

2015

David and Rosemary Olsen; Dianne and William Newland; Rick Margolis, Plaintiffs/Appellants, vs. Park City Municipal Corporation, a Municipal Corporation; Valley of Love LLC Defendants/Appellees.

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

DAVID and ROSEMARY OLSEN;
DIANNE and WILLIAM NEWLAND;
RICK MARGOLIS,

Plaintiffs/Appellants,

vs.

PARK CITY MUNICIPAL
CORPORATION, a municipal
corporation; VALLEY OF LOVE, LLC,

Defendants/Appellees.

Appellate Case No. 20141193-CA

District Court No. 110500786

BRIEF OF APPELLEE PARK CITY MUNICIPAL CORP.

Appeal from the Final Order and Judgment of the Third Judicial District
Court of Summit County, State of Utah, dated December 2, 2014,
Honorable Todd M. Shaughnessy

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UTAH APPELLATE COURTS

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JURISDICTIONAL STATEMENT

Pursuant to Utah Code section 78A-4-103(2)(j), this Court has appellate jurisdiction over the final decision of the Third Judicial District Court.

STATUTES AND ORDINANCES

UTAH CODE ANN. § 10-9A-405. Effect of general plan.

Except as provided in Section 10-9a-406, the general plan is an advisory guide for land use decisions, the impact of which shall be determined by ordinance.

UTAH CODE ANN. § 10-9A-801. No district court review until administrative remedies exhausted — Time for filing — Tolling of time — Standards governing court review — Record on review — Staying of decision.

(3) (a) The courts shall:

(i) presume that a decision, ordinance, or regulation made under the authority of this chapter is valid; and

(ii) determine only whether or not the decision, ordinance, or regulation is arbitrary, capricious, or illegal.

(b) A decision, ordinance, or regulation involving the exercise of legislative discretion is valid if it is reasonably debatable that the decision, ordinance, or regulation promotes the purposes of this chapter and is not otherwise illegal.

(d) A determination of illegality requires a determination that the decision, ordinance, or regulation violates a law, statute, or ordinance in effect at the time the decision was made or the ordinance or regulation adopted.

PARK CITY LAND MANAGEMENT CODE § 15-7-1. Subdivision General
Provisions – Enactment

In order that land may be subdivided, or Lot lines adjusted in accordance with these purposes and policy, these Subdivision regulations are hereby adopted.

PARK CITY LAND MANAGEMENT CODE § 15-7-2. Subdivision General
Provisions – Purpose

The purpose of the Subdivision regulations is:

- (A) To protect and provide for the public health, safety, and general welfare of Park City.
- (B) To guide the future growth and Development of Park City, in accordance with the General Plan.
- (C) To provide for adequate light, air, and privacy, to secure safety from fire, flood, landslides and other geologic hazards, mine subsidence, mine tunnels, shafts, adits and dump Areas, and other danger, and to prevent overcrowding of the land and undue congestion of population.
- (D) To protect the character and the social and economic stability of all parts of Park City and to encourage the orderly and beneficial Development of all parts of the municipality.
- (E) To protect and conserve the value of land throughout the municipality and the value of Buildings and improvements upon the land, and to minimize the conflicts among the Uses of land and Buildings.
- (F) To guide public and private policy and action in order to provide adequate and efficient transportation, water, sewerage, schools, parks, playgrounds, recreation, and other public requirements and facilities.
- (G) To provide the most beneficial relationship between the Uses of land and Buildings and the circulation of traffic, throughout the municipality, having particular regard to the avoidance of congestion in the Streets and highways, and the pedestrian traffic movements appropriate to the

various Uses of land and Buildings, and to provide for the proper location and width of Streets and Building lines.

(H) To establish reasonable standards of design and procedures for Subdivisions, Re-subdivisions, and Lot Line Adjustments, in order to further the orderly layout and Use of land; and to insure proper legal descriptions and monumenting of subdivided land.

(I) To insure that public facilities are available and will have a sufficient capacity to serve the proposed Subdivision, Re-subdivision, or Lot Line Adjustment,

(J) To prevent the pollution or degradation of air, streams, and ponds; to assure the adequacy of drainage facilities; to safeguard the water table; to minimize Site disturbance, removal of native vegetation, and soil erosion; and to encourage the wise Use and management of natural resources throughout the municipality in order to preserve the integrity, stability, and beauty of the community and the value of the land,

(K) To preserve the natural beauty and topography of Park City and to insure appropriate Development with regard to these natural features, and

(L) To provide for open spaces through the most efficient design and layout of the land, including the Use of flexible Density or cluster-type zoning in providing for minimum width and Area of Lots, while preserving the Density of land as established in the Land Management Code of Park City.

PARK CITY LAND MANAGEMENT CODE § 15-7-5. Subdivision General Provisions – Interpretation, Conflict, and Severability

(B) Conflict with Public and Private Provisions.

(1) **Public Provisions.** These regulations are not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law. Where any provision of these regulations imposes restriction different from those imposed by any other provision of these regulations or any other ordinance, rule or regulation, or other

provision of law, whichever provisions are more restrictive or impose higher standards shall control.

PARK CITY LAND MANAGEMENT CODE § 15-15-1. Defined Terms – Definitions

1.152 **Lot.** A unit of land described in a recorded Subdivision Plat.

STATEMENT OF FACTS

On February 25, 2010, the Park City Council adopted Ordinance 10-08 approving a proposed subdivision and thereby creating a buildable, platted lot of record at 1440 Empire Avenue in Park City, Utah. Prior to the ordinance, the land at issue – owned by Valley of Love, LLC – consisted of three undeveloped, unplatted metes-and-bounds parcels. Valley of Love's application for subdivision sought to create a single buildable lot from the three parcels for purposes of developing a multi-unit dwelling.

After proper notice was given and upon recommendation of the Park City Planning Commission, the City Council held a public hearing, determined that the proposed subdivision complied with all applicable requirements of the Park City Land Management Code (LMC) and that there was good cause to approve the subdivision, and adopted Ordinance 10-08.

After the City Council adopted Ordinance 10-08, the Plaintiffs, who are

owners of developed lots adjacent to the property, filed a complaint against Defendant Park City alleging that the ordinance was illegal. The complaint was dismissed for being untimely, but the Court of Appeals reversed the dismissal and remanded the case for consideration on the merits. Defendant Valley of Love, LLC was allowed to intervene as a party in interest under Utah Rule of Civil Procedure 24(a).

Both sides moved for summary judgment. The District Court heard oral argument and granted the Defendants' motion for summary judgment.

SUMMARY OF ARGUMENT

Courts are required by Utah statute to presume that municipal land-use ordinances are valid; a court's review is limited to whether the ordinance is arbitrary, capricious, or illegal. Utah Code Ann. (UCA) § 10-9a-801(3)(a), (b). Plaintiffs only challenge whether Ordinance 10-08 is illegal. A decision is illegal if it violates a law, statute, or ordinance in effect at the time the decision was made. UCA § 10-9a-801(3)(d). The court must give "some level of non-binding deference" to the municipality's interpretation of the ordinances at issue. *Carrier v. Salt Lake County*, 104 P.3d 1208, 1216 (Utah 2004).

The Council's enactment of Ordinance 10-08 was in compliance with all applicable provisions of State and City code. The Plaintiffs claim otherwise, pointing to general purpose statements and catch-all conflicts provisions of the City's subdivision ordinance and the advisory guidelines of the General

Plan. The Plaintiffs creatively read into those general statements specific mandates that are nowhere stated or reflected in the City code. Even if such extra-statutory mandates are enforceable against the City, Ordinance 10-08 substantively complies. The Plaintiffs thus fail to show any law, statute, or ordinance that was violated by the approval of the subdivision. Specifically, the subdivision does not violate the conflicts provision of LMC § 15-7-5(B)(1), the general purpose statements of LMC § 15-7-2, or the General Plan.

The conflicts provision in LMC § 15-7-5(B)(1) does not require that subdivisions approved by the City Council set densities as though the subdivision were not drawing new property lines; to claim otherwise would vitiate the express purpose and plain language of the City's subdivision ordinances. Furthermore, Ordinance 10-08 did not impose any regulations in conflict with other regulations then in place.

The general purpose statements in LMC § 15-7-2 do not mandate specific actions by the City Council when it considers an application for subdivision. Rather, they provide a general statement of the Council's purpose in enacting the subdivision regulations. If an application meets the requirements laid out in the LMC, then it supports the purposes of the LMC. Therefore, Ordinance 10-08 complies with the purpose statements of LMC § 15-7-2.

A general plan is an "advisory guide" for land-use decisions. UCA § 10-9a-405. Decisions on land-use applications must take into account the general

plan; but the broad, aspirational, forward-looking language of a general plan does not impose on municipalities specific requirements regarding setbacks, review procedures, or other details. Regardless, the decision at issue here is in every way compatible with the Park City General Plan.

Not only is the City Council's approval of the subdivision in compliance with all applicable laws, but the Plaintiffs have not met their burden of demonstrating prejudice. The Plaintiffs must show "how, if at all, the City's decision would have been different" had it followed the laws that it has allegedly violated. *Springville Citizens for a Better Cmty. v. City of Springville*, 979 P.2d 332, 338 (Utah 1999). The Plaintiffs have made no such showing.

ARGUMENT

The Plaintiffs' sole claim on appeal is that the Park City Council's adoption of Ordinance 10-08 is illegal and should therefore be held void. They do not argue that the ordinance was arbitrary or capricious. Adoption of a land-use ordinance is illegal only if it violates a law in effect at the time of adoption. UCA § 10-9a-801(3)(d).

I. Ordinance 10-08 does not violate any substantive requirements of the Park City Land Management Code or applicable state law.

The ordinance at issue here is the City Council's approval of an application for subdivision. Valley of Love sought to develop its property

located at 1440 Empire Avenue. City ordinances require that before a landowner can develop, the property must be converted to lots of record. See LMC § 15-1-9(A)(3) (requiring that proposed land uses respect lot lines). A lot is defined in City ordinances as “A unit of land described in a recorded Subdivision Plat.” LMC § 15-15-1.152. Therefore, a parcel of land cannot be developed until it is subdivided – even if only one lot is thereby created. See LMC 15-15-1.258 (defining “subdivision” to include the creation of a single lot). The three metes-and-bounds parcels that make up 1440 Empire Avenue had never been subdivided prior to the application. They were not lots of record, and the application did not seek a lot-line adjustment.¹ See UCA § 10-9a-103(29) (defining “lot line adjustment” as “the relocation of the property boundary line *in a subdivision* between two adjoining lots” (emphasis added)).²

Plaintiffs do not dispute that Ordinance 10-08 complies with the

¹ Despite this fact, the Plaintiffs’ brief repeatedly refers to the parcels as lots, and to the subdivision as a “lot line adjustment” or “lot line consolidation.” See Brief of Appellants, pp. 5-15. Such characterizations of the action at issue are inaccurate and misleading.

² Note that State law treats a “parcel boundary adjustment” much more permissively than it does a “lot line adjustment.” A parcel boundary adjustment involves un-subdivided parcels. See UCA § 10-9a-103(35). As long as it does not create a new parcel, a parcel boundary adjustment can be executed by deed and does not involve review by any land-use authority. UCA § 10-9a-523. By contrast, lot line adjustments require review and approval of the land-use authority. UCA § 10-9a-608(5).

requirements and purpose of the zoning district in which the property sits. The Recreation Commercial (RC) District was created to, among other things, “allow for resort-related transient housing” and “provide opportunities for variation in architectural design and housing types.” LMC § 15-2.16-1(B) and (E). “Multi-Unit Dwelling” is a conditional use in the RC District. *Id.* at 2(B). Within the RC District, the required front-yard setback is 20 feet, and rear- and side-yard setbacks are 10 feet. *Id.* at 3(E) - (H). Most of Plaintiffs’ allegations center around issues which are not subject to subdivision review, such as parking or a multi-unit dwelling use. Those issues were addressed in the Conditional Use Permit review that was previously adjudicated and not appealed.

The Plaintiffs also do not dispute that the Ordinance complies with the substantive requirements of the Park City Land Management Code (LMC) and applicable state law. Plaintiffs contend only that the law violates: (a) LMC § 15-7-5(B)(1), which addresses potential conflicts between the City’s subdivision ordinances and the rest of its Code; (b) LMC § 15-7-2, which is a general statement as to the purposes for the City’s subdivision regulations; and (c) the Park City General Plan.

II. Ordinance 10-08 does not violate the conflicts provision of LMC § 15-7-5(B)(1).

Chapter 7 of the LMC establishes regulations regarding the subdivision of

land within Park City. Referring to that chapter and the four sub-chapters that follow it, Section 15-7-5(B)(1) states that:

These regulations are not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law. Where any provision of these regulations imposes restriction different from those imposed by any other provision of these regulations or any other ordinance, rule or regulation, or other provision of law, whichever provisions are more restrictive or impose higher standards shall control.

A. Plaintiffs' reading of LMC § 15-7-5(B)(1) controverts the clear purpose of the subdivision regulations.

Plaintiffs have failed to point to any part of Chapter 7 or its four subsequent sub-chapters that interferes with, abrogates, or annuls another ordinance. Rather, Plaintiffs argue that a subdivision approval *pursuant to Chapter 7* acted to abrogate the setback provisions of LMC § 15-2.16-3 as they would have applied to the parcels. Brief of Appellants, p. 8. However, nowhere in Chapter 7 is there any reference to setbacks or density. Plaintiffs' novel reading of the conflicts provision would act to block *all* subdivisions in Park City, as a subdivision necessarily involves drawing new boundaries for purposes of dividing previously undivided parcels or joining parcels together into lots of record. Plaintiffs would thus read the conflicts provision to say that the City's subdivision ordinances are not intended to allow subdividing, because setbacks that would apply to the original metes-and-bounds parcels should still apply despite the creation of the new lot.

Such a reading contradicts the express intent (“In order that land may be subdivided...,” LMC § 15-7-1) and very existence of the City’s subdivision ordinances, effectively striking from the LMC five whole chapters in favor of an overbroad reading of one provision – contrary to the oft-invoked judicial rule: A statute should be read to give meaning to all of its parts. See *Totorica v. Thomas*, 397 P.2d 984, 987 (Utah 1965) (“It needs no citation of authorities that wherever possible effect should be given to every part of an Act.”).

B. Ordinance 10-08 did not alter any existing regulations.

Moreover, Plaintiffs ignore the fact that at the time of the application, the setback provisions of LMC § 15-2.16-3 did not apply to the three parcels. Park City enforces its zoning requirements through the “Allowed Use Review Process.” LMC § 15-1-9(A). That process includes verifying that the proposed use “respects lot lines of a legally subdivided lot.” *Id.* at § 9(A)(3). Unless a parcel has been subdivided into at least one buildable lot of record, the landowner cannot begin the process of developing the land.

Because the parcels at issue here had never been subdivided and made into a lot, the density and setback regulations of the RC District were not regulations “in effect at the time the decision was made.”³ UCA § 10-9a-

³ The Plaintiffs make use of an analysis performed by City staff in preparation for the City Council’s hearing. See Brief of Appellants, at p. 8 (citing R. 000145). The City analysis calculates the “floor area ratio” (F.A.R.)

801(3)(d). All zoning regulations that were in effect at the time of the subdivision remain in effect.⁴ Nothing in the subdivision requirements is in conflict with the zoning requirements. Because Ordinance 10-08 did not interfere with, abrogate, or annul any existing regulation, it does not violate LMC § 15-7-5(B)(1).

III. Ordinance 10-08 does not violate the purpose provisions in LMC § 15-7-2.

Section 15-7-2 of the LMC lists the purposes of the subdivision regulations. The Plaintiffs invoke three of the 12 purpose statements:

(B) To guide the future growth and Development of Park City, in accordance with the General Plan;

(C) To ... prevent overcrowding of the land and undue congestion of population;

(G) To provide the most beneficial relationship between the Uses of land and Buildings and the circulation of traffic, throughout the municipality...

for each parcel as if it were a lot of record, taking into account the setbacks that would apply. The confusion this chart apparently caused to the Plaintiffs is regrettable; but the chart does not delineate or purport to delineate any actual building rights associated with the property.

⁴ Furthermore, as of 2013, Valley of Love has the right under Utah statute to combine the three parcels by deed without interference by the City. UCA § 10-9a-523. As a result, Valley of Love could simply aggregate the parcels by deed and apply to the City for subdivision from one parcel to one lot of record. The setback and density requirements that Plaintiffs have attempted to impose on the property are thus contrary not only to City law, but to State law as well.

The other listed purposes include such things as ensuring availability of public facilities, preventing pollution, and protecting the unique character of Park City. LMC § 15-7-2(D), (I), (J).

A. LMC § 15-7-2 does not impose any procedural obligation on City Council's review of a subdivision application.

The Plaintiffs claim that purpose statements (C) and (G) put the City Council, when considering an application to subdivide, under an obligation to commission a formal study of the potential development's impact on traffic and parking in the area, and to examine alternative developments that would, in the Council's view, better fit the area.

However, the purpose statements of LMC § 15-7-2 simply state that the subdivision regulations (meaning Chapter 7 of the LMC and its four subchapters) were enacted with certain purposes in mind. They do not prescribe any particular procedures; in fact, the subdivision process is expressly addressed in subchapter 7.1, "Subdivision Procedures."

The Plaintiffs don't argue that the purpose statements have in fact been violated. Instead, they argue that LMC § 15-7-1 imposes on the City a responsibility to perform formal studies for each of the stated purposes. But the provision does not impose any such requirement. Rather, it states that "In order that land may be subdivided, or Lot lines adjusted in accordance with these purposes and policy, these Subdivision regulations are hereby

adopted.” LMC § 15-7-1. The Plaintiffs read “in accordance with” to mean that for an individual application, the Council must make a specific finding of compliance or compatibility with each listed purpose. However, the subdivision regulations with which Ordinance 10-08 complies were designed in order to fulfill the stated purposes. The property at issue here is in-fill development in an area with well-established streets and utilities. Nowhere in the LMC is a formal traffic study required for such a development, and LMC §§ 15-7-1 and 2 cannot be fairly read to impose such an obligation.

The regulations in subchapters 7.1 and 7.3 of the LMC lay out the review process for subdivision applications. The Plaintiffs point to no inadequacy or ambiguity of those chapters. Instead, they ask the Court to read an ordinance’s general purpose statements to contradict its unambiguous substantive provisions – something courts routinely refuse to do. See, e.g., *Ethyl Corp. v. EPA*, 51 F.3d 1053, 1060 (D.C. Cir. 1995) (the court only considers a general purpose statement “when Congress’s intent is not clear from the plain language of the provision,” and federal rule-makers cannot “disregard the specific scheme Congress has created ... in order to follow a broad purpose statement”); *Dorsey v. Dep’t of Workforce Servs.*, 330 P.3d 91, 96 (Utah 2014) (a purpose statement “might inform our resolution of ambiguities in statutory text” but cannot “override the clear terms of the law”); *Green v. Garriott*, 212 P.3d 96, 106 (Ariz. Ct. App. 2009) (elevating a

purpose statement above the actual language of a statute is “an approach we are obligated to reject”). The more-specific requirements of subchapters 7.1 and 7.3 of the LMC must control over the general purpose statements. Neither subchapter requires a formal traffic study.

B. Even if the City Council considers the purpose statements for individual applications, it is not required to consider alternative designs.

Even if the perambulatory LMC §§ 15-7-1 and 2 could be read to impose an obligation on the City Council to consider each purpose with regard to an individual application, the LMC does not require a particular process for doing so. The Plaintiffs imply that instead of considering the application that is presented to it, the Council must design its own alternative developments in search of the “best” one. Such a requirement is not feasible and would require as a matter of course the very evil that Plaintiffs purport to revile: “chang[ing] the rules halfway through the game.” Brief of Appellants, at p. 15 (citing *Springville Citizens*, 979 P.2d at 338). The City Council can only consider the application in front of it, and the Council must decide which better fulfills all of the statutory purposes: approval or denial.

C. The General Plan is an advisory guide and does not have the same status as City ordinances.

The Plaintiffs also interpret LMC § 15-7-2(B) to impose a strict substantive requirement that all subdivisions must comply with the

guidelines of the Park City General Plan. This reading contradicts State law, which states that “the general plan is an advisory guide for land use decisions....” UCA § 10-9a-405.⁵ A city’s general plan is not an ordinance. See UCA § 10-9a-103(25) (specifically excluding general plans from the definition of “land use ordinance”). Therefore, unless the LMC says otherwise, the Park City General Plan is not a “law, statute or ordinance,” and a subdivision cannot be deemed illegal for failing conform to the General Plan.

The LMC affirms the advisory nature of the City’s General Plan. Its creation and revision must focus on “long-range zoning and land-use objectives,” not immediate concerns or specific zoning restrictions. LMC § 15-12-15(B)(1) (delineating the Park City Planning Commission’s scope of review regarding the General Plan). The text of the General Plan⁶ expressly confirms its advisory nature, referring to itself as a “general guide” that provides “a vision of the future” and “guide[s] future decisions.” Park City General Plan (1997) at pp. 2-3 (relevant portions attached as Addendum A).

This is not to say that the City Council cannot refer to the General Plan

⁵ The exception to this rule is that public uses must conform to the general plan. UCA § 10-9a-406. However, the proposed development at issue here is not a public use.

⁶ The City revised its General Plan in 2014. However, because Valley of Love’s application predated that revision, the application was evaluated under the previous General Plan, enacted in 1997. All references to the General Plan in this document are thus directed at the 1997 version.

when deciding on land-use applications, only that the General Plan does not have the same status as the LMC.

D. The City Council determined that the subdivision is consistent with the General Plan.

Even if LMC § 15-7-2(B) imposes on the City Council a procedural obligation to review a subdivision application's conformity to the General Plan, the City Council met that requirement. It discussed the proposal's conformity with the General Plan. See R.000123, 145. And it concluded that the subdivision is consistent with the General Plan. See R.000144; see also R.000181. Thus, whatever procedural obligation might have been required by LMC § 15-7-2(B) was met, and the Court should defer to the City Council's interpretation of the General Plan. See *Carrier*, 104 P.3d at 1216.

IV. Ordinance 10-08 is consistent with the General Plan.

The Plaintiffs argue that Ordinance 10-08 substantively violates the General Plan. Brief of Appellants, at pp. 13-14. The Plaintiffs claim that the General Plan allows development on the west side of Empire Avenue "to the maximum scale of the RC zone," but on the eastern side of Empire Avenue, the density must be lower than the maximum. *Id.*

The Plaintiffs misread the General Plan. It provides that development east of Empire Avenue should "provide skier bed base, while allowing for a transition of scale to Park Avenue." R.000146. The Plaintiffs read this

general admonition to mean that no single development east of Empire Avenue can be built to the maximum density allowed by the RC District regulations. But “scale” is not the same thing as “density,” and the actual language of the General Plan does not impose a prohibition on allowing an applicant to build to the zone maximum. The General Plan does not limit the scale of individual developments in the RC zone; rather, it provides for a transition of scale throughout the area in question.

Ordinance 10-08 provides skier bed base and allows for a transition of scale to the east. The lots on the west side of Empire Avenue near the property at issue are significantly larger than the lot created by Ordinance 10-08. See R.000156. Meanwhile, within 300 feet of the lot in both directions along the east side of Empire Avenue are multi-unit buildings of a similar size, as well as very dense single-family properties. See *id.* Together with the other multi-unit buildings and the other lots of varying sizes between Empire Avenue and Park Avenue, the new lot “provide[s] opportunities for variation in ... housing types,” which is the stated purpose of the RC District. LMC § 15-2.16-1(E). The General Plan must be read in light of the specific restrictions and purposes of the RC District. R.000171 (Commissioner Luskin stating that it was “appropriate to look to the purpose statements of the RC zone as an overlay on how to address the application”). Together, the various lot sizes provide skier bed base and allow for a transition of scale from the

larger lots on the west side of Empire Ave. to the smaller lots along Park Ave.

The Plaintiffs identify no other General Plan provision that they think is violated by Ordinance 10-08. On its face and according to the plain meaning of its language, the General Plan does not prohibit the subdivision. Therefore, the subdivision substantively conforms to the General Plan and procedurally complies with the LMC.

V. Plaintiffs have not shown that they were prejudiced by the City Council's decision.

Claiming that a city's land-use decision violates existing laws and ordinances is not enough to have the decision overturned by a court. The Plaintiffs must also show prejudice; that means the Plaintiffs must show "how, if at all, the City's decision would have been different" had it followed the laws that it has allegedly violated. *Springville Citizens*, 979 P.2d at 338. It's not enough to say, for example, that the City should have done a formal study regarding the proposed subdivision's impact on neighborhood traffic. Plaintiffs must also show that the study would have resulted in a different outcome. See *Gardner v. Perry City*, 994 P.2d 811, 815-816 (Utah Ct. App. 2000). Because the Plaintiffs have not shown that they were prejudiced by the City Council's decision, the claim must fail.

CONCLUSION

The Park City Council's decision to approve the subdivision ordinance for

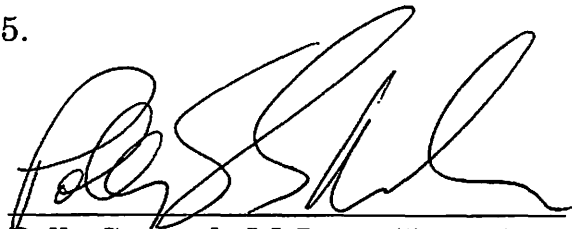
1440 Empire Avenue did not violate any law, statute, or ordinance then in effect. Therefore, under UCA § 10-9a-801(3)(d), the ordinance is not illegal, and this Court should affirm the lower court's judgment to that effect. This Court must give deference to the City Council's interpretation of the ordinances and statutes at issue. *Carrier*, 104 P.3d at 1216; *see* R.000119 (City Council concluding in Ordinance 10-08 that the subdivision "is consistent with the Park City Land Management Code and applicable State law"). Such a measure of deference is in line with the principle that "municipal land use decisions as a whole are generally entitled to a 'great deal of deference.'" *Bradley v. Payson City Corp.*, 70 P.3d 47, 50 (Utah 2003) (citing *Springville Citizens*, 979 P.2d at 336). And even if the decision were deemed illegal, the Plaintiffs have failed to carry their burden of showing prejudice.

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitations of Utah Rules of Appellate Procedure 24(f)(1). This brief contains 5,199 words, excluding the parts of the brief exempted by Utah Rules of Appellate Procedure 24(f)(1)(B).

This brief complies with the typeface requirements of Utah Rules of Appellate Procedure 27(b). This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Century Schoolbook font and 13 point font size.

DATED this 21st day of August, 2015.

A handwritten signature in black ink, appearing to read 'Polly Samuels McLean', written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rules 21 and 26(a) of the Utah Rules of Appellate Procedure, two true and correct copies of this Brief of Appellee PCMC were delivered, to the following named parties, by depositing the same in the U.S. Mail, first-class and postage prepaid, on this 26 day of August, 2015:

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Addendum A

Park City General Plan (1997)
pp. 2-3

II. PARK CITY DIRECTION

Overview

Park City is well situated to continue to build on its natural features, historic qualities, and resort character to become a mountain community that serves as a model for quality living. Within the City boundaries, Park City's future includes the prospect of reasonable, well designed, high-quality development that is consistent with the small-town community character cherished by its citizens. Park City's future also includes the prospect of boundaries established by an open space buffer at the perimeter of the City.

The expansion of the City's geographic boundaries will be based on the desire to enhance open space, provide high quality public places (such as parks, trails, schools, libraries, and recreation facilities), and harmonize development with the natural and historic settings. Public places must be linked to residential neighborhoods, the resorts, and commercial areas by a year round trail system and landscaped roadways, so that the community's amenities are noticeable and convenient for visitors and residents.

One of the City's primary objectives is to establish the appearance of an open space buffer around its expanded boundaries, which essentially would encompass the natural and visual "basin" defining the community. The buffer will effectively establish Park City's ultimate size, allow it to remain a distinct geographic place, focus attention on the quality and role of its internal build out, and enhance its public facilities.

The need to balance carefully the demand for continued growth and the protection of the resources that make Park City successful remains at the heart of today's planning. However, the community's experience in guiding development over the last decade emphasizes the need to broaden the definition of "community character" to address new and emerging concerns.

The General Plan will not only guide future decisions, but emphasize that decisions affect three distinct, yet interrelated, areas. The *existing town*, new development areas *within the City*, and areas *adjacent to but beyond* present corporate limits are vital to Park City's future. Each of these areas has a different character, requiring community sensitivity to the opportunities and challenges it presents. Future decisions must consider these areas individually and collectively.

The policies outlined in this plan are intended to provide a vision of the future for Park City, including the systematic preservation of open space and small-town

character. As we consider a comprehensive approach to Park City's future, the goals, policies, and action plans in the General Plan will serve as a general guide. Future decisions should be consistent with them.

Existing Challenges

Park City has capitalized on its history as a mining and resort community to achieve a very high quality of life for its residents. Careful planning and decision making have enabled Park City to thrive. The community's continued success, however, demands even more attention to the future.

Tourism

- Tourism has expanded into traditional off-peak seasons, making Park City a year-round resort area.

Community Character

- The historic downtown area, an attraction for visitors and residents, has been well maintained, but the scale of new development threatens to detract from the charm of Main Street.
- One third of the people working in Summit County live elsewhere. Significantly, as many Park City residents work outside Summit County as wage earners commute to Park City.
- Park City's full-time residents rely on a strong tourism and resort economy to help provide the tax base for community amenities and services. Thus, second homes and tourist-oriented lodging need to continue to be built while we add full-time residences to the community. Over 50 percent of all new housing will need to be for tourists and second homes to maintain a strong resort economy and a good quality of life for our residents.

Population Growth

- With rapid population growth in the past two decades, both residents and visitors feel the pressures of development. The increasing population continues to put pressure on the community's services.
- The City's permanent residential population increased from 2,823 in 1980 to 4,468 in 1990. The estimated population in 1996 was about 7,000 residents, with a compound annual growth rate of 5.4 percent.
- The Utah State Governor's Office of Planning and Budget (GOPB) estimates