



To: Utah County Commission
From: Cannon Law Group, PLLC
Date: September 21st, 2015
RE: Clearwater Holdings, LLC

Sent via email: Dave Shawcroft Daves@utahcounty.gov

VIA FIRST CLASS MAIL

Mr. Shawcroft and the Commissioners,

Clearwater Holdings, LLC ("Clearwater") respectfully submits this letter with the intent to respond, in part, to letter submitted by Mr. Leslie Slauch on behalf of the Giles regarding the pending application for a variance. Most of the points were addresses in the August 18th, 2015 meeting however to the extend Mr. Slauch raises new issues please see below:

The Giles Signed a Plat Dedicating the 56' ROW Already

Contrary to the Giles' assertions, Clearwater, far more than the Giles, have relied upon the County. Attached as Exhibit A is the actual plat signed by the Giles in May 1999 where the Giles willingly conceded the 300 foot section has 56 foot width. The plat indicates:

"Know all men by these presents, that we [Giles] all of the undersigned owners of the all of the property described in the surveyor's certificate hereon...have caused the same to be subdivide into lots, block, streets, and easements and do hereby dedicate the streets and other public areas as indicated hereon for perpetual use of the public. (Emphasis added.)"

Thus, Giles has already dedicated 56' right of way. This is shown on a publicly recorded plat that abuts the Clearwater parcel. Clearwater relied upon this access shown on the recorded plat in purchasing nearly 400 acres the property in 2010. The County can easily resolve this issue by holding the Giles to the dedication they have already made.

The Giles Did Not Dedicate 30 Feet the Public Obtained it by Use

The Giles seem to indicate they relied upon Utah County in making their decision to stipulate to the 30' right of way. Specifically, the Giles claim they relied upon a May 20th, 2011 letter from Jeff Mendenhall in order to establish the 30' right of way. This position is not supported by the trial or the public record. The right of way was

established long before the Giles owned the property and decades before Mr. Mendenhall's letter was drafted. Judge McVey of the Fourth District Court established:

“Thus although the historical use was more likely than not less than 30 feet in width, the Court established its historic, safe and necessary use at less than 30 feet, but through the Giles’ accommodation at trial that width is 30 feet.” Trial Findings of Fact, Conclusions of Law and Judgment, filed June 2, 2014.

Judge McVey established that 30 feet was “safe and necessary.” The Judge was only indicated there was no further dispute around the 30’ width. In other words, regardless of whether the Giles had an objection to the 30’ width the court made its own finding of 30.’ The Court pointed to aerial maps from 1993 as its evidence of a publically dedicated right of way. These maps depict a time three years *prior* to the Giles ownership of the property whatsoever and thus there could not have been reliance by the Giles in establishing a 30’ ROW.

Utah County is Not “Changing its Position”

Should the Commission approve the application of Clearwater then in no way does that mean Utah County “changed its position” (as the Giles suggest). Mr. Mendenhall’s letter concerned only the Morley application the Planning Commission approved on July 23rd, 2002. The application of Clearwater is far different from Mr. Morely’s application as Clearwater is willingly offering to restrict, by deed, the number of buildable lots on its land until the time a full 56’ is dedicated or the Commission otherwise has a different road standard it is willing to accept.

The Clearwater Proposal does NOT Lack Detail

To the extent Clearwater’s proposal lacks detail, it is only because the request does not necessitate detail. Clearwater is asking for 300 feet of roadway to be incorporated into the Official Utah County Roadmap. Clearwater is not asking for a building permit, a subdivision, or a boundary line adjustment, just a simple addition of 300 feet to the road map. The details the Giles want will come at a future time when/if building permits are sought by Clearwater. The proposal specifically calls out that other provisions of the Utah County Land Use Ordinance will be followed.

Physically Speaking the 56 Foot Right of Way Already Exists

The 300’ road section has berms and utility easements currently existing. Attached as Exhibit B is a map showing a utility easement that has been agreed to by the Giles and confirmed by the Court. The 300’ road section in question has both the pavement necessary and utilities necessary to provide for a 56’ right of way. The exception Clearwater seeks could not possibly be more narrowly construed (see. *B.A.M Dev. L.L.C. v. Salt Lake County*, 2006 UT 2 ¶¶32-34, 128 P3d 1161, 1168). The road does in fact have 56’ physically speaking whether or not the dedication was legally made is in question.

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Conclusion

Clearwater hopes the Commission will uphold the first stated goal of its Land Use Ordinance to "Encourage and facilitate orderly growth and development in the county." (Section 1-2.A.) by not allowing a 300' road strip to hold a 400 acre development hostage because a private landowner resists having modest development adjacent to theirs because 1) the Giles have already dedicated the 56' ROW, 2) the Clearwater proposal will make the road safer by providing a cul-de-sac turnaround, 3) the 300' road section has all the physical elements customary of other Class D roads, and 4) to restrict Clearwater from building up to seven houses would be adverse to Utah County's stated goals.

Regards,

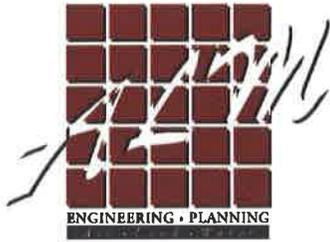


Cole S. Cannon

Exhibit "A"

Giles Plat

Exhibit B
Utility Map



A.L.M. & ASSOCIATES, INC.
ENGINEERING • PLANNING • SURVEYING • DEVELOPMENT

2230 NORTH UNIVERSITY PARKWAY, BLDG. 6-D
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March 07, 2013

Project: Clearwater Farms
Project No.: 917-1669

30' wide irrigation easement for an existing irrigation pipeline over Dixon and Giles Property, as follows:

Commencing at a point located South $00^{\circ}07'24''$ East along the section line 1332.99 feet and East 230.08 feet from the Southeast Corner of Section 32, Township 7 South, Range 2 East, Salt Lake Base & Meridian; thence North $35^{\circ}48'01''$ West 76.15 feet; thence North $07^{\circ}47'25''$ East 260.01 feet; thence North $25^{\circ}56'00''$ West 734.82 feet; thence North $29^{\circ}45'40''$ West 373.29 feet; thence North $15^{\circ}51'58''$ West 44.33 feet; thence North $44^{\circ}10'14''$ West 82.21 feet; thence North $45^{\circ}49'46''$ East 30.00 feet; thence South $44^{\circ}10'14''$ East 89.77 feet; thence South $15^{\circ}51'58''$ East 48.24 feet; thence South $29^{\circ}45'40''$ East 370.64 feet; thence South $25^{\circ}56'00''$ East 744.92 feet; thence South $07^{\circ}47'25''$ West 257.11 feet; thence South $35^{\circ}48'01''$ East 64.15 feet; thence South $54^{\circ}11'59''$ West 30.00 feet to the point of beginning.