

**CHRISTINA R. SLOAN**, No. 11963

Grand County Attorney

**GRAND COUNTY**

125 E. Center Street

Moab, UT 84532

435.259.1326

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**IN THE 7TH JUDICIAL DISTRICT COURT OF GRAND COUNTY  
STATE OF UTAH**

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Christina Brinegar and Scot Anderson,  
aka Scot Andersen, Plaintiffs

v.

GRAND COUNTY,  
Defendant

**GRAND COUNTY MOTION TO  
DISMISS PETITION FOR JUDICIAL  
REVIEW OF AGENCY ACTION AND  
ANSWER TO PETITION**

Judge Don Torgerson  
Case No. 2107-00016

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Defendant Grand County (the “County”), by and through the County Attorney Christina R. Sloan, hereby motions the Court to dismiss Plaintiffs’ Petition for Judicial Review of Agency Action under Utah Rules of Civil Procedure 7(c) and 12(b)(4) and (6); in the alternative, submits its Answer to the Petition; and states in support the following:

**I. LEGISLATIVE BACKGROUND AND RELEVANT FACTS**

In a public meeting on January 19, 2021, after a public hearing on December 15, 2020, the Grand County Commission voted to approve an amendment to the Creeksides Estate Planned Unit Development (“PUD”) by a vote of 6-1. *See County Exhibit A*, Ordinance No. 625.

A PUD is a zoning overlay which “provides for modification of the otherwise applicable dimensional and density standards of the underlying base district” to accomplish one or more of a number of purposes articulated in the Grand County Land Use Code (“LUC”) including promoting 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; providing density bonus incentives in the interest of creating beneficial open space; and encourage more efficient use of land and public streets, utilities, and governmental services.

LUC Section 4.4.1 (Purpose and Intent),

<https://www.codepublishing.com/UT/GrandCounty/#!/GrandCountyLUC/GrandCountyLUC04.html>.

Thus, a PUD amendment constitutes a zoning map amendment to the Grand County Zoning Map, a legislative action. Further, a major PUD amendment must be processed under the same procedures as an original PUD request. *See Id.* at LUC Section 4.4.16 (Major Amendments).

The Grand County Council originally approved the Creekside PUD on July 25, 1997, which created a private roadway (Creekside Lane) and 12 one-acre lots for single-family use. Six of those lots and a portion of Creekside Lane were platted in Phase I and have since been developed. That portion of Creekside Lane located in Phase I crosses through the lots in an easement. The remaining six lots and appurtenant roadway were reserved for future development in "Tract A," comprised of 6.48 acres. Tract A is also burdened by a second existing private roadway (E. Bench Rd) on its northern boundary.

Since PUD approval in 1997, the owner of Tract A, Larry White, has used Tract A as a family farm known as Creekside Lane Organics. In 2020, Mr. White requested the County amend the PUD to reconfigure the size, but not the density, of the six lots to allow a minimum lot size of 0.37 acres to provide for a range of lot sizes. Upon review of the application, the County deemed the amendment a major amendment and applied the requirements of LUC Sections 4.4 and 9.2. *See Id.* and

<https://www.codepublishing.com/UT/GrandCounty/#!/GrandCountyLUC/GrandCountyLUC09.html>; *see also* Sections 2.2.2 (Zoning Map Amendment)

<https://www.codepublishing.com/UT/GrandCounty/#!/GrandCountyLUC/GrandCountyLUC02.html>.

As part of its review, the County requested Mr. White to place the private roadways into separate tracts rather than an easement across the lots in the interest of clarifying rights and obligations for the roadways. The roadways constitute 1.79 acres of Tract A, which means that Mr. White could only comply with the County's request if the one-acre minimum lot sizes approved in 1997 were reduced. The applicant agreed. Accordingly, County staff, including the Roads Supervisor, the Planning and Zoning Director, and the County Attorney supported approval of the PUD Amendment.

The PUD Amendment was first heard at a public hearing before the Grand County Planning Commission on September 28, 2020. Despite neighborhood objection, the Planning Commission voted 5-1 to recommend approval of the PUD Amendment, noting support for the PUD tool and clustered development. The application was heard at a second public hearing before the Grand County Commission on December 15, 2020. The Grand County Commission approved the PUD Amendment by a vote of 6-1 on January 19, 2021 despite noting the "large amount of opposition" from the neighborhood. *See* <https://www.youtube.com/watch?v=wxflThFNdKo> (discussion found at 1:01:48).

In articulating its legislative decision, the Commissioners expressly voiced the following reasons for approving the PUD Amendment:

1. The PUD is a planning tool that has been integrated into the LUC for approximately 25 years.

2. The Applicant is not getting a density bonus for open space or affordable housing, so the underlying density does not change.
3. Regardless of Commission action, the Applicant still has the right to develop the same number of lots (6) under the existing PUD, but the PUD Amendment is advantageous because it addresses concerns with road layout and places the roads in a separate parcel rather than an easement over the lots.
4. The County does not require the roads to be separate, but it is good planning practice and it is the County's reference.
5. LUC Sec. 4.4.1(A) states that the PUD overlay was designed to promote flexibility for stated purposes, including the siting of features.
6. The Applicant is not asking for a density bonus; he's only asking for flexibility with where to site the houses.
7. LUC Sec. 4.4.1(D) encourages clustered density, which makes sense because it allows more open space in larger lots which may be used for agricultural or farming purposes.
8. The PUD Amendment preserves and/or is consistent with the rural character of the neighborhood.
9. Staff and the County Attorney support the PUD Amendment.

The final master plan approved by the Commission includes four lots sized 0.38- to 0.59-acres, two lots sized approximately 1.75-acres each, and a separate tract to hold the roadways.

***See Exhibit A.***

## **II. LEGAL ARGUMENT**

### **A. *The Petition Must be Pled with Specificity and Include a Claim upon which***

### ***Relief May Be Granted***

U.R.C.P. 7(c)(1)(B) requires that each Motion, including the Complaint, include “one or more sections that include a concise statement of the relevant facts claimed by the moving party and argument citing authority for the relief requested.”

#### ***B. Legislative Decisions Are Entitled to Particular Deference and Shall be Upheld unless Arbitrary and Capricious***

The Utah Supreme Court has long upheld land use decisions by local governments unless those decisions are arbitrary and capricious or otherwise illegal. *See Bradley v. Payson City Corp.*, 70 P.3d 47 (Utah 2003); *Gayland v. Salt Lake County*, 358 P.2d 633, 636 (Utah 1961); *Marshall v. Salt Lake City*, 141 P.2d 704, 709 (Utah 1943). In fact, such land use decisions as a whole are generally entitled to a “great deal of deference.” *Springville Citizens for a Better Cmty. v. City of Springville*, 979 P.2d 332 (Utah 1999). However, in specific cases the determination of whether a particular land use decision is arbitrary and capricious has traditionally depended on whether the decision involves the exercise of legislative, administrative, or quasi-judicial powers. *Bradley*, 70 P.3d at 50.

When a county makes a land use decision as a function of its legislative powers, we have held that such a decision is not arbitrary and capricious so long as the grounds for the decision are “reasonably debatable.” *Id.* at 50-51, *quoting Marshall*, 141 P.2d at 709 (reviewing municipal zoning decision as legislative function and employing reasonably debatable standard) and *Smith Inv. Co. v. Sandy City*, 958 P.2d 245, 252 (Utah Ct.App.1998) (same). When a land use decision is made as an exercise of administrative or quasi-judicial powers, however, we have held that such decisions are not arbitrary and capricious if they are supported by “substantial evidence.” *Xanthos v. Bd. of Adjustment of Salt Lake City*, 685 P.2d 1032, 1034-35 (Utah 1984) (reviewing

board of adjustment decision as an administrative act and employing substantial evidence standard).

Like in *Bradley*, here, “there is no dispute in this case that the enactment and amendment of zoning ordinances is fundamentally a legislative act.” *Bradley*, 70 P.3d at 51, *quoting Sandy City v. Salt Lake County*, 827 P.2d 212, 221 (Utah 1992) (the passage of general zoning ordinances and the determination of zoning policy are properly vested in the legislative branch). The political nature of the decision making process underlying zoning demands that the power to make such decisions be vested in persons who are publicly accountable for their choices. *Bradley*, 70 P.3d at 51, *quoting Marshall*, 141 P.2d at 709 (noting that accountability for balancing competing interests in zoning decisions properly resides in the “governing body of the city”).

Specifically, the Utah Supreme Court has long recognized that zoning decisions that are made as an exercise of legislative powers are entitled to particular deference. In *Crestview-Holladay Homeowners Ass'n. Inc. v. Engh Floral Co.*, Utah’s highest court noted that:

[t]he prior decisions of this court without exception have laid down the rule that the exercise of zoning power is a legislative function to be exercised by the legislative bodies of the municipalities. The wisdom of the zoning plan, its necessity, the nature and boundaries of the district to be zoned are matters which lie solely within that discretion. It is the policy of this court as enunciated in its prior decisions that it will avoid substituting its judgment for that of the legislative body of the municipality.

*Crestview-Holladay*, 545 P.2d 1150, 1152 (Utah 1976) (citing *Marshall*, 105 Utah 111, 141 P.2d 704; *Phi Kappa Iota Fraternity v. Salt Lake City*, 116 Utah 536, 212 P.2d 177 (1949); *Dowse v. Salt Lake City Corp.*, 123 Utah 107, 255 P.2d 723 (1953); *Naylor v. Salt Lake City Corp.*, 17

Utah 2d 300, 410 P.2d 764 (1966)).

Given this deferential disposition, the Utah Supreme Court has held that it is “the court's duty to resolve all doubts in favor” of the local government, and the burden is on the plaintiff challenging a land use decision to show that the county action was clearly beyond its power. *Gayland*, 358 P.2d at 636. In doing so, for legislative decisions, Utah Courts have applied a highly deferential variation of the arbitrary and capricious standard and limited review to the strict question of whether the zoning ordinance “could promote the general welfare; or even if it is reasonably debatable that it is in the interest of the general welfare.” *Bradley*, 70 P.3d at 52, quoting *Smith Inv. Co.*, 958 P.2d at 252 (quoting *Marshall*, 141 P.2d at 709); *Walker v. Brigham City*, 856 P.2d 347, 349 (Utah 1993) (holding that the municipality’s legislative decision would be upheld unless “wholly discordant to reason and justice”); *Dowse*, 255 P.2d at 724 (holding that zoning could be attacked only if there was “no reasonable basis therefor”). And, “the selection of one method of solving the problem in preference to another is entirely within the discretion of the [county]; and does not, in and of itself, evidence an abuse of discretion.” *Bradley*, 70 P.3d at 52, quoting *Phi Kappa Iota Fraternity*, 212 P.2d at 181.

### **III. THE COURT SHOULD DISMISS THE PLAINTIFFS’ PETITION BECAUSE IT DOES NOT INCLUDE A STATEMENT OF RELEVANT FACTS, AUTHORITY SUPPORTING THE RELIEF REQUESTED, OR A CLAIM UPON WHICH RELIEF MAY BE GRANTED**

The Petition, a form, does not include any facts in response to question no. 8 (“the facts demonstrating that I am entitled to judicial review”). In response, Plaintiffs list “spot zoning capricious, arbitrary + unreasonable and procedural errors” plus an illegible word. These are not “relevant facts.” The Plaintiffs fail to include facts that demonstrate what aspect of the County’s legislative decision might constitute spot zoning; facts that explain why the County’s legislative

decision was arbitrary and capricious, or unreasonable; or facts regarding what procedural errors were allegedly committed.

Similarly, the Petition does not cite any authority for the relief requested in response to question no. 10 (“the reasons why I am entitled to relief”). In response, Plaintiffs list “procedural errors,” “arbitrary + unreasonable + capricious,” and “aggrieved/spot zoning.” These words, strung together, do not constitute a basis for relief. Plaintiffs do not cite to what laws governing the county’s legislative process were allegedly broken; any standard within which to consider their argument that the legislative decision was arbitrary or capricious, or unreasonable; or any law which explains what “aggrieved/spot zoning” means here or why they are entitled to relief for the same.

Finally, the Petition does not state a claim upon which relief may be granted. The Petition requests relief from “agency action,” an administrative decision. Ordinance No. 625 is a legislative decision, not an administrative decision.

For these reasons, the County requests the Court dismiss the Petition for insufficiency of process and for failure to state a claim upon which relief may be granted under U.R.C.P. Rules 7 and 12(b)(4) and (6).

#### **IV. IN THE ALTERNATIVE, THE COUNTY’S ANSWER**

In the alternative, to the extent that the Court finds the Petition is sufficient, the County answers as follows:

1. The County denies that Ordinance No. 625 constitutes spot zoning.
2. The County denies that approval of Ordinance No. 625 was arbitrary and capricious, or unreasonable.
3. The County denies it committed any procedural errors in approving Ordinance



No. 625.

**V. PRAYER FOR RELIEF**

WHEREFORE, the County respectfully requests the Court dismiss the Petition under U.R.C.P. Rule 7(c) for failure to plead the facts and claims with specificity, U.R.C.P. Rules 12(b)(4) and (6) for lack of sufficiency of process and for failure to state a claim upon which relief may be granted. Alternatively, if the Court is unpersuaded by the Plaintiffs' statements in the Petition, the County hereby files its Answer and denies all allegations.

Respectfully submitted February 23, 2021.

**GRAND COUNTY**

*/s/ CHRISTINA R. SLOAN*

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Christina R. Sloan  
Grand County Attorney

**CERTIFICATE OF SERVICE**

I hereby certify that on February 23, 2021, I filed the foregoing **GRAND COUNTY MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW OF FINAL AGENCY ACTION AND ANSWER TO PETITION** with the Court and served via Email as follows:

Christina Brinegar  
[cbrinegar69@yahoo.com](mailto:cbrinegar69@yahoo.com)  
(consent to email service provided on 2/22/2021)

Scot Anderson, aka Scot Andersen  
[scot.andersen@gmail.com](mailto:scot.andersen@gmail.com)  
(consent to email service provided on 2/23/2021)

*/s/ CRISTIN HOFHINE*

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Cristin Hofhine

## County Exhibit A

### GRAND COUNTY, UTAH ORDINANCE NO. 625 (2021)

#### APPROVING AN AMENDMENT TO THE CREEKSIDE ESTATES PLANNED UNIT DEVELOPMENT AND ASSOCIATED MASTER PLAN FOR PHASE II

**WHEREAS**, the previously named Grand County Council (“County Council”) adopted the Grand County General Plan (“General Plan”) on April 6, 2004, with Resolution No. 2654, as amended by Resolution No. 2976;

**WHEREAS**, the County Council adopted the Grand County Land Use Code (“LUC”) on January 4, 1999 with Ordinance No. 299, as amended by Ordinance No. 468, for the purpose of regulating land use, subdivision and development in Grand County in accordance with the General Plan;

**WHEREAS**, the Owner and Applicant, Larry White, (“Applicant” or “Developer”) is the owner of record of real property known as Parcels 02-0CRK-0007 and 02-0CRK-0008, specifically described by metes and bounds as follows:

Beginning at the South 1/16 corner of Section 22 and 23, Township 26 South, Range 22 East, Salt Lake Base and Meridian, and proceeding thence with the section line South 00°04'00" West 560.4 feet to the Northeast corner of Lot 4, Creekside Estates; thence with said Lot North 83°22'00" West 138.4 feet; thence North 44°35'00" West 177.4 feet; thence South 75°16'00" West 249.1 feet; thence North 13°31'00" West 503.2 feet; thence North 88°28'00" East 621.4 feet; thence South 00°25'00" West 24.5 feet to the point of beginning, having an area of 6.48 acres, more or less.

**WHEREAS**, the Property is zoned Rural Residential;

**WHEREAS**, upon application and hearing, the County Council applied the planned unit development (“PUD”) overlay to the Property via plat in 1997 and approved the Creekside Estates Final Plat recorded on July 25, 1997 which proposes a total of twelve (12) lots for single family dwellings, as follows:

	PUD Development stipulations table Rural Residential - PUD	
	PHASE I	PHASE II
Primary Uses	Single Family Res.	Single Family Res.
Accessory Uses	Uses normally associated with and accessory to the permitted use	Uses normally associated with and accessory to the permitted use

Acreage	6.40	6.48
Number of Units	6	6
Min. Lot Size	1.0 acres	1.0 acres
Building Height	35 ft.	35 ft.
Parking Off Street	2 per unit; 14 total	2 per unit; 14 total
Setbacks	Front = 25 ft. Side = 15 ft. Rear = 25 ft.	Front = 25 ft. Side = 15 ft. Rear = 25 ft.

**WHEREAS**, the Grand County Planning Commission reviewed and forwarded a favorable recommendation to amend the Creekside Estates Planned Unit Development (“PUD”) to create a master plan for Phase II allowing minimum lot sizes on Tract A of 0.37 acres;

**WHEREAS**, the Applicant submitted a Master Plan for Phase II of the Creeksides Estates PUD;

**WHEREAS**, due notice was given that the Grand County Commission would meet to hear and consider the proposed amendment to the Creekside Estates PUD and associated master plan for Phase II allowing minimum lot sizes on Tract A of 0.37 acres in a public hearing on December 15, 2020;

**WHEREAS**, the Grand County Commission has heard and considered all evidence and testimony presented with respect to the subject application and has determined that the adoption of this ordinance is in the best interests of the citizens of Grand County, Utah;

**NOW, THEREFORE, BE IT ORDAINED** by the Grand County Commission that it does hereby approve the amendment to the Creekside Estates PUD and associated Master Plan for Phase II attached hereto as ***Exhibit A*** conditioned upon the following:

- A note shall be added to the Master Plan as follows:  
*“The Grand County Land Use Code and Zoning Map in effect at the time the Creekside Estates Phase II PUD was approved by the prior Grand County Council established that the underlying zone was Rural Residential, and the base density was 1 lot per acre. The average density of the Creekside Estates Phase II PUD is 1 lot per acre, and no lot in the Creekside Estates Phase II PUD may be subdivided, unless the underlying zoning of the vicinity is changed to allow higher density, and any other requirements established by the land use authority are met.”*

This Ordinance shall be recorded in the real property records of Grand County, Utah prior to an Amended Plat for Creekside Estates.

**PASSED** by the Grand County Commission in open session this 19th day of January 2021 by the following vote:

*Those voting aye:* McGann, Clapper, Stock, Woytek, Walker and Hadler

*Those voting nay:* Hedin

*Those absent:* \_\_\_\_\_

**Grand County Commission**

  
\_\_\_\_\_  
Mary McGann, Chairperson

**ATTEST:**

  
\_\_\_\_\_  
Quinn Hall, Clerk/Auditor



88 East Center Street  
Moab, UT 84532  
435.259.8171

NOT VALID WITHOUT  
ORIGINAL SIGNATURE

STANDARD LEGEND

- POWERPOLE  
GUY WIRE  
SEWER MANHOLE  
SAN. SEWER LINE  
WATER LINE  
FENCE  
EASEMENT  
CONTOURS
- MAG. NAIL SET  
BLOCK CORNER  
SECTION MONUMENT  
WATER MANHOLE  
WATER VALVE  
WATER METER  
HYDRANT
- PROP. CORNER FOUND  
PROP. CORNER SET  
ELEC. TRANSFORMER  
TELEPHONE PEDestal  
RECORD DATA  
MEASURED DATA  
CALCULATED DATA

PROJECT TYPE:  
MASTER PLAN

PROJECT ADDRESS:  
BENCH ROAD  
MOAB, UTAH 84532

PROJECT LOCATION:  
GRAND COUNTY, UTAH

PREPARED FOR:  
LARRY WHITE

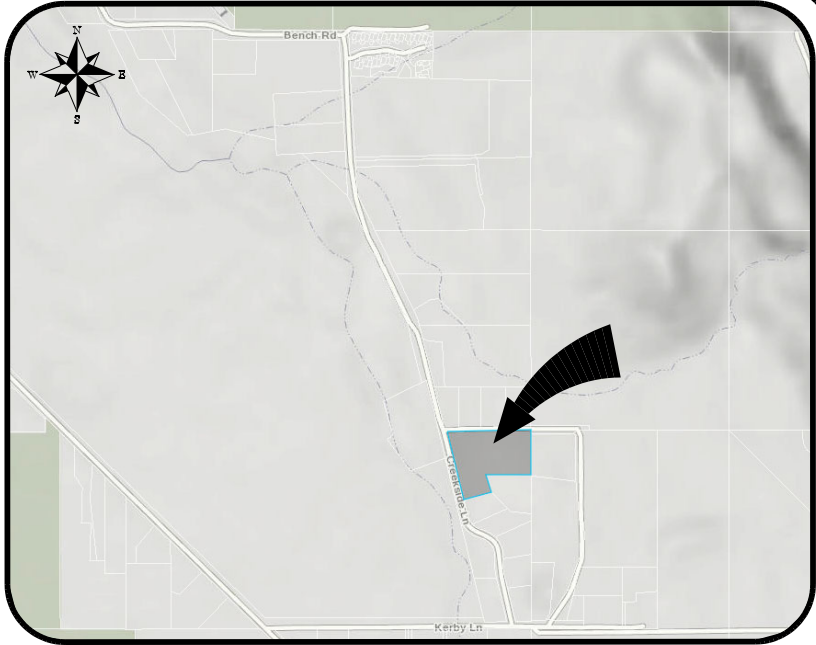
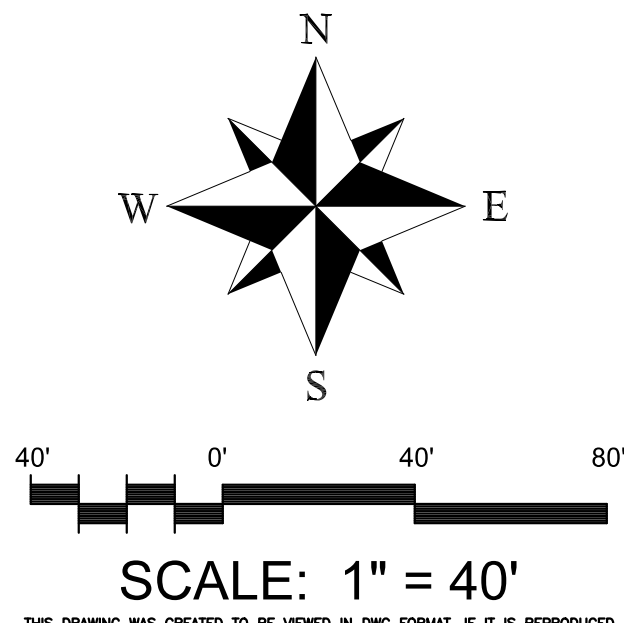
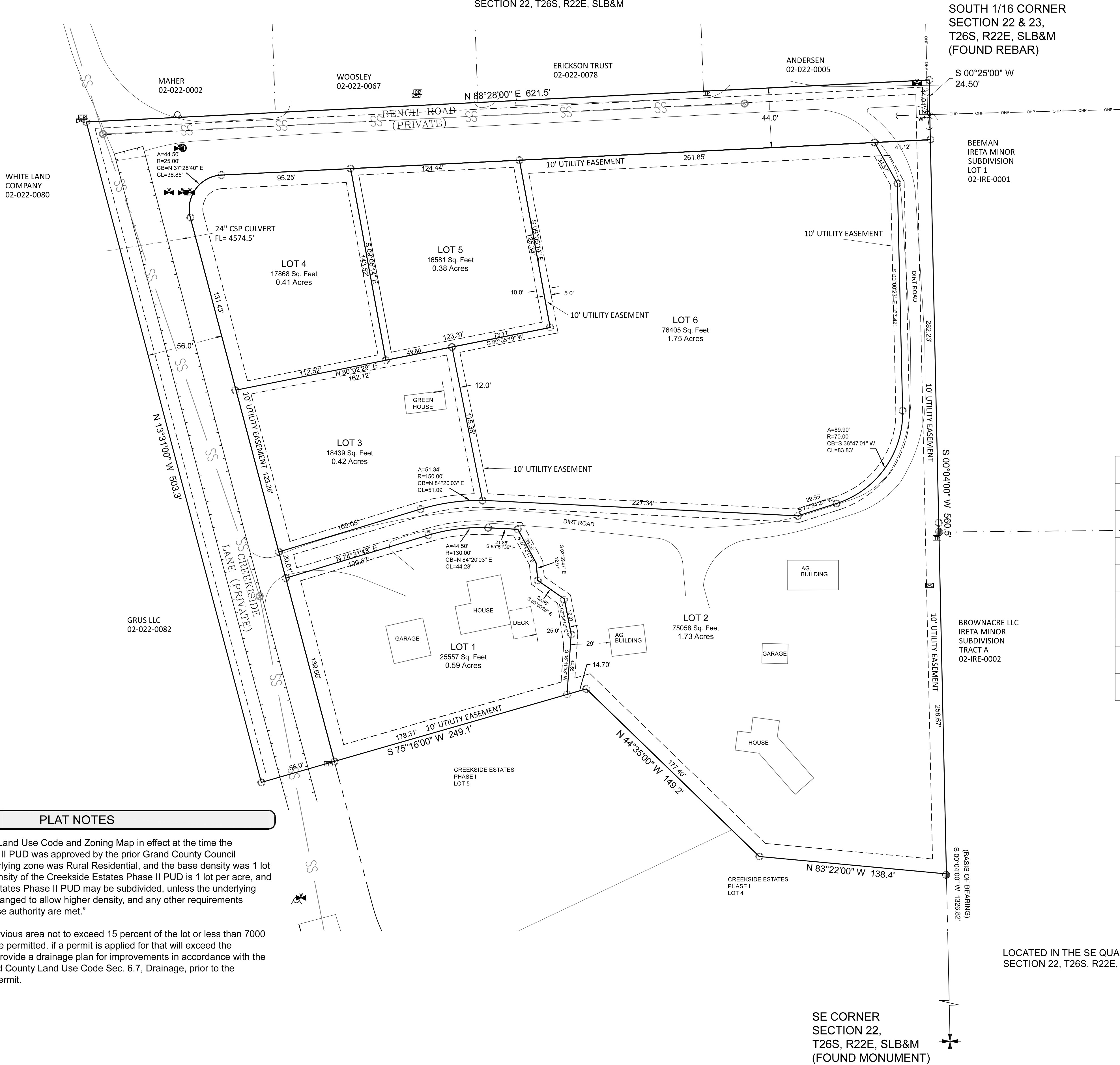
SHEET 1 OF 1

DATE:  
10/16/20  
REVISION DATE:  
02/16/2020

JOB NUMBER:  
164-19

CREEKSIDE ESTATES  
PLANNED UNIT DEVELOPMENT  
PHASE II MASTER PLAN

AMENDING TRACT A, CREEKSIDE ESTATES  
LOCATED IN THE SE QUARTER OF  
SECTION 22, T26S, R22E, SLB&M



VICINITY MAP

NOT TO SCALE

MASTER PLAN

SURVEYOR'S CERTIFICATION

I, Lucas Blake, certify that I am a Professional Land Surveyor as prescribed under the laws of the State of Utah and that I hold license no. 7540504. I further certify that an land survey was made of the property described below, and the findings of that survey are as shown hereon.

Lucas Blake  
License No. 7540504

LEGAL DESCRIPTION

PHASE II SUBDIVISION BOUNDARY

Beginning at the South 1/16 corner of Section 22 and 23, Township 26 South, Range 22 East, Salt Lake Base and Meridian, and proceeding thence with the section line South 00°04'00" West 560.50 feet to the Northeast corner of Lot 4, Creekside Estates; thence with said Lot North 83°22'00" West 138.4 feet; thence North 44°35'00" West 177.4 feet; thence South 75°16'00" West 249.1 feet; thence North 13°31'00" West 503.3 feet; thence North 88°28'00" East 621.5 feet; thence South 00°25'00" West 24.5 feet to the point of beginning, having an area of 6.48 acres, more or less.

	PHASE I	PHASE II	TOTAL
PRIMARY USE	SINGLE FAMILY RESIDENTIAL	SINGLE FAMILY RESIDENTIAL	N/A
ACCESSORY USE	USES NORMALLY ASSOCIATES WITH AND ACCESSORY TO THE PERMITTED USE	USES NORMALLY ASSOCIATES WITH AND ACCESSORY TO THE PERMITTED USE	N/A
ACREAGE	6.40	6.48	12.88 ACRES
NUMBER OF UNITS	6	6	12
MINIMUM LOT SIZE	1.0 ACRES	.37 ACRES AS APPROVED ON 01/19/2021	N/A
BUILDING HEIGHT	35 FT.	35 FT.	N/A
PARKING OFF STREET	2 PER UNIT 14 TOTAL	2 PER UNIT 14 TOTAL	28
SETBACKS	FRONT= 25 FT. SIDE= 15 FT. REAR= 25FT.	FRONT= 25 FT. SIDE= 15 FT. REAR= 25FT.	N/A

EASEMENTS:

10' UTILITY EASEMENT ALONG RIGHTS-OF-WAY AND LOT LINES  
AND ALL OTHER EASEMENTS OF RECORDS

SURVEYOR NOTES

THE BASIS OF BEARING IS S 00°04'00" W BETWEEN THE SE CORNER AND THE S1/16 CORNER OF SECTION 22, TOWNSHIP 26 SOUTH, RANGE 22 EAST, SALT LAKE BASE AND MERIDIAN.

COORDINATE SYSTEM: UTAH STATE PLANE CENTRAL (NAD83, US SURVEY FEET)

THE INTENT OF THE SURVEY IS TO SUBDIVIDE LAND.

LOCATED IN THE SE QUARTER OF  
SECTION 22, T26S, R22E, SLB&M

SE CORNER  
SECTION 22,  
T26S, R22E, SLB&M  
(FOUND MONUMENT)