



MEMORANDUM:

Date: April 12, 2013
To: Council Members
From: Robert Jasper
Re: Service Area #6

I have completed a review of record relating to the intended purpose and creation of Service Area #6, Ordinance 85-A. According to County Commission minutes from a regular County Commission meeting on May 10, 1977, the Commissioners discussed:

“setting up a special service area, providing road maintenance in subdivisions”...a motion was made and passed unanimously “ to create an Ordinance establishing a service area over all new, year round, subdivisions in the County where roads are to be dedicated as public roads”.

It appears clear that the intent of the County Commission at that time was to establish a special service district for the specific purpose of maintaining (and snow plowing) all public roads within new subdivisions in Summit County.

I have attached a copy of the May 10, 1977 minutes and Ordinance 85-A for your review.

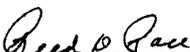
I have learned that for a number of years a previous Public Work Director, staff and County Commissioner assigned to Public Works, preferred and encouraged development of private roads. This practice made it easier and less expensive for developers to construct roads within subdivisions. In a previous workshop I sought Councils guidance as to whether they wanted to follow County ordinances. I advised that numerous Home Associations did not adequately maintain their roads and were requesting that the county take them over. I further advised that there might be gated communities that would make requests for exceptions and each of these requests can be considered on a case by case basis.

It should be noted that in the same May 1977 meeting, the Commission sought to “try and include service areas to the present subdivisions, if they want[ed] to bring their roads up to [County] standards. As the Council is aware, this is an on-going matter and at least three subdivisions have started the process and are nearing a presentation of their road dedication plats to the Council for acceptance.

I look forward to further discussion on this matter and your direction on how the County should move forward on this issue.

A Motion was made by Commissioner Wallin to sign the Contract with Utah State Division of Alcohol and Drugs. The Motion was seconded by Commissioner Leavitt and Carried.

The foregoing minutes are hereby approved as correct.


Reed D. Pace, Clerk


Alva J. Dearden, Chairman

SPECIAL MEETING MAY 10, 1977

Coalville, Summit County, State of Utah the Board of County Commissioner met in Special Session May 10, 1977 @ 10:00 a.m. and the following business transacted.

Present: Alva J. Dearden, Chairman
Dale Leavitt, Member
Bill Wallin, Member
Reed D. Pace, Clerk

DAIRY PRINCESS CONTEST

Celia Marchant, Dairy Princess Chairman, called on the telephone and asked about the County purchasing the awards for the Dairy Princess Contest scheduled for June 18 at South Summit High School. This would involve approximately \$85.00. Motion was made by Commissioner Leavitt to allow the County to purchase these awards for the Dairy Princess Contest. The Motion was seconded by Commissioner Wallin and carried.

PINE BROOKS SUBDIVISION

Meeks Wirthlin, Frank Noel and Mr. Haney appeared by appointment to talk about the final approval of Pine Brook Subdivision. They reviewed the meeting with Jim Kaisezman held May 9th resolving some of the Engineering Deficiencies. They proposed to post a bond in the Amount of \$600, 000.00 for all improvements, including lagoons for the sewer system. If the bond election on May 17th passes, they would ask that \$45,000.00 of this bond be released. A special service area was discussed. They will not object to the creation of a special service area, if the county would take over the road. Release of the bond was also discussed. They have an engineer hired that will be on the job, he will recommend to our engineer that certain work has been done and recommend that a certain amount of the bond be released. Our Engineer will verify to the Commission that the work has been done satisfactorily, then the Commission will release that part of the bond. A discussion was had concerning the two roads parallel to each other, one 24 foot road will be built at this time, and they will blade the other 24 foot road right of way. Before any additional lots are approved this other road will have to be constructed. Motion was made by Commissioner ~~Wallin~~ to rescind the portion of the motion made October 6, 1976 denying the variance of having to pave both sides of the two roads of ingress and egress. That at this time variance be granted to the paving of both lanes, that the west portion will be oiled at this time, the east side be bladed for emergency use until approval for additional lots is requested, then the east side will be oiled to county standards. This road is referred to as Pinebrook road. The motion was seconded by Commissioner Wallin and carried.

The next special meeting will be held Thursday May 12th, at 10:00 a.m.

SERVICE AREA

A discussion was had concerning setting up a special service area, providing road maintenance in subdivisions. Motion was made by Commissioner Wallin to create an Ordinance establishing a service area over all new year around subdivisions in the County where the roads are to be dedicated as public roads. Also to try and include service areas to the present subdivisions, if they want to bring their roads up to standards. The motion was seconded by Commissioner Leavitt and carried. The County Attorney was asked to draw up the resolution creating a special service area for the Pinebrook subdivision. Most of the afternoon was spent in receiving officials reports from the various offices.

PINEBROOK SUBDIVISION

Frank Noel again appeared to discuss the final signing of the plats for Pine Brook Estates. A motion was made by Commissioner ~~Wallin~~ to approve the plat, sign the agreement and authorize the Chairman to sign the plat and the agreement in ~~place of the Chairman~~ ~~containing 100 lots~~. Motion was seconded by Commissioner Leavitt and carried.

EXTRA HELP

County Recorder, Wanda Y Spriggs, appeared and during her reporting for her office duties for the month of April reported that she would be looking for some additional help. Sue Robinson does not want to work all summer, on a full time basis, but would be available part time.

BEER LICENSE

An Application for renewal of the Beer License for the Smith Rest Haven Campground in Woodland was received. Motion was made by Commissioner Leavitt to approve the renewal of this license. Motion was seconded by Commissioner Wallin and carried.

The foregoing minutes are hereby approved as correct.


Reed D. Pace, Clerk


Alva J. Dearden, Chairman

INDEXED: _____
 GRANTOR: *d*
 GRANTEE: _____
 RELEASED: _____
 ABSTRACTED: *A. Smith*
 STAMPED: _____

ORDINANCE #85-A

CREATING COUNTY SERVICE AREA # _____

The Board of County Commissioners of Summit County, Utah, met in session at the special meeting place of the Board in the County Building in Coalville, Utah, at 10:00 o'clock a.m. on Tuesday, the 6th day of September, 1977.

There were present Chairman Alva J. Dearden, Commissioner Dale J. Leavitt, and Commissioner William Wallin.

There was also present Mr. Reed Pace, County Clerk.

After the minutes of the last meeting had been read and approved and the roll called with the above result, the following was introduced in written form by Commissioner Alva J. Dearden, was read in full and discussed, and thereupon pursuant to motion made by Commissioner William Wallin and seconded by Commissioner Dale J. Leavitt, was adopted by the following vote:

AYE. Chairman Alva J. Dearden
 Commissioner Dale J. Leavitt
 Commissioner William Wallin

NAY: None.

The resolution is as follows:

RESOLUTION giving notice of the formation of a county service area within Summit County, Utah, to be designated as "Summit County Service Area #6."

WHEREAS, upon its motion and pursuant to 17-29-6, Utah Code Annotated 1953, as amended, the Board of County Commissioner of Summit County is authorized to provide for the creation of a service area within Summit County.

NOW, THEREFORE, Be It and It Is Hereby Resolved by the Board of County Commissioners of Summit County, Utah:

Section 1. The public health, convenience and necessity require the creation of a county service area within Summit County having the boundaries described in the Notice of Intention set out in Section 6 hereof.

Section 2. The proposed service area is designated as Summit County Service Area #6.

Section 3. The district shall be created for the purpose of the maintenance

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Entry No.	143418	Book	22107
RECORDED	9/21/77	at	9:31 M Page 63 66
REQUEST of	Summit County		
BY	WANDA Y SPRINGS SUMMIT CO RECORDER		
\$ P.H.	<i>Wanda Y Springs</i>		
INDEXED	AS 72 A 67		

of roads, including snow removal.

Section 4. All of the territory to be included within the proposed county service area lies within Summit County, Utah, and no municipal corporation is included in whole or in part within the boundaries of the proposed area.

Section 5. On September 6, 1977, at the hour of 2:30 p.m. this Board of County Commissioners met in the County Building at Coalville, Utah, and held a public hearing at which time no interested parties appeared to be heard.

Section 6. Notice of intention to create said service area was given by publication once a week for four (4) consecutive weeks at weekly intervals in the Summit County Bee, a newspaper of general circulation in Summit County, Utah. The notice was in substantially the following form:

NOTICE OF INTENTION TO CREATE

SUMMIT COUNTY SERVICE AREA #6

RESOLVED, that this resolution be made in accordance with the requirements of Section 17-29-6, Utah Code Annotated 1953, as amended, and that pursuant to said section the following information as to the proposed County Service Area is herewith set forth:

Section 1. The boundaries of the proposed County Service Area are as follows:

Beginning at a point lying South 1430.79 ft. and West 2607.19 ft. from the East 1/4 Corner of Section 11, T. 1 S., R. 3 E., S.L.B. & M., said point being on the Northwest right-of-way line of Pinebrook Road, and running thence Northwesterly 37.40 ft. along a 25 ft. radius curve to the right to a point of reverse curve, thence Northwesterly 153.20 ft. along a 623 ft. radius curve to the left, thence N 52°00'00" W 520.00 ft., thence Northwesterly 206.51 ft. along a 400 ft. radius curve to the left, thence N 81°00'00" W 500.00 ft., thence Northwesterly 407.39 ft. along a 1197 ft. radius curve to the right, thence N 61°30'00" W 205.00 ft., thence Westerly 398.48 ft. along a 158 ft. radius curve to the left, thence S 26°00'00" E 110.00 ft., thence Southwesterly 78.04 ft. along a 167 ft. radius curve to the right of a point of compound curve, thence Southwesterly 41.26 ft. along a 25 ft. radius curve to the right to a point of reverse curve, thence Westerly 258.77 ft. along a 203 ft. radius curve to the left, thence N 72°30'00" W 418.33 ft. to the S 1/16 Corner Section 10 and 11, T. 1 S., R. 3 E., S.L.B. & M., thence S 22°14'31" W 302.29 ft., thence S 48°00'00" E 620.00 ft., thence N 34°00'00" E 461.82 ft., thence along radial bearing S 88°45'00" E 301.00 ft., thence Southerly 48.66 ft. along a 413 ft. radius curve to the right, thence S 82°00'00" E 192.07 ft., thence S 58°02'07" E 219.78 ft., thence S 42°00'00" E 221.44 ft., thence 83.91 ft. along a 254.17 ft. radius curve to the right (radial bearing S 40°15'08" E), thence S 50°20'20" E 301.14 ft., thence

*Pinebrook
No. 2 PI*

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PINE BROOK
SUB No 2, PI

PINE BROOK
SUB No. 1 - PI

S 50°04'53" E 292.11 ft., thence S 69°00'00" E 176.57 ft.,
thence 813.39 ft. along a 1500 ft. radius curve to the right
(radial bearing S 64°42'08" E) to the point of beginning
containing 41.57 acres more or less.

Commencing at the East 1/4 Corner Section 11, T. 1 S., R.
3 E., and running thence East 264.00 ft. to the East Right-of-
way line of the Freeway frontage road, thence along said Right-
of-way S 36°15'00" E 124.0 ft., thence West 337.32 ft. to a point
on a 718.83 ft. radius curve to the left, thence along said curve
690.03 ft., thence S 36°00'00" W 292.55 ft., thence S 37°51'58"
W 100.00 ft. to a point on a 900.00 ft. radius curve to the left
(radial bearing S 37°51'58" W), thence along said curve 422.01 ft.,
thence N 79°00'00" W 50.00 ft., thence S 11°00'00" W 80.00 ft. to
a point on a 545.00 ft. radius curve to the right, thence along
said curve 499.38 ft., thence S 63°30'00" W 945.53 ft. to a point
on a 1400 ft. radius curve to the left, thence along said curve
1038.47 ft., thence S 21°00'00" W 548.80 ft. to a point on a
1450.00 ft. radius curve to the left, thence along said curve
278.38 ft., thence S 10°00'00" W 516.65 ft. to a point on 1330 ft.
radius curve to the right, thence along said curve 289.25 ft. to
the NE side of a pipeline right-of-way, thence along said right-
of-way N 55°16'21" W 401.47 ft., thence N 20°00'00" E 120.88 ft.,
thence N 10°00'00" E 516.65 ft. thence N 11°41'18" E 480.63 ft.,
thence N 56°30'00" W 560.24 ft., thence N 60°00'00" W 79.12 ft.
thence S 29°00'00" W 242.73 ft., thence S 61°00'00" E 43.00 ft.,
thence S 29°00'00" W 66.00 ft., thence N 61°00'00" W 230.00 ft. to
a point on a 423.00 ft. radius curve to the right, thence along
said curve 44.36 ft., thence S 47°00'00" W 414.70 ft., thence
S 43°00'00" W 279.68 ft. to a pipeline right-of-way, thence
along said right-of-way N 55°16'21" W 303.15 ft., thence S
43°00'00" W 23.62 ft. to a point on a 62.50 ft. radius curve
to the right (radial bearing S 74°52'13" W), thence along
said curve 32.81 ft. to a point on the SW side of a pipeline
right-of-way, thence along said right-of-way S 55°16'21"
E 280.77 ft., thence S 43°00'00" 290.41 ft., thence N 73°45'00"
W 458.74 ft., thence N 13°30'00" E 357.00 ft., thence N 55°16'21"
W 304.21 ft., thence N 34°43'39" E 100.00 ft. to a point on the
SW side of a pipeline right-of-way, thence along said right-
of-way S 55°16'21" E 511.97 ft. to a point on a 62.50 ft. radius
curve to the right, (radial bearing S 35°29'19" E), thence along
said curve 50.85 ft., thence N 43°00'00" E 14.03 ft. to a point
on the NE right-of-way line of a pipeline, thence along said
right-of-way N 55°16'21" W 281.93 ft., thence N 43°00'00" E
373.46 ft., thence N 47°30'00" E 363.51 ft., thence N 34°00'00"
E 619.51 ft., thence S 88°45'00" E 301.00 ft. to a point on a
413.00 ft. radius curve to the right, (radial bearing N 88°45'00"
E 301.00 ft. to a point on a 413.00 ft. radius curve to the right,
radial bearing N 88°45'00" W), thence along said curve 48.66
ft., thence S 83°00'00" E 192.07 ft. thence S 58°02'07" E 219.78
ft., thence S 42°00'00" E 221.44 ft. to a point on a 254.17 radius
curve to the right (radial bearing S 40°15'08" E), thence along
said curve 83.91 ft., thence S 50°20'20" E 301.14 ft., thence
S 59°04'53" E 292.11 ft., thence S 69°00'00" E 176.57 ft. to a
point on a 1500.00 ft. radius curve to the right (radial bearing
S 64°42'09" E), thence along said curve 1000.14 ft., thence
N 63°30'00" E 945.33 ft. to a point on a 445.00 ft. radius curve
to the left, thence along said curve 407.75 ft., thence N 11°00'00"
E 80.00 ft., thence N 79°00'00" W 50.00 ft., thence N 11°00'00"
E 100.00 ft., thence S 79°00'00" E 200.00 ft. to a point on a 1000.00
ft. radius curve to the right, thence along said curve 368.86 ft.,
thence N 35°00'00" E 292.55 ft. to a point on a 818.83 ft. radius
curve to the right, thence along said curve 786.02 ft. to the point
of beginning. Containing 64.52 acres more or less.

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Section 2. It is proposed that the County Service Area provide road

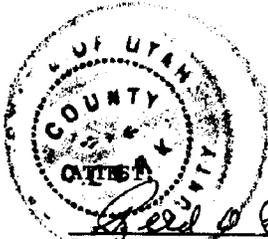
maintenance, including snow removal, for the territory described in Section 1.

Section 3. The name of the proposed County Service Area is the Summit County Service Area No. 6.

Section 4. A property tax will be annually levied on all taxable property located within the proposed County Service Area to pay for services to be furnished by the proposed County Service Area.

Section 5. On September 6, 1977, at 2:30 p.m. at the Summit County Courthouse, Coalville, Utah, the Board of County Commissioners of Summit County will meet and hold a public hearing at which time and place all interested persons may appear and protest, either orally or in writing, the creation of the proposed County Service Area or the furnishing of the proposed services. Property owners owning taxable property in the proposed County Service Area may file written protests with the Board of County Commissioners of Summit County, State of Utah.

DATED this 20 day of September, 1977.



Reed D. Pace
Reed D. Pace, Summit County Clerk

APPROVED AS TO FORM:

by Robert W. Adkins
County Attorney

BOARD OF COMMISSIONERS OF SUMMIT COUNTY:

Alva J. Dearden
Alva J. Dearden, Chairman

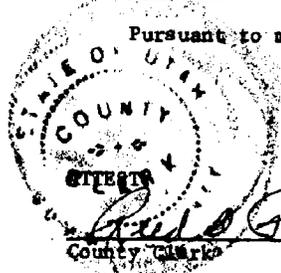
Dale J. Leavitt
Dale J. Leavitt, Commissioner

William Wallin
William Wallin, Commissioner

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Section 7. This Ordinance shall be effective immediately upon publication.

Pursuant to motion duly made and seconded, the meeting was adjourned.



Reed D. Pace
County Clerk

Alva J. Dearden
Alva J. Dearden, Chairman



STAFF REPORT

To: County Council
Report Date: April 17, 2013
Meeting Date: April 17, 2013
Author: Brian Bellamy
Description: Status of South Summit Ambulance
Type of Item: Discussion and Possible Decision

A. Background

On July 20, 1982 the Summit County Commission met to discuss the state of ambulance service in Summit County. At the time ambulance service was being provided by Holy Cross hospital. This led to a series of meetings that formally established three local ambulance service districts, North Summit, Park City and South Summit.

Both North and South Summit created 501-C-3 non-profit organizations under the names of North Summit Emergency Medical Technicians Association and South Summit Emergency Medical Technicians Association respectively. Summit County ran payroll for both associations. In 2001 Park City Fire District, which already ran Park City Ambulance, took responsibility for North Summit Ambulance. South Summit Ambulance has continued to be supervised at the local ambulance level with Summit County continuing to run their payroll.

Over the years the status of South Summit Ambulance employees has been discussed extensively at the County. Are they County employees or are they employees of South Summit Ambulance? Currently, although we perform payroll for South Summit Ambulance, the County does not recruit for any South Summit positions, participate in setting salaries, handle their personnel matters and we do not list their employees as part of Summit County. But, because payroll is handled by Summit County we are liable for Worker's Comp issues and Unemployment claims. Since 2010 South Summit Ambulance has had two Worker's Comp claims and three Unemployment Insurance claims that Summit County paid. With the 2014 Healthcare Reform Laws coming into effect, it appears we may need to offer health insurance to on-call employees.

Currently all of South Summit Ambulance's finances run through Summit County and we subsidize the ambulance operation, similarly to Park City Ambulance.

B. Recommendation

Staff recommends:

1. We create a contract for South Summit Emergency Medical Technicians Association to perform ambulance services in the South Summit area.
2. As a separate 501-C-3 non-profit organization South Summit Emergency Medical Technicians Association run their own payroll and is responsible for their Worker's Comp, Unemployment Insurance, and any other operational business expense.
3. Summit County continues our annual subsidy of South Summit Emergency Medical Technicians Association.

Attachments A - South Summit Emergency Medical Technicians Association By-Laws
 B – South Summit Emergency Medical Technicians Association Current
 Certificate of Existence

BY-LAWS
OF THE
SOUTH SUMMIT EMERGENCY MEDICAL TECHNICIANS ASSOCIATION

ARTICLE I
NAME

Section 1. Name

The name of this corporation is the South Summit Emergency Medical Technician Association (hereinafter the Association).

Section 2. Office

The official address for the Association will be: Post Office Box 298 Kamas, Utah 84036.

ARTICLE II
MEMBERSHIP

Section 1. Classes of Members

The membership of the Association shall be divided into two classes as follows:

- a. Active members: Those persons who have been certified as Emergency Medical Technicians and certified as such by the State of Utah, applied for membership, paid all fees and dues as required by these By-laws, and who have been notified of their acceptance into active membership.
- b. Probationary members: Those persons who are actively pursuing Emergency Medical Technician certification from the State of Utah.

Section 2. Charter Membership

A charter member is an individual who shall have paid dues before June 30, 1983.

Section 3. Election of Members

Any person seeking membership in this Association shall submit a written signed application, on a form approved by the Board of Directors.

Section 4. Voting Rights

Each active member shall be entitled to cast one vote on all matters submitted to a vote of the members.

Section 5. Termination of Membership

The Board of Directors, by affirmative vote of two-thirds of a quorum of the Board, may suspend or expel a member upon showing that said member was engaged in such conduct which is injurious to the Association. Upon a majority vote of those directors present at any regularly constituted meeting, the membership may be terminated of any member who shall default in the payment of his dues for a period of three months after they become due.

Section 6. Resignation

Any member may resign by filing a written resignation with the secretary, but such resignation shall not relieve the member so resigning of the obligation to pay any assessments or other charges theretofore accrued and unpaid.

Section 7. Reinstatement

On written request signed by a former member and filed with the secretary, the Board of Directors, by affirmative vote of two-thirds of a quorum, may reinstate such former member to membership on such terms as the Board of Directors may deem appropriate.

Section 8. Transfer of Membership

Membership in this Association is not transferable or assignable.

Section 9. Limited Number of Members

Membership shall have twelve (12) members in the Association minimum.

Section 10. Attendance of Members

Members must maintain a minimum of 25 hours documented CME annually. (Added May 31, 2004)

Section 11. Priority of Service

All Association members volunteering for more than one community service organization will give this Association priority when their prospective crew is scheduled to be on call.

ARTICLE III
MEETINGS OF MEMBERS

Section 1. Procedure

The rules contained in Robert's Rules of Order shall govern the Association in all meetings except when they are inconsistent with the By-laws of the Association.

Section 2. Annual Meeting

The annual meeting of the Association shall be held on the last Monday of November each year in Kamas, Utah.

Section 3. Special Meetings

Special meetings of the members may be called by the President, the Board of Directors, or not less than ten percent (10%) of the members having voting rights, at a place designated by the Board of Directors.

Section 4. Notice of Meetings

The monthly meeting shall be held the last Monday of the month in Kamas Valley.

Section 5. Quorum

Members holding ten percent (10%) of the vote that may be cast at any meeting shall constitute a quorum at such meeting. If a quorum is not present at any meeting of members, a majority of the members present may adjourn the meeting from time to time without further notice.

Section 6. Voting by Mail

All matters to be voted upon by members at special meetings and all matters to be voted at regular meetings including the election of officers may be voted upon by mail in such manner as the Board of Directors shall determine.

ARTICLE IV
BOARD OF DIRECTORS

Section 1. General Powers

The affairs of the Association shall be managed by its Board of Directors. The Board of Directors shall determine the general policies of the Association within the limit prescribed by the Constitution, Articles of Incorporation and By-laws. It shall counsel the President in the conduct of his/her office. It shall approve the expenditures and budgets and shall make such provision for auditing of records as it may deem proper for the protection of the funds and property of the Association. It shall consider all applications for membership. The right to accept or reject any membership application shall be served exclusively to the Board of Directors.

Section 2. Makeup

The Board of Directors shall consist of the President, President-elect, Secretary and Treasurer of the Association, also one other member of the Association not holding any office. This board member shall represent the members' views. This position on the Board can be by membership vote or by appointment of the Board of Directors.

Section 3. Regular Meetings

A regular meeting of the Board of Directors shall be held without any other notice than this By-law immediately after, and at the same place as the annual meeting of members. The Board of Directors may provide, by resolution, the time and place for holding additional regular meetings without other notice than such resolution. Additional regular meetings shall be held within Kamas Valley in the absence of any designation in the resolution.

Section 4. Quorum

Two thirds of the members of the Board of Directors shall constitute a quorum for the transaction of business at any meeting of the Board; but if less than 10 percent of the members of the Board of Directors are present at any meeting, a majority of the directors may adjourn the meeting from time to time without further notice. The Board of Directors shall include the officers of the Association and may include active Emergency Medical Technicians of the South Summit Ambulance Service who are actively serving with the vehicle.

Section 5. Procedure

The rules contained in Robert's Rules of Order shall govern the Board of Directors in all meetings except when they are inconsistent with the By-laws of the Association.

ARTICLE V
OFFICERS

Section 1. Who May Serve

Only active members in good standing shall be eligible to hold office. Should the right of a member to hold office be questioned, the records of the Association shall be conclusive evidence.

Section 2. Officers

The officers of the Association shall be President, President-elect, and Secretary and Treasurer. No two offices may be held at the same time by the same person.

Section 3. Term of Office and Election

The regular term of office for all officers of the Association shall be for a period of one (1) year. New offices may be created and filled at any meeting of the Board of Directors. Each officer shall hold office until his successor has been duly elected and qualifies. Elected officers shall take office at the conclusion of the annual meeting.

Section 4. Removal

Any officer elected or appointed by the Board of Directors may be removed by the Board of Directors whenever in its judgment the best interest of the Association would be served thereby. Any officer elected by the membership of the Association may be removed by the affirmative vote of two-thirds of those active members casting ballots, as provided in these By-laws, at any regular or special meeting called for the purpose of considering such removal. Any such removal by the Board of Directors of the members shall be without prejudice to the contract rights of any of the office so removed.

Section 5. Vacancies

A vacancy in any office because of death, resignation, removal, disqualification or otherwise shall be filled by the Board of Directors for the unexpired portion of the term.

Section 6. Powers and Duties

The several officers shall have such powers and shall perform such duties as may from time to time be specified in resolutions or other directives of the Board of Directors. In the absence of such specifications, each officer shall have the powers and authority and shall perform and discharge the duties outlined as follows:

- a. The President shall preside at all meetings of the Association and the Board of Directors. He shall appoint all committees other than standing committees; direct and coordinate the activities of all officers and committees, and perform such other duties as prescribed by the Board of Directors. He shall represent South Summit Ambulance at the local EMS quarterly meetings. He shall act as representative for Advanced Life Support meetings with resource hospital personnel.
- b. The President-elect shall assume duties of the President in his/her absence. He shall represent South Summit EMT Association at the quarterly EMS meetings. He shall perform other duties as assigned by the President.
- c. The Secretary and Treasurer shall be responsible for keeping all records of the Association. He/she shall keep minutes of all meetings of the Association, prepare notices of such meetings, and perform other duties as may be assigned by the President. He/she shall also collect all fees and dues, disburse all monies, and keep such accounts as may be decided upon by the Board of Directors. He shall submit his books for audit when required and surrender his records to his successor when the latter has been duly elected to office.

ARTICLE VI
CONTRACTS, CHECKS, DEPOSITS AND FUNDS

Section 1. Contracts

The Board of Directors may authorize any officer or officers, agent or agents of the Association, in addition to the officers so authorized by By-laws, to enter into any contract or execute and deliver any instrument in the name and on behalf of the Association, and such authority may be general or may be confined to specific instances.

Section 2. Checks, Drafts or Orders

All checks, drafts or orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Association shall be signed by such officer or officers, and in such a manner as shall from time to time be determined by resolution of the Board of Directors. In the absence of such determination by the Board of Directors, such instruments shall be signed by the Secretary and Treasurer or an assistant treasurer and counter-signed by the President of the Association.

Section 3. Deposits

All funds of the Association shall be deposited within three (3) business days of receipt of such funds to the credit of the Association in such banks, trust companies, or other depositories as the Board of Directors may select.

Section 4. Gifts

The Board of Directors may accept on behalf of the Association any contribution, gift, bequest or devise for any purpose of the Association.

ARTICLE VII
BOOKS AND RECORDS

The Association shall keep correct and complete books and records of accounts and shall keep minutes of the proceedings of its members, Board of Directors, and shall keep a record giving the names and addresses of the members entitled to vote. All books and records of the Association may be inspected by any member, or his agent or attorney for any proper purpose at any reasonable time.

The Constitution, Articles of Incorporation, By-laws and current official Directory shall be available to all members. A copy of the Constitution, By-laws and current official Directory shall be transmitted to all new members by Secretary and Treasurer.

ARTICLE VIII
FISCAL YEAR

The fiscal year of the Association shall extend from January first (1) through December thirty-first (31) of the calendar year.

ARTICLE IX
DUES AND FEES

Section 1. Annual Dues

The annual dues for active members and probationary members shall be \$1.00.

Section 2. Payment of Dues

Dues are payable upon notification of acceptance of membership and at the annual meeting each year thereafter.

ARTICLE X
SEAL

The Board of Directors shall provide a corporate seal.

ARTICLE XI
WAIVER OF NOTICE

Whenever any notice is required to be given under the provisions of Utah Code Annotated, Sec. 16-6-1 et seq, or under the provision of the Articles of Incorporation or By-laws of the Association, a waiver thereof in writing signed by the person or persons entitled such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

ARTICLE XII
AMENDMENTS

These By-laws may be altered, amended or repealed and new By-laws may be adopted by a majority of the Directors at any regular meeting or any special meeting, if at least thirty (30) days written notice is given of the intention to alter, amend, or reveal or to adopt new By-laws at such meeting.

Dated this 22nd day of November 1982

Bessie B. Russell
Secretary and Treasurer

Amended November 1986
Amended November 1990
Amended September 1994
Amended May 2004

Amendments

AMENDMENT OF ARTICLE III ARTICLE OF INCORPORATION

ARTICLE III

Purpose: The Corporation's purpose is to provide an ongoing and organized pool of available, trained and certified Emergency Medical Technicians in the southern area of Summit County for ambulance operations and other civic functions requiring or benefiting from Emergency Medical Technician's services. This Corporation is organized and operated exclusively for non-profit purposes. No part of any net earnings shall insure to the benefit of, or be distributed to, any member, officer, trustee or other private persons.

This organization is organized exclusively for charitable purposes within the meaning of Section 501 (c) (3) of the Internal Revenue Code.

Notwithstanding any other provision of these articles, the Corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under Section 501 (c) (3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue Service law) or (b) by a corporation's contributions which are deductible under Section 170 (c) (2) of the Internal Revenue Code of 1986 (or corresponding provisions of any future United States Internal Revenue Service law).

Upon the dissolution of this Corporation, assets shall be distributed for one or more exempt purposes within the meaning of Section 501 (c) (3) of the Internal Revenue Code (or corresponding section of any future tax code), or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such assets not so disposed of shall be disposed by the Court of Common Pleas of the county in which the principal purpose or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purpose.



Utah Department of Commerce
Division of Corporations & Commercial Code
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Salt Lake City, UT 84114-6705
Service Center: (801) 530-4849
Toll Free: (877) 526-3994 Utah Residents
Fax: (801) 530-6438
Web Site: <http://www.commerce.utah.gov>

04/08/2013
831976-014004082013-156998

CERTIFICATE OF EXISTENCE

Registration Number: 831976-0140
Business Name: SOUTH SUMMIT EMERGENCY MEDICAL
TECHNICIANS ASSOCIATION, THE
Registered Date: April 22, 1983
Entity Type: Corporation - Domestic - Non-Profit
Current Status: Good Standing

The Division of Corporations and Commercial Code of the State of Utah, custodian of the records of business registrations, certifies that the business entity on this certificate is authorized to transact business and was duly registered under the laws of the State of Utah. The Division also certifies that this entity has paid all fees and penalties owed to this state; its most recent annual report has been filed by the Division (unless Delinquent); and, that Articles of Dissolution have not been filed.



Kathy Berg
Director
Division of Corporations and Commercial Code

MINUTES

SUMMIT COUNTY
BOARD OF COUNTY COUNCIL
WEDNESDAY, MARCH 20, 2013
SHELDON RICHINS BUILDING
PARK CITY, UTAH

PRESENT:

Claudia McMullin, *Council Chair*
Chris Robinson, *Council Vice Chair*
Roger Armstrong, *Council Member*
Kim Carson, *Council Member*
David Ure, *Council Member*

Anita Lewis, *Assistant Manager*
David Brickey, *Attorney*
Dave Thomas, *Deputy Attorney*
Jami Brackin, *Deputy Attorney*
Kent Jones, *Clerk*
Karen McLaws, *Secretary*

CLOSED SESSION

Council Member Armstrong made a motion to convene in closed session to discuss personnel. The motion was seconded by Council Member Carson and passed unanimously, 5 to 0.

The Summit County Council met in closed session from 1:15 p.m. to 1:50 p.m. for the purpose of discussing personnel. Those in attendance were:

Claudia McMullin, *Council Chair*
Chris Robinson, *Council Vice Chair*
Roger Armstrong, *Council Member*
Kim Carson, *Council Member*
David Ure, *Council Member*

Anita Lewis, *Assistant Manager*
Dave Thomas, *Deputy Attorney*
Brian Bellamy, *Personnel Director*

Council Member Ure made a motion to dismiss from closed session to discuss personnel and to convene in closed session to discuss property acquisition. The motion was seconded by Council Member Armstrong and passed unanimously, 5 to 0.

The Summit County Council met in closed session from 1:50 p.m. to 2:00 p.m. for the purpose of discussing property acquisition. Those in attendance were:

Claudia McMullin, *Council Chair*
Chris Robinson, *Council Vice Chair*
Roger Armstrong, *Council Member*
Kim Carson, *Council Member*
David Ure, *Council Member*

Anita Lewis, *Assistant Manager*
Dave Thomas, *Deputy Attorney*

Council Member Armstrong made a motion to dismiss from closed session and to convene in regular session. The motion was seconded by Council Member Robinson and passed unanimously, 5 to 0.

REGULAR MEETING

Chair McMullin called the regular meeting to order at 2:10 p.m.

- **Pledge of Allegiance**

CONSIDERATION AND POSSIBLE DECISION ON APPEAL OF ROCKPORT ROCKS CONDITIONAL USE PERMIT; SEAN LEWIS, COUNTY PLANNER

Chair McMullin asked how much time the parties would need to present their case and stated that the Council will reserve an hour for discussion and deliberation.

Jodi Hoffman, representing the appellants, explained that land use is a balance of an applicant's property rights, the affected parties' property rights, and the community's commitment to planning for growth and economic development. She claimed that this Conditional Use Permit (CUP) should fail on appeal because it did not meet the criteria of the law. She stated that the application is for development on a slope in excess of 30%, which is prohibited by the Eastern Summit County Development Code. The Planning Commission not only failed to mitigate the impacts of the application but approved a use that is far more intense than what the applicant applied for and was not analyzed by the service providers. She stated that the use would destroy property values in its proximity and fails to meet the legal criteria required of a CUP. She noted that the Memorandum of Points of Authorities on Appeal the appellant submitted on January 9 was not included in the packet provided by Staff. Chair McMullin confirmed that the Council Members have that Memorandum. Ms. Hoffman explained that offers of proof would come from a number of individuals whom she named, and she listed a number of documents she had submitted or would submit for the Council Members to review and consider.

Ms. Hoffman read from the Code that before an application for a CUP is approved by the Planning Commission, it shall conform to the following criteria. She stated that language is very clear, and there is no leeway. She explained that much of the testimony the appellants will offer relates to this land use being incompatible with the surrounding uses and the Planning Commission acting on a false premise that the rock quarry was hidden. She stated that the quarry may be hidden now, but it will not be hidden once the excavation starts. She also stated that the water rights offered for this use are from Mountain Regional Water, and she provided a map of Mountain Regional's service area showing that this quarry is not included in their service area. She indicated that the Siddoways have water rights for agricultural purposes, but a rock quarry is an industrial use, and an agricultural water right cannot be used for an industrial use. The Siddoways claim they have a will serve letter from Mountain Regional, but those water rights are not approved for use in this area, so she asserted that the Siddoways do not have a water right. She noted that the Code states that no development shall occur on slopes greater than 30%, and she provided a slope analysis of the proposed 2-acre quarry site showing that it is all on 40% or 50% slopes. She noted that Staff has indicated that a decision was made at some point in time that they would not apply this criterion to non-vertical construction, but that is not in Staff's purview to determine, and Staff decided to not apply the law in this circumstance. She stated that there is no written document stating that this criterion does not apply to vertical

construction, and in her mind, that means there is no decision. Since the Council is the final appeal authority on interpretation or application of the Code, she asserted that they cannot circumvent their authority as the interpreter of the Code and uphold Staff's interpretation of development. She maintained that, if non-vertical development is not development, it would not require a permit. She claimed that it is development, and development on slopes far in excess of 30%, which is absolutely prohibited. To suggest that the Council cannot make that decision and that only the Board of Adjustment can make that decision flies in the face of Staff's description to the Council and the appellant, flies in the face of State law, and flies in the face of common sense as to what an appeal is. Ms. Hoffman noted that State Code states that the County is bound by the plain meaning of the words of its Code. She asserted that there is no ambiguity, just a decision by the Planning Director that he did not want to apply the Code in this instance, and the Council has the right to determine whatever planning law they want to have within certain parameters and an obligation to enforce the laws they have enacted. She referred to a private property Ombudsman's opinion which states that the Planning Commission has no authority to interpret the Code in a manner that fails to give meaning to the plain language of the Code.

Council Member Robinson requested that Ms. Hoffman address her argument regarding the noise ordinance.

Ms. Hoffman explained that the reason slopes make a difference is that it is difficult to get things to grow back once an area is disturbed. She provided photographs to demonstrate her point and to show the impacts on the neighboring properties. Council Member Armstrong commented that, based on the site visit, it did not appear that Ms. Hoffman's photographs are very precise. Eric Bergeson stated that his home is across SR 32 to the south of the quarry, and he would see more of the quarry than the photograph shows. Council Member Armstrong stated that, having walked the site, it appeared that there was only a very narrow view corridor to the houses further to the west. He believed the photographs are confusing given his memory of the site visit.

Chair McMullin swore in those who intended to provide testimony.

Ms. Hoffman made the point that, not only is there a prohibition on development on slopes greater than 30%, but that actually matters because it will be seen. The reason steep slopes are regulated is because they are visually prevalent.

Ms. Hoffman noted that another criterion is that the developers shall not contribute significantly to the degradation of air quality in the County. The Planning Commission required the operator to apply water for dust control and submit to a voluntary plan to control dust particulates, but the State does not regulate particulates, so she pointed out that no one will be watching. The Planning Commission and Staff deferred to something that does not exist, and she believed they should have imposed a condition that there would be no fugitive dust from the site. She stated that watering will not cover dust control during blasting and much of the excavation operation. She stated that conditional uses are not allowed if they cannot mitigate off-site impacts.

With regard to noise, Ms. Hoffman noted that the Code says non-agricultural development shall not generate noise equal to or exceeding 60 dB at the property line which would result in material adverse impacts relating to the use of the land in question or adjacent land or its occupants. She believed the Planning Commission confused the noise study with the OSHA criteria for an employee on a job site. She noted that they admitted multiple times that the noise would be loud but allowed the use and said they mitigated the use by controlling the hours of

operation. Ms. Hoffman stated that the operations are essentially dawn to dusk six days a week, and the operation will be loud all day. Because they cannot replicate the noises that will occur on the site, the appellants came up with a highly scientific method that contours the noise. She stated that they selected the smallest possible equipment that could be used on the site in order to not exaggerate, and at the core of the site, the noise would exceed 90 dB. She noted that the core of the site is immediately on the property line, and they have evidence from the Keller family that they have a right to use their property, too, and the neighbors will not build their dream home on their property next to a rock quarry. Council Member Robinson confirmed with Ms. Hoffman that she believes they should measure the dB level on an adjacent property regardless of whether the owner protests or not. Council Member Robinson asked if Mr. Keller represents the immediately adjacent property owner. Ms. Hoffman replied that she was mistaken. Brandon Richins confirmed that the Keller property is not immediately adjacent to the proposed quarry but is further up and looks down on the quarry. Ms. Hoffman stated that the Council is here to protect the adjacent property owner, too, and that property owner has a right to expect the noise ordinance to be applied. She stated that, because of the chosen path for the trucks, the noise levels at the Stonebrook/Smith residence will exceed 73 dB, which is significant urban noise all day long, six days a week. One question is what constitutes a material impact. What a person buys when they buy their property is the quiet use and enjoyment of their property, and she stated that this will definitely impact that for at least the two adjacent parcels. She explained that the primary use and enjoyment of those properties is during the daytime in the summer when the quarry will have its highest use, and she could not think of a way to mitigate the noise from the immediately adjacent parcel.

Ms. Hoffman stated that zoning in eastern Summit County has existed since 1995, and many of the existing quarries pre-existed the Code and CUP criteria. She asked that the Council not make the same mistakes made prior to 1995, because they have the tools to prevent it.

Ms. Hoffman referred to the criterion regarding impact on public services, facilities, or programs provided to the general public and stated that the primary public service here is roads. She noted that the applicant applied for a small operation of three to five trucks per day that would access onto what could be considered an abandoned County road that only serves a few uses. She claimed that using this small portion of County road would exempt the applicant from analysis by UDOT, because there would not be a new entrance onto SR 32, and UDOT must accept traffic from a County road onto a State road. She noted that there are many bicyclists on SR 32, with no room for them now, and there will be much less room for them in the future. She stated that it takes two football fields for a large dumptruck to stop, which is a health, safety, and welfare concern. She stated that volume of truck traffic, noise, and risk on the roads is directly related to the number of vehicles permitted. When the Planning Commission proposed limiting the truck traffic, the applicant told them they would not want him to be unsuccessful, so the Planning Commission suggested 140 truck trips a month. The applicant said that would be too confining, so the Planning Commission finally agreed to allow 1,960 truck trips in any rolling seven-month period. She stated that this is a sparsely traveled road, and this would have a dramatic impact on traffic with no oversight. If there is an accident and UDOT decides to put in an acceleration/deceleration lane, the taxpayers would pay for it, but she noted that the Council could require the applicant to pay for that as a condition of the CUP. She stated that every gravel pit she has seen has an acceleration/deceleration lane, because the trucks are slow to get moving and slow to stop and create a traffic hazard. She claimed that UDOT was told there would be a small amount of truck traffic, but what was approved was a huge amount, and UDOT thought

that they did not have authority to regulate between a County and State road, not that there is not a safety issue.

Ms. Hoffman presented a statement from Virginia Pia, who is Ruth Richins' mother and has owned her property since the 1950's. She noted that every property in the area has enjoyed the peace and tranquility of their property and are outdoor users of their property, and traffic and noise would be a problem. She stated that Ms. Pia fears for the safety of her grandchildren. She presented affidavits from Brandon Richins and Brooke Richins, Leon Peterson, Eric Bergeson, the Krajekis, Terry Smith, and Michael Stonebrook.

Leon Peterson identified on a site map where his property is located and stated that it is one of the most valuable properties along the river. He stated that his friend, Robert Garff, has been on his property on many occasions and lamentably states that Mr. Peterson has water. He stated that there are very few places with water running through them like his property. He stated that they hold incredible concerts on their property with many important people and dignitaries, and there is no place like it. He stated that his lot has the most direct view of the proposed quarry.

Ms. Hoffman stated that, without understanding the surroundings and the investments people have made in their property, it would be hard to make a determination. She owns property immediately across the river from the Petersons and has invested her life savings into it. She is just completing her agricultural buildings and will soon start on the residence. She has a small horse breeding operation, and loud noises and horses do not go together. She commented that agriculture is one of the highest values in eastern Summit County, and this quarry operation would be antithetical to that. She believed there is ample reason for the Council to reverse the Planning Commission's decision. If they want gravel pits on 30% slopes, they could change the law to allow it, but she asked that they not ignore the law in order to allow it. She stated that the approval should be limited to what has been applied for, not the outside potential for the site. She stated that the noise criteria should follow the permit, and there should be no off-site adverse noise impacts. Once this is approved, the County noise ordinance would apply, which only applies at night. She stated that this would be an opportunity to prevent this effect on the neighbors' properties. She noted that Terry Smith and Michael Stonebrook requested seismic monitors for the blasting, as they have an older home adjacent to the blasting, and she believed the Planning Commission overlooked that. She stated that a condition requiring no fugitive dust would be better than a condition stating that they have to water the roads. If they had a condition that there shall be no off-site blasting impacts, there would be recourse if those impacts were to occur. Without those types of conditions, there would be no recourse for the neighbors.

Ted Barnes, representing Wesley Siddoway and Rockport Rocks, recalled that Mr. Siddoway applied for a CUP over a year ago. He went to the State first to determine the criteria for a rock quarry. He went to UDOT to determine the impacts, and they agreed with the use. He checked with Mountain Regional Water to see if they would supply him with water, and they agreed. Only then did he apply for the CUP, and a stone quarry is an allowed conditional use in an Agriculture Protection (AP) Zone. The County has already determined that this is an appropriate use if the impacts can be addressed. Mr. Barnes stated that Mr. Siddoway appeared before the Eastern Summit County Planning Commission six times, four of which were public hearings. He acknowledged that there are passionate concerns in every land use decision, and he respects the feelings that have been expressed. He noted that there are emotional and property rights on the Siddoway side of this issue as well. He did not believe that because the Planning Commission asked questions about OSHA and other issues meant they were confused about them. In fact, he

believed they were careful and thorough and proposed conditions that in their unanimous opinion would reasonably mitigate the potential impacts of this project. Each condition was accepted by Mr. Siddoway, and he agreed to operate within the limits of a permit.

Mr. Barnes explained that State law says a conditional use shall be approved if reasonable conditions are proposed or can be imposed to mitigate the reasonably anticipated detrimental effects of the proposed use. It does not say there can be no effects, but they must be reasonably mitigated. If they can be reasonably mitigated, the conditional use shall be approved, which is mandatory. If the effects cannot be reasonably mitigated, the conditional use may be denied, which is discretionary. If they can be addressed, it is incumbent on the Council to approve it.

Mr. Barnes appreciated that the Council visited the site and noted that the proposed quarry will be located in a side canyon. If someone were to stand at the top of the demarcation line, they could see some properties in the area, but the operations will not be on the top of the ridge; they will be behind it. He explained that sound travels in a line of sight, and when it hits a sound wall, it goes up. Creating this quarry within the 2-acre limit would create probably the largest sound wall in Summit County, and all the work would be on the back side of it. He noted that this is not proposed as a gravel pit; it is proposed as a quarry for architectural and landscaping stone. Blasting is not a common activity in a stone quarry, as it is in a gravel pit, and blasting and crushing would be incidental to the rock quarry operation.

Mr. Barnes clarified that this is not a trial. It is a de novo proceeding, which means that the Council sits as if it were the Planning Commission, and the burden on appeal is on the appellant to show that the decision below was erroneous. He noted that the Planning Commission decision was unanimous and was made after six separate hearings. He explained that in a de novo consideration, they focus on facts and owe no deference to legal determinations made below.

Mr. Barnes recalled that it has been suggested that the application for approval of the quarry was limited to three to five trucks, but that is not in the application. When the applicant went to UDOT to see if there would be an impact on the State highway, they asked what the impact would be, and the applicant believed it would average three to five trucks. UDOT was all right with that, and if the traffic were to be a lot more, they would look at it again. He noted that the County road is also used by a school bus, which also turns off the State highway, and snow plows clear that road. He explained that the snow plows are the same size as the truck Mr. Siddoway would use in his operation, and snow plows and school buses are able to turn on and off the road without any problem. He believed that it was clear from the site visit that the quarry workings will never be seen unless someone goes up the canyon where it is located.

Mr. Barnes explained that Mountain Regional Water has wells on the Siddoway property, and Mr. Siddoway is talking about using a water truck to spread water for dust suppression. It does not matter where he picks up that water, and Mountain Regional offered to provide him water for dust suppression. Mr. Siddoway is entitled to rely upon that source, and if he has to truck it from another location where Mountain Regional can deliver it, there is nothing wrong or illegal or unethical about that process. The fact that they plan to provide water does not mean they are running pipes, although they already have pipes on the Siddoway property.

Mr. Barnes stated that there are two issues, one being whether this is development and the other being sound. He recalled that Ms. Hoffman suggested that construction on a 30% slope is absolutely prohibited and that the Council must read the Code without common sense or

referring to past precedent. He explained that the Richins gravel pit CUP was granted in August 2004 and involves greater than 30% slopes. The Rowser pit was given a CUP in May of 2009. The D & C Transport pit and construction yard was permitted in June 2004. Mountain Valley Stone rock quarry was granted in July 2003. The Mountain Regional pump house near the Siddoway property goes into a slope and was permitted in 2003. The substation adjacent to it has a slope of about 35%. The Promontory subdivision, Bridge Hollow subdivision, Cherry Canyon Ranches, and the Blue Sky subdivisions all traverse as part of their development slopes in excess of 30%, and Ms. Hoffman's argument that the County has acted illegally in each of those subdivisions and CUPs is wrong as a matter of law. She is suggesting a change in the existing standard, not a description of the existing standard. In Summit County, slopes necessarily have to be addressed, and as long as structures are not put there and there is sensitivity in the siting, every one of the quarries has been permitted under the existing Development Code, and no subdivisions are allowed to have structures on slopes greater than 30%, although roads and other infrastructure may traverse slopes greater than 30%. No structures are contemplated on slopes greater than 30% in this proposal. He referred to the photographs presented by Ms. Hoffman and explained that trying to impose a vertical plane on a horizontal photograph confuses the dimensions. He stated that the red lines on the photograph may describe the ridgeline, but they do not describe what happens on the back side of the ridge. Even if they excavate to the full extent, they would excavate from below and behind those lines.

With regard to air quality, Mr. Barnes stated that agreeing to comply with a State voluntary plan that is not required shows a significant commitment. He believed watering for dust suppression would be an effective plan to mitigate the reasonably anticipated detrimental effects.

Mr. Barnes addressed the noise studies and noted that Mr. Brennan was told to analyze an area where the rock resource would be loosened by explosive charges, excavated with a bulldozer or a power shovel, and loaded onto dump trucks. The trucks would transport the large rock to a crushing and screening facility. The rock would be loaded into a crusher with a wheel loader, and crushed aggregate would then be transported out of the site by 50-ton transport trucks. He explained that almost none of that is correct in applying to this application. He recalled that Mr. Siddoway explained at the site visit that he uses a track hoe, which is the only way to preserve this kind of rock. Crushing would be a byproduct of this operation; this is not a crushing facility. He noted that Mr. Brennan suggests that 5 dB is the point at which noise becomes material and points out that noise is a subjective reaction and that perceptions of sound are highly subjective from person to person, yet none of the residents were tested, nor was any empirical testing done by Mr. Brennan. Instead, he hypothesized that the noise would emanate from the front side of the hill with no sound wall. All of his drawings suggest that nothing will interrupt the sound, but the actual location is a mitigation, because it is behind the ridge. He noted that Mr. Brennan talks about wide variations of individual thresholds, but none of them are measured. He also discusses the ambient noise level, and Mr. Barnes stated that is very important and that the report states that a change of at least 5 dB is required before any noticeable change in human response is expected. He noted that Ms. Hoffman's description of Mr. Brennan's report and what the report actually states are different. She indicates that Mr. Brennan used the smallest possible equivalent, but his report does not say that; in fact, it does not say what kind of equipment he used in his report. Mr. Brennan's report states that he used a bulldozer based on existing mining operations in Nevada and California. Mr. Barnes maintained that existing mining operations use the largest equipment feasible for their site. Mr. Brennan also hypothesizes a steady state operation of a bulldozer, a crusher, and wheel loader, and 50-ton transport trucks. Mr. Barnes noted that the maximum weight for a 10-wheel truck proposed by the applicant is about 70,000

pounds. He noted that Mr. Brennan stated that the facility in his report is an aggregate production facility, where rock is loosened by explosives, a rock drill, then excavated and transported to a crusher, and transported off site by a 50-ton transport truck. He noted that Mr. Siddoway's site is too small for those operations and none of that equipment will be used at this site except a haul truck, which is the same size as the snow plow that currently plows snow in this area that no one has objected to. He stated that Mr. Brennan hypothesizes the impact of this steady state operation in six areas surrounding the proposed rock quarry. The area that Mr. Brennan indicates will have the highest ambient noise is around the corner from the pit, and he does not consider mitigation, hours of operation, or the ambient noise level. He believed Mr. Brennan's assumption that this will be a crushing operation running crushing operations 24 hours a day discredits his report. Mr. Barnes agreed that it is important to measure ambient noise, and he reviewed the noise report he had provided. He explained that they measured actual operations over a 24-hour period at two sites. The results of his sound study show that the sound was inaudible or barely perceptible during the loading operation and dump truck travel off site at the Stonebrook property. The staff that did the sound study observed numerous large trucks drive by on SR 32 during the study, at one point observing 36 trucks during a 15 minute period of time. They also noted background sound from wildlife, wind gusts, a creek, and a jet plane flying overhead. They also took note of a recent State study showing 3,500 trips per day on SR 32, which includes the County's refuse trucks, snow plows, and other large vehicles. They concluded that the noise environment is dominated by passing trucks not associated with the quarry operation. If the 60 dB limit is used, then nearly every vehicle exceeds that limit, and the proposed operation presents no material adverse impact to ambient conditions. Mr. Barnes asked the people who did the sound study to graph the noise, and on the graph, it is not possible to discern a change in the ambient noise measured at the two areas where the study was conducted. He noted that there are no complaints about existing traffic noise in the statements submitted by the neighbors. There is also no mention of noise from the Staker pit, which is actually much larger and closer to some of the properties than Mr. Siddoway's proposed pit.

Mr. Barnes explained that this operation is limited by its site and is not large and expansive. They can only run one dump truck to the site at a time. Mr. Siddoway has only asked for authority to mine two acres, which is all the Planning Commission has given him authority to do. He believed that, if Mr. Siddoway has a customer who has an urgent need for his product, he should be allowed to run 10 trucks in a day if necessary. However, he will not do that on average, because the quarry is too small.

Mr. Barnes provided a map showing the Siddoway property and indicated that an adjacent property owner has provided written consent for him to operate, and noise is not a consideration for that property owner. He indicated the properties represented by Ms. Hoffman and asked the Council Members to consider their distance and angles. He also indicated the location of the Staker quarry. He explained that they are not talking about large industry but about the ability of the Siddoway family to use their property in a way that is within their rights to receive the CUP that has been approved and which, according to State law, shall be approved if reasonable conditions can be imposed to mitigate reasonably anticipated detrimental effects. He stated that the Planning Commission studied this exhaustively, and their conditions are appropriate and acceptable to the Siddoways. He believed they have done everything required by County ordinances and more to justify the permit.

Council Member Robinson stated that he does not have the ordinance that says the sound should not be greater than 60 dB at the property line, and he was not certain about the effect of a written consent. He believed the consent should be recorded against the property so there would be no future argument as to whether consent was given. With regard to the slope, he asked for more detail regarding what has been done in other approvals where 30% slopes are involved and the Community Development Director's decision that development in Eastern Summit County does not include non-vertical structures. He asked for examples of where that rule has been applied. With regard to water, he believed that, in order to withdraw water from Mountain Regional's facilities next door, a change application would be required to expand Mountain Regional's service area. However, the will serve letter and trucking the water from an approved use may be satisfactory. He would like to know whether a will serve letter in the past has been used as a satisfactory means of meeting the approved water right requirement. He asked the applicant to indicate whether there is a maximum number of trucks on a weekly basis that would allow him to get the job done. He hiked to this site and walked both above and below the flags identifying the outer reaches, and from areas below, he was able to observe a larger portion of the valley than he would have thought, and he believed there would be some visibility of the cut from the Bergeson home.

Council Member Ure asked if 30% slopes were handled the same way for the other gravel pits as they were for this pit. County Planner Sean Lewis replied that all of the approvals other than the Rowser pit were approved prior to his being employed by the County, and he has not seen anything that refers to a determination regarding 30% slopes. He believed the prevailing thought in the past has been that they have to go where there is rock, and some accommodations have to be made to allow for that. He stated that 30% slopes were not an issue in the Rowser approval.

Chair McMullin asked in what other circumstances development has occurred on slopes of 30% or more that is not considered to be development in the Planning Department's opinion. Planner Lewis replied that he would have to get back to the Council with that information. Chair McMullin explained that the Council is looking for evidence that the Community Development Department has determined that development means or does not mean something. They have heard that there was a determination that it is not development if no structures have been built, and she asked Staff to find circumstances where that definition has been applied.

Council Member Robinson asked how they justify having to go through a CUP process for a quarry development if a quarry or gravel pit that has no structures is not considered to be development. Deputy County Attorney Dave Thomas explained that in land use, the County regulates uses, configurations, and other things, some of which is development. If they regulate a use that requires a permit, it does not necessarily have to be development. He used an example of a residential home business, where the structure of the house will not change, but the use may require a CUP. Planner Lewis explained that there is a use in the use chart in the Code for rock quarries and gravel pits that is a permitted use and therefore requires a development permit.

Council Member Armstrong commented that it appears the 30% slope requirement is intended to prevent something that is potentially harmful. Applying structures to that standard makes sense, but in terms of quarries and how they are operate, it is hard to see the distinction. Ms. Hoffman argued that what they are trying to do is prevent alteration of a 30% natural grade in terms of runoff, slope stabilization, and visual impacts, because they would be imposing a human condition on a natural environment. If they have a flat area and dig a pit mine or excavate a foundation for a house, they have an excavated area, but it can be returned to a state that will

deal with the runoff, stabilization, visual impacts, etc. She claimed that a 30% slope can never be returned to a natural state. Council Member Ure commented that the slope could be 27%, and with one scoop of dirt, it would exceed 30%. He acknowledged that it will never be reclaimed to its original state, but it would have to be reclaimed. He stated that it makes no sense if the slope were 27% today and tomorrow it would be 30%, and it does not appear to be illegal to start with. He questioned what difference it would make whether the slope is 30% if it will be a stone quarry. Planner Lewis quoted from the Code regarding hillside development that development shall minimize the highly visible placement of homes and other structures on hillsides, and he believed that was where they were coming from with regard to vertical structures. He explained that they did not look at equipment as being a permanent structure on a hillside of 30%.

Ms. Hoffman stated that the Code has a definition of “Developer,” which is a person, corporation, firm, or partnership owning land proposed to be developed in any way. Because development and developer are related, she cautioned the Council to be careful in attempting to define the term development in a narrow fashion to fit this CUP, because they would regret it. She stated that there are all sorts of things they want to prevent, and by narrowing the definition of development to something that only includes vertical construction, they would foreclose themselves from trying to regulate those kinds of land uses, and they want to regulate these things. Mr. Barnes argued that the definition of Developer leads to a circular argument and is not useful in this situation. Ms. Hoffman stated that, if it is not development, the applicant should not need a development permit.

Council Member Armstrong stated that, looking at the SLR noise study, he saw one instance where it exceeded 70 dB briefly, and it looks like it peaked before the operation of the excavator and haul truck. He did not see a material change once the excavator started and once the truck started running. He stated that when they visited the site, he was surprised by the amount of noise coming from the highway, with huge 18-wheeler trucks coming down SR 32. He asked how they could reconcile the fact that this study does not seem to suggest that there will be a material change. Brandon Richins stated that the first thing he noticed on the sound study is that there is no wind direction. He stated that the wind will carry the sound, and there are a lot of other factors that will change where the sound goes. He did not think they need a scientist to tell them that and stated that the adverse effect will be different for every person. He stated that 60 dB came from somewhere, and it is probably the point at which noise becomes annoying to people. He believed adverse effect is a silly question and that they should stick with the 60 dB in the Code. Council Member Armstrong explained that the Code does not say it is a hard and fast 60 dB at the property line, it says it must have a materially adverse impact. He could not see from the study that this had any kind of impact.

Ms. Hoffman contended that the SLR study was completely unsupervised, and if the applicant were willing to commit to using these specific pieces of equipment and not use other techniques, that might be a good condition. She stated that every piece of equipment has a noise signature, and in the Brennan noise study, they specifically selected equipment with the lowest noise signature. She understood that in the second noise study the backhoe was idle, and the excavator was moving rock. She also believed that 36 trucks in 15 minutes as claimed is an incredible number of trucks for that road. She did not want to impugn anyone’s study, but she stated that there are ways to make background noise louder for a limited period of time, and it is difficult to say that did not happen. She recalled that they are saying the 73 dB at the Stonebrook/Smith house seemed odd, because it is around the corner, but they are missing the point. The noise from the study comes from the fact that there will be a newly cut haul road where they will send

all of these very large trucks. If they are just going to use a snow plow sized truck, they should make that a condition of approval. She stated that a typical rock quarry operation will use a 50-ton truck, and they would be aimed straight at the Stonebrook/Smith residence, and nothing in the applicant's study emulates that noise. She did not believe there is any question that at their property line the noise signature would far exceed 70 dB.

Council Member Armstrong asked if the applicant would be willing to limit the size of the trucks to 10-wheelers. Council Member Ure explained that the only size truck they would be able to take up to the site would be a 10-wheeler. Mr. Barnes confirmed that their measurement was at the Stonebrook property line and included driving the truck down the haul road, and the noise does not approach 73 dB. Council Member Armstrong recalled that Mr. Siddoway had indicated he was planning to build a berm. Mr. Barnes explained that he has to make the corner anyway and would be happy to use the cut material to create a berm, and he would have no problem with that being a condition of approval.

Council Member Robinson commented that he had not seen any drawings showing the improvements to the road and the berm and how close it would be to the Stonebrook home. He was also surprised that, with the kind of truck volume during the seven-month period approved in the CUP, no acceleration or deceleration lanes were required. If that is because UDOT does not want to affect a County road, there will be no party to build it later other than the County taxpayers and UDOT. Mr. Barnes explained that the school buses accelerate or decelerate no faster than dump trucks. He noted that the driver can see a half mile in either direction as they come out onto SR 32. This is a State highway, and the State looked at it and did not see a problem with what is proposed. Brandon Richins stated that he called the State, and they told him that if anyone accesses onto the State road with a commercial operation, they need an acceleration and deceleration lane.

Council Member Carson expressed concern about the road that will be cut in to the County road, as it appears to be a sharp curve and a steep slope. She noted that there is a restriction on Jake brakes, and she believed it would be difficult for trucks coming down there fully loaded to get down the steep grade and negotiate a sharp curve. Mr. Barnes acknowledged that they do not yet have engineering on that road, but they will meet the County's requirements. The Siddoways own the property and can adjust the grade as necessary. Council Member Carson commented that, with the 7-month revolving time period, it might be possible to have a short period of time when the traffic would be much more intense. Wesley Siddoway, the applicant, explained that in this type of business, it depends on the projects and the economy, and there is not a set amount that will be moved every day. It depends on the demand. Chair McMullin asked if there is an amount of truck traffic Mr. Siddoway could live with on a daily basis. Mr. Siddoway offered to look into that and stated that he would be willing to discuss the truck traffic further with the Council. Council Member Robinson stated that he is not comfortable with the 7-month average and would like at least a weekly maximum with a daily maximum. He also suggested that they try to move the road further from the Stonebrook residence. Council Member Ure also suggested that the berm be as high as possible to shield the noise from the Stonebrook residence. Council Member Carson noted that they need clear visibility of the road, because the Stonebrooks have children who play on their property.

Council Member Robinson stated that, due to the visibility of the ridge, he would like to have the two acres reduced so the upper limit would not be visible from elsewhere in the valley. He suggested that the applicant come back with the things the Council has suggested and that Staff research instances where construction on 30% slopes has been defined as vertical structures only.

Council Member Ure suggested that the applicant think about the number of days he would crush gravel on the site and find a way to assure the neighbors that will not happen during most of the month. Chair McMullin asked for the same thing with regard to blasting.

Council Member Robinson asked for further information regarding the consent from the neighboring property owner, whether that satisfies the County requirement, and whether there would be a material impact on the Brandon Richins property line.

Council Member Armstrong stated that he is still troubled by the 30% slope issue and asked Staff to do a comprehensive review of where approvals have been granted on properties that exceed 30% and where the County stands legally on that kind of decision.

Ms. Hoffman stated that it would be most relevant to know those areas that have been allowed to develop in excess of 30% slopes since 1995 and also those developments in which that has been an issue. She believed often it has been missed, and the approval has been inadvertent.

Council Member Carson made a motion to continue this item to April 17. The motion was seconded by Council Member Robinson and passed unanimously 5 to 0.

MANAGER COMMENTS

There were no Manager comments.

COUNCIL COMMENTS

Council Member Ure requested that Mr. Thomas provide a summary next week of the impacts on the County of actions that occurred at the legislature and start working toward incorporating them into the County Code.

Council Member Carson stated that she would attend the UAC board meeting on the Thursday morning of the UAC conference. Council Member Robinson stated that he would also plan to attend the UAC conference.

APPROVAL OF COUNCIL MINUTES

FEBRUARY 5, 2013

FEBRUARY 6, 2013

FEBRUARY 12, 2013

FEBRUARY 13, 2013

Council Member Ure made a motion to approve the minutes of the February 5, February 6, February 12, and February 13, 2013, County Council meetings. The motion was seconded by Council Member Armstrong.

Council Member Carson noted that Carl Neu's name was misspelled in the February 5 and February 6 minutes.

The motion passed unanimously, 5 to 0, for the February 5, February 6, and February 12 minutes and 4 to 0 for the February 13 minutes. Council Member Robinson abstained from voting on the February 13 minutes, as he did not attend the February 13 meeting.

DISCUSSION AND POSSIBLE ACTION REGARDING LEGISLATIVE INTERPRETATION OF THE NEWPARK DEVELOPMENT AGREEMENT; KIMBER GABRYSZAK, COUNTY PLANNER

Marc Wangsgard, representing Newpark, stated that when they last met with the County Council, they understood that they should file a special exception application to extend the development agreement for another five years. He recalled that the Council asked him to address the way notice is given, and he has proposed that 30 days' written notice be required for future extensions. He also recalled that they asked to address the missing plat for the Recreation District parcel, and that has been addressed as a proposed condition of approval. He recalled that Newpark had a phasing plan that dealt with architectural approval that has long since expired, and they propose that the Council acknowledged that phasing plan is no longer in effect. He stated that their approach has been to put the status quo back in place, and the stakeholders involved have no reputation for trying to reach beyond the development agreement. He stated that the conditions shown in the staff report are not acceptable to any of the stakeholders.

Chair McMullin stated that she thought Newpark was going to deal with the legislative interpretation of the development agreement and explore and preserve all their options. She asked if they had decided to only apply for the special exception. Mr. Wangsgard confirmed that they plan to explore all their options. They have a special exception application before them as well as a legislative interpretation of the development agreement.

Council Member Robinson stated that he thought there were three options. One would be that the Council would legislatively interpret the development agreement language. If they do not reach resolution by going through that process, they would have a hearing on the special exception. The third option would be to get a merit determination to go through the vested rights determination process.

Mr. Barnes stated that the arguments on the legislative interpretation are no different than they were the last time they met. He believes those arguments are valid and an option the Council can choose, but there seemed to be a higher level of comfort with the special exception procedure. He acknowledged that a legislative interpretation is not routinely done, and there is not a lot of authority for that action. He recalled that there is no procedure or stipulated notice for extending the development agreement or approval required, and he suggested that they acknowledge that both parties have treated the development agreement as if it were still in effect and had been extended for an additional term. He explained that Newpark would be willing to obligate itself in the future to handle extensions in a particular manner.

Council Member Ure stated that he would not have a problem with making a legislative interpretation.

Chair McMullin could not recall everything that was said at the previous meeting, but she did recall that she had no desire to construe the termination clause as having been complied with and that it was extended. Mr. Wangsgard explained that, since there is no specified process for extending the agreement, the Council should decide whether there was an expression of intent to extend in any form and be liberal about that because of the consequences for the stakeholders and lack of consequences for the County if the extension were acknowledged. He recalled that, during the time when the extension should have taken place, Cottonwood Partners was approving Cottonwood III and platting of a residential project next door within approximately two weeks of the development agreement expiration. There was a phasing plan in place with development deadlines extending over a year beyond the current expiration date which were approved by both the stakeholders and the County. They had a Recreation District proposal for expansion of its facility that started in 2012, which was over a year after the stated expiration date, and no one acted as if there was a problem with the development agreement. The question only came up because the stakeholders asked about the phasing plan and how to deal with architectural approvals that had expired. Only at that point did Staff raise the issue that the development agreement had expired. He noted that the Staff that raised that issue was not in place at the time the development agreement was negotiated. He pointed out that the development agreement did not contemplate an expiration. It contemplated several extensions until the project was fully complete, and everyone knows it is not complete. Based on that, he had requested that the Council determine that there was sufficient intent to extend the agreement.

Council Member Armstrong stated that the problem he has is that the Council has to live with a decision that recognizes that kind of intent, which creates trouble with other development agreements that may have expired. It could open the door to parties suggesting that they contemplated an extension. He did not believe a decision could be so narrowly crafted as to keep it from being exploited in the future.

Council Member Robinson agreed and stated that he would be willing to consider a special exception. He believed the equitable arguments and reliance on things used in a special exception are stronger than interpreting intent to extend.

Chair McMullin asked if Newpark has anything to say about vested rights. Mr. Barnes replied that they do not. The only reservation he has about proceeding with the special exception is that it seems to assume that the development agreement has lapsed. As long as they do not have to waive the argument that they believe the development agreement remains in effect, they have no problem proceeding with a special exception.

Planner Gabryszak explained that Staff would strongly encourage the Council to not make a legislative determination. She noted that the staff report contains a partial list of the duration language from other consent and development agreements, which is very consistent. If a legislative determination is made based on that language, it could pose a problem for other development agreements that have lapsed.

Council Member Robinson stated that he would like to see what type of notification is required in the other development agreements. Deputy County Attorney Jami Brackin explained that she prepared the list, and almost every development agreement has a noticing provision that requires written notification. Council Member Robinson asked about the document used to extend the Newpark development agreement in 2006. Planner Gabryszak explained that a letter was written requesting an extension. Mr. Wangsgard noted that no action is required on the part of the

County, and either party has the option to extend. One side can simply extend the contract without needing consent from the other side. He stated that he sent a letter notifying the County of their desire to extend, and two months later he received a letter back saying that the extension had been approved. Ms. Brackin explained that in researching other development agreements, to the best of her knowledge, every extension of every development agreement has been at the request of the developer and approved in a public meeting by the legislative body. Council Member Armstrong commented that the language he has seen does not require that approval. Ms. Brackin acknowledged that but explained that has been the practice.

WORK SESSION

- **Discussion regarding Newpark Development Agreement; Kimber Gabryszak, County Planner**

Chair McMullin and Planner Gabryszak noted that this item was placed on the agenda in error.

PUBLIC INPUT

Chair McMullin opened the public input.

Chris Hague recalled that the Council held a hearing on the Blue Sky Ranch distillery on January 20, which was an appeal from Dave Ure and Sally Elliott based upon failure to follow the proper process. A Low Impact Permit (LIP) was issued, and Deputy County Attorney Dave Thomas cited a Code provision 10-2-10, representing that it gave the County authority to make the determination to issue the permit. Mr. Hague stated that the provision cited was from the Snyderville Basin Development Code, and no such provision exists in the Eastern Summit County Development Code. He was aware that this was brought to the Council's attention and that they had a meeting and determined to not reopen the public meeting. He provided a copy of the Open Meetings Act, which requires that type of action to be done in an open meeting. He stated that final votes must be open and on the record. The Council apparently had a telephone meeting, but the Open Meetings Act states that the public must have a means to attend or participate. He noted that the Act tells what will happen if they intentionally violates the Open Meetings Act. He suggested that the only way to cure the original approval based on bad legal advice is to hold an open meeting and allow further public comment with regard to that permit.

Chair McMullin closed the public input.

Council Member Robinson noted that the Council was acting in a quasi-judicial capacity on the Blue Sky matter. The question that arose was in the draft of the findings of fact and conclusions of law whether the citation from the Snyderville Basin Development Code changed their opinion on the findings. Their conclusion was that it did not. He did not believe they violated the Open and Public Meetings Act.

Council Member Armstrong stated that he did not recall having a telephone meeting.

County Attorney David Brickey reported that he spoke to the Chair and only the Chair regarding this matter.

**PUBLIC HEARING AND POSSIBLE DECISION ON SPECIAL EXCEPTION
REQUEST BY NEWPARK DEVELOPMENT AGREEMENT; KIMBER GABRYSZAK,
COUNTY PLANNER**

Planner Gabryszak presented the staff and report and noted that this is a special exception request to extend the Newpark Development Agreement to October 2016. Staff has provided the criteria for a special exception and has found that the application with appropriate conditions complies with the special exception criteria. Staff recommended approval of the special exception with conditions. Planner Gabryszak noted that the applicants disagree with the conditions. She reported that an e-mail was received yesterday from a member of the public requesting enforcement mechanisms to minimize the impacts of construction and events.

Mr. Wangsgard explained that the special exception application includes pages of facts and circumstances which the applicants believe warrant granting a special exception. He stated that Newpark believes there are numerous acts and events on the part of both the County and the stakeholders that create vesting of the density or have resulted in reasonable reliance on those acts and warrant a determination that the development agreement has not expired or to estop the County from declaring that it is expired and consider it reinstated. This development agreement came about through a TDR agreement of 154 units of density that were vested and approved on the north side of I-80 on the hill above Rasmussen Road. The County asked the developer to not build the project, and that spawned the Newpark Town Center development. It is their view that the transferred density cannot be extinguished or declared expired because of a technicality in an agreement that transferred the density to Newpark. He asserted that, if it was vested once, it is vested now. However, that density does not comprise 100% of the Newpark project, and additional density was created on top of the transferred density through a package of community benefits and the inherent density on the land. None of that density was attributed to any particular parcel, and the density consisted of an aggregate of 800,000 square feet. The developer also donated to the County 112,000 square feet to be used as open space. Mr. Wangsgard explained that the development agreement was entered into in 2001 with a full package of community benefits that were a condition of the density granted, and all of those community benefits have been constructed.

Mr. Wangsgard reported that in 2003 the County assigned its 112,000 square feet of density rights to the Snyderville Basin Special Recreation District, and he did not believe there was any reference in that agreement to that density being subject to later action of the County declaring it void. On June 18, 2003, the Recreation District came to the Board of County Commissioners for final site plan approval, which identified all 112,000 square feet of density assigned to that parcel.

Mr. Wangsgard stated that in 2004 Newpark Townhomes Phases I and II moved forward, and the plat notes mentioned common areas and cross parking rights to be used by future expansion phases of the project. In 2006 Newpark exercised its option to extend the development agreement, and the County notified Newpark that the extension was granted. In May of 2007, Denise Hytonen delivered written confirmation that the Community Development Department approved an administrative amendment to the development agreement that would extend future projects into 2012. He believed this phasing plan, which goes beyond the expiration date, is unique to the Newpark development. Relying on that phasing plan, Newpark moved forward, creating Parcels R1 and R2, one of which contains a parking garage with a future residential project to be located on top of the garage. He noted that plat was recorded, and those projects

proceeded with the understanding on both sides that density for both the retail and residential would be identified later when final approvals were given for the residential and a further plat would be recorded. He stated that in May and July of 2008, Newpark purchased footing and foundation permits for those parcels, including construction drawings that contained the infrastructure for the residential project that would sit on top of the parking garage. He noted that is one of the projects at issue today, because it has not been fully constructed.

Mr. Wangsgard recalled that on September 28, 2011, the County Council approved architecture, site plans, land uses, densities, and draft plats for Cottonwood III and an amended Parcel P. He explained that Parcel P and Parcel P2 were also approved for future development. Those approvals included a condition to install a 6-foot-wide interim pedestrian connection path which would be replaced with a permanent connection when Parcel 2 comes forward. He noted that approval was only three weeks prior to the stated expiration date in the development agreement, and there was no way that project could have been built within those three weeks. It would have to have occurred after the current expiration of the development agreement, so he believed an extension of the development agreement was contemplated. In January 2012, property tax liens were charged against Newpark properties, and Mr. Wangsgard stated that it is their view that the taxes assessed on the properties were based on values that contemplated development of the parcels. On October 24, 2011, which would have been after the expiration date, County Planner A.C. Caus issued a Temporary Use Permit for a retail project at Newpark pursuant to the development agreement. On February 21, 2012, the Newpark Parcel P subdivision plat was finally approved pursuant to the development agreement and recorded several months after the extension date. He noted that the table recorded with the plat contains a recitation of density, some of which is identified with other parcels, like Parcel P2. The total remaining density of 119,000 square feet is also stated on the plat. Council Member Robinson confirmed with Mr. Wangsgard that every square foot of remaining density is shown on the plat.

Mr. Wangsgard noted that on July 11, 2012, the Summit County Council approved the Recreation District tax award in the amount of \$1.5 million for a second phase addition to the fieldhouse. He did not believe that would have been approved if it was expected that they would go forward with the expansion phase under an existing development agreement. On October 9, 2012, there was public notice and a Recreation District public hearing, with a vote to forward a positive recommendation for approval of the Phase II expansion. On October 22, 2012, Parcel P1, Cottonwood at Newpark III final site plan package, was recorded, and Parcel P2 is labeled future phase on sheet 1 and future development on sheets 2 and 3. He explained that the plat was recorded earlier, and this was a site plan showing details regarding particular site improvements.

Planner Gabryszak clarified that when a development agreement expires, it does not mean everything contained in the development agreement is no longer applicable. The terms of the development agreement go on for whatever has been platted, developed, and constructed. Only the unplatted density would expire with the development agreement. With the Cottonwood III building, the approval had occurred, and therefore, it could continue even though the development agreement may have expired. There was no expectation that it would be constructed within a three-week time period. With regard to plats being recorded after the development agreement has expired, as long as a complete application is submitted prior to the expiration, it can go forward.

Mr. Wangsgard requested that the County Council reconsider three of the conditions Staff has recommended, because they cannot meet any of them. Staff has suggested that traffic impact fees for all remaining density be imposed as a standard for all new development. He recalled that a few years ago there was a dispute with Staff over traffic impact fees. It was Newport's position that they had more than mitigated all traffic impacts of the project, and the County did not agree and wanted to impose its new traffic impact fee ordinance. That resulted in a lengthy arbitration process, and a detailed decision was reached, with the arbitrator finding that the value of Newport's impact mitigations was at least the amount requested by the County under the new ordinance. Staff has also requested that all future extensions require approval of both parties, which is a substantial change from how the development agreement is currently written. The current development agreement simply requires notice. If both parties have to agree on an extension, that means conditions can be imposed. Those conditions have not been specified, and he argued that there is no limit to this recommendation. A third condition that is of concern is the request for an updated phasing plan. There is a difference of opinion as to what the prior phasing plan was about, and it is Newport's position that the earlier phasing plan was put in place because at the time they had architectural approval of several projects that were not to be built immediately. The phasing plan was in place to take those approvals out to 2012, whereas they would normally only last a year. They did not expect that, if they were not completed by then, they would evaporate or that the rights would expire or that they would have to negotiate a new timeline. He noted that the development agreement in many places states that the timing of the projects in the Town Center would be market driven. There were no timelines or phasing plans. If this condition is imposed, it will force projects to be built before the market can support them, which means they probably will not be built. He asked which project would be demanded to be fully built under this phasing plan and how long it would be. He clarified that they are asking to leave the agreement as it is and not impose new conditions that are burdensome. He believed it could be argued that imposing new conditions would create a substantial amendment to the development agreement, and there is a different process for amending the development agreement as shown in the agreement.

Chair McMullin asked what is behind the proposed conditions. Planner Gabryszak explained that she did not know about the arbitration regarding traffic impact fees at first, but because this is a special exception to allow development to go forward, the various departments discussed the traffic impact fees and felt it would be appropriate to include the condition for discussion. Chair McMullin asked what the traffic impact fees would be for this amount of density. Mr. Wangsgard replied that it would be in the hundreds of thousands of dollars. Chair McMullin asked why a phasing plan would be needed. Planner Gabryszak explained that was included because existence of the phasing plan seemed to be too much of a contradiction, with their argument being based on a phasing plan and then not having a phasing plan. She stated that it could be very flexible, but Staff is not comfortable with Newport hinging much of the argument on a phasing plan and then arguing that the phasing plan is not valid. Chair McMullin noted that the argument about the phasing plan was more about what was envisioned in extending the development agreement, and the special exception does not seem to focus much on the phasing plan. Assuming they determine that the special exception is not grounded on a phasing plan, she asked if Staff would care about a phasing plan. Planner Gabryszak replied that they would not. Council Member Carson confirmed with Planner Gabryszak that Staff does not believe the end result would be less satisfactory for the community without a phasing plan. Planner Gabryszak replied that would be assuming they at least find some middle ground on extensions. If there is no phasing and an extension can be provided for just by a letter from the applicant, they could run into a development that could take 50 years to develop and would not comply with the

zoning at the time. She believed there should be some obligation for development to occur in a timely fashion.

Chair McMullin asked if the County typically imposes a mutual agreement for extension in development agreements. Planner Gabryszak explained that, because development agreements are legislative documents adopted by the County Council, unless they specifically state that administrative extensions are allowed, all development agreements have been brought to the Board of County Commissioners or County Council for approval in the past. Chair McMullin asked if Staff could live with the language about substantial compliance, which was the language for the first five-year extension. Planner Gabryszak explained that this language would be added to the original language, and substantial compliance would still be required.

Council Member Robinson stated that his view of what they are doing tonight does not include the Council's purview to amend the agreement. There is a process for doing that, and this is not the process. He stated that he is more comfortable with the notice provisions which state that a request for an extension must be in writing, but he did not believe they should add things to the development agreement. The Council is looking at whether the existing agreement was extended by the developer exercising its option, or due to equitable arguments the Council is estopped from terminating it. He did not believe the Council is here to do anything beyond that tonight.

Council Member Armstrong noted that this is a special exception, and they are looking at a development agreement that has arguably expired, with findings that the Council determines. He believed the findings could include that, as part of the special exception, they look at the development agreement and see if there are some holes they can fix, such as providing notice in a certain way in order to extend the agreement. Council Member Robinson did not believe they should make amendments to the agreement without it going back through the appropriate process. Council Member Armstrong asked if the development agreement contains a modifications clause that requires modifications to be made in writing. Ms. Brackin replied that a substantial amendment that would change any of the terms of the agreement requires that it be in writing and that it go through the amendment process. Council Member Armstrong stated that he did not believe an addition to the notice provision saying that notice of extensions must be in writing would be considered a substantial amendment. Ms. Brackin explained that the question is whether they are changing the terms of the agreement.

Mr. Barnes addressed proposed Condition 5 regarding the Recreation District and commented that it is not appropriately conditioned for this matter. He explained that they will come back to the Council, assuming the development agreement is extended, to address that, and he questioned the appropriateness of conditioning that right now. A final site plan needs to be approved, and he can suggest why a plat was not required and need not be required. He explained that the plat for that parcel was developed and established by the master development plat recorded in 2003 with all of the providers, and Newpark has not suggested any subdivision of that plat. He stated that they are happy to follow the final site plan approval process described in the development agreement and update that to Staff's satisfaction over a period of time.

Chair McMullin opened the public hearing.

There was no public comment.

Chair McMullin closed the public hearing.

The Council Members reviewed the e-mail received from Aaron Sher and agreed that his comments are related to site-specific issues that might be better addressed at the next phase of Newpark seeking approval for a project.

Mr. Wangsgard noted that he has reviewed the substantial amendment language in the development agreement, and it is clear that changing how notice is given would be considered an administrative amendment.

Council Member Robinson stated that he is sympathetic to the request that they not require a phasing plan. Most of the density will be developed in the future, and the developers do not yet know what that will look like. They are only talking about the last 10% to 12% of development, and he would be inclined to let that occur without a phasing plan. He noted that most development agreements of this vintage have this loose provision that, as long as the terms are substantially adhered to, the developer or the County can ask for an extension. In this case, 90% of the project has been substantially complied with.

Council Member Armstrong commented that there is some value to the County in extending the development agreement. Certainty and intensity have been allocated to this area, which is a Town Center under the Code. It is a place where they want to see density developed and is a benefit to the County. He believed it would be undesirable for the County if this agreement were to expire. He believed they are trying to get the County in a position where they no longer zone by litigation and instead zone by planning. For those reasons he would be in favor of looking at this as a special exception. He believed it was an administrative oversight that the agreement was not extended by either the County or the developer, and it appears that these are remarkably unique circumstances. With the allocated density, this is a very significant development in the County that has been well planned in advance and is a complicated development that involves multiple transfers. Certain actions were taken by Staff and the developer that suggest that they believed they were going forward. For all of those reasons, and for only those reasons, and on a non-precedential basis in this one set of very unique circumstances, he would suggest that they recognize that the development agreement was inadvertently terminated and revive it on its original terms with a change to the notice provisions.

Council Member Robinson verified with Council Member Armstrong that the notice provisions would be changed so that, for either party to exercise their rights under the option to extend, they would need to give notice as provided. Council Member Robinson stated that he agrees with that. He believed the finding they should make is that the County is estopped from terminating the agreement. Council Member Armstrong stated that he did not believe the County is estopped, and they were well within their rights to terminate the agreement. In his mind, the development agreement expired inadvertently, both parties proceeded, and it is in the County's interest for the development agreement to not be terminated. For those reasons, the County would like to make a special exception to the termination and deem it to have been properly extended. Council Member Robinson stated that he did not believe the County's interests meet the test for a special exception, and he believed equitable arguments need to be made. Council Member Armstrong explained that he is making the argument for unique circumstances, as shown in finding 2.d. of the staff report. He believed under these unique circumstances given this particular development, a special exception is warranted.

Mr. Barnes stated that he did not believe the Council needs to make a determination that the development agreement terminated or lapsed, and he believed it would be unfair to the parties to assert that it has lapsed. He believed they could find that it remains in effect through the five-year period and make the finding that extension in the future will be by the process discussed. Mr. Brickey explained that granting the special exception is based on the fact that the development agreement has expired.

Ms. Brackin explained that the concept of applying for a special exception is because there is no other process. Of necessity, the Council would have to determine that the agreement has expired; otherwise, this special exception process would not be necessary. They are trying to find a way, because of these special circumstances and the equitable claims, to allow the development to continue under the development agreement, even though it has expired. That is why the special exception process is necessary, and of necessity they need to find that it did terminate, whether inadvertently or not, and find all the reasons why it should continue. She noted that they need to indicate what date the continuance is from or what the new deadline is.

Council Member Armstrong made a motion to approve a special exception with respect to the Newpark Development Agreement subject to the adoption of findings of fact and conclusions of law to be drafted by the County's counsel based on the discussion at this meeting with the following findings:

Findings:

- 1. Under these unique circumstances, the special exception is not detrimental to the public health, safety, and welfare and would, in fact, be beneficial to it.**
- 2. The intent of the Snyderville Basin General Plan and Development Code would be met with the continuation of the development of the project.**
- 3. It does not appear that the applicant reasonably qualifies for any other equitable processes provided through the provisions of law.**
- 4. Based on these unique circumstances the special exception is warranted.**
- 5. The development agreement is deemed extended for a further five-year term commencing upon the expiration of the prior term, October 18, 2011.**
- 6. An administrative amendment will be made to the development agreement that provides for any further extensions to the development agreement to be by written notice in accordance with the notice provisions of the development agreement.**

The motion was seconded by Council Member Robinson.

Council Member Robinson amended the motion to state that the administrative amendment requires that all exercise of the parties' options to extend pursuant to Paragraph 10-4 are to be done by giving written notice. Council Member Armstrong accepted the amendment to the motion, and Council Member Robinson accepted the amendment in his second to the motion. The motion passed unanimously, 5 to 0.

PUBLIC HEARING AND POSSIBLE APPROVAL OF AN UPDATED AFFORDABLE HOUSING FEE-IN-LIEU AMOUNT THROUGH ADOPTION OF RESOLUTION NO. 2013-03; KIMBER GABRYSZAK, COUNTY PLANNER

Planner Gabryszak explained that this is a proposal to increase the fee-in-lieu amount for affordable housing obligations. She noted that Chapter 5 of the Snyderville Basin Development Code outlines the requirements for affordable housing, and all new development has some sort of affordable housing obligation. That obligation can be met by building units on site, building

units off site as part of another development, working with a housing non-profit to provide affordable housing, buying existing units and reselling them with deed restrictions as affordable housing, or paying a fee-in-lieu. The fee-in-lieu amount was last calculated in 2006 as the gap between what an average target household could afford and an average market rate applied to the size of unit the Code would put the household into. The fee in 2006 was calculated at about \$75,000, with an administrative fee bringing it to just over \$86,000. In 2012 the Council adopted an updated affordable housing needs assessment, which is now a technical appendix to the Snyderville Basin General Plan. In conjunction with that needs assessment, the affordability gap was recalculated, and based on current information, that amount has been increased to about \$118,000 with a smaller administrative fee bringing the total amount to \$120,000 per unit equivalent. Staff recommended that the Council consider updating the fee-in-lieu consistent with the 2012 needs assessment and the Snyderville Basin General Plan. Because the fee-in-lieu and the cost of developing housing is quite significant, a recent Code Amendment will exempt the first 5,000 square feet of commercial development from any obligation so as to not overburden small businesses with the affordable housing requirement.

Council Member Carson asked why the administrative amount had decreased. Planner Gabryszak explained that, because the increase in the fee-in-lieu is so significant and that option has not been utilized to a great extent, Staff felt a smaller amount would be appropriate, and they made it a round number to make it easy to work with.

Council Member Armstrong asked how often developers use the fee-in-lieu. Planner Gabryszak replied that they have not had any developers use the fee-in-lieu, but there have not been many developments since the mandatory affordable housing requirement was implemented. The applications that were approved were relatively small in nature and contemplated building on site, because they could recoup the cost of building on site but not the fee-in-lieu costs. Council Member Armstrong asked how this relates to the developer's cost to build on someone's property. Planner Gabryszak explained that it is not based on the cost to build. It is just based on the cost to get the target household into a unit of the appropriate size. Developers have stated that it is often cheaper for them to build than to pay the fee-in-lieu, because they can sell or rent the unit. The fee-in-lieu is most likely to be used when the developer cannot place the units on site or does not want to deal with what they perceive as added difficulty when they have the financial capital to pay a fee.

Council Member Robinson commented that he would be interested in putting an escalator on the fee-in-lieu so it would not be stagnant if they do not get around to looking at it again for a few years. Planner Gabryszak explained that, if they had looked at it bi-annually, they would likely have lowered the fee-in-lieu after 2008 and increased it again today. She suggested that they require that the fee-in-lieu be reviewed when the needs assessment is updated. Council Member Robinson noted that eight possible uses for the money are listed, but none seem to give the County the ability to use it to purchase land. Planner Gabryszak noted that it states some uses may include but shall not be limited to.

Council Member Carson expressed concern that, if the amount is too high, no developer will take advantage of the fee-in-lieu. She believed this could be a good source of funds to provide some alternatives. Council Member Robinson confirmed with Staff that it is in the Council's purview to change the amount. Planner Gabryszak replied that the Council could consider that the current fee-in-lieu has seldom been used and perhaps continue at that level. Council Member Robinson suggested that they try to determine the break point between the gap and what it really costs the

developer to provide affordable housing. If the County wants to use it as an incentive, it would be good to have an idea of what it would cost. He asked if they need to adopt the resolution if they do not raise the fee. Planner Gabryszak replied that they would not. Council Member Carson suggested that they leave it as it is, and if Staff wants to bring forward something that is based on something more comparable, they could consider that.

Chair McMullin opened the public hearing.

Joe Tesch suggested that they might consider that it is better when a developer does not pay the fee-in-lieu and actually builds the unit, which would be an advantage to the people who need the housing.

Becky Rambo stated that she likes the idea of having alternatives to construction. People prize their open space and do not want high density development in the Snyderville Basin. If there is a way to incentivize developers to not build but allow some other options, that would be good, because there would at least be an alternative to new construction.

Sue Pollard stated that the biggest consternation they have had with the Snyderville Basin General Plan has been workforce housing, and she agreed that the Council should table this and wait to get more information or until the General Plan is updated.

Kristen Brown stated that she has been attending the Snyderville Basin Planning Commission meetings, and they lament the loss of Bruce Taylor on the Commission. She stated that he had a lot of common sense and represented the views of a lot of the County. She was glad that they tabled what was offered and stated that in the Planning Commission meetings, they have heard many comments on how people do not want any more workforce housing than is absolutely necessary to comply with the law.

Chair McMullin closed the public hearing.

Council Member Ure made a motion to table the adoption of Resolution No. 2013-13 updating the affordable housing fee-in-lieu for the Snyderville Basin. The motion was seconded by Council Member Robinson and passed unanimously, 5 to 0.

The County Council meeting adjourned at 7:35 p.m.

Council Chair, Claudia McMullin

County Clerk, Kent Jones



MEMORANDUM:

Date: April 17, 2013

To: Council Members

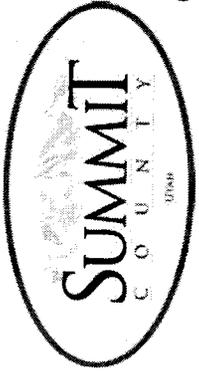
From: Robert Jasper

Re: Recommendation to appoint members to the Snyderville Basin Open Space Advisory Committee (BOSAC)

Advice and consent of County Manager's recommendation to reappoint Thomas Brennan and Mindy Wheeler to serve on the Snyderville Basin Open Space Advisory Committee (BOSAC). Thomas and Mindy's terms of service to expire March 2, 2017.

Appoint Chris Retzer, Ramon Gomez Jr. and Scott McClelland to serve on the Snyderville Basin Open Space Advisory Committee (BOSAC). Chris, Ramon and Scott's terms of service to expire March 3, 2016.

Appoint Tyler Dustman to serve on the Snyderville Basin Open Space Advisory Committee (BOSAC). Tyler's term of service to expire March 2, 2017.



COUNCIL SUBMITTAL FORM

- **Agenda items must be scheduled by Tuesday at 12:00 p.m. one week prior to being placed on the agenda**
- **Staff reports and information must be submitted by 12:00 p.m. the Thursday before the Council meeting**

Agenda date: April 17, 2013

Time allotment 10 Minutes

Requestor and contact information Kathryn Rockhill, Patricia Griffith

Item type: *public hearing work session discussion approval
*Email notice published in paper

Submit language for agenda (public hearing - email notice published in paper)

Consideration of approving a payment plan for a May Tax Sale Property
(Parcel WS-74)

Has the Attorney's Office reviewed and signed off? Yes No

Attorney name

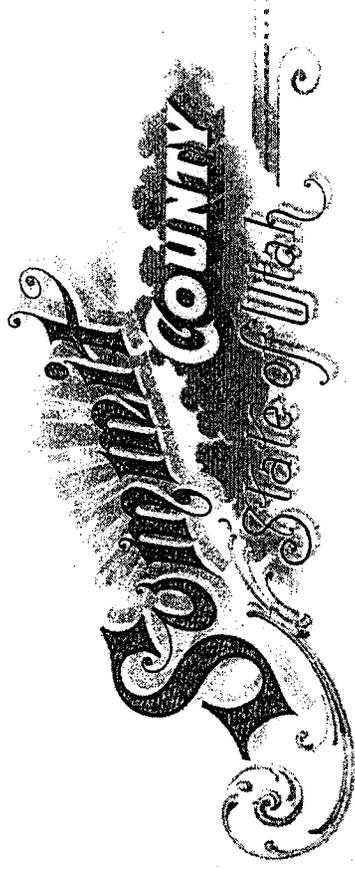
Is this an Ordinance or a Resolution? Ordinance Resolution No

PLEASE PROVIDE 3 ORIGINAL HARDCOPY IES AND EMAIL INFORMATION TO asingleton@summitcounty.org by 12:00p.m. the Thursday before Council meeting (must include staff report) or the item will be removed from the agenda

CLICK HERE to Submit

Auditor

Blake Frazier



April 09, 2013

County Council

RE; May Tax Sale

Patricia Griffith is asking that you consider approving a payment plan for her delinquent property taxes. Her property (WS-74) is scheduled to be sold at Tax Sale on May 23rd. She has been residing there since 2006, but has never applied for Primary Residency. She plans to do so for this current year.

Patricia can pay \$300.00 per month towards her \$5,700.00 past due taxes. She thinks she can probably pay off the balance sooner than that.

Your consideration would be greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathryn Rockhill".

Kathryn Rockhill
Deputy Auditor

Kathryn Rockhill

From: Tricia [tgrif@xmission.com]
Sent: Tuesday, April 09, 2013 3:06 PM
To: Kathryn Rockhill
Subject: Re: Request to appear before commission

Dear Kathryn,

Since I expect my taxes to decrease once it is established that this house is my primary residence I can pay ~~\$150.00~~ ^{\$300.00} per month until the amount due is paid off.

I will hand deliver my form stating the fact that this house is my primary residence on Thursday April 10 .

Thank You

Sent from my iPad

On Apr 9, 2013, at 12:56 PM, Kathryn Rockhill <krockhill@summitcounty.org> wrote:

- > Patricia,
- > What payment plan are you proposing? The Council will want a payment plan.
- > Thanks, Kathryn
- >
- > -----Original Message-----
- > From: Tricia [<mailto:tgrif@xmission.com>]
- > Sent: Tuesday, April 09, 2013 12:55 PM
- > To: Kathryn Rockhill
- > Subject: Request to appear before commission
- >
- > Dear Ms. Rockhill,
- >
- > My name is Patricia Griffith
- > Parcel # WS 74
- > Account # 0093744
- >
- > I am requesting to appear before the commissioners as soon as possible to (hopefully) set up a payment plan for my back taxes.
- >
- > I was sent a letter saying my home will be up for auction in May if I don't pay the taxes. To say I am anxious to handle this issue is an understatement .
- >
- > Thank you for your time and consideration .
- >
- > Sincerely,
- > Patricia Griffith
- > 801-560-1933
- >
- > Sent from my iPad
- >

\$ 300.00
x 19 mo

5700.00



Staff Report

To: Summit County Council (SCC)
Report Date: Thursday, April 11, 2013
Meeting Date: Wednesday, April 17, 2013
Author: Kimber Gabryszak, AICP - County Planning Department
Project Name & Type: Ridge at Red Hawk Entry Gate – Vested Rights Determination

EXECUTIVE SUMMARY: The applicant, Joe Tesch on behalf of the Ridge at Red Hawk (RRH) Homeowners Association (HOA), is requesting consideration of a vested rights determination to determine whether the RRH subdivision is allowed a vehicle control gate through their original Consent Agreement.

Staff recommends that the Summit County Council (SCC) review the Application and determine if it has merit. If the SCC determines that the Application has merit, the Application will be sent to the Snyderville Basin Planning Commission (SBPC) for a public hearing, a recommendation made by the SBPC to the SCC, then a final decision by the SCC.

A. **Project Description**

- **Project Name:** Ridge at Red Hawk Entry Gate - Appeal
- **Applicant(s):** Ridge at Red Hawk Development
- **Property Owner(s):** Red Hawk Wildlife Preserve Foundation (HOA)
- **Location:** East of Jeremy Ranch, North of I-80 (Exhibit A)
- **Zone District & Setbacks:** Hillside Stewardship (HS)
- **Adjacent Land Uses:** Low-density residential
- **Existing Uses:** Residential, HOA
- **Parcel Number & Size:** RRH-6-A and entire development
- **Lot of Record Status:** RRH-6-A: no
Residential Lots: yes
- **Type of Item:** Vested Rights Determination
- **Land Use Authority:** Summit County Council (SCC)
- **Type of Process:** Quasi-judicial
- **Future Routing:** SBPC and SCC

B. **Background**

The Ridge at Red Hawk subdivision, renamed internally as the Ranches at the Preserve, contains 40 residential lots ranging in size from 10 acres to 60 acres, and was recorded May 28, 1997 under the Red Hawk Preserve Consent Agreement. This consent agreement was finalized April 21, 1997 and allowed 116 units in the Ridge at Red Hawk and the various phases of the Preserve. The Ridge at Red Hawk and the Preserve later separated due to internal issues, and individual amendments were done to the Preserve portion of the settlement agreement. Allowances were made for gates on private driveways, but not to manage access to the entire development. The Preserve portion obtained Low Impact Permits for their entry gates but could no longer do so today due to changing regulations.

History of Gate Regulations in Summit County

- 1985 - 1993 Development Code – gates not mentioned; anything not mentioned was prohibited unless expressly permitted upon request by the Board of County Commissioners (BCC).
- 1993 – 1998 Code – gates still not mentioned; anything not mentioned was still not allowed unless expressly permitted upon request by the BCC.
- 1998 – 2004 Code – Everything was developed through the Specially Planned Area (SPA) process, and uses not mentioned in the individual SPA agreements or in the Code separately were not allowed.
- 2004 – 2006 Code – Uses added back to the Code; uses not mentioned were prohibited.
- 2006, Ordinance 647 – added Section 10-8-12 to the Code, permitting vehicle control gates in limited circumstances and containing the criteria in place today.

Conditional Use Permit Process

The SBPC held a public hearing on a CUP application for the Ridge at Red Hawk entry gate on May 22, 2012, closed the public hearing, and continued their decision to a future date with direction to the appellant and Staff on further information required for them to render a decision. The SBPC continued the discussion on June 26, 2012, and voted to deny the CUP, finding that the gate did not meet the criteria in the Code.

The applicants appealed this decision to the SCC, and then placed the appeal on hold pending an advisory opinion from the State Property Rights Ombudsman. The appeal has again been placed on hold at the applicants' request, pending the outcome of this vested rights determination.

Ombudsman's Advisory Opinion

The applicants requested an advisory opinion from the State Property Rights Ombudsman, concerning whether or not the criteria in Section 10-8-2 were required in order for the CUP to proceed. On September 20, 2012 the Ombudsman issued an opinion upholding Staff's determination that the criteria in Section 10-8-12 of the Code are conditions precedent to applying the typical Conditional Use Permit criteria (Exhibit C).

C. Community Review

This item has been placed on the agenda as discussion and possible action. If the Application is determined to have merit, future public meetings / hearing(s) will be held.

D. Identification and Analysis of Issues

Consent Agreement Language

The applicant has submitted a vested rights application arguing that the Consent Agreement permits entry gates. The crux of the decision centers on language in the Consent Agreement and related exhibits (note that there are minor variations between exhibits) concerning gates:

Gates

All posts for gates on private driveways and roads will be four feet wider than the approved road width. All gates shall be located at least fifteen (15) feet from the

right-of-way and shall open inward, allowing a vehicle to stop while not obstructing traffic on the road. Should gates be electronically operated, a receiver shall be installed that will permit emergency services access with a transmitter. If the gate can be locked, a lock box approved and accessible to the Park City Fire Service District and Summit County Sheriff will be located on the exterior side of the gate to provide for emergency equipment access to the property through the gate.

Staff has interpreted this to permit gates on driveways and shared driveways, but not on the main roads into and through the project. Any gate across a main road into and through the project would not be able to meet the criterion that requires gates to be located 15' from the right-of-way, while gates on driveways and shared driveways without a right-of-way would be able to meet the criterion.

Development Agreement Expiration

The Development Agreement expired in April 2002 (Exhibit I); however, the development is vested for the uses and density that were “perfected”, meaning that the building lots and density may continue even though the DA has expired. Due to the expiration, the DA may not be amended to change the gate language or add gates as an allowed use.

Even if the Development Agreement could be interpreted to permit gates, uses that have not been “perfected”, meaning not acted on prior to the expiration, are not vested. As the gate was not constructed nor applied for prior to the expiration date, any permission in the Development Agreement would have expired.

Applicant Summary

The applicant has submitted a written summary of the history and issue as part of the application (Exhibit D). Staff responded to the summary (Exhibit E), and the applicant then provided additional information (Exhibit F) to rebut against Staff’s interpretation above. The applicant then provided an additional letter and supporting affidavits (Exhibit G).

Staff upholds the original interpretation that the Consent Agreement does not permit gates on the main roads.

E. Consistency with the General Plan

The Red Hawk development is located within the North Mountain Neighborhood Planning Area. When the consent agreement was originally approved the development was found to be compatible with the General Plan. Currently the General Plan does not mention gates.

F. Findings/ Code Criteria and Discussion

Section 10-9-17 of the Snyderville Basin Development Code outlines the process for a vested rights determination, but does not include specific criteria for evaluating a vested rights determination. Instead, the SCC reviews each application for merit, followed by review by the SBPC and a hearing before the SCC, on a case-by-case basis:

10-9-17(B) Procedure and Approval: Application for a vested rights determination shall be submitted to the CDD and processed in accordance with the provisions set forth herein:

1. Upon receipt of an application for a vested rights determination, the County Council shall consider the merits of an application. If the County Council

finds that the application warrants further consideration, the County Council shall refer the application along with any instructions related to the merits of the application to the Commission.

2. No application for a vested rights determination shall be issued by the CDD unless a recommendation has been made by the Commission. No application for a vested rights determination shall be approved or denied unless, upon receipt of the Commission's recommendation, a public hearing has been conducted by the County Council. The County Council may, at its discretion, combine a public hearing pertaining to a vested rights determination with a hearing pertaining to a consent agreement.

G. Recommendation(s)/Alternatives

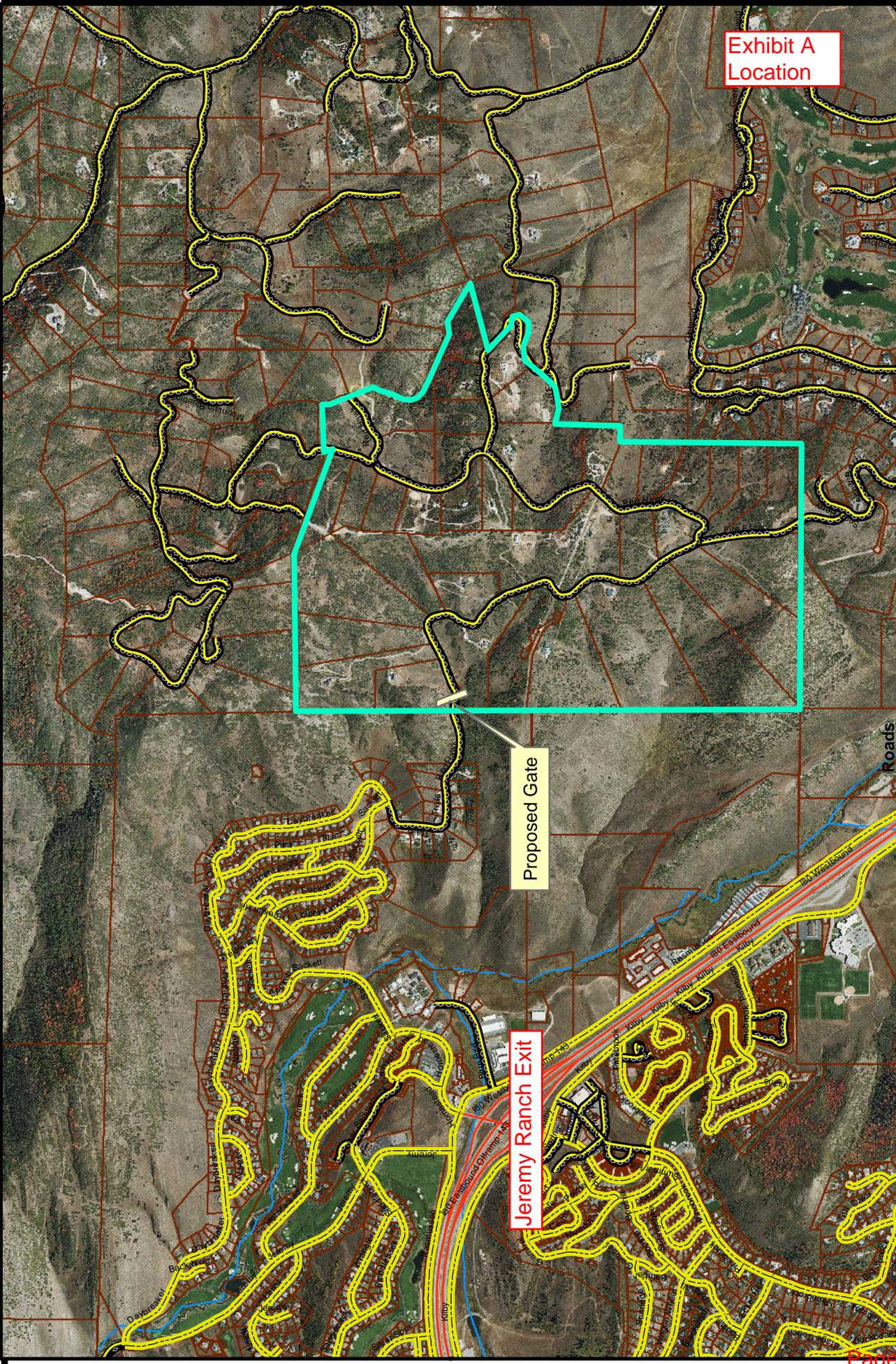
Staff recommends that the SCC review the Application and discuss whether it has merit.

If the SCC determines that the application does not have merit, Staff recommends that the motion include direction for Staff to prepare official Findings of Fact and Conclusions of Law based on the discussion of the SCC.

If the SCC determines that it has merit, Staff will schedule the Application for an upcoming SBPC meeting for further review. Findings of Fact and Conclusions of Law will be prepared at a later date for the SBPC recommendation, and then for the final decision of the SCC.

Exhibits(s)

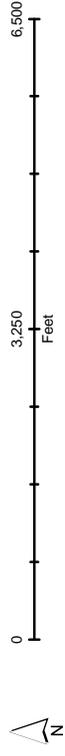
- Exhibit A – Subdivision & gate location, and roads through the project (page 5)
- Exhibit B – Gate Aerial (page 6)
- Exhibit C – Ombudsman's Opinion (pages 7-23)
- Exhibit D – Applicant summary, October 12, 2012 (pages 24-37)
- Exhibit E – Staff's Response, November 29, 2012 (pages 38-39)
- Exhibit F – Applicant's additional information, January 8, 2013 (pages 40-48)
- Exhibit G – Applicant's supplemental letter & affidavits, April 3, 2013 (pages 49-62)
 - 1. Letter
 - 2. Mike Neilsen Affidavit
 - 3. Max Greenhalgh Affidavit
 - 4. John Gasgill Affidavit
 - 5. Doug Dotson Affidavit
- Exhibit H – North Mountain Neighborhood Planning Area (pages 63-66)
- Exhibit I – Development Agreement excerpts (pages 67-88)
 - a. Original CA pages 1-8 and term (pages 67-74)
 - b. Original CA Schedule 1 regarding gates (pages 75-84)
 - c. CA amendment separating the two portions (pages 84-88)



**Exhibit A
Location**

Proposed Gate

Jeremy Ranch Exit



This drawing is neither a legally recorded map, nor a survey, and is not intended to be used as such. The information displayed is a compilation of records, information, and data obtained from various sources including Summit County. Summit County is not responsible for the timeliness or accuracy of information shown.

- S_JURIS**
- Major Roads
 - County Roads
 - County Class D
 - City Roads
 - Private Roads

Summit County, Utah Vicinity Map

Prepared by Summit County
Community Development Department





Exhibit B
Gate aerial



This drawing is neither a legally recorded map, nor a survey, and is not intended to be used as such. The information displayed is a compilation of records, information, and data obtained from various sources including Summit County. Summit County is not responsible for the timeliness or accuracy of information shown.

Roads

S_JURIS

- Major Roads
- County Roads
- County Class D
- City Roads
- Private Roads

Summit County, Utah Vicinity Map

Prepared by Summit County
Community Development Department





GARY R. HERBERT
Governor

GREG BELL
Lieutenant Governor

State of Utah
Department of Commerce

OFFICE OF THE PROPERTY RIGHTS OMBUDSMAN

Exhibit C
Ombudsman's Opinion

ADVISORY OPINION

Advisory Opinion Requested by: Red Hawk Wildlife Preserve Foundation
Local Government Entity: Summit County
Applicant for the Land Use Approval: Red Hawk Wildlife Preserve Foundation
Type of Property: Residential Subdivision
Date of this Advisory Opinion: September 20, 2012
Opinion Authored By: Elliot R. Lawrence
Office of the Property Rights Ombudsman

Issues

Is a County obligated by State law to approve an application for a conditional use regardless of qualifying requirements established in a zoning ordinance?

Summary of Advisory Opinion

A local government may designate uses as permitted or conditional, and may adopt requirements that each use must satisfy in order to be eligible for further consideration. Section 17-27a-506 of the Utah Code impacts, but does not supplant, local authority to designate, regulate, and consider conditional use applications. A local government may impose minimum "threshold" requirements that must be met before an application for a conditional use may be considered. These requirements are no different than minimum requirements for permitted uses, and if the threshold standards cannot be satisfied, the use is not eligible to be considered as a conditional use, even if there are no detrimental impacts.

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. 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 Paxton R. Guymon, on behalf of Red Hawk Wildlife Preserve Foundation on July 20, 2012. A copy of that request was sent via certified mail to Bob Jasper, Summit County Manager, at 60 North Main Street, Coalville, Utah. 84017. The County received that copy on July 25, 2012.

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 Red Hawk Wildlife Preserve Foundation, received by the Office of the Property Rights Ombudsman on July 20, 2012.
2. Response from Summit County, submitted by Jami R. Brackin, Deputy County Attorney, received August 27, 2012.
3. Reply from Red Hawk via email, dated August 29, 2012, with attachments.

Background

The Red Hawk Wildlife Foundation (“Red Hawk”) operates as a Homeowner’s Association for “Ranches at the Preserve,” a residential development in the Snyderville Basin area of Summit County. The development consists of several large lots (ranging from 10 to 60 acres) on a hilly area above Kimball Junction.¹ The internal roads within the Ranches are all owned and maintained by Red Hawk on behalf of the lot owners. Although the internal roads are private, they eventually connect to public roads on more than one side of the development, so it is possible for traffic to pass through the subdivision.

The subdivision plat was approved in 1997, along with a consent agreement which governed development. In November of 2001, the County issued a building permit to construct a small guard house along Red Fox Trail, near the western entrance to the development. The guard house was constructed on Lot 6 of the subdivision. The County states that it understood that the guard house was an “entry feature,” marking the boundary of the Ranches at the Preserve development. In 2004, the County issued a building permit to construct a home on Lot 6.² The County states that the permit application for the home did not refer to the guard house which had already been constructed. In April of 2008, the owner of Lot 6 quit claimed a small portion of

¹ Kimball Junction is the intersection of Interstate 80 and State Road 224 near Park City.

² According to the subdivision plat, Lot 6 contains about 27.64 acres.

the lot where the guard house stood.³ The County notes that this division was a plat amendment which was not approved by the County.

Sometime after the guard house was constructed, Red Hawk approached the County with plans to improve the entrance with landscaping and a planter which divided the travel lanes, along with a rock wall and a gate across the road to control vehicle access to the subdivision.⁴ The County acknowledges that the plans were discussed, but that Red Hawk was told that additional review was needed, and that a gate would not be allowed. According to the County, there was no additional review, and no approvals given for the improvements. Nevertheless, Red Hawk completed the improvements, including the rock wall and gate.⁵

By 2010, the County became aware that the improvements had been installed. Red Hawk was informed that the gates had to be removed, unless the County granted approval for them. The County began to monitor the guard house and gates, to ensure that they remained open.⁶ Since then, Red Hawk has not used the gate to restrict entry, and has sought approval from the County.

Vehicle control gates are listed as conditional uses in the HS and MR zones, and are governed by § 10-8-12 of the County Code.⁷ In addition to compliance with the standards listed for any conditional use permit, § 10-8-12 lists 13 review criteria that must be met before control gates may be approved.⁸ The first criteria requires that the applicant demonstrate “a need for a vehicle control gate to effectively control an ongoing health, safety, and welfare situation, or, in unique circumstances, to mitigate traffic, parking congestion, or through traffic on streets within a neighborhood.” SUMMIT COUNTY CODE, § 10-8-12(A)(1). The section also states that “[v]ehicle control gates are generally not appropriate in any zone.” *Id.* § 10-8-12(A). There are control gates in the vicinity, apparently on cul-de-sac roads.

Red Hawk applied for a conditional use permit to obtain permission to use the gate. On June 26, 2012, the Snyderville Basin Planning Commission denied the permit. The planning commission found that Red Hawk did not satisfy all of the criteria required for a vehicle control gate permit. Specifically, the commission found that Red Hawk had not shown that a gate was necessary to promote the health, safety, or welfare of the area; that the gate was not appropriate on a through road; that a gate was not necessary because it was not close to a major traffic or parking facility; and Red Hawk did not have an approved gate management plan. The commission also found

³ Presumably, the smaller portion was quit-claimed to Red Hawk, which operates as an HOA. This small portion was later designated “Lot 6A.”

⁴ The County states that a construction company brought the proposal for discussion.

⁵ The materials submitted for this Opinion do not clearly state when the gate and other improvements were completed.

⁶ The gates are motorized, but are inoperative because they have not yet been connected to electrical service. The County requires a permit for electrical connections.

⁷ The County states that the subdivision is located in the Mountain Remote (MR) zone. The property owners indicate that the zoning is Hillside Stewardship (HS). A vehicle control gate is a conditional use in either zone.

⁸ In addition, there is a “general” conditional use permit ordinance. *See* SUMMIT COUNTY CODE, § 10-3-5. The language of §§ 10-3-5 and 10-8-12 are included in this Opinion as Attachment A.

that Red Hawk had not satisfied aspects of the "general" conditional use permit ordinance.⁹ Red Hawk appealed that decision.

Red Hawk argues that it is entitled to the conditional use permit, because the County did not identify any detrimental affects of the gate or any conditions meant to mitigate those affects, as required by § 17-27a-507 of the Utah Code. Red Hawk states the Utah Code section requires approval of its application, unless the County can show that the detrimental impacts of the gate cannot be mitigated with reasonable conditions.

Analysis

The County's Zoning Ordinance Establishing Standards for Vehicle Control Gates is Consistent With State Law, and Within the County's Discretion.

Because the Utah Code requires local governments to adopt standards for conditional uses, § 10-8-12 is consistent with state law, and the standards chosen are within the County's discretion. Section 17-27a-506 authorizes counties to designate conditional uses, provided that standards are also adopted to guide decisions on whether or not to grant the uses.

- (1) A land use ordinance may include conditional uses and provisions for conditional uses that require compliance with standards set forth in an applicable ordinance.
- (2) (a) A conditional use shall be approved 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.
(b) If the reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards, the conditional use may be denied.

UTAH CODE ANN. § 17-27a-506. The standards apply to the uses, and establish guidelines that each use must meet. The standards are no different than development guidelines or standards imposed on permitted uses. All property is subject to land use regulation, and local governments may impose controls or standards which regulate how, where, and when a use may be carried out. *See Western Land Equities v. City of Logan*, 617 P.2d 388, 390 (Utah 1980); *see also* UTAH CODE ANN. § 17-27a-102(1)(b).

A conditional use is a land use with unique characteristics or impacts that warrants special consideration, and conditions to mitigate the impacts. *See* UTAH CODE ANN. § 17-27a-103(6). Designating a use as conditional, however, does not remove it from a local government's authority to impose development standards and guidelines. While § 17-27a-506 generally

⁹ The County noted that because the application did not comply with § 10-8-12, it also did not satisfy § 10-3-5(B)(2), which requires compliance with other ordinances and statutes. In addition, the County stated that the gate would interfere with service providers and the free flow of traffic, both of which are standards established in § 10-3-5(C).

dictates the type of conditions that may be imposed, it does not supplant local authority to adopt qualifying requirements or standards which must be satisfied in order for a conditional use to be considered. An application for a conditional use permit must first meet any threshold requirements before there is any consideration of detrimental impacts or reasonable conditions to mitigate those impacts.¹⁰ If a proposed land use cannot satisfy the standards imposed by local ordinance, it cannot be approved, regardless of whether the use is permitted or conditional.

To illustrate, consider this example: A local ordinance establishes that commercial buildings up to 50 feet high are conditional uses, if the building is located at least 1,000 feet from a residential property. If the building is less than 1,000 feet from a residential property, a 40 foot building cannot be built, even if there are no detrimental impacts. The 1,000 foot separation is a threshold requirement that must be satisfied before the conditional use analysis starts.

Summit County adopted an ordinance governing how, when, and where vehicle control gates may be installed. The County decided that such gates should be discouraged, and chose to allow them as conditional uses only in certain zones. The County also adopted strict requirements that must be satisfied before a gate is eligible to be considered. Among other things, the County's ordinances require that a gate be placed only on cul-de-sacs, not on through streets. SUMMIT COUNTY CODE, § 10-8-12(A)(2). The proposed gate does not meet this requirement, because it is proposed to be installed on a through street.¹¹

Secondly, there must be a "major traffic or parking generator" within 900 feet of the private street. *Id.*, § 10-8-12(A)(4). The term "major traffic or parking generator" is not defined, but it apparently means a site or amenity that attracts people (and their vehicles), causing traffic or parking congestion. The County states that there is no traffic or parking generator within 900 feet of the proposed gate.¹² Third, a vehicle control gate management plan must be submitted and approved, and the owner must agree to keep the gate open at all times, except as provided in the agreement. *Id.*, § 10-8-12(A)(13). Red Hawk submitted a plan, which stated that the gate would be closed at all times, except to authorized users. The County rejected the plan, stating that closing the gate at all times does not comply with the intent of the ordinance.

Finally, the applicants must show that a gate is needed to control an ongoing health, safety, or welfare situation, or to control traffic or parking. Red Hawk explained that the property owners are concerned about trespassers and criminal activity, and that the gate is needed to address those

¹⁰ In addition, the County is obligated to comply with its own ordinances. UTAH CODE ANN. § 17-27a-508(2).

¹¹ A map of the subdivision shows that there are at least three entrances to the subdivision, even though the interior roads are all private. The proposed gate would block the road at the northwest entrance, on a road which continues through the subdivision, into other developments, and eventually back to public roads. In other words, a person is able to drive from a public road through the Ranches at the Preserve back to a public road. The County noted that the road is used by pedestrians and cyclists as well as automobiles, and that the gate would allow pedestrian, bicycle, and equestrian traffic. *See* SUMMIT COUNTY CODE, § 10-8-12(A)(7).

¹² According to the County, the nearest potential "major traffic or parking generator" is a trail crossing which does not generate much parking congestion. Red Hawk argues that this trail crossing generates unauthorized *pedestrians*, but evidently it does not claim that parking or traffic congestion is a problem.

problems.¹³ The County stated that the reports did not constitute a sufficient threat to the public welfare, and that there were no unique traffic or parking circumstances that warranted a vehicle control gate. This Opinion does not attempt to determine if Red Hawk has established that a gate is needed to control an ongoing public health, safety, or welfare situation, but it only notes that as long as the question is not fully resolved, the gate cannot be considered as a conditional use.

Since these basic, threshold standards cannot be met, the application is not eligible to be a conditional use, even if there are no detrimental impacts.¹⁴ Until those basic standards are met, the County is not obligated to consider or approve the application.

Conclusion

A local government may designate uses as conditional, as long as it adopts standards which apply to those uses. Those standards may include threshold requirements that an application must satisfy in order to be eligible as a conditional use. This is no different than minimum requirements for permitted uses. Section 17-27a-506 of the Utah Code does not supplant the County's authority to adopt ordinances and standards applicable to conditional uses. Although the state statute mandates that a conditional use may only be denied if the detrimental impacts cannot be mitigated, a use must meet threshold requirements to *be* conditional before there is a consideration of any detrimental impacts. A local government is not obligated to consider an application for a conditional use that does not satisfy the threshold requirements.



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

¹³ Red Hawk stated that the trespassers are on foot as well as in vehicles. As already noted, the proposed gate would not restrict pedestrian, bicycle, or equestrian traffic, although the gate may discourage entry. Red Hawk argues that since the interior roads are private, pedestrians may be excluded.

¹⁴ In addition, the County argues that the application does not satisfy aspects of the "general" conditional use statute (§ 10-3-5 of the County Code). Specifically, the application does not comply with § 10-8-12, a gate would be detrimental to the public welfare, and it would impact service providers as well as traffic flow. These criteria must also be met in order for an application to be considered as a conditional use.

ATTACHMENT A

SUMMIT COUNTY CODE, §§ 10-8-12 and 10-3-5

10-8-12: VEHICLE CONTROL GATES:

A. Purpose: Vehicle control gates are generally not appropriate in any zone. In the event that a vehicle control gate is necessary to protect the public's health, safety, and welfare, a vehicle control gate may be approved in residential zones on private streets as a conditional use. In order to approve a conditional use for a vehicle control gate, all applicable findings and review standards as required for a conditional use permit in section 10-3-5 of this title shall be met. In addition, all of the following review criteria shall be met:

1. The applicants have demonstrated a need for a vehicle control gate to effectively control an ongoing health, safety, and welfare situation or, in unique circumstances, to mitigate traffic, parking congestion, or through traffic on streets within a neighborhood.
2. The street is a private street, is a cul-de-sac, and is not a through street. The proposed vehicle control gate does not impact traffic circulation through the neighborhood.
3. The private street serves primarily single-family or duplex residences with individual or shared driveways.
4. There is a major traffic or parking generator or use within a nine hundred foot (900') walking distance of the private street entrance and there is evidence of spillover parking or other vehicular activity on a regular basis throughout the season.
5. The vehicle control gate is located outside of the county right of way and maintains all setbacks of the zone.
6. The vehicle control gate does not impact existing utility easements.
7. The vehicle control gate is designed to permit unimpeded pedestrian, bicycle and equestrian access through the neighborhood and to existing public trails and walkways. A minimum gap of four feet (4') shall be allowed for these nonvehicular uses.
8. The vehicle control gate is designed to be minimal in height, scale, and mass to accomplish the goal of preventing unauthorized vehicle traffic, parking, and/or other impacts on the neighborhood. There shall be a minimum bottom clearance of two feet (2') from the bottom of the gate rail to the road surface. A diagonal structural support may cross through the two foot (2') opening to provide additional structural strength for the cantilevered gate and keep the overall gate mass to a minimum. The gate shall be no more than three feet (3') or thirty six inches (36") in height from the bottom rail to the top rail, although allowance may be made for decorative elements. The gate shall open inward allowing a vehicle to stop while not obstructing traffic on the roads. Design and materials shall result in a visually open gate. Any walls associated with the entry gate shall be pedestrian in scale and shall generally not exceed a height of five feet (5').

Column elements may be added for architectural interest, but these column elements shall not exceed a height of nine feet (9').

9. The method of access for emergency, service, and delivery vehicles shall meet all requirements of the county planning, engineering, and building departments and the Park City fire service district prior to issuance of a building permit for the gate construction.
10. If the gate is electronically operated, a receiver shall be installed that will permit emergency services access with a transmitter. If the gate can be locked, a lock box approved and provided by PCFSD and the county sheriff will be located on the exterior side of the gate to provide for emergency equipment access to the property through the gate.
11. Vehicle control gates on private streets are not permitted in all zones. Gates on private streets are allowed as a conditional use in the following zoning districts: RR, HS, MR, RC.
12. Any signs associated with the gate and/or walls are subject to section 10-8-2 of this chapter.
13. A vehicle control gate management plan shall be submitted for approval to address times and situations when the gate will be closed. Applicants shall agree to leave the gate open at all times, except as specified in the approved management plan. (Ord. 708, 12-10-2008)

10-3-5: CONDITIONAL USE PERMIT:

A. Applicability:

1. Conditional uses are those uses which are generally compatible with the permitted uses in a zoning district, but which, because of their size, scale, intensity of use, traffic generation, or other characteristics, require individual review of their location, design and configuration and the imposition of conditions in order to ensure the appropriateness of the use at a particular location within a given zoning district.
2. Only those uses that are enumerated as conditional uses in a zoning district (section 10-2-10 of this title) shall be authorized by the commission.
3. Conditional uses may be established only upon approval of a conditional use permit pursuant to this section.

B. Criteria For Approval: No conditional use permit shall be approved unless the applicant demonstrates that:

1. The use is in accordance with the general plan;
2. The use conforms to all applicable provisions of this title, including, but not limited to, any applicable provisions of this section and chapter 4 of this title, the general plan, and state and federal regulations;
3. The use is not detrimental to public health, safety and welfare;
4. The use is appropriately located with respect to public facilities; and
5. The use is compatible with the existing neighborhood character and with the character and purpose provision of the applicable zoning district, and will not adversely affect surrounding land uses

C. Special Standards For Conditional Uses: In addition to the standards established in this section and in chapter 4 of this title for particular uses, all conditional uses within a zoning district shall conform to the following standards and criteria:

1. The commission may require the applicant or the owner of the property subject to an application for development approval for a conditional use permit to establish an escrow account, post a bond or provide other financial security, in such form and sum as the commission shall determine, with sufficient surety running to the county to offset any extraordinary costs or expenses associated with the following: a) construction of any highways, roads, water or sewer mains, drainage facilities, or other public infrastructure;

b) landscaping; c) compliance with the requirements of this section, any applicable special requirements set forth in this section and chapter 4 of this title, and the conditions attached to the development permit; and d) any expense requirements set forth in this section and chapter 4 of this title, and the conditions attached to the development permit, including the provision of facilities or structures, maintenance or construction work, or the execution or fulfillment of conditions of a continuing nature.

2. The proposed development shall not cause a reduction in the adopted level of service for any public facility.
3. Lighting shall not be directed or reflected upon adjoining land and shall meet all other related requirements of section 10-4-21 of this title with respect to exterior lighting.
4. The natural topography, soils, critical areas, watercourses and vegetation shall be preserved and used, where possible, through careful location and design of circulation ways, buildings and other structures, parking areas, recreation areas, open space, utilities and drainage facilities.
5. All roads shall provide free movement for safe and efficient use within the development. Local roads shall provide access to the site in a manner that discourages unsafe and congested conditions, and which provides convenient accessibility to parking areas, arterial and collector roads that shall be free of backing movement from adjoining parking areas and free from congestion and public safety problems.
6. Vehicular and pedestrian passageways shall be separated from public rights of way. Where appropriate, a system of walkways and bicycle paths connecting buildings, open spaces, recreation areas, public facilities, and parking areas shall be provided and appropriately lighted for night use.
7. Buildings and other structures shall provide a human scale consistent with adjacent development and appropriate to residential uses in the RR, HS, MR, CC, SC, and NC zoning districts, and consistent with adjacent conforming development in the zoning districts. The massing, scale and architectural design shall be consistent with the design guidelines established in section 10-4-19 of this title.
8. Site design shall avoid, to the extent practicable, the placement of obstructions in any sensitive lands, other watercourses, and shall be maintained free from any obstruction not authorized by a site plan, and any pool of standing water which is formed in any watercourse within the county on account of any unauthorized obstruction shall be deemed to be a public nuisance.
9. The volume rate of post development runoff shall not exceed predevelopment runoff. Runoff calculations shall be submitted with the application for site plan approval and shall be based upon: a) the 25-year, twenty four (24) hour design storm event; b) a fully developed contributing drainage area; c) the specific location of the proposed

development; d) the proposed land use and use density or intensity; and e) the specific location and amount of impervious surfaces, in square feet.

10. The site shall be landscaped in accordance with the requirements of section 10-4-20 of this title.

D. Submission Requirements: An applicant shall submit a conditional use permit application and pay the fee for the review thereof; the conditional use permit shall contain enough information, in graphic and text form to adequately describe the applicant's intentions with regard to site layout and compliance with the general plan, this title, and any applicable development permit, consent agreement or development agreement, including, but not limited to:

1. A detailed site plan, drawn to a scale, of not more than one inch equals one hundred feet (1" = 100') that includes:

- a. A vicinity map and north arrow;
- b. The location and arrangement of all proposed uses, including the building area;
- c. The height and number of floors of all buildings, other than single-family dwellings, both above and below or partially below the finished grade;
- d. A cross section elevation plat depicting all buildings, structures, monuments, and other significant natural and manmade features of the proposed development;
- e. Setbacks from the property lines for all structures;
- f. The traffic and pedestrian circulation system, including the location and width of all roads, driveways, entrances to parking areas, trails, and pedestrian pathways;
- g. Off road parking and loading areas and structures, and landscaping for parking areas;
- h. Architectural elevations and features of typical proposed structures, including lighting fixtures, signs and landscaping;
- i. When the development is to be constructed in stages or units, a final sequence of development schedule showing the order of construction of such stages or units, and approximate completion date for the construction of each stage or unit;
- j. A final statement in tabular form which sets forth the following data, when such data is applicable to a given development plan:
 - (1) The area of the parcel, including total acreage of roads or other easements;

- (2) Total number of dwelling units, by development phase or total amount of square footage for nonresidential uses;
- (3) Residential and/or nonresidential density and units per acre;
- (4) Total floor area and floor area ratio for each type of use;
- (5) Total area in open space and trails;
- (6) Total area in development recreational open space; and
- (7) Total number of off road parking and loading spaces

E. Review Procedure:

1. The CDD or designated planning staff member shall review the conditional use permit application and make preliminary findings as to whether the application complies with the development approval criteria established in this title and all applicable provisions of the general plan.
2. The CDD or designated planning staff member shall secure input regarding the proposed development from all affected agencies and service providers. Upon receiving such information, the CDD or designated planning staff member shall prepare a report and make findings and recommendations and shall schedule a public hearing before the commission as soon thereafter as may be practicable.
3. The commission shall review the application and staff report. After conducting a public hearing, the commission shall approve, approve with conditions, or deny the proposed conditional use permit. The commission may impose conditions or requirements in addition to those prescribed in this section and chapter 4 of this title in order to ensure that the proposed use is compatible with other uses permitted in the applicable zoning district and to mitigate or eliminate the adverse impacts of the proposed use, as set forth in subsection D of this section

F. Time Limit For Action:

1. An approval of a conditional use permit shall be valid for a period of time not to exceed one year from the date of such approval, but said approval may be extended for a period not to exceed one year by the commission upon the property owner submitting to the commission satisfactory evidence indicating that reasonable progress is being made to provide project infrastructure and to complete construction. If a conditional use permit is allowed to expire, the applicant or property owner will be required to submit a new proposal for review and approval under the development regulations in place at that time.

G. Mandatory Review Process:

1. Conditional use permits are subject to periodic reviews by the CDD or designated planning staff member to assess if the conditions of approval are being satisfied. If the original conditions associated with the conditional use permit are not being satisfied, the commission may commence the conditional use permit revocation process.

H. Establishment Of A Conditional Use Permit: Final approval of a conditional use permit shall be in the form of a letter to the applicant specifically identifying each condition together with the approved site plan and any other accompanying documents determined to be relevant by the CDD or designated planning staff member and stamped approved.

I. Amendments To Conditional Use Permits:

1. Minor Amendment: A "minor amendment" is defined as an amendment that does not increase the square footage, density, or intensity of a previously approved conditional use permit, which may be approved administratively. A minor amendment may be commenced by filing a low impact permit application and paying the fee for the review thereof. Refer to section 10-3-4 of this chapter for detailed submission requirements and review process.
2. Major Amendment: A "major amendment" is defined as an amendment that increases square footage, density, and/or intensity of a previously approved conditional use permit. A major amendment may be commenced by filing a conditional use permit application and paying the fee for the review thereof. Refer to this title for detailed submission requirements and review process.

J. Adult/Sex Oriented Facilities And Businesses:

1. Findings; Zones Permitted As Conditional Use: The county council finds that the appropriate location for adult/sex oriented facilities and businesses within the county is within concentrated areas of the county where it can be better regulated by county officials and law enforcement, and outside of residential or recreational (park) areas where the quality of life will not be as greatly impacted. Within the unincorporated county, adult/sex oriented facilities and businesses shall be allowed as specified herein, and shall conform to the criteria mandated under this subsection and title 3, chapter 5 of this code, governing such activities. This title is hereby amended to allow adult/sex oriented facilities and businesses as outlined in section 10-2-10 of this title.
2. Conditional Use Permit Required: Adult/sex oriented facilities and businesses must be approved in accordance with the provisions of this subsection and title 3, chapter 5 of this code. In all cases, a design and site plan diagramming the premises shall be provided as part of the application process. A public hearing shall be required in all cases prior to the issuance of a conditional use permit. The applicant shall receive notice of the public hearing. The procedures for issuance of conditional use permits, as

found in the appropriate development code, shall be followed in all cases. A final decision by the county as to the issuance of a conditional use permit for an adult/sex oriented facility or business shall be made within ninety (90) days of receipt of a completed application by the department of community development, unless a delay is requested or agreed upon by the applicant, or where the applicant is causing the delay by not providing needed information. The CDD or designated planning staff member shall communicate the final decision to the applicant.

3. Nonconforming Uses:

- a. Right To Continue: Adult/sex oriented facilities and businesses already existing within the unincorporated area of the county shall have the right to continue in their businesses without a conditional use permit. However, all such businesses shall be subject to compliance with the criteria, mandatory general conditions, and mandatory design of premises conditions, as provided in this subsection and title 3, chapter 5 of this code, within ninety (90) days of the adoption of the ordinance codified herein. A time extension may be granted where the county manager determines, on a case by case basis, that a hardship exists for a business owner/operator.
 - b. Change Or Extension/Enlargement Of Use: Any nonconforming use herein may not be materially changed, nor extended/enlarged unless it comes into compliance with the then existing development code.
 - c. Cessation Of Use: If active and continuous operations are not carried on in a nonconforming use during a continuous period of one year, the building or land where such nonconforming use previously existed shall thereafter be occupied and used only for a conforming use. Intent to resume active operations shall not affect the foregoing.
4. Right Of Appeal: All appeals from denials by the planning commission or county manager of conditional use permit applications shall be as provided in this title, the Eastern Summit County development code (as applicable), and Utah Code Annotated, section 17-27a-801, to the district court within thirty (30) days of the planning commission/county manager's final action.
5. Penalty: Violations of any of the provisions of this subsection J shall subject the offender to the penalties as provided in this title, other applicable state law, or where no penalty is otherwise provided, a fine of not more than seven hundred fifty dollars (\$750.00) and a ninety (90) day jail sentence. (Ord. 708, 12-10-2008)

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

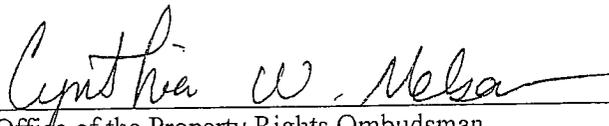
Section 13-43-206(10)(b) of the Utah Code requires delivery of the attached advisory opinion to the government entity involved in this matter in a manner that complies with Utah Code Ann. § 63-30d-401 (Notices Filed Under the Governmental Immunity Act).

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:

Bob Jasper, County Manager
Summit County
60 N. Main Street
Coalville, UT 84017

On this 20th day of September, 2012, 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

INTEROFFICE MEMORANDUM

TO: JAMI BRACKIN
FROM: JOSEPH E. TESCH
CC: DONNA VANBUREN, BRAD KRASSNER, KRISTAL BOWMAN-CARTER
FILE: RED HAWK
SUBJECT: MAY RED HAWK KEEP ITS SECURITY GATE EITHER UNDER THE TERMS OF THE 1997 CONSENT AGREEMENT STILL IN EFFECT AT THE TIME THE GATE WAS ERECTED IN 2004, AS THE EXERCISE OF A VESTED RIGHT UNDER SUMMIT COUNTY ORDINANCE 310 AND THE CONSENT AGREEMENT OR AS AN ALLOWABLE CONDITIONAL USE?
DATE: OCTOBER 12, 2012

Jami, please (if you have time) review this analysis of the Red Hawk Gate issue before we meet on October 16, 2012. This is not meant to be exhaustive.

I. PROJECT HISTORY & SUMMARY OF FACTS

On April 21, 1997, the Summit County Board of Commissioners adopted Summit County Ordinance No. 310 "An Ordinance Approving and Adopting the Consent Agreement for Red Hawk Wildlife Preserve Project".

Summit County (hereafter "the County") and Red Hawk, LLC (hereafter "Red Hawk" or "the Developer") entered a Consent Agreement on May 1, 1997, which includes all attachments (Schedule 1) and Exhibits ("the Consent Agreement" or "the CA"). The CA provides that the specific design conditions for the project are governed by Schedule 1 to the CA and the Rural Development Guidelines then in place and attached as Exh. G to the CA. It also provides that the more specific design conditions of Schedule 1 taking precedence over those in any of the Exhibits (CA, para. 1.4). Included in the Exhibits to the CA are the CC&R's which were specifically approved by the County as then required (the copy of the CC&R's in our notebook is missing the first 3 pages which might tell us something about the County's approval of the contents of the CC&R's).

A. The Consent Agreement provides in pertinent part:

1.3 Approved Use Density and Configuration The Consent Agreement vests with respect to the project's **use**, density and configuration as reflected on Exh. B (simply a plat map mainly meant to show the roadway design and lots) and "as more fully set forth [in the CA]".

1.4 Specific Design Conditions Development and design to be consistent with design conditions of Schedule 1 to the CA and proposed Rural Development Guidelines for the Snyderville Basin Planning District at Exh. C. , with the more specific design provisions of Schedule 1 taking precedence. [Note that Schedule 1 as it pertains to gates and roadways adopts the language of the Rural Development Guidelines].

2.2.1 Vested Rights Subject to reserved legislative powers only which are stated in 2.2.2.1 and reserve the County's right to modify the vested rights only under very strict circumstances (see immediately below). Developer has vested rights to develop and construct the Project in accordance with the uses as vested in para. 1.3.

2.2.2.1 Future Changes of Laws and Plans The County may only apply later-enacted legislation to modify the vested rights under the CA if the policies, facts and circumstances meet the "compelling, countervailing public interest exception to the vested rights doctrine in the state of Utah.

5.1 Agreements to Run with the Land The CA is recorded against the acreage (shown in Exh. A) and lots (shown in Exh. B).

5.4 Duration CA term is 5 years from 5/1/97 with option by either Red Hawk, LLC or the County to extend additional 5 years (through 4/30/07) if there has been substantial compliance or written amendment.

B. Schedule 1 to the CA provides in part:

VI. General Design and Development Layout. G. Driveway Access, appears to contemplate the use of gated driveways within the development: "All driveways, whether or not gated and locked, must provide a turnaround acceptable the Park City Fire District."

VII. Provision of Services – This section addresses roads and provides again that it must comply with Exh. B to the CA and appears to contemplate gates at VII.3. Ingress/Egress which provides the Developer shall grant emergency access to surrounding land owners.

VII.11. Gates Section VII of the CA, which includes at para. 11 a provision pertaining to gates on private driveways and private roads was copied verbatim from the Snyderville Basin Planning District Rural Development Guidelines then in place, dated 1/31/1997 and provides in relevant part:

11. Gates. All posts for gates **on private driveways and roads** will be four feet wider than the approved road width. All gates shall be . . . [specifications not pertinent to the discussion]. (Emphasis added).

C. The CC&R's provide in pertinent part:

9.10 reserves the right to install security gates. These CC&R's are Exh. F to the CA agreement and were submitted to the County as part of the approval of the CA. "Relative to the construction and maintenance of any Major Roads, Declarant and the Foundation shall have the right to install...security and entry gates, security gate house... and the like."

D. Amendments to the Consent Agreement

There are three Amendments to the Consent Agreement. There is reference to the 2004 Amendment but I cannot locate it at this time.

Amendment to Consent Agreement (apparent first amendment) Summit County Clerk entry No. 00821868, entered 8/10/2007. Was signed by "Managing Partner" on 7/9/2003, which signature was notarized on 10/29/2003 as the signature of Kirkpatrick MacDonald". The first page of the document purports that the agreement was entered on 10/29/2003. However, Shauna Kerr, Summit County Board Member did not sign the document until 8/7/2007. The Amendment is entered into between the Wildlife Conservancy Trust as a successor to Red Hawk, LLC and the County.

at 8. The duration of the Consent Agreement is amended to extend to April 21, 2007.

at subsection D. of the Recitals to the amendment *and* at para.15. Ongoing Validity of Other Provision of the Consent Agreement. Except as expressly modified by the Third Amendment or any prior amendment, or to the extent inconsistent with any prior amendment or modification to the Consent Agreement, all other terms and provisions of the Consent Agreement shall remain in full force and effect.

Third Amendment to Consent Agreement Entry No. 00821870, Does not extend the duration of the CA.¹

II. ANALYSIS

A. The County Based Its Opposition To The Construction Of The Gate On An Erroneous Reading Of The Consent Agreement That The Gate Was Not Permitted Under The Consent Agreement

According to the Summit County Staff Report, dated May 16, 2012 (" 5/12 SCSR"), addressing Red Hawk's request for a CUP to allow the gate, "...a vehicle control gate was not permitted under the Consent Agreement" (5/12 SCSR, p.2, para. 2). There is no support anywhere in SCSR or the Consent Agreement or any other document to support this statement. On the contrary, the CA specifically provides that the roads within the Development are private and the Developer must maintain them (Schedule 1, VII. A. 1.). The CA goes on to provide specific guidelines for constructing gates on the Development's

private roads and specifically contemplates the electronic operation of such gates (Schedule 1, VII. A. 11.). Since the Consent Agreement specifically provides for electronic gates on private roads, Red Hawk was not required to obtain a CUP to construct the gate.

B. Red Hawk Had A Vested Right To Build The Gate Under The Consent Agreement

The CA provides that the Developer has a vested right to develop and construct the Project in accordance with the approved uses under specific design conditions set out in Schedule 1 to the CA (CA at 1.3, 1.4 and 2.2.1). As stated above, Schedule 1 specifically contemplates the construction of electronic gates on the private roads of the Development (Schedule 1, VII. A. 1 & A. 11). Additionally, the CC&R's which are Exh. F to the CA approved by the County specifically contemplate the construction of security gates (CC&R's 9.10). Having approved and entered into the CA which includes all exhibits thereto the only reasonable interpretation is that the CA allowed security gates on Red Hawk's private roads were one the uses that became a vested right upon signing of the CA. At the very least, Summit County had notice and knew or should have known that by including provisions in its CC&R's providing for security gates that Red Hawk interpreted the provisions of the CA pertaining to use (CA 1.3), design(CA 1.4) and gates (CA Schedule 1, VII. 11) as approved uses and therefore vested rights under the CA. Any other interpretation strains credibility. Summit County's current position that Red Hawk did not have a vested right to construct security gates as an approved use and therefore not subject to obtaining a CUP is based on an erroneous interpretation of the contract.

"Unless a different intention is manifested, where language has a generally prevailing meaning, it is interpreted in accordance with that meaning."
Restatement Second, Contracts § 202(3)(a).

"...[W]here there is a choice, an interpretation which will bring about an equitable result will be preferred over a harsh or inequitable one. *Wingets, Inc. v. Bitters* (1972)28 Utah 2d 231, 236.

Utilizing ordinary rules of contract construction, if a contract's terms are clear and unambiguous, the court must construe the writing according to its plain and ordinary meaning. See *Homer v. Smith*, 866 P.2d 622, 629 (Utah Ct.App.1993). Further, the contract should be read as a whole, in an attempt to harmonize and give effect to all of the contract provisions. See *Nielsen v. O'Reilly*, 848 P.2d 664, 665 (Utah 1992); cf. *First Am. Title Ins. Co. v. J.B. Ranch, Inc.*, 343 Utah Adv. Rep. 6, 7, 966 P.2d 834, 836 (Utah 1998). *ELM, Inc. v. M.T. Enterprises, Inc.* (1998) 968 P.2d 861, 863.

Further, as specifically stated in the CA at 2.2.2.1 Red Hawk's vested right to construct a security gate under the plain language of the contract taken as a whole is not subject to later-enacted legislation absent a compelling, countervailing public interest exception to the vested rights doctrine stated in *Western Land Equities, Inc. v. City of Logan*, 617 P.2d 388.

396 (Utah 1980). In that case, the court held “that an applicant is entitled to a building permit or subdivision approval if his proposed development meets the zoning requirements in existence at the time of his application and if he proceeds with reasonable diligence, absent a compelling, countervailing public interest.” The County has failed to state any reason that the later-enacted legislation upon which it relies is applicable, much less a compelling, countervailing public interest. The County has only approached this from the position that the Gate was not an approved use and therefore a CUP was required. As demonstrated above, that position is erroneous and unsupported by the CA or the County laws then in place and current law.

Even If Red Hawk’s Right to Construct the Gate Was Not Vested, It Remained In Effect Through April 21, 2007

The parties originally entered into the CA in May of 1997 pursuant to Ordinance 310 adopting the Consent Agreement with an effective date is April 21, 1997. After litigation between Red Hawk partners, the Red Hawk Development split. Subsequent to that split, Red Hawk, LLC remained as the Developer of Red Hawk Wildlife Preserve and MacDonald Utah Holdings, LLC became successor in interest to Red Hawk, LLC as to Plat F. As a result of that separation, the County and MacDonald made three amendments to the CA.ⁱⁱ Those amendments made certain changes to the breakaway portion of the subdivision in amendments only applicable to the property now owned by MacDonald but in all other respects confirmed the continued validity of all unaltered portions of the CA.

Red Hawk, LLC was not party to any of these amendments. Nonetheless, the County pursuant to the terms of the CA, either the County *or* the Developer had the option to extend the CA five years *if there has been substantial compliance*. The County’s choice to exercise its option to extend the CA estops it from: 1) claiming that there had not been substantial compliance; or 2) that it was extending the CA as to only the new entity where it specifically agreed that all other terms and provisions of the Consent Agreement remained in full force and effect. Further, by agreeing to the amendments and thereby acknowledging substantial compliance, the County must also be deemed to have acknowledged the vesting of the rights under the laws at the time the CA was entered.

C. The Security Gate Is A Use

If a Gate is not a use of the property covered by the CA, then why should the County be allowed to regulate its construction as a use by imposing a conditional *use* permit requirement? It is disingenuous for the County to argue that the Gate is not a use under the terms of the CA in order to preclude the vested right to that use and then argue that it is a use in order to impose the restrictions of a conditional use permit.

The County itself defines vehicle control gates as a “use”, albeit a conditional use in the Snyderville Basin Development Code in the Use Table found at 10-2-10.

The Gate is also a use within the meaning of CA para. 1.3 re Approved Uses and Configuration which provides, "This Consent Agreement shall vest with respect to the Project the use, density and configuration reflected on Exh. B *and as more fully set forth herein...*" That sentence is almost nonsensical. It can be read to mean the CA vests as to the Project itself, as to the use, and as to the density and configuration shown on Exh. B, and as set forth within the remainder of the paragraph or the remainder of the document. It should be argued that the CA must be read as a whole to determine the uses referred to because it cannot be determined from the phrasing of that sentence or that paragraph alone and that paragraph was not intended to exclude vesting of uses allowed in the rest of the document as reflected by the "and as more fully set forth herein" language.

III. ASSUMING ARGUENDO RED HAWK DID NOT HAVE A VESTED RIGHT TO CONSTRUCT THE GATE, THE COUNTY SHOULD HAVE GRANTED A CONDITIONAL USE PERMIT TO CONSTRUCT IT

The County takes issue with the fact that even though permits were obtained in 2001, well within the original five-year term of the CA and renewed in 2004 to build a guardhouse, no one can locate a permit to erect the gate that was later built at some point after 2008. The County concedes that Red Hawk showed it plans for the Gate but asserts that the drawings were never submitted to the planning department and therefor never approved (5/12 SCSR, p. 2). Red Hawk has not been able to locate stamped copies of the plans. In or before 2010 it appears Red Hawk attempted to obtain electrical permits to operate the gate. The County denied the permits and began "enforcement of the gate issue" (Id.). The County eventually sent a Code Enforcement officer with an official notice to Red Hawk to apply for a CUP or remove the Gate on March 22, 2012. Red Hawk then applied for a CUP which was subsequently denied on June 26, 2012. On July 6, 2012, Red Hawk appealed the decision to the Summit County Community Development Director.

The County relied on Snyderville Basin Development Code §10-8-12, Vehicle Control Gates, which was not adopted until 9/13/06 and not effective until 10/23/06 to deny the CUP. The County forced Red Hawk to apply for a CUP despite its pre-existing vested right under the CA and despite the specific provisions in the CA that the laws in effect at the time of the CA would apply rather than later-enacted legislation.

As then Chair Salem recognized at the 5/22/12 meeting to discuss the issue, it is arbitrary and capricious to allow all the developments surrounding Red Hawk to have vehicle control gates and prohibit one at Red Hawk (5/22/12 Planning Commission Minutes, p. 9). The June 2012 SCSR, p. 4 lists all the surrounding developments with Gates:

- The Preserve obtained Low Impact Permits for their gates under their Consent Agreements (Isn't the Preserve the break-off entity that used the same CA as ours with Amendments? No gates are mentioned in those amendments).
- Glenwild has 2 permitted gates, but there is no mention of when those gates were approved or whether they were pursuant to a CUP. My guess is they were approved before 2006.

- Stagecoach was given a CUP for its gates in 2012, four years after the restrictions were enacted. How were they able to comply?

It would be interesting to see how Stagecoach was able to obtain a CUP under these overly restrictive rules. Stagecoach Estates is not a cul-de-sac, so how did it get around that requirement four years after the statute was enacted? Does Stagecoach meet the 900 feet requirement? It would seem that none of the surrounding developments could comply with all of the conditions.

There is one case on point which overturned a county planning commission's denial of a CUP to one facility to operate a residential treatment facility with more than ten beds where the county had approved a CUP for another to do the same.

In *Uintah Mountain RTC, LLC v. Duchesne County*, (2005) 127 P.3d 1270, UM RTC submitted a CUP to operate a residential treatment center in an area zoned A-5 for agricultural-residential use. UM RTC was following the model that one of its principals had observed while working at another residential treatment center called Cedar Ridge RTC located in Duchesne County in an A-5 zone. Cedar Ridge had obtained a CUP in 1997 to operate its facility. The planning commission approved CUP application but limited the number of residents to 10 or less, a number which was not financially feasible for operation of the UM RTC. Both residents who objected to the facility and UM RTC which objected to the limitation to 10 or fewer residents appealed the planning commission's decision to the County, which was affirmed the ten resident limit but overturned the planning commission's decision to allow the facility. UM RTC appealed to the District Court which affirmed. UM RTC then appealed to the Court of Appeals which found that the County's decision to overturn the grant of the CUP to allow the facility was arbitrary and capricious and reversed that part of the decision. However, it upheld the 10 resident limit because the applicant had failed to provide a sufficient and complete CUP application. In reaching its decision, the Court of Appeals applied the following standard:

When reviewing a county's land use decision, "[t]he district court's review is limited to a determination of whether the ... decision is arbitrary, capricious, or illegal." Utah Code Ann. § 17-27-708(2)(a) (2001). A local government's "land use decision [concerning the granting or denial of a conditional use permit] is arbitrary and capricious [only] if it is not supported by substantial evidence." " Ralph L. Wadsworth Constr., Inc. v. West Jordan City, 2000 UT App 49, 9, 999 P.2d 1240 (alterations in original) (quoting Springville Citizens v. City of Springville, 1999 UT 25, 24, 979 P.2d 332). Substantial evidence is " 'that quantum and quality of relevant evidence that is adequate to convince a reasonable mind to support a conclusion.' " Bradley v. Payson City Corp., 2003 UT 16, 15, 70 P.3d 47 (citation omitted). "A determination of illegality requires a determination that the ... decision violates a statute, or ordinance, or existing law." Utah Code Ann. § 17-27-708(2)(b).

Uintah Mountain RTC, LLC v. Duchesne County (2005) 127 P.3d 1270, 1275.

The Court of Appeal addressed the criteria of compatible use, traffic and public safety and welfare, finding that County's stated reasons for denial on each of these grounds were not supported by substantial evidence and therefore arbitrary and capricious.

Compatible Use: Where the County had granted a CUP to another facility 1997 to operate a much larger RTC in another area of the county also zoned A-5 and similar in neighborhood and use, the argument that UM RTC would not be a compatible use was not supported by substantial evidence, rendering the decision arbitrary and capricious.

Traffic: The Court of Appeal could not find any evidence in the record to support the County's conclusion that traffic generated by the facility would be a problem therefor it was not supported by substantial evidence, rendering the decision arbitrary and capricious.

Public Safety and Welfare: The Court of Appeal agreed that what evidence there was in the record to support a finding that the facility would be unduly detrimental or injurious to the property in the vicinity or public health was nothing more than "public clamor" therefor the decision was arbitrary and capricious.

The case at bar is similar to the Uinta Mountain RTC case above. As in that case, SBPC has allowed all of the surrounding private developments to have vehicle control gates and even granted such gate to Stagecoach under a CUP in 2010 despite the fact that Stagecoach is not a cul-de-sac as required by the statute and may not comply in various other respects that need to be investigated. The decision to allow Stagecoach a CUP while denying a CUP to Red Hawk who's plans for a Gate were included in its master plan approved by the CA in 1997 and in effect through 2007, where Red Hawk substantially complied by seeking a permit prior to the expiration of the CA is arbitrary and capricious within the meaning of UCA§ 17-27-708(2)(a).

Additionally, the SBPC's finding that there is no traffic spillover within 900 feet is not supported by the evidence. SBPC simply stated that people park elsewhere when using trails, such as Glenwild and ignored the evidence that indeed, people park on the private roads and property at Red Hawk to access trails and trespass.

In fact, when we address each criteria for approval deemed "not met" by the SBPC in the 5/12 SCSR at pp. 3-9, it is clear that each decision is arbitrary and capricious within the meaning of the controlling statute.

IV. SECTION 10-8-12 IS INVALID ON ITS FACE AS PLACES UNREASONABLE RESTRICTIONS ON THE USE OF PRIVATE PROPERTY AND CONFLICTS WITH STATE LAW CONCERNING CONDITIONAL USES

In addition to the arbitrary and capricious nature of the denial of the CUP, the county statute upon which the Snyderville Basin Planning Commission relies conflicts with State law, is overly burdensome, and impossible to comply with.

County land use ordinances must comply with UCA §17-27a-506 (full text attached as Exh. A). Under that statute, it is mandatory that a conditional use be approved 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.

In this case, the County has adopted an ordinance that provides that vehicle gates are not appropriate in any zone unless necessary to protect the public's health safety and welfare (full text of ordinance at Exh. B). If the gate is necessary, then it can only be erected on private roads under several unduly burdensome conditions, including that the road be a cul-de-sac.

Among the SBPC's reasons for denial of the CUP are the findings that Red Hawk did not meet 4 of the 13 criteria (5/12 SCSR, pp. 3-9):

1. Applicants haven't demonstrated a need for the gate to effectively control ongoing health, safety and welfare situations or to mitigate traffic, etc.

In fact, the only evidence that was presented on this issue was that there is a need to protect Red Hawk resident's private property from trespass. The County simply dismissed it.

2. The Street must be private, a cul-de-sac, and not a through street and the Gate can't affect traffic circulation through the neighborhood.

Planning Commission denied because it is not a cul-de-sac and even though the surrounding neighborhoods are themselves gated, there is an *option* for through traffic. Clearly, this is an unreasonable condition that does not address reasonably anticipated detrimental effects of the proposed use as defined by the State statute.

4. Must be a major traffic generator w/in 900 feet.

As discussed above, the SBPC's finding that there is no traffic spillover within 900 feet is not supported by the evidence. SBPC simply stated that people park elsewhere when using trails, such as Glenwild and ignored the evidence that indeed, people park on the private roads and property at Red Hawk to access trails and trespass.

13. Gate must be kept open at all times.

What is the point of having a gate if it must be kept open at all times???
This is patently ridiculous and unreasonable.

The SBPC goes on to find that Gate doesn't conform to the § 10-8-12. It further argues at No. 3 on pp. 6 & 7 of the 5/12 SCSR that the use of all Gates "is inherently dangerous to public

health, safety and welfare through the division of neighborhoods, the creation of a false sense of security, and encouraging exclusivity." If, in fact, Gates are inherently dangerous then the County should enact legislation prohibiting all gates or assume liability for accidents caused by those gates such as delays in service by fire fighters or robberies of homes of those who leave their doors unlocked because they were lulled into a false sense of security by the County allowing a gate. The planning commission then backpedals and allows that, "That being said, appropriate conditions may be able to ensure that there are no negative impacts to the public health, safety, and welfare, and SBPC discussion is requested."

V. PRIOR COUNSEL'S GROUNDS FOR APPEAL MUST BE ASSERTED

As addressed above, prior counsel argues as grounds for appeal that the SBPC ran astray of State law and the County's analysis should be:

- 1) What are the reasonably anticipated detrimental effects of the proposed use; and
- 2) What conditions can be imposed to mitigate such anticipated detrimental effects of the proposed use?

The county ordinance is over-broad. It seeks to prohibit all vehicle control gates at all costs and by implementing conditions that cannot be complied with it has enacted an outright ban that should be and would be stricken down in a court of law.

CONFUSION

At the very least, you can understand why Red Hawk believed, from all of the documents that it was vested with the gate as a use.

Joe Tesch

Exhibit A

U.C.A. 1953 § 17-27a-506

West's Utah Code Annotated Currentness

Title 17. Counties

Chapter 27A. County Land Use, Development, and Management Act (Refs & Annos)

Part 5. Land Use Ordinances

➔ **§ 17-27a-506. Conditional uses**

(1) A land use ordinance may include conditional uses and provisions for conditional uses that require compliance with standards set forth in an applicable ordinance.

(2)(a) A conditional use shall be approved 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.

(b) If the reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards, the conditional use may be denied.

CREDIT(S)

Laws 2005, c. 254, § 109, eff. May 2, 2005.

HISTORICAL AND STATUTORY NOTES

Composite section by the Office of Legislative Research and General Counsel of Laws 2005, c. 245, § 8 and Laws 2005, c. 254, § 109.

Prior Laws:

Laws 1991, c. 235, § 76.

Laws 2001, c. 241, § 31.

Laws 2005, c. 245, § 8.

C. 1953, § 17-27-406.

CROSS REFERENCES

Property Rights Ombudsman Act, advisory opinions, see § 13-43-205.

LIBRARY REFERENCES

Zoning and Planning ◊ 1355.

Westlaw Topic No. 414.

NOTES OF DECISIONS

Application, generally 1

Substantial evidence 2

1. Application, generally

County did not act illegally in limiting residential treatment center to 10 residents, in proceeding in which property owners applied for conditional use permit to operate facility in county; owners' application provided insufficient information and plans detailing how they intended to house more than 10 residents. Uintah Mountain RTC, L.L.C. v. Duchesne County, 2005, 127 P.3d 1270, 542 Utah Adv. Rep. 23, 2005 UT App 565. Zoning And Planning ¶1373

2. Substantial evidence

A local government's land use decision concerning the granting or denial of a conditional use permit is arbitrary and capricious only if it is not supported by substantial evidence; substantial evidence is that quantum and quality of relevant evidence that is adequate to convince a reasonable mind to support a conclusion. Uintah Mountain RTC, L.L.C. v. Duchesne County, 2005, 127 P.3d 1270, 542 Utah Adv. Rep. 23, 2005 UT App 565. Zoning And Planning ¶1632; Zoning And Planning ¶1703

County's determination that 10-person residential treatment center would not be compatible with other uses in general neighborhood, as ground for denying property owners' application for conditional use permit to operate center, was not supported by substantial evidence; evidence showed that county had previously granted conditional use permit to another facility to operate a much larger residential treatment center in an area of county also zoned agricultural-residential zoning category, and given similarities in both neighborhood and use, it was unlikely that larger residential treatment center would be a compatible use while property owners' center would not. Uintah Mountain RTC, L.L.C. v. Duchesne County, 2005, 127 P.3d 1270, 542 Utah Adv. Rep. 23, 2005 UT App 565. Zoning And Planning ¶1373

County's conclusion that 10-person residential treatment center did not adequately address issue of traffic, as ground for denying property owners' application for conditional use permit to operate center, was not supported by substantial evidence; there was ample evidence in record indicating that traffic for a 10-person facility would not be a problem, and county's decision was inconsistent on issue. Uintah Mountain RTC, L.L.C. v. Duchesne County, 2005, 127 P.3d 1270, 542 Utah Adv. Rep. 23, 2005 UT App 565. Zoning And Planning ¶1373

County's concern about safety aspects of proposed use and its decision that 10-person residential treatment center would adversely affect other property in vicinity, as ground for denying property owners' application for conditional use permit to operate center, were not supported by substantial evidence; record consisted of submissions and comments from neighboring landowners, including letters raising safety concerns and news stories of other similar centers that did have safety issues, but there was no record evidence detailing actual safety issues with facility, and thus, evidence was nothing more than "public clamor," which was insufficient justification to deny permit. Uintah Mountain RTC, L.L.C. v. Duchesne County, 2005, 127 P.3d 1270, 542 Utah Adv. Rep. 23, 2005 UT App 565. Zoning And Planning ¶1373

U.C.A. 1953 § 17-27a-506, UT ST § 17-27a-506

Current through 2012 Fourth Special Session.

Exhibit B

Snyderville Basin Development Code:

10-8-12: VEHICLE CONTROL GATES:

A. Purpose: Vehicle Control Gates are generally not appropriate in any zone. In the event that a vehicle control gate is necessary to protect the public's health, safety, and welfare, a vehicle control gate may be approved in residential zones on private streets as a conditional use. In order to approve a conditional use for a vehicle control gate, all applicable findings and review standards as required for a Conditional Use Permit in Section 10-3-5 shall be met. In addition, all of the following review criteria shall be met:

1. The applicants have demonstrated a need for a vehicle control gate to effectively control an ongoing health, safety, and welfare situation or in unique circumstances, to mitigate traffic, parking congestion, or through traffic on Streets within a neighborhood.
2. The street is a private street, is a cul-de-sac, and is not a through street. The proposed vehicle control gate does not impact traffic circulation through the neighborhood.
3. The private street serves primarily single family or duplex residences with individual or shared driveways.
4. There is a major traffic or parking generator or use within a nine hundred (900) foot walking distance of the private street entrance and there is evidence of spill over parking or other vehicular activity on a regular basis throughout the season.
5. The vehicle control gate is located outside of the County right-of-way and maintains all setbacks of the zone.
6. The vehicle control gate does not impact existing utility easements.
7. The vehicle control gate is designed to permit unimpeded pedestrian, bicycle and equestrian access through the neighborhood and to existing public trails and walkways. A minimum gap of four (4) feet shall be allowed for these non-vehicular Uses.
8. The vehicle control gate is designed to be minimal in height, scale, and mass to accomplish the goal of preventing unauthorized vehicle traffic, parking, and/or other impacts on the neighborhood. There shall be a minimum bottom clearance of two (2), feet from the bottom of the gate rail to the road surface. A diagonal structural support may cross through the two (2) foot opening to provide additional structural strength for the cantilevered gate and keep the overall gate mass to a minimum. The gate shall be no more than three (3) feet or thirty-six (36) inches in height from the bottom rail

to the top rail, although allowance may be made for decorative elements. The gate shall open inward allowing a vehicle to stop while not obstructing traffic on the roads. Design and materials shall result in a visually open gate. Any walls associated with the entry gate shall be pedestrian in scale and shall generally not exceed a height of five (5) feet. Column elements may be added for architectural interest, but these column elements shall not exceed a height of nine (9) feet.

9. The method of access for emergency, service, and delivery vehicles shall meet all requirements of the County Planning, Engineering, and Building Departments and the Park City Fire Service District prior to issuance of a building permit for the gate construction.

10. If the gate is electronically operated, a receiver shall be installed that will permit emergency services access with a transmitter. If the gate can be locked, a lock box approved and provided by PCFSD and the County Sheriff will be located on the exterior side of the gate to provide for emergency equipment access to the property through the gate.

11. Vehicle control gates on private streets are not permitted in all zones. Gates on private streets are allowed as a conditional use in the following Zoning Districts: RR, HS, MR, RC

12. Any signs associated with the gate and/or walls are subject to Section 10-8-2.

13. A vehicle control gate management plan shall be submitted for approval to address times and situations when the gate will be closed. Applicants shall agree to leave the gate open at all times, except as specified in the approved management plan.

ⁱ This Amendment is dated 6/21/07 for Kirk McDonald's signature and signed by "Management" but not acknowledged to a notary until 8/1/07. Summit County's signature is not dated at all.

ⁱⁱ A First Amendment to the CA was curiously dated October 29, 2003 but executed July 9, 2003 to reflect the changes in ownership with minor modifications but otherwise ratifying all terms of the CA agreement and extended its term through April 21, 2007. A Second Amendment to the CA was made on May 12, 2004. The County agreed to a Third Amendment to the CA which again ratified and confirmed the terms of the original CA except for the modifications contained in that amendment. The Third Amendment specifically stated that the terms of the original CA had ongoing effect at para. 18. However, the Third Amendment was silent as to duration. It purported to be effective June 21, 2006 but was not actually acknowledged before a notary until August 1, 2007 by the MacDonald entity and there was no date or proper notarization of the County's signature.



Memorandum

To: Summit County Council (SCC)
Memo Date: Thursday, November 29, 2012
Meeting Date: Wednesday, December 5, 2012
Author: Kimber Gabryszak, AICP and Jami Brackin, Deputy County Attorney
Project Name: Ridge at Red Hawk (RRH) Vested Rights – Staff Response

Below please find Staff's response to the Interoffice Memorandum from Joe E. Tesch dated October 12, 2012. Staff's analysis is written in red; in summary, Staff does not find that the vested rights determination has merit, and recommends that the application not be forwarded to the Snyderville Basin Planning Commission.

Section I – history

- A. The applicant outlines various sections of the Consent Agreement (CA).
 - 1.3 – use, density, and configuration as outlined in the CA are vested.

This is correct. The CA has expired, however those uses that were implemented (platted lots, design guidelines, road patterns, etc.) are vested. Those uses that were not implemented would not be vested, for example if approved lots were not actually platted before the CA expired.
 - 1.4 – specific design conditions are included in the CA
Correct, there are specific design conditions.
 - 2.2.1 – the developer has vested rights to develop the project
See analysis of 1.3, above.
 - 2.2.2.1 – future changes of laws and plans do not apply to the project
Partially correct. For those uses that are vested and covered in the CA. Items not addressed in the CA, or not vested, are subject to current Code requirements. See analysis of 1.3, above.
 - 5.1 – agreements to run with the land
Correct, for those uses that are vested and covered in the CA. See analysis of 1.3, above.
 - 5.4 – duration of 5 years with option to extend for 5 years, until April 2007
Incorrect. The CA for the RRH half expired in April 2002 without amendment.
- B. The applicant outlines information contained in Schedule 1 to the Consent Agreement.
 - VI – General Design and Development layout contemplates gated driveways.

Correct. Gates on private driveways (roads) to individual lots and out of the Right of Way have been approved. Under our driveway standards, a single driveway can only access up to five (5) houses.
 - VII – Provision of services references Exhibit B to the CA, which contemplates gates
Gates on private driveways were contemplated.
 - VII.11. – Paragraph 11 (below) includes a provision to gates on private driveways and roads that was copied from the Development Code in effect at the time.
Staff has been unable to locate this language in the associated Development Code.
- C. The applicant outlines information contained in the CC&Rs, which were included in draft form in the Consent Agreement.
 - 9.10 – HOA has the right to install gates.

While the CC&Rs may reference gates, they were included in draft form as an exhibit to the CA, and not adopted by or incorporated into the CA. CC&Rs are private covenants that are not enforced by the County or enforceable against the County (see Ombudsman Opinion for Silver Creek Unit I). In no event are CC&Rs permitted to be less restrictive

than or otherwise supersede County standards whether contained in a Consent Agreement or in the Development Code.

- D. The applicant summarizes CA amendments and states that the CA was extended to April 2007. Incorrect. After the Court partition, the Consent Agreement was amended to divide the Preserve half from the RRH half. The amendment then extended the Consent Agreement only as to the Preserve half and was amended twice more during its effective period but only as to the Preserve half. The RRH half never applied for nor received an extension of the CA, and therefore it expired by its own terms in April 2002.

Section II – Analysis

- A. The County based its opposition to the construction of the gate on an erroneous reading of the consent agreement that the gate was not permitted under the consent agreement
The applicant argues that gates are permitted under the section that allows gates on private driveways and roads. However, it is impossible for a gate to be constructed on the main entrance or a road in a manner that complies with the standards set forth in the agreement. The standards require that all gates be constructed outside of the Right of Way, so that a vehicle may park and wait at the gate without impeding traffic. A gate *across and through* the right of way is not able to be located *fifteen feet from* the right of way. This provision appears to have been included to permit private property owners gates on their driveways, but not on the roads through the project.
- B. Red Hawk had a vested right to build the gate under the consent agreement.
The applicant continues with the theory that the CA permits gates, through the inclusion of the draft CC&Rs as an exhibit to the CA, and that the County should have known that gates were contemplated in the development.
The CC&Rs were attached as exhibits only to show that there was going to be a mechanism to deal with common areas and on-going obligations. They were not incorporated into or made part of the Agreement itself and cannot supersede the terms of the Agreement or grant themselves greater rights than they would otherwise have under any development code. Also see Section I.C above, outlining the relationship of the CC&Rs to the CA, and the Ombudsman opinion that was issued for Silver Creek Unit I, stating that the County cannot enforce CC&Rs.
- C. The security gate is a use.
The applicant argues that gates are a use, and if the County says that gates are not an allowed *use* then how can the County require a conditional *use* permit?
The County does find that gates are a use, however they are simply not a use that is permitted by the CA. The interpretation is not concerning the word *use*, but the word *allowed*. If the use is not allowed in the CA, then it is subject to current requirements for gates under the Development Code.

Section III – Assuming Red hawk did not have a vested right to construct a gate, the County should have granted a conditional use permit to construct it.

These arguments pertain to the CUP appeal and do not impact a vested rights application. They will be addressed separately in the appeal, should the appeal go forward.

Section IV – Section 10-8-12 is invalid on its face as places unreasonable restrictions on the use of private property and conflicts with State law concerning conditional uses.

Again, these arguments pertain to the CUP appeal and do not impact a vested rights application. This will be addressed separately in the appeal, should the appeal go forward.

Section V – Prior Counsel's grounds for appeal must be asserted.

Again, these arguments pertain to the CUP appeal and do not impact a vested rights application. This will be addressed separately in the appeal, should the appeal go forward.

INTEROFFICE MEMORANDUM

TO: JAMI BRACKIN AND KIMBER GABYRSZAK
FROM: JOSEPH E. TESCH
FILE: RED HAWK
SUBJECT: GATES ARE PERMITTED ON RED HAWK ROADS
DATE: 1/8/13

I. THE PLANNING DEPARTMENT’S ARGUMENT THAT “ROADS” REALLY ONLY MEANS DRIVEWAYS IGNORES THE PLAIN MEANING OF THE CONTRACT PROVISIONS AND ELIMINATE THE WORD “ROADS” ALTOGETHER FROM THE PROVISION WHICH SPECIFICALLY ALLOWS GATES ON ROADS.

The Planning Department is interpreting the Consent Agreement in a way that eliminates the word “road” from the section specifically allowing gates on roads in order to reach its desired result of eliminating gates on roads. It also imposes a later-enacted ordinance to defeat Red Hawk’s pre-existing vested right to construct gates on roads. The rules of construction of contracts do not permit this. See:

Our own Third District Court followed these rules of construction in resolving a dispute between a homeowner in Park City’s South Ridge Development (above and bordering Jeremy Ranch) and the South Ridge HOA over short term rentals. *South Ridge Homeowners’ Ass’n v. Brown* (3d Dist., Utah 2012) 226 P.3d 758. The dispute concerned the interpretation of the following provision in the CC&R’s, “No timeshare, nightly rental or similar use will be allowed on any single family residential lot”. Homeowner Brown argued that renting by the week on a short-term basis was not a violation of the terms of the CC&R’s. The Third District Court examined the provision and applied these hornbook principals of contract interpretation to reach the conclusion that short-term rentals constituted a use similar to that of a nightly rental or timeshare and were therefore prohibited by the CC&R’s at issue, saying:

“We agree with the parties that the relevant provisions of the Declaration of Covenants, Conditions and Restrictions (the CC & Rs) are not ambiguous.^{FN1} See generally *WebBank v. American Gen. Annuity Serv. Corp.*, 2002 UT 88, ¶¶ 20, 22, 54 P.3d 1139 (stating that “[w]hether an ambiguity exists in a contract is a question of law” and that ambiguity exists if a contract term “is capable of more than one reasonable interpretation”) (citations and internal quotation marks omitted). Accordingly, our interpretation of the relevant provisions is limited to the four corners of the CC & Rs, and we of course interpret the relevant language in light of the overall meaning and intent of the CC & Rs. See *Bodell Constr. Co. v. Robbins*, 2009 UT 52, ¶ 19, 215 P.3d 933 (“When we interpret a contract, ... we determine the intent of the contracting parties by first look [ing] to the writing alone. If the writing is unambiguous, we determine the intent of the parties exclusively from the plain meaning of the contractual language.”) (alteration in original) (citation footnotes and internal quotation marks omitted); *Peterson & Simpson v. IHC Health Servs., Inc.*, 2009 UT 54, ¶ 13, 217 P.3d 716 (“As with

any contract, we determine what the parties have agreed upon by looking first to the plain language within the four corners of the document. When interpreting the plain language, 'we look for a reading that harmonizes the provisions and avoids rendering any provision meaningless.' [emphasis added] If we find the language unambiguous, we interpret the contract as a matter of law.” (citations omitted). *See also Swenson v. Erickson*, 2000 UT 16, ¶ 11, 998 P.2d 807 (“Restrictive covenants that run with the land and encumber subdivision lots form a contract between subdivision property owners as a whole and individual lot owners; therefore, interpretation of the covenants is governed by the same rules of construction as those used to interpret contracts.”). “In interpreting contracts, ‘the ordinary and usual meaning of the words used is given effect,’ ” which “ordinary meaning ... is often best determined through standard, non-legal dictionaries.” *Warburton v. Virginia Beach Fed. Sav. & Loan Ass'n*, 899 P.2d 779, 782 (Utah Ct.App.1995) (citation omitted).

FN1. That the parties have different views about the meaning of the key terms does not render the terms ambiguous. *See Equitable Life & Cas. Ins. Co. v. Ross*, 849 P.2d 1187, 1192 (Utah Ct.App.) (“[A] contract term is not ambiguous simply because one party ascribes a different meaning to it to suit his or her own interests.”), *cert. denied*, 860 P.2d 943 (Utah 1993).”

In *Buehner Block v. UWC Associates* (1998, UT) 752 P.2d 892, the issue before the court was whether language in paragraph 9 of a construction commitment letter *required* the lender to provide a bond for the project. Harmonizing the language “shall require [the lender to obtain bond]” and later in the contract “as deemed necessary and approved by the lender” the court found the language was unambiguous and bond was only required at the lender’s option and for the lender’s benefit. In reaching its conclusion the *Buehner* court stated:

“The interpretation of a written contract may be a question of law determined by the words in the agreement.^{FN7} In this regard, a cardinal rule in construing such a contract is to give effect to the intentions of the parties, and if possible, these intentions should be gleaned from an examination of the text of the contract itself.^{FN8} Additionally, it is axiomatic that a contract should be interpreted so as to harmonize all of its provisions and all of its terms, and all of its terms should be given effect if it is possible to do so.^{FN9} If a trial court interprets a contract as a matter of law, as was obviously the case here, we accord its construction no particular weight and review its actions under a correction-of-error standard.^{FN10}” [emphasis added]

FN7. *Kimball v. Campbell*, 699 P.2d 714, 716 (Utah 1985); *accord Colonial Leasing Co. v. Larsen Bros. Constr. Co.*, 731 P.2d 483, 488 (Utah 1986); *Morris v. Mountain States Tel. & Tel. Co.*, 658 P.2d 1199, 1200–01 (Utah 1983); *O'Hara v. Hall*, 628 P.2d 1289, 1290–91 (Utah 1981); *Overson v. United States Fidelity & Guar. Co.*, 587 P.2d 149, 151 (Utah 1978).

FN8. *Atlas Corp. v. Clovis Nat'l Bank*, 737 P.2d 225, 229 (Utah 1987) (citing *DuBois v. Nye*, 584 P.2d 823 (Utah 1978); *Oberhansly v. Earle*, 572 P.2d 1384 (Utah 1977)); *Land v.*

Land, 605 P.2d 1248, 1251 (Utah 1980); see also Hal Taylor Assocs. v. UnionAmerica, Inc., 657 P.2d 743, 749 (Utah 1982); Utah State Medical Ass'n v. Utah State Employees Credit Union, 655 P.2d 643, 646 (Utah 1982); Jones v. Hinkle, 611 P.2d 733, 735 (Utah 1980).

FN9. Larrabee v. Royal Dairy Prods. Co., 614 P.2d 160, 162–63 (Utah 1980); Jones, 611 P.2d at 735; Minshew v. Chevron Oil Co., 575 P.2d 192, 194 (Utah 1978).

Larrabee v. Royal Dairy Products Co., 614 P.2d 160, 162 (Utah 1980) concerned the interpretation of terms of a revocable trust. “In harmony with the view thus expressed by the trial court is the fact that in the fashioning of these important documents the revocable trust expressly recited that it could be revoked at the will of the settlor, mother Rebecca, whereas the Agreement, upon which this controversy devolves, did not so provide. In arriving at his conclusion, the trial court applied correct principles as to giving effect to a written document: that where questions arise the first source of inquiry is within the document itself; that it should be looked at in its entirety and in accordance with its purpose; and that all of its parts should be given effect insofar as that is possible.[FN1]

FN1. See Thomas J. Peck & Sons, Inc. v. Lee Rock Products, Inc., 30 Utah 2d 187, 515 P.2d 466 (1973), citing Restatement of Contracts, Section 235; Jensen's Used Cars v. Rice, 7 Utah 2d 276, 323 P.2d 259 (1958).”

The *Larabee* court found the Restatement of Contracts, Section 235 persuasive in this regard. I did not retrieve the language of the Restatement of Contracts as it is outside of your plan, however, the courts have cited to this section (see immediately above) as persuasive secondary authority.

Minshew v. Chevron Oil Co. 575 P.2d 192 (Utah 1978) does not use the word “harmonize” but supports the principal of harmonization as recognized by *Buehner* above which cited it for that proposition FN 9. *Minshew* concerned the interpretation of a lease agreement. The appellate court affirmed the trial court’s reading of the lease agreement. In doing so, it noted that the appellant’s position sought to ignore the second half of a pertinent provision of the lease at issue and found that the trial court’s interpretation properly considered all of the paragraph and not just the first half of the paragraph that was emphasized in the appellant’s briefing. Additionally, similar to the County approving plans for a gate and watching as Red Haw built the gate, the appellate court also found the appellant’s inaction while the appellee built a structure on the leased premises even though appellant apparently claimed the terms of the lease did not allow it to do so to be instructive of the parties’ intent.

“The established rules of contract interpretation require consideration of each of its provisions in connection with the others and, if possible, to give effect to all.[FN3] Effect is to be given the entire agreement without ignoring any part thereof.[FN4]

FN3. McKay v. Barnett, 21 Utah 239, 60 P. 1100 (1900).

FN4. Gates v. Daines, 3 Utah 2d 95, 279 P.2d 458 (1955).”

Minshew v. Chevron Oil Co. 575 P.2d 192 (Utah 1978).

See also, *Atlas Corp. v. Clovis Nat. Bank*, 737 P.2d 225, 229 (Utah 1987)

“The cardinal rule in construing any contract must be to give effect to the intentions of the parties. If possible, those intentions must be determined from an examination of the text of the agreements. *DuBois v. Nye*, 584 P.2d 823 (Utah 1978); *Oberhansly v. Earle*, 572 P.2d 1384 (Utah 1977). And, inasmuch as the agreements and the mining deed were executed substantially contemporaneously and are clearly interrelated, they must be construed as a whole and harmonized, if possible. *Mark Steel Corp. v. EIMCO Corp.*, 548 P.2d 892 (Utah 1976). If the contract language is ambiguous or uncertain after careful consideration of the whole integration, only then should a court consider extrinsic evidence to determine the parties' intent. *Big Butte Ranch, Inc. v. Holm*, 570 P.2d 690 (Utah 1977).”

Schedule I, § VII.A.II reads as follows:

“Gates All posts for gates on private driveways and roads will be four feet wider...”
[emphasis added]

The Planning Department’s interpretation eliminates the words “and roads.” This is a critical term and may not be ignored or simply read out of the CA.

If the Agreement is interpreted so that the following sentence of “All gates shall be located at least fifteen (15) feet from the right-of-way...” applies only to gates on private driveways, and not to roads then we have an interpretation which harmonizes all of the terms and gives meaning to the word “roads.”

The rules of contract interpretation do not support the Planning Department’s position. Those rules require that we look first to the plain meaning of the contract in a way that harmonizes each provision and avoids rendering any provision meaningless. Summit County ignores those rules of interpretation by: 1) referring to the wrong document (the Snyderville Basin planning District Rural Development Guidelines rather than Schedule 1 to the Consent Agreement which supersedes those Guidelines); 2) failing to give plain meaning to the words in the contract; and 3) and striving for a reading which renders the Gates provision meaningless as to the term “roads” rather than seeking a valid interpretation that harmonizes the provisions of the contract in order to give meaning each provision.

II. THE LAW OF CONTRACT INTERPRETATION DICTATES THAT THE CONSENT AGREEMENT AND EXHIBITS BE READ TO ALLOW CONSTRUCTION THE GATES ON ROADS

The law of contract requires parties interpreting a contract to look first to the writing alone. “When we interpret a contract,...we determine the intent of the contracting parties by first look[ing] to the writing alone. If the writing is unambiguous, we determine the intent of the parties exclusively from the plain meaning of the contractual language.” *Bodell Constr. Co. v. Robbins*, 2009 UT 52, ¶ 19, 215 P.3d 933. “When interpreting the plain language, ‘**we look for a reading that harmonizes the provisions and avoids rendering any provision meaningless.**’ If we

find the language unambiguous, we interpret the contract as a matter of law.” *Peterson & Simpson v. IHC Health Servs., Inc.*, 2009 UT 54, ¶ 13, 217 P.3d 716, *emphasis added*.

The four corners of the contract at issue include the CA, Schedule 1, the Development Guidelines and the CC&R’s. Roads are clearly defined within the documents which comprise the CA is a way that is not ambiguous. It is the construction of one sentence in the Development Guidelines which are superseded by Schedule 1 which is at issue. The elimination of the terms “major and minor” in Schedule 1 serve to clarify and support the plain reading of the contract to allow the construction of gates or roads. The County’s overly narrow reading of the superseded sentence in the Development Guidelines is a reading that ignores the plain meaning of the contract. It contravenes the law of contract interpretation by ignoring the specific inclusion of the word “road” in the relevant section and ignore the additional harmonizing provisions of the contract which specifically allowing gates on roads.

III. THE PLANNING DEPARTMENT LOOKS TO THE WRONG PROVISION TO SUPPORT ITS POSITION

The gate constructed at the entrance to Red Hawk was permitted as a vested right pursuant to Schedule 1 of the CA at §VII.A.11. Gates. In response, Kimber Gabryszak argues: “The key issue isn't whether or not the gates are only permitted on driveways. The key is later in the sentence, where the requirements state that they have to be at least 15' from the road right of way and designed so that there is no obstruction of major or minor roads. This, in application, means that gates can only be across driveways, or shared driveways, or private drives that only serve a few homes and thus have no right of way.” Of course, this interpretation reads “roads” right out of the CA.

Of Course, Ms. Gabryszak takes this language from the wrong provision. She refers to the Snyderville Basin Planning District Rural Development Guidelines of January 31, 1997 (“the Development Guidelines”) at §III.B.7. “Gates,” rather than from the nearly identical, but notably different provision in Schedule 1 to the Consent Agreement (CA) at §VII.A.11. Gates. The reason this is important is the CA provides that the specific design conditions for the project are governed by Schedule 1 to the CA and take precedence over the Exhibits which include the Development Guidelines (CA, para. 1.4). The change in wording from the Development Guidelines to the wording found in the controlling at Schedule 1 are noted and then illustrated in bold immediately below. (Sections of the controlling documents referenced herein are summarized or set out in full at the end of the document).

Note that the differences in the two provisions are:

- 1) the order of “(15) fifteen” in the Development Guidelines is switched to “fifteen (15)” in Schedule 1;
- 2) addition of the word “the” before “right-of-way” in Schedule 1; and

- 3) **elimination of the words “major and minor” which were in the Development Guidelines before roads in the phrase “allowing a vehicle to stop while not obstructing traffic on the road” as found in Schedule 1.**

The following is the definition of Gates found in Schedule 1 to the Consent Agreement (with changes from the Development Guidelines noted in bold):

§VII.A.11.Gates All posts for gates on private driveways and roads will be four feet wider than the approved road width. All gates shall be located at least ~~(15)~~ **fifteen fifteen (15)** feet from **the** right-of-way and shall open inward, allowing a vehicle to stop while not obstructing traffic on ~~major or minor~~ roads. Should gates be electronically operated, a receiver shall be installed that will permit emergency services access with a transmitter. If the gate can be locked, a lock box approved and accessible to the Park City Fire Service District and Summit County Sheriff will be located on the exterior side of the gate to provide for emergency equipment access through the gate.

The elimination of the words “major or minor” in the controlling Schedule 1 is an attempt to clarify the ambiguity in the sentence. The primary purpose of that sentence is to require gates or driveways to be located in a manner and location that prevents obstruction of traffic the right-of-way road. The requirements to affect this purpose are: 1) locating the gate fifteen feet from the right-of-way road; and 2) ensuring the gate opens inward so that a vehicle can stop without obstructing traffic on such right-of-way road. The second use of the word “road” in this sentence does not inject a third and new requirement into the sentence that no gates may be constructed on any roads as Ms. Gabryzak posits.

IV. SUMMIT COUNTY’S INTERPRETATION IS OVERLY RESTRICTIVE, IGNORES THE PLAIN MEANING OF THE CONTRACT, AND FAILS TO HARMONIZE THE PROVISIONS OF THE CONTRACT

Ms. Gabryzak’s overly restrictive reading of the language is wrong for several reasons:

- 1) it eliminates the word “road” from the first sentence of the provision which explicitly allows gates on private driveways **and roads**; [emphasis added]
- 2) it ignores every other provision of the Consent Agreement, Schedule 1 thereto which clearly contemplate the construction of security gates on roads;
- 3) it ignores the CC&R’s which it approved without objection for inclusion in the CA which specifically reserve the right to construct security gates on the private major roadways in the Development; and
- 4) it seeks to retroactively apply restrictions enacted after the County approved the CA **and** approved and permitted the construction of the gate and gatehouse in question at significant expense of more than \$30,000, waiting several years before taking any action to reverse its decision.

These errors are more fully address as follows:

- 1) it eliminates the word "road" from the first sentence of the provision which explicitly allows gates on private driveways **and** roads.

A plain reading of the governing section of Schedule 1 of the Consent Agreement includes the word roads. The very first sentence of the provision specifically applicable to gates reads, "All posts for gates on private driveways and roads will be four feet wider than the approved road width." This clearly contemplates the construction of gates on roads, which are defined as set forth in section V. of this memorandum below. The Planning Department to misapply the language in "major and minor roads" which was removed from the governing document, Schedule 1, almost certainly because of the confusion it is now causing. If Planning Department's reading is applied, there is no harmony in the paragraph, much less the contract as a whole. Summit County urges a reading which in one sentence very clearly allows gates on roads, which by definition is an obstruction of a road and in the next disallows any obstruction on any road. The interpretation that gives meaning to all the words in the contract and harmonizes the provisions of the Consent Agreement and its exhibits as a whole is one which recognizes that the word "road" in the second sentence of §VII.A.11. Gates refers to the right-of-way roads which must not be blocked. This reading gives meaning to each term in the paragraph without eliminating the word road from the very first sentence. Additionally, it harmonizes the other provisions of the Consent Agreement including the CC&R's approved by the county which clearly contemplate the construction of gates on the private roads of Red Hawk.

- 2) it ignores every other provision of the Consent Agreement, Schedule 1 thereto which clearly contemplate the construction of security gates on roads:

§VII. Provision of Services. A. Roads.

1. provides in pertinent part that all the roads within the project are private roads to be privately maintained by the Project.
2. approves the road layout on Exh. B.
4. Road Widths mandates major roads as shown on Exh. B have a width of 24 feet and minor roads have a width of 20 feet and a right-of-way width of 100 feet. "All roads and driveways will have unobstructed vertical clearance of 13 feet, 6 inches."

- 3) it ignores the CC&R's which it approved without objection for inclusion in the CA which specifically reserve the right to construct security gates on the private major roadways in the Development; and

The CC&R's which are Exh. F to the CA at section 9.10 Major Road Easements reserves the right to install security gates. These CC&R's were submitted to the County as part of the approval of the CA. In includes the statement, "Relative to the construction and maintenance of any Major Roads, Declarant and the Foundation shall have the right to install...security and entry gates, security gate house... and the like."

- 4) it seeks to retroactively apply restrictions enacted after the County approved the CA **and** approved and permitted the construction of the gate and gatehouse in question

at significant expense of more than \$30,000, waiting several years before taking any action to reverse its decision.

V. RELEVANT ROAD AND DRIVEWAY DEFINITIONS FOR REFERENCE

The following are the various relevant definitions of roads and driveways found in the three relevant documents, Schedule 1 to the Consent Agreement, the Snyderville Basin District Rural Development Guidelines, and the CC&R's:

Consent Agreement, Schedule 1:

VI. G. Driveway Access contemplates gates on driveways where it states in the last paragraph: "All driveways, whether or not gated and locked, must provide a turnaround acceptable to the Park City Fire District."

VII. Provision of Services. A. Roads.

1. provides in pertinent part that all the roads within the project are private roads to be privately maintained by the Project.

2. approves the road layout on Exh. B.

4. Road Widths mandates major roads as shown on Exh. B have a width of 24 feet and minor roads have a width of 20 feet and a right-of-way width of 100 feet. "All roads and driveways will have unobstructed vertical clearance of 13 feet, 6 inches."

11. Gates All posts for gates on private driveways and roads will be four feet wider than the approved road width. All gates shall be located at least fifteen (15) feet from the right-of-way and shall open inward, allowing a vehicle to stop while not obstructing traffic on the road. Should gates be electronically operated, a receiver shall be installed that will permit emergency services access with a transmitter. If the gate can be locked, a lock box approved and accessible to the Park City Fire Service District and Summit County Sheriff will be located on the exterior side of the gate to provide for emergency equipment access through the gate.

Snyderville Basin Planning District Rural Development Guidelines (SBPDRDG):

III. Access, Roads and Driveways, B. Roads and Streets

7. Gates All posts for gates on private driveways and roads will be four feet wider than the approved road width. All gates shall be located at least (15) fifteen feet from right-of-way and shall open inward, allowing a vehicle to stop while not obstructing traffic on major or minor roads. Should gates be electronically operated, a receiver shall be installed that will permit emergency services access with a transmitter. If the gate can be locked, a lock box approved and accessible to the Park City Fire Service District and Summit County Sheriff will be located on the exterior side of the gate to provide for emergency equipment access through the gate.

CC & R's:

3.11 Driveway shall mean the driveway from any Major Road or Minor Road to each homesite.

3.15 Major Roads shall mean the primary subdivision roads as shown on the subdivision plat.

3.16 Minor Roads shall mean all other subdivision roads, including but not limited to service roads, and access roads to the Preserve facilities.

9.10 Major Road Easements reserves the right to install security gates. These CC&R's are Exh. F to the CA agreement and were submitted to the County as part of the approval of the CA. "Relative to the construction and maintenance of any Major Roads, Declarant and the Foundation shall have the right to install...security and entry gates, security gate house... and the like."

VI. RED HAWK'S INTERPRETATION OF THE CONSENT AGREEMENT MUST PREVAIL BECAUSE IT ACKNOWLEDGES THE PLAIN MEANING OF EACH TERM AND HARMONIZES THE PROVISIONS OF THE WHOLE CONTRACT

Red Hawk's interpretation of the Consent Agreement must prevail because it acknowledges the plain meaning of each term and harmonizes the provisions of the whole contract while the interpretation urged by Summit County disregards the plain meaning of the terms of the contract, creates diametrically opposed interpretations of the word "road" within one paragraph while ignoring the harmonizing provisions of others all in an attempt to retroactively impose restrictions on the construction of gates in contravention of Red Hawk's vested rights.

CONCLUSION

The Planning Department should adopt Red Hawk's interpretation of the CA which does not eliminate the critical words "and roads" in Schedule I. However, even if the Planning Department disagrees, it must concede that the interpretation suggested has merit and it is not frivolous. Clearly, an independent body, such as a court, could reasonably rule that Red Hawk's proposed interpretation is correct.

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April 3, 2013

VIA EMAIL

Kimber Gabryszak
Summit County Planning Department

RE: Ridges at Red Hawk, aka Ranches at the Preserve HOA—Vested Rights Determination

Dear Kimber,

This information is a supplement to the prior information that we have provided with regard to the position of Red Hawk the gates were clearly vested under the Consent Agreement. This argument consists of two parts. The first part is the fact that they are permitted by the CC&R's which were adopted by and amended by the Planning Commission. The second point is that the County Officials involved in the approval of the Consent Agreement all intended and interpreted the Consent Agreement allowed gates on the major roads. This proof are by way of the attached affidavits.

1. The CC&R's permit gates and were adopted by the Planning Commission.

Little credibility has been given to Red Hawk's position that the CC&R's now permit and have always permitted entry gates. The position of the Planning Department had always been that the CC&R's are not part of the Agreement. In fact, they are part of the Agreement.

The first place we look for this proof is in Schedule I, adopted as vested by the Consent Agreement. The following paragraphs in Schedule I all call out provisions in the CC&R's that are required to be contained in the CC&R's and are, thus, part of the Consent Agreement. The relevant language, by sections and subsections, specifically calling out specific sections in the CC&R's are the following:

1. The very first paragraph entitled Specific Design Conditions references the fact that the CC&R's will be recorded against every lot and includes the CC&R's as an attachment to Schedule I.

2. Section II.A. references the CC&R's as controlling wildlife and open space. Protection of wildlife involves minimization of motor vehicle traffic.
3. Section IV. Designation and Limitation upon Land Uses within the Project. In the opening paragraph it discusses the fact that the CC&R's are applicable to the open space of the project. Again, IV, subsection B. lists permissible and prohibited uses as otherwise prohibited in the project CC&R's.
 - a. Subparagraph B.1. discusses the CC&R's and critical wildlife and open space plan.
 - b. Subparagraph B.2.b. discussed the prohibition of any site work or grading without approval under the CC&R's.
 - c. Subparagraph B.2.b.3. discusses removal of foliage or vegetation must be consistent with the CC&R's.
4. Section VI, General Design and Development Layout, subparagraph A.
 - a. Subparagraph E. requires that the construction guidelines be consistent with the CC&R's.
 - b. Subparagraph F. requires that structures permitted within the development shall approved under the CC&R's.
 - c. Subparagraph H. requires that the project trail system be consistent with the CC&R's.
5. Section VII, Provision of Service, A.1. requires that the maintenance for the private roads be budgeted within the CC&R's.
 - a. Subparagraph A.12. requires that the CC&R's provide an adequate budget for snow removal, etc.
 - b. Subparagraph C.2. requires that within the CC&R's it identifies the process for obtaining a building permit as it relates to water rights, etc.
 - c. Subparagraph F. requires that the CC&R's shall contain a requirement to the extent made practicable all excess construction material shall be recycled.
6. The Planning Commission minutes of the March 25, 1997, wherein the Consent Agreement was approved demonstrate that the Planning Commission

adopted and directed language to be contained in the CC&R's which, in turn, were an exhibit to the Consent Agreement. In particular, we have attached a copy of those minutes beginning on page 6 which reflect the ownership of and adoption of the CC&R's from the point of view of the Planning Commission. On page 9, Commission Kohler makes the motion to approve the Consent Agreement. Within his motion, he states the following requirements of the CC&R's:

- a. Page 11, subsection f. wherein he states that "All open space areas shall be subject to the restrictions of the CC&Rs."
- b. Page 13, subsection 7., which states that the conditions of the CC&R's with regard to the principal dwelling on each lot shall be consistent with the other provisions of Schedule 1.
- c. Page 13, subsection 8., wherein he indicates that the CC&R's need to establish a minimum fine for violations of the domestic animal policies.
- d. Page 14, subsection 12., wherein he indicates that Section 11 1 of the CC&Rs shall be amended to state that Domestic Water shall be provided to all Ranches.

Given these required changes to the CC&R's, it could not have been lost on Commissioner Kohler that the CC&R's permitted entry gates and security gate houses on all of its major roads.

Given the fact that the CC&R's were attached to Schedule I and referenced in all of these many paragraphs of Schedule I, and in several areas of the motion approving the Consent Agreement, it can hardly be argued that the provisions of the CC&R's authorizing gates were not part of the Consent Agreement.

Given the above, Section 9.10 of the CC&R's permitting gates for "including security entry gates, security gatehouse" could hardly have been overlooked by the Snyderville Basin Planning Commission when the approval was given to the Consent Agreement.

2. Proof by Affidavits.

All of the relevant parties to the Agreement understood that security and entry gates would be permitted. In addition to all of the prior correspondence and all the prior submittals, we are hereby submitting the affidavits of Doug Dotson, the director of the Planning Department at the time of the negotiation and adoption of the Consent Agreement, Mike Nielsen and John Gasgill, the developers who negotiated the Consent Agreement with Doug Dotson and Max

Greenhalgh, who was a member of the Snyderville Basin Planning Commission who approved the Consent Agreement.

These affidavits must be read and studied carefully. There is only one obvious conclusion: All of the parties involved, on both sides, understood that entry gates were permitted under the terms of the Consent Agreement.

Based on the foregoing and upon applicant's prior submittals, Applicant request that the Planning Department recommend to the County Council that Applicant's request for vested rights to erect entry gates has obvious merit.

Respectfully Submitted,
TESCH LAW OFFICES, P.C.



Joseph E. Tesch

JET/tw

Cc: Jami Brackin
Donna VanBuren
Brad Krassner

STATE OF)
) :ss.
COUNTY OF) AFFIDAVIT OF MIKE NIELSEN
REGARDING RED HAWK/
CONSENT AGREEMENT

Mike Nielsen, being first duly sworn, deposes and states as follows:

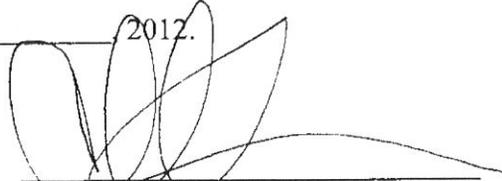
1. I am an adult over the age of 18.
2. During the fall of 1996 and the spring of 1997, I was one of the principals of the company which owned Red Hawk Preserve.
3. During that time I was directly involved in the negotiation of the Consent Agreement for the Red Hawk Wildlife Preserve Project.
4. After the gate matter was mutually agreed upon between myself and Doug Dotson, the head of planning and zoning for Summit County, it was adopted by Summit County Ordinance No. 310, adopted April 21, 1997.
5. In particular, I recall negotiating paragraph 5.1 of Ordinance No. 310 which required that all of the agreements run with the land and are binding on all successors and ownership of the Property and subsequent lots.
6. I also recall that certain provisions of the Consent Agreement were vested and they did not change whether or not the Consent Agreement ultimately expired.
7. I also recall that Schedule 1, Specific Design Guidelines, were incorporated and attached to the Consent Agreement and that the uses contained in that document, including the right to have gates on roads as set forth in Schedule 1, paragraph 11, where vested.
8. During the negotiations, there was discussion about the County's desire to eliminate gates on the roads and that discussion resulted in an agreement that gates could be placed on the roads in the Red Hawk Wildlife Preserve. In particular, Schedule 1, paragraph 11, as it was negotiated, reads in pertinent part as follows:

"11. Gates. All posts for gates on private driveways and roads will be four feet wider than the approved road width." (emphasis added)

9. In particular, the word "roads" was inserted to mean that we could have gates across major and minor roads as defined. There was never any thought that the later language that was intended to deal with only private driveways, that gates shall be

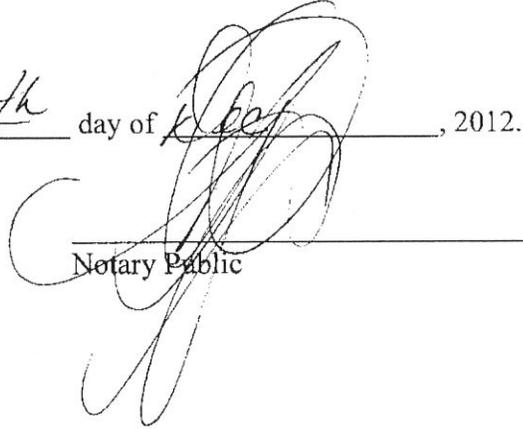
located at least 15' from the right of way and shall open inward, would ever apply to roads. While the language could be more clear, the understanding that gates could be installed on roads was very clear to all involved in the negotiations, including the representatives of the County.

Dated this 28 day of DEC, 2012.

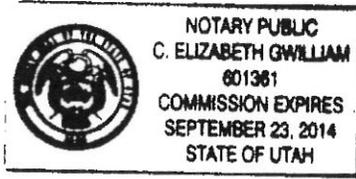


Michael Nielsen

Subscribed and sworn before me this 28th day of Dec, 2012.



Notary Public



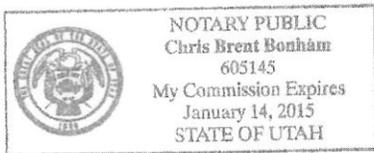
In particular, the word "road and roads" were inserted in this paragraph to mean that a privacy / security gate could be placed across the major and minor roads. The four-foot requirement was intended to insure that the supporting structure for any gate would not impede emergency vehicles, particularly in the event of a build-up of snow. The Planning Commission and County Commissioner's, in approving the Consent Agreement, wanted to ensure that any gate placed on a driveway would have to be located at least fifteen (15) feet from the road right-of-way and that it must open inward to the lot to allow a vehicle to stop in a manner that would not obstruct traffic on the road. Any interpretation of this requirement to now prohibit a security / privacy gate on a road would be inconsistent with the County's intent and approval at that time.

7. During the negotiations, I was present on a site visit with the Mike Nielsen and John Gaskill, during which we reviewed the area where a security / privacy gate was proposed. That area is above the Trails subdivision. I recently reviewed Google Earth photos of the site and confirmed that there is a small gate house structure in that location. This is precisely the location where a gate was also proposed. This location was reviewed by the Planning Commission and County Commission prior to the approval of Summit County Ordinance No. 310, approving the Consent Agreement for the project.
8. It is my understanding that the County now takes the position that, due to a lapse/ termination provision set forth in the approval, that the entire Consent Agreement is now null and void. This was not the intent or purpose of such language. I was involved in negotiating all of these related provisions, including paragraph 5.1 of Ordinance No. 310 that stipulates that the Agreement should run with the land and be binding on all successors and ownership of the Property and subsequent lots, including an HOA.
9. The lapse provision was specific to an instance where, following approval of a Consent Agreement, the terms, conditions and obligations established under the Agreement would lapse if and only if the original developer or a subsequent property owner(s) / developer did not commence development before the lapse date. In this case the developer did commence development prior to the lapse date and therefore the project became fully vested in the rights established under the Agreement. Again, any position to the effect that simply passing the lapse date set forth in the approval terminates the entire agreement would be inconsistent with the County's intent and approval at that time. Moreover, such a position would likely prove problematic and not in the best interest of Summit County residents since it likely relieves any current or future property owners within the development of any obligations or community benefits required under the terms of the Consent Agreement, such as maintaining wildlife corridors, trail connections, and so on. When these agreements were negotiated at that time it was the intent of the Planning Commission and County Commission to ensure that such obligations and commitments lived on and would be enforceable long after the original approval.

28th day of March, 2013
Dated this 6th day of February, 2013.

Max Greenhalgh

Subscribed and sworn before me this 28th day of March, 2013.



[Handwritten Signature]
Notary Public

STATE OF)
)
:ss.
COUNTY OF)

AFFIDAVIT OF JOHN GASGILL
REGARDING RED HAWK/
CONSENT AGREEMENT

John Gasgill, being first duly sworn, deposes and states as follows:

1. I am an adult over the age of 18.
2. During the fall of 1996 and the spring of 1997, I was one of the principals of the company which owned Red Hawk Preserve.
3. During that time I was directly involved in the negotiation of the Consent Agreement for the Red Hawk Wildlife Preserve Project.
4. After the gate matter and site location on the road just beyond Trails in Jeremy was mutually agreed upon between me, Mike Nielsen and Doug Dotson, the head of planning and zoning for Summit County, it was adopted by Summit County Ordinance No. 310, adopted April 21, 1997.
5. In particular, I recall negotiating paragraph 5.1 of Ordinance No. 310 which required that all of the agreements run with the land and are binding on all successors and ownership of the Property and subsequent lots.
6. I also recall that certain provisions of the Consent Agreement were vested and they did not change whether or not the Consent Agreement ultimately expired.
7. I also recall that Schedule 1, Specific Design Guidelines, were incorporated and attached to the Consent Agreement and that the uses contained in that document, including the right to have gates on roads as set forth in Schedule 1, paragraph 11, where vested.
8. During the negotiations, there was discussion about the County's desire to eliminate gates on the roads and that discussion resulted in an agreement that gates could be placed on the roads in the Red Hawk Wildlife Preserve due to the vested development already in place. In particular, Schedule 1, paragraph 11, as it was negotiated, reads in pertinent part as follows:

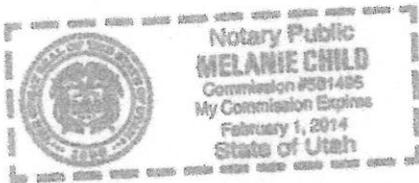
“11. Gates. All posts for gates on private driveways and roads will be four feet wider than the approved road width.” (emphasis added)

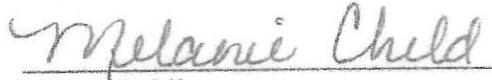
9. In particular, the word "roads" was inserted in "11. Gates." above, to mean that we could have gates across major and minor roads as defined. There was never any thought that the later language that was intended to deal with only private driveways, that gates shall be located at least 15' from the right of way and shall open inward, would ever apply to roads. While the language written by the County could be clearer, the understanding that gates could be installed on roads was very clear to all involved in the negotiations, including the representatives of the County.

Dated this 8 day of January, 2013.


John Gaskill

Subscribed and sworn before me this ^{8th} ~~January~~ day of January, 201³~~2~~.

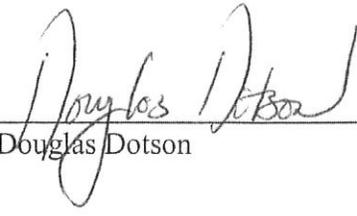



Notary Public

snow. The Planning Commission and County Commissioner's, in approving the Consent Agreement, wanted to ensure that any gate placed on a driveway would have to be located at least fifteen (15) feet from the road right-of-way and that it must open inward to the lot to allow a vehicle to stop in a manner that would not obstruct traffic on the road. Any interpretation of this requirement to now prohibit a security / privacy gate on a road would be inconsistent with the County's intent and approval at that time.

7. During the negotiations, I conducted a site visit with the Mike Nielsen and John Gaskill, during which we review the area where a security / privacy gate was proposed. That area is above the Trails subdivision. I reviewed Google Earth photos of the site and confirmed that there is a small gate house structure in that location. This is precisely the location where a gate was also proposed. This location was reviewed by the Planning Commission and County Commission prior to the approval of Summit County Ordinance No. 310, approving the Consent Agreement for the project.
8. It is my understanding that the County now takes the position that, due to a lapse/ termination provision set forth in the approval, that the entire Consent Agreement is now null and void. This was not the intent or purpose of such language. I negotiated all of these related provisions, including paragraph 5.1 of Ordinance No. 310 that stipulates that the Agreement should run with the land and be binding on all successors and ownership of the Property and subsequent lots.
9. The lapse provision was specific to an instance where, following approval of a Consent Agreement, the terms, conditions and obligations established under the Agreement would lapse if and only if the original developer or a subsequent property owner / developer did not commence development before the lapse date. In this case the developer did commence development prior to the lapse date and therefore the project became fully vested in the rights established under the Agreement. Again, any position to the effect that simply passing the lapse date set forth in the approval terminates the entire agreement would be inconsistent with the County's intent and approval at that time. Moreover, such a position would likely prove problematic and not in the best interest of Summit County residents since it likely relieves any current or future property owners within the development of any obligations or community benefits required under the terms of the Consent Agreement, such as maintaining wildlife preservation programs, trails and so on. When these agreements were negotiated at that time it was the intent of the Planning Commission and County Commission to ensure that such obligations and commitments lived on and would be enforceable long after the original approval.

Dated this 6th day of February, 2013.



Douglas Dotson

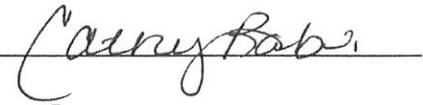
Acknowledgement

STATE OF COLORADO

COUNTY OF FREMONT

I, the undersigned, a Notary Public of the County and State aforesaid, certify that Douglas D. Dotson appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal this 12th day of February, 2013.

Notary Public 

Print Name Cathy Babe

My Commission Expires: 05-10-2015

measures indicating use by children, horses, bicyclists, walkers and fisherman.

- H. Future roadway improvements should include the extension of the Highland Drive frontage road along the south side of Interstate 80 to Kimball Junction. Road design standards shall be appropriate for the neighborhood. No other major roadways should connect to Old Ranch Road.

- I. All roads within the neighborhood shall be given names that reflect the rural ranching character of the neighborhood.

Old Ranch Road Land Use Plan

There are many land use and environmental sensitivity classifications that should guide developments in this neighborhood planning area. These areas are

identified on the Land Use Map.

NORTH MOUNTAIN NEIGHBORHOOD PLANNING AREA

Planning Area Goal:

Protect the unique natural and scenic resources of this rural area, and ensure the area remains primarily an open environment; a place where people and animals live in harmony and where residential and recreational uses are separated by large areas of open land.

Neighborhood Character Objectives

The appropriate long-term character of the area is large lot residential use, with structures appropriately clustered and sensitively sited in the mountainous terrain and consistent with hillside and meadow view shed policies which promote large

expanses of open space; appropriate residential densities a round the principal meadows; an appropriately-sized neighborhood commercial area; related recreational amenities; and large areas of open space suitable for the protection of scenic resources and the continuation of wildlife in the area. The character of all development, including the scale and design of the infrastructure, shall be rural in nature and in harmony with the mountain environment. Development in the North Mountain neighborhood shall comply with the following principles:

Function and Scale

- A. All new development shall comply with rural road and site planning standards.
- B. The appropriate character includes trails (equestrian, pedestrian, bicycle), private equestrian uses and

facilities, large lot single family detached dwellings, and other uses that are compatible with and promote the mountain and open character of the land.

- C. Summit County will consider incentives to bring about the master planning of any properties that will form an appropriate neighborhood commercial area for the neighborhood in previously approved commercial areas.

- D. The neighborhood commercial area shall be limited in size and type of uses, which serve the immediate needs of or are compatible with the neighborhood.

- E. Required open space in each development shall be contiguous to adjacent open space and protect hillside and meadow view sheds

and natural resources. Required meaningful open space may be incorporated into unfenced individual lots in this area, to ensure appropriate maintenance, so long as to appropriate restrictions, are established to ensure that the area will remain open space.

Physical Design and Aesthetics

- A. All development shall occur in a manner that protects and enhances the mountain and rural character of the area.
 - B. All structures shall be sited in a manner that preserves hillside and meadow view sheds in a manner that is consistent with the Policies of Chapter 6 of this Plan. If development must be permitted in a view shed area it must be integrated into the site, using topography,
- vegetation, special lighting designs, and any other reasonable technique to mitigate the visual impact.
- C. All development shall be required to bridge streams and the 100 year floodplain (not including irrigation ditches), whenever possible.
 - D. All development shall demonstrate that architectural design, materials, and colors will be consistent with the rural, mountain, and ranch character of this neighborhood.
 - E. Development shall be appropriate in scale and style to the surrounding environment, with designs that enhance rather than dominate the natural features of any site.
 - F. Where no other options exist, the owner of a previously platted lot or

legal lot of record may appeal to the Board of County Commissioners for a variance.

- G. Create an entry to each development to contribute to neighborhood ambiance on the easterly portion of the planning area, where the hills transition into meadows. Mountain entryways are appropriate in the westerly portion of the planning area.
- H. All fencing in the neighborhood shall be ranch style and wildlife sensitive, except around corral areas.
- I. Exterior lighting shall be minimal and must be directed down and shielded in accordance with County standards.
- J. There may be infrastructure in this neighborhood, which is private or does not meet public

infrastructure standards adopted by Summit County. In order to inform current and future property owners of the County's and Special Service Districts' level of service commitment, the developer shall state level of service expectations on the final plat; and at the time a building permit is applied for, property owners will be required to sign a "Memorandum of Understanding" acknowledging that they understand the County's and Special Service Districts' level of service commitment to the subject property.

Recreation and Amenities

- A. The Community trail system shall be integrated into open space parcels whenever possible and appropriate, as described in the Recreation and Trails

Master Plan. Summit County will use development incentives when appropriate to ensure public access in conformance with the Recreation and Trails Master Plan.

B. Equestrian trails shall be designed to avoid "land locking" horse owners and provide them with trail access to appropriate areas.

C. In the absence of appropriate passive and active parks designed to accommodate the needs of neighborhood residents, developers shall contribute their fair share toward meeting these needs at other locations within the Snyderville Basin.

Environmental Objectives

A. Development is prohibited in all wetlands (jurisdictional or otherwise), critical

wildlife habitat, significant ridgelines and hillsides, and waterway corridors, including streams and irrigation ditches, as open space.

B. Critical or otherwise significant wildlife habitat shall be preserved. Protection of wildlife and the enhancement of wildlife habitats, including stream environments, shall be required.

C. Development must preserve, to the extent possible, the natural landform, vegetation, scenic quality, and ecological balance that exist in the North Mountain neighborhood planning area. While homes shall be placed on the periphery of open spaces to the extent possible, efforts should be made to minimize the removal or disturbance of trees and hillside shrub vegetation.

D. All man-made elements shall be integrated into the natural environment with a sense of quality, permanence, and sensitivity. They shall be respectful and preserve stream corridors, wetlands, hillside and meadow view sheds, and natural drainage patterns.

E. Development shall be located in relation to vegetation in a manner that reduces the danger of wildfire damage to property and wildlife, to the extent possible.

F. Development along the stream should help to enhance the aquatic habitat of the stream.

G. Development shall avoid critical wildlife winter ranges, birthing areas, and migration corridors.

H. Appropriate infrastructure and design standards shall

be incorporated into the Snyderville Basin Development Code to ensure that development shall provide an adequate water supply for fire fighting purposes, measures for clearing brush and vegetation from the area around structures, appropriate access, and other mitigation regulations for high, moderate, and low fire hazard areas, depending on the specific location of a structure.

Transportation Objectives

A. A master road and circulation plan shall be developed for the North Mountain Neighborhood Planning Area before further development approvals are granted to ensure proper circulation, access for individual properties, and traffic distribution. In order to provide adequate

emergency access, the neighborhood road system should be master planned to provide appropriate circulation. Access to both the east and west sides of the neighborhood planning area shall be provided.

B. With the exception of the principal collector roadway through the neighborhood, all other roads which access residential properties shall be treated as minor rural roads, and required to meet only those standards.

C. Curb and gutter is not appropriate in this neighborhood; drainage along roadways shall be consistent with rural character, i.e., ditches and other similar techniques.

D. Reduced speeds shall be promoted on neighborhood roads with appropriate signs indicating use by

children, horses, bicyclists, walkers, and fisherman.

E. All roads within the neighborhood shall be given names that reflect the mountain, rural and/or ranching character of that portion of the neighborhood.

F. Private roads, including secondary access roads, must be able to provide adequate access on a year round basis. Exemptions from secondary access or year round access and maintenance requirements shall be permitted in mountain remote and environmentally sensitive areas when the Park City Fire Service District determines that provisions for life safety and firefighting can and have been appropriately addressed.

North Mountain Land Use Plan

There are several basic land use treatments that are appropriate for this neighborhood. These areas are identified on the Land Use Map.

SUN PEAK / SILVER SPRINGS NEIGHBORHOOD PLANNING AREA

Planning Area Goal:

Enhance the existing residential characteristics of the neighborhood in a manner, which is compatible with the mountain environment, the public areas of the neighborhood, especially the roadway corridors and open space areas, and promote appropriate amenities, which help establish a stronger social environment and which are compatible,

and in scale with the neighborhood.

Neighborhood Character Objectives

This neighborhood is subdivided and substantially built-out. While it has a mix of uses, it is primarily a residential neighborhood. While this neighborhood is largely moderate density, single family detached residential in character, there are pockets of commercial development. West of Highway 224 the topography is typically foothill to mountainous, while that portion of the neighborhood east of Highway 224 is flat.

Function and Scale

A. Any future change to an existing consent agreement for the purposes of altering approved uses, densities, and configurations shall require developers to establish appropriate

WHEN RECORDED RETURN TO:

Summit County Clerk
Summit County Courthouse
Coalville, Utah 84017

Exhibit I.a
Original Consent Agreement

CONSENT AGREEMENT
FOR THE
RED HAWK WILDLIFE PRESERVE PROJECT
SNYDERVILLE BASIN, SUMMIT COUNTY, UTAH

This Consent Agreement is entered into this 1st day of May, 1997, by and between Redhawk Development L.L.C., a Utah Limited Liability Company (hereinafter referred to as "Developer"), the developer of the real property consisting of the Red Hawk Wildlife Preserve development project, as described in Exhibit A, which is attached hereto and incorporated herein by this reference (hereinafter referred to as "the Project"), and Summit County, a political subdivision of the State of Utah, by and through its Board of County Commissioners ("the County").

RECITALS:

A. The Project involves initial development of 116 single family residential units on a parcel of real property currently consisting of approximately 2,299 acres located in Summit County, Utah, and potential future development of single family residential units on real property contiguous to the Project, at the option of Developer so long as the future development consists of the same density (one lot per approximately 20 acres) and is subject to design conditions as the current residential units. A portion of the Project previously was part of what has been known as the Jeremy Ranch Development.

B. There is a dispute between the County and the Developer whether development of at least 1,261 acres of the Project is exempt from the application of the standards of Summit County Ordinance 201 and 202, Temporary Zoning Regulation Ordinances (the "TRZO"), County Ordinance 204, Snyderville Basin Development Code (the "Code"), and the various subsequent amendments made to the Code.

C. Developer has various vested rights claims pending with the County which are inconsistent with current County land use planning and, if successful, would result in high density development in an area where the County desires low density development and preservation of open space values.

D. In August 1995, the County acknowledged the existence of nine lots of record within Section 7 of the Project. Each lot of record is eligible for development of a single family dwelling, provided certain requirements for building permits under the Development Code were met.

E. In January 1997, the County acknowledged the existence of eleven lots of record within Section 6 of the Project. Each lot of record is eligible for development of a single family dwelling, provided certain requirements for building permits under the Development Code were met.

F. It is in the best interests of the County to master plan the Project property to prevent piecemeal development and to ensure low density development consistent with current County land use planning values.

G. Developer is willing to modify the design and density of the Project and agree to certain other considerations to address various Summit County issues and policies.

H. Without conceding or waiving their respective positions, the parties seek to settle their disputes pursuant to Chapter 14 of the Snyderville Basin Administrative Guidelines, Resolution 93-1 (the "Administrative Guidelines") which provides for a vested rights determination and approval of a Consent Agreement.

I. The County, acting pursuant to its authority under Utah Code Annotated § 17-27-101, et seq., and its authority under Section 14.1 of the Administrative Guidelines, has made certain determinations with respect to the proposed Project, and, in the exercise of its legislative discretion, has elected to process the Project pursuant to its Administrative Guidelines and the Code, resulting in the negotiation, consideration and approval of this Consent Agreement after all necessary public hearings. Due process was afforded to all those who appeared at the public hearings.

NOW, THEREFORE, SUMMIT COUNTY AND DEVELOPER HEREBY AGREE AS FOLLOWS:

1 THE PROJECT.

1.1 Description of Project. The Project initially covered by this Consent Agreement is located on approximately 2,299 acres consisting of real property located in Summit County, Utah, together with the contiguous real property included in Exhibit "A" hereto, on which Developer proposes the development of single family residential units together with certain amenities as more fully set forth herein, to be constructed in multiple phases.

1.2 Legal Description of the Project. The legal description of the real property covered by the Project, including the potential contiguous real property, is attached hereto as Exhibit A and

incorporated into this Consent Agreement by this reference. No property may be added to the legal description for purposes of this Consent Agreement, except by written amendment

- 1.3 Approved Use, Density and Configuration. This Consent Agreement shall vest with respect to the Project the use, density and configuration reflected on Exhibit B and as more fully set forth herein. While Exhibit B provides for 119 lots, Developer shall redesign future plats to reduce the number from 119 to 116 lots. Developer may construct an equestrian center on Lot 78. The equestrian center would include a stable area and other amenities generally associated with such centers. ~~Use and design standards, including site design, building design, landscaping, parking, lighting, screening and signage, shall be submitted to the Director for approval. A minor permit (administrative) issued by the County shall be required to locate the equestrian center and related improvements, and to authorize its construction.~~
- 1.4 Specific Design Conditions. The development and construction of this Project must be consistent with those design conditions set forth in Schedule 1 to this Consent Agreement, which Schedule is incorporated in this Consent Agreement by this reference, and with those design conditions set forth in the proposed Rural Development Guidelines for the Snyderville Basin Planning District, which Guidelines are attached hereto as Exhibit C and incorporated herein by this reference. In the event there is any ambiguity or conflict between the Exhibits and design conditions in Schedule 1 and other provisions of the Rural Design Guidelines or this Consent Agreement, the more specific provisions of the design conditions in Schedule 1 shall take precedence.
- 1.5 Red Hawk Wildlife Management and Enhancement Plan. The development and construction of this Project must be consistent with the terms of the Red Hawk Wildlife Management and Enhancement Plan (the "Wildlife Plan"), which is attached hereto as Exhibit D and incorporated herein by this reference. The Wildlife Plan may be amended, as necessary, by action of the Red Hawk Wildlife Preserve Foundation, upon the recommendation and approval of the Foundation's wildlife consultants, and as approved by the County, which approval shall not be unreasonably withheld. Provided, however, that the amendment shall be in the best interest of the wildlife that inhabit the Project area.
- 1.6 Red Hawk Wildfire Prevention Plan. The development and construction of this Project must be consistent with the terms of the Red Hawk Wildfire Plan (the "Wildfire Plan"), which is attached hereto as Exhibit E and incorporated herein by this reference. The Wildfire Plan may be amended, as necessary, by action of the Red Hawk Wildlife Preserve Foundation, with approval of any such amendments by the Park City Fire Service District, which

approval shall not be unreasonably withheld. Provided, however, that the amendment shall be in the best interest of the public in providing fire fighting services in the Project area.

2 SUMMARY OF COUNTY DETERMINATION RELATING TO THE PROJECT.

2.1 County Determinations Relating to the Project.

2.1.1 Plan Approval. The Project has received a recommendation for approval of a Consent Agreement by action of the Summit County Planning Commission taken on March 25, 1997. The Board of County Commissioners has approved the Project under the Consent Agreement procedures set forth in § 14.2.6 et seq. of the Administrative Guidelines on the terms and conditions set forth in this Consent Agreement.

2.1.2 Exemption from County Ordinances. The Board of County Commissioners has determined, in the exercise of their legislative authority, that the Project is exempt from the application of Ordinances 204-207 solely to the extent that such a finding may be a condition precedent to approval of this Consent Agreement.

2.1.3 Consistency with General Plan Update. The density reflected on Exhibit B hereto and approved hereunder is generally consistent with the draft 1997 Snyderville Basin General Plan Update.

2.2 Vested Rights and Reserved Legislative Powers.

2.2.1 Vested Rights. Subject to Paragraph 2.2.2, Developer shall have the vested right to have preliminary and final subdivision plats approved, and to develop and construct the Project in accordance with the uses, density, timing and configuration of development as vested in Paragraph 1.3 under the terms and conditions of this Consent Agreement. Developer acknowledges that the provisions of this Consent Agreement, including 2.1.2, contemplate that the rights vested in the Project are exempt from the application of Ordinances 204-207 and to subsequently enacted ordinances only to the extent that such exemption is a condition precedent to grant of said vested rights; and, that all other provisions of Ordinance 204 and the relevant laws shall apply, including, but not limited to, the processing requirements (e.g. procedures for the approval of preliminary and final subdivision plats) and fees (as established by Resolution 93-1).

2.2.2 Reserved Legislative Powers.

2.2.2.1 Future Changes of Laws and Plans: Compelling, Countervailing Public Interest. Nothing in this Agreement shall limit the future exercise of the police power of the County in enacting

zoning, subdivision, development, growth management, platting, environmental, open space, transportation and other land use plans, policies, ordinances and regulations after the date of this Agreement. Notwithstanding the retained power of the County to enact such legislation under the police power, such legislation shall only be applied to modify the vested rights described in Paragraph 2.2.1 and other provisions of this Consent Agreement based upon policies, facts and circumstances meeting the compelling, countervailing public interest exception to the vested rights doctrine in the state of Utah. Any such proposed change affecting the vested rights of the Project shall be of general application to all development activity in the Snyderville Basin; and, unless the County declares an emergency, Developer shall be entitled to prior written notice and an opportunity to be heard with respect to the proposed change and its applicability to the Project under the compelling, countervailing public policy exception to the vested rights doctrine.

2.3 Fees.

2.3.1 Vested Rights Application Fees. Pursuant to the provisions of 4.9 and 14.1.3 of the Administrative Guidelines, Developer agrees to pay the sum of \$11,600 (\$100 per approved lot) prior to final approval of the Consent Agreement by the Board of County Commissioners. Prior to approval of any additional lots hereunder, Developer shall pay \$100 per approved lot. At such time as any plat hereunder is submitted for final County approval, Developer shall pay \$185 per lot receiving final approval under such plat. Developer shall receive such credits or adjustments toward fees that may have been paid previously toward County approval of the Project, as approved by the Director. The County may charge such standard planning and engineering review fees as are generally applicable at the time of application, pursuant to the provisions of Resolution 93-1 as amended or other applicable statutes, ordinances, resolutions or administrative guidelines. The County may charge other fees that are generally applicable, including, but not limited to, standard building permit review fees for improvements to be constructed on improved lots.

2.3.2 Future Impact Fees. The Project shall be subject to all impact fees which are (1) imposed at time of issuance of building permits, and (2) generally applicable to other property in the Snyderville Basin, and Developer waives its position with respect to any vested rights to the imposition of such fees, but shall be entitled to similar treatment afforded any other vested projects if an impact fees ordinance makes any such distinction or any other vested project is afforded different treatment pursuant to decision of the Courts of the State of Utah. If fees are properly imposed under the preceding tests, the fees shall be payable in accordance with the payment requirements of the particular impact fee ordinance and implementing resolution. Notwithstanding the agreement of the Developer to subject the Project to impact fees under the above-stated conditions, Developer does not hereby waive its right under any applicable law to challenge the reasonableness of the amount of the fees within thirty (30) days following imposition of the fees on the Project.

3 PHASING AND TIMING OF SUBDIVISION DEVELOPMENT AND CONSTRUCTION OF INFRASTRUCTURE.

- 3.1 Phases and Timing. Exhibit B depicts each phase of the 2,299 acres of the Project to be developed at this time. Developer may proceed by platting and constructing one phase at a time, or portions of a phase, with each phase or portion providing a logical extension of the road system through the Project; provided, however, that adequate public facilities exist to serve each varied phase or portion thereof. In any case, all roads within the Project, including the road linking Jeremy Ranch to the Project, shall be for private use only, and shall not be subject to public maintenance. At such time as Developer may elect to develop the contiguous property described in Exhibit "A" hereto, Developer shall submit to the County a new site plan for review by the Director and the County Planning staff. The phase or phases of the contiguous property shall follow the same approval process as the phases shown in Exhibit "B" hereto. At such time as a plat receives final approval by the County, any existing lots of record within the approved plat shall be null and void.
- 3.2 Construction of Infrastructure Improvements. Developer shall construct improvements in accordance with the engineering requirements of the County, any applicable Special Service District or County Service Area, or recommended rural development guidelines of the Director of Community Development, and the Code, as modified by any applicable terms of this Consent Agreement.
- 3.3 Dedication of Open Space. As integral consideration for this Consent Agreement, Developer agrees to preserve and maintain the Project land outside of individual building envelopes as open space subject to the restrictions of the CC&R's of the Project and/or subject to a conservation easement granted by Developer in perpetuity to an appropriate agency or entity approved by the Board of County Commissioners of Summit County.
- 3.4 Utility Capacity Verification. The parties shall verify the availability of the following for the portion of the Project subject to final plat or site plan approval at the time of each application for final plat or site plan approval within the Project: (a) sewage treatment capacity to cover anticipated development within the site plan or plat, if the Project will be served by sewer; (b) water quality and water pressure adequate for residential consumption and fire flows; (c) capacity for electrical and telephone service; and (d) road design and capacity. Developer has acknowledged to the County that it has 259 acre-feet of water available for supplying the needs of the lot owners within the Project.

Developer shall, upon approval of this Consent Agreement, commence an analysis related to the creation of a "community water system" for the Project. Developer will work with

adjacent property owners in determining the feasibility of this type of water system. Developer shall provide information related to the viability of a community water system for the Project to Summit County prior to the issuance of any building permits in Plats B, C, or D of the Project.

4 SUCCESSORS AND ASSIGNS.

4.1 Binding Effect. This Consent Agreement shall be binding on the successors and assigns of Developer in the ownership or development of any portion of the Project. ~~Notwithstanding the foregoing, a purchaser of the Project or any portion thereof shall be responsible for performance of Developer's obligations hereunder as to the portion of the Project so transferred in accordance with the provisions of Section 4.3 hereof.~~

4.2 Transfer of Project. Developer shall be entitled to transfer any portion of this Project subject to the terms of this Consent Agreement upon written notice to and written consent of the County, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Developer shall not be required to notify the County or obtain the County's consent with regard to the sale of lots in single family residential subdivisions which have been platted and approved in accordance with the terms of this Agreement.

4.3 Release of Developer. Except for the sale of lots in single family residential subdivisions which have been platted and approved in accordance with the terms of this Agreement, in which case this requirement shall not apply, in the event of a transfer of all or a portion of the Project, Developer shall obtain an assumption by the transferee of Developer's obligations under this Agreement, and, in such event, the transferee shall be fully substituted as the Developer under this Agreement as to the parcel so transferred, and Developer executing this Agreement shall be released from any further obligations with respect to this Consent Agreement as to the parcel so transferred.

5 GENERAL TERMS AND CONDITIONS.

5.1 Agreements to Run with the Land. This Agreement shall be recorded against the Project's 2,299 acres described in Exhibit A hereto and the lots shown on Exhibit B hereto. The agreements contained herein shall be deemed to run with the land and shall be binding on all successors in the ownership of the Project property and subsequent lots.

5.2 Construction of Agreement. This Agreement should be construed so as to effectuate the public purpose of settlement of disputes, while protecting any compelling, countervailing public interest.

5.3 Laws of General Applicability. Where this Agreement refers to laws of general applicability to the Project and other properties, this Agreement shall be deemed to refer to other developed and subdivided properties in the Snyderville Basin of Summit County.

5.4 Duration. The term of this Agreement shall commence on, and the effective date of this Agreement shall be, the effective date of the Ordinance approving this Agreement. The Term of this Agreement shall extend for a period of five (5) years following the effective date with an option on the part of Developer or the County to extend this Consent Agreement for an additional five years if the terms of the Consent Agreement have been substantially complied with unless the Agreement is earlier terminated, or its term modified by written amendment to this Agreement.

5.5 Mutual Releases. At the time of, and subject to, (i) the expiration of any applicable appeal period with respect to the approval of this Agreement without an appeal having been filed or (ii) the final determination of any court upholding this Agreement, whichever occurs later, and excepting the parties' respective rights and obligations under this Agreement, Developer, on behalf of itself and Developer's partners, officers, directors, employees, agents, attorneys and consultants, hereby releases the County and the County's board members, officials, employees, agents, attorneys and consultants, and the County, on behalf of itself and the County's board members, officials, employees, agents, attorneys and consultants, hereby releases Developer and Developer's partners, officers, directors, employees, agents, attorneys and consultants, from and against any and all claims, demands, liabilities, costs, expenses of whatever nature, whether known or unknown, and whether liquidated or contingent, arising on or before the date of this Agreement in connection with the application, processing or approval of the Project, including, but not limited to, the claims set forth in the lawsuit styled Westside Canadian Properties Company v. Summit County et al., Case No. 95-03-00005 PR, Third Judicial District Court in and for Summit County, State of Utah, filed January 6, 1995 (the "Lawsuit"), and any Notices of Claim and correspondence previously submitted to and filed with the County on behalf of Developer referring and relating to various issues arising out of the approval process for the Project.

5.6 State and Federal Law. The parties agree, intend and understand that the obligations imposed by this Agreement are only such as are consistent with state and federal law. The parties further agree that if any provision of this Agreement becomes, in its performance, inconsistent with state or federal law or is declared invalid, this Agreement shall be deemed

SCHEDULE 1

SPECIFIC DESIGN CONDITIONS

The following Specific Design Conditions reference the Red Hawk Wildlife Preserve development project (the "Project"). For purposes of the Consent Agreement and these Specific Design Conditions, the term "Developer" refers to all of the owners of the real property covered by the Project who are signatories to this Consent Agreement. The term "Director" refers to the Summit County Director of Community Development. The term "County" refers to Summit County. The term "CC&R's" refers to the Declaration of Covenants, Conditions and Restrictions which will be recorded against the individual lots that will make up the Project. (A copy of the most current draft of the CC&R's for the Project is attached to this Schedule as Attachment 1.)

I. REVIEW PROCESS.

- A. Development Requirements. All development proposals within the area described in Exhibit A to the Consent Agreement shall be consistent with the adopted Consent Agreement (including this Schedule).
- B. Amendments to Consent Agreement. Except as otherwise provided in the Consent Agreement (including this Schedule), the procedure for Developer to amend the adopted Consent Agreement and these Specific Design Conditions shall be as follows: Developer and/or the Red Hawk Wildlife Preserve Foundation shall submit to the County's Planning staff any proposed amendment to the Consent Agreement or these Specific Design Conditions. Approval by the Red Hawk Wildlife Preserve Foundation Board of Trustees of any such proposed amendment shall be sufficient to bind any individual lot owner within the Project to the proposed amendment. The Planning staff shall determine whether the proposed amendment is a substantial amendment (i.e., one that alters the intent of the Consent Agreement regarding the use, density, and configuration of the Project). For minor amendments which do not adversely affect the use, density or configuration of the Project, the Planning staff may treat the proposed amendment as a minor permit application. The Planning staff shall also determine the appropriate service provider review for a proposed substantial amendment, and shall timely submit the matter to such review. Following such review, the Planning staff shall make its recommendation to the Board of County Commissioners regarding the proposed amendment, whereupon the Board of County Commissioners shall approve or disapprove the proposed amendment. Amendments shall include any proposed changes to the Consent Agreement (excluding Exhibits D or E thereto, which can be amended as per Section 1.5 and 1.6 of the Consent Agreement) or to this Schedule, which may be amended as per this Section (excluding Attachment 1 hereto (the "Red Hawk Wildlife Preserve

Declaration of Covenants, Conditions, and Restrictions which may be freely amended as contained therein)).

- C. Review Process for Future Plats. A detailed final plat for each phase or portion of a phase of the Project submitted to the County by Developer for final approval shall be submitted to the Planning staff for initial review as to the plat's compliance with the Consent Agreement and this Schedule. The Planning staff shall determine the appropriate service provider review of the plat and timely submit the plat for such review. Upon a staff determination that the submitted plat is in compliance with the Consent Agreement and this Schedule, the plat shall be submitted directly to the Board of County Commissioners for final approval.

II. ENVIRONMENTAL QUALITY.

- A. Wildlife and Open Space Preservation. The Project shall be developed in such a way as to preserve and protect, to the largest extent possible in connection with the development uses permitted under the Consent Agreement, the natural beauty, serenity, views, environment and ecosystem of the Project, specifically including the native wildlife and natural land within the Project and its environment. In that connection, the Project shall be preserved through interconnected conservation and open space areas subject either to a conservation easement or to CC&R's, or to both, which require maintenance of such conservation and open space areas, with the balance of the Project improved and maintained in a manner as consistent with conservation and preservation values as is reasonably practicable.

In developing the Project, Developer shall place a high value on minimum impact, and shall take such steps as are reasonably practicable to satisfy the following objectives regarding wildlife preservation within the Project:

1. To encourage, promote, propagate, preserve and protect the wildlife within the environs of the Project and the Red Hawk environment as it relates to the off-site ecosystem so that owners and succeeding generations of Snyderville Basin residents may enjoy and learn to accept the responsibilities for native wildlife.
2. To encourage, promote, propagate, preserve and protect the wildlife in the environs of the Project: protect the native habitat for the bedding and birthing of native wildlife; nurture and improve native wildlife stocks; rehabilitate and restore damaged wildlife environments; preserve the natural game trails, drinking areas and natural tree and shrub cover for native bird life and wildlife protection; plant areas to provide additional food for the wildlife, as appropriate; set up salt stations and mineral licks and, during severe winter

periods, provide feeding stations for big game, as appropriate; promote and assist in construction of trails for uses in harmony with the native wildlife and natural environment, such as hiking, equestrian, non-motorized biking, and Nordic skiing.

3. To acquire, receive and hold such real and personal property, either by purchase or by gift, as may be necessary and convenient to carry out these objectives. To issue bonds, notes and other assessments for the improvement of the wildlife areas. To lease or buy water rights, develop watering areas and catch basins, develop ponds, natural springs and wells for the benefit of the native wildlife.
4. To cooperate with local, state, federal and private agencies to develop and maintain effective wildlife preservation practices in Summit County and on a state-wide basis. To promote legislation emphasizing the parallel between economic prosperity and maintenance of adequate natural resources. To assist with the design of future developments that harmonize development with concerns for the environment.
5. To assist other property owners and state and local law enforcement officials in protecting private property and enforcing hunting and animal abuse laws and ordinances.

To meet the foregoing objectives, Developer shall adopt and enforce a Wildlife Management and Enhancement Plan and Wildfire Protection Plan. (A copy of Red Hawk's Wildlife Management and Enhancement Plan and a copy of Red Hawk's Wildfire Protection Plan for the Project are attached to the Consent Agreement as Exhibits D and E, respectively.)

- B. Air Quality. All fireplace or woodburning devices shall meet minimum EPA standards or other standard adopted by the County.
- C. Revegetation, Erosion Protection and Runoff Control. Development plans shall, to the extent practicable, preserve existing vegetation and repair the damage caused historically by overgrazing of livestock; provide for prompt revegetation or erosion protection measures; and provide for surface water runoff control in accordance with Summit County Engineering Standards. In connection with revegetation efforts, the Developer shall preserve for replanting as many trees as practicable which are removed in the process of cutting roads, shall plant indigenous trees on the project, and may maintain a tree farm on the Project to aid in the revegetation process. These design conditions serve to satisfy the requirements of 5.2(e) of the Code regarding revegetation/erosion protection/runoff control.

III. CRITICAL AREAS, AS DEFINED IN SECTION 5.3 OF THE CODE.

- A. Prohibition of Development in Critical Areas. Development plans shall prohibit development in critical areas, as defined in Section 5.3 of the Snyderville Basin Development Code, as amended 1992, except the road configuration as reflected in Exhibit B to the Consent Agreement, which shall override conflicting requirements in Section 5.3 of the Code.

IV. DESIGNATION OF, AND LIMITATIONS UPON, LAND USES WITHIN THE PROJECT.

Although open space areas are not required in the Countryside or Critical/Sensitive Land Use Zones of the Snyderville Basin, the Project intends to preserve and maintain virtually all of the land outside of individual building envelopes as open space, subject to the limitations herein. All open space areas shall be subject to the restrictions of the CC&R's of the Project and/or subject to a conservation easement granted in perpetuity by the Developer to an appropriate agency or entity approved by the Board of County Commissioners, as provided in Section 3.3 of the Consent Agreement. The approved use, density and configuration reflected on Exhibit B to the Consent Agreement, together with the following design conditions, CC&R's and applicable conservation easement, shall serve as the Project's Open Space Provision and Maintenance Plan under the Code.

- A. Designation and Location of Land Use Zones within the Project. The Project shall be comprised of four land use zones:
1. Critical Wildlife and Open Space Areas
 2. General Wildlife and Open Space Areas
 3. Driveway Access Corridors Through Open Space Areas
 4. Development Activity Envelopes

The Critical Wildlife and Open Space Areas and the General Wildlife and Open Space Areas on any lot shall be designated by the Red Hawk Wildlife Preserve Foundation (the "Foundation") through the Foundation's wildlife consultants. The designations must occur prior to designation of the Development Activity Envelope for the given lot.

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Prior to obtaining a building permit for a lot within the Project, the Owner and the Foundation's Design Review and Land Use Committee shall mutually agree on the location of a Development Activity Envelope for the lot. The Development Activity Envelope shall not exceed 50,000 square feet, and its location shall not adversely impact any Critical Wildlife and Open Space Areas and otherwise be acceptable to the Foundation's wildlife consultants and the Director. Each Development Activity Envelope shall be designed to minimize visual impact and to maximize each site's best features with consideration for natural terrain, views, privacy, wildlife

management, vegetation, orientation, access and relationship to adjacent sites. In instances where wildlife interests outweigh the other criteria for Development Activity Envelope location, the protection of wildlife shall be the determining factor for location selection. The location shall be surveyed and recorded with the Summit County Recorder. An owner within the Project may not relocate the Development Activity Envelope without the written approval of Developer and the Foundation's wildlife consultants.

→ on plat!

B. Permissible and Prohibited Uses (except as otherwise permitted in the Project's CC&R's or Design Guidelines).

1. Critical Wildlife and Open Space Areas. No construction, development or improvement, including fencing, is allowed other than as approved under the Wildlife Plan, CC&R's or any applicable conservation easement.

2. General Wildlife and Open Space Areas

a. Low impact permitted uses include:

- (1) Wildlife sensitive fencing
- (2) Hiking trails
- (3) Pastures
- (4) Picnic areas
- (5) Ponds
- (6) Out-buildings, including a barn (if a barn is constructed outside a Development Activity Envelope, it may not include human living quarters including any plumbing, fixtures, or other appurtenances that could make the barn or any portion thereof suitable for human occupancy, unless the barn is located within 100 feet of the Development Activity Envelope and otherwise is located far enough from any Critical Wildlife and Open Space Area to avoid any adverse impact to wildlife)
- (7) Equestrian center

must remain in flat designated area - will be striped

b. Prohibited activities and uses include:

- (1) Any site work or grading without approval under the CC&R's or conservation easement, as applicable.
- (2) Lighting (except for reflective material or a low-level light fixture at each lot's access driveway to illuminate address signage).
- (3) Vegetation removal or defoliation without approval under the CC&R's or conservation easement, as applicable.

3. Driveway Access and Utility Corridors. Permitted improvements within

these corridors include limited vegetation removal, road bed grading, drainage improvements, erosion control, mechanical retainage, utility service extensions and paving.

4. Development Activity Envelopes. Within each Development Activity Envelope, an owner may construct one primary residence for single-family dwelling, one guest house, one caretaker's cottage and similar accessory or incidental structures, including a barn. *DICTATED ON*
THE PLAN

V. COMPATIBILITY ASSESSMENT.

The approved use, density and configuration reflected on Exhibit B to the Consent Agreement is deemed by the County to be reasonably compatible and sensitive to the immediate environment of the site and the neighborhood, and shall serve to satisfy the requirements in Section 5.4 of the Code.

VI. GENERAL DESIGN AND DEVELOPMENT LAYOUT.

- A. Approved Use, Density and Configuration. The use, density and lot configuration reflected on Exhibit B to the Consent Agreement has received appropriate County approval and, together with the CC&R's and the following design conditions, serve to satisfy the regulations contained in 5.6 (Development Layout), 5.7 (Design) and 5.9 (Density and Intensity) of the Code.
- B. Lot Size. The average lot size within the Project shall be approximately 20 acres, and no less than 10 acres in size. The lots within individual plats or phases may average less than or more than approximately 20 acres so long as Developer limits the overall density of the Project to 116 single family residential lots on the initial 2,299 acres of the Project.
- C. Visual Corridor. Subject to the protection of wildlife interests in the location of Development Activity Envelopes in Section IV above, the Project shall be developed as much as is reasonably practicable to preserve and enhance views through site planning; to avoid construction within areas identified as being highly vulnerable to visual degradation; to use building forms, materials and colors that minimize color, line, form and texture contrasts with the setting; and to locate structures away from areas that are prominently visible against the sky along a ridge line.
- D. Enhancement of Entrance Corridor from Jeremy Ranch and The Trails. The Project may improve and enhance the entrance corridor from Jeremy Ranch and The Trails Subdivision into the Project, including through the 800 feet of dedicated Jeremy Ranch open space existing between The Trails Subdivision and the Project provided

that the Owner of the property approves of the improvements and that there are no private restrictions which would prohibit such activity. Such improvements and enhancements may include planting of indigenous trees, increasing the riparian aesthetics through installation of natural-looking water features, and stabilizing and reducing erosion of the existing creek by lining the creek bed with indigenous rock material.

E. CC&R's and Construction Guidelines. CC&R's consistent with the Consent Agreement, including this Schedule, shall be recorded against all lots within the Project. The CC&R's, and guidelines and regulations adopted thereunder, shall require design and construction which meets the following objectives:

1. Protect the natural ecosystem.
2. Minimize the visual impact of site development on roads and other homesites.
3. Preserve the existing character of the Project.
4. Establish architectural standards to preserve the rural character of the Project.
5. Establish absolute fire protection standards which cannot be changed without County approval.
6. Establish horse and pasture management guidelines to ensure that the natural ecosystem of the Project is protected.
7. Establish building height, screening and sign standards which are appropriate for this Project.

F. Structures Permitted within Development Activity Envelopes. Subject to compatibility with and approval under the CC&R's, within each Development Activity Envelope a primary residence, guest house and caretaker's cottage may be constructed (all of which must remain under the common ownership of the lot owner, with no subdivision permitted), and, within each lot, a barn and associated corral may be constructed. A minor permit (administrative) issued by the County will be required to locate the barn and related improvements and to authorize its construction.

G. Driveway Access. All individual driveway access locations within the project shall be designed to function well with the existing conditions and layout of each building envelope and dwelling, and all efforts shall be made to minimize the total impact of driveway construction, including to allow for the least amount of site and vegetation disturbance. The maximum grade allowed for driveways shall be 10%; provided, however, that road grades in excess of 10% will be allowed for short distances for protection of the environment so long as the road design and grades adequately meet considerations of safety, including fire protection. Where possible, driveways shall parallel the slope to lessen site impact.

Cut slopes shall be specified by a qualified soils engineer to achieve a stable embankment. Fill areas shall be contoured to two (2) feet horizontal to one (1) foot vertical slopes or flatter as directed by a qualified soils engineer, unless it is determined that steeper slopes are necessary to preserve natural vegetation and trees. Driveway access for all lots within the Project shall be from roads within the Preserve and not from streets or roads outside the Preserve.

Lot owners may not grant additional vehicular right-of-ways or road easements across their property in addition to those vehicular right-of-ways and road easements that are already of record at the date of the plat recordation.

All driveways, whether or not gated and locked, must provide a turnaround acceptable to the Park City Fire District.

- H. The Project Trail System. Developer shall ensure that easements over and across the General Wildlife and Open Space Areas of the Project shall permit establishment of a trail system for the use and enjoyment of Owners and their guests and invited members of the public accorded such rights by Developer for hiking, horseback riding, jogging, cross-country skiing, snow shoeing and other activities, including educational activities, consistent with the CC&R's. Portions of the trail system may be closed periodically (including from mid-May to mid-June) to accommodate elk, big game calving, migration or other wildlife concerns. Construction and operation of the trail system may include cutting, clearing, stabilizing or maintaining trails, the posting of signs and erosion control. The use of the Project trail system shall be subject to such rules and regulations as Developer shall from time to time establish.

In the event the County proposes to link portions of a public trail system through any part of the Project, Developer shall consider such a proposal in good faith and may be required to construct a public trail system in an appropriate location along the Project perimeter, so long as adjacent property owners allow the public trail to cross their property in a manner consistent with the public trails system plan and grant Owners within the Project access to the public trail system.

VII. PROVISION OF SERVICES.

- A. Roads. The following design conditions serve to satisfy the requirements of 5.5 of the Code regarding transportation and roads for the Project:
1. Private Roads: Private Maintenance. The roads within the Project shall remain private and shall be maintained privately by the Project. The CC&R's for the Project shall provide, and require adequate budgeting for, snow removal and road maintenance services.

Public
private
trails
exist

Developer may maintain on the Project operations to crush, screen and sift excavated dirt to separate rocks and top soil for use on the Project so long as the operations are located in such a way as to avoid any adverse impact within or outside the Project, relating to erosion, runoff, noise, dust and other similar impacts. Developer has prepared a plan to restore the existing site, which plan has been reviewed and approved by the County Engineer and is attached hereto and incorporated herein as Attachment 2. For any future pits, Developer will prepare a similar plan for review by the County Engineer.

2. Road Layout. The road layout designated in Exhibit B to the Consent Agreement is hereby approved. Any significant adjustments to the road layout shall be subject to approval by the Director, which approval shall not be unreasonably withheld; slight changes to the road layout may be made by the Developer, so long as the changes do not detract from the spirit of these Design Conditions.

3. Ingress/Egress The Project shall provide a minimum of two points of ingress and egress. Secondary access, as described in Exhibit "B", shall be provided before any Certificate of Occupancy will be issued by Summit County for structures in any phase of the Project. The secondary access road shall include asphalt pavement, and the design of the road section shall comply with applicable provisions of the Consent Agreement. Developer will grant emergency access to surrounding property owners over and across the Project and will agree to improve and maintain, with the surrounding property owners, the Old Bitner Road as a secondary access to the Project.

4. Road Widths. The major roads within the Project, including only those shown on Exhibit B, should be a minimum unobstructed driveable width of 24 feet with 20 feet of asphalt paving, while minor roads within the project should be a minimum unobstructed driveable width of 20 feet with 16 feet of asphalt paving. The right-of-way width shall be 100 feet, to allow for greater flexibility in utility installation to preserve existing vegetation and trees. All roads and driveways will have unobstructed vertical clearance of 13 feet, 6 inches.

5. Cul-de-sacs. Cul-de-sacs will be designed with a minimum road width of 20 feet with 16 feet of asphalt paving, and otherwise according to the proposed Rural Development Guidelines, unless otherwise approved by the Park City Fire Service District.

6. Road Grades. The major road already rough-cut in Section 7 of the project has been approved by the County, and a similar road is hereby approved for

the remainder of the roads throughout the project. Road grades less than 8% are encouraged and preferred. The maximum road grade allowed shall be 10%; provided, however, that road grades in excess of 10%, up to a maximum of 12.5%, will be allowed for short distances for protection of the environment so long as the road design and grades adequately meet considerations of safety, including fire protection.

7. Revegetation. Revegetation of all disturbed soils meeting County standards will be required on all roads.
8. Bridges and Culverts. Bridges and culverts will be constructed in accordance with the Rural Development Guidelines (see Exhibit C to the Consent Agreement).
9. Road Base Specifications. All roads should be designed by a qualified soils engineer and will have a base capable of supporting a gross vehicle weight of 40,000 pounds. The asphalt road surface should be capable of providing all weather, year-round access.
10. Street Signage. In keeping with the desire to maintain the Project in as natural a state as possible, the signage for the project will be uniquely designed to provide address and street markers engraved in rock, so long as the signage is acceptable to the Park City Fire Service District.

11. Gates. All posts for gates on private driveways and roads will be four feet wider than the approved road width. All gates shall be located at least fifteen (15) feet from the right-of-way and shall open inward, allowing a vehicle to stop while not obstructing traffic on the road. Should gates be electronically operated, a receiver shall be installed that will permit emergency services access with a transmitter. If the gate can be locked, a lock box approved and accessible to the Park City Fire Service District and Summit County Sheriff will be located on the exterior side of the gate to provide for emergency equipment access through the gate.

12. Snow Removal and Road Maintenance. Snow removal and road maintenance shall be the responsibility of the Project and will be noted as such on the recorded plat. The CC&R's for the Project shall provide, and require adequate budgeting for, snow removal and road maintenance services. These requirements serve to satisfy the requirements of 5.5(q) of the Code. Failure to maintain adequate snow removal and road maintenance to ensure acceptable emergency vehicle access shall be considered a violation of the Consent Agreement.

Plant note



AMENDMENT TO
CONSENT AGREEMENT

Exhibit I.c
CA amendment, separation

This Amendment to that certain Consent Agreement dated May 1, 1997 (the "Consent Agreement"), by and between Redhawk Development, L.L.C., a Utah limited liability company, of which Developer is a successor-in-interest, and Summit County, Utah, a copy of which is attached hereto as Exhibit "1" (the "Amendment"), is entered into this 21st day of October, 2003 by and between MacDonald Utah Holdings, L.L.C., a Utah limited liability company ("Developer"), and Summit County, a political subdivision of the State of Utah, by and through its Board of County Commissioners (the "County").

RECITALS

- A. Since the Consent Agreement was executed in May of 1997, some of the circumstances involving the project (the "Project") approved by the Consent Agreement have changed.
- B. On or about December 15, 1999, the Project, known as the "Red Hawk Wildlife Preserve," was partitioned pursuant to arbitration. Developer under this Agreement is the successor-in-interest in and to that portion of the Project property reflected on Exhibit "2" (the "MacDonald Parcel of the Project"). The remaining portion of the Project is referred to interchangeably herein as the "Nielsen Parcel of the Project" or the "Ridges at Redhawk Parcel."
- C. The Amendment to the Consent Agreement is intended to modify certain aspects of the Consent Agreement as they affect the MacDonald Parcel of the Project.
- D. Except as amended and modified by this Amendment or inconsistent with the terms and provisions hereof, it is the intent of the parties that all other terms and provisions of the Consent Agreement shall remain in full force and effect.

E. The Summit County Planning staff has determined that this Amendment to the Consent Agreement is not a substantial amendment, i.e., one that alters the intent of the Consent Agreement regarding the use, density and configuration of the Project, but is a minor amendment.

NOW, THEREFORE, for and in consideration of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County and Developer hereby agree as follows:

1. Project Name. The Project identified in the Consent Agreement shall continue to be referred to as the Red Hawk Wildlife Preserve. However, the MacDonald Parcel of the Project and any subdivisions developed therein, are hereby renamed and shall be referred to as "The Preserve."

2. Density. The overall density of the Project reflected in paragraph 1.3 of the Consent Agreement shall remain as reflected therein. Of the 116 lot density permitted thereby, 45 lots of that density shall be permitted on the MacDonald Parcel of the Project. Three of these 45 lots are owned by GrayHawk/DMB Park City, L.L.C.

3. Equestrian Center. The equestrian center referenced in paragraph 1.3 of the Consent Agreement will not be located on Lot 78, because the lot numbering system has changed. However, the Developer, or the Homeowners Association of the MacDonald Parcel of the Project (the "HOA") may construct an equestrian center on the MacDonald Parcel of the Project at the location reflected on the plats attached hereto as Exhibit "3," which equestrian center and construction shall be consistent with the provisions of paragraph 1.3 of the Consent Agreement, except as modified by this Amendment. The Exhibit "3" plats will be replaced by the final approved plats upon final plat approval.

4. Specific Design Conditions. The development and construction of the MacDonald Parcel of the Project shall be consistent with the Specific Design Conditions set forth in Schedule 1 to the Consent Agreement, as amended hereby, and the restrictions identified and set forth on the plats attached as Exhibit "3," and the other documents identified in paragraph 1.4 of the Consent Agreement, to the extent not inconsistent with this Amendment.

5. Red Hawk Wildlife Management and Enhancement Plan. As it relates to the property located within the MacDonald Parcel of the Project, any reference in paragraph 1.5 of the Consent Agreement, or in any exhibit thereto, including without limitation, Exhibits D and E to the Consent Agreement, "The Wildlife Management and Enhancement Plan," shall mean and refer to The Preserve Home Owners Association ("HOA") The creation and operation of a separate wildlife preserve foundation shall not be required. Instead, the HOA shall perform any and all functions that were previously required of the Red Hawk Wildlife Preserve Foundation and the Wildfire Prevention Plan in the Consent Agreement and its attachments with respect to the MacDonald Parcel of the Project.

6. Dedication of Open Space. Paragraph 3.3 of the Consent Agreement is amended and modified such that Developer agrees to preserve as open space the land in the MacDonald Parcel of the Project outside of areas where construction of houses, guest houses, caretaker cottages, barns, or other structures are permitted, based on the restrictions placed on the location and construction of such structures in the plats attached hereto as Exhibit "3," and subject to the restrictions of the CC&Rs of the MacDonald Parcel. A conservation easement will not be required or granted, but the open space will be protected pursuant to CC&Rs and plat restrictions as set forth above. Certain public trail easements reflected on the Plats attached as Exhibit 3 will be dedicated to the Snyderville Basin Recreation District, as reflected in Section 10.g hereof.

7. Transfer of Project. Paragraph 4.2 of the Consent Agreement is amended and modified to reflect that the County has approved and does hereby acknowledge various transfers of portions of the property within the Project. These transfers include the transfer of the Nielsen Parcel of the Project to Nielson Red Hawk, L.L.C., (also referred to as the "Ridges at Red Hawk Parcel") and a portion of the Project to MacDonald Utah Holdings, L.L.C., (the MacDonald Parcel of the Project) as a result of an arbitration proceeding partition which occurred on or about March 27, 2000. Also included are three lots in the Project located within the MacDonald Parcel, that have been transferred to GrayHawk/DMB Park City, L.L.C. All other aspects of paragraph 4.2, not inconsistent with this addition remain valid, binding and enforceable.

8. Duration. Paragraph 5.4 of the Consent Agreement is amended and modified to reflect that the Developer and the County have by mutual agreement extended the term of the Consent Agreement for five (5) years, through April 21, 2007.

9. Notices. Paragraph 5.11 of the Consent Agreement is amended and modified so that notice to the owner of the MacDonald Portion of the Project shall be given as follows:

To:

MacDonald Utah Holdings, L.L.C.
c/o Kirkpatrick MacDonald
MacDonald & Cie
114 West 78th Street
New York City, NY 10024

With copies to:

Jim Lavendar
Cedar Jordan
Heil Construction, Inc.
2 S Main St. #2A
Heber City, UT 84032-1800

and



Text highlighted has been added/changed from the March 20, 2013 meeting

STAFF REPORT

To: Summit County Council (SCC)
Report Date: Thursday, April 11, 2013
Meeting Date: Wednesday, April 17, 2013
Author: Sean Lewis, County Planner
Project Name & Type: Rockport Rocks, Conditional Use Permit (CUP) Appeal

EXECUTIVE SUMMARY: The applicant, Wesley Siddoway, has applied to open a new sandstone rock quarry approximately ½ mile south of Rockport Reservoir. The proposed quarry would extract and sell decorative sandstone to the general public. The Eastern Summit County Planning Commission conducted six (6) separate meetings regarding this proposal before voting unanimously (7-0) to approve the CUP. A group of concerned citizens and neighbors of the proposed quarry have appealed the decision of the ESCPC.

Staff recommends that the SCC consider the issues outlined in this report regarding the application and vote to uphold the findings of the ESCPC to allow the operation of a rock quarry at this location.

A. **Project Description**

- **Project Name:** Rockport Rocks
- **Appellant(s):** Jodi Hoffman and others
- **Applicant:** Wesley Siddoway
- **Property Owner(s):** NS-59-1: Robert & Kayleen Siddoway, Trustees
NS-71: Siddoway Family Limited Partnership

- **Location:** 7120 North SR 32
- **Zone District:** Agriculture Protection (AP)
- **Setbacks:** Front: 55 feet from centerline Side/Rear 12 feet
- **Adjacent Land Uses:** Agriculture / Residential
- **Existing Uses:** Agriculture / Residential
- **Parcel Number and Size:** NS-59-1, 69.3 Acres; NS-71, 18.64 acres;
- **Lot of Record Status:** Both parcels NS-59-1 & NS-71 are considered Lots of Record

- **Type of Item:** Appeal of Decision of a Conditional Use Permit
- **Land Use Authority:** Eastern Summit County Planning Commission
- **Type of Process:** Judicial
- **Future Routing:** Appeal to Third District Court (if requested)

B. **Background**

The applicant is requesting to use portions of two (2) parcels near Lake Rockport Reservoir for the extraction of sandstone, generally intended to be used as decorative landscape rocks or as a stabilization product; in addition, the applicant has future plans to install a rock crusher and screen. The proposed disturbance area is limited to 2 acres of parcels NS-71 and NS-59-1 as shown on the site plan submitted as Exhibit C of this report. The applicant expects that the proposed 2 acre site should be suitable for up to 30 years of extraction. Storage of material and staging areas are also included as portions of the proposed 2 acre disturbance area.

The applicant anticipates having ten (10) employees on site on a daily basis. The applicant has stated that hours of operation would follow a 7:00 a.m. – 5:00 p.m. schedule Monday - Friday with allowances for after-hours maintenance and some Saturday hours if needed.

The ESCPC conducted a work session regarding this item on July 11, 2012. Issues discussed during the work session included: 1) Blasting hours and potential limitations; 2) Mud tracking on road, potential debris; and 3) intersection traffic impact analysis. The applicant has submitted a proposed blasting plan and a quarry track-out control plan (Exhibits H & I). Staff has reviewed these plans and will address them below.

The ESCPC held a public hearing for this application on August 1, 2012. At the hearing, 11 members of the public provided comment. Issues raised by the public included such items as not being included in the public noticing, potential noise and dust impacts, and Development Code compliance. The ESCPC voted to continue the public hearing until their regular meeting on September 19, 2012.

The ESCPC conducted a second work session on September 5, 2012. At the work session, Staff presented review and analysis regarding the issues raised during the public hearing. The ESCPC directed Staff to contact the State Division of Wildlife Resources to determine if there could be adverse effects to wildlife in the vicinity of the proposed quarry. Staff was also directed to work with the applicant to identify a firm scope of operations, including the amount of stone that could be quarried and the potential average number of trucks/loads that could be removed per week over the lifespan of the proposed quarry.

The August 1, 2012 public hearing was continued during the September 19, 2012 regular meeting of the ESCPC. During this hearing, members of the public spoke against the proposal and alleged that Staff did not complete a full and thorough review of the project for the ESCPC. The ESCPC instructed Staff to return at the October 17, 2012 with a “contract” or other document that would clearly define the parameters of the operation and the conditions of approval that may be applied if approved. The ESCPC also asked Staff to provide further details from the County Engineer regarding potential traffic impacts to the county road that trucks will use to access SR 32 and further clarification from the County Attorney regarding the apparent contradictory noise standards. The ESCPC voted to continue the public hearing until October 17, 2012.

On October 17, 2012, the ESCPC again invited members of the public to speak regarding the proposed quarry. Again, several members of the public spoke in opposition to the quarry with concerns raised about noise, traffic, blasting impacts, or potential seismic impacts. The ESCPC also instructed Staff to expand and clarify the proposed findings and conditions.

On November 7, 2012 the ESCPC conducted their final work session and worked out details with the applicant pertaining to Saturday operating hours, and further clarifying what process would take place if the average monthly number of trips were exceeded. Following the work session, the ESCPC held a public hearing regarding the proposed quarry. A preliminary sound study was presented to the ESCPC by members of the public and comments were received regarding the items discussed during the work session. The ESCPC voted unanimously to approve the quarry operation based upon findings and with conditions that had been finalized during the work session. Staff mailed the approval document to the applicant on November 9, 2012. An appeal of the decision was filed with Summit County on November 15, 2012

The SCC held an initial hearing on January 9, 2013 regarding this item. The applicant's representative was unable to attend that meeting. Following comments from the appellant, the SCC instructed Staff to conduct a site visit with all parties, and to schedule another hearing following the site visit. The SCC visited the site on February 25, 2013.

The SCC resumed their hearing on March 20, 2013. At that meeting both the Appellant and Applicant were provided equal time to present the merits of their positions. The SCC was able to ask questions of both parties as well as others listed as appellants that were in the audience. Following their discussion, the SCC provided Staff and the applicant instructions as to what information the SCC would like further clarification on. The SCC specifically requested information regarding other development activity on 30% slopes from Staff; and information regarding the access road and berm, water rights, size of the quarry, and a potential weekly/daily maximum number of truck trips from the Applicant. The SCC then continued the hearing until their regularly scheduled meeting on April 17, 2013.

C. **Community Review**

This item appears on the agenda as an appeal. As such, no public notice is required to be published other than the agenda. Public Hearings for this application were held before the ESCPC as described in Section B of this report.

D. **Standard of Review**

Appeals of Decisions made by the ESCPC must be made to the County Council within ten (calendar) days of the final written decision by the Community Development Director (CDD), or designated planning staff member. Pursuant to Utah Code Annotated §17-27a-705 and 707, the appellant has the burden of proving that the land use authority, i.e. the ESCPC, erred. On appeal, the County Council shall review the matter de novo

that is, reviewing the facts and evidence “anew,” and shall determine the correctness of the ESCPC’s decision in its interpretation and application of the Eastern Summit County General Plan and Section 11-4-12 of the Code governing Conditional Use Permits.

E. Identification and Analysis of Issues

The issue identified here was identified by the SCC as requiring further information/clarification from Staff. Items directed towards the Applicant are addressed in a letter addressed from the Applicant to Staff dated April 3, 2013 and are included herein as exhibit B.

Uses on 30% Slope:

SCC asked Staff to provide analysis aimed at determining whether the Community Development Department Staff has:

- 1) Consistently interpreted “development” to mean vertical construction only; and
- 2) Applied this interpretation/definition to not allow vertical construction on slopes 30% or greater.

In preparing the analysis, Staff has found instances where development on slopes greater than 30% has occurred. These instances mostly occurred in areas where subdivisions were platted, or uses established, prior to the original 1977 zoning ordinance in Summit County. (i.e. cabins, quarries, agricultural uses, certain roads, etc.)

Staff has prepared Exhibit C, which shows various locations in Eastern Summit County. Including other rock quarry operations, where uses may be located in areas in excess of 30% slope. Staff has been unable to find a consistent pattern of allowing vertical construction in these areas.

F. Recommendation(s)/Alternatives

Staff recommends that the SCC review and discuss the records as provided. Staff further recommends that the SCC vote to uphold the findings and conditions for a Conditional Use Permit for the proposed Rockport Rocks quarry as voted upon by the ESCPC.

Attachment(s)

Exhibit A – ESCPC Approval

Exhibit B – Applicant Letter

Exhibit C – 30% Slope Example Maps

S:\SHARED\Sean Lewis\Conditional Use\Rockport Quarry\Appeal Docs\Rockport Appeal Staff Report 4-17-13.docx



Sean Lewis
County Planner

November 9, 2012

Wesley Siddoway
Rockport Rocks, LLC.
5325 N Bridle Circle
Oakley, UT 84055

via email: rockportrocks@yahoo.com

RE: Rockport Rocks Conditional Use Permit on Parcels NS-71 and NS-59-1, File #2012-189.

Wesley,

The Eastern Summit County Planning Commission, during their regular meeting on November 7, 2012 voted to approve your application for a Conditional Use Permit to establish a rock quarry on parcels NS-71 and NS-59-1 located at 7120 SR 32, Peoa.

Project Description:

The project approved under this Conditional Use Permit consists of a rock quarry located on 2 acres of land situated within two (2) larger parcels identified as tax parcels #NS-59-1 and #NS-71. The rock quarry operation is limited to the 2 acres described as: Beginning at a point North 3°31'41" East 585.42 feet more or less along the section line from the East 1/4 Corner of Section 10, T1S, R5E, SLB&M and running thence South 82°21'00" West 278.94 feet; thence North 3°31'41" East 318.36 feet; thence North 82°21'00" East 278.94 feet to the section line; thence South 3°31'41" West 318.36 feet along the section line to the point of beginning. This includes all material and equipment storage. The quarry operation consists of production of large rock products suitable for riprap and/or landscape walls, and also crushing of the spoils from that into gravel products, all for retail sale. The project does not include asphalt batch plants or concrete products. The operation will include excavating and rock breaking equipment, and while not routine, will also include periodic blasting. No on site fuel storage is approved as part of this permit. At peak operation, the project may include up to 10 employees, in addition to equipment service personnel.

Findings:

1. The application complies with the Eastern Summit County General Plan.
2. The proposed plan complies with the appropriate Development Code Requirements.
3. The proposed use will not be a detriment to public health, safety, or welfare.

COMMUNITY DEVELOPMENT DEPARTMENT - PLANNING DIVISION
P.O. Box 128
60 NORTH MAIN STREET
COALVILLE, UT 84017
PHONE (435) 336-3134 FAX (435) 336-3046
SLEWIS@SUMMITCOUNTY.ORG WWW.SUMMITCOUNTY.ORG

4. The proposed use is able to use current infrastructure and is in close proximity to existing public facilities.
5. The location and unique site conditions of the project are such that the off-site visual impacts are significantly hidden from view from Highway 32 and most nearby properties. These site characteristics significantly mitigate the impacts of the project.
6. The project is small in scale, and the limited size of the operation is a significant mitigating factor on the off-site impacts.
7. Noise from the operation of a quarry and trucks leaving and entering the site is a potentially significant impact; however, these impacts have been mitigated by the following factors:
 - a. The hours of operation of the quarry have been limited and will therefore meet the criteria of the Noise Ordinance which limits the hours in which Noise can be produced as a primary means of mitigating the effects on neighboring properties.
 - b. The location of the quarry within the existing terrain provides for significant shielding of the noise generators (e.g. rock crushers) from the surrounding properties. Ambient noise levels from the State Highway are relatively high and the new noise generators will be of a similar level and therefore less significant when compared to ambient conditions during the daytime.
 - c. While the individual noise generators (equipment) associated with the project cannot be eliminated entirely, the quarry's permitted size is relatively small which will limit the number of noise generators and their potential cumulative impact. Therefore, noise from the project will not create material adverse impacts to surrounding properties.
8. Though traffic from the project is an increase from that existing now on the county road and SR 32, from an engineering and road capacity analysis, the traffic impacts of the project are negligible and will not result in a reduction of service levels.

Conditions of Approval:

1. The applicant must submit proof of an operating permit and reclamation bond as required by the Utah Division of Oil, Gas and Mining. If at any time that permit is withdrawn, or the reclamation bond is not in place, this CUP will also terminate. Violations of the State DOGM permit constitute violations of this CUP, whether enforcement action is taken by the State or not, and the County has the right to terminate this CUP or take other appropriate enforcement action independently of the State of Utah.
2. Work at the site shall not commence until the applicant has obtained an SWP3 permit from the Summit County Engineer. Continuous compliance with the SWP3 permit is a condition of this approval.
3. All blasting operations on the project shall be carried out by properly licensed personnel or contractors, in full compliance with Federal and State regulations. Reasonable advance notice of proposed blasting shall be submitted to the County and also the North Summit Fire District. Blasting shall be carried out in accordance with the policies of those agencies. In addition, in order to protect a high pressure natural gas line near the project, notice shall be given to Questar Gas for their personnel to be on site. Blasting shall be limited to the

hours of 10 a.m. to 3 p.m. Monday through Friday. Reasonable effort shall be made to notify immediately adjoining property owners of blasting at least 72 hours in advance.

4. This approval is limited to the project description above, and no temporary uses or uses related to, but not included in the project description are approved or implied.
5. Hours of operation shall be limited to between 7:00 a.m. and 5:00 p.m. Monday through Friday, and 8:00 a.m. and 5:00 p.m. on Saturdays. Maintenance and repair operations that do not require operation of machinery can occur outside of those hours. Bona fide emergency operations may exceed these hours.
6. The applicant has the obligation to control mud, rock, and dust track-out from the project. There will be a regular program of road sweeping, washing, or scraping to avoid debris on the public roadways, and either mechanical or manual truck cleaning before trucks leave the project site. The frequency of control work will vary with the season and weather conditions as necessary to keep the public roadways free of mud, rocks, and dust. A rumble cage will be installed on the project side of the paved road to dislodge mud and rocks from trucks as they exit the quarry. The quarry access road will be graveled, or at the option of the applicant, paved. The only non-treated surface driveway will be the actual loading zone within the quarry. An asphalt road will be maintained for 350 feet from SR 32. Track-out will be monitored by the applicant, and in periods of wet conditions, traffic will be suspended if the other track out elimination measures are not sufficient.
7. Dust will be controlled under the voluntary fugitive dust program administered by the State DEQ. Compliance with the program is voluntary under the State regulations, but is made a specific condition of this approval. In addition, the unpaved portion of the access road will be watered and/or treated with magnesium chloride as needed for dust control.
8. The Project is expressly limited to the 2 acres described above. This is essential as the limited size and scale of the project are material to the mitigation of impacts in the surrounding area. Any expansion will require an amendment to this CUP, and the applicant acknowledges that no subsequent approval is expressed or implied by this approval.
9. Trucks operating within the project will not use engine compression brakes commonly referred to as "Jake Brakes."
10. Truck traffic will be heavier on some days and lighter on others, but if the monthly truck traffic exceeds 140 round trips, installation of an acceleration or deceleration lane may become necessary. If truck traffic (for vehicles hauling material from the quarry) exceeds 140 round trips per month, as recorded via traffic log by the applicant, the applicant shall notify Summit County, and UDOT will be asked to determine whether additional turning or access lanes are needed. If required, road improvements will be at the expense of the owner of the Quarry.
11. If the truck traffic exceeds a monthly average of 140 truck round trips over any rolling 7 month (210 day) period, a work session shall be scheduled with the Eastern Summit County Planning Commission to review the possible impacts of the increased traffic and additional mitigation measures. This average truck count is limited to material hauling vehicles, and does not include passenger cars or light trucks used by employees or others visiting the Project.

Rockport Rocks
November 9, 2012
Page 4 of 4

Any person wishing to appeal the Conditional Use Permit decision may do so by submitting the appropriate application and fees to the Community Development Director within ten (10) calendar days of this notice.

Please feel free to contact me by phone at (435) 336-3134; or by email at slewis@summitcounty.org if you have any questions regarding this decision.

Sincerely,

A handwritten signature in black ink, appearing to read "Sean Lewis", written in a cursive style.

Sean Lewis
County Planner

cc: inquiry file

Attachments: Approved Site/Operational plans

<S:\SHARED\Sean Lewis\Conditional Use\Rockport Quarry\Rockport Approval.docx>

April 3, 2013

Sean Lewis
County Planner
Community Development Department – Planning Division
60 N. Main Street
Coalville, UT 84017

Re: Rockport Rocks Conditional Use Permit

Dear Sean:

Wes Siddoway and Rockport Rocks greatly appreciate the attention paid by the Planning staff, the Eastern Summit County Planning District Planning Commission (Planning Commission), and the County Council to his application for a conditional use permit (CUP). This has been an expensive and arduous process for Rockport Rocks, with six hearings before the Planning Commission and, to date, three subsequent meetings involving the County Council. As I noted when we last met, Utah Code Ann. § 17-27a-506 mandates that conditional use permits be approved if reasonable conditions can be imposed to mitigate reasonably anticipated detrimental effects of the proposed use. Respectfully, Rockport Rocks submits that the conditions already proposed by the Planning Commission more than adequately mitigate the effects reasonably anticipated from this small quarry. We also would like to point out that approval of the CUP will further one of the express purposes for the Eastern Summit County Development Code (Development Code), namely the promotion of new business enterprises and jobs that have been determined to be “crucial to the future of Eastern Summit County.” Development Code, Section 11-1-6.C.

Rockport Rocks has asked that I forward this letter to respond to the questions posed by the County Council during our hearing on March 20, 2013. At that time, I mentioned a series of development authorizations that have been granted over the past decade in a manner that confirms the County’s approach to development in those areas governed by the Development Code. That is, that the term “development” has been consistently applied to structures and not to land forms that may be a part of such developments. In particular, areas involving quarry and other mining operations, and access roads with cuts and fills across 30% slopes to service developments, all confirm and have been consistent with that understanding of the term. I understand that the County Council has asked for a further treatment of that subject from planning staff and/or the County Attorney and will not argue it further here. Neither do I intend to further address the water situation. Water is necessary for this operation only for dust suppression, which will be done by trucks. We believe the letter from Mountain Regional amply

satisfies that requirement. Water can be trucked from other sources and, if it later becomes more desirable to pipe water to the property, appropriate applications can be filed and be approved by the State Engineer. Approval from the State Engineer is not required in order to bring water to the quarry by truck.

As the County Council will have noted during the site visit, a number of truck loads of rock have been removed from the quarry area since 2010. Two of those loads of rocks were used for improvements on the Burgeson property. In that process, Mr. Siddoway has received no complaints from the neighbors or others in the public about either the initial quarry operations or the hauling of the quarried rock from the site by truck. Similarly, the disturbance to the land that the Council viewed site visit has existed to that extent since 2010 without complaint. The proposed future operations are a continuation of that exploratory use.

Council members asked Rockport Rocks to consider and respond to four inquiries: 1) if Rockport Rocks could provide a better description of the proposed haul road and berm, and whether it could be relocated further away from the Stonebrook property; 2) if Rockport Rocks would provide written evidence of the consent of the adjacent landowner; 3) whether it would make sense to consider adjustments to the size or location of the quarry; and 4) whether Rockport Rocks could agree to limits on the type of trucks and/or the a limit the number of truckloads in a given period. We will respond to each inquiry, in that order.

1. **Roadway and Berm.** Rockport Rocks has adjusted the alignment of the proposed haul road as indicated in the drawing from Alliance Engineering attached as Exhibit A. You will note that the new alignment results in a movement of the road farther away from the Stonebrook property and closer to the Siddoway residence. It also yields a wider turning radius and will produce a berm approximately ten feet high on the curve, further providing “sound wall” buffering from noise and visual impact for the Stonebrook property. Rockport Rocks will agree to have the Hall Road constructed in accordance with this drawing.

2. **Consent.** Attached is a letter from Dan Reeb, confirming the consent of the landowner of the adjacent property to the impacts of quarry operations on that property over the 30-year expected life of those operations.

3. **Size/Location.** Rockport Rocks has very carefully considered the questions voiced about the size and location of the quarry. Respectfully, Rockport Rocks is not able to agree to adjustments in this regard. The two-acre CUP site approved by the Planning Commission is the absolute minimum footprint required to make this operation viable. At two-acres it will already be the smallest quarry in the area, and a reduction in size from that area is simply not feasible. Rockport Rocks has also considered the possibility of moving the operation to the north or northeast, but has determined that adjustments in that direction would result in scars higher on the hill at a greater visible impact than keeping the quarry in the proposed location which provides the maximum possible shielding from visual and noise impacts.

4. **Number of Truckloads.** Much attention was paid to the impacts of haul trucks. Again with respect, that is not as large an issue as has been made of it. The County Council should be aware that it will take a maximum of six minutes to transit the haul road. Site limitations already restrict the size of trucks that can access the quarry, and the use of engine brakes is already prohibited. Use of trucks larger than conventional ten-wheel dump trucks, similar in size and noise impact to the snowplow trucks utilized by Summit County without objection, is simply not feasible. Rockport Rocks is willing to not use larger trucks. The issue of the number of loads in a given time is a more complicated one. It is impossible to project the business requirements of future customers and it is not fair to limit Rockport Rocks with arbitrary weekly or daily limits. The 3-6 average loads/day figure once mentioned to UDOT, over a typical work month of 26 days, would yield 156 loads. Rockport Rocks is willing to agree to a 140 load/month maximum, so long as it is able to time those loads to meet the demands of its business.

Rockport Rocks has previously offered to provide the appellants with advance notice in the rare event that it contemplates blasting. We expect that most of the concerts at the Peterson home will be scheduled after 5:00 pm, when the quarry will not be in operation. Rockport Rocks is also willing to stand down its operations, as a courtesy, during day-time concerts, if the Petersons will provide advance notice of those events.

I hope I have been sufficiently clear in explaining Rockport Rocks' position. Please let me know if you or the County Council have further questions.

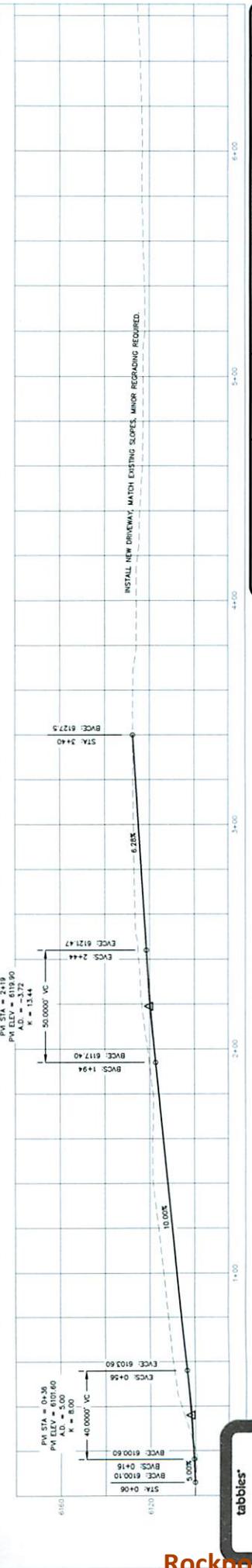
Very truly yours,

CLYDE SNOW & SESSIONS



Edwin C. Barnes

Enclosures



SUMMIT COUNTY
ROCKPORT ROCKS
 NEW DRIVEWAY DESIGN
 FOR: WES SODOWAY
 JOB NO.: N/A
 FILE: C:\M\VEP\RA12.DWG
 DATE: 3/26/13
 STAFFS:
 MICHAEL DEMOWICZ
 (435) 644-6467
 CONSULTING ENGINEER, LAND PLANNERS & SURVEYORS
 225 West 1st St. Suite 200, Rockport, MO 64486

SHEET
C1

tabbles®
EXHIBIT
A

**Travelers Construction Co.,
L.C. PSP
Viewpoint Resort, L.C.**

2812 N. Norwalk, Suite 105 ▲ Mesa, Arizona 85215
480.898.9090 Fax: 480.464.0979

VIA FACSIMILE: 435-783-5163

September 5, 2012

Wesley Siddoway
Rockport Rocks
7120 N. S.R. #32
Peoa, UT 84061

RE: Rockport Rocks Conditional Use Permit

Dear Mr. Siddoway:

We are aware of your pending application before the Eastern Summit County Planning Commission (ESCPC) for a Conditional Use Permit for a sandstone and decorative rock harvesting operation; within a disturbance area limited to 2 acres within Summit County parcels NS-71 and NS-59-1 as depicted in your application. We are the owners of the property immediately adjacent to the east of the proposed 2 acre site.

Though we believe that ultimately the "highest and best" long-term use for the property encompassing parcels NS-71 and NS-59-1 is that of a residential nature, we presently do not have an objection to your interim proposed extraction of sandstone; provided all applicable State of Utah and Summit County regulations are adhered to in connection with both the approval of the Conditional Use Permit and the period of operation of the facility.

Per paragraph "B. Background" of the report produced by the Summit County Planning Department; we note the statement, "The applicant expects that the proposed 2 acre site should be suitable for up to 30 years of extraction." Should you decide at a future date to apply for an expansion of the proposed 2 acre facility, we hereby request notification of same.

Sincere regards,


Dan Reeb
Co-Trustee, Travelers Construction Co., L.C.
PSP


Dan Reeb
Manager, Viewpoint Resort, L.C.

cc: Sean Lewis, Summit County Planner via email: slewis@summitcounty.org

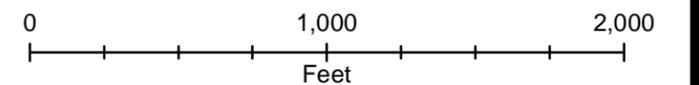




Blue Sky 30% Slope Analysis

Prepared April 2013 by Summit County Community Development Department

- 30% Slope
- Parcels



This drawing is neither a legally recorded map, nor a survey, and is not intended to be used as such. The information displayed is a compilation of records, information, and data obtained from various sources including Summit County. Summit County is not responsible for the timeliness or accuracy of information shown.

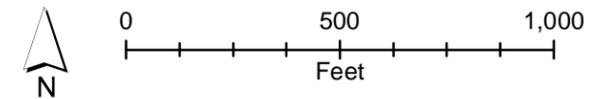


Browns Quarries

30% Slope Analysis

Prepared April 2013 by Summit County Community Development Department

- 30% Slope
- Parcels



This drawing is neither a legally recorded map, nor a survey, and is not intended to be used as such. The information displayed is a compilation of records, information, and data obtained from various sources including Summit County. Summit County is not responsible for the timeliness or accuracy of information shown.

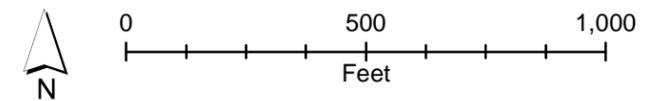


Peoa Quarries

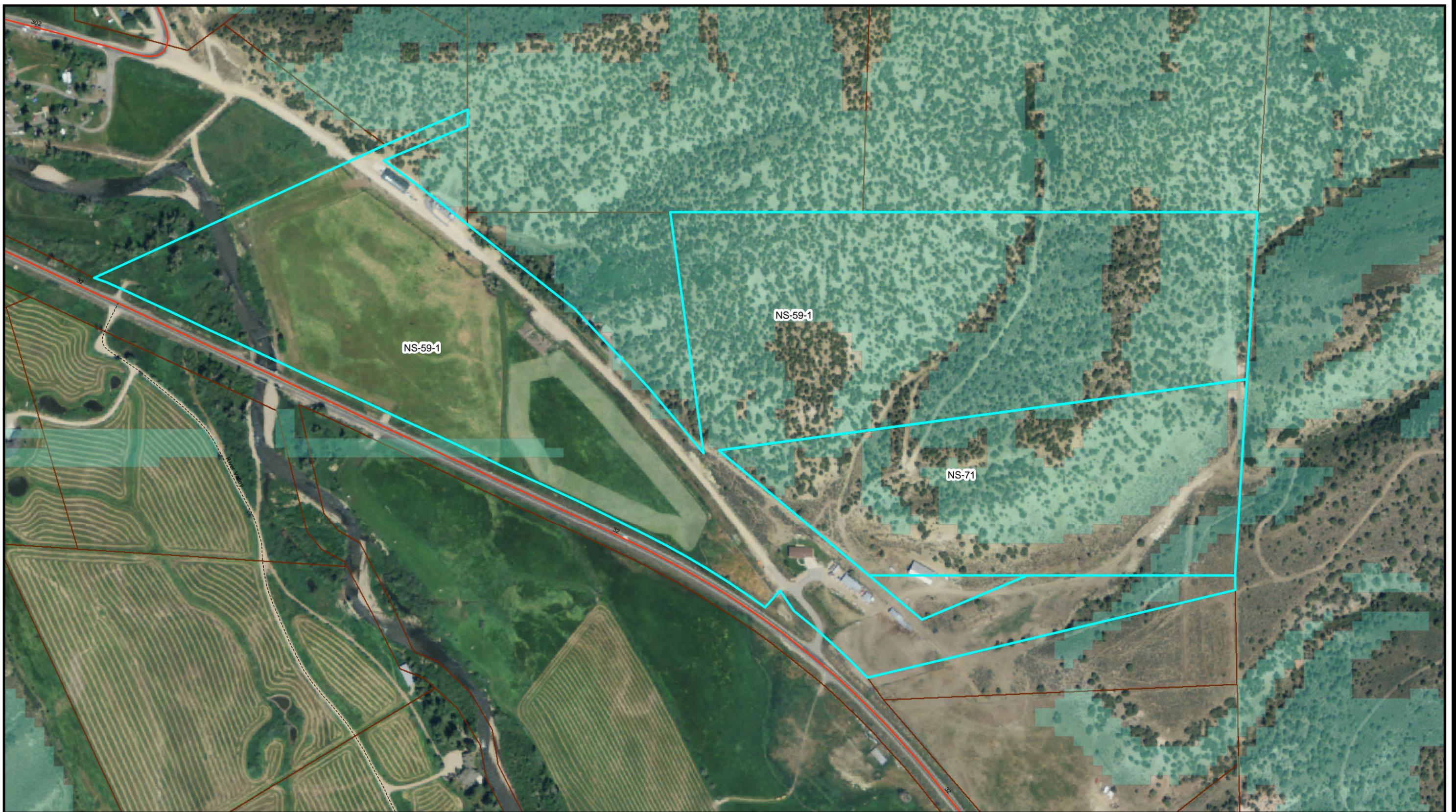
30% Slope Analysis

Prepared April 2013 by Summit County Community Development Department

- 30% Slope
- Parcels



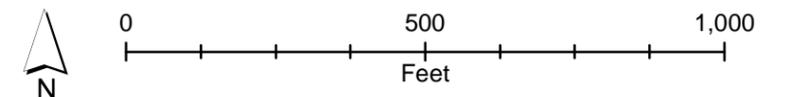
This drawing is neither a legally recorded map, nor a survey, and is not intended to be used as such. The information displayed is a compilation of records, information, and data obtained from various sources including Summit County. Summit County is not responsible for the timeliness or accuracy of information shown.



NS-59-1, NS-71
30% Slope Analysis

Prepared April 2013 by Summit County Community Development Department

-  Detail Parcels
-  30% Slope
-  Parcels



This drawing is neither a legally recorded map, nor a survey, and is not intended to be used as such. The information displayed is a compilation of records, information, and data obtained from various sources including Summit County. Summit County is not responsible for the timeliness or accuracy of information shown.

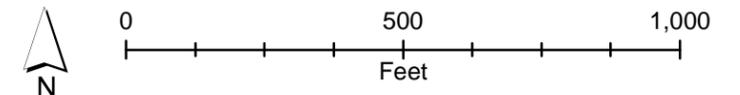


Utelite/Three Mile Landfill

30% Slope Analysis

Prepared April 2013 by Summit County Community Development Department

- 30% Slope
- Parcels



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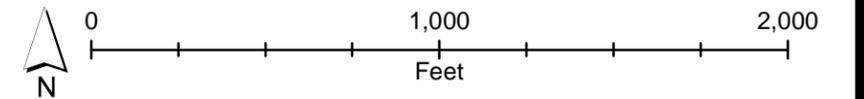


Geneva Rock

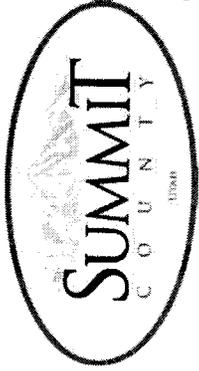
30% Slope Analysis

Prepared April 2013 by Summit County Community Development Department

- 30% Slope
- Parcels



This drawing is neither a legally recorded map, nor a survey, and is not intended to be used as such. The information displayed is a compilation of records, information, and data obtained from various sources including Summit County. Summit County is not responsible for the timeliness or accuracy of information shown.



COUNCIL SUBMITTAL FORM

- **Agenda items must be scheduled by Tuesday at 12:00 p.m. one week prior to being placed on the agenda**
- **Staff reports and information must be submitted by 12:00 p.m. the Thursday before the Council meeting**

Agenda date: April 17, 2013

Time allotment 10 Minutes

Requestor and contact information Kathryn Rockhill and Travis Lewis

Item type: *public hearing work session discussion approval
*Email notice published in paper

Submit language for agenda (public hearing - email notice published in paper)

Reconvene as the Board of Equalization
Approval of 2012 Stipulations

Has the Attorney's Office reviewed and signed off? Yes No

Attorney name

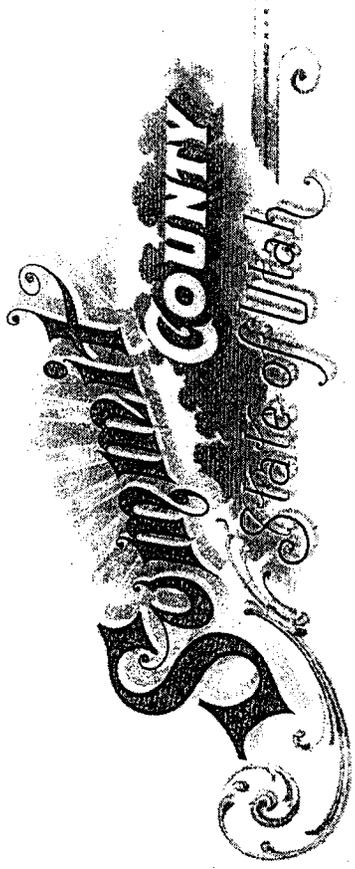
Is this an Ordinance or a Resolution? Ordinance Resolution No

PLEASE PROVIDE 3 ORIGINAL HARDCOPY IES AND EMAIL INFORMATION TO asingleton@summitcounty.org by 12:00p.m. the Thursday before Council meeting (must include staff report) or the item will be removed from the agenda

CLICK HERE to Submit

Auditor

Blake Frazier



April 8, 2013

County Council;

Please consider approving the Board of Equalization Stipulations on April 17th.
They will be prepared for your review by Travis Lewis prior to that date.

Thank You,


Kathryn Rockhill
BOE Clerk

ESCLAL-P-37-AM	\$	17,025.94	\$	20,000.00	\$	(2,974.06)	\$	17,025.94	\$	20,000.00
ESCLAL-P-38-AM	\$	17,025.94	\$	20,000.00	\$	(2,974.06)	\$	17,025.94	\$	20,000.00
ESCLAL-P-3-AM	\$	17,025.94	\$	20,000.00	\$	(2,974.06)	\$	17,025.94	\$	20,000.00
ESCLAL-P-4-AM	\$	17,025.94	\$	20,000.00	\$	(2,974.06)	\$	17,025.94	\$	20,000.00
ESCLAL-P-5-AM	\$	17,025.94	\$	20,000.00	\$	(2,974.06)	\$	17,025.94	\$	20,000.00
ESCLAL-P-6-AM	\$	17,025.94	\$	20,000.00	\$	(2,974.06)	\$	17,025.94	\$	20,000.00
ESCLAL-P-7-AM	\$	17,025.94	\$	20,000.00	\$	(2,974.06)	\$	17,025.94	\$	20,000.00
ESCLAL-P-8-AM	\$	17,025.94	\$	20,000.00	\$	(2,974.06)	\$	17,025.94	\$	20,000.00
ESCLAL-P-9-AM	\$	17,025.94	\$	20,000.00	\$	(2,974.06)	\$	17,025.94	\$	20,000.00
ESCLAL-S-55-AM	\$	17,025.94	\$	20,000.00	\$	(2,974.06)	\$	17,025.94	\$	20,000.00
ESCLAL-SC-27-AM	\$	17,025.94	\$	20,000.00	\$	(2,974.06)	\$	17,025.94	\$	20,000.00
ESCLAL-SC-5-AM	\$	17,025.94	\$	20,000.00	\$	(2,974.06)	\$	17,025.94	\$	20,000.00
ESCLAL-C-56-AM	\$	25,538.91	\$	30,000.00	\$	(4,461.09)	\$	25,538.91	\$	30,000.00
ESCLAL-SC-85-AM	\$	25,538.91	\$	30,000.00	\$	(4,461.09)	\$	25,538.91	\$	30,000.00
ESCLAL-SC-97-AM	\$	25,538.91	\$	30,000.00	\$	(4,461.09)	\$	25,538.91	\$	30,000.00
ESCLAL-C-16-AM	\$	34,051.88	\$	40,000.00	\$	(5,948.12)	\$	34,051.88	\$	40,000.00
ESCLAL-C-7-AM	\$	34,051.88	\$	40,000.00	\$	(5,948.12)	\$	34,051.88	\$	40,000.00
ESCLAL-C-94-AM	\$	34,051.88	\$	40,000.00	\$	(5,948.12)	\$	34,051.88	\$	40,000.00
ESCLAL-S-130-AM	\$	34,051.88	\$	40,000.00	\$	(5,948.12)	\$	34,051.88	\$	40,000.00
ESCLAL-S-132-AM	\$	34,051.88	\$	40,000.00	\$	(5,948.12)	\$	34,051.88	\$	40,000.00
ESCLAL-S-133-AM	\$	34,051.88	\$	40,000.00	\$	(5,948.12)	\$	34,051.88	\$	40,000.00
ESCLAL-SC-67-AM	\$	34,051.88	\$	40,000.00	\$	(5,948.12)	\$	34,051.88	\$	40,000.00
ESCLAL-C-80-AM	\$	42,564.85	\$	50,000.00	\$	(7,435.15)	\$	42,564.85	\$	50,000.00
ESCLAL-C-8-AM	\$	42,564.85	\$	50,000.00	\$	(7,435.15)	\$	42,564.85	\$	50,000.00
ESCLAL-C-97-AM	\$	42,564.85	\$	50,000.00	\$	(7,435.15)	\$	42,564.85	\$	50,000.00
ESCLAL-SC-1-AM	\$	42,564.85	\$	50,000.00	\$	(7,435.15)	\$	42,564.85	\$	50,000.00
ESCLAL-SC-57-AM	\$	42,564.85	\$	50,000.00	\$	(7,435.15)	\$	42,564.85	\$	50,000.00
ESCLAL-SC-59-AM	\$	42,564.85	\$	50,000.00	\$	(7,435.15)	\$	42,564.85	\$	50,000.00
ESCLAL-SC-63-AM	\$	42,564.85	\$	50,000.00	\$	(7,435.15)	\$	42,564.85	\$	50,000.00
ESCLAL-C-73-AM	\$	51,077.82	\$	60,000.00	\$	(8,922.18)	\$	51,077.82	\$	60,000.00
ESCLAL-C-82-AM	\$	51,077.82	\$	60,000.00	\$	(8,922.18)	\$	51,077.82	\$	60,000.00
ESCLAL-SC-58-AM	\$	51,077.82	\$	60,000.00	\$	(8,922.18)	\$	51,077.82	\$	60,000.00
ESCLAL-C-5-AM	\$	59,590.79	\$	70,000.00	\$	(10,409.21)	\$	59,590.79	\$	70,000.00
ESCLAL-C-6-AM	\$	59,590.79	\$	70,000.00	\$	(10,409.21)	\$	59,590.79	\$	70,000.00
ESCLAL-S-136-AM	\$	59,590.79	\$	70,000.00	\$	(10,409.21)	\$	59,590.79	\$	70,000.00
ESCLAL-C-76-AM	\$	68,103.76	\$	80,000.00	\$	(11,896.24)	\$	68,103.76	\$	80,000.00
ESCLAL-S-128-AM	\$	68,103.76	\$	80,000.00	\$	(11,896.24)	\$	68,103.76	\$	80,000.00
ESCLAL-S-137-AM	\$	68,103.76	\$	80,000.00	\$	(11,896.24)	\$	68,103.76	\$	80,000.00
ESCLAL-C-4-AM	\$	85,129.70	\$	100,000.00	\$	(14,870.30)	\$	85,129.70	\$	100,000.00
ESCLAL-S-131-AM	\$	85,129.70	\$	100,000.00	\$	(14,870.30)	\$	85,129.70	\$	100,000.00

ESCLAL-SC-86-AM	\$	85,129.70	\$	100,000.00	\$	(14,870.30)	\$	85,129.70	\$	100,000.00
ESCLAL-C-88-AM	\$	102,155.64	\$	120,000.00	\$	(17,844.36)	\$	102,155.64	\$	120,000.00
ESCLAL-C-93-AM	\$	110,668.61	\$	130,000.00	\$	(19,331.39)	\$	110,668.61	\$	130,000.00
ESCLAL-C-17-AM	\$	119,181.58	\$	140,000.00	\$	(20,818.42)	\$	119,181.58	\$	140,000.00
ESCL-A-4	\$	126,481.45	\$	148,575.00	\$	(22,093.55)	\$	126,481.45	\$	148,575.00
ESCLAL-C-29-AM	\$	127,694.55	\$	150,000.00	\$	(22,305.45)	\$	127,694.55	\$	150,000.00
ESCLAL-C-32-AM	\$	161,746.43	\$	190,000.00	\$	(28,253.57)	\$	161,746.43	\$	190,000.00
ESCLAL-S-138-AM	\$	161,746.43	\$	190,000.00	\$	(28,253.57)	\$	161,746.43	\$	190,000.00
ESCLAL-C-60-AM	\$	170,259.40	\$	200,000.00	\$	(29,740.60)	\$	170,259.40	\$	200,000.00
ESCL-A-5	\$	182,973.52	\$	214,935.00	\$	(31,961.48)	\$	182,973.52	\$	214,935.00
ESCLAL-S-92-AM	\$	187,285.34	\$	220,000.00	\$	(32,714.66)	\$	187,285.34	\$	220,000.00
ESCL-A-3	\$	219,741.04	\$	258,125.00	\$	(38,383.96)	\$	219,741.04	\$	258,125.00
ESCLAL-C-34-AM	\$	221,337.22	\$	260,000.00	\$	(38,662.78)	\$	221,337.22	\$	260,000.00
ESCLAL-C-2-AM	\$	238,363.16	\$	280,000.00	\$	(41,636.84)	\$	238,363.16	\$	280,000.00
ESCLAL-C-33-AM	\$	263,902.07	\$	310,000.00	\$	(46,097.93)	\$	263,902.07	\$	310,000.00
ESCLAL-SC-94-AM	\$	263,902.07	\$	310,000.00	\$	(46,097.93)	\$	263,902.07	\$	310,000.00
ESCLAL-C-3-AM	\$	289,440.98	\$	340,000.00	\$	(50,559.02)	\$	289,440.98	\$	340,000.00
ESCLAL-C-28-AM	\$	306,466.92	\$	360,000.00	\$	(53,533.08)	\$	306,466.92	\$	360,000.00
ESCLAL-C-68-AM	\$	314,979.89	\$	370,000.00	\$	(55,020.11)	\$	314,979.89	\$	370,000.00
ESCLAL-4-105-AM	\$	349,031.77	\$	410,000.00	\$	(60,968.23)	\$	349,031.77	\$	410,000.00
ESCLAL-4-109-AM	\$	349,031.77	\$	410,000.00	\$	(60,968.23)	\$	349,031.77	\$	410,000.00
ESCLAL-4-111-AM	\$	349,031.77	\$	410,000.00	\$	(60,968.23)	\$	349,031.77	\$	410,000.00
ESCLAL-4-113-AM	\$	349,031.77	\$	410,000.00	\$	(60,968.23)	\$	349,031.77	\$	410,000.00
ESCLAL-4-119-AM	\$	349,031.77	\$	410,000.00	\$	(60,968.23)	\$	349,031.77	\$	410,000.00
ESCLAL-4-120-AM	\$	349,031.77	\$	410,000.00	\$	(60,968.23)	\$	349,031.77	\$	410,000.00
ESCLAL-4-151-AM	\$	349,031.77	\$	410,000.00	\$	(60,968.23)	\$	349,031.77	\$	410,000.00
ESCLAL-4-153-AM	\$	349,031.77	\$	410,000.00	\$	(60,968.23)	\$	349,031.77	\$	410,000.00
ESCLAL-4-205-AM	\$	349,031.77	\$	410,000.00	\$	(60,968.23)	\$	349,031.77	\$	410,000.00
ESCLAL-4-209-AM	\$	349,031.77	\$	410,000.00	\$	(60,968.23)	\$	349,031.77	\$	410,000.00
ESCLAL-4-211-AM	\$	349,031.77	\$	410,000.00	\$	(60,968.23)	\$	349,031.77	\$	410,000.00
ESCLAL-4-213-AM	\$	349,031.77	\$	410,000.00	\$	(60,968.23)	\$	349,031.77	\$	410,000.00
ESCLAL-4-219-AM	\$	349,031.77	\$	410,000.00	\$	(60,968.23)	\$	349,031.77	\$	410,000.00
ESCLAL-4-220-AM	\$	349,031.77	\$	410,000.00	\$	(60,968.23)	\$	349,031.77	\$	410,000.00
ESCLAL-4-235-AM	\$	349,031.77	\$	410,000.00	\$	(60,968.23)	\$	349,031.77	\$	410,000.00
ESCLAL-4-237-AM	\$	349,031.77	\$	410,000.00	\$	(60,968.23)	\$	349,031.77	\$	410,000.00
ESCLAL-5-167-AM	\$	349,031.77	\$	410,000.00	\$	(60,968.23)	\$	349,031.77	\$	410,000.00
ESCLAL-5-168-AM	\$	349,031.77	\$	410,000.00	\$	(60,968.23)	\$	349,031.77	\$	410,000.00
ESCLAL-5-169-AM	\$	349,031.77	\$	410,000.00	\$	(60,968.23)	\$	349,031.77	\$	410,000.00
ESCLAL-5-171-AM	\$	349,031.77	\$	410,000.00	\$	(60,968.23)	\$	349,031.77	\$	410,000.00
ESCLAL-5-173-AM	\$	349,031.77	\$	410,000.00	\$	(60,968.23)	\$	349,031.77	\$	410,000.00

ESCLAL-5-267-AM	\$	349,031.77	\$	410,000.00	\$	(60,968.23)	\$	349,031.77	\$	410,000.00
ESCLAL-5-268-AM	\$	349,031.77	\$	410,000.00	\$	(60,968.23)	\$	349,031.77	\$	410,000.00
ESCLAL-5-269-AM	\$	349,031.77	\$	410,000.00	\$	(60,968.23)	\$	349,031.77	\$	410,000.00
ESCLAL-5-271-AM	\$	349,031.77	\$	410,000.00	\$	(60,968.23)	\$	349,031.77	\$	410,000.00
ESCLAL-5-273-AM	\$	349,031.77	\$	410,000.00	\$	(60,968.23)	\$	349,031.77	\$	410,000.00
ESCLAL-5-367-AM	\$	349,031.77	\$	410,000.00	\$	(60,968.23)	\$	349,031.77	\$	410,000.00
ESCLAL-5-368-AM	\$	349,031.77	\$	410,000.00	\$	(60,968.23)	\$	349,031.77	\$	410,000.00
ESCLAL-5-369-AM	\$	349,031.77	\$	410,000.00	\$	(60,968.23)	\$	349,031.77	\$	410,000.00
ESCLAL-5-371-AM	\$	349,031.77	\$	410,000.00	\$	(60,968.23)	\$	349,031.77	\$	410,000.00
ESCLAL-5-373-AM	\$	349,031.77	\$	410,000.00	\$	(60,968.23)	\$	349,031.77	\$	410,000.00
ESCLAL-C-55-AM	\$	357,544.74	\$	420,000.00	\$	(62,455.26)	\$	357,544.74	\$	420,000.00
ESCLAL-C-10-AM	\$	400,109.59	\$	470,000.00	\$	(69,890.41)	\$	400,109.59	\$	470,000.00
ESCLAL-S-129-AM	\$	434,161.47	\$	510,000.00	\$	(75,838.53)	\$	434,161.47	\$	510,000.00
ESCLAL-C-9-AM	\$	459,700.38	\$	540,000.00	\$	(80,299.62)	\$	459,700.38	\$	540,000.00
ESCLAL-C-12-AM	\$	476,726.32	\$	560,000.00	\$	(83,273.68)	\$	476,726.32	\$	560,000.00
ESCLAL-C-26-AM	\$	476,726.32	\$	560,000.00	\$	(83,273.68)	\$	476,726.32	\$	560,000.00
ESCLAL-C-65-AM	\$	502,265.23	\$	590,000.00	\$	(87,734.77)	\$	502,265.23	\$	590,000.00
ESCL-A-2	\$	510,633.48	\$	599,830.00	\$	(89,196.52)	\$	510,633.48	\$	599,830.00
ESCLAL-C-23-AM	\$	519,291.17	\$	610,000.00	\$	(90,708.83)	\$	519,291.17	\$	610,000.00
ESCLAL-C-31-AM	\$	527,804.14	\$	620,000.00	\$	(92,195.86)	\$	527,804.14	\$	620,000.00
ESCLAL-144-AM	\$	604,420.87	\$	710,000.00	\$	(105,579.13)	\$	604,420.87	\$	710,000.00
ESCLAL-244-AM	\$	604,420.87	\$	710,000.00	\$	(105,579.13)	\$	604,420.87	\$	710,000.00
ESCLAL-304-AM	\$	604,420.87	\$	710,000.00	\$	(105,579.13)	\$	604,420.87	\$	710,000.00
ESCLAL-316-AM	\$	604,420.87	\$	710,000.00	\$	(105,579.13)	\$	604,420.87	\$	710,000.00
ESCLAL-404-AM	\$	604,420.87	\$	710,000.00	\$	(105,579.13)	\$	604,420.87	\$	710,000.00
ESCLAL-4-100-AM	\$	604,420.87	\$	710,000.00	\$	(105,579.13)	\$	604,420.87	\$	710,000.00
ESCLAL-4-106-AM	\$	604,420.87	\$	710,000.00	\$	(105,579.13)	\$	604,420.87	\$	710,000.00
ESCLAL-4-112-AM	\$	604,420.87	\$	710,000.00	\$	(105,579.13)	\$	604,420.87	\$	710,000.00
ESCLAL-4-118-AM	\$	604,420.87	\$	710,000.00	\$	(105,579.13)	\$	604,420.87	\$	710,000.00
ESCLAL-4-130-AM	\$	604,420.87	\$	710,000.00	\$	(105,579.13)	\$	604,420.87	\$	710,000.00
ESCLAL-4-135-AM	\$	604,420.87	\$	710,000.00	\$	(105,579.13)	\$	604,420.87	\$	710,000.00
ESCLAL-4-136-AM	\$	604,420.87	\$	710,000.00	\$	(105,579.13)	\$	604,420.87	\$	710,000.00
ESCLAL-4-141-AM	\$	604,420.87	\$	710,000.00	\$	(105,579.13)	\$	604,420.87	\$	710,000.00
ESCLAL-4-142-AM	\$	604,420.87	\$	710,000.00	\$	(105,579.13)	\$	604,420.87	\$	710,000.00
ESCLAL-4-147-AM	\$	604,420.87	\$	710,000.00	\$	(105,579.13)	\$	604,420.87	\$	710,000.00
ESCLAL-4-148-AM	\$	604,420.87	\$	710,000.00	\$	(105,579.13)	\$	604,420.87	\$	710,000.00
ESCLAL-4-154-AM	\$	604,420.87	\$	710,000.00	\$	(105,579.13)	\$	604,420.87	\$	710,000.00
ESCLAL-416-AM	\$	604,420.87	\$	710,000.00	\$	(105,579.13)	\$	604,420.87	\$	710,000.00
ESCLAL-4-200-AM	\$	604,420.87	\$	710,000.00	\$	(105,579.13)	\$	604,420.87	\$	710,000.00
ESCLAL-4-206-AM	\$	604,420.87	\$	710,000.00	\$	(105,579.13)	\$	604,420.87	\$	710,000.00

ESCLAL-5-260-AM	\$	1,110,764.37	\$	1,288,571.43	\$	(177,807.06)	\$	1,110,764.37	\$	1,288,571.43
ESCLAL-C-1-AM	\$	1,224,651.54	\$	1,438,571.43	\$	(213,919.89)	\$	1,224,651.54	\$	1,438,571.43
ESCLAL-149-AM	\$	1,352,346.09	\$	1,588,571.43	\$	(236,225.34)	\$	1,352,346.09	\$	1,588,571.43
ESCLAL-251-AM	\$	1,352,346.09	\$	1,588,571.43	\$	(236,225.34)	\$	1,352,346.09	\$	1,588,571.43
ESCLAL-338-AM	\$	1,352,346.09	\$	1,588,571.43	\$	(236,225.34)	\$	1,352,346.09	\$	1,588,571.43
ESCLAL-354-AM	\$	1,352,346.09	\$	1,588,571.43	\$	(236,225.34)	\$	1,352,346.09	\$	1,588,571.43
ESCLAL-4-226-AM	\$	1,352,346.09	\$	1,588,571.43	\$	(236,225.34)	\$	1,352,346.09	\$	1,588,571.43
ESCLAL-4-326-AM	\$	1,352,346.09	\$	1,588,571.43	\$	(236,225.34)	\$	1,352,346.09	\$	1,588,571.43
ESCLAL-451-AM	\$	1,352,346.09	\$	1,588,571.43	\$	(236,225.34)	\$	1,352,346.09	\$	1,588,571.43
ESCLAL-456-AM	\$	1,352,346.09	\$	1,588,571.43	\$	(236,225.34)	\$	1,352,346.09	\$	1,588,571.43
ESCLAL-508-AM	\$	1,352,346.09	\$	1,588,571.43	\$	(236,225.34)	\$	1,352,346.09	\$	1,588,571.43
ESCLAL-513-AM	\$	1,352,346.09	\$	1,588,571.43	\$	(236,225.34)	\$	1,352,346.09	\$	1,588,571.43
ESCLAL-5-360-AM	\$	1,352,346.09	\$	1,588,571.43	\$	(236,225.34)	\$	1,352,346.09	\$	1,588,571.43
Totals for 4-17-2013	\$	77,822,442.53	\$	91,400,105.00	\$	(13,577,662.47)	\$	77,822,442.53	\$	91,400,105.00
Totals for 12/6/2013	\$	11,226,292.00	\$	14,282,578.00	\$	(3,056,286.00)	\$	12,056,708.00	\$	14,282,578.00
Totals for 1/23/2013	\$	9,557,714.00	\$	16,752,509.00	\$	(7,194,795.00)	\$	6,073,082.00	\$	16,752,509.00
Totals For 1/16/2013	\$	3,903,626.00	\$	4,642,600.00	\$	(738,974.00)	\$	3,609,173.00	\$	4,642,600.00
Totals for 1/9/2013	\$	9,760,651.00	\$	10,060,514.00	\$	(299,863.00)	\$	9,604,431.00	\$	10,060,514.00
Totals for 12/19/2012	\$	12,271,327.00	\$	15,315,340.00	\$	(3,044,013.00)	\$	11,489,968.00	\$	15,315,340.00
Totals for 12/12/2012	\$	4,537,723.00	\$	4,458,233.00	\$	(1,881,986.00)	\$	7,113,970.00	\$	6,419,709.00
Totals for 12/5/2012	\$	141,975,855.00	\$	144,887,100.00	\$	(2,911,245.00)	\$	124,487,845.00	\$	144,887,100.00
Totals for 11/28/2012	\$	17,131,643.00	\$	20,995,955.00	\$	(3,864,312.00)	\$	14,652,832.00	\$	20,995,955.00
Totals for 11/14/2012	\$	25,635,298.00	\$	30,178,915.00	\$	(4,543,617.00)	\$	19,413,938.00	\$	30,178,915.00
Totals for 11/7/2012	\$	33,461,193.00	\$	34,639,261.00	\$	(1,178,068.00)	\$	31,299,683.00	\$	34,639,261.00
Totals for 10/31/2012	\$	33,144,825.00	\$	40,535,768.00	\$	(7,390,943.00)	\$	30,963,681.00	\$	40,535,768.00
Totals for 10/24/2012	\$	121,728,378.00	\$	149,002,842.00	\$	(27,274,464.00)	\$	103,844,981.00	\$	149,002,842.00
Totals for 10/10/2012	\$	86,042,006.00	\$	102,778,872.00	\$	(16,736,866.00)	\$	71,107,144.00	\$	102,778,872.00
Totals for 10/3/2012	\$	38,591,363.00	\$	47,578,853.00	\$	(8,987,490.00)	\$	28,377,158.00	\$	47,578,853.00
Totals for 9/26/2012	\$	59,278,729.00	\$	69,288,965.00	\$	(10,010,236.00)	\$	42,301,770.00	\$	69,288,965.00
Totals for 9/19/2012	\$	61,834,634.00	\$	58,697,816.00	\$	3,136,818.00	\$	52,024,580.00	\$	58,697,816.00
Totals For 9/12/2012	\$	85,543,866.00	\$	91,568,057.00	\$	(6,024,171.00)	\$	66,650,057.00	\$	91,568,057.00
Totals For 8/29/2012	\$	46,659,094.00	\$	48,620,199.00	\$	(1,961,105.00)	\$	37,170,923.00	\$	48,620,199.00
RunningTotal	\$	880,106,659.53	\$	995,684,482.00	\$	(117,539,278.47)	\$	750,064,366.53	\$	997,645,958.00

Annette,

So far this year(2012)the Market value decrease is (\$ 117,539,278.47) As of 4/17/2013

The total number of Appeals for 2012 is 1,841 we have sent 1,684 of those for your approval as of April 17, 2013.

This is 92% of the Appeals.



Staff Report

To: Summit County Council (SCC)
Report Date: Thursday, April 11, 2013
Meeting Date: Wednesday, April 17, 2013
Author: Kimber Gabryszak, AICP
Project Name & Type: Silver Creek Unit I - Rezone

Executive Summary: The Silver Creek Estates Unit I Subdivision Plat (Plat I) was recorded in 1965 with certain allowed uses listed in a plat note. Over the years, various interpretations of how that note interacted with underlying County zoning have led to inconsistent development in the area, with a portion developing for commercial use. Staff initiated a potential rezone of the commercial area to Community Commercial.

After several work sessions, the Snyderville Basin Planning Commission (SBPC) held a public hearing on December 18, 2012, and voted 3:3 on a motion to forward a positive recommendation on a partial Plat I rezone to Community Commercial (Exhibit L). As a result of the split vote, no recommendation, either positive or negative, was forwarded to the SCC.

The SCC held a work session on February 20, 2013 and directed Staff to prepare for a public hearing. For the convenience of the SCC, additional information and changes are highlighted in yellow.

Staff recommends that the SCC conduct a public hearing to review the potential rezone, review the SBPC discussion (meeting minutes attached), and discuss the potential rezone. If the SCC determines that they have enough information to make a decision, they may choose from the options in this report.

To help update the SCC and public on this project, the remainder of this report includes background information, SBPC process and discussion, analysis of issues, service provider comments, General Plan compliance, and Development Code compliance, maps, meeting minutes, and other resources.

A. Project Description

- **Project Name:** Silver Creek Estates Unit I Rezone
- **Applicant(s):** Summit County
- **Property owners:** Multiple
- **Location:** Silver Creek Estates, north of I-80 / US 40 intersection
- **Zone District & Setbacks:** Current: Rural Residential (RR)
Proposed: portion to Community Commercial (CC)
- **Adjacent Land Uses:** Vacant; Residential
- **Existing Uses:** Commercial; residential; vacant
- **Parcel Number and Size:** Multiple
- **Lot of Record Status:** Most are LORs
- **Type of Item:** Rezone
- **Land Use Authority:** SCC
- **Type of Process:** Legislative
- **Type of meeting:** Public Hearing
- **Future routing:** None

B. Background

The Silver Creek development is located north of the junction of Interstate 80 and US Highway 40. The development was recorded in phases, with the multiple subdivision plats being identified by letters (Unit A, Unit B, etc.). The Silver Creek plats were recorded prior to the 1977 establishment of zoning in Summit County. As there was no zoning in place, the plats were legally recorded and the parcels created are considered to be legal lots, each with a right to develop.

Unit I was recorded in March of 1965. Unit I differed from the other Silver Creek plats in that it was intended for more intense residential, commercial, and industrial uses. As these uses were referenced in a note on the subdivision plat, it was the practice of the County for many years to recognize the uses on the plat even though the underlying zoning of the area was for residential use only. As a result, many of the lots in Unit I have been developed for commercial uses.

Plat I Uses

Unit I is divided into Blocks, and the plat identifies the uses permitted for each block, referencing a set of CC&Rs which further define the types of uses that are permitted in each category.

- Light Industry: Block 1, Lots 1 thru 14 incl. & Parcel 'A'
- Commercial: Block 2, Lots 1 and 30 thru 45 incl.
Block 4, Lots 1 thru 16 incl.
Block 7, Lots 1 thru 14
Block 8, Lots 1 thru 8
All of Block 9
- Multiple Dwellings: Block 2, Lots 2 thru 29
Block 5, Lots 1 thru 9
Block 6, Lots 1 thru 4
- Apartments and Professional: Block 3, Lots 1 thru 7 incl.

In the review of applications for commercial or multi-family uses, Staff previously reviewed the proposals against specific uses listed in the CC&Rs for the plat (attached). Many of these uses are outdated; however, based on the circumstances of the plat, Staff did not have the ability to switch to the current zone and development code.

Due to the development of a significant portion of the subdivision plat for commercial use, as well as pending applications for vested rights determinations for other commercial uses, Staff has suggested a rezone of portions of the plat to the Community Commercial zone.

Interpretation, application, recent changes, and confusion

In the spring of 2011 a property owner requested an opinion from the Office of the Utah Property Rights Ombudsman to verify that the plat note had vested the uses. In response, the Ombudsman's office issued a letter to the effect that the County does not have the authority to uphold the plat's uses, and that the County should apply County zoning to any future applications for development. As a result, the County practice changed: all new development applications are now subject to the zoning in place at the time of application, which at this time is Rural Residential (RR).

The RR zone does not allow many commercial uses. More property owners began requesting Ombudsman's opinions for their individual lots based on their reliance on the plat note; the Ombudsman has since determined that the plat's uses shall be permitted in instances where an

equitable estoppel claim could apply, aka where property owners have relied upon the plat note and moved forward to their detriment. An example would be a lot owner that obtained a grading permit for a commercial use, but had not yet moved forward with a permit for the commercial use itself.

The additional Ombudsman opinions led to several vested rights determination requests, which are allowing additional property owners to move forward with commercial uses. From conversations with other property owners, it is apparent that similar claims will be submitted. The SCC requested copies of these requests, which are attached to this report (Exhibit J).

Rezone application

In the midst of these discussions and applications, Staff received an application for a commercial rezone on two of the lots in Unit I. The owners of lots 11 and 12 in Block 7 felt that the County's changing practice regarding the applicability of the plat's uses was too unreliable, and requested a zone change to guarantee that their commercial uses would continue to be conforming, to obtain a commercial use on one as-yet undeveloped parcel surrounded by commercial uses, and to enable them to change to other commercial uses in the future.

Staff felt that a rezone of only two (2) lots was not appropriate, and that it would be better to proactively rezone the commercial area to ensure that business owners would have stable zoning.

SBPC Process & Discussion

- Work session – August 12, 2012
- Work session – September 11, 2012
- Public hearing – October 9, 2012 (Exhibit K)
- Continued discussion and recommendation – December 18, 2012 (Exhibit L)

Discussion points:

- Desired to master plan the western area in concert with the update to the General Plan.
- Due to infrastructure and wetland issues, expressed deep reservations about rezoning the western portion of the development (west of Silver Creek Road) until further planning and research could be done.
- Supported a commercial rezone to the eastern portion of the development, which was already developed for commercial use, while putting the western portion on hold until infrastructure issues could be addressed and master planning occur.
- Concerned by the potential for large-scale commercial uses under the CC zone, and discussing whether the Neighborhood Commercial (NC) zone may be more appropriate.
- Requested a comparison of the uses allowed in the CC and NC zones, as well as the uses existing in the area, and the uses permitted in the plat (Exhibit I).

On December 18, 2013, the SBPC voted 3:3 on a motion to forward a positive recommendation to the SCC on a rezone to Community Commercial for the eastern lots. **Due to the split vote the application moved on to the SCC without an official recommendation.**

C. Community Review

This item has been noticed in the *Park Record* and mailed notice sent to all property owners within 1000 feet of the plat as well as to all property owners in the plat. As of the date of this report, no public comment beyond that provided during the SBPC process has been received.

D. Identification and Analysis of Issues

Comprehensive rezone

Staff began review of a rezone application for Lots 11 & 12, and determined that the best course of action would be to consider the entire plat as a whole instead of only the two lots, for the following reasons:

- the plat has been treated as commercial for most of its history;
- many lots have been developed as commercial so the area is commercial in nature;
- for long-range planning the location may be appropriate for commercial development more than residential development based on access, freeway noise, interchange capacity, topography, and existing commercial uses; and
- the continuing applications for vested rights determinations and Ombudsman opinions may result in a haphazard and leapfrog pattern of development, making the application of the RR zone to all other lots impractical; and
- business owners should have stable and reliable zoning.

Service Provider Review

- **Snyderville Basin Water Reclamation District (SBWRD):** The nearest trunk line is more than two thousand feet (2000') away; cost to extend service is extreme. Development will have to pay for extension, or develop on septic tanks.
- **Questar:** Has a trunk line and can service development in the area.
- **Snyderville Basin Special Recreation District:** Would like to see connection via trail or commuter path from Bitner to Silver Creek.
- **Mountain Regional Water:** Service doesn't cross under I-80; must be serviced by local water company via Service Area 3.
- **Service Area 3:** Significant concerns:
 - Most concern to the west of Silver Creek Road due to infrastructure and wetlands.
 - Can't continue to support potential level of development on septic tanks.
 - Only one (1) access point is an issue.
 - Wetland drainage and impacts are also concerns.
- **Health Department (HD):** Staff met with the HD to review the potential for development on the western lots. The HD expressed concern over the high water table and already ongoing issues with septic tanks in the area. Conventional septic tanks would not be an option, alternative systems would likely not be an option, and additional infrastructure would likely be necessary.

Scope of Rezone

Throughout the SBPC and SCC discussions, a topic was whether or not to consider all of the lots designated as commercial on the plat, or whether to limit the rezone to those lots to the east of Silver Creek Road. Due to the infrastructure and wetland issues, the SBPC determined that it was more appropriate to address only the eastern lots, while leaving the western lots for a future date.

The SBPC did desire to master plan the entire area, however due to the existing development in the eastern portion and the concerns of those property owners about unclear development parameters, elected to move forward with the eastern lots only.

The SBPC gave direction that the applicants and property owners in the western portion should work with the County and Special Service Districts to address infrastructure issues, so that a master plan to reconfigure the existing density in a more appropriate manner could be considered.

Community Commercial vs. Neighborhood Commercial

There are quite a few businesses in Unit I, but only a few different types of use classifications (Exhibit I). Among those classifications, several would be permitted in both the CC and NC zones, however several businesses related to auto repair would continue to be nonconforming uses if the area is rezoned to NC instead of CC. The CC zone would leave these uses as nonconforming uses. The Snyderville Basin Development Code does not currently allow nonconforming uses to be expanded.

Staff originally recommended moving forward with the rezone to the CC for the eastern portion due to the commercial nature of the eastern portion, full conformance of the existing uses with the CC zone, and desire of some property owners to move forward with commercial development.

The SCC discussed the appropriate zone in their work session on February 20, 2013, and did not come to a consensus. As a result, Staff prepared the public hearing notices to state possible rezone to either the NC or the SC zones.

E. General Plan Consistency

Silver Creek Unit I is located in the North Mountain Neighborhood Planning Area (Exhibit I). The Planning Area goal is to *“Protect the unique natural and scenic resources of this rural area, and ensure the area remains primarily an open environment; a place where people and animals live in harmony; and where recreational uses are separated by large areas of open land.”*

The Neighborhood Planning Area objectives go on to include “[...]an appropriately-sized neighborhood commercial area”, and include the standards below:

- C. Summit County will consider incentives to bring about the master planning of any properties that will form an appropriate neighborhood commercial area for the neighborhood in previously approved commercial areas.
- D. The neighborhood commercial area shall be limited in size and type of uses, which serve the immediate needs of or are compatible with the neighborhood.

Staff recommended that the rezone will be to Community Commercial, rather than Neighborhood Commercial, however this may still comply with the General Plan goal as it is “compatible with the neighborhood.” SBPC discussion included a disagreement between commissioners as to whether the CC or NC zone was more appropriate.

The owners / developers of the western lots are currently working on an attempt to begin master planning the undeveloped area as suggested by the General Plan and as directed by the SBPC.

F. Code Criteria and Discussion

Section 10-7-4(C.2.a) of the Snyderville Basin Development Code outlines the standards for any amendment to the zoning map:

2. When the amendment is proposed by the County Council, County Manager, or Commission:
 - a. The Commission shall review the proposed amendment. The Commission must find that the proposed amendment is consistent with the requirements of this Title. Prior to making a recommendation, the Commission shall hold a public hearing regarding the proposed amendment.
 - b. The Commission's recommendation shall be delivered to the County Council. The County Council shall hold a public hearing regarding the proposed amendment. Following the public hearing, the County Council shall either approve, approve with modifications or deny the amendment. In order to approve the amendment, the County Council must find that the proposed amendment is consistent with the requirements in Subsection C1c of this Section.

Subsection C1c includes the following requirements:

- c. Approval of an amendment to the zone district shall not be granted until both the Commission and the County Council have reviewed the specific development proposal and determined:
 - (1) The amendment complies with the goals, objectives and policies of the General Plan, the Neighborhood Planning Area Plan, and the Land Use Plan Maps.
Staff has found that the amendment is compatible with the General Plan. It brings several nonconforming uses into compliance with the Development Code, and is consistent with the neighborhood planning goals of having a commercial area that is compatible with existing uses.
 - (2) The amendment is compatible with adjacent land uses and will not be overly burdensome on the local community.
The area has developed primarily as commercial, and is therefore compatible. As most of the area is already developed, development of the few remaining lots will not be overly burdensome.
 - (3) The specific development plan is in compliance with all applicable standards and criteria for approval as described in Chapters 3 and 4 of this Title; and
There is no specific development plan, as the rezone is proposed by the County. Any new development will be subject to review for compliance with the standards in the Development Code.
 - (4) The amendment does not adversely affect the public health, safety and general welfare.
By bringing the uses into compliance with the current Development Code, Staff suggests that public health, safety, and general welfare will be positively affected.

G. Recommendation(s) / Alternatives

Staff recommends that the SCC discuss the proposed rezone to the Silver Creek Unit I Lots to the east of Silver Creek Road. Based on this report, public input, additional information, and SCC review, the SCC may choose from the following options:

Option A

If the SCC determines that they have sufficient information to make a decision, and if the SCC determines that the CC zone is more appropriate, Staff recommends that the SCC vote to **approve** the rezone to **Community Commercial**, subject to the drafting and approval of Findings of Fact, Conclusions of Law, Ordinance, and Conditions based on the direction of the SCC.

Option B

If the SCC determines that they have sufficient information to make a decision, and if the SCC determines that the NC zone is more appropriate, Staff recommends that the SCC vote to **approve** the rezone to **Neighborhood Commercial**, subject to the drafting and approval of Findings of Fact, Conclusions of Law, Ordinance, and Conditions based on the direction of the SCC.

Option C

The SCC may instead choose to continue the decision to another date, with specific direction to Staff concerning information needed to render a decision.

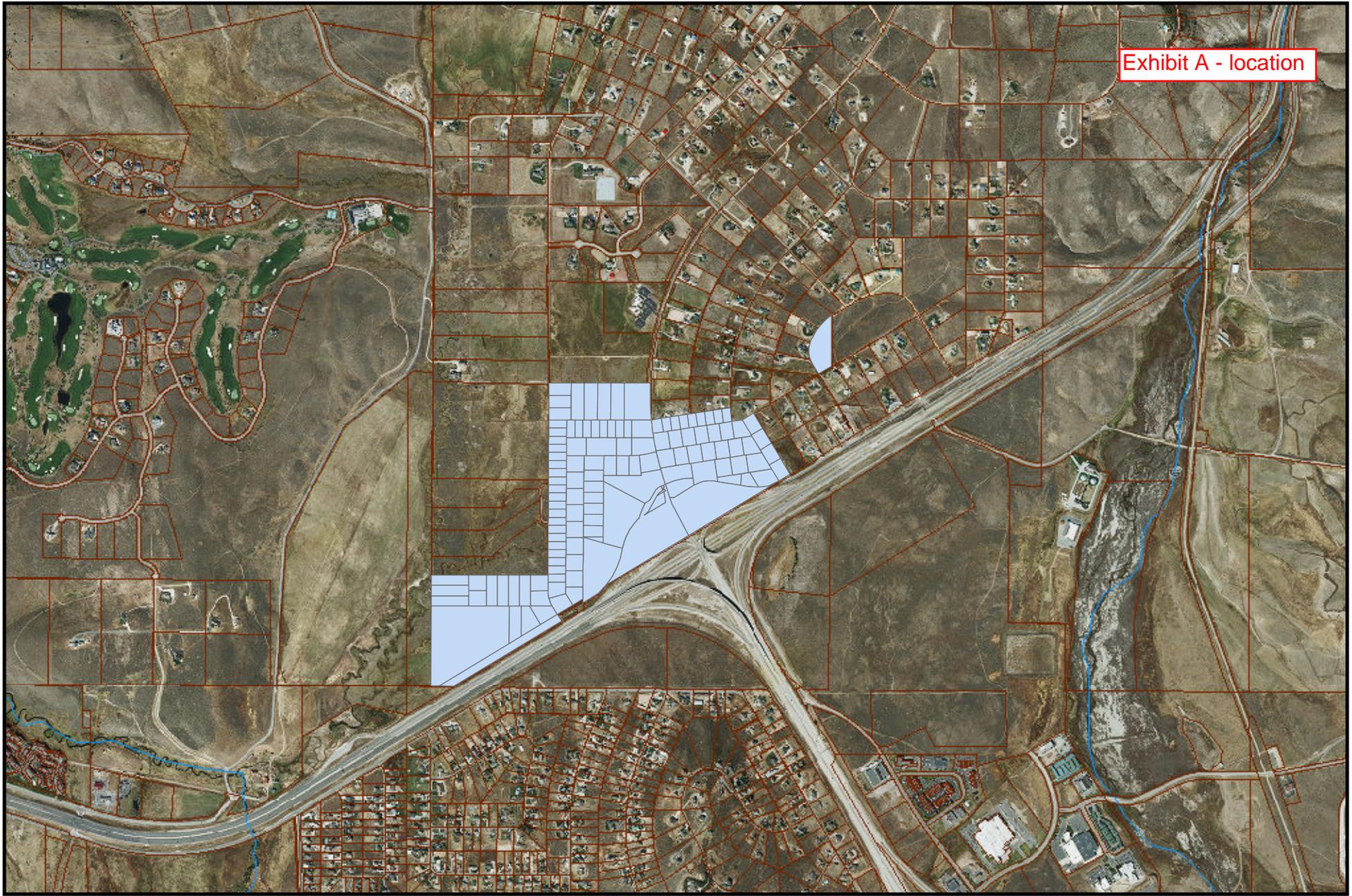
Option D

The SCC may instead choose to **deny** the rezone, with appropriate findings as to how the rezone does not comply with the General Plan and / or the Development Code.

Exhibits

- A. Location (page 8)
- B. Current zoning (page 9)
- C. Original Silver Creek Unit I Plat (page 10)
- D. Unit I CC&Rs (pages 11-18)
- E. Uses as designated on the plat (page 19)
- F. Ownership (page 20)
- G. Summit County Service Area 3 comments (page 21)
- H. General Plan - North Mountain Neighborhood Planning Area (pages 22-25)
- I. CC, NC, Plat comparison, existing businesses highlighted (pages 26-28)
- J. October 9, 2012 SBPC minutes (pages 29-37)
- K. December 18, 2012 SBPC minutes (pages 38-41)
- L. **Vested Rights Applications / Correspondence (pages 42-78)**
 - a. **George Mount (pages 42-58)**
 - b. **HJ Silver Creek (pages 59-78)**

Exhibit A - location



Summit County, Utah Vicinity Map

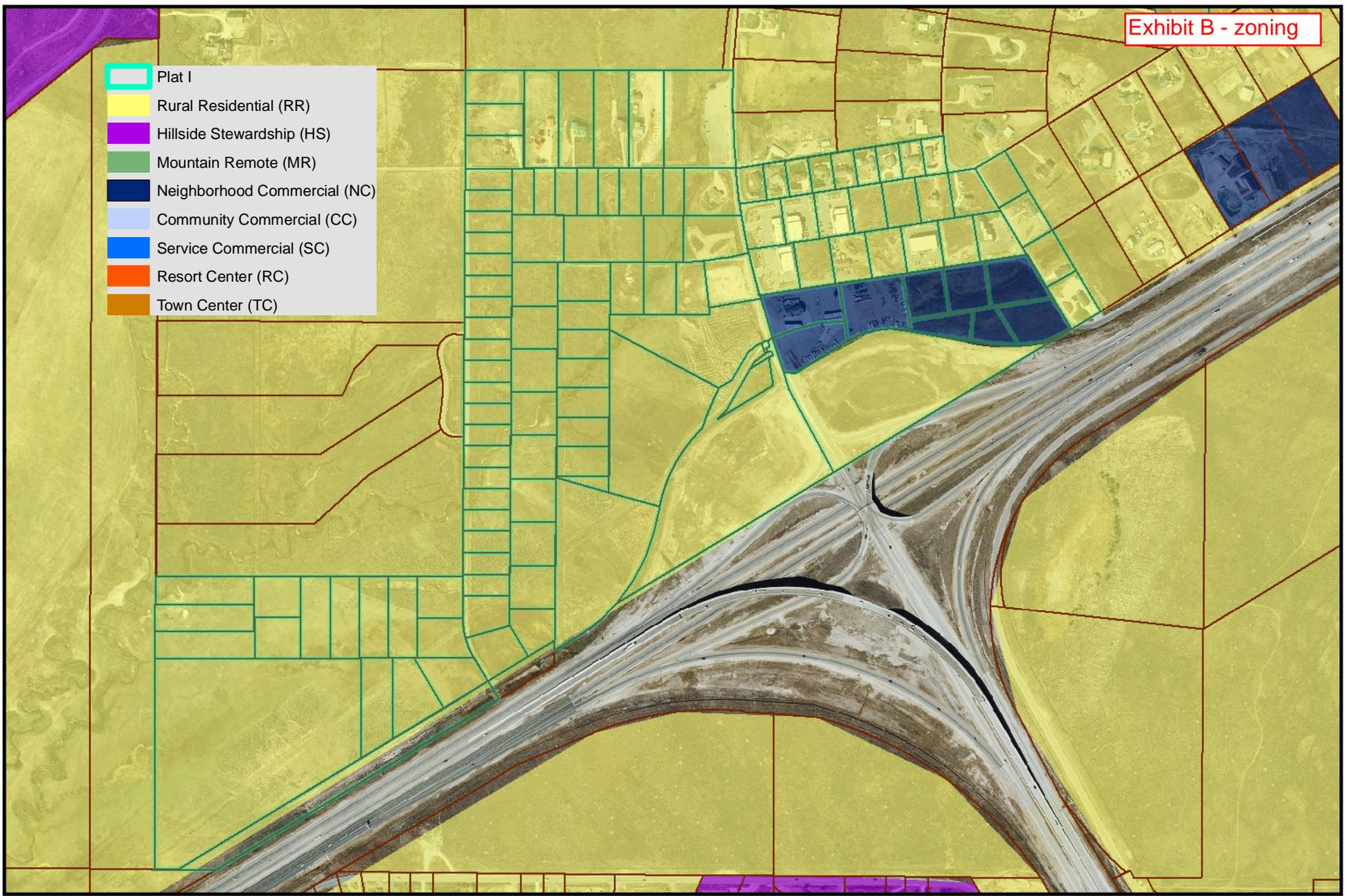
Prepared by Summit County
Community Development Department

-  Plat I
-  Cities
-  Reservoirs
-  Rivers



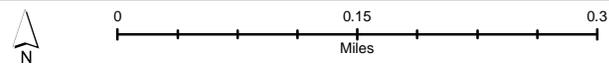
This drawing is neither a legally recorded map, nor a survey, and is not intended to be used as such. The information displayed is a compilation of records, information, and data obtained from various sources including Summit County. Summit County is not responsible for the timeliness or accuracy of information shown.

- Plat I
- Rural Residential (RR)
- Hillside Stewardship (HS)
- Mountain Remote (MR)
- Neighborhood Commercial (NC)
- Community Commercial (CC)
- Service Commercial (SC)
- Resort Center (RC)
- Town Center (TC)



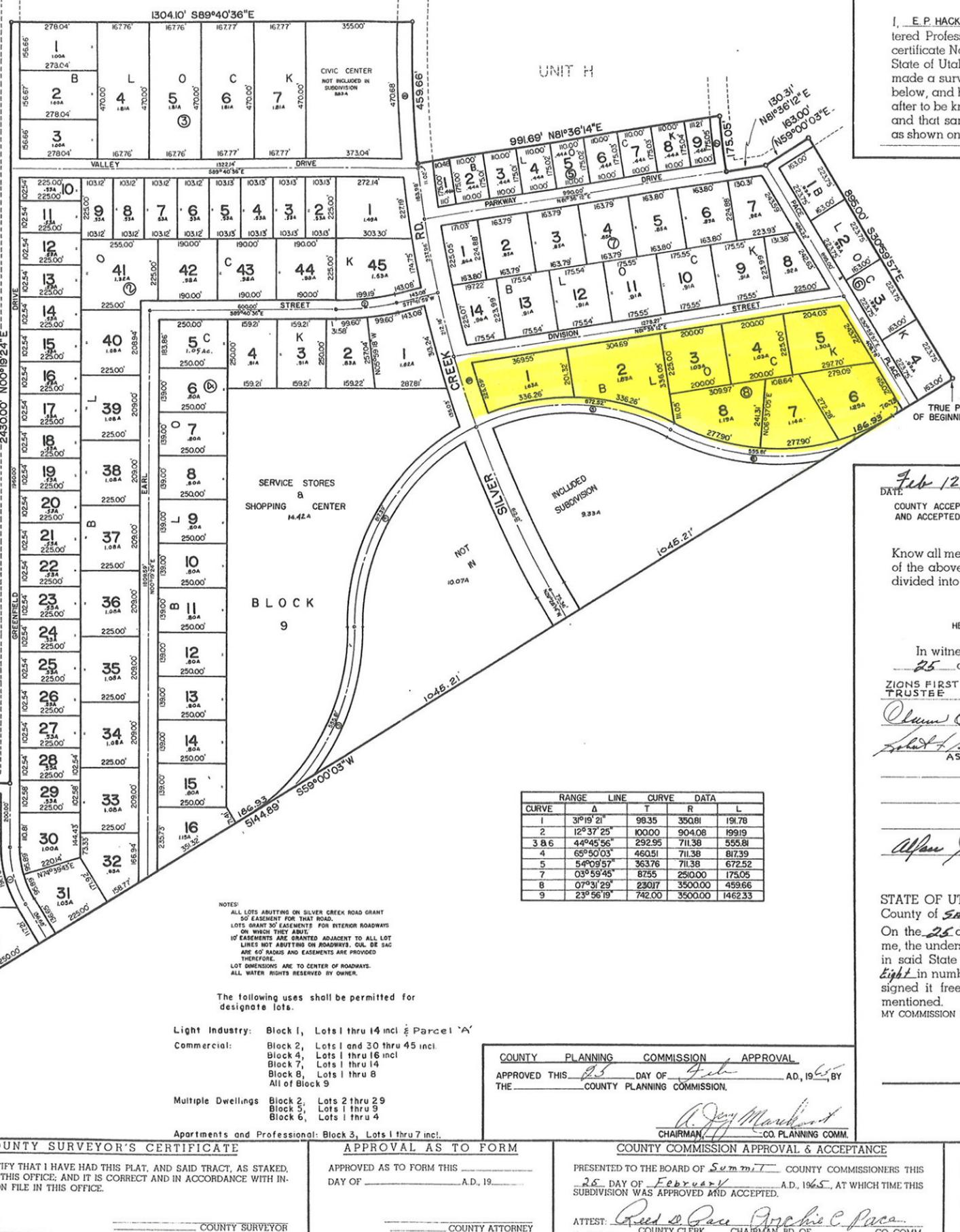
Summit County, Utah Vicinity Map

Prepared by Summit County
Community Development Department



This drawing is neither a legally recorded map, nor a survey, and is not intended to be used as such. The information displayed is a compilation of records, information, and data obtained from various sources including Summit County. Summit County is not responsible for the timeliness or accuracy of information shown.

SILVER CREEK ESTATES UNIT 'I'



SURVEYOR'S CERTIFICATE

I, E. P. HACKERT, do hereby certify that I am a Registered Professional Engineer and certificate No. 2510 & 2511, **Exhibit C - original plat** the State of Utah. I further certify that I have made a survey of the tract of land shown below, and have subdivided said tract of land into lots and streets, hereafter to be known as SILVER CREEK ESTATES UNIT 'I' and that same has been correctly surveyed and staked on the ground as shown on this plat.

BOUNDARY DESCRIPTION
REMARKS
A PARCEL OF LAND LYING WHOLLY WITHIN SEC. 16, TWP. 15, R. 4E OF SALT LAKE BASE AND MERIDIAN, SITUATE IN THE COUNTY OF SUMMIT, STATE UTAH, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:
BEGINNING AT THE S/W COR. OF LOT 513 UNIT 'H' SILVER CREEK ESTATES, WHICH IS IN FACT THE TRUE POINT OF BEGINNING, AND RUNNING, THENCE
S59°00'03"W 5144.89' ALONG THE N/W LINE OF SERVICE ROAD R.O.W., THENCE S89°53'16"W 133.30' TO A POINT IN THE WEST LINE OF SEC. 16, THENCE N00°19'24"E 1390.00' ALONG SAID WEST LINE TO A POINT, THENCE S89°40'36"E 1473.44' THENCE N00°19'24"E 2430.00' THENCE S89°40'36"E 1304.10' SEASTERLY 459.66' ALONG AN ARC OF A 3500.00' RADIUS CURVE TO THE LEFT, WHOSE LONG CORD BEARS S01°36'10"E 459.35', THENCE N81°36'14"E 991.69' THENCE SEASTERLY 175.05' ALONG AN ARC OF A 2310.00' RADIUS CURVE TO THE LEFT, WHOSE LONG CORD BEARS S06°23'56"E 175.03', THENCE N81°36'12"E 1303.1' THENCE N59°00'03"E 163.00' S30°59'57"E 895.00' TO THE TRUE POINT OF BEGINNING.
CONTAINS 159.92 ACRES MORE OR LESS

DATE Feb 12, 1965
COUNTY ACCEPTS NO RESPONSIBILITY FOR MAINTENANCE OF ROADS UNTIL FORMALLY DEDICATED AND ACCEPTED BY THE COUNTY.

OWNER'S DEDICATION
Know all men by these presents that Me, the undersigned owner (s) of the above described tract of land, having caused same to be subdivided into lots and streets to be hereafter known as the

SILVER CREEK ESTATES UNIT 'I'
HEREBY GRANTS UTILITIES & ROADWAYS AS INDICATED OR NOTED HEREON.
In witness whereof We have hereunto set our hands & seals this 25 day of February, A.D., 1965

ZIONS FIRST NATIONAL BANK TRUSTEE
Oliver O. Spurr VICE PRES.
Robert H. Jensen ASS'T. TRUST OFFICER
SILVER CREEK RANCH CORP.
Alfon J. Lavin, Pres.
R. P. Shapiro, Sec.
Donald J. Romedon
Bernard L. Roman
Alfon J. Lavin MORTGAGEE
Verda D. Lavin MORTGAGEE

CURVE	RANGE	LINE	CURVE	DATA	L
1	31°19'21"		9835	35081	191.78
2	12°37'25"		10000	90408	199.19
3 & 6	44°45'56"		292.95	711.38	555.81
4	65°50'03"		460.51	711.38	817.39
5	54°09'57"		363.76	711.38	672.52
7	03°59'45"		8755	25100	175.05
8	07°31'29"		23017	35000	459.66
9	23°56'19"		742.00	35000	1462.33

NOTES:
ALL LOTS ABUTTING ON SILVER CREEK ROAD GRANT 50' EASEMENT FOR THAT ROAD.
LOTS GRANT 30' EASEMENTS FOR INTERIOR ROADWAYS ON WHICH THEY ABUT.
10' EASEMENTS ARE GRANTED ADJACENT TO ALL LOT LINES NOT ABUTTING ON ROADWAYS. CUL DE SAC ARE 60' RADII AND EASEMENTS ARE PROVIDED THEREFORE.
LOT DIMENSIONS ARE TO CENTER OF ROADWAYS.
ALL WATER RIGHTS RESERVED BY OWNER.

- The following uses shall be permitted for designate lots.
- Light Industry: Block 1, Lots 1 thru 14 incl & Parcel 'A'
 - Commercial: Block 2, Lots 1 and 30 thru 45 incl; Block 4, Lots 1 thru 16 incl; Block 7, Lots 1 thru 14; Block 8, Lots 1 thru 8; All of Block 9
 - Multiple Dwellings: Block 2, Lots 2 thru 29; Block 5, Lots 1 thru 9; Block 6, Lots 1 thru 4
 - Apartments and Professional: Block 3, Lots 1 thru 7 incl.

COUNTY PLANNING COMMISSION APPROVAL
APPROVED THIS 25 DAY OF Feb, A.D., 1965, BY THE _____ COUNTY PLANNING COMMISSION.
A. Jay Marchant CHAIRMAN, CO. PLANNING COMM.

ACKNOWLEDGMENT
STATE OF UTAH } S.S.
County of Salt Lake }
On the 25 day of February, A.D., 1965, personally appeared before me, the undersigned Notary Public, in and for said County of Salt Lake in said State of Utah, the signer(s) of the above Owner's dedication, Eight in number, who duly acknowledged to me that They signed it freely and voluntarily and for the uses and purposes therein mentioned.
MY COMMISSION EXPIRES: 11-21-1967
Stanley E. Sandberg NOTARY PUBLIC
RESIDING IN SALT LAKE COUNTY

COUNTY SURVEYOR'S CERTIFICATE
I HEREBY CERTIFY THAT I HAVE HAD THIS PLAT, AND SAID TRACT, AS STAKED, EXAMINED BY THIS OFFICE, AND IT IS CORRECT AND IN ACCORDANCE WITH INFORMATION ON FILE IN THIS OFFICE.
DATE _____ COUNTY SURVEYOR

APPROVAL AS TO FORM
APPROVED AS TO FORM THIS _____ DAY OF _____ A.D., 19____

COUNTY ATTORNEY

COUNTY COMMISSION APPROVAL & ACCEPTANCE
PRESENTED TO THE BOARD OF Summit COUNTY COMMISSIONERS THIS 26 DAY OF February, A.D., 1965, AT WHICH TIME THIS SUBDIVISION WAS APPROVED AND ACCEPTED.
ATTEST: Reed O. Pace COUNTY CLERK
Archie C. Pace CHAIRMAN, BD. OF CO. COMM.

RECORDED # 100552
STATE OF UTAH, COUNTY OF Summit, RECORDED AND FILED AT THE REQUEST OF STANLEY TITLE COMPANY
DATE MARCH 2, 1965 TIME 2:34 P.M. BOOK _____ PAGE _____
FEE \$ 62.00
Verda D. Lavin COUNTY RECORDER

It is hereby understood that any parties securing grant on behalf of the Grantee are without authority to make any representations, covenants or agreements not herein expressed.

WITNESS the execution hereof this 10th day of August, 1964.

Witness John H. Dearden
John H. Dearden
Ellen L. Dearden
Ellen L. Dearden

STATE OF UTAH
County of _____

On the 10th day of August, 1964, personally appeared before me JOHN H. DEARDEN AND ELLEN L. DEARDEN, the signers of the foregoing instrument, who duly acknowledged to me that they executed the same.

(NOTARIAL SEAL)

My Commission Expires:

N. L. Witte
Notary Public



N. L. WITTE
Notary Public residing at Salt Lake City
Utah, My commission expires: Feb. 12, 1968

Recorded at the request of Mt. Fuel Supply Co., March 1, A.D. 1965 at 4:11 P.M.

Wanda Y. Spriggs, Summit County Recorder:

Entry No. 100553

DECLARATION OF RESERVATIONS
AND PROTECTIVE COVENANTS

Silver Creek Estates Unit "I" Summit County,
State of Utah

THIS DECLARATION made this 25th day of February, 1965 by SILVER CREEK RANCH CORPORATION, a Utah corporation, and other declarants holding an interest in the property covered by this declaration.

WHEREAS, declarant is the owner of that certain property in Summit County, State of Utah, known as Silver Creek Estates Unit "I" as per plat thereof recorded in the County Recorder's Office of Summit County, Utah, and

WHEREAS, declarant intends to sell, dispose of, or convey from time to time all or a portion thereof, the lots in said unit above described, and desires to subject the same to certain protective reservations, covenants, conditions, restrictions, (hereinafter referred to as "conditions") between it and the acquirers and/or users of the lots in said unit;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That declarant hereby certifies and declares that it has established and does hereby establish a general plan for the protection, maintenance, development and improvement of said unit, that

This declaration is designated for the mutual benefit of the lots in said unit and declarant has fixed and does hereby fix the protective conditions upon and subject to which all lots, parcels and portions of said unit shall be held, leased, or sold and/or conveyed by them as such owners, each and all of which is and are for the mutual benefit of the lots in said unit and of each owner thereof, and shall run with the land and shall inure to and pass with each such lot and parcel of land in said unit, and shall apply to and bind the respective successors in interest thereof, and further, all and each thereof is imposed upon said unit as a mutual equitable servitude in favor of each and every parcel of land therein as the dominant tenements. Said conditions are as follows:

1. That Block 1, Lots 1-14, inclusive; and Parcel A shall be designated as light industrial lots and shall be improved, used and occupied under conditions set forth under M-1 Land Use Regulations;
2. That Block 2, Lots 2-29, inclusive; Block 5, Lots 1-9, inclusive; and Block 6, Lots 1-4, inclusive; shall be designated as multiple dwelling lots and shall be improved, used and occupied under conditions set forth under R-1 Land Use Regulations.
3. That Block 2, Lot 1 and Lots 30-45, inclusive; Block 4, Lots 1-16, inclusive; Block 7, Lots 1-11, inclusive; Block 8, Lots 1-8, inclusive; and Block 9, shall be designated as commercial area lots and shall be improved, used and occupied under conditions set forth under C-1 Land Use Regulations.

4. Block 3, Lots 1-7, inclusive; shall be designated as multiple dwelling area lots and/or professional area lots and shall be improved, used and occupied under conditions set forth under R-4 Land Use Regulations or P-1 Land Use Regulations, depending upon whether the intended improvement is for multiple family dwellings or for professional offices.

A. Committee of Architecture

1. No building, fence, patio or other structure shall be erected, altered, added to, placed, or permitted to remain on said lots or any of them or any part of any such lot until or unless the plans showing floor areas, external design and the ground location of the intended structure along with a plot plan and a checking fee in the amount of \$15.00 have been first delivered to and approved in writing by any two members of a committee of architecture hereinafter sometimes called committee, which shall initially be composed of Allan J. Lewis, E. P. Hackert and R. P. Shapiro, provided that any vacancy on such committee caused by death, resignation or disability, shall be filled on the nomination of Silver Creek Ranch Corporation or its successors in interest. It shall be the purpose of this committee to provide for the maintenance and the high standard of architecture and construction in such manner as to enhance the properties of the developed subdivision. Notwithstanding other requirements imposed by these conditions, this committee may require changes, deletions, or revisions, in order that the architectural and general plans of all buildings, other structures and grounds be in keeping with the architecture of the neighborhood and such as not to be detrimental to the public health, safety, general welfare of the community in which such use or uses shall be located. All structures shall utilize the requirements of the uniform building code as published by the International Conference of Building Officials, current editions, and State and local building codes as guides to sound construction and practices.

2. Notwithstanding any other provisions of this Declaration of Reservations, it shall remain in the prerogative and in the jurisdiction of the committee to review applications and give approvals for exceptions to these conditions. Variations from these requirements and, in general, other forms of deviations from these conditions imposed by this Declaration may be made when and only when such exceptions, variances and deviations do not in any way, detract from the appearance of the premises, and are not in any way detrimental to the public welfare or to the property of other persons located in the vicinity thereof, all in the sole opinion of the committee.

3. The designated maximum building height and minimum yard requirements may be waived by the committee, when in their opinion such structures relate to sound architectural planning and conform to the over-all design and pattern of the development.

B. Land Use-General

1. Any lot constituting part of Silver Creek Estates Unit "I" may be built upon and improved as a single family residential lot, however in such event, the Protective Covenants recorded in the County Recorder's Office of Summit County, Utah, in connection with Silver Creek Estates Units D, E, F, G, and H shall apply and govern any such construction and use.

2. The exterior portions of all buildings shall have a finished appearance upon completion.

3. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which would change or interfere with the installation and maintenance of utilities or which may change the direction of flow of drainage channels and easements, or which may obstruct or retard the flow of water through channels in the easements. The easement area of each lot and improvements in it shall be maintained continuously by the owner of the lot except for those easements for which a public authority or utility company is responsible. There is reserved to electric power, gas, water and other public utilities, the right to construct, maintain and operate along, upon and across all present and future streets, alleys and highways in said unit.

4. The keeping of livestock, poultry or pets upon the property for commercial purposes is prohibited and the keeping of hogs upon the property for any purpose is prohibited. However such restriction shall not be construed to mean that a pet shop or animal hospital may not be maintained upon a lot designated as "Commercial or Light Industry", provided that all such pets are kept and maintained within an enclosed structure and such as would not constitute a public nuisance.

5. No noxious or offensive activities shall be carried on upon any lot, nor shall anything be done thereon which would constitute a public nuisance.

6. All structures shall have complete and approved plumbing installations before occupancy. No privies shall be erected, maintained or used upon any lot or parcel in said Unit, but a temporary privy may be permitted in the course of the construction of a building. Any lavatory, toilet or water closet that shall be erected, maintained or used thereon shall be enclosed and located within a building herein permitted to be erected upon said premises and shall be properly connected with an underground septic tank or other sewage disposal system in accordance with the standards required by the State Board of Health of the State of Utah, and so constructed and operated that no offensive odors shall arise or otherwise escape therefrom and that none of the affluent from septic tanks shall be permitted to be discharged beyond the limits of the lot in which it is installed unless discharged into an approved sewage system.

7. No temporary building including basements, cellars, tents, shacks, barns or other temporary outhouses or structures shall, at any time, be used for human habitation or used for professional industrial or commercial purposes.

8. Under no circumstances shall any owner of any lot or parcel of land be permitted to deliberately alter the topographic conditions of his lot or parcel of land in any way that would permit additional quantities of water from any source, other than that naturally originally intended to flow from his property onto any adjoining property or public right-of-way.

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Long

A. R-4 Multiple Dwelling or Apartment House Area

The following regulations shall apply in the R-4 Multiple Family Area unless otherwise provided in these reservations.

1. Use Permitted.

- A. Multiple family dwellings or apartment houses, but not including hotels, motels or boarding houses.
- B. The accessory buildings necessary to such use located on the same lot or parcel of land.
- C. One professionally made sign of not to exceed One (1) square foot in area containing only the name and title or occupation of the occupant.
- D. One professionally made unlighted sign of not to exceed six (6) square feet in area advertising the premises for sale, lease or rent, located not nearer than ten feet to adjoining premises nor nearer than five feet to a street line.

2. Maximum Building Height.

Two levels not to exceed thirty (30) feet.

3. Minimum Yard Requirements.

The following shall apply:

- a. Front setbacks shall conform to a minimum depth of twenty (20) feet from the roadway easement line as noted on the recorded plat to the furthest structural projection, including porches, but not including eaves, overhangs or planters.
- b. A side yard setback shall be maintained of at least ten (10) feet in depth from all side property lines to the building line of any structure.
- c. A rear yard shall be maintained to at least ten (10) feet from the property line to the nearest building line, excepting fences and hedges when used as a property or boundary line separation.

4. Maximum Area of Building.

Notwithstanding uses permitted herein, no more than 60% of the total lot area shall be used for the building and other structures.

5. Automobile Parking Requirements.

One and one-half off street parking spaces shall be provided for each dwelling unit. A full parking space will be provided in each instance where a fractional space would be otherwise required. Under no circumstances will any parking be permitted within the set back areas adjacent to streets.

6. Minimum Dwelling Unit Size.

Each and every dwelling unit on the premises shall consist of at least 500 square feet of living area.

7. Subdivision of Lots.

No lot or parcel of land shall be divided into smaller lots or parcels whether for lease, sale or other purposes, provided the variations may be granted by the Committee of Architecture.

2, 42, 43, 44, 45

C-1 LAND USE REGULATIONS

A. C-1 Commercial Area

*Still requires a LIP, even if allowed

The following regulations shall apply in the C-1 Commercial Area lots unless otherwise provided in these reservations.

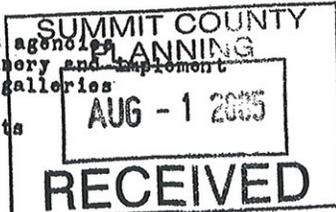
1. Uses Permitted.

a. Any use permitted in the R-4 and P-1 areas.

b. Stores, shops and premises for the conduct of the following types of general retail or wholesale business:

- Antiques
- Automobiles, new and used
- Automobile parts
- Bakeries, retail
- Banks
- Barber shops
- Beauty shops
- Bookstores
- Cafes or restaurants
- Childrens day care centers and nurseries
- Clothing shops
- Clubs
- Confectionery stores
- Dancing schools, charm schools and music schools
- Department stores
- Dressmaking or millinery
- Drunestores

- Employment agencies
- Farm machinery and equipment
- Fine arts galleries
- Florists
- Food markets
- Furniture
- Gift shops
- Hardware
- Hospitals
- Jewelry
- Meat markets
- Mortuaries
- Offices
- Photographic studios
- Private clubs
- Self-service laundries
- Shoe sales
- Shops for retail business



Noted

Silver Creek Block 2 = commercial lots

paint cabinets

office 15% - behind Chevron rest warehousing / manufacturing / industrial

would not manufacture on site

Dry cleaning and processing
Dry goods
Electric appliances

Stationery
Tailor
Theaters

c. Such other types of retail and wholesale businesses including service stations and motels but not including trailer parks, shall be permitted where in the sole opinion of the architectural committee such businesses are compatible with the uses permitted in the list above and with other businesses conducted or planned for the immediate adjacent areas.

d. The operations from such stores, shops or businesses shall be conducted entirely within an enclosed building, unless specific approval otherwise is given by the architectural control committee.

e. Any exterior sign displayed shall pertain only to a use conducted within the building or on the lot. The design of such sign shall be approved by the committee of architecture prior to its construction.

f. The accessory buildings and structures necessary to such uses located on the same lot or parcel of land.

2. Front Setback.

Front setbacks shall conform to a minimum depth of 65 feet from the roadway easement line as noted on the recorded plat. Off street parking may be utilized within such setback area. In the case of Block 8, Lots 1 and 2, the setback shall be a minimum of 40 feet.

3. Maximum Building Height.

Two levels or thirty (30) feet.

4. Storage of Materials.

The storage of supplies or equipment, boxes, refuse, trash, materials, machinery or machinery parts or otherwise that shall detract from the esthetic values of the property shall be so placed and stored either on the side or to the rear of the major structure so as to be concealed from view from the public right of way and streets.

5. Automobile Parking Requirement.

There shall be at least two off street parking spaces provided for each 250 square feet of floor space constructed.

6. Loading Space.

There shall be provided adequate loading space on private property for standing and loading and unloading for any commercial use involving the receipt or distribution by vehicles of materials or merchandise. Such loading space shall not be located in the front of any building and shall be so located on the sides or to the rear of such structure so as to avoid undue interference with the use of public streets and alleys and shall be graded and surfaced to provide proper drainage and prevent dust arising therefrom.

P-1 LAND USE REGULATIONS

A. P-1 Professional Area

The following regulations shall apply in the P-1 Professional area unless otherwise provided in these reservations.

1. Uses Permitted.

a. Any use permitted in the R-4 area.

b. Professional's buildings such as doctors, dentists, lawyers, accountants, bookkeepers, beauticians and other similar types of professions.

c. Medical clinics.

d. The exterior sign displayed shall pertain only to the use conducted within the structure or building. The design and size of such sign shall be approved by the Committee of Architecture prior to the construction or placement on the lot or structure located thereon.

2. Maximum Building Height.

Two levels not to exceed thirty (30) feet.

3. The following shall apply:

a. Front setbacks shall conform to a minimum depth of twenty (20) feet from the roadway easement line as noted on the recorded plat to the furthest structural projection, including porches, but not including eaves, overhangs or planters.

b. A side yard setback shall be maintained of at least ten (10) feet in depth from all side property lines to the building line of any structure.

c. A rear yard shall be maintained to at least ten (10) feet from the property line to the nearest building line, excepting fences and hedges when used as a property or boundary line separation.

4. Maximum Area of Building.

Notwithstanding uses permitted herein, no more than 60% of the total lot area shall be used for the building and other structures.

SUMMIT COUNTY
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5. Automobile Parking Requirements.

There shall be at least two off street parking spaces for each professional person and employee employed or working within the professional building erected on said lot. Under no circumstances will any parking be permitted within the setback areas adjacent to streets.

M-1 LAND USE REGULATIONS

A. M-1 Light Industrial Area

The following regulations shall apply in the M-1 Light Industrial Area unless otherwise provided in these reservations.

1. Uses Permitted.

a. Any use permitted in the R-4, C-1 and P-1 areas and trailer parks.

b. Light industrial, light manufacturing and assembly plants except the following which are hereby prohibited:

- Ammonia, bleaching powder or chlorine manufacture
- Asphalt manufacture or refining
- Arsenals
- Blast furnaces
- Cement, lime or plaster or paris manufacture
- Coke ovens
- Crematory
- Creosote treatment or manufacture
- Disinfectant and insecticide manufacture
- Distillation of bones, coal or wood
- Fat rendering
- Fertilizer manufacture, except the cold compounding of non-odorous materials
- Fireworks, explosive manufacture and storage
- Gas manufacture or storage in excess of 10,000 cubic feet
- Gelatine, glue or size manufacture
- Grease or tallow manufacture or refining
- Hair factory
- Hydrochloric, nitric, sulphuric, or sulphurous acid manufacture
- Incineration or reduction of garbage, offal or refuse
- Petroleum refining
- Potash manufacture or refining
- Raw hides or skins, storage, curing or tanning
- Rock crushing
- Rubber manufacture from the crude material
- Slaughter houses
- Smelting of iron, copper, zinc or tin ores
- Stock yards
- Sugar refining
- Tannery
- Tar distillation or manufacture
- Tar roofing or tar waterproofing manufacture
- Wool pilling, scouring or shoddy manufacture
- Soap manufacture
- Stone mill or quarry
- Sauerkraut manufacture
- Pickle factory
- Paint, oil, etc. manufacture
- Oxygen manufacture
- Junk, rags, etc. storage
- Food or cereal mill using power in excess of 50 h.p.
- Exterminators or insect poisons manufacture
- Breweries or distilleries
- Acid manufacture

The following shall not be permitted within 100 feet of a dwelling or apartment house:

- | | |
|------------------------------------|--------------------------------------|
| Dyeing and cleaning establishments | Mattress factories |
| Food products manufacture | Planing mills |
| Fuel yards | Public garages |
| Laundries | Sheet metal works |
| Lumber mills | Stables |
| Lumber yards | Veterinary hospitals |
| Machine shops | Wholesale milk distributing stations |

2. Maximum Building Height.

Two levels or thirty feet.

3. Storage of Materials.

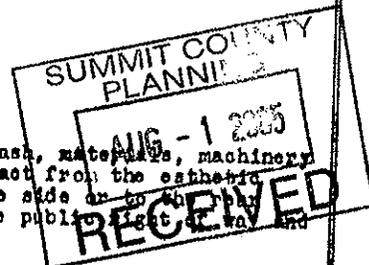
The storage of supplies or equipment, boxes, refuse, trash, materials, machinery or machinery parts, or other items that shall in appearance detract from the aesthetic value of the property shall be so placed or stored either on the side or to the rear of the major structure so as to be concealed from the view of the public on the streets.

4. Automobile Parking Requirements.

There shall be at least two off street parking spaces provided for each 250 square feet of floor space constructed.

5. Loading Space.

There shall be provided adequate loading space on private property for standing loading and unloading for any industrial use.



These conditions shall run with the land and shall bind upon all parties and all persons claiming under them until July 1, 1985 at which time said conditions and covenants shall be automatically extended for successive periods of ten years unless by vote of the owners of a majority of the lots in said unit, it is agreed to change said conditions in whole or in part.

In the event that any of the provisions of this Declaration in each area of Land Use Regulations conflict with any other of the sections therein, the more restrictive of the two shall govern. If any paragraph, section, sentence, clause or phrase of the conditions and covenants herein contained shall be or become illegal, null or void, for any reason or shall be held by any court of competent jurisdiction to be illegal, null or void, the remaining paragraphs, sections, sentences, clauses or phrases herein contained shall not be affected thereby. It is hereby declared that those conditions and covenants herein contained would have been and are imposed and each paragraph, section, sentence, clause or phrase thereof, irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses or phrases are or shall become or be illegal, null, or void.

If any owner of any lot in said property or his heirs, or assigns, shall violate or attempt to violate any of the conditions or covenants herein, it shall be lawful for any other person or persons owning any other lots in said Unit I to prosecute any proceeding at law or in equity against the person or persons violating or attempting to violate any such conditions or covenants and either to prevent him or them from so doing or to recover damages or other dues for each violation.

Provided, however, that a breach of any of the foregoing conditions or covenants shall not in any wise affect any valid mortgage or lien made in good faith and for value and not made for the purpose of defeating the purposes of such reservations and restrictions.

IN WITNESS WHEREOF, Silver Creek Ranch Corporation, and other declarants, have caused their corporate seals and names to be fixed by themselves or officers thereunto duly authorized, the date and year aforesaid.

(SEAL)

SILVER CREEK RANCH CORPORATION

By Allan J. Lewis
President.

By H. P. Shapiro
Secretary

STATE OF UTAH {
COUNTY OF SALT LAKE { ss.

On the 25 day of February, 1965 personally appeared before me Allan J. Lewis and R. P. Shapiro, who being by me duly sworn, each for himself, did say that he, the said Allan J. Lewis is the President and she, the said R. P. Shapiro is the Secretary of Silver Creek Ranch Corporation, a Utah corporation, and the within and foregoing instrument was signed on behalf of said corporation by authority of a resolution of its Board of Directors and the said Allan J. Lewis and R. P. Shapiro each duly acknowledged to me that said corporation executed the same and that the seal affixed is the seal of said corporation.

(NOTARIAL SEAL)

Ben L. Rawlins
Notary Public

Residing at Salt Lake City, Utah

The undersigned, who are holders of a note secured by a mortgage covering the property constituting Silver Creek Estates Unit "1" hereby give their consent to the foregoing Declaration of Protective Covenants of Silver Creek Ranch Corporation and to the extent of their interest in said property agree to be bound by the provisions of said declaration.

IN WITNESS WHEREOF, we have hereunto set our hands and seals, this 25 day of February 1965.

Allan J. Lewis
Allan J. Lewis

Veida S. Lewis
Veida S. Lewis

STATE OF UTAH {
COUNTY OF SALT LAKE { ss.

On the 25 day of February, 1965, personally appeared before me Allan J. Lewis and Veida S. Lewis, the signers of the within instrument, who duly acknowledged to me that they executed the same.

(NOTARIAL SEAL)

Ben E. Rawlins
Notary Public

Residing at Salt Lake City, Utah

Zions First National Bank, as testamentary trustee of the last will and testament and estate of Henry Hoffman Bitner, deceased, and the contract seller of property constituting Silver Creek Estates Unit "1", hereby gives its consent to the Declaration above mentioned and to the extent of its interest in said property joins in said declaration and agrees to be bound by the provisions of said declaration.

IN WITNESS WHEREOF, Zions First National Bank of Salt Lake City, Utah, has caused its name and seal to be affixed by its officers thereunto duly authorized, this 25th day of Feb., 1965.



By Claron O. Spencer
Vice President

By Emerle L. Crosland
Asst. Trust Officer

STATE OF UTAH {
 { SS.
COUNTY OF SALT LAKE {

On the 2 day of March, 1965, personally appeared before me Claron O. Spencer and Emerle L. Crosland, who being by me duly sworn each for himself, did say that he, the said Claron O. Spencer is the Vice President of Zions First National Bank, a National Association, and he, the said Emerle L. Crosland is the Asst. Trust Officer of said Bank, and the within and foregoing instrument was signed in behalf of said corporation by authority of its By-Laws; and said Claron O. Spencer and Emerle L. Crosland each duly acknowledged to me that said corporation executed the same.

(NOTARIAL SEAL)

William A. Dawson
Notary Public

Residing at Salt Lake City, Utah

The undersigned, who are contract purchasers of part of the property covered by Silver Creek Estates Unit "I", to wit: Parcel A, hereby give their consent to the foregoing declaration of Silver Creek Ranch Corporation, the subdivider, and to the extent of their interest in said property agree to be bound by the provisions of said declaration.

Donald J. Romeo
Donald J. Romeo

Barbara L. Romeo
Barbara Romeo

STATE OF NEVADA {
 { ss.
COUNTY OF CLARK {

On the 1st day of March, 1965, personally appeared before me Donald J. Romeo and Barbara Romeo, his wife, the signers of the foregoing instrument who duly acknowledged to me that they executed the same.

(NOTARIAL SEAL)

Jane Brumett
Notary Public

Residing at: Las Vegas, Nevada



Recorded at the request of Stanley Title Co., March 3, A.D. 1965 at 2:35 P.M.

Wanda Y. Spriggs, Summit County Recorder:

Entry No. 100554

PROTECTIVE COVENANTS

Silver Creek Estates Unit (s) D, E, F, G and H Residential Lots 201 through 514 Summit County, State of Utah

A. THIS DECLARATION, made this 25th day of February, 1965, by SILVER CREEK RANCH CORPORATION, a Utah corporation, having its principal place of business in the City of Salt Lake State of Utah, hereinafter referred to as the Declarant.

WHEREAS, the Declarant is owner of Silver Creek Estates, Units (s) D, E, F, G and H, Summit County, State of Utah, as per plat thereof, recorded in the office of the County Recorder of said county, and

WHEREAS, the Declarant is about to dispose of or convey the lots in said Silver Creek Estates Units(s) and desires to subject the same to certain protective covenants, conditions and restrictions (hereinafter referred to as covenants,) between it and the acquirers and/or users of the lots in said subdivision.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that Declarant hereby certifies and declares that it has established and does hereby establish a general plan for the protection, maintenance, development and improvement of said subdivision, that

THIS DECLARATION is designed for the mutual benefit of the lots in said unit and Declarant has fixed and does hereby fix the protective covenants upon and subject to which all lots, parcels and portions of said subdivision shall be hold, leased or sold, and/or conveyed by such owners, each and all of which is, and are for the mutual benefit of the lots in said subdivision and of each owner thereof and shall run with the land and shall inure to and pass with said subdivision and each and every parcel of land therein and shall apply to and bind the respective successors in interest thereof, and are and each thereof is imposed upon the lots as a mutual, equitable servitude in favor of each and every parcel of land therein as the dominant tenement or tenements.

B. SAID COVENANTS ARE AS FOLLOWS:

1. That all of the lots within said unit(s) and designated as Lots No. 201 through 514 inclusive shall be designated as single family residential lots; except that any of said lots as originally platted may be re-subdivided in lots, none of which shall be less in size than 30,000 square feet and provided that any of said lots shall have at least 75

CURVE	RANGE	LINE
1	31° 19' 21"	A
2	12° 37' 25"	
3 & 6	44° 46' 56"	
4	65° 50' 03"	
5	54° 09' 57"	
7	03° 59' 45"	
8	07° 31' 29"	
9	23° 56' 19"	

NOTES:
 ALL LOTS ABUTTING ON SILVER CREEK ROAD GRANT 50' EASEMENT FOR THAT ROAD.
 LOTS GRANT 30' EASEMENTS FOR INTERIOR ROADWAYS ON WHICH THEY ABUT.
 10' EASEMENTS ARE GRANTED ADJACENT TO ALL LOT LINES NOT ABUTTING ON ROADWAYS. CUL-DE-SAC ARE 60' RADIUS AND EASEMENTS ARE PROVIDED THEREFORE.
 LOT DIMENSIONS ARE TO CENTER OF ROADWAYS. ALL WATER RIGHTS RESERVED BY OWNER.

The following uses shall be permitted for designate lots.

- Light Industry:** Block 1, Lots 1 thru 14 incl. & Parcel 'A'
- Commercial:** Block 2, Lots 1 and 30 thru 45 incl.
 Block 4, Lots 1 thru 16 incl.
 Block 7, Lots 1 thru 14
 Block 8, Lots 1 thru 8
 All of Block 9
- Multiple Dwellings:** Block 2, Lots 2 thru 29
 Block 5, Lots 1 thru 9
 -Block 6, Lots 1 thru 4

Apartment and Professional: Block 3, Lots 1 thru 7 incl.

COUNTY SURVEYOR'S CERTIFICATE

HEREBY CERTIFY THAT I HAVE HAD THIS PLAT, AND SAID TRACT, AS STAKED, EXAMINED BY THIS OFFICE, AND IT IS CORRECT AND IN ACCORDANCE WITH INFORMATION ON FILE IN THIS OFFICE.

APPROVAL AS TO FORM

APPROVED AS TO FORM THIS _____
 DAY OF _____ A.D., 19 _____

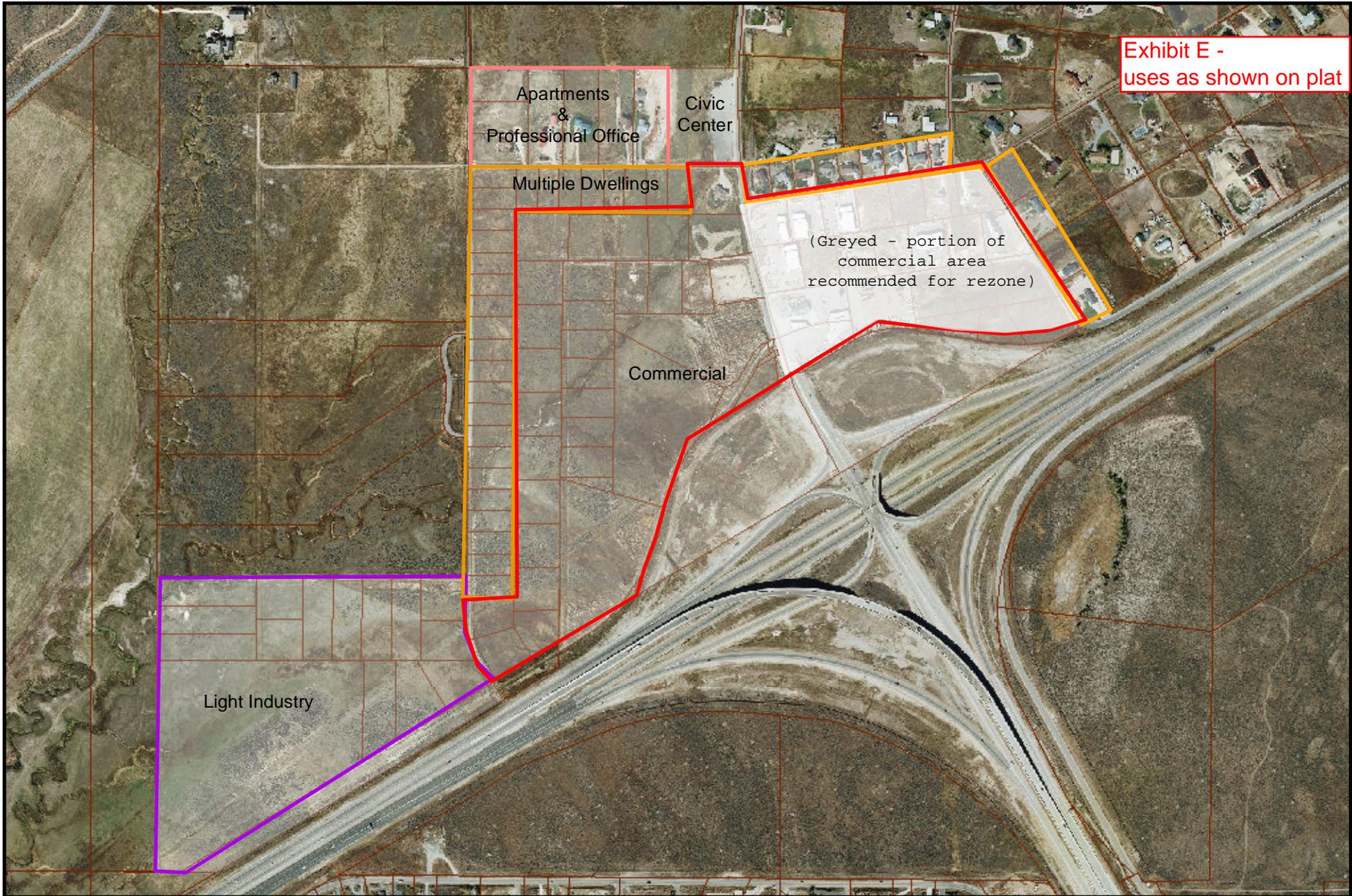
PRESENTED
 25 / 1 /
 SUBDIVISION

DATE _____ COUNTY SURVEYOR _____ COUNTY ATTORNEY _____

ATTEST: _____

COUNTY PLANNING
 APPROVED THIS _____
 THE _____ COUNTY

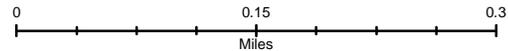
Exhibit E -
uses as shown on plat



Summit County, Utah Vicinity Map

Prepared by Summit County
Community Development Department

-  Plat I
-  Cities
-  Reservoirs
-  Rivers



This drawing is neither a legally recorded map, nor a survey, and is not intended to be used as such. The information displayed is a compilation of records, information, and data obtained from various sources including Summit County. Summit County is not responsible for the timeliness or accuracy of information shown.

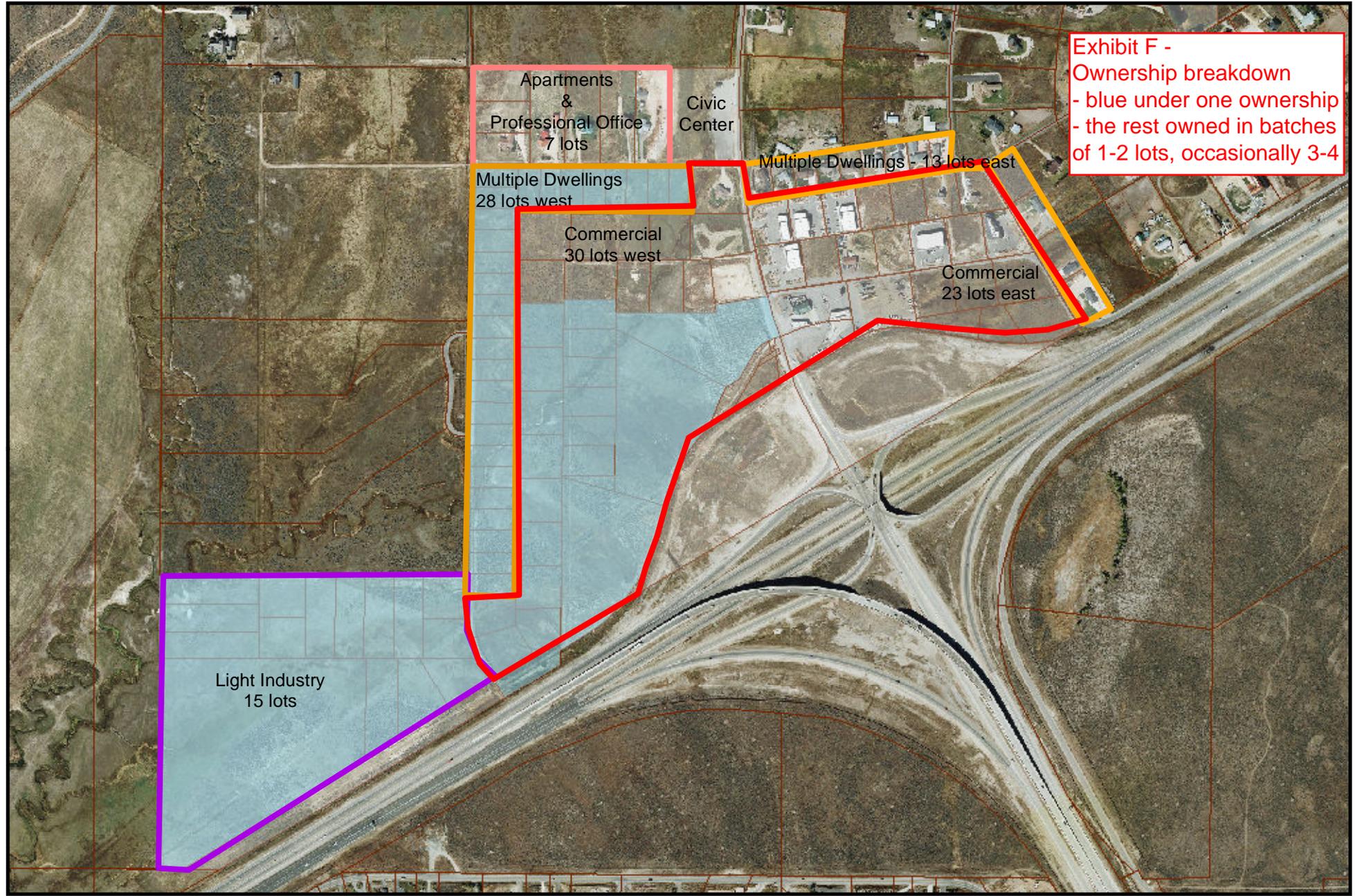


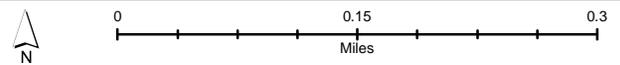
Exhibit F -
 Ownership breakdown
 - blue under one ownership
 - the rest owned in batches
 of 1-2 lots, occasionally 3-4



Summit County, Utah Vicinity Map

Prepared by Summit County
Community Development Department

SC Estate Holdings LLC
 Plat I



This drawing is neither a legally recorded map, nor a survey, and is not intended to be used as such. The information displayed is a compilation of records, information, and data obtained from various sources including Summit County. Summit County is not responsible for the timeliness or accuracy of information shown.

**Summit County Service Area # 3
7215 North Silver Creek Road
Park City, Utah 84098**

Service Provider Meeting – August 20, 2012

**Request for Service Provider questions and input to Item 1a
(Discussion of Silver Creek Plat I possible rezone)**

Item 1. Ingress and Egress- Will there be carrying capacity on current roads

- a. Will there be a frontage road considered in this plan
- b. Will there be upgrades to the County maintained ramp from US40 into Silver Creek to widen for turning lanes to accommodate traffic.
- c. Traffic exiting from I80 and US40 speed reducing concerns

Item 2. Septic

- a. Will a sewer trunk line be brought in to accommodate the commercial and multiple dwelling lots in and around “sensitive areas” ie. Wetlands and drainage area.

Item 3. Municipal Water

- a. Summit County Service Area # 3 would require expansion to the system (wells and Storage facilities?) and additional water rights to meet Concurrency requirements to provide for complete development of Unit I – West side of Silver Creek Road.
- b. Cost of this type of expansion would be beyond the bonding capabilities of the Service Area # 3 at the present time.
- c. Amount of Water required to be taken from the current water aquifers, static level on wells (system and private wells) is currently dropping due to the current usage and drought conditions. Will the aquifers be adequate to supply high buildout on Unit I.

Item 4. Drainage

- a. Additional construction in this area should be closely monitored for discharge to existing properties and structures.
- b. Mitigation of existing and seasonal wetlands and Fema floodplain areas

measures indicating use by children, horses, bicyclists, walkers and fisherman.

- H. Future roadway improvements should include the extension of the Highland Drive frontage road along the south side of Interstate 80 to Kimball Junction. Road design standards shall be appropriate for the neighborhood. No other major roadways should connect to Old Ranch Road.
- I. All roads within the neighborhood shall be given names that reflect the rural ranching character of the neighborhood.

Old Ranch Road Land Use Plan

There are many land use and environmental sensitivity classifications that should guide developments in this neighborhood planning area. These areas are

identified on the Land Use Map.

NORTH MOUNTAIN NEIGHBORHOOD PLANNING AREA

Planning Area Goal:

Protect the unique natural and scenic resources of this rural area, and ensure the area remains primarily an open environment; a place where people and animals live in harmony; and where residential and recreational uses are separated by large areas of open land.

Neighborhood Character Objectives

The appropriate long-term character of the area is large lot residential use, with structures appropriately clustered and sensitively sited in the mountainous terrain and consistent with hillside and meadow view shed policies which promote large

expanses of open space; appropriate residential densities a round the principal meadows; an appropriately-sized neighborhood commercial area; related recreational amenities; and large areas of open space suitable for the protection of scenic resources and the continuation of wildlife in the area. The character of all development, including the scale and design of the infrastructure, shall be rural in nature and in harmony with the mountain environment. Development in the North Mountain neighborhood shall comply with the following principles:

Function and Scale

- A. All new development shall comply with rural road and site planning standards.
- B. The appropriate character includes trails (equestrian, pedestrian, bicycle), private equestrian uses and

facilities, large lot single family detached dwellings, and other uses that are compatible with and promote the mountain and open character of the land.

- C. Summit County will consider incentives to bring about the master planning of any properties that will form an appropriate neighborhood commercial area for the neighborhood in previously approved commercial areas.
- D. The neighborhood commercial area shall be limited in size and type of uses, which serve the immediate needs of or are compatible with the neighborhood.
- E. Required open space in each development shall be contiguous to adjacent open space and protect hillside and meadow view sheds

and natural resources. Required meaningful open space may be incorporated into unfenced individual lots in this area, to ensure appropriate maintenance, so long as to appropriate restrictions, are established to ensure that the area will remain open space.

Physical Design and Aesthetics

- A. All development shall occur in a manner that protects and enhances the mountain and rural character of the area.
- B. All structures shall be sited in a manner that preserves hillside and meadow view sheds in a manner that is consistent with the Policies of Chapter 6 of this Plan. If development must be permitted in a view shed area it must be integrated into the site, using topography,

vegetation, special lighting designs, and any other reasonable technique to mitigate the visual impact.

- C. All development shall be required to bridge streams and the 100 year floodplain (not including irrigation ditches), whenever possible.
- D. All development shall demonstrate that architectural design, materials, and colors will be consistent with the rural, mountain, and ranch character of this neighborhood.
- E. Development shall be appropriate in scale and style to the surrounding environment, with designs that enhance rather than dominate the natural features of any site.
- F. Where no other options exist, the owner of a previously platted lot or

legal lot of record may appeal to the Board of County Commissioners for a variance.

- G. Create an entry to each development to contribute to neighborhood ambiance on the easterly portion of the planning area, where the hills transition into meadows. Mountain entryways are appropriate in the westerly portion of the planning area.
- H. All fencing in the neighborhood shall be ranch style and wildlife sensitive, except around corral areas.
- I. Exterior lighting shall be minimal and must be directed down and shielded in accordance with County standards.
- J. There may be infrastructure in this neighborhood, which is private or does not meet public

infrastructure standards adopted by Summit County. In order to inform current and future property owners of the County's and Special Service Districts' level of service commitment, the developer shall state level of service expectations on the final plat; and at the time a building permit is applied for, property owners will be required to sign a "Memorandum of Understanding" acknowledging that they understand the County's and Special Service Districts' level of service commitment to the subject property.

Recreation and Amenities

- A. The Community trail system shall be integrated into open space parcels whenever possible and appropriate, as described in the Recreation and Trails

Master Plan. Summit County will use development incentives when appropriate to ensure public access in conformance with the Recreation and Trails Master Plan.

- B. Equestrian trails shall be designed to avoid “land locking” horse owners and provide them with trail access to appropriate areas.
- C. In the absence of appropriate passive and active parks designed to accommodate the needs of neighborhood residents, developers shall contribute their fair share toward meeting these needs at other locations within the Snyderville Basin.

Environmental Objectives

- A. Development is prohibited in all wetlands (jurisdictional or otherwise), critical

wildlife habitat, significant ridgelines and hillsides, and waterway corridors, including streams and irrigation ditches, as open space.

- B. Critical or otherwise significant wildlife habitat shall be preserved. Protection of wildlife and the enhancement of wildlife habitats, including stream environments, shall be required.
- C. Development must preserve, to the extent possible, the natural landform, vegetation, scenic quality, and ecological balance that exist in the North Mountain neighborhood planning area. While homes shall be placed on the periphery of open spaces to the extent possible, efforts should be made to minimize the removal or disturbance of trees and hillside shrub vegetation.

- D. All man-made elements shall be integrated into the natural environment with a sense of quality, permanence, and sensitivity. They shall be respectful and preserve stream corridors, wetlands, hillside and meadow view sheds, and natural drainage patterns.
- E. Development shall be located in relation to vegetation in a manner that reduces the danger of wildfire damage to property and wildlife, to the extent possible.
- F. Development along the stream should help to enhance the aquatic habitat of the stream.
- G. Development shall avoid critical wildlife winter ranges, birthing areas, and migration corridors.
- H. Appropriate infrastructure and design standards shall

be incorporated into the Snyderville Basin Development Code to ensure that development shall provide an adequate water supply for fire fighting purposes, measures for clearing brush and vegetation from the area around structures, appropriate access, and other mitigation regulations for high, moderate, and low fire hazard areas, depending on the specific location of a structure.

Transportation Objectives

- A. A master road and circulation plan shall be developed for the North Mountain Neighborhood Planning Area before further development approvals are granted to ensure proper circulation, access for individual properties, and traffic distribution. In order to provide adequate

emergency access, the neighborhood road system should be master planned to provide appropriate circulation. Access to both the east and west sides of the neighborhood planning area shall be provided.

- B. With the exception of the principal collector roadway through the neighborhood, all other roads which access residential properties shall be treated as minor rural roads, and required to meet only those standards.
- C. Curb and gutter is not appropriate in this neighborhood; drainage along roadways shall be consistent with rural character, i.e., ditches and other similar techniques.
- D. Reduced speeds shall be promoted on neighborhood roads with appropriate signs indicating use by

children, horses, bicyclists, walkers, and fisherman.

- E. All roads within the neighborhood shall be given names that reflect the mountain, rural and/or ranching character of that portion of the neighborhood.
- F. Private roads, including secondary access roads, must be able to provide adequate access on a year round basis. Exemptions from secondary access or year round access and maintenance requirements shall be permitted in mountain remote and environmentally sensitive areas when the Park City Fire Service District determines that provisions for life safety and firefighting can and have been appropriately addressed.

North Mountain Land Use Plan

There are several basic land use treatments that are appropriate for this neighborhood. These areas are identified on the Land Use Map.

SUN PEAK / SILVER SPRINGS NEIGHBORHOOD PLANNING AREA

Planning Area Goal:

Enhance the existing residential characteristics of the neighborhood in a manner, which is compatible with the mountain environment, the public areas of the neighborhood, especially the roadway corridors and open space areas, and promote appropriate amenities, which help establish a stronger social environment and which are compatible,

and in scale with the neighborhood.

Neighborhood Character Objectives

This neighborhood is subdivided and substantially built-out. While it has a mix of uses, it is primarily a residential neighborhood. While this neighborhood is largely moderate density, single family detached residential in character, there are pockets of commercial development. West of Highway 224 the topography is typically foothill to mountainous, while that portion of the neighborhood east of Highway 224 is flat.

Function and Scale

- A. Any future change to an existing consent agreement for the purposes of altering approved uses, densities, and configurations shall require developers to establish appropriate

USE (using category name from Basin Code)	CC	NC	Plat	Existing in plat
Adult/sex oriented facilities and businesses	C	--	--	
Agricultural Sales and Service	L	--	L	
Agriculture	A	A	--	
Auto Impoundment Yard and towing services	--	--	--	
Automotive Sales	C	--	L	
Auto Rental	L	--	--	
Auto Repair, Service and Detailing	L	--	L	X
Auto Wrecking Yard	--	--	--	
Banks and Financial Services	L	C	L	
Bars, Taverns, Private Clubs	L	C	L	
Bed and Breakfast Inn	--	--	--	
Building and Maintenance Services	L	--	L	
Campground	C	--	--	
Camp	--	--	--	
Car Wash, Commercial	L	--	--	
Cemetery	C	C	--	
Child Care, In-home	--	A	L	
Child Care, Family, fewer than 9 children	--	C	L	
Child Care, Center with 9-16 children	--	C	L	
Child Care Centers with more than 16 children	L	C	L	
Churches, Schools, Institutional Uses	C	C	L	
Commercial Kennels	L	C	--	
Construction Equipment Storage	C	--	--	
Construction Equipment Rental	L	--	--	
Construction Management Office	L	--	L	
Construction Services, Contract	L	--	L	
Construction Sales, Wholesale	L	--	L	
Cultural Activity	L	C	L	
Dwelling Unit, Accessory	A	A	L	
Dwelling Unit in the Ridgeline Overlay Zone	L	L	NA	
Dwelling Unit, Agricultural Employee	--	L	NA	
Dwelling Unit, Multi-Family	C	C	L	
Dwelling Unit, Single-Family Attached	C	C	L	
Dwelling Unit, Single Family Detached on a lot of record within a platted or recorded subdivision	--	A	L	
Dwelling Unit, Single-Family Detached on a lot of record outside of a platted or recorded subdivision	--	L	L	
Dwelling Unit, Two-family or Duplex	C	C	L	
Funeral Services	L	--	L	
Gas and fuel, storage and sales	C	--	--	
Gasoline Service Station with Convenience Store	L	C	--	X
Golf Courses	C	--	--	
Group Home	L	C	--	
Health Care Facilities	L	C	--	
Historic Structures, preservation of, including related accessory and supporting uses	L	L	--	

USE (using category name from Basin Code)	CC	NC	Plat	Existing in plat
Home-based Businesses Class 1	A	--	--	
Home-based Businesses Class 2	--	--	--	
Horse Boarding, Private	L	L	--	
Horse Boarding, Commercial	C	C	--	
Horse Stables and Riding Academy, Commercial	C	C	--	
Hospitals	C	--	C	
Hotel, Motel or Inn with fewer than 16 rooms	C	C	--	
Hotel, Motel or Inn with 16 or more rooms	C	--	--	
Indoor Entertainment such as bowling alleys, skating rinks, movie theater, performing arts center	L	--	L	
Indoor Shooting Ranges	L	--	--	
Laundromat	L	C	L	
Logging Camp	--	--	--	
Manufacturing, custom	L	--	-- Not in C area	
Manufacturing, heavy	--	--	-- Not in C area	
Manufacturing, light	L	--	-- Not in C area	
Medical equipment supply	L	--	--	
Mining, Resource Extraction	--	--	--	
Nursery, Retail	C	--	L	
Nursery, Wholesale	C	C	--	
Nursing Home	C	C	--	
Offices, General	L	C	L	X
Offices, Intensive	C	--	L	
Offices, Moderate	L	--	L	
Offices, Medical and Dental	L	C	L	
Open Recreation Uses, commercial	C	C	--	
OpenSpace	A	A	--	
Outdoor Display of Merchandise, on-premise	C	--	--	
Outdoor Display of Merchandise, off-premise	--	--	--	
Park and Ride	L	L	--	X
Parking Lot, Commercial	L	C	--	
Personal Improvement Services	L	C	L	
Pet Services and Grooming	L	C	L - if beauty or barber ;)	
Personal Services	L	C	L	
Property Management Offices/Check-in facilities	L	--	L	
Public Facilities	C	C	--	
Recreation, Public	C	L	--	
Recreation and Athletic Facilities, Commercial	L	C	--	
Recreation and Athletic Facilities, Private	C	L	--	
Recycling Facilities, Class I	A	A	--	
Recycling Facilities, Class II	L	L	--	
Repair Services, Consumer	L	C	--	X
Residential Treatment Facility	L	C	--	
Resort Lifts, New	--	C	--	
Resort Lifts, Replacement	--	L	--	
Resort Operations	--	L	--	

USE (using category name from Basin Code)	CC	NC	Plat	Existing in plat
Resort Runs, New	--	C	--	
Resort Structures under 5,000 sq. ft.	--	L	--	
Resort Structures 5,000 sq. ft. and over	--	C	--	
Rehearsal or teaching studio for creative, performing and/or martial arts with no public performances	L	L	L	X
Restaurant, Deli or take out intended to serve a neighborhood	L	C	L	X
Restaurant, Drive-In or Drive- up Window	C	--	L	
Restaurant, Full Service	L	--	L	X
Retail Sales, Convenience Store	L	C	L	X
Retail Sales, Associated with Service Commercial	--	--	--	
Retail Sales, Food	L	C	L	X
Retail Sales, General	L	C	L	X
Retail Sales, Wholesale	L	--	L	
Retail Sales, larger than 40,000, less than 60,000 sq ft in size	C	--	L	
Retail Sales, larger than 60,000 sq ft in size	--	--	L	
Seasonal Plant & Agricultural Sales	T	T	L	
Ski Lifts, Private	--	C	--	
Ski Runs, Private	--	C	--	
Stockyards	--	--	--	
Storage, self service	L	--	--	
Storage, RV or Boat	C	--	--	
Storage, vehicle	C	--	--	
Transportation Services	L	--	--	
Truck Stop	C	--	--	
Typesetting and Printing Facility	L	--	--	
Vehicle and equipment sales or rental	L	--	L	
Veterinarian	L	C	--	
Warehousing and Distribution, General	C	--	--	
Warehousing and Distribution, Limited	L	--	--	
Wholesale Construction Supply	L	--	--	

MINUTES

SNYDERVILLE BASIN PLANNING COMMISSION

REGULAR MEETING

TUESDAY, OCTOBER 9, 2012

SHELDON RICHINS BUILDING

6505 N. LANDMARK DRIVE, PARK CITY, UTAH

The regular meeting of the Snyderville Basin Planning Commission was called to order Tuesday, October 9, 2012, at 6:00 p.m.

PRESENT: Bruce Taylor—Chair, Mike Franklin, Chuck Klingenstein, Greg Lawson, Annette Velarde

STAFF: Don Sargent—Community Development Director, Kimber Gabryszak—County Planner, Molly Orgill—Assistant Planner, Jami Brackin—Deputy County Attorney, Karen McLaws—Secretary

Chair Taylor announced that Commissioner Velarde would not be able to attend the meeting until 7:00. She lives in Silver Creek, and they will move the agenda item regarding Silver Creek Unit I to the beginning of the agenda to make better use of the time, as Commissioner Velarde would be recusing herself from that item.

REGULAR MEETING

1. Public input for items not on the agenda or pending applications

Chair Taylor opened the public input.

There was no public input.

Chair Taylor closed the public input.

2. Public hearing and possible recommendation for a rezone of properties located on the east side of Silver Creek road in Silver Creek Unit I – Kimber Gabryszak, County Planner

County Planner Kimber Gabryszak presented the staff report and recalled that the Planning Commission has discussed this rezone in two work sessions. She indicated Silver Creek Unit I on an aerial map and reviewed the current zoning of Unit I. She presented the original plat recorded in 1965, which contains individual blocks and noted that the plat calls out uses for the individual blocks in the subdivision. The uses on the plat allowed some parts of Unit I to develop as commercial, although it is zoned Rural Residential, not commercial. She noted that most of the development has occurred east

of Silver Creek Road. The plat with its associated uses was recorded in 1965, prior to any zoning in Summit County. Over the years there have been various interpretations of the plat, and for many years the County determined that the uses on the plat were vested when the plat was recorded. Last year several property owners requested advisory opinions from the State Property Rights Ombudsman, and the first opinion stated that the County should not apply the uses on the plat but should apply the zoning. A letter was sent to all owners in Unit I explaining that their property was residential unless it had previously been approved for a commercial use, and there were then additional requests for opinions from the Ombudsman. Recently a property owner applied for a rezone to a commercial zone for two lots in Unit I, and Staff and the Planning Commission did not believe it would make sense to just bring forward two lots or for some of the lots surrounded by commercial to now be zoned residential. Staff recommended that they look at the entire plat, and they now recommend a rezone to those parcels that were designated commercial on the east side of Silver Creek Road.

Planner Gabryszak presented graphics showing some issues associated with the plat, especially on the western portion of Unit I, which include hydric soils which are indicators of wetlands, wetlands and floodplains, and wastewater management. Because of these and other issues, the Planning Commission recommended that only the portion of Unit I east of Silver Creek Road be reviewed for a rezone at this time. Staff recommended that the apartments/professional office area that is already developed remain in the Rural Residential Zone, as well as the multiple dwellings and light industry designations as they were either developed as residential or undeveloped. Only the area indicated in the staff report east of Silver Creek Road is proposed for a rezone to Community Commercial (CC). The Planning Commission requested that Staff contact the property owners on the west side of Unit I to discuss a possible master replan, and they are currently looking at their options. Input was requested from service providers, and the Snyderville Basin Water Reclamation District reported that their nearest trunk line is 2,000 feet away and that the cost would be prohibitive to extend the sewer at this time. Questar Gas can service the area, and the Snyderville Basin Recreation District is interested in a commuter connection to this point. Mountain Regional Water does not provide service to this area, so water would have to be obtained from Service Area 3. Service Area 3 was very concerned about the impacts of the western portion of Unit I due to infrastructure, wetlands, and the reach of the Service Area for water. They were also concerned about septic tanks. Other concerns included having only one access point and carrying capacity of the roads. Planner Gabryszak reviewed the General Plan and Development Code standards and requirements for the proposed rezone as shown in the staff report. Staff recommended that the Planning Commission conduct a public hearing, take public comment, and take action based on one of the options in the staff report, with Staff recommending Option A. If the Planning Commission believes they have sufficient information, Staff recommends that they forward a positive recommendation to the Summit County Council with the findings and conditions in the staff report. Other options include continuing this item to another date or forwarding a negative recommendation with appropriate findings.

Commissioner Klingenstein verified with Planner Gabryszak that the septic system would have to be approved by the County Health Department and asked if that would have to wait until spring. Planner Gabryszak verified that the Health Department is requiring that septic tanks be tested during the wet period of the year. **Commissioner Klingenstein** asked for clarification of the Recreation District's desire for a commuter connection. Planner Gabryszak stated that she believed that was more pertinent to the idea of a master planned development or the sewer line being extended and the Recreation District and developer working together on a commuter connection. She clarified ownership and uses on various parcels for Commissioner Klingenstein.

Commissioner Lawson confirmed with Planner Gabryszak that the rezone would only apply to Block 7, Lots 1 through 14, and Block 8, Lots 1 through 8. He asked who is applying for the zone change. Planner Gabryszak explained that County Staff is proposing it and clarified that the County Manager actually gave direction on the proposed rezone. **Commissioner Lawson** asked why CC zoning is proposed rather than Neighborhood Commercial (NC). He believed the Code would favor NC with the residential uses in the area. Planner Gabryszak explained that the list of CC uses was more compatible with the uses on the plat. Because this area already contains a gas station and is frequently accessed from the highway, it is not just neighborhood oriented, and many of the uses in the area are not neighborhood uses.

Chair Taylor opened the public hearing.

John Tinkelpaugh, a resident of Silver Creek, stated that he had no idea where Unit I was until he came to the meeting this evening. He stated that the residents in Silver Creek have always been concerned about the extension of commercial to the western side of Silver Creek Drive, but he is hearing that this is the first stage of a process to develop a lot of commercial in Silver Creek. He commented that the vast majority of neighbors in Silver Creek are not in favor of commercial. Although the County actually submitted the rezone, he understands that one or two property owners in that area are promoting this. He explained that Silver Creek maintains its own roads, and when there is commercial development or greater use of density, the Silver Creek residents subsidize that business and are impacted financially as well as personally by additional traffic in Silver Creek. He did not believe the people who live across the road from the commercial would be happy with additional commercial development, which could generate traffic and large numbers of people coming and going. He noted that there are already a number of empty commercial spaces in Silver Creek, and the owner of those spaces is unable to rent them, so he did not know why they need more commercial, with increased dust, lighting, and other impacts. He would like to see the County concentrate commercial development in certain areas rather than commercial developments in Silver Creek, Kimball Junction, and every intersection along Highway 40. He believed they would want to eliminate some of the car culture that exists in the area. There are a number of illegal or nonconforming uses in Silver Creek, including the area proposed for the rezone, and he disagreed with the County advocating for not enforcing the zoning and uses taking place there now by giving a blanket rezone. He believed the County needs to enforce the

illegal businesses that currently exist in Silver Creek and not allow ones that have been there for a long time to continue to exist. If individual lot owners are asking for this, he would like to see the process as it has been, on an individual basis. Although it has been stated that this rezone complies with the General Plan, he would like to think that the General Plan had a broader and more environmentally friendly and open space concept when it was designed, not trying to jam in more commercial. Mr. Tinkelpaugh stated that roads will be an issue, as well as the neighbors, and he did not want to see Community Commercial and would prefer that it be more rural if it is going to be any type of commercial. He believed this would be burdensome on Silver Creek.

Wes James stated that he does not live in Unit I but is one parcel away from Unit I. When he moved there, there was no residential on either side of Parkway except for one home. Now every lot is taken on the north side of the road, and they have started building on the south side of the road. He stated that he was under the impression when he bought that Parkway had no commercial and that the area on the other side of Bells was commercial. He agreed with Mr. Tinkelpaugh about business owners that do not abide by the CC&Rs. A lot of traffic comes along Whileaway and Parkway every day related to business traffic. If they change the CC&Rs for the two homes on the south side of Parkway, they are asking for commercial to be all the way across. He did not believe his neighbors would like that, and he would not like it. He explained that his concern relates to traffic. Chair Taylor clarified that the County has nothing to do with the CC&Rs. Mr. James stated that he did not receive a notice when they changed the home on the corner of Pace and Parkway, and he did not believe they are totally informed about what is going on in their neighborhood.

John Graber stated that he lives on the north side of Parkway Drive and is significantly impacted by what is proposed. He commented that the people who are trying to rezone do not have the interests of the residents who live on the north side in mind. He stated that when he moved to Silver Creek in 1993, his was the second home on the north side of Parkway Drive, and he was told it was residential and would be residential. He looked at that when deciding to move there and retire there. He believed Mr. Conway was involved in the businesses on the corner of Parkway and Silver Creek and had bragged to him that he was going to come up with 25% of the cost to asphalt Parkway Drive. Mr. Graber stated that he was opposed to asphalt and wanted to keep it a rural dirt road, because as soon as they put asphalt in, they would have speed. It is the only asphalt in their area, and motor bikes constantly race up and down that street. Now they want to increase the volume of traffic in that area. He noted that Silver Creek has one way in and one way out and asked how people would get out in an emergency. There is a paint company there now, which creates the potential of a fire or explosion. He understands that the County has refused to take over the roads in Silver Creek because they are not up to standard, and they cannot get their fire or rescue equipment into these areas. He understood that Bells tried to rebuild to make their business more compatible, and the County refused to let them. Now the County wants to turn the area into a commercial area when everyone they talked to told them it was residential. He did not believe anyone would want a big commercial building across from their home, and he does not

want it where he lives and wants to keep it a residential area. He stated that businesses operate out of homes in Silver Creek that were originally built as residential homes. The only way he knows to stop these things that break the law is for the County to make a recommendation that this will not be commercial and will remain residential, which was the initial intent.

Bob Olson, Vice Chairman of Service Area 3, stated that his primary assignment is roads, and his biggest concern will be when they move on to the west side. He was pleased with the comments from the residents of Service Area 3, and he will take them to the committee. He stated that their attorney is working with the County to be sure they do the right thing.

Luann Lukenbach explained that she and her husband are owners of commercial property and originally purchased their property as commercial property. They bought their property with the understanding that they could have a commercial business and hoped one day to build a dance hall so people could go ballroom dancing. She acknowledged that there are problems with roads, sewer, and water in Silver Creek, but they need to think about what is best for the entire area. She explained that people bought lots as commercial lots when the subdivision was created, and the area proposed for the rezone is not a prime area for homes to be built because of the existing commercial uses. She believed they need to keep in mind that the people who purchased the lots in this area bought them as commercial lots so they could use them for commercial purposes.

John Bergen stated that his family has owned the commercial property next to Lukenbachs since the early 1960's with the understanding that it was commercial. They have always hoped the area would develop with a nice commercial atmosphere, and it was understood to be commercial throughout the years his family owned the property. They believe the County is going in the right direction by requesting that the zoning be changed to commercial. He noted that most of the properties in that area are commercial, which has been that way for many years, and commercial adjacent to residential has been that way for decades.

George Mount confirmed with Staff that they are discussing only the neighborhood east of Silver Creek Drive.

Jim Conway, owner of two of the commercial buildings, stated that he moved to Silver Creek in 1997, and he understood that his property was commercial. Anyone who built homes in that area only had to pick up a copy of the CC&Rs to see that it was commercial and was grandfathered. When he moved in, there was nothing at Jeremy or Silver Creek, and there were one or two gas stations at Kimball Junction. Then everyone else moved in, and now they want his commercial to move out. He stated that more requests are going to the Ombudsman, and he believed the County puts a lot of weight on what the Ombudsman says. Mr. Conway stated that, even if they don't count the four vacant lots, more than 90% of the property has been estopped by the County. Someone needs to explain to people who are building homes around this property that it has been

there since 1965 and is not going away. He noted that it is only one block from the off-ramp to this commercial area, and he has always wondered why they got left behind. Everyone else has developed and is flourishing, and Silver Creek is still dying on the vine. He stated that he has two spaces available in his four buildings. Everything else on the block is in use, so it is not like there is a big surplus of commercial space. He would like to see this area treated like the other off ramps since they were first in the County and ahead of everyone else in 1965, and now they are behind everyone else. He stated that they have always been treated by the County like the bastard child, because Silver Creek developed without a big-time developer or a lot of money. They need a little extra help to get this developed right and tie into trails and maybe put in a little park for a buffer between the commercial and the residents.

Rudy Bergen stated that he and his family own Lot 13, and they could not put a home there. There clearly needs to be a separation between commercial and residential, and the County is doing the right thing.

Mr. Tinkelpaugh stated that he has been here since 1977, and he also understands what has happened in Silver Creek over the years. He recalled that Mr. Conway stated that there are only two vacancies, but they have been vacant for several years, so there must be some issue about the need for commercial property. Mr. Tinkelpaugh stated that access is a tremendous issue that no one wants to talk about. Everything that goes into Silver Creek has to go through one road, which is a fire issue. When he hears people say that the County does not want to get involved in another lawsuit, it is obviously the intention of some of the developers to sue the County if they do not get their way.

Chair Taylor closed the public hearing.

Commissioner Franklin emphasized to the public that the economic benefit of someone building commercial in this area is not germane to their decision and is an economic decision of the property owner. He acknowledged that the public is very passionate about this issue.

Commissioner Lawson stated that his assessment is that the area proposed as CC is already commercial and has been accepted for that. He was not sure what they would gain by zoning it CC and perhaps allowing more uses than are allowed right now. He stated that the area was developed as and continues to be a rural residential area, and he has a hard time expecting to see anything more than neighborhood commercial to serve the residents living in that location. He did not sense a strong need to do a rezone. The property has already had the commercial usage designation, and people have had the ability to develop their commercial in that location. He did not see the downside of staying with what is written on the plat regarding commercial uses in this location.

Commissioner Klingenstein commented that this is a cookie cutter subdivision that does not have any of the amenities that the other projects Mr. Conway referred to have benefitted from. It is not that they have been ignored, but it is the way the subdivision

was done in the first place in 1965. He would prefer to master plan the entire area, but that will not happen unless all the property owners work together. He believed Staff might think it would be difficult to retrofit this area as NC since the existing uses are community commercial. If they leave it as it is, according to the Ombudsman's opinion, all the remaining lots are zoned residential. The challenge is the conflict between RR zoning and the plat, which the County has now been told it cannot enforce. If they cannot master plan, the question is how to re-create the east side to be better. He believed new development should be required to meet specific standards. Planner Gabryszak confirmed that those requirements would include parking standards, architectural standards, lighting, landscaping, and circulation within the project. **Commissioner Klingenstein** confirmed with Planner Gabryszak that any existing nonconforming uses would have to go through an incremental improvement as they come to the County for improvements to their lots. He stated that he is trying to understand the roads and who is responsible for maintaining them. Deputy County Attorney Jami Brackin explained that a service area was created to maintain the roads in this development. It is a taxing entity, and people within the service area pay taxes to maintain the roads. The service area also receives Class B road money from the State. **Commissioner Klingenstein** asked how they could get commercial property owners to be responsible for the portion of the road leading to their property so the service area does not have to be responsible for impacts on that section of the road. Ms. Brackin explained that the service area is a taxing entity, and everyone within the service area pays taxes to maintain the road. **Commissioner Klingenstein** verified with Ms. Brackin that Unit I is in the taxing jurisdiction. He acknowledged that some residents may not like living next to this commercial area, but between the zoning, the CC&Rs, and the built environment, residents should have been able to realize that these have been commercial uses. He stated that he is leaning toward a commercial rezone and making sure that the County is rigorous in its standards of review.

Planner Gabryszak clarified that if the Planning Commission decides to do nothing with the rezone, the undeveloped lots in the middle of the area would only be allowed to construct residential units, nothing commercial.

Chair Taylor commented that when they started this discussion, they took it upon themselves to address legitimizing what exists there, and it seemed to make sense to use Silver Creek Road as a demarcation line to zone the lots east of that from RR to CC. From the public input, they heard that people do not want that, and they have suggested enforcing nonconforming uses. He asked if the Commission wants to legitimize what is already there, legitimize the whole block, or do nothing.

Commissioner Lawson stated that he misread the exhibit and was under the impression that the existing commercial uses granted under the plat were still in effect and did not realize that the lots on the east side are now zoned RR. Understanding that, he believes NC is more residential friendly to an essentially rural residential area. He could see the appropriateness of the commercial zone for that entire area so it would be consistent.

Commissioner Franklin agreed that they should legitimize the uses in the block in question.

Commissioner Lawson noted that retail sales larger than 40,000 square feet but less than 60,000 square feet are allowed in the CC Zone as a conditional use, and a 40,000-square-foot building in a neighborhood does not fit. He stated that he is trying to get support for the NC Zone as opposed to the CC Zone.

Commissioner Klingenstein referred to the intent of the two commercial zones and stated that he would like to see if they could come up with a compromise that would allow them to have commercial recognized with the compatibility mentioned in the intent section. He asked if they could come up with a matrix that compares NC, CC, and the plat notes so they can make a more educated vote. He is comfortable with commercial but wants to come up with tools to minimize the impacts, and he does not know how to do that other than lot-by-lot reviews. Planner Gabryszak stated that she would be happy to do that if the Commission continues this item, and she presented the types of uses that were allowed on the plat until the Ombudsman's opinion and the County's application of the RR Zone. She noted that all of those uses would fall into the allowed category in the CC Zone. In the NC Zone, uses that would not be permitted are automotive, funeral services, full-service restaurants, offices, storage uses, hospitals, and construction industry uses. Some theater-type uses would also be prohibited. Structures are permitted to be up to 40,000 to 60,000 square feet through a process, but big box is not permitted. Individual retail uses are limited to 20,000 square feet. **Commissioner Lawson** verified with Planner Gabryszak that truck stops and shooting ranges would be allowed in the CC Zone. He stated that he is not comfortable that they are fitting commercial uses in the right location for this rural residential area. He would need more detailed information before allowing CC zoning. **Commissioner Klingenstein** believed it would be important for everyone to see a clear layout of the uses to understand which ones are permitted, which ones are conditional, etc. He also noted that a conditional use is basically a permitted use, so they should not think it is easy to say no to a CUP. He asked about the County's ordinance on sexually oriented businesses and stated that he did not believe this would be an appropriate place for that type of use. Planner Gabryszak replied that they are only allowed in the Industrial Zone.

Commissioner Klingenstein made a motion to continue the Silver Creek Estates Unit I rezone east of Silver Creek Drive, Blocks 7 and 8, to a future meeting with a request for additional analysis of whether the zoning would be more appropriate as Neighborhood Commercial or Community Commercial. The motion was seconded by Commissioner Lawson.

Chair Taylor suggested that the motion be amended to ask that the analysis include a summary of the businesses that already exist in this area to see if the uses are compatible.

Commissioner Klingenstein amended the motion to include the request that Staff also provide a summary of the existing businesses in Silver Creek Unit I

to determine whether the uses are compatible. The amended motion was seconded by Commissioner Lawson.

Commissioner Lawson commented that he believed the comparison should be between the CC and NC uses, because what is on the plat now is RR and is not as relevant to what they are concerned about.

The motion passed unanimously, 4 to 0. Commissioner Velarde was not present for the vote.

Commissioner Velarde arrived and joined the meeting.

3. Public hearing and possible action regarding Glenwild Lots 191 and 192 plat amendment, 8030 & 8040 Glenwild Drive; Mark & Margaret Stone, applicant – Molly Orgill, Assistant Planner

Assistant Planner Molly Orgill indicated the location of Parcels 191 and 192 in the Glenwild Subdivision and explained that Lot 191 has an existing home, and Lot 192 is vacant. Once the lots are combined, the new lot will be 1.12 acres and will no longer be eligible for further division. Public notice was given and mailed to property owners within 1,000 feet, and no comment has been received. The HOA and architectural committee have reviewed and approved the combination of the parcels. Staff recommended that the Planning Commission discuss the application, conduct a public hearing, and vote to approve the plat amendment based on the findings in the staff report.

Chair Taylor opened the public hearing.

There was no public comment.

Chair Taylor closed the public hearing.

Commissioner Velarde asked about the motivation for combining the lots. Jeff Schindewolf, representing the applicant, replied that the applicant wants to do some landscaping and acknowledged that they would be limiting their options.

Chair Taylor asked if lots would pay double fees to the HOA once they are combined or if they would only be subject to one assessment. Mr. Schindewolf stated that he believed they would only receive one assessment.

Commissioner Franklin made a motion to approve the Stone plat amendment to combine Lots 191 and 192 Phase 3 of the Glenwild Subdivision based on the following findings in the staff report dated October 3, 2012:

Findings:

1. **The expansion complies with the standards in the Redstone Parkside/Newpark Development Agreement as outlined in Section F of this report.**
2. **The expansion complies with the Snyderville Basin General Plan as outlined in Section E of this report.**

Conditions:

1. **All Service Provider requirements, including those of the Building Department, shall be met prior to plan recordation.**
2. **Any others as stated by the SBPC.**

The motion was seconded by Commissioner Franklin and passed unanimously, 6 to 0.

6. **Continued discussion and possible action regarding a rezone of properties located on the east side of Silver Creek Road in Silver Creek Unit I – Kimber Gabryszak, County Planner**

Commissioner Velarde recused herself from discussing and voting on this item.

Planner Gabryszak recalled that the Planning Commission held a public hearing on October 9 regarding a potential rezone to the eastern portion of Silver Creek Unit I. She explained that plans for the western portion of Unit I are still up in the air. The owners of property on the west side of Unit I have been meeting to discuss a possible master plan for that area, but Staff has no current updates on the progress of those discussions. She reminded the Commissioners that the public hearing was closed on October 9, and they continued a decision to a later date pending additional information. The Planning Commission requested a comparison between the Community Commercial (CC) Zone, as recommended by Staff, the Neighborhood Commercial (NC) Zone, and the existing uses in the plat. She reviewed the use charts for the CC and NC Zones and how existing uses compare to the use charts. She noted that several businesses exist in the area that would remain non-conforming if it were rezoned to the NC Zone. Staff recommended that the

Planning Commission rezone the eastern portion of Unit I to the CC Zone due to the commercial nature of existing uses and property owners wishing to move forward with commercial development. Staff recommended that the Planning Commission forward a positive recommendation to the County Council on the rezone to CC with the findings and conditions in the staff report, or forward a positive recommendation to the County Council on a rezone to NC with findings and conditions articulated by the Planning Commission as to why that zoning would be appropriate, continue this item to another date, or forward a negative recommendation with appropriate findings as to how the rezone does not comply.

Chair Taylor noted that other than ski runs and lifts, only dwelling units and child care are allowed in NC and not in CC. He believed some lots in the rezone area are built on and used as residences and asked if they would become nonconforming. Planner Gabryszak confirmed that they would and noted that one of the single-family residences is in the process of being converted to offices, which would leave one single-family home in the area. **Chair Taylor** asked about the impacts to that home if the zoning were changed to CC. He verified with Planner Gabryszak that it could be sold as a single-family residence and asked whether it could be remodeled or added to. Planner Gabryszak explained that the use would be nonconforming, not the structure, so the structure would not be limited to its existing footprint. **Chair Taylor** asked at what point the County would no longer allow the residence to be used as a single-family residence. Ms. Brackin replied that if it were abandoned for a year, it would have to come into compliance.

Commissioner Lawson asked about the existing restaurant use in Unit I. Mr. Conway explained that Kneaders still does some baking in half of the building he owns, and the Hole in One restaurant is in the other side of the building. He anticipated that both businesses might move out in the coming year. **Commissioner Lawson** stated that what is allowed in the CC Zone goes far beyond the description of NC zoning, and the intent of NC zoning was to restrict commercial development to neighborhood types of uses.

Because CC has the potential to become more of a retail commercial center, he did not believe it would be appropriate for this location. He was not willing to vote in favor of CC zoning, in spite of the fact that grandfathered and nonconforming uses would be somewhat of an issue. He stated that they exist all over the County, and there are provisions in the Code to deal with them. He believed the few that would be affected would be more than offset by opening the door wide for commercial development in this essentially rural neighborhood.

Commissioner DeFord noted that, looking at the use chart, other uses are still allowed as conditional uses, and people who want to put in a business could do so. He did not want to block out existing businesses and make them nonconforming. The uses Commissioner Lawson was concerned about would still require a CUP, and they would have to come to the Planning Commission and meet the criteria. He believed they should think that through before giving up on the idea of the CC Zone. **Commissioner Lawson** noted that in the CC Zone, wholesale uses are allowed, as well as retail sales between 40,000 and 60,000 square feet, storage of vehicles, and construction equipment storage and rental, and he finds those uses bothersome in a neighborhood area. **Commissioner DeFord** stated that the warehousing and other uses existing in the area are closer to CC zoning. He expressed concern about disenfranchising the existing uses and locking them in so they cannot expand or change. **Commissioner Lawson** stated that he did not believe they would be disenfranchising existing uses, and he was more concerned about the wider variety and larger scale commercial development that goes with CC zoning.

Commissioner Franklin made a motion to forward a positive recommendation to the Summit County Council to rezone the eastern portion of Unit I in Silver Creek Estates to Community Commercial with the following findings and conditions contained in the staff report dated December 12, 2012:

Findings:

1. **The rezone complies with the Snyderville Basin General Plan as outlined in Section E of this report.**
2. **The rezone complies with the criteria in the Snyderville Basin Development Code as outlined in Section F of this report.**

Conditions:

1. **Any conditions as recommended by the Snyderville Basin Planning Commission.**

The motion was seconded by Commissioner DeFord. With a vote of 2 to 2, with Commissioners DeFord and Franklin voting in favor of the motion, Commissioners Lawson and Taylor voting against the motion, and Commissioner Barnes abstaining from the vote, this item moved forward to the County Council without a recommendation.

Commissioner Barnes deferred any comments on this item.

Commissioner Lawson stated that he is opposed to zoning this area CC because of the additional expansion of commercial uses in an area that he believes would more appropriately be zoned NC.

Commissioner Franklin stated that he believes the area should be zoned CC because it covers a larger swath of the existing commercial uses and minimizes the nonconforming aspects.

Commissioner DeFord stated that he does not want to see the existing businesses disenfranchised and prevented from further expansion.

Chair Taylor stated that he believes the CC definitions are too broad for this neighborhood.

WORK SESSION



GARY R. HERBERT
Governor

GREG BELL
Lieutenant Governor

State of Utah
Department of Commerce

OFFICE OF THE PROPERTY RIGHTS OMBUDSMAN

Exhibit L.a
George Mount Vested Rights

ADVISORY OPINION

Advisory Opinion Requested by: George Mount
Local Government Entity: Summit County
Applicant for the Land Use Approval: George Mount
Type of Property: Commercial Development
Date of this Advisory Opinion: December 6, 2011
Opinion Authored By: Elliot R. Lawrence
Office of the Property Rights Ombudsman

Issues

Is a local government legally obligated to recognize uses listed in a private declaration of covenants, conditions, and restrictions for a subdivision development, if the government is not a party to the declaration, and if the zoning for the undeveloped property will not allow the uses?

Summary of Advisory Opinion

The Declaration was created by private property owners, and is essentially a contract amongst the property owners in the subdivision. The County is not a party to that Declaration, and is not bound by its terms. Private property is subject to reasonable land use regulation. Private covenants do not obligate local governments.

Although the Declaration is not binding, the County may nevertheless bind itself through the doctrine of equitable estoppel. If a property owner incurs significant expense, or makes substantial changes based on the County's representation that a use may be allowed, the County cannot deny that use. Mere ownership of property is not a significant expense or a substantial change in position. However, improvements to property, if based on reasonable reliance of representations that use may be allowed, may bind the County to accept that use.

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 George Mount on August 25, 2011. A copy of that request was sent via certified mail to Bob Jasper, County Manager for Summit County, at 60 North Main, Coalville, Utah 84017. The return receipt was signed and delivered on August 30, 2011, indicating it had been received by the County.

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 George Mount, received by the Office of the Property Rights Ombudsman, August 25, 2011.
2. Response submitted on behalf of the County by Jami Brackin, Deputy County Attorney, received September 16, 2011.
3. Reply submitted by George Mount, received September 30, 2011.
4. Material submitted by Jim Conway, received November 16, 2011.

Background

George Mount owns four contiguous lots in Silver Creek Estates, a subdivision located at Silver Creek Junction in Summit County.¹ The subdivision was created in 1965, and was originally intended to be a type of planned development, mixing residential, commercial and light industrial uses. When the subdivision was created, the County did not have a comprehensive zoning ordinance, although it approved the subdivision plat. In the absence of zoning ordinances, the property owners adopted declarations which governed uses, densities, heights, set backs, and other development matters for the subdivision. In particular, Unit "I" of the subdivision, where Mr. Mount's parcels are located, consists of parcels near the intersection of two major highways, had a declaration allowing a mixture of residential, commercial, and light industrial uses.² This Declaration is essentially covenants, conditions, and restrictions

¹ Silver Creek Junction is at the intersection of Interstate 80 and U.S. Highway 40.

² Declaration of Reservations and Protective Covenants, Silver Creek Estates Unit "I" (25 February 1965) (hereafter "Declaration.")

“CC&Rs”) for the property, although it contains enough detail to govern development of that portion of the subdivision.

Based on the information provided for this Opinion, it appears that the subdivision was to be managed by the Silver Creek Ranch Corporation, which had filed the plat and created the Declaration. However, that corporation was dissolved in 1980, and no evidence has been submitted that there is or was ever a successor corporation or owner appointed. It also appears that the lots of the subdivision have all been sold.³ A special service district has been created to maintain the roads for the area.

Several years after the subdivision was created, the County adopted and implemented a comprehensive zoning ordinance. Under the County’s current ordinances, the Silver Creek Estates area is zoned “rural residential.” Despite this zoning, the County states that it recognizes the Declaration as governing development of Silver Creek Estates Unit I, but the Declaration cannot be expanded beyond its express terms. Thus, commercial and light industrial uses specifically listed in the Declaration are allowable, even though the County’s “official” zoning for the area is residential. The County maintains that the Declaration created “vested” rights in the plat, and it treats the Declaration as analogous to a nonconforming, or “grandfathered” use. Moreover, if there are any changes to individual lots, including amendments to lot boundaries, the County’s policy is that the Declaration would no longer apply, and the property would need to comply with the underlying zoning ordinances.

According to the County, the grandfathering analogy supports its position that the uses should be limited to only those listed in the Declaration. The County Code provides that nonconforming uses may not be enlarged or expanded. The Declaration, however, includes a provision allowing commercial uses similar to those listed. (See Declaration, “C-I Land Use Regulations,” A.1.c) Despite this language, it appears that the County would not allow similar commercial uses, but only those specifically listed.

Although there has been increased development and growth in Summit County, there has been little development at Silver Creek Junction. Mr. Mount’s parcels are undeveloped, and he has sought opportunity to consolidate the lots to develop them for commercial uses allowed under the Declaration. He has contacted potential buyers, promoting the property for commercial development. Mr. Mount claims that potential buyers are discouraged when they discuss zoning and development regulations with the County.⁴ He also claims that he purchased the property anticipating commercial development, but his plans and his investment have been stymied by the County.

Jim Conway also owns parcels in Unit I. He constructed commercial-style buildings on his parcels, but has not been able to find buyers.⁵ He also claims that the County has discouraged

³ This Opinion only concerns the properties located in Unit “I”, and not the other areas of the subdivision. Jim Conway, a property owner in Unit I, stated that he believed that all lots had been sold.

⁴ Mr. Mount states that a company recently expressed interest in a storage unit business on the parcels, but chose another location. Mr. Mount believes that the company selected another site because of the County’s representations concerning the Silver Creek area.

⁵ Mr. Conway states that his property has been proposed for use as a fitness center, bicycle shop, and plant nursery.

potential buyers. Both Mr. Conway and Mr. Mount contend that the County's decision to maintain the rural residential zoning for Unit I is unreasonable, and stifles development of the area.

The original Declaration created a three-member "Committee of Architecture," to oversee the maintenance and construction of properties in Unit I. The members of the Committee were selected by the Silver Creek Ranch Corporation, which was the original owner of the property.⁶ The Committee was to approve plans for new construction, and was specifically authorized to waive conditions and grant some exceptions, although it is not clear whether that authority included approving uses not listed in the Declaration.⁷ The Declaration named the original members of the Committee, but it did not function for several years. In 2010, a group of property owners proposed reorganizing the Committee, and submitted a list of candidates to the property owners in Unit I. Three members, including Mr. Conway, were approved by the voters. The County was notified that Committee had been reconstituted. The County acknowledges receiving the notice, but it does not recognize the Committee as having any authority other than as an advisory body.

Mr. Mount requested this Advisory Opinion to evaluate the nature and extent of the County's authority to regulate land uses within Unit I. Mr. Conway became aware of the Advisory Opinion request, and submitted a letter explaining the reinstatement of the Committee of Architecture, along with his own concerns about development of Silver Creek Estates.

Analysis

I. Since The Declaration Is Not a County Ordinance, it Does Not Legally Obligate the County or Grant Vested Rights.

A. The County Has Broad Authority to Regulate Land Uses.

The County may regulate land uses within Unit I, and is not legally obligated to abide by the Declaration. Private property is subject to local government regulation. "It is established that an owner of property holds it subject to zoning ordinances enacted pursuant to a [local government's] police power." *Western Land Equities v. City of Logan*, 617 P.2d 388, 390 (Utah 1980); see also *Smith Investment Co. v. Sandy City*, 958 P.2d 245, 252 (Utah Ct. App. 1998). Zoning ordinances "must be reasonably related to serving the public health, safety, or general welfare." *Smith Investment*, 958 P.2d at 252. An ordinance will be upheld as valid if it could reasonably promote the public welfare. *Id.*

⁶ See "Declarations of Reservations and Protective Covenants, Silver Creek Estates Unit 'I'" by Silver Creek Ranch Corporation, dated 25 February 1965, at ¶ A.1. The Declaration provides that the Corporation (or its successor owners) could nominate members of the Committee.

⁷ *Id.*, Declaration at ¶ A.2-3. The Committee can approve exceptions if they do not detract from the appearance of the premises, and are not detrimental to the public welfare.

Local governments are given very broad discretion to make decisions regarding regulation of land use. "If the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control." *Id.* (citation omitted). Zoning ordinances restrain the use of land, interfere with planned development, and affect the value of land. These impacts, however, do not invalidate the ordinance or entitle a property owner to compensation. A local government is authorized to:

regulate and restrain the use of private property when the health, safety, morals, or welfare of the public demands it; . . . the exercise of proper police regulations may to some extent prevent enjoyment or individual rights in property or cause inconvenience or loss to the owner, [but that] does not necessarily render the . . . law unconstitutional, for the reason that such laws are not considered as appropriating private property for a public use, but simply as regulating its use and enjoyment

Bountiful City v. DeLuca, 77 Utah 107, 120, 292 P. 194 (Utah 1930); *see also Colman v. Utah State Land Board*, 795 P.2d 622, 627-28 (Utah 1990). Thus, even a significant impact on a property's value will not invalidate a zoning ordinance.

B. The Declaration Itself Does Not Establish any Vested Rights to Develop, and the County Should Not "Recognize" the Declaration as Granting Development Rights.

The Declaration was created by the original property owner of Silver Creek Estates, and is essentially a contract amongst the current property owners. "Restrictive covenants that run with the land and encumber subdivision lots form a contract between subdivision property owners as a whole and individual lot owners" *Swenson v. Erickson*, 200 UT 16, ¶ 11; 998 P.2d 807, 810-11. The County is not a party to that Declaration, and it has not been adopted or approved through any official procedure.⁸ Thus, the Declaration does not establish vested rights for any property owner, and it does not legally obligate the County to adopt any particular zoning scheme, or approve any type of development other than what is consistent with its zoning regulations.

The County's "recognition" of the Declaration as granting vested rights is troubling. The County must follow its own ordinances. "A county is bound by the terms and standards of applicable land use ordinances and shall comply with mandatory provisions of those ordinances." UTAH CODE ANN. § 17-27a-508(2). The County should therefore comply with its own ordinances, and cannot ignore or modify them by administrative fiat. Restrictive covenants adopted by private property owners cannot supersede the County's authority.⁹ The material submitted for this Opinion indicates that the County's staff unilaterally determined that the Declaration allows

⁸ There are zoning mechanisms, such as a Planned Unit Development (PUD) or an overlay zone, which allow a local government to adopt "tailor made" zoning ordinances incorporating restrictive covenants. These mechanisms would thus obligate the locality, not by contract, but by ordinance.

⁹ *See Western Land Equities*, 617 P.2d at 390.

commercial and industrial development in Unit I, even though the zoning ordinance regulates that area as residential. In effect, the County is improperly ignoring its own land use ordinance.¹⁰

If the County wants to recognize the uses listed in the Declaration, the County Council may adopt them in the ordinances which regulate land use in Unit I. However, because the Declaration's language has not been adopted as an ordinance, the County is not entitled to treat the Declaration as binding. This violates § 17-27a-508(2), discourages reliability and consistency in land use regulation, and leads to the possibility that land uses for Unit I will be determined on an *ad hoc* basis without regard for ordinances enacted by the County Council. The County should not treat the Declaration as legally-binding, unless it adopts the listed uses as part of a land use ordinance.

The County's broad authority to regulate land uses must recognize vested rights in existing development. If a property owner submits an application for development approval, and that application complies with existing zoning ordinances, the property owner has a vested right to proceed with that development. *See* UTAH CODE ANN. § 17-27a-508(1)(a) Once a complete and compliant application is submitted, the development must be approved.¹¹ However, a property owner cannot claim vested rights in planned or anticipated development. *See Western Land Equities*, 617 P.2d at 391.¹²

The Declaration suggests possible plans for Unit I, but cannot grant vested rights, because it is not a zoning ordinance and the County is not legally bound to recognize it. Instead, the Declaration outlines acceptable uses and restricts some activities within Unit I. For example, property owners may not raise livestock or undertake "noxious or offensive activities." *See* Declaration, "Land Use – General" ¶¶ 4 & 5. If a property owner's use violates the Declaration, other property owners may pursue an action to curb or eliminate the violating use. However, the County's zoning ordinances take precedence, so a property owner's legal rights under the Declaration must operate within the framework of those ordinances.

II. The Property Owners in Unit I may Amend the Declaration, and Select a Committee to Administer it.

The property owners in Unit I have the right to amend the Declaration, and may also select a Committee of Architecture to administer the Declaration. As was already discussed, the Declaration is a type of CC&Rs for Unit I, and the property owners may amend its terms. *See*

¹⁰ As is discussed more fully below, the County would be obligated to recognize any vested right from development that has been initiated.

¹¹ A local government may deny the application if there is a compelling, countervailing public interest, or if an ordinance change is pending when the application is submitted. *See* UTAH CODE ANN. § 17-27a-508(1).

¹² *See also Stucker v. Summit County*, 870 P.2d 283, 287 (Utah Ct. App. 1994) (rejecting a claim of vested rights when development had not been initiated, but was only anticipated).

Declaration, "General Provisions."¹³ It stands to reason that a majority of the property owners may also repeal the Declaration in its entirety.¹⁴

The Committee of Architecture created by the Declaration was to be nominated by the Silver Creek Ranch Corporation (or its successor). See Declaration, "Committee of Architecture," ¶ A.1. The Silver Creek Ranch Corporation was dissolved in 1980, and apparently, no successor corporation has been created. In the absence of a successor, the property owners could possibly act to appoint a Committee, or the owners could amend the Declaration to provide that the Committee be approved by a vote of the property owners.¹⁵ However, the Declaration is not binding upon the County, so the administration of the Declaration does not affect the County's authority. The owners may choose to continue the Declaration amongst themselves, insofar as it would govern activity in Unit I under regulations imposed by the County.

The Declaration provides that the Committee of Architecture has authority to approve applications, and it may allow reasonable deviations from the terms of the Declaration, or approve uses similar to those listed. Declaration, "Committee of Architecture," ¶ A.2. Since the members of the Committee would also be property owners, they could initiate actions against property owners who violate the Declaration. *Id.*, "General Provisions."

III. The County may be Estopped From Denying Development Applications on Some of the Lots in Unit I.

It appears that since some property owners have acted in reliance on official representations concerning uses in Unit I, the County may be estopped from denying applications for commercial development on those parcels. A local government may be estopped from enforcing its zoning ordinances if it has "committed an act or omission upon which [a] developer could rely in good faith in making substantial changes in position or incurring extensive expenses." *Utah County v. Young*, 615 P.2d 1265, 1267 (Utah 1980); see also *Stucker*, 870 P.2d at 290. Estoppel (also called zoning estoppel) recognizes a property owner's rights and investment interests if the circumstances call for fairness. "A court has discretion in the exercise of its equitable powers and may deny injunctive relief against the violation of a zoning ordinance. If the granting of an injunction [*i.e.*, enforcement of zoning regulations] would be inconsistent with basic principles of justice and equity, it may be denied"¹⁶ *Young*, 615 P.2d at 1267. If a property owner has incurred expense based on reliance from the County's representation that commercial development is allowed, the County cannot deny an application for commercial development.

¹³ A majority of the owners in Unit I may change the terms of the Declaration.

¹⁴ But see *Swenson v. Erickson*, 2007 UT 76, ¶ 11; 171 P.3d 423, 425 (*Swenson II*). *Swenson II* interpreted a provision in a restrictive covenant, which is fairly similar to that of the Declaration. The Utah Supreme Court held that the language allowed an amendment to the covenant only on the date in which the restrictions were automatically renewed, which occurred every ten years.

¹⁵ Another possibility is creating a business entity to serve as the successor owner of Silver Creek Estates.

¹⁶ It should be remembered, however, that zoning estoppel may only be invoked if there are "exceptional circumstances" which warrant estoppel. *Utah County v. Baxter*, 635 P.2d 61, 65.

The County has stated officially that it recognizes the uses listed in the Declaration as “vested rights.” There is evidence that County officials made this representation to its Planning Commission in 2001. Thus, the County’s official position is that the commercial uses listed in the Declaration are allowable. If a developer relied upon that statement, and incurred significant expenses because of that reliance, the County should be estopped from denying that the listed commercial uses are not allowed. Changes to the parcels within the subdivision would not impact an owner’s vested rights under the estoppel doctrine, because those rights arise because of a change in position due to reliance on the County’s representations, and would apply to any configuration of the affected property.

The expenses must be more than merely purchasing property. “[S]omething beyond mere ownership of the land is required before the doctrine of equitable estoppel will apply, and in most cases the doctrine will not apply absent exceptional circumstances.” *Stucker*, 870 P.2d at 290. Construction of commercial buildings and other related expenses may obligate the County to approve commercial uses, despite the current zoning.¹⁷ This obligation would arise because of the expense, and the County could not deny a use, nor could it excuse itself because of alleged technical noncompliance.¹⁸ Although the Declaration does not bind the County, it may nevertheless bind itself to the Declaration because of representations made by County officials.

The County argues that the Declaration should be treated in the same manner as a nonconforming use, and intimates that the Declaration has been abandoned by non-use. However, this argument should not apply, because the County has repeatedly committed to recognizing the uses in the Declaration. In other words, the County cannot consistently state that it recognizes the uses in the Declaration, while it simultaneously argues that the Declaration has been abandoned through non-use.¹⁹ If a developer incurs expenses in reliance of the County’s representation, estoppel applies, and the County cannot claim that a right to develop was lost through non-use.

Conclusion

The County may regulate land uses within Unit I, in the manner that it may regulate land uses in other areas. The Declaration does not bind the County to recognize any uses or commit to any land use plans. The County is obligated to follow its own ordinances, and County officials do not have authority to ignore or modify ordinances without action from the County Council. The

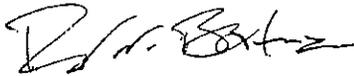
¹⁷ Mr. Conway reports that he constructed commercial buildings, but that the County discouraged potential buyers. One of the proposed uses for his buildings was a bicycle shop. Retail shops are specifically listed in the Declaration as a permitted use.

¹⁸ For example, the County’s position is that any alteration in the subdivision plat (such as combining lots) negates the Declaration. (This policy was not adopted by the County Council, but was imposed administratively). However, if a developer relied upon the County’s representation, and incurred significant expenses, the County is bound to its representations, despite any alteration to the plat.

¹⁹ In addition, a nonconforming use theory does not logically apply, because nonconforming use status arises when a use is established while allowed, but has subsequently become illegal due to a zoning change. In Silver Creek Estates, very few uses have been established, so the nonconforming use analysis would not apply. The Declaration itself is not a “land use,” but a list of uses permitted by the original land owners. Nonconforming use analysis would not apply to potential uses, but only to those that have been established.

County may adopt an ordinance which incorporates the language of the Declaration, but otherwise, the County must obey its own zoning regulations.

Although the Declaration is not binding, the County may nevertheless be bound if property owners make substantial changes or incur expenses in reliance on the County's representations that the uses listed in the Declaration are allowed. The County may be bound under the doctrine of equitable estoppel, but only if property owners have made substantial changes. Mere ownership of property is not sufficient, even if the owner plans or anticipates commercial development.



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.

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July 2, 2012

DESCRIPTION OF VESTED RIGHTS APPLICATION

This Description of Vested Rights Application introduces us as legal counsel for George “Skip” Mount (“Mr. Mount”) and is submitted to provide a description of Mr. Mount’s Vested Rights Determination Application.

Relevant Procedural Facts

Mr. Mount is the owner of four contiguous lots (Parcel #s: *SL-I-2-42-43*; *SL-I-2-44*; *SL-I-2-45*) (“Property”) located in the Silver Creek Estates subdivision in Summit County, Utah. In early 2012, Mr. Mount received an undated letter from the Community Development Director (“Undated Letter”), Don B. Sargent (“Mr. Sargent”), stating that “...effective immediately, Summit County will be enforcing the existing zoning on your [P]roperty which is currently zoned Rural Residential.” This letter was sent despite the fact that the Property has been considered zoned Commercial for the past 47 years (at least). The Undated Letter was allegedly prompted by the December 6, 2011 Advisory Opinion from the Office of Property Rights Ombudsman (“Advisory Opinion”). *See Advisory Opinion dated December 6, 2011*, attached hereto as Exhibit A.

On or about February 14, 2012 Mr. Mount sent, by and through his legal counsel, a letter to Mr. Sargent regarding the contents of the Undated Letter. Therein, Mr. Mount requested that Mr. Sargent immediately retract his letter since Summit County is estopped from denying commercial use of his Property. *See Letter dated February 14, 2012*, attached hereto as Exhibit B. Mr. Sargent and/ or Summit County failed to immediately respond to the February 14th letter. Consequently, on March 1, 2012, Mr. Mount delivered a follow up letter requesting a response on or before March 9, 2012. *See Letter dated March 1, 2012*, attached hereto as Exhibit C.

On March 5, 2012, Mr. Sargent sent a letter to Mr. Mount’s counsel stating that “I have reviewed the arguments made [in your letter dated February 14, 2012]...I am unable to agree with your position or accede to your request...[t]herefore, the policy articulated in the letter sent to all property owners of Silver Creek ‘I’ in January 2012 remains unchanged.” *See Letter dated March 5, 2012*, attached hereto as Exhibit D.

On March 15, 2012 Mr. Mount filed an appeal (“Original Appeal”) with the Community Development Department pursuant to Section 10-9-22 of the Snyderville Basin Development Code. The Community Development Department refused to process the Original Appeal, and therefore, Mr. Mount filed a second appeal (“Second Appeal”) on March 30, 2012 requesting County Council review of the rejection of the Original Appeal.

The Community Development Department and Mr. Mount’s counsel corresponded further regarding the appeals. The Community Development Department refused to process the appeals and insisted that Mr. Mount file a Vested Rights Determination Application claiming that it is the only mechanism to determine whether the Property is for commercial use. *See Email Correspondence from Don Sargent dated June 8, 2012*, attached hereto as Exhibit F; *see also Advisory Opinion from the Office of the Property Rights Ombudsman dated April 30, 2012 (“Second Advisory Opinion”)*, attached hereto as Exhibit F. Pursuant to the Community Development Director’s request, Mr. Mount now submits this Vested Rights Determination Application Form and Description.

Brief Description of Vested Rights Application

As set forth in the February 14, 2012 letter, Mr. Mount believes that Mr. Sargent’s Undated Letter is a misreading of the First Advisory Opinion. *See Exhibit A*. The Advisory Opinion clearly states that in certain instances the County may be estopped from denying a property owner or developer from using their property in the manner proscribed under the Declaration of Reservations and Protective Covenants, Silver Creek Estates Unit “I” (February 25, 1965) (“CC&Rs”). *See CC&Rs*, attached hereto as Exhibit G.

For years, Summit County has consistently acknowledged and recognized the uses listed in the CC&Rs as “vested rights.” *See Summit County’s Letter to the Ombudsman’s Office dated September 15, 2011*, attached hereto as Exhibit H. Indeed, it is well documented on several occasions that the County has consistently taken the position that the Silver Creek Estates “I” plat (and the designated uses therein) is vested. *See Snyderville Basin Planning Commission Work Session Notes dated October 23, 2001*, attached hereto as Exhibit I; *See also Planning Commission Work Session Meeting on July 8, 2003 and Board of Adjustment Hearing on August 28, 2003*, attached hereto as Exhibit J. Moreover, Mr. Mount was informed by County representatives on multiple occasions that the Property was designated for Commercial use.

Mr. Mount owned the Property beginning in 1995. Since then he has incurred significant expenses (over \$25,000.00) to develop the Property for commercial use. These expenses have included obtaining grading and excavation permits (approved by the County), engineering reports, installed a culvert across the Property, marketing fees, and other expenses directly related to the development of the commercial property. *See Various Documents and Permits*, attached hereto as Exhibit K. Moreover, the property has consistently been assessed (taxed) as Commercial property over the years. *See Tax Assessments*, attached hereto as Exhibit L. Simply

put, Mr. Mount has made substantial changes to the Property and incurred significant expenses in reliance on the repeated representations that it was designated as Commercial.¹

Accordingly, and consistent with the Advisory Opinion, the County is estopped from denying the commercial use of Mr. Mount's Property. The Property is currently listed for sale and offers have been made to purchase it as well as additional inquiries from a commercial broker to purchase it within days of this letter. Indeed, there are at least two buyers interested in purchasing the Property for commercial use. The contents of Mr. Sargent's Undated Letter and the policy articulated therein adversely affect Mr. Mount and are directly impairing his ability to sell it. Moreover, the County's failure to recognize the Property as commercial has caused Mr. Mount to reduce the price of the Property over \$500,000.00 on the advice of his realtor, in order to be competitive. This is damage to Mr. Mount which is actionable.

Mr. Mount respectfully requests that the Summit County Council review this Vested Rights Determination Application and provide Mr. Mount with an opportunity to be heard before the Council and to offer any additional evidence as the Council may deem appropriate.

Very truly yours,
TESCH LAW OFFICES, P.C.



Joseph E. Tesch
Stephanie K. Matsumura

cc: Client
Jami Brackin (via e-mail)
Bob Jasper

¹ Mr. Mount is fully ready and willing to provide any additional or specific evidence or documentation as the Council may deem as appropriate.

January 29, 2013

Don Sargent, Director
Community Development Department
P.O. Box 128
Coalville, UT 84107

RE: Silver Creek Parcels
SL I-2, 42, 43, 44, 45
Your Letter 1-7-2013

Dear Mr. Sargent:

Since you have previously agreed that lot #45 is commercial, please provide a letter reinstating that use (see enclosed).

As regards the other referenced above lots, you are misinterpreting the Ombudsman's Advisory opinion relating to my situation. You are basing your decision on the advisory opinion relating to H. J. Silver Creek, L.P. These are different opinions for two different situations. The State of Utah would not endorse a law where zoning use laws can be changed at any time by the county, at their discretion, no matter how much you have spent to improve, advertise, market, etc. the property. Also, the county has taken the position that having paid commercial taxes on the property is irrelevant. These expenses occurred while the county stated verbally and in writing that the land was zoned commercial!!

According to your position, Summit County has unbelievable control of power and authority and can change zoning at any time no matter how much was spent and how long they have owned the property. By the county citing Utah law, there are no guaranteed zoning laws in the state. Any individual or corporation purchasing vacant commercial land in the State of Utah would have no guarantee of future building rights. This would be tremendously wrong and an injustice regarding all property rights in Summit County as well as the entire State of Utah.

Sincerely,



George Mount
P.O. Box 3802
Park City, UT 84060

cc: Bob Jasper, Summit County

cc: Gary Herbert, Governor
Utah State Capital
350 North State Street
Salt Lake City, UT 84114





*Don B Sargent, Director
Community Development Department
(435) 336-3125
dsargent@co.summit.ut.us*

February 19, 2013

Mr. George Mount
P.O. Box 3802
Park City, Utah 84060

RE: George Mount, Unit I Parcels: SL-I-2, 42, 43, 44, 45, Silver Creek

Dear Mr. Mount,

Thank you for your letter dated January 29, 2013. Our previous decisions and correspondence still stand as an official determination regarding the above referenced properties.

You currently have a vested right application on file with our office, so I know you are aware of that process. Please be assured that we are fully aware of the provisions of the Utah Code and always model our actions to conform to those requirements.

If you have any further questions, please contact me.

Sincerely,

Don B Sargent, AICP
Community Development Director

cc: Vested Rights Application File



January 29, 2013

George Mount
P.O. Box 3802
Park City, Utah 84060

Dear George,

Don Sargent, Community Development Director, asked that I put a previous email I wrote to Stephanie Matsumura with Tesch Law Offices in a letter format to you. The email is dated July 30, 2012 and is in response to an inquiry regarding the status of the vested rights determination application that was submitted on your behalf.

Don Sargent determined that because Parcel SL-I-2-45 received a grading permit in 2008 and based on the Ombudsman Opinion for HJ Silver Creek LP, Parcel SL-I-2-45 is subject to the approved Silver Creek Unit I subdivision plat and associated CCR's. However, based on the information submitted with the vested rights determination request, it doesn't appear that any permits have been issued for the remaining parcels. The decision of the Community Development Director is that the remaining parcels are subject to a vested rights determination. The process for such determination requires the County Council to review the request and decide whether or not it warrants further consideration. If it does, the Planning Commission reviews the request and makes a recommendation back to the Council. The Council then conducts a public hearing before making their final decision.

One other item I want you to be aware of is that Staff is proposing to rezone a portion of Silver Creek Unit I to a community commercial zone. We recognize that it probably makes sense to allow commercial uses in this area due to existing uses, topography, and access to and from Hwy 40 and Interstate 80. The rezone would include Mr. Mount's property and Staff is anticipating moving forward with a work session regarding the rezone at the end of August. Staff's research indicates that the Community Commercial zone allows most uses that are described in the CRR's for Unit I.

I'm happy to move forward with the vested rights determination, but I do feel that it might make more sense though to wait until an initial work session is held on the rezone in order to see if the Planning Commission is even interested in entertaining the notion. If they are, I think it would be a win-win for all parties involved.

If you'd like to discuss this in more detail, please feel free to contact me at your earliest convenience.

Sincerely,


Jennifer Strader
County Planner

Don Sargent

From: Joe Tesch <joet@teschlaw.com>
Sent: Thursday, June 14, 2012 2:32 PM
To: Don Sargent
Cc: Stephanie Matsumura
Subject: Skip Mount's Property in Silver Creek

Sensitivity: Confidential

Don,
This email is simply confirmation of our telephone conversation on 6/13. At that time, I inquired of you as to why Summit County was requesting that we process the commercial zone petition as a vested rights application rather than as an appeal since both of the Ombudsman opinions note that this is not an issue of vesting, but an issue of equitable estoppel. Your explanation is that the vested rights process is the only process available to Planning Staff to make these decisions and that the Planning Staff is using the Vested Rights Determination process for that reason. You further agreed to apply the \$400 appeal fee that we have already paid to the vested rights process so that we need only pay only the remaining \$100 to total \$500 for the vested rights process.

Based on the foregoing, we will use that process.

Thank you for your assistance.

Joe

cc: Skip Mount (via mail)

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Bradley R. Cahoon (5925)
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15 West South Temple, Suite 1200
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(801) 257-1900
bcahoon@swlaw.com



Attorneys for HJ Silver Creek, L.P.

BEFORE SUMMIT COUNTY, UTAH

IN THE MATTER OF HJ SILVER
CREEK, L.P. SILVER CREEK
ESTATES, UNIT I, BLOCK 8, LOTS
3-8

**VESTED RIGHTS DETERMINATION
APPLICATION**

Introduction

HJ Silver Creek, L.P. (**HJ**), through its legal counsel, submits this application and respectfully requests that the County make the determination that HJ's property comprising Lots 3-8 in Block 8 of the Silver Creek Estates, Unit I Subdivision Plat (**Plat**) (**Exhibit A**) has vested rights. This application is in response to emails received January 11, 2012 and January 17, 2012, and an undated letter (**Exhibit B**) received January 9, 2012, all from Don B. Sargent, Summit County Community Development Director, in which he states that the County will henceforth "be enforcing the existing zoning" of Rural Residential on HJ's property. This "decision" (Sargent 11Jan2012 email) or "notice" (Sargent 17Jan2012 email) is in fact contrary to the Silver Creek Estates Plat signed, approved and recorded on March 3, 1965 by Summit County together with the Declaration of Reservations and Protective Covenants (**CC&Rs**) (**Exhibit C**). Both the Plat and the CC&Rs (which reference the county-approved Plat throughout the instrument) designated that HJ's property is permitted for commercial uses. (*See* Plat Notes, Block 8, Lots 3-8.) HJ has vested rights to develop its property for commercial uses in accordance with the Plat and CC&Rs, subject to architectural committee review but without any discretionary approvals by the County.

Background

In September 2005, based on the permitted commercial uses designated on the 1965 Plat and corresponding CC&Rs as vested rights and on confirmation from and representations made by official representatives of Summit County, HJ, a commercial developer, entered into escrow to purchase the property. Thereafter, during a substantial due diligence escrow period, HJ did extensive research and had several meetings with County officials in which they assured HJ and made representations to HJ that HJ could develop the property for commercial uses, and with what conditions. Prior to and after acquiring the property HJ incurred significant expenses on planning, environmental, geotechnical, and septic design studies and reports, as well as expenses in marketing the project to potential commercial tenants and users. HJ incurred these considerable expenses in reliance on the County's assurances to HJ that the property had vested

rights to develop commercial uses and to pave the way for that commercial development on the property.

In August 2005, prior to HJ's opening escrow, HJ was provided with a copy of a report, dated July 8, 2003 (**Exhibit D**) to the Summit County Planning Commission by Summit County Deputy Attorney Jami Brackin, wherein she stated "that the zoning that has been placed according to the Declaration of Covenants and the zoning that is a part of the plat map, is in fact the zoning that needs to be used. And while it is in conflict with what our current land use plan has and our current development code has, this actually does take precedence." Ms. Brackin's letter of September 15, 2011 (**Exhibit E**) to the Ombudsman admits that the County treated the property as "grandfathered non-conforming uses, including height and set back requirements in the declarations (rather than the adopted County standard)." Ms. Brackin's opinion reflects Deputy County Attorney David Thomas' opinion rendered in October 2001 (**Exhibit F**) that "since development has occurred in the area over the years and been somewhat sporadic, the entire plat is vested, and the designated uses are also vested with the recorded plat." The County's position that the Silver Creek Plat lots hold vested rights to develop in accordance with the Plat and CC&Rs without any other discretionary approvals is reflected in a letter (**Exhibit G**) from the Planning Department in 2005 to a Block 7 lot owner.

In addition, the Snyderville Basin General Plan (**Exhibit H**, p.73) acknowledges that Silver Creek has "previously approved commercial areas." Likewise, regarding the rural residential density, the Snyderville Basin Development Code § 10-2-4 (**Exhibit I**) excludes already platted property: "In areas that are not already platted, or otherwise entitled, the Base Density shall be 1 unit/20 acres on Developable Lands and 1 unit/40 acres on Sensitive Lands." These exceptions are consistent with the Thomas and Brackin opinions, representations by the County to HJ and the extensive development that the County has allowed in Silver Creek confirming that the area enjoys vested rights to develop in accordance with the Plat and CC&Rs.

In an August 2005 meeting, Nora Shepard, Summit County Planning Director, explained to HJ that the property had vested rights to develop commercial uses and that no discretionary County approval process was required for a project that met the requirements of the Plat and CC&Rs and had been reviewed by the Silver Creek Estates Architectural Committee. In an August 2006 meeting, HJ presented to the Planning Department a site plan (**Exhibit J**) depicting five commercial building pads, among other details. At this meeting the County once again confirmed to HJ that the property held vested rights to develop commercial uses without any discretionary approvals by the County. (**Exhibit K**.) After much more planning and study of the property for commercial development, and in reliance on the representations and assurances by the County, HJ paid \$1.3MM and purchased the property on May 17, 2007.

Subsequent to the purchase, and in further reliance on the County's representations that HJ held vested rights to develop commercial uses, HJ undertook a very lengthy and costly process with the U.S. Army Corps of Engineers that led to HJ's investment in infrastructure improvements that the County permitted for HJ. HJ did substantial work and invested upwards of \$300,000 in the effort toward completing its planned commercial development. The work comprised replacing a street culvert and installing a large pipeline, trenches, monitoring wells and infrastructure that is necessary for HJ to develop commercial uses on its property without the impediment of the time spent on the Army Corps issues, HJ would have a commercial development operating on the property at this time. HJ would have never invested in this major

effort and substantial additional expense without the County's assurances that HJ had vested permitted uses to develop commercial uses on its property.

The County's permitting of HJ's infrastructure improvements is significant in confirming that HJ holds vested rights and estoppel bars the County from denying HJ's vested rights. After HJ applied for a grading permit, the County Planning Department filed comments (**Exhibit L**) with the County Engineering Department voicing objections to the issuance of the permit. One objection was that HJ needed a permit from the Army Corps. The Army Corps later determined that it did not need to issue a permit for HJ's project (**Exhibit M**). The other objection was that HJ had not filed a development proposal or development application. County Engineer Derrick Radke confirmed that the Planning Department "believe[s] the project is contrary to the Development Code and they will not sign-off on the Permit. Legal Staff has determined that they do not have a 'Legal Basis' to not approve the Permit, so I will not require their signature for Permit approval." (**Exhibit N**.)

The County's issuance of the grading permit confirmed that HJ's project satisfied the County's policy (**Exhibit O**) for issuing grading permits: (i) Planning Commission and County Council had approved commercial development for the property; (ii) a final plat had been recorded permitting commercial use of the property; (iii) neither a development agreement nor development improvement agreement is needed for HJ's project; and (iv) no other discretionary County approval is needed to develop the property for commercial uses consistent with the Plat and CC&Rs. In other words, HJ has vested rights to develop commercial uses in accordance with the County-approved Plat and CC&Rs without any other County discretionary approvals.

HJ Has Vested Rights

The County always has considered HJ's property and all other property within the Silver Creek Plat to have vested rights to develop the permitted uses set forth on the County-approved Plat and in CC&Rs without any other discretionary approvals. HJ's property is distinguishable from the property analyzed in the advisory opinion by the Utah Property Rights Ombudsman (**Exhibit P**). The County is estopped from enforcing rural residential zoning on, or considering any rezone of, HJ's property. The Ombudsman opinion states that the County is subject to estoppel:

If a property owner incurs significant expense, or makes substantial changes based on the County's representation that a use may be allowed, the County cannot deny that use. Mere ownership of property is not a significant expense or a substantial change in position. However, improvements to property, if based on reasonable reliance of representations that use may be allowed, may bind the County to accept that use.

As acknowledged in the Ombudsman opinion, property owners acting in reliance on the County's representations invokes principles of equitable and zoning estoppel. According to the law set forth in the Ombudsman opinion, a local government is estopped from enforcing its zoning ordinances if it has acted in a way upon which a developer could rely in good faith to make substantial changes in its position or incur extensive expenses. *Utah County v. Young*, 615 P.2d 1265, 1267 (Utah 1980). Estoppel recognizes a property owner's rights and investment interests if the circumstances call for fairness. Enforcement of zoning regulations is barred if enforcement would be inconsistent with basic principles of justice and equity. *Id.* The Utah

Supreme Court has stated that perhaps the most important consideration is whether “the landowner [met its] duty to inquire and confer with the local zoning authority regarding the uses of the property that would be permitted.” *Xanthos v. Board of Adjustment*, 685 P.2d 1032, 1037 (Utah 1984).

Estoppel bars the County from denying that HJ has vested rights to develop the permitted commercial uses in accordance with the County-approved Plat and CC&Rs without any other discretionary approvals. HJ’s property improvements and reliance on the County’s representations is exactly what the Ombudsman had in mind. HJ’s reliance expenses are far beyond its \$1.3MM purchase of the property by some \$300,000. The County must allow HJ to develop its property for commercial use as the County represented to HJ because HJ has reasonably relied on the County’s representations in not only investing the \$1.3MM in purchasing the property but also expending more than \$300,000 since its purchase until the time that Mr. Sargent sent HJ his letters.

HJ met its duty prior to its purchase to inquire and confer with the County regarding the commercial use that would be permitted on the property. HJ relied on clear actions and representations by the County including the County legal department’s opinion, the series of meetings with County officials, and the signed, approved and recorded Plat, all of which concluded that the property holds vested rights to develop commercial uses.

Significantly, HJ purchased the property and made substantial investments toward development of the property above and beyond the purchase price in reliance on assurances from the County that the property was permitted for commercial development. Rather than withholding a grading permit from HJ, the County issued the permit after its legal department corrected the Planning Department that HJ held vested rights to develop its property for commercial uses. HJ reasonably relied on the County’s actions and approvals and proceeded to complete its project that consisted of replacing a street culvert and installing a large pipeline, trenches, monitoring wells and infrastructure that is necessary for HJ to develop commercial uses on its property.

The County is estopped from denying HJ’s vested rights to proceed with developing its property for commercial uses in accordance with the Plat and CC&Rs without any other discretionary approvals. Any contrary decision regarding the use of the property is clearly inconsistent with basic principles of equity and justice. Because HJ incurred substantial expenses in reliance on the County’s representations to HJ that the property holds vested rights to develop commercial uses, HJ’s right to develop commercial use on its property is vested and cannot be rezoned or subject to the rural residential zoning.

Further, the Ombudsman office has advised that they were not provided the Plat and were therefore unaware of the permitted use designations on the Plat and that the County was party to the Plat and signed, approved and recorded the Plat in March 1965. This is critical because the Ombudsman’s analysis was grounded in the fact that the County was not a party to the CC&Rs. In fact, the County processed and approved the Plat complete with the zoning designations, and was a party to the Plat, confirming its approval of the same by affixing the County’s signature. The County was a party to this process. The County-approved Plat designating HJ’s property with permitted commercial uses, coupled with the County’s policy of treating the Platted lots as vested uses after the County had downzoned Silver Creek Estates to rural residential down-zoning, the County’s pre-purchase representations made to HJ, and HJ’s reliance thereon in

making valuable improvements on its property, renders the Plat, CC&Rs, and non-discretionary approval process enforceable and cannot be disregarded by the County.

Finally, HJ's property is an elongated property stretching east and west bounded by a gas service station to the west, commercial use to the north, and the busy I-80 interstate to the south. Given the intensity of the surrounding commercial land uses that have developed under the platted permitted use designations, it is inappropriate to be considering HJ's property for anything other than commercial use as designated in the recorded Plat. Considering HJ's property to be zoned rural residential use (which provides for one residential unit per 20 acres) is completely inappropriate and unjust.

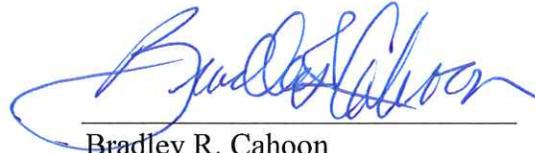
Conclusion

For all of the foregoing reasons, the County is estopped from enforcing rural residential zoning on, or considering any rezone of, HJ's property. HJ requests a determination by the County that HJ holds vested rights to develop its property for commercial uses consistent with the Plat and CC&Rs, subject to review by the Silver Creek Estates Architectural Committee but without any other discretionary approvals by the County.

HJ has filed an application with the Ombudsman requesting an advisory opinion that HJ holds vested rights as requested in this Vested Rights Determination Application to Summit County. The County is advised that should HJ prevail in district court in a ruling that is consistent with the Ombudsman's opinion, the County will be required to pay HJ's attorney fees and costs incurred from the date of the Ombudsman's opinion. *See* Utah Code Ann. § 13-43-206.

DATED this 27th day of January, 2012.

SNELL & WILMER L.L.P.



Bradley R. Cahoon

Attorneys for HJ Silver Creek, L.P.



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: HJ Silver Creek, LP
Local Government Entity: Summit County
Applicant for the Land Use Approval: HJ Silver Creek, LP
Type of Property: Subdivision
Date of this Advisory Opinion: April 30, 2012
Opinion Authored By: Elliot R. Lawrence
Office of the Property Rights Ombudsman

Issues

Do land uses designated on a subdivision plat grant vested rights to lot owners?

Summary of Advisory Opinion

Vested rights in land use or development arise because a property owner submitted an application that complies with existing zoning ordinances. Without an application for land use approval, an owner cannot claim vested rights in the continued existence of any ordinance. All property is subject to zoning regulation, and approval of a subdivision plat does not remove or exempt that property from local government control.

A subdivision plat is not a zoning ordinance, and cannot grant vested rights in any particular use, even if that use is listed on the plat. Principles of sound governance, comprehensive planning, and public involvement dictate that plat language should not be elevated to the level of a zoning ordinance. Uses listed on a plat should be considered advisory only, and not binding on a local government, except as necessary to preserve established uses.

A property owner may invoke the doctrine of zoning estoppel when a local government has made a representation which the owner relies upon in good faith to make a substantial change in position. While mere ownership or purchase of property is not sufficient to invoke zoning estoppel, a substantial purchase price coupled with a significant investment for improvements

dedicated to construction is sufficient. Based on the information submitted for this Opinion, HJ Silver Creek has incurred extensive expenses to purchase and improve its property, relying upon representations made by the County that commercial development would be permissible. Thus, HJ Silver Creek may estop the County from denying that commercial development is allowed on the property.

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. 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 HJ Silver Creek, LP on January 31, 2012. A copy of that request was sent via certified mail to Bob Jasper, Summit County Manager, at 60 North Main, Coalville, Utah 84017.

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 Bradley R. Cahoon, attorney for HJ Silver Creek, LP received by the Office of the Property Rights Ombudsman, January 27, 2012.
2. Response submitted on behalf of Summit County, by David L. Thomas, Chief Deputy County Attorney, received February 14, 2012.
3. Reply letter from Bradley R. Cahoon, received February 23, 2012.
4. A Summit County "Appeal of a Decision Application Form," with attachments, prepared by HJ Silver Creek, dated January 12, 2012. (It is not clear whether this Appeal Form was submitted to the County).

Background

HJ Silver Creek, LP owns property in Unit I of “Silver Creek Estates,” a subdivision located at Silver Creek Junction in Summit County.¹ The subdivision was created in 1965, and was originally intended to be a type of planned development, mixing residential, commercial and light industrial uses. When the subdivision was created, the County did not have a comprehensive zoning ordinance, although it approved the subdivision plat. The plat for Unit I includes the following language:

The following uses shall be permitted for designate [sic] lots.

Light Industry:	Block 1, Lots 1 thru 14, incl. (inclusive) & Parcel A
Commercial:	Block 2, Lots 1 and 30 thru 45 incl. Block 4, Lots 1 thru 16 incl. Block 7, Lots 1 thru 14 Block 8, Lots 1 thru 8 All of Block 9
Multiple Dwellings:	Block 2, Lots 2 thru 29 Block 5, Lots 1 thru 9 Block 6, Lots 1 thru 4
Apartments and Professional:	Block 3, Lots 1 thru 7 incl.

This language was evidently on the original plat, which was approved and signed by the Summit County Commission in February, 1965. Along with the subdivision plat, the original property owners created a “Declaration of Reservations and Protective Covenants” for Unit I (“Declaration”), which stated regulations for land uses.² This Declaration is essentially covenants, conditions, and restrictions (“CC&Rs”) for Unit I, and it contains details governing development of that portion of the subdivision. The County was not a party to the Declaration, and did not approve its language.³

In 1977, several years after the Silver Creek Estates Plat was approved and recorded, Summit County adopted a comprehensive zoning ordinance. Under the County’s current zoning, Silver Creek Junction is zoned “rural residential,” which prohibits most commercial and industrial uses.

¹ Silver Creek Junction is at the intersection of Interstate 80 and U.S. Highway 40. This Opinion only concerns Unit I (as in the letter “I”) of the Silver Creek Estates Subdivision, which is located immediately north of Interstate 80. Other units within the subdivision are not affected by this Opinion.

² Declaration of Reservations and Protective Covenants, Silver Creek Estates Unit “I” (25 February 1965) (*hereafter* “Declaration.”)

³ The owner of the property in 1965 was Silver Creek Ranch Corporation, which filed the plat and the Declaration. That corporation was dissolved in 1980, and no materials have been submitted indicating if there was a successor corporation or owner appointed. It appears that all of the lots in Unit I have been sold. A special service district maintains roads in the area.

However, until recently the County stated that it would recognize uses specifically listed in the Declaration, but no others, even if they were similar to those which were listed.⁴

In the fall of 2011, the Office of the Property Rights Ombudsman was approached by two owners of property in Unit I. They both felt that the County was not letting them develop their property in a profitable manner, despite representations from the County that commercial uses were possible. One owner had not been able to build on the four lots he owned, and stated that potential buyers were discouraged by information obtained from the County. The other owner had constructed buildings suitable for commercial uses, but also stated that potential buyers were not willing to invest because the zoning regulation for the area was unsettled.⁵

One of the property owners requested an Advisory Opinion, to evaluate the status of the Declaration, and the County's policy that the Declaration would be recognized as creating some type of "grandfathered" uses.⁶ The Office of the Property Rights Ombudsman issued an Advisory Opinion on December 6, 2011, which stated that the County is not bound by the Declaration, because it was a private contract amongst the lot owners. However, the County may be obligated to recognize uses under the doctrine of zoning estoppel.⁷ The Opinion did not evaluate the question of whether the uses listed on the subdivision plat itself granted any vested rights to property owners.⁸ Because of that Opinion, the County discontinued its policy of recognizing uses listed in the Declaration.

HJ Silver Creek, LP purchased property in Unit I in September 2005. HJ Silver Creek states that it met with County officials prior to completing the purchase, and that the County assured them that commercial development was possible on the property they were purchasing.⁹ The company completed the purchase, and proceeded to prepare engineering studies, planning, environmental and geotechnical analysis, and facility design.

HJ Silver Creek further states that it sought a permit from the US Army Corps of Engineers, because development of the property would affect water resources or wetlands. The Corps of Engineers required installation of pipelines, trenches, monitoring wells, and a street culvert. HJ Silver Creek states that the cost of these improvements alone exceeded \$300,000.00. The County acknowledges that in 2009, it granted an excavation or grading permit to HJ Silver Creek to install the improvements on the property.

⁴ The County analogized its policy as recognizing the uses listed in the Declaration as "grandfathered" or nonconforming. If any of the lots were changed, including consolidation or amendments to lot boundaries, the "grandfathered" rights were lost, and the property had to comply with the rural residential zoning regulations.

⁵ Both owners accused the County of deliberately discouraging development on their properties.

⁶ The Opinion was requested by George Mount, who owned four lots in Unit I. Jim Conway, the other owner, also provided information for the Opinion.

⁷ See Mount Advisory Opinion, issued December 6, 2011 (The Office of the Property Rights Ombudsman). Under the zoning estoppel doctrine, if a property owner makes a substantial change in position because of representations made by a local government, the government cannot prevent the development.

⁸ Copies of the Silver Creek Estates Unit I Plat were submitted to the Office for the Mount Advisory Opinion, but the Request for Advisory Opinion did not request evaluation of whether the uses listed on the plat granted vested rights to the property owners.

⁹ HJ Silver Creek states that it received confirmation that commercial development was permitted from both the County Attorney's Office and the County's Planning Director.

HJ Silver Creek requested this Opinion to address whether they would be entitled to claim vested rights based on the uses listed on the original subdivision plat, and whether they could claim the right to commercial development based on a zoning estoppel theory.

Analysis

I. Vested Rights are Established When an Owner Applies for Land Use Approval

A vested right does not exist until a property owner submits an application seeking approval of a particular land use. A property owner “is entitled to a building permit . . . if his proposed development meets the zoning requirements in existence at the time of his application.” *Western Land Equities v. City of Logan*, 617 P.2d 388, 396 (Utah 1980). The Utah Legislature codified that rule at § 17-27a-508 of the Utah Code:

[A]n applicant is entitled to approval of a land use application if the application conforms to the requirements of the county's land use maps, zoning map, and applicable land use ordinance in effect when a complete application is submitted and all application fees have been paid, unless:

- (i) the land use authority, on the record, finds that a compelling, countervailing public interest would be jeopardized by approving the application; or
- (ii) in the manner provided by local ordinance and before the application is submitted, the county has formally initiated proceedings to amend its ordinances in a manner that would prohibit approval of the application as submitted.

UTAH CODE ANN. § 17-27a-508(1)(a).

In a case evaluating a vested rights claim, the Utah Court of Appeals explained that an approved subdivision plat grants some rights, although development would still be subject to local zoning regulation:

Some courts have recognized that the filing of a subdivision plat gives a vested right to individual lot owners as to the lots' size Individual lot owners within an approved subdivision, however, generally have no vested right to build under a given zoning ordinance until the municipality has issued a building permit for that specific lot or the lot owner has incurred substantial expense in reliance on the current zoning ordinance.

Stucker v. Summit County, 870 P.2d 283, 288 (Utah Ct. App. 1994).¹⁰ In other words, a subdivision plat establishes the size and configuration of lots, and the owner of a lot may rely on

¹⁰ Despite the language in *Stucker* that a vested right does not arise until a building permit is issued, the rule from *Western Land Equities* (and in § 17-27a-508) states that a property owner may claim vested rights from the date a complete application is submitted. “[T]he date of application . . . fixes the applicable zoning laws.” *Western Land Equities*, 617 P.2d at 391.

that configuration.¹¹ A plat, however, does not govern development aspects not shown, such as setback, building height, landscaping, etc. Those requirements are found in a locality's zoning and development ordinances, which may be changed by ordinance amendments.

A similar approach was adopted by the Utah Supreme Court in *Wood v. North Salt Lake*, 15 Utah 2d 245, 390 P.2d 858 (1964). In *Wood*, a city approved a subdivision plat with 60-foot wide lots, which was the minimum width allowed under the city's zoning ordinances. The property owner installed water mains and sewer lines to serve the subdivision. A few years after the subdivision was approved the city amended its ordinances, and required lots to be 70 feet wide. The city denied a building permit to an owner of a 60-foot wide lot, because the lot was too narrow under the amended ordinance. The court held that "enforcement of the ordinance would be unfair, inequitable, discriminatory and inconsonant with realistic concepts of affinitive and privileged use of one's property." The ordinance in *Wood* only affected the width of the lots, and did not impact any uses.

Although the *Wood* opinion did not use the term "vested rights," the analysis would be the same under the *Western Land Equities* rule. The property owners in *Wood* applied for and received approval of a subdivision plat at a time when the city's ordinances allowed lots to be 60 feet wide. After approval, the city changed that ordinance so that lots could not be less than 70 feet wide. If the vested rights rule from *Western Land Equities* had been in effect, the property owners could have created 60-foot wide lots, because that width was permitted when the subdivision application was submitted. The change in the width requirement did not void the subdivision or make the lots illegal.¹² The city had to recognize the size and configuration of the lots which had been duly approved.

Creating a subdivision, however, does not grant a vested right to *use* property in any particular way. Such a right would arise when a property owner submitted an application for approval of an allowed use, such as an application for a building permit. The lots would be subject to zoning regulations such as setback and height restrictions even if the lots were created when those restrictions were different. Subdivided property also remains subject to zoning ordinances governing uses. If uses on the property were prohibited by a zoning ordinance amendment, an owner cannot claim a vested right to that use simply because the subdivision was approved before that amendment was adopted.¹³

To conclude, a property owner may claim vested rights by submitting a development application, according to the *Western Land Equities* rule.¹⁴ Otherwise, all property is subject to changes in

¹¹ A local government may approve an amendment to a subdivision plat. In essence, subdivision approval creates a new property description for a parcel. A subdivision may be defined by a "metes and bounds" description, or by reference to an approved subdivision plat. The Silver Creek Estates Plat created several lots which could be defined by reference to the plat.

¹² Lots created prior to a change in zoning ordinances could be considered as nonconforming or noncomplying.

¹³ If a use was established when it was permitted, the owner could continue it as a nonconforming use. *See* UTAH CODE ANN. § 17-27a-510

¹⁴ As has been discussed, a developer may invoke the zoning estoppel doctrine if a local government's representations induced a substantial change in position, and it would be inequitable to enforce the zoning ordinance against the developer.

local zoning regulations. The mere existence of a zoning ordinance does not confer a vested right upon any property owner. A subdivision creates a new property description, and an owner may rely upon the size and configuration of lots created by an approved subdivision. However, the mere act of approving a subdivision plat does not create vested rights in any property uses listed in a zoning ordinance.

II. Uses Stated on the Plat Do Not Grant Vested Rights.

The question posed for this Opinion does not concern lot configuration or description, but whether a list of uses included on a plat map grants vested rights for those uses. The appellants in *Stucker* sought an answer to that very question, but the Court of Appeals refused to address it, because it had not been raised before the trial court. *Stucker*, 870 P.2d at 286.¹⁵ Nevertheless, the analysis from *Stucker* provides helpful guidance.

A. A Subdivision Plat is Not a Zoning Ordinance

A subdivision plat is not a zoning ordinance, and uses listed on a plat do not automatically grant an owner the right to carry out those uses. A property owner cannot claim a vested right to any type of development until an application which complies with local zoning regulation is submitted. See *Stucker*, 870 P.2d at 288.¹⁶ This is the *Western Land Equities* rule. However, even if uses are listed on a subdivision plat, the property is still subject to zoning regulation by a local government. “Even final approval of a subdivision plot . . . does not place the lots beyond the authority of zoning changes.” *Stucker*, 870 P.2d at 288 (citations omitted).¹⁷

As has been discussed, the *Western Land Equities* vested rights rule has been codified into the Utah Code. “[A]n applicant is entitled to approval of a land use application if the application conforms to the requirements of the county’s land use maps, zoning map, and applicable land use ordinance[s]” UTAH CODE ANN. § 17-27a-508(1)(a). Under this law, vested rights are established when a development application complies with land use ordinances and maps. “‘Land use ordinance’ means a planning, zoning, development, or subdivision ordinance of the county, but does not include the general plan.” *Id.*, § 17-27a-103(28). A zoning map is “a map, adopted as part of a land use ordinance, that depicts land use zones, overlays, or districts.” *Id.*, § 17-27a-103(62).¹⁸

¹⁵ The factual situation evaluated in *Stucker* was markedly similar to the one addressed in this Opinion. The Stuckers purchased a lot in the “Highland Estates Subdivision,” which is also in Summit County. The subdivision was approved in 1964, and included a list of approved uses. The plat designated the Stucker’s lot as commercial property. County ordinances adopted after 1964 imposed new zoning restrictions on the property. The Stuckers failed to argue to the trial court that the uses listed on the 1964 plat granted them the right to pursue a commercial use on the property, so the Utah Court of Appeals declined to consider that argument on appeal.

¹⁶ The Utah Code also requires that all application fees be paid in order to establish vested rights. See UTAH CODE ANN. § 17-27a-508(1)(a).

¹⁷ See also *Western Land Equities*, 617 P.2d at 390. “[A]n owner of property holds it subject to zoning ordinances enacted pursuant to a state’s police power.”

¹⁸ The term “land use map” is not defined in the Utah Code.

A subdivision plat is not a “land use ordinance” or “zoning map.” A property owner may rely upon a local government’s ordinances which govern the size and configuration of lots, and claim the vested right to create a subdivision plat which complies with those ordinances. However, the plat itself is not an ordinance or map, and vested rights for land uses cannot derive from it.¹⁹ Although a local government would be obligated to recognize the size and configuration of parcels created by a valid subdivision process, they do not surrender the authority to amend zoning ordinances simply by approving a subdivision plat. This would, in effect, grant private property owners a share of the government’s regulatory power, which is forbidden.²⁰

Local governments may adopt zoning ordinances, following strict notice and public hearing requirements. UTAH CODE ANN. §§ 17-27a-501 to -502. Zoning ordinances may also be amended or changed, if the locality follows similar notice and procedural requirements established in the Utah Code. *Id.*, § 17-27a-503. Approving a subdivision plat does not satisfy these requirements. Consideration of proposed subdivision plats or amendments to existing plats do not need to follow the same notice and procedural requirements as ordinance adoption or amendment. Notice is required so that the public has ample opportunity to participate in the decision-making process.²¹ Elevating plat language to a level equal to a zoning ordinance would allow planning decisions to be made without providing the public with the same opportunities to participate.²²

B. The Subdivision Approval and Amendment Process Is Not a Substitute for Adopting and Amending Zoning Ordinances.

Because the process to approve or amend subdivision plats does not protect important public interests, it should not be used as a substitute for the process of adopting or amending zoning ordinances. The term “[s]ubdivision” means any land that is divided, resubdivided 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 either on the installment plan or upon any and all other plans, terms, and conditions.” UTAH CODE ANN. § 17-27a-103(56)(a). Thus, subdivision refers to land; specifically, the term refers to land that is being divided for possible sale or development. It is not a regulation of land use, but a means to facilitate land development by altering property descriptions. The subdivision process is not intended nor authorized to be a means of creating land use regulation.

¹⁹ This illustrates the distinction between an approved subdivision plat, and the vested right to create a plat. A property owner may apply to subdivide property, and if the proposed subdivision complies with the subdivision ordinances in place when the application is filed, the owner may claim the vested right to have the subdivision approved. Approval, however, only creates new boundary descriptions for the property, and does not confer the right to carry out any particular use. A vested right to a land use is created when a property owner applies for approval to carry out the use, as long as the application complies with the land use ordinances in place when the application is filed.

²⁰ See *Busche v. Salt Lake County*, 2001 UT App 111, ¶¶ 7-15 (Some discretionary approvals may be delegated to government officials, but legislative bodies may not delegate authority to adopt or amend ordinances).

²¹ See *Call v. City of West Jordan*, 727 P.2d 180, 183 (Utah 1986); *Hatch v. Boulder Town*, 2001 UT App 55, ¶ 12, 21 P.3d 245, 248-49.

²² In addition, the public would most likely not realize that approval of an individual subdivision would entail long-term decisions on planning land uses. The public would thus be deprived of the opportunity to fully participate in the community’s planning process that is guaranteed by the Utah Code.

It is not appropriate to treat uses listed on a plat as the equivalent of a zoning ordinance because a plat cannot have the same detail that is required of an ordinance. The Silver Creek Estates Plat demonstrates this problem. The plat merely assigns uses to the lots in Unit I, but contains no additional information about how those uses are to be regulated. Due process requires that regulatory language contain enough detail so that a person of common understanding would know what is required.²³ Simply assigning a use to a particular lot does not fulfill that obligation. A land use regulation, like any statute or ordinance, must contain enough information so that a land owner knows what can and cannot be done on the property. Designating a use on a subdivision plat does not provide the required specificity.²⁴

A conclusion that language approved on a subdivision plat is not the equivalent of a zoning ordinance is bolstered by the fact that a subdivision may only be amended when requested by the owner of property within that subdivision. The Utah Code provides that “[a] fee owner of land . . . in a subdivision . . . may file a petition . . . to have some or all of the plat vacated or amended.” UTAH CODE ANN. § 17-27a-608(1). Thus, the property owners control when plat amendments are considered, not the local government or the general public.

If suggested land uses on a plat are elevated to the level of zoning ordinances, the listed uses could only be changed if a property owner files a petition to amend the plat.²⁵ This would effectively give the property owners veto authority over any changes to the listed uses. If the owners did not want the uses changed, they would simply not file a petition for an amendment, thus preventing the local government from exercising its statutory duty to enact and amend land use ordinances.²⁶ In other words, by approving a subdivision plat the local government would be giving away its authority to make changes to zoning regulations. Government entities may not delegate the authority to approve ordinance changes. *Busche v. Salt Lake County*, 2001 UT App 111, ¶¶ 7-15.

Finally, allowing land uses to be controlled by language on individual subdivision plats would theoretically mean that every subdivision plat becomes a zoning ordinance unto itself. It would be impossible to carry out general plans, or to make community improvements if every change required amendments to dozens of subdivision plats.²⁷ Local governments are charged to

²³ See e.g., *Roth v. U.S.*, 354 U.S. 476, 491 (1956). (“The Constitution does not require impossible standards; all that is required is that the language conveys sufficiently definite warning as to the [expected] conduct when measured by common understanding and practices.”)

²⁴ Furthermore, without the details adopted by ordinance, the uses listed on a plat become whatever the owner wants them to be, supplanting the authority of a local government.

²⁵ A petition to amend may be filed by any owner, as long as the property is within the plat. It is not necessary that all owners agree to the petition.

²⁶ It should also be noted that if land use regulation can be controlled by language on a subdivision plat, the plat amendment process would become an alternate means of zoning regulation, circumventing the requirements of the Utah Code. The importance of the public’s right to participation, preservation of property rights, promotion of sound planning, and stability of governmental processes further justifies a conclusion that uses listed on a plat cannot be considered the same as a zoning ordinance.

²⁷ It is recognized that such a scenario is unlikely. However, the issue is whether language adopted on an individual plat should be considered as the equivalent of a zoning ordinance. Because of the potential to undermine the legitimate governmental objectives of sound planning and public involvement, this Opinion concludes that plat language must not be equal to a land use ordinance.

preserve the “health, safety, and welfare, and promote the prosperity, improve the morals, peace, and good order, comfort, convenience and aesthetics of [the public]” UTAH CODE ANN. § 17-27a-103(1). Fragmenting zoning regulation into individual subdivision plats would undermine a local government’s authority to carry out those duties.

To conclude, uses listed on a subdivision plat cannot have the same effect nor grant the same rights as duly-enacted zoning ordinances. Even if uses are approved on a plat, they cannot supersede a local government’s authority over land uses. A subdivision plat does not place the property beyond the authority of zoning changes.²⁸ The interests of sound governance and protection of the public’s right to be informed and involved in the planning process dictate this conclusion. Moreover, the property owners may still develop their property, by working with the County to adopt new ordinances governing development of the Silver Creek Area.

C. The Use Designations on the Plat Should be Considered Advisory Only, and Do Not Regulate the Land Use of the Plat.

If the uses listed on the Silver Creek Estates Plat do not grant vested rights to the lot owners, what, if any, significance does the plat language have? Because a subdivision plat is still subject to land use regulation, this Opinion concludes that the language on the Silver Creek Estates Plat is advisory, and similar to language in a general plan.²⁹ The uses approved on the subdivision plat should not be completely ignored, and should help guide future regulation of the area.

It is recognized that this situation is extremely rare, and that when the Silver Creek Estates subdivision was created there was no comprehensive zoning ordinance in Summit County. The language on the plat was evidently an attempt to impose some control over development of that area. However, a comprehensive ordinance was adopted later, and the zoning for the area has been changed, pursuant to the County’s authority to regulate land use. The plans envisioned when the Silver Creek Estates Plat was adopted may be used to help guide future development, but the County should not be obligated to those plans, except as necessary to preserve established uses.

III. Zoning Estoppel May Be Invoked When A Property Owner Makes a Substantial Change in Position.

Based on the information submitted for this Opinion, HJ Silver Creek may estop the County from denying that commercial development is allowed. “The Utah Supreme Court has stated that equitable [or zoning] estoppel applies only when ‘the county has committed an act or omission upon which developer could rely on in good faith in making substantial changes in position or incurring extensive expenses.’” *Stucker*, 870 P.2d at 290 (*quoting Utah County v. Young*, 615 P.2d 1265, 1267 (Utah 1980)) (other alterations omitted). However, “something beyond mere ownership of the land is required before the doctrine . . . will apply, and in most cases the doctrine will not apply absent exceptional circumstances.” *Id.*

²⁸ *Stucker*, 870 P.2d at 288.

²⁹ Local governments are required to adopt a “comprehensive, long-range general plan.” UTAH CODE ANN. § 17-27a-401(1). A general plan is “an advisory guide for land use decisions.” *Id.*, § 17-27a-405(1).

The change in position must be motivated by an act or omission from a local government.

The action upon which the developer claims reliance must be of a clear, definite and affirmative nature. If the claim be based on an omission of the local zoning authority, omission means negligent or culpable omission where the party failing to act was under a duty to do so. Silence or inaction will not operate to work an estoppel.

Utah County v. Young, 615 P.2d at 1267-68. “Furthermore, to successfully [invoke] equitable estoppel . . . exceptional circumstances must be present . . .” *Utah County v. Baxter*, 635 P.2d 61, 65 (Utah 1981).³⁰

HJ Silver Creek states that it purchased the property after receiving assurances from County officials that commercial development was permissible. As has been stated, mere ownership of property, regardless of the property’s value, is insufficient reliance to invoke zoning estoppel. However, HJ Silver Creek further states that, as required by the US Army Corps of Engineers, it designed and installed new wells, culverts, and pipelines on the property in anticipation of the commercial development. In order to complete this work, HJ Silver Creek obtained an excavation or grading permit from the County, again showing that the County was aware of and agreeable to the development plans. The cost for the improvements exceeded \$300,000.00, and they were installed because the property owner was led to believe that commercial development was allowed.

Given these facts, it appears that HJ Silver Creek may estop Summit County from preventing the proposed commercial development. The County made affirmative representations to the owners, both prior to purchase, and by granting the excavation permit. HJ Silver Creek’s reliance on those representations was reasonable, especially given the fact that the owners are experienced and knowledgeable, and not likely to make substantial investments in property development without confidence that the development can be completed. Although ownership of the property alone cannot be grounds for estoppel, the investment made for the improvements, along with the substantial purchase price, constitute extensive expenses sufficient to invoke the doctrine. To conclude, HJ Silver Creek should be allowed to complete its commercial development.

Conclusion

A right to develop or use property does not vest until the property owner submits an application for land use approval which complies with the zoning ordinances then in place. Until an application is submitted, no rights vest. All property is subject to zoning regulation, and approval of a subdivision plat does not place the lots beyond a local government’s zoning authority. A subdivision creates new property descriptions, and establishes the size and configuration of property, but a plat does not grant the right to use property in any particular way.

Uses listed on subdivision plats do not grant vested rights. All property is subject to zoning regulation. A subdivision plat is not a zoning ordinance, and does not adequately promote the

³⁰ The court explained that “injunctive relief is available only when intervention of a court of equity is essential to protect against ‘irreparable injury.’ . . .” *Utah County v. Baxter*, 635 P.2d at 64.

public interests of community involvement and stability of the land use regulation process. Elevating plat language to the level of a zoning ordinance creates an unmanageable regulatory process, by allowing each subdivision to be a zoning law unto itself. Moreover, amendments to subdivision plats may only be initiated by lot owners, essentially giving them a veto over the duly constituted local authorities.

A local government may be estopped from enforcing a zoning ordinance if a property owner relies on representations made by the government, and incurs substantial expense because of that representation. There must be a significant change in position or extensive expense made because an owner relied upon a clear and definite representation from a local authority. Given the facts submitted for this Opinion, HJ Silver Creek may estop the County from denying that commercial development is allowed on the property



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.

MAILING CERTIFICATE

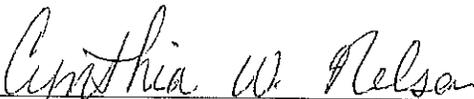
Section 13-43-206(10)(b) of the Utah Code requires delivery of the attached advisory opinion to the government entity involved in this matter in a manner that complies with Utah Code Ann. § 63-30d-401 (Notices Filed Under the Governmental Immunity Act).

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 in as designated in that database.

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

Bob Jasper, County Manager
Summit County
60 North Main
Coalville, UT 84017

On this 30th Day of April, 2012, 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



Jennifer Strader
Planner III

May 16, 2012

Geoff Reeslund
23 Corporate Plaza, Suite 245
Newport Beach, CA 92660

Re: Silver Creek Estates, Unit I, Lots SL-I-8-3, SL-I-8-4, SL-I-8-5, SL-I-8-6, SL-I-8-7, and SL-I-8-8

Dear Mr. Reeslund,

This letter is in response to the State of Utah Ombudsman Advisory Opinion, dated April 30, 2012, regarding the aforementioned parcels. The opinion states:

"A property owner may invoke the doctrine of zoning estoppel when a local government has made a representation which the owner relies upon in good faith to make a substantial change in position. While mere ownership or purchase of property is not sufficient to invoke zoning estoppel, a substantial purchase price coupled with a significant investment for improvements dedicated to construction is sufficient. Based on the information submitted for this Opinion, HJ Silver Creek has incurred extensive expenses to purchase and improve its property, relying upon representations made by the County that commercial development would be permissible. Thus, HJ Silver Creek may estop the County from denying that commercial development is allowed on the property".

Based on this opinion, this Department has concluded that the aforementioned parcels are subject to the approved Silver Creek Unit I subdivision plat and associated CCR's, which allow various commercial uses. The CCR's also address items such as setbacks and building height, among other things; however, the Snyderville Basin Development Code that is in effect at the time of development application submittal will be the guiding document for any items that are not specifically called out in the CCR's (i.e. landscape requirements, lighting requirements, etc.).

The process for approval of any type of commercial use, consistent with the CCR's, requires the submittal of a Low Impact Permit, which is to be reviewed and approved by this Department prior to the issuance of any building permits.

If you should have any questions or concerns, please feel free to contact me at (435) 615-3152, or by e-mail, jstrader@summitcounty.org.

Sincerely,

A handwritten signature in black ink that reads "J Strader".

Jennifer Strader
County Planner

Cc: File
Don Sargent, Community Development Director (by e-mail)
Jami Brackin, Deputy County Attorney (by e-mail)

Community Development Department
Planning Division
Summit County Courthouse, 60 N. Main St., P.O. Box 128, Coalville, Utah 84017
Phone (435) 615-3152 Fax (435) 615-3046
jstrader@co.summit.ut.us



Staff Report

To: Summit County Council (SCC)
Report Date: Thursday, April 11, 2013
Meeting Date: Wednesday, April 17, 2013
Author: Kimber Gabryszak, AICP
RE: Snyderville Basin Recreation District - Fieldhouse Expansion

EXECUTIVE SUMMARY: The Snyderville Basin Special Recreation District (SBSRD) is proposing modifications to the Snyderville Basin Recreation Fieldhouse, located at 1388 Center Drive in the Newpark Town Center. The proposal includes a two-story ~7640 sq. ft. expansion on the west side of the existing building, as well as the relocation of the main entrance from the south side of the building to the west side.

The Snyderville Basin Planning Commission (SBPC) held a public hearing on October 9, 2012 and voted to forward a positive recommendation to the SCC (minutes attached as Exhibit G). The SBPC held an additional discussion on December 18, 2012 to review minor modifications, and again voted to forward a positive recommendation on the expansion (draft minutes attached as Exhibit H).

Staff recommends that the SCC conduct a public hearing, discuss the application, and consider taking action on the proposed Final Site Plan amendment for Phase II of the Fieldhouse.

A. **Project Description**

- **Project Name:** Snyderville Basin Recreation District Fieldhouse Expansion
- **Applicant(s):** Matt Strader, SBSRD
- **Property Owner(s):** Snyderville Basin Special Recreation District
- **Location:** 1388 Center Drive, Kimball Junction
- **Zone District & Setbacks:** Town Center Zone, Newpark Specially Planned Area
- **Adjacent Land Uses:** Commercial (Newpark Cottonwood III), Residential (Newpark Studios), open space (Swaner Preserve), I-80
- **Existing Uses:** Recreation Fieldhouse
- **Parcel Number and Size:** NPRK-S, 2.37 acres
- **Land Use Authority:** Summit County Council (SCC)
- **Type of Item:** Public hearing, possible action
- **Type of Process:** Administrative
- **Future Routing:** None

B. **Background**

The Redstone Parkside / Newpark Specially Planned Area (SPA) and The Redstone Parkside / Newpark Development Agreement (DA) were approved in October, 2001 and amended in December 2002. The SPA resulted in the approval of 819,360 sq. ft. of density on the ~37 acre site. The original approval anticipated a mix of 36% corporate office/resort residential, 25% residential (resort, townhouses, flats), 24% commercial, and 15% of the density allocated to the Swaner Nature Preserve and the US Ski and Snowboard Association national training center. Out of the overall project density, 112,000 sq. ft. was allocated for the SBSRD Fieldhouse.

On June 18, 2003 the Board of Summit County Commissioners approved a final site plan for Phase I of the Fieldhouse, an ~40,000 sq. ft. facility with a 120' x 250' practice field, 2nd story running track, locker rooms, and other exercise facilities. Under the remaining unallocated square footage (~72,000 sq. ft.), the SBSRD is now proposing a Phase II expansion that involves the construction of a two-story ~7,640 sq. ft. addition on the east side of the building in an existing concrete pad area and along the existing indoor field / track. This proposed addition would allow for an increase in storage space as well as provide for additional exercise area. In addition to the proposed expansion, the existing main entrance would be relocated to the west side of the building, adjacent to the parking lot.

Design Review Committee

According to the DA, Final Site Plans and Final Subdivision/ Condominium Plats are required prior to the development of each parcel and shall first be reviewed by the Design Review Committee (DRC). The DRC consists of County planning staff, Planning Commission members chosen to represent the Planning Commission, and representatives of the Developer. The DRC was established to allow a more detailed, intense, and interactive review of the projects. The DRC met on July 23 and August 20, 2012 to review this project. Based on that review, the DRC felt the project could move forward to the Planning Commission for a work session. Discussion during the DRC meetings included parking and design of the relocated front entry.

September 11, 2012 SBPC work session

The SBPC reviewed the expansion in work session on September 11, 2012. At that meeting, the SBPC provided positive feedback on the expansion, with a few questions for additional information as addressed in Section D of this report.

October 9, 2012 SBPC hearing and recommendation (minutes attached)

The SBPC held a public hearing and reviewed the information provided. Based upon their discussion, DRC recommendation, Staff's recommendation, and DA standards, the SBPC voted to forward a positive recommendation to the SCC.

December 18, 2012 SBPC discussion and recommendation

Following the recommendation, the applicants modified the proposal as follows:

- Increase in size from ~6700 sq. ft. to 7640 sq. ft., with ~500 sq. ft. of the change useable by guests, and the remainder for increased storage.
- Redesign of the eastern expansion from two stories to one, to keep the views out from the track as currently existing.
- Updated parking study to reflect the modifications, which still demonstrates that existing parking will be adequate.

The changes were minor and did not warrant an additional public hearing. The SBPC reviewed the changes and voted to reaffirm their positive recommendation to the SCC.

Newpark DA expiration

During the expansion process, it came to the attention of all parties that the Newpark DA had expired in October of 2011. The Fieldhouse Expansion was put on hold while the SCC reviewed a Special Exception to extend the Newpark DA to October 2016. On March 20, 2013 the SCC voted to approve a Special Exception to restore and extend the DA; the Findings of Fact and Conclusions of Law have not yet been adopted.

C. Community Review

This item has been scheduled as a public hearing. Public notice has been posted and notice mailed to all property owners within 1,000 ft. of the proposal. As of the date of this report, no public comment beyond that given at the SBPC hearings has been received.

D. **Identification and Analysis of Issues**

Service Providers

Area service providers have been presented with this proposal and have been asked for comment. As of the date of this report, no concerns have been noted. A condition of approval has been proposed requiring compliance with any Service Provider requirements that may arise.

Parking

Initially, there were concerns over the availability of parking, and whether existing parking areas would meet the need, or if additional parking was necessary. A parking study has been completed and updated (Exhibit F), verifying that adequate parking is available for the anticipated increase in demand for the current proposal. If the SBSRD moves forward with a phase III expansion in the future, overall parking demand and facilities will be discussed further.

Energy Efficiency

The SBPC requested additional information on energy efficiency. The applicants briefly discussed their intention of constructing the addition to be more energy efficient at the meeting. If the SBPC feels that it is necessary to require a certain standard, they may choose to add it as a condition of approval.

Drainage / Swaner Nature Preserve

The SBPC expressed concern over the potential for storm water runoff to impact the Swaner Nature Preserve. As part of the building permit process, the County Engineer will require a Storm Water Pollution Prevention Plan (SWPP), which will be reviewed to ensure that the plan prohibits untreated drainage from entering the Nature Preserve. The SBPC may consider a condition to ensure that this concern is addressed.

Original approvals

During the September 11, 2012 work session, the SBPC requested information on the original approvals for the Fieldhouse. Specifically, the SBPC was concerned with original architectural designs that included clerestory elements, which were presented to the community but did not appear in the final construction documents and do not appear on the current building.

Staff researched the original approvals, and found that the plans recommended by the SBPC on June 10, 2003 showed a clerestory element, as well as the plans approved by the Board of County Commissioners on June 18, 2003. Building permit #03535 was issued on August 23, 2003, and the Certificate of Occupancy was issued on June 17, 2004. Summit County only keeps building plans for a short period of time, and no longer has the original plans from this permit. The SBPC discussed the original elevations, expressed disappointment that the building was not constructed as originally presented, and directed the applicant and Staff to ensure that similar changes did not occur for the current expansion and that the proposed expansion be constructed as proposed.

As a result of this direction, the applicant presented modifications to the SBPC at their December 18, 2012 meeting, prior to moving forward with SCC approval.

Future Expansion(s)

If the Phase II expansion is approved, approximately 64,000 sq. ft. of density will remain for potential future expansion(s) of the Fieldhouse. This current proposal does not imply approval for future expansions, as any future expansion would be processed as a Final Site Plan amendment and go through a separate review to ensure that the expansion complies with Code and DA standards, and any impacts are addressed.

E. **Consistency with the General Plan**

The proposed expansion is located on a parcel within the Kimball Junction Neighborhood Planning Area. The proposed development does not appear to be in conflict with the Goals and Objectives of the Kimball Junction Planning Area. This includes the following:

There shall be an economically and socially viable area at Kimball Junction that reflects the mountain character of its surroundings, promotes a sense of place and community identity supporting the residents of the Snyderville Basin, separate from but complimentary to Park City.

Development in Kimball Junction neighborhood planning area should complement the Park City resort experience and provide another means of attracting tourist and destination shoppers to the area.

Staff has found that the expansion is consistent with and supported by both of these statements.

F. **Criteria and Discussion**

The approval process for Final Site Plans is governed by Article 6.6 of the DA. This article requires a public hearing and recommendation by the Planning Commission and final approval by the Board of County Commissioners (Summit County Council). Had the developers been subject to the current Code, they would be required to go before the Planning Commission and County Manager.

Final Site Plans within the Newpark Development are governed by the DA, and are not subject to the standard review process for major developments found in the Snyderville Basin Development Code.

The application has been reviewed and recommended by the Design Review Committee, and Staff has found that it complies with the allowed density, allowed uses, and parking standards outlined in the DA.

G. **Recommendation(s)/Alternatives**

Staff recommends that the SCC conduct a public hearing, take public input, and choose Option A below.

Option A – If the SCC determines that they have enough information, they may vote to **approve** the Fieldhouse Expansion Final Site Plan, with the findings of fact, conclusion of law, and conditions below:

Findings of Fact

1. The Snyderville Basin General Plan contemplates higher density mixed-use development within the Town Center, with social and community components.
2. In accordance with the Snyderville Basin General Plan, the Redstone Parkside / Newpark Development Agreement was approved October 2001, and contemplated a recreational component. 112,000 square feet of density was allocated in the Development Agreement for this use.
3. The Snyderville Basin Special Recreation District obtained approval from the County for the Fieldhouse in June 2003, using ~40,000 square feet of the allocated density, leaving ~72,000 square feet for potential future expansion(s).
4. The SCC approved a Special Exception extending the Development Agreement until October 2016.

5. The Phase II expansion proposal consists of 7640 square feet, which fits within the allocated density.
6. The location, layout, parking, and architecture have been reviewed by the Newpark Design Review Committee and Snyderville Basin Planning Commission for consistency with the Development Agreement standards.
7. Service providers have reviewed the expansion and outlined their conditions to ensure that service is available and impacts mitigated.
8. A parking study has been provided to verify parking needs for the expansion.
9. The County Engineer and Planning Staff have reviewed the expansion for potential impacts to the Swaner Nature Preserve. The applicant stipulates to the submittal of appropriate Stormwater Pollution Prevention Plans and information for review and action by the Summit County Engineer.
10. The Summit County Engineer has reviewed the expansion and no negative impacts to traffic have been identified.

Conclusions of Law

1. The expansion complies with the standards and density in the Redstone Parkside / Newpark Development Agreement.
2. There will be no negative impacts to the public health, safety, and welfare.
3. The expansion is consistent with the Snyderville Basin General Plan.
4. The expansion complies with applicable sections of the Snyderville Basin Development Code.

Conditions

1. All Service Provider requirements shall be met prior to plan recordation.
2. The Final Site Plan shall include landscaping plans and lighting plans which shall be reviewed for compliance with Development Code standards.
3. All applicable Development Code requirements shall be met.
4. Any other conditions as stated by the SCC.

Option B – if the SCC determines that more information is needed, they may continue the decision to another date with specific direction to Staff and the applicant on information needed to render a decision.

Option C – if the SCC determines that the application does not and cannot comply with the General Plan and / or the DA, they may vote to **deny** the Fieldhouse Expansion Final Site Plan, with specific findings of fact and conclusions of law as to how the application does not comply.

Attachment(s)

- Exhibit A – Site Photograph(s) (page 6)
- Exhibit B – Zoning/Vicinity Map (page 7)
- Exhibit C – Aerial (page 8)
- Exhibit D – Proposed Site Plan (pages 9-12)
- Exhibit E – Sketches (pages 13-14)
- Exhibit F – Updated Horrocks Parking Study Memo, dated December 5, 2012 (pages 15-18)
- Exhibit G – October 9, 2012 SBPC minutes (pages 19-22)
- Exhibit H – December 18, 2012 SBPC minutes (pages 23-24)



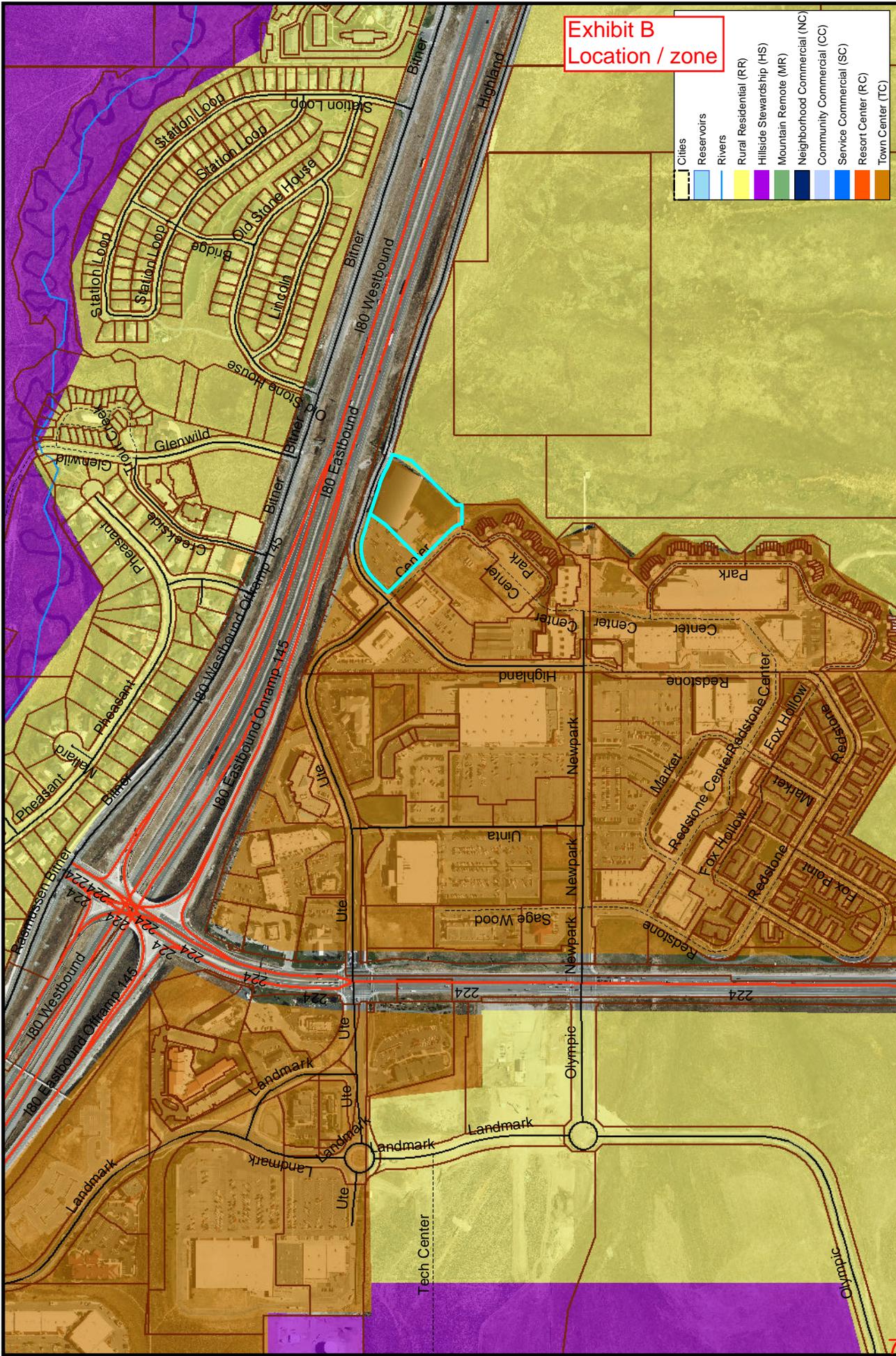


Exhibit B
Location / zone

- Cities
- Reservoirs
- Rivers
- Rural Residential (RR)
- Hillside Stewardship (HS)
- Mountain Remote (MR)
- Neighborhood Commercial (NC)
- Community Commercial (CC)
- Service Commercial (SC)
- Resort Center (RC)
- Town Center (TC)



This drawing is neither a legally recorded map, nor a survey, and is not intended to be used as such. The information displayed is a compilation of records, information, and data obtained from various sources including Summit County. Summit County is not responsible for the timeliness or accuracy of information shown.

Summit County, Utah
Vicinity Map

Prepared by Summit County
Community Development Department





**Exhibit C.1
Aerials**



	Cities
	Reservoirs
	Rivers

This drawing is neither a legally recorded map, nor a survey, and is not intended to be used as such. The information displayed is a compilation of records, information, and data obtained from various sources including Summit County. Summit County is not responsible for the timeliness or accuracy of information shown.

Summit County, Utah Vicinity Map

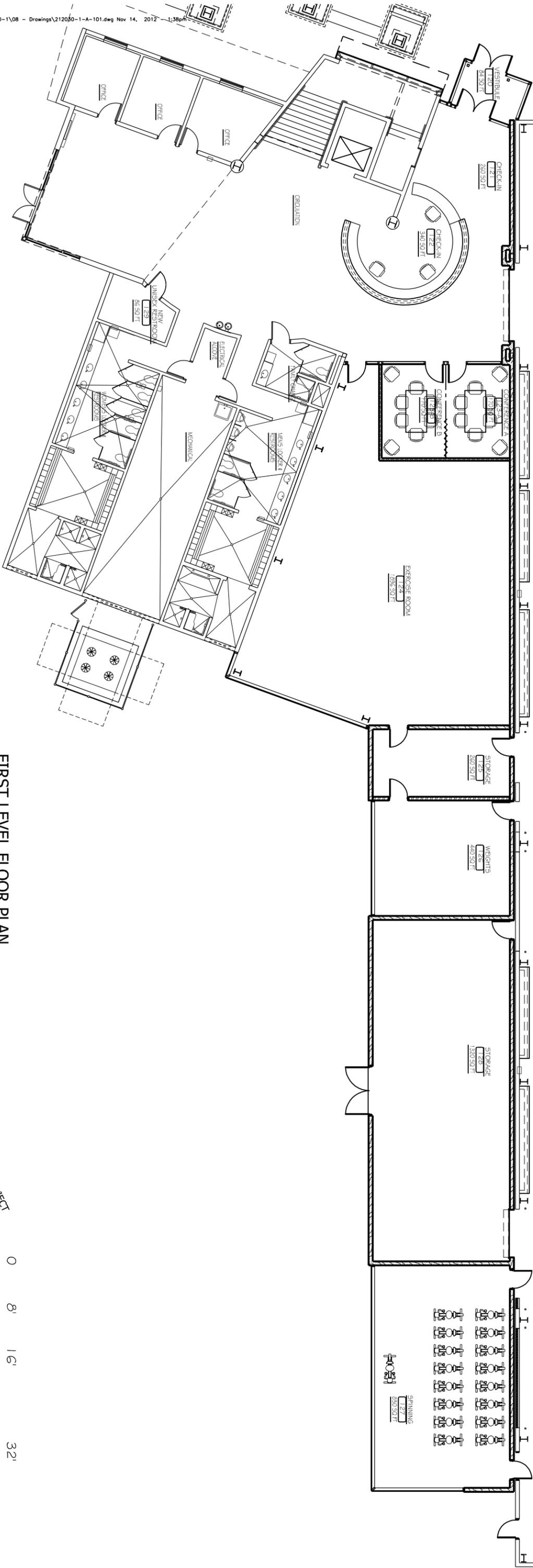
Prepared by Summit County
Community Development Department



Exhibit C.1

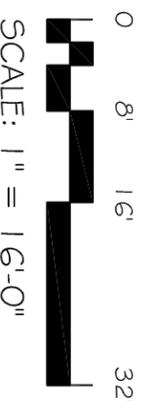
Exhibit D
Site plans

PROPOSED NEW MAIN
ENTRANCE



FIRST LEVEL FLOOR PLAN

SCALE: 1/16" = 1'-0"



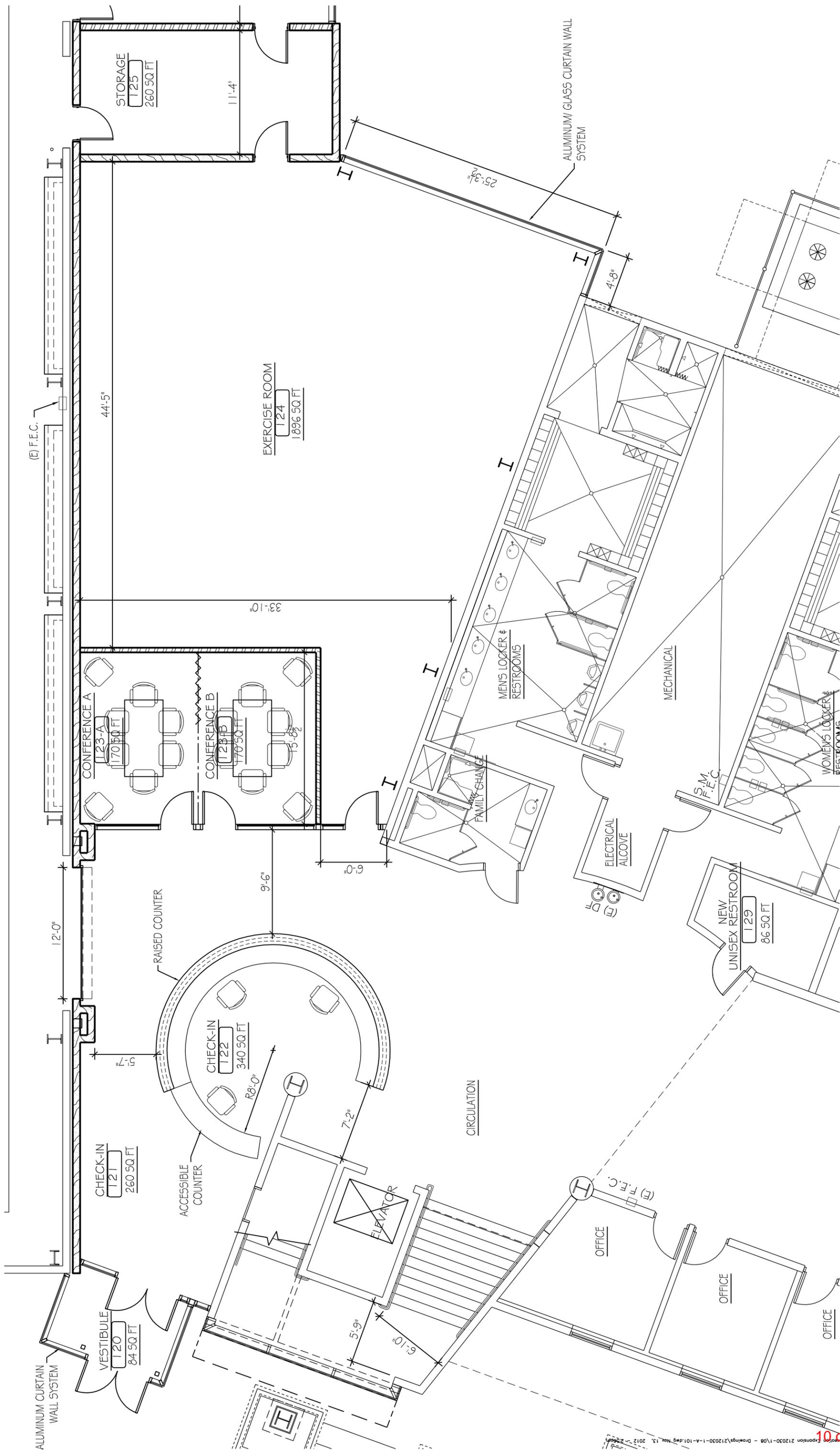
THE BOSTON BUILDING
9 EXCHANGE PLACE, SUITE 1100
SALT LAKE CITY
UTAH 84111
O: 801 531 7600
F: 801 531 7600
www.edstarch.com



BASIN RECREATION at NEWPARK
FIELDHOUSE EXPANSION
1388 CENTER DRIVE - PARK CITY, UTAH 84098

DATE: 11/13/12
JOB NO: 212030-1
DWG REF:

A101



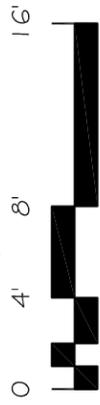
**BASIN RECREATION at NEWPARK
FIELDHOUSE EXPANSION**
1388 CENTER DRIVE - PARK CITY, UTAH 84098

FIRST LEVEL FLOOR PLAN - PARTIAL

SCALE: 1/8" = 1'-0"



SCALE: 1" = 8'-0"



DATE: 11/13/12
JOB NO: 212030-1
DWG REF:

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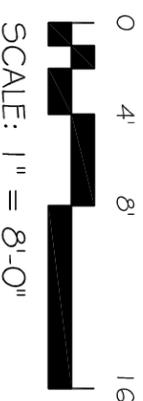
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**BASIN RECREATION at NEWPARK
 FIELDHOUSE EXPANSION**
 1388 CENTER DRIVE - PARK CITY, UTAH 84098

FIRST LEVEL FLOOR PLAN - PARTIAL
 SCALE: 1/8" = 1'-0"

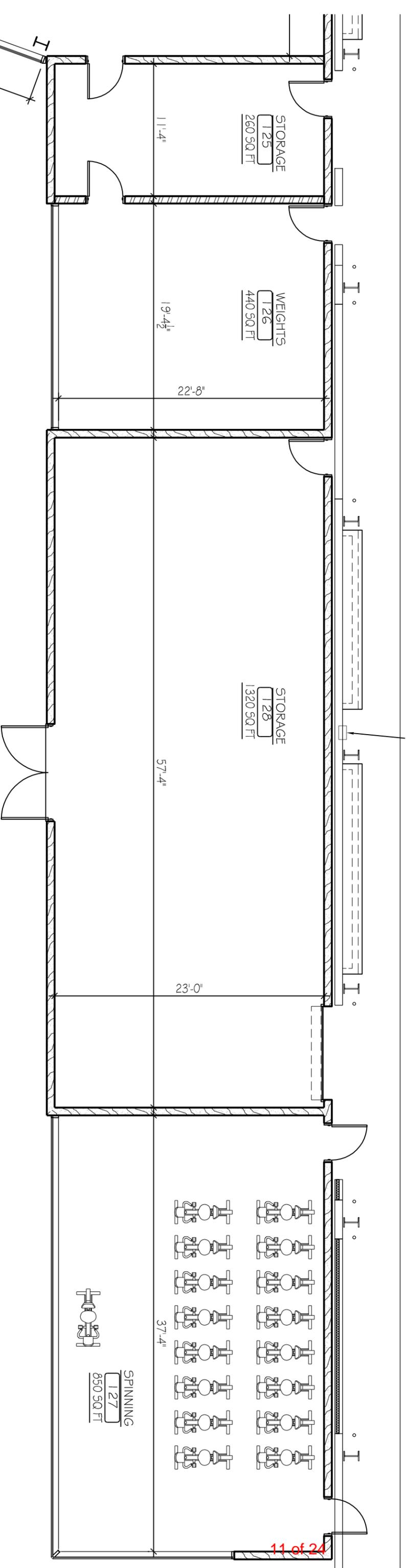


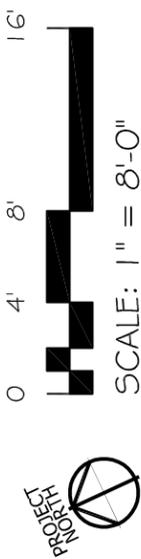
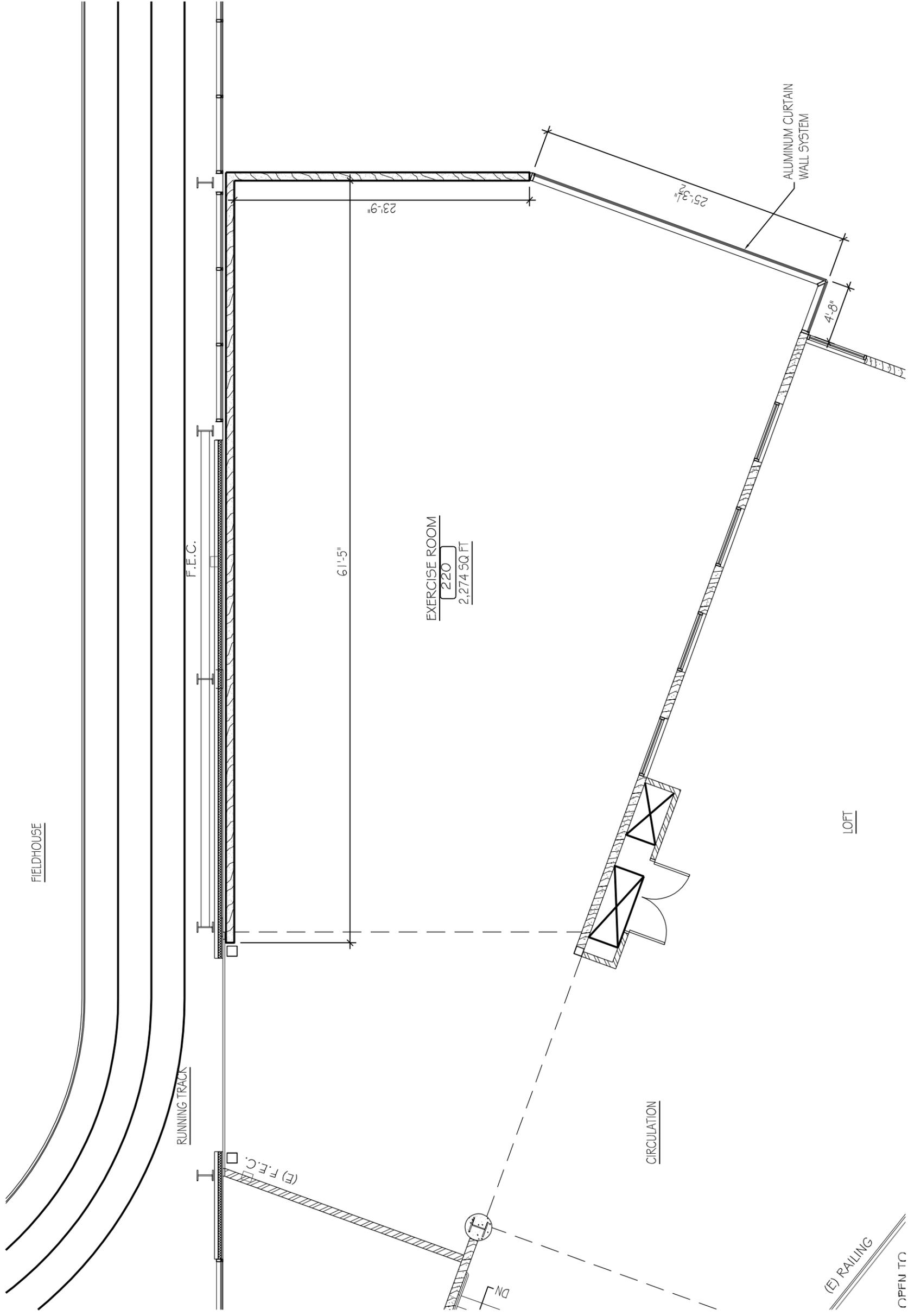
DATE: 11/14/12
 JOB NO: 212030-1
 DWG REF:

A101
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ALUMINUM GLASS CURTAIN WALL SYSTEM

25'-3 1/2"





SECOND LEVEL FLOOR PLAN

SCALE: 1/8" = 1'-0"

DATE: 11/12/12
 JOB NO: 212030-1
 DWG REF:

A102

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**BASIN RECREATION at NEWPARK
 FIELDHOUSE EXPANSION**
 1388 CENTER DRIVE - PARK CITY, UTAH 84098

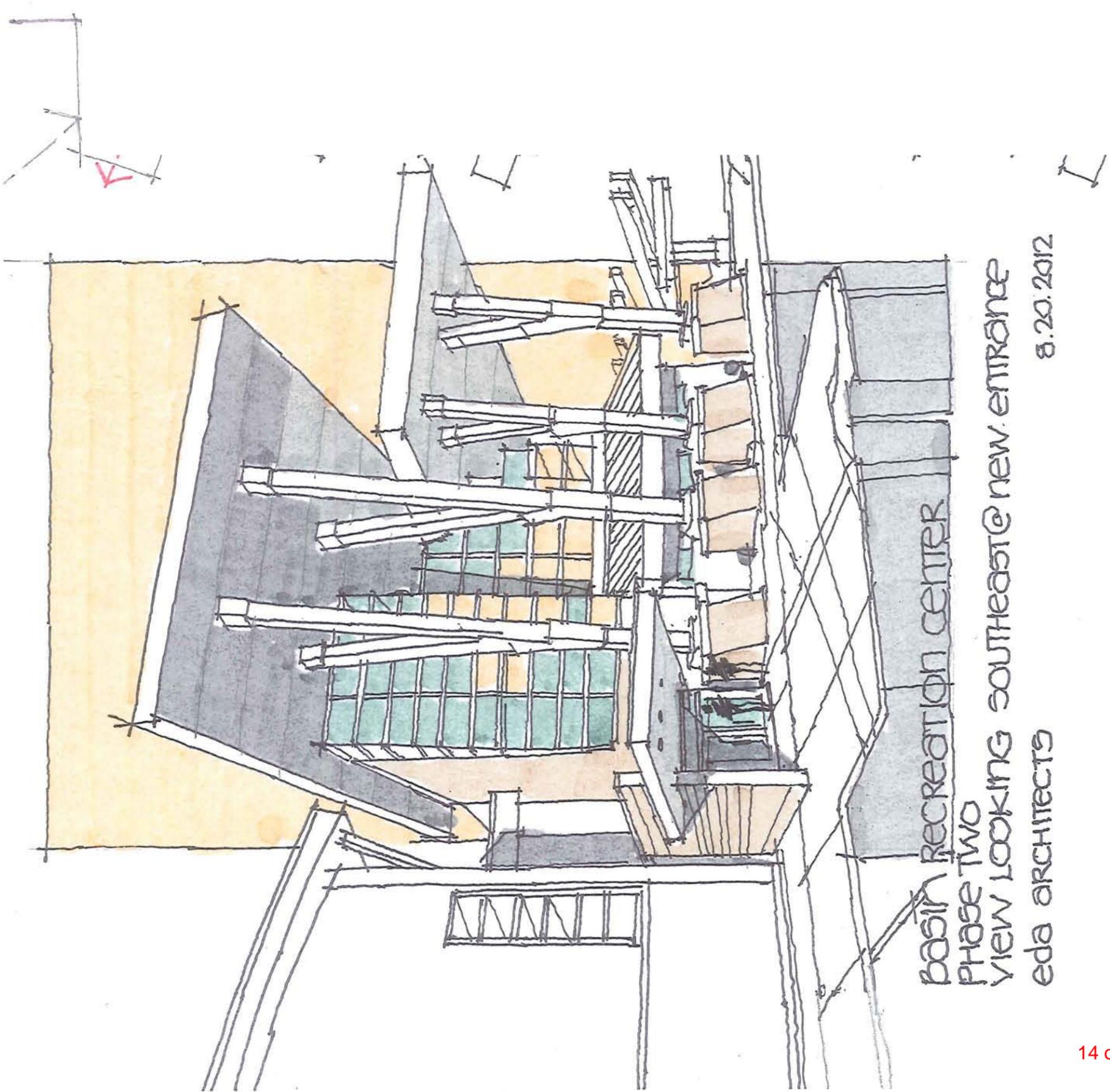


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Basin Recreation Center
Phase Two
View Looking Northwest @ Fitness Expansion
11.30.2012

edols



Basin RECREATION CENTER
PHASE TWO
VIEW LOOKING SOUTHEAST @ NEW ENTRANCE
eda ARCHITECTS
8.20.2012



To: Matt Strader
Recreation Facilities Manager

From: Jayson Cluff, P.E., PTOE
John Dorny, P.E.

Date: December 05, 2012

Memorandum
PG-949-1208

Subject: Basin Recreation Fieldhouse Parking Study

Introduction

Horrocks Engineers was asked to perform a parking study for the proposed 7,640 sq. ft. addition to the Basin Recreation Fieldhouse. The Fieldhouse is located at the Newpark development at Kimball Junction. Figure 1 shows the current parking lot layout of the study area. A previous parking study was performed in the same area in 2011, and the parking data related to the Fieldhouse from that study is still valid and will be used in this memorandum. The previous study data was supplemented with parking data for Lot R which was collected August 14 and 16, 2012.

Figure 1: Parking Lot Layout



Existing Weekday Newpark Parking Demand

Actual parking data was collected for several existing buildings in the Newpark development because shared parking is allowed and required to meet the parking demand. This data was originally collected by representatives of Cottonwood Partners on July 15 and 20, 2011. Horrocks Engineers counted parked vehicles at the project site on Tuesday August 16 and Wednesday August 17, 2011. Weekday parking count data for Lot R was collected August 14 and 16, 2012. Existing parked vehicles were counted throughout the day to determine the peak parking demand. A summary of the data is presented in **Tables 1 and 2**.

Table 1: Existing Actual Weekday Parking Data

Weekday (Tuesday - Thursday)																
	Lot Q		Lot T-1		Lot T-2		Lot S		Lot R		Ute Blvd.		N. Center		S. Center	
	Stalls	110	Stalls	50	Stalls	34	Stalls	107	Stalls	103	Stalls	14	Stalls	23	Stalls	25
Time	Empty	Full	Empty	Full	Empty	Full	Empty	Full	Empty	Full	Empty	Full	Empty	Full	Empty	Full
9:00 AM	9	101	0	50	20	14	65	42	45	58	0	14	8	15	5	20
11:00 AM	8	102	0	50	23	11	69	38	40	63	0	14	7	16	6	19
2:00 PM	16	94	3	47	22	12	75	32	42	61	1	13	11	12	10	15
4:00 PM	27	83	6	44	24	10	75	32	58	45	5	9	10	13	6	19

Table 2: Existing Actual Weekend Parking Data

Friday 7/15/11																
	Lot Q		Lot T-1		Lot T-2		Lot S		Ute Blvd.		N. Center		S. Center			
	Stalls	110	Stalls	50	Stalls	34	Stalls	107	Stalls	14	Stalls	23	Stalls	25		
Time	Empty	Full	Empty	Full	Empty	Full	Empty	Full	Empty	Full	Empty	Full	Empty	Full		
9:00 AM	24	86	2	48	20	14	58	49	3	11	9	14	4	21		
11:00 AM	14	96	2	48	22	12	79	28	3	11	11	12	6	19		
2:00 PM	25	85	7	43	23	11	88	19	3	11	11	12	11	14		
4:00 PM	46	64	5	45	24	10	89	18	9	5	13	10	9	16		

The parking demand data was analyzed to determine the existing maximum parked vehicles. The maximum parking demand was used to give a conservative analysis. It was assumed that 10 of the S. Center stalls, 11 of the N. Center stalls, and 13 stalls from Lot S are used by the Rosignol Office Building. It was also assumed that 25 of the Lot S stalls are allocated to the Lot Q office building. The previous study stated that the Basin Recreation Fieldhouse only has parking rights for 38 percent of Lot S from 7:00AM to 5:30PM on weekdays. Using these assumptions, the actual parking count data for Lot S, N. Center, and S. Center were allocated proportionally between the Rosignol building, the Lot Q office building, and the Fieldhouse. **Table 3** below shows the existing maximum weekday parking demand by building.

Table 3 Existing Weekday Parking Demand by Building

Building	Lot	Maximum Parked Vehicles				Average	Max
		9:00 AM	11:00 AM	2:00 PM	4:00 PM		
Lot Q Office Building	Lot Q	101	102	94	83	95	102
	Lot S	10	9	7	7	8	10
	Lot T-1	50	50	47	44	48	50
	Ute Blvd	14	14	13	9	13	14
	Total	175	175	161	143	164	175
Newpark Studios	Lot T-2	14	11	12	10	12	14
	Total	14	11	12	10	12	14
Rosignol Office Building (Lot R)	Lot S	5	5	4	4	5	5
	S Center	8	8	6	8	8	8
	N Center	7	8	6	6	7	8
	Lot R	58	63	61	45	57	63
	Total	78	84	77	63	76	84
Basin Recreation Fieldhouse	Lot S	27	25	21	21	24	27
	S Center	12	11	9	11	11	12
	N Center	8	8	6	7	7	8
	Total	47	44	36	39	42	47
Area Total		314	314	286	255	292	314

Projected Parking Demand

A combination of actual Newpark parking data and *ITE Parking Generation Manual, 4th Edition* data was used to determine parking demand for Lots Q and R office buildings, Newpark Studios, and the Fieldhouse with the 7,640 sq. ft. addition. The ITE manual contains figures specifying ranges of values, applicable periods, number of studies, and the appropriate independent variable for estimating parking generation. It also provides a fitted curve equation together with the correlation coefficient. The equations use national parking data relating to each land use area. Where available, the actual parking data collected for this study was used instead of ITE data to determine parking demand.

For the Fieldhouse, the independent variable, square feet of building area, is used to determine the maximum parking demand for weekday and weekends. **Table 4** shows the projected parking demand.

Table 4: Projected Parking Demand

NEWARK UPDATE PARKING DEMAND TABLE							
Parcel	Use	SF	Description	Weekday 8am-5pm	Weekday 6pm-8am	Weekend 8am-5pm	Weekend 6pm-8am
R	General Office	-	Rosignol Office Building	84	21	5	1
Q	General Office	62,091	Lot Q Office Building	175	44	10	3
S	Recreational	54,492	Basin Recreation Fieldhouse	55	90	150	141
T	Residential	20,240	Newpark Studios	14	32	14	33
Total Peak Parking Demands				328	187	179	178

Parking Rights

The peak demand time for parking differ by the land use. The peak parking demand for office buildings is between 8:00AM and 5:00PM during work days, while ITE parking site data shows the peak parking demand for a recreational facility to be between 7:00PM and 8:00PM on weekdays and between 11:00AM and 12:00PM on the weekends. With these offset peak parking periods, parking spaces can be shared for both land uses.

Newpark has dedicated parking rights to the different land uses. The Lot Q office building has parking rights to Lot Q, Lot T-1, adjacent street parking and rights to 25 stalls at Parcel S from 7:00AM to 5:30PM on weekdays. The Newpark Studio Flats has parking rights to Lot T-2 all day weekdays and weekends. The Basin Recreation Fieldhouse has parking rights to 41 stalls from Lot S from 7:00AM to 5:30PM on weekdays and is assumed to have rights to adjacent street parking. During evenings and weekends it has parking rights to all of Lot S and 75 percent from each of Lot Q, Lot T-1 and Lot P. **Table 5** compares the parking demand with the space available.

Table 5: Parking Supply/Demand Comparison

Building	Weekday 8am-5pm			Weekday 6pm-8am		Weekend 8am-5pm		Weekend 6pm-8am	
	Current Stall Demand	Projected Stall Demand	Stall Supply						
Lot Q Office Building	175	175	199	44	54	10	54	3	54
Lot P Office Building	-	175	175	44	52	10	52	3	52
Newpark Studios	14	14	34	32	34	14	34	33	34
Basin Recreation Fieldhouse	47	55	64	90	332	150	332	141	332
Total	236	419	472	210	472	184	472	180	472

As shown in the table, the parking spaces available for the Basin Recreation Fieldhouse with the 7,640 sq. ft. addition are adequate to provide for the parking demand. During the busiest weekday period, the Fieldhouse is estimated to have approximately 9 more parking stalls available than the demand. During other periods and weekends there is estimated to be a minimum 180 more parking stalls available than the demand.

1. **The application complies with the Snyderville Basin General Plan as outlined in Section E of this report.**
 2. **The application complies with Section 10-3-18 of the Snyderville Basin Development Code as outlined in Section F of this report.**
- The motion was seconded by Commissioner Velarde and passed unanimously, 5 to 0.**

4. **Public hearing and possible recommendation for a final site plan for Basin Recreation Fieldhouse expansion; Snyderville Basin Special Recreation District – Kimber Gabryszak, County Planner**

Planner Gabryszak presented the staff report and indicated the location of the fieldhouse and surrounding neighborhood on an aerial map. She explained that the fieldhouse is part of the Newpark development agreement, which allotted 112,000 square feet to the fieldhouse. The current fieldhouse is approximately 40,000 square feet. The current proposal is for a 6,772-square-foot expansion to the south and west of the existing structure. She indicated the location of the current entrance and the proposed entrance. This proposal has been reviewed in work session, and there were no service provider concerns for this phase of the development. The proposal complies with the Newpark development agreement, and based on the development agreement language, a final decision will go to the County Council. She noted that the staff report address the concerns raised at the work session. One item raised at the previous work session was why the building was not originally constructed according to the plans presented at the time of approval. Staff's research showed the exhibit attached to the staff report at the time of approval which included a clerestory element, but the building permit file does not contain the original building plans, so she was unable to determine what was actually approved. However, the County did sign off on the building permit and certificate of occupancy as built. Therefore, Staff and the Legal Department do not believe it would be possible to require the elements shown in the staff report at the time of approval. Staff has found that the General Plan intent for the neighborhood is met with this proposal and that it also meets the development agreement standards. Staff also pointed out that the Building Department had additional concerns, and recommended that the conditions be modified to include the Building Department's requirements. Staff recommended that the Planning Commission conduct a public hearing, take public input, and choose to forward a positive recommendation to the County Council with the findings and conditions in the staff report. Other options would be to continue the decision or forward a negative recommendation with specific findings.

Jake Hill with EDA Architects explained that he has been working on this addition and was involved in the initial building design. He stated that energy efficiency is second nature for his firm, and they have tried to make this expansion as energy efficient as possible. They plan to collect the roof rainwater and divert it into the storm drain, which should minimize any drainage impact. Since the expansion is minimal, he did not anticipate much disturbance. A lot of windows will be included to collect as much sunlight as possible to provide heat gain. They plan to match the materials already on the

building to make it look like part of the original building. With regard to the clerestory on the original plans, he recalled that it was presented early in the process, but as they worked with the structural engineer, the original design did not lend itself to the large openings, and the fact that they did not bring it back for review was an oversight.

Chair Taylor opened the public hearing.

Stanton Jones stated that he wanted to talk about principle and his distaste for the use of this space and how his local government uses his tax dollars to try to better compete with private industry. He noted that the parking site data shows the peak parking demand for a recreational facility to be between 7 and 8 p.m. on weekdays, but it is not logical to believe that will be the peak demand time. If that is the basis on which parking was determined, it is inaccurate, and the parking study is a farce. The new 6,700 square feet is intended specifically for uses that are already provided and competes with private industry. He read from the minutes when the fieldhouse was originally approved and observed that he had expressed concern and asked if the new recreation complex would compete with the private sector. His concern at that time was with cardiovascular training, weight training, and aerobic instruction classes. Bonnie Park had indicated that it was not the intention of the Recreation District to compete with the private sector. Mr. Jones stated that, whether Ms. Park was sincere in saying that, the result of this facility, especially the weights, cardio, and aerobics classes, is the exact opposite of her stated intentions, and the proof is that two private-sector businesses went out of business because of this facility. He stated that he went to all the Recreation District meetings and suggested that they make the facility larger to provide the fields the community needs, but putting in cardio, weights, and classes put two private-sector businesses that employed a number of people out of business. The community needs more indoor fields and more basketball courts, and he did not understand why 6,700 square feet has to be dedicated to areas where the private sector already fulfills the need. It puts more pressure on private industry and means less people being employed by private industry. This tax-exempt facility gets off scot free while he has to pay his tax bill of \$138,000 to support this facility to compete with him. He emphasized that this facility does not need more cardio, weights, and aerobics.

Chair Taylor closed the public hearing.

Chair Taylor recalled that he had expressed concern about construction of a facility that strongly resembled but did not match what was approved. Some of the items deleted from the building were specifically referred to in the minutes as being part of the submission. He was not looking for the addition of those elements, but he wanted an explanation as to how something slipped through. He did not believe it was a good example for the County to have a facility that gets away with a deviation and then try to enforce no deviation on private developers.

Commissioner Klingenstein agreed with Commissioner Taylor's concerns and acknowledged that the County did not do a good job in their review. However, if it were

a private development, he did not believe they would go back and enforce, because it would be the County's fault it was missed. He did not believe the Recreation District is getting special treatment, because it is the County's job to be sure the review takes place. He asked for an explanation of the issue brought up by Mr. Jones regarding parking. Ms. Brackin explained that the County does not try to second guess a parking study once it has been signed off on and is found to be appropriate. However, peak demand for a public facility may be different from a private business because of the programming. Rena Jordan Snyderville, Basin Special Recreation District Director, stated that because of the complications with the easements and shared parking arrangements, the District spent the money to do this in a more inclusive way to get a better picture of what the parking needs are. She confirmed that the busiest time of day at the fieldhouse is between 6 and 9 p.m. **Commissioner Klingenstein** referred to Mr. Jones's comments and explained that, as a Planning Commissioner, he does not look at interior uses; he looks at the overall use of the facility, which is a recreation facility. He acknowledged Mr. Jones's concerns and stated that he is satisfied with the application as it stands.

Commissioner Lawson referred to the study and noted that the peak use was out of the manual, not something that was generated by the engineer's surveys. They simply quote what was in the ITE manual. He agreed that Chair Taylor's concerns about missing plans needs to be worked on. He hoped this would be a good example for improving the review process. He stated that he does not have a problem with what is proposed.

Commissioner Franklin noted that there was only one week between when the Planning Commission forwarded a positive recommendation and the Board of County Commissioners took action on the original building, which is not adequate time for Staff to get minutes to the County Commission. He believed they need to be aware of that.

Chair Taylor stated that he believes the facility is great and does a wonderful thing for the community, but it sets a horrible precedent. He acknowledged that the design issue is not the applicant's fault, but they cannot go down that road again. He struggles with the idea that they had to scale things down because of costs, and now all of sudden they have money to build an addition, especially because the County should lead the charge on how it maintains and enforces and lives by a General Plan and Code. He wanted to be sure that everyone is aware that he does not want that to happen again going forward. They represented to the public what they would get, and that is not what they got. That is what he struggles with, and he absolutely does not want that to happen again, especially when it is a County facility. He asked what they could say to a private developer who could point their finger and say that the County got away with it. **Commissioner Klingenstein** suggested that they address this under Staff Items.

Commissioner Klingenstein made a motion to forward a positive recommendation to the Summit County Council for the proposed Snyderville Basin Recreation District Fieldhouse Expansion, Phase II, with the following findings and conditions outlined in the staff report dated October 3, 2012,

with the clarification that Condition 1 regarding service provider requirements being met shall include the Building Department:

Findings:

- 1. The expansion complies with the standards in the Redstone Parkside/Newpark Development Agreement as outlined in Section F of this report.**
- 2. The expansion complies with the Snyderville Basin General Plan as outlined in Section E of this report.**

Conditions:

- 1. All Service Provider requirements, including those of the Building Department, shall be met prior to plan recordation.**
- 2. Any others as stated by the SBPC.**

The motion was seconded by Commissioner Franklin and passed unanimously, 5 to 0.

5. Approval of Minutes: July 17, 2012

Commissioner Lawson referred to page 2 of 20, third sentence, and stated that what is reflected in the minutes is not exactly what he meant. He would like to correct the minutes to read, “No matter what public input is received, the Snyderville Basin Planning Commission should follow the Staff recommendation.” **Chair Taylor** explained that they do not have the right to change what the minutes and the recording may have said. Commissioner Lawson could say that the intent of his comment is not represented in the minutes, and then it could be looked at as a clarification. **Commissioner Lawson** stated that the minutes do not reflect his intention, and he would like to have the minutes reflect what he intended to say. He stated that they are back to the issue of the public hearing being held and then proceeding with the Staff recommendation, and he is not comfortable with Staff making a recommendation prior to the public hearing. He asked about the purpose of the public hearing if it is just to hear people talk and then do what Staff recommends. He was not comfortable with how the process is written and orchestrated to have a Staff recommendation with the implication that they will disregard what the public has to say.

Commissioner Klingenstein stated that he has a question on page 19 of the minutes and recalled that he and Ms. Brackin had an exchange about general plans. He thought Ms. Brackin had stated that judges expect General Plans to be lofty generalizations, and that is not reflected in the minutes. He requested that the recording be checked to make the verbiage more accurate.

Commissioner Klingenstein made a motion to continue approval of the minutes of Tuesday, July 17, 2012, to allow the secretary time to clarify the remarks on pages 2 and 19 of the minutes. The motion was seconded by Commissioner Franklin and passed unanimously, 5 to 0.

WORK SESSION

Commissioners Barnes, DeFord, and Franklin voting in favor of the motion, Commissioners Lawson and Taylor voting against the motion, and Commissioner Velarde abstaining from the vote.

5. **Discussion and possible action regarding a Final Site Plan for the Snyderville Basin Recreation District Fieldhouse Expansion, 1388 Center Drive, Park City; Snyderville Basin Special Recreation District, applicant – Kimber Gabryszak, County Planner**

Planner Gabryszak presented the staff report and recalled that the Planning Commission held a public hearing on October 9 on a final site plan for an expansion to the Snyderville Basin Recreation District Fieldhouse. Since then the plan has been modified, and although the modifications did not warrant an additional public hearing, Staff wanted the Planning Commission to have an opportunity to look at the modifications before the plan is presented to the County Council.

Matt Strader with the Snyderville Basin Special Recreation District presented the approved plan and the modifications to the plan. He explained that the area with two levels is now proposed to be on one level. They have added an Olympic lifting area, which would add 400 square feet and an additional 300 square feet in the storage area.

Commissioner DeFord confirmed with Mr. Strader that these changes would not hinder a Phase III expansion. Mr. Strader also clarified the access to the rooms.

Commissioner Lawson made a motion to forward a positive recommendation to the Summit County Council on an amendment to the Final Site Plan for the Snyderville Basin Special Recreation District Fieldhouse as proposed in the staff report dated December 12, 2012, with the following findings and conditions contained in the original recommendation on November 9, 2012:

Findings:

1. **The expansion complies with the standards in the Redstone Parkside/Newpark Development Agreement as outlined in Section F of this report.**
2. **The expansion complies with the Snyderville Basin General Plan as outlined in Section E of this report.**

Conditions:

1. **All Service Provider requirements, including those of the Building Department, shall be met prior to plan recordation.**
2. **Any others as stated by the SBPC.**

The motion was seconded by Commissioner Franklin and passed unanimously, 6 to 0.

6. **Continued discussion and possible action regarding a rezone of properties located on the east side of Silver Creek Road in Silver Creek Unit I – Kimber Gabryszak, County Planner**

Commissioner Velarde recused herself from discussing and voting on this item.

Planner Gabryszak recalled that the Planning Commission held a public hearing on October 9 regarding a potential rezone to the eastern portion of Silver Creek Unit I. She explained that plans for the western portion of Unit I are still up in the air. The owners of property on the west side of Unit I have been meeting to discuss a possible master plan for that area, but Staff has no current updates on the progress of those discussions. She reminded the Commissioners that the public hearing was closed on October 9, and they continued a decision to a later date pending additional information. The Planning Commission requested a comparison between the Community Commercial (CC) Zone, as recommended by Staff, the Neighborhood Commercial (NC) Zone, and the existing uses in the plat. She reviewed the use charts for the CC and NC Zones and how existing uses compare to the use charts. She noted that several businesses exist in the area that would remain non-conforming if it were rezoned to the NC Zone. Staff recommended that the