

1979

Western Land Equities, Inc. et al v. City of Logan et al : Brief of Respondents

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

WESTERN LAND EQUITIES, INC.,)
a Utah corporation; LeGRANDE)
REEDER and LEAH DAWN REEDER,)

Respondents,)

vs.)

Supreme Court No. 16321

CITY OF LOGAN, a municipal)
corporation; THE LOGAN CITY)
MUNICIPAL COUNCIL; MAYOR)
DESMOND L. ANDERSON; DARWIN)
W. LARSEN; CAROL W. CLAY;)
LOYE E. MARTINDALE; CLAUDE)
J. BURTENSHAW, and GLENN)
T. BAIRD,)

Appellants.)

BRIEF OF RESPONDENTS

An Appeal from the Judgment of the First Judicial
District Court in and for the County of Utah, State of Utah

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TABLE OF CONTENTS

	<u>Page No.</u>
NATURE OF THE CASE	1
DISPOSITION IN LOWER COURT	2
NATURE OF RELIEF SOUGHT ON APPEAL	2
STATEMENT OF FACTS	2
ARGUMENT	10
Argument One	
PLAINTIFFS HAVE A VESTED RIGHT TO CONSTRUCT THE WILLOW CREEK SUBDIVISION	10
Argument Two	
DEFENDANTS ARE EQUITABLY ESTOPPED FROM DENYING APPROVAL OF PLAINTIFFS' SUBDIVISION PLAN	17
Argument Three	
DEFENDANTS HAVE MISREPRESENTED THE CURRENT STATUS OF THE LAW REGARDING VESTED RIGHTS AND EQUITABLE ESTOPPEL IN OTHER JURISDICTIONS	23
CONCLUSION	30

AUTHORITIES CITED

CASES

	<u>Page No.</u>
<u>Allen v. City and County of Honolulu</u> , 571 P.2d 328 (Hawaii 1977)	25, 26
<u>Avco v. South Coast Regional Commission</u> , 553 P.2d 346 (Calif. 1976)	23
<u>Clackamas Co. v. Holmes</u> , 265 Ore. 193, 508 P.2d 190 (1973)	25
<u>Contracts Funding & Mortgage Exchange v. Maynes</u> , 527 P.2d 1073 (Utah 1974)	11, 16, 17, 29, 30
<u>Crawford v. McLaughlin</u> , 473 P.2d 725 (Colo. 1970)	28, 30
<u>Dansie v. Murray City</u> , 560 P.2d 1123 (Utah 1977)	18, 30
<u>Dawe v. City of Scarsdale</u> , 119 Ariz. 486, 581 P.2d 1136 (1978)	23
<u>Hollywood Beach Hotel Co. v. City of Hollywood</u> , 329 So. 2d 10 (Fla. 1976)	27, 28
<u>Mayer Built Homes, Inc. v. Town of Steilacoom</u> , 17 Wash. App. 558, 564 P.2d 1170 (Wash. App. 1977)	24, 29
<u>Morgan v. Board of State Lands</u> , 549 P.2d 695 (Utah 1976)	17, 18
<u>Pure Oil Division v. City of Columbia</u> , 173 S.E. 2d 140 (S.C. 1970)	24
<u>Ready to Pour, Inc. v. McCoy</u> , 95 Idaho 510, 511 P.2d 792 (1973)	24
<u>Ulloch v. City of Bremerton</u> , 17 Wash. App. 573, 565 P.2d 1179 (Wash. App. 1977)	25

ORDINANCES

	<u>Page</u>	<u>No.</u>
Logan City Ordinances, §17-1-1, <u>et seq.</u>	3	
Logan City Ordinances, §17-22-1, <u>et seq.</u>	4	

IN THE SUPREME COURT OF THE STATE OF UTAH

WESTERN LAND EQUITIES, INC.,)
a Utah corporation; LeGRANDE)
REEDER and LEAH DAWN REEDER,)

Respondents,)

vs.)

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MUNICIPAL COUNCIL; MAYOR)
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W. LARSEN; CAROL W. CLAY;)
LOYE E. MARTINDALE; CLAUDE)
J. BURTENSHAW, and GLENN)
T. BAIRD,)

Appellants.)

BRIEF OF RESPONDENTS

NATURE OF THE CASE

Plaintiffs sought and obtained a judgment against Defendants wherein the court determined that the defendants were estopped from withholding approval of plaintiffs' proposed residential subdivision plan and found, as a matter of law, that plaintiffs had a vested right to proceed with their proposed residential subdivision.

DISPOSITION IN LOWER COURT

The parties filed a Statement of Stipulated Facts and a Statement of Stipulated Issues with the district court. Thereafter, plaintiffs moved for summary judgment requesting the district court to declare that plaintiffs had a vested right to develop a subdivision consisting of single-family dwelling units and to further declare that defendants were estopped from prohibiting plaintiffs' development of their property.

The district court ordered plaintiffs' subdivision to be approved on the grounds that the defendants were estopped from refusing to approve the subdivision and that plaintiffs had a vested right to develop the subdivision subject only to plaintiffs' compliance with the reasonable requirements of the Logan City Ordinances.

NATURE OF RELIEF SOUGHT ON APPEAL

Plaintiffs-respondents seek to affirm the lower court's order which estopped defendants from disapproving plaintiffs' proposed residential subdivision and granted plaintiffs a vested right to develop the proposed residential subdivision.

STATEMENT OF FACTS

In February, 1969, plaintiffs purchased 18.53 acres of land located within the boundaries of the City of Logan between Third and Sixth North and Sixth and Eighth West with

the intent to develop the property for uses including the development of single-family dwelling units for families seeking residential housing in a moderate price range. In connection with the purchase and development of said property, the plaintiffs expended substantial time and effort in conducting marketing studies in order to determine the highest, and best use for the property. The plaintiffs determined that there was a need for moderate-priced housing in the City of Logan and that this would be the highest and best use in connection with the development of the property.

LeGrande Reeder, one of the plaintiffs, and principal owner and President of plaintiff, Western Land Equities, Inc., had several conversations with members of the Logan City Municipal Council and the City Planner, Mark Brenchley, regarding the development of the property. Reeder informed those officials of his intent to develop the property for single-family dwelling residential uses and was encouraged by the City Planner and members of the Municipal Council to develop the property for such a use.

Prior to April, 1976, the area in which plaintiffs were to develop their property permitted the development of single-family dwelling homes. In April, 1976, the City of Logan adopted a land-use ordinance (Logan City Ordinances, §17-1-1, et seq.) under which the plaintiffs' above-described

property was designated in an M-1 zone, known as a light industry district. Among the permitted uses of property within the M-1 district, until January 31, 1978, was "dwelling, one family detached" which term is used by the City of Logan to designate subdivisions consisting of single-family residential units.

The City of Logan has also adopted an ordinance entitled Subdivision Rules and Recommendations, Logan City Ordinances, §17-22-1, et seq., which sets forth the procedures whereby single-family residential subdivisions are to be approved by the City of Logan. That procedure is as follows:

1. Consultation with the Logan City Planning Commission;
2. Preparation and submittal of three copies of a preliminary plan of the subdivision with the Logan City Planning Commission. The Plan is to comply with the minimum requirements set forth in the subdivision ordinance;
3. The applicant is to obtain the Logan City Planning Commission's approval of a preliminary plan. If the preliminary plan is disapproved, reasons for disapproval shall be transmitted to the applicant.
4. If the Planning Commission approves the preliminary plan, the applicant is to prepare final plans and specifications including the minimum improvements required by Section 17-22-7 and submit the plans and specifications to the Logan City Planning Commission for final approval.

5. The final plan is either approved or disapproved by the Logan City Planning Commission.

Pursuant to the 1976 Ordinance requirements, in March, 1977, plaintiffs undertook to comply with the Logan City Subdivision Ordinance and to do whatever was necessary for the development of single-family dwelling units upon the property in question. During that same month, plaintiffs consulted with Mike Lund of Mountain West Design and contracted with him to prepare a preliminary subdivision plan and present the plan to the Logan City Planning Commission and the Logan City Municipal Council for their approval.

Thereafter, plaintiff, LeGrande Reeder, and his engineer, Mike Lund, consulted with the Logan City Engineering and Planning Department regarding the proposed subdivision and informed the officials of each department of plaintiffs' intention to develop the property in question. After these consultations, plaintiffs directed their engineer to prepare a preliminary plan consisting of an 89-lot subdivision to be known as the Willow Creek Subdivision. This plan was prepared by plaintiffs' engineer, Mike Lund, and submitted to the Logan City Planning Commission on July 18, 1977. The preliminary plan was unanimously accepted and placed on the agenda for a second reading before the Planning Commission.

On August 10, 1977, Mike Lund appeared before the Logan City Planning Commission for the second reading and approval of the Willow Creek Subdivision Preliminary Plan.

Consideration of the Preliminary Plan was tabled and plaintiffs were asked to approach the Logan City Municipal Council to consider the question of whether residential housing should be permitted in a district designated "M-1."

On August 18, 1977, plaintiffs' engineer presented the Willow Creek Subdivision Preliminary Plan to the Logan City Municipal Council for approval. The Council referred the matter back to the Logan City Planning Commission with the recommendation that protective covenants be written and that more roadways into and out of the subdivision be investigated. Plaintiffs' engineer again appeared before the Logan City Planning Commission on September 14, 1977, at which time the Commission tabled the matter for a period of 60 days.

On October 12, 1977. the Logan City Planning Commission, again met and at this meeting, the Planning Commission, for the first time, went on record as opposing subdivisions in "M-1" zones.

On November 9, 1977, the Logan City Planning Commission rejected plaintiffs' proposed Willow Creek Subdivision, stating the following grounds:

1. The Willow Creek Subdivision was against the the "intent" of the Logan City Land Use Ordinance and the master plan; and
2. The Willow Creek Subdivision Plan provided for only one ingress and egress, and

3. The Willow Creek Subdivision Plan was surrounded by railroads on three sides.

The foregoing are the only reasons which the Logan City Planning Commission cited to plaintiffs in connection with their rejection of plaintiffs' subdivision.

The plaintiffs appealed the decision of the Logan City Planning Commission to the Logan City Municipal Council. Plaintiffs' appeal was rejected at a meeting of the council on November 17, 1977.

Plaintiffs filed a complaint in the First Judicial District Court of Cache County, State of Utah, on December 23, 1977. Thereafter, on January 31, 1978, Logan City amended its land-use ordinance so as to specifically restrict the development of single-family dwelling units in an "M-1" district except by special permit. The parties submitted a stipulated statement of facts and a stipulated statement of issues to the court in connection with plaintiffs' Motion for Summary Judgment requesting the court to determine, as a matter of law, that plaintiffs had a vested right to develop their subdivision consisting of single-family dwelling homes and that defendants, as a matter of law, were estopped from denying approval of plaintiffs' subdivision. The stipulated statement of issues submitted to the court are set forth below as follows:

Counsel for the parties submit the following stipulated issues of law for the court's determination:

1. Did the M-1 land-use description as set forth in the Logan City Land-Use Ordinance of 1976, prior to the January 31, 1978 amendment, permit the development of subdivisions consisting of single-family dwelling units on property zoned M-1?

2. Does the amendment to the M-1 land-use description of the Logan City Land-Use Ordinance of 1976, which was adopted January 31, 1978 and which prohibits the development of single-family units in the M-1 zone except by special use permit, give defendants the authority to deny approval of plaintiffs' Willow Creek Subdivision which was submitted prior to the amendment and appears to be proper in all other respects other than those items set forth in paragraph 9 of the stipulated statement of facts?

Paragraph 9 of the stipulated statement of facts submitted to the court is set forth as follows:

It has not been contended by defendants that this preliminary plan did not comply in all particulars with the minimum requirements of the Logan City Subdivision Ordinance with the exception that Logan City has raised questions concerning ingress and egress in and out of the subdivision, the fact that the subdivision is surrounded on three sides by railroad tracks and the need to establish protective covenants restraining manufacturing uses within the subdivision. It is not intended by the parties that the provisions herein shall be binding upon them with respect to the subdivision's compliance with minimum requirements. . . . (Emphasis added).

Both of the Stipulated Issues of Law submitted by the parties to the district court for its determination involve the doctrines of vested rights and equitable estoppel. The appellants have raised other issues in their brief relating to alleged technical items of non-compliance with the zoning ordinance by the plaintiffs, such as the lack of a walkway. However, the district court found, as a matter of fact, that the plaintiffs had complied with or indicated that they would comply with each reasonable requirement established by the defendants. The court also found, as a matter of fact, that the City Planner and municipal council members encouraged the development. As clearly evidenced by the defendants' action in going on record opposing subdivisions in the M-1 zone and in so amending the ordinance, the only real objection to plaintiffs' proposed subdivision was that the defendants decided that they did not want a residential subdivision in the M-1 zone, even though the use was permitted under the zoning ordinance. This was the issue first submitted to the court below by stipulation of the parties. The second issue goes to whether a local zoning authority may, with retroactive application, amend or change its zoning laws. These are the only issues which were before the court below, and the appellants cannot at this time raise other issues.

The Court granted plaintiffs' Motion for Summary Judgment and in so doing, entered the following Conclusions of Law:

CONCLUSIONS OF LAW

1. The M-1 land-use description as set forth in the Logan City Land-Use Ordinance of 1976 did permit the development of subdivisions consisting of detached single-family dwelling units on properties zoned M-1 prior to January 31, 1978.
2. Plaintiffs have substantially complied with the procedural requirements of the Logan City Ordinance, §17-22-1, with respect to seeking approval of their preliminary subdivision plan prior to filing this action.
3. Plaintiffs have a vested right to develop a subdivision consisting of detached single-family dwelling units upon the subject property in accordance with the reasonable requirements set forth in the Logan City ordinances.
4. Defendants are estopped from denying plaintiffs' preliminary subdivision on the grounds that it is situated in an M-1 use zone.

Pursuant to the court's Findings of Fact and Conclusions of Law, the court entered a judgment for the plaintiffs and against the defendants granting plaintiffs the right to develop the subdivision consisting of detached single-family dwelling homes and directed that the plaintiffs develop their subdivision in a manner consistent with the reasonable requirements of the Logan City ordinances relating to subdivision development.

ARGUMENT ONE

PLAINTIFFS HAVE A VESTED RIGHT TO CONSTRUCT THE WILLOW CREEK SUBDIVISION

It is a stipulated fact that the area wherein plaintiffs' proposed subdivision is located is zoned M-1 under Logan City Zoning Ordinances. It has also been stipulated that at the time plaintiffs made application for approval of their subdivision, one of the permitted uses in the M-1 district was, "Dwelling, one-family DET." The parties stipulated the term "Dwelling, one-family DET," is the term by which the City of Logan Zoning Ordinance provides for single-family residential use within specified use districts. The district court further found that the term "dwelling, one-family detached," was the term which was used by the city of Logan to designate subdivisions consisting of single-family residential units. This finding by the court is consistent with the use with which the term is used throughout the 1976 Logan City Ordinance. There can be no question but what, as the district court found, single-family detached dwellings and subdivisions consisting of single-family residential units were permitted in the M-1 zone prior to the change in the zoning ordinance on January 3, 1978, which change was made several months after plaintiffs' request for approval of the Willow Creek Subdivision and after plaintiffs filed their action for declaratory and equitable relief.

The Utah Supreme Court has already decided the question whether a municipality can change its zoning ordinance to prohibit a proposed use for which application has been made prior to the change. In Contracts Funding & Mortgage Exchange v. Maynes, 527 P.2d 1073 (Utah 1974), the plaintiff had sought a conditional use permit for the construction of mobile homes. The Salt Lake County Planning Commission conditionally approved the application and afterward verbally denied plaintiff's application for a building permit. Thereafter, a written notice of such denial was given and the plaintiff appealed directly to the county commission. The county commission denied the request and later, when the plaintiff again sought a building permit, the commission not only denied the appeal, but, two days later, passed a zoning ordinance which would not allow plaintiff's proposed use. The court stated:

Therefore, as we see it, 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. 527 P.2d at 1074 (Emphasis is the court's).

The Utah Supreme Court held that the county could not eliminate the plaintiffs' right to develop property in a manner consistent with the use available at the time that plaintiff submitted its application to the county. The court further held that the county could not eliminate a permissible use under such circumstances by enacting an ex

post facto zoning change. The court stated:

There is nothing in the record to indicate that the County or anyone else, denied the application for a permit because of failure to file something, pay something, do something or violate something. The presumption in this case is in favor of the applicant's right, with incidental, but serious constitutional and other problems proposed by the facts here as to due process, impairment of the obligation of contracts, scope of sovereign authority, etc.

There is considerable urgency in this, some of which appears to be gratuitous . . . suggesting an omnipotence in County government to disturb or destroy pre-existing property rights, which seems to be the nub of the case.

We think the only way the County could have justified a reversal of the trial court's decision, would have been to show that "Contracts," after having been denied the opportunity (which was not granted here), had not satisfied some kind of procedural, governmental or other regulation as a condition precedent to the application's grant, - which the County here completely has failed in its task to establish.

The simple fact is, that a property owner, having done everything necessary under existing laws, cannot be expected to be circumscribed by ex post facto modus operandi leges, such as zoning ordinances presuming to upside-down the hourglass. . . .

The weakness of defendant's case is . . . an ordinance, which, if sustained as to the property subject of this litigation, would destroy property rights and emasculate and eliminate laws and regulations extant at the time application for a permit was made, - by retro-spection, - and effective by such ex post facto determination, as of a date nearly a year before. If this be permissible there is

no reason why the ordinance could not reach back five years, a decade or earlier. 527 P.2d at 1074. (Emphasis added).

The plaintiffs purchased the property and intended to develop the property for uses including the development of single-family dwelling units. Plaintiff, LeGrande Reeder, had several conversations with the City Planner and members of the Logan City Municipal Council in which he informed them of his intent to so develop the property and was encouraged by them to proceed with that development. The district court found that plaintiffs undertook to comply with the Logan City Subdivision Ordinance and made an effort to do whatever was necessary for the development of single-family dwelling units upon their property. (Finding No. 9)

Plaintiffs prepared a preliminary subdivision plan and presented it to the Logan City Planning Commission on July 18, 1977, where the plan was unanimously accepted. (Finding No. 12).

On August 10, 1977, plaintiffs' engineer appeared before the Logan City Planning Commission for a second reading concerning the approval of the subdivision and the planning commission voted to table the matter until the municipal council could consider the question whether residential housing would be permitted in a district designated as "M-1." (Finding No. 13).

On August 18, 1978, plaintiffs presented the preliminary plan to the Logan City Municipal Council for approval and the city commission referred the matter back to the planning

commission with recommendations for protective covenants and more roadways concerning ingress and egress through the subdivision. (Finding No. 14).

On September 14, 1977 plaintiffs again appeared before the Logan City Planning Commission but the commission tabled a decision to approve or disapprove of the subdivision for a matter of 60 days. (Finding No. 15).

On October 12, 1977, the Logan City Planning Commission again met and decided to go on record as opposing the development of subdivisions in areas designated "M-1."

On November 9, 1977, the Logan City Planning Commission rejected plaintiffs' proposed subdivision and plaintiffs appealed the decision of the Logan City Planning Commission to the Logan City Municipal Council. Plaintiffs' appeal was rejected at a meeting of the Logan City Municipal Council held on November 17, 1977. (Findings 17 and 18).

On the 31st day of January, 1978, after plaintiffs had commenced an action in the district court seeking declaratory relief that plaintiffs had a vested right to develop their subdivision as proposed and that defendants were estopped from denying the development of the plaintiffs' subdivision as proposed, the Logan City Municipal Council amended the Logan City Land Use Ordinances to restrict single-family dwelling units located in "M-1" districts except by special use permit only. (Finding No.19).

The court further found that the Logan City Planning Commission refused to approve plaintiffs' subdivision plan

although the plaintiffs had complied and had indicated that they would comply with all reasonable requirements established by the local governing authorities with respect to the application for and development of their subdivision (Finding No. 21).

Nowhere did Logan City allege or attempt to prove that the plaintiffs failed to satisfy some procedure, or regulation which was a condition precedent to granting approval as required by Contracts Funding. The simple fact is that plaintiffs in the instant case did not fail to file something, pay something, do something or violate something. Under Contracts Funding, where, as here, a property owner such as the plaintiffs have done everything necessary under existing laws (1976 Logan City Ordinance), they "cannot be expected to be circumscribed by ex post facto modus operandi leges, such zoning ordinances presuming to be upside-down the hourglass."

Based upon the foregoing circumstances and findings the court concluded, as a matter of law, that "plaintiffs have a vested right to develop a subdivision consisting of detached single-family dwelling units upon the subject property."

Plaintiffs urge the court to affirm the rule established in Contracts Funding that once proper application has been made for a use permitted under then-existing zoning ordinances, the

rights of the applicant vest and the zoning authority cannot then change or prevent the use allowed at the time application was made. Such a principle of law is not only just, but is also demanded for sound, public policy reasons. If municipal councils and the various local governments throughout the state of Utah are allowed to amend their ordinances with retroactive application, such a precedent would serve to discourage development, and further discourage the financial backing which is necessary for such development. If local governmental entities were able to so change the zoning laws, lending institutions would certainly be more hesitant to commit substantial funds to building projects and their developers. Doubtless, these same institutions would require higher interest rates and higher security for any loans they might make for such developments. Such is not the law and plaintiffs-respondents urge the court to, at this time, affirm those principles laid down in Contracts Funding, supra.

ARGUMENT TWO

DEFENDANTS ARE EQUITABLY ESTOPPED FROM
DENYING APPROVAL OF PLAINTIFFS' SUB-
DIVISION PLAN

In Morgan v. Board of State Lands, 549 P.2d 692 (Utah 1976) the Supreme Court articulated the requirements of equitable estoppel:

Estoppel arises when a party . . . by his acts, representations, or admissions, or by his silence when he ought to speak, intentionally or through culpable negligence, induces another . . . to believe certain facts to exist and that such other . . . acting with reasonable prudence and diligence, relies and acts thereon so that he will suffer an injustice if the former . . . is permitted to deny the existence of such facts. 549 P.2d at 697.

The Court further noted that the "doctrine of equitable estoppel does not operate in favor of one who has knowledge of the essential facts or who has convenient and available means of obtaining such knowledge", 549 P.2d at 697 4, nor is it applicable if the party seeking the protection of equity "exercised neither prudence nor diligence."

In Dansie v. Murray City, 560 P.2d 1123 (Utah 1977), the court recognized that the doctrine of estoppel applied to zoning situations. However, the court held that estoppel was inapplicable under the fact situation of that case. One of the reasons given in Dansie that the estoppel doctrine did not apply was that the city employee who gave out information which led the petitioner to believe that he could erect a structure in violation of the zoning laws had "no authority whatever" to give out that information.

In Morgan, the court laid out the applicable test for the application of the doctrine of equitable estoppel. Under Morgan, there are four essential elements which must

be found before the doctrine will apply. These are:

- (1) Acts, representations or omissions, or silence when one ought to speak which,
- (2) Intentionally or through culpable negligence induce another to believe certain facts to exist;
- (3) The parties so induced to believe must with reasonable prudence and diligence rely upon an act thereon such that
- (4) They will suffer an injustice if the person who made the representations is permitted to deny the existence of such facts.

In the instant case, there were several acts and representations, as well as omissions, made by defendants to plaintiffs which would have led a reasonable person to believe that the approval of plaintiffs' subdivision would be given.

The court below found that plaintiff, LeGrande Reeder, had several conversations with members of the Logan City Municipal Council and the City Planner informing them of his intention to develop a subdivision consisting of single-family dwelling homes. Plaintiff Reeder was encouraged by those officials to develop the property for such purpose. Plaintiff Reeder, from the date of his purchase of the property in February of 1969 until August of 1977, was never informed by any city official that a subdivision consisting

of single-family dwelling units situated upon the subject property would be prohibited so long as plaintiffs complied with the reasonable requirements of the Logan City Ordinances. (Findings 7 and 8). The plaintiffs did what was necessary to apply for and develop the subdivision in a manner consistent with the Logan City Subdivision Ordinances (Findings No. 9 and 21).

The actions of the Logan City officials constituted acts, representations, admissions, and silence when they should have spoken, all of which would have led a reasonable person to believe that approval of the subdivision would be given upon compliance with the requirements of the subdivision ordinance.

The defendants' statements and actions of encouragement to plaintiffs referred to above and found to exist by the court were either made intentionally through a belief that such a subdivision did not violate the ordinance, or, the Logan City officials misled or were "culpably negligent" in not having understood the ordinance which they enacted and administered. The plaintiffs' reliance upon their statements, as the only authorized people to give such statements, certainly was reasonable and prudent.

Having received such encouragement from the Logan City officials, the plaintiffs, in March of 1977, undertook to comply with the Logan City Subdivision Ordinance and made an

effort to do whatever was necessary for the deveopment of single-family dwelling units upon the property. The plaintiffs consulted with Mountain West Design and in particular, Mike Lund, who prepared the preliminary subdivision plat and presented the plat to the Logan City Planning Commission and the Logan City Municipal Council for their approval. Not only were there expenses involved in this as well as surveys made for the property, but the fact that the property was not utilized for some other purpose during this period of time because of the representations made by the Logan City officials and relied upon by the plaintiffs creates a large amount of damage suffered by plaintiffs. Because of the city's actions, and the litigation which has followed, for two years now, approval has been sought for the Willow Creek Subdivision Preliminary Plan. Certain out-of-pocket expenses incurred by the plaintiffs are detailed in the defendants' brief. However, the plaintiffs have also lost time, payments on the property, tax monies paid, and other items of expense which necessarily accrue to the owner of vacant property. The cumulative effect of these circumstances is that the plaintiffs will suffer a great injustice if the city is permitted to deny that plaintiffs' Willow Creek Subdivision Preliminary Plan conforms with the Logan City Subdivision

and Zoning Ordinances. There was never any allegation by defendants or finding by the district court that plaintiffs had any convenient or available means for obtaining the knowledge that their subdivision would not or could not be allowed under the subdivision ordinance. By its terms, the ordinance allowed for single-family dwelling units and this same term was used by the city to designate those areas in which single-family residential subdivisions would be allowed. This difficulty is further compounded in the face of the defendants' silence as to any problems and the defendants' encouraging statements which were made by the City Planner and members of the Municipal Council regarding the plaintiffs' subdivision plans. On at least three occasions, plaintiffs' engineer conversed with the City Planner concerning the subdivision requirements for the preliminary plat which was being prepared by plaintiffs' engineer, and no mention was made or indication given that the Planning Commission would refuse to allow a subdivision of single-family dwelling units to be constructed upon the plaintiffs' property.

These actions by the Logan City officials constituted actions, statements, and silence when actions and statements should have been made, which were either intentionally or negligently made and which reasonably induced the plaintiffs to rely in fact upon such representations. The situation is such that the plaintiffs will suffer a great injustice as

evidenced by the great expense of time and money caused by defendants' actions if defendants are permitted to deny approval of the subdivision.

ARGUMENT THREE

DEFENDANTS HAVE MISREPRESENTED THE
CURRENT STATUS OF THE LAW REGARDING
VESTED RIGHTS AND EQUITABLE ESTOPPEL
IN OTHER JURISDICTIONS.

On Page 22 of appellants' brief, appellants cite Dawe v. City of Scarsdale, 119 Ariz. 486, 581 P.2d 1136 (1978) as "a typical example of the proper application of the universally accepted principles of vested rights and non-conforming uses." (Emphasis added). Respondents submit that there is great controversy, and no "universally-accepted" methodology for handling vested rights and equitable estoppel issues.

Some states, such as California, place the time of vesting after the builder has applied for and received a building permit for the specific buildings and performed substantial work in reliance thereof. See, Avco v. Southcoast Regional Commission, 535 P.2d 546 (Cal. 1976). It would seem that the Arizona court cited by appellants appears to follow the California standard.

Other states, such as Idaho and South Carolina allow

rights to vest at the time of application for a permit. See
Ready to Pour, Inc. v. McCoy, 95 Idaho 510, 511 P.2d 792 (1973);
Pure Oil Division v. City of Columbia, 173 S.E.2d, 145 (S.C. 1970).
The South Carolina court stated:

We see no sound reason to protect vested rights acquired after a permit is issued, and to deny such protection to similar rights acquired under an ordinance as it existed at the time a proper application for a permit is made. In both instances, the right protected is the same, that is, the good faith reliance by the owner of the right to use his property as permitted under the Zoning Ordinance in force at the time of the application for a permit. 173 S.E.2d at 143.

The court went on to state that the issuance of the required permit

could not be legally denied, even under a subsequently-enacted ordinance prohibiting such use, so as to deprive the owner of the vested rights acquired. . . .

[V]ested rights acquired under a zoning ordinance in effect at the time of the application for a permit will be protected even against a change in the zoning ordinance, and controls our decision here on that issue.
Id.

Other states, such as Washington, place the time of vesting at either the time the permit is applied for, or sought and validly issued. There is some controversy on this point in the Washington appellate courts at this time. See Mayer Built ^{for}
v. Town of Steilacoom, 17 Wash. App. 558, 564 P.2d 1170 (Wash.

App. 1977); Ulloch v. City of Bremerton, 17 Wash.App. 573, 565 P.2d 1179 (Wash. App. 1977).

Oregon, on the other hand, does not follow any of the general rules stated above. In Clackamas Co. v. Holmes, 265 Ore. 193, 508 P.2d 190 (1973), the Oregon Supreme Court stated that the determination of the time of vesting was to be made factually on a case-by-case basis. In order to acquire a vested right to proceed with construction of a non-conforming use after a zone change, substantial construction must have been started, or substantial costs incurred. The court should also consider the ratio of expenditures to total cost of the project, good faith of the landowner, whether the owner had notice of any proposed zoning changes before starting his improvements, the kind of project, the location and ultimate cost of the project, and whether the expenditures could be used for any allowed use. The court rejected any set formula for determining the time when rights vest and particularly rejected the theory that rights vest only after receiving a building permit.

Hawaii has recently held the opposite of the California theory of vested rights urged upon the court by the defendants. In Allen v. City and County of Honolulu, 571 P.2d 328 (Hawaii 1977) the Hawaii Supreme Court, quoting

from Heeter, "Zoning Estoppel: Application of the Principles of Equitable Estoppel and Vested Rights to Zoning Disputes"

71 Urban L. Ann. 63 at 64 through 65 stated:

The defense of estoppel is derived from equity, but the defense of vested rights reflects principles of common and constitutional law. Similarly their elements are different. Estoppel focuses on whether it would be inequitable to allow the government to repudiate its prior conduct; vested rights upon whether the owner acquired real property rights which cannot be taken away by governmental regulation. Nevertheless, the courts seem to reach the same results when applying these defenses to identical factual situations. 571 P.2d at 329.

The Allen court recognized the position urged upon this court at this time by the appellants but flatly rejected it, stating:

If Denning [the applicant - developer] expended substantial sums for the preparation of plans and documents in good faith reliance upon law prior to [the new zoning ordinance] and which expenditures were incurred upon the reasonable probability of a building permit being issued then Denning must be allowed the right to proceed.

In order to avoid unnecessary appellate proceedings and for the proper guidance of the trial court, we are of the opinion that for Denning to be allowed the right to proceed in the constructing the planned structure the facts must show that Denning had been given assurances of some form by appellants that Denning's proposed construction met zoning requirements. [Sic]

And that Denning had a right to rely on such assurances thereby equitably estopping appellants from enforcing the terms [of the new ordinance]. Id. at 330.

The Florida court addressed the issue similarly to the Hawaii court. In Hollywood Beach Hotel Co. v. City of Hollywood, 329 So.2d 10 (Fla. 1976) the Florida Supreme Court held that the city was equitably estopped from rezoning petitioner's property:

The doctrine of equitable estoppel may be invoked against a municipality as if it were an individual [citations omitted] and the city's contention that the doctrine is inapplicable where actual physical construction has not yet begun, is without merit. [Citations omitted] . . . [T]he doctrine of equitable estoppel will preclude a municipality from exercising its zoning power where . . .

[A] property owner (1) in good faith (2) upon some act or omission of the government (3) has made such a substantial change in position or has incurred such extensive obligations and expenses that it would be highly inequitable and unjust to destroy the right he acquired. 329 So. 2d at 15 through 16.

Under the circumstances of that case, the court held that the city was both equitably estopped from changing the zoning on plaintiff's land and that the plaintiff had a vested property right under a prior building permit. The

court further noted that "every citizen has the right to expect that he will be dealt with fairly by his government," Id. at 18, and that unfair dealing could be the basis for equitable estoppel.

Colorado has also addressed the issues brought forth by the doctrines of equitable estoppel and vested rights. The leading case in Colorado is Crawford v. McLaughlin, 473 P.2d 725 (Colo. 1970). After recognizing the applicability of the doctrine of equitable estoppel to zoning situations, and recognizing that many jurisdictions of the United States do not regard a property owner to have vested rights until the owner has taken steps in reliance on the permit, the court noted that in this case, the landowner's acts "which were of a significant nature, occurred preliminarily to the issuance of the permit." 473 P.2d at 731. These were such acts as the purchase of the land, architectural fees, etc. The court further stated, "the totality of the situation should be weighed in the equitable balance." Id. The court also stated:

The doctrine of equitable estoppel bars a municipal corporation from enforcing an obligation by taking a position contrary to a previous representation relied on by defendants to their detriment. Id.

There are many different legal standards applied by the highest courts of different states throughout this country

concerning the issue of vested rights. Some courts place the time of vesting after the permit has been issued and the developer has materially and substantially relied thereon, others at the time of the issuance of the permit. Other courts, such as Hawaii, while recognizing a doctrinal difference between equitable estoppel and vested rights, seem to adhere to the theory that a vested right is acquired by the property owner at the time the local governmental entity is estopped from enforcing the new zoning ordinance against the property owner. Still other courts, among which Utah is included, place the time of vesting at the time application is made by a developer to the governing authority. This is the principle established and set down in Contracts Funding.

If the property owner has done everything necessary under existing laws to apply for a permitted use, the local governing authority cannot deny the property owner that use by enacting zoning ordinances eliminating the use. The rationale, as previously stated in the Contracts Funding case, is consistent with the district court's decision to grant plaintiffs a vested right to develop their subdivision and to estop defendants under Morgan, supra, from denying plaintiffs the right to develop their property as a residential

subdivision as applied for. Quoting from Contracts Funding:

The weakness of defendants' case is . . . an ordinance, which, if sustained as to the property subject to this litigation, would destroy property rights and emasculate and eliminate laws and regulations extant at the time application for a permit was made, - by retrospection, - and effective by such ex post facto determination, as of a date nearly a year before. If this be permissible there is no reason why the ordinance could not reach back five years, a decade or earlier. 527 P.2d at 1074.

CONCLUSION

Utah law has determined that where a use is permitted and a property owner applies for a permit to develop its property for such a permitted use, that property owner's rights vest at the time of proper application for needed approval. If the property owner has satisfied the procedural requirements, the governing authority (in this case, Logan City) cannot deny the property owner the right to develop the property by enacting an ordinance with the effect of prohibiting a permitted use after the property owner has properly applied for approval.

Under Dansie and Morgan v. State Board of Lands, *supra*, the principle was established that the local governing authority is estopped to deny a property owner the right to

pursue the development of the property owner's property where the local governing authority made representations or remained silent when it ought to have spoken which induced the property owner to rely and the property owner reasonably relied on the actions or inactions of the governing authority to his damage and detriment.

Plaintiffs, in 1969, purchased the subject property intending to develop it for uses including the development of single-family dwelling units for families seeking residential housing in a moderate price range. Plaintiffs had several conversations with the Logan City officials who encouraged plaintiffs to develop the property in such a manner. At no time since the purchase of the property in 1969 until August of 1977 were plaintiffs informed by any city official that a subdivision consisting of single-family dwelling units would not be allowed so long as the application and development procedures of the Logan City Ordinances were complied with. The plaintiffs undertook to comply and did everything necessary to comply with those procedures. Nevertheless, the Logan City officials denied plaintiffs the right to develop their property into a subdivision consisting of single-family dwelling units.

Defendants sought to deny plaintiffs the right to

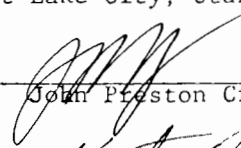
develop their property in such a manner by enacting an ordinance in January of 1978, well after plaintiff had applied for and made substantial efforts to comply with the Logan City ordinance, and well after plaintiffs had filed this action requesting the district court to determine whether plaintiffs had a vested right to develop their property and whether the defendants were estopped from denying the plaintiffs' right to develop their property in a manner which was consistent with a permitted use under the Logan City Zoning Ordinances.

Plaintiffs-Respondents submit that this court should affirm the judgment rendered by the district court which held that plaintiffs have a vested right to develop their property as a subdivision and that defendants were estopped from denying plaintiffs' right to so develop their property.

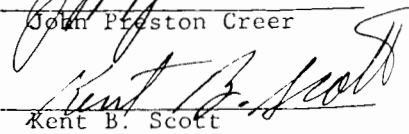
Respectfully submitted,

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