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**OFFICE OF THE LAND USE APPEAL AUTHORITY
IN AND FOR GRAND COUNTY, STATE OF UTAH**

SANDSTONE COTTAGES, LLC, a Utah
limited liability company,

Appellant

v.

GRAND COUNTY UTAH,

Respondents

**RESPONSE IN OPPOSITION TO
ADMINISTRATIVE APPEAL**

Hearing Officer: Bruce Jenkins

Respondents Grand County, Utah and the Grand County Commission (collectively, the “County”), by and through the County Attorney Christina R. Sloan, hereby respond to Appellant’s Administrative Appeal (the “Appeal”) and states in support the following:

I. INTRODUCTION

The Grand County Commission (the “Commission”), a Utah political subdivision, is an expanded commission form of government under Utah Statute § 17-52a-202. Accordingly, the Commission serves as both the county executive and the county legislative body. *Id. at 202(3); see also Grand County Ordinance No. 614 (Optional Plan),*

<https://www.grandcountyutah.net/DocumentCenter/View/9972/Ordinance-615---Amendments-to-the-Land-Use-Code---9-2020>.

On March 2, 2021, in adopting the Grand County Rules and Regulations for High Density Housing Overlay Developments (the “Rules and Regulations”), the Commission acted within its administrative capacity as the County executive to implement a law already in existence, Grand County Ordinance No. 591 (the “HDHO Ordinance”), codified in Section 4.7 of the Grand County Land Use Code (“LUC”). *See County Exhibit A* (Rules and Regulations); *County Exhibit B* (LUC Section 4.7); *see also Suarez v. Grand Cty*, 2012 UT 72, ¶ 19, 296 P.3d 688, 694, quoting *Carter v. Lehi City*, 2012 UT 2, ¶ 32, 269 P.3d 141 (administrative acts are aimed at applying an existing law to particular individuals or groups).

It is noteworthy that the Commission adopted the Rules and Regulations by vote alone. No formal resolution or ordinance citing policy considerations accompanied their adoption and, contrary to Developer’s inaccurate statements, no public hearings were held. *Compare Appeal* at ¶ 23; *see also Suarez*, ¶ 19 (legislative acts are formal in nature). In fact, the County Attorney explained to the Commission prior to its vote that it need not adopt the Rules and Regulations at all, which document she drafted at the request of Developers of High Density Housing Overlay (“HDHO”) Developments to answer questions regarding the County’s administration of the HDHO Ordinance.

Ultimately, the Commission adopted the Rules and Regulations by unanimous vote at a public meeting to build confidence in the HDHO program for local buyers, to help guide the administrator of the Program, the Housing Authority of Southeastern Utah (“Housing Authority” or “HASU”), and upon the recommendation of the Grand County Planning Commission.

Specifically, the Rules and Regulations address temporary leaves of absences or lapses in local employment; the treatment of familial financial partners and non-profit organizations; notification requirements; and procedures and timelines related to applications, renewals, unit/lot sales, appeal, and enforcement under LUC Section 4.7. *See County Exhibit A.*

Specifically, in Sections 1(B) and 2(A), the Rules and Regulations merely restate the ownership requirement set forth in the HDHO Ordinance, which already prohibits the sale or rental of HDHO lots or units to non-actively employed households. Thus, contrary to the assertions of the Appellant (the “Developer”), the Rules and Regulations do not restrict ownership “only to those individuals that qualify to live in the units” and they do not generally “prohibit ownership of HDHO units by employers, corporations and investors.” *Compare Appeal* at ¶ 24. They merely integrate the existing requirements of LUC Section 4.7.

Now, Developer, rich in density after County approval of its zoning map amendment and with much money to gain, seeks to invalidate the Rules and Regulations in an attempt to undermine the effectiveness of the HDHO Ordinance, the County’s award-winning workforce housing legislation. The Commission adopted the HDHO Ordinance on January 15, 2019 after more than eighteen months of public hearings, meetings, and comment and study of data and market research, all of which concluded that the County needed more housing for local workers that serve the tourism industry.¹

Over a period of years predating the HDHO drafting process, County staff and elected

¹ One such study relied upon repeatedly by County staff in HDHO public hearings and meetings throughout 2018 was the BAE Urban Economics Phase I Assured Housing Feasibility Study for the City of Moab and Grand County, Utah (“BAE Housing Study”) which determined that in 2017 no homes sold were affordable to households earning up to 80% of Area Median Income (“AMI”) and only 7 homes sold were affordable to households earning up to 100% of AMI. *See BAE Housing Study*, page X, <https://www.grandcountyutah.net/DocumentCenter/View/5135/Phase-1---Economic-Feasibility-Report---Moab-Area-Assured-Housing-3-2-18?bidId=>.

officials had considered a number of legislative strategies for incentivizing workforce housing. Most affordable housing programs in comparable Western tourism economies, such as Aspen, Vail, and Jackson Hole, require sales price caps and income qualifications which are effective but administratively costly to the local government to implement and enforce. Accordingly, the Commission zeroed in on a simpler, progressive model - one that relied on a local ownership requirement to repress prices to levels supported by local wages. Price caps and income qualifications were unnecessary because, by deed restricting the ownership and rentals of the HDHO units and lots for the County's workforce only, home prices would deflate to what locals could afford.² At public meetings throughout 2018, County staff in the Planning and Zoning Department assured the Commission repeatedly that since the ownership qualification happens early at sale, because the enforcement provision set forth in Section 4.7.11 of the HDHO Ordinance was express and strict, and due to the fact that the Housing Authority was willing to administer the program for the County, the HDHO Ordinance provided an effective and efficient solution to at least one aspect of the County's housing crisis.³

² For example, this conversation at the June 5, 2018 Commission meeting was representative of many held while the Commission workshopped the HDHO Ordinance throughout 2018:

Commissioner Hawks: Will the HDHO Ordinance will put a cap on "how much [developers] can charge for [HDHO lots/units]?"

PZ Staff: "It does not. We are counting on the income level of people who live here to create the cap. Theoretically, if they were required to sell to people who live here full-time, then they would have to make it affordable to people who live here full-time or they wouldn't be able to sell the units."

Commissioner Wells: "How confident are you that . . . the economic viability is still intact for development in those areas. It just seems, back of the napkin, that's a lot of units."

PZ Staff: "All of the units will be developed to market rate. So ultimately it's up to the developer or realtor to sell those units. We totally removed the affordability aspect of this and said: as long as you aren't selling to second homeowners."

Commissioner Wells: "You aren't going to cap the value of the unit with a deed restriction?"

PZ Staff: "No, the market will kinda do what it does."

Commissioner Wells: "So you are deed restricting it for certain criteria?"

PZ Staff: "Right."

³ "Because the units built through the HDHO would not be restricted based on income, they would be restricted based on the owner or renter living and working in Grand County, there is not a proposed cap on appreciation or

Accordingly, the Commission approved the HDHO Ordinance on January 15, 2019 and amended the same on June 18, 2019 to expand the definition of “actively employed household” to include “a retiree with a work history required under subsections A.1 through 3 of this section for the five years prior to retirement.” *See County Exhibit B* at Section 4.7.3.A(5).

The HDHO Ordinance creates an overlay whereby a developer can request increased density via a zoning map amendment, a legislative decision, in the County in exchange for deed restricting eighty percent (80%) of the lots or units within the development for local workforce ownership and housing under the terms of LUC Section 4.7. *Id.* at Section 4.7.8. From June 2019 through March 2021, the County rezoned eight properties with HDHO districts, which resulted in approval of 278 HDHO lots or units.

II. CORRECTED STATEMENT OF FACTS

In its Appeal, Developer provides a nearly wholly inaccurate and confusing recital of the land use history and approvals obtained for the real property located in Grand County owned by Developer now known as Sundance Village (f/k/a Sandstone Cottages), which statements of fact are corrected here.

In 2019, after the County approved the HDHO Ordinance, Developer submitted an application for a zoning map amendment to apply the HDHO-10 District to two parcels of property comprising 4.28 acres located on Spanish Valley Drive in Grand County (the “Property” or “Sundance Village”). On July 2, 2019, the County approved the Developer’s HDHO rezone

price . . . When that house turns over after the first owner or renter, they are still required to sell or rent to someone who lives and works in Grand County. So that market restriction on what price they can generate as a sale or in rent is going to be dictated by what wages are here in Grand County. In effect, you are achieving affordability in the same way you were with the first buyer. So, yes, it could appreciate but only if, say, wages are going up or there are more people living in Grand County earning wages that enable them to pay that price point.”PZ Staff, October 16, 2018 Commission Workshop.

request, 40-lot Master Plan, and Development Agreement (the “2019 Development Agreement”) which increased the allowable density on the Property by 10 times, from 1 lot/unit per acre (rural residential) to 10 lots/units per acre (HDHO-10), in exchange for home ownership for the local workforce and strict adherence to LUC Section 4.7. *See Developer Exhibit 1* (2019 Development Agreement); *County Exhibit B at Section 4.7.4.A* (HDHO-10); *County Exhibit C* (LUC Section 5.4.1.A (rural residential)). The County memorialized the approval of the zoning map amendment, Master Plan, and 2019 Development Agreement via Grand County Ordinance No. 592. *See County Exhibit D* (Ordinance No. 592).

Developer incorrectly describes this rezone approval as “preliminary” and incorrectly states that the 2019 Development Agreement is “governed by the Rules and Regulations . . . which were passed and imposed by the County under the guise of rulemaking.” *See Appeal* at p2. Both statements are entirely incorrect - the rezone was a final legislative decision approved by the County Commission, and the 2019 Development Agreement, which long predated the Rules and Regulations, integrates only the requirements of the HDHO Ordinance by express reference.

Developer chose not to proceed with the 40-lot HDHO Development and instead submitted an amended application for a zoning map amendment on June 12, 2020 to add two additional units to the proposed HDHO Development, approval of which requires the Commission to repeal and replace Ordinance No. 592 and approve a new Master Plan and Development Agreement for the amended HDHO development. Thus, under LUC Section 4.7.8, the project proceeded to a public hearing before the Grand County Planning Commission on June 22, 2020. Contrary to Developer’s representations in the appeal, the *Planning Commission* recommended approval of the 42-lot HDHO development at that time, not the County

Commission.⁴⁵ *Compare Appeal* at p 2, ¶ 17.

Developer also misstates the nature of the HDHO Development by repeatedly referring to 42 HDHO lots in the Appeal. Note that the Developer’s proposed development contains 42 total lots, but only 34 of those lots are deed-restricted HDHO lots. *Compare Appeal* at p 2, ¶ 20. Like with all HDHO developments, 20% of the lots in Sundance Village resulting from the increased density are not affected by the ownership and enforcement requirements of LUC Section 4.7 and may be sold unrestricted to any buyer at great profit.

The package of documents presented to the Planning Commission in the summer of 2020 for consideration included a revised Development Agreement on the form then used by the County (the “2020 Development Agreement”), which form was nearly identical to that approved by the Commission for the 40-lot HDHO development in 2019. However, because the application to repeal and replace Ordinance No. 592 and approve a new Master Plan and Development Agreement is a legislative decision, the Planning Commission’s recommendation carries no weight, is not binding on the County Commission, and does not vest the applicant with any interest in the recommendation made by the Planning Commission or the forms used by the County at the time of application.

Thus, Developer is also entirely wrong in stating that “on June 29, 2020, the Appellant and County entered into the 2020 Development Agreement.” *Compare Appeal* at ¶¶ 18-19. The County did not and has not approved the 42-lot HDHO development; it did not and has not

⁴ Note that Grand County changed the name of its expanded commission form of government from a Council to a Commission in 2020.

⁵ In June 2020, Kevin Walker served on the Grand County Planning Commission. In November 2020, he was elected to the Grand County Commission in the general election. In January 2021, he was sworn into elected office. Thus, the motion made by “Commissioner Walker” in June 2020 was during his term on the Grand County Planning Commission.

repealed and replaced Ordinance No. 592; and did not and has not entered into, agreed to, or executed the 2020 Development Agreement, which explains why the Developer cannot produce the County's signature any County document approving the 2020 Development Agreement. Instead, on June 29, 2020, the Developer merely signed the 2020 Development Agreement, which it later submitted to the County Planning and Zoning Director to supplement his application for consideration by the County Commission at a later meeting.

Similarly, Developer is confused when it states the County has approved construction drawings and engineering plans for the 42-lot HDHO development. *Compare Appeal* at ¶ 20. The County engineer has merely approved these documents as complete and ready for the Commission's consideration of the amended rezone request, a legislative decision, at a later meeting.

However, that later meeting has not yet occurred. Due to the Developer's schedule in responding to the County's review of the various application requirements (such as the construction drawings and engineering plans), the impact of COVID on local government capacity and operations, and several staff transitions affecting all positions in the County's Planning and Zoning Department from July 2020 through to the current date, the County did not deem the amended rezone application complete and ready for the Commission's consideration until April 2021, after the County adopted the Rules and Regulations. On April 27, 2021, Developer notified the County that it would still like the Commission to consider its amended rezone application despite this pending appeal and Developer's stated refusal to integrate the Rules and Regulations into the proposed new ordinance, master plan, and development agreement for the 42-lot HDHO development. Currently, the amended rezone application is set

for the Commission’s consideration at its regular meeting on May 18, 2021.

Thus, Developer’s vested rights lie in the zoning map amendment memorialized in Ordinance No. 592, subject to the associated 40-lot Master Plan, 2019 Development Agreement, and LUC Section 4.7, not the proposed amended rezone application and associated expanded project. Contrary to Developer’s representations, the County has never indicated to Developer that it could not proceed with the development approvals under Ordinance No. 592, and the County has never repudiated the 2019 Development Agreement. *Compare Appeal* at ¶¶ 28-29. The Developer chose not to pursue the 40-lot HDHO development, for reasons to which the County is not privy.

Meanwhile, the County properly adopted the Rules and Regulations, which are legal and enforceable, to implement LUC Section 4.7; provide administrative guidance to the County’s designee, HASU; and to build local buyer confidence in HDHO units and lots.

ARGUMENT

III. THE RULES AND REGULATIONS ARE CONSISTENT WITH THE LAND USE CODE AND HDHO ORDINANCE

Developer’s argument that the Rules and Regulations “directly conflict with the plain language of the Grand County Land Use Code, Section 4.7” is meritless. Specifically, Developer argues that the Rules and Regulations create new ownership requirements inconsistent with the LUC because the LUC does not restrict ownership of the HDHO lots to only those individuals that qualify to live in the HDHO units, i.e. actively employed households. *See Appeal* at ¶¶ 32-35. However, this argument fails because, when read as a whole, the HDHO Ordinance contains a clear prohibition on selling or renting properties to non-actively employed households, as well as an enforcement provision for violations of the HDHO Ordinance.

Under Utah law, “[courts] read the plain language of the statute as a whole, and interpret its provisions in harmony with other statutes in the same chapter and related chapters.” *Bryner v. Cardon Outreach, LLC*, 2018 UT 52, ¶ 10, 428 P.3d 1096 (quoting *State v. Barrett*, 2005 UT 88, ¶ 29, 127 P.3d 682). Statutory ambiguity exists if there are multiple reasonable interpretations. *Id.* However, “a statute susceptible to competing interpretations may nevertheless be unambiguous if the text of the act as a whole, in light of related statutory provisions, makes all but one of those meanings implausible.” *Id.* (quoting *Utah Pub. Emps. Ass’n v. State*, 2006 UT 9, ¶ 60, 131 P.3d 208 (Parrish, J., concurring)).

Here, when read as a whole, the HDHO Ordinance clearly intends to limit ownership to “actively employed households.” See *County Exhibit B* at Section 4.7.3.A; see e.g. *id.* at Section 4.7.3.M (referencing owner or renter rather than occupant) and 4.7.4.A (referencing owner or renter rather than occupant). Indeed, the HDHO Ordinance itself indisputably prohibits the sale or rental of HDHO units and lots to a household not qualified under the HDHO Ordinance. See *Appeal* at ¶ 35; *County Exhibit B* at Section 4.7.11.

The fact that the HDHO Ordinance contemplates that HDHO units or lots may be rented to qualified individuals by a person, firm, entity or corporation similarly is consistent with the HDHO’s definition of actively employed household, as the definition of “actively employed household” specifically includes “[a]n owner or owner’s representative of a business or entity with a primary place of business within Grand County[.]” *County Exhibit B* at Section 4.7.3.A(2). The Rules and Regulations clarify this requirement, stating that “[s]o long as the owner of a business or entity with a primary place of business in Grand County is approved as a Qualified Household, pursuant to LUC Section 4.7.3(A)(2), either the owner or the business or

entity may own the HDHO Lot or Unit.” Rules and Regulations at Section 2(A)(1)(ii).

Thus, the Rules and Regulations do not foreclose the sale and subsequent rental of HDHO units or lots by persons or business entities for employee housing or investment, but consistent with the plain language and purpose of the HDHO Ordinance, those persons or business entities must be local to Grand County. In addition, neither the HDHO Ordinance nor the Rules and Regulations compel the sale of HDHO lots and units. Thus, non-local Developers, such as the Appellant, may hold and own HDHO lots or units for rent to qualified households.

For these reasons, the Rules and Regulations’ ownership requirement does not exceed the HDHO Ordinance’s scope, and the passage of the Rules and Regulations was not an illegal act. Developer attempts to ignore the clear limitations on the sale of HDHO units and lots to circumvent the HDHO’s intended purpose—to prevent non-local investors from purchasing HDHO properties at prices above those supported by local wages and driving up rents beyond what local county residents can afford. For this reason, Developer’s preferred interpretation of the HDHO Ordinance, and its attempts to invalidate the Rules and Regulations, for its own gain cannot be permitted.

Additionally, Developer’s claim that the Rules and Regulations were improperly enacted through an administrative act rather than legislative act is similarly meritless. “The legislature may grant an agency discretion, either explicitly or implicitly, to interpret specific statutory terms.” *LPI Servs. v. McGee*, 2009 UT 41, ¶ 8, 215 P.3d 135. Here, the Rules and Regulations merely restate provision of LUC Section 4.7 and reflect an agency interpretation of “actively employed household.” And as previously discussed, this interpretation fits well within the scope of the HDHO Ordinance when properly read as a whole. Because the Rules and Regulations do

not conflict with the LUC's plain language and were not enacted contrary to law, they should be upheld.

IV. THE RULES AND REGULATIONS DO NOT VIOLATE DEVELOPER'S STATUTORY OR CONSTITUTIONAL RIGHTS

Contrary to Developer's assertions, which may be rooted in its misunderstanding of the procedural history of the County's approval and position as discussed above, the Rules and Regulations do not violate Utah Code Ann. § 17-27a-508 of the CLUDMA, otherwise known as the Utah Vesting Rule or vested rights doctrine. "The vested rights doctrine is the body of law that addresses at what point development rights 'vest' such that subsequent zoning changes cannot be retroactively applied." *Keith v. Mountain Resorts Dev., L.L.C.*, 2014 UT 32, ¶ 30, 337 P.3d 213. "Until the rights vest on a particular piece of property, the city or state can change land-use and zoning regulations and apply the new laws to the development of the property." *Id.* Under Utah law, "rights in a development application vest upon submission of a completed application that conforms to the county land use and zoning ordinances in effect at the time." *Id.* at ¶ 31. However, submission of a development plan merely creates the "right not to have the county revoke approval of the development based on a change in the applicable zoning laws." *Id.* Thus, "[a] development approval does not create independent free-floating vested property rights—the rights obtained by the submission and later approval of a development plan are necessarily conditioned upon compliance with the approved plan." *Id.*

As previously discussed, the County has never repudiated the 2019 Development Agreement, and the County has never denied the Developer's rights in the development approvals memorialized in Ordinance No. 592. *Compare Appeal* at ¶¶ 28-29.

In addition, Developer had actual notice of the ownership and enforcement requirements

of the HDHO Ordinance, via the express language of LUC Section 4.7, when it requested a zoning map amendment to the HDHO-10 District, submitted the 40-lot Master Plan to the County, and entered into the 2019 Development Agreement. *See e.g. County Exhibit B* at Section 4.7.11. And the Developer had constructive notice of the requirements of the HDHO Ordinance as the ownership requirement and HASU's program administration were discussed numerous times in public meetings, workshops, and hearings for more than 18 months. Developers often attended and participated in these public meetings during the HDHO drafting and adoption process. In addition, the intent and requirements of the HDHO Ordinance were also reported on by local media such as the *Moab Sun News*, a free weekly newspaper:

“This is really more of a ‘workforce housing’ incentive than an ‘affordable housing’ incentive,” said Zacharia Levine, director of the County Department of Community and Economic Development.

Home prices in Moab are high in part due to second-home buyers and overnight rental developers willing to spend more capital than the average Grand County earner can afford.

“We anticipate these units to be more affordable than unrestricted market-rate units. Buyers and renters of restricted HDHO lots or units will not have to compete with the spending power of non-residents,” said Levine, meaning that, at least in theory, the selling prices of those units will be limited by the incomes of Grand County residents.

There is not, however, Levine noted, an explicit income-based component to the deed restriction required in the HDHO . . . “While we suspect the restricted HDHO units will be cheaper than unrestricted market-rate units, due to the elimination of competition with second homeowners and non-residents and overnight lodging units, we don't know for certain if, or how much, cheaper they will be,” Levine noted.

See Rachel Fixen, Closing the Gap: New Developments May Aid Median-Income Homebuyers (Feb. 6, 2020),

https://www.moabsunnews.com/news/article_1b8bf8a4-494f-11ea-a65b-d3f66d1b7a99.html.

Developer's attempts to now avoid the HDHO Ordinance's requirements, as restated in the Rules and Regulations, directly contradict the County's objectives in enacting the HDHO Ordinance and its express language. Developer has no "vested right" to circumvent the County's objectives in passing the HDHO Ordinance or its requirements. Therefore, Developer's arguments that the Rules and Regulations violate the vested rights doctrine are meritless.

Moreover, Developer's argument that the Rules and Regulations constitute an illegal taking of Developer's vested property rights under the Utah Constitution and United States Constitution is meritless. Under Utah law, "for there to be a taking under a zoning ordinance, the landowner must show that he has been deprived of all reasonable uses of his land." *Cornish Town v. Koller*, 817 P.2d 305, 312 (Utah 1991). Here, Developer has not been denied all reasonable uses of its land as it can sell or rent HDHO lots or units to actively employed households, it can keep and rent HDHO lots or unit to actively employed households, and it can sell the unrestricted 20% of HDHO lots and units allowed under the increased density of the HDHO-10 district to any buyer at great profit.

Based on the foregoing, the County has not violated Developer's statutory and constitutional rights, and the Rules and Regulations are legal and enforceable.

V. THE RULES AND REGULATIONS DO NOT BREACH THE DEVELOPMENT AGREEMENT

Developer claims that the County breached the 2019 and 2020 Development Agreements by amending them without Developer's consent in adopting the Rules and Regulations, which impose an ownership requirement not present in the HDHO Ordinance. The elements of breach of contract under Utah law are: "(1) a contract, (2) performance by the party seeking recovery, (3) breach of the contract by the other party, and (4) damages." *Bair v. Axiom Design, L.L.C.*,

2001 UT 20, ¶ 14, 20 P.3d 388. First, Developer has no rights in the 2020 Development Agreement, which was not approved or executed by the County; second, the County has not breached the 2019 Development Agreement in passing the Rules and Regulations; and third, Developer cannot demonstrate that it has suffered damages as a result of the passage of the Rules and Regulations.

Tooele Associates Ltd Partnership v. Tooele City, 2012 UT App 214, 284 P.3d 709, is instructive. In *Tooele Associates*, the developer claimed that the city breached a series of agreements the parties entered into for development of a planned residential community. *Id.* ¶ 2. The agreements required the developer to construct certain public improvements and required the city to provide culinary water for the project. *Id.* However, the developer claimed that the city breached these agreements by misapplying the city’s “public improvements ordinances with respect to the [planned residential community], requiring the public improvements to meet standards not clearly set forth in any agreement and not required of other similarly situated developers, creating arbitrary and incomplete punch lists of items that needed to be fixed for the public improvements to be considered complete, slowing or refusing to make final inspections of the public improvements, refusing to recognize prior admissions that certain public improvements were complete, and ultimately refusing to accept certain public improvements as complete.” *Id.* at ¶ 4. The Court of Appeals affirmed the jury verdict in favor of the developer, holding that the city materially breached the agreements, including its covenant of good faith and fair dealing, in part by hindering the developer’s “completing of the public improvements and withholding approval of additional phases.” *Id.* at ¶¶ 34, 35.

In contrast to *Toole Associates*, the County has not hindered or interfered with

Developer's completion of the project. Indeed, the Developer does not dispute the 2019 Development Agreement is a reasonable requirement of the zoning map amendment application or that the HDHO Ordinance includes the prohibition from "sell[ing] or rent[ing] an HDHO lot or unit to a household not qualified under this section." LUC 4.7.11. Therefore, Developer was aware of the HDHO Ordinance's ownership restrictions at the time of signing the 2019 Development Agreement and approval of Ordinance No. 592, and the County's enforcement of the Rules and Regulations' ownership restrictions is not a breach of the Development Agreement.

Additionally, Developer fails to demonstrate it has suffered any damages as a result of enforcement of the Rules and Regulations' ownership restrictions. The Rules and Regulations do not interfere with Developer's ability to complete the project, sell or rent HDHO lots or units to actively employed households, keep and rent HDHO lots or unit to actively employed households, or sell the unrestricted 20% of HDHO lots and units allowed under the increased density of the HDHO-10 district to any buyer at great profit. Therefore, Developer's breach of contract claim fails.

VI. CONCLUSION

The Rules and Regulations are guidelines to help the County and its designee, HASU, implement the HDHO Ordinance, a critical workforce housing legislation. The Rules and Regulations do not: 1) amend LUC Section 4.7, which already prohibits sales of HDHO units and lots to non-qualified households; 2) violate or change any of Developer's vested rights, which are rooted in LUC Section 4.7, which already prohibits sales of HDHO units and lots to non-qualified households; or 3) breach the Development Agreement which already integrates

LUC Section 4.7, which already prohibits sales of HDHO units and lots to non-qualified households.

DATED this 27th day of April, 2021.

GRAND COUNTY

/s/ CHRISTINA R. SLOAN

Christina R. Sloan
Grand County Attorney

**GRAND COUNTY
RULES and REGULATIONS
for
HIGH DENSITY HOUSING OVERLAY DEVELOPMENTS**
Effective March 2, 2021

WHEREAS, the legislative body of Grand County has approved the application of the High Density Housing Overlay (“HDHO”) to those HDHO developments approved pursuant to Grand County Ordinance No. 591 (2019) as codified in the Grand County Land Use Code (“LUC”) in Section 4.7;

WHEREAS, Grand County created the HDHO to provide decent, safe and affordable housing in Grand County, Utah for local residents contributing to the workforce;

WHEREAS, as a condition of approval and subject to LUC Section 4.7.6(B), the Lots and Units particularly described in the attached *Exhibit A* are deed restricted for Primary Residential Housing for Actively Employed Households in perpetuity;

WHEREAS, Grand County has delegated management of the HDHO program to the Housing Authority of Southeastern Utah (“HASU”), a non-profit organization incorporated in 1994 to administer affordable housing programs for Grand County and San Juan County (as used herein, Grand County shall include its designee, HASU).

SECTION 1. PURPOSE

- A. Rules and Regulations. These Rules and Regulations shall provide instructions and guidance to the County and HASU when applying the provisions of LUC Section 4.7 to HDHO Developments. All terms not defined herein shall have the meaning assigned them in LUC Section 4.7.
- B. Qualified Ownership Required. LUC Section 4.7, and specifically 4.7.11, requires all HDHO Lots and Units to be sold to Households who qualify thereunder. Temporary lapses in local employment or leaves of absence shall be addressed pursuant to the provisions in Section 3 below.
- C. Purpose. Subject to LUC Section 4.7 and these Rules and Regulations, the purpose of the HDHO is to facilitate housing for local residents working in Grand County who maintain their primary residence in Grand County. These Rules and Regulations shall be applied to HDHO Developments in a manner which supports this purpose.

SECTION 2. QUALIFIED HOUSEHOLD

A. Qualified Household. The ownership, use, and occupancy of HDHO Lots and Units shall be limited to qualified Actively Employed Households (hereafter “Qualified Household”), as set forth in LUC Section 4.7 and herein.

1. *Household, defined.*

i. The definition of Actively Employed Households shall not be construed to prohibit a familial financial partner who co-signs a loan with an adult who meets the criteria set forth in LUC Section 4.7.3.

ii. So long as the owner of a business or entity with a primary place of business in Grand County is approved as a Qualified Household, pursuant to LUC Section 4.7.3(A)(2), either the owner or the business or entity may own the HDHO Lot or Unit.

iii. The definition of “owner’s representative” in LUC Section 4.7.3(A)(2) shall be construed to include Directors of a non-profit organization. Accordingly, so long as a majority of the Directors of a non-profit organization with a primary place of business in Grand County is approved as a Qualified Household, pursuant to LUC Section 4.7.3(A)(2), the non-profit organization may own the HDHO Lot or Unit.

2. *Continuing Obligation*. Once an Owner is approved as a Qualified Household, as required by LUC Section 4.7.11, the occupants of the HDHO Lot or Unit shall satisfy the definition of a Qualified Household at all times as required by LUC Section 4.7 and these Rules and Regulations.

3. *Duty of Notification*. Each Owner and renter shall notify the County prior to any change in ownership and occupancy of their HDHO Lot or Unit, which change shall be pre-approved by the County pursuant to Section 3 herein. Any failure to pre-qualify a new owner or occupant shall be the sole liability of the owner or renter.

4. *Ownership by Grand County*. Grand County may purchase and own the HDHO Lot and/or Unit.

SECTION 3. APPLICATION PROCEDURE

A. Application Required. Each Owner and renter of an HDHO Lot or Unit shall apply for approval as a Qualified Household on written applications, kept on file with HASU, at least thirty (30) days prior to purchase or lease of an HDHO Lot or Unit.

B. Application Approval. Once HASU determines eligibility, it shall provide written acknowledgement of the same.

C. Notifications Required. Each Owner and renter shall notify HASU prior to any change in ownership or occupancy of their HDHO Lot or Unit or their employment status, which change shall be pre-approved by HASU.

1. *Lapses of Employment.*

i. Temporary lapses of employment of three (3) months or less do not require notification to HASU and shall not affect an owner or renter's status as a Qualified Household.

ii. Lapses of employment lasting more than three (3) months shall be reported to HASU by the owner or renter and require HASU approval to ensure continuing eligibility of the occupant.

2. *Leaves of Absence.*

i. Temporary leaves of absence of three (3) months or less do not require notification to HASU and shall not affect an owner or renter's status as a Qualified Household.

ii. Extraordinary leaves of absence for specialized education, care-giving of a family member, religious or charitable work, or military service, lasting not more than two (2) years, where the owner or renter can demonstrate a commitment to returning to Grand County and otherwise complying with LUC Section 4.7.3(M), may be granted by HASU in advance. In the event of approval, the owner may rent the HDHO Lot or Unit to a Qualified Household during the extraordinary leave of absence.

D. Renewal. HASU will contact each owner and renter on an annual basis to re-qualify the Household. Each owner and renter shall submit a written affidavit that attests to their qualifications and any additional requested documentation required by HASU that proves the same.

E. Denials or Revocation. HASU may deny an Application or revoke a prior determination of eligibility if the occupant does not continue to qualify as a Qualified Householder under LUC Section 4.7.3 and these Rules and Regulations. If HASU denies or revokes an Application or prior determination of eligibility, that determination shall be referred to the Grand County Planning and Zoning Director for Final Decision.

F. Change in Eligibility. Once an Owner is approved as a Qualified Household, a change in the owner's eligibility status shall not constitute a violation hereunder for the period of time the owner continues to own the HDHO Lot or Unit so long as the occupant continues to qualify as a Qualified Household.

SECTION 4. SALE OF UNITS

- A. Sale of Units, generally. An owner may sell an HDHO Lot or Unit For Sale By Owner or with a licensed Utah realtor. If an HDHO Lot or Unit is occupied during the Listing Period, the occupant must be a Qualified Household.
- B. Notification upon Listing. The owner shall notify the County when an HDHO Lot or Unit is listed for sale, when it goes under contract, and when it sells for the purposes of qualifying the potential or new owner.
- C. Prequalification of Owners. It is advisable for potential buyers of HDHO Lots and Units to request pre-approval as a Qualified Household pursuant to Section 3 above while a sale is pending, at least thirty (30) days and preferably sixty (60) days before closing.

SECTION 5. APPEAL AND ENFORCEMENT

- A. Conflict. In the event of conflict between these Rules and Regulations and LUC Section 4.7, LUC Section 4.7 shall control.
- B. Appeal. A person adversely affected by a denial or revocation of the Grand County Planning and Zoning Director may appeal such Final Decision within thirty (30) days of the County's written decision pursuant to the process set forth in Chapter 1.16 of Grand County's General Ordinances.
- C. Violation, Defined. Any default under LUC Section 4.7, the Deed Restrictions recorded against the HDHO Development, or these Rules and Regulations, including fraud or misrepresentation by an Owner of an HDHO Lot or Unit, shall constitute a violation of County Ordinance.
- D. Investigation and Enforcement. Grand County shall oversee enforcement of LUC Section 4.7 and these Rules and Regulations. Possible violations of the same shall be investigated and enforced under Chapter 1.16 of the General Grand County Ordinances.
- E. Grand County Remedies. An Owner shall cure a Violation or shall sell the HDHO Lot or Unit to a Qualified Household.

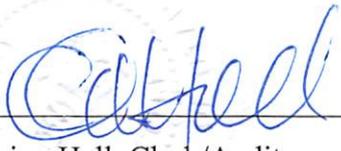
ADOPTED by the Grand County Commission on March 2, 2021 in open session of a public meeting.

GRAND COUNTY COMMISSION

ATTEST:



Mary McGann, Chair



Quinn Hall, Clerk/Auditor

(3) An analysis that compares the stated community benefit(s) with the proposed impact(s).

3. The conceptual site plan shall include the information required under Sections 9.17.3A through N. [Ord. 607, 2020.]

D. **Recordation.** The developer or subdivider shall record the development agreement and master plan in the real property records of Grand County, Utah, prior to recordation of a final plat approved hereunder or issuance of a building permit for any unit within a site plan approved hereunder. Once approved, the development agreement and master plan may not be amended or modified without reapplication to the County.

E. **Effect.** Review and consideration of an -OAO District application is a discretionary legislative decision. Further, approval of an -OAO District application does not constitute site plan, preliminary plat, or final plat approval. Rather, such approval shall be deemed approval of permission to develop under the standards of this section and the master plan.

F. **Lapse of Approval.** The -OAO District approval shall automatically expire and be void unless the County approves and developer records a site plan or final plat for the overnight accommodations development in accordance with Section 9.5 or 9.17 within 24 months of the date of -OAO District approval.

G. **Conflict.** In the event of conflict between the provisions of Section 9.2 and this Section 4.6.7, this section shall control.

[Ord. 622, 2021; Ord. 595, 2019.]

4.7 High Density Housing Overlay Districts Revised 3/21

4.7.1 Purpose

The High Density Housing Overlay Districts ("HDHO Districts") are designed to provide for modification of the otherwise applicable development standards of the underlying base district as specified in Articles 2 and 5, in order to accomplish one or more of the following purposes:

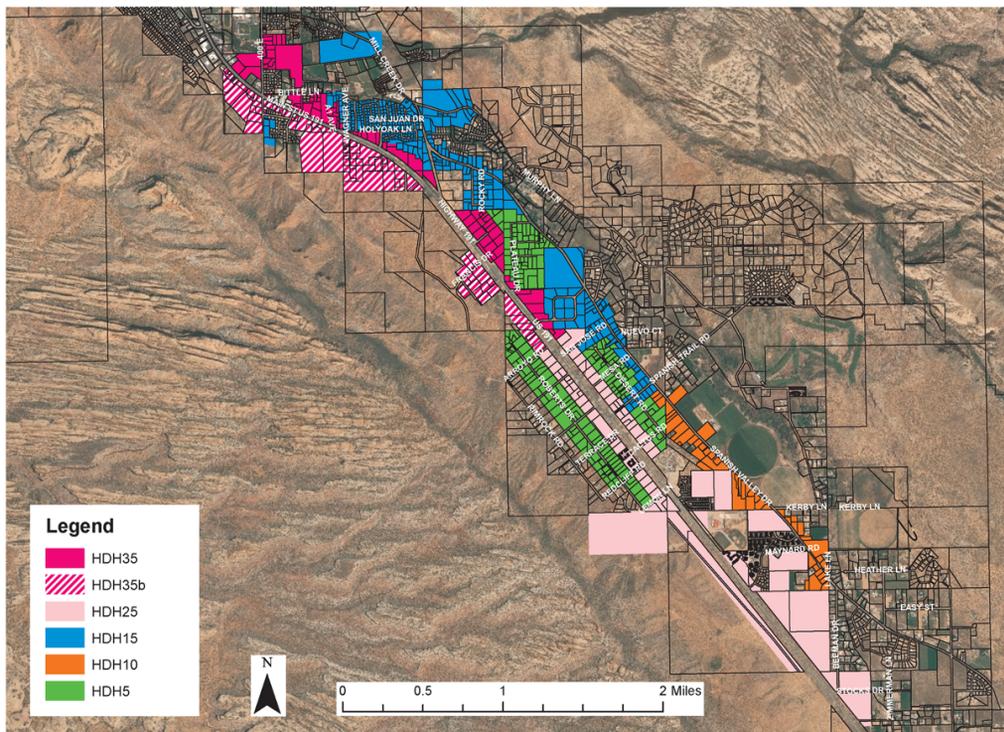
- A. Facilitating the provision of new housing units used for primary residential occupancy by actively employed households;
- B. Achieving the goals of the housing element of the County's General Plan;
- C. Implementing the policies and goals of the housing element of the County's General Plan;
- D. Encouraging the development of new high quality housing units by assisting both the public and private sector in making the provision of these units economically viable; and
- E. Encouraging the provision of primary residential housing through the combination of multiple-family and single-family residential zoning districts within the County where the residential housing projects are determined to be feasible and are consistent with the County's General Plan.

[Ord. 591, 2019.]

4.7.2 Applicability

The regulations set forth in this section may be applied to real property located within the HDHO boundaries, as shown in Exhibit A attached to the ordinance codified in this section, upon application to and approval by the County Commission pursuant to the provisions herein. Upon approval, the HDHO District zoning, development agreement, and master plan shall control development of the property.

High Density Housing Overlay Boundaries



[Ord. 591, 2019.]

4.7.3 Definitions

- A. "Active employment household" or "actively employed household" means a household with at least one adult who meets one of the following criteria; provided, however, where there are unrelated individuals living together in one household, at least 50 percent of all the adults comprising the household shall meet one of the following criteria:
 1. A full-time (aggregate of 30 hours of employment per week) employee of an entity or entities located within Grand County; or
 2. An owner or owner's representative of a business or entity with a primary place of business within Grand County; or
 3. A full-time (aggregate of 30 hours of employment per week for nine months out of each calendar year) worker who is self-employed or works out of their home must provide their entire list of clients/workload so that it can be verified that a minimum of 75 percent of their work/clients are based within Grand County;
 4. A person who is unable to work or does not have a work history required under subsections A.1 through 3 of this section due to a disability; or
 5. A retiree with a work history required under subsections A.1 through 3 of this section for the five years prior to retirement.
- B. "Developer" means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities, which seeks approval of an application for an HDHO development.
- C. "Development agreement" means a development agreement and deed restriction, which is a contract between Grand County and a developer or subdivider, which is recorded as an encumbrance upon the property to ensure compliance hereunder. A development agreement shall run with the land and be binding upon the parties and their successors in title, as provided by its terms.
- D. "High Density Housing Overlay District" or "HDHO District" means a zoning district applied to the property that benefits from a higher density than that allowed under the existing underlying zoning designation, which attendant increased density encourages the provision of new housing units used for primary residential occupancy as further described in this section.
- E. "High Density Housing Overlay development" or "HDHO development" means a subdivision or site plan approved within an HDHO District in which at least 80 percent of the lots or units developed on the property are restricted for primary residential housing occupied by actively employed households.
- F. "High Density Housing Overlay lot" or "HDHO lot" is a lot restricted for primary residential housing occupied by actively employed households that otherwise meet the requirements of this section.
- G. "HDHO lots or units" or "HDHO lots and units" shall refer to HDHO lots and/or HDHO units.
- H. "High Density Housing Overlay unit" or "HDHO unit" is a dwelling unit restricted for primary residential housing occupied by actively employed households that otherwise meet the requirements of this section.
- I. "Household" means one adult living alone, two or more adults related to each other by blood, marriage, or another legally recognized relationship, or a maximum of five unrelated adults residing in the same residence.
- J. "Master plan" means a planning document which guides development of the property based on the County's planning goals, existing development, and physical characteristics of the particular HDHO development. A master plan shall be recorded, run with the land, and be binding upon the parties and their successors in title, as provided by its terms.
- K. "Primary resident" means an adult that meets the "primary residential occupancy" requirement.
- L. "Primary residential housing" or "primary residential development" shall have the same meaning as "high density housing development," which terms may be used interchangeably throughout this section.
- M. "Primary residential occupancy" means the owner of record occupying the dwelling unit for a minimum of nine months out of any 12-month period or a renter occupying the dwelling unit through a lease term no shorter than six months out of any 12-month period.
- N. "Property" means a specific parcel of real property upon which an HDHO District is applied.
- O. "Subdivider" means any person creating a subdivision and offering lots for sale to the public.

[Ord. 591, 2019.]

4.7.4 Permitted Uses

The following uses are permitted within an HDHO development upon the County Commission's approval of application of an HDHO District to a specific parcel:

A. Residential developments at a density greater than normally permitted by the underlying zoning district as described in the table below, when a subdivider or developer ensures a minimum of 80 percent of lots or units developed on the property are deed restricted for primary residential occupancy for actively employed households. HDHO lots and units may be owner-occupied or renter-occupied as long as the residents meet the occupancy and active employment requirements of this subsection A. The maximum density (units/acre) limit shall be based on a calculation that includes all existing and all new units on the land area that is being included in the calculation. Residential development qualifying for greater density pursuant to the provisions of this section shall be permitted to obtain such density by constructing residential housing types not otherwise allowed in the underlying zoning district. For example, multifamily units may be constructed in a single-family residential zone.

High Density Housing (HDH) District	Maximum Density
HDH 35a	35 lots or units per acre
HDH 35b	35 lots or units per acre
HDH 25	25 lots or units per acre

High Density Housing (HDH) District	Maximum Density
HDH 15	15 lots or units per acre
HDH 10	10 lots or units per acre
HDH 5	5 lots or units per acre

B. Accessory uses or structures incidental to the principally permitted use pursuant to Section [3.3](#). Any accessory dwelling unit permitted under Section [3.3](#) in an HDHO development shall meet the occupancy and active employment requirements of subsection A of this section.

[Ord. 591, 2019.]

4.7.5 Development Standards

A. Eligibility. In order to reduce costs associated with the development and construction of primary residential housing, the property development standards set forth in subsection B of this section are established for and shall apply to all HDHO developments within the HDHO Districts upon approval of a site plan or preliminary plat approval.

B. Property Development Standards. The following development standards shall apply to HDHO developments within the HDHO Districts:

1. General Design Standards. The development shall be designed and developed in a manner compatible with and complementary to existing and potential development in the immediate vicinity of the development site. Site planning on the perimeter shall provide for protection of the property from adverse surrounding influences and shall protect surrounding areas from potentially adverse influences from the property. To the greatest extent possible, the design of the development shall promote privacy for residents and neighbors, security, and use of passive solar heating and cooling through proper placement of walls, windows, and landscaping.

2. Minimum Design Standards. Minimum design standards are included to ensure a high degree of quality in the development of HDHO lots and units. The following design standards shall apply to a development that utilizes the density increases allowed by this section:

a. Sidewalks shall be installed along all street frontages where otherwise required by this LUC.

b. Screening Requirements.

(1) Outdoor Storage Screening. All outdoor storage areas for materials, trash, mechanical equipment, vehicles, or other similar items shall follow the standards outlined in Section [6.4.3](#).

(2) Parking Lot Screening. Parking lot screening must be provided between an off-street parking area containing six or more parking spaces and either 1) a different zoning district or 2) a public street, and shall:

i. Be provided within 10 feet of the perimeter of the parking lot to be screened, except for parking lots adjacent to rain gardens/bioretenion systems, other landscape features, or where screening may negatively impact the traffic sight distance (as defined by the American Association of State Highway and Transportation Officials (AASHTO) and verified by the County Engineer);

ii. Be not less than 80 percent opaque and be a minimum of three feet in height as measured from the highest finished adjacent grade of the parking area. When shrubs are used to provide the screen, such shrubs must be at least two feet tall at planting and anticipated to grow to at least three feet tall at maturity;

iii. Not interfere with driver or pedestrian visibility for vehicles entering or exiting the premises;

iv. Utilize plants found in Section [6.4.3F](#), where required;

v. Consist of at least two of the following:

(A) A compact hedge of evergreen or densely twigged deciduous shrubs spaced to ensure closure into a solid hedge at maturity.

(B) A berm with plantings as described above.

(C) Transit shelters, benches, bicycle racks, and similar features may be integrated as a part of the screen.

(D) Fencing may be integrated as part of the screen. All wood fencing shall be stained and sealed with a weatherproof product;

vi. Be equipped with an irrigation system adequate for establishing and maintaining the plant materials within it.

c. Parking Island Design. Off-street parking areas with at least 25 parking stalls shall contain interior landscaped islands. Such islands shall be bounded by a raised concrete curb, pervious curbing, or an approved equivalent and shall contain mulch to retain soil moisture. This provision shall not apply to parking structures. Landscaped parking lot islands shall:

(1) Be located at the beginning and end of each parking row and shall contain a minimum of 180 square feet and a minimum width of nine feet;

(2) Include at least one tree per island;

(3) Incorporate shrubs, perennials, and ornamental grasses, where required;

(4) Be prepared with topsoil to a depth of two feet and improved to ensure adequate drainage, nutrient, and moisture retention levels for the establishment of plantings; and

(5) Be equipped with an irrigation system adequate for establishing and maintaining the plant materials within it.

d. Building Exterior Facade Standards.

(1) Exterior finishes may be of wood, masonry, stone, stucco, HDO board or other high quality material permitted by the building code, but shall not utilize vinyl siding; cedar or wood shakes; highly reflective, shiny, or mirror-like materials; or exposed plywood or particle board.

(2) Buildings shall utilize at least two of the following design features to provide visual relief along the front of the residence:

- i. Projections, recessions, or reveals such as, but not limited to, columns, pilasters, cornices, and bay windows.
- ii. Dormers.
- iii. Gables.
- iv. Recessed entries, a minimum of three feet deep.
- v. Covered front porches.
- vi. Cupolas.
- vii. Architectural pillars or posts.
- viii. Quoins.
- ix. Corbeling on wall.
- x. Decorative lintel.
- xi. Incorporation of brick or stone on at least 25 percent of front surface area.

e. Where HDHO units may be placed on the same lot as current or future temporary or short-term accommodations, dedicated HDHO units shall be clustered together so as to minimize the exposure of residents to temporary guests. In all other developments, where temporary or short-term accommodations units do not exist and cannot exist due to zoning restrictions, dedicated HDHO units shall be dispersed throughout the residential development.

f. Where there is a combination of commercial and residential uses, the commercial uses shall front along the highest road designation. Residential development shall be located behind commercial development or on upper floors above commercial development.

g. The County Commission may waive, or modify, any, or all, of these requirements when the Commission finds it is infeasible to comply due to physical or other constraints on the lot.

3. Minimum Building Site Area and Lot Width. There shall be no minimum building site area, minimum lot width, or maximum lot coverage requirements for individual lots or individual dwelling sites in a HDHO development. However, the building site area lot widths and lot coverage percentages shall be designated on a preliminary plat or site plan pursuant to Section [4.7.9](#).

4. Density. Overall density of site development within an HDHO District shall not exceed the limits established in Section [4.7.4](#).

5. Building Height.

a. Maximum building heights shall not exceed the limits defined in the underlying zone district except that buildings constructed in the HDHO 35b District shall not exceed four stories or 42 feet in height.

b. To the maximum extent possible, building heights and locations shall minimize shading and interruption of solar access to adjacent properties with existing residential structures or commercial agricultural operations.

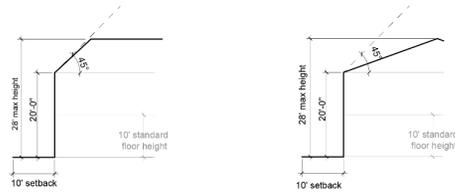
c. All structures shall conform to the ridgeline standards of Section [6.9.8](#).

d. Structures built within an HDHO development must comply with the setback and buffer requirements of the underlying zone. The maximum height of the building at the exterior wall shall be the greater of:

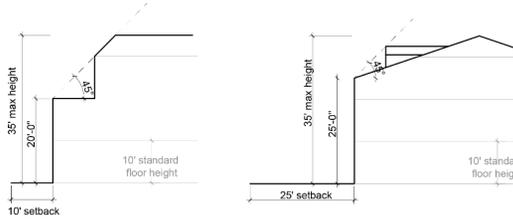
- (1) Twenty feet.
- (2) The building's setback at that point.

e. From the exterior wall, the building's height may increase to its maximum height at a rate not greater than a 45 degree angle from the maximum allowable height of the exterior wall.

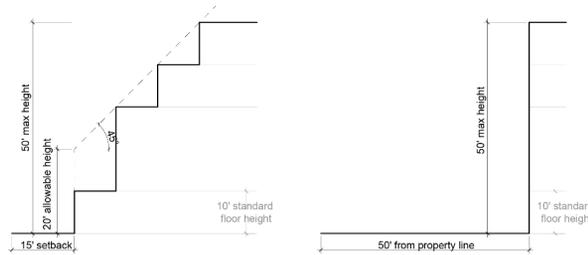
Examples of HDH Height-Compliant Structures



28' Max. Height Examples



35' Max. Height Examples



50' Max. Height Examples

6. Setbacks. The minimum setbacks from the lot line of the development shall be determined by the buffer requirements of Section 5.4.1B and the compatibility standards of Section 6.10.

7. Parking.

a. Number of Spaces Required.

- (1) For every single-family or two-family dwelling, there shall be provided at least two off-street parking spaces for each unit. Parking spaces provided in a garage or carport may count towards the minimum requirement.
- (2) For every attached multifamily dwelling, off-street parking spaces shall be provided in accordance with Section 6.1.4:

Multifamily dwellings	Efficiency and one-bedroom	1.5 per dwelling unit
	Two-bedroom	1.75 per dwelling unit
	Three-bedroom and larger	2.0 per dwelling unit

b. Parking Design Requirements.

- (1) Parking areas for single-family or two-family dwellings need not be paved.
- (2) Parking areas for attached multifamily dwellings shall be subject to the off-street requirements outlined in Section 6.1.7.
- (3) Uncovered surface parking may be permitted in the rear and side setbacks but is not permitted in the front or street-side setback.
- (4) Garages, carports, and individual locking storage units are subject to the setback standards outlined in Section 5.4.1.
- (5) Required spaces for multifamily developments equal to or greater than five units shall be covered in a carport or a garage except that for multifamily dwellings with four or fewer units, parking spaces can be uncovered.

8. Minimum Standards of Physical Condition. Each HDHO unit is required to have and maintain those minimum standards of physical conditions set forth in Exhibit B – Minimum Standards, attached to the ordinance codified in this section.

9. Streets. All public streets within or abutting the proposed planned development shall be dedicated and improved to County specifications for the particular classification of street.

10. Signs. Signs shall be permitted only to the extent allowed under Section 6.5. Signs, and must be approved by the Planning and Zoning Administrator.

11. Construction Timing. The HDHO units shall be ready for occupancy no later than the date of the initial or temporary occupancy of any unrestricted units within the development or applicable phase thereof. If the unrestricted units are developed in phases, then the HDHO units may be developed in proportion to the phasing of the unrestricted units. For example, for each unrestricted unit constructed at least four HDHO units shall be constructed.

[Ord. 591, 2019.]

4.7.6 Assurance of Primary Residential Housing and Occupancy

A. General. HDHO lots and units shall be used for primary residential housing for actively employed households in perpetuity.

B. Deed Restriction. The following deed restriction shall be integrated into the development agreement, the master plan, each final plat or site plan, and each deed of conveyance:

The Property shall be used for Primary Residential Housing for Actively Employed Households as required by Grand County Land Use Code, Section [4.7](#), High Density Overlay Districts Overlay, in perpetuity. The Property is further subject to a Development Agreement and Master Plan recorded against the Property in the real property records of Grand County, Utah.

Grand County reserves the right to revoke, deny or suspend any permit, including a land development permit, conditional use permit, building permit, certificate of occupancy, or discretionary approval upon a violation or breach of this Deed Restriction by a record owner of any HDHO Lot or Unit in Grand County. [Ord. 615, 2020.]

C. Enforcement. In addition to other remedies preserved herein, Grand County reserves the right to revoke, deny or suspend any permit, including a land development permit, conditional use permit, building permit, certificate of occupancy, or discretionary approval upon a violation or breach of this section by a record owner of any HDHO lot or unit in Grand County.

[Ord. 591, 2019.]

4.7.7 Development Incentives

A. General. As a further inducement to the development of primary residential housing beyond the relaxation and flexibility of development standards, the County, where appropriate, may also extend one or more development incentives to an HDHO development, as set forth in subsection B of this section, the selection of which shall depend on the quality, size, nature, and scope of the development being proposed. Incentives shall be targeted to improve the development design or to yield the greatest number of HDHO units, so as to permit the County to meet its estimate of additional housing needs and the goals of the housing element of the County's General Plan.

B. Additional Development Incentives. The County may also offer impact fee deferrals or waivers, property tax abatements, or direct financial contributions should the County Commission determine that such incentives are warranted and in the best interest of the County.

[Ord. 591, 2019.]

4.7.8 HDHO District Application [Revised 3/21](#)

A. Preapplication Conference. Prior to submission of an HDHO District application, as defined in this section, the developer or subdivider shall meet with the Community Development Director or their designee(s), including other County staff deemed desirable or necessary by the Community Development Director, to discuss the procedures, standards, and regulations hereunder.

B. Procedure. An HDHO District application shall be reviewed and approved in accordance with the procedures of Section [9.2](#), Text and Zoning Map Amendments (Rezoning), and shall be considered to be a zoning map amendment.

C. Application. A developer or subdivider shall submit an HDHO District application with the information contained in Section [9.2.3](#) together with a development agreement, master plan, and conceptual site plan as follows:

1. The development agreement shall include the following information:
 - a. Legal description of the property;
 - b. Narrative summarizing the proposed development of the property by gross acre, number of lots or units, common area and open space acreage, overall character and architectural style, and other related development features as proposed by the developer or requested by the County;
 - c. Percentage of HDHO lots or units to be developed on the property; and
 - d. Deed restriction required by Section [4.7.6B](#).
2. The master plan shall include the following information:
 - a. Legal description of the property;
 - b. Number and location of lots or units to be developed on the property;
 - c. Percentage of HDHO lots or units to be developed on the property, including designation of the specific HDHO lots or units in accordance with Section [4.7.4](#); and
 - d. Identification of site planning features designed to ensure compatibility between proposed HDHO development and surrounding neighborhoods and land use.
3. The conceptual site plan shall include the information required under Sections [9.17.3A](#) through N.

D. Recordation. The developer or subdivider shall record the development agreement and master plan in the real property records of Grand County, Utah, prior to recordation of a final plat approved hereunder or issuance of a building permit for any unit within a site plan approved hereunder. Once approved, the development agreement and master plan may not be amended or modified without reapplication to the County.

E. Effect. Review and consideration of an HDHO District application is a discretionary legislative decision. Further, approval of an HDHO District application does not constitute site plan, preliminary plat, or final plat approval. Rather, such approval shall be deemed approval of permission to develop under the standards of this section and the master plan.

F. Lapse of Approval. The HDHO District approval shall automatically expire and be void unless the County approves and developer records a site plan or final plat for the HDHO development in accordance with Sections [4.7.9](#) and 9.5 within 24 months of the date of HDHO District approval.

G. Conflict. In the event of conflict between the provisions of Section [9.2](#) and this Section [4.7.8](#), this section shall control.

[Ord. 622, 2021; Ord. 591, 2019.]

4.7.9 HDHO Development Plat and Site Plan Approval

A. Application Procedure. Review of an HDHO development plat or site plan is an administrative decision, which shall be consistent with the County's prior legislative approval of an HDHO District, the development agreement, and the master plan.

B. HDHO Development Preliminary Plat and Final Plat. Each subdivider shall submit and the County shall review a preliminary plat application and final plat application in accordance with Sections [9.4](#) and [9.5](#), Preliminary Plat and Final Plat, and this Section [4.7](#).

1. In addition to the requirements of Sections [9.4.2](#) and [9.5.1](#), Submittal Requirements, each plat shall include:

- a. Designation of HDHO lots in accordance with Section [4.7.4](#);
- b. Deed restriction as required by Section [4.7.6B](#).

C. HDHO Development Site Plan. Each developer of a mixed use or multifamily residential HDHO development shall submit and the County shall review a site plan application in accordance with Section [9.17](#), Site Plan Review, and this Section [4.7](#).

1. In addition to the requirements of Section [9.17.3](#), Submittal Requirements, each site plan shall include:

- a. Designation of HDHO units in accordance with Section [4.7.4](#);
- b. Deed restriction as required by Section [4.7.6B](#).

D. In the event of conflict between the provisions of Section [9.4](#), [9.5](#), or [9.17](#) and this Section [4.7.9](#), this section shall control.

[Ord. 591, 2019.]

4.7.10 Expiration of High Density Housing Ordinance [Revised 3/21](#)

The ordinance codified in this section shall automatically expire after 300 HDHO lots or units have been approved or after two years, whichever occurs first. A record of the number and location of HDHO lots and units approved shall be kept on file within the Community Development Department at all times. [Ord. 622, 2021; Ord. 591, 2019.]

4.7.11 Enforcement

A. Penalties for Violation. As more particularly set forth in Section [1.9](#), Penalties for Violation, any person, firm, entity, or corporation violating any provision or failing to comply with any provision of this section shall be guilty of a Class C misdemeanor. Without limiting the generality of the foregoing, it shall also be a Class C misdemeanor for any person, firm, entity, or corporation to sell or rent an HDHO lot or unit to a household not qualified under this section. It shall further be a Class C misdemeanor for any person, firm, entity, or corporation to provide false or materially incomplete information to the County or its designee or to a seller or lessor of an HDHO lot or unit to obtain occupancy of housing for which the person is not eligible.

B. Legal Action. In addition to the remedies set forth in Section [1.9](#), the County may institute any appropriate legal actions or proceedings necessary to ensure compliance with this section, including:

1. Actions to revoke, deny or suspend any permit, including a land development permit, conditional use permit, building permit, certificate of occupancy, or discretionary approval;
2. Actions to recover from any violator of this section civil fines, restitution to prevent unjust enrichment, and/or enforcement costs, including attorney fees;
3. Actions to seek judicial enforcement of such fines, restitution and costs, including judgment liens and foreclosure; and
4. Any other appropriate action for unlawful detainer, injunctive relief or damages.

[Ord. 591, 2019.]

4.7.12 Repeal/Savings Clause

Ordinance No. 584, enacted January 15, 2019, is hereby repealed; provided, however, that Ordinance No. 584 shall remain in force to authorize the arrest, prosecution, conviction, and punishment of a person who violates Ordinance No. 584 prior to the effective date of the ordinance codified in this section. [Ord. 591, 2019.]

4.8 Scenic Resource Protection District [Revised 3/21](#)

4.8.1 Purpose [Revised 3/21](#)

The Scenic Resource Protection District (SRPD) is an overlay district intended to accomplish one or more of the following purposes:

- A.** Prioritize the preservation of the natural beauty and ecological quality of the gateway to Moab and facilitate the use and enjoyment of the area while providing opportunities for development that enhances the character of the area while not impeding its scenic value;
- B.** Recognize this area as a gateway to the valuable scenic amenities of the greater Moab area, and as an introduction to the character and outdoor ethics of the community;
- C.** Protect and preserve the recreational and conservation uses of the area;

PART II. NON-RESIDENTIAL DISTRICTS. This Part sets forth the standards for development in non-residential districts. Section [5.5.1](#) to [5.5.3](#)

5.4 Part I: Residential Districts

5.4.1 Residential Development Standards

Development projects may include a mix of housing types as set forth in Section [3.1](#), Use Table.

A. Residential Density and Dimensional Standards

Residential development shall be subject to the maximum density and dimensional standards of the underlying base zoning district in accordance with the following table.

Residential Zoning Districts					
Development Standard	MFR	SLR	LLR	RR	RG
Max. Density (units/acre)	8	5	2	1	0.20
Min. Lot Size (acres)	0.125	0.20	0.50	1	5
Min. Project Boundary Buffer Parcel Size	5,445	8,712	21,780	21,780	21,780
Min. Front Yard and Street Side Yard	10'	20'	25'	25'	25'
Min. Interior Side Yard*	10'	10'	10'	15'	15'
Min. Rear Yard	10'	10'	20'	20'	20'
Min Lot Width*	80'	50'	100'	130'	130'
Bldg. Coverage Max.	55%	45%	25%	25%	25%
Max. Height Principal Structure	28'	28'	35'	35'	35'
Max. Height Accessory Structure	28'	28'	35'	35'	35'

*Side setback and min. lot width does not apply to townhome and multi-family shared walls.

[Ord. 615, 2020.]

B. Project Boundary Buffer

1. Project boundary buffers are intended to provide a suitable transition between the proposed subdivision and adjacent development. Buffers are required along all sides of the proposed subdivision that share a boundary with a protected zone district, excluding arterial or collector streets. For projects providing 20 percent or more affordable housing units as defined by Section [6.14](#), the project boundary buffer on each edge shall be 20 feet. For all other projects, the project boundary buffer on each edge shall be 20 feet or the proposed building height, whichever is greater.
2. Buffer width shall be measured perpendicular to the property lines that define the project area.
3. Development projects may include a mix of housing types as set forth in Section [3.1](#), Use Table, so long as the development complies with the maximum density requirement of the underlying base district (see subsection A of this section). [Ord. 549, 2016.]

C. Mix of Housing Types

Two-family, townhouse, multi-family residential units may comprise no more than 50 percent of the total dwelling units of any proposed conventional residential subdivision. In no case shall the district density be exceeded for the overall site.

D. Constrained Lands

1. Maximum allowable density for constrained lands (or portion of property which constitutes constrained lands) as described in this subsection (below) in all subdivision types shall be reduced by a minimum of 50 percent (see also Section [5.6](#), Measurements, Computations, and Exceptions).
2. Constrained lands include lands with natural slopes greater than 30 percent, jurisdictional wetlands, lands in the 100 year floodplain, public drinking water supply water sources (recharge areas for the aquifer in the Glen Canyon Formation), lands affected by unmitigable geo-hazards, and riparian habitats and archeological sites.
3. Constrained lands in all developments and subdivisions shall be identified on plats and remain unoccupied by buildings or impervious surfaces, unless the applicant demonstrates to the County Commission that this provision would constitute an unusual hardship and is counter to the purposes of this LUC. In cases where a hardship is granted not more than ten percent of any constrained land area shall be occupied by such surfaces.

E. Land Suitability

The County shall not approve the subdivision of land if, from adequate investigations conducted by all public agencies concerned, it has been determined that in the best interest of the public, the site is not suitable for platting and development purposes of the kind proposed. Land deemed to be environmentally unsuitable shall not be platted for residential occupancy, or for such other uses as may increase danger to health, life, or property, or aggravate erosion or flood hazard. Such land within the plat shall be restricted for such uses as shall not be endangered by periodic or occasional inundation or shall not produce unsatisfactory living conditions.

5.5 Part II: Nonresidential Districts

**GRAND COUNTY, UTAH
ORDINANCE 592 (2019)**

**APPROVING APPLICATION OF THE HIGH DENSITY HOUSING OVERLAY DISTRICT 10 (HDHO-10)
TO 3058 AND 3060 SPANISH VALLEY DRIVE IN CONJUNCTION WITH THE SANDSTONE
COTTAGES HIGH DENSITY HOUSING OVERLAY DEVELOPMENT**

WHEREAS, Glen Lent is the authorized Applicant and Developer, and Verd M. Byrnes and Kathy R. Byrnes, Trustees of the VK BYRNES TRUST dated December 21, 2004 are the owners of record of approximately (4.35) acres of real property in (Section 22, Township 26 South, Range 22 East) Grand County, Utah, more specifically described as follows;

Parcel #02-022-0049 – Bk. 637 P. 345 Entry No. 465710

Beginning 381.9 feet S # 247 ft E of W ¼ corner Section 22 T26S R22E, N 51°02' E 693.2 ft, S 38°58' E 254.1 ft, S51°02' W 539.8 ft, N 38°53' W 116.9 ft, S 51°02' W 118.4 ft, N 53°23' W 141.5 ft to Beg.

Also: Beginning at a point which bears S 556.84 ft & E 482.35 ft from W ¼ corner Sections 22 T26S R22E, thence N 53°23' W 31 ft, N 51°02' E 627.9 ft, S 38°58' E 30 ft, S 51°02' W 620.2 ft to point of beginning 4.07 Acres.

Parcel #02-022-0050 – Bk. 637 P. 344 Entry No. 465709

Beginning 466.3 ft S & 360.6 ft E of W ¼ corner Section 22 T26S R22E thence N 51°02' E 118.4 ft, S 38°58' E 116.9 ft, S 51°02' W 881.1 ft, N 53°23' W 120.7 ft to beginning .28 Acres.

WHEREAS, the Applicant has submitted an application requesting the High Density Housing Overlay District 10 (HDHO-10) as defined by the Grand County Land Use Code (LUC);

WHEREAS, the *Grand County Land Use Code* was adopted by the Grand County Council on January 4, 1999 with Ordinance No. 299, Series 1999, and codified with Resolution 468 on April 15, 2008 and as amended to date, for the purpose of regulating land use, subdivision and development in Grand County in accordance with the *General Plan*;

WHEREAS, the Grand County Council adopted Ordinance 584 - High Density Housing Overlay Districts on January 15, 2019 and amended it further on June 25, 2019;

WHEREAS, in a public hearing on May 14, 2019 the Grand County Planning Commission considered all evidence and testimony presented with respect to the subject application and forwarded a favorable recommendation to the Grand County Council;

WHEREAS, in a public meeting on May 14, 2019 the Grand County Planning Commission provided a conditional approval of the Sandstone Cottages Preliminary Plat contingent upon the County Council taking action to apply the HDHO-10 District to the subject parcels;

WHEREAS, the Applicant has submitted and the County Attorney has approved a Development Agreement committing the Developer to the deed restriction requirements of Section 4.7, which states that at least 80 percent (80%) of the Lots created by the Sandstone Cottages Subdivision shall be deed restricted to primary residents who are actively employed within Grand County (See Exhibit A);

WHEREAS, the Applicant has submitted a Preliminary Plat for the Sandstone Cottages Subdivision and designated which Lots would be deed restricted according to the provisions of Section 4.7 (See Exhibit B);

WHEREAS, due notice was given that the Grand County Council would meet to hear and consider the proposed HDHO-10 application in a public hearing on June 25, 2019;

WHEREAS, the County Council 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 County Council that it does hereby approve the HDHO-10 application for 3058 and 3060 Spanish Valley Dr.

PASSED, ADOPTED, AND APPROVED by the Grand County Council in open session this 2nd day of July, 2019 by the following vote:

Those voting aye: Halliday, Wells, McGann, Morse, Paxman, Clapper

Those voting nay: Hawks

Those absent: _____

ATTEST:

Grand County Council

Chris Baird, Clerk/Auditor

Terry Morse, Vice-Chair
Evan Clapper, Chair
Terry Morse - Vice chair