

CHRISTINA BRINEGAR

My Name

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I am the ☒ Appellant

☐ Appellee

☐ Attorney for the ☐ Appellant ☐ Appellee and my Utah Bar number is

In the ☐ Utah Supreme Court ☐ Utah Court of Appeals

450 South State Street, Salt Lake City, UT 84111

CHRISTINA BRINEGAR
SCOT ANDERSEN

Appellant

v.

GRAND COUNTY

Appellee

Response to Court's Motion for
Summary Disposition

2107-00016

Appellate Court Case Number

Complete (1) or (2), not both.

- If you **do not want** the court to dismiss the appeal, complete (1).
- If you **do want** the court to dismiss the appeal, complete (2).

(1) The court **should not** dismiss the appeal because (choose as many as apply):

☐ The trial court has now signed a final order.

☐ I am getting a signed, final order from the trial court. I submitted my request to the trial court on _____ (date).

☒ I believe there is a substantial question on appeal because (Attach additional pages if needed; maximum of 10 pages total):

UTAH CODE Ann. § 17-27-a-801(2)(a)

UTAH CODE Ann. § 17-27-a-102(1)(a)(vii)(ix)(x)

''

17-27-a-302(1)(ii)(b)

UTAH CODE 17-27-a-701(C1) ~~(A)~~ ^{AB}
~~UTAH CODE 17-27-a-801(C3)(A)(Li)(A)(B)~~
UTAH CODE 17-27-a-801(3)(D)(i)
UTAH CODE 17-27-a-801(3)(a)(Li) - stating that
county land use decisions, ordinances, or regulations
shall be reviewed by the district court to "determine"
only whether or not the decision, ordinance, or regulation
is arbitrary, capricious, or illegal)

OR

- (2) The court should dismiss the appeal because (Attach additional pages if needed;
maximum of 10 pages total):

3.1.2021

Date

Sign here ►



Typed or Printed Name

CHRISTINA BRINEGAR

APPEAL/COMMISSION'S DECISION/LARRY WHITE'S REZONE (PUD AMENDMENT)

From: Christina Brinegar (cbrinegar69@yahoo.com)

To: cbrinegar69@yahoo.com

Date: Wednesday, March 3, 2021, 10:48 AM MST

Dear Judge Don Torgerson,

Thank you for your time and consideration. We would like to address the following issues and concerns:

PUD TOOL, LUC AND GENERAL PLAN:

1.) Was the PUD tool (overlay), LUC and General Plan used appropriately for this project?

Definitions of Key Terms from Grand County LUC:

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.

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

"Phase 2 as written on the 1997 plat 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. There's no change to the underlying zone.

Um, 6 acres would allow for (6 ONE ACRE PARCELS.)" "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. There's no change to the underlying zone. Um, 6 acres would allow for (6 ONE ACRE PARCELS.)"

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

"There's NO CHANGE TO THE UNDERLYING ZONE"

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) 28-20)

Re: Cluster Development: A PUD only allows for a reconfiguration of lot dimensions which allows for CLUSTER DEVELOPMENT and by CLUSTERING DEVELOPMENT we end up with "OPEN SPACE" that is "NOT DEVELOPABLE."

Our attorney Melanie R. Clark of Steel Rives provided correspondence dated December 9, 2020 which has suggested the Commissioners should deny the request as the PUD is not compatible with the General Plan and the LUC.

The rezone (PUD amendment) does not preserve agricultural uses or open space. 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. Allowing 1/3 acre is inconsistent with the area and out of character with the neighborhood and would therefore constitute **spot zoning**.

She also stated 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.

PLANNING COMMISSION RECOMMENDATION: APPROVE: (12-15-20)

The PC noted support for clustered development and the fact that the current minimum lot size does not change the allowed minimum lot size in the underlying zone (RR) therefore not using any aspect of the PUD tool.

AGRICULTURAL LAND, OPEN SPACE, UNDEVELOPED, ETC:

2.) Were the terms Agricultural land, Open Space, Undeveloped, Entitled, etc., used in a legal way or were they used to push false narrative?

Definitions of Key Terms from Grand County LUC:

Agricultural Land: Land suitable for or historically used for production of commercial purposes of crops, livestock or products.

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 plat 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."

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 platted 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?

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: (5:32:57 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...

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"

STAFF REPORT SUMMARY REQUEST: (12-1-2020)

Creekside Estates PUD was approved in July of 1997 for a total of 12 lots. The first phase was plated as six, 1 acre lots, and this Phase has been left as "Tract A" until this year, with six more lots intended as per the original plat.

The original plat stipulates that the applicant has a minimum lot size of 1 acre for Phase II, which the applicant contends he chose for no reason other than to have something to put in the table. Due to the road dedication which was contained in Tract A, there is not enough acreage for all six lots to be developed, supporting the contention that the 1.0 acre minimum lot size was not well thought out or intentional. Current PUD rules allow for a developer to alter the minimum lot size in a PUD as long as the underlying allowed density does not change. This is used as a mechanism to cluster development and preserve agricultural land.

*The Master Plan included in the packet for approval has been approved by the Development Review Team which **PRESERVES AGRICULTURAL LAND** and includes all six lots, with five smaller lots and one larger. The allowed density of 6 lots will not change with this amendment.*

MISSTATEMENT AND FACTUAL INACCURACY:

1. Agricultural land is not protected or set aside.
2. There are not five smaller lots and one larger lot. In fact there are **2 larger lots one medium size lot and 3 smaller lots**. This is a mixed bag on inconsistency all the while not preserving agricultural space nor preserving the current make up of surrounding properties that average greater than 3 acres per parcel.

"The allowed density of 6 lots will not change with this amendment"

Incorrect presumption, there are not 6 lots allowed currently. There is only 4.69 acres of allowable space for platting under current requirements. It is worth noting that the 1997 consideration did not include any platting for

Tract A/Phase II, therefore no formal "approval" could have occurred and as such the county is not obligated to allow 6 lots on the proposed tract. This is a well known basis of development and in fact in the code most city and county approvals are only valid for 6 months for this purpose alone.

STAFF RECOMMENDATION: RECOMMEND FOR APPROVAL/9-28-20

Staff fully supports this alteration and supports clustered development in general and does not see any reason not to allow the applicant to develop according to current PUD standards as a means to **further preserve open space and agricultural land in Grand County.**

SUMMARY OF REQUEST: 9-28-20

The original plat stipulates that the applicant has a minimum lot size of 1 acre, which he states he chose for no real reason other than to have something to put in the table. Current PUD rules allow for a developer to alter the minimum lot size in a PUD as long as the underlying allowed density does not change as a mechanism to **cluster development and preserve open space. Staff is supportive of open space.** The applicant has a DRT-approved Preliminary Plat with 0.3 acre minimum lot sizes, which **preserves agricultural land and open space.**

9.2.7 Issues for Consideration 9/28 attachment

- B. ... The pertinent community change is the need for affordable housing
- C.... More affordable housing is a benefit for the community
- D.... "Will there be benefits derived by the community..." Yes, see above.
- H.... Yes... would preserve current agricultural uses.
- I.... would allow for ... agricultural uses to remain

Every one of these reference to "open space" agricultural land" and "affordable housing" is false.

Applicant Statement dated 9/17/20 (9-28-attachment)

4. "Yes the proposal provides building lots that also support open space."

8. "yes the proposal is for single-family homes and provides lots that support open space."

These are very interesting statement from an applicant who during the actual Planning commission meeting denies there is open space.

ENOUGH ACREAGE, ENTITLED TO 6, AND ROADS:

3.) Why did Staff, P&Z, County Attorney, state in their Agenda that Larry White had no other option but to use the PUD tool because he DOES NOT have the acreage? Then state a contradiction. He was entitled to 6 lots regardless and stated by County Attorney **"So regardless of whether the PUD is approved, 6 lots will be created and roadway impacts to surrounding lots will be the same."**

Definitions of Key Terms from Grand County LUC:

Spot Zoning: Where a particular small tract within a large district is specifically zoned so as to impose upon it restrictions not imposed upon the surrounding lands, or grant to it special privileges not granted generally, not done in pursuance of any general or comprehensive plan.

COUNTY ATTORNEY RECOMMENDATION: APPROVE (12-15-2020)

It is preferable that modern developments place common elements, like private roadways into a separate parcel for ownership and maintenance by the HOA (or County via dedication, which is not proposed here at this time). *Otherwise, Tract A cannot be developed into six 1-acre Lots unless the private roadways are contained within private lots and easements are provided to the HOA.* This creates potential liability issues, which the County has an interest in avoiding in the event the roadways are later dedicated to and accepted by the County. The clustered lots provide sufficient acreage to place the roadways in separate parcels.

BACKGROUND:(12-15-20)

Creekside Estates was approved as two-phase PUD in 1997 via plat only, prior to the requirement for a master plan. Phase I included 6 lots with a minimum size of 1.0 acres, and Phase II was planned for the future for 6 lots also with a minimum size of 1.0 acres, on a tract of land that is 6.48 acres. This 6.48 acres included the land dedicated to two private roads, which leaves the applicant without room for their entitled six lots at 1.0 acre minimums, whereas if the applicant were able to take advantage of the purpose of the PUD, which is clustered development, they will be able to develop all six lots.

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 Plat. There are legitimate issues. We will address those at final Plat.

Scot Andersen states: "Due to the road dedication which was contained in Tract A, there is not enough acreage for all six lots to be developed supporting the contention that the 1.0 acre minimum lot size was not well thought-out or intentional. This is true all surrounding parcels have had to meet 1.0 acre minimums and this proposed rezone (PUD) amendment is an unintended use of the PUD design. ***If the PUD were not being misused, the proposed plat would have platted the total allowable 1.0 acre sites then correspondingly platted that number under the PUD guidelines, thereby NOT increasing density while simultaneously preserving open space.*** Some commissioners falsely claim that Mr. White is entitled to six lots knowing this is untrue. There is not enough space for all six lots to be developed but this is not due to anything other than Grand County road requirements having been updated/enforced and the layout of current structures on the property many of which did not exist at the time of the original "approval." Now they want to employ a work around in order to get the "entitled" lots. Current PUD rules allow for a developer to alter the minimum lot size in a PUD as long as the underlying allowed density does not change. We've shown why this argument is not accurate same as above plat 1.0 acres then take the total available lots under 1.0 acre and use this number for the PUD plat (clustered) and not increase the density by allowing smaller lots.

This is used as a mechanism to cluster development and preserve agricultural land. Again, as we've pointed out agricultural land is not preserved. The plat states 4.69 acres are used at 6 residential lots, NO SPACE AT ALL FOR AGRICULTURAL DESIGNATION. Furthermore, the proposed plat outlines the argument precisely. Due to updated county road requirements specifically, 1.79 acre for roadway, 4.69 acres are available for residential lots, and under current zoning this would yield four residential lots. Any change from four residential lots is an increase in density."

STATEMENTS MADE BY COMMISSIONERS DAY OF APPROVAL: VOTE COUNT 6-1

"Our land use code clearly prefers clustered developments that preserve the base density and I think there is a good argument for that preference because it allows open space to continue to exist in a subdivided area. Without clustering there would be no large fields left and to me that is the rural character the agricultural component not necessarily having some neighbors having small lots."

"Preserving the established cultivated agricultural land does constitute a benefit and that is what this amendment achieves."

"So really comes down to me to preserving that veggie garden and the agricultural land that has been productive and it is a special place."

"That is the case the LUC encourages clustering. I think the key passage is in 4.4.1 "D" promote a clustering development plan pattern in the interest of preserving rural character. Over the years, a lot of people in this county thought clustering is a good for rural character but now within the past few months in Strawburb and again here have had cases of a large majority of neighbors thinks it's harmful to rural character. I don't quite see it."

"You guys gave me a great opportunity to brush up or actually delve into the LUC for the FIRST time."

THE ONE COMMISSIONER WHO VOTED AGAINST:

*"I want to state that the Planning and County Commission has produced a PUD overlay ordinance that now has been **taken advantage of** and thus going against Rural Residential Zoning and also the **quality of life** of those INDIVIDUALS that have chosen to live in a Rural Residential parts of this County. A few months ago the commissioners approved the Strawburb development against the wishes of a large portion of the neighbors that existed there however that being said I live on that street Strawburb at least accommodates affordable housing but I will tell you it has had a large impact on the configuration and the characteristics of that neighborhood AND that also being said it has set a dangerous precedence for further development. It is time as commissioners to note the errors in our ways and acknowledge that **FAULTY** use of specific ordinances but more importantly the wishes of our*

residents. And I hope you guys will see that as there are a lot of residents opposing this and there is a reason for that. So let me state the PUD overlay READS (shown below):

Commentary:

The -PUD "overlay district" permits variation from standard lot configuration patterns in order to reduce disturbance of sensitive lands, promote land use compatibility, open space, affordable housing, and facilitate creative site planning. In the -PUD district, the underlying base district standards may be modified consistent with the purposes for -PUD. However, allowed uses and maximum density must be determined by the underlying base district.

Then states this proposed PUD does **NONE** of the above. And I hope this is something you are looking very carefully at. Strawburb produced affordable housing. This PUD offers **NONE** of that!

Let me elaborate.

* **THESE ARE NOT SENSITIVE LANDS**- there is no topography that forces creative clustering of homes. It's flat land. It can be developed as one acre lots. Rural Residential as one acre lots. This goes against the land use compatibility as the current land use within this area is rural residential **THUS NO** lot should be below one acre and the fact is in that area the acreage **FAR EXCEEDS** that.

* **the PROPOSAL OF OPEN SPACE** that will be maintained within this PUD is not correct. The open space left by the landowner is simply a buffer from his large parcel to the small clustering he wants to produce. He has not set this buffer aside for a community garden or for a park. It's not designated open space.

* **AFFORDABLE HOUSING**- This in no way meets the demands of affordable housing. And let me give you statistics here. The .42 lot that they are proposing here has already been set at Market Value of \$200,000.00. Average building costs are approx \$250.00 per square foot. That being said a thousand (1,000 sq. ft house) would be \$450,000.00. A current Mtg rates that gives you a MTG rate of 1800.00 per month... housing 30% of your income that individual would have to make \$6500.00 a month, \$40.00 an hour. This is no way satisfies the need for affordable housing. Be **VERY WARY OF that VERBIAGE** being used by developers. **Something to look forward to in the planning commission to really start to put hammer down on what we are deeming as affordable housing.... Needing deed restrictions managed as such.**

* **SMALLER LOTS**- he states more desirable. That is **NOT** the case out there. I moved to Spanish Valley 18 years ago because I wanted to be in a rural setting. if I wanted to be in a suburban setting I would find that area. If i wanted an Urban setting, I would find that area. People moved out there to live in a rural setting. So the fact is we are coming in and manipulating Rural Residential is **UNACCEPTABLE**. It's overriding the wishes of our residences!

* **DENSITY**- this **DOES** increase density. Yes in general he is allowed six lots **BUT** What he's doing is taking up most of it and shoving people into smaller configurations. What happened on Easy/Chapman Street is has increased that density and the fact that the houses are all pushed together we changed the set backs and so the houses are pushed right up against the road. You have a massive amount of people shoved into a small space. It completely changed the configuration of All American Acres. **I DON'T WANT TO SEE THIS HAPPENING IN OTHER communities in Spanish Valley, Castle Valley and Thompson**

*** AGRICULTURAL-** *Mr. White tells us his land is agricultural and yet he does not really set that aside or define that. He has a hobby farm which I appreciate but if this was TRUE AG land he's producing a product to whether it be a crop or livestock.*

If we continue to allow these types of overlays to happen that truly do NOT they are not apart of the definition of the PUD, we are setting a precedence we are not going to backtrack on so I would adamantly hope you will vote against this!"

County Attorney States in the Motion to Dismiss *"Since PUD approval in 1997, the owner of Tract A, Larry White, has used Tract A as a family farm known as Creekside Lane Organic. This statement is misleading. I do not know what is meant by this statement but I can personally tell you I have lived on Creekside almost 5 years and last summer is the first time he has grown on his hobby farm. Larry White personally told me and my husband that he had not farmed in the last decade!*

Statement made by Karen Robinson concerned resident who has lived in Moab several decades: "she very much appreciates agricultural land and wishes he had continued to farm it with the intensity of the earlier years. However, I do not believe there are any stipulations with this zoning change that require him to keep that land in agriculture or even "open space" despite the fact a PUD requires it and the Master Plan addressed on 12-1-20 stated it would be preserved as agricultural land. As such, approval should not have been granted for a zoning change to smaller lots without a legal requirement that lot 6 remain either "open space" or "agricultural." If the applicant is legally required to maintain the entirety of Lot 6 in actively farmed land, it might then be considered agricultural.

The validity of the zoning decision and the zoning integrity throughout this process are causes for concern. I would like to mention that all of our issues/concerns were addressed with the Staff, County Counsel and Planning & Zoning Administrator as well as the County Commissioners. Commencing with email correspondence following the First meeting and obtaining legal counsel. The second meeting our legal counsel presented our concerns, issues and her findings and not one comment about our counsel's statements from the County Attorney, P&Z, or the Commissioners. This should have given them pause and or engage. Then more letters from the community, my request for Interpretation and still nothing. Not one of them addressed our legal counsel's letter or my interpretation. Then I appealed Mila's response to the Interpretation. This should have given them pause that maybe we need to look into this. When we tell the residents, there will be open space better yet let's put it on the Staff Report and state that the Master Plan will preserve agricultural land and nothing is preserved and no action is taken.. this is a red flag! That is the very reason I have appealed the legislative decision to be heard by the District Court so the Judge will be able to verify if in fact they operated capriciously, arbitrarily and unreasonably. Our LUC and General Plan should not be open to interpretation only for the County Attorney, Staff, P&Z and Commissioners to determine what is meant by the use of these codes. It should be crystal clear. There is too much at stake for the communities in Moab! We are just searching for due process.

Definitions of Key Terms from Grand County LUC:

Zoning Administrator: An officer designated by the County Commission to enforce the provisions of this LUC.

Side note: The Planning and Zoning Administrator was relieved of her duties as of last week. I find this to be suspect.

Definitions of Key Terms from Grand County LUC:

Appeal Authority: Grand County Hearing Officer designated by ordinance to act in a quasi-judicial manner and serve as the final arbitrator of issues involving the interpretation or application of land use ordinances or a variance. *I have not been provided with a Hearing Officer but had requested one.*

Respectfully,
Christina Brinegar