

San Juan County, Utah Administrative Law Judge

Megan Simmons)	Administrative Law Judge Lyn L. Creswell
<i>Petitioner,</i>)	Background,
vs.)	Factual Summary, Legal Framework
)	Findings and Conclusions,
San Juan County, Utah,)	Decisions and Orders
<i>Respondent</i>)	20 February 2026

Background

On 9 May 2025 San Juan County Attorney Mitchell Maughan sent a “heads up” email to San Juan County Administrative Law Judge Lyn Creswell regarding three potential notices of violations, including a Simmons Notice of Violation for 152 Tera Drive.

In May 2025¹ San Juan County issued a “Notice of Violation” to Megan Simmons residing at 2323 South 1400 West, College Ward, Utah 84339 and at 152 South Tera Drive, Moab, Utah 84532. The Notice of Violation included the following.

- 152 Tera Drive or San Juan County Parcel Number 130000002B is located within the Spanish Valley Residential (“SVR”) zone or district of the San Juan Spanish Valley Development Ordinances (“SVDO”).
- Prior to the adoption of the SVDO (2019), 152 Tera Drive was in the A-1 district or zone of the 2011 San Juan County land use ordinance.
- Prior to the adoption of the SVDO (2019), 152 Tera Drive was vacant.

¹ For some reason the Notice of Appeal was dated 8 June 2025, a date after it was published.

It is unclear when the Simmons Notice of Violation was “issued” by San Juan County. On 28 May 2025, County Attorney Mitchell Maughan sent an email to Administrative Law Judge Creswell informing him that the Notice of Violation was “recently” issued.

- At the time of the adoption of the SVDO (12/19/2019)², the property continued to be vacant, although the property owner had moved and/or constructed several mobile trailers onto or on the property.
- After the adoption of the SVDO until the present Notice of Violation, property owners have constructed several structures on the property and have transported or constructed several sheds/trailers onto the property. These actions were done without ever obtaining any building permits, inspections and without ever obtaining a certificate of occupancy.
- After the adoption of the SVDO (2019) until the Notice of Violation, the owners of 152 Tera Drive used the structures on the property as a residence and as short-term rentals.
- The use of the structures at 152 Tera Drive as short-term rentals within the Spanish Valley Residential (SVR) District is in violation of the SVDO.
- 152 Tera Drive is not zoned for short-term rentals.
- Over the last several years, San Juan County and Grand County have issued stop work orders or red-tagged 152 Tera Drive and issued emails, written notices, and verbal notices demanding that all work and activity cease and desist pending compliance with all rules and regulations.
- The owner of 152 Tera Drive has ignored and failed to address the notices and warnings and continued to rent out property.
- The property owner's actions in this matter are willful and deliberate.
- The owner's actions have created a considerable public safety concern.
- The trailers, structures, and hereditaments on the property are not accessory uses as defined by the SVDO and "shall be removed immediately."
- Recently, the property owner has applied for a zone change.
- The owner's application for a zone change is denied "as the existing uses are illegal."
- The owner of 152 Tera Drive has failed to comply with the San Juan County ordinance (1-6 of the 2011 zoning ordinance) which requires a building permit for the construction or alteration of any structure.
- The noncompliant uses at 152 Tera Drive constitute "nuisance activity" as defined in Section 1-12 of the 2011 zoning ordinance.

² The Spanish Valley Development Ordinances were adopted by the San Juan County Board of Commissioners on 19 November 2019 and became effective on 19 December 2019.

- The owner of 152 Tera Drive shall cease and desist any use of the property for residential or commercial purposes “effective immediately until further notice.”
- The owner of 152 Tera Drive was informed of the sanctions which may be imposed for failure to comply.

On 22 May 2025 Attorney Russell A. Cline (representing Megan Simmons) responded to the Notice of Violation. The response included the following.

- Prior to the adoption of the Spanish Valley Development Ordinances (2019), 152 Tera Drive was within the “commercial highway zone” in Spanish Valley.
- Prior to purchasing the property in 2021, petitioner’s husband Conner Simmons checked the zoning of 152 Tera Drive and understood (based on information provided by San Juan County) the property was in a “commercial highway zone.”
- The current uses are consistent with a “commercial highway zone.”
- The previous owner of 152 Tera Drive spoke with San Juan County Greg Adams, who “approved the property” (and neighboring property) as campgrounds.
- The petitioner understood that the “campground” uses of the property were “grandfathered” for the benefit of the petitioner after the adoption of the SVDO.³
- Petitioner understood the “permission” given by Greg Adams to the prior owner continued with petitioner after the property was purchased.
- Petitioner denies the property (152 Tera Drive) was within the A-1 Agricultural District prior to the adoption of the SVDO.
- Petitioner denies the property was vacant prior to the adoption of the SVDO.
- The property was being used as a campground prior to the adoption of the SVDO.
- No building permits were applied for prior to the adoption of the SVDO.
- In 2020 building permits and a certificate of occupancy were obtained for the “house” on that property.
- On the property, a mobile home and five mobile sheds have been used as short term rentals since the SVDO was adopted.

³ A property owner has the burden of proof in establishing a legal nonconforming use of property. Megan Simmons submitted limited evidence – and submitted no brief nor made arguments – supporting a conclusion of a legal nonconforming use of 152 Tera Drive.

- Since 2024 petitioner has worked with San Juan County to “satisfy the County’s requests” relating to the property.
- Early in 2024 petitioner’s husband met with San Juan County Zoning Official Kristen Bushnell to discuss how to proceed with the property.
- Petitioner’s husband has attended San Juan County Planning Commission meetings.
- Both the Planning Commission and Zoning Administrator were aware of the petitioner’s efforts to comply with County requests.
- Petitioner was informed by Ms. Bushnell to either apply for nonconforming use determination or apply for a zone change.
- Based on Ms. Bushnell’s recommendation, petitioner applied for a zone change (dated 5 April 2024).
- Ms. Bushnell informed the petitioner to “wait” on a response to the zone change application since the County was working on a County-wide rezone.
- Petitioner has been waiting over a year for the County-wide rezone.
- In the meantime, the 5 April 2024 zone change application has not been considered by the Planning Commission or the Board of Commissioners.
- On 7 May 2025 petitioner filed an additional zone change application.
- San Juan County’s denial of the petitioner’s zone change applications without “full and fair consideration.”
- During a 9 January 2025 Planning Commission meeting, petitioner understood that the County would work with property owners, like petitioner, and not shut them down.
- Petitioner applied for a business license (on 12 April 2023) and was informed (on 16 January 2025) to wait for approval of the new County-wide zoning ordinance.
- Since 2023 petitioner’s property (152 Tera Drive) has been taxed as a “Nightly Rental.” In addition, petitioner has paid transient room taxes to San Juan County.
- Petitioner’s actions have been in good faith.
- Petitioner has been in constant contact with the County and was informed to wait for the County-wide rezone.

Mr. Cline submitted several exhibits with the 22 May 2025 response. The exhibits included the following.

- An aerial photograph and drawing representing portions of the subject property within 1000 feet of State Highway 191.
- The September 2019 draft Spanish Valley Development Ordinance which was posted on the San Juan County website with the Planning Department documents for Spanish Valley.
- An audio recording of the 14 November 2024 San Juan County Planning Commission meeting.
- San Juan County Building Permit Number 20095 dated 12 October 2020 with a Certificate of Occupancy dated 5 May 2021 for a single-family detached residential structure at 152 Tera Drive.
- 1 March 2024 email from petitioner's husband to Ms. Kristen Bushnell.
- 24 January 2024 email from petitioner's husband to Ms. Kristen Bushnell.
- Audio recording of 9 January 2024 Planning Commission meeting.
- 12 April 2023 Megan Simmons business license application.
- 16 January 2025 San Juan County Business License Administrator email to petitioner regarding business license application.
- 2024 San Juan County Property Tax Roll Record for 152 Tera Drive.
- Airbnb bookings for 2018 and 2019.
- 5 November 2024 email from Ms. Kristen Bushnell to petitioner's husband.

On 2 June 2025 ALJ Creswell emailed Mr. Maughan requesting who would represent San Juan County in the Simmons appeal.

On 10 June 2025 ALJ Creswell emailed San Juan County Administrator Mack McDonald, County Zoning Administrator Kristen Bushnell, and County Attorney Maughan. ALJ Creswell stated he understood that Mr. Maughan was seeking an outside attorney to represent the County with the Simmons appeal; and that the County was gathering the relevant documents associated with the property. ALJ Creswell stated he would schedule a virtual meeting with the parties, once a County representative was identified.

On 10 June 2025, Kristen Bushnell (in an email) sent the Simmons 22 May 2025 response to Administrative Law Judge Lyn Creswell.

On 16 June 2025 ALJ Creswell emailed Ms. Bushnell asking her to inform petitioner Simmons that he would schedule a meeting once the County identified a representative. On 17 June 2025 Ms. Bushnell responded to ALJ Creswell, informing him that petitioner Simmons had been informed and she understood ALJ Creswell was waiting for a County representative to be identified.

On 31 July 2025 ALJ Creswell sent a text message to County Administrator Mack McDonald and County Attorney Mitchell Maughan. ALJ Creswell asked whether the County had identified a representative. ALJ Creswell asked for an update.

On 6 August 2025 County Attorney Mitchell Maughan informed ALJ Creswell that he [Mitch Maughan] would represent the County.

On 18 August 2025 ALJ Creswell sent an email to County Attorney Maughan and Attorney Cline. The email summarized the kinds of evidence ALJ Creswell would be requesting from San Juan County in support of the County's Simmons Notice of Violation.

On 19 August 2025 ALJ Creswell sent Mr. Maughan and Mr. Cline a draft memorandum and order – which summarized a prehearing conference held on 19 August 2025 and included a list of documents or evidence ordered to be submitted by San Juan County.

On 20 August 2025 ALJ Creswell published the Memorandum and Order.

On 12 September 2025 ALJ Creswell emailed Mr. Cline to inform him that the County had requested additional time to gather the ordered documents and evidence. The date of 26 September 2025 was identified as the new submission date.

On 12 September 2025 ALJ Creswell sent the parties' attorneys his initial "fact summary" based on the documents submitted by Mr. Cline – subject to a revision based on documents to be submitted by San Juan County.

On 25 September 2025 Mr. Maughan submitted evidence and documents relating to the Simmons Notice of Appeal and response. With the submission were the following.

- March 2023 draft correspondence to "Conner."
- Email exchange between Conner Simmons and Kristin Bushnell (31 January and 12 February 2024).
- Email exchanges between Conner Simmons and Kristin Bushnell (26 February, 28 February, 29 February, and 1 March 2024).
- Select Google Earth photos.
- Mersereau Subdivision Plats.
- 17 September 2021 and 20 September 2021 Warranty Deeds.
- 2022 San Juan County Property Tax Master Roll Record for 152 Tera Drive.
- 2023 San Juan County Property Tax Master Roll Record for 152 Tera Drive.
- 2024 San Juan County Property Tax Master Roll Record for 152 Tera Drive.
- Airbnb listings for 152 Tera Drive.
- Building permit application dated 23 September 2019 for 152 Tera Drive.
- 4 June 2022 Conditional Use Permit Application for 152 Tera Drive.
- 13 December 2021 building permit application for 152 Tera Drive.
- 12 October 2020 building permit application for 152 Tera Drive.

On 8 October 2025 ALJ Creswell sent an email to Mr. Maughan and Mr. Cline. ALJ Creswell acknowledged receiving and reviewing Mr. Maughan's 25 September 2025 submission. Based on the initial submission by the parties, ALJ Creswell asked follow-on questions for the parties.

On 4 November 2025 Mr. Cline submitted affidavits in response to ALJ Creswell's 8 October 2025 email.

On 7 November 2025 Mr. Cline submitted a supplemental affidavit and an attachment.

On 4 December 2025 ALJ Creswell hosted a prehearing conference to prepare for and schedule a hearing. A hearing date of 6 February 2026 in Monticello was selected.

On 4 December 2025 ALJ Creswell sent the parties a draft "hearing management order," an initial "factual summary," initial "legal framework," and initial "findings and conclusions." ALJ Creswell also asked follow-up questions relevant to the scheduled hearing.

On 4 and 5 December 2025 ALJ Creswell sent the parties two emails. One addressed the issue of "public nuisance" in the subject appeal. The second email addressed the issue of building code compliance.

On 19 December 2015 Conner Simmons submitted a list of witnesses for the 6 February 2026 hearing.

On 30 December 2025 San Juan County submitted a list of witnesses for the 6 February 2026 hearing.

On 7 January 2026 ALJ Creswell published a Hearing Management Order for the 6 February 2026 hearing.

On 30 January 2026 Mr. Maughan sent an email with additional emails/attachments relevant to the subject appeal.

On 4 February 2026 Mr. Cline sent ALJ Creswell an additional response to ALJ Creswell's 4 December 2024 email.

On 6 February 2026 the subject appeal was heard at a hearing held in the County Commission Chambers of San Juan County in Monticello, Utah.

On 6 February 2026 (after the conclusion of the hearing) Corey Coleman sent an email outlining the “As Built Permit Process” for San Juan County.

On 12 February 2026 Ms. Rosa Vargas – who served as clerk for the 6 February 2026 hearing – sent an unofficial transcript of the hearing to ALJ Creswell. On 13 February 2026 ALJ Creswell sent the transcript to the parties and witnesses.

On 13 February 2026 ALJ Creswell sent the parties’ attorneys a preliminary draft decision of the subject appeal. ALJ Creswell requested comments or edits, if any, from the parties by close of business 18 February 2026. On 18 February 2026 Mr. Maughan sent ALJ Creswell a clarification regarding the application of the San Juan County zoning code to the Megan Simmons property. Mr. Maughan also sent edits regarding the “Decisions and Orders” section of the decision

Factual Summary

On 5 June 1978 San Juan County adopted its first zoning ordinance.

On 18 November 2002 San Juan County adopted the codes and regulations relating to buildings and structures, which codes and regulations were regulated by the International Conference of Building Officials and the International of Association of Plumbing and Mechanical Officials. Among those adopted codes were the International Residential Code, the International Plumbing Code, and the International Building Code.

On 12 September 2011 San Juan County adopted an amended zoning ordinance. The 2011 zoning ordinance included the following.

- Uses which were considered “nuisances” were identified, along with the action required for nuisance activity.
- Building permits were required for “the use of land” and for the alteration or construction of structures.
- Any County action which conflicted with the zoning ordinance “shall be null and void.”
- Nonconforming uses were defined.

On 17 April 2018 the San Juan County Board of Commissioners unanimously adopted the San Juan County Spanish Valley Area Plan.⁴ The Spanish Valley Area Plan states that it “is an official document intended to guide future development in the San Juan County portion of Spanish Valley.” When adopted, the Spanish Valley Area Plan became a chapter of the San Juan County Master Plan. Relevant to the location of short-term/overnight rentals in Spanish Valley residential neighborhoods, the Spanish Valley Area Plan included the following guidelines.

⁴ The 17 April 2018 Spanish Valley Area Plan was the result of considerable community outreach and involvement.

In 2017 San Juan County contracted with Landmark Design (a landscape architect company) to prepare an “area plan” for the Spanish Valley community. The creation of a “Spanish Valley Area Plan” began with a presentation by Landmark Design to the San Juan County Planning Commission on 14 August 2017. This Planning Commission meeting was followed by interviews with select residents, neighborhood groups, and government agencies during a three-day period 18 to 20 September 2017. Comments received during these three days included the following.

- “Would like it [Spanish Valley] to be a place with no hotels and over-night visitors (Airbnb) or similar tourist-based uses.”
- “Many people want to build small homes on their properties that they can rent out or subdivide and sell – they don’t think this is a good idea for permanent residents, and don’t like the idea of too many ‘overnighters’ in the area.”

These interviews were followed by public scoping meetings on 20 September 2017 and two public workshops on 7 and 8 November 2017.

On 13 February 2018 Landmark Design hosted a public Open House to receive comments about a draft San Juan County Spanish Valley Area Plan. Fifty people attended the Open House. Following the Open House, the County provided a website and an email address for individuals to comment on the draft Area Plan. Comments were received from 13 February to 11 March 2018. After comments were received on the project website, Landmark Design created a document with the verbatim comments from citizens about the Spanish Valley Area Plan. Included among those comments were these.

- Hotels nestled amongst single-family homes are incompatible and should be rectified.
- Nightly rentals involve late-night parties, with loud noise. Some nightly rentals involve large groups of people, which impact the roadways.⁴

After the interviews, workshops, an open house, and receipt of emails from individuals, Landmark Design summarized the community ideas and concerns about the future of Spanish Valley. Among the summarized responses were the following:

- “The primary reason for living here is the relative isolation and distance from tourists and tourism impacts.”
- “The area should be more aligned with creating a community for its residents and less about accommodating the needs of tourists.”

On 22 March 2018 the San Juan Planning and Zoning Commission received a presentation regarding a possible Spanish Valley Area Plan. After public comments, comments from San Juan County zoning official Walter Bird, and discussion among the commissioners; the Planning and Zoning Commission voted to send the Spanish Valley Area Plan to the County Board of Commissioners.

- A guiding principle should be to create a non-tourism centered community that is distinctly different from Moab yet still maintains its current close ties.
- A guiding principle should be to encourage and support business development through the location of well-situated business development zones adjacent to the highway.

After the 17 April 2018 adoption of the Spanish Valley Area Plan, San Juan County spent several months⁵ preparing a zoning ordinance for Spanish Valley. On 19 November 2019 the San Juan County Board of Commissioners approved the Spanish Valley Development Ordinances (SVDO) as an amendment (or sub-ordinance) to the 2011 San Juan County Zoning Ordinance.⁶

⁵ The process of adopting a Spanish Valley land use ordinance began on 17 May 2018 when the San Juan County Planning Commission first considered proposed zoning changes for Spanish Valley. A draft ordinance was presented by Landmark Design. The ordinance included a San Juan County Spanish Valley Residential (SVR) District. It also included a Highway Commercial District.

On 8 November 2018 the Planning Commission received another presentation relating to a draft Spanish Valley zoning ordinance. Included with the meeting agenda was a May 2018 draft Spanish Valley zoning ordinance. The agenda and draft ordinance were available to the public. That draft ordinance included a residential zoning district, the Spanish Valley Residential (SVR) District and a Highway Commercial District. The draft ordinance included a proposed table of uses for the SVR District.

On 13 December 2018 the Planning Commission again discussed a draft San Juan County Spanish Valley Development Ordinance.

On 7 February 2019 the Planning Commission met. Included with the meeting agenda was a 17 December 2018 draft Spanish Valley zoning ordinance. The agenda and draft ordinance were available to the public. That draft ordinance included a residential zoning district, the Spanish Valley Residential (SVR) District, and a Commercial Highway District. The draft ordinance included a proposed SVR District table of uses.

On 30 October 2019 the Planning Commission met. Included with the meeting agenda was a 13 September 2018 draft Spanish Valley zoning ordinance. The agenda and draft ordinance were available to the public. That draft ordinance included a residential zoning district, the Spanish Valley Residential (SVR) District, a Highway Commercial District. The draft ordinance included a proposed SVR District table of uses.

⁶ The Spanish Valley Development Ordinances were not drafted nor adopted to be a separate or stand-alone land use ordinance for Spanish Valley. San Juan County Ordinance 2019-02, which adopted the Spanish Valley Development Ordinances, states: "The San Juan County Zoning Ordinance is hereby amended to include the attached Spanish Valley Development Ordinances."

The 19 November 2019 Spanish Valley Development Ordinances (SVDO) included the following relevant to 152 Tera Drive.

- The SVDO included a Spanish Valley Residential (SVR) district and a Spanish Valley Highway Commercial (HC) district.
- The SVDO created an “overnight accommodations overlay.” The SVDO identified the “overnight accommodations overlay” for qualifying uses in the Spanish Valley Highway Commercial (HC) District (and other Spanish Valley zoning districts), but *not* as qualifying uses in the Spanish Valley Residential (SVR) District.
- All Highway Commercial (HC) District uses must have direct frontage and/or a physical parcel connection by street to U.S. Highway 191. Sites lacking such relationships will be limited to uses and development conditions of the adjacent Spanish Valley Residential (SVR) District.
- The SVDO identified permitted uses and conditional uses within the Spanish Valley Residential (SVR) district. Short-term rentals and overnight accommodations were not among the permitted or conditional uses (specified or inferred) in the SVR District.

On 19 November 2019 the San Juan County Board of Commissioners adopted a Spanish Valley Zoning Map. The Zoning Map showed the parcels (west) on Tera Drive – which included 152 Tera Drive - were wholly within the Spanish Valley Residential (SVR) District, with no part of a parcel in the Spanish Valley Highway Commercial (HC) District.

After the 19 November 2019 adoption of the Spanish Valley Development Ordinances, the San Juan County Planning Commission (from 9 July 2020 to 11 February 2021) discussed short-term rentals in Spanish Valley and considered a county-wide short-term rental ordinance.⁷

On 12 October 2020 San Juan County issued a building permit (number 20095)⁸ for a residential single-family (detached) manufactured home (“factory built housing, modular”) at 152 Tera Drive, Moab. The owner of the property was Daniel Wright. The legal description of the property (152 Tera Drive) was “Mersereau Subdivision, Lot 2, A Subdivision located in the SE1/4 of SEC 35, according to the official plat thereof (together with a 25 foot wide access & utility easement throughout Lot 1).” A certificate of occupancy was issued on 5 April 2021.

⁷ On 9 July 2020, the San Juan County Planning Commission discussed overnight accommodations in Spanish Valley. The Planning Commission considered revisions to the overnight accommodation requirements in the 19 November 2019 Spanish Valley Development Ordinances.

On 13 August 2020, the San Juan County Planning Commission discussed the possibility of recommending a County-wide short-term rental ordinance.

On 8 October 2020, the San Juan County Planning Commission again discussed a possible County-wide short-term rental ordinance.

The San Juan County Planning Commission on 14 January 2021 discussed short-term rentals. Commissioner Johnston supported not allowing short-term rentals in residential areas with a stipulation that when ownership changes, the short-term rental is no longer allowed. There was concern about the application of Commissioner Johnston’s proposal in the Spanish Valley community. County Chief Administrative Officer Mack McDonald commented that short-term rentals increase real estate values. Commission members wanted to see a proposed ordinance dealing with short-term rentals.

On 11 February 2021 the San Juan County Planning Commission discussed short-term rentals in the Spanish Valley Highway Commercial (HC) District. Members of the Planning Commission were given a draft ordinance which would set the requirements for short-term rentals – where they are authorized in the County’s zoning ordinances. Comments made about short-term rentals during the meeting included:

- Nightly rentals should be allowed in commercial zones, but not in residential zones; and
- Hotels, motels, and commercial condos should be conditional uses.

⁸ The building permit document provided by Conner Simmons lists files which were “uploaded” to the County. These files include the original building permit application, the original plans, and an updated site plan. These files were not provided to ALJ Creswell.

On 15 December 2020 the San Juan County Board of Commissioners adopted Ordinance No. 2020-10-A (An Ordinance of the Board of San Juan Commissioners Establishing Rules and Regulations for the Licensing and Operation of Businesses with San Juan County). Included in Ordinance 2020-10-A were the following.

- It is unlawful for any person, firm, or corporation or any employee thereof, to commence, engage in, carry on, or operate any business in unincorporated San Juan County without first applying for and obtaining a license from the County to do so.
- Any business license applications must be approved for proper zoning by the County building inspector or zoning administrator.
- Any person who operates a business in violation of the provisions of this chapter shall be subject to fines.

On 8 March 2021 the San Juan County Office of the County Attorney (Deputy County Attorney Alex Goble) published⁹ a legal opinion which addressed short-term rentals in the SVR District. On 11 March 2021 that legal opinion was shared with the San Juan County Planning Commission and discussed in a public meeting.¹⁰ The legal opinion¹¹ found that short-term

⁹The legal opinion was sent by email to the County Planning Director, who quoted the legal opinion in an 11 March 2021 Staff Report – which was included in the meeting packet for the 11 March 2021 San Juan County Planning Commission. The legal opinion was presented and read during the 11 March 2021 Planning Commission meeting. The 11 March 2021 Staff Report was included with the meeting packet which was published on the State of Utah Public Notice Website.

¹⁰ The Office of the County Attorney concluded the following.

“Upon review of the Spanish Valley Sub-Ordinance and the San Juan County Zoning Ordinance, it is the determination of this office that short-term rentals in the Spanish Valley Residential (SVR) District are not permitted uses.

Permitted uses in the SVR are limited to single-family dwellings, two-family dwellings, and manufactured dwellings. Some accessory buildings to those three primary uses are also permitted or may be conditional. A short-term rental is not permitted because:

[1] The use is not residential, it is commercial. The express primary purpose of the SVR is to accommodate residential uses. As a commercial use, operating a short-term rental requires obtaining a business license.

[2] Even if the use were considered residential, it also would not meet the definition of ‘dwelling’ which is ‘Any building, or portion thereof, which is designed for use for **residential purposes**, except hotels, apartment hotels, bed & breakfast/boarding houses, lodging houses, tourist courts, and apartment courts.’

[3] Short-term rentals would not qualify as single-family or two-family dwellings. They would qualify, however, as lodging houses defined in the SJCO [2011 San Juan County Zoning Ordinance] as ‘a building where lodging only is provided for compensation to five (5) or more, but not to exceed fifteen (15) persons.’ Anything designed for larger occupancy is considered a hotel or tourist court defined as ‘a building containing sleeping rooms with a fixed cooking facility designed for temporary use by automobile tourists or transients, with a garage attached or a convenient parking place.’

Therefore, any application requesting approval as a permitted use will be denied as inconsistent with the SVSO [Spanish Valley Sub-Ordinance].”

¹¹ The 8 March 2021 legal opinion was later supported by four decisions published by San Juan County Administrative Law Judge Lyn Creswell.

Kimberly Camberlango v. San Juan County 12 April 2023

- An appeal of the denial of a business license for a short-term rental enterprise in the Spanish Valley Residential (SVR) District. ALJ Creswell concluded that short-term rentals were prohibited in the SVR District and that the denial of a business license was appropriate.

San Juan Rentals LLC v. San Juan County 19 July 2023

- Appeals of two San Juan County notices of violations for the proposed operation of short-term rentals in the Spanish Valley Residential (SVR) District. ALJ Creswell concluded that the Spanish Valley Development Ordinances – adopted on 19 November 2019 - prohibits the operation of “all variations of overnight accommodations intended for nightly rental” in the Spanish Valley Residential District.

rentals were not permitted in the Spanish Valley Residential (SVR) District. Many Spanish Valley residents participated in the 11 March 2021 Planning Commission meeting.

Cristie J. North v. San Juan County 1 April 2024

- Case involved a referral to ALJ Creswell by San Juan County of a Notice of Claims which asserted that the Spanish Valley Development Ordinances – adopted on 19 November 2019 – does not prohibit short-term rentals in the Spanish Valley Residential (SVR) District. ALJ Creswell concluded the Spanish Valley Development Ordinances plainly prohibit short-term nightly rentals in the Spanish Valley Residential (SVR) District.

Harold Saunders v. San Juan County 1 April 2024

- Case involved a referral to ALJ Creswell by San Juan County of a Notice of Claims which asserted that the Spanish Valley Development Ordinances – adopted on 19 November 2019 – does not prohibit short-term rentals in the Spanish Valley Residential (SVR) District. ALJ Creswell concluded the Spanish Valley Development Ordinances plainly prohibit short-term nightly rentals in the Spanish Valley Residential (SVR) District.

During the 11 March 2021 meeting, the Planning Commission discussed short-term rentals in the SVR District. Several owners of short-term rentals properties in Spanish Valley felt they had received County approval for their businesses. Owners claimed to have communications from Planning Commission members or County staff that short-term rentals were allowed. Some owners had received business licenses for their short-term rentals. In response, the Deputy County Attorney stated that these business licenses should not have been issued.

Notwithstanding short-term rentals not being authorized in the Spanish Valley Residential District, short-term rentals have been approved in *other* Spanish Valley zoning districts. Since the 19 November 2019 adoption of the Spanish Valley Development Ordinances, the County Commission (from 16 February 2021 to 2 January 2024) approved several overnight accommodations in Spanish Valley¹² - but no overnight rentals in the Spanish Valley Residential District.

¹² On 16 February 2021 the San Juan County Board of Commissioners (upon recommendation from the San Juan County Planning Commission) approved a proposal by Josh Anderson to construct and operate seven (7) geodesic domes along Highway 191 in the Spanish Valley Overlay District. The domes would be used by visitors in Moab and Spanish Valley.

On 17 August 2021 the San Juan County Board of Commissioners (upon recommendation from the San Juan County Planning Commission) approved a proposal by Curtis Wells (representing Byrd Company Real Estate) to operate five residential properties in Spanish Valley as overnight rentals (in the highway commercial district within the Spanish Valley overlay zone).

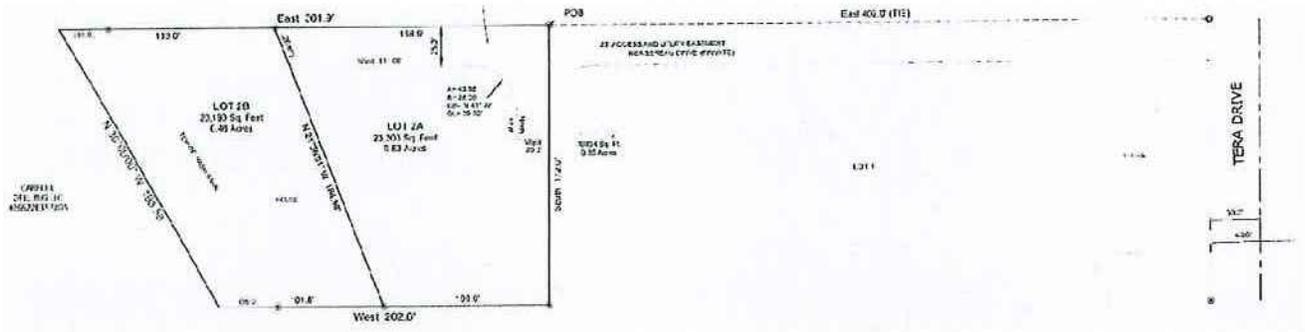
On 21 December 2021 the San Juan County Board of Commissioners (upon recommendation from the San Juan County Planning Commission) approved three proposals for development within the Spanish Valley Overlay Zone. Projects were proposed by Tom Balsley (two projects) and Jeff Burgess. The Jeff Burgess project involves 45 residential units in 4-, 5-, and 6-plex structures on the southwest side of Highway 191 near the junction of Old Airport Road.

On 21 June 2022 the San Juan County Board of Commissioners (upon recommendation from the San Juan County Planning Commission) approved two proposals (from Stephen Howard and Alicia Davis) for development in Spanish Valley Overnight Accommodations Overlay District.

On 4 October 2022 the San Juan County Board of Commissioners (upon recommendation from the San Juan County Planning Commission) approved a proposal by Stephen Howard to construct twelve (12) residential units for nightly rentals in the Spanish Valley Overnight Accommodations Overlay District.

On 20 June 2023 the San Juan County Board of Commissioners (upon recommendation from the San Juan County Planning Commission) approved a proposal by Balanced Rock Resort for 220 residential units for overnight accommodations (including 94 single-family lots, 42 duplexes with 88 units, and condominium and lodge rooms). The property is in the Spanish Valley Residential Flex Planned Community (RF) District.

In 2021 Daniel Wright submitted a subdivision application to subdivide Lot 2 in the Mersereau Subdivision in San Juan County, Utah. The Mersereau Subdivision, Amended Lot 2 Plat was filed with San Juan County on 22 July 2021. The “narrative” on that plat states: “This plat is to subdivide Lot 2 in the Mersereau Subdivision into 2 lots [Lot 1A and Lot 2B].” Lot 2A would become parcel 00130000002A. Lot 2B would become parcel 00130000002B. The plat shows two parcels – Lot 2A (0.53 acres) and Lot 2B (0.46 acres).



Lot 2B and Lot 2A from Mersereau Subdivision, Amended Lot 2 Plat

On 17 September 2021 Daniel Wright (Grantor) conveyed and warranted property Lot 2, Mersereau Subdivision (“known as 152 South Tera Drive, Moab, Utah 84532”) to Megan Simmons (Grantee). The Warranty Deed states that the transfer was subject to “restrictions . . . of record and those enforceable in law and equity.” A “Corrective Warranty Deed” was issued on 20 September 2021 clarifying that the property conveyed was Lot 2B, Mersereau Subdivision, Amended Lot 2 (“known as 152 South Tera Drive, Moab, Utah 84532”). The Corrective Warranty Deed states that the transfer was subject to “restrictions . . . of record and those enforceable in law and equity.”

According to the 19 November 2019 Spanish Valley Zoning Map, Lot 2B (152 Tera Drive) was wholly in the Spanish Valley Residential (SVR) District.

On 2 January 2024 the San Juan County Board of Commissioners (upon recommendation from the Planning Commission) approved a proposal in the El Rancho Development for ten residential units for overnight accommodations. The property (2.5 acres) is in the Spanish Valley Residential Flex zoning district.

On 2 January 2024 the San Juan County Board of Commissioners (upon recommendation from the Planning Commission) approved a proposal in the Valley Estates development for 180 residential units for overnight accommodations. The property (45.5 acres) is in the Spanish Valley Residential Flex zoning district.

Access to Lot 2B is from South Tera Drive along an easement on the north side of Mersereau Subdivision Lot 1. The east side of Lot 2B is bordered by a “wash” preventing access to the property from the east.

The 2022 San Juan County Tax Roll Master Record for 152 Tera Drive (owned by Megan Simmons) identifies the “property type” as “permanently att mobile home” built in 2020.

Beginning in March 2022 Megan Simmons began using the “single wide” mobile home at 152 South Tera Drive for both family use and as a nightly rental. At the same time Megan Simmons began renting two “mobile brown cabins” that were already on the property, as well as six tent sites. Guests on the property had access to porta potties and an outdoor shower.

In the summer of 2022 Megan Simmons removed the six tent sites and built three (3) mobile white cabins, which were rented.

Megan Simmons did not submit building permit applications for the three white cabins.

During 2022 owner Megan Simmons (at 152 Tera Drive, Moab, Utah) had “Documented Stays” at “Moab’s Majestic Escape” [house] on the following dates: 29 April 2022, 31 May 2022, 30 June 2022, 29 July 2022, 15 August 2022, 30 September 2022, 27 October 2022, 27 November 2022, and 26 December 2022.

During 2022 owner Megan Simmons (at 152 Tera Drive, Moab, Utah) had “Documented Stays” at “Moab’s Majestic Escape” [tiny houses] on the following dates: 30 June 2022, 31 July 2022, 27 August 2022, 30 September 2022, 24 October 2022, 26 November 2022, and 26 December 2022.



Lot 2B (Megan Simmons), Lot 2A, Lot 1 Mersereau Subdivision October 2022 Google Earth photo

On 12 April 2023 San Juan County (by email) acknowledged receiving a business license application from Megan Simmons with Creative Holdings LLC.¹³ The address of the business was 152 Tera Drive.

The 2023 San Juan County Tax Roll Master Record for 152 Tera Drive (parcel 00130000002B) reports 0.46 acres owned by Conner and Megan Simmons (residing at 2323 South 2400 West, College Ward, Utah 84339). The 2023 Tax Roll Master Record states that the “property type” is “Nightly Rental.” Associated with the “Nightly Rental” property type is a manufactured home built in 2020.

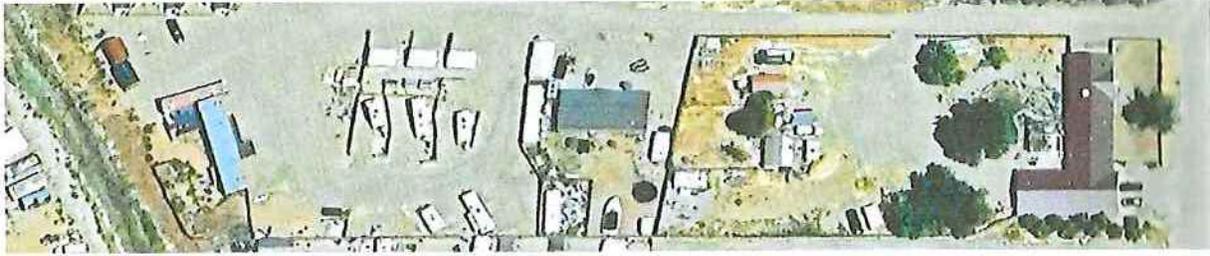
In the spring of 2023 Megan Simmons installed a “shipping container bathhouse” and removed the existing outdoor shower and porta potties.

Megan Simmons did not submit a building permit application for the bathhouse.

During 2023 owner Megan Simmons (at 152 Tera Drive, Moab, Utah) had “Documented Stays” at “Moab’s Majestic Escape” [house] on the following dates: 26 February 2023, 28 March 2023, 26 April 2023, 30 May 2023, 29 June 2023, 28 July 2023, 30 August 2023, 27 September 2023, 28 October 2023, 26 November 2023, and 27 December 2023.

During 2023 owner Megan Simmons (at 152 Tera Drive, Moab, Utah) had “Documented Stays” at “Moab’s Majestic Escape” [tiny houses] on the following dates: 30 March 2023, 30 April 2023, 31 May 2023, 30 June 2023, 31 July 2023, 28 August 2023, 30 September 2023, 29 October 2023, and 30 November 2023.

¹³ On 29 November 2018 Creative Holdings LLC was registered as a business with the State of Utah Division of Corporations and Commercial Code. Creative Holdings LLC registration is current through 30 November 2026. The listed agent of Creative Holdings LLC is Conner Simmons, with Conner Simmons and Megan Simmons as managers. The business address of Creative Holdings LLC is 2323 S 2400 W, WELLSVILLE, UT, 84339, USA.



Lot 2B (Megan Simmons), Lot 2A, Lot 1 Mersereau Subdivision 2023 Google Earth photo

On 4 January 2024 Conner Simmons sent an email to San Juan County Chief Administrative Officer Mack McDonald.

“Mack,

My name is Conner Simmons. I’m the one looking into doing the subdivide on Tera Drive and also own property (well technically it’s my wife) at 152 Tera Drive.

I’d really like to come meet with you about this area. I’ve spoken with Ben Tomco and Dawn Sanchez in pretty good detail about it. Most people on the street are running campgrounds/nightly rentals and it’s not allowed. Ben said you guys are aware. I applied for a business license like 8 months ago and never heard back. Dawn was very informative about the impact fees that should be paid for each unit. I’m sure there is more I don’t know. I’d really like to come meet with you and discuss what options there are. I feel like there is a way to make this work for us and for the county.

I live in Logan, Utah, but I’m down there a lot. Cheers, Conner”

After receiving the 4 January 2024 email, Mr. McDonald forwarded it to Kristen Bushnell and Mr. McDonald informed Mr. Simmons that Ms. Bushnell would reach out to Mr. Simmons.

The 2024 San Juan County Tax Roll Master Record for 152 Tera Drive reports 0.46 acres owned by Megan Simmons (residing at 2323 South 2400 West, College Ward, Utah 84339). The 2024 Tax Roll Master Record states that the “property type” is “Nightly Rental.” Associated with the “Nightly Rental” property type is a manufactured home built in 2020. The parcel is identified as 00130000002B.

On 11 January 2024 the San Juan County Planning Commission met. Early in the meeting, Planning Commission Chairperson Schafer commented on the ongoing work to update the County-wide planning ordinance.

On 11 January 2024 the San Juan County Planning Commission considered possible changes to the Spanish Valley Development Ordinances to clarify that short-term rental uses are prohibited in the Spanish Valley Residential District. The following summarizes the discussion among the planning commissioners.

- County Attorney Maughan stated that overnight rentals are not allowed in the SVR District. Attorney Maughan proposed clarifying language in the Spanish Valley Development Ordinances.
- One planning commissioner believed there were properties providing short-term rentals serving 4 or less people – that use would be grandfathered with the adoption of the proposed language.¹⁴
- There was discussion of enforcement – through business license applications and by an enforcement officer.
- Administrator Mack McDonald stated that there have been conflicting legal opinions about short-term rentals in the SVR District. Mr. McDonald felt that the proposed language would help.

On 11 January 2024 the Planning Commission received public comments on the proposed language and short-term rentals in the SVR District. The following comments were made.

- A citizen was concerned with short-term rentals being run ‘under the radar’ and not obtaining a business license.
- A citizen believed that short-term rentals are developing around her. The citizen asked about the County’s plans to enforce the ordinance and find the prohibited short-term rentals.

¹⁴ During the discussion Assistant County Attorney Jens Neilson clarified the standard for legal non-conforming uses.

On 16 January 2024 the San Juan County Commission adopted Ordinance No. 2024-01 which amended the San Juan County Zoning Ordinance “to clarify that short-term rental use is prohibited in the Spanish Valley Residential (SVR) District.”

On 24 January 2024 Conner Simmons emailed San Juan County zoning official Kristen Bushnell.

“Kristen,

Thanks again for taking the time and meeting with us yesterday. Please let me know when those meetings will be! How soon do you suspect the first one will be?

Quick summary of our meeting (Feel free to correct anything) about our properties on Tera Drive being used and camping/glamping/tiny houses all on Airbnb.

1. Non-conforming use could be an option if we have good records.
2. Rezone is an option, but . . .
3. A new zone is likely to be created. Some kind of flex zone and we hopefully make it into that. This will be part of the whole new zoning map and ordinances that will be county wide.
4. We should come voice our concerns at the town meetings.
5. We want to work with the county to create a win-win. We generate taxes (I’m guessing over \$40,000 a year between Daniel [Wright], Sharell [Carlson] and I). I hope to make that bigger with the property I just acquired¹⁵.”

Conner Simmons, husband of Megan Simmons, asserts that prior to early 2024 he was not aware of compliance issues at 152 Tera Drive. Conner Simmons met with Kristen Simmons on 23 January 2024. From the meeting, Conner Simmons understood that he should wait for a county wide land use rezone “so that we could become compliant.”

¹⁵ Conner Simmons refers here to 160 Tera Drive (Mersereau Subdivision Lot 1), which he purchased in early 2024.

On 26 February 2024 Conner Simmons sent an email to Kristen Bushnell.

“I’m wondering if you know if there is a way we can find out how many glamping spots we can put on our property (this assuming the rezone happens)? Are there certain criteria you could share? I’m assuming fire truck access is first and foremost. Anything else?”

We are cleaning up the mess the last owner¹⁶ had in the backyard. She had one guy back there for 9 years. Pretty interesting situation. The other 5 spots were rented short term and to fellow river guides. Several of the units were in terrible shape. Pretty sad to be honest. It was interesting though; the folks seemed to like it.

I actually have one more random question. I was reading the meeting minutes for February 8th 2024. It looks like the west side of Tera Drive was zoned commercial on Sept 13, 2019 or Nov 19, 2019. The document has one draft map showing Tera Drive as commercial (page 463) and two approved maps – one has Tera Drive as commercial (page 559) and one does not (page 650). Can you clarify?

If you don’t know off hand I’m not terribly worried about it because it sounds like that will all change soon. It seemed to show that it was at one time zoned commercial. This is probably all going to be irrelevant, but I wanted to bring it to your attention that Tera Dr has been on the radar for being commercial. Thanks. Conner.”

¹⁶ It appears the reference here is to 160 Tera Drive, not to 152 Tera Drive.

On 5 March 2024 Conner Simmons received the following email from Kristen Bushnell.

“Conner [Simmons],

I appreciate the conversations that have been on-going between us and I hope that we can continue to be transparent as we proceed towards compliance with the endeavors you have on your property. As we work on updating our ordinances and zoning maps, a lot of attention has come to the area around Tera Drive. We have been investigating historic zoning maps, ordinances, existing structures and businesses along this corridor.

During that investigation we noticed your property located at 152 Tera Drive in Spanish Valley, including several neighboring parcels of various landowners, is not in compliance with our current Spanish Valley Ordinances and is not zoned for the use that we have seen on the ground. Our Records Office that deeded ownership was transferred to you on July 21, 2021. Additionally, we show a change to commercial property (not necessarily approved as commercial zoning) was changed in the 2023 tax year by means of use.

There are two separate issues that go hand-in-hand with your property. Both addressed below, one is the appropriate building permitting and utility clearance and the other is the business/commercial operations. We are attempting to gain compliance in both areas. The option of bringing your property into a non-conforming use status is not available due to the alternations and extensions of structures and uses over the past few years.

HISTORICAL CONTEXT

Historically, your property would have been in Agriculture (A-1) as of our July 2013 maps and governed in the September 2011 Zoning Ordinance previously applying to this parcel. Within this document it is outlined that “Private park or recreational grounds or private recreational camp or resort, including accessory or supporting dwellings or dwelling complexes and commercial service uses which are owned by or managed by the recreational facility” are a Conditional Use within the Agricultural Zone. Under this historical context, there is a one (1) acre lot minimum, 25 foot front yard setback, 25 foot front yard setback, 25 foot front yard setback, 25 foot rear yard setback, and 15 foot side yard setbacks from the property line to any dwelling or accessory buildings. As it exists, you are not in compliance here.

One way to gain zoning compliance is to present a Conditional Use Permit from your application or a previous landowner, which would transfer between property ownership granting that the use has been consistent from the initial time of the Conditional Use Permit being approved (with no more than 12 months of non-use). Without this you are not in compliance.

SPANISH VALLEY ORDINANCE ADOPTION

The Spanish Valley Ordinance was legally adopted in September 2019¹⁷ by the San Juan County Board of Commissioners. This document, with the accompanied maps updated and amended in 2021, holds as our current legal directive. Your property is designated as

¹⁷ The “Spanish Valley Ordinance” was adopted on 19 November 2019 by the San Juan County Board of Commissioners. The Commission adopted a September 2019 draft of the Spanish Valley Development Ordinances.

Spanish Valley Residential (SVR) which defines “Accessory Buildings and Uses” and “All other household living uses (5th wheel, trailers, etc.)” as a Conditional Use. Every building and lot must have access to either an approved private street or driveway or alley which provides safe and convenient access for servicing, fire protection and required on-site parking. Each lot must uphold our minimum for 75 foot lot width, 25 foot front setback, 20-foot rear yard setback, and 8-foot side yard setback. A setback is defined as being unobstructed by any part of a structure from the ground to the sky and measured as the horizontal distance between a property line and the furthestmost projection of the structure. The SVR district also requires a minimum spacing of 16 feet between units.

Please refer to Chapter 1: Spanish Valley Residential (SVR) District of the Spanish Valley Development Ordinances for additional information on the current requirements on your property

PROPERTY HISTORY

We have no building permits in file for the work that has been done in the past, nor the work that is currently underway. You must apply for a building permit prior to any construction requiring utilities, foundation, dwelling units, or any accessory building over 200 square feet in footprint.

The legality of the utility lines on your property cannot be clearly defined as when approvals were granted and that they were installed under a licensed contractor/utility company. Please provide documentation (work orders, receipts of payment, building inspections, health department reports, etc.) that provides evidence that this work was completed in accordance with the International Building Code. Without this evidence, the ability to conduct commercial operations as a business is forfeit.

To clarify previous questions, as owner-builder exception applies only to single-family residences of which the builder is the main inhabitant and in which case an “Owner Builder Certification Agreement” needs to be filed with the State of Utah at the point of construction commencing.

The use of your property as a commercial endeavor has been greatly expanded upon well after the September 2019 [November 2019] Spanish Valley Ordinance’s legal adoption. This letter serves as a notice of Zoning Violation and for immediate compliance due to prohibited uses of your property. Failure to comply may result in penalty fines or being charged with a Class C Misdemeanor under the Utah State Code.

There are two routes you may take toward becoming compliant at this point in time. First, you may apply for a zoning change with the Planning & Zoning Commission to be “Residential Flex” or “Highway Commercial Flex,” then additionally applying for the Spanish Valley Overnight Accommodation Overlay. This multi-step process would take between 3-4 months if done quickly and completely on your end.

Your second option is to hold off until we have the new Zoning Maps and Ordinances in place around July 1st, 2024. While we are pushing for changes, they may or may not be in favor of your property as a commercial overnight rentals operation. The process will go through several community input sessions, our Planning Commission for recommendations, and finally our San Juan County Board of Commissioners.

Please reach out to us within the next fourteen (14) days from the date of this letter to take the necessary steps towards becoming compliant.”

After receiving the 5 March 2024 email from Kristen Bushnell, Conner Simmons asserts the following.

- Mr. Simmons understood he had two options to come into compliance: 1. Apply for a zoning change (Residential Flex or Highway Commercial Flex) [under the existing Spanish Valley Development Ordinances] and then apply for the Spanish Valley Overnight Accommodation Overlay – a process Mr. Simmons understood could take three to four months; 2. Wait for the County’s new zoning maps and ordinances.
- Shortly after the 5 March 2024 email, Conner Simmons submitted a rezone application to the County. The application was never acted upon by the Planning Commission. Mr. Simmons believed Ms. Bushnell did not submit the application to the Planning Commission “because she wanted to wait until a master rezone of the entire County was completed.”
- Again in 2025 Mr. Simmons submitted a second rezone application. Mr. Simmons understood his second rezone application was not considered for the same reason as before – “they wanted to wait for a master rezone of the entire county to be completed.”
- Mr. Simmons was told “repeatedly” by both Kristen Bushnell and Nathan Pitts that Megan Simmons could continue to operate – if Megan Simmons did not expand – “because the rezone will likely bring us into compliance.” One of these conversations occurred between Conner Simmons and Kristen Bushnell during the April 2024 Planning Commission meeting.
- Mr. Simmons asserts the County supported Megan Simmons continued short-term rental business at 152 Tera Drive. Mr. Simmons points to comments made by County Attorney Mitch Maughan during the 9 January 2025 Planning Commission meeting.
- Mr. Simmons also assumed Megan Simmons could continue to operate 152 Tera Drive as a nightly rental because the County continued to tax the property as a nightly rental. Mr. Simmons stated the County tax notice gave “us confidence that the County knew we were operating and was okay with that.”

On 14 March 2024 the Planning Commission again discussed short-term rentals in Spanish Valley. Planning Commissioner Wilson was aware of individuals who had bought investment property for overnight accommodations. Planning Commissioner Wilson felt those who had purchased property for investment – which they thought were legal non-conforming uses – are now being told they cannot extend the prior uses. County Planning Director Bushnell informed Commissioner Wilson that a new County land use ordinance (which would be passed in “only a few months at this point”) will address these concerns. Ms. Bushnell stated that “after the new adoption we can focus our efforts on those properties that were out of compliance and continue to be out of compliance.”

On 13 June 2024, in a work meeting, the San Juan County Planning Commission discussed sections of a draft 2024 County land use ordinance (which would have replaced the 2011 zoning ordinance and the “subordinance” – the Spanish Valley Development Ordinances).

On 11 July 2024 County Planning Director Kristen Bushnell informed the Planning Commission that the 2024 County land use ordinance was under legal review and being made available for public input.

On 5 November 2024 Conner Simmons received an email from Kristen Bushnell with San Juan County.

“Connor,

You don’t qualify for any type of ‘grandfathering.’ You came on scene too late well after the 2019 Spanish Valley Ordinance was in place. However, the new ordinance should address this and you will be able to proceed with your business. We’re all bottlenecked with legal, at the moment.”

On 16 January 2025 Conner Simmons received an email from San Juan County business licensing official Nathan Pitts. (The email was in response to a business license application submitted by Megan Simmons on 12 April 2023.)

“Dear business owner,

Thank you for your patience to work with our county. Your business license has been pending because it is currently not permitted as a commercial use under the 2011 Zoning Ordinance. Our planning administrator did not want to deny your application but instead has been working to create a new land use ordinance that could permit this use in your zone.

Due to extreme circumstances over the past year, this process has been delayed much longer than anticipated. We are reaching out to connect with you to give an update that you are still on our list of pending applications and hope to be able to move forward shortly to approve your business license with the hopeful adoption of the 2025 Land Use, Development and Management Ordinance. . .

Again, we apologize for the delay and are working to grant this request pending legislative action. Sincerely, Nate Pitts, San Juan County Business License Administrator.”

On 21 January 2025 the San Juan County Board of Commissioners considered a new County-wide land use ordinance. The new ordinance draft was made available to the public. During the 21 January 2025 meeting, the Commission received public comments. There were comments that the ordinance was too long (“daunting”), the ordinance is too restrictive and would impede economic growth, the ordinance might not be aligned with the County general plan, and property rights should be protected. Several residents requested more time to review and comment on the ordinance. Spanish Valley residents voiced the following concerns with the new ordinance.

- Lack of enforcement of nighttime flashing lights and junk yards was a concern.
- Permits are being held up pending the adoption of the ordinance.¹⁸

¹⁸This comment was made by Conner Simmons who resides at Tera Drive.

After public comments, the Board of Commissioners on 21 January 2025 discussed and decided to table the ordinance for six months – to allow for public engagement and attorney review. During the discussion, Ms. Bushnell informed the Commission there were building licenses pending while the County considered a new ordinance.

On 8 May 2025 the San Juan County Planning Commission met. During its meeting, the Planning Commission discussed a County Land Use, Development and Management Ordinance, along with zoning maps and use tables. A presentation was given by San Juan County Planning Director Kristen Bushnell. During the presentation and discussion, Ms. Bushnell provided the following information.

- After adoption of the Ordinance, existing legal structures will be grandfathered as non-conforming uses.
- The current County land use ordinance does not permit “long-term RV dwelling[s].” The new ordinance would allow one long-term RV dwelling per half acre.
- Seasonal RV hunting camps would be added to the new ordinance.

After Ms. Bushnell’s presentation, the planning commissioners discussed the new ordinance. The Planning Commission discussed whether to allow “small scale” commercial activities in residential zones. The challenge would be to define “small scale” so that such activities do not become commercial hubs.

The Planning Commission on 8 May 2025 discussed the “can of worms” associated with a county-wide zoning ordinance in Spanish Valley. The following information was discussed during the 8 May 2025 Planning Commission meeting.

- The Planning Commission discussed whether Spanish Valley should be addressed by either “step-down” zoning or “micro-zoning.” A micro-zoning approach could address specific needs and existing structures going “road-by-road.”
- There was mention of auto repair shops in Spanish Valley residential neighborhoods.

On 10 July 2025 County Planning Director Kristen Bushnell discussed with the Planning Commission public comments on the draft 2025 County land use ordinance.

On 5 August 2025 the County Board of Commissioners directed that the County General Plan and the new County land use plan be worked on together; and that a timeline be established.

On 14 August 2025 County Planning Director Kristen Bushnell discussed with the Planning Commission a timeline for adoption of a County land use ordinance and County General Plan. Ms. Bushnell proposed a timeline to continue work on the draft ordinance, with approval of General Plan amendments in December 2025¹⁹ and adoption of a land use ordinance in May 2026.

On 4 November 2025 Megan Simmons continued to operate the single wide mobile home, two brown cabins, and three white cabins as nightly rentals.

On 6 February 2026 Administrative Law Judge Creswell held a hearing for the subject appeal in the San Juan County Commission Chambers in Monticello, Utah. Attorneys for the parties were given opportunities to make statements and arguments. Testifying during the hearing were Conner Simmons, Corey Coleman, and Nathan Pitts. There were also exchanges among ALJ Creswell, County Attorney Mitchell Maughan, and County Chief Administrative Officer Mack McDonald. The following summarizes the testimony of the witnesses and the exchanges.

- Regarding 152 Tera Drive, Mr. Maughan stated the County would not present specific evidence supporting a public nuisance. Mr. Maughan stated generally there were parties at night, additional parking in the neighborhood, and structures operating without inspections constituting public safety concerns. ALJ Creswell responded by saying that, based on Utah case law, he could not find the Simmons' use of their property to be a "public nuisance" without substantial evidence of impacts on the neighbors. It was Mr. Maughan's opinion that the Simmons' property "raises public safety concerns" without being declared a public nuisance.
- ALJ Creswell requested from Mr. McDonald the preliminary plat application, meeting minutes, and correspondence relating to the Mersereau subdivision. Mr. McDonald agreed to provide that information.²⁰

¹⁹ San Juan County adopted a new General Plan on 3 February 2026.

²⁰ Mr. McDonald subsequently provided this information to ALJ Creswell. ALJ Creswell determined that the information was relevant to the appeal involving Daniel Wright and not to the Megan Simmons appeal.

- Mr. Simmons provided the following during the hearing.
 - o Before 2021 Conner Simmons worked as a manufacturing engineer. In 2021 Conner Simmons got into the real estate business “flipping houses.” “I was purchasing homes, repairing them. . . I’m a flipper.” During this process Mr. Simmons “became familiar with going and getting a permit to renovate a home. It was a pretty narrow focus.” Mr. Simmons does not have a real estate license or contractor license. Mr. Simmons admitted that in 2021 he had little experience researching local government land use regulations.
 - o Conner and Megan Simmons live in College Ward, Utah – near Logan, Utah. In 2020 Conner Simmons was in Moab and met Daniel Wright and saw Daniel Wright’s nightly rental business on Tera Drive. Conner Simmons was intrigued by Mr. Wright’s business. Conner and Megan Simmons made the investment to purchase a portion of Mr. Wright’s business, which included Mr. Wright’s home and some tiny houses. Megan and Conner Simmons began using the property as a secondary home and as nightly rentals.
 - o Prior to purchasing property from Mr. Wright, Mr. Simmons went to the San Juan County website. This was in 2021. One document on the County’s website included a zoning map showing the west side of Tera Drive in a commercial zone. Seeing that map was a “huge part of my decision.” Mr. Simmons also learned from Mr. Wright that he had been operating his nightly rental business on Tera Drive since 2017 or 2018. Mr. Wright’s experience in operating a short-term rental business on Tera Drive “was enough evidence for me.” Mr. Simmons also spoke with Sharell Carlson, who also operated a short-term rental business on the west side of Tera Drive. Mr. Carlson told Mr. Simmons that the property was in a commercial zone.
 - o Prior to purchasing the Daniel Wright property, Mr. Simmons was not aware of the 8 March 2021 San Juan County Deputy Attorney legal opinion – which was shared on the County’s website with the 11 March 2021 Planning Commission meeting – that short-term rentals were not permitted in the Spanish Valley Residential District.
 - o During cross examination, Mr. Simmons admitted prior to purchasing the property from Mr. Wright – Mr. Simmons did not contact anybody from San Juan County. No one from the County told Mr. Simmons he could continue to operate the property the way it was being used.
 - o Late in 2023 Conner Simmons began to have concerns about whether his property followed the San Juan County land use code.

- ALJ Creswell asked Mr. Simmons about his knowledge of San Juan County Ordinance 2024-01 adopted by the County Commission on 16 January 2024. That ordinance specifically prohibited any overnight accommodations or nightly rentals in the Spanish Valley Residential District. Mr. Simmons said that he was not “overly active” prior to a 23 January 2024 meeting with Ms. Bushnell. Mr. Simmons was not aware of Ordinance 2024-01 until later.
- On 23 January 2024 Conner Simmons met with the County Zoning Administrator Kristen Bushnell. During that meeting Mr. Simmons “laid it all out there.” “I showed her absolutely everything that we’re doing, what we’re operating, and wasn’t trying to hide anything.” During that meeting, Mr. Simmons “knew that we were not in compliance with what we were doing.”
- During the 23 January 2024 meeting, Ms. Bushnell talked about the County-wide rezone effort. That rezone process might be completed “in a couple of months.” Mr. Simmons understood that Ms. Bushnell suggested that he “wait until this rezone’s done.” During the meeting, Ms. Bushnell did not tell Mr. Simmons that he should shut down his business.
- Mr. Simmons testified that in late February 2024 Ms. Bushnell visited 152 Tera Drive. (Mr. Simmons was not present during this visit.) During her visit, Ms. Bushnell believed she saw improvements being made to the property. Shortly thereafter, Conner Simmons received an email from Ms. Bushnell telling Mr. Simmons that he should hold off on improvements. Mr. Simmons understood this to mean he and his wife could not expand. Mr. Simmons felt this exchange between himself and Ms. Bushnell may have been out of context. Mr. Simmons owned another property (160 Tera Drive) near 152 Tera Drive. It was unclear to Mr. Simmons, which property Ms. Bushnell visited in late February 2024. Nevertheless, Mr. Simmons did not expand his operation of 152 Tera Drive after the email exchange with Mr. Bushnell and his receipt of the 5 March 2024 email from Ms. Bushnell.
- Mr. Simmons, when he received the 5 March 2024 email, felt that one option he had was to request a rezone of his property. Mr. Simmons believed that Ms. Bushnell thought that Mr. Simmons should not submit a rezone application because of the soon-to-be adopted county-wide land use ordinance. On 6 March 2024, after he received the 5 March 2024 email, Mr. Simmons called Lloyd Wilson – a member of the San Juan County Planning Commission. Mr. Simmons stated that Mr. Wilson told him to submit a rezone application.
- Mr. Simmons eventually submitted a rezone application, but the application was too late for the April 2024 Planning Commission agenda. The rezone application – submitted in 2024 – was never heard by the Planning Commission. Mr. Simmons was never told why the application was not forwarded to the Planning Commission. It was Mr. Simmons’ belief that the application was held up by Ms. Bushnell because she was focused on the county-wide land use code adoption.

- On 6 May 2024 Mr. Simmons had a telephone conversation with Ms. Bushnell. Mr. Simmons understood that Ms. Bushnell was working on the county-wide land use ordinance, and that ordinance might place 152 Tera Drive in a multi-use or flex zone – which might allow the Simmons’s nightly rental business to continue.
- Mr. Simmons felt that his communications with Ms. Bushnell were “trying in good faith to come into compliance working with her [Ms. Bushnell] regularly.”
- Mr. Simmons said he attended some Planning Commission meetings after 6 May 2024. At these meetings, Mr. Simmons continued to talk with Ms. Bushnell. It was Mr. Simmons’ understanding from Ms. Bushnell that he could continue to operate so long as he did not expand.
- In January 2025 Mr. Simmons attended a Planning Commission meeting. During that meeting, Mr. Simmons concluded, based on statements made by County officials during the meeting, that the County was working with himself and similarly situated nightly rental businesses to bring them into compliance. Based on the January 2025 Planning Commission meeting, Mr. Simmons reached out to Ms. Bushnell and County Attorney Mitch Maughan to request a meeting to discuss the Simmons’ property. “Can we please have a meeting to figure this out?” That meeting never occurred and Mr. Simmons testified, “and we were kind of exhausted.”
- At this time (early 2025), Mr. Simmons submitted another rezone application for his property. That application was never sent to the Planning Commission but was denied in the May 2025 Notice of Violation.
- When Mr. Simmons read the May 2025 Notice of Violation, “It was very surprising. We were kind of dumbfounded.”
- After receiving the May 2025 Notice of Violation, Mr. Simmons continued to operate the short-term rental business at 152 Tera Drive. Based on conversations with his attorney, it was Mr. Simmons’ understanding that he could continue to operate his business until the administrative law judge made his decision.
- Megan and Conner Simmons have not rented the structures since mid-November 2025. Mr. Simmons stated the property is rented seasonally and currently [in February 2026] is off season for rent.

- After testimony relating to land use and zoning code compliance, testimony was taken regarding compliance with the County building permit process. First, Mr. Simmons responded to questions from ALJ Creswell about the structures at 152 Tera Drive. The following summarizes Mr. Simmons' statements about the structures on the property.
 - o There is a "bath house" on the property. It is a forty feet shipping container with four doors cut into the side with two rooms, each with a toilet and sink. There are also two rooms - each with a shower. The shipping container has a metal bottom set on the ground. The bath house has sewer, power, and propane for a water heater. The bathhouse has no building permit.
 - o The single wide manufactured home is on the property and has a building permit. (However, the building permit was for a residential use not a nightly rental commercial use.)
 - o There are cabins on the property, some (two brown cabins) were on the property when purchased and some (three white cabins) added. Under each cabin is a concrete slab. The three white cabins are powered by their own solar system. The brown cabins are hooked up with electricity. The cabins have no building permits.
- Second, County Building Administrator Corey Coleman testified. Mr. Coleman has considerable experience with the several construction "I" code.
 - o After listening to Mr. Simmons' explanation of the structures at 152 Tera Drive, it was Mr. Coleman's opinion that each structure required a building permit for its intended and actual use. Mr. Coleman cited specific code provisions relating to the identified structures.
 - o Mr. Coleman added to bring the existing structures into compliance the property owner could work with San Juan County following the "as-built permit process." Mr. Coleman said that he would provide Mr. Simmons that process after the hearing.²¹

²¹ Mr. Coleman sent an email with the information late on 6 February 2026.

- During an exchange between ALJ Creswell and Mr. Maughan, an issue was discussed about other requirements beyond the building permit process – for any structure that might remain on the property after ALJ Creswell’s decision. ALJ Creswell and Mr. Maughan agreed that each structure would have to fully comply with the County land use code, including setbacks and other standards/requirements. Following the hearing (on 18 February 2026) Mr. Maughan provided the following summary of San Juan County zoning regulations applicable to the continued use of 152 Tera Drive.

- o San Juan County’s zoning ordinances prohibit the use or possession of any structures other than the principal home in the Spanish Valley Residential (SVR) District, except for an accessory use.
- o The 2011 ordinance defines an accessory building as: “Accessory Building. Building not used for human occupancy which is secondary to the main structure on the same piece of property such as a shed or garage.”

- o The 2019 Spanish Valley Development Ordinances state the following.

District Standards: All principal residential structures in the SVR District shall comply with the following requirements:

1. All properties shall be designed in accordance with the requirements of the Water Efficient Zoning Ordinance.

2. The minimum spacing between dwellings shall be 16 feet, with an additional 8 feet per story provided between buildings for every story over 2 stories.

3. Manufactured Homes shall:

a. Utilize non-reflective siding materials; i.e. wood, stucco, adobe, brick, or stone or material that looks like wood, stucco, adobe, brick, or stone;

b. Be placed on a concrete slab-on-grade or concrete perimeter foundation;

c. Have a minimum 24-foot horizontal wall dimension on at least 2 non-opposing sides;

d. Be skirted with a material or product specifically designed for the skirting of such homes. Required skirting shall be maintained so as not to provide a harborage for animals or create a fire hazard.

e. Have running gear, tongues, axles and wheels removed from the manufactured home at the time of installation.

f. Be permanently attached to a foundation. Anchors and tie-downs, such as cast-in place concrete “dead-men”, eyelets embedded in concrete slabs or runways,

screw augers, arrowhead anchors, or other devices shall be used to stabilize the manufactured home.

g. Have a minimum finished floor elevation at least 24 inches above the exterior finish grade, as measured at the main entrance into the dwelling.

h. Shall comply with current building code requirements, the standards of this ordinance, and in accordance with current FHA and HUD guidelines.

i. Shall allow only one manufactured home per designated lot (manufactured home communities shall be permitted as part of a Planned Community only).

- Accessory Uses are defined as: An accessory use must meet three main criteria:
 - Subordinate: It must be smaller or less significant in area, extent, or purpose than the primary use.
 - Incidental: It must be reasonably related to the main use, rather than an independent business or activity.
 - Customary: It must be a use that is commonly, habitually, and normally associated with the principal use.
 - Location: It must be on the same lot as the principal use.
- Spanish Valley Residential (SVR) District lots must have a minimum of 25' front and side setbacks as well as emergency access.
- Any easement or roadway must provide emergency access and meet the minimum frontage.

- Mr. Nathan Pitts also testified during the hearing. From 2021 to 2025 Mr. Pitts was responsible for business licensing in the County. After May 2025 Mr. Pitts became the County tax assessor.
 - o Mr. Pitts addressed why he did not deny Megan Simmon’s business license application in his 16 January 2025 email – which said that the Simmons’ business license application was “on our list of pending applications.” Mr. Pitts testified that prior to his email, he met with County Planning and Zoning. Mr. Pitts was aware of the zoning violation – but he was “very hopeful” that the property could come into compliance once the land use code was updated. At that time, it was anticipated that a new zoning code would be adopted in a reasonable amount of time. As a result, Simmons’ application was put on a list of pending applications.
 - o While Mr. Pitts was not the tax assessor when Megan Simmons’ property was classified as a nightly rental/commercial property, Mr. Pitts provided insight into the San Juan County tax assessment process. Mr. Pitts explained that a property’s tax classification is based *solely* on the use of the property. A property’s zoning classification is not considered – only the use of the property. Among the factors considered by the county tax assessor may be a business license application.
- Near the end of the hearing. Mr. Maughan stated that Ms. Bushnell’s actions regarding the Simmon’s property were not supported by the Office of the County Attorney. ALJ Creswell noted that in one of Ms. Bushnell’s emails – she confirmed that she and “legal” were not on the same page.

Legal Framework

Based on facts associated with Megan Simmons' use of 152 Tera Drive and the structures at that address – along with issues raised in the San Juan County Simmons Notice of Violation – the following County codes and legal standards apply to adjudicate the Megan Simmons administrative appeal of the Notice of Violation. These code provisions and legal standards include the following.

- Zoning estoppel (equitable estoppel)
- San Juan County zoning ordinances (2011 zoning ordinance, Spanish Valley Development Ordinances [adopted in 2019 and amended in 2024])
- San Juan County business licensing
- International Residential Code, International Plumbing Code, International Building Code, other "I" codes
- Public nuisance law
- Sanctions for failure to comply with San Juan County ordinances

Zoning Estoppel (or Equitable Estoppel)

Zoning or equitable estoppel is a principle in equity, not in law. This means that the application of zoning estoppel is within the discretion of the appeal authority – after considering the needs of both the property owner and the public. This is referred to as “balancing.” See Utah Property Ombudsman Advisory Opinion 9 (19 December 2006); Kelly L. Frey, “A ‘Gateway Plan’ to Unhindered Development: Recent Cases Addressing Municipal Estoppel,” *The Urban Lawyer* (published by the American Bar Association), Vol. 44, No. 3 (Summer 2012) 605 – 614.

While a property owner may successfully object to local government land use regulation due to the application of zoning estoppel – the property owner may not have the unfettered right to further develop, or expand the use of, property absent the successful application for a land use approval. See J. Randall Minchew, “On Vested Rights in Land Use and Development,” *Washington and Lee Law Review*, Vol. 46, 373 – 409 (1989).

Zoning Estoppel (or Equitable Estoppel). Zoning or equitable estoppel may apply when a landowner shows that:

- a. the landowner inquired and conferred with the local zoning authority regarding the uses of the property at issue;
- b. the local authority committed an act or omission;
- c. the act or omission must be of a clear, definite, and affirmative nature;
- d. the landowner reasonably relied on that act or omission, and
- e. because of that reliance, the landowner made substantial changes to his position or incurred extensive expenses. See *Utah County v. Young*, 615 P.2d 1265 (Utah 1980).

Utah cases have found that acts or omissions of local government employees other than the zoning official do not give rise to zoning estoppel. See *Morrison v. Horne*, 363 P.2d 1113, 12 Utah 2d 131 (1961) [county assessor]; *Utah County v. Young*, 615 P.2d 1265 (Utah 1980) [building inspector]; *Utah County v. Baxter*, 635 P.2d 61 (Utah 1981) [building official]; *Grand County v. Rogers*, 44 P.3d 734, 2002 UT 25 [county recorder].

Where a zoning official expressed an opinion about a Summit County zoning provision, the Utah Court of Appeals held that the opinion of the zoning administrator “is not a commission of an act by the County upon which the Stuckers could rely.” *Stucker v. Summit County*, 870 P.2d 283 (Utah Ct. App. 1994).

Finally, a property owner is required to exercise reasonable diligence and review the applicable zoning code to determine whether the contemplated use was authorized or illegal. See *McGannon v. Board of Trustees for the Village of Pomona*, 239 A.D.2d 392, 657 N.Y.S.2d 745 (N.Y. App. Div. 1997)

The Utah Court of Appeals dealt with a claim of equitable estoppel in *Town of Alta v. Ben Hame Corporation*, 836 P.2d 797 (Utah Ct. App. 1992). On appeal, Ben Hame Corporation (BHC) claimed that because Alta issued business licenses to operate a lodging facility for a total of twenty-four months *and* Alta initially failed to seek enforcement of its zoning ordinance – a defense of equitable estoppel was created. The Court of Appeals found the following.

- To raise a successful defense against the enforcement of a zoning law, a landowner must first show exceptional circumstances warranting such a defense.
- If a property owner relies on an act or omission of government, the action or omission must be clear, definite, and affirmative.
- Estoppel occurs only when the injustice to be avoided is of sufficient gravity to invoke the exception.
- “The failure to enforce zoning for a time does not forfeit the power to enforce.”

The Court in *Town of Alta v. Ben Hame Corporation* found that BHC had not shown exceptional circumstances constituting an estoppel defense.

The Utah Court of Appeals outlined the principles of zoning estoppel in *Checketts v. Providence City*, 420 P.3d 71, 2018 UT App 48 (2018). The Court of Appeals stated: “The zoning estoppel doctrine estops a government entity from exercising its zoning powers to prohibit land use when a property owner, relying reasonably and in good faith on some government act or omission, has made a substantial change in position or incurred such extensive obligations or expenses that it would be highly inequitable to deprive the owner of his right to complete his proposed development. . . . The zoning estoppel doctrine does not apply unless the government entity ‘committed an act or omission upon which the developer could rely on in good faith,’ and the ‘action upon which the developer claims reliance must be a clear, definite, and affirmative nature.’ Finally, ‘exceptional circumstances must be present, such as the intentional discriminatory application of the ordinance,’ before zoning estoppel will apply to preclude government action.”²² The Court of Appeals in *Checketts* concluded that if “the equities of the situation are fairly debatable” the property owner has not shown the required “exceptional circumstances.”

In *Anderson v. Public Services Commission of Utah*, 839 P.2 822 (Utah 1992), the Utah Supreme Court summarized the principles governing claims of equitable estoppel against a government agency.

- There must be unusual circumstances where it is plain that the interests of justice so require.
- The facts must be found with such certainty, and the injustice suffered is of sufficient gravity.
- Often, explicit written representations by authorized government entities are involved.

²² See also *Utah County v. Young*, 615 P.2d 1265 (1980) (Utah Supreme Court).

These and other appellate cases further define zoning estoppel as follows.

- Zoning estoppel will not be applied against a government entity if to do so would effectively nullify a strong rule of policy, adopted for the benefit of the public²³. Such public benefit may be shown by planning documents, discussion among public bodies, and public input.
- To support zoning estoppel there must be “wrongful conduct” by an authorized government agent. An erroneous government action or simple mistake do not constitute wrongful conduct²⁴.
- Statements by planning commissioners are generally considered advisory and not binding on the government entity²⁵.
- If a developer misrepresents a project, the developer cannot thereafter assert equitable estoppel by government actions related to the misrepresentation²⁶.
- A landowner’s reliance on a government action must be “sufficiently substantial.” A determination of substantiality is made on a case-by-case basis²⁷. It may consider a range of factors, including the nature of the person or entity (whether the developer was an entity for whom the costs would be considered a substantial expenditure²⁸), the cost of the land, and the cost of contractors hired. Another factor would be whether a large portion of the expenditures is recoverable if the project fails²⁹.
- A factor in equitable estoppel is the landowner lacked the knowledge or the means to determine the truth of the facts relied upon. In considering this factor, it may be relevant that a local government official was not able to determine the relevant facts³⁰.

²³ *Carty v. City of Ojai*, 143 Cal. Rptr. 506, 77 Cal. App.3d 329 (1978) (California Court of Appeal).

²⁴ *City of North Oaks v. Sarpal*, 797 N.W.2d 18 (2011) Minnesota Supreme Court); *Rivera v. City of Phoenix*, 186 Ariz. 600, 925 P.2d 741 (Arizona Court of Appeals (1996).

²⁵ *Colonial Investment Company v. The City of Leawood, Kansas*, 7 Kan. App.2d 660, 646 P.2d 1149 (1982).

²⁶ *Yeh v. County of Cass*, 696 N.W.2d 115 (2005) (Minnesota Court of Appeals).

²⁷ *1350 Lake Shore Associates v. Healey*, 861 N.E.2d 944 (Supreme Court of Illinois) (2006).

²⁸ *Boise City v. Blaser*, 98 Idaho 789, 572 P.2d 892 (1977) (Court found “substantial disadvantage” where the good faith expenditures were by a closely held corporation with no other business except the project.)

²⁹ *Abbeville Arms v. City of Abbeville*, 273 S.C. 491, 257 S.E.2d 716 (Supreme Court of South Carolina) (1979). The Pennsylvania Supreme Court said that in determining whether a property owner’s expenditures are sufficiently detrimental, the court should consider whether the costs are recoverable. *Petrosky v. Zoning Hearing Board*, 402 P.2d 1385 (Pennsylvania Supreme Court, 1979)

³⁰ *Abbeville Arms v. City of Abbeville*, 273 S.C. 491, 257 S.E.2d 716 (Supreme Court of South Carolina) (1979).

- Equitable estoppel arises when reliance follows an “official act” by the local government³¹. Such official acts may include a building permit or plat approval³².
- Equitable estoppel will not be found where the landowner does not fully disclose the intended use³³ of the property or misrepresents information provided to the local government.
- A landowner’s expenditures after notification³⁴ that his land use violates local zoning may not be considered good faith or reasonable reliance.
- The balance of equities³⁵ must weigh in favor of the developer over the local government. If the public interest to be served by the enforcement of the ordinance is minimal and the developer in good faith expends large sums of money and begins project work in reasonable reliance, the balance should weigh on the side of the developer.

³¹ *American National Bank and Trust Company of Chicago v. City of Chicago*, 19 Ill.App.3d 30, 311 N.E.2d 325 (Appellate Court of Illinois).

³² *Board of Supervisors of Fairfax County v. Medical Structures*, 192 S.E.2d 799, 213 Va. 355 (1972) (Supreme Court of Virginia).

³³ *Checketts v. Providence City*, 420 P.3d 71, 2018 UT App 48 (2018).

³⁴ *Checketts v. Providence City*, 420 P.3d 71, 2018 UT App 48 (2018).

³⁵ *In re 244.5 Acres of Land in the Village LLC v. Delaware Agricultural Lands Foundation*, 808 A.2d 753 (Delaware Supreme Court 2002); *City of North Oaks v. Sarpal*, 797 N.W.2d 18 (2011) (Minnesota Supreme Court).

San Juan County zoning ordinances (2011 zoning ordinance, Spanish Valley Development Ordinances [adopted in 2019 and amended in 2024])

2011 San Juan County zoning code

On 5 June 1978 San Juan County adopted its first zoning ordinance (“Zoning Ordinance of San Juan County”).

On 12 September 2011 San Juan County amended its Zoning ordinance. The 2011 San Juan County zoning code included provisions relevant to Megan Simmons’ appeal of her May 2025 Notice of Violation.

Section 1-6 (Building Permit Required) states “The *use of land* or the construction or alteration of any building or structure or any part thereof, *as provided or as restricted by this Ordinance* shall not be commenced, or proceeded with, except after the issuance of a written permit for the same by the Building Inspector.”

Section 1-12 (Nuisance and Abatement) of Chapter 1 authorizes the County Commission to direct the County Attorney to “*at once* commence action or proceeding” to abate and remove a building or structure – or to restrain or enjoin any person or party from maintaining a building or structure - which violates the provisions of the 2011 Zoning Code.

Section 1-15 (Licensing) of the 2011 Zoning Code states: “All departments, officials and public employees of the County which are vested with the duty or authority to issue permits or licenses shall conform to the provisions of this Ordinance and shall issue no permit or license for uses, building or purposes where the same would be in conflict with the provisions of this Ordinance and any such permit or license, if issued in conflict with the provisions of this Ordinance shall be null and void.”

Section 1-16 (Penalties) of Chapter 1 states that violations of the provisions of the zoning code may be enforced as a class C misdemeanor or by civil penalties.

Spanish Valley Development Ordinances

On 19 November 2019 the San Juan County Board of Commissioners approved the Spanish Valley Development Ordinances as an amendment (or sub-ordinance) to the 2011 San Juan County Zoning Ordinance.

The Spanish Valley Development Ordinances created six (6) zoning districts which replaced the previous two districts in Spanish Valley. The six districts were: Spanish Valley Residential (SVR) District, Spanish Valley Planned Community (PC) District, Spanish Valley Residential Flex Planned Community (RF) District, Spanish Valley Business Flex Planning Community (BF), Spanish Valley Highway Flex Planned Community (HF) District, and Spanish Valley Highway Commercial (HC) District³⁶.

The Spanish Valley Development Ordinances included a chapter for each of the six zoning districts.

For four of the six zoning districts, the Spanish Valley Development Ordinances allows “overnight accommodations” – if such uses satisfy the standards and requirements of the zoning district *and* the standards and requirements of an adopted Overnight Accommodations Overlay. In the SVDO Chapter 3 (Spanish Valley Residential Flex Planned Community District), Chapter 4 (Spanish Valley Business Flex Planned Community District), Chapter 5 (Spanish Valley Highway Flex Planned Community District), and Chapter 6 (Spanish Valley Highway Commercial District) include the following language.

“Uses Subject to the Spanish Valley Overnight Accommodations Overlay

- Hotels and Motels
- Commercial Condominiums for short-term rentals
- Bed and Breakfasts (B&Bs), lodges and resorts
- Commercial campgrounds
- All other variations of overnight accommodations intended for nightly rentals.”

³⁶ In addition to the six zoning districts, the Spanish Valley Development Ordinances adopted standards for water efficient landscaping, outdoor lighting and sign illumination, and sign and display requirements.

The referenced “Spanish Valley Overnight Accommodations Overlay” in chapters 3, 4, 5, and 6³⁷ is included in “Chapter 10: Spanish Valley Overnight Accommodations Overlay District Requirements” of the Spanish Valley Development Ordinances. Chapter 10 establishes a three-step process for approval of overnight accommodations, which steps include 1) a “rezone” by the County Commission of the official zoning map where the overnight accommodations will be located, 2) adoption by the County Commission of the terms upon which overnight accommodations will be developed, and 3) approval of County staff of a development agreement, project plan and/or subdivision plat.

In addition, Chapter 10 sets forth planning and design requirements for overnight accommodations approved under the Spanish Valley Overnight Accommodation Overlay. Included are the following.

- A site master plan, with a traffic study
- Development standards, including density and heights; lot dimensions, configuration, and shape; lot access; open space requirements; streets and road access; bicycle facilities; storm water management

³⁷ Chapter 2 of the Spanish Valley Development Ordinances sets forth a process for approval of “large-scale master-planned communities” within a Spanish Valley Planned Community (PC) District. Chapter 2 establishes a procedure which ends with the Chair of the Board of Commissioners approving development agreements for the establishment of a large-scale master planned community. Chapter 2 includes purpose language – along with planning principles – which guide the process for approving a PC district community. Chapter 2 includes the following regarding residential uses:

- “high quality, innovative and creative development” including “sufficient diversity of housing types” are among the purposes of the PC District;
- “Buffers and transitions should be provided between distinctly different uses . . . such as residential neighborhoods, business uses, distribution uses, highway commercial, specialty residential uses and campuses.”
- Permitted uses in the PC district may include “residential uses of various types and lot sizes” and “mixed-use housing.”

Chapter 2 does not include the “Subject to the Spanish Valley Overnight Accommodations Overlay” language, which was included in chapters 3, 4, 5, and 6 of the Spanish Valley Development Ordinance. However, the process and requirements for approval of a PC District development are like the process and requirements of Chapter 10 (Spanish Valley Overnight Accommodations Overlay District Requirements).

- Landscape standards and maintenance
- Parking requirements

152 Tera Drive is within the Spanish Valley Residential (SVR) District. The purpose and uses in the SVR District are set forth in Chapter 1 of the Spanish Valley Development Ordinances or Sub-Ordinance.

Chapter 1 states the purpose of the SVR District: “The Spanish Valley Residential (SVR) District is designed primarily to accommodate residential uses in large lot (one-acre or greater) and smaller lot (1/4 acre to 1 acre) developments.” Additionally, Chapter 1 states: “In addition to the Uses and Lot Design Standards of this section [Chapter 1], development in this district shall be in compliance with all other applicable provisions of the San Juan County Land Use Ordinance [2011 Zoning Code], and shall promote and protect public health, safety, and welfare.”

Chapter 1 of the Spanish Valley Development Ordinances includes a table of uses (Table 1-1) for the Spanish Valley Residential (SVR) District. The SVR Table of Uses lists the following permitted uses.

- Dwelling, single family
- Dwelling, two-family (duplex)
- Dwelling, Manufactured³⁸
- Educational Facilities, Public
- Places of Worship
- Parks and Open Spaces, Public
- Farmland, Grazing and Pasture
- Animal Husbandry – small animals (pigs, goats, lambs, etc.)
- Animal Husbandry - large animals (cows, cattle, horses, etc.) on greater than 1 acre lots only

³⁸ Manufactured dwellings refer to “Pre-HUD-Code Manufactured (mobile) Homes.” Pre-HUD-Code Homes are homes built prior to the MHCSS, 24 CFR 3280, which became effective on June 15, 1976.

The Table of Uses lists the following conditional uses.

- All other household living (5th wheels, trailers, etc.)
- Day Care
- Educational Facilities, Private
- Government Facilities and Public Institutions
- Institutions, Private or Non-Profit
- Medical Facilities
- Utilities
- Parks and Open Spaces, Private

Accessory uses may be either permitted or conditional uses in the SVR District.

Chapter 1 does *not* include the “Subject to the Spanish Valley Overnight Accommodations Overlay” language in chapters 3, 4, 5, and 6 of the Spanish Valley Development Ordinances.

The San Juan County land use ordinance uses the following phrase: “all other variations of overnight accommodations intended for nightly rentals.”

All other variations of overnight accommodations intended for nightly rental. In the 19 November 2019, San Juan County added the phrase “all other variations of overnight accommodations intended for nightly rental” to the San Juan County land use code. However, that phrase was not defined.

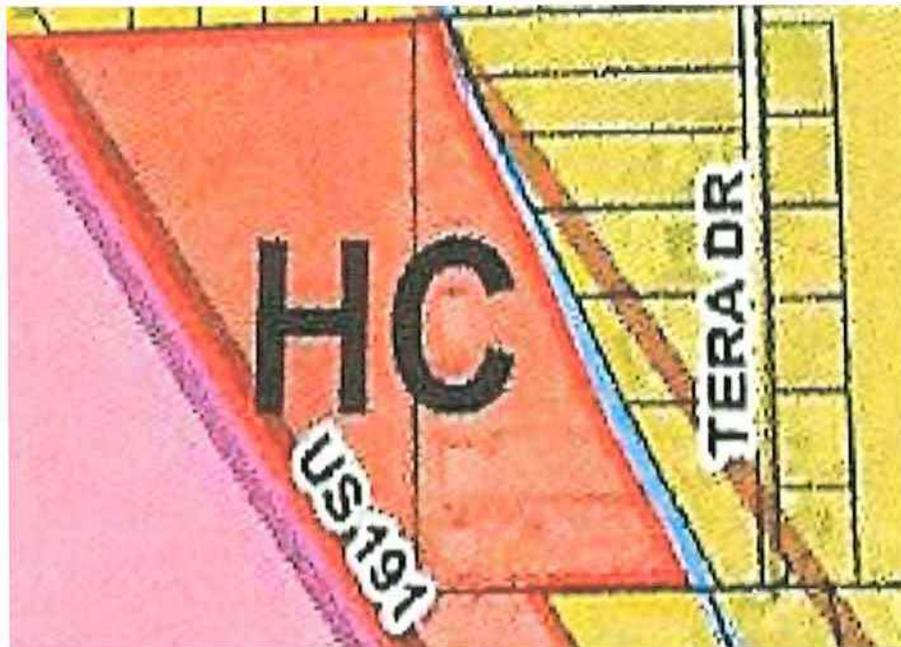
The phrase “all other variations of overnight accommodations intended for nightly rental” was inserted in four chapters of the Spanish Valley Development Ordinances - in paragraphs titled “Uses Subject to the Spanish Valley Overnight Accommodations Overlay” followed by a list of “overnight accommodations” property uses. Those representative uses (examples) were: “Hotels and Motels, Commercial Condominiums for *short-term rentals*, Bed and Breakfasts (B&Bs), lodges and resorts, Commercial campgrounds.” The phrase “*all other variations of overnight accommodation intended for nightly rental*” plainly adopts a broad (“*all other variations*”) definition of “accommodations” intended for “nightly rental.”

When the Spanish Valley Development Ordinances were approved on 19 November 2019, and the Ordinances included the phrase “all other variations of overnight accommodations intended for nightly rental,” the Utah Code included a definition for “short-term rental.” Utah Code § 17-50-338³⁹ defines the phrase “short-term rental.” “‘Short-term rental’ means a residential unit or any portion of a residential unit that the owner of record or the lessee of the residential unit offers for occupancy for fewer than 30 consecutive days.” Given the plain and express broad wording of “all other variations of overnight accommodations intended for nightly rental” *and* the use of the phrase “short-term rentals” among the examples of “nightly rental” and “accommodations” - properties which fall within the Utah Code definition of “short-term rental” are included in the definition of “all other variations of overnight accommodations intended for nightly rental.”

Important here: renting property for more than 30 consecutive days may be allowed in areas where residential buildings are permitted but short-term rentals or “overnight accommodations” are restricted. Persons renting or leasing property for occupancy beyond 30 days are usually considered tenants – with tenant’s rights. Short-term renters are guests and typically do not have tenants’ rights.

³⁹ Utah Code §17-50-338 was adopted 9 May 2017.

On 19 November 2019 the Board of Commissioners adopted a Spanish Valley Zoning Map, which showed the zoning districts in Spanish Valley. The Zoning Map showed the parcels along (west of) South Tera Drive wholly within the Spanish Valley Residential (SVR) District. No part of any South Tera Drive parcel was included in the Spanish Valley Highway Commercial (HC) District.



Spanish Valley 2019 Zoning Map

On 16 February 2021 the Board of Commissioners adopted an amended Spanish Valley Zoning Map.⁴⁰ The 2021 Zoning Map continued to show the parcels along (west of) South Tera Drive wholly within the Spanish Valley Residential (SVR) District. No part of any South Tera Drive parcel was included in the HC District.



- | | |
|--|--|
|  Planned Community (PC) |  Highway Flex (HF) |
|  Spanish Valley Residential (SVR) |  Highway Commercial (HC) |
|  Residential Flex (RF) |  Controlled District - Highway (Cd-h) |
|  Business Flex (BF) |  Agricultural (A1)* |

Spanish Valley 2021 Zoning Map

⁴⁰ Prior to the adoption of the 2021 Spanish Valley zoning map, the map was included with the public agenda for the San Juan County Planning Commission meetings on 8 October 2020, 12 November 2020 and 14 January 2021. Consideration of the proposed zoning map included public notice and public comment.

On 16 January 2024 the San Juan County Board of Commissioners amended Chapter 1 (Spanish Valley Residential SVR District) of the Spanish Valley Development Ordinances. San Juan County Ordinance No. 2024-01. The following language was inserted in Chapter 1 at the end of the section on uses.

“No short-term rental is allowed in the SVR District, and the Spanish Valley Overnight Accommodation Overlay shall not be applied to the SVR District. Regardless of the number of occupants, no hotel, apartment hotel, motel, tourist court, apartment court, commercial condominium for short-term rental, bed and breakfast (B&B) boarding house, lodging house, resort, commercial campground, or any other variation of overnight accommodation intended for nightly rental is permitted in the SVR District.”

On 16 January 2024 the Board of Commissioners also adopted the following definition of a short-term rental. “Short-term rental. A dwelling or a portion of a dwelling that the owner or record or the lessee of the dwelling or the portion of a dwelling leases to another for occupancy for fewer than 30 consecutive days.”

San Juan County business licensing

On 15 December 2020 the San Juan County Board of Commissioners adopted Ordinance No. 2020-10-A (An Ordinance of the Board of San Juan Commissioners Establishing Rules and Regulations for the Licensing and Operation of Businesses with San Juan County). Included in Ordinance -2020-10-A were the following.

- Every person, partnership, or corporation engaged in, carrying on, or operating a business, trade, or occupation in the county shall secure a license for such business or profession. §110.002 (A) (2) [Exceptions are found at §110.002 (F) and (J)]. It is unlawful to engage in, carry on, or operate a business in the unincorporated county without first applying for and obtaining a business license. §110.002 (A) (1).
- The County Economic Development Office has an affirmative responsibility to examine all places of business or persons which may be required to obtain and maintain business licenses. The Economic Development Office shall notify, in writing, non-compliant businesses or persons of the business license requirement and penalties. At least annually, the Economic Development Office shall report to the County Attorney all businesses or persons that have failed to obtain or renew a business license. It shall be the duty of the County Attorney to cause complaints to be filed against all persons violating any of the provisions of the San Juan County Business License ordinance. §110.010.
- Violations of the Business License ordinance are subject to fines not exceeding \$1,000 for each month of non-compliance. § 111.999.

For the purpose of the San Juan County Business Licensing ordinance, the term “business” is defined in Utah Code §17-53-216 (1). “A ‘business’ means any enterprise carried on for the purpose of gain or economic profit, except that the acts of employees rendering services to employers are not included in this definition.”

International Codes

On 18 November 2002, the San Juan County Board of Commissioners approved Ordinance 2002-01. That ordinance adopted several “codes” or regulations approved by the International Conference of Building Officials and the International Association of Plumbing and Mechanical Officials. Among the approved codes (and adopted by San Juan County) were the International Building Code, the International Residential Code, and International Plumbing Code.

In addition, in 2011 the State of Utah adopted the “international” construction and fire codes. Utah Code Title 15 A (State Construction and Fire Code Act).

Appendix Q of the International Building Code includes specific rules for tiny houses, which will be occupied. Included in Appendix Q are minimum ceiling heights, emergency escape and rescue openings, and details for compact stairs or lofts.

Section 114 of the International Building Code includes compliance actions for any failure to comply with the Code requirements and standards. Among the compliance actions for non-compliance include notice of violation by local officials, penalties, and abatement.

Section R110 of the International Residential Code states “A building or structure shall not be used or occupied in whole or in part, and a change in occupancy of a building or structure of part thereof shall not be made, until the building official has issued a certificate of occupancy.”

Section R113 of the International Residential Code authorizes building officials to give property owners a “notice of violation” for failing to comply with the R110 certificate of occupancy requirements *and* recognizes the authority of local jurisdictions to sanction a property owner for failing to comply with R110.

For bathhouses the International Plumbing Code includes requirements for plumbing fixtures based on occupancy load. For bathhouses the International Plumbing Code establishes, based on the occupancy, the number of required lavatories, water closets, and showers. This Code mandates that the drainage system be connected to a public sewer or a private sewage disposal system. It also addresses water supply requirements. The International Plumbing Code provides criteria for the proper installation and performance of plumbing systems, including material and installation requirements for fixtures.

Section 115 of the International Plumbing Code includes compliance actions with the failure to comply with the Code requirements and standards. Among the compliance actions for non-compliance include notice of violation by local officials, penalties, and abatement.

Public nuisance law

San Juan County's land use code identifies actions which are considered a "public nuisance" and the authority to "abatement" and "restrain" such public nuisances.

"San Juan County Code § 153.024 NUISANCE AND ABATEMENT. (A) Any building or structure erected constructed, altered, enlarged, converted, moved or maintained contrary to the provisions of this chapter, and any use of land, building or premise established, conducted or maintained contrary to provisions in this chapter shall be, and the same hereby is, declared to be unlawful and a public nuisance; and the County Attorney shall, upon request of the governing body, at once commence action or proceeding for abatement and removal of enjoyment thereof in a manner provided by law, and take other steps as will abate and remove such building or structure, and restrain or enjoin any person, firm or corporation from erecting, building, maintaining or using said building or structure or property contrary to the provisions of this chapter."

The Utah Code further identifies actions which are considered a "nuisance" in the State of Utah Judicial Code.

"Utah Code § 78B-6-1101 (1) (d) 'Nuisance' means anything that is injurious to health, indecent, offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property."

In 2000, the Utah Supreme Court found the following regarding nuisance actions. *Dairy Product Services, Inc. v. City of Wellsville*, 2000 UT 81, 13 P.3d 581.

- Cities have been granted a "general welfare" authority, to promote the well-being, peace, health, and safety of its citizens, and protection of property. Cities may enact ordinances reasonably related to the objectives of this authority.
- Cities have authority to declare what constitutes a nuisance, to abate nuisances, and to impose fines upon those who cause nuisances to exist. Cities may regulate "offensive businesses" up to one mile beyond their boundaries.
- Cities may regulate businesses through licensing. A city may revoke a license, and the revocation may be reviewed to determine if the action was arbitrary, capricious, or illegal, based on the record of the proceedings.

In adjudicating public nuisance claims, courts and appeal authorities should consider the following principles.

- Did the property owner's conduct unreasonably interfere with a right common to the general public, such as a right to public health, safety, or comfort?
- There must be a causal link between the property owner's actions and the public nuisance.
- The activity must cause or threaten injury or damage to the public's health, safety, or comfort. Aesthetic issues alone are typically not considered a nuisance.
- The property owner's actions must negatively impact the neighborhood or community, not just a single neighbor.
- It must be shown the property owner created, maintained, or allowed the nuisance to continue, meaning they had control over the situation.
- The length of time and the degree of unreasonableness are important factors.
- Was the property owner aware of the nuisance and complaints about the nuisance?
- There must be "substantial evidence" supporting a nuisance claim.⁴¹ Such evidence may include detailed records of the nuisance, including photos, videos, and notes on dates and times.

⁴¹ *Wadsworth Construction v. West Jordan*, 2000 UT App 49, 999 P.2d 1240 (Utah App 2000).

Sanctions for failure to comply with San Juan County ordinances

When a property owner is in violation of the San Juan County code, including the business license, international building codes, and land use ordinance, the San Juan County Administrative Law Judge has authority to:

- Issue an order requiring a property owner to cease from violating a County published ordinance;
- Order the County to enter property and abate all violations and order the property owner to pay to the County the actual costs of abatement and the administrative costs of the County to perform the abatement;
- Publish an administrative order imposing civil fines for failure to abate a violation of the county code by a stated deadline;
- Order the accrual of civil fines until an order of the Administrative Law Judge is complied with;
- Schedule subsequent review hearings as may be necessary to ensure compliance with an administrative order;
- Revoke or suspend a building permit or business license associated with property where there are violations of the San Juan County code; and
- Take any action reasonably necessary to obtain compliance with the applicable county ordinances. San Juan County Code § 10.010 (A).

When a property owner fails to comply with an order of the San Juan County Administrative Law Judge, the San Juan County ordinance provides for the following remedy.

“San Juan County Code § 11.010 (B)

- (1) It shall be unlawful for any person to fail to comply with the terms and deadlines set forth in a final administrative order.
- (2) A violation of this section shall be a Class B misdemeanor.
- (3) Upon failure of a person to comply with the terms and deadline set forth in the administrative order, the county may use all appropriate legal means to recover the civil penalties and administrative costs to obtain compliance.”

The San Juan County Administrative Law Judge has the authority to impose the following civil fines.

- When the Administrative Law Judge orders the abatement of a violation of the County Code by a stated deadline, the Administrative Law Judge may order civil fines not to exceed \$200 for each day the violation remains uncorrected and not to exceed a total of \$3,000 for a violation. San Juan County Code § 11.010 (A) (9).
- Any person who operates a business in violation of the provisions of the San Juan County business ordinance shall be subject to a fine not exceeding \$1,000. Each month that person shall violate or continue to violate the San Juan County business ordinance after written notice of such violation by county or its officers or agents, shall be considered a separate violation, and shall be punished as such. San Juan County Code § 110.999.

Findings and Conclusions

Administrative Law Judge adopts the following findings and conclusions in the subject appeal.

1. San Juan County may be estopped, as a matter of equity, to enforce the Spanish Valley Development Ordinances' prohibition against short-term rental and overnight accommodations in the Spanish Valley Residential (SVR) District if an appeal authority finds the following.
 - a. The property owner exercised reasonable diligence and reviewed the applicable zoning code to determine whether the contemplated use was authorized or illegal.
 - b. The property owner inquired and conferred with the local zoning authority regarding the use of the property.
 - c. The local government official responding to or addressing the property owner's inquiry was authorized to address the inquiry.
 - d. The local government official's response to the inquiry was clear, definite, and affirmative in nature.
 - e. The local government official's response was not a mistake.
 - f. After notification that a use is prohibited, the property owner may not act in bad faith by continuing a use or expenditures associated with the prohibited use.
 - g. The application of zoning estoppel will not nullify a strong rule of policy, adopted for the benefit of the public.

2. For an appeal authority to find that a property is a public nuisance there must be the following established by substantial evidence.
 - a. The property owner's conduct unreasonably interfered with a right common to the general public, such as a right to public health, safety, or comfort.
 - b. There is a causal link between the property owner's actions and the public nuisance.
 - c. The activity caused or threatened injury or damage to the public's health, safety, or comfort. Aesthetic issues alone are typically not considered a nuisance.
 - d. The property owner's actions negatively impacted the neighborhood or community, not just a single neighbor.
 - e. The property owner created, maintained, or allowed the nuisance to continue, meaning they had control over the situation.
3. Effective 18 November 2002 property owners in San Juan County were subject to the rules and regulations promulgated by the International Conference of Building Officials, including the International Building Code, the International Residential Code, and International Plumbing Code. These codes include specific requirements and standards for tiny houses and bathhouses. The codes also include provisions authorizing compliance actions.
4. The San Juan County zoning ordinance, amended on 12 September 2011, prohibits the use of property, or use of a building or structure on property, without a building permit.
5. The San Juan County zoning ordinance, amended on 12 September 2011, authorizes the County Attorney to commence an action or proceeding to abate and remove a building or structure – or to restrain or enjoin any person or party from maintaining a building or structure - which violates the San Juan County zoning code.
6. On 19 November 2019 the San Juan County Board of Commissioners adopted the Spanish Valley Development Ordinances (SVDO), which created new zoning districts in the San Juan County area of Spanish Valley.

7. The SVDO created a Spanish Valley Residential (SVR) District in Spanish Valley.
8. The SVDO listed uses which were permitted or conditional in the SVR District.
9. Short-term rentals and overnight accommodations, which are authorized uses in other zoning districts in Spanish Valley, are not recognized or implied in the SVR District.
10. Short-term rentals and overnight accommodations are prohibited in the SVR District.
11. Short-term rentals and overnight accommodations (as prohibited uses in the SVR District) include the following: commercial campgrounds, any residential or housing unit which is rented for less than 30 days, or all other variations of overnight accommodations intended for nightly rentals.
12. After the 19 November 2019 adoption of the Spanish Valley Development Ordinances, the San Juan County Planning Commission discussed the subject of short-term rentals in Spanish Valley and throughout unincorporated San Juan County.
13. Based on the Planning Commission's discussions about short-term rentals in Spanish Valley, on 8 March 2021 Deputy County Attorney Alex Goble published his legal opinion that short-term rentals were not permitted in the Spanish Valley Residential (SVR) District.
14. Deputy County Attorney Goble's legal opinion was published and discussed during the 11 March 2021 Planning Commission meeting – which many residents of Spanish Valley attended.
15. Attorney Goble's legal opinion was available to the public on the San Juan County website and the State of Utah Public Notice Website.

16. On 16 January 2024 the San Juan County Board of Commissioners, with an amendment to the SVDO provisions relating to the Spanish Valley Residential (SVR) District, affirmed that short-term rentals and overnight accommodations are prohibited in the Spanish Valley Residential District.
17. The 16 January 2024 amendment to the SVDO relating to short-term rentals was available to the public on the San Juan County website and the State of Utah Public Notice Website.
18. The 19 November 2019 and 14 February 2021 Spanish Valley Zoning Maps show the parcels on the west side of South Tera Drive(including 152 Tera Drive) to be wholly within the Spanish Valley Residential (SVR) District and not within the Spanish Valley Highway Commercial (HC) District.
19. The 2019 and 2021 Spanish Valley zoning maps were available to the public on the County's website and on the State of Utah Public Notice Website.
20. Effective 15 December 2020 businesses operating in unincorporated San Juan County were required to obtain and retain a business license.
21. Conducting a business in unincorporated San Juan County without a business license is unlawful and subjects the business owner to penalties.
22. The San Juan County Attorney has an affirmative responsibility to cause complaints to be filed against all persons operating a business without a business license.
23. On 12 October 2020 San Juan County issued a building permit for a residential single-family manufactured home at Lot 2, Mersereau Subdivision. On 5 April 2021, a Certificate of Occupancy was issued for the manufactured home at Lot 2.
24. The building permit and Certificate of Occupancy for the manufactured home at Lot 2, Mersereau Subdivision was for residential use and not for commercial or transient uses.

25. On 22 July 2021, the Mersereau Subdivision Amended Lot 2 Plat was filed with San Juan County. That Plat subdivided Lot 2 into Lot 2A and Lot 2B.
26. On 20 September 2021 Daniel Wright - the owner of Lot 2B - conveyed Lot 2B (which contained the manufactured home) to Megan Simmons.
27. Lot 2B (or 152 Tera Drive) has been owned by Megan Simmons since 20 September 2021.
28. Prior to 20 September 2021, the owner Lot 2 (Daniel Wright) used the property for short-term rentals.
29. Prior to 20 September 2021 another property on Tera Drive, property owned by Sharell and Sharee Carlson, was also used for short-term rentals.
30. The administrative record does not support a finding that prior to 20 September 2021 short-term rentals or commercial camping were authorized uses of Lot 2 or of the Carlson property in the Spanish Valley Residential District of the Spanish Valley Residential (SVR) District.
31. Megan Simmons' husband Conner was involved in acquiring 152 Tera Drive from Daniel Wright.
32. Prior to acquiring Lot 2B, Conner Simmons was informed by Daniel Wright – the owner of Lot 2B - that short-term rentals were authorized on the parcel.
33. Mr. Simmons also spoke with Sharell Carlson, a neighboring property owner on Tera Drive, who represented to Mr. Simmons that Lot 2B was in a commercial zone and could be used for short-term rentals.
34. Mr. Simmons did not speak with a County employee or official prior to Megan Simmons acquiring Lot 2B.

35. Mr. Simmons conducted an incomplete search of the County website and misinterpreted a zoning map, concluding that Lot 2B was in a commercial zone.
36. The 2019 Spanish Valley zoning map, which shows Lot 2B wholly within the Spanish Valley Residential District – and not within a commercial district - was publicly available on the County’s website and on the Utah Public Notice Website.
37. Also publicly available was the 8 March 2021 legal opinion of the Deputy County Attorney Alex Goble that short-term rentals were not permitted in the Spanish Valley Residential (SVR) District.
38. Prior to 2021, Conner Simmons was a manufacturing engineer with no experience in real property acquisition or land use regulations.
39. Beginning in 2021 Conner Simmons became active in “flipping” properties.
40. At the time (in 2021) Conner and Megan Simmons were considering acquiring Lot 2B, Conner Simmons had little knowledge or experience with and understanding of local land use regulations relating to real property.
41. At the time Conner and Megan Simmons considered acquiring Lot 2B, Conner Simmons was beginning to become familiar with the local government building permit processes.
42. When Megan Simmons acquired Lot 2B, the property had a manufactured home and two tiny “brown” cabins.
43. When Megan Simmons acquired Lot 2B, the two tiny “brown” cabins had not received building permits.
44. After the acquisition of Lot 2B, Megan Simmons did not request or seek building permits or equivalent approval for the two tiny “brown” cabins.

45. In 2022 Megan Simmons began using the manufactured home at 152 Tera Drive (Lot 2B) for both family use (secondary residence) and for short-term renting.
46. In 2022 the manufactured home at 152 Tera Drive had a certificate of occupancy for residential use, but not for commercial/transient occupancy.
47. After 2022 Megan Simmons did not request or seek a certificate of occupancy for the manufactured home for commercial/transient occupancy.
48. In 2022 Megan Simmons began renting short-term two brown cabins which were on the property when she acquired 152 Tera Drive.
49. In 2022 Megan Simmons rented (short-term) six tent sites on the property (152 Tera Drive).
50. In the summer of 2022 Megan Simmons removed the six tent sites and built three “mobile white cabins,” which were rented short-term.
51. Megan Simmons did not submit building permit applications for the three cabins and did not receive certificates of occupancy from San Juan County.
52. In 2022 the short-term rental guests used an outdoor shower and porta potties on the property (152 Tera Drive).
53. On 12 April 2023 San Juan County received a business license application from Megan Simmons.
54. In 2023 the San Juan County Tax Roll Master Record for 152 Tera Drive reported the “property type” for 152 Tera Drive was “nightly rental.” Associated with the nightly rental property type designation was a manufactured home built in 2020.
55. The San Juan County property tax classification process focuses solely on the use of property and not on any land use restrictions on the property.

56. In 2023 Megan Simmons removed the outdoor shower and porta potties and installed a “shipping container bathhouse.” The bathhouse was a forty feet shipping container with two toilets, two sinks, and two showers. The bathhouse had sewer, power, and propane for a water heater.
57. Megan Simmons did not submit a building permit application for the bathhouse or receive approval from San Juan County for the use of the bathhouse.
58. On 11 January 2024 the San Juan County Planning Commission discussed short-term rentals in the Spanish Valley Residential (SVR) District. The discussion began with County Attorney Mitch Maughan stating that short-term rentals are not allowed in the Spanish Valley Residential (SVR) District.
59. On 16 January 2024 the San Juan County Board of Commissioners adopted Ordinance No. 2024-01. That ordinance amended the Spanish Valley Development Ordinances to include the following.
- “No short-term rental is allowed in the SVR District, and the Spanish Valley Overnight Accommodation Overlay shall not be applied to the SVR District. Regardless of the number of occupants, no hotel, apartment hotel, motel, tourist court, apartment court, commercial condominium for short-term rental, bed and breakfast (B&B) boarding house, lodging house, resort, commercial campground, or any other variation of overnight accommodation intended for nightly rental is permitted in the SVR District.”
60. Even though Ordinance No. 2024-01 was publicly available, Conner Simmons was not aware of the ordinance until later.
61. On 23 January 2024 Megan Simmons’ husband (Conner) met with San Juan County Planning Director Kristen Bushnell. During the meeting, Mr. Simmons acknowledged 152 Tera Drive was being used as camping/glamping/tiny houses, which were advertised on Airbnb. Discussed at the meeting was how to bring the property into compliance. The options to become compliant included: establishing a legal nonconforming use; rezoning the property; or wait for a new zone anticipated with the new county-wide zoning ordinance.

62. Mr. Simmons asserted that prior to the 23 January 2024 meeting, he and his wife were not aware of any compliance issues.⁴²
63. Mr. Simmons asserted that during and after the 23 January 2024 meeting with Ms. Bushnell “knew that we were not in compliance with what we were doing.”
64. During the 23 January 2024 meeting with Ms. Bushnell, Mr. Simmons understood that a county-wide land use ordinance would be adopted soon (“in a couple of months”).
65. During the 23 January 2024 meeting Ms. Bushnell did not direct Mr. Simmons to stop operating his short-term rental business.
66. In late February 2024 Ms. Bushnell emailed Mr. Simmons informing him that he could not expand his use of property (or properties) he and/or Megan Simmons owned. That email did not direct Mr. Simmons to stop operating his nightly rental business.

⁴² The meeting with Ms. Bushnell was scheduled after Conner Simmons on 2 January 2024 sent an email to San Juan County Chief Administrative Officer Mack McDonald requesting to speak with a County official about his property. In that email, Mr. Simmons acknowledged that there were short-term rentals on his street (Tera Drive) which were “not allowed.” The 23 January 2024 meeting between Kristen Bushnell and Conner Simmons occurred after Mr. McDonald referred Mr. Simmons to Ms. Bushnell.

67. On 5 March 2024 Ms. Bushnell sent an email to Conner Simmons. In the email were the following.

- a. Ms. Bushnell expressed appreciation for the ongoing conversations towards “compliance with the endeavors you have on your property.”
- b. The work on updating the County’s ordinances and zoning map has included attention to the area around Tera Drive.
- c. The Megan Simmons property “is not in compliance with our current Spanish Valley Ordinances and is not zoned for the use that we have seen on the ground.”
- d. The Megan Simmons property was “changed to commercial property (not necessarily approved as commercial zoning)” in the 2023 tax year “by means of use.”
- e. The option of bringing the Megan Simmons property into a [legal] non-conforming use status is not available “due to alterations and extensions of structures and uses over the past few years.”
- f. One option might be for Megan Simmons to show that the prior owner, before the adoption of the SVDO, applied for and received a conditional use permit for the use as a “private park or recreational grounds or private recreational camp or resort” in the A-1 Agricultural District of the 2011 zoning ordinance. Without such a conditional use permit “you are not in compliance.”
- g. There are no building permits for the dwelling units or accessory buildings over 200 square feet on the property.
- h. Regarding the use of the Megan Simmons property as a “commercial endeavor,” “This letter serves as a notice of zoning violation and for immediate compliance due to prohibited uses of your property.”
- i. The letter included two routes to become compliant.
 - i. Apply for a zoning change.
 - ii. Hold off until “we have the new zoning maps and ordinances in place around July 1st, 2024.”

68. After receiving the 5 March 2024 email, Mr. Simmons asserts the following.

- a. Mr. Simmons understood his two options for bringing the property into compliance.
- b. Shortly after 5 March 2024 Megan Simmons submitted a rezone application. Mr. Simmons asserts that the application was not forwarded to the Planning Commission because Ms. Bushnell “wanted to wait until a master rezone of the entire county was completed.”
- c. Again in 2025 Megan Simmons submitted a rezone application. The application was not sent to the Planning Commission due to the pending master rezone.

69. Mr. Simmons asserts, based on his conversations with Ms. Bushnell, that he and his wife could continue their short-term rental business at 152 Tera Drive so long as they did not expand the use of the property.

70. The administrative record suggests that Ms. Bushnell’s actions to allow the continued use of 152 Tera Drive as a short-term rental business (or to not demand compliance with the zoning code) were not supported by the County Attorney.

71. Mr. Simmons’ conclusion that he and Megan Simmons could continue their nightly rental business after 5 March 2024 is inconsistent with the express language of the Kristen Bushnell email which states that directed “immediate compliance due to prohibited uses of your property.”

72. After 5 March 2024 Megan and Conner Simmons continued with the short-term rental of structures at 152 Tera Drive. Mr. Simmons asserts that the rentals continued due to the following.

- a. Mr. Simmons was told “repeatedly” by Ms. Bushnell and the San Juan County Business License Official Nathan Pitts that the rental activity at 152 Tera Drive could continue so long as the activity is not expanded.
- b. Mr. Simmons believed that comments made by County Attorney Mitchell Maughan during a 9 January 2025 Planning Commission meeting supported the continued operation of the rental activity at 152 Tera Drive.
- c. Mr. Simmons also believed that the designation of 152 Tera Drive as a “nightly rental” in the County’s tax records gave “us confidence that the County knew we were operating and was okay with that.”

73. During the 14 March 2024 San Juan County Planning Commission, Planning Commissioner Wilson and County Planning Director Kristen Bushnell exchanged comments about short rentals in Spanish Valley. Planning Commission Wilson understood that individuals had purchased properties for investment, with the understanding that short-term rentals were a legal nonconforming use of the property. Planning Commission Wilson mentioned that these property owners are now told they cannot continue the prior use. Planning Director Bushnell noted that the new County land use ordinance (which would be passed in “only a few months at this point”) would address these concerns. Ms. Bushnell stated that “after the adoption [of the new ordinance] we can focus our efforts on these properties that were out of compliance and continue to be out of compliance.”

74. On 5 November 2024 Ms. Bushnell sent Mr. Simmons an email stating that the Megan Simmons property did not qualify for legal nonconforming use. However, the new ordinance “should address this and you will be able to proceed with your business.”

75. On 16 January 2025 Megan Simmons received an email from San Juan County Business Licensing Official Nathan Pitts, who was responding to Ms. Simmons 12 April 2023 business license application. Mr. Pitts email included the following.

- a. The proposed business is not permitted as a commercial use under the County zoning code.
- b. However, the business license application has not been denied due to work on the new land use ordinance, which could permit Ms. Simmons' use in the zone where the property is located.
- c. The business license application is "still on the list of pending applications" as the County moves forward with a hopeful adoption of the new county land use ordinance.
- d. Mr. Pitts thanked Ms. Simmons for her patience and apologized for the delay.

76. Mr. Pitts asserted that prior to publishing his 16 January 2025 email, he spoke with the County Planning and Zoning Office and concluded that the Simmons property would shortly be in compliance with the passage of a county-wide land use ordinance.

77. On 21 January 2025 the San Juan County Board of Commissioners considered a new county-wide land use ordinance. Public comments were received by the Board of Commissioners. After discussion, the Board of Commissioners tabled the ordinance for six months, to allow for public engagement and attorney review.

78. On 8 May 2025, the San Juan County Planning Commission discussed a County land use ordinance. The Planning Commissioners discussed the challenges associated with a county-wide ordinance in Spanish Valley.

79. In May 2025 Megan Simmons received a San Juan County Notice of Violation relating to uses at 152 South Tera Drive. Ms. Simmons was informed that the use of the structures at 152 Tera Drive as short-term rentals within the Spanish Valley Residential (SVR) District is in violation of the SVDO. 152 Tera Drive is not zoned for short-term rentals. The Notice of Violation stated that trailers, structures, and hereditaments on the property are not accessory uses and “shall be removed immediately.” Ms. Simmons was informed that the existing uses of the property “are illegal.” The owner (Megan Simmons) of 152 Tera Drive shall cease and desist any use of the property for residential or commercial purposes “effective immediately until further notice.”
80. Notwithstanding the cease and desist direction, and direction to remove the structures from the property, in the May 2025 Notice of Violation, until mid-November 2025 Ms. Simmons continued to operate the single wide mobile home, two brown cabins, and three white cabins as short-term rentals.
81. As the San Juan County Zoning Administrator, Ms. Bushnell had the obligation to enforce the County’s land use code.
82. Ms. Bushnell’s failure to direct and specifically support the termination of noncompliant activities at 152 Tera Drive represented ineffective stewardship of her duties.
83. The mid-November 2025 halting of rental activity at 152 Tera Drive was due to seasonal considerations and not because Megan Simmon wanted to become compliant with the County zoning code.
84. As of 4 November 2025, Megan Simmons had not obtained building permits for the cabins or bathhouse at 152 Tera Drive.
85. As of 14 August 2025, San Juan County did not anticipate adopting a new land use ordinance until May 2026.

86. It was the opinion of the San Juan County Building Official that the structure on 152 Tera Drive could become compliant with the construction and building codes – through an as-built permit process.”
87. Such a process would be preceded with a review of the proposed structures to assure they are fully compliant with all provisions of the San Juan County land use ordinance.
88. (Conclusion) Under the provisions of the 19 November 2019 Spanish Valley Development Ordinances and associated Zoning Maps (2019 and 2021) 152 Tera Drive is wholly within the Spanish Valley Residential (SVR) District; with no part of 152 Tera Drive in the Spanish Valley Highway Commercial (HC) District.
89. (Conclusion) From 20 September 2021 until mid-November 2025, the use of 152 Tera Drive as a short-term rental enterprise was not authorized in the Spanish Valley Residential (SVR) District.
90. (Conclusion) Prior to purchasing 152 Tera Drive on 20 September 2021, Conner and Megan Simmons could have determined that use of the property as for overnight accommodations or short-term rentals was not permitted in the SVR District – such determination to include the 8 March 2021 Deputy County Attorney legal opinion shared publicly and discussed with residents of Spanish Valley in the 11 March 2021 San Juan County Planning Commission.

91. (Conclusion) On several occasions prior to May 2025 Megan Simmons was informed, or could have reasonably concluded, that her short-term rental enterprise at 152 Tera Drive did not comply with the San Juan County zoning code – such information or notice included: (a) the 8 March 2021 legal opinion of Deputy County Attorney Alex Gobel; (b) a 11 January 2024 public statement by County Attorney Mitchell Maughan that overnight rentals are not allowed in the Spanish Valley Residential (SVR) District; (c) a 23 January 2024 meeting between Conner Simmons and San Juan County Planning Director Kristen Bushnell; (d) a 5 March 2025 email from Ms. Bushnell to Conner Simmons stating that the use of 152 Tera Drive was out of compliance with the zoning code and which email directed “immediate compliance due to prohibited uses of your property.”; (e) a statement by Ms. Bushnell during the 14 April 2024 San Juan County Planning Commission that short-term rentals in the Spanish Valley Residential (SVR) District were out of compliance; and (f) a 16 January 2025 email to Megan Simmons from San Juan County Business Licensing Official Nathan Pitts stating that Ms. Simmons’ proposed business at 152 Tera Drive was not a permitted use under the County’s zoning code.
92. (Conclusion) Notwithstanding the several notices that uses at 152 Tera Drive were not in compliance with the zoning code, until May 2025 there is no written record (or other reliable communication) of San Juan County ordering or specifically directing Megan Simmons to stop, or cease and desist, her commercial camping or short-term rental enterprise.
93. (Conclusions) Notwithstanding the several notices that uses at 152 Tera Drive were not in compliance with the zoning code, until May 2025 there were several communications with Conner or Megan Simmons that in the future the commercial camping or short-term rental enterprise at 152 Tera Drive might be allowed under a County land use code.
94. (Conclusion) Prior to May 2025 Megan Simmons’ continuation of her commercial camping or short-term rental enterprise at 152 Tera Drive did not constitute bad faith or a willful violation of County ordinances – considering the optimistic statements of County representatives.

95. (Conclusion) After May 2025 (when Ms. Simmons was directed to cease and desist and to remove non-compliant structures) Megan Simmon's continuation of her commercial camping or short-term rental enterprise at 152 Tera Drive constituted bad faith and a willful violation of County ordinances.
96. (Conclusion) San Juan County is not equitably estopped from enforcing the Spanish Valley Development Ordinances land use requirements at 152 Tera Drive due to: (a) Megan Simmons, with the exercise of reasonable diligence, could have determined that 152 Tera Drive was in the Spanish Valley Residential (SVR) District and that short-term rental enterprises were not permitted uses in the SVR District; (b) Ms. Simmons acted in bad faith by continuing her short-term rental enterprise after being specifically and clearly ordered to cease and desist her business activity at 152 Tera Drive; and () to allow Ms. Simmons to conduct short-term rentals at 152 Tera Drive would defeat an important public policy intended to restrict or prohibit certain commercial enterprises in the Spanish Valley residential neighborhoods.
97. (Conclusion) Notwithstanding Mr. Pitts' 25 January 2025 email stating that Ms. Simmons' business license application was pending on a "list," after 15 December 2020 commercial camping or the short-term rental enterprise at 152 Tera Drive was unlawful and subject to sanctions.
98. (Conclusion) After acquiring 152 Tera Drive Megan and Conner Simmons failed to comply with the San Juan County building permit requirements of the San Juan County Code.
99. (Conclusion) In view of Conner Simmons' knowledge of local government permitting requirements, the failure of Megan and Conner Simmons to comply with the San Juan County building permit requirements was bad faith.

100. (Conclusion) If Megan and Conner Simmons intend to continue the use of 152 Tera Drive for permitted uses within the Spanish Valley Residential District, the use of structures on the property may become compliant through an “as built permit process” and by fully complying with the San Juan County land use standards and requirements.
101. (Conclusion) The action by San Juan County to classify 152 Tera Drive as a “nightly rental” does not waive or impair the County’s actions to bring 152 Tera Drive into compliance with the land use code.
102. (Conclusion) The failure of Megan and Conner Simmons to bring 152 Tera Drive into compliance after the publication of this decision shall subject Megan and Conner Simmons to abatement orders, fines, and penalties.

Decisions and Orders

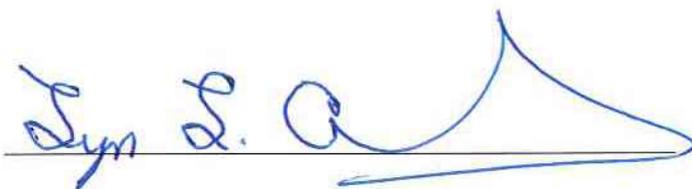
Based on the foregoing findings of fact and conclusions of law, Administrative Law Judge Lyn Creswell adopts the following decisions and orders in the matter *Megan Simmons v. San Juan County*.

1. **Order.** San Juan County parcel 130000002B at 152 Tera Drive, Moab, Utah shall not be used for short-rental activity or any other overnight accommodation business activity so long as the property is subject to the Spanish Valley Development Ordinances.
2. **Decision.** Any activity in violation of paragraph 1 above shall subject the property owner to ordered abatement, fines, and penalties.
3. **Order.** By close of business 20 March 2026 property owner Megan Simmons shall submit to the San Juan County Attorney and Administrative Law Judge Lyn Creswell a detailed/complete list of all structures, buildings, hookups, or other facilities which Megan Simmons intends to retain and maintain at 152 Tera Drive for permitted uses in the Spanish Valley Residential (SVR) District – and which uses shall comply with all standards and requirements of the 2011 San Juan County zoning ordinance and the Spanish Valley Development Ordinances.⁴³
4. **Order.** By close of business 20 March 2026 property owner Megan Simmons shall submit to the San Juan County and Administrative Law Judge Lyn Creswell a detailed/complete list of all structures, buildings, hookups, or other facilities which were previously used for short-term rental/overnight accommodation guests *and* which will be removed from 152 Tera Drive.

⁴³ It is understood this “detailed/complete list” will be created by Megan Simmons after coordination with the San Juan County Zoning Administrator or appropriate official.

5. **Order.** On or before 24 April 2026 Megan Simmons shall submit a signed affidavit to the San Juan County Attorney and to Administrative Law Judge Lyn Creswell that all structures, buildings, hookups, or other facilities listed in paragraph 4 above have been removed from 152 Tera Drive.
6. **Order.** On or before 26 June 2026 San Juan County and property owner Megan Simmons shall complete an “as built permit” process for each structure, building, hookup, or other facility identified in paragraph 3 above.
7. **Order.** On or before 26 June 2026 San Juan County and property owner Megan Simmons shall submit a joint affidavit to Administrative Law Judge Lyn Creswell that the work ordered in paragraph 6 has been completed.
8. **Decision.** The 12 April 2023 San Juan County business license application of Megan Simmons is denied.
9. **Order.** Megan Simmons shall *immediately* remove from 152 Tera Drive, and from any online postings, any references of/to short-rental activity and by close of business 27 February 2026 shall submit to Administrative Law Judge Creswell that the ordered removals have been accomplished.
10. **Order.** Megan Simmons shall by close of business 20 March 2026 pay to San Juan County (Utah) the net proceeds (revenues received minus any reasonable expenses incurred in renting structures) from all rental activities at 152 Tera Drive from 12 May 2025 until the date of this decision.
11. **Decision.** Megan Simmons shall be subject to appropriate fines and penalties for operating an overnight accommodations or similar business at 152 Tera Drive as long as the property is governed by the Spanish Valley Development Ordinances.

12. **Decision.** As of the date of this decision, the use of 152 Tera Drive during the ownership of Megan Simmons cannot be characterized as a public nuisance.
13. **Decision.** The San Juan County 2024 property tax characterizations of 152 Tera Drive as commercial “nightly-rental” property does not limit or restrict Administrative Law Judge Lyn Creswell from concluding that overnight accommodation activities are prohibited at 152 Tera Drive in the Spanish Valley Residential (SVR) District.
14. **Decision.** San Juan County is not equitably estopped from enforcing compliance with County zoning and business licensing ordinances at 152 Tera Drive.
15. **Decision.** The deadlines in this Decision and Order may be extended by Administrative Law Judge Lyn Creswell upon request and based on reasonable cause.
16. **Decision.** Administrative Law Judge Creswell shall continue jurisdiction in the matter until completion of the orders.
17. **Decision.** Either party may request clarification or direction from Administrative Law Judge Creswell regarding this Decision and Order.
18. **Decision.** Failure of Megan Simmons to comply with the orders herein subject her to fines and penalties set forth in the San Juan County Code.



Lyn Loyd Creswell
San Juan County Administrative Law Judge

20 February 2026