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IN THE FIFTH JUDICIAL DISTRICT COURT, IN AND FOR WASHINGTON COUNTY, STATE OF UTAH	
SKY MOUNTAIN GOLF ESTATES HOMEOWNERS ASSOCIATION, INC. Petitioners, vs. THE CITY OF HURRICANE, UTAH, Respondent.	**PETITION FOR REVIEW OF DECISION** Case No.: 190500180 Judge: John J. Walton

COMES NOW, the Petitioner, SKY MOUNTAIN GOLF ESTATES HOMEOWNERS ASSOCIATION, by and through its attorney of record, Adam C. Dunn of the Dunn Law Firm, and hereby petitions the Fifth Judicial District Court in and for Washington County, Utah as follows:

PARTIES, JURISDICTION, & VENUE

1. Petitioner is a Utah nonprofit corporation consisting of homeowners of the Sky Mountain Subdivision, and located in Washington County, Utah. That subdivision is hereinafter sometimes

referred to as “Sky Mountain”.

2. Respondent is The City of Hurricane (hereinafter “Hurricane” or the “City”), which is in Washington County, Utah.

3. All actions complained of herein occurred in Washington County, State of Utah.

4. That the real property that is the subject of this action is in the incorporated city of Hurricane, Washington County, State of Utah.

5. This action arises out of a land use decision by Hurricane wherein it granted an application for an amendment to the General Plan Map.

6. U.C.A. § 10-9a-801(2)(a) provides that “[a]ny person adversely affected by a final decision made in the exercise of or in violation of the provisions of this chapter may file a petition for review of the decision with the district court within 30 days after the decision is final.”

7. Hurricane City Council voted on and approved the application for an amendment to the General Plan Map on March 7, 2019, making its decision final on that date.

8. Petitioner files this petition within the time period laid out in U.C.A. § 10-9a-801(2)(a).

9. Jurisdiction is proper in the above-captioned court under U.C.A. § 78A-5-102.

10. Venue is is proper in the above-captioned court under U.C.A. § 78B-3-301 & -307.

GENERAL ALLEGATIONS

Hurricane City’s General Plan

11. The City of Hurricane has adopted a General Plan for its city’s land use. The General Plan is, “[i]n many ways a reflection of the community’s values.” General Plan, at p. 4.

12. The "[m]essage of the [adopted] General Plan is that the land uses shown have already been debated and approved by the community". *Id.* at pp. 4-5.

13. Where a "…landowner or developer wishes to propose something substantially different from the General Plan, the proposal must pass through ***close scrutiny*** by the community." *Id.* at p. 5 (emphasis added).

14. Hurricane has stated that one of its visions is a community "…where growth is well-managed and new development does not exceed the capacity and services [of the community]". *Id.* at p. 8.

15. Indeed, Hurricane has established a goal in its General Plan that it will "[e]nsure that new development (including its cumulative impacts) will not create an unfair or inappropriate burden, ***financial or otherwise***, on existing residents." *Id.* at p. 11 (emphasis added).

16. Many of the Petitioner's members chose to settle at Hurricane because of its General Plan, its commitment to reasoned and well-planned growth, and its commitment to the natural environment.

Application for the Amendment of the General Plan

17. On or about December 6, 2018, a certain "Jim Thomas" (hereinafter "Thomas" or the "Developer") submitted a "General Plan Amendment Application" (hereinafter, the "Application") to amend the City's Land Use Map covering an approximately 340-acre property north of 600 North at 2000 West (the "Cove" or the "Property").

18. The Cove is currently within a general plan area that was designated to have "Single Family

Residential Up To 4 Units/Acre". *See* General Plan Map for Hurricane.

19. The Property is on a peninsular-like property that is surrounding on the North, East, and South by open space, including the Red Cliffs Desert Reserve and on the west by Sky Mountain. *See* Map that was included with Application and which is attached hereto as **Exhibit A**.

20. In 2011, the Hurricane Planning Commission concluded that the best use for the Property is single-family homes. *See* Staff Comments, at p. 1.

21. Hurricane City Ordinances § 10-2-2(H)(2) provides that "[p]ersons proposing general plan amendments shall do the survey and analysis work necessary to ***justify*** the proposed amendment." (emphasis added).

22. Of the things the applicant must put forward for the city to show that the proposed amendment is "justified" are the following:

a) Eight and one-half inch by eleven inch (81/2" x 11") map showing the area of the proposed amendment;

b) Current copy of county assessor's parcel map showing the area of the proposed amendment;

c) Mapped inventory of existing land uses within the area of the proposed amendment and extending one-half (1/2) mile beyond such area;

d) Correct property addresses of parcels included within the area of the proposed amendment;

e) Written statement specifying the potential use of property within the area of the proposed amendment;

f) Written statement explaining why the existing general plan designation for the area is no longer appropriate or feasible;

g) Analysis of the potential impacts of the proposed amendment on existing infrastructure and public services such as traffic, streets, intersections, water and sewer, storm drains, electrical power, fire protection, garbage collection, etc.; and

h) As part of the general plan map amendment process, the applicant shall attempt to collect the signature of the property owner or authorized agent or, in the case of amendments affecting multiple properties, the signatures of a majority of the persons who own property within the area proposed for the general plan map amendment.

Hurricane City Ordinances § 10-2-2(H)(2)(a)(1) – (8).

23. The Developer sought to change the Cove area to "Mixed Use – Neighborhood Scaled, Development Including Residential, Commercial, and Light Industrial". *See* Application, Statements.

24. The Developer did not provide a "[m]apped inventory of existing land uses within the area of the proposed amendment and extending one-half (1/2) mile beyond such area" as required under Hurricane City Ordinances § 10-2-2(H)(2)(a)(3).

25. Instead, the applicant stated that "[t]his property will tie in with all uses that surround this property. The use to west is multi-family use. Use to the south is commercial, multi-family and mixed use." (*Id.*)

26. Not only did the applicant fail to provide a "mapped inventory" as required by ordinance, but, according to staff comments, "The statement provided regarding potential impact says 'this property will tie in with all the uses that surround this property' *fails to note the property to the east, **which is entirely open space/ public recreation***. While the designation on the General Plan

map to the west is 'multifamily uses', *the actual development is* ***single family houses*** on a public golf course." Staff Comments at p.2 (emphasis added).

27. In providing a written statement specifying the potential use of property within the area of the proposed amendment as required under Hurricane City Ordinances § 10-2-2(H)(2)(a)(5), the Developer provided an inexplicably vague explanation as follows:

> We propose to change this 352-acre future parcel to mixed use - neighborhood scaled, development including residential, commercial, and light industrial. Projects will include streetscape enhancements & community amenities that will require plan approval.
>
> Application, at Statements.

28. The Developer also provided a map wherein only 50 acres would be used for "commercial" uses with the balance of the property being used as residential uses. *See* Application.

29. The approximately 50 acres proposed as commercial property is on the tip of the peninsula of the Property (as shown in the map which is attached hereto as **Exhibit B**, and which was included with the Application.

30. At various meetings prior to the March 7, 2019 meeting, the Developer repeatedly stated that it would use all but approximately 50 acres for residential uses and approximately 50 acres for commercial uses and never stated that any of the property would be used for light industrial uses.

31. If the commercial section of the property was approved, it would have been surrounded on three sides by open space (including the Red Cliffs Desert Reserve) and on the west by residential properties.

32. The written Hurricane General Plan explicitly states that a goal of the plan is to "[r]educe high speeds ***and traffic levels through neighborhoods***." General Plan, at p. 12 (emphasis added).

33. The Developer ignored the fact that there is no way to get to 600 North from State Route 9 without going through residential neighborhoods or to the proposed commercial property at the Cove without driving through neighborhoods (namely the residential portion of the Cove).

34. The written Hurricane General Plan explicitly states that "***[s]mall, isolated*** commercial buildings may be considered on a case-by-case basis if the use and building are compatible with the neighborhood." General Plan, at p. 31 (emphasis added).

35. The approximately 50 acre commercial section proposed in the Cove is not small or isolated commercial buildings, but, according to the Developer, included a 1,200 seat auditorium, hotel, wedding chapel, twenty (20) restaurants and shops, and a 185-unit RV park.

36. The statement of intended or potential uses is not sufficient to justify the map amendment under Hurricane City Ordinances § 10-2-2(H)(2) nor was such a proposed use consistent with the written general plan.

37. The applicant did not seek to amend the written general plan in any way (instead only seeking a general plan ***map*** amendment.

38. The Developer did not provide a sufficient "[w]ritten statement explaining why the existing general plan designation for the area is no longer appropriate or feasible" as required under Hurricane City Ordinances § 10-2-2(H)(2)(a)(6).

39. In the application, the Developer simply stated that

> This property is north of 600 North and an area that is designated mixed use, commercial use, and multi-family residential use. Our plan is for mixed use to complete a planned commercial development that will have a mix of single residential, multi-family residential and commercial uses. The single-family residential use is not appropriate for this proposed mixed use.
>
> Application, at Statements.

40. The Developers self-serving statement that they do not want to use the property for the currently designated use is not sufficient under the ordinances to justify an amendment to the general plan because it does not actually show why the current use is not "appropriate or feasible" as required under Hurricane City Ordinances § 10-2-2(H)(2)(a)(6).

41. Under Hurricane City Ordinances § 10-2-2(H)(2)(a)(7), the applicant bears the burden of presenting an "[a]nalysis of the potential impacts of the proposed amendment on existing infrastructure and public services such as traffic, streets, intersections, water and sewer, storm drains, electrical power, fire protection, garbage collection, etc." that would justify the amendment to the general plan map.

42. The Developer did not provide any such analysis as contemplated by Hurricane City Ordinances § 10-2-2(H)(2)(a)(7).

43. Illustrating this deficiency, some of the Staff Comments from Hurricane that were made on the Application were as follows:

> a) Multiple property owners have expressed concern about the "impacts on traffic" but "[i]t is early in the process to determine how much impact would actually result without understanding the nature of the commercial activity ***through a traffic study***." (*Id.*, emphasis added)

b) 600 North is designated on the Master Transportation plan map as a minor arterial, "which is appropriate for developing commercial uses." However, "***it is not yet developed or used as an arterial.***" (*Id.*, emphasis added)

c) A water study will be required for extending the culinary water line to the Property. (p.3)

d) The Developer was advised to meet with the Hurricane Valley Fire District for fire access and fire protection requirements. (*Id.*)

e) A feasibility study was recommended before zone change to show whether the location will draw enough visitors to "support the construction of a mile-long road and all associated utilities in addition to the construction of the facilities shown." (*Id.*)

44. At the January 10, 2019 Planning Commission hearing, the Petitioner provided over seven hundred separate petitions opposing the Application to the City. These petitions were not just from within Sky Mountain and Sky Ridge, but also included petitions from residents from thirty-four (34) different communities in Hurricane.[1] *See* Minutes of the Planning Commission Hearing, January 10, 2019, p.4.

45. More than forty (40) individuals who spoke during the hearing were recorded in the Planning Commission minutes, with most of them against the approval of the Application in one way or another (the most prevalent opposition appears to be due to anticipated traffic). *Id.* at pp. 4-8.

[1] Petitioner collected more petitions since the Planning Commission hearing, reaching more than a thousand signatures from fifty (50) different communities in Hurricane. These were submitted for the consideration of the City as well.

46. On the issue of traffic, the Developer mentioned two proposed access roads that are in very close proximity to one another and that they were trying to obtain a third access through federally owned Bureau of Land Management ("BLM") property. *Id.* at p. 9.

47. The applicant explained that the Developer could not get the documents proving access across the federal land because the Federal government was shut down at that time.

48. There was a motion to recommend denial of the Application subject to the following findings:

a) "There are no compelling reasons to change the General Plan."

b) "The traffic flow is not supportable."

c) "Residential and commercial uses would have a greater impact than just residential."

d) "The community has given feedback on traffic, safety, and other negative impacts to the community as a whole."

Minutes of the Planning Commission Hearing, January 10, 2019, p. 10.

49. Said motion was seconded and carried.

50. The Planning Commission recommended that the City Council should deny the Application.

City Council Hearings

51. At the February 7, 2019 City Council Public Hearing, Karl Rasmussen with ProValue Engineering and the Developer gave an overview of the project. The proposal is for "mixed use

which will include streetscapes, commercial properties, trails and a master planned development." *See* Minutes of the February 7, 2019 City Council Public Hearing, p.1.

52. The Developer presented the planned Wild West themed development of the Cove which will include "a western themed indoor dinner show, town square shows with horses, hotel, wedding chapel, restaurants and some commercial shops," hiking and equestrian trials, as well as an RV park. *Id.* at p. 2.

53. Many people also presented at that meeting and a majority of the people who spoke at the February 7, 2019 City Council Public Hearing on the Cove development were against the approval of the Application. *Id.*

54. Some of the concerns of the people opposing the amendment were: (i) traffic including response of emergency services, (ii) feasibility, (iii) noise pollution, and (iv) effect on surrounding property values. *Id.*

55. Petitioner, through counsel, expressed concern that the applicant had not complied with City Ordinances and had not provided sufficient information to the City in order to "justify" the proposed general plan map amendment.

56. This concern was expressed both in writing and in person at the February 7, 2019 meeting.

57. Petitioner also presented more signed statements opposing the Cove, bringing the total of petitions opposing the Cove to over one thousand (1000).

58. At the February 7, 2019 meeting the Developer again had no documentation on access over the BLM property. *See* Minutes of the February 7, 2019 City Council Meeting.

59. The City Council postponed deciding on the Application to February 21, 2019 to further study the issue and to allow the Developer to submit more documents to address the concerns raised during the hearing. *Id.*

60. In determining to postpone the decision on the application, the City raised concerns over the proximity of the access to the Property (pointing to the need to have the access points sufficiently separated for safety access of first responders, etc.) and asked the Developer to actually provide information regarding access through the BLM property. *Id.*

61. At the February 7, 2019 Public Hearing, the City Council also postponed the decision to allow the Developer time to submit additional information regarding traffic, the utility and emergency access road, and any other concerns to be addressed.

62. The Mayor highlighted fourteen (14) areas of concern regarding the Application including the need for information to (a) adequately determine if the change is in the public's best interest, (b) determine if the change will preserve property values in the surrounding properties, (c) determine if traffic and road concerns can be mitigated, (d) determine the impact on utilities, and (e) other concerns raised by the large number of persons at that meeting, including petitioners.

63. The Cove Application was not addressed at the February 21, 2019 City Council meeting because the Developer requested that it be continued to March 7, 2019. *See* Minutes of the February 21, 2019 City Council Meeting.

64. The only information that was supplied to the City prior to the March 7, 2019 meeting regarding the Cove came from the Fire Chief of the Hurricane Valley Fire & Rescue District. *See* Email from Tom Kuhlman dated March 6, 2019.

65. In that letter, the Fire Chief stated that "[t]he District does not take an official stance of support or non-support for a General Plan Map amendment." *Id.*

66. He further stated that "[t]he International Fire Code provides life safety code requirements for the occupancy built as allowed by the General Plan Map and the associated zoning, not the General Plan itself." *Id.*

67. The Fire Chief also stated that:

> The location of this property poses some challenges in meeting code elements regardless of an amendment to the General Plan Map. We have discussed our concern of a remote secondary fire access road as required by the density allowed by the General Plan Map request and potential additional requirements on any proposed project(s) in this area with Mr. Rasmussen. Our request, specifically a letter from the Bureau of Land Management supporting the claim that the area in question will be allowed a secondary 75,000 pound all-weather fire access road through the Red Desert Reserve, has not been provided.
>
> *Id.*

68. The City confirmed that prior to the March 7, 2019 meeting, it did not receive any additional information from the Developer regarding its concerns raised on February 7th.

69. The City did not receive any information on the BLM property and a council person even stated at that meeting that she was frustrated that the Developer had not provided any such information and that she was forced to call the BLM herself.

70. At the March 7th meeting, the City and/or the Developer proposed that the Application be modified and that not all of the Property received a changed designation to "mixed-use".

71. Even though the plan put forward by the Developer included only 50 acres of commercial uses and the balance of the property staying residential uses, the City Council discussed a designation change on the map completely different from that proposed by the Developer.

72. The City had absolutely no plan, statement of use, explanation of infeasibility or inappropriateness regarding the acreage.

73. In addition, in spite of having no information to assuage their concerns raised on February 7th, and without the information contemplated and required under Hurricane Ordinances, on March 7, 2019, the City Council ignored the recommendation of the Planning Commission and instead approved the Application, in part.

74. Of the 340-acres subject of the Application, 122 acres would be mixed use while 218 acres will remain at the current designation.

75. Even without any information regarding the uses proposed on the 122 acres that would be re-designated as "mixed-use", a councilperson stated that the proposed change will promote the public interest, and tourism and money coming into the Hurricane Valley.

76. On whether a BLM-designated road could be used for emergency access, the Developer again had no information but stated that the letter from the Fire Chief should be sufficient.

77. U.C.A. § 10-9a-801(3)(b) provides that "[a] court shall: presume that a final decision of a land use authority or an appeal authority is valid; and uphold the decision unless the decision is:

arbitrary and capricious; or illegal." Petitioners assert that the approval of the Developer's Application is ***both*** illegal ***and*** arbitrary and capricious, and hence warrant reversal by this Court.

FIRST CAUSE OF ACTION
(Hurricane's Decision was Illegal because the City violated its own Ordinances.)

78. Petitioner realleges and reasserts the allegations contained in the above paragraphs as if fully set forth herein.

79. The Utah Supreme Court has also made a finding of illegality where the land use authority has "… failed to strictly follow its own ordinances…". *Springville Citizens v. City of Springville*, 1999 UT 25, P20; 979 P.2d 332, 336.

80. In its ordinances, Hurricane has established the process for amending the General Plan by which the City must go through, with "close scrutiny", to ensure an "…orderly review of new proposals". *Id.* at p. 5.

81. In Hurricane City Ordinances § 10-2-2(H), the requirements that an application for amendment to the general plan are detailed.

82. The applicant bears the burden to show that a proposed amendment is appropriate and justified. Hurricane City Ordinances § 10-2-2(H)(2) provides that "[p]ersons proposing general plan amendments shall do the survey ***and analysis work necessary to justify the proposed amendment***."

83. As noted above, to ensure that there is sufficient "analysis work necessary to justify the proposed amendment", the applicant ***shall*** provide various items to the City.

84. The Developer did not satisfy the requirements of Hurricane City Ordinances § 10-2-2(H)(2).

85. The Developer failed to provide a map of adjoining uses.

86. The Developer even falsely characterized the adjoining properties in the Statements in the Application.

87. The Developer failed to provide a clear statement of potential uses.

88. The requirement of providing a clear statement about potential use gives the Planning Commission and the City Council an understanding of what to expect when analyzing the amendment application.

89. It also provides the critical notice to the community as it determines whether to attend public hearings, in voicing concern, and, most critically, in weighing in on an amendment to the General Plan, which has "already been debated and approved". *See* General Plan, at p. 4.

90. The Developer's non-definitive and intended uses included only 50 acres of commercial uses and yet the City ultimately approved 122 acres of mixed-use designation.

91. The City approved an amendment without any clear explanation of potential uses (even approving seventy-five acres of mixed use that the Developer unequivocally stated would remain residential uses).

92. Indeed, without the needed information on potential uses, the City Council is not in a position to assess a general plan amendment and should not blanketly grant a new designation to mixed use on property proposed to remain residential.

93. Indeed, the Staff Comments further indicate that the 52 acres will be commercial and do not indicate that there was any proposed "light industrial" uses in the Application.

94. Therefore, the intent of the Developer in seeking "Mixed Use" designation under the General Plan is wholly lost in the discrepancies before the Council. Such differences affect the due process of citizens of Hurricane who may, at varying degrees, oppose one use and not another.

95. Yet, because the incompleteness and discrepancies in the Developer's own statement of use and schematic, granting a new designation to "Mixed Use" is overly problematic and not sufficient to properly designate the intended use for that property.

96. Without adhering to the ordinances and compelling the Developer to adhere to the ordinances in showing the potential uses of the property, the City acted illegally and the approval of the general plan map amendment should be unwound and deemed void.

97. The Developer also does not provide any supportable statement and does not provide any evidence for "why" the existing general plan designation is no longer appropriate or feasible.

98. Instead, the Developer provides a circular and conclusory statement claiming that "[t]he single family residential use in not appropriate for [his] proposed use."

99. The City's own ordinance compel and require an applicant to provide justification for why a current use is no longer appropriate or feasible; this requirement is presumably so the City can closely scrutinize the justifications for the amendment of the General Plan.

100. Nothing in the Application as well as the records of the hearings before the Planning Commission and the City Council show that the previous General Plan designation at the Cove

was not "appropriate or feasible."

101. In fact, the Planning Commission found that "[t]here are no compelling reasons to change the General Plan."

102. This aspect has not been discussed at all by the City Council, instead focusing on *how to make the Application work* as shown by the City's concession of approving the amendment if the area for mixed use was approved for 122 acres while the Developer sought only 50 acres of commercial land and the balance as residential property.

103. The Developer has not complied with the Ordinance and has not supplied any information or analysis showing that the "best use" from 2011 on the Property is no longer appropriate or feasible.

104. Without adhering to the ordinances and compelling the Developer to adhere to the ordinances in this aspect of showing why the current designation is no longer feasible or appropriate, the City acted illegally and the approval of the general plan map amendment should be unwound and deemed void.

105. Under the ordinances, the Developer must present "analysis on the potential impacts of the proposed amendment on existing infrastructure and public services such as traffic, streets, intersections, water and sewer, storm drains, electrical power, fire protection, garbage collection, etc." Hurricane City Ordinances § 10-2-2(H)(2)(a)(7).

106. Again, the Developer failed to adhere with the Ordinance.

107. In the Application, the Developer's only statement on the "potential impacts of the mixed

use" is that "[t]his Property will tie in with all uses that surround this Property" or where utilities will come from. *See* Application, at "Statements".

108. There is no analysis provided by the Developer on potential impacts of traffic, detriment to values of adjacent properties, or other public services.

109. The Developer certainly did not address the proximity of the two access points and the need for more separation under the law.

110. The Application's conclusory statement fails to show any analysis on the actual impact of the proposed amendment to the General Plan map.

111. Not only did the Developer *fail to provide any* ***analysis*** of the potential impact of the amendment applied for, the statements include erroneous details. The Staff Comments even observed that the application "fails to note the property to the east, which is entirely open space/ public recreation." Another error in the potential impact statement, as noted in the Staff Comments, is that the area to the west was designated by the Developer as 'multifamily uses' but "the actual development is single family houses on a public golf course."

112. The Hurricane Staff Comments acknowledge the dearth of information from the Developer with regard to the "analysis" contemplated under Hurricane City Ordinance § 10-2-2(H)(2)(a)(6). The Staff Comments are replete with showings that information from the Developer is lacking. *See* Staff Comments to Application, at pp. 2-3 (stating, in part, "[i]t is early in the process to determine how much impact would actually result…"; "[a] water study will be required…"; "[a] traffic impact study will have to be completed…"; and "[a] question remains

[regarding] possible access…").

113. Even the letter from the Fire Chief, which the Developer characterized as positive for the Application at the March 7th meeting, raised concerns over the access and the BLM property and yet the Developer provided absolutely no information nor "analysis" (as contemplated by the ordinances) to justify the amendment and to address potential impacts of the amendment.

114. At the Planning Commission meeting from January 10, the Developer failed in his burden to show that the change to the General Plan was justified. The Planning Commission found that "the traffic flow is not supportable", and that "residential and commercial would have a greater impact than just residential".

115. The findings of the Planning Commission are still applicable even though the mixed-use area was reduced to 122 acres.

116. The City Council postponed deciding on the Application to give the Developer time to address the concerns raised during the hearings, and to provide the analysis required under the ordinances, but up to the day the Application was improperly approved, the Developer failed to submit such information.

117. As a result, the Developer failed to meet the requirement of Hurricane's Ordinances, and without adhering to the ordinance's requirements, the Application should have been summarily denied.

118. Based on the foregoing, the City approved the Application even though it was deficient and did not comply with City ordinances.

119. The Developer was not able to meet the requirements set forth by Hurricane's Ordinances necessary "***to justify the proposed amendment***".

120. Because of this, the City's approval of a deficient application is illegal and warrants the reversal of the approval of the Application.

SECOND CAUSE OF ACTION
(Hurricane's Decision was Arbitrary and Capricious - in the Alternative)

121. Petitioner realleges and reasserts the allegations contained in the above paragraphs as if fully set forth herein.

122. Hurricane City Ordinance § 10-7-5(A)(1)(a) provides that general plan amendments are legislative decisions.

123. Hurricane City Ordinance § 10-7-5(A)(2) provides that legislative decisions shall be based on the "reasonably debatable" standard. *See Petersen v. Riverton City*, 2010 UT 58, 243 P.3d 1261 (citing *Bradley v. Payson City Corp*. 2003 UT 16, 70 P.3d 47) (providing that a court shall apply the "reasonably debatable standard when reviewing a municipality's zoning decision". *Petersen v. Riverton City*, 2010 UT 58, 243 P.3d 1261 (citing *Bradley v. Payson City Corp*. 2003 UT 16, 70 P.3d 47).

124. A general plan amendment must reasonably "…promote the public interest, conserve the values of other properties, avoid incompatible development, encourage appropriate use and development, and promote the general welfare." Hurricane City Ordinance § 10-7-5(A)(2)(a).

125. The approval of the Application cannot be said to be reasonably debatable.

126. Because the Developer did not meet the requirements of the code, the City did not have sufficient information or evidence before it to grant any kind of general plan map amendment.

127. The determination of the City on the Application cannot be said to be reasonably debatable where the City lacked so much information.

128. The Application is devoid of evidence and instead relies on conclusory statements.

129. The Developer has not met his burden of showing the amendment is justified.

130. All of the written information supplied to the City and the verbal presentations prior to March 7, 2019 proposed a general re-designation of the whole property to mixed use with only 50 acres being proposed to be used for commercial uses and the balance being proposed to be used for residential uses.

131. In spite of this unequivocal plan from the Developer, the City approved 122 acres for mixed use.

132. All of the requirements of Hurricane's Ordinance still apply and there was no evidence or statement presented on how the 122 acres would be used or why the current designation is not feasible or appropriate.

133. According to the Developer, all of the property adjacent to 600 North would have been used for residential purposes.

134. Notwithstanding this claim, on March 7, and without any information that is contemplated under the Hurricane City Ordinance, the City zoned many acres bordering 600 North as mixed use.

135. There was not a finding of why the current use designation at that site is no longer appropriate or feasible or what the potential uses at that location would be.

136. There was not a finding of the potential impact of such a designation on the community.

137. In spite of absolutely no evidence supporting such a re-designation (and contrary to all information supplied by the Developer to that date), the City re-designated that portion of the Cove.

138. The City acknowledged its need for additional evidence and information when it requested additional information from the Developer during the February 7, 2019 hearing.

139. Regardless of the Developer doing nothing and supplying no additional information (the only additional information that came in was from the Fire Chief), the City approved a re-designation on a portion of the property.

140. Without all of the information required under Hurricane City Ordinances, the approval of the Application is not reasonably debatable and is not supported by evidence; as such, the approval is arbitrary and capricious.

141. There is insufficient evidence (because of the Developer failing to adhere to City ordinances and because the City did not compel the Developer to produce information sought in and after the February 7th meeting) to support a finding that the 122 acres of mixed use will promote the public interest.

142. For instance, there is no evidence as to the potential uses of that property under such a designation so the City cannot determine whether it will promote the public interest or not.

143. There is insufficient evidence (because of the Developer failing to adhere to City ordinances and because the City did not compel the Developer to produce information sought in and after the February 7th meeting) to support a finding that the 122 acres of mixed use will conserve the values of other properties.

144. For instance, there is no evidence as to the potential impact of such a designation on the 122 acres will have on Sky Mountain or other properties in the area of the Cove.

145. There is insufficient evidence (because of the Developer failing to adhere to City ordinances and because the City did not compel the Developer to produce information sought in and after the February 7th meeting) to support a finding that the 122 acres of mixed use will avoid incompatible development.

146. For instance, there is no evidence as to the potential uses of that property under such a designation so the City cannot determine whether it the mixed-use designation will be compatible with the surrounding properties (at the least, the commercial property proposed by the Developer will not be compatible with the Red Cliffs Desert Reserve and the other open space completely surrounding the 50 acres of proposed commercial property.

147. There is insufficient evidence (because of the Developer failing to adhere to City ordinances and because the City did not compel the Developer to produce information sought in and after the February 7th meeting) to support a finding that the 122 acres of mixed use will encourage appropriate use and development.

148. For instance, the Developer provided no analyses about the impact of the development on resources or why the well settled previous designation is not appropriate use at this time and so the City cannot determine if this change will encourage appropriate use and development.

149. There is insufficient evidence (because of the Developer failing to adhere to City ordinances and because the City did not compel the Developer to produce information sought in and after the February 7th meeting) to support a finding that the 122 acres of mixed use will promote the general welfare.

150. For instance, without any plan on the 122 acres there is insufficient information to determine if this re-designation will promote the general welfare of Hurricane.

WHEREFORE, Petitioner prays as follows:

A. For a declaratory judgment that partial approval by Hurricane of the Application for the amendment of the General Plan covering the Cove is illegal;

B. For a declaratory judgment that approval by Hurricane of the Application for the amendment of the General Plan covering the Cove is arbitrary and capricious;

C. For an order setting aside Hurricane's approval of the General Plan Amendment Application of Mr. Thomas; and,

D. For such other relief as this Court deems fair and equitable under the premises.

DATED this 3rd day of April, 2019.

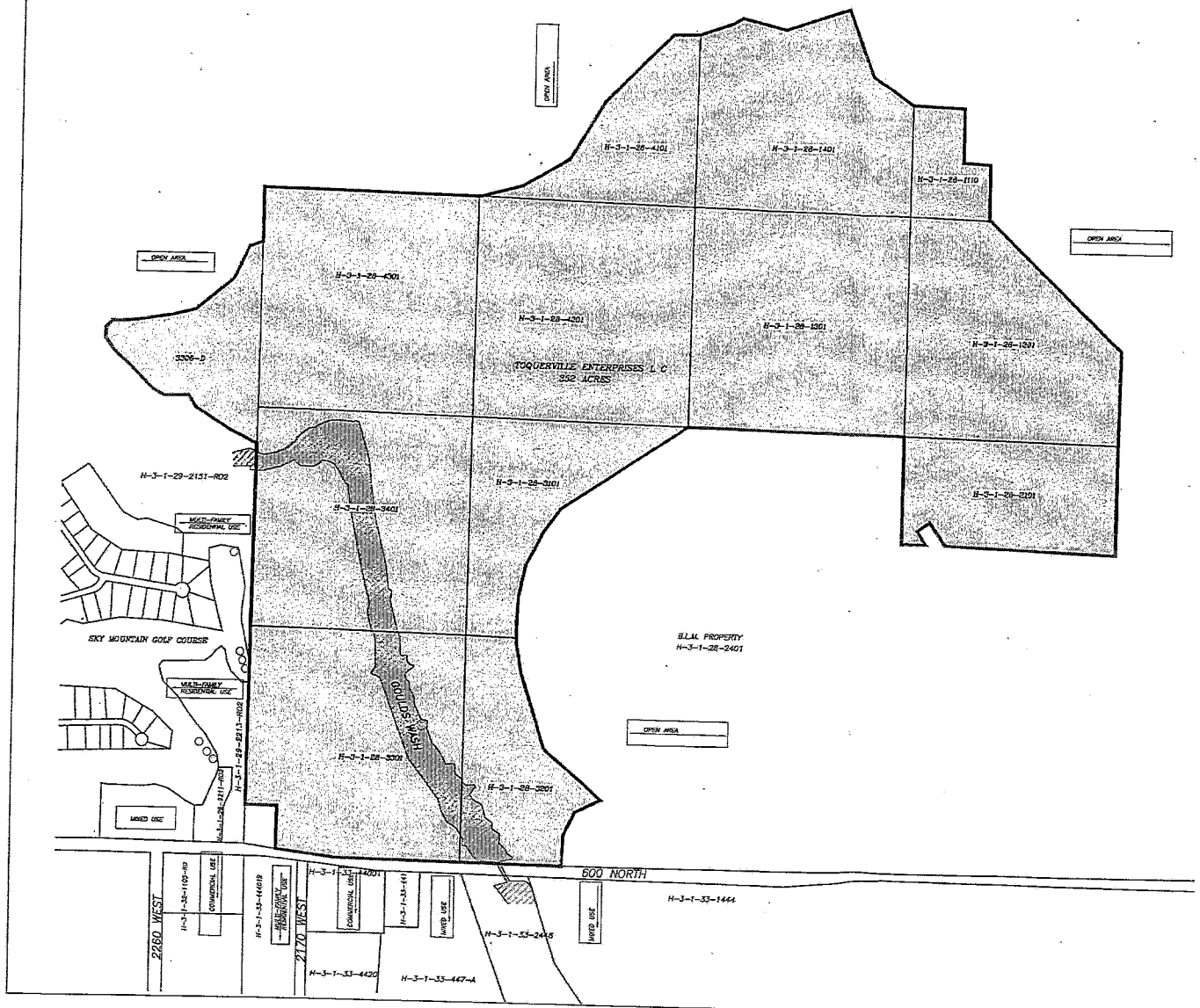
DUNN LAW FIRM:

/s/ Adam C. Dunn
ADAM C. DUNN

Exhibit A

GENERAL PLAN AMENDMENT MAP FOR:
TOQUERVILLE ENTERPRISES L C

A PART OF THE NE 1/4 OF THE NE 1/4 OF SECTION 29 AND A PART OF
SECTION 28, T41S, R13W, S.L.B.&M.
HURRICANE CITY, WASHINGTON COUNTY, UTAH



N
W E
S

300 0 300
SCALE IN FEET

LEGEND

- PROPERTY LINE
- ADJACENT PROPERTY LINE
- EXISTING FENCE
- SECTION LINE
- SECTION CORNER AS DESCRIBED
- SET PROVALUE ENGINEERING REBAR & CAP
- FOUND MONUMENT AS DESCRIBED
- 352 ACRE PARCEL TO CHANGE USE

WRITTEN STATEMENTS

POTENTIAL USE STATEMENT: WE PROPOSE TO CHANGE THIS 352 ACRE FUTURE PARCEL TO MIXED USE - NEIGHBORHOOD SCALED, DEVELOPMENT INCLUDING RESIDENTIAL, COMMERCIAL, AND LIGHT INDUSTRIAL. PROJECTS WILL INCLUDE SUBSTANTIAL ENHANCEMENTS & COMMUNITY AMENITIES THAT WILL REQUIRE PLAN APPROVAL.

STATEMENT OF NON-APPROPRIATE USE: THIS PROPERTY IS NORTH OF 600 NORTH AND AN AREA THAT IS DESIGNATED MIXED USE, COMMERCIAL USE AND MULTI-FAMILY RESIDENTIAL USE. OUR PLAN IS FOR MIXED USE TO COMPLETE A PLANNED COMMERCIAL DEVELOPMENT THAT WILL HAVE A MIX OF SINGLE RESIDENTIAL, MULTI-FAMILY RESIDENTIAL AND COMMERCIAL USES. THE SINGLE FAMILY RESIDENTIAL USE IS NOT APPROPRIATE FOR THIS PROPOSED MIXED USE.

POTENTIAL IMPACTS OF THIS MIXED USE FOR THIS PROPERTY: THIS PROPERTY WILL TIE IN WITH ALL USES THAT SURROUND THIS PROPERTY. THE USE TO WEST IS MULTI-FAMILY USE. USE TO THE SOUTH IS COMMERCIAL, MULTI-FAMILY AND MIXED USE.

NO	DESCRIPTION	DATE	BY

PROVALUE ENGINEERING, INC.
Engineers - Land Surveyors - Land Planners

GENERAL PLAN AMENDMENT FOR:
TOQUERVILLE ENTERPRISES L C
HURRICANE CITY, WASHINGTON COUNTY, UTAH
A PART OF SECTION 28 & 29, T41S, R13W, S.L.B.&M.

DATE: 12-14-2016
SCALE: 1"=300'
JOB NO. 405-001
SHEET NO. 1 OF 1

PLAN AMENDMENT

Exhibit B

PLANNED COMMERCIAL PLAN FOR:
LOST TRAILS AT THE COVE

LOCATED AT IN SECTION 28, T41S, R13W, S.L.B.&M.
WASHINGTON COUNTY, UTAH

HATCH LEGEND

- RESIDENTIAL 8–10K+ LOTS
- STABLE LOTS

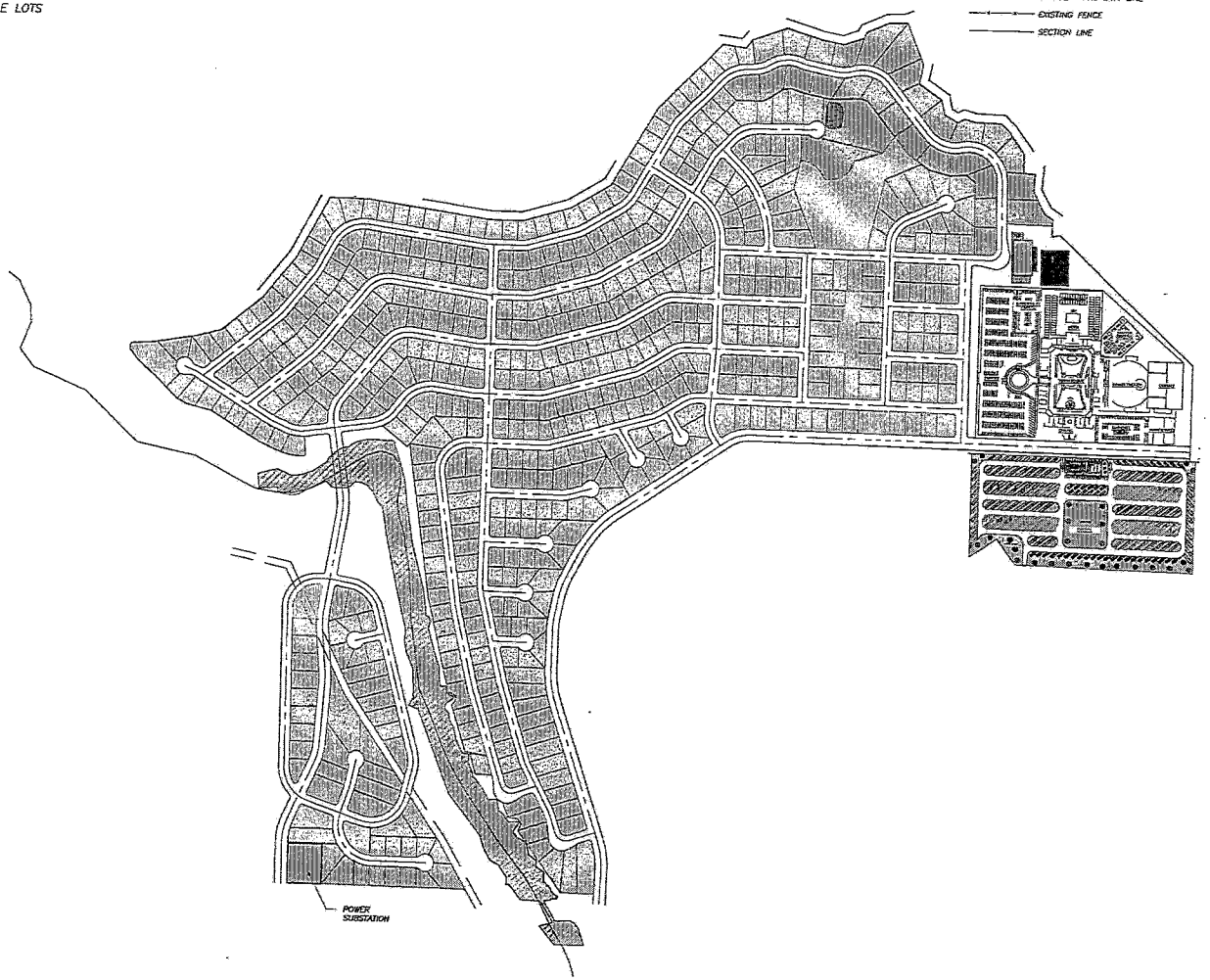
LEGEND

- PROPERTY LINE
- ADJACENT PROPERTY LINE
- EXISTING FENCE
- SECTION LINE

N

300 0 300

SCALE IN FEET



NO	DESCRIPTION	DATE	BY
	REVISIONS		

PROVALUE ENGINEERING, INC.
Engineers • Land Surveyors • Land Planners
Hurricane City, Utah 84737
Phone: (435) 668-0687

PLANNED COMMERCIAL PLAN FOR:
LOST TRAILS AT THE COVE
SECTION 28, T41S, R13W, S.L.B.&M.
HURRICANE, UT
LOCATED IN SECTION 28, T41S, R13W, S.L.B.&M.

DATE: 12/6/2016
SCALE: 1"=300'

JOB NO.
407-001

SHEET NO.
C1

SITE PLAN