

BRENT N. BATEMAN, No. 10003
Dentons Durham Jones Pinegar
3301 N Thanksgiving Way, Suite 400
Lehi, UT 84043
801-375-6600
brent.bateman@dentons.com

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	Reply to the Response of Grand County Hearing Officer: Bruce Jenkins

The Response of Grand County dated April 27, 2021 in the present matter merits a brief reply, and we appreciate the hearing officer's consideration thereof.

Appellant Sandstone Cottages is grateful for Grand County's careful review of the facts and procedural history as set forth in the Appeal of Sandstone Cottages, LLC. The County did make many valuable corrections and clarifications, and Sandstone Cottages acknowledges that there may have been some misunderstood aspects of the procedural history of Sandstone's application, particularly with regard to the approval status of the original application and the requested second applications.

Nevertheless, there is no need to spend additional time on those matters, as they are not relevant to the primary issue here: *Whether the County intended to, and did, legally restrict*

ownership if the HDHO units, rather than just occupancy, prior to the approvals applied for and obtained by Sandstone Cottages, or whether the restrictions on ownership were added after the fact, making an interpretation that is not supported in the Ordinance, and violating Sandstone Cottages' vested rights.

I will endeavor to be brief. The County's primary argument in its reply is that "when read as a whole, the HDHO Ordinance contains a clear prohibition on selling or renting properties to non-actively employed households." County's Response, p.9. The County argues that the restriction on unit ownership was intended to be, and was a part of, the County's ordinances from the beginning. The County further argues that "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. Although this is an accurate statement of the law, it does not support the County's approach. The County urges that meaning be found by reading the statute "as a whole," but at the expense of or ignoring the plainly and expressly stated terms in the ordinance. The plain language of the ordinance controls. Only when the plain language presents ambiguity, do other maxims of ordinance interpretation apply. Carrier v. Salt Lake County, 2004 UT 98 ¶ 30, 104 P.3d 1208.

Here, the plain language presents no ambiguity, because nothing in the plain language restricts ownership in any way. It is very telling that the County opens its argument by resorting to the "ordinance as a whole" rather than referring to any express statement in the ordinance. As the County points out, this ordinance was carefully crafted, over months of hard work. Certainly, had the County intended to restrict ownership as they now claim to have done, they would have expressly said so, rather than having to resort to an abstract reading of the ordinance as a whole to support that completely lacking provision.

To the contrary, the express language of the ordinance clearly and unequivocally contemplates that the occupancy is to be carefully restricted, not the ownership of the units. Indeed, the plain language of the ordinance includes several references to Owners, but all restrictions are directed at occupancy:

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

Other instances have been cited by developer's counsel. There is simply no express language in the ordinance that supports a restriction on ownership.

The County's assertion that the County intended all along to restrict ownership of the units is no only unsupportable, but untrue. As stated, the County had many opportunities to expressly place such a restriction in the Code. Moreover, the County staff responsible for drafting and passing this ordinance have stated that it was not their intent nor understanding that ownership was meant to be restricted. See Attachment 1, Statement of Zacheria Levine, for County Development Director.

The rules and regulations interpreting these ordinances were adopted after the ordinance was passed. There is no dispute that those rules contain no express restriction on ownership. Rules were later amended, adding language to restrict ownership, and likewise amended the county's required development agreement. This is also undisputable. The County's argument that restrictions on ownership were intended from the outset has no support whatsoever, not in the ordinance language, not in the interaction between the developers and the County, not in any minutes to any meeting. Nowhere.

Accordingly, the rules and regulations placing restrictions on ownership are not supported by the ordinance. Thus, as an administrative act as the County has classified them, they are unlawful because they exceed the County's authority to make new rules without going through a legislative process. To the extent that the County claims that it has such authority to make rules, then this restriction on ownership must be a legislative act, done without following legislative procedures. In any event, if a legislative act, these rules are new rules that the County is trying to impose, impermissibly in violation of the Utah Vesting Rule.

Thanks for your consideration.

DATED this 30th day of April, 2021.



Brent N. Bateman
Attorney for Sandstone Cottages, LLC