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Jack B. and Joanna M. Zito v. Cendant Mobility Services : Cendant Mobility Services v. Craig and Kylie Reagan : Brief of Appellants

Utah Court of Appeals

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IN THE COURT OF APPEALS
OF THE STATE OF UTAH

JACK B. AND JOANNA M. ZITO,

Plaintiffs,

vs.

CENDANT MOBILITY SERVICES,

Defendants.

Case No. 20010715-CA

CENDANT MOBILITY SERVICES,

Plaintiff-Appellee,

vs.

CRAIG & KYLIE REAGAN,

Defendants-Appellants.

BRIEF OF APPELLANTS

APPEAL FROM A FINAL JUDGMENT
OF THE FOURTH DISTRICT COURT OF WASATCH COUNTY, UTAH,
THE HONORABLE DONALD J. EYRE, DISTRICT JUDGE

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IN THE COURT OF APPEALS
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BRIEF OF APPELLANTS

JURISDICTION

The Order Granting Cendant's Motion for Summary Judgment against the Reagans and Rule 54(b) Determination was filed August 6, 2001. Reagans filed their Notice of Appeal on August 29, 2001. The appeal was timely. Utah R. App. P. 22(a). Jurisdiction was conferred on the Utah Supreme Court by Utah Code Ann. § 78-2-2(3)(j) (Supp. 2001),

because the appeal is one over which the Court of Appeals does not have original jurisdiction. The Utah Supreme Court transferred to Case to the Court of Appeals, as authorized by Utah Code Ann. § 78-2-2(4). (Record 227.)

ISSUES PRESENTED

1. Were a statute and ordinance regulating the division of land "for the purpose" of development violated if the undisputed primary purpose for the division was other than development although there was a minor, non-motivating possibility of future building on the divided land?

In determining whether the trial court properly granted judgment as a matter of law to the prevailing party, the appellate court reviews the trial court's conclusions for correctness, giving no deference to the trial court's conclusions. Ward v. Richfield City, 798 P.2d 757, 759 (Utah 1990).

2. Was summary judgment precluded by a genuine question of fact as to whether a landowner's purpose in splitting his property was for purpose of future development, where the landowner repeatedly testified that his purpose was to take advantage of the lower interest rates that would result from such a splitting?

Summary judgment is appropriate only when no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law. Utah R. Civ. P. 56(c). In determining whether the trial court correctly found that there was no genuine issue of material fact, the appellate court views the facts and inferences to be drawn therefrom in the

light most favorable to the losing party. Hamblin v. City of Clearfield, 795 P.2d 1133, 1135 (Utah 1990).

3. Was summary judgment of rescission precluded by a factual dispute as to whether the buyer could restore the property to the seller in the same condition as received?

Review is for correctness. Id.

4. Does a zoning violation which may limit the use to which property may be put but which does not completely destroy the value of the property constitutes an encumbrance warranted against by a warranty deed.

Review is for correctness. Ward, supra.

5. Does a zoning violation which may limit the use to which property may be put but which does not completely destroy the value of the property violates the covenant of good right to convey implicit in a warranty deed.

Review is for correctness. Id.

DETERMINATIVE PROVISIONS

Copies of the relevant ordinances and statutes are attached in the appendix.

STATEMENT OF THE CASE

A. Nature of the case. This is an appeal from a final judgment in a civil action for rescission of a real estate conveyance.

B. Course of proceedings and disposition below.

Zitos filed their complaint against Cendant on April 19, 1999. (Record 18-1.¹) Cendant filed a third-party complaint against Reagans on December 2, 1999. (Record 27-26.) The action between Zitos and Cendant was settled and dismissed with prejudice by order entered July 26, 2000. (Record 39.)

Cendant moved for summary judgment against Reagans on May 16, 2001. (Record 54-53.) Oral arguments on the motion were held July 18, 2001, and the court granted the motion.² (Record 197.) The formal Order Granting Cendant's Motion for Summary Judgment against the Reagans and Rule 54(b) Determination was filed August 6, 2001. (Record 201-199.) The order ruled that there remained factual disputes regarding Cendant's claim for damages and regarding the Reagans' claim that Cendant failed to maintain the property or had an obligation to purchase additional property, but held that was no reason to delay the finality of the order during the pendency of the remaining proceedings and that it should become final for purposes of appeal. (Record 200.)

Following entry of the summary judgment against Reagans, Reagans filed a third-party complaint against First American Title Co.. (Record 206-202.) That matter also remains pending before the trial court.

¹The documents in the trial court record are organized in reverse chronological order, with the result that the numbering placed on the documents pursuant to Rule 11(b) of the Utah Rules of Appellate Procedure runs in reverse order on each document.

²Although the minute entry does not reflect it, apparently an oral motion was made at the hearing to certify the summary judgment as final for purposes of appeal.

C. Statement of Facts.

Craig Reagan purchased an 80 acre parcel of land in Wasatch County, and in 1994 commenced construction of a house on the property. (Record 167-166.) He moved in the property in November 1994. He got married March 31, 1995, and he and his wife used the house as their primary residence until September 1997 when he was required to move to Texas in connection with a new job. (Record 165.)

In June 1997, before he had received the new job offer, he learned that he could save three percent interest on his home loan if the parcel securing the loan was less than 10 acres. (Record 164.) He contacted the Wasatch County recorder to determine what would be necessary to split up the property. He was informed that, so long as he did not break the property into more than three parcels, all he would need would be to obtain a description of the new parcels and have them recorded with the recorder's office. (Record 163-162.)

Mr. Reagan's purpose in splitting up the property was to reduce the interest rate on his home. (Record 164.) As long as he was at the process, however, he decided to create an extra parcel "[b]ecause I wanted to be able to have the advantage of adding another home [for my parents] if I ever needed to." (Record 161.)

Mr. Reagan had a surveyor prepare a new legal description with two parcels of slightly less than 10 acres in addition to the remaining approximately 60 acres. He took the survey to a title company and asked them to prepare the appropriate deeds for recording with the county to split the property into three separate parcels. (Record 161.)

Sometime in the late summer or fall of 1997 Mr. Reagan received a job offer with Union Pacific which required his moving to Fort Worth, Texas. Part of the offer included a relocation benefit to help with the move. (Record 159.) The employer apparently contracted with HFS Mobility Services, later Cendant Mobility Services, to provide the relocation benefit, and on November 28, 1997, HFS Mobility Services, Inc. agreed to purchase the property from Reagans for \$375,000. (Record 139-133.) A warranty deed implementing the purchase was signed in November 1997 and recorded June 5, 1998. (Record 60-59.)

Jack B. and Joanna M. Zito contracted to purchase the property from Cendant. (Record 12-1.) On April 19, 1999, Zitos filed a complaint alleging that Cendant had refused to close or convey the property and seeking an award of damages. (Record 18-1.) Cendant, in turn, filed a third-party complaint against Reagans alleging that Reagans had failed to obtain legal approval from Wasatch County to "subdivide" their property. (Record 27-26.) Cendant settled the Zito complaint for \$25,000, (Record 37-35), but refused to disclose to Reagans the basis for the settlement nor to give any information concerning damages which may have been suffered by Zitos. (Record 82, 90-89.)

Reagans moved out of the property in September 1997. (Record 165.) The home has an HRF heating system which must be kept on during the winter. (Record 158.) Cendant apparently did not keep the system running, resulting in a crack in a concrete floor in the garage and apparent damage to the heating system. The deck had not been maintained and was deteriorated, the house had not been painted, the road had not been maintained and was

completely dilapidated and rundown, there were cracks in the tile, a door had been broken into, and the toilets had apparently been used even though the plumbing was not operable. (Record 153.)

Cendant filed a motion for summary judgment, seeking rescission. (Record 54-53, 80-57.) Reagans filed a Rule 56(f) affidavit asserting that Cendant had failed to provide adequate responses to discovery focused on the reasonableness of the settlement with Zitos. (Record 83-81.) Reagans argued they had not illegally subdivided the property. They also asserted that rescission was inappropriate because Cendant had allowed the property to be damaged and therefore could not restore the property to the Reagans. (Record 180-84.)

In the trial court acknowledged that there were factual disputes concerning the extent of the damage to the property. The court nonetheless held that rescission was appropriate and granted summary judgment to Cendant, reserving the issue of damages. (Record 201-199.) Reagans thereafter perfected this appeal. (Record 211-209.)

SUMMARY OF ARGUMENT

Summary judgment was not appropriate under the law, and factual issues precluded summary judgment in any event. The division of property at issue in this case would have been improper only if it were done for the primary purpose of resale or development. The undisputed evidence, however, was that the primary purpose of Mr. Reagan in dividing the property was to lower the interest rate on his home loan. Although Mr. Reagan also had a vague idea that he might at some indeterminate point in the future use one of the parcels to

build a home for his parents, there was no evidence from which the court could have determined that this was "the" purpose for the property division.

At the very least there was a disputed issue of fact as to what was the purpose for dividing the property. Viewed in the light most favorable to the Reagans, the evidence showed that Reagans did not have any intent to develop or resell the property.

Even if the division of the property was improper, it did not breach the warranty against encumbrances nor the covenant of good right to convey. Any statutory violation did not create a lien or other charge against the tile. It was clear that Reagans had full right to actually convey everything the warranty deed stated they conveyed.

Finally, there was an issue of fact as to whether rescission was appropriate. Viewed in the light most favorable to Reagans, the evidence showed that Cendant had allowed the property to deteriorate and suffer serious damage, and Cendant could not restore the property to Reagans in the same condition as it was received. Where restoration of the status quo ante is impossible, rescission may not be granted. This factual dispute precluded summary judgment of rescission.

ARGUMENT

I: SUMMARY JUDGMENT WAS INAPPROPRIATELY GRANTED WHERE THERE REMAINED A GENUINE FACTUAL DISPUTE REGARDING CRAIG REAGAN'S PURPOSE IN DIVIDING HIS LAND.

Relying on section 17-27-804 of the Utah Code and section 16.04.030 of the Wasatch County Code, Cendant argued below and the trial court held that Reagans illegally subdivided their property. The definitions of "subdivision" in both the Utah Code and the Wasatch County Code, however, exclude a division of property which is not for the purpose of resale or development. This exclusion applies here.

Utah Code Ann. § 17-27-103(1)(w) defines "subdivision" as "any land that is subdivided, resubdivided or proposed to be divided into two or more lots, parcels, sites, units, plots, or other division of land *for the purpose*, whether immediate or future, for offer, sale, lease, or development either on the installment plan or upon any and all other plans, terms, and conditions." (Italics added.) Wasatch County Code section 16.01.010(97) similarly defines "subdivision" as "a tract, lot or parcel of land which has been divided into two or more lots, plots, sites, or other division of land *for the purpose*, whether immediate or future, of sale or of building development" (Italics added.) Neither of these definitions, therefore, include within the term "subdivision" a division of land which is not for the purpose of resale or development.

The trial court granted summary judgment on the issue of whether the Reagans' 1997 division of their land into three parcels fell within these definitions. In so ruling, the trial

court implicitly held there was no factual dispute that Mr. Reagan's decision to split their 80-acre property into three parcels was "for the purpose" of future development. See Record at 200. The court based this ruling on one selected piece of testimony from Mr. Reagan's deposition, where he had stated that he "wanted to be able to have the advantage of adding another home if [he] ever needed to." See id. (citing Record at 161).

In ruling that there was no dispute as to this clearly dispositive question of fact, the trial court simply disregarded, without explanation, Mr. Reagan's repeated insistence that his decision to divide his property was in fact based upon an altogether different rationale. According to Mr. Reagan's testimony in the very same deposition that was relied upon by the trial court, his decision to divide his property was instead based upon his belief that he could secure a lower interest rate on his homeowner's loan if the plot on which his home was being built was 10 acres in size or less. In contrast to the one mention—found on one page of his deposition—of the desire to parcel out a place where he might *possibly* build a home for his parents, Mr. Reagan's repeated insistence that the reason for this division was to get a better rate on his loan appears on no less than *twelve* other pages of his deposed testimony. See Record at pp. 156, 161-164.³ Relevant examples of Mr. Reagan's explanation of the cost of this loan and the resultant decision to parcel out a ten acre plot to reduce the interest rate include the following:

Q. Tell me why you decided to split up the property.

³Encompassing pages 13-20, 23, 28, 47-48 of Mr. Reagan's deposition.

A. To reduce the interest rate on my home, because the lot size for a conventional loan needed to be ten acres or under to drop my interest rate three percent.

Q. Three percent?

A. Correct. So I was trying to drop my interest rate to get my house payment lower.

Q. Who told you that it would save you three percent?

A. The mortgage companies.

Record at 164.

Q. . . . And sometime in this time frame of June, '97, you learned that you could lower your rate three percent?

A. Correct. . . .

Q. Do you know if you have any documents related to the June, '97 refinancing still in your files?

A. Did not refinance it in June. We were working towards that.

Q. All right. Did you ever refinance it?

A. Yes. *That's what the whole goal is about.*

Record at 163 (emphasis added).

Q. Tell me what steps you took to split the property in the summer of '97.

A. *As I learned of this* [the lower loan rate available for parcels that are 10 acres or smaller], I called the County Recorder and asked them what was required for me to be able to split my property up.

Record at 163 (emphasis added).

Q. Can you tell me why the property that you split up with the house on it is only 9.5 acres?

A. Just so that it would fall underneath the ten acres but be close enough to ten to make it a decent size. . . .

Record at 160.

Q. Do you remember any discussions with any of the real estate agents regarding how you split up the property into ten acre pieces . . . ?

A. I might have with Chris on our listing that, just like I say, on that same discussion of, hey, we owned 80, we want to split this thing up to get our interest rate down

Record at 156.

As is clear from this testimony, Mr. Reagan's decision to parcel his 80 acres into three separate lots was in every way related to his desire to get a lower interest rate on his homeowners loan. That this was the case is further confirmed by the fact that though Mr. Reagan had actually purchased the property in 1989, it wasn't until June of 1997, the same month in which he had learned about the potential 3 point drop in interest rate that was available to sub-10 acre parcels, that he suddenly decided to divide his land.

The trial court's grant of summary judgment is therefore baffling. In granting summary judgment on this point, the court ostensibly found that there was no genuine issue of material fact as to this central question. Given the weight of Mr. Reagan's testimony on the subject, however, it seems clear that, at the very least, the question of what Mr. Reagan's purpose was in dividing the property is an open question that needs to be resolved at trial. In reviewing the trial court's ruling on this point, this Court views all facts and inferences

against the prevailing party. This Court is thus required to view the above listed quotes and facts as meaning what Mr. Reagan insists that they meant all along: that Mr. Reagan's purpose in dividing his land into three parcels was to secure a lower interest rate on his loan.

The trial court's grant of summary judgment should therefore be reversed.

II. A DIVISION OF LAND WITH AN UNDEFINED, UNPLANNED POSSIBILITY OF A FUTURE NON-COMMERCIAL IMPROVEMENT WAS NOT FOR THE PURPOSE OF "DEVELOPMENT."

The second reason that the trial court's summary judgment should be overturned is due to the trial court's erroneous interpretation of Utah Code Ann. § 7-27-103(1)(w)(i) (hereafter referred to as "§ 103"). As discussed above, this section defines what type of property divisions are included within the requirements of Utah Code Ann. § 17-27-804 (hereafter referred to as "§ 804"). The trial court held that § 103 applied to Mr. Reagan's division of his property and that his resultant failure to comply with § 804 therefore acted as encumbrance upon the land.⁴

As noted above, the basis for the trial court's ruling was its determination that "one of the purposes" for Mr. Reagan's division of his property was for "the future development" of the property. See Record at 200. In so ruling, the court ignored both the plain language and plain meaning of the statute.

⁴This discussion applies equally to the Wasatch County ordinances.

The text of the statute does not support the broad reading given it by the trial court. Rather than imposing the requirements of § 804 on all property owners who have mentally contemplated a possible future division of their property, § 103 strictly limits the application of § 804 to those who divide the land "for the purpose" of those future developments. The trial court's grant of summary judgment because future development was ostensibly "*one of the purposes*" is an overly broad reading that is not in conformity with the plain language of the statute. In essence, the trial court's insertion of its own definition-expanding language has transformed the statute's meaning. Whereas the text of the statute requires at least a showing of primacy, the trial court's reading could now support a wide variety of potential inclusions, just so long as it can be shown that those inclusions were "*one of the purposes*" for the division.⁵

The Utah Supreme Court has "repeatedly stated (that) statutes must be construed not from interpretations of their terms in extraneous contexts, but from 'the plain language of the Act' itself." Associated General Contractors v. Board of Oil, Gas and Mining, 2001 UT 112, ¶ 27, 38 P.3d 291 (citations omitted). Further, "only if there is ambiguity [in a statute] do we look beyond the plain language to legislative history or policy considerations." State v. Lusk,

⁵In its reply brief on the initial motion for summary judgment, Cendant suggested that this reading would "create an exception to the subdivision laws that would swallow their purpose." Defendant/Third Party Plaintiff Cendant's Reply Memorandum in Support of Motion for Summary Judgment at 5. This argument misses the point of the statute. According to the express terms of 804, the very purpose of § 103 is to act as a definitional exemption to the subdivision requirements. See Utah Code Ann. § 804(1) (stating that "unless exempt under section 17-27-806 or not included in the definition of a subdivision under subsection 17-27-103(1)", the requirements of § 804 are to apply).

2001 UT 102, ¶19, 37 P.3d 1103. In the present case, it is thus important to note what this statute does and does not say. The statute does not say that § 804's requirements apply when future development is "a purpose" or "a substantial purpose" or even "one of the purposes." Section 103 plainly states that § 804 applies when future development is "*the* purpose" of the division. A plain language reading of the article "the," coupled with the fact that "purpose" is listed as a singular noun, actually seems to indicate that the statute contemplates application of 804 only when development is the only purpose. Even if one does not subscribe to such a strict reading of the statute, however, it is nevertheless clear that, given the restrictive language used in the statute, a degree of primacy of purpose is obviously required. At the very least, it seems to require something more than an incidental motivation such as was present here.

In its expansion of § 804's inclusiveness, the trial court does not at all attempt to define how much of a factor a motivation has to be in order to be considered "one of the purposes." The trial court does not tell us, for example, whether a motivation needs to have been responsible for at least 50% of the decision to divide to be considered "one of the purposes," or whether even a lesser motivation might suffice. If a particular motivation were only 40% responsible for the decision to divide, does that qualify? Does a motivation that was 30% responsible qualify? If the possibility of future development was only 5% responsible for the decision to divide, is that sufficient to be considered "one of the purposes," thereby requiring registration of the plat? The statute plainly requires the

registration of a plat whenever development is "the purpose" of the property division. That language is simply not as inclusive as the trial court's ruling would suggest.

Further, it is not even clear that Mr. Reagan had *any* purpose to further develop his land, let alone having such future development as *the* purpose. As noted above, Mr. Reagan has made it clear that the division of his land was based upon a desire to lower the interest rate on his loan. In ruling that this was not "the purpose" of his division, the trial court erroneously relied upon his statement that he "wanted to be able to have the advantage of adding another home if he ever needed to." Explaining this, Mr. Reagan noted that "(his) parents had talked about moving up there some day," and that, since he was already dividing the property anyways, he thought that he would go ahead and make the change now so as to be able to avoid having to redivide his land again if his parents ever actually decided to move. Record at 161.

Something that is a "purpose" acts as a motivator. In order to rule that the "purpose" of the division was for future development, one would have to conclude that Mr. Reagan took the steps necessary to divide his land *because of* his desire to possibly build for his parents. This simply isn't the case. As the sole owner of the 80 acres, Mr. Reagan did not need to divide his property in order to build a house for his parents. The land was already his, and, subject to zoning laws, he could have built on it at will. If not for the fact that he was already engaged in the division process due to his own interest in procuring a lower loan, it seems clear that there would have been no division of the land in the summer of 1997.

Had Mr. Reagan started preparing the land for the building of his parents' home, that might indicate that there was a purpose for a future development. Had Mr. Reagan run water or power over to that spot, that might indicate that there was a purpose for a future development. Had Mr. Reagan had the land appraised for such a building, that might indicate that there was a purpose for such a development. Had Mr. Reagan and his parents decided on a date or year in which they would move to that spot, that might indicate that there was a purpose for a such a development. Had Mr. Reagan's parents even affirmatively made up their minds that they were in fact going to move to that spot, then that decision might be said to have acted as a "purpose" in Mr. Reagan's redivision of his land. None of this had happened, however.⁶ Instead, at the time that Mr. Reagan decided to subdivide his land, his parents had made no decision as to when or even if they would move onto his property. His decision to parcel out a spot for them while in the midst of his own division of property therefore seems to be nothing more than an incidental act done to make more convenient a decision that had not yet even been made. Would Mr. Reagan have divided his property in June 1997 in the absence of any potential plans to move his parents? Yes, to take advantage of a lower interest rate on his bank loan. Would Mr. Reagan have divided his property in the absence of that potentially lower bank loan, just to make easier the still unplanned, long "talked about" potential move of his parents? No.

⁶Indeed, to this day, Mr. Reagan's parents have still not decided whether they will ever move up to a spot on his property.

This Court should hold that the purpose requirement of § 804 at least requires a showing of motivated primacy. The grant of summary judgment should be reversed.

III: SUMMARY JUDGMENT OF RESCISSION WAS IMPROPER WHERE THERE WERE FACTUAL DISPUTES CONCERNING WHETHER CENDANT COULD RESTORE THE PROPERTY TO STATUS QUO.

Two elementary rules of rescission are that it is an equitable remedy available only when a remedy at law is unavailable, and even in equity rescission is not available if the parties cannot be placed in status quo ante. 50 West Broadway Associates v. Redevelopment Agency of Salt Lake City, 784 P.2d 1162, 1170-71 (Utah 1989); Coalville City v. Lundgren, 930 P.2d 1206, 1210 (Utah Ct. App. 1997). Neither requirement was met here.

The trial court acknowledged that factual disputes existed as to the amount of damage to the property. (Record 200.) Reagans presented evidence of significant damage to the property, including a cracked floor which apparently damaged the heating system and a generally deteriorated condition of the property. (E.g., Record 153.) Where there was a dispute as to the amount and extent of the damage, it is difficult to understand how the trial court could have concluded, as a matter of law, that Reagans could be placed back in status quo ante.

By the same logic, if the damages were such that Reagans could be placed back in status quo, then Cendant had an adequate remedy at law. Cendant's position in this transaction was solely to fulfill a contractual requirement to purchase and then resell

Reagans' property—the property had no intrinsic value to Cendant. If the zoning problems impacted the resale value and were legally actionable, then Cendant's remedy was an action at law on the contract or on the warranty deed.

Because there was an adequate remedy at law, and a dispute as to whether Reagans could be placed in status quo, rescission was improper.

**IV: EVEN IF THERE WAS AN IMPROPER SUBDIVISION,
IT DID NOT BREACH ANY WARRANTY OF THE
WARRANTY DEED.**

Reagans conveyed title to Cendant by warranty deed. The trial court held the sale to Cendant "violated that warranties in the Reagans' deed to Cendant of the right to sell and the covenant against encumbrances." (Record 200.) Holmes Development, LLC v. Cook, 2002 UT 38, decided after the trial court's ruling, establishes there was no breach of the warranty deed.

- A. There was no breach of the covenant of good right to convey because Reagans conveyed good title.

Holmes stated that "if a warranty deed comports with Utah law, then the five covenants of title articulated therein implicitly apply to the real property conveyance: (1) the covenant of seisin, (2) the covenant of right to convey, (3) the covenant against encumbrances, (4) the covenant of warranty, and (5) the covenant of quiet enjoyment." Id ¶ 33. It appears likely the trial court's reference here to the warranty of right to sell was to the covenant of right to convey. Holmes explained that covenant as follows:

Similarly, in making the covenant of the right to convey, a grantor guarantees that the grantor has the legal right to convey the estate the deed purports to convey. Utah Code Ann. §§ 57-1-12 (providing that grantor covenants "he has good right to convey premises"); see also . . . Seymour [v. Evans], 608 So. 2d [1141] at 1144 [(Miss. 1992)]. Essentially, the covenants of seisin and the right to convey are synonymous, and the analysis of whether a grantor breached one of these covenants is the same for either covenant.

Hence, the covenants of seisin and right to convey, if found in a warranty deed, attest that the grantor covenants that it has good title to the estate purportedly conveyed. Consequently, the grantor breaches these covenants when it is shown that the grantor did not own the land that he purported to convey by the warranty deed description.

Holmes, 2002 UT 38. ¶¶ 34-35 (some citations omitted, quotation marks omitted).

The Seymour case cited by the Utah Supreme Court considered whether the conveyance of an illegally subdivided lot breached the covenants of seisen and good right to convey. The court rejected that claim, holding that "a deed which runs afoul of subdivision regulations is perfectly valid despite the violation." 608 So.2d at 1145.

Because Reagans owned the land sold to Cendant and validly conveyed everything they owned, there was no breach of the covenant of good right to convey.

B. A zoning restriction is not an encumbrance.

Holmes Development, LLC v. Cook, 2002 UT 38, summarized the law regarding the covenant against encumbrances as follows:

A grantor in a warranty deed in Utah warrants to the grantee, among other things, that the premises are free from all encumbrances. . . . This court has defined an encumbrance as "any interest in a third person consistent with a title in fee in the

grantee, if such outstanding interest injuriously affects the value of the property," or "constitutes a burden or limitation upon the rights of the fee title holder."

2002 UT 38, ¶ 44 (citations and quotation marks omitted).

The claimed statutory violation here was not an interest in a third person, and therefore was not an encumbrance. In Ellis v. Hale, 13 Utah 2d 279, 373 P.2d 382 (1962), the Utah Supreme Court considered a claim for damages arising out of a claimed illegal subdivision. The seller prepared a subdivision plat, but it was never approved nor recorded. Notwithstanding the lack of approval or recording, the seller sold four lots in the purported subdivision. The city refused to grant building permits to the buyers because of the illegal subdivision. The buyers sued the seller, but the trial court dismissed the complaint for failure to state a cause of action. The Utah Supreme Court affirmed.

As in this case, the buyers in Ellis claimed the seller violated the county ordinance and state statutes. The Utah Supreme Court rejected this claim, noting that the ordinance and statutes "impose a duty running to the sovereign, and a violation thereof does not necessarily give rise to civil liability." 373 P.2d at 384.

The Ellis court did not address whether the illegal subdivision also breached any of the warranties in a warranty deed, because the issue was not raised in the complaint. A recent Idaho Supreme Court decision has squarely addressed this issue. Hoffer v. Callister, Docket No. 27077, 2002 Idaho LEXIS 71 (May 6, 2002). Hoffer purchased a mobile home park which had 27 mobile home spaces. A few years thereafter, Hoffer discovered that the zoning regulations only allowed 16 mobile home spaces and brought suit against his vendors.

As an instant case, there was no claim that any of the defendants were aware of the zoning restrictions nor that they made any representation of the contrary in the sale documents.

The Hoffer court noted that the Idaho statutes defined encumbrances as including "taxes, assessments, and all liens upon real property." The court held that nothing in this definition or in other Idaho cases would support holding the zoning violations were encumbrances.

The Idaho statute and cases are consistent with decisions of the Utah Supreme Court. The Court has defined "encumbrance" as "any right that a third party holds in land which constitutes a burden or limitation upon the rights of the fee title holder." Bergstrom v. Moore, 677 P.2d 1123, 1124 (Utah 1984). Accord Brewer v. Peatross, 595 P.2d 866, 868 (Utah 1979); Boothe v. Wyatt, 54 Utah 550, 183 P. 323, 324 (1919). With a statutory violation, there is no "third party" who holds a right in the land. As explained by Ellis v. Hale, 13 Utah 2d 279, 373 P.2d 382, 384 (1962), subdivision regulations impose a duty running to the sovereign, not to private individuals. Reagans did not breach of the covenant against encumbrances.

CONCLUSION

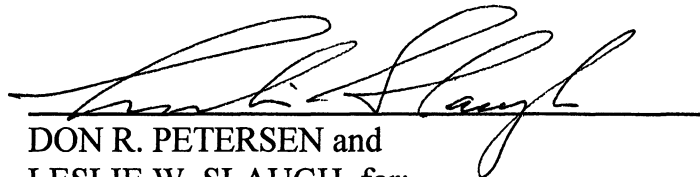
There is a genuine factual dispute as to whether Mr. Reagan's purpose in dividing his land was to facilitate future development. Also, the evidence showed the primary purpose of the division was to obtain a lower interest rate, and not for development. This Court

should hold that a division of land is for "the purpose" of development only if development is the primary purpose of the division.

Even if the subdivision was improper, there was no actionable breach of any covenant of the warranty deed, and rescission was improper because the extent of damage to the property was disputed.

This Court should reverse the trial court's grant of summary judgment and remand for trial.

DATED this 24th day of June, 2002.

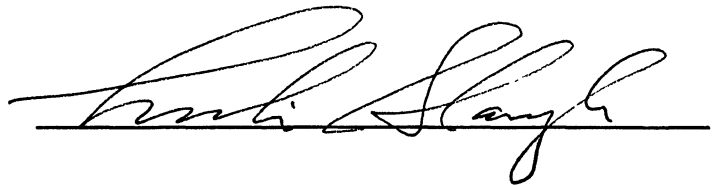
A handwritten signature in black ink, appearing to read "Don R. Petersen and Leslie W. Slaugh", is written over a horizontal line.

DON R. PETERSEN and
LESLIE W. SLAUGH, for:
HOWARD, LEWIS & PETERSEN
Attorneys for Plaintiff-Appellant

MAILING CERTIFICATE

I hereby certify that two true and correct copies of the foregoing were mailed to the following, postage prepaid, this 24th day of June, 2002.

Bruce R. Baird
Baird & Jones, L.C.
201 South Main Street, Suite 900
Salt Lake City, UT 84111-2215

A handwritten signature in black ink, appearing to read "Bruce R. Baird", is written over a horizontal line.

APPENDIX "A"

**Order Granting Cendant's Motion for Summary Judgment against the Reagans
and rule 54(b) Determination (R. 201-199)**

Bruce R. Baird # 0176
Baird & Jones, L. C.
Attorneys for Defendant/Third-Party Plaintiff Cendant Mobility
201 South Main Street, Suite 900
Salt Lake City, UT 84111-2215
Telephone: (801) 328-1400
Fax: (801) 328-1444
Email: brblaw@hqutah.com

PMB

IN THE FOURTH JUDICIAL DISTRICT COURT
IN AND FOR WASATCH COUNTY

JACK B. AND JOANNA M. ZITO,
Plaintiffs,

vs.

CENDANT MOBILITY SERVICES
Defendants.

**ORDER GRANTING CENDANT'S
MOTION FOR SUMMARY JUDGMENT
AGAINST THE REAGANS AND RULE
54(B) DETERMINATION**

Civil No.: 990500160

CENDANT MOBILITY SERVICES
Third-Party-Plaintiff,

vs.

CRAIG & KYLIE REAGAN
Third-Party Defendants.

Judge Donald J. Eyre

This matter came before the Court on July 18, 2001, the Honorable Donald J. Eyre, Judge, presiding, pursuant to a Motion by Defendant/Third-Party Plaintiff Cendant Mobility Services ("Cendant") pursuant to Rule 56, *Utah Rules of Civil Procedure*, for Summary Judgment against Third-Party Defendants Craig and Kylie Reagan ("the Reagans"). Cendant was represented by its counsel, Bruce R. Baird of Baird & Jones and the Reagans were represented by their counsel, Don R. Peterson of Howard Lewis & Peterson. The Court reviewed the pleadings and heard the arguments of counsel. Being thus fully apprised in the matter, the Court hereby

finds that there are no genuine disputes regarding any material issue of fact on the following matters.

By virtue of his own testimony, Mr. Reagan established that when he split the property he and Ms. Reagan owned into three pieces one of his purposes for doing so was the future development of the property. Pursuant to Section 17-27-804, Utah Code Annotated, and Section 16.04.030, Wasatch County Code, this intent required that a subdivision plat be presented to and approved by Wasatch County. The Reagans failed to meet that requirement and thus the portion of the Reagans' property sold to Cendant was not a lawful parcel of property. The sale to Cendant thus violated both State and County law. The sale also violated the warranties in the Reagans' deed to Cendant of the right to sell and the covenant against encumbrances. Section 57-1-12, U.C.A. The Reagans are not excused from complying with the subdivision laws by their claimed reliance on the verbal instructions of a functionary employee of Wasatch County.

The breach of the warranties and the illegality of the sale to Cendant renders the sale void. The proper remedy for the void sale is rescission.

The Court determines that there are or may be factual disputes regarding Cendant's claims for damages for the Reagans for the amounts that Cendant paid to settle with the Zitos and for Cendant's claims for interest on the monies paid to the Reagans for the illegal sale. There also are or may be factual disputes regarding the claims by the Reagans that Cendant failed to maintain the property and/or that Cendant has a contractual obligation to purchase the entire 80 acres owned by the Reagans.

The Court specifically finds and determines that there is no just reason for delaying the finality of this judgment during the pendency of the remaining proceedings and that this Judgment and Order should become final for the purposes of appeal upon its entry.

Based on the foregoing, the Court enters the following:

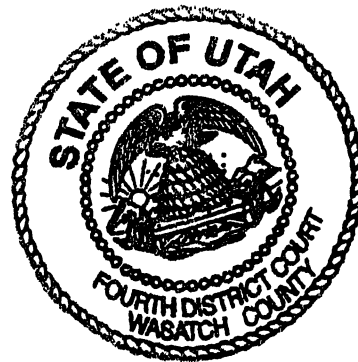
ORDER

The sale from the Reagans to Cendant of the property that is the subject of this action is declared null and void and rescinded. The Reagans are given until August 17, 2001 to file any counterclaims or any third-party actions related to this matter. All other issues related to this matter are reserved for further disposition. Pursuant to Rule 54(b), *Utah Rules of Civil Procedure*, this Judgment and Order shall become final for the purposes of appeal upon entry.

MADE AND ENTERED this 6th day of July, 2001.

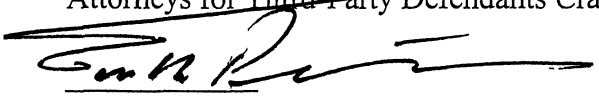
BY THE COURT:


Donald J. Eyre, District Judge



APPROVED AS TO FORM:

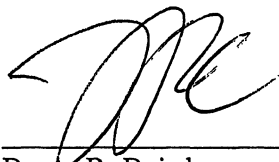
HOWARD LEWIS & PETERSON
Attorneys for Third Party Defendants Craig & Kylie Reagan


Don R. Peterson

CERTIFICATE OF MAILING

I hereby certify that on this 20th day of July, 2001 a true and correct copy of the foregoing ORDER GRANTING CENDANT'S MOTION FOR SUMMARY JUDGMENT AGAINST THE REAGANS was mailed, postage prepaid addressed to the following:

Don R. Peterson
Howard Lewis & Peterson
120 East 300 North
P.O. Box 1248
Provo, UT 84603



Bruce R. Baird

APPENDIX "B"

Utah Code Ann. § 17-27-103 (2001)

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*** STATUTES CURRENT THROUGH THE 2001 2ND SPECIAL SESSION

ANNOTATIONS CURRENT THROUGH 2001 UT 98 AND 2001 UT APP
329.

Utah Code Ann. § 17-27-103 (2001)

§ 17-27-103. Definitions -- Notice

(1) As used in this chapter:

(a) "Billboard" means a freestanding ground sign located on industrial, commercial, or residential property if the sign is designed or intended to direct attention to a business, product, or service that is not sold, offered, or existing on the property where the sign is located.

(b) "Chief executive officer" means the person or body that exercises the executive powers of the county.

(c) "Conditional use" means a land use that, because of its unique characteristics or potential impact on the county, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.

(d) "Constitutional taking" has the meaning as defined in Section 63-34-13.

(e) "County" means the unincorporated area of the county.

(f) "Elderly person" means a person who is 60 years old or older, who desires or needs to live with other elderly persons in a group setting, but who is capable of living independently.

(g) "Gas corporation" has the same meaning as defined in Section 54-2-1.

(h) (i) "General plan" means a document that a county adopts that sets forth general guidelines for proposed future development of the land within the county, as set forth in Sections 17-27-301 and 17-27-302.

(ii) "General plan" includes what is also commonly referred to as a "master plan."

(i) "Interstate pipeline company" means a person or entity engaged in natural gas transportation subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, *15 U.S.C. Sec. 717 et seq.*

(j) "Intrastate pipeline company" means a person or entity engaged in natural gas transportation that is not subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, *15 U.S.C. Sec. 717 et seq.*

(k) "Legislative body" means the county legislative body, or for a county that has adopted an alternative form of government, the body exercising legislative powers.

(l) "Lot line adjustment" means the relocation of the property boundary line between two adjoining lots with the consent of the owners of record.

(m) "Municipality" means a city or town.

(n) "Nonconforming structure" means a structure that:

(i) legally existed before its current zoning designation; and

(ii) because of subsequent zoning changes, does not conform with the zoning regulation's setback, height restrictions, or other regulations that govern the structure.

(o) "Nonconforming use" means a use of land that:

(i) legally existed before its current zoning designation;

(ii) has been maintained continuously since the time the zoning regulation governing the land changed; and

(iii) because of subsequent zoning changes, does not conform with the zoning regulations that now govern the land.

(p) "Official map" has the same meaning as provided in Section 72-5-401.

(q) "Person" means an individual, corporation, partnership, organization, association, trust, governmental agency, or any other legal entity.

(r) "Plat" means a map or other graphical representation of lands being laid out and prepared in accordance with Section 17-27-804.

(s) "Record of survey map" means a map of a survey of land prepared in accordance with Section 17-23-17.

(t) (i) "Residential facility for elderly persons" means a single-family or multiple-family dwelling unit that meets the requirements of Part 5 and any ordinance adopted under authority of that part.

(ii) "Residential facility for elderly persons" does not include a health care facility as defined by Section 26-21-2.

(u) "Special district" means all entities established under the authority of Title 17A, Special Districts, and any other governmental or quasi-governmental entity that is not a county, municipality, school district, or unit of the state.

(v) "Street" means public rights-of-way, including highways, avenues, boulevards, parkways, roads, lanes, walks, alleys, viaducts, subways, tunnels, bridges, public easements, and other ways.

(w) (i) "Subdivision" means any land that is divided, resubdivided or proposed to be divided into two or more lots, parcels, sites, units, plots, or other division of land for the purpose, whether immediate or future, for offer, sale, lease, or development either on the installment plan or upon any and all other plans, terms, and conditions.

(ii) "Subdivision" includes the division or development of land whether by deed, metes and bounds

description, devise and testacy, lease, map, plat, or other recorded instrument.

(iii) "Subdivision" does not include:

(A) a bona fide division or partition of agricultural land for agricultural purposes;

(B) a recorded agreement between owners of adjoining properties adjusting their mutual boundary if:

(I) no new lot is created; and

(II) the adjustment does not result in a violation of applicable zoning ordinances;

(C) a recorded document, executed by the owner of record, revising the legal description of more than one contiguous parcel of property into one legal description encompassing all such parcels of property; or

(D) a bona fide division or partition of land in a county other than a first class county for the purpose of siting, on one or more of the resulting separate parcels:

(I) an unmanned facility appurtenant to a pipeline owned or operated by a gas corporation, interstate pipeline company, or intrastate pipeline company; or

(II) an unmanned telecommunications, microwave, fiber optic, electrical, or other utility service regeneration, transformation, retransmission, or amplification facility.

(iv) The joining of a subdivided parcel of property to another parcel of property that has not been subdivided does not constitute a "subdivision" under this Subsection (1)(w) as to the unsubdivided parcel of property or subject the unsubdivided parcel to the county's subdivision ordinance.

(x) "Unincorporated" means the area outside of the incorporated boundaries of cities and towns.

(2) (a) A county meets the requirements of reasonable notice required by this chapter if it:

(i) posts notice of the hearing or meeting in at least three public places within the jurisdiction and

publishes notice of the hearing or meeting in a newspaper of general circulation in the jurisdiction, if one is available; or

(ii) gives actual notice of the hearing or meeting.

(b) A county legislative body may enact an ordinance establishing stricter notice requirements than those required by this Subsection (2).

(c) (i) Proof that one of the two forms of notice authorized by this Subsection (2) was given is prima facie evidence that notice was properly given.

(ii) If notice given under authority of this section is not challenged as provided in Section 17-27-1001 within 30 days from the date of the meeting for which the notice was given, the notice is considered adequate and proper.

HISTORY: C. 1953, 17-27-103, enacted by L. 1991, ch. 235, § 58; 1992, ch. 23, § 25; 1993, ch. 227, § 150; 1995, ch. 179, § 8; 1997, ch. 90, § 1; 1997, ch. 108, § 5; 1997, ch. 151, § 3; 1998, ch. 89, § 2; 1999, ch. 139, § 1; 1999, ch. 291, § 4; 2000, ch. 34, § 4; 2000, ch. 209, § 9; 2001, ch. 66, § 1; 2001, ch. 241, § 30.

NOTES:

AMENDMENT NOTES. --The 1997 amendment by ch. 90, effective May 5, 1997, deleted "or of commercial, manufacturing, or industrial land for commercial, manufacturing or industrial purposes" from the end of Subsection (1)(r)(iii)(A) (Subsection (1)(p)(iii)(A) of the reconciled version).

The 1997 amendment by ch. 108, effective May 5, 1997, deleted definitions of "handicapped person" and "residential facility for handicapped persons," redesignating subsections accordingly, and made a stylistic change. For present provisions covering residences for persons with disabilities, see § 17-27-605.

The 1997 amendment by ch. 151, effective May 5, 1997, added Subsections (1)(r)(iii)(B) and (C) (which are Subsections (1)(p)(iii)(B) and (C) in the reconciled version).

The 1998 amendment, effective May 4, 1998, added Subsection (1)(p)(iv).

The 1999 amendment by ch. 139, effective May 3, 1999, added Subsections (1)(f), (1)(h), (1)(i), and (1)(s)(iii)(D) (Subsections (1)(g), (1)(i), (1)(j), and (1)(t)(iii)(D) in the reconciled version), redesignating the other subsections accordingly and making related changes.

The 1999 amendment by ch. 291, effective May 3, 1999, added Subsection (1)(d), making related designation changes and updating the internal references.

The 2000 amendment by ch. 34, effective May 1, 2000, rewrote the definition of "official map" in Subsection (1)(p).

The 2000 amendment by ch. 209, effective May 1, 2000, added Subsections (1)(q) to (1)(s), redesignating former Subsections (1)(q) to (1)(u) as (1)(t) to (1)(x) and making one related change.

The 2001 amendment by ch. 66, effective April 30, 2001, added Subsection (1)(w)(iii) (D)(II) and made related changes.

The 2001 amendment by ch. 241, effective April 30, 2001, in Subsection (1)(b) substituted "person or body that exercises the executive powers of the county" for "county executive, or if the county has adopted an alternative form of government, the official who exercises the executive powers."

This section has been reconciled by the Office of Legislative Research and General Counsel.

APPENDIX "C"

Utah Code Ann. § 17-27-804 (2001)

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*** STATUTES CURRENT THROUGH THE 2001 2ND SPECIAL SESSION

ANNOTATIONS CURRENT THROUGH 2001 UT 98 AND 2001 UT APP 329.

Utah Code Ann. § 17-27-804 (2001)

§ 17-27-804. Plats required

(1) Unless exempt under Section 17-27-806 or not included in the definition of a subdivision under Subsection 17-27-103(1), whenever any lands are divided, the owner of those lands shall have an accurate plat made of them that sets forth and describes:

(a) all the parcels of ground divided, by their boundaries, course, and extent, and whether they are intended for streets or other public uses, together with any areas that are reserved for public purposes; and

(b) the lot or unit reference, the block or building reference, the street or site address, the street name or coordinate address, the acreage or square footage for all parcels, units, or lots, and the length and width of the blocks and lots intended for sale.

(2) (a) The owner of the land shall acknowledge the plat before an officer authorized by law to take the acknowledgement of conveyances of real estate.

(b) The surveyor making the plat shall certify it.

(c) The county executive shall approve the plat as provided in this part. Before the county executive may approve a plat, the owner of the land shall provide the county executive with a tax clearance indicating that all taxes, interest, and penalties owing on the land have been paid.

(3) After the plat has been acknowledged, certified, and approved, the owner of the land shall record it in the county

recorder's office in the county in which the lands platted and laid out are situated.

HISTORY: C. 1953, 17-27-804, enacted by L. 1991, ch. 235, § 97; 1994, ch. 17, § 1; 1995, ch. 181, § 3; 1997, ch. 151, § 4; 1998, ch. 13, § 12; 2000, ch. 209, § 10; 2001, ch. 241, § 36.

NOTES:

AMENDMENT NOTES. --The 1997 amendment, effective May 5, 1997, inserted "or not included in the definition of a subdivision under Subsection 17-27-103(1)(r)" in Subsection (1).

The 1998 amendment, effective May 4, 1998, updated the second section reference in Subsection (1).

The 2000 amendment, effective May 1, 2000, rewrote Subsection (1)(b) and deleted "map or" before "plat" in the second sentence of Subsection (2)(c).

The 2001 amendment, effective April 30, 2001, substituted "executive" for "legislative body" in Subsection (2)(c) and made stylistic changes.

APPENDIX "D"

Wasatch County Code 16.01.010(97)

TITLE 16. LAND USE AND
DEVELOPMENT

- 16.01. Establishment of
Zones
- 16.02. General Development
Standards Applicable
to All Zones
- 16.03. Specific
Requirements for
Zones
- 16.04. Residential
Development

Chapter 16.01. Establishment
of Zones.

- 16.01.010. Definitions.
- 16.01.020. Violations.
- 16.01.030. Zones Established.
- 16.01.040. Official Zone Map.
- 16.01.050. Boundaries of
Zones.

16.01.010. Definitions.

All terms used in Title 16 which are not specifically defined herein are to be given their usual and standard definition. Disputes as to the definition of a term not specifically defined herein shall be referred to the Board of Adjustment for resolution.

For purposes of this title:

(1) **"Agriculture"** is defined as ~~the act or science of~~ cultivating the ground, the act or science of the production of plants and

animals useful to man or beast; and includes "gardening or horticultural fruit growing, storage and marketing.

(2) **"Agricultural land for agricultural purposes"** means a tract of land which has been approved by the Planning Commission as a tract of agricultural land for agricultural purposes in accordance with Section 16.04.280.

(3) **"Bed and Breakfast"** Bed and Breakfast Establishments: An establishment in a private dwelling that supplies temporary accommodations to overnight guests for a fee.

(4) **"Boarding house"** means a building containing sleeping apartments where meals are provided from a common kitchen for compensation pursuant to previous arrangements on a daily, weekly, or monthly basis as distinguished from a hotel, cafe, or rooming house.

(5) **"Bond"** means a document which complies with the standards contained in Title 16 and binds the parties thereto to take certain action if particular conditions are not met.

(6) **"Building"** means any structure built for the support, shelter, or enclosure of persons, animals, chattels, or property of any kind.

(a) **"Main building"** means one or more of the principal

buildings upon a lot. Garages, carports and other buildings which are attached to a dwelling or other main building or which are situated within ten feet of a main building shall be considered as a part of the main building.

(b) **"Accessory building"** means a subordinate building more than ten feet away from any main building, the use of which is incidental to that of a main building.

(7) **"Building site"** means the total area covered by a building, plus a 20 foot strip around the exterior of the building, and, if a septic tank is to serve the building, such area as is required for normal functioning of a septic tank drain field as determined in accordance with state and County standards.

(8) **"Central sewage disposal system"** means a system of pipes which collects liquid waste from two or more separate and independent sources and delivers the waste to an approved common disposal facility.

(9) **"Club, limited membership"** means a building or other structures constructed in accordance with a properly approved plan and used as an integral part of a park or large scale development and operated by an organized association of persons for

social, fraternal, religious, or patriotic purposes for the benefit of the members and guests and not for the general public, and shall include eating facilities, club administrative offices, off-street parking and retail establishments for the sale of goods and services consumed on the premises. It shall also include auxiliary recreational facilities such as swimming pools, gymnasiums, tennis courts and hunting preserves, but a limited membership club shall not include sleeping accommodations nor facilities which are open to use by the general public.

(10) **"Common area"** means an area of common ownership designed to serve the recreational, open space or other similar needs of two or more lots or dwelling units in separate ownership.

(11) **"Comprehensive General plan"** means a coordinated plan which has been prepared and adopted by the County for the purpose of guiding development, including but not limited to a plan or plans of land use, resources, circulation, housing, and public facilities and grounds.

(12) **"Conditional Use"** means a use which has been specifically permitted by the terms of this code and which requires special consideration by the Board of Adjustment,

Planning Commission, or County Commission before a permit therefor may be issued by the zoning administrator or building inspector.

(13) **"Condominium unit"** or **"condominium"** means a unit in a condominium project.

(14) **"Condominium project"** means a project planned in accordance with the Utah Condominium Ownership Act, including, without limitation, all units, limited common area, and common area within the project.

(15) **"Convenience establishments"** means establishments which are designed for and intended to serve the daily or frequent trade or service needs of people who reside, visit or vacation in a particular large scale development. Such establishments include cafes, gasoline service stations, grocery, variety and drug stores, coin-operated laundries and dry-cleaning establishments, beauty and barber shops when associated with a planned residential development, and sporting goods, camera and curio stores, or a combination thereof, when associated with a planned recreation development; but convenience establishments do not include repair garages, automobile sales yards, wholesale establishments and other such

enterprises.

(16) **"Critical angle of repose"** means the degree of slope at which earth material at the surface of the ground moves of its own accord in response to the force of gravity.

(17) **"Density"** means the term density shall mean the number of dwelling units and sleeping apartments per acre of land.

(18) **"Density standards"** means the minimum, maximum and average lot sizes and the maximum number of dwelling units and sleeping apartments permitted in a planned recreation development.

(19) **"Developer"** means any person or entity proposing to divide land for the purposes of selling smaller parcels, or any person or entity proposing to change or increase the use of a tract of land in Wasatch County.

(20) **"Development credit"** means a right or entitlement to construct a dwelling, which right or entitlement is unusable within a zone or situation but which may be transferred and used within another zone or situation.

(21) **"Driveway"** means a strip of land not over 100 feet long designed to serve for access to one dwelling unit.

(22) **"Dwelling"** means a one family dwelling, two-family dwelling, multiple-family dwelling, vacation dwelling,

commercial caretaker's dwelling, farm caretaker's dwelling, or industrial caretaker's dwelling.

(a) **"Dwelling unit"** means one or more rooms in a building designed for living purposes, that is, bathing, eating, and sleeping, and occupied by or designed for one family.

(b) **"One-family dwelling"** or **"single-family dwelling"** means a building containing one dwelling unit.

(c) **"Two-family dwelling"** means a building containing two dwelling units.

(d) **"Multiple-family dwelling"** means a building containing three or more dwelling units.

(e) **"Commercial caretaker's dwelling"** means a building containing a dwelling unit which is occupied by an individual or a family whose primary responsibility is to secure the premises and to perform work thereon which is incidental to the commercial use conducted on the premises.

(f) **"Farm caretaker's dwelling"** means a building containing a single dwelling unit which is located on agricultural land for agricultural purposes.

(g) **"Industrial caretaker's dwelling"** means a building containing a dwelling unit which is occupied by an individual or a family whose primary responsibility is to secure the premises and to

perform work thereon which is incidental to the industrial use conducted on the premises.

(h) **"Vacation dwelling"** means a building containing a dwelling unit which is only occupied intermittently by one or more individuals or families which are permanently housed elsewhere or have permanent dwellings elsewhere.

(23) **"Environment"** means the sum total of the surroundings, including both natural and man-made factors.

(24) **"Environmental impact statement"** means a statement describing the impact that a development will likely have on the natural features of the immediate area, and the social and financial impact which a development will likely have on the County as a whole.

(25) **"Family"** means an individual or two or more persons related by law, blood, marriage, or adoption, living together in a single dwelling unit and maintaining a common household. Family shall not be construed to mean a group of non-related individuals, a fraternity, a club, or an institutional group.

(26) **"Family care home"** means a dwelling wherein room, board, care, and supervision are provided by the resident family in a home setting to persons who are handicapped, mentally ill, or mentally retarded and who are provided

with a program of services including training in vocational and recreational activities. To qualify, the dwelling must be approved or operated by the Division of Community Services of the State Training School or other appropriate state agency.

(27) **"Family day-care center"** means a dwelling or place of business wherein ordinary care and supervision are provided during customary daytime periods by the resident family to non-related persons. To qualify, the dwelling or place of business must be approved by the Utah State Department of Social Services.

(28) **"Farm"** means a business enterprise in which land is used for the production of food, feed, or fiber.

(29) **"Farm Preservation Subdivision"** means a subdivision which meets the requirements of Section 16.04.200 et seq.

(30) **"Fence, sight-obscuring"** means a fence having a height of at least eight feet above grade which permits vision through not more than 10% of each square foot more than eight inches above ground.

(31) **"Final plan"** means a plan of development showing the layout and dimensions of the streets, easements, common areas and other features of a development in accurate detail, prepared in accordance

with County standards.

(32) **"Final plat"** means a plat or plats of a large scale development which has been prepared for recording purposes in accordance with County standards.

(33) **"Flood, 100 year"** means a flood of a magnitude which will probably occur only once in 100 years.

(34) **"Flood channel"** means a natural or artificial water course with definite bed and banks to confine and conduct flood water.

(35) **"Forfeiture"** means the loss of ones' rights because of a failure to abide by the terms of an agreement.

(36) **"Flood plain"** means an area of land adjoining a river, stream, water course, or lake, which has been or probably would be covered with water in the event of a 100 year flood.

(37) **"Floor area"** means the sum of the areas of the several floors of a building, including basements, mezzanines, and penthouses of headroom height of six feet or more, measured from the exterior of walls or from the center line of walls separating buildings. The floor area does not include unoccupied features such as pipe trenches, exterior terraces or steps, chimneys, and roof overhangs.

(38) **"Foster care home"** means

a dwelling unit wherein room, board, care, and supervision are provided by the resident family to children who are unrelated to the resident family under the approval and supervision of the Utah State Department of Social Services or other placement agency licensed by the state.

(39) **"Fractional numbers or measurements"** means any computation or measurement resulting in a fractional number will be rounded down to the next smaller whole number; for example, 23.75 inches would be rounded down to 23 inches.

(40) **"Grade":**

(a) **"For a building fronting on one street only"** means the elevation of the sidewalk or center line of the street, whichever is higher, at right angles to the midpoint of the fronting wall.

(b) **"For a building fronting on more than one street"** means the average of the grades obtained with respect to each of the fronting streets by considering that the building fronts only on each such fronting street at a time.

(c) **"For a building having no walls fronting on a street"** means the average level of the sidewalk or center line of the closest surrounding street, whichever is higher.

(d) **"For a street or driveway"** means the ratio of vertical

distance traversed to horizontal distance traversed when moving along such street or driveway expressed in either percentage or degree.

(41) **"Grazing"** means the act of eating forage growing from the ground.

(42) **"Guest"** means a person staying or receiving services for compensation at a hotel, motel, boarding house, rooming house, rest home, or similar use.

(43) **"Height of building"** means the weighted average vertical distance from the grade of the building to the top of the building walls.

(44) **"Hog farm" or "piggery"** means a tract of land and facilities for the raising a feeding of an average of 25 more swine for a period of time exceeding 100 days in a calendar year.

(45) **"Home occupation"** means any occupation conducted within a dwelling, other than a vacation dwelling, and carried on by persons residing in the dwelling.

(46) **"Hospital"** means a building in which ten or more ill or injured human beings are offered board and room while being treated for such illness or injury in accordance with instructions and procedures prescribed by persons registered to practice the healing sciences in the State of Utah.

(47) **"Information brochure"** means a statement setting forth the organizational structure of the Property Owners Association, and the rights and obligations of the owner, the developer, the Property Owners Association, the individual lot or home owners, and the County.

(48) **"Junk yard"** means a place where scrap, waste, discarded or salvaged materials are bought, sold, exchanged, baled, packed, disassembled, handled, or stored, including auto wrecking yards, house wrecking yards, used lumber yards and places or yards for storage of salvaged house wrecking and structural steel materials and equipment; but not including places where such uses are conducted entirely within a completely enclosed building or where salvaged materials are kept incidental to manufacturing operations conducted on the premises.

(49) **"Kennel"** An establishment in which dogs or cats are housed, groomed, bred, boarded, trained, or sold for commercial purposes.

(50) **"Landscaping"** means the application or use of some combination of planted trees, shrubs, vines, ground cover, flowers, or lawns. It also means the combination of rocks and such structural features as fountains, pools, art

works, screens, walls, fences, or hedges, but such objects alone, in the absence of planted trees, shrubs, ground cover, flowers, or lawns, shall not meet the requirements of this code.

(51) **"Land use plan"** means a plan adopted and maintained by the planning commission which shows how the land should be used. The land use plan is an element of the comprehensive or General plan.

(52) **"Large Lot Planned Subdivision"** means a subdivision which conforms to the requirements of Section 16.04.400 et seq. and 16.04.500 et seq.

(53) **"Live waterway"** means a stream channel in which water runs more or less continually for a period of ten days or more during any one calendar year, including a river, creek, irrigation canal and irrigation ditch, but not including a channel that is dry except during rainstorms.

(54) **"Livestock corral"** means a place or pen where livestock are kept as part of an agricultural or livestock operation as distinguished from a livestock feed lot.

(55) **"Livestock feed lot"** means a feeding operation on a parcel of land where livestock are conditioned for market on a year-round basis and where the feed is brought to the yard, as contrasted to feed

obtained through grazing the animals on the premises.

(56) **"Lodging house"** means a building containing sleeping apartments that are rented to guests on a weekly or monthly basis.

(57) **"Lot"** or **"zoning lot"** means a parcel of property complying with all applicable standards of the zone in which it is situated and otherwise fully complying with all other requirements for the issuance of a building permit with respect thereto. Where the context so requires, the term lot shall also include parcels of ground in a large scale development or a planned small subdivision, which parcels have been approved by the County for individual disposition to purchasers, and condominium units in such a large scale development, but only if such units are defined as, or include, a parcel of ground similar to other types of lots.

(58) **"Master plan"** means a plan prepared by the County in conformance with Utah Code § 17-27-301 or such other similar statute.

(59) **"Mobile home"** means a vehicular or portable structure which is constructed for movement on the public highways and designed for use as a residence, but which has

not been demonstrated to conform to the requirements of the uniform building code.

(60) **"Mobile home park"** means an area or tract of land used to accommodate two or more mobile homes.

(61) **"Nonconforming building"** means a building, structure, or portion thereof which does not conform to the regulation of this code but which legally existed prior to the effective date of this code.

(62) **"Nonconforming lot of record"** means a parcel of land which does not conform to the area, frontage, access, or width requirements of this code, but which was shown on the records of the County recorder, and legally existed as an independent parcel or two contiguous parcels prior to the effective date of this code and which satisfies one of the following additional requirements:

(a) The parcel would have qualified for a building permit prior to the effective date of this code;

(b) The parcel did not qualify for a building permit prior to the effective date of this code for the sole reason that the parcel did not comply with the access or frontage requirements, prior to said date, and the parcel is now served by a travel easement or

the type required for a building permit on a parcel of agricultural land for agricultural purposes.

(63) **"Nonconforming use"** means a use of premises which does not conform to the regulations of this code, but which legally existed prior to the effective date of this code.

(64) **"Off-site"** means pertaining to the territory outside the boundaries of a particular project.

(65) **"On-site"** means pertaining to the territory within the boundaries of a particular project.

(66) **"Open space"** means land which is not covered by dwellings or other buildings, or by pavement or other impervious material which has common ownership and is dedicated to be used perpetually by the owners or the public for some other purpose besides development.

(67) **"Open space preservation agreement"** means an agreement, in a form approved by the County, between the County, the owner, and the developer in which the owner and the developer each agrees for himself, his successors and assigns to preserve certain land as open space for the life of a development.

(68) **"Owner"** means, for the purposes of Title 16 only, the

person who is the owner of record in the office of the County Recorder of the fee interest in a tract of land proposed for development as a large scale development. Owner shall include a mortgagee or beneficiary under a mortgage or deed of trust encumbering the proposed common area in the tract when used to identify those persons who are to execute the open space preservation agreement and the warranty deed conveying such common area to the Property Owners Association.

(69) **"Parking space"** means a space not less than 20 feet in length and not less than 8.5 feet in width for the parking of a mobile vehicle, exclusive of driveways and ramps.

(70) **"Pasture"** means an enclosure for animals in which no feed is provided except that which the animals obtain by grazing.

(71) **"Planned recreation development"** means a tract of land located in the RF-1 zone which conforms with the requirements of Section 16.04. et. seq.

(72) **"Planning commission"** means the Wasatch County Planning Commission.

(73) **"Planting plan"** means a plan showing the location and dimensions of irrigation equipment and curbs and other

protective features around the edge of the planting beds, and the location, dimensions, and species of plants to be planted.

(74) **"Preliminary plan"** means a plan prepared in accordance with County standards showing the approximate layout and dimensions of lots, streets, easements, common areas and other features of a development in sufficient detail to give the reviewing authority a clear and accurate concept of the development and what it will contain when completed.

(75) **"Premises"** means a lot together with the buildings and structures located thereon.

(76) **"Premises occupation"** means an occupation conducted on any premises, except premises containing a vacation dwelling, by persons residing on those premises.

(77) **"Property Owners Association"** or **"Home Owners Association"** means the association of lot owners of a project approved as a planned recreational development under Section 16.04.2000, or a planned unit development under Section 16.04.3000 for the benefit and use of the individual lot owners in such development.

(78) **"Public parks and**

playgrounds" means a tract of land which is owned by the County and has been partially or totally developed or designated for recreational use by the public.

(79) **"Record of survey map"** means a final plat that conforms to this code and constitutes a record of survey map as defined by the Utah Condominium Ownership Act.

(80) **"Rest home"** means a building for the care and keeping of elderly or infirm people affected with infirmities or chronic illness.

(81) **"Retail drive-in"** means any form of merchandising; serving, or dispensing of goods or services in which the customer is serviced while in his automobile.

(82) **"Rooming house"** means lodging house.

(83) **"Salvage yard"** means junk yard.

(84) **"Septic tank"** means a tank in which the solid matter of continuously flowing sewage is disintegrated by bacteria.

(85) **"Septic tank drainfield"** means a specified tract or parcel of land in which the sewage that flows from a septic tank is oxidized.

(86) **"Setback"** means the shortest distance between a specified line and the foundation, wall, or main

frame of a building.

(87) **"Sign"** means any device for visual communication that is used for the purpose of bringing the subject thereof to the attention of the public, but not including a flag pole which is used for the display of the state or national flag.

(a) **"Accessory sign"** means a sign which directs attention to a business or profession conducted on the premises.

(b) **"Area of sign"** means the area of a sign shall be considered to include all lettering, working and accompanying designs or symbols, and any background material or free standing supports. Where a sign consists of individual letters or symbols attached to or painted on a building, wall, or window, the area of the sign shall be considered to be the area of the smallest rectangle which encompasses all such letters or symbols.

(c) **"Free-standing sign"** means a sign which is not attached to or part of a building.

(d) **"Non-accessory" or "billboard sign"** means a sign which directs attention to a business, commodity, service or entertainment that is not, other than incidentally, conducted, sold, or offered such on the premises where the

sign is located.

(88) **"Sleeping apartment"** means one or more rooms designed as a unit within a hotel, motel, boarding house, dormitory, bunkhouse or similar use providing sleeping accommodations for guests. Regardless of the structure of the building concerned, such a unit shall not be considered to consist of more than two bedrooms or two beds, whichever is less, within such building for the purpose of determining the number of sleeping apartments.

(89) **"Single Lot subdivision"** means a subdivision consisting of a single building lot which conforms with the requirements of Section 16.04.100 et seq.

(90) **"Slope"** means the ratio of the vertical distance moved to the horizontal distance moved, expressed in percentage or degrees, when traversing along the surface of land.

(91) **"Small-lot Planned Subdivision"** means a subdivision which conforms with the requirements of Section 16.04.1000 et seq.

(92) **"Small-scale subdivision"** means a subdivision which conforms with the requirements of Section 16.04.300 et seq.

(93) **"Special exception"** means conditional use.

(94) **"Storm, 100 Year 24 Hour Incident"** means a storm of the

magnitude which is probable to occur only once in 100 years.

(95) **"Story"** means that portion of a building included between the surface of a floor and the ceiling next above it.

(96) **"Street"** is defined as follows:

(a) **"Paved street"** means a roadway which has been constructed in accordance with County standards, with respect to durability of the surface of the traveled part of the roadway.

(b) **"Major street"** means a road which has been designated on the County master plan as a collector, arterial, or other principal thoroughfare as distinguished from a minor street.

(c) **"Minor street"** means any dedicated street serving as the principal means of access to property, which street is not shown on the County master plan as a principal thoroughfare.

(d) **"Private street"** means a roadway which is used for vehicular travel to two or more dwellings, but does not have the status of a public street.

(e) **"Public street"** means a roadway which has been designated as a federal or state highway or which has been designated as a County street on the official County

road map adopted by resolution of the County commission.

(97) **"Subdivision"** means a tract, lot or parcel of land which has been divided into two or more lots, plots, sites, or other division of land for the purpose, whether immediate or future, of sale or of building development; provided that this definition shall not include a bona fide division or partition of agricultural land for agricultural purposes or of commercial, manufacturing or industrial land for commercial, manufacturing, or industrial purposes.

(98) **"Supplemental environmental study"** means a document requested by the Planning or County Commission pursuant to this Title providing additional information regarding the impact that a proposed development will have on the natural features of the immediate area, and the social and financial impact which the proposed development will have on the County as a whole.

(99) **"Unnecessary hardship"** means a general restriction placed upon a parcel with respect to area, width, or setback where, by reason of exceptional narrowness, shallowness, shape or topography of such parcel, a

literal enforcement of the general restriction would result in an unfairness to the owner of the parcel when compared to the owners of lots in the same zone and where literal enforcement would be unnecessary in order to achieve the intent of the zone.

(100) **"Vacation home"** means vacation dwelling defined in Subsection (22)(h).

(101) **"Vacation vehicle"** means a vehicle used or maintained primarily as a temporary dwelling for travel, vacation, or recreation purposes.

(102) **"Vacation vehicle court"** means an area or tract of land used to accommodate two or more vacation vehicles or camper units for a period of less than 30 days.

(103) **"Variance"** means a waiver of an area, width, or setback requirement, as distinguished from a special exception.

(104) **"Waste disposal site"** means a tract of land devoted to the disposal of solid wastes, including garbage, rubbish, trash and other refuse material, but not earth or other totally inert materials.

(105) **"Yard"** means the space on a lot with a dwelling, unoccupied or unobstructed except by landscaping from the

ground upward.

(a) **"Front yard"** means the yard between the street right-of-way line and the front line of a dwelling, exclusive of non-enclosed steps, and extending the entire width of the lot. On a corner lot, the front yard may be applied to either street.

(b) **"Rear yard"** means the yard between the rear line of a dwelling, exclusive of all steps, and the rear lot line and extending for the entire width of the lot. In the case of a corner lot where the dwelling facade faces on the side street, the rear yard may be established from the side of the house to the side property line.

(c) **"Required yard"** means the yard around dwellings required by the terms of this code.

(d) **"Side yard"** means the yard between the side line of a dwelling and the side lot line and extending from the front yard to the rear yard.

(106) **"Youth group home"** means a dwelling unit wherein room, board, ordinary care, and supervision are provided in a family environment by the resident family or group home parents to persons who are unrelated to the resident family or group home parents and who are under the age of 18 years. To qualify, the

dwelling unit must be approved by the Utah State Department of Social Services.

16.01.020. Violations.

Unless otherwise specified herein, any person violating the provisions of Title 16 shall be deemed guilty of a class B misdemeanor.

(Ord. No. 63, Renumbered, 10/01/91, 16.01.020)

16.01.030. Zones Established.

In order to carry out the purposes of this title, the unincorporated area of Wasatch County, Utah, is hereby divided into zones as follows:

- (1) A-1 Agricultural Zone
- (2) G-1 Grazing Zone
- (3) W.C.-1 Watershed Conservation Zone
- (4) RA Residential Agricultural Zone
- (5) RF-1 Recreation Forestry Zone
- (6) T&S-1 Trades and Services Zone
- (7) C-1 Commercial Zone I
- (8) C-2 Commercial Zone II
- (9) I-1 Industrial Zone
- (10) I-2 Industrial Zone
- (11) FPO-1 Flood Plain Overlay Zone
- (12) A-1 Airport Overlay Zone
- (13) FP Foothill Preservation Zone

(Ord. No. 63, Renumbered, 10/01/91, 16.01.030)

16.01.040. Official Zone Map.

The location and boundaries of each of the zones are shown on the Official Zone Map of Wasatch County, Utah, and the map is hereby declared to be an official record and a part of this Code. The Official Zone

Map and all notations, reference and other information shown thereon shall be as much a part of this code as if the matters and other information set forth by the map were fully described in this title. The Official Zone Map shall be identified by the signature of the chairman of the County Commission, attested to by the County Clerk and recorded in the office of the County Recorder. Whenever amendments or changes are made in zone boundaries, such amendments or changes shall be made promptly by the Zoning Administrator on the Official Zone Map. No amendment or change shall become effective until after it has been properly noted and attested to on the Official Zone Map.

(Ord. No. 63, Renumbered, 10/01/91, 16.01.040)

16.01.050. Boundaries of Zones.

Where uncertainty exists with respect to the boundaries of various zones, the following rules shall apply:

(1) Where the indicated boundaries on the Official Zone Map are approximately street or alley lines, the streets or alleys shall be construed to be the zone boundaries.

(2) Where the indicated boundaries are approximately

lot lines, the lot lines shall be construed to be the zone boundaries.

(3) Where indicated boundaries are canals or rivers, the centerline of the canals or rivers shall be construed as the zone boundaries.

(4) Where land has not been subdivided into lots, the zone boundaries shall be determined by the use of the scale of measurement shown on the Official Zone Map.

(5) Where other uncertainty exists, the Board of Adjustment shall interpret the Official Zone Map.

(Ord. No. 63, Renumbered, 10/01/91, 16.01.050)

Chapter 16.02. General Development Standards Applicable to All Zones.

16.02.010. Intent.

16.02.020. Yard Space for One Building Only.

16.02.030. Sale or Lease of Required Space Prohibited.

16.02.040. Every Dwelling to be on a Zoning Lot.

16.02.050. Area of Accessory Buildings.

16.02.060. Accessory Building Prohibited as Living Quarters.

16.02.070. Storage of Junk and Debris Prohibited.

16.02.080. Yards to be Unobstructed - Exceptions.

16.02.090. Additional Setbacks

For Buildings Required.

16.02.100. Exception to Front and Side Setback Requirements.

16.02.110. Setbacks from Highways.

16.02.120. Dwelling Sites to be Accessible by a Public Street.

16.02.130. Effect of Street Plan.

16.02.140. Additional Height Allowed for Public Buildings.

16.02.150. Minimum Height of Dwellings.

16.02.160. Location of Barns.

16.02.170. Fences and Walls.

16.02.180. Drainage.

16.02.190. Bond.

16.02.200. Pollution Prevention.

16.02.210. Concessions in Public Parks and Playgrounds.

16.02.220. Extraction of Earth Products.

16.02.230. Watershed Pollution Prevention.

16.02.240. Solid Waste Disposal Sites.

16.02.250. Utility Buildings and Structures Permitted in Residential Agricultural Zone.

16.02.260. Exposed Slopes to be Less than the Critical Angle of Repose.

16.02.270. Fractional Numbers.

16.02.280. Agricultural Lands for Agricultural Purposes.

16.02.290. Off-Street Parking Standards.

16.02.300. Motor Vehicle Access Standards.

16.02.310. Landscaping

APPENDIX "E"

Wasatch County Code 16.04.030

be owned by the same person or corporation which owns or controls the operation of the airport, or else an easement covering the land must be owned by the same person or corporation which will prevent the construction of buildings and structures or the growing of trees or other natural feature over the above prescribed height limits.

(4) Use Restrictions.

Notwithstanding any other provision of this title, no uses may be made of land within the County which will create electrical interference with radio communication between airports and aircraft; make it difficult for flyers to distinguish between airport lights and others; result in glare in the eyes of flyers using the airport; impair visibility in the vicinity of airports or otherwise endanger the landing or taking off of aircraft.

(Ord. No. 62, Renumbered, 10/01/91, 16.02.140; Ord. No. 66, Renumbered, 10/01/91, 16.03.140)

**16.03.160. FP Foothill
Preservation Zone
(RESERVED).**

**Chapter 16.04 Residential
Development in Zones.**

**16.04.010. Residential
Developments available in**

zones.

Except for caretaker dwellings allowed pursuant to Section 16.04.280, and other Sections of this Title, the following are the only types of residential developments allowed:

- (a) Single Lot Subdivisions (Section 16.04.100);
- (b) Farm Preservation Subdivisions (Section 16.04.200);
- (c) Small Scale Subdivisions (Section 16.04.300);
- (d) Large Lot Planned Subdivisions (Sections 16.04.400 and 16.04.500);
- (e) Small Lot Planned Subdivisions (Sections 16.04.1000);
- (f) Planned Residential Developments (Sections 16.04.1700); and
- (g) Recreational Developments (Section 16.04.2000).

16.04.020. Specific Requirements. Specific requirements for each type of residential development are contained in this chapter. Building permits shall not be issued for dwelling units which would be in violation of this Title.

16.04.030. Sale, Advertisement, or Offering for Sale of Lots in Unapproved Subdivisions Prohibited. Lot(s) in a subdivision that

has not received final approval according to the requirements contained in this Title may not be sold, advertised for sale, or offered for sale in any manner.

16.04.040. Minimum Lot Size.
Except as specifically provided otherwise in this Title, the minimum lot size allowed for a dwelling unit in Wasatch County is one(1) acre.

16.04.050. Water Required for Residential Development.

(1) Each residential development proposed in Wasatch County must have safe and adequate culinary water sufficient to meet the water needs of the development according to State and local ordinance. It is the responsibility of the developer to conclusively establish the availability of culinary water and its dedication to the proposed residential development prior to final approval.

(2) Except for single lot subdivisions, farm preservation subdivisions, or small scale subdivisions any residential development containing lot(s) smaller than five(5) acres in size is required to connect each lot to a culinary water system if

any of the property in the proposed development is located in a Special Service District organized for the purpose of supplying culinary water.

(3) Except for single lot subdivisions, farm preservation subdivisions, or small scale subdivisions, any residential development containing lot(s) smaller than 2.5 acres in size is required to connect each lot in the residential development to a culinary water system.

(4) Except for single lot subdivisions, farm preservation subdivisions, or small scale subdivisions, any residential development containing lot(s) smaller than 2.5 acres in size is required to connect each lot in the residential development to a secondary water system for outside and/or livestock watering.

(5) Any residential development required to connect to a culinary water system pursuant to this Title shall also be required to provide fire flow protection to each lot in the residential development as set forth in the applicable statute or ordinance.

(6) Except for caretaker dwellings and lots in farm preservation subdivisions, and