

EXHIBIT "B"

From: Christina Brinegar cbrinegar69@yahoo.com
Subject: Fw: Creekside PUD Analysis
Date: February 16, 2021 at 8:36 AM
To: Geoff Brinegar geoff.brinegar@gmail.com



—— Forwarded Message ——

From: Clark, Melanie R. <melanie.clark@stoel.com>
To: 'scot.andersen@gmail.com' <scot.andersen@gmail.com>; 'Christina Brinegar' <cbrinegar69@yahoo.com>
Sent: Monday, November 23, 2020, 12:03:49 PM MST
Subject: Creekside PUD Analysis

Scot and Christina,

The approval process the developer is going through is the equivalent of a re-zone. This has a number of implications, one of which is that the County Council can approve any changes to the underlying zoning that it deems appropriate. This is how they are getting around the minimize size of 1-acre lots. Because this follows the re-zone process, the decision is "legislative" rather than "administrative." With a legislative decision the County Council can use its discretion. Administrative decisions are more of a check-the-box process; the decision maker just verifies that the application complies with the requirements without exercising any discretion.

The good news about it being a legislative decision is that the County Council can rely on the opinions and feedback of neighbors and decide that the application should be denied. The bad news is that, once decided, it's very hard to successfully appeal. Accordingly, I recommend that you oppose the current application. This can be done by submitting comments in advance (I can do this on your behalf) and by speaking at the public hearing. You can also encourage neighbors to do the same.

In considering the PUD application the County Council has to address the 11 items identified in the attached and included in the planning commission packet you provided. The attached lists the items with the analysis/comments from planning staff, and then my own analysis. As you can see there are a number of items that I believe were incorrectly addressed by planning staff. One major item, as Christina identified, is that the smaller lots do not provide "affordable housing." Secondly, the smaller lots are inconsistent with the character of the neighborhood, where all of the surrounding lots are at least 1 acre. And thirdly, although I would appreciate you verifying this, allowing the PUD does not appear to preserve agricultural uses. While the one lot retained by the developer will be larger, with a number of out-buildings, my understanding is that this lot is not used for agriculture. If I'm mistaken about this my analysis on the attached will need to be revised.

I'm happy to schedule a call to discuss, or you can just let me know if you would like me to prepare a more formal letter to the County with the analysis in the attached.

Best,

Melanie

Melanie R. Clark | Partner

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A handwritten signature, possibly reading "C. Clark", in black ink.



Considerations
for PU...I.DOCX

Grand County Land Use Code requires consideration of the questions listed below. The planning staff's analysis is in blue, my analysis is in red.

A. Was the existing zone for the property adopted in error?

Somewhat. The applicant has stated that the existing 1.0 acre lot minimum sizes were not predicated on any future plans and were simply a placeholder for the dimensional standards table on the original plat.

No. Surrounding areas are rural residential with 1.0 acre lot minimums. The existing zoning was adopted consistently with the neighborhood.

B. Has there been a change of character in the area (e.g., installation of public facilities, other zone changes, new growth trends, deterioration, development transitions, etc.)?

There has not been a change of character in the immediate area, other than further subdivision and new residences. The pertinent community change is the need for affordable housing. Creating smaller lots brings prices down and can help achieve this goal.

No. The need for affordable housing does not constitute a change of character in the area.

C. Is there a need for the proposed use(s) within the area or community?

Yes, more affordable housing is a benefit for the community.

This change does not provide for affordable housing. The reference to "affordable" does not mean less expensive than it would be if the lot were smaller. The definition of affordable housing is provided in Section 10.2 of the LUC: "Housing for which the allowable housing expenses paid by a household earning less than the median household income shall not exceed 30 percent of the gross monthly household income – unassisted and assisted (State and/or Federal) rental and unassisted and assisted (State and/or Federal) for sale units whose gross rental or sale price on the open market is affordable to, or for which rental and/or sale is restricted to, households whose gross annual household income is below the county median household income."

D. Will there be benefits derived by the community or area by granting the proposed rezoning?

Yes, see above.

No. The rezone does not allow for "affordable housing" nor does it provide open space or other benefit to the community. The only benefit is to the developer, allowing him to retain a larger parcel but still create a total of six lots.

E. Is the proposal in conformance with the policies, intents and requirements of Grand County General Plan, specifically the plan's zoning map amendment guidelines (see pages 44-48 of the Grand County General Plan)?

Yes, the proposal is in conformance with the General Plan, specifically the use of the PUD tool to cluster development.

Clustered development is not the intent or benefit of the proposed PUD. If it were so, then the six "density units" would all be clustered to preserve more open space on the entire tract. Rather, the grouping of three homes on 1/3 acre lots is just a means of keeping a total of six lots

without disrupting the existing buildings that the developer will retain and allowing the developer to retain as much land as possible.

The proposed clustering of three dwelling units does nothing to promote any of the following goals stating under the development patterns section in the General Plan:

Goal 1 – Support and participate in the implementation of the Grand County and City of Moab Housing Study and Affordable Housing Plan.

Goal 2 – Focus future development in centers where existing and planned infrastructure can accommodate it so that people can live close to where they work and obtain goods and services

Goal 3 – Minimize impacts of development on scenic resources.

Goal 4 – Promote community clean-up.

Goal 5 – Minimize impacts of natural hazards on properties and people.

Instead, the proposed clustering simply makes the neighborhood feel more suburban rather than rural, which is counter to the intent of the underlying zoning.

The General Plan focuses on “creating larger, more useful open spaces areas in residential neighborhoods.” The proposed PUD does not provide that benefit.

F. Should the development be annexed to a city?

No.

G. Is the proposed density and intensity of use permitted in the proposed zoning district?

Yes.

Density, yes; intensity, no. The proposed PUD places three dwelling units on a single acre, which increases the intensity on that land. It is also important to note that the larger lots do not have less intensity; there are simply more out-buildings on those lots, not open space.

H. Is the site suitable for rezoning based on a consideration of environmental and scenic quality impacts?

Yes, the proposed PUD amendment would be suitable for the area and would preserve current agricultural uses.

The only scenic impact is to make the corner with three homes, which would be the most visible to neighbors, feel more suburban and less rural. There is no mention in the application that the purpose of the PUD is to preserve agricultural uses or that adoption of the PUD will accomplish that goal.


I. Are the proposed uses compatible with the surrounding area or uses; will there be adverse impacts; and/or can any adverse impacts be adequately mitigated?

Yes, the proposed use (residential) is compatible with surrounding uses, which include residential. In addition, the amendment would allow for compatibility with surrounding agricultural uses to remain.

This is the same whether the property is subdivided using the minimum 1-acre lot requirement or the PUD requirement. Adoption of the PUD should only be done if there is an overall benefit to the community, not if the benefit is only to the developer.

J. Are adequate public facilities and services available to serve development for the type and scope suggested by the proposed zone? If utilities are not available, could they be reasonably extended? Is the applicant willing to pay for the extension of public facilities and services necessary to serve the proposed development?

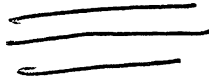
Yes, the applicant has been through DRT review with the proposed preliminary plat and has addressed all issues.

Again, this is the same whether the property remains rural residential or is approved for the PUD overlay. The developer has not shown how this change will benefit the community. 

K. Does the proposed change constitute "spot zoning"?

No, the applicant has an existing PUD applied to the property. 

Yes. Allowing 1/3 acre lots is inconsistent with the area and out of character with the neighborhood and would therefore constitute spot zoning.





December 9, 2020

VIA EMAIL
COMMISSION@GRANDCOUNTYUTAH.NET

Grand County Commission
Commission Chambers
125 E. Center St.
Moab, UT 84532

Melanie R. Clark
201 S Main Street, Suite 1100
Salt Lake City, UT 84111
D. 801.578.6904
melanie.clark@stoel.com

Re: Creekside PUD Amendment

Dear County Commission:

This firm represents Scot Andersen, Geoff and Christina Brinegar, Todd Beeman, Richard Davidson, Marian Boardley, Brian Parkin, Lisa Albert, Rob Kerchen, Bonita and Ken Kolb, Steve Mulligan, Karen Robinson, Bret Van Burgess, Lew McCreery, Harvey Dewitt, Rob Jahries, Ken Helfenbein, Darcey Brown, and Dave & Jana Knowles, whose addresses are set forth on Exhibit A attached hereto, who all object to the Creekside PUD Amendment (the “PUD”) for the property located at approximately 3373 Creekside Lane (the “Property”) being considered by the Grand County Commission (the “Commission”) on December 15, 2020. We have reviewed the Agenda Summary prepared for the Grand County Planning Commission on September 28, 2020 by Mila Dunbar-Irwin, Planning and Zoning Director (the “Planning Report”), and believe there are a number of errors that inaccurately led to the conclusion that the PUD should be approved. We also reviewed the Agenda Summary prepared by the Community Development Staff for the Commission’s December 15th meeting and the Staff Report dated December 1, 2020.

The key issue here is that if a regular subdivision application were submitted for the Property, that application would have to comply with the land use regulations in effect at the time of the submittal. Utah Code Ann. § 17-27a-508. Because of the current requirement to plat roads as separate lots and not as easements over residential lots, only about 4.7 acres of the Property is available for subdivision. Applying the minimum lot size of the Rural Residential zone this means that without the PUD this Property could only contain four lots. The reference on the original plat including the Property as Tract A that it was intended for six lots with a minimum one-acre lot size did not vest the Property with a right to develop six lots, it simply stated an intention for the future. In considering the criteria discussed below it is important to compare the requested PUD to a subdivision under the existing land use regulations, not a presumption that the Property is somehow entitled to six lots.

As you know, the Grand County Land Use Code (“LUC”) treats the PUD as a re-zone. (See LUC § 4.4.3.) Accordingly, Section 9.2.7 of the LUC requires the Commission to consider the

eleven criteria listed below in evaluating the PUD. We have included the information from the Planning Report addressing each item first, and then have separately analyzed each criterion.

A. Was the existing zone for the property adopted in error?

- Planning Report: Somewhat. The applicant has stated that the existing 1.0 acre lot minimum sizes were not predicated on any future plans and were simply a placeholder for the dimensional standards table on the original plat.
- Analysis: No. Surrounding areas are rural residential with 1.0 acre lot minimums. The existing zoning was adopted to be consistent with the neighborhood.

B. Has there been a change of character in the area (e.g., installation of public facilities, other zone changes, new growth trends, deterioration, development transitions, etc.)?

- Planning Report: There has not been a change of character in the immediate area, other than further subdivision and new residences. The pertinent community change is the need for affordable housing. Creating smaller lots brings prices down and can help achieve this goal.
- Analysis: No. The need for affordable housing does not constitute a change of character in the area. The character of the area has remained rural. Additionally, as described below, the PUD would not provide for affordable housing.

C. Is there a need for the proposed use(s) within the area or community?

- Planning Report: Yes, more affordable housing is a benefit for the community.
- Analysis: The PUD does not provide for affordable housing. The reference to “affordable” does not mean less expensive than it would be if the lots were larger. The definition of affordable housing is provided in Section 10.2 of the LUC: “Housing for which the allowable housing expenses paid by a household earning less than the median household income shall not exceed 30 percent of the gross monthly household income – unassisted and assisted (State and/or Federal) rental and unassisted and assisted (State and/or Federal) for sale units whose gross rental or sale price on the open market is affordable to, or for which rental and/or sale is restricted to, households whose gross annual household income is below the county median household income.” To provide for affordable housing the developer of the PUD would need to propose and agree to restrictive covenants that would limit the sales price or monthly rent of future homes on the proposed lots to meet the definition of affordable housing set forth above.

D. Will there be benefits derived by the community or area by granting the proposed rezoning?

- Planning Report: Yes, see above.
- Analysis: No. The rezone does not provide for “affordable housing” nor does it provide open space or other benefit to the community. The only benefit is to the developer, allowing him to retain a larger parcel but still create a total of six lots.

E. Is the proposal in conformance with the policies, intents and requirements of Grand County General Plan, specifically the plan’s zoning map amendment guidelines (see pages 44-48 of the Grand County General Plan)?

- Planning Report: Yes, the proposal is in conformance with the General Plan, specifically the use of the PUD tool to cluster development.
- Analysis: Clustered development is not the intent or benefit of the proposed PUD. If it were, then the six “density units” would all be clustered to preserve more open space on the entire tract. Rather, the grouping of three homes on 1/3 acre lots is just a means of keeping a total of six lots without disrupting the existing buildings that the developer will retain and allowing the developer to retain as much land as possible. The proposed clustering of three dwelling units does nothing to promote any of the following goals stated under the development patterns section in the General Plan:
 - Goal 1 – Support and participate in the implementation of the Grand County and City of Moab Housing Study and Affordable Housing Plan.
 - Goal 2 – Focus future development in centers where existing and planned infrastructure can accommodate it so that people can live close to where they work and obtain goods and services
 - Goal 3 – Minimize impacts of development on scenic resources.
 - Goal 4 – Promote community clean-up.
 - Goal 5 – Minimize impacts of natural hazards on properties and people.

Rather than meeting these goals, the proposed clustering simply makes the neighborhood feel more suburban rather than rural, which is counter to the intent of the underlying zoning. The General Plan focuses on “creating larger, more useful open spaces area in residential neighborhoods.” The proposed PUD does not provide that benefit.

F. Should the development be annexed to a city?

- Planning Report: No.

G. Is the proposed density and intensity of use permitted in the proposed zoning district?

- Planning Report: Yes.

- Analysis: No. The proposed PUD permits six lots where only four would be permitted under existing land use regulations, a density increase of 50%. Additionally, it places three dwelling units on a single acre, which increases the density and intensity on that land. It is also important to note that the larger lots do not have less intensity; there are simply more out-buildings on those lots, not open space.

H. Is the site suitable for rezoning based on a consideration of environmental and scenic quality impacts?

- Planning Report: Yes, the proposed PUD amendment would be suitable for the area and would preserve current agricultural uses.
- Analysis: The only scenic impact is to make the corner with three homes, which would be the most visible to neighbors, feel more suburban and less rural. There is no mention in the application that the purpose of the PUD is to preserve agricultural uses or that adoption of the PUD will accomplish that goal. Neither does the PUD promote open space as none of the land is restricted from development and instead includes as many as five buildings on a single lot.

I. Are the proposed uses compatible with the surrounding area or uses; will there be adverse impacts; and/or can any adverse impacts be adequately mitigated?

- Planning Report: Yes, the proposed use (residential) is compatible with surrounding uses, which include residential. In addition, the amendment would allow for compatibility with surrounding agricultural uses to remain.
- Analysis: While residential use is compatible with the surrounding area, three lots per acre is not compatible. The proposal makes no mention of preserving agricultural uses.

J. Are adequate public facilities and services available to serve development for the type and scope suggested by the proposed zone? If utilities are not available, could they be reasonably extended? Is the applicant willing to pay for the extension of public facilities and services necessary to serve the proposed development?

- Planning Report: Yes, the applicant has been through DRT review with the proposed preliminary plat and has addressed all issues.
- Analysis: The use of public facilities and services is the same whether or not the PUD is approved. The developer has not demonstrated that the PUD will provide any benefit in terms of facilities and services.

K. Does the proposed change constitute "spot zoning"?

- Planning Report: No, the applicant has an existing PUD applied to the property.
- Analysis: Yes. Allowing 1/3 acre lots is out of character with the neighborhood. The average lot size for properties within 1,000 feet of the PUD (excluding White Ranch, which has significantly larger acreage) is 3.19 acres. The proposed PUD would allow lots 1/10th that size. This is clearly inconsistent with the area and would therefore constitute spot zoning.

As stated in Section 4.4.1 of the LUC, the planned unit development overlay district was designed to provide flexibility to accomplish one or more of the following purposes:

- A. Promote flexibility in the siting of structures so as to preserve and take advantage of the site's unique, natural, resource or scenic features and to avoid or mitigate any hazardous area;
- B. Provide density bonus incentives in the interest of creating affordable housing and beneficial open space;
- C. Encourage more efficient use of land and public streets, utilities, and governmental services;
- D. Promote a clustering development pattern in the interest of preserving rural character;
- E. Preserve open space for the benefit of residents of developments and the community;
- F. Achieve a compatible land use relationship with surrounding areas; and
- G. Promote greater variety in the type and design of buildings and thereby improving the character and quality of new development.

Consideration of the previously discussed criteria demonstrates that approving the PUD would not fulfill any of these purposes and would actually be a detriment to the community without any benefit except to the developer. Just because the LUC permits planned unit developments in certain instances, it does not necessarily follow that this PUD is compatible with the General Plan and the LUC. Under that logic every single application for a planned unit development should be approved. If the criteria in the LUC are properly applied, it is clear that the Commission should deny the PUD and retain the existing requirement for minimum one-acre lots for the subject property.

Respectfully submitted,

A handwritten signature in black ink that reads "Melanie Clark". The script is cursive and fluid, with the first name and last name clearly distinguishable.

Melanie R. Clark

Exhibit A

Represented Parties

Scot Andersen, 3231 and 3229 East Bench Road, Moab, UT 84532;
Geoff and Christina Brinegar, 3416 Creekside Lane, Moab, UT 84532;
Todd Beeman, 3283 E. Bench Road, Moab, UT 84532;
Richard Davidson, 3432 Creekside Lane, Moab, UT 84532;
Marian Boardley & Brian Parkin, 3411 Creekside Lane, Moab, UT 84532;
Lisa Albert and Rob Kerchen, 3151 E. Bench Road, Moab, UT 84532;
Bonita and Ken Kolb, 3649 E. Kerby Lane, Moab, UT 84532;
Steve Mulligan, 3800 Kerby Lane, Moab, UT 84532;
Karen Robinson, 2881 and 2891 SE Bench Road, Moab, UT 84532;
Bret Van Burgess, 3620 E. Kerby Lane, Moab, UT 84532;
Lew McCreery and Harvey Dewitt, 3466 Creekside Lane, Moab, UT 84532;
Rob Jahries, 3181 E. Bench Road, Moab, UT 84532,
Ken Helfenbein and Darcey Brown, 2931 E. Bench Road, Moab, UT 84532; and
Dave and Jana Knowles, 2940 E. Bench Road, Moab, UT 84532.