

# **REGULAR MEETING**

# Memo

To: Mayor and City Council  
From: Mark K. Anderson  
Date: 05/14/2015  
Re: City Council Agenda Items for May 21, 2015

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## REGULAR MEETING

**Item 1 – Nate Cox, Peoples’ Health Clinic, Report on How the City’s 2014 Donation Was Used:** Nate Cox, a Heber resident, will make a short PowerPoint presentation to the Council to show how monies donated by the City in 2014 were used by the Peoples’ Health Clinic. See attached PowerPoint presentation. The City currently has a \$5,000 donation to the Peoples’ Health Clinic identified in the 2015-16 tentative budget.

**Item 2 – Approve Modification of Cottages at Ranch Landing Development**  
**Agreement:** With the recent sale of the Christensen property located at approximately 800 South 600 East, the need to protect the agricultural use of this property is no longer necessary. As a result, Russ Watts is requesting that the Ranch Landing development agreement be amended to remove the requirement to fence their northern boundary (lots 15-18). Staff has no objection to this provision being removed from the agreement and would recommend approval. Enclosed is a proposed addendum to the September 2014 agreement.

**Item 3 – Approve Ordinance 2015-08, an Ordinance Vacating a Portion of The Cove at Valley Hills Subdivision Located on the West Side of Valley Hills Boulevard:** At the April 2<sup>nd</sup> Council meeting, Councilman Rowland asked that this item be continued to this agenda to allow other options to be discussed before the open space is vacated and the Valley Hills Phase 1C Subdivision is considered for approval. This item was also removed from the May 7<sup>th</sup> work meeting because Councilman Rowland was out of town and additional information was still being acquired. Mayor McDonald has asked that this item be placed on the regular agenda for consideration.

The staff report, plat map and opinion from the Utah State Ombudsman that were provided at the April 2<sup>nd</sup> meeting are included in the packet of materials.

**Item 4 – Coyote Development, Approve The Cove at Valley Hills Phase 1C, Located between 1772 North Valley Hills Boulevard and Callaway Drive, and the Associated Development Agreement:** This item is related to the previous agenda item. Please refer to the materials provided for Item 3 in your packet.

# MINUTES

1 Heber City Corporation  
2 City Council Meeting  
3 April 27, 2015  
4 5:00 p.m.

5  
6 SPECIAL MEETING

7  
8 The Council of Heber City, Wasatch County, Utah, met in **Special Meeting** on April 27, 2015,  
9 in the City Council Chambers in Heber City, Utah

10  
11 I. Call to Order  
12 City Manager's Memo

13  
14 **Present:** Council Member Robert Patterson  
Council Member Jeffery Bradshaw  
Council Member Erik Rowland  
Council Member Heidi Franco  
Council Member Kelleen Potter (excused at 9:18 p.m.)

**Excused:** Mayor Alan McDonald

**Also Present:** City Manager Mark Anderson  
City Recorder Michelle Kellogg  
Sr. Accountant Wes Bingham  
Police Chief Dave Booth

15 **Others Present:** Paul Mayer, Mark Burton, Jay Price, Riley Probst, Wade Kelson, Mel  
16 McQuarrie, and others whose names were illegible.

17  
18 Mayor Pro Tempore Bradshaw opened the meeting and excused Mayor McDonald.

19  
20 2. Discuss Southern Bypass Roadway between Highway 40 and Daniel Road  
21 Memo from Burton Lumber

22  
23 Anderson stated he met with Bart Mumford and Tony Kohler and also had a conversation with  
24 Shawn Seager with regard to the southern bypass. From a staff perspective, there was not enough  
25 data to offer a best option. It was known that the bigger the bypass, the more traffic would be  
26 taken off the HUB intersection. If the HUB intersection wouldn't function with that traffic, it  
27 would be UDOT's problem and also a City problem. It was agreed that more routes provided  
28 better movement and less congestion, but he didn't know if that would justify a \$2.8 million road.  
29 Anderson also didn't know if the County would reimburse this project with Corridor Preservation  
30 Funds.

31  
32 Anderson indicated Mumford had offered another option which shifted the alignment further  
33 south while maintaining the 100 foot bypass with the curve, but Mumford couldn't estimate if

1 this option would be viable on further study. He looked to the Council to determine the best  
2 right-of-way for the future. He also outlined the steps needed before acquisition could take place.  
3 Anderson recommended doing a study immediately so better advice could be given to the  
4 Council on how to proceed on the southern bypass.  
5

6 Council Member Potter asked if Seager knew what UDOT would do at the HUB intersection if  
7 congestion increased and the intersection failed. Anderson stated measures would be taken and  
8 acquiring additional land in the area might be a possibility as well. Council Member Franco was  
9 concerned about Burton Lumber's site plan since it proposed buildings within the future bypass  
10 route. She asked how the City could work with the property owner to the south. Anderson stated  
11 about four acres would be needed from that property. Council Member Franco asked the Council  
12 how this bypass would tie into the City's revitalization project. Council Member Bradshaw  
13 indicated it was his understanding that UDOT was not willing to move Highway 40 off Main  
14 Street, so trucks would continue to travel through Main Street. Council Member Potter felt  
15 administrators would change over time, and she didn't want to give up hope that Heber could  
16 maintain its quality of life. Council Member Bradshaw stated he had seen administrators come  
17 and go and, barring a catastrophe, their minds didn't change.  
18

19 Council Member Patterson stated he was still in favor of the T intersection. Council Member  
20 Bradshaw stated the only other possibility would be to slow down Main Street by having more  
21 stop lights, slower speed limits, and planters in the median. Council Member Franco felt if the  
22 Council opted for a T intersection now, it would cost so much more money to acquire the land  
23 for a curve in the future. Wade Kelson stated UDOT didn't have a study that would support a  
24 curve, but if the City wanted to acquire the curve, his client was willing to sell the land needed.  
25 He stated if the T intersection was approved, the land could be economically developed, but he  
26 didn't feel the land could be developed with the bypass curve because of limited access points.  
27

28 Council Member Bradshaw asserted this bypass had been studied for a long time in a public  
29 forum. There had been no secrecy in the deliberations. He asked why Burton Lumber wanted to  
30 move from US 40 to Daniel Road. Mark Burton stated it was difficult for loaded trucks to come  
31 out onto Highway 40 because they could not accelerate quickly. The solution was to move to  
32 Daniel Road, but the bypass curve would not help the trucks because of vehicles moving at a  
33 high speed. Price didn't understand why a T intersection would be beneficial since vehicles  
34 would have to stop. He didn't think that would be an attractive alternate route because it wouldn't  
35 save any travel time. There was discussion on Burton Lumber access from Daniel Road.  
36

37 Council Member Rowland stated the bypass with a curve would give the City more options. He  
38 hoped to explore moving the bypass to the South, but didn't favor the currently proposed route  
39 because it negatively impacted this business. Anderson noted that Mumford felt if the bypass  
40 was not acquired, then the City should let a future developer develop a local road further south.  
41 Council Member Franco felt a traffic study would be good for making a more educated decision.  
42 Anderson stated a study could be done in two to four weeks, but he didn't know if the City would  
43 have to bid that out per the purchasing policy. Council Member Patterson also noted that a  
44 bypass would not be in the best interest of the City because commercial businesses would be on  
45 both sides of the road, making limited access unfeasible. Council Member Rowland suggested  
46 acquiring the land for the T intersection and then acquiring land to the south for future

1 development of the bypass. Burton stated he would plan his business for the future possibility of  
2 a bypass with regard to his access point onto Daniel Road.

3  
4 Council Member Franco asked to go into closed session to have a strategy discussion on  
5 acquisition of real property. Council Member Bradshaw stated that there were no appraisals or  
6 cost estimates so a closed session was not a good idea.

7  
8 Council Member Rowland moved to approve a T alignment while a study was done to determine  
9 if a more southern bypass route would be a good alternative. Council Member Patterson made  
10 the second.

11  
12 Council Member Franco asked if the T option would consider an 80 foot or 100 foot right-of-  
13 way. Council Member Rowland left the motion as it stood. Council Member Potter stressed that  
14 the sale of the land was pushing the City to make decisions that could take up to a year. She  
15 wanted to think of all the citizens.

16  
17 Voting Aye: Council Members Patterson, Bradshaw, and Rowland. Voting Nay: Council  
18 Members Franco and Potter. Motion passed.

19  
20 1. Discuss 2015-2016 Operating Budget

21  
22 Anderson explained that the Airport Industrial Park land sale should close on May 25. After a  
23 survey of the property, it was discovered that there was a little over an acre more than the  
24 estimate. He expected the proceeds of the sale to be divided equally between the Water, Sewer,  
25 and General Funds. He also recommended buying back 3.5 acres using funds in the Industrial  
26 Park Fund, and amending the current budget to transfer surplus funds to the Internal Service  
27 Fund and Capital Projects Fund in order to stay within the limits set by the State.

28  
29 Anderson reviewed his recommendations for manpower requests. Council Member Potter asked  
30 how much revenue the City would gain if property taxes were raised. Anderson stated \$11,500 in  
31 revenue would be received for every percent that taxes were raised. Council Member Potter was  
32 in favor of increasing taxes to accommodate inflation. Council Member Bradshaw stated that  
33 when tax increases were discussed, the same people would complain, no matter the percentage.  
34 He agreed that the City should keep up with inflation.

35  
36 After some discussion on wage increases for employees receiving certifications, Council  
37 Member Franco expressed her support, and felt incentives were necessary to promote expertise.  
38 Council Member Rowland asked if the swing shift and graveyard shift differentials were  
39 removed from the budget. He felt that could help keep good officers from leaving the City to  
40 work elsewhere. Chief Booth stated Vernal, Park City, Salt Lake City and Murray offered the  
41 shift differential for police officers. He stated his goal was to get his officers to afford homes  
42 here. Anderson stated the housing problem was not unique to the police department, but for all  
43 employees. He hoped there would be a solution that could benefit all employees. Council  
44 Member Rowland stated he didn't want the police to be seen as the preferred department in the  
45 City, so if other departments had different shifts, he would want the pay extended to them as

1 well. It was noted that other departments did not have night shifts, but Public Works and Animal  
2 Control had on-call pay, whether they were called out or not.

3  
4 Council Member Franco asked if the Parks/Cemetery certifications were as difficult as the Public  
5 Works certifications. Anderson was unsure, but felt a set amount should be given to all  
6 employees who passed certifications instead of a percentage increase. Council Member Patterson  
7 indicated he was in favor of hiring one Public Works employee. Council Member Potter asked  
8 why the Court Clerk position was not funded. Anderson stated he wanted to fill that as the need  
9 arose and not because the need was anticipated. It was decided to pay a shift differential for  
10 police officers working swing and graveyard shifts.

11  
12 With regard to capital requests, Anderson recommended funding the Citizen Corp with the  
13 Police Department budget, so that group could be accountable to the Police Chief. In the  
14 Planning Department, Anderson recommended proceeding with the downtown visioning and  
15 then reevaluating the project from there. Council Member Franco stated all the items in the  
16 revitalization study moved together. Council Member Bradshaw was in favor of funding all the  
17 visioning and guidelines for the revitalization. Anderson suggested putting a placeholder for  
18 funding these items out of the Industrial Park Fund. Council Member Rowland indicated that  
19 regardless of the TDR outcome, he wanted to do the visioning and economic studies. There was  
20 discussion on the southern bypass study. Anderson felt the bypass study should be done in this  
21 fiscal year.

22  
23 Anderson passed out a cost estimate for the Public Works building expansion, and indicated it  
24 was a realistic budget. He recommended engaging an architect to analyze the needs, and then  
25 determine what the City could afford based on the proceeds from the sale of the Airport  
26 Industrial Park. Anderson felt this was a definite immediate need as well as a long-term need.  
27 Other needs discussed concerned the Social Hall roof and the extra needs for the Public Safety  
28 building. Chief Booth answered questions from the Council with regard to the Public Safety  
29 building needs. Regarding Parks, Anderson budgeted the amount of the donation for a splash  
30 pad, and asked the Council if they had further direction to give. The Council asked for more  
31 information from Rounds before making a decision. Council Member Rowland stated this  
32 project could be a good fundraising opportunity. The Social Hall roof was discussed. Anderson  
33 stated there was money in the Capital Improvements Fund that could be used to replace the roof,  
34 but then that fund would be depleted. Council Member Bradshaw noted that there wasn't much  
35 community interest in donating money to beautify the building.

36  
37 In the Water Fund, there were two water lines that needed to be replaced. Another project  
38 proposed by Mayor McDonald was to add a pressurized irrigation line to the sewer line project  
39 for future needs. Anderson stated impact fees could be used and it would be a benefit to take  
40 people off the culinary system for outdoor water needs. His concern was that the City needed to  
41 develop a policy for extending pressurized irrigation into the parts of the City that had no access  
42 to that service. Within the City, there were residents with ditch irrigation, those on Wasatch  
43 Irrigation, those with water rights and those without water rights. He was reluctant to begin a  
44 process until there was a policy put in place that he was comfortable with. Council Member  
45 Rowland expressed frustration from residents with regard to the alternating watering schedule in  
46 his neighborhood. Anderson noted the City might want to engage a consultant to make

1 recommendations with regard to pressurized irrigation. Council Member Franco asked Anderson  
2 to bring figures for the 600 South UDOT project to the next meeting. Anderson reviewed vehicle  
3 requests. It was noted the building inspector's vehicle was taken out of next year's budget  
4 because one was being purchased in this year's budget. He also reviewed the revenues  
5 anticipated for the coming year.

6  
7 Wes Bingham discussed his research with regard to water rates. There was some concern from  
8 the Council that the annual increase in rates had not made headway with the expenses in the  
9 Water and Sewer Funds. Bingham compared the City's water rates with other cities and noted  
10 that other cities charged \$15-\$20 more a month for that service. He stated that the sooner the  
11 City's rates were in line with other cities, the less it would need to bond for infrastructure.  
12 Bingham proposed three scenarios for bonding and raising water rates. The scenarios proposed  
13 10%-15% yearly rate increases through 2026 plus bonding for projects. Anderson demonstrated  
14 that even with the increases, the expenses plus depreciation would outweigh the additional  
15 revenue. There was discussion on the bonding and revenue needs. Council Member Franco  
16 expressed concern that the City planned to expand the Public Works building but would be  
17 bonding for water projects, and felt there would be some in the community that would question  
18 the need for the Public Works building expansion. Anderson stated the City's revenue projections  
19 had been more than anticipated, but the expenses had offset that. Council Member Franco  
20 indicated she would like to see an efficiency study in the Public Works Department since the  
21 expenses were so high. Council Member Rowland liked the idea of picking a rate and sticking to  
22 it so the public could know that the increase would be consistent year after year. Council  
23 Member Bradshaw stated the water lines had been in place for decades and needed to be  
24 replaced. He felt the City was in catch up mode from not raising rates for so many years. The  
25 Council asked to see a graduated increase, with an increased base rate and then to exponentially  
26 increase the tier structure. Council Member Franco preferred the constant increase annually.

27  
28 Council Member Potter was excused at 9:18 p.m.

29  
30 Anderson stated he could bring back different rate increase scenarios. Council Member  
31 Bradshaw stated he preferred an annual 12% increase. The Council agreed. Anderson also talked  
32 about sewer rate increases, and stated the budget included a 10% increase going into effect  
33 January, 2016. He suggested this increase going into effect July, 2015. It was decided to increase  
34 sewer rates in July and increase water rates in January, 2016. Anderson also stated he would  
35 include a utility fee increase that would just break even with the expenses and bring that figure  
36 back to the Council.

37  
38 Anderson indicated he was still working with Mike Swallow to study the employee pay grade  
39 evaluation. Kellogg reported that the restroom remodel low bid came in at \$23,500. In the  
40 meantime, Wes Greenhalgh had rearranged the existing restrooms to enable them to be ADA  
41 compliant. She asked the Council if she should rebid the project, or proceed with the current  
42 remodel. The Council was in favor of making the restrooms ADA compliant.

43  
44 With no further business, the meeting was adjourned.

45  
46  

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Michelle Kellogg, City Recorder

# TAB 1

**There are no physical  
materials for this  
agenda item.**

# TAB 2

Heber City Planning Commission  
Meeting date: May 21, 2015  
Report by: Anthony L. Kohler

**Re: Ranch Landing Development Agreement**

Ranch Landing is requesting an amendment to the signed development agreement. During the development process, it was felt a fence would help protect the adjoining Christensen property to remain a farm. Since then, the Christensen property has been sold to Self Help Homes, who intends to develop the property into a residential subdivision. Russ Watts, developer of Ranch Landing, and Self Help Homes, owner of the Christensen property, agree that a fence is not necessary. If the request is approved, an addendum to the development agreement would be signed and recorded.

ADDENDUM TO SUBDIVISION AGREEMENT  
(Ranch Landing Cottages Plat A)

This ADDENDUM AGREEMENT ("Addendum") to the original Subdivision Agreement, dated the 25th day of September, 2014, recorded in book 1114 page 1051-1056 as Entry Number 405296 in the Wasatch County Recorder's Office; ("the 2014 Agreement"), is made this \_\_\_\_ day of \_\_\_\_\_, 2015, between HEBER CITY, herein called City or Heber City, and RKW 2006, LLC, herein referred to as "Developer".

WHEREAS, the City and Developer entered into the above described 2014 Subdivision Agreement, (Agreement), and circumstances have changed and the Parties desire to amend that Agreement;

NOW, THEREFORE, the Parties hereby agree as follows:

1. Number 5 of said 2014 Agreement shall not be required.
2. Nothing in this *Addendum*, except for what is specifically articulated and described herein, shall be interpreted to amend, alter, change or modify any provisions of the above described original Agreement. All remaining provisions of said original Agreement remain binding upon all parties and of full force and effect.
3. This *Addendum* contains the entire agreement between the parties, as relates to the amendment to the original Agreement, and no statement, promise or inducement made by either party hereto, or agent of either party hereto which is not contained in this written *Addendum* shall be valid or binding; and this *Addendum* may not be enlarged, modified or altered except in writing approved by the parties.

IN WITNESS WHEREOF, the Parties hereto have hereunto set their hands to this Addendum on the date set forth above.

HEBER CITY:

By: \_\_\_\_\_  
Alan McDonald, Mayor

ATTEST:

\_\_\_\_\_  
Heber City Recorder

OWNER, \_\_\_\_\_  
RKW 2006, LLC

By: \_\_\_\_\_  
Russ K. Watts

STATE OF UTAH                    )  
  : ss.  
COUNTY OF WASATCH    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, personally appeared before me the above named Owner, who duly acknowledged to me that he is the owner in fee and executed the same as such.

\_\_\_\_\_  
NOTARY PUBLIC

SUBDIVISION AGREEMENT  
AND  
COVENANT RUNNING WITH THE LAND  
**(Ranch Landing Cottages - Plat A)**

THIS AGREEMENT entered into this 25 day of ~~SEPTEMBER~~, 2014, by and between Heber City, hereinafter referred to as "City" and the undersigned as "Developer".

WHEREAS, the petitioner has proposed the Ranch Landing Cottages Plat A Subdivision;

WHEREAS, the City annexed the property subject to certain conditions; and

WHEREAS, unique conditions exist resulting from the features on and around the property and the layout and design proposed by the developer; and

NOW, THEREFORE, the parties hereby agree as follows:

1. With respect to the approved final subdivision plats, the developer shall, prior to recordation of the subdivision plat, transfer to the City all required water rights necessary including 18.37 Acre-Feet of diversion water rights.
2. Developer will own the common retention pond area, Parcel A, install grass and irrigation facilities, and create a home owner's association to maintain the proposed area.
3. Developer will place a note on the plat granting a dedicated easement to Heber City over Parcel A and Lot 14 containing the following language: "Easement granted to Heber City. A permanent easement of right-of-way for the purpose of storm drain main lines, retention and/or detention ponds, manholes, boxes, and surface structures, together with the right to construct, operate, maintain, repair and replace said facilities, and the right of ingress and egress for such purposes. Property owner shall not increase or decrease or permit to be increased or decrease the ground elevations of said easement existing at the time this document is executed, nor construct or permit to be constructed any permanent building, structures, fences, landscaping other than grass, improvements, or other encroachments upon said easement without prior written permission from the City. Any improvements not authorized in writing by City will be

removed at property owner's expense. Any fencing allowed around or crossing said easement shall install a twelve (12) foot gates and keep easement area accessible to City."

4. Street lights will be placed at each intersection consistent with engineering standards.
5. Developer will construct a 6 foot tall fence along rear property line of lots 15 through 18.
6. The plat will show a legend for the designated PUEs and their widths.
7. If the Right to Farm Notice is shown on the Plat, the City Notice shall also be included on the plat.
8. The plat shall show a note prohibiting driveway access to 500 East as prohibited for Lots 14 and 15;
9. Developer shall provide City with a noxious weed control plan approved by the Wasatch County Weed Control Board prior to recording the subdivision plats and implement approved measures prior to project acceptance by the City.
10. All streets, utilities, and improvements will be constructed to property lines.
11. Public streets shall be dedicated to Heber City.
12. All aforementioned improvements shall consist of frontage improvements of curbs, sidewalks, pavements, inlets, and placing of monuments, as required and consistent with Heber City Standards, including but not limited to required subdivision improvement requirements.
13. Said improvement costs will be paid by the Developer, their assigns, transferees or successors as owners or developers. The Developer shall be obligated to disclose and notify in writing its immediate successors in ownership or developers of the requirements of this Agreement.
14. Developer shall execute a performance agreement and provide a cash bond or letter of credit acceptable to the City, guaranteeing the improvements related to subdivision.

15. The parties agree that the improvements will be required at the time of development, and that no building permits shall be issued thereto without the completion of said improvements.
16. Upon the full and complete performance of all of the terms and conditions of this Agreement by the Developer, their assigns, transferees or successors, and upon approval of the improvements, the City agrees to take over roads as shown on the filed map and those areas shown on the recorded subdivision plats as dedicated to the public, and maintain them as public works and public highways of the City without assessment for the construction of improvements as set out in the plans and specifications. Nothing contained here shall be construed in any way to render the City liable for any charges, costs, or debts for material, labor, or other expenses incurred in the making of these improvements.
17. In the event there is a Failure to Perform under this Agreement and it becomes reasonably necessary for any party to employ the services of an attorney in connection therewith (whether such attorney be in-house or outside counsel), either with or without litigation, on appeal or otherwise, the losing party to the controversy shall pay to the successful party reasonable attorney's fees incurred by such party and, in addition, such costs and expenses as are incurred in enforcing this Agreement.
18. This Agreement contains the entire agreement between the parties, and no statement, promise or inducement made by either party hereto, or agent of either party hereto which is not contained in this written Agreement shall be valid or binding; and this Agreement may not be enlarged, modified or altered except in writing approved by the parties.
19. Time is of the essence of this Agreement. In case any party shall fail to perform the obligations on its part at the time fixed for the performance of such obligations by the terms of this Agreement, the other party or parties may pursue any and all remedies available in equity, at law, and/or pursuant to the terms of this Agreement.
20. This Agreement shall be a covenant running with the land, and shall be binding upon the parties and their assigns and successors in interest. This Agreement shall be recorded with the Wasatch County Recorder.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands the day and year this agreement was first above written.

DATED this 29th day of September, 2014.

HEBER CITY:

By: *Alan McDonald*  
Alan McDonald, Mayor

ATTEST:

*Michelle Kellogg*  
Heber City Recorder



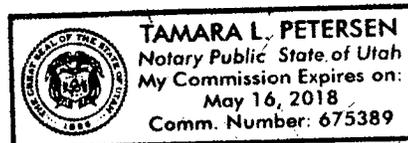
OWNER, *RKW 2006, LLC*  
LLC

By: *Reelie Wang*  
, LLC

STATE OF UTAH )  
                  *Salt Lake* : ss.  
COUNTY OF WASATCH )

On this 25th day of September, 2014, personally appeared before me the above named Owner, who duly acknowledged to me that he is the owner in fee and executed the same as such.

*Tamara L Petersen*  
NOTARY PUBLIC



**EXHIBIT A**

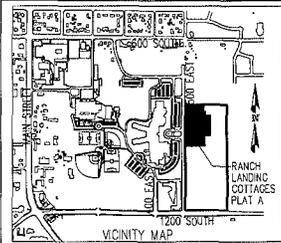
## BOUNDARY DESCRIPTION

BEGINNING AT A POINT WHICH IS NORTH 1044.32 FEET AND EAST 60.28 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 5, TOWNSHIP 4 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN;

THENCE NORTH 200.15 FEET; THENCE ALONG THE ARC OF A 67.00 FOOT RADIUS CURVE TO THE LEFT 11.51 FEET (CENTRAL ANGLE OF 09°50'38 AND A CHORD BEARING NORTH 85°04'41" WEST 11.50 FEET);

THENCE WEST 5.55 FEET; THENCE ALONG THE ARC OF A 20.00 FOOT RADIUS CURVE TO THE LEFT 31.42 FEET (CENTRAL ANGLE OF 90°00'39 AND A CHORD BEARING SOUTH 45°00'04" WEST 28.29 FEET); THENCE NORTH 00°00'39" WEST 450.49 FEET; THENCE NORTH 89°53'40" EAST 278.00 FEET; THENCE SOUTH 00°00'39" EAST 114.34 FEET; THENCE SOUTH 89°59'21" WEST 25.47 FEET; THENCE SOUTH 00°00'39" EAST 60.00 FEET; THENCE NORTH 89°59'21" EAST 85.00 FEET; THENCE SOUTH 00°00'39" EAST 299.00 FEET; THENCE NORTH 89°50'40" EAST 77.28 FEET; THENCE ALONG THE ARC OF A 217.00 FOOT RADIUS CURVE TO THE RIGHT 8.26 FEET (CENTRAL ANGLE OF 02°10'48 AND A CHORD BEARING NORTH 89°03'56" WEST 8.26 FEET); THENCE SOUTH 00°48'47" WEST 66.01 FEET; THENCE SOUTH 92.73 FEET; THENCE WEST 265.00 FEET TO THE POINT OF BEGINNING.

CONTAINING: 4.745 ACRES



LOCATED IN THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 4 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN

**RIGHT TO FARM NOTE:**  
PURCHASERS OF LOTS IN THIS SUBDIVISION ARE HEREBY NOTICED THAT HEBER CITY HAS DETERMINED TO PROTECT AGRICULTURAL LAND USES AND WILL PROTECT THE RIGHT TO FARM OF ADJACENT AND NEARBY PROPERTY OWNERS. PURCHASERS ARE ADVISED THAT FARM HOURS OF OPERATION ARE EARLY IN THE MORNING TO LATE IN THE EVENING. FARM OPERATIONS AND ANIMALS CREATE NOISE AND ODORS WHICH MAY BE OBJECTIONABLE TO SOME PURCHASERS. SPRINKLER IRRIGATION OF FARM LAND MAY FREQUENTLY OVERSPRAY ONTO ADJACENT PROPERTIES WHICH CAN SATURATE OR DAMPEN ADJACENT LOTS. STOCK AND OTHER FARM ANIMALS MAY ENDOURCH ON ADJACENT PROPERTIES IF NOT PROPERLY FENCED. DUMPING OF GRASS CLIPPINGS OR ANY OTHER MATERIALS ON TO FARM PROPERTY WITHOUT PERMISSION IS ILLEGAL. ENTERING FARM PROPERTY WITHOUT PERMISSION IS CONSIDERED TRESPASSING.

**SEE THE RETENTION POND EASEMENT NOTE:**  
AN EASEMENT TO CONSTRUCT, OPERATE AND MAINTAIN A STORM DRAIN RETENTION POND HAS BEEN GRANTED TO THE RANCH LANDING COTTAGES SUBDIVISION BY FRONTSIDE RLC CENTER, INC. AS RECORDED IN PLAT PAGE \_\_\_\_\_ OF THE WASATCH COUNTY RECORDS.

**DRIVEWAY RESTRICTIONS NOTE:**  
DRIVEWAYS ON TO 500 EAST ARE PROHIBITED FOR LOTS 14 AND 15.

**STORM DRAIN EASEMENT:**  
EASEMENT GRANTED TO HEBER CITY, A PERMANENT EASEMENT OF RIGHT-OF-WAY FOR PURPOSE OF STORM DRAIN MAINLINES, RETENTION AND/OR DETENTION PONDS, STORM DRAIN MANHOLES AND BOXES, AND SURFACE STRUCTURE, INCLUDING BUT NOT LIMITED TO MANHOLES AND CLEANOUTS, TOGETHER WITH THE RIGHT TO CONSTRUCT, OPERATE, MAINTAIN, REPAIR AND REPLACE SAID FACILITIES, AND THE RIGHT OF ACCESS AND EGRESS FOR SUCH PURPOSES.

GRANTOR OF EASEMENT SHALL NOT INCREASE OR DECREASE OR PERMIT TO INCREASE OR DECREASE THE GROUND ELEVATIONS OF SAID EASEMENT EXISTING AT THE TIME THIS DOCUMENT IS EXECUTED, NOR CONSTRUCT OR PERMIT TO BE CONSTRUCTED ANY PERMANENT BUILDING, STRUCTURES, LANDSCAPING, FENCES, IMPROVEMENTS OR OTHER ENCROACHMENT UPON SAID EASEMENT WITHOUT PRIOR WRITTEN PERMISSION FROM THE CITY. ANY IMPROVEMENTS NOT AUTHORIZED IN WRITING BY CITY WILL BE REMOVED AT PROPERTY OWNERS EXPENSE.

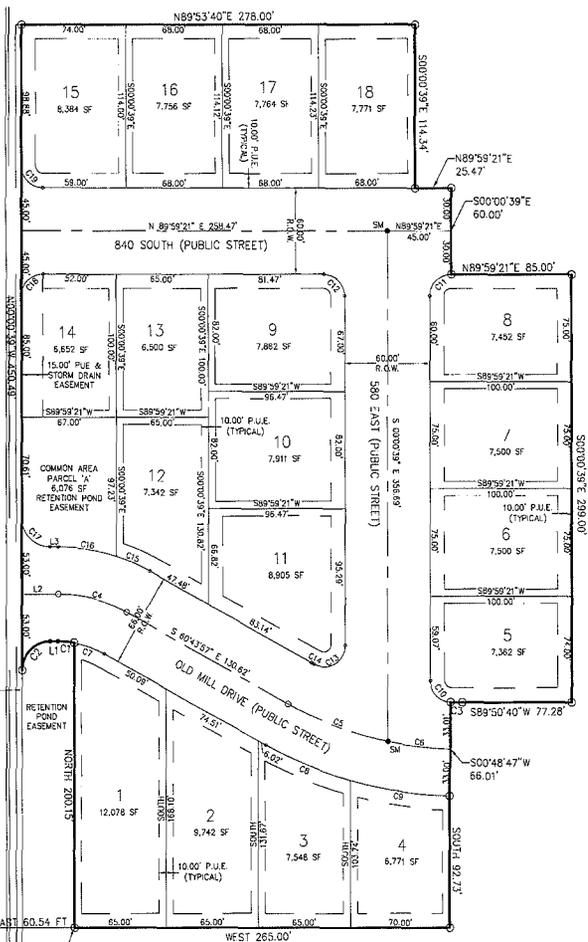
**CONSENT OF MORTGAGEE TO RECORD**  
I, Tamara L. Peterson, hereby consent to the recording of this document in the public records of the County of Salt Lake, Utah.

**ACKNOWLEDGMENTS**  
STATE OF UTAH  
COUNTY OF SALT LAKE  
ON the 14 day of September, A.D. 2014, before me, the undersigned authority, personally appeared Tamara L. Peterson, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he did execute the same in the capacity required.

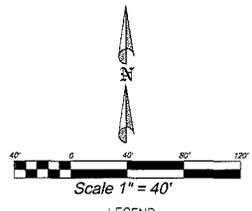
TAMARA L. PETERSEN  
Heber Public, State of Utah  
County Recorder  
Commission Expires May 14, 2018  
Comm. Number: 87280

SUBJECT:  
DANA CHRISTENSEN, P.L.S.  
DANA HOLDING GROUP, INC.  
P.O. BOX 174  
HEBER CITY, UTAH 84032 PHON: (435) 854-3279  
DATE OF SURVEY: JULY 2014

WASATCH COUNTY MONUMENT AT THE SOUTH QUARTER CORNER OF SECTION 5, TOWNSHIP 4 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN.



**BOUNDARY DESCRIPTION**  
BEGINNING AT A POINT WHICH IS NORTH 1044.32 FEET AND EAST 60.54 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 5, TOWNSHIP 4 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN;  
THENCE NORTH 200.15 FEET; THENCE WESTERLY ALONG THE ARC OF A 67.00 FOOT RADIUS CURVE CONCAVE TO THE SOUTH 11.51 FEET (CENTRAL ANGLE IS 09°50'38" AND CHORD BEARS NORTH 85°04'41" WEST 11.50 FEET); THENCE WEST 5.55 FEET TO THE BEGINNING OF A TANGENT CURVE; THENCE ALONG THE ARC OF SAID 20.00 FOOT RADIUS CURVE TO THE LEFT 31.42 FEET (CENTRAL ANGLE IS 90°00'39" AND CHORD BEARS SOUTH 48°00'44" WEST 28.29 FEET); THENCE NORTH 00°00'39" WEST 450.49 FEET; THENCE NORTH 89°53'40" EAST 278.00 FEET; THENCE SOUTH 00°00'39" EAST 114.34 FEET; THENCE NORTH 89°59'21" EAST 25.47 FEET; THENCE SOUTH 00°00'39" EAST 60.00 FEET; THENCE NORTH 89°59'21" EAST 85.00 FEET; THENCE SOUTH 00°00'39" EAST 299.00 FEET; THENCE SOUTH 89°50'40" WEST 77.28 FEET; THENCE ALONG THE ARC OF A 217.00 FOOT RADIUS CURVE TO THE RIGHT 8.26 FEET (CENTRAL ANGLE IS 02°10'48" AND CHORD BEARS NORTH 89°03'55" WEST 8.26 FEET); THENCE SOUTH 00°45'47" WEST 66.91 FEET; THENCE SOUTH 92.73 FEET; THENCE WEST 255.00 FEET TO THE POINT OF BEGINNING.  
CONTAINING: 4.745 ACRES



**ADDRESS TABLE**

LOT	ADDRESS
1	518 EAST OLD MILL DRIVE
2	532 EAST OLD MILL DRIVE
3	542 EAST OLD MILL DRIVE
4	554 EAST OLD MILL DRIVE
5	913 SOUTH 500 EAST
6	895 SOUTH 550 EAST
7	877 SOUTH 550 EAST
8	855 SOUTH 550 EAST
9	858 SOUTH 550 EAST
10	538 EAST 840 SOUTH
11	824 SOUTH 550 EAST
12	535 EAST OLD MILL DRIVE
13	522 EAST 840 SOUTH
14	512 EAST 840 SOUTH
15	515 EAST 840 SOUTH
16	525 EAST 840 SOUTH
17	535 EAST 840 SOUTH
18	545 EAST 840 SOUTH

**LINE TABLE**

LINE	LENGTH	BEARING
L1	5.55'	WEST
L2	25.56'	EAST
L3	5.57'	EAST

**CURVE TABLE**

CURVE	LENGTH	RADIUS	CHORD	BEARING	DELTA
C1	11.51'	67.00'	11.50'	N85°04'41"W	09°50'38"
C2	31.42'	20.00'	28.29'	S45°00'04"W	90°00'39"
C3	8.26'	217.00'	8.26'	N89°03'56"W	02°10'48"
C4	51.08'	100.00'	50.53'	S75°21'59"E	29°16'03"
C5	75.19'	250.00'	74.81'	S69°20'55"E	17°13'56"
C6	44.38'	250.00'	44.32'	S83°03'00"E	10°10'14"
C7	22.71'	87.00'	22.50'	S79°25'40"E	18°25'25"
C8	64.91'	283.00'	64.77'	S87°18'12"E	13°00'29"
C9	71.05'	283.00'	70.86'	S81°03'58"E	14°23'02"
C10	23.03'	15.00'	20.83'	N43°59'35"W	87°57'53"
C11	23.56'	15.00'	21.21'	N44°59'21"E	90°00'00"
C12	23.56'	15.00'	21.21'	S45°00'39"E	90°00'00"
C13	31.09'	15.00'	25.82'	S58°21'59"W	118°45'17"
C14	1.98'	217.00'	1.98'	N60°59'40"W	00°31'25"
C15	25.80'	133.00'	25.76'	N68°17'55"W	11°00'55"
C16	42.14'	133.00'	41.96'	N80°55'26"W	18°00'07"
C17	31.41'	20.00'	28.28'	N45°00'20"W	89°59'21"
C18	23.55'	15.00'	21.21'	N44°59'21"E	90°00'00"
C19	23.56'	15.00'	21.21'	N45°00'39"W	90°00'00"

**COUNTY RECORDER**  
ENTRY # 405295 DATE 08.14.14 TIME 1:46 P.M.  
FILED BY L.L.V. P.O. BOX 1209 HEBER UT 84032  
BY: [Signature] WASATCH COUNTY RECORDER/CLERK IN CHARGE

**COUNTY SURVEYOR'S CERTIFICATE**  
APPROVED AS TO FORM ON THIS 14th DAY OF Sept, 2014  
RO# 2578  
[Signature]  
COUNTY SURVEYOR

**SURVEYOR'S CERTIFICATE**  
IN ACCORDANCE WITH SECTION 10-96-603 OF THE UTAH CODE, I, BING CHRISTENSEN, DO HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR HOLDING LICENSE NUMBER 145796 IN ACCORDANCE WITH TITLE 58, CHAPTER 22, OF THE PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS LICENSING ACT.  
I FURTHER CERTIFY THAT I HAVE COMPLETED A SURVEY OF THE PROPERTY DESCRIBED ON THE PLAT IN ACCORDANCE WITH SECTION 17-23-17 OF THE UTAH CODE, AND HAVE VERIFIED ALL MEASUREMENTS, AND HAVE PLACED MONUMENTS AS REPRESENTED ON THE PLAT.

7.29.14  
DATE [Signature]  
SURVEYOR (SEE SEAL BELOW)

**BASIS OF BEARINGS**  
THE BASIS OF BEARINGS FOR THIS SURVEY WAS ESTABLISHED AS NORTH 89°50'38" EAST (MEASURED 2660.68') BETWEEN FOUND WASATCH COUNTY SECTION CORNER SURVEY MONUMENTS FOR THE SOUTH ONE-QUARTER AND SOUTHEAST CORNERS OF SECTION 5, TOWNSHIP 4 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN, IN CONFORMANCE WITH UTAH COORDINATE SYSTEM 1983 CENTRAL ZONE BEARINGS.

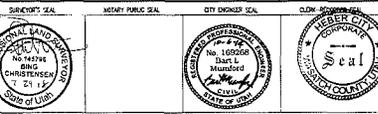
**OWNER'S CONSENT TO RECORD AND DEDICATION**  
KNOW ALL MEN BY THESE PRESENTS THAT, THE UNDERSIGNED OWNER(S) OF THE PROPERTY DESCRIBED HEREON, HAVE CAUSED THE SAME TO BE SUBDIVIDED INTO LOTS, PUBLIC STREETS, AND EASEMENTS, AND IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE DECLARATION HEREBY DEDICATE THOSE AREAS LABELED AS PUBLIC STREETS AND EASEMENTS TO HEBER CITY FOR THE BENEFIT OF THE CITY AND THE INHABITANTS THEREOF, AND DO HEREBY GIVE CONSENT TO RECORD THIS PLAT.  
DATED THIS 14 DAY OF SEPTEMBER, A.D. 2014.  
BY: [Signature]  
RWK 2006 LLC - RUSS WATTS, MANAGER

**ACKNOWLEDGMENT**  
STATE OF Utah  
COUNTY OF Salt Lake  
ON the 14 day of September, A.D. 2014, PERSONALLY APPEARED BEFORE ME, DANIEL J. HARRIS, WHO DULY ACKNOWLEDGED TO ME THAT HE DID EXECUTE THE SAME IN THE CAPACITY INDICATED.  
MY COMMISSION EXPIRES 5/14/2018 [Signature]  
NOTARY PUBLIC

**ACCEPTANCE BY HEBER CITY**  
THE CITY COUNCIL OF HEBER CITY, WASATCH COUNTY, STATE OF UTAH, HEREBY APPROVES THIS PLANNED UNIT DEVELOPMENT AND ACCEPTS THE DEDICATION OF EASEMENTS AND PUBLIC RIGHTS-OF-WAY HEREON SHOWN.  
ON this 22 DAY OF SEPT, A.D. 2014  
APPROVED: [Signature] MAYOR  
[Signature] ATTEST [Signature] CLERK-RECORDS  
APPROVED: [Signature] CITY ATTORNEY [Signature] CITY ENGINEER  
CITY OF HEBER

**PLANNING COMMISSION APPROVAL**  
APPROVED THIS 30th DAY OF Sept, A.D. 2014 BY THE CITY PLANNING COMMISSION  
[Signature] CHAIRMAN, PLANNING COMMISSION

**RANCH LANDING COTTAGES PLAT "A"**  
LOCATED IN THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 4 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN  
HEBER CITY, WASATCH COUNTY, STATE OF UTAH  
SCALE: 1" = 40' FEET



**TAB 3**

HEBER CITY COUNCIL  
Meeting date: April 2, 2015  
Report by: Anthony L. Kohler

**Re: Cove at Valley Hills Open Space Abandonment Ordinance**

As part of the approval of the Cove at Valley Hills Phase 1-C, the open space area is a designated lot in the existing subdivision. In order to plat lots in its place, the lot must be vacated by ordinance. The County Recorder requires this ordinance as per Section 10-9a-609 of the Utah Code.

**RECOMMENDATION**

If the Cove Phase 1-C is approved, this ordinance will need to be approved as well.

ORDINANCE NO. 2015-08

AN ORDINANCE VACATING A PORTION OF THE COVE AT VALLEY HILLS SUBDIVISION PLAT.

BE IT ORDAINED by the Council of Heber City, Utah, that pursuant to Utah State Code, Section 10-9a-609 (3), the Open Space Parcel Owned by Coyote Development, L.C., containing 2.03 acres and illustrated on Exhibit 1, is hereby vacated from the Cove at Valley Hills Subdivision Plat.

**Legal Description:** Open Space Parcel Owned by Coyote Development, L.C.

**Tax ID Number:** OCV-00PN-0-029-035

This Ordinance shall take effect and be in force from and after its adoption.

ADOPTED and PASSED by the City Council of Heber City, Utah this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by the following vote:

	AYE	NAY
Council Member Robert L. Patterson	_____	_____
Council Member Jeffery Bradshaw	_____	_____
Council Member Erik Rowland	_____	_____
Council Member Heidi Franco	_____	_____
Council Member Kelleen Potter	_____	_____

APPROVED:

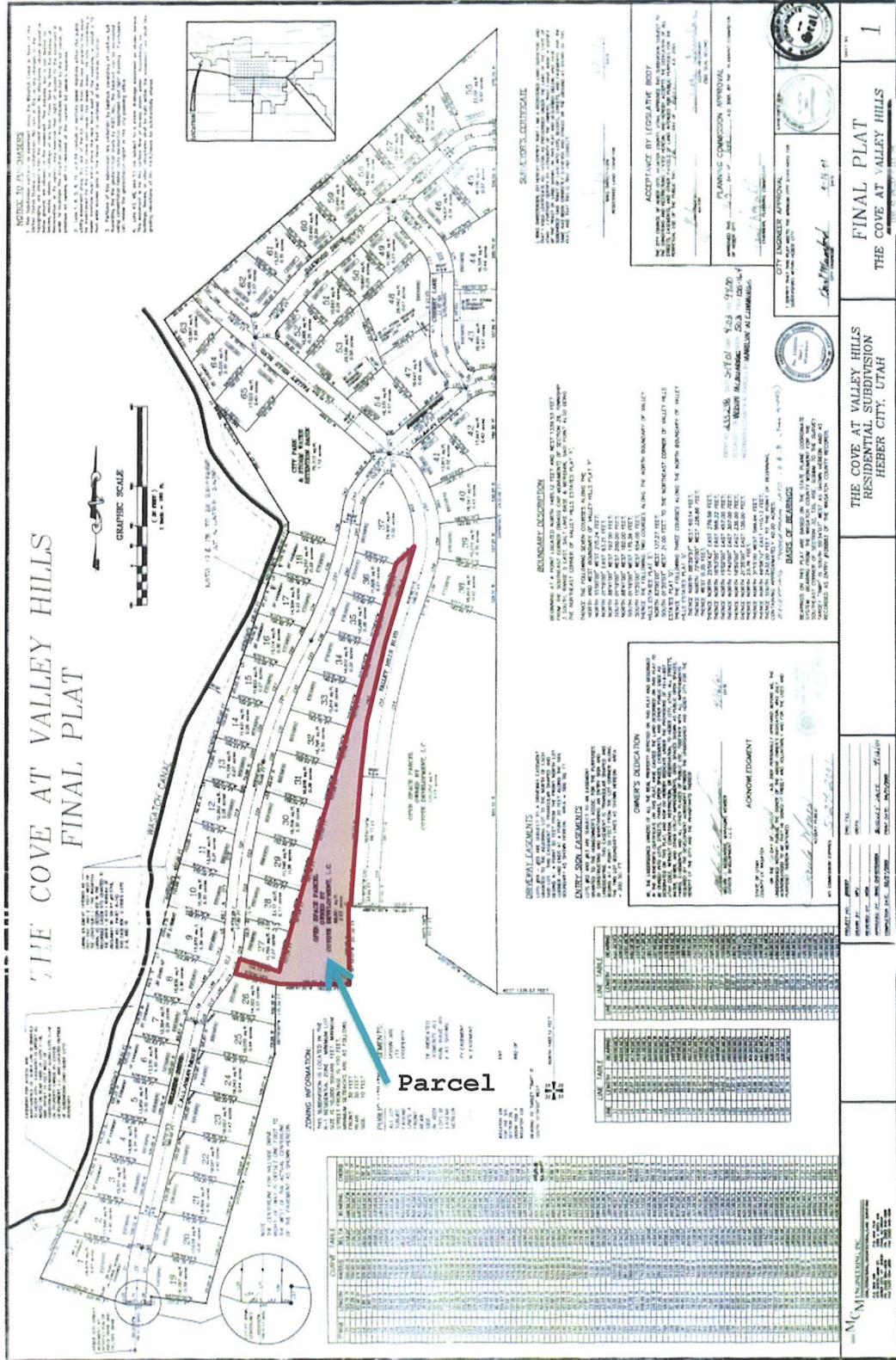
\_\_\_\_\_  
Mayor Alan McDonald

ATTEST:

\_\_\_\_\_  
RECORDER

Date of First Publishing: \_\_\_\_\_

EXHIBIT 1



# TAB 4

HEBER CITY COUNCIL  
Meeting date: April 2, 2015  
Report by: Anthony L. Kohler

**Re: The Cove at Valley Hills Phase 1-C**

In the Fall of 2014, the City Council continued the subdivision request to obtain an opinion from the Property Rights Ombudsman regarding the city's obligation or the lack thereof to approve the subdivision. The city has obtained this opinion which suggests the city should approve the subdivision.

Coyote Development LC has applied for subdivision of the remaining property within the Cove at Valley Hills Subdivision to the west of Valley Hills Boulevard. The proposal creates two (2) new building lots. The subdivision is located within the R-1 Residential Zone, requiring 100 feet of frontage and 10,000 square feet.

A geotechnical report was conducted on the property in 1994 by AGECE that indicates the property is located upon stable soils. The report provides recommendations for foundations, drainage, and grading for the lots, particularly to avoid problems with ground water.

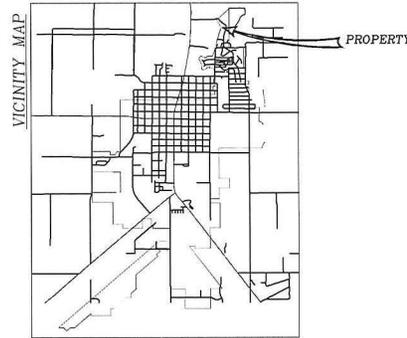
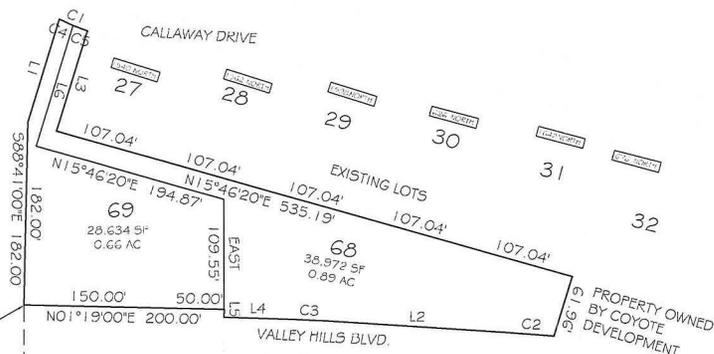
**RECOMMENDATION**

On June 26, 2014, 3 Planning Commissioners voted for the subdivision and two voted against the subdivision. The Planning Commission struggled with their vote for much of the same reasons expressed in past meetings. Residents of the surrounding lots expressed concern that the proposed two western lots would be hazardous, block views, and was not ethical because the original plat showed that area as "open space". However, the Planning Commission could not find that the proposed subdivision violates any provision of Heber City Code and therefore recommended approval of the proposed subdivision as consistent with the Municipal Code, conditional upon the following:

- 1) Developer install fire hydrants along Valley Hills Blvd. so that each lot is within 250 feet of a fire hydrant;
- 2) Developer provide notice on the plat of the existence of a geotechnical report that provides building recommendations and is available in the Heber City Planning Office;
- 3) Developer install necessary utilities and laterals to each lot;
- 4) Developer address what becomes of the remainder of property to the rear (east) of the Cove at Valley Hills Lots 32-36; preferable, such area would become part of the building lots.

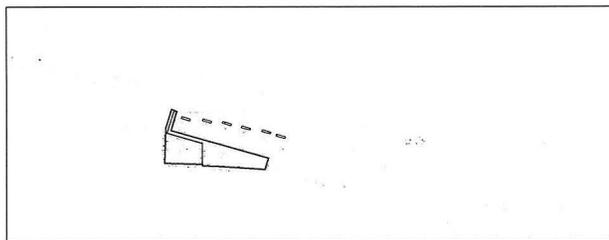
# THE COVE AT VALLEY HILLS PHASE I-C

HEBER CITY, UTAH S29, T35, R5E, 5LB#M

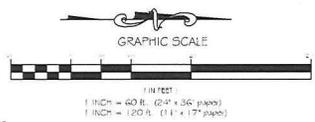


CURVE	LENGTH	RADIUS	DELTA	CHORD DR.	CHORD I.
C1	30.14	224.00	74.232	N27°09'24"E	30.12
C2	46.20	1209.00	127.742	S04°25'48"W	46.20
C3	33.02	1233.00	152.844	S02°43'27"W	33.02
C4	19.07	224.00	39°11.61	N24°12'02"E	19.07
C5	19.07	224.00	39°11.61	N27°24'42"E	19.07

LINE	LENGTH	BEARING
L1	107.04	N72°41'19"W
L2	151.73	S03°41'38"W
L3	104.73	N72°41'19"W
L4	66.37	S01°49'00"W
L5	8.00	N88°41'00"W
L6	122.85	N72°41'19"W



**ENGINEER/SURVEYOR**  
MCM ENGINEERING, INC.  
MEL MCCUARRIE  
575 N. MAIN  
HEBER CITY, UTAH 84032  
435-654-0939



**MCM ENGINEERING, INC.**  
CIVIL / STRUCTURAL / LAND SURVEYING

Customer: SCHWAB DEVELOPMENT	Revision: 01	Revision: 02	Revision: 03
Date: 02/20/14	Date: 02/20/14	Date: 02/20/14	Date: 02/20/14

**LEGEND**  
MONUMENTS SET BY SURVEYOR  
BOUND SECTION CORNER  
PUBLIC EASEMENT

**ZONING INFORMATION:**  
THIS SUBDIVISION IS LOCATED IN THE R-1 RESIDENTIAL ZONE.  
MINIMUM LOT SIZE: 15,000 SQUARE FEET.  
MINIMUM STREET FRONTAGE: 100 FEET.  
MINIMUM SETBACKS ARE AS FOLLOWS:  
FRONT: 30 FEET.  
REAR: 30 FEET.  
SIDE: 10 FEET.

**LOT SUMMARY:**  
TOTAL AREA: 0.66  
TOTAL LOT ACRES: 0.66  
ARABAC: 01 ACRES: 0.25  
DEVELOPER: COYOTE DEVELOPMENT, L.L.C.  
275 E. MAIN  
HEBER, UTAH 84032

**PUBLIC UTILITY EASEMENTS:**  
ALL LOTS IN THIS SUBDIVISION ARE SUBJECT TO PUBLIC UTILITY EASEMENTS ALONG ALL PROPERTY LINES AS FOLLOWS:  
FRONT: 10 FEET  
REAR: 10 FEET  
SIDE: 10 FEET ON SIDE INDICATED.

**Notice to Purchaser:**  
1. Portions of this subdivision are marked by rebar, cornering or yellow nails. According to the geotechnical report by AGC Inc., the rebar can be advanced using conventional heavy-duty excavator equipment and hand shovels. The bars can reach the geological upper 100 feet of the site.  
2. Lot 68 & 69 will not be allowed to receive a building permit until Heber City has completed the new water pressure zone. The plan to place the City's water for the installation of infrastructure through the American Plan and the Stone Creek Park.  
3. Lot 68 & 69 must receive proper retaining on the lot so as not to impose harm or damage of any kind to the lower lots. Lot # 27-31.  
4. Driveway on lot 68 & 69 shall be designed before proceeding with building permit. Slope of driveway shall not exceed 10%.

## SURVEYOR'S CERTIFICATE

I, MELVIN C. MCCUARRIE, DO HEREBY CERTIFY THAT I AM A REGISTERED LAND SURVEYOR, AND THAT I HOLD LICENSE NO. 778651 AS PRESCRIBED UNDER THE LAWS OF THE STATE OF UTAH. I FURTHER CERTIFY BY AUTHORITY OF THE OWNERS, THAT I HAVE MADE A SURVEY OF THE TRACT OF LAND SHOWN ON THIS PLAT AND DESCRIBED BELOW, AND HAVE SUBDIVIDED SAID TRACT OF LAND INTO LOTS, BLOCKS, STREETS, AND EASEMENTS, AND THE SAID LOTS HAVE BEEN CORRECTLY SURVEYED AND STAKED ON THE GROUND AS SHOWN ON THIS PLAT, AND THAT THIS IS TRUE AND CORRECT.

## BOUNDARY DESCRIPTION

BEGINNING AT A POINT LOCATED NORTH 1506.34 FEET AND WEST 1715.25 FEET FROM THE SOUTHWEST CORNER BRASS CAP MONUMENT OF SECTION 29, TOWNSHIP 35 SOUTH, RANGE 5 EAST, 54TH PARALLEL, SAID POINT BEING ON THE NORTH BOUNDARY LINE OF VALLEY HILLS ESTATES PLAT #1.  
THENCE N89°41'00"W 482.00 FEET  
THENCE N72°41'19"W 107.29 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 224.00 FEET.  
THENCE NORTHEASTERLY 50.14 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 07°42'32" (CHORD BEARING AND DISTANCE OF SAID CURVE BEING N22°20'24" 30.12 FEET)  
THENCE S72°41'19"E 104.73 FEET  
THENCE N15°46'20"E 535.19 FEET  
THENCE S72°41'19"E 61.96 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 1209.00 FEET.  
THENCE SOUTHWESTERLY 46.20 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 01°27'48" (CHORD BEARING AND DISTANCE OF SAID CURVE BEING S04°25'48"W 46.20 FEET)  
THENCE S03°41'38"W 151.73 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 1233.00 FEET.  
THENCE SOUTHWESTERLY 33.02 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 01°15'24" (CHORD BEARING AND DISTANCE OF SAID CURVE BEING S02°43'27"W 33.02 FEET)  
THENCE S01°49'00"W 66.37 FEET  
THENCE N88°41'00"W 8.00 FEET  
THENCE S01°19'00"W 200.00 FEET TO THE POINT OF BEGINNING.

CONTAINS 1.56 ACRES

## BASIS OF BEARING

BEARINGS ON THIS PLAT ARE BASED ON THE STATE PLANE COORDINATE SYSTEM, BEARING FROM THE WASHINGTON COUNTY MONUMENT FOR THE SOUTHEAST CORNER OF SECTION 32, T35, R5E, SUBM TO THE SURVEY TARGET TAMP IS SOUTH 55°34'07" WEST AS SHOWN HEREON AND AS RECORDED AS ENTRY #1 006992 OF THE WASHINGTON COUNTY RECORDS.

MELVIN C. MCCUARRIE  
REGISTERED LAND SURVEYOR

DATE

## OWNER'S DEDICATION

WE, THE UNDERSIGNED OWNERS OF ALL THE REAL PROPERTY DEPICTED ON THIS PLAT AND DESCRIBED IN THE SURVEYOR'S CERTIFICATE ON THIS PLAT, HAVE CAUSED THE LAND DESCRIBED ON THIS PLAT TO BE DIVIDED INTO LOTS, EASEMENTS, AND OTHER PUBLIC USES AS DESIGNATED ON THIS PLAT, AND NOW DO HEREBY DEDICATE UNDER THE PROVISIONS OF 10-9-507 UTAH CODE, WITHOUT CONDITION, RESTRICTION, OR RESERVATION TO HEBER CITY, UTAH, ALL WATER, SEWER, AND OTHER UTILITY IMPROVEMENTS, OPEN SPACES SHOWN AS PUBLIC OPEN SPACES, EASEMENTS, AND ALL OTHER PLACES OF PUBLIC USE, TOGETHER WITH ALL IMPROVEMENTS REQUIRED BY THE DEVELOPMENT AGREEMENT BETWEEN THE UNDERSIGNED AND HEBER CITY FOR THE BENEFIT OF THE CITY AND THE INHABITANTS THEREOF.

MANAGING MEMBER OF MME-COVE, L.L.C. DATE

## ACCEPTANCE BY LEGISLATIVE BODY

THE CITY COUNCIL OF HEBER CITY APPROVES THIS SUBDIVISION SUBJECT OF THE CONDITIONS AND RESTRICTIONS STATED HEREON AND HEREBY ACCEPTS THE DEDICATION OF ALL STREETS, EASEMENTS, AND OTHER PARCELS OF LAND INTENDED FOR PUBLIC PURPOSES FOR THE PERPETUAL USE OF THE PUBLIC THIS DAY OF \_\_\_\_\_ A.D. 2014.

APPROVED BY MAYOR \_\_\_\_\_ ATTEST BY CLERK/CORPORATE CLERK (SEE SEAL BELOW)

## CITY ENGINEER APPROVAL

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ A.D. 2014, BY HEBER CITY'S ENGINEER.  
ENGINEER: \_\_\_\_\_

## PLANNING COMMISSION APPROVAL

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ A.D. 2014, BY THE PLANNING COMMISSION OF HEBER CITY.  
DIRECTOR-SECRETARY: \_\_\_\_\_  
CHAIRMAN, PLANNING COMMISSION: \_\_\_\_\_

## ACKNOWLEDGMENT

STATE OF UTAH  
COUNTY OF WASATCH  
ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_ A.D. 2014, PERSONALLY APPEARED BEFORE ME THE PERSONS SIGNING THE FOREGOING OWNERS DEDICATION KNOWN TO ME TO BE AUTHORIZED TO EXECUTE THE FOREGOING OWNERS DEDICATION FOR AND ON BEHALF OF THE OWNERS WHO DULY ACKNOWLEDGED TO ME THAT THE OWNERS DEDICATION WAS EXECUTED BY THEM ON BEHALF OF THE OWNERS.  
NOTARY PUBLIC (SEE SEAL ON BACK)

REVISION DATE	REVISION BY	REVISION DESCRIPTION

PROJECT: THE COVE AT VALLEY HILLS PHASE I-C  
HEBER, UT 529, T35, R5E

SHEET TITLE: PRELIMINARY PLAT MAP  
SHEET NO: 1

DEVELOPMENT AGREEMENT  
AND  
COVENANT RUNNING WITH THE LAND  
**The Cove at Valley Hills Phase 1-C**

THIS AGREEMENT entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between Heber City, hereinafter referred to as "City" and the undersigned as "Developer".

WHEREAS, developer has proposed a 2 lot subdivision in the R-1 Residential Zone, The Cove at Valley Hills Phase 1-C;

NOW, THEREFORE, the parties hereby agree as follows.

1. With respect to Exhibit A (the approved final subdivision plat), the developer shall, prior to recording of that subdivision plat, transfer to the City all required water rights necessary for development, which shall include but not be limited to \_\_\_\_\_ Acre-Feet of diversion water rights;
2. During home construction, each lot shall erect a construction debris fence along the western property lines to minimize the potential for debris falling onto adjoining properties to the west;
3. Developer shall provide notice on the plat of the existence of a geotechnical report that provides building recommendations and is available in the Heber City Planning Office;
4. Prior to the plat recording, developer shall provide recommendations from a licensed geotechnical engineer on allowable excavation depths and distances that will protect the stability of the adjacent Valley Hills Boulevard road, including recommendations on foundation and driveway cuts and fills;
5. The remainder of property owned by Coyote Development shall either be attached as part of Lot 68 or attached to adjoining Lots 32 through 37;
6. The required water, sewer, and irrigation services will be installed to each lot, and a fire hydrant shall be installed within 250 feet of each lot per City standards.

7. The final plat shall contain a note prohibiting driveway access off of Calloway Drive, and list the new lot addresses.
8. In the event there is a Failure to Perform under this Agreement and it becomes reasonably necessary for any party to employ the services of an attorney in connection therewith (whether such attorney be in-house or outside counsel), either with or without litigation, on appeal or otherwise, the losing party to the controversy shall pay to the successful party reasonable attorney's fees incurred by such party and, in addition, such costs and expenses as are incurred in enforcing this Agreement;
9. This Agreement contains the entire agreement between the parties, and no statement, promise or inducement made by either party hereto, or agent of either party hereto which is not contained in this written Agreement shall be valid or binding; and this Agreement may not be enlarged, modified or altered except in writing approved by the parties;
10. Time is of the essence of this Agreement. In case any party shall fail to perform the obligations on its part at the time fixed for the performance of such obligations by the terms of this Agreement, the other party or parties may pursue any and all remedies available in equity, at law, and/or pursuant to the terms of this Agreement; and
11. This Agreement shall be a covenant running with the land, and shall be binding upon the parties and their assigns and successors in interest. This Agreement shall be recorded with the Wasatch County Recorder.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands the day and year this agreement was first above written.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

HEBER CITY:

By: \_\_\_\_\_  
Alan McDonald, Mayor

Attest: \_\_\_\_\_  
Michelle Kellogg, Recorder

OWNER, \_\_\_\_\_

By: \_\_\_\_\_  
Coyote Development, LLC.

STATE OF UTAH            )  
                                  : ss.  
COUNTY OF WASATCH    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, personally  
appeared before me the above named Owner, who duly acknowledged  
to me that he is the owner in fee and executed the same as such.

\_\_\_\_\_  
NOTARY PUBLIC

## BOUNDARY DESCRIPTION

BEGINNING AT A POINT LOCATED NORTH 1506.34 FEET AND WEST 1715.25 FEET FROM THE SOUTHEAST CORNER (BRASS CAP MONUMENT) OF SECTION 29, TOWNSHIP 3 SOUTH, RANGE 5 EAST, SALT LAKE BASE & MERIDIAN, SAID POINT BEING ON THE NORTH BOUNDARY LINE OF VALLEY HILLS ESTATES PLAT 'F';  
THENCE N88°41'00"W 182.00 FEET;  
THENCE N72°41'19"W 107.29 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 224.00 FEET;  
THENCE NORTHEASTERLY 30.14 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 07°42'32" (CHORD BEARING AND DISTANCE OF SAID CURVE BEING N22°20'24"E 30.12 FEET)  
THENCE S72°41'19"E 104.73 FEET;  
THENCE N15°46'20"E 535.19 FEET;  
THENCE S72°41'19"E 61.96 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 1809.00 FEET;  
THENCE SOUTHWESTERLY 46.20 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 01°27'48" (CHORD BEARING AND DISTANCE OF SAID CURVE BEING S04°25'48"W 46.20 FEET)  
THENCE S03°41'54"W 181.73 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 1033.00 FEET;  
THENCE SOUTHWESTERLY 33.92 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 01°52'54" (CHORD BEARING AND DISTANCE OF SAID CURVE BEING S02°45'27"W 33.92 FEET)  
THENCE S01°49'00"W 68.37 FEET;  
THENCE N88°41'00"W 8.00 FEET;  
THENCE S01°19'00"W 200.00 FEET TO THE POINT OF BEGINNING.

CONTAINS 1.55 ACRES





GARY R. HERBERT  
*Governor*

SPENCER J. COX  
*Lieutenant Governor*

## State of Utah Department of Commerce

### OFFICE OF THE PROPERTY RIGHTS OMBUDSMAN

FRANCINE A. GIANI  
*Executive Director*

BRENT N. BATEMAN  
*Lead Attorney, Office of the Property Rights Ombudsman*

### ADVISORY OPINION

Advisory Opinion Requested by:	Heber City Anthony L. Kohler, Planning Director
Local Government Entity:	Heber City
Property Owner:	Coyote Development, LLC
Type of Property:	Residential Subdivision
Date of this Advisory Opinion:	February 24, 2015
Opinion Authored By:	Elliot R. Lawrence Office of the Property Rights Ombudsman

#### Issues

May a City deny a proposed subdivision of a parcel if the developer previously retained the parcel as open space?

#### Summary of Advisory Opinion

Any restriction on a property right, such as the right to develop, must be construed strictly in favor of the property owner. The City has no ordinance requiring dedication of open space, and there is not a sufficient basis to conclude that open space was required as a condition of the original subdivision approval. Furthermore, there is no evidence that the City has a contractual or prescriptive right to affect or restrict development on the open space parcel. In short, there is no reason to conclude that development on the parcel in question may be restricted.

#### 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 Anthony Kohler, Planning Director of Heber City on October 27, 2014. A copy of that request was sent via certified mail to Coyote Development, LLC, at PO Box 189, Heber City, Utah. According to the return receipt, Coyote Development received the Request on November 3, 2014.

### **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, with attachments, submitted by Heber City (Anthony Kohler, Planning Director), received by the Office of the Property Rights Ombudsman on October 27, 2014.
2. Response from Mel McQuarrie, Managing Member of Coyote Development, LLC, received December 8, 2014.
3. Submission from Robert Mills, Neighboring Property Owner, received November 12, 2014.
4. Submission from David and Tara Lundberg, Neighboring Property Owners, received December 3, 2014.
5. Submission from John and Tess Farra, Neighboring Property Owners, received December 11, 2014.
6. Additional information submitted by Heber City, received December 30, 2014.

### **Background**

Coyote Development, LLC is the owner and developer of a subdivision, known as “Cove at Valley Hills,” located in Heber City.<sup>1</sup> The property was annexed into the City in 1991, and several development plats have been approved, beginning in 1992. The City states that in 1994, it requested that Coyote Development remove some property from a proposed subdivision plat because it was considered too steep for development.<sup>2</sup> That parcel was eventually included in the plat for the “Cove at Valley Hills,” identified as “Open Space owned by Coyote Development”

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<sup>1</sup> The City states that the subdivision was also identified as “Valley Hills Phase III,” and “Valley Hills Plat H”, but the development is currently known as “Cove at Valley Hills.”

<sup>2</sup> This lot was identified as “Lot 71” in a 1994 subdivision plat application.

(the “Open Space Parcel”). The minutes of the Heber City Planning Commission from August 24, 2000—when the final plat was approved—state that some “hillside areas” were declared as privately-owned open space, and identified as such on the plat.<sup>3</sup> The City’s Planning Commission approved the final plat with no further discussion on the Open Space Parcels.<sup>4</sup> Since 2001, the Open Space Parcel has been exempt from property taxes.<sup>5</sup>

The Open Space Parcel is located on a hillside with steep slopes, although the portion proposed for development has a more gradual slope.<sup>6</sup> The Parcel is located above several other homes, and is accessed by a road located near the rear property lines of the neighboring homes. Coyote Development considers the Open Space Parcel as a “remnant” parcel belonging to the development company, which has never been dedicated or restricted as open space.<sup>7</sup> The City does not dispute that the Parcel belongs to Coyote Development, but it maintains that the developer agreed to set aside the Parcel as open space as a condition of the plat approval in 2000.<sup>8</sup>

For several years, the Parcel was not developed, but in 2014, Coyote Development submitted an application to divide the Parcel and develop a portion as two residential lots.<sup>9</sup> The City acknowledges that the proposed lots meet its minimum standards for size and dimension. Although several neighboring property owners objected, the City’s Planning Commission recommended approval of the subdivision on June 26, 2014. In September, the City Council postponed a final decision on the proposed subdivision, citing questions about whether the Open Space Parcel could be developed, along with concerns about the slope of the Parcel and its impact on neighboring property owners.

Coyote Development points out that other lots in the Cove at Valley Hills have been developed with similar slopes as the Open Space Parcel, and that development on the Parcel is possible

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<sup>3</sup> Minutes of the Heber City Planning Commission, August 24, 2000, at 2. The statement was made by Mike Johnston, from the engineering firm that completed the plats. Coyote Development’s representatives attended the hearing, but offered no comments on any proposed open space.

<sup>4</sup> The motion to approve the final plat included conditions related to bonding for improvements, clarification of an easement, traffic sign placement, calculation of water shares, landscaping for a proposed public park, alignment of a road, and some issues related to geotechnical reports. None of the conditions concerned the Open Space Parcels (the proposed park was in a different area of the development). *See* Minutes of the Heber City Planning Commission, August 24, 2000, at 3.

<sup>5</sup> The materials submitted for this Opinion indicate that the Open Space Parcel qualified for the exemption because development was not feasible. The Wasatch County Assessor stated that at least five years of back taxes would be charged if the Parcel is developed.

<sup>6</sup> There are no specific slope restrictions in the City’s development code. The area for the two proposed building lots has a 23 to 30 percent slope. Other portions of the Open Space Parcel have slopes exceeding 50 percent.

<sup>7</sup> It appears that the Open Space Parcel remains undisturbed in a “natural” state, with native vegetation. Neither the City nor Coyote Development stated whether the public could access the Parcel for hiking or other recreation, or whether the Parcel as actually used by the public.

<sup>8</sup> The City states that Coyote Development offered to dedicate the Open Space Parcel as public lands when the plat was approved in 2000, but the City declined because the Parcel was too steep for City purposes.

<sup>9</sup> The materials submitted for this Opinion indicate that a subdivision of the Open Space Parcel was also requested in March of 2009, but was denied by the City. It appears that the remaining portion of the Open Space Parcel will not be developed.

within the City's existing standards.<sup>10</sup> Furthermore, Coyote Development notes that the City has accepted other property dedicated as open space, but transferred those parcels to private owners.<sup>11</sup> The City counters that those properties were no longer usable as public property, and so were deeded to the owners of adjoining lots.<sup>12</sup> In one instance, publicly owned property that had been reserved as open space was transferred in exchange for property used for a City-owned water tank.<sup>13</sup>

The owners of property adjoining the Open Space Parcel oppose Coyote Development's proposed subdivision. They state that they relied upon the plat for the Cove at Valley Hills, which designates the Parcel as open space, and that the adjoining open space was part of their decision to purchase their lots.<sup>14</sup> From this, the homeowners argue—along with the City—that the Open Space Parcel was a condition imposed on the original subdivision plat, and so the Parcel should never be developed.<sup>15</sup> Finally, the homeowners state that development of the Parcel is limited due to its steep slope.

In September of 2014, the City Council postponed a final decision on the proposed subdivision, so it could request this Opinion. Specifically, the City asks the Office of the Property Rights Ombudsman to determine whether the subdivision may be denied because Coyote Development committed to provide the open space?

## Analysis

### I. The Open Space Parcel was Not a Condition Required for Subdivision Approval.

Because there is no indication that the City specifically required Coyote Development to reserve the Open Space Parcel, it cannot be considered a condition of subdivision approval. Local governments may impose reasonable conditions on subdivision and development approvals. *See Call v. City of West Jordan*, 606 P.2d 217, 220 (Utah 1979).<sup>16</sup> These conditions may be imposed

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<sup>10</sup> The City notes that a geotechnical analysis of the Open Space Parcel was completed in 1994. The analysis concluded that development was possible, with specific recommendations for foundations, grading, and water drainage. It was not stated that a new geotechnical analysis would be needed.

<sup>11</sup> Coyote Development cites these examples to support its contention that "open space" designation does not prohibit future development.

<sup>12</sup> The City explains that the former open space parcels became part of adjoining properties, and were not used as new building lots.

<sup>13</sup> Neither the City nor Coyote Development offered details on the water tank negotiations. The City explains that at the time, it was determined that there was no harm to the public by transferred property originally intended as open space.

<sup>14</sup> The neighboring property owners state that they relied on verbal representations that Open Space Parcel would remain as open space. Coyote Development disputes that any such representation was ever made, only that the Parcel was merely identified as privately-owned open space on the subdivision plat.

<sup>15</sup> One property owner, Robert Mills, also opposed the subdivision proposed in 2009. He submitted a letter he wrote to the City at that time,

<sup>16</sup> "[A]s a prerequisite for permitting the creation of a subdivision, the City . . . [may] impose reasonable regulations." *See also Banberry Development Corp. v. South Jordan City*, 631 P.2d 899, 901 (Utah 1981)(discussing cases where local governments were authorized to impose conditions on development or plat approvals). The Land

by a local ordinance, or required by a planning commission or legislative body as part of the approval process. The City acknowledges that its ordinances do not include a requirement that any open space be reserved or dedicated as a condition of subdivision plat approval. Thus, the requirement cannot arise from an ordinance.

The City contends that the Open Space Parcel was imposed by its planning commission, and accepted by Coyote Development, when the subdivision plat was approved in August of 2000. The minutes of the City's Planning Commission meeting on August 24, 2000 include a statement from Mike Johnston that "there are some hillside areas which are declared as open space area which will be privately owned open space."<sup>17</sup> That, however, was the only statement made concerning open space for the Cove at Valley Hills subdivision.<sup>18</sup> There is no statement attributed to the property's owner regarding creation of open space.<sup>19</sup> The motion to recommend approval of the subdivision plat made no reference to any required open space.<sup>20</sup>

Since there is no express requirement that Coyote Development reserve a portion of the property as open space, the condition was not imposed as part of the approval process. Zoning ordinances and requirements on development are in derogation of an owner's property rights, and so "should be strictly construed" in favor of the property owner. *See Patterson v. Utah County*, 893 P.2d 602, 606 (Utah Ct. App. 1995).<sup>21</sup> Following this precept, a condition or requirement cannot be implied or presumed, but should be created by specific language. The minutes of the Planning Commission do not specifically state that Coyote Development was required to reserve a portion of its property as open space. A single sentence—which was not expressed by a property owner—is not enough to sustain the conclusion that the Open Space Parcel fulfilled a requirement of subdivision approval. Therefore, the requirement was not a condition imposed at the time of approval.

The City thus has insufficient grounds to enforce a "condition" that Coyote Development continue to preserve the Open Space Parcel and relinquish any rights to develop it.<sup>22</sup> While an open space requirement would have feasibly been within the City's authority in 2000, the information provided does not support a conclusion that such a condition was actually imposed.<sup>23</sup>

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Use, Development, and Management Acts (LUDMA) allow local governments to impose conditions on subdivision plats. *See* UTAH CODE ANN. §§ 10-9a-509(1)(h) and (i); 17-27a-508(1)(h) and (i).

<sup>17</sup> Minutes of the Heber City Planning Commission, August 24, 2000 at 2. Mike Johnston represented an engineering firm which apparently had prepared the plats.

<sup>18</sup> The minutes include discussion of a proposed public park in another part of the development.

<sup>19</sup> Representatives of Coyote Development attended the Planning Commission hearing, but made no statement regarding open space. In addition, there is no written statement indicating that the property owner agreed to reserve open space to fulfill a condition imposed by the City.

<sup>20</sup> The Commission recommended that the City Council "favorably consider" accepting the proposed park. *Id.*, at 3.

<sup>21</sup> *Patterson* cited several decisions from other states, including an Alabama decision holding that "land use restrictions" should be strictly construed. *See Ex parte Fairhope Bd. of Adjustment & Appeals*, 567 So.2d 1353, 1354-55 (Ala. 1990). *See also Carrier v. Salt Lake County*, 2004 UT 98, ¶ 31, 104 P.3d 1208, 1217.

<sup>22</sup> This does not mean, however, that the City is prevented from imposing a reasonable open space requirement on future subdivision approvals.

<sup>23</sup> This Opinion does not examine whether reserving the entire Open Space Parcel would have been justified when the subdivision plat was approved in 2000. This Opinion merely notes that the City could have possibly required dedication or reservation of some property as open space.

Moreover, no such condition was imposed by ordinance, and the brief mention in the minutes of the Planning Commission is hardly enough to establish a condition required of approval.

## **II. It Does Not Appear Likely That Easement or Use Rights Were Acquired in the Open Space Parcel.**

Because there has been no evidence of actual use of the Open Space Parcel by the City, the public, or neighboring property owners, it appears unlikely that any use or easement rights have been created. The materials submitted for this Opinion make no reference to any use of the Open Space Parcel by the public or even by neighboring property owners.<sup>24</sup> There is also no indication that Coyote Development agreed to allow any type of uses on the Parcel. Finally, no private prescriptive rights could be created, because not enough time has passed since the Parcel was established.<sup>25</sup>

The Parcel's label as open space on the plat is insufficient to establish an obligation that the Parcel remain unchanged in perpetuity. Plats may be amended and the features shown thereon changed. Typically, changes to a plat must be done with the consent of all parties owning an interest in the portion being changed. *See* UTAH CODE ANN. § 10-9a-608. Often an open space designation will include a dedication to the public or to a homeowner's association (HOA). In such case, the public or HOA gains an ownership interest in the property, and with it the legal ability to prevent a change. However, no such dedication is indicated for the Open Space Parcel. Coyote Development retained full ownership; it therefore retains the ability to control the destiny of the Parcel, which includes changing the parcel to something different than open space, despite it being so labeled on the Plat.

Unless it can be shown that an agreement existed between the City and Coyote Development, or that the City made some special use of the Parcel, the City has no basis to insist that it remain undeveloped. Although the neighboring property owners may enjoy the views and privacy afforded by the undeveloped property behind their homes, that alone is insufficient to guarantee that the parcel will remain in that state indefinitely.

## **Conclusion**

Heber City simply does not have sufficient justification to prevent development on the Open Space Parcel. Any requirement restricting a property right (such as the right to develop) must be construed in favor of the property owner. The City has no ordinance requiring that property be reserved as open space, and the record of the subdivision approval from 2000 does not show that open space was imposed as a condition of approval. Finally, since there is no evidence of a specific agreement or special use, the City has no basis to restrict development. Along the same

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<sup>24</sup> The neighbors state that the location of the Open Space Parcel near their homes was a factor in their decision to purchase their lots and build homes. Other than the view, however, there is no evidence that the Parcel was used for hiking or other recreational uses.

<sup>25</sup> Prescriptive easement rights may only be established after 20 years of continuous use. *See Potter v. Chadaz*, 1999 UT App 95, ¶ 17, 977 P.2d 533, 538. The Open Space Parcel was created in 2000, so less than 20 years passed before the proposed subdivision in 2014.

lines, the neighboring property owners have not demonstrated a special or unique right to restrict development.

A handwritten signature in black ink, appearing to read "Brent N. Bateman". The signature is fluid and cursive, with a long horizontal stroke at the end.

Brent N. Bateman, 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

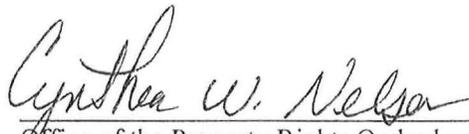
Section 13-43-206(10)(b) of the Utah Code requires delivery of the attached advisory opinion to the government entity involved in this matter in a manner that complies with Utah Code Ann. § 63-30d-401 (Notices Filed Under the Governmental Immunity Act).

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 David R. Phillips  
Heber City  
75 North Main Street  
Heber City, Utah 84032

On this 24<sup>th</sup> Day of February, 2015, 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.

  
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Cynthia W. Nelson  
Office of the Property Rights Ombudsman