

EXHIBIT "D"



Grand County Community Development
Planning & Zoning
125 E Center St.
Moab, UT 84532
435-259-1368
planning@grandcountyutah.net

January 11, 2020

CHRISTINA SLUAN ACKS REAR WILL BE CORRECTED.

To: Christina Brinegar

RE: REQUEST FOR INTERPRETATION – CREEKSIDE PUD AMENDMENT

Dear Christina,

We received your request for interpretation in an e-mail dated December 17, 2020 and are submitting the following in response. Your questions are in regards to the Creekside Planned Unit Development Amendment Application received by Planning & Zoning on September 14, 2020. It was heard at a public hearing before the Grand County Planning Commission on September 28, 2020 and received a favorable recommendation to be forwarded to the Grand County Commission. The public hearing before the County Commission was held on December 15, 2020, and the vote has yet to be taken.

This application contemplates a change to the Dimensional Standards table on the Creekside PUD Final Plat approved in 1997 for Phase II to 0.37 acres from 1.0 acres.

Please see below for the requests and their replies.

1. Please provide your interpretation as to why you did not follow this LUC?

Excerpts from your December 17 Letter, quoting Counsel's Letter dated December 9:

- *The second paragraph of the letter (see attached) the key issue is that if a regular subdivision application were submitted for property, that application would have to comply with the land use regulations in effect at the time of the submittal. Utah Code Ann 17-27-a-508. I also found within the very long code the following verbiage which clearly states same as attorney addressed on her letter dated December 9, 2020.*
- *A county is bound by the terms and standards of applicable land use regulations and shall comply with mandatory provisions of those regulations.*
- *Upon a specified public agency's submission of a development plan and schedule as required in subsection 17-27a-305(8) that complies with the requirements of that subsection, the specified public agency vests in the county's applicable land use maps, zoning map, hookup fees, impact fees, other applicable development fees, and land use regulations in effect on the date of submission.*

(emphasis added by requester)

This is an inaccurate leading question; however, I interpret this question to be asking why the current application is not compliant with the LUC in effect when the plat was signed in 1997 and will answer as such in that spirit. The quoted statute, however, refers to a "public agency," which Larry White is not, so this provision is not applicable.

Any person who has made a request for interpretation may appeal interpretation of the Zoning Administrator to the County Commission by filing an application within 30 days of the Zoning Administrator's decision. The date of the decision shall be the postmark date of the certified mail notifying the applicant of the interpretation. The application shall be considered by the County Commission within 30 days of its filing, and the interpretation of the Zoning Administrator affirmed or modified.

On Tuesday, February 9, 2021, 02:44:23 PM MST, Christina Sloan <csloan@grandcountyutah.net> wrote:

We will stipulate the correct date of the Interpretation is January 11, 2021.

A stipulation is cleaner for a court record than a later correction issued on a different date, so the County will not issue a 2nd version of the Interpretation.

Regarding your appeal of Mila's Response to your Request for Interpretation, that appeal will be heard in an oral hearing before the Grand County Commission, who is the hearing or appeals authority in this matter. Note that LUC Section 9.2.8 controls the hearing process. You have the right to an attorney if you choose, and I will represent the Commission in that hearing. Please note that the scope of the appeal shall be limited to Mila's Interpretation, not the Commission's decision to approve the Creekside PUD Amendment, which is a legislative decision which must be appealed in the Moab District Court.

Your Appeal of Mila's Interpretation was received on 2/8, which means the Commission has until 3/10 to hear your Appeal unless you grant the extension, requested below.

Mila is on vacation from 2/5 - 2/22, thus we request a two-week extension to hear your Appeal of Mila's Interpretation, to 3/24. If you grant this extension, it does not mean that we will wait until 3/24 to set the hearing, but we'd like to confer with Mila upon her return before setting the date.

Please let us know by 2/12 at 5 pm if this request for an extension to hear your Appeal of the Interpretation to 3/24 is agreeable.

Thank you -

Christina Sloan
Grand County Attorney
125 East Center Street
Moab, Utah 84532
435.259.1324

On Tue, Feb 9, 2021 at 2:29 PM Christina Brinegar <cbrinegar69@yahoo.com> wrote:
to clarify, the year is incorrect.

Many thanks,
Christina

On Tuesday, February 9, 2021, 02:29:31 PM MST, Christina Brinegar <cbrinegar69@yahoo.com> wrote:

Hi Mallory,

The District Court will need a correction on the letter below. The date is incorrect.

Many thanks,
Christina

On Tuesday, February 9, 2021, 12:10:43 PM MST, Christina Sloan <csloan@grandcountyutah.net> wrote:

Also, Scot, to clarify, the timeframe to appeal a legislative decision is governed by Utah law (the Rules of Civil Pro and case law), not our land use code.

That's why I am emphasizing that your own attorney needs to answer that question for you.

Christina Sloan
Grand County Attorney
125 East Center Street
Moab, Utah 84532
435.259.1324

On Tue, Feb 9, 2021 at 11:55 AM Mallory Nassau <mnassau@grandcountyutah.net> wrote:
Hi Scot,

To appeal the rezone decision, you will have to appeal to the district court within 30 days since it's a legislative decision.

Mallory

On Tue, Feb 9, 2021 at 10:20 AM Scot Andersen <scot.andersen@gmail.com> wrote:
Dear Christina,

It was not my intent to seek legal advice from you or your office. It is reasonable by the nature of your office to inquire as to the correct or current person and office of contact in order to advance an appeal. The County's website lists contacts but alas they are all expired. In this case would it not be reasonable to reach out to the county directly? As to the direction of seeking outside counsel, you are aware that step has already been taken, but thank you just the same for the reminder.

Kind regards,
Scot

On Mon, Feb 8, 2021 at 3:53 PM Christina Sloan <sloan@grandcountyutah.net> wrote:
I'm not answering questions. You've submitted an appeal, and we'll respond accordingly.

Thank you -

Christina Sloan
Grand County Attorney
125 East Center Street
Moab, Utah 84532
435.259.1324

On Mon, Feb 8, 2021 at 3:45 PM Scot Andersen <scot.andersen@gmail.com> wrote:
Thank you Christina, we'll look forward to hearing back from Mallory on the date of final approval.

I didn't see a direction on the question of an "appeal authority," please advise.

The Utah Code requires that each local government that regulates zoning must appoint an "appeal authority" to hear appeals from zoning decisions. Traditionally, the appeal authority has been a board of adjustment, and several cities and counties still have such boards. However, an appeal authority may also be a hearing officer appointed to review decisions.

X

Appeal authorities are authorized to consider appeals of administrative land use decisions, and may grant variances to zoning regulations. Appeal authorities may not amend land ordinances, ignore ordinances, or use "appeals" as a means of waiving required regulations.

X

See Utah Code §§ 10-9a-701 to -708 or 17-27a-701 to -708

On Mon, Feb 8, 2021 at 3:36 PM Christina Sloan <sloan@grandcountyutah.net> wrote:
Oh, and re. the Creekside PUD approval date, I'll let Mallory confirm the date of approval.

You'll need to hire an attorney to confirm your litigation deadline.

Thank you -

Christina Sloan
Grand County Attorney
125 East Center Street
Moab, Utah 84532
435.259.1324

On Mon, Feb 8, 2021 at 3:35 PM Christina Sloan <sloan@grandcountyutah.net> wrote:
Scot,

I recommend you hire an attorney to answer your procedural questions.

Christina has filed an appeal of staff's interpretation, and we'll respond to that soon.

Thank you -

Christina Sloan
Grand County Attorney
125 East Center Street
Moab, Utah 84532
435.259.1324

On Mon, Feb 8, 2021 at 3:28 PM Scott Andersen <scott.andersen@gmail.com> wrote:
Hello Christina,

Hope you are doing well.

Could you please help clarify the question of appeal in land use decisions? I see your message below to Christina Brinegar on Jan. 24.

"Just to clarify/emphasize, the Commission's decision to approve can only be appealed in District Court.

The administrative appeal will be limited to Mila's response to the request for interpretation, not the decision itself as the County did not rely on Mila's response in its decision."

I'm not sure how this aligns with the following from the State of Utah (below). Also, would Brinegar's current appeal fall under the below mentioned authority? If so, who is the point of contact for our local "appeal authority"?

What is an Appeal Authority?

The Utah Code requires that each local government that regulates zoning must appoint an "appeal authority" to hear appeals from zoning decisions. Traditionally, the appeal authority has been a board of adjustment, and several cities and counties still have such boards. However, an appeal authority may also be a hearing officer appointed to review decisions.

X

Appeal authorities are authorized to consider appeals of administrative land use decisions, and may grant variances to zoning regulations. Appeal authorities may not amend land ordinances, ignore ordinances, or use "appeals" as a means of waiving required regulations.

X

See Utah Code §§ 10-9a-701 to -708 or 17-27a-701 to -708

Secondly, can you confirm if the Creekside PUD is in fact approved and if so on what final date was the decision? It's my understanding an appeal would need to be filed with the District Court by 30 days from final decision correct?

Thank you very much!

Warm regards,
Scott
801-897-8356

—
Mallory Nassau
Assoc. Commission Administrator
Grand County
(435) 259-1346
mnassau@grandcountyutah.net

From: Christina Brinegar <cbinegar69@yahoo.com>
Subject: Fw: Appeal Hearing Information and Request for 2-Week Extension to Hearing the Appeal of the Interpretation
Date: February 15, 2021 at 2:06 PM
To: Geoff Brinegar <geoff.brinegar@gmail.com>



PRINT

----- Forwarded Message -----

From: Christina Sloan <csloan@grandcountyutah.net>
To: Christina Brinegar <cbinegar69@yahoo.com>
Cc: Mallory Nassau <mnassau@grandcountyutah.net>; Scot Andersen <scot.andersen@gmail.com>; Chris Baird <cbaird@grandcountyutah.net>; Milla Dunbar-Irwin <mdunbarirwin@grandcountyutah.net>
Sent: Friday, February 12, 2021, 05:50:34 PM MST
Subject: Re: Appeal Hearing Information and Request for 2-Week Extension to Hearing the Appeal of the Interpretation

Thank you -

Christina Sloan
Grand County Attorney
125 East Center Street
Moab, Utah 84532
435.259.1324

On Fri, Feb 12, 2021 at 4:24 PM Christina Brinegar <cbinegar69@yahoo.com> wrote:

I maybe away so I am verifying the date with the person who will be able to attend. I will have an answer for you next week. Hopefully by Tuesday!

Christina B.

On Friday, February 12, 2021, 12:59:22 PM MST, Christina Sloan <csloan@grandcountyutah.net> wrote:

Christina B.,

I'm asking which days March 1-10 work best for you for the hearing? If you would like me to set the hearing without regard to your schedule, please confirm that.

Thanks -

Christina Sloan
Grand County Attorney
125 East Center Street
Moab, Utah 84532
435.259.1324

On Fri, Feb 12, 2021 at 12:48 PM Christina Brinegar <cbinegar69@yahoo.com> wrote:

Thank you Christina S.

I will get back to you if I and/or have another party available that day to be present OR let the appeal speak for itself.

I do understand and if I did not would seek our outside counsel. That document will be submitted along with other documents for the court to review and all dates must be accurate.

Many thanks,
Christina B.

On Friday, February 12, 2021, 12:04:23 PM MST, Christina Sloan <csloan@grandcountyutah.net> wrote:

Christina B.,

Denial of extension received. For purposes of setting the hearing with the Commission, please let me know what mornings between March 1 and 10 that work for you for the hearing. You do not have to attend or present oral argument, but you are welcome to do so.

I've already discussed the error on the date of the Interpretation - we will not correct it by reissuing the letter but we will stipulate to the correct date in District Court, as needed. However, that date is related to Milla's Interpretation, which is not the subject of an appeal in District Court to a legislative decision. If you do not understand that, please consult with your attorney who will.

Thank you -

Christina Sloan
Grand County Attorney

125 East Center Street
Moab, Utah 89532
435.259.1324

On Fri, Feb 12, 2021 at 11:32 AM Christina Brinegar <chrinegar69@yahoo.com> wrote:
Good Morning Christina S.,

Respectfully, I do not see a need to grant an extension therefore the answer is no.

I am unfamiliar with stipulations. If you or someone can kindly correct the year on the letter as requested earlier and initial that should be sufficient to present to the District Court, I think? We are on a very tight timeframe if we go the route of appealing to the District Court.

Many thanks,
Christina B

On Tuesday, February 9, 2021, 04:00:23 PM MST, Christina Sloan <sloan@grandcountyutah.net> wrote:

Christina,

You do not have to have an attorney, but I'm letting you know you can be represented by an attorney without objection.

We will set a hearing date by mutual agreement. If you want to address the Commission, you may. If you do not, your written appeal will suffice. We will discuss it and either affirm or modify the Interpretation.

Are you agreeable to the two-week extension or no?

Christina Sloan
Grand County Attorney
125 East Center Street
Moab, Utah 89532
435.259.1324

On Tue, Feb 9, 2021 at 3:48 PM Christina Brinegar <chrinegar69@yahoo.com> wrote:
Christina S.,

This is all that is stated with regards to the appeal.

I have done what it states. You mention I have the right to an attorney? Mila states this is not an attorney process. I am confused? This is why I asked yesterday if there is anything I needed to do with regard to the appeal and you said to contact an attorney as you would not answer with regard to procedural process.

So you have the appeal and you will read the appeal to your County Commissioners and then let me know if there is a modification?

Christina B.

On Tuesday, January 19, 2021, 09:50:10 AM MST, Mila Dunbar-Irwin <mdunbarirwin@grandcountyutah.net> wrote:

Hi Christina,

You may file an appeal on the Request for Interpretation via a letter stating your request and the reason for your appeal. As per Section 9.2.8.C.6, this appeal will only go to the County Commission for decision. It is not an attorney process. The County Commission will read the documents which pertain to your Request for Interpretation and vote to either uphold the County's reply or modify it. ***Please note: this appeal will not change the outcome of the Creekside PUD Amendment application.*** The application will be voted on today at the Regular Commission Meeting beginning at 4pm. This vote will determine whether or not the proposed amendment is approved.

Please let me know if you have any questions. If you'd like to proceed with an appeal of the Request for Interpretation, please submit your letter to the Planning & Zoning Office via my e-mail address or at 125 E Center St.

Thank you,
Mila

Regardless, the County is bound to comply with the land use regulations in effect at time of submittal. The application in question was submitted on September 14, 2020, and the current LUC governs its process.

A developer or owner of a Planned Unit Development may, at any time, submit an application for an amendment to any part of the Planned Unit Development. Processing of an amendment application is governed by Sections 4.4.15 and 4.4.16 of the Grand County Land Use Code. The County deemed the application in question to fall under Section 4.4.16 *Major Amendments* (the most burdensome process for the applicant) and Section 9.2 *Text and Zoning Map Amendments* as per the Land Use Code. The Creekside Final Plat from 1997 may be amended, through due process, if approved, as per the LUC. This is also true for any final plat in Grand County. Regular final plat amendments are governed by Section 9.9.1 *Plat Amendments* and may be undertaken by a property owner at any time through proper process. This PUD amendment is not an unusual request.

2. Please provide your interpretation as to why you presume that the property is entitled to six lots based on our Counsel's findings above? In addition, please provide your interpretation of the 1997 recorded final plat executed by Larry White.

Excerpts from your December 17 Letter, quoting Counsel's Letter dated December 9:

- *Continued from our counsel's letter dated December 9, 2020:*
- *Because of the current requirement to plat roads as separate lots and not as easements over residential lots, only 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.*

(emphasis added by requester)

The owner of Creekside Estates PUD Phase II has a vested right to subdivide Tract A into six lots with six residences, per the Development Stipulations table on the Final Plat recorded on July 25, 1997 in the Grand County Recorder's Office. This calculation was made at the time due to the 6.48 acres contained within Phase II, which, at an allowable density of 1 lot / acre, results in six lots. Were the applicant's request for an amendment not approved, the applicant would be able to draw the lot lines across the current road easements to achieve the minimum sizes, as was done with Phase I, and still achieve six lots.

Please also note that your counsel is incorrect when she states that our Land Use Code requires roads to be platted as separate lots. This is not a requirement - it is County preference. Thus, your counsel's argument that the proposed amendment increases density is creative but legally flawed. The owner of Tract A has the right to place the road inside easements within each lot, as done in Phase I, which again would preserve his right to develop six lots on Tract A. Instead, the County has requested that the owner place the roads in a separate road parcel as it clarifies ownership and liability for both the owning entity as well as the lot owners in the subdivision.

3. Please provide your interpretation as to how you concluded your findings of Section 9.2.7 of the LUC of all eleven criteria in evaluating the PUD.

Excerpts from your December 17 Letter, quoting Counsel's Letter dated December 9:

- *Continued from our counsel's letter dated December 9, 2020:*

- *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 (see attached letter dated December 9, 2020 Page 2) in evaluating the PUD. 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. If the criteria in the LUC are properly applied, it is clear the Commission should DENY the PUD and retain the existing requirement for minimum one-acre lots for the subject property.*

Creekside Estates is an approved and vested Planned Unit Development which was platted in two phases in 1997 with the aforementioned Final Plat. The amendment to be considered by the Commission is a legislative action, meaning that the Commission has broad authority to approve or deny it. Thus, your counsel's emphasis on the role of the eleven criteria is misplaced. Specifically, Section 9.2.7 contains "Issues for Consideration" which are intended as guiding questions. A legislative proposal need not fail because one or even many of the criteria cannot be met.

Our Planning Commission stated their reasons in considering the request during their public hearing on September 28, 2020. Staff has considered Section 9.2.7 in the following manner:

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

The existing zone is Rural Residential with an existing PUD overlay applied. Neither were adopted in error.

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.)?*

Yes, there has been development in the area since the plat was approved in 1997, including on the lots approved by the original plat.

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

The proposed use is an already entitled development right. Smaller lots can be beneficial to potential owners for many reasons, most notably providing additional housing stock in a more affordable configuration.

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

The proposed larger lot would be preserved as an agricultural use, which can benefit the area as a small farm, as a visual buffer from development, and to preserve other uses in the area. Additionally any provision of housing helps relieve Grand County's lack of housing. And, smaller lot configurations provide the possibility for more affordable development.

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, a Planned Unit Development is a tool codified in the Grand County Land Use Code and as such is supported by the General Plan.

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. There is no additional density or intensity proposed in this application.

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

Yes, the smaller lots would have a smaller development footprint and preserve agricultural land.

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 is residential and agricultural, as are the surrounding uses. Any adverse impacts can be adequately mitigated.

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 developer will provide for all the required utilities.

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

No, there is already an approved PUD for the property.

4. Please provide your interpretation as to why the County would benefit the developer only and not consider following the LUC and listen to the neighborhood outcry...

This is a leading question, and so staff declines to answer. The County Commissioners will take the concerns of both the property owner and neighborhood residents into consideration.

I hope this interpretation is to your satisfaction and helps to elucidate some of these issues.

Thank you,



Mila Dunbar-Irwin
Planning & Zoning Director
Grand County, UT
435-259-1371
mdli@grandcountyutah.net

CC:

Christina Sloan, Grand County Attorney
Mary McGann, Grand County Commission Chair
Chris Baird, Grand County Commission Administrator

From: Christina Brinegar <cbrinegar69@yahoo.com>

Subject: APPEAL TO INTERPRETATION/RE: LARRY WHITE'S/CREEKSIDE PUD AMENDMENT

Date: February 8, 2021 at 12:32:12 PM MST

To: Planning2 <planning@grandcountyutah.net>, Chris Baird <cbaird@grandcountyutah.net>, Christina Sloan <csloan@grandcountyutah.net>, Mila Dunbar-Irwin <mdunbarirwin@grandcountyutah.net>, Mary McGann <mmcgann@grandcountyutah.net>, Trisha Hedin <thedin@grandcountyutah.net>, "commission@grandcountyutah.net" <commission@grandcountyutah.net>

Dear County Council:

I am appealing the response to the request for interpretation because I believe some commissioners and members of the community were misled by intentional misuse of such legally descriptive words as "**OPEN SPACE**," "**Agriculture Land**," "**Farmland**," "**undevelopable**," "**affordable**," "**already entitled**," and "**Clustered Development**."

These words, whose conditions are necessary to approve a Planned Unit Development (PUD), were incorrectly used in both the agenda and public hearing to give the impression that the conditions were true for the plat being developed. Moreover not having a preliminary plat in the packet available is not in sync! Ask Garrish!

Furthermore, THERE IS NO OPEN SPACE! The terms **OPEN SPACE**," "**Agriculture Land**," "**Farmland**," "**undevelopable**," "**affordable**," "**already entitled**," and "**Clustered Development**." have been used consistently during arguments for acceptance of the PUD. County officials have corrected themselves on occasion, but have continued to use the phrase(s) enough to convey the existence of open space. Larry White may have also confused some commissioners and members of the community by intentional misuse of such legally descriptive words **OPEN SPACE**," "**Agriculture Land**," "**Farmland**," "**Clustered**." I am not convinced that everyone involved in approving this PUD amendment was aware that Lot 6 (? acres) was NOT open space (agricultural or otherwise).

MILA STATES: (5:00:55 Meeting 12-16-20)

"Planning Dept voted in support of CLUSTERED DEVELOPMENT".

MILA STATES: 5:01:51 Meeting 12-16-20)

"Staff recommendation is to approve we support the CLUSTERED DEVELOPMENT proposal".

MR. WHITE STATES: (5:05:36 - 5:06 Meeting 12-16-20)

"I have put many years spent tens of thousands of dollars into AGRICULTURAL building that soil and I want to KEEP IT OPEN for that purpose that's why Lot 6 is 1.75 acres and I have CLUSTERED the rest of my lots."

MR. WHITE STATES: (5:06:44 meeting 12-16-2020)

"I have taken many years to look at this to see what is best for the property. So, keeping it AGRICULTURAL for the next owner who owns Lot 6 he will have the option to FARM it and that's a big big purpose of this whole um re platting of the lots.

MR. WHITE STATES: (5:33:24 Meeting 12-16-2022)

"I have done a really good job of keeping this neighborhood AGRICULTURAL and it's going to stay that way"

MR. WHITE STATES: (5:32:57 Meeting 12-16-2022)

"There is NO OPEN SPACE REQUIREMENT and Mila please I would like for you to follow up on my comments here as to what is and isn't in the land use code".

Mila does not respond...

This rezone should not have been permitted. The request does not meet even one of the seven characteristics required under 4.4.1 Purpose and intent. **No one in any of the County entities ever (publicly at least) confronted the fact that the PUD itself was inappropriate.**

I did not see the P&Z discuss/refute any of the points brought up by the lawyer except in one case that was where she mistakenly mentioned road acreage. Arguments instead centered around roads.

Does it state in the Grand County Land Use Code ("LUC") and General Plan that roadway(s) are a criteria for approving a PUD amendment? How were the roadway(s) used in decision making? Is this a legal issue that does not apply to a PUD amendment approval process?

CHRISTINA SLOAN STATES: (5:20:54 Meeting 12-16-20)

"I supports this amendment because we can "Clean Up" the issue of the roadway for tract A".

CHRISTINA SLOAN STATES: (5:21:40 Meeting 12-16-20)

"I'm supportive of this because it cleans up a legal issue that is a benefit to the County. Especially if we ever end up with this roadway.

CHRISTINA SLOAN STATES 5:22:29 Meeting 12-16-20)

"We have not studied the road issues. We will study the East Bench road issues at Final Platt. There are legitimate issues. We will address those at final Plat.

MILA STATES: (1:42:18 Meeting 9-28-20)

"Theres NO CHANGE TO THE UNDERLYING ZONE"

MILA STATES: (1:41:34 Meeting 9-28-20)

"Phase 2 as written on the 1997 platt also has a (MINIMUM LOT SIZE of 1 ACRE) and allows for 6 lots."

"The applicant is asking to REDUCE the (MINIMUM LOT SIZE from 1 ACRE) to 0.3 acres this is something that is currently supported by the PUD tool in our code the land is zoned R&R which has a (MINIMUM LOT SIZE of 1 ACRE)"

"So if he did not reduce this... I mean, essentially the way that it is written is, um, he doesn't need a PUD. Theres no change to the underlying zone. Um, 6 acres would allow for (6 ONE ACRE PARCELS.)

MILA STATES: (1:42:24 Meeting 9-28-20)

"Um, so, reducing the minimum lot size allows the applicant to fully use the PUD development tool which a then intention is for CLUSTER DEVELOPMENT and to leave larger contiguous acreage UNDEVELOPED and UN DEVELOPABLE um, the applicant has an approved preliminary platt by the DRT not by planning commission of course but a the DRT has seen no issues with the 0.3 lot sizes um everything works for the layout the applicant is entitled to six lots and they are proposing six lots they are CLUSTERING the lots in the North West corner of the property and then leaving a MUCH LARGER TRACT UNDEVELOPED on the other side."

MILA STATES: (1:44:32 Meeting 9-28-20)

All the mentions of this Tract A in the easement documents and the CC&R's essentially state that Tract A will have 6 lots. They don't state anything specific or prohibitive as far as MINIMUM LOT size or any change to that being specifically disallowed it just says that it will have just 6 lots which this proposal has 6 lots.

MILA STATES: (1:52:50 Meeting 9-28-20)

"And that's why the code treats a PUD amendment request, a major amendment request, WHICH IS WHAT THIS IS AS A REZONE."

Mila Dunbar: (1:54:00 Meeting 9-28-20)

Re: Cluster Development

A PUD only allows for a reconfiguration of lot dimensions which allows for CLUSTER DEVELOPEMNET and by CLUSTERING DEVELOPMENT we end up with "OPEN SPACE" that is "NOT DEVELPOABLE."

Larry White: (2:01:44 Meeting 9-28-2020)

There was to some verbage as to no developemnt on other parts of my property. All parts on the property are platitted out in building lots. I just made that 2 acre piece that larger piece at 2 acre lot you know and "SO THERE IS NO OPEN SPACE" (2:02:02) or any UNDEVELOPED PARCELS OR ANY LOT openings or how ever you want to verbage it to the lot so every part of the lot the six acres will be a building lot is that clear is there any question on that?

Mila Dunbar response to Larry White: (2:02:20 Meeting 9-28-20)

"We're using OPEN SPACE as a slightly FLUID TERM and you are exactly right there is no TECHNICALLY public OPEN SPACE that will be part of this at all UM, it is just a, not going to a... I guess I don't really know how else to say it but... there's one residence and thats all thats going to stay on that parcel essentially. It's just a larger lot THAT'S WHAT WE SHOULD SAY." Mila looks puzzled

ADDITIONAL COMMENTS BY NEIGHBORS WHO ATTENDED THE PUBLIC HEARING:

As stated by Scot Andersen, neighbor, at zoom public hearing on 9-28-20 THE BIGGEST BIGGEST CONTRADICTION OF ALL that he was told multiple times

from Mila directly that this was in favor UNDER the NEW PUD open space guidelines because there will be open space.

THIS IS CONTRARY TO WHAT LARRY JUST SHARED WITH US TODAY. LOT 6 CAN BE DEVELOPED. THIS IS DIRECTLY A CONTRADICTION AS TO WHAT HAS BEEN SHARED WITH US.

Todd Beeman, neighbor, at zoom public hearing on 9-28-20 also concerned that he might have been misled on the open area lot 6. It was confusing to him when it was originally stated that it will remain open area BUT there is no guarantee that it will remain open area which to him he would not be in favor at all. He states he is in favor of development and in favor of the one acre parcels. He is worried it could set a precedence in this area.

Mila is asked by Emily to clarify how to use the term and how it was applied open space.

(Mila states "Open space" is generally considered to be public access. No public access open space as contemplated as part of this PUD nor does there need to be. PUD's are used for cluster development which means a few smaller lots and one larger lot. It's all private. It's all developable. **The same underlying density just a different lot configuration so essentially it is meant to preserve agricultural land and habitat. That is the idea with cluster development and this current proposal does preserve agricultural land on lot 6.** There is no public open space contemplated on this pud nor does there need to be.)

OUR COUNSEL: Because of the current requirement to plat roads as separate lots and not as easements over residential lots, only 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 is was intended for six lots with a maximum one-acre lot size did not vest the Property with a RIGHT to develop six lots, it simply stated an intention 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.

MY QUESTION ON THE REQUEST FOR INTERPRETATION: Please provide your interpretation as to why you presume that the property is entitled to six lots based on our counsel's findings. In addition, please provide your interpretation of the 1997 recorded final plat executed by Larry White.

MILA'S RESPONSE TO INTERPRETATION:

The owner of Creekside Estates PUD Phase II has a vested right to subdivide Tract A into six lots with six residences per the Development Stipulation table on the Final Plat recorded July 25, 1997 in the Grand County Recorder's Office. This calculation was made at the time due to the 6.48 acres contained within Phase II, which, at an allowable density of 1 lot /acre, results in six lots.

Were the applicant's request for an amendment not approved, the applicant would be able to draw the lot lines across the current road easements to achieve the minimum sizes, as was done with Phase I, and still achieve six lots.

Please also note that your counsel is incorrect when she states that our Land Use Code requires roads to be plated as separate lots. This is not a requirement - it is County preference. Thus, your counsel's argument that the proposed amendment increases density is creative but legally flawed. The owner of Tract A has the right to place the road inside easements within each lot, as done in Phase I which again would preserve his right to develop six lots on Tract A. Instead the County has requested that the owner place the roads in separate road parcel as it clarifies ownership and liability for both the owning entity as well as the lot owners in the subdivision.

MY APPEAL: Yes, Phase I and Phase II are currently in a PUD. That does not give Phase I or Phase II the authority/approval or entitlement of anything but the Minimum lot size of 1 lot per 1 acre as executed by Larry White in 1997. This is why Mr. White has applied for the PUD amendment.

(Please refer to County Attorney's statement with regard to roadways). I argue that your statement is flawed and would need to be looked into.

CHRISTINA SLOAN STATES: (5:20:54 Meeting 12-16-20)

"I supports this amendment because we can "Clean Up" the issue of the roadway for tract A".

CHRISTINA SLOAN STATES: (5:21:40 Meeting 12-16-20)

"I'm supportive of this because it cleans up a legal issue that is a benefit to the County. Especially if we ever end up with this roadway.

CHRISTINA SLOAN STATES 5:22:29 Meeting 12-16-20)

"We have not studied the road issues. We will study the East Bench road issues at Final Platt. There are legitimate issues. We will address those at final Plat.

Our Attorney states it **does** in fact increase the density because if it were approved under the current guidelines with the way the roads have to be configured there are only be 4.7 acres available for development and with a one acre lot minimum which is required by the Rural Residential zone that would only permit 4 lots and this is proposed 6 which is an increase.

I am not an attorney but hired one and cannot dispute her findings.

Definition: Cluster zoning permits residential properties to be clustered closely together than normally allowed. This leaves substantial land area to be devoted to open space. This is also referred to as density zoning.

Mila's statement below states that Larry needed to change his lot size in order to get his 6 lots. Due to the way Larry configured his current layout, it does not allow him to utilize the one lot per acre as our counsel stated. Without the PUD amendment approved, Larry would have had to relocate already existing structures in order to achieve 6 one acre lots. That is the reason he applied for a PUD amendment which I might add was not "approved."

MILA STATES: (1:41:34 Meeting 9-28-20)

Phase 2 as written on the 1997 platt also has a MINIMUM lot size of 1 acre and allows for 6 lots. The

applicant is asking to reduce the minium lot size from 1 acre to 0.3 acres this is something that is

currently supported by the pud tool in our code the land is zoned RR1 which has a MINIMUM lot size of 1

acre so if he did not reduce this... I mean, essentially the way that it is written is, um, he doesn't

need a PUD. Theres no change to the underlying zone. um, 6 acres would allow for 6 ONE ACRE parcels.

Um, so, reducing the minium lot size allows the appliacnt to fully use the PUD development tool which a

then intention is to CLUSTER DEVELOPMENT and to leave larger contiguous acreage UNDEVELOPED.

OUR COUNSEL: The second paragraph of the letter (see attached) the key issue is that if a regular subdivision application were submitted for property, that application would have to comply with the land use regulations in effect at the time of the submittal. Utah Code Ann 17-27-a-508. I also found within the very long code the following verbiage which clearly states same as attorney addressed on her letter dated December 9, 2020.

- A county is bound by the terms and standards of applicable land use regulations and shall comply with mandatory provisions of those regulations.
- Upon a specified public agency's submission of a development plan and schedule as required in subsection 17-27a-305(8) that complies with the requirements of that subsection, the specified public agency vests in the county's applicable land use maps, zoning map, hookup fees, impact fees, other applicable development fees, and land use regulations in effect on the date of submission.

MY QUESTION ON THE REQUEST FOR INTERPRETATION: Please provide your interpretation as to why you did not follow the LUC?

MILA'S RESPONSE: this is an inaccurate leading question; however, I interpret this to be asking why the current application is not compliant with the LUC in effect when the plat as signed in 1997 and will answer as such in that spirit. The quoted statute, however, refers to a "public agency," which Larry White is not, so this provision is not applicable. Regardless the County is bound to comply with the land use regulations in effect at time of submittal. The application in question was submitted on September 14, 2020, and the current LUC governs its process. A developer or owner of a Planned Unit Development may at any time submit an application for an amendment to any part of the Planned Unit Development. Processing of an amendment application is

governed by Sections 4.4.15 and 4.4.16 of the Grand County Land Use Code. The county deemed the application in question to fall under zoning map amendments as per the land use code. The Creekside Final Plat from 1997 may be amended, through due process, if approved, as per the LUC. This is also true for any final plat in Grand County. Regular final plat amendments are governed by Section 9.9.1 Plat Amendments and may be undertaken by a property owner at any time through property process. This PUD amendment is not an unusual request.

MY APPEAL:

As stated by our attorney, 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 GOALS STATED UNDER THE DEVELOPMENT PATTERN SECTION IN THE GENERAL PLAN.

It does not support and participate in the implementation of the Grand County and City of Moab Housing Study and Affordable Housing Plan.

It does not focus on 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.

It does not minimize impacts of development on scenic resources.

It does not promote community clean-up and it does not minimize impacts of natural hazards on properties and people.

Rather than meeting these goals, the proposed clustering simply make the area 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 space in residential neighborhoods." The proposed PUD does not provide that benefit.

It does not address issues with change in character in the neighborhood.

It does not provide affordable housing.

It does not provide for meaningful open space.

We have one additional lot which I appreciate has been stated by Larry White it will continue to be used as agricultural use but there are approximately 6 buildings on that lot. It is NOT OPEN SPACE. The point of a PUD is to accomplish a specific purpose and this does not do any of the those things.

It is not truly a lot cluster. It did not take all six (6) units and put them together and allow for 4 acres of total open space. It just grouped three (3) so that one (1) lot could be larger, two (2) could be medium sized and then (3) could be put together which then creates a more suburban feel in a rural area.

RESTATED FROM OUR COUNSEL:

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 in evaluating the PUD. 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. If the criteria in the LUC are properly applied, it is clear the Commission should deny the PUD and retain the existing requirement for minimum one-acre lots for the subject property.

OUR COUNSEL: 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 in evaluating the PUD. 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. If the criteria in the LUC are properly applied, it is clear the Commission should deny the PUD and retain the existing requirement for minimum one-acre lots for the subject property.

MY QUESTION ON THE REQUEST FOR INTERPRETATION: Please provide your interpretation as to how you concluded your findings of Section 9.2.7 of the LUC of all eleven criteria in evaluating the PUD.

MILA'S RESPONSE: Creekside Estates is an approved and vested Planned Unit Development which was platted in two phases in 1997 with the aforementioned Final Plat. The amendment to be considered by the Commission is a legislative action, meaning that the Commission has broad authority to approve or deny it. Thus, your counsel's emphasis on the role of the eleven criteria is misplaced. Specifically, Section 9.2.7 contains "Issues for Consideration" which are intended as guiding questions. A legislative proposal need not fail because one or even many of the criteria cannot be met. Our planning Commission stated their reasons in considering the request during their public hearing on September 28, 2020. Staff has considered Section 9.2.7 in the following manner.

MY APPEAL: The words "approved" and "vested" are misleading and could have confused some Commissioners.

Yes, Phase I and Phase II are currently in a PUD. That does not give Phase I or Phase II the authority or entitlement of anything but the Minimum lot size of 1 lot per 1 acre as executed by Larry White in 1997.

Some commissioners the day they decided to approve this PUD amendment did not fully understand the LUC because they had never read the land use code. Most importantly, the intentional misuse of such legally descriptive words as "open space" may have confused several commissioners. Is it possible because the County Attorney and Planning Zoning Administrator had already given their approval, that some commissioners due to their lack of real knowledge and understanding of the LUC and the misuse of legally descriptive words as "open space," "affordable,"

"farmland," and "preserve agricultural," based their decision not on their own understanding and knowledge but because the County Attorney and Planning Zoning administrator had already made the decision for them?

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

MILA: The proposed use is an already entitled development right. Smaller lots can be beneficial to potential owners for many reasons, most notably providing additional housing stock in a more affordable configuration.

MY APPEAL:

NO.

THIS STATEMENT IS FALSE AND MISLEADING. Yes, Phase I and Phase II are currently in a PUD. That does not give Phase I or Phase II the authority or entitlement of anything but the Minimum lot size of 1 lot per 1 acre as executed by Larry White in 1997. I believe some commissioners and members of the community were misled by intentional misuse of such legally descriptive word "affordable." As stated by our counsel- 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. It does not support and participate in the implementation of the Grand County and City of Moab Housing Study and Affordable Housing Plan. Please refer to Section 10.2 of the LUC. The definition of affordable housing is provided in Section 10.2 of the LUC.

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

MILA: The proposed larger lot would be preserved as an agricultural use, which can benefit the area as a small farm, as a visual buffer from development, and to preserve other uses in the area. Additionally any provision of housing helps relieve Grand County's lack of housing. And smaller lot configurations provide the possibility for more affordable development.

MY APPEAL:

NO.

THIS STATEMENT IS FALSE AND MISLEADING. I believe some commissioners and members of the community were misled by intentional misuse of such legally descriptive word(s) as "preserve agricultural" and "small farm" and "preserve." **THESE LOTS ARE NOT CONSIDERED AFFORDABLE AND SHOULD NOT BE STATED AS SUCH AND SINCE YOU STATED THE PROPOSED LARGER LOT WOULD BE PRESERVED AS AGRICULTURAL OR CAN BENEFIT THE AREA AS A FARM, SHOULD there be a DEED RESTRICTING OPEN SPACE THAT PRESERVE'S AGRICULTURAL AND FARM LAND? IS IT POSSIBLE THIS PUD AMENDMENT WAS APPROVED IN ERROR AND IS NULL AND VOID?**

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)?

MILA: Yes, a Planned Unit Development is a tool codified in the Grand County Land Use Code and as such is supported by the General Plan.

MY APPEAL:

NO.

Mila's statement is false. As stated by our counsel- Rather than meeting these goals, the proposed clustering simply make the area 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 space in residential neighborhoods."

The proposed PUD does not provide that benefit.

It does not support and participate in the implementation of the Grand County and City of Moab Housing Study and Affordable Housing Plan.

It does not focus on 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.

It does not minimize impacts of development on scenic resources.

It does not promote community clean-up and it does not minimize impacts of natural hazards on properties and people.

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

MILA: Yes, There is no additional density or intensity proposed in this application?

MY APPEAL:

NO.

Her answer is false. According to our attorney Larry does not have the acreage for 6 lots but only has acreage due to road issue for 4. This is considered additional density. Furthermore, Cluster development if done properly according to this definition Cluster development zoning permits residential properties to be clustered closely together than normally allowed. This leaves substantial land area to be devoted to open space. This is also referred to as density zoning.

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

MILA: Yes the smaller lots would have a smaller development foot print and preserve agricultural land.

MY APPEAL:

NO.

I believe some commissioners and members of the community were misled by intentional misuse of such legally descriptive word "preserve agricultural."

SHOULD there be a DEED RESTRICTING OPEN SPACE THAT PRESERVE'S AGRICULTURAL LAND? IS IT POSSIBLE THIS PUD AMENDMENT WAS APPROVED IN ERROR AND IS NULL AND VOID?

It does not minimize impacts of development on scenic resources.

It does not promote community clean-up and it does not minimize impacts of natural hazards on properties and people.

L 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?

MILA: Yes, the proposed use is residential and agricultural as are the surrounding uses. Any adverse can be adequately mitigated.

MY APPEAL:

NO.

I believe some commissioners and members of the community were misled by intentional misuse of such legally descriptive word "agricultural." AS stated by our counsel, 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. I hope this can be mitigated ASAP!

In closing, the appeal presented today should leave many commissioners wondering if the PUD tool in the Grand County Land Use Code ("LUC") and General Plan were applied and used properly? Moreover, is it possible being that the County Attorney and Planning Zoning Administrator had already given their approval, that some commissioners due to their lack of understanding of the Grand County Land Use Code ("LUC") and the misuse of legally descriptive words as "OPEN SPACE," "Agriculture Land," "Farmland," "undevelopable," "affordable," "already entitled," and "Clustered Development." "preserve agricultural." based their decision not on their own understanding but because the County Attorney and Planning Zoning administrator had already made the decision for them? No one in any of the County entities ever (publicly at least) confronted the fact that the PUD itself was inappropriate. Should the PUD amendment application have ever been pushed through without having the preliminary plat provided to the commissioners and members of the community in the first public hearing? Was the PUD amendment application implemented inappropriately?

I would and some members of the community would like to see that the recently approved PUD amendment be looked into to verify if in fact it was approved erroneously? Should the County attorney have approved this based solely on the roadway? Does it state in the Grand County Land Use Code ("LUC") and General Plan that roadway(s) are a criteria for approving a PUD amendment approval

receipts from the sale of the farm, ranch, or timber products produced thereon do not exceed \$ 1,000. Farming, ranching, or timber production includes, but is not limited to, activities set forth in the Standard Industrial Classification Manual (1987), Division A, exclusive of industry numbers 0711-0783, 0851, and 0912-0919 which cover animal trapping, game management, hunting carried on as a business enterprise, trapping carried on as a business enterprise, and wildlife management. Land used for forestry production means, land exceeding 10 acres in which 10 percent is stocked by trees of any size, including land that formerly had such tree cover and that will be naturally or artificially regenerated.”

Attached you will also find definitions from Grand County LUC that clearly state using Affordable housing, Agriculture land, Cluster Development to allow the remaining land to be used for open space and agriculture uses.

Thank you and I greatly appreciate your time.

Respectfully,
Christina Brinegar

Definitions of Key Terms

From Grand County LLC

Affordable Housing	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.
Agricultural Land	Land suitable for or historically used for production of commercial purposes of crops, livestock or products.
Agricultural Production	Production for commercial purposes of crops, livestock products if 50 percent or more of the material processed or marketed is produced by the farm operator. Production of forage, grains, livestock, trees and fruits, vegetables, nursery, floral and ornamental stock with reasonable expectation of profit is agricultural production activity.
Cluster Development	A development design technique that concentrates buildings in specific areas on a site to allow the remaining land to be used for recreation, open space and agricultural uses.
Cluster Subdivision	Cluster subdivision trades smaller lot sizes (with smaller yards) for additional common area. Cluster subdivision must provide a minimum of 30 percent common area exclusive of individual lots.
Clustered II Subdivision	Clustered II subdivision reduces lot sizes even further, in trade for substantial open space provision for the subdivision as a whole. Clustered II subdivisions must provide a minimum of 50 percent common area, exclusive of individual lots.