

County Manager Considerations for Thursday, May 2, 2013

Time of Signing: 4:45 p.m.

- 1) Check Register, for checks to be mailed 5/03/13
- 2) Personnel Sheets
- 3) Purchase Order #130108 to Young Chevrolet Co. for a Chevy Equinox in the amount of \$21,640.00 (Criminal Investigation)
- 4) Purchase Order #130130 to Crandall Ford for one truck and two Interceptors in the amount of \$110,145.00 (Sheriff Patrol)
- 5) Amendment from National Benefits Services for the Cafeteria Plan to limit flex spending to \$2500.00 beginning after Dec. 31, 2012.
- 6) Development Improvements Agreement: Escrow Fund Agreement, Village at Kimball Junction SPA-OBK Pads A,C, F in the amount of \$729,693.84 at Bank of American Fork.
- 7) New Park Blvd Round-About Project – Contract with Miller Paving in the amount of \$412,946.05, they were low bidder for the project.
- 8) Agreement with Rocky Mountain School of Baseball to use the fairgrounds ball fields on July 4 & 5, 2013 for their Firecracker Tournament. They pay \$200.00 per day for the use of the fields and \$50.00 a day for the use of the lights.
- 9) Bridge Painting Project Contract with the Gateway Company of Utah in the amount \$116,267.00. Includes additional painting of the bridge on Woodenshoe Road.
- 10) Slurry Seal Project Contract with Intermountain Slurry Seal in the amount of \$74,728.49. This was the low bid.
- 11) Summit Park, Parkview Drive Reconstruction Project Bid Award: Consideration of the award of the referenced contract with Geneva Rock Products. The Bid Amount for the project was \$1,113,396. The County's portion of the project is \$512,317.69. The balance of the cost is the responsibility of the Snyderville Basin Water Reclamation District and Mountain Regional Water.
- 12) Employment Agreement with Patrick John Putt for employment as the Community Development Director. Will be compensation at an annual rate of \$100,000.00 with benefits.
- 13) Updated contract with Alison Weyher for Economic Development, will be compensated in the amount of \$4,000.00 a month instead of \$1200.00 a month.



Kimber Gabryszak, AICP
County Planner III

Memorandum

From: Kimber Gabryszak
To: Summit County Council (SCC)
Date: Thursday, May 2, 2013
Meeting: Wednesday, May 8, 2013
Re: Potential changes to Lower Silver Creek Overlay Zone

Background

After decades of mining activity and contamination, the Federal Environmental Protection Agency (EPA) has declared the lower Silver Creek area as a CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act) site; CERCLA is more commonly known as “Superfund”.

In response, in 2008 the Summit County Council adopted Ordinance 692 (Exhibit A), creating the Silver Creek Soils Temporary Overlay Zone (Overlay Zone). The boundary of the Overlay Zone corresponds to the CERCLA declaration area, containing lands with significant heavy metal contamination stemming from the area’s mining history (Exhibit B).

Since that time, all new development in the Overlay Zone has been required to obtain either a certificate of compliance from the EPA or a Voluntary Clean Up Permit (V-CUP) from the State Division of Environmental Quality (UDEQ) prior to beginning development.

Request

The EPA recently notified the County of potential changes to the way development is approached in the Overlay Zone (last paragraph of Exhibit C). The UDEQ V-CUP process is handled on a property-by-property basis, and depending on the development proposals for each property, may result in varying standards of remediation. Some properties may be cleaned to a residential (higher) standard, while others may be cleaned to a commercial or industrial (lower) standard.

To ensure consistency in remediation standards, the EPA would prefer that property owners no longer go through the V-CUP process, and that remediation of the area instead wait for comprehensive remediation required of United Park City Mines, now owned by Talisker. The UDEQ does not oppose this change.

Discussion & Recommendation

Staff recommends that the SCC discuss the EPA request, and give Staff feedback on the request. In particular Staff requests discussion of the following options and potential impacts.

Option A – No Development

Under this option, the County could honor the EPA’s request and not require the V-CUP process. However, development would be prohibited until the area is comprehensively remediated.

- Pros under this option may include:
 - Ensuring that the area is fully remediated prior to development.
 - Remediation that occurs to a consistent standard and that is comprehensive throughout the area.
 - Ensuring that development does not occur in potentially contaminated areas.

- If EPA work with Talisker does not result in remediation, there is no incentive for property owners that have already developed to go back and remediate their property. This avoids this risk.
- Public health, safety, and welfare are better protected.
- Cons may include:
 - Placing all new development in the area, with the exception of locations that have already obtained V-CUP approval from the UDEQ, on hold for an unforeseeable period of time.
- Staff supports consideration of this option.

Option B – Development

Under this option, no V-CUP would be required, and development could occur on portions of lots outside of contaminated areas.

- Pros may include:
 - Allowing development and lowering cost to individual property owners.
 - Ensuring a consistent remediation standard - if the area is remediated.
- Cons may include:
 - The potential for development to occur in contaminated areas, as all parcels within the CERCLA boundary are considered at-risk, while the soils are not fully mapped for all parcels.
 - No guarantee that remediation will occur; if EPA work with Talisker does not result in remediation, there is no incentive for property owners that have already developed to go back and remediate their property.
- Staff does not support this option.

Option C – Business as Usual

Under this option, the County would still require either an EPA certificate or a V-CUP from the UDEQ and permit development to occur with some level of remediation.

- Pros may include:
 - Allowing development to occur without placing it on hold for an unknown length of time.
- Cons may include:
 - Disagreeing with the EPA's request.
 - Higher cost to individual property owners.
 - A resulting pattern of inconsistent remediation standards.
 - Potential for the area to not be fully remediated, as discussed in the previous options.
- Staff is willing to discuss consideration of this option.

Following this work session, Staff will move forward with the drafting of appropriate Ordinance amendments and related Snyderville Basin Development Code amendments, if necessary, to reflect the SCC direction, and begin scheduling work sessions and public hearings as appropriate.

Thank you,



Kimber Gabryszak, AICP
Summit County Planner

Exhibits:

- Exhibit A - Ordinance 692 (pages 3-5)
- Exhibit B - Overlay Zone Map & ownership (page 6)
- Exhibit C - EPA Letter dated February 7, 2013 (pages 7-8)

ORDINANCE NO. 692

AN ORDINANCE REQUIRING ESTABLISHING THE LOWER SILVER CREEK SOILS TEMPORARY OVERLAY ZONE TO INFORM THE CITIZENS AND PROPERTY OWNERS OF THE PRESENCE OF IMPAIRED SOILS AND WATER AND TO REQUIRE SOILS STUDY AND REMEDIATION.

WHEREAS, an innovative site assessment was conducted by the Utah Department of Environmental Quality (UDEQ) in 2001/2002 and concluded that all of the Lower Silver Creek area should be considered for placement on the CERCLIS list for further investigation and possible remediation under Superfund; and

WHEREAS, a Lower Silver Creek Stakeholders and work group has been formed to discuss local remediation solutions other than listing on CERCLIS and

WHEREAS, the Environmental Protection Agency (EPA) and UDEQ are in the process of refining data to further define the areas and type of contamination in the Lower Silver Creek Area; and

WHEREAS Summit County seeks to recognize and inform the public and property owners of potential historical mining contamination in the Lower Silver Creek drainage area of the Snyderville Basin and to minimize potential exposure while studies are being performed; and

WHEREAS Summit County has received input from the public as well as private parties affected by the historical mining contamination; and

WHEREAS, it is anticipated that this ordinance and overlay zone will be revised once additional data is generated to more specifically address the actual areas and type of contamination and options for remediation; and

WHEREAS Summit County has adopted appropriate Land Use General Plans and Development Codes to regulate the proper use of land within the Snyderville Basin; and

WHEREAS Summit County declares it in the best interest of the public health, safety, and welfare to adopt appropriate regulations for development as concerns the environmental quality of the Lower Silver Creek;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SUMMIT COUNTY, UTAH, AS FOLLOWS:

Section I. Definitions.

- A. "Development" is defined in Summit County Code, §10-Appendix A, "Development or Development Activity."
- B. "Development Permit" is defined in Summit County Code, §10-Appendix A, "Development Permit."

- C. "Soils Study" means a study conducted by a certified engineer and approved by UDEQ to measure the toxicity of the soil of the land which one owns, has developed, or desires to develop.
- D. "Remediate" means to remedy any environmental problems/violations as approved by UDEQ, EPA and Summit County on the land one already owns, has developed, or desires to develop, and according to the standards of any clean-up program pursuant to §II.C.i.-ii. herein.

Section II. Provisions.

This Ordinance creates a temporary overlay zone to minimize potential exposure to heavy metals from contaminated soils within the Lower Silver Creek drainage area, which is identified in Exhibit A, and consists of the Silver Creek drainage area between Highway 248 and I-80.

A. Development.

- i. Anyone desiring to develop or redevelop in the overlay zone shall obtain a soils study and shall show evidence that the development area is outside of the impacted area or shall propose a plan to remediate any environmental problems/violations identified in the study to the satisfaction of UDEQ and EPA before Summit County will grant a development permit.
- ii. Any party who has received approval to develop in the overlay zone, but has not yet built, shall obtain a soils study and shall show evidence that the development area is outside of the impacted area or shall propose a plan to remediate any environmental problems/violations identified in the study to the satisfaction of UDEQ and EPA before Summit County will grant building permits.
- iii. Any land owners who may have already built, and/or who do not wish to develop, in the overlay zone shall hereby be on notice that once the final EPA Study is completed, if property they own is in the identified impacted area, they shall be required to remediate under the terms identified in the EPA Study and shall have a limited time in which to do so.

B. Remediation.

- i. Environmental issues identified in any soils study may be remediated through the State of Utah Voluntary Clean Up Program ("VCUP"). A certificate from VCUP shall be prima facie evidence of satisfactory compliance; or
- ii. Remediation may be executed through any other clean-up plan approved in advance and in writing from UDEQ, EPA and Summit County.

Section III. Violations, Penalties, Enforcement.

- A. Violations of this Ordinance may be prosecuted criminally under the Summit County Code §10-9-20(A). Notwithstanding any criminal prosecution, the county may pursue any and all civil remedies available to it pursuant to Summit County Code §10-9-19(E) to ensure compliance with this Ordinance.

Section IV. Effect.

- A. This Ordinance shall become effective when approved, passed, and published pursuant to Utah Law.

APPROVED, ADOPTED, and PASSED this ____ day of _____, 2008.

BOARD OF COUNTY COMMISSIONERS
SUMMIT COUNTY, UTAH

By: _____
Chair

Commissioner Elliot Voted: _____
Commissioner Richer Voted: _____
Commissioner Woolstenhulme Voted: _____

ATTEST:

COUTNY CLERK
SUMMIT COUNTY, UTAH

Legend

- Lower Silver Creek Overlay Zone
- Silver Creek Village Center
- Silver Gate Ranches
- Ella Pace Trustees
- SBWRD
- PCMC
- South Summit School District
- Florence Gillmor
- Triangle Parcel
- Edward Gillmor
- G-Bar Ventures (Gillmor?)
- Nadine Gillmor
- Park City Business Center
- Geneva Rock
- RDB LLC
- Stoly Associates
- United Park City Mines
- IHC
- Quinn's Junction Partnership

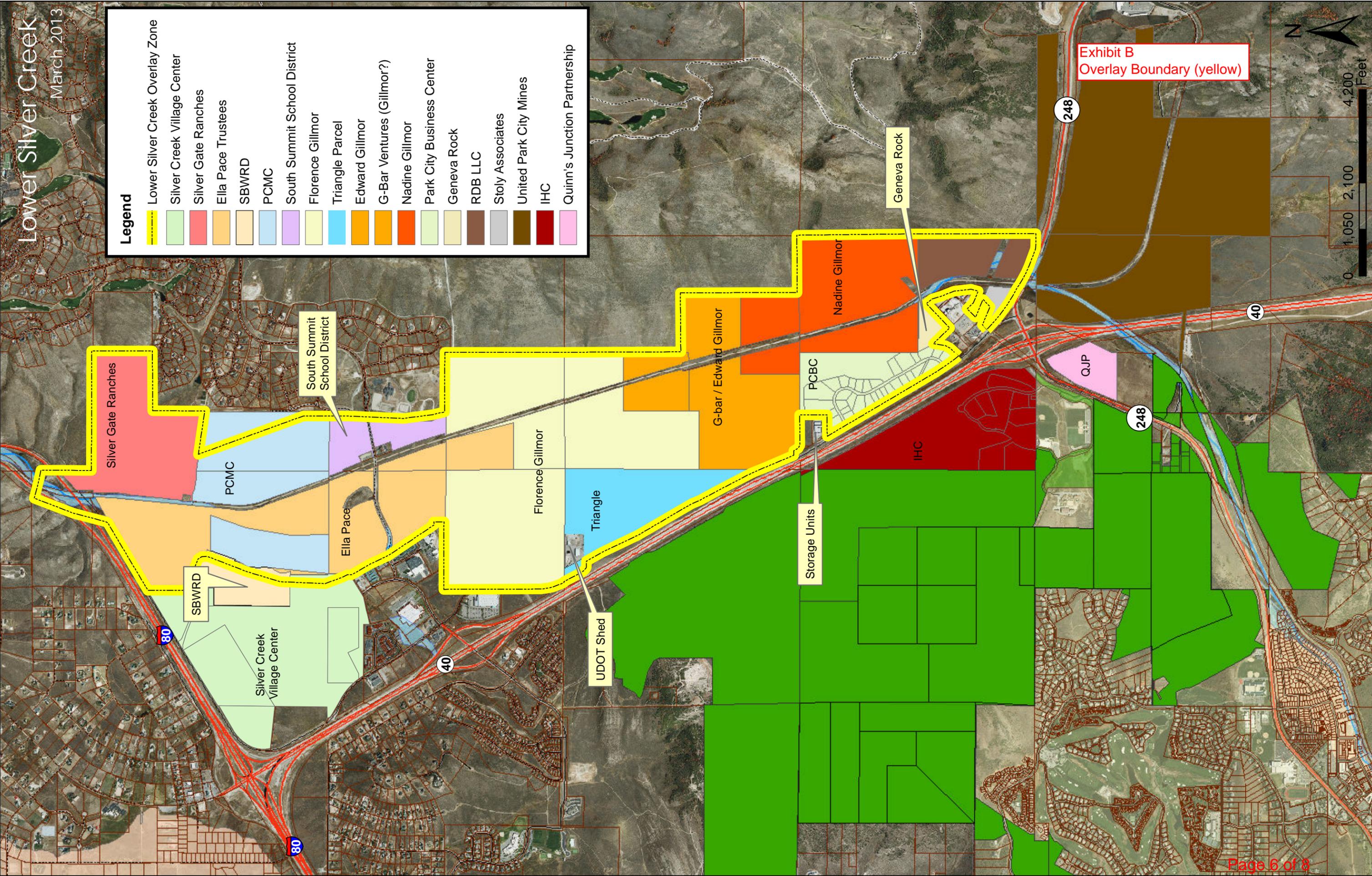


Exhibit B
Overlay Boundary (yellow)





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

Exhibit C
EPA letter

Ref: 8ENF-L

February 7, 2013

Jami R. Brackin
Deputy Summit Count Attorney
60 N Main
Coalville, Utah 84017

RE: Richardson Flat Tailings Site, Park City, Utah

Dear Ms. Brackin:

The purpose of this letter is to follow up our conversation regarding Summit County Ordinance 692 and cleanup of Lower Silver Creek. Due to contamination resulting from historic mining operations, the U.S. Environmental Protection Agency (EPA) determined that the Richardson Flat Tailings Site (Site) posed a threat to human health and the environment and should be addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et. seq.* (CERCLA). Initially, the Site encompassed the 258 acre mine tailings impoundment approximately three and one-half miles northeast of Park City, adjacent to Silver Creek. In July 2005, the EPA issued a Record of Decision (ROD) providing for the removal of contaminated sediments from nearby wetlands, covering contaminated sediments in the diversion ditch, capping the tailings impoundment, and imposing deed restrictions on future land use and groundwater use. The ROD was subsequently modified to allow for the removal of contaminated sediments in the diversion ditches. United Park City Mines (UPCM) and the EPA entered into a consent decree captioned *United States of America v United Park City Mines Company* entered on October 4, 2007 by the United States District Court for the District of Utah under case number 2:07-cv-00642, whereby UPCM is implementing the ROD.

Thereafter, the EPA expanded the Site to include additional areas of contamination associated with historic mining operations. The Richardson Flat tailings impoundment is now designated as operable unit one. EPA designated operable unit 2 of the Site to address mine waste and tailings that had been transported downstream of the tailings impoundment over twelve miles along the banks of Lower Silver Creek, from U.S. Highway 40 on the southern end to Interstate 80 on the northern end, an area of over 400 acres. UPCM agreed to perform a remedial investigation/feasibility study for operable unit 2 pursuant to an administrative order on consent executed in September 2009. The EPA recently identified two additional operable units. Along Silver Creek there is a stretch of the creek below Park City referred to as the "Middle Reach". The EPA created operable unit 3, which encompasses approximately 836 acres in the Middle Reach and approximately 720 acres along the flood plain of Silver Creek that were formerly part of operable unit 2.

The EPA also created operable unit 4, which consists of the discharge from Prospector Drain, an underground pipe that runs through a subdivision of Park City known as Prospector Square and a municipal park named Prospector Park. The Prospector Drain collects shallow groundwater from areas in and around Prospector Park and Prospector Square. It then discharges a portion of this flow to a constructed treatment wetland and the remainder to a natural wetland area on or near property known as the Silver Maple Claims. The Prospector Drain was constructed in conjunction with the development of the Prospector Park and Prospector Square area during the late 1970s when buildings were built atop tailings material. The EPA was concerned that if the outfall from the Prospector Drain was not addressed, recontamination of operable unit 2 and 3 would occur.

Summit County Ordinance No 692 was passed in 2008. This ordinance addresses impaired soils and water in Lower Silver Creek and creates a temporary overlay zone. The ordinance provides that with respect to new development, if a soils study reveals that the proposed development area is in an impacted area, remediation may be addressed through the State of Utah Voluntary Clean Up Program (VCUP) or other cleanup plan approved in advance by the Utah Department of Environmental Quality (UDEQ), the EPA and Summit County. Since Lower Silver Creek is now included within the Richardson Flat CERCLA site, EPA believes that future remediation should be addressed pursuant to CERCLA rather than the VCUP. EPA and the UDEQ also recognize the need to work with property owners who may wish to undertake development activities prior to completion of the CERCLA cleanup. The EPA would like to work with Summit County and UDEQ on how to proceed under such circumstances on a case by case basis. There are three pending VCUP applications that raise this issue. The EPA would like to schedule a meeting with you and UDEQ to discuss this matter further. I will call next week to check your availability.

I appreciate your consideration of this matter. If you have any questions, feel free to give me a call at (303) 312-6904.

Sincerely,



Andrea Madigan
Supervisory Attorney
Legal Enforcement Program

cc: Sandra Allen, State of Utah





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: May 8, 2013

Time allotment: 1/2 hour

Requestor and contact information: Jami Brackin x 3208

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

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

Discussion of interest and process on request of Vernon Merritt to amend the Jeremy Center consent agreement.

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

Attorney name: Jami Brackin

Is this an Ordinance or a Resolution? Ordinance Resolution No

PLEASE PROVIDE 4 ORIGINAL HARDCOPIES AND EMAIL INFORMATION TO asingleton@summitcounty.org by 12:00 p.m. the Thursday before Council meeting (must include staff report) or the item will be removed from the agenda.

MEMORANDUM

To: Summit County Council
From: Jami Brackin
Date: April 29, 2013
Re: Amendment to Jeremy Center Settlement Agreement

Vernon Merritt, who is the successor in interest to James Winkler, has requested an amendment to the Jeremy Center Consent Agreement (a copy of which is attached to this memo).

The Jeremy Center is sited on a parcel of land at the entry of Jeremy Ranch. It is the currently undeveloped corner parcel bounded by Tenet Road, Rasmussen Road and Homestead Road (across the street from the gas station and West of the LDS Church). The Consent Agreement was entered into as a settlement to legal action on June 28, 2005 and allows for small commercial/retail development on the property. Because this Agreement was a settlement of a land use litigation action, there is no formal action or process by which to amend this type of agreement. It is for this reason that this request has been brought to the Summit County Council for further direction.

After the changes to the Form of Government were made last year, it is the Council that has the authority to settle land use litigation matters and the Council which would consider and/or approve amendments to prior settlements. At this point staff is seeking direction on how to proceed with this request. By the questions articulated below we have provided some options that the Council may consider, but this initial discussion is to talk only about the process moving forward, and not the merits of the actual amendment request.

As a litigation settlement, the ultimate decision of whether to amend the Agreement or not is made by the Council. The first question to answer, therefore, is whether or not there is a desire to entertain any amendment. If the answer is yes, we can proceed with direction from the Council on process. If the answer is no, the item will be noticed on the Council agenda for a decision on the request, so that the decision may be made in a formal setting. A “no” answer will leave the existing Agreement in place as it is.

If the Council chooses to entertain an amendment, then the next question to answer is what process should be followed? To amend a Development Agreement requires public hearings before the planning commission and the County Council. Do you want to use this same legislative type process? Do you want review by the planning commission without public hearings or would you prefer a staff analysis only with the final decision coming directly to you? If/when the Council hears the merits of the request do you want a public hearing (not required) or would you prefer again to hear only from the applicant and staff?

If the Council chooses to entertain an amendment, staff needs direction on process and we are seeking that direction now. Once the Council determines the initial question and process (if any), staff will follow that directive and bring it back the Council to make a final decision in a public meeting on the record.

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into this 28 day of June, 2005, by and between Summit County, a body politic of the State of Utah, through its Board of Commissioners ("Summit County") and James Winkler, and JIMROB Jeremy, LTD, a Utah limited partnership (collectively, "Winkler").

RECITALS

- A. The Jeremy Center parcel, approximately 11.79 acres (the "Property"), which is owned by Winkler, was originally subdivided as part of the Jeremy Ranch Consent Agreement and received preliminary site plan approval from Summit County for 100,000 square feet of commercial and retail density on June 19, 2000;
- B. On June 19, 2001, the County took the position that the preliminary site plan had expired;
- C. Thereafter, a dispute arose as to the validity of the preliminary site plan culminating in Winkler bringing suit against Summit County in the District Court on January 14, 2004, Case No. 030500779MI, ("Lawsuit") asserting that he had vested development rights in the Jeremy Center;
- D. Winkler and Summit County now wish to resolve their respective claims and defenses in the Lawsuit.

NOW, THEREFORE, in consideration of the foregoing, the covenants, promises and releases set forth herein, the parties hereto agree as follows:

1. Approval of Final Site Plan.

Summit County hereby approves the Jeremy Center Final Site Plan, which is incorporated herein as Exhibit "A". Said Final Site Plan provides for 66,000 square feet of commercial and retail density.

A. The issuance of further development permits, to include building permits, shall be governed by Chapter 10 of the Summit County Code (Snyderville Basin Development Code), or its successor ordinance. This shall include tendering all engineering and construction documents, final landscaping, lighting, architecture, elevations, and signage plans to Summit County prior to building permit application.

B. Commercial uses shall be consistent with those listed in the Jeremy Ranch Consent Agreement. Fast food restaurants, drive through businesses, walk up food services, automotive services, sales, repairs, and maintenance, or uses that

RECORDER'S NOTE
LEGIBILITY OF WRITING, TYPING OR
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DOCUMENT WHEN RECEIVED.

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ALAN SPRIGGS, SUMMIT CO RECORDER
2005 OCT 04 10:51 AM FEE \$.00 BY GGB
REQUEST: SUMMIT COUNTY CLERK

BK1739 PG1022

create excessive noise, noxious odors, nuisances or general high traffic levels are prohibited.

C. Each commercial use is limited to 3,000 square feet of "sales space."

D. Height of buildings is restricted to 30 feet, measured in accordance with the zoning regulations in effect at the time of building permit application.

E. Interior and exterior lighting must be turned off by 10:00 p.m.

2. Bus Loop Turn-around.

As an integral part of the consideration for the County entering into this Settlement Agreement, Winkler agrees to provide a bus loop turn-around on the Property or, in the alternative, shall contribute to the County sufficient money or bond (estimated to be \$45,000) to build a bus loop turn-around at the intersection of Jeremy and Rasmussen Roads. In the event that said turn-around is not constructed within five (5) years from the date of this Agreement, Winkler shall dedicate an easement on the Property sufficient to build a turn-around. Said easement shall not encroach any closer than 30 feet to any building.

3. Reimbursement of fees.

Summit County shall pay to Winkler as reimbursement for overpayment of development fees the amount of \$19,152.00. Payable within 30 days of execution of this Settlement Agreement.

4. Dismissal of Lawsuit.

Within 10 days after execution of this Settlement Agreement, Winkler and Summit County shall file in the Lawsuit a stipulation for dismissal with prejudice in the form attached hereto as Exhibit "B".

5. Winkler Release.

Except as provided in this Settlement Agreement, and conditioned upon issuance of the Final Site Plan approval (Exhibit "A"), Winkler, on behalf of itself and its respective past, present, and future insurers, assignees, subrogees, affiliates, subsidiaries, parent persons or entities, partners, limited partners, joint venturers, members, managers, shareholders, directors, officers, employees, employers, trustors, trustees, beneficiaries, loan participants, agents, fiduciaries, and attorneys does hereby fully and irrevocably release, acquit, and forever discharge Summit County, and its respective past, present, and future insurers, assignees, subrogees, affiliates, subsidiaries, parent persons or entities, partners, limited partners, joint venturers, members, managers, shareholders, directors, officers, employees, employers, trustors, trustees, beneficiaries, loan participants, agents, fiduciaries, and attorneys, and each of them who might be

liable or claimed to be liable, none of whom admit liability, but all of whom expressly deny liability, of and from any and all past, present, or future claims, demands, debts, contracts, actions or causes of action, suits or causes of suit, of any kind and nature whatsoever, whether known or unknown, suspected or unsuspected, and in whatever legal theory or form, which Winkler now has, claims to have, or has at any time theretofore had, or claims to have, arising from by reason of or in any way connection with any transaction, agreement, occurrence, act or omission whatsoever, pertaining to the Lawsuit.

6. Miscellaneous.

- a. Amendment and Waiver. No amendment or waiver of any provision of this Settlement Agreement shall in any event be effective unless the same shall be in writing and signed by the parties hereto, and then such waiver or consent shall be effective only in the specific instance or for the specific purpose for which it is given.
- b. Parties in Interest. This Settlement Agreement shall inure to the benefit of and be binding upon the parties named herein and their respective successors and assigns.
- c. Entire Transaction. This Settlement Agreement contains the entire understanding among the parties with respect to the transactions contemplated hereby and shall supersede all other agreements and understandings between the parties. Other than this Settlement Agreement, there are no other agreements, statements, representations, and/or warranties, oral or otherwise, upon which any of the other parties hereto are relying.
- d. Applicable Law. This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of Utah. The parties agree that any dispute arising from this Settlement Agreement shall be litigated in courts located in Summit County, Utah.
- e. Headings. This section and other headings contained in this Settlement Agreement are for purposes of reference only and shall not effect in any way the meaning or interpretation of this Settlement Agreement.
- f. Counterparts. This Settlement Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Settlement Agreement. Facsimile signatures shall be deemed to be originals.
- g. Attorney's Fees. In the event of breach of this Settlement Agreement, the party found at fault hereby agrees to pay the costs and reasonable attorney's fees incurred in the enforcement thereof.

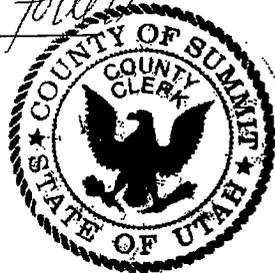
- h. Incorporated Documents. All exhibits, attachments, and other documents to be delivered by parties hereto concurrently herewith are hereby incorporated in this Settlement Agreement by this reference.

SUMMIT COUNTY

By: *[Signature]*
Chairman

ATTEST:

[Signature]
Sue Follett
County Clerk



JAMES WINKLER

See attached facsimile
copy

JIMROB JEREMY, LTD.

By: See attached facsimile
General Partner copy

HUTCHINGS BAIRD & JONES PLLC

ATTORNEYS AND COUNSELORS

9337 SOUTH 100 EAST
SALT LAKE CITY, UTAH 84070
TELEPHONE (801) 328-1400
FACSIMILE (801) 328-1444
www.hbj-law.com

To: Dave Thomas & Sue Follett &
435 336 3287 435 336 3030
From: Bruce Baird Jody Burnett
364 4500

Pages: 5

Signed Settlement Agreement

Please call my associate Dallis Nordstrom, 801 808 1400, with any questions or concerns.

YBC

Fax:4063225369

Jun 28 2005 9:51

P.01

JUN-28-2005 TUE 09:04 AM Bluffdale City

FAX NO. 8012533270

P. 02

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RECORDER'S NOTE

LEGIBILITY OF WRITING, TYPING OR PRINTING UNSATISFACTORY IN THIS DOCUMENT WHEN RECEIVED.

BK1739 PG1027

create excessive noise, noxious odors, nuisances or general high traffic levels are prohibited.

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Within 10 days after execution of this Settlement Agreement, Winkler and Summit County shall file in the Lawsuit a stipulation for dismissal with prejudice in the form attached hereto as Exhibit "B".

5. Winkler Release.

Except as provided in this Settlement Agreement, and conditioned upon issuance of the Final Site Plan approval (Exhibit "A"), Winkler, on behalf of itself and its respective past, present, and future insurers, assignees, subrogees, affiliates, subsidiaries, parent persons or entities, partners, limited partners, joint venturers, members, managers, shareholders, directors, officers, employees, employers, trustors, trustees, beneficiaries, loan participants, agents, fiduciaries, and attorneys does hereby fully and irrevocably release, acquit, and forever discharge Summit County, and its respective past, present, and future insurers, assignees, subrogees, affiliates, subsidiaries, parent persons or entities, partners, limited partners, joint venturers, members, managers, shareholders, directors, officers, employees, employers, trustors, trustees, beneficiaries, loan participants, agents, fiduciaries, and attorneys, and each of them who might be

liable or claimed to be liable, none of whom admit liability, but all of whom expressly deny liability, of and from any and all past, present, or future claims, demands, debts, contracts, actions or causes of action, suits or causes of suit, of any kind and nature whatsoever, whether known or unknown, suspected or unsuspected, and in whatever legal theory or form, which Winkler now has, claims to have, or has at any time theretofore had, or claims to have, arising from by reason of or in any way connection with any transaction, agreement, occurrence, act or omission whatsoever, pertaining to the Lawsuit.

6. **Miscellaneous.**
 - a. **Amendment and Waiver.** No amendment or waiver of any provision of this Settlement Agreement shall in any event be effective unless the same shall be in writing and signed by the parties hereto, and then such waiver or consent shall be effective only in the specific instance or for the specific purpose for which it is given.
 - b. **Parties in Interest.** This Settlement Agreement shall inure to the benefit of and be binding upon the parties named herein and their respective successors and assigns.
 - c. **Entire Transaction.** This Settlement Agreement contains the entire understanding among the parties with respect to the transactions contemplated hereby and shall supersede all other agreements and understandings between the parties. Other than this Settlement Agreement, there are no other agreements, statements, representations, and/or warranties, oral or otherwise, upon which any of the other parties hereto are relying.
 - d. **Applicable Law.** This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of Utah. The parties agree that any dispute arising from this Settlement Agreement shall be litigated in courts located in Summit County, Utah.
 - e. **Headings.** This section and other headings contained in this Settlement Agreement are for purposes of reference only and shall not effect in any way the meaning or interpretation of this Settlement Agreement.
 - f. **Counterparts.** This Settlement Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Settlement Agreement. Facsimile signatures shall be deemed to be originals.
 - g. **Attorney's Fees.** In the event of breach of this Settlement Agreement, the party found at fault hereby agrees to pay the costs and reasonable attorney's fees incurred in the enforcement thereof.

YBC

Fax: 4063225369

Jun 28 2005 9:52 P.02

JUN-28-2005 TUE 09:04 AM Bluffdale City

FAX NO. 8012533270

P. 05

Incorporated Documents. All exhibits, attachments, and other documents to be delivered by parties hereto concurrently herewith are hereby incorporated in this Settlement Agreement by this reference.

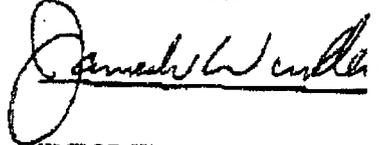
SUMMIT COUNTY

By: _____
Chairman

ATTEST:

Bue Pollett
County Clerk

JAMES WINKLER



JIMROB JEREMY, LTD.

By: _____
General Partner

Flays -4-

BK1739 PG1030

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Robert C. Keller (A4861)
WILLIAMS & HUNT
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P.O. Box 45678
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Chief Civil Deputy Summit County Attorney
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Coalville, Utah 84017
Phone: (435) 336-3206
Facsimile: (435) 336-3287

Attorneys for Summit County

**IN THE THIRD DISTRICT COURT OF SUMMIT COUNTY
STATE OF UTAH**

JAMES WINKLER, an Individual
and JIMROB JEREMY, LTD., a
Utah limited partnership,

Plaintiffs,

v.

SUMMIT COUNTY, a political subdivision
of the State of Utah, and DOES I-X,

Defendants.

: STIPULATED
: SETTLEMENT AND JOINT
: MOTION FOR
: VOLUNTARY DISMISSAL
: WITH PREJUDICE

: Civil Docket No.
: 030500779

: Judge Bruce C. Lubeck

In accordance with Rule 41 of the Utah Rules of Civil Procedure, the parties jointly move and agree to voluntarily dismiss with prejudice the above styled case and these proceedings upon the following stipulated terms:

1. That the Settlement Agreement, signed by the parties and incorporated herewith as Exhibit A, be incorporated into the Order of Dismissal.
2. That each party will bear their own costs and attorney fees.

WHEREFORE, the parties jointly request that this Court dismiss the above styled case with prejudice and incorporate the terms of this stipulation therein.

DATED this ____ day of July, 2005.

David L. Thomas
Chief Civil Deputy County Attorney
Attorney for Defendants

Bruce Baird
HUTCHINGS, BAIRD & JONES
Attorney for Plaintiffs

VERNON MERRITT, IV
ATLAS DEVELOPMENT COMPANY, LLC
DOUGHBOY MANAGEMENT WEST, LLC
2692 Ruminant Road · Park City, UT · 84060
(435) 214 7051

April 8, 2013

Ms. Jami R. Brackin, Esq.
Deputy County Attorney
Summit County - Utah
60 N. Main Street
PO Box 128
Coalville, UT 84017
jbrackin@summitcounty.org

**RE: Amendment to Settlement Agreement between
Summit County, Utah and James Winkler, JIMROB Jeremy, LTD
(the "Agreement")**

Dear Ms. Brackin:

Thank you very much for taking the time to meet with myself and Jennifer Strader of Summit County's Planning Division last Tuesday (April 2nd) regarding the above-referenced matter.

As we discussed, we are seeking a streamlined protocol with the Summit County Council and your office with respect to amending the above-referenced Agreement. Paragraph 6. - Miscellaneous - Subparagraph a. of the Agreement states as follows:

Amendment and Waiver. No amendment or waiver of any provision of this Settlement Agreement shall in any event be [sic] effective unless the same shall be in writing and signed by the parties hereto, and then such waiver or consent shall be effective only in the specific instance or for the specific purpose for which it is given."

It is our hope that we can reach accord with Summit County regarding modifying aspects of the following conditions of the Agreement:

LETTER TO JAMI BRACKIN – SUMMIT COUNTY DEPUTY ATTORNEY
RE: AMENDMENT TO SETTLEMENT AGREEMENT DATED JUNE 28, 2005
BETWEEN SUMMIT COUNTY AND WINKLER/JIMROB JEREMY, LTD.

APRIL 5, 2013 - P. 2

Paragraph 1. Approval of Final Site Plan.

“Summit County approves the Jeremy Center Final Site Plan, which is incorporated herein as Exhibit “A”. Said Final Site Plan provides 66,000 square feet of commercial and retail density.”

Also -

Paragraph 1. Subparagraphs B - E.

- B. “Fast food restaurants, drive through businesses, walk up food services, automotive services, sales, repairs, and maintenance, or uses that create excessive noise, noxious odors, nuisances or general high traffic levels are prohibited.”
- C. “Each commercial use is limited to 3000 square feet of “sales space.”
- D. “Height of buildings is restricted to 30 feet, measured in accordance with the zoning regulations in effect at the time of building permit application.”
- E. “Interior and exterior lighting must be turned off by 10:00 p.m.”

Finally -

It is also important for us to be able to receive clarification and confirmation of what uses – commercial or otherwise, besides those described above – are either specifically prohibited or permitted (the Agreement is silent as to this issue).

Background:

The Agreement flows from a preliminary site plan dated June 19, 2000. Sometime after the date of June 19, 2001 a dispute arose between the parties to the Agreement with respect to this preliminary site plan that led to a lawsuit, which was filed on January 14, 2004. Subsequently, on June 28, 2005 – or almost eight years ago – the within Agreement was entered into.

LETTER TO JAMI BRACKIN – SUMMIT COUNTY DEPUTY ATTORNEY
RE: AMENDMENT TO SETTLEMENT AGREEMENT DATED JUNE 28, 2005
BETWEEN SUMMIT COUNTY AND WINKLER/JIMROB JEREMY, LTD

APRIL 5, 2013 - P. 3

Present Situation:

I entered into a contract with the current owner of the within property at the end of 2012. It is our hope to design and build a well-planned, complimentary mixed use project at this site that is sympathetic to present-day economic and market needs and realities. To do so successfully we believe requires a complete do over of the existing Final Site Plan, and re-imagining and re-engineering appropriate, sustainable, complimentary uses for the specific trading area in that community. It is a remarkable and highly relevant fact that in that very trading area, there is – by our study of surrounding real estate – a minimum of 40,000 square feet of vacant commercial and office space. Therefore, as the within existing Final Site Plan contemplates 66,000 square feet of essentially the same type of development of which there is so much present-day vacancy(ies), for this project to ever be successful requires a departure from past plan design.

As an experienced land use planner and developer, I understand that careful consideration must be given to issues such as traffic and parking impacts, lighting, noise, and overall aesthetics when assessing the merits of a particular development. We believe that we can re-think this project and, with the assistance and cooperation of Summit County, design an economically feasible (in 2013 and beyond) project that provides useful, sustainable and complimentary development which simultaneously serves the needs and tastes of residents of Jeremy Ranch, Pinebrook, and Summit County, as well as visitors to this area.

I am writing this letter to you because it is my hope, after our meeting on April 2nd, that a clear but basic framework – or protocol – can be determined by Summit County officials that would permit us to move forward, within a reasonable period of time, with negotiations to amend the Agreement. As we discussed with Ms. Strader, it is not expedient for any of us to invest any significant amount of time, energy or money into a process that ultimately brings us nowhere. So I am encouraged that both you and Ms. Strader seemed optimistic that Summit County officials would be amenable to entering into negotiations with regard to this Agreement.

It is my suggestion that we approach this almost as an “overlay” zone for the subject property, whereby specific uses and density and other design criteria be established in discussions with the Planning Division and Attorney(s), prior to the need to design

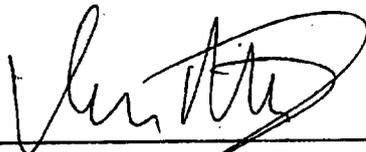
**LETTER TO JAMI BRACKIN – SUMMIT COUNTY DEPUTY ATTORNEY
RE: AMENDMENT TO SETTLEMENT AGREEMENT DATED JUNE 28, 2005
BETWEEN SUMMIT COUNTY AND WINKLER/JIMROB JEREMY, LTD**

APRIL 5, 2013 - P. 4

and engineer a site plan. This seems logical, as it seems to flow from the provisions of the Agreement regarding its amendment and/or waivers. Also, this would allow important generalities to be agreed to prior to getting into the nitty gritty of engineers and final design(s). Assuming we ultimately arrive at an understanding and agreement with regard to uses and design criteria, we would then undertake the necessary engineering work to complete a formal site plan.

I look forward to hearing back from you soon, hopefully within the next week to 10 days, regarding next steps. Your time and cooperation is greatly appreciated, as is that of Ms. Strader and the Summit County Planning Division.

Thank you sincerely in advance,



Vernon Merritt

cc: Jennifer Strader, Planner - Summit County Planning Division
jstrader@summitcounty.org

File

MINUTES

SUMMIT COUNTY BOARD OF COUNTY COUNCIL WEDNESDAY, APRIL 3, 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*

Robert Jasper, *Manager*
Anita Lewis, *Assistant Manager*
Dave Thomas, *Deputy Attorney*
Jami Brackin, *Deputy Attorney*
Karen McLaws, *Secretary*

WORK SESSION

Chair McMullin called the work session to order at 2:40 p.m.

- **Discussion regarding air quality; Seth Arens, Utah Department of Environmental Quality, and Rich Bullough, Health Director**

County Health Director Rich Bullough explained that this report provides valuable information and sets the stage for directing future efforts to monitor ozone in the County and start to discuss interventions to help address the issue. He explained that the inversions experienced this winter are not related to this report and that ozone is a primary pollutant during the summer. The County monitors PM2.5 but did not have levels exceeding the Federal standards this winter. Summit County was an island of relatively low levels, and he believed they got lucky this winter, because every valley surrounding Summit County exceeded the PM2.5 standards. He recalled that almost two years ago the Summit County Board of Health authorized the purchase of ozone monitors, and just as they were going to purchase those, the State contacted them and said they wanted to do a study in Summit County. He believed in a couple of years they would be back in a position of buying monitors.

Seth Arens with the Division of Air Quality presented the research that has been done on ozone quality in Summit County over the last three years. He stated that the standard is 75 parts per billion (ppb) for a daily 8-hour average. He explained that the EPA will review the ozone levels by the end of this calendar year and likely lower the standard to between 60 and 70 ppb. He noted that ozone is primarily a summer pollutant, and the goal of the ozone research has been to determine the boundary of a potential ozone non-attainment area and understand the background levels of ozone in the State of Utah. He explained that the Great Salt Lake plays a strong role in forming ozone along the Wasatch Front, and they would like to better understand how that factors into ozone formation. He presented a map showing the 27 sites monitored in Utah over the past three years, one of which is at the fire station in Silver Summit. He explained that, for the most part, ozone was monitored from June through September. In 2010 they found low to

moderate levels of ozone, but 2010 was a very low ozone year throughout the State. In 2011 they found slightly higher concentrations of ozone, but in 2012 they found that ozone concentrations in the Park City area were similar to what they see in Salt Lake City. The highest ozone in Summit County was at Parley's Summit, Parley's Elementary School, and Silver Summit, and those three sites were statistically identical in ozone concentration. He reviewed the ozone levels in the valleys surrounding Summit County and presented a graph showing the number of days the ozone level exceeded 75 ppb in Summit County.

Council Member Armstrong asked if there is a correlation between days with high ozone levels in Salt Lake City and high levels in Summit County. Mr. Arens replied that there is for the most part, although there can be some slight variations. Council Member Armstrong asked if Morgan County is usually high when Summit County is high. Mr. Arens replied that is not necessarily the case.

Mr. Arens compared the ozone at the Summit County sites with Salt Lake City and noted that on most high ozone days, at least one Summit County site is higher than the Salt Lake City site. He showed the dominant daytime wind patterns, showing that winds come up Parley's Canyon almost the entire day. He noted that the wind patterns indicate that Parley's Canyon is a corridor for transport of air masses from Salt Lake City into Summit County.

Council Member Ure asked about the cause of ozone. Mr. Arens explained that ozone is a secondary pollutant that is formed through chemical reactions of volatile organic compounds in the atmosphere in the presence of strong sunlight. Volatile organic compounds come from many sources, such as gasoline fumes, not tailpipe emissions, and plants.

Council Member Robinson asked why ozone is measured at only one site in Salt Lake and multiple sites in Summit County. Mr. Arens explained that the equipment in Summit County is temporary and being used at various sites to determine whether there is significant differentiation between the sites. The permanent equipment is very expensive, and it is only necessary to have one site in the Salt Lake Valley, because prior studies like the one in Summit County helped to determine where that equipment should be placed. Council Member Robinson confirmed with Mr. Arens that there is no significant discrepancy between data measured with equipment in Salt Lake compared to the equipment in Summit County.

Mr. Arens summarized that the ozone levels in Summit County have a lot to do with transport of ozone and ozone precursors from Salt Lake City. Other potential influences on ozone include some local emissions and possibly higher solar radiation at higher elevations. The equipment found that solar radiation was almost 60% higher in Summit County than in Salt Lake City. There could also be an enhanced role of biogenic volatile organic compounds emitted from plants in Summit County. He presented a potential timeline for the EPA to lower the ozone standard and commented that it is likely that Summit County will be included in the EPA's ozone non-attainment area. He believed the EPA would adopt a new standard by December 2013 and finalize it by December 2014. By December 2015, the State of Utah would have to give its recommendations of an ozone non-attainment area to the EPA, and by December 2016 the EPA would decide what the non-attainment would be. By December 2019, the State would be required to have a State implementation plan in place to reduce ozone concentrations.

County Manager Bob Jasper noted that one of the Council's priorities is to protect air quality and asked what measures are being considered in the Salt Lake Area. He asked whether the County should look at measures such as vehicle emissions inspection, putting guards on gas pumps, or other types of measures. Bo Call with the Division of Air Quality stated that they are not the best ones to talk to about control strategies. However, there are a couple of strategies in place. One is Phase I vapor reduction in which gas stations throughout the State vacuum up the vapors. Phase II would be rubber nozzles on every gas pump. He explained that they do not have a sure method for controlling ozone. Just like Summit County is subject to what comes up the canyon from Salt Lake City, the Wasatch Front is at the mercy of what comes from Nevada and Los Angeles. As the standard is reduced, it will become a regional issue where one state or locale will not be able to solve the problem on their own.

Mr. Bullough stated that he has been talking to the State about emissions monitoring, but because Summit County is not a non-attainment area, by law they cannot implement emissions testing. Even if the County could implement a program, the data are not convincing that emissions monitoring would be effective, because so many cars not registered in this County drive through the County. He stated that the vast majority of cars were produced after 1996, at which time the check engine light that monitors the oxygen sensors and the catalytic converter were put into place, and there are some non-regulatory ways to get people to get the check engine light checked when it comes on. He stated that the data are unconvincing about whether emissions testing is effective in the counties that do it. He explained that the County does not have real-time monitoring for ozone or CO₂. Last year when the fires occurred, Mr. Jasper asked if they could issue a health advisory. He replied that they could, but the County does not have any data upon which to base a health advisory. He hoped to have real-time monitoring next year so they can issue an advisory when ozone or PM_{2.5} levels are high.

Council Member Carson asked about the known health effects of ozone. Mr. Bullough replied that it turns lung tissue leathery. It is a powerful pro-oxidant, and when biological tissues are oxidized, cell damage and DNA modification can result. He explained that congestive heart conditions and lung conditions are usually aggravated by PM_{2.5} or ozone. Mr. Arens described it as a sunburn to the lungs.

Council Member Ure asked what percent of the problem comes from tailpipe emissions. Mr. Call replied that different constituents react to greater or lesser degrees chemically. Some things that are emitted in very small amounts may be very reactive, and they do not know for sure. Along the Wasatch Front, tailpipe emissions are about 55% of total emissions. Council Member Ure asked how they know the ozone is coming from Salt Lake County and not from the traffic coming over Parley's Summit. Mr. Arens replied that local emissions play some role, but the magnitude of emissions from the Salt Lake Valley dwarf what happens on I-80. The dominant wind patterns and progression and timing of ozone peaks supports the fact that ozone is transported from Salt Lake City. He explained that ozone levels are actually somewhat lower along highways, because NO emitted from tailpipes will chemically destroy ozone. At night, ozone decreases along I-80 because the NO from tailpipes destroys it. Council Member Ure asked if the same problem exists with ozone coming from Utah County into Wasatch County, and Mr. Arens confirmed that it does.

Mr. Jasper asked what effect converting to natural gas vehicles would have on ozone levels. Mr. Call stated that the biggest reduction by switching to natural gas comes in older vehicles which pollute less than natural gas vehicles. However, if there are two new cars, one natural gas and

the other using gasoline, they are rated according to their emissions, and the ratings for gasoline engines will also be very low. He explained that all vehicles that meet the same standard have similar emissions signatures.

Council Member Armstrong asked if there is data in Summit County dating back to 2000 to 2002 to see if the transport from Salt Lake has been consistent or whether expansion of growth in Summit County has been a contributor. Mr. Arens replied that he is not aware of any historical data. Council Member Armstrong asked what other sources of ozone might be associated with increased growth in the County besides an increase in the number of vehicles. Mr. Call replied that every new home has a furnace and water heater and other combustion sources, and additional cars on the road add to the mix. Council Member Armstrong asked how Morgan County and Wasatch County compare with Summit County. Mr. Arens replied that ozone levels there are not as significant as in Summit County, but there is daily transport from the Wasatch Front into Morgan and Heber.

- **Discussion regarding Notice of Annexation Petition regarding 1367.94 acres referred to as Round Valley Annexation Petition to Park City Municipal Corporation; Kent Jones and Kimber Gabryszak**

County Planner Kimber Gabryszak explained that Park City Municipal has petitioned to annex property into Park City Municipal. She referred to maps of the Park City Annexation Declaration boundary and indicated the area the City proposes to annex. She confirmed that the property recently purchased from Nadine Gillmor is not currently included in the annexation. She noted that the property to be annexed is currently designated open space through deed restrictions or conservation easements.

Council Member Robinson asked about the County's role in the annexation petition. Deputy County Attorney Dave Thomas explained that the County is the only entity that can protest the petition to the Boundary Commission. The 5% incorporation rule applies, which would be a reason to protest, and he did not see any other reasons in the statute for which the County could protest. He explained that the Council does not need to take any action, and the annexation could proceed. If the Council finds a reason to protest based on the 5% rule, that would be noticed for a decision regarding whether to protest.

Mr. Jasper asked if Park City could unilaterally expand its annexation declaration area or if the County would be involved in that process. Mr. Thomas replied that the City can unilaterally expand its annexation declaration area. Mr. Jasper verified with Mr. Thomas that they could jump over the highway to expand the annexation declaration area. He stated that he believes the City and County should have mutual discussions about future annexation declaration areas so they would be on the same page with regard to the size of the City, infrastructure plans, etc. He asked if the property owners have to concur. Mr. Thomas explained that a majority of the property owners have to concur, and most municipalities will not annex unless they have the property owners' consent. Mr. Jasper asked if the City would take responsibility for roads or services for the areas they annex. Heinrich Deters with the Park City Council replied that was his understanding. He explained that this is more of a housekeeping item, because the City purchased the land some time ago and has annexed in other portions under their ownership in the past. He explained that they have had concerns about hunting on the property and want to be able to control what happens on the property. Mr. Jasper asked if something needs to be done to

remove this area from the Snyderville Basin Special Recreation District. Mr. Deters replied that was his understanding, but the land does not have any tax value.

Planner Gabryszak noted that there is an agreement in place that has allowed special events to occur on that property and the City's management of those events.

Council Member Ure asked how Park City plans to manage the elk herd on the land. Mr. Deters replied that they will work with the various jurisdictions involved to provide for a healthy herd.

Council Member Carson asked about a potential reservoir on the property and asked if it would be allowed under the City's rezone of the property. Mr. Deters explained that a clause is included that addresses regional water discussions occurring with Weber Basin Water, Summit Water, and Park City. At the moment it is merely a study, and he understands that no agreement has been reached to work on it and it has not been funded. He explained that they cannot do an analysis of it, because they do not know what it will be, but it would be allowed to go through its own permitting and regulatory process if it is proposed.

CONVENE AS THE BOARD OF EQUALIZATION

Council Member Carson made a motion to convene as the Summit County Board of Equalization. The motion was seconded by Council Member Armstrong and passed unanimously, 5 to 0.

The meeting of the Summit County Board of Equalization was called to order at 3:50 p.m.

CONSIDERATION OF APPEAL OF PRIMARY RESIDENTIAL EXEMPTION STATUS FOR THE 2012 TAX YEAR, ARMIN J. WAGMAN

Armin Wagman stated that he was past the extension time, and working with his attorney, he has requested an extension for unusual circumstances. He stated that when the tax notice was mailed to him, he had gone to Missouri and forwarded his mail. The tax notice arrived in Missouri before he did, and he did not realize it. His wife was living in Missouri so their daughter could finish high school, and it got mixed up with some other documents, so he did not discover it until she moved here in December. At that time it was too late to file for the primary residential exemption. He asked to have this reconsidered based on factual error and stated that he has evidence that he was a primary resident and was considered a secondary resident.

Board Member Robinson stated that it appears the case Mr. Wagman is trying to make is that the County had an obligation to declare this a primary residence. He explained that unless a person applies for the primary residential exemption, the property is assumed by the County to be non-primary, and Mr. Wagman is trying to shift that burden to the County. If the County were to take that approach, every home in the County would be considered a primary residence, and the County would have to collect information from the homeowners showing they are not primary residents, but the process is just the opposite. He stated that the County's policy is very clear. A homeowner has 45 days to apply for the primary residency exemption, and if they do not apply, the house is considered non-primary. He did not believe the County could grant this appeal.

Board Member Armstrong explained that a factual error might be if Mr. Wagman had sent in the application on a timely basis and for some reason the County processed it incorrectly. In this case, it appears that Mr. Wagman made a mistake, and the way the County laws are structured, they cannot grant the appeal.

Mr. Wagman noted that his first request was for extraordinary circumstances, and at that time, he did not know why he had missed the tax notice. Then he discovered that it was forwarded to him when he was trying to get his house ready in Missouri and he did not see the notice until he found it when his wife moved here in December. He asked if that is enough to be considered an extraordinary or unanticipated circumstance.

Board Member Carson stated that, although the Council sympathizes with Mr. Wagman's situation, because the County was not at fault, it cannot take responsibility and accept Mr. Wagman's request.

Board Member Robinson made a motion to deny the appeal of primary residential exemption status for the 2012 tax year for Armin J. Wagman, Parcel PB-4-183. The motion was seconded by Board Member Ure and passed unanimously, 5 to 0.

DISMISS AS THE BOARD OF EQUALIZATION AND RECONVENE AS THE SUMMIT COUNTY COUNCIL

Board Member Robinson made a motion to dismiss as the Board of Equalization and to reconvene as the Summit County Council in regular session. The motion was seconded by Board Member Carson and passed unanimously, 5 to 0.

The meeting of the Summit County Board of Equalization adjourned at 4:00 p.m.

REGULAR MEETING

Chair McMullin called the regular meeting to order at 4:00 p.m.

- **Pledge of Allegiance**

CONSIDERATION AND POSSIBLE APPROVAL OF PAYMENT PLANS FOR MAY TAX SALE, PARCELS KT-32, WHLS-19, AND PC-488-A; KATHRYN ROCKHILL, AUDITOR CLERK

Chair McMullin recalled that the Council approved a payment plan last year for the Craig Savage home, PC-488-A, based on the house being sold to pay off the debt. The house has not been sold, and Mr. Savage is requesting an extension.

Council Member Robinson made a motion to postpone the tax sale for Parcel PC-488-A for one year, and if it does not sell in the interim, it will come back to the County Council next year. The motion was seconded by Council Member Armstrong and passed unanimously, 4 to 0.

Council Member Robinson verified with Gary Richins that he owes about \$5,200 and would like to make payments of \$350 over the next 19 months.

Council Member Ure made a motion to stop the 2013 tax sale and accept the payment plan for Parcel KT-32 as proposed. The motion was seconded by Council Member Carson and passed unanimously, 5 to 0.

The Council Members asked if Mr. Esbensen made his first payment of \$25,000 as proposed in the payment plan. Kathryn Rockhill with the County Auditor's Office replied that he did not. She explained that it was suggested he hold off in case his payment plan was not accepted. Council Member Ure suggested that Ms. Rockhill contact Mr. Esbensen, and if he comes up with the \$25,000 within the next 10 days, they would take the property off the tax sale. If he does not, the property will go to tax sale.

Council Member Robinson made a motion to approve the payment plan for Parcel WHLS-19 with the provision that the \$25,000 payment which was to have been made on or before April 1, 2013, be made on or before April 10, 2013, and if that payment is not made, the tax sale will go through. The motion was seconded by Council Member Carson and passed unanimously 5 to 0.

APPOINT MEMBERS TO THE NORTH SUMMIT RECREATION SPECIAL SERVICE DISTRICT

Council Member Ure made a motion to appoint Virginia Richins to the North Summit Recreation Special Service District to fill the unexpired term of Jim Brooks, with her term of service to expire September 30, 2015. The motion was seconded by Council Member Robinson and passed unanimously, 5 to 0.

Council Member Robinson made a motion to appoint Marci Hansen to the North Summit Recreation Special Service District to fill the unexpired term of Riley Siddoway, with her term of service to expire September 30, 2013. The motion was seconded by Council Member Ure and passed unanimously, 5 to 0.

APPOINT MEMBERS TO THE SUMMIT COUNTY RECREATION ARTS AND PARKS ADVISORY COMMITTEE (RAP TAX RECREATION COMMITTEE)

Council Member Armstrong made a motion to appoint Peter Tomai, Alex Natt, and Shana Overton to the Summit County Recreation Arts and Parks Advisory Committee (RAP Tax Recreation Committee), with their terms of service to expire May 31, 2016. The motion was seconded by Council Member Ure and passed unanimously, 5 to 0.

CONTINUED APPEAL OF SNYDERVILLE BASIN PLANNING COMMISSION DECISION FOR THE SILVER MOOSE BED AND BREAKFAST CONDITIONAL USE PERMIT; AMIR CAUS, COUNTY PLANNER

Chair McMullin explained that the purpose of this one-hour extension of the CUP appeal is to hear from the neighbors who did not get a chance to speak at the previous meeting. She swore in each person as they came to the podium to speak.

Kerry Armstrong, wife of Mel Armstrong, stated that she has lived in the red barn for over 30 years and that Snow's Lane has been anything but quiet since the Moorings started the bed and breakfast. Not only is there additional traffic on the lane, but people who are lost drive into their personal property and also people on foot just come to look. She stated that the most troubling thing to her is that twice last March people walked into her home assuming it was the bed and breakfast. She explained that there are a lot of signs saying no trespassing, private road, no summer ranch, etc., and she did not know what else she could do to prevent people from coming in. She stated that the recent news about Mr. Kelley's status as a Level 3 sex offender with a high probability to re-offend is extremely disturbing to her. She expressed concern, as she has many nieces and nephews who come to her home to stay and visit.

Melbourne Armstrong, a resident of Snows' Lane, stated that he inherited his property in 1959 from his grandfather's estate. They tried to keep it a single-family, low-key neighborhood, and this has changed the neighborhood a lot. He stated that last summer people in a 2-ton box van with an event tent showed up and knocked on his door. He stated that this was not set up to be anything but single-family. He believed Mr. Kelley may have needed someone to run this as a bed and breakfast. He stated that he was not clear at the last meeting about whether Mr. Kelley's home is the correction facility in Massachusetts since he has not been here for several years or if this is his home. The Moorings say when he is here they don't run the operation, and he questioned whether they would want their grandchildren to be there with him there. He stated that he was confused at this and wondered why someone did not tell them when William Kelley started the process that they should talk to the neighbors. The Moorings just showed up, and he did not know who they were, and things have gone downhill since then. He commented that his grandfather instilled in him to hold onto this land, and he was so young when his grandfather died that he was told he would not have a chance to. He stated that this just stuns him. He explained that his sister married Rick Prince, and during the recession in 1987, they lost their property to the bank. He talked about neighbors who have lived on the property and how Mr. Kelley has driven them away.

Herb Armstrong, Mel Armstrong's brother, stated that he has been involved with the property for many years. He remembered what the easement to his grandmother's house and a single-family house for his sister was for. He stated that he would hate to see the tranquility of this place turned into a commercial project. He noted that he has lived on the property continuously since 1959 and is very much opposed to turning it into a commercial operation.

Suzette Robarge, a resident on Three Kings Drive, stated that her home directly faces the pasture at the Armstrong property, and her mother lives near her on Three Kings Drive directly facing Snow's Lane. She stated that traffic has increased substantially on Snow's Lane, and she and her mother have observed that on multiple occasions. Her mother would have to draw the blinds in her home at night because the auto lights come directly into her den. She stated that they no longer walk up Snow's Lane as the Armstrongs have encouraged them to do because the traffic is such that they do not know who is driving the lane, and they no longer feel secure. She stated that there are speeding issues and people asking where the bed and breakfast is. When she does walk her dog on Snow's Lane, she reported that people stop to ask her who owns the barn and about the history of the area, and she believes it is intrusive to be asked about her neighbors. She has owned her property since 1994, and it is not the same character as it was before. She stated that her mother's peace and quiet as she gets older is definitely being diminished. She recalled that at one time a girl who was living at the Kelley property prior to this becoming a bed and breakfast came to her mother's home begging to live in her nanny apartment, because Mr. Kelley

was so creepy and she felt impacted by his behavior. She stated that the bed and breakfast is out of character with the neighborhood and creates more traffic, and the guests of the bed and breakfast impose on the neighbors and intrude on their privacy.

Brent Gold, representing the Armstrong family, stated that when the Council continued the hearing at the last meeting, they were concerned about several things. They had questions about water issues and asked for further information, specifically asking for a copy of the answer and counterclaims filed in connection with the litigation, and he does have that documentation. Deputy County Attorney Jami Brackin confirmed that she sent that to the Council by e-mail. Mr. Gold requested that those documents become part of the record. He recalled that he made a comment at the previous meeting that he did not believe the State Engineer's Office had full record of Judge Hilder's judgment and it was not reflected in the records, but he was wrong. The applicants went to the State Engineer's Office and requested certification for a larger amount of water, and the State reflected on the record that, in accord with Judge Hilder's judgment and order, they were not entitled to that amount and appropriately reduced it. He provided an amendment to the letter from Mr. Hansen presented at the previous meeting regarding the water and noted that the conclusion of the amended letter is that there is even greater insufficiency in the applicant's water rights. He noted that the Council also received a letter from Friends of East Canyon Water in which they raised concerns that were not previously entered into the record, and he provided a copy of the letter for the record. He provided a copy of the advertising for outdoor events from the applicant's website and noted that it also shows that children are on the premises. He believed the fact that events are directly booked with the bed and breakfast is a water issue as addressed in the water letter. He requested time to respond to any further arguments the Council may hear on this matter.

Tina Smith stated that she has kept horses on Mr. Kelley's property since 1990, noted that she had sent a letter to the Council, and asked if they have questions for her. She stated that the Moorings do not send people out into the conservation easement property or into the pastures and that they have been extremely respectful and careful about not disturbing the horses on the property. She stated that the Moorings send the guests for walks on Snow's Lane, and they like to see the horses. She did not see any problems with traffic. She stated that she had no idea what the sex offender issue is with Mr. Kelley.

Dylan Rothwell stated that he lives adjacent to Snow's Lane and lived on Snow's Lane for five years. His parents still own a house on Snow's Lane, and he wanted to address the neighborhood impact. He was concerned that the neighbors were not able to address the impacts at the last meeting, because the bed and breakfast is selling something the neighborhood created, specifically the Armstrongs. He stated that the open space would not exist without the Armstrongs because they chose not to develop their property. The same has been the case with his family, and the two families have contributed all of the open space. The bed and breakfast is selling that open space and the rural experience the neighbors created and, in doing so, degrading what they have built. The neighbors wanted it to be rural and went to great lengths to keep it that way. For years they left notes on people's cars to not park on their property to try to access the ski resort without buying a ticket, and they have dealt with the repercussions of enforcing a rural policy on Snow's Lane. He stated that everyone who lives there understands the rules, because they talk to each other as neighbors and want to live their entire lives there and take care of their lane. They have chosen not to rent out their homes and have finally established a lane that is clear of traffic and quiet. Now the traffic comes from something that someone else profits from. He feels the neighbors have created an asset that the applicants benefit from financially, and the

neighbors only get the negative impacts. He stated that even nightly rental in this area does not seem right, because this is a single-family neighborhood. He believed no one would lose anything if the Council were to deny a bed and breakfast or nightly rentals for the applicant, and he asked the Council to do that.

Mr. Thomas reported for the record that he has a letter from Tricia Lake, Assistant City Attorney with the Park City Legal Department dated April 3, 2013; an e-mail from Mark Schwartz addressed to Mr. Tesch regarding the issue of owner occupancy; the Kelley-Mooring LLC agreement dated October 10, 2011; the Armstrongs' answer and counterclaims; the signature page of the Mooring agreement; the LLC Articles of Organization of Silver Moose Ranch, LLC; an affidavit of Jeffrey D. Salberg addressing the water issue; and a stipulation regarding pre-judgment security from Massachusetts as noted by the County in its presentation.

Chair McMullin noted that they need to add to the record the letter from Tina Smith sent to the Council; the Bed and Breakfast Inns of Utah standards; the David E. Hansen letter dated April 1, 2013; the concerns of Friends of East Canyon Creek dated April 1, 2013; the outdoor activities available at the bed and breakfast from the internet; and the two Dylan Rothwell letters.

Joe Tesch, representing the appellants, stated that the neighbors can get along, and nothing he has heard falls outside the fact that things change, zoning laws are in effect, and people may not like what their neighbor does, but they cannot control what they do as long as it is legal. He believed everything could be dealt with by imposing conditions, and he suggested some conditions that his clients have agreed to. He stated that they are willing to contribute a fair share to maintenance of the lane. Another fair condition would be that the appellants would be required to respect the Utah Open Lands easement with the exception that they believe the road can be improved under their easement right. He stated that they go out of their way to have the wildlife and the property taken care of in the right way. With regard to Mr. Kelley, he stated that other people in other forums deal with that issue, and he would have a right to live in his home. They would not mind a condition that when the bed and breakfast is being operated, Mr. Kelley will not be there. With regard to traffic issues, the appellants have agreed to remind people in their brochures and when they get there to observe the 10 mph speed limit. The appellants would agree to finish off the road in a similar condition to what has been done up to the Armstrong property and would be happy to have the water tested once a year. They would be willing to have a condition that they meet all State and local requirements for foodservice. Mr. Tesch noted that his clients have already requested that the City allow them to put up more signage, and the City will not allow them to put up any signs, but they could sign their own property better and give more explicit directions to people who come as guests to the bed and breakfast. He stated that they would be happy to try to be the best neighbor possible.

Council Member Robinson summarized his opinion that a bed and breakfast is a conditional use in this zone, which means it is an approved use if the impacts can be mitigated. The first issue for him is the issue of owner occupancy, and if they get past that, there are issues such as legal access, compatibility with health, safety, and welfare issues in the neighborhood, and the water issue. He asked Mr. Tesch to explain his view of the ownership issue as addressed by Mr. Schwartz in an e-mail to Mr. Tesch. It is clear that Mr. Kelley is an owner of the LLC, but the operating agreement falls short of what he would expect to see in an operating agreement. He asked Mr. Tesch to explain his position that this is owner occupied. Mr. Tesch explained that "owner" is defined under a different section of the Code as having either legal or equitable interest in the property. He stated that the Moorings are the owner occupiers of the property,

because they have an equitable interest. The agreement, although it is informal, says that the Moorings rent and pay \$700 a month for the unit they live in. He explained that Utah law is clear that the right to use and occupy a piece of property is an equitable interest, even though they are not on the title. He maintained that the County ordinances describe what an owner is. Another argument is that the Moorings are the owner proxy as managers for the owner, and there is no requirement of any specific number of days an owner must occupy. If there is an issue with foodservice, the appellants need to go to the State to deal with that, and if there is an issue with water, they have provided a professional opinion, and those issues are really not the Council's call. He believed they had met their burden of proof. He stated that the issue of whether the lane can be improved is for a judge to decide; they were forced into that litigation by the County Attorney's Office, and that is not for the Council to sort out.

Council Member Armstrong stated that he is troubled by Mr. Tesch's analysis of owner occupation given the purported operating agreement. He questioned whether, if he had a caretaker on his property and charged him rent and had him do things to take care of the property, the caretaker would have an equitable interest and the right to start a business on his property, and the answer is that he would not. This agreement says the Moorings have the run of the property and should feel free to do what they want with it, and when Mr. Kelley comes to town, he gets to stay there. Typically, a lease agreement transfers control of the property to the lessee, and the lessor would have the right to inspect the property and be sure the lessee is living up to the lease, but the control is with the lessee and there would be an interest in the property that is fairly recognizable. This agreement seems to be confined to the Moorings being allowed to use the caretaker quarters for \$700 per month and operate the bed and breakfast for Mr. Kelley. He has the right to approve certain things, but they have to clear out the bed and breakfast when he comes to town if he ever comes to town. Council Member Armstrong stated that the record shows that for a 16-month period Mr. Kelley has not been here at all. Even in the articles of organization, the address listed for Mr. Kelley was Massachusetts. He is struggling to see that the caretaker or manager of the property is sufficient to transfer the equitable title and allow them to run the business. Mr. Tesch noted that on the last page of the agreement, it states that they are required to operate the bed and breakfast to the level expected by the customers, so it is obvious that it is done with Mr. Kelley's permission. The question is what they are really trying to do. If they had time to amend the ordinance to what he believes its purpose is, they would say it has to be owner occupied or manager occupied, and having a trained manager there is more important than having the title owner there. He believed they are concerned about the control issue. He questioned what would happen if the owner were called away in the military or on an LDS mission and whether they would lose the ownership of the property. He believed they need to interpret the Code in connection with what the purpose is. Council Member Armstrong stated that a bed and breakfast has a different connotation than some of the citations Mr. Tesch has provided. He believes when someone walks into a bed a breakfast, they imagine it is a nice little couple providing a bed and breakfast because that is something they want to do. It appeared to him that the ordinance was drafted with that in mind. The ordinance could have been drafted to cover other scenarios, like manager operated or corporate operated, but it was not. He could stretch it so far as the owner wanting to form an LLC or corporation because of liability concerns, which would still fit the notion, but this seems to be different and more of a commercial operation. It is different to bring in managers to operate something rather than the owner, which seems to move it up to something closer to a hotel, not a local level, very small bed and breakfast concept.

Council Member Robinson stated that in order to get to owner occupancy in this case, that has to do with the Moorings and has nothing to do with Mr. Kelley and whether he is a primary resident. For this to work, there needs to be equitable title on the part of the Moorings, who occupy the residence. He believed most bed and breakfast businesses would want to form an LLC, and the case that needs to be made is that the Moorings have equitable title. He believed the Code is getting at requiring that the people who operate the bed and breakfast live in-house. He was convinced by Mr. Salberg's memorandum dated April 2, 2013, stating that Judge Hilder's order was incorporated into the certificated water right and the right to one domestic use at .45 acre feet and the right to irrigate 1.87 acres of expanded yard and to water 10 equivalent livestock units. That totals almost 6 acre feet, and it was his opinion that the applicants have demonstrated sufficient water rights. With regard to the access, he asked Mr. Thomas to address the Park City letter regarding the easement. Mr. Thomas stated that he has looked at the cases referred to in the Park City letter, and there are subsequent cases which state directly that easements are controlled by contract law, and that is how they are to be interpreted. He believed case law has developed over time, and it was his opinion, based on the status of the law today, that they would look at the easement, and if it is a written instrument, they would look at the four corners of it. If it is plain on its face and plain in meaning, they would not look beyond that. If there is some ambiguity, they could look at extrinsic evidence. He read the language from the most recent Utah Supreme Court case that, where the language of the grant leaves no doubt as to its meaning, the terms of easement cannot be expanded beyond what is contained in the instrument. Since this is being litigated in District Court, they may want to let the court make the determination. Generally speaking, when an applicant comes in, the County asks for proof of access, which is usually a written easement, and they try not to look beyond that. However, there have been cases in the past where the County accepted the written instrument that was provided and it resulted in a lawsuit. He stated that it is a difficult decision for Staff when someone brings in a written instrument and it is immediately disputed and ends up in a court proceeding. He explained that they could place a condition on the CUP that it would be contingent on the court's decision regarding the access easement. Council Member Robinson stated that he believed the County should accept the easement at the application level if it is unambiguous on its face. Mr. Thomas explained that it is up to the Council's discretion to determine how they want to deal with the easement.

Council Member Robinson noted that some have said the road needs to be improved, but other parties say the road cannot be improved. He did not know whether the road meets the requirements, but he believed they should condition the approval so that it needs to meet the County's road requirements. He asked if the road meets current Summit County standards. County Planner Amir Caus explained that Staff did not receive comments from the Engineering Department during the CUP review but received them prior to the first meeting on the appeal. According to the Engineering Department, the road is 18 feet wide and does not meet current standards, but it could be improved to meet the standards. According to the Park City Fire District, the road needs to all be surfaced, but they did not comment on a specific width. Ms. Lake stated that both the County's engineering exhibit and the City's exhibit indicate that the Fire Code would require a 20-foot width.

Ms. Lake stated that, with regard to the 1988 Kelley easement, it is the City's position that the instrument that granted the easement is clear, but at the time it was for a single-family, non-commercial, private residence, and the road has remained substantially unchanged for decades. She argued that, to improve the road by virtue of width or pavement for commercial or private use would change the scope of that easement, and that is what is being litigated in District Court.

She stated that the easement was a part of the deed which granted the property, and looking at the totality of the instrument, it is for a single-family, non-commercial, private residence.

Mr. Tesch noted that there are two opinions from the Engineer, one being from the traffic engineer, who said this is a driveway and that driveway standards apply. He stated that about 12 days later Jami Brackin said she met with Derrick Radke, and after that they got a different opinion, not from the traffic engineer. He referred to Section 10.4.10 of the Snyderville Basin Development Code which addresses rural road design standards and stated that it defines a rural minor road as providing supplemental access to adjoining properties and is secondary to a rural local road, provides little continuity. If anything, he believed that is the character of Snow's Lane.

Council Member Carson asked about the events at the bed and breakfast. She believed operating a bed and breakfast in the Mountain Remote Zone would be similar to a single-family residence. She asked about plans for special events as shown in the applicant's advertising and commented that running a special event center is very different from what the people who developed the Code and the bed and breakfast use imagined for a bed and breakfast. Tamara Mooring, the applicant, explained that the events develop from the setting, and they try to promote a romantic, couples-oriented experience. The property is 13 acres, and anyone who owns 13 acres has a right to throw parties. She stated that these are managed events, and they require the guests to work with a professional event planner. She explained that the type of people who would attend the events are drawn to the setting and tranquility and would want a family-oriented, small gathering. Chair McMullin asked Ms. Mooring to describe how many events there would be, the types of events, and how many people would attend. Ms. Mooring replied that they require that the guests rent the entire ranch, usually for two days. The bridal parties stay there as guests, and they would not have simultaneous individual guests and events. She stated that they had three events last year, and she believed they had eight scheduled for 2013. Chair McMullin asked about the goal in the business plan for the bed and breakfast to have a certain number of events. Ms. Mooring replied that events just happen because of the setting, and they do not require a certain number. They rent the rooms at the same rate as any other room rental. Chair McMullin asked what eight events are planned for this year. Ms. Mooring replied that they are weddings of 100 guests or less. Chair McMullin asked if those events might include a cocktail party, wine tasting, or catered dinner on the grounds. Ms. Mooring replied that they would. Council Member Armstrong noted that the advertising materials for the bed and breakfast include a list of possible uses. Ms. Mooring stated that the website was built before they opened the business and were the types of events they envisioned, and it has not been modified since then.

Mr. Gold stated that, with respect to legal or equitable title, it is an equitable ownership interest in the property, not an equitable interest, and an equitable ownership interest is far different than an equitable interest. It was clearly stated by counsel for the applicant at the last meeting that the owner occupant was William Kelley. With regard to clear and unambiguous, he referred to the Wycoff case and noted that the judge who dissented to the decision took the position that it was clear and unambiguous language that was at issue, which is as clear and unambiguous as the language in this easement. Notwithstanding that clear and unambiguous language, the court said they must look at the history and intent of the grantor and grantee at the time the easement was granted. Because of the history, they ruled against the position that these applicants are taking. He stated that the applicants have spelled out the rule but have not acknowledged the exceptions to the rule, and in many cases the exceptions subsume the existence of the rule.

Council Member Carson made a motion to close any further comment on the Silver Moose Bed and Breakfast CUP appeal. The motion was seconded by Council Member Robinson and passed unanimously, 4 to 0. Council Member Ure was not present for the vote.

MANAGER COMMENTS

Mr. Jasper reported that he would soon bring to the Council some options regarding possible consolidation of elected County offices. He recalled that they ran out of time when this was discussed previously, and he wanted to allow plenty of time to discuss it before the next election. He noted that they do not have a County surveyor, and he was not certain whether that position was formally consolidated with the County Assessor's office, so he would research that and propose that the offices be officially consolidated if that has not already happened.

Mr. Jasper recalled that the Council amended Chapter 2 of the County Code and reserved personnel decisions with regard to the administrative control boards. Some concern has been raised that only the Council could appoint the staff members of every special service district, which he did not believe was the Council's intent. He suggested that they might want to delegate day-to-day operations, because he did not believe the Council would want to hire or approve of every staff person with those special districts.

Mr. Jasper reported that a work session will be scheduled on April 10 to prepare for the joint visioning meeting with Park City and asked the Council Members to think about how to approach that discussion. Chair McMullin asked that the Council also finalize the strategic plan at the next meeting.

Mr. Jasper stated that he has a letter from the Canyons seeking an extension of time for the golf course, which would be an amendment to an amended Manager's decision, and he wanted the Council to be aware of it before he meets with the Canyons. He explained that the Canyons is arguing that they bought additional property and would like to make the golf course bigger and upgrade it, and they cannot get the financing in place to do that with the deadline the County has placed on them. Council Member Ure commented that this is a huge issue with the community, and he felt that they need to keep the pressure on the Canyons.

COUNCIL COMMENTS

Council Member Armstrong reported that he attended the Park City Blue Ribbon Soils Committee meeting and provided recommendations to Park City about what to do about hazardous waste. He noted that one issue is that it costs about \$220 per cubic yard to truck the hazardous waste. Another issue is whether they can segregate the clean soil and haul out only the contaminated soils, whereas under the current ordinance everything has to be hauled out, and the soils cannot be segregated. It is prohibitively expensive to do that, and being able to segregate the soils may address some of the cost issues. Education was a secondary issue to be certain that they properly educate the public about the hazards at the site.

Council Member Carson asked about the UDOT annual visit. Council Members Robinson and Carson agreed to attend. Council Member Carson asked about the retired and senior volunteer program on April 23 and stated that she believed there should be Council representation there. Council Members McMullin and Ure offered to attend that event. Council Member Carson noted that the Council of Governments will meet on Monday, April 15, at 6:00 p.m.

Chair McMullin stated that she does not understand the meeting notices she gets from the Wasatch transportation group. Council Member Robinson recalled that Chair McMullin is the County's representative on the executive committee of that group. He stated that they are holding a meeting on April 19 and offered to get the details to Chair McMullin.

Council Member Armstrong commented that he believes they need to give some thought to the issue of dogs on trails and leash laws. He stated that the issue keeps coming up, and he did not believe they should close their eyes to it. He asked for an update from Mr. Bellamy. Chair McMullin stated that the problem is that they have a leash law that is routinely ignored, and the County does not have enforcement capability because of the loss of staff in Animal Control. She recalled that they were going to try to do education and provide materials at the trailheads, but currently they do not have the ability to do that. Council Member Armstrong stated that he believes they need to revisit the issue, because they can respond to the problem now, or when an accident occurs people will want to know why they have not responded to it.

Council Member Robinson recalled that UAC solicited participation by elected officials in the State's new Prison Relocation and Development Authority and stated that he has submitted a letter of interest.

PUBLIC INPUT

Chair McMullin opened the public input.

There was no public input.

Chair McMullin closed the public input.

CLOSED SESSION

Council Member Ure made a motion to meet in closed session to deliberate on quasi-judicial matters. The motion was seconded by Council Member Robinson and passed unanimously, 5 to 0.

The Summit County Council met in closed session from 6:00 p.m. to 7:15 to deliberate on quasi-judicial matters. 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

Robert Jasper, Manager
Dave Thomas, Deputy Attorney

Council Member Ure made a motion to dismiss from closed session and to adjourn as the Summit County Council. The motion was seconded by Council Member Armstrong and passed unanimously, 5 to 0.

The County Council meeting adjourned at 7:15 p.m.

Council Chair, Claudia McMullin

County Clerk, Kent Jones

Jeffrey B. Corben*
Chad M. Gallacher*
Charles E. Maxwell*
Brian W. Morgan*†
Paul R. Neil*†
W. William Nikolaus*
Allen H. Quist*

* Admitted in Arizona
‡ Admitted in Utah
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May 2, 2013

SENT VIA EMAIL ONLY krobbinson@summitcounty.org

Summit County Council
Attn: Kelly Robinson

**Re: Silver Baron Lodge at Deer Valley
Tax Parcels SBLDV-CU-2, SBLDV-CU-13, SBLDV-CU-18
Request to be Placed on County Council Agenda**

Thank you for taking my call today. I am the attorney for Silver Baron Lodge at Deer Valley ("Silver Baron") and for the past year and a half I have been assisting the Silver Baron in formally converting the above referenced parcels from commercial units to common elements. As such, I am writing in regards to a pending tax sale for Parcels SBLDV-II-CU-13 and SBLDV-II-CU-18. The sale for both parcels is scheduled for May 23, 2013. I am asking to be placed on the agenda for May 8, 2013 to discuss two items, namely 1) a request that the sale for the two parcels be postponed, and 2) that the Council consider a reduction in the outstanding tax bill for each parcel.

Silver Baron Lodge at Deer Valley ("Silver Baron") is a condominium development built just below the base of Deer Valley Ski Resort. The developer ultimately went into receivership and the owners within Silver Baron have had the burden of completing the last portions of the project. The developer (and subsequently the receiver) sold most of the residential and commercial units. However, the three units referenced above continued to be held by a sister company of the developer, and consequently were not disposed of during the receivership proceedings. Silver Baron eventually had to go through the foreclosure process to have the parcels taken out of the sister company's name and put into the name of Silver Baron. After working its way through the legal system, Silver Baron ultimately became the owners of the units. Since that time, Silver Baron has gone through the process of amending the CC&Rs and the Plat to change the stated use from commercial to common elements. During this process I have had several meetings with various officials with the County, including the County Assessor and the County Recorder in order to properly modify the tax valuation moving forward and to appeal the valuation as far back as the Assessor is allowed to go without Council intervention. Now that all documents have properly been amended, it is my understanding the valuation will be permanently changed moving forward. However, we are still in the final process of determining the final amount owing, and it is unlikely those figures can be calculated and paid prior to the sale date scheduled for May 23. Consequently, on behalf of the owners of Silver Baron, I respectfully request that the sale date be continued until such time as a final bill can be

MAXWELL & MORGAN, P.C.
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May 2, 2013
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produced and promptly paid for any remaining unpaid taxes. In light of the cooperation provided by the Assessor's office in particular, I can provide proper assurances that the modified tax bill will be paid immediately once the process is complete with the proper County officials.

In addition to the request to continue the sale date, I am asking the Council to consider a formal reduction in the property valuation for the three parcels referenced above, retroactive to the inception of the community. The parcels in question have always been considered common elements. One parcel is essentially a storage closet, one parcel is a breakfast lounge available to all owners, and the third area is not yet built out, but is in the basement and is intended to serve as a spa facility available to all owners. Since Silver Baron's inception, the three parcels in question have been utilized as common elements.

Due to problems with the developer and other legalities involving ownership of the units, it has taken almost two years now to complete the process of formalizing what has always been the norm. After various meetings with Assessor Martin, he has indicated that with proper paperwork in place, there should be no problem in reducing the valuation and tax liability for as far back as the Assessor's office has authority to do so. But the Assessor's office does not have the ability to go back to the inception of the community to reduce valuation and tax liability. Throughout the entire history of Silver Baron, the three parcels in question have been utilized as common elements and no commercial owner has received any benefit from the units. The breakfast area provides complimentary breakfast to all resort guests, paid for by common assessment funds collected from all the owners. The storage closet has never been used commercially, nor has the basement area that remains in a shell form. Taxing these parcels at a commercial rate would ultimately require the condominium unit owners to pay for such taxes through their common assessments.

In light of the foregoing, we respectfully request the Council reduce the valuation of the Parcels in question to rate equivalent to common area property in a planned community. I will have representatives of the community present with me to help attest to the circumstances of these three Parcels, and we thank you in advance for your consideration.

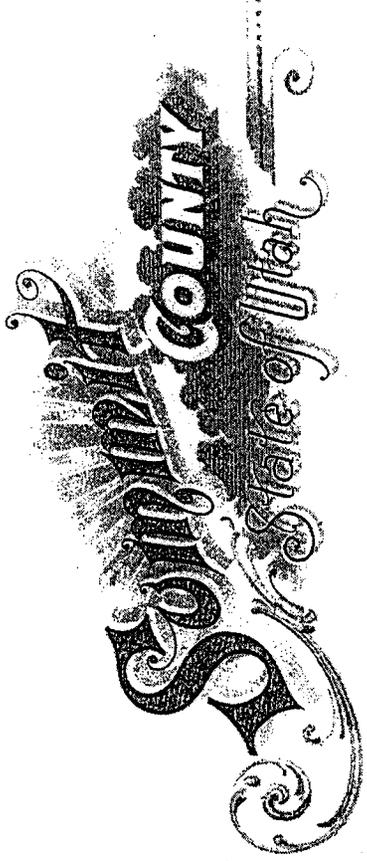
Very truly yours,

A handwritten signature in blue ink, appearing to read "B. Morgan", written over a horizontal line.

Brian W. Morgan, Esq.

Auditor

Blake Frazier



May 03, 2013

County Council;

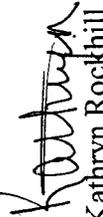
RE; Parcel SBLDV-II-CU-13 & 18

Mr. Brian Morgan is the attorney for Silver Baron Lodge at Deer Valley Assoc. He has requested that we remove these 2 properties from the Tax Sale that is scheduled for May 23rd. He is working with Steve Martin regarding a common area issue. I'm haven't been involved in this issue, but Steve can explain why it's taken so long to resolve.

In Mr. Morgan's letter he states that when and if he gets a modified tax bill, it will be paid immediately. That may not be completed before the day of the sale.

I'll recommend to Mr. Martin that he attends this council meeting to answer additional questions. Thanks for your consideration in this issue.

Sincerely,


Kathryn Rockhill
Deputy Auditor

County Council,

In reviewing the value question for the three units under consideration it appears that there are several issues that would need to be considered to wit:

1. these units were never under any appeal at any time since their creation
2. whatever the actual use, they were still legal units within the condominium project and subject to taxation as such (unless appealed).
3. As CU units they were considered as commercial units per the recorded plat and appraised at commercial rates
4. There is a definite distinction between areas designated on the plat as commercial and those as commercial

It is my opinion that until they are legally established as common area that they continue to be assessed as separate units.

As to value, it would be based on market sales if the Council chooses to consider revaluation for those years on these units. Note: common space has no separate value from the sum of the units so valuing them as common space would be a zero value.

Steve Martin
Summit County Assessor
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435.336.3251