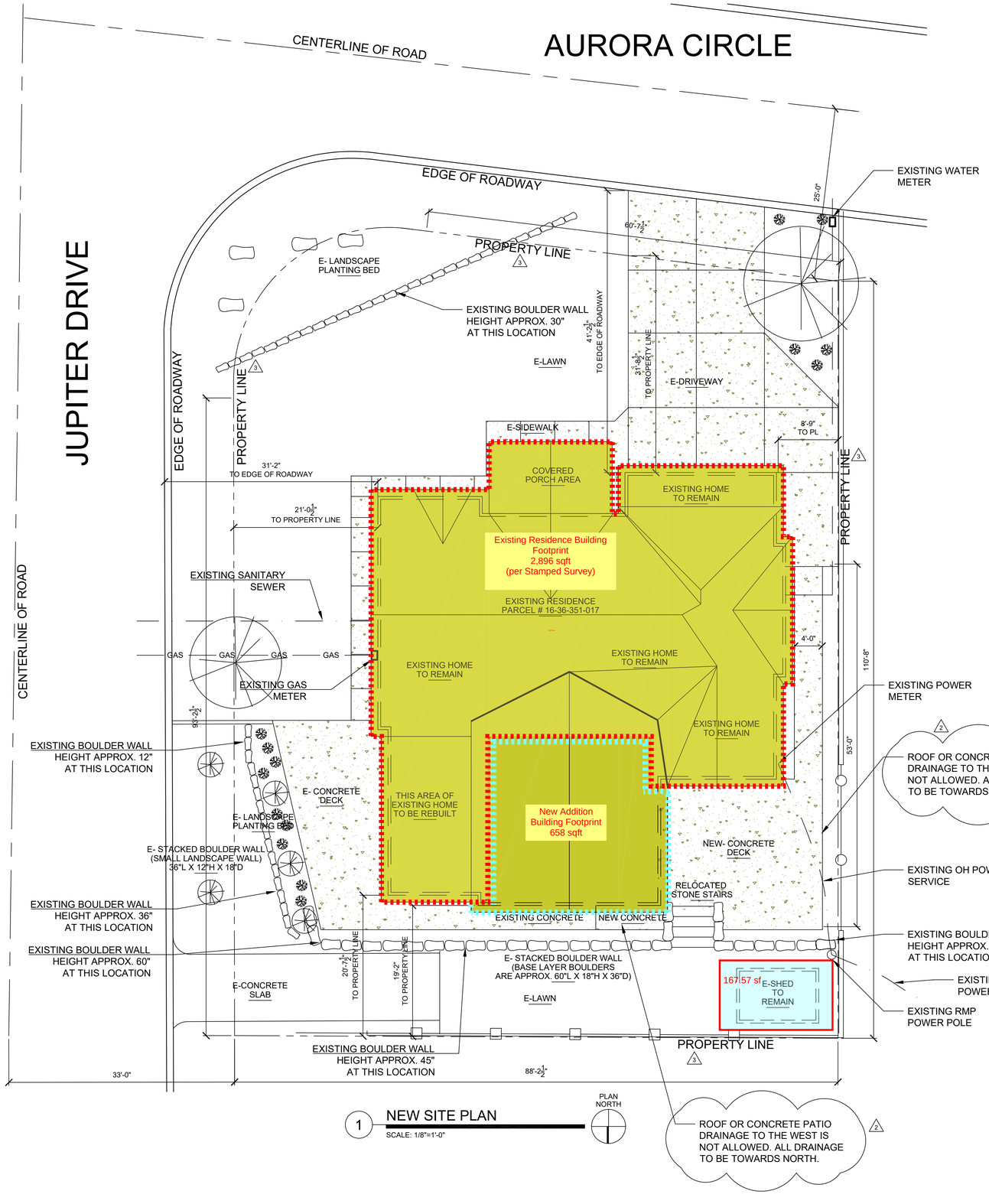
# ROMERO RESIDENCE ADDTION
## 3652 AURORA CIRCLE
SALT LAKE CITY, UTAH 84124

| Rev # | Date | Description |
|---|---|---|
| 3 | 1-8-2026 | P&Z PLAN REVIEW RESPONSE |

Job #
CAD File
Drawn
Checked
Date 9-8-2025
Owner #
Ins. #

EXISTING CONDITIONS SITE PLAN

SD1_A
Sheet of Sheets




## LOT COVERAGE CALCULATIONS

| | |
|---|---|
| TOTAL FOOTPRINT OF EXISTING HOME + ADDITION (CALCULATED FROM EDGE OF ROOF) | 3,554 SQFT |
| TOTAL SHED AREA | 167 SQFT |
| TOTAL ROOFED AREA ON SITE | 3,721 SQFT |
| TOTAL SQFT OF PARCEL | 10,062 SQFT |
| **CALCULATION OF ACTUAL LOT COVERAGE (3,721 / 10,062 = 36.9%)** | **36.9%** |

## EXISTING DRAINAGE CALCULATIONS

| | |
|---|---|
| TOTAL EST. SQFT OF PARCEL | 9,583 SQFT |
| EXISTING PERMEABLE LAND AREA | 6,187 SQFT |
| EXISTING IMPERVIOUS LAND AREA | 3,215 SQFT |
| TOTAL SQFT (FOOTPRINT) OF RESIDENCE | 2,472 SQFT |
| TOTAL IMPERVIOUS SQFT (3,215 SQFT + 2,472 SQFT) | 5,687 SQFT |
| % OF IMPERVIOUS LAND AREA (5,687 / 9,583 SQFT) | 59 % TOTAL |

## NEW DRAINAGE CALCULATIONS

| | |
|---|---|
| TOTAL EST. SQFT OF PARCEL | 9,583 SQFT |
| EXISTING PERMEABLE LAND AREA | 5,521 SQFT |
| EXISTING IMPERVIOUS LAND AREA | 3,186 SQFT |
| TOTAL SQFT (FOOTPRINT) OF RESIDENCE | 3,164 SQFT |
| TOTAL IMPERVIOUS SQFT (3,186 SQFT + 3,164 SQFT) | 6,350 SQFT |
| % OF IMPERVIOUS LAND AREA (6,350 / 9,583 SQFT) | 66 % TOTAL |

# DRAWING INDEX


| | |
|---|---|
| ARCHITECTURAL PLANS | |
| SD1_0 | SITE PLAN, COVER SHEET AND DRAWING INDEX |
| A1_0 | DEMOLITION PLAN |
| A1_1 | NEW MAIN LEVEL FLOOR PLAN |
| A1_2 | NEW 2ND LEVEL FLOOR PLAN |
| A1_3 | NEW ROOF PLAN |
| A2_1 | EXTERIOR ELEVATIONS |
| A2_2 | EXTERIOR ELEVATIONS |
| A3_1 | BUILDING & WALL SECTIONS |
| A4_1 | FIREPLACE ELEVATIONS / SECTION / DETAILS |
| STRUCTURAL PLANS | |
| S1_0 | FOOTING AND FOUNDATION PLAN |
| S1_1 | MAIN LEVEL FLOOR FRAMING PLAN |
| S1_2 | ROOF FRAMING PLAN |
| S3_1 | STRUCTURAL DETAILS |
| MECHANICAL / PLUMBING PLANS | |
| M1_1 | MAIN LEVEL MECHANICAL PLAN |
| ELECTRICAL / PLUMBING PLANS | |
| E1_1 | MAIN LEVEL ELECTRICAL PLAN |


# SYMBOL LEGEND

- 1 KEY NOTE
- T.O. LANDING ELEV: 100'-0"
- A WINDOW CALL OUT
- 101 DOOR CALL OUT
- 1 ACCESSORY NOTE
- TYP. DETAIL CALL OUT
- 2 / A3_2 BUILDING SECTION
- 2 / A3_2 ELEVATION CALL OUT

# PROJECT TEAM


OWNER / DRAFTER / DESIGNER: JOE AND JENNIFER ROMERO
3652 AURORA CIRCLE
SALT LAKE CITY, UTAH 84124
(801) 808 - 0063

STRUCTURAL ENGINEER: DANY TREMBLAY, PE
CANYONS STRUCTURAL CONSULTING
940 EAST ELM AVE
SALT LAKE CITY, UTAH 84105
(801) 486-6848


# GENERAL INFO .

CODE: 2021 INTERNATIONAL RESIDENTIAL CODE

ZONING R1-8

# ROMERO RESIDENCE ADDTION
3652 AURORA CIRCLE
SALT LAKE CITY, UTAH 84124

| Rev # | Date | Description |
|---|---|---|
| 1 | 11-5-2025 | PERMIT SET |
| 2 | 11-12-2025 | ENGINEERING PLAN REVIEW RESPONSE |
| 3 | 1-23-2026 | P&Z PLAN REVIEW RESPONSE |

Job #
CAD File
Drawn Checked
Date 9-8-2025
Owner #
Ins. #

SITE PLAN, COVER SHEET AND DRAWING INDEX

SD1_0
Sheet of Sheets

Attachment "C"

# Advisory Opinion #104

Parties: Jeff Love and Park City

Issued: July 27, 2011

**TOPIC CATEGORIES**:
J: Requirements Imposed upon Development
R(v): Other Topics (Interpretation of Ordinances)

Interpretation of ordinances starts with the language of the ordinance, and the purposes the ordinance is intended to promote. Although local governments have some discretion to control land use, a property owner's right to the use and enjoyment of property must be honored. Decisions must be based upon objective standards and provable facts. It is inappropriate to inquire into the motivations and sincerity of a property owner, or the nature and timing of property acquisition.

**DISCLAIMER**

The Office of the Property Rights Ombudsman makes every effort to ensure that the legal analysis of each Advisory Opinion is based on a correct application of statutes and cases in existence when the Opinion was prepared. Over time, however, the analysis of an Advisory Opinion may be altered because of statutory changes or new interpretations issued by appellate courts. Readers should be advised that Advisory Opinions provide general guidance and information on legal protections afforded to private property, but an Opinion should not be considered legal advice. Specific questions should be directed to an attorney to be analyzed according to current laws.

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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: | Jeff Love |
| Local Government Entity: | Park City |
| Applicant for the Land Use Approval: | Jeff Love |
| Project: | Permit to Move Building |
| Date of this Advisory Opinion: | July 27, 2011 |
| Opinion Authored By: | Elliot R. Lawrence, Attorney, Office of the Property Rights Ombudsman |

## Issues

Did a local government properly interpret and apply an ordinance intended to protect historic structures, by focusing on the plans and motivations of the property owner?

## Summary of Advisory Opinion

Interpretation of ordinances starts with the language of the ordinance, and the purposes the ordinance is intended to promote. Although local governments have authority and discretion to control land use, a property owner's right to the use and enjoyment of property must be strictly honored. Local governments are not authorized to incorporate requirements not found in the language of the ordinance, or unrelated to the ordinance's intent. Decisions must be based upon objective standards and provable facts.

It is inappropriate to inquire into the motivations and sincerity of a property owner, or the nature and timing of property acquisition. Such inquiry is not guided by standards or objective measures, and leads to decisions based on emotions or public clamor, not facts. In addition, the motivations of a property owner are not relevant to whether the owner may be entitled to approval under a land use ordinance. Proper interpretation and application of any ordinance must be tied to objective criteria and provable facts.

## 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 ANN. § 13-43-205. The 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 Jeff Love on May 26, 2011. A copy of that request was sent via certified mail to Janet M. Scott, City Recorder of Park City. A certified mail receipt, indicating that the City received the letter, were delivered to the Office of the Property Rights Ombudsman on June 2, 2010.

## 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, including attachments, from Jeff Love, filed May 26, 2011 with the Office of the Property Rights Ombudsman
2. Agenda and Transcript of the May 17, 2011 meeting of the Park City Board of Adjustment.
3. Response from Park City, submitted by Polly Samuels McLean, Assistant City Attorney, received July 14, 2011.

## Background

Jeff Love owns property located at 811 Norfolk Avenue in Park City. The property is located in the older part of the City, and includes a home and a garage. The property is part of a subdivision that was originally recorded in the 1880s. The lots in that subdivision are only 25 feet wide. When Mr. Love purchased the property in June of 2010, it included one-half of Lot 2 all of Lots 3 and 4, and three feet of Lot 5. The home is located on Lot 3, but encroaches a few feet onto Lot 4. Shortly after Mr. Love purchased the property, he sold Lot 4 and the portion of Lot 5 to a Mr. Ludlow, who was a friend of Mr. Love's. At the time of the purchase, Mr. Ludlow was aware that the home encroached onto Lot 4. There were no other structures on the property purchased by Mr. Ludlow.

The City considers the home a "Landmark Site," because it was built in 1880s, and is characteristic of the homes built during Park City's mining heyday.[1] Other than its age and location in the older portion of the City, the building has no particular historic significance. Because of its status as a Landmark Site, the home is subject to special regulations in the Park City Land Management Code. The City adopted historic preservation ordinances "[t]o encourage the preservation of Buildings, Structures, and Sites of Historic Significance . . .." PARK CITY MUNICIPAL CODE, § 15-11-9.

According to Mr. Love, when the home was built, a portion of it encroached onto Lot 4, which was then in separate ownership. Apparently, no one objected to the encroachment, and both lots eventually became owned by the same person, and the lots continued to be part of one parcel up until the time Mr. Love divided it. The sale of Lot 4 to Mr. Ludlow raised the issue of the encroachment, and so Mr. Love proposed moving the home about six feet (*i.e.,* Lot 3 and one-half of Lot 2). This would eliminate the encroachment, and would also make the home compliant with the City's set-back ordinance. Moving the home would also make development of Mr. Ludlow's property possible.

According to Mr. Love, he discussed the encroachment issue with Mr. Ludlow at the time of the sale. They considered creating an easement, whereby Mr. Love's home could remain in its original location. However, Mr. Love stated that both he and Mr. Ludlow decided that an easement was not an acceptable solution, because it would possibly have a negative impact on the value of the properties, and would restrict development of Mr. Ludlow's property. Consequently, Mr. Ludlow would not agree to an easement on Lot 4. Since the easement could not be obtained, Mr. Love believed that moving the home was the only available option.

Despite discussions with Mr. Love, the City's staff denied approval for the home to be moved, and so Mr. Love appealed to the Historic Preservation Board (HPB). The HPB determined that Mr. Love could not obtain an easement, and so the City's Historic Preservation Ordinance allowed him to move the home. The HPB also noted that the City's Historic Preservation consultant found that the home would still meet the criteria for Landmark Site status.[2]

Five individuals who own property near Mr. Love's objected, and appealed the decision to the City's Board of Adjustment (BOA).[3] The BOA overruled the HPB, and denied Mr. Love permission to move the home. The BOA considered the nature of the transaction between Mr. Love and Mr. Ludlow, finding that Mr. Love could have secured an easement on Lot 4 for the home, but intentionally chose not to. The BOA reasoned that Mr. Love owned the entire parcel, and he could have created the easement at the time of the sale to Mr. Ludlow. The BOA felt that

[1] The materials submitted for this Opinion do not indicate the exact date when the home was built, but both Mr. Love and the City agree that it qualifies for Historic Building status.

[2] The HPB approval included several conditions, most of which relate to preserving the historic character of the home and property. For example, any restoration work must be according to accepted standards for historic preservation, including restoring windows or doors that were part of the original structure but had been boarded over.

[3] The procedure to seek review before the Historic Preservation Board and appeal to the Board of Adjustment are established in the City Code.

Mr. Love had not "sincerely" sought an easement in "good faith," and never intended to seek one. Since Mr. Love created the problem himself, he should be disqualified from seeking approval to move the home.

Following the BOA hearing, but before the board approved the final decision, Mr. Love requested this Opinion, seeking an evaluation of the process that led to the BOA's denial. Mr. Love expressed concern that the BOA acted improperly by allowing "ex parte" communications between board members and other persons involved in this controversy, and he also objected to the board's procedure, stating that it should not have accepted new evidence when it reviewed the HPB's decision. Finally, Mr. Love feels that the City is misinterpreting its ordinance, and that he should have been granted permission to move the house.

In response, the City denies that the BOA acted improperly, or that Mr. Love was not given his due process rights. The City also maintains that it correctly interpreted the Historic Preservation Ordinance, and that the BOA's decision was a proper application of that ordinance.

## Analysis

### The Interpretation and Application of § 15-11-13 Must be Based on the Language and Purpose of the Ordinance, and on Objective Criteria and Provable Facts.

The City's application of § 15-11-13 is not justified by the language of the ordinance. Section 15-11-13(A)(1) allows a property owner to move an encroaching historic building if an easement cannot be secured. Permission to move the structure is not dependent upon the motivations or plans of the property owner, but only on whether an easement for the encroachment can be obtained. The City must follow the plain language of the ordinance, which does not include investigation into the nature of the property ownership, any transactions affecting the property, or whether the property owner created the problem.

*A. Standards of Statutory Interpretation*

Statutory interpretation begins with the language of the ordinance. *See Biddle v. Washington Terrace City*, 1999 UT 110, ¶ 14, 993 P.2d 875, 879. 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, 100 P.3d 1171, 1174. "In addition 'statutory enactments are to be so construed as to render all parts thereof relevant and meaningful, and . . . interpretations are to be avoided which render some part of a provision nonsensical or absurd.'" *Perrine v. Kennecott Mining Corp.*, 911 P.2d 1290, 1292 (Utah 1996) (*quoting Millet v. Clark Clinic Corp.*, 609 P.2d 934, 936 (Utah 1980). It must also be presumed "that each term included in the ordinance was used advisedly." *Carrier v. Salt Lake County*, 2004 UT 98, ¶30, 104 P.3d 1208, 1216.

Two more paradigms of statutory interpretation are important to this analysis: First, "the expression of one should be interpreted as the exclusion of another." *Biddle*, 1999 UT 110, ¶ 30, 993 P.2d at 879. In other words, an omission in an ordinance should be given effect by a presumption that an omission was purposeful. *See Carrier*, 2004 UT 98, ¶ 30, 104 P.3d at 1216. Secondly, "since zoning ordinances are in derogation of a property owner's use of land . . . any ordinance prohibiting a proposed use should be strictly construed in favor of allowing the use." *Id.* 2004 UT 98, ¶31, 104 P.3d at 1217.

*B. The Language and Purpose of § 15-11-13.*

Section 15-11-13 of the Park City Municipal Code provides that historic structures can be moved in certain circumstances. The City's Planning Department makes the initial determination whether a structure may be relocated or reoriented, if one of the following criteria can be met:

> (1) A portion of the Historic Building(s) and/or Structure(s) encroaches on an adjacent Property and an easement cannot be secured; or
>
> (2) The proposed relocation and/or reorientation will abate demolition of the Historic Building(s) and/or Structure(s) on the Site; or
>
> (3) The Planning Director and the Chief Building Official determine that unique conditions warrant the proposed relocation and/or reorientation on the existing Site; or
>
> (4) The Planning Director and the Chief Building Official determine that unique conditions warrant the proposed relocation and/or reorientation to a different Site.

PARK CITY MUNICIPAL CODE, § 15-11-13(A). An applicant may appeal a decision of the Planning Department to the Historic Preservation Board. Decisions of the Historic Preservation Board may be appealed to the City's Board of Adjustment. *See id.*, § 15-13-12(E).

The purpose and intent of the section is expressed in the following paragraph:

> It is the intent of this section to preserve the Historic and architectural resources of Park City through limitations on the relocation and/or orientation of Historic Buildings, Structures, and Sites.

*Id.*, § 15-11-13; *see also id.*, § 15-11-9. Thus, approval to move a structure should be granted if the conditions are met, and moving or reorienting the building preserves the City's architectural resources.

*C. Interpretation and Application of § 15-11-13.*

When deciding whether to grant permission to move a historic structure, the focus of the inquiry should center on whether the property meets the conditions listed in § 15-11-13, and whether

granting permission preserves the City's historic and architectural resources. The application to move the home located at 811 Norfolk concerned only one of the four conditions listed in the ordinance. It encroaches on an adjacent property, and, according to the property owner, an easement cannot be secured.[4] There is no dispute that the home encroaches on an adjoining parcel which is now owned by Mr. Ludlow.

The dispute centers almost entirely on whether Mr. Love could secure an easement from Mr. Ludlow, which would allow the home to remain at its original location. The Historic Preservation Board agreed with Mr. Love that an easement was not practical or possible, because Mr. Ludlow did not wish to grant an easement. The City and a group of neighboring landowners argue that the Mr. Love should not have been given permission to move the home, because he did not seek an easement with enough "sincerity" or diligence, and that the division of the original lot was not an "arm's-length transaction."[5] The City points to the close business and personal relationship between Love and Ludlow, and claims that the two owners planned to circumvent the historic preservation ordinance.[6]

The City also points out that Mr. Love could have created an easement when he divided the property. Since he owned the entire parcel, he could have deeded a portion to Mr. Ludlow, subject to an easement for the home. The City argues that since Mr. Love "created" the hardship (by not securing an easement when the property was divided) he is not entitled to permission to move the home by claiming that he cannot get an easement. The ordinance only provides that a move may be granted if an easement cannot be secured. There is no basis for excluding a property owner based on past behavior, even if the problem could have been avoided.[7]

The City's focus on the how the property was divided, or if Mr. Love "sincerely" sought an easement is not justified by the plain language and intent of the ordinance. Section 15-11-13(A)(1) provides that the City will grant permission to move a home that encroaches on adjacent property when "an easement cannot be secured." The ordinance does not require or justify investigation into the nature of the transaction dividing the property. Since it must be presumed that such a requirement was purposefully left out of the ordinance, the City cannot incorporate it as part of its analysis. The only inquiry is whether an easement could be secured. An owner's plans for the property or the motivations leading to the property's acquisition are also not part of the ordinance. It is no secret that both owners hope to enhance the value of their

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[4] The other three conditions are not at issue, because demolition of the home is not threatened, it is not proposed that the home be moved to another site, and the property owner has not argued that there are unique conditions which warrant the move.

[5] An "arm's length" transaction refers to business or contractual dealings "negotiated by unrelated parties, each acting in his or her own self interest . . ." BLACK'S LAW DICTIONARY 109 (6th Ed. 1990).

[6] The City notes that Mr. Love has the same business address, phone number, and email as Mr. Ludlow, and that they have retained the same attorney. The nature of the property division, which occurred immediately after Mr. Love completed the purchase, is also presented as evidence that the transaction was not at "arm's length." In other words, the property division was not a "normal" business transaction, but was concocted as a ruse to obtain permission to move the home and construct a new building on a portion of the property.

[7] It appears that the City borrowed the "self-created hardship" language from the statutes governing variances. (*See* UTAH CODE ANN. § 10-9a-702(2)(b)(ii)). Since the language of § 15-11-13 contains no provision prohibiting self-created hardships, there is no justification to incorporate it into the ordinance.

properties.[8] Such a desire, however, does not taint the transaction dividing the original parcel, and it has no bearing on whether an easement could be obtained.[9]

The ordinance provides no criteria to guide a decision no whether an easement could be secured. Without specific guidance, the City (including the HPB and the Board of Adjustment) could develop reasonable and objective criteria to apply and administer the ordinance.[10] The City's authority to interpret the ordinance, however, must be tempered by the proviso that land use ordinances should be strictly interpreted in favor of the property owner.[11] With this in mind, then, it would be reasonable to consider whether an easement is economically feasible and whether it would practical light of the proposed use of the property, including such factors as topography, placement of access and utility lines, and the configuration and size of the lot. These factors are objective and can be reliably measured or ascertained. On the other hand, parsing the details of a property transaction in an attempt to deduce the motivation or sincerity of a purchaser is highly subjective, and has no relation on whether an easement can reasonably be secured.[12] This approach strays from decision-making based on facts and measurable standards, leading to decisions based on emotion and preferential treatment, which is not acceptable.[13] This approach been condemned by appellate courts, because it erodes the property owner's right to the use and enjoyment of his property.[14]

Finally, and perhaps most significantly, the purpose of the ordinance is satisfied by objectively determining whether an easement can reasonably be secured. The ordinance should be interpreted based on its language, in light of the purpose the ordinance was meant to achieve. Seemingly lost in all the discussion of whether Mr. Love's motivations were sincere is the finding by the City's Historic Preservation consultant that moving the home meets the criteria for

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[8] Mr. Love proposed building an addition onto the rear of the home after it was moved. Mr. Ludlow also indicated plans to develop his lot, but did not offer specifics.

[9] The fact that the two property owners worked "in conjunction" with each other to purchase and subsequently divide the original parcel hardly means that the transaction was not "arm's length." Business transactions between individuals with a preexisting business or personal relationship are very common. The record also shows that Mr. Love approached the City about dividing the parcel to accommodate new development. This is not an improper motivation, so there appears to be nothing nefarious about the transaction between Mr. Love and Mr. Ludlow. The City appears to be affixing a negative label on the transaction as an attempt to "prove" that Mr. Love does not deserve permission to move the home.

[10] *See Carrier*, 2004 UT 98, ¶28, 104 P.3d at 1216 (interpretation of ordinances by local governments given a degree of "non-binding deference").

[11] *Carrier*, 2004 UT 98, ¶ 31, 104 P.2d at 1217 ("since zoning ordinances are in derogation of a property owner's use of land . . . any ordinance prohibiting a proposed use should be strictly construed in favor of allowing the use").

[12] The City's argument that Mr. Love did not "sincerely" seek an easement raises the question of how that conclusion was reached. At what point is an applicant's "sincerity" proven? What factors contribute to such a finding? Since that determination is highly subjective and based on personal motivations and prejudices rather than objective standards, the City should avoid making assumptions about an applicant's sincerity, especially when such an inquiry is not justified by the ordinance upon which it relies.

[13] *See Davis County v. Clearfield City*, 756 P.2d 704, 712 (Utah Ct. App. 1988) ("A [local government] must rely on facts, and not mere emotion or local opinion, in making [a land use] decision."); *accord Bradley v. Payson City*, 2003 UT 16, ¶ 27, 70 P.3d 47, 55.

[14] There is also the very real possibility that no property owner could be found "worthy" enough to be allowed to move a historic home. This interpretation would effectively nullify § 15-11-13, which is not an acceptable approach. *See Perrine v. Kennecott Mining Corp.*, 911 P.2d 1290, 1292 (Utah 1996).

Landmark Sites, and would preserve the home as a Landmark Structure. The intent of the Historic Preservation Ordinance is to preserve the City's historic and architectural resources, so the interpretation and application of the ordinance should be aimed at fulfilling that intent.

To conclude, the City's investigation into the nature of the property's acquisition and division are not justified by the language or intent of the ordinance. The only inquiry is whether an easement for the encroachment could be reasonably secured. The motivations of the property owner, and the relationship between the owner and another purchaser are not relevant. The determination of whether permission to move should be granted must be based on the standards expressed in the ordinance, on objective measures and standards directly related to the intent of the ordinance, and on established facts. The decision may not be based on speculation as to whether the property owner was sincere or on opinions about the business relationship with a subsequent purchaser.[15]

## Conclusion

Section 15-13-11 of the Park City Municipal Code provides that a historic structure may be moved if encroaches on an adjacent parcel, and the owner cannot secure an easement for the building. The plain language of the ordinance must be applied, and the focus of the inquiry is whether the property owner can secure an easement. Although the ordinance provides no criteria upon which to judge whether an easement can be secured, it is appropriate to base a decision on objective measures, including cost, feasibility, practicality, and such factors as topography, and parcel size. Application of the ordinance should also focus on promoting the purpose of the ordinance, which is preserving the City's architectural resources.

It is inappropriate to focus on the nature of property transactions, and the motivations of the property owner. Such an inquiry is not justified by the language or intent of the ordinance, and tends to decision-making based on emotion, public clamor, and opinion, rather than objective standards and provable facts. The motivation or sincerity of a property owner, business relations with other purchasers, and the timing or nature of property transactions are not relevant to determining whether an easement could be secured.

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

[15] In the Request for Advisory Opinion, Mr. Love raised concerns about the nature of the process, including improper communication between the City staff and decision-makers, the procedures used by the public bodies, and insufficient notice. While these concerns are important, and should be addressed as appropriate, they are outside of the scope for Advisory Opinions. Section 13-43-205 lists the topics for Advisory Opinions. The Office of the Property Rights Ombudsman must limit its analysis to those topics. Therefore, this Opinion does not address the concerns raised by Mr. Love.

**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.**

**MAILING CERTIFICATE**

Section 13-43-206(10)(b) of the Utah Code requires delivery of the attached advisory opinion to the government entity involved in this matter in a manner that complies with Utah Code Ann. § 63G-7-401 (Notices Filed Under the Governmental Immunity Act).

These provisions of state code require that the advisory opinion be delivered to the agent designated by the governmental entity to receive notices on behalf of the governmental entity in the Governmental Immunity Act database maintained by the Utah State Department of Commerce, Division of Corporations and Commercial Code, and to the address shown is as designated in that database.

The person and address designated in the Governmental Immunity Act database is as follows:

Janet M. Scott, City Recorder
Park City
445 Marsac Avenue
Park City, Utah 84060

On this _____ Day of July, 2011, I caused the attached Advisory Opinion to be delivered to the governmental office by delivering the same to the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the person shown above.

_____
Office of the Property Rights Ombudsman

# Advisory Opinion 218

Parties: Tony Tippetts / Millcreek City

Issued: March 3, 2020

**TOPIC CATEGORIES**:

**Compliance with Land Use Ordinances**

**Interpretation of Ordinances**

Design standards, when they could be interpreted to conflict with express substantive code requirements, should be interpreted as purpose language. The City was incorrect in interpreting the design standard requiring subdivisions to be designed according to the character of surrounding development so as to allow the City to impose lot frontage requirements greater than the express minimums of the code by determining that the surrounding development's character establishes some other requirement. Since the lot frontages in the property owner's proposed development comply with the express lot frontage requirements in the City's Municipal Code, his development proposal is entitled to approval in that regard.

**DISCLAIMER**

The Office of the Property Rights Ombudsman makes every effort to ensure that the legal analysis of each Advisory Opinion is based on a correct application of statutes and cases in existence when the Opinion was prepared. Over time, however, the analysis of an Advisory Opinion may be altered because of statutory changes or new interpretations issued by appellate courts. Readers should be advised that Advisory Opinions provide general guidance and information on legal protections afforded to private property, but an Opinion should not be considered legal advice. Specific questions should be directed to an attorney to be analyzed according to current laws.

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State of Utah
Department of Commerce

**OFFICE OF THE PROPERTY RIGHTS OMBUDSMAN**

CHRIS PARKER
*Interim Executive Director*

JORDAN S. CULLIMORE
*Division Director, Office of the Property Rights Ombudsman*

## ADVISORY OPINION

| | |
|---|---|
| Advisory Opinion Requested By: | Tony Tippetts |
| Local Government Entity: | City of Millcreek |
| Applicant for Land Use Approval: | Tony Tippetts |
| Type of Property: | Residential Subdivision |
| Date of this Advisory Opinion: | March 3, 2020 |
| Opinion Authored By: | Richard B. Plehn, Attorney<br>Office of the Property Rights Ombudsman |

## ISSUE

Can Millcreek City use a design standard requiring subdivisions and conditional uses to be designed according to the character of surrounding development to modify an express lot frontage requirement in the City's Municipal Code?

## SUMMARY OF ADVISORY OPINION

Millcreek City's municipal code design standards require lot arrangements to be designed according to the "character of surrounding development, and to existing requirements." While development "character" is not defined by the municipal code, Millcreek City has interpreted development "character" to be limited to four characteristics only—lot frontage, lot area, lot width, and lot depth. As to these characteristics, the zoning code provides minimum lot requirements for area and width according to each zone. The City has interpreted the design standard requiring subdivisions to be designed according to the character of surrounding development so as to allow the City to impose lot frontage requirements greater than the express minimums of the code by determining that the surrounding development's character establishes some other requirement.

Design standards, when they could be interpreted to conflict with express substantive code requirements, should be interpreted as purpose language. A municipality may not deny a subdivision application, or modify express lot frontage requirements in the municipality's code, based upon a policy determination that the proposed development does not match the character of surrounding development when the proposed lots comply with the minimum requirements specified in the code for that particular zone. Since the lot frontages in Mr. Tippetts' proposed development comply with the express lot frontage requirements in the Millcreek Municipal Code, his development proposal is entitled to approval in that regard.

## 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 Title 13, Chapter 43, Section 205 of the Utah Code. 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 Tony Tippetts on January 7, 2020. A copy of that request was sent via certified mail to Jeff Silvestrini, Mayor of the City of Milcreek, 3330 South 1300 East, Milcreek Utah 84016 on January 9, 2020.

## EVIDENCE

The Ombudsman's Office reviewed the following relevant documents and information prior to completing this Advisory Opinion:

1. Request for an Advisory Opinion, submitted by Tony Tippetts received January 7, 2020, and subsequent additional information.
2. Letter submitted by John N. Brems, Millcreek City Attorney, received January 17, 2020, including Planning Commission Staff Report SD-19-014.

## BACKGROUND

Tony Tippetts proposes to subdivide his property located at 3675 South Craig Circle in Millcreek City ("City") to five lots. According to Salt Lake County records the Property consists of four parcels that have a combined acreage of approximately 1.9 acres and has an existing dwelling located on the Property. The Property is in the R-1-8 zone.

The Millcreek Municipal Code provides that the planning commission "may adopt development standards for use as a guide in conditional use review and subdivision design."[1] Under Title 18 "Subdivisions" of the Municipal Code, design standards are established for lot arrangement and

[1] MILLCREEK MUNICIPAL CODE § 19.02.120.

design, and provide that lots shall be "properly designed according to topography, the character of surrounding development, and to existing requirements."[2] The Municipal Code requires a minimum lot width within the R-1-8 zone of "65 feet at a distance 25 feet from the front lot line."[3]

On October 18, 2019, Mr. Tippetts filed a Land Use & Development Application for his proposed five-lot subdivision. The proposed lots of the subdivision all met the required minimum lot widths in the Municipal Code of 65 feet. On December 7, 2019, the City contacted Mr. Tippetts and informed him that his lot frontages did not match the character of surrounding development. The City provided Mr. Tippetts a comparison document constituting a map image showing his property and surrounding lots marked with numbers indicating the width in feet of each lot. The comparison document also defined selected area surrounding his property.

The City explained that according to the comparison, 34 lots were wholly or partially included in the 300 foot perimeter area surrounding his property, with an average lot frontage of 89.5 feet in width. The City told Mr. Tippetts that he should limit his proposed subdivision to four lots as opposed to five, and that he needed to match the lots with the character of surrounding development by ensuring a minimum of 70 foot lot widths and meeting the average frontage of 89.5 feet. The City cited Section 18.20.040 of the Municipal Code to require the additional frontage above the zone minimums.

The map image provided to Mr. Tippetts shows at least three properties in the define area with lot frontages less than 70 feet. The City discounted the relevance of the smaller lots alleging they all front on 2700 East, a minor arterial street. The City determined these were of a different character than the lots fronting on local streets. However, the map image also shows other larger frontages along that same street, up to 100 feet in width, but these properties seem to have been included in the average, rather than excluded with their immediate neighbors of smaller widths, without any explanation.

On December 18, 2019, the Millcreek Planning Commission heard the application and reviewed a Planning Commission Staff Report regarding the subdivision. The Staff Report found that the subdivision meets all the express requirements in the code, but that it did not match the character of the surrounding development. The Staff Report generally summarized the lot comparison, but provided no explanation on how it defined the surrounding area, or how it determined to include or exclude certain properties to define character. The Planning Commission motioned to "continue the subdivision application…until a more suitable and compatible development can be proposed based on staff findings located in the staff report."[4]

Following the meeting, in response to Mr. Tippetts' request that the City provide him more specific instructions on how to move forward, the City told Mr. Tippetts to revise his subdivision plat to conform more to the character of the neighborhood to meet the design standards requirement in the Municipal Code regarding subdivision.

[2] MILLCREEK MUNICIPAL CODE § 18.20.040.
[3] MILLCREEK MUNICIPAL CODE § 19.14.040.
[4] Minutes of the Millcreek Planning Commission December 18, 2019, page 6.

Mr. Tippetts has requested that the Office of the Property Rights Ombudsman provide an Advisory Opinion to determine whether his land use application is entitled to approval under applicable law, and whether the City is correctly interpreting its ordinances to require lot dimensions in excess of the minimums provided by Code based on a determination that the character of surrounding development may establish different requirements.

## ANALYSIS

When interpreting the meaning of ordinances, the standard rules of statutory construction apply.[5] Looking to the plain language of the ordinance is considered the first step of interpretation.[6] 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."[7] Because 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."[8]

Chapter 18.20 of the Millcreek Municipal Code contains "Design Standards" for subdivisions. The section regarding lots reads as follows:

A. The lot arrangement and design shall be such that lots will provide satisfactory and desirable sites for buildings and be properly designed according to topography, the character of surrounding development, and to existing requirements.
B. All lots shown on the preliminary and final plats must conform to the minimum requirements of the zoning title, if any, for the zone in which the subdivision is located, and to the minimum requirements of the health department for water supply and sewage disposal.

…[9]

Design standards in a local ordinance usually express general principles and purposes. Sometimes, design standards contain defined, substantive requirements that may be plainly and unambiguously applied to a development proposal. More often, design standards simply contain aspirational or precatory language intended to guide the developer as they configure the layout and setup of their development. This latter type of language should be treated as purpose language, as opposed to language that conveys definite, substantive requirements.

In *Price Development Co. v. Orem City*,[10] the court discussed the role of legislative statements of purpose as opposed to operative provisions. Many ordinances and statutes contain distinct sections of purpose that serve as a 'preamble' to the operative provisions of a statute. "[Such language] is nothing more than a statement of policy which confers no substantive rights."[11] The court explained that these provisions "provide guidance to the reader as to how the act should be

[5] *Brendle v. City of Draper*, 937 P.2d 1044, 1047 (Utah Ct. App. 1997).
[6] *Carrier v. Salt Lake County*, 2004 UT 98, ¶ 30, 104 P.3d 1208.
[7] *Foutz v. South Jordan*, 2004 UT 75, ¶ 11, 100 P.3d 1171.
[8] *Patterson v. Utah County Bd. of Adjustment*, 893 P.2d 602, 606 (Utah Ct. App. 1995).
[9] MILLCREEK MUNICIPAL CODE § 18.20.040.
[10] *Price Dev. Co. v. Orem,* 2000 UT 26, ¶ 23, 995 P.2d 1237.
[11] *Id.*

enforced and interpreted, but they are not a substantive part of the statute."[12] Accordingly, these provisions "may be used to clarify ambiguities, but they do not create rights that are not found within the statute, nor do they limit those actually given by the legislation."[13]

Here, this is the role that the character language in the Municipal Code's Design Standards plays. The plain language of the Design Standards states that "lot arrangement and design shall be such that lots will provide satisfactory and desirable sites for buildings and be properly designed according to topography, the character of surrounding development, and to existing requirements."[14] This is purpose language. It does not contain any unambiguous, substantive requirements that may be objectively applied to a development proposal. The Design Standards, by their plain language, do not impose independent substantive requirements of design and character, but give purpose to the specific, substantive standards contained elsewhere in the Municipal Code.

Moreover, the Municipal Code does not contain an express definition of development "character," but the City has attempted to define it, apparently by internal policy, as limited to four characteristics only—lot frontage, lot area, lot width, and lot depth.[15] The City applies the Design Standard as an independent requirement that possesses enough substantive weight to form the sole basis of approval or denial of a development proposal, even when the proposal complies with express dimensional requirements in the Municipal Code.

In Mr. Tippetts' case, the City has told him that he must adhere to a subjective standard created by the character of surrounding development, even though his proposal complies with the written, minimum lot requirements in the Municipal Code. These new requirements cannot be discerned by reference to city ordinances, but originate from the discernment of planning authorities.

Since the Municipal Code does not define "character," the City may not, by internal policy, attach a seemingly objective definition to a term that is otherwise inherently subjective. Where character is undefined, the substantive requirements of the Municipal Code, such as codified minimum lot frontage requirements, determine the community's character. Section 19.14.040 of the Municipal Code expressly provides that the minimum lot width for a lot in the R-1-8 zone is "65 feet at a distance 25 feet from the front line." Since Mr. Tippetts' proposal meets this requirement, it, by definition, meets the character of the surrounding community, and is entitled to approval.

## CONCLUSION

Land use ordinances restricting the use of property are strictly construed, and provisions permitting property use are liberally construed in favor of the property owner. Moreover, a city must interpret its code according to the code's plain language, and not by internal policy.

[12] *Id*.
[13] *Id*.
[14] MILLCREEK MUNICIPAL CODE 18.20.040.
[15] Letter submitted by John N. Brems, Millcreek City Attorney, page 4, received January 17, 2020.

In this case, the City has incorrectly treated its Design Standards as substantive requirements, and interpreted its provisions to require greater restrictions on property use. The City's Design Standards should be interpreted as providing purpose, as opposed to imposing greater restrictions than what the express provisions of the Municipal Code already require. Since Mr. Tippetts' proposed lot frontages comply with the express requirements of the Municipal Code, his application is entitled to approval.

Jordan S. Cullimore, Lead Attorney
Office of the Property Rights Ombudsman

**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.**

**The Advisory Opinion process is an alternative dispute resolution process. Advisory Opinions are intended to assist parties to resolve disputes and avoid litigation. All of the statutory procedures in place for Advisory Opinions, as well as the internal policies of the Office of the Property Rights Ombudsman, are designed to maximize the opportunity to resolve disputes in a friendly and mutually beneficial manner. The Advisory Opinion attorney fees provisions, found in UTAH CODE § 13-43-206, are also designed to encourage dispute resolution. By statute they are awarded in very narrow circumstances, and even if those circumstances are met, the judge maintains discretion regarding whether to award them.**

**MAILING CERTIFICATE**

Section 13-43-206(10)(b) of the Utah Code requires delivery of the attached advisory opinion to the government entity involved in this matter in a manner that complies with UTAH CODE § 63-30d-401 (Notices Filed Under the Governmental Immunity Act).

These provisions of state code require that the advisory opinion be delivered to the agent designated by the governmental entity to receive notices on behalf of the governmental entity in the Governmental Immunity Act database maintained by the Utah State Department of Commerce, Division of Corporations and Commercial Code, and to the address shown is as designated in that database.

The person and address designated in the Governmental Immunity Act database is as follows:

Mayor Jeff Silvestrini
City of Millcreek
3330 South 1300 East
Millcreek, Utah 84016

On this _____ day of March 2020, I caused the attached Advisory Opinion to be delivered to the governmental office by delivering the same to the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the person shown above.

_____
Office of the Property Rights Ombudsman

# Advisory Opinion #250

Parties: Scott Bracken, Weber County
Issued: January 20, 2022

**TOPIC CATEGORIES**:

**Compliance with Land Use Ordinances**
**Entitlement to Application Approval (Vested Rights)**
**Interpretation of Ordinances**
**Requirements Imposed on Development**

The 75-foot building setback required by the Weber County stream corridor ordinance applies to naturally occurring, year-round streams. The watercourse running along the rear property line of the subject property is manmade and conveys water only a few months of the year. Furthermore, while the Stream Map does offer a conflicting depiction of "stream," such ambiguity is interpreted in favor of the property owner. Therefore, according to the plain language of the county ordinance defining a "stream", the 75-foot building setback does not apply to the watercourse in this case.

**DISCLAIMER**

The Office of the Property Rights Ombudsman makes every effort to ensure that the legal analysis of each Advisory Opinion is based on a correct application of statutes and cases in existence when the Opinion was prepared. Over time, however, the analysis of an Advisory Opinion may be altered because of statutory changes or new interpretations issued by appellate courts. Readers should be advised that Advisory Opinions provide general guidance and information on legal protections afforded to private property, but an Opinion should not be considered legal advice. Specific questions should be directed to an attorney to be analyzed according to current laws.

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**OFFICE OF THE PROPERTY RIGHTS OMBUDSMAN**

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JORDAN S. CULLIMORE
*Division Director, Office of the Property Rights Ombudsman*

# ADVISORY OPINION

| | |
|---|---|
| Advisory Opinion Requested By: | Scott Bracken |
| Local Government Entity: | Weber County |
| Applicant for Land Use Approval: | Scott Bracken |
| Type of Property: | Residential |
| Date of this Advisory Opinion: | January 20, 2022 |
| Opinion Authored By: | Marcie M. Jones, Attorney<br>Office of the Property Rights Ombudsman |

## ISSUE

Did Weber County correctly interpret applicable county code provisions when it imposed a 75-foot stream setback from a manmade irrigation channel which is dry several months of each year?

## SUMMARY OF ADVISORY OPINION

The 75-foot building setback required by the Weber County stream corridor ordinance applies to naturally occurring, year-round streams. The watercourse running along the rear property line of the subject property is manmade and conveys water only a few months of the year. Furthermore, while the Stream Map does offer a conflicting depiction of "stream," such ambiguity is interpreted in favor of the property owner. Therefore, according to the plain language of the county ordinance defining a "stream", the 75-foot building setback does not apply to the watercourse in this case.

## 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 Scott Bracken on September 27, 2021. A copy of that request was sent via certified mail to Ricky D. Hatch, CPA, Counter Clerk / Auditor Weber County, 2380 Washington Boulevard, Suite 320, Ogden, Utah 84401 on September 28, 2021.

## EVIDENCE

The Ombudsman's Office reviewed the following relevant documents and information prior to completing this Advisory Opinion:

1. Request for an Advisory Opinion, submitted by Scott Bracken on September 27, 2021.
2. Response letter submitted by Steve Burton, Principal Planner, Weber County Planning Division on November 2, 2021.
3. Documents submitted by Scott Bracken on November 10, 2021.

## BACKGROUND

Scott Bracken ("Bracken") purchased a parcel of land in Eden, Utah on which he plans to build a residence. The lot is bordered by a watercourse that runs along the rear boundary line. Bracken designed home building plans using a 50' building setback from this rear property line as required on the recorded subdivision plat and in the relevant zoning ordinances. Bracken submitted a building permit request to Weber County Planning Division ("County") depicting the same.[1]

The County reviewed and denied the building permit application asserting the plans did not properly depict a 75-foot stream corridor building setback from the adjacent watercourse as required by the County's Stream Corridor Ordinance[2] (the "Stream Corridor Ordinance").

Bracken maintains that the stream corridor ordinance does not apply to that particular watercourse because it is a manmade irrigation channel and does not meet the definition of "stream" provided in the Weber County Land Use Code.

In a letter provided by Bracken, the Wolf Creek Irrigation Company ("Irrigation Company") states that the channel was dug as a way to carry water from the diversion of Wolf Creek stream to the Wolf Creek collection water. It is based upon a diversion of water from a stream, but is not itself a natural watercourse. Further, the Irrigation Company is allowed to take water from the actual stream for only part of each year – from March 1 until October 31. Thus, Bracken and the Irrigation Company maintain that the channel is a manmade collection reservoir used for irrigation purposes, which does not meet the County's definition of "stream." Additionally, according to the Irrigation Company, the channel does not convey water "year-round" as required by the Stream Corridor Ordinance. According to the Stream Corridor Ordinance, naturally occurring ephemeral streams which do not run year-round require only a 50' setback. Bracken has provided photos of the channel in a dry state to show that water is not present year-round.

[1] Bracken has submitted several iterations of building permit applications and variance requests in an attempt to receive approval. It is not necessary or helpful to the analysis to go through details of the various applications.
[2] Weber County Code § 104-28-2(b)(1).

In opposition, the County maintains that the watercourse is depicted as a stream on the map which accompanies the Stream Corridor Ordinance and therefore, the 75-foot stream setback has been properly applied.

Bracken has requested this Advisory Opinion to determine if Weber County is correctly interpreting county ordinances to designate the channel in question as a stream, and whether it may therefore impose the 75-foot building setback required by the Stream Corridor Ordinance on his development application.

## ANALYSIS

Ordinance interpretation requires application of the canons of statutory construction.[3] An analysis of the plain language of the ordinance always comes first,[4] with the primary goal "to give effect to the legislative intent, as evidenced by the plain language, in light of the purpose the statute was meant to achieve."[5] If the plain language of an ordinance is sufficiently clear, the analysis ends there.[6]

Note that where a reasonably well-informed person could understand a land use ordinance to have more than one meaning, the ordinance should be strictly construed in favor of the property owner, since such ordinances are in derogation of an owner's common-law right to unrestricted use of their land.[7]

It is also important to recognize that meaning must be given to words which are missing as well as those included. It must be presumed "that each term included in the ordinance was used advisedly"[8] and "[o]missions in statutory language should be taken note of and given effect."[9]

To summarize, we will review the plain language of the ordinance, reading any ambiguity in favor of the property owner and giving meaning to each term to determine whether the watercourse running at the rear boundary of Bracken's property is in fact a stream to which the 75-foot building setback required by the Stream Corridor Ordinance applies.

### I. By the plain language of the ordinance, and in consideration of the evidence presented, the identified channel is not a stream

The Stream Corridor Ordinance is within Part II Land Use of the Weber County Code (the "County Code", or, simply "Code"). That section begins with "General Provisions" which provides guidance for how to use and apply the Code and also includes a section labeled "Definitions" (the "Definitions"). If there is any question as to how the Definitions should be used, the section labeled

[3] *Foutz v. City of South Jordan*, 2004 UT 75, ¶8.
[4] *Carrier v. Salt Lake County*, 2004 UT 98 ¶30.
[5] *Foutz*, 2004 UT 75, ¶11.
[6] *General Construction & Development, Inc. v. Peterson Plumbing Supply*, 2011 UT 1, ¶ 8.
[7] *Patterson v. Utah County Bd. Of Adjustment.*, 893 P.2d 602 (Utah Ct. of App. 1995).
[8] *Carrier v. Salt Lake County*, 2004 UT 98, ¶ 30, 104 P.3d 602, 606 (Utah Ct. App. 1995).
[9] *Biddle v. Washington Terrace*, 1999 UT 110, ¶ 14.

"Applicability" states "When used in this Code, the following words and phrases have the meaning ascribed to them in this section, unless the context indicates a different meaning."[10]

Furthermore, the General Provisions also give guidance on the "Rules of Construction." It states "[t]he words used in this Code shall be construed to effect the intended purposes. *Definitions of various words and phrases used throughout the Code are provided in this title. . .."* (*emphasis added*).[11] It goes on to say that "Other definitions may be found in specific sections of the Code and apply only to that section or portion of the Code. . ."[12] and later "[s]ome sections of this Code contain separate definitions sections intended primarily for use in connection with the relevant section or portion of the Code."[13]

Therefore, by the plain language of the Code, the Definitions section provides the applicable definitions of words used in the Code. If an alternate definition is required for a particular section or subsection of Code, it will be defined separately there.

With that guidance, we next look to see whether, and how, "stream" is defined. The definition for "stream" occurs only once in the Code.[14] According to the Definition provided:

> The term "stream" means those areas where surface waters flow sufficiently to produce a defined channel or bed. A defined channel or bed is indicated by hydraulically sorted sediments or the removal of vegetation litter or loosely rooted vegetation by action of moving water. The channel or bed need not contain water year-round. *This definition is not meant to include stormwater runoff devices or entirely artificial watercourse unless they are used to store or convey pass through stream flows naturally occurring prior to construction of such devices*. Stream watercourses where the definition may apply are those that appear on the U.S. Geological Survey Quad maps *excluding irrigation canals and ditches*. For instance, an irrigation canal following a natural or jurisdictional watercourse would not be exempt, but others would be exempt.[15] (*emphasis added*).

According to the Code, entirely artificial watercourses are not considered "streams." The Irrigation Company has stated that the disputed watercourse was manmade and created to convey irrigation water. Based on that portion of the definition, and the presented evidence, the disputed channel is not considered a stream, and the Stream Corridor Ordinance would not apply.

Note further that while the definition of "stream" does not require water be present year-round, the Stream Corridor Ordinance does. According to the Irrigation Company, irrigation water flows through the channel for only seven months of the year. Likewise, Bracken has provided photos of the channel where it is completely dry, indicating this is not a year-round watercourse. Therefore,

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[10] Weber County Code § 101-2-1.
[11] Weber County Code § 101-1-6(a).
[12] Weber County Code § 101-1-6(a).
[13] Weber County Code § 101-1-6(b)(9).
[14] The Stream Corridor Ordinance is detailed in Chapter 104 – Ogden Valley Sensitive Lands Overlay Zone, which does not include any definitions pertinent only to that Section. (Weber County Code § 104-28).
[15] Weber County Code § 101-2-20.

the 75' building setback required for year-round streams would not apply to the subject watercourse based on this requirement as well.

Because the Code states that the meaning of those words provided in the Definitions section applies unless an alternate meaning is provided in a particular subsection, and because "stream" is not otherwise defined in the Code, the conclusion that the identified canal is manmade and therefore not a "stream" according to the Definition, appears definitive. However, before ending our analysis, we must nonetheless determine whether "the context indicates a different meaning" as provided by the Applicability section of the Code.[16]

## II. By the overall context of the ordinance, the identified channel is not a stream

The Stream Corridor Ordinance is a subsection of the Code. This subsection does not provide its own definitions; therefore, it relies on the Definitions provided earlier in that overall section of the code. There is, nonetheless, context which might indicate a separate definition of "stream" could apply to the Stream Corridor Ordinance.

The text of the Stream Corridor Ordinance clearly requires that "Structures, roads, or parking areas shall not be developed or located with 75-feet on both sides of a year-round stream, as determined from the high-water mark of the stream."[17] That much seems clear. The Stream Corridor Ordinance is prefaced by a Purpose and Intent subsection which includes a thumbnail roughly 4 inches by 5 inches of Ogden Valley Sensitive Lands Stream Corridors map (the "Stream Map"). The thumbnail covers the entire county and is therefore unreadable, but the ordinance does include text which reads "the Ogden Valley Sensitive Lands Maps [including the Stream Map] are available from Weber County."[18].

Once obtained from Weber County, one can "zoom in" on the Stream Map and see that the disputed watercousre is clearly highlighted in blue, and then locate the legend which clearly states that the blue highlighting identifies areas as a "stream or braided stream". It is from this context that the County has determined the watercourse in question is a "stream." Because the channel is labeled as a "stream or braided stream," on the Stream Map, the County argues, the 75-foot building setback applies.

Bracken argues, and the County has not protested, that the highlighting on the Stream Map is not accurate. Moreover, it appears that the Stream Map is not intended to be dispositive. The Stream Map includes the following disclaimers on the legend:

> "*This is not an official map, but for reference use only.* The data was compiled from the best sources available, so *various errors from the sources may be inherent on the map*. All boundaries and features therein should be treated as such. For official boundary information, the pertinent County department or Municipality should be

[16] *See* Weber County Code § 101-2-1. Applicability which states "When used in this Code, the following words and phrases have the meaning ascribed to them in this section, *unless the context indicates a different meaning*." (*emphasis added*).
[17] Weber County Code § 104-28-2(b)(1).
[18] Weber County Code § 104-28-1(c).

> contacted. This map is a representation of ground features and is *not a legal document of their locations*. The scale represented is approximate, nonexistent, or has been changed, so this is *NOT a Survey or Engineering grade map and should by no means be used as such*. This map is not intended for all uses. Weber County is not responsible or liable for any derivative or misuses of this map." (*emphasis added*).

Further, the text of the Stream Corridor Ordinance itself does not even imply that the Stream Map should be dispositive. The Stream Corridor Ordinance is silent on how it should be used. The Stream Map is only mentioned in the prior "Purpose and Intent" subsection, and even then, only to say "the Ogden Valley Sensitive Lands Maps [including the Stream Map] are available from Weber County."[19]

In contrast, in the immediately following section regulating important wildlife habitat areas includes specific directions for how the corresponding map should be used. That sections states both that "Limitations in areas of wildlife habitat *as shown on the Ogden Valley Sensitive Lands Wildlife Map*"[20] and also "when development occurs in *mapped important areas*, the state division of wildlife resources (DWR) may provide written recommendations . . .."[21]

Noting that "[o]missions in statutory language should be taken note of and given effect"[22] the Stream Corridor Ordinance failing to mention the map must be given meaning, particularly where the immediately following subsection includes language making use of that corresponding map obligatory. Therefore, based on the lack of language in the Stream Corridor Ordinance indicating the Stream Map is dispositive, and the disclaimer language on the Stream Map itself, there is no clear indication how the Stream Map should be applied.

The Utah courts have given us direction on how to interpret ordinances which include conflicting or imprecise language—where any ambiguity remains, the ordinance should be read in favor of the property owner. "A statute is ambiguous if it can be understood by reasonably well-informed persons to have different meanings."[23] In this case, a reasonably well-informed person could read the Definition of stream and determine the subject watercourse is *not* a stream because it is intermittent and manmade, yet then look at the Stream Map and determine that it *is* a stream because the legend indicates that it is. Therefore, the ordinance, when taken as a whole, includes some ambiguity.

Utah case law stipulates that, regarding land use regulations, any ambiguity must be "liberally construed in favor of the property owner" because "zoning ordinances are in derogation of a property owner's common-law right to unrestricted use of his or her provisions."[24] Further, zoning "provisions therein restricting property uses should be strictly construed, and provisions permitting

[19] Weber County Code § 104-28-1(c).
[20] Weber County Code § 104-28-3(a)(1)(a).
[21] Weber County Code § 104-28-3(b).
[22] *Biddle v. Washington Terrace*, 1999 UT 110, ¶ 14.
[23] *Miller Welding Supply, Inc. v. Utah State Tax Comm'n*, 860 P.2d 361, 362 (Utah App. 1993) (quoting *Sneddon v. Graham*, 821 P.2d 1185, 1187 (Utah App. 1991)),
[24] *Patterson v. Utah County Bd. Of Adjustment*, 893 P.2d 602 quoting Sammons v. Village of Batavia, 53 Ohio App. 3d 87, 557 N.E.2d 1246, 1249 (Ohio App. 1988); *see* 83 Am. Jur. 2d *Zoning & Planning* § 977 (1992).

property uses should be liberally construed in favor of the property owner."[25] Therefore, where a reasonably well-informed person could find two different building setbacks applying to the watercourse in question – one that is 50', as detailed on the plat and in the zoning code, and one that is 75' which is indicated on the Stream Map – the one which least restricts the property owner's use of the land must be used.

In conclusion, while there may be some remaining ambiguity where the Definition of "stream" conflicts with the conclusion one gets from using the Stream Map, the overall context does not clearly indicate that the Stream Map should override the definition of "stream" explicitly included in Definitions. This decision is supported by the practice of construing any ambiguity in favor of the property owner.

Accordingly, because the watercourse running along the rear of Bracken's property is apparently manmade, it does not meet the definition of "stream" in the Definitions section of the County Code. Furthermore, while the Stream Map does provide an alternate interpretation, ambiguity is interpreted in favor of the property owner. As such, by the plain language of the ordinances, and in light of the evidence presented, the 75-foot building setback established in the Stream Corridor Ordinance does not apply and the County may not lawfully apply it to this property when reviewing a land use application.

## CONCLUSION

The 75-foot building setback required by the Weber County Stream Corridor Ordinance applies to naturally occurring, year-round streams. As the watercourse running the along the rear property line of the subject property is manmade and conveys water only a few months of the year, the 75-foot building setback does not apply.

Jordan S. Cullimore

Jordan S. Cullimore, Lead Attorney
Office of the Property Rights Ombudsman

[25] *Id.*

**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.**

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# Advisory Opinion 279

Parties: 1115 Aerie, LLC / Park City

Issued: November 16, 2023

**TOPIC CATEGORIES**:

**Application Review Fees**

**Compliance With Land Use Regulations**

The City's denial of a conditional use permit for approval of an existing unpermitted private recreational sports court was wrongful as the City erred in (1) misinterpreting the subdivision plat as prohibiting further development of the lot, and (2) concluding it had received insufficient information to determine compliance with steep slope requirements and other conditional use standards.

Ambiguous plat depictions may be resolved with extrinsic evidence of the plat approval's legislative history and ordinances in effect at the time. Prior City ordinances allowed for prospective development restrictions by plat, but only if defined and clearly stated on the plat. As the City erred in finding the plat imposed such development restrictions, the City otherwise erred in denying the conditional use permit application for insufficient information when the applicant had requested a continuance to provide the necessary information. Cities bear the burden of obtaining sufficient information through substantive review before proceeding with final action on an application in order to avoid arbitrary decisions.

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# UTAH DEPARTMENT OF COMMERCE
## Office of the Property Rights Ombudsman

MARGARET W. BUSSE
*Executive Director*

JORDAN S. CULLIMORE
*Division Director, Office of the Property Rights Ombudsman*

## ADVISORY OPINION

| | |
|---|---|
| Advisory Opinion Requested By: | Wade Budge, Attorney for 1115 Aerie, LLC |
| Local Government Entity: | Park City |
| Applicant for Land Use Approval: | 1115 Aerie LLC |
| Type of Property: | Residential |
| Date of this Advisory Opinion: | November 16, 2023 |
| Opinion Authored By: | Richard Plehn, Attorney<br>Office of the Property Rights Ombudsman |

## ISSUES

Was 1115 Aerie entitled to approval of the Conditional Use Permit Application it submitted to the Park City Planning Commission for a sports court as a "Private Recreation Facility"?

## SUMMARY OF ADVISORY OPINION

The applicant's residential property is a lot in a master planned development subdivision located in the city's Estate district and subject to the sensitive lands overlay. The applicant is seeking to legalize certain prior land disturbance and development activity that had initially commenced without proper permits, and applied for conditional use approval of a sports court.

Final action on conditional use applications must include findings according to conditional use standards and must be supported by substantial evidence. It is incumbent on the city to use the substantive review process to obtain all information necessary before considering a matter for final decision. Unless the applicant demands final action, "insufficient information" is not a valid basis for denial where the application could be continued to obtain information necessary for required findings. Conditional uses, like any land use application, must also comply with the objective requirements of land use regulations, development standards, and applicable land use decisions, including plat restrictions. Plats are interpreted to discern the meaning of the parties at the time the

plat is created, and ambiguity is appropriately resolved by the extrinsic evidence of subdivision approval documents and the land use ordinances in effect at the time of approval.

The city wrongfully interpreted platted building pad lines as proscribing any development activity beyond the existing home's footprint, which was not the intent of the plat according to the master planned development approval and ordinances in effect at that time. The city also concluded that it had insufficient information about the lot's pre-development condition in order to determine compliance with standards for steep slopes and vegetation protection. Despite the applicant's preference to continue the matter to provide the necessary information, the city wrongfully denied the application for "lack of information" and for noncompliance with original plat restrictions, which was erroneous.

The city should reconsider the application without regard to any plat restrictions, and only after it has received whatever information it feels is necessary to determine compliance with steep slope regulations and to make required findings under its conditional use standards of reasonably anticipated detrimental effects, and the potential mitigation of those effects by condition. It must then approve the conditional use permit if it determines the application, as conditioned, achieves compliance with its standards, or else deny the permit if it determines objective requirements are not met or that reasonable conditions cannot substantially mitigate identified detrimental effects.

## EVIDENCE

The Ombudsman's Office reviewed the following relevant documents and information prior to completing this Advisory Opinion:

1. Request for Advisory Opinion submitted by Wade Budge, Attorney for 1115 Aerie, LLC, received on August 2, 2022.
2. Response Letter from Park City, received on February 13, 2023.
3. Reply letter from Wade Budge, received on March 8, 2023.
4. Park City's Response to March 8, 2023 reply, received March 13, 2023.
5. Wade Budge reply to City's March 13, 2023 response, received on March 17, 2023.
6. Letter from Wade Budge re: Supplemental Information, dated July 20, 2023.

## BACKGROUND

1115 Aerie Drive, in Park City, is owned by an LLC of the same name, 1115 Aerie, LLC (Aerie). The property is a residential lot within a subdivision originally approved as a 12-lot Master Planned Development in 1993. The subdivision plat depicts on each lot a 90' x 90' area noted as "building pad." A home was later built in 1998 which utilized the lot area noted as building pad.

Aerie hired a landscaping contractor to landscape, retain, and build improvements on the Property, including a large sports court. The contractor represented to Aerie that it had obtained all necessary permits for the work. Unfortunately, the contractor had not, in fact, done so. While the contractor

did apply for a grading/landscaping permit in January of 2021 to replace three retaining walls, the remainder of the work, including the sports court, had not been permitted by Park City (City).

In September 2021, after much work had been performed, the City notified Aerie that the work had exceeded the scope of the issued permit and violated provisions of Park City's Land Management Code (Code). Once Aerie learned that its contractor had failed to obtain the correct permits, it began working with the City to obtain necessary approvals and attempt to modify the contractor's work to bring it in compliance with Code requirements.

On December 20, 2021, Aerie submitted a Conditional Use Permit Application (CUP) proposing to legalize the already constructed sports court by modifying the facility and seeking approval of the facility as a "Private Recreation Facility," which is a conditionally permitted use in the applicable Estate Zoning District under the Code. The application proposed to significantly modify the sports court to accommodate setback requirements, reduce the overall size of the court to minimize disturbance, and increase the amount of vegetative screening to minimize the court's impacts on neighbors and the community. Aerie also submitted a separate Administrative CUP application for retaining walls greater than six feet in height. On June 17, 2022, Aerie formally requested final action pursuant to Utah Code Section 10-9a-509.5(2)(b) on the Administrative CUP. Planning staff recommended that because the proposed relocated retaining wall is located directly adjacent to the sports court pad, the Planning Commission should review the Private Facility CUP for the sports court use and provide input before the administrative hearing on the retaining wall CUP.

When the private recreation facility CUP was scheduled to come before the planning commission, the staff report that accompanied the application concluded that the building pad lines depicted on the plat were intended as the limit on disturbance for the lot, and that developing outside of the building pad area violated restrictions in the plat. The report noted that the information submitted regarding lot conditions were all post-development, and that information regarding the pre-development conditions were necessary. The report referenced several pieces of information that staff felt was missing in order to determine compliance with the City's conditional use standards, and ultimately recommended denial of the CUP "due to a lack of submitted information to date." The report continued:

> *If the applicant wishes to withdraw and resubmit, the following information should be provided:*
> - *Additional analysis of pre-development conditions, including identifying areas of Steep Slopes, Very Steep Slopes, and Significant Vegetation*
> - *An explanation and proposed management for the use of the sports court*
> - *A lighting and noise mitigation plan for the court and site*

On July 13, 2022, the Planning Commission reviewed the CUP application in a public hearing. Before and during the hearing, neighbors to the Property expressed concerns that lighting and noise associated with the sports court would negatively impact them. City staff raised issues related to steeps slopes and noncompliance with prior approvals and the applicable subdivision plat.

The applicant provided an explanation of the proposed use of the sports court as well as lighting, and stated that the owner would accept certain conditions regarding use and lighting that he felt would mitigate anticipated detrimental impacts and address comments made by neighbors.

In regards to the pre-development conditions for steep slope and vegetation issues, the applicant repeatedly offered to provide more information as needed. When one commissioner expressed support for denying the permit until the applicant worked more with staff and provided more information, the applicant responded that "the applicant would be happy to provide the additional information and rather than going through the process of handling a denial, they would like to provide that information to the Commission. [Applicant] suggested a continuance would be preferable."

Despite the request for more time to provide information that the Commission felt it was lacking, Planning Staff expressed its opinion that while more information could be helpful, even with additional information, Staff would likely still recommend denial. This appears to be, in part, due to the conclusion that the plat restricted any development outside of the building pad area, but also due to questions of whether the applicant could adequately mitigate the loss of vegetation and issues of drainage due to the amount of impervious surface and other landscaping added.

The Planning Commission therefore moved forward with denying the application. A July 20, 2022 denial letter issued by the Planning Commission listed 17 findings of fact to support its conclusions that the conditional use permit was not consistent with the conditional use standards in the Code.

These findings are distilled into two primary reasons for denial: (1) that the as-built conditions, including placement of structures like the sports court outside of the building pad area depicted on the plat violated original plat restrictions, and could not therefore be brought into compliance, and (2) the application does not meet the Code's conditional use review process "due to a lack of information submitted regarding screening and landscaping, compatibility with surrounding structures, potential noise, lighting, environmentally sensitive lands, steep slopes, and appropriateness of the proposed Structure to the existing topography of the Site."

Aerie contends that the City's provided reasons for denial are legally insufficient, and that the Planning Commission therefore unlawfully denied Aerie's conditional use permit application. Accordingly, Aerie has submitted a Request for Advisory Opinion to this Office asking us to determine whether the denial was lawful.

## ANALYSIS

Utah's Land Use, Development, and Management Act (LUDMA), as applied to municipalities, provides that a court "shall presume that a final land use decision of a land use authority or an appeal authority is valid unless the land use decision is . . . arbitrary and capricious; or . . . illegal." UTAH CODE § 10-9a-801(3)(b).

In its Request for Advisory Opinion, Aerie asserts the City's land use authority—the Planning Commission—erred in denying Aerie's conditional use permit application for four primary

reasons. Namely, Aerie alleges, first, that the Commission improperly denied the application "for a lack of information," instead of identifying detrimental effects and determining whether the effects could be mitigated. Second, Aerie alleges that the Commission was legally wrong in concluding that subdivision plat prohibits development of the proposed sports court outside of the platted building pad lines. Third, Aerie argues that the Commission incorrectly determined the sports court was constructed within fifty feet of a Very Steep Slope. Fourth, and finally, Aerie argues that the Commission improperly relied on aspirational or subjective provisions of the City's general plan to deny the application.

We will address each concern, but as discussed below, we conclude that the Planning Commission erred in its interpretation that the plat restricted the proposed development, and that the development activity violated steep slope standards. Without these two reasons as independent bases for denial, the Commission likewise erred in taking final action to deny the conditional use application without the information it felt it needed to make required findings under its conditional use standards. We conclude that the reasons stated as the basis for denial in the City's final action letter were affected by unknowns that the City acknowledges could be cleared up by additional information by the application. The Commission therefore should have continued the matter, as was preferred by the applicant, before attempting to conclude that the application did not conform to applicable standards.

## I. Aerie's Proposed Development Activity Does Not Violate Internal Lot Restrictions

A land use application is entitled to substantive review under the land use regulations in effect at the time of application. UTAH CODE § 10-9a-509(1)(a). However, an application must also comply with applicable land use decisions and development standards, *see id.*, which may include "internal lot restrictions," defined as a "platted note, platted demarcation, or platted designation that . . . runs with the land; and creates a restriction . . . [or] designates a development condition that is enclosed within the perimeter of a lot described on the plat." *Id.* § 10-9a-103(27).

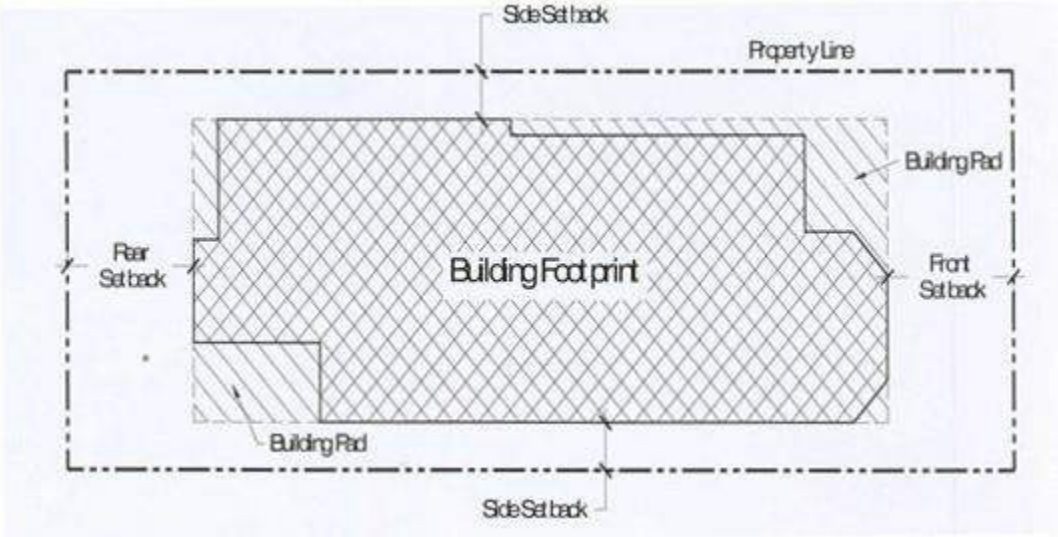
Here, the 1993 Hearthstone Subdivision plat that created the Aerie lot depicts, on each lot of the subdivision, a designated area labeled "90' x 90' BUILDING PAD".

Relevant for our purposes, the City's current version of the Code defines the following terms:

> **STRUCTURE**. Anything constructed, the Use of which requires a fixed location on or in the ground, or attached to something having a fixed location on the ground and which imposes an impervious material on or above the ground; definition includes "Building".
>
> **BUILDING ENVELOPE**. The Building Pad, Building Footprint, and Height restrictions that defines the maximum Building Envelope in which all Development must occur.
>
> **BUILDING FOOTPRINT**. The total Area of the foundation of the Structure, or the furthest exterior wall of the Structure projected to Natural Grade, not including exterior stairs, patios, decks and Accessory Buildings listed on the Park

City Historic Structures Inventory that are not expanded, enlarged or incorporated into the Main Building.

**BUILDING PAD**. The exclusive Area, as defined by the Setbacks, in which the entire Building Footprint may be located. See the following example; also see Limits of Disturbance.




**LIMITS OF DISTURBANCE**. The designated Area in which all Construction Activity must be contained.

**CONSTRUCTION ACTIVITY**. All Grading, excavation, construction, Grubbing, mining, or other Development Activity which disturbs or changes the natural vegetation, Grade, or any existing Structure, or the act of adding an addition to an existing Structure, or the erection of a new principal or Accessory Structure on a Lot or Property.

LAND MANAGEMENT CODE (LMC) § 15-15-1.

The City concludes that the proposed sports court is a "structure" under the Code, and that demarcation of "building pad" on the subdivision plat, consistent with that term's meaning and other related terms as currently defined in the Code, is intended to effectively act as the lot's definitive building envelope, meaning that the plat restricts any type of development activity outside of the depicted building pad area, and since the Aerie lot has been improved with a primary structure that effectively utilized the entirety of this building pad area, the City concludes that the plat prospectively prohibits any further development of a structure on the Aerie lot, including the proposed sports court. Aerie concludes, to the contrary, that the building pad plat restriction applies only to the primary structure, and does not proscribe other development activity on the lot.

Our Office is not aware of any Utah appellate decision that directly addresses the proper interpretation of plat notes, specifically. However, Utah recognizes the basic legal concept that when "lands are granted according to an official plat of a survey, the plat itself, with all its notes, lines, descriptions and landmarks, becomes as much a part of the grant or deed by which they are

conveyed, and controls so far as limits are concerned, as if such descriptive features were written out on the face of the deed or grant itself." *Barbizon of Utah v. Gen. Oil Co.*, 24 Utah 2d 321, 323, 471 P.2d 148 (Utah 1970).

As such, Utah Courts construe deeds "like other written instruments, and . . . employ all appropriate tools of construction to arrive at the best interpretation of its language . . . [to] determine the parties' intent from the plain language of the four corners of the deed." *Keith v. Mt. Resorts Dev., L.L.C.*, 2014 UT 32, ¶ 21. However, a deed is ambiguous "if the parties have both advanced a tenable interpretation of the language," in which case extrinsic evidence may be used "to illuminate the intent of the parties." *RHN Corp. v. Veibell*, 2004 UT 60, ¶ 40. Beyond this, any remaining doubts regarding "uncertain or ambiguous restrictions" are to be resolved "in favor of the free and unrestricted use of property." *Freeman v. Gee*, 18 Utah 2d 339, 345, 423 P.2d 155 (Utah 1967).

Here, other than the depicted building pad areas, the plat does not otherwise contain any notes defining building pad and/or limits of disturbance. Therefore, both parties advance tenable interpretations of the subdivision plat's depiction of "building pad" on the Aerie lot, in that it either means a limitation on all development activity for the lot, or else reflects a limitation on the primary structure only. To resolve this ambiguity, then, both parties urge us to look at the legislative history of the master planned development approval. We agree with this approach that the "legislative history" of the plat—meaning the stated conditions of the master planned development approval itself as well as the applicable land use ordinances in effect at the time—would be appropriate extrinsic evidence to illuminate the intent of the parties to the plat.

The City approved the master planned development on June 17, 1993. A Sketch and Preliminary plat were approved on September 8, 1993, and the final subdivision plat for the Hearthstone Subdivision was later approved on October 7, 1993. A revised plat was later approved on April 21, 1994, which reduced the 12-lot subdivision to ten lots. The revised plat was approved and recorded in June of 1994, and the parties have proffered that the 1994 version of the Land Management Code reflects the relevant version of land use ordinances applicable to the approved subdivision plat that we should consider.

The master planned development conditions of approval stated that the "plat shall contain notes regarding . . . limits of disturbance as specified at the time of final plat approval." It also stated that "Limitations on landscaping and irrigation shall be defined at the time of final plat," and further provided that "Structures built in the [subdivision] shall be limited by a maximum house size of up to 6,000 square feet."

Both parties acknowledge that the final plat approval and subsequently recorded plat did not address any separate limits of disturbance or limits on landscaping. The City concludes that this absence establishes that the "building pad" plat designation is intended as a restriction to limit construction activity on each lot to minimize impact to steep slopes and significant vegetation. Aerie alleges, however, that the master planned development approval contemplated a limit of disturbance to ensure each lot contained opens space, but that by the time of final plat approval, the "plan had changed so that the developer was going to dedicate an entire lot to open space thereby negating the need for open space on each individual lot," which is alleged to be why the limitation of disturbance was not included on the plat.

We conclude that the building pad depiction on the plat was intended to regulate the construction activity of the primary structure, only, and not to serve as a prospective restriction on further development activity on the rest of the lot for other kinds of lot improvements such as the sports court in question. The applicable regulations at the time did provide a way to clearly impose the kind of prospective development restrictions the City has in mind, but would have employed platted definitions, easements, covenants to more clearly and effectively restrict the proscribed activity. Since these tools were not used, we decline to conclude any such prohibitions now exist.

The 1994 Code provided that "Building sites or envelopes shall be designed which minimize disturbance of existing vegetation. In designating building envelopes, consideration should be given to minimum separations between structures." *Id.* § 15.4.2(b) (1994). While the 1994 Code does not have an enacted definition for "building sites" or "building envelope," it is clear that the code nevertheless adheres to the traditional concept of building envelope and buildable area, in that required yard setbacks establish the total outer limits of where a building "site" or "area" may be built in relation to the lot's respective property lines. *See*, "Setback," *id*. ("The distance between a building and the street line or road right-of-way, or nearest property line thereto."); *See also*, "Yard," *id.* ("A required space on a lot other than a court, unoccupied and *unobstructed by buildings* from the ground upward . . .") (emphasis added).

The City's subdivision ordinances at the time provide, for all subdivisions, and not just master planned developments,[1] that "a separate plan which addresses limits of disturbance and vegetation protection *during construction* and revegetation of disturbed areas will be required." *Id.* § 15.4.1(m) (1994) (emphasis added). However, this required disturbance plan does not appear to equate to requiring designations on the plat itself, unless "staff determines that there is significant vegetation on the site or if it is important to *clearly designate future building locations*," in which case "Limits of disturbance or building pad lines shall be shown on the preliminary and final plats." *Id.* § 15.4.2(d) (1994) (emphasis added). However, the code requires that "Limits of disturbance or building pad lines *with definitions as approved by the staff* must be reflected on the final plat." *Id.* (1994) (emphasis added). Without any accompanying definitions that would have clearly acted as a prospective restriction on any development activity, according to the provisions cited above, we are left to conclude that the intention would have been nothing more than to designate the location of the "Main Building," *See*, LMC § 2.1 (1994), in order to protect existing vegetation *during construction*. Should the intention have been to limit any future development activity beyond the building pad, including for landscaping and other lot improvements, the final subdivision plat requirements direct that any such self-imposed restrictions, reservations, easements, or covenants, should be clearly restricted on the plat. See, *id.* §§ 15.5.2, 15.5.3, 15.5.4 (1994).

In other words, the 1994 ordinances allowed the City to impose building pad lines as a plat restriction to define a specific building envelope within the total buildable area of the lot as defined by setbacks, if there was a specific need to protect significant vegetation or designate future building locations. Those plat restrictions could have included easements, reservations, covenants, or specific definitions had the intention been for the building pad to include permanent landscaping

[1] The code's master plan development provisions simply repeat these same standards—applicable to all subdivisions—to master planned developments, without any significant alteration. *See,* LMC § 10.9(k) (1994).

or improvement restrictions. However, in absence of any specific definition on the plat or explanation of any reservation or easement, the ordinances at the time evidence that the parties' intention in depicting "building pad" on the 1993 subdivision lots was merely to designate where the principal residential structure should go, and would not have prohibited future development of other lot improvements. *See*, *id.* §§ 8.14, 8.15 (1994).

We therefore conclude that whereas no defined development restrictions are reflected on the plat, and in resolving doubts in favor of the free and unrestricted use of property, the "building pad" plat note does not restrict the development of a sports court on the lot areas outside of the building pad area.

## II. The Commission's Finding that the as-built conditions Violated the City's Steep Slope Regulations is Not Supported by the Record.

The City's staff report identifies that the Aerie property is subject to the "Sensitive Land Overlay," or "SLO." The Code's "Sensitive Lands Regulations – Slope Protection" provisions state the following prohibition: "No Development is allowed on or within fifty feet (50'), map distance, of Very Steep Slopes." LMC § 15-2.21-4 (2007).[2]

This is an objective development standard for which noncompliance would be an independent basis for denial. However, we conclude that the Commission's finding that this provision is violated by the development activity is not supported by the record, as it actively conflicts with the Commission's other findings that slopes could not be determined without more information on the site's pre-development condition.

In the City's final action letter, the very first reason provided as basis for the Commission's denial is that "The subject property contains Steep Slopes and Very Steep Slopes, which have been disturbed and terraced to accommodate the Recreation Facility." However, the Commission also found that the submitted slope map and vegetative cover map were reflective of post-development conditions, and that because of this, "staff is unable to verify . . . in what areas development was placed within 50' of Very Steep Slopes." The Commission went on to conclude that, according to the post-development conditions slope map, much of the new development is currently within 50' of Very Steep Slopes.

The Commission's findings acknowledge that it is the *pre-development* conditions that would determine compliance with the Code's regulations on Very Steep Slopes. Indeed, the staff report suggested that the applicant could resubmit by providing additional analysis of pre-development conditions, including identifying areas of Steep Slopes, Very Steep Slopes, and Significant Vegetation. Therefore, the Commission's finding that Very Steep Slopes have been disturbed is undermined by its other finding that slopes could not be determined, and is therefore not supported by the record.

## III. Final Action on Conditional Use Applications Must Be Supported by Substantial Evidence; The Substantive Review Process Allows for Obtaining Additional

[2] We note that since the time of Aerie's application, this section has more recently been amended. We therefore cite to the last version of this section of the LMC that was in effect at the time of application.

**Necessary Information before Decision-making, and the City's Code Suggests that the Planning Commission Should Have Continued the Matter per Aerie's Request**

Aerie alleges that the City erred in denying the conditional use permit by finding that it "lacked information to determine compliance with screening and landscaping, lighting, noise, sensitive lands, and steep slope requirements." Aerie argues that state law requires that in order to deny a conditional use application, the City must (1) make findings of detrimental effects anticipated by the proposed use, and (2) find that the reasonably anticipated detrimental effects "cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards." *See*, UTAH CODE § 10-9a-507(2)(c).

Aerie argues that in denying the application for insufficient information, the City effectively "dodged its duties" to make findings to support either an approval or denial of the conditional use application by substantial evidence.

We note, briefly, that had there been an independent objective basis for denial—such as the violation of plat restrictions on development or noncompliance with some other development standard such as the steep slope regulations—a decision denying the application would not have been in error even without required conditional use findings, because such development restrictions or code compliance issues are not something that can be "mitigated" by condition. However, because we have concluded that the plat imposed no development restriction, and the City's finding regarding steep slope violations was not supported by the record, the City's denial must otherwise stand on the basis of its review of the proposed conditional use according to its enacted standards.

Utah law has made clear that the approval or denial of a conditional use application is an administrative decision that must be supported by substantial evidence. *McElhaney v. City of Moab*, 2017 UT 65, ¶ 27. Substantial evidence requires findings of fact, and the failure to produce findings, generally, is a "fatal flaw" that renders a decision arbitrary and capricious. *N. Monticello All. LLC v. San Juan Cty.*, 2023 UT App 18, ¶ 17. The reason for requiring findings to support an administrative decision is "to permit meaningful appellate review" by "inform[ing] the parties of the basis of the administrative agency's decision such that the parties knew why the agency ruled the way it did." *Staker v. Town of Springdale*, 2020 UT App 174, ¶ 40 (cleaned up).

Here, the City's denial was, in fact, memorialized in a written final action letter that listed a total of 17 findings of fact. The City's enacted conditional use standards require the City to conclude that the "Application complies with all requirements of this LMC," and that the "Use will be Compatible with surrounding Structures in Use, scale, mass, and circulation," and that "the effects of any differences in Use or scale have been mitigated through careful planning." LMC § 15-1-10(D). To reach this conclusion, the Code provides a list of 16 items which the City "must review . . . when considering whether or not the proposed Conditional Use mitigates impacts of and addresses the [listed] items." *Id*. § 15-1-10(E).

In the final action letter, the Planning Commission found that the application "does not meet Land Management Code, Section 15-1-10, *Conditional Use Review Process*, due to a lack of information submitted regarding screening and landscaping, compatibility with surrounding structures,

potential noise, lighting, environmentally sensitive lands, steep slopes, and appropriateness of the proposed Structure to existing topography of the Site." (emphasis in original). The City cited to five of the 16 required review criteria it found as having "not been sufficiently addressed"—namely, Subsections (E)(7), (E)(8), (E)(11), (E)(12), and (E)(15). In substance, the Planning Commission is effectively saying: *we didn't have enough information to make the findings we were required to.* This is an outcome that should not occur if LUDMA is followed correctly.

LUDMA anticipates that a municipality's application process for land use approvals will entail "specific, objective, ordinance-based application requirement[s]." *See*, UTAH CODE § 10-9a-509.5(1). In which case, the applicant bears the initial burden to present a complete land use application according to the ordinance-based application requirements. However, once an application is submitted, as it is ultimately the land use authority that must support its administrative decision with substantial evidence in the record, the burden effectively shifts to the municipality to ensure it has all of the information needed before it moves that matter forward for decision. Namely, LUDMA explicitly requires a city, upon receiving an application to (1) "in a timely manner," determine the application is complete, and then (2) substantively review a complete application and approve or deny "with reasonable diligence." *Id.* § 10-9a-509.5(1)-(2).

This initial review as to form, and subsequent substantive review, is the process by which a city is able to ensure that there is enough evidence in the record from which to make findings to avoid arbitrary and capricious decisions. It is often the case that an application may be "red-lined" and returned to the applicant with requests for additional or clarifying information, before the application proceeds further. In the separate context of subdivision approval, this back-and-forth process was recently defined in LUDMA as a "review cycle,"[3] in which case there may be several rounds.

Throughout the application process, after the application is submitted, it is generally the city who is at the helm as to whether the application is moving forward; in deeming it complete or sending back to the applicant, and then forwarding it on to the designated land use authority, and scheduling the application as an item on the public agenda for formal consideration and action. In that regard, we generally agree with Aerie's proposition that a land use authority has not "work[ed] within the statutorily required framework" to the extent that *the land use authority has decided* to take final action on an application without sufficient information to make required findings.

However, LUDMA does provide a circumstance under which *the applicant* may take control of whether to move the application forward for final action. After a reasonable period of time to allow the land use authority to consider an application, the applicant may in writing request final action on the application within 45 days from the request. *See*, UTAH CODE § 10-9a-509.5(2)(b). If the effect of the request is to cut short any routine review cycle that would otherwise have produced more information for the record, the request under Section 509.5(2)(b) might be appropriately

[3] Section 10-9a-604.2 provides that, as used in that section: "'Review cycle' means the occurrence of:
(i) the applicant's submittal of a complete subdivision land use application;
(ii) the municipality's review of that subdivision land use application;
(iii) the municipality's response to that subdivision land use application, in accordance with this section; and
(iv) the applicant's reply to the municipality's response that addresses each of the municipality's required modifications or requests for additional information."

characterized as "proceed at your own risk" when it comes to compelling the land use authority to take final action on an application with only the information submitted to that point. Under those circumstances, we agree that a "lack of information" necessary to support findings required by conditional use standards would be a valid basis for denial. However, we do not feel those circumstances are present here, as although the applicant made an initial demand for final decision, that demand was on a separate land use application and it was ultimately the City who moved forward with final action on this CUP despite the applicant's request for a continuance.

The staff report for the Aerie application reflects that the applicant did, in fact, make a demand for final action under Section 509.5(2)(b), albeit for the specific Administrative CUP for proposed retaining walls, and not for the Private Recreation Facility CUP. Staff suggested, however, that a decision on the conditional use application for the sports court use was necessary before proceeding further with the other Administrative CUP. At the hearing, in response to a commissioner's question as to why the retaining wall Administrative CUP would not be heard first, the applicant responded that they wanted it first, but were deferential.

Over the course of the hearing, the general lack of necessary information was discussed, and the applicant expressed its preference for a continuance to provide the information requested. However, the Planning Commission moved forward with its decision to deny.

The Code provides that a public hearing is required for a conditional use application. LMC § 15-1-10(C). The Code also addresses an applicant's request for continuance for an item scheduled for public hearings, which gives staff the authority to continue if requested five days in advance, or, otherwise, the Planning Commission "will determine if there is a sufficient reason to continue the item on the scheduled date." *Id.* § 15-1-12.5.

LUDMA requires a land use authority to make findings of detrimental effects according to its conditional use standards, as well as the potential mitigation of those identified effects by condition. The land use authority must "approve or deny" the application, *See* UTAH CODE § 10-9a-509.5(2)(a), and support the decision with substantial evidence in the record. A lack of sufficient information to evaluate the listed items the City "must review" under its conditional use standards, s*ee,* LMC § 15-1-10(E), is more than a "sufficient reason to continue" a conditional use matter to avoid arbitrary and capricious decision-making.

We recognize that, apart from insufficient information, the Planning Commission felt it had other independent bases for denial, which may have contributed to its decision not to continue the application for more information. But since we find the Commission's conclusion regarding plat restrictions to have been in error, then taking final action on the basis of insufficient information, alone, was contrary to both state law and local ordinance that directed that the matter should have been continued.

## IV. Remaining Findings According to the City's Conditional Use Review Must be Revisited to Consider Proper Plat Interpretation and Additional Necessary Information.

Other than the Commission's findings regarding plat note restrictions, steep slope noncompliance, and insufficient information for five of the 16 required conditional use review criteria, the Commission did make other affirmative findings under its conditional use review criteria to support its denial. For example, the Commission found as follows:

> *[11]c. The proposed resized sports court adds approximately 2,085 square feet of impervious surfaces to the site. This is not adequately mitigated in the applicant's proposal, as they have only shown new proposed vegetation uphill of the court and proposed to retain a hardscape flagstone patio and artificial turf lawn downhill of the court.*
> *[11]d. The amount of disturbed and landscaped areas outside of the Building Pad is not consistent with other properties in the Overlook at Old Town subdivision.*
> *...*
> *16. The proposal is not consistent with the General Plan, as it allows for disturbance of Sensitive Lands without adequate mitigation.*
>
> *a. The property is located in the Masonic Hill neighborhood of the General Plan. The property is noted as having slopes that exceed 30 degrees. The General Plan identifies Masonic Hill as a "natural conservation neighborhood", with it also denoted as "Critical Area for Protection and Conservation". The General Plan stresses that, "the aesthetic of the Masonic Hill Neighborhood should be preserved".*
>
> *b. These elements are described in Goal 4 of the General Plan, Open Space, and Objective 4D emphasizes to minimize further land disturbance and conservation or remaining undisturbed land areas to development to minimize the effects on neighborhoods.*

As to finding 16, we note that Aerie's final contention had been that the Commission improperly relied on aspirational or subjective provisions of the City's general plan to deny the application. While we ultimately conclude that the Commission's findings must be revisited, we fundamentally disagree that the Commission's finding number 16 regarding the general plan, above, is somehow irrelevant or that the Commission "relied" on this finding to support its denial.

The final item on the Code's listed required review items for conditional use review states "reviewed for consistency with the goals and objectives of the Park City General Plan," however, the Code itself qualifies this item by further stating that "such review for consistency shall not alone be binding." LMC § 15-1-10(E)(16). It is clear, then, that this final required review item cannot be used as a sole item of noncompliance to support the denial of a conditional use permit under the Code. We find this to be consistent with state law in that the general plan, as typically expressing a statement of policy, may "provide guidance to the reader as to how the [zoning ordinance] should be enforced and interpreted, but [is not] not a substantive part of the statute." *See, Price Development Co. v. Orem City*, 2000 UT 26, ¶ 6. We nevertheless find the review item relevant as framing the nature of the detrimental effects to be found under the Code's other required review items, as well as providing guidance as to what conditions may or may not be considered reasonable to achieve compliance with the Code's stated goals and requirements.

The problem here, however, is the relation of the Code's required review items to the Commission's findings that it had insufficient information to determine compliance. We find that each of these remaining findings, 11(c), 11(d), 16(a), and 16(b), all suffer, to some extent, on the erroneous findings discussed herein, or to the Commission's other findings that it had insufficient information to determine compliance, and should be revisited on the premise that plat does not restrict development activity of a sports court outside of the building pad, and only after receiving additional information regarding the pre-development condition of the property in order to determine the actual impacts of the previous land disturbance and development activity, as proposed.

For example, 11(c) and 11(d)'s findings that the proposal adds additional impervious surface without adequate mitigation and that the amount of disturbed and landscaped areas outside of the Building Pad is inconsist with other properties in the subdivision, both appear to relate to required review items that the Commission already found were lacking in information to determine compliance, such items (E)(8), "Building mass, bulk, and orientation, and the location of Buildings on the Site; including orientation to Buildings on adjoining Lots," item (E)(11), "physical design and Compatibility with surrounding Structures in mass, scale, style, design, and architectural detailing," and item (E)(15), "within and adjoining the Site, Environmental Sensitive Lands, Physical Mine Hazards, Historic Mine Waste and Park City Soils Ordinance, Steep Slopes, and appropriateness of the proposed Structure to the existing topography of the Site." LMC § 15-1-10(E). The same can also be said for the findings under 16(a) and 16(b).

In other words, these remaining findings—similar to the findings on steep slopes—are undermined by the Commission's other findings that it had insufficient information to determine compliance. The Commission must make findings that are definitive and based upon adequate information. Therefore, the Commission should revisit its findings with the proper legal analysis and upon the additional information identified as necessary for determining compliance.

We note, finally, that the Staff had signaled to the Commission that, even with additional information, a denial might still be recommended due to questions of whether the applicant could adequately mitigate the loss of vegetation and issues of drainage due to the amount of impervious surface and other landscaping added. That may very well continue to be the case once the Commission reviews the application upon proper supporting information, however, the Commission must nevertheless make the attempt, and definitively support its findings upon proper information, which includes not only findings of detrimental effects according to its standards, but also specific findings as to whether "reasonable conditions are proposed, *or can be imposed*, to mitigate" those effects to achieve compliance. UTAH CODE § 10-9a-507(2)(a) (emphasis added).

## CONCLUSION

The Planning Commission's basis for denying Aerie's conditional use application because it determined that the plat prohibited further development on the lot was in error. The Commission further erred by taking final action to deny the application due to lack of sufficient information when the applicant had requested a continuance to provide additional information requested by Staff and the Commission. The Planning Commission should reconsider the application in light of

a proper interpretation of the plat, and upon receiving the additional information identified as necessary in order to make required findings according to the City's conditional use review process. This must not only include findings of reasonably anticipated detrimental effects, but also findings as to whether those effects can be substantially mitigated by reasonable conditions to achieve compliance with the City's enacted standards.

Jordan S. Cullimore, Lead Attorney
Office of the Property Rights Ombudsman

**NOTE:**

**This is an advisory opinion as defined in Section 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.**

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# Advisory Opinion #289

Parties: Applegate LLC; Murray City
Issued: July 23, 2024

**TOPIC CATEGORIES**:

**Interpretation of Ordinances**
**Requirements imposed upon development**

State law restricts municipalities from imposing conditions of approval which are not authorized by applicable law. Because the condition to require emergency-only access at the connection point between Fuji Avenue and Spring Clover Drive is not supported by substantial evidence the city may not lawfully impose such as a condition of approval of the subdivision plat amendment. Additionally, state law allows only those conditions to be imposed on conditional use permits which mitigate a reasonably anticipated detrimental effect. Because the traffic study indicated the townhomes will not adversely impact traffic level of service in the area, there are no anticipated detrimental effects, and a condition to mitigate the same is therefore unlawful.

As to the final issue, City Code requires that single-family lots must abut a *public* street. The lots in this subdivision abut a *private* street, and therefore the multi-family townhome blocks may not be further subdivided into single-family homes and sold individually.

**DISCLAIMER**

The Office of the Property Rights Ombudsman makes every effort to ensure that the legal analysis of each Advisory Opinion is based on a correct application of statutes and cases in existence when the Opinion was prepared. Over time, however, the analysis of an Advisory Opinion may be altered because of statutory changes or new interpretations issued by appellate courts. Readers should be advised that Advisory Opinions provide general guidance and information on legal protections afforded to private property, but an Opinion should not be considered legal advice. Specific questions should be directed to an attorney to be analyzed according to current laws.

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# UTAH DEPARTMENT OF COMMERCE
## Office of the Property Rights Ombudsman

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**ADVISORY OPINION**

| | |
|---|---|
| Advisory Opinion Requested by: | Jake Christensen |
| Local Government Entity: | Murray City |
| Property Owner: | Applegate LLC |
| Type of Property: | Residential |
| Date of this Advisory Opinion: | July 23, 2024 |
| Opinion Authored By: | Marcie M. Jones, Attorney<br>Office of the Property Rights Ombudsman |

**Issues**

1. May a city require the installation of an emergency-only access gate where a proposed 42-townhome project connects with an existing street?

2. May the developer further subdivide the proposed multi-family townhome blocks into individually sold single-family homes? The townhomes abut a private street and city code requires that single-family homes abut a public street.

**Summary of Advisory Opinion**

The property owner is proposing to develop a 42-unit townhome project. The townhomes are developed in blocks with multiple townhome units on each individual subdivision lot similar to typical apartment buildings.

As required by city ordinance, the property owner submitted an amended subdivision plat application as well as a conditional use permit in connection with the project. As a condition of approval of both applications, the city is requiring an emergency-only access gate be installed across the roadway connection between the proposed project and an existing street to mitigate potential traffic impacts on an adjoining neighborhood. The condition to install the gate is not supported by substantial evidence nor intended to mitigate an established anticipated detrimental effect. Therefore, the city may not lawfully impose this as a condition of approval.

The property owner next asks whether the developer may lawfully further subdivide the proposed multifamily townhome apartment blocks into individually sold single-family homes. The city code requires that single-family lots must abut a *public* street. The lots in this subdivision abut a *private*

street, and therefore the multi-family townhome blocks may not be further subdivided into single-family homes and sold individually.

## 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 Jake Christensen on behalf of Applegate LLC, received on August 18, 2023.
2. Documents provided by email from City Attorney Mark Richardson, dated November 17, 2023.
3. Email response from attorney Ryan Wallace, on behalf of Applegate LLC, dated November 20, 2023.
4. Additional question for advisory opinion and linked documents from Ryan Wallace, dated November 27, 2023.
5. Murray City's memorandum response to additional issues, submitted by Mark Richardson, dated December 13, 2023.
6. Email response from Ryan Wallace, dated December 20, 2023.
7. Email reply from Mark S. Richardson, dated December 29, 2023.
8. Email surresponse and attachments from Ryan Wallace, dated January 3, 2024.
9. Email reply from Mark S. Richardson, dated January 16, 2024.
10. Email from Ryan Wallace, dated January 18, 2024.

## Background

In connection with a proposed 42-unit townhouse project, the property owner (Property Owner) applied for (1) preliminary and final subdivision plat approval to amend the existing Applegate Condominiums subdivision, and (2) a conditional use permit to Murray City (City). The project is infill development and adjacent to existing residential neighborhoods and the Applegate Condominium project.

The Murray City Planning Commission approved the project subject to multiple conditions. The Property Owner objected to several of the required conditions, however, through the appeal process, all but one of the objected-to conditions were resolved.

The Property Owner asks whether the remaining objected-to condition may be imposed. Specifically, the City is requiring that the new roadway connection between the proposed Fiji Avenue and existing Spring Clover Drive be blocked by an emergency-only gate so that only fire and emergency vehicles can use the access point. Neighbors have expressed concern over the potential traffic impacts of the project.

The Traffic Impact Study prepared by the Property Owner's engineer indicated that the proposed development would have no significant impact on existing traffic. Furthermore, there are no City

ordinances requiring that an emergency only access gate be installed under the proposed conditions. The Property Owner therefore asks whether this condition is arbitrary and capricious because it is not supported by substantial evidence or otherwise illegal because the requirement is not included in city ordinances.

Additionally, the Property Owner questions the City's interpretation of City Code restricting the apartment townhome blocks from being further subdivided and sold as individual single-family homes. As currently proposed, multiple townhomes sit on each lot and will have a common owner and be rented individually.

City code requires that all lots serving single-family homes or duplexes abut a *public* street. Each lot in the proposed subdivision is directly served by a *private* street. The Property Owner maintains that the lots may be sold individually because common area (the private street) abuts the public street, arguably meeting the requirements of the Code. The City maintains that this does not meet the definition of "abut" and therefore the blocks of townhomes may not be further subdivided into single-family homes and individually sold.

The Property Owner has requested this Advisory Opinion to answer whether the City (1) may lawfully require installation of an emergency-only access gate as a condition of approval for the amended subdivision plat and conditional use permit and whether (2) the blocks of townhomes may be further subdivided into single-family homes and individually sold.

## Analysis

### I. The City may not require that an emergency access gate be installed as a condition of approval for the amended subdivision plat because the Code does not expressly require the gate and the condition is not supported by substantial evidence in the record.

We first acknowledge that in contrast to other administrative decisions, the land use authority possesses an added level of discretion on whether to approve an *amended* subdivision plat application. Utah Code Section 10-9a-609(1) reads "the land use authority may approve the vacation or amendment of a plat . . . if the land use authority finds that: . . . there is good cause for the vacation or amendment."[1] In this case, the City may deny the plat outright if it finds there was not "good cause" for approving the amendment. *See, e.g.,* Six Blue Bison LLC v. Alpine City, 2023 UT App 89, 536 P.3d 77 (supporting the city council's decision in not finding "good cause" for approval of a plat amendment because the proposed project road was not explicitly included in the general plan). Regardless, and as will be explained below, the City's authority to outright deny for lack of "good cause" does not include discretion to approve the proposal with unlawful conditions.

Initially, we analyze whether the City may lawfully require that an emergency access gate be installed as a condition of approval of the amended subdivision plat.

[1] Of note, it appears the Planning Commission already found good cause to approve the subdivision it its July 20, 2023 Findings of Fact, which states that "[t]he proposed subdivision creates an opportunity for further residential development which is encouraged and supported by the 2017 Murray City General Plan in this area." Therefore, the inquiry here focuses on whether the City has otherwise lawfully approved the subdivision with conditions.

When reviewing the City's decision to attach conditions to a development approval, the first step is to determine whether applicable law authorizes the City to impose conditions on the approval, and under what circumstances. If applicable law permits the City to impose conditions, we then determine if the City supported its decision to impose the condition with substantial evidence in the record. If a land use authority exercises discretion to impose a condition in a manner that is unsupported by substantial evidence, then the decision is arbitrary and capricious and therefore unlawful. *See* Utah Code UTAH CODE § 10-9a-801(3)(b).

Utah state statute mandates that a municipality may only impose conditions of approval when state law, the municipal code, or municipal standards authorize it to do so. Utah Code Section 10-9a-509(f) states that "a municipality may not impose on an applicant who has submitted a complete application a requirement that is not expressed in: (i) this chapter; (ii) a municipal ordinance in effect on the date that the applicant submits a complete application . . .; or (iii) a municipal specification for public improvements applicable to a subdivision or development . . ."

Furthermore, land use applications are "entitled to approval if the application conforms to the requirements of the applicable land use regulations, land use decisions, and development standards in effect when the applicant submits a complete application and pays the application fees." UTAH CODE § 10-9a-509(1)(a)(ii). In plain English, if the subdivision plat meets the rules and standards[2] outlined in the state law, the municipal code and adopted municipal standards for public improvements, it must be approved.

In this case, for the city to lawfully impose the condition that an emergency-only access gate be installed as a condition of approval, applicable law must clearly authorize the municipality to impose the condition, otherwise, the condition conflicts with state law.

According to the information the parties have submitted, and upon review of the Murray City Code, the following applies:

> B. This title is designed to inform the subdivision developer and the public of the requirements for obtaining subdivision plat approval. Because each parcel of real property has unique site/situation characteristics, there may be some aspects of subdivision development that cannot easily be articulated. For this reason, it is not possible to cover every possible contingency. Therefore, the City Engineer, Planning Commission, and Community and Economic Development Director have the authority to impose reasonable conditions upon a subdivider in addition to those expressly required, provided that:
>
> 1. The conditions are not arbitrary or capricious;
>
> 2. The conditions do not conflict with any applicable law.

[2] For a detailed explanation regarding the legal distinction between a rule and a standard, see Chapter 17. *Rules and Standards*, in *The Legal Analyst: A Tool Kit for Thinking about the Law*. In short, "[t]he general difference between a rule and a standard [is]: the consequences of a rule are triggered once we settle the facts; a standard requires a judgment about the facts before it kicks in." *Ward Farnsworth*, *The Legal Analyst: A Tool Kit for Thinking about the Law*, at 164 (2007).

Murray City Code § 16.04.010.

This provision generally authorizes the City to impose reasonable conditions on a subdivision approval to the extent that the condition does not conflict with some other applicable law and to the extent the condition is not arbitrary and capricious because it is supported by substantial evidence in the record. *See* Utah Code UTAH CODE § 10-9a-801(3)(b).

But there must be more than just a general grant of discretion to impose conditions not expressly articulated in the Code. Where discretion is given to impose conditions, the discretion must be guided by some "intelligible principle" or standard of decision making. S*ee J. W. Hampton, Jr. & Co. v. United States*, 276 U.S. 394 (1928) (standing for the proposition that a legislative grant of discretion must include some "intelligible principle" to which the person or body authorized to act is directed to conform), *see also State Tax Comm'n v. Katsis*, 90 Utah 406 (Utah 1936) ("Where judgment and discretion are required of municipal officers they cannot be delegated without express legislative authority."), *and* Bradley v. Payson City Corp., 2003 UT 16 n.2 (noting that administrative decisions are governed by city ordinances that "expressly limit[] the city's discretion over [the approval]").

Broad discretion to impose any condition, without articulated criteria for the decisionmaker to follow, will be considered an unlawful delegation of legislative authority, which is illegal. *See State Tax Comm'n v. Katsis*, 90 Utah 406 (Utah 1936) ("[w]here judgment and discretion are required of municipal officers they cannot be delegated without express legislative authority.") The City Code must provide guidelines or decision-making criteria for the land use authority to look to and follow when imposing a condition.

Here, the express rule governing access to the development is found in Murray City Code § 16.16.170. The section is titled "Relation of New Streets to Adjoining Street System; Access Streets." Subsection (B)(2) states the following:

> Multiple-Family Dwellings: Any residential subdivision development of more than one hundred (100) multiple-family dwellings shall have access to and from at least two (2) existing or proposed streets.

This section requires access to and from at least two existing or proposed streets where the development will contain more than one hundred multi-family dwellings, as is the case here since the road will serve the existing condos and the newly proposed townhomes. The applicant proposes to meet the requirement by completing the Fuji Avenue connection to Spring Clover Drive.

For the land use authority to have authority to impose an additional condition on the applicant's proposed connection, such as the installation of a crash gate to limit access, it must identify a provision in the Code that would authorize it to impose the condition. The only language we can find to guide the city's decision making in limiting access via a gate is in Murray City Code § 16.16.170(C) (emphasis added):

> Design Standards: Every development proposal shall demonstrate to the satisfaction of the city engineer, city fire marshal and planning commission that the overall street system design and subdivision layout incorporates design features conducive to efficient travel, public safety, and the protection of property and the community residents therein. The basis for the required improvements shall be in accordance with the street design and fire suppression standards adopted by the city. *Required improvements shall bear a proportionate, rational nexus to the impact of the proposed development on the local roadway system*.

By including the Fuji to Spring Clover drive connection in accordance with the requirement for two access points, the applicant has met its burden for approval. For the City's condition that the connection include a crash gate to be lawful, it must support its requirement with substantial evidence that the "required improvement" bears a proportionate, rational nexus to the impact of the proposed development on the local roadway system. We conclude that the City, in this case, has failed to meet this burden because no evidence has been presented that the crash gate is necessary to address the impact of the proposed development.

The only traffic study submitted for our review provides the following conclusion (emphasis added):

> The addition of an unrestricted connection between Applegate Drive and Spring Clover Drive could result in a potential extra 60-121 daily, 4-7 AM peak hour, and 6-11 PM peak hour trips dispersed throughout the neighborhood to the west of Applegate. Fehr & Peers was not able to find publicly available data on current traffic volumes and operations of the neighborhood streets such as Halcyon Drive and Clover Meadow Drive, *but this number of additional trips is not expected to cause significant traffic issues to these neighborhood streets* unless they are already operating at or near capacity. The neighborhood roadways are not likely near capacity given the number of homes in the neighborhood and the lack of connectivity to other areas that would increase traffic. Furthermore, *the additional connection could provide traffic benefits to the wider Murray area by providing redundant routes and access and potentially dispersing traffic in case where nearby intersections are impacted by incidents*.

Fehr & Peers Traffic Study Memorandum dated June 14, 2023.

This conclusion is the only substantial evidence that has been presented upon which a decision could be made. Other opinions provided for our review do not appear to be supported by evidence or data, but consist of mere speculation and conjecture, which are inappropriate bases for imposing a condition. Accordingly, we conclude that the City, in exercising its discretion to impose a condition to address the impact of the proposed development has failed to support its decision with substantial evidence in the record, and that the condition is therefore unlawful.

We next analyze whether the City may lawfully require that an emergency access gate be installed as a condition of approval of the conditional use permit.

## II. The City may not require that an emergency access gate be installed as a condition of approval of the conditional use permit because there are no reasonably anticipated negative traffic effects to mitigate.

In reviewing the City's decision to conditionally approve the conditional use permit we "shall presume that a final land use decision of a land use authority or an appeal authority is valid unless the land use decision is . . . (1) arbitrary and capricious; or . . . (2) illegal." UTAH CODE § 10-9a-801(3)(b) (emphasis added).

We again first analyze whether imposing the condition on the conditional use permit was legal. Illegality refers to a determination that the decision violates a statute, ordinance, or existing law. UTAH CODE §10-9a-801(3)(c)(ii).

According to state law, "A municipality may not impose a requirement or standard on a conditional use that conflicts with a provision of this chapter or other state or federal law." UTAH CODE § 10-9a-507(1)(b). Furthermore, "A land use authority shall approve a conditional use if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards." UTAH CODE § 10-9a-507(2)(a)(i).

In plain English, the City may impose conditions to *mitigate* the *reasonably anticipated detrimental effects* of the townhome project. The City may require the installation of the emergency-only access gate if it mitigates anticipated detrimental traffic effects.

In the case at hand, the Property Owner maintains that the City Engineer failed to identify any detrimental impacts that the minimal traffic generated by the new development via the Spring Clover Drive access. The traffic impact study prepared by engineering consultants for the Property Owner indicates that the traffic generated by the proposed project will not adversely impact access, level of service, nor the surrounding neighborhood roads. *Traffic Study*, Fehr Peers, May 29, 2019, and supplemented on June 20, 2022, December 28, 2022, and June 14, 2023.

The City Engineer recommends an emergency-only access while acknowledging that based on the accepted Traffic Study the traffic impacts generated by the proposed project will not detrimentally impact the level of service on neighboring roads. While the Code contemplates mitigating detrimental traffic impacts,[3] the City cannot lawfully impose a condition to mitigate traffic impacts which the Traffic Impact Study indicates will not exist.

As indicated above, the applicant has provided the Fehr & Peers Traffic Study. This study concluded that the proposed access point would not create any reasonably anticipated detrimental

[3] Murray City Code § 17.56.060(C) provides that "[t]he applicant may be required to provide…reports and studies which will provide information relating to…traffic impacts…."

impacts, therefore, it would be unlawful for the city to impose a condition to install a crash gate, where detrimental impacts for the gate to mitigate there are not anticipated.

In summary, requiring that an emergency-only access gate be installed as a condition of approval of the conditional use permit is unlawful because there are no reasonably anticipated detrimental traffic effects to mitigate.

## III. The townhome lots do not directly abut a public street as required by City Code to be sold as single-family homes on individual lots.

We next address whether the plain language of the City Code prevents the apartment-style townhome blocks from being further subdivided and sold as single-family homes. As currently proposed, the project will have multiple townhomes on each subdivided lot. Each block of townhomes therefore will be under common ownership and be rented rather than owner-occupied. The project has been planned with all 42 townhomes being accessed via a private street.

The Property Owner designed the project with private streets which do not meet the more rigorous improvement standards of public streets. By designating the roadways as private the Property Owner eliminates the option to further subdivide each townhome into an individual lot to be sold as a single-family home. This is according to the requirements of City Code 16.16.090: entitled "Access to Public Streets" which reads "(A) All lots or parcels created by the subdivision of land, for single-family or two-family dwellings, . . . shall abut a public street which is improved to standards established according to this chapter."

The term *abut* is not defined in City Code or Utah Code. Merriam Webster defines *abut* as "to border on: to touch along an edge" and "to cause to touch or lean for support." *Merriam Webster Dictionary,* online edition, accessed May 23, 2024.

The Property Owner argues that the private street is common area and therefore part of the development, and as the development abuts the public roadway, the overall project meets the criteria and further subdividing should be allowed. However, the City Code language does not support this interpretation.

In interpreting city code, we must "apply the *plain language* of land use regulations." Utah Code § 10-9a-306(1). In this case, the City Code is clear. "All lots or parcels created by the subdivision of land, for single-family or two-family dwellings . . . shall abut a public street. . ." Because each of the 42 townhomes abut a *private* roadway, they cannot be further subdivided into single-family units and sold individually. To hold otherwise would make the distinction between what may be built on private vs. public streets irrelevant.

To summarize, City Code requires that single-family lots must abut a *public* street. The lots in this subdivision abut a *private* street, and therefore the multi-family townhome blocks may not be further subdivided into single-family homes and sold individually.

## Conclusion

State law restricts municipalities from imposing conditions of approval which are not authorized by applicable law. Because the condition to require emergency-only access at the connection point between Fuji Avenue and Spring Clover Drive is not supported by substantial evidence the city may not lawfully impose such as a condition of approval of the subdivision plat amendment. Additionally, state law allows only those conditions to be imposed on conditional use permits which mitigate a reasonably anticipated detrimental effect. Because the traffic study indicated the townhomes will not adversely impact traffic level of service in the area, there are no anticipated detrimental effects, and a condition to mitigate the same is therefore unlawful.

As to the final issue, City Code requires that single-family lots must abut a *public* street. The lots in this subdivision abut a *private* street, and therefore the multi-family townhome blocks may not be further subdivided into single-family homes and sold individually.

Jordan S. Cullimore, Lead Attorney
Office of the Property Rights Ombudsman

**NOTE:**

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# Advisory Opinion 293

Parties: Scott Vranes, City of Cottonwood Heights
Issued: August 23, 2024

**TOPIC CATEGORIES**:

**Interpretation of Ordinance**
**Compliance with Land Use Regulations**
**Entitlement to Application Approval**
**Requirements Imposed on Development**

A reconstructed and enlarged backyard deck is an accessory structure for which the city code does not regulate a rear yard setback.

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# UTAH DEPARTMENT OF COMMERCE
## Office of the Property Rights Ombudsman

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*Division Director, Office of the Property Rights Ombudsman*

**ADVISORY OPINION**

| | |
|---|---|
| Advisory Opinion Requested by: | Scott Vranes |
| Local Government Entity: | City of Cottonwood Heights |
| Property Owner: | Scott Vranes |
| Type of Property: | Residential |
| Date of this Advisory Opinion: | August 23, 2024 |
| Opinion Authored By: | Marcie M. Jones, Attorney<br>Office of the Property Rights Ombudsman |

## Issue

Do the city's ordinances subject a backyard deck to a 20' primary building setback or a 3' accessory building setback from the rear property line?

## Summary of Advisory Opinion

The property owner recently reconstructed and enlarged a backyard deck without realizing a building permit was required. As built, the deck extends to approximately 5' from the rear property line. The property owner is now working with the city to secure a building permit retroactively and the parties disagree on how close the deck may lawfully be to the rear property line.

The city maintains that the deck must meet the 20' rear yard setbacks imposed on the main building because the deck is attached to the home and therefore part of the main building. The property owner maintains that the deck must instead meet the 3' rear yard setback for accessory buildings. Each argument requires inferring meaning not supported by the language of the code or ignoring contradictory regulations.

There is one interpretation of the code that avoids any conflict, however. This interpretation follows the rules of statutory interpretation to its logical conclusion, including reading the code as a whole, giving each word meaning, and interpreting ambiguity in favor of allowing the proposed use.

The context of the code overall distinguishes a *building* from other *structures* as one that is specifically enclosed. We accordingly find that the deck is *neither* part of the main *building* nor an accessory *building*. Decks are instead an accessory *structure*. Decks are specifically listed as an accessory *structure* in one section of the code, and declaring the deck a *structure* leaves no contradictory guidance in the code.

We therefore conclude that the deck is an accessory structure for which the city code does not regulate a rear yard setback (only height restrictions are provided). Accordingly, the location of the deck is not bound by setbacks in the city code and may be constructed as close to the rear property line as applicable building and fire code allow.

## 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 Scott Vranes on July 20, 2023.
2. Response letter from Mike Johnson, on behalf of the City of Cottonwood Heights on September 5, 2023.
3. Letter from H. Burt Ringwood, on behalf of Scott Vranes on January 17, 2024.
4. Response letter from Mike Johnson, on behalf of the City of Cottonwood Heights on February 13, 2024.
5. Letter from H. Burt Ringwood, on behalf of Scott Vranes on March 19, 2024.
6. Email response from Scott Vranes dated June 3, 2020.

## Background

Scott Vranes (Property Owner) owns a single-family residence in the City of Cottonwood Heights (City). The Property Owner has recently replaced and enlarged a formerly dilapidated backyard deck. Not realizing that a building permit was necessary, the Property Owner substantially completed work when a neighbor noticed and complained to the City who then cited the Property Owner for failure to secure a building permit. The Property Owner immediately stopped construction, opened a dialogue with the City, and retroactively submitted a building permit application.

The permit application was rejected for failure to comply with setback requirements in the City Code for the R-1-8 zone. The deck, as now constructed, extends to within 4’9” of the rear property line.

The City considers the deck part of the primary habitable structure and therefore subject to a 20’ rear setback per City Code 19.26.060(A)(3). The Property Owner instead considers the deck to be an accessory building and therefore subject to a 3’ rear setback in accordance with City Code 19.26.060(B)(3).

The Property Owner and the City have had several good discussions regarding the deck but have come to an impasse. The Property Owner therefore has requested this Advisory Opinion to answer

whether the backyard deck is subject to the primary habitable structure setback of 20' or the accessory building setback of 3'.

## Analysis

### I. The backyard deck is neither a "building for human inhabitants" nor an "accessory building:" it is an "accessory structure" without established setback requirements.

At the outset we note that the Code lacks the any clear direction that an attached deck must meet the 20' setback requirements of the main building. The various Code interpretations require piecing multiple definitions and details together to form an argument. The reader is advised to pay attention to the distinct use of the words *structure* and *building*. Buildings are a particular type of structure. All buildings are structures, but some structures are not buildings. Also, note when a structure or building is an *accessory* to the main habitable structure, as well as the words *inhabitant* and whether enclosure or shelter is necessary according to a definition.

We begin with the City's interpretation. The City has decided that because the deck is attached to the primary structure it is subject to the 20' rear property line setback, as distinct from an accessory building which is subject to a 3' rear setback.

To determine whether a municipality correctly interpreted and applied its ordinance to a development application, a court will follow established rules of statutory construction. *Foutz v. City of South Jordan*, 2004 UT 75, ¶8. Because the interpretation of ordinances is a pure question of law, local governments are afforded no deference in interpreting their own ordinances; rather, courts review a local government's interpretation of an ordinance for correctness. *Outfront Media, LLC v. Salt Lake City Corp.*, 2017 UT 74, ¶ 12 n.13, 416 P.3d 389, 394 (noting that the court's past practice of affording some level of "non-binding deference" to a local agency's interpretation could not stand in view of subsequent developments in precedent).

Ordinance interpretation begins with an analysis of the plain language of the ordinance. *Carrier v. Salt Lake County,* 2004 UT 98 ¶ 30, 104 P.3d 1208. The primary goal of interpretation is "to give effect to the legislative intent, as evidenced by the plain language, in light of the purpose the [ordinance] was meant to achieve." *Foutz*, 2004 UT 75, ¶ 11, 100 P.3d 1171. In doing so, it is presumed that the legislative body used each word advisedly. *Selman v. Box Elder County*, 2011 UT 18, ¶ 18, 251 P.3d 804. "Omissions in statutory language should be taken note of and given effect." *Biddle v. Washington Terrace*, 1999 UT 110, ¶ 14.

Furthermore, "The canon of meaningful variation suggests that '[d]ifferent words used in . . . a similar statute . . . are assigned different meanings whenever possible.'" *Outfront Media, LLC v. Salt Lake City Corp*., 2017 UT 74 quoting SUTHERLAND STATUTES & STATUTORY CONSTRUCTION 2A SUTHERLAND STATUTORY CONSTRUCTION § 46:6 (7th ed. 2016); *see also City Ctr. Exec. Plaza, LLC v. Jantzen*, 237 Ariz. 37, 344 P.3d 339, 344 (Ariz. Ct. App. 2015).

Note that where a reasonably well-informed person could understand a land use ordinance to have more than one meaning, the ordinance should be strictly construed in favor of the property owner, because such ordinances are in derogation of an owner's common-law right to unrestricted use of

their land. *See, e.g. Patterson v. Utah County Bd. Of Adjustment*, 893 P.2d 602 (Utah Ct. of App. 1995). Furthermore, "provisions therein restricting property uses should be strictly construed, and provisions permitting property uses should be liberally construed in favor of the property owner." *Id.* quoting *Sammons v. Village of Batavia*, 53 Ohio App. 3d 87, 557 N.E.2d 1246, 1249 (Ohio App. 1988); *see* 83 Am. Jur. 2d Zoning & Planning § 977 (1992).

We next apply these established rules of statutory interpretation to the City Code. The plain language of City Code establishes the following setbacks in the (applicable) R-1-8 zone:

> A. Setbacks/yard requirements are intended to provide a description of the required space between *buildings* and property lines. *All buildings intended for human inhabitants* shall maintain a minimum distance from property lines as follows:
>
> 1. Front: 25 feet.
> 2. Sides: On interior lots, a total of at least 20 feet between the two side yards, with no yard of less than 8 feet. On corner lots, at least 20 feet per side yard.
> 3. *Rear: 20 feet.*
>
> B. *Accessory buildings* in the R-1-8 shall maintain a minimum distance from property lines as follows:
>
> 1. Front: Accessory buildings, including detached garages, shall maintain a setback of at least six feet from the main building in the rear yard of the particular property.
> 2. Sides: Three feet on interior lots; 20 feet on the street side of corner lots.
> 3. *Rear: Three feet on interior lots; 20 feet of the street side of corner lots.*
>
> *C. Attached garages shall conform to the rear yard requirements of main buildings.*

Maximum Height Of *Structures*

> A. For uses where the slope of the original ground surface is greater than 15%, or if a slope stability hazard is present on site, the maximum *structure height* shall be 30 feet.
> B. All other properties shall maintain a *maximum structure height* of 35 feet.
> C. No *accessory structure* shall exceed 20 feet in height. For each foot of height over 14 feet, accessory structures shall be set back from property lines an additional foot from the minimum setback to allow a maximum height of 20 feet.

*CITY CODE 19.26.060, 070* (emphasis added). In plain English, the setback against the rear property line is 20' for the main building intended for human inhabitants and 3' for accessory buildings. Height restrictions are given for structures generally.

The City Code also includes the following definitions:

> **Main Building:** The building or buildings on a lot which are occupied by the primary use. *CITY CODE 19.040.1610.*
>
> **Building:** Any structure intended for shelter, occupancy, housing, or enclosure for persons, animals, or chattel. When separated by dividing walls without openings, each portion of such structure so separated shall be deemed a separate building. *CITY CODE 19.040.380.*
>
> **Accessory Buildings (Residential):** In a residential district, a subordinate building that is *attached or detached*[1] and used for a purpose that is customarily incidental to the main structure but not involved in the conduct of a business. Examples include, without limitation, the following: a private garage for automobile storage, tool shed, greenhouse as a hobby (no business), home workshop, children's playhouse, storage building, garden shelter, etc. *CITY CODE 19.040.010.*
>
> **Structure:** Anything constructed or erected, the use of which requires location on the ground or which is attached to something having a location on the ground (see also "Building"). *CITY CODE 19.40.2670.*
>
> **Occupancy:** The use or intended use of the land or buildings by proprietors or tenants. *CITY CODE 19.40.1840.*

*A. City presents a plausible but indirect argument that the deck is part of the main building and therefore subject to the 20' rear yard setback.*

The City maintains that "the main indicator for setback requirements for decks, and for determining whether decks are primary or accessory structures, is whether the deck is structurally attached and connected to the primary structure on the property intended for human inhabitants. . . . a deck . . . should be classified as a separate building only if it was completely separated by dividing walls without opening, which does not appear to be the case here." *Letter from Cottonwood Heights dated September 5, 2023.* The City maintains that because the deck is attached to the home, it is part of the primary structure for setback purposes, rather than needing to meet the 3' accessory building setback requirements. The attachment defines the classification of the deck, according to this line of reasoning. This interpretation is indirect and circuitous, but plausible.

The argument may be pieced together as follows:

[1] It appears that this language in the City Code has since been altered to exclude attached structures. *See* Ordinance 412, dated April 9, 2024. Indeed, the City Code has also been recently updated to include a definition directly on point: "19.04.1905 Ornamental Features. Design elements that serve as an ornament or decoration to the outside of a building. Areas with usable square footage, such as stairwells, decks, cantilevered rooms, bay windows, etc. do not qualify as ornamental features and must meet the standard setback requirements in the underlying zone." Amended by Ordinance 397 on July 11, 2023. Neither change applies to this application, however, because each was adopted after the building permit was submitted.

| ARGUMENT | SUPPORT FOR ARGUMENT |
|---|---|
| Step 1: Deck is a building | **Building:** Any structure intended for shelter, *occupancy*, housing, or enclosure for persons, animals, or chattel. *CITY CODE 19.040.380.*<br><br>**Occupancy:** The use or intended use of the land or buildings by proprietors or tenants. *CITY CODE 19.40.1840.*<br><br>The deck is a *structure* which is presumably used or intended for a use which amounts to *occupancy* under this broad definition which automatically makes it a *building*.<br><br>We note that this interpretation would qualify *any* structure with *any* intended use as a building, which seems inaccurate. For instance, this would make mailboxes, fences, driveways, retaining walls, sport courts, swimming pools, arbors, storage tanks, etc. *buildings*. |
| Step 2: Two buildings attached by a wall with an opening is one building. | **Building:** Any structure intended for shelter, occupancy, housing, or enclosure for persons, animals, or chattel. *When separated by dividing walls without openings, each portion of such structure so separated shall be deemed a separate building*. *CITY CODE 19.040.380.*<br><br>Two structures separated by a wall without an opening are separate buildings and the City extends this to infer that two structures separated by a wall with an opening are considered a single building. |
| Step 3: Deck and home are one building, therefore deck is subject to 20' setback | Code states that "All buildings intended for human inhabitants shall maintain a minimum distance from property lines as follows: . . . Rear: 20 feet." *CITY CODE 19.26.060.*<br><br>The home is intended for "human inhabitants" and the deck is considered part of the main building because it is attached with a wall with an opening (door), therefore, the deck is also subject to the 20' rear yard setback. |

This interpretation is plausible, but has weaknesses, especially when interpreted in favor of allowing the proposed use. The first weakness is just how circuitous and unclear this line of reasoning is.

Next, this interpretation relies on the deck being a *building* rather than a *structure*. The argument relies on the extremely broad definition of *occupancy* which would also make a mailbox, fence, driveway, and retaining wall a *building* which seems wide of the mark. Note also that the definition of *occupancy* does not mention *structures* at all. "The use or intended use of the *land or buildings* by proprietors or tenants." *CITY CODE 19.40.1840.* The Code does not extend *occupancy* to *structures.* This is reasonable because a fence, retaining wall, driveway, mailbox, etc. are not typically considered *buildings* which need to meet setbacks, even if they fulfill their intended use.

Next, this interpretation requires inferring support not included in the Code. The definition of building reads: "Any structure intended for shelter, occupancy, housing, or enclosure for persons, animals, or chattel. *When separated by dividing walls without openings, each portion of such structure so separated shall be deemed a separate building.*" *CITY CODE 19.040.380* (emphasis added). The City is inferring support for the assumption that because two structures adjacent to one another without a door equates to two separate buildings, that two structures adjacent to one another with a door are necessarily considered one building, and that any structure so attached automatically becomes part of the main building. This may be reasonable, but requires inserting language not stated in the Code.

Furthermore, by defining the deck as a *building* rather than a *structure*, many of the qualifications included in the definition of building must be ignored. A building is "any structure intended for shelter, occupancy, housing, or enclosure." *CITY CODE 19.040.380.* The deck lacks elements intended for shelter, housing, or enclosure, which the listed examples all include "a private garage for automobile storage, tool shed, greenhouse as a hobby (no business), home workshop, children's playhouse, storage building, garden shelter." Definition, Accessory Building, *CITY CODE 19.040.010.*

Furthermore, the exact language applying the setback clearly applies only to a restricted subset of *buildings intended for human inhabitants* which distinctly implies shelter, housing, or enclosure. *CITY CODE 19.26.060.* While the Code does not include a definition, The Law Dictionary, featuring Black's Law Dictionary, 2nd Ed., (2024) defines "inhabit" as "One who resides actually and permanently In a given place and has his domicile there." *Ex parte Shaw*, 145 U. S. 444, 12 Sup. Ct. 935, 36 L. Ed. 768; The Pizarro, 2 Wheat. 245, 4 L. Ed. 226. "The words 'inhabitant,' 'citizen,' and 'resident,' as employed in different constitutions to define the qualifications of electors, mean substantially the same thing; and one is an inhabitant, resident, or citizen at the place where he has his domicile or home." Cooley, Const. Dim. *600. But the terms "resident" and "inhabitant" have also been held not synonymous, the latter implying a more fixed and permanent abode than the former and importing privileges and duties to which a mere resident would not be subject. *Tazewell County v. Davenport*, 40 111. 197.

In short, "inhabitant" requires significantly more than mere leisurely occupation of a space. Consequently, the deck does not meet the requirements of a building "intended for human inhabitants."

Because decks themselves are not for *human inhabitants,* the argument relies on the deck's attachment to the main structure to make it part of the main structure and thus subject to the 20' setback. However, this is not supported by the definition of accessory building in the City Code which specifically states, "In a residential district, a subordinate building that is *attached or detached . . ." CITY CODE 193.040.010* (emphasis added). Additionally, this section of Code does not make any distinction between attached "with an opening" like the definition of building does. This section clearly anticipates that an accessory building may be attached to the primary structure and maintain its definition as a separate improvement. Whether the deck is attached to the home, therefore, does not automatically preclude it from being an accessory building instead of part of the main building.

The Code lacks clear language requiring that any structure attached to the main building shall be subject to the main building setbacks. Indeed, the Code specifically lists only one such attached improvement that is subject to the 20' setback applied to main buildings – namely attached garages. The Code clearly states that "Attached garages shall conform to the rear yard requirements of main buildings." *CITY CODE 19.26.060.* We must assume that the legislative body used each word advisedly. *Selman v. Box Elder County*, 2011 UT 18, ¶ 18, 251 P.3d 804. "Omissions in statutory language should be taken note of and given effect." *Biddle v. Washington Terrace*, 1999 UT 110, ¶ 14. By specifying that attached garages are subject to the 20' setback applied to the main building, we must give meaning to the omission of decks as being subject to the same.

Furthermore, we note that the City has apparently since amended their Code to clarify this point. "City Code 19.04.1905 Ornamental Features" has been added which states "Design elements that serve as an ornament or decoration to the outside of a building. Areas with usable square footage, such as stairwells, decks, cantilevered rooms, bay windows, etc. do not qualify as ornamental features and must meet the standard setback requirements in the underlying zone." This, combined with the definition change in "accessory buildings" to include only "detached" improvements, changes the analysis for building permits applied for after the ordinance changes went into effect, but not here in this case.

In summary, the City's interpretation that the deck is part of the main building because it is attached by a wall with an opening and therefore subject to the 20' main building setbacks instead of the 3' setbacks applicable to accessory buildings is plausible. It has weaknesses, however. This interpretation relies on the overly broad definition of *occupancy* to qualify the deck as a *building* rather than a *structure* (along with fences and mailboxes) and infers language not in the Code to establish that because the deck and main building are connected by a wall with a door, they are considered one building. This argument also ignores the definition of *accessory building* allowing attachment to the main building yet retaining its accessory nature and renders moot the specific language applying the 20' setbacks to an attached garage, without mentioning any other structure or building. This interpretation is plausible but not definitive.

B. *Property Owner presents plausible argument that the deck is an accessory building.*

On the other hand, the Property Owner argues that the deck ought to be considered an accessory building. He acknowledges that the Code does not directly stipulate that decks are accessory buildings, however, he argues that there are other sections where the Code clearly considers them such. For instance, the Property Owner points out that decks are included as an accessory structure under Site Development Regulations for property zoned Planned Development Districts:

> 2. Lot coverage.
>
> a. The following areas are to be included for the purpose of computing lot coverage:
>
> (1) All buildings, including dwellings; and
>
> (2) *All accessory structures*, including sheds, garages, pool structures, carports, *decks*, roof overhangs exceeding 20", platform walkways and similar structures;

*CITY CODE 19.51.060(B)(2)(a)* (emphasis added). The City Code also includes decks as a part of the landscaping Code: "Gathering areas" means portions of the landscape that are dedicated to congregating, such as patios, gazebos, *decks*, and other seating areas. *CITY CODE 19.70.030(D)* (emphasis added).

As discussed above, the Property Owner also notes that the Code clearly includes "a private garage for automobile storage" in the definition of accessory buildings, which ordinarily would subject it to the 3' accessory building setback. However, the Code makes an exception that "attached garages shall conform to the rear yard requirements of main buildings." The Property Owner argues that it must be presumed "that each term included in the ordinance was used advisedly" *Carrier v. Salt Lake County*, 2004 UT 98, ¶ 30, 104 P.3d 602, 606 (Utah Ct. App. 1995) and "[o]missions in statutory language should be taken note of and given effect." *Biddle v. Washington Terrace*, 1999 UT 110, ¶ 14. By specifically calling out an attached garage as an accessory building which must meet the setbacks for the primary structure, the language implies that other accessory buildings which are not mentioned do not.

The Property Owner next maintains that decks are distinct from Buildings of any type in that they lack requisite the "shelter, occupancy, housing, or enclosure" elements contemplated in the definition. *CITY CODE 19.040.380.* The Property Owner points out that "The definition of 'Building' in the City's Ordinances clearly implies an enclosed structure that will provide shelter and housing for humans, animals and chattel. A deck is clearly not designed to provide shelter, housing, occupancy, or enclosure." *Letter from H. Burt Ringwood, on behalf of Scott Vranes on January 17, 2024.* These arguments are also plausible.

However, there is a complication to considering the deck an accessory building. Accessory buildings may extend to within 3' of the rear boundary, but would also need to be a free-standing structure, with a 6' gap between the deck and the home. "Accessory buildings . . . *shall maintain a setback of at least six feet from the main building* in the rear yard of the particular property." *CITY CODE 19.26.060.* This appears to be an absurd or at least unusual result. Backyard decks are typically attached to the home such that you exit a rear door directly onto the deck. And if the deck is defined as an accessory building attached to the main building by a wall with an opening, the two structures are considered one building, and the deck is subject to the 20' rear setback regardless.

In summary, the interpretation put forth by the Property Owner is similarly plausible. Decks are specifically included as an *accessory structure* when considering lot coverage in a separate section of the Code, and the Code clearly allows *attached and detached* accessory buildings, which negates the City's argument that any improvement attached to the main building is subject to the main building setback. Furthermore, he Code states that "attached garages shall conform to the rear yard requirements of main buildings" without mentioning that decks or any other attached improvement must meet the same. This interpretation is also plausible but not definitive.

*C. Deck is an accessory structure which is subject to height restrictions, but no defined setback requirements within the applicable code.*

We seemingly are left at an impasse. We have been provided with two plausible interpretations, but both have weaknesses. We are asked to hold that the deck is subject to the main building setbacks merely because it is attached to the home despite the Code allowing for attached accessory buildings. An additional complication to this interpretation is that the 20' setback applies only to buildings "intended for human habitation" where the deck is intended for incidental leisure occupation, not residence. Also, attached garages (and only attached garages) are specifically called out as being subject to the main building setback. The omission of decks or any other attached improvement must be given meaning.

On the other hand, we are asked to hold that the deck is an accessory building and therefore required to be set 6' away from the home. Because decks are typically attached to homes, we hesitate to adopt such an unusual interpretation without it being clearly articulated in the Code. Also, decks do not cleanly fit within the definition provided for accessory buildings because they lack elements providing shelter, housing, occupancy, and enclosure." *CITY CODE 19.26.060.*

There is one interpretation of the Code that avoids any conflict. This interpretation follows the rules of statutory interpretation to its logical conclusion. The context of the Code overall distinguishes a *building* from other *structures* as one that is specifically enclosed. *Building* and *structure* are used distinctly and not interchangeably. For example, there are separate and distinct definitions of each. Also, there are several instances in the Code which treat each distinctly. As an example, in the above-mentioned quote of how Lot Coverage is determined, "(1) *All buildings*, including dwellings; and (2) *All accessory structures*, including sheds, garages, pool structures, carports, *decks*, roof overhangs exceeding 20", platform walkways and similar structures; *CITY CODE 19.51.160(B)(2)(a)* (emphasis added).

ALSO, CITY CODE 19.02.090 Building and Use Permits Required uses states "Construction, alteration, repair or removal of any *building or structure*, or any part thereof, as provided or as restricted in this title, shall not be commenced or proceeded upon except after the issuance of a written permit. . ."

Additionally, CITY CODE 19.02.100 Compliance Prerequisite to Permit Issuance states " . . . The director or his designee shall not approve a building permit if any *building, structure or use* of land would be in violation of any of the provisions of this title. . ."

Even the applicable R-1-8 zone which lists setbacks for accessory buildings, restricts the height of structures specifically. "19.26.070 Maximum Height of *Structures* . . . (B) All other properties shall maintain a maximum *structure* height of 35 feet. (C) No *accessory structure* shall exceed 20' in height . . ."

There are several zones where accessory structures, rather than accessory buildings, are regulated. For instance, City Code 19.18.090(C) says "No *accessory structure* shall exceed 20 feet in height . . ." and (D) "*Accessory structures* which meet the minimum side, rear, and front setbacks for main buildings . . ."

The canon of meaningful variation suggests that "different words used in . . . a similar statute . . . are assigned different meanings whenever possible." *Outfront Media, LLC v. Salt Lake City Corp*., 2017 UT 74 quoting SUTHERLAND STATUTES & STATUTORY CONSTRUCTION 2A Sutherland

Statutory Construction § 46:6 (7th ed. 2016); *see also City Ctr. Exec. Plaza, LLC v. Jantzen*, 237 Ariz. 37, 344 P.3d 339, 344 (Ariz. Ct. App. 2015).

We are also reminded that our guidance is to read the Code "in harmony with other provisions in the same statute and with other statutes under the same and related chapters" *Lyon v. Burton*, 2000 UT 19 ¶ 17 and presume that the legislative body used each word advisedly, *Selman v. Box Elder County*, 2011 UT 18, ¶ 18, 251 P.3d 804, and note "[o]missions in statutory language should be taken note of and given effect." *Biddle v. Washington Terrace*, 1999 UT 110, ¶ 14. Also, where reasonably well-informed person could understand these land use ordinances to have more than one meaning, we must strictly construe the Code in favor of the property owner.

Given this distinction between buildings and structures, and decks being included in a list of structures, the choice of the city to specify setbacks apply to accessory structures in some zones and accessory buildings in others, and their lack elements of housing and shelter qualifying them as buildings, we find that decks are indeed *structures*.

Note that by defining the deck as a *structure*, it is not a *building* which is attached to the main building by a wall with an opening, and therefore one building. It remains a distinct, separate *structure* attached to the main building.

Also, the broad definition of *occupancy* does not apply to *structures*. "Occupancy: The use or intended use of the *land or buildings* by proprietors or tenants." *CITY CODE 19.40.1840* (emphasis added). Therefore, under this interpretation, mailboxes, fences, retaining walls, etc. are appropriately not *buildings*.

The height of structures is plainly restricted in the R-1-8 zone "Maximum Height of *Structures* . . . (B) All other properties shall maintain a maximum *structure* height of 35 feet. (C) No accessory *structure* shall exceed 20' in height . . ." CITY CODE 19.26.070. However, setbacks are only provided for *buildings*. "Setbacks/yard requirements are intended to provide a description of the required space between *buildings and property lines*." CITY CODE 19.26.060 (emphasis added). Silence means unregulated. By failing to include setbacks for accessory *structures*, it is implicitly determined that such structures do not need setback regulation. *See Brown v. Sandy City Bd. Of Adjustment*, 957 P.2d 207.

In conclusion, we have followed the rules of statutory interpretation, reading the Code as a whole, giving each word meaning, and erring in favor of allowing the proposed use, and conclude that the deck is an *accessory structure*. The context of the Code overall distinguishes a *building* from other *structures* as one that is specifically enclosed. As such, the deck is neither part of the main building and subject to the 20' rear yard setback nor an accessory building subject to the 3' rear yard setback plus the 6' setback from the home. As an accessory structures, the deck must meet the applicable height restrictions within the R-1-8 zone for accessory structures. There are no applicable setback requirements. Therefore, the deck may remain in its current location.

## Conclusion

Decks are neither part of the main building intended for human habitation and subject to the 20' rear yard setback nor an accessory building subject to the 3' rear yard setback plus the 6' setback

from the home. Different words used in a similar statute must be assigned different meanings whenever possible. The Code uses *building* and *structures* distinctly. When read as a whole, we find that decks are accessory *structures*. There are height restrictions within the R-1-8 zone for accessory structures, but no setback requirements. Therefore, the deck may remain in its current location.

Jordan S. Cullimore, Lead Attorney
Office of the Property Rights Ombudsman

**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. Additionally, a civil penalty may also be available if the court finds that the opposing party—if either a land use applicant or a government entity—knowingly and intentionally violated the law governing that cause of action.**

**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.**

**The Advisory Opinion process is an alternative dispute resolution process. Advisory Opinions are intended to assist parties to resolve disputes and avoid litigation. All of the statutory procedures in place for Advisory Opinions, as well as the internal policies of the Office of the Property Rights Ombudsman, are designed to maximize the opportunity to resolve disputes in a friendly and mutually beneficial manner. The Advisory Opinion attorney fees and civil penalty provisions, found in § 13-43-206 of the Utah Code, are also designed to encourage dispute resolution. By statute they are awarded in very narrow circumstances, and even if those circumstances are met, the judge maintains discretion regarding whether to award them.**

Attachment "D"

Outlook

**RE: Final Submission and Request for Approval or Determination**

**From** Carlos Estudillo <cestudillo@millcreekut.gov>
**Date** Thu 1/8/2026 5:31 PM
**To** Joe Romero <joe@rthreegroup.com>; Francis Lilly <flilly@millcreekut.gov>

Joe,

The ordinance you are referencing is an old ordinance, that has been repealed since April 2025. You may see the updated ordinance through this link https://millcreek.municipalcodeonline.com/book?type=planzone#name=18.36_SINGLE-HOUSEHOLD_RESIDENTIAL_(R-1)_ZONES. I have additionally linked our definitions in a link below. From said link, I would like to clarify the following:

**18.97 DEFINITIONS**:

**Lot or Parcel Coverage** means the measurement of land use intensity that represents the portion of a lot or parcel occupied by the principal **building** and all accessory buildings, but excluding all other impervious improvements such as sidewalks, driveways, uncovered patios, uncovered decks and open porches.

**Building** means a **roofed structure, supported by columns or walls**, used for shelter meeting requirements of the Building Code and all the requirements of this title.

After a discussion with Francis, we concluded that your porch meets the definition of covered porch and not open porch, as the porch is being covered by a roofed structure, in this case, an extension of the roof covering the majority of the main structure. The term “open porches” are applied to porches that are composed of only impervious surfaces, such as a slab of concrete, etc. Typically, impervious surfaces such as sidewalks, walkways, driveways are exempt from the lot coverage requirement, as they are not typically covered by a roofed structure. With that being said, the porch must be included in the calculation for lot coverage. Once you have added the porch to your calculations, we can certainly change the site plan form your building permit on our end. I do, however, recommend to re-submit your elevations as well, as the scale was not matching the measurements on the elevation sheet.

In terms of the NCM process, staff will first need to analyze the average of all homes within the 200’ radius of your property. The example given to you was based off an old ordinance that only allowed applicants to choose six properties within their radius. The new ordinance (linked above) allows you to obtain an average of all homes within the 200 ft radius. This should give you more flexibility when obtaining the average lot coverage of your direct neighborhood. Neighborhood compatibility is what drives this exception to our requirements. Basically, the process allows you to blend with the spatial requirements obtained by your neighbors through decades of different ordinances, but in order to keep homes compatible, the result of the lot coverage average of all homes within the 200 ft radius is the one way we are able to approve an application such as yours. Millcreek will not approve a Neighborhood compatibility modification based only on one property.

Once you obtain the calculations of all homes within the 200 ft radius and seem satisfactory to you, have your surveyor verify and stamp the calculations. Let us know if you have any further questions.

Best,

**Carlos Estudillo**
**Planner II**
Office: 801-214-2763
Millcreekut.gov

Disclaimer: Information, comments, or recommendations provided in this email are offered as a courtesy and are non-binding. They should not be interpreted as a formal review, approval, or determination by Millcreek.

**From:** Joe Romero <joe@rthreegroup.com>
**Sent:** Thursday, January 8, 2026 7:19 AM
**To:** Carlos Estudillo <cestudillo@millcreekut.gov>; Francis Lilly <flilly@millcreekut.gov>
**Subject:** [Ext] Final Submission and Request for Approval or Determination

Francis / Carlos,

Again, thank you for your continued support and guidance regarding the P&Z processes for Millcreek City. I have learned a lot and at the end of the day, endeavoring to meet the code requirements. In the end, my intent is to ensure I am providing accurate information to the best of my knowledge and have drawn everything accordingly.

With this in mind, I am submitting two paths for either your approval or guidance on what you believe is the correct path to compliance. With that being said, I offer the following:

- Path # 1 (***Seeking Approval of Revised Site Plan***)

- I am respectfully requesting the REVISED dated 1-8-2026 site plan be approved and added to the formal document submission.
- See the attached REVISED Site Plan including all elements we have discussed in conversation and email. (*Existing design plans work so no change to design required*)
- I have double and triple checked the scale, every dimension on the plan, the footprint square footages and have confirmed lot square footages with you and believe everything is accurate
- Per Chapter 19.71.060 (RCOZ Amendments May 2024), I have not included the Open Front Porch in the footprint calculations and have noted such on the Revised Plan

- 
- Path # 2 (***If required, Proceed with NCM Process***)
  - I have spent 4-6 hours researching the NCM Process and Requirements
  - I have utilized Millcreek's GIS mapping system to complete initial analysis of lot coverages of (6) parcels within 200 feet of my property (See attached)
  - A few questions I have for you and guidance requested if I must go down this process:
    - For the (6) properties around my parcel I conducted analysis on, ***ONLY (1) property EXCEEDS the 33%*** maximum lot coverage
    - The other (5) are below the 33%
    - On the GIS Mapping System, several of the properties are heavily wooded so I can not confirm if there are additional accessory buildings or sheds that would increase the lot coverage
    - The "*Average*" lot coverage for the six properties is 27.71%
    - Using the NCM calculation, the 27.71% x 1.15 only equals 31.86% which is already under the 33%.
  - ***Will Millcreek City allow an NCM Approval to exceed the maximum 33% lot coverage if there is only (1) of the (6) properties exceeding the current maximum? For my Property, we would certainly be below the 38% NCM Max.***
  - Lastly, If I am required to utilize Path # 2
    - I'd like to confirm that a Land Surveyor will be required to "stamp" all information and analysis and not just the survey of my existing home?
    - I'd like to provide accurate direction to the Land Surveyor so I can get an accurate quote before I decide to proceed with this method, if required.

As you know, my preference is to have the attached site plan approved so Building can proceed with their review; however, if I must proceed with the NCM process, before I spend $3-4K on survey costs, I'd like to ensure I have a reasonable degree of certainty that the NCM process will be approved based on the preliminary information listed above.

Again, respectfully submitted and I look forward to your response.

**Joe Romero, LEED AP**
***President***
The R3 Group, LLC
P: 801-808-0063 | E: joe@rthreegroup.com



List of All Documents Submitted by Parties
***"ON THE RECORD"***
for the Appeal Hearing

***Joe Romero Documentation which has been submitted and is included in the record of the Appeal Hearing:***

- Letter to Francis Lilly Requesting Administrative Action dated December 22, 2025 (***3 pages***)
- Formal Appeal Letter dated February 5, 2026 (***93 pages***)
- Supplemental Information Memorandum dated February 16, 2026 (***108 pages***)
- Appeal Authority Notification and Memorandum dated March 16, 2026 (***2 pages***)
- Appeal Hearing PowerPoint Presentation dated April 4, 2026 (***41 pages***)
- Appeal Authority Notification and Memorandum dated April 13, 2026 (***192 pages***)
- J Romero Response and Rebuttal Letter dated April 15, 2026 (***14 pages***)
- J Romero email Notification Regarding Phone Call from Mr. Lilly dated April 20, 2026 (***6 pages***)
- Notice of Non-Compliance Letter regarding Public Notice dated April 22, 2026 (***25 pages***)

- (***484 Pages***) Total for all Exhibits on the Record

***Millcreek City Documentation which has been submitted and is included in the record of the Appeal Hearing:***

- Millcreek City Brief/Memoranda dated April 11, 2026 (***12 + exhibits***)
    - Exhibit "A" – 1 page
    - Exhibit "B" – 1 page
    - Exhibit "C" – 1 page (*No Staff Reports provided by Millcreek*)
    - Exhibit "D"- 1 page
    - Exhibit "E" – 8 pages
    - Exhibit "G" – 1 page
    - Exhibit "H" – 1 page
- (26 ***Pages***) Total for all Exhibits on the Record

**FORMAL APPEAL LETTER** **February 5, 2026**

**Building Permit #** 252009 and NCM Permit No. 926020

**To:** Millcreek City Appeal Authority

**Applicant:** Joe Romero

3652 Aurora Circle

Millcreek, Utah 84124

**Re:** **APPEAL OF DENIAL – MISAPPLICATION OF LOT COVERAGE STANDARDS, AMBIGIOUS CODE REFERENCES, ARBITRARY ADMINISTRATIVE ACTION, AND REQUEST FOR IMMEDIATE APPROVAL AND FEE REMIBURSEMENT**

## I. INTRODUCTION AND BASIS FOR APPEAL

This letter constitutes a **formal appeal** of Millcreek City's denial of Building Permit No. 252009 and subsequent NCM Permit No. 926020 for the residential addition at 3652 Aurora Circle, located within the R-1-8 zoning district. The denial rests on **misapplication of Millcreek City's own Land Use Code**, an **internally inconsistent interpretation of the Code's elements, including ambiguous and unclear methods for "calculation of lot coverage", definitions for "open porch" and "architectural features"** and an **arbitrary refusal by the Assistant City Manager / Planning Director, Mr. Francis Lilly and his staff Planner II, Mr. Carlos Estudillo, to apply the ordinances as written**, despite repeated written notice from Mr. Romero identifying the errors.

Even though Mr. Romero attempted to clarify with Mr. Lilly and Mr. Estudillo on several occasions, and in writing, the record demonstrates that Mr. Lilly and Mr. Estudillo **persisted in an incorrect calculation methodology** – one not supported by Title 18 – after being repeatedly advised in writing that their interpretation conflicted with the City's adopted ordinance, diagrams, and definitions. This conduct constitutes **arbitrary and capricious administrative action**, violates established principles of Utah statutory interpretation, and improperly deprived Mr.

Romero of a lawful permit based on compliant plans. As a result of this ambiguous process managed by Mr. Lilly and Mr. Estudillo, Mr. Romero has suffered irreparable financial damage and unrecoverable delays to his project.

This appeal seeks immediate reversal of the original denial on Permit No. 252009, and approval of the project **based on the original design documents submitted to the City in November 2025**, for the Appeal Board and Millcreek City to acknowledge Mr. Lilly and Mr. Estudillo's rejection was not in good faith nor in accordance with the Title 18 and acknowledge that the NCM process was never required, even though the City Planner, Mr. Lilly and his staff, Mr. Estudillo stated it was. Lastly, this appeal is seeking financial relief from the City for the undue costs Mr. Romero spent hiring a licensed land surveyor which can be provided via a reduction in the overall building permit fee, after this project is fully approved.

## II. FACTUAL BACKGROUND AND RECORD OF BAD FAITH ADMINISTRATION

### 1. Initial Project Permit Submittal and Engineering vs. Planning Review

Mr. Romero submitted comprehensive design drawings on November 10, 2025 which resulted in Building Permit No. 252009 being generated. The engineering department review initially resulted in questions and clarifications needed about the design (similar to those raised by Planning and Zoning); however, unlike Mr. Lilly's Planning Department, the Engineering staff immediately responded to a written request by Mr. Romero for a face-to-face meeting. In this meeting engineering and Mr. Romero reviewed applicable code, clarified each others questions/ expectations which allowed Mr. Romero to resubmit his corrected plans the same day. Immediately after the resubmittal and within 24 hours, engineering approved the plans. This entire process only took (2) two calendar days from the time the initial design set was submitted to the City for Permit.

To contrast this routine experience with Mr. Romero's experience with Mr. Lilly's Planning department will be outlined below and it is an important factor to consider regarding this appeal.

To further substantiate Mr. Romero's appeal and request for approval, the process through engineering demonstrates that the project was "not" inherently noncompliant, but rather that the Planning staff refused to engage in good-faith conversations, code review, and repeatedly provided inaccurate and incorrect direction to Mr. Romero which was not compliant with the Code. Ultimately, Mr.

Estudillo ceased communication with Mr. Romero for over a month resulting in a formal letter written by Mr. Romero to Mr. Lilly on December 23, 2025, (43) forty-three days after the initial permit drawing submittal and (32) thirty-two days after Mr. Estudillo's last communication.

2. **Planning Denial Based on Ambiguous Code References Leading to Arbitrary, Capricious and Inaccurate Lot Coverage Calculations by Millcreek Planning Staff**

   On November 17, 2025, Mr. Estudillo denied the permit, asserting that the project exceeded the 33% maximum lot coverage for the R-1-8 zone. The denial relied on several factors

   - Utilized Millcreek's standard GIS map to approximate what Mr. Estudillo believes was the square footage of the home, but did not take into account the full text and requirements of the Title 18 Code and its exclusion provisions.
   - Ignored the **diagrams and definitions in Title 18 showing measurements taken to the exterior of the structure and excluding roof overhangs, eaves, and open front porches**
   - Relied on **non-scaled imagery** rather than scaled architectural drawings provided in the permit design set
   - Mr. Estudillo's own admission that his take-off were "**rough estimates**", but decided to deny this permit anyway.

   During this initial review, Mr. Estudillo did highlight a concern regarding a typo on the original design documents. Admittedly, Mr. Estudillo's concern was valid and I corrected that typo along with providing Mr. Estudillo a detailed specific take-off of the actual square footage of the residence. Additionally, later on in the review process, Mr. Lilly discovered an incorrect scale on a plan as well. Upon notification this was immediately corrected and resent to the City. These simple errors, that were both corrected immediately, are typical during reviews; however with the updated files, this should have been the end of this review resulting in approval.

3. **Repeated Written Notice to Planning Department of their Error initiated by Mr. Romero**

   Between November 17,2025 and January 6, 2026, Mr. Romero sent multiple emails to Mr. Estudillo and Mr. Lilly explicitly explaining that their review **was not calculating lot coverage in accordance with Millcreek City Code**. With each

written communication, Mr. Romero provided scaled drawings, square footage take-offs, and citations to the ordinance.

By Title 18 definitions, “open porches” are ***EXCLUDED*** in the calculations for Lot Coverage:

**Lot or Parcel Coverage** means the measurement of land use intensity that represents the portion of a lot or parcel occupied by the principal building and all accessory buildings, but excluding all other impervious improvements such as sidewalks, driveways, patios, decks and open porches.

Whatever communication Mr. Romero sent Mr. Estudillo, he would simply reply stating that the project was denied without accurate information defining why. On several occasions, Mr. Romero even specifically asked Mr. Estudillo what national standard Millcreek City based their Title 18 Code on because the direction that Mr. Estudillo did not comply, nor adhere the guidelines provided for American Planning Association (APA) which is the national standard that a most, if not all Planning and Zoning departments across the country base their Code on. Mr. Estudillo’s response remained consistently vague and just stated the project was denied without substantiated details.

At one point, Mr. Romero even provided references to the APA (PAS Reports) which were very similar to Millcreek’s Code again demonstrating that architectural features, roof overhangs, and open porches are excluded from the lot coverage calculation.

Acknowledging APA PAS reports have not been adopted by Millcreek City as they have their own approved Land Use Code (which Mr. Romero firmly believes is based on the National Standards of APA), this compare and contrast information was simply an attempt to have a conversation with Mr. Lilly and Mr. Estudillo so we could discuss the elements of the code and find a reasonable solution; however, Mr. Estudillo chose to cease communication with Mr. Romero instead.

In addition, in Mr. Lilly’s own email correspondence dated January 5, 2026, he acknowledged that open porches are excluded from the calculation (however, failed not to include the acknowledgement that architectural features, roof overhangs and eaves being excluded in his email), but also conveyed “**Here is a way forward on this issue**”:

**From:** Francis Lilly <flilly@millcreekut.gov>
**Sent:** Monday, January 5, 2026 4:54 PM
**To:** Joe Romero <joe@rthreegroup.com>; Carlos Estudillo <cestudillo@millcreekut.gov>
**Subject:** RE: [Ext] Building Permit # 252009 - Formal Request for Corrective Application of Lot Coverage Standards and Administrative Action

Here's your way forward on this issue:

1. Resubmit a site plan and fix the significant errors, using one of two means:
    1. Use the dimensions of the lot that are shown on the Mount Olympus Acres plat; or
    2. Obtain a survey from a licensed surveyor that shows the property dimensions on the site. They will use the plat to make that determination.

2. Calculate the lot coverage using the following definition: "Lot or Parcel Coverage means the measurement of land use intensity that represents the portion of a lot or parcel occupied by the principal building and all accessory buildings, but excluding all other impervious improvements such as sidewalks, driveways, uncovered patios, uncovered decks and open porches." Anything *occupied* by the principal building and all accessory buildings would include anything under the roof of the buildings.

3. If you are over the lot coverage that is allowed by the code (it's 33%), know that you can request a Neighborhood Compatibility Modification to get a coverage of up to 40%, if there are properties within 200' of yours that have lot coverages that exceed 33%. This may be worth your while to get you the addition you want. However, to demonstrate that this will require a survey to be completed by a licensed surveyor, as well as a separate application from the city. Here's a link to those rules.

Mr. Lilly inaccurately referenced and stated that anything "**under the roof of the building**" is included in the square footage calculation. *This clearly is not what Title 18 states nor illustrates,* (i.e, exemptions for architectural features, overhangs, eaves, open porches, etc.); however, coming from the Planning Director himself, Mr. Romero decided to rely on this information. In several more written communications to Mr. Lilly and Mr. Estudillo, Mr. Romero expressed his disagreement with their determination, stated and provided snips of the Code to demonstrate that their direction was in direct violation with the text of Title 18.

Ultimately, on January 8, 2026, (see below) *Mr. Estudillo sent an email stating* that "*after a discussion with Francis, **we concluded that your porch meets the definition of a "covered porch" and not an open porch,** as the porch is being covered by a roof structure…*.". What is important to understand is that nothing within Title 18 states or makes a determination regarding porches to be "*covered or uncovered*". The Code only determines them to be "*enclosed or open*". In addition, Mr. Estudillo also hides the fact that the open porch in question also falls under the exemption of an ***architectural feature***. In Mr. Estudillo's email he also inaccurately states that "*The term "open porches" are applied to porches that are composed of only impervious surfaces, such as a slab of concrete, etc*." Again, Mr. Estudillo is making up what he believes the definition of an open porch means because Title 18 does not align with Mr. Estudillo's determination he provided. Mr. Estudillo also does not acknowledge that per Title 18 a porch can have a roof or be covered and his reference to it ONLY composed of impervious surfaces is negligence on his part. Contrary to Mr. Estudillo's email, Title 18 – Section 18.036.70-E is the only location that clarifies that "Covered"

porches shall remain unenclosed or “open-style” (no walls, doors, windows, screens, etc).

grade.

E. Covered porches and balconies may project up to 10 feet into the front yard or street side yard setback if they meet the following criteria:

1. Porches and balconies shall remain unenclosed or "open style" (no walls, doors, windows, screens, etc.) except for the minimum required handrail.
2. Porches and balconies shall not encroach into any easements or clear vision site areas.

In this email, Mr. Estudillo also references Code Section 19.97 DEFINITIONS which include definitions of various elements of the Code.

Although Mr. Estudillo included definitions of “**Lot or Parcel Coverage**” and “**Building**”, it was clear Mr. Estudillo clearly did not include the definition of “**Porch**” or “**Open Porch**” as Title 18 is ambiguous, unclear and left the to determination of the City Planning department.

**RE: Final Submission and Request for Approval or Determination**

**From** Carlos Estudillo <cestudillo@millcreekut.gov>
**Date** Thu 1/8/2026 5:31 PM
**To** Joe Romero <joe@rthreegroup.com>; Francis Lilly <flilly@millcreekut.gov>

Joe,

The ordinance you are referencing is an old ordinance, that has been repealed since April 2025. You may see the updated ordinance through this link https://millcreek.municipalcodeonline.com/book?type=planzone#name=18.36_SINGLE-HOUSEHOLD_RESIDENTIAL_(R-1)_ZONES. I have additionally linked our definitions in a link below. From said link, I would like to clarify the following:

**18.97 DEFINITIONS**:

**Lot or Parcel Coverage** means the measurement of land use intensity that represents the portion of a lot or parcel occupied by the principal **building** and all accessory buildings, but excluding all other impervious improvements such as sidewalks, driveways, uncovered patios, uncovered decks and open porches.

**Building** means a **roofed structure, supported by columns or walls**, used for shelter meeting requirements of the Building Code and all the requirements of this title.

After a discussion with Francis, we concluded that your porch meets the definition of covered porch and not open porch, as the porch is being covered by a roofed structure, in this case, an extension of the roof covering the majority of the main structure. The term "open porches" are applied to porches that are composed of only impervious surfaces, such as a slab of concrete, etc. Typically, impervious surfaces such as sidewalks, walkways, driveways are exempt from the lot coverage requirement, as they are not typically covered by a roofed structure. With that being said, the porch must be included in the calculation for lot coverage. Once you have added the porch to your calculations, we can certainly change the site plan form your building permit on our end. I do, however, recommend to re-submit your elevations as well, as the scale was not matching the measurements on the elevation sheet.

**As noted above and stated in Title 18, the definition of “Building” is solely for the purpose of defining that IT IS “a *roofed structure, supported by columns or walls and used for shelter*”.** What this definition does not convey is that

other parts of the Code specifically outline there are “occupiable” on “non-occupiable spaces within a Building and **that not all areas “under a roof” are included in calculations for lot coverage** per Title 18 (i.e, architectural features, overhangs, eaves, open porches, etc.) that are relevant to calculating floor square footage or lot coverage. This again shows that the communication from Mr. Lilly and Mr. Estudillo was inaccurate, misleading and in bad faith.

**It was clear from this email that Mr. Estudillo and Mr. Lilly’s decision was solely focused on the definitions they chose to interpret, but did not consider the other relevant definitions within Title 18 that actually describe the elements other of the “Building” and those elements that are to be excluded from calculations. Even within Mr. Estudillo’s email above, the LOT or PARCEL COVERAGE definition in itself, states that open porches are excluded from the calculation. In plain sight, Mr. Estudillo was contradicting Title 18 by choosing to make determinations on only the pieces of the Code he chose.**

Additionally, Mr. Estudillo’s statement that the term “Open Porches” are applied to porches that are composed of only impervious surfaces, such as concrete slab is beyond comprehension. Especially since Section 18.36.070 (along with other similar Zoning Sections) is the ONLY place that ***defines what an “open-style” or “open porch” is*** for R-1 Zones. ***As noted, an “open style” porch is one that shall remain unclosed, without walls, doors, windows or screens***, nothing regarding to roofed, or not roofed is identified in Title 18 as Mr. Lilly suggests.

The open porch at Mr. Romero’s residence clearly falls within Title 18 guidelines that outline the elements of an open-style porch but says nothing about solely being under roof. To further support the square footage exclusion of the open porch is that the porch also falls under and should be governed by Title 18’s definition of and **Architectural Feature**. This will be further addressed below; however, architectural features are also determined not to be included in lot coverage calculations as per Section 18.036.040.

Even though Mr. Romero met ***unsubstantiated denial*** at each turn or communication with Mr. Lilly and Mr. Estudillo, each of Mr. Romero’s written correspondence consistently conveyed the following, but not limited to these critical points: 1) the design should be approved based on original design, 2) the “footprint” method Mr. Estudillo confirmed Millcreek uses is the method used to calculate home square footage, 3) requested the reasoning behind why Mr.

Estudillo declined to exclude architectural features, roof overhangs, eaves and open porches and 4) scaled and accurate drawings and take-offs, in accordance with Title 18 and its definitions and illustrations demonstrating compliance.

At one point, Mr. Romero questioned Mr. Lilly about the reasoning behind including the "open porch" as part the calculation and on January 5, 2026, Mr. Lilly's email direction stated "***I consider your porch closed***".

Although the Code is silent on the actual definition of what a "*porch*" is, the Code is clear on the differences between the elements of an "enclosed" and "open-style" porch. By all definitions of the Code, the porch located at Mr. Romero's property falls under the details, descriptions and exclusions of an "open porch" and an "architectural feature" per Title 18. (***See Attachment "E"***)

Mr. Lilly and Mr. Estudillo's written direction and statements made to Mr. Romero through their communication were at best complicit if not acting in bad faith. Nevertheless, the information that was provided conflicts with Title 18.

Title 18 does not allow for a City Official to arbitrarily make up a determination that is in direct conflict or dispute with the full breadth of the Code.

Mr. Lilly and Mr. Estudillo's arbitrary actions and statements are not in compliance with Title 18 and are not allowed under State law and Millcreek City ordinances.

## III. MISAPPLICATION OF MILLCREEK CITY CODE

### 1. Title 18 Measures to the Exterior Wall, not including overhangs, open porches or architectural features

- The same verbiage listed below, clarifying spatial requirements including lot coverage calculations, measuring to the exterior wall, exclusion of open porches, overhangs and eaves are also shown in AG, FRE, R-1, R-2, R-3, RM zoning. All verbiage within these Zones **consistently depict** measurements taken to the **exterior wall** of the building. Nowhere does Title 18 state that roof overhangs, eaves, open-style porches or architectural features are included in the lot coverage. To the contrary, in numerous references, **Title 18 specifically "excludes" these elements of the building from calculations.**

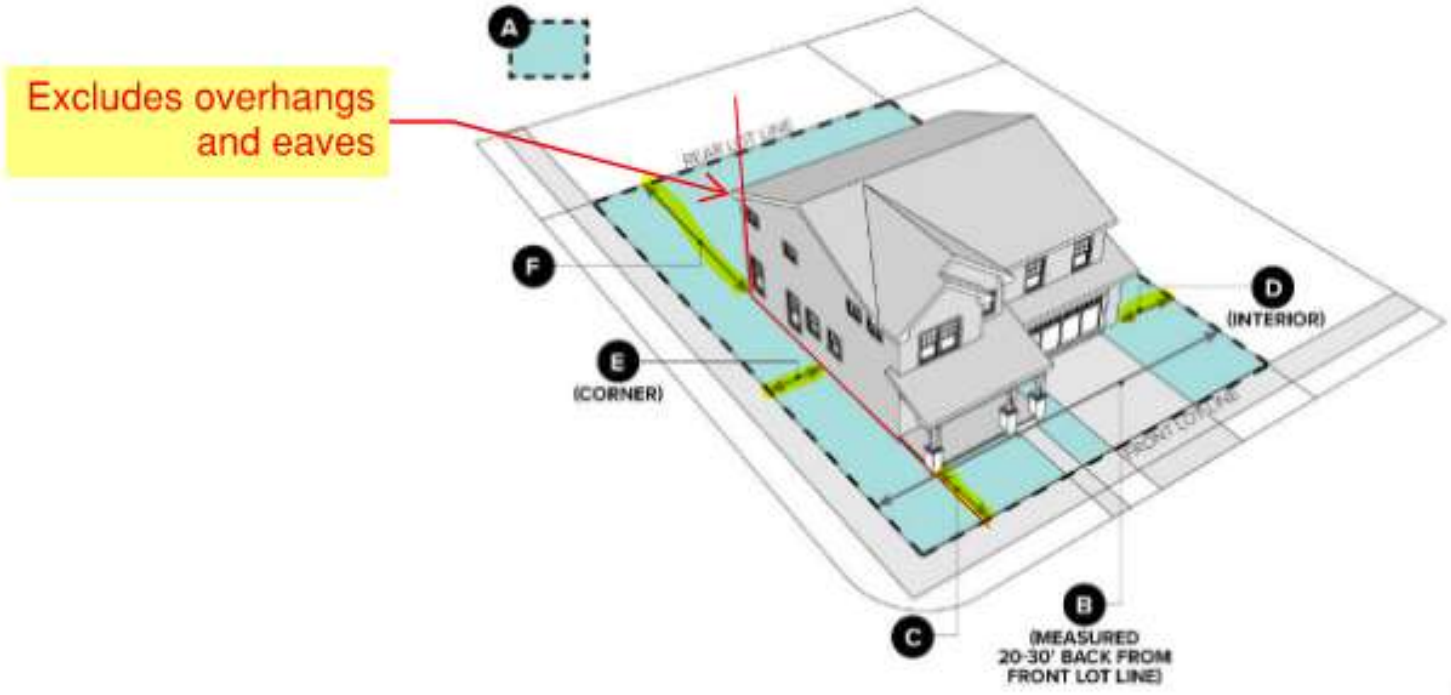
- **Section 18.36 (for R-1 Zones)** and its accompanying written descriptions and illustrations (Figures 18.3.2, 18.36.3, 18.36.6) **consistently depict** measurements taken to the **exterior wall** of the building and not including overhangs, eaves, unenclosed architectural features, etc. Nowhere does Title 18 state these elements are included in the lot coverage as the Illustration clearly shows these are not included. To the contrary, in numerous references, **Title 18 specifically "excludes" these elements of the building from calculations**; however, Mr. Lilly and Mr. Estudillo did not take these sections into consideration when making their determination.

18.36.040 Spatial Requirements

A. Setback Measurements. The minimum property size, width, setbacks, and maximum property coverage requirements are as determined by Table 18.36-2 Spatial Requirements for the Single-Household Residential (R-1) Zones and are as illustrated in Figure 18.36.2.

**This is the only reference in the Code for R-1 Zones that dictates and specifically states the "<u>maximum property coverage</u>" requirements <u>are as determined by Tables of this section</u>.**

*Figure 18.36.2 Spatial Requirements Diagram (letter labels related to Table 18.36-2)*

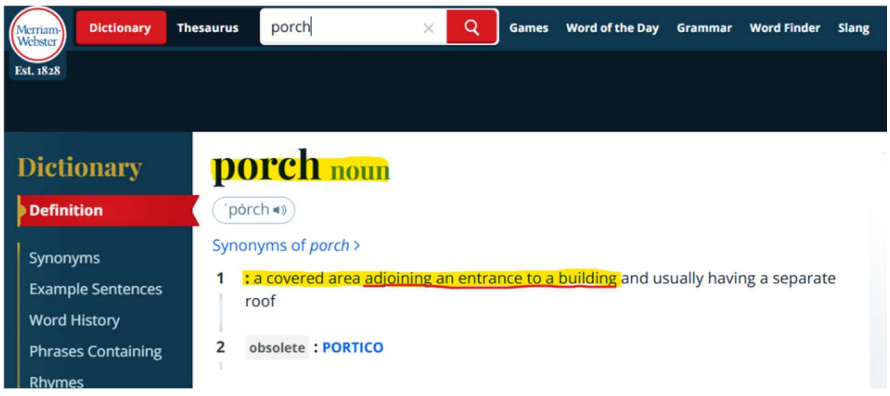


Although this illustration is showing set back limits, **the written text above (Section 18036.040 Spatial Requirements) states this illustration is also used for maximum lot coverage as well**. It is clear from this illustration all dimensions calculating the building line are to the "**exterior wall**" of the building and not the overhangs or eaves.

In addition, Title 18 is unclear (although this illustration suggests) that all calculations for maximum lot coverage shall be based on the "ground level" footprint of the building. Again, this is an unclear, grey area of the code; however, during his communications, Mr. Romero did ask for clarification as this determination and Mr. Estudillo and Mr. Lilly failed to respond to his request.

Because this determination is not clearly outlined in the Code, Mr. Romero should be allowed to determine the maximum lot coverage at the ground level, not including the 2nd floor as Title 18 allows for the exclusion of overhangs and eaves which consist of the 2nd floor.

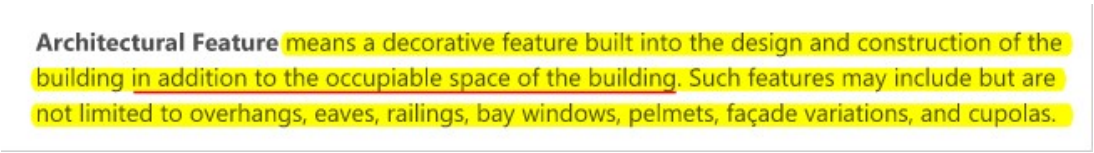
- **Section 18.36.060** Projections - states that dormers, gables (which the front porch can also be considered) may project beyond the building envelope and are "**non-habitable architectural elements**". By Code, these architectural elements are excluded from calculations.
- Since Title 18 is unclear, ambiguous and does not include a definition of what a residential porch is, below is a definition from Websters Dictionary:




- With the lack of definition by Millcreek City, Mr. Romero believes any reasonable citizen of the community, would know exactly what a front porch is and would consider the elements as open, non-occupied or non-inhabitable space.

- In architectural terms, a front porch is considered primarily as an architectural element which denotes the location of the front door of a residence. The secondary consideration of a front porch being to protect occupants or visitors entering the home during inclement weather upon arrival.

2. **Architectural Features Are Defined as Non-Occupiable**
   - Title 18 defines "**architectural features**" (including eaves, overhangs, and similar projections) as elements "**in addition to**" occupiable spaces.


**Architectural Feature** means a decorative feature built into the design and construction of the building in addition to the occupiable space of the building. Such features may include but are not limited to overhangs, eaves, railings, bay windows, pelmets, façade variations, and cupolas.

   - This definition is clear that the building should be considered broken down into two distinct and separate characteristics. Occupiable spaces which would be considered everything from the "exterior walls" inward and non-occupiable spaces "**in addition**" to the building. Title 18 is clear that these architectural elements, including open-style porches are excluded from the Lot Coverage calculations.

3. **Open Porches and Non-Habitable or Non-Occupiable Areas are Excluded by Ordinance**
   - **Section 18.36.070** repeatedly excludes unenclosed porches, decks, and similar features from spatial and area calculations. The City's attempt to make a subjective determination without the bases of factual clarity and to treat the open porch (by definition and detailed text within the code describing what an "open-porch consists of) is inaccurate and is unsupported by any provision in Title 18.
   - This section is the only place that ***defines what an "open-style" or "open porch" is. As noted, an "open style" porch is one that shall remain unclosed, without walls, doors, windows or screens*** for R-1 zones. As such, the design drawings clearly show the front porch is an "open porch" in strict accordance with these elements of the code.
   - Subsections E – G convey additional information about front porches further supporting that the existing porch is considered an Open Porch.

- E.1- Covered porches and balconies shall remain “unenclosed” or “open-style” (no walls, doors, windows, screens, etc.)
- F. – Other architectural elements which are not used as habitable space
- G – Cornices, eaves, sills, planter boxes, or similar architectural features attached to the “building” and not enclosed by walls

Although the ordinance lacks an actual definition of what a porch is, this section of the ordinance clearly demonstrates Mr. Romero’s front porch is in line with the intent of the code as it is “unenclosed”, “open-style” with no walls, doors, windows, screens”, uninhabitable and unoccupied.

4. **Gross Floor Area Definition**

- ***The Gross Floor Area definition gets to the heart of this debate***. This definition is the sole and specific reference within Title 18 defining what areas of a building should be included when completing calculating building areas which is a component of calculating lot coverage for the parcel coverage.
- It is clear the calculation should be “**within the exterior walls**” and only includes habitable living space.
- This definition clearly defines the difference between porches (enclosed or open) and it is clear that open porches are excluded from calculations.

**Gross Floor Area** means the total area of all floors or stories within the exterior walls of a building or structure, including basements, mezzanines, and interior balconies, and all accessory structures on the property. Gross floor area includes:

A. Habitable living spaces, including but not limited to bedrooms, lobbies, kitchens, living rooms, offices, workspaces, shop floors, or hallways.
B. Accessory structures, such as detached garages, workshops, detached ADUs, or guest houses.
C. Enclosed porches or sunrooms, regardless of heating or cooling.
D. Storage areas and mechanical rooms if enclosed by permanent walls.
E. Garages, whether attached or detached.
F. Stairwells, elevator shafts, hallways, and similar vertical or horizontal circulation areas on each floor.
G. Areas designed for mechanical equipment or utilities, such as HVAC or electrical systems.

The following areas are not included in a calculation of a gross floor area:

A. Open or partially-open balconies, decks, or porches.
B. Crawl spaces or attics that are not designed for occupancy or storage.
C. Parking areas that are not enclosed, such as carports or parking lots.
D. Unenclosed courtyards or breezeways.

5. **International Building Code (IBC) and International Residential Code (IRC) interpretation of why an Open Porch is not considered inhabitable or occupiable**
    - Based on the definitions and technical requirements set forth in the International Building Code (IBC) and the International Residential Code (IRC), an exterior open porch does not constitute an occupiable or habitable space. **The IBC defines an occupiable space as a room or enclosed area designed for human occupancy in which individuals remain for a period of time for specific purposes such as living, working, dining, or amusement, and which is equipped with required means of egress, lighting, and ventilation**. Likewise, the **IRC limits habitable space to enclosed areas used for living, sleeping, eating, or cooking**. An open porch, by its nature, lacks enclosure, is not within the building's thermal envelope, and is not provided with code-required, mechanical ventilation, or environmental controls applicable to interior spaces. While open porches may be regulated for safety when they function as part of a means of egress or are intentionally designed for assembly purposes, they are not designed for sustained human occupancy as defined by code and are therefore excluded from occupiable or habitable area calculations. Accordingly, classifying an exterior open porch as occupiable space is inconsistent with the plain language of the IBC and IRC and the established distinction between enclosed interior spaces and exterior accessory structures.

6. **Ambiguity Must Be Construed in Favor of the Property Owner**
    - Even if the City asserts ambiguity (which Mr. Romero disputes), Utah law requires zoning ordinances, being in derogation of property rights – to be strictly construed in favor of the property owner. Planning staff instead **made their decision on what to include in the lot coverage calculation in the most restrictive, subjective manner possible**, one not grounded in the ordinance text.

## IV. FACTUAL CONCLUSIONS

Below outlines the factual conclusions as written, defined and illustrated by Utah Law and Title 18:

- Utah law requires zoning ordinances, being in derogation of property rights – to be strictly construed in favor of the property owner

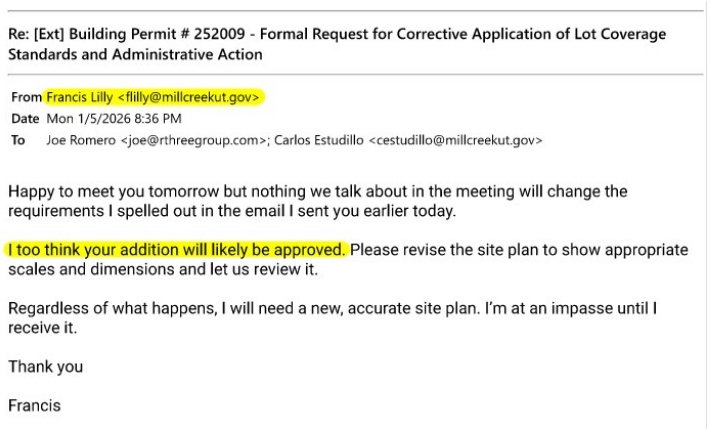
- Utah law requires that when land use regulations are ambiguous or unclear, such ambiguity be resolved in favor of the property owner – not expanded through administrative interpretation or post hoc enforcement positions.
- Title 18 was adopted by Millcreek City on April 28, 2025 and with an effective date of May 19, 2025
- Section 18.36 – Single-Household Residential (R-1) Zones governs this permit application
- Section 18.36.040 – Spatial Requirements states the maximum property coverage requirements are as determined by Table 18.36-2 and as illustrated by Figure 18.36.2
- Section 18.36.040 and its illustrations are the sole and only reference and requirement to calculate lot coverage
- Section 18.36.040 is vague, unclear and does not separate the Spatial Requirement differences between setback requirements and lot coverage requirements.
- Section 18.36-2 outlines a maximum of 33% lot coverage
- Illustration 18.36-2 details the measurement to a building is located to the exterior wall and this illustration clearly shows that overhangs and eaves are not included this this calculation. Since Illustration 18.36-2 details both setback and maximum lot coverage requirements, the same demarcation for both calculations shown to be the exterior wall shall govern both calculations
- Title 18 does not provide a definition of porch, enclosed porch or open porch
- Section 18.36.070-D separates the elements of a deck, patio, porches, driveways, stairs, landings
- Section 18.36.070-E defines that a porch can be “covered” and that Covered porches, balconies may project up to 10 feet into the front yard or street side setback
- Section 18.36.070-E.1 defines and determines the elements of an “open style” porch (no walls, doors, windows, screen, etc).
- Section 18.36.070-F defines other architectural elements which are not used as habitable spaces
- Title 18 Definitions
    - **Architectural Feature** includes the terms overhangs, eaves, et al.
    - **Building** means a roof structure

- **Gross Floor Area** calculation specifically includes habitable living areas and specifically excludes open or partially porches
- **Lot Coverage** specifically excludes open porches
- **Structure Design for Human Occupancy** specifies that it is any residential dwelling intended for supporting or sheltering human occupancy

## V. ARBITRARY AND CAPRICIOUS ADMINISTRATIIVE ACTION BY MILLCREEK CITY

The following are direct actions taken by Mr. Lilly and Mr. Estudillo that are in complete disregard for Title 18, Millcreek City Ordinances and Utah law.

- Repeated written notification from Mr. Romero to Mr. Lilly and Mr. Estudillo has conveyed that the City did not completed with this review with the full breadth of Title 18 in mind and simply picking and choosing what they want to acknowledge.
- Mr. Lilly and Mr. Estudillo including and calculating explicit elements of the code in reference to excluded items from the lot coverage analysis.
- Mr. Romero had no other choice but to continue his reliance on Mr. Lilly and Mr. Estudillo's decisions based on unsupported lot calculation methodology, even after countless notices from Mr. Romero.
- Mr. Estudillo's ceasing to communicate with Mr. Romero for (32) days requiring Mr. Romero to escalate the matter by sending a formal letter to Mr. Lilly in order to receive action from the City. (***See Attachment "B"***)
- Refusal to meet in person with Mr. Romero to expedite the concerns and discuss Mr. Romero's perspective and review and discuss Title 18 together.
- Escalation into the direction to proceed with additional permit processes (NCM) without legal basis
- Mr. Lilly's written communication stating, "*he believes this will be approved*".



Re: [Ext] Building Permit # 252009 - Formal Request for Corrective Application of Lot Coverage Standards and Administrative Action

From Francis Lilly <flilly@millcreekut.gov>
Date Mon 1/5/2026 8:36 PM
To Joe Romero <joe@rthreegroup.com>; Carlos Estudillo <cestudillo@millcreekut.gov>

Happy to meet you tomorrow but nothing we talk about in the meeting will change the requirements I spelled out in the email I sent you earlier today.

I too think your addition will likely be approved. Please revise the site plan to show appropriate scales and dimensions and let us review it.

Regardless of what happens, I will need a new, accurate site plan. I'm at an impasse until I receive it.

Thank you

Francis

- Ignoring the ordinance text and figures
- Persisting in an unsupported methodology after notice
- Imposing additional procedural requirements without legal basis

This pattern exceeds mere error. It reflects arbitrary administration and a failure to apply the ordinances uniformly and in good faith.

## VI. REVISED AND CURRENT LOT COVERAGE CALCULATIONS AND EVIDENCE

On numerous occasions, Mr. Romero has formally submitted accurate, scaled drawings in accordance with the provisions of Title 18 demonstrating the following:

**Existing Home Calculations** (***See Attachment "C"***)

- Existing footprint (Per Title 18): 2,477 square feet
- Total Shed Area: 95 square feet
- Total Lot Coverage of Existing 2,572 square feet
- Total SqFt of Parcel 10,062 square feet
- **Total Lot Coverage percentage** **25.5%**

**Proposed Addition Home Calculations** (***See Attachment "C"***)

- Total footprint (Per Title 18): 3,135 square feet
- Total Shed Area: 95 square feet
- Total Lot Coverage of Existing 3,230 square feet
- Total SqFt of Parcel 10,062 square feet
- **Total Lot Coverage percentage** **31.1%**

**Note:** Mr. Romero requested clarification from Mr. Lilly and Mr. Estudillo on if the gross square footage calculation method (utilizing the home's dimensions on **GROUND LEVEL**) was allowed; however, not response was provided as the only response the Mr. Lilly and Mr. Estudillo chose to provide was the inaccurate, non-compliant response that everything under roof has to be included. If allowed to calculate based on ground level dimensions (not included overhangs, eaves *for the second floor*, the calculated building footprint and total lot coverage **will be further reduced**.

## VII. DEMAND FOR FEE WAIVER AND REIMBURSEMENT

Because the City's improper application of its ordinances directly caused delay, escalation, unnecessary permit processes, additional expense and this appeal, Mr. Romero formally demands:

- Immediate waiver of building permit fees in the amount equal to unnecessary permit fees associated with filing the NCM and Appeal processes, as a concession for administrative errors and delays;
- Reimbursement of land surveying costs ($1,900) that were improperly required despite the absence of a lawful lot-coverage violation;

These amounts represent direct, foreseeable costs imposed on Mr. Romero solely due to the City's unlawful interpretation and should be refunded as a matter of equity and administrative fairness.

## VIII. REQUEST FOR IMMEDIATE APPROVAL BASED ON ORIGINAL PLANS

The original design documents submitted with the building department demonstrated compliance with the 33% maximum lot coverage when calculated in accordance with the full Title 18 code. Mr. Romero therefore requests that the Appeal Authority:

- **Reverse Planning & Zoning denial** of Building Permit No. 252009
  - It should be noted that Mr. Romero never received a formal denial letter, just a copy of the permit card stating that the current review was denied. This is critical because unlike the NCM Denial letter, which provided certain appeal deadlines, the review denial does not include verbiage regarding Appeals for this review. (***See Attachment "D"***)
- Approve the project based on the original design documents submitted to the City;
- Direct staff to proceed immediately with moving the project onto the building department.

## IX. Conclusion

For the reasons set forth above, the City's denial of the permit is unsupported by the plain language of the Millcreek Land Use Ordinance, inconsistent with adopted and incorporated building standards, and

contrary to the established principles of statutory construction under Utah law. The City relied on interpretations that are neither expressly stated in the ordinance nor reasonably derived from its text, has failed to reconcile internal definitional conflicts, and has applied discretionary standards in a manner that is arbitrary, inconsistent, and unsupported by substantial evidence. **When land use regulations are ambiguous, Utah law requires that such ambiguity be resolved in favor of the property owner – not expanded through administrative interpretation or post hoc enforcement positions.** The record demonstrates that the proposed project complies with applicable dimensional standards and has been improperly calculated by the city.

The record before the Appeal Authority establishes that the denial of Building Permit No. 252009 and the compelled submission of the NCM Permit No. 926020 were not the result of any actual noncompliance with Millcreek City Code, but rather a product of an arbitrary, inconsistent, and legally unsupportable interpretation of Title 18 by the Planning Director and his staff. The City's determination disregarded the plain language of the ordinance, ignored controlling diagrams and definitions, excluded relevant code sections from communications with Mr. Romero, and relied on subjective administrative judgement in the place of adopted standards. At multiple points, Planning staff persisted in an erroneous lot coverage methodology after being expressly notified – in writing- of the conflict between their interpretation and the City's own code provisions. Such conduct exceeds a mere mistake and reflects a failure to administer the land use code uniformly, transparently, and in good faith.

Title 18 consistently measures lot coverage to the exterior wall of the building and expressly excludes architectural features, roof overhangs, eaves, and open, unenclosed porches from lot coverage calculations. The proposed project complies with these requirements when calculated in accordance with the ordinance as written. The City's attempt to redefine an open, unenclosed porch as occupiable or enclosed space (simply because it has a roof) finds no support in the text of Title 18, its illustrations, or the adopted definitions of gross floor area, architectural features, or non-habitable space.

Accordingly, Mr. Romero **respectfully requests that the Appeal Authority reverse the denial of the Planning and Zoning review of Building Permit**

**No. 252009, determine that the NCM process was improperly imposed and not required under Title 18, approve the project as originally submitted in November 2025, and direct City Staff to proceed without further delay**.

Nothing in this Appeal shall be construed as a waiver of Mr. Romero's rights. Mr. Romero expressly reserves the right to purse any and all additional administrative, judicial, or equitable remedies available under Utah law should the City continue to apply or enforce its land use regulations in a matter that is arbitrary, inconsistent with adopted standards, or in derogation of constitutionally protected property right.

Respectfully Submitted,



Joe Romero

Homeowner / Taxpayer / Voter

Millcreek City

Attachments to Appeal Letter

- Attachment “A”:
    - Email correspondence sent from Mr. Romero to Mr. Lilly and Mr. Estudillo throughout process
- Attachment “B”:
    - Letter to Mr. Lilly dated December 22,2025
- Attachment “C”:
    - Lot Coverage Calculations
- Attachment “D”
    - Denial Notice from Permit
- Attachment “E”
    - Photograph of Open Front Porch
- Attachment “F”
    - Title 18 – R1 Zone
- Attachment “G”
    - Title 18 – Relevant Definitions

Attachment "A"

Outlook

## Re: [Ext] Millcreek Permit # 252009 - 3652 E AURORA CIR

**From** Joe Romero <joe@rthreegroup.com>
**Date** Wed 11/12/2025 8:13 PM
**To** Ryan Bagshaw <rbagshaw@millcreekut.gov>

Many thanks!

Much appreciated.

Sent on the go - please forgive me for any errors.

JoRo

> On Nov 12, 2025, at 7:37 PM, Ryan Bagshaw <rbagshaw@millcreekut.gov> wrote:
>
> Hello Joe,
>
> The permit is engineering completed; the remaining review departments will start on their review process when it comes up in the cue.
>
> Regards,
>
> **Ryan Bagshaw**
> DEVELOPMENT REVIEW / SPECIAL PROJECTS COORDINATOR
> Office: 801.214.2664
> rbagshaw@millcreekut.gov
>
> MILLCREEK
>
> **From:** Joe Romero <joe@rthreegroup.com>
> **Sent:** Wednesday, November 12, 2025 2:09 PM
> **To:** Ryan Bagshaw <rbagshaw@millcreekut.gov>
> **Subject:** Fw: [Ext] Millcreek Permit # 252009 - 3652 E AURORA CIR

Ryan,

It was great meeting you this morning and THANK YOU for working with me on the drainage information.

Please see the attached (2) PDF files as follows:

- SD 1_0 - Site Plan (REV 2)
    - This is the new PDF plan with the calculations you requested. This can replace the originally submitted SD1_0 plan
- SD 1_0 - Site Plan _ Take Off Calculations
    - This is not meant for the formal submittal (unless you need it), but this 2 page PDF shows you the take I performed to demonstrate the actual square footage for each of the areas shown.
    - I hope this provides additional substantiation.

Please review the attached PDF's and let me know if they are acceptable to you in order to pass the planning and zoning review.

Thank you again and I hope you enjoyed the shark video I shared today! It was pretty awesome!

Please confirm receipt of this information.

**Joe Romero, LEED AP**
***President***
The R3 Group, LLC
P: 801-808-0063 | E: joe@rthreegroup.com

---

**From:** Millcreek Utah <wo@iworq.net>
**Sent:** Wednesday, November 12, 2025 9:17 AM
**To:** Joe Romero <joe@rthreegroup.com>
**Subject:** Millcreek Permit # 252009 - 3652 E AURORA CIR

Applicant,

Engineering has this permit denied until the notes on the plans are addressed. Please see the 1st review, the RL's notes are attached to this email. The site needs a stamped grading drainage plan, a completed hazard disclosure and a few notes need to be transferred to the civil pages. Once the corrections are made to the 1st civil review plan set, the affected pages are to be delivered directly to me via email for the 2nd review.

Any engineering questions or comments you may have regarding this review can be directed to me at your convenience.

Regards.

Ryan Bagshaw
DEVELOPMENT REVIEW / SPECIAL PROJECTS COORDINATOR
Office: 801.214.2664
rbagshaw@millcreekut.gov

**Date:** 11/12/2025
**Permit #:** 252009
**Permit Date:** 11/10/2025
**Review Date:** 11/10/2025
**Permit Type:** Residential Addition
**Review Type:** Public Works/Engineering
**Target Date:** 11/20/2025
**Scheduled Time:** 00:00
**Completed Date:** 11/12/2025
**Description:** 1st Engineering review.
**Review Status:** Denied
**Assigned To:** Ryan Bagshaw
**Time In:** 00:00
**Time Out:** 00:00
**Hours:** 0.0

**Property Information**
Parcel#: 16363510170000 J ROMERO FAMILY TRUST 12/14/2022

J ROMERO FAMILY TRUST 12/14/2022 3652 E AURORA CIR
3652 E AURORA CIR MILLCREEK UT, UT 84124
Zoning: RLot: Block:

## Uploaded Files

| Date | File Name | Uploaded By |
|---|---|---|
| 11/12/2025 | 29380530-252009 Geological-Hazards-Disclosure.pdf | Ryan Bagshaw |
| 11/12/2025 | 29380512-252009 Plans 1.pdf | Ryan Bagshaw |

Outlook

## Fw: Millcreek Permit # 252009 - 3652 E AURORA CIR

**From** Joe Romero <joe@rthreegroup.com>
**Date** Mon 11/17/2025 7:59 PM
**To** cestudillo@millcreekut.gov <cestudillo@millcreekut.gov>

1 attachment (469 KB)
SD1_1_P&Z Study for PR Response 11-17-2025.pdf;

Mr. Estudillo,

Good evening, I received your plan review response regarding my proposed home addition and have read the information you provided. I believe I do in fact comply with the requirements of setbacks, lot coverage and the 8'-0" high & 45 degree building envelope requirements outlined in the document. I believe your calculations do not comply with the requirements on the code, are larger than actual square footages and also the rebuild areas is included in the existing residence square footage and I believe you double calculated it. It is my understanding, all coverage areas are based on "footprint" of the structure so I have included all calculations on this new plan.

In order to demonstrate I comply with, I have created a Planning and Zoning plan showing ALL requirements listed in the document provided. I have outlined the areas of the code and listed all heights, dimensions, setbacks, etc. on the plan.

I would ask that you please reconsider your denial with this additional information and approve this addition set. Upon your review, if you still have concerns regarding this information, I would ask that you please call me to discuss.

Thank you for your time and consideration.

**Joe Romero**
P: 801-808-0063 | E: joe@rthreegroup.com

Outlook

## Re: Millcreek Permit # 252009 - 3652 E AURORA CIR

**From** Joe Romero <joe@rthreegroup.com>
**Date** Mon 11/17/2025 12:11 PM
**To** cestudillo@millcreek.us <cestudillo@millcreek.us>

Carlos,

May I have your phone number so I can call you to discuss and better understand your plan review responses???

Or you can call me at 801-808-0063.

Thank you,

Joe Romero

Sent on the go - please forgive me for any errors.

JoRo

> On Nov 17, 2025, at 11:21 AM, Millcreek Utah <wo@iworq.net> wrote:
>
> Denied under scope of work. Applicant exceed the maximum lot coverage allowed in the R-1-8 zone (33%).
>
> 9,583 SF X 33% = 3,163 SF (maximum lot coverage allowed)
> 3900 (existing residence) + 721(new addition) + 349 (rebuild) + 164 (shed) = 5134 SF = 53%
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> Applicant must also provide a building envelope as per 18.36 SINGLE-HOUSEHOLD RESIDENTIAL (R-1) ZONES. (https://millcreek.municipalcodeonline.com/book?type=planzone#name=18.36_SINGLE-HOUSEHOLD_RESIDENTIAL_(R-1)_ZONES).
>
> Any new plans must be sent to cestudillo@millcreekut.gov.
>
> Best,
> Carlos Estudillo.

**Date:** 11/17/2025
**Permit #:** 252009
**Permit Date:** 11/10/2025
**Review Date:** 11/10/2025
**Permit Type:** Residential Addition
**Review Type:** Planning and Zoning
**Target Date:** 11/20/2025
**Scheduled Time:** 00:00
**Completed Date:** 11/17/2025
**Description:**
**Review Status:** Denied
**Assigned To:** Carlos Estudillo
**Time In:** 00:00
**Time Out:** 00:00
**Hours:** 0.0

**Notes**

11/17/2025 Denied under scope of work. Applicant exceed the maximum lot coverage allowed in the R-1-8 zone (33%).

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Best,

Carlos Estudillo.

**Property Information**

Parcel#: 16363510170000
J ROMERO FAMILY TRUST 12/14/2022
3652 E AURORA CIR
Zoning: RLot: Block:

J ROMERO FAMILY TRUST 12/14/2022
3652 E AURORA CIR
MILLCREEK UT, UT 84124

Outlook

## Re: [Ext] Millcreek Permit # 252009 - 3652 E AURORA CIR

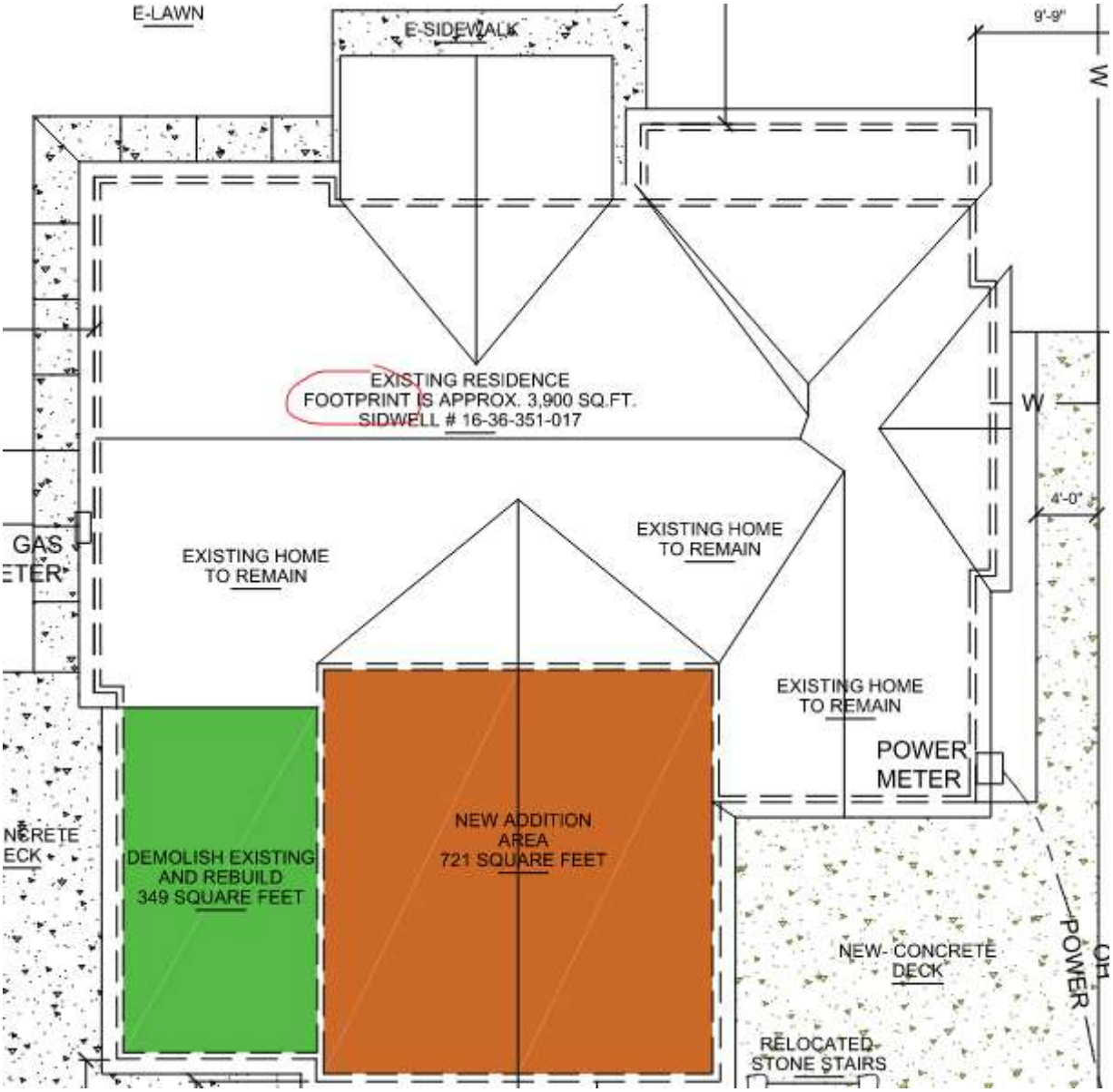
**From** Joe Romero <joe@rthreegroup.com>
**Date** Tue 11/18/2025 6:52 PM
**To** Carlos Estudillo <cestudillo@millcreekut.gov>

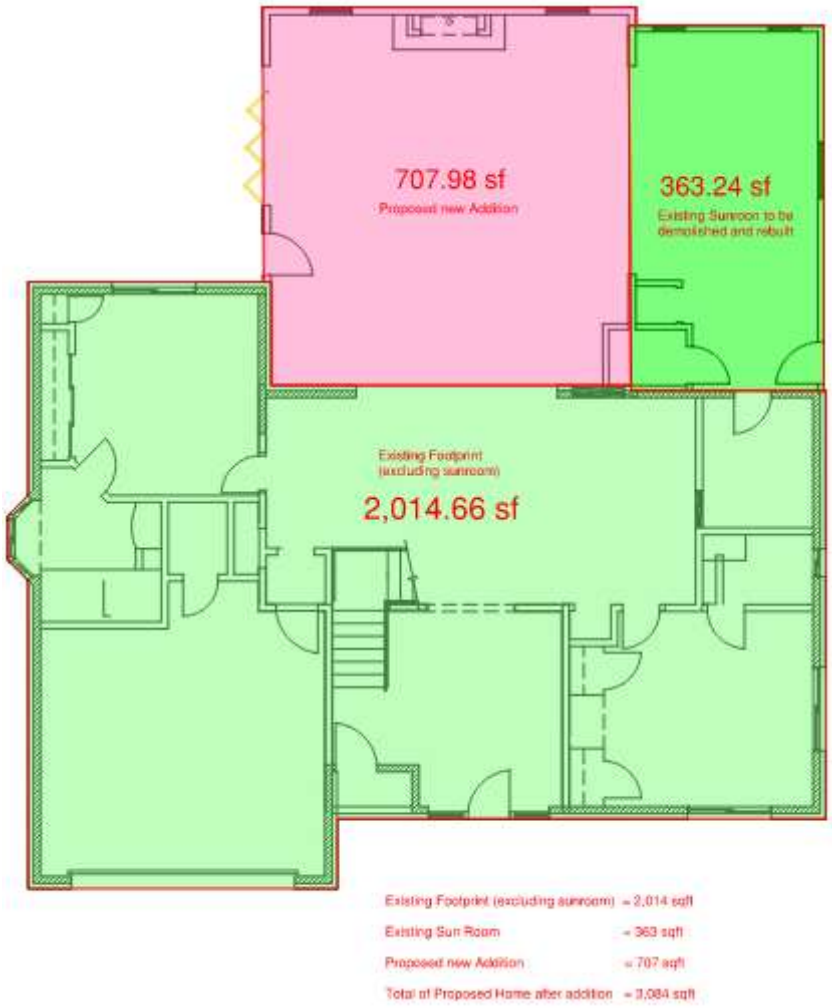
1 attachment (27 KB)
1st Floor Plan Square Footage.pdf;

Mr. Estudillo,

Thank you for your response and I apologize I missed your call. I was in a meeting and was unable to step away. I want to first start off by acknowledging you were correct, and it appears the Site Plan was labeled incorrectly, which is why your initial calculations seemed to far off to me. (See below). The site plan should have stated the ***overall square footage*** (not footprint) of the home (including 1st, 2nd, Garage) was approximately 3,900 sqft. I am certain it is actually under 3,900; however, that was estimated.

I have attached a PDF plan with take-off area to show the actual square footage of existing 1$^{st}$ floor (including the existing sunroom) and then the new addition. It demonstrates the Total Square footage of the existing home (including existing sunroom) "before" the addition is 2,377 sqft and "after" the addition would be 3,084 square feet. Again, I apologize about this error in the drafting and labeling of the original site plan.


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9'-9"
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Ultimately, I would like to know what the process is to get this design approved through your department. Are you available tomorrow (Wednesday) afternoon for me to come into your office to review everything with you and discuss a reasonable path forward?

I could come down around 2:00 or 3:00 pm? Would that work for you?

**Joe Romero, LEED AP**
P: 801-808-0063 | E: joe@rthreegroup.com

---

**From:** Carlos Estudillo <cestudillo@millcreekut.gov>
**Sent:** Tuesday, November 18, 2025 4:55 PM
**To:** Joe Romero <joe@rthreegroup.com>
**Subject:** RE: [Ext] Millcreek Permit # 252009 - 3652 E AURORA CIR

Joe,

**To:** Joe Romero <joe@rthreegroup.com>
**Subject:** Millcreek Permit # 252009 - 3652 E AURORA CIR

Denied under scope of work. Applicant exceed the maximum lot coverage allowed in the R-1-8 zone (33%).

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**Permit Date:** 11/10/2025
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**Review Type:** Planning and Zoning
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**Completed Date:** 11/17/2025
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**Review Status:** Denied
**Assigned To:** Carlos Estudillo
**Time In:** 00:00
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**Hours:** 0.0

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MILLCREEK UT, UT 84124

Outlook

## Re: [Ext] Millcreek Permit # 252009 - 3652 E AURORA CIR

**From** Joe Romero <joe@rthreegroup.com>
**Date** Mon 11/24/2025 2:48 PM
**To** Carlos Estudillo <cestudillo@millcreekut.gov>

1 attachment (27 KB)
1st Floor Plan Square Footage.pdf;

Carlos,

Thank you for the confirmation that Millcreek City measures the lot coverage square footage by utilizing the "footprint" method. I agreed with your determination which is supported by industry standards of the American Planning Association (APA) who outlines this method in their Planning Advisory Services (PAS) report # 111. As I am sure we can both agree the APA is the National Standard for Planning.

With this being said, APA PAS Report 111 defines how the floor area ratio should be calculated which is measured from the "exterior" faces of exterior walls or from the centerline of walls separating two buildings (not the case for my home) and at the finished grade elevation. The APA also states that when calculating floor area ratio, roof overhangs (less than 2 feet) and open porches "***are not to be included***" in the calculation.

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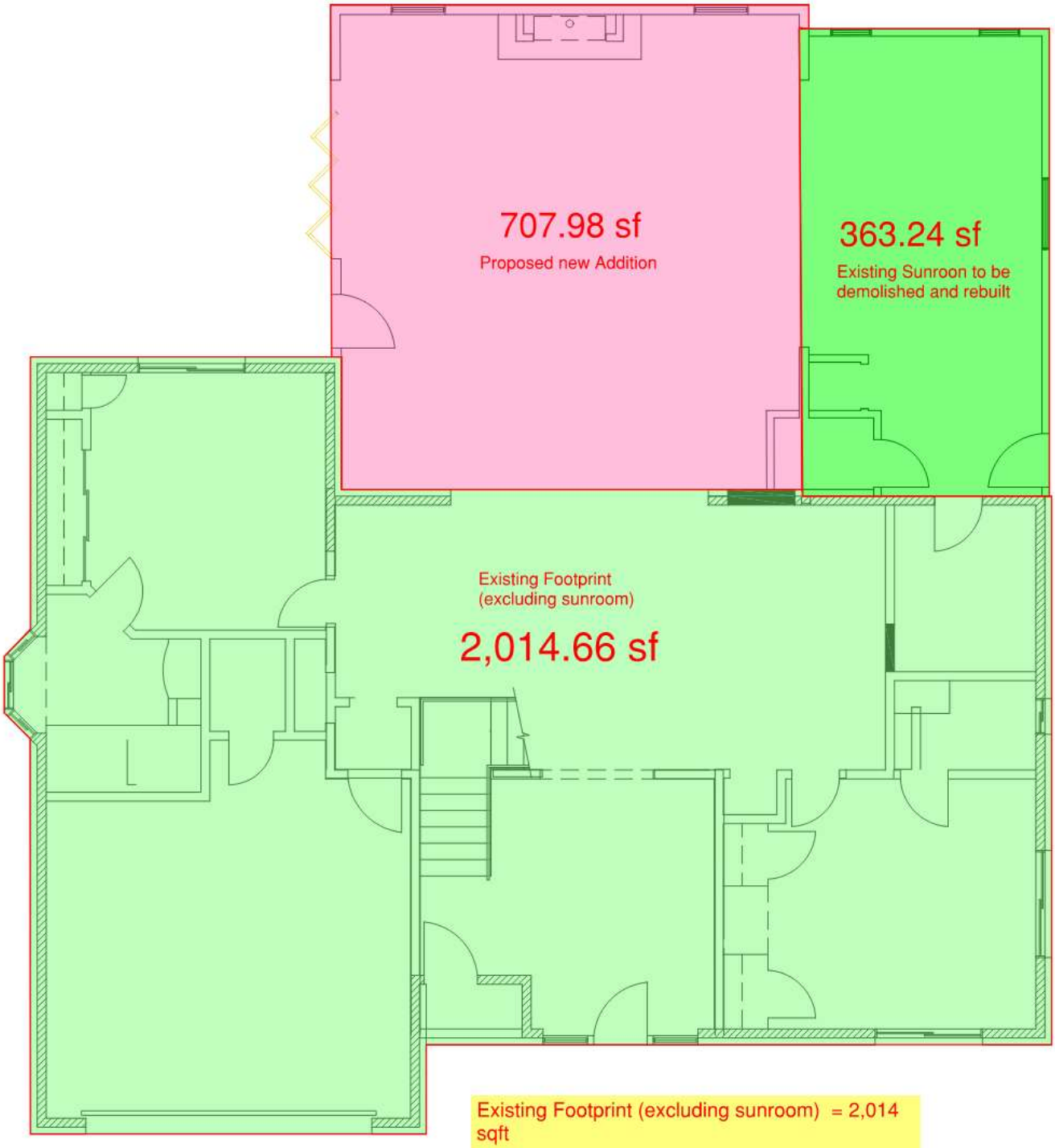
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My concern is that your area calculations are not accurate as you are simply taking a non-scaled aerial view of the home showing the front porch along with roof overhangs that are 16" wide (and should not be calculated).

I again would ask for you to review the drawing below (and attached PDF) as these are the actual, scaled, square footages for each area of the home.

I truly believe not allowing this new addition, which in my opinion, falls within the zoning requirements of Millcreek City would create a hardship for this addition and for my family.

Lastly, as I mentioned several times before, I would be happy to sit down with you in person to finalize this phase of the plan review.




| | |
|---|---|
| Existing Footprint (excluding sunroom) sqft | = 2,014 |
| Existing Sun Room sqft | = 363 |
| Proposed new Addition sqft | = 707 |
| Total of Proposed Home after addition sqft | = 3,084 |

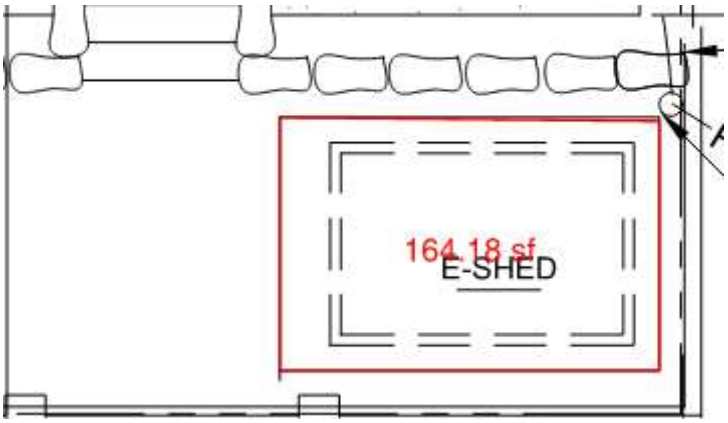
**Joe Romero, LEED AP**
***President***
The R3 Group, LLC
P: 801-808-0063 | E: joe@rthreegroup.com

**From:** Carlos Estudillo <cestudillo@millcreekut.gov>
**Sent:** Friday, November 21, 2025 4:35 PM
**To:** Joe Romero <joe@rthreegroup.com>
**Subject:** RE: [Ext] Millcreek Permit # 252009 - 3652 E AURORA CIR

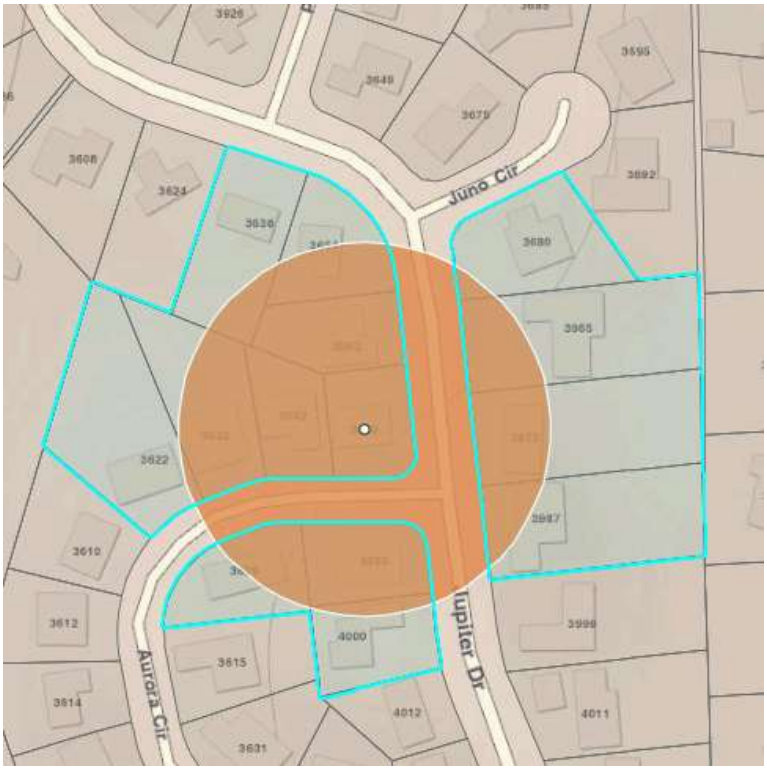
Joe,

As per the lot coverage, staff indeed measures footprint, rather than overall square footage. I took a rough estimate of your current lot coverage, and it seems that the main residence and the shed, add up to about 3,136 SF. While this is just a rough measurement, I estimate that you already are covering about 32.9% out of 33% lot coverage. Even if you remove the shed, that'll only give you about 200 SF to work with, meaning that the new addition wouldn't be possible. We could certainly approve the sunroom, as it seems to already be existing, but the addition would certainly go beyond what we can allow you to expand, in terms of lot coverage.




In your past email, you mentioned our Neighborhood compatibility modification, which could potentially allow you to expand the lot coverage up to 38% from 33%. Roughly, this would mean that your lot coverage would hit a maximum of 3,642 SF (9538 x 38%). This would give you some wiggle room to redesign the proposed addition to maybe 600 sf instead of 700 sf to fit within the lot coverage standards. The catch is that you must provide evidence of properties with a larger lot coverage, within 200' of your property. Basically, the neighborhood compatibility modification allows you "copy" your neighbors, given they have a larger lot coverage. Below is the 200' radius if you incline to do the NCM for lot coverage. The submitted survey must be completed by a surveyor, licensed to practice in the state of Utah.
https://millcreek.municipalcodeonline.com/book?type=planzone#name=18.36.090_Neighborhood_Compatibility_Modification_(NCM)




Best,

**Carlos Estudillo**
**Planner ll**
Office: 801-214-2763
Millcreekut.gov

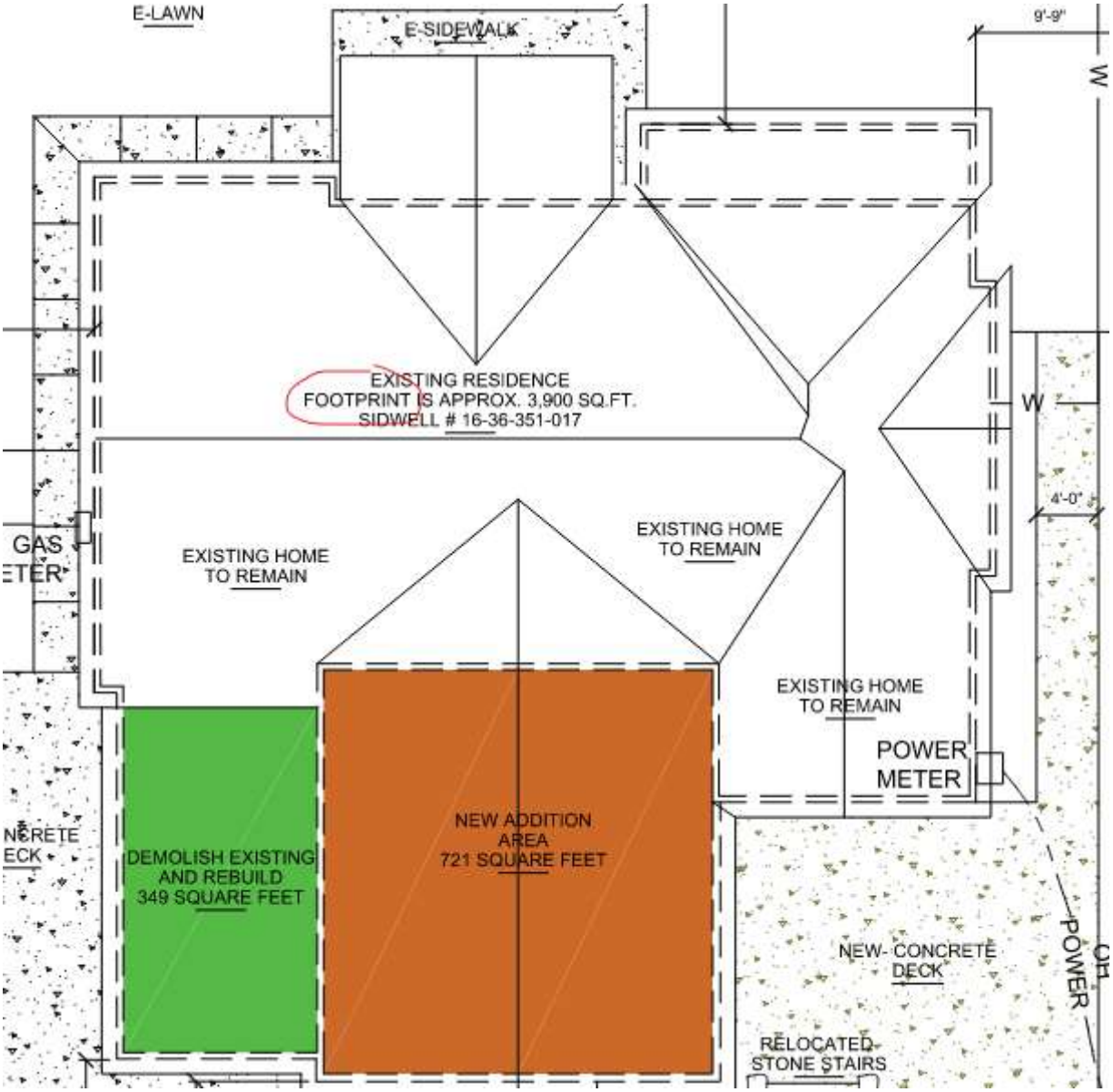
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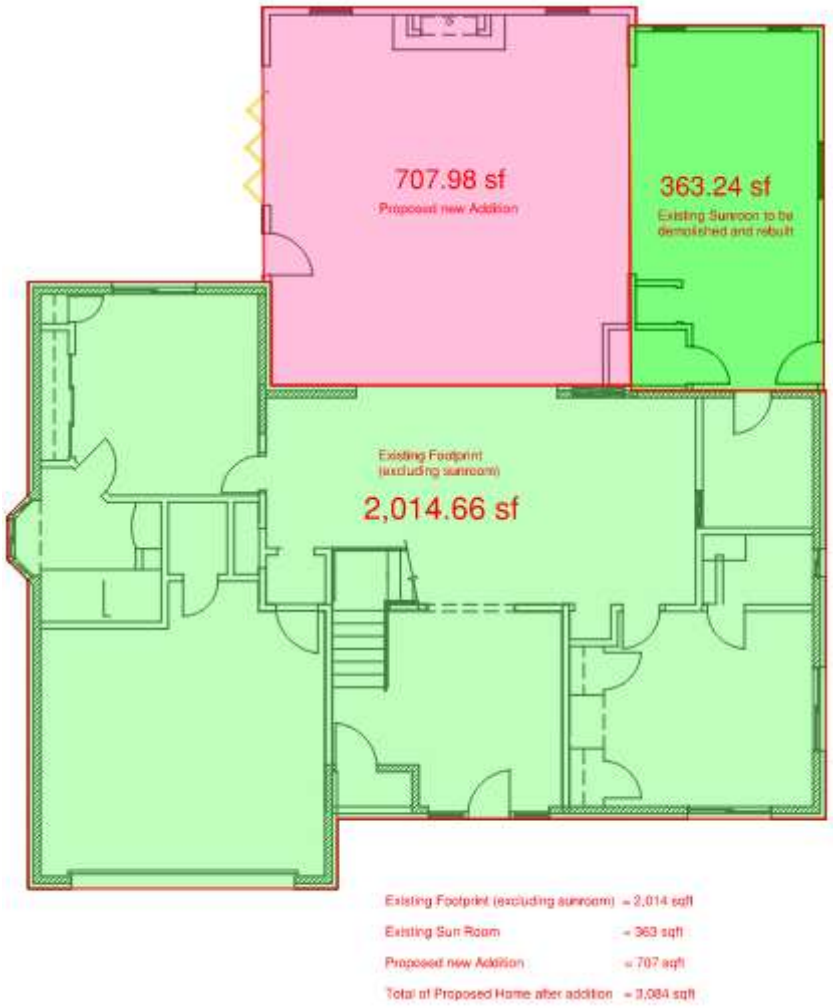
**From:** Joe Romero <joe@rthreegroup.com>
**Sent:** Tuesday, November 18, 2025 6:53 PM
**To:** Carlos Estudillo <cestudillo@millcreekut.gov>
**Subject:** Re: [Ext] Millcreek Permit # 252009 - 3652 E AURORA CIR

Mr. Estudillo,

Thank you for your response and I apologize I missed your call. I was in a meeting and was unable to step away. I want to first start off by acknowledging you were correct, and it appears the Site Plan was labeled incorrectly, which is why your initial calculations seemed to far off to me. (See below). The site plan should have stated the ***overall square footage*** (not footprint) of the home (including 1st, 2nd, Garage) was approximately 3,900 sqft. I am certain it is actually under 3,900; however, that was estimated.

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I could come down around 2:00 or 3:00 pm? Would that work for you?

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P: 801-808-0063 | E: joe@rthreegroup.com

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**From:** Carlos Estudillo <cestudillo@millcreekut.gov>
**Sent:** Tuesday, November 18, 2025 4:55 PM
**To:** Joe Romero <joe@rthreegroup.com>
**Subject:** RE: [Ext] Millcreek Permit # 252009 - 3652 E AURORA CIR

Joe,

My calculations were done with the information provided ON the plans. I believe my calculations DO comply with code, however; it does not seem the submitted data is correct. I also went over the plans you just sent, and it shows that you are still over the lot coverage. The building envelope is also not currently complaint.

I have left you a voicemail, as I attempted to call you to go over the regulations of the R-1-8 zone. Happy to discuss our ordinance with you in order to comply to our code.

Best,

**Carlos Estudillo**
**Planner ll**
Office: 801-214-2763
Millcreekut.gov




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**From:** Joe Romero <joe@rthreegroup.com>
**Sent:** Monday, November 17, 2025 7:59 PM
**To:** Carlos Estudillo <cestudillo@millcreekut.gov>
**Subject:** Fw: [Ext] Millcreek Permit # 252009 - 3652 E AURORA CIR

Mr. Estudillo,

Good evening, I received your plan review response regarding my proposed home addition and have read the information you provided. I believe I do in fact comply with the requirements of setbacks, lot coverage and the 8'-0" high & 45 degree building envelope requirements outlined in the document. I believe your calculations do not comply with the requirements on the code, are larger than actual square footages and also the rebuild areas is included in the existing residence square footage and I believe you double calculated it. It is my understanding, all coverage areas are based on "footprint" of the structure so I have included all calculations on this new plan.

In order to demonstrate I comply with, I have created a Planning and Zoning plan showing ALL requirements listed in the document provided. I have outlined the areas of the code and listed all heights, dimensions, setbacks, etc. on the plan.

I would ask that you please reconsider your denial with this additional information and approve this addition set. Upon your review, if you still have concerns regarding this information, I would ask that you please call me to discuss.

Thank you for your time and consideration.

**Joe Romero**
P: 801-808-0063 | E: joe@rthreegroup.com

---

**From:** Millcreek Utah <wo@iworq.net>
**Sent:** Monday, November 17, 2025 11:20 AM

**To:** Joe Romero <joe@rthreegroup.com>
**Subject:** Millcreek Permit # 252009 - 3652 E AURORA CIR

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**Date:** 11/17/2025
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**Permit Date:** 11/10/2025
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**Review Type:** Planning and Zoning
**Target Date:** 11/20/2025
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**Description:**
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Outlook

## Fw: [Ext] Millcreek Permit # 252009 - 3652 E AURORA CIR

**From** Joe Romero <joe@rthreegroup.com>
**Date** Mon 12/8/2025 3:50 PM
**To** Carlos Estudillo <cestudillo@millcreekut.gov>

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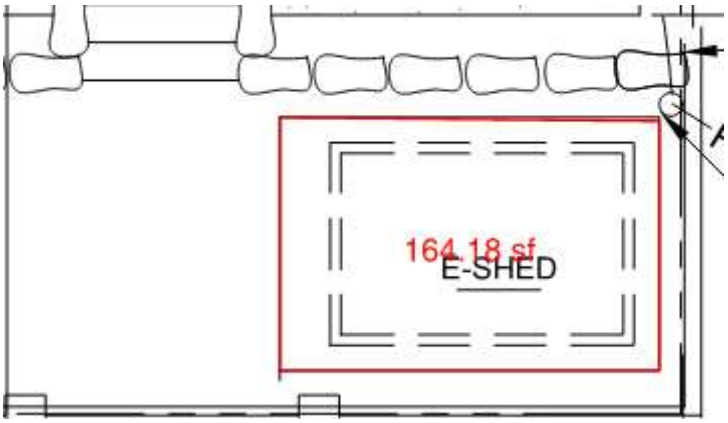
Carlos,

I am following up from the email I sent before Thanksgiving on November 24, 2025. Please confirm the attached PDF of the scaled footprint of the existing footprint of the home and requested addition does in fact fall under the 33% lot coverage maximum requirement for the R-1-8 zone.

As I mentioned in a couple previous emails to you, I acknowledge the R-1-8 zone has a recommended maximum lot coverage of 33%; however, I have provided you with "scaled" drawings (with actual square footages) demonstrating that ***"with" the addition, the total lot coverage will only be 3,084 square feet with is (3084 / 9,583 (.22 ac) = 31%*** and therefore, should still have room for the additional 96 square foot shed on site.

I'll again express my concern with your method of take-off which is from an aerial photograph that is not accurately scaled, and you are showing all roof overhangs, patios, etc. that should not be calculated in the footprint method as per the APA. It's clear and evident that your take off method does not align with APA (***See below for the images you provided from your email below dated November 21, 2025***) showing the shed is 164 sqft. As you can see, you have inadvertently taken off the roof overhangs, not the footprint of the shed which is only 96 square feet. It is clear you have taken this same take-off approach for the existing home as well.




I would be happy to sit down with you to discuss and do the plan take off together so you can confirm the square footages are accurate.

I am respectfully requesting that this renovation be approved through your department so the plans can move onto the Building Department for their review.

**Joe Romero, LEED AP**
***President***
The R3 Group, LLC
P: 801-808-0063 | E: joe@rthreegroup.com

**From:** Joe Romero <joe@rthreegroup.com>
**Sent:** Monday, November 24, 2025 2:48 PM
**To:** Carlos Estudillo <cestudillo@millcreekut.gov>
**Subject:** Re: [Ext] Millcreek Permit # 252009 - 3652 E AURORA CIR

Carlos,

Thank you for the confirmation that Millcreek City measures the lot coverage square footage by utilizing the "footprint" method. I agreed with your determination which is supported by industry standards of the American Planning Association (APA) who outlines this method in their Planning Advisory Services (PAS) report # 111. As I am sure we can both agree the APA is the National Standard for Planning.

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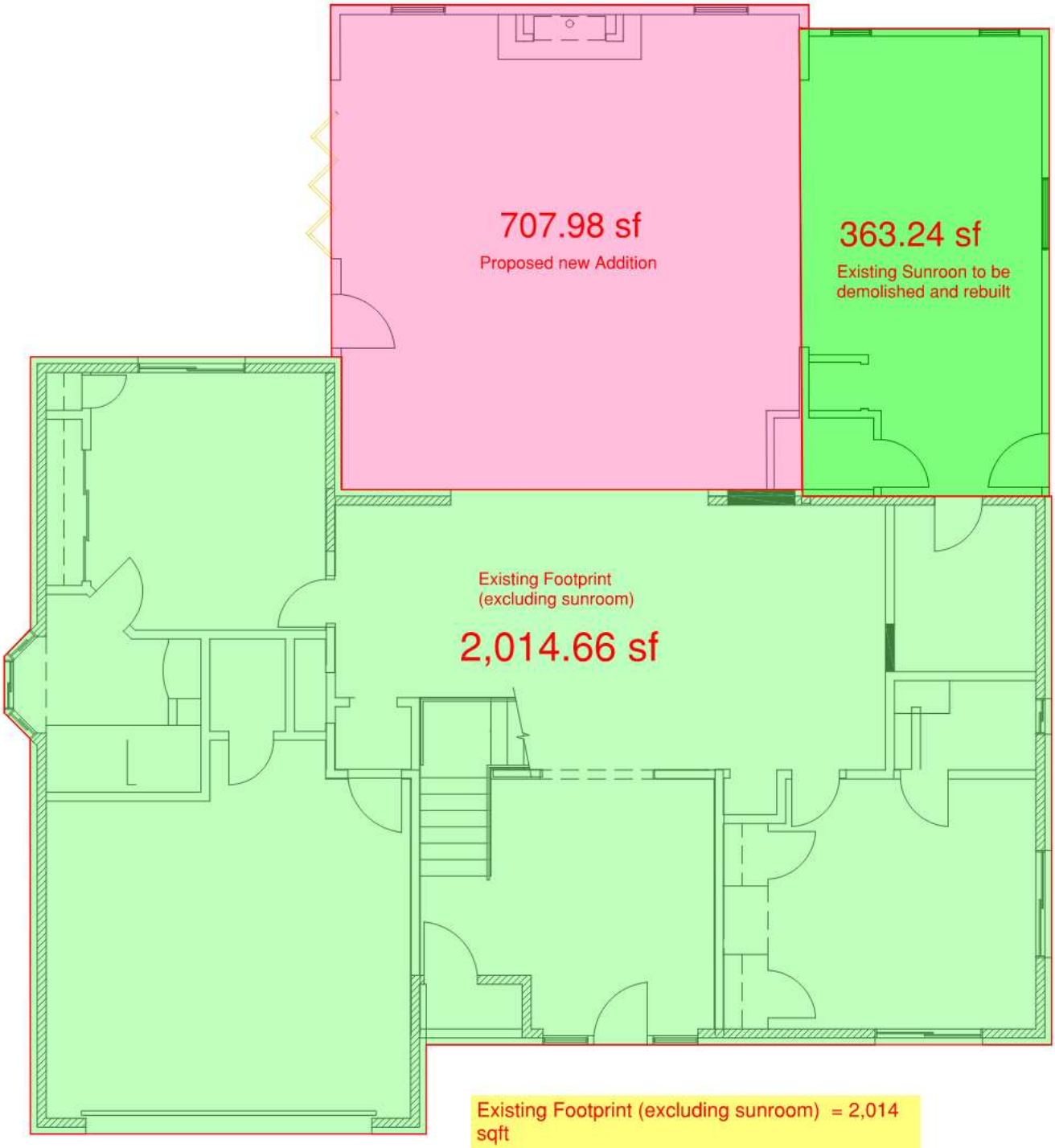
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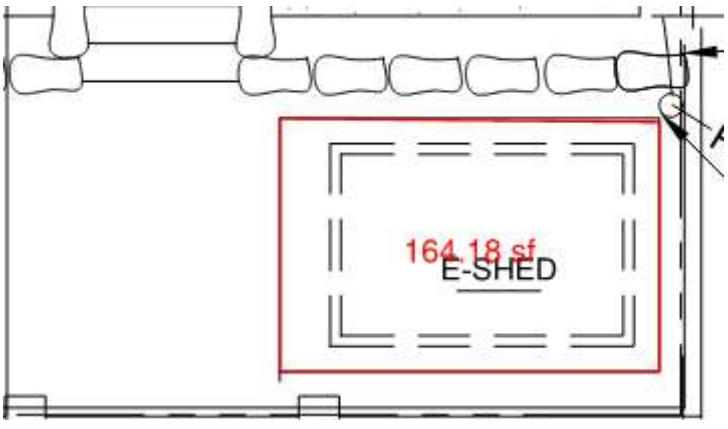
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***President***
The R3 Group, LLC
P: 801-808-0063 | E: joe@rthreegroup.com

**From:** Carlos Estudillo <cestudillo@millcreekut.gov>
**Sent:** Friday, November 21, 2025 4:35 PM
**To:** Joe Romero <joe@rthreegroup.com>
**Subject:** RE: [Ext] Millcreek Permit # 252009 - 3652 E AURORA CIR

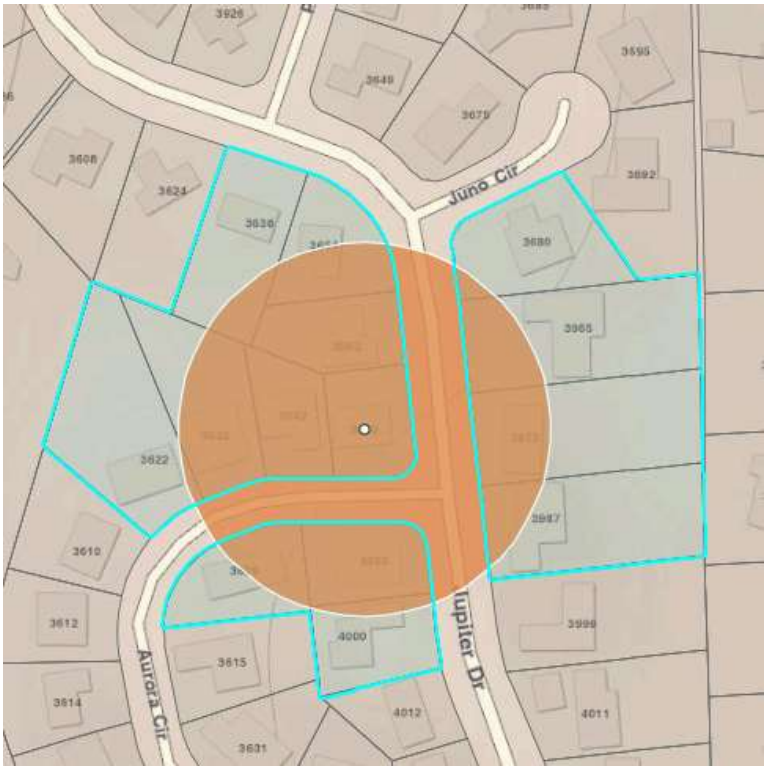
Joe,

As per the lot coverage, staff indeed measures footprint, rather than overall square footage. I took a rough estimate of your current lot coverage, and it seems that the main residence and the shed, add up to about 3,136 SF. While this is just a rough measurement, I estimate that you already are covering about 32.9% out of 33% lot coverage. Even if you remove the shed, that'll only give you about 200 SF to work with, meaning that the new addition wouldn't be possible. We could certainly approve the sunroom, as it seems to already be existing, but the addition would certainly go beyond what we can allow you to expand, in terms of lot coverage.



In your past email, you mentioned our Neighborhood compatibility modification, which could potentially allow you to expand the lot coverage up to 38% from 33%. Roughly, this would mean that your lot coverage would hit a maximum of 3,642 SF (9538 x 38%). This would give you some wiggle room to redesign the proposed addition to maybe 600 sf instead of 700 sf to fit within the lot coverage standards. The catch is that you must provide evidence of properties with a larger lot coverage, within 200' of your property. Basically, the neighborhood compatibility modification allows you "copy" your neighbors, given they have a larger lot coverage. Below is the 200' radius if you incline to do the NCM for lot coverage. The submitted survey must be completed by a surveyor, licensed to practice in the state of Utah.
https://millcreek.municipalcodeonline.com/book?type=planzone#name=18.36.090_Neighborhood_Compatibility_Modification_(NCM)




Best,

**Carlos Estudillo**
**Planner II**
Office: 801-214-2763
Millcreekut.gov

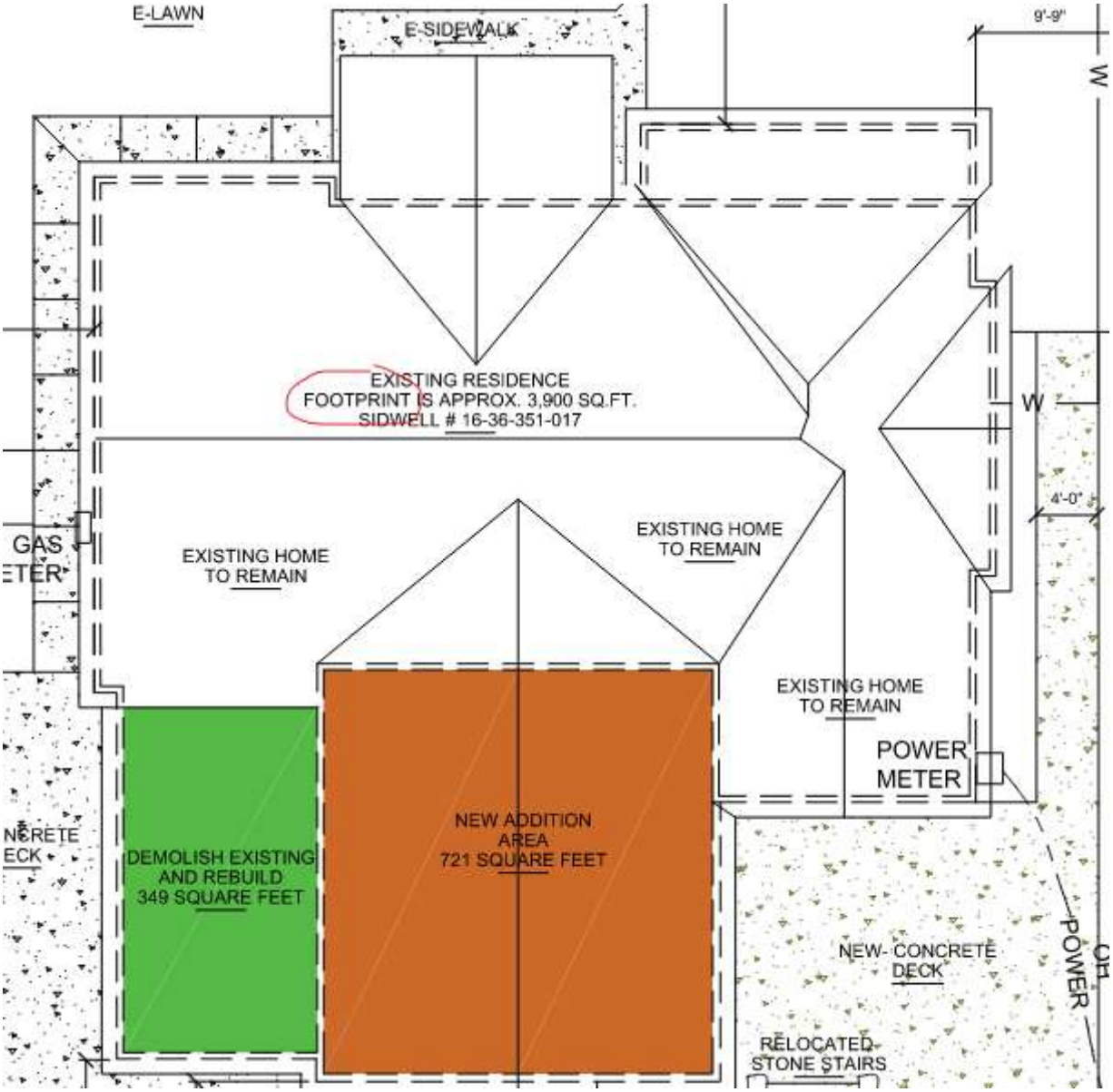
Disclaimer: Information, comments, or recommendations provided in this email are offered as a courtesy and are non-binding. They should not be interpreted as a formal review, approval, or determination by Millcreek.

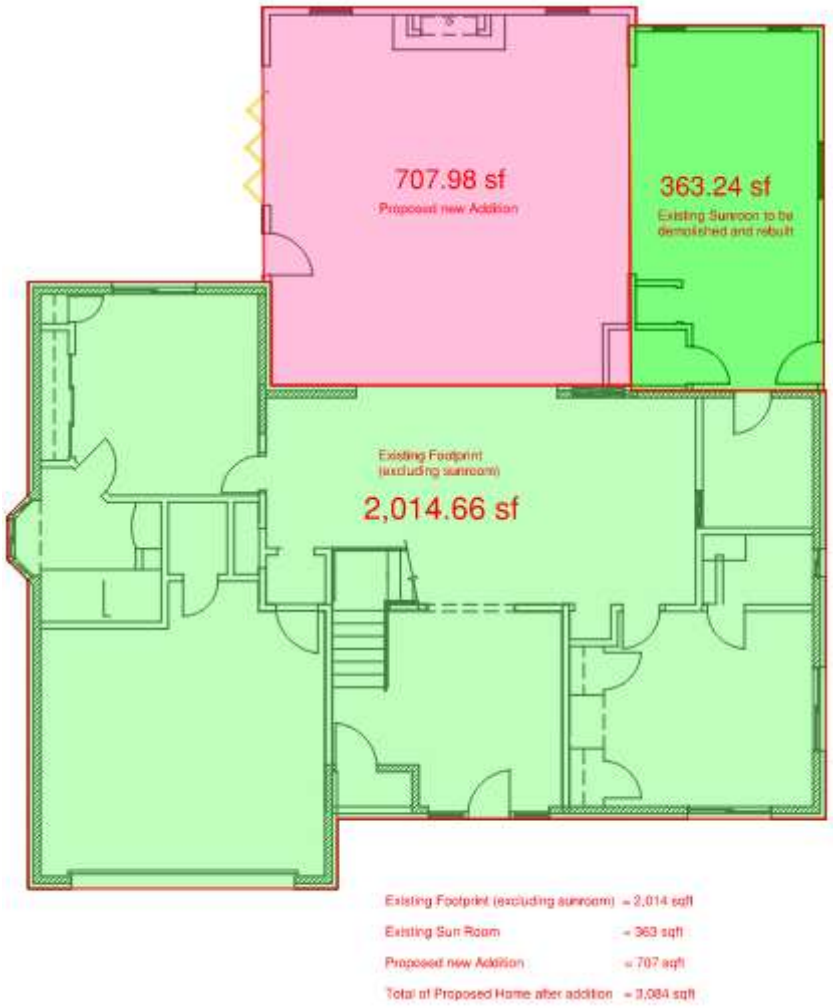
**From:** Joe Romero <joe@rthreegroup.com>
**Sent:** Tuesday, November 18, 2025 6:53 PM
**To:** Carlos Estudillo <cestudillo@millcreekut.gov>
**Subject:** Re: [Ext] Millcreek Permit # 252009 - 3652 E AURORA CIR

Mr. Estudillo,

Thank you for your response and I apologize I missed your call. I was in a meeting and was unable to step away. I want to first start off by acknowledging you were correct, and it appears the Site Plan was labeled incorrectly, which is why your initial calculations seemed to far off to me. (See below). The site plan should have stated the ***overall square footage*** (not footprint) of the home (including 1st, 2nd, Garage) was approximately 3,900 sqft. I am certain it is actually under 3,900; however, that was estimated.

I have attached a PDF plan with take-off area to show the actual square footage of existing 1st floor (including the existing sunroom) and then the new addition. It demonstrates the Total Square footage of the existing home (including existing sunroom) "before" the addition is 2,377 sqft and "after" the addition would be 3,084 square feet. Again, I apologize about this error in the drafting and labeling of the original site plan.


E-LAWN
E-SIDEWALK
9'-9"
W
EXISTING RESIDENCE
FOOTPRINT IS APPROX. 3,900 SQ.FT.
SIDWELL # 16-36-351-017
W
4'-0"
GAS
ETER
EXISTING HOME
TO REMAIN
EXISTING HOME
TO REMAIN
EXISTING HOME
TO REMAIN
POWER
METER
NCRETE
ECK
DEMOLISH EXISTING
AND REBUILD
349 SQUARE FEET
NEW ADDITION
AREA
721 SQUARE FEET
NEW- CONCRETE
DECK
POWER
OH
RELOCATED
STONE STAIRS




I acknowledge that fact that I am over the lot square footage by approximately 150-200 square feet. I would like to discuss what my options would be for this. Also, I thought I had put together the envelope drawings based on the Millcreek standards document, and so if you believe they are incorrect, if you could better explain the elements that are not compliant, that will help me get it right. This will be a learning opportunity for me and so I am open to learning from you.

Ultimately, I would like to know what the process is to get this design approved through your department. Are you available tomorrow (Wednesday) afternoon for me to come into your office to review everything with you and discuss a reasonable path forward?

I could come down around 2:00 or 3:00 pm? Would that work for you?

**Joe Romero, LEED AP**
P: 801-808-0063 | E: joe@rthreegroup.com

---

**From:** Carlos Estudillo <cestudillo@millcreekut.gov>
**Sent:** Tuesday, November 18, 2025 4:55 PM
**To:** Joe Romero <joe@rthreegroup.com>
**Subject:** RE: [Ext] Millcreek Permit # 252009 - 3652 E AURORA CIR

Joe,

My calculations were done with the information provided ON the plans. I believe my calculations DO comply with code, however; it does not seem the submitted data is correct. I also went over the plans you just sent, and it shows that you are still over the lot coverage. The building envelope is also not currently complaint.

I have left you a voicemail, as I attempted to call you to go over the regulations of the R-1-8 zone. Happy to discuss our ordinance with you in order to comply to our code.

Best,

**Carlos Estudillo**
**Planner ll**
Office: 801-214-2763
Millcreekut.gov

Disclaimer: Information, comments, or recommendations provided in this email are offered as a courtesy and are non-binding. They should not be interpreted as a formal review, approval, or determination by Millcreek.

**From:** Joe Romero <joe@rthreegroup.com>
**Sent:** Monday, November 17, 2025 7:59 PM
**To:** Carlos Estudillo <cestudillo@millcreekut.gov>
**Subject:** Fw: [Ext] Millcreek Permit # 252009 - 3652 E AURORA CIR

Mr. Estudillo,

Good evening, I received your plan review response regarding my proposed home addition and have read the information you provided. I believe I do in fact comply with the requirements of setbacks, lot coverage and the 8'-0" high & 45 degree building envelope requirements outlined in the document. I believe your calculations do not comply with the requirements on the code, are larger than actual square footages and also the rebuild areas is included in the existing residence square footage and I believe you double calculated it. It is my understanding, all coverage areas are based on "footprint" of the structure so I have included all calculations on this new plan.

In order to demonstrate I comply with, I have created a Planning and Zoning plan showing ALL requirements listed in the document provided. I have outlined the areas of the code and listed all heights, dimensions, setbacks, etc. on the plan.

I would ask that you please reconsider your denial with this additional information and approve this addition set. Upon your review, if you still have concerns regarding this information, I would ask that you please call me to discuss.

Thank you for your time and consideration.

**Joe Romero**
P: 801-808-0063 | E: joe@rthreegroup.com

---

**From:** Millcreek Utah <wo@iworq.net>
**Sent:** Monday, November 17, 2025 11:20 AM
**To:** Joe Romero <joe@rthreegroup.com>
**Subject:** Millcreek Permit # 252009 - 3652 E AURORA CIR

Denied under scope of work. Applicant exceed the maximum lot coverage allowed in the R-1-8 zone (33%).

9,583 SF X 33% = 3,163 SF (maximum lot coverage allowed)
3900 (existing residence) + 721(new addition) + 349 (rebuild) + 164 (shed) = 5134 SF = 53%

Applicant must also provide a building envelope as per 18.36 SINGLE-HOUSEHOLD RESIDENTIAL (R-1) ZONES. (https://millcreek.municipalcodeonline.com/book?type=planzone#name=18.36_SINGLE-HOUSEHOLD_RESIDENTIAL_(R-1)_ZONES).

Any new plans must be sent to cestudillo@millcreekut.gov.

Best,
Carlos Estudillo.



**Date:** 11/17/2025
**Permit #:** 252009
**Permit Date:** 11/10/2025
**Review Date:** 11/10/2025
**Permit Type:** Residential Addition
**Review Type:** Planning and Zoning
**Target Date:** 11/20/2025
**Scheduled Time:** 00:00
**Completed Date:** 11/17/2025
**Description:**
**Review Status:** Denied
**Assigned To:** Carlos Estudillo
**Time In:** 00:00
**Time Out:** 00:00
**Hours:** 0.0

**Notes**

11/17/2025 Denied under scope of work. Applicant exceed the maximum lot coverage allowed in the R-1-8 zone (33%).

9,583 SF X 33% = 3,163 SF (maximum lot coverage allowed)
3900 (existing residence) + 721(new addition) + 349 (rebuild) + 164 (shed) = 5134 SF = 53%

Applicant must also provide a building envelope as per 18.36 SINGLE-HOUSEHOLD RESIDENTIAL (R-1) ZONES. (https://millcreek.municipalcodeonline.com/book?type=planzone#name=18.36_SINGLE-HOUSEHOLD_RESIDENTIAL_(R-1)_ZONES).

Any new plans must be sent to cestudillo@millcreekut.gov.

Best,
Carlos Estudillo.

**Property Information**

Parcel#: 16363510170000
J ROMERO FAMILY TRUST 12/14/2022
3652 E AURORA CIR
Zoning: RLot: Block:

J ROMERO FAMILY TRUST 12/14/2022
3652 E AURORA CIR
MILLCREEK UT, UT 84124

Outlook

## Building Permit # 252009 - Formal Request for Corrective Application of Lot Coverage Standards and Administrative Action

**From** Joe Romero <joe@rthreegroup.com>
**Date** Tue 12/23/2025 2:46 PM
**To** flilly@millcreekut.gov <flilly@millcreekut.gov>

2 attachments (235 KB)
Letter to Mr. Lilly - Planning Director, Millcreek City 12-22-2025.pdf; Attachment B- Scaled Drawings - 12-22-2025.pdf;

Mr. Lilly,

Please see the attached letter and documentation regarding my current in process Building Permit Application for my home.

I respectfully request that you contact me upon your review and that we can meet in person if there are additional questions or concerns regarding the immediate approval of the planning and zoning acceptance of my proposed addition.

Thank you.

**Joe Romero, LEED AP**
***President***
The R3 Group, LLC
P: 801-808-0063 | E: joe@rthreegroup.com

Outlook

## Re: [Ext] Building Permit # 252009 - Formal Request for Corrective Application of Lot Coverage Standards and Administrative Action

**From** Joe Romero <joe@rthreegroup.com>
**Date** Mon 1/5/2026 8:32 PM
**To** Francis Lilly <flilly@millcreekut.gov>; Carlos Estudillo <cestudillo@millcreekut.gov>

Mr. Lilly,

Thank you for your response and I have reviewed all documents you have provided, which I believe clears up a lot and quite frankly, are the documents that clearly substantiate this addition should be approved.

Reflecting back through the last couple of months, I do believe we are at this juncture due to simple "miscommunication" on my part, and I believe on Mr. Estudillo's part as well.

Although I have asked for a face-to-face meeting in each of my correspondences with Mr. Estudillo, I believe that if you can provide me a 30 minute in person meeting tomorrow (Tuesday) to go over my responses to your comments, I truly believe we will all feel much better about the actual square footages of the existing home and allowable lot coverage and I'm optimistic that we can resolve this matter in a mutually acceptable way.

I respectfully ask for 30 minutes of your time tomorrow and I will make myself available all day long.

Joe Romero
801-808-0063

**From:** Joe Romero <joe@rthreegroup.com>
**Sent:** Tuesday, December 23, 2025 6:14 PM
**To:** Francis Lilly <flilly@millcreekut.gov>
**Subject:** Re: [Ext] Building Permit # 252009 - Formal Request for Corrective Application of Lot Coverage Standards and Administrative Action

Thank you, Sir.

I look forward to hearing from you upon your return to
Get this addition approved and onto Building's review.

Joe Romero

Sent on the go - please forgive me for any errors.

JoRo

> On Dec 23, 2025, at 3:19 PM, Francis Lilly <flilly@millcreekut.gov> wrote:
>
> Hi Joe. I'm in receipt of your letter. I will be out of town until 5 January. I'll attend to the matter the week I return.
>
> Thanks, and merry Christmas
>
> Francis Lilly
>
> Get Outlook for iOS

---

**From:** Joe Romero <joe@rthreegroup.com>
**Sent:** Tuesday, December 23, 2025 2:46:40 PM
**To:** Francis Lilly <flilly@millcreekut.gov>
**Subject:** [Ext] Building Permit # 252009 - Formal Request for Corrective Application of Lot Coverage Standards and Administrative Action

Mr. Lilly,

Please see the attached letter and documentation regarding my current in process Building Permit Application for my home.

I respectfully request that you contact me upon your review and that we can meet in person if there are additional questions or concerns regarding the immediate approval of the planning and zoning acceptance of my proposed addition.

Thank you.

**Joe Romero, LEED AP**
***President***
The R3 Group, LLC
P: 801-808-0063 | E: joe@rthreegroup.com

Outlook

## Re: [Ext] Building Permit # 252009 - Formal Request for Corrective Application of Lot Coverage Standards and Administrative Action

**From** Joe Romero <joe@rthreegroup.com>
**Date** Tue 1/6/2026 1:00 PM
**To** Francis Lilly <flilly@millcreekut.gov>; Carlos Estudillo <cestudillo@millcreekut.gov>

1 attachment (333 KB)
SD1_0 Updated 1-6-2026 P&Z Revisions.pdf;

Mr. Lilly,

In response to your previous email, I believe I discovered and now know where the miscommunication regarding this review stems from. Until your email yesterday questioning and pointing out the discrepancy from the submitted site plan, I was never informed there was a concern regarding the Property Lines as drawn or the size of the lot itself. (*This plan was simply reused from a previous addition in 2008 that SLCounty P&Z approved without issue, so I didn't think to look at changing it for this 700 sqft addition*). Based on my limited email communications from Carlos, he only questioned the footprint size of the home, and not the actual lot size or configuration. During our meeting, I will quickly explain how we got here during our meeting, what I have done to confirm every dimension on site and in the Plat Map you provided and I confidently believe everything adds up now and does demonstrate the addition is compliant with Millcreek P&Z requirements.

Nevertheless, and per your request, I have taken all information provided by you yesterday, along with my field verification of dimensions and have completely redrawn the Site Plan including all of the required elements you pointed out and requested. I also found that a "scale to fit" box was checked in Autocad which is why the previous plan's scale was slightly off. I fixed that issue, added my Lot Coverage Calculations on the plan as well and the attached PDF is scaled perfectly.

I offer the following PDF for your review prior to our meeting. I believe this revised plan will be what you need to substantiate the proposed addition still falls within the maximum lot coverage requirements in a clean, concise plan. I trust you'll be able to approve this plan so the Project's plan review and continue with Building.

Thank you for taking the time to review my proposed addition project plans, and for promptly communicating your concerns so I could address them in detail. This is all I have been trying to do for the last 2+ months. I look forward to reviewing all information at 4:00 pm.

**Joe Romero, LEED AP**
P: 801-808-0063 | E: joe@rthreegroup.com

---

**From:** Francis Lilly <flilly@millcreekut.gov>
**Sent:** Tuesday, January 6, 2026 9:57 AM
**To:** Joe Romero <joe@rthreegroup.com>; Carlos Estudillo <cestudillo@millcreekut.gov>
**Subject:** RE: [Ext] Building Permit # 252009 - Formal Request for Corrective Application of Lot Coverage Standards and Administrative Action

I propose we meet remotely at 4 pm. I can set up a Teams call. We can share information on the screen.

**Francis Xavier Lilly, AICP**
**Assistant City Manager / Planning Director**
Office: 801.214.2752
Millcreekut.gov

Disclaimer: Information, comments, or recommendations provided in this email are offered as a courtesy and are non-binding. They should not be interpreted as a formal review, approval, or determination by Millcreek.

---

**From:** Joe Romero <joe@rthreegroup.com>
**Sent:** Tuesday, January 6, 2026 9:38 AM
**To:** Francis Lilly <flilly@millcreekut.gov>; Carlos Estudillo <cestudillo@millcreekut.gov>
**Subject:** Re: [Ext] Building Permit # 252009 - Formal Request for Corrective Application of Lot Coverage Standards and Administrative Action

Thank you, Sir. I will be prepared to walk through everything with you and Carlos.

What time works best for you? I can be available anytime from 10:30 AM through end of day.

**Joe Romero, LEED AP**
***President***
The R3 Group, LLC
P: 801-808-0063 | E: joe@rthreegroup.com

---

**From:** Francis Lilly <flilly@millcreekut.gov>
**Sent:** Monday, January 5, 2026 8:36 PM
**To:** Joe Romero <joe@rthreegroup.com>; Carlos Estudillo <cestudillo@millcreekut.gov>
**Subject:** Re: [Ext] Building Permit # 252009 - Formal Request for Corrective Application of Lot Coverage Standards and Administrative Action

Happy to meet you tomorrow but nothing we talk about in the meeting will change the requirements I spelled out in the email I sent you earlier today.

I too think your addition will likely be approved. Please revise the site plan to show appropriate scales and dimensions and let us review it.

Regardless of what happens, I will need a new, accurate site plan. I'm at an impasse until I receive it.

Thank you

Francis

Get Outlook for iOS

---

**From:** Joe Romero <joe@rthreegroup.com>
**Sent:** Monday, January 5, 2026 8:32:53 PM
**To:** Francis Lilly <flilly@millcreekut.gov>; Carlos Estudillo <cestudillo@millcreekut.gov>
**Subject:** Re: [Ext] Building Permit # 252009 - Formal Request for Corrective Application of Lot Coverage Standards and Administrative Action

Mr. Lilly,

Thank you for your response and I have reviewed all documents you have provided, which I believe clears up a lot and quite frankly, are the documents that clearly substantiate this addition should be approved.

Reflecting back through the last couple of months, I do believe we are at this juncture due to simple "miscommunication" on my part, and I believe on Mr. Estudillo's part as well.

Although I have asked for a face-to-face meeting in each of my correspondences with Mr. Estudillo, I believe that if you can provide me a 30 minute in person meeting tomorrow (Tuesday) to go over my responses to your comments, I truly believe we will all feel much better about the actual square footages of the existing home and allowable lot coverage and I'm optimistic that we can resolve this matter in a mutually acceptable way.

I respectfully ask for 30 minutes of your time tomorrow and I will make myself available all day long.

Joe Romero
801-808-0063

---

**From:** Francis Lilly <flilly@millcreekut.gov>
**Sent:** Monday, January 5, 2026 4:54 PM
**To:** Joe Romero <joe@rthreegroup.com>; Carlos Estudillo <cestudillo@millcreekut.gov>
**Subject:** RE: [Ext] Building Permit # 252009 - Formal Request for Corrective Application of Lot Coverage Standards and Administrative Action

Hi Joe.

I spent some time today talking with Carlos and reviewing your plans. Unfortunately, there are some significant errors on your plans that make a meaningful calculation of lot coverage impossible to determine. I've attached the plans, with areas that I clouded that show the problem:

1. The scale of 1/8"=1' doesn't correspond to any of the measurements on the site plan. I used Bluebeam to do a custom scale, calibrating against the 30' call you show for the corner side setback. The dimension on the north side of the property that you show as "90'-0" +/-" is actually 97'-6". In any case, using "+/-" as a qualifier is not meaningful when it comes to calculating lot coverage. Moreover, using your 30' setback as a guide, I get completely different numbers for the square footages you identified on the site plan, than what you showed.

2. The dimensions of your property are also inaccurate. I looked up the plat on your property, which was recorded 1954, and which I've attached to this email. Your lot is Lot 79 on that plat. Your north

**From:** Joe Romero <joe@rthreegroup.com>
**Sent:** Tuesday, December 23, 2025 6:14 PM
**To:** Francis Lilly <flilly@millcreekut.gov>
**Subject:** Re: [Ext] Building Permit # 252009 - Formal Request for Corrective Application of Lot Coverage Standards and Administrative Action

Thank you, Sir.

I look forward to hearing from you upon your return to
Get this addition approved and onto Building's review.

Joe Romero

Sent on the go - please forgive me for any errors.

JoRo

> On Dec 23, 2025, at 3:19 PM, Francis Lilly <flilly@millcreekut.gov> wrote:
>
> Hi Joe. I'm in receipt of your letter. I will be out of town until 5 January. I'll attend to the matter the week I return.
>
> Thanks, and merry Christmas
>
> Francis Lilly
>
> Get Outlook for iOS

---

**From:** Joe Romero <joe@rthreegroup.com>
**Sent:** Tuesday, December 23, 2025 2:46:40 PM
**To:** Francis Lilly <flilly@millcreekut.gov>
**Subject:** [Ext] Building Permit # 252009 - Formal Request for Corrective Application of Lot Coverage Standards and Administrative Action

Mr. Lilly,

Please see the attached letter and documentation regarding my current in process Building Permit Application for my home.

I respectfully request that you contact me upon your review and that we can meet in person if there are additional questions or concerns regarding the immediate approval of the planning and zoning acceptance of my proposed addition.

Thank you.

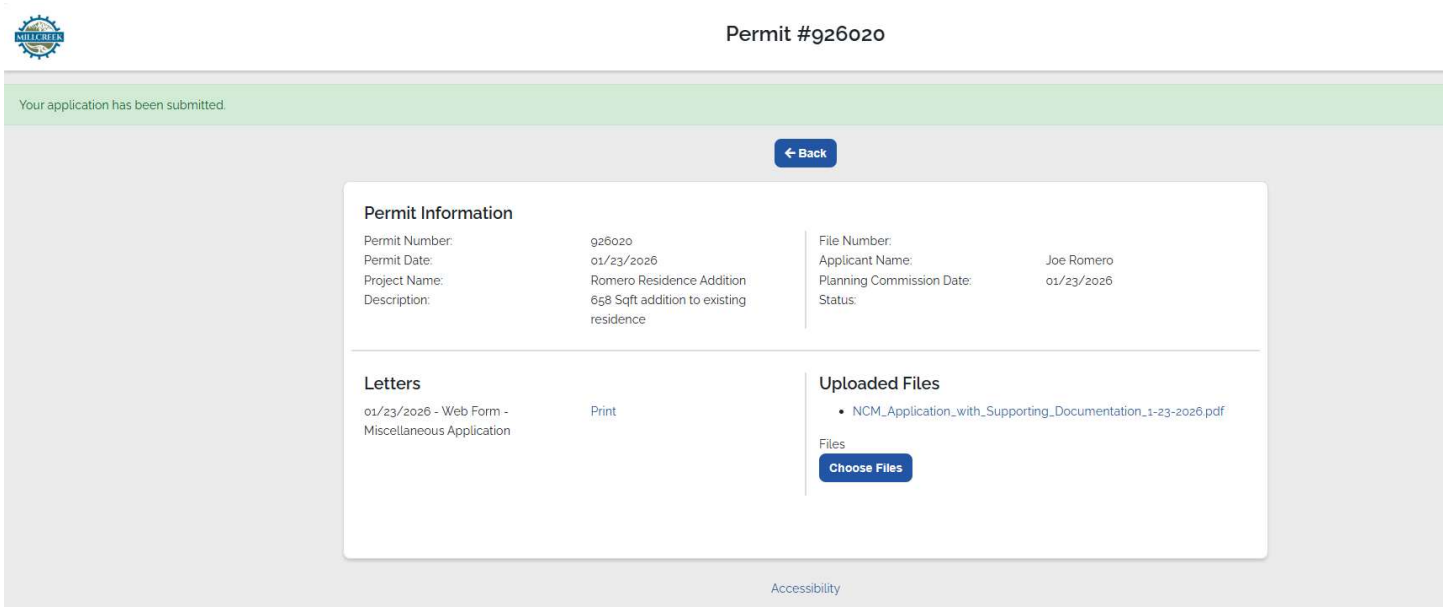
**Joe Romero, LEED AP**

Outlook

**Re: Final Submission and Request for Approval or Determination**

**From** Joe Romero <joe@rthreegroup.com>
**Date** Fri 1/23/2026 1:54 PM
**To** Francis Lilly <flilly@millcreekut.gov>; Carlos Estudillo <cestudillo@millcreekut.gov>; Trudi Hawes <thawes@millcreekut.gov>

Done.




**Joe Romero, LEED AP**
***President***
The R3 Group, LLC
P: 801-808-0063 | E: joe@rthreegroup.com

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**From:** Francis Lilly <flilly@millcreekut.gov>
**Sent:** Friday, January 23, 2026 1:48 PM
**To:** Joe Romero <joe@rthreegroup.com>; Carlos Estudillo <cestudillo@millcreekut.gov>; Trudi Hawes <thawes@millcreekut.gov>
**Subject:** Re: Final Submission and Request for Approval or Determination

Joe,

Please submit your application via this link:

https://portal.iworq.net/MILLCREEKUT/new-permit/601/10288

Under 'project description' call it 'neighborhood compatibility modification'

Once that application is filed, you'll receive a link to pay the fee online.

Get Outlook for iOS

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**From:** Joe Romero <joe@rthreegroup.com>
**Sent:** Friday, January 23, 2026 1:29:25 PM
**To:** Carlos Estudillo <cestudillo@millcreekut.gov>; Francis Lilly <flilly@millcreekut.gov>
**Subject:** [Ext] Final Submission and Request for Approval or Determination

Francis and Carlos,

See the completed and comprehensive Land Use and Development Application, specifically regarding the Neighborhood Compatibility Modification request for approval. *Please confirm receipt of this submitted package*.

I realize there is a fee for this application, so please send me an invoice and I will get this paid.

Per several discussions, I firmly believe this package and information is exactly what you have requested for this process. If possible, I respectfully request this request be expedited since it has been several months since initial submittals were received by the Planning and Zoning department.

Thank you for your time and efforts.

**Joe Romero, LEED AP**
***President***
The R3 Group, LLC
P: 801-808-0063 | E: joe@rthreegroup.com



Outlook

## Re: [Ext] Millcreek, Utah Permit # 926020

**From** Joe Romero <joe@rthreegroup.com>
**Date** Thu 2/5/2026 11:56 AM
**To** Francis Lilly <flilly@millcreekut.gov>; Trudi Hawes <thawes@millcreekut.gov>; Carlos Estudillo <cestudillo@millcreekut.gov>

Francis,

The appeal documentation addresses both the original permit denial and the subsequent NCM permit denial as the original permit denial was simply a review denial so there is no formal deadline to appeal that decision. In addition, I believe Utah law could find me being directed towards the NCM process was unjustifed, not as a result of any noncompliance with Title 18, but rather a product of an arbitrary, inconsistent, and legally unsuppotable interpretation of Title 18 by your staff.

In addition, Utah law precedent is clear that when land use regulations, are unclear and ambiguous, they should be resolved in favor of the property owner and not through expanded administrative interpretation or post hoc enforcement positions.

If it is your position that I can submit to Planning and Zoning my appeal (in addition to filing the appeal with the Recorder's office) strictly to have your staff reconsider the original permit denial, I am happy to do so. I believe once you review my appeal and the legal conclusions and ramifications to such, you will reconsider your position on the original permit and approve it without me extending and delaying this process another 45-60 days.

Please confirm you are willing to accept my appeal to reconsider the originally permitted design is compliant within Title 18.

**Joe Romero, LEED AP**
***President***
The R3 Group, LLC
P: 801-808-0063 | E: joe@rthreegroup.com

---

**From:** Francis Lilly <flilly@millcreekut.gov>
**Sent:** Thursday, February 5, 2026 11:37 AM
**To:** Joe Romero <joe@rthreegroup.com>; Trudi Hawes <thawes@millcreekut.gov>; Carlos Estudillo <cestudillo@millcreekut.gov>
**Subject:** Re: [Ext] Millcreek, Utah Permit # 926020

Hi Joe,

Thanks for your email. I cannot meet this afternoon. My earliest availability is next week.

But know that I have looked at your project every possible way I can and I don't see any path forward for you other than to reduce the footprint of your building ever so slightly. I'm not sure a meeting will help, because I'm familiar with your position- we've already discussed it at length.

You could I suppose appeal our denial of your building permit if you feel we implemented the code in error.

Sincerely,

Francis

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**From:** Joe Romero <joe@rthreegroup.com>
**Sent:** Thursday, February 5, 2026 11:19:38 AM
**To:** Francis Lilly <flilly@millcreekut.gov>; Trudi Hawes <thawes@millcreekut.gov>; Carlos Estudillo <cestudillo@millcreekut.gov>
**Subject:** Re: [Ext] Millcreek, Utah Permit # 926020

Mr. Lilly,

I have my Appeal prepared and have coordinated with the Recorder's office for submission by close of business today.

Before I delay this permit approval process another 45-60 days, I would like to make one last good faith offer to meet with you face-to-face and further explain my position and the elements of Title 18 that support the original design was compliant therefore the original design should have been approved and I never should been directed to the NCM process.

Unfortunately, I am flying out of town in the morning, but could make myself available anytime this afternoon with the exception of 2:00-2:45 pm.

My hope is that I point out sections of the code for you to reconsider that support my original design being compliant. I realize that the NCM request does not comply with Title 18 and therefore should be rejected; however, the original denial on the permit is well within the requirements of Title 18 as written.

Will you extend this good faith offer to meet with me this afternoon?

**Joe Romero, LEED AP**
***President***
The R3 Group, LLC
P: 801-808-0063 | E: joe@rthreegroup.com

**From:** Joe Romero <joe@rthreegroup.com>
**Sent:** Tuesday, February 3, 2026 9:23 PM
**To:** Francis Lilly <flilly@millcreekut.gov>; Trudi Hawes <thawes@millcreekut.gov>; Carlos Estudillo <cestudillo@millcreekut.gov>
**Subject:** Re: [Ext] Millcreek, Utah Permit # 926020

Francis,

I received the letter today and continued my research of the code and Millcreek City published ordinances. I adamantly believe you, Carlos and Millcreek City have not, and are continuing not to follow your own Ordinances, rules and regulations that have been adopted and I will be filing an appeal by week's end. I have attempted to explain this to both you and Carlos in almost every written communication.

Quite frankly, evidence within the code, along with the email documentation I have regarding this matter will demonstrate that my initial submission, without the need for the NCM process, along with subsequent submissions have always complied with the intent and written Millcreek Ordinance and never should have been rejected.

Like much of the email correspondence you and Carlos have sent me regarding this matter again provides incorrect and conflicting information. As you noted below, your decision on this is not FINAL as you state. That is what the appeal process is for.

It is sad and very disappointing that you and your planner have turned this matter into what it has become as it was never justified from the beginning. Since the beginning of November, I have repeatedly asked for face to face meeting with you so I could describe the elements and requirements of your own Ordinances.

Nevertheless, I will trust the appeal process will get this determination corrected and in line with Millcreek City's ordinances.

**Joe Romero, LEED AP**
***President***
The R3 Group, LLC
P: 801-808-0063 | E: joe@rthreegroup.com



**From:** Francis Lilly <flilly@millcreekut.gov>
**Sent:** Tuesday, February 3, 2026 9:07 PM
**To:** Joe Romero <joe@rthreegroup.com>; Trudi Hawes <thawes@millcreekut.gov>; Carlos Estudillo <cestudillo@millcreekut.gov>
**Subject:** Re: [Ext] Millcreek, Utah Permit # 926020

Hello Joe -

***Sent via email to Mr. Lilly to flilly@millcreekut.gov and via USPS***

Attachment "B"

**December 22, 2025**

Mr. Francis Xavier Lilly, AICP
Planning Director
Millcreek City
1370 South 2100 East
Millcreek, Utah 84108

**Re: Building Permit # 252009 - Formal Request for Correct Application of Lot Coverage Standards and Administrative Action Regarding Planning Specialist Non-Responsiveness**

Dear Mr. Lilly,

I am writing to formally request administrative review and corrective action by your office concerning the ongoing lot coverage determination for my residence located within the R-1-8 zoning district of Millcreek City. Despite multiple written communications to **Carlos Estudillo (Planner II)** - dated **November 17**, **2025**, **November 18**, **2025, November 21, 2025**, **November 24, 2025** and **December 8, 2025** appropriately responding to his planning & zoning questions regarding the proposed addition to my home, I have not received a substantive nor appropriate response consistent with City standards, professional planning practice, or the American Planning Association (APA) methodologies that Mr. Estudillo himself confirmed Millcreek City follows.

With each of my emails listed above, I have provided scaled, dimensioned drawings with square foot take-offs demonstrating that my existing plus new addition square footage is below or right at the 33% maximum per Millcreek's planning & zoning standards. The only communication I have received from Mr. Estudillo is his denial of the permit with the only justification stated in his November 21, 2025, email stating "*I took a rough estimate of your current lot coverage*" which does not align with actual on site conditions, the scaled drawings I have provided nor with the APA and Millcreek's standards for lot coverage take off. Mr. Estudillo also states I only have approximately 200 square feet of available lot coverage; however, that is because he does not follow Millcreek City nor APA's guidelines by using a non-scaled aerial map and including all overhangs and porches. I have also requested in several emails that I be able to meet with Mr. Estudillo so I can clear up or satisfy any questions he may have and demonstrate the proposed project should be approved. ***Lastly, Mr. Estudillo has chosen not to communicate with me since November 24, 2025 which is the purpose for my letter.***

For the reasons listed below, I am requesting this project's review be escalated within your department for the following reasons:

**I. Failure of Appropriate Response**

Mr. Estudillo has not acknowledged or addressed the accurately scaled drawings I provided, nor has he corrected his reliance on non-scaled aerial imagery that improperly includes roof overhangs, patios, and other elements explicitly excluded under the footprint method

recognized by both Millcreek City and the APA. His continued use of an inaccurate measurement method has resulted in materially erroneous conclusions, including but not limited to:

- Miscalculation of my primary existing home as **2,971 sq ft** despite its actual **2,377 sq ft footprint** (Mr. Estudillo solely used non-scaled aerial photography and non Millcreek/APA methods)
- Miscalculation of my proposed addition as **721 sq ft** despite its actual **707 sq ft footprint**
- Miscalculation of my accessory shed as **164 sq ft** despite its actual **96 sq ft footprint**; and
- Inclusion of roof overhangs approximately **16 inches** wide in the home's footprint calculations, contrary to APA PAS Report No. 111, which states that roof overhangs under two feet **must not be included**.
- Inclusion of open area patios or front porches that are allowed to be excluded per the APA.

*These errors directly contradict the method Mr. Estudillo previously confirmed Millcreek City uses for lot coverage: the "footprint" method, measured at finished grade and limited strictly to the exterior faces of exterior walls.*

**II. Compliance Demonstrated Through Scaled Drawings**

The scaled architectural drawings submitted to the Planning Department (See Attachment "B") clearly demonstrate:

- Existing structure + proposed addition = **3,084 sq ft footprint**
- Existing shed = **96 sq ft footprint**
- Lot size = **9,583 sq ft (.22 acre)**
- Resulting lot coverage = **3,180 / 9,583 = 33%**, below or right at Millcreek City's **33% maximum recommended lot coverage** for the R-1-8 zone.
- I have also offered to tear down the shed to be under the maximum limit; however, I still don't believe this would not be necessary.

*No provision within Millcreek Municipal Code §18.36 alters the APA-standard footprint methodology or authorizes the inclusion of roof overhangs or open porches in lot coverage calculations.*

**III. Formal Request for Immediate Administrative Action**

Given the above, I hereby formally request that the Planning Department:

1. **Immediately apply the correct footprint-based lot coverage methodology** consistent with APA PAS Report No. 111 and with prior City acknowledgment;
2. **Review and approve the proposed addition** based on the accurate 33% lot coverage calculation cased on scaled drawings and applied per APA standards;
3. **Direct the plans to the Building Department** for the next phase of review without further delay; and
4. **Provide a written response from the Planning Director**, confirming the City's corrected calculations and next administrative steps.

***Sent via email to Mr. Lilly to flilly@millcreekut.gov and via USPS***

*Failure of a Planning Specialist to apply proper planning methods and respond to applicant communications compromises procedural fairness and imposes an unreasonable hardship on my family, contrary to the purpose and intent of Millcreek's zoning framework.*

**IV. Request for Meeting**

To avoid further unnecessary delay, I again offer to meet with you directly—along with Mr. Estudillo, if appropriate, to review the scaled drawings together and confirm the correct square footages.

I respectfully request a written response from your office within **five (5) business days** of receipt of this letter so that this matter can move forward appropriately and without the need for additional escalation.

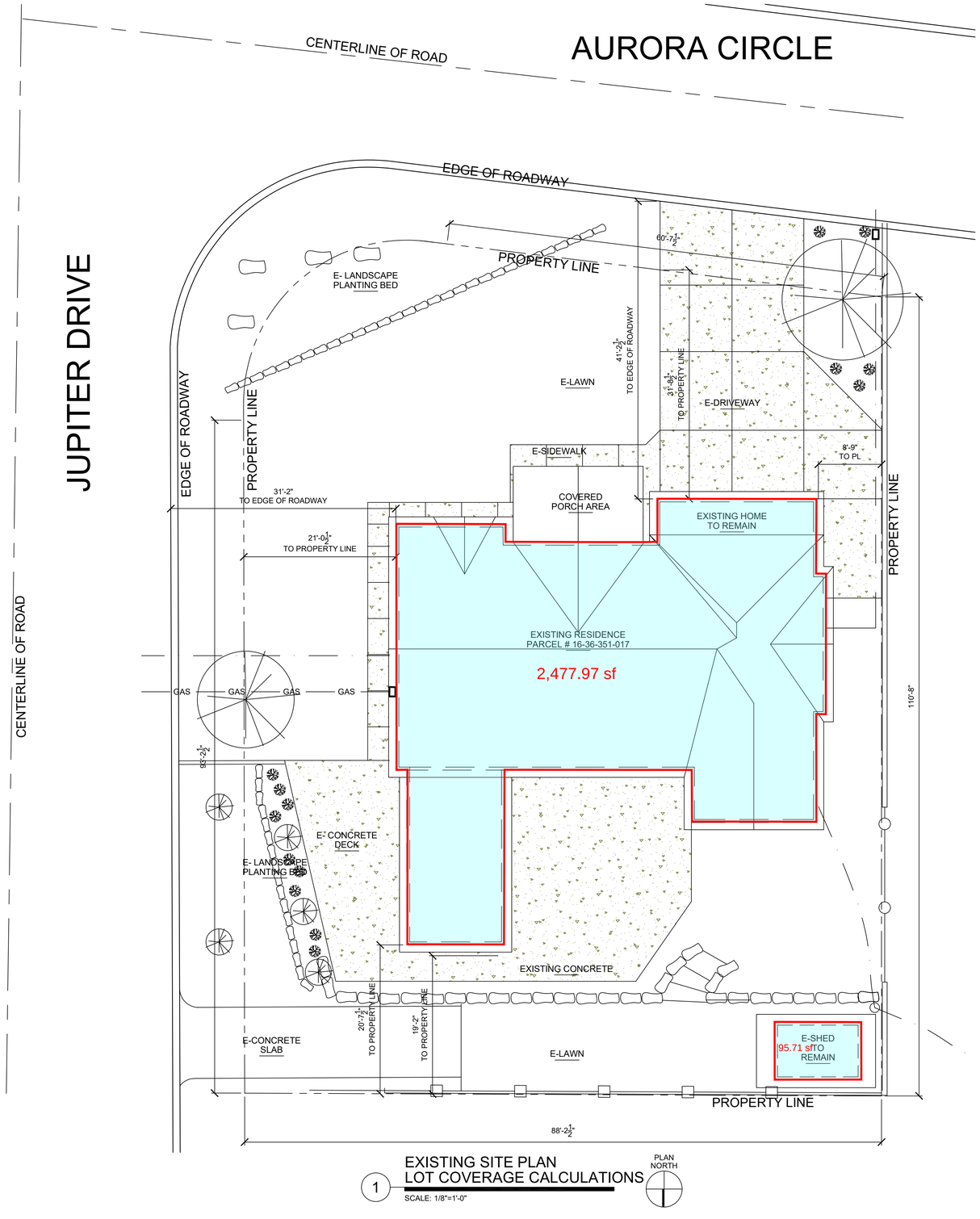
Thank you for your prompt attention and please know I can be contacted at anytime.

Respectfully Submitted,



Homeowner
3652 Aurora Circle
Millcreek, Utah 84124
(801) 808-0063

Attachment "C"




1 EXISTING SITE PLAN
LOT COVERAGE CALCULATIONS

SCALE: 1/8"=1'-0"

**EXISTING CONDITIONS**
**LOT COVERAGE CALCULATIONS**

| | |
|---|---|
| TOTAL FOOTPRINT OF EXISTING HOME (PER MILLCREEK ORDINANCE CALCULATION REQUIREMENTS) | 2,477 SQFT |
| TOTAL SHED AREA | 95 SQFT |
| TOTAL ROOFED AREA ON SITE | 2,572 SQFT |
| TOTAL SQFT OF PARCEL | 10,062 SQFT |
| **CALCULATION OF ACTUAL LOT COVERAGE (5,572 / 10,062 = 25.5%)** | **25.5%** |

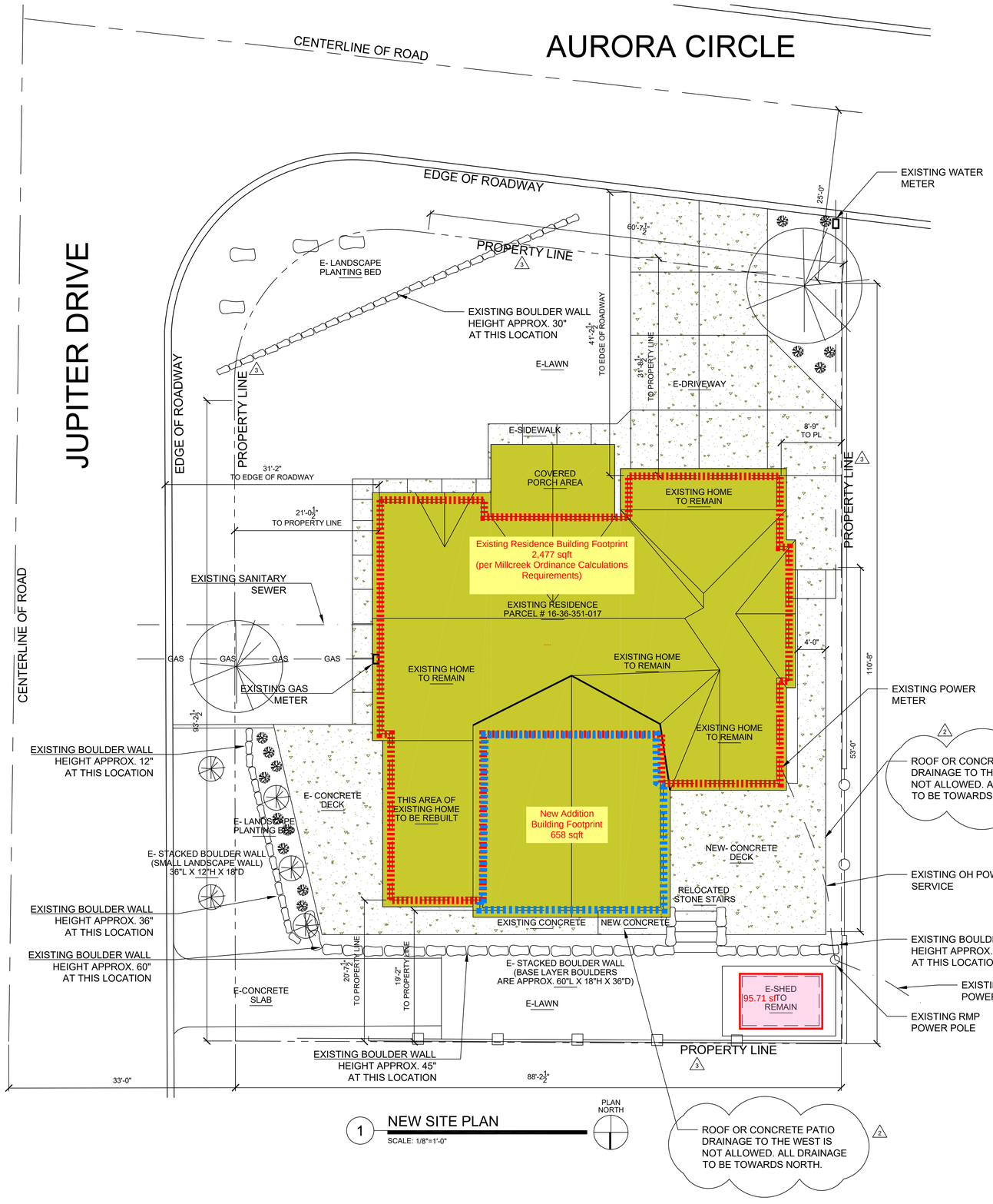
# ROMERO RESIDENCE ADDTION
## 3652 AURORA CIRCLE
SALT LAKE CITY, UTAH 84124

| Rev # | Date | Description |
|---|---|---|
| 3 | 1-8-2026 | P&Z PLAN REVIEW RESPONSE |

Job #
CAD File
Drawn Checked
Date 9-8-2025
Owner #
Ins. #

EXISTING CONDITIONS SITE PLAN

SD1_A
Sheet of Sheets




1 NEW SITE PLAN

SCALE: 1/8"=1'-0"

## LOT COVERAGE CALCULATIONS

| | |
|---|---|
| TOTAL FOOTPRINT OF EXISTING HOME + ADDITION (CALCULATED FROM EDGE OF BUILDING) | 3,135 SQFT |
| TOTAL SHED AREA | 95 SQFT |
| TOTAL ROOFED AREA ON SITE | 3,230 SQFT |
| TOTAL SQFT OF PARCEL | 10,062 SQFT |
| **CALCULATION OF ACTUAL LOT COVERAGE (3,230 / 10,062 = 32.1%)** | **32.1%** |

## EXISTING DRAINAGE CALCULATIONS

| | |
|---|---|
| TOTAL EST. SQFT OF PARCEL | 9,583 SQFT |
| EXISTING PERMEABLE LAND AREA | 6,187 SQFT |
| EXISTING IMPERVIOUS LAND AREA | 3,215 SQFT |
| TOTAL SQFT (FOOTPRINT) OF RESIDENCE | 2,472 SQFT |
| TOTAL IMPERVIOUS SQFT (3,215 SQFT + 2,472 SQFT) | 5,687 SQFT |
| % OF IMPERVIOUS LAND AREA (5,687 / 9,583 SQFT) | 59 % TOTAL |

## NEW DRAINAGE CALCULATIONS

| | |
|---|---|
| TOTAL EST. SQFT OF PARCEL | 9,583 SQFT |
| EXISTING PERMEABLE LAND AREA | 5,521 SQFT |
| EXISTING IMPERVIOUS LAND AREA | 3,186 SQFT |
| TOTAL SQFT (FOOTPRINT) OF RESIDENCE | 3,164 SQFT |
| TOTAL IMPERVIOUS SQFT (3,186 SQFT + 3,164 SQFT) | 6,350 SQFT |
| % OF IMPERVIOUS LAND AREA (6,350 / 9,583 SQFT) | 66 % TOTAL |

# DRAWING INDEX


| | |
|---|---|
| ARCHITECTURAL PLANS | |
| SD1_0 | SITE PLAN, COVER SHEET AND DRAWING INDEX |
| A1_0 | DEMOLITION PLAN |
| A1_1 | NEW MAIN LEVEL FLOOR PLAN |
| A1_2 | NEW 2ND LEVEL FLOOR PLAN |
| A1_3 | NEW ROOF PLAN |
| A2_1 | EXTERIOR ELEVATIONS |
| A2_2 | EXTERIOR ELEVATIONS |
| A3_1 | BUILDING & WALL SECTIONS |
| A4_1 | FIREPLACE ELEVATIONS / SECTION / DETAILS |
| STRUCTURAL PLANS | |
| S1_0 | FOOTING AND FOUNDATION PLAN |
| S1_1 | MAIN LEVEL FLOOR FRAMING PLAN |
| S1_2 | ROOF FRAMING PLAN |
| S3_1 | STRUCTURAL DETAILS |
| MECHANICAL / PLUMBING PLANS | |
| M1_1 | MAIN LEVEL MECHANICAL PLAN |
| ELECTRICAL / PLUMBING PLANS | |
| E1_1 | MAIN LEVEL ELECTRICAL PLAN |


# SYMBOL LEGEND

- (1) KEY NOTE
- T.O. LANDING ELEV: 100'-0"
- A WINDOW CALL OUT
- 101 DOOR CALL OUT
- (1) ACCESSORY NOTE
- TYP. DETAIL CALL OUT
- 2 / A3_2 BUILDING SECTION
- 2 / A3_2 ELEVATION CALL OUT

# PROJECT TEAM


| | |
|---|---|
| OWNER / DRAFTER / DESIGNER: | JOE AND JENNIFER ROMERO<br>3652 AURORA CIRCLE<br>SALT LAKE CITY, UTAH 84124<br>(801) 808 - 0063 |
| STRUCTURAL ENGINEER: | DANY TREMBLAY, PE<br>CANYONS STRUCTURAL CONSULTING<br>940 EAST ELM AVE<br>SALT LAKE CITY, UTAH 84105<br>(801) 486-6848 |


# GENERAL INFO .

| | |
|---|---|
| CODE: | 2021 INTERNATIONAL RESIDENTIAL CODE |
| ZONING | R1-8 |

# ROMERO RESIDENCE ADDTION
## 3652 AURORA CIRCLE
SALT LAKE CITY, UTAH 84124

| Rev # | Date | Description |
|---|---|---|
| 1 | 11-5-2025 | PERMIT SET |
| 2 | 11-12-2025 | ENGINEERING PLAN REVIEW RESPONSE |
| 3 | 1-23-2026 | P&Z PLAN REVIEW RESPONSE |

Job #
CAD File
Drawn
Checked
Date 9-8-2025
Owner #
Ins. #

SITE PLAN, COVER SHEET AND DRAWING INDEX

SD1_0

Sheet of Sheets

Attachment "D"

Outlook

## Re: Millcreek Permit # 252009 - 3652 E AURORA CIR

**From** Joe Romero <joe@rthreegroup.com>
**Date** Mon 11/17/2025 12:11 PM
**To** cestudillo@millcreek.us <cestudillo@millcreek.us>

Carlos,

May I have your phone number so I can call you to discuss and better understand your plan review responses???

Or you can call me at 801-808-0063.

Thank you,

Joe Romero

Sent on the go - please forgive me for any errors.

JoRo

> On Nov 17, 2025, at 11:21 AM, Millcreek Utah <wo@iworq.net> wrote:
>
> Denied under scope of work. Applicant exceed the maximum lot coverage allowed in the R-1-8 zone (33%).
>
> 9,583 SF X 33% = 3,163 SF (maximum lot coverage allowed)
> 3900 (existing residence) + 721(new addition) + 349 (rebuild) + 164 (shed) = 5134 SF = 53%
>
> Applicant must also provide a building envelope as per 18.36 SINGLE-HOUSEHOLD RESIDENTIAL (R-1) ZONES. (https://millcreek.municipalcodeonline.com/book?type=planzone#name=18.36_SINGLE-HOUSEHOLD_RESIDENTIAL_(R-1)_ZONES).
>
> Any new plans must be sent to cestudillo@millcreekut.gov.
>
> Best,
> Carlos Estudillo.

**Date:** 11/17/2025
**Permit #:** 252009
**Permit Date:** 11/10/2025
**Review Date:** 11/10/2025
**Permit Type:** Residential Addition
**Review Type:** Planning and Zoning
**Target Date:** 11/20/2025
**Scheduled Time:** 00:00
**Completed Date:** 11/17/2025
**Description:**
**Review Status:** Denied
**Assigned To:** Carlos Estudillo
**Time In:** 00:00
**Time Out:** 00:00
**Hours:** 0.0

**Notes**

11/17/2025 Denied under scope of work. Applicant exceed the maximum lot coverage allowed in the R-1-8 zone (33%).

9,583 SF X 33% = 3,163 SF (maximum lot coverage allowed)
3900 (existing residence) + 721(new addition) + 349 (rebuild) + 164 (shed) = 5134 SF = 53%

Applicant must also provide a building envelope as per 18.36 SINGLE-HOUSEHOLD RESIDENTIAL (R-1) ZONES. (https://millcreek.municipalcodeonline.com/book?type=planzone#name=18.36_SINGLE-HOUSEHOLD_RESIDENTIAL_(R-1)_ZONES).

Any new plans must be sent to cestudillo@millcreekut.gov.

Best,

Carlos Estudillo.

**Property Information**

Parcel#: 16363510170000
J ROMERO FAMILY TRUST 12/14/2022
3652 E AURORA CIR
Zoning: RLot: Block:

J ROMERO FAMILY TRUST 12/14/2022
3652 E AURORA CIR
MILLCREEK UT, UT 84124

Attachment "E"





Front Porch is an Architectural Element and per the only section of Title 18 shall be considered an "open style" porch as it has no walls, doors, windows, screens, etc.

Attachment "F"

# 18.36 Single-Household Residential (R-1) Zones

## 18.36.010 Purpose

The purpose of the Single-Household Residential R-1 Zones is to establish single-household neighborhoods consistent with the City's general plan for low density residential areas within the City. It is the intent to balance neighborhood compatibility with the private property interests of those who wish to expand, develop, improve, or otherwise make exterior modification to their residential property.

## 18.36.020 Applicability

This chapter applies to the following residential zones: R-1-3, R-1-4, R-1-5, R-1-6, R-1-8, R-1-10, R-1-15, and R-1-21 zones. Development in the Single-Household Residential Zones may be subject to the requirements set forth in MKZ 18.61, Sensitive Lands.

## 18.36.030 Permitted Uses and Conditional Uses

Uses in the Single-Household Residential (R-1) Zones are allowed, either as permitted or conditional, and may include certain limitations as set forth in Table 18.36-1 Permitted and Conditional Uses in the Single-Household Residential (R-1) Zones. If a use is not explicitly designated in the table, then the use is prohibited. An applicant seeking a Millcreek Business License may submit a Classification Request by following the procedure as set forth in MKZ 18.15.030 (J), to determine whether a proposed land use aligns with an existing land use listed in Table 18.36-1.

**Table 18.36-1 Permitted and Conditional Uses in the Single-Household Residential (R-1) Zones**

| ***Land Use*** | ***R-1 (All Zones)*** | ***Limitations / References*** |
|---|---|---|
| *P= Permitted C= Conditional Use Review Required* | | |
| *Residential Uses* | | |
| Accessory Dwelling Unit | P | Limitations set forth in MKZ 18.71, Accessory Dwelling Unit Standards. |
| Dwelling, Single Household - Detached | P | |
| Home Business | P | Subject to MKZ 18.76, Special Business Land Use Regulations |
| Home Daycare or Preschool – up to 6 children | P | Subject to MKZ 18.76, Special Business Land Use Regulations |

| Table 18.36-1 Permitted and Conditional Uses in the Single-Household Residential (R-1) Zones | | |
|---|---|---|
| ***Land Use*** | ***R-1 (All Zones)*** | ***Limitations / References*** |
| *P= Permitted C= Conditional Use Review Required* | | |
| Home Daycare or Preschool – 7 to 12 children | C | Subject to MKZ 18.76, Special Business Land Use Regulations |
| Residential Facilities for Elderly Persons or Persons With a Disability | P | Limitations as set forth in MKZ 18.74, Residential Facilities for Persons With a Disability |
| Short-Term Rental | P | Provided a valid Millcreek Business License has been issued and is in good standing with respect to the property. Further limitations are as set forth in MKC 5.19, Short-Term Rentals. |
| *Non-Residential Uses* | | |
| Noncommercial Agriculture | P | |
| Cemetery | P | |
| *Civic and Institutional Uses* | | |
| Public Uses | P | |
| Quasi-Public Use | P | |
| Religious Assembly | P | |
| Schools, Public and Private | P | |
| *Miscellaneous Uses* | | |
| Accessory Uses, Buildings, and Structures | P | Limitation as set forth in MKZ 18.59, Accessory Structures |
| Temporary Uses | P | Limitation as set forth in MKZ 18.58, Temporary Uses and Structures |

## 18.36.040 Spatial Requirements

A. Setback Measurements. The minimum property size, width, setbacks, and maximum property coverage requirements are as determined by Table 18.36-2 Spatial Requirements for the Single-Household Residential (R-1) Zones and are as illustrated in Figure 18.36.2.

B. Side and Rear Setbacks for Civic and Institutional Uses. Civic and Institutional Uses require a minimum 30-foot rear and side yard setback when abutting and sharing a property line with a residential use.

C. Rear Setback on Sloped Lots or Parcels. If the average slope of the original ground surface, as measured from the rear property line to the front property line, is more than 20 percent, then the rear setback shall be increased one additional foot for every one degree of slope in excess of 20 percent, up to a maximum of 25 feet.

D. Side Yard Setbacks on Lots Fifty Percent Larger Than Minimum Lot or Parcel Width. Lots or parcels with a width at least 50 percent larger than the required minimum lot or parcel width shall measure side yard setbacks as set forth in the following:

    1. The combined measurements of the side yard setbacks shall be at least 25 percent of the lot or parcel width.
    2. No side setback shall be less than the required minimum side yard setback.
    3. The width of the lot or parcel is measured as the diameter of the largest circle that can be inscribed entirely within the lot or parcel excluding any streams, floodplains, wetlands, areas of thirty percent slope or greater, or other natural hazard areas shall be excluded from the circle, as illustrated in Figure 18.36.1.

E. A lot or parcel containing an existing legally-established two-household dwelling may be subdivided, subject to the standards as set forth in MKZ 18.26, Division of Legally-Established Two-Household Dwellings.

*Figure 18.36.1 Combined Side yard Setback Spatial Requirements Diagram*

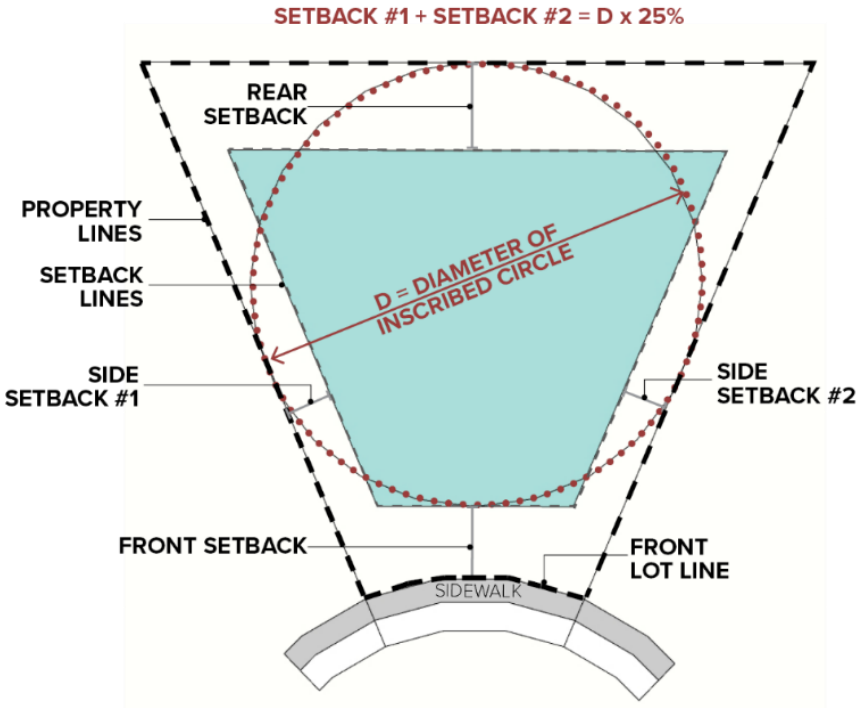
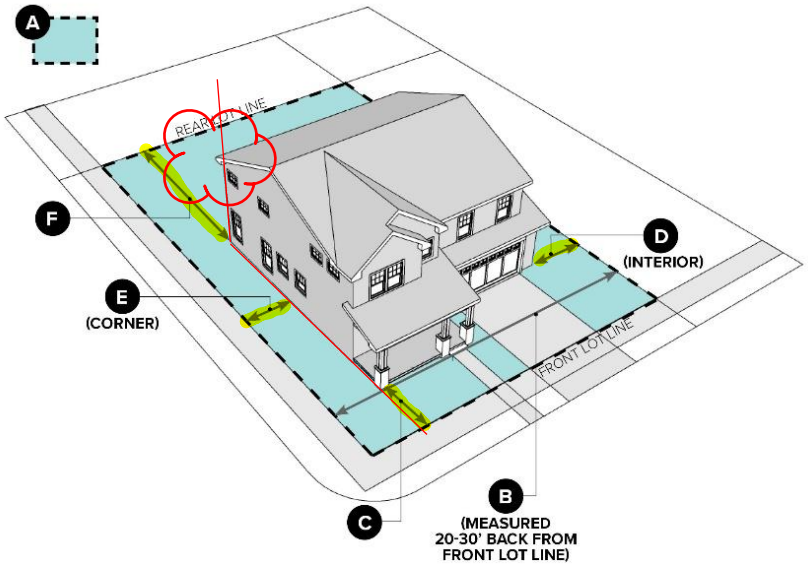


*Figure 18.36.2 Spatial Requirements Diagram (letter labels related to Table 18.36-2)*



| Table 18.36-2 Spatial Requirements for the Single-Household Residential (R-1) Zones | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| ***Zone*** | ***Min. Lot or Parcel area (A)*** | ***Min. Lot or Parcel width (B)*** | ***Min. Front Setback (C)*** | ***Residential Use Min. Side Setbacks on interior Lots or Parcels (D)*** | ***Residential Use Min. Side Setbacks on corner (E)*** | ***Civic/ Institutional and Non-Residential Use Min. Side Setback*** | ***Min. Rear Setback (F)*** | ***Max. Lot or Parcel Coverage*** |
| R-1-3 | 3,000 sq ft | 25′ | 20′ | 5′ (unless attached to a dwelling on an abutting lot or parcel) | 20′ | 20′ | 15′ | 40% |
| R-1-4 | 4,000 sq ft | 25′ | 20′ | 5′ (unless attached to a dwelling on an abutting lot or parcel) | 20′ | 20′ | 15′ | 40% |
| R-1-5 | 5,000 sq ft | 25′ | 20′ | 5′ (unless attached to a dwelling on an abutting lot or parcel) | 20′ | 20′ | 15′ | 35% |
| R-1-6 | 6, 000 sq ft | 60′ | 25′ | 8′ | 20′ | 20′ | 15′ | 35% |
| R-1-8 | 8,000 sq ft | 65′ | 25′ | 8′ | 20′ | 20′ | 15′ | 33% |
| R-1-10 | 10, 000 sq ft | 80′ | 30′ | 10′ | 20′ | 20′ | 15′ | 31% |
| R-1-15 | 15,000 sq ft | 80′ | 30′ | 10′ | 20′ | 20′. | 15′ | 25% |
| R-1-21 | 21,000 sq ft | 100′ | 30′ | 10′ | 20′ | 20′ | 15′ | 25% |

## 18.36.050 Building Height and Building Envelopes

A. Minimum height. All dwelling structures shall be a minimum of one story in height.

B. Maximum Height. Maximum building height is set forth in Table 18.36-3 Building Height and Building Envelope for R-1 Zones.

C. Building Envelope. The height of structures may be further limited by the building envelope. The building envelope is formed by a box defined by the perimeter of the property line extended vertically perpendicular to the property line to a height and subsequent angle as set forth in Table 18.36-3 and as illustrated in Figures 18.36.3, 18.36.4, 18.36.5, and 18.36.6. The entire building shall fit under this envelope except as described in the projections section below.

D. Lots or parcels located in the R-1-8 zone determined by staff to be a Lot or Parcel of Record and are nonconforming due to minimum lot or parcel width and minimum lot or parcel area

can qualify to use the 60 degree (60°) Building Envelope Angle and 12-foot Building Envelope Wall Height.

| Table 18.36-3 Building Height and Building Envelope for R-1 Zones | | | | | |
|---|---|---|---|---|---|
| | ***R-1-3 R-1-4 R-1-5*** | ***R-1-6*** | ***R-1-8*** | ***R-1-10 R-1-15*** | ***R-1-21*** |
| Building Height Maximum | 30′ | 30′ | 30′ | 32′ | 32′ |
| Building Envelope Wall Height and Angle | 30′ | 12′ | 8′ | 8′ | 8′ |
| Building Envelope Angle | 0° | 60° | 45° | 45° | 45° |

*Figure 18.36.3 R-1-3, R-1-4, and R-1-5 Building Envelope*

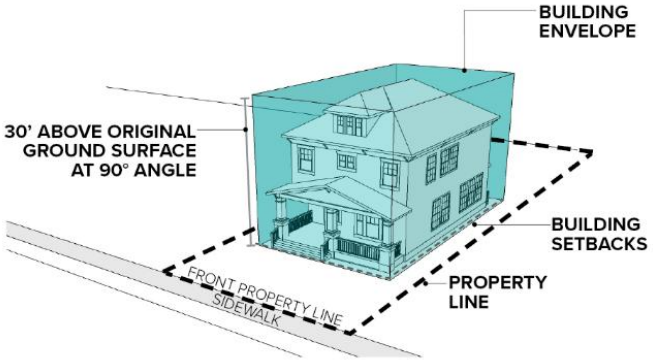



*Figure 18.36.4 R-1-6 Building Envelope*

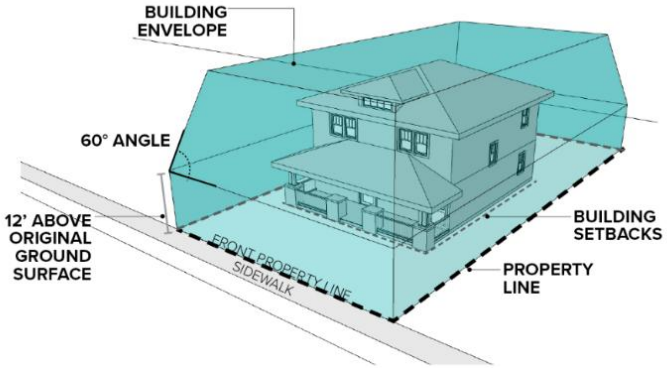



*Figure 18.36.5 R-1-8, R-1-10, R-1-15, and R-1-21 Building Envelope*

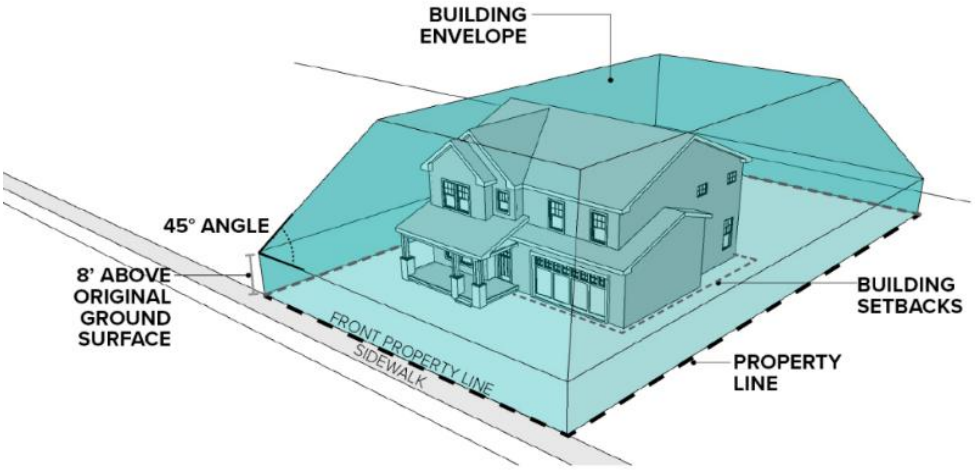
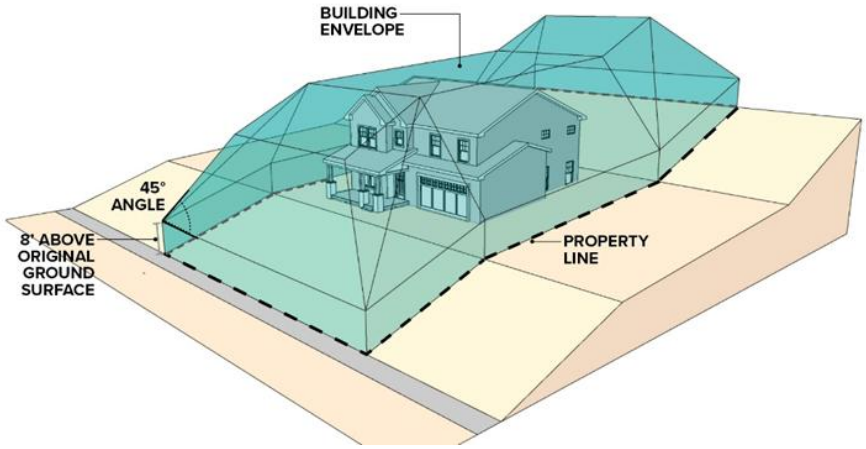


*Figure 18.36.6 Sloped Building Envelope Example*




## 18.36.060 Projections

Dormers, Gables, and non-habitable architectural elements may project beyond the building height envelope if they meet the following criteria, as illustrated in Figure 18.36.7:

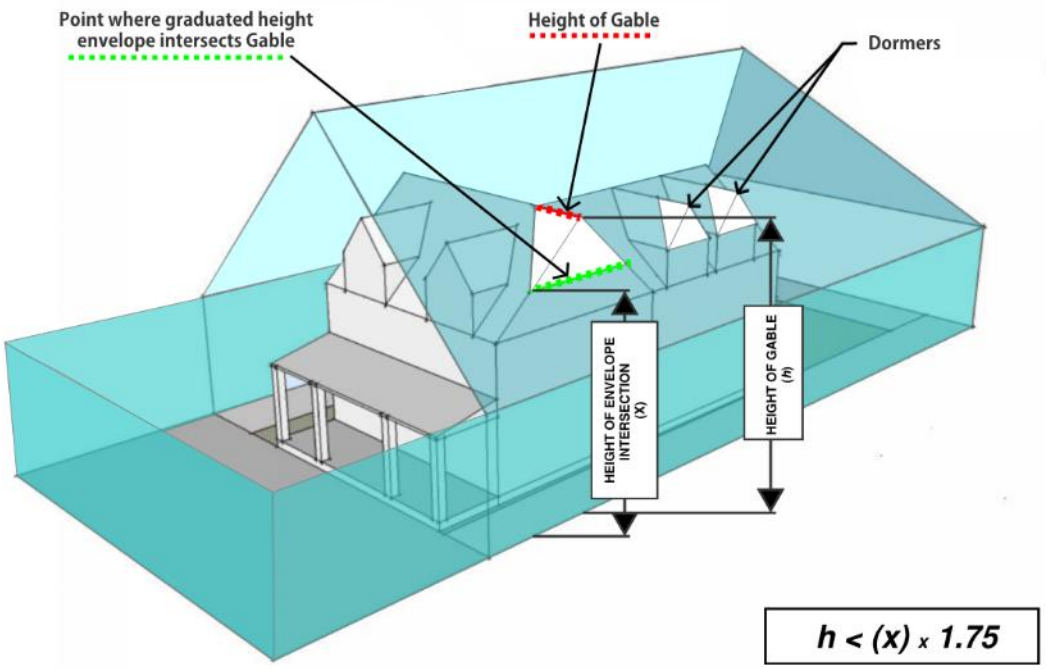
A. Dormers

1. The width of the dormer shall not exceed 14 feet;
2. Multiple dormers shall be spaced such that the distance to the edges of the roof is at least one-half the distance between dormers; and
3. The dormer shall be no higher than the ridge of the roof.

B. Gables

1. The height of the gable is less than 1.75 times higher than the point where the graduated building height envelope intersects the gable;
2. The height of the gable is less than the maximum building height; and

*Figure 18.36.7 Dormer and Gable illustration with height envelope exception*




## 18.36.070 Setback Encroachments

The following may be erected on, or encroach into the required yard setbacks:

A. Fences and walls in conformance with this code.

B. Landscape elements, including trees, shrubs, and other plants.

C. Utility or irrigation equipment or facilities.

D. Decks, patios, porches, driveways, sidewalks, stairs, landings, not exceeding two feet (2') above grade.

E. Covered porches and balconies may project up to 10 feet into the front yard or street side yard setback if they meet the following criteria:

1. Porches and balconies shall remain unenclosed or "open style" (no walls, doors, windows, screens, etc.) except for the minimum required handrail.
2. Porches and balconies shall not encroach into any easements or clear vision site areas.
3. Porches, balconies, stairs, landings, eaves which project into the setbacks, shall not be located nearer than 15 feet from a street property line, or project outside of the building height envelope.
4. Exception. Covered porches and balconies located in the R-1-3, R-1-4, and R-1-5 Zones may protrude into the front setback no more than five (5') feet.

F. Other architectural elements which are not used as habitable space.

G. Cornices, eaves, sills, planter boxes, stairways, landings, awnings, window wells, or similar architectural features attached to the building and not enclosed by walls, extending not more

than two feet (2') into a side yard or four feet (4') into the front or rear yard. In no case shall a side yard setback be less than six feet (6').

H. Chimneys, fireplace keys, box or bay windows or cantilevered walls attached to the building, no greater than eight feet (8') wide, extending not more than two feet (2') into a side yard, or four feet (4') into a front or rear yard. In no case shall a side yard setback be less than six feet (6').

### 18.36.080 Articulation

To avoid a large, continuous building mass of uniform height; no portion of any building shall continue more than forty feet horizontally without a minimum of an eighteen-inch break in the roofline or introduction of a contrasting architectural element such as an overhang, projection, or inset of a minimum depth of two feet (2') from the primary façade plane, to create shadow patterns along the elevation of the building.

### 18.36.090 Neighborhood Compatibility Modification (NCM)

The Neighborhood Compatibility Modification (NCM) allows for modified standards from one or more of the spatial standards based upon the compatibility of the proposed residential development application with other properties/dwellings in the proximate neighborhood. The Planning Director may approve an NCM request at time of site plan submittal provided the following conditions are met:

A. Evidence. Compliance with the corresponding neighborhood conditions must be established by a survey from the proximate neighborhood, defined as a 200-foot radial distance from the property boundary. Survey submitted must be completed by a surveyor licensed to practice in the State of Utah.

B. Submittal. NCM requests shall be submitted on a separate form and shall include an additional review fee as set forth in the Millcreek Consolidated Fee Schedule.

C. Permissible Modifications. Building height, setbacks and lot or parcel coverage modifications may be accommodated if the request does not exceed the allowances as set forth in Table 18.36-4 NCM Standards.

D. Non-Permissible Modifications. Building envelope, mass and scale, and accessory structure modifications do not qualify under the NCM.

**Table 18.36-4 NCM Standards**

| *Zone* | *(H)* | *Lot or Parcel Coverage* | *Front Setback* | *Side Setback* | *Rear Setback* | *Max Height* |
|---|---|---|---|---|---|---|
| R-1-3 | 33' | 40% (1) | The average of all lots or | Combined side yard | The average rear yard | The maximum building height that may be approved by the Planning Director or designee |
| R-1-4 | 33' | 40% (1) | | | | |

| Table 18.36-4 NCM Standards | | | | | | |
|---|---|---|---|---|---|---|
| ***Zone*** | ***(H)*** | ***Lot or Parcel Coverage*** | ***Front Setback*** | ***Side Setback*** | ***Rear Setback*** | ***Max Height*** |
| R-1-5 | 33′ | 40% (1) | parcels within the proximate neighborhood that fronts to the same street, road, or right-of way. | shall be at least twenty-five percent (25%) of the lot or parcel width, and no less than five feet (5′) on each side. | setback that are on six lots or parcels of the applicant's choice within the proximate neighborhood, and no less than 15′ | under the NCM standards is the lesser of:<br>3. Three feet plus the average maximum ridge height of residential structures that are on six lots or parcels of the applicant's choice that are within the proximate neighborhood; and<br>4. The maximum height of the zone specified in column (H) of Table 18.36-4 NCM Standards. |
| R-1-6 | 33′ | 40% (1) | | | | |
| R-1-8 | 33′ | 38% (1) | | | | |
| R-1-10 | 35′ | 36% (1) | | | | |
| R-1-15 | 37′ | 30% (1) | | | | |
| R-1-21 | 37′ | 30% (1) | | | | |

E. Table Notes.

1. Lot or parcel coverage for all lots or parcels may not exceed more than 1.15 times the average coverage of proximate neighborhood lots or parcels.

Attachment "G"

# 18.97 Definitions

## 18.97.010 Purpose

For the purpose of this title, certain words and terms are defined as set out in this chapter. Additional definitions may be found in MKC 14.60. Words used in the present tense include the future; words in the singular number include the plural and the plural the singular; and words included herein but defined in the building code shall be construed as defined therein.

## 18.97.020 Organization

Defined words and terms are organized alphabetically.

## 18.97.030 Alphabetized Definitions

### A

**Abut** or **Abutting** or **Adjoining** means immediately contiguous to, or physically touching, and when used with respect to lots, parcels, or development sites, means two lots, parcels, or development sites that share a common property line, including property separated by an alley, a private right-of-way or a utility strip.

**Access** means the ability for vehicles or pedestrians to enter or exit a site or building at a designated location.

**Access Strip** means the portion of a flag lot that connects the main body of the flag lot to a public street and that includes a driveway for vehicular access.

**Accessory Uses and Buildings or Structures** means a subordinate use or structure customarily incidental to and located upon the same lot occupied by a main or primary use.

**Active Fault** means a fault displaying evidence of greater than four inches of displacement along one or more of its traces during Holocene time (about 10,000 years ago to the present).

**Active Recreation Areas** means areas of the landscape dedicated to active play where lawn may be used as the playing surface such as sports fields.

**Activity Zones** means portions of the landscape designed for recreation or function, such as storage areas, fire pits, vegetable gardens, and playgrounds.

**Adaptive Reuse** means the process of repurposing a building for a use other than what it was built or designed for.

**Affected Property Owners Within a Subdivision** means property owners who have a direct interest in, or will be directly affected by, a proposed subdivision amendment or lot line adjustment, including the applicant.

**Affected Entities** means individuals, organizations, or governmental bodies that have a stake or are impacted by a proposed regulation or land use decision.

**Affordable Housing** means housing occupied or reserved for occupancy by households with the following gross household income levels:

- **Very Low-income Housing** means housing occupied or reserved for occupancy by households with a gross household income equal to or less than 30% of the median gross income for households of the same size in the county in which the housing is located.
- **Low-income Housing** means housing occupied or reserved for occupancy by households with a gross household income between 30% - 50% of the median gross income for households of the same size in the county in which the housing is located.
- **Moderate-income Housing** means housing occupied or reserved for occupancy by households with a gross household income between 50% - 80% of the median gross income for households of the same size in the county in which the housing is located.

**Agriculture, Commercial** means tilling of soil, horticulture, raising crops, raising animals, and commercial greenhouses with the intent of selling the products for profit. Commercial agriculture includes the keeping or raising of domestic animals, except household pets or fowl, and not including any agricultural industry or business such as fruit-packing plants, fur farms, animal hospitals, or similar uses.

**Agriculture, Noncommercial** means tilling of soil, horticulture, raising crops, raising animals, and noncommercial greenhouses associated with residential uses, but not including the keeping or raising of domestic animals, except household pets or fowl, and not including any agricultural industry or business such as fruit-packing plants, fur farms, animal hospitals, or similar uses.

**ALTA Survey** means a standard survey format proposed by the American Land Title Association and the American Congress on Surveying and Mapping.

**Antenna** means a communication equipment that transmits or receives electromagnetic waves.

**Animal Care, Grooming, Boarding, Daycare** means a facility where dogs, cats or other domestic animals are provided care such as grooming, daycare, or overnight boarding.

**Apiary** means a place where one or more colonies of bees are located.

**Architectural Feature** means a decorative feature built into the design and construction of the building in addition to the occupiable space of the building. Such features may include but are not limited to overhangs, eaves, railings, bay windows, pelmets, façade variations, and cupolas.

**Architectural Lighting** means lighting of building surfaces, landscape features, statues, and similar items for the purpose of decoration, safety, or ornamentation.

acceptable and reasonable level, and where structures may be safely sited. Buildable areas must be clearly marked on the site plan and final approved plat, as appropriate.

**Building** means a roofed structure, supported by columns or walls, used for shelter meeting requirements of the Building Code and all the requirements of this title.

**Building or Structure, Accessory** means a building or structure which is incidental and subordinate to the use of the main building on the lot or parcel.

**Building, Principal, Primary, or Main** means a building which is integral to the principal use to which the premises are devoted, and which is usually the largest building or among the largest buildings on the lot or parcel.

**Building Height**

A. "Building Height" means the vertical distance above the lowest original ground surface or "existing grade" at any point on the perimeter of the building to the highest point of the coping of a flat roof or the deck line of a mansard roof, or the highest point of pitched or hipped roofs, or gambrel roofs.

B. Buildings may be stepped to accommodate the slope of the terrain provided that each step shall be at least twelve feet in the horizontal dimension. The height of each stepped building segment shall be measured as required in subsection A.

C. Original ground surface, or "existing grade," shall be the elevation of the ground surface in its natural state before any human-caused alterations including but not limited to grading, excavation, or filling, excluding improvements required by zoning or subdivision ordinances. When the elevation of the original ground surface is not readily apparent, the Planning Director shall determine the elevation of the original grade using one of the following methods:

    1. The original grade established related to the most recent building permit activity on the property.
    2. Referencing the original grade where the developed area appears to meet the undeveloped portions of the land. The estimated grade shall tie into the elevation and slopes of adjoining properties without creating a need for the new retaining wall, abrupt differences in the visual slope and elevation of the land or redirecting the flow of runoff water.

**Building Orientation** means the position or alignment of a structure on a lot or parcel relative to key factors such as cardinal directions, street frontage, setbacks, topography, solar access, views, and climate elements.

**Build to Line** means a requirement that dictates the exact location where a building's façade must be constructed relative to the property line, typically along a street or public right-of-way, as defined by a line parallel to the property line, ensuring a uniform or consistently articulated façade line along a street.

**Gross Floor Area** means the total area of all floors or stories within the exterior walls of a building or structure, including basements, mezzanines, and interior balconies, and all accessory structures on the property. Gross floor area includes:

A. Habitable living spaces, including but not limited to bedrooms, lobbies, kitchens, living rooms, offices, workspaces, shop floors, or hallways.
B. Accessory structures, such as detached garages, workshops, detached ADUs, or guest houses.
C. Enclosed porches or sunrooms, regardless of heating or cooling.
D. Storage areas and mechanical rooms if enclosed by permanent walls.
E. Garages, whether attached or detached.
F. Stairwells, elevator shafts, hallways, and similar vertical or horizontal circulation areas on each floor.
G. Areas designed for mechanical equipment or utilities, such as HVAC or electrical systems.

The following areas are not included in a calculation of a gross floor area:

A. Open or partially-open balconies, decks, or porches.
B. Crawl spaces or attics that are not designed for occupancy or storage.
C. Parking areas that are not enclosed, such as carports or parking lots.
D. Unenclosed courtyards or breezeways.

**Groundcover** means material planted in such a way as to form a continuous cover over the ground that can be maintained at a height not more than twelve inches.

**Group Home** means a residential facility home where fewer than sixteen (16) residents in need of care, support, or supervision can live together, such as those who are elderly, disabled, or protected by federal fair housing laws.

**Guardrail** means a strong barrier intended to prevent people from falling off or being hit by something, typically thirty-six inches (36″) to forty-two inches (42″) in height.

**Guest House** means a separate dwelling located on a lot or parcel with one or more main dwelling structures and used for housing of guests or servants, and not rented, leased, or sold separate from the rental, lease, or sale of the main dwelling.

**Gym or Fitness Studio** means a facility where members or nonmembers use equipment or space or receive instruction for the purpose of physical exercise, fitness, flexibility, and/or weight control. Facilities may include amenities such as whirlpools, saunas, massage rooms, locker rooms, and showers. Gyms and fitness studios may also cater to children with instruction classes, lessons, and accessible play areas.

**LocalScapes®** means a landscaping approach designed to create locally adapted and sustainable landscapes through a basic 5-step approach (central open shape, gathering areas, activity zones, connecting pathways, and planting beds).

**Lodging** means a commercial establishment providing temporary residence to the general public, with a temporary stay not exceeding thirty (30) days. Terms commonly associated with this use include hotel, motel, and inn. This definition shall not include bed-and-breakfasts.

**Lot** means a tract of land, regardless of any label, that is created by and shown on a subdivision plat that has been recorded in the office of the Salt Lake County recorder.

**Lot or Parcel Coverage** means the measurement of land use intensity that represents the portion of a lot or parcel occupied by the principal building and all accessory buildings, but excluding all other impervious improvements such as sidewalks, driveways, patios, decks and open porches.

**Lot or Parcel of Record** means a lot or parcel of land established in compliance with all laws applicable at the time of its creation and recorded in the office of the county recorder either as part of a recorded subdivision or as described on a deed, having frontage upon a street, a right-of-way approved by the land use hearing officer, or a right-of-way not less than twenty feet wide.

**Lot Width** means the width of the lot measured along the minimum building setback line.

**Low Impact Development (LID)** means stormwater and land use-management that mimics natural hydrologic conditions and emphasizes conservation, use of natural features, site planning and distributed best management practices for stormwater management. LID may include but is not limited to permeable pavement, bioswales, and rain gardens.

**LUDMA (the Municipal Land Use Development Management Act)** means the Utah State Law pertaining to land use codified at Utah Code Section 10-9a-101 et seq.

**Lumen** means a standard measurement of light emitted by a light fixture. The lumen output of a fixture shall be the manufacturer's published documentation of initial lumens for the fixture.

## M

**Main Building** means the principal building on a lot.

**Major Alteration** means a change or alteration to a building or historic resource that would destroy the historic integrity, including, but not limited to, changes in the pitch of the main roof, enlargement or enclosure of windows on the principal facades, the addition of upper stories or the removal of original upper stories, covering exterior walls (except adobe) with non-historic materials, moving the historical resource from its original location to one that is dissimilar to the original, or additions which significantly detract from or obscure the original form and appearance of the historic resource when viewed from a public right-of-way.

**Streetscape** means the appearance of the full public right-of-way, possibly including the setback areas and the adjacent buildings.

**Street Light** means a raised light installed within or adjacent to the street right-of-way that is turned on or lit at a certain time every night. Modern lamps may also have light-sensitive photocells that turn on at dusk and off at sunrise or activate automatically in inclement weather.

**Street Tree** means a tree located in the landscaped area within or abutting to a public right-of-way. These are located between the sidewalk and the street curb, or where there is no sidewalk present, they are located along the right-of-way.

**Structure** means any object or building erected or constructed on a lot or parcel which exceeds six feet (6') in height or exceeds two feet (2') in height and forms a geometric shape covering a ground area greater than thirty (30) square feet.

**Structure Designed for Human Occupancy** means any residential dwelling or other structure used or intended for supporting or sheltering any human occupancy.

**Structure, Temporary** means a building or structure which is not permanently affixed to a foundation or ground, designed and intended short-term use, such as events, storage, or temporary occupancy.

**Subdivision** means any land that is divided, re-subdivided or proposed to be divided into two or more lots, parcels, sites, units, plots, or other division of land for the purpose, whether immediate or future, for offer, sale, lease, or development. Subdivision does not include a bona fide division or partition of agricultural land for agricultural purposes, as set forth in Utah Code Section 10-9a-605(2), a recorded conveyance document, consolidating multiple lots or parcels into one legal description encompassing all lots by reference to a recorded plat and all parcels by metes and bounds description, joining a lot to a parcel, a bona fide division of land by deed or other instruments if the deed or other instrument states in writing that the division is in anticipation of future land use approvals on the parcel or parcels, does not confer any land use approvals, and has not been approved by the City, a boundary adjustment, a boundary establishment, road, street, or highway dedication plat, a deed or easement for a road, street, or highway purposes, or any other division of land authorized by law. The word "subdivide," and any derivative thereof shall have reference to the term subdivision as defined in this Title.

**Subdivision Amendment** means an amendment to a recorded subdivision as set forth in Utah Code Section 10-9a-608 that vacates all or a portion of a subdivision, increases the number of lots within a subdivision, that alters a public right-of-way, a public easement, or public infrastructure within the subdivision, or alters a common area or other common amenity within the subdivision. A subdivision amendment does not include a simple or full boundary adjustment.

**Subdivision Application** means a land use application for the subdivision of land.

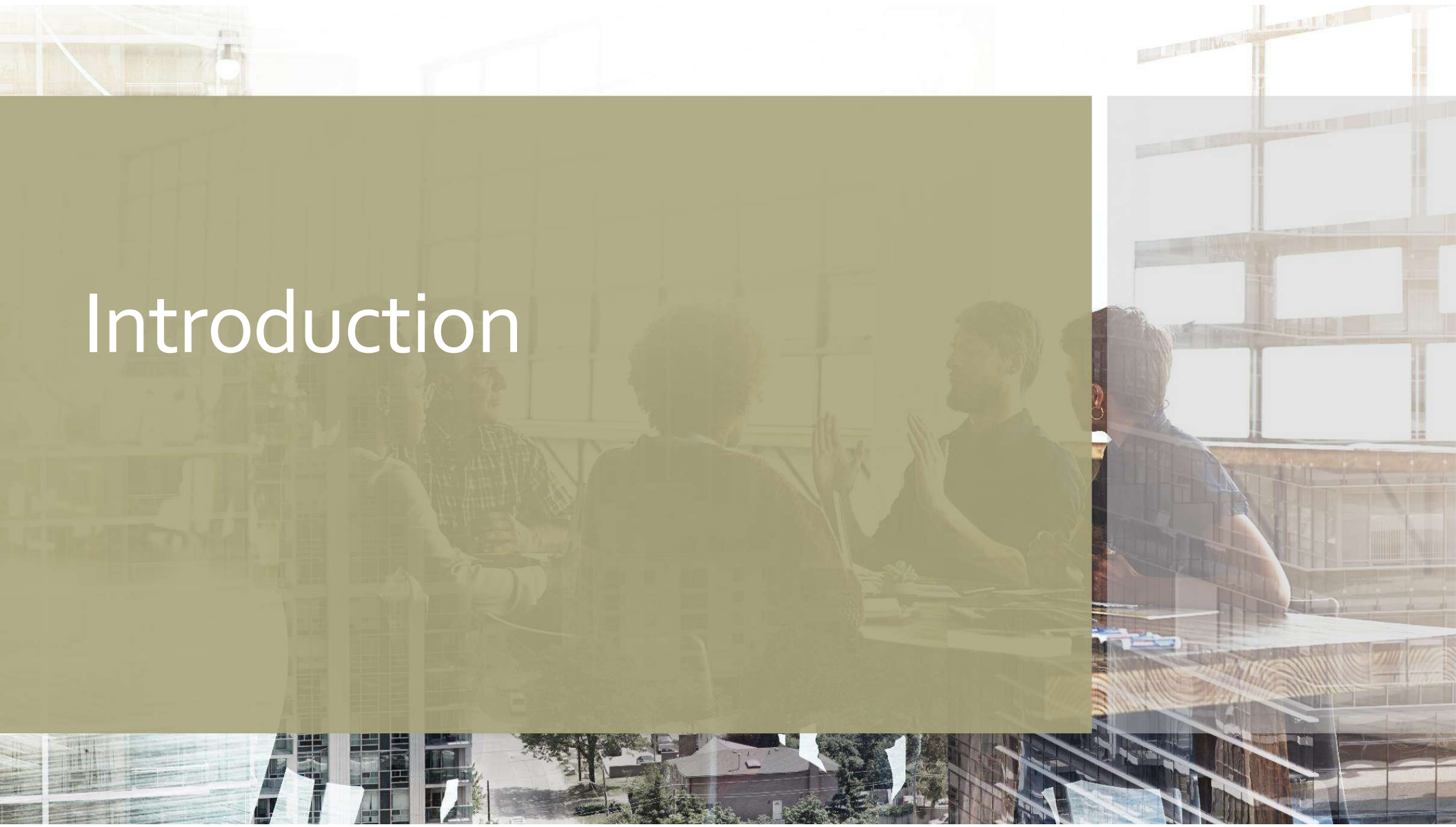


# Land Use Appeal Hearing

## Millcreek, Utah

Applicant / Appellant:
Joe Romero
Permit #'s 252009 & 926020
Hearing Date: April 22, 2026

# Introduction



# Theory of the Appeal

UTAH / MILLCREEK CODE & CASE LAW PRECEDENT

TITLE 18 CODE (PLAIN TEXT)

ALLEGED MIS-INTERPRETATION AND MISAPPLICATION OF TITLE 18 CODE

ALLEGED IMPROPER CONDUCT BY PLANNING AND ZONING DEPARTMENT

CONCLUSION & FINAL REVISED PLANS AND LOT COVERAGE CALCULATIONS

# Introduction & Appeal Documents on Record

## Appeal Documents on the Record

- Formal Appeal Letter dated February 5, 2026 (w/ appeal application)
- Supplemental Information Memorandum Letter dated February 16, 2026
- Power Point Presentation for Appeal Hearing (Submitted April 10, 2026)
- Scheduling Letter dated March 16, 2026 requesting required discovery information from Millcreek City



Mr. Romero expressly reserves the right to submit additional documentation, evidence, and information into the administrative record at the time of the appeal hearing. This reservation includes, but is not limited to, any materials that were not reasonably available, discoverable, or capable of being verified prior to the submission of this disclosure, despite the exercise of reasonable diligence.

# The Romero Family



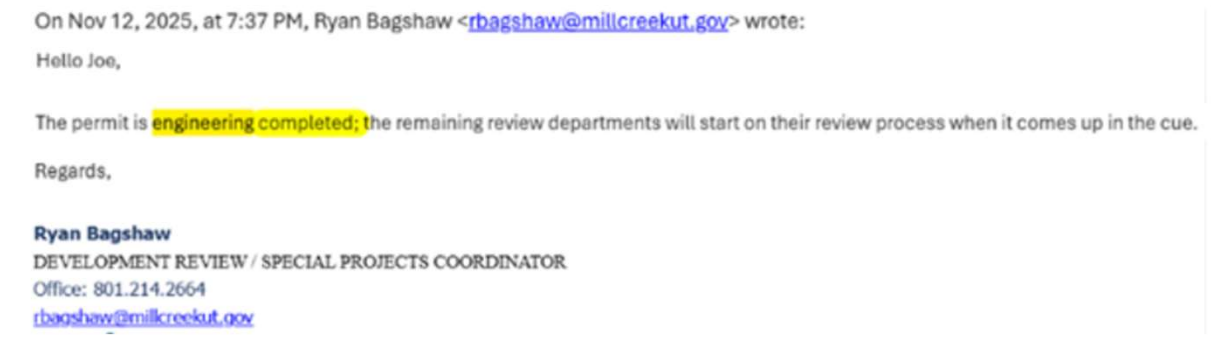

**Family**

- Married 20 Years in July
- Been a resident of Millcreek City on Aurora Circle since May 2005.
- (3) Children who have all successfully completed elementary, Jr. High and High School within Millcreek City
- (1) Grandson
- 100% Service-Disabled US Marine Corps Veteran
- Middle son is a Service-Disabled US Marine Corps Veteran

# Engineering vs. Planning Dept. Experience

- Initial project submittal to Millcreek City was on November 10, 2025
- Engineering Plan Review and Approval happened on 11-12-2025. *Same day review comments were issued, and new drainage plan was submitted.*
- VERSUS
- P&Z Planner ***ceased to communicate for 43 days*** requiring Mr. Romero to send a formal letter to Planning Director for Administrative Action.
- As of the date of this hearing, is has been **163** days, **23.29** weeks, and **5.38** months since Mr. Romero submitted his permit application.

- ***November 12, 2025 @9:17 am -*** Engineering department plan review comments that required a *new and revised drawings* for drainage calculations (similar to lot coverage calculations revisions)
- ***@10:45 am the same*** day - Mr. Romero contacted Engineering and requested a face-to-face meeting to review their comments and ensure he understood what was needed. ***Mr. Ryan Bagshaw was very, very accommodating*** and met with Mr. Romero within about an hour.
- ***@2:08 am the same day*** - Mr. Romero completed plan revisions and calculations and submitted back to Mr. Bagshaw via email.
- ***@7:37 pm the same day*** - Engineering approval was granted the *same day as initial comments were published* and after face-to face meeting to ensure all comments were appropriately addressed)



On Nov 12, 2025, at 7:37 PM, Ryan Bagshaw <rbagshaw@millcreekut.gov> wrote:

Hello Joe,

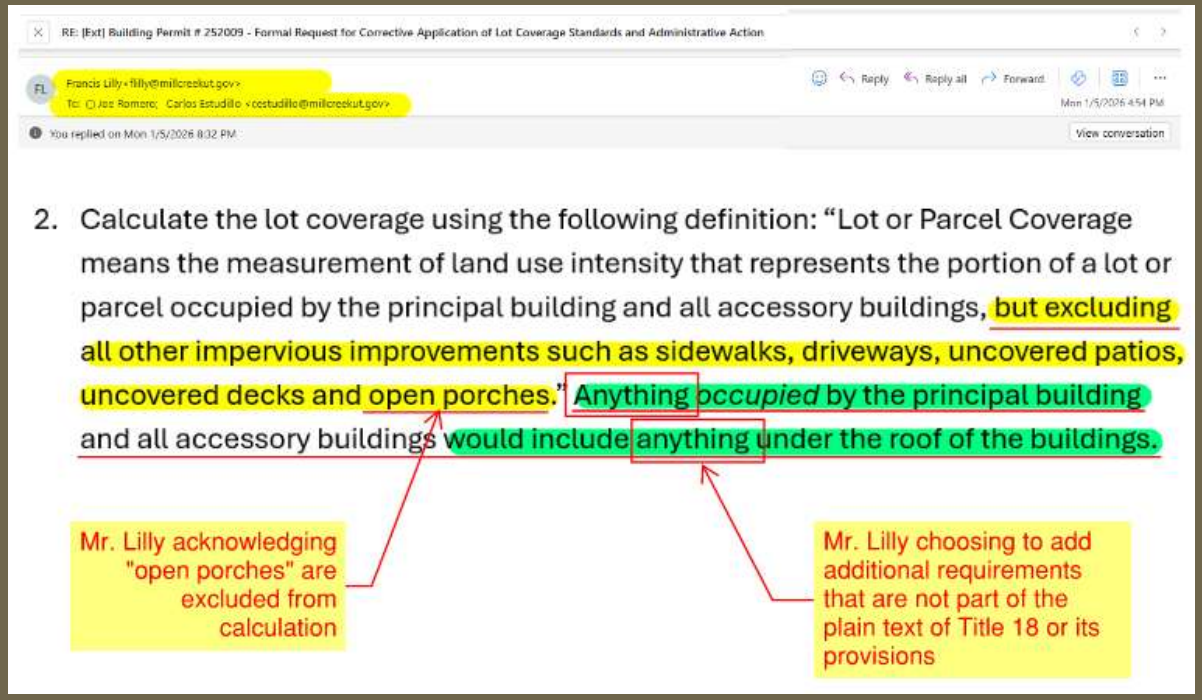
The permit is engineering completed; the remaining review departments will start on their review process when it comes up in the cue.

Regards,

**Ryan Bagshaw**
DEVELOPMENT REVIEW / SPECIAL PROJECTS COORDINATOR
Office: 801.214.2664
rbagshaw@millcreekut.gov

# The Impasse Resulting from Mr. Lilly Determination

January 5, 2026, - Mr. Lilly email with his interpretation of how-to calculate lot coverage.




**The Impasse Resulting in Delays & this Appeal Hearing Process**

- Mr. Lilly is simply misreading and misinterpreting the PLAIN TEXT of Title 18 as he noted in the definition he provided.
- What part of the code defines "**anything**"
- Title 18 – Section 18.36.040 and Illustration 18.36.2 show exactly how to calculate maximum lot coverage and it clearly DOES NOT include "anything" under the roof.
- Mr. Lilly is simply using his position to require greater restrictions on property use.

# Romero Family Home since 2005





**The Impasse Resulting in Delays & this Appeal Hearing Process**

- Front porch is "unhabitable space" and "in addition to" the building
- "*Unenclosed, open-style (no walls, doors, screens, etc*.)
- "Architectural Feature"
- Just a "Gable" as it has a lower separate roof
- The roof eaves extend only 12" from the face of the exterior wall around whole house
- 2nd floor has a couple of cantilevered "overhangs"

# Utah / Millcreek Code & Case Law Precedent



# Applicable Utah / Millcreek Code / Precedent

- Municipal Land Use, Development, and Management Act. (LUDMA) (§10-20-1 et. seq.)
- Property Rights Ombudsman Act (§13-43-201, et. seq.)
- Municipal Officers' and Employees Act (§10-3-1301 et. seq)
- Title 18 – Millcreek Land Use Code
  - Adopted April 28, 2025
  - Effective May 19, 2025
- Utah Case law precedent outlined and listed in Appeal Documentation

***Effective 11/6/2025***
**10-20-902. Applicant's entitlement to land use application approval -- Municipality's requirements and limitations -- Vesting upon submission of development plan and schedule.**

(1) (a) (i) An applicant who has submitted a complete land use application as described in Subsection (1)(c), including the payment of all application fees, is entitled to substantive review of the application under the land use regulations:

(A) in effect on the date that the application is complete; and

(B) applicable to the application or to the information shown on the application.

(ii) An applicant is entitled to approval of a land use application if the application conforms to the requirements of the applicable land use regulations, land use decisions, and development standards in effect when the applicant submits a complete application and pays application fees, unless:

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

***Effective 11/6/2025***
**10-20-1105. Burden of proof.**

The appellant has the burden of proving that the land use authority erred.

***Effective 11/6/2025***
**10-20-1106. Due process.**

(1) Each appeal authority shall conduct each appeal and variance request as provided in local ordinance.

(2) Each appeal authority shall respect the due process rights of each of the participants.

***Effective 11/6/2025***
**10-20-1107. Scope of review of factual matters on appeal -- Appeal authority requirements.**

(1) A municipality may, by ordinance, designate the scope of review of factual matters for appeals of land use authority decisions.

(2) If the municipality fails to designate a scope of review of factual matters, the appeal authority shall review the matter de novo, without deference to the land use authority's determination of factual matters.

(3) If the scope of review of factual matters is on the record, the appeal authority shall determine whether the record on appeal includes substantial evidence for each essential finding of fact.

(4) The appeal authority shall:

(a) determine the correctness of the land use authority's interpretation and application of the plain meaning of the land use regulations; and

(b) interpret and apply a land use regulation to favor a land use application unless the land use regulation plainly restricts the land use application.

# Applicable Utah / Millcreek Code / Precedent

- Municipal Land Use, Development, and Management Act. (LUDMA) (§10-20-1 Et. seq.)
- Property Rights Ombudsman Act (§13-43-201, Et. seq)
- Municipal Officers' and Employees Act (§10-3-1301 Et. seq)
- Title 18 – Millcreek Land Use Code
  - Adopted April 28, 2025
  - Effective May 19, 2025
- Utah Case law precedent outlined and listed in Appeal Documentation

***Effective 11/6/2025***

**10-20-1109. No district court review until administrative remedies exhausted -- Time for filing -- Tolling of time -- Standards governing court review -- Record on review -- Staying of decision.**

(3) (a) A court shall:

(i) presume that a land use regulation properly enacted under the authority of this chapter is valid; and

(ii) determine only whether:

(A) the land use regulation is expressly preempted by, or was enacted contrary to, state or federal law; and

(B) it is reasonably debatable that the land use regulation is consistent with this chapter.

(b) A court shall presume that a final land use decision of a land use authority or an appeal authority is valid unless the land use decision is:

(i) arbitrary and capricious; or

(ii) illegal.

(c) (i) A land use decision is arbitrary and capricious if the land use decision is not supported by substantial evidence in the record.

(ii) A land use decision is illegal if the land use decision:

(A) is based on an incorrect interpretation of a land use regulation;

(B) conflicts with the authority granted by this title; or

(C) is contrary to law.

(7)

(a) The land use authority or appeal authority, as the case may be, shall transmit to the reviewing court the record of the proceedings of the land use authority or appeal authority, including the minutes, findings, orders, and, if available, a true and correct transcript of the proceedings.

(b) If the proceeding was recorded, a transcript of that recording is a true and correct transcript for purposes of this Subsection (7).

(8)

(a)

(i) If there is a record, the district court's review is limited to the record provided by the land use authority or appeal authority, as the case may be.

(ii) The court may not accept or consider any evidence outside the record of the land use authority or appeal authority, as the case may be, unless that evidence was offered to the land use authority or appeal authority, respectively, and the court determines that the evidence was improperly excluded.

# Title 18 Code
# Millcreek's Land Use Code
# "Plain Text"



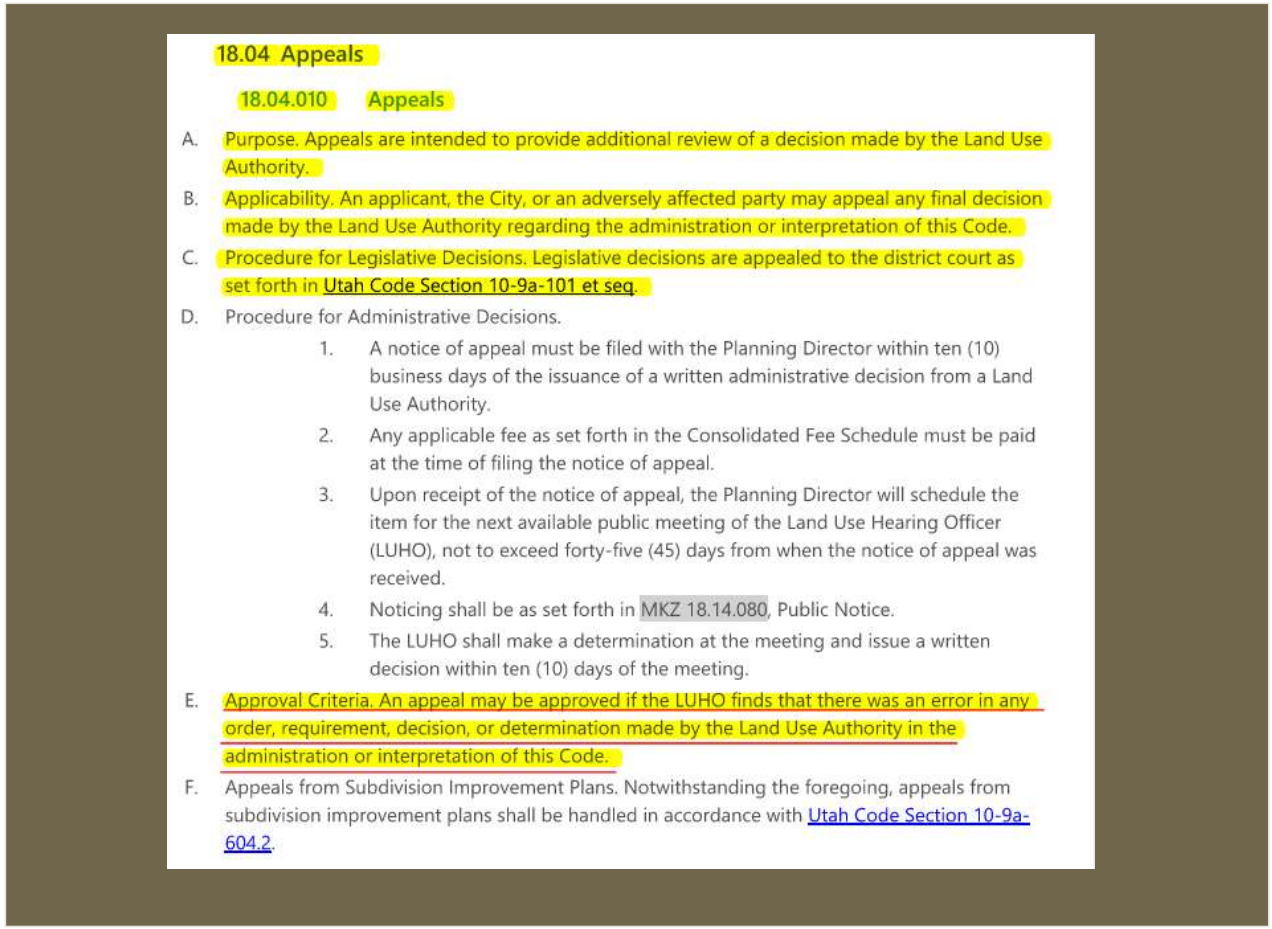
# Millcreek Title 18 - Inconsistencies

- The catalyst of this matter is with the actual "***plain text***" of Title 18 itself. The code requirements regarding maximum lot coverage *are ambiguous, vague and unclear.*
- The diagrams and illustrations are more specific to lot Setbacks as opposed to maximum lot coverage; however, Mr. Romero has utilized the direction of the ***plain text*** to determine his lot coverage as well per the plain text and instructions of this Code.
- Other provisions of the code assist in clarifying what the intent of the code is poorly and inaccurately trying to achieve.
- Detailed definitions clarifying what items are to be "***excluded***" in lot coverage calculations
- Planning and Zoning review *does not have the liberty to change the plain text of the code, change definitions or make up their own determinations if the plain text does not support their determination.*

**Relevant Sections of Title 18**

- PLAIN TEXT of pages 107-117 Title 18 are the pages outlining the requirements for R-1 Zones.
- Definitions included in Title 18 "supplement" the requirements in the R-1 Section.
- Crux of the matter rest in the "***plain text, tables and illustrations***" of ***Section 10.36.040*** and supplemental "***Definitions"*** which is the "***ONLY***" plain text within R-1 zone requirements that outlines requirements for Lot Coverage.

# Millcreek Title 18 - Appeals



**18.04 Appeals**

**18.04.010 Appeals**

A. Purpose. Appeals are intended to provide additional review of a decision made by the Land Use Authority.

B. Applicability. An applicant, the City, or an adversely affected party may appeal any final decision made by the Land Use Authority regarding the administration or interpretation of this Code.

C. Procedure for Legislative Decisions. Legislative decisions are appealed to the district court as set forth in Utah Code Section 10-9a-101 et seq.

D. Procedure for Administrative Decisions.

1. A notice of appeal must be filed with the Planning Director within ten (10) business days of the issuance of a written administrative decision from a Land Use Authority.
2. Any applicable fee as set forth in the Consolidated Fee Schedule must be paid at the time of filing the notice of appeal.
3. Upon receipt of the notice of appeal, the Planning Director will schedule the item for the next available public meeting of the Land Use Hearing Officer (LUHO), not to exceed forty-five (45) days from when the notice of appeal was received.
4. Noticing shall be as set forth in MKZ 18.14.080, Public Notice.
5. The LUHO shall make a determination at the meeting and issue a written decision within ten (10) days of the meeting.

E. Approval Criteria. An appeal may be approved if the LUHO finds that there was an error in any order, requirement, decision, or determination made by the Land Use Authority in the administration or interpretation of this Code.

F. Appeals from Subdivision Improvement Plans. Notwithstanding the foregoing, appeals from subdivision improvement plans shall be handled in accordance with Utah Code Section 10-9a-604.2.

**Plain Text of the Code**

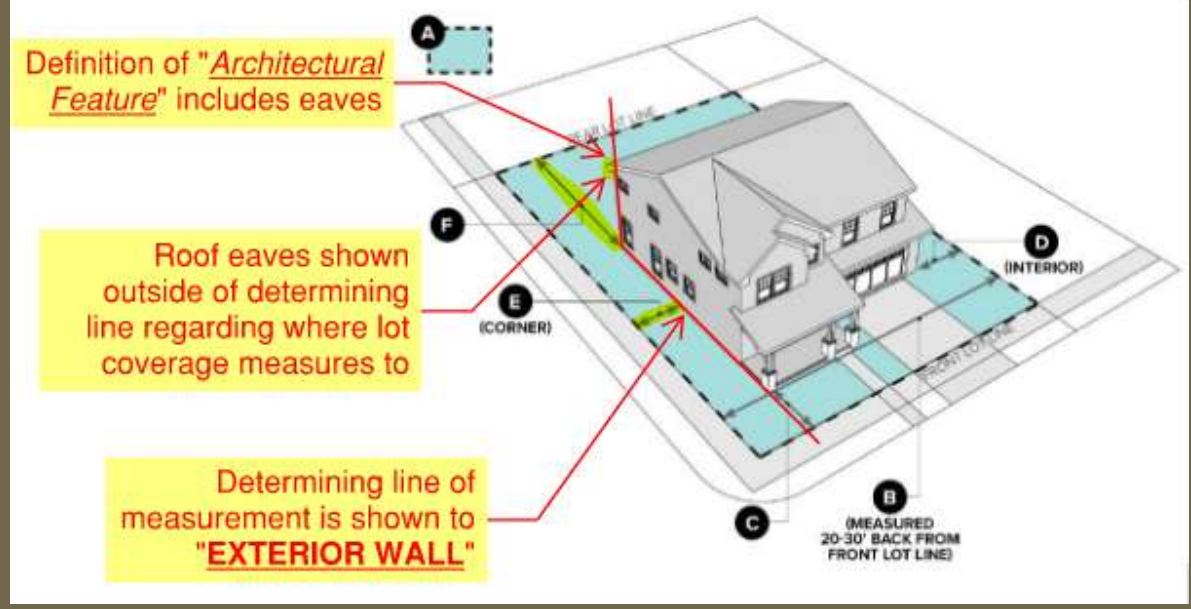
- 18.04.010-A-B designates the applicability and purpose of the Appeals process
- 18.04.010-C allows for further legal procedure and action to the district court
- 18.04.010-E confirms the ALJ/LUHO has the ability and authority to "***approve Appeal***" if there ***was an error in any*** order, requirement, ***decision*** or determination made by the LUA ***in the interpretation*** of the code.

# Millcreek Title 18.36.040 for R1-8 Zoning Requirements

**18.36.040 Spatial Requirements**

A. Setback Measurements. The minimum property size, width, setbacks, and maximum property coverage requirements are as determined by Table 18.36-2 Spatial Requirements for the Single-Household Residential (R-1) Zones and are as illustrated in Figure 18.36.2.

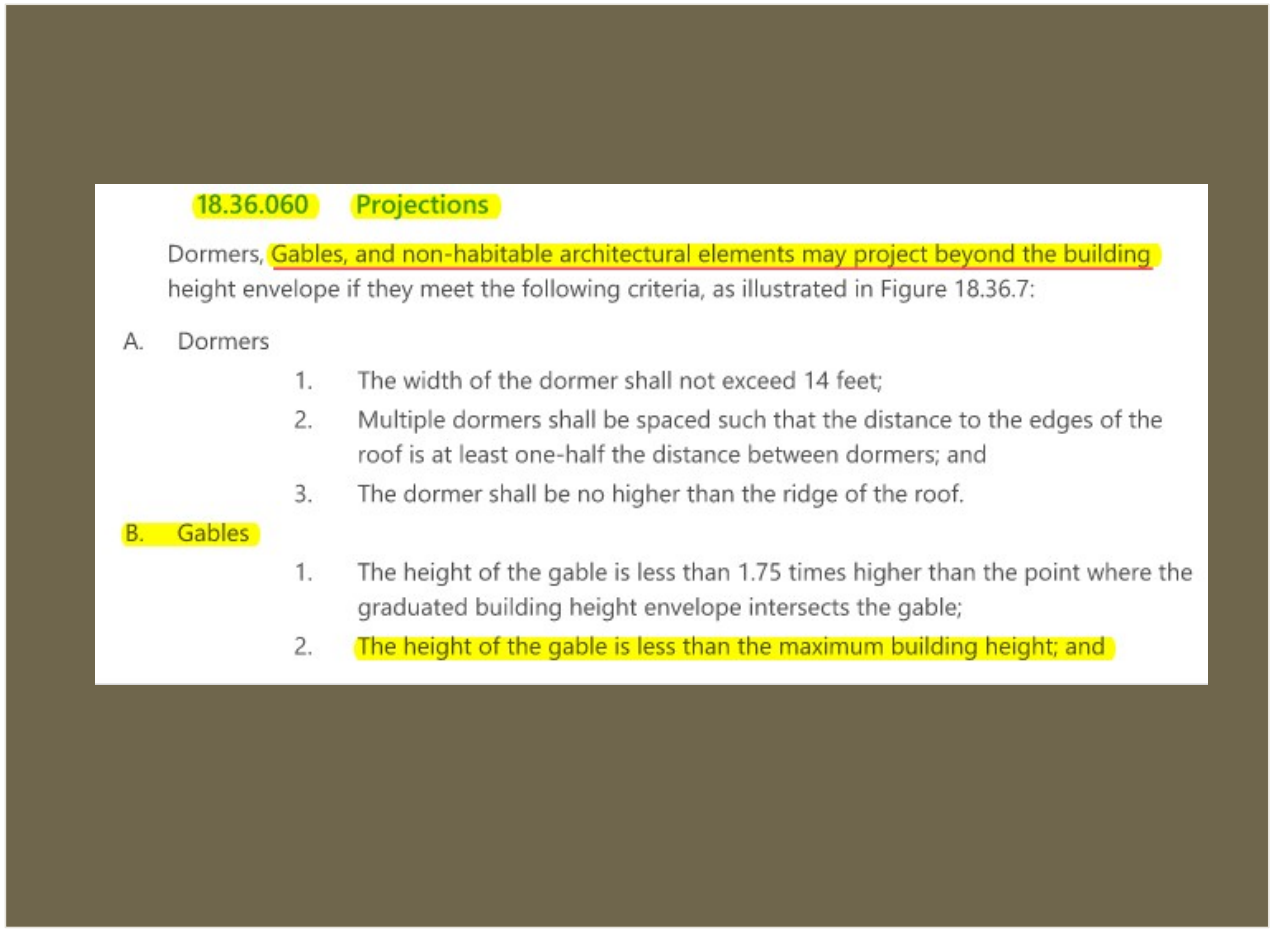
*Figure 18.36.2 Spatial Requirements Diagram (letter labels related to Table 18.36-2)*




**Plain Text of the Code**

- 18.36.040 outlines that "*Maximum Property Coverage*" requirements is "***as determined***" by Table 18.36.2 and "***as illustrated***" in Figure 18.36.2.
- No other reference on how to determine lot/property coverage is included in R-1-8 Section of Title 18 Code.
- Illustration outlines determining line of dimensions are "***Exterior Wall***"
- Illustration outlines that "***overhangs, eaves, et. all***" are ***excluded*** from the line of measurement determination
- Title 18 shows same requirements in AG, FRE, R-2, R-3 and RM Zoning

# Millcreek Title 18 Definitions & Supporting Information



18.36.060 Projections

Dormers, Gables, and non-habitable architectural elements may project beyond the building height envelope if they meet the following criteria, as illustrated in Figure 18.36.7:

A. Dormers

1. The width of the dormer shall not exceed 14 feet;
2. Multiple dormers shall be spaced such that the distance to the edges of the roof is at least one-half the distance between dormers; and
3. The dormer shall be no higher than the ridge of the roof.

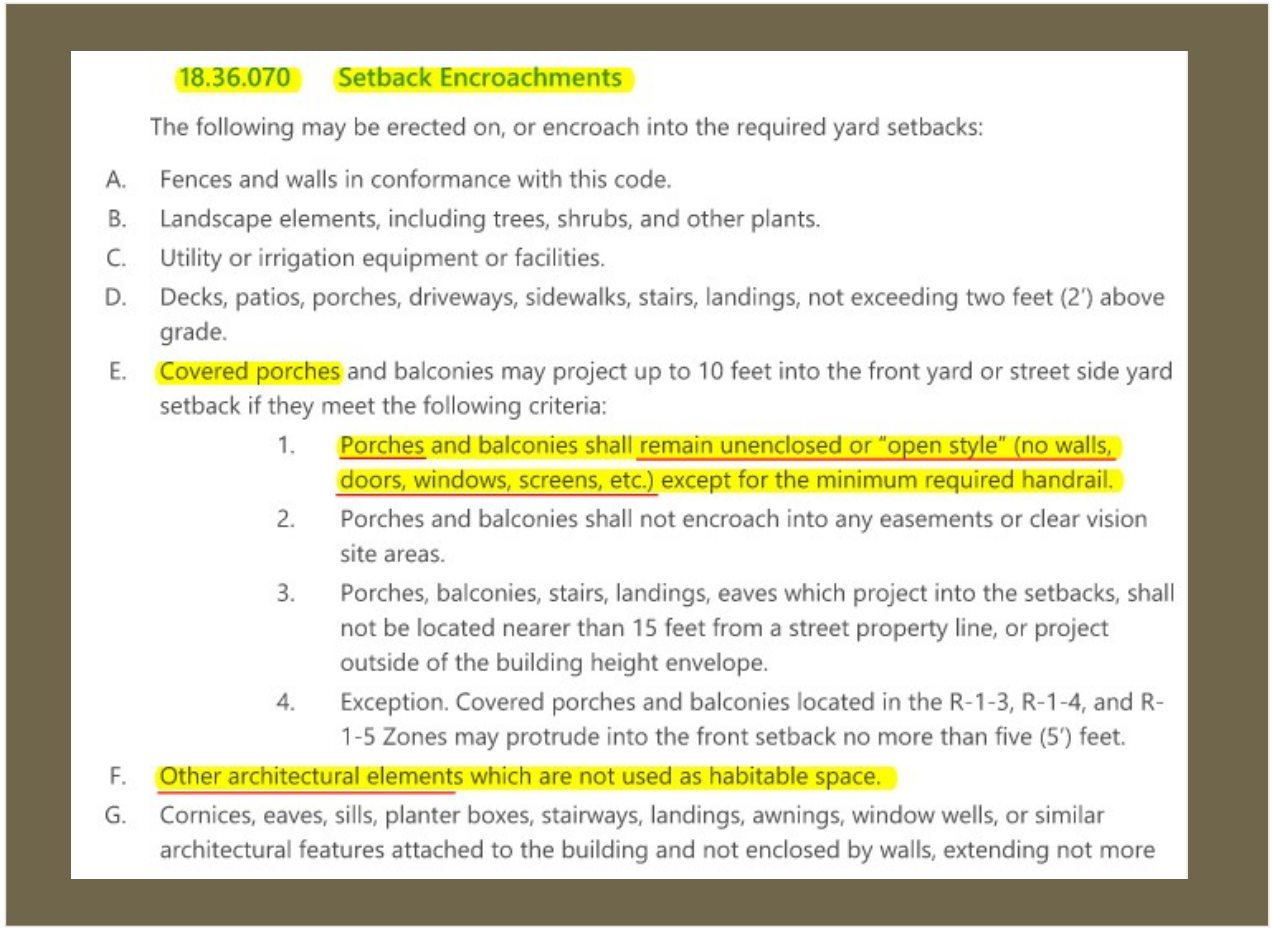
B. Gables

1. The height of the gable is less than 1.75 times higher than the point where the graduated building height envelope intersects the gable;
2. The height of the gable is less than the maximum building height; and

**Plain Text of the Code**

- R-1 Code is ambiguous, vague provides insufficient information and is unclear
- Plain text of the code is clear that "***Non-habitable architectural elements***" may project ***beyond*** the building.
- The plain text supports that projections are "***not included***" and "***in addition to***" the building calculations.
- Plain text state "***may project beyond***" the building envelope.
- The front porch roof could be considered a "***gable***" as well as "***architectural element***".

# Millcreek Title 18 Definitions & Supporting Information



**18.36.070 Setback Encroachments**

The following may be erected on, or encroach into the required yard setbacks:

A. Fences and walls in conformance with this code.

B. Landscape elements, including trees, shrubs, and other plants.

C. Utility or irrigation equipment or facilities.

D. Decks, patios, porches, driveways, sidewalks, stairs, landings, not exceeding two feet (2') above grade.

E. Covered porches and balconies may project up to 10 feet into the front yard or street side yard setback if they meet the following criteria:

1. Porches and balconies shall remain unenclosed or "open style" (no walls, doors, windows, screens, etc.) except for the minimum required handrail.
2. Porches and balconies shall not encroach into any easements or clear vision site areas.
3. Porches, balconies, stairs, landings, eaves which project into the setbacks, shall not be located nearer than 15 feet from a street property line, or project outside of the building height envelope.
4. Exception. Covered porches and balconies located in the R-1-3, R-1-4, and R-1-5 Zones may protrude into the front setback no more than five (5') feet.

F. Other architectural elements which are not used as habitable space.

G. Cornices, eaves, sills, planter boxes, stairways, landings, awnings, window wells, or similar architectural features attached to the building and not enclosed by walls, extending not more

**Plain Text of the Code**

- R-1 Code is ambiguous, vague provides insufficient information and is unclear
- Only text within R-1-8 Section that outlines ***elements of*** an "***OPEN PORCH***" - (***no walls, doors, windows, screens, etc***.)
- Plain text of the code is clear on elements of an "Open Porch"
- Plain text of the code is clear that "***Architectural Elements***" are not used as habitable space.
- No other definition of "***Porch***" provided in the Code

# Millcreek Title 18 Definitions & Supporting Information

**Lot or Parcel Coverage** means the measurement of land use intensity that represents the portion of a lot or parcel occupied by the principal building and all accessory buildings, but excluding all other impervious improvements such as sidewalks, driveways, patios, decks and open porches.

- Page 506 – Title 18

**Architectural Feature** means a decorative feature built into the design and construction of the building in addition to the occupiable space of the building. Such features may include but are not limited to overhangs, eaves, railings, bay windows, pelmets, façade variations, and cupolas.

- Page 486 – Title 18

**Building** means a roofed structure, supported by columns or walls, used for shelter meeting requirements of the Building Code and all the requirements of this title.

- Page 489 – Title 18

**Plain Text of the Code**

- Definition of Lot or Parcel Coverage "specifically excludes" ***open porches.***
- Definition of Architectural Feature states it is "***in addition to the occupiable space of the building***" and "***specifically not limited to*** overhangs, eaves, bay windows, etc.
- Definition of Building simply states it is "a roofed structure". Title 18 ***does not*** state that lot coverage is determined by the whole building. (***See Illustration 18.36.2***).

# Millcreek Title 18 Definitions & Supporting Information

**Gross Floor Area** means the total area of all floors or stories within the exterior walls of a building or structure, including basements, mezzanines, and interior balconies, and all accessory structures on the property. Gross floor area includes:

A. Habitable living spaces, including but not limited to bedrooms, lobbies, kitchens, living rooms, offices, workspaces, shop floors, or hallways.
B. Accessory structures, such as detached garages, workshops, detached ADUs, or guest houses.
C. Enclosed porches or sunrooms, regardless of heating or cooling.
D. Storage areas and mechanical rooms if enclosed by permanent walls.
E. Garages, whether attached or detached.
F. Stairwells, elevator shafts, hallways, and similar vertical or horizontal circulation areas on each floor.
G. Areas designed for mechanical equipment or utilities, such as HVAC or electrical systems.

The following areas are not included in a calculation of a gross floor area:

A. Open or partially-open balconies, decks, or porches.
B. Crawl spaces or attics that are not designed for occupancy or storage.
C. Parking areas that are not enclosed, such as carports or parking lots.
D. Unenclosed courtyards or breezeways.

- Page 501 – Title 18

(Note: Mr. Romero believes that lot coverage calculations are based on "***ground level***" exterior wall calculations (per Figure 18.36-2). He asked for clarification several times from planning staff, but they never answered.)

**Plain Text of the Code**

- Although Title 18 is ambiguous, vague and unclear regarding "*exactly*" how to determine lot coverage, the best and most accurate definition that could determine what an area of a building should be is "***Gross Floor Area***"
- Specifically ***Including***:
  - Habitable living spaces
  - "Enclosed porches"
- Specifically ***EXCLUDING***:
  - ***Open or partially open*** balconies, decks, ***porches***.
- (Section 18.36.070 regarding elements of open porch)

# Alleged Misinterpretation and Misapplication of Title 18 Code



# Basis for Alleged Misinterpretation

- The original denial rests on the "***misinterpretation and misapplication***" of Millcreek's own Land Use Code, Title 18, and internally inconsistent Staff directions and decisions of "***actual***" elements of the "***plain text***" of the code which are *ambiguous, unclear and vague* at best.
- Title 18 "***does not***" provide actual and undeniably clear process of how to determine "*lot coverage*" and Planning Staff / Planning Director is not following the "***plain text***" of the Code ***AS WRITTEN***.
- Planning Staff / Planning Director are not following the "***plain text***" ***DEFINITIONS*** and ***EXCEPTIONS*** within the Code and improperly including the open front porch, roof eaves, and 2nd level overhangs in the lot coverage without legal basis nor support of plain text from the Code.
- Gross Floor Area definition is the most logical description of how to calculate the "area" of a building. The plain text of this definition states

> **Gross Floor Area** means the total area of all floors or stories within the exterior walls of a building or structure, including basements, mezzanines, and interior balconies, and all accessory structures on the property. Gross floor area includes:

- Lot Coverage should be calculated from 1st or ground level of exterior walls

**Relevant Sections of Title 18**

- PLAIN TEXT of pages 107-117 Title 18 are the pages outlining the requirements for R-1 Zones.
- Definitions included in Title 18 "supplement" the requirements in the R-1 Section.
- Crux of the matter rest in the "***plain text, tables and illustrations***" of ***Section 10.36.040*** and supplemental "***Definitions"*** which is the "***ONLY***" plain text within R-1 zone requirements that outlines requirements for Lot Coverage.

# Basis for Alleged Misinterpretation

- Section 18.36.070 provides the distinction between a "covered porch" and explicitly clarifies that "unenclosed or open style" porches (no walls, doors, windows, screens, etc.)

> E. Covered porches and balconies may project up to 10 feet into the front yard or street side yard setback if they meet the following criteria:
>
> 1. Porches and balconies shall remain unenclosed or "open style" (no walls, doors, windows, screens, etc.) except for the minimum required handrail.

- Plain text definition of "Lot Coverage" is clear and "excludes" Open Porches.

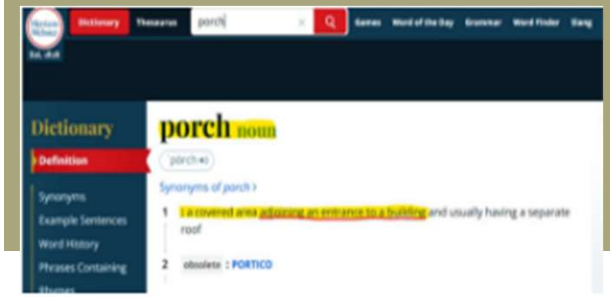
> **Lot or Parcel Coverage** means the measurement of land use intensity that represents the portion of a lot or parcel occupied by the principal building and all accessory buildings, but excluding all other impervious improvements such as sidewalks, driveways, patios, decks and open porches.

- Plain text definition of "Architectural Feature" is clear and states those elements (i.e. overhangs, eaves, etc.) are "***<u>in addition to</u>***" the building

> **Architectural Feature** means a decorative feature built into the design and construction of the building in addition to the occupiable space of the building. Such features may include but are not limited to overhangs, eaves, railings, bay windows, pelmets, façade variations, and cupolas.

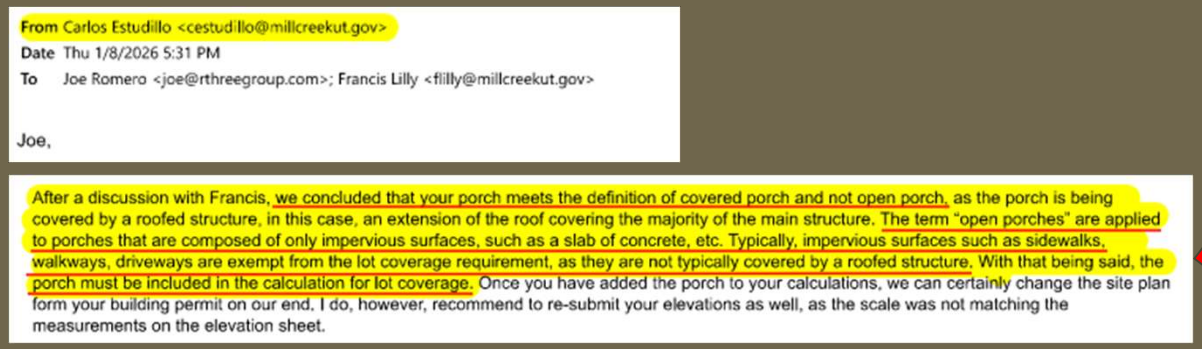
**<u>Relevant Sections of Title 18 and Additional Definitions</u>**

- Pages 107-117 of Title 18 are the sole pages outlining the requirements for R-1 Zones.
- Definitions included in Title 18 supplement the requirements in the R-1 Section.
- Title 18 DOES NOT include definition of "porch". (Closed, Covered or Open) Webster's Dictionary confirms it is "adjoining" the building.



# Basis for Alleged Misinterpretation

- Planning staff's own admission (via email) that the original denial was based off non-scaled, Millcreek GIS systems (aerial photography) that cannot see location of exterior walls or determine what area of roof may be an open porch even though Mr. Romero pointed this out several times.
- Planning Director's direction to Mr. Romero via Planning Staff's email (1-8-2026) stating "we concluded that your porch meets the definition of a covered porch and not an open porch as it's being covered by a roof structure"
- Planning Staff's email included their arbitrary interpretation that does not align with the plain text of the code



From Carlos Estudillo <cestudillo@millcreekut.gov>
Date Thu 1/8/2026 5:31 PM
To Joe Romero <joe@rthreegroup.com>; Francis Lilly <flilly@millcreekut.gov>

Joe,

After a discussion with Francis, we concluded that your porch meets the definition of covered porch and not open porch, as the porch is being covered by a roofed structure, in this case, an extension of the roof covering the majority of the main structure. The term "open porches" are applied to porches that are composed of only impervious surfaces, such as a slab of concrete, etc. Typically, impervious surfaces such as sidewalks, walkways, driveways are exempt from the lot coverage requirement, as they are not typically covered by a roofed structure. With that being said, the porch must be included in the calculation for lot coverage. Once you have added the porch to your calculations, we can certainly change the site plan form your building permit on our end. I do, however, recommend to re-submit your elevations as well, as the scale was not matching the measurements on the elevation sheet.

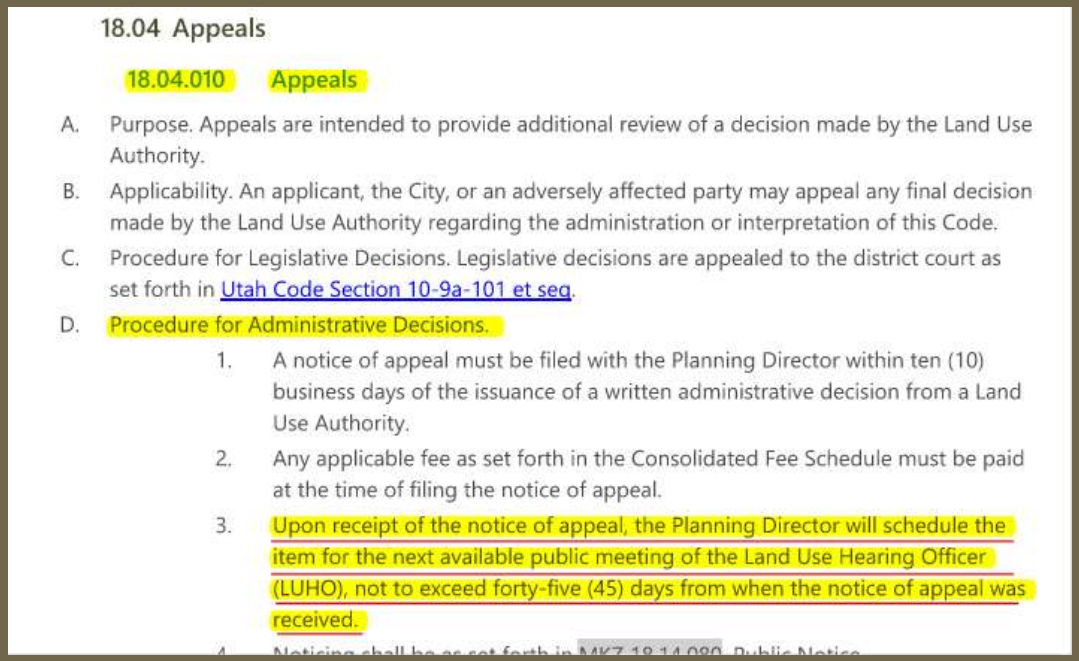
**Relevant Sections of Title 18**

- What Title 18 definition did they use to conclude the porch meets the definition of a "covered porch"
- How can an "open porch" be composed of ONLY impervious surfaces if they determined it to be a "covered porch"
- 18.36.070 provide the elements of an "open porch" (no walls, doors, screens, etc.)
- Contradiction and misinterpretation of Title 18 code in same email.

# Alleged Improper Conduct by Planning and Zoning Department



# Alleged Improper Conduct by City Officials



18.04 Appeals

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2. Any applicable fee as set forth in the Consolidated Fee Schedule must be paid at the time of filing the notice of appeal.
3. Upon receipt of the notice of appeal, the Planning Director will schedule the item for the next available public meeting of the Land Use Hearing Officer (LUHO), not to exceed forty-five (45) days from when the notice of appeal was received.

- By Title 18 Code, Mr. Romero's matter should have been scheduled for March 19, 2026; however, Planning Director chose to act in bad faith and negligently delay Mr. Romero's matter an additional (34) days until April 22, 2026 which was (76) days from submission.

**Negligent Violation of Title 18**

- March 19, 2026 @ 2:00 pm or April 8, 2026 @ 2:00 pm were the "***next available***" LUHO public meetings which would have been (42 or 62) days after appeal was submitted. LUHO, Mr. Catten adjudicated both of these hearings.
- March 19th and April 8th LUHO hearings only had (1) scheduled Appeal hearing each and lasted less than 15 minutes.
- Planning Director, Francis Lilly demonstrated bad faith by not scheduling Mr. Romero's hearing in accordance with Title 18 provisions.

# Utah Property Rights – Ombudsman Office

- Property Rights Ombudsman Act (§13-43-201, et. seq.)
- §13-43-205-206 allows for an application and an Advisory Opinion process at any time before a final decision is made by Land Use Appeal Authority.
- §13-43-206.12-14 may allow damages, civil penalties and judgement if the court finds that opposing party knowing and intentionally violated the law.
- **HISTORICAL DECISION**: Advisory Opinion # 218 issued March 3, 2020 confirmed Millcreek City was previously found to incorrectly apply their own Standards *"by requiring greater restrictions on property use"* affecting applicant .

**CONCLUSION**

Land use ordinances restricting the use of property are strictly construed, and provisions permitting property use are liberally construed in favor of the property owner. Moreover, a city must interpret its code according to the code's plain language, and not by internal policy.

In this case, the City has incorrectly treated its Design Standards as substantive requirements, and interpreted its provisions to require greater restrictions on property use. The City's Design Standards should be interpreted as providing purpose, as opposed to imposing greater restrictions than what the express provisions of the Municipal Code already require. Since Mr. Tippetts' proposed lot frontages comply with the express requirements of the Municipal Code, his application is entitled to approval.

**UPR Ombudsman Information**

- There are many Advisory Opinions that are very similar to this matter and support Mr. Romero's position
- Advisory Opinions
  - # 104, 218, 250, 279, 289 that are very similar to this matter and support Mr. Romero's position

# Alleged Improper Conduct by City Officials

- Internally inconsistent and misapplication of Title 18 by Planning Staff and Planning Director to include, but not limited to:
  - Staff Planner II ***ceasing all communication*** with Mr. Romero for 43 days resulting in Mr. Romero submitting a letter to Planning Director requesting Administrative Action.
  - Arbitrary and capricious administrative action and refusal to apply ordinances as written by repeatedly making decisions and determinations that are not consistent with the ***PLAIN TEXT*** of Title 18
  - Planning Department persisted in incorrect calculation methodology – one *not supported by* ***PLAIN TEXT*** of Title 18 even after being advised in nearly every email and letter notification by Mr. Romero
  - Planning Department not allowing appropriate meeting opportunities for Mr. Romero to clarify his position and work out the details that would be mutually acceptable to both sides
  - Planning Department misstating Title 18 ordinances in written emails based on ambiguous code references, made up definitions, leading to arbitrary and capricious and inaccurate Lot Coverage calculations

**Concerning Questions ???**

- Isn't a land use decision found to be arbitrary, capricious and illegal if the decision is not supported by substantial evidence in the record or based on a misapplication of the Code?
- (§10-20-1109_3(b)i & 3(c)(i)-(ii)
- Did the City Planners rely on non-existent code language
- In nearly every one of his emails to the City Planners, did Mr. Romero notify the original plans met the intent of the code and urged the City to accept them?

# Alleged Improper Conduct by City Officials

- Internally inconsistent and misapplication of Title 18 by Planning Staff and Planning Director to include, but not limited to:
  - Staff Planner II basing calculations on inaccurate Millcreek GIS take-offs
  - Mr. Lilly, not acknowledging the theory of industry standards such as American Planning Association (APA) to determine lot coverage even though Mr. Lilly's LinkedIn profile shows he received Certification as a Planner by the APA organization.
  - Mr. Lilly's email dated 1-6-2026 confirming he repeatedly provided improper direction and ***misrepresenting*** the ***actual definition*** of the definition of "Lot or Parcel Coverage" *omitting that open porches are excluded*.

**RE: [Ext] Building Permit # 252009 - Formal Request for Corrective Application of Lot Coverage Standards and Administrative Action**

From Francis Lilly <flilly@millcreekut.gov>
Date Tue 1/6/2026 2:10 PM
To Joe Romero <joe@rthreegroup.com>; Carlos Estudillo <cestudillo@millcreekut.gov>

Joe,

You're still showing incorrect numbers on your plan. I don't know why you show your lot to be .22 acres, when your own CAD drawing shows it to be larger than that. The scale is still off.

Also, you are calculating lot coverage from the building footprint. This is, as I told you in a previous email, incorrect. Our definition of "building" refers to a "roofed structure." Our definition of "lot or parcel coverage" includes everything that is occupied by a principal building and all accessory buildings. "Buildings" by our definition include their roofs.

**"OUR DEFINITION"** described does not match the Title 18 definition

**Lot or Parcel Coverage** means the measurement of land use intensity that represents the portion of a lot or parcel occupied by the principal building and all accessory buildings, but excluding all other impervious improvements such as sidewalks, driveways, patios, decks and open porches.

**Concerning Questions ???**

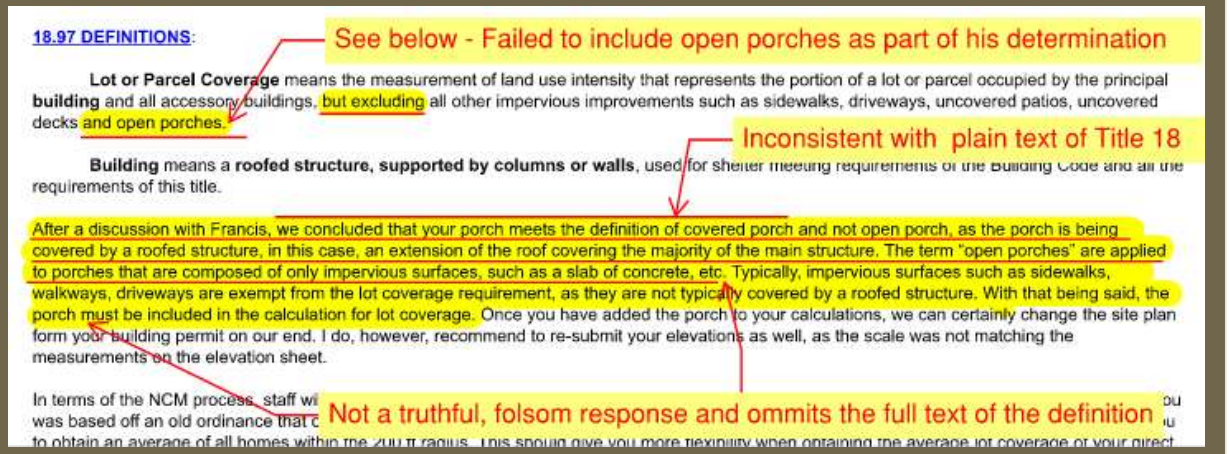
- If the Code is ambiguous, unclear and vague, doesn't Utah law require the City to error on behalf of the Applicant?
- Is Mr. certified and trained on APA industry standards?




- Did Mr. Romero suffer unnecessary Financial Burden, Unrecoverable Schedule Delays to his project as a direct of Millcreek Planning Dept.?

# Alleged Improper Conduct by City Officials

- Mr. Etudillo's email dated 1-8-2026 demonstrates improper direction stating "after a discussion with Francis, we concluded that your porch meets the definition of covered porch and not an open porch ***misrepresenting*** the ***actual plain text*** of Title 18 by *omitting that Title 18 is ambiguous, vague and unclear and not applying the "exceptions" explicitly stated in the plain text and illustrations of the Code.*
- Omitting plain text of the code in the determination of a critical element of the matter, misstating Title 18 definitions (as an attempt to justify) and not providing a fulsome response ***could be construed as bad faith***.

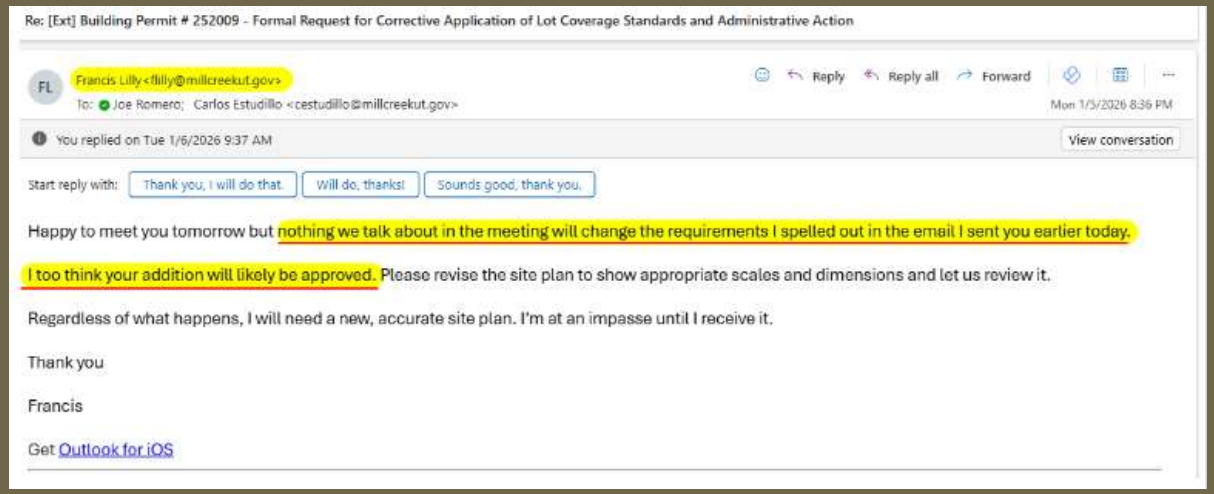



**Concerning Questions???**

- What Title 18 definition was used to make the determination of "Covered Porch"?
- What is the Title 18 definition of a "porch", much less a covered porch?
- How did they conclude that my porch was not an open porch?
- Did they consider the elements of an "Open-Style" or "un-eclosed" porch specifically outlined in Title 18?
- If the Code is ambiguous, unclear and vague, doesn't Utah law require the City to error on behalf of the Applicant?

# Alleged Improper Conduct by City Officials

- Mr. Lilly's email to Mr. Romero on 1-5-2026 (1 day before the only meeting) demonstrating his unwillingness to hear Mr. Romero's points in the 30-minute meeting that took place at 4:00 pm on 1-6-2026.
- Mr. Lilly *predetermined* the outcome of the meeting yet stated, "*I too think your addition will likely be approved*".



Re: [Ext] Building Permit # 252009 - Formal Request for Corrective Application of Lot Coverage Standards and Administrative Action

FL Francis Lilly <flilly@millcreekut.gov>

To: Joe Romero; Carlos Estudillo <cestudillo@millcreekut.gov>

Reply | Reply all | Forward

Mon 1/5/2026 8:36 PM

You replied on Tue 1/6/2026 9:37 AM

View conversation

Start reply with: Thank you, I will do that. | Will do, thanks! | Sounds good, thank you.

Happy to meet you tomorrow but nothing we talk about in the meeting will change the requirements I spelled out in the email I sent you earlier today.

I too think your addition will likely be approved. Please revise the site plan to show appropriate scales and dimensions and let us review it.

Regardless of what happens, I will need a new, accurate site plan. I'm at an impasse until I receive it.

Thank you

Francis

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**Concerning Statements and Direction**

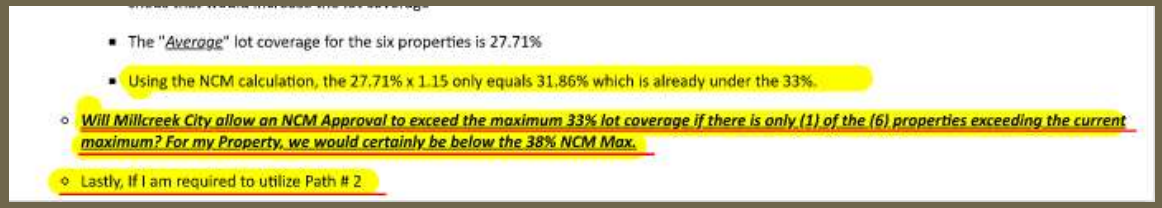
- Mr. Lilly's statements potentially acting in bad-faith by giving Mr. Romero false hope stating he believes the project is likely to get approved, yet already had his mind made up.
- In the 30 Minute meeting, Mr. Lilly and Mr. Estudillo "***directed***" Mr. Romero to the NCM process
- It is believed that since the Original Design met the intent and plain text of Title 18, the direction by Mr. Lilly to proceed with the NCM process was illegal and in bad faith.

# Improper and Forced Requirement for NCM Process

- As a result of Planning and Zoning repeatedly misapplying Title 18, and during a Team's Meeting conversation with Millcreek City, Mr. Romero was *directed and forced* to proceed with a Neighborhood Compatibility Modification (NCM) process after exhausting all his previously attempted remedies. ***Mr. Romero believes this was an illegal action***.

- Prior to Mr. Romero submitting the formal NCM application (requiring a full licensed land surveyor), he compiled a full "informal" package and email dated 1-8-2026 outlining what the results would be and submitted to Mr. Lilly and his staff for cursory review.

- Mr. Romero even asked the specific question to the Planning Director about the preliminary findings of the NCM calculations were still under the 33% and challenged that the NCM process was warranted.


- The "*Average*" lot coverage for the six properties is 27.71%
- Using the NCM calculation, the 27.71% x 1.15 only equals 31.86% which is already under the 33%.
  - ***Will Millcreek City allow an NCM Approval to exceed the maximum 33% lot coverage if there is only (1) of the (6) properties exceeding the current maximum? For my Property, we would certainly be below the 38% NCM Max.***
  - Lastly, If I am required to utilize Path # 2

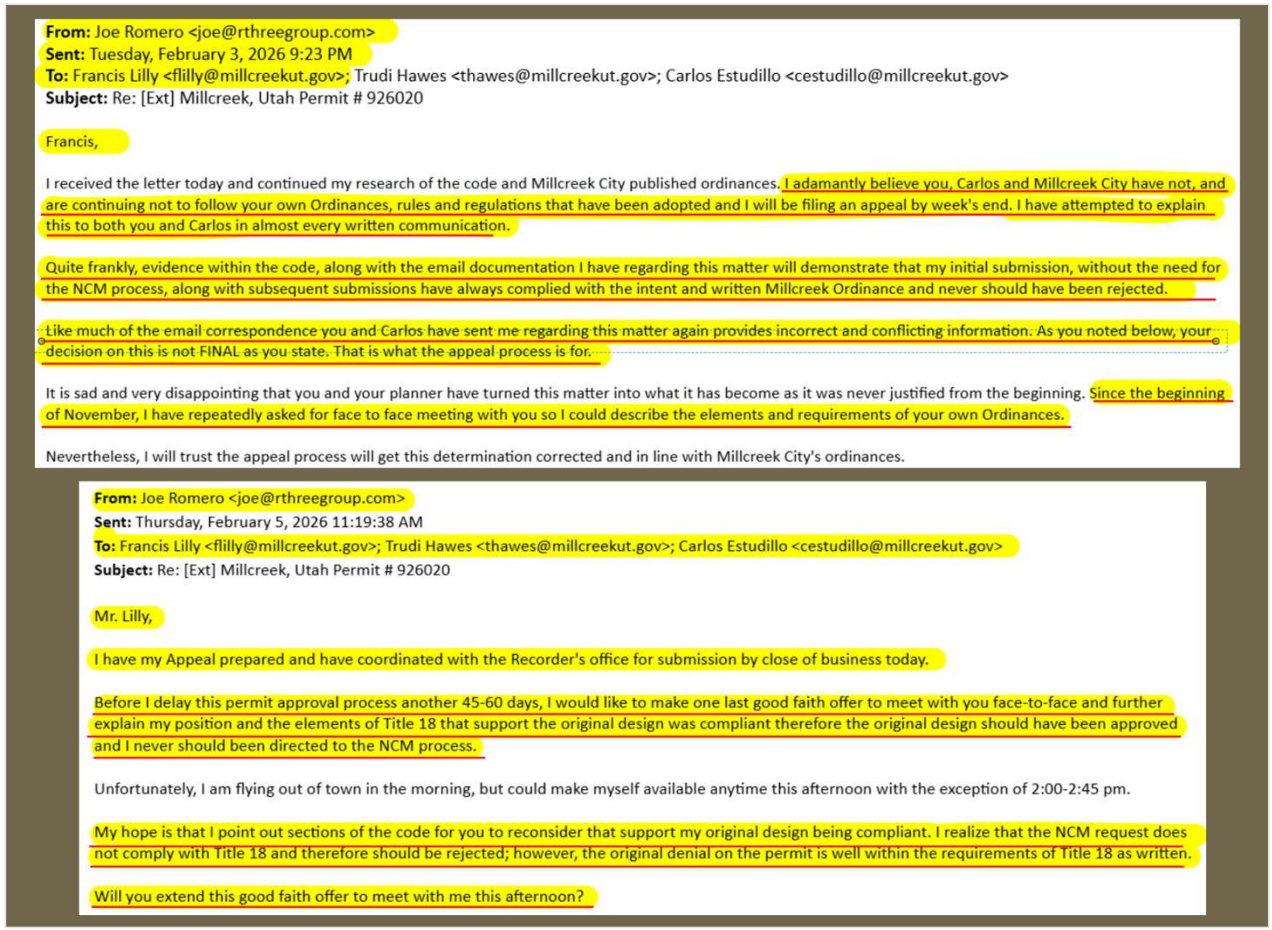
**NCM Process**

- Mr. Romero went above and beyond to try and confirm the NCM process was going to be required and the Planning Director and Staff acted potentially acted in bad faith requiring the process anyway.

- The Planning Director, Mr. Lilly could have quickly and easily identified the NCM process was never going to be approved.

- Based on Mr. Lilly's direction, Mr. Romero spent approximately $3,000 on a land survey and additional costs to proceed with the NCM.

# Mr. Romero Exhausting All Remedies in Good Faith



**From:** Joe Romero <joe@rthreegroup.com>
**Sent:** Tuesday, February 3, 2026 9:23 PM
**To:** Francis Lilly <flilly@millcreekut.gov>; Trudi Hawes <thawes@millcreekut.gov>; Carlos Estudillo <cestudillo@millcreekut.gov>
**Subject:** Re: [Ext] Millcreek, Utah Permit # 926020

Francis,

I received the letter today and continued my research of the code and Millcreek City published ordinances. I adamantly believe you, Carlos and Millcreek City have not, and are continuing not to follow your own Ordinances, rules and regulations that have been adopted and I will be filing an appeal by week's end. I have attempted to explain this to both you and Carlos in almost every written communication.

Quite frankly, evidence within the code, along with the email documentation I have regarding this matter will demonstrate that my initial submission, without the need for the NCM process, along with subsequent submissions have always complied with the intent and written Millcreek Ordinance and never should have been rejected.

Like much of the email correspondence you and Carlos have sent me regarding this matter again provides incorrect and conflicting information. As you noted below, your decision on this is not FINAL as you state. That is what the appeal process is for.

It is sad and very disappointing that you and your planner have turned this matter into what it has become as it was never justified from the beginning. Since the beginning of November, I have repeatedly asked for face to face meeting with you so I could describe the elements and requirements of your own Ordinances.

Nevertheless, I will trust the appeal process will get this determination corrected and in line with Millcreek City's ordinances.

**From:** Joe Romero <joe@rthreegroup.com>
**Sent:** Thursday, February 5, 2026 11:19:38 AM
**To:** Francis Lilly <flilly@millcreekut.gov>; Trudi Hawes <thawes@millcreekut.gov>; Carlos Estudillo <cestudillo@millcreekut.gov>
**Subject:** Re: [Ext] Millcreek, Utah Permit # 926020

Mr. Lilly,

I have my Appeal prepared and have coordinated with the Recorder's office for submission by close of business today.

Before I delay this permit approval process another 45-60 days, I would like to make one last good faith offer to meet with you face-to-face and further explain my position and the elements of Title 18 that support the original design was compliant therefore the original design should have been approved and I never should been directed to the NCM process.

Unfortunately, I am flying out of town in the morning, but could make myself available anytime this afternoon with the exception of 2:00-2:45 pm.

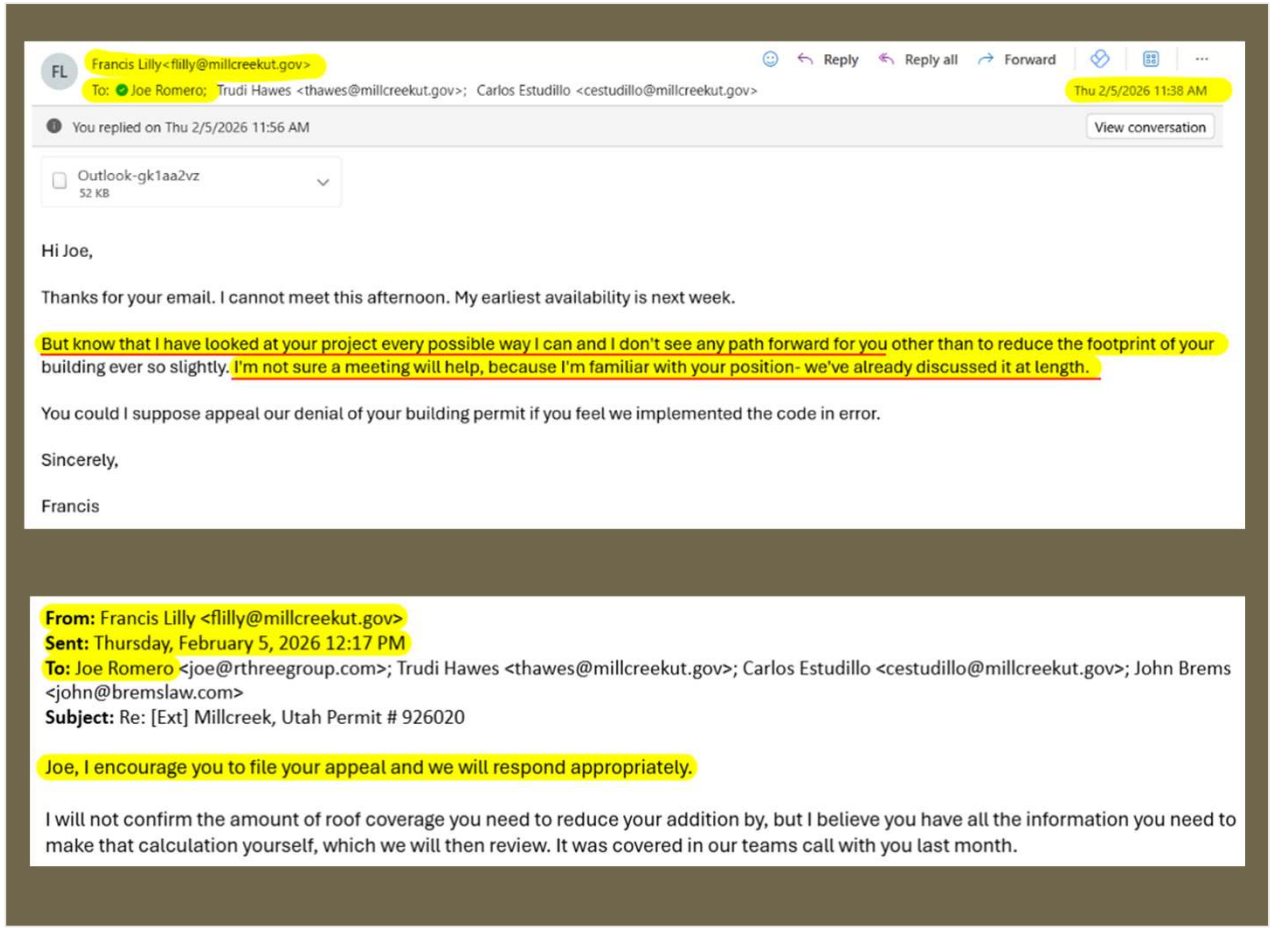
My hope is that I point out sections of the code for you to reconsider that support my original design being compliant. I realize that the NCM request does not comply with Title 18 and therefore should be rejected; however, the original denial on the permit is well within the requirements of Title 18 as written.

Will you extend this good faith offer to meet with me this afternoon?

**Last Good Faith Effort**

- Mr. Romero attempted to meet face-to-face with Planning Department once again as a last-ditch effort before a formal appeal was submitted.
- Mr. Romero again stating that his plan was compliant and the original design should have been approved and never should have been directed to the NCM process.
- Mr. Romero again notifying Planning Staff / Director that they were not following the Code, rules and regulations and Planners continue to send emails with conflicting info.

# Exhausting All Remedies in Good Faith



FL Francis Lilly<flilly@millcreekut.gov>

Reply Reply all Forward

To: Joe Romero; Trudi Hawes <thawes@millcreekut.gov>; Carlos Estudillo <cestudillo@millcreekut.gov>

Thu 2/5/2026 11:38 AM

You replied on Thu 2/5/2026 11:56 AM

View conversation

Outlook-gk1aa2vz
52 KB

Hi Joe,

Thanks for your email. I cannot meet this afternoon. My earliest availability is next week.

But know that I have looked at your project every possible way I can and I don't see any path forward for you other than to reduce the footprint of your building ever so slightly. I'm not sure a meeting will help, because I'm familiar with your position- we've already discussed it at length.

You could I suppose appeal our denial of your building permit if you feel we implemented the code in error.

Sincerely,

Francis

**From:** Francis Lilly <flilly@millcreekut.gov>
**Sent:** Thursday, February 5, 2026 12:17 PM
**To:** Joe Romero <joe@rthreegroup.com>; Trudi Hawes <thawes@millcreekut.gov>; Carlos Estudillo <cestudillo@millcreekut.gov>; John Brems <john@bremslaw.com>
**Subject:** Re: [Ext] Millcreek, Utah Permit # 926020

Joe, I encourage you to file your appeal and we will respond appropriately.

I will not confirm the amount of roof coverage you need to reduce your addition by, but I believe you have all the information you need to make that calculation yourself, which we will then review. It was covered in our teams call with you last month.

**Final Response from Planning**

***Mr. Lilly again stating "he has looked at this every way possible, and I don't see a path forward for you"***

***(He predetermined his decision)***

***Mr. Lilly again stating that a meeting wouldn't help because he was familiar with Mr. Romero's position***

***(Then why was the NCM process directed???)***

***Mr. Lilly's final direction to file the appeal***

# Francis Lilly's everchanging position

**January 5, 2026**

"*I too think your addition will be approved*"

" ***to*** "

**February 5, 2026**

"*I don't see any path forward for you*"

Yet, nothing on the Project changed from Day 1

# Case Law Precedent Supporting Mr. Romero

*MISINTERPRETATION OF TITLE 18 and*

- Plain language should control as Utah law requires land use ordinances to be interpreted according to their plain language:
  - ***Carrier v. Salt Lake County*, 2004 UT 98**
  - ***Foutz v. South Jordan*, 2004 UT 75**
  - ***Brendle v. Draper City*, 937 P.2d 1047 (Utah Ct. App. 1997)**
  - **Price Dev. Co. v. Orem, 2000 UT 26 23,995 P.2d 1237**
- Utah law prohibits municipalities from adding requirements not found in plain language ordinance language.

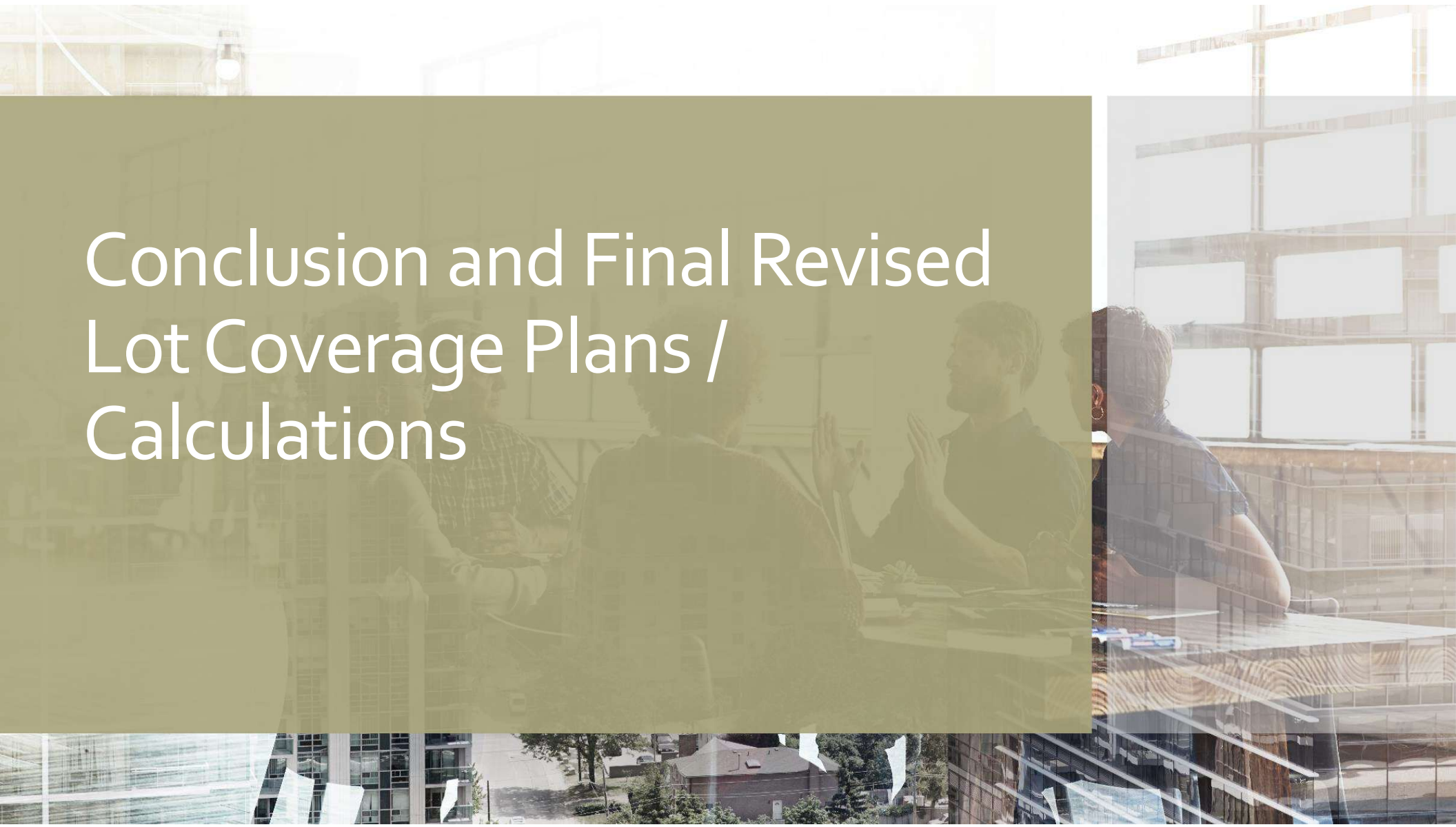
*AMBIGUITITIES MUST BE RESOLVED IN FAVOR OF THE PROPERTY OWNER*

- Utah appellate and district courts consistently hold that zoning restrictions are to be strictly construed, and ambiguities resolved in favor of the free use of property:
  - ***Raps Invs. v. N. Logan City, 2025 UT App 55***
  - ***Patterson v. Utah County Bd. of Adjustment*, 893 P.2d 602**
  - ***Freeman v. Gee*, 18 Utah 2d 339**
  - ***Brown v. Sandy City Board of Adjustment***

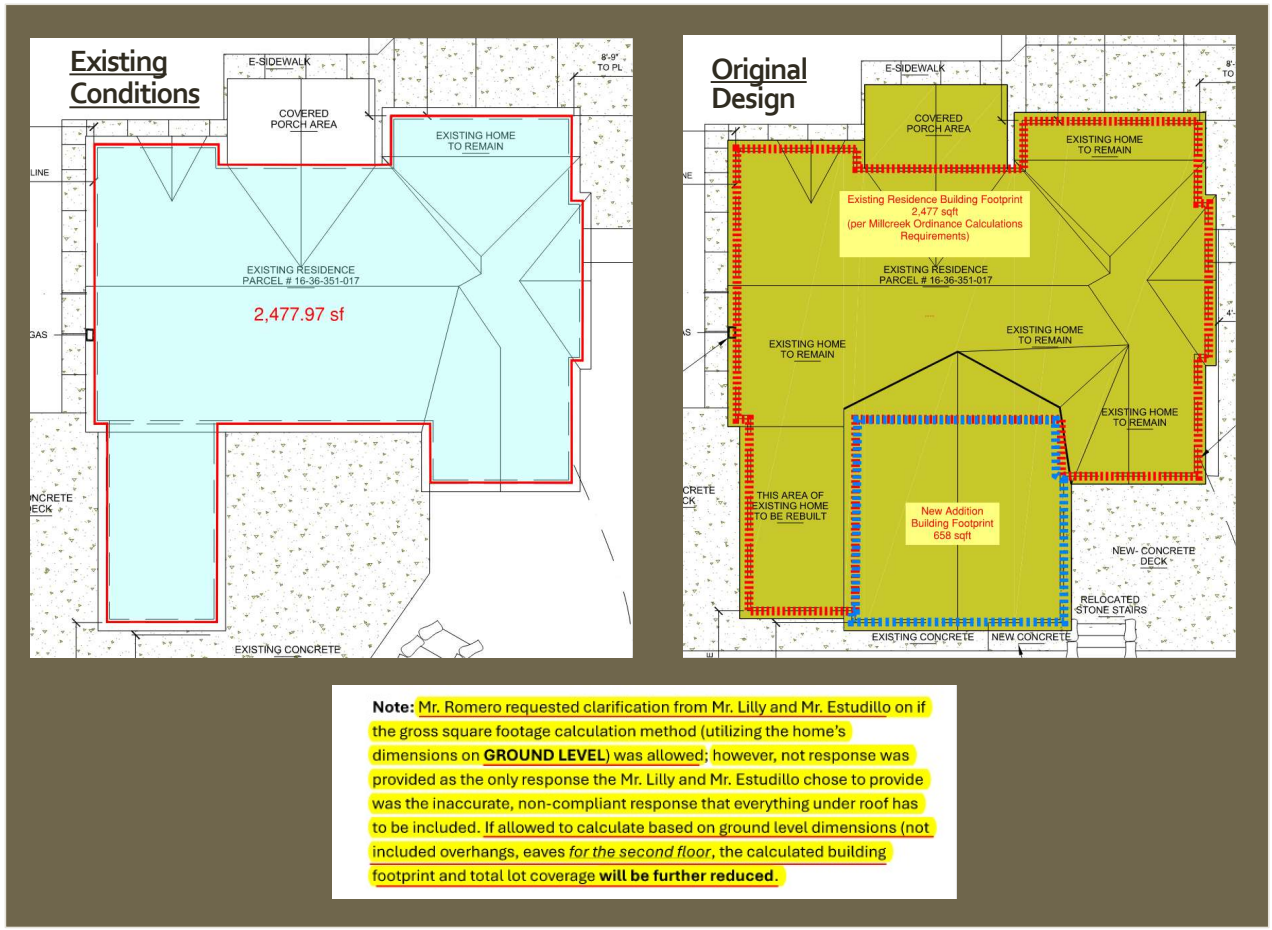
**Utah Code Determinations**

- A land use decision is found to be arbitrary, capricious and illegal ***if the decision is not supported by substantial evidence in the record or based on an incorrect interpretation of the Code***? (§10-20-1109_3(b)i & 3(c)(i)-(II)

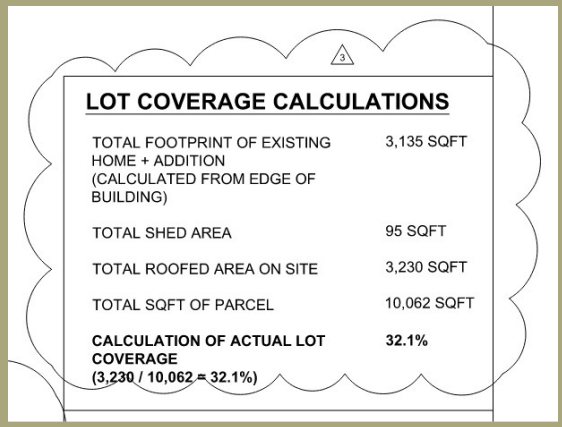
# Conclusion and Final Revised Lot Coverage Plans / Calculations



# Revised Supplemental Lot Coverage Plan




**Note:** Mr. Romero requested clarification from Mr. Lilly and Mr. Estudillo on if the gross square footage calculation method (utilizing the home's dimensions on **GROUND LEVEL**) was allowed; however, not response was provided as the only response the Mr. Lilly and Mr. Estudillo chose to provide was the inaccurate, non-compliant response that everything under roof has to be included. If allowed to calculate based on ground level dimensions (not included overhangs, eaves *for the second floor*, the calculated building footprint and total lot coverage **will be further reduced**.



**LOT COVERAGE CALCULATIONS**

| | |
|---|---|
| TOTAL FOOTPRINT OF EXISTING HOME + ADDITION (CALCULATED FROM EDGE OF BUILDING) | 3,135 SQFT |
| TOTAL SHED AREA | 95 SQFT |
| TOTAL ROOFED AREA ON SITE | 3,230 SQFT |
| TOTAL SQFT OF PARCEL | 10,062 SQFT |
| **CALCULATION OF ACTUAL LOT COVERAGE (3,230 / 10,062 = 32.1%)** | **32.1%** |

- Full PDF plan submitted to P&Z for review and with Appeal Documents (includes shed)
- Demonstrates ***compliance*** with original Title 18 Code.
- Take-off based on scaled plans and not Millcreek GIS system.

# Factual Conclusions of Utah Code & Millcreek Title 18

- Utah Code (LUMDA)
  - requires that when land use regulations are ambiguous or unclear, such ambiguity be resolved in favor of the property owner – not expanded through administrative interpretation or post hoc enforcement positions.
- Section 18.36.040 – Spatial Requirements state the maximum property coverage requirements are as determined by Table 18.36-2 and as illustrated by Figure 18.36.2
- Section 18.36.040, its illustrations and Title 18 definitions ***are the sole references and requirements to calculate lot coverage*** for R-1 zones.
- Section 18.36.040 is ambiguous, vague, unclear and does not separate the Spatial Requirement differences between setback requirements and lot coverage requirements; therefore, shall be used for BOTH
- Illustration 18.36-2 details the measurement to a building are located to the exterior wall and the illustration clearly shows that overhangs, eaves and architectural features are not included this this calculation. Since Illustration 18.36-2 details both setback and maximum lot coverage requirements, the ***same demarcation for both calculations shown to be the exterior wall shall govern both calculations***

# Factual Conclusions of Utah Code & Millcreek Title 18

- Title 18 does not provide an actual definition of porch, enclosed porch
- Section 18.36.070-D separates the elements of a deck, patio, porches, driveways, stairs, landings
- Section 18.36.070-E & (.1) defines that a porch can be "covered" BUT defines and determines the elements of an "open style" porch (no walls, doors, windows, screen, etc).
- Section 18.36.070-F defines other architectural elements which are not used as habitable spaces
- Definition of "Gross Floor Area" is the most logical definition within Title 18 – R-1 Zones that outline what is included in calculating building square footage ( Not just the definition of "Building" without applying the supplemental definitions.
- Utah Case Law precedent outlined in Appeal Documentation and Presentation ***support APPROVAL for Mr. Romero***.

- ***TITLE 18 is ambiguous, vague and unclear and should be construed in favor of applicant***

- ***Utah Code does provide for City Staff to make up their own determinations outside of plain text***

# Request for Specific Findings

- Immediate reversal of initial denied plans (Permit No. 252009) and immediate approval of the original building permit plans (including supplemental PDF drawings provided to P&Z staff) demonstrating original design is in compliance with ***plain text*** of Title 18 code.
- Provide what legal authority does P&Z department posses to *expand the plain text of Title 18 and make up their own definitions and meanings* to include architectural features, overhangs, and open porches as part of the lot coverage calculation
- Provide what legal basis did P&Z department posses for *disregarding scaled plans submitted by the Applicant* in favor of using rough GIS estimates
- Formal acknowledgement that the NCM process *was not legally required* as it was based on illegal, misinterpretation of Title 18 requirements
- *Equitable fee adjustment and reimbursement of all fees and costs* expended by Mr. Romero to include additional application fees, appeal fees and the costs of engaging a land surveyor.

**Final Action**
**And**
**Results of Presentation**

- Mr. Romero has met his burden of proof and has provided sufficient evidence to establish a legal standard and to be granted a full and complete **REVERSAL** of the original Building Permit # 252009 determination and for the Appeal Authority to find this his project is compliant with Title 18 as submitted and that the directed NCM process should be deemed as illegal and never should have been required.

# How to Make Fair and Balanced Decision – Justice Hagen

Minutes 7:45 – 9:03



Minutes 10:45 – 11:55



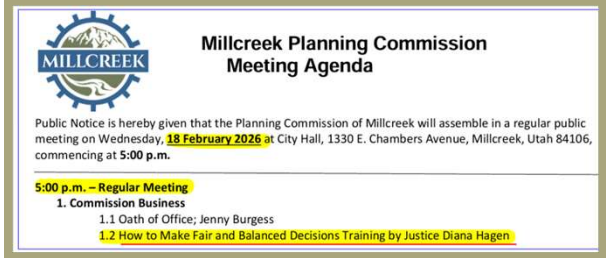


Minutes 15:50 – 16:28



Minutes 17:45 – 18:18

## Justice Hagen's Thoughts



**Millcreek Planning Commission Meeting Agenda**

Public Notice is hereby given that the Planning Commission of Millcreek will assemble in a regular public meeting on Wednesday, **18 February 2026** at City Hall, 1330 E. Chambers Avenue, Millcreek, Utah 84106, commencing at **5:00 p.m.**

**5:00 p.m. – Regular Meeting**

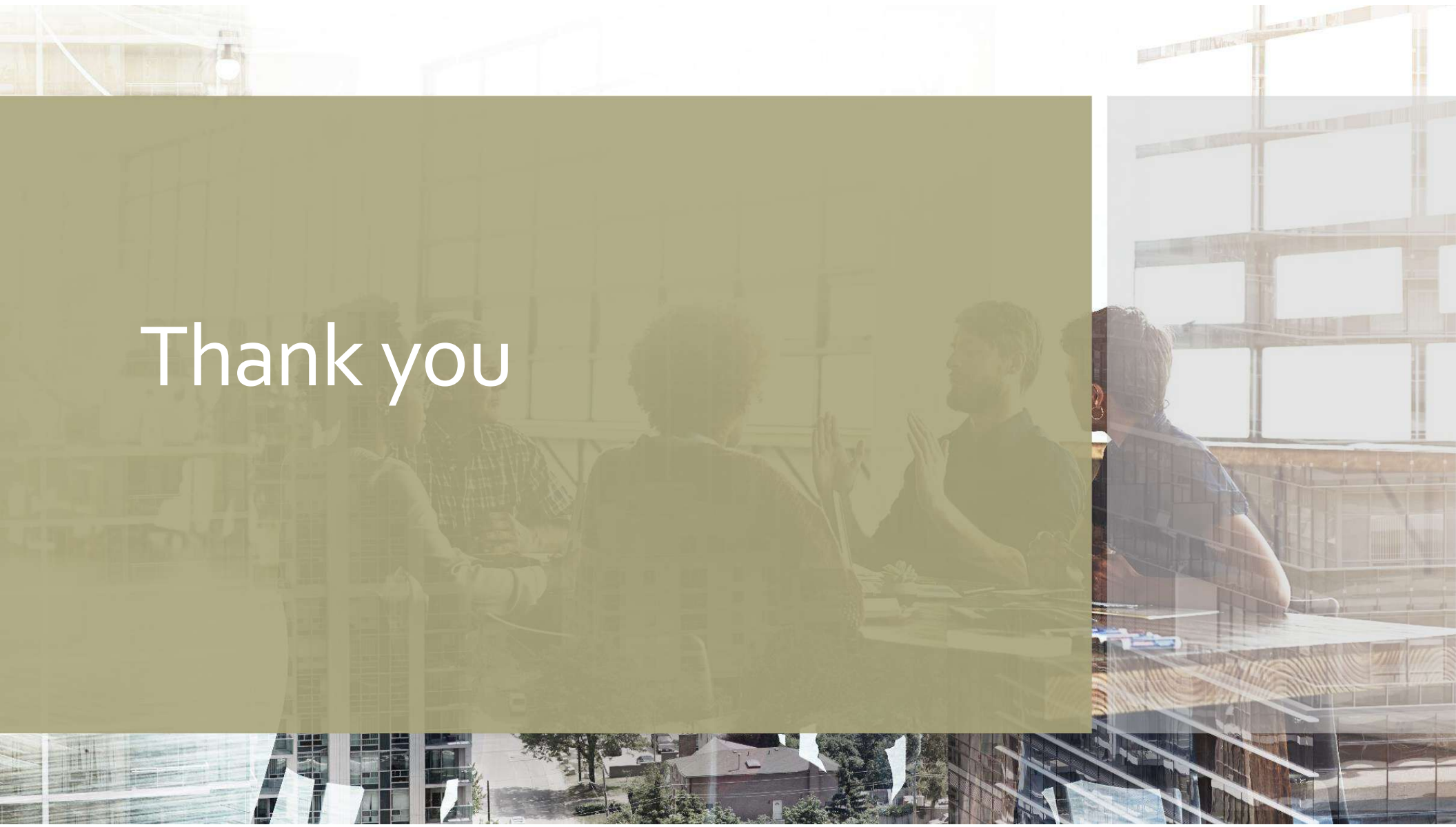
**1. Commission Business**

1.1 Oath of Office; Jenny Burgess

1.2 How to Make Fair and Balanced Decisions Training by Justice Diana Hagen

- Applying objective criteria to a given state of facts
- Essence of the rule-of-law is that the rules apply the same to everyone
- Predictability in the law is extremely important
- Being willing to admit she was wrong and be open minded when presented another opinion

# Thank you



**APPEAL AUTHORITY NOTIFICATION AND MEMORANDUM** **April 15, 2026**

| | |
|---|---|
| **Appeal Date:** | **February 5, 2026** |
| **Building Permit #** | 252009 and NCM Permit No. 926020 |
| **To:** | Millcreek City Appeal Authority / Land Use Hearing Officer |
| **Applicant:** | Joe Romero |
| | 3652 Aurora Circle |
| | Millcreek, Utah 84124 |

**Re:** **RESPONSE AND REBUTTAL TO MILLCREEK CITY BRIEF-MEMORANDA ISSUED APRIL 11, 2026**

Millcreek City Mayor
State of Utah Property Rights Ombudsman Office
Millcreek City Ethics Review Committee
Members of the Appeal Authority,

This correspondence is submitted in response and rebuttal to Millcreek City's Brief / Memoranda and to ensure Mr. Romero's position and response is on the formal record. As noted in correspondence previously submitted on the record, Mr. Romero expressly reserved his right to submit additional documentation, evidence, and information into the administrative record prior to and at the time of the appeal hearing if necessary. This reservation included, but was not limited to, any materials that were not reasonably available, discoverable, or capable of being verified prior to the Appeal hearing, but after the deadline to submit documents which happens to be (10) days prior to the hearing.

Despite the repeated exercise of reasonable diligence by Mr. Romero for over two months by formally requesting the City's position or staff reports, "*in writing and on multiple occasions*", the City chose not to provide him with any information until just days before the deadline. As such, Utah law, and the Policies and Procedures provides that Mr. Romero has the ability and right to supplement the record by taking this opportunity to officially respond to the City brief and rebut any and all inaccurate or misleading information provided by the City brief.

On Saturday, April 11, 2026, Mr. Romero was provided Millcreek City's Appeal Brief/Memoranda via email; however, based upon his review of this document, ***Mr. Romero wants to formally assert and make one important detail about Mr. Brems assertions abundantly clear as Mr. Brems statements are potentially misleading, not fulsome and do not align with the full email record and correspondence of the matter***. In his brief, Mr. Brems states that Mr. Romero has never submitted a plan that demonstrates compliant lot coverage calculations; however, this is simply false and inaccurate.

It is Mr. Romero's assertion that any and all drawings, examples of drawings, rendition of drawings or references to drawings that may not have been in compliance or presented by Mr. Romero throughout this process as outlined in Mr. Brem's brief "*exhibits*", were drawn, redrawn and submitted based on the ***sole direction of Mr. Lilly and his staff*** who continually provided inaccurate direction, misinterpretations of Title 18 such as to include the porch roof, all overhangs, and all roof eaves even though Title 18 explicitly exclude these from the lot coverage calculations. ***These non-compliant submissions were contrary to Mr. Romero's belief, however, the process itself at the time put Mr. Romero at a severe disadvantage, as Mr. Lilly's unwillingness to have a conversation and his staff ceasing to communicate with Mr. Romero for over (43) days about Mr. Romero's opinion, put Mr. Romero in a place of duress and one that he felt he could not push back***.

As such, even after Mr. Romero continually notified and asserted his position consistently, Mr. Romero was simply following the direction provided by Mr. Lilly and his staff which is the ***ONLY REASON*** why any drawings were submitted that did not show compliance. It is *Mr. Romero's opinion and belief that he repeatedly provided compliant drawings, as demonstrated in the email record from the beginning, that Mr. Romero always believed, and continuously notified the Planning Department that they were not calculating the information correctly and in accordance with the plain text of Title 18*; however, at the time, Mr. Romero did not have any recourse of action, but to adhere to the City's direction of including elements of the residence that were actually explicitly stated by definition, and illustrations to "***exclude***" from the lot coverage calculations.

Nevertheless, the following are documented instances where Mr. Romero provided accurate, scaled drawings to City Planning Staff (based on his interpretation of Title 18 and against the direction of City Planning Staff) that were compliant with Title 18's plain text:

- From the onset of this matter and in an email from Mr. Romero to Mr. Carlos Estudillo dated November 24, 2025, Mr. Romero provided a scaled drawing of the existing and proposed home floor plan (including scaled dimension square foot take-offs) showing a total proposed lot coverage of 3,084 square feet. The

text of this email also had provided calculations as to the lot coverage calculation which at this time, showed a lot coverage of 31%; however, this was based on the estimated lot acreage of .22 acre (as shown in SLCO public records). ***As a reminder and per previous letters issued by Mr. Romero, after Mr. Romero sent this email to Mr. Estudillo, Mr. Estudillo ceased to communicate with Mr. Romero for (43) forty-three days requiring Mr. Romero to send a formal written letter to Mr. Lilly for administrative action.***

- On December 8, 2025, Mr. Romero sent a follow up email to Mr. Estudillo with the same information listed above demonstrating the lot coverage was in compliance with Title 18.

- On December 23, 2025, Mr. Romero sent a letter to Mr. Lilly requesting administrative review due to Mr. Estudillo ceasing communication with Mr. Romero for over (43) forty-three days. This letter included the same PDF scaled floor plan take off noted in the two bullet points above and also had shown the lesser parcel square footage of 9.583 (.22 acres) as the licensed land survey was not yet available. This letter showed a lot coverage of 33% which was still compliant; however, it was later determined Mr. Romero was double-calculating an area around the existing roof on the back of the house.

- On January 5, 2026, Mr. Romero sent an email to Mr. Lilly, which included an additional revised scaled site plan (based on Mr. Lilly's comments regarding the scale was slightly off). This email and PDF plan showed a project that was in compliance with Title 18.

- On January 8, 2026, Mr. Romero sent an email to Mr. Lilly and Mr. Estudillo showing "(***2) Two-Paths of Compliance***". Path # 1 was seeking approval based on scaled and accurate site plans listed above (and included in this email). Path # 2 was addressing the NCM process.

- The NCM Application submitted January 23, 2026 included a land survey stamped by a professional land surveyor that confirmed the actual lot or parcel size is actually 10,066 sqft and not the 9,583 sqft calculated by Mr. Estudillo and stated in his initial denial comments on November 17, 2025. This licensed survey eventually confirmed the mutually acceptable 10,066 square foot parcel size.

- Attachment "C" (pages 71 & 72 of the PDF) of the Formal Appeal Letter dated February 5, 2026 submitted by Mr. Romero included the scaled existing and proposed lot coverage calculations that are also included in Attachment "Q" of this letter. These scaled and accurate drawings demonstrated a lot coverage of 32.1% and compliant with Title 18.

In order to ensure the record is accurate and complete, all emails listed above are included in Mr. Romero's Notification Letter dated April 13, 2026. (see ***ATTACHMENT "R"*** of that letter's Attachments). All of these emails from Mr. Romero to Millcreek City Planning staff demonstrated compliance and did in fact provide Planning and Zoning the ability to approve Mr. Romero's project.

To further address inconsistencies or misleading information related to Millcreek City's Brief, each of the items below outline the City's position and then Mr. Romero's rebuttal position. As such, I offer the following:

- ***Page 1:***
    - *Item 1:* City is not acknowledging that Mr. Romero corresponded with the City via email on multiple occasions and provided scaled, accurate drawings, along with emails explanations demonstrating compliance repeatedly. (See ***ATTACHMENT "R"*** from April 13, 2026 letter)
    - *Item 3:* Mr. Romero acknowledges there were two minor errors in drawings but resubmitted immediately. This acknowledgement was included in Mr. Romero's initial Appeal Notification letter dated February 5,2026. (see page 3- paragraph 2)
        - Mr. Romero utilized a site plan utilized for a previous 2008 remodel and addition for this home. These plans were originally submitted & fully approved by SL County Planning and Zoning and Building Departments.
        - Mr. Estudillo pointed out that a "typo" on the site plan stated the footprint of the home was approximately 3900 sqft as identified in Mr. Estudillo's initial plan review comment in November. Once this minor typo was uncovered, Mr. Romero and Mr. Estudillo acknowledged the issue and it was corrected the same day.
        - Mr. Lilly pointed out that the site plan was not drawn according to the accurate property layout. Mr. Romero also noted that when plotting the PDF document, the scale was sightly off. Mr. Romero corrected all concerns and immediately sent a clean, accurate plan to Planning and Zoning on January 6, 2026.

- ***Page 2:***
    - *Item 6:* Mr. Romero concurs with this comment regarding numerous emails but ***disagrees regarding numerous phone conversations***. With each of the numerous emails, Mr. Romero provided scaled drawings showing compliance and attempted to demonstrate that City staff was not reviewing Title 18 correctly.(See Attachments in Appeal Letter dated February 5, 2026). With notification, whether City staff replied or not, Mr. Romero confirmed his design was in accordance with Title 18 and should be approved. As noted in all correspondence, the record reflects that Mr. Estudillo ceased to communicate by any means for over (43) days between November 24th and January 5, 2026 when Mr. Lilly replied to Mr. Romero's formal letter.
    - *Item 9:* As noted above, the 36.9% lot coverage calculation was based on the sole direction of Mr. Lilly "to include" all roof eaves, overhangs and open porches even though Title 18 explicitly excludes these items from the calculation. Mr. Romero submitted this plan under duress.
    - *Item 10:* The records will demonstrate this is NCM application submittal was ***forced and at Mr. Lilly's direction***. As noted above, the 36.9% lot coverage calculation was based on the sole direction of Mr. Lilly "to include" all roof eaves, overhangs and open porches even though Title 18 explicitly excludes these items from the calculation. Mr. Romero submitted this plan under duress.
    - *Item 11:* Mr. Romero believes this statement is inaccurate, false and misleading. Based on the City's comment that Mr. Romero was not including the square footage of the addition, it appears the City was reviewing (1 of 2) drawings submitted with the NCM application. The drawing the City was referring to here is the "AS IS" condition which by nature "would not" include the addition.
    - *Item 12:* The City's comments ***are not complete, fulsome and does not provide the full context*** of the NCM process and the events, emails and direction provided by Mr. Lilly leading up to the submission of the NCM application.
        - See ATTACHMENT "R" of Mr. Romero's Notification Letter to City dated April 13, 2026. Prior to submitting the formal NCM application, Mr. Romero sent an email dated January 8, 2026 to Mr. Lilly and Mr. Estudillo where he provided two separate paths. Mr. Romero's email is clear where he states "*I have a few questions for*

*you and guidance requested if I must go down this path*". Mr. Romero conveyed that he performed a preliminary NCM calculations for properties around his parcel. Mr. Romero noted that the "average" lot coverage of surrounding parcels was only 27.1%. Mr. Romero additional provided the NCM calculation showing that even with the 1.15% NCM increase, the maximum allowed would only be 31.86% and already under the 33% allowed under normal conditions.

- Within this email, Mr. Romero highlighted in a ***BOLD UNDERLINED*** bullet point the following:
- Mr. Romero spelled out that the NCM process "was not going to work" and ***informed Mr. Lilly and Mr. Estudillo that he would like to ensure with a reasonable degree of certainty that the NCM process will be approved*** based on preliminary information he provided.

- Path # 2 (***If required, Proceed with NCM Process***)
  - I have spent 4-6 hours researching the NCM Process and Requirements
  - I have utilized Millcreek's GIS mapping system to complete initial analysis of lot coverages of (6) parcels within 200 feet of my property (See attached)
  - A few questions I have for you and guidance requested if I must go down this process:
    - For the (6) properties around my parcel I conducted analysis on, ***ONLY (1) property EXCEEDS the 33%*** maximum lot coverage
    - The other (5) are below the 33%
    - On the GIS Mapping System, several of the properties are heavily wooded so I can not confirm if there are additional accessory buildings or sheds that would increase the lot coverage
    - The "*Average*" lot coverage for the six properties is 27.71%
    - Using the NCM calculation, the 27.71% x 1.15 only equals 31.86% which is already under the 33%.
  - ***Will Millcreek City allow an NCM Approval to exceed the maximum 33% lot coverage if there is only (1) of the (6) properties exceeding the current maximum? For my Property, we would certainly be below the 38% NCM Max.***
  - Lastly, If I am required to utilize Path # 2
    - I'd like to confirm that a Land Surveyor will be required to "stamp" all information and analysis and not just the survey of my existing home?
    - I'd like to provide accurate direction to the Land Surveyor so I can get an accurate quote before I decide to proceed with this method, if required.

As you know, my preference is to have the attached site plan approved so Building can proceed with their review; however, if I must proceed with the NCM process, before I spend $3-4K on survey costs, I'd like to ensure I have a reasonable degree of certainty that the NCM process will be approved based on the preliminary information listed above.

- Mr. Lilly was given notice that Mr. Romero would need to expend approximately $3,000 if he was directed to proceed with the NCM process even after Mr. Romero notified Mr. Lilly that the process was not likely to work. As such and after this email, Mr. Lilly directed Mr. Romero to proceed with the licensed Land Survey scope of work.
- Also, during these discussions Mr. Lilly and Mr. Romero acknowledged and agreed that the proper and right "actual lot square footage" was 10,077 square feet prior to the land survey.

***All site plans after this time demonstrated this mutual agreement*** (until such time the land survey was completed which then reduced the square footage down to 10,060 sqft).

- ***Page 4:***
    - *Paragraph B:* Based on Millcreek City website, there does not appear to be a Title 19.92 Millcreek City Code. (See ***ATTACHMENT "A"***). No reference to Title 19 whatsoever.
- ***Page 5:***
    - *Table 18.36.2 (Spatial Requirements):* Mr. Romero acknowledges the information within the Table showing that R-1-8 zones have a maximum lot coverage of 33%.
    - Mr. Romero acknowledges (***with emphasis***) that the definition of "Lot or Parcel Coverage" ***specifically EXCLUDES*** open porches. (***with emphasis***)
- ***Page 7:***
    - *Item 1:* Mr. Romero concedes that the NCM permit # 926020 does not meet Title 18 requirements; however, Mr. Romero "***explicitly and repeatedly contends and argues***", again with emphasis, that Mr. Lilly's directed NCM process as a whole was illegal based on his repeated arbitrary, capricious, misinterpretation and misapplication of the Title 18 code that is vague, ambiguous and unclear. Plain and simple, the NCM process never should have been directed in the first place and certainly not after Mr. Romero highlighted in his informal submission that the NCM process was not going to work. Nevertheless, Mr. Lilly's direction to Mr. Romero to proceed in no way shape or form had an impact on Mr. Lilly's life, nor personal finances the way it did for Mr. Romero.
- ***Page 8:***
    - *Paragraph 2 – (i):* The City's comment regarding "*staff do not have the tools to measure precisely*", they "asked" the Applicant to provide a survey (professionally stamped by a surveyor) that shows the Property's current size.
        - This comment is truly unfathomable that a large, Municipal City cannot provide the tools necessary for their staff the "accurately and precisely" measure a plan, but in the same breath can direct a resident of their community to spend thousands of dollars to do their work for them. Simply put, they never asked Mr. Romero to spend $3000 to perform a land survey, they directed him to.

- *Paragraph 2 – (ii):* The City's comment that the Applicant showed a lot coverage of 53% was resolved in the first conversation and day (1) of the initial review comments. Adding this comment here is simply misleading and not representative of the tens of dozens of other communication Mr. Romero where the lot coverage was accurate.

- ***Page 9:***
  - *Last Paragraph of Section 1:* Mr. Romero concedes that the NCM permit # 926020 does not meet Title 18 requirements; however, Mr. Romero "***explicitly and repeatedly contends and argues***", again with emphasis, that Mr. Lilly's directed NCM process as a whole was illegal based on his repeated arbitrary, capricious, misinterpretation and misapplication of the Title 18 code that is vague, ambiguous and unclear. Plain and simple, the NCM process never should have been directed in the first place and certainly not after Mr. Romero highlighted in his informal submission that the NCM process was not going to work. Nevertheless, Mr. Lilly's direction to Mr. Romero to proceed in no way shape or form had an impact on Mr. Lilly's life, nor personal finances the way it did for Mr. Romero.
  - *Section 2 – Entire Paragraph*: Within this paragraph, the City actually *confirm and supports Mr. Romero's beliefs and position* in many instances. Each item of rebuttal is outlined below:
    - ***City Verbiage***: "Because local governments posses a certain degree of specialized knowledge about their ordinances, Utah courts afford "some level of non-binding deference to the interpretation advanced by the local agency……. *However, the courts retain the ultimate authority to determine whether a local government's interpretation of an ordinance is correct*"
    - ***Romero REBUTTAL***: This last sentence is paramount to this matter; however, Mr. Romero has consistently demonstrated the City is misinterpreting and misapplying their PLAIN TEXT of the code. No added interpretations, No added opinions, No conflicting directions to the Appellant, simply the PLAIN TEXT.
    - ***City Verbiage***: "When the plain meaning of the statute can be discerned from the language, no other interpretive tools are needed"
    - ***Romero REBUTTAL***: Mr. Romero would generally agree; however those *are not the facts of the matter regarding Millcreek Title 18* code. Mr. Romero has presented and provided substantial and clear evidence that Millcreek's Title 18 is ambiguous, vague and

unclear in many ways as pointed out by Mr. Romero on multiple occasions.

- ***City Verbiage***: "It is also important to recognize that zoning ordinances should be strictly construed in favor of allowing a property owner's desired use since such ordinances are in derogation of an owner's use of land"
- ***Romero REBUTTAL***: Mr. Romero whole heartedly agrees which has been his point and position in all written and verbal communications with City staff.

- ***Page 10:***
  - *Continuation of Section 2 – Entire Paragraph*: Within this paragraph, the City actually *confirm and supports Mr. Romero's beliefs and position* in many instances. Each item of rebuttal is outlined below:
    - ***City Verbiage***: "Applicant argues that the City misinterpreted the definition of open porch, and that if the porch portion of his house were excluded, the would satisfy the 33%"
    - ***Romero REBUTTAL***: Mr. Romero agrees, but also argues, via his formal communication that roof eaves and overhangs are also excluded based on Titl8 18 code. Mr. Romero also argues that Title 18 is ambiguous, vague and unclear as to the definition of what a "porch" is as Title 18 lacks this definition. The City has provided "***several conflicting personal opinions***" of a porch, (none of which are supported by the plain text of the code. In these conflicting personal opinions, City staff relate a "porch" the same as a sidewalk, driveway, uncovered deck or uncovered patio. It is believed that any reasonable person in the community, if asked what a front porch is, every single one of them would not confuse it with a sidewalk, driveway, deck or concrete patio.
    - ***City Verbiage***: "The patio at issue is a roofed structure supported by columns"
    - ***Romero REBUTTAL***: Even though City staff have classified this in multiple ways within their email correspondence, such as: covered porch, enclosed porch. Now within this City legal Brief, the City Attorney is contending this is a "patio". If this is the case, then I would ask Mr. Lilly, during his presentation, to clarify for the quasi-judicial court where this definition is within Title 18 and why he, himself along his staff previously incorrectly identified this porch as a "covered porch" or "enclosed porch". Also, as identified

in Mr. Romero's appeal PowerPoint presentation, email dated January 8, 2026 from Mr. Estudillo stated that "after a discussion with Francis, we concluded that your porch meets the definition of a "covered porch", not an "open porch". I would simply ask, which Title 18 definition of "covered porch" did Mr. Estudillo and Mr. Lilly use to make this very critical and important determination? Mr. Romero contends there is no definition of these elements, to include a simple definition of "porch" therefore supporting that Mr. Estudillo's and Mr. Lilly's interpretations are arbitrary, capricious, and illegal.

- ***City Verbiage***: "MCZ 18.36 consistently depicts measurements taken to the exterior wall of the building and not including overhangs, eaves and unenclosed architectural features. Measurements taken from exterior walls are used for setback purposes, not for lot coverage."
- ***Romero REBUTTAL***: THIS IS THE WHOLE CRUX OF THE MATTER AND WHAT MILLCREEK CITY STAFF DOES NOT UNDERSTAND NOR ACCEPT about their ambiguous, vague and unclear Title 18 Code.
- Below is clipped directly from Title 18 and this is the only place within the R-1-8 Zone that directly states how to determine maximum property (lot or parcel) coverage.

18.36.040 Spatial Requirements

A. Setback Measurements. The minimum property size, width, setbacks, and maximum property coverage requirements are as determined by Table 18.36-2 Spatial Requirements for the Single-Household Residential (R-1) Zones and are as illustrated in Figure 18.36.2.

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- Mr. Romero would like to HIGHLIGHT and POINT out (with emphasis) the first sentence of Section A. This sentence "clearly states" The minimum property size, width, setbacks AND MAXIMUM PROPERTY COVERAGE REQUIREMENTS "ARE AS DETERMINED BY" Table 18.36-2 for the Single-Household Residential (R-1) Zones "AND ARE AS ILLUSTRATED IN" Figure 18.36.2.
- I agree with Millcreek City that this section (table and illustration) addresses Setback requirements, but by the PLAIN TEXT of the

code, it INCLUDES maximum lot coverage calculation direction as well. ***HARD STOP… No further explanation is needed.***

- Within Table 18.36-2, this identifies both Setback requirements and Maximum Lot Coverage requirements as the plain text of this section directs you to.
- Within the Illustration as shown in Figure 18.36.2 – the plain text and illustrations are clear as well. The ONLY determining line for measurements are to the ***EXTERIOR WALL***. As such, the roof eaves, and overhangs are "excluded" from the calculations as per Mr. Romero's presentation graphic.
- The only other plain text Title 18 clarification comes in to support Mr. Romero's belief is in the actual definition of Lot or Parcel coverage which "***explicitly excludes***" open porches and supports Mr. Romero's plan.
- As noted above, the Title 18 Code is silent on the definition of a porch, open, covered or otherwise, and so there is no way Mr. Lilly and Mr. Estudillo can interpret the code to determine what Mr. Romero's porch is. This is a clear fact, because Mr. Lilly and Mr. Estudillo have classified Mr. Romero's open porch in every possible way, including saying it was like a sidewalk, driveway, or concrete patio or deck.
- ***City Verbiage***: "the roof coverage is used in managing stormwater and drainage calculations, environmental and heat island mitigation. Furthermore, the plain meaning of the definition in the that it is part of the building and supported by colums; it is not an open porch excluded by lot coverage."
- ***Romero REBUTTAL***: I firmly refute and rebut that the verbiage within the City's brief's above description is found anywhere within pages 107-117 of Title 18 (R-1 Zones) which is the sole and governing requirements for R-1 zones. Their verbiage related to managing storm water and drainage based on the "roof coverage" is accurate for stormwater calculations, but completely erroneous to this topic of discussion, and the City is mixing about 4-5 different aspects of Land Use "master planning" but has no relevance to lot coverage determinations and calculations required by Title 18. It is believed they are trying to push these erroneous requirements onto the Appellant which is only highlighting and further supporting Mr. Romero's position that the

City is unable to interpret and apply the PLAIN TEXT requirements of their own Title 18 to determine lot coverage.

- ***City Verbiage***: "Setbacks, height limits and lot coverage work together to regulate building placement, scale, and intensity, protecting light, air, privacy, open space, stormwater management, and neighborhood character while ensuring development aligns with public safety and infrastructure."
- ***Romero REBUTTAL***: Mr. Romero believes this is somewhat true if you were at a freshman level "city master planning" college class; however, what the City fails to acknowledge and recognize is that Title 18, and more specifically Section 18.36.040 does not require these components when using the plain text of the Title 18 Code to determine lot coverage.

In conclusion, Mr. Romero's reliance on the phrase "*as determined by*" or "*as illustrated in*" are legal terms construed as granting explicit bounds, structure and non-subjective authority. Under Utah law, such language denotes ***administrative judgment that shall be constrained by the written plain text standard, not carte blanche discretion to reach any outcome the decision-maker prefers, based on their own changes, additions, or deletions of the plain text.***

Utah courts have repeatedly held that when an ordinance delegates decision-making authority, that discretion ***must be exercised within defined legal limits and may not be arbitrary, capricious, or unsupported by evidence***. *Staker v. Town of Springdale*, 2020 UT App 174, ¶ 13 ("municipal land use decisions" must be reviewed for arbitrariness, capriciousness, and evidentiary support); *Bradbury v. Valencia*, 2000 UT 50, ¶ 9 (delegated discretion must be exercised reasonably and not arbitrarily). All of this is noted throughout Mr. Romero's written case documentation on the record.

Critically, the Utah Supreme Court has made clear that ***any delegation of authority must include sufficient standards to guide its exercise***. *State v. Hutchinson*, 624 P.2d 1116, 1121 (Utah 1980). Where, as here, Mr. Romero invokes "as determined by" or "as illustrated in" are discrete, direct and applying discernible criteria, and that the resulting directing of these words reflects ***a lawful exercise of bounded structure which does not allow discretion to change their meaning***, rendering any interpretation or application by City staff, that extends past the PLAIN TEXT of this Section renders it arbitrary and legally deficient. Mr. Lilly and Mr. Estudillo simply does not have the liberty, nor authority to change the plain text or make up their own determinations. Similar to the comments in the City brief, it is also important to recognize that zoning ordinances should be strictly construed in favor of allowing a property owner's desired use (especially when the code is ambiguous, vague and unclear) since such ordinances are in derogation of an owner's use of land.

Moreover, under Utah's land use framework, municipalities are strictly bound to apply their ordinances ***according to their plain terms*** and may not expand or modify those terms through ad hoc determinations. *Patterson v. Utah County Bd. of Adjustment*, 893 P.2d 602, 604 (Utah Ct. App. 1995). Thus, the City cannot rewrite the term "as determined by" or "as illustrated in" by supply or adding missing standards, or justifingy outcomes untethered to the code's text**.**

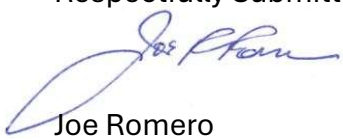
In this context, the City's interpretation effectively converts a limited delegation into **unchecked authority**, which Utah law does not permit. At a minimum, any determination made pursuant to such language must be: (1) grounded in identifiable standards within the ordinance, (2) supported by substantial evidence in the record, and (3) applied consistently and non-arbitrarily.

Because the City failed to meet these requirements in nearly all aspects and at all phase gates throughout the process, its determination should be found ***arbitrary, capricious, and illegal under Utah law***, and the Appellant shall be granted approval of his original building permit and design drawings as originally submitted, with supplemental lot coverage calculations.

As a result of this additional information contained in the City brief, along with Mr. Romero's responses and rebuttal, let it be known that nothing in this letter shall be construed as a waiver of his rights. Additionally, Mr. Romero expressly reserves the right to pursue all additional administrative, judicial, financial or equitable remedies available under Utah law.

This full letter and its attachment are to be placed in the formal record.

Respectfully Submitted,



Joe Romero

Homeowner / Taxpayer / Voter

***Attachments Referenced in Notification Letter***

- ***Attachment "A"*:**
    - Millcreek City Website outlining Municipal Code Sections

**Millcreek City Hall**
1330 East Chambers Ave
Millcreek, Utah 84106
millcreekut.gov

**Planning & Zoning**
(801) 214-2700
planner@millcreekut.gov

# LAND USE AND DEVELOPMENT APPLICATION

| | | | |
|---|---|---|---|
| **Property Address** | 3652 Aurora Circle | **Parcel No.** | 16-36-351-017 |
| **Name of Project** | Romero Residence Addition | **Project Size in SF** | 658 sqft |

**Please describe your request. Add additional pages if necessary.**

This application is to APPEAL the planning department determination and denial of Permit # 252009 for this project as it is believed to not be consistent with Title 18 as written. The attached APPEAL letter includes the full consisting of (93) ninety three pages. Based on the information contained in this application and appeal letter, the applicant is requesting the planning department reconsider their position and approve the permit as submitted.

**Administrative**

- ☐ ADU Approval
- ☐ Change of Use
- ☐ Conditional Use
- ☐ Eligible Facility Request
- ☐ Minor Site Plan Amendment
- ☐ Reasonable Accommodation
- ☐ Sign Permit
- ☐ Site Plan
- ☐ Temporary Use

**Subdivisions**

- ☐ Condominium
- ☐ Lot Line Adjustment
- ☐ Major Subdivision
- ☐ Minor Subdivision
- ☐ Parcel Line Adjustment
- ☐ PUE Vacation

**Other**

- ☐ General Plan Amendment
- ☐ Rezone
- ☐ Text Amendment
- ☐ Noncomplying Expansion
- ☐ Nonconformity Determination
- ☐ Variance
- ☐ Zoning Compliance Letter
- ☑ Other: APPEAL FOR RECONSIDE

**PLANNING REVIEW PERIOD**

**Each application is subject to a planning review period.** Upon payment of all applicable fees and submission of a complete land use application for an approval that requires a public meeting, planning staff will have a review period of fifteen business days to review the application for substantial compliance with all the requirements of applicable ordinances before scheduling the application for the first public meeting or hearing. If staff requires additional information, clarification or an updated application submittal as part of their review, the time to provide the additional information, clarification, or submittal will be in addition to the review period. Staff will schedule your application at the first available public meeting after the review period concludes.

**Millcreek City Hall**
1330 East Chambers Ave
Millcreek, Utah 84106
millcreekut.gov




**Planning & Zoning**
(801) 214-2700
planner@millcreekut.gov

**APPLICANT'S INFO**

First Joe Last Romero Initial

Address 3652 Aurora Circle City Millcreek State Utah ZIP 84124

Phone 801-808-0063 Email joe@rthreegroup.com

**PROPERTY OWNER(S) – Note: A signed affidavit is required of property owner(s).**

☑ - Check here if applicant and property owner(s) are the same.

First Last Initial

Address City State ZIP

Phone Email

**PROFESSIONALS** ____ Engineer ____ Architect APPE Other

Company Contact

Address City State ZIP

Phone Email

Applicant hereby authorizes Millcreek to reproduce this application, and all documents attached to the application for staff, officials, and the interested public. Applicant further authorizes city staff to access the property for inspections and assessments as required as part of an application review.

Applicant's Signature: Date: 1/23/2026

**APPEAL AUTHORITY NOTIFICATION AND MEMORANDUM** **March 3, 2026**

| | |
|---|---|
| **Appeal Date:** | **February 5, 2026** |
| **Building Permit #** | 252009 and NCM Permit No. 926020 |
| **To:** | Millcreek City Land Use Authority / Planning Director / City Attorney |
| **Applicant:** | Joe Romero |
| | 3652 Aurora Circle |
| | Millcreek, Utah 84124 |

**Re:** **FORMAL REQUEST TO SCHEDULE HEARING AFTER ISSUANCE OF STATE OF UTAH PROPERTY RIGHTS OMBUDSMAN ADIVORY OPINION**

Dear City Attorney / Millcreek City Land Use Authority:

In accordance with Millcreek Code 18.04.010-D.3, upon notice of appeal, the Planning Director will schedule the item for the next available public meeting of the Land Use Hearing Officer (LUHO), not to exceed forty-five (45) days from when the notice of appeal was received.

The formal Appeal was submitted by the Applicant and received by the City twenty-six (26) days ago on February 5, 2025.

As such, subsequent to the Appeal being filed, Mr. Romero filed an application with the Utah State Property Rights Ombudsman office requesting an Advisory Opinion be issue in accordance with Utah Code §13-43-205 & 206. The Ombudsman's office accepted this application, and it is Mr. Romero's understanding Millcreek City has been formally notified by the Ombudsman's office.

In accordance with §13-43-206.8(c), and advisory opinion shall be issued within fifteen (15) days after the appointment of the neutral party, and currently expected on approximately day forty-five (45) after the Appeal was submitted.

It is Mr. Romero's understanding that a request for an advisory opinion does not stay the progress of a land use application; however, as the pending Advisory Opinion expected to be material to the Appeal hearing, Mr. Romero hereby submits this request for Millcreek City to schedule the Appeal Hearing at the most expeditious time "***after***" the anticipated Advisory Opinion is issued.

Acknowledging the fact that Millcreek City has certain public notice requirements, Mr. Romero will waive his rights to "*minimally extend*" the (45) hearing period required by Millcreek Municipal Code.

If this request cannot be accommodated, it is requested that the City: 1) proceed to schedule the hearing; 2) issue public notice; 3) and provide full notice to Mr. Romero regarding date, time, location and name of the Land Use Hearing Officer they have chosen for this hearing.

Respectfully Submitted,



Joe Romero
Homeowner / Taxpayer / Voter

**APPEAL AUTHORITY NOTIFICATION AND MEMORANDUM** **March 16, 2026**

**Appeal Date:** **February 5, 2026**

**Building Permit #** 252009 and NCM Permit No. 926020

**To:** Millcreek City Land Use Authority / Planning Director / City Attorney

**Applicant:** Joe Romero

3652 Aurora Circle

Millcreek, Utah 84124

**Re:** **SCHEDULING OF LAND USE APPEAL HEARING AND FORMAL REQUEST FOR DISCOVERY**

Dear City Attorney / Millcreek City Land Use Authority:

In accordance with Millcreek Code 18.04.010-D.3, upon notice of appeal, *the Planning Director will schedule the item for the next available public meeting of the Land Use Hearing Officer (LUHO), not to exceed forty-five (45) days from when the notice of appeal was received*. Based on public records, it appears the first available Land Use Appeal hearing after Mr. Romero's submission would have been the date of March 19, 2026 which would have been forty-two (42) days after the appeal was submitted and in accordance with Millcreek's Title 18 requirements. By failing to schedule Mr. Romero for the March 19th land use hearing, Millcreek City has again chosen not to adhere to the plain text of their own Code requirements and further delay Mr. Romero's project.

The formal Appeal was submitted by Mr. Romero and received by the Millcreek City thirty-nine (39) days ago on February 5, 2026 and based on correspondence from Millcreek City Planning Department today, the Land Use Appeal hearing regarding Mr. Romero matter ***is now scheduled for April 22, 2026, seventy-six (76) days after initial submission***.

Nevertheless, other Title 18 procedural requirements, including Millcreek's ***Resolution No. 17-18*** outline the ***Land Use Hearing Officer Policies and Procedures*** governing the processes for the hearing. These procedures are clear that both Parties have certain obligations to the other Party prior to the hearing regarding: 1) disclosure of position, 2) submission of written materials, 3) public and private notice and

other timely performance requirements so the other Party may object or research the information provided. At this time, Mr. Romero is requesting the following information be provided immediately for him to evaluate and consider the City's position and documentation prior to the scheduled hearing date and in accordance with the Rules and Procedures noted above. The following documentation is requested:

- Public Notice and Private Notice documentation identifying Land Use Hearing Appeal date April 22, 2026 including the identification of Land Use Hearing Officer assigned to matter, place and time of the hearing
- All discovery documentation Millcreek City will rely upon, and present at the Appeal Hearing. (i.e: Millcreek Staff Report, other evidence or documentation related to this matter). There are procedural deadlines required in the Rules and Procedures document must follow regarding the obligations each party has to the other.

Previously, Mr. Romero sent correspondence to Millcreek City's Attorney agreeing to "minimally extend" the (45) deadline if mediation or waiting for the pending advisory opinion was granted; however, Millcreek City chose continue to delay the matter by not replying to or making a good faith effort to attend Mediation as discussed with the State of Utah Property Rights Ombudsman.

As such, and due to the lack of response from Millcreek City, this letter is to ***formally rescind any request to extend the procedural timelines required in Title 18***. Mr. Romero will continue being at the mercy of Millcreek City's misapplication of their code requirements and will attend the meeting on April 22, 2026.

Nothing in this notification letter shall be construed as a waiver of Mr. Romero's rights. Mr. Romero expressly reserves the right to purse all additional administrative, judicial, or equitable remedies available under Utah law should the City, or the Appeal Authority be found to have violated Mr. Romero's Civil Rights.

Please include this letter in the official record of these proceedings.

Respectfully Submitted,



Joe Romero
Homeowner / Taxpayer / Voter

***Sent via email to Mr. Lilly to flilly@millcreekut.gov and via USPS***

**December 22, 2025**

Mr. Francis Xavier Lilly, AICP
Planning Director
Millcreek City
1370 South 2100 East
Millcreek, Utah 84108

**Re: Building Permit # 252009 - Formal Request for Correct Application of Lot Coverage Standards and Administrative Action Regarding Planning Specialist Non-Responsiveness**

Dear Mr. Lilly,

I am writing to formally request administrative review and corrective action by your office concerning the ongoing lot coverage determination for my residence located within the R-1-8 zoning district of Millcreek City. Despite multiple written communications to **Carlos Estudillo (Planner II)** - dated **November 17**, **2025**, **November 18**, **2025, November 21, 2025**, **November 24, 2025** and **December 8, 2025** appropriately responding to his planning & zoning questions regarding the proposed addition to my home, I have not received a substantive nor appropriate response consistent with City standards, professional planning practice, or the American Planning Association (APA) methodologies that Mr. Estudillo himself confirmed Millcreek City follows.

With each of my emails listed above, I have provided scaled, dimensioned drawings with square foot take-offs demonstrating that my existing plus new addition square footage is below or right at the 33% maximum per Millcreek's planning & zoning standards. The only communication I have received from Mr. Estudillo is his denial of the permit with the only justification stated in his November 21, 2025, email stating "*I took a rough estimate of your current lot coverage*" which does not align with actual on site conditions, the scaled drawings I have provided nor with the APA and Millcreek's standards for lot coverage take off. Mr. Estudillo also states I only have approximately 200 square feet of available lot coverage; however, that is because he does not follow Millcreek City nor APA's guidelines by using a non-scaled aerial map and including all overhangs and porches. I have also requested in several emails that I be able to meet with Mr. Estudillo so I can clear up or satisfy any questions he may have and demonstrate the proposed project should be approved. ***Lastly, Mr. Estudillo has chosen not to communicate with me since November 24, 2025 which is the purpose for my letter.***

For the reasons listed below, I am requesting this project's review be escalated within your department for the following reasons:

**I. Failure of Appropriate Response**

Mr. Estudillo has not acknowledged or addressed the accurately scaled drawings I provided, nor has he corrected his reliance on non-scaled aerial imagery that improperly includes roof overhangs, patios, and other elements explicitly excluded under the footprint method

recognized by both Millcreek City and the APA. His continued use of an inaccurate measurement method has resulted in materially erroneous conclusions, including but not limited to:

- Miscalculation of my primary existing home as **2,971 sq ft** despite its actual **2,377 sq ft footprint** (Mr. Estudillo solely used non-scaled aerial photography and non Millcreek/APA methods)
- Miscalculation of my proposed addition as **721 sq ft** despite its actual **707 sq ft footprint**
- Miscalculation of my accessory shed as **164 sq ft** despite its actual **96 sq ft footprint**; and
- Inclusion of roof overhangs approximately **16 inches** wide in the home's footprint calculations, contrary to APA PAS Report No. 111, which states that roof overhangs under two feet **must not be included**.
- Inclusion of open area patios or front porches that are allowed to be excluded per the APA.

*These errors directly contradict the method Mr. Estudillo previously confirmed Millcreek City uses for lot coverage: the "footprint" method, measured at finished grade and limited strictly to the exterior faces of exterior walls.*

**II. Compliance Demonstrated Through Scaled Drawings**

The scaled architectural drawings submitted to the Planning Department (See Attachment "B") clearly demonstrate:

- Existing structure + proposed addition = **3,084 sq ft footprint**
- Existing shed = **96 sq ft footprint**
- Lot size = **9,583 sq ft (.22 acre)**
- Resulting lot coverage = **3,180 / 9,583 = 33%**, below or right at Millcreek City's **33% maximum recommended lot coverage** for the R-1-8 zone.
- I have also offered to tear down the shed to be under the maximum limit; however, I still don't believe this would not be necessary.

*No provision within Millcreek Municipal Code §18.36 alters the APA-standard footprint methodology or authorizes the inclusion of roof overhangs or open porches in lot coverage calculations.*

**III. Formal Request for Immediate Administrative Action**

Given the above, I hereby formally request that the Planning Department:

1. **Immediately apply the correct footprint-based lot coverage methodology** consistent with APA PAS Report No. 111 and with prior City acknowledgment;
2. **Review and approve the proposed addition** based on the accurate 33% lot coverage calculation cased on scaled drawings and applied per APA standards;
3. **Direct the plans to the Building Department** for the next phase of review without further delay; and
4. **Provide a written response from the Planning Director**, confirming the City's corrected calculations and next administrative steps.

***Sent via email to Mr. Lilly to flilly@millcreekut.gov and via USPS***

*Failure of a Planning Specialist to apply proper planning methods and respond to applicant communications compromises procedural fairness and imposes an unreasonable hardship on my family, contrary to the purpose and intent of Millcreek's zoning framework.*

**IV. Request for Meeting**

To avoid further unnecessary delay, I again offer to meet with you directly—along with Mr. Estudillo, if appropriate, to review the scaled drawings together and confirm the correct square footages.

I respectfully request a written response from your office within **five (5) business days** of receipt of this letter so that this matter can move forward appropriately and without the need for additional escalation.

Thank you for your prompt attention and please know I can be contacted at anytime.

Respectfully Submitted,



Homeowner
3652 Aurora Circle
Millcreek, Utah 84124
(801) 808-0063

**APPEAL AUTHORITY NOTIFICATION AND MEMORANDUM** **April 13, 2026**

**Appeal Date:** **February 5, 2026**

**Building Permit #** 252009 and NCM Permit No. 926020

**To:** Millcreek City Appeal Authority / Land Use Hearing Officer

**Applicant:** Joe Romero

3652 Aurora Circle

Millcreek, Utah 84124

**Re:** **FORMAL NOTIFICATION OF POTENTIAL STRUCTURAL BIAS, CONFLICTS OF INTEREST, VIOLATION OF DUE PROCESS AND REQUEST FOR INDEPENDENT ETHICS COMMITTEE REVIEW**

Millcreek City Mayor
State of Utah Property Rights Ombudsman Office
Millcreek City Ethics Review Committee
Members of the Appeal Authority,

This correspondence is submitted to formally and publicly record serious concerns about potential structural bias, potentially inherent complicit bias, apparent conflicts of interest, and potential due-process violations that could impact the impartiality of Mr. Romero's land-use appeal proceedings as the potential issues outlined in this letter, along with the objective evidence presented in the letter's attachments, may substantiate there are significant violations of the rights afforded to Mr. Romero under the 14th Amendment of United States Constitution and Article 1 – Section 7 of the Utah Constitution, amongst other Utah laws and statutes.

***The 14th Amendment, Section 1*** *to the United States Constitution cites: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the*

*laws".* As such, bias or prejudice either inherent in the structure of a trial system, the hearing venue of the trial itself or imposed by external events or governmental actions can infringe on a person's right to a fair trial. Thus, as in the civil context, procedural due process requires cases to be overseen by an unbiased and impartial judge.

It has very recently come to Mr. Romero's attention that the Administrative Law Judge / Land Use Hearing Officer (herein referred to as "ALJ or LUHO"), Mr. J. Richard Catten was appointed and reaffirmed by multiple City Council Resolutions upon motions or votes initiated by or participated in by his family member, Ms. Silvia Catten, who ***was at the time of the voting processes and remains a sitting member of the Millcreek City Council***. The multiple voting actions as shown in the Millcreek City public record, undertaken by Council Member Catten would more likely than not be considered "***Governmental Actions***" as defined in accordance with Millcreek Code - 2.07.201-A.6 (see ***ATTACHMENT M***) that have been taken by the Council Member in her public duties. The *objective evidence* relied on for these concerns regarding potential structural bias, complicit bias, conflict of interest, and due process violations are included in either Millcreek City public records or in publicly available information (i.e. internet searches, business entity searches, FOIA/GRAMA requests, social media accounts, etc.) (see ***ATTACHMENTS A, B, C, D, E, F, G, H, J, K, L, M,N & P***).

Not only are there serious concerns regarding violations of law about the actual systematic processes of the entire appeal hearing process itself, there are additional concerns that the venue for the hearing is also biased. For the record, there is a very large, framed portrait of Council Member Catten bearing her name that is hanging on the wall approximately 20-25 feet to the left of the presiding bench, where LUHO, Mr. Catten's adjudicates his hearings (see ***ATTACHMENT P***). On its face, this visual trigger could be seen as a constant reminder for LUHO, Mr. Catten of what is potentially a close familial relationship with Council Member Catten during the Appeal hearings, ***but certainly does not support nor provide a neutral, unbiased, quasi-judicial hearing venue for Mr. Romero***.

In accordance with Utah Law, it is often required that when potential structural bias, complicit bias, conflicts of interest or due process violations are discovered by a party or Appellant in this case, the Appellant shall file notice regarding their concerns, promptly after the Appellant learns of the potential structural bias, complicit bias, conflict of interest or potential due process violation.

Specifically related to this matter and during the two-month scheduling process, Mr. Romero submitted several written email requests to be informed by Millcreek City which of the (5) five rotating and available ALJ/LUHO's were going to be scheduled to adjudicate his

hearing. After Millcreek's non-response to each of the separate requests, Mr. Romero sent a formal letter dated March 16, 2026, to City Attorney, Mr. John Brems, Planning Director, Mr. Francis Lilly, City Recorder, Ms. Elyse Sullivan again requesting this vital information regarding the LUHO assignment. This letter was submitted on the formal record of this appeal.

For over a month, Millcreek City chose not to respond to any of Mr. Romero's prior written requests; however, on Saturday, April 11, 2026, Mr. Romero received Millcreek City's Appeal Hearing Brief, issued by City Attorney, Mr. John Brems. Within this brief, Mr. Brems, for the first time, identified LUHO, Mr. Catten as the selected hearing officer for Mr. Romero's land use appeal hearing. LUHO, Mr. Catten was also included on the email from Mr. John Brems as well. As such, upon receipt and review of the brief, this was first time Mr. Romero learned that LUHO, Mr. Catten was the hearing officer who was selected and who would be adjudicating his Appeal. Therefore, Utah law supports the Appellant's first available time to provide the required notice was during the week of April 13-17, 2026, which was the first reasonable time Mr. Romero could complete and finalize this notice, but certainly meets the intent of the law by providing notice promptly. It should be noted that ***Millcreek City had the opportunity to assign one of five rotating ALJ/LUHO's for this matter (in accordance with their own City Resolutions) but chose to select LUHO, Mr. Catten for this hearing***. As it may be, if Millcreek City had chosen to select one of its other ALJ/LUHO's for this hearing, this concern would have been moot for Mr. Romero; however, an alternate LUHO selection, besides Mr. Catten, would have ensured a detached and neutral hearing officer, neutral location and unbiased proceedings. Concerns regarding the apparent disproportionate selection of LUHO, Mr. Catten, by Planning Director, Mr. Francis Lilly will be addressed below.

Public records demonstrate the ***City Council and Planning Department are the governing bodies responsible for*** appointment, contractual oversight, scheduling, compensation and potential renewal or termination of LUHO, Mr. Catten's position which thereby confirms the process taken by Millcreek to appoint, reaffirm and administer the contract of Mr. Catten has introduced a potential structural bias, complicit bias, and due process violation against Mr. Romero *and any other Appellant where LUHO, Mr. Catten previously presided as the LUHO for Appeal hearings*. Also, based on public budget records for Millcreek City, the Planning and Zoning department's land use appeal application fees provide funding and revenue streams to the general fund of Millcreek City, which in turn, it is believed those funds pay for LUHO, Mr. Catten's compensation, both of which are attributable to the Planning and Zoning department. Additionally, upon reviewing and comparing the FY2025 and FY2026 Consolidated Fee Schedules (see ***ATTACHMENT H***), it appears the Planning and Zoning department doubled the Land Use Appeal Hearing Fee

from $300 to $600 in FY2026 potentially ***demonstrating the Planning and Zoning department may be trying to discourage Appellants*** from filing Land Use appeals; however, it could also be believed that ***these fees ultimately pay for the compensation of LUHO, Mr. Catten and the increasing of fees (revenue funds) could be also be seen as an institutional incentive to increase LUHO, Mr. Catten's compensation*** as well. It is in the public's best interest to know if LUHO, Mr. Catten's compensation, has been increased since May 2025 when the FY26 fee schedule was published. Nevertheless, it could be believed that structural bias, inherent to the system itself, is present since LUHO, Mr. Catten is ultimately compensated for his position by revenue funds generated on behalf of Millcreek City, by the Planning and Zoning department.

In addition to the potential or perceived familial conflict of interest between LUHO, Mr. Catten and Council Member Catten, public records show LUHO, Mr. Catten, previously worked for more than (4) four years in a close professional capacity with the current ***Millcreek City Assistant City Manager and Planning Director, Mr. Francis Lilly***, while both were employed by another municipality. Although Mr. Catten served as West Valley City Attorney for over 29 years, he and Mr. Lilly served together, respectively as City Attorney and Long-Range Planner or Planner II for West Valley City, Utah, from at least March 26, 2007, through April 2011, during Mr. Lilly's tenure at the city. It is potentially significant that public records demonstrate Mr. Catten and Mr. Lilly resigned or left their WVC positions within just 2 to 3 months of each other and subsequently arrived and began employment or was appointed as the LUHO at Millcreek City within months of the same year in 2017. These events ***could simply be serendipitous happenstance***; however, for two high ranking City Officers to leave one City so closely together and arrive at the next city within months of each other ***(6) six years later***, may present potential collaboration amongst them, or even potentially other Millcreek City officials, but certainly could warrant an investigation. Attached are public records received via FOIA request from West Valley City (see ***ATTACHMENT D***) confirming Mr. Lilly's overlapping employment dates with LUHO, Mr. Catten. Mr. Lilly and LUHO, Mr. Catten's past professional relationship, is believed to be more likely than not very similar or the same professional contact and coordination as Mr. Lilly's existing professional relationship with the current Millcreek City attorney, Mr. John Brems who works very closely with Mr. Lilly regarding Planning and Zoning matters. Due to Mr. Lilly's past professional relationship with LUHO, Mr, Catten, and a potential for collaboration by being hired by Millcreek City, there is significant potential for complicit bias, conflict of interest and structural bias as Mr. Romero's appeal hearing, and LUHO, Mr. Catten's decisions relate "*directly*" to ***Millcreek Planning Director, Mr. Lilly's interpretations and determinations of Millcreek Code, which are central to the issues currently under appeal and to be decided by the ALJ/LUHO***. Additionally, under Utah

law, Millcreek Code and the Employee Handbook, it is believed that Mr. Lilly's combined roles of *Assistant City Manager and Planning Director* ***elevate Lilly*** to an "***Appointed Officer***" position within Millcreek City, which would require an Annual Disclosure of Conflict of Interest which it appears ***he does not have on file*** or cannot be found in the public record. If it was on file, it is believed Utah law would require Mr. Lilly to have publicly disclosed his past professional relationship with LUHO, Mr. Catten since it is believed he adjudicates most, if not all the Appeal hearings resulting from Mr. Lilly's decisions, which by nature of the appeals process, are negatively affecting the Appellants in one way or another. It could also be believed that Mr. Lilly's position acting in capacity as Assistant City Manager, assisting with the administration or running of official City matters ***blurs the line even further regarding the appearance of potential conflict of interest*** from just being department head to making critical and lawful decisions for Millcreek City as a whole.

In the Minutes of the City Council Meeting on February 17, 2017, it appears the City Council conducted interviews with Land Use Hearing Officer candidates in a working session prior to the generally accepted public hearing later that evening. It is believed Council Member Catten briefly and verbally disclosed her familial relationship with LUHO, Mr. Catten; however, public records show her disclosure was made only in a "***working session***", without the knowledge or appearance of any public party attending that session and there is ***no additional indication*** that she or the "*Council Chair*" verbally disclosed this familial relationship in other "***general sessions***" prior to voting procedures taking place on February 17th and 28th, 2017.

The City Council general sessions are more generally viewed and known as the open public meetings that provide a forum for any voting events taking place as may be required by Millcreek Code and Utah law. These same meeting minutes demonstrate that just 1-2 hours after the initial working session, Council Member Catten, proceeded to participate in the public facing general session meeting and voted on the initial approval of Resolution No. 17-18, "***Adopting Appeal Authority Rules of Procedure***," and the ***initial appointment of Mr. Catten, which was made in Resolution No. 17-24 just a week later on February 28, 2017***. It does not appear that proper disclosure from the presiding bench took place prior to both voting events. Furthermore, in the February 17th working session, it appears Council Member Catten only disclosed that LUHO, Mr. Catten is a "***distant***" relative of her husband and that they have "***very limited***" contact; however, information within this letter along with its attachments may suggest the familial relationship is much closer than initially disclosed. *Millcreek Agenda public record, for both February 17th and 28th meetings, list Mr. John Brems, acting as City Attorney was in attendance during the working and general sessions of these important and critical meetings and could have provided valuable input or even potentially granted the approval of Council Member Catten to not*

*recuse herself and move forward with voting even after the conflict of interest was disclosed*. Throughout Mr. Brem's tenure at Millcreek City, public record shows that he has been in attendance for most public City Council and Planning and Zoning meetings.

Recently, it has been discovered that several public-facing "***Catten Family***" social media accounts (see ***ATTACHMENT G***) show that Council Member Catten and LUHO, Mr. Catten are "***mutual friends***" on multiple family Facebook accounts visible to the public and connecting both Cattens in question as well as the much broader Catten Family. The mutual Facebook friend status could also be found in other Catten Family Facebook accounts that are set to private and not visible to the public. It should be noted that Council Member Catten and LUHO, Mr. Catten's Facebook accounts are both "*private accounts*" so it cannot be confirmed if these two are actual Facebook friends; however, this should be investigated as it would further support structural bias, complicit bias, conflict of interest and due process violations concerns. Nevertheless, some of the public facing Catten family member's accounts even ***posted to their social media openly supporting Ms. Catten's Senate candidacy announcement as recently as January 2026***. Since Council Member Catten and LUHO, Mr. Catten are mutual Facebook friends with the individual family members who posted these celebratory messages to their public accounts, whether he asked for the information or not, LUHO, Mr. Catten, ***would have had full visibility of these supportive and celebratory notices***, which could further indicate that ***the familial relationship is closer than that of distant relatives with very limited contact***. These public social media posts, and potentially additional posts in private accounts, provide detailed insights and updates into Council Member Catten's life, thus keeping LUHO, Mr. Catten informed of the events of the Council Member, potentially violating Utah law based on Council Member Catten's elected officer position and LUHO, Mr. Catten's LUHO role as an ALJ/LUHO within Millcreek City which is supposed to remain impartial, unbiased and detached position.

Nevertheless, it is believed that the "*working session*" disclosure, as referenced in the attachments contained herein, Council Member Catten may have violated Utah Code §10-3-1305-2b, Millcreek Code 2.07.201-B, D, E (and other Ordinances, Resolutions and Employee Handbook) requiring the disclosure of the information ***be in an open / public facing meeting*** to the members of the municipal body of which the officer is a member ***immediately before the discussion and "each time" there is a vote required***. It is also believed the Chair of the City Council would have been required to verbally announce this potential conflict of interest while at the presiding bench, to the public, which would have resulted in the required Council Member Catten's recusal on the record.

It should be acknowledged there are multiple ways a conflict of interest can exist (i.e, financial, familial, past working relationships, multitude of other ways) and there are layered protective measures, including Federal and State laws, City Codes, Ordinances, Resolutions and the Millcreek Employee Handbook that are in place ***to ensure even the slightest potential of these are protected***. If any of these potential conflicts of interest are paired with "*governmental action*", "*structural bias*", "*unfair practices*", "*institutional incentives* "or "*using their position in a manner to secure special privileges for others*", they could be viewed as illegal and in violation of due process laws and may require recusal, of both Council Member Catten and LUHO, Mr. Catten at a minimum. While a single potential conflict of interest such as a prior familial or professional familiarity alone may not mandate recusal, ***objective evidence has been found*** and ***the combination of***: (1) any familial relationship between the LUHO and a current member of the appointing authority, (2) any participation of that relative ***in continued motions to approve and voting in favor of the appointment and reaffirmation*** of the LUHO without formal announcement on the public record (or recusal) ahead of the voting process taking place, (3) the Hearing Officer's adjudication of matters involving City Appointed Officers who have potentially had a close professional relationship and whose positions, contracts and payments are overseen by the same governing body, (4) lack of proper initial disclosure and ongoing annual disclosures, (5) where the governing body's revenue stream (i.e, land use application and appeal fees) pays for the LUHO compensation, and (6) the LUHO himself, not recusing from being a ALJ/LUHO *in accordance with the Appeal Authority Rules and Procedures* creates at minimum, a serious appearance of structural bias, complicit bias, institutional incentive, due process violations and certainly provides for unconscious bias to be present and certainly could make a reasonable person believe there is a cause for concern.

Additionally, given the timing between the initial meeting disclosure and the Council Member's initial voting record in February 2017 regarding LUHO, Mr. Catten's appointment, the public record does not support nor suggest that Millcreek City conducted an appropriate formal conflict or ethics review process regarding these potential conflicts of interest, as required by Millcreek's own Benefited Employee Handbook (4-01 Code of Conduct), (see ***ATTACHMENT J***). Throughout Mr. Brem's tenure at Millcreek City, public record shows that he was noted as being in attendance for most public City Council and Planning and Zoning meetings. The record is not clear who cleared the initial conflict of interest disclosure, and who authorized Council Member Catten to proceed with the initial and all subsequent voting processes related to her family member's appointment and reaffirmation as ALJ/LUHO.

Upon review the Millcreek Employee Handbook, Section 4-01–Code of Conduct, it is clear the City is a public entity whose purpose, among others is to provide municipal

services to its residents. City employees must adhere to high standards of public service that emphasize professionalism and courtesy. City employees shall conduct themselves in a way that will *bring trust* and *respect* to themselves and the City. According to this Code, "***all" persons holding office***, before commencing the duties of their respective offices, "***and annually thereafter***", shall file an ***Officer / Employee Conflict of Interest Disclosure Statement*** and shall read, sign and file the "***Annual Ethics Pledge***" in a form provided by the City.

*Additionally, Millcreek's Planning Commission Rules of Order and Procedure* (see ***ATTACHMENT K***) requires Planning Commission members to disclose conflicts and in accordance with *Section VII – Section 2 – Ethics and Conflicts of Interest* where this Code explicitly states**, *a member who has a conflict of interest as defined by Utah Code and/or Millcreek Ordinances shall declare the conflict of interest and RECUSE THEMSELVES FROM THE AGENDA ITEM RELATING TO THE CONFLICT OF INTEREST. THE CHAIR SHALL ANNOUNCE THE RECUSAL FOR THE RECORD***. It is believed the City Council has similar Rules and Procedures in place (see ***ATTACHMENT L***) as the outcomes of their voting decisions often have a much greater impact on City business and their residents. Although the City Council rules are vaguer and more rudimentary than the more explicit Planning Commission Rules of Order and Procedure, as they were adopted very early in the creation of the City via Resolution No. 16-10, it could be viewed as negligent if Millcreek City Council rules are less stringent for the City Council than those required by of Planning Commission and other departments or the requirements of the Employee Handbook, *especially relating to the Chair announcing the conflict of interest and required recusal on the public record*. Nevertheless, all Millcreek Code, Ordinances, Resolutions and the Employee Handbook related to ethics and conflicts of interest are stated to follow requirements of the Utah Municipal Officers and Employees' Ethics Act ("**UMOEEA**") - Utah Code §10-3-1301 et seq, as they should, requiring recusal, initial and continued public verbal and written disclosure.

Under Utah's Land Use, Development, and Management Act (**LUDMA**) – Utah Code §10-20-1 et seq, and the Utah Administrative Procedures Act (**UAPA**) Utah Code §63G-Chapter 4, et seq, the quasi-judicial proceedings (land use appeals) require an "***impartial***" Land Use Hearing Officer who provides a "***fair hearing***"' based on the record. Additionally, under both the United States and Utah Constitutions, proceedings require the Land Use Hearing Officer be a "***neutral and detached decision maker***" with "***no actual or potential bias***." The hearing venue should also provide an unbiased and neutral tribunal room as well. These lawful requirements are similar, if not identical, to requirements in Millcreek's own ***Land Use Hearing Officer Policies and Procedures*** adopted by Millcreek City Council in Resolution No. 17-18, dated February 21, 2017. (see ***ATTACHMENT A***)

Under Utah's Municipal Officers' and Employees' Ethics Act (Utah Code §10-3-1301 et seq, including but not limited to provisions §10-3-1304-2(a)(b)) (see ***ATTACHMENT E***), public "**Elected officers**", "**Appointed officers**" or "**Municipal employees**" may not utilize their influence and stature by: (1) using their positions to benefit "***others***" (it is believed that a relative is included in "others"), (2) participate in decisions where family members or past professional relationships have a financial interest where the appointing body compensates the LUHO and where the department is incentivized by additional revenue into forcing their applicants into unnecessary appeal hearings for increased fees, (3) secure special privileges for by recommending, supporting or influencing the selection of "***others***" (it is believed that a relative is included in "others"), including LUHO, Mr. Catten that could issue biased decisions due to past or current familial and professional relationships. (4) Concealing their influence by not filing the required initial proper disclosures with the Mayor in addition to continuing to disclose ongoing potential conflict of interest in required Annual Disclosure.

Suppose it is found by a Millcreek City, or 3rd party independent ethics review committee, State of Utah Political Subdivisions Ethics Review Commission or adjudicated by a District Court Judge that the Council Member or the Assistant City Manager / Planning Director, or both, engaged in these prohibited and potentially unlawful activities, it could be public opinion, and potentially supported by law that *their actions don't support the validity of the appointment process, instill public confidence in neutrality of the Appeal and may be a potential violation of State and municipal ethics laws*. Additionally, based on Council Member Catten's 2026 Annual Conflict-of-Interest Disclosure form on Millcreek City's website (see ***ATTACHMENT F***) required of Elected Officers, it appears the Council Member *did not utilize Section III.2 of this annual disclosure opportunity* to continue to disclose her ongoing familial relationship as required by Utah and Millcreek Code and Millcreek Employee Handbook; however, Millcreek public records shows Council Member Catten has continued to either "***initiate motions to approve***" or "***voted YES***" on votes involving her family member in multiple City Resolutions between February 2017 through June 2019 which are still active and valid today. *Since Council Member Catten, and / or Millcreek City deemed the familial relationship met the standards to be disclosed in February 2017 which were included in the public record, which are still present and valid today in April 2026, these acknowledgements should have required continued verbal disclosure on the record, and annual disclosure for each of the subsequent years beginning in 2018 through 2026 which are required to be on file as this potential conflict of interest remains today*. Regarding Mr. Lilly's Annual Conflict of Interest Disclosure, it does not appear he has one on public record as potentially required. Improper submission and posting of initial, and

ongoing required annual written disclosures for Council Member Catten and Mr. Lilly could be in violation of §10-3-1313-1(a)(b).

***To further complicate the matter, yet further support Mr. Romero's concerns***, as outlined in Millcreek City Resolution 17-18 (see ***ATTACHMENT A***), the City Council adopted an Ordinance that includes ***Land Use Hearing Officer Policies and Procedures for the Appeal Authority*** for the Land Use Hearing Officers themselves. It's believed these procedural rules were intended to support the United States and Utah Constitutions and laws, which provide for fair and equitable hearings for the affected party. These Millcreek City adopted Policies and Procedures governing the Land Use Hearing process outline the rules the assigned ALJ/LUHO must also follow, providing an additional layer of protection for the Appellant. ***Section "B" – Conflicts of Interest*** of Millcreek's *Land Use Hearing Officer Policies and Procedures* outline that the ***Land Use Hearing Officer shall not participate in any appeal or other matter in which the LUHO has a conflict of interest that may be "actual, apparent, or reasonably foreseeable" and "shall recuse himself from the hearing matter"***. Nevertheless, it appears LUHO, Mr. Catten, may be in violation of Millcreek's own published Policies and Procedures by presiding and adjudicating over the hearings where there is ***significant objective evidence*** demonstrating that *an actual, apparent or reasonably foreseeable conflict of interest is present due* to his familial relationship with Council Member Catten along with his past professional relationship with Mr. Lilly. Both potential violations, not only potentially violate Mr. Romero's due process rights, *but also any other Appellant whose matter has been previously adjudicated by Mr. Catten*, whether that Appellant was successful or not in their Appeal. Although Mr. Romero believes that Mr. John Brems, Millcreek City Attorney is and has always acted in good faith and to the best of his abilities and professional conduct requirements, throughout Mr. Brem's tenure at Millcreek City, public record shows that he was listed as being in attendance overseeing most public City Council, Planning and Zoning meetings, Appeal Hearings and processes; however, "may" have demonstrated complicit bias by silently allowing the LUHO's to adjudicate hearings when there was potentially clear apparent, or foreseeable conflict of interest violations of Land Use Hearing Officer Policies and Procedures to continue year after year for any hearings LUHO,Mr. Catten adjudicated. Mr. Romero wants to make it abundantly clear that this "*is not*" a personal accusation that Mr. Brems did anything unethical, and Mr. Romero's position is that Mr. Brems "*is not*" believed to be at fault; however, it would be in the public's best interest for an independent 3rd party to review the matter regarding any potential irregularities of the process of selection, reaffirmation and potential violations by the LUHO's position.

For the reasons listed in the full text of this letter, along with supplemental attachments, ***it is believed that any reasonable person in the community would***

***ascertain that structural bias, complicit bias, conflict of interest and violation of due process does exist*** *regarding not only Council Member Catten's participation in appointment and reaffirmations of LUHO, Mr. Catten, but also that Mr. Lilly's determinations requiring the Appeal Hearing itself are at the heart of the matter and that LUHO, Mr. Catten is adjudicating the process which is believed to be in violation of the adopted Policies and Procedures set forth in Millcreek Resolutions.* All these protective, layered and lawful measures were previously adopted by either the United States Congress, State of Utah Legislature or Millcreek City Council, and are in place to ensure impartiality, neutrality, ensure structural bias, complicit bias does not exist, and that conflict of interest, of any kind, is not present.

Upon review of Millcreek Code - Title 18.04-D.3, "***upon receipt of the notice of appeal, the Planning Director will schedule the item for the next available public meeting of the LUHO, not to exceed forty-five (45) days from when the notice of appeal was received"***. By Title 18 Code, Mr. Romero's matter should have been scheduled for the next available public meeting after submission. The next available meetings after Mr. Romero submitted his appeal were on March 19, 2026 or even April 8, 2026; however, Planning Director, Mr. Lilly again chose not to adhere to the plain text of Title 18 Code and ***chose to further delay Mr. Romero's matter an additional (34) days until April 22, 2026 which was (76) days from the Appeal submission and 163 days, 23.29 weeks and 5.38 months after Mr. Romero submitted his plans for initial building, engineering, planning and zoning permit review***. Additionally, Mr. Catten's recent selection as the LUHO for Mr. Romero's hearing, which was at the direction and appointment of Mr. Lilly, may very possibly require rescheduling of Mr. Romero's Appeal Hearing thus further delaying the matter, but ensuring this matter is being adjudicated by a neutral, detached, impartial decision maker. The additional delays potentially caused by Mr. Lilly direct actions, and outside of Mr. Romero's control will simply cause additional considerable financial harm, schedule delays and impacts to Mr. Romero's project, all of which he should be fully reimbursed by Millcreek City.

Prior to this letter, Mr. Romero has submitted (3) three additional letters and a PowerPoint presentation on the record outlining the continued alleged misapplication and misinterpretation of the plain text of the Code by Millcreek City's Planning and Zoning Planning Director, Mr. Lilly and staff; however, in any regard, it is unreasonable for a small residential addition project (658 sqft) to take over 5 months for the Planning and Zoning department to finalize, especially since it has always been compliant with the plain text of the Title 18 Code from its initial submission. These letters simply highlight the institutional issues, concerns and lack of leadership that may be present within Millcreek City's Planning department, all of which should be fully and completely investigated. Just like the

confirmation of prior Planning and Zoning overreach in State of Utah Advisory Opinion #218, if these potential serious and repeated violations within the Planning and Zoning department are confirmed by an independent review committee or board, it may be in the public's best interest for a change in leadership within the Planning and Zoning department to restore the community and citizen's trust.

Furthermore, the City Council voting record and adopted City Resolutions shows that Millcreek City ***has (4) four other and different ALJ/LUHO's previously appointed to adjudicate hearings***, in addition to Mr. Catten; however, it appears that Planning Director, Mr. Lilly, ***has continually chosen*** to select only Mr. Catten as the ALJ/LUHO for not only Mr. Romero's hearing, but ***most if not all previous*** "Land Use or Appeal" hearings, even though City Resolutions state all ALJ/LUHO's ***shall serve on a rotating basis***. Based on review of documentation of several recent and past Appeal Hearings in the public record or could be found through internet searches, in addition to Mr. Romero's in-person attendance of the recent Appeal Hearings on March 19th and April 8, 2026, and the recently received City Brief for Mr. Romero's LUHO selection, it is potentially evident that ***Mr. Lilly does not*** adhere to the City Resolutions and Millcreek Code and assign ALJ/LUHO on a "***rotating basis***". Through Mr. Romero's clear in person observation and review of public records, LUHO, Mr. Catten adjudicated the last two sequential appeal hearings listed above and is currently scheduled to adjudicate Mr. Romero's hearing on April 22, 2026 which would assign LUHO, Mr. Catten for three hearings in a row. Additionally, and upon a further full review of all ALJ/LUHO selections, not readily discovered by Mr. Romero, it is believed Mr. Lilly has shown bias and potentially favoritism towards selecting ALJ/LUHO, Mr. Catten on a disproportionate basis compared to the other appointed ALJ/LUHO's, again which are to be rotated. These continued improper and potentially illegal actions possibly violate the City Resolutions / Code and the Employee Handbook. The ever-so-critical selections of the ALJ/LUHO, but more so the apparent continued disproportionate selection of LUHO, Mr. Catten, initiated and overseen by Mr. Francis Lilly, may further demonstrate that Mr. Lilly does not follow the required City Resolutions, Ordinances and City Code. As such, these several potential violations inherent within the selection process of the ALJ/LUHO further support the notion that there are significant irregularities in Millcreek City's entire process, as there are several apparent potential conflict of interests present thus creating potential structural bias and due process violations for the matter. All of which further demonstrates there may be institutional incentive structures present within the structure as *Mr. Lilly and his enforcement staff control the adjudicators*.

***It is not necessary to demonstrate actual bias; rather, the standard is whether there exists a constitutionally intolerable probability of bias or circumstances under which a reasonable person would question the adjudicator's independence***; as

procedural due process under both the United States and Utah Constitutions and laws which require an ***impartial, neutral and detached decision-maker*** and ***fair tribunal location*** that follow the ***clear and straightforward policies and procedures*** governing the process.

Accordingly, and ***in the best interest of the public and to ensure the validity of Millcreek's Land Use Appeal Hearing process***, Mr. Romero respectfully requests that the following items be addressed on the record:

1. Disclosure of the "***actual***" nature and extent of the familial relationship between the Hearing Officer and the Council member, disclosed in meetings, where Council Member Catten stated she is a "*distant*" relative with "*very limited*" contact to LUHO, Mr. Catten.

2. Disclosure as to whether the Council Member and LUHO, Mr. Catten are "***Friends***" on their personal Facebook accounts.

3. Disclosure as to whether the Council Member and LUHO, Mr. Catten are "***Friends***" on other Catten family member "***Private***" accounts.

4. Disclosure of the "***actual***" nature and extent of the "*past professional*" relationship or any "*current professional affiliations*" between the Hearing Officer, Mr, Catten and the Assistant City Manager / Planning Director, Mr. Lilly.

5. Millcreek City disclosure regarding the process the City took to seek out, recruit or find potential ALJ/LUHO's and the current Planning Director and LUHO, Mr. Catten. Were these processes in a public Request for Qualifications/Proposal? Did anyone in the City reach out to, recommend or suggest Mr. Catten or Mr. Lilly submit a resume/CV for their currently held positions.

6. Acknowledgement Council Member verbally disclosed her familial relationship in a work session meeting and has ***not disclosed in the general session of any voting meetings*** before the Appointment of Mr. Catten and (4) four other Appeal Authorities in Resolution No. 17-24, initially appointing them as an Administrative Law Judge or Land Use Hearing Officer to "***serve on a rotation basis***". Also confirm if the City Council Chair announced the conflict of interest from the presiding bench in the Regular Session and announced that Council Member Catten had to recuse herself from the voting.

7. Disclosure by Millcreek City providing a list of "***ALL***" prior appeal hearings for the last (3) three to (5) five years, and the Administrative Law Judge/LUHO who presided over each hearing demonstrating compliance that Millcreek City follows their own adopted Resolution No. 17-24 (and subsequent Resolutions) by rotating their Administrative Law Judges for each hearing and that they did not favor or disproportionately assign one LUHO over others for hearings.

8. Acknowledgement that public records show Council Member "***initiated motions to approve or participated in the voting process***" related to Resolutions to appoint or reaffirm LUHO, Mr. Catten.

9. Provide the detailed ethics review process taken between the initial working session disclosure on February 21, 2017, (including the subsequent vote that same night) and the initial voting/appointment of Mr. Catten on February 27, 2017, ***including who the decision maker was approving Council Member Catten to participate in these voting events*** after she disclosed the conflict of interest.

10. Confirm Millcreek City ethics office officials completed a full review of the potential ethics or conflict of interest violation outlined in this letter before the actual initial appointment of Mr. Catten as an ALJ/LUHO. If a Millcreek ethics office was not in place for review at the time on initial appointment in February 2017, did Millcreek City engage the State of Utah - Political Subdivisions Ethics Review Commission in accordance with Title 63A – Chapter 15 as required by Utah law.

11. Provide Millcreek City's decision as to why Council Member was not required to recuse herself from participating in "***any***" appointment or reaffirmation voting to eliminate "***any***" potential conflict of interest.

12. Provide Millcreek City's decision as to why LUHO, Mr. Catten was allowed even to be considered or continue as a candidate and interview as an impartial LUHO for appointment on February 21, 2017, even though in the same interview meeting, the familial relationship was disclosed, potentially violating Utah Law, Millcreek Code, Ordinances, Resolutions, the Employee Handbook and the Policies and Procedures governing a LUHO adopted just one week later by appointing him to that position.

13. Provide Millcreek City's decision as to why LUHO, Mr. Catten was not required to recuse himself from presiding over or participating in "***any***" Land Use Appeal Hearings in accordance with the published LUHO Policies and Procedures due to conflict of interest previously disclosed by Council Member, Catten and the potential conflict of interest with Mr. Lilly.

14. Acknowledgement that a large, framed photo of Council Member Catten (including her name) is hanging on the wall approximately 20-25 feet from where the LUHO, Mr. Catten, presides over appeal hearings.

15. Acknowledgement that Council Member Catten's 2026 (or previous years since 2017) Annual Conflict of Interest Disclosure -Section III.2 does not list the familial relationship conflict with LUHO, Mr. Catten, who is required to be detached and neutral. Since Council Member Catten, or Millcreek City deemed the familial relationship met the standards to disclose in February 2017, those same standards are still valid and should have been met and achieved in each of the subsequent annual disclosure forms required to be on file as this conflict of interest remains.

16. What consideration of voluntary recusal of LUHO, Mr. Catten, was made to preserve the integrity of Mr. Romero's on April 22, 2026 or other prior Appellant's appeal proceedings.

17. Millcreek City to disclose who made the actual selection to schedule and use LUHO, Mr. Catten for Mr. Romero's Appeal hearing.

18. Disclosure of the contractual terms governing the LUHO, Mr. Catten's current compensation structure, past increases to fee, and renewal of contract, including the City Council's authority over such matters, and confirmation of the Planning and Zoning Department's authorization and approval of payments to the LUHO's compensation.

19. Confirm the Planning and Zoning department's "Land Use Application Fees" increases revenue from their enforcement of the department (i.e, requiring additional Land Use Appeal fees, recently increased to $600 per Appeal etc.) fund or increase revenue of the general fund of Millcreek City, tied to the

Planning and Zoning department code and the LUHO is paid out of general fund of Millcreek City also attributed to Planning and Zoning department coded funds.

20. Disclose any ex-parte contact and communication (written or verbal) directly between LUHO, Mr. Catten, City Employees (Mr. Lilly and his staff) and City Contracted employees (Mr. John Brems) regarding Mr. Romero's appeal hearing to include, but not limited to LUHO scheduling, coordination of discovery, exchange or information, LUHO contact with City employees while on site, etc.

21. Any other findings the State of Utah or a 3rd party independent ethics review committee may find.

With Millcreek City's own public record acknowledgment, of the disclosure and the appearance of several instances of potential conflict of interest and structural / complicit bias across many layers of Millcreek City, it is believed any reasonable person or citizen could ascertain the next logical, simple and ***most reasonable action Millcreek City should have taken was to have the Council Member Catten recuse herself from "any" of the voting processes*** regarding the appointment or reaffirmation of Mr. Catten as the ALJ/LUHO as required by the Millcreek Code, Employee Handbook and Rules and Procedures documentation. It is also believed that the Appeal Hearings should have never been scheduled and located in a venue room that is inherently biased towards Council Member Catten and LUHO, Mr. Catten's familial relationship. Even if Millcreek City had directed recusal as required, the Resolutions to appoint LUHO, Mr. Catten would still have passed unanimously. Additionally, it is believed that Millcreek City should have recognized and identified Mr. Lilly and LUHO Mr. Catten's past professional relationship as well. If Millcreek City had acted, it potentially would have removed the appearance of potential structural bias or due-process violations. Also, recusal of both City Council Member Catten, and LUHO Mr. Cattern would have only strengthened Millcreek City's commitment to ethics requirements, by removing any and all actual, apparent, or reasonably foreseeable conflicts of interest from the process itself which it is believed is the intent stated in their Municipal Code, Employee Handbook and other City documentation.

It is possible that even if the appointment itself technically complied with the legal process at the time, the adjudicator "***may owe his position or compensation that may be found disproportionate to other ALJ/LUHO's***" to a family member's past and current influence or past professional relationship with the Assistant City Manager/Planning Director, which could also violate the Utah and Millcreek Code and further demonstrate procedural irregularities. Additionally, it could be believed that LUHO, Mr. Catten, should

have recused himself from adjudicating all Appeal hearings in accordance with the rules set forth in the *Land Use Hearing Officer Policies and Procedures* which are very clear that even an *actual, apparent or foreseeable conflict requires recusal*. In accordance with Utah Code §10-3-1310 (Penalties for Violation), in addition to any penalty contained in any other provision of the law, ***any person who knowingly or intentionally violates this part should be dismissed from employment or removed from office, for cause.***

Lastly, *Millcreek records and other publicly available information confirm that a familial relationship was present from initiation of the interview process along with the subsequent initial appointment and reaffirmations of LUHO, Mr. Catten, which if not handled within the appropriate Utah & Millcreek Code and Employee Handbook processes, could result in several ethical violations.* ***By human nature, any reasonable person could believe that "any" communication, limited or not, with a family member, whether distant or close, along with social media posts supporting Council Member Catten's Utah Senate candidacy in January 2026, sent to most, if not all Catten family members, including Mr. Catten himself "could" be perceived that a familial relationship still does in fact exist and that a personal interest "may" also be present.***

It is very possible that when the State of Utah Property Rights Ombudsman, a third-party Ethics Review Committee, a District Court Judge or other State of Utah entities, reviewing under the Utah Administrative Procedures Act and other Federal and Utah laws, evaluates the concerns of this letter, and the full case record, along with the objective evidence presented herein, it could find at a minimum, the following violations are present:

1. There is enough objective evidence in the public record demonstrating that a reasonable person would believe structural bias, complicit bias, conflicts of interest, and due-process violations exist.

2. The objective evidence demonstrates that institutional incentive structures are present and LUHO, Mr. Catten has a pecuniary interest as he is being compensated by the Planning and Zoning Department funds while adjudicating matters related to the same department.

3. Based on the full record of this Appeal matter, and if substantiated by State of Utah Property Rights Ombudsman's pending Advisory Opinion for Mr. Romero, there are ***potential serious concerns showing multiple instances of systemic, potentially illegal and ongoing overreach by the Planning Director, Mr. Lilly and his staff*** by *continually and incorrectly* treating its Municipal Code and Design Standards, not as substantive requirements that

have to be interpreted with purpose, as opposed to imposing greater restrictions on what the express provisions of the Municipal and Utah Code already require. As previously confirmed in State of Utah Property Rights Ombudsman Advisory Opinion # 218, and if additional violations are confirmed by the Property Rights Ombudsman in Mr. Romero's pending Advisory Opinion, Mr. Lilly could be found in multiple violations of Utah Code §10-20-1109-3(c)i-ii demonstrating that Mr. Lilly's continued actions are arbitrary, capricious and illegal demonstrating that the land use decisions were not supported by substantial evidence in the record or was based on incorrect interpretations of the land use regulation. This potential failed leadership by continually requiring greater restrictions on property use, severely delaying projects of Millcreek's residents could be remedied by a change in leadership to re-instill trust and respect in this department as this is a stated goal and intent of the Employee Handbook.

4. A reasonable person would question the impartiality of the process due to the large amounts of objective evidence within public record, and there exists a ***constitutionally intolerable probability of bias*** or circumstances under which a reasonable person would question the adjudicator's independence including the hearing venue itself.

If confirmed by an independent ethics review board that even if only (1) one conflict exists, or the combination of the potential structural bias, apparent complicit bias, potential conflict of interest, and potential due process violations are present, Mr. Romero, *along with any other Appellant whose case was scheduled for or adjudicated by LUHO, Mr. Cattten "may" have the ability to file a class action suit against Millcreek City, and could be successful in their pursuit for damages against the City for unlawful violations of Utah law and their own published written Code, Ordinances, Resolutions and Employee Handbooks*.

A written and published, Harvard Law Review article (Vol. 136:119) on "***complicit bias***" (see ***ATTACHMENT N***) establishes that adjudicative bodies may violate principles of due process not only through explicit prejudice, but through ***knowing inaction, institutional alignment, or silent endorsement of harmful outcomes***. Complicit bias arises where decision-makers are aware of present or foreseeable harm yet fail to intervene, particularly when their roles, relationships, or institutional interests incline them toward protecting prior decisions or affiliated actors. Critically, this framework ***does not*** require proof of intentional misconduct; rather, it identifies a constitutionally significant ***risk of bias*** where an adjudicative system is structurally positioned to ***perpetuate harm***

***through loyalty, dependence, or internal alignment***, thereby undermining neutrality and impartiality.

Applied to Millcreek City's Land Use Hearing process, the presence of overlapping institutional roles, prior involvement in underlying decisions, or incentives tied to government action and municipal outcomes could support the findings of ***structural and complicit bias***. Where the same governmental apparatus is effectively responsible for both defending, reviewing its own land use determinations, and hiring the adjudicator, the risk is not merely theoretical—it reflects the very conditions described in the article: awareness of potential harm to the appellant coupled with a failure to provide an independent check or allow a LUHO, with potential strong familial and professional bias, to adjudicate the hearings. Such a framework raises serious due process concerns, as it creates an appearance and probability of bias that is constitutionally intolerable. Accordingly, the appellant could reasonably argue that the hearing process, and hearing venue itself lacks the ***impartial tribunal required for fair adjudication***, warranting reversal or remand to a neutral, impartial and disinterested decision-maker.

In conclusion, if there are actual confirmed violations substantiated by the State of Utah Property Rights Ombudsman, Millcreek City Ethics review committee, or independent 3rd party review committee, the potential constitutional violations in this matter are serious, illegal and are further underscored by long-established Supreme Court precedent defining when recusal is not discretionary, but required which is what appears to be the required action Millcreek City documents and Utah and City Codes outline as well. Additionally, in *Tumey v. Ohio, 273 U.S. 510 (1927)*, the Supreme Court held that due process is violated where a decision-maker has a "direct, ***personal***, substantial, ***pecuniary interest***" in adjudicating of a case. That principle is not limited to overt financial gain but reflects a broader constitutional mandate: adjudication must be free from incentives—***financial or otherwise***—***that distort neutrality***. The Court's reasoning recognized that even the structure of a system that creates such incentives is sufficient to invalidate the proceeding, because it injects bias into the decision-making process itself.

Building on that foundation, *Withrow v. Larkin, 421 U.S. 35 (1975)*, clarified that recusal is constitutionally required wherever "***the probability of bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable***." ***This objective standard does not require proof of actual bias; rather, it is enough that the circumstances would lead a reasonable observer to question the decision-maker's ability to remain impartial***. The focus, therefore, is on the structure, the tribunal hearing venue and incentives embedded within the process—not merely the subjective intent of the individual adjudicator.

Applied here, these precedents could compel a singular conclusion. The potential structural relationships, appointment authority processes and procedures, unbiased tribunal hearing venue, pecuniary interest, Millcreek City not following their own published standards, Resolutions, Code, Employee Handbooks and institutional dependencies at issue have potentially created, at a minimum, a constitutionally intolerable probability of bias. As in *Tumey*, the defect lies in the system and venue themselves, ***one that places the decision-maker in a position where neutrality cannot be assured***. And under *Withrow*, that risk alone mandates disqualification and invalidation of the resulting decision.

Accordingly, Mr. Romero's proceedings conducted could very well be in violation of the 14th Amendment's Due Process Clause as a fair tribunal is required under the US Constitution, and the resulting decision must be vacated in its entirety and the matter should be remanded for rehearing before a neutral, independent, and constitutionally compliant tribunal, free from the structural bias, complicit bias, and conflicts of interest that irreparably tainted the original appeal process.

Lastly, it is Mr. Romero's belief that this Appeal Hearing was filed strictly and in accordance with Millcreek's denial of his Neighborhood Compatibility Modification (NCM) application (Permit #926020) as required by Millcreek's formal NCM denial letter. Because it is believed the City's directive to Mr. Romero to proceed down the NCM process was illegal, and the original plan submission (Permit #252009) was not tied to the NCM application or denial, (and has simply be denied based on Millcreek's plan review comments), *the original permit drawings can and should be approved outside of the NCM appeal process*.

On Saturday, April 11, 2026, Mr. Romero was provided Millcreek City's Appeal Brief/Memoranda via email and Mr. Romero will formally respond to Mr. Brems and Millcreek City via separate correspondence in the near future; however, based upon his initial review of this document, ***Mr. Romero wants to formally assert and make one important detail about Mr. Brems assertions abundantly clear as Mr. Brems statements are potentially misleading, not fulsome and do not align with the full email record and correspondence of the matter***. In his brief, Mr. Brems states that Mr. Romero has never submitted a plan that demonstrates compliant lot coverage calculations; however, this is simply false and inaccurate. It is Mr. Romero's assertion that any and all drawings, examples of drawings, rendition of drawings or references to drawings that may have been not be in compliance or presented by Mr. Romero throughout this process as outlined in Mr. Brem's brief, were drawn, redrawn and submitted base on the ***sole direction of Mr. Lilly and his staff*** who continually provided inaccurate direction, interpretations of Title 18 such as to include the porch roof, all overhangs, and all roof

eaves even though Title 18 explicitly exclude these from the lot coverage calculations. ***These non-compliant submissions were contrary to Mr. Romero's belief, however, the process itself at the time put Mr. Romero at a severe disadvantage, as Mr. Lilly's unwillingness to have a conversation about Mr. Romero's opinion did not put Mr. Romero in a place that he could push back***. As such, even after Mr. Romero continually notified and asserted his position constantly, Mr. Romero was simply following the direction provided by Mr. Lilly and his staff which is the ***ONLY REASON*** why any drawings were submitted that did not show compliance. It is Mr. Romero's opinion and belief that he repeatedly provided compliant drawings, as demonstrated in the email record from the beginning, that Mr. Romero always believed, and continuously notified the Planning Department that they were not calculating the information correctly and in accordance with the plain text of Title 18; however, at the time, Mr. Romero did not have any recourse of action, but to adhere to the City's direction of including elements of the residence that were actually explicitly stated to "exclude" from the calculations.

Nevertheless, the following are documented instances where Mr. Romero provided accurate, scaled drawings to City Planning Staff (based on his interpretation of Title 18 and against the direction of City Planning Staff) that were compliant with Title 18's plain text:

- From the onset of this matter and in an email from Mr. Romero to Mr. Carlos Estudillo dated November 24, 2025, Mr. Romero provided a scaled drawing of the existing and proposed home's floor plan (including scaled dimension square foot take-offs) showing a total proposed lot coverage of 3,084 square feet. The text of this email also had provided calculations as to the lot coverage calculation which at this time, showed a lot coverage of 31%; however, this was based on the estimated lot acreage of .22 acre (as shown in SLCO public records). ***As a reminder and per previous letters issued by Mr. Romero, after Mr. Romero sent this email to Mr. Estudillo, Mr. Estudillo ceased to communicate with Mr. Romero for (43) forty-three days requiring Mr. Romero to send a formal written letter to Mr. Lilly for administrative action.***

- On December 8, 2025, Mr. Romero sent a follow up email to Mr. Estudillo with the same information listed above demonstrating the lot coverage was in compliance with Title 18.

- On December 23, 2025, Mr. Romero sent a letter to Mr. Lilly requesting administrative review due to Mr. Estudillo ceasing communication with Mr. Romero for over (43) forty-three days. This letter included the same PDF scaled floor plan take off noted in the two bullet points above and also had shown the

lesser parcel square footage of 9.583 (.22 acres) as the licensed land survey was not yet available. This letter showed a lot coverage of 33% which was still compliant; however, it was later determined Mr. Romero was double-calculating an area around the existing roof on the back of the house.

- On January 5, 2026, Mr. Romero sent an email to Mr. Lilly, which included an additional revised scaled site plan (based on Mr. Lilly's comments regarding the scale was slightly off). This email and PDF plan showed a project that was in compliance with Title 18.

- On January 8, 2026, Mr. Romero sent an email to Mr. Lilly and Mr. Estudillo showing "(***2) Two-Paths of Compliance***". Path # 1 was seeking approval based on scaled and accurate site plans listed above (and included in this email). Path # 2 was addressing the NCM process.

- The NCM Application submitted January 23, 2026 included a land survey stamped by a professional land surveyor that confirmed the actual lot or parcel size is actually 10,066 sqft and not the 9,583 sqft calculated by Mr. Estudillo and stated in his initial denial comments on November 17, 2025. This licensed survey eventually confirmed the mutually acceptable 10,066 square foot parcel size.

- Attachment "C" (pages 71 & 72 of the PDF) of the Formal Appeal Letter dated February 5, 2026 submitted by Mr. Romero included the scaled existing and proposed lot coverage calculations that are also included in Attachment "Q" of this letter. These scaled and accurate drawings demonstrated a lot coverage of 32.1% and compliant with Title 18.

In order to ensure the record is accurate and complete, all emails listed above are included in this letter – (see ***Attachment "R"***). All of these emails from Mr. Romero to Millcreek City Planning staff demonstrated compliance and did in fact provide Planning and Zoning the ability to approve Mr. Romero's project.

This notice and supporting information ***are not meant as personal accusations to any party listed herein*** *but to highlight and alert the Millcreek City Mayor, Millcreek Appeal Board, Millcreek City Ethics Committee, and State of Utah Property Rights Ombudsman Office, about significant* ***"potential conflicts"*** *that should be* ***independently reviewed by the State of Utah and 3rd parties outside of Millcreek City.*** It may be in the public's best interest to exclude the current City Attorney, Mr. John Brems from the review, or if potential

investigation into this matter is warranted as Mr. Brems may have been party to review and / or acceptance of the initial and subsequent conflict of interest disclosures. *The requested 3rd party and fully independent process is a necessary step to* ***protect fundamental due-process rights and maintain public confidence in the fairness of Millcreek City's quasi-judicial land-use appeal process***.

As such, and to avoid additional delays, financial impacts and the possibility of rehearing this Appeal matter or additional 3rd party investigations, ***Mr. Romero's again requests the original design documents be "IMMEDIATELY APPROVED" based on the original November 10, 2026, submission (and supplemental drawings provided by Mr. Romero prior to, included in the NCM application and herein) as they are and always have been in full compliance with plain text of Millcreek Title 18 code, regarding lot coverage.***

***Even though several email exchanges, and the formal Appeal Letter previously sent directly to the Planning and Zoning department demonstrate Mr. Romero has already provided Millcreek City accurate scaled site plans, scaled square footage take off drawings on several occasions previously, to ensure Mr. Romero's calculations and the record is abundantly clear, Mr. Romero hereby submits the attached "existing and proposed" Lot Coverage Site Plans (including calculations based on plain text of Title 18) for the record.*** (see ***ATTACHMENT Q***). As Mr. Romero's previously acknowledged in his submitted letters regarding this matter, and as noted in Millcreek City's Hearing Brief, City Staff did find (1) one typo related to "footprint square footage" on the initial plan submission and they additionally found an improper scale due to printing on another plan submission, which when notified by the City of their concerns, Mr. Romero corrected and resubmitted the plans the same day. Nevertheless, the attached plans in *Attachment "Q"* are clear, accurate and for the record demonstrating the project is and has always been in compliance with the plain text of Title 18 as written which specifically exclude certain elements of the residence.

Due to the concerns outlined in this letter, it is believed Millcreek City may find they need to have LUHO Mr. Catten recuse himself from Mr. Romero's hearing as required by the Policies and Procedures listed above and will require the selection of a new LUHO. This process will continue to delay Mr. Romero and further impact his project. ***Mr. Romero's project has already been significantly delayed due to the continued apparent failures of the Planning and Zoning department, including additional potential violations of the law by Millcreek City staff and Mr. Romero will only suffer more delays and financial damage if an additional hearing is required because of potentially illegal violations by Millcreek City***. The immediate approval of Mr. Romero's plans is the best and most logical

path forward as he believes is in the best interest of all Parties involved. Lastly, Mr. Romero also *seeks Millcreek City as a whole, including all departments, to agree and commit to conduct themselves in a full, compliant, non-retaliatory posture for all future, building plan reviews, building inspections and all future communications.*

As a result of these additional findings and potential violations of Mr. Romero's rights, nothing in this notification letter shall be construed as a waiver of his rights. Additionally, Mr. Romero expressly reserves the right to pursue all additional administrative, judicial, financial or equitable remedies available under Utah law should Millcreek City, or the Appeal Authority, be found to have violated Mr. Romero's Civil Rights to include, but not limited to filing suit within the 3rd District Court jurisdiction or the potential future filing a formal ethics complaint regarding this matter with the State of Utah Political Subdivisions Ethics Review Commission in accordance with §63A-15-501 et seq..

In addition, ***Mr. Romero is requesting the State of Utah Property Rights Ombudsman office review this information and provide their opinion of the potential findings within their pending "Advisory Opinion" related to Mr. Romero's matter and that the Millcreek City Mayor take these allegations as significant and serious enough to hire and retain a 3rd party investigative team to research and investigate this matter of public interest***. If either the Property Rights Ombudsman or Millcreek City decide not to investigate these concerns Mr. Romero will be forced to submit these potential violations to the State of Utah Political Subdivisions Ethics Review Commission; however, his submission "***would not"*** be intended or for purpose of harassing Millcreek City or to cause unwarranted harm to Millcreek City or their employee's reputation (as this would violate §63A-15-501(3)(f)(ii)), it would simply be to ensure the public interest in the matter is being reviewed and properly investigated.

Please include this letter in the official record of these proceedings.

Respectfully Submitted,

Joe Romero

Homeowner / Taxpayer / Voter

***Attachments Referenced in Notification Letter***

- ***Attachment "A"*:**
  - Millcreek City Resolution No. 17-18 dated February 21, 2017
  - Millcreek City Resolution No. 17-24 dated February 27, 2017
  - Millcreek City Resolution No. 18-17 dated April 9, 2018
  - Millcreek City Resolution No. 19-11 dated April 22, 2019
  - Millcreek City Resolution No. 19-17 dated June 10, 2019
- ***Attachment "B"***:
  - Millcreek City Council Meeting Minutes dated February 21, 2017
  - Millcreek City Council Meeting Minutes dated February 27, 2017
  - Millcreek City Council Meeting Minutes dated April 9, 2018
  - Millcreek City Council Meeting Minutes dated April 22, 2019
  - Millcreek City Council Meeting Minutes dated May 13, 2019
  - Millcreek City Council Meeting Minutes dated June 10, 2019
- ***Attachment "C":***
  - Public Record and Internet Research Information
- ***Attachment "D"***:
  - Mr. Francis Lilly – West Valley City Employment Dates and Roles
- ***Attachment "E"***:
  - Utah's Municipal Officers' and Employees' Ethics Act ("**UMOEEA**") (Utah Code §10-3-1301 et seq)
- ***Attachment "F"***:
  - Elected Officer Annual Conflict of Interest Disclosure Statement for Silvia Catten dated January 07, 2026
- ***Attachment "G"***:
  - Catten Family Social Media Accounts
- ***Attachment "H"***:
  - Millcreek FY25 & FY26 Consolidated Fee Schedules
- ***Attachment "J"***:
  - Millcreek City Resolution 25-25 - Millcreek Benefited Employee Handbook
- ***Attachment "K"***:
  - Millcreek City Resolution 21-32 - Planning Commission Rules of Order and Procedure
- ***Attachment "L"***:
  - Millcreek City Resolution 16-10 – Council Rules of Procedure
- ***Attachment "M"***:
  - Millcreek City Code 2.07.201 – City Ethics Code

- ***Attachment "N"***:
    - Harvard Law Review Article (136:119)
- ***Attachment "P"***:
    - Photo of Millcreek Hearing Room
- ***Attachment "Q"***:
    - Existing and Proposed Site Plans with Lot Coverage Calculations
- ***Attachment "R"***:
    - Emails from Mr. Romero to Mr. Lilly and Mr. Estudillo demonstrating compliance through the inclusion of Existing and Proposed Site Plans with Lot Coverage Calculations

**ATTACHMENT "A"**

**MILLCREEK, UTAH**
**RESOLUTION NO. 17-18**

**A RESOLUTION OF THE MILLCREEK COUNCIL ADOPTING APPEAL AUTHORITY RULES OF PROCEDURE**

**WHEREAS**, the Millcreek Council ("Council") met in regular session on February 21st, 2017, to consider, among other things, adopting Appeal Authority rules of procedure; and

**WHEREAS,** on December 12, 2016, the Council adopted an ordinance creating an Appeal Authority that provided among other things that the authority shall be organized as deemed appropriate and as approved by the Council; and

**WHEREAS,** the Council has determined that rules of procedure for the Appeal Authority should be adopted and approved by the Council; and

**WHEREAS**, draft Appeal Authority rules of procedure have been presented to the Council for review and approval, a copy of which is attached hereto ("Rules"); and

**WHEREAS**, after careful consideration, the Council has determined that adopting the Rules is in the best interest of the health, safety and of the present and future inhabitants of Millcreek.

**NOW, THEREFORE, BE IT RESOLVED** by the Council that that the attached Rules be adopted by the Council as rules of procedures that govern the operation of the Appeal Authority.

This Resolution, assigned No. 17-18 shall take effect immediately.

**PASSED AND APPROVED** by the Millcreek Council this 21st day of February, 2017.

**MILLCREEK**

**Jeff Silvestrini,** Mayor

**ATTEST:**

**Leslie Van Frank**, Acting City Recorder

# MILLCREEK LAND USE HEARING OFFICER POLICIES AND PROCEDURES

## A. General Provisions

1. Jurisdictional Matters: The Land Use Hearing Officer shall only have authority to hear and decide requests for variances from the terms of the land use ordinance and appeals from decisions applying land use ordinances.

2. Duty to Exhaust: Each adversely affected person who wishes to challenge a local administrative land use decision shall, before going to court, timely and specifically challenge the local land use decision in accordance with the provisions of the Millcreek Code.

3. Other Laws Controls: If these policies and procedures conflict with existing or future statutes or ordinances, the statute or ordinance shall control.

4. Hearings: All hearings before the Land Use Hearing Officer shall be open to the public, but such hearings are not "public hearings" and the public shall not be allowed to testify unless otherwise provided herein.

## B. Conflicts of Interest

Conflicts of Interest. The Land Use Hearing Officer shall not participate in any appeal or other matter in which the Land Use Hearing Officer has a conflict of interest. The hearing officer may declare a conflict of interest regarding specific matters. When the hearing officer believes that he may have an actual, apparent, or reasonably foreseeable conflict of interest on any matter that may come before the Land Use Hearing Officer, he shall recuse himself from hearing the matter. When a conflict of interest arises, another appointed Land Use Hearing Officer shall conduct the hearing.

## C. Procedures Prior to Hearing

1. Initial Notification to Land Use Hearing Officer. Once an Application has been submitted to be heard by the Land Use Hearing Officer, the City staff will notify the Land Use Hearing Officer of the matter prior to scheduling the matter for a hearing.

2. Provision of Contact Information: Absent a showing that such a requirement is prejudicial to any party, the person bringing an appeal ("Applicant") and any other interested person who desires notice over and above that required by ordinance or statute shall provide the City staff with an email address or other means of contact.

a. This email address or other means of contact shall be used to notify the parties ("Parties" and term Parties shall include the Applicant and any party allowed to intervene as provided herein) of the information required for the hearing and the process to be followed at the hearing, as well as to exchange documents and discuss scheduling, procedures, or any other information about the process of the application review before and after any hearing on the matter. The Land Use Hearing Officer, Applicant, or Parties shall not discuss the merits of the appeal outside of the hearing.

b. Any emailed messages are public documents and subject to the Government Records Access Management Act, Utah Code Ann. § 63G-2-101, et seq.

3. Gathering the Record: City staff shall cause a copy of the record of the proceedings and decision being appealed. If a recording has been made of any hearing, the recording shall be made part of the record, but there is no requirement that a formal transcript be made. A copy of the record shall be provided to the Land Use Hearing Officer and made available to the Parties as soon as possible after an appeal has been filed but no later than twenty (20) calendar days prior to the scheduled hearing. If any Party believes that the record is incomplete, that Party may file a request with the Land Use Hearing Officer to supplement the record within five (5) calendar days after the record has been made available to the Parties.

4. Notification of Hearings: All hearings before the Land Use Hearing Officer shall comply with the requirements of the Open and Public Meetings Act, Utah Code Ann. § 52-4-101 et seq.

a. As soon as practicable after receiving the Application, the Land Use Hearing Officer shall schedule a date, time, and place for a hearing.

b. Notice of the date, time, and place of the administrative hearing shall be sent by email or by other means of contact provided by the Parties in accordance with Section (2) above.

c. Notice of Land Use Hearing Officer hearings, shall be posted on the City's website. Any person whose legal interests may be substantially affected by the matter to be heard by the Land Use Hearing Officer may file a written petition with the Land Use Hearing Officer to intervene prior to the hearing. The Land Use Hearing Office shall notify the Parties by email or by other means of contact provided by the Parties in accordance with Section (2) above. Any Party may object in writing to a petition to intervene. Written objections must be submitted to the Land Use Hearing Officer within seven (7) calendar days after submission of the petition to intervene. At the hearing or prior to the hearing the Land Use Hearing Officer shall determine whether the petitioner's legal interests may be substantially affected by the matter to be heard and whether to allow the intervention. The Land Use Hearing Officer may, but need not, hear oral argument on the petition to intervene prior to making a determination.

5. Submission of Written Materials: The Parties shall have the opportunity to file written materials in support of their arguments for consideration by the Land Use Hearing Officer.

a. Written materials from the Applicant should be submitted to the Land Use Hearing Officer at least ten (10) calendar days prior to the scheduled hearing.

b. Any response from Parties whose interests are challenged by the Application shall be submitted to the Land Use Hearing Officer with a copy to the Applicant no later than five (5) calendar days prior to the scheduled hearing.

c. All submitted written materials should be concise.

d. Any Party to a matter may submit proposed findings of fact and conclusions of law for adoption by the Land Use Hearing Officer.

e. Any Party that submits materials for consideration by the Land Use Hearing Officer shall provide a copy of those materials to the other Parties to the matter.

**D. Hearings by the Land Use Hearing Officer**

1. Place: All hearings of the Land Use Hearing Officer shall be held in a place as determined appropriate by the Land Use Hearing Officer.

2. Field Trips: On those occasions when site inspections are deemed advisable, field trips may be conducted by the Land Use Hearing Officer, and notice of the time and place of the field trip shall be provided to the Parties and others who receive notice of the hearing.

a. The Parties shall be allowed at the sites of the field trip.

b. Field trips shall be for the purpose of gathering information, not for the discussion of the project or decisions.

**E. Procedure at Hearings:**

1. Due Process: With respect to matter not based on the record, such as a variance, the Land Use Hearing Officer shall have authority to administer oaths, provide an opportunity for cross-examination, and direct the proceedings of the authority in a quasi-judicial manner, so that the due process rights of each participant are respected.

2. Who May Speak: Except for a Variance Application, only a Party approved by the Land Use Hearing Officer may appear and be heard. Where the matter is Variance Application, the public may appear before the Land Use Hearing Officer in addition to the Parties and make comment related to the matter.

3. Order of Consideration of Items: The following procedure will normally be observed; however, it may be rearranged by the Land Use Hearing Officer for individual items if necessary for the expeditious conduct of business and in the interest of fairness: introduction by Land Use Hearing Officer, presentation by the Applicant who bears the burden of proof, presentation by the City responding to the appeal, and any person the Land Use Hearing Officer has determined would have legal interests that may be substantially affected by the matter, and reply by the Applicant if necessary.

**F. Standard of Review**

1. Appeals: The Land Use Hearing Officer shall hear the matter based on the record of the decision provided by the City.

a. The Applicant shall have the burden of proceeding and shall have the burden of proving that the land use authority erred.

b. The Land Use Hearing Officer shall determine the correctness of a decision.

c. The Land Use Hearing Officer shall uphold the decision which is the subject of the appeal unless it is demonstrated that the decision is not supported by substantial evidence in the record or violates a law, statute, or ordinance in effect when the decision was made.

2. Variances: The Land Use Hearing Officer shall have the power to grant a variance, but only if:

a. Literal enforcement of Millcreek's land use ordinances would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of this title;

b. There are special circumstances attached to the property that do not generally apply to other properties in the same district;

c. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district;

d. The variance will not substantially affect Millcreek's general plan and will not be contrary to the public interest; and

e. The spirit of Millcreek's land use ordinances are observed and substantial justice is done.

f. In determining whether enforcement of Millcreek's land use ordinances will cause unreasonable hardship, the Land Use Hearing Officer 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 particular to the property, not from conditions which are general to the neighborhood. In determining whether or not enforcement of Millcreek's land use ordinances would cause an unreasonable hardship, the Land Use Hearing Officer may not find an unreasonable hardship if the hardship is self-imposed or economic. In determining whether or not there are special circumstances attached to the property, the Land Use Hearing Officer may find that special circumstances exist only if special circumstances relate to the hardship complained of and deprive the property of the privileges granted to other properties in the same district. The applicant shall bear the burden of proving that all the conditions justifying a variance have been met. In granting a variance, the Land Use Hearing Officer may impose additional requirements on the applicant that will mitigate any harmful effects of the variance or serve the purpose of the standard or requirement that is waived or modified.

## G. Procedure; Decisions

1. Completion of Evidence and Comments: After hearing the presentations and comments of those appearing, the Land Use Hearing Officer may continue the matter and leave the record open for more submittals by the Parties; take the matter under advisement and issue his written decision.

a. A written decision of any matter shall be prepared which sets forth the facts and law upon which the decision is made.

b. The date of the decision shall be the date that it is signed by the Land Use Hearing Officer.

c. Notification of the decision shall immediately be sent to the Parties accordance with Section C (2) above.

## H. Suspension or Alteration of Rules

1. Approval Required: No standing rules, policies, or procedures of the Land Use Hearing Officer shall be altered, amended, suspended, or rescinded without the approval of the Mayor.

2. Notice Required: Any proposed change in the standing rules, policies, or procedures shall be posted on the City website. Notice of any proposed changes shall also be provided to those who have requested notice of changes. Such a request shall be in writing, and delivered to the Millcreek Recorder.

**MILLCREEK , UTAH**
**RESOLUTION NO. 17-24**

**A RESOLUTION OF THE MILLCREEK COUNCIL APPOINTING APPEAL AUTHORITIES**

**WHEREAS**, the Millcreek Council ("*Council*") met in regular meeting on February27, 2017, to consider, among other things, appointing Appeal Authorities; and

**WHEREAS**, pursuant to the terms of the Municipal Land Use, Development, and Management Act, Utah Code Ann. § 10-9a-101, et seq. the Council created an Appeal Authority which provides in part that the Appeal Authority be appointed by the Mayor with the advice and consent of the Council; and

**WHEREAS**, the Mayor has nominated Richard Catten, Gary Sackett, Paul Nielsen, Craig Hall and Dwayne Vance to act as the Appeal Authorities; and

**WHEREAS**, the Council has given advice for the appointment of these individuals and hereby consents to such appointments; and

**WHEREAS,** the Appeal Authorities shall serve on a rotation basis; and

**WHEREAS**, after careful consideration, the Council has determined that it is in the best interest of the health, safety, and welfare of the citizens of Millcreek to consent to such appointments.

**NOW, THEREFORE, BE IT RESOLVED** by the Council that Richard Catten, Gary Sackett, Paul Nielsen, Craig Hall, and Dwayne Vance are appointed as the Appeal Authorities to serve on a rotation basis.

This Resolution, assigned No. 17-24 shall take effect immediately upon passage.

**PASSED AND APPROVED** by the Council this 27th day of February, 2017.

**MILLCREEK**

**Mayor Jeff Silvestrini**

**ATTEST**:

**Leslie Van Frank**, Acting City Recorder

{00048180.DOC /}

**MILLCREEK , UTAH**
**RESOLUTION NO. 18-17**

# A RESOLUTION OF THE MILLCREEK COUNCIL APPOINTING ADMINISTRATIVE LAW JUDGES

**WHEREAS**, the Millcreek Council ("*Council*") met in regular meeting on April 9, 2018, to consider, among other things, appointing Administrative Law Judges; and

**WHEREAS**, Millcreek Code of Ordinances §1.16.010 et seq. provides, among other things, that a responsible person served with a "city enforcement action" shall have the right to request an administrative hearing to an Administrative Law Judge; and

**WHEREAS,** city enforcement actions have been or are anticipated to be served and the City is in need of Administrative Law Judge(s) in case appeals are filed; and

**WHEREAS**, the Mayor has nominated Paul Nielson, Richard Catten, and Gary Sackett to act as Administrative Law Judges; and

**WHEREAS**, the Council has given advice for the appointment of Paul Nielson, Richard Catten, and Gary Sackett and hereby consents to such appointments; and

**WHEREAS,** the Administrative Law Judges shall serve on a rotation basis; and

**WHEREAS**, after careful consideration, the Council has determined that it is in the best interest of the health, safety, and welfare of the residents of Millcreek to consent to such appointments.

**NOW, THEREFORE, BE IT RESOLVED** by the Council that Paul Nielson, Richard Catten, and Gary Sackett are appointed as Administrative Law Judges to serve on a rotation basis.

This Resolution, assigned No. 18-17, shall take effect immediately upon passage.

**PASSED AND APPROVED** by the Council this 9th day of April, 2018.

**ATTEST**:

**Elyse Greiner**, CMC, City Recorder

**MILLCREEK**

**Jeff Silvestrini,** Mayor

| Roll Call Vote: | | |
|---|---|---|
| Silvestrini | Yes | No |
| Marchant | Yes | No |
| Jackson | Yes | No |
| Catten | Yes | No |
| Uipi | Yes | No |

**MILLCREEK , UTAH**
**RESOLUTION NO. 19-11**

**A RESOLUTION OF THE MILLCREEK COUNCIL APPOINTING BUSINESS LICENSE APPEAL AUTHORITIES**

**WHEREAS**, the Millcreek Council ("*Council*") met in regular meeting on April 22, 2019, to consider, among other things, appointing business license appeal authorities; and

**WHEREAS**, Millcreek Code of Ordinances §5.01.010 provides, among other things, that the Mayor appoint a person with the advice and consent of the City Council to hear appeals as provided in Title 5 of the Millcreek Code of Ordinances; and

**WHEREAS**, the Mayor has nominated Paul Nielson, Richard Catten, and Gary Sackett to act as Appeal Authorities; and

**WHEREAS**, the Council has given advice for the appointment of Paul Nielson, Richard Catten, and Gary Sackett and hereby consents to such appointments; and

**WHEREAS,** the Appeal Authorities shall serve on a rotation basis; and

**WHEREAS**, after careful consideration, the Council has determined that it is in the best interest of the health, safety, and welfare of the residents of Millcreek to consent to such appointments.

**NOW, THEREFORE**, **BE IT RESOLVED** by the Council that Paul Nielson, Richard Catten, and Gary Sackett are appointed as Appeal Authorities to hear appeals as provided in Title 5 of the Millcreek Code of Ordinances to serve on a rotation basis.

This Resolution, assigned No. 19-11, shall take effect immediately upon passage.

**PASSED AND APPROVED** by the Council this 22nd day of April, 2019.

**MILLCREEK**

_____

**ATTEST**: **Jeff Silvestrini**, Mayor

_____

**Elyse Greiner**, City Recorder

Roll Call Vote:

| | | |
|---|---|---|
| Silvestrini | Yes | No |
| Marchant | Yes | No |
| Jackson | Yes | No |
| Catten | Yes | No |
| Uipi | Yes | No |

**MILLCREEK , UTAH**
**RESOLUTION NO. 19-17**

**A RESOLUTION OF THE MILLCREEK COUNCIL APPOINTING A BUSINESS LICENSE APPEAL AUTHORITY, ADMINISTRATIVE LAW JUDGE FOR CITY ENFORCEMENT ACTIONS, AND LAND USE APPEAL AUTHORITY**

**WHEREAS**, the Millcreek Council ("*Council*") met in regular meeting on June 10, 2019, to consider, among other things approving a resolution appointing a business license appeal authority, administrative law judge for city enforcement actions, and land use appeal authority; and

**WHEREAS**, Millcreek Code of Ordinances §5.01.010 provides, among other things, that the Mayor appoint a person with the advice and consent of the City Council to hear appeals as provided in this Title 5 of the Millcreek Code of Ordinances ("Business License Appeal Authority"); and

**WHEREAS**, Millcreek Code of Ordinances §1.16.010 et seq. provides, among other things, that a responsible person served with a "city enforcement action" shall have the right to request an administrative hearing to an Administrative Law Judge ("Administrative Law Judge"); and

**WHEREAS**, Millcreek Code of Ordinances §19.05A.010 et seq. provides, among other things, that the Mayor appoint a person with the advice and consent of the City Council to hear land use appeals ("Land Use Appeal Authority"); and

**WHEREAS**, the Mayor has nominated Kenneth Brown to act as Business License Appeal Authorities, Administrative Law Judge, and Land Use Appeal Authority; and

**WHEREAS**, the Council has given advice for the appointment of Kenneth Brown and hereby consents to such appointments; and

**WHEREAS**, the Mayor has previously nominated Paul Nielson, Richard Catten, and Gary Sackett to act as Business License Appeal Authorities, Administrative Law Judge, and Land Use Appeal Authority and the Council has previously given consent for such appointments; and

**WHEREAS**, after careful consideration, the Council has determined that it is in the best interest of the health, safety, and welfare of the residents of Millcreek to consent to such appointments and reaffirm such appointments.

**NOW, THEREFORE**, **BE IT RESOLVED** by the Council that Kenneth Brown be appointed as Business License Appeal Authority, Administrative Law Judge, and Land Use Appeal Authority and reaffirm the appointment of Paul Nielson, Richard Catten, and Gary Sackett as Business License Appeal Authorities, Administrative Law Judges, and Land Use Appeal Authorities.

This Resolution, assigned No. 19-17, shall take effect immediately upon passage.

**PASSED AND APPROVED** by the Council this 10th day of June, 2019.

**MILLCREEK**

**ATTEST**: **Mayor Jeff Silvestrini**

**Elyse Greiner**, City Recorder

Roll Call Vote:

| | | |
|---|---|---|
| Silvestrini | Yes | No |
| Marchant | Yes | No |
| Jackson | Yes | No |
| Catten | Yes | No |
| Uipi | Yes | No |

**ATTACHMENT "B"**

ONLY relevant pages of Minutes are included. For full minutes, please see www.MillcreekUt.gov

# Minutes of the Millcreek City Council Meeting Tuesday, February 21, 2017

**Councilmembers present**

Jeff Silvestrini – Mayor
Silvia Catten – Council District 1
Dwight Marchant – Council District 2
Cheri Jackson – Council District 3
Bev Uipi – Council District 4

**Other present**

Leslie Van Frank – Acting Recorder
John Brems – City Attorney
Rita Lund – Deputy Recorder

## WORK SESSION

Mayor Silvestrini called the work session to order at 4:01 p.m.

**Agenda Item 1. Discussion with Salt Lake County about Millcreek-specific issues**

Mayor Silvestrini reported on meetings he has been having with county personnel each Friday afternoon, with discussions about sidewalks, street lights, pavement conditions and other

issues. The mayor described a booklet he had received from Kevyn Smeltzer from Salt Lake County Public Works that includes a road index report for all class "C" roads in Millcreek broken down by small sections indicating pavement conditions and mileage. This report is prepared on an annual basis for all roads in Millcreek. The mayor also mentioned additional information he had previously shared with the councilmembers, including a schedule for slurry sealing, chip sealing, and repaving in Millcreek. The mayor reported that the county has indicated that these projects are included in the adopted MSD budget for 2017, and work should begin in the spring.

Councilmember Marchant asked for information on which roads in Millcreek are state owned and Mayor Silvestrini indicated that 33rd South, 45th South, State Street and 7th East comprise all of the state roads in Millcreek other than the I-215 and the I-15 freeways.

Mayor Silvestrini reported on conversations he has had with the county engineering team related to traffic calming. Speed trailers and traffic counters are used to collect information on average speeds and traffic calming measures are considered when the data shows actual speeds in excess of the speed limits. Speed can be a perception issue, thus there is a need for actual data. The data collected is included as part of a hazard index that is developed and includes items such as proximity to a school or public place.

The mayor further reported that the pavement management program is based on pavement condition and age. Semi-annual meetings are held with utility companies to alert them as to upcoming pavement work and encourage them to schedule any work they have to complete to be done at the same time to reduce cuts being made into new pavement. Fees for pavement cuts are based on the age of the pavement. A cut in a newly paved road can reduce the life of the road by half. The city should consider an ordinance and franchise agreements with utilities.

Councilmember Uipi asked for information on how neighbors are notified of upcoming pavement work and would like to discuss and potentially expand the notification process.

The mayor reported that personnel from the county will be attending Millcreek work sessions in the future in order to present various programs and to answer specific questions.

**Interviews with land use hearing officer candidates**

Mr. Richard Catten, an applicant for the position of land use hearing officer for Millcreek joined the meeting and Mayor Silvestrini adjusted the agenda to allow for his interview. Disclosure was made by Councilmember Catten that Richard Catten is a distant relative of her husband

Disclosed ONLY IN WORK SESSION

and that they have had very limited contact. Mr. Catten outlined his experience and qualifications for the job and responded to questions from the council.

**Agenda Item 3. Planning report from John Jansen**

Mr. Jansen reported on the initial meeting of the Millcreek Envision Committee. Approximately thirty residents were in attendance mostly from the area east of 700 East and he stressed the need to find participants from the west area that was not represented. The group discussed expectations for their participation, what is involved in and the need for a general plan, the request for proposals that will be developed to advertise for a consultant to develop the general plan and organized the next meeting of the group scheduled for March 9th.

Mr. Jansen reviewed the grant application that had been made to the Wasatch Front Regional Council in the amount of $75,000 and an additional application to the RDA in the amount of $20,000. If the application is successful, these funds would be used to develop the new general plan. Grants are awarded in May or June and Mr. Jansen hopes to have the Request for Proposals ready in May in order that it is ready when funds become available.

Mr. Jansen additionally reported that he had forwarded a pdf of the proposed MD zone to the City Council and community council members as well as county personnel and will be attending community council meetings to discuss the proposal. Mayor Silvestrini asked if he was working with Mr. Parker and Mr. Jensen responded that he and Tom Stephens have been coordinating with Mr. Parker.

Mr. Jansen suggested that an ordinance should be considered at a future meeting to repeal the MD 1 zone.

A presentation was made outlining a potential new MD zone that would combine aspects of the current MD zones and may include the following:

- Height – with new maximums and possibly minimums
- A mix of commercial, light manufacturing (enclosed building)
- No outside storage
- Categories of use rather than listing specific uses
- Prohibited uses
- Design standards
- Setback from the creek
- Reduced parking standards

for a close review. Mr. Brems commented that this bill is opposed by the League or Cities and Towns.

The Work Session temporarily broke at 5:55 PM.

## GENERAL MEETING

1. Call to Order

Mayor Silvestrini called the meeting to order at 6:15 p.m.

1.1 Pledge – the Pledge of Allegiance was led by members of Scout Troop 305 and Scout Troop 308.

1.2 Approval of Minutes –

**MOTION** for approval of the minutes of February 13th, 2017, was made by Councilmember Uipi, Seconded by Councilmember Catten. Motion passed unanimously.

2. Public Comment

Ms. Joanne Wong, a Millcreek resident, asked whether the appeals process that had been mentioned in the working meeting would be open to the public. Mayor Silvestrini responded that they would be publicly noticed open meetings. Ms. Wong further asked about the Envision Committee and the process going forward. Mayor Silvestrini outlined the process noting that the committee will be starting the conversation that will move toward re-drafting and simplifying ordinances and creating a new zone. The new zone would only be applied when an application is received and would go through a public process that includes public noticing and meetings. Property owners will receive notices of all public meetings and open houses.

3. Reports

3.1 Report of the Mayor, reports of City Council members

Mayor Silvestrini reported about the ongoing discussions related to setting a process for prioritizing requests such as sidewalks, traffic control and streetlights in light of funding

Councilmember Jackson reported that she had met with Linda Milne and Lisa Bagley regarding how to best move forward with an emergency services plan for Millcreek. The UFA had reported that they do not have adequate staff to serve this function for Millcreek and there was further discussion about how to move forward.

4. Appointments

No appointments appeared on the agenda.

5. Consent Agenda

No consent items appeared on the agenda.

6. Planning Matters

6.1 Discussion and consideration of Resolution No. 17-_____ - adopting rules and procedures for land use hearing officer

Leslie Van Frank suggested that an addition should be made to the resolution allowing a hearing officer the ability to issue a stay.

**MOTION** was made by Councilmember Uipi, seconded by Councilmember Jackson to adopt the rules of procedure for land use hearing officer adding a verbal amendment that the land use hearing officer is empowered to grant a stay both before and after his or her decision. Motion passed unanimously and Mr. Brems was asked to bring back the revised set of rules and procedures indicating that change.

7. Financial Matters

No financial matters appeared on the agenda.

8. Other Matters

8.1 Discussion and consideration of Resolution No 17-_____ - authorizing the Mayor to work with Salt Lake County to prepare an application to obtain section 5310 grant funds for sidewalk improvements at qualified locations in Millcreek

**Agenda Item 10. Discussion of priorities/solutions**

Councilmember Uipi led a discussion related to the difficulty of the budget and the fact that the Municipal Services District will be making decisions. Mayor Silvestrini reported that he had been in discussions with Jared Steffey and Rick Graham at the county and it had been stated that payments for legal services and special events funds should be made through the MSD upon a resolution by that board.

Mayor Silvestrini discussed the issue of funds for administrative assistance being requested by three of the Metro Townships and that he felt that if those funds are approved, a ratable distribution should be approved for Millcreek and the remaining Metros. There should additionally be a distribution for election costs.

There followed additional discussion related to future budgeting requirements, timelines for potential job slots that the city would require, elected official salaries, possible timelines for road and sales tax receipts and the probable decision to withdraw from the MSD.

Councilmember Uipi notified the council that she would be participating electronically at the March 20th meeting.

**MOTION** BY Councilmember Uipi, seconded by Councilmember Jackson to adjourn. Motion passed unanimously.

The meeting adjourned at 8:45 PM

ONLY relevant pages of Minutes are included. For full minutes, please see www.MillcreekUt.gov

# Minutes of the Millcreek City Council Meeting

## Monday, February 27, 2017

**Councilmembers present**

Jeff Silvestrini – Mayor
Silvia Catten – Council District 1
Dwight Marchant – Council District 2
Cheri Jackson – Council District 3
Bev Uipi – Council District 4 (on telephone)

**Others present**

John Brems – City Attorney
Leslie Van Frank – City Recorder
Rita Lund – Deputy City Recorder

## WORK SESSION

The work session was called to order at 4:02 p.m.

Mayor Silvestrini reported that Councilmember Uipi will be joining the meeting by phone due to a funeral for a family member.

Mayor Silvestrini also announced that the item listed on the agenda as item number 1, discussion with Taylorsville Mayor Larry Johnson and City Administrator John Taylor about staffing issues has been moved to the City Council agenda for March 6th due to previous commitment by Mayor Johnson.

Councilmember Marchant gave a financial report. Thirteen checks had been written leaving a balance of $76,442.89 in the city account. This amount does not account of accrued expenses such as the city attorney fees, the payment to the Local Government Insurance Trust, accounting services and reimbursement for incidental expenses that have been paid by the City Recorder on behalf of the city.

Councilmember Marchant additionally reported on a meeting of the Wasatch Front Waste and Recycling District and related the results of a customer satisfaction survey that had been conducted. Of the 10,000 surveys representing 12% of the homes serviced, with overall satisfaction rate was 95.3% favorable with Millcreek favorability ratings at 96.7%. Only 48% of respondents realized that the services were funded exclusively through fees. Due to rising costs, WFWRD is proposing a $2.00 fee increase in order to be able to maintain current service levels.

**4. Appointments**

No appointments appeared on the agenda.

**5. Consent Items**

No consent items appeared on the agenda.

**6. Planning Matters**

6.1 Discussion and consideration of Ordinance No. 17 - _____ amending the ordinance that creates an appeal authority in order to provide for a stay.

Mayor Silvestrini reported that this amendment had been discussed at the city council meeting held on February 21, 2017, and motion had been made at that time to adopt the amendment that would allow for a stay to be imposed by an appeals officer on certain occasions in compliance with state law.

**MOTION** was made by Councilmember Catten, seconded by Councilmember Jackson to adopt Ordinance No. 17- _____ amending the ordinance that creates an appeal authority in order to provide for a stay. A roll call vote was held and the motion passed with councilmembers voting as follows:

Councilmember Uipi – Aye
Councilmember Catten – Aye
Councilmember Jackson – Aye
Councilmember Marchant – Aye
Mayor Silvestrini – Aye

blank Ordinance Reference was No. 17-13 per Public Records

**7. Financial Matters**

Mayor Silvestrini then introduced UFA Chief Brad Larsen who gave a brief presentation of his experience with the UFA. He has served as the Fire Marshal for many years and has been appointed as the Millcreek liaison with the UFA.

**10. Calendar of Upcoming Events**

The calendar of upcoming events was presented including Community Council meetings, future City Council meetings and the MSD Board of Directors meeting.

**11. Closed Session (If Needed)**

No closed session was convened.

**12. Adjournment**

**MOTION** for adjournment was made by Councilmember Jackson, seconded by Councilmember Marchant.

The meeting adjourned at 7:15 p.m.

ONLY relevant pages of Minutes are included. For full minutes, please see www.MillcreekUt.gov

# Minutes of the Millcreek City Council
**April 9, 2018**
**5:00 p.m.**
**Work Meeting**
**7:00 p.m.**
**Regular Meeting**

The City Council of Millcreek, Utah, met in a Work Meeting and Regular Meeting on April 9, 2018 in the Council Chambers at City Hall, located at 3330 S. 1300 E., Millcreek, UT 84106.

**PRESENT:**

**Council Members**
Jeff Silvestrini, Mayor
Silvia Catten, District 1
Dwight Marchant, District 2
Cheri Jackson, District 3
Bev Uipi, District 4

**City Staff**
John Geilmann, City Manager
John Brems, City Attorney
Elyse Greiner, City Recorder
John Miller, City Engineer
Kurt Hansen, City Services Director
Rita Lund, Communications and Programs Director
Michael Winder, Economic Development Director
Francis Lilly, Planning Services Director

**Attendees:** Michael Lasko, Suzanne Dunbar, Dennis Dunbar, Aracely Banos, John Gallagher, Kasey Kershaw, Doug Smith, Hazel Feinauer, Abigail May, Carrie England, Pam Samuelson, Linda Allen, Joan Haven, Robert Renza, Lee Dial, Sheryl Martin, Ron Lund, Lt. Alex Huggard, Paul Johnston, Chief DeBry, and Chief Woolsey.

**WORK MEETING – 5:00 p.m.**
**TIME COMMENCED: 5:07 p.m.**

Mayor Silvestrini called the work meeting to order. Staff was having technical difficulties with respect to audio/visual, so the Mayor skipped to agenda items 4 and 5.

**4. Discussion of Ordinance Amending Code Chapter 2.56 Community Districts and Community Councils**
Mayor Silvestrini said he wanted to bring the attention of the Council to the need to look at code regarding the community councils. He said the substance of the ordinance would not change with this ordinance, but when the City brought code over from the County there was some language lost in translation. This is a clarifying ordinance that the community councils will review before it is approved. Council Member Jackson noticed language that said planning issues would be sent to the Chair, but packets should go to the whole council. John Brems said he will adjust the language accordingly.

**5. Discussion on Engineering Department Budget Adjustments**

East between 3900 South and 4500 South. Chief Larsen will go look at the area and report back to the Mayor. Chief Larsen said that new areas must have had hazardous environmental conditions in two of the last five years.

Mayor Silvestrini said the City executed an agreement with Bombshell Music and Media to apply for an anti-drug program grant. He said they were not able to apply because the City did not get an application number in time, but the City should be able to use the number next year. Mayor Silvestrini wanted to make the Council aware of another grant that the Promise Program could use for an after-school program. He met with the principal of Millcreek Elementary and she is in support of the program and offered her assistance. The new agreement with Bombshell Music and Media to apply for the grant would be for $60 an hour not to exceed $3,500. Rita Lund said it is a Work Force Services grant called "After School Quality Improvement Grant." It is a three-year grant and in the first year, the City match can be in-kind services by city staff. The grant is based on the qualification of free/reduced lunches in the school. The grant amount is $41,000 to $60,000 and the application is due April 23rd. It is intended to supplement or build upon existing programs, so the City would need to work with South Salt Lake Promise. Mayor Silvestrini said United Way will also support it.

Mayor Silvestrini reported that he received a nice thank you note from Linda Milne. He then said the Council discussed filing an application for a grant for a study on cultural facilities. The study will help provide data for a larger grant that will help identify a facility and the need for one. He will write a letter of support toward obtaining a grant, so the City can have a study. Lund said the letter should state that the City is willing to participate in the 50% match that is required. Lund thinks it will be about $25,000 from the City. Mayor Silvestrini asked if the City can donate in-kind on the match. Lund will check on that.

**Meeting adjourned for dinner at 6:43 p.m.**

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**REGULAR MEETING – 7:00 p.m.**
**TIME COMMENCED: 7:07 p.m.**

**1. Welcome, Introduction and Preliminary Matters**

**1.1 Pledge of Allegiance**

Mayor Silvestrini called the meeting to order and asked Josie, Abigail, and Hazel from the activity day girls to assist in leading the pledge of allegiance.

**1.2 Public Comment**

Mayor Silvestrini extended an invitation to the public to address the Council. There was no public comment.

**2. Planning Matters**

**2.1 Discussion and Consideration of Ordinance 18-21 and Ordinance 18-22, Rezone to Remove Zone Condition on an Existing RM Zone and a Rezone from R-2-10 to**

**Providing Services for the City. Council Member Uipi seconded. Mayor Silvestrini called for the vote. The motion passed unanimously.**

**3.2 Discussion and Consideration of Resolution 18-17, Appointing Administrative Law Judges**

John Brems said as the City starts to enforce ordinances, the City must create an appeal mechanism if someone disagrees with the interpretation. This Resolution creates an appeal authority with three land use officers who will become administrative law judges on code violations.

**Council Member Uipi moved to approve item 3.2, Resolution 18-17. Council Member Catten seconded. Mayor Silvestrini called for the vote. The motion passed unanimously.**

No mentioned of Conflict of Interest previous disclosed by Council Member Catten and appears she voted

**4. Reports**

**4.1 Mayor's Report**

Mayor Silvestrini said he would like to recognize Chief Steve DeBry in the audience for the Millcreek Community Crime Suppression Unit. He said he received an email from a resident thanking the Unit for responding to an issue they had. The Mayor commended the Chief for the activity of the Unit. He said the Unit is comprised of a Sergeant and 4 officers that are dedicated on focused enforcement around the City.

Mayor Silvestrini said he was honored to attend the ceremonial signing of two bills. One was to increase the penalty for knowingly killing a police dog and the other is a firework bill that was discussed in the work session on restricted discharge areas.

The Mayor said he has been trying to get involved in the Salt Lake Public Utilities Advisory Commission for his interest in the City's water rates. He said he is getting pushback about the vacancy position and has asked Council Member Cheri Jackson to fill it if he is not allowed to.

**4.2 Reports of City Council Members**

**Council Member Catten:** None.

**Council Member Marchant**: He thanked Rita Lund for notifying him about trees being removed in Scott Ave. Park. They were removed because they are too close to the wall and it poses a danger to the wall. The surrounding neighbors have been informed. Tree Utah would like to plant 20 new trees in the park. Mayor Silvestrini said he has communicated to Salt Lake County Flood Control to notify the City when they are cutting down trees, so the City has information for the residents. Council Member Marchant brought up that he has been attending the UPD Citizens Police Academy and it has been very informative.

**Council Member Jackson**: She said she attended a breakfast at Salt Lake Community College (SLCC) to learn more about it. She said there are 1,765 students and 199 SLCC employees who live in the City. She said she talked to the President of SLCC about the Promise Program and she would like to meet about it. The Mayor suggested they ask her to be on the leadership committee.

**Council Member Uipi**: She thanked Michael Winder for the community tours with the Council Members. She said she and Council Member Jackson attended the Rotary Club's snowshoeing event and mentioned the club wants to be engaged in the City.

**4.3 Staff Reports**
Chief DeBry mentioned that he would be out of town at a training during the next Council meeting.

**5. Consent Agenda**

**5.1 Approval of Minutes for March 26, 2017 Work and Regular Meeting**

**Council Member Uipi moved to approve the minutes. Council Member Jackson seconded. Mayor Silvestrini called for the vote. The motion passed unanimously.**

**6. New Items for Subsequent Consideration** None.

**7. Calendar of Upcoming Events**

- Envision Committee Meeting 4/11/18, 6 p.m., City Hall
- Planning Commission Meeting 4/18/18, 5 p.m., City Hall
- City Council Meeting 4/23/18, 5 p.m., City Hall

Mayor Silvestrini said that on Wednesday night at 6:30 p.m. there will be a Skyline High rebuild meeting at Skyline. He encouraged the public to attend and participate in that process. He then went through the list of calendar events.

**8. Closed Session**
***The Council may convene in a closed session as provided by Utah Code Ann. §52-4-205(1)(d) & (a) strategy sessions to discuss the purchase, exchange, or lease of real property and discussion of the character, professional competence, or physical or mental health of an individual.***

**Council Member Jackson moved to convene in a closed session as provided by Utah Code Ann. §52-4-205(1)(d) & (a) strategy sessions to discuss the purchase, exchange, or lease of real property and discussion of the character, professional competence, or physical or mental health of an individual at 8:28 p.m. Council Member Marchant seconded. Mayor Silvestrini called for the vote. The motion passed unanimously.**

**Council Member Jackson moved to go back into a public meeting. Council Member Uipi seconded. Mayor Silvestrini called for the vote. The motion passed unanimously.**

**ADJOURNED: Council Member Uipi moved to adjourn the meeting at 9:27 p.m. Council Member Jackson seconded. Mayor Silvestrini called for the vote. The motion passed unanimously.**

**APPROVED:** _____ 5-14-18 **Date**
**Jeff Silvestrini, Mayor**

**Attest:** _____
**Elyse Greiner, City Recorder**

ONLY relevant pages of Minutes are included. For full minutes, please see www.MillcreekUt.gov

**Minutes of the**
**Millcreek City Council**
**April 22, 2019**
**5:30 p.m.**
**Work Meeting**
**7:00 p.m.**
**Regular Meeting**

The City Council of Millcreek, Utah, met in a public work meeting and regular meeting on April 22, 2019 at City Hall, located at 3330 S. 1300 E., Millcreek, UT 84106.

**PRESENT:**

**Council Members**
Jeff Silvestrini, Mayor
Silvia Catten, District 1
Dwight Marchant, District 2
Cheri Jackson, District 3
Bev Uipi, District 4

**City Staff**
John Brems, City Attorney
Elyse Greiner, City Recorder
Mike Winder, Economic Development Director
Rita Lund, Communications & Programs Director
Laurie Johnson, HR-Finance Director
Kurt Hansen, City Services Director
John Miller, Public Works Director

**Attendees:** County Council Member Ann Granato, County Council Member Shireen Ghorbani, Chief Wade Watkins, Ali Mardanlou, John S., Gary Hanneman, Paul Cisneros, Doug Smith, Stephanie Steele, Ralph Morelli, Marc Edminster, Detective Jordan Schmidt, Detective Jared Nichols, and Chief Steve DeBry.

**WORK MEETING – 5:30 p.m.**
**TIME COMMENCED: 5:34 p.m.**

Mayor Silvestrini called the meeting to order.

1. **Review Proposed Sales Tax Revenue Bonds, Series 2019 Financing Structure; Marc Edminster, Lewis Young Robertson & Burningham, Inc.**
   Mayor Silvestrini said Millcreek is considering, as part of the city center master plan, putting a park along the fault line and in order to do that, Millcreek would need to acquire money. The conversation with Marc Edminster would be about securing a bond on sales tax revenue in the amount of $20 million. This bond would be repaid by money generated from the community reinvestment area as it develops. The current community reinvestment area fund would pay on the interest until revenue is generated.

   Marc Edminster said Lewis Young Robertson & Burningham, Inc. had been retained as Millcreek's financial advisor. They work with cities on securing bonds with the lowest interest rate possible. He said the bonding process is interesting and educational. He said various professionals will come together to structure the bond advantageously for the City. He

**Council Member Uipi moved to adjourn the work meeting at 6:37 p.m. Council Member Jackson seconded. Mayor Silvestrini called for the vote. The motion passed unanimously.**

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**REGULAR MEETING – 7:00 p.m.**
**TIME COMMENCED: 7:03 p.m.**

## 1. Welcome, Introduction and Preliminary Matters

### 1.1 Pledge of Allegiance

Mayor Silvestrini called the meeting to order and scouts from Troop 402 led the pledge of allegiance.

### 1.2 Presentation of Unified Police Department Officer of the Month for March 2019

Chief Steve DeBry introduced Detective Jordan Schmidt as Officer of the Month for March 2019. Detective Schmidt conducted a successful drug trafficking investigation. The dealer was selling over a pound of methamphetamine every week in the Salt Lake County area. The Citizens Advisory Board gave Detective Schmidt a gift. Mayor Silvestrini thanked Detective Schmidt for his service. Chief DeBry thanked the Citizens Advisory Board.

### 1.3 Public Comment

There were no comments.

## 2. Financial Matters

### 2.1 Presentation of FY 2019-20 General Fund & Capital Improvement Project Fund Tentative Budget; Laurie Johnson, HR-Finance Director

Mayor Silvestrini said the Council would look at the budget that was put together by staff. He said by the Council tentatively adopting it, the public will have a chance to look at it and then there will be a public hearing for the public to make comment, then it will be adopted. Mayor Silvestrini said Millcreek enacted a property tax for the first time last fall to pay for the Unified Police Department (UPD) contract. Millcreek shifted the tax from the former taxing district, Salt Lake Valley Law Enforcement Service Area (SLVLESA). The Council was careful to select a tax rate that would cover only the contract and the cost of borrowing to finance the contract. He then went over the revenue highlights of the tentative budget and said this budget contemplates no property tax increase. Millcreek has had a 97% property tax collection rate in 2018 and the police contract constitutes 41% of the total budget. Millcreek has collected in excess of $860,000 from new growth and a high collection rate which will cover an increase in the UPD contract. He said the City mainly functions on sales tax, and staff is projecting a 2% increase over the previous year, which also constitutes 41% of the total budget. The State ranks the collection of sales tax for various jurisdictions and Millcreek was 13$^{th}$ in the State in the amount of additional sales taxes collected this year over the previous year. The remaining 8% of revenue is fees for services, such as business license fees and building permit fees.

will be a study to look at public works operations for the City that will be taken out of professional services that will be done in a fourth quarter budget amendment. The Class B & C Road funds budget helps pay for the public works operations budget. There is 31% remaining in the budget expenditures, over $8.1 million.

Mayor Silvestrini asked about the funding to fix the jump on Jupiter Drive. Miller said most of the funds are in this budget, but there will be some carry over because the estimates came in higher than anticipated. Johnson said the CIP fund budget balance is $2.4 million. She said the difference between the general fund and the capital improvement fund is general fund funds not expended go back into the general fund reserve and capital improvement project funds assigned to a specific project are carried into the next fiscal year.

## 3. Business Matters

### 3.1 Discussion and Consideration of Resolution 19-11, Appointing Business License Appeal Authorities

Mayor Silvestrini said the Council changed the ordinance to authorize a business license appeal authority to hear appeals instead of the City Council, so he has nominated the same individuals who hear land use appeals to also hear business license appeals. Council Member Jackson asked how long the terms are. Mayor Silvestrini said they do not have terms; they serve at a fixed hourly rate as needed. The appointees are Paul Nielson, Richard Catten and Gary Sackett.

**Council Member Jackson moved to approve Resolution 19-11, Appointing Business License Appeal Authorities. Council Member Marchant seconded. The City Recorder called for the vote. All Council Members voted yes. The motion passed unanimously.**

No mentioned of Conflict of Interest previous disclosed by Council Member Catten and appears she voted

## 4. Reports

### 4.1 Mayor's Report

Mayor Silvestrini announced that Council Member Jackson, the Community Development Director, and the Public Works Director met with officials from Salt Lake City about the Brickyard Plaza. Staff from each city will exchange information and have clarified various concerns. He said he attended the Unified Police Department (UPD) Board and the Unified Fire Authority (UFA) Board meetings. They are trying to maintain market competiveness by increasing the pay scales in their budgets. The UFA budget increase will come through as property taxes in the district service area and UPD will be through the contract with Millcreek. He anticipated about a 5% budget increase in each. The UPD adopted a formula to be used with respect to the withdrawal of Riverton and Herriman. Their goals are to protect UPD as an agency, protect the taxpayers in the various jurisdictions served by them, and to be fair. He mentioned he went to the Lions Club Easter Egg Hunt, which was well attended.

### 4.2 Reports of City Council Members

**Council Member Marchant**: said he attended the Wasatch Front Waste and Recycling District (WFWRD) Board meeting and they went over their budget. He said that 47 trucks collect garbage throughout the district. Millcreek is one of the largest users of their services at 42% of total usage. There is a contract in place with Salt Lake City because Salt Lake City and Salt Lake County own the transfer station and the landfill, and

1% increase in stolen vehicles over the last four years. Council Member Uipi asked if trends are seasonal. Detective Nichols said he would have to do research.

**5. Consent Agenda**

**5.1 Approval of April 8, 2019 Work Meeting and Regular Meeting Minutes**
**5.2 Approval of April 15, 2019 Work Meeting Minutes**

**Council Member Uipi moved to approve item 5.1 and item 5.2. Council Member Jackson seconded. Mayor Silvestrini called for the vote. All Council Members voted yes. The motion passed unanimously.**

**6. Calendar of Upcoming Events**

- City Council Special Mtg., 5/1/19, 5:00 p.m. at City Hall
- Canyon Rim Citizens Association Mtg., 5/1/19, 7:00 p.m. at 2375 E. 3300 S.
- East Mill Creek Community Council Mtg., 5/2/19, 6:30 p.m. at 2266 E. Evergreen Ave.
- Mt. Olympus Community Council Mtg., 5/7/19, 6:00 p.m. at 3450 E. Oakview Dr.
- Millcreek Community Council Mtg., 5/7/19, 6:30 p.m. at City Hall
- City Council Mtg., 5/13/19, 5:00 p.m. at City Hall
- Planning Commission Mtg., 5/15/19, 5:00 p.m. at City Hall

**ADJOURNED: Council Member Uipi moved to adjourn the meeting at 8:15 p.m. Council Member Marchant seconded. Mayor Silvestrini called for the vote. All Council Members voted yes. The motion passed unanimously.**

**APPROVED:** _____ **Date** 5-13-19
**Jeff Silvestrini, Mayor**

**Attest:** _____
**Elyse Greiner, City Recorder**

ONLY relevant pages of Minutes are included. For full minutes, please see www.MillcreekUt.gov

**Minutes of the**
**Millcreek City Council**
**May 13, 2019**
**5:30 p.m.**
**Work Meeting**
**7:00 p.m.**
**Regular Meeting**

The City Council of Millcreek, Utah, met in a public work meeting and regular meeting on May 13, 2019 at City Hall, located at 3330 S. 1300 E., Millcreek, UT 84106.

**PRESENT:**

**Council Members**
Jeff Silvestrini, Mayor
Silvia Catten, District 1
Dwight Marchant, District 2
Cheri Jackson, District 3
Bev Uipi, District 4
(electronic participation; absent 7:45-7:53 p.m.)

**City Staff**
John Brems, City Attorney
John Geilmann, City Manager
Elyse Greiner, City Recorder
Rita Lund, Communications & Programs Director
Laurie Johnson, HR-Finance Director
Kurt Hansen, City Services Director
John Miller, Public Works Director
Mike Winder, Economic Development Director

**Attendees:** E. Loveland, Marv Poulson, Shaura Cole, Kerry Cole, Brett Johanson, Steve Schaller, Baird, Byron Goates, Tracy Strohm, Lon K., Lupe Jimenez, Jake Wood, Angie K., Sandra Coffman, Herb Jimenez, Kristopher Carambelas, Stan & Bonnie Carambelas, Aaron Wade, Carolin Cady, Sheryl Martin, Travis Jones, Sergeant Mike Mays, Detective Jonathan Richardson, Detective Chris Sullivan, Detective Jake Werner, Detective Keith Borders, Chief Steve DeBry, and Chief Duane Woolsey.

**WORK MEETING – 5:00 p.m.**
**TIME COMMENCED: 5:01 p.m.**

Mayor Silvestrini called the meeting to order and excused Council Member Uipi.

1. **Introductions of new Millcreek Staff**
   John Miller introduced Jennifer Smith, Staff Engineer II, and Aaron Roberts, Inspector II, to the Council as the newest Millcreek staff.

2. **Discussion with Rocky Mountain Power on Power Outages**
   Mayor Silvestrini said there have been a number of outages on the east side of the City this year and residents have expressed concern if it is because of aging infrastructure. Travis Jones, Regional Business Manager-Community Manager for Rocky Mountain Power, said there have been an increase in outages this year, specifically with the Olympus substation at the top of 3900 S. There have been about 40 outages in the last 12 months. After eliminating major events, such as weather, 4 were tree-related, 1 vine-related, 3 animal-related, and 4 car-

under-expend will be there but the amount is unknown until an accounting of all the bills come in. They have asked precinct chiefs to stop spending this fiscal year. The Midvale City Council discussed withdrawing from UPD. The Mayor said there may be an investigation or criminal charges because the budget submitted to the State was different than what the Board approved. The Mayor has been looking at what Millcreek could do with respect to the UPD contract. Millcreek will be able to pay more for an increase in officer compensation based on the amount of property tax received last year but now there might be a need to replace some fund balance. The Sheriff came out with their budget and it goes through the same process as the City with a tentative budget. That budget makes significant cuts but still a 4% increase for officer compensation. The UPD Finance Committee discussed a market increase of 4-10%. The consensus with Millcreek, Holladay, and Taylorsville is to have the right sized UPD. Those cities expected to see reductions in force in the pooled regional service area. The Mayor said UPD needs to increase compensation even if it means with a leaner force. UPD will be requesting the State Auditor to look at the budget. He said the current CFO has done a fantastic job in making the budget more transparent. Council Member Jackson asked how long the budget practice had been occurring. Mayor Silvestrini said around 8-9 years, since conception. Council Member Marchant asked who was taking the lead on it. Mayor Silvestrini said the Sheriff agreed that it needed to be investigated and the Board will discuss it at their next meeting. Council Member Marchant said South Salt Lake pays 15% below the average of the police districts. Council Member Catten asked when the Board would know how much they had in fund balance. Laurie Johnson said UPD's books were never really closed at the end of each fiscal year and reopened in the next one. She said bills come in after the fiscal year, so the underspend will be unknown until the books are wrapped up in the early fall. Mayor Silvestrini said UPD is replacing the auditor they use through an RFP process.

**Council Member Jackson moved to adjourn the work meeting at 6:21 p.m. Council Member Marchant seconded. Mayor Silvestrini called for the vote. The motion passed unanimously.**

**REGULAR MEETING – 7:00 p.m.**
**TIME COMMENCED: 7:02 p.m.**

## 1. Welcome, Introduction and Preliminary Matters

### 1.1 Pledge of Allegiance

Mayor Silvestrini called the meeting to order and led the pledge of allegiance.

### 1.2 Recognition of Excellence to Unified Police Department Community Crime Suppression Unit

Kurt Hansen said Millcreek wanted to recognize the Community Crime Suppression Unit (CCSU) for their work with the code enforcement officers. Sergeant Mays said the unit has been in operation for over a year. CCSU consists of a supervisor and four detectives. Each day, they go to different areas of the City. He presented statistics for the year from April 2018-April 2019. The 444 arrests by the Unit were made through observation, not through dispatch. In September of 2018, CCSU developed a good relationship with Millcreek code enforcement officers and have serviced 4 business search warrants and 11

the level of police services that the Council wants to have and to provide a salary increase to officers despite the budget difficulty.

**5.2 Reports of City Council Members**
There were none.

**5.3 Staff Reports**
There were none.

No mentioned of Conflict of Interest previous disclosed by Council Member Catten and appears she initiated motion to approve MM ratifying LUHO Catten's appointment.

**6. Consent Agenda**

**6.1 Approval of April 22, 2019 Work Meeting and Regular Meeting Minutes**
**6.2 Approval of Resolution 19-13, Approving a Federal Aid Agreement for Local Agency Project Between UDOT and Millcreek with Respect to Curb, Gutter, and Sidewalk Improvements Located on 4705 S. Between 1380 and 1450 E.**

**Council Member Catten moved to approve the April 22nd work and regular meeting minutes. Council Member Jackson seconded. Mayor Silvestrini called for the vote. All Council Members voted yes. The motion passed unanimously.**

Mayor Silvestrini said item 6.2 was a resolution to approve a grant for $70,325 for improvements to the City. There will be a 25% match for Millcreek as part of the budget. Council Member Marchant said this was a project recommended by residents.

**Council Member Marchant moved to approve Resolution 19-13, Approving a Federal Aid Agreement for Local Agency Project Between UDOT and Millcreek with Respect to Curb, Gutter, and Sidewalk Improvements Located on 4705 S. Between 1380 and 1450 E. Council Member Jackson seconded. The City Recorder called for the vote. All Council Members voted yes. The motion passed unanimously.**

**7. New Items for Subsequent Consideration**

**8. Calendar of Upcoming Events**

- Planning Commission Mtg. 5/15/19 at 5:00 p.m., City Hall
- City Council Work Mtg. 5/20/19 at 5:30 p.m., City Hall
- City Council Mtg. 5/28/19 (TUESDAY) at 5:00 p.m., City Hall

**Council Member Jackson moved to go into a closed session for the purpose of a closed meeting described under Utah Code Ann. 52-4-205(d) to discuss the strategy to discuss the purchase, exchange, or lease of real property at 8:30 p.m. Council Member Marchant seconded. The City Recorder called for the vote. All Council Members voted yes. The motion passed unanimously.**

**Council Member Catten moved to go back into the open meeting at 9:35 p.m. Council Member Marchant seconded. The City Recorder called for the vote. All Council Members voted yes. The motion passed unanimously.**

DRAFT

**ADJOURNED: Council Member Marchant moved to adjourn the meeting at 9:36 p.m. Council Member Uipi seconded. Mayor Silvestrini called for the vote. All Council Members voted yes. The motion passed unanimously.**

**APPROVED: _____ Date**
**Jeff Silvestrini, Mayor**

**_____**
**Attest: Elyse Greiner, City Recorder**

DRAFT

ONLY relevant pages of Minutes are included. For full minutes, please see www.MillcreekUt.gov

**Minutes of the**
**Millcreek City Council**
**June 10, 2019**
**6:00 p.m.**
**Work Meeting**
**7:00 p.m.**
**Regular Meeting**

The City Council of Millcreek, Utah, met in a public work meeting and regular meeting on June 10, 2019 at City Hall, located at 3330 S. 1300 E., Millcreek, UT 84106.

**PRESENT:**

**Council Members**
Jeff Silvestrini, Mayor
Silvia Catten, District 1
Dwight Marchant, District 2 (excused)
Cheri Jackson, District 3
Bev Uipi, District 4

**City Staff**
John Brems, City Attorney
John Geilmann, City Manager
Elyse Greiner, City Recorder
Rita Lund, Communications & Programs Director
Laurie Johnson, HR-Finance Director
Kurt Hansen, City Services Director
Francis Lilly, Community Development Director
Erin O'Kelley, Planner
Blaine Gehring, Planner

**Attendees:** Richard Hansen, Marv Poulson, Angel Vice, Mitchell Vice, Les Parkin, Larry Plowgian, John Janson, Millie Rogers, Jason Burningham, Ralph Becker, Lindsey Neilson, Byron Goates, Pasu Pasupathi, Alice Pasupathi, Rebecca Reed, Diane Wenzl, Lindsey Nielsen, John Darr, Alisha H. Owen, Lois Wright, Ralph Morelli, Nick Baldwin, Carolin Cady, Russell Ussery, Chief Steve DeBry, and Chief Duane Woolsey.

**WORK MEETING – 6:00 p.m.**
**TIME COMMENCED: 6:02 p.m.**

Mayor Silvestrini called the meeting to order.

1. **Planning Item First Reading:**
   **a. Discussion of ZM-19-005, Rezone from M and C-3 to MD at 3999 S. Main Street; Blaine Gehring, Planner**
   Mayor Silvestrini said that the item would be continued to the next meeting.

2. **Discussion on Code Section 19.80.035 Parking In R-1 and R-2 Residential Zones; Kurt Hansen, City Services Director**
   Kurt Hansen said code enforcement has received a lot of complaints about recreational vehicles (RV) blocking the line of sight from driveways. Hansen said one resident has 5 RVs parked at a house and he showed an image of an RV parked in the City's right-of-way. Hansen said an RV could also be a trailer. He read the definition of a recreational vehicle from

**4.1 Discussion and Consideration of Resolution 19-16, Approving Appointments to the Planning Commission**

Mayor Silvestrini said the Mayor makes appointments to the Planning Commission subject to the confirmation of those appointments by the City Council. He said staff advertised for an open seat on the Planning Commission for one vacancy due to the resignation of Heather Wilson. Since then, Commissioner Carlson had fallen ill and was unable to continue serving. Commissioner Carlson's and Healey's terms were up in June. Mayor Silvestrini said he supported the reappointment of Commissioner Fred Healey because he is the current Chair of the Commission and it provided continuity. The two new appointees are Skye Sieber and Victoria Reid. Mayor Silvestrini said he interviewed eight candidates and recommended the three appointments. Council Member Jackson requested that District 3 get more representation on the Commission.

**Council Member Jackson moved to approve Fred Healey, Skye Sieber, and Victoria Reid as members of the Planning Commission. Council Member Catten seconded.** Council Member Uipi pointed out that other reappointments have been made on the Commission. **The City Recorder called for the vote. All Council Members voted yes. The motion passed unanimously.**

**4.2 Discussion and Consideration of Resolution 19-17, Appointing a Business License Appeal Authority, Administrative Law Judge for City Enforcement Actions, and a Land Use Appeal Authority**

John Brems said the Resolution is for an appointment for one new appeal authority and a reappointment of the others. Mayor Silvestrini said Millcreek uses law-trained hearing officers for appeals to ensure that trained people are making adequate findings to make a decision on the right legal basis and that are sustainable if challenged to district court.

**Council Member Catten moved to approve Resolution 19-17, Appointing a Business License Appeal Authority, Administrative Law Judge for City Enforcement Actions, and a Land Use Appeal Authority. Council Member Uipi seconded. The City Recorder called for the vote. All Council Members voted yes. The motion passed unanimously.**

**4.3 Discussion and Con**
**Wasatch Commission**

No mentioned of Conflict of Interest previous disclosed by Council Member Catten and appears she initiated motion to approve the reappointment LUHO Catten.

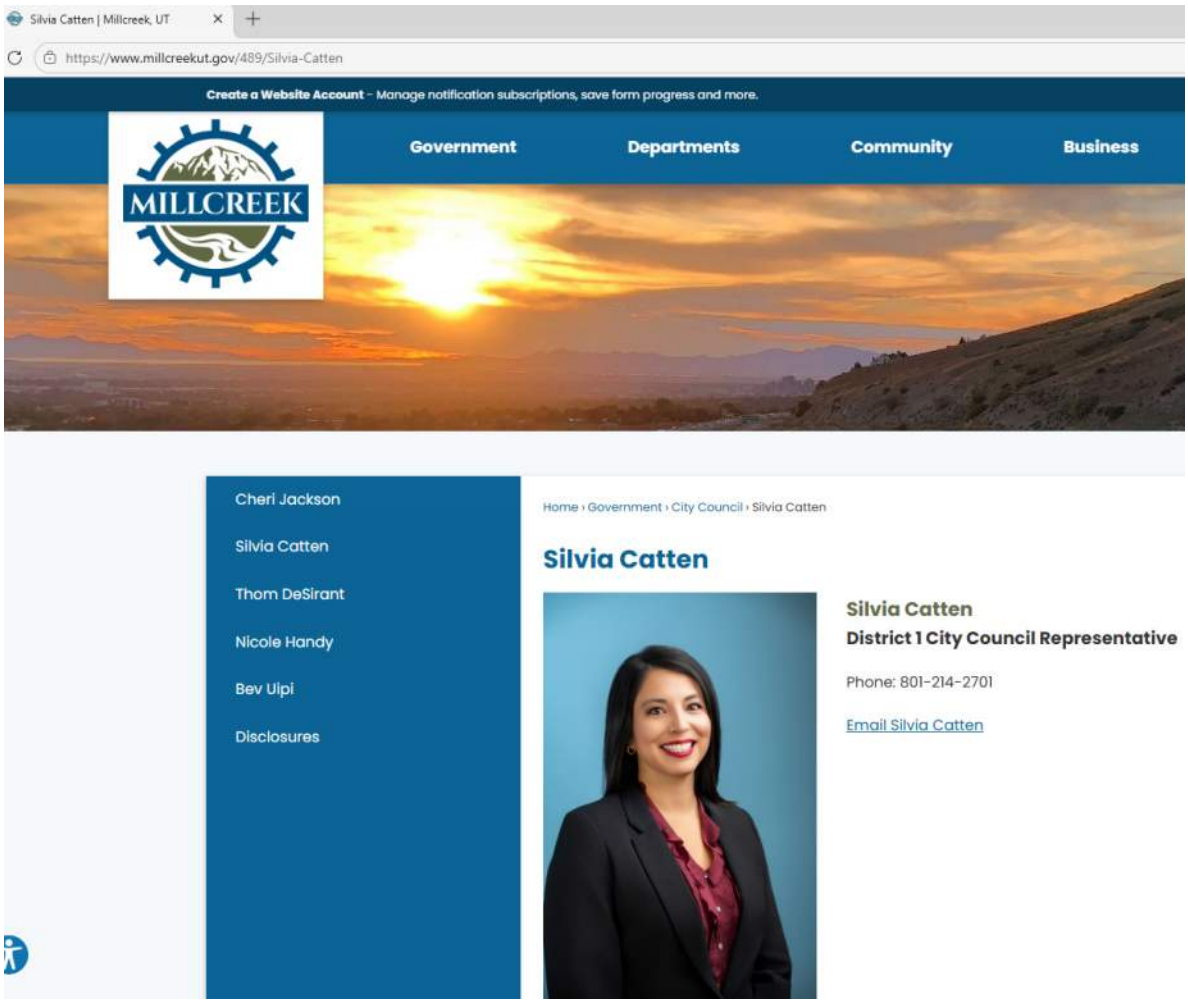
Mayor Silvestrini said he
Commission was formed as an outgrowth of the Mountain Accord and they are charged with carrying out the recommendations and coordinating functions of the Mountain Accord. He said Mayor Silvestrini has been a meaningful member of the Commission. The Commission will pursue congressional legislation to designate new public land areas in the central Wasatch Mountains from Parley's Canyon to Little Cottonwood Canyon to create new wilderness, special protection areas around White Pine, provide for where development can and cannot be in the future, and provide for land exchanges. That legislation was introduced in 2016 but has been held in suspension; they are now working on the fourth draft. Another task of the Commission is to find transportation solutions in the canyons, and they are working with UDOT on that. The resolution is being brought to the Council because part of the congressional effort has some controversy around some of the proposals, so the Commission is seeking support from

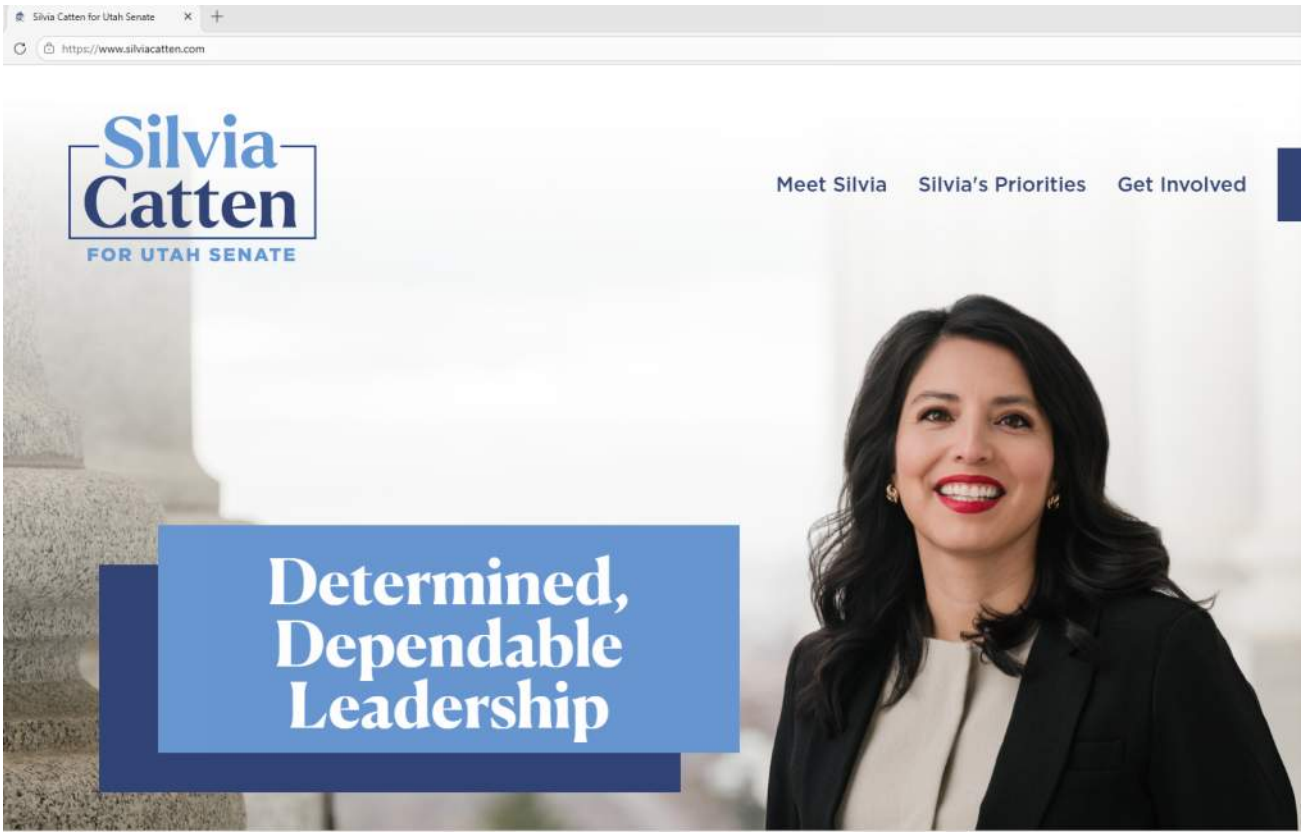
**ADJOURNED: Council Member Uipi moved to adjourn the meeting at 9:07 p.m. Council Member Jackson seconded. Mayor Silvestrini called for the vote. All Council Members voted yes. The motion passed unanimously.**

**APPROVED:** _____ **Date** 6/24/19
**Bev Uipi, Mayor Pro Tempore**

**Attest:** _____
**Elyse Greiner, City Recorder**

**ATTACHMENT "C"**



# Silvia Navejar

Age 40, Born November 1985
Lives in Salt Lake City, UT
(801) 358-8072


## Full Background Report Sponsored Link

- Arrest & Criminal Records
- Misdemeanors & Felonies
- Registered Sex Offender Check
- Warrants & Police Records
- Nationwide Court Records
- Evictions & Foreclosures
- Marriage & Divorce Records
- Bankruptcies, Liens & Judgments
- Assets & Properties
- Business Records
- Professional Licenses
- Social Media Records

View Full Background Report


## Also Seen As

Includes all names used in any public records filings for Silvia Navejar.

Silvia L Catten

## Current Address

This is the most recently reported address for Silvia Navejar.

1026 E Hillview Dr
Salt Lake City, UT 84124

$649,000 | 4 Bed | 1.75 Bath | 1,542 Sq Ft | Built 1952
Salt Lake County
(Aug 2006 - Feb 2026)

## Phone Numbers

Includes the current and past phone numbers for Silvia Navejar.

(801) 358-8072 - Wireless

**Possible Primary Phone**
Last reported Dec 2025
T-Mobile

(801) 874-9734 - Wireless

Last reported Aug 2025
AT&T


## Full Background Report Sponsored Link

- Arrest Records
- Court Records
- Marriage & Divorce Records
- Birth & Death Records
- Police Records
- Search Warrants
- Criminal Records Data
- Property Records
- Current and Past Contact Info
- Reverse Phone Lookups
- AKAs, Age, Date of Birth
- Addresses and Phone Numbers
- Relatives and Associates
- Public Records Data
- Bankruptcies, Judgments, Liens
- Complete Background Check

View Full Background Report

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## Email Addresses

Includes all known email addresses for Silvia Navejar.

snavejar@cox.net

nay_lynn15@hotmail.com

s.navejar@gmail.com

## Current Address Property Details

Property record details for the current residence of Silvia Navejar.

1026 E Hillview Dr
Salt Lake City, UT 84124

| Bedrooms | Bathrooms | Square Feet | Year Built |
|---|---|---|---|
| **4** | **2** | **1,542** | **1952** |
| Estimated Value | Estimated Equity | Last Sale Amount | Last Sale Date |
| **$649,000** | **$349,277** | **$211,000** | **11/13/2009** |
| Occupancy Type | Ownership Type | Land Use | Property Class |
| **Owner Occupied** | **Trust** | **Single Family** | **Residential** |
| Subdivision | Lot Square Feet | APN | School District |
| **Mountain View Add** | **16,117** | **16-32-455-003-0000** | **Granite School District** |

## Previous Addresses

All previously reported addresses for Silvia Navejar.

6100 Edinger Ave #831
Huntington Beach, CA 92647
Orange County
(May 2006 - Nov 2024)

671 E 500 S
Provo, UT 84606
Utah County
(Jun 2002 - Nov 2024)

4 Star Thistle
Irvine, CA 92604
Orange County
(Mar 2006 - Nov 2024)

671 E 500
Provo, UT 84606
Utah County
(Oct 2015)

671 500 E S
Provo, UT 84606
Utah County
(Jul 2002 - Oct 2010)

605 S Grand St #2
Salt Lake City, UT 84102
Salt Lake County
(Jan 2010)

## Criminal Records Report Sponsored Link

- Arrest & Criminal Records
- Misdemeanors & Felonies
- Registered Sex Offender Check
- Warrants & Police Records
- Nationwide Court Records
- Speeding Tickets

View Criminal Records Report

## Possible Relatives

May include parents (mother, father), spouse (wife, husband), exes, brothers, sisters and children of Silvia Navejar.

| | | | |
|---|---|---|---|
| Benjamin Navejar<br>Age 45 | Celia Navejar<br>Age 79 | Garrett Catten<br>Age 44 | Naomi Shingleton<br>Age 42 |
| Spencer Navejar<br>Age 44 | James Navejar<br>Age 73 | Laura Navejar<br>Age 49 | Naomi Navejar<br>Age 42 |
| Gavin Catten<br>Age 47 | Jacqueline Catten<br>Age 75 | Keshia Catten<br>Age 38 | Lawrence Catten<br>Age 74 |
| McKenzie Catten<br>Age 42 | Vivian Catten<br>Age 49 | | |

## Possible Associates

May include current and past roommates, friends, and extended family of Silvia Navejar.

| | | | |
|---|---|---|---|
| Ken Wright<br>Age 82 | Lea Woodcox<br>Age 61 | Antonio Merino<br>Age 74 | Jonathan Jeffery<br>Age 59 |
| Laura Jeffery<br>Age 58 | Martin Cuevas<br>Age 62 | Munenori Yamamoto<br>Age 60 | Rawlin Jeffery<br>Age 66 |
| Ray Jeffery<br>Age 95 | Rita Jeffery<br>Age 95 | Trevor Stickney<br>Age 35 | Yvonne Oteo<br>Age 55 |

## Education and Employment

May include education and employment history for Silvia Navejar.

Company
**Western Governors University**

Job Title
**Public Relations Coordinator**

From
**N/A**

To
**N/A**

Company
**Odyssey Talent**

Job Title
**Dance Competitions**

From
**N/A**

To
**N/A**

View Background Report

advertisement

# Background Profile on Silvia L Navejar

Silvia L Navejar, **40 years old**, was born in November 1985. Silvia's address is 1026 E Hillview Dr in **Salt Lake City, UT**, where she's lived since August 2006. She has a phone number of **(801) 358-8072**, a mobile number through T-Mobile.

Silvia is also known as **Silvia L Catten**. She may be married or may have been married in the past.

Past addresses for Silvia include Huntington Beach, CA, Irvine, CA, Salt Lake City, UT, South Pasadena, CA, and Provo, UT for about 22 years (from June 2002 to November 2024), plus 1 other location. Records also show **(801) 874-9734** as a phone number for Silvia, a mobile number through AT&T, which was last active as of August 2025. She uses the email addresses **snavejar@cox.net** and **nay_lynn15@hotmail.com** plus 1 other.

Social media links, property ownership & more can be found at our partner site.

Career history shows Silvia at **Western Governors University** as a **Public Relations Coordinator** and **Odyssey Talent** as a **Dance Competitions**.

Silvia is related to **Benjamin Navejar**, **Celia Navejar**, **Garrett Catten**, **Naomi Shingleton** and 10 others. Silvia has been associated with **Ken Wright**, **Lea Woodcox** and others.

A full criminal records report for Silvia Navejar can be found at our partner site.

Located at **1026 E Hillview Dr in Salt Lake City, UT 84124**, the residence is 4 bedrooms, 1.8 bathrooms, and 1,542 sq feet. It appears Silvia owns this property. This property is valued at approximately **$649,000** with approximately $349,277 in equity (54%). It was built in 1952 (74 years ago).

A more in-depth report can be found at our partner site.

# Garrett Catten

Age 44, Born August 1981
Lives in Salt Lake City, UT
(801) 722-5860


## Full Background Report Sponsored Link

- Arrest & Criminal Records
- Misdemeanors & Felonies
- Registered Sex Offender Check
- Warrants & Police Records
- Nationwide Court Records
- Evictions & Foreclosures
- Marriage & Divorce Records
- Bankruptcies, Liens & Judgments
- Assets & Properties
- Business Records
- Professional Licenses
- Social Media Records

View Full Background Report


## Also Seen As

Includes all names used in any public records filings for Garrett Catten.

Garret L Catten

## Current Address

This is the most recently reported address for Garrett Catten.

1026 E Hillview Dr
Salt Lake City, UT 84124
$649,000 | 4 Bed | 1.75 Bath | 1,542 Sq Ft | Built 1952
Salt Lake County
(Jan 2009 - Feb 2026)

## Phone Numbers

Includes the current and past phone numbers for Garrett Catten.

(801) 722-5860 - Wireless
**Possible Primary Phone**
Last reported Jan 2026
T-Mobile

(801) 268-2090 - Voip
Last reported Aug 2012
Comcast

(801) 916-3363 - Wireless
Last reported Apr 2021
T-Mobile

(573) 578-8378 - Wireless
Last reported Apr 2021
AT&T

(801) 815-6450 - Wireless
Last reported Apr 2021
T-Mobile

(801) 358-8072 - Wireless
Last reported Dec 2023
T-Mobile

(801) 707-4242 - Wireless
Last reported Feb 2022
T-Mobile


## Full Background Report Sponsored Link

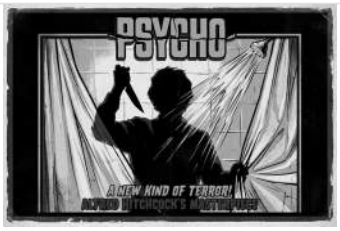
- Arrest Records
- Court Records
- Marriage & Divorce Records
- Birth & Death Records
- Police Records
- Current and Past Contact Info
- Reverse Phone Lookups
- AKAs, Age, Date of Birth
- Addresses and Phone Numbers
- Relative[illegible]sociates





View Full Background Report

## Sponsored Links


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Test your movie knowledge with iconic film moments. Play free trivia & compete globally!


## Email Addresses

Includes all known email addresses for Garrett Catten.

jcatten@hotmail.com

lcatten@yahoo.com

gcatten@cs.com

## Current Address Property Details

Property record details for the current residence of Garrett Catten.

1026 E Hillview Dr
Salt Lake City, UT 84124

| Bedrooms | Bathrooms | Square Feet | Year Built |
|---|---|---|---|
| **4** | **2** | **1,542** | **1952** |
| Estimated Value | Estimated Equity | Last Sale Amount | Last Sale Date |
| **$649,000** | **$349,277** | **$211,000** | **11/13/2009** |
| Occupancy Type | Ownership Type | Land Use | Property Class |
| **Owner Occupied** | **Trust** | **Single Family** | **Residential** |
| Subdivision | Lot Square Feet | APN | School District |
| **Mountain View Add** | **16,117** | **16-32-455-003-0000** | **Granite School District** |

## Previous Addresses

All previously reported addresses for Garrett Catten.

605 S Grand St #2
Salt Lake City, UT 84102
Salt Lake County
(Apr 2004 - Dec 2014)

991 W Sunberry Dr
Salt Lake City, UT 84123
Salt Lake County
(Apr 2001 - Apr 2022)

1849 N Freedom Blvd #152
Provo, UT 84604
Utah County
(Mar 2004)


## Criminal Records Report Sponsored Link

- Arrest & Criminal Records
- Warrants & Police Records

View Criminal Records Report

## Sponsored Links

## Possible Relatives

May include parents (mother, father), spouse (wife, husband), exes, brothers, sisters and children of Garrett Catten.

| | | | |
|---|---|---|---|
| Gavin Catten<br>Age 47 | Jacqueline Catten<br>Age 75 | Keshia Catten<br>Age 38 | Lawrence Catten<br>Age 74 |
| McKenzie Catten<br>Age 42 | Silvia Navejar<br>Age 40 | Vivian Catten<br>Age 49 | Craig Catten<br>Age 62 |
| Debra Catten<br>Age 67 | Karen Catten<br>Age 83 | Katrina Catten<br>Age 21 | Jon Catten<br>Age 69 |
| Linda Catten<br>Age 78 | Stephanie Catten<br>Age 72 | | |

## Possible Associates

May include current and past roommates, friends, and extended family of Garrett Catten.

| | | | |
|---|---|---|---|
| Celia Navejar<br>Age 79 | Calvin Coon<br>Age 100 | Keshia Jacquelle Catten<br>Age 38 | Ken Wright<br>Age 82 |
| Robert Moore<br>Age 40 | Shirley Coon<br>Age 96 | Benjamin Navejar<br>Age 45 | Christopher Lopez<br>Age 63 |
| Eyni Lopez<br>Age 42 | Janeth Lopez<br>Age 66 | Jorge Lopez<br>Age 76 | Joseph Anderson<br>Age 36 |

## Education and Employment

May include education and employment history for Garrett Catten.

| | |
|---|---|
| Company<br>**Blue Star Steel** | Job Title<br>**General Manager** |
| From<br>**N/A** | To<br>**N/A** |

x

## Background Report Sponsored Link

- Arrest Records
- Court Records
- Reverse Phone Lookups
- Age

- Property Records
- Current and Past Contact Info
- Background Search

View Background Report

advertisement

## Background Profile on Garrett L Catten

Born in August 1981, Garrett L Catten is **44 years old**. He has resided at 1026 E Hillview Dr in **Salt Lake City, UT** since January 2009. You can reach him at **(801) 722-5860**, a mobile number through T-Mobile.

Past addresses for Garrett include Provo, UT and Salt Lake City, UT for about 21 years (from April 2001 to April 2022). Additional phone numbers on file for Garrett include **(801) 268-2090** (voip), **(801) 916-3363** (mobile) and others. He uses the email addresses **jcatten@hotmail.com** and **lcatten@yahoo.com** plus 1 other.

Social media links, property ownership & more can be found at our partner site.

Career history shows Garrett at **Blue Star Steel** as a **General Manager**. This company is associated with the **Real Estate and Construction** industry.

Garrett is related to **Gavin Catten**, **Jacqueline Catten**, **Keshia Catten**, **Lawrence Catten** and 10 others. Garrett has been associated with **Celia Navejar**, **Calvin Coon** and others.

A full criminal records report for Garrett Catten can be found at our partner site.

The property at **1026 E Hillview Dr in Salt Lake City, UT 84124** features 4 bedrooms, 1.8 bathrooms, and 1,542 sq feet. It appears Garrett owns this property. This property is valued at approximately **$649,000** with approximately $349,277 in equity (54%). It was built in 1952 (74 years ago).

A more in-depth report can be found at our partner site.

## Frequently Asked Questions

Where does **Garrett L Catten** live? +

How old is **Garrett L Catten**? +

1 record found for John Catten

**John R Catten**
Age 69 • Bettendorf, IA

**Used to live in** Salt Lake City UT, Salt Lake Cty UT, Magn...
**Related to** Julie Rice, Karen Catten, Linda Catten, Br...

## Sponsored Links


Paid service sponsored by **BeenVerified.com**

| Name | Age | Location | |
|---|---|---|---|
| John Richard Patten | 80 | Clermont, FL | Search Details |
| John Richard Patten | 76 | Harrodsburg, KY | Search Details |
| John Richard Batten | 105 | Thomasville, NC | Search Details |
| John Richard Batten | 77 | Rockford, MI | Search Details |

Paid service sponsored by **PeopleLooker.com**

| Name | Age | Location | |
|---|---|---|---|
| John Richard Catten | 69 | Bettendorf, IA | Search Details |

Paid service sponsored by **Spokeo.com**

| Name | Age | Location | |
|---|---|---|---|
| John Richard Catten | 69 | Bettendorf, IA | Search Details |






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Grand Junction offers countless ways to adventure.

# Jon Catten

Age 69, Born November 1956
Lives in Bettendorf, IA
(801) 467-7962


## Full Background Report Sponsored Link

- Arrest & Criminal Records
- Misdemeanors & Felonies
- Registered Sex Offender Check
- Warrants & Police Records
- Nationwide Court Records
- Evictions & Foreclosures
- Marriage & Divorce Records
- Bankruptcies, Liens & Judgments
- Assets & Properties
- Business Records
- Professional Licenses
- Social Media Records

View Full Background Report


## Also Seen As

Includes all names used in any public records filings for Jon Catten.

Jon Richard Catten, Richard R Catten, John Richard Catten, Rick Catten

## Current Address

This is the most recently reported address for Jon Catten.

4155 Mallard Ct #11
Bettendorf, IA 52722
$164,000 | 2 Bed | 1 Bath | 986 Sq Ft | Built 1997
Scott County
(Jun 1993 - Feb 2026)

## Phone Numbers

Includes the current and past phone numbers for Jon Catten.

(801) 467-7962 - Voip
**Possible Primary Phone**
Last reported Jan 2026
Comcast

(619) 558-0612 - Voip
Last reported Aug 2022
TWILIO INTERNATIONAL

(801) 259-0179 - Wireless
Last reported Apr 2021
T-Mobile


## Full Background Report Sponsored Link

- Arrest Records
- Court Records
- Marriage & Divorce Records
- Birth & Death Records
- Police Records
- Search Warrants
- Criminal Records Data
- Property Records
- Current and Past Contact Info
- Reverse Phone Lookups
- AKAs, Age, Date of Birth
- Addresses and Phone Numbers
- Relatives and Associates
- Public Records Data
- Bankruptcies, Judgments, Liens
- Complete Background Check

View Full Background Report

## Email Addresses

Includes all known email addresses for Jon Catten.

jcatten@msn.com

jcatten@prodigy.net

rcatten@comcast.net

tammykolarik@aol.com

## Current Address Property Details

Property record details for the current residence of Jon Catten.

4155 Mallard Ct #11
Bettendorf, IA 52722

| Bedrooms | Bathrooms | Square Feet | Year Built |
|---|---|---|---|
| **2** | **1** | **986** | **1997** |
| Estimated Value | Estimated Equity | Last Sale Amount | Last Sale Date |
| **$164,000** | **$37,421** | **$161,000** | **04/08/2024** |
| Occupancy Type | Ownership Type | Land Use | Property Class |
| **Owner Occupied** | **Individual** | **Condominium** | **Residential** |
| Subdivision | Lot Square Feet | APN | School District |
| **Devils Glen Condo Phase Ii** | **2,483** | **841519811DG2** | **Pleasant Valley Community School District** |

## Previous Addresses

All previously reported addresses for Jon Catten.

Cascade Way
Salt Lake City, UT 84109
(May 2001)

3810 S Redwood Rd #2004
Salt Lake City, UT 84119
Salt Lake County
(Sep 1984 - Nov 2000)

PO Box 26295
Salt Lake City, UT 84126
Salt Lake County
(Aug 1987 - Jan 2011)

2989 S Cascade Way
Salt Lake Cty, UT 84109
Salt Lake County
(Nov 2015)

2794 S 8650 W

3810 S Redwood Rd #2182

2794 S 8560 W
Magna, UT 84044
Salt Lake County
(Jan 1998)

## Criminal Records Report Sponsored Link

- Arrest & Criminal Records
- Misdemeanors & Felonies
- Registered Sex Offender Check
- Warrants & Police Records
- Nationwide Court Records
- Speeding Tickets

View Criminal Records Report

## Sponsored Links

## Possible Relatives

May include parents (mother, father), spouse (wife, husband), exes, brothers, sisters and children of Jon Catten.

Julie Rice
Age 62

Karen Catten
Age 83

Linda Catten
Age 78

Brett Catten
Age 47

Lawrence Catten
Age 74

Raymond Catten
Age 83

Sandra Catten
Age 75

Debra Catten
Age 67

Garrett Catten
Age 44

Gavin Catten
Age 47

Jacqueline Catten
Age 75

Katrina Catten
Age 21

## Possible Associates

May include current and past roommates, friends, and extended family of Jon Catten.

Bailey Rice
Age 35

Julie Hoffman
Age 55

Leslie Ensign
Age 72

Marian Rice
Age 54

Mark Leftwich
Age 92

Monica Hubbard
Age 54

Steven Rice
Age 69

Tracy Amos
Age 47

Tracy Amos
Age 47

## Education and Employment

May include education and employment history for Jon Catten.

Company
**West Valley City**

Job Title
**City Attorney**

From
**N/A**

To
**N/A**

College
**Brigham Young University—j. Reuben Clark Law School**

Degree
**Juris Doctor**

From
**1981**

To
**1984**

College
**Byu Law School**

Degree
**J.d.**

From
**N/A**

To
**N/A**


## Background Report Sponsored Link

- Arrest Records
- Court Records
- Marriage & Divorce Records
- Bankruptcies, Judgments, Liens
- Search Warrants
- Property Records
- Current and Past Contact Info
- Reverse Phone Lookups
- Age
- Locality History and Phone Numbers
- Relatives and Associates
- Public Records Data
- Background Search

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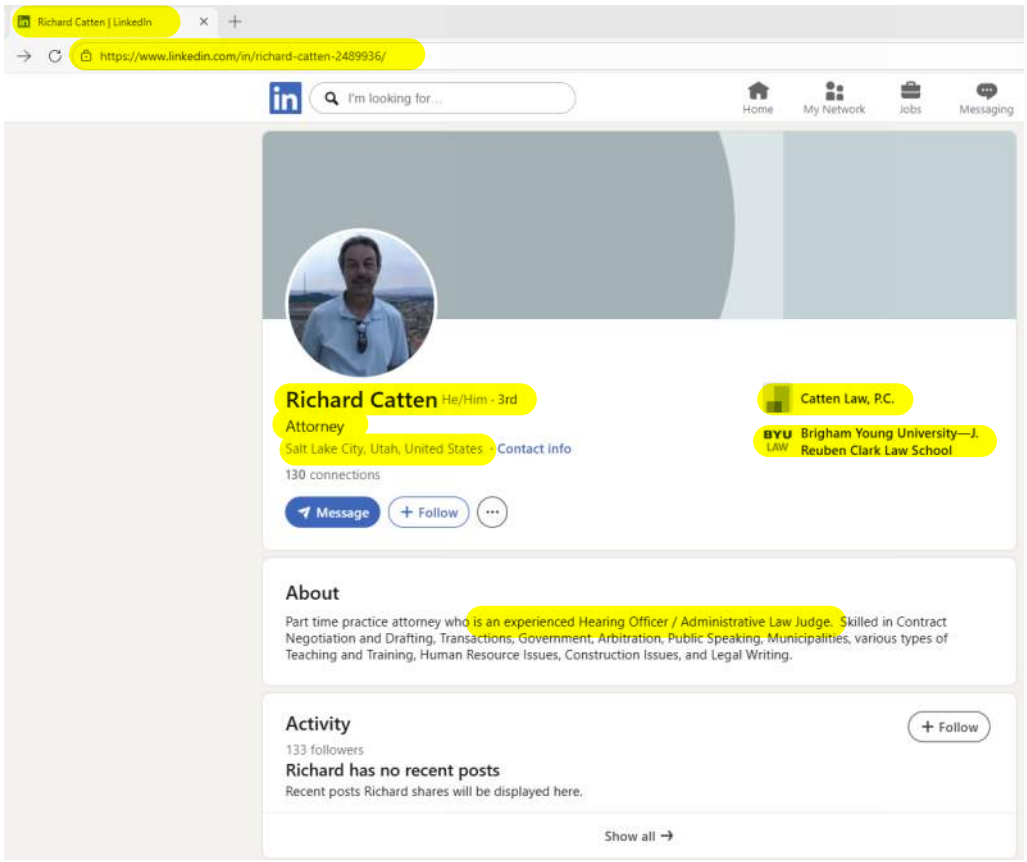

# Background Profile on Jon R Catten

Born in November 1956, Jon R Catten is **69 years old**. He has lived at 4155 Mallard Ct #11 in **Bettendorf, IA** since June 1993. Contact information for Jon includes **(801) 467-7962**, a VOIP number through Comcast.

Jon has also gone by **Richard R Catten**, **John Richard Catten**, and **Rick Catten**.

His prior residences include Salt Lake Cty, UT, Magna, UT, and Salt Lake City, UT for about 26 years (from September 1984 to January 2011). We also found phone numbers for Jon: **(619) 558-0612** (voip) and **(801) 259-0179** (mobile). Jon has email addresses including **jcatten@msn.com** and **jcatten@prodigy.net** plus 2 others.

Social media links, property ownership & more can be found at our partner site.




## Experience

**Attorney / President**
Catten Law, P.C. · Self-employed
Aug 2012 - Present · 13 yrs 7 mos
Salt Lake City Metropolitan Area

Current and former clients include: Centennial Management Group, Inc.; Diamond Concessions of Utah, Inc.; Utah Grizzlies Hockey Club; Military Installation Development Authority; Utah Peace Officer Standards and Training; Utah Department of Public Safety; MIDA Mountain Village Public Infrastructure District; MIDA Golf and Equestrian Center Public Infrastructure District; MIDA Mountqin Veterans Program Public Infrastructure District; Holladay City; Millcreek City; Farmington City, City of Cedar Hills; Diamond Concessions of California

Municpal bond Issuers counsel

**Land Use Hearing Officer**
Millcreek City
May 2017 - Present · 8 yrs 10 mos

**Administrative Law Judge**
Utah Department of Public Safety
Jan 1990 - Present · 36 yrs 2 mos

**Discharge and Transfer Hearing Officer**
Park City Municipal Corporation
Sep 2013 - Present · 12 yrs 6 mos

**Public Arbitrator**
Financial Industry Regulatory Authority
Jun 2013 - Present · 12 yrs 9 mos

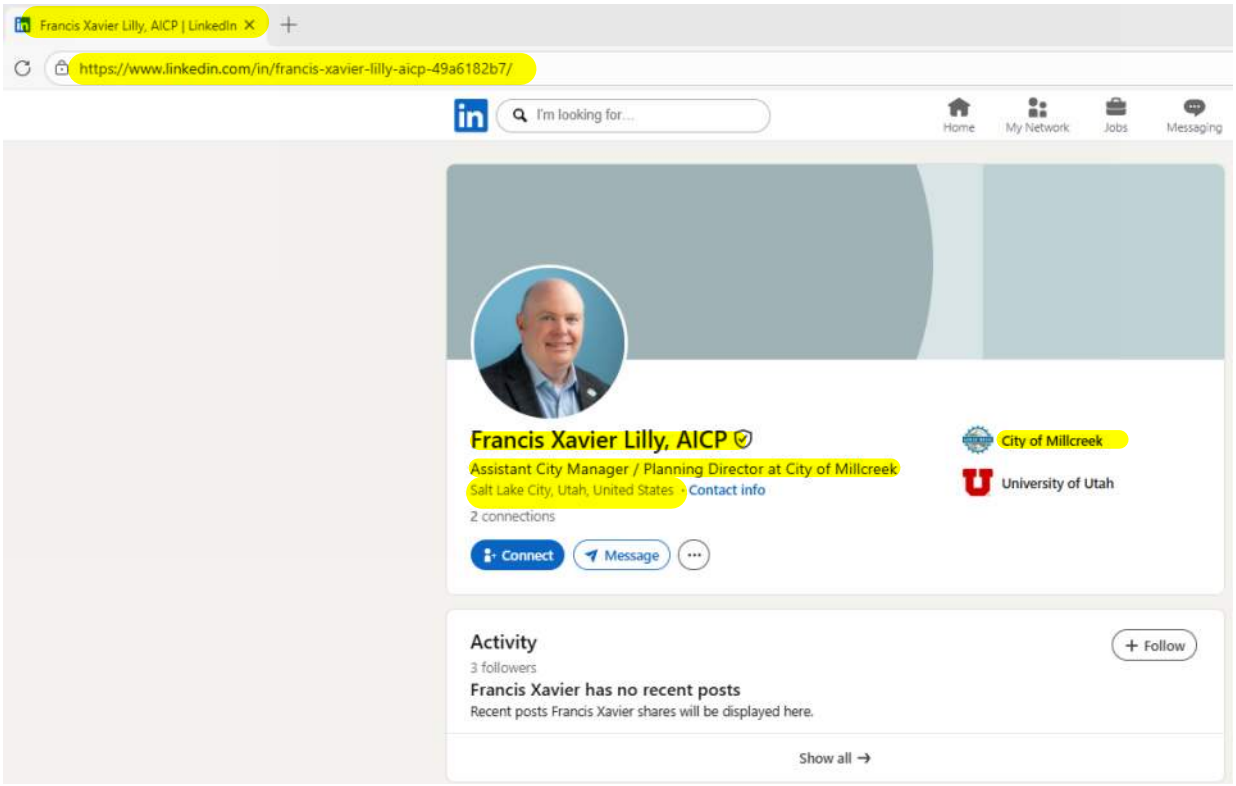
Public Arbitrator for FINRA (Financial Industry Regulatory Agency)

**Adjunct Faculty**
University of Utah
Sep 2006 - May 2023 · 16 yrs 9 mos

Master of Public Administration Program

**City Attorney**
West Valley City
Apr 1985 - Apr 2011 · 26 yrs 1 mo

**Refinery Worker**
Kennecott Copper Corporation
Apr 1977 - Jul 1980 · 3 yrs 4 mos




## Experience

**City of Millcreek**
Full-time · 8 yrs 5 mos
Millcreek, Utah, United States · On-site

**Assistant City Manager and Planning Director**
May 2022 - Present · 3 yrs 10 mos

Assisted the City Manager in formulating policy and budget recommendations for the Millcreek City Council.

Coordinated the placement of and public outreach regarding a temporary homeless shelter during winter of 2022-2023 with community members, first responders, service providers, and the State of Utah.

Completed a comprehensive revision of Millcreek's zoning and subdivision ordinances to include a robust affordable housing incentive and waterwise landscape standards that qualified every Millcreek household for grants to replace landscaping.

Coordinated public outreach efforts on controversial issues that Millcreek was required to address, including the placement of permanent supportive housing and other inclusionary housing initiatives.

Coordinated land acquisition and development efforts around City Hall and Millcreek Common, including the construction of a hotel, condominiums, associated retail, and a shared public parking structure.

Coordinated the establishment of a Historic Preservation Commission for Millcreek.

Led an effort to establish a historic neighborhood with over 300 homes built from the 1930s to the 1950s as Utah's first mid-century National Historic District.

Managed a planning department consisting of nine employees and an annual operating budget of approximately $1.4 million.

**Collaborative Leadership, Local Government and +2 skills**

**Planning Director**
Oct 2017 - May 2022 · 4 yrs 8 mos

Established Millcreek's Planning and Zoning Department with an emphasis on collaborative decision-making, transparency, and attentive customer service. The department started with three staff, and grew to... more

**Urban Planning, Public Policy and +1 skill**

### Education

**University of Utah**
Bachelor of Science - BS, City/Urban, Community and Regional Planning

**University of Utah**
Master of Public Administration - MPA

### Licenses & certifications

**American Institute of Certified Planners**
American Planning Association
Issued May 2011

### Skills

**Team Building**
Planning Director at City of Millcreek

**Collaborative Leadership**
Assistant City Manager and Planning Director at City of Millcreek

Show all →

Francis Lilly | LinkedIn

https://www.linkedin.com/in/francis-lilly-0ba7467/

I'm looking for...

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**Francis Lilly** · 2nd

Long Range Planner at West Valley City

Salt Lake City, Utah, United States · Contact info

30 connections

Mike is a mutual connection

Connect | Message | ...

West Valley City

University of Utah

## Highlights

**Get introduced to Francis**

Ask your mutual connections to help you start a conversation.

Message top connections

## Activity

+ Follow

31 followers

**Francis has no recent posts**

Recent posts Francis shares will be displayed here.

Show all →

## Experience

**Long Range Planner**

West Valley City

# Keshia Catten

Age 38, Born September 1987
Lives in Salt Lake City, UT
(801) 403-4878


## Full Background Report Sponsored Link

- Arrest & Criminal Records
- Misdemeanors & Felonies
- Registered Sex Offender Check
- Warrants & Police Records
- Nationwide Court Records
- Evictions & Foreclosures
- Marriage & Divorce Records
- Bankruptcies, Liens & Judgments
- Assets & Properties
- Business Records
- Professional Licenses
- Social Media Records

View Full Background Report


## Also Seen As

Includes all names used in any public records filings for Keshia Catten.

Keshia Catten Anderson, Keshia Jacquelle Catten

## Current Address

This is the most recently reported address for Keshia Catten.

5822 S Treasure Farm Cir
Salt Lake City, UT 84123

$681,000 | 4 Bed | 2.5 Bath | 2,096 Sq Ft | Built 2014
Salt Lake County
(Dec 2016 - Mar 2026)

## Phone Numbers

Includes the current and past phone numbers for Keshia Catten.

(801) 403-4878 - Wireless
**Possible Primary Phone**
Last reported Feb 2026
T-Mobile

(801) 268-2090 - Voip
Last reported May 2018
Comcast

(801) 815-6450 - Wireless
Last reported Apr 2021
T-Mobile

(801) 403-5954 - Wireless
Last reported Apr 2021
T-Mobile

(801) 839-4431 - Landline
Last reported Apr 2021
Bandwidth.com CLEC

(801) 833-2948 - Wireless
Last reported Mar 2021
T-Mobile


## Full Background Report Sponsored Link

- Arrest Records
- Court Records
- Marriage & Divorce Records
- Birth & Death Records
- Police Records
- Search Warrants
- Criminal Records Data
- Property Records
- Current and Past Contact Info
- Reverse Phone Lookups
- AKAs, Age, Date of Birth
- Addresses and Phone Numbers
- Relatives and Associates
- Public Records Data
- Bankruptcies, Judgments, Liens
- Complete Background Check

Sponsored Links

## Email Addresses

Includes all known email addresses for Keshia Catten.

kjcatten@gmail.com

keshiacatten@msn.com

## Current Address Property Details

Property record details for the current residence of Keshia Catten.

5822 S Treasure Farm Cir
Salt Lake City, UT 84123

| Bedrooms | Bathrooms | Square Feet | Year Built |
|---|---|---|---|
| **4** | **2** | **2,096** | **2014** |
| Estimated Value | Estimated Equity | Last Sale Amount | Last Sale Date |
| **$681,000** | **$326,758** | **$360,000** | **04/24/2020** |
| Occupancy Type | Ownership Type | Land Use | Property Class |
| **Owner Occupied** | **Related** | **Single Family** | **Residential** |
| Subdivision | Lot Square Feet | APN | School District |
| **Old Farm Of Murray 2** | **10,454** | **21-14-303-016-0000** | **Murray School District** |

## Previous Addresses

All previously reported addresses for Keshia Catten.

1156 W Rimrock Ln
Salt Lake City, UT 84123
Salt Lake County
(Jun 2007 - Nov 2024)

991 W Sunberry Dr
Salt Lake City, UT 84123
Salt Lake County
(Jun 2006 - Nov 2024)


## Criminal Records Report Sponsored Link

- Arrest & Criminal Records
- Misdemeanors & Felonies
- Registered Sex Offender Check
- Warrants & Police Records
- Nationwide Court Records
- Speeding Tickets

View Criminal Records Report

Sponsored Links

## Possible Relatives

May include parents (mother, father), spouse (wife, husband), exes, brothers, sisters and children of Keshia Catten.

| | | | |
|---|---|---|---|
| Garrett Catten<br>Age 44 | Gavin Catten<br>Age 47 | Jacqueline Catten<br>Age 75 | Joseph Anderson<br>Age 36 |
| Lawrence Catten<br>Age 75 | McKenzie Catten<br>Age 42 | Vivian Catten<br>Age 49 | Craig Catten<br>Age 62 |
| Debra Catten<br>Age 67 | Karen Catten<br>Age 84 | Katrina Catten<br>Age 21 | Linda Catten<br>Age 78 |

## Possible Associates

May include current and past roommates, friends, and extended family of Keshia Catten.

| | | | |
|---|---|---|---|
| Calvin Coon<br>Age 100 | Keshia Jacquelle Catten<br>Age 38 | Robert Moore<br>Age 40 | Bill Boss<br>Age 59 |
| Deanne Boss<br>Age 61 | Douglas Kissel<br>Age 58 | Eduardo Quiroz<br>Age 40 | Elizabeth Murdock<br>Age 50 |
| Richard Murdock<br>Age 50 | Scott Burwell<br>Age 63 | Shirley Coon<br>Age 96 | Susan Kissel<br>Age 56 |


## Background Report Sponsored Link

- Arrest Records
- Court Records
- Marriage & Divorce Records
- Bankruptcies, Judgments, Liens
- Search Warrants
- Property Records
- Current and Past Contact Info
- Reverse Phone Lookups
- Age
- Locality History and Phone Numbers
- Relatives and Associates
- Public Records Data
- Background Search

View Background Report

advertisement


# Background Profile on Keshia J Catten

Born in September 1987, Keshia J Catten is **38 years old**. She has lived at 5822 S Treasure Farm Cir in **Salt Lake City, UT** since December 2016. Keshia can be reached at **(801) 403-4878**, a

A former address for Keshia is in Salt Lake City, UT for about 18 years (from June 2006 to November 2024). We also found phone numbers for Keshia: **(801) 268-2090** (voip), **(801) 815-6450** (mobile) and others. Keshia has email addresses including **kjcatten@gmail.com** and **keshiacatten@msn.com**.

Social media links, property ownership & more can be found at our partner site.

Keshia's relatives include **Garrett Catten**, **Gavin Catten**, **Jacqueline Catten**, **Joseph Anderson** and 17 others. Keshia's associates include **Calvin Coon**, **Keshia Jacquelle Catten** and others.

A full criminal records report for Keshia Catten can be found at our partner site.

The property at **5822 S Treasure Farm Cir in Salt Lake City, UT 84123** features 4 bedrooms, 2.5 bathrooms, and 2,096 sq feet. It appears Keshia owns this property. This property is valued at approximately **$681,000** with approximately $326,758 in equity (48%). The property was purchased in April 2020 for **$360,000**. It was built in 2014 (12 years ago).

A more in-depth report can be found at our partner site.

## Frequently Asked Questions

- Where does **Keshia J Catten** live? +
- How old is **Keshia J Catten**? +
- What is **Keshia J Catten**'s phone number? +
- Is **Keshia J Catten** married? +
- What other names is **Keshia J Catten** known by? +
- Where has **Keshia J Catten** lived previously? +
- Who are **Keshia J Catten**'s relatives? +


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Disclaimers
Information displayed on this page is compiled from public records sources including but not limited to

## ENTITY INFORMATION

### ENTITY INFORMATION

**Entity Name:**

CATTEN LAW, P.C.

**Entity Number:**

8423509-0144

**Entity Type:**

Domestic Business Corporation

**Entity Subtype:**

Domestic Professional Corporation

**Formation Date:**

08/29/2012

**Profession:**

N/A

**Formation Effective Date:**

08/29/2012

**Entity Status:**

Active

**Renew By Date:**

08/31/2026

**Entity Status Details:**

Current

**Last Renewed Date:**

07/29/2025

**Status Updated On:**

07/29/2025

## REGISTERED AGENT INFORMATION

**Name:**

J CATTEN

**Registered Agent Type:**

Individual

**Street Address:**

2989 CASCADE WY, MILLCREEK, UT, 84109, USA

**Last Updated:**

9/13/2024 9:22:44 PM

## PRINCIPAL INFORMATION

| Title | Name | Address | Last Updated |
|---|---|---|---|
| Director | JON RICHARD CATTEN | 2989 CASCADE WY, Salt Lake City, UT, 84109, USA | 09/13/2024 |
| President | JON RICHARD CATTEN | 2989 CASCADE WY, Salt Lake City, UT, 84109, USA | 09/13/2024 |

Page 1 of 1, records 1 to 2 of 2

## ADDRESS INFORMATION

**Physical Address:**

2989 CASCADE WAY, PO BOX 9805, SALT LAKE CITY, UT, 84109, USA

**Updated Date:**

9/13/2024 8:42:59 PM

**Mailing Address:**

**Updated Date:**

Filing History Name History Mergers/Conversions Associated DBAs

Return to Search Return to Results

**ATTACHMENT "D"**

**WEST VALLEY CITY**
Human Resources

**From:** West Valley City Human Resources

**Sent:** March 11, 2026

**Subject:** Francis Lilly

To whom it may concern,

This letter is regarding Francis Lilly; he was employed with West Valley City from March 26, 2007 thru July 27, 2011 as a Planner II in the CED Department.

*Effective 5/1/2024*

**ATTACHMENT "E"**

**10-3-1301 Short title.**

This part is known as the "***Municipal Officers' and Employees' Ethics Act***."

Amended by Chapter 147, 1989 General Session

**10-3-1302 Purpose.**

The purposes of this part are to establish standards of conduct for municipal officers and employees and to require these persons to disclose actual or potential conflicts of interest between their public duties and their personal interests.

Amended by Chapter 438, 2024 General Session

**10-3-1303 Definitions.**

As used in this part:

(1)

(a)"Appointed officer" means an individual appointed to:

(i)a statutory office or position; or

(ii)a position of employment with a city or with a community reinvestment agency under Title 17C, Limited Purpose Local Government Entities - Community Reinvestment Agency Act.

(b)"Appointed officer" includes an individual serving on a special, regular, or full-time committee, agency, or board, regardless of whether the individual is compensated for the individual's services.

(c)"Appointed officer" does not include an elected officer.

(2)"Assist" means to act, or offer or agree to act, in such a way as to help, represent, aid, advise, furnish information to, or otherwise provide assistance to a person or business entity, believing that such action is of help, aid, advice, or assistance to such person or business entity and with the intent to assist such person or business entity.

(3)"Business entity" means a sole proprietorship, partnership, association, joint venture, corporation, firm, trust, foundation, or other organization or entity used in carrying on a business.

(4)"Compensation" means anything of economic value, however designated, which is paid, loaned, granted, given, donated, or transferred to a person or business entity by anyone other than the governmental employer for or in consideration of personal services, materials, property, or any other thing whatsoever.

(5)"Elected officer" means:

(a)an individual elected or appointed to fill a vacancy in the office of mayor, commissioner, or council member; or

(b)an individual who is considered to be elected to the office of mayor, commissioner, or council member by a municipal legislative body in accordance with Section 20A-1-206.

(6)"Improper disclosure" means the disclosure of private, controlled, or protected information to a person who does not have both the right and the need to receive the information.

(7)"Municipal employee" means an individual who is employed on a full or part-time basis by a municipality or by a community reinvestment agency under Title 17C, Limited Purpose Local Government Entities - Community Reinvestment Agency Act.

(8)"Officer" means an appointed officer or an elected officer.

(9)"Private, controlled, or protected information" means information classified as private, controlled, or protected under Title 63G, Chapter 2, Government Records Access and Management Act, or another applicable provision of law.

(10)"Substantial interest" means the ownership, either legally or equitably, by an individual, the individual's spouse, or the individual's minor children, of at least 10% of the outstanding shares of a corporation or 10%

interest in any other business entity.

Amended by Chapter 443, 2024 General Session

**10-3-1303.5 Statutory construction.**

The definition of appointed officer in Section 10-3-1303 does not have the effect of making an appointed individual or employee an officer of the municipality.

Enacted by Chapter 443, 2024 General Session

**10-3-1304 Use of office for personal benefit prohibited.**

(1)As used in this section, "economic benefit tantamount to a gift" includes:

(a)a loan at an interest rate that is substantially lower than the commercial rate then currently prevalent for similar loans; or

(b)compensation received for a private service rendered at a rate substantially exceeding the fair market value of the service.

(2)Except as provided in Subsection (4), it is an offense for an officer or municipal employee to:

(a)disclose or improperly use private, controlled, or protected information acquired by reason of the officer's or municipal employee's official position or in the course of official duties in order to further substantially the officer's or municipal employee's personal economic interest or to secure special privileges or exemptions for the officer or municipal employee or for others;

(b)use or attempt to use the officer's or municipal employee's official position to:

(i)further substantially the officer's or municipal employee's personal economic interest; or

(ii)secure special privileges for the officer or municipal employee or for others; or

(c)knowingly receive, accept, take, seek, or solicit, directly or indirectly, for the officer or municipal employee or for another, a gift of substantial value or a substantial economic benefit tantamount to a gift that:

(i)would tend improperly to influence a reasonable person in the person's position to depart from the faithful and impartial discharge of the person's public duties; or

(ii)the person knows or that a reasonable person in that position should know under the circumstances is primarily for the purpose of rewarding the person for official action taken.

(3)Subsection (2)(c) does not apply to:

(a)an occasional nonpecuniary gift having a value of less than $50;

(b)an award publicly presented in recognition of public services;

(c)any bona fide loan made in the ordinary course of business; or

(d)a political campaign contribution.

(4)This section does not apply to an officer or municipal employee who engages in conduct that constitutes a violation of this section to the extent that the officer or municipal employee is chargeable, for the same conduct, under Section 76-8-105.

Amended by Chapter 443, 2024 General Session

**10-3-1305 Compensation for assistance in transaction involving municipality -- Public disclosure and filing required.**

(1)As used in this section, "municipal body" means any public board, commission, committee, or other public group organized to make public policy decisions or to advise persons who make public policy decisions.

(2)Except as provided in Subsection (9), it is an offense for an officer who is a member of a municipal body to receive or agree to receive compensation for assisting a person or business entity in a transaction involving the municipality of which the officer is elected or appointed unless the officer:

(a)files with the mayor a sworn statement disclosing the information described in Subsection (8);

(b)discloses the information described in Subsection (8) in an open meeting to the members of the municipal body of which the officer is a member immediately before the discussion; and
(c)for an officer who is an elected officer, files the sworn statement described in Subsection (2)(a) with the city recorder or town clerk.
(3)It is an offense for an appointed officer who is not a member of a municipal body or a municipal employee to receive or agree to receive compensation for assisting a person or business entity in a transaction involving the municipality by which the appointed officer or municipal employee is employed unless the appointed officer or employee:
(a)files with the mayor a sworn statement disclosing the information described in Subsection (8); and
(b)discloses the information described in Subsection (8) to:
(i)the appointed officer's or municipal employee's immediate supervisor; and
(ii)any other municipal officer or employee who may rely on the appointed officer's or municipal employee's representations in evaluating or approving the transaction.
(4)
(a)An officer or municipal employee shall file the sworn statement described in Subsection (2)(a) or (3)(a), as applicable, on or before the earlier of:
(i)10 days before the date on which the officer or municipal employee and the person or business entity being assisted enter into an agreement; or
(ii)10 days before the date on which the officer or municipal employee receives compensation.
(5)In accordance with Subsection (2)(c), an elected officer shall file the sworn statement with the city recorder or town clerk on or before the earlier of the deadlines described in Subsections (4)(a)(i) and (ii).
(6)A municipal recorder or town clerk who receives a sworn statement described in Subsection (2)(a) shall:
(a)post a copy of the sworn statement on the municipality's website; and
(b)ensure that the sworn statement remains posted on the municipality's website until the elected officer leaves office.
(7)The sworn statements described in this section are public information and shall be available for examination by the public.
(8)The sworn statement and public disclosure described in Subsections (2) and (3) shall contain:
(a)the name and address of the officer or municipal employee;
(b)the name and address of the person or business entity being or to be assisted or in which the officer or municipal employee has a substantial interest; and
(c)a brief description of the transaction as to which service is rendered or is to be rendered and of the nature of the service performed or to be performed.
(9)This section does not apply to an officer who is a member of a municipal body and who engages in conduct that constitutes a violation of this section to the extent that the officer is chargeable, for the same conduct, under Section 76-8-105.

Amended by Chapter 443, 2024 General Session

**10-3-1306 Interest in business entity regulated by municipality -- Disclosure statement required.**
(1)An officer under this part, or a municipal employee, who is an officer, director, agent, or employee or the owner of a substantial interest in a business entity that is subject to the regulation of the municipality in which the officer or municipal employee is elected, appointed, or employed, shall disclose the position held and the nature and value of the officer's or employee's interest:
(a)upon first becoming appointed, elected, or employed by the municipality; and
(b)when the officer's or municipal employee's position in the business entity changes significantly or when the value of the officer's or municipal employee's interest in the entity significantly increases above the officer's or municipal employee's most recent disclosure.
(2)An officer or municipal employee shall make the disclosure described in Subsection (1) in a sworn

statement filed with:
(a)the mayor; and
(b)for an officer who is an elected officer, the city recorder or town clerk.
(3)The mayor shall:
(a)report the substance of the sworn statement described in Subsection (2) to the members of the governing body; or
(b)provide a copy of the sworn statement to the members of the governing body no later than 30 days after the date on which the mayor receives the statement.
(4)The municipal recorder or town clerk who receives the sworn statement described in Subsection (2) shall:
(a)post a copy of the sworn statement on the municipality's website; and
(b)ensure that the sworn statement remains posted on the municipality's website until the elected officer leaves office.
(5)
(a)This section does not apply to an instance where the value of the interest does not exceed $$5,000.
(b)A life insurance policy or an annuity may not be considered in determining the value of the interest.

Amended by Chapter 443, 2024 General Session

**10-3-1307 Interest in business entity doing business with municipality -- Disclosure.**
(1)An officer under this part, or municipal employee, who is an officer, director, agent, employee, or owner of a substantial interest in a business entity that does or anticipates doing business with the municipality in which the officer or municipal employee is appointed, elected, or employed, shall:
(a)publicly disclose the conflict of interest to the members of the body of which the officer is a member or by which the municipal employee is employed, immediately before any discussion by the municipal body concerning matters relating to the business entity, the nature of the officer's or municipal employee's interest in the business entity; and
(b)for an officer who is an elected officer, file a sworn statement describing the conflict of interest with the city recorder or town clerk.
(2)The public disclosure described in Subsection (1)(a) shall be entered in the minutes of the meeting.
(3)A city recorder or town clerk who receives the sworn statement described in Subsection (1)(b) shall:
(a)post a copy of the sworn statement on the municipality's website; and
(b)ensure that the sworn statement remains posted on the municipality's website until the elected officer leaves office.
(4)Disclosure by a municipal employee under this section is satisfied if the municipal employee makes the disclosure in the manner described in Section 10-3-1305 or Section 10-3-1306.

Amended by Chapter 443, 2024 General Session

**10-3-1308 Investment creating conflict of interest with duties -- Disclosure.**
An officer or municipal employee who has a personal interest or investment that creates a conflict between the officer's or municipal employee's personal interests and the officer's or municipal employee's public duties shall disclose the conflict in the manner described in Section 10-3-1306.

Amended by Chapter 443, 2024 General Session

**10-3-1309 Inducing officer or employee to violate part prohibited.**
It is a class A misdemeanor for any person to induce or seek to induce an officer or a municipal employee to violate any of the provisions of this part.

Amended by Chapter 443, 2024 General Session

**10-3-1310 Penalties for violation -- Dismissal from employment or removal from office.**

In addition to any penalty contained in any other provision of law, any person who knowingly and intentionally violates this part, with the exception of Sections 10-3-1306, 10-3-1307, 10-3-1308, and 10-3-1309, shall be dismissed from employment or removed from office and is guilty of:

(1) a felony of the second degree if the total value of the compensation, conflict of interest, or assistance exceeds $1,000;

(2) a felony of the third degree if:

(a) the total value of the compensation, conflict of interest, or assistance is more than $250 but not more than $1,000; or

(b) the elected or appointed officer or municipal employee has been twice before convicted of violation of this chapter and the value of the conflict of interest, compensation, or assistance was $250 or less;

(3) a class A misdemeanor if the value of the compensation or assistance was more than $100 but does not exceed $250; or

(4) a class B misdemeanor if the value of the compensation or assistance was $100 or less.

Amended by Chapter 147, 1989 General Session

**10-3-1311 Municipal ethics commission -- Complaints charging violations.**

(1)A municipality may establish by ordinance an ethics commission to review a complaint against an officer or a municipal employee subject to this part for a violation of a provision of this part.

(2)

(a)A person filing a complaint for a violation of this part shall file the complaint:

(i)with the municipal ethics commission, if a municipality has established a municipal ethics commission in accordance with Subsection (1); or

(ii)with the Political Subdivisions Ethics Review Commission in accordance with Title 63A, Chapter 15, Political Subdivisions Ethics Review Commission, if the municipality has not established a municipal ethics commission.

(b)A municipality that receives a complaint described in Subsection (2)(a) may:

(i)accept the complaint if the municipality has established a municipal ethics commission in accordance with Subsection (1); or

(ii)forward the complaint to the Political Subdivisions Ethics Review Commission established in Section 63A-15-201:

(A)regardless of whether the municipality has established a municipal ethics commission; or

(B)if the municipality has not established a municipal ethics commission.

(3)If the alleged ethics complaint is against a person who is a member of the municipal ethics commission, the complaint shall be filed with or forwarded to the Political Subdivisions Ethics Review Commission.

Amended by Chapter 443, 2024 General Session

**10-3-1312 Violation of disclosure requirements -- Penalties -- Rescission of prohibited transaction.**

If a transaction is entered into in connection with a violation of Section 10-3-1305, 10-3-1306, 10-3-1307, or 10-3-1308, the municipality:

(1)shall dismiss or remove the officer or municipal employee who knowingly and intentionally violates this part from employment or office; and

(2)may rescind or void a contract or subcontract entered into pursuant to that transaction without returning any part of the consideration received by the municipality.

Amended by Chapter 443, 2024 General Session

**10-3-1313 Annual conflict of interest disclosure -- City recorder or town clerk -- Posting of written disclosure statement -- Penalties.**

(1)In addition to any other disclosure obligation described in this part, an elected officer shall, no sooner than January 1 and no later than January 31 of each year during which the elected officer holds the office of mayor, commissioner, or council member:

(a)prepare a written conflict of interest disclosure statement that contains a response to each item of information described in Subsection 20A-11-1604(6); and

(b)submit the written disclosure statement to the city recorder or town clerk.

(2)

(a)No later than 10 business days after the day on which the elected officer submits the written disclosure statement described in Subsection (1) to the city recorder or town clerk, the city recorder or town clerk shall:

(i)post an electronic copy of the written disclosure statement on the municipality's website; and

(ii)provide the lieutenant governor with a link to the electronic posting described in Subsection (2)(a)(i).

(b)The city recorder or town clerk shall ensure that the elected officer's written disclosure statement remains posted on the municipality's website until the elected officer leaves office.

(3)A city recorder or town clerk shall take the action described in Subsection (4) if:

(a)an elected officer fails to timely submit the written disclosure statement described in Subsection (1); or

(b)a submitted written disclosure statement does not comply with the requirements of Subsection 20A-11-1604(6).

(4)If a circumstance described in Subsection (3) occurs, the city recorder or town clerk shall, within five days after the day on which the city recorder or town clerk determines that a violation occurred, notify the elected officer of the violation and direct the elected officer to submit an amended written disclosure statement correcting the problem.

(5)

(a)It is unlawful for an elected officer to fail to submit or amend a written disclosure statement within seven days after the day on which the elected officer receives the notice described in Subsection (4).

(b)An elected officer who violates Subsection (5)(a) is guilty of a class B misdemeanor.

(c)The city recorder or town clerk shall report a violation of Subsection (5)(a) to the attorney general.

(d)In addition to the criminal penalty described in Subsection (5)(b), the city recorder or town clerk shall impose a civil fine of $100 against an elected officer who violates Subsection (5)(a).

(6)The city recorder or town clerk shall deposit a fine collected under this section into the municipality's general fund as a dedicated credit to pay for the costs of administering this section.

Enacted by Chapter 443, 2024 General Session

ATTACHMENT "F"

# Elected Officer Annual Conflict-of-Interest Disclosure Statement

**As required by Utah Code Ann. 10-3-1313 and Utah Code Ann. 20A-11-1604(6), all City elected officers shall no sooner than January 1 and no later than January 31 of each year make a complete conflict of interest disclosure to be filed with the City Recorder. An electronic copy of this written disclosure statement will be posted on the City's website until the elected officer leaves office, and a link to the electronic posting will be provided to the State of Utah's Lieutenant Governor's office.**

**Elected Officer's Name:** Silvia Catten

**Spouse's Name (if applicable):** Garrett Catten

## SECTION I: REQUIRED INFORMATION

***Attach additional pages if needed.***

- **Elected Officer's Current Employment**
  *Current Employer Name* Self-Employed/ Arc Tags, LLC
  *Address* 1026 Hillview Dr
  *City, State and Zip* Millcreek, UT 84124
  *Occupation* small business
  *Brief Description of Duties* owner/operator

- **Elected Officer's Previous Employment** *(during preceding year, if applicable)*
  *Previous Employer Name* n/a
  *Address* _____
  *City, State and Zip* _____
  *Occupation* _____
  *Brief Description of Duties* _____

- **Spouse's Current Employment**
  *Current Employer Name* Blue Star Steel
  *Address* 3692 W 500 S
  *City, State and Zip* Salt Lake City, UT 84104
  *Occupation* General Manager
  *Brief Description of Duties* _____

- **Spouse's Previous Employment** *(during preceding year, if applicable)*

  *Current Employer Name* n/a

  *Address* _____

  *City, State and Zip* _____

  *Occupation* _____

  *Brief Description of Duties* _____

## SECTION II: REQUIRED DISCLOSURES

***Attach additional pages if needed.***

1. **List each entity that you are an owner or officer of, or was an owner or officer of, during the preceding year:**

   *Entity name:* n/a

   *Brief description of the type of business or activity conducted by the entity:*

   _____

   _____

   *Your position in the entity*: _____

2. **List each individual or entity from which you have received $5,000 or more in income during the preceding year:** *(If you provide goods or services to multiple customers or clients as part of a business or licensed profession, you are only required to provide this information in relation to the entity or practice through which you provided the goods or services. You are not required to provide information in relation to your individual customers or clients.)*

   *Individual or Entity name:* n/a

   *Brief description of the type of business or activity conducted by the entity:*

   _____

   _____

3. **List each entity that you hold any stocks or bonds having a fair market value of $5,000 or more at the time of this disclosure or during the preceding year** *(exclude funds managed by a third party including blind trusts, managed investment accounts, and mutual funds):*

   *Individual or Entity name:* n/a

   *Brief description of the type of business or activity conducted by the entity*:

   _____

   _____

4. **List each entity in which you currently serve, or served in the preceding year, in a paid leadership capacity or in a paid or unpaid position on a board of directors** *(do not include any entities listed in 1-3 above)*:

*Individual or Entity name:* n/a

*Brief description of the type of business or activity conducted by the entity*:

*Your position in the entity*:

5. **List the name of your spouse and any other adult residing in your household who is not related by blood or marriage, as applicable:**

*Name:* *Relationship:*

*Occupation:* *Job Duties:*

*Name:* *Relationship:*

*Occupation:* *Job Duties:*

## SECTION III: OPTIONAL DISCLOSURES

***Attach additional pages if needed.***

1. ***Optional* Describe any real property in which you hold an ownership or other financial interest that you believe may constitute a conflict of interest including a description of the type of interest you hold in the property.**

n/a

2. ***Optional* Describe any other matter or interest you believe may constitute a conflict of interest with your public duties as an elected officer.**

n/a

*My answers to this disclosure are true and accurate to the best of my knowledge. Should a possible conflict of interest arise in my responsibilities as an elected officer, I understand my obligation to notify and abstain from any participation in the matter until the City determines whether a conflict exists and how that conflict shall be resolved. I understand this statement is public information and shall be available for public examination when required by law.*

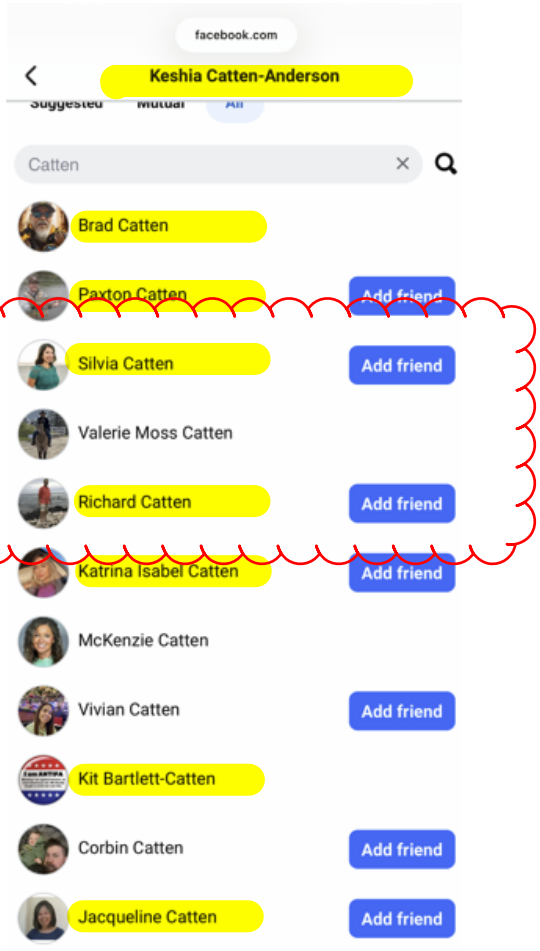
Silvia Catten

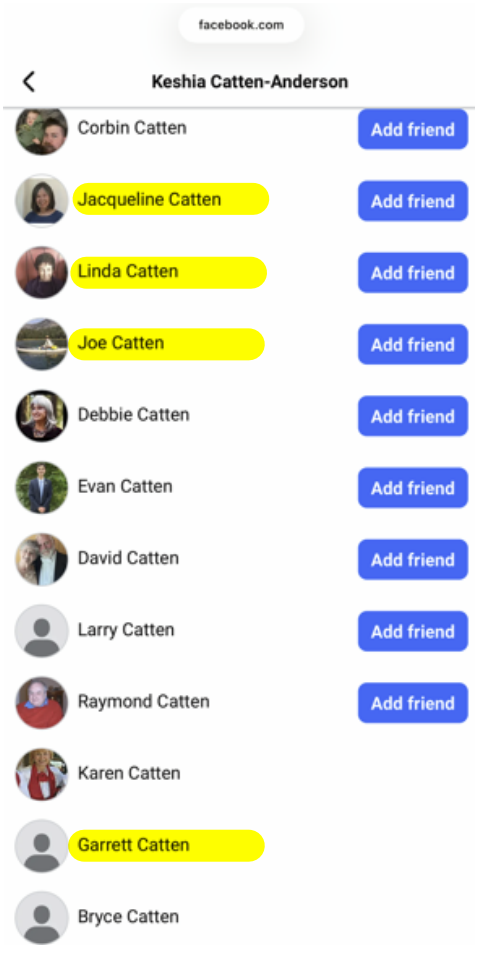
**Elected Officer Signature**

01/07/2026

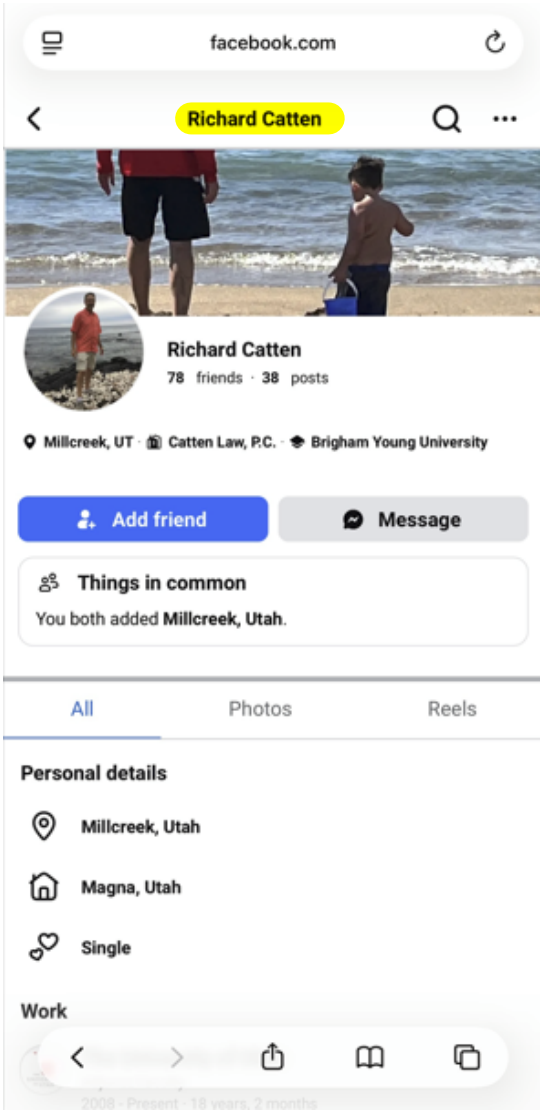
**Date**

**ATTACHMENT "G"**

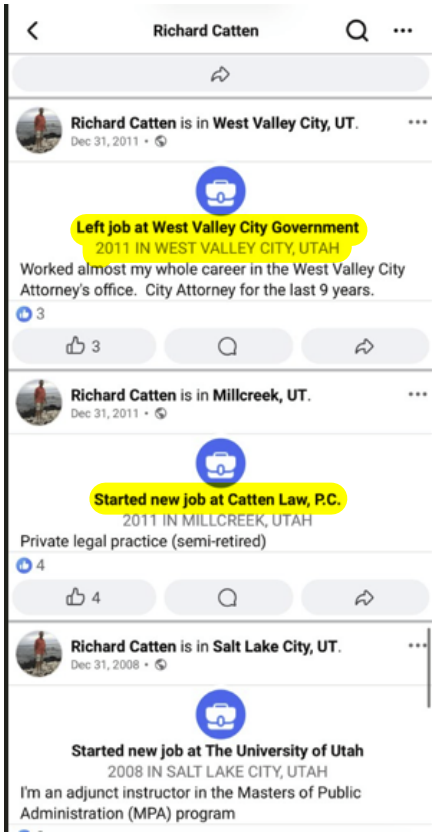


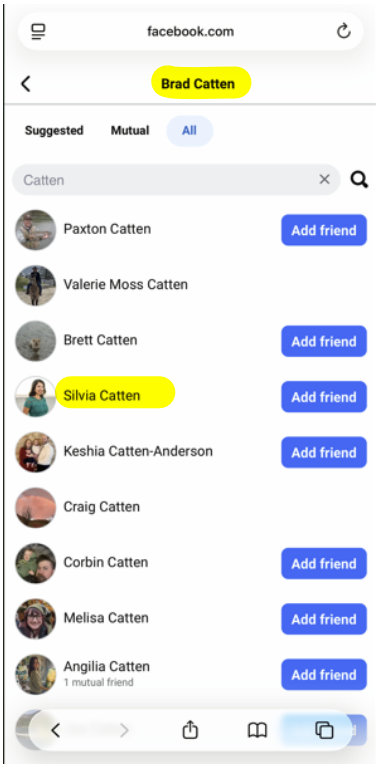



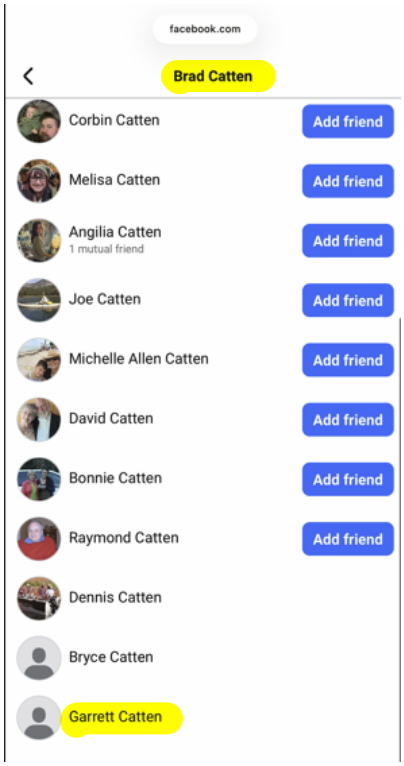


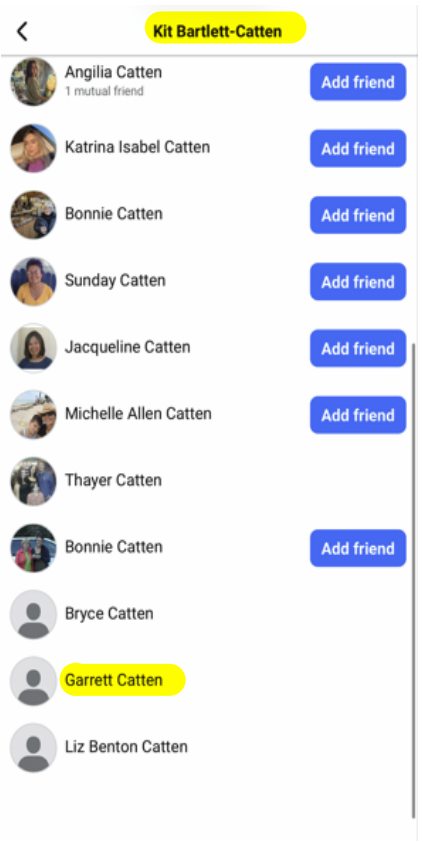


facebook.com
Richard Catten
Richard Catten
78 friends · 38 posts
Millcreek, UT · Catten Law, P.C. · Brigham Young University
Add friend
Message
Things in common
You both added Millcreek, Utah.
All
Photos
Reels
Personal details
Millcreek, Utah
Magna, Utah
Single
Work

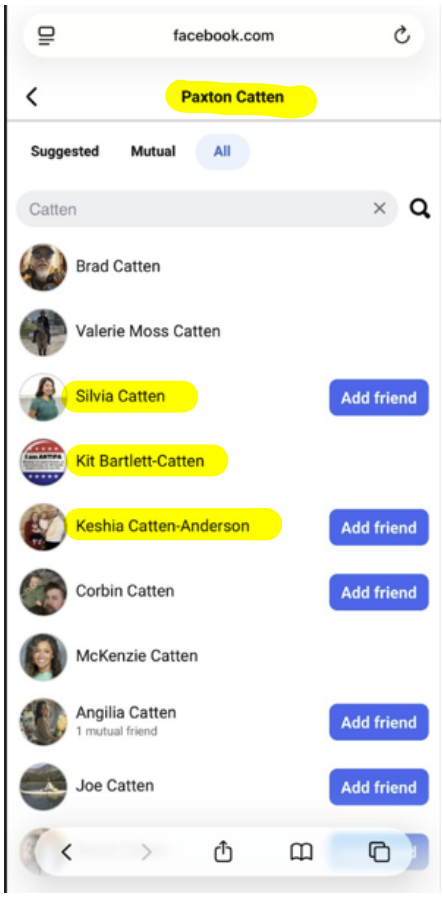

facebook.com
Richard Catten
Richard Catten updated his profile picture.
May 15, 2022
5
2 Comments

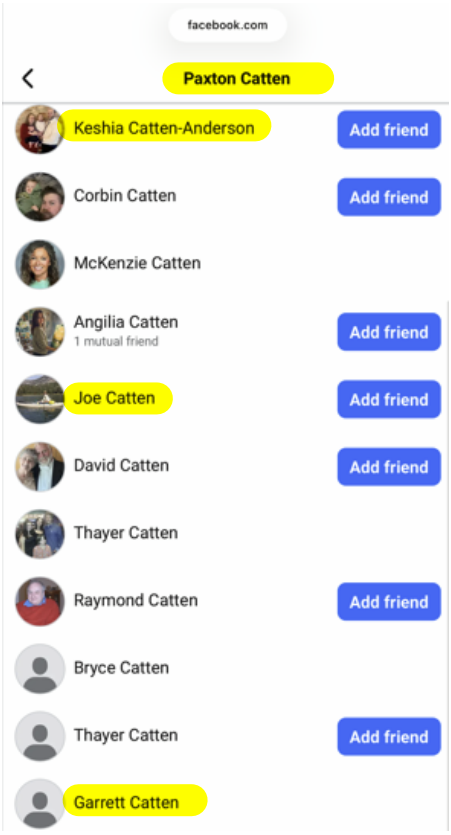

Richard Catten
Richard Catten is in West Valley City, UT.
Dec 31, 2011
Left job at West Valley City Government
2011 IN WEST VALLEY CITY, UTAH
Worked almost my whole career in the West Valley City Attorney's office. City Attorney for the last 9 years.
3
3
Richard Catten is in Millcreek, UT.
Dec 31, 2011
Started new job at Catten Law, P.C.
2011 IN MILLCREEK, UTAH
Private legal practice (semi-retired)
4
4
Richard Catten is in Salt Lake City, UT.
Dec 31, 2008
Started new job at The University of Utah
2008 IN SALT LAKE CITY, UTAH
I'm an adjunct instructor in the Masters of Public Administration (MPA) program

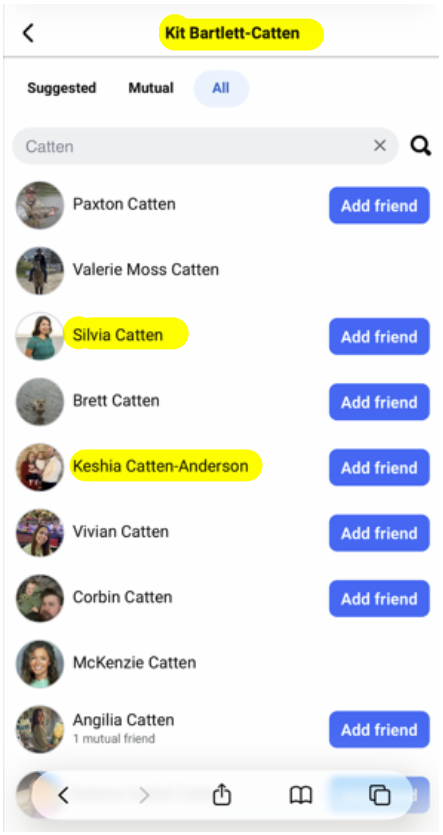

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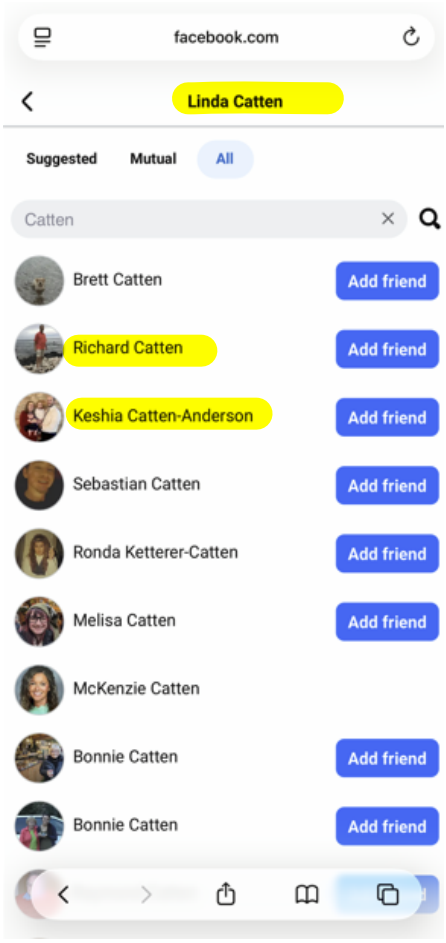

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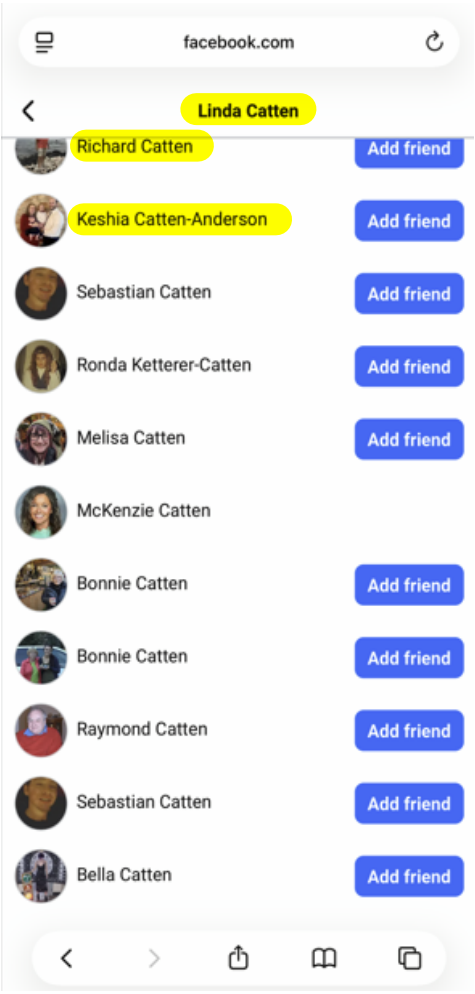

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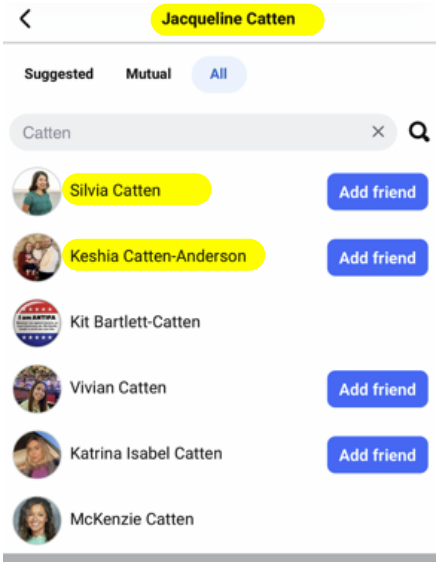

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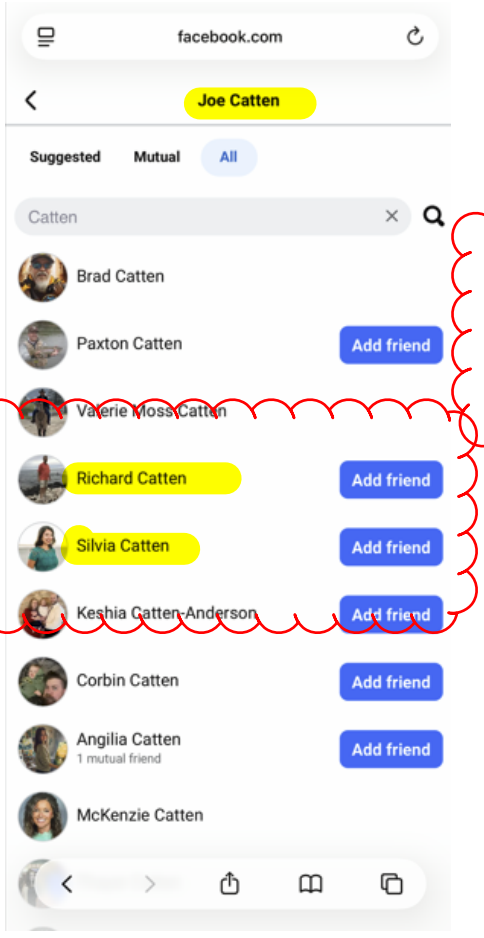

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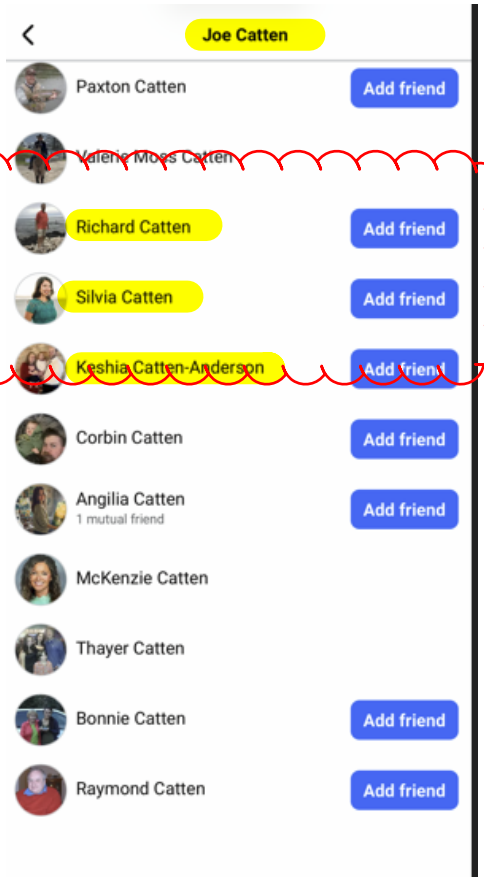

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**ATTACHMENT "H"**

# MILLCREEK

## FY25 CONSOLIDATED FEE SCHEDULE

See Page 5 - Line Item 172.
(Other pages removed for simplification purposes)

| ITEM | | DESCRIPTION | CODE | FEE |
|---|---|---|---|---|
| | | **BUILDING PERMIT FEES** | | |
| | | **All valuations are calculated using the current International Code Council (ICC) Building Valuation Data, except under certain circumstances, which are calculated by project cost.** | | |
| | | *Current ICC Building Valuation Data | | |
| | | **Permit Types** | | |
| 1 | | Building Permit | 15-08-030 | *Based on current ICC Valuation Table |
| 2 | | Demolition Permit | 15-08-030 | *Based on current ICC Valuation Table |
| 3 | | Mechanical, Electrical, Plumbing Permits (Circuit, Electrical Service Charge, Power to Panel, Temporary Panel, Furnace/AC, Ductwork, Water Heater, Re-Pipe, etc.) | 15-16-020 | $70.00 |
| 4 | | Mechanical, Electrical, Plumbing Permits - Additional Appliances, Fixtures, etc. | 15-16-020 | $20.00/additional item |
| 5 | | Grading Permit | 15-08-030 | *Based on current ICC Valuation Table |
| 6 | | Retaining Wall Permit | 15-08-030 | *Based on current ICC Valuation Table |
| 7 | | Manufactured Home Permit | 15-08-030 | $200.00 |
| | | **Solar Permits** | | |
| 8 | | Base Solar Permit (Charged with KWA Fee) | 15-08-030 | $70.00 |
| 9 | | KWA (In addition to Base Solar Permit) | 15-08-030 | $30.00 |
| 10 | | Plan Review Fee (Solar) | 15-08-030 | $100.00 |
| | | **Re-Roof Permits** | | |
| 11 | | Re-roof (Residential) | 15-08-030 | $70.00 |
| | | Re-roof (Commercial) based on valuation below: | | |
| 12 | | $1-$9,999 | 15-08-030 | $150.00 |
| 13 | | $10,000-$49,999 | 15-08-030 | $300.00 |
| 14 | | $50,000-and up | 15-08-030 | $500.00 |
| | | **Window and Door (Replacement only with no other work) Permits** | | |
| 15 | | Window and Door (Residential) | 15-08-030 | $70.00 |
| 16 | | Window and Door (Commercial) | 15-08-030 | *Based on current ICC Valuation Table |
| | | **Plan Review Fees** | | |
| 17 | | Plan Review Fee (Hourly) | 15-08-030 | $120/hour |
| 18 | | Plan Review Fee (Card File) | 15-08-030 | $100.00 |
| 19 | | Plan Review Fee (Residential) | 15-08-030 | 40% of Building Permit Fee |
| 20 | | Plan Review Fee (Commercial) | 15-08-030 | 65% of Building Permit Fee |
| 21 | | Plan Review Fee (Foothills/Canyons Overlay Zone (FCOZ)) | 15-08-030 | 65% of Building Permit Fee |
| 22 | | Substantial Improvement/Substantial Damage Determination | 15-08-040 | $120.00 |
| | | **Inspection Fees** | | |
| 23 | | Re-inspection | 15-08-040 | $75.00 |
| 24 | | Overtime/After Hour/Same Day Requests | 15-08-040 | $120/hour |
| | | **Administrative Fees** | | |
| 25 | | Canceled Building Permit Fee | 15-08-040 | 25% of Building Permit Fee |
| 26 | | Building without Permit Penalty | 15-08-040 | 100% of Building Permit Fee |
| 27 | | Permit Re-instatement Fee | 15-08-040 | 1/2 of BLDG Permit Fee or $200, whichever is less |
| 28 | | Board of Appeals Hearing | 15-08-040 | $300.00 |
| | | **State Surcharge** | | |
| 29 | | Applicable State Surcharge on all permits | 15-08-040 | 1% of Building Fees |

| ITEM | | DESCRIPTION | CODE | FEE |
|---|---|---|---|---|
| 139 | | Waiver of Foothills/Canyon Overlay Zone (FCOZ) Standards | 19-72-060(b&c) | $675.00 |
| 140 | | Residential Canyons Overlay Zone (RCOZ) Option C | 19-71-050 | $675.00 |
| 141 | | Special Exception to have Use Violation declared legal | 19-88-140 | $675.00 |
| 142 | | Re-Zone Gen Plan, etc. | 19-02-130 | $675.00 |
| 143 | | Public Notice Mailings | 19-02-160 | $1.25/notice |
| | | ***Mayor's Meeting (Planning Commission's recommendation to the Mayor):*** | | |
| 144 | | Subdivision Amendment to Vacate a Public Street | 14-48-040 | $115.00 |
| 145 | | Street Dedication (for streets not reviewed as part of a Subdivision Plat) | 15-28-030(b) | $115.00 |
| 146 | | Exception to Road Improvements | 15-28-070 | $115.00 |
| | | ***Millcreek Council Meeting: (Planning Commission's Recommendation to the Millcreek Council):*** | | |
| 147 | | General Plan and General Plan Amendment Ordinances | 19-02-130 | $115.00 |
| 148 | | Re-Zone up to 10 Acres (Zoning Map Amendment) [19.90.050] (Re-Zones greater than 10 acres require consideration of an Area Amendment to the General Plan prior to acceptance of the Re-Zone application. See General Plan Amendment) | 19-90-050 | $115.00 |
| 149 | | Takings Relief Petition Hearing | 19-93-040 | $115.00 |
| | | ***General Plan Amendment:*** | | |
| 150 | | Text Amendment | 19-90-070 | $300.00 |
| 151 | | Future Land Use Map Amendment (base - includes up to 10 acres) | 19-02-130 | $1,500.00 |
| | | Future Land Use Map acreage fee (in addition to base): | | |
| 152 | | Between 10 and 50 Acres | 19-02-130 | $200.00/acre |
| 153 | | Between 50 to 100 Acres | 19-02-130 | $300.00/acre |
| 154 | | Greater than 100 Acres | 19-02-130 | TBD prior to acceptance of the application |
| | | ***Small Wireless Telecom Facilities Deployment*** | | |
| | | Application Fees: | | |
| 155 | | Collocate existing or replacement utility poles or wireless support structures | 16-20-070 | $100/collocation |
| 156 | | Install, modify, or replace a utility pole in connection with a permitted use | 16-20-070 | $250/utility pole |
| 157 | | Install, modify, or replace a utility pole In connection with discretionary use | 16-20-070 | $1,000/utility pole |
| 158 | | Master License Agreement and Site License | 16-20-070 | See Agreements |
| | | **Administrative Fees** | | |
| 159 | | Legal Status of a lot or parcel | 19-02-130 | $50.00 base fee + $50/hour |
| 160 | | Zoning Compliance Letter | 19-02-130 | $50.00 base fee + $50/hour |
| 161 | | Administrative Decision | 19-76-030 | $50.00 base fee + $50/hour |
| | | **Civil Penalties for Violation of Zoning Regulations (Warning Period: 28 Days for All Violations)** | | |
| | | ***Residential Zones: R-1's; R-2's; R-4-8.5; FR's; F-1; RMH*** | | |
| 162 | | Conditional use without a permit & Other Violations | 19-94-070 | $25 fine for each day after warning period |
| 163 | | Nonpermitted use; Violation of permit or approval | 19-94-070 | $50 fine for each day after warning period |
| | | ***Mixed Zones: R-M; MD's; FM's; S-1-G*** | | |
| 164 | | Conditional use without a permit & Other Violations | 19-94-070 | $50 fine for each day after warning period |
| 165 | | Nonpermitted use; Violation of permit or approval | 19-94-070 | $100 fine for each day after warning period |
| | | ***Commercial/Manufacturing Zones: C's; M's; O-R-D*** | | |
| 166 | | Conditional use without a permit & Other Violations | 19-94-070 | $100 fine for each day after warning period |
| 167 | | Nonpermitted use; Violation of permit or approval | 19-94-070 | $200 fine for each day after warning period |
| | | ***Agricultural Zones: A's; FA's*** | | |
| 168 | | Conditional use without a permit & Other Violations | 19-94-070 | $25 fine for each day after warning period |
| 169 | | Nonpermitted use; Violation of permit or approval | 19-94-070 | $50 fine for each day after warning period |
| | | ***Overlay Zones: AOZ; HPZ*** | | |
| 170 | | Violation of provisions | 19-94-070 | $100 fine for each day after warning period |
| | | **Land Use Hearing Officer Review** | | |
| 171 | | Appeals of Conditional Use Decisions | 19-92-030 | $300.00 |
| 172 | | Appeals of a zoning decision or interpretation | 19-92-050 | $300.00 |
| 173 | | Special Exceptions: | | |
| | | Adjusting a zone boundary line | 19-92-060 | $300.00 |

# MILLCREEK

## FY26 CONSOLIDATED FEE SCHEDULE

See Page 5 - Line Item 159.
(Other pages removed for simplification purposes)

| # | DESCRIPTION | CODE | FEE |
|---|---|---|---|
| **BUILDING PERMIT FEES** | | | |
| | **All valuations are calculated using the current International Code Council (ICC) Building Valuation Data, except under certain circumstances, which are calculated by project cost.** | | |
| | *Current ICC Building Valuation Data | | |
| | **Permit Types** | | |
| 1 | Building Permit | 15-08-030 | *Based on current ICC Valuation Table |
| 2 | Demolition Permit | 15-08-030 | *Based on current ICC Valuation Table |
| 3 | Mechanical, Electrical, Plumbing Permits (Circuit, Electrical Service Charge, Power to Panel, Temporary Panel, Furnace/AC, Ductwork, Water Heater, Re-Pipe, etc.) | 15-16-020 | $70.00 |
| 4 | Mechanical, Electrical, Plumbing Permits - Additional Appliances, Fixtures, etc. | 15-16-020 | $20.00/additional item |
| 5 | Grading Permit | 15-08-030 | *Based on current ICC Valuation Table |
| 6 | Retaining Wall Permit | 15-08-030 | *Based on current ICC Valuation Table |
| 7 | Manufactured Home Permit | 15-08-030 | $200.00 |
| | **Solar Permits** | | |
| 8 | Base Solar Permit (Charged with KWA Fee) | 15-08-030 | $70.00 |
| 9 | KWA (In addition to Base Solar Permit) | 15-08-030 | $30.00 |
| 10 | Plan Review Fee (Solar) | 15-08-030 | $100.00 |
| | **Re-Roof Permits** | | |
| 11 | Re-roof (Residential) | 15-08-030 | $70.00 |
| | Re-roof (Commercial) based on valuation below: | | |
| 12 | $1-$9,999 | 15-08-030 | $150.00 |
| 13 | $10,000-$49,999 | 15-08-030 | $300.00 |
| 14 | $50,000-and up | 15-08-030 | $500.00 |
| | **Window and Door (Replacement only with no other work) Permits** | | |
| 15 | Window and Door (Residential) | 15-08-030 | $70.00 |
| 16 | Window and Door (Commercial) | 15-08-030 | *Based on current ICC Valuation Table |
| | **Plan Review Fees** | | |
| 17 | Plan Review Fee (Hourly) | 15-08-030 | $120.00/hour |
| 18 | Plan Review Fee (Identical Plans) | 15-08-030 | $100.00 |
| 19 | Plan Review Fee (Residential) | 15-08-030 | 40% of Building Permit Fee |
| 20 | Plan Review Fee (Commercial) | 15-08-030 | 65% of Building Permit Fee |
| 21 | Substantial Improvement/Substantial Damage Determination | 15-08-040 | $120.00 |
| | **Inspection Fees** | | |
| 22 | Re-inspection | 15-08-040 | $75.00 |
| 23 | Overtime/After Hour/Same Day Requests | 15-08-040 | $120.00/hour |
| | **Administrative Fees** | | |
| 24 | Canceled Building Permit Fee | 15-08-040 | 25% of Building Permit Fee |
| 25 | Building without Permit Penalty | 15-08-040 | 100% of Building Permit Fee |
| 26 | Permit Re-instatement Fee | 15-08-040 | 1/2 of Building Permit Fee or $200.00, whichever is less |
| 27 | Board of Appeals Hearing | 15-08-040 | $300.00 |
| | **State Surcharge** | | |
| 28 | Applicable State Surcharge on all permits | 15-08-040 | 1% of Building Fees |
| **BUILDING PERMIT AND INSPECTION FEES VALUATION TABLE** | | | |
| | **Value of Project** | | **Bldg Permit Fee** |
| 29 | Less Than $2,000 | 15-08-030 | $76.50 |

Increased Fee in FY26

| # | DESCRIPTION | CODE | FEE |
|---|---|---|---|
| 153 | Variances | 18-15-040 (c) | $600.00 |
| | **Other Administrative Fees** | | |
| 154 | Neighborhood Compatibility Modification | 18-34-090, 18-36-090, 18-37-090, 18-66-100 | $250.00 |
| 155 | Legal Status of a Lot or Parcel | 18-12-020 (a) | $100.00 |
| 156 | Zoning Compliance Letter | 18-12-020 (a) | $100.00 |
| 157 | Extensions of Land Use Approvals | 18-12-030 | $500.00 |
| 158 | Street Dedication as Part of a Building Permit, Site Plan Approval, Change of Use Permit, Minor Site Plan Amendment, or Conditional Use Approval | 15-28-030 | $100.00 |
| 159 | Appeals of Land Use Decisions | 18-04-010 | $600.00 |
| 160 | Public Notice Mailings | 18-13-060 (e) | $1.50 per notice |
| | **Small Wireless Facility Deployment License and Application Fees** | | |
| 161 | Collocate existing or replacement utility poles or wireless support structures | 16-20-070 | $100.00/collocation |
| 162 | Install, modify, or replace a utility pole in connection with a permitted use | 16-20-070 | $250.00/utility pole |
| 163 | Install, modify, or replace a utility pole in connection with a discretionary use | 16-20-070 | $1,000.00/utility pole |
| 164 | Master Site Agreement and Site License | 16-20-070 | See Agreements |
| | **Planning and Engineering Plan Checking Fees** | | |
| | ***Planning and Engineering Checking Fee for Subdivision Development:*** | | |
| 165 | Engineering Review Fee for Subdivision Development | 3-48-020 | 6% of Engineering bond |
| 166 | Planning Review Fee for Subdivision Development | 3-48-020 | 6% of Landscape bond |
| | ***Planning and Engineering Checking Fee for Non-Subdivision Development:*** | | |
| 167 | Engineering Review Fee for Non-Subdivision Development | 3-48-030 | 4.5% of Engineering bond |
| 168 | Planning Review Fee for Non-Subdivision Development | 3-48-030 | 4.5% of Landscape bond |
| 169 | Road dedication without plat | 3-48-040 | $150.00 |
| | ***Address Change Fees*** | | |
| 170 | SLCo Assignment of Address | 3-42-010 | Actual SLCO Cost must be paid in advance |
| | ***Surveying Review Fees:*** | | |
| 171 | Surveying Charge | | Actual SLCO Cost must be paid in advance |
| 172 | Review of Geologic and/or Technical Reports | | Actual Cost must be paid in advance |
| 173 | Traffic and Parking Study | 11-26-040 | Actual Cost must be paid in advance |
| | **STORMWATER QUALITY FEE, PENALTY, AND FINE SCHEDULES** | | |
| | **Control Measure Fine (By Violation)** | | |
| 174 | Working without a SWPPP permit | 17-22-180 | $500.00/occurrence |
| 175 | Best management practice failure | 17-22-180 | $500.00/occurrence |
| 176 | Tracking mud on roadway | 17-22-180 | $300.00/occurrence |
| 177 | Failure to clean up or report spills | 17-22-180 | $250.00/occurrence |
| 178 | Failure to conduct stormwater inspections | 17-22-180 | $100.00/occurrence |
| 179 | Failure to maintain stormwater records | 17-22-180 | $100.00/occurrence |
| 180 | Plan Administration - Each SWPPP application requires administration and written documentation such as but not limited to; inspections, training, SWPPP amendments, closeout documents etc. | 17-22-180 | $1,000.00 |
| | **Illicit Discharge Fine (By Violation) -** *Stormwater violation schedule for illicit discharges common to construction and maintenance activities. It is a violation to discharge pollutants. The presence of BMP's does not excuse an illicit discharge. Illicit discharges are divided into the following categories.* | | |
| 181 | Sediment | 17-22-180 | $250.00/day |
| 182 | Cementations material | 17-22-180 | $500.00/day |
| 183 | Paints and solvents | 17-22-180 | $500.00/day |
| 184 | Solid waste | 17-22-180 | $500.00/day |
| 185 | Sanitary waste | 17-22-180 | $2,000.00/day |
| 186 | Fuels | 17-22-180 | $1,000.00/day |

**ATTACHMENT "J"**

**MILLCREEK, UTAH**
**RESOLUTION NO. 25-25**

**A RESOLUTION OF THE MILLCREEK COUNCIL ADOPTING AN UPDATED VERSION OF THE MILLCREEK EMPLOYEE HANDBOOK**

**WHEREAS**, the Millcreek Council ("*Council*") met in regular session on June 23, 2025, to consider, among other things, approving a resolution to adopt an updated version of the Millcreek Employee Handbook to be known as the "Millcreek Employee Handbook – Fourth Edition"; and

**WHEREAS**, the Council approved an Employee Policy and Procedure Manual on October 23, 2017, and subsequently amended it in July 2019, February 2020, May 2020, August 2020, and September 2023; and

**WHEREAS**, the Council has determined that it is in the best interest of the inhabitants of Millcreek to adopt a resolution to adopt an updated version of the Millcreek Employee Handbook to be known as the "Millcreek Employee Handbook – Fourth Edition", a copy of which is attached hereto.

**NOW, THEREFORE, BE IT RESOLVED** that the Millcreek Employee Handbook – Fourth Edition is hereby approved, and the City Manager is hereby directed to implement the Millcreek Employee Handbook – Fourth Edition.

This Resolution, assigned No. 25-25, shall take effect immediately on passage.

**PASSED AND APPROVED** this 23rd day of June 2025.

**MILLCREEK COUNCIL**

By: _____
Bev Uipi, Mayor Pro Tempore

**ATTEST:**

_____
Elyse Sullivan, City Recorder

| Roll Call Vote: | | | |
|---|---|---|---|
| Silvestrini | Yes | No | excused |
| Catten | Yes | No | |
| DeSirant | Yes | No | |
| Jackson | Yes | No | |
| Uipi | Yes | No | |

See Section 4 - Pages 42-45 of this Handbook (Other pages removed from simplification purposes)

# Employee Handbook

Fourth Edition

Effective 07/01/2025

Millcreek Council
Jeff Silvestrini, Mayor
Silvia Catten, District 1
Thom DeSirant, District 2
Cheri Jackson, District 3
Bev Uipi, District 4




Millcreek City Hall
1330 E Chambers Ave
Millcreek, Utah 84106
801-214-2700
millcreekut.gov

Dear Fellow Millcreeker,

Welcome to one of Utah's newest cities and a career in public service for an amazing community! Millcreek's motto is "Connected by Nature," and our natural beauty flows from the Wasatch Mountains west to the Jordan River. But you'll also find a close-knit community and city employees working hard to facilitate connections and make this a great place to live, work, and play.

Having just incorporated a few short years ago, we've been fortunate to hand-pick a "Dream Team" from scratch-including YOU! Millcreek needs your energy, talents, and positive attitude to help build a truly magical municipal organization. I'm glad you are here to enhance our entrepreneurial vibe.

Here we encourage each other to "Play to Win," and we expect big things. Our culture is fast-moving, nimble, and responsive. But we also expect hard work, dedication, and being problem solvers instead of bureaucrats. We put a lot of trust in our team, and if you are fair with Millcreek, Millcreek will always be fair with you.

The policies in this handbook are here to help you do your job effectively and efficiently. Please take time to read and understand them and refer back to this book often. Any questions along the way? I'm here for you, so is your Department Head, and so is Human Resources. We can't wait to help you thrive and soar at Millcreek!

All the best,



Mike Winder
City Manager

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# SECTION 4: CODE OF CONDUCT AND ETHICAL BEHAVIOR

## 4-01 CODE OF CONDUCT

1. **Professionalism** – The City is a public entity whose purpose, among others, is to provide municipal services to its residents. City employees must adhere to high standards of public service that emphasize professionalism and courtesy. City employees shall conduct themselves in a way that will bring trust and respect to themselves and the City. Employees are expected to treat the public, visitors, and fellow employees with respect at all times.

2. **Conflict of Interest** – The purposes of this section are to establish standards of conduct for municipal officers and employees and to require these persons to disclose actual or potential conflicts of interest between their public duties and their personal interests.

   - General - All municipal officers and employees shall comply with the Municipal Officer's and Employee's Ethics Act (Utah Code Ann. §10-3-1301 et seq.)
   - Use of Office for Personal Benefit - All municipal officers and employees shall comply with Utah Code Ann. §10-3-1304.
   - Compensation for Assistance in Transaction Involving Municipality - All municipal officers and employees shall comply with Utah Code Ann. §10-3-1305.
   - Interest in Business Entity Regulated by Municipality - All municipal officers and employees who are officers, directors, agents, or employees or the owners of a substantial interest in a business entity that is subject to the regulation of the City in which the officer or municipal employee is elected, appointed, or employed, shall comply with Utah Code Ann. §10-3-1306.
   - Interest in Business Entity Doing Business with the City - All municipal officers and employees who are officers, directors, agents, or employees or the owners of a substantial

interest in a business entity that does or anticipates doing business with the City shall comply with Utah Code Ann. §10-3-1307.

- Investments Creating Conflict of Interest - All municipal officers and employees who have a personal interest or investment that creates a conflict between the officer's or municipal employee's personal interests and the officer's or municipal employee's public duties shall comply with Utah Code Ann. §10-3-1309.
- Officer/Employee Conflict-of-Interest Disclosure Statement - All municipal officers and employees shall file an "Officer/Employee Conflict-of-Interest Disclosure Statement" with Human Resources at the time of hire and thereafter as required. The "Officer/Employee Conflict-of-Interest Disclosure Statement" can be accessed on the City's M Drive.
    - City elected officers must complete an additional conflict-of-interest form, the "Elected Officer Annual Conflict-of-Interest Disclosure Statement," in January each year, as set forth in Utah Code Ann. §10-3-1313.

3. Annual Ethics Pledge - All persons holding office or in the employment of Millcreek, before commencing the duties of their respective offices and annually thereafter, shall read, sign, and file the "Annual Ethics Pledge" in a form provided by the City.
    - The "Annual Ethics Pledge" form can be accessed on the City's M Drive.

4. Reporting Fraud, Waste, and Abuse--The City recognizes the need to establish a reporting and investigation process for suspected fraud, waste, or abuse by City employees, vendors, or the public.
    - Employees are responsible to report fraud, waste, abuse, and other irregularities.
    - Suspected fraud, waste, or abuse should be reported immediately. To aid in the investigation, provide as much information as possible, including the names of individuals involved, details about the issue, and the date, time, and place of the occurrence.
    - The Utah Protection of Public Employees Act protects employees who report suspected fraud. (Utah Code Ann. §67-21-1 et seq.)
    - Types of behavior that should be reported:
        - Gross mismanagement
        - Abuse of authority
        - Unethical conduct
        - Undisclosed conflicts of interest

- Physical or emotional abuse
- Child molestation or sexual abuse
- Using City assets for personal benefit
- Timecard violations
- Wasteful or fraudulent purchases
- Theft
- Forgery
- Other irregularities

- Employees may file a report directly through one of the following means:
  - Email fraudhotline@millcreekut.gov
  - Immediate Supervisor
  - Any Department Head
  - Human Resources Manager or HR/Finance Director
  - Assistant City Manager
  - City Manager
  - City Attorney
  - Mayor or member of the City Council
  - State Auditors Fraud Hotline (801) 538-9777
- Employees shall not file a false, frivolous, or malicious report.
- Employees shall not alert suspected individuals whether they are the subject of or part of a fraud, waste, or abuse report. If a supervisor is suspected of being involved in the reported activity, the employee should choose a reporting avenue that does not include that supervisor.
- Employees shall not attempt to personally conduct investigations, interviews, or interrogations related to any suspected inappropriate activity. The employee making the report should not contact the suspected individual to determine the facts or demand restitution.
- The proper management level or an independent third party will thoroughly investigate reported fraud, waste, or abuse.

**ATTACHMENT "K"**

**MILLCREEK, UTAH**
**RESOLUTION NO. 21-32**

**A RESOLUTION OF THE MILLCREEK COUNCIL APPROVING AMENDED RULES OF ORDER AND PROCEDURE FOR THE MILLCREEK PLANNING COMMISSION**

**WHEREAS**, the Millcreek Council ("*Council*") met in regular meeting on July 26, 2021 to consider, among other things, approving amended Rules of Order and Procedure for the Millcreek Planning Commission ("Amended Rules"); and

**WHEREAS**, as Millcreek Code of Ordinances Section 19.05.060 provides, "[t]he Commission shall adopt rules of order and procedure for use by the planning commission in a public meeting and for any other purposes considered necessary for the functioning of the Commission. Such policies and procedures shall be approved by the Council before taking effect," and

**WHEREAS,** at a business meeting held on July 21, 2021, the Planning Commission considered and adopted and recommended approval of the Amended Rules pursuant to Millcreek Code of Ordinances Section 19.05.060; and

**WHEREAS**, a copy of the Amended Rules adopted by the Planning Commission has been presented to the Council, a copy of which is attached hereto; and

**WHEREAS**, the Council has reviewed the Amended Rules and determines that the Amended Rules are acceptable.

**NOW, THEREFORE, BE IT RESOLVED** by the Council that the Rules are hereby approved (designated by interlineating the words to be deleted and underlining the words to be added).

This Resolution, assigned No. 21-32, shall take effect immediately upon passage.

**PASSED AND APPROVED** by the Council this 26th day of July, 2021.

**MILLCREEK**

_____
Jeff Silvestrini, Mayor

**ATTEST**:

_____
Elyse Sullivan, City Recorder

Roll Call Vote:

| | | |
|---|---|---|
| Silvestrini | Yes | No |
| Marchant | Yes | No |
| Jackson | Yes | No |
| Catten | Yes | No |
| Uipi | Yes | No |

# MILLCREEK PLANNING COMMISSION
# RULES OF ORDER AND PROCEDURE

These Rules of Order and and Procedure ("Rules of Procedure") shall govern the proceedings of the Millcreek Planning Commission ("Commission") and shall be consistent with applicable provisions of the Utah Code ("Utah Code") and Millcreek Code of Ordinances. ("Millcreek Ordinances").

## I. Authority and Duties

The Commission shall act on all planning matters that arise within the jurisdiction of Millcreek ("City") as required or permitted by Utah Code and/or Millcreek Ordinances.

## II. Membership

Section 1. Appointment of Members and Participation– Members of the Commission ("Members") shall be appointed as provided in the Millcreek Ordinances.

Section 2. Rights of Members– All Members, including the Chair, shall be entitled to one vote on all matters properly brought before the Commission for action. Proxy votes shall not be permitted, and Members must be present to vote unless otherwise allowed by a duly adopted policy on electronic meetings.

Section 3. Supporting Staff - The Millcreek Planning and Zoning Department and the Millcreek City Recorder shall be the supporting staff of the Commission (the "Supporting Staff") and shall digitally record all meetings, make recordings available to the public within seven (7) business days, take written minutes, and post all agendas and meeting activities as required by Utah Code. The Supporting Staff in consultation with the Chair shall create the agenda for each meeting and shall send an agenda to the Members of the Commission. Additional items may be placed on the business meeting section of the agenda by Members of the Commission or Supporting Staff as provided below.

Section 4. Members' Terms– The terms of regular and alternate Members shall be as set forth in the Millcreek Ordinances.

Section 5. Training – Planning Commissioners shall obtain training as required by UTAH CODE ANN. §10-9a-302. A newly appointed Member may not participate in a public meeting as an appointed Member until the member completes the training as required by Utah Code, and meets with the Supporting Staff to review among other things the Rules of Procedure and the General Plan. Failure to comply with this provision may result in removal of the Member from the Commission. All Members should attend additional trainings scheduled from time to time by the Supporting Staff.

Section 6. Attendance – Members shall regularly attend Commission meetings. A Member who misses more than three scheduled meetings in a calendar year may result in removal of the Member from the Commission.

Section 7. Member Responsibilities – As a Member of the Commission, each member shall be responsible to:

1. Read and study the agenda, staff reports, and all attached documents prepared by Supporting Staff so that they are fully informed about each application prior to the scheduled Commission meeting.

2. Act in a courteous and respectful manner to their fellow Members, the Supporting Staff, applicant, and the public, during all meetings.

3. Attend Commission meetings and arrive on time.

Section 8. Removal Proceedings – Removal from the Commission shall be as set forth in the Millcreek Ordinances.

Section 9. Vacancies – A Member may resign at any time by giving written notice of such resignation to the Mayor, Chair, and Supporting Staff. Resignations shall be recorded in the meeting minutes. Any vacancy during a Member's term shall be filled as set forth in Millcreek Ordinances.

Section 10. Compensation and Reimbursement – Members shall receive no compensation for their services and no reimbursement for expenses.

**III. Officers**

Section 1. Election of Officers – As the first order of business at the first regularly scheduled Commission meeting of the calendar year, the Commission shall hold elections for the positions of Chair and Vice Chair from among regular Members by a majority vote of the Members' present.

Section 2. Officer Terms - Officers may serve successive terms.

Section 3. Officers Duties

1. The Chair Shall:
    a. Serve as the Presiding Officer of the Commission
    b. Implement the Rules of Procedure
    c. Coordinate with the Supporting Staff to provide an agenda for each public meeting, and timely reports and other relevant information to the Commission
    d. Execute all official documents and letters of the Commission
    e. Identify and bring before the Commission such policy matters as are within the purview of the Commission

2. The Vice Chair Shall:
    a. Assist the Chair in all necessary capacities
    b. Assume the duties and responsibilities for the Chair in all instances where the Chair is not available or unable to carry out the duties and responsibilities
    c. Identify and bring before the Commission such policy matters as are within the purview of the Commission

Section 4. Chair *pro tempore* – In the absence or incapacity of both the Chair and the Vice Chair for a Commission meeting, the Members present at the meeting shall elect a Chair *pro tempore* to serve as Presiding Officer only for that meeting. ~~Alternate Members shall not serve as Chair *pro tempore*~~.

## IV. Meetings of Members

Section 1. A Quorum shall consist of a majority of its Members and shall be necessary to conduct any business of the Commission. A commissioner who is not physically present may nevertheless participate in the meeting through electronic means and be counted toward the required quorum. All electronic meeting proceedings shall comply with UTAH CODE ANN. § 52-4-207. Any Commissioner participating via electronic means may make, second, and vote on all motions and participating in the discussion as though present, except that the Commissioner who chairs the meeting must be present at the anchor location.

Section 2. Adherence to City, State, and Federal Law – Except as provided herein, all meetings shall be generally guided by Roberts Rule of Order-Simplified. With respect to matters of interpretation or applicability of these Rules of Procedure, or applicability of the Roberts Rules of Order-Simplified a determination by a majority of the Commission in attendance shall control. All meeting shall adhere to the Utah Open Meetings Act, and the Government Records Access Management Act.

Section 3. Regular Meetings – Meeting locations shall be publicly noticed and held each month. Annual notice of meeting dates shall be noticed as required by Utah Code. In addition, dates and times of the meeting shall be posted as required by Utah Code.

Section 4. Special Meetings – Special meetings may be called by the Chair or Supporting Staff, with the consent of the Chair, at any time, provided that a preferred seventy-two (72) hours' notice (minimum of twenty-four (24) hours' notice) is given to each Member before the meeting is held and notice is given as required by Utah Code.

Section 5. Staff and Applicant Participation at Electronic Meetings – Staff members or applicants who are not physically present may nevertheless participate in the meeting through electronic means, provided the Chair and City Recorder receive at least twenty-four (24) hours' advance notice of electronic participation.

Section 5. Meeting Cancellation – Notice of cancellation of a meeting shall be posted as required by Utah Code. If a meeting is rescheduled the new meeting time, date, and location shall be posted as required by Utah Code.

## V. Subcommittees

The Chair may create subcommittees as deemed necessary. Members of subcommittees shall be Commission Members.

## VI. Procedures

A. Business Section

Section 1. The Commission shall conduct busines as a component of each regularly scheduled meeting. The Supporting Staff, or the Commission, by a majority vote, may adjust the scheduled time as needed. Members of the public may attend such meetings, but will not participate unless invited to do so by the Chair.

Section 2. The commission shall review, correct, and approve of the minutes from the previous meeting. Additional items may be added to the business meeting section of the agenda by the Supporting Staff,

Chair, or the Commission, by a majority vote. The Commission may also discuss and render decisions on policy issues, legislative issues and administrative matters ~~that do not require public input~~. Special presentations, reports, and updates from the Supporting Staff that do not require a decision may also be made. ~~During a business meeting, there shall be no discussion of an application, request, or approval scheduled for the regular meeting.~~ During the business meeting there shall be no discussion of any completed application, either administrative or legislative, that is scheduled for the regular meeting.

B. Meeting Procedures

Section 1. Order – The order of business at the regular meeting shall follow the noticed agenda. The Chair, with the consent of the Commission, by a majority vote, or upon recommendation of the Supporting Staff, may consider matters out of the agenda order.

Section 2. Decisions – A matter for decision will be placed before the Commission by motion made by any Member present at the meeting. The Chair shall not make motions before the Commission except in the absence of a response from other Members to an invitation by the Chair that a motion on a pending matter would be in order. Any Member may second a motion. ~~Alternates may make motions and second motions only if they are serving as an acting Member of the Commission at the meeting because of the absence of a regular Member.~~

Section 3. A majority vote by the present Members in favor of a motion shall carry the motion.

Section 4. Following a seconded motion, the Chair may ask each Member to verbally pronounce their name and vote and shall record each individual vote in the written minutes as an “aye”, “yes”, “nay”, or “no.”

Section 5. Following a non-unanimous vote, the Chair may ask Members who vote “nay” or “no” to state for the record their rationale for their opposing vote.

C. Procedures for Applications

Section 1. Application Public Hearing Procedure

1. Any person or entity may appear in person or be represented by an authorized agent at any meeting of the Commission

2. Unless altered by the Chair, the order of the procedure at a public hearing on an application shall be:

a. Presentation of the application by the Supporting Staff, including its recommendations and a summary of pertinent written comments and reports concerning the application

b. The applicant’s presentation, not to exceed fifteen (15) minutes

c. Any group representing the area in which the subject property is located, not to exceed five (5) minutes

d. Persons other than the applicant in favor of, or not opposed to, or in opposition to, the application, not to exceed three (3) minutes per person

e. Rebuttal by the applicant as necessary to respond to new issues or questions raised by other parties, not to exceed five (5) minutes

f. Surrebuttal may be allowed at the discretion of the Chair.

Section 2. Application Public Hearing Rules

1. Each speaker, before talking, shall give their name and their address.

2. Only one speaker is permitted before the Commission at a time.

3. The discussion must be confined to essential points stated in the application bearing on the desirability or undesirability of the application and is not a time for debate regarding the applications.

4. The Chair may cease any presentation or information that has already been presented and acknowledge that it has been noted in the public record.

5. No personal attacks shall be indulged in by either side, and such action shall be sufficient cause for stopping the speaker from proceeding.

6. No applause or public outbursts shall be permitted.

7. The Chair or Supporting Staff may request police support to remove offending individuals who refuse to abide by these rules.

Section 3. Discussion and Vote – After all presentations have been made, the Chair ~~may request or entertain a motion to~~ shall close the public hearing. Members may continue to discuss the application among the Commission. Following this discussion on the application, a motion must be made and seconded, which may include; Approval, Approval with Conditions, Denial, a Recommendation to the Council (as appropriate), or Continuation of the item with or without date.

Section 4. Decisions –A decision of the Commission on an application shall be documented in writing by the Supporting Staff and shall include reasons for the decision.

## VII. Ethics and Conflicts of Interest

Section 1. Compliance -All Members shall abide by Utah Code and, annually complete any necessary volunteer forms, documents, and training.

Section 2. Voting/ Recusal: ~~–~~A member of the Commission who has a conflict of interest as defined by Utah Code and/or Millcreek Ordinances shall declare the conflict of interest as required by Utah Code

and recuse themselves from the agenda item relating to the conflict of interest. The Chair shall announce the recusal for the record.

Section 3. Ex Parte Communications – No member of the Commission shall have any ex parte discussion regarding any administrative land use application or re-zone application pending before the Commission. Ex parte communication means any communication, including but not limited to electronic or social media communication, with interested parties of an administrative land use application or re-zone application pending before the Commission prior to the Commission reaching a final decision. An administrative land use application means any land use application where by Utah Code or Millcreek Ordinances the Commission is the final decision-maker. A re-zone land use application means any land use application where by Utah Code or Millcreek Ordinance the City Council is the final decision-maker.

## VIII. Amendments and Adoption

A. Adoption and Amendment Procedure

These Rules of Procedure must be reviewed and approved by the Council before they become effective and may be amended upon approval by the Council.

**ATTACHMENT "L"**

**MILLCREEK, UTAH**
**RESOLUTION NO. 16-10**

**A RESOLUTION OF THE MILLCREEK COUNCIL ADOPTING COUNCIL RULES OF PROCEDURE**

**WHEREAS**, the Millcreek Council elect ("Council") met in a special session on December 27, 2016, to consider, among other things, adopting council rules of procedure; and

**WHEREAS**, Utah Code Ann. § 10-2a-218 provides that upon canvass of the final election of city officers and until the future city becomes legally incorporated, the offices of the future city may perform certain functions, including but not limited to, prepare a proposed budget and compilation of ordinances, negotiate and make personnel contracts and hirings, negotiate and make service contracts, negotiate and make contracts to purchase equipment, materials, and supplies, borrow funds from the county in which the future city is located, and borrow funds for startup expenses of the future city; and

**WHEREAS,** on November 22, 2016, the canvass of the final election of the city officers for the City was held and thereby the Council is authorized by Utah Code Ann. §10-2a-218 to, including but not limited to, prepare a proposed budget and compilation of ordinances, negotiate and make personnel contracts and hirings, negotiate and make service contracts, negotiate and make contracts to purchase equipment, materials, and supplies, borrow funds from the county in which the future city is located, and borrow funds for startup expenses of the future city; and

**WHEREAS**, after careful consideration, the Council has determined that adopting council rules of procedure is consistent with and inherent in Utah Code Ann. §10-2a-218 and adoption of council rules of procedure is in the best interest of the health, safety and of the present and future inhabitants of Millcreek; and

**WHEREAS,** a copy of the proposed council rules of procedure has been presented to the Council for review and approval, a copy of which is attached hereto ("Rules");

**NOW, THEREFORE, BE IT RESOLVED** by the Council that that the attached Rules be adopted by the Council as rules of procedures that govern the operation of the Council.

This Resolution, assigned No. 16-10, shall take effect immediately.

**PASSED AND APPROVED** by the Millcreek Council this 27th day of December, 2016.

**MILLCREEK**

**Jeff Silvestrini,** Mayor elect

**ATTEST:**

**Leslie Van Frank,** Acting City Recorder

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# COUNCIL RULES OF PROCEDURE

## Powers and Duties of the Mayor and Mayor Pro tempore

1.1. The Mayor is the Council chair and presides at all Council meetings, is a regular and voting member of the council, exercises ceremonial functions for the City, and may not veto any ordinance, tax levy, or appropriation passed by the Council.

1.2. The Council shall elect one of its members as Mayor pro tempore and the recorder shall enter in the minutes of the Council meeting the election of mayor pro tempore. If the Mayor is absent or unable or refuses to act the Mayor pro tempore shall preside at a Council meeting; and perform, during the mayor's absence, disability, or refusal to act, the duties and functions of Mayor.

## Order of Business and Organization of Council Agenda

The Council shall consider business in the following order:

2.1. Work/Briefing Session (generally work/briefing sessions will be held on Monday starting at 5:00 p.m. and regular sessions will be held on Monday starting at 7:00, or convened upon call of the Mayor).

2.2. Regular Session Welcome, Introduction & Preliminary Matters

a. Pledge of Allegiance

b. Public comments

The purpose of public comment is to allow citizens to address items on the agenda. Citizens requesting to address the Council will be asked to complete a written comment form and present it to the City Recorder. In general, the chair will allow an individual two minutes to address the Council. A spokesperson, recognized as representing a group in attendance, may be allowed up to five minutes. At the conclusion of the citizen comment time, the chair may direct staff to assist the citizen on the issue presented; direct the citizen to the proper administrative department(s); or take no action. Citizens may also submit written requests (outlining their issue) for an item to be considered at a future council meeting. The chair may place the item on the agenda under citizen comments; direct staff to assist the citizen; direct the citizen to the proper administrative departments; or take no action.

c. Mayor's report

d. Special recognition

2.3. Reports

2.4. Appointments

2.5. Consent Agenda

Generally known to public as Open Hearings

The Consent Agenda lists Council action items which require no further discussion or which are routine in nature, including the minutes of prior meetings. All items on the Consent Agenda shall be adopted by a single motion and roll call vote. Prior to the motion to adopt the Consent Agenda, any Council member may have any item removed from the Consent Agenda in order to permit discussion on that item. If a majority of the quorum present at the Council meeting vote in favor of adopting the Consent Agenda, every item on the Consent Agenda shall be adopted.

2.6. Planning Matters
2.7. Financial Matters
2.8. Other Matters
2.9. New Items for Subsequent Consideration
2.10. Notice of Future Public Meetings
2.11. Calendar of Upcoming Events

The Council may, by motion and majority vote, proceed out of order to any order of business and return to order.

**Motions**

3.1. Motions can be made or seconded by any member of the Council. No motion shall be debated until it has been seconded and announced by the Chair.
3.2. Any motion may be modified by the sponsor of the motion, with the consent of the second, or withdrawn by the sponsor, with consent of the chair, at any time before amendment or voting.
3.3. When a question is under debate, the procedural motions listed below, shall require a majority vote of the quorum present at the Council meeting. The Chair will consider motions to:
    a. Recess
    b. Suspend the rules to address an immediate more urgent matter (this motion requires a two-thirds majority)
    c. Cease debate and call for a vote
    d. Postpone to a set time and date
    e. Refer to a committee
    f. Limit debate
    g. Table the motion (postpone indefinitely)
    h. Amend
3.4. Any amendment must relate to the same subject as the original motion under consideration.

**Debate**

4.1. The Chair shall recognize any Council member requesting recognition to speak, debate, make a motion, submit a report, or for any reason, address the Council, unless a motion taking precedence is offered.
4.2. The Chair shall recognize the author of the motion first and then others wishing to address the motion.

4.3. During debate, the Chair shall be responsible for maintaining order. If private discourse among or between Council members or any other disturbance disrupts the Council's business, the Chair may call the Council to order. When the Chair calls the Council to order, all discussion and other disturbance shall cease.

4.4. Any Council member may make a motion to call to order, a point of personal privilege, or for information on or clarification of the motion. A motion for any of these issues does not require a second and is not debatable.

4.5. All Council members shall be allowed to speak once on each motion before any member may speak a second time.

**Motions Decided Without Debate**

The following motions will be decided without debate:

5.1. Adjourn
5.2. Recess
5.3. Suspend the rules
5.4. Cease debate and call for a vote
5.5. Limit debate
5.6. Table the motion (may be limited debate on the propriety of the motion to table)

**Voting**

6.1. Voting shall be in the form of "yes," "no," and no "abstain," votes will be accepted.

6.2. All votes requiring a majority shall be a majority of the quorum present, except where State law require otherwise.

6.3. An expression of "abstain" during voting shall be considered as a no vote. A Council member who abstains on a question, or is absent, may not move to reconsider that question.

6.4. In the case of a tie vote, the motion shall fail.

6.5. Council members shall not explain their votes during the call of the roll or at the time of a voice vote. However, at the conclusion of the vote, any Council member may request a point of personal privilege to give an explanation of their vote.

**When Council Members Shall Vote**

7.1. Every Council member who is in the Council chambers at the time the vote is called shall vote. On a roll call vote, votes shall be cast as the roll is called. Roll call votes shall proceed as directed by the Chair.

7.2. Any Council member who has a financial interest in any issue pending before the Council shall comply with applicable provision of law including, but not limited to, Utah Code Ann. § 10-3-1301 et seq.

**Decorum**

8.1. No Council member shall walk about in or out of the Council Chamber while the Chair is calling the vote.

8.2. Council members should avoid engaging in private discourse or committing any other act which may tend to distract the attention of the Council or the audience from the business before the Council, or interfere with any person's right to be heard after recognition by the Chair.

8.3. When speaking to or debating a specific subject before the Council, all persons, including Council members, shall confine their remarks to the topic under discussion or debate, avoiding personal attacks. Anyone engaging in discussion or debate beyond the topic before the Council shall be ordered to stop by the Chair and no further discussion or debate will be allowed by said person.

8.4. No one may address the Council without first being recognized by the Chair.

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**Reconsideration**

9.1. Any Council member who has voted with the prevailing side of a question may move at the same meeting to reconsider the question.

9.2. A motion to reconsider shall require the affirmative vote of a majority of the quorum present.

**Amendment, Revision or Addition to Rules of Procedure**

10.1. Any Council member may propose amendments, revisions, or additions to these Rules of Procedure.

10.2. Each amendment, revision, or addition proposed by a Council member shall be in written form and copies shall be provided to each Council member.

10.3. A majority vote of all Council members in a regular Council meeting shall be required for passage and adoption of any amendment, revision, or addition to these Rules of Procedure.

**Roberts Rules of Order**

11.1. With respect to matters not described above, Roberts Rules of Order-Simplified shall govern.

**ATTACHMENT "M"**

## 2.07.201 Conflict Of Interest

A. For the purposes of this chapter, the following definitions control:

1. "Compensation" or "compensated" means any remuneration or anything of economic value, however designated, which is paid, loaned, granted, given, donated, or transferred to any person or business entity for or in consideration of personal services, materials, property, or any other thing whatsoever. For purposes of this definition, compensation includes salary and any payment for services not otherwise identified as salary (e.g., consulting fees, honoraria, paid authorship); equity interest includes any stock, stock option, or other ownership interest, as determined through reference to public prices or other reasonable measures of fair market value.

2. "Conflict of interest" means any financial interest held by an employee or representative of the city, or by members of an employee's or representative's household, or those providing regular financial support to the employee or representative or any and all other interests including political, family, fraternal, social, and other interests or associations which may reasonably create the appearance or the actuality of a conflict of interest between an employee's or representative's outside interest and their city responsibilities. Conflict of interest also includes other conflicts as defined by state statute, and any campaign contribution made to the officer, employee, or representative, or to any member of their household, of more than five hundred dollars during the prior calendar year.

3. "Employee" means a person who is employed on a full-time, part-time, or contract basis by the city. "Employee" shall include elected and appointed officers of the city.

4. "Financial interest" means, but may not be limited to, any employment by or compensated representation as an agent of any individual, corporation, business entity, organization, or committee. A financial interest also includes any legal or equitable ownership by an employee or representative of the city or their spouse or their minor children of 10% or more of the outstanding shares of a corporation or 10% in any business entity.

5. "Financial conflict of interest" means a situation in which the employee or representative of the city, the employee or representative of the city's spouse or dependent children has a significant financial interest or financial relationship that could directly and significantly affect the design, conduct, reporting with respect to the funding of a federally supported, funded, or assisted activity.

6. "Governmental action" means any official action on the part of the city, including, but not limited to:

   a. Any decision, determination, finding, ruling, or order, or discussions thereof;

   b. Any grant, payment, award, license, contract, subcontract, transaction, decision, sanction, or approval, or the denial thereof, or the failure to act in respect thereto; or

   c. Any legislative, administrative, appointive, or discretionary act of any public servant or volunteer public servant.

7. "Representative" means any authorized agent of the city. Representative shall include any appointed person, other than an employee, serving on a special, regular, or full-time committee, commission, authority, agency, or board of the city, who is not paid a salary or an hourly wage by the city for his or her services thereon.

8. “Significant financial interest” means:

    a. A financial interest consisting of one or more of the following interests of an employee or representative, the employee’s or representative's spouse and dependent children that reasonably appears to be related to the employee or representative responsibilities:

        (1) With regard to any foreign or domestic publicly traded entity, a significant financial interest exists if the value of any compensation received from the entity in the twelve months preceding the disclosure and the value of any equity interest in the entity as of the date of disclosure, when aggregated, exceeds $5,000;

        (2) With regard to any foreign or domestic non-publicly traded entity, a significant financial interest exists if the value of any compensation, not otherwise disclosed as current, pending, or other support, received from the entity in the twelve months preceding the disclosure, when aggregated, exceeds $5,000, or when the employee or representative (or the employee’s or representative's spouse or dependent children) holds any equity interest (e.g., stock, stock option, or other ownership interest);

        (3) Intellectual property rights and interests (e.g., patents, copyrights), upon receipt of income related to such rights and interests.

    b. Any reimbursed or sponsored travel (i.e., that which is paid on behalf of the employee or representative and not reimbursed to the employee or representative so that the exact monetary value may not be readily available) related to their institutional responsibilities, provided that this disclosure requirement does not apply to travel that is reimbursed or sponsored by a Federal, state, or local government agency of the United States; a domestic Institution of Higher Education; or a domestic research institute that is affiliated with a domestic Institution of Higher Education.

    c. The term significant financial interest does not include the following types of financial interests: salary, royalties, or other remuneration paid by the City to the employee or representative if the employee or representative is currently employed or otherwise appointed by the City, including intellectual property rights assigned to the City and agreements to share in royalties relating to such rights; income from seminars, lectures, or teaching engagements sponsored by a Federal, state, or local government agency of the United States, a domestic Institution of Higher Education, or a domestic research institute that is affiliated with a domestic Institution of Higher Education; or income from service on advisory committees or review panels for a Federal, state, or local government agency of the United States, a domestic Institution of Higher Education, or a domestic research institute that is affiliated with a domestic Institution of Higher Education.

B. General prohibitions.

1. City employees are governed by the Municipal Officer’s and Employee’s Ethics Act (10-3-1301, et seq.) regarding outside interests and conflicts that are prohibited or that require disclosure.

2. Employees and representatives are prohibited from using non-public information in a manner that could provide themselves or another gain or benefit.

3. Employees and representatives shall not use or attempt to use their position in a manner that could secure special privileges or exemptions for themselves or others.

4. Employees and representatives are prohibited from engaging in any outside activity, employment, or financial investment which constitutes a conflict of interest where such conflict could impair their judgment regarding the faithful performance of city responsibilities.

C. Specific prohibitions depending on the funding source.
Additional specific prohibitions shall be required, as set forth herein, for federally supported, funded, or assisted activities depending on the funding source. An employee or representative shall be deemed to have a significant financial interest in a federally supported, funded, or assisted activities if the City Manager reasonably determines that the significant financial interest could be affected by the activities funded under applicable federally supported, funded, or assisted activities, could affect the activities funded under applicable federally supported, funded, or assisted activities, is in an entity whose financial interest could affect the activities funded under applicable federally supported, funded, or assisted activities, or is in an entity whose financial interest could be affected by the activities funded under applicable federally supported, funded, or assisted activities.

1. Employees and representatives who are planning to participate in federally supported, funded, or assisted activities must disclose to the City Manager or its designee significant financial interests and the employee's or representative's spouse and dependent children no later than the time of application for federally supported, funded, or assisted activities. In the event the City seeks to add an employee or representative after the time of application, the City shall require the employee or representative and the employee's or representative's spouse and dependent children to make such disclosures prior to participating in the federally supported, funded, or assisted activities.

2. Employees and representatives who are participating in federally supported, funded, or assisted activities shall submit an updated disclosure of significant financial interests at least annually, on or before the last day of June, during the period of the award. Such disclosure shall include any information that was not disclosed initially to the City pursuant to paragraph 3.1 of this section, or in a subsequent disclosure of significant financial interests (e.g., any financial conflict of interest identified on a federally supported, funded, or assisted activities transferred from another government entity), and shall include updated information regarding any previously disclosed significant financial interest (e.g., the updated value of a previously disclosed equity interest).

3. Employees and representatives who are participating in federally supported, funded, or assisted activities must submit an updated disclosure of significant financial interests within 30 days of discovering or acquiring (e.g., through purchase, marriage, or inheritance) a new significant financial interest.

4. Disclosure and updated disclosure shall be signed and dated by the employee or representative and include a certification statement that reads:
I understand that this Disclosure is required to obtain funding from the U.S. Government. I, [Full Name and Title], certify to the best of my knowledge and belief that the information contained in this Disclosure Statement is true, complete, and accurate. I understand that any false, fictitious, or fraudulent information, misrepresentations, half-truths, or omissions of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims, or otherwise. (18 U.S.C. §§ 1001 and 287, and 31 U.S.C. 3729-3730 and 3801-3812). I further understand and agree that (1) the statements and representations made herein are material to U.S. Government's funding decision, and (2) I have a responsibility to update the disclosures

during the period of performance of the award should circumstances change which impact the responses provided above.

D. Conflicts of interest.

1. Employees and representatives are required to disclose any conflict of interest and are bound by the requirements of the Municipal Officer's and Employee's Ethics Act (10-3-1301, et seq.).

2. Any action, vote, contract, or other governmental action which has been undertaken by an officer, employee, or representative who has a conflict of interest shall be terminable by the body that took the action, or by the city officer with authority to void or terminate the action. That body or city officer may also ratify any prior governmental action that was taken in violation of this section.

E. Disclosure.

1. Employees and representatives are required to comply with all legal requirements setting a responsibility to disclose a conflicts of interests including, if applicable, public disclosure of any and all conflicts of interest at any meeting, hearing, or deliberation where the employee or representative is present, and the conflict of interest could impair the judgment of the employee or representative.

2. Oral or written disclosures must be made in accordance with state statute, other sources of the law, and this section.

3. Employees are required to file written disclosures in accordance with the provisions of state statute and city ordinance.

4. All persons holding office or in the employment of Millcreek, before commencing the duties of their respective offices, when necessary if circumstances change which impact the responses provided, and annually shall read, sign, and file a "Conflict of Interest " form as provided by the City.

F. Specific management and reporting requirements depending on the funding source.

1. Prior to the City's expenditure of applicable federally supported, funded, or assisted activities the City Manager or its designee entity shall, consistent with the applicable provision of paragraph 3 of this section: review all applicable disclosures of significant financial interests; determine whether any of the disclosures relate to the activities funded under applicable federally supported, funded, or assisted activities; determine whether a financial conflict of interest exists; and, if so, develop and implement a management plan that shall specify the actions that have been, and shall be, taken to manage such financial conflict of interest.

2. Whenever, in the course of an ongoing activities funded by applicable federally supported, funded, or assisted activities, an employee or representative who is new to participating in the activities discloses a significant financial interest or an existing employee or representative discloses a new significant financial interest to the City Manager or its designee, the City Manager or its designee shall, within 60 days: review the disclosure; determine whether it is related to the activities funded by applicable federally supported, funded, or assisted activities; determine whether a financial conflict of interest exists; and, if so, implement, on at least an interim basis, a management plan that shall specify the actions that have been, and will be, taken to manage such financial conflict of interest. Depending on the nature of the significant financial interest, the City Manager or its designee may determine that additional interim measures are necessary with regard to the employee or representative in the activities funded by applicable

federally supported, funded, or assisted activities between the date of disclosure and the completion of the review.

3. Whenever the City Manager or its designee identifies a significant financial interest that was not disclosed timely by an employee or representative, for whatever reason, was not previously reviewed by the City Manager or its designee during an ongoing federally supported, funded, or assisted activities (e.g., was not timely reviewed or reported by a subrecipient), the designated official(s) shall, within 60 days: review the significant financial interest; determine whether it is related to the activities funded by federally supported, funded, or assisted activities; determine whether a financial conflict of interest exists; and, if so:

    a. Implement, on at least an interim basis, a management plan that shall specify the actions that have been and will be taken to manage such financial conflict of interest going forward;

    b. In addition, whenever a financial conflict of interest is not identified or managed in a timely manner, including failure by the employee or representative to disclose a significant financial interest that is determined by the City Manager or its designee to constitute a financial conflict of interest; failure by the City Manager or its designee to review or manage such a financial conflict of interest; or failure by the employee or representative to comply with a financial conflict of interest management plan, the City Manager or its designee shall, within 120 days of the City's determination of noncompliance, complete a retrospective review of the employee's or representative's activities and the federally supported, funded, or assisted activities to determine whether any activities funded by applicable federally supported, funded, or assisted activities, or portion thereof, conducted during the time period of the noncompliance, was biased in the purpose, design, conduct, or reporting of such activities funded by applicable federally supported, funded, or assisted activities.

        (1) The City Manager or its designee shall document the retrospective review; such documentation shall include, but not necessarily be limited to, all of the following key elements:

            (A) The federally supported, funded, or assisted activities award number;

            (B) The title of the activities funded by applicable federally supported, funded, or assisted activities;

            (C) City's principal contact;

            (D) Name of the employee or representative with the financial conflict of interest;

            (E) Name of the entity with which the employee or representative has a financial conflict of interest;

            (F) Reason(s) for the retrospective review;

            (G) Detailed methodology used for the retrospective review (e.g., methodology of the review process, composition of the review panel, documents reviewed);

            (H) Findings of the review; and

            (I) Conclusions of the review.

(2) Based on the results of the retrospective review, if appropriate, the City Manager or its designee shall update the previously submitted a financial conflict of interest report, specifying the actions that will be taken to manage the financial conflict of interest going forward. If bias is found, the City Manager or its designee shall notify the federal entity that supported, funded, or assisted activities program office promptly and submit a mitigation report. The mitigation report must include, at a minimum, the key elements documented in the retrospective review above, a description of the impact of the bias on the activities funded by applicable federally supported, funded, or assisted activities, and the City's plan of action or actions taken to eliminate or mitigate the effect of the bias (e.g., impact on the p activities funded by applicable federally supported, funded, or assisted activities; extent of harm done, including any qualitative and quantitative data to support any actual or future harm; analysis of whether the activity funded by applicable federally supported, funded, or assisted activity is salvageable). Thereafter, the City Manager or its designee shall submit financial conflict of interest reports annually. Depending on the nature of the financial conflict of interest, the City Manager or its designee may determine that additional interim measures are necessary with regard to the employee's or representative's participation in the activity funded by federally supported, funded, or assisted activity between the date that the conflict of interest or the employee's or representative's noncompliance is determined and the completion of the City's retrospective review.

4. Whenever the City Manager or its designee implements a management plan pursuant to these provisions, the City Manager or its designee shall monitor employee's or representative's compliance with the management plan on an ongoing basis until the completion of the activity funded by applicable federally supported, funded, or assisted activity.

5. Prior to the City's expenditure of any funds by federally supported, funded, or assisted activities, the City Manager or its designee shall ensure public accessibility, via a publicly accessible website or written response to any requestor within five business days of a request of information concerning any significant financial interest disclosed to the City Manager or its designee that meets the following three criteria:

    a. The significant financial interest is still held by the senior/key personnel as defined by this conflict-of-interest policy;

    b. The City Manager or its designee determined that the significant financial interest is related to the activities funded by federally supported, funded, or assisted activities; and

    c. The City Manager or its designee determined that the significant financial interest is a financial conflict of interest.

        (1) The information that the City Manager or its designee makes available via a publicly accessible website or written response to any requestor within five business days of a request, shall include, at a minimum, the following: the employee's or representative's name; the employee's or representative's title and role with respect to the activities funded by applicable federally supported, funded, or assisted activities; the name of the entity in which the significant financial interest is held; the nature of the significant financial interest; and the approximate dollar value of the significant financial interest (dollar ranges are permissible: $0-$4,999;

$5,000-$9,999; $10,000-$19,999; amounts between $20,000-$100,000 by increments of $20,000; amounts above $100,000 by increments of $50,000), or a statement that the interest is one whose value cannot be readily determined through reference to public prices or other reasonable measures of fair market value.

(2) (A) If the City Manager or its designee uses a publicly accessible website for the purposes of this subsection, the information that the City's posts shall be updated at least annually. In addition, the City Manager or its designee shall update the website within 60 days of the City's receipt or identification of information concerning any additional significant financial interest of the senior/key personnel for the activities funded by federally supported, funded, or assisted activities that was not previously disclosed, or upon the disclosure of a significant financial interest of senior/key personnel new to the activities funded by applicable federally supported, funded, or assisted activities, if the City Manager or its designee determines that the significant financial interest is related to the activities funded by applicable federally supported, funded, or assisted activities and is a financial conflict of interest. The website shall note that the information provided is current as of the date listed and is subject to updates, on at least an annual basis and within 60 days of the City's identification of a new financial conflict of interest.

(B) If the City Manager or its designee responds to written requests for the purposes of this subsection, the City Manager or its designee will note in its written response that the information provided is current as of the date of the correspondence and is subject to updates, on at least an annual basis and within 60 days of the City's identification of a new financial conflict of interest, which should be requested subsequently by the requestor.

(A) Information concerning the significant financial interests of an individual subject to paragraph (a)(5) of this section shall remain available, for responses to written requests or for posting via the City's publicly accessible website, for at least three years from the date that the information was most recently updated.

6. The City Manager or its designee shall report any unmanaged or unmanageable significant financial interest found to be a conflict as require by the applicable entity providing the funds or assisted activities.

7. Contractual representatives.

a. Individuals and business entities who contract to represent the city interests shall disclose to the city the names of other clients they represent and those clients' respective issues and interests that are relevant to the city interests. Unless they receive written permission from the mayor, such individuals or business entities are prohibited from representing other clients about the same or substantially same issues and interests as covered by the city representation.

b. Individuals and business entities who contract to represent the city's interests by lobbying the State Legislature or any other municipal, city, state or federal office or agency are prohibited from engaging in any lobbying of city officers, employees, agencies or offices, as defined in MKC 2.73.010.

HISTORY
*Repealed & Reenacted by Ord. 23-40 on 10/23/2023*

ATTACHMENT "N"

# COMPLICIT BIAS AND THE SUPREME COURT

*Michele Goodwin*[*]

> The principle that sustains compulsory vaccination is broad enough to cover cutting the Fallopian tubes. Three generations of imbeciles are enough.
>
> — Justice Oliver Wendell Holmes (*Buck v. Bell*, 274 U.S. 200, 207 (1927)).

*Complicit*: involved with others in an illegal activity or wrongdoing.

— OXFORD AMERICAN DICTIONARY (3d ed. 2015).

*Bias*: prejudice in favor of or against one thing, person, or group compared with another, usually in a way considered to be unfair.

— OXFORD AMERICAN DICTIONARY (3d ed. 2015).

Complicit Bias:
(1) cognitive awareness of a past or present harm and conscious refusal to intercede with knowledge that the impact will prejudice another or others.
(2) to feel or show an inclination of protection toward an individual or group based on relationship, affinity, or group characteristics.
(3) further a harm through silence and inaction.

## INTRODUCTION

Even as judges and courts serve as important safeguards and guardians against state and federal enforcement of unjust, harmful, and unconstitutional laws and discriminatory policies, they too may be fallible, weak in judgement and character, personally and professionally indifferent to systemic injustice, or corruptible.[1] As history demonstrates,

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[1] Jerry Kang et al., *Implicit Bias in the Courtroom*, 59 UCLA L. REV. 1124, 1173 (2012); *see also* Jodi Kantor & Jo Becker, *Former Anti-abortion Leader Alleges Another Supreme Court Breach*, N.Y. TIMES (Nov. 19, 2022), https://www.nytimes.com/2022/11/19/us/supreme-court-leak-abortion-

judges may be complicit in perpetuating harms or furthering discrimination against vulnerable people, including racial minorities, women, individuals with disabilities, and people who identify as LGBTQ.[2] In other words, judges may possess cognitive awareness of a past or present harm against a vulnerable group and yet refuse to intervene to avert the continuance of harm or discrimination.

Judges may also refuse to acknowledge glaring injustices against vulnerable groups, denying appropriate relief related to past, ongoing, or future harms.[3] Judges may inflict further harm through this purposeful inaction or silence. Ironically, legal scholarship generally sidesteps directly naming and developing theory to address these concerns.

As noted by Professor Jerry Kang: "[T]here is no inherent reason to think that judges are immune from implicit biases."[4] Highly visible United States Supreme Court cases, such as *Dred Scott v. Sandford*,[5] *Buck v. Bell*,[6] *Korematsu v. United States*,[7] *Plessy v. Ferguson*,[8] and *Bowers v. Hardwick*,[9] among others, clarify this point. Judges are not immune to complicit, implicit, or explicit biases in the adjudicative

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roe-wade.html [https://perma.cc/5C32-W6VS] ("In interviews and thousands of emails and other records . . . shared with The Times," Reverend Rob Schenk, a former antiabortion leader, provided details regarding how he worked to "exploit the [Supreme Court's] permeability," gaining access to Supreme Court Justices "amenable to outreach" through "faith, through favors traded with gatekeepers and through wealthy donors to his organization, abortion opponents whom he called 'stealth missionaries.'"); Mark W. Bennett, *Unraveling the Gordian Knot of Implicit Bias in Jury Selection: The Problems of Judge-Dominated Voir Dire, The Failed Promise of* Batson*, and Proposed Solutions*, 4 HARV. L. & POL'Y REV. 149, 150 (2010); Jeffrey J. Rachlinski et al., *Does Unconscious Racial Bias Affect Trial Judges?*, 84 NOTRE DAME L. REV. 1195, 1210 (2009).

[2] *See, e.g.*, State v. Mann, 13 N.C. (2 Dev.) 263, 267 (1829) (involving an enslaved Black woman who was not named in the legal dispute) (Ruffin, J., a slave owner himself) (ruling that the owner, leaser, or renter of an enslaved person is not liable for assault, battery, or even murder, in a case involving a slaver shooting and severely maiming a Black woman for her obstinance); Minor v. Happersett, 53 Mo. 58, 64–65 (1873) (finding that although the Constitution granted women citizenship, it did not provide them a right to vote); Buck v. Bell, 274 U.S. 200, 205, 207–08 (1927) (affirming the constitutionality of forced sterilization performed on an indigent, "feeble-minded," female victim of rape); Ward v. Ward, 742 So. 2d 250, 251–52 (Fla. Dist. Ct. App. 1996) (affirming the grant of custody to a father who, although found guilty of murdering his first wife, successfully argued that his recently divorced wife was lesbian and thus unfit to rear their daughter); *see also* State v. Paolella, 554 A.2d 702, 708 (Conn. 1989) (holding that CONN. GEN. STAT. ANN. §§ 53a-70(a), 53a-70a(a) (West 1989), exonerate husbands who rape their wives).

[3] *See, e.g.*, Bowers v. Hardwick, 478 U.S. 186, 194 (1986) (5–4 decision) ("Against [a background in which many states have criminalized sodomy and still do], to claim that a right to engage in such conduct is 'deeply rooted in this Nation's history and tradition' or 'implicit in the concept of ordered liberty' is, at best, facetious."); McCleskey v. Kemp, 481 U.S. 279, 319 (1987) (5–4 decision) (holding that a death sentence was constitutionally imposed, despite robust empirical evidence that racial bias dramatically heightened the likelihood of sentencing the defendant to death if the perpetrator was Black and the victim white).

[4] Kang et al., *supra* note 1, at 1146.

[5] 60 U.S. (19 How.) 393 (1857) (involving an enslaved party).

[6] 274 U.S. 200.

[7] 323 U.S. 214 (1944).

[8] 163 U.S. 537 (1896).

[9] 478 U.S. 186 (1986).

process. The judicial process may be corrupted by partisanship and affected by external political or associational pressures and influence.[10] Even if the rule of law operates as a safety valve to protect rights, at times it too is leaky and unreliable. Moreover, while the scholarship on implicit and explicit biases remains important, too little has been expressed about judges' complicit biases. These biases may incline judges toward advancing particular principles or causes based on their religious, political, or other beliefs and affiliations. This may happen even if the result is or appears outcome determinative, infringes on established rights, or perpetuates discrimination.

This Response takes up those concerns, building on the theory of complicit bias. As used here, complicit bias is comprised of three potentially overlapping elements. First, complicit bias can be shown where the actor is aware of a past, present, or future harm and does not intercede, with apparent knowledge that the impact will prejudice another. Second, the perpetrator shows an inclination to protect an individual or group based on relationship, affinity, or group characteristics. Third, the individual or institution furthers the harm through silence and inaction. The essay analyzes complicit bias by addressing the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*.[11]

As Professor Khiara Bridges observes in this year's Foreword,[12] in the Supreme Court's 2021 Term, the valves broke: the Supreme Court's conservative majority declared stare decisis inconsequential and incompatible with its evolving and conflicting originalist frameworks.[13] Notably inconsistent, and lacking uniformity or coherence among themselves, the Court's conservative originalists extended their solicitude to states hungry to dismantle reproductive freedom.[14] Justice Thomas warned that his aim included all privacy protections save interracial marriage,[15] a feature of the Court's protection that safeguards marriages relevant to his personal life.[16]

According to Justice Thomas, "'substantive due process' is an oxymoron that 'lack[s] any basis in the Constitution,'" and as such, "in future cases [the Court] should reconsider all of [its] substantive due

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[10] David Russell, *Politicization in the Federal Judiciary and Its Effect on the Federal Judicial Function*, N.Y.U. J. LEGIS. & PUB. POL'Y QUORUM 21, 26 (2017).

[11] 142 S. Ct. 2228 (2022).

[12] Khiara M. Bridges, *The Supreme Court, 2021 Term — Foreword: Race in the Roberts Court*, 136 HARV. L. REV. 23 (2022).

[13] *Id.* at 53.

[14] *See* Jesus Jiménez & Nicholas Bogel-Burroughs, *What Are Abortion Trigger Laws and Which States Have Them*, N.Y. TIMES (June 24, 2022), https://www.nytimes.com/2022/06/25/us/trigger-laws-abortion-states-roe.html [https://perma.cc/G634-8TYV].

[15] *See Dobbs*, 142 S. Ct. at 2301 (Thomas, J., concurring).

[16] *See* Kelsey Reichmann, *Thomas Didn't Mention Interracial Marriage, And that's Worth Talking About*, COURTHOUSE NEWS SERV. (July 13, 2022), https://www.courthousenews.com/thomas-didnt-mention-interracial-marriage-and-thats-worth-talking-about [https://perma.cc/4AEM-UKKD].

process precedents, including *Griswold*, *Lawrence*, and *Obergefell*."[17] Citing his concurrences as legal authority, Justice Thomas claimed that "any substantive due process decision is 'demonstrably erroneous.'"[18] He urged that the Court has "a duty to 'correct the error'" established in more than 150 years of precedent.[19] Despite tepid assurances from Justice Alito's majority opinion and Justice Kavanaugh's concurrence that other fundamental privacy protections such as contraception access and marriage equality remain protected,[20] those guardrails are unreliable at best. Unfortunately, the risks for women's health are not insignificant. Nor were they unforeseeable.

In her gripping Foreword, Bridges provides carefully argued insights. She reasons that the Court's willingness to see race discrimination is cabined to "objective" or "common sense" race discrimination cases and outcomes.[21] As she explains it, the laws that undergird the "objective" or "common sense" cases of racism represent "'old-school' racism"[22] or artifacts from "the bad old days of the nation's formal racial caste system."[23] This "pre–Civil Rights Era racism"[24] involved objective sadism, overt cruelties, and insidious violations of the legal order by self-avowed white supremacists and nationalists unabashed in decrying school integration, opposing interracial marriage, and supporting "separate but equal" laws.[25] Bridges argues that this old-school archetype of racism problematically serves as the standard for the Roberts Court's interpretation or methodology for adjudicating contemporary claims of racial discrimination, which no longer resemble the types of overt racial discrimination inflicted by Commissioner Theophilus Eugene "Bull" Connor, Governor Orval Faubus, or Governor George Wallace.[26] Worryingly, according to Bridges, if the old racism is the standard for understanding contemporary racism, then remediable racism will be confined to matters and frameworks of the old: "eugenics[,] . . . genocide[,] . . . racists disarming formerly enslaved black

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[17] *Dobbs*, 142 S. Ct. at 2301 (Thomas, J., concurring) (quoting Johnson v. United States, 135 S. Ct. 2551, 2564 (2015) (Thomas, J., concurring in the judgment)) (citing Griswold v. Connecticut, 381 U.S. 479 (1965); Lawrence v. Texas, 539 U.S. 558 (2003); Obergefell v. Hodges, 135 S. Ct. 2584 (2015)).

[18] *Id.* (quoting Ramos v. Louisiana, 140 S. Ct. 1390, 1424 (2020) (Thomas, J., concurring in the judgment)).

[19] *Id.* (quoting Gamble v. United States, 139 S. Ct. 1960, 1984–85 (2019) (Thomas, J., concurring)).

[20] *See id.* at 2242–43 (majority opinion); *id.* at 2309 (Kavanaugh, J., concurring).

[21] Bridges, *supra* note 12, at 24.

[22] *Id.* at 32.

[23] *Id.* at 28.

[24] *Id.* at 27.

[25] *See id.* at 24–34; David Pilgrim, *What Was Jim Crow*, FERRIS STATE UNIV.: JIM CROW MUSEUM (2012), https://www.ferris.edu/HTMLS/news/jimcrow/what.htm [https://perma.cc/6XVW-6XJE].

[26] *See* Bridges, *supra* note 12, at 24–34; EQUAL JUST. INITIATIVE, *"Segregation Forever": Leaders of White Supremacy*, *in* SEGREGATION IN AMERICA 70, 76, 78–79 (2018).

people to render them helpless and easily killed," or similarly "a bigoted prosecutor trying to convict an innocent black man of murder."[27]

To expound upon Bridges's theory, in the Roberts Court, remediable racism takes the shape of "an extraordinary problem" under "exceptional conditions."[28] Yet this is relative. While Bridges very likely views the alarmingly high rates of Black maternal mortality and morbidity as an "extraordinary problem" occurring under "exceptional conditions,"[29] at least five Justices ostensibly do not.[30] Given this, what constitutes "extraordinary" and "exceptional" in the Roberts Court?

In the context of voting rights, the Roberts Court has recognized "literacy and knowledge tests, good moral character requirements, the need for vouchers from registered voters, and the like" as fitting into a remediable form of racial discrimination.[31] Pre–Voting Rights Act[32] physical abuses in the form of aggressive canines and law enforcement brandishing and using weapons against *potential* Black voters qualify as meeting the threshold of "extraordinary" and "exceptional."[33] At the same time, continued voter suppression — in the form of systemic and persistent partisan gerrymandering,[34] racial gerrymandering,[35] mandated payment of fines and fees as a condition to

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[27] Bridges, *supra* note 12, at 24.

[28] Shelby County v. Holder, 570 U.S. 529, 534, 557 (2013).

[29] *See generally* Khiara M. Bridges, *Racial Disparities in Maternal Mortality*, 95 N.Y.U. L. REV. 1229, 1279 n.228 (2020).

[30] *Compare* sources cited *infra* notes 277–79 and accompanying text, *with* Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228, 2240, 2243 (2022).

[31] *Shelby County*, 570 U.S. at 537, 545–46.

[32] Voting Rights Act of 1965, 52 U.S.C. §§ 10101, 10301–10702.

[33] *See Shelby County*, 570 U.S. at 544, 549; *Congress and the Voting Rights Act of 1965*, NAT'L ARCHIVES, https://www.archives.gov/legislative/features/voting-rights-1965 [https://perma.cc/8QWU-M2ZF] ("On March 7, 1965, peaceful voting rights protesters in Selma, Alabama[,] were violently attacked by Alabama state police. News cameras filmed the violence in what became known as 'Bloody Sunday.' Many Americans and members of Congress began to wonder if existing civil rights laws would ever be properly enforced by the local authorities."); *Birmingham, Alabama, Protests*, LIBR. OF CONG., https://www.loc.gov/exhibits/civil-rights-act/multimedia/birmingham-protests.html [https://perma.cc/PW3A-WNGA].

[34] *See* Alex Tausanovitch, *The Impact of Partisan Gerrymandering*, CTR. FOR AM. PROGRESS (Oct. 1, 2019), https://www.americanprogress.org/article/impact-partisan-gerrymandering [https://perma.cc/G8F2-B83T]; Julia Kirschenbaum & Michael Li, *Gerrymandering Explained*, BRENNAN CTR. FOR JUST. (Aug. 12, 2021), https://www.brennancenter.org/our-work/research-reports/gerrymandering-explained [https://perma.cc/YA7B-3QYR].

[35] *See* LaQuita Howard, *Racial Gerrymandering and the 2021–2022 Redistricting Process*, LEAGUE OF WOMEN VOTERS (Mar. 31, 2022), https://www.lwv.org/blog/racial-gerrymandering-and-2021-2022-redistricting-process [https://perma.cc/E9K7-9F9B].

vote,[36] deceptive robocalls,[37] barriers to assistance,[38] voter intimidation,[39] strict voter identification laws, the broadscale and strategic closing of voter registration sites, ex-felon disenfranchisement laws, lack of early voting, and polling place relocations and reductions[40] — apparently falls short. Seemingly, this is because contemporary discrimination may fall short of the pain still viscerally felt from "Bull" Connor's unleashing of fire hoses, dogs, and law enforcement on Black women and men.[41]

In *Shelby County v. Holder*,[42] the Court did not deny the existence of voter discrimination, but it was unwilling to acknowledge modern racism in voting laws.[43] Notably, the Chief Justice in that majority opinion never used the term "racism" and barely referenced "racial discrimination" in a case where both were at the heart of the litigation before the Court.[44] Perhaps this is because the Roberts Court has latched on to the belief that "[o]ur country has changed."[45] In other words, according to Bridges, "[t]he crux of the Roberts Court's apparent racial common sense is that racism against people of color is what racism looked like during the pre–Civil Rights Era — in the bad old days."[46]

This essay responds to Bridges's compelling Foreword. In the Foreword, she makes several key claims. First, Bridges argues that the Roberts Court "stands willing to interpret various parts of the Constitution — the Second Amendment, the Sixth Amendment, and the

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[36] *See* Malia Brink, *Fines, Fees, and the Right to Vote*, AM. BAR ASS'N (Feb. 9, 2020), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/voting-rights/fines--fees--and-the-right-to-vote [https://perma.cc/T5HJ-ABUB].

[37] *See, e.g.*, Tony Romm & Isaac Stanley-Becker, *Suspicious Robocall Campaign Warning People to "Stay Home" Spooks Voters Nationwide*, WASH. POST (Nov. 3, 2020, 5:48 PM), https://www.washingtonpost.com/technology/2020/11/03/robocall-election-day [https://perma.cc/2MHG-9FV4].

[38] *See* Fabiola Cineas, *Why It's Now Illegal for Some Voters with Disabilities to Cast a Ballot*, VOX (Apr. 28, 2022, 2:10 PM), https://www.vox.com/23043567/voters-with-disabilities-voting-barriers-restrictive-laws [https://perma.cc/AK5Q-PKP8]; Press Release, Ctr. for Am. Progress, Disabled Voters Still Face Systemic Barriers to Casting Ballots; CAP Report Urges Officials to Improve Access (July 8, 2021), https://www.americanprogress.org/press/release-disabled-voters-still-face-systemic-barriers-casting-ballots-cap-report-urges-officials-improve-access [https://perma.cc/28VL-WGDU].

[39] *See, e.g.*, Neil Vigdor & Jon Hurdle, *Election Officials Say Efforts to Intimidate Voters Are Widening*, N.Y. TIMES (Nov. 3, 2022), https://www.nytimes.com/2022/11/03/us/politics/voting-intimidation-democracy.html [https://perma.cc/C6PA-7XZU].

[40] *See Block the Vote: How Politicians Are Trying to Block Voters from the Ballot Box*, ACLU (Aug. 18, 2021), https://wp.api.aclu.org/news/civil-liberties/block-the-vote-voter-suppression-in-2020 [https://perma.cc/5DV2-TCVH].

[41] *Connor, Theophilus Eugene "Bull,"* STANFORD UNIV.: MARTIN LUTHER KING, JR. RSCH. & EDUC. INST., https://kinginstitute.stanford.edu/encyclopedia/connor-theophilus-eugene-bull [https://perma.cc/54Z7-B5TZ].

[42] 570 U.S. 529 (2013).

[43] *See id.* at 536, 547–49, 551, 553–54.

[44] *See generally id.*

[45] *Id.* at 557.

[46] Bridges, *supra* note 12, at 24.

Due Process Clause of the Fourteenth Amendment — in ways that are responsive to nonwhite people's racial injuries when they are reminiscent of the pre–Civil Rights Era."[47] As such, the Roberts Court, "among other things," was willing to "save[] black people from a genocide that abortion providers were perpetrating, albeit unintentionally, through facially race-neutral laws that permit abortion."[48] Or, as in *New York State Rifle & Pistol Ass'n v. Bruen*,[49] the Court was willing to strike down the "facially race-neutral licensing scheme at issue in the case in order to, among other things, be able to say that it saved black people from a racist disarmament that began at the end of Reconstruction."[50] That is, when the Court fixates on anti-Black racism looking like Governor Wallace physically blocking Vivian Malone and James Hood from entering the University of Alabama in order to prevent their integration of the university,[51] it sophomorically ignores racism's adaptability and mutations. Like the virus that it is, racism produces variants, including some more infectious and perilous than others, often requiring new vaccines and remedies.

Second, Bridges argues the Court makes different demands of white litigants that claim racial discrimination than of nonwhites. She explains that "judicial responsiveness to white people's 'new' racial injuries means that white people receive judicial and constitutional solicitude not afforded to nonwhite people."[52] Where nonwhite people must show Jim Crow–type overt conduct to successfully seek remedies for race discrimination, white petitioners need not show odious stereotypes, stigmas embedded in law, or vile and violent enforcement carried out by the government or its agents against them.[53] As a result, she explains, "requiring nonwhite people's racial injuries to have a similarity to past techniques of racial disenfranchisement allows the Court to implicitly declare that racism against people of color is a thing of the past; it permits the Court to deny the existence and persistence of structural racism."[54]

Third, and most devastatingly, Bridges posits that "efforts to disrupt the systems and processes that have made it so that people of color are at the bottom of most measures of social well-being will not survive judicial review."[55] Bridges is not new to studying the law's negative externalities in the lives of poor, pregnant women. Across carefully

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[47] *Id.* at 30–31.

[48] *Id.* at 31.

[49] 142 S. Ct. 2111 (2022).

[50] Bridges, *supra* note 12, at 31.

[51] *See Fifty Years Ago: The Stand in the Schoolhouse Door*, NAACP LEGAL DEF. FUND (June 11, 2013), https://www.naacpldf.org/press/fifty-years-ago-the-stand-in-the-schoolhouse-door [https://perma.cc/D2WW-8EJJ].

[52] Bridges, *supra* note 12, at 32.

[53] *See id.*

[54] *Id.* at 31.

[55] *Id.* at 32.

researched books and copiously detailed law review articles, she time and again has urged centering the lives of Black and Brown women in discourse on reproductive health and rights and has argued for the use of a reproductive justice framework to analyze the law's failure to show solicitude toward low-income women of color.[56] In her Foreword, Bridges expands on those intuitions and instincts to include a more generalizable critique and description of the Court's review of racial discrimination, a particularly relevant endeavor given the Court's recent Term. Accordingly, to Bridges, the Roberts Court shows its theory of racism, even while it claims to be "atheoretical" in its race jurisprudence.[57] Bridges marks this as "theory masquerading as no-theory" — a theory she describes as both "incomplete"[58] and "convenient."[59] How then does one make sense of the Court's methodology or theory of law? And is the Roberts Court unique in its masquerading? Is there a framework that might connect the Roberts Court to its predecessor Courts, which equally showed a lack of solicitude for the lives of women generally, and women of color particularly?

This essay characterizes the Court's grievously wrong rulings in its 2021 Term abortion cases as manifestations of complicit bias. It takes seriously an overlooked — even unnamed — phenomenology involving third parties who do not act when harms occur, even when they could do so or arguably have a duty to do so. It argues that in cases involving sex, race, and gender discrimination, action or *inaction* by third parties, including by courts, may cause harm. Furthermore, that action or inaction may be linked to personal or professional interest in, affinity toward, loyalty to, benefit from, or relationship to the perpetrator, which may be state legislatures as well as individuals.

This essay offers a new conceptual framework, namely "complicit bias," to address circumstances wherein people fail to act — even people presumably of goodwill. This distinct conceptual framework complements and expands the recognized theoretical frames of implicit bias and explicit bias. It suggests that those useful and important frames fail to capture an important third rail. Unlike those who engage in implicit bias (being cognitively unaware of prejudiced thoughts and behaviors),[60] individuals who engage in complicit bias are cognitively aware of the

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[56] *See, e.g.*, KHIARA BRIDGES, THE POVERTY OF PRIVACY RIGHTS (2017); KHIARA BRIDGES, REPRODUCING RACE: AN ETHNOGRAPHY OF PREGNANCY AS A SITE OF RACIALIZATION (2011); Bridges, *supra* note 29; Khiara Bridges, *Race, Pregnancy, and the Opioid Epidemic: White Privilege and the Criminalization of Opioid Use During Pregnancy*, 133 HARV. L. REV. 772 (2020); Khiara Bridges, *White Privilege and White Disadvantage*, 105 VA. L. REV. 449 (2019); Khiara Bridges, *When Pregnancy Is an Injury: Rape, Law, and Culture*, 65 STAN. L. REV. 457 (2013).

[57] Bridges, *supra* note 12, at 27.

[58] *Id.* at 26.

[59] *Id.*

[60] *See* Kang et al., *supra* note 1, at 1128–32 (2012) (providing a scientific overview of implicit bias).

specific prejudice, discrimination, and injustice at issue. However, unlike actors engaged in explicit bias, the complicitly biased may not be engaged in purposeful acts to discriminate or harm.[61] Rather, individuals or institutions that engage in complicit bias occupy a third category. They are those who fail to correct or acknowledge the discriminatory harms inflicted on vulnerable individuals despite awareness of the inappropriate, unethical, or illegal conduct.

This essay proceeds in three Parts. Part I briefly lays out the contours of complicit bias theory. Part II argues that complicit bias has been a pillar of American jurisprudence by tracing the longer arc of complicit bias in judicial decisionmaking. Part III turns to the real-world implications and impacts of judicial complicit bias. It offers an overview of the dangerous but predictable aftermath of the Supreme Court's decision in *Dobbs*. It asks: Why, with the unsurprising likelihood of pregnancy-related injuries and harms in the wake of abortions bans, did the Court accord such solicitude to Mississippi? The essay then concludes.

## I. COMPLICIT BIAS

The racial heuristics that Bridges brings to light invite more than a reflection on the Court's mishandling of sex and race, which it presents as neutral, fair, and rigorous in its canvassing of history but which Bridges describes as intentionally harmful.[62] Rather, the Roberts Court's decisions reveal complicit bias and must be addressed by a framework that takes into account the Court's knowledge of unjust outcomes and participation in the predictable injuries experienced by those harmed by its jurisprudence. Notably, while this bias could reasonably be analyzed as implicit or explicit sexism or racism — and the discrimination produced by the intersection of racism and sexism — this essay introduces and offers another approach.

Complicit bias makes a positive argument, building from prior works.[63] It includes instances wherein people of goodwill and good faith fail to act. It makes no assumptions about the motivations of members of the Court. In other words, to identify and bring attention to complicit bias in the judiciary, one need not evaluate the internal mental *processes* of judges. Instead, the conditions or elements of complicit bias can be less probingly discerned. First, complicit bias can be shown where the

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[61] *See id.* at 1129 (describing explicit bias as attitudes and stereotypes that are "consciously accessible through introspection *and* endorsed as appropriate by the person who possesses them").

[62] *See* Bridges, *supra* note 12, at 25 (describing the Court's narrow definition of racism as a "tactic that allows the Court to do no more than the absolute bare minimum").

[63] *See, e.g.*, Michele Goodwin & Erwin Chemerinsky, *Pregnancy, Poverty, and the State*, 127 YALE L.J. 1270, 1286 (2018) (book review); Michele Goodwin, *Complicit Bias: Sexual Harassment and Communities that Sustain It*, HUFFPOST (Dec. 12, 2017), https://www.huffpost.com/entry/complicit-bias-sexual-harassment-and-communities-that_b_5a2e238de4b0d7c3f262244f [https://perma.cc/Y65V-HF45].

actor is aware of a past, present, or future harm and does not intercede, with apparent knowledge that the impact will prejudice another. Second, the perpetrator (individual or institution) shows an inclination to protect an individual or group based on relationship, affinity, or group characteristics. Third, the individual or institution furthers the harm through silence and inaction.

### *A. Complicit Bias in Society*

Complicit bias manifests at multiple levels of law and society. I name four: the individual, institutional, contractual, and associational. A relative who decides not to intervene to protect the victim in matters of family violence or lend credibility to the victim's claims may be complicitly biased at the individual level.[64] A religious organization that denies known, credible reports of sexual assaults committed by its leadership and employees may be complicitly biased at the institutional level.[65] People with contractual relationships with an institution may seek to maximize their interests by denying any ethical or moral responsibility to act in instances of known institutional abuse. Yet, by remaining silent, they may further contribute to the pain and suffering of victims who know that the perpetrator is aware.[66]

In the case of Harvey Weinstein, studio executives, actors, actresses, and those looking to do business with his company were allegedly aware of his assaults on women.[67] Among these were people that had contractual relationships with his company. As one actress wrote, "the most

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[64] *See* Alexandra Topping, *"No Support": Domestic Abuse Survivors on Feeling Ignored by Police*, THE GUARDIAN (Oct. 20, 2021, 10:58 AM), https://www.theguardian.com/society/2021/sep/17/no-support-domestic-abuse-victims-on-being-ignored-by-police [https://perma.cc/US2C-9G6U]; Roland C. Summit, *The Child Sexual Abuse Accommodation Syndrome*, 7 CHILD ABUSE & NEGLECT 177, 187 (1983) ("The mother's whole security and life adjustment and much of her sense of adult self-worth demand a trust in the reliability of her partner. To accept the alternative means annihilation of the family and a large piece of her own identity."); Mark D. Everson et al., *Maternal Support Following Disclosure of Incest*, 59 AM. J. ORTHOPSYCHIATRY 197 (1989) (noting that lack of support following childhood sexual violence may trigger more psychological harm for the victim than the abuse itself); Melissa Platt et al., *A Betrayal Trauma Perspective on Domestic Violence*, *in* 1 VIOLENCE AGAINST WOMEN IN FAMILIES AND RELATIONSHIPS 185, 186 (Evan Stark & Eve S. Buzawa eds., 2009) ("She may be further betrayed when the institutions and communities she turns to for support fail to validate her experience and fail to provide access to necessary resources."); IMOGEN PARKER, A LINK IN THE CHAIN: THE ROLE OF FRIENDS AND FAMILY IN TACKLING DOMESTIC ABUSE 26 (2015), https://www.citizensadvice.org.uk/Global/CitizensAdvice/Crime%20and%20Justice%20Publications/Linkinthechain.pdf [https://perma.cc/G24M-ND8Y] ("Friends and family are more likely to be aware of abuse than anyone else. The British Crime Survey of victims found more than two thirds (71 per cent) of individuals who experienced domestic abuse last year told someone personally close to them, compared to just one third (33 per cent) who told an official (police for example) . . . .").

[65] *See* Laurie Goodstein & Sharon Otterman, *Catholic Priests Abused 1,000 Children in Pennsylvania, Report Says*, N.Y. TIMES (Aug. 14, 2018), https://www.nytimes.com/2018/08/14/us/catholic-church-sex-abuse-pennsylvania.html [https://perma.cc/4PDK-N25X].

[66] *See Harvey Weinstein: Did Everyone Really Know?*, BBC (Oct. 12, 2017), https://www.bbc.com/news/entertainment-arts-41593384 [https://perma.cc/C4K3-Z487].

[67] *Id.*

disgusting thing" was that "[e]veryone knew what Harvey was up to and no one did anything."[68] Entities that contracted with Weinstein's studio were placed on notice about his abuse, and while they had no legal obligation to report him, their personal interests in profiting off of their relationships with Weinstein (a form of complicit bias) may help to explain why they essentially did nothing at all.[69]

Finally, associational complicity may be triggered by one's involvement with a group, association, or fraternity. In such instances there may be multiple reasons that one does not act, but among them may be loyalty or solidarity to the brotherhood or sisterhood of the organization. In the wake of #MeToo, numerous examples fit these categories. Below, a few are briefly identified.

*1. Philadelphia Catholic Archdiocese.* — A damning 2018 grand jury report concluded that in Pennsylvania alone, Catholic priests abused more than one thousand children.[70] According to an investigative report by Laurie Goodstein and Sharon Otterman, "[b]ishops and other leaders of the Roman Catholic Church in Pennsylvania covered up child sexual abuse by more than 300 priests over a period of 70 years, persuading victims not to report the abuse and law enforcement not to investigate it."[71] In a case of such widespread abuses, there is also widespread complicit bias at every layer. The silence of so many individuals could translate into law as innocence while at the same time projecting negative stereotypes on the victims who come forward.

*2. Penn State's Response to Jerry Sandusky.* — Such widespread complicit bias was on display in the case involving young men who came forward to report sexual abuses, assaults, and rapes carried out by retired football coach Jerry Sandusky at his home on the campus of the Pennsylvania State University (Penn State) and while away at off-campus football games.[72] Sandusky claimed that the young men lied and were seeking to exploit the legal system to unjustly enrich themselves at his expense.[73]

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[68] *Id.*

[69] *See* Ronan Farrow, *From Aggressive Overtures to Sexual Assault: Harvey Weinstein's Accusers Tell Their Stories*, NEW YORKER (Oct. 10, 2017, 10:47 AM), https://www.newyorker.com/news/news-desk/from-aggressive-overtures-to-sexual-assault-harvey-weinsteins-accusers-tell-their-stories [https://perma.cc/4A9T-C7B9] (explaining that at least "[s]ixteen former and current executives and assistants at Weinstein's companies" were aware of Weinstein's conduct).

[70] Goodstein & Otterman, *supra* note 65.

[71] *Id.*

[72] Joe Drape, *Sandusky Guilty of Sexual Abuse of 10 Young Boys*, N.Y. TIMES (June 22, 2012), https://www.nytimes.com/2012/06/23/sports/ncaafootball/jerry-sandusky-convicted-of-sexually-abusing-boys.html [https://perma.cc/233Y-LBSG].

[73] Jim Avila & Colleen Curry, *Penn State "Victim" Was Retaliating Against a Tough Mentor, Lawyer Claims*, ABC NEWS (Nov. 22, 2011, 12:08 PM), https://abcnews.go.com/US/penn-state-suspects-lawyer-victim-lied-felt-important/story?id=15007125 [https://perma.cc/P3H9-UES3] ("'[W]hat Jerry believes happened is that this young guy got tired of Jerry pushing. Jerry believes

When Penn State's President, Graham Spanier, downplayed eyewitness allegations made by a graduate student — who worked in the university's football program — that Sandusky inappropriately showered with a naked child in a Penn State locker room,[74] was that plain incompetence? Dereliction of responsibility as a university administrator? A breach of a civil legal duty? A crime? All of the above? Prosecutors eventually charged Spanier with conspiracy and the failure to properly report suspected abuse, in addition to perjury, obstruction, and endangering the welfare of children.[75] Prosecutors also referred to Spanier's actions as part of a "conspiracy of silence."[76] Ultimately, a Dauphin County jury convicted Spanier on a single count of child endangerment, which he unsuccessfully appealed.[77] But was the University's President culpable of something else not yet identified in legal discourse?

As a cognitive matter, why had Spanier and others not come forward given the gravity of the witness account? Had Spanier, Joe Paterno — the revered head coach — and numerous others ignored allegations spanning decades "to preserve the reputation of the venerated football program"?[78] If they had, clearly that involved some level of cognitive processing. Arguably, multiple colleagues of Sandusky's who were proximate to and informed about the harms, but under no legal obligation to report them, were guilty of complicit bias in this case.[79]

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that what happened was this young guy said, you know what, gee, if I say Jerry did something to me, that's the end of my relationship with Jerry.' Amendola alleges the victim has changed and embellished his story in response to the attention he received from prosecutors."); Michael R. Sisak, *Sandusky Defense: Victims Lying for Financial Benefit*, THE TIMES-TRIBUNE (Scranton, Pa.) (Apr. 15, 2020), https://www.thetimes-tribune.com/news/sandusky-defense-victims-lying-for-financial-benefit/article_328ca5ba-a45d-550e-8be8-7ebb529289c0.html [https://perma.cc/29DC-CJWJ].

[74] *See* Michael Sokolove, *The Trials of Graham Spanier, Penn State's Ousted President*, N.Y. TIMES (July 16, 2014), https://www.nytimes.com/2014/07/20/magazine/the-trials-of-graham-spanier-penn-states-ousted-president.html [https://perma.cc/EHP6-MWH9]; *Penn State Ex-President Reports to Jail in Sandusky Scandal*, ASSOCIATED PRESS (June 10, 2021), https://apnews.com/article/pa-state-wire-jerry-sandusky-graham-spanier-sexual-abuse-child-endangerment-3381510116034e07575c303775467ac8 [https://perma.cc/8TMJ-6LKQ] ("A judge upheld Spanier's sentence last month and ordered him to begin serving at least two months in the county jail by July 9 for a single misdemeanor conviction of endangering the welfare of children.").

[75] *Graham Spanier Arraigned over Penn State Jerry Sandusky Case*, THE GUARDIAN (Nov. 7, 2012, 10:33 AM), https://www.theguardian.com/world/2012/nov/07/graham-spanier-penn-state-jerry-sandusky [https://perma.cc/V4Q4-SEKN].

[76] *Id.*

[77] Charles Thompson, *Where Are the Key People in the Sandusky Child Sex Abuse Scandal Now?*, PITT. POST-GAZETTE (Mar. 31, 2021), https://www.post-gazette.com/news/crimecourts/2021/03/31/Where-are-the-key-people-in-the-Sandusky-child-sex-abuse-scandal-now/stories/202103310106 [https://perma.cc/P2D2-3TFF] ("[The child endangerment] charge was all that was left of a far-reaching obstruction of justice case that was largely thrown out by a state Superior Court panel based on what the judges found were gross violations of attorney/client privilege in the grand jury investigation.").

[78] *See id.*

[79] *Id.* (providing updates on the various individuals directly and indirectly involved in Sandusky's sexual abuse scandal).

*3. Correcting for Complicit Bias.* — On August 3, 2021, President Joe Biden confirmed that he stood by his prior statements that Governor Andrew Cuomo should resign if the New York Attorney General's inquiry found credible evidence of sexual harassment by the New York Governor.[80] President Biden, a key sponsor and author of the Violence Against Women Act of 1994[81] (VAWA) and Chair of the Senate Judiciary Committee during Justice Thomas's Supreme Court confirmation hearings,[82] is no stranger to the political minefields surrounding sexual harassment allegations. In 1999, then-Senator Biden "argued strongly against the need to depose additional witnesses or seek new evidence" in the investigation related to President Bill Clinton's impeachment trial.[83]

In a memorandum to fellow Senate Democrats penned two decades ago, then-Senator Biden stressed that a full impeachment proceeding, including calling on additional witnesses against President Clinton following allegations of sexual impropriety with a White House intern, could adversely affect the country[84]:

> In light of the extensive record already compiled, it may be that the benefit of receiving additional evidence or live testimony is not great enough to outweigh the public costs (in terms of national prestige, faith in public institutions, etc.) of such a proceeding. While a judge may not take such considerations into account, the Senate is uniquely competent to make such a balance.[85]

At the time, then-Senator Biden's legal assertions and broader commentary related to President Clinton's impeachment received little pushback. Men dominated the demographic makeup of the Senate and

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[80] David Smith, *Biden Calls on Cuomo to Quit After Damning Sexual Harassment Report*, THE GUARDIAN (Aug. 3, 2021, 5:20 PM), https://www.theguardian.com/us-news/2021/aug/03/biden-cuomo-white-house-sexual-harassment-investigation [https://perma.cc/99BW-2WT6].

[81] Email from Vice President Joe Biden to Those Signed Up to Receive Updates from the White House (Sept. 13, 2014) (available at *Vice President Biden: "20 Years Ago Today,"* WHITE HOUSE: PRESIDENT BARACK OBAMA (Sept. 13, 2014, 6:57 PM), https://obamawhitehouse.archives.gov/blog/2014/09/13/vice-president-biden-20-years-ago-today [https://perma.cc/7ZL7-43GJ]) (referring to VAWA as his "proudest legislative achievement").

[82] Sheryl Gay Stolberg & Carl Hulse, *Joe Biden Expresses Regret to Anita Hill, But She Says "I'm Sorry" Is Not Enough*, N.Y. TIMES (Apr. 25, 2019), https://www.nytimes.com/2019/04/25/us/politics/joe-biden-anita-hill.html [https://perma.cc/9M9P-BW4D].

[83] John Bresnahan & Burgess Everett, *Biden Argued Against Witnesses in 1999 Impeachment Trial Memo*, POLITICO (Jan. 30, 2020, 11:54 PM) https://www.politico.com/news/2020/01/30/joe-biden-impeachment-witness-109730 [https://perma.cc/3KHP-HERT] (reporting that in 1999, then-Senator Biden circulated a memorandum to fellow Democrats that argued that "the Senate need not hold a 'full-blown' trial" (quoting Memorandum from Joseph Biden, U.S. Sen., to the Democratic Caucus, Arguments in Support of a Summary Impeachment Trial (Jan. 5, 1999) (available at https://static.politico.com/1e/c3/c1f5b0e64288babbba06da2e401a/0247-001.pdf [https://perma.cc/MXB4-HZZ7]))).

[84] Memorandum from Joseph Biden, U.S. Sen., to the Democratic Caucus, *supra* note 83.

[85] *Id.*

House of Representatives, including in the Democratic Party.[86] When then-Senator Biden compared the impeachment of President Clinton to a "lynching," Democrats in his party said very little.[87] In fact, several congressmen referred to Republican efforts to impeach President Clinton as a "lynching," part of a "lynch mob" mentality, or a conspiracy carried out by conservative lawmakers.[88]

However, by 2019, the nation's mood and tolerance for looking the other way in matters of sex scandals had shifted.[89] This came in the wake of a national reckoning with sexual harassment and assault, triggered by public scandals and chilling allegations involving prominent celebrities, judges, and various public figures and politicians, including

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[86] *See* Katherine Schaeffer, *The Changing Face of Congress in 7 Charts*, PEW RSCH. CTR. (Mar. 10, 2021), https://www.pewresearch.org/fact-tank/2021/03/10/the-changing-face-of-congress [https://perma.cc/C3FS-ZSAD].

[87] *Cf.* Matt Viser & Cleve Wootson Jr., *After Criticizing Trump, Joe Biden Apologizes for Using "Partisan Lynching" in 1998*, WASH. POST (Oct. 23, 2019, 11:01 AM), https://www.washingtonpost.com/politics/after-criticizing-trump-joe-biden-apologizes-for-using-partisan-lynching-in-1998/2019/10/23/32349202-f597-11e9-a285-882a8e386a96_story.html [https://perma.cc/S2UR-URE3].

[88] The *Washington Post* identified at least a handful of instances in which past and current congressmen compared President Clinton's impeachment to a lynching or lynch mob. *See id.* ("Danny K. Davis (Ill.), Gregory W. Meeks (N.Y.), Jim McDermott (Wash.), Charles B. Rangel (N.Y.) and Jerrold Nadler (N.Y.) . . . talked about a 'lynching' or 'lynch mob' when it came to Clinton's impeachment.").

[89] *See* The Atlantic Culture Desk, *The 7 Most Defining #MeToo Moments of 2019*, THE ATLANTIC (Dec. 12, 2019), https://www.theatlantic.com/entertainment/archive/2019/12/most-defining-metoo-moments-2019/603490 [https://perma.cc/J3TB-PVN8] ("#MeToo has woven itself into American culture . . . ."); *see also* ANNA BROWN, PEW RSCH. CTR., MORE THAN TWICE AS MANY AMERICANS SUPPORT THAN OPPOSE THE #METOO MOVEMENT 4 (2022) ("As the five-year anniversary of #MeToo approaches, Americans see some changes in how sexual harassment and assault are handled in the workplace. Seven-in-ten U.S. adults — including majorities across demographic groups and partisan lines — say that, compared with five years ago, people who commit sexual harassment or assault in the workplace are now more likely to be held responsible for their actions. And about six-in-ten say that those who report harassment or assault at work are now more likely to be believed. These views are echoed even by a majority of those who oppose the #MeToo movement overall.").

Harvey Weinstein,[90] Bill Cosby,[91] Matt Lauer,[92] Justice Kavanaugh,[93] and Judge Kozinski.[94]

Whether responding to the #MeToo climate or a heated race for the United States presidency, President Biden publicly shifted too. He apologized for claiming that the impeachment of President Clinton could be equated to a "partisan lynching."[95] And, in the case of Governor

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[90] *See* Farrow, *supra* note 69 ("In the course of a ten-month investigation . . . thirteen women [interviewed] said that, between the nineteen-nineties and 2015, Weinstein sexually harassed or assaulted them.").

[91] *See* Graham Bowley, *Bill Cosby Loses Appeal of Sexual Assault Conviction*, N.Y. TIMES (July 28, 2021), https://www.nytimes.com/2019/12/10/arts/television/bill-cosby-appeal-sexual-assault.html [https://perma.cc/H8SP-2PHH]; *see also* Charlie Savage, *Bill Cosby's Release from Prison, Explained*, N.Y. TIMES (Oct. 14, 2021), https://www.nytimes.com/2021/07/01/arts/television/bill-cosby-conviction-overturned-why.html [https://perma.cc/5ZE4-T6L2].

[92] *See* Daniel Arkin, *Brooke Nevils Clearly Described Rape or Sexual Assault by Matt Lauer in NBC Meeting, Ronan Farrow Says*, NBC NEWS (Oct. 11, 2019, 11:06 AM), https://www.nbcnews.com/news/us-news/brooke-nevils-unambiguously-described-rape-matt-lauer-nbc-meeting-ronan-n1064986 [https://perma.cc/R8YA-62EX] ("[Brooke] Nevils has accused Lauer of raping her in a hotel room in Russia during the 2014 Sochi Olympics. . . . Lauer was fired by NBC News . . . following Nevils' complaint to the company.").

[93] *See* Haley Sweetland Edwards, *How Christine Blasey Ford's Testimony Changed America*, TIME (Oct. 4, 2018, 6:10 PM), https://time.com/5415027/christine-blasey-ford-testimony [https://perma.cc/NG73-6DVR] ("Ford's testimony slowed the machinery of political power when it was fully in gear. . . . [T]he chairman of the Judiciary Committee[] congratulated Ford on her bravery. President Trump . . . called Ford . . . a 'credible witness' . . . . Within hours, three Republican governors and the American Bar Association had called for a delay on Kavanaugh's confirmation vote . . . . That's a marked shift from 1991, when Americans sided with then Supreme Court nominee Clarence Thomas after Anita Hill accused him of sexual harassment."); Deborah Bloom, *Sexual Assault Victims Are Reliving Their Trauma, Triggered by Kavanaugh Hearing*, WASH. POST (Sept. 28, 2018, 6:26 AM), https://www.washingtonpost.com/health/2018/09/28/sexual-assault-victims-are-reliving-their-trauma-triggered-by-kavanaugh-hearing [https://perma.cc/QR5H-QKAJ] ("Painful. Gut-wrenching. Heartbreaking. Unbearable. That's how women described listening to Thursday's Senate Judiciary Committee hearing, where Christine Blasey Ford testified that Supreme Court nominee Brett M. Kavanaugh had sexually assaulted her when they were both in high school."); Sheryl Gay Stolberg & Nicholas Fandos, *Brett Kavanaugh and Christine Blasey Ford Duel with Tears and Fury*, N.Y. TIMES (Sept. 27, 2018), https://www.nytimes.com/2018/09/27/us/politics/brett-kavanaugh-confirmation-hearings.html [https://perma.cc/P8VE-AR8G] ("A few hours later, Judge Kavanaugh delivered a blistering, scorched-earth defense. Speaking through tears at points, he denied that he assaulted Dr. Blasey — 'I am innocent of this charge!' — and denounced a partisan 'frenzy' bent on destroying his nomination, his family and his good name.").

[94] *See* Matt Zapotosky, *Prominent Appeals Court Judge Alex Kozinski Accused of Sexual Misconduct*, WASH. POST (Dec. 8, 2017), https://www.washingtonpost.com/world/national-security/prominent-appeals-court-judge-alex-kozinski-accused-of-sexual-misconduct/2017/12/08/1763e2b8-d913-11e7-a841-2066faf731ef_story.html [https://perma.cc/A438-FT66] ("A former clerk for Judge Alex Kozinski said the powerful and well-known jurist, who for many years served as chief judge on the U.S. Court of Appeals for the 9th Circuit, called her into his office several times and pulled up pornography on his computer, asking if she thought it was photoshopped or if it aroused her sexually.").

[95] Viser & Wootson, *supra* note 87. In an interview with news anchor Wolf Blitzer, then-Senator Biden remarked:

> Even if the president should be impeached, history is going to question whether or not this was just a partisan lynching or whether or not it was something that in fact met the standard, the very high bar, that was set by the founders as to what constituted an impeachable offense.

*Id.*

Cuomo, President Biden did not hesitate to distance himself and call for the Governor's resignation.[96] One could argue that this simply reflected good judgment and political shrewdness. Was this also a public rejection of complicit bias? Arguably so.

### *B. Complicit Bias as an Internal Supreme Court Phenomenon and Problem*

Consider an internal case of complicit bias and the Supreme Court. In an empirical study examining fifteen years of Supreme Court oral arguments, Professor Tonja Jacobi and Dylan Schweers show not only that "conservative justices interrupt the liberal justices more than twice as often as vice versa" but also that "women do not have an equal opportunity to be heard on the highest court in the land."[97]

In fact, as more women join the Supreme Court, "the reaction of the male justices has been to increase their interruptions of the female justices."[98] As Jacobi and Schweers's study shows, the interruptions are not insignificant:

> Many male justices are now interrupting female justices at double-digit rates per term, but the reverse is almost never true. In the last 12 years, during which women made up, on average, 24% of the bench, 32% of interruptions were *of* the female justices, but only 4% were *by* the female justices.[99]

Overall, male Justices interrupt their female colleagues "approximately three times as often as they interrupt each other during oral arguments."[100] Jacobi and Schweers note that even "[d]uring the Senate hearings on whether he should become the next associate justice of the Supreme Court, Neil Gorsuch," who was otherwise even tempered, "showed his cards in one regard: He could not help repeatedly interrupting the liberal female senators."[101]

Jacobi and Schweers also conducted research across multiple Terms to test how their hypothesis has fared historically. They analyzed oral argument data from the 1990, 2002, and 2015 Terms to assess whether "the same patterns held when there were fewer female justices on the court."[102] Their review yielded the following findings:

> In 1990, with one woman on the bench (former Justice Sandra Day O'Connor), 35.7% of interruptions were directed at her; in 2002, 45.3% were directed at the two female justices (O'Connor and Ruth Bader Ginsburg);

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[96] *See* Smith, *supra* note 80.

[97] Tonja Jacobi & Dylan Schweers, *Female Supreme Court Justices Are Interrupted More by Male Justices and Advocates*, HARV. BUS. REV. (Apr. 11, 2017), https://hbr.org/2017/04/female-supreme-court-justices-are-interrupted-more-by-male-justices-and-advocates [https://perma.cc/UAH7-7PV7].

[98] *Id.*

[99] *Id.*

[100] *Id.*

[101] *Id.*

[102] *Id.*

> in 2015, 65.9% of all interruptions on the court were directed at the three female justices on the bench (Ginsburg, Sonia Sotomayor, and Elena Kagan). With more women on the court, the situation only seems to be getting worse.[103]

Jacobi and Schweers's research contributes to a robust discourse on women in the workplace and offers an important lens into the broader field by exposing and linking a ubiquitous workplace harm[104] with the Supreme Court. Even while the authors make no predictions or normative conclusions about what their findings mean for the outcomes of cases, there are substantive and symbolic takeaways.

Substantively, if women Justices are silenced during oral arguments, important insights may not surface because the process takes place only once in most cases. Even though the Justices' roles extend beyond oral arguments, including to private deliberations, cross-examining lawyers presumably aids judicial review and clarifies the facts and law in a case. Clearly, male Justices value the oral argument process because they ask questions and expect lawyers to answer them. For example, Professor Lawrence Wrightsman's illuminating study on oral arguments at the Supreme Court notes that "Chief Justice Marshall took full advantage of the talent before the Court; he encouraged extended arguments, established no time limits, and sometimes enabled a single lawyer to speak for 2 or 3 days."[105]

Thus, although it is not clear what Jacobi and Schweers's findings mean for the substantive outcomes in the cases heard by the Court, certain harms to the legal process flow from these interactions, which silence the questions and perspectives of the female Justices.

Symbolic problems can also be identified. By frequently interrupting their female colleagues, male Justices signal to other Court officers that their female colleagues are undeserving of the respect accorded male

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103 *Id.*

104 *Cf.* Francesca Gino, *Why Hillary Clinton Gets Interrupted More than Donald Trump*, HARV. BUS. REV. (Sept. 20, 2016), https://hbr.org/2016/09/why-hillary-clinton-gets-interrupted-more-than-donald-trump [https://perma.cc/7R8E-M9SC] (reviewing studies showing that women are more likely than men to be interrupted).

105 LAWRENCE S. WRIGHTSMAN, ORAL ARGUMENTS BEFORE THE SUPREME COURT 11 (2008). When Justice O'Connor proposed in 1981 that the Justices "dispense with oral arguments" for recently accepted cases, *id.* at 8, "Justice Lewis Powell responded, 'I could agree with Sandra's proposed change [but] my only concern is that we might abuse this privilege. I believe in the utility of oral argument, and also in the symbolism it portrays for the public. Accordingly, if the rule is changed, I would hope that we could use this option sparingly,'" *id.* at 9 (alteration in original) (quoting JOAN BISKUPIC, SANDRA DAY O'CONNOR 120 (2005)). Even as Chief Justice Burger and then-Justice Rehnquist supported the idea, *id.* at 8–9, Justice Brennan "was adamantly opposed," writing, "Dear Chief: I could *not* agree to Sandra's proposed change. . . . I expect my reaction is influenced by my New Jersey experience [and] the [past] practice of the [state's] highest court in deciding almost all cases on briefs without oral argument. The low quality of final judgments was traced directly to that practice . . . [.] Thus the New Jersey Supreme Court rule [now] requires oral argument of every case granted review. . . . I feel so strongly about this that I must publicly dissent if the rule is changed," *id.* at 9 (omissions and first, second, third, and fifth alteration in original) (quoting BISKUPIC, *supra*, at 120).

Justices. Potentially, this has a trickle-down effect even beyond the Court. However, this problem is particularly acute within the Court itself. Strict guidelines govern Supreme Court oral arguments, requiring that lawyers cease their argument when a Justice speaks.[106] However, male lawyers cause "10% of all interruptions that occur in court (excluding justices interrupting advocates, which is standard procedure)."[107] Notably, "[i]n contrast, interruptions by female advocates account for approximately 0%."[108]

At the Supreme Court, this is not only a sex problem but also a sex-and-race problem. This sex-and-race issue became glaringly apparent after Justice Sotomayor joined the Court. In 2015, male attorneys interrupted Justice Sotomayor more than any other Justice. In fact, "male advocates interrupting Justice Sotomayor was the most common form of interruption[] of any justice, accounting for 8% of all interruptions in the court."[109]

Finally, businesses and industries assume that as workplaces become more numerically inclusive of women, like the Court has, the behaviors that push women out and hold them back from advancement will lessen.[110] In reality, such behaviors may actually worsen in some instances due to active complicit bias.

## II. THE HISTORICAL CASE: COMPLICIT BIAS AS A PILLAR OF JURISPRUDENCE

In the wake of its 2021 Term, confidence in the Court has waned,[111] likely due to the public's perception of personal or political influences infecting the Court's judicial process and decisions. According to an Annenberg Public Policy Center study conducted after the 2021 Term: "Over half (53%) [of Americans] have little or no trust in the Supreme Court to operate in the best interests of the American people, up 22 percentage points since 2019."[112] Further, "[h]alf of U.S. adults (50%,

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106 SUP. CT. OF THE U.S., GUIDE FOR COUNSEL IN CASES TO BE ARGUED 9 (2021).

107 Jacobi & Schweers, *supra* note 97.

108 *Id.*

109 *Id.*

110 *See, e.g.*, JESS HUANG ET AL., MCKINSEY & COMPANY, WOMEN IN THE WORKPLACE 2019, at 3 (2019).

111 *See* Jared Gans, *Confidence in Supreme Court Is at Lowest Level in 50-Year Recorded History, Gallup Poll Finds*, THE HILL (June 23, 2022, 4:06 PM), https://thehill.com/regulation/court-battles/3534955-confidence-in-supreme-court-is-at-lowest-level-in-50-year-recorded-history-gallup-poll-finds [https://perma.cc/A7TE-VGGH].

112 *Over Half of Americans Disapprove of Supreme Court as Trust Plummets*, ANNENBERG PUB. POL'Y CTR. (Oct. 10, 2022), https://www.annenbergpublicpolicycenter.org/over-half-of-americans-disapprove-of-supreme-court-as-trust-plummets [https://perma.cc/RWE3-YXVU] ("[W]hen the public is asked whether Supreme Court justices are more likely to set aside their personal and political beliefs to make rulings based on the Constitution, the law, and the facts, just 40% say they are likely to do so."); *see also* Adam Liptak, *An Extraordinary Winning Streak for Religion at the*

up from 35% in 2019) feel that Supreme Court justices 'are just like any other politicians' and 'we cannot trust them to decide court cases in a way that is in the best interest of our country.'"[113] Even according to sitting Justices, the Court appears vulnerable to public perceptions of undue influence. At an event sponsored by Northwestern Law School, Justice Kagan warned that "[w]hen courts become extensions of the political process, when people see them as extensions of the political process, once people see them as trying just to impose personal preferences on a society, irrespective of the law, that's when there's a problem."[114]

At oral argument in *Dobbs*, Justice Sotomayor framed her concerns with the Court in a question: "Will this institution survive the stench that this creates in the public perception that the Constitution and its reading are just political acts?"[115] Answering her own question, she responded: "I don't see how it is possible."[116] To her point, the newly constituted conservative majority of the Court seemed poised, even at oral argument, to undermine eighty years of Court jurisprudence relating to autonomy, liberty, and privacy in family planning dating back to *Skinner v. Oklahoma ex rel. Williamson*[117] and including *Griswold v. Connecticut*,[118] *Eisenstadt v. Baird*,[119] *Roe v. Wade*,[120] and *Planned Parenthood of Southeastern Pennsylvania v. Casey*.[121] To drill down further, when Justices Kagan and Sotomayor warn of the public's perception of political influence infecting the Court's deliberations and holdings, judicial complicit bias should not be ignored.

That said, the problem of perceived or actual judicial complicity and complicit bias is not new. Historically, legal institutions — legislatures and courts — have been explicit and complicit in creating and preserving racial hierarchies.[122] Indeed, the clearest examples of biases — complicit, explicit, and implicit — are revealed in law.[123] Yet it is not

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*Supreme Court*, N.Y. TIMES (Apr. 5, 2021), https://www.nytimes.com/2021/04/05/us/politics/supreme-court-religion.html [https://perma.cc/QC53-SZS3] ("The court led by Chief Justice Earl Warren, from 1953 to 1969, supported religion just 46 percent of the time[,] . . . and [that] finally jumped to just over 81 percent under Chief Justice Roberts, who joined the court in 2005.").

113 *Over Half of Americans Disapprove of Supreme Court as Trust Plummets*, *supra* note 112.

114 Nate Raymond & Andrew Chung, *U.S. Supreme Court Risks Its Legitimacy by Looking Political, Justice Kagan Says*, REUTERS (Sept. 14, 2022, 5:10 PM), https://www.reuters.com/legal/us-supreme-court-risks-its-legitimacy-by-looking-political-justice-kagan-says-2022-09-14 [https://perma.cc/4XFQ-DZYK].

115 Transcript of Oral Argument at 15, Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228 (2022) (No. 19-1392), https://www.supremecourt.gov/oral_arguments/argument_transcripts/2021/19-1392_4425.pdf [https://perma.cc/74G9-M4RK].

116 *Id.*

117 316 U.S. 535 (1942).

118 381 U.S. 479 (1965).

119 405 U.S. 438 (1972).

120 410 U.S. 113 (1973).

121 505 U.S. 833 (1992).

122 *See generally, e.g.*, PAULI MURRAY, STATES' LAWS ON RACE AND COLOR (1951).

123 *See, e.g.*, Korematsu v. United States, 323 U.S. 214, 218 (1944); Buck v. Bell, 274 U.S. 200, 207 (1927); Dred Scott v. Sandford, 60 U.S. (19 How.) 393, 412 (1857) (involving an enslaved party).

judicial decisions alone that instantiate and embed bias into law.[124] Law reflects the priorities of lawmakers. It codifies their impressions, expressions, platforms, and ultimately their values, principles, and even biases.[125] As Professor Frederick Schauer observes, "the legislative process is itself hardly devoid of its own pathologies," not the least of which is political capture by lobbyists and special-interest groups.[126] Yet bias and pathology infect the judicial process too.

### *A. A Tradition of Complicit Bias?*

A less sophisticated reading of the Supreme Court's response to antiabortion legislation might suggest that implicit or explicit sex biases are the only or most plausible explanation for its dismantling of *Roe v. Wade* and evisceration of abortion rights. After all, nearly all in the majority are male and nearly all in the majority are white. Their lack of solicitude for reproductive rights might therefore be fairly attributed to implicit biases that hinder their recognition of and appreciation for the significant civil liberty harms imposed against women and girls and against the communities most affected by such laws — Black and Brown women and girls.[127] Yet my point is not to deny the existence of past or present implicit or explicit biases among legislators or judges — something about which Bridges and I would agree. Rather, this essay highlights the value in recognizing and naming an objectively discernible behavior — the Court's complicit bias.

On that front, observation tells us that the conservative Justices have cognitive awareness of the egregious harms inflicted by antiabortion legislation on women, girls, and people capable of becoming pregnant and that the Justices consciously refuse to intercede even with the knowledge that the legislation's impact will be discriminatory and significant.[128]

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[124] For example, Black codes reflected the legal priorities of southern lawmakers shortly after the Civil War in preserving slavery through its transformation. Professor Eric Foner explains: "Virtually all the former Confederate states enacted sweeping vagrancy and labor contract laws, supplemented by 'antienticement' measures punishing anyone offering higher wages to an employee already under contract." ERIC FONER, RECONSTRUCTION 200 (1988).

[125] *See id.* at 200–01.

[126] Frederick Schauer, *Do Cases Make Bad Law?*, 73 U. CHI. L. REV. 883, 912 (2006) (noting also pathologies of common law methodologies).

[127] *See* Kimberly Lonsway et al., *Understanding the Judicial Role in Addressing Gender Bias: A View from the Eighth Circuit Federal Court System*, 27 LAW & SOC. INQ. 205, 209 (2002) ("For example, only 4% of the attorneys in the Massachusetts survey reported ever having observed judicial intervention to address improper treatment of female attorneys, litigants, or witnesses. Similarly, 12% of the women and 7% of the men in the New York study had observed a judge intervening to address gender-biased misconduct." (citations omitted)); Deborah Hensler, *Studying Gender Bias in the Courts: Stories and Statistics*, 45 STAN. L. REV. 2187, 2191 (1993); *Gender Roles Highlight Gender Bias in Judicial Decisions*, SCIENCEDAILY (Apr. 3, 2018), https://www.sciencedaily.com/releases/2018/04/180403085049.htm [https://perma.cc/QH7B-PYZW].

[128] *See e.g.*, Whole Woman's Health v. Hellerstedt, 136 S. Ct. 2292, 2315 (2016) ("Nationwide, childbirth is 14 times more likely than abortion to result in death . . . ."); *see also* June Med. Servs.

Lawyers, juries, and judges routinely assess bias to evaluate state of mind, determine culpability, gauge innocence or guilt, and protect the legitimacy of legal proceedings.[129] Depending on the matter at hand, lawyers, jurors, and judges may serve as key observers of the nature of prejudice.[130] As Kang's research underlines, individual and collective social biases may even project negative stereotypes on officers of the court — for example, that Asian people lack the qualities expected of good lawyers.[131]

Officers of the court may also intentionally or unintentionally infect legal proceedings with bias, thus undermining the integrity of law and the legal process. For example, *Batson v. Kentucky*[132] illustrates that prosecutors sometimes deliberately and illegally exclude certain jurors based on race.[133] In *McCleskey v. Kemp*,[134] compelling empirical data indicated that Black defendants who kill white victims are more likely to receive the death penalty.[135] Equally, in cases involving rape, glaring disparities in sentencing based on the race of the perpetrator are well documented.[136]

Furthermore, biases perpetuated by lawyers, juries, and judges that undermine the rule of law extend beyond race. Sex-based biases mark

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L.L.C. v. Russo, 140 S. Ct. 2103, 2116 (2020) ("Act 620 does not advance Louisiana's legitimate interest in protecting the health of women seeking abortions. Instead, Act 620 would increase the risk of harm to women's health by dramatically reducing the availability of safe abortion in Louisiana." (quoting June Med. Servs. L.L.C. v. Kliebert, 250 F. Supp. 3d 27, 87 (M.D. La. 2017), *rev'd sub nom.* June Medical Services L.L.C. v. Gee, 905 F.3d 787 (5th Cir. 2018), *rev'd sub nom.* June Med. Servs. L.L.C. v. Russo, 140 S. Ct. 2103)).

129 JERRY KANG, NAT'L CTR. FOR STATE CTS., IMPLICIT BIAS: A PRIMER FOR COURTS 2 (2009) ("Though our shorthand schemas of people may be helpful in some situations, they also can lead to discriminatory behaviors if we are not careful. Given the critical importance of exercising fairness and equality in the court system, lawyers, judges, jurors, and staff should be particularly concerned about identifying such possibilities.").

130 *See generally* GORDON ALLPORT, THE NATURE OF PREJUDICE (1954) (providing a broad account of the emergence of prejudicial thinking from acquiring prejudice to sociocultural factors, groupthink, and preferential decisionmaking).

131 *See* Jerry Kang et al., *Are Ideal Litigators White? Measuring the Myth of Colorblindness*, 7 J. EMPIRICAL LEGAL STUD. 886, 888 (2010).

132 476 U.S. 79 (1986).

133 *Id.* at 89 (holding that a prosecutor cannot exclude potential jurors based on their race). *But see* Swain v. Alabama, 380 U.S. 202, 221–22 (1965) (finding no constitutional violation in a death penalty case where the prosecutor struck all six African Americans on the defendant's jury panel but conceding that preemptory strikes based on race are unconstitutional).

134 481 U.S. 279 (1987).

135 *Id.* at 306–08 (upholding the death penalty based on a troubling finding that the Eighth Amendment is not violated when purposeful racial discrimination cannot be proven, notwithstanding statistical evidence offered by the defendant and despite evident disparate racial impact).

136 *See, e.g.*, Donald H. Partington, *The Incidence of the Death Penalty for Rape in Virginia*, 22 WASH. & LEE L. REV. 43, 43 (1965) ("Since 1908, when the electric chair was installed in the Virginia State Penitentiary, forty-one men have been executed for rape, thirteen for attempted rape, one for rape and robbery, and one for attempted rape and highway robbery. All of these men were Negroes." (footnotes omitted)); Jessica Shaw & HaeNim Lee, *Race and the Criminal Justice System Response to Sexual Assault: A Systematic Review*, 64 AM. J. CMTY. PSYCH. 256 (2019).

the very foundations of American law. In *Bradwell v. Illinois*,[137] the Supreme Court upheld a discriminatory law barring women law school graduates from the practice of law,[138] thereby complicitly preserving the profession for men. The Court's role was not passive but rather proximate and complicit in the harming of women who sought to practice law: Justice Bradley claimed it "repugnant" for a woman to achieve "a distinct and independent" professional life.[139]

Understanding the role of bias in society is not simply a lofty academic matter or concern; law frowns on biases because they introduce errors in judgment. Such errors privilege one set of beliefs, values, and outcomes over possible alternatives, which can harm the integrity of transactions; legal proceedings; and institutional, intimate, and professional relationships. Biases may also harm the political process and interfere with the advancement of democratic values and norms at local, national, and even international levels.

Consider Chief Justice Taney's opinion in *Dred Scott v. Sandford*. The case provides one of many useful historical lenses in American law and society through which racial bias and complicity can be traced, identified, and examined and their impacts mapped.[140] In that case, the Chief Justice opined that Black people in the United States, freed or not, "had no rights which the white man was bound to respect."[141] To leave no further room for doubt, he claimed, "for more than a century," Black people had "been regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations."[142]

To point out the Court's lingering project of complicity in furthering the practice of institutional racism, sexism, homophobia, and ableism is no insignificant matter. By doing so, efforts to dismantle injustice can be more thoughtfully targeted and approached. Again, in *Dred Scott*, according to the United States Supreme Court, Black people were not and could never become citizens of the United States.[143] Chief Justice Taney wrote: "[T]he [N]egro might justly and lawfully be reduced to slavery for his benefit. He was bought and sold, and treated as an ordinary article of merchandise and traffic, whenever a profit could be made by it."[144] The opinion remains hauntingly unambiguous. "[I]t is too clear for dispute, that the enslaved African race were not intended to be included, and formed no part of the people who framed and

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137 83 U.S. (16 Wall.) 130 (1873).
138 *See id.* at 138–39.
139 *Id.* at 141 (Bradley, J., concurring in the judgment).
140 *See* Jamal Greene, *The Anticanon*, 125 HARV. L. REV. 379, 406–12 (2011).
141 Dred Scott v. Sandford, 60 U.S. (19 How.) 393, 407 (1857) (involving an enslaved party).
142 *Id.*
143 *Id.* at 410.
144 *Id.* at 407.

adopted" the Declaration of Independence.[145] For some scholars *Dred Scott* is the obvious embodiment of what Bridges would call the "bad old" law or cases.[146] While this is true, studying the obviously bad, old racial-inequality cases is crucially informative, including by identifying when decisions of the Court serve as barriers to racial justice and equality.

Nor does *Dred Scott* stand in isolation or as an aberration in Supreme Court jurisprudence and American law. To the contrary. Understandably, to the skeptical reader, both *Dred Scott* and Chief Justice Taney's invectives might appear the anomaly that subsequent postbellum jurisprudence disproves. In part, they would be correct; the question of African American citizenship was settled by the Fourteenth Amendment's ratification.[147] Yet the overt, explicit racial hostility grounding the Court's opinion in *Dred Scott* simply transformed in the wake of constitutional protections.[148] In the *Civil Rights Cases*,[149] an 8–1 opinion rendered fifteen years after ratification of the Fourteenth Amendment, the Court stated:

> When a man has emerged from slavery, and by the aid of beneficent legislation has shaken off the inseparable concomitants of that state, there must be some stage in the progress of his elevation when he takes the rank of a mere citizen, and ceases to be the special favorite of the laws, and when his rights as a citizen, or a man, are to be protected in the ordinary modes by which other men's rights are protected.[150]

In other words, lawful, explicit discrimination transformed into permissible "[m]ere discrimination[]."[151] That is, "[m]ere discriminations on account of race or color" that denied Black people access to accommodations and recreation while explicitly, purposefully, and specifically disenfranchising Black people were not sufficiently odious to be "regarded as badges of slavery."[152]

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145 *Id.* at 410.

146 Bridges, *supra* note 12, at 28.

147 *See* U.S. CONST. amend. XIV, § 1.

148 *See* Reva Siegel, *Why Equal Protection No Longer Protects: The Evolving Forms of Status-Enforcing State Action*, 49 STAN. L. REV. 1111, 1119–20 (1997) ("White Americans who emphatically opposed slavery regularly disagreed about what it would mean to emancipate African-Americans. Some defined freedom from slavery as equality in civil rights; others insisted that emancipating African-Americans from slavery entailed equality in civil *and* political rights; but most white Americans who opposed slavery did not think its abolition required giving African-Americans equality in 'social rights.'").

149 109 U.S. 3 (1883); *see also Ex parte* Virginia, 100 U.S. 339, 358 (1880) ("Nothing . . . could have a greater tendency to destroy the independence and autonomy of the States; reduce them to a humiliating and degrading dependence upon the central government; engender constant irritation; and destroy that domestic tranquility which it was one of the objects of the Constitution to insure, — than the doctrine asserted in this case, that Congress can exercise coercive authority over judicial officers of the States in the discharge of their duties under State laws.").

150 *The Civil Rights Cases*, 109 U.S. at 25.

151 *Id.*

152 *Id.*

Sadly, the Court's canon is replete with opinions upholding laws discriminating on the bases of race,[153] sex,[154] and sexual orientation.[155] Equally, the Court has actively struck down civil rights laws (in whole or in part) intended to protect vulnerable groups.[156] It has reviewed cases involving profound expressions and patterns of racism and sexism and found no violation of the Constitution or civil rights laws despite odious racial and sexual impacts.[157]

To understand the scope and scale of racial bias emanating from the Court and its complicity in legitimizing American racism, consider that in 1922, decades after the ratifications of the Thirteenth Amendment (abolishing slavery)[158] and the Fourteenth Amendment (instantiating equal protection in federal law),[159] the Supreme Court declared in *Ozawa v. United States*[160]:

> The provision is not that Negroes and Indians shall be *excluded* but it is, in effect, that only free white persons shall be *included*. The intention was to

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153 *See, e.g.*, *id.*; Plessy v. Ferguson, 163 U.S. 537, 551–52 (1896); Korematsu v. United States, 323 U.S. 214, 223–24 (1944) (upholding an executive order excluding from certain areas and detaining Japanese Americans); Palmer v. Thompson, 403 U.S. 217, 226–27 (1971).

154 *See, e.g.*, Minor v. Happersett, 88 U.S. (21 Wall.) 162, 178 (1874) (affirming state legislation denying women the right to vote); Buck v. Bell, 274 U.S. 200, 207 (1927) (upholding compulsory sterilization law); Goesaert v. Cleary, 335 U.S. 464, 467 (1948) (upholding a Michigan law that prohibited women from serving as bartenders); Hoyt v. Florida, 368 U.S. 57, 62 (1961) ("[W]oman is still regarded as the center of home and family life."); Schlesinger v. Ballard, 419 U.S. 498, 508 (1975) (applying a deferential rationality standard to uphold a policy for promotions in the Navy that discriminated against male servicemembers); *see also* Strauder v. West Virginia, 100 U.S. 303, 310 (1880), *abrogated by* Taylor v. Louisiana, 419 U.S. 522 (1975).

155 *See, e.g.*, Rowland v. Mad River Loc. Sch. Dist., 470 U.S. 1009, 1014 (1985) (Brennan, J., dissenting) ("[Gay men and women] have historically been the object of pernicious and sustained hostility, and it is fair to say that discrimination against homosexuals is 'likely . . . to reflect deep-seated prejudice rather than . . . rationality.'" (alterations in original) (quoting Plyler v. Doe, 457 U.S. 202, 216 n.14 (1982)); Bowers v. Hardwick, 478 U.S. 186, 196 (1986) (upholding, in a 5–4 opinion, a Georgia sodomy law that criminalized private oral and anal sex); Boy Scouts of Am. v. Dale, 530 U.S. 640, 656, 661 (2000) (holding that the Boy Scouts' ban on "openly" gay members was protected by the First Amendment).

156 *See, e.g.*, Brnovich v. Democratic Nat'l Comm., 141 S. Ct. 2321, 2343–44, 2348–49 (2021) (holding that Arizona's out-of-precinct policy does not violate § 2 of the Voting Rights Act and that it was not enacted with a racially discriminatory purpose); Shelby County v. Holder, 570 U.S. 529, 557 (2013) (striking down § 4(b) of the Voting Rights Act); Hammer v. Dagenhart, 247 U.S. 251, 276 (1918) (striking down a federal law to end child labor); Prigg v. Pennsylvania, 41 U.S. (16 Pet.) 539, 622, 625–26 (1842) (striking down a Pennsylvania law that sought to protect Black people from being kidnapped and returned to slavery as preempted by the federal Fugitive Slave Act); *The Civil Rights Cases*, 109 U.S. at 25 (opining that "[m]ere discriminations on account of race or color were not . . . badges of slavery" or, for that matter, unconstitutional under any other provision).

157 *See, e.g.*, McCleskey v. Kemp, 481 U.S. 279, 306–08 (1987); Washington v. Davis, 426 U.S. 229, 246 (1976); Ledbetter v. Goodyear Tire & Rubber Co., 550 U.S. 618, 637–43 (2007); Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 367 (2011).

158 *See* U.S. CONST. amend. XIII, § 1.

159 *See id.* amend. XIV, § 1.

160 260 U.S. 178 (1922).

> confer the privilege of citizenship upon that class of persons whom the fathers knew as white, and to deny it to all who could not be so classified.[161]

The Court reached a similar conclusion one year later in *United States v. Bhagat Singh Thind*.[162]

In *Korematsu v. United States*, a decision that would further test the Court's record and review of policy-based race exclusions, the Court ruled that President Franklin Roosevelt's Executive Order 9066 — which empowered military officials to require Japanese Americans to leave their homes and move into "relocation" (or, more accurately, concentration) camps as a matter of national security[163] — did not exceed presidential or congressional war powers.[164] Writing for the majority, Justice Black opined that the President's evacuation order did not violate Fred Korematsu's Fifth Amendment rights nor inflict racial prejudice on those subjected to the removal order,[165] despite the fact that Korematsu was born in the United States and that the Constitution made him a citizen of the United States "by nativity and a citizen of California by residence."[166] According to Justice Black, not all restrictions that target a particular "racial group" are unconstitutional.[167] The Court found that legal restrictions that curtail the rights of communities based on race may be permissible for "[p]ressing public necessity."[168]

In *Korematsu*, the Court's failure was not only its enforcement of an order that violated constitutional limitations but also its entrenchment of racist ideology. The role of the Court is to exercise judicial power, apply law, and adhere to the principles of the Constitution. Here, the Court not only became complicit in an explicit race-based policy but also became an impermissible instrument of military policy. As such, it ceased to be a civil court.[169]

Despite the promise of *Brown v. Board of Education*,[170] striking down notorious "separate but equal" laws,[171] that landmark decision did not remedy the Court of its racial blind spots nor cure it of susceptibility to bias in its deliberations and decisionmaking. Equally, *Brown* did not

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[161] *Id.* at 195; *see also id.* at 198 (unanimously holding a Japanese American man ineligible for citizenship because the legislature intended naturalization in the United States only for "free white persons").

[162] 261 U.S. 204 (1923); *see id.* at 209, 210, 213 (denying citizenship to Bhagat Singh Thind, a man of Indian parentage who argued that his Aryan lineage entitled him to the status of a white man in the United States).

[163] *See* Exec. Order No. 9066, 7 Fed. Reg. 1407 (Feb. 19, 1942).

[164] Korematsu v. United States, 323 U.S. 214, 217–18 (1944).

[165] *See id.* at 223–24.

[166] *Id.* at 242–43 (Jackson, J., dissenting).

[167] *Id.* at 216 (majority opinion).

[168] *Id.*

[169] *Id.* at 247 (Jackson, J., dissenting).

[170] 374 U.S. 483 (1954).

[171] *See id.* at 495.

foreshadow or trigger voluntary compliance at the state level of desegregation orders and racial equality.

As Justice Douglas opined more than a decade later in *Jones v. Alfred H. Mayer Co.*,[172] "the existence of the institution [that] produced the notion that the white man was of superior character, intelligence, and morality" lived on in the cases before the Court.[173] According to Justice Douglas, policymakers had been equal participants in the notion that Black people "were little more than livestock — to be fed and fattened for the economic benefits they could bestow through their labors, and to be subjected to authority, often with cruelty, to make clear who was master and who slave."[174]

Justice Douglas laid bare anti-Black laws and policies that lingered despite slavery's abolition, the rise of the civil rights movement, social justice victories marked by the Civil Rights Act of 1964,[175] and the hard-fought triumph of the Voting Rights Act of 1965. In his surprisingly overlooked but ever timely concurrence, he wrote: "Some badges of slavery remain today. While the institution has been outlawed, it has remained in the minds and hearts of many white men."[176]

Justice Douglas recited a litany of Supreme Court cases to "show how prejudices, once part and parcel of slavery, still persist."[177] Equality, according to Justice Douglas, "has been delayed by numerous stratagems and devices," most of which root in the law.[178] These cases did not evolve from thin air but were the consequence of unequal laws intended to further racial hierarchies and instantiate white supremacy. According to Justice Douglas:

> We have seen contrivances by States designed to thwart Negro voting, *e.g., Lane* v. *Wilson*. Negroes have been excluded over and again from juries solely on account of their race, *e.g., Strauder* v. *West Virginia*, or have been forced to sit in segregated seats in courtrooms, *Johnson* v. *Virginia*. They have been made to attend segregated and inferior schools, *e.g., Brown* v. *Board of Education*, or been denied entrance to colleges or graduate schools because of their color, *e.g., Pennsylvania* v. *Board of Trusts*; *Sweatt* v. *Painter*. Negroes have been prosecuted for marrying whites, *e.g., Loving* v. *Virginia*. They have been forced to live in segregated residential districts, *Buchanan* v. *Warley*, and residents of white neighborhoods have denied them entrance, *e.g., Shelley* v. *Kraemer*. Negroes have been forced to use segregated facilities in going about their daily lives, having been excluded from railway coaches, *Plessy* v. *Ferguson*; public parks, *New Orleans* [*City*]

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172 392 U.S. 409 (1968).
173 *Id.* at 445 (Douglas, J., concurring).
174 *Id.*
175 28 U.S.C. § 1447; 42 U.S.C. §§ 1971, 2000a to 2000d-4a, 2000e to 2000h-6.
176 *Alfred H. Mayer Co.*, 392 U.S. at 445.
177 *Id.* at 449.
178 *Id.* at 448.

> *Park Improvement Assn.* v. *Detiege*; restaurants, *Lombard* v. *Louisiana*; [and] public beaches, *Mayor of Baltimore* v. *Dawson* . . . .[179]

A mere few years after *Jones v. Alfred H. Mayer Co.*, and nearly two decades post *Brown v. Board of Education*, Justice Douglas's evocative concurrence would be tested in *Palmer v. Thompson*.[180] In that case, Jackson, Mississippi, closed all the public swimming pools in the city after the Fifth Circuit Court of Appeals ordered them desegregated.[181] The city then rescinded its lease of a pool from the YMCA, which continued to permit only white people to use it.[182] Thereafter, the mayor and city council officials refused to open any swimming pools on an integrated basis.[183]

Despite compelling evidence that local officials closed the pools to avoid compliance with a federal order, the Supreme Court held that the city council did not create a "badge or incident" of slavery by closing all the pools instead of integrating them.[184] The Court opined that the city's decision appeared race neutral and motivated by credible economic and safety considerations.[185] Thus, into the 1970s, the Supreme Court conceded to a "tired contention, one that [was] overworked in civil rights cases,"[186] that actions meant to obstruct desegregation affected Black and white people equally. The Court seemed to fear that (a) overwhelming racial strife would result from dismantling Jim Crow barriers — such that (b) violence would erupt from enforcing constitutional guarantees of equal protection and substantive due process — and (c) Southern cities would suffer significant economic consequences. *So whose interests did the Court protect?*

As both Justices Douglas and White articulated in separate dissenting opinions, the reality of the city's action and the Court's decision fell on Black citizens of Jackson, Mississippi. Justice Douglas wrote:

> As stated at the outset of this opinion, by closing the pools solely because of the order to desegregate, the city is expressing its official view that Negroes are so inferior that they are unfit to share with whites this particular type of public facility, though pools were long a feature of the city's segregated recreation program. . . . Closing the pools without a colorable nondiscriminatory reason was every bit . . . an official endorsement of the notion that Negroes are not equal to whites . . . .[187]

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179 *Id.* at 445 (citations omitted).

180 403 U.S. 217 (1971).

181 Clark v. Thompson, 313 F.2d 637, 638 (5th Cir. 1963); *see Palmer*, 403 U.S. at 218–19.

182 *Palmer*, 403 U.S. at 222.

183 *See id.* at 219; *id.* at 253 (White, J., dissenting).

184 *Id.* at 226 (majority opinion) (finding "faint and unpersuasive" petitioner's arguments that "the closing of the pools violated the Thirteenth Amendment").

185 *Id.* at 225.

186 *Id.* at 265 (White, J., dissenting) (quoting Palmer v. Thompson, 419 F.2d 1222, 1232 (5th Cir. 1969) (Wisdom, J., dissenting)).

187 *Id.* at 266–67; *see also id.* at 235 (Douglas, J., dissenting).

The front-page *New York Times* headline following the ruling, *Court Says Cities May Close Pools to Bar Racial Mix*, reflected the painful reality of the majority's racial blind spots and complicity.[188]

### *B. Contemporary Challenges of Complicit Bias*

Complicit bias offers a meaningful lens through which to understand real and existing harms. Consider the fact that the Court struck down key provisions in the Voting Rights Act,[189] which now contributes to the proliferation of voter suppression laws.[190] Arguably, the Court's decision in *Shelby County* set the stage for *Merrill v. Milligan*.[191] It signaled conservative Justices' willingness to entertain future cases that attack race-conscious laws remedying past or present harms to Black people, including outside the voting context. For example, the Court permitted a harsh Texas abortion ban, S.B. No. 8[192] (SB8), that disproportionately harms the interests of Latinx and Black women and girls, as well as people with disabilities, to a predictable, deadly degree.[193] And, in *Dobbs*, the Court accepted Mississippi's invitation to dismantle *Roe* and *Casey*.[194] Even before its ruling, there was only one clinic in the entire

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[188] Fred P. Graham, *Court Says Cities May Close Pools to Bar Racial Mix*, N.Y. TIMES, June 15, 1971, at A1; *see also* Taunya Lovell Banks, *Still Drowning in Segregation: Limits of Law in Post-Civil Rights America*, 32 LAW & INEQ. 215, 217–19 (2014) (connecting the history of pool segregation and discrimination in the United States to the high rates of Black people unable to swim and racially disproportionate drownings as a result).

[189] *See* Shelby County v. Holder, 570 U.S. 529, 545–46, 556–57 (2013).

[190] *See generally, e.g.*, THURGOOD MARSHALL INST., NAACP LEGAL DEF. FUND, DEMOCRACY DIMINISHED: STATE AND LOCAL THREATS TO VOTING POST-*SHELBY COUNTY, ALABAMA V. HOLDER*; Richard L. Hasen, *The Supreme Court's Pro-partisanship Turn*, 109 GEO. L.J. ONLINE 50 (2020) (explaining that, after the Supreme Court's decision in *Shelby County*, the Court used "[t]hese three Supreme Court tools — willful ignorance of political reality, the presumption of legislative good faith, and animus laundering — [to] give self-interested government actors the ability to make partisan gerrymandering, racial gerrymandering, restrictive election laws, and minority vote dilution easier," *id.* at 52)

[191] 142 S. Ct. 879 (2022) (mem.). In this case, the Court will consider whether Alabama's 2021 redistricting map for seven U.S. House of Representatives seats violate § 2 of the Voting Rights Act. *See* Caster v. Merrill, No. 21-cv-1536, 2022 WL 264819, at *1 (N.D. Ala. Jan. 24, 2022). The case presents the opportunity for the Roberts Court to strike down another key provision of the Act.

[192] TEX. HEALTH & SAFETY CODE § 171.204 (2021).

[193] *See* Rachel K. Jones et al., *New Evidence: Texas Residents Have Obtained Abortions in at Least 12 States that Do Not Border Texas*, GUTTMACHER INST. (Nov. 9, 2021), https://www.guttmacher.org/article/2021/11/new-evidence-texas-residents-have-obtained-abortions-least-12-states-do-not-border [https://perma.cc/VNF4-WWHC]; Lizzie Widdicombe, *A Reproductive-Rights Activist Explains the Realities of Abortion for Latina Women*, NEW YORKER (Jan. 26, 2022), https://www.newyorker.com/news/as-told-to/a-reproductive-rights-activist-explains-the-realities-of-abortion-for-latina-women [https://perma.cc/RK98-7UQH]; *LULAC Says Texas Law Against Access to Abortions Impacts Communities of Color*, LEAGUE OF UNITED LATIN AM. CITIZENS, https://lulac.org/news/pr/LULAC_Says_Texas_Law_Against_Access_To_Abortions_Impacts_Communities_Of_Color [https://perma.cc/E79N-N6LP].

[194] *See* Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228, 2242 (2022).

state of Mississippi to serve a population of 1.538 million women that might desire or need to terminate a pregnancy.[195]

Complicit bias as a concept or framework may provide the basis for shaping and reshaping remedies, be they legal, policy, or social. Specifically, three shifts are presaged with a turn to incorporating complicit bias into legal and social thought. First, this framework in law and society provides for an overdue attitudinal shift and the ability to mark associational silence and paralysis (or omission), as well as cover-up and commission, as complicit and harmful. Second, a critical examination of complicit bias in law reveals the weaknesses in turning to the Court to protect the interests of minorities, people of color, and unpopular groups. A close tracing of the Court's record on race and sex discrimination reveals the myriad ways in which the "Court has been an impediment to progressive government efforts regarding race by striking down laws," including "the Court's invalidating state laws to protect fugitive slaves, [and] its declaring the Missouri Compromise unconstitutional."[196]

Third, embedding complicit bias within the fabric of law expands the manner in which harms may be perceived, adjudicated, and remedied. Such an expansion allows for the expression of harms to be analyzed beyond the constitutional law paradigm. For example, tort law, Title VII, and Title IX can be employed as analytic frameworks.[197] Retooling and expanding the lens through which harms are identified could allow for the redress of individualized harms that fall outside of those rooted in a status — race, sex, or LGBTQ status — keeping in mind that complicit bias is not necessarily rooted in the victim's sex, race, or other status.

The Court's record and public perception weather poorly in contemporary times. Indeed, *Dobbs* serves as a powerful case study in complicit bias, as discussed below. Notably, as Bridges points out, other cases in the 2021 Term and recent years, including *Bruen*, *Trump v. Hawaii*,[198] and *Shelby County*, reveal what she describes as the Court's "political values," which "inform whether the Court will find" racial discrimination in a given case.[199] Bridges posits that "although the Court purports to be engaged in a value-neutral inquiry into whether a claim of racial

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[195] *See The Impact of the Supreme Court's* Dobbs *Decision on Abortion Rights and Access Across the United States: Hearing Before the H. Comm. on Oversight & Reform*, 117th Cong. 8 (2022) (statement of Michele Bratcher Goodwin, Chancellor's Professor, University of California, Irvine).

[196] ERWIN CHEMERINSKY, THE CASE AGAINST THE SUPREME COURT 52 (2014).

[197] Government agents and nonagents may be liable for their failures to act in the face of sexual harassment. *See* Davis *ex rel.* LaShonda D. v. Monroe Cnty. Bd. of Educ., 526 U.S. 629, 643 (1999) ("[T]he regulatory scheme surrounding Title IX has long provided funding recipients with notice that they may be liable for their failure to respond to the discriminatory acts of certain nonagents."); Gebser v. Lago Vista Indep. Sch. Dist., 524 U.S. 274, 277 (1998) (school district may be liable under Title IX if it shows deliberate indifference to known teacher-to-student sexual harassment).

[198] 138 S. Ct. 2392 (2018).

[199] Bridges, *supra* note 12, at 110.

discrimination 'looks like' the racism that was practiced during the pre–Civil Rights Era, this inquiry is far from objective."[200] The Court "has embraced an exceedingly narrow definition of racism," and by this "constrained definition," the Court is likely to "recognize" or acknowledge and remedy racism when it furthers a political value and deny a remedy when the "contexts [are] not perfectly aligned with the goals of the Republican Party."[201] Simply put, according to Bridges, values — specifically, *political* values — inform whether the Court will find and remedy a race-based harm.

Bridges's claim has purchase on matters of sex equality and reproductive freedom too. Most devastatingly, the Court overturned *Roe* after granting certiorari in a case already settled by lower courts.[202] However, the Court did not simply overturn *Roe* but also engaged in an opportunistic reading of history that misleads and misinforms. The Court promised to provide a historical account and analysis to rebut *Roe* and *Casey* but chose weak branches on which to hoist its arguments and analysis. For example, as Bridges notes, the Court implied that abortion is part of the American legacy of eugenics and that this agenda sought to "suppress the size of the African-American population."[203] Likely, such misleading and misaligned analyses have been given added consideration in light of the fact that Justice Thomas, the Court's only African American, male Justice, has been the progenitor of this inaccurate claim.[204] Simply put, the claim is false.

Indeed, the Court misread its own jurisprudence (and complicit bias) in *Buck v. Bell*, which sanctioned eugenics in the United States.[205] Notably, the case had nothing to do with Black women or girls but rather, poor white Americans. The Court's misstep associating abortion

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[200] *Id.* at 109–10.

[201] *Id.* at 110.

[202] *See* Dobbs v. Jackson Women's Health Org., 141 S. Ct. 2619, 2619–20 (2021) (granting certiorari); Amy Howe, *Court Leaves Texas' Six-Week Abortion Ban in Effect and Narrows Abortion Providers' Challenge*, SCOTUSBLOG (Dec. 10, 2021, 2:11 PM), https://www.scotusblog.com/2021/12/court-leaves-texas-six-week-abortion-ban-in-effect-and-narrows-abortion-providers-challenge [https://perma.cc/7BM8-X4CE]; *see also* Andrea Romero & Amanda Septimo, *Texas Abortion Ban Leaves Latinx Community More Vulnerable*, REWIRE NEWS GRP. (Nov. 1, 2021, 8:30 AM), https://rewirenewsgroup.com/article/2021/11/01/texas-abortion-ban-leaves-latinx-community-more-vulnerable [https://perma.cc/A92R-AES5]. Judge Reeves had issued an order enjoining the law from going into effect. *See* Jackson Women's Health Org. v. Currier, 349 F. Supp. 3d 536, 545 (S.D. Miss. 2018), *aff'd sub nom.* Jackson Women's Health Org. v. Dobbs, 945 F.3d 265 (5th Cir. 2019), *rev'd*, 142 S. Ct. 2228 (2022). The order was upheld by a federal appeals court. *See Dobbs*, 945 F.3d at 269. Given that the Mississippi law was unconstitutional based on the holdings in *Roe* and *Casey*, the Supreme Court could have ignored Mississippi's petition.

[203] Bridges, *supra* note 12, at 63 (quoting *Dobbs*, 142 S. Ct. at 2256 n.41 (citing Brief for Amici Curiae African-American, Hispanic, Roman Catholic and Protestant Religious and Civil Rights Organizations and Leaders Supporting Petitioners at 14–21, *Dobbs* (No. 19-1392))); *see* Box v. Planned Parenthood of Ind. & Ky., Inc., 139 S. Ct. 1780, 1782–84 (2019) (Thomas, J., concurring).

[204] Bridges, *supra* note 12, at 54, 63; *see Box*, 139 S. Ct. at 1783–84 (Thomas, J., concurring).

[205] *See* 274 U.S. 200, 205, 207–08 (1927).

with "black genocide"[206] is clarified by consulting the Court's decision in *Buck*, which Justice Thomas used to support the theory.[207] Quite explicitly, Justice Holmes announced in that case: "Carrie Buck is a feeble minded white woman who was committed to the State Colony above mentioned in due form. She is the daughter of a feeble minded mother in the same institution, and the mother of an illegitimate feeble minded child."[208]

Nevertheless, the inaccurate claim that abortion advocacy is rooted in eugenics does a direct and deadly disservice to Black women, who are 3.5 times more likely to die due to maternal mortality than their white counterparts.[209] In Mississippi, a Black woman is 118 times more likely to die by carrying a pregnancy to term than by having an abortion.[210] According to the Mississippi Maternal Mortality Report, Black women accounted for "nearly 80% of pregnancy-related cardiac deaths" in that state.[211] The Court's failure to address the predictable deaths, especially among Black women, that will unfold in states banning abortions after *Dobbs* reflects what Bridges argues is the "narrow" category of discrimination the Court will seek to remedy, which does not include harms related to the denial of reproductive freedom. It also reflects a disregard for the health and humanity of Black women. That is, the *Dobbs* decision purports to protect Black women from the coercive foil of eugenicists who seek to suppress their reproductive capacities through abortion.[212] Horrifically, the Court's remedy is to disempower Black women and people with the capacity for pregnancy by stripping them of the decision to reduce the risk of maternal mortality and morbidity by returning these matters to states with the most glaring maternal mortality rates in the industrialized world.[213]

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[206] *Box*, 139 S. Ct. at 1790 (Thomas, J., concurring).

[207] *See id.* at 1786.

[208] *Buck*, 274 U.S. at 205.

[209] Marian F. MacDorman et al., *Racial and Ethnic Disparities in Maternal Mortality in the United States Using Enhanced Vital Records, 2016–2017*, 111 AM. J. PUB. HEALTH 1673, 1673 (2021).

[210] In Mississippi, between 2013 and 2016, the pregnancy-related mortality ratio for Black women was 51.9 deaths per 100,000 live births, nearly three times the white ratio of 18.9. MISS. STATE DEP'T OF HEALTH, MISSISSIPPI MATERNAL MORTALITY REPORT 2013–2016, at 12 fig.3 (addended 2021), https://msdh.ms.gov/msdhsite/_static/resources/8127.pdf [https://perma.cc/H82G-4TN4]. The national legal induced-abortion case-fatality rate from 2013 to 2017 was 0.44 legal induced-abortion-related deaths per 100,000 reported legal abortions. Katherine Kortsmit et al., *Abortion Surveillance — United States, 2018*, MORBIDITY & MORALITY WKLY. REP. SURVEILLANCE SUMMARIES, Nov. 27, 2020, at 1, 29, https://www.cdc.gov/mmwr/volumes/69/ss/pdfs/ss6907a1-H.pdf [https://perma.cc/T52H-RFAD].

[211] MISS. STATE DEP'T OF HEALTH, *supra* note 210, at 16.

[212] *See* Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228, 2256 n.41 (2022).

[213] *See* Jamila Taylor et al., *The Worsening U.S. Maternal Health Crisis in Three Graphs*, THE CENTURY FOUND. (Mar. 2, 2022), https://tcf.org/content/commentary/worsening-u-s-maternal-health-crisis-three-graphs [https://perma.cc/YBR4-5PJG].

Simply put, the Supreme Court took away women's right to save themselves from the risks associated with pregnancy.[214] Notably, the Court is not ignorant of the significant health risks associated with pregnancy. As recently as 2016, the Supreme Court articulated its awareness of the high risks associated with pregnancy and childbirth compared to abortion. In *Whole Woman's Health v. Hellerstedt*,[215] the Court stated: "Nationwide, childbirth is 14 times more likely than abortion to result in death."[216] However, the Court's conservative majority has now shown grave indifference to this predictable suffering and death.

Nor can the Supreme Court's conservative majority be credibly unaware of the particular contexts in which it has now stripped Black women of bodily self-defense and self-determination — ironically while claiming to advance such interests for Black men in *Bruen*.[217] Mississippi and many other antiabortion states share the legacies of profiting from American slavery and later propping up and defending Jim Crow.[218] Moreover, these states share alarming legacies of amplifying or inflicting physical, economic, and psychological violence against Black women and their offspring.[219] As federal district court Judge Reeves wrote in the 2018 order granting injunctive relief against the Mississippi law, "Fannie Lou Hamer's reporting" informed the nation about a dirty secret in Mississippi — that the state had "sterilized six out of ten black women in Sunflower County at the local hospital — against their will."[220]

It is this Mississippi, not an alternative, fairytale state, to which the Supreme Court gave its imprimatur. Mississippi is a state where Black women as well as Black men were lynched. The Equal Justice Initiative describes how Luther Holbert and an unidentified Black woman were "tortured and killed in Doddsville, Mississippi, a Sunflower County town in the Mississippi Delta," while hundreds of white people watched as their bodies were set aflame and burned after the lynching.[221]

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[214] *See Dobbs*, 142 S. Ct. at 2242 ("The Constitution makes no reference to abortion, and no such right is implicitly protected by any constitutional provision, including . . . the Fourteenth Amendment.").

[215] 136 S. Ct. 2292 (2016).

[216] *Id.* at 2315.

[217] *See* N.Y. State Rifle & Pistol Ass'n v. Bruen, 142 S. Ct. 2111, 2151–52 (2022); *see also* Bridges, *supra* note 12, at 82–83.

[218] *See* Ta-Nehisi Coates, *The Case for Reparations*, THE ATLANTIC (June 2014), https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631 [https://perma.cc/Q7LU-CD9M].

[219] *See* Memorandum of Law in Support of Plaintiff's Motion for Partial Summary Judgment at 23, Jackson Women's Health Org. v. Currier, 349 F. Supp. 3d 536 (S.D. Miss. 2018) (No. 18cv171).

[220] *Jackson Women's Health Org.*, 349 F. Supp. 3d at 540 n.22.

[221] *On This Day — Feb. 07, 1904: Black Man and Woman Brutally Lynched in Mississippi Delta*, EQUAL JUST. INITIATIVE, https://calendar.eji.org/racial-injustice/feb/7 [https://perma.cc/97QB-YC29].

Until 2013, Mississippi had not ratified the Thirteenth Amendment, which abolished slavery in 1865.[222] Not until 1987 did "Mississippi voters repeal[] by a narrow 52 percent to 48 percent margin the state's 1890 constitutional ban on interracial marriage."[223] It is the state where Black women were physically beaten for attempting to vote.[224] As Professor Jesmyn Ward argues, "racism is 'built into the very bones' of Mississippi" and "thrive[s]" today.[225] In a recent article in *The Atlantic*, Ward offers a firsthand, narrative account of racism in Mississippi from the perspective of a Black woman.[226] She explains, it "has strangled us for hundreds of years. Under the thin veneer of mutability, the belief that anyone of African descent is inferior still flourishes."[227]

Making clear what was at stake, Judge Reeves wrote that Mississippi "'ranks as the state with the most [medical] challenges for women, infants, and children' but is silent on expanding Medicaid."[228] He surmised that the "[abortion] legislation . . . is closer to the old Mississippi — the Mississippi bent on controlling women and minorities. The Mississippi that, just a few decades ago, barred women from serving on juries 'so they may continue their service as mothers, wives, and homemakers.'"[229]

Finally, even while the Supreme Court performs a crucial role in advancing equality and protecting the interests of vulnerable groups, both its legacy of judicial review and contemporary jurisprudence reveal its critical role in legitimizing harmful racist and sexist laws. The Court has too often failed when vulnerable groups most relied on it to uphold their civil rights against unconstitutional practices and policies. As such, the Court too frequently abrogated its due process function to protect individual rights and to interpret the Constitution in an unbiased manner.

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[222] *See* Ben Waldron, *Mississippi Officially Abolishes Slavery, Ratifies 13th Amendment*, ABC NEWS (Feb. 19, 2013), https://abcnews.go.com/blogs/headlines/2013/02/mississippi-officially-abolishes-slavery-ratifies-13th-amendment [https://perma.cc/2Z57-TERL].

[223] Kathy Eyre, *Mississippi Still Far from Accepting Interracial Marriage*, AP NEWS (Nov. 28, 1987), https://apnews.com/article/d57930264fd39578c14f3f64f2cec4e8 [https://perma.cc/QRU9-CMZZ].

[224] Thomas A. Johnson, *Fannie Lou Hamer Dies; Left Farm to Lead Struggle for Civil Rights*, N.Y. TIMES, Mar. 15, 1977, at 40.

[225] Jesmyn Ward, *Racism Is "Built into the Very Bones" of Mississippi*, THE ATLANTIC, https://www.theatlantic.com/magazine/archive/2018/02/jesmyn-ward-mississippi/552500 [https://perma.cc/WU3A-5DRZ].

[226] *See id.*

[227] *Id.*

[228] Jackson Women's Health Org. v. Currier, 349 F. Supp. 3d 536, 540 n.22 (S.D. Miss. 2018) (alteration in original), *aff'd sub nom.* Jackson Women's Health Org. v. Dobbs, 945 F.3d 265 (5th Cir. 2019), *rev'd*, 142 S. Ct. 2228 (2022).

[229] *Id.* (citing State v. Hall, 187 So. 2d 861, 863 (Miss. 1966)).

## III. CRUEL REALITIES OF THE POST-*DOBBS* LANDSCAPE

Not insignificantly, the states at the center of abortion-related petitions to the Court — Texas, Kentucky, and Mississippi[230] — bear the distinction of being well practiced in disenfranchising women of color through histories of enforced enslavement, Jim Crow, and modern-day discrimination.[231] These practices have been preserved and transformed through policing, arrests, prosecutions, sentencing, voter suppression, and discrimination in housing, education, and employment, among other forms of social and cultural suffering. Beyond their slave-economy-based heritage, these states also have in common a history of federal interventions to defend the constitutional interests and rights of people of color, women, and LGBTQ individuals. Or, stated differently, in common among these three states is their historically bold resistance to racial and sex equality and their criminalization of LGBTQ intimacy,[232] all of which might continue to persist save for federal intervention by the Court, Congress, or executive orders.[233]

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[230] *See generally* Whole Woman's Health v. Jackson, 142 S. Ct. 522 (2022) (Texas); Cameron v. EMW Women's Surgical Ctr., 142 S. Ct. 1002 (2022) (Kentucky); Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228 (2022) (Mississippi).

[231] *See* Donna Gosbee, *Jane Elkins*, HUM. RTS. DALLAS, https://humanrightsdallasmaps.com/items/show/2 [https://perma.cc/FG83-2GHH]; *Margaret Garner*, KY. COMM'N ON HUM. RTS., https://kchr.ky.gov/Hall-of-Fame/Pages/Margaret-Garner.aspx [https://perma.cc/L9NS-UKU9]; *ACLU of Mississippi Shares U.N. Concerns About Human Rights Violations*, ACLU (Aug. 2, 2006), https://www.aclu.org/press-releases/aclu-mississippi-shares-un-concerns-about-human-rights-violations [https://perma.cc/Z6N2-ASED].

[232] *See, e.g.*, Lawrence v. Texas, 539 U.S. 558, 562 (2003).

[233] For example, in efforts to circumvent the Fifteenth Amendment, which established voting rights for African American men, Mississippi, Texas, and Kentucky enacted laws that purposefully suppressed African American voting. These laws included "white primaries" and poll taxes, making it almost impossible in some instances for African Americans to vote. These laws were later dismantled by the Voting Rights Act of 1965, 52 U.S.C. §§ 10101, 10301–10702. *See, e.g.*, Ronald G. Shafer, *The "Mississippi Plan" to Keep Blacks from Voting in 1890: "We Came Here to Exclude the Negro,"* WASH. POST (May 1, 2021, 7:00 AM), https://www.washingtonpost.com/history/2021/05/01/mississippi-constitution-voting-rights-jim-crow [https://perma.cc/RF84-HJRK] (quoting Solomon Saladin Calhoon, President of the Mississippi convention to reform that state's constitution in 1890). Similarly, in Texas, "[f]ollowing Reconstruction in the South, Texas banned African Americans from voting in party primaries in a law adopted in 1923." Stephanie Lindquist, *Jim Crow Tactics Reborn: Texas Abortion Law Delegates Enforcement to Citizens*, MISS. FREE PRESS (Sept. 13, 2021), https://www.mississippifreepress.org/15885/jim-crow-tactics-reborn-in-texas-abortion-law-deputizing-citizens-to-enforce-legally-suspect-provisions [https://perma.cc/TSB8-5GYY]. The law was challenged and struck down by the Supreme Court in 1927. *See* Nixon v. Herndon, 273 U.S. 536, 541 (1927); *see also* Smith v. Allwright, 321 U.S. 649, 649 (1944) (striking a Texas law that allowed political parties to establish primaries that were exclusively white). Kentucky's third constitution, ratified in 1850, "specifically require[d] all voters to be 'white.'" *The Evolution of Voting in Kentucky*, FILSON HIST. SOC'Y, https://filsonhistorical.omeka.net/exhibits/show/presidential-elections/the-evolution-of-voting-in-ky [https://perma.cc/BRC3-3XSQ]. After ratification of the Fifteenth Amendment, Kentucky officials deployed various tactics to suppress Black enfranchisement, including violating the Enforcement Act of 1870 by refusing to receive and count the vote of a Black elector. *See* United States v. Reese, 92 U.S. 214, 227 (1875) (Clifford, J., dissenting) ("[T]he

The unprecedented overturn or annulment of a constitutional right blights the Court's 2021 Term and stands as a robust political victory for the former President, Donald Trump, who vowed to punish women who obtain abortions.[234] President Trump also promised to appoint only judges committed to overturning of *Roe v. Wade*.[235] Today, he publicly declares victory: that he delivered on those promises with key nominations to the Supreme Court[236] and the aggressive filling of vacancies in lower federal courts.[237] Perhaps the most significant test regarding President Trump's bold antiabortion agenda came in the 2021 Supreme Court Term.

The Supreme Court agreed to review several cases involving abortion bans or restrictions,[238] including one from Texas — SB8 — that prohibits abortions after six weeks of pregnancy (a time at which most people do not know they are pregnant).[239] The law effectively overturned *Roe* in Texas, leaving nearly seven million women of reproductive age in that state without access to abortion.[240] For some, it was hindsight that exposed that case as setting the table for the Court's

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Congress knew full well that cases would arise where the want of other qualifications, if not removed, might prevent the colored citizen from exercising the right of suffrage . . . and the intent and purpose of the second section of the act are to furnish to all citizens an opportunity to remove every such other disability to enable them to become qualified to exercise that right, and to punish persons and officers charged with any duty in that regard who unlawfully and wrongfully refuse or willfully omit to co-operate to that end."). The state also enacted one of the strictest anti-enfranchisement laws, banning those convicted of felonies from voting. KY. ADVISORY COMM. TO THE U.S. COMM'N ON CIV. RTS., VOTING RIGHTS IN KENTUCKY: FELONS WHO HAVE COMPLETED ALL TERMS OF THEIR SENTENCES SHOULD HAVE THE RIGHT TO VOTE 2 (2009), https://www.usccr.gov/files/pubs/docs/KYVotingRightsReport.pdf [https://perma.cc/8X6K-QYZR].

234 Matt Flegenheimer & Maggie Haberman, *Donald Trump, Abortion Foe, Eyes "Punishment" for Women, Then Recants*, N.Y. TIMES (Mar. 30, 2016), https://www.nytimes.com/2016/03/31/us/politics/donald-trump-abortion.html [https://perma.cc/RZK5-98RE].

235 Dan Mangan, *Trump: I'll Appoint Supreme Court Justices to Overturn* Roe v. Wade *Abortion Case*, CNBC (Oct. 19, 2016, 10:00 PM), https://www.cnbc.com/2016/10/19/trump-ill-appoint-supreme-court-justices-to-overturn-roe-v-wade-abortion-case.html [https://perma.cc/EG32-EPWG].

236 Lauren Feiner & Dan Mangan, *Trump Takes Credit for End of* Roe v. Wade *After His 3 Supreme Court Justice Picks Vote to Void Abortion Rights*, CNBC (June 24, 2022, 6:59 PM), https://www.cnbc.com/2022/06/24/roe-v-wade-decision-trump-takes-credit-for-supreme-court-abortion-ruling.html [https://perma.cc/YL22-XFEU].

237 *See* John Gramlich, *How Trump Compares with Other Recent Presidents in Appointing Federal Judges*, PEW RSCH. CTR. (Jan. 13, 2021), https://www.pewresearch.org/fact-tank/2021/01/13/how-trump-compares-with-other-recent-presidents-in-appointing-federal-judges [https://perma.cc/4PM8-9H2U].

238 In *Cameron v. EMW Women's Surgical Ctr.*, 142 S. Ct. 1002 (2022), the Court decided the question whether the Kentucky Attorney General vested with the power to defend state law should be permitted to intervene when no other state actor will defend a state statute after a federal court of appeals invalidated the law. The Court held that the Attorney General should have been permitted to intervene. *See id.* at 1014.

239 *See* Whole Woman's Health v. Jackson, 142 S. Ct. 522, 529–30 (2022).

240 Chloe Atkins, *Texas Abortion Clinics Turning Away Patients as Strict New Law Takes Effect*, NBC NEWS (Sept. 1, 2021, 2:06 AM), https://www.nbcnews.com/politics/politics-news/texas-abortion-clinics-turning-away-patients-ahead-draconian-new-law-n1278184 [https://perma.cc/28KE-UHKC].

ruling in *Dobbs*. For others, the law amplified and fortified a strategic, voluminous arsenal of targeted regulations of abortion providers (TRAP laws) enacted by Texas lawmakers to gut abortion access in their state,[241] notwithstanding material harms to women of color. These laws contributed to alarming rates of maternal mortality and morbidity, making the state the deadliest place in the developed world to be pregnant.[242]

Among its disturbing features, SB8 deputizes citizens to enforce its provisions, granting them authority to sue individuals who aid or abet in the termination of a pregnancy, recover awards of at least ten thousand dollars, and obtain or recoup attorneys' fees.[243] Reminiscent of the Fugitive Slave Acts of 1793[244] and 1850,[245] SB8 places state interests firmly in the hands of citizens to spy upon, report, and track down those whose human rights hang in the balance.[246] But the Court appeared handcuffed in its ability to intervene — or so it projected.[247] A more cynical view is that the Court's refusal to intervene was intended as a precursor to *Dobbs* and the overturn of *Roe* and *Casey*. Another view is that it ultimately revealed the Court's complicity and bias.

*Dobbs*, which drew the most attention of any case in the 2021 Term, involved a fifteen-week Mississippi abortion ban.[248] In his ruling granting an injunction against the law, district court Judge Reeves explained: "[T]his Court concludes that the Mississippi Legislature's professed interest in 'women's health' is pure gaslighting."[249] Judge Reeves noted that "[i]n its legislative findings justifying the need for this legislation, the Legislature cites *Casey* yet defies *Casey*'s core holding. The State 'ranks as the state with the most [medical] challenges for women, infants, and children' but is silent on expanding Medicaid."[250] Judge Reeves opined that "legislation like [Mississippi's fifteen-week abortion

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241 *See, e.g.*, Whole Woman's Health v. Hellerstedt, 136 S. Ct. 2292, 2300 (2016).

242 Sophie Novack, *Texas' Maternal Mortality Rate: Worst in Developed World, Shrugged Off by Lawmakers*, TEX. OBSERVER (June 5, 2017, 6:04 PM), https://www.texasobserver.org/texas-worst-maternal-mortality-rate-developed-world-lawmakers-priorities [https://perma.cc/BW3R-5EKG]; Katha Pollitt, *The Story Behind the Maternal Mortality Rate in Texas Is Even Sadder than We Realize*, THE NATION (Sept. 8, 2016), https://www.thenation.com/article/archive/the-story-behind-the-maternal-mortality-rate-in-texas-is-even-sadder-than-we-realize [https://perma.cc/F7AM-H9CB].

243 TEX. HEALTH & SAFETY CODE § 171.208(a)–(b) (2021).

244 Act of Feb. 12, 1793, ch. 7, § 3, 1 Stat. 302, 302–05 (repealed 1864).

245 Act of Sept. 18, 1850, ch. 60, 9 Stat. 462 (repealed 1864).

246 Aziz Huq, *What Texas's Abortion Law Has in Common with the Fugitive Slave Act*, WASH. POST (Nov. 1, 2021, 10:42 AM), https://www.washingtonpost.com/outlook/2021/11/01/texas-abortion-law-history-rights-suppressed [https://perma.cc/5RCY-NKN9].

247 *See* Whole Woman's Health v. Jackson, 142 S. Ct. 522, 532–34, 537–39 (2021).

248 *See* Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228, 2243 (2022) (quoting MISS. CODE ANN. § 41-41-191 (2022)).

249 Jackson Women's Health Org. v. Currier, 349 F. Supp. 3d 536, 540 n.22 (S.D. Miss. 2018), *aff'd sub nom.* Jackson Women's Health Org. v. Dobbs, 945 F.3d 265 (5th Cir. 2019), *rev'd*, 142 S. Ct. 2228 (2022).

250 *Id.* (second alteration in original).

ban] is closer to the old Mississippi — the Mississippi bent on controlling women and minorities. The Mississippi that, just a few decades ago, barred women from serving on juries 'so they may continue their service as mothers, wives, and homemakers.'"[251]

In fact, by providing no relief for survivors of sexual assault and by prohibiting abortions after fifteen weeks of pregnancy, the law challenged the core viability framework introduced by *Roe* and affirmed in *Casey*. Mississippi defended this law with the spurious claim that it sought to protect women's health and well-being, even while, in Mississippi, it is nearly 118 times more dangerous for a Black woman to give birth than it is for the average American woman to have an abortion.[252]

Perhaps the most persuasive evidence of the deadly trap set for Black women by Mississippi lawmakers comes from the Mississippi Department of Health (MDH). The MDH's most recent investigation of maternal health and mortality, the *Mississippi Maternal Mortality Report*, reported that Black women accounted for "nearly 80% of pregnancy-related cardiac deaths" in the state,[253] despite the fact that Mississippi Attorney General Lynn Fitch forcefully claims that "[t]he Mississippi legislature enacted this law . . . to promote women's health . . . ."[254]

The Court gave its imprimatur to Mississippi's revised and strategically timed petition to dismantle abortion rights altogether. In doing so, it overlooked texts contradicting its arguments. The Court effectively ignored Reconstruction-era, abolitionist Framers of the Thirteenth and Fourteenth Amendments — who clearly debated the involuntary reproductive servitude and sexual exploitation of Black women and girls[255] — unlike the eighteenth-century Framers, some of

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[251] *Id.* (citing State v. Hall, 187 So. 2d 861, 863 (Miss. 1966)).

[252] In Mississippi, between 2013 and 2016, "the pregnancy-related mortality ratio for Black women was 51.9 deaths per 100,000 live births, nearly three times the White ratio of 18.9." MISS. STATE DEP'T OF HEALTH, *supra* note 210, at 5. "The national legal induced abortion case-fatality rate for 2013–2017 was 0.44 legal induced abortion-related deaths per 100,000 reported legal abortions." Kortsmit et al., *supra* note 210, at 7.

[253] MISS. STATE DEP'T OF HEALTH, *supra* note 210, at 16.

[254] Lawrence Hurley, *U.S. Supreme Court Takes Up Major Challenge to Abortion Rights*, REUTERS (May 17, 2021, 9:41 AM), https://www.reuters.com/world/us/us-supreme-court-takes-up-case-that-could-limit-abortion-rights-2021-05-17 [https://perma.cc/Z9UF-YH9H].

[255] Senator Charles Sumner's thinly veiled references to the sexual violence commonly endured by enslaved people were on full display in his gripping speech to Congress in 1856. He cried that "hideous offspring" in the form of lust for new slave states was the result of the "crime" of slavery. Senator Charles Sumner, The Crime Against Kansas (May 19–20, 1856), *in* SPEECH OF HON. CHARLES SUMNER, IN THE SENATE OF THE UNITED STATES, 19TH AND 20TH MAY, 1856, at 5 (Boston, John P. Jewett & Co. 1856), https://www.senate.gov/artandhistory/history/resources/pdf/CrimeAgainstKSSpeech.pdf [https://perma.cc/3UZM-VSKN]. This crime included "the rape of a virgin Territory." *Id.* He stated that "*force*" was "openly employed in compelling . . . this pollution, and all for the sake of political power." *Id.* It was this "wickedness that ma[de] other public

whom themselves enslaved and sexually exploited Black girls and women.[256] Justice Alito, author of the *Dobbs* majority opinion, ignored egregious rates of maternal mortality in the United States,[257] confining any reference to pregnancy-related deaths to one paragraph discussing *Roe*-era concerns.[258] Even in its claimed adherence to original meaning and history, the Court poorly engaged with both, showing a greater commitment to outcomes than accuracy and analysis.[259] The result was a decision riddled with errors in history and law.[260]

The predictable species of laws unleashed or "triggered" in response to *Dobbs* extends well beyond truncating *Roe*'s viability framework. Now, lack of exceptions for rape and incest — a bridge lawmakers were unwilling to cross even a few years ago — is a feature rather than a bug of antiabortion laws.[261] Lawmakers argue for cruel punishments: fines, fees, and criminal sentences, including the death penalty, for violating

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crimes seem like public virtues." *Id.* at 5–6. In Senator Sumner's view, the wickedness that he "beg[a]n to expose [wa]s immeasurably aggravated by the motive which prompted it. Not in any common lust for power did this uncommon tragedy have its origin" but in a virgin rape "compelling it to the hateful embrace of Slavery." *Id.* at 5. Two days later, Senator Sumner was severely caned in the halls of Congress. *See "The Crime Against Kansas*," U.S. SENATE, https://www.senate.gov/artandhistory/history/minute/The_Crime_Against_Kansas.htm [https://perma.cc/Z3RB-N9S3].

256 More than a third of the delegates to the Constitutional Convention enslaved Black people; similarly, eight of the first twelve Presidents of the United States enslaved Black people. *See, e.g.*, *How Should We Judge Our Nation's Founders?*, CONST. RTS. FOUND. (2017), https://www.crf-usa.org/images/t2t/pdf/HowShouldWeJudgeOurNation.pdf [https://perma.cc/RE9K-VUQD]; Michael Henry Adams, The Other Madisons *Review: An Astonishing Story of a President's Black Family*, THE GUARDIAN (July 19, 2020, 9:23 AM), https://www.theguardian.com/world/2020/jul/19/the-other-madisons-review-president-black-family [https://perma.cc/V3HV-YQDS] ("But Jefferson is known to have fathered children with Sally Hemings, a black woman he owned, and Washington, Madison and Monroe are reputed to have done the same, with women owned personally or by family members."). For a discussion of the pervasiveness of enslavers' sexual exploitation of and violence against enslaved women, see Cynthia Prather et al., *Racism, African American Women, and Their Sexual and Reproductive Health: A Review of Historical and Contemporary Evidence and Implications for Health Equity*, 2 HEALTH EQUITY 249, 251 (2018); and Pamela D. Bridgewater, *Un/Re/Dis Covering Slave Breeding in Thirteenth Amendment Jurisprudence*, 7 WASH. & LEE RACE & ETHNIC ANC. L.J. 11, 14 (2001).

257 *See* MISS. STATE DEP'T OF HEALTH, *supra* note 210.

258 *See* Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228, 2268 (2022).

259 *See* Michele Goodwin, Opinion, *No, Justice Alito, Reproductive Justice Is in the Constitution*, N.Y. TIMES (June 26, 2022), https://www.nytimes.com/2022/06/26/opinion/justice-alito-reproductive-justice-constitution-abortion.html [https://perma.cc/LP9L-E968].

260 *See id.*

261 *See, e.g.*, Jan Hoffman, *The New Abortion Bans: Almost No Exceptions for Rape, Incest or Health*, N.Y. TIMES (June 9, 2022), https://www.nytimes.com/2022/06/09/health/abortion-bans-rape-incest.html [https://perma.cc/Q94A-R4U7]; Fabiola Cineas, *Rape and Incest Abortion Exceptions Don't Really Exist*, VOX (July 22, 2022, 4:20 PM), https://www.vox.com/23271352/rape-and-incest-abortion-exception [https://perma.cc/F5F5-7VWF]; Michele Goodwin & Mary Ziegler, *Whatever Happened to the Exceptions for Rape and Incest?*, THE ATLANTIC (Nov. 29, 2021), https://www.theatlantic.com/ideas/archive/2021/11/abortion-law-exceptions-rape-and-incest/620812 [https://perma.cc/3JVE-CBTH].

antiabortion proposals.[262] Implicated are core rule of law principles and values: freedom of speech, commercial speech, the right to travel, freedom of association, and freedom of religion.[263]

Suffering caused by the decision is already manifesting across the United States. For example, these harms exist in the form of a ten-year-old girl fleeing Ohio for Indiana to terminate a pregnancy caused by rape that likely began when she was nine.[264] A woman in Wisconsin bled for more than ten days while experiencing an incomplete miscarriage as doctors waited until she was in sufficient distress and near death to intervene.[265] In Louisiana, a woman was forced to carry to term a nonviable fetus developing without a skull.[266] In Florida, a teenage girl was denied a judicial bypass to obtain an abortion based on the injudicious finding that she lacked the maturity to refuse being

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[262] Giulia Carbonaro, *Anger as Louisiana Abortion Bill Could See Women Charged with Murder*, NEWSWEEK (May 6, 2022, 3:57 AM), https://www.newsweek.com/anger-louisiana-abortion-bill-could-see-women-charged-murder-1704069 [https://perma.cc/BE4H-MLMC] ("Under the new proposed bill, called House Bill 813, abortion will be considered as homicide from fertilization and conception."); Megan Messerly & Alice Miranda Ollstein, *Abortion Bans and Penalties Would Vary Widely by State*, POLITICO (May 6, 2022, 4:30 AM), https://www.politico.com/news/2022/05/06/potential-abortion-bans-and-penalties-by-state-00030572 [https://perma.cc/4XR3-F4Z6] ("[I]n Texas, anyone who performs, induces or attempts an abortion where 'an unborn child dies as a result of the offense' is guilty of a first-degree felony — punishable by up to life in prison and up to a $10,000 fine — under the state's trigger ban."); Lukas Mikelionis, *Death Penalty for Women Having Abortions? No, Candidate Clarifies*, FOX NEWS (Apr. 4, 2018, 1:09 AM), https://www.foxnews.com/politics/death-penalty-for-women-having-abortions-no-candidate-clarifies [https://perma.cc/FJT6-Y63E] ("'There should be no abortion and anyone who has an abortion should pay,' Nonini said and reportedly nodded in support of the death penalty as a means of punishing women.").

[263] *See* Yascha Mounk, *Why Freedom of Speech Is the Next Abortion Fight*, THE ATLANTIC (Aug. 22, 2022), https://www.theatlantic.com/ideas/archive/2022/08/freedom-speech-mississippi-abortion-rights/671202 [https://perma.cc/ZPJ8-LU2V]; Jeremy W. Peters, *First Amendment Confrontation May Loom in Post-*Roe *Fight*, N.Y. TIMES (June 30, 2022), https://www.nytimes.com/2022/06/29/business/media/first-amendment-roe-abortion-rights.html [https://perma.cc/6USL-TJVK]; Adam Liptak, *The Right to Travel in a Post-*Roe *World*, N.Y. TIMES (July 11, 2022), https://www.nytimes.com/2022/07/11/us/politics/the-right-to-travel-in-a-post-roe-world.html [https://perma.cc/H84F-P8WP]; Rachel Kranson, *History Shows that the First Amendment Should Protect Abortion*, WASH. POST (May 12, 2022, 6:00 AM), https://www.washingtonpost.com/outlook/2022/05/12/first-amendment-could-save-abortion-rights [https://perma.cc/372R-VUYE]; Madeleine Carlisle & Abigail Abrams, *Does Religious Freedom Protect a Right to an Abortion? One Rabbi's Mission to Find Out*, TIME (July 7, 2022, 6:51 PM), https://time.com/6194804/abortion-religious-freedom-judaism-florida [https://perma.cc/UZ7X-9Z4L].

[264] Elizabeth Wolfe et al., *Man Indicted in Rape of a Child Who Traveled from Ohio to Indiana for an Abortion*, CNN (July 22, 2022, 12:32 AM), https://www.cnn.com/2022/07/22/us/gerson-fuentes-child-rape-abortion-indictment/index.html [https://perma.cc/C9KG-TWPH] ("[T]he indictment says she was 9 years old when the rapes took place, allegedly by Fuentes.").

[265] Frances Stead Sellers & Fenit Nirappil, *Confusion Post-*Roe *Spurs Delays, Denials for Some Lifesaving Pregnancy Care*, WASH. POST (July 16, 2022, 9:09 AM), https://www.washingtonpost.com/health/2022/07/16/abortion-miscarriage-ectopic-pregnancy-care [https://perma.cc/7EBB-F2P6].

[266] Minyvonne Burke, *Woman Carrying Fetus Without a Skull to Seek Abortion in Another State Following Louisiana Ban*, NBC NEWS (Aug. 26, 2022, 1:22 PM), https://www.nbcnews.com/news/us-news/louisiana-woman-carrying-fetus-skull-seek-abortion-another-state-rcna45005 [https://perma.cc/559T-LVX2] ("'Basically they said I had to carry my baby to bury my baby,' said [Nancy] Davis.").

pregnant.[267] In that case, the parentless sixteen year old, who acknowledged that "she [wa]s not ready for the emotional, physical, or financial responsibility of raising a child," may nonetheless be forced to carry the pregnancy to term.[268] In Nebraska, a mother and daughter were both prosecuted in the aftermath of the daughter's self-managed abortion.[269] In Texas, "[a]fter receiving fetal diagnoses of spina bifida and trisomy 18, a 39-year-old woman was shocked that her physician would not even inform her about termination options."[270] After being denied care, she shared, "[w]hen you already have received news like that and can barely function, the thought of then having to do your own investigating to determine where to get this medical care and to arrange going out of state feels additionally overwhelming."[271]

Each day presents more glaring pregnancy-related medical crises for women and girls residing in antiabortion states.[272] In a study published in the *New England Journal of Medicine*, researchers conclude that the Texas abortion ban "has had a chilling effect on a broad range of health care professionals, adversely affecting patient care and endangering people's lives."[273]

Inevitably, at the heart of the surveillance demanded by various antiabortion laws and lawmakers[274] will be non-race-neutral policing. *Dobbs* will likely magnify and amplify — rather than curtail or upend — preexisting patterns of socioeconomic distress and racial discrimination that target women of color.[275] In other words, antiabortion laws, which are a form of sex discrimination,[276] also cause and exacerbate race

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[267] Brittany Shammas & Kim Bellware, *Florida Court Rules 16-Year-Old Is Not "Sufficiently Mature" for Abortion*, WASH. POST (Aug. 17, 2022, 4:57 PM), https://www.washingtonpost.com/nation/2022/08/17/florida-teen-abortion-denied-mature [https://perma.cc/X63J-DDQ5].

[268] *Id.*

[269] Shaila Dewan & Sheera Frenkel, *A Mother, A Daughter and an Unusual Abortion Prosecution in Nebraska*, N.Y. TIMES (Aug. 18, 2022), https://www.nytimes.com/2022/08/18/us/abortion-prosecution-nebraska.html [https://perma.cc/2665-WAUP] ("[B]oth mother and daughter face criminal charges. Their Facebook messages, obtained by the police through a warrant, have become key evidence in a rare prosecution over abortion.").

[270] Whitney Arey et al., *A Preview of the Dangerous Future of Abortion Bans — Texas Senate Bill 8*, 387 NEW ENG. J. MED. 388, 389 (2022).

[271] *Id.*

[272] *See* Neel Dhanesha, *A Pregnancy Turns Deadly in an Anti-abortion State. What Happens Next?*, VOX (July 4, 2022, 7:30 AM), https://www.vox.com/science-and-health/23191865/abortion-ban-medical-emergency-ectopic-pregnancy [https://perma.cc/ZL6K-WTKA]; *see also* Michelle Andrews, *$80,000 and 5 ER Visits: An Ectopic Pregnancy Takes a Toll*, NPR (October 4, 2022, 5:00 AM), https://www.npr.org/sections/health-shots/2022/10/04/1126594608/ectopic-pregnancy-expensive-new-york [https://perma.cc/K55F-X29Y].

[273] Arey et al., *supra* note 270, at 388.

[274] *See* Lily Hay Newman, *The Surveillance State Is Primed for Criminalized Abortion*, WIRED (May 24, 2022, 5:00 AM), https://www.wired.com/story/surveillance-police-roe-v-wade-abortion [https://perma.cc/BTK7-CE9H]; MICHELE GOODWIN, POLICING THE WOMB 28–45 (2020).

[275] Bridges, *supra* note 29, at 1279 n.228.

[276] *See* Ed Pilkington, *UN Experts Condemn Texas Abortion Law as Sex Discrimination "At Its Worst,"* THE GUARDIAN (Sept. 7, 2021, 2:00 AM), https://www.theguardian.com/us-news/2021/sep/07/un-experts-condemn-texas-anti-abortion-law [https://perma.cc/B4WN-K4DB].

discrimination and suffering. As a general matter, in the United States, a woman is fourteen times more likely to die in pregnancy or childbirth than during an abortion.[277] However, nationally, Black women are roughly 3.5 times more likely to die due to maternal mortality than their white counterparts.[278] That statistical gap multiplies depending on the city or county in which a Black woman resides.[279]

Why, then, did the Court fail to address racism and racial discrimination in *Dobbs* despite the alarmingly high racial disparities in rates of maternal deaths and morbidity in Mississippi?[280] Despite a district court record replete with references to historical patterns of race discrimination and violence inflicted on Black women by the state, including coercive sterilizations,[281] why did the Court decline to address the negative impacts surely to be experienced by Black women? To what extent might complicit bias have influenced or been perceived as influencing the outcome in *Dobbs* or other cases this Term related to reproductive freedom, gun control, or free exercise?

## CONCLUSION

What explains enduring legacies of racial inequality that materialize across the lifespan in reproductive rights, education, employment, housing, and fundamental areas related to civil liberties and civil rights? What accounts for the persistence of arcane race or sex biases and stereotypes festering in law and society despite available information to dislodge them? And can constitutional law serve to resolve these types of challenges? One reasonable answer resides in the argument made by Professor Neil Komesar in *Law's Limits* regarding the inherent

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[277] Elizabeth G. Raymond & David A. Grimes, *The Comparative Safety of Legal Induced Abortion and Childbirth in the United States*, 119 OBSTETRICS & GYNECOLOGY 215, 216 (2012), http://www.ncbi.nlm.nih.gov/pubmed/22270271 [https://perma.cc/HM24-HNRM].

[278] Sarika Chawla, *Black Women Are 3.5 Times More Likely to Die from Being Pregnant than White Women*, VICE (Sept. 13, 2017, 6:03 PM), https://www.vice.com/en/article/mb7j4p/black-women-are-3-times-more-likely-to-die-from-being-pregnant [https://perma.cc/FN63-KF5Q].

[279] *See* LORRAINE C. BOYD ET AL., N.Y.C. DEP'T OF HEALTH & MENTAL HYGIENE, PREGNANCY-ASSOCIATED MORTALITY, https://www1.nyc.gov/assets/doh/downloads/pdf/ms/pregnancy-associated-mortality-report.pdf [https://perma.cc/XF77-YAHY] (finding that from 2006 to 2010 in New York City, Black women were up to twelve times more likely to die due to complications in pregnancy and childbirth than their white counterparts); Sarah Owermohle, *Why Louisiana's Maternal Mortality Rates Are So High*, POLITICO (May 19, 2022, 4:06 PM), https://www.politico.com/news/2022/05/19/why-louisianas-maternal-mortality-rates-are-so-high-00033832 [https://perma.cc/J8CY-8UE2]; Ashton Pittman, *As Mississippi Debates Abortion, Maternal Mortality Remains High*, JACKSON FREE PRESS (May 23, 2019, 12:42 PM), https://www.jacksonfreepress.com/news/2019/may/23/mississippi-debates-abortion-maternal-mortality-re [https://perma.cc/7ZKE-PYCW] ("During the 2013 to 2016 time period studied, black women accounted for 80% of pregnancy-related cardiac deaths.").

[280] *See, e.g.*, Jackson Women's Health Org. v. Currier, 349 F. Supp. 3d 536, 540 n.22 (S.D. Miss. 2018), *aff'd sub nom.* Jackson Women's Health Org. v. Dobbs, 945 F.3d 265 (5th Cir. 2019), *rev'd*, 142 S. Ct. 2228 (2022); Pittman, *supra* note 279.

[281] *Jackson Women's Health Org.*, 349 F. Supp. 3d at 540 n.22.

weaknesses in law and legal processes. Komesar compares the legal process to a "tiny engine" confronted by "increasing strains on both its substantive abilities and physical capacity."[282] Law can do only so much, and, ironically, the processes traditionally relied upon to settle legal disputes may actually be ill conceived and poorly structured to do so.[283]

Another argument, more specific to matters of civil rights and civil liberties and deployed by both segregationists and civil rights leaders during Jim Crow, is that law on its own — and constitutional law more specifically — may not be up to the task of changing hearts and minds. For the former, such arguments counseled against the enactment of civil rights legislation, and they urged courts against using their authority to strike down segregationist laws.[284] In 1954, at the time of *Brown*, four states permitted racial segregation in schooling and seventeen states along with Washington, D.C., mandated racially segregated education.[285] In fact, more states mandated racial segregation than forbade it.[286] In such an atmosphere, changing laws presented less of a battle and fewer substantive obstacles than scrubbing from an American social consciousness centuries of bias and stereotype.

Thus, in *Brown*, when the Court explained, "[t]o separate [Black children] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone,"[287] whose hearts and minds concerned the Court? Or needed retooling? To answer the question, the Court stated, "[s]egregation of white and colored children in public schools has a detrimental effect upon the colored children."[288] According to the Court, "the policy of separating the races is usually interpreted as denoting the inferiority of

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[282] NEIL K. KOMESAR, LAW'S LIMITS 35 (2001) (generally addressing the limits in law to resolve all legal disputes and speculating that some conflicts might better be resolved outside of traditional legal processes).

[283] *See id.*

[284] *See* Loving v. Virginia, 388 U.S. 1, 8 (1967) ("On [the question of whether a state has any rational basis to forbid interracial marriage], the State argues, the scientific evidence is substantially in doubt and, consequently, this Court should defer to the wisdom of the state legislature in adopting its policy of discouraging interracial marriages."); Transcript of Oral Argument at 32, *Loving* (No. 395) ("[F]or the Court to undertake to enter this controversy [regarding the legality of laws forbidding interracial marriage], the Court would find itself mired in a Sybarian bog of conflicting scientific opinions which . . . is sufficiently broad, sufficiently fluid, and sufficiently deep to swallow the entire Federal Judiciary.").

[285] *See* Richard H. King, *Race, Equality, and "Hearts and Minds*," 70 J.S. HIST. 309, 309–10 (2004) ("A segregated America was not exactly the most compelling image to present to the newly emerging nations of the Third World (even though American foreign policy never placed decolonization at or near the top of its concerns).").

[286] *See id.* at 310 ("Sixteen states explicitly forbade school segregation, while the laws of eleven others made no mention of the matter.").

[287] Brown v. Bd. of Educ., 347 U.S. 483, 494 (1954).

[288] *Id.*

the negro group," and because of this "sense of inferiority," Black children's motivation to learn was stunted along with their "educational and mental development."[289]

Even as Bridges argues that the Court is willing to remedy anti-Black racism in pre–Civil Rights Era form, much remains contested about *Brown* and the Court's unwillingness to recognize structural inequalities bounded in American law and white supremacy — including unequal housing, employment, and blatant racial discrimination in virtually all aspects of life — as that which harmed the psyche of Black children, not themselves.[290] The much harder task before the Court was not speaking to the hearts and minds or attitudinal changes of Black children, but to those of white parents, lawmakers, school boards, and judges.

Nevertheless, even civil rights and civil liberties activists and movement leaders who relied on traditional constitutional arguments to dismantle unjust practices recognized the limits of constitutional law to reshape culture or change hearts and minds.[291] To understand *Brown* as the case whose time had come in light of the moral urgency to end a form of racial apartheid embedded in American law would be to misunderstand geopolitical realities and the fact that "the national commitment to racial equality was always intertwined with Cold War considerations and thus highly opportunistic."[292]

Achieving legal victories to strike down unjust laws served an expedient purpose for civil rights leaders too, even if it meant the persistence of harmful and unjust racial biases in American culture furthered by the complicity of the Supreme Court in perpetuating stereotypes against Black children.

Perhaps one of the more troubling answers to the enduring phenomenon of race and sex bias in law and society and the relative inability of constitutional law to serve as the primary or sole force in law to address those problems emanates from the Court itself and its complicated, and arguably weak, history in defending the interests of the most vulnerable. In 1883, merely a stone's throw away from the legalization of American slavery, the Court dismissed racial discrimination claims, explaining:

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289 *Id.*

290 *See generally, e.g.*, Derrick A. Bell, Jr., Brown v. Board of Education *and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518 (1980).

291 *See* Wendy B. Scott, *Dr. King and the Battle for Hearts and Minds* 5 (Univ. of Md. Sch. of L. Legal Stud. Rsch. Paper No. 2009-2, 2009), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1323329 [https://perma.cc/6KZ5-7BRW] (quoting Dr. King: "Desegregation will break down the legal barriers[,] . . . but something must touch the hearts and souls of men so that they will come together spiritually . . . True integration will be achieved by true neighbors who are willingly obedient to unenforceable obligations." (second omission in original)). *See generally* GUNNAR MYRDAL, AN AMERICAN DILEMMA (1944) (noting generally that the challenge for achieving racial equality in the United States is rooted in the struggle to change hearts and minds).

292 *See* King, *supra* note 285, at 310. *See also generally* MARY L. DUDZIAK, COLD WAR CIVIL RIGHTS: RACE AND THE IMAGE OF AMERICAN DEMOCRACY (2000).

> When a man has emerged from slavery, and by the aid of beneficent legislation has shaken off the inseparable concomitants of that state, there must be some stage in the progress of his elevation when he takes the rank of a mere citizen, and ceases to be the special favorite of the laws, and when his rights as a citizen, or a man, are to be protected in the ordinary modes by which other men's rights are protected.[293]

That is, despite the striking down of "separate but equal laws" and seventeen years of the Warren Court, according to Dean Erwin Chemerinsky, "[t]he Court, overall, has done much more harm than good with regard to race."[294] The Court's nearly two decades of evaluating and striking down often bizarre, inane laws "cannot outweigh the horrendous ones in the century and a half before that or the troubling ones since."[295]

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[293] *The Civil Rights Cases*, 109 U.S. 3, 25 (1883).
[294] CHEMERINSKY, *supra* note 196, at 52–53.
[295] *Id.*

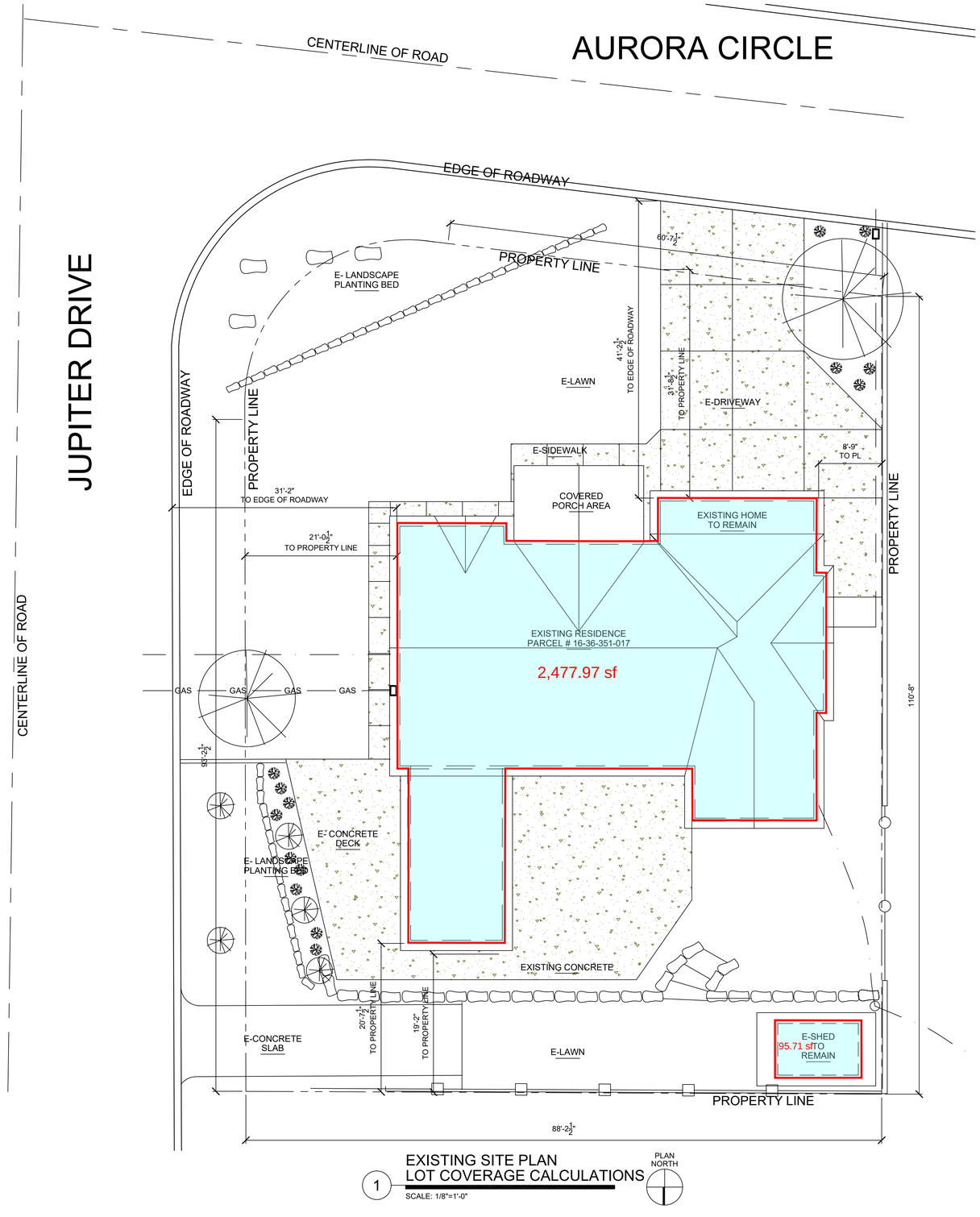
# Attachment "P"

Land Use Hearing Officer seat on presiding bench

Council Member Catten framed photo



**ATTACHMENT "Q"**




1 EXISTING SITE PLAN
LOT COVERAGE CALCULATIONS
SCALE: 1/8"=1'-0"

**EXISTING CONDITIONS**
**LOT COVERAGE CALCULATIONS**

| | |
|---|---|
| TOTAL FOOTPRINT OF EXISTING HOME (PER MILLCREEK ORDINANCE CALCULATION REQUIREMENTS) | 2,477 SQFT |
| TOTAL SHED AREA | 95 SQFT |
| TOTAL ROOFED AREA ON SITE | 2,572 SQFT |
| TOTAL SQFT OF PARCEL | 10,062 SQFT |
| **CALCULATION OF ACTUAL LOT COVERAGE (5,572 / 10,062 = 25.5%)** | **25.5%** |

Confirmed by Licensed Land Surveyor as part of NCM process

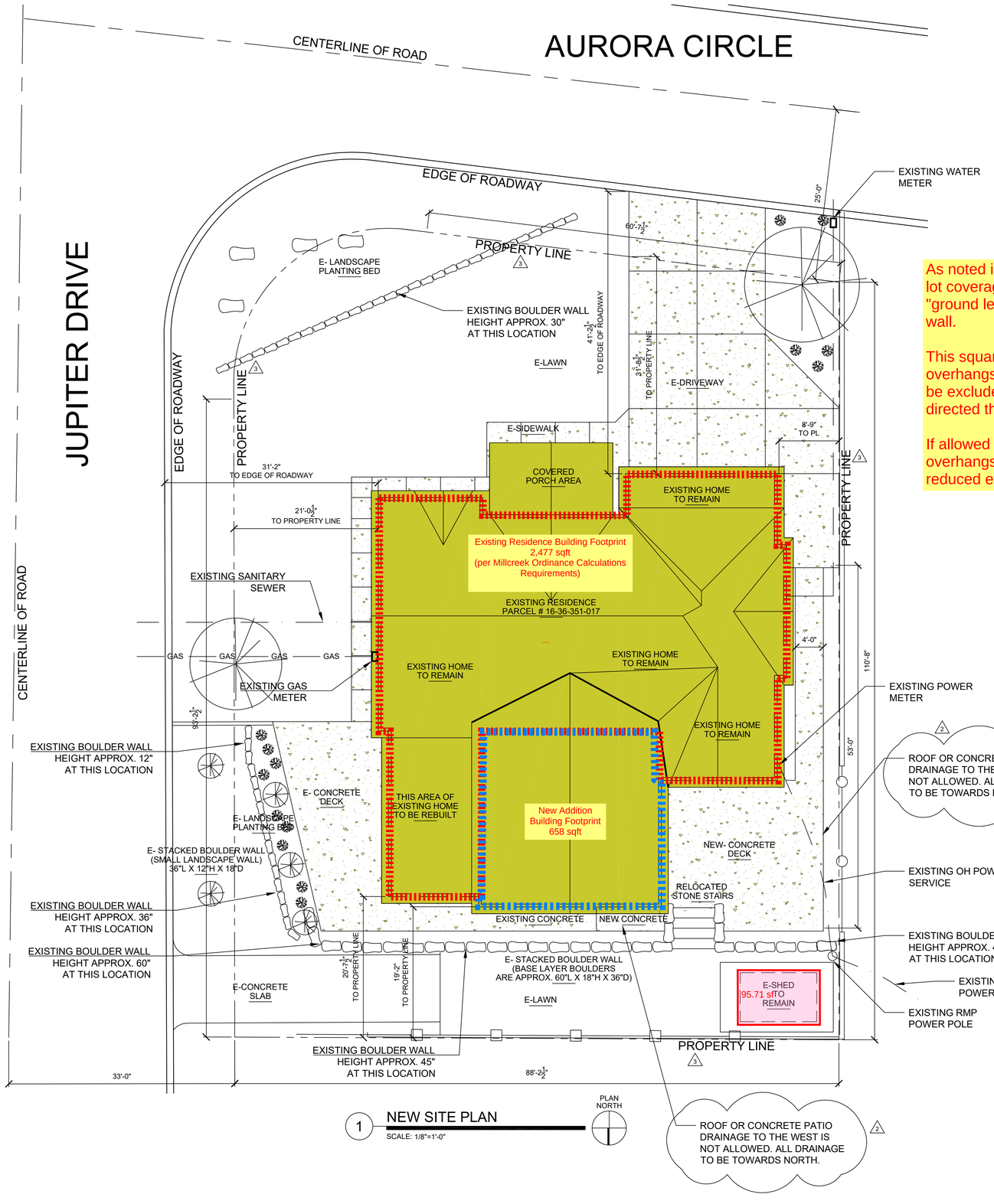
ROMERO RESIDENCE ADDTION
3652 AURORA CIRCLE
SALT LAKE CITY, UTAH 84124

| Rev # | Date | Description |
|---|---|---|
| 3 | 1-8-2026 | P&Z PLAN REVIEW RESPONSE |

Job #
CAD File
Drawn Checked
Date 9-8-2025
Owner #
Ins. #

EXISTING CONDITIONS SITE PLAN

SD1_A
Sheet of Sheets




1 NEW SITE PLAN

SCALE: 1/8"=1'-0"

ROOF OR CONCRETE PATIO DRAINAGE TO THE WEST IS NOT ALLOWED. ALL DRAINAGE TO BE TOWARDS NORTH.

ROOF OR CONCRETE PATIO DRAINAGE TO THE WEST IS NOT ALLOWED. ALL DRAINAGE TO BE TOWARDS NORTH.

As noted in letter, Mr. Romero believes lot coverage calculation is based on "ground level" and at edge of exterior wall.

This square footage includes 2nd floor overhangs which are believed should be excluded; however, Mr. Lilly directed that these are to be included.

If allowed to exclude 2nd floor overhangs, the lot coverage will be reduced even further.

## LOT COVERAGE CALCULATIONS

| | |
|---|---|
| TOTAL FOOTPRINT OF EXISTING HOME + ADDITION (CALCULATED FROM EDGE OF BUILDING) | 3,135 SQFT |
| TOTAL SHED AREA | 95 SQFT |
| TOTAL ROOFED AREA ON SITE | 3,230 SQFT |
| TOTAL SQFT OF PARCEL | 10,062 SQFT |
| **CALCULATION OF ACTUAL LOT COVERAGE (3,230 / 10,062 = 32.1%)** | **32.1%** |

## EXISTING DRAINAGE CALCULATIONS

| | |
|---|---|
| TOTAL EST. SQFT OF PARCEL | 9,583 SQFT |
| EXISTING PERMEABLE LAND AREA | 6,187 SQFT |
| EXISTING IMPERVIOUS LAND AREA | 3,215 SQFT |
| TOTAL SQFT (FOOTPRINT) OF RESIDENCE | 2,472 SQFT |
| TOTAL IMPERVIOUS SQFT (3,215 SQFT + 2,472 SQFT) | 5,687 SQFT |
| % OF IMPERVIOUS LAND AREA (5,687 / 9,583 SQFT) | 59 % TOTAL |

## NEW DRAINAGE CALCULATIONS

| | |
|---|---|
| TOTAL EST. SQFT OF PARCEL | 9,583 SQFT |
| EXISTING PERMEABLE LAND AREA | 5,521 SQFT |
| EXISTING IMPERVIOUS LAND AREA | 3,186 SQFT |
| TOTAL SQFT (FOOTPRINT) OF RESIDENCE | 3,164 SQFT |
| TOTAL IMPERVIOUS SQFT (3,186 SQFT + 3,164 SQFT) | 6,350 SQFT |
| % OF IMPERVIOUS LAND AREA (6,350 / 9,583 SQFT) | 66 % TOTAL |

# DRAWING INDEX


| | |
|---|---|
| ARCHITECTURAL PLANS | |
| SD1_0 | SITE PLAN, COVER SHEET AND DRAWING INDEX |
| A1_0 | DEMOLITION PLAN |
| A1_1 | NEW MAIN LEVEL FLOOR PLAN |
| A1_2 | NEW 2ND LEVEL FLOOR PLAN |
| A1_3 | NEW ROOF PLAN |
| A2_1 | EXTERIOR ELEVATIONS |
| A2_2 | EXTERIOR ELEVATIONS |
| A3_1 | BUILDING & WALL SECTIONS |
| A4_1 | FIREPLACE ELEVATIONS / SECTION / DETAILS |
| STRUCTURAL PLANS | |
| S1_0 | FOOTING AND FOUNDATION PLAN |
| S1_1 | MAIN LEVEL FLOOR FRAMING PLAN |
| S1_2 | ROOF FRAMING PLAN |
| S3_1 | STRUCTURAL DETAILS |
| MECHANICAL / PLUMBING PLANS | |
| M1_1 | MAIN LEVEL MECHANICAL PLAN |
| ELECTRICAL / PLUMBING PLANS | |
| E1_1 | MAIN LEVEL ELECTRICAL PLAN |


# SYMBOL LEGEND

- 1 KEY NOTE
- T.O. LANDING ELEV: 100'-0"
- A WINDOW CALL OUT
- 101 DOOR CALL OUT
- 1 ACCESSORY NOTE
- TYP. DETAIL CALL OUT
- 2 / A3_2 BUILDING SECTION
- 2 / A3_2 ELEVATION CALL OUT

# PROJECT TEAM


OWNER / DRAFTER / DESIGNER: JOE AND JENNIFER ROMERO, 3652 AURORA CIRCLE, SALT LAKE CITY, UTAH 84124, (801) 808 - 0063

STRUCTURAL ENGINEER: DANY TREMBLAY, PE, CANYONS STRUCTURAL CONSULTING, 940 EAST ELM AVE, SALT LAKE CITY, UTAH 84105, (801) 486-6848


# GENERAL INFO .

CODE: 2021 INTERNATIONAL RESIDENTIAL CODE

ZONING R1-8

ROMERO RESIDENCE ADDTION
3652 AURORA CIRCLE
SALT LAKE CITY, UTAH 84124

| Rev # | Date | Description |
|---|---|---|
| 1 | 11-5-2025 | PERMIT SET |
| 2 | 11-12-2025 | ENGINEERING PLAN REVIEW RESPONSE |
| 3 | 1-23-2026 | P&Z PLAN REVIEW RESPONSE |

Job #
CAD File
Drawn Checked
Date 9-8-2025
Owner #
Ins. #

SITE PLAN, COVER SHEET AND DRAWING INDEX

SD1_0
Sheet of Sheets

**Attachment "R"**

Outlook

## Re: [Ext] Millcreek Permit # 252009 - 3652 E AURORA CIR

**From** Joe Romero <joe@rthreegroup.com>
**Date** Mon 11/24/2025 2:48 PM
**To** Carlos Estudillo <cestudillo@millcreekut.gov>

1 attachment (27 KB)
1st Floor Plan Square Footage.pdf;

Carlos,

Thank you for the confirmation that Millcreek City measures the lot coverage square footage by utilizing the "footprint" method. I agreed with your determination which is supported by industry standards of the American Planning Association (APA) who outlines this method in their Planning Advisory Services (PAS) report # 111. As I am sure we can both agree the APA is the National Standard for Planning.

With this being said, APA PAS Report 111 defines how the floor area ratio should be calculated which is measured from the "exterior" faces of exterior walls or from the centerline of walls separating two buildings (not the case for my home) and at the finished grade elevation. The APA also states that when calculating floor area ratio, roof overhangs (less than 2 feet) and open porches "***are not to be included***" in the calculation.

Although there can be local variations of the APA's national standard, I have completed a comprehensive review of Millcreek's 18.36 Single-Household Residential Zoning documents, and I can't see anything that would supplement or change the APA's typical standard.

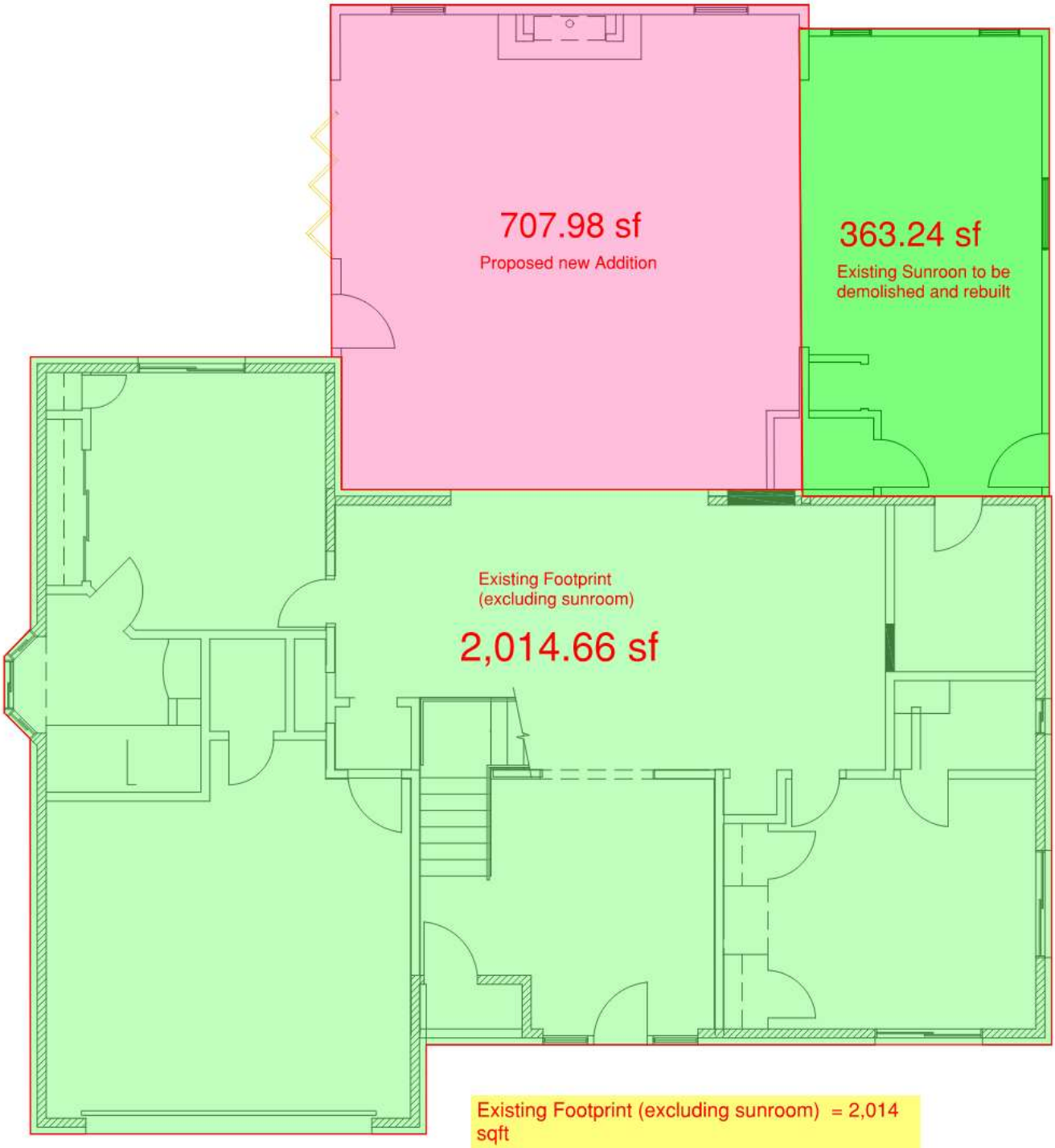
As I mentioned in a previous email to you, I acknowledge the R-1-8 zone has a recommended maximum lot coverage of 33%; however, in my previous emails, I have provided you with scaled drawings demonstrating (with actual square footages) demonstrating that ***"with" the addition, the total lot coverage will only be 3,084 square feet with is (3084 / 9,583 (.22 ac) = 31%*** and therefore, should still have room for the additional 96 square foot shed on site.

My concern is that your area calculations are not accurate as you are simply taking a non-scaled aerial view of the home showing the front porch along with roof overhangs that are 16" wide (and should not be calculated).

I again would ask for you to review the drawing below (and attached PDF) as these are the actual, scaled, square footages for each area of the home.

I truly believe not allowing this new addition, which in my opinion, falls within the zoning requirements of Millcreek City would create a hardship for this addition and for my family.

Lastly, as I mentioned several times before, I would be happy to sit down with you in person to finalize this phase of the plan review.




| | |
|---|---|
| Existing Footprint (excluding sunroom) sqft | = 2,014 |
| Existing Sun Room sqft | = 363 |
| Proposed new Addition sqft | = 707 |
| Total of Proposed Home after addition sqft | = 3,084 |

**Joe Romero, LEED AP**
***President***
The R3 Group, LLC
P: 801-808-0063 | E: joe@rthreegroup.com

Outlook

# Fw: [Ext] Millcreek Permit # 252009 - 3652 E AURORA CIR

**From** Joe Romero <joe@rthreegroup.com>
**Date** Mon 12/8/2025 3:50 PM
**To** Carlos Estudillo <cestudillo@millcreekut.gov>

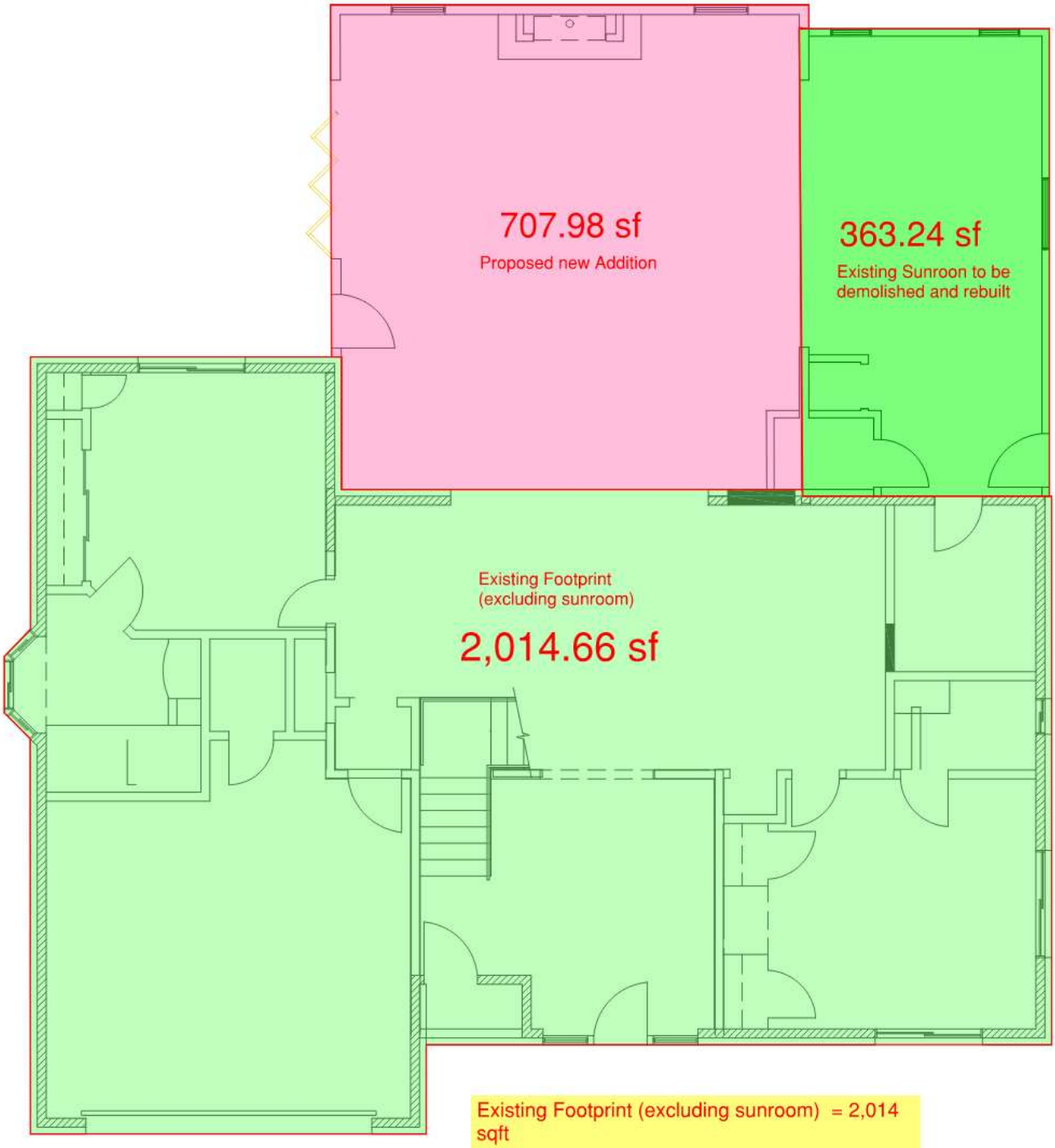
1 attachment (27 KB)
1st Floor Plan Square Footage.pdf;

Carlos,

I am following up from the email I sent before Thanksgiving on November 24, 2025. Please confirm the attached PDF of the scaled footprint of the existing footprint of the home and requested addition does in fact fall under the 33% lot coverage maximum requirement for the R-1-8 zone.

As I mentioned in a couple previous emails to you, I acknowledge the R-1-8 zone has a recommended maximum lot coverage of 33%; however, I have provided you with "scaled" drawings (with actual square footages) demonstrating that ***"with" the addition, the total lot coverage will only be 3,084 square feet with is (3084 / 9,583 (.22 ac) = 31%*** and therefore, should still have room for the additional 96 square foot shed on site.

I'll again express my concern with your method of take-off which is from an aerial photograph that is not accurately scaled, and you are showing all roof overhangs, patios, etc. that should not be calculated in the footprint method as per the APA. It's clear and evident that your take off method does not align with APA (***See below for the images you provided from your email below dated November 21, 2025***) showing the shed is 164 sqft. As you can see, you have inadvertently taken off the roof overhangs, not the footprint of the shed which is only 96 square feet. It is clear you have taken this same take-off approach for the existing home as well.




| | |
|---|---|
| Existing Footprint (excluding sunroom) sqft | = 2,014 |
| Existing Sun Room sqft | = 363 |
| Proposed new Addition sqft | = 707 |
| Total of Proposed Home after addition sqft | = 3,084 |

**Joe Romero, LEED AP**
***President***
The R3 Group, LLC
P: 801-808-0063 | E: joe@rthreegroup.com

Outlook

# Building Permit # 252009 - Formal Request for Corrective Application of Lot Coverage Standards and Administrative Action

**From** Joe Romero <joe@rthreegroup.com>
**Date** Tue 12/23/2025 2:46 PM
**To** flilly@millcreekut.gov <flilly@millcreekut.gov>

2 attachments (235 KB)
Letter to Mr. Lilly - Planning Director, Millcreek City 12-22-2025.pdf; Attachment B- Scaled Drawings - 12-22-2025.pdf;

Mr. Lilly,

Please see the attached letter and documentation regarding my current in process Building Permit Application for my home.

I respectfully request that you contact me upon your review and that we can meet in person if there are additional questions or concerns regarding the immediate approval of the planning and zoning acceptance of my proposed addition.

Thank you.

**Joe Romero, LEED AP**
***President***
The R3 Group, LLC
P: 801-808-0063 | E: joe@rthreegroup.com

***Sent via email to Mr. Lilly to flilly@millcreekut.gov and via USPS***

**December 22, 2025**

Mr. Francis Xavier Lilly, AICP

Planning Director

Millcreek City

1370 South 2100 East

Millcreek, Utah 84108

**Re: Building Permit # 252009 - Formal Request for Correct Application of Lot Coverage Standards and Administrative Action Regarding Planning Specialist Non-Responsiveness**

Dear Mr. Lilly,

I am writing to formally request administrative review and corrective action by your office concerning the ongoing lot coverage determination for my residence located within the R-1-8 zoning district of Millcreek City. Despite multiple written communications to **Carlos Estudillo (Planner II)** - dated **November 17**, **2025**, **November 18**, **2025, November 21, 2025**, **November 24, 2025** and **December 8, 2025** appropriately responding to his planning & zoning questions regarding the proposed addition to my home, I have not received a substantive nor appropriate response consistent with City standards, professional planning practice, or the American Planning Association (APA) methodologies that Mr. Estudillo himself confirmed Millcreek City follows.

With each of my emails listed above, I have provided scaled, dimensioned drawings with square foot take-offs demonstrating that my existing plus new addition square footage is below or right at the 33% maximum per Millcreek's planning & zoning standards. The only communication I have received from Mr. Estudillo is his denial of the permit with the only justification stated in his November 21, 2025, email stating "*I took a rough estimate of your current lot coverage*" which does not align with actual on site conditions, the scaled drawings I have provided nor with the APA and Millcreek's standards for lot coverage take off. Mr. Estudillo also states I only have approximately 200 square feet of available lot coverage; however, that is because he does not follow Millcreek City nor APA's guidelines by using a non-scaled aerial map and including all overhangs and porches. I have also requested in several emails that I be able to meet with Mr. Estudillo so I can clear up or satisfy any questions he may have and demonstrate the proposed project should be approved. ***Lastly, Mr. Estudillo has chosen not to communicate with me since November 24, 2025 which is the purpose for my letter.***

For the reasons listed below, I am requesting this project's review be escalated within your department for the following reasons:

**I. Failure of Appropriate Response**

Mr. Estudillo has not acknowledged or addressed the accurately scaled drawings I provided, nor has he corrected his reliance on non-scaled aerial imagery that improperly includes roof overhangs, patios, and other elements explicitly excluded under the footprint method

recognized by both Millcreek City and the APA. His continued use of an inaccurate measurement method has resulted in materially erroneous conclusions, including but not limited to:

- Miscalculation of my primary existing home as **2,971 sq ft** despite its actual **2,377 sq ft footprint** (Mr. Estudillo solely used non-scaled aerial photography and non Millcreek/APA methods)
- Miscalculation of my proposed addition as **721 sq ft** despite its actual **707 sq ft footprint**
- Miscalculation of my accessory shed as **164 sq ft** despite its actual **96 sq ft footprint**; and
- Inclusion of roof overhangs approximately **16 inches** wide in the home's footprint calculations, contrary to APA PAS Report No. 111, which states that roof overhangs under two feet **must not be included**.
- Inclusion of open area patios or front porches that are allowed to be excluded per the APA.

*These errors directly contradict the method Mr. Estudillo previously confirmed Millcreek City uses for lot coverage: the "footprint" method, measured at finished grade and limited strictly to the exterior faces of exterior walls.*

**II. Compliance Demonstrated Through Scaled Drawings**

The scaled architectural drawings submitted to the Planning Department (See Attachment "B") clearly demonstrate:

- Existing structure + proposed addition = **3,084 sq ft footprint**
- Existing shed = **96 sq ft footprint**
- Lot size = **9,583 sq ft (.22 acre)**
- Resulting lot coverage = **3,180 / 9,583 = 33%**, below or right at Millcreek City's **33% maximum recommended lot coverage** for the R-1-8 zone.
- I have also offered to tear down the shed to be under the maximum limit; however, I still don't believe this would not be necessary.

*No provision within Millcreek Municipal Code §18.36 alters the APA-standard footprint methodology or authorizes the inclusion of roof overhangs or open porches in lot coverage calculations.*

**III. Formal Request for Immediate Administrative Action**

Given the above, I hereby formally request that the Planning Department:

1. **Immediately apply the correct footprint-based lot coverage methodology** consistent with APA PAS Report No. 111 and with prior City acknowledgment;
2. **Review and approve the proposed addition** based on the accurate 33% lot coverage calculation cased on scaled drawings and applied per APA standards;
3. **Direct the plans to the Building Department** for the next phase of review without further delay; and
4. **Provide a written response from the Planning Director**, confirming the City's corrected calculations and next administrative steps.

***Sent via email to Mr. Lilly to flilly@millcreekut.gov and via USPS***

*Failure of a Planning Specialist to apply proper planning methods and respond to applicant communications compromises procedural fairness and imposes an unreasonable hardship on my family, contrary to the purpose and intent of Millcreek's zoning framework.*

**IV. Request for Meeting**

To avoid further unnecessary delay, I again offer to meet with you directly—along with Mr. Estudillo, if appropriate, to review the scaled drawings together and confirm the correct square footages.

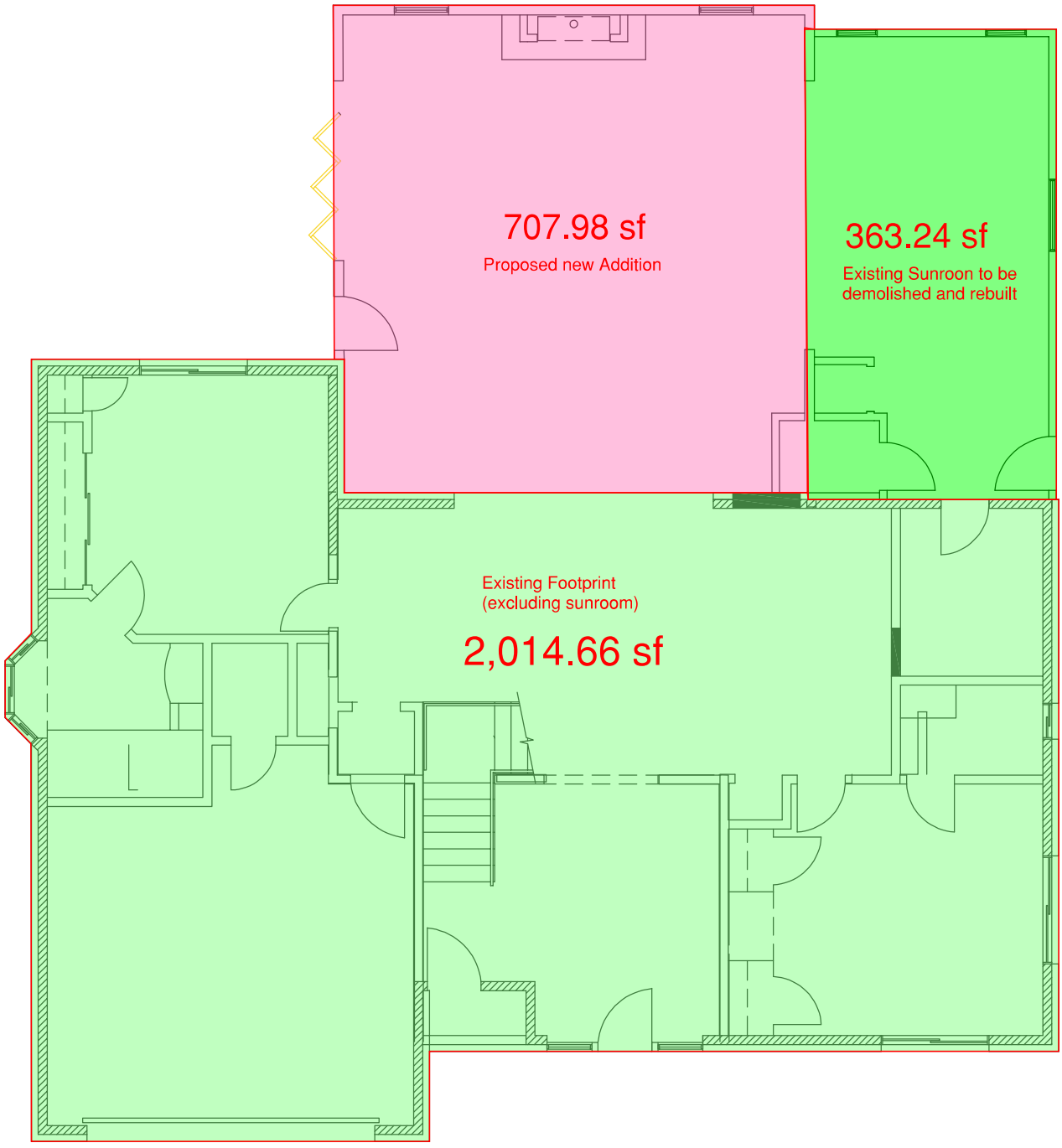
I respectfully request a written response from your office within **five (5) business days** of receipt of this letter so that this matter can move forward appropriately and without the need for additional escalation.

Thank you for your prompt attention and please know I can be contacted at anytime.

Respectfully Submitted,



Homeowner
3652 Aurora Circle
Millcreek, Utah 84124
(801) 808-0063




| | |
|---|---|
| Existing Footprint (excluding sunroom) | = 2,014 sqft |
| Existing Sun Room | = 363 sqft |
| Proposed new Addition | = 707 sqft |
| Total of Proposed Home after addition | = 3,084 sqft |

Outlook

# Re: [Ext] Building Permit # 252009 - Formal Request for Corrective Application of Lot Coverage Standards and Administrative Action

**From** Joe Romero <joe@rthreegroup.com>
**Date** Tue 1/6/2026 1:00 PM
**To** Francis Lilly <flilly@millcreekut.gov>; Carlos Estudillo <cestudillo@millcreekut.gov>

1 attachment (333 KB)
SD1_0 Updated 1-6-2026 P&Z Revisions.pdf;

Mr. Lilly,

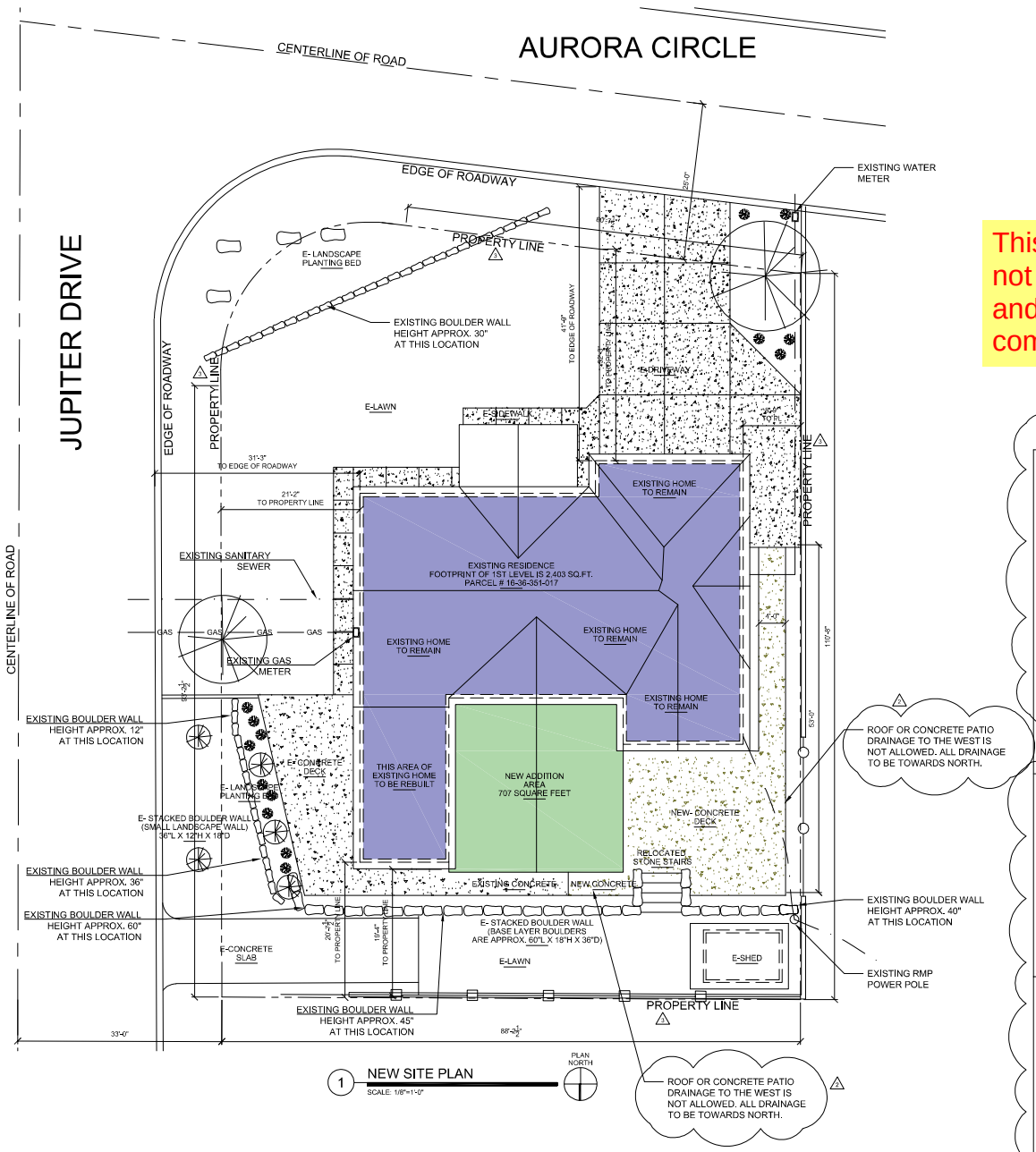
In response to your previous email, I believe I discovered and now know where the miscommunication regarding this review stems from. Until your email yesterday questioning and pointing out the discrepancy from the submitted site plan, I was never informed there was a concern regarding the Property Lines as drawn or the size of the lot itself. (*This plan was simply reused from a previous addition in 2008 that SLCounty P&Z approved without issue, so I didn't think to look at changing it for this 700 sqft addition*). Based on my limited email communications from Carlos, he only questioned the footprint size of the home, and not the actual lot size or configuration. During our meeting, I will quickly explain how we got here during our meeting, what I have done to confirm every dimension on site and in the Plat Map you provided and I confidently believe everything adds up now and does demonstrate the addition is compliant with Millcreek P&Z requirements.

Nevertheless, and per your request, I have taken all information provided by you yesterday, along with my field verification of dimensions and have completely redrawn the Site Plan including all of the required elements you pointed out and requested. I also found that a "scale to fit" box was checked in Autocad which is why the previous plan's scale was slightly off. I fixed that issue, added my Lot Coverage Calculations on the plan as well and the attached PDF is scaled perfectly.

I offer the following PDF for your review prior to our meeting. I believe this revised plan will be what you need to substantiate the proposed addition still falls within the maximum lot coverage requirements in a clean, concise plan. I trust you'll be able to approve this plan so the Project's plan review and continue with Building.

Thank you for taking the time to review my proposed addition project plans, and for promptly communicating your concerns so I could address them in detail. This is all I have been trying to do for the last 2+ months. I look forward to reviewing all information at 4:00 pm.

**Joe Romero, LEED AP**
P: 801-808-0063 | E: joe@rthreegroup.com




This lot coverage did not include roof eaves and demonstrated compliance

## LOT COVERAGE CALCULATIONS

| | |
|---|---|
| FOOTPRINT OF EXISTING HOME (INCLUDUING EXIST. SUN ROOM) | 2,403 SQFT |
| FOOTPRINT OF ADDITION | 707 SQFT |
| FOOTPRINT SUBTOTAL (EXIST + ADDITION) TOTAL LOT COVERAGE | 3,110 SQFT |
| TOTAL SQFT OF PARCEL | 9,468 SQFT (.22 ACRE) |
| MAXIMUM LOT COVERAGE ALLOWED (9,468 SQFT X 33% = 3,124 SQFT) | 3,124 SQFT |
| **CALCULATION OF ACTUAL LOT COVERAGE (3,110 / 9,468 = 32.84%)** | **32.84% TOTAL** |

## EXISTING DRAINAGE CALCULATIONS

| | |
|---|---|
| TOTAL EST. SQFT OF PARCEL | 9,583 SQFT |
| EXISTING PERMEABLE LAND AREA | 6,187 SQFT |
| EXISTING IMPERVIOUS LAND AREA | 3,215 SQFT |
| TOTAL SQFT (FOOTPRINT) OF RESIDENCE | 2,472 SQFT |
| TOTAL IMPERVIOUS SQFT (3,215 SQFT + 2,472 SQFT) | 5,687 SQFT |
| % OF IMPERVIOUS LAND AREA (5,687 / 9,583 SQFT) | 59 % TOTAL |

## NEW DRAINAGE CALCULATIONS

| | |
|---|---|
| TOTAL EST. SQFT OF PARCEL | 9,583 SQFT |
| EXISTING PERMEABLE LAND AREA | 5,521 SQFT |
| EXISTING IMPERVIOUS LAND AREA | 3,186 SQFT |
| TOTAL SQFT (FOOTPRINT) OF RESIDENCE | 3,164 SQFT |
| TOTAL IMPERVIOUS SQFT (3,186 SQFT + 3,164 SQFT) | 6,350 SQFT |
| % OF IMPERVIOUS LAND AREA (6,350 / 9,583 SQFT) | 66 % TOTAL |

# DRAWING INDEX


| | |
|---|---|
| ARCHITECTURAL PLANS | |
| SD1_0 | SITE PLAN, COVER SHEET AND DRAWING INDEX |
| A1_0 | DEMOLITION PLAN |
| A1_1 | NEW MAIN LEVEL FLOOR PLAN |
| A1_2 | NEW 2ND LEVEL FLOOR PLAN |
| A1_3 | NEW ROOF PLAN |
| A2_1 | EXTERIOR ELEVATIONS |
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# SYMBOL LEGEND

- KEY NOTE
- T.O. LANDING ELEV. 100'-0"
- WINDOW CALL OUT
- DOOR CALL OUT
- ACCESSORY NOTE
- DETAIL CALL OUT
- BUILDING SECTION
- ELEVATION CALL OUT

# PROJECT TEAM


OWNER / DRAFTER / DESIGNER: JOE AND JENNIFER ROMERO
3652 AURORA CIRCLE
SALT LAKE CITY, UTAH 84124
(801) 808 - 0063

STRUCTURAL ENGINEER: DANY TREMBLAY, PE
CANYONS STRUCTURAL CONSULTING
940 EAST ELM AVE
SALT LAKE CITY, UTAH 84105
(801) 486-6848


# GENERAL INFO .

| | |
|---|---|
| CODE: | 2021 INTERNATIONAL RESIDENTIAL CODE |
| ZONING | R1-8 |

ROMERO RESIDENCE ADDTION
3652 AURORA CIRCLE
SALT LAKE CITY, UTAH 84124

| No. | Date | Description |
|---|---|---|
| 1 | 11-5-2025 | PERMIT SET |
| 2 | 11-12-2025 | ENGINEERING PLAN REVIEW RESPONSE |
| 3 | 1-6-2026 | P&Z PLAN REVIEW RESPONSE |

Job #
CAD File
Drawn
Checked
Date 9-8-2025
Comm. #
Rev. #

SITE PLAN, COVER SHEET AND DRAWING INDEX

SD1_0
Sheet of Sheets

Outlook

## Final Submission and Request for Approval or Determination

**From** Joe Romero <joe@rthreegroup.com>
**Date** Thu 1/8/2026 7:19 AM
**To** Carlos Estudillo <cestudillo@millcreekut.gov>; Francis Lilly <flilly@millcreekut.gov>

2 attachments (7 MB)
SD1_0 Updated 1-8-2026 P&Z Revisions.pdf; NCM Lot Coverage and Calulation Information.pdf;

Francis / Carlos,

Again, thank you for your continued support and guidance regarding the P&Z processes for Millcreek City. I have learned a lot and at the end of the day, endeavoring to meet the code requirements. In the end, my intent is to ensure I am providing accurate information to the best of my knowledge and have drawn everything accordingly.

With this in mind, I am submitting two paths for either your approval or guidance on what you believe is the correct path to compliance. With that being said, I offer the following:

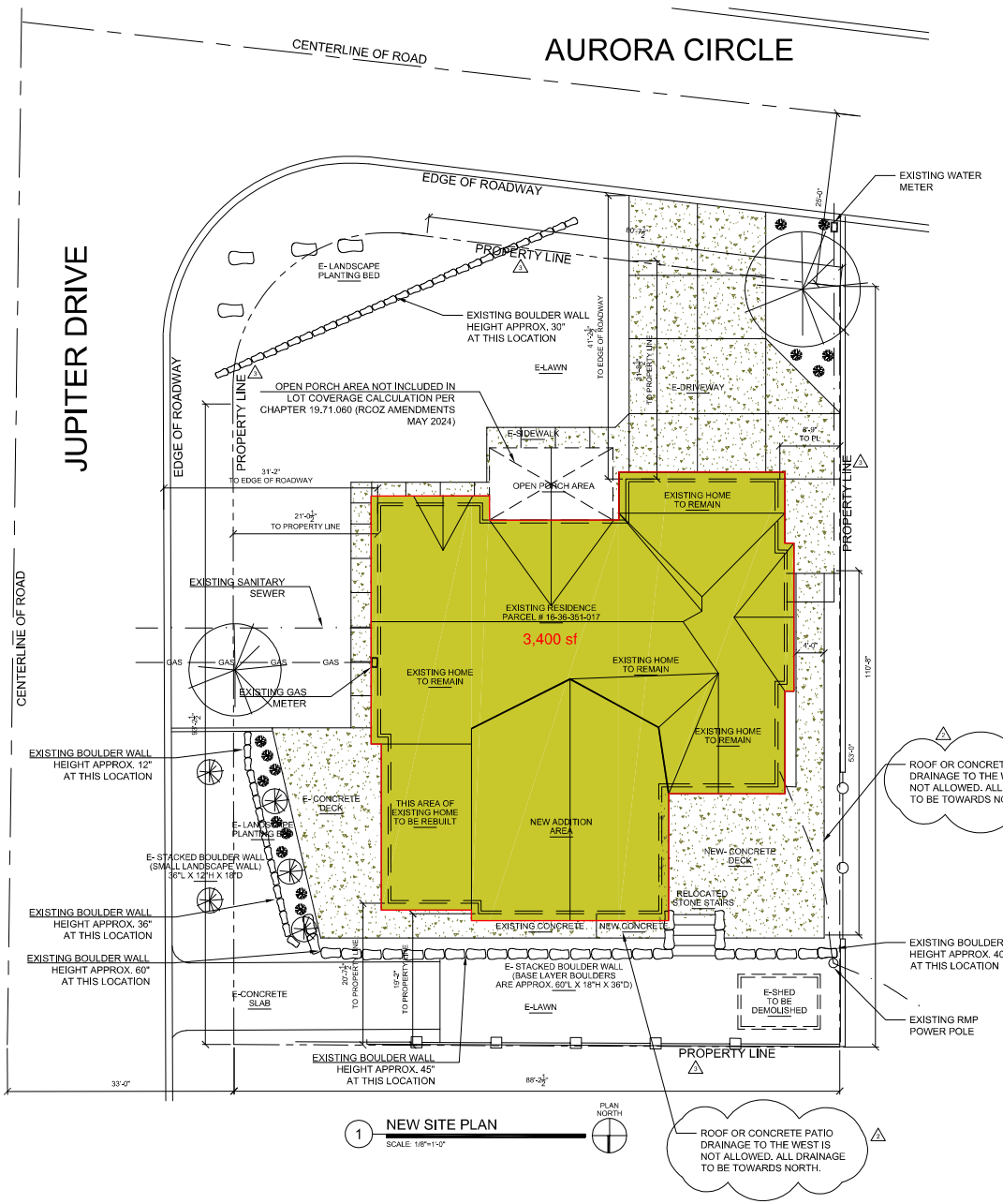
- Path # 1 (***Seeking Approval of Revised Site Plan***)
  - I am respectfully requesting the REVISED dated 1-8-2026 site plan be approved and added to the formal document submission.
  - See the attached REVISED Site Plan including all elements we have discussed in conversation and email. (*Existing design plans work so no change to design required*)
  - I have double and triple checked the scale, every dimension on the plan, the footprint square footages and have confirmed lot square footages with you and believe everything is accurate
  - Per Chapter 19.71.060 (RCOZ Amendments May 2024), I have not included the Open Front Porch in the footprint calculations and have noted such on the Revised Plan

- Path # 2 (***If required, Proceed with NCM Process***)
  - I have spent 4-6 hours researching the NCM Process and Requirements
  - I have utilized Millcreek's GIS mapping system to complete initial analysis of lot coverages of (6) parcels within 200 feet of my property (See attached)
  - A few questions I have for you and guidance requested if I must go down this process:
    - For the (6) properties around my parcel I conducted analysis on, ***ONLY (1) property EXCEEDS the 33%*** maximum lot coverage
    - The other (5) are below the 33%
    - On the GIS Mapping System, several of the properties are heavily wooded so I can not confirm if there are additional accessory buildings or sheds that would increase the lot coverage
    - The "*Average*" lot coverage for the six properties is 27.71%
    - Using the NCM calculation, the 27.71% x 1.15 only equals 31.86% which is already under the 33%.
  - ***Will Millcreek City allow an NCM Approval to exceed the maximum 33% lot coverage if there is only (1) of the (6) properties exceeding the current maximum? For my Property, we would certainly be below the 38% NCM Max.***
  - Lastly, If I am required to utilize Path # 2
    - I'd like to confirm that a Land Surveyor will be required to "stamp" all information and analysis and not just the survey of my existing home?
    - I'd like to provide accurate direction to the Land Surveyor so I can get an accurate quote before I decide to proceed with this method, if required.

As you know, my preference is to have the attached site plan approved so Building can proceed with their review; however, if I must proceed with the NCM process, before I spend $3-4K on survey costs, I'd like to ensure I have a reasonable degree of certainty that the NCM process will be approved based on the preliminary information listed above.

Again, respectfully submitted and I look forward to your response.

**Joe Romero, LEED AP**
***President***
The R3 Group, LLC
P: 801-808-0063 | E: joe@rthreegroup.com




1 NEW SITE PLAN
SCALE: 1/8"=1'-0"

This lot coverage included roof eaves at the direction of Mr. Francis Lilly

## LOT COVERAGE CALCULATIONS

| | |
|---|---|
| TOTAL FOOTPRINT OF EXISTING HOME + ADDITION (CALCULATED FROM EDGE OF ROOF) | 3,400 SQFT |
| TOTAL SQFT OF PARCEL | 10,077 SQFT |
| **CALCULATION OF ACTUAL LOT COVERAGE (3,400 / 10,077 = 33.7%)** | **33.7%** |

## EXISTING DRAINAGE CALCULATIONS

| | |
|---|---|
| TOTAL EST. SQFT OF PARCEL | 9,583 SQFT |
| EXISTING PERMEABLE LAND AREA | 6,187 SQFT |
| EXISTING IMPERVIOUS LAND AREA | 3,215 SQFT |
| TOTAL SQFT (FOOTPRINT) OF RESIDENCE | 2,472 SQFT |
| TOTAL IMPERVIOUS SQFT (3,215 SQFT + 2,472 SQFT) | 5,687 SQFT |
| % OF IMPERVIOUS LAND AREA (5,687 / 9,583 SQFT) | 59 % TOTAL |

## NEW DRAINAGE CALCULATIONS

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| TOTAL EST. SQFT OF PARCEL | 9,583 SQFT |
| EXISTING PERMEABLE LAND AREA | 5,521 SQFT |
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| TOTAL SQFT (FOOTPRINT) OF RESIDENCE | 3,164 SQFT |
| TOTAL IMPERVIOUS SQFT (3,186 SQFT + 3,164 SQFT) | 6,350 SQFT |
| % OF IMPERVIOUS LAND AREA (6,350 / 9,583 SQFT) | 66 % TOTAL |

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# SYMBOL LEGEND

- KEY NOTE
- T.O. LANDING ELEV. 100'-0"
- WINDOW CALL OUT
- DOOR CALL OUT
- ACCESSORY NOTE
- DETAIL CALL OUT
- BUILDING SECTION
- ELEVATION CALL OUT

# PROJECT TEAM

| | |
|---|---|
| OWNER / DRAFTER / DESIGNER: | JOE AND JENNIFER ROMERO<br>3652 AURORA CIRCLE<br>SALT LAKE CITY, UTAH 84124<br>(801) 808 - 0063 |
| STRUCTURAL ENGINEER: | DANY TREMBLAY, PE<br>CANYONS STRUCTURAL CONSULTING<br>940 EAST ELM AVE<br>SALT LAKE CITY, UTAH 84105<br>(801) 486-6848 |

# GENERAL INFO .

| | |
|---|---|
| CODE: | 2021 INTERNATIONAL RESIDENTIAL CODE |
| ZONING | R1-8 |

ROMERO RESIDENCE ADDTION
3652 AURORA CIRCLE
SALT LAKE CITY, UTAH 84124

| Rev # | Date | Description |
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| 1 | 11-5-2025 | PERMIT SET |
| 2 | 11-12-2025 | ENGINEERING PLAN REVIEW RESPONSE |
| 3 | 1-8-2026 | P&Z PLAN REVIEW RESPONSE |

Job #
CAD File
Drawn
Checked
Date 9-8-2025
Comm #
Ins. #

SITE PLAN, COVER SHEET AND DRAWING INDEX

SD1_0
Sheet of Sheets

**APPEAL AUTHORITY NOTIFICATION AND MEMORANDUM** **April 22, 2026**

**Appeal Date:** **February 5, 2026**

**Building Permit #** 252009 and NCM Permit No. 926020

**To:** Millcreek City Appeal Authority / Land Use Hearing Officer

**Applicant:** Joe Romero

3652 Aurora Circle

Millcreek, Utah 84124

**Re:** **NOTICE OF NON-COMPLIANCE WITH PUBLIC NOTICE REQUIREMENTS (UTAH CODE §52-4-101 et seq. (Open and Public Meetings Act) and MILLCREEK POLICIES AND PROCEDURES**

**FAILURE TO PROVIDE STATUTORILY REQUIRED PUBLIC NOTICE – LAND USE APPEAL HEARING (ROMERO) SCHEDULED FOR APRIL 22,2026 @ 1:00 PM**

Millcreek City Mayor
State of Utah Property Rights Ombudsman Office
Millcreek City Ethics Review Committee
Members of the Appeal Authority,

This correspondence serves as formal notice that Millcreek City has failed to comply with the requirements of their own mandatory and adopted *Land Use Hearing Officer Policies and Procedures* requiring public notice and posting requirements. Within these Policies and Procedures, it is stated that "***all hearings before the Land Use Hearing Officer shall comply with the requirements of the Open and Public Meetings Act, set forth under Utah Code § 52-4-101 et seq***." and other Public Notice provisions outlined in Section 4 of the *Land Use Hearing Officer Policies and Procedures*. (*See below for clip from P&P's*)

4. Notification of Hearings: All hearings before the Land Use Hearing Officer shall comply with the requirements of the Open and Public Meetings Act, Utah Code Ann. § 52-4-101 et seq.

a. As soon as practicable after receiving the Application, the Land Use Hearing Officer shall schedule a date, time, and place for a hearing.

b. Notice of the date, time, and place of the administrative hearing shall be sent by email or by other means of contact provided by the Parties in accordance with Section (2) above.

c. Notice of Land Use Hearing Officer hearings, shall be posted on the City's website. Any person whose legal interests may be substantially affected by the matter to be heard by the Land Use Hearing Officer may file a written

Additionally, and pursuant to the attached email, the land use appeal hearing has been scheduled for April 22, 2026 @ 1:00 pm (local Mountain time) concerning Mr. Romero. (See ***Attachment "A"***); therefore, required public notice and posting to the City's website, at a minimum, shall be no later than 12:59 PM on April 21, 2026.

**1. Statutory Non-Compliance (Utah Code § 52-4-202)**

As required by the Policies and Procedures Section C-4, Utah law requires that a public body provides, at minimum:

- At least 24 hours advance public notice
- Notice including agenda, date, time, and place
- Posting on the Utah Public Notice Website
- Posting at a physical location within the jurisdiction

Millcreek City has failed to satisfy these statutory minimum requirements, including but not limited to the failure to ensure proper and timely dissemination of notice sufficient to inform the public and affected parties. See the attached screenshots from Utah's Public Meeting Notice website (www.utah.gov/pmn/search.html) for each day starting one week prior to the notice deadline requirement. (See ***Attachment "B"***)

As of 5:15 pm, local Mountain Time, on April 21, 2026, Millcreek City has failed to publish notice of Mr. Romero's April 22, 2026 hearing on Utah's Public Meeting Notice

website and do not have the public notice posted at the physical location within the jurisdiction (See ***Attachment "C"***), in direct contravention of its own mandatory procedures. It should be noted that Millcreek has published other Appeal Hearing Notices on this public website and at their location, but not Mr. Romero's.

**2. Violation of City's Own Adopted Policies**

Millcreek City's Land Use Hearing Officer Policies and Procedures expressly require compliance with Utah Code § 52-4-101 et. seq and additional requirements specifically stated within these Policies and Procedures published on the City's official website. *In addition to Utah Code noted above*, the Policies and Procedures (Section C-4.(c)) require "***notice of land use hearing officer hearings, "shall be posted on the City's website***". See the attached screenshots from Millcreek City's Agenda Center website (www.millcreekut.gov/AgendaCenter) for each day starting one week prior to the notice deadline requirement. (***See Attachment "B"***)

It is well-established that when a municipality adopts procedural rules, it is bound to follow them. Failure to do so constitutes:

- A deviation from required procedure
- Evidence of arbitrary and capricious action by City officials
- A potential violation of procedural due process rights

As of 2:05 pm local Mountain Time on April 21, 2026, Millcreek City has failed to publish notice of Mr. Romero's April 22, 2026 hearing on its official website, in direct contravention of its own mandatory procedures. It should be noted there are other Millcreek Appeal Hearing Notices shown (past and future hearing) on this website, but not Mr. Romero's.

***3. Inconsistent and Unequal Application of Notice Requirements***

It has been verified via public website review that:

- Millcreek City has published proper public notice on its website for the next scheduled Land Use Hearing on April 30, 2026; however, no such notice has been provided for Mr. Romero's April 22, 2026, hearing which shows bad faith on the City's part.

Furthermore, a review of prior public records and historical land use appeal notices demonstrate that:

- Millcreek City has consistently published public notice on its website approximately (1) one to (2) two weeks prior to scheduled appeal hearings

Despite this established and consistent practice, the City has failed to provide comparable notice for Mr. Romero, representing a clear departure from standard procedure.

***4. Due Process Implications***

The failure to provide proper and consistent public notice:

- Undermines the ***transparency requirements*** of Utah's Open and Public Meetings Act and Millcreek's Policies and Procedures
- Impairs the ability of the public and interested parties to ***participate meaningfully*** by listening to the events at the hearing and reviewing the documents on the record of this Appeal Hearing submitted by both Millcreek City and the Appellant.
- Raises serious concerns regarding ***procedural fairness, structural bias, and unequal treatment***
    - Such deficiencies may render any action taken at the April 22, 2026 hearing legally vulnerable to challenge and invalidation.

Since the 24-hour time period has expired, prior to Mr. Romero's hearing, there is no way for Millcreek City to cure these deficiencies;however, as a result of Millcreek's decision, which is clearly demonstrating bad faith on the City's part, not to adhere to their own Policies and Procedures, Mr. Romero may have no other alternative but to pursue all available legal remedies, including but not limited to claims and / or the filing of State of Utah - 3rd District Court action arising from violations of statutory requirements and constitutional due process protections.

On Monday, April 20, 2026 at 7:46 am, just 48 hours prior to Mr. Romero's appeal hearing, Mr. Romero sent an email to City Attorney, Mr. John Brems, and Planning Director, Mr. Francis Lilly (who is responsible to administer the scheduling of the adjudicators) to confirm the Land Use Appeal hearing was still on schedule. (***See Attachment "D"***) The City never responded to this email requesting confirmation sent by Mr. Romero; however, Mr. Romero received an unexpected, unsolicited phone call from Planning Director, Mr. Francis

Lilly where amongst other things, Mr. Lilly confirmed the Appeal Hearing on April 22, 2026. A separate email dated April 20, 2026 has been sent by Mr. Romero to Millcreek City and the Property Rights Ombudsman to place on the record the phone conversation between Mr. Lilly and **Mr**. Romero.

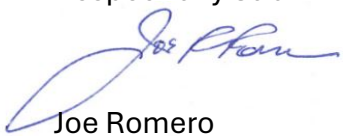
As such, and as not to delay Mr. Romero's Appeal Hearing any further, Mr. Romero hereby waives his rights, related ***"solely and directly"*** as they relate to the Land Use Appeal hearing public notice requirements to the public "***prior to his hearing***"; however, ***Mr. Romero hereby demands that Millcreek City "immediately" (within the next 24 hours) provide posting of his hearing to their Website as require by their Policies and Procedures and include all documents that are included on the public record of this Appeal hearing to accurately record and document the processes of this matter in the same manner, fashion and format of every Appeal hearing that came before his.*** Since in accordance with the Policies and Procedures, the public is not allowed to speak at this hearing for or against the City or the Appellant and any public who attends this meeting will not affect the outcome; however, the public record shall be preserved to appropriately protect Mr. Romero's civil due process rights. Mr. Romero however, "***does not waive***" his rights to pursue further legal action against Millcreek City regarding their blatant disregard for the State of Utah and Millcreek Code legal requirements as they relate to public notices for Land Use Appeal Hearings as these required notices, including, but not limited to posting notices to the Millcreek City and State of Utah Public Notice webpages and the posting the notice at the physical location of the hearing (Millcreek City Hall) would be in strict accordance with Millcreek's Policies and Procedures. The public notices are required yet Millcreek's lack of required and lawful actions further support and demonstrate Millcreek City's ongoing inappropriate, non-compliant actions by all levels of Millcreek City employees and staff.

This lack of professionalism, and continued tactics demonstrate ***a continued pattern of bad faith actions on behalf of Millcreek City and their officials and employees,*** at all levels which have been present (and documented on the formal record) from the initial submission of Mr. Romero's plans for permit on November 10, 2025.

Nothing in this notification letter shall be construed as a waiver of Mr. Romero's rights. Mr. Romero expressly reserves the right to purse all additional administrative, judicial, or equitable remedies available under Utah law should the City, or the Appeal Authority be found to have violated Mr. Romero's Civil Rights.

This full letter and its attachment are to be placed in the formal record.

Respectfully Submitted,



Joe Romero

Homeowner / Taxpayer / Voter

***Attachments Referenced in Notification Letter***

- ***Attachment "A"*:**
  - T. Hawes confirmation and scheduling email to J. Romero dated March 16, 2026
- ***Attachment "B"*:**
  - Millcreek City Website and Utah Public Meeting Notice Website information
- ***Attachment "C"*:**
  - Photographs of Millcreek City Public Notice Meeting Board after 1:00 pm on April 21, 2026.
- ***Attachment "D"*:**
  - J. Romero email to Millcreek City Attorney and Planning Director dated April 20, 2026 @ 7:46 am

ATTACHMENT "A"

Outlook

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**Re: [Ext] URGENT: Status Update and Request for City's Disclosure Documents**

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**From** Trudi Hawes <thawes@millcreekut.gov>
**Date** Mon 3/16/2026 1:20 PM
**To** Joe Romero <joe@rthreegroup.com>; John Brems <john@bremslaw.com>
**Cc** Jordan S. Cullimore <jcullimore@utah.gov>

Thank you for confirming. When you arrive on April 22nd at 1:00pm, please come to the 2nd Floor Community Forum Room at Millcreek City Hall (1330 E Chambers Ave).

I can't speak to your questions regarding the timelines. I'll defer to John Brehms on that.

Thank you,

**Trudi Hawes**
PLANNING ADMINISTRATIVE ASSISTANT
Office: 801.252.6408
thawes@millcreekut.gov
millcreekut.gov

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**From:** Joe Romero <joe@rthreegroup.com>
**Sent:** Monday, March 16, 2026 11:03 AM
**To:** Trudi Hawes <thawes@millcreekut.gov>; John Brems <john@bremslaw.com>
**Cc:** Jordan S. Cullimore <jcullimore@utah.gov>
**Subject:** Re: [Ext] URGENT: Status Update and Request for City's Disclosure Documents

Trudi,

Yes, I am available that day if it is the soonest available date; however, please confirm this is the earliest availability in April 2026 as it significantly extends the "*not to exceed (45) days after submission of the appeal*" procedural requirement within Title 18.04.

Millcreek City is not adhering to their own Code's requirements by not including this Appeal for the currently scheduled March 19, 2026 LUHO date, which is in fact the "next available and within 45 days of my submission". It is my position that extending the date another (37) days or (5.2) weeks is not in either parties best interest.

As such, if April 22, 2026 is the only available option, I will be again forced to concede to the City's direction.

**Joe Romero, LEED AP**
***President***
The R3 Group, LLC
P: 801-808-0063 | E: joe@rthreegroup.com

---

**From:** Trudi Hawes <thawes@millcreekut.gov>
**Sent:** Monday, March 16, 2026 10:36 AM
**To:** Joe Romero <joe@rthreegroup.com>; John Brems <john@bremslaw.com>
**Cc:** Jordan S. Cullimore <jcullimore@utah.gov>
**Subject:** Re: [Ext] URGENT: Status Update and Request for City's Disclosure Documents

Hi Joe,

We have coordinated a time with our Land Use Hearing Officer and have you on the schedule for April 22nd at 1:00pm.

Please confirm this time will work with your schedule.

**Trudi Hawes**
PLANNING ADMINISTRATIVE ASSISTANT
Office: 801.252.6408
thawes@millcreekut.gov
millcreekut.gov

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---

**From:** Joe Romero <joe@rthreegroup.com>
**Sent:** Thursday, March 12, 2026 6:10 PM
**To:** John Brems <john@bremslaw.com>
**Cc:** Jordan S. Cullimore <jcullimore@utah.gov>; Trudi Hawes <thawes@millcreekut.gov>
**Subject:** Re: [Ext] URGENT: Status Update and Request for City's Disclosure Documents

Mr. Brems,

I don't mean to seem argumentative here, but I am confused by your email below. You mention you are willing to sit down "next week", but the planning director is out of office. You can get his assistant, or we can schedule "next week". I'd ask you to clarify your intent.

I am certainly open to meeting next week; however, I believe a representative of the City, ***with approval authority***, should be present in the meeting unless you, yourself, hold that authorization to bind the City to any agreeable terms of settlement. If a City representative is not available, then I propose that we do not meet since the City would not be bound to any settlement potentially achieved.

I will defer to Mr. Cullimore on the final decision as if a mediation next week should take place.

Lastly, and prior to setting up a mediation time, I'd like you to confirm that I will be provided with the list of requested discovery items listed below "***by close of business, Friday March 13, 2026 so I can review prior to***" the mediation. I have highlighted the requests again below in YELLOW.

**Joe Romero, LEED AP**
***President***
The R3 Group, LLC
P: 801-808-0063 | E: joe@rthreegroup.com

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**From:** John Brems <john@bremslaw.com>
**Sent:** Thursday, March 12, 2026 3:39 PM
**To:** Joe Romero <joe@rthreegroup.com>
**Cc:** Jordan S. Cullimore <jcullimore@utah.gov>; Trudi Hawes <thawes@millcreekut.gov>
**Subject:** Re: URGENT: Status Update and Request for City's Disclosure Documents

Given that it was not scheduled this week, I have asked that the matter be assigned to the Land Use Hearing Officer, Trudi, at 801-252-6408, is responsible for scheduling the matter. I am still willing to sit down with you next week, but the Planning Director is out of the office. I can get his assistant, or we can schedule next week, and either time you identified on Tuesday or Wednesday works for me.

John Brems
Attorney at Law
10717 Watery Way
South Jordan, UT 84009
(801)580-2347

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---

**From:** Joe Romero <joe@rthreegroup.com>
**Date:** Thursday, March 12, 2026 at 2:28 PM
**To:** John Brems <john@bremslaw.com>
**Cc:** Jordan S. Cullimore <jcullimore@utah.gov>
**Subject:** URGENT: Status Update and Request for City's Disclosure Documents

*** ***This message is subject to Federal/Utah ROE 408***

Mr. Brems,

I just had a conversation with Mr. Cullimore regarding scheduling of the informal mediation which I anticipated was to happen this week; however, it appears this will not be achieved. Below are dates and times I am available next week to schedule mediation with Mr. Cullimore.

- Monday March 16th - 8:00 am - 5:00 pm (I believe Mr. Cullimore is not available this day)
- Tuesday, March 17th - 8:00 am - 2:00 pm
- Wednesday March 18th - 10:30 am - 5:00 pm
- Thursday March 19th - 8:00 am - 1:30 pm (LUHO Appeal Hearing at 2:00 pm which I intend to attend)

Additionally however, I'll again express my concern that Millcreek City is not adhering to their own procedural requirement in regards to *Title 18.01.010.3* of scheduling the LUHO Appeal Hearing which state the Planning Director will schedule the hearing "***for the next available public meeting of the land Use Hearing Office (LUHO), not to exceed (45) days from when the application was received***". It is my understanding there is currently a LUHO Appeal Hearing scheduled for March 19, 2026 which would have been the next available public meeting after the application was received and (42) days after the initial submission of the Appeal.

Nevertheless, other Title 18 procedural requirements, including Millcreek's ***Resolution No. 17-18*** outline the ***Land Use Hearing Officer Policies and Procedures*** governing the processes for the hearing. These procedures are clear that both Parties have certain obligations to the other Party regarding: 1) disclosure of position, 2) submission of written materials, 3) public and private notice and other timely performance requirements so the other Party may object or research the information provided. Since there have not been any mutually agreed stipulations accepted to date even after formally submitting a letter to your office, the original (45) day procedural requirements should remain in full effect with one exception. As I noted in my last email, I am willing to "slightly extend" the 45 days if Mediation was completed this week, but I am willing to stipulate that if the Mediation can take place next week, I agree to toll the matter for days equivalent from today, to the date of mediation. If mediation is unsuccessful, I will reevaluate the previous letter submitted requesting for an extension for the pending Advisory Opinion.

Based on my written formal submissions, I believe I have adhered to the procedural requirements set forth in the Policies and Procedures document; however, in my opinion, Millcreek City has not.

At this time, I am requesting the following information be provided "***prior to***" the Mediation next week in order for me to evaluate and consider the City's position and documentation which, in my opinion, is material when evaluating mediation conditions and agreements. Please provide the following immediately:

- Identification of the soonest Land Use Hearing Appeal date in April, 2026 since Public Notice requirements will not allow for a March 2026 date
- Identification of Land Use Hearing Officer assigned to matter
- Identification of Place of the hearing
- All discovery Millcreek will rely upon, and present at the Appeal Hearing. (i.e: Millcreek Staff Report, other evidence or documentation related to this matter)

At your earliest convenience, I ask that you pick a day, time and location listed above that works for you and the City Officials.

If you would like to talk with directly regarding this matter, I would be happy to discuss the matter with you.

**Joe Romero, LEED AP**
***President***
The R3 Group, LLC
P: 801-808-0063 | E: joe@rthreegroup.com

---

**From:** Joe Romero <joe@rthreegroup.com>
**Sent:** Monday, March 9, 2026 10:24 AM
**To:** John Brems <john@bremslaw.com>
**Cc:** Jordan Cullimore <jcullimore@utah.gov>
**Subject:** Re: Letter to Appeal Hearing

Mr. Brems,

As per my conversations with Mr. Cullimore, if the parties can meet this week for informal mediation, I agree to pause the required current timeline for the Land Use Hearing scheduling, temporarily; however, it's important for me to note that although tolling can extend deadlines, it does not erase time within the required deadline that has already passed.

For scheduling purposes, I will make myself available at any time this week; however, as time is of the essence regarding this matter since 32 days has already passed since the formal filing of the Appeal and no hearing has been scheduled, the sooner the better as to not delay this process any further.

**Joe Romero, LEED AP**
***President***
The R3 Group, LLC
P: 801-808-0063 | E: joe@rthreegroup.com

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ATTACHMENT "B"

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| Business License Appeal Hearing | 2026/04/08 02:00 PM | Millcreek Recorder | Millcreek | No associated attachments |
| RFQ - Floral Vending Machine on Millcreek Common | 2026/03/03 02:30 PM | Millcreek Recorder | Millcreek | • Floral Vending Machine RFQ- 2026 2.pdf (Public Information Handout) |
| RFP - Millcreek Common Climbing Wall Strip and Refinish | 2026/02/25 03:00 PM | Millcreek Recorder | Millcreek | • Millcreek Climbing Wall Refinish - RFP.pdf (Public Information Handout) |
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| RFQ - Millcreek Common Fruit Stand | 2026/02/03 10:30 AM | Millcreek Recorder | Millcreek | • Fruit Stand RFQ 2026.pdf (Public Information Handout) |

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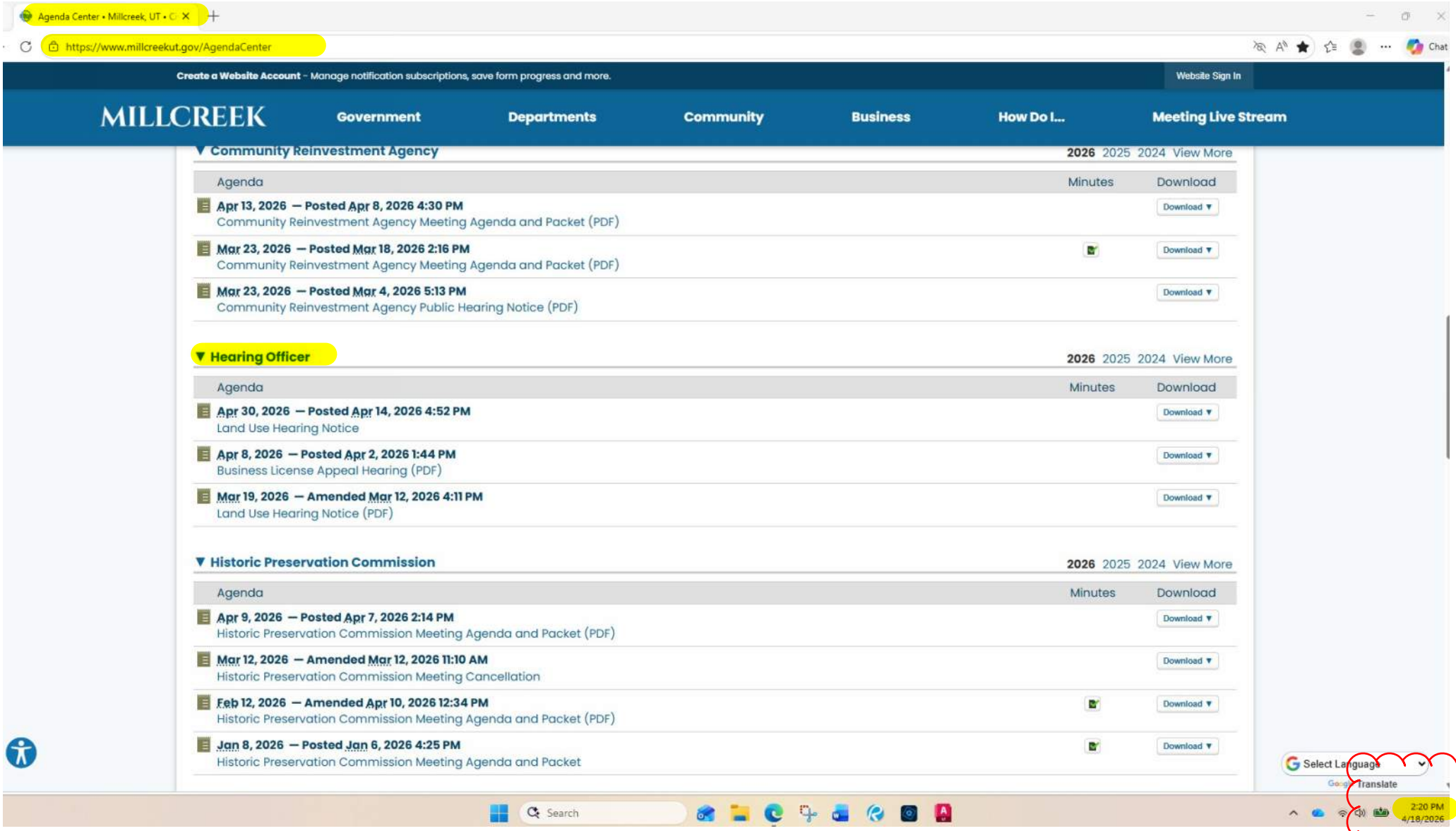
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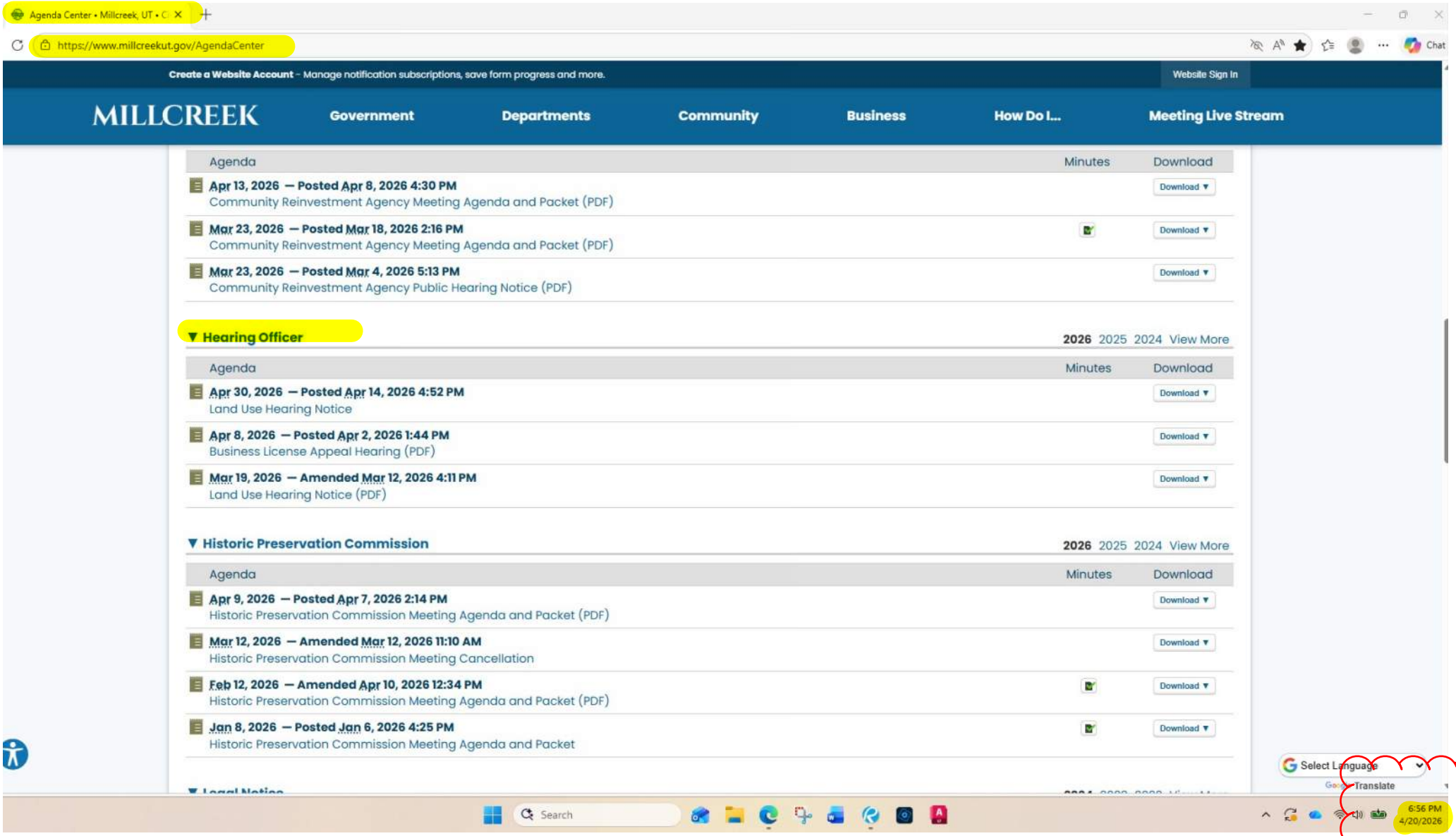
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| **Mar 12, 2026 — Amended Mar 12, 2026 11:10 AM** Historic Preservation Commission Meeting Cancellation | | Download |
| **Feb 12, 2026 — Amended Apr 10, 2026 12:34 PM** Historic Preservation Commission Meeting Agenda and Packet (PDF) | | Download |
| **Jan 8, 2026 — Posted Jan 6, 2026 4:25 PM** Historic Preservation Commission Meeting Agenda and Packet | | Download |

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Ending date to search for notices. Defaults to today's date.

Deadline Date:

mm/dd/yyyy

Deadline dates often include deadlines for submitting written comments or requests to speak at a meeting.

Posted On:

mm/dd/yyyy

Date notice was posted on.

SUBMIT RESET FORM

| Notice Title | Event Date | Public Body | Entity | Attachments |
|---|---|---|---|---|
| Business License Appeal Hearing | 2026/04/08 02:00 PM | Millcreek Recorder | Millcreek | No associated attachments |
| RFQ - Floral Vending Machine on Millcreek Common | 2026/03/03 02:30 PM | Millcreek Recorder | Millcreek | • Floral Vending Machine RFQ- 2026 2.pdf (Public Information Handout) |
| RFP - Millcreek Common Climbing Wall Strip and Refinish | 2026/02/25 03:00 PM | Millcreek Recorder | Millcreek | • Millcreek Climbing Wall Refinish - RFP.pdf (Public Information Handout) |
| RFQ - City Hall Cafe | 2026/02/11 10:00 AM | Millcreek Recorder | Millcreek | • City Hall Cafe RFQ.docx (Public Information Handout) |

*Search Results*

Portal.

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Give Feedback



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5:15 PM
4/21/2026

ATTACHMENT "C"

These (2) photographs were taken at approximately 4:55 pm on April 21, 2026 at Millcreek City Hall located at 1330 East Chambers Avenue, Millcreek, Utah.

Description of photographs:

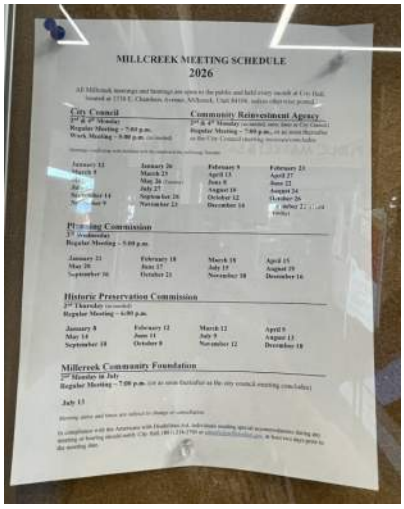
- ***Picture # 1***: Millcreek City Public Notice Posting Board showing Public Meeting / Notices. This bulletin board is located to the left just after entry into front door.

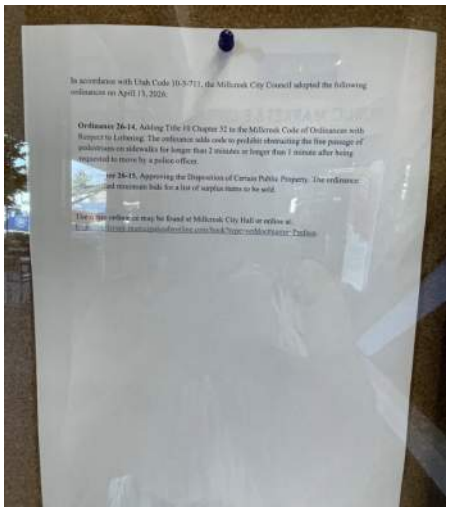
- ***Picture # 2 - 6*** : Enlarged photo showing

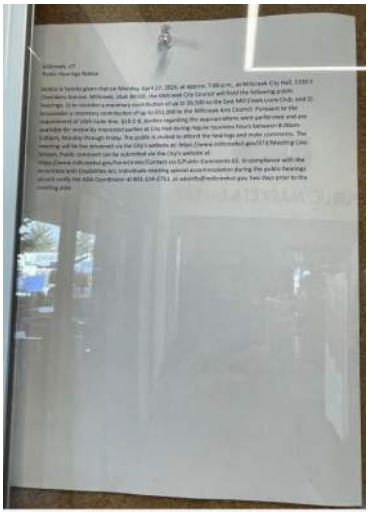
*Picture # 1*

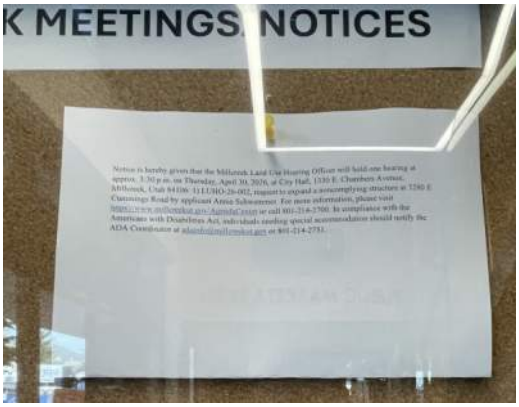


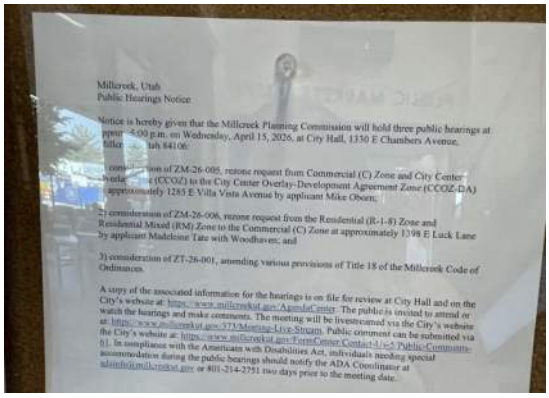

*Pictures # 2 - 6*







ATTACHMENT "D"

Outlook

## Appeal Hearing on Wednesay

**From** Joe Romero <joe@rthreegroup.com>
**Date** Mon 4/20/2026 7:46 AM
**To** John Brems <john@bremslaw.com>
**Cc** Francis Lilly <flilly@millcreekut.gov>; Jordan Cullimore <jcullimore@utah.gov>

Mr. Brems,

After significant delay, I am glad the appeal hearing is finally upon us this week and I am looking forward to presenting to the Appeal Board and Hearing Officer on Wednesday, April 22, 2026 at 1:00 pm. Mr. Lilly was gracious enough to allow me to come test the AV system on Friday at 11:00 am and it worked great, so it appears everything is set and ready.

In final preparations for this hearing, I want to confirm that there are no changes to the hearing day, time, venue or hearing officer. Per your email on April 13, 2026 to the group, you confirmed Mr. Catten was appropriate to hear the matter and I will accept that as the City's direction.

As I have not received notice otherwise, please confirm my understanding is still correct and no changes are anticipated.

**Joe Romero, LEED AP**
***President***
The R3 Group, LLC
P: 801-808-0063 | E: joe@rthreegroup.com

| | |
|---|---|
| **From:** | Joe Romero |
| **To:** | Cheri Jackson; Jordan Cullimore; John Brems; Elyse Sullivan |
| **Cc:** | Francis Lilly; Cyndy Nelson |
| **Subject:** | [Ext] J Romero Statement - Recap of Unexpected Phone Call from Mr. Francis Lilly Today |
| **Date:** | Monday, April 20, 2026 5:04:35 PM |
| **Attachments:** | image.png |

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THIS EMAIL IS INTENDED TO RECAP AND FORMALLY DOCUMENT A PHONE CONVERSATION INITIATED BY FRANCIS LILLY TO JOE ROMERO ON APRIL 20, 2026. THIS RECAP IS BEING SUBMITTED ON THE FORMAL RECORD OF MR. ROMERO'S LAND USE APPEAL HEARING.

Ms. Jackson and Mr. Cullimore,

This morning at 10:45 am (Local Mountain Time) I received an unexpected and unsolicited phone call from Millcreek City Asst City Manager / Planning Director, Mr. Francis Lilly from the phone number (801) 214-2752. This call lasted 33 seconds. During this initial phone call, Mr. Lilly asked if it was a good time to talk, and I mentioned I was just finishing up a transaction at Verizon Wireless store located in the Sugarhouse Shopping Center at approximately 2300 South and 1300 East in Salt Lake City, Utah. I asked if I could call Mr. Lilly back within about 5 minutes or so and he stated YES, and would wait for my return call.

After my transaction, I went to my vehicle and moved to a remote section of the parking lot where I could ensure Mr. Lilly had my full and undivided attention and where I would not be interrupted in my returned phone call to him. At 10:48 am (Local Mountain Time), I called the same phone number listed number above and Mr. Lilly answered the phone. (*See Below for Screenshot of Mr. Romero's Call log from April 20, 2026*). This phone call lasted 22 minutes. It should be noted that even though both Mr. Lilly and Mr. Romero had much differing opinions on the substance of actual appeal hearing matter they discussed; they both conversed in a civil manner throughout the phone call.

***I sincerely and respectfully attest and state that the below recap and summary of the phone conversation initiated by Francis Lilly on April 20, 2026 is true and correct to the best of my knowledge, ability and recollection and would be willing to testify to my recollection*** if required;however, it is clear, this conversation needed to be properly documented promptly to keep the integrity of my recollection intact and to preserve this information for the Appeal Hearing record, potential future State of Utah 3rd District Court litigation and also potential Millcreek City action. I returned home at 1:25 pm (approximately (2.5) two hours after the phone conversation with Mr. Lilly) and started to immediately write this email which took approximately (3.5) hours. The bullet points listed below are in order of my recollection of the conversation and represent the facts of the conversation as well.

As an example, the following is a format of how I remember the conversation transpiring and essentially who said what and in what order: The (**L**) *represents statements made by Mr. Francis Lilly* and the (**R**) *represent statements made by Mr. Romero.*

Phone conversation commencing at 10:48 am:

(**L**): Mr. Lilly's opening comments of the phone call was to inform me he believes Millcreek City found a means to resolve my matter and wanted to run the possibilities and his thoughts by me.

- (**R**): I agreed to listen to the proposal

- (**L**): Mr. Lilly went on to state that he has been working on a Planning and Zoning Title 18 Code update which he intends to present and seek approval by the Planning Commission (and I think he also said City Council) on approximately May 20, 2026. In his terms, Mr. Lilly stated that the City has recognized some discrepancies in Title 18 Land Use Code which the department needed to clean up, which happens from time to time, and Mr. Lilly also stated that one of the discrepancies they found is how they calculate "Lot Coverage" within the current Title 18 Code. During this part of the conversation, Mr. Lilly explicitly stated that in the new pending revisions of Title 18, the proposed changes to the Code will actually clarify and change how to calculate lot coverage which he mentioned should be to the "***exterior wall***" of the residence. He did not clarify other parts of the lot coverage calculation section that he intended on changing but alluded to better aligning with the APA.
  - (**R**): After Mr. Lilly's explanation, I quickly agreed with their proposed and much needed revisions and stated that is what I have trying to help Millcreek City understand and convince the Planning Staff on since November 12, 2025 when I first received comments related to my plans, but I was glad that Millcreek City is finally acknowledging this discrepancy by making changes to their Code which will not only better align with industry standards, but provide a code that is clear, unambiguous and concise (unlike their current code) but quite frankly, ***SUPPORT MY POSITION FROM THE INITIAL SUBMISSION***. I also reminded Mr. Lilly that back in November and December 2025, I highlighted this same exact discrepancy in a formal *Letter Requesting Administrative Action dated December 23, 2025* and subsequent other emails, all of which reside on the formal Appeal Hearing record. My letter even included references to American Planning Association - (APA)_PAS-Report # 111 which in my opinion, APA recognizes as the industry standard that assists the industry with clear direction on how to calculate Lot Coverage within the United States and as a national industry standard which is generally requires dimensions to the Exterior Wall (at ground level), excludes architectural features, overhangs, porches, etc. I remind Mr. Lilly that these are the same arguments I have been making regarding my position on the case. I asked Mr. Lilly how long the City had been contemplating these changes.

- (**L**): In Mr. Lilly's response, he was first cautious to state when the City started its contemplation of the Title 18 Land Use Code change; however, he then stated, "about a month ago". Mr. Lilly then went to state that ***it may be in "my" (Mr. Romero's) best interest*** for me to forego the Appeal Hearing (as a reminder, currently scheduled 2 days from this phone call) and that I should delay the project another month for the City to submit these Title 18 changes to the Planning Commission. He stated once he gains approval on the Title 18 Code changes, my project would then meet the new Title 18 code and the City could immediately approve it.
  - (**R**): Again, I agreed with Mr. Lilly's statements about the City's need to change their code due to it currently being very ambiguous, vague and unclear; however, I also

stated I did not plan to waive my due process rights allowing my case to be heard by an impartial, unbiased and neutral decision maker. I reaffirmed that my plans are already compliant under the "*current*" Title 18 Land Use Code and it is only Millcreek's arbitrary, capricious interpretation and misapplication of the current code is why we are at the Appeal hearing stage to begin with. I again reminded Mr. Lilly that my plans should be adjudicated based on the current code and that the City has known my position, which I have made it clear since November 2025, that the City has continued misinterpreting and misapplying their own Code which doesn't not align with APA industry standards either as it sounds like they are now acknowledging. I also stated, *it was not my fault that the current Title 18 is ambiguous, vague and unclear*; however, I am glad Millcreek City, and the Planning Department are finally acknowledging this, but I have always calculated the lot coverage based on the plain text of the current Title 18 code. I again stated that I fully believe in the validity of my position and when, presented "*in front of an unbiased, impartial, detached and neutral*" land use hearing officer which is what Utah and Federal law and Title 18 require, that I would be successful in my appeal hearing and Millcreek City would be required to reverse their own determinations of their plan review based on the current Code. I stated that if the City was so confident in not only their current pposition but felt so strong that my position was so invalid, why hasn't the City (via Staff Reports or City Attorney Brief) state where they believe my position is wrong. They simply have not provided any evidence on the record of this.

- (**L**): At this time of the phone call, Mr. Lilly again tried steering the conversation back to me delaying my project the additional month to allow him and his staff to get the intended Title 18 Code changed so this approval can be easy and basically go away. Mr. Lilly used the phrase "***you should come to the appeal hearing and request a continuance***" and to paraphrase after that *so we can change the code and make this approval easy because your plans will perfectly align*.
    - (**R**): My reply again was that there was no benefit for me to delay my hearing and my verbal comments were that my position has been clearly documented with the 453 pages of documents I previously submitted on the record and that I find it totally acceptable that if the Land Use Appeal Hearing rules does not rule in my favor, I would still have the option to Appeal that decision the State of Utah 3rd District Court because I firmly believed Millcreek Planning and Zoning Departments actions have been arbitrary, capricious and illegal from the beginning. I also stated that if my Appeal is denied, I could simply just wait until late May, after the Title 18 Land Use Code changes which Mr. Lilly stated he intended to present at the Planning Commission meeting in May 2026, were adopted and simply resubmit my plans at that time under the new Title 18 Code. I simply reaffirmed that although his opinion differs, there was absolutely no actual benefit to me to not follow through with my due process rights and have the hearing be heard by the adjudicator. I then went on to remind Mr. Lilly that I have and will continue to suffer significant financial and time impacts to my project due to the continued misapplication and misinterpretation of their own Code therefore, I didn't seem it necessary to delay my project another month to wait for a new Title 18 Code to be adopted. I reminded Mr. Lilly of the geopolitical events happening in the world right

now and that due to his department's process taking so long, I have not been able to sign contracts with subcontractors because I don't have reasonable certainty that my permit would be approved. I reminded Mr. Lilly that due to gas prices being so high, my project costs have skyrocketed.

WHAT CAME OUT NEXT FROM MR. FRANCIS LILLY WAS COMPLETELY AND TOTALLY UNEXPECTED AND MAY BE IN VIOLATION OF UTAH LAW AND MILLCREEK CITY CODE.

- (**L**): Mr. Lilly agreed with my interpretation that I could just wait the (30) or so days for the new Title 18 Code to be adopted as he mentioned above: however, Mr. Lilly then stated that "***he "COULD" also be so inclined "TO JUST NOT" proceed with the needed Title 18 Code amendments that he plans, citing a pending legal matter.***

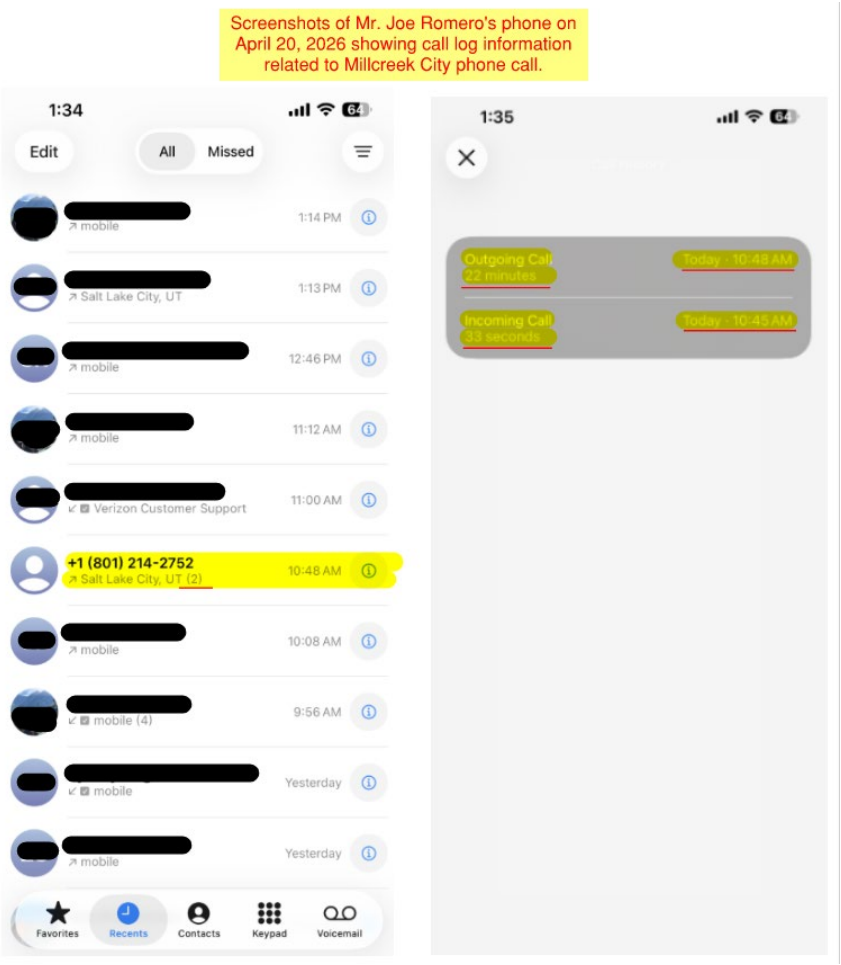
- (*The following is Mr. Romero's personal commentary, understanding, and perception of Mr. Lilly's intended statements and actions from his verbalization during the phone call. Without accusing Mr. Lilly of wrongdoing or committing an illegal act, these are my sole opinions as protected under my 1st Amendment Rights. These personal comments are not intended to cause harm or unnecessary actions that Millcreek City Codes and processes do not support but in the best interest of due process, this conversation should be fully investigated. These are simply my personal opinions.*

- It was clear that Mr. Lilly was using his proposal as a bargaining chip, *yet stating that if I don't comply with asking for a continuance of the Appeal Hearing to late May, 2026, that* ***he very well could simply just "CHOOSE NOT****" move forward with submitting the Title 18 Code changes to the Planning Commission* even though they now also believe their own Code is ambiguous, vague and unclear as they now find it not in the best interest of the Public even though I have pointed this out for the last five months. This was the clear and evident message stated by Mr. Lilly and heard loud & clear and the message received by Mr. Romero. Mr. Lilly's statements completely contradict the Appeal Hearing adjudicating process because Mr. Romero's Appeal Hearing, in its entirety, would be completed prior to when Mr. Lilly intends to submit his proposed Title 18 changes to the Planning Commission. The result of Mr. Romero's appeal hearing, and whether he was successful or not, his appeal hearing and process should have no effect on Mr. Lilly's decision to clean up his own Code. Even the mere comments and statements by Mr. Lilly has truly made me sick to my stomach knowing, with full belief and understanding, that the statements made by Mr. Lilly is simply an attempt to continue to use what I believe is his "*bully pulpit*" to require greater restrictions on property rights of Millcreek City residents where more often than not, individual property owners are always at a disadvantage to the City, have little to no leverage, always acting under duress, yet this continued arbitrary capricious and potentially illegal action is being accepted and tolerated by the Mayor of the City, but should not have to be accepted and tolerated by Millcreek City residents. Although Mr. Romero has referenced that he has the possibility of further legal action, as these are Mr. Romero's Federal and Utah Constitution civil rights protections, Mr. Romero is confident that he will be successful in his appeal, thus potentially not requiring additional efforts on his behalf so Mr. Lilly's comments above could simply be a bad-faith effort to get Mr. Romero into initiating the cause to delay his project.

    - (**R**): I stopped for a few seconds after these abominable comments to let them sink in, and clarified with Mr. Lilly, "***your saying that because I am exercising my due process rights to be heard in an Appeal Hearing, and not conceding to your request of continuing my matter you would simply just not move to change the code***"?????
- (**L**): Mr. Lilly stated YES citing because of pending legal concerns.
    - (**R**): To pivot from this absurd and obscene statement made by Mr. Lilly, I offered a proposal of my own to Mr. Lilly. I proposed that just as Utah Supreme Court Justic Hagen stated in her "*how to make fair and balanced decisions*" training she conducted for the Planning Commission on February 18, 2026, The city and Planning Staff could simply reverse their original denial because of new evidence they could consider (i.e, the 453 pages of Mr. Romero's record). I reminded Mr. Lilly that they always have that ability to just simply consider my position and approve the compliant plans. I then also presented Mr. Lilly another option to help resolve this matter. I stated that I am sure he has read the book, the "*Art of War*" by Sun Tzu, where the author states you should always provide a "*golden bridge*" to your opponent by always giving them a "***dignified***" way out or safe retreat. With that, I proposed that a Mediation be conducted tomorrow (Tuesday the 21st) to include Mr. Lilly, Mr. Brems, Mr. Cullimore (Property Rights Ombudsman) and myself. I reaffirmed and again stated I have always tried to be reasonable with a solution but would not back down from my beliefs and that Millcreek City could utilize the additional information within the case record and change their denial of the permit.
- (**L**): Mr. Lilly said that was not possible as Mr. Brems is out of the office and not available due to a recent medical concern.
    - (**R**): My response was that it was acceptable to me that we didn't need Mr. Brems or Mr. Cullimore and confirmed that Mr. Lily is the Assistant City Manager and could act on behalf of the City regarding any potential mediation settlement. During this part of the conversation, I also reminded him that Mr. Cullimore and I tried to schedule a mediation with Millcreek City and their Attorney about a month ago, but Millcreek City essentially "ghosted" myself and Mr. Cullimore after agreeing to mediate.
- (**L**): To end the conversation, Mr. Lilly then alleged that I never responded to (2) prior review comments from Mr. Estudillo (Planner who originated plan review in November) as they relate to Building Envelope requirements of Title 18.
    - (**R**): My response was clear and intact, I reminded Mr. Lilly that all building envelope comments were cleared after I submitted (on several occasions), a full plan showing envelope compliance as they relate to Building Envelope parts of the Land Use Code. I also stated (which I firmly believe) that Mr. Lilly himself stated "and confirmed" via email and or in our verbal conversations that he signed off on the previously submitted building envelope review and that I was very sure about this being recorded in the email record for this matter. I believe I also stated this alleged deficiency is nowhere in the City Attorney's Brief/Memoranda that I received last week regarding their concerns related to this Appeal hearing, so why is this now just coming up.
- (**L**): Mr. Lilly stated he gets over (60) sixty emails a day and "*asked that I would send him the emails*" I referenced above so he can confirm.
    - (**R**): I simply thanked him for the additional strategy information he intends to bring up at the Appeal Hearing, and that I would save those emails and plans and will plan on

providing them on the record to the Land Use Hearing Officer at the Appeal Hearing in rebuttal to their apparent strategy.

- (L): Mr. Lilly stated, ok, seems like we are done talking
    - (R): I agreed and hung up.




As like other letters submitted to Millcreek City and the Property Rights Ombudsman, I am not qualified to make legal determinations, and I am certainly not accusing Mr. Lilly of illegal action. however, I can only state, from my own perspective what I firmly believe Mr. Lilly's intent was by him verbalizing what I heard explicitly in the phone call with Mr. Romero....."*he could be so inclined just not move forward with the Title 18 changes unless I asked for a continuance on my Appeal Hearing*". Quite honestly, this statement floored me, and I truly believe Mr. Lilly's actions need to be fully investigated because if it is found and verified that Mr. Lilly violated the law; there is only one pending action by Millcreek City that would be in the best interest of their community residents.

Simply stated, it is clear from this conversation that Millcreek City as stated by the Planning Director, Mr. Francis Lilly that Mr. Romero's position has been completely validated and supported by this phone conversation. Mr. Lilly's own verbal commentary in this phone call where he acknowledges and confirms this section of the code needs critical and important revisions should be evidence in itself that the current code is ambiguous, vague and unclear, thus supporting that the Planning and Zoning Department's actions have been arbitrary, capricious and illegal the entire time. ***They are just***

***now formally verbalizing this out loud, and by their leader.***

This information, along with additional information, ***shall be included in the formal record for this Appeal Hearing matter*** and will be presented at the Appeal Hearing scheduled for April 22, 2026, at 1:00 pm. I look forward to presenting my case and relying on an impartial, unbiased, detached and neutral hearing officer to see that I, Joe Romero being a lonely homeowner, taxpayer and voter within Millcreek City has proven his case beyond a reasonable doubt, with the assistance of Mr. Lilly. If this is not the case, I can always enact my rights to move this matter forward to the State of Utah 3rd District Court or Federal Court since the previous notification letters could demonstrate that Federal and Utah laws could have been violated.

As like always, @Elyse Sullivan, please confirm receipt of this information and confirm it is now on the public record for this matter.

**Joe Romero, LEED AP**
P: 801-808-0063 | E: joe@rthreegroup.com
Homeowner / Taxpayer / Voter

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