

2000

MARVIN A. MELVILLE; RENEE B. MELVILLE;
VERNA B. MELVILLE; EILEEN DUNYON;
ALBION BASIN DEVELOPMENT COMPANY,
a Utah corporation; MARVIL EXPLORATION
COMPANY, a Nevada corporation;
CANYONLAND, INC., a Utah corporation;
VALLEY INVESTMENT COMPANY, a Utah
corporation; and INTERMOUNTAIN
DEVELOPMENT, INC., a Utah corporation v.
SALT LAKE COUNTY, a body politic; RALPH Y.
McCLURE; WILLIAM E.DUNN; DARREL
MAYNES; LEE HOFFMAN; WILBUR C.
PARKINSON; HARRY L. GIBBONS;

Recommended Citation

Legal Brief, *Melville v. Salt Lake County*, No. 13734.00 (Utah Supreme Court, 2000).
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DOUGLAS H. CAMPBELL; GERALD H.
BARNES; CLAYNE J. RICKS; FRANK
GRANATO; ALBION C. MULCOCK; MILLIE
OBERHANSLEY BERNARD; GARY PALMER;
GRAHAM W. DOXEY; D. JAMES CANNON;
JOHN DOE #1; JOHN DOE #2 and JOHN
DOE #3 : Petition for Rehearing

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

**BRIGHAM YOUNG UNIVERSITY
J. Reuben Clark Law School**

MARVIN A. MELVILLE; RENEE B.
MELVILLE; VERA B. MELVILLE;
EILEEN DUNYON; ALBION BASIN
DEVELOPMENT COMPANY, a Utah
corporation; MARVIL EXPLORATION
COMPANY, a Nevada corporation;
CANYONLAND, INC., a Utah corpora-
tion; VALLEY INVESTMENT COMPANY,
a Utah corporation; and INTER-
MOUNTAIN DEVELOPMENT, INC., a
Utah corporation,

Plaintiffs and Appellants,

-vs-

No. 13734

SALT LAKE COUNTY, a body politic;
RALPH Y. McCLURE; WILLIAM E. DUNN;
DARREL MAYNES; LEE HOFFMAN; WILBUR
C. PARKINSON; HARRY L. GIBBONS;
DOUGLAS H. CAMPBELL; GERALD H. BARNES;
CLAYNE J. RICKS; FRANK GRANATO; ALBION
C. MULCOCK; MILLIE OBERHANSLEY BERNARD;
GARY PALMER; GRAHAM W. DOXEY; D. JAMES
CANNON; JOHN DOE #1; JOHN DOE #2 and
JOHN DOE #3;

Defendants and Respondents.

PETITION FOR REHEARING

FILED

JUN 19 1975

Clerk, Supreme Court, Utah

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IN THE SUPREME COURT
OF THE STATE OF UTAH

MARVIN A. MELVILLE; RENEE B.
MELVILLE; VERA B. MELVILLE;
EILEEN DUNYON; ALBION BASIN
DEVELOPMENT CO., a Utah corporation;
MARVIL EXPLORATION CO., a Nevada
corporation; CANYONLAND, INC., a
Utah corporation; VALLEY INVESTMENT
CO., a Utah corporation; and
INTERMOUNTAIN DEVELOPMENT, INC.,
a Utah corporation,

Plaintiffs and Appellants,

-vs-

No. 13734

SALT LAKE COUNTY, a body politic;
RALPH Y. McCLURE; WILLIAM E. DUNN;
DARREL MAYNES; LEE HOFFMAN; WILBUR
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GRAHAM W. DOXEY; D. JAMES CANNON;
JOHN DOE #1; JOHN DOE #2; and
JOHN DOE #3,

Defendants and Respondents.

PETITION FOR REHEARING

STATEMENT OF THE CASE

On June 3, 1975, this Court held that the FR-50 zoning on the canyons East of the Salt Lake Valley was invalid and illegal in that proper notice had not been given, and overruled the District Court.

One of the Points on Appeal was whether or not the Appellants were entitled to building permits as applied for. This question was not determined in the decision of this Court. The Appellants had applied for three building permits. The District Court refused to issue an Order requiring the Respondents to issue the permits as prayed for in Appellants' Fourth Cause of Action. This ruling was appealed from and argued in Appellants' Point Three.

STATEMENT OF FACTS

The Appellants applied for three building permits (Ex. 19-P, 20-P and 22-P, Tr. P 133). The Appellants met all of the requirements for the issuance of the permits, except zoning, on the 4th day of November, 1975 (Tr. P 133). Respondents refused to issue the permits on the basis of the zoning which has now been determined to be invalid.

ARGUMENT

POINT 1

THE APPELLANTS ARE ENTITLED, AS A MATTER OF LAW, TO THE ISSUANCE OF BUILDING PERMITS AS APPLIED FOR. It is admitted by the County that the Appellants have met all of the requirements for the building permits other than zoning. This admission can be found on Page 133 of the Transcript.

The Appellants, in their Fourth Cause of Action, prayed for the issuance of a Writ of Mandamus or an Order requiring the County to issue the permits. The lower Court refused to issue the Order on the basis that the zoning was valid. This Court has now ruled that the zoning is invalid and the lower Court should be directed to issue an Order requiring the County to issue the permits. If all of the requirements for a permit are met, and the County refuses to issue the permits, the only speedy remedy available to the Appellants is an Order of the Court requiring the County to issue the permits. The issuance of the permits is not a discretionary matter by the building and zoning enforcement people of the County, but is an administrative act and the Appellants should be granted an Order requiring the County to issue the permits. See McQuillin Municipal Corporation, Vol. 17, Paragraph 51.54, Page 603 for cases cited therein.

This Court in Contracts Funding and Mortgage Exchange, a Utah corporation v. Darrell Maynes and Salt Lake County, #13608 Filed Nov. 4, 1974, indicated in that case that "the Plaintiff had a right to build what it said it wanted to build, if it had filed an application for

a permit to do so", and affirmed the lower Courts judgment that the Plaintiff be allowed to develop his proposed project. In our case, we have an even stronger position in that the permits were filed and all of the requirements met prior to the zoning.

CONCLUSION

One of the points appealed from the lower Court was the lower Court's failure to issue the Order requiring the issuance of the building permits. To require the Appellants to return to the lower Court for these orders without some guidance from this Court on this point leaves the Appellants in a position of a possible second appeal on the same question that was appealed from in this appeal. This procedure would be a burden which the Appellants should not have to assume. This matter was presented to this Court as part of this appeal and should be decided by this Court and some guidance given to the lower Court in regard to its responsibilities to issue the Order.

Respectfully submitted,

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