

San Juan County, Utah Administrative Law Judge

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| Kimberley Anne Pratt Camberlango, | ) |                          |
|                                   | ) |                          |
| Petitioner,                       | ) | ALJ Lyn Loyd Creswell    |
|                                   | ) | Factual Background and   |
| vs.                               | ) | Legal Framework,         |
|                                   | ) | Findings and Conclusion, |
|                                   | ) | Decision                 |
| San Juan County, Utah,            | ) |                          |
|                                   | ) | Date: 12 April 2023      |
| Respondent                        | ) |                          |
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On 19 July 2022 Kali Bisco, on behalf of Kimberley Anne Pratt Camberlango, doing business as J & K Camberlango LLC, filed a business license application with San Juan County. On 20 January 2023 San Juan County denied the Camberlango business license application.

On 14 February 2023 attorneys Brien J. Brockbank and H. Burt Ringwood, representing Kimberley Camberlango, emailed an administrative appeal letter (dated 13 February 2023) to San Juan County Chief Administrative Officer Mack McDonald. On 17 February 2023 McDonald referred the Camberlango appeal to San Juan County Administrative Law Judge Lyn Creswell (ALJ Creswell).

On 2 March 2023 ALJ Creswell hosted a virtual pre-hearing conference with attorneys H. Burt Ringwood and Brien J. Brockbank, representing Kimberley Camberlango, and with Deputy County Attorney Mitchell Maughan, representing San Juan County.

On 5 March 2023 ALJ Creswell published a Prehearing Memorandum and Order. That document summarized the discussion at the 3 March 2023 prehearing conference and ordered the production of documents or affidavits relating to the appeal.

On 24 March 2023 attorneys for the parties submitted briefs and documents in response to the 5 March 2023 Prehearing Memorandum and Order.

On 31 March 2023 ALJ Creswell sent a draft decision to the attorneys representing the parties. On 4 April ALJ Creswell hosted a virtual meeting with the attorneys and discussed the draft decision. During that meeting ALJ Creswell committed to send an updated draft decision to the attorneys for comments prior to his publication of a decision.

On 5 and 7 April 2023 ALJ Creswell sent revised/draft decisions to the attorneys representing the parties. ALJ Creswell requested comments from the attorneys on his draft decision by close of business (COB) Tuesday, 11 April 2023. ALJ Creswell received no comments on his draft decision.

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A decision in this matter requires an analysis of the following.

- An understanding of the San Juan County Zoning Code adopted on 12 September 2011, and the application/interpretation of the 2011 Zoning Code<sup>1</sup> to the proposed use of the Camberlango property in the Spanish Valley community of San Juan County.
- Actions by Kimberley Camberlango and her husband Jay Camberlango after July 2016 when they purchased property in a residential neighborhood in Spanish Valley.
- An understanding of the Spanish Valley Area Plan (adopted by the San Juan County Board of Commissioners on 17 April 2018), a component of the San Juan County Master Plan, and how the principles or goals of that Area Plan relate to the intended use of the Camberlango property.

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<sup>1</sup> The San Juan County Zoning Code is found in two locations on the San Juan County website. The zoning ordinance adopted by the San Juan County Board of Commissioners on 12 September 2011 is found within the “Planning Documents” of the “Planning and Zoning” department on the County’s website. The 2011 Zoning Code is also included in the set of County ordinances (published by American Legal Publishing) under “Codes and Ordinances” under “Business” of the “Government” portal on the County’s website. This unified County code citation of the 2011 Zoning Code is Chapter 153 (Zoning) of Title XV (Land Usage) of the San Juan County ordinances. In this decision, ALJ Creswell references the 2011 San Juan County Zoning Code found in the Planning and Zoning portal of the County’s website.

- An understanding of the Spanish Valley Development Ordinances (adopted by the San Juan County Board of Commissioners on 19 November 2019)<sup>2</sup>, a “sub-ordinance” of the 2011 Zoning Code, and the application/interpretation of the Spanish Valley Development Ordinances to the proposed use of the Camberlango property in Spanish Valley.
  - A review of discussions (including advice provided by the Office of the San Juan County Attorney) relating to short-term rentals in Spanish Valley residential neighborhoods in meetings of the San Juan County Planning Commission after 19 November 2019.
  - An understanding of the legal framework relating to nonconforming uses and equitable estoppel, as such legal framework applies to the intended use of the Camberlango property.
  - An understanding of the San Juan County Business License Ordinance (adopted 15 December 2020).
  - A review of San Juan County’s actions in denying the business license application of Kimberley Camberlango.
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<sup>2</sup> The 19 November 2019 Spanish Valley Development Ordinances is found on the County’s website under “Spanish Valley Documents” of the “Planning and Zoning” portal. The Spanish Valley Development Ordinances found in the “Spanish Valley Documents” set includes the language “September 13, 2019, Draft” on the title pages of the ordinance. The adopting document is not included with the “Spanish Valley Documents” on the County’s website. The adopting ordinance document (Ordinance No. 2019-02 signed by Commission Chairman Kenneth Maryboy) is found on the Utah State public meetings website under San Juan County for the date 19 November 2019. At that location the adopting ordinance is found. On 19 November 2019 the San Juan County Board of Commissioners adopted the 13 September 2019 draft version of the Spanish Valley Development Ordinances, which were later referred to as the “Spanish Valley Sub-Ordinance.”

## Factual Background and Legal Framework

### *The Camberlango intended use of property in Spanish Valley*

A 19 July 2022 business license application submitted to San Juan County on behalf of Kimberley Camberlango and J & K Camberlango LLC declared the intended use of property at 4896 Spanish Valley Drive as “overnight rentals” which were advertised on “Airbnb<sup>3</sup> Vrbo<sup>4</sup>.” A subsequent affidavit submitted by Kimberley Camberlango stated that a structure on the property “could sleep 9 people.” The affidavit also stated that a detached garage was constructed “so that renters would have a place to park their ATV vehicles, which is a popular activity in the Moab area.” In 2018 the Camberlango’s purchased “rental unit” insurance for the Spanish Valley Drive property. For the 2019 Tax Year, Kimberley Camberlango obtained a federal “special depreciation allowance” for “rental real estate” known as “Moab Nightly Rental.”

Prior to 19 November 2019, the Camberlango property was in the A-1 Agricultural District of the 2011 San Juan County Zoning Code. After 19 November 2019, the Camberlango property was in the Spanish Valley Residential (SVR) District of the Spanish Valley Development Ordinances (also known as the Spanish Valley Sub-Ordinance).

### *2011 San Juan County Zoning Ordinance*

On 5 June 1978 San Juan County adopted its first zoning ordinance. The future Jay and Kimberley Camberlango property (4896 Spanish Valley Drive) was within the Agriculture District (A-10) of the 1978 Ordinance.

On 12 September 2011 San Juan County adopted an amended Zoning ordinance. The Camberlango property was in the 2011 Zoning Code’s Agricultural District<sup>5</sup> (re-designated A-1), which identified permitted, conditional, and prohibited uses within that District.

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<sup>3</sup> Airbnb, Inc. is a San Francisco-based company operating an online marketplace for short-term homestays and experiences.

<sup>4</sup> Vrbo operates an online marketplace for vacation rentals. It was originally known as Vacation Rentals by Owner or VRBO. It is headquartered in Austin, Texas, and is owned by Expedia Group.

<sup>5</sup> The 2011 Zoning Code identified five “zoning districts”: Multiple Use District (MU-1), Agricultural District (A-1), Rural Residential ((RR-1), Controlled District (CD), and Indian Reservation District (IR).

Chapter 1 of the 2011 San Juan County Zoning Code includes definitions, a few of which are relevant to the matter on appeal. Included in these definitions are the following.

- “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.”
- “Bed & Breakfast/Boarding House. A building with not more than five (5) guest rooms, where, for compensation, meals are provided for at least five (5) but not more than fifteen (15) persons.”
- “Dwelling.<sup>6</sup> 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.”
- “Dwelling, Single-family. A building arranged or designed to be occupied by one (1) family, the structure having only one dwelling unit.”
- “Dwelling, Two-family. A building arranged and designed to be occupied by two (2) families, the structure having only two dwelling units.”
- “Family, One or more persons occupying a dwelling unit and living as a single housekeeping unit, as distinguished from a group occupying a boarding house, lodging house, or hotel, as herein defined.”
- “Hotel. A building designed for or occupied as a temporary abiding place of sixteen (16) or more individuals who are, for compensation, lodged.”
- “Lodging House. A building where lodging only is provided for compensation to five (5) or more, but not to exceed fifteen (15) persons.”

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<sup>6</sup> The 2011 Zoning Code further defines Ranch and Farm Dwellings, Multi-family Dwellings, and Dwelling Units.

- “Motel. A building or group of buildings for the drive-in accommodation of transient guests, comprising individual sleeping or living units, and designed and located to serve the motoring public.”
- “Tourist Court. Any building or group of buildings containing sleeping rooms, with or without fixed cooking facilities designed for temporary use by automobile tourist or transients, with a garage attached or parking space conveniently located to each unit, including auto courts, motels, or motor lodges.”

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.”

Chapter 10 of the 2011 Zoning Code identifies five (5) “zoning districts,” including the Agricultural (A-1) District – within which the Camberlango property, prior to 19 November 2019, was located. Chapter 11 of the 2011 Zoning Code states the purposes for three of the zoning districts (Multiple-Use, Agriculture, and Rural Residential). The “purpose” for the Agricultural (A-1) District is: “To promote and preserve, in appropriate areas, conditions favorable to agriculture and to maintain greenbelt open spaces. Such districts are intended to include activities normally and necessarily related to the conduct of agricultural production and to provide protection from the intrusion of uses adverse to the continuance of agricultural activity.”

Section 11-2 (Use Regulations) of Chapter 11 of the 2011 Zoning Code states: “No building, structure, or land shall be used and no building or structure shall be hereafter erected, structurally altered, enlarged, or maintained, except as allowed in the districts as shown as ‘permitted uses’ [P]. . . or as ‘conditional uses’ [C]. . .” The introductory paragraph of § 11-2 further states: “If a use is not allowed in the district, it is either not named or it is indicated in the appropriate column by a dash, ‘-.’”

Following the introductory paragraph of § 11-2, Chapter 11 of the 2011 Zoning Code identifies twenty-three (23) land uses within the three zoning districts. For each land use, § 11-2 states whether the use in a particular zoning district is: permitted (P), a conditional use (C), or prohibited (-).

From the land uses (and potentially relevant to the Camberlango property) defined in Chapter 1 of the 2011 Zoning Code, the following are not included in the § 11-2 Table of Uses:

- Bed & Breakfast/Boarding House,
- Hotel,
- Lodging House,
- Motel, and
- Tourist Court.

Since these uses are not listed in the Chapter 11 Table of Uses, they are prohibited in the A-1 Agricultural Zone. (“If a use is not allowed in the district, it is either not named or it is indicated in the appropriate column by a dash ‘- ‘.’”)

In the § 11-2 Table of Uses there are uses which *potentially* might apply to the Camberlango property as an overnight rental.

- “Dude ranch; family vacation ranch.” The Chapter 11 Table of Uses classifies a “Dude ranch; family vacation ranch” as a conditional use in the A-1 District.

The terms “dude ranch” and “family vacation ranch” are not defined in Chapter 1 of the 2011 San Juan County Zoning Code.

According to the Oxford Languages dictionary, a “dude ranch” is a cattle ranch converted to a vacation resort for tourists. The Merriam-Webster Dictionary defines “dude ranch” as a vacation resort offering horseback riding and other activities typical of western ranches.

Dictionaries do not define a “family vacation ranch” separate from a “dude ranch.” The Kane County, Utah, land use code includes “dude ranch” and “family vacation ranch” in its zoning definitions. “Dude Ranch or Family Vacation Ranch: A vacation resort offering activities typical of western ranches, which must include horse riding.” Kane County Code § 9-1-7 (Definitions).

The proposed Camberlango use of the Spanish Valley Driver property does not include horseback riding or other western ranch features on the property. The Camberlango proposed rental use of the Spanish Valley property is not included in the definition of “dude ranch” or “family vacation ranch” and would not be a conditional use in the A-1 Agriculture District.

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- Single-family and two-family dwellings are permitted in the A-1 District. A “dwelling” is defined in Chapter 1 of the 2011 Zoning Code: “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.” Further, a “family” is defined in Chapter 1 of the 2011 Zoning Code: “One or more persons occupying a dwelling unit and living as a single housekeeping unit, as distinguished from a group occupying a boarding house, lodging house, or hotel, as herein defined.”

The intended use of the Camberlango property as an overnight rental for up to nine (9) persons for compensation is included in the definition of “lodging house” of the 2011 Zoning Code. A “lodging house” is a building where lodging is provided for compensation to five (5) or more, but not to exceed fifteen (15) persons.”

As a lodging house, the Camberlango property is expressly not an allowed use as a single-family or two-family dwelling – because “lodging houses” are excluded from the definition of a “dwelling” in the 2011 Zoning Code *and* “lodging houses” are excluded from the definition of a “family” in the 2011 Zoning Code.

The Camberlango proposed use of the Spanish Valley property as overnight rental property does not qualify as a permitted use as a single-family or two-family dwelling in the A-1 District of the 2011 Zoning Code.

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- “Accessory buildings and uses customarily incidental to” the permitted or conditional uses. The use of “customarily incidental” as a modifier to “accessory buildings and uses” means that the intended use of the accessory building must be connected to or supportive of the primary land use, which is a permitted or conditional use. Additionally, Chapter 1 of the 2011 Zoning Code defines an accessory building as a “Building not used for human occupancy.”

The Camberlango property does not qualify as an accessory building or use (either permitted or a conditional use) since the intended use of the property is not “incidental to” a permitted or conditional use *and* since an accessory building cannot be used for human occupancy.

In July 2016 most of Spanish Valley fell within the Agricultural (A-1) District of the 2011 Zoning Code. However, some property in Spanish Valley was in the Controlled District Highway (CD-h) zone: property within 1,000 feet of highway US-191. Within that zoning district, a range of commercial uses considered appropriate for a roadway setting are allowed. Examples include restaurants, motels, mobile home parks, commercial recreation facilities, automobile service stations, and “other uses approved by the Planning Commission as being in harmony<sup>7</sup> with the intent of the neighborhood commercial zone.”

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<sup>7</sup> It is assumed here that overnight rentals and lodging houses would be compatible in the CD-h District.

*Jay and Kimberley Camberlango Purchase and Development of Spanish Valley Property*

In 2015 Jay Vincent Camberlango and Kimberley Anne Parry Camberlango were living in Lindon, Utah County, Utah. Jay Camberlango owned a construction company (Camberlango Builders) and a concrete company (Camcrete). On occasion Jay Camberlango visited and recreated in and around Moab, Utah.

In 2015 Jay and Kimberley Camberlango became interested in purchasing and fixing up property in the Moab vicinity as overnight rental property. After researching the Moab area, Jay and Kimberley Camberlango learned of a home being auctioned at 4896 Spanish Valley Drive in the community of Spanish Valley (south of incorporated Moab, Grand County, Utah<sup>8</sup>) in San Juan County.

In researching the Spanish Valley Drive property, Jay Camberlango “was told by representatives in San Juan County government that the Spanish Valley area was zoned for nightly rental use.” In June 2016<sup>9</sup>, Jay Camberlango was the highest bidder and purchased the property from the seller. The purchase price of the property was \$135,009.

When Jay and Kimberley Camberlango purchased the Spanish Valley Drive home, the property was in disrepair. During 2016 and 2017 Jay Camberlango made improvements to the property so the home could sleep nine (9) people. All improvements to the main structure on the property, except for a detached garage, were completed in late 2017.

On 22 July and 25 September 2017 Jay and Kimberley Camberlango purchased new beds and furniture for the Spanish Valley Drive home.

In the spring of 2018 Jay Camberlango applied for a building permit from San Juan County for the construction of a detached garage. On 16 April 2018 San Juan County issued Building Permit # 18011 for an “outbuilding (garage) Metal Building 60’ x 42’”. The Permit was

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<sup>8</sup> An important backdrop to this appeal involves the Camberlango property’s location in the greater Moab area. Moab, Utah has become a significant tourist designation. The pressure for overnight accommodations for those visiting Moab has increased over the last decade. The community of Spanish Valley in San Juan County and other communities near incorporated Moab have experienced pressure to accommodate short-term rental homes. See Sophia Fisher, “Short-term rentals compose 19% of Grand’s housing,” *The Times-Independent*, 7 July 2022; and David Boyle, “Short-term rentals make up three percent of county housing,” *San Juan Record*, 13 July 2022.

<sup>9</sup> Jay Camberlango submitted his bid on 13 June 2016. The seller was Carrington Mortgage Services LLC. The sale of the property closed on 15 July 2016.

issued to Jay Camberlango at 4896 Spanish Valley Drive. Jay Camberlango's purpose in constructing the garage was to allow renters to park their ATV vehicles when staying at the property. The detached garage was completed in early 2019.

In 2018 Jay and Kimberley Camberlango obtained insurance for the Spanish Valley Drive property. On 1 December 2018 Darrin Long Insurance Agency of Pleasant Grove, Utah issued an insurance policy to Kimberley Camberlango, to include coverage for "rental units." In applying for insurance, Jay and Kimberley Camberlango disclosed that the property would be used as rental property.

In late 2018 and early 2019 people known by Jay and Kimberley Camberlango became aware of the Spanish Valley Drive property and its intended use as a nightly rental.

From 27 to 30 September 2018, and again from 24 to 28 April 2019, Brandon Scott contracted for and paid nightly rental fees to stay at the Camberlango property at 4896 Spanish Valley Drive.

In the last week of August 2018, Victoria and Jake Elder rented the Spanish Valley Drive property from Kay and Kimberley Camberlango.

In early 2019 Jay and Kimberley Camberlango discussed whether to contract with a third-party property manager to rent the property or to manage the rental operation themselves.

On 30 June 2019 Jay Vincent Camberlango died as a passenger in an airplane accident outside of Moab, Utah. For the first months after Jay Camberlango's death, Kimberley Camberlango's focus was diverted from the Spanish Valley Drive property. In September 2019 Kimberley Camberlango's father Michael Parry began assisting his daughter to find a property manager for the Spanish Valley Drive property. Between 6 September and 15 October 2019, Michael Perry exchanged emails with Jody Hardesty of Vacasa Business Development about possibly managing the Spanish Valley Road property as a nightly rental.

For the Tax Year 2019 Kimberley Camberlango provided all receipts for the remodeling and furnishing of the Spanish Valley Drive property to the Camberlango's tax accountant. Those receipts were used by the tax accountant as business-related expenses<sup>10</sup> for the operation of the Spanish Valley Drive property as "rental real estate." For Tax Year 2019 Kimberley Camberlango claimed a one-time "special depreciation allowance" of \$230,633 for "Moab Nightly Rental" owned by J & K Camberlango LLC<sup>11</sup>.

On 22 September 2020 Kimberley Camberlango signed a property management agreement with Kali Bisco (with KLBK Enterprise LLC) and began listing the Spanish Valley Drive property as an overnight rental.

### *Spanish Valley Area Plan*

In 2017, as Jay and Kimberley Camberlango were preparing their property as a rental, San Juan County began focusing on land uses in the Spanish Valley community. 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<sup>12</sup>. This 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."

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<sup>10</sup> For tax year 2019, J&K Camberlango LLC of Lindon, Utah filed IRS Form 1065, which reported a one-time depreciation of \$230,633 for "Moab Nightly Rental." An IRS Form 4562 (Depreciation and Amortization) form accompanied the IRS Form 1065. The tax documents were prepared by Clyde W. Jones of Orem, Utah.

<sup>11</sup> A Certificate of Organization for J&K Camberlango, LLC was registered with the State of Utah Department of Commerce Division of Corporations and Commercial Code on 26 September 2014. The corporate filing of J&K Camberlango, LLC was undated on 20 July 2015 and on 28 August 2020.

<sup>12</sup> Prior to the Planning Commission meeting, Landmark Design on 14 August 2017 met with a small group of San Juan County executives. This meeting (called a "Kick-Off Meeting") allowed the County executives to alert Landmark Design to issues the public might raise as the Area Plan was being prepared. Among the issues identified in the Kick-Off Meeting was: "Having the right mix of short-term rentals or full-time residential is a huge issue here."

- “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 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.

After the interviews, workshops, 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 official Walter Bird, and discussion among the commissioners; the Planning and Zoning Commission moved to send the Spanish Valley Area Plan to the County Board of Commissioners.

On 17 April 2018 the San Juan County Board of Commissioners adopted the San Juan County Spanish Valley Area Plan. The Plan was unanimously adopted.

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<sup>13</sup>.” 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.

- A guiding principle should be to create a non-tourism centered community that is distinctly different than 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.

*Spanish Valley Development Ordinance or “Spanish Valley Sub-Ordinance”*

After the adoption of the Spanish Valley Area Plan, San Juan County spent several months preparing a zoning ordinance for Spanish Valley. 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, which would later include the Camberlango property.

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. The draft ordinance included a proposed table of uses for the SVR District. The

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<sup>13</sup> The San Juan County portion of Spanish Valley is approximately six miles long and 2.5 miles wide (encompassing fifteen square miles of land). The remainder of Spanish Valley is in Grand County (north of San Juan County).

SVR District table of uses did not include tourist courts, lodging houses, or any other land use which might accommodate short-term/overnight rentals.

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. The draft ordinance included a proposed SVR District table of uses. The table of uses did not include tourist courts, lodging houses, or any other land use which might accommodate short-term/overnight rentals.

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. The draft ordinance included a proposed SVR District table of uses. The table of uses did not include tourist courts, lodging houses, or any other land use which might accommodate short-term/overnight rentals.

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 under the 2011 Zoning Code. 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) District.

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 Camberlango property lies within the Spanish Valley Residential (SVR) District. The Spanish Valley Sub-Ordinance 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.”

Chapter 1 of the Spanish Valley Development Ordinances include a table of uses for the Spanish Valley Residential (SVR) District. The SVR Table of Uses separates eighteen (18) uses into three categories: Residential Uses; Civic and Institutional Uses; and Parks, Open Space and Agricultural Uses. None of the eighteen uses<sup>14</sup> include overnight rental accommodations.

Chapter 10 of the Spanish Valley Development Ordinances creates the possibility of approved overnight accommodations. The approval process is governed by an “overlay district” which applies exclusively to the Spanish Valley Highway Commercial (HC) District and to the Spanish Valley Highway Flex Planning Community (HF) District. Chapter 10 does not authorize overnight accommodations in other Spanish Valley zoning districts, including the Spanish Valley Residential (SVR) District.

*San Juan County Planning Commission Discussion of Short-term Rentals in Spanish Valley*

After the 19 November 2019 adoption of the Spanish Valley Development Ordinances by the Board of Commissioners, the San Juan County Planning Commission regularly discussed short-term/overnight rentals in Spanish Valley, including within the Spanish Valley Residential (SVR) District. The following summarizes those discussions based on meeting minutes and based on an unofficial transcript of a portion of the 11 March 2021 Planning Commission meeting.

On 9 July 2020, the San Juan County Planning Commission discussed overnight accommodations in Spanish Valley. The Planning Commission considered revisions to the

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<sup>14</sup> Three of the five Residential Uses are “dwelling” units, which as defined in the 2011 San Juan County Zoning Code are used for family purposes. A fourth Residential Use is for accessory buildings and uses – related to a dwelling unit on the property. The last Residential Use category is “All other household living uses (5<sup>th</sup> wheels, trailer, etc.)” The modifier “household” excludes living spaces which are rented out to overnight guests.

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.

On 11 March 2021 the San Juan County Planning Commission discussed the topic of nightly rentals in the Spanish Valley SVR District. Prior to the meeting, the Planning Commission received a staff memorandum which included the following statement<sup>15</sup> from the Office of the County Attorney.

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<sup>15</sup> This statement was sent by email on 8 March 2021 from Deputy County Attorney Alex Goble to San Juan County Planning Director Scott Burton.

“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<sup>16</sup>. 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].”

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<sup>16</sup> 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. In the Table of Uses for the A-1 Agricultural District of the 2011 Zoning Code, Pre-HUD- Code Manufactured (mobile) Homes are expressly prohibited.

During the 11 March 2021 Planning Commission meeting Deputy County Attorney Alex Goble provided information to the planning commissioners and answered questions from property owners who attended the meeting. (Some of the discussion during the meeting was among property owners and not between a property owner and Deputy County Attorney Goble.) Included in the discussion were the following.

- The Office of the County Attorney reviewed the Spanish Valley Development Ordinance, focusing on short-term rentals in the Spanish Valley Residential (SVR) District. It was determined that short-term rentals are not permitted uses in the Spanish Valley Residential (SVR) District. The Office of the County Attorney said that short-term rentals were commercial activities, which were not authorized in the SVR District.
- The Office of the County Attorney found that if a short-term rental was in operation and approved prior to the adoption of the Spanish Valley Development Ordinance, operations might be a legal nonconforming use.
- All the property within the SVR District was previously in the A-1 Agricultural District of the 2011 Zoning District. The land uses in the SVR District were governed under the A-1 District of the 2011 Zoning Code.
- Many property owners claimed they had operated a short-term rental on their property prior to the adoption of the Spanish Valley Development Ordinances. The property owners felt those uses were previously approved and that those uses should be grandfathered or be legal nonconforming uses.
- The County's business license ordinance was adopted in 2020. Prior to that ordinance's adoption, business licenses were not issued to short-term rental property owners. Since its adoption, the County Economic Development Office has been sending letters to known businesses informing them of the County's business license requirement.

- Unlike larger communities, including Utah and Salt Lake counties, San Juan County has not had a code enforcement program – which investigates violations of the County ordinances by property owners<sup>17</sup>. Nevertheless, the County investigates complaints of ordinance violations received from citizens and property owners.
- Regarding a property owner who claims a legal nonconforming use, it is the responsibility [burden] of the property owner to show the nonconforming use.
- The Office of the County Attorney recommended that a property owner discuss the status of a legal nonconforming use with the property owner’s attorney.
- In some cases, business licenses were issued for short-term rentals in the SVR District. The Office of the County Attorney noted that the business licensing official is required to ensure there is zoning compliance before issuing the license. The Office of the County Attorney stated that when the licenses are renewed there will be a closer review of the zoning where the business is located.
- A resident stated that he believed there were about fifty (50) short-term rentals in the SVR District. He expressed concern that some of these businesses invested money in these short-term rentals based on oral or other representation from County officials that the rentals were authorized. The resident suggested members of the Planning Commission may have said that short-term rentals were allowed in the SVR District. The resident also claimed that the business owners were told they needed business licenses, applied for business licenses, and received business licenses. The resident said the County needs to do a better job of informing property owners.
- Another resident reported that having short-term rentals in his residential neighborhood has been a problem. The renters block property owners’ driveways and streets. The resident supported zoning which restricted short-term rentals in residential communities. The resident said this problem has been ongoing for several years.

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<sup>17</sup> The inference was that San Juan County has not proactively attempted to determine whether property owners in Spanish Valley were complying with the zoning ordinances.

- One person said that the problem is not the ordinance. The problem is that property owners were misled about the ordinance.
- After public comment, the Office of the County Attorney responded by saying:
  - o 1) the adoption of the Spanish Valley Development Ordinances in 2019 was a public process, with public hearings;
  - o 2) the Office of the County Attorney has advised the Planning Commission regarding the application and administration of land uses in the SVR District;
  - o 3) the advice of the Office of the County Attorney is that short-term rentals are prohibited in the SVR District;
  - o 4) property owners may have a remedy by documenting that their short-term rental property was vested (grandfathered or being a legal nonconforming use) prior to the adoption of the Spanish Valley Development Ordinances;
  - o 5) the Planning Commission does not have the authority to change the date of implementation of the Spanish Valley Development Ordinances; and
  - o 6) property owners have the ability, through the political process, to request that the San Juan County Board of Commissioners change the zoning.
- One person said that the issue of short-term rentals in the Spanish Valley residential neighborhoods was discussed going back to 2017 when Landmark worked on the Area Plan. The person felt that raising these issues now, at the last minute, was frustrating because the issue had been publicly discussed since 2017.

- One speaker said he has a letter dated 18 June 2020 from the County saying that his short-term rental was legal. The speaker was frustrated that the County is now saying the use is not authorized. The Office of the County Attorney responded by saying his recourse is to document a legal nonconforming use of the property.
- During the discussion, the County Chief Administrative Officer Mack McDonald offered to review any information provided by a property owner regarding the status of their property.
- During the meeting it was mentioned that in other Spanish Valley zoning districts, other than the SVR District, short-term rentals are allowed, with conditions.

## *Legal Nonconforming Uses and Equitable Estoppel*

Legal Nonconforming Uses. The principles relevant to a finding that a land use qualifies as a legal nonconforming use include the following:

- The scope of use allowed under a legal nonconforming use is determined by what activities or uses were *authorized* prior to the adoption of the zoning ordinance which prohibits or restricts the land use<sup>18</sup>;
- Legal nonconforming uses cannot expand beyond the historical (previously *authorized*) physical boundaries – in other words, the use must remain within the property boundaries existing when the use became nonconforming<sup>19</sup>;
- Constructing new structures or buildings on nonconforming use property is generally not authorized<sup>20</sup>;
- Changes in the nonconforming uses may not deviate from the essential character, nature, or kind of the prior *authorized* use<sup>21</sup>; and

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<sup>18</sup> See *New London Land Use Assoc. v. New London Zoning Bd.*, 130 N. H. 510 (1988); *Residents Defending Their Homes v. Lone Pine Hunters' Club, Inc.*, 155 N.H. 486 (2007); *State ex. rel Brill v. Mortenson*, 6 Wis. 2d 325 (1959).

<sup>19</sup> See Utah Property Rights Ombudsman Opinion 186 (24 May 2017), which referenced *Gibbons & Reed Co. v. North Salt Lake City*, 19 Utah 2d 329, 431 P. 2d 559 (1967). See also *Buffalo Crushed Stone, Inc. v. Town of Cheektowaga*, 13 N.Y. 3d 88 (2009); *Rudolf Steiner Fellowship Foundation v. De Luccia*, 90 N.Y.2d 453 (1997); *Town of Hampton v. Brust*, 122 N. H. 463 (1982); *County of San Diego v. McClurken*, 37 Cal.2d 683 (1951); *Lessard v. Burnett County Bd. of Adjustment*, 2002 WI App 186. An exception to this rule is made when the nonconforming property is used for mining or mineral extraction. In such cases, the courts apply the Doctrine of Diminishing Assets.

<sup>20</sup> *Lake Bluff Housing Partners v. City of South Milwaukee*, 197 Wis. 2d 157 (1995) (where developer failed to obtain a valid building permit prior to rezone, the developer had no legal right to build the desired project); *Chizum v. Elkhart County Plan Commission*, 17 Ind. App. 691, 263 N.E.2d 654 (1970).

Expanding existing structures on nonconforming use property is prohibited. *Stan Moore Motors, Inc. v. Polk County Bd. of Adjust.*, 209 N. W. 2d 50, Iowa (1973).

<sup>21</sup> The intensification or enlargement of nonconforming uses (within the confines of the property) is not necessarily proscribed. *Peirce Appeal*, 119 A.2d 506, 509 (Pa. 1956); *Lucile Bartz v. Bd. of Adjustment*, 80 Wn.2d 209 (1972); *Robert H. Keller v. City of Bellingham*, 92 Wn.2d 726 (1979). However, changes in nonconforming uses may not deviate from the essential nature of the previously lawful use. *Dearden v. City of Detroit*, 70 Mich App 163 (1976); *Norton Shores v. Carr*, 81 Mich App 715 (1978); *New London Land Use Assoc. v. New London Zoning Bd.*, 130 N. H. 510 (1988). To determine the essential nature of the previous legal use, a court may look at the prior legal

- Changes in the nonconforming uses may not significantly change the impacts on abutting property or the neighborhood<sup>22</sup>.

A legal nonconforming use is terminated if the property is abandoned over a period. The test for abandonment includes evidence of both the intent to abandon and actual abandonment.

In deciding whether, prior to the adoption of the Spanish Valley Development Ordinances, Kimberley Camberlango had a legal nonconforming use of her property a core question is: Was the use of the Camberlango property as a nightly rental *authorized*? If the property could not be used as a nightly rental prior to the adoption of the Spanish Valley Development Ordinances, a claim of nonconforming use fails.

The following are relevant in determining when a prior use is legally nonconforming.

The 2011 San Juan County Zoning Code [§1-5 Definitions (69)] defines a nonconforming use as: “A use of land that *legally existed* before its current land use designation, has been maintained continuously since the time the land use ordinance regulation governing the land changed, and because of one or more subsequent land use ordinance changes, does not conform to the regulations that now govern the use of the land.” See also Utah Code 17-27a-103 (47) (County Land Use, Development, and Management Act) (Definitions).

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conforming use as a whole to see if the proposed or current use differs from the from the prior use in “character, nature, and kind” or whether the proposed use under the new zoning code will have a substantially different impact on abutting property or the neighborhood? See *Joseph P. Hurley v. Town of Hollis*, 143 N. H. 567 (1999) [“We are mindful that nonconforming uses cannot be substantially enlarged or expanded, but may only be altered ‘where the expansion is a natural activity, closely related to the manner in which the piece of property is used at the time of the enactment of the ordinance creating the nonconforming use.’ *New London Land Use Assoc. v. New London Zoning Bd.*, 130 N.H. 510; 543 A.2d 1385 (1988)”]; *Town of Salem v. Wickson*, 146 N. H. 328 (2001). See also *Town of Bridgewater v. Chuckran*, 351 Mass. 20 (1966) [court adopted a three-part test: Does the use reflect the nature and purpose of the use prevailing when the zoning law took effect? Is there a difference in the quality of the character as well as the degree of use? Is the current use different in its effect on the neighborhood?].

<sup>22</sup> However, the modification of a prior legal nonconforming use will not be barred by a claim that the use harms the neighborhood if the alleged harm is minimal or insignificant. *L. Grossman & Sons, Inc. v. Town of Gilford*, 118 N. H. 480 (1978) [court found that changing an advertising sign in a commercial area among several other signs of similar size and nature had no appreciable effect on the neighborhood. The sign’s existence “in no way diminishes the value of other property. It is not a health or safety hazard. No fumes, smoke, or noise is generated by the sign to the detriment of the neighborhood.”].

The Utah Office of Property Rights Ombudsman uses the following definition in providing advice in land use disputes: “A nonconforming use is a land use that was established when *allowed by a zoning ordinance*, has been maintained continuously, but which would no longer be allowed due to an ordinance change.”

In other words, a use that was *never legal* is not a nonconforming use.

A case illustrating the principle of *prior legal use* is *Town of Alta v. Ben Hame Corporation*, 836 P.2d 797 (Utah Ct. App. 1992). The following summarizes the case.

Ben Hame Corporation (BHC) purchased property in Salt Lake County near the Town of Alta in Little Cottonwood Canyon. The property was in the Salt Lake County Forest Recreation/FR-0.5 land use district. The only permitted uses in that district were (1) agriculture; (2) single-family dwellings, however, not including hotels, apartment hotels, boarding houses, lodging houses, mobile homes, tourist courts, and apartment courts; and (3) accessory uses and structures customarily incidental to a permitted use. Notwithstanding the restrictions in the FR-05 zoning district, BHC constructed and operated residential properties for rent. BHC’s tax and corporate filings stated its business was “operation of hotels and inns.” BHC printed and distributed brochures and rate schedules advertising residential properties for rent. BHC’s published rates quoted a base rate plus a surcharge for each additional person. The standard BHC booking was stated as “7 days – Saturday to Saturday.” A service charge was added for shorter bookings. In 1988 BHC reported about \$54,000 in income from short-term rentals.

In 1982 the BHC property was annexed into the Town of Alta. The BHC property was in the FR (Forestry and Recreation) district of Alta’s zoning ordinance. That Alta FR district was the same or like the FR-0.5 district of the Salt Lake County ordinance. The same three permitted uses in the Salt Lake County ordinance were in the Town of Alta ordinance. The Town of Alta ordinance added the following language which was not in the County ordinance. “It shall be deemed a prohibited commercial use in a FR [Forestry and Recreation] zone to lease or rent any dwelling or other structure, or portion thereof, for lodging purposes, for a period of thirty (30) days or less.”

After annexation BHC applied to Alta's town clerk for a business license to operate a "lodging facility." Initially, the town clerk issues business licenses to BHC. No business licenses were issued later.

The Town of Alta filed an action against BHC for injunctive relief to prohibit BHC's ongoing short-term rentals. A trial court granted Alta summary judgment for injunctive relief. BHC appealed. The Utah Court of Appeals addressed the claims by BHC.

BHC provided evidence that a Salt Lake County official interpreted the County land use code as authorizing overnight rentals. The County official concluded the "accessory buildings" provision in the FR-05 district allowed rentals. BHC also pointed out that there were no enforcement actions taken by Salt Lake County.

The Utah Court of Appeals concluded that an accessory use to a single-family dwelling would not include overnight rental accommodations. The Court of Appeals found the following.

- A legislative purpose of the Salt Lake County ordinance was to maintain the character of a single-family neighborhood.
- The use of the phrase "customarily incidental" to the main use (a residential dwelling) means "a valid accessory use to a single-family dwelling is one which actually furthers or enhances the use of the property as a residence and not one which merely helps finance the property."

In response to BHC's claim that Salt Lake County had allowed or authorized overnight rentals, the Court of Appeals found the following: "County officials may not forfeit the power of enforcement by disregarding an ordinance."

Regarding BHC's claim that it had a legal nonconforming use, the Utah Court of Appeals concluded "a nonconforming use may not be established through a use which from its inception violated a zoning ordinance."

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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)

Zoning or equitable estoppel is a principle in equity, not in law. This means 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.

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). The facts in that appeal were previously summarized in this decision.

On appeal, 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.

*San Juan County Business License Ordinance*

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. (1 C)
- Any business license applications must be approved for property zoning by the County building inspector or zoning administrator. (1 F)

*Camberlango Business License Application and San Juan County Administrative Decision*

On 19 July 2022 Kali Bisco, representing Kimberley Camberlango and J & K Camberlango LLC, submitted a business license application. The license application was for an overnight rental business at 4896 Spanish Valley Drive, Moab, Utah 84532. The application reported that advertising of the property was “Airbnb Vrbo.”

The Camberlango application was received and managed by Nathan Pitts, San Juan County Economic Development and Visitor Services Office Manager. After receiving the Camberlango application, Nathan Pitts consulted with Scott Burton, San Juan County’s Zoning Administrator. On 23 August 2022 Nathan Pitts posted the following notice on the San Juan County portal relating to the subject application.

“Short term rentals are not a permitted use in the Spanish Valley Residential District. If this nightly rental was in operation prior to December 2019, please provide that information for us to verify that you were in operation prior to the zone change.”

Several days after the 23 August 2022 notice, Nathan Pitts had a telephone conversation with Kali Bisco. Ms. Bisco informed Nathan Pitts that the business was not operational prior to December 2019.

On 1 December 2022 Nathan Pitts sent a letter to “San Jan County Business Owner” at 4896 Spanish Valley Drive (the Camberlango property). The letter informed the business owner that a business license had not been approved. The Business Owner (Camberlango) was informed that the business could no longer be operated and was subject to fines.

On 20 January 2023 Nathan Pitts and Bruce Adams, San Juan County Commission Chairman, signed a letter to Brien J. Burbank (attorney with Strong and Hanni) and Kim Camberlango/J &K Camberlango LLC. The letter stated: “Your application for a business license related to the use of [4896 Spanish Valley Drive, Moab, Utah 84532] as an overnight rental is declined for the reason that said use is not allowed under the San Juan County Zoning Ordinance for Spanish Valley in existence at the time of application, either as a permissive [permitted], conditional, or non-conforming use.” The letter provided information regarding an appeal of the decision.

With its 24 March 2023 document submission, San Juan County provided ALJ Creswell an internet search report which stated that the Camberlango property was first listed on the internet on 25 September 2020 and by October 2020 had four (4) documented stays.

### Findings and Conclusions

Administrative Law Judge Creswell makes the following findings and conclusions based on the administrative record and the relevant legal framework.

1. From July 2016 to the date of this appeal, Kimberley Camberlango owned property at 4896 Spanish Valley Drive in the Spanish Valley community of San Juan County, Utah.
2. Kimberly Camberlango and her husband Jay Vincent Camberlango, who died in June 2019, purchased the property in July 2016 to establish an overnight rental enterprise.
3. The Spanish Valley Drive property is near Moab, Utah, a popular designation for tourists.
4. Prior to purchasing the Spanish Valley Drive property, an unidentified county representative informed Jay Camberlango that the “Spanish Valley area was zoned for nightly rental use.”
5. The report of the communication between Jay Camberlango and a County representative is not specific and did not state: whether the communication was oral or written; the name, the position, or the authority of the County representative; whether the County representative communicated a personal opinion or an official interpretation of a County ordinance; whether the County representative knew where in Spanish Valley the Camberlango property was located; and whether the County representative’s communication was clear, definite, and affirmative.
6. Prior to the end of the 2019 Tax Year, Jay and Kimberley Camberlango renovated a structure on the property; built a detached garage; and purchased beds, furniture, household supplies for the Spanish Valley Drive property.
7. For the 2019 Tax Year, Kimberley Camberlango filed a federal tax form which claimed a depreciation value of \$230,633 for the Spanish Valley Drive property, which was titled “Moab Nightly Rental” on the federal tax forms.

8. The Spanish Valley Drive property was renovated so the property could sleep nine (9) persons. A detached garage was built on the property so that renters would have a place to park their ATV vehicles, which is a popular activity in the Moab area.
9. From August 2018 to April 2019, the Camberlango property was rented on three occasions as accommodations.
10. From July 2016 to 19 November 2019, the Camberlango property was in the A-1 Agriculture District of the 2011 San Juan County Zoning Code.
11. The 2011 Zoning Code states that the purpose for the A-1 Agriculture District is: “To promote and preserve, in appropriate areas, conditions favorable to agriculture and to maintain greenbelt open spaces. Such districts are intended to include activities normally and necessarily related to the conduct of agriculture production and to provide protection from the intrusion of uses adverse to the continuance of agricultural production.”
12. The 2011 Zoning Code includes a Table of Uses for three zoning districts in San Juan County, including the A-1 Agricultural District.
13. The 2011 Zoning Code, including the Table of Uses, sets forth what uses are permitted, conditional, and prohibited (or not authorized) for the three zoning districts.
14. The 2011 Zoning Code states that a use which is neither a permitted nor a conditional use “is not allowed” in the subject zoning district.
15. The 2011 Zoning Code includes several defined uses. Two of these uses were interpreted by the Office of the San Juan County Attorney as including short-term/overnight rentals: “lodging houses” and “tourist courts.”
16. In the 2011 Zoning Code Table of Uses (for the A-1 Agriculture and two other zoning districts) “lodging houses” are not included. Because lodging houses are excluded from the Table of Uses, they are prohibited in the A-1 Agricultural District.

17. A “lodging house” is defined in the 2011 Zoning Code as “a building where lodging only is provided for compensation to five (5) or more, but not to exceed fifteen (15) persons.”
18. The Camberlango property on Spanish Valley Drive includes “a building” which is rented as “lodging” “for compensation” for up to nine (9) persons.
19. The Spanish Valley Drive property is a “lodging house” within the definition of the 2011 San Juan County Zoning Code.
20. In the 2011 Zoning Code Table of uses, there are three uses which *potentially* might include overnight rentals: dude ranch/family vacation ranch (conditional use); dwellings (permitted use); and accessory buildings and uses (permitted or conditional).
21. The definitions of the three potential uses in the 2011 Zoning Code include characteristics or requirements which preclude a Camberlango overnight rental in any of the three identified land uses.
22. Lodging houses (and similar overnight accommodations) are prohibited in the A-1 Agricultural District.
23. The 2011 Zoning Code provides opportunities for the establishment of overnight rentals in the Controlled District Highway (CD-h) zoning district which is not included in the Chapter 11 Table of Uses. Short-term/overnight rentals may be approved by the San Juan County Planning Commission if the proposed use is in harmony with the intent of the commercial zone. A portion of Spanish Valley, along the highway which traverses Spanish Valley, is included in the CD-h District of the 2011 Zoning Code.
24. The 2011 Zoning Code states that where a San Juan County “department, officials, and public employees” issue a permit or license which conflicts with the Zoning Code, that license or permit “shall be null and void.” A reasonable inference is that when a San Juan County official or employee gives advice or acts contrary to the Zoning Code, that advice or action is “null and void.”

25. After 19 November 2019, the Camberlango property was in the Spanish Valley Residential (SVR) District of the Spanish Valley Development Ordinances or “Spanish Valley Sub-Ordinance.”
26. The Spanish Valley Sub-Ordinance created six zoning districts in the Spanish Valley community. Within two of those zoning districts, short-term rentals may be approved as conditional uses by the San Juan County Planning Commission. These two districts are adjacent or near the highway which traverses the Spanish Valley community. The Spanish Valley Residential (SVR) District, where the Camberlango property is located, is not one of the two zoning districts where short-term rentals may be approved as conditional uses.
27. The Spanish Valley Sub-Ordinance states the following purpose of the Spanish Valley Residential (SVR) District: “The Spanish Valley Residential (SVR) District is designed primarily to accommodate residential uses in large lots (one-acre or greater) and smaller lot (1/4 acre up to 1 acre) developments.”
28. The Spanish Valley Sub-Ordinance includes a SVR District Table of Uses which lists permitted and conditional uses. The Table identifies eighteen (18) uses, which are separated into three categories: Residential Uses; Civic and Institutional Uses; and Parks, Open Space and Agricultural Uses.
29. On 8 March 2021 the San Juan County Office of the County Attorney authored a legal opinion which addressed short-term rentals in the Spanish Valley Residential (SVR) District. That legal opinion stated that: (1) “short-term rentals in the Spanish Valley Residential (SVR) District are NOT permitted uses;” (2) “the express primary purpose of the SVR is to accommodate residential uses;” (3) a short-term rental “is not a residential use, it is commercial;” (4) “Even if the use were considered residential, it also would not meet the definition of a ‘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;” (5)

“Short-term rentals would not qualify as single-family or two-family dwellings;” and (6) “They [short-term rentals] would qualify, however, as lodging houses . . . or tourist courts.”

30. The 19 November 2019 adoption of the Spanish Valley Sub-Ordinance was preceded by an eight (8) month public engagement process which culminated on 17 April 2018 in the adoption of a Spanish Valley Area Plan, which became a chapter of the San Juan County Master Plan. During the public engagement process, San Juan County received public input including the following: “Would like it [Spanish Valley] to be a place with no hotels or over-night visitors (Airbnb) or similar tourist uses,” “The primary reason for living here is the relative isolation and distance from tourists and tourism impacts,” and “The area [Spanish Valley] should be more aligned with creating a community for its residents and less about accommodating the needs of tourists.”<sup>23</sup>

31. The Spanish Valley Area Plan public engagement process included interviews with neighborhood groups, public scoping meetings, public workshops, and an open house. From 13 February to 11 March 2018, San Juan County hosted a website and invited persons to submit written comments about the future of the Spanish Valley community in San Juan County. These activities were occurring as Jay and Kimberley Camberlango worked to establish an overnight rental in Spanish Valley.

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<sup>23</sup> During the public engagement process, a resident of Spanish Valley submitted this written comment. “In the past five years the number of nightly rentals has drastically increased (more than a dozen advertised in Airbnb and VRBO ranging in price \$60 to \$399 a night within a few miles of the Grand and San Juan County line). Many of these rental opportunities are advertised as ‘big enough for you and all your toys’ and are housing large groups/weddings/reunions/retreats for 20 to 40 people. Frequently the driveways are full with additional RVs and tents in the yard and cars parked along the roadway.” Comment included in the Landmark Design-published Verbatim Comments on the Draft San Juan County Spanish Valley Area Plan, comment period 13 February to 11 March 2018.

32. The Spanish Valley Area Plan, adopted by the San Juan County Board of Commissioners, includes the following guidelines relating to short-term rentals: “A guiding principle should be to create a non-tourism community that is distinctly different from Moab, yet still maintains its current close ties,” and “A guiding principle should be to encourage and support business development through the location of well-situated business development zones adjacent to the highway.”
33. Soon after the adoption of the Spanish Valley Area Plan, San Juan County began an eighteen (18) month process of preparing a zoning ordinance, or sub-ordinance, which would implement the guidelines of the Area Plan. A series of Planning Commission meetings were held from 17 May 2018 until 30 October 2019. Early in this process Landmark Design introduced drafts of a possible Spanish Valley zoning ordinance. In each of these drafts there was a residential district, later known as the Spanish Valley Residential (SVR) District. These draft or proposed ordinances prohibited short-term rentals in the residential districts. On the following dates, drafts of the proposed Spanish Valley zoning ordinance were posted on-line with an agenda of scheduled San Juan County Planning Commission meetings: 8 November 2018, 7 February 2019, and 30 October 2019.
34. On 15 December 2020, the San Juan County Board of Commissioners adopted an ordinance which established a business licensing program. The ordinance required any business in unincorporated San Juan County to have a business license. The ordinance states that before a business license is approved the business license “application must be approved for property zoning by the County building inspector or zoning administrator.”
35. Section 1-15 of the 2011 Zoning Code states that any County-issued license which is in conflict with the Zoning Code “shall be null and void.”
36. On 19 July 2022 Kali Bisco, representing Kimberley Camberlango and J & K Camberlango LLC, submitted a business license application for an overnight rental at 4896 Spanish Valley Drive.

37. The Camberlango application was subsequently reviewed by the San Juan County Zoning Administrator Scott Burton. After review by the Zoning Administrator, Camberlango was given the following notice: “Short term rentals are not permitted use in the Spanish Valley Residential District. If this nightly rental was in operation prior to December 2019, please provide that information for us to verify that you were in operation prior to the zone change.”
38. After this notice, San Juan County was informed by Kali Bisco that the Camberlango nightly rental operation was not in operation prior to December 2019.
39. On 20 January 2023 San Juan County informed Kimberley Camberlango that the application for a business license was declined “for the reason that said use is not allowed under the San Juan County Zoning Ordinance for Spanish Valley in existence at the time of the application, either as a permissive [permitted], conditional, or non-conforming use.”
40. After the receipt of the notice of declination, and as part of the de novo review of the denial of the Camberlango business license, attorneys for Kimberley Camberlango submitted documents which showed business activity associated with the Spanish Valley Drive property overnight rental or lodging house prior to 19 November 2019. The purpose of the information provided to ALJ Creswell was to demonstrate the Spanish Valley Drive property was operating as an overnight rental prior to 19 November 2019 and potentially a legal nonconforming use.
41. If Kimberley Camberlango can show she had a legal non-conforming use prior to 19 November 2019, San Juan County should approve the business license application.
42. The first and foundational requirement in demonstrating a legal nonconforming use is whether the use “legally existed” or was “allowed by a zoning ordinance” prior to the adoption of the zoning ordinance that now governs the use of the property.

43. Kimberley Camberlango has the burden to show that prior to 19 November 2019 the overnight rental at 4896 Spanish Valley Drive was a permitted or a conditional use in the A-1 Agricultural District of the 2011 San Juan County Zoning Code.
44. Since the Camberlango proposed use of the Spanish Valley Drive property meets the definition of a “lodging house” in the 2011 Zoning Ordinance *and* “lodging houses” are prohibited uses in the A-1 Agricultural District, Kimberley Camberlango cannot demonstrate the intended use is a nonconforming use.
45. If Kimberley Camberlango fails to meet her burden of proof in establishing a legal nonconforming use, Administrative Law Judge Creswell may nevertheless find that San Juan County is equitably estopped from challenging the Camberlango land use if: (1) the property owner inquired and conferred with the local zoning authority regarding the uses of the property at issue; (2) the local zoning authority committed an act or omission, which act or omission was clear, definite and affirmative; (3) the landowner reasonably relied on the act or omission; (4) because of that reliance, the property owner made substantial changes to the landowner’s position or incurred extensive expenses; and (5) the appeal authority [ALJ Creswell] determines that an injustice of sufficient gravity has occurred, after considering the needs of both the property owner and the public.

Spanish Valley Residential (SVR) District

46. Kimberley Camberlango’s intended use of her property at 4896 Spanish Valley Drive as an overnight rental is neither a permitted nor a conditional use in the Spanish Valley Residential (SVR) District.
47. Kimberley Camberlango’s intended use of her property as an overnight rental in the SVR District is prohibited and unauthorized.

Nonconforming use from operation in the A-1 Agricultural District

48. Overnight rentals are not permitted or conditional uses in the A-1 Agricultural District where Kimberley Camberlango's property was located prior to the establishment of the Spanish Valley Residential (SVR) District.
49. Since the Camberlango proposed use of the Spanish Valley Drive property falls within the definition of a "lodging house" in the 2011 Zoning Ordinance *and* "lodging houses" are prohibited uses in the A-1 Agricultural District, Kimberley Camberlango cannot demonstrate the intended use is a nonconforming use.
50. Any operation by Kimberley Camberlango's property as an overnight rental and lodging house in the A-1 Agricultural District was prohibited, did not "legally exist," and was not "allowed by a zoning ordinance."

51. Since Kimberley Camberlango’s use of her property as an overnight rental in the A-1 Agricultural District was prohibited and not authorized<sup>24</sup>, the property cannot be a legal nonconforming use<sup>25</sup>.

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<sup>24</sup> There are appellate decisions in some states, including Utah, where courts have found that the definition of residential dwelling includes short-term rentals. In *Brown v. Sandy City Board of Adjustment*, 957 P.2d 207 (1998), the Utah Court of Appeals interpreted a Sandy City zoning ordinance.

- The Sandy Code permitted “housing units with a structure with kitchen and sleeping facilities, . . . for occupancy by one family.”
- A family was defined by the Sand City Code as “an individual or two or more persons related by blood, marriage or adoption, or a group of not to exceed four unrelated persons living together as a single housekeeping unit.”
- The Sandy City Code did not place an express durational limit on the use of the property.
- The purpose of the residential zone was to establish quiet residential neighborhoods favorable to family life.
- The Sandy City Code did not explicitly prohibit short-term rentals in Sandy’s residential districts.

After reviewing the Sand City Code, the Utah Court of Appeals found:

- “The [Sandy City] Code does not limit the permitted use by referencing a type of estate the occupying family holds in the property or the duration of the occupancy.”
- “The only relevant inquiry is whether the dwelling is being used for occupancy by a single family.”
- “Although we recognize that short-term leases *may* disrupt the residential environment of a neighborhood in some instances, by failing to prohibit short-term leases, Sandy City has implicitly determined that such practices are conducive to a residential environment.”

In this matter, the San Juan County A-1 Agricultural District provisions differ from the Sandy City residential district provisions. The 2011 San Juan County Zoning Code defines a “dwelling” as “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.” The San Juan County Office of the County Attorney found (March 2021) that short-term rentals fall within the definition of “lodging houses” and “tourist courts.” A “lodging house” is defined as “a building where lodging is provided for compensation to five (5) or more, but not to exceed fifteen (15) persons.” A “tourist court” is “Any building or group of buildings containing sleeping rooms, with or without fixed cooking facilities designed for temporary use by automobile tourists or transients, with a garage attached or parking spaces conveniently located to each unit, including auto courts, motels, or motor lodges.”

The Table of Uses for the A-1 Agricultural District **excludes** both lodging houses and tourist courts from the list of permitted and conditional uses. Consequently, these uses are expressly and explicitly prohibited.

Where “dwellings” are listed as authorized uses in the Table of Uses for the A-1 Agricultural District, “dwellings” reference families – single or two. The 2011 Zoning Code defines a family as “One or more persons occupying a

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dwelling unit and living as a single household unit, **as distinguished from** a group occupying a boarding house, lodging house, or hotel, defined herein.”

Other factors which support a conclusion that short-term rentals are not authorized in the A-1 Agricultural Zone include:

- The legislative purpose of the A-1 Agricultural District is “to promote and preserve, in appropriate areas, conditions favorable to agriculture and to maintain greenbelt open spaces . . . Such districts are intended to include activities normally and necessarily related to the conduct of agricultural production and to provide protection from the intrusion of uses adverse to the continuance of agricultural production;” and
- The fact that the 2011 San Juan County Zoning Code allows (as conditional uses) short-term rentals, lodging houses, or tourists courts; by providing for these uses along highways in the Controlled District Highway (CD-h) District.

<sup>25</sup> If the Camberlango rental *had been* a permitted use in the A-1 Agricultural District, Administrative Law Judge Creswell would have found that the evidence presented by Kimberley Camberlango sufficient to conclude that the Camberlango property was operating as an overnight rental prior to the adoption of the Spanish Valley Development Ordinances and would have been a legal non-conforming use.

### San Juan County Business License

52. Since Kimberley Camberlango's operation of an overnight rental at 4896 Spanish Valley Drive is neither permitted, a conditional use, nor a legal nonconforming use, Kimberley Camberlango does not qualify for a San Juan County business license.
53. It is unlawful for Kimberley Camberlango to operate or continue to operate an overnight rental business at 4896 Spanish Valley Drive<sup>26</sup>.

### Zoning Estoppel

54. Administrative Law Judge Lyn Creswell finds that San Juan County is not equitably estopped from the enforcement of its zoning laws and its business licensing requirements in this matter due to the following.
- a. The reported communication received by Jay Camberlango from an unidentified county representative lacks sufficient detail to determine that the communication was clear, definite, and affirmative.
  - b. The Camberlango decision to proceed with establishing an overnight/short-term rental at 4896 Spanish Valley Drive was not reasonable in light of the information available to the public prior to and before April 2018 that San Juan County (in its Spanish Valley Area Plan) considered short-term rentals incompatible with residential neighborhoods in Spanish Valley *and* in light of information available to the public from May 2018 to November 2019 that San Juan County was preparing to adopt a zoning ordinance which would prohibit short-term rentals in Spanish Valley residential areas.

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<sup>26</sup> Administrative Law Judge Creswell does not herein determine whether all or any other short-term rental enterprises operating in the SVR District are prohibited businesses. It is likely that a short-term rental established after 12 September 2011 in the A-1 Agricultural District could not demonstrate a legal non-conforming use status. However, such a determination should be made on a case-by-case basis.

- c. The impact on Kimberley Camberlango is not of sufficient gravity to warrant the remedy of equitable estoppel.

Conclusion

55. The Camberlango proposed use of property in Spanish Valley, San Juan County, Utah is prohibited in the SVR District, is not a legal nonconforming use, and San Juan County is not estopped from enforcing the County's zoning and business licensing ordinances<sup>27</sup>.

DECISION

The San Juan County 20 January 2023 decision to deny a business license to Kimberley Camberlango/J & K Camberlango LLC for an overnight rental business at 4896 Spanish Valley Drive, Moab, Utah 84532 is upheld.

A handwritten signature in black ink, reading "Lyn L. Creswell", is written over a horizontal line. The signature is stylized and cursive.

Lyn Loyd Creswell  
San Juan County Administrative Law Judge

12 April 2023

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<sup>27</sup> On 11 March 2021 Deputy County Attorney Alex Goble suggested that SVR District property owners desiring to operate short-term rentals consider legislative alternatives.