

CHRISTINA R. SLOAN, No. 11963
Grand County Attorney
GRAND COUNTY
125 E. Center Street
Moab, UT 84532
435.259.1326
csloan@grandcountyutah.net

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

SANDSTONE COTTAGES, LLC,

Appellant

v.

GRAND COUNTY UTAH, GRAND
COUNTY COMMISSION,

Respondents

**RESPONSE
TO DEVELOPER REPLY TO COUNTY'S
RESPONSE TO ADMINISTRATIVE
APPEAL**

Hearing Officer: Bruce Jenkins

The County desires to briefly address Developer's new introduction of legislative history in its Reply to the County's Response to the Administrative Response.

I. LEGISLATIVE HISTORY

In its Reply, Developer states that the County staff responsible for drafting "and passing" the HDHO Ordinance has stated that it was not his "intent or understanding that ownership was meant to be restricted." *Reply* at p3; Attachment 1.

Firstly, staff is not responsible for passing Ordinances; only the legislative body can do

that. Secondly, staff intent and understanding do not comprise legislative intent; only the intent and the understanding of the legislative body is dispositive.

Thirdly, the plain language of LUC Section 4.7.11, which Developer ignores over and over in its Appeal and Reply, restricts the *sale* or rental of HDHO units and lots to non-qualified households. Thus, the HDHO Ordinance regulates the sale of HDHO units and lots, which is distinct from an outright ownership restriction. It does not force the sale of units away from a Developer, and it does not force the sale of units away from a once-qualified household. However, it does require that all HDHO units or lots *sold* must be sold to qualified households. And all HDHO units or lots *rented* must be rented to qualified households.

This express language is purposeful and produces a rational result, which is consistent with the legislative goals of the HDHO. The records shows that the County Commission wanted to facilitate both a rental market and an owner-occupied market for workforce housing. Both markets were much discussed and important to Planning and County Commission members. In doing so, the County Commission did not want local workforce buyers to have to compete with ineligible non-local-workforce buyers, which is well documented in the legislative record. And, the County Commission also wanted once-eligible HDHO owners to have some reasonable options if their eligibility status changed. In particular, the County Commission did not want them to have to sell the unit immediately. The restrictions on sale and occupancy accomplish all these goals.

The County does not dispute the HDHO Ordinance's plain language. However, the goal of any statutory interpretation is to "evinced the true *intent and purpose of the Legislature*. We do so by looking at the best evidence of legislative intent, namely, the plain language of the statute

itself.” *Olsen v. Chase*, 2011 UT App 181, ¶ 8, 270 P.3d 538 (emphasis added) (quoting *Archuleta v. St. Mark's Hosp.*, 2009 UT 36, ¶ 8, 238 P.3d 1044).

In its Reply, Developer now introduces a letter purportedly signed by Zacharia Levine, the prior Community and Development Director for Grand County, stating that his intent was to restrict occupancy, not ownership. *Reply* at p3; Attachment 1. However, the statements of staff regarding its own understanding of the HDHO Ordinance is not relevant here and does not override the overwhelming legislative history that spans more than 18 months of public meetings, workshops, and hearings that supports the ownership requirement as a critical component of the success of the HDHO Ordinance.

The Commission adopted the HDHO Ordinance, a workforce housing legislation that prohibits the sale of HDHO units and lots to non-qualified households, instead of the more traditional affordable housing legislation requiring income requirements and price caps, at least in part because staff - the same Zacharia Levine - promised that the ownership requirement triggered at sale of an HDHO unit or lot ensures that the program is easy to administer and enforce:

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 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.

Zacharia Levine (emphasis added), *October 16, 2018 Commission Workshop*,

<https://www.grandcountyutah.net/CivicMedia?VID=247>.

And of course, the repeated conversations with the Commission, often with Zacharia Levine, regarding the ownership requirement were intricately wrapped up in the purpose of the HDHO Ordinance, to enable the local workforce to buy homes and stay in Grand County long-term:

So when we talk about what [our essential workforce] can afford, this is really important when we start talking about having deed restrictions and having developers build to market or to these people that would be living and working here. When we look at an affordable *home price*, that gives you a better idea of the range of where these housing units would be *sold*. But again, that would be up to the developer to *price them at an adequate price* where people that actually live and work here can afford to pay for that.

Id. (emphasis added).

Similarly, an earlier conversation held at the June 5, 2018 Commission meeting with other County staff in Zacharia Levine's absence regarding how the ownership requirement would benefit the local workforce by repressing values 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.”

Commission Discussion (emphasis added), *June 5, 2018 Commission Meeting*,

<https://www.youtube.com/watch?v=MR34Ugv755E>.

These express discussions were also framed by related topics including how the benefits of the local ownership requirement in the HDHO Ordinance outweighed the burden to rural residential neighborhoods which would be “forever changed” by the increased density of the HDHO developments; presentations of studies and other data showing that the local workforce could not afford to buy homes in Grand County; and the rejection of traditional affordable housing programs with income requirements and price caps in favor of the local ownership requirement. *See e.g., id* (presentation of data showing market unaffordability and rejection of affordable housing models); *October 16, 2018 Commission Workshop* at <https://www.grandcountyutah.net/CivicMedia?VID=247> (presentation of data showing local wages have not kept up with housing market and discussion regarding the burden on rural residential neighborhoods); *December 4, 2018 Commission Workshop* at <https://www.youtube.com/watch?v=JTYtWjK1bGA> (presentation of data showing 1000 households in the City and County were cost-burdened in 2018 with an additional 400 households predicted to be cost-burdened by 2020 and robust discussion about how to protect local workforce upon retirement without forcing them to sell their units); *January 15, 2019 Commission Workshop* at <https://www.grandcountyutah.net/CivicMedia?VID=276> (additional

discussion that benefits of HDHO program outweigh burden on rural residential neighborhoods because it helps the County's workforce buy homes and build equity).

Here, the HDHO Ordinance's plain language prohibiting sales of HDHO units and lots to non-actively employed households supports the County's clear legislative intent to prevent non-local investors and second homebuyers from purchasing HDHO properties at prices above those supported by the local wages and driving up rents beyond what local county residents can afford. For all these reasons, the HDHO Ordinance, as well as the Rules and Regulations, should be upheld.

DATED this 3rd day of May 2021.

GRAND COUNTY

/s/ CHRISTINA R. SLOAN

Christina R. Sloan
Grand County Attorney