

1997

Jon Triesault, Elizabeth Triesault, Roger Clive Baker
and Lynnette Jennifer Baker v. QMF, INC., William
E. Casper, Jr., Shirley A. Casper, George G. Wright,
Jane C. Wright, and John Does 1-10 : Brief of
Appellee

Utah Court of Appeals

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Recommended Citation

Brief of Appellee, *Triesault v. QMF*, No. 970274 (Utah Court of Appeals, 1997).
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UTAH COURT OF APPEALS
BRIEF

UTAH
DOCUMENT

NO. 970274-CA

IN THE COURT OF APPEALS OF THE STATE OF UTAH

JON TRIESAULT, ELIZABETH
TRIESAULT, ROGER CLIVE BAKER
and LYNNETTE JENNIFER BAKER,
Plaintiffs/Appellants,

vs.

QMF, INC., WILLIAM E. CASPER,
JR., SHIRLEY A. CASPER, GEORGE
G. WRIGHT, JANE C. WRIGHT, and
JOHN DOES 1-10,
Defendants/Appellees.

**BRIEF OF APPELLEES QMF,
INC., GEORGE G. WRIGHT,
AND JANE C. WRIGHT**

Case No. 970274-CA
(Priority 15)

**APPEAL FROM THE FOURTH JUDICIAL DISTRICT COURT OF
UTAH COUNTY, STATE OF UTAH
HONORABLE DONALD C. EYRE, DISTRICT JUDGE, PRESIDING**

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FILED

Utah Court of Appeals

NOV 18 1997

Julia D'Alessandro

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JURISDICTION

Jurisdiction was conferred on the Utah Supreme Court by Utah Code Ann. § 78-2-2 (3) (j) (1996). The appeal was timely. The Order of Dismissal appealed from was initially entered May 28, 1996 (R. 809-806), and amended December 10, 1996, (R. 912-910). No motions were filed under Rules 50(a) or (b), 52(b), or 59 of the Utah Rules of Civil Procedure. Two motions seeking reconsideration (authorized by Rule 54(b)) were filed. The first was filed April 12, 1996 (R. 765-763), and denied by the Order of Dismissal dated May 28, 1996. The second Rule 54(b) motion was filed August 16, 1996 (R. 826-825), and denied by the Order of Dismissal dated December 10, 1996. Because of a pending counterclaim, which was first dismissed as part of the December 10, 1996 Order of dismissal, the May 28, 1996 Order of Dismissal did not become final until December 10, 1996.

By order entered January 9, 1997, the trial court granted Plaintiffs' ex parte motion for extension of time to appeal, and granted a 30-day extension of time. (R. 920-918.) Plaintiffs filed their Notice of Appeal on Monday, February 10, 1997. (R. 923-921.)

This Court has jurisdiction under Utah Code Ann. § 78-2a-3 (2) (j) (Supp. 1997).

ISSUES PRESENTED

1. Do the Plaintiffs lack standing to bring or maintain this action where all authority to do so is vested in the Executive Committee or, alternatively, in the Homeowners Association of the Planned Unit Development?

2. Do the Plaintiffs lack standing as a result of having waived all personal claims and deferred any potential recovery to the Homeowners Association?

3. Did the Plaintiffs fail to cure their lack of standing through their Amended Complaint that named the homeowners as Defendants, when the homeowners would not join as Plaintiffs?

4. Should the wishes of the owners of eight of the ten properties be observed and the Plaintiffs' claims dismissed, where the owners of all eight properties signed Affidavits to that affect, without first having a meeting or taking a formal vote on the subject?

STANDARD OF REVIEW

The trial court decided this case by summary judgment, and its ruling is reviewed for correctness, with no deference to the trial court. Bonham v. Morgan, 788 P.2d 497 (Utah 1989); Blue Cross & Blue Shield v. State, 779 P.2d 634, 636 (Utah 1989); Ron Case Roofing & Asphalt Paving v. Blomquist, 773 P.2d 1382, 1385 (Utah 1989); Transamerica Cash Reserve, Inc. v. Dixie Power & Water, Inc., 789 P.2d 24 (Utah 1990).

DETERMINATIVE STATUTES OR RULES

Appellees are not aware of any statutes, rules or cases which are solely determinative of the issues.

STATEMENT OF THE CASE

A. Nature of the Case.

This is an appeal from a final order granting summary judgment, dismissing the Plaintiffs' case. The original lawsuit sought to recover a portion of the common area and money damages. An amended complaint added additional parties

Defendant but no additional substantive issues. The order because a final judgment only after the lower court considered two Rule 54 motions.

B. Court of Proceedings and Disposition Below.

Plaintiffs filed their Complaint on March 10, 1995. (R. 24-1.) The Complaint named as Defendants the Wrights and QMF, Inc. (sometimes jointly referred to in this brief as “Wright”), and the Caspers. Among other things, the Complaint sought an Order restoring certain real property to a planned unit development, and an award of damages related to the loss of the property. Plaintiffs also filed a Lis Pendens. (R. 26-25.) On June 21, 1995, the parties filed a Stipulation dismissing the claim for restoration of the real property. (R. 70-68.) Plaintiffs also released their Lis Pendens against the property. (R. 72-71.) An Order of Partial Dismissal was entered June 29, 1995. (R. 75-73.)

Plaintiffs filed a Motion for Summary Judgment (R. 79-78) and supporting Memorandum (R. 171-080) on July 14, 1995. Wrights responded to the Motion (R. 191-185) and filed their own Motion for Summary Judgment. (R. 355-354.) Caspers also responded to the Motion. (R. 507-475.) Following oral argument, the

trial court (Judge Lynn Davis) ordered the parties to provide further briefs on whether Plaintiffs had standing. (R. 536.) Caspers then filed a Motion for Summary Judgment which included arguments on standing. (R. 559-558.) Wrights filed a Memorandum on the issue. (R. 560-616.) Plaintiffs filed a Motion to have the Court determine that Plaintiffs had standing or alternatively to grant leave to join additional parties. (R. 618-617.)

On January 25, 1996, the trial court (Judge Lynn Davis) ruled that Plaintiffs lacked standing, and that the case would be dismissed without prejudice unless the Plaintiffs within 30 days joined the Homeowners Association or the other homeowners. (R. 647-645.) Plaintiffs filed an Amended Complaint on February 23, 1996, naming the other homeowners and the Homeowners Association as additional Defendants. (R. 730-696.) Wrights (R. 736-731) and Caspers (741-737) answered the Amended Complaint.

As part of the regular rotation of cases in the Fourth District, the case was assigned to Judge Donald Eyre. On April 4, 1996, Judge Eyre ruled on Caspers' Motion for Summary Judgment. Apparently unaware that Plaintiffs had filed an

Amended Complaint, Judge Eyre stated the action was dismissed without prejudice because Plaintiffs had failed to join additional parties. Judge Eyre also noted that Judge Davis had allowed for joinder of either the Homeowners Association or the homeowners, but expressed his opinion that joinder of the Homeowners Association would be more appropriate. (R. 762-760.)

Plaintiffs sought reconsideration of the dismissal on the ground that Judge Eyre was obviously unaware Plaintiffs had filed an Amended Complaint. (R. 756-763.) Wrights opposed the reconsideration and submitted affidavits from several homeowners stating they did not want to be part of any lawsuit. (R. 791-773.) On May 7, 1996, Judge Eyre granted the Motion to Reconsider, but nonetheless ordered the case dismissed. The Court held that only the Homeowners Association had standing to pursue the claims, and that the affidavits of a majority of the homeowners precluded the Homeowners Association from being named as a party to pursue the claims. (R. 796-792.) An order of dismissal prepared by Wrights' counsel and dismissing the Plaintiffs' case with prejudice was entered May 28, 1996. (R. 809-806.)

On September 1, 1995, without seeking prior leave of court, Wrights had filed a Counterclaim against Plaintiffs claiming slander of title and other damages. (R. 346-343.) The Court subsequently granted leave to file the Counterclaim. (R. 655.) On August 19, 1996, Plaintiffs, through new counsel, filed a Motion for Summary Judgment against the Counterclaim. (R. 839-838.) Plaintiffs also sought an order vacating the dismissal of their personal claims. (R. 826-825.) Following argument, the trial court reaffirmed the dismissal of all parties' claims, but ordered that the dismissal be without prejudice. The Court also granted Plaintiffs' Motion for Summary Judgment dismissing Wrights' Counterclaim. (R. 904-899.) The formal Order of Dismissal was entered December 10, 1996. (R. 912-910.)

Plaintiffs obtained a 30-day extension of time to appeal (R. 920-918), and filed their Notice of Appeal on February 10, 1997. (R. 923-921.) The Supreme Court poured the case over to this Court on April 30, 1997. (R. 931.)

C. Statement of Facts.

These Defendants adopt the statement of facts as set forth in the Brief of Appellees William E. Casper, Jr. and Shirley A. Casper.

These Defendants object to the Appellants' Statement of Facts. It is riddled with inaccuracies. However, not all of the errors are material to the discussion of the case. The material misstatements are as follows:

The Appellants assert that in the original Planned Unit Development ("PUD"), only two acres were set aside as common ground. It was closer to six acres. Even with the approximately two acres removed from the common area, there were 4.12 acres remaining in the common area. (R. 280 and Appendix 1 and Appendix 3.)

The Plaintiff erroneously characterized George Wright's statements regarding funds from the sale of the new lot to be used for the benefit of the homeowners. Not *all* funds from the sale of the lot were intended to be used for the benefit of the PUD, but only *a portion*. (R. 127.) A portion of the funds was used for the three items mentioned in the Petition that Quiet Meadow Farms agreed to do for the benefit of the Homeowners Association. (R. 286-284 and Appendix 2)

The previous owner of the Triesault lot, Steve Hechtle, did sign the amended plat in November, 1992, in that his signature was affixed by George Wright, pursuant to express authorization from Hechtle. (R. 445-444 and Appendix 4.)

The Appellants assert that monies from the sale of the lot were not used for the debts of the PUD. In fact, the Plaintiffs were provided an accounting of expenses relating to the three items of improvement required in the Petition. (R. 264-263 and Appendix 3.)

SUMMARY OF ARGUMENT

The Plaintiffs, representing two of the ten lots of the Quiet Meadow Farms Planned Unit Development (“PUD”), brought this action regarding removal of a portion of common area from the PUD. The action was brought without permission of the Executive Committee of the PUD or the Homeowners Association, and against the desires of the other eight property owners. The Plaintiffs have no authority to bring this action and have no standing to maintain their claim.

The Plaintiffs attempt to name the owners of the other eight properties as Defendants was a failed attempt to attain standing, inasmuch as those who had standing were not willing to bring or maintain the action as Plaintiffs.

The Plaintiffs acknowledged their lack of standing in deposition statements which make it clear that they seek no personal gain in the lawsuit.

The owners of the other eight properties expressed their unwillingness to have the lawsuit pursued, rendering the Plaintiffs' claims futile, and justifying the lower Court's granting of summary judgment dismissing Plaintiffs' claims.

ARGUMENT

POINT I

ALL EQUITABLE AND LEGAL CLAIMS OF THE PLAINTIFFS HAVE BEEN VOLUNTARILY DISMISSED OR WAIVED, EXCEPT THE LEGAL CLAIM FOR WHICH PLAINTIFFS HAVE NO STANDING.

The Plaintiffs' original Complaint raised equitable claims and legal claims. The equitable claims were voluntarily dismissed and are no longer at issue. (R. 75-68.) The legal claims, for monetary damages, are all that survive. These legal claims fit into two categories:

1. Claims of representations by George Wright, individually, when Triesaults bought their lot from Hechtle. These relate to picking cherries, Forest Service boundaries, storage buildings, and the access road. These issues were fully briefed by the parties and were dismissed by the lower Court with the granting of the Summary Judgment against the Plaintiffs. (R. 177-171; 461-454; 527; 826-825; 875-868; and 895-880.) These were not preserved on appeal or addressed in Appellants' brief. They are therefore not at issue and merit no further discussion.

2. The Plaintiffs' other claim at law relates to some intangible interest they claim in the removed common area. They make this claim, even though that portion of common area was removed before the Triesaults acquired their lot and, hence, before they could have acquired any interest in any common areas. Nevertheless, and regardless of when the removal happened, the interest in the common areas of the PUD is not personal to the Plaintiffs, but is within the exclusive ambit of the Homeowners Association or the Executive Committee.

The Plaintiffs' consistent statements to the effect that they sought no personal gain, but that all legal damages to be recovered were to go to the Homeowners Association, are an undeniable acknowledgement that the claim is not their own but belongs to the Homeowners Association. This amounts to a recognition that they lack standing to bring the claim, which is the central issue of this appeal.

The fact that the homeowners do not want this remedy forced upon them seems to have miraculously escaped the Plaintiffs' notice.

The issue of standing is effectively and adequately briefed in Point I of the Argument of Brief of Appellees Casper. The Appellees Wright and QMF, Inc. adopt that discussion from Appellees Casper's brief, and concur with Caspers in that discussion, with the additional observation, as stated below, that the Plaintiffs' attempt to cure standing through their Amended Complaint failed because the proper parties with standing refused to join as *Plaintiffs*.

POINT II

THE PLAINTIFFS FAILED TO CURE THEIR LACK OF STANDING.

Both trial court judges, Judge Davis and Judge Eyre, recognized early on that the Plaintiffs lacked standing. Plaintiffs were given every opportunity to cure their lack of standing if they could do so. The Plaintiffs filed a Supplemental Memorandum regarding the issue of standing, and were allowed to file an Amended Complaint.

However, the Amended Complaint failed to cure the lack of standing. It failed in this attempt because the Amended Complaint only added additional Defendants. What the Plaintiffs failed to realize is that the proper parties needed to *bring* the action. They needed to become *Plaintiffs* in the case. The Plaintiffs' inability to persuade the homeowners, the Association, or the Executive Committee, to join as parties Plaintiff is fatal to the Plaintiffs' attempt to cure their lack of standing.

POINT III

PLAINTIFFS WAIVED THEIR CLAIMS.

The Plaintiffs are unwilling to concede that the following language constitutes a waiver of their personal claims.

Q BY MR. BRADFORD: Mr. Triesault, do you claim that you and your wife are entitled to the full value of the common areas that were taken out?

A BY MR. TRIESAULT: No.

Q What would be your claim?

A A portion. There is no claim on my behalf for a monetary gain of any kind. This is a claim to return the common ground, and any damages that may have been incurred or legal expenses, or whatever else is pled in the complaint. There is no attempt on my part or I believe on Mr. Baker's part to profit in any way by this lawsuit, financially.

Q You're not seeking to benefit monetarily at all from the lawsuit?

A Not personally. If there are benefits monetarily, they would be given to the homeowners' association.

Deposition I of Jon Triesault, ps. 36:2-38:2. (R. 411.)

* * * * *

Q BY MR. BRADFORD: On page 36 of your husband's deposition, he states, "There is no claim on my behalf for monetary gain of any kind. This is a claim to return the common ground, and any damages that may have been incurred or legal expenses, or whatever else is pled in the Complaint. There is not attempt only part or I believe on Mr. Baker's part to profit in any way by this lawsuit financially."

A I would agree with that.

Q That is your position, also?

A Yes.

Deposition of Elizabeth Triesault, p. 38:12-24. (R.376 [reverse side of page])

* * * * *

Q BY MR. BRADFORD: On page 36 of Mr. Triesault's deposition, beginning on line 13, he makes the statement "There is no claim on my behalf for a monetary gain of any kind. This is a claim to return the common ground and any damages that may have been incurred or legal expenses or what else is prayed in the complaint. There is no attempt on my part or I believe on Mr. Baker's part to profit in any way by this lawsuit financially."

A Yes.

Q Is that your position as well Dr. Baker, is that in fact an accurate statement of your position in this matter?

A That is accurate.

Deposition of Roger Baker, p. 20:10-22. (R. 363.)

These statements clearly appear on their face to be waivers of any personal claims. The Plaintiffs' attempts to characterize these statements other than waivers runs contrary not only to the words expressed but to the context of the statements as well.

The Plaintiffs had no personal claims to begin with. Nevertheless, and regardless of whether the Plaintiffs have a right to waive a claim they do not own, their waiver clearly takes away the "case or controversy" that is essential to the concept of standing.

POINT IV

THE WISHES OF THE HOMEOWNERS MAY BE EXPRESSED BY AFFIDAVIT, AND NO MEETING IS REQUIRED.

The Plaintiffs raise the issue on appeal that the wishes of the then current homeowners were expressed in the form of Affidavits submitted in connection with the Defendants' Opposition to Motion to Reconsider. (R. 791-771.) They claim that

the Affidavits should be given no legal effect because the affiants had not previously met in some meeting with the Plaintiffs.

The Defendants Wright and QMF concur with Caspers that the issue of lack of a meeting was not preserved on appeal, and adopt the arguments in Point III of Caspers' brief.

Furthermore, Wrights assert that there is nothing whatsoever about a meeting that could change the fact that the necessary signatures had been affixed to the Amended Plat years earlier. No meeting could undo what had been done, or do anything to change past history.

Some of those affiants did not even have an interest in the PUD when the Amended Plat was signed on November 11, 1992, and therefore would have no power to change or remove those signatures, even if it were otherwise theoretically possible.

The Affidavits submitted by the homeowners are valid expressions of the will of those who would have had standing at that time to bring or maintain this action.

There is no requirement of a meeting for them to express their desire that they do not wish to have the lawsuit pursued.

Plaintiffs invoke Corporation Law regarding Directors' meetings. The document that establishes the Homeowners Association specifies that it is an unincorporated association, and corporate statutes have no applicability, even by analogy. (R. 700-696 and Appendix 5.)

It was proper for the lower court to consider and give due effect to those Affidavits. They assured the Court that, in its attempt to do substantial justice, a dismissal of the Plaintiffs' claims was not only the legally inevitable result, but the right, fair, and proper result as well. The clear expression of the homeowners, as stated in those Affidavits, reassured the lower Court and reassures this court that the summary judgment dismissing the Plaintiffs' claims was and is correct and should be affirmed.

CONCLUSION

The Plaintiffs never had standing to bring this action. The claim, if indeed one ever existed, belonged to the Homeowners Association, or possibly the

Executive Committee or even the homeowners themselves, but never to these Plaintiffs. The Plaintiffs' attempt to bring in the other homeowners as *Defendants* was a misguided attempt to cure their lack of standing, as the homeowners had to be the ones bringing the action not the ones against whom the action was brought.

In any event, the action is inevitably futile inasmuch as eight out of the ten lots constituting the Homeowners Association rejected the remedy which the Plaintiffs have attempted to foist upon them. There is no question that the fair, proper, and appropriate result, as well as the legally correct one, is affirmance of the lower court's summary judgment, dismissing the Plaintiffs' claims.

DATED this 31 day of October, 1997.



RICHARD D. BRADFORD

Attorney for Appellees QMF, Inc.,
George G. Wright, and Jane C. Wright

MAILING CERTIFICATE

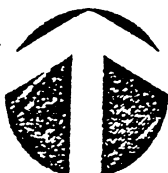
On this 31 day of October, 1997, two copies of the foregoing *Brief of Appellees QMF, Inc., George G. Wright, and Jane C. Wright* was mailed by first-class mail, postage paid, to:

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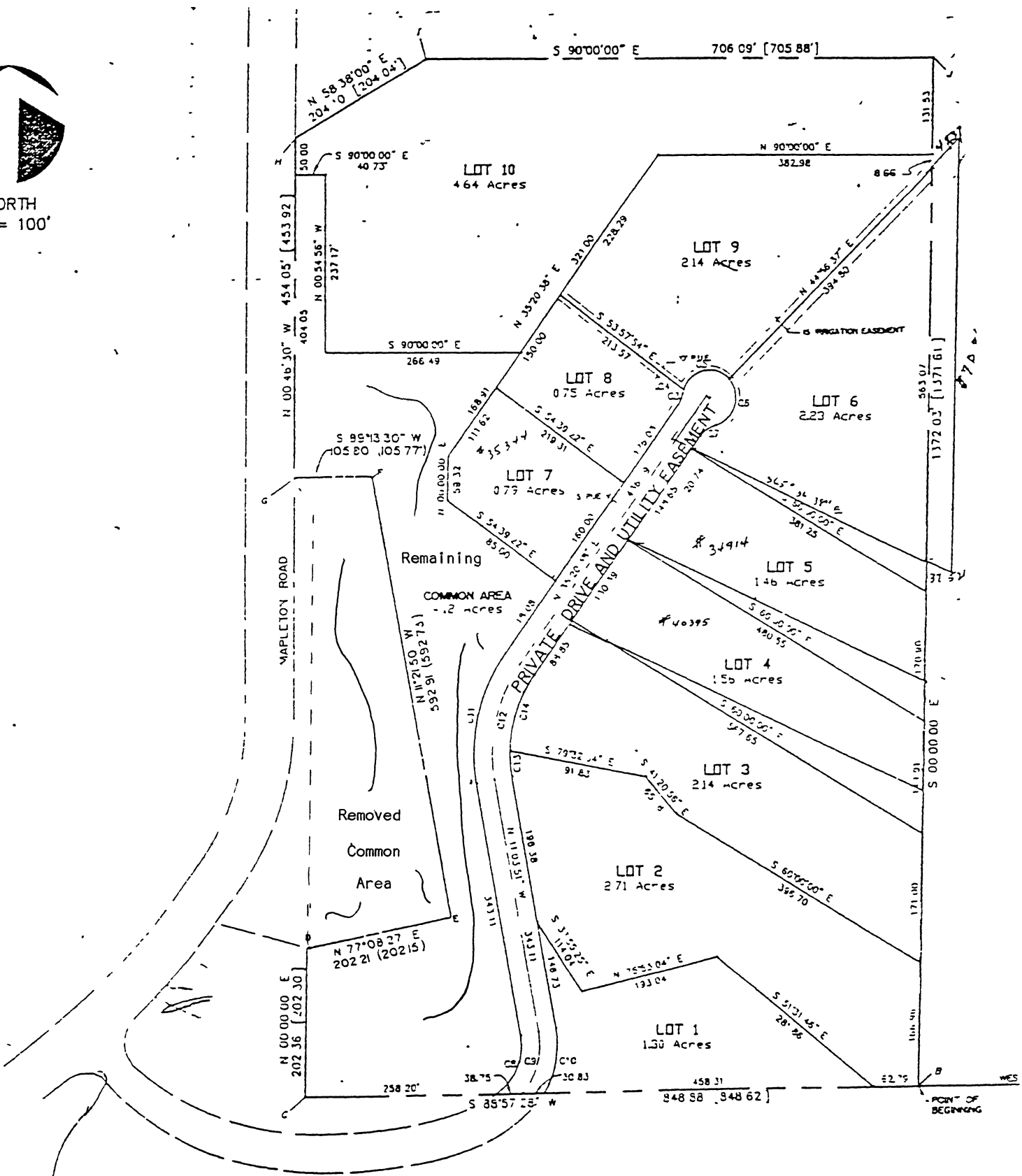
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Dana L. VanCott

APPENDIX 1



NORTH
1" = 100'



893-61



OCCUPANCY RESTRICTION NOTICE
ORDINANCE NO. _____ OF _____, UTAH COUNTY
UTAH RESTRICTS THE OCCUPANCY OF BUILDINGS WITHIN
THIS SUBDIVISION. ACCORDINGLY, IT IS UNLAWFUL TO OC-
CUPY ANY BUILDING LOCATED WITHIN THIS SUBDIVISION
WITHOUT FIRST HAVING OBTAINED A CERTIFICATE OF OC-
CUPANCY ISSUED BY _____

ACKNOWLEDGEMENT (PERSONAL)
STATE OF UTAH } ss
COUNTY OF UTAH } ss
ON THE 17th DAY OF NOV _____ AD 1993 PERSONALLY APPEARED BEFORE ME THE
SIGNERS OF THE FOREGOING DECLARATION WHO DULY ACKNOWLEDGE TO ME THAT THEY DID
EXECUTE THE SAME
MY COMMISSION EXPIRES 3-1-12
NOTARY PUBLIC SEE SEAL

PLANNING COMMISSION MINUTES

OCTOBER 22, 1992

7:15 P.M.

CONDUCTING:

CHAIRMAN: Rod Torgersen

PRESENT:

MEMBERS: Tom James
Collin Allan
John McMullin

COUNCILMAN: Wynn Everett

EXEC. SEC: Lois Murdock

ZONING ADMN: Bill Jones

VISITOR: Juan Whiting, Brent Whiting, Eccles Cammeron, Laurel Brady, Keith Pickett and Jim Anderson

EXCUSED: Tom Murdock

The Pledge was led by Cl. Wynn Everett

The Prayer was offered by Comm. John McMullin

Collin Allan was designated as a full voting member.

1) The minutes of Oct. 8, 1992 were reviewed. Commissioner McMullin made the motion to approve the minutes as written. Cl. Everett seconded the motion. The motion passed unanimously.

2) The discussion on the LeeKavina Subdivision was rescheduled because not all of the items had been completed.

3) Brent Whiting came before the commission with the preliminary and final plats for the Whiting Subdivision. All items on the preliminary check list were completed. The fire hydrants were reviewed and were found to be in accordance with city and state code.

The gas company had not reviewed the plat, but the gas is already installed in front of the property. Chrmn. Torgersen reviewed with the commission the reason for the requirement of review by the utilities. Chrmn. Torgersen said that the

commission could wave the requirement of review by the gas company because the gas runs in front of the subdivision.

Cl. Everett made the motion to accept the preliminary plat of the Brent Whiting Subdivision. Comm. McMullin seconded the motion. The motion passed unanimously.

The final plat was reviewed. The items that needed to be completed were paying the facility and improvement fees, the title report and the signature of the city engineer on the mylar.

Cl. Everett made the motion that the commission recommend that the city council accept the final plat of the Whiting subdivision. Comm. McMullin seconded the motion. The motion passed unanimously.

Mr. Whiting was informed that if he did not go to the city council within 180 days, he would need to come back to the planning commission again for the final plat review. Councilman Everett stated he would review the title report.

4) Mr. George Wright presented his request to amend the Quiet Meadow Farmes PUD. He requested vacattion of amended plats A & B and adopt Plat C. He proposed taking out a lot that fronted on 1200 E. This would exclude 2 1/2 acres from the PUD. He has added land on the east of the PUD to retain the total 25 acres in the PUD. He has deeded the land to the lots because it is not practical as common area. This will leave 4.12 acres inthe common area.

Chrmn. Torgersen asked if all the owners in the PUD had signed the petition. Mr. Wright stated that he had furnished a petition with all the owners' signatures.

Landscaping of the common area was discussed. Mr. Wright expressed concern over the interest of the planning commission in the business portion of the PUD.

Chrmn. Torgersen stated that if the commission is to entertain the application to amend the PUD, the commission will need to see a landscaping plan and be assured that it will be completed. Mr. Wright asked why now, after 15 years. Chrmn. Torgersen stated that the city now has an opportunity and the commitment to finishing the common ground is the concern of the city.

Mr. Wright was concerned that the city would dictate the improvements in the common area such as a swimming pool or a tennis court. The commission assured Mr. Wright that this was not the case.

Cl. Everett expressed concern that he would want other lots to come out of the PUD. Mr. Wright assured the Cl. Everett that this lot is a unique lot, since it is apart from the PUD.

Comm. Allan explained that he had a problem with the application. He felt that the PUD should remain the way it was set up and approved. He stated that he understood why the request was being submitted but was not sure the commission could entertain it.

Comm. McMullin, reading from Chapter 18.84.24 #6, found that it was within the power of the commission to address the vacation of the plat.

Mr. Ray Whiting asked how they would water the common area, with culinary water? Mr. Wright said possibly culinary water, but also informed the commission creek water could be used but it would need to be pumped. Strawberry water was not available.

Chrmn. Torgersen felt that if Mr. Wright had all the signatures of the property owners, the commission could look at it. But the commission would need to review the restrictive covenants and the plan for landscaping the common area.

Comm. Allan then agreed.

Chrmn. Torgersen voiced his opinion, with the information before the commission, a decision could not be made. He felt there needed to be an agreement for development of the common area between the Quiet Meadow Farms and the PUD property owners. Mr. Wright again expressed concern about city involvement in the PUD. Chrmn. Torgersen clarified that the improvements of the common ground would be agreed upon by the PUD Association. Then the city would be assured they would be completed.

Chrmn. Torgersen stated that since the commission is essentially approving a new PUD, the present code would apply. Mr. Wright stated that he would work with Bill Jones on the agreement.

5) Mr. Merrill Gappmayer came with the Final Plat for the Maplevista Subdivision Plat A.

Before discussing the final, the recommendation of the irrigation co. was discussed. They requested that the ditch on lot #5 be put in a pipe and then put in cement so that the water does not wash the ditch. Mr. Gappmayer stated he was going to move the ditch and pipe it. He was requested by the commission to obtain a letter from the irrigation company.

The final plat was reviewed by the city engineer. He was concerned that the NW corner did not close. Mr. Gunnell stated that the surveyor also needs to date, sign, and stamp the mylar.

The improvements on 2620 S. were discussed. They were to be put through all the way to 800 W. He will either do 1/2 width plus five feet or will do the full width of the street. In any case, it will be the same width all the way.

Mr. Gappmayer needed to pay the improvement and facility fee. He will do a trust deed as soon as the engineer gives the figures, then he will sign the improvement guarantee document.

Comm. McMullin made the motion to recommend to the City Council that they accept Plat A of the Maplevista Subdivision on completion of the payment of the facility and improvement fees, the signing of the improvement guarantee document, the correction of the coordinates on the plat and surveyor dating, signing and stamping the mylar. Comm. Allan seconded the motion. The motion passed unanimously.

6) A discussion of the addition of an ordinance addressing fences was discussed. The following items were considered:

- a. Should this include agricultural fencing?
- b. Setbacks from sidewalk.
- c. Should corner lots have a separate code?
- d. Need to address different fencing material.
- e. Commercial Zones need different requirements.

After discussing the above, it was the consensus of the commission to table the issue for further review and study.

7) The addition to Chapter 17 of 17.02.020 on one lot subdivisions was reviewed. After a brief discussion, Comm. Allan made the motion to recommend to the City Council approval to add 17.02.020 to Chapter 17 of the city code, addressing one lot subdivisions. Cl. Everett seconded the motion. The motion passed unanimously.

8) Mr. Bill Jones discussed where lot frontage is measured on a cul-de-sac. Is it measured 30' back for the frontage requirement? Cul-de-sacs are 110' diameter. The RA-2 zone requires 100' frontage, but it does not address the difference between regular lots and ones on cul-de-sacs. Chrmn. Torgersen stated that in other cities the width of the lot is measured from the setback. He recommended that the City Council would adopt that into the code.

Cl. Everett made the motion to recommend to the city council that the frontage for lots on a cul-de-sac be measured at the setback in the particular zone where they are located. Comm. McMullin seconded the motion. The motion passed unanimously.

9) Reports:

Cl. Everett stated the city council had discussed the problem with 1400 N. between 800 W. and 1000 W. They felt that Mr. Christensen and Mr. Clayson needed to be informed and receive their input. The City Council felt leaving this section of 1400 N. off the General Street Map would affect access out of Seals Estates Subdivision.

Cl. Everett is to talk to Mr. Clayson and Mr. Christensen and have all adjacent owners present for the discussion.

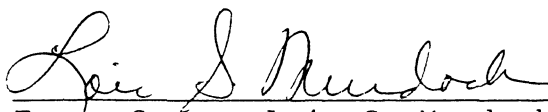
10) Comm. McMullin hoped the street map would be prepare by the next meeting.

11) Cl. Everett made the motion to adjourn. Comm. McMullin seconded the motion. The motion passed unanimously.

Adjourned: 9:00 p.m.



Chairman, Rod Torgersen



Exec. Sec., Lois S. Murdock

APPENDIX 2

Whereas: George G. Wright and Quiet Meadow Farms as developers of the Quiet Meadow Planned Unit Development did install the road, placed underground the irrigation ditch, brought underground utilities to the lots, including a natural gas line that was not required at substantial cost. and

Whereas: Wright has for over 12 years seen that the road and property has been maintained. Equipment purchased for the removal of snow. Taken the trash and refuse down to the street for removal on a weekly basis. Removed snow from the roads and private driveways during the winter. Done repairs to the water line when necessary. and

Whereas: Wright has served as a manager of the property in working with the city of Mapleton to protect the rights and interest of the property owners.

Whereas: For all this work and benefits to the lot owners there has been no charge or cost nor assessment.

Whereas: Since no property owner or groups of property owners has expressed any interest in spending any money to develop or improve the common land off the hill along the road.

Therefore resolve: We the undersigned lot owners agree to and Petition the City of Mapleton to:

Release from out of the Planned Unit Development approximately two (2) acres of Common Land located north of the Woodfield Property as per inclosed Plat. and deed said property to Quiet Meadow Farms and said property to be out side of the Planned Unit Development.

Accept if necessary, the addition of a corresponding two (2) acres to be given to the P.U.D by Quiet Meadow Farms located in the NorthEast part of the Subdivision. This is to be done if the City of Mapleton insist on maintaining the ratio of 25 acres to 10 lots. This 2 acre strip to be deeded to lots 10, 6 and 5 or be designated as common ground.

For consideration of this exchange or release: Quiet Meadow Farms agrees to do the following for the benefit of the Home Owners Association of the P.U.D.:-

1. Pay the meter fee for a water meter in the name of "Home Owners Association" at the "upper level common ground".

2. Install water meter and install a "satisfactory sprinkler system" on said common ground.

3. Remove some rocks, bring in topsoil, and landscape a portion of said common ground for the beautification and enjoyment of the lot and home owners. The landscaping plans will be submitted to the Homeowners Executive Committee for approval.

PETITION

We the undersigned owners of various lots situated in the Amended Plat "B", QUIET MEADOW FARMS PLANNED UNIT DEVELOPMENT, MAPLETON, UTAH, according to the official plat thereof on file in the office of the Recorder of Utah County, Utah, Do HEREBY APPROVE and CONSENT to the Changes in Amended Plat "A" which includes the elimination of approximately 2 acres of Common Area and if necessary, the addition of like acreage to the NorthEast corner of the P.U.D. and corresponding changes in the lot boundaries of lots, 5, 6 and 10.

SIGNED:

LOT 1 *Dorothy K. Rader*
Dorothy K. Rader

LOT 2 *William G. Schwartz*
William G. Schwartz

LOT 3 *William E. Casper Jr.* *Shirley A. Casper*
William E. Casper Jr. Shirley A. Casper

LOT 4 *George G. Wright*
QUIET MEADOW FARMS, George G. Wright, Mang. Partner

LOT 5 *George G. Wright*
QUIET MEADOW FARMS, George G. Wright, Mang. Partner

LOT 6 *Michael G. Rieker* *Carol F. Rieker*
Michael G. Rieker Carol F. Rieker

LOT 7 *George G. Wright* *Jane C. Wright*
George G. Wright Jane C. Wright

LOT 8 *Roger Baker* *Lynette Baker*
Roger Baker Lynette Baker

LOT 9 *Gail E. Peterson* *Marilyn S. Peterson*
Gail E. Peterson, Trustee Marilyn S. Peterson, Trustee

LOT 10 *Jay Clark* *Patricia H. Clark*
Jay Clark Patricia Clark

APPENDIX 3

EXPENSES ON COMMON GROUND

	57 loads top soil @ \$65.00 each		3,705.00
	backhoe work and labor on landscaping		235.00
	Wasatch Shadows	Trees for C.G.	418.81
	backhoe & labor	trees	70.00
	Valley Asphalt	Sand & rock	143.63
	Hansen Electric	Parts for pump	48.43
	Harward Irrig.	pump system	500.00
	Hansen Electric	parts for pump	45.32
	Linford Plumb.	parts for pump	7.44
	Bruce Palmer	Insp. for elect.	45.00
	Mountainland Plumb.	Parts for pump system	74.22
	Backhoe expense	water system 46.5 hrs	1,627.50
	Labor expense	385 hrs @ \$9.00	3,465.00
	Harward Irrig.	Parts for water system	1,500.00
	Country Side Garden	trees for comm.land	1,025.00
	George Wright	steel fire ring	70.00
	George Hutchings	Service for PUD	100.00
	Mountainland Plumb.	parts for water system	170.37
	Harward Irrig.	parts for water system	500.00
	Backhoe work	4 hrs @ \$35.00	140.00
	Harward Irrig	parts for water system	1,265.64
	Utah Power & Light	permit & elec.meter	369.90
	TOTAL EXPENDED ON COMMON LAND		\$15,526.30

ESTIMATE OF WORK YET TO BE COMPLETED

Tractor	12 hrs @ \$15.00	\$180.00
Backhoe	7 hrs @ \$35.00	\$245.00
Plumb parts	heads, lines, valves	\$650.00
Labor	85 hrs @ \$9.00	\$765.00
Rock work		\$300.00
Plants		\$350.00
Seed		\$150.00
Fertilizer		\$120.00
Benches, table etc		\$450.00
TOTAL ESTIMATED		\$3,210.00

APPENDIX 4

Richard D. Bradford (421)
BRADFORD, BRADY & RASMUSSEN, P.C.
Attorneys for Defendants
389 North University Avenue
Provo, Utah 84601
(801) 374-6272

File No. 2388.03

IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR UTAH COUNTY
STATE OF UTAH

JON TRIESAULT, ELIZABETH
TRIESAULT, ROGER CLIVE BAKER and
LYNNETTE JENNIFER BAKER,
Plaintiffs,

vs.

QMF, INC., WILLIAM E. CASPER, JR.,
SHIRLEY AS. CASPER, GEORGE G.
WRIGHT, JANE C. WRIGHT and JOHN
DOES, I - X,
Defendants.

**AFFIDAVIT OF
STEVE HECHTLE**

Civil No. 950400154
Judge Lynn W. Davis

STATE OF UTAH)
 :SS.
COUNTY OF UTAH)

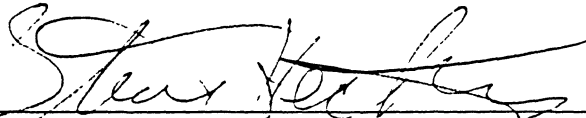
I, Steve Hechtle, being first duly sworn and under oath do hereby state as follows:

1. I have first-hand knowledge of all information contained in this Affidavit. I am competent to testify before this Court, and if called upon would do so consistent with the information contained herein.
2. My ex-wife and I were previously owners of Lot 4 in the Quiet Meadow Farms P.U.D.
3. I was awarded the property in my divorce, so I had full interest in the property.

4. Sometime after that, George Wright contacted me and told me that there were complaints about the maintenance of the common areas, and something needed to be done. The other property owners decided they wanted George to amend the plat and sell off a couple of acres of the common area. None of us wanted to do anything with it or spend any money on it, and as far as I knew everyone agreed to have George sell it off.

5. I understood and agreed with what they were trying to do, and I authorized George Wright or his company, QMF, Inc., to sign for me on any documents that needed a signature.

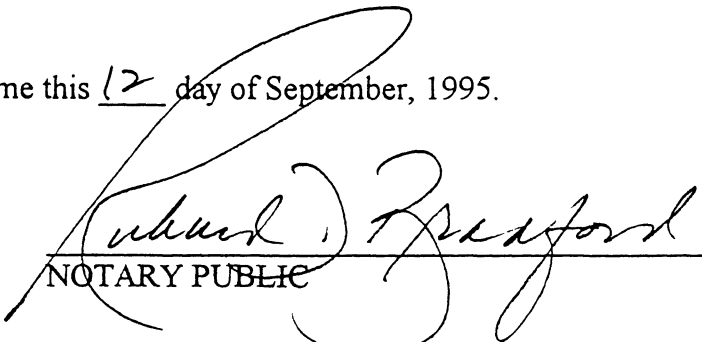
DATED this 12 day of September, 1995.



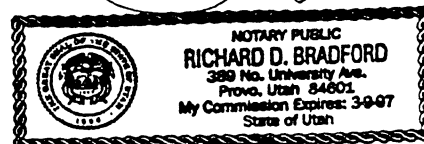
STEVE HECHTLE

STATE OF UTAH)
 :SS
COUNTY OF UTAH)

Subscribed and sworn to before me this 12 day of September, 1995.



NOTARY PUBLIC



APPENDIX 5

16282

QUIET MEADOW FARMS
PLANNED UNIT DEVELOPMENT
AGREEMENT

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The undersigned, who are all the owners of the real property described in Exhibit A to this Agreement have agreed to create a planned unit development within the meaning of Mapleton City Zoning Ordinance and the Utah Condominium Ownership Act. A set of plans for the planned unit development, to be known as Quiet Meadow Farms (hereinafter called the "Development"), is attached as Exhibit B to this Agreement. The owners have agreed to maintain and manage the common areas of the Development according to the terms of this Agreement as set forth below:

1. *Organization and Membership.*

The owners hereby organize themselves as the Quiet Meadow Farms Owners Association (hereinafter called the "Association"), an unincorporated association. All owners of property in the Development shall be members of the Association, and no member may sell or transfer his property unless the new owner agrees in writing to become a member of the Association.

2. *Executive Committee.*

The business of the Association, including the operation, maintenance and improvement of the common areas of the Development shall be conducted by an executive committee consisting of three members to be elected by the owners.

3. *Annual Meetings of the Association.*

Meetings of the members of the Association shall be held at least once per year on the first Monday in May, or such other convenient time as three-fourths of the owners may agree upon. At the annual meeting the members shall receive a report of the business of the Association and elect the executive committee of the Association. Each owner shall have three votes and may cast one or more of such votes for any candidate.

4. *Covenants to Run with the Land.*

This Agreement shall be recorded as a deed covenant and all covenants, restrictions, limitations, and conditions provided in this Agreement shall run with the land owned in common by the owners and shall be binding on the owners whose signatures appear on this document, all additional owners who acquire an interest in the common areas of the Development, and their successors in interest.

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5. *Change of Ownership.*

The executive committee shall require any new owner to furnish evidence of ownership and sign a written agreement agreeing to be bound by this Agreement before recognizing a new owner's claim to use of the common areas. No interest in the common areas may be transferred without the transfer of ownership of a homesite in the Development.

6. *Insurance.*

The executive committee shall maintain insurance in an amount equal to estimated replacement cost of common facilities.

7. *Assessments.*

Each owner shall pay his proportionate share of common expenses. Payment shall be made at such times and in such amounts as the executive committee shall determine in accordance with this Agreement and the by-laws of the Association.

The Association shall have a lien upon the individual homesites and any improvements thereon for the payment of common expenses as provided in Paragraph 8 of this Agreement. Failure to use the common facilities shall not exempt any owner from liability for his share of common expenses.

Each owner shall pay his allocated portion of common expenses for maintenance and operation of common areas according to an annual schedule to be prepared by the executive committee. Assessments for construction of new facilities costing in excess of \$1,500 shall require the approval of 75% of the homesite owners. This shall not apply in the case of reconstructing facilities destroyed through a casualty loss fully covered by insurance.

Any assessment unpaid within thirty days after the due date shall bear interest at the rate of 10 percent.

The executive committee shall have full discretion to prescribe the manner of operating and maintaining the common areas and the cash requirements for doing so. Every reasonable determination by the executive committee shall be final and conclusive as to the owners and every reasonable expenditure shall be deemed necessary and properly made.

8. *Liens.*

Each monthly assessment and each special assessment shall be personal debts and obligations of the owner against whom they are assessed at the time assessment is made and shall be collectible as such. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same. The amount of any assessment, whether regular or special, assessed to the

owner of any homesite, including reasonable attorney's fees, shall become a lien upon such homesite and improvements and the owner's interest in common areas upon recording a notice of the assessment as provided by the Utah Condominium Ownership Act.

The lien for nonpayment of common expenses shall have priority over all other liens and encumbrances, recorded or unrecorded, except only:

(a) Tax and special assessment liens, and

(b) Encumbrances on the homesite and owners' interest in common areas recorded prior to the date such notice is recorded, which by law would be a lien prior to subsequently recorded encumbrances.

The lien for nonpayment of assessment may be enforced by sale or foreclosure of the owner's interest by the executive committee or by a bank, trust company or title insurance company authorized by the executive committee, such sale or foreclosure to be conducted in accordance with the provisions of law applicable to the exercise of powers of sale or foreclosure in deeds of trust or mortgages or in any manner permitted by law.

9. *Agreement Enforceable by City.*

This Agreement, when executed by the owners, and approved by the City Attorney of the City of Mapleton, Utah, shall be filed with the Utah County Recorder and shall be enforceable by the City of Mapleton, as provided in the Zoning Ordinance of the City of Mapleton. These sections permit the City to treat a breach of this Agreement as a violation of the Mapleton City ordinances. The City also has the right to treat a failure to maintain the common areas as a public nuisance and the City may use any remedy provided by law to abate such nuisance. The owners hereby specifically agree that the covenants set forth in this agreement may be enforced by the City should the owners fail to do so.

10. *Services Rendered by City.*

The owners agree that if the City of Mapleton should be hindered in rendering fire, police or other city services by the locked gate at the entrance to the Development or other special features of the Development, the owners shall not hold the City liable provided reasonable efforts have been made to furnish the service in question.

11. *Use Restrictions.*

Use of property in the Development shall be subject to the following provisions:

(a) Each homesite shall be used only for a private single family residence and shall be occupied only by an individual family and its servants, guests, lessees or tenants. No homesite may be subdivided nor may an owner sell or transfer less than all his interest in his homesite and common areas.

(b) The common areas shall be used only by the owners, their families, guests and lessees. No commercial use of the common areas may be permitted.

(c) All homesites and the common areas shall be kept in a clean and sanitary condition. No rubbish or refuse shall be allowed to accumulate. No unlawful use of any part of the Development shall be permitted.

(d) No signs, notices or advertisements shall be displayed in the Development without the consent of the executive committee.

12. *Administrative Rules and Regulations.*

The executive committee shall have the power to adopt and establish by resolution such building, management and operational rules as it may deem necessary for the maintenance, operation, management and control of the project. The committee may, from time to time by resolution, alter, amend and repeal such rules. When a copy of any rule has been furnished to the owners, the rule shall be binding upon the owners.

13. *Amendment.*

This Agreement, the by-laws of the Association and the rules adopted by the executive committee may be amended by a vote of not less than three-fourths of the owners. Any amendment to this Agreement shall be filed for recording with the Utah County Recorder.

14. *Right of First Refusal.*

When an owner desires to sell his interest in the Development, he shall give notice to the executive committee of the owner's intention to sell. The notice shall include the name and address of the prospective purchaser and the price and terms of the proposed sale. At any time within ten days of the receipt of the notice the executive committee may notify the owner that the Association or a member of the Association elects to purchase the owner's interest at the price and on the terms specified. If the owner is not notified within ten days that the Association elects to purchase the owner's interest, the owner is free to sell to the prospective purchaser at the price and on the terms specified. If the owner fails to complete the sale to the designated purchaser, the owner shall again tender his interest to the executive committee before making any sale.

15. *Agent for Service of Process.*

Service of process upon the Association may be made by serving George G. Wright, whose address is: 2137 East 400 North, Mapleton, Utah, 84663

16. Miscellaneous Provisions.

(a) Invalid Provisions. In the event that one or more of the phrases, sentences, clauses, paragraphs or subparagraphs contained in this Agreement are determined to be invalid or operate to render this Agreement invalid, this instrument shall be construed as if such invalid phrase, sentence, clause, paragraph or subparagraph had not been inserted so far as legally possible.

(b) Interpretation. The singular, wherever used herein, shall be construed to include the plural when applicable, and a given gender shall be deemed to include partnerships, corporations, individuals, and men or women where necessary and applicable.

(c) Topical Headings. The topical headings of the paragraphs contained in this Agreement are for convenience only and do not define, limit or construe the contents of the paragraphs or of this Agreement.

17. Waiver.

No provisions contained in this Agreement shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

18. Effective Date.

This Agreement shall take effect on the date it is recorded in the office of the Utah County Recorder.

Executed this 8 day of 1980.

Quiet Meadow Farms, Inc. by

William E. Casper Jr.
William E. Casper, Jr. Pres.

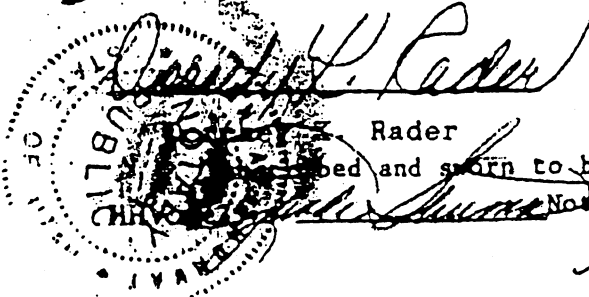
George H. Wright
George Wright Sect. & Treas.

William E. Casper Jr.
William E. Casper Jr.

Shirley A. Casper
Shirley A. Casper

George G. Wright
George G. Wright

Jane C. Wright
Jane C. Wright



Rader

Subscribed and sworn to before me this 8th day of May 1980
Residing in Orem, Utah

My commission expires 5/26/81

-5-

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