

1993

# Margot de Villiers v. Utah County, Highland City, and John Does 1-3 : Brief of Appellant

Utah Court of Appeals

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UTAH COURT OF APPEALS

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IN THE UTAH COURT OF APPEALS

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MARGOT de VILLIERS,

:

Appeal No.

Plaintiff/Appellant,

:

vs.

:

93-0274-CA

UTAH COUNTY, HIGHLAND CITY,  
and JOHN DOES 1-3,

:

:

Priority No. 16

Defendants/Appellee.

:

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BRIEF OF THE APPELLANT

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APPEAL

From the Judgment of the Fourth Judicial  
District Court in and for Utah County  
Honorable Lynn Davis District Judge

---

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**FILED**

Utah Court of Appeals

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APR 30 1993

  
Mary T. Noonan  
Clerk of the Court

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IN THE UTAH COURT OF APPEALS

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MARGOT de VILLIERS,	:	
Plaintiff/Appellant,	:	Appeal No.
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**IN THE UTAH COURT OF APPEALS**

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	:	BRIEF OF THE APPELLANT
Plaintiff,	:	
vs.	:	
UTAH COUNTY, HIGHLAND CITY,	:	Appeal No.
and JOHN DOES 1-3,	:	
Defendants.	:	

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**JURISDICTIONAL STATEMENT**

This appeal arises from a final judgment of the Fourth Judicial District Court in and for Utah County, State of Utah. The Utah Court of Appeals has jurisdiction over this appeal pursuant to Utah Code Ann. §78-2a-2(3)(j) (1992).

**STATEMENT OF ISSUES**

1. Did genuine issues of material fact preclude summary judgment?

**STANDARD OF REVIEW:** Summary judgment is proper only when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Krantz v. Holt, 819 P.2d 352 (Utah 1991); Billings v. Union Bankers Ins. Co., 819 P.2d 803 (Utah 1991). On review of a summary judgment, the losing party is entitled to have all the facts presented, and all the inferences

fairly arising therefrom, considered in a light most favorable to him. Winegar v. Froerer Corp., 813 P.2d 184 (Utah 1991). Mountain States Tel. & Tel. Co. v. Garfield County, 811 P.2d 184 (Utah 1991).

2. Did Utah County have a duty, based on Utah statute or common law, to use reasonable care to warn motorists using 6000 West of the perilous sight distance hazard associated with the Intersection?

Standard of Review: In deciding whether judgment as a matter of law was proper, the Supreme Court gives no deference to the trial court's view of the law; the appellate court reviews it for correctness. Ron Case Roofing and Asphalt Paving, Inc. v. Blomquist, 773 P.2d 1382 (Utah 1989); Mountain Fuel Supply Co. v. Salt Lake City Corp., 752 P.2d 884 (Utah 1988); Olwell v. Clark, 658 P.2d 585 (Utah 1982).

3. Did Utah County have a duty to conduct a traffic and engineering study before lowering the speed along 6000 West, pursuant to Utah Code Ann. §41-6-48 (1988)?

Standard of Review: In deciding whether judgment as a matter of law was proper, the Supreme Court gives no deference to the trial court's view of the law; the appellate court reviews it for correctness. Ron Case Roofing and Asphalt Paving, Inc. v. Blomquist, 773 P.2d 1382 (Utah 1989); Mountain Fuel Supply Co. v.



Salt Lake City Corp., 752 P.2d 884 (Utah 1988); Olwell v. Clark, 658 P.2d 585 (Utah 1982).

**DETERMINATIVE STATUTES, RULES AND ORDINANCES**

Utah Code Ann. §41-6-22 (1988) provides:

Local authorities, in their respective jurisdictions, shall place and maintain official traffic-control devices upon highways under their jurisdiction as they find necessary to indicate and to carry out the provisions of this chapter or local traffic ordinances, or to regulate, warn, or guide traffic. All traffic control devices erected under this section shall conform to and be maintained in conformance with the Department of Transportation manual and specifications for a uniform system of traffic-control devices under Section 41-6-20.

Utah Code Ann. § 41-6-46 (1988), provides in pertinent part:

(2) Where no special hazard exists, and subject to subsection (3) and Sections 41-6-47 and 41-6-48, the following speeds are lawful. Any speed in excess of these limits is prima facie evidence that the speed is not reasonable or prudent and that it is unlawful:

(a) twenty miles per hour when passing a school building or its grounds during school recess or while children are going to or leaving school during opening or closing hours, except that local authorities may require a complete stop before passing a school building or grounds at any of these periods;

(b) twenty-five miles per hour in any urban district; and

(c) fifty-five miles per hour in other locations.

Utah Code Ann. §41-6-48 (1988) provides:

(1) When local authorities in their respective jurisdictions determine on the basis of an engineering and traffic investigation that the prima facie speed permitted under this article is not reasonable and safe under the conditions found to exist upon a highway or part of a highway, the local authority may determine a reasonable and safe prima facie limit which:

- (a) decreases the limit at intersections;
- (b) increases the limit within an urban district;
- (c) decreases the limit outside an urban district, but not to less than 35 miles per hour.

(2) Local authorities in their respective jurisdictions shall determine by an engineering and traffic investigation the prima facie speed for all highways under their respective jurisdictions and shall declare a reasonable and safe prima facie limit, which may be different than the prima facie speed permitted under this chapter for an urban district.

#### **STATEMENT OF THE CASE**

##### **A. NATURE OF THE CASE**

Plaintiff brought this action to recover for injuries she suffered as a result of an automobile collision she was involved in at the intersection of 6000 West and 11500 North (the "Intersection") in Utah County on January 18, 1990. The Intersection was constructed in the early 1980's in connection with the development of the Oakview PUD subdivision in Highland City, Utah County. The Plaintiff lived in the Oakview PUD at the time of the accident.

Originally, the developer of the Oakview PUD designed 11500 North (a/k/a Oakview Drive) to run straight along the northern boundary of the Oakview PUD property line. However, the Highland City Planning Commission refused to approve the Oakview PUD until the developer agreed to move a portion of 11500 North to the south such that 11500 North separated the PUD's common ground from the residential lots. However, under this arrangement, 11500 North intersected with 6000 West approximately 141 feet closer to the crest of a hill on 6000 West. Subsequent investigation of the Intersection revealed that the Intersection was so close to the crest of the hill on 6000 West that it violated the safety standards for the construction of intersections which are set forth by the American Association of State Highway and Transportation Officials in their publication "A Policy on Geometric Design of Highways and Streets." The publication is uniformly accepted by all traffic engineers in the State of Utah as the authoritative treatise on road construction safety standards.

The close proximity between the Intersection and the crest of the hill on 6000 West created a dangerous sight distance problem in that motorists entering the Intersection from 11500 North will not be able to see motorists entering the Intersection from 6000 West, and vice versa, in time to avoid a collision.

The Plaintiff brought suit against both Highland City and Utah County. The Plaintiff claimed that Utah County had a duty to maintain its roads in a condition reasonably safe for travel. This duty included a duty to warn motorists of the dangerous nature of the Intersection. Plaintiff alleged that Utah County breached this duty by failing to place warning signs or using other means to warn motorists using 6000 West of the dangerous Intersection and by failing to conduct a traffic and engineering study before lowering the speed limit along 6000 West. Plaintiff contended that if Utah County would have conducted such a study, it would have learned of the dangerous sight distance problem at the Intersection, and should have installed appropriate safety measures to warn motorists using 6000 West of the dangerous Intersection. Utah Code Ann. §41-6-48 (1988).

#### **B. COURSE OF PROCEEDINGS**

Utah County moved for summary judgment, arguing that it had no duty to place signs at the Intersection because 11500 North was a private road. Utah County relied on the Utah Supreme Court's ruling in Stevens v. Salt Lake County, 478 P.2d 496 (Utah 1970), for the proposition that it had no duty to warn users of 6000 West of the private road entering the Intersection.

Plaintiff opposed the summary judgment, arguing that Utah County had a duty to warn and that this duty was not eliminated by

the Stevens decision. Plaintiff also argued that there were several genuine issues of material fact, including, among others: (1) did Utah County have notice of the dangerous condition?; (2) was Utah County negligent per se because it failed to conduct a traffic and engineering study prior to lowering the speed limit along 6000 West?; (3) would a "blind intersection" sign have prevented this accident?; (4) would a "blind intersection" sign with flashers have prevented the accident?; (5) would the installation of flashers have prevented this accident?; (6) would the accident have been prevented if Utah County would have conducted the legally mandated traffic and engineering study? Plaintiff argued that if these factual issues were resolved in her favor, the legal principles governing this area of the law would mandate a judgment for the Plaintiff.

#### **C. DISPOSITION AT TRIAL COURT**

The trial court granted summary judgment on the basis of Stevens v. Salt Lake County, 478 P.2d 496 (Utah 1970) and Jones v. Bountiful City, 834 P.2d 556 (Utah App. 1992). The Court held that Utah County did not have a duty to protect users of either 6000 West or 11500 North from the dangerous sight distance problem. The trial court also ruled that Utah County did not have a duty to conduct a traffic and engineering study because it concluded that Utah County did not lower the speed limit.

V.

**STATEMENT OF RELEVANT FACTS**

1. The Plaintiff was involved in an automobile accident on January 18, 1990, at the Intersection in Highland City, Utah County, State of Utah. R. 165.

2. As a result of the accident, Plaintiff is a paraplegic. R. 347.

3. 11500 North provides access to the Oakview Planned Unit Development ("PUD"). R. 486. The Oakview PUD was developed in the early 1980's and contains eight lots. R. 347.

4. Paul Frampton was the developer of the Oakview PUD. R. 486 (Deposition of Paul Frampton, pp. 5-6).

5. In developing the Oakview PUD, Mr. Frampton hired Richard Clayton to assist him in obtaining approval for the subdivision from the Highland City Planning Commission. Mr. Clayton had previously developed and obtained approval for another Planned Unit Development located immediately to the west of the Oakview PUD in Highland City. R. 486 (Deposition of Paul Frampton, pp. 6-7); R. 353 (Deposition of Richard Clayton, pp. 6-7).

6. Before a developer can commence construction of a PUD in Highland City, the developer must submit a proposed plat of the development to the Highland City Planning Commission for

consideration and approval. R. 353 (Deposition of Richard Clayton, p. 10).

7. Mr. Clayton hired Nature's Estates Engineering to prepare a plat for the Oakview PUD and to submit that plat to the Highland City Planning Commission for consideration. R.353 (Deposition of Richard Clayton, p. 11).

8. After the proposed plat for the Oakview PUD had been completed by Nature's Estates Engineering, it was submitted to, but rejected by, the Highland City Planning Commission. R. 353 (Deposition of Richard Clayton, p. 12); R. 486 (Deposition of Paul Frampton, pp. 11-13).

9. In the original plat of the Oakview PUD prepared by Nature's Estates Engineering, 11500 North was designed as a straight road which ran east along the northern boundary of the Oakview PUD property line until it intersected with 6000 West. R. 597 (Exhibit "A" to Plaintiff's Memorandum in Opposition of Highland City's Motion for Summary Judgment is attached hereto as Exhibit "A"); R. 486 (Deposition of Paul Frampton, pp. 11-12); R. 353 (Deposition of Richard Clayton, pp. 12-13).

10. Mr. Clayton and Mr. Frampton were notified by the Highland City Planning Commission that before the City would approve the Oakview PUD plat, Mr. Frampton would have to move part of 11500 North to the south so that the common area of the PUD

would be separated from the lots by 11500 North. R. 486 (Deposition of Paul Frampton, pp. 12-13); R. 353 (Deposition of Richard Clayton, pp. 14-15).

11. In accordance with the conditions set forth by the Highland City Planning Commission, the Oakview PUD plat finally accepted by Highland City shows that 11500 North curves to the south and cuts through the property such that the common area is separated from the home lots. 11500 North intersects with 6000 West approximately 141 feet south of where it was originally planned to intersect. R. 597 (Exhibit "B" of Plaintiff's Memorandum in Opposition to Highland City's Motion for Summary Judgment is attached hereto as Exhibit "B"); R. 486 (Deposition of Paul Frampton, pp. 11-12); R. 353 (Deposition of Richard Clayton, pp. 12-13).

12. The Intersection designed by Highland City is defective, unsafe, and dangerous because the gradient on 6000 West as it approaches the Intersection is excessive. The Intersection is also dangerous because southbound vehicles on 6000 West and motorists entering the Intersection from 11500 North do not have adequate sight distance to perceive and react to each other. Motorists entering the Intersection from 11500 North cannot see vehicles approaching the Intersection on 6000 West until the



vehicle is only 285 feet away. C. Arthur Geurts, a licensed traffic engineer in the State of Utah, testified by affidavit as follows:

7. Specifically, when Highland City required the developer (Paul Frampton) to move the Intersection from where it was proposed on the original plat approximately 141 feet to the south as a condition precedent to approval of the Oakview plat, the following AASHTO design standards were violated:

a. Approach Gradient: For intersections like the one positioned at 6000 West and 11500 North, AASHTO specifies that the maximum approach gradient is 6 percent. Therefore, because Oakview Drive has an approach gradient of at least 7 1/2 percent, the Intersection violates AASHTO approach gradient standards;<sup>1</sup> and

b. Sight Distance: Based on the 85th percentile speed of vehicles traveling on 6000 West and the excessive approach gradients at the Intersection, AASHTO specifies that the Intersection in question should have a sight distance in excess of 500 feet. Therefore, because the sight distance at the Intersection is only 265 feet, the Intersection violates AASHTO sight standards.

8. Based on the results of my traffic study and the specific violations of the AASHTO

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<sup>1</sup> "When the approach gradient of an intersection is greater than that specified by AASHTO, the required sight distance for the intersection must be increased because the excessive gradient negatively effects the acceleration capabilities of vehicles entering the Intersection and such vehicles require more time to enter the intersection and cross the through lanes of traffic. Based on my observations of the land 141 feet to the north of the Intersection (where the original Oakview PUD plat proposed the Intersection be located), if Highland City had approved the original Oakview PUD plat as submitted by the developer (Paul Frampton) and his engineers (Nature's Estates), there would have, in all probability, been no violation of the AASHTO approach gradient standards."

standards enumerated above, it is my opinion that the Intersection is defective, unsafe and dangerous and that the specified deficiencies were a real and proximate cause of the subject accident.

R. 597 (Exhibit "C" to Plaintiff's Memorandum in Opposition to Highland City's Motion for Summary Judgment).

13. Officer Kerry Evans, the officer from the Utah County Sheriff's office who investigated the accident, stated in his Accident Report that:

The intersection at 6000 West 11500 North is a poorly designed one in my opinion. The north bo[und] traffic and the west bound traffic cannot see each other until the No[orth] Bo[und] vehicle crests the hill. The absence of skid marks of both vehicles in this accident shows this.

R. 597 (Exhibit "D" of Plaintiff's Memorandum in Opposition to Highland City's Motion for Summary Judgment).

14. Utah County did not undertake any steps to warn motorists using 6000 West of the dangerous sight distance problem at the Intersection by use of signs.

15. Utah County lowered the speed limit along 6000 West from the prima facie speed limit of 55 miles per hour established by the Utah Legislature. However, there is a genuine issue of material fact as to whether Utah County lowered the speed limit and by how much. Officer Kerry Evans testified:

Q. Do you know what the posted speed limit was on this section of road?

A. I'm thinking--

MR. HENNING: Don't guess. If you can't recall, tell him your recollection, but don't guess.

THE WITNESS: 35.

Q. (Mr. Lund) Was it posted?

A. Yes.

R. 354 (Deposition of Kerry Evans, p. 18). On the other hand, Mr. Paul Hawker, Utah County's traffic engineer, testified:

Q. Do you now what the speed limit is on that roads?

\*\*\*

A. Accurately I don't remember what the speed limit is.

Q. If the speed limit is not posted on a rural road like that, what would it be by statute, do you know that?

A. County ordinance states that any county road not posted is 40 miles per hour, or has a speed limit of 40 miles an hour. That road doesn't go 40 miles per hour.

R. 352 (Deposition of Paul Hawker, pp. 13-14).

16. Utah County did not conduct a "traffic and engineering study" on the section of 6000 West involved in this litigation from 1979 through 1989:

Interrogatory No. 5 Identify all traffic engineering studies, speed zone studies and or safety studies for 6000 West from Star Route (11100 South northerly to 11800 North) in Utah County for the years 1979 [sic]-1989.

Answer: None.

(Defendant Utah County's Answers to Plaintiff's First Set of Interrogatories, Requests of Admissions and Requests for Production of Documents.)

17. On January 18, 1990, the Plaintiff approached the Intersection and stopped. R. 347. The Plaintiff looked both ways. She then entered the Intersection. The Plaintiff was hit by a north bound vehicle approaching the Intersection on 6000 West immediately after she entered the Intersection from 11500 North in an attempt to turn south onto 6000 West. R. 597 (Exhibit "E" of Plaintiff's Memorandum in Opposition to Highland City's Motion for Summary Judgment).

18. As a result of the accident, Plaintiff is a paraplegic. R. 347 (Highland City's Memorandum in Support of its Motion for Summary Judgment).

#### **SUMMARY OF THE ARGUMENT**

I. The Utah Supreme Court has held that "[s]ummary judgment should be granted with great caution in negligence cases". Williams v. Melby, 699 P.2d 723, 725 (Utah 1985). The Utah Supreme Court has also held that: "Although summary judgment may on occasion be appropriate in negligence cases, it is appropriate only in the most clear-cut cases." Ingram v. Salt Lake City, 733 P.2d 126 (Utah 1987). Application of these principles to the instant case demands

that this case be remanded for a jury determination of Utah County's negligence.

IIA. Utah County had a non-delegable duty to maintain its roads and streets in a condition reasonably safe for travel. Bowen v. Riverton City, 656 P.2d 434, 437 (Utah 1982). This duty includes a duty to warn motorists of conditions on or adjacent to the road which render the road not reasonably safe for travel.

One treatise typically followed by the Utah Supreme Court has stated that as a general rule, a governmental entity has a duty "to take proper precautions to guard against accidents by the use of railings, barriers, lights, or the like, especially at night." 18 E. McQuillin, The Law of Municipal Corporations, § 54.90a, at pp. 334-35. Similarly, American Jurisprudence has stated that "[w]here the responsible public authority has notice of the dangerous condition of a highway, it has the duty in the exercise of reasonable care to place warning signs thereon, and it is liable for injuries proximately resulting from its neglect to do so." 39 Am.Jur.2d, Highways, Streets, and Bridges, § 398 (1968). Also instructive is Annotation, Highways: Governmental Duty to Provide Curve Warnings or Markings, 57 A.L.R.4th 342 (1987), which concludes that the general rule is that "[m]oreover, it is the duty of the responsible public authority to maintain warning signs when

reasonably necessary to enable travelers exercising ordinary care and prudence to avoid injury." Id. § 2[a], at 349.

The Utah Supreme Court has also held that governmental entities must warn of dangerous conditions in their streets and roads. For example, in Bramel v. Utah State Road Commission, 465 P.2d 534 (Utah 1970), the Utah Supreme Court held that:

The answer to the first proposition is to be found in applying the test found so generally throughout the law of torts, and which is also applicable here: Did the defendant Road Commission discharge its duty of exercising reasonable care under the circumstances by placing adequate and appropriate warning signs for the safety of traffic using the highway?

Id. at 536 (emphasis added); see also Carroll v. State Road Commission, 496 P.2d 888 (Utah 1970).

Thus, the vast majority of authorities have held that governmental entities must warn motorists of dangerous conditions in their roads which render the roads not "reasonably safe for travel."

IIB. Utah law also imposes a statutory duty upon governmental entities to warn motorists of dangerous conditions in streets and roads. Utah Code Ann. § 41-6-22 (1988). Utah Code Ann. § 41-6-22 (1988) states that governmental entities "shall" erect traffic control devices to "regulate, warn, or guide traffic." The term "shall" is typically construed as imposing a mandatory requirement as opposed to a mere direction. Board of Educ. of Granite School v.

Salt Lake City, 659 P.2d 1030, 1035 (Utah 1983). Thus, Utah County has not only a common law duty to warn motorists of dangerous conditions on its roads, but it also has a statutory duty.

IIC. Utah County also has a self imposed duty to warn motorists. Utah County has accepted the Manual on Uniform Traffic Control Devices as its standard. The manual provides that "Signs are essential where special regulations apply at specific places or at specific times only, or where hazards are not self-evident." Manual on Uniform Traffic Control Devices for Streets and Highways, § 2A-1 (1988). The Manual also provides that:

Warning signs are used when it is deemed necessary to warn traffic of existing or potentially hazardous conditions on or adjacent to a highway or street. Warning signs require caution on the part of the vehicle operator and may call for a reduction of speed or a maneuver in the interest of his own safety and that of other vehicle operators and pedestrians.

Id. § 2C-1 (emphasis added). Thus, Utah County's own standards required it to warn motorists of the dangerous condition of the Intersection.

III. The trial court erroneously relied upon Stevens v. Salt Lake County, 478 P.2d 496, 499 (Utah 1970), and Jones v. Bountiful City, 834 P.2d 556 (Utah App. 1992), in concluding that Utah County did not have a duty to warn motorists using 6000 West of the dangerous Intersection. Stevens is inapplicable because the Utah Supreme

Court took great pains to limit the holding of that case to its facts. Also, Stevens should not apply to the present case because the intersection involved here was between a paved, improved county road and a paved, improved subdivision road. Clearly, the Utah Supreme Court did not intend by its ruling in Stevens to relieve governmental entities of their duty to maintain their roads in a condition reasonably safe or travel simply because the causative force was not on the road itself.

The trial court also erroneously relied upon Jones v. Bountiful City, 834 P.2d 556 (Utah App. 1992). The basis for this Court's decision in Jones was that a municipality could not be held liable for the failure to install traffic control devices because the decision to install such devices was "discretionary". Under Utah law, governmental entities have not waived immunity for "discretionary" acts. However, Utah County does not have discretion to warn motorists of the dangerous condition of its streets. It must warn motorists. Carroll v. State Road Commission, 496 P.2d 888 (Utah 1970). Thus, the Jones decision would not apply to shield Utah County against allegations that it failed to warn of the dangerous Intersection. Thus, the trial court erroneously relied upon Jones in granting summary judgment.

IV. Plaintiff alleged that Utah County lowered the speed limit along 6000 West from the prima facie speed limit established by the



Utah legislature (55 miles per hour) without conducting a traffic and engineering study as required by Utah law. Utah Code Ann. §41-6-46 (1988) §41-6-48 (1988).

The trial court erroneously granted summary judgment where there was a genuine issue of material fact as to whether Utah County lowered the speed limit along 6000 West. The trial court, by implication, ruled that there was no reduction in the prima facie speed limit established by the Utah legislature because it did not find Utah County liable for its failure to conduct a traffic and engineering study. However, Officer Kerry Evans has testified that 6000 West was posted with a 35 miles per hour speed limit.

Utah County's failure to conduct a traffic and engineering study prior to lowering the speed limit was an actual and proximate cause of the accident. If Utah County would have conducted the required traffic and engineering study prior to lowering the speed limit, it would have learned that vehicles were traveling between 45 and 50 miles per hour and that some warning of the dangerous Intersection was needed. The failure of Utah County to conduct such a traffic and engineering study constitutes per se negligence.

#### **DETAIL OF THE ARGUMENT**

##### **I**

#### **SUMMARY JUDGMENT IN NEGLIGENCE CASES.**

The trial court held as a matter of law that Utah County did not breach its duty to maintain 6000 West in a condition reasonably safe for travel and that Utah County's actions were not the cause of the accident. The Utah Supreme Court has held that "[s]ummary judgment should be granted with great caution in negligence cases." Williams v. Melby, 699 P.2d 723, 725 (Utah 1985). The Utah Supreme Court has also held that: "Although summary judgment may on occasion be appropriate in negligence cases, it is appropriate only in the most clear-cut cases." Ingram v. Salt Lake City, 733 P.2d 126 (Utah 1987). Application of these principles to the instant case demands that this case be remanded for a jury determination of Utah County's negligence.

## II.

### UTAH COUNTY HAD A DUTY TO WARN MOTORISTS USING 6000 WEST OF THE DANGEROUS CONDITION CREATED BY THE INTERSECTION.

The trial court held that Utah County could not be held liable for Plaintiff's injuries because it did not have a duty to place signs or use other means to warn motorists of the dangerous Intersection. However, as demonstrated below, Utah County had a common law, statutory, and self-imposed duty to properly place and maintain warning signs along 6000 West.

#### A. COMMON LAW DUTY

The Utah Supreme Court has held that a governmental entity has "a non-delegable duty to exercise due care in maintaining streets within its corporate boundaries in a condition reasonably safe for travel. . . and the city may be held liable for injuries proximately resulting from its failure to do so." Bowen v. Riverton City, 656 P.2d 434, 437 (Utah 1982).

The Utah Supreme Court has stated: "The duty of municipal corporations with respect to the maintenance and repair of traffic signs in this state is set out in 18 E. McQuillin, The Law of Municipal Corporations." Richards v. Leavitt, 716 P.2d 276, 278 (Utah 1985). With respect to the duty to warn, McQuillin indicates that there is a broad common law duty to sign roads and streets to warn motorists of danger:

The absence of a sufficient barrier, guard, railing, light, [sign], or the like in a public way, for the protection of travelers using due care who are endangered by the want of such precautions, constitutes a defect and a want of repair. Accordingly, in addition to the duty to repair, the duty of a municipality to use ordinary care to keep its streets in condition for use includes the duty, where there are dangerous obstructions, declivities, or excavations in or near the street, whether created by the municipality itself or by third persons, where it has notice thereof or notice is unnecessary, to take proper precautions to guard against accidents by the use of railings, barriers, lights, or the like, especially at night.

18 E. McQuillin, The Law of Municipal Corporations, § 54.90a, at pp. 334-35 (emphasis added). The word "sign" was placed in brackets in the above paragraph because the term was added in the most recent supplement to McQuillin to make explicit that a municipality has a duty to warn motorists of danger through signs or other means.

American Jurisprudence has also found that a municipality has a duty to warn motorists of a danger:

It is the duty of the responsible public authority to exercise reasonable care to warn travelers of defects, obstructions, and unsafe places in its streets, highways, and bridges of which it has or is chargeable with notice, by barriers or guardrail, lights, warning signs, or other means, which are reasonably sufficient for that purpose, and if it fails to do so it will be liable to one injured by reason of that failure, assuming an exception to its sovereign immunity from responsibility for its torts. Especially is it the duty of the public authority to give such warning in the nighttime.

39 Am.Jur.2d, Highways, Streets, and Bridges, § 397 (1968). American Jurisprudence has also found that "[w]here the responsible public authority has notice of the dangerous condition of a highway, it has the duty in the exercise of reasonable care to place warning signs thereon, and it is liable for injuries proximately resulting from its neglect to do so." Id. § 398.

American Jurisprudence has found in relation to the proper signing of intersections:

Although there is authority to the contrary, it has been held that the public authority has the duty to maintain adequate traffic control signs at dangerous intersections on its highways, and the breach of this duty constitutes negligence rendering it liable for injuries sustained in an accident proximately resulting therefrom.

Id. § 400.

Also instructive is Annotation, Highways: Governmental Duty to Provide Curve Warnings or Markings, 57 A.L.R.4th 342 (1987). The annotation concludes that the general rule is that "[m]oreover, it is the duty of the responsible public authority to maintain warning signs when reasonably necessary to enable travelers exercising ordinary care and prudence to avoid injury."

Id. § 2[a], at 349.

There is also ample Utah case authority to support a municipality's duty to properly warn motorists of hazards. For example, in Bramel v. Utah State Road Commission, 465 P.2d 534 (Utah 1970), the Utah Supreme Court held that:

The answer to the first proposition is to be found in applying the test found so generally throughout the law of torts, and which is also applicable here: Did the defendant Road Commission discharge its duty of exercising reasonable care under the circumstances by placing adequate and appropriate warning signs for the safety of traffic using the highway?

Id. at 536 (emphasis added). In Carroll v. State Road Commission, 496 P.2d 888 (Utah 1970), the Utah Supreme Court reaffirmed Bramel, stating that:

In the recent case of Bramel v. Utah State Road Commission, this Court affirmed a judgment against the Road Commission, wherein the commission was found to have failed to discharge its duty of exercising reasonable care under the circumstances by placing adequate and appropriate warning signs for the safety of the traffic using the highway.

Id. at 890 (emphasis in original) (footnote omitted).

Thus, the vast majority of authorities have held that a municipality must properly warn motorists of hazards on its roads or streets. The public policy for requiring such warnings is self-evident. An extreme example illustrates the point. Assume that a city constructs a road which leads to the edge of a 10,000 foot cliff. Can the governmental entity reasonably argue that it was not required to place a sign on that road warning motorists of the impending doom? The governmental entity could not reasonably argue that under such circumstances its roads were in a condition "reasonably safe for travel."

Similarly, Utah County cannot plausibly argue that 6000 West was "reasonably safe for travel" without some warning that motorists using 6000 West were approaching an intersection where extra caution was needed due to the inadequate sight distance and where there was a probability that, at normal speeds and without

extra caution, users of 6000 West would be unable to avoid an accident with motorists entering the Intersection from 11500 North.

Utah County had a common law duty to warn motorists using 6000 West of the dangerous sight distance problem caused by the location of the Intersection. Because the trial court erroneously concluded that there was no such duty, summary judgment in favor of Utah County was improper and should be reversed.

#### **B. STATUTORY DUTY TO WARN MOTORISTS**

The trial court based its decision solely on the lack of a common law duty requiring governmental entities to warn motorists of the dangerous condition of its roads. The trial court did not consider whether there would be any controlling statutory duty requiring governmental entities to warn motorists. However, Utah law requires that governmental entities properly sign roads and streets under their control:

Local authorities, in their respective jurisdictions, shall place and maintain official traffic-control devices upon highways under their jurisdiction as they find necessary to indicate and to carry out the provisions of this chapter or local traffic ordinances, or to regulate, warn, or guide traffic. All traffic control devices erected under this section shall conform to and be maintained in conformance with the Department of Transportation manual and specifications for a uniform system of traffic-control devices under Section 41-6-20.

Utah Code Ann. § 41-6-22 (1988) (emphasis added).

This section of the Utah Code has never been addressed by either the Utah Supreme Court or the Utah Court of Appeals. However, applying traditional principles of statutory construction yields the conclusion that Utah County was required by Utah law to warn motorists of the dangerous Intersection. Utah Code Ann. § 41-6-22 (1988) states that governmental entities "shall" erect traffic control devices to "regulate, warn, or guide traffic." The term "shall" is typically construed as imposing a mandatory requirement as opposed to a mere direction. The Utah Supreme Court has held that "[w]hile 'shall' has been validly interpreted as directory . . . it is usually presumed mandatory and has been interpreted as such previously in this and other jurisdictions." Board of Educ. of Granite School v. Salt Lake City, 659 P.2d 1030, 1035 (Utah 1983).

Thus, Utah County has not only a common law duty to warn motorists of dangerous conditions on its roads, but it also has a statutory duty.

#### **C. UTAH COUNTY'S OWN STANDARDS IMPOSE A DUTY TO WARN**

Mr. Paul Hawker, a traffic engineer for Utah County, testified that Utah County had accepted the standards set forth in the Manual on Uniform Traffic Control Devices for Streets and Highways.<sup>2</sup> This manual is published by the Federal Highway

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<sup>2</sup> Mr. Hawker testified as follows:



Administration, and contains standards for the installation and maintenance of signs. (The Utah legislature has mandated that the Department of Transportation create a manual in substantial compliance with this Manual on Uniform Traffic Control Devices. As evidenced by Utah Code Ann. § 41-6-22 (1988), Utah County was also bound statutorily by this manual).

This manual requires Utah County to warn motorists of hazards on or near the road which render the road not "reasonably safe for travel." Specifically, the manual provides that "Signs are essential where special regulations apply at specific places or at specific times only, or where hazards are not self-evident." Manual on Uniform Traffic Control Devices for Streets and Highways, § 2A-1 (1988). The Manual also provides that:

Warning signs are used when it is deemed necessary to warn traffic of existing or potentially hazardous conditions on or

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Q. Are you familiar with the manual of Uniform Traffic Control Devices?

A. Yes.

\* \* \*

Q. How does Utah County view the principles set forth in the book? Are they good suggestions? Are they strong recommendations? Are they principles to be adhered to? How would you evaluate them?

A. Utah County has accepted the manual as our standard.

R. 352 (Deposition of Paul Hawker, p. 21).

adjacent to a highway or street. Warning signs require caution on the part of the vehicle operator and may call for a reduction of speed or a maneuver in the interest of his own safety and that of other vehicle operators and pedestrians.

Id. § 2C-1 (emphasis added).

Utah County's own standards required it to properly sign that portion of 6000 West, including appropriate warnings of the upcoming dangerous Intersection.

Thus, Utah County had a duty to properly sign the Intersection. This duty was based on the common law, on Utah statutory law, and on Utah County's own principles and standards. As demonstrated immediately below, the cases relied upon by the trial court to the contrary are inapplicable.

### III.

#### **THE CASE AUTHORITY RELIED UPON BY THE TRIAL COURT IS INAPPLICABLE TO THE CASE AT BAR.**

The trial court relied upon Stevens v. Salt Lake County, 478 P.2d 496, 499 (Utah 1970), and Jones v. Bountiful City, 834 P.2d 556 (Utah App. 1992), in concluding that Utah County did not have a duty to warn motorists using 6000 West of the dangerous Intersection. However, for the reasons set forth below, these cases do not properly state the legal principles which are applicable to this case.

Any discussion of Stevens v. Salt Lake County, 478 P.2d 496, 499 (Utah 1970), must begin with a statement of the facts of that rather unique case. The plaintiff was riding his "mini-bike" along a "pathway" in a vacant lot. He emerged onto a county road and was struck by the defendant. The plaintiff alleged that due to some tall weeds and bushes, defendant and plaintiff could not see each other until it was too late to avoid an accident. Plaintiff alleged Salt Lake County had a duty to correct the visibility by removing, or forcing the removal of bushes on the adjacent private land.

The Utah Supreme Court correctly held that "[i]t would place a wholly impractical burden upon counties if they had to assume the duty of correcting such conditions with respect to every private way that enters upon a private road." Id. at 499. However, as important as this holding is what the Utah Supreme Court did not hold. The Court took great pains to limit the holding of Stevens to its particular facts:

In respect to our analysis of the claim against Salt Lake County, it is appropriate to observe that there is not here presented any such broad problem as to whether there may be some circumstances where a public road is so positioned and/or maintained in relation to adjacent conditions that there is created such a hazard as to create a "defective, unsafe or dangerous condition of the highway." Our concern is with the particular facts shown in this case[.]

Id. (emphasis in original).

Essentially, the trial court extrapolated the holding in Stevens to hold that a governmental entity could never be held liable for the dangerous condition of its roads when the danger results from a causative force not in the roadway. In other words, Utah County argued, and the trial court accepted, the notion that so long as the causative force is outside the physical boundaries of the road, the governmental entity no longer has a duty to maintain its roads and streets in a condition "reasonably safe for travel."

This is contrary to established legal principles and common sense. For example, McQuillin has stated that "the duty of a municipality to use ordinary care to keep its streets in condition for use includes the duty, where there are dangerous obstructions, declivities, or excavations in or near the street, whether created by the municipality itself or by third persons, where it has notice thereof or notice is unnecessary, to take proper precautions to guard against accidents by the use of railings, barriers, lights, or the like, especially at night." 18 E. McQuillin, The Law of Municipal Corporations, § 54.90a, at pp. 334-35 (emphasis added).

The fundamental inquiry is not from where the hazard arises, but whether or not the road is "reasonably safe for

travel." Utah County attempts to distinguish between roads not "reasonably safe for travel" due to hazards in the road and those roads not "reasonably safe for travel" due to conditions adjacent to the road. In both instances, the road is not "reasonably safe for travel." In both instances, Utah County's duty to maintain its roads in a condition "reasonably safe for travel" is the same. There is no support for Utah County's argument that it does not have to fulfill its duty to maintain its roads in a condition "reasonably safe for travel" simply because the causative factor leading to the dangerous condition is not on the road itself.

The limiting language in Stevens was placed there to avoid an unwarranted extrapolation of the holding of that case. The danger in Stevens, an intersection between a "path" and a unimproved county road, is vastly different than the intersection here, which was between a paved, improved county road, and a paved, improved subdivision road. While the governmental entity need not provide a warning as to every driveway and path that adjoin road, it should be required to warn of dangerous intersections between roads within the public road system.

The trial court also relied upon this Court's decision in Jones v. Bountiful City, 834 P.2d 556 (Utah App. 1992). In Jones, this Court held:

Rather than placing a duty on a municipality to erect traffic control devices, the common

law requires only that once the municipality takes action to install such devices, it must do so in a non-negligent manner.

Id. at 560 (quoting 19 E. McQuillin, The Law of Municipal Corporations, § 54.28b, at 90 (3d ed. 1985)). The language from McQuillin relied upon by this Court in the Jones decision was as follows:

Thus, though a city is not generally liable for failure to install signs or signals, if it undertakes to do so and invites public reliance on such signs or signals, it may be held liable for creating a dangerous condition or nuisance.<sup>2</sup>

Id. (footnote in original). Consideration of the footnote is essential. McQuillin's statement that a municipality cannot be held liable for its failure to install traffic control devices is based on the ruling of many courts that the decision as to whether or not to install traffic control devices is a "discretionary" act for which immunity has been retained.

However, a governmental entity does not have discretion to chose to warn or not warn motorists of a dangerous condition in its roads. It must provide a warning. Thus, there is no immunity and the governmental entity may be sued. For example, McQuillin has stated that:

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<sup>2</sup> Governmental function immunity as applied to traffic lights and signs, see ch. 53.

In addition, even in jurisdictions providing for sign placement immunity, a public entity may be liable for the creation of a dangerous condition if it fails to post signs.

McQuillin, The Law of Municipal Corporations, § 53.42.

The Utah Supreme Court has also held that a municipality is not immune from allegations that it failed to warn. In Carroll v. State Road Commission, 496 P.2d 888 (Utah 1970), the Utah Supreme Court held:

In the instant action, the decision of the road supervisor to use berms as the sole means of protection for the unwary traveler was not a basic policy decision essential to the realization or accomplishment of some basic governmental policy, program, or objective. His decision did not require the exercise of basic policy evaluation, judgment, and expertise on the part of the Road Commission. His determination may properly be characterized as one at the operational level of decision making, and the trial court did not err in its ruling that the discretionary exception of Section 63-30-10(1) of the Governmental Immunity Act was not a defense to the alleged acts of negligence.

Id. at 891-92. Perhaps a more crisp statement of the law was made by Justice Ellett, concurring in Carroll:

In this case there was no place for discretion to give or not to give an adequate warning to the motoring public. The duty on the part of the State to give and maintain a reasonably adequate warning was absolute, and I am unable to see where discretion is involved.

Id. at 892. Utah County cannot claim that its failure to warn was based on a "discretionary" act. It follows that it cannot rely on

Jones to shield itself from liability, for Jones was based on governmental immunity which Utah County does not have.

The Supreme Court of Florida faced similar issues in Department of Trans. v. Neilson, 419 So.2d 1071 (Fla. 1982). There, the plaintiffs were injured when they traveled through an unregulated intersection and were struck by another vehicle. They sued the Department of Transportation alleging that it failed to sign the intersection. The Florida Supreme Court distinguished between the decision not to place traffic control devices at the intersection and the decision not to warn motorists of the dangerous intersection:

In our view, decisions relating to the installation of appropriate traffic control methods and devices or the establishment of speed limits are discretionary decisions which implement the entity's police power and are judgmental, planning level functions.

Id. at 1077. However, with respect to the duty to warn, the Supreme Court of Florida held:

The failure to so warn of a known danger is, in our view, a negligent omission at the operational level of government and cannot reasonably be argued to be within the judgmental, planning-level sphere. Clearly, this type of failure may serve as the basis for an action against the governmental entity.

Id. at 1078. Thus, the Court held that if the plaintiff alleged that the government failed to warn of the intersection, it could be



held liable, but if the sole contention was that the government failed to sign the intersection, it could not be held liable. Id.

Thus, the underlying basis for the Jones decision was that a governmental entity has discretion to erect traffic control devices. But the entity does not have discretion to warn of dangerous conditions in its roads and streets. The principles of governmental immunity and, ultimately, the decision of this Court in Jones do not apply to the present case because Plaintiff has alleged a failure to warn. The trial court erroneously applied Jones v. Bountiful City, 834 P.2d 556 (Utah App. 1992), to the present case.

In sum, Utah County had an absolute, non-delegable duty to place warning signs or otherwise warn motorists of the dangerous Intersection. Those cases relied upon by the trial court are inapplicable. Plaintiff respectfully requests that this Court reverse the trial court's ruling that Utah County did not have a duty to warn of the dangerous Intersection, and remand this matter for a trial on the merits.

#### IV.

**UTAH COUNTY WAS NEGLIGENT IN FAILING TO  
CONDUCT A TRAFFIC AND ENGINEERING STUDY OF  
6000 WEST BEFORE REDUCING THE SPEED LIMIT.**

In its memorandum opposing Utah County's Motion for Summary Judgment, Plaintiff argued that Utah County was negligent

in that it failed to conduct a traffic and engineering study prior to reducing the speed limit along 6000 West. The source of Utah County's duty to conduct such an investigation is found in the following statutes:

(2) Where no special hazard exists, and subject to subsection (3) and Sections 41-6-47 and 41-6-48, the following speeds are lawful. Any speed in excess of these limits is prima facie evidence that the speed is not reasonable or prudent and that it is unlawful:

(a) twenty miles per hour when passing a school building or its grounds during school recess or while children are going to or leaving school during opening or closing hours, except that local authorities may require a complete stop before passing a school building or grounds at any of these periods;

(b) twenty-five miles per hour in any urban district; and

(c) fifty-five miles per hour in other locations.

Utah Code Ann. § 41-6-46 (1988). Utah Code Ann. § 41-6-48 (1988) provides:

(1) When local authorities in their respective jurisdictions determine on the basis of an engineering and traffic investigation that the prima facie speed permitted under this article is not reasonable and safe under the conditions found to exist upon a highway or part of a highway, the local authority may determine a reasonable and safe prima facie limit which:

(a) decreases the limit at intersections;

(b) increases the limit within an urban district;

(c) decreases the limit outside an urban district, but not to less than 35 miles per hour.

Id. Thus, under Utah Code Ann. § 41-6-48 (1988), the prima facie speed limit for 6000 West was 55 miles per hour. R.683 (Affidavit of C. Arthur Guerts, ¶ 1). If the speed limit was lowered, it must be based upon a traffic and engineering study. Plaintiff contended that Utah County lowered the speed to 35 miles per hour in March, 1988, and therefore, was required to conduct a traffic and engineering study. Utah County responded that the sign referred to by Plaintiff governed southbound traffic. (The driver involved in the accident was traveling northbound at the time of the accident.) Thus, the trial court concluded that Utah County was under no duty to conduct a traffic and engineering study because it did not lower the speed limit.

This ruling was in error for two reasons. First, there is a genuine issue of material fact as to whether or not Utah County lowered the speed along 6000 West. Officer Kerry Evans testified:

Q. Do you know what the posted speed limit was on this section of road?

A. I'm thinking--

MR. HENNING: Don't guess. If you can't recall, tell him your recollection, but don't guess.

THE WITNESS: 35.

Q. (Mr. Lund) Was it posted?

A. Yes.

R. 354 (Deposition of Kerry Evans, p. 18). On the other hand, Mr. Paul Hawker, Utah County's traffic engineer, testified:

Q. Do you now what the speed limit is on that roads?

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A. Accurately I don't remember what the speed limit is.

Q. If the speed limit is not posted on a rural road lie that, what would it be by statute, do you know that?

A. County ordinance states that any county road not posted is 40 miles per hour, or has a speed limit of 40 miles an hour. That road doesn't go 40 miles per hour.

R. 352 (Deposition of Paul Hawker, pp. 13-14).

Thus, there is a genuine issue of material fact as to the speed limit along 6000 West prior to the accident. The speed limit could have been 35 miles per hour as testified to by Mr. Evans or it could have been unposted, in which case Mr. Hawker believes it would have a speed limit of 40 miles per hour. In fact, 6000 West could have been posted with another speed limit. The Plaintiff cannot state to this Court with any degree of certainty what the speed limit is along 6000 West. Utah County has also not set forth what the speed limit along that road was. All the Plaintiff has to go on is the testimony of Officer Evans that the road was posted with a 35 miles per hour sign. The trial court erred in granting summary judgment in light of this genuine issue of material fact.

The second error in the trial court's ruling was that it assumed if 6000 West did not have a posted speed limit, Utah County did not have a duty to conduct a traffic and engineering study.

However, as noted above, Mr. Hawker has testified that if the road is not posted, Utah County has established a prima facie speed limit of 40 miles per hour. The Utah legislature, under the following statute, has mandated that if Utah County is going to lower the prima facie speed limit on roads in its jurisdiction, as Utah County did here, it must first conduct a traffic and engineering study:

(2) Local authorities in their respective jurisdictions shall determine by an engineering and traffic investigation the prima facie speed for all highways under their respective jurisdictions and shall declare a reasonable and safe prima facie limit, which may be different than the prima facie speed permitted under this chapter for an urban district.

Utah Code Ann. § 41-6-48 (1988).

Under Utah statute, any reduction in the speed of a road from the prima facie speed limit established by the legislature must be done pursuant to a traffic and engineering study. Here, there is a genuine issue of fact as to how much Utah County lowered the speed limit from the 55 miles per hour speed limit established by the legislature. Based on the testimony elicited to date, it seems clear that Utah County either lowered the speed limit to a posted speed limit of 35 miles per hour or has not posted the road, which Mr. Hawker has testified means the road has a speed limit of 40 miles per hour. In either case, the speed limit has been lowered from 55 miles per hour. Under state statute, this reduction in the

speed limit could legally be done only pursuant to a traffic and engineering study. Utah County's failure to obey the state statute renders it negligent.

Utah County has conceded that it failed to conduct a traffic and engineering study along 6000 West prior to reducing the speed limit:

Interrogatory No. 5 Identify all traffic engineering studies, speed zone studies and or safety studies for 6000 West from Star Route (11100 South northerly to 11800 North) in Utah County for the years 19799 [sic]-1989.

Answer: None.

(Defendant Utah County's Answers to Plaintiff's First Set of Interrogatories, Requests of Admissions and Requests for Production of Documents.) Thus, Plaintiff has established that Utah County had a duty under state statute and that it breached that duty by failing to conduct a traffic and engineering study prior to lowering the speed limit along 6000 West.

The failure of Utah County to conduct a proper traffic and engineering study prior to lowering the speed limit along 6000 West was an actual and proximate cause of the accident. In order to understand Plaintiff's position regarding causation, it is essential to understand one simple principle of highway design: motorists will travel at or around the 85th percentile speed regardless of the posted speed limit. (The 85th percentile speed is

the speed at which 85 percent of vehicles travel at or below.) Plaintiff's expert witness, C. Arthur Guerts, opined that "vehicles will travel at or near the 85th percentile speed regardless of the posted speed limit." R. 683 (Affidavit of C. Arthur Guerts, ¶ 13). Mr. Paul Hawker also testified that "the goal a lot of times is to have a road speed limit at what 80 percentile of the traffic is doing." R. 352 (Deposition of Paul Hawker, p. 15).

Mr. Guerts testified that based upon his investigation, the "85th percentile" speed for vehicles traveling north on 6000 West is 48.1 miles per hour. R. 683 (Affidavit of Arthur Guerts, ¶ 12). Applying the above principle of highway design, motorists will travel at or near 48 miles per hour regardless of the posted speed limit.

Utah County has conceded that two elements it considers when conducting a proper traffic and engineering study is the speed of traffic and any attendant sight distance problems.<sup>3</sup> If Utah

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<sup>3</sup> Interrogatory No. 4: Detail factors that are considered in determining speed limits and intersection safety improvement.

Answer: The defendant objects to Interrogatory No. 4 on the grounds that it is overly broad and unduly burdensome and impossible to answer with any particularity. Without waiving the foregoing objections, the defendant responds that it utilizes factors considered in the Manual on Uniform Traffic Control Devices and other guidelines. Included among the elements to be considered are the following:

a) Traffic Counts

County would have conducted a traffic and engineering study in accordance with its own standards in this case, it would have discovered that traffic was going to travel at or near 48 miles per hour and that at that speed, there was a danger that motorists would not be able to avoid an accident with motorists entering the Intersection from 6000 West. Utah County would have learned that additional measures were needed to warn motorists of the sight distance problem in order to avoid injury. Mr. Guerts opined that "if Utah County would have conducted a proper engineering and traffic investigation prior to the installation of the 35 miles per hour speed limit on 6000 West, it would have discovered that corrective measures were needed to protect motorists using 6000 West from the hazard which existed due to the limited sight distances at the intersection of 6000 West and 11500 North." R. 683 (Affidavit of C. Arthur Guerts, ¶ 16).

As discussed above, the trial court resolved this claim by concluding that Utah County did not lower the speed limit from

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- b) Previous Accident History,
  - c) Sight Distance and Angle Problems,
  - d) Area Traffic Patterns and Speeds,
  - e) Right of way and Road Problems
  - f) History of Weather Problems
  - g) Input from others (law enforcement, UDOT, school bus, public, etc.)

(Defendant Utah County's Answers to Plaintiff's First Set of Interrogatories, Requests of Admissions and Requests for Production of Documents (emphasis added)).



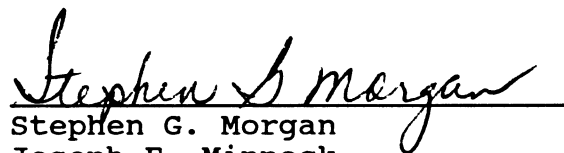
55 miles per hour along 6000 West, despite the testimony of Officer Evans that the road had a posted speed limit of 35 miles per hour and the testimony of Utah County's own traffic engineer, Paul Hawker, who testified that an unposted road had a speed limit of 40 miles per hour. The summary judgment in favor of Utah County should be reversed in order to resolve these genuine issues of material fact.

**CONCLUSION**

On the basis of the foregoing, Plaintiff respectfully requests that this Court reverse the summary judgment granted to Utah County.

DATED this <sup>30<sup>th</sup></sup>~~29<sup>th</sup>~~ day of April, 1993.

MORGAN & HANSEN

  
Stephen G. Morgan  
Joseph E. Minnock  
Attorneys for Plaintiff

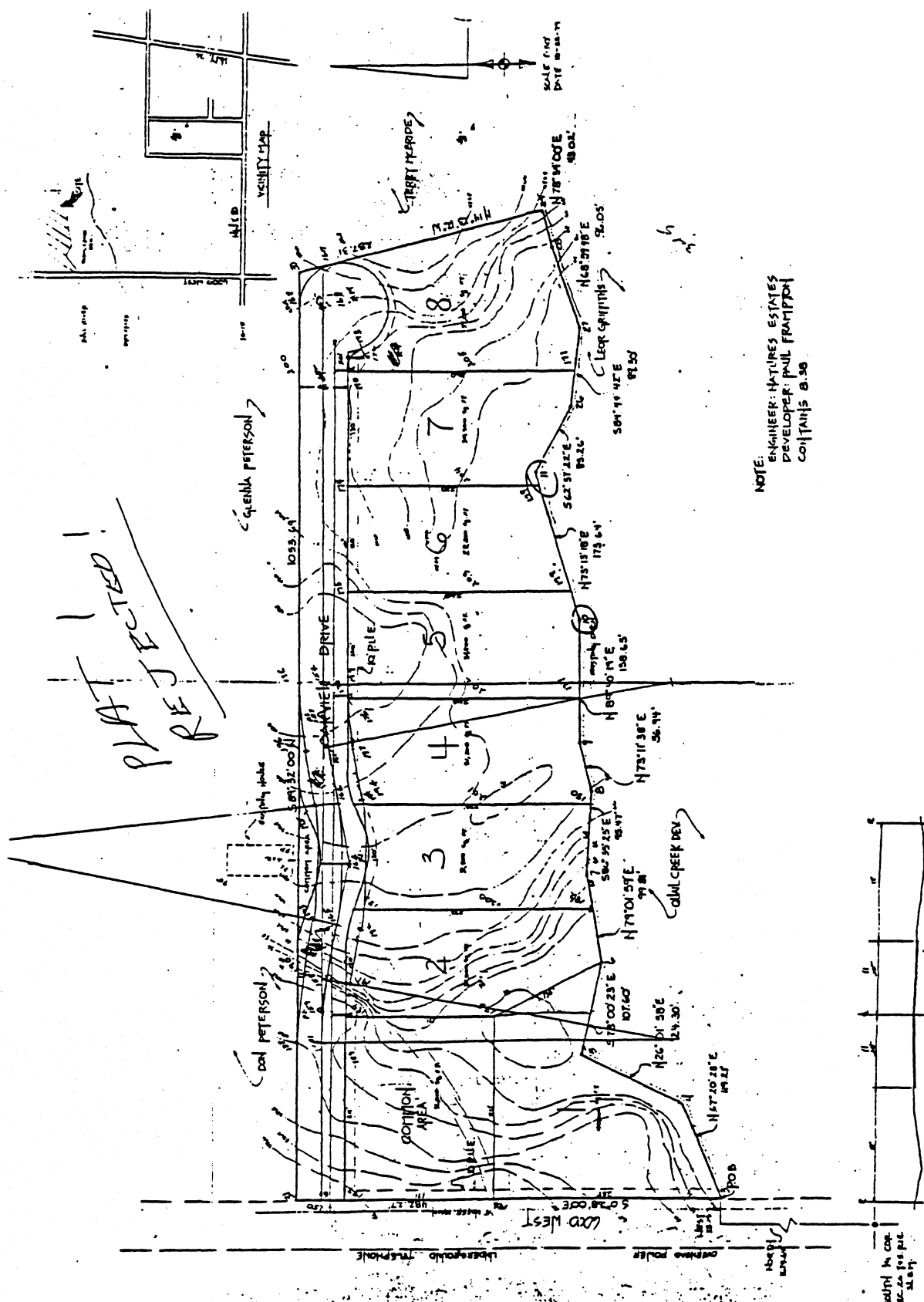
**CERTIFICATE OF SERVICE**

I hereby certify that on the ~~29<sup>th</sup>~~<sup>30<sup>th</sup></sup> day of April, 1993, I caused a true and correct copy of the foregoing BRIEF OF APPELLANT to be hand-delivered to the following:

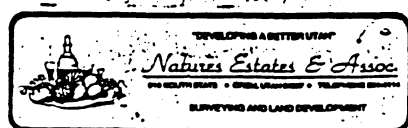
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Stephen B Morgan

Tab A



NOTE:  
ENGINEER: NATURES ESTATES  
DEVELOPER: PAUL FRAMPTON  
CONTAINS B.30



**OAKVIEW** PLD  
HIGHLAND, UTAH

Tab B

