

2001

George Whitney, Hazel Leishman, Hal Olsen and
the College-Young Ward Planning and Zoning
Commission v. Cache County Board of
Adjustments, Brent Speth and Edna Speth : Brief of
Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

GEORGE WHITNEY, HAZEL
LEISHMAN, HAL OLSEN, and the
COLLEGE-YOUNG WARD
PLANNING & ZONING COMMISSION,

Petitioner/Appellant,

v.

CACHE COUNTY BOARD OF
ADJUSTMENTS, BRENT SPETH, and
EDNA SPETH,

Respondents/Appellees.

* Case No. 20010902-CA

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* Priority No. 15

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BRIEF OF THE APPELLANT

APPEAL FROM THE FIRST JUDICIAL DISTRICT
IN AND FOR CACHE COUNTY, STATE OF UTAH, JUDGE THOMAS WILLMORE

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BRIEF OF THE APPELLANT

Jurisdiction

The Court of Appeals has jurisdiction in this matter pursuant to Utah Code Ann. §
78-2a-3(2)(b)(i).

Determinative Constitutional Provisions, Statutes, Ordinances, and Rules Set Forth
Verbatim or by Citation Alone if They are Set Forth Verbatim in the Addendum

1. U.C.A. § 17-27-200.5 (1997).
2. U.C.A. § 17-27-201(2)(b)(1998).
3. U.C.A. § 17-27-201(3)(e)(i) (1998).
4. U.C.A. § 17-27-704(1)(a)(i) (1995).
5. U.C.A. § 78-2a-3(2)(b)(i).
6. Cache County Land Use Ordinance Chapter 2-2.A.3.
7. Cache County Land Use Ordinance Chapter 2-2.A.48.

8. Cache County Land Use Ordinance Chapter 4-1.
9. Cache County Land Use Ordinance Chapter 4-2.J.
10. Cache County Land Use Ordinance Chapter 4-3.X.
11. Cache County Land Use Ordinance Chapter 24-4(E)(4).
12. Cache County Land Use Ordinance Chapter 27-31.2.
13. Cache County Ordinance 99-01.

Statement of Issue for Review

1. Did the District Court err in determining that the proper standard of review to be used by Board of Adjustment in reviewing the determination of the Planning Commission is De Novo. “In reviewing a grant of summary judgment, [the Court of Appeals does] not defer to the legal conclusions of the District Court, but review[s] them for correctness.” Springville Cit. for a Btr. Comm. v. Springville, 1999 UT 25 ¶ 22, 979 P.2d 332 (Utah 1999). (See Record at pp. 230-31.)

2. Did the Cache County Board of Adjustment act illegally in overturning the decision of the College-Young Township Planning Commission. “When reviewing a municipality’s land use decision, our [the Court of Appeals] review is limited to determining ‘whether... the decision is arbitrary, capricious, or illegal.’” Springville Cit. for a Btr. Comm. v. Springville, 1999 UT 25 ¶22, 979 P.2d 332 (Utah 1999). (Quoting U.C.A. § 10-9-1001(3)(b) (1996).) (See Record at pp. 231-39.)

Statement of the Case

1. This appeal is from a final order of the First District Court, State of Utah, County of Cache. (See Record at pp. 381-388.)
2. The Speths applied for a conditional use permit to construct for a commercial business two 250' X 40' storage sheds with 25 double units for a total of 100 rental units on real property located in the Agricultural Zone. (See Record at p. 178.)
3. At the meeting of the College-Young Township Planning Commission held on 19 April 2000, the Speths presented evidence of other uses in Cache County that they believed established precedent for their proposed use. (See Record at pp. 178-179.)
4. The College-Young Township Planning Commission denied the conditional use permit request of Brent and Edna Speth for the following reasons: "1) The request is for a Commercial Business in the Agricultural Zone on an existing residential lot with an existing single family dwelling. 2) The ordinance states that commercial business should be in commercial or manufacturing zones. There is nothing in the ordinance that allows for this type of business in the Agricultural Zone. 3) This proposed business is not in harmony with the Agricultural Zone. 4) This proposed business is not compatible with a residential neighborhood. 5) The increase of traffic is not compatible with the residential neighborhood. 6) An increase of traffic turning off of 2200 South would be dangerous." (See Record at p. 179.)
5. At the meeting of the Township Planning Commission on 21 June 2000, the Commission corrected the minutes of the 19 April meeting by unanimous vote as follows: "Addendum to the Hearings on the Brent Speth Request. 1) This item first came

before our Commission on 3-15-00 along with a request be [sic] Steve Thatcher to use an existing building for some kind of storage. 2) In that meeting it was felt by our Commission that the Zoning Office supported Brent Speth's request but did not encourage support for Thatchers' request. In fact Steve Thatcher stated someone who contacted the zoning office on his behalf was told "he'd get a permit over Lorene's dead body." 3) Because both requests appeared to be for large commercial businesses, which we hadn't dealt with before, in an Ag. Zone, past problems with a business in the Thatcher building, some technical errors in the requests, and our desire to get more help and clarification to determine how to treat both requests fairly; we continued both requests to our next meeting so we could seek advice from other county representatives that had past experience with these matters. 4) Before our next meeting we talked individually and in groups with: Mark Teuscher, County Planner; Lynn Lemon, County Executive; Pat Nolan, Assistant County Attorney; and Lorene Greenhalgh, County Zoning Administrator. 5) Mark Teuscher advised us that both requests were for a commercial business and should be denied in the Agricultural Zone. He said, however, if Thatchers could show they had a valid permit issued years ago, we would have to honor it. 6) At first Pat Nolan was unsure if Thatchers had a valid permit, but later determined they did and that we'd have to work from there. 7) Later, Kelly Pitcher, County Fire Chief, verified the 100,000 to 120,000 gallon water tank he required for fire protection was specifically because it was a commercial business and the State Fire Code demanded it. He also said there was not another place in the County where a home or agricultural business had required this kind of water storage for fire protection because they are

exempt. 8) We were also told past decisions by past boards, straw polls, of neighbors, and financial benefit of the applicant should not be considered. 9) In the end, we determined Brent Speth's request was clearly for a commercial business. The lot he wanted to place it on was agriculture residential. It was not a home business by size, scope, magnitude, or by level of activity, nor was it supplemental or accessory in nature. Also, that two 250' X 40' storage sheds consisting of 100 rental units with a total of 20,000 square feet of storage were not like any of the agricultural businesses in our area or harmonious with them or the dozen or so homes immediately surrounding the site. 10) We denied Speth's request because to ignore the advice and council we'd been given from the above named parties, and the fact that the Zoning Ordinance for Cache County distinguishes between agricultural businesses and commercial businesses, and provides zones for each, would have been arbitrary and capricious." (See Record at p. 180.)

6. On or about the 15th day of June 2000, a public hearing was held before the Cache County Board of Adjustment on the Speth appeal. (See Record at p. 162.)

7. At the Board of Adjustment's meeting, the Board of Adjustment had neither an approved set of minutes from the College-Young Township Planning Commission meeting nor a transcript of those proceedings. A motion was made to continue the decision until the next Board of Adjustment's meeting so that the Board members would have an opportunity to review the transcript of the College-Young meeting for the 19th day of April 2000. (See Record at p. 168.)

8. On the 20th day of July 2000, the Board of Adjustment voted to reverse the decision of the College-Young Township as follows: "Based on the following Findings of

Fact: 1) The request for this commercial business is in compliance with the Land Use Ordinance; and 2), commercial businesses have been approved and are in operation in this area; Weeks made the motion to reverse the College-Young Township Planning Commission decision and allow a conditional use permit for the construction of two 250'X40' storage sheds containing 100 units total as a commercial business in the Agricultural Zone at 1279 West 2200 South, College Ward with the following stipulations: 1) The applicant must follow the requirements of the College Ward Irrigation Company, County Road Superintendent and the County Fire Chief's Office regarding access and culverts. 2) Current and future property owners must be aware that they will be subject to the sights, sounds, and smells associated with agricultural activities which are the permitted uses in the Agricultural Zone. 3) The applicant shall receive a permit to tear down the existing buildings. And 4), the applicant shall comply with all conditions of the proposal they submitted for review to include the fencing, attractive buildings, side yards, setbacks, etc. The motion was seconded by Clements and passed with four (Weeks, Clements, Gunnell, and Nielsen) in favor and two (Griffin and Erickson) opposed." (See Record at pp. 160-61.)

9. The College-Young Township Planning Commission was established pursuant to Ordinance 99-01 effective February 28, 1999 and enacted pursuant to Utah Code Annotated Section 17-27-200.5 effective 1997. (See Record at pp. 252-57.)

10. The College-Young Township Planning Commission consists of four (4) appointed members and three (3) elected members and is vested with the authority to

“Exercise any other powers that are necessary to enable it to perform its functions.” (See Record at pp. 252-57.)

11. In meeting the marshalling requirement, the following instances of other alleged commercial uses was presented to the Board to support a decision to overturn the decision of the Planning Commission:

- a. Snowmobile repair shop;
- b. Concrete forming company;
- c. Cabinet shop;
- d. Artificial insemination company;
- e. Bee keeping business;
- f. Nursery Sales;
- g. Equipment repair shop;
- h. Office and Warehouse leasing;
- i. Trucking operation;
- j. Heavy equipment for hire;
- k. Snow mobile sales and service;
- l. Service station;
- m. Former drive in theater and junkyard;
- n. Former fast food drive in and grocery;
- o. Storage by the airport;
- p. Richmond Storage Units;
- q. Benson storage units (Ballard);

- r. Benson storage units (Ricks);
- s. Jay R's Auto & Salvage;
- t. Connerly permit;
- u. Junior Miller;
- v. Lovelands.

(See Record at pp. 159-168.)

12. Many of these examples were not presented to the Planning Commission.
(See Record at pp. 178-79.)

13. In addition to the College-Young Township Planning Commission, the Benson Planning Commission and the Cache County Planning Commission also act as Planning Commissions within the boundaries of Cache County.

14. The College-Young Township Planning Commission is vested with planning & zoning authority within the College-Young Township boundaries. (See Record at pp. 255-56.)

15. Attempts were made before the Board of Adjustment hearing to explain the differences between these alleged commercial uses and the use sought by the Speths. (See Record at pp. 164-67 also found in transcript of Board of Adjustment hearing at pp. 000099-000104 (the transcript of the Board of Adjustment hearings has not been included in the Record transmitted to the Court of Appeals though it was delivered to the Court by the Board and referenced before the District Court)).

Summary of Argument

The Arguments presented by the Planning Commission are two-fold; first that Brown v. Sandy City should be re-visited as to the standard used by a Board of Adjustment in reviewing the factual and legal determinations of a Township Planning Commission. Second, that even if Brown applies the Board acted illegally in overturning the decision of the Commission.

Argument

Point I

The District Court erred in determining that the proper standard of review to be used by the Board of Adjustment in reviewing the determination of the Planning Commission is De Novo

The Planning Commission asserted before the District Court that the appropriate standard of review to be used by the Board of Adjustment in reviewing decisions of the Planning Commission is an arbitrary capricious or illegal standard similar to that used by the District Court in reviewing decisions of the Board of Adjustment. (See Record at pp. 230-31.) This was in accordance with the position of the Cache County Attorney and the Board of Adjustment prior to the Board of Adjustment hearing at issue herein. (See record at pp. 259-61 and p. 160.) The Court rejected this argument and determined that the standard of review was in fact de novo. (See Record at p. 384.)

While this matter was pending before the District Court, in researching this issue Appellant's counsel had not come across the case of Brown v. Sandy City, 95 P.3d 207 (Utah Ct. App. 1998). Additionally, the case was not cited by the Appellees to the District Court in their Memorandum before the District Court. While the District Court

did not appear to rely on the case in its order, the Appellees did make brief mention of it at the hearing. (See Transcript of 28 June 2001 hearing at pp. 62-63.) At first glance, Brown appears to answer the standard of review question in favor of the District Court's decision.

In the Brown case, the Court of Appeals wrote:

It is clear that sec; 10-9-704 requires the board's review to review the staff's interpretation for correctness, giving it no deference. Although, "[t]he person or entity making the appeal has the burden of proving that an error has been made," Utah Code Ann. sec; 10-9-704(3) (1996), the person need show only an "error in an [] order, requirement, decision, or determination made by an official in the administration or interpretation of the zoning ordinance." Id. sec; 10-9-704(1)(a)(1). There is no requirement that the Board give any deference to the administrator or executive official making the determination.

Id. at p. 209. The planning commission has been deemed to be an "administrative officer" for purposes of an appeal to the board of adjustments. Bennion v. Sundance Development Corp., 897 P.2d 1232, 1236 (Utah Ct.App. 1995).

However, the present case appears distinguishable from Brown on several grounds. In Brown the Court of Appeals was dealing with a city staff member's legal interpretation of the meaning of an ordinance. In the present case, the College-Young Township Planning Commission has been vested with planning and zoning authority for the College-Young Township area within Cache County. (See Record at pp. 252-57.) The College-Young Township was created pursuant to U.C.A. § 17-27-200.5 and Cache County Ordinance 99-01. (See Record at pp. 252-57.) Pursuant to U.C.A. § 17-27-201(3)(e)(i) the College-Young Township Planning Commission is a partially elected and partially appointed body. (See Record at pp. 252-57.) The situation is clearly distinct

from that of a staff member and is even distinct from the purely appointed countywide planning commission. See U.C.A. § 17-27-201(2)(b). Further, unlike a staff decision with a Planning Commission, public meetings/hearings are held where evidence is presented and a record is made.

Utah Code Ann. § 17-27-704(1)(a)(i) subsequently amended, read in relevant part “The applicant or any other person or entity adversely affected by a zoning decision administering or interpreting a zoning ordinance may appeal that decision applying the zoning ordinance by alleging that there is error in any order, requirement, decision, or determination made by an official in the administration or interpretation of the zoning ordinance.” The Cache County Board of Adjustment is vested only with the authority to affirm, reverse, or modify the decision of the Planning Commission. Cache County Land Use Ordinance Chapter 27-31.2.

In accordance with the foregoing, Cache County has enacted Section 24-4(E)(4) of the Cache County Land Use Ordinance. That section provides “The Board of Adjustment may hear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, or decision made in the enforcement of a land use ordinance.” Though the Board of Adjustment is given the power to take new evidence, they do not hear the matter anew. (See record at pp. 259-61 and p. 160.) Surely if the only question is interpretation of the ordinance no deference is necessary, however, where the Board of Adjustment does not re-hear the matter in total, the Court of Appeals should re-visit Brown and deference should be given to the Planning Commission’s findings of fact.

The standard of review when a planning commission makes a decision as opposed to a staff member, especially a Township Planning Commission decision, should be arbitrary, capricious or illegal. The case law supports this interpretation. In Sandy City v. Salt Lake Cty., 827 P.2d 212, (Utah 1992) the Supreme Court writes:

Section 17-27-16 establishes the procedure for appeals to county boards of adjustment, which are appellate bodies appointed by the county commissioners. The statute limits the boards' powers, allowing them to hear only alleged errors in zoning enforcement decisions. Utah Code Ann. §17-27-16. As their name implies, boards of adjustment provide important elasticity in the application of zoning ordinances to avoid arbitrary or confiscatory consequences at odds with zoning's general purpose and intent. Florentine v. Darien, 142 Conn. 415, 425, 115 A.2d 328, 332-33 (1955).

Id. at 220 (emphasis added). The Utah Supreme Court clearly contemplated that the purpose of the Board was to avoid arbitrary results not just to substitute their judgment in a situation. The Board must find that there was an error, not simply that they have a different opinion. In this case the Board has simply substituted its judgment. If this were allowed it would seem to nullify the purpose of having a Planning Commission hold hearings. Therefore, the decision of the Board and the District Court should be reversed and the decision of the Planning Commission re-instated.

Point II

The Cache County Board of Adjustment acted illegally in overturning the decision of the College-Young Township Planning Commission

In the event that the Brown standard is applicable to the present situation, the question then becomes did the Board of Adjustment act illegally in overturning the decision of the Planning Commission. As set forth above, U.C.A. § 17-27-704(1)(a)(i)

subsequently amended, read in relevant part: “The applicant or any other person or entity adversely affected by a zoning decision administering or interpreting a zoning ordinance may appeal that decision applying the zoning ordinance by alleging that there is error in any order, requirement, decision, or determination made by an official in the administration or interpretation of the zoning ordinance.” Pursuant to this section, the Cache County Board of Adjustment enacted the following ordinance: “The Board of Adjustment may hear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, or decision made in the enforcement of a land use ordinance.” Cache County Land Use Ordinance Section 24-4(E)(4).

The proposed development in this matter is to take place in the agricultural zone. Chapter 4 of the Cache County Land Use Ordinance deals with the agricultural zone. Section 4.1 provides “Purpose To ensure that residential and other development in the unincorporated county area occurs in such a way as to minimize detrimental impact on agriculture, at the least cost to the taxpayer, and in harmony with the intent of the Cache County Policy Plan as enacted on March 29, 1958, and subsequent modifications.” The landowners in this case sought a conditional use permit for the construction of their storage units under provision 4-3.X, which provides “Conditional Uses . . . X. Other uses which are consistent with the purpose of this [agricultural] zone and which are approved upon those specific conditions determined by the Planning Commission to be reasonable and necessary under the circumstances and such uses shall be in harmony with the character and intent of the agricultural zone.”

In their decision to reverse the decision of the College-Young Township Planning Commission, the Board of Adjustment determined as follows “*Based on the following Findings of Fact: 1) The request for this commercial business is in compliance with the Land Use Ordinance; and 2), commercial businesses have been approved and are in operation in this area; Weeks made the motion to reverse the College-Young Township Planning Commission decision and allow a conditional use permit for the construction of two 250’X40’ storage sheds containing 100 units total as a commercial business in the Agricultural Zone at 1279 West 2200 South, College Ward with the following stipulations: 1) The applicant must follow the requirements of the College Ward Irrigation Company, County Road Superintendent and the County Fire Chief’s Office regarding access and culverts. 2) Current and future property owners must be aware that they will be subject to the sights, sounds, and smells associated with agricultural activities which are the permitted uses in the Agricultural Zone. 3) The applicant shall receive a permit to tear down the existing buildings. And 4), the applicant shall comply with all conditions of the proposal they submitted for review to include the fencing, attractive buildings, side yards, setbacks, etc. The motion was seconded by Clements and passed with four (Weeks, Clements, Gunnell, and Nielsen) in favor and two (Griffin and Erickson) opposed.*” (See Record at pp. 160-61 (emphasis in original)).

Though a formal written order as required by the Cache County Land Use Ordinance was never entered by the Board, their decision as set forth in the Minutes would seem to indicate there was no consideration of whether this specific use was in fact in harmony with the purpose and intent of the agricultural zone only a general conclusion

unsupported by facts in the record that: “*The request for this commercial business is in compliance with the Land Use Ordinance.*” It appears that the Board’s sole basis for this determination was that other “commercial businesses” had been allowed in the agricultural zone because that was the only evidence presented.

The agricultural zone is not a de facto commercial zone, rather commercial operations to be allowed in the agricultural zone must be in harmony with the character, purpose, and intent of the agricultural zone. In overturning the decision of the Planning Commission, the Board acted illegally in failing to consider whether the proposed development was in harmony with the purpose of the agricultural zone. See, Town of Alta v. Ben Hame Corp., 836 P.2d 797, 801 (Utah Ct. App. 1992) (holding that the specification of uses demonstrates intent to prohibit inconsistent uses) “Among the objectives to be served [by zoning] is to avoid mixing together of industrial, commercial, business, and residential uses.” quoting, Naylor v. Salt Lake City Corp., 410 P.2d 764, 765 (Utah 1966).

In addition to failing to determine whether the proposed businesses are in harmony with the purpose of the zone, the Board failed to determine whether the so-called other commercial uses were in fact similar in type, size, scope, and/or surrounding area; whether the other commercial uses that were established were allowed by a different planning body; whether the use was a prior non-conforming use; or whether the use existed at all. (See Record at pp. 159-68.) To argue only that it has been done in the past and creates some kind of precedence is simplistic and ignores important issues.

Though Mr. Speth did not introduce most of these examples before the Township Planning Commission, he presented to the Board 22 different alleged commercial uses that he claimed created a precedent for his use. (See Record at pp. 123-169.) As was presented to Board and the District Court, each use is clearly distinguishable from the Speth proposal. Looking at each allegedly similar use individually, the differences are as follows:

1. Snowmobile repair shop – The business is located in a permitted accessory building which was re-built and is used primarily for agricultural purposes. As a home enterprise as the same is defined in Cache County Land Use Ordinance Chapter 2-2.A.48 of the Land Use Ordinance it is a permitted use in the Agricultural Zone. This use pre-dates the Township Commission.

2. Concrete forming company – The building was originally erected in the 1930s and began to be used for the concrete company in the 1980s, the occupants were allowed to replace the existing building in 1991 by the Cache County Planning Commission. This use pre-dates the Township Commission.

3. Cabinet shop – The building is believed to have been built in the 1960s, it was originally used for concrete form setting, the occupants began to use the same as a cabinet shop in the early 1990s. The business is now closed and clearly predates the existing ordinance and Township Planning Commission.

4. Artificial insemination company – This is clearly an agricultural business as the same is defined in Cache County Land Use Ordinance Chapter 2-2.A.3 and is therefore a

permitted use. The use is believed to have existed for at least twenty years which pre-dates the ordinance and Commission.

5. Bee keeping business – Another agricultural business permitted in the agriculture zone it also pre-dates Township Planning Commission.

6. Nursery Sales – It is believed that this business has been around since the late 1960s or early 1970s, the business has been closed for some time, if it were not closed it would be permitted in the Agriculture Zone under Cache County Land Use Ordinance Chapter 4-2.J.

7. Equipment repair shop – It is believed the shop was built in the mid 1970s for agricultural purposes, it apparently has not been operational for several years and pre-dates the Commission and Land Use Ordinance.

8. Office and Warehouse leasing – This use pre-dates the Township Planning Commission and has been shut down since approximately 1987-88, opposed by the Cache County Zoning Administrator, apparently no permit has ever been issued.

9. Trucking operation – A home occupation, the truck is used as part of this individual's farming operations, moves his own commodities, occasionally will move grain for others and farm equipment, harmonious with the purpose of the zone and very small in scope.

10. Heavy equipment for hire – A home occupation, the equipment used provides custom farming services.

11. Snowmobile sales and service – This use pre-dates the Township Commission and is no longer believed to be an active business.

12. Service station – The station was built in the early 1960s and has operated as a service station since that time, the use pre-dates the Commission and the Land Use Ordinance.

13. Former drive in theater and junkyard – Originally built in the 1950s the drive-in has been closed for almost 50 years, the junkyard closed in the 1960s. This use pre-dates the planning commission and land use ordinance.

14. Former fast food drive in and grocery – The operation has been closed for approximately 30 years and is now apparently a duplex. The use obviously pre-dates the planning commission and the land use ordinance.

15. Storage by the airport – The situation surrounding this use is unknown it was not approved by Township Planning Commission and is located in a different surrounding area.

16. Richmond Storage Units – The permit was issued in 1992, not by the Township Planning Commission, only 14 units on 18.8 acres as opposed to 100 units on 1.2 acres. This use was approved by the Cache County Planning Commission.

17. Benson storage units (Ballard) – Permit issued in 1995, not issued by the College-Young Township Planning Commission, only 23 units on 30.46 acres. This use was approved by the Benson Planning Commission.

18. Benson storage units (Ricks) – The permit allows for only 10 Units and the building was a pre-existing farm building that had been converted to storage units before approval was actually obtained. This use was approved by the Benson Planning Commission.

19. Jay R's Auto & Salvage – Permit not issued by the Township Planning Commission.

20. Connerly permit – Permit not issued by the Township Planning Commission, one model home setting on 3.27 acres of property.

21. Junior Miller – Agricultural business, not in the Township boundaries.

22. Lovelands – Located in Nibley city and apparently has been for twenty years. (See Record at pp. 164-67 also found in transcript of Board of Adjustment hearing at pp. 000099-000104; also see Record at p. 362 and pp. 236-38.)

Attempts were made at the Board of Adjustment hearing to explain the differences between the alleged similar uses and the proposed use. (See Record at pp. 164-67.) Without making any inquiry or investigation, the Board apparently made the simplistic leap that all of the alleged uses by Mr. Speth were comparable. Obviously this is not the case. The uses differ in size, scope, and surrounding area. Many have been in existence for years and pre-date the current land use ordinance. Many are permitted uses in the agricultural zone. Additionally, the College-Young Township Planning Commission was not the approving body in any of these examples.

Further, if these other uses were illegally approved, this does not eliminate the Township's ability to enforce the ordinance. The Court of Appeals has held:

Although we defer to the county commission's legislatively delegated discretion in making legal decisions, county officials may not forfeit the power of enforcement by disregarding an ordinance. The custom or practice of certain county officials not to enforce the prohibition of short-term rentals of single family residences does not necessarily mirror the

intent of the legislative body in enacting a zoning ordinance with the language now under scrutiny.

Town of Alta, 836 P.2d at 801, (citations omitted) (emphasis added).

In its order, the District Court mischaracterizes the position of the Planning Commission. The Planning Commission does not assert that all commercial uses are excluded in the agricultural zone. The Planning Commission does assert that for a use to be allowed the proponent must demonstrate that it qualifies as a permitted or conditional use within the zone. The Board appears to rule that any commercial use is allowed in the zone because other commercial uses have been allowed. The position of the Board is clearly illegal.

The Speths provided no evidence to the Commission or the Board that their proposed use was in harmony with the purpose of the Agricultural Zone. In fact, Mr. Speth admitted before the Township Planning Commission that traffic problems interfere with the farming operation, therefore it is reasonable to accept that additional traffic problems for surrounding farmers will be created by the proposed business. (See Record at p. 201.) Because the proposed use is not in compliance with the requirements of the Land Use Ordinance the decision of the Board to overturn the Planning Commission was illegal and should have been reversed by the District Court.

Conclusion

For the foregoing reasons, the Court of Appeals should clarify the holding of Brown as it applies to the decisions of Township Planning Commissions and determine that the standard is arbitrary, capricious, or illegal. Further, even if no deference is given

to the Planning Commission decision, the Court of Appeals should reverse the decision of the District Court and find that the Board acted illegally in overturning the decision of the Planning Commission.

DATED this 22 day of April 2002.

Hallock & Hallock, a Professional Corporation

A handwritten signature in black ink, appearing to read "T. Hallock", is written over a horizontal line.

TODD N. HALLOCK
Attorney for Appellant

CERTIFICATE OF MAILING

I hereby certify that on the 22 day of April 2002, I mailed 2 true and correct copies, postage prepaid, of the above and foregoing BRIEF OF APPELLANT to:

N. George Daines
BARRETT & DAINES
Attorney for Cache County Board of Adjustment
108 North Main Street
Logan, Utah 84321

Dan Van Woerkom
HOLMAN & WALKER
Attorney for Brent Speth and Edna Speth
9537 South 700 East
Sandy, Utah 84070

A handwritten signature in black ink, appearing to read "Dan Van Woerkom", is written over a horizontal line.

ADDENDUM

ADDENDUM 1

17-27-105.5. Manufactured homes.

(1) For purposes of this section, a manufactured home is the same as defined in Section 58-56-3, except that the manufactured home must be attached to a permanent foundation in accordance with plans providing for vertical loads, uplift, and lateral forces and frost protection in compliance with the applicable building code. All appendages, including carports, garages, storage buildings, additions, or alterations must be built in compliance with the applicable building code.

(2) A manufactured home may not be excluded from any zone or area in which a single-family residence would be permitted, provided the manufactured home complies with all local zoning, building code, and subdivision requirements, including any restrictive covenants, applicable to single-family residence within that zone or area. 1996

17-27-106. Limit on plan check fees.

(1) A county may not impose or collect a fee for reviewing or approving the plans for a commercial or residential building that exceeds the lesser of:

- (a) the actual cost of performing the plan review; and
- (b) 65% of the amount the county charges for a building permit fee for that building.

(2) (a) For purposes of this Subsection (2):

(i) "Identical plans" means building plans submitted to a county that:

(A) are substantially identical to building plans that were previously submitted to and reviewed and approved by the county; and

(B) describe a building that is:

(I) located on land zoned the same as the land on which the building described in the previously approved plans is located; and

(II) subject to the same geological and meteorological conditions and the same law as the building described in the previously approved plans.

(ii) "Nominal fee" means a fee that reasonably reimburses a county only for time spent and expenses incurred in:

(A) verifying that building plans are identical plans; and

(B) reviewing and approving those minor aspects of identical plans that differ from the previously reviewed and approved building plans referred to in Subsection (2)(a)(i).

(b) Subject to Subsection (1), a county may impose and collect only a nominal fee for reviewing and approving identical plans. 1999

PART 2**PLANNING COMMISSION****17-27-200.5. Townships.**

(1) As used in this part:

(a) "Township" means a contiguous, geographically defined portion of the unincorporated area of a county, established under this part or reconstituted or reinstated under Subsection 17-27-200.5(2)(e) of this part, with planning and zoning functions as exercised through the township planning commission, as provided in this part, but with no legal or political identity separate from the county and no taxing authority, except that "township" means a former township under Chapter 308, Laws of Utah 1996, where the context so indicates.

(b) "Unincorporated" means not within a municipality.

(2) (a) (i) Subject to Subsection (2)(a)(ii), a county legislative body may enact an ordinance establishing a

township within the unincorporated county or dividing the unincorporated county into townships.

(ii) Before enacting an ordinance under Subsection (2)(a)(i), the county legislative body shall, after providing reasonable advance notice, hold a public hearing on the proposal to establish a township or to divide the unincorporated county into townships.

(b) If 25% of the private real property owners in a contiguous area of the unincorporated county petition the county legislative body to establish a township for that area, the county legislative body shall:

(i) hold a public hearing to discuss the petition;

(ii) at least one week before the public hearing, publish notice of the petition and the time, date, and place of the public hearing at least once in a newspaper of general circulation in the county; and

(iii) at the public hearing, consider oral and written testimony from the public and vote on the question of whether or not to establish a township.

(c) If the county legislative body establishes a township pursuant to a petition, the members of the township planning commission shall be appointed as provided in Subsection 17-27-201(3)(b) to perform the duties established in this part for the township.

(d) Except as provided in Subsection (2)(e), each township shall contain:

(i) in a county of the first, second, or third class:

(A) at least 20% but not more than 80% of:

(I) the total private land area in the unincorporated county; or

(II) the total value of locally assessed taxable property in the unincorporated county; or

(B) at least 5% of the total population of the unincorporated county; or

(ii) in a county of the fourth, fifth, or sixth class:

(A) at least 20% but not more than 80% of:

(I) the total private land area in the unincorporated county; or

(II) the total value of locally assessed taxable property in the unincorporated county; and

(B) at least 25% of the total population of the unincorporated county.

(e) (i) (A) A township that was dissolved under Chapter 389, Laws of Utah 1997, is reinstated as a township under this part with the same boundaries and name as before the dissolution, if the former township consisted of a single, contiguous land area.

(B) Notwithstanding Subsection (2)(e)(i)(A), a county legislative body may enact an ordinance establishing as a township under this part a former township that was dissolved under Chapter 389, Laws of Utah 1997, even though the former township does not qualify to be reinstated under Subsection (2)(e)(i)(A).

(C) A township reinstated under Subsection (2)(e)(i)(A) or established under Subsection (2)(e)(i)(B) shall be subject to the provisions of this part.

(ii) Each planning district established under Chapter 225, Laws of Utah 1995, and each township planning district established under Chapter 389, Laws of Utah 1997, shall continue in existence as a township, subject to the provisions of this part.

(f) (i) After May 1, 2002, the legislative body of each county in which a township that has been reconstituted under Chapter 389, Laws of Utah 1997, or

reinstated under Subsection (2)(e)(i) is located shall review the township and determine whether its continued existence is advisable.

(ii) In conducting the review required under Subsection (2)(f)(i), the county legislative body shall hold a public hearing with reasonable, advance, published notice of the hearing and the purpose of the hearing.

(iii) Each township that has been reconstituted under Chapter 389, Laws of Utah 1997, or reinstated or established under Subsection (2)(e)(i) and its planning commission shall continue in effect, unless, within 90 days after conducting the review and public hearing required under Subsections (2)(f)(i) and (ii), the county legislative body by ordinance dissolves the township and its planning commission.

(g) A township established under this section on or after May 5, 1997, may use the word "township" in its name.

(3) (a) If the county legislative body establishes a township without having received a petition, the county legislative body may:

(i) assign to the countywide planning commission the duties established in this part that would have been assumed by a township planning commission designated under Subsection (3)(a)(ii); or

(ii) designate a planning commission for the township.

(b) (i) If the county legislative body fails to designate a planning commission for a township, 40% of the private real property owners in the area proposed to be included in the township, as shown by the last county assessment roll, may petition the county legislative body to designate and appoint a planning commission for the township.

(ii) If the county legislative body determines that the petition is validly signed by 40% of the private real property owners in the township, as shown by the last county assessment roll, it shall designate and appoint a planning commission for the township.

(4) (a) Except as provided in Subsection (2)(f)(iii), a county legislative body may dissolve township planning commissions created under the authority of this section only by following the procedures and requirements of this Subsection (4).

(b) If 20% of the private real property owners in the county petition the county legislative body to dissolve township planning commissions and to appoint a countywide planning commission, the county legislative body shall:

(i) hold a public hearing to discuss the petition;

(ii) at least one week before the public hearing, publish notice of the petition and the time, date, and place of the public hearing at least once in a newspaper of general circulation in the county; and

(iii) at the public hearing, consider oral and written testimony from the public and vote on the question of whether or not to dissolve township planning commissions and to appoint a countywide planning commission.

(c) (i) If the county legislative body fails to dissolve township planning commissions and to appoint a countywide planning commission when petitioned to do so by private real property owners under this subsection, 40% of private real property owners in the county, as shown by the last county assessment roll, may petition the county legislative body to dissolve the township planning commissions and to appoint a countywide planning commission

(ii) If the county legislative body determines that the petition is validly signed by 40% of private real property owners in the township, as shown by the last county assessment roll, it shall dissolve the township planning commissions and appoint a countywide planning commission.

1997 (2nd S.S.)

17-27-201. Establishment of commission — Appointment or election, term, vacancy, and compensation.

(1) (a) Except as provided in Subsection (1)(b), each county shall enact an ordinance establishing a countywide planning commission for the unincorporated areas of the county not within a township.

(b) Subsection (1)(a) does not apply if all of the county is included within any combination of:

(i) municipalities; and

(ii) townships with their own planning commissions.

(2) The ordinance establishing a countywide planning commission shall define:

(a) the number and terms of the members;

(b) the mode of appointment;

(c) the procedures for filling vacancies and removal from office; and

(d) other details relating to the organization and procedures of the planning commission.

(3) (a) If the county establishes township planning commissions, the county legislative body shall enact an ordinance defining appointment procedures, procedures for filling vacancies and removing members from office, and other details relating to the organization and procedures of each township planning commission.

(b) The planning commission for each township shall consist of seven members who, except as provided in Subsection (3)(e), shall be appointed by:

(i) in a county operating under a form of government in which the executive and legislative functions of the governing body are separated, the county executive with the advice and consent of the county legislative body; or

(ii) in a county operating under a form of government in which the executive and legislative functions of the governing body are not separated, the county legislative body.

(c) (i) Members shall serve four-year terms and until their successors are appointed or, as provided in Subsection (3)(e), elected and qualified.

(ii) Notwithstanding the provisions of Subsection (3)(c)(i) and except as provided in Subsection (3)(e), members of the first planning commissions shall be appointed so that, for each commission, the terms of at least one member and no more than two members expire each year.

(d) (i) Except as provided in Subsection (3)(d)(ii), each member of a township planning commission shall be a registered voter residing within the township.

(ii) (A) Notwithstanding Subsection (3)(d)(i), one member of a planning commission of a township reconstituted under Chapter 389, Laws of Utah 1997, or reinstated or established under Subsection 17-27-200.5(2)(e)(i) may be an appointed member who is a registered voter residing outside the township if that member:

(I) is an owner of real property located within the township; and

(II) resides within the county in which the township is located.

(B) (I) Each appointee under Subsection (3)(d)(ii)(A) shall be chosen by the township

ADDENDUM 2

reinstated under Subsection (2)(e)(i) is located shall review the township and determine whether its continued existence is advisable.

(ii) In conducting the review required under Subsection (2)(f)(i), the county legislative body shall hold a public hearing with reasonable, advance, published notice of the hearing and the purpose of the hearing.

(iii) Each township that has been reconstituted under Chapter 389, Laws of Utah 1997, or reinstated or established under Subsection (2)(e)(i) and its planning commission shall continue in effect, unless, within 90 days after conducting the review and public hearing required under Subsections (2)(f)(i) and (ii), the county legislative body by ordinance dissolves the township and its planning commission.

(g) A township established under this section on or after May 5, 1997, may use the word "township" in its name.

(3) (a) If the county legislative body establishes a township without having received a petition, the county legislative body may:

(i) assign to the countywide planning commission the duties established in this part that would have been assumed by a township planning commission designated under Subsection (3)(a)(ii); or

(ii) designate a planning commission for the township.

(b) (i) If the county legislative body fails to designate a planning commission for a township, 40% of the private real property owners in the area proposed to be included in the township, as shown by the last county assessment roll, may petition the county legislative body to designate and appoint a planning commission for the township.

(ii) If the county legislative body determines that the petition is validly signed by 40% of the private real property owners in the township, as shown by the last county assessment roll, it shall designate and appoint a planning commission for the township.

(4) (a) Except as provided in Subsection (2)(f)(iii), a county legislative body may dissolve township planning commissions created under the authority of this section only by following the procedures and requirements of this Subsection (4).

(b) If 20% of the private real property owners in the county petition the county legislative body to dissolve township planning commissions and to appoint a countywide planning commission, the county legislative body shall:

(i) hold a public hearing to discuss the petition;

(ii) at least one week before the public hearing, publish notice of the petition and the time, date, and place of the public hearing at least once in a newspaper of general circulation in the county; and

(iii) at the public hearing, consider oral and written testimony from the public and vote on the question of whether or not to dissolve township planning commissions and to appoint a countywide planning commission.

(c) (i) If the county legislative body fails to dissolve township planning commissions and to appoint a countywide planning commission when petitioned to do so by private real property owners under this subsection, 40% of private real property owners in the county, as shown by the last county assessment roll, may petition the county legislative body to dissolve the township planning commissions and to appoint a countywide planning commission.

(ii) If the county legislative body determines that the petition is validly signed by 40% of private real property owners in the township, as shown by the last county assessment roll, it shall dissolve the township planning commissions and appoint a countywide planning commission. 1997 (2nd S.S.)

17-27-201. Establishment of commission — Appointment or election, term, vacancy, and compensation.

(1) (a) Except as provided in Subsection (1)(b), each county shall enact an ordinance establishing a countywide planning commission for the unincorporated areas of the county not within a township.

(b) Subsection (1)(a) does not apply if all of the county is included within any combination of:

(i) municipalities; and

(ii) townships with their own planning commissions.

(2) The ordinance establishing a countywide planning commission shall define:

(a) the number and terms of the members;

(b) the mode of appointment;

(c) the procedures for filling vacancies and removal from office; and

(d) other details relating to the organization and procedures of the planning commission.

(3) (a) If the county establishes township planning commissions, the county legislative body shall enact an ordinance defining appointment procedures, procedures for filling vacancies and removing members from office, and other details relating to the organization and procedures of each township planning commission.

(b) The planning commission for each township shall consist of seven members who, except as provided in Subsection (3)(e), shall be appointed by:

(i) in a county operating under a form of government in which the executive and legislative functions of the governing body are separated, the county executive with the advice and consent of the county legislative body; or

(ii) in a county operating under a form of government in which the executive and legislative functions of the governing body are not separated, the county legislative body.

(c) (i) Members shall serve four-year terms and until their successors are appointed or, as provided in Subsection (3)(e), elected and qualified.

(ii) Notwithstanding the provisions of Subsection (3)(c)(i) and except as provided in Subsection (3)(e), members of the first planning commissions shall be appointed so that, for each commission, the terms of at least one member and no more than two members expire each year.

(d) (i) Except as provided in Subsection (3)(d)(ii), each member of a township planning commission shall be a registered voter residing within the township.

(ii) (A) Notwithstanding Subsection (3)(d)(i), one member of a planning commission of a township reconstituted under Chapter 389, Laws of Utah 1997, or reinstated or established under Subsection 17-27-200.5(2)(e)(i) may be an appointed member who is a registered voter residing outside the township if that member:

(I) is an owner of real property located within the township; and

(II) resides within the county in which the township is located.

(B) (I) Each appointee under Subsection (3)(d)(ii)(A) shall be chosen by the township

ADDENDUM 3

planning commission from a list of three persons submitted by the county legislative body.

(II) If the township planning commission has not notified the county legislative body of its choice under Subsection (3)(d)(ii)(B)(I) within 60 days of the township planning commission's receipt of the list, the county legislative body may appoint one of the three persons on the list or a registered voter residing within the township as a member of the township planning commission.

- (e) (i) The legislative body of each county in which a township reconstituted under Chapter 389, Laws of Utah 1997, or reinstated or established under Subsection 17-27-200.5(2)(e)(i) is located shall enact an ordinance that provides for the election of at least three members of the planning commission of that township.

(ii) The election of planning commission members under Subsection (3)(e)(i) shall coincide with the election of other county officers during even-numbered years. Approximately half the elected planning commission members shall be elected every four years during elections held on even-numbered years, and the remaining elected members shall be elected every four years on alternating even-numbered years.

- (f) (i) (A) The legislative body of each county in which a township reconstituted under Chapter 389, Laws of Utah 1997, or reinstated or established under Subsection 17-27-200.5(2)(e)(i) is located shall enact an ordinance appointing each elected member of the planning and zoning board of the former township, established under Chapter 308, Laws of Utah 1996, as a member of the planning commission of the reconstituted or reinstated township. Each member appointed under this subsection shall be considered an elected member.

(B) (I) Except as provided in Subsection (3)(f)(i)(B)(II), the term of each member appointed under Subsection (3)(f)(i)(A) shall continue until the time that the member's term as an elected member of the former township planning and zoning board would have expired.

(II) Notwithstanding Subsection (3)(f)(i)(B)(I), the county legislative body may adjust the terms of the members appointed under Subsection (3)(f)(i)(A) so that the terms of those members coincide with the schedule under Subsection (3)(e)(ii) for elected members.

(ii) Subject to Subsection (3)(f)(iii), the legislative body of a county in which a township reconstituted under Chapter 389, Laws of Utah 1997, or reinstated or established under Subsection 17-27-200.5(2)(e)(i) is located may enact an ordinance allowing each appointed member of the planning and zoning board of the former township, established under Chapter 308, Laws of Utah 1996, to continue to hold office as a member of the planning commission of the reconstituted or reinstated township until the time that the member's term as a member of the former township's planning and zoning board would have expired.

(iii) If a planning commission of a township reconstituted under Chapter 389, Laws of Utah 1997, or reinstated or established under Subsection 17-27-200.5(2)(e)(i) has more than one appointed member

who resides outside the township, the legislative body of the county in which that township is located shall, within 15 days of the effective date of this Subsection (3)(f)(iii), dismiss all but one of the appointed members who reside outside the township, and a new member shall be appointed under Subsection (3)(b) no later than August 16, 1997, to fill the position of each dismissed member.

- (g) (i) Except as provided in Subsection (3)(g)(ii), upon the appointment or election of all members of a township planning commission, each township planning commission under this section shall begin to exercise the powers and perform the duties provided in Section 17-27-204 with respect to all matters then pending that previously had been under the jurisdiction of the countywide planning commission or township planning and zoning board.

(ii) Notwithstanding Subsection (3)(g)(i), if the members of a former township planning and zoning board continue to hold office as members of the planning commission of the township planning district under an ordinance enacted under Subsection (3)(f), the township planning commission shall immediately begin to exercise the powers and perform the duties provided in Section 17-27-204 with respect to all matters then pending that had previously been under the jurisdiction of the township planning and zoning board.

- (4) The legislative body may fix per diem compensation for the members of the planning commission, based on necessary and reasonable expenses and on meetings actually attended.

1998

17-27-202. Organization and procedures.

- (1) A planning commission shall elect a chair from its members as provided by the ordinance establishing the planning commission.

(2) (a) A planning commission may adopt policies and procedures for the conduct of its meetings, the processing of applications, and for any other purposes considered necessary for the functioning of the planning commission.

(b) The legislative body may provide that those policies and procedures be approved by the legislative body before taking effect.

1995

17-27-203. Use of state data.

- (1) A planning commission may obtain access to and use any data and information held by the state or any of its agencies:

(a) that is classified "public"; and

(b) that is classified "protected" if the planning commission's use of the data is lawfully authorized or if the data will be used for a purpose similar to the purpose for which it was gathered.

- (2) Each state official, department, and agency shall:

(a) make any data and information requested by the planning commission available if authorized under the requirements of this section; and

(b) furnish any other technical assistance and advice that they have available to planning commissions without additional cost to the county.

1995

17-27-204. Powers and duties.

- (1) Each countywide or township planning commission shall, with respect to the county or township, as the case may be:

(a) prepare and recommend a general plan and amendments to the general plan to the county legislative body as provided in this chapter;

ADDENDUM 4

(2) The board of adjustment shall meet at the call of the chairperson and at any other times that the board of adjustment determines

(3) The chairperson, or in the absence of the chairperson, the acting chairperson, may administer oaths and compel the attendance of witnesses

(4) (a) All meetings of the board of adjustment shall comply with the requirements of Title 52, Chapter 4, Open and Public Meetings

(b) The board of adjustment shall

(i) keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating that fact, and

(ii) keep records of its examinations and other official actions

(c) The board of adjustment may, but is not required to, have its proceedings contemporaneously transcribed by a court reporter or a tape recorder

(d) The board of adjustment shall file its records in the office of the board of adjustment

(e) All records in the office of the board of adjustment are public records

(5) The concurring vote of at least three members of the board of adjustment is necessary to reverse any order, requirement, decision, or determination of any administrative official or agency or to decide in favor of the appellant

(6) Decisions of the board of adjustment become effective at the meeting in which the decision is made, unless a different time is designated in the board's rules or at the time the decision is made

(7) The legislative body may fix per diem compensation for the members of the board of adjustment, based on necessary and reasonable expenses and on meetings actually attended

1995

17-27-703. Powers and duties.

(1) The board of adjustment shall hear and decide

(a) appeals from zoning decisions applying the zoning ordinance,

(b) special exceptions to the terms of the zoning ordinance, and

(c) variances from the terms of the zoning ordinance

(2) The board of adjustments may make determinations regarding the existence, expansion, or modification of nonconforming uses if that authority is delegated to them by the legislative body

(3) If authorized by the legislative body, the board of adjustment may interpret the zoning maps and pass upon disputed questions of lot lines, district boundary lines, or similar questions as they arise in the administration of the zoning regulations

1992

17-27-704. Appeals.

(1) (a) (i) The applicant or any other person or entity adversely affected by a decision administering or interpreting a zoning ordinance may appeal that decision applying the zoning ordinance by alleging that there is error in any order, requirement, decision, or determination made by an official in the administration or interpretation of the zoning ordinance

(ii) The legislative body shall enact an ordinance establishing a reasonable time for appeal to the board of adjustment of decisions administering or interpreting a zoning ordinance

(b) Any officer, department, board, or bureau of a county affected by the grant or refusal of a building permit or by any other decisions of the administrative officer in the administration or interpretation of the

zoning ordinance may appeal any decision to the board of adjustment

(2) The person or entity making the appeal has the burden of proving that an error has been made

(3) (a) Only decisions applying the ordinance may be appealed to the board of adjustment

(b) A person may not appeal, and the board of adjustment may not consider, any zoning ordinance amendments

(4) Appeals may not be used to waive or modify the terms or requirements of the zoning ordinance

1995

17-27-705. Routine and uncontested matters.

(1) (a) With the consent of the legislative body, the chief executive officer may appoint an administrative officer to decide routine and uncontested matters before the board of adjustment

(b) The board of adjustment shall

(i) designate which matters may be decided by the administrative officer, and

(ii) establish guidelines for the administrative officer to comply with in making decisions

(2) Any person affected by a decision of the hearing officer may appeal the decision to the board of adjustment as provided in this part

1992

17-27-706. Special exceptions.

(1) In enacting the zoning ordinance, the legislative body may

(a) provide for special exceptions, and

(b) grant jurisdiction to the board of adjustment to hear and decide some or all special exceptions

(2) The board of adjustment may hear and decide special exceptions only if authorized to do so by the zoning ordinance and based only on the standards contained in the zoning ordinance

(3) The legislative body may provide that conditional use permits be treated as special exceptions in the zoning ordinance

1991

17-27-707. Variances.

(1) Any person or entity desiring a waiver or modification of the requirements of the zoning ordinance as applied to a parcel of property that he owns, leases, or in which he holds some other beneficial interest may apply to the board of adjustment for a variance from the terms of the zoning ordinance

(2) (a) The board of adjustment may grant a variance only if

(i) literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance,

(ii) there are special circumstances attached to the property that do not generally apply to other properties in the same district,

(iii) granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district,

(iv) the variance will not substantially affect the general plan and will not be contrary to the public interest, and

(v) the spirit of the zoning ordinance is observed and substantial justice done

(b) (i) In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under Subsection (2)(a), the board of adjustment may not find an unreasonable hardship unless the alleged hardship

ADDENDUM 5

a-3. Court of Appeals jurisdiction.

-) The Court of Appeals has jurisdiction to issue all extraordinary writs and to issue all writs and process necessary:
 -) to carry into effect its judgments, orders, and decrees; or
 -) in aid of its jurisdiction.
-) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:
 - a) the final orders and decrees resulting from formal adjudicative proceedings of state agencies or appeals from the district court review of formal adjudicative proceedings of the agencies, except the Public Service Commission, State Tax Commission, School and Institutional Trust Lands Board of Trustees, Division of Forestry, Fire and State Lands, actions reviewed by the executive director of the Department of Natural Resources, Board of Oil, Gas, and Mining, and the state engineer;
 - b) appeals from the district court review of:
 -) adjudicative proceedings of agencies of political subdivisions of state or other local agencies; and
 - 1) a challenge to agency action under Section 63-46a-12.1;
 - c) appeals from the juvenile courts;
 - d) interlocutory appeals from any court of record in criminal cases, except those involving a charge of a first degree or capital felony;
 - e) appeals from a court of record in criminal cases, except those involving a conviction or charge of a first degree felony or capital felony;
 - f) appeals from orders on petitions for extraordinary writs sought by persons who are incarcerated or serving any other criminal sentence, except petitions constituting a challenge to a conviction of or the sentence for a first degree or capital felony;
 - g) appeals from the orders on petitions for extraordinary writs challenging the decisions of the Board of Pardons and Parole except in cases involving a first degree or capital felony;
 - 1) appeals from district court involving domestic relations cases, including, but not limited to, divorce, annulment, property division, child custody, support, parent-time, visitation, adoption, and parenthood;
 - 1) appeals from the Utah Military Court; and
 - j) cases transferred to the Court of Appeals from the Supreme Court.
- 3) The Court of Appeals upon its own motion only and by the vote of a majority of judges of the court may certify to the Supreme Court for original appellate review and determination any matter over which the Court of Appeals has original appellate jurisdiction.
- 4) The Court of Appeals shall comply with the requirements of Title 63, Chapter 46b, Administrative Procedures Act, in its review of agency adjudicative proceedings.

ADDENDUM 6

CHAPTER 2 - DEFINITIONS

2-1 General Rules of Interpretation of Words

For the purpose of this zoning ordinance, certain terms or words used herein shall be interpreted as follows:

- A. The word "person" includes a firm, association organization, partnership, trust, company, corporation, or other legal entity as well as an individual.
- B. The present tense shall include the future tense.
- C. The singular number includes the plural and the plural number includes the singular.
- D. The word "shall" is mandatory and the word "may" is permissive.
- E. The words "used" or "occupied" include the words and meaning of "intended, designed or arranged to be used or occupied."
- F. The word "lot" includes the words "plot, parcel or tract."
- G. The word "buildings" includes the words "structure and constructed improvements" and the meaning shall include other things constructed or erected on the ground, attached to something having location on/in the ground, or requiring construction or erection on the ground.

2-2 Definitions

- A. These definitions are to be used to assist in interpretation of this ordinance.
 - 1. Accessory Use or Building - A use or building subordinate or incidental to the principle use or building on the same lot.
 - 2. Adjacent - Within 300 feet of the property line but not necessarily touching.
 - 3. Agriculture - The cultivation, raising, and harvesting of the products of the soil, including, but not limited to, nurseries, horticulture, animal and poultry husbandry, aquaculture, and fur farms.
 - 4. Alteration - Any change in size, shape, construction, occupancy, character, or use of a building or structure.
 - 5. Apartment - A single dwelling unit within a multiple family dwelling or within a building other than a dwelling and constituting a separate housing unit including at least a bathroom, kitchen area, and living and sleeping accommodations.

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6. Apartment, Accessory - Part of any building which is to be used as a separate or independent housing unit including a bathroom, kitchen area, outside access, and living and sleeping accommodations. The apartment shall be deemed to include a bathroom or kitchen area if wiring, plumbing, or other utility services have been incorporated into the area regardless of whether actual fixtures such as, but not limited to, sinks, toilets, showers, or kitchen or other appliances have been actually affixed or installed.
7. Automobile Graveyard - Any establishment or place of business which is maintained, used or operated, for storing, keeping, buying or selling wrecked, scrap, ruined or dismantled motor vehicles or motor vehicle parts.
8. Automotive Maintenance or Repair Service - The general maintenance, repair, replacement of parts, rebuilding, reconditioning, or painting of vehicles as a business enterprise.
9. Automotive Service Station - Any premises used for selling or supplying gasoline and oil, tires, and/or automobile accessories and services for automobiles.
10. Basement - A story partly underground. A basement shall be counted as a story for purposes of height measurement if its height is one-half (1/2) or more above the average finished grade of the lot.
11. Billboard - 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
12. Buffer Area - An area bordering any property and designated as an area reserved for plantings, fencing, or other similar screening devices for the purpose of creating a transition area wherein adjoining uses do not detract from one another.
13. Building - Any structure used or intended for supporting or sheltering any use or occupancy.
14. Building Area - That area within a lot and bounded by required yards and setbacks.
15. Building Height - The vertical distance from the average finished grade to the highest point of the coping of a flat roof, or to the deck line of a mansard roof, or the height of the highest gable of a pitched or hipped roof.

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16. Building, Main - The principal building or one of the principal buildings upon a lot or the building or one of the principal buildings housing the principal use upon a lot.
17. Building, Public - A building owned and operated by a public agency of the United States of America, or the State of Utah or any of its subdivisions, Cache County, or any municipality within the county.
18. Building, Setback Line - The line nearest the street and across a lot establishing the minimum open space to be provided between buildings and specified structures and street lines.
19. Building Site - That part of a lot upon which a building has been or is proposed to be erected.
20. Carport - A private garage not completely enclosed by walls or doors. For the purposes of this ordinance, a carport shall be subject to all of the regulations prescribed for a private garage.
21. Car Wash - A building, or any portion thereof, containing facilities for washing automobiles.
22. Cemetery - A lawful place for burying the dead.
23. Change of Use - A discontinuance of an existing use and the substitution thereof of a use of a different kind or class.
24. Child Care Center - An establishment for the care and/or instruction, whether or not for compensation, of six (6) or more children other than members of the family residing on the premise.
25. Church - A building for public worship together with customary accessory uses and buildings.
26. Club, Private - Buildings and premises used for and operated by a non-profit corporation, the use of such facilities being primarily restricted to members and their guests.
27. Court - An open, unoccupied space, other than a yard, on the same lot with a building or group of buildings and which is bounded on two or more sides by such building or buildings.
28. Coverage - That percentage of the lot area covered by the combined area of all buildings or structures on the lot.
 - a. buildings and structures;
 - b. patios;

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- c. decks;
 - d. streets, roads and sidewalks;
 - e. recreational courts; and
 - f. any other areas as defined herein.
29. Dairy - A commercial establishment for manufacture or processing of dairy products.
30. Dairying - The keeping of milk producing animals, offspring and breeding stock primarily for the production of milk, the processing of milk products which are produced on the premises, and accessory buildings related to the above activities.
31. Develop - To convert a tract of land into an area suitable for residential, commercial, or other nonagricultural uses.
32. Dwelling - Any building, or part thereof, occupied or used in whole or in part, as the residence or living quarters of one or more persons, permanently or temporarily, continuously or transiently, with cooking and sanitary facilities.
33. Dwelling, Single-Family - A building arranged or designed to be used for and containing one dwelling unit.
34. Dwelling, Multiple-Family - A building arranged or designed containing more than one dwelling unit.
35. Dwelling Unit - A building or portion thereof designed for residential occupancy by one family, having all rooms of the unit accessible from within the unit, with complete housekeeping facilities for the exclusive use of the occupant family, including only one facility for the cooking and preparation of food.
36. Family - One or more persons related by blood, marriage, or adoption, occupying a dwelling unit and living as a single housekeeping unit, exclusive of renters or boarders.
37. Family Food Production - The use of a property containing a dwelling for the keeping of poultry or livestock for the ultimate consumption thereof by the occupants of the property and not for commercial purposes.
38. Farm Building - A structure assembled and/or used for an agricultural purpose.
39. Feed Lot - Premises where livestock are kept in corrals or yards for commercial purposes at a density which permits reduced movement and

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where feed is provided for the purpose of fattening or maintaining the condition of the livestock prior to their shipment to a stockyard, slaughter house, or other commercial destination.

40. Frontage - The portion of a lot abutting a street or public right-of-way.
41. Front Lot Line - The side of the lot along which frontage is measured. In the case of corner lots, the front lot line may be measured along either street bounding the corner lot.
42. Fur Farm - Property used for the raising, breeding, or production of furbearing animals.
43. Garage - A building for the storing of vehicles.
44. Garage, Public - A building or portion thereof or garage designed or used for the servicing, repair, equipping, hiring, selling, or storing of vehicles for compensation.
45. Grade - The lowest point of elevation of the finished surface of the ground, paving or sidewalk within the area between the building and the property line or, when the property line is more than 5 feet from the building, between the building and a line 5 feet from the building.
46. Gravel Pit or Quarry - An open excavation or pit from which gravel or other stones or earthen materials are obtained by digging, cutting, or blasting.
47. Habitable Space - That portion of space or area in a building used for living, sleeping, eating, and/or cooking purposes.
48. Home Enterprise - An occupation conducted entirely within a dwelling unit or permitted accessory buildings by members of the family residing on the premises and which occupation is clearly incidental and secondary to the use of the premises as a dwelling.
49. Hospital - A building or buildings where comprehensive medical or surgical care and treatment and related services are provided on an inpatient and outpatient basis.
50. Hospital, Animal or Veterinarian - Any structure or premises used primarily and essentially for the medical care of animals.
51. Household Pets - Animals or fowl ordinarily permitted in a house and kept for pleasure and not for commercial purposes.

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52. Husbandry - The cultivation or production of plants and animals, including livestock, and/or the by-products thereof.
53. Junk - Waste, discarded, scrap, salvage, or old materials, equipment, or other such items including, but not limited to, junked, dismantled, or wrecked vehicles, farm equipment, or parts thereof.
54. Junkyard - Any place, premises, or business maintained, used, or operated for the storing, keeping, buying, or selling of junk; or for the maintenance or operation of an automobile graveyard; or materials scrap yard; or more than three unlicensed, inoperable motor vehicles.
55. Kenel - Any premises where 4 or more dogs of at least 4 months of age are kept.
56. Landscaping - An improvement of a lot with grass, shrubs, bushes, plants, ground cover, trees and complimentary structural landscape features.
57. Livestock - Domestic animals including, but not limited to, cattle, horses, sheep, pigs, or goats raised for home or commercial use.
58. Living Area - That area of a dwelling unit enclosed and protected from the elements, including interior halls, closets, basements, utility and storage areas, but excluding garages and carports, screened porches, unenclosed areas, cellars, and attics.
59. Logging - The work or business of felling and trimming trees and transporting the logs.
60. Lot - A parcel of land occupied or to be occupied by a main and accessory buildings together with such yards, open spaces, lot width, and lot area as are required by this ordinance.
61. Lot Area - The horizontal land area of a lot computed in square feet or acres.
62. Lot, Corner - Any lot situated at the intersection of two streets and abutting such streets on two adjacent sides.
63. Lot Coverage - The total area in square feet of all buildings and structures located on a lot.
64. Lot, Flag - A lot having no frontage on a street.
65. Lot Frontage - The property line of a lot abutting a street or streets.

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66. Lot Measurement - The depth of a lot should be considered to be the distance between the midpoints of straight lines connecting the four most points of the side lot lines in front and the rear most points of the side lot lines in the rear. The width of a lot shall be considered to be the average distance between straight lines connecting front and rear lot lines at each side of the lot, measured at the required setback line.
67. Lot of Record - A lot whose existence, location, and dimensions have been legally registered or recorded in a deed or on a plat.
68. Manufactured/Modular House - A structure transportable in one or more modules and designed to be used as a dwelling with a permanent foundation and footing when connected to required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The house shall be attached permanently to an approved foundation and footing, provided the units are manufactured after June 1976 and stamped approved by HUD.
69. Manufacturing - Any activity involving the making or assembling of any commodity including the assembly, packaging, canning, bottling, or processing of any item.
70. Medical and Dental Clinic - Premises where medical or dental professions are practiced on an outpatient basis.
71. Mobile Home - A vehicular transportable structure built on a chassis in one or more sections with plumbing, heating, and/or electrical systems contained within the structure, which, when erected on site and with or without a permanent foundation, is used or could upon connection to utilities be used, as a single-family dwelling or for family purposes. Such units which are manufactured prior to June, 1976 or which do not have a stamp of approval by HUD under the provisions and standards of the National Manufactured Home Construction and Safety Standards Act of 1974, shall not be considered a mobile home under this zoning ordinance.
72. Mobile Home Park - A tract of land under single ownership in which two or more mobile home spaces are leased or used to accommodate mobile homes for residential purposes. For the purposes hereof, a mobile home space shall be defined as a specific area of land within a mobile home park designed to accommodate one mobile home.
73. Mobile Home Subdivision - A subdivision designed and intended for residential use in which lots are intended to be occupied exclusively by mobile homes and are individually owned. For the purposes hereof, a

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mobile home lot shall mean a lot within a mobile home subdivision designed and used for the accommodation of one mobile home.

74. Natural Waterways - Those areas, varying in width, along streams, creeks, springs, gullies, and washes which are natural drainage channels as are determined by the Zoning Administrator.
75. Non-conforming Building - A building or structure, or any portion thereof, lawfully existing at the time this ordinance became effective, which does not conform to all of the height, area, and yard regulations prescribed in this ordinance in the zone in which it was located.
76. Non-conforming Lot - A lot of record, being a parcel of land with a separate legal description and property tax identification number at the time of the adoption of this ordinance which did not at that time meet the lot area or lot width requirements of this ordinance. (A lot, the size or shape of which has been diminished or changed by sale or lease since August 20, 1970, is not a non-conforming lot as defined herein for the purposes of this and the previous ordinance.)
77. Non-conforming Use - A use which lawfully was made of a building or land at the time the previous ordinance became effective in August 1970 and which does not conform with the use and regulations of the zone in which it is located.
78. Nursery or Greenhouse - Any lot, structure, or premises where plants are grown and/or sold.
79. Occupy - To possess, take, or enter into possession, including, but not limited to, to inhabit by people or to use for storage or business purposes.
80. Open Space - Land area not occupied by buildings.
81. Parking Lot - An open area, other than a street, used for the temporary parking of automobiles and available for public use or as an accommodation for patrons.
82. Parking Space - A space within a building, lot, or parking lot for the parking or storage of one automobile.
83. Parks - Land set aside for public recreational use.
84. Permanent Use - A use of land or building intended to last for an indefinite period.

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85. Physical Boundaries - Topographic or other physical conditions which are included in a parcel of land and which may be considered to constitute a barrier sufficient to break a piece of ground into two or more separate and distinct lots. (Physical boundaries may include but not be limited to: public streets, rights of ways established prior to August 20, 1970, railroad tracks, and natural waterways but shall not include cliffs or irrigation canals or ditches without deeded right-of-ways established since August 20, 1970.)
86. Premises - Any lot, parcel, plot, or tract of land together with any buildings or structures thereon.
87. Public Use - The use of any land, water, or building by any public body, or for a public service or purpose.
88. Rear Yard - Open space occupied other than by permitted accessory buildings or uses, extending from the rear building line of a principal building to the rear lot line.
89. Recreation Camp - A privately owned place where temporary lodging in tents, huts, or other shelter is available.
90. Recreation Dwellings - Dwellings, whether temporary or permanent, the use of which is seasonal, temporary, or recreational.
91. Recreation Grounds, Public - Publicly owned areas designated for use by the public for recreational purposes.
92. Recreational Vehicle - A vehicular unit primarily designed and/or used as temporary living quarters for recreational, camping, or travel use which either has its own motor power or is mounted on or drawn by another vehicle.
93. Restricted Lot - A parcel of land severed or placed in separate ownership after August 20, 1970, and which does not meet all area, width, yard and other requirements of this ordinance for a lot; or a parcel of land which does meet all the requirements of this ordinance for a lot, but the creation of which has caused any adjacent lot from which it was severed to be insufficient in area, width, setback, yard, or coverage requirements.
94. Right-of-Way - A recorded or lawfully established right of ingress and egress.
95. R V Park - Any area or tract plan used or designed to accommodate two or more trailers.

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96. Set-Back - The horizontal distance from a lot line to the part of a building nearest to such lot line, whether front, rear, or side.
97. Sign - Any visible means of display, advertising, or other depiction of any name, identification, image, logo, demonstration, display, information, or illustration affixed to, painted on, or otherwise placed directly or indirectly upon any building, structure, fence, natural feature, or land which directs attention to an object, product, place, activity, facility, service, event, attraction, occupant, person organization, or business and which is visible from any street, right-of-way, sidewalk, park, or other public or private property.
98. Sign, Business - A sign which directs attention to a use conducted, a commodity sold, or a service performed or provided, whether on or off the premises upon which the sign is located, or which directs traffic to a business whether located on or off the premises upon which the sign is located.
99. Sign, Freestanding - A sign which is supported by one or more columns, uprights, or braces in or upon the ground, and having a minimum clearance height from the ground plan.
100. Sign, Ground - A sign supported by uprights, braces, or foundations placed upon or in the ground and not attached to any building. Ground signs include pole signs.
101. Sign, Surface Area - The surface area of a sign shall include the entire area within the periphery of a regular geometric form, or combinations thereof, comprising all of the display area of the sign but excluding structural support elements of the sign. In the case of double faced signs, where both faces contain the same exact display, only one face shall be counted toward the total surface area of the sign. However, where the display on each sign's face differ then each sign shall be measured towards the total aggregate surface area.
102. Sign, Wall - A sign mounted flat against a building or other structure and attached to the exterior of that building or structure and projecting no more than 12 inches from the building or structure and extending substantially parallel to it.
103. Stable - Private - A detached accessory building for the keeping of horses owned by the occupants of the premises and not kept for remuneration, hire, or sale.
104. Stable - Public - A stable other than a private stable and generally open to the public.

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105. Story - That portion of a building included between the upper surface of a floor or average grade, finished or unfinished, open or enclosed, and the upper surface of the floor or roof next above.
 106. Street or Road - A public thoroughfare which affords principal means of access to abutting property.
 107. Structural Change - Any change in supporting members of a building, such as bearing walls, columns, beams, or girders, or any substantial change in the roof or in the exterior walls.
 108. Temporary Use - A use of land or building intended to last for a limited, definite period.
 109. Trailer - A vehicle or camper, with or without motive power or wheels, designed to be used for sleeping quarters. A trailer does not include mobile homes.
 110. Use - Any activity, function, or purpose to which a parcel of land or building is put and shall include the words "used", "arranged" or "occupied" for any purpose.
 111. Use - Principal - The main use establishing the reason and basis for a building or structure and comprising the general activity for which such building and/or property is used.
 112. Utilities - Installation and lines for water, sewer, gas, telephone, cable television and electrical systems from off premises.
 113. Width - The distance between the side lot lines measured at the front set back line.
 114. Zone or Zoning District - An area assigned a specific classification of uses and structures pursuant to this zoning ordinance.
- B. Any word used in this ordinance and not defined herein will be the literal meaning of the word or the accepted definition in Webster's Dictionary.

ADDENDUM 7

CHAPTER 4 - AGRICULTURAL ZONE (A)

4-1 Purpose

To ensure that residential and other development in the unincorporated county area occurs in such a way as to minimize detrimental impact on agriculture, at the least cost to the taxpayer, and in harmony with the intent of the Cache County Policy Plan as enacted on March 29, 1958, and subsequent modifications.

4-2 Permitted Uses

- A. Agriculture.
- B. Livestock, poultry, honey bees and aquaculture.
- C. Home enterprise.
- D. Accessory buildings and uses.
- E. Farm buildings.
- F. Dairying, fur farms, livestock feed yards, corrals, silage bunkers, manure pits, chicken coops, and such similar uses.
- G. Single family dwellings on a lot which has a minimum area of 10 acres and a minimum width (frontage) of 100 feet; and was created and of public record and contained the required area and width prior to July 6, 1978.
- H. Single family dwellings on severed lots subject to the following conditions. The lots severed must:
 - 1. Meet the minimum area, width, and yard regulations set forth in Section 4-4 at the time of severance.
 - 2. Include a single family dwelling which existed and was of and documented by public record prior to August 20, 1970. A single family dwelling shall be permitted on the remaining lot provided that the remaining lot meets the minimum area, width, and yard regulations set forth in Section 4-4.
- I. Stands for sale of produce grown on the premises.
- J. Wholesale nurseries, greenhouses and sod farms

4-3 Conditional Uses

- A. Single family dwelling that does not qualify as a permitted use
- ~~B.~~ Subdivisions: residential, minor, mobile home.
- C. Condominium.
- D. Airport.
- E. Cemetery.
- F. Country Club.
- G. Gravel Pit.
- H. Sanitary landfill.
- I. Riding stable open to the public.
- J. Public utilities.

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K. School.

L. Church.

M. Shooting range.

N. Mobile home used as a permanent dwelling subject to the following conditions:

1. The unit qualifies as a "Mobile Home" as defined by this ordinance.
2. The necessary building permits are obtained to assure that site preparation, foundations, installation, roof loads, and so forth, meet the manufacturer's installation instructions and the appropriate codes.
3. The mobile home is recorded with the County Recorder as being "permanently affixed" to real estate.
4. It has approved permanent entrances and exits which are installed according to the adopted building codes.
5. All additions, enlargements, or remodels to mobile homes shall conform to the Uniform Building Codes and cannot be undertaken unless building permits have been issued and all adopted uniform standards met.
6. There shall be not more than one mobile home used as a permanent dwelling on any parcel.

O. Mobile home on a temporary basis subject to the following:

1. The mobile home must be used during residential construction on a temporary basis to provide housing during the construction of an approved permanent dwelling on the construction site provided that the mobile home be removed within 90 days of the occupancy of the permanent dwelling unless approval for any other use is given.
2. The conditional use permit may be renewed by the Planning Commission upon the request of the owner if construction of the home is underway with a valid, current building permit and the planning department determines that circumstances warrant a renewal. Under no circumstances shall the permit be renewed for a total period that exceeds three years.
3. The mobile home must have a minimum 14 ft width.
4. The mobile home must be placed, connected and used in accordance with all Health Department and County regulations with respect to water, drainage, and sanitation disposal as well as all applicable building and safety codes.

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5. No mobile home may be placed or moved onto the property as a substitute for another mobile home nor may any mobile home be relocated on the lot without the approval of the Planning Commission.
- P. Mobile home used as a secondary dwelling to provide a residence for an agricultural worker, who is the head of the occupying family, and his or her immediate family subject to the following conditions:
 1. The occupying worker shall be a qualified, bonafide agricultural worker who is primarily engaged in a permitted agricultural activity on the premises where the mobile home is placed during the period of residency. This shall be certified in writing by the property owner.
 2. A building permit is obtained.
 3. No additions other than temporary porches or entrance ways are built on the mobile home.
 4. The premises on which the mobile home is located shall be maintained in a clean, orderly, and sanitary condition. The accumulation of junk or other unsightly material shall be prohibited. The mobile home shall be kept in a safe and sanitary condition.
 5. There shall be not more than one mobile home used as a secondary dwelling for an agricultural worker on any one parcel.
 6. The mobile home shall be set back at a distance equal to or greater than the primary dwelling. (If topographical conditions warrant, this requirement may be varied by the Planning Commission.)
 7. The conditional use permit for this conditional use shall be for a term of four years at which time the owner must renew his application and execute a new certificate as specified in Subsection 1.
 8. The mobile home must be placed, connected and used in accordance with all Health Department and County regulations with respect to water, drainage, and sanitation disposal as well as all applicable building and safety codes.
 9. No mobile home may be placed or moved onto the property as a substitute for another mobile home nor may any mobile home be relocated on the lot without the approval of the Planning Commission.
 10. If the above conditions are not met the conditional use permit will be revoked.

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11. If at any time the property owner desires to designate the mobile home located on the property as a permanent structure then the mobile home must be converted to a permanent dwelling and otherwise qualify as a permanent family dwelling within the provisions of this zoning ordinance including complying with lot restrictions, subdivision requirements and all other requirements for a family dwelling.

Q. Mobile home used on an emergency basis to provide temporary housing for a period of not more than one (1) year for members of the immediate family where an emergency situation exists which requires special attention; provided that all requirements are met as described in 4-3.P.2. thru 11. and:

1. At the end of one year, if the owner desires to maintain the mobile home on the property then the mobile home must be converted to a permanent dwelling and otherwise qualify as a permanent single family dwelling within the provisions of the zoning ordinance including, but not limited to, compliance with lot restrictions, subdivision requirement, and all other requirements for a single family dwelling.
2. Failure to complete construction of a residence is not an "emergency" for the purposes of this section.

R. Retail nurseries and greenhouses.

S. Bed and Breakfast Inns.

T. Accessory apartment subject to the following conditions:

1. An accessory apartment is part of an existing single family dwelling which has been designated, built, or converted to accommodate an independent housing unit.
2. The apartment must be approved by the Department of Health and County Building Department with respect to sanitation, water, drainage, and all applicable health codes and requirements and must also comply with all applicable building and safety codes including the obtaining of a building permit.
3. There may be only one accessory apartment on a lot.

U. Public recreation grounds and facilities.

V. Mining or oil, gas, or mineral extraction or treatment of operations or facilities.

W. Go-cart and recreational facilities.

X. Other uses which are consistent with the purpose of this zone and which are approved upon those specific conditions determined by the Planning Commission to be reasonable and necessary under the circumstances and

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such uses shall be in harmony with the character and intent of the agricultural zone.

4-4 Regulations

A. Height

No building shall be erected to a height greater than 35 feet unless a conditional use permit is granted by the Planning Commission.

B. Minimum Area

The greater of 1/2 acre or the minimum area required by the Health Department.

C. Minimum Width and Frontage - 100 feet.

D. Minimum Yard Setbacks

1. Front - 30 feet unless a greater front yard setback is required by the Planning Commission.
2. Side - 12 & 12 feet.
3. Rear - 30 feet.

E. Side Yards - Main buildings other than dwellings shall have minimum side yard of 20 feet and the total of the two side yards shall be 40 feet. Private garages and other accessory buildings located at least 10 feet behind the main building may have a side yard of three feet, except the street side yard of a corner lot shall be a minimum of 20 feet for main and accessory buildings.

F. Rear Yards - Private garages and accessory buildings located at least 10 feet behind the main buildings may have a rear yard of three feet provided that on corner lots rearing on the side yard of another lot, the minimum rear yard for all buildings shall be 10 feet.

G. Distance Between Buildings - No building, structure, or enclosure housing animals or fowl shall be constructed closer than 100 feet to a well or dwelling on the same or adjacent lot (except those exempt from the Uniform Building Code).

H. Exceptions - Storage sheds for grain or feed, even though being the only or first building constructed upon the property, may be deemed accessory buildings and not main buildings provided that the location, plans, and specifications for such sheds are approved by the Planning Commission and

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that such buildings are designed and built such that there shall be no drainage of water from the building or caused by said building to run upon any adjacent properties.

4-5 Agricultural Construction Exception

The requirements of this ordinance as to minimum lot area or lot width shall not prevent the construction of structures used for agricultural or livestock purposes on a parcel of land in the agricultural zone as long as side yards, setback and coverage requirements are maintained, unless it is a restricted lot.

4-6 Waterways and Wetlands, Protection Requirements

A. Purpose

In order to protect existing water quality, to prevent further degradation of water quality, to lessen the impact and damage to persons and property caused by floods in areas frequently subject to flooding and to protect important wildlife habitat areas, land uses subject to this chapter shall be set back from waterways, canals, ditches, drains, lakes, reservoirs, or wetlands. The Cache County Planning Commission shall require such management practices or waste prevention facilities as are reasonably necessary to prevent pollution of public waters and that are in compliance with the Corps of Engineers and State Wet Land regulations.

B. Definitions.

1. Animal Unit - the number of animals equivalent to one mature beef cow, based on the daily output (in pounds) of manure.
2. Concentrated Animal Confinement - ten or more animal units confined in an area with 200 square feet or less per animal unit.
3. Ditch - any natural or manmade drainage contained on more than one property.
4. High Water Mark - the line of the shore established by the fluctuations of water and indicated by physical characteristics, such as, a clear, natural line impressed on the bank; shelving; changes in the character of the soil; destruction of terrestrial vegetation; the appropriate means that consider the characteristics of the surrounding areas.
5. Modifications to Wetlands - activities, such as dredging, draining, or filling, which result in a loss of, or reduction in, the quality or quantity of wetlands.

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6. Setback Distance - the distance between the high water mark of a waterway, lake, or reservoir (or the edge of a canal, ditch, drain, or wetland) and a use or structure regulated by this chapter.
7. Waterway - a perennial or intermittent stream or river.
8. Wetland - those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include marshes, sloughs, bogs, and similar areas.
9. Wetland, Class A - those wetlands located inside the 100-year floodplain as identified on the Cache County Flood Hazard Boundary Map (dated 9/82).
10. Wetland, Class B - those wetlands subject to U. S. Army Corps of Engineers Section 404, Dredge and Fill Permits, as identified on the Cache County Section 404 Wetlands Map (dated 9/82).

C. Uses Not Subject to this Chapter

Cropland, woodland, pasture, grazing, and natural vegetation uses are not regulated by this Chapter.

D. Setback Distances

1. The applicant shall demonstrate to the County prior to the time his building permit is issued that his waste management system will minimize any wastes from entering a waterway; canal, drain, or ditch; lake or reservoir; wetland or water table; consistent with applicable federal, state, and local laws and regulations.
2. If the applicant questions the determination of the Planning Office, he may apply to the County Planning Commission for their determination of the adequacy of the system.

E. Modifying Regulations

In certain situations, modification of existing wetlands may be permitted in order to allow development or use of a particular site to occur.

1. Class A Wetlands - Wetlands in the 100-year floodplain may not be modified except in exceptional situations where the modification is reasonable and appropriate and will not be unduly detrimental to the health and welfare of residents of Cache County. Wetlands in the 100-

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year floodplain reduce flood damage in downstream areas by reducing peak velocity and volume of floodwater.

2. Class B Wetlands - Wetlands subject to 404 Dredge and Fill Permits may be modified, providing a 404 permit is secured from the U. S. Army Corps of Engineers.
3. Notice of modifications to any mapped wetland type must be given to the Cache County Planning Commission which may make appropriate recommendations.

ADDENDUM 8

CHAPTER 24 - BOARD OF ADJUSTMENT

24-1 Organization

- A. **Designation.** There shall be a County Board of Adjustment which shall be designated as the "Cache County Board of Adjustment."
- B. **Members.** The Board of Adjustment shall consist of five (5) members to be appointed by the County Executive with the advice and consent of the Cache County Council.
- C. **Chairman of Planning Commission.** The Chairman of the Planning Commission shall be a member of the Board of Adjustment.
- D. **Term.** Members shall serve for a term of five (5) years; provided, that the term of one member shall expire each year.
- E. **Removal.** Any member of the Board of Adjustment may be removed for cause by the County Council upon written charges and after a public hearing.
- F. **Vacancy.** Any vacancy occurring on the Board by reason of death, resignation, removal, or disqualification shall be promptly filled by appointment by the County Executive with the advice and consent of the County Council for the unexpired term of such member.
- G. **Associate Members.** The County Executive may appoint associate members to the Board of Adjustment with the advice and consent of the County Council subject to the following:
 - 1. An associate member who is called upon by the Chairman of the Board shall have the authority to act as a regular member during such time that a regular member is temporarily unable to act because of absence, illness, a conflict of interest, or any other cause creating a temporary disability, or conflict of interest for board members.
 - 2. When called upon to take the place of a regular member, the associate member may vote on any matter placed before the Board.
 - 3. In the event that there is more than one (1) associate member, the Chairman shall have the discretion of designating which associate member shall sit at a specific meeting for a regular member who is temporarily unable to act.
 - 4. In the event that the regular member is able to attend the meeting after it has commenced, the regular member shall be entitled to take his seat and the associate member shall step down; provided, however, that any actions taken by the associate member up to that point shall be deemed valid.

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- H. Rules. The County Council may adopt rules by resolution or ordinance to govern the organization, procedure, and jurisdiction of the Board of Adjustment and the Board of Adjustment may itself adopt supplemental rules of procedure not inconsistent with this ordinance, or the laws of the state of Utah.

24-2 Special Meetings

A. Scheduling and Notice

The Board of Adjustment, in its discretion and upon a vote of the majority of members present at a regular meeting or upon receipt of signed consents of a majority of the board, may schedule a special meeting; provided, that notice be given as required by this ordinance and state law and that the meeting be a public meeting.

B. Application and Fee

Any person desiring to have a matter considered at a special meeting may apply for approval to be heard and shall pay a special non-refundable meeting scheduling fee as determined by the fee schedule adopted by resolution or ordinance of the County Council in addition to the regular application fee. The special meeting fee may be amended by resolution of the County Council.

24-3 Procedures

- A. Quorum. A quorum shall consist of four (4) or more members present.
- B. Open Meetings. All meetings of the Board of Adjustment shall be open to the public.
- C. Minutes and Records. The Board shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and the Board shall keep records of its examinations and other official actions.
- D. Applications. Applications for matters to be brought before the Board of Adjustment shall be submitted on forms provided by the Office of the Zoning Administrator and shall be submitted to the Office of the Zoning Administrator by the owner or owners of the subject property.
- E. Fee. The applicant for any matter to be brought before the Board of Adjustment shall pay a fee as designated by a schedule of fees duly adopted by resolution or by the County Council.
- F. Findings of Fact

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1. Every decision of the Board shall be based upon specific findings of fact which shall be supported by the record of the Board proceedings. The findings must be written and specific and copies thereof given to the Office of the Cache County Zoning Administrator and to the applicant.
2. The following findings of facts must be made with respect to each Board decision:
 - a. That the relief requested specifically falls within the provisions of this chapter.
 - b. That the relief requested will not authorize a use other than those uses specifically enumerated for the zone in which the property is located.
 - c. That the relief requested is necessary in order for the property to yield a reasonable use or income as compared to adjacent conforming property in the same zone.
 - d. That the relief requested will not substantially injure, either permanently or temporarily the appropriate use of adjacent non-conforming property in the same zone.
 - e. That the relief requested will not alter the essential character of the zone in which the property is located.
 - f. That the relief requested will not weaken the general purposes of this ordinance and will be in harmony with the purposes of this ordinance.
 - g. That the relief requested will not adversely affect the public health, safety or welfare.
 - h. That special circumstances attached to the property do not generally apply to the other property in the same zone and because of said special circumstances, the property is deprived of privileges possessed by other properties in the same zone.
 - i. That the owner has not created the hardship for which relief is requested by deed restriction, conveyance, private agreement, subdivision, or any other actions.
 - j. That the relief requested does not allow a use which is a use specifically provided for in other zones.

- k. That if the relief requested is a variance, the requirements of Section 24-4.D. have been met and the property qualifies under the provisions of that Section for a variance.

G. Notice

Notice is to be given of all meetings and public hearings in the manner set forth in Chapter 29 of this ordinance.

24-4 Powers, Duties, and Limits

The Board of Adjustment shall have the powers and duties to hear, consider, and act upon the following and be subject to the minutes set forth hereafter:

A. Interpretation

To interpret the zoning map subject to the following rules of interpretation:

1. Except as provided otherwise, a zone symbol shown within boundaries on the official zoning map indicates that zone regulations pertaining to the identified zone extends throughout the entire area surrounded by the boundary line.
2. Boundaries which appear to follow the center lines of dedicated streets, roads, railroad tracks, streams, canals or other bodies of water, or rights-of-way shall be construed as following such center lines as they exist on the ground.
3. Boundaries which appear to follow lot, boundary, or property lines shall be construed as following such lines as they exist on the ground; provided however, that where such lot, boundary, or property lines are adjacent to a dedicated street, road, or right-of-way, the boundaries shall be construed as running to the middle of such street, road, or right-of-way.
4. Boundaries which appear to follow city or county limits shall be construed as following such city or county limits as they exist on the ground.
5. Boundaries indicated as parallel to or extensions of land or water features shall be construed as being parallel to or extensions of such features.
6. Distances not officially indicated on the zoning map shall be determined by the scale of the map on each page of the zoning map.

7. In all other cases, interpretations shall be in accordance with the intent and purpose of these zoning regulations.

B. Lot Line Dispute

To pass upon disputed questions of lot lines or zone boundary lines solely as they may arise in the administration of the zoning ordinance; provided, however, that the Board of Adjustment may not rule as to validity of title, legal descriptions, surveys, or matters as they relate between adjacent or claiming landowners or parties of interest.

C. Temporary Building

To permit a temporary building for commercial, industrial, or residential use; provided, however, that such building is incidental to the permitted use and that the permit for the temporary building shall be for a period not exceeding one (1) year and shall be renewable upon application and after approval of the Board of Adjustment for one additional year.

D. Variance

1. To grant a variance upon the condition that the Board specifically finds that:
 - a. The specific property for which relief is sought has the same legal description at the time of application as it did on August 20, 1970; and that
 - b. On or before August 20, 1970, the specific property:
 - (1) had exceptional narrowness, shallowness, or shape; or
 - (2) had exceptional topographical conditions; or
 - (3) had an other extraordinary or exceptional existing situation or condition; and that
 - c. Because of the conditions or situation as found to exist under the foregoing sub-paragraph, the strict application of any regulation enacted under this ordinance would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon, the owner of such property; and that
 - d. The granting of a variance:
 - (1) would relieve such difficulties; and

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- (2) would not result in a substantial detriment to the public good; and
 - (3) would not substantially impair the intent and purpose of this ordinance or any adopted county master plan or policy.
2. A variance is authorized only for height, area, and size of structures, yards, and open space. Establishment or expansion of a use otherwise prohibited in this zone shall not be allowed by variance. No non-conforming use of adjacent property or structures in the same zone nor any permitted use of lands or structures in any other zone shall be considered grounds for the granting of a variance.

E. Appeals

To hear appeals as follows, subject to the provisions of Chapter 27 of this zoning ordinance:

1. Appeals may be taken to the Board of Adjustment by any officer, department, or board of the County affected by the decision of an administrative officer or agency based on or made in the course of the administration or enforcement of the provisions of the land use ordinance.
2. Appeals may be taken to the Board of Adjustment by any person affected by a decision made by the Planning Commission in regards to provisions of the land use ordinance.
3. Appeals to the Board of Adjustment may be taken by any officer, department, or board of the County affected by the grant or refusal of a building permit or by other decision of an administrative officer or agency based on or made in the course of the administration or enforcement of the provisions of the land use ordinance.
4. The Board of Adjustment may hear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, or decision made in the enforcement of the land use ordinance.

F. Special Exceptions

To grant the special exceptions specified in the following Sub-section 1. subject to the provisions of the following Sub-section 2.:

1. A special exception, which is defined for the purposes of this ordinance to mean permission for a use which would not be permissible generally or without restriction throughout a zone but (which, if controlled as to number, area, location, relation to the adjacent property and other restrictions as may be deemed appropriate in each case, would promote the public health, safety and welfare) may be granted for the following purposes:

a. Lot divided by zone boundary line

In the circumstance where a zone boundary line divides a lot which was in single ownership on August 20, 1970, the board may permit a use authorized on either portion of such lot to extend not more than fifty (50) feet into the other portion of the lot.

b. Frontage

The board may permit the building of a dwelling upon a lot which does not have adequate frontage, as required by this ordinance, on a street provided that such lot has been deemed to be otherwise fully eligible for dwelling purposes. A recorded right-of-way specifying a legal description approved by the County shall be required for any such lot for public ingress and egress to that lot.

c. Non-conforming uses, lots, and buildings

The Board of Adjustment may permit the enlargement of, change of, or addition to a non-conforming building or a building occupied by a non-conforming use. (Refer to Chapter 19 of this Ordinance.)

2. The board may permit:

- a. The enlargement or change of a non-conforming use of property on the same property but no expansion of the use to other property.
- b. The board may permit the relocation on a lot of a non-conforming building or a building occupied by a non-conforming use.
- c. The board may permit the intensification of a non-conforming use or a permitted use upon a non-conforming lot in the event the applicant wishes to reduce the size of the property or building occupied by a non-conforming use without reducing the volume or scope of the use; provided, however, that in the event of such reduction of size of lot or building, only one portion of the building or lot may be eligible for the non-conforming use.
- d. The board may reduce the amount of off-street parking required where acquisition of land for such use is not possible or would cause exceptional hardship.

3. The Board of Adjustment shall approve, disapprove, or approve with conditions, each request for a special exception after finding that the proposed exception:

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- a. is necessary and appropriate to the area; and
- b. will conform to the spirit and intent of these regulations; and
- c. will not have an unreasonably adverse effect on surrounding property; and
- d. is a suitable use in regard to location, site characteristics, and in purpose; and
- e. will not be detrimental to public health, morals, safety, or welfare.

24-5 Policies and Procedures

- A. The Board of Adjustment may adopt and implement such rules of procedure and policies for consideration of matters brought before it as it deems reasonable and necessary for the conduct of its business; provided, however, such rules and procedures comply with the requirements and intent of applicable state law and county ordinances. The Board may establish criteria for the consideration of any matters to be brought before it.
- B. The Board of Adjustment may submit proposals or recommendations for any rules of procedure, criteria, or policies to the County Council for such rules, criteria, or policies to be enacted, adopted, or endorsed by ordinance, motion or resolution.
- C. The County Council may initiate proposals for rules of procedure, criteria or policies for the Board of Adjustment but before enacting or adopting any motion, resolution, or ordinance incorporating the same must submit such proposals to the Board of Adjustment for its review and recommendations.

ADDENDUM 9

CHAPTER 27 - APPEALS

27-1 Appeals

- A. Appeals may be made to the Board of Adjustment from decisions of the Cache County Planning Commission, except recommendations of the Planning Commission for rezones, new ordinances or ordinance changes.
- B. Appeals may be made only by:
 - 1. The owner of the subject real property.
 - 2. The owner of any real property located within three hundred (300) feet of the subject property.
 - 3. Any government entity or person directly affected by the decision of the Cache County Planning Commission.

27-2 Public Hearing

Appeals from decisions of the Planning Commission shall be deemed to be in the nature of public hearings and conducted under the provisions of Section 11 of Ordinance No. 87-2 with the exception of requirements for notice.

27-3 Procedures

The procedures for appeals of decisions of the Planning Commission shall be as follows:

- A. Notice of appeal shall be in writing upon designated forms provided by the Office of the Zoning Administrator, signed by the applicant landowner, and include all required attachments.
- B. The completed notice of appeal shall be filed in the office of the Zoning Administrator, 179 North Main Street, Room 210, Logan, Utah 84321. A copy of the appeal will be forwarded to the County Attorney and the County Executive.
- C. The completed notice of appeal and required attached documents must be filed not more than 10 working days after the meeting where the decision being appealed was made by the Planning Commission.
- D. The Zoning Administrator shall provide the following information to the Board of Adjustment on all appeals of the Planning Commission decisions:

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1. Minutes;
 2. Application;
 3. Documents;
 4. Summary;
 5. Plat;
 6. Communications; and
 7. any other materials the Zoning Administrator feels pertinent or that the Board of Adjustment may request.
- E. The Zoning Administrator will determine whether the Board of Adjustment may appropriately and lawfully hear the appeal. Upon a decision to hear the appeal, a hearing date will be set by the Zoning Administrator which shall not be less than 30 days from the date of the filing of the notice of appeal and will allocate time limit. The public hearing shall be held in the Cache County Council Chambers, unless circumstances warrant otherwise.
- F. Notice of the hearing must be given as follows:
1. The County Zoning office shall publish a notice once a week for 2 consecutive weeks in a newspaper of local circulation with the date of last publication being at least 5 days before the date of the scheduled hearing.
 2. The Office of the Zoning Administrator shall give notice by mail to the applicant, all persons requesting notice, and the owners of all property located within three hundred (300) feet of the subject property at least five (5) days prior to the scheduled hearing date.
- G. Any one wishing to give comments in person may be given a limited opportunity to speak. If written comments are submitted, copies shall be provided for the Board of Adjustment, and the Zoning Administrator.
- H. Proceedings on appeals should be conducted in substantially the following manner:
1. The Zoning Administrator shall briefly describe the application, action of the Planning Commission and nature of appeal filed.
 2. The appellant shall make his presentation.
 3. Those in favor of the appeal should make their presentations.
 4. Those opposing the appeal should make their presentations.
 5. Appellants should be allowed a brief rebuttal.

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6. The opponents to the appeal should make a brief rebuttal.
7. The Board of Adjustment may request any representative of the Planning Commission to respond if desired.
- I. The Board of Adjustment shall act in accordance with the following:
 1. The Board of Adjustment shall then take action on the appeal either at the meeting in which the public hearing was conducted or at the next subsequent regular meeting of the board.
 2. The Board of Adjustment may affirm, modify, or reverse the decision of the Planning Commission or, subject to the provisions of this section, it may also remand the matter to the Planning Commission for its further consideration.
 - a. The matter under appeal may be remanded to the Planning Commission only if the Board of Adjustment determines that further information is required or that other essential matters ought to have been taken into consideration by the Planning Commission.
 - b. The Board of Adjustment shall give specific instructions to the Planning Commission for the types of information required or matters to be taken into consideration.
 - c. Specifically, if the Board of Adjustment desires that the subject decision be reconsidered by the Planning Commission based upon purported new information to be obtained or other matters to be considered, the Planning Commission shall have the authority to reconsider and to take action on the conditional use permit as though its original decision had not been made.
- J. The Board of Adjustment in making its decision shall:
 1. Make formal findings of fact; and
 2. Specify the reasons for the action which they take on the appeal; and
 3. Issue a formal written order incorporating the decision based upon the findings of fact and reasons for the action; and
 4. Submit copies of those findings of fact, reasons for the action and order to the applicant and to the Planning Commission.

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- K. The formal findings of fact, reasons for the actions taken, and the formal order may be executed at a subsequent meeting but the effective date of the order shall be the date that the action was taken.**
- L. All hearings on appeals must be public and official action on the appeals must be taken by the Board of Adjustment only in open public meetings.**
- M. The Board of Adjustment may take action at the same meeting which the hearing on the appeal is conducted or may continue the matter for decision to another meeting.**
- N. No appeal may be reconsidered by the Board of Adjustment once they have taken action unless the matter has been reconsidered by the Planning Commission and an appeal made therefrom.**

NOTICE TO INTERESTED PARTIES OF APPEAL HEARING

You are hereby notified that a notice of appeal has been filed by _____ appealing the decision of the action or decision of _____ on _____ and requesting the Board of Adjustment to grant the following relief on appeal:

Property which is the subject of this appeal:

Tax Identification No.: _____
Street Address: _____

Appeal Hearing: Date: _____
Time: _____
Place: _____

Dated this _____ day of _____, 19____.

CACHE COUNTY ZONING ADMINISTRATOR

pc:

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CACHE COUNTY, UTAH - OFFICE OF THE ZONING ADMINISTRATOR
NOTICE OF APPEAL

The undersigned herewith files this notice of appeal and verifies that the statements and information set forth in it are true and correct.

Appellant: Name: _____
Address: _____
Business Tel.: (____) _____ Home Tel.: (____) _____

Subject Property: County Property ID No.: _____ - _____ - _____
Owner(s): _____
Owner(s) Address: _____
Property Address: _____
Current Zone: _____
Current Use: _____

Has there ever been a prior conditional use permit issued for the property?
_____ Yes _____ No

If "yes," please state: Date of Issuance: _____

Conditional Use Granted _____

Appeal

1. This is an appeal from an action or decision of (check one):

_____ Planning Commission
_____ Zoning Department or Zoning Administrator

2. Describe the action or decision appealed:

3. Please state your specific grounds for this appeal including specific sections of applicable State Statutes and County Ordinance: _____

4. If the appeal is from an action or decision of the Planning Commission, please state the date of decision:

APPEALS FROM ANY DECISION OF THE PLANNING COMMISSION MUST BE FILED WITHIN TEN (10) WORKING DAYS OF THE DECISION APPEALED.

5. Please describe:

(a) The specific relief which you request on appeal: _____
(b) Your reasons or basis for requesting that relief: _____

6. This notice of appeal is signed and filed with the knowledge that:

(a) Decisions or actions of the Planning Commission are appealable only to the Board of Adjustment.
(b) Appeals to the Board of Adjustment may be made as to decision of the officer in charge of the administration of this ordinance and of decisions or actions of the Planning Commission.

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- (c) Decisions of the Board of Adjustment can not be appealed to the Cache County Executive, County Council, or Planning Commission.

7. **Appeal Planning Commission Decision**

Notices of appeals from decisions of the Planning Commission must be filed at the office of the office of the Zoning Administrator, Room 210, 179 North Main Street, Logan, Utah 84321. (A copy of the appeal will then be forwarded to the office of the County Attorney and the County Executive.)

 Appeal Decision of Any Administrative Officer

Notices of appeals from decisions of any administrative officer must be filed at the office of the Zoning Administrator, Room 210, 179 North Main Street, Logan, Utah 84321. (A copy of the appeal will then be forwarded to the office of the County Attorney and the County Executive.)

8. The appellant should attach copies of any documents to be considered on appeal such as permits, applications, deed, maps, correspondence, or otherwise.
9. Appellant may attach additional sheets if needed.
10. The appellant must attach a list stating the names and addresses of the owners of all property located within 300 feet of any property line of the subject property and of any other know interested parties such as mortgage holders or otherwise. The list must also specify the property tax numbers of each of those properties.

THE UNDERSIGNED:

1. VERIFIES THAT THE INFORMATION SET FORTH IN THIS NOTICE OF APPEAL AS WELL AS IN ANY ATTACHED LISTS OR DOCUMENTS ARE TRUE AND CORRECT.
2. ACKNOWLEDGES THAT HE HAS THE DUTY TO DELIVER TO THE OFFICE OF THE ZONING ADMINISTRATOR A LIST OF NAMES AND ADDRESSES OF ALL OWNERS OF PROPERTY LOCATED WITHIN 300 FEET OF ANY PROPERTY LINE OF THE SUBJECT PROPERTY AND OF ANY OTHER KNOWN INTERESTED PARTIES WITH THIS FORM.
3. ACKNOWLEDGES THE MAKING OF ANY UNTRUE OR MISREPRESENTATIVE STATEMENTS OR INFORMATION IN THIS APPEAL OR ANY ATTACHMENTS MAY CONSTITUTE GROUNDS FOR THE IMMEDIATE TERMINATION OF THE APPEALS PROCESS OR THE SETTING ASIDE OF ANY RELIEF GRANTED ON THE APPEAL.

Dated this _____ day of _____, 19____.

Appellant

State of Utah }
County of Cache }

Subscribed and sworn to before me this ____ day of _____, 19____.

NOTARY PUBLIC

ADDENDUM 10

CACHE COUNTY
ORDINANCE NO. 99- 01

AN ORDINANCE ESTABLISHING THE PROCEDURES REGARDING THE TIME AND MANNER OF ESTABLISHING TOWNSHIPS, THE PROCEDURES FOR THE ELECTION AND APPOINTMENT OF TOWNSHIP PLANNING COMMISSION MEMBERS AND THE JURISDICTION AND AUTHORITY OF TOWNSHIP PLANNING COMMISSIONS.

WHEREAS: pursuant to then-existing State law, in the general election held on 05 November 1996, the College-Young Township was created, and three (3) persons were elected to the Township Planning and Zoning Board; and pursuant to Cache County Ordinances No. 96-03 and 96-10, the Cache County Council appointed three (3) additional members to the Township Planning and Zoning Board; and the Board members then appointed a seventh member; and

WHEREAS: the Township Planning and Zoning Board, as currently constituted, has been functioning as a planning commission for the College-Young Township since January, 1997; and

WHEREAS: in legislative sessions in 1997, the Utah State Legislature first dissolved the College-Young Township, and then reinstated it, with provision for the Cache County Council to appoint those members, both elected and appointed, who had previously been serving on the Township Planning and Zoning Board, to the reconstituted Township Planning Commission; and

WHEREAS: Cache County, by ordinance 96-03 and 96-10 set forth an ordinance establishing the time and manner of conducting elections to create townships, providing for the election of township planning and zoning board members, and setting procedures thereof and an ordinance establishing the jurisdiction and authority of township planning and zoning boards, respectively. In legislative sessions in 1997, the Utah State Legislature modified the state statutes governing township planning commissions requiring Cache County to update its ordinances listed above.

WHEREAS: Utah law now requires that such appointment be made by way of an ordinance,

NOW, THEREFORE, the Cache County Council ordains, as follows:

SECTION 1: REPEAL OF PRIOR ORDINANCES

Cache County Ordinance 96-03 and 96-10 are hereby repealed.

SECTION 2: PURPOSE

Pursuant to the provisions and requirements of the *Utah Township Act, 17-27-200.5, et. seq., Utah Code Ann.*, hereinafter "the Act", the following procedures regarding the time and manner of establishing townships and further the procedures for the election and appointment of

township planning commission members and the jurisdiction and authority of township planning commissions are hereby established.

SECTION 3: ESTABLISHING A TOWNSHIP

Upon the receipt of a valid petition to create a township, which contains original signatures and which has been reviewed and certified as adequate by the Cache County Clerk and Cache County Attorney in accordance with the requirements of the Act and of state law generally, the Cache County Council shall by resolution, set and hold a public hearing on the petition, consider oral and written testimony from the public and vote on the question of whether or not to establish a township.

SECTION 4: PLANNING COMMISSION MEMBERS.

Township Planning Commissions shall be comprised of seven (7) members. Three (3) members shall be elected and four (4) members shall be appointed as set forth below. At least one member, but not more than two members of the Township Planning Commission's term shall expire at the end of each year.

SECTION 5: ELECTION OF PLANNING COMMISSION MEMBERS

A. Three (3) township planning commission members shall be elected from among residents of the township area in accordance with the provisions of the Act.

B. Candidates for elected township planning commission members shall be registered voters and residents of the township area. Candidates shall file a declaration of candidacy for a specific seat with the Cache County Clerk on forms prepared by the Clerk and shall pay a Twelve Dollar (\$12.00) filing fee. Unless set forth otherwise in ordinance, when a new township is initially created the filing period for candidates shall open on the date following the public hearing where the council establishes a township and shall close thirty (30) days before the election. Subsequent elections shall be conducted consistent with Utah Law and this ordinance.

C. Elected planning commission members shall serve for term of four years, provided that the terms of board members shall be staggered in accordance with the terms of subparagraph E. below.

D. The terms of initial board members may be less than four (4) years and shall be staggered and modified in such a way that members shall stand for re-election in odd-numbered years.

E. All aspects of planning commission elections not specifically addressed in this ordinance shall be conducted in accordance with standard election procedures as established by the *Utah Election Code*, including but not limited to, voter registration and qualifications, elections judges, ballots and polling procedures, canvass, and all other aspects and procedures of

the electoral process. The Cache County Clerk shall determine the necessity and manner of consolidation of voting precincts and appointment of election judges, in accordance with State statute. If any aspect of planning commission elections, as set forth in this ordinance, is inconsistent with state law, state law shall govern.

SECTION 6: APPOINTMENT OF PLANNING COMMISSION MEMBERS

In accordance with the provisions of the Act, the County Executive, with the advice and consent of the County Council, shall appoint four (4) township planning commission members who are registered voters and residents of the township. Board members appointed by the County shall serve for staggered four (4) year terms.

SECTION 7: ORGANIZATION OF BOARD.

A. QUORUM

1. A quorum of a township planning commission shall consist of four members present;
2. A quorum of a township planning commission shall have the authority to conduct all business; and
3. A majority vote of a township planning commission shall be required to take any action, pass a motion, or approve or grant any application.

B. VACANCIES

1. A township electee or county appointee vacancy of a township planning commission by reason of death, resignation, removal or disqualification shall be filled by appointment by the County Executive with the advice and consent of the County Council.
2. Unless otherwise provided by law, vacancies for township electees or appointees shall be filled for the unexpired term of the member replaced.
3. In the event the County Executive is unable, for a period of sixty (60) days, to locate sufficient residents who are willing to serve on the Township Planning Commission to create or maintain a seven-member board, the township planning commission shall cease to function. If any township planning commission ceases to function, the Cache County Planning Commission shall act in the place of the township planning commission. Once the County Executive is able to locate sufficient residents who are willing to serve, the township planning commission shall resume its function.

C. MEETINGS

1. Township planning commissions shall convene in regular meetings at least

once a month for the conduct of its business. If no business has been initiated with the County Zoning office to be considered by the Township Planning Commission then the meeting scheduled for that month is not required.

2. All meetings shall be open to the public and records and minutes thereof made and maintained by the office of the County Zoning Administrator.

3. All meetings shall be held at the same location where the county planning commission meetings are held.

SECTION 8: POWERS AND DUTIES OF COMMISSION.

A. The extent of power conferred by this Ordinance upon a township planning commission is limited to the territory included within the boundaries of the relevant township and is limited to the powers and duties set forth in county ordinances, including but not limited to the Cache County Land Use Ordinance, and Utah law.

B. Unless specifically modified by this Ordinance, or specifically granted by Utah law, township planning commissions shall be subject to all provisions of the Cache County Land Use Ordinance as it now exists and as it may be amended from time to time.

C. After a township is created, the duly elected and appointed township planning commission shall act as the planning commission within the township boundaries so far as it is authorized herein and shall:

1. Prepare and recommend a general plan and amendments to the general plan to the county legislative body.

2. Recommend zoning ordinances and maps, and amendments to zoning ordinances and maps, to the county legislative body.

3. Administer provisions of the zoning ordinance, if specifically provided for in the zoning ordinance adopted by the county legislative body.

4. Recommend subdivision regulations and amendments to those regulations to the county legislative body.

5. Recommend approval or denial of subdivision applications.

6. Advise the county legislative body on matters as the county legislative body directs.

7. Hear or decide any matters that the county legislative body designates, including the approval or denial of, or recommendations to approve or deny, conditional use permits.

8. Exercise any other powers delegated to it by the county legislative body.
9. Exercise any other powers that are necessary to enable it to perform its functions.

D. The planning commission of a township may recommend to the legislative body of the county in which the township is located:

1. That the county legislative body support or oppose a proposed incorporation of an area located within the township.
2. That the county legislative body file a protest to a proposed annexation of an area located within the township.

E. The Office of the Cache County Zoning Administrator shall act as staff for all township planning commissions. Any applications for land use permits or other matters that are to be acted upon by a township planning commission shall be filed with the Cache County Zoning Administrator.

F. Any appeals from a township planning commission shall not be filed with the County Planning Commission but shall be filed as if the appeal was taken from the County Planning Commission in the method provided for by law.

SECTION 9: APPOINTMENT OF COLLEGE-YOUNG TOWNSHIP BOARD MEMBERS

The following registered voters and residents of the College-Young Township are hereby appointed to the College-Young Township Planning Commission by the County Executive and approved by the County Council. All members shall serve four (4) year terms except for this initial appointment:

Appointed Members

Greg Olsen	December 31, 1999
Hazel Leishman	December 31, 2000
Becky Whittier	December 31, 2001
George Whitney	December 31, 2001

Elected Members

Kent Olsen	December 31, 2002
Glen Roy Zilles	December 31, 2002
Hal Olsen	December 31, 2000

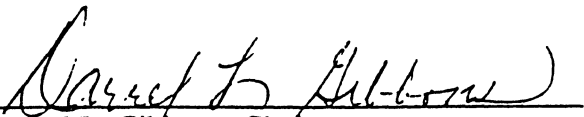
SECTION 10: EFFECTIVE DATE.

This ordinance shall become effective fifteen (15) days after its passage and upon at least one publication in a newspaper published in and having general circulation in Cache County.

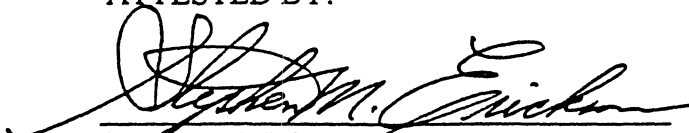
This ordinance was adopted by the Cache County Council on the 9th day of February 1999 upon the following vote:

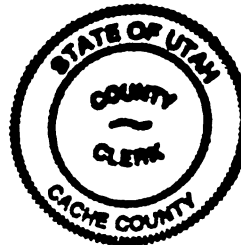
Council Member	In Favor	Against	Abstain
Anhder	X		
Beck	X		
Gibbons	X		
Petersen	X		
Pulsipher	X		
Skanchy	X		
Yeates	X		
Total	7		

CACHE COUNTY COUNCIL

By: 
Darrel L. Gibbons, Chairman

ATTESTED BY:


Stephen M. Erickson
Cache County Clerk



Publication Date: February 28, 1999

ADDENDUM 11

And 4) current and future property owners must be aware that they are subject to the sights, sounds, and smells associated with agricultural activities which are the permitted uses in the Agricultural Zone. George Whitney seconded the motion and it was unanimously approved.

Brent Speth, agent for Edna Speth (00-23R), requested a conditional use permit to allow the division of 1.70 acres with an existing single family dwelling on a .50 acre lot with an additional 1.20 acres in the Agricultural Zone located at 2185 South Highway 89-91, College Ward, and continued at the 15 March 2000 meeting. This home was constructed by Mr. Speth's parents in 1931 and his mother continues to own it and live there. This request was reviewed by the Planning Commission at the 15 March 2000 meeting and was continued to allow the applicant time to obtain approval from the Board of Health concerning the well and septic tank for the .50 acre lot; and specifications from the irrigation company concerning the minimum size culvert required for access from 2200 South. The Board of Health has stated that Mr. Speth will be required to use the well by the barn for the house and an easement shows on the survey. The Board of Health has stated that by using the well on the 1.20 acre lot for culinary use, the well on the .50 acre lot can be used for fire protection. This also allows a great enough distance between the culinary well and the septic tank system to meet the requirements. A third well shows on the site plan which has been abandoned and is no longer in use. The President of the College Ward Irrigation Company, Ed Nelson, has stated that the ditch is a private ditch and maintained by the users of that ditch. Each user has agreed to the proposal. Mr. Nelson suggests that a 24" culvert pipe be used for the ingress and egress areas on the 1.20 acre lot. Whitney questioned if the remainder parcel will automatically acquire residential status if the lot is split. Greenhalgh replied that the lot would be considered a remainder lot until it was approved for a specific use. *George Whitney made the motion to approve the residential lot split with the following stipulations: 1) The applicant must install 24-inch culvert pipe in the ditch for ingress and egress on the remainder lot. 2) The applicant must dedicate 25-feet from the center of the road on 2200 South to the County for future road widening. 3) A 10-foot wide easement from the well on the remainder lot to the house must show on the survey. And 4) current and future property owners must be aware that they are subject to the sights, sounds, and smells associated with agricultural activities which are the permitted uses in the Agricultural Zone. Hal Olsen seconded the motion and it was unanimously approved.*

Brent Speth, agent for Edna Speth (00-24C), requested a conditional use permit to allow the division of 1.20 acres in the Agricultural Zone for the construction of two storage sheds 250' X 40' as a commercial business to be located at 1279 West 2200 South, College Ward. Each building is to have 25 double units (100 units total) to be used as rental storage space. The units will be 14-feet high and are to meet all set back and side yard requirements. They will be constructed of metal or block with a concrete floor which would be in keeping with the type of construction of the surrounding area. The color tones would also be chosen to blend with the area. There will be two entrance/exits to the property. The President of the College Ward Irrigation Company, Ed Nelson, has suggested the approaches have 24" culverts. A dedication of 25-feet from the center of the existing road will be required. The well on the property will be used for culinary water for the home on the .50 acre parcel and the well on the property with the home is to be used for fire protection. Mr. Speth stated that a 100,000 to 120,000 gallon tank made of concrete would be installed under the storage units for fire protection for the community in the entire area. A double switch for the use of the water in the tank would be installed in Mrs. Speth's home, where she could control the water for her sprinkling system, and the other switch would be located by the storage units for the use of the fire department for fire protection. The existing barns and other farm sheds are to be torn down with the property cleaned and prepared with a base for the storage sheds. The entire base will be gravel so there should be no storm water run off from the construction of these sheds. It will be easier to control weeds and other growth on the property. There should be minimal traffic since rental units are visited on an average of less than one visit per two months. There would not be any trash collection at the site. Tenants would be required to remove their own trash. Mrs. Speth addressed the Board about her desire to clean up her property and add to her limited income by having the storage units built on her property. The irrigation ditch on her property is no longer in use so her lawn has died. Zilles questioned Mr. Speth on the opinion of the surrounding neighbors. Mr. Speth replied that he had spoken to all of his neighbors and had given them a paper on which they could write their opinion. Nine out of ten had been returned with favorable statements. The other had expressed concerns about drugs being made and sold in the units. Mr. Speth stated the entire perimeter would be fenced with a block wall to the north and west and with chain link fencing around the south and east sides and that he would police the area on a regular basis. There would be keyed locks on the gates and be secured between the hours of 10:00 p.m. and 6:00 a.m. Rental agreements would be conducted over the telephone so there would not be an increase in traffic. Leishman commented how hard it is to get onto the road as it is. Mr. Speth responded there would be a turn off lane entering the storage sheds that would not interfere with traffic. Whitney responded that people would want to come to the site to see what is available so there would be more traffic than if a single family dwelling was in that location. Mr. Speth stated that a commercial business would generate a tax revenue if College-Young Township incorporated. It would also assist his mother financially. Residential homes often need room for additional

going on a residential lot and the applicant has the option to request a rezone. Mr. Speth stated this property is zoned agriculture and storage barns are a permitted use without conditional use permits. He questioned if there have ever been commercial businesses in the agricultural zone before. Greenhalgh stated it happens all the time. This type of commercial business exists throughout the county. Mr. Speth inquired if this request was denied would the Board allow his mother to annex into Logan City. Whitney stated that annexation is being opposed within the incorporation boundaries. Mr. Speth stated his mother was included in the boundaries without being asked. *George Whitney made the motion to deny this request because of the following reasons: 1) The request is for a commercial business in the Agricultural Zone on an existing residential lot with an existing single family dwelling. 2) The ordinance states that commercial business should be in commercial or manufacturing zones. There is nothing in the ordinance that allows for this type of business in the Agricultural Zone. 3) This proposed business is not in harmony with the Agricultural Zone. 4) This proposed business is not compatible with a residential neighborhood. 5) The increase of traffic is not compatible with the residential neighborhood. 6) An increase of traffic turning off of 2200 South would be dangerous. Hal Olsen seconded the motion and it unanimously passed to deny the request.*

Stephen Thatcher, agent for Thatcher Enterprises (00-25C) requested a conditional use permit to allow the use of the Sew Easy building as a commercial storage facility on 3 acres of property in the Agricultural Zone located at 2701 West 1800 South, Young Ward, and continued at the 15 March 2000 meeting. Mr. Thatcher stated the Taylor Maid business is no longer interested in the building. Discussed at the previous meeting was the possibility of using the building under any previous conditional use permit that may still be valid. The County Attorney was asked to retrieve the files from the Salt Lake City attorney that represented the County in the law suit. The files have not been found, at this point. There was research into the minutes from 1973 to the present. Greenhalgh and the County Attorney were trying to determine if there was a valid conditional use permit for the building or business. The minutes indicate that there were permits approved but some of the conditions on the permits were not met. The last conditional use permit that was approved made it clear that all previous conditional use permits were null and void, but it was never signed or issued. Mr. Thatcher had a copy of a conditional use permit dated July 20, 1979. H. Olsen questioned which conditions were not met as they were doing the business. Greenhalgh stated that those conditions were in the past and bringing them up now would cause hard feelings again. Conditional use permits are approved for specific businesses with the uses and conditions clearly stated. Whitney stated there are two possibilities that can be followed in order to proceed. One is to start up where it was left off with the old conditional use permit and operate on that permit. He suggested to try to obtain information from the files that are missing or from the Court order pertaining to the decision of the Court on the status of existing permits. The other possibility is to start all over again. However, if we did we probably would deny his request. If the option to start over is taken, the Board would be considering a commercial business in an agricultural zone. Whitney suggested that Mr. Thatcher, the County Executive, the County Attorney, Lorene Greenhalgh, and members of the College-Young Township Planning Commission meet together to clarify the status of this business. Mr. Thatcher stated he has an Internet sales company interested in the building now. They sell their product on the Internet and ship the product to the customer by UPS. Any approval given for the use of this building would need to include what the specific business is, what name it is under, and specific stipulations numbered so that everyone is aware of what will be expected and enforcement measures clearly stated. With specific uses presented and appropriate conditions attached, some type of commercial use may be appropriate for this building in the College Ward area. Mr. Thatcher stated there were six or eight permits issued. Whitney stated it must be determined if those permits have been revoked or if they are still valid. *George Whitney made the motion to continue this request for up to 60 days to give the applicant time to meet with the County Executive, the County Attorney, the Zoning Administrator, and Board members to determine the status of the existing conditional use permits. Hazel Leishman seconded the motion and it was unanimously approved.* It was determined the meeting should be held within the next two weeks so that the applicant can meet the deadline for next month's regularly scheduled meeting if he desires. Greenhalgh stated she would try to set up the meeting and the Board members would be informed.

Staff Discussion included: *George Whitney made the motion to delay discussion on the lot size clarification until next month's regularly scheduled meeting. Hazel Leishman seconded the motion. There was no vote.*

Whitney stated he would like the College-Young Township Incorporation meeting to be held in conjunction with the College-Young Planning Commission meeting. *George Whitney made the motion to move the regularly scheduled College-Young Township Planning Commission meeting to June 14th instead of June 21st so that the Township Incorporation meeting could be held in conjunction. Hal Olsen seconded the motion and it was unanimously approved.* Greenhalgh will investigate the possibility of changing the June meeting.

The meeting adjourned at 9:55 p.m.

There were no names suggested for persons to take Kent Olsen's place on the Board.

College-Young Township Planning and Zoning Commission corrections to the minutes to the Brent Speth hearing on 4-19-2000 with Finding of Fact made by George Whitney. 1) The decision made by the College-Young Planning and Zoning Commission to deny Brent Speth's request has been appealed to the Cache County Board of Adjustment. 2) Other meetings took place regarding this request that the Zoning Administrator was aware of, but did not mention at the Board of Adjustment hearing and which are important to this record. These meetings shall be addressed by addendum. 3) At their hearing, the Board of Adjustment appeared to request an accurate record of our meeting, by transcript or otherwise, of our hearing. 4) An accurate record of our hearing is important not only for our board but for the Board of Adjustment to determine whether this board's decision was proper or not. 5) At the Board of Adjustment hearing, to those of our commission in attendance, it appeared that the Zoning Administrator implied that if we made corrections to the minutes of our meeting they could not necessarily be relied on to accurately reflect what happened in our hearing. 6) The hearing on Brent Speth's request took place 2 months ago. 7) Said hearing lasted about 1 ½ hours. 8) The summary of this hearing provided by the Zoning Office is less than one full page in length, 1/3rd of which is the Zoning Administrator's own evaluation given to our board that night. 9) Having this been provided less than 2/3rds of one sheet of minutes from that hearing to start from, it would be impossible to correct them in a way that would accurately represent a one and one half hour hearing or that someone could not claim was different from the exact discussion that took place. So be it moved that an accurate transcript of the Brent Speth hearing be made from the tape of said meeting and made a part of that meeting's minutes with regards to that portion of that meeting and given, along with the addendum referenced in #2 above, to the Board of Adjustment to represent our actions on the Brent Speth request."

Addendum to the Hearings on the Brent Speth Request made by George Whitney. 1) This item first came before our Commission on 3-15-00 along with a request by Steve Thatcher to use an existing building for some kind of storage. 2) In that meeting it was felt by our Commission that the Zoning Office supported Brent Speth's request but did not encourage support for Thatcher's request. In fact Steve Thatcher stated someone who contacted the zoning office on his behalf was told "he'd get a permit over Lorene's dead body." 3) Because both requests appeared to be for large commercial businesses, which we hadn't dealt with before, in an Ag. Zone, past problems with a business in the Thatcher building, some technical errors in the requests, and our desire to get more input and clarification to determine how to treat both requests fairly; we continued both requests to our next meeting so we could seek advice from other county representatives that had past experience with these matters. 4) Before our next meeting we talked individually and in groups with: Mark Teuscher, County Planner; Lynn Lemon, County Executive; Pat Nolan, Assistant County Attorney; and Lorene Greenhalgh, County Zoning Administrator. 5) Mark Teuscher advised us that both requests were for a commercial business and should be denied in the Agricultural Zone. He said, however, if Thatcher could show they had a valid permit issued years ago, we would have to honor it. 6) At first Pat Nolan was unsure if Thatcher had a valid permit, but later determined they did and that we'd have to work from there. 7) Later, Kelly Pitcher, County Fire Chief, verified the 100,000 to 120,000 gallon water tank he required for fire protection was specifically because it was a commercial business and the State Fire Code demanded it. He also said there was not another place in the County where a home or agricultural business had required this kind of water storage for fire protection because they are exempt. 8) We were also told past decisions by past boards, straw polls, of neighbors, and financial benefit of the applicant should not be considered. 9) In the end, we determined Brent Speth's request was clearly for a commercial business. The lot he wanted to place it on was agriculture residential. It was not a home business by size, scope, magnitude, or by level of activity, nor was it supplemental or accessory in nature. Also, that 2 255' X 40' storage sheds consisting of 100 rental units with a total of 20,000 square feet of storage were not like any of the agricultural businesses in our area or harmonious with them or the dozen or so homes immediately surrounding this site. 10) We denied Speth's request because to ignore the advice and counsel we'd been given from the above named parties, and the fact that the Zoning Ordinance for Cache County distinguishes between agricultural businesses and commercial businesses, and provides zones for each, would have been arbitrary and capricious.

COLLEGE YOUNG TOWNSHIP
PLANNING AND ZONING COMMISSION

CORRECTIONS TO MINUTES OF THE BRENT SPETH HEARING ON 4/19/00
WITH FINDING OF FACT

- #1. The decision made by the College Young Planning and Zoning Commission to deny Brent Speth's request has been appealed to the Cache County Board of Adjustment.
- #2. Other meetings took place regarding this request that the Zoning Administrator was aware of, but did not mention at the Board of Adjustment hearing and which are important to this record. These meetings shall be addressed by addendum.
- #3. At their hearing, the Board of Adjustment appeared to request and accurate record of our meeting, by transcript or otherwise, of our hearing.
- #4. An accurate record of our hearing is important not only for our board but for the Board of Adjustment to determine whether this board's decision was proper or not.
- #5. At the Board of Adjustment hearing, to those of our commission in attendance, it appeared that the Zoning Administrator implied that if we made corrections to the minutes of our meeting they could not necessarily be relied on to accurately reflect what happened in our hearing.
- #6. The hearing on Brent Speth's request took place 2 months ago.
- #7. Said hearing lasted about 1½ hours.
- #8. The summary of this hearing provided by the Zoning Office is less than one full page in length, 1/3rd. of which is the Zoning Administrator's own evaluation given to our board that night.
- #9. Having thus been provided less than 2/3rds. of one sheet of minutes from that hearing to start from, it would be impossible to correct them in a way that would accurately represent a one and one half hour hearing or that someone could not claim was different from the exact discussion that took place.

So be it moved that an accurate transcript of the Brent Speth hearing be made from the tape of said meeting and made a part of that meeting's minutes with regards to that portion of that meeting and given, along with the addendum referenced in #2 above, to the Board of Adjustment

COLLEGE YOUNG TOWNSHIP
PLANNING AND ZONING COMMISSION

ADDENDUM TO THE HEARINGS
ON THE BRENT SPETH REQUEST

#1. This item first came before our Commission on 3/15/00 along with a request by Steve Thatcher to use an existing building for some kind of storage.

#2. In that meeting it was felt by our Commission that the Zoning Office supported Brent Speth's request but did not encourage support for Thatchers' request. In fact Steve Thatcher stated someone who contacted the zoning office on his behalf was told "he'd get a permit over Lorene's dead body."

#3. Because both requests appeared to be for large commercial businesses, which we hadn't dealt with before, in an Ag. Zone, past problems with a business in the Thatcher building, some technical errors in the requests, and our desire to get more help and clarification to determine how to treat both requests fairly; we continued both requests to our next meeting so we could seek advice from other county representatives that had past experience with these matters.

#4. Before our next meeting we talked individually and in groups with: Mark Teuscher, Co. Planner; Lynn Lemon, Co. Executive; Pat Nolan, Asst. Co. Attorney; and Lorene Greenhalgh, Co. Zoning Administrator.

#5. Mark Teuscher advised us that both requests were for a commercial business and should be denied in the Ag. Zone. He said, however, if Thatchers could show they had a valid permit issued years ago, we would have to honor it.

#6. At first Pat Nolan was unsure if Thatchers had a valid permit, but later determined they did and that we'd have to work from there.

#7. Later, Kelly Pitcher, Co. Fire Chief, verified the 100,000 to 120,000 gallon water tank he required for fire protection was specifically because it was a commercial business and the state fire code demanded it. He also said there was not another place in the county where a home or Ag. business had required this kind of water storage for fire protection because they are exempt.

#8. We were also told past decisions by past board, straw polls of neighbors, and financial benefit of the applicant should not be considered.

#9. In the end, we determined Brent Speth's request was clearly for a commercial business. The lot he wanted to place it on was Ag. residential. It was not a home business by size, scope, magnitude, or by level of activity, nor was it supplemental or accessory in nature. Also, that 2 250' x40' storage sheds consisting of 100 rental units with a total of 20,000 sq. ft. of storage were not like any of the Ag. businesses in our area or harmonious with them or the dozen or so homes immediately surrounding this site.

#10. We denied Speth's request because to ignore the advice and council we'd been given from the above named parties, and the fact that the Zoning Ordinance for Cache Co. distinguishes between Ag. businesses and Commercial businesses, and provides zones for each, would have been arbitrary and capricious. And we have yet to hear a formal request from Thatchers.

ADDENDUM 12

of emergency vehicles. Whitney stated this is a new situation for him and he does not understand the procedure for private roads. Whitney questioned again why they needed to go to the Board of Adjustments. Greenhalgh stated they needed a variance because the existing home is too close to the private road and a special exception because lot #1 does not have frontage on a public road. Whitney questioned if the corral would need a special exception. Greenhalgh stated if it is only used as a summer pasture and is portable and can be moved, it would not require a special exception. Whitney suggested the applicant go to the Board of Adjustment for approvals and then come back to the College-Young Board. Whitney would find out about the 50-foot road dedication. Greenhalgh stated the Board of Adjustment should grant approvals because of the circumstances. H. Olsen reminded the applicant that the 50-foot is just an easement for access. Ms. Cook requested the return of property that her father dedicated for road right-of-way. Greenhalgh stated that it cannot be returned, that it must remain for future road expansion. Ms. Cook stated she had legal descriptions of neighbors property that only had to dedicate a rod (16.5) and not 25-feet. Greenhalgh stated that sometimes the County already owns the center portion of the road and the property owners would not be required to dedicate the full 25-feet on their side of the road. The legal descriptions do not state if there has been road dedication previously. Whitney stated that when property is split and road dedications are not required, it is required at the time of development. Ms. Cook stated that her property legal description states one rod west. H. Olsen suggested to find the starting point of the legal description. Greenhalgh stated she follows the recommendations of the road supervisor. Ms. Cook stated that Joe Kirby told her he measures from the center of the road. Ms. Cook stated that because the road had been widened so many times it was difficult to determine the center of the road. Whitney stated it does not matter what was approved for previous applications; now, the requirement is a 50-foot easement on public roads and that if Ms. Cook got a survey to show the road crowded onto her property, they would see that Joe Kirby moves the road. Whitney stated the Board of Adjustment must rule whether they need an exception for the inadequate distance from the manufactured home to the graveled road, if it's a 50-foot road, or exempt them from having a 50-foot easement and limit it to the 33-feet that already exists. They will have to rule on property with no frontage on a public road for the lot containing the manufactured home. Also they need to grant an exception on the corral because it is used only a few months out of the year for three horses and a few calves and is mobile and can be moved. When those approvals are given, the applicant will come back to the College-Young Township Planning Commission for final approval. Greenhalgh stated it was not required to have them come back to the Planning Commission. Zilles suggested to let the Board of Adjustment give approvals and not have the applicant come back to College-Young Board. *George Whitney made the motion to approve the request with the following stipulations: 1) Lot #1 has the required minimum right-of-way dedication from the center of the public road. 2) The appropriate access easement be given across lot #2 to lot #1. 3) The applicant request the Board of Adjustment grant a special exception for the home on lot #2 relative to the set back distance from the easement to lot #1. 4) The applicant request a special exception for lot #2 because it does not front a public road. 5) Because the existing portable corral is used only two to three months a year for up to three horses and a few calves, the applicant request the Board of Adjustment grant a variance for the inadequate set back of the existing corral to the manufactured home. 6) The canal company has the right to access and maintain the canal and must be consulted for approvals of any culverts that may be disturbed on the road. And 7) current and future property owners must be aware that they are subject to the sights, sounds, and smells associated with agricultural activities which are the permitted uses in the Agricultural Zone. Hazel Leishman seconded the motion and it was unanimously approved.*

Ms. Cook stated she wished more people would have explained what could have been done concerning the division of her property. H. Olsen replied that the Board doesn't know what the applicants want. They have to come to the Board with their request. Ms. Cook stated she applied for one thing and that was not what she really wanted. Whitney informed her that she didn't have to pursue this process now; she could stop and reapply for what she does need. Mr. Cook stated that down the road they would like to give their sons a lot to build a house. Whitney stated it would be possible to split their two acres into three or four lots but because of the requirements of the septic systems, wells, and spacings it would be difficult. H. Olsen stated they would have to start over with the application process.

Staff Discussion included: Corrections of the 4-19-00 minutes. See attached transcript of the 6-21-00 College-Young Planning Commission meeting.

ADDENDUM 13

Those present at the regular Board of Adjustment meeting were: Lamar Clements, Mervin Weeks, Bonnie Nielsen, David Erickson, Kelly Griffin, Gay Gunnell, Pat Nolan (Deputy County Attorney), Lorene Greenhalgh, and Peggy S. Johnson.

June 15, 2000

The meeting was called to order at 4:00 p.m. with Griffin conducting; he welcomed all present. Gunnell offered an invocation. The current agenda was discussed and approved unanimously; there were no minutes available to approve.

PUBLIC HEARING OPENED. Brent Speth, agent for Edna Speth (00-24), appealed the decision made 19 April 2000 by the College-Young Township Planning Commission to deny a conditional use permit for the construction of two storage sheds to be used for a commercial business and to be located at 1279 West 2200 South, College Ward. Each of the two buildings was to be constructed to be 250' X 40' with 25 double units for a total number of 100 rental storage units available to rent to the public. The College-Young Township Planning Commission voted to deny the request for the conditional use permit based on the following findings of fact: 1) The request is for a commercial business in the Agricultural Zone on an existing residential lot with an existing single family dwelling. 2) The Ordinance states that commercial businesses should be located in Commercial or Manufacturing Zones. There is nothing in the Ordinance that allows for this type of business in the Agricultural Zone. 3) This proposed business is not in harmony with the Agricultural Zone. 4) This proposed business is not compatible with a residential neighborhood. 5) The increased traffic is not compatible with the residential neighborhood. And 6), the increase of traffic turning off 2200 South would be dangerous. The Board of Adjustment was instructed to consider the following items when considering the appeal: 1) Was the decision of the Planning Commission based on conditions and powers set forth in the Cache County Land Use Ordinance. 2) Was the decision and motion of the Planning Commission based on the information and facts presented or was it an arbitrary and capricious decision. And 3), were all issues and facts given fair consideration and was the applicant's due process denied by the actions of the Planning Commission. The Chairman told the appellant he could have up to 10 minutes to present the facts of his case. Mr. Speth gave each board member a handout of a map showing parcels with businesses in College-Young Ward with a legend describing the location of the homes and commercial businesses in this area. He continued that the reason his request was denied was because this was an agricultural lot, there could be no commercial activities. On this lot of 1.7 acres, there is an existing residence. In the Agricultural Chapter of the Land Use Ordinance, it states that accessory buildings and uses are permitted. Accessory buildings can be used for different and various things. Mr. Speth asked if the law permitted or restricted the property owner from renting those accessory buildings out. He could not find such restrictions anywhere in the Ordinance. In fact, it is very common in the agricultural area of the county for a retired farmer to live in his home and rent his entire operation—his land, his buildings, corrals, etc. People can store anything they want in those buildings. That farmer's principle use would revert back to the same situation as his mother's. This 1.7-acre parcel is where the family's dairy operation took place which included the raising of calves, milking cows, and other activities associated with that type of operation; it started in 1931 and culminated in 1996 when the family built a new dairy at another location. However, they continued to use this property to raise their replacement stock. The current accessory buildings cover approximately 26,000 square feet of property; they are old and rundown. He proposed to replace these accessory buildings with new buildings that would cover only 20,000 square feet. They have two accesses to the property now; the accesses to the area where the storage sheds are located are at least 400 feet from the highway so that it would not be a problem for people accessing the storage sheds or for those accessing the highway. The proposed buildings would be an accessory use to the primary use of the property which would remain residential. The law takes no stand on whether accessory buildings can be

rented; it is a common occurrence in the Agricultural Zone. Mr. Speth stated he had been told that he could not get a conditional use permit for a commercial business on a residential lot. He then reviewed the handouts previously distributed with the board members. He oriented the board members by locating Highway 89-91, 2200 South in College Ward, the location of the old drive-in theater, the newly constructed motel, and the site for the proposed storage sheds on the map. The sites discussed were: 1) A parcel with a home, farm buildings, and a snowmobile repair shop located approximately 1,000 feet away from his mother's property. A conditional use permit was issued for the snowmobile repair business. 2) This parcel of ground located approximately 400 feet to the north of the subject property. Grange Construction was allowed a conditional use permit to replace an existing rundown building with a new larger building to store and repair concrete forming construction equipment as well as the prefabricating of concrete sections. This lot was also too small to have a residence approved on it. 3) Across the road from 2) and about 700 feet from the subject property is a commercial cabinet shop. This was rezoned to Neighborhood Commercial. Mr. Speth continued that he had asked the Planning Commissioners if they would consider a rezone to commercial for his mother's property; the board members responded that they would not. 4) A site approximately 1500 feet from the subject property has an artificial insemination company, cattle, and a residence on the same lot. Their business is an agriculture-related business, but it is a commercial business with an approved conditional use permit in the Agricultural Zone. 5) Duane Cox has property that has been rezoned to Neighborhood Commercial for a bee keeping business to include warehousing, honey extraction, and retail sales. 6) Clint Liechty has property with a residence that was rezoned to Neighborhood Commercial for a nursery business to include sales on site. 7) An individual west of the subject property has operated an equipment repair shop for a number of years on the same parcel with a residence. 8) This property has an approved conditional use permit in the Agricultural Zone allowing an office and warehouse leasing. 9) This parcel has a commercial trucking operation. The trucks for this business are licensed commercially, but no conditional use permit has been issued for a business. The property owner is also a farmer and has a dairy. 10) This individual has a residential lot, no agriculture property, and admitted in the College-Young Township Planning Commission minutes of June 1999 that he has no County Business License to conduct a land-leveling operation or for being a dealer for the distribution of hydraulic hose. There are other commercial businesses between 10) and 11) which are not listed in the handout because they have been annexed into Nibley; however, Loveland's welding shop received a conditional use permit when it was in the County on the same lot with a residence in the Agricultural Zone. 11) Property with an approved conditional use permit for a commercial business allowing snowmobile repairs and the retail sales of parts and clothing, etc. And 12), property zoned Neighborhood Commercial for a service station and auto repair shop. In conclusion, Mr. Speth stated there are many commercial businesses (without including the commercial storage sheds and junkyard in Benson, commercial storage shed near the airport, and commercial storage sheds near Richmond) that have been approved with conditional use permits in the Agriculture Zone. He felt the College-Young Planning Commission was very unfair in denying the conditional use permit for the storage sheds. He was told by the Bear River Health Department that if they divided his mother's home off onto .5 acre for financial reasons, the remainder 1.2 acres would not be large enough to have a septic tank system on it; this fact was also related to Greenhalgh by Joel Hoyt. Mr. Speth stated he had contacted the State Environmental Quality Division and they also confirmed what Mr. Hoyt had told him. At the Planning Commission meeting, he was told by their spokesman that he should go against what the Health Department had told him and that he should request a residential lot. He was also told that this individual would support a request for a duplex. The spokesman was reminded by the Chairman of the board that duplexes are not allowed. Mr. Speth stated that he and his wife had canvassed the neighbors around this property and discussed the proposed venture with them; they found the neighbors are not opposed to this

use. He also discussed the road issue with Lynn Lemon, County Executive. He asked Mr. Lemon what would constitute too much traffic on 2200 South; there was no answer to the question. At the same Planning Commission meeting where his storage sheds were denied, a conditional use permit was approved for a residence. A residence can generate up to 10 vehicle trips a day on the road accessing their home. Mr. Speth felt they would have no more than three or four vehicles accessing the storage sheds per day. Curtis Knight, who has 1,003 nice storage sheds at a location in Ogden, counted 40 to 60 vehicles accessing the sheds on a busy day; that would break down to be four to six per day for 100 storage sheds. Mr. Speth felt there would be less than that number. In contrast, when the property was used for agriculture and they were harvesting or hauling manure, they would access and leave the property 25 to 30 times a day. They also had hay trucks and milk trucks accessing the property on a regular basis. He added that what he has requested would generate considerably less traffic than when the property was in agriculture. The Planning Commission had stated the intersection is dangerous and used that for one reason to deny the request. Mr. Speth had asked Mr. Lemon if that intersection is considered dangerous; he responded that all intersections are dangerous – people just have to pay attention. However, this intersection is not on UDOT's list or the County's list as being a dangerous intersection. Griffin asked if Mr. Speth could conclude his remarks and added that he would be given more time for comments a little later in the meeting. Mr. Speth stated that his mother is 86 years old; she and her husband paid for this land and worked it with their family. She would like to have some return from the land that would give her additional income. Mr. Speth also has a daughter who has had a kidney transplant; in approximately four years she will have no insurance coverage since she will no longer be eligible under her parents' health insurance. Her anti-rejection drugs cost from \$700 to \$3300 a month. He felt this would be very helpful income for both families. The land cannot be sold as a residential parcel because the Health Department will not issue a septic tank permit for the parcel. He would like to have the opportunity to have some use on this land; this request was determined by Mr. Speth to be the best and highest use for the parcel. Griffin thanked Mr. Speth and asked if a representative from the College-Young Planning Commission would like to speak on their behalf. George Whitney stated he was a member of the College-Young Township Planning Board. He continued that Mr. Speth had made several comments that were discussed at length at the Planning Commission meeting; however, the minutes had not elaborated on any of the discussion that transpired on the points he had made. Some of Mr. Speth's presentation the night of the Planning Commission meeting was deemed to be inaccurate. One of the points Mr. Speth made was that there are a number of businesses in that area which are comparable to this request. The businesses in question are home occupations in the Agricultural Zone which are permitted in the Agricultural Section of the Ordinance. The businesses they have approved have excluded all retail traffic, excluded employees, and the board has tried to limit delivery and/or truck traffic. Mr. Speth cited a snowmobile business. That business is operated by Hazel Leishman's son. They asked for a business that would provide a supplemental income. The board approved it because they felt there would be no excess traffic involved with the business and because it was located in an existing farm building. Mr. Whitney continued that Mr. Speth had mentioned the Grange Construction property. Mr. Whitney stated that as far as he knows, that property is zoned commercial. He had also referenced several parcels as though they are residential lots with commercial businesses in the Agriculture Zone; they are commercial lots. The Arctic Cat is a commercial building on a commercial lot. Mr. Whitney continued that Mr. Speth also stated that storage is a very common use in the Agriculture Zone. That was also brought up the night of the Planning Commission meeting, but was not addressed in the minutes. The only storage building that Greenhalgh could recall at that time was a building near Richmond with six bays which were to be used to store the neighbors' farm equipment. Mr. Whitney agreed that there are a lot of commercial uses in their area, but they are all closely or specifically agriculture related. Mr. Speth had mentioned a land-leveling

business which Mr. Whitney admitted was his business. He continued that it had been brought up in the last few years that he should have a business license because he does custom ag work. He checked with Lynn Lemon, County Executive; Gary McKean, the previous County Attorney; and Evan Olsen, State Representative. The Code changed to say that if a person operates a business that generates a certain income or in kind, a business license is required. He added that he does not know any farmer who does not trade a little work with his neighbors for money or in kind. Evan Olsen told him that anyone who works for a farmer, whether on his farm or on another farm, is entitled to the benefit of the laws extended to farmers. In the last few weeks, the County has clarified some issues regarding business licenses. Mr. Whitney stated he encouraged Mr. Lemon to clarify whether custom ag work would require a business license. If that determination is made, he should get a County Business License. Mr. Whitney is also a sales representative for Hydraulic Hose. He has hose shipped from Spokane, Washington, to ag dealers in this area of the state. He stated that when he started this business years ago, he asked whether he should get a business license. Mr. Whitney was told that until it was of some consequence, generated traffic, or the neighbors complained, it wasn't worth worrying about. Since it has been brought up in the last few years, he stated he probably should get a business license. He added that he was confident that the board would place several restrictions on him; and he was just as confident that they would not allow him to construct two 250' X 40' buildings as a home occupation. Mr. Whitney stated Mr. Speth calls the storage sheds a home occupation. He added that the minutes do not reflect the fact that the board asked him about this classification of a home business which he plans to run from Providence. The board had asked him if this type of business would be allowed in his backyard in Providence under their commercial zoning to which he answered no. In conclusion, it is clearly a commercial business and there is nothing in the Agricultural Chapter of the Ordinance that addresses this type of a commercial, rental, warehousing, storage use. In response to the fact of taking the old buildings down, Mr. Whitney stated he could not find anything in the code that would allow an individual the benefit of commercial zoning on a lot just because they remove old buildings. Nor is anything mentioned in the code to allowing commercial zoning because of financial difficulties. He added that at the Planning Commission meeting, the board was asked if they would support the rezone of this property to Commercial; the board responded they would not support it because there are more than one dozen homes immediately surrounding this lot. It did not appear to be an appropriate location for that type of business. Mr. Whitney stated that it would not be up to the Planning Commission whether the property could be rezoned to Commercial, but that decision would need to be made by the County Council. In response to the fact there might be a conflict because board members had encouraged condominiums, Mr. Whitney stated that Mr. Speth had asked the board what could be done with the property because of the financial situation Mr. Speth's mother is in. He added that Mr. Speth's representation that 1.2 acres will not accommodate a home is completely false. At the Planning Commission meeting, the board approved the lot to be divided with the existing home to remain on a .5 acre lot. There is a technicality through the Health Department which allows a home on a .5 acre lot if the well providing culinary water for that home is not located on the same lot with the home. There is a well on the 1.2-acre parcel which will provide culinary water to the existing home. There is also a very large well on the .5-acre lot which, in Mr. Whitney's opinion, could be used to supply water to the 1.2 acres. Mr Whitney told Mr. Speth he thought he could get a permit to build a home on the 1.2 acres; even though Greenhalgh was strongly against the idea, Mr. Whitney had mentioned constructing a duplex instead of a single family dwelling on that lot. He added that condominiums are allowed in the Agricultural Zone as a conditional use. Mr. Whitney continued that one home is substantially different from 100 rental units for storage. The board did not tell Mr. Speth what they would approve or what he should do, but tried to offer some suggestions for ways he could utilize his property. Mr. Whitney stated in conclusion, the Ordinance states clearly

that commercial uses should take place in a Commercial Zone. Clements disagreed with Mr. Whitney. Mr. Whitney stated that the unincorporated area should be reserved primarily for rural uses such as agriculture and residential development on unproductive land, but not to exclude other appropriate activities. The College-Young board did not deem this to be appropriate use since it was surrounded by 12 homes. Griffin asked Mr. Whitney to conclude his remarks. Mr. Whitney continued, it says to promote the full utilization of existing areas within the community which are presently zoned for commercial and manufacturing purposes and where services are located or can be easily provided. He added that in regards to the other business Mr. Speth was speaking about, the board had told that applicant they would not approve that business for commercial use either. However, it was determined that applicant had a valid permit issued years ago. The past Zoning Administrator, Ken Sizemore, in reviewing that request, had asked the following questions: 1) Does the business fit the definition of an appropriate family-type supplemental endeavor. 2) Is the request in harmony with surrounding agricultural uses. 3) Has the operation of the business caused financial, environmental, or physical harm to surrounding areas. 4) Has the concerns with the access right-of-way, internal traffic circulation, and parking been resolved. 5) How does this approval promote the development of areas already zoned for commercial uses. Mr. Sizemore had presented the following evaluation regarding those questions, "It is quite evident that this business has expanded beyond the supplemental endeavor. The business supports many families as well as employees. Should this type of business be allowed in the Agricultural Zone? If this is the desire of the citizens and county officials, then there is no need for Commercial or Manufacturing Zones in the unincorporated area. All landowners should be able to apply for any use they deem appropriate for their circumstances. This is the most vital reason for zoning districts. They provide an established, recognized, and viable backup for land use descriptions." Mr. Whitney added that this type of business would be very appropriate in some places in the county, but not in his mother's backyard. Erickson asked for clarification regarding the statement made about a conflict of interest of those on the Planning Commission. The second item Erickson expressed concern about was the phrases "it seems to be," "it seems to me" as this item was discussed. He would like to hear more concrete facts rather than impressions. Erickson also asked why these items were not included in the minutes. Mr. Whitney stated their board had not met since that meeting so there was opportunity for revisions of the minutes to be made by the board. There were only four members at that Planning Commission meeting and three of those members were present at this Board of Adjustment meeting and could verify the facts presented. Greenhalgh stated she was there also. Erickson continued that there are various business in that area; he wanted to know how decisions were being made to allow some of these businesses and not allow others. Mr. Whitney stated he is quite sure David Grange's building is a commercial building; he's quite sure Ted's Service Station is a commercial building; he's also sure that the building used by Homer's Leishman's son for a business was an existing small building which burned down and he was granted permission to rebuild the building. He is also sure Mr. Leishman does repair in that building for his farm and some repairs for other farmers. He felt that type of shop is closely related to agriculture. Each Planning Commission member should feel obligated to study the code and try to make assessments. This request is not at all similar to those approved uses. Griffin told Mr. Speth he could have two minutes for comments or rebuttal. Mr. Speth stated that the reason for the conflict of interest was because Mr. Whitney's cousin is Curtis Knight's wife. He added that it is his firm belief that since Mr. Knight has a major storage shed operation in this valley and in the Ogden valley, Mr. Whitney is trying to prevent any competition to Mr. Knight's business. If Mr. Whitney had declared it, it could have been dealt with; but it was never declared. Mr. Speth stated there are no employees with this business, it is a family operated business, there would be no retail sales, there would be no manufacturing, and it could serve farmers as well as the residents in this area. Mr. Whitney replied that Mr. Speth had made the accusation about the conflict of interest; since

he is the party accused, he wanted to respond to it. Curtis Knight is the gentleman who is trying to help Mr. Speth build these units. Mr. Whitney added that he has no business interest with Curtis Knight in storage units; Mr. Knight had hired Mr. Whitney several years ago to do some ground work in Ogden. Mr. Speth stated that if Mr. Whitney had worked for Curtis Knight; he did commercial work outside the valley for Curtis Knight who is not a farmer. Mr. Whitney responded that he does not need a Business License in Cache County in order to do work in the Ogden area. Coreen Speth stated that in their research, they found that by definition a home business is a business that operates within the walls of the home or a smaller building used for that home business. The businesses on the handout Brent Speth distributed are not home businesses. They are businesses that have been given conditional use permits for a commercial use in the Agricultural Zone with residential homes around them. Clements made a motion to close the public hearing. It was seconded by Nielsen and passed unanimously. **The Public hearing closed at 4:45 p.m.** The Chairman reminded the board members of their options: 1) to uphold the Planning Commission's decision; 2) to overturn their decision; 3) if the board members felt there is significant information that might have made a difference if the Planning Commission would have had that information to review, it could be remanded back to them; or 4), if there is additional information that might be helpful for this board to have, they could continue the item for a decision at a later meeting. Nielsen stated that the definition of home enterprise (which is allowed in the Agriculture Zone) is defined in the Ordinance as, "An occupation conducted entirely within a dwelling unit or permitted accessory building by members of the family residing on the premises and which occupation is clearly incidental and secondary to the use of the premises as a dwelling." She understood that Mr. Speth would be handling the business as far as the rental, collection of rental fees, etc., from his residence in Providence. Therefore, it would not qualify as a home enterprise. Weeks stated they also run the dairy that way; cows are not always milked at the same location where the home is located. Nielsen responded that a dairy is an agricultural use. Clements stated the Planning Commission boards have allowed a lot of commercial businesses in the unincorporated area of the County. Erickson stated that Brent Speth is acting as agent for Edna Speth, the property owner where these storage units would be located. Mr. Speth was asked who would own the storage sheds. Mr. Speth stated the storage units would be financed by his mother's property and would be in her name. He added that they are not asking for a home enterprise business; they are asking for a conditional use permit for a commercial business. Nielsen stated that a home enterprise allows for a home business on the property. Mr. Speth responded that they had approached the Planning Commission for a conditional use permit allowed by 4-3.X. listed under conditional uses. Greenhalgh added that a home business is a permitted use and is handled in the office by staff; it does not need conditional use approval. All the conditional use permits that have been issued have been for commercial businesses in the Agricultural Zone. Griffin reminded the board members that any evidence found showing the College-Young Planning Commission acted arbitrarily needed to be listed as findings of fact. Nielsen stated she felt the board was following the Ordinance. Clements felt the Planning Commission was capricious and arbitrary; the items they pointed out such as increased traffic would be no different if a residence or dairy would be allowed to be there. More traffic would probably be generated by a dairy. He continued that he found little of what Mr. Whitney stated to be relevant. The Ordinance does allow commercial businesses in the Agricultural Zone with conditions. Griffin expressed concern regarding the claim of inaccurate minutes from the Planning Commission meeting. He added it would be very helpful to read the approved minutes. Nielsen stated if the approved minutes are different than what had been presented, the board members should have the corrected version. Greenhalgh stated that with that in mind, there may be changes made to the minutes that may not be accurate either. She suggested the board may wish to review a transcription of the tape for that

1. Nielsen asked if the board should act on what they have heard instead of

waiting for a transcript. They asked Mr. Nolan which would be best. He responded that it was their decision; they could defer this decision to a later meeting if they desired. Erickson stated his feeling was to continue this decision until the next meeting to have a more accurate record of the proceedings. Griffin stated it is obvious there are approved commercial businesses throughout the County. Greenhalgh added that the College-Young area is a small portion of the unincorporated area of the County; there are a lot of commercial businesses throughout the County and have been since she started working for the County 17 years ago. Gunnell stated she felt this use might be more appropriate than a dairy at this location. Clements agreed; even though a dairy would be allowed under the Ordinance, it may not be the most appropriate location for that use. Nielsen asked if the setbacks and side yards could be met for these buildings which are 40 feet wide. Clements stated this board did not need to worry about that; a zoning clearance would not be issued until proper setbacks and side yards are met. A discussion ensued regarding the setbacks and side yards. Weeks stated that it would be an improvement to tear the old existing buildings down to be replaced by these two new ones. Greenhalgh added that Joel Hoyt did tell her that he would not allow a septic tank on the 1.2-acre parcel for a home because of the high water table. *Nielsen made the motion to continue this decision until the next Board of Adjustment meeting so the board members would have an opportunity to review the transcript of the College-Young meeting for 19 April 2000.* Greenhalgh stated they would make every effort to provide that transcript, but wanted them to know that staff is several weeks behind. *Erickson seconded the motion. It passed with three (Nielsen, Erickson, and Gunnell) in favor, two (Clements and Weeks) opposed, and the chairman did not vote.* A discussion ensued regarding the tape recording of the College-Young meeting; it was the consensus of the board that if a transcript could not be provided, then they should listen to the tape together as a board.

Richard Broun and Sheryl Lisonbee (00-39R) requested a special exception to allow 17.189 acres of property in the Agricultural Zone with no frontage on a public road for the construction of a single family dwelling to be located at 2756 Valley View West, Petersboro. The Cache County Planning Commission reviewed this application for the division of property and granted approval on 5 June 2000 with the following stipulations: 1) Current and future property owners must be aware that they will be subject to the sights, sounds, and smells associated with agricultural activities which are the permitted uses in the Agricultural Zone. 2) The applicants shall receive Board of Adjustment approval of a special exception for property with no frontage on a public road. 3) The County is not responsible to provide any services to private roads or driveways. 4) The County will not provide snow removal services to the private road Valley View West. 5) If the driveway is 150 feet or longer, the surface shall be constructed to be 20 feet wide with an approved turnaround near the home site for emergency vehicles; construction work shall be completed on the driveway and turnaround with written approval given to staff from the County Fire Chief's Office prior to the release of a zoning clearance for a building permit on this property. And 6), the 10-foot wide easement over the water line from the well on the north parcel to the parcel with the existing home shall be recorded with a copy given to staff prior to the release of a zoning clearance for a building permit on this property. As stated, this approval is subject to the approval of a special exception by the Board of Adjustment under Section 24-4.F.1.b. Frontage which provides for the development of property for a dwelling unit not having frontage on a public road. A discussion ensued regarding the location of the private road Valley View West and this property. The construction work on the private road has been completed. The board reviewed 24-3.F. Findings of Fact 2.a.-k. *Based on Findings of Fact a.-h. and j., Gunnell made the motion to approve this request with the same stipulations as listed on the conditional use permit approved 5 June 2000. The motion was seconded by Clements and passed unanimously.*

ADDENDUM 14

continued that she appreciated their concerns with the North Logan Officials, but could not understand the relevance of meeting with them when it is a project located in the unincorporated area of Cache County. Gunnell stated that the CMPO master plan indicates 200 East is to be designated as corridor. She felt the appellants had not proven that the Planning Commission acted in a capricious manner or that proper procedures had not been followed regarding this request. Weeks stated that when traffic problems occur on State Highways, UDOT will deal with them in regards to traffic signals, etc., as the need dictates. Erickson expressed concern with the haste of how some of these things happened; however, he continued that he felt the County had fulfilled their obligation regarding notices, etc. North Logan appears to be a bystander in this process and may not have a great deal of influence in how it is to happen. He stated in the evidence presented, he found nothing that indicated the Planning Commission acted in an arbitrary or capricious manner regarding this request. He complimented those citizens who voiced concerns and who want more access to their government. He stated he personally is not in favor of the Ice Arena, but that it had nothing to do with the decision to be made regarding the appeal. Clements stated that if he had this to do over as a Planning Commissioner, he would have made sure that the mayor understood he could not proceed until he received the proper road approval; however, he continued that Greenhalgh will not give a zoning clearance for a building permit until that road is built to County standards. At the time, it was not a concern because the zoning clearance for a building permit would not be issued until UDOT issued their Encroachment Permit and the County Road Superintendent and County Fire Chief's Office approved the construction of those roads. He understood that it would impact these citizens, but almost any endeavor of this size would impact someone. Griffin stated that as a Board of Adjustment Appellant Board, they had three options: 1) To find the Planning Commission acted in an illegal, arbitrary, or capricious manner for which their decision to approve the conditional use permit could be overturned. Personally, he felt that it was handled according to outlined procedures. There were some unfortunate things that happened, but the citizens needed to keep in mind that the project is located in the unincorporated area of the county. 2) The board could uphold the Planning Commission's decision to issue the conditional use permit. Or 3), the board could amend the decision to approve the conditional use permit by adding stipulations. Erickson asked whether the UDOT permit had to be in place prior to construction. He was also concerned that Mr. Draxler stated the access road from the highway was to be a construction road and eventually as development occurs, it would be a completely improved road. Griffin wondered if he meant that once the construction phase of the Ice Arena was completed, the road would be finished. Erickson asked if once the Ice Arena is completed, before they open it for public use, if the roads would have to be completed. Greenhalgh explained that once the County Fire Chief's Office and the County Road Superintendent give her staff written approval that the roads meet their standards and specifications, a zoning clearance could be issued; that does not mean the roads would need to be paved. She continued that her office would have no means of following through to make sure the road was paved with curb and gutter. Mr. Draxler stated they have every intention for the access road to be paved (blacktop) from Highway 91 to the Ice Arena to County standards prior to opening. He explained that County standards do not require curb and gutter and everything that North Logan City requires when that property is developed by a commercial developer. *Based on the following findings of fact from the evidence presented: 1) This development is to be constructed in the unincorporated area of the County; North Logan City currently has no jurisdiction over it; 2) proper procedures were followed regarding this request as evidenced in the minutes and other testimony presented; and 3), no evidence was presented to prove the Planning Commission acted in an illegal, arbitrary, or capricious manner in the decision process of this request; Nielsen made the motion to uphold the Planning Commission's decision as written. It was seconded by Gunnell and passed unanimously.*

A public hearing was held 15 June 2000 for **Brent Speth, agent for Edna Speth (00-24C)**, who appealed the 19 April 2000 decision of the College-Young Township Planning Commission to deny a request for a conditional use permit to allow 1.20 acres of property in the Agricultural Zone for the construction of two 250' X 40' storage sheds as a commercial business to be located at 1279 West

2200 South, College Ward. Each building is to have 25 double units (100 units total) to be used as rental storage space. The units will be 14 feet high and are to meet all setback and side yard requirements. They would be constructed of metal or block with a concrete floor which would be in keeping with the type of construction found in the surrounding area. The color tones would also be chosen to blend with the area. The president of the College Ward Irrigation Company, Ed Nelson, suggested the approaches to the property have 24" culverts. The Planning Commission voted to deny the request for a conditional use permit based on the following findings of fact: 1) The request is for a commercial business in the Agriculture Zone on an existing residential lot with an existing single family dwelling. 2) The Ordinance states that commercial businesses should be in commercial or manufacturing zones. 3) This proposed business is not in harmony with the Agriculture Zone. 4) This proposed business is not compatible with a residential neighborhood. 5) The increase of traffic is not compatible with the residential neighborhood. 6) The increase of traffic turning off 2200 South would be dangerous. The appeal was based on whether the decision to deny the application was arbitrary or capricious. The Board of Adjustment was advised not to rehear the arguments of the appeal, but use the information already received including a transcript of the Planning Commission's tape of the 19 April 2000 meeting where this request was denied. Questions could be asked of the appellant and others if more information was required. They were further advised that any prior discussion the board members participated in with the appellant or with members of the College-Young Township board should be fully disclosed or board members should disqualify themselves from voting. Weeks stated that when Mr. Speth distributed the maps at the last meeting during the public hearing, it showed there were commercial businesses all along Highway 89-91 and the College-Young area. The College-Young Township Planning Commission stated they did not want a commercial business in the Agricultural Zone. However, he did not feel this was appropriate since precedence has been set in that area; and since this particular parcel is such a small parcel of ground, it does not lend itself very well to agricultural use. Clements stated he felt the Speths had the right to proceed. He continued that it was his opinion that the Planning Commissioners for that area interpret the Ordinance differently than others do; his personal opinion is that their interpretation in this instance is not correct. Commercial businesses are allowed in the Agricultural Zone as long as conditions are specified. He added that he feels that agriculture endeavors are also commercial businesses. Nielsen stated that in Chapter 4 - Agricultural Zone (A) of the Land Use Ordinance, commercial businesses are allowed as conditional uses. In studying the Purpose of the Agricultural Zone (4-1) and 4-3.X, she did not feel the Planning Commission exactly followed the Ordinance. The enterprise they are proposing would be allowed in the Agricultural Zone under these references in this chapter. Gunnell stated she was in accordance with the other board members. There are other commercial businesses in this area and she felt this business should be allowed. Clements asked if this board could overturn a denial or if the request should be sent back to the Planning Commission for further consideration. Griffin replied that it could not be sent back to the Planning Commission according to the court ruling on the Cronquist decision. Weeks stated the applicant had agreed to construct certain fences and other things. Erickson asked how this is different from the other properties along here that have commercial businesses. Griffin stated that what the board members appear to be saying is that there is no difference; if there is a difference, it would be in size. He continued that this is a very challenging matter for him because a line needs to be drawn somewhere for these commercial businesses based on size. He also feels he has the right to utilize that property and that the request is not unreasonable. He stated that even though he felt somewhat disconcerted as he read through the transcript of the minutes relative to the nature of the meeting, he felt they went to great lengths to check resources to find out what was appropriate. Clearly the Agricultural Zone has allowed commercial businesses and will continue to allow them. Gunnell stated that this commercial use is probably more appropriate than a big dairy. *Based on the following Findings of Fact: 1) The request for this commercial business is in compliance with the Land Use Ordinance; and 2), commercial businesses have been approved and are in operation in this area; Weeks made the motion to reverse the College-Young Township Planning Commission decision and allow a conditional use permit for the construction of two 250' X 40' storage sheds containing 100 units total as a commercial business in the*

Agricultural Zone at 1279 West 2200 South, College Ward with the following stipulations: 1) The applicant must follow the requirements of the College Ward Irrigation Company, County Road Superintendent and the County Fire Chiefs Office regarding access and culverts. 2) Current and future property owners must be aware that they will be subject to the sights, sounds, and smells associated with agricultural activities which are the permitted uses in the Agricultural Zone. 3) The applicant shall receive a permit to tear down the existing buildings. And 4), the applicant shall comply with all conditions of the proposal they submitted for review to include the fencing, attractive buildings, side yards, setbacks, etc. The motion was seconded by Clements and passed with four (Weeks, Clements, Gunnell, and Nielsen) in favor and two (Griffin and Erickson) opposed. Erickson asked if this decision would mean that the College-Young Township Planning Commission had lost any type of control over maintaining the agricultural atmosphere in the College-Young area. Griffin stated that even within the guidelines the board has been given, they should seek strongly to find reasons to uphold; this matter was not taken lightly. Nielsen stated that it is a matter of interpretation. One of the functions of this board is to interpret the Ordinance; there is evidence that the Ordinance does allow commercial businesses in the Agricultural Zone.

A public hearing was held 15 April 1999 on behalf of Terry Cronquist who requested the Board of Adjustment to overturn the Planning Commission's decision to uphold the conditional use permit issued to **Robert O. Cronquist, Jr. (97-56C)**, to allow a landscaping business in conjunction with an existing gravel pit to include the extraction of gravel, rock, and top soil on property located near 1925 Canyon Road in Smithfield Canyon. The decision made by the board at that meeting was to remand the item to the Planning Commission for further review. That decision was taken to the First District Court of Cache County and overturned as a failure to "hear and decide" the appeal. The original conditional use permit was approved by the Planning Commission on 6 October 1997 to allow a landscaping business in conjunction with an existing gravel pit; this decision was later appealed by several parties. The appeal hearing was held 20th November 1997. The Board of Adjustment upheld the Planning Commission's decision to allow the business. A letter from Brian Cannell of Hillyard, Anderson & Olsen dated 31 December 1998 was received by staff requesting the Planning Commission to review the conditional use permit on the grounds that alleged violations were being committed. At this hearing held 1 February 1999, the Planning Commission determined there was insufficient evidence to overturn or revoke the conditional use permit. This decision was appealed by Terry Cronquist citing the conditional use permit allowed a different right-of-way than the 50-foot right-of-way approved with the original approval. The business owner, Robert O. Cronquist, Jr., was using a 35-foot wide right-of-way. The Board of Adjustment heard that appeal 15 April 1999 and remanded it back to the Planning Commission for clarification on the approval of the right-of-way. This decision was taken to court. A stay was placed on the Planning Commission from making this clarification until after a court ruling. The Court ruling dated 16 May 2000 stated that the Board of Adjustment must hear and decide on the Appeal and that the Cache County Ordinance was invalid concerning the remanding of appeal decisions back to the Planning Commission. The board was advised that this request does not require a new hearing, but a decision only. Chris Daines asked if this was a hearing. Griffin replied that it was not necessarily a hearing. Mr. Daines stated that if it were a hearing that Mr. Hillyard should be given an opportunity to present his case. The last time this matter appeared before the board, Mr. Brian Cannell and he both thought that these proceedings would be a hearing. Since there are board members who were not present at the original hearing and given that the options open to the board were limited compared to what options the board thought they had at the original hearing, he felt each side should be given the opportunity to state their case. Griffin stated that if the two attorneys would give the board consideration regarding the time required to present their case, he would allow up to ten minutes for each side. Mr. Lyle Hillyard stated that when they brought up the subject of the appeal, their argument with the Planning Commission was that when they granted the conditional use permit, they did not clarify which access road to the property should be used. The road at the time the conditional use permit was requested was a road that went through the father's, Ollie's, property. Ollie has since shut off that access. Now Robert is using a 35-foot wide

ADDENDUM 15

IN THE FIRST JUDICIAL DISTRICT COURT
STATE OF UTAH, IN AND FOR THE COUNTY OF CACHE

COLLEGE -YOUNG WARD
TOWNSHIP PLANNING COMMISSION,

Petitioner,

v.

CACHE COUNTY BOARD
OF ADJUSTMENTS et.al.

Respondents.

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MEMORANDUM DECISION

Case No: 000101276 AA

Respondents have once again moved to dismiss this action based on Petitioner's alleged lack of standing. In addition both sides have moved for summary judgment. Finally, Respondents request that the court strike Exhibit "C" of Petitioner's *Memorandum of Points and Authorities in Support of Motion for Summary Judgment*. The court has considered the memoranda and the arguments made at the 28 June 2001 hearing on this matter.

The court will deal with the issues raised by each of the parties one by one. This case presents a number of frustrations for the court. The lack of a formal order from the Board of Adjustments stating the reasons for its reversal of the Township Planning Commission with no statement of findings, makes it difficult for this court to review the Board's action. The Cache County Ordinance requires that the Board enter a formal order with findings. Such a practice would greatly aid the court in its review of Board decisions. As such, the court highly recommends compliance with

the ordinance in the future. The court does not believe that the lack of a formal order is cause to reverse the decision of the Board where the minutes contain two reasons for the decision.

Likewise, the court does not view Petitioner's allegation of *ex-parte* communications with the board as sufficient grounds to reverse the Board's decision. Petitioner only submits the documents stamped 13-34 in the record as evidence of *ex-parte* communications. Petitioner does not specifically contend that these documents were not available to Petitioner before the second Board meeting. The documents are information supplied by the Speths between the first Board hearing in April and the Board meeting at which the vote was taken in July. If the Board has the right to review the case *de novo*, then it has the right to allow additional information to be submitted in written form after the hearing. Notably, the Petitioner also appears to have submitted additional material in the form of corrected minutes and transcripts after the April hearing. Under the circumstances, the court cannot say that the Board proceeding was unfair or violated due process because of "*ex-parte*" communications as a matter of law. This matter could be reason to deny the Respondent's motion for summary judgment, but Petitioner has not supplied anything more than the bald assertion in its *Memorandum of Points and Authorities in Support of Motion for Summary Judgment* and the record itself in support of its proposition. Such unsupported allegations are insufficient to raise a question of fact.

Petitioner contends that the Board concluded as a matter of law that "all commercial uses are allowed in the agricultural zone." If that were true, Petitioner would have standing as such a conclusion of law is clearly contrary to law. However, the court does not agree with Petitioner's interpretation of the Board's action.

The Board's finding states "the request for this commercial business is in compliance with the land use ordinance." From a review of the minutes and transcript of the Board's 20 July meeting it seems clear that the Board found that the Commission had misinterpreted the Ordinance to preclude commercial businesses in the agricultural zone. The Board was then faced with a problem. A memorandum decision issued by another court in this district ruled that the commission could not remand the matter to the Commission. The Board then either had to reverse the Commission solely on the grounds of what it perceived as a legal error, or consider the evidence itself in light of its understanding of the correct legal principle. At any rate, the Board's finding that this use complies with the ordinance does not necessarily include the proposition that "all commercial uses are allowed in an agricultural zone." By arguing it does, Petitioner ignores that the Board's finding only speaks to this case. Even if the Board's standard for reviewing Commission decisions were not *de novo*, the Board could take the Commission's findings and apply the law in this case such that it could reverse the Commission. Of course, this court could apply the same approach to the Board's decision in that case.

The record reveals that the Board felt it could not remand the case to the Commission despite its feeling that the Commission applied the wrong legal standard. This court has *sua sponte* taken judicial notice of the record in *Cronquist v. Cache County Board of Adjustments*, First District No. 990100624. The court is unpersuaded by the arguments there presented that the remand portion of the ordinance violates the enabling act. That argument is not squarely before the court, but in light of the general findings, the court is forced to address the Board concerns that appear in the record. Even if the remand provision violates the enabling act, the

Board can *de facto* remand the matter by vacating the decision of the Commission without issuing the permit based on a well crafted formal order that does so based on the alleged erroneous application of an improper legal standard. The litigants would then be free to again apply for the conditional use permit and would have the guidance of the Board's interpretation of the Ordinance. The court, therefore, holds that the Board erred in its determination that it cannot vacate the Commission's order without issuing the conditional use permit or that it cannot remand the matter to the Commission.

The court can understand the Commission's frustration at the County's changed position on the issue of the standard of review the Board must use in appeals from Commission decisions on conditional use permits. It is clear from the record before the Board that the Board at least considered the "arbitrary, capricious or illegal" standard. The court further finds that the county attorney's opinion is properly considered in this connection. While the opinion does not appear in the official record, neither the Respondent nor the county dispute the fact that the opinion was given in this instance, and in other instances to the Board as part of its "packet" for considering appeals. As such, it was a part of the record that should have been included in the record transmitted to the court. Pursuant to Utah Code Ann. § 17-27-708(5)(a)(ii) the court deems it as part of the official record.

The county attorney's opinion makes it clear that the official legal officer of the county deems the appropriate standard for Board review of Commission decisions the "arbitrary, capricious or illegal" standard. Although the official opinion is not binding on this court, the court will consider it in this case. The court also notes that the ordinance itself gives authority to the Board to adopt "policies." *See* Ordinance

§ 24-5(A). Under the circumstances, an argument can be made that the county attorney's opinion, circulated to the board, may have become a *de facto* policy.

The decision in the *Cronquist* case purporting to invalidate the remand provisions of the ordinance placed the Board in a "catch 22." The Board could no longer remand the matter for reconsideration, the Board did not think to vacate without issuing the permit, and the only option open to the Board based on its understanding was to review *de novo* the Commission's determination.

At any rate, Respondents move to dismiss claiming that Board of Adjustment review of the Township Planning Commission is *de novo* so that, pursuant to the court's previous decision, the Commission has no standing to challenge the Board's decision. The court has already found that the Commission's argument that the Board misinterpreted the law gives the Board standing as a "person aggrieved." The Commission also argues that the standard as to the evidence is whether there was substantial evidence to support the Commission's decision or in other words that the Commission's decision was not "arbitrary or capricious" but based on more than a scintilla of evidence. The court is not bound by either the Commission or the Board's interpretation of the ordinance. The court is bound by the findings of the Board to the extent that the Board has *de novo* review of the Commission's decision.

To determine the appropriate standard for the Board's review of the Commission decision, the court must first turn to the enabling act. The Utah Code does not contain a provision dealing directly with review of township planning commission decisions. Instead the parties cite section 17-27-703(1) and 704(1)(a)(I) which provide:

(1) The board of adjustment shall hear and decide:
appeals from zoning decisions applying the zoning ordinance.

(1)(a)(I) The applicant or any other person or entity adversely affected by a decision administering or interpreting a zoning ordinance may appeal that decision applying the zoning ordinance by alleging that there is error in any order, requirement, decision, or determination made by an official in the administration or interpretation of the zoning ordinance.

It is interesting to note that the last legislature amended this section to include a new subparagraph:

(D) appeals from a decision approving or denying a conditional use permit, unless the county legislative body has by ordinance designated itself or another body to hear and decide those appeals.

2001 Utah Laws ch. 241 § 33. This new subsection makes it clear that the Board of Adjustments can hear appeals from a decision approving or denying a conditional use permit. Obviously someone in the legislature felt that the language of the section was not clear on that point in its previous version. Unfortunately, neither the former statute nor the amendments cast any light on what the appropriate standard of review for appeals from Commission decisions is or was. The lack of statutory guidance concerning appeals from township planning commission decisions makes this case especially difficult.

The enabling act provides that the county can give the township planning

commission the power to “approve or deny conditional use permits.” Neither party has cited or provided the applicable part of the ordinance, but apparently the county has designated the Township Planning Commission to decide on conditional use permits as the decisions of the Commission and the Board, and the argument of counsel, all assume the ordinance has provided that authority. A review of that portion of the ordinance may have been helpful in determining what the proper role of the Commission is in the legal scheme. The court notes that the record provided by the Board includes the transcript of a meeting of the Commission where a heated discussion concerning the Commission minutes occurred. During that exchange, the Commission commented that it does not always provide a transcript of its proceedings to the Board. In those instances, the Board clearly would be enabled to take evidence on its own just as the District Court would. To hold otherwise, might invalidate the ordinance. *See Xanthos v. Board of Adjustment* 685 P.2d 1032, 1033 (Utah 1984)(lack of record allowed district court to take evidence based on due process requirements).

The question remains as to what the applicable standard of review is for appeals from Commission decisions regarding conditional use permits when a transcript of the proceedings is sent to the Board. The court will turn to those

provisions of the Ordinance that the parties have cited as authority. None of them explicitly address the appropriate standard of review. Section 24-4(E)(4) of the County Ordinance provides:

The Board of Adjustment may hear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, or decision made in the enforcement of the land use ordinance.

This provision makes no distinction between legal error or an error in a factual finding.

When faced with a similar dearth of applicable ordinance provisions and some conflicting related ordinance provisions, the Court of Appeals has resolved the issue in favor of finding broad authority for the Board. In *Bennion v. Sundance Development Corp.*, 897 P.2d 1232, 1235 (Utah App. 1995), the Utah Court of Appeals held that the Board of Adjustments could hear appeals from the Utah County Commission despite a conflict in the language of the Utah County Ordinance because the section listing the general powers of the Board of Adjustments did not include the limiting language of the section requiring four votes to overturn an action of any "administrative official."

In like manner the court here will invoke such reasoning and find that because neither the enabling act nor the ordinance limit the review of the Board of

Adjustments to the higher standard, the Board may review any action of the Commission *de novo*. The Ordinance can be amended to provide otherwise, but it does not contain such a limitation at present.

Both the Ordinance and the statutory scheme do, however, add support to the conclusion that the review should be *de novo*. In general, the statutes contemplate the Board of Adjustments taking evidence. Section 17-27-708(5)(a)(ii) allows the District Court to take evidence if the evidence was offered to the Board of Adjustments but the Board improperly excluded it. The statute assumes that the Board will take evidence.

Likewise, chapter 27 of the Ordinance is full of provisions that lend themselves to finding the review is *de novo*.¹ Section 27-3 provides in subsection "G" that:

Anyone wishing to give comments in person may be given a limited opportunity to speak. If written comments are submitted, copies shall be provided for the Board of Adjustment, and the Zoning Administrator.

The comments from "anyone" go beyond the legal argument of counsel and the statements of a petitioner and allow "anyone" to submit information to the Board that

¹The court notes that chapter 27 mentions only appeals from the "Cache County Planning Commission" and is silent as to appeals from the Township Planning Commissions. The court reads the provisions as equally applicable despite the chapter's failure to mention the other planning commissions.

would be considered new evidence. In this way, subsection "G" contemplates *de novo* review. Likewise, subsection "H" contemplates presentations from both sides.

Section (I)(2) provides that:

The Board of Adjustments may affirm, modify , or reverse the decision of the Planning Commission or, subject to the provisions of this section, it may also remand the matter to the Planing Commission for its further consideration.

Respondents argue that the word "modify" in this section means that the Board's review is *de novo*. Certainly the term does no harm to the argument it is *de novo*. Subsection "F" provides that five days prior-notice of the hearing must be given to the owners of all property within three hundred feet of the property in question. Perhaps most telling, Subsection J(1) requires the Board to make "formal findings of fact." In light of the latter requirement, the case for *de novo* review is more compelling.

The court notes that there are some Ordinance provisions that the court could interpret as inconsistent with the forgoing analysis. For example, 27-3(I)(2)(a) provides that:

The matter under appeal may be remanded to the Planning Commission only if the Board of Adjustment determines that further information is required or that other essential matters ought to have been taken into consideration by the Planning Commission.

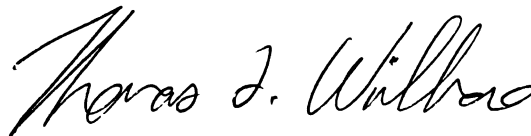
This provision could be interpreted as requiring a remand if the Board feels the Commission did not consider certain evidence -- an unnecessary action if the Board can simply consider the evidence itself. The provision is not necessarily inconsistent with the section that requires findings of fact and the other provisions mentioned above. Although the Ordinance contemplates a remand, it does not require it. The Board may wish to remand in cases where it wishes the benefit of the Commission's expertise and local perspective. In other cases, it may decide to go forward with the evidence itself.

Having determined that the Board properly conducted a *de novo* review of the Commission's decision, the court turns now to the Respondents' motion for summary judgment. The court's review is limited to the record and is limited to a determination of whether the Board's decision is arbitrary, capricious or illegal. Utah Code Ann. §§ 17-27-708(2), (5)(a)(i). The court has reviewed the record and finds that there is substantial evidence to support the Board's findings and action. Both the Commission and the Board were operating under the assumption that certain commercial uses are conditionally available in the agricultural zone as per the ordinance. The Commission appears to have found that the proposed use is not in harmony with the agricultural zone. The Board disagrees. This court must apply the

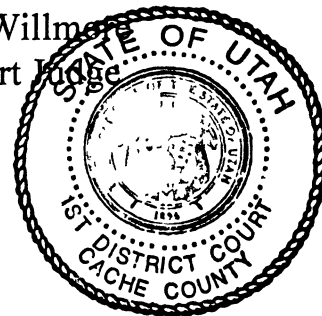
substantial evidence standard to the Board's decision and in doing so upholds the Board's decision and grants Respondent's motion for summary judgment and denies Petitioner's motion for summary judgment. The Respondents shall prepare an appropriate order

Dated this 18 day of July, 2001.

BY THE COURT



Thomas L. Willmore
District Court Judge



CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 000101276 by the method and on the date specified.

METHOD NAME

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 ATTORNEY RES
 HOLMAN WALKER & HTUCHINGS,
 LLC
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 SANDY, UT 84070

By Hand N. GEORGE DAINES
By Hand TODD HALLOCK

Dated this 19 day of July, 2001.

M. Flaherty
Deputy Court Clerk

ADDENDUM 16

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**IN THE FIRST DISTRICT COURT, CACHE COUNTY
STATE OF UTAH**

COLLEGE – YOUNG WARD
TOWNSHIP PLANNING
COMMISSION,

Petitioner,

v.

CACHE COUNTY BOARD OF
ADJUSTMENTS, et al.,

Respondents.

ORDER

Case No. 000101276 AA

Judge Thomas L. Willmore

This matter came before the Court on cross-motions for summary judgment. In addition, Respondent's have moved to dismiss the remaining petitioner and to strike Exhibit "C" to Petitioner's Memorandum, and Petitioner has applied for a preliminary injunction. Oral argument on these matters was heard by the Court on June 28, 2001. The Court has

considered the written submissions of the parties, the arguments of counsel, the pleadings, and the record of proceedings before the Cache County Board of Adjustments. On July 18, 2001, the Court issued a Memorandum Decision. Following is the order of the Court.

1. The following facts in this case are undisputed. Respondents Brent Speth and Edna Speth (“the Speths”) applied to the College-Young Ward Township Planning Commission (“the Commission”) for a conditional use permit to operate a commercial business (storage units) within an agricultural zone. The Commission denied the request. The Speths appealed that decision to the Cache County Board of Adjustments (“the Board”). The Board reversed the Commission’s decision and allowed the Speths a conditional use permit with four enumerated conditions. The Commission (and certain individuals who have been dismissed from this case) filed this action to appeal The Board’s decision. The record of proceedings before the Board has been filed with the Court.

2. Pursuant to Section 17-27-1001, Utah Code, the question before this Court is whether or not the Board’s decision is arbitrary, capricious, or illegal, and the presumption is that the Board’s decision is valid. Because the Board’s action arose from an appeal of the Commission’s decision, the Court’s evaluation must begin with a determination of the Board’s scope of review. This is a question of law.

3. The Commission argues that the appropriate standard is the same one employed by this Court in reviewing the Board’s decision. Under this standard, the Board could reverse only if the Commission’s decision were arbitrary, capricious, or illegal, and would be bound

to uphold the Commission's decision if there were substantial evidence (more than a scintilla of evidence) to support it. The Court rejects the Commission's argument regarding the Board's standard and scope of review. The standard to be employed by the Board in reviewing conditional use permit appeals from the Commission is broader and invests the Board with more discretion than the arbitrary, capricious, or illegal standard. The Board has discretion to have evidence presented to it directly, and to make its own findings of fact. This conclusion is reached based on the following review and analysis of the enabling statute, Cache County zoning ordinances, and reported decisions of Utah appellate courts.

4. Section 17-27-704(1)(a)(i), Utah Code, provides:

The applicant or any other person or entity adversely affected by a decision administering or interpreting a zoning ordinance may appeal that decision applying the zoning ordinance by alleging that there is error in any order, requirement, decision, or determination made by an official in the administration or interpretation of the zoning ordinance.

A recent addition to Section 703(1) makes it clear that appeals from conditional use permit decisions are to be handled by the Board of Adjustments. The word "error" is not defined in the statute. The applicable zoning ordinance provides:

The Board of Adjustment may hear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, or decision made in the enforcement of the land use ordinance.

Section 24-4(E)(4), Cache County Zoning Ordinance. The term "error" is not defined, and no distinction is made between legal error or an error in a factual finding. Neither the statute nor the ordinance provide definitive guidance on the question of the standard of review.

5. When faced with an analogous dearth of legislative guidance, the Utah Court of Appeals has resolved the issue in favor of finding broad authority for the Board. In *Bennion v. Sundance Development Corp.*, 897 P.2d 1232, 1235 (Utah App. 1995), the Utah Court of Appeals held that the Board of Adjustments could hear appeals from the Utah County Commission despite a conflict in the language of the Utah County Ordinance because the section listing the general powers of the Board of Adjustments did not include language limiting “administrative official” so as to specifically exclude the County Commission.

6. A *de novo* standard of review is implicitly supported by other statutory provisions and ordinances. Section 17-27-708(5)(a)(ii) allows the District Court to take evidence if the evidence was improperly excluded by the Board. The statute assumes that the Board will take evidence. The Cache County Zoning Ordinance provides in Section 27-3, subsection G, that “[a]nyone” may be allowed a limited opportunity to speak or to submit information to the Board in writing. This appears to go beyond legal argument, and could be considered to allow for new evidence. Subsection H, provides the Board with power to make a decision to “affirm, modify, or reverse” a Commission decision. The term “modify” is not inconsistent with a broader scope of review than “arbitrary or capricious.” Subsection F requires that advance written notice of the hearing before the Board be given to the owners of all property within three hundred feet of the property in question. More significant is Subsection J(1), requiring the Board to make “formal findings of fact.”

7. The Commission argues that the Board's own reference to the "arbitrary or capricious" standard militates in favor of this Court holding the Board to that standard. In the same vein, the Board apparently felt it could not remand to the Commission as provided in Subsection 27(H) due to a recent decision of Judge Judkins in *Cronquist v. Cache County Board of Adjustments*, First District Court, Cache County, Utah, Case No. 990100624, in which the Court ruled that the remand option provided therein was invalid. This Court, *sua sponte*, has taken judicial notice of the *Cronquist* case. This Court will also consider Exhibit "C" to Petitioner's Memorandum regarding the standard of review because that document was provided to the Board as part of its standard "packet" for considering appeals. As such, the Court deems it to be part of the official record of the Board pursuant to Section 17-27-708(5)(a)(ii), Utah Code. Although the Court is considering both of these matters, the Board's opinion as to the legal standard to be employed in reviewing Commission decisions is not binding on this Court. The Board may have taken the course it did because it perceived the absence of a remand option as conflicting with an arbitrary or capricious standard. Regardless of the reason for its approach, the Board did consider submissions made directly to it in addition to the record from the Commission; and the Board did make its own findings of fact.¹ This approach is consistent with the broader standard of review that the Court has ruled is appropriate.

¹ It would probably have been more helpful to the Court if the Board's findings had been made formally in a separate written document, rather than simply being included in minutes.

8. The Commission's allegation that *ex-parte* communications were entertained by the Board should be viewed in the context of the Board's proper role and its capacity to receive evidence. As a factual matter, the Commission has not pointed to any evidence that the Board considered the documents stamped 13-34 in an *ex-parte* fashion. The material was submitted after the Board's first hearing in April, 2000. By the time the Board met a second time (July, 2000), Petitioners not only had access to the Speths' submission, Petitioners had likewise provided the Board with additional materials, namely corrected minutes and transcripts. There was nothing unfair or violative of due process in the Board's willingness to consider these materials. The Board had discretion to hear evidence.

9. The Board found that the Speth's request was "in compliance with the Land Use Ordinance" and that "commercial businesses have been approved and are in operation in this area." These findings and the decision that followed granting the Speths a conditional use permit are presumptively valid. Only if the decision is "arbitrary, capricious, or illegal" may the Court disturb it. If there is substantial evidence to support the decision, then it must be upheld. The Court has reviewed the record and finds that there is substantial evidence to support the Board's findings and action. Both the Commission and the Board were operating under the assumption that certain commercial uses are conditionally available in the agricultural zone as per the ordinance. The Commission's apparent conclusion was that the proposed use is not in harmony with the agricultural zone. The Board disagreed, and by

issuing the conditional use permit, necessarily determined that the Commission's decision was erroneous. There was substantial evidence before the Board to support its determination.

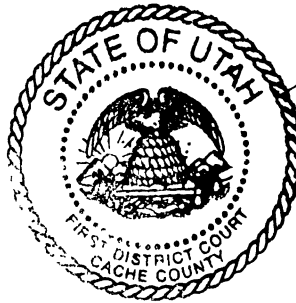
10. The Commission asserts that the Board's decision depends upon a legal conclusion that "all commercial uses are allowed in the agricultural zone." The Board's findings and decision are expressly limited to the case before it at the time. By contrast, the Board felt that the Commission's decision precluded commercial businesses in the agricultural zone. Such a sweeping decision by the Commission would obviously be made in error, and the Board could justifiably overturn it no matter what the standard of review. The Board's decision reversing the Commission in this case showed appropriate restraint by the Board. Certainly the Board did not globally rework the zoning ordinance as claimed by the Commission.

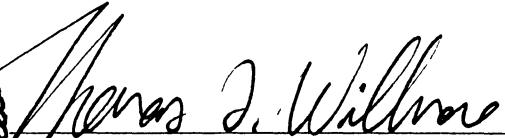
11. Based on the foregoing, the Court finds that there are no genuine issues as to material facts, and that as a matter of law Respondents are entitled to judgment. Accordingly it is hereby

12. ORDERED that the Commissioner's motion for summary judgment and application for preliminary injunction are hereby denied and that the Board's and the Speths' joint motion for summary judgment is hereby granted, with the result that Petitioner's complaint is dismissed with prejudice on the merits.

DATED ~~September~~ ^{October} 11, 2001.

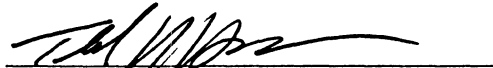
BY THE COURT




Thomas L. Willmore
District Court Judge

APPROVED AS TO FORM:

HALLOCK & HALLOCK


Todd N. Hallock
Attorney for Petitioner