

San Juan County, Utah
Administrative Law Judge

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| Harold Saunders |) | |
| |) | Administrative Law Judge |
| |) | Lyn Loyd Creswell |
| v. |) | |
| |) | Facts, Legal Framework and Analysis, |
| San Juan County, Utah |) | Findings, Conclusions, |
| |) | Decision |
| |) | |
| |) | 1 April 2024 |

On 28 April 2023 Ryan B. Hancey, representing petitioner Harold Saunders, submitted a “notice of claims” to San Juan County Clerk/Auditor¹. The notice asserted three (3) claims.

1. That the Spanish Valley Development Ordinances, adopted on 19 November 2019, were invalid and void *ab initio* due to San Juan County’s failure to notify, by mail, each affected landowner and failure to post the proposed Ordinances on the required websites.
2. That San Juan County is equitably estopped from prohibiting short-term nightly rentals due to petitioner’s reasonable reliance on the County’s assertions.
3. That the Spanish Valley Development Ordinances do not expressly prohibit short-term nightly rentals in the Spanish Valley Residential (SVR) District.

¹ Prior to filing the notice of claims, petitioner’s attorneys communicated with the San Juan County Office of the County Attorney. These communications included the following: a 14 February 2023 email to County Attorney Brittney Ivins from Ryan B. Hancey (with Kesler Rust); two emails on 28 February 2023 between Deputy County Attorney Mitchell Maughan and attorney Ryan B. Hancey; a 2 March 2023 email from County Attorney Brittney Ivins to Ryan B. Hancey; a 3 March 2023 email from Deputy County Attorney Mitchell Maughan to Ryan B. Hancey; a 14 March 2023 email from Ryan B. Hancey to deputy county attorneys Mitchell Maughan and Jens Nielson; a 27 March 2023 email from attorney Austin Turley (with Kesler Rust) to deputy county attorneys Mitchell Maughan and Jens Nielsen; a 6 April 2023 email from Mitchell Maughan to Austin Turley; a 13 April 2023 email from Austin Turley to Mitchell Maughan; and a 14 April email from Mitchell Maughan to Austin Turley.

On 8 May 2023 San Juan County referred petitioner's claims to San Juan County Administrative Law Judge (ALJ) Lyn Loyd Creswell.

On 11 May 2023 ALJ Creswell hosted a virtual meeting (pre-hearing conference) with attorneys representing petitioner and San Juan County. Following the virtual meeting, on 12 May 2023, ALJ Creswell published a "Prehearing Memorandum and Order" relating to the appeal.

On 8 June 2023 San Juan County filed a motion to dismiss petitioner's notice of claims. On 6 July 2023 petitioner submitted a memorandum opposing the County's motion to dismiss.

On 2 August 2023 ALJ Creswell hosted a virtual meeting with attorneys representing the parties. During that meeting, San Juan County withdrew its motion to dismiss regarding items 2 and 3 in the 28 April 2023 notice of claims. The County requested that item 1 of the notice of claims be dismissed. ALJ Creswell notified the parties he would not adjudicate item 1 (relating to the alleged failure of San Juan County to properly notice the Spanish Valley Development Ordinances prior to adopting the ordinances on 19 November 2019) since it was a legislative action rather than an administrative action. (In an email dated 24 July 2023 ALJ Creswell previously informed the parties' attorneys that he would not adjudicate the challenge to the San Juan County Commission's adoption of the Spanish Valley Development Ordinances.)

At the 2 August 2023 virtual meeting, the parties agreed to ALJ Creswell's review and adjudication of items 2 and 3 of the notice of claims.

On 4 August 2023 ALJ Creswell published a Prehearing Memorandum and Order directing submissions relevant to the issues associated with items 2 and 3 of the notice of claims.

On 30 August 2023 ALJ Creswell received documents and affidavits ordered in the 4 August 2023 Prehearing Memorandum and Order.

On 20 September 2023 ALJ Creswell published a Memorandum and Order – ordering additional submissions by the parties. The requested submissions were received by ALJ Creswell on 13 November 2023.

Based on documents and other submissions, ALJ Creswell prepared a draft decision and sent the draft decision to the parties’ attorneys on 11 December 2023.

On 26 January 2024 Harold Saunders submitted a response to ALJ Creswell’s 11 December 2023 initial decision. On 29 January 2024 San Juan County submitted a response to ALJ Creswell’s 11 December 2023 initial decision.

On 27 February 2024 ALJ Creswell hosted a conference. During that conference ALJ Creswell updated the parties on his preliminary decision. The parties requested the opportunity to submit supplemental material.

The decision here includes the following.

- A summary of relevant facts relating to item 2 of petitioner’s notice of claims.
 - The legal framework associated with item 2 of petitioner’s notice of claims.
 - The legal framework and analysis associated with item 3 of petitioner’s notice of claims.
 - Findings.
 - Conclusions.
 - Decision.
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A summary of relevant facts relating to item 2 of petitioner’s notice of claims

On 19 November 2019 the San Juan County Board of Commissioners adopted the Spanish Valley Development Ordinances, which included the creation of six new zoning districts for Spanish Valley – replacing two prior zoning districts under the 2011 San Juan County Zoning Code.

Prior to the San Juan County Board of Commissioners’ adoption of the Spanish Valley Development Ordinances, the following public process occurred.

- In 2017 San Juan County began focusing on land uses in the Spanish Valley community. 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 2017². 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.
 - o “Would like it [Spanish Valley] to be a place with no hotels and over-night visitors (Airbnb) or similar tourist-based uses.”
 - o “Many people want to build small homes on their properties that they can rent out or subdivide and sell – we 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,

² 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.”

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 roadways³.
- 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 Zoning Director 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.
- On 17 April 2018 the San Juan County Board of Commissioners unanimously adopted the San Juan County Spanish Valley Area Plan.

³ 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.

- 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.”⁴ When adopted, the Spanish Valley Area Plan became a chapter of the San Juan County General Plan.
- Relevant to the location of short-term/overnight rentals in Spanish Valley residential neighborhoods, the Spanish Valley Area Plan included the following guidelines.
 - o 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.
 - o A guiding principle should be to encourage and support business development through the location of well-situated business development zones adjacent to the highway [US Highway 191].
- After the adoption of the Spanish Valley Area Plan, the Plan was posted on the San Juan County website.
- 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 Harold Saunders property.
- On 8 November 2018 the Planning Commission received another presentation relating to a 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.
- On 13 December 2018 the Planning Commission again discussed a San Juan County Spanish Valley zoning 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.

⁴ 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).

- On 30 October 2019 the Planning Commission met. Included with the meeting agenda was a 13 September 2019 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.
- 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 published 19 November 2019 meeting packet for the Board of Commissioners' meeting included the 13 September 2019 draft Spanish Valley Development Ordinances. After consideration of alternatives to the 13 September 2019 draft Ordinances, the Board of Commissioners adopted the 13 September 2019 version of the Spanish Valley Development Ordinances.
- In the Spanish Valley Development Ordinances was the Spanish Valley Residential (SVR) District. There were few significant changes in the wording of the SVR District from the first 17 May 2018 (draft made available to the public) and the final adopted 13 September 2019 version Ordinances.
- Associated with the following San Juan County public meetings, the Utah State Public Meetings website included working drafts of a future Spanish Valley land use ordinance: 8 November 2018 San Juan County Planning Commission meeting; 7 February 2019 San Juan County Planning Commission meeting; 30 October 2019 San Juan County Planning Commission meeting; and 19 November 2019 San Juan County Board of Commissioners meeting.
- Prior to the 19 November 2019 Board of Commissioners' meeting (where the Spanish Valley Development Ordinances were adopted), the 8 and 13 November 2019 editions of the *San Juan Record* (a newspaper serving San Juan County, Utah) included a "public notice" that the San Juan County Board of Commissioners would consider a draft Spanish Valley Residential (SVR) District ordinance on 19 November 2019. The place and time of the meeting were included. Notice was also given regarding how the public could view the proposed ordinance on the Utah Public Notice website.

Between 2019 and 2021 there was a turnover of San Juan County employees and officers. Included in this turnover were individuals who acted as County Chief Administrative Officer and as County Zoning Director.

In March 2011 Harold Saunders purchased Lot 49, 177 East Mt. Peale Drive. The original plan for Lot 49 was for a single-family dwelling. Around January 2018 Harold Saunders and his wife decided to convert the property to a short-term nightly rental.

In February and March 2019 Saunders had conversations with a land surveyor about subdividing Lot 49 into two lots becoming Lot 49-A and Lot 49-B.

From March 2019 through 12 September 2019 Saunders had regular contact with San Juan County Zoning Director Walter Bird, and with San Juan County Planning Commissioners Lloyd Wilson and Cole Cloward. Bird, Wilson, and Cloward were aware that Saunders intended to use 49-B as a residence for nightly vacation rental. Bird, Wilson, and Cloward verbally assured Saunders the residence would be approved for use as a nightly rental.

In the spring of 2019 Saunders discussed a specific issue with San Juan County Zoning Director Walter Bird. The issue involved the appropriate lot size for the nightly rental project. Bird suggested that a half-acre (rather than a quarter-acre) for a nightly rental would be approved without issue.

In May and June 2019 Saunders had several conversations (in person and over the telephone) with San Juan County Planner Scott Burton about subdividing 177 E Mount Peale Drive (Lot 49). Saunders informed Burton that he intended to use 49-B as a nightly vacation rental. Saunders' discussions with Burton included whether a fire sprinkler was required for the Lot 49-B structure. Burton informed Saunders that no fire sprinklers were required because San Juan County did not distinguish between nightly rentals and single-family dwellings regarding fire sprinklers.

In May 2019 Saunders hired Surveyor Brad D. Bunker to prepare a plat amendment for the subdivision. The plat was titled San Juan Estates Phase 5 Subdivision Amendment No. 1. The new subdivided lot was labeled 49-B. Bunker signed the plat amendment on 10 September 2019.

In or about June 2019 Saunders had at least five telephone conversations with San Juan County Zoning Director Walter Bird about nightly rentals. Bird repeatedly informed Saunders that nightly rentals could be operated in Spanish Valley.

The Subdivision amendment was considered by the Planning Commission on 12 September 2019. The amendment was tabled pending consideration of a lot size reduction ordinance. Two members of the Planning Commission and two employees of the County Building and Zoning Departments knew that Saunders' Lot 49-B proposal was to construct and operate a short-term nightly rental. The minutes of the 12 September 2019 Planning Commission meeting do not mention the intended use of the subdivided property as short-term rentals.

Throughout 2019 – until 19 November 2019 – Bird, Wilson, Cloward, Burton with whom Saunders spoke were involved in the Planning Commission process to prepare the eventual Spanish Valley Development Ordinances for adoption by the San Juan County Board of Commissioners.

Saunders incurred initial costs for site preparation in September 2019. Actual construction began after the Planning Commission on 9 January 2020 recommended approving Lot 49-B as a subdivision amendment. Present at the 9 January 2020 Planning Commission were Cole Cloward, Lloyd Wilson, Walter Bird, and Scott Burton who previously discussed the nightly rental intended use of the subdivided property with Harold Saunders. However, the minutes of the 9 January 2020 Planning Commission meeting include no mention of the intended use of the subdivided property as a short-term rental.

On 4 February 2020 the San Juan County Board of Commissioners approved the Planning Commission-recommended Lot 49-B subdivision amendment. The minutes of the Commission meeting did not mention the intended use of the parcel as a short-term rental.

If the Board of Commissioners on 4 February 2020 had approved the subdivision amendment for use as short-term rentals, that approval would have not been allowed under the San Juan County subdivision ordinance which prohibited approvals of subdivision amendments which violated the County's land use ordinance.

On 5 February 2020 Harold and Charla Saunders filed with San Juan County, San Juan Estates Phase 5 Subdivision Amendment #1 as a separate parcel.

After the subdivision of former Lot 49, Saunders sought to sell Lot 49-A to Daniel McPherson. McPherson needed assurances that Lot 49-A could be used for nightly rental.

In an 18 June 2020 Walter Bird letter to prospective buyer Daniel McPherson and his broker Lynda Diem – Bird stated that the property was “currently operating as a legal short-term rental within the county.”

“This letter echoes and supports the opinion letter⁵ given to you by County Attorney Kendall Laws that the above-named property is currently operating as a legal short-term rental within the county. However, with that stated, the regulation of short-term rentals could foreseeably change in the area and the county’s legal opinion today on that matter is not binding on future decisions and actions by the legislative body of San Juan County to regulate short-term rentals.”⁶

Saunders sold Lot 49-A to McPherson in July 2020. (San Juan County parcel records state that on 13 July 2020 Charla and Harold Saunders transferred Lot 49-A to Daniel McPherson by warranty deed.)

In July 2020 Harold Saunders submitted a San Juan County building permit application for 171 E. Mt. Peale Drive (Lot 49-B). The proposed structure was for a 1040 square foot main level and a 200 square foot covered patio or deck. The building permit received San Juan County Fire Department and Planning approvals on 15 July and 12 August 2020 respectfully.

A building permit for 171 East Mount Peale (Lot 49-B) was approved and issued on 17 August 2020 (Permit #20065). The permit was issued to SA Construction LLC⁷. Owner of the property was identified as Harold Saunders. The legal description of the property was “San Juan Estates Phase 5 Amendment No. 1 Lot 49-B, Lot 49-B San Juan Estates Phase 5 Subdivision.” Building Permit # 20065 states: “It shall be unlawful to occupy this building until a Certificate of Occupancy is issued.” On 17 August 2020 Building Inspector Cole Cloward conducted an inspection of the footings on Lot 49-B.

⁵ Neither party has been able to locate this attorney opinion letter.

⁶ This letter was published after the adoption of the Spanish Valley Development Ordinances. The reference to possible future legislation to regulate short-term rentals may be referring to ongoing discussions among Planning Commissioners about a county-wide short-term rentals ordinance.

⁷ SA Construction LLC became a Utah business on 22 February 2018. The company’s registered agent is Harold Clair Saunders with an address at 184 East Mount Peale, Moab, Utah 84532.

Initial construction activity included plans, building permits, foundation work, framing, mechanical systems, and site preparation. The costs were roughly \$175,000. Impact fees for utilities were \$7,773.02. Fencing to divide the properties cost \$3,648.71.

Construction at Lot 49-B continued from September to November 2020 with framing, rough electrical and HVAC, windows, doors, and insulation. Drywall, paint, cabinets, doors, trim, countertops, showers, and bathrooms were completed between January and March 2021.

Building Inspector Cole Cloward conducted inspections of underground water pressure, pre-slab, insulation, mechanical, and other infrastructure between August 2020 and May 2021.

Throughout the building inspection process Cloward and Saunders had conversations regarding the project. Saunders repeatedly informed Cloward the intended use of Lot 49-B was for nightly vacation rental.

Throughout the construction of Lot 49-B building materials were often difficult to obtain due to COVID-19.

Saunders expended roughly \$285,000 for Lot 49-B construction including roofing, insulation and drywall, exterior work, indoor furnishing, painting, appliances, site improvements, sidewalk, and patio.

Saunders was a neighbor and friend of Kenny North. North informed Saunders of conversations he had with Walter Bird and members of the Planning Commission. Based on North's reports, Saunders' understanding that short-term rentals were authorized was reinforced by his conversations with Kenny North.

On 8 March 2021 San Juan County Deputy County Attorney Alex Goble authored a legal opinion which addressed short-term rentals in the Spanish Valley Residential (SVR) District. Goble's opinion was included in a "staff report" provided to the Planning Commission, and included in the meeting packet, for the 11 March 2021 meeting. Goble's opinion⁸ stated.

"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 dwellings⁹. 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]."

⁸ This opinion was sent by email on 8 March 2021 from Deputy County Attorney Alex Goble to San Juan County Planning Director Scott Burton.

⁹ 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.

At the 11 March 2021 San Juan County Planning Commission meeting, Deputy County Attorney Alex Goble stated that nightly rentals were not permitted in the SVR District, and that any in existence before December 2019 would need to seek status as legal non-conforming uses.

Harold Saunders was present at the 11 March 2021 Planning Commission meeting.

Portions of the 11 March 2021 meeting are included here (from an unofficial verbatim transcript).

Planning Commissioner: “The planning commission has been discussing a short-term rental ordinance¹⁰. . . Some questions have arrived in the past. . . We’ve had a discussion in our meeting about: are they permitted, are they conditional? . . . We asked Alex [Goble from the attorney’s office] to look into it and let us know how they wanted us to handle.”

Alex Goble: “The document [Goble’s opinion in the staff report] pretty much speaks for itself. . . This was the first time that somebody had approached our office to review the new 2019 ordinance [Spanish Valley Development Ordinances]. [The opinion] is limited to the residential zone. . . [Regarding statutory construction] our ordinance in this area is pretty clear that the permitted uses are the ones that are listed. And if it’s not listed, it’s not permitted. . . I’ve pointed out some of the shortcomings of the ordinance to this body before. . . In the residential zone [the 2019] ordinance prohibited adding new short-term rentals to that area.”

Planning Commissioner: “Chapter four, the Spanish Valley Business Flex Planning Community, the bottom of the first page, I think this is where Walter [Bird] got the idea [that short-term rentals were allowed] . . . First page of chapter four, right at the bottom page 28, it says overnight rentals in residential neighborhoods and other zones in the Spanish Valley zoning map are addressed in separate San Juan County ordinances. . . Any ordinance that are not in this ordinance, which we’ve reflected back to the A-1 [district of the 2011 Zoning Code] . . . I would agree with Walter [Bird] on that. [Overnight rentals are] addressed in the San Juan County ordinance, which would’ve been our old [2011 Zoning Code].”

¹⁰ For months prior to 11 March 2021 the San Juan County Planning Commission regularly discussed a short-term rental ordinance. 13 August 2020 Planning Commission Meeting Minutes (consideration of countywide short-term rental ordinance). 8 October 2020 Planning Commission Meeting Minutes (consideration of countywide short-term rental ordinance – with suggestion that Planning Commission to meet with San Juan County Economic Development Board and with County Commissioners Maryboy and Adams). 14 January 2020 Planning Commission Meeting Minutes (discussion about short-term rental ordinance for Spanish Valley – with a Planning Commission priority for 2021 a short-term rental ordinance). 11 February 2021 Planning Commission Meeting Minutes (discussion about a short-term rental ordinance).

Alex Goble: “The SVR doesn’t exist in any other ordinance. . . You can’t look to the old ordinance to say, well, what am I supposed to do in the SVR? Because the SVR isn’t even a thing in our 2011 records. It doesn’t exist. . . the other thing, the way that the [Spanish Valley Development Ordinances] was adopted, which is originally the overnight rental overlay was supposed to be separate and was supposed to be its own thing. . . Final point, even under the old 2011 ordinance [overnight rentals] are prohibited in the residential zones in those areas as well. . . The commercial nature of a short-term rental is prohibited in the residential area. . . The uses that came in would’ve been governed at that point in time under the A-1 [Agricultural District] when it switched to the SVR. The SVR is residential, not agricultural. . . The rules surrounding residential strictly prohibits specific types of commercial activities, including those that have been described in the letter [staff report] that was provided.”

Alex Goble and Planning Commissioner Cody Nielsen had an exchange about interpreting the Spanish Valley Development Ordinances.

- Cody Nielsen: “I have a question to help clarify for me. . . We had a discussion about being specific in our ordinances . . . We were talking about hotels and size and that we needed to specify in our ordinance what was allowed. . . If it wasn’t specified in the ordinance, then we were taking the view that it was allowed. . . What’s your interpretation there? Do we need to go in there and just specify that is allowed. I mean, because I looked at it the other way.”

- Alex Goble: “The best way when you’re drafting an ordinance for especially planning and zoning is to be as specific as possible because it answers all the questions upfront. It informs the public upfront. It informs investors who are looking at possibly purchasing property exactly what they can and cannot get into. So, the more specific you are, the better. In regards to the Spanish Valley [Development Ordinances], the way it is drafted – the residential is drafted in a way that it’s very clear that the permitted uses are listed and then, if it’s not listed, it’s not a permitted use. That is the inverse of some of the other areas where it says things along the lines of the following list is not exclusive. And so that is an indication that when you are reading that ordinance, that you would be reading it the other direction where it is, if it prohibited, then it’s allowed as long as it matches in nature to what is listed. But in the residential, it is the inverse. What is permitted is permitted. And if it’s not permitted, then it’s either prohibited or conditional. . . Under the 2011 overarching ordinance [2011 Zoning Code], it’s the umbrella ordinance. That one [2011 Zoning Code] has some definitions that were not considered when the [Spanish Valley Development Ordinance] was drafted. But [the definitions] do provide some guidance to us on how to treat certain things. But it is very much my preference that for the Spanish Valley [Development Ordinances] that a definition section that matches the language of the subordinate [Spanish Valley Development Ordinances] get created so that we can have a lot of these questions answered and that landowners can have clarity in their decisions.”

Kenny North: “I have a question for Alex [Goble]. The county has been over the last few months giving out business licenses in the [SVR] zone that you’re saying that it’s not approved for doing short term rentals. So, you say that your ordinance is one thing, but the county has been acting totally different.”

Alex Goble responded to Kenny North: “Scott [Burton] mentioned there may be some of those. . . In speaking with the Department of Economic Development, I pointed out that the business ordinance has a requirement that before the license is issued, they have to show compliance with zoning. . . So, if they were issuing licenses without first checking with zoning, then there’s an issue with the licensing division.”

Kenny North: “I actually purchased a piece of property, came into this planning and zoning meeting last September and told you guys I was going to do vacation rentals on these properties . . . and you approved my subdivision and you told me the different steps that I need to go through because you were allowing, at the time, vacation rentals. . . There’s over 50 homes right now that are being run as vacation rentals in your SVR zone. So, are you gonna go through to each one of those and give them a stop order? And how can you guys tell us to do one thing, we invest millions of dollars and then you come around and now you’re saying we can’t. I mean there is something about verbal contracts, verbal communication that I’ve heard from each one of you guys on the board saying certain things we can do. . . And you guys are the ones who said, go get your business licenses so we all go get our business licenses. Now where some of them got approved, some of the people who actually have those business licenses and are selling that home. . . You have all these people that have, I mean, we’re talking millions and millions of dollars, guys. This is not just a small issue. I think if you’re gonna put something out there and say, you can’t do this anymore, you gotta give people that have invested and purchased land and have all this money into it, time to actually comply with what you guys want to happen. Give us all conditional use permits. . . We talked in previous meetings about having some workshops and figuring out how the best way to do this. And we’re not having a workshop today. This is just like, hey, you can’t do it, period. So, I’m just, I’m super concerned about it. . . People are out with peace, they’re enjoying these properties, they’re enjoying Moab, they’re doing it peacefully. We’re not, you know, running Jeep Safari, you know, out here. It’s just people bringing their families and enjoying.”

Harold Saunders: “I’m Harold Saunders. I’ve been renting a home for a few years before the 2019 date. I have also built another one this year, to rent as well. . . planning on doing a nightly rental and you’re gonna strip that right from me as well, because I also had discussions, not with everybody, but particularly with Walter [Bird]. And that’s why I even ventured into building another house to rent. . . I think Kenny [North] has a very good point that we’ve been misled and we’ve all invested money now. And it isn’t something that you can just throw down. . . You can’t just set a date that’s in the past. There should be better

notification. I could see setting a date in the future and giving us all time to figure this out. But the implications of what you're entering into right here, financially are incredible."

Dave Evans: "I think a lot of this boils down to pretty poor communication by the county overall." Evans discussed misleading information on the San Juan County website relating to business licensing. "I think a lot of these concerns that have been raised over this, and the angst could be eliminated if there was a little better communication and even just website maintenance for that matter. . . I'm not a website guy, so I don't really know what all goes into that, but I don't think it'd be too hard to remove outdated and irrelevant documents, that completely lead astray the general public."

Commissioner Trent Shafer: "By way of clarification for the ordinance [Spanish Valley Development Ordinances] . . . The overnight accommodation overlay is a specific portion. It usually requires a legislative action by the County Commission in order to apply the overlay zoning to a specific area. It [the overlay zone] attaches to the Highway Commercial and other commercial areas. So, it's actually an overlay of the zoning that's not applicable to the residential. . . It's actually a legislative and not an administrative process. . . I'm not familiar at all of this stuff. This is all very new within the last 24 hours for me. I won't give you too hard of a time cuz it's a pretty new ordinance for all of us too cuz it was only about over a year ordinance."

Ann Austin: "I think it's easy to blame the PNZ [Planning and Zoning Commission] or the administration, but this has been an ongoing process. These ordinances have been discussed over and over again. I just feel like there's some responsibility for landowners, developers to have been part of this conversation earlier on, especially if they were planning to do short-term rentals and to weigh in on this matter instead of the last minute coming to the table and saying that they didn't know. Believe me, I have been frustrated with San Juan County since 2017, feeling like there's been poor communication. But that is just the reality of our county. And, so many improvements have happened over the last three years, four years. I just wanted to point that out that I think everybody's got some responsibility for paying attention to what's going on in our local government."

Property owner: "I feel like I did in good faith do everything I could understand what is required, coming to the government bodies, going through the planning commission, this is our intended use. And then even talking to commissioners, this is our intended use and we are good to go. And then, so I'm in a good faith thinking the understandings there and I try to be as open book as possible on everything. And now it feels like, oh well, I just don't know the ramifications I'm gonna have. It's just way above my pay grade and my understanding."

County Chief Administrative Officer Mack McDonald: “If we’ve got property owners that have gone through the process . . . if there’s property owners that have gone through a process and received approvals in the past since the zoning has been approved, come in, let’s talk. Let’s explore some options and see what we can do to move forward with it. The difficulty, you know, I make a thousand mistakes and the public will point out 2000 of them. Some I’m not even aware of. You know right now we’re out a planning director . . . you see a little bit more studying of the zoning ordinance so that you know those people that are trying to fill in the voids as we have questions. . . You delve further into them, which only brings out more issues and highlights some of the concerns. . . As we try to correct what was approved, I wouldn’t really say how strong our ordinances are. The ones who were approved were draft versions that we’re trying to work from, that are incomplete and separated from the overall ordinance. So, let’s come into a set up appointment and let’s see what we can do, what our next steps are to work through this process. Because we realized that there’s some misrepresentations of that ordinance that have taken place.”

There was discussion about the Spanish Valley nightly rental overlay zone relating to large projects, like hotels. One of the Planning Commissioners felt the nightly rental overlay zone does not seem to fit the smaller short term rental projects. Also, there was confusion regarding in which Spanish Valley zoning districts the overlay zone would operate.

Discussion on 11 March 2021 among the Planning Commissioners, County staff, and Deputy County Attorney Alex Goble involved footnote 2 found in Chapter 4 of Spanish Valley Development Ordinances. That footnote states “[o]vernight rentals in residential neighborhoods and other zones of the Spanish Valley Zoning Map are addressed in separate San Juan County Ordinances.” The Planning Commissioners and the County Zoning Director Walter Bird interpreted this footnote as allowing nightly rentals in the SVR District. Deputy County Attorney Goble disagreed with that understanding.

After the 11 March 2021 Planning Commission meeting, Saunders joined Kenny North and Ty Shumway in a meeting with Mack McDonald. It is unclear what was said in this meeting. The submitted statements of this meeting differ. However, after the meeting Saunders sent McDonald an email with information – which McDonald reported he requested during the meeting.

On 17 March 2021 Harold Saunders sent an email titled “Non-Conforming Permit Request” to Mack McDonald. The email stated: “Hello Mack – Thank you for reviewing our permit request.” Attached to the email was the 18 June 2020 letter from Walter J. Bird to Lynda Diem regarding “Zoning and Use Status of 177 East Mt. Peale Dr. Moab, UT 84532.”

Also, on 17 March 2021 Harold and Charla Saunders sent a letter to Mack McDonald. The letter recounted the history of 177 E. Mt. Peale [San Juan Estates Phase 5, Lot 49] (purchased in 2012 and operated in 2018 as a nightly rental). The letter then states: “We also divided the front portion of the lot as soon as water & sewer was finally extended into our part of San Juan County. The attached plat shows the adjustment of Lot 49 to Lot 49A (still 177 East Mount Peale) & Lot 49B (now 171 East Mount Peale). We did this with the intention of nightly renting out all 3 units. We decided in the spring of 2020 to sell the 177 E. Mount Peale house to Dan McPherson. We also attached the letter from San Juan at the time of the sale allowing for rentals. Harold also had several conversations with Walter Bird and Cole Cloward expressing our intention to rent out the 171 house as a nightly rental as soon as it was completed. Also attached is the 171 building permit, copies of our rental statements from Premier Property (for 2018 and part of 2019) & then from Vacasa (second half of 2019 and 2020). We expect to get a C of O [certificate of occupancy] for 171 E. Mount Peale in the next month.”

On 7 May 2021 San Juan County Chief Administrative Officer Mack McDonald sent a letter¹¹ regarding “Nightly Rentals at 177 (Lot 49B) and 171 (49A) East Mt. Peale Drive” to Harold Saunders. The letter stated:

Harold, I apologize for the delay receiving this letter regarding the nightly rental use of the dwelling units located at 177 East Mt. Peale Drive also known as Lot 49.

I have reviewed the information you submitted, the building permit, letter from Walter Bird, your nightly-rental history as far back as March 2018 and the continued nightly-rental use.

Because this use was permitted and allowed prior to the new zoning that took place for the original property 177 (Lot 49A), the nightly-rental continues to be allowed but now becomes a non-conforming use allowed for nightly-rentals to continue, however, the purpose of the non-conforming use is to eventually move to a Conditional Use permit or for the dwelling units to be utilized in compliance with the zone.

When you subdivided 177 East Mt. Peale Drive into Lot 49A and Lot 49B, that future use of night-time rentals would not be permitted under the current zoning. 177 East Mt. Peale Drive (Lot 49A) never changes so that remains, however, the new subdivided lot does have to comply with the current zoning uses for 171 (Lot 49B). The new zoning . . . It is

¹¹ McDonald’s letter switched or incorrectly referenced lots 49A and 49B in his letter. The transcript here of the letter correctly identifies lots 49A and 49B in context.

allowed to have long-term rentals which is what is indicated in Walter’s letter, it does not permit nightly rentals. Long-term rentals are different from nightly-rentals. Long-term allows for a month-to-month lease, completely different from a nightly-rental.

There is nothing to supporting grandfathering the prior zoning of this area to 171 (Lot 49B) East Mt. Peale Drive. It is a recent subdivision allowed under the current zoning of which the current zoning has to be applied.

Building inspector Cole Cloward conducted a final inspection of Lot 49-B on 25 May 2021, with instructions to “fix and call” once Saunders completed a number of tasks, including posting the address, finishing electrical work, and caulking plumbing fixtures and backsplashes. Once Saunders completed these tasks, he called Cloward who changed the status of the final inspection to “passed.” Cloward informed Saunders he (Cloward) would take care of the certificate of occupancy. However, a certificate of occupancy was not thereafter recorded.

On 18 May 2022 Emma Rice (compliance coordinator with Vacasa LLC¹²) submitted a business license application for a “nightly rental” business at 171 E. Mt. Peale. The business owners’ names were Harold and Charla Saunders. Advertising for the business included Airbnb, VRBO, Homeaway, and Vacasa.com. San Juan County notes associated with the license application include the following: (8 June 2022) “Prior nonconforming use will need to be verified”; (13 June 2022) “Payment for one time processing and annual license fee received.”; (23 August 2022) “Host compliance shows this property was listed in 2021. Short term rentals are not permitted in the Spanish Valley as of December 2019.”; (1 December 2022) “Declined letter sent.”

Without a certificate of occupancy, Harold Saunders rented 171 E. Peale Drive (or allowed occupancy of 171 E. Peale Drive) after 25 May 2021 – including on or about the following dates: 31 December 2022, 24 January 2023, 23 February 2023, 30 March 2023, 19 April 2023, and 1 May 2023.

Without a business license, Harold Saunders rented 171 E. Peale Drive and conducted business at 171 East Mt. Peale Drive – including on or about the following dates: 31 December 2022, 24 January 2023, 23 February 2023, 30 March 2023, 19 April 2023, and 1 May 2023.

¹² Vacasa LLC registered as a Utah corporation with the State of Utah on 30 July 2014. Its registered agent is CT Corporation System at 1108 East South Union Avenue, Midvale, Utah 84047. Vacasa is a vacation rental management company based in Portland, Oregon.

Harold Saunders provided the following information about the physical characteristics and intended use of Lot 49-B as a nightly rental.

- The Lot 49-B structure will accommodate eight (8) people overnight.
- Guest off-street parking will not be permitted.
- The 49-B structure will not be used as an event venue.

Legal framework associated with item 2 of petitioner’s notice of claims

In Utah and other states, developers may assert a claim zoning estoppel¹³ against a local government. Zoning estoppel arises out of equitable principles.

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.¹⁴” 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.”

¹³ The analysis here focuses on equitable estoppel or zoning estoppel. However, land use treatises typically include zoning estoppel and vested rights in the same chapter. See Daniel R. Mandelyn and Michael Alan Wolf, *Land Use Law*, Chapter 6 (Estoppel and Vested Rights); James A. Kushner, *Subdivision Law and Growth Management*, Chapter 10 (Vested Rights) with Section 10.2 titled “Estoppel compared.” The Utah Office of the Property Ombudsman addresses “zoning estoppel” in its online vested rights section.

It is often difficult to distinguish equitable estoppel from vested rights in case law. Daniel R. Mandelyn asserts that the cases which address vested rights and equitable estoppel rely on the same or similar legal principles. “The factual basis for showing a vested right is the same as the factual basis for proving estoppel, and the courts may apply both theories with identical results.” Daniel R. Mandelyn, *Land Use Law*, Section 6.12 (Estoppel and Vested Rights: The Theory).

Based on Administrative Law Judge Creswell’s reading of many vested rights and equitable estoppel cases, one distinction might be the oft quoted zoning estoppel principle that the balance of fairness or justice must weigh on the side of the property owner and not on the local government.

¹⁴ See also *Utah County v. Young*, 615 P.2d 1265 (1980) (Utah Supreme Court).

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.

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 public¹⁵. 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 conduct¹⁶.
- Statements by planning commissioners are generally considered advisory and not binding on the government entity¹⁷.
- A landowner’s reliance on a government action must be “sufficiently substantial.” A determination of substantiality is made on a case-by-case basis¹⁸. It may consider a range of factors, including the nature of the person or entity (whether the developer was an

¹⁵ *Carty v. City of Ojai*, 143 Cal. Rptr. 506, 77 Cal. App.3d 329 (1978) (California Court of Appeal).

¹⁶ *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).

¹⁷ *Colonial Investment Company v. The City of Leawood, Kansas*, 7 Kan. App.2d 660, 646 P.2d 1149 (1982).

¹⁸ *1350 Lake Shore Associates v. Healey*, 861 N.E.2d 944 (Supreme Court of Illinois) (2006).

entity for whom the costs would be considered a substantial expenditure¹⁹), 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 fails²⁰.

- Equitable estoppel may arise when reliance follows an “official act” by the local government²¹. Such official acts may include a building permit or plat approval²².
- Equitable estoppel will not be found where the landowner does not fully disclose the intended use²³ of the property or misrepresents information provided to the local government.
- A landowner’s expenditures after notification²⁴ that his land use violates local zoning may not be considered good faith or reasonable reliance.
- The balance of equities²⁵ 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.

¹⁹ *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.).

²⁰ *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).

²¹ *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).

²² *Board of Supervisors of Fairfax County v. Medical Structures*, 192 S.E.2d 799, 213 Va. 355 (1972) (Supreme Court of Virginia).

²³ *Checketts v. Providence City*, 420 P.3d 71, 2018 UT App 48 (2018).

²⁴ *Checketts v. Providence City*, 420 P.3d 71, 2018 UT App 48 (2018).

²⁵ *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).

Relevant to petitioner's claim of equitable estoppel relief in this case is the following San Juan County ordinances.

San Juan County Business License Ordinance. On 15 December 2020, San Juan County adopted a business license ordinance. Ordinance 2020-10-A. That ordinance includes the following provisions.

- §110.002 (License Required). (A) (1) "It is unlawful for any person, firm, or corporation or an employee thereof, to commence, engage in, carry on or operate a business in the unincorporated county without first applying for and obtaining a business license.

- § 110.010 (Examinations and Inspections) (C) "It shall be the duty of the County Attorney to cause complaints to be filed against persons violating any of the provisions of this chapter.

San Juan County Subdivision Ordinance. §152.020 (A) of the San Juan County land use ordinance provides for the approval of subdivision amendments. This section states: "The Board of County Commissioners, acting as the land use authority, is authorized to amend or vacate any subdivision plat by signing an amended plat or passing an ordinance describing the subdivision or the portion being vacated, *if the proposal does not violate other land use ordinances contained herein.*"

The procedure prior to the Board of Commissioners consideration of a subdivision amendment includes a recommendation from the Planning Commission. §152.020 (B) (2).

Legal framework and analysis associated with item 3 of petitioner’s notice of claims

Appellate case (and advisory opinion) principles relevant to interpreting potential restrictions on short-term rentals in a residential neighborhood

Slaby v. Mountain River Estates Residential Ass’n, Inc., 100 So. 3d 569 (Ala. Civ. App. 2012) (Court of Civil Appeals of Alabama). Mark and Maria Slaby owned a lot and built a cabin in the Mountain River Estates subdivision in DeKalb County, Alabama. The Slaby property was within a homeowner’s association (HOA), the Mountain River Estates Residential Association (Association). The governing documents of the HOA included the following restrictive covenant.

“The subject property is restricted to single family residential purposes. No commercial, agricultural, or industrial use shall be permitted.”

One of the Association bylaws stated that parcels shall be “leased” subject to the terms and conditions of the restrictive covenants.

The Slabys rented²⁶ their property to persons who were not related family members and the Association asserted that such rental activity was a commercial use in violation of the restrictive covenant. The Association sought to enjoin the Slabys’ use of the property as a short-term rental.

The Alabama Court of Civil Appeals addressed the Slabys’ claim that the Association’s restrictive covenant did not preclude short-term rentals. The Court’s analysis follows.

- The controlling phrase in the HOA restrictive covenant is “single family residential purposes only.”
- “Residential use, without more, has been consistently interpreted as meaning that the use of the property is for living purposes, or a dwelling, or a place of abode, and that the transitory or temporary nature of such use does not defeat the residential use.”

²⁶ The Slabys’ property was a five-bedroom log cabin. The Slabys prepared brochures about how to rent the cabin and placed the brochures at the local county tourist bureau. Later the Slabys created their own web site, to inform potential guests about the cabin. Interested persons contacted Maria Slaby via email or telephone. All rentals were subject to a vacation rental agreement, which governed use of the property. The Slabys did not list the cabin with a rental company or management company. Rental money was exchanged off-site via the Internet.

The Slabys did not provide transportation or food services for the renters. Renters prepared their own meals, changed their own linens, took out the garbage, did their own laundry, and cleaned the house during their stay. After guests left, the Slabys hired someone to clean the cabin.

- Regarding the duration or length of the rental period, the Alabama court noted that the Association’s bylaws allowed property to be leased. The appellate court’s discussion included the following. “We read nothing in the restrictive covenants, as written, addressing the acceptable length of a rental or lease of the property. . . A majority of the members of the Association rejected attempts to provide further definition of the property owners’ leasing rights. In the absence of some specific restriction, the Slabys presumably can authorize their renters to use the cabin in the same manner, and for the same period, that the Slabys themselves use it.”

- Regarding the argument that the Slabys’ short-term rental was a commercial use and violated the restrictive covenant, the Alabama court held: “When the Slabys rent their cabin, they no doubt realize some pecuniary gain, but neither that financial benefit nor the advertisement of the property or the remittance of a lodging tax transforms the nature of the use of the property from residential to commercial. . . In this case no mercantile or similar activity occurs at the cabin. The actual renting of the cabin, and any financial transactions associated therewith, occurs off-site. The Slabys do not solicit renters on-site, but do so through the Internet, where potential tenants can view the premises without actually going there. While occupying the cabin, the tenants must cook and clean for themselves and they do not receive any services from the Slabys. Although the Slabys remit a lodging tax, which is payable for persons ‘engaging in the business of renting or furnishing any room or rooms, lodging, or accommodations to transients in any . . . tourist cabin . . . in DeKalb [County],’ that fact does not detract from the conclusion that no commercial activity takes place on the premises. . . The income the Slabys derive from the rental of the property derives solely from the use of the property in the same manner as the other landowners in the subdivision use their properties. The fact that the Slabys receive rental income does not transform the character of the surrounding subdivision like the maintenance of a mobile-home park or hotel would.”

Wilson v. Maynard, 2021 S.D. 37 (South Dakota Supreme Court). In the 1990s a 160-acre tract of land was purchased near Deadwood, South Dakota. In 1997 a residential development was created on the land and known as the Shirt Tail Gulch subdivision. The developer of the subdivision recorded a declaration of restrictive covenants with the Lawrence County Register of Deeds for 31 lots in the subdivision. Among the covenant provisions was the following: “No lot may be used except for residential purposes, which shall include normal home occupations and offices of recognized professions and bed and breakfast uses allowed under State and County laws and regulations.” Another provision stated: “[a]ll construction shall be new construction and shall be restricted to family or residential recreation type dwellings and attached or detached garages.”

In 2007 Robert and Sharlene Wilson purchased Lot 25 in the Shirt Tail Gulch subdivision. The Wilsons intended to use the residence as a vacation home and eventually as a retirement home.

In 2016 Rory and Kristen Maynard purchased Lot 24, adjacent to the Wilson's property. In the summer of 2016, the Maynards began construction of a three-story home with five master bedrooms, five master bathrooms, and a half-bath. The property could house up to fourteen people. The Maynards intended to rent the property to short-term guests for profit. The Maynards owned other commercial rental properties and hotels in the Deadwood and Lead, South Dakota area. They owned and operated two real estate holding companies to manage their rental properties.

In May 2017 the Wilsons filed an action for declaratory judgment, seeking a determination that the Maynards' use of the property for short-term rental income was prohibited by the subdivision covenants.

In its analysis of the phrase "residential purposes," the South Dakota Supreme Court found the following.

- From other appellate courts are the following principles.
 - o Use of property for eating, sleeping, and recreation for any duration is determinative as whether the property is used for "residential purposes" regardless of the property owner's receipt of rental income.
 - o Short-term vacation rentals do not violate restrictive covenants that require property to be used only for residential purposes and prohibit its use for business purposes.
 - o If a vacation renter uses a home for the purposes of eating, sleeping, and other residential purposes, this use is residential, not commercial, no matter how short the rental duration.
 - o As long as the property is used for living purposes, it does not cease being "residential" simply because such use for short term rentals is transitory rather than permanent.

- “While the covenants do not define ‘residential purposes,’ the court may rely on dictionary definitions to determine the plain and ordinary meaning of undefined words. In the Merriam-Webster dictionary the word ‘residential’ is commonly understood to pertain to ‘dwelling in a place for some time.’ Therefore, ‘residential purposes’ may be plainly understood to include the occupation of a home or dwelling for an indefinite length of time. . . we rely on our normal rules of contract construction to conclude the plain language of ‘residential purposes’ includes short-term rentals.”
- “The Covenants’ ‘residential purposes’ provision does not prohibit [the] Maynards from profiting by renting to guests who use the property as a short-term residence. If the Covenants intended ‘residential purposes’ to prohibit profit-making activity, . . . then the Covenants would even prohibit a long-term lease of the property that generates a profit. There is nothing in the Covenants that suggests a homeowner in Shirt Tail Gulch may not lease a residence on a short-term or long-term basis, or that limits the occupancy to a single-family.”
- “Short-term vacation rentals are a residential purpose consistent with the Covenants. Maynards’ construction of a multi-bedroom vacation home on the property is also consistent with the provision in the Covenants requiring construction of only ‘family or residential recreation type dwellings.’”

Brown v. Sandy City Board of Adjustment, 957 P.2d 207 (Utah Court of Appeals, 1998)

Thomas and Nancy Brown, Dennis Cloward, and Joseph Bowers owned homes in Sandy City, Utah. The homes owned by the Browns and Cloward were in an area zoned R-1-8 Residential. Bowers’ home was in an area zoned R-1-10 Residential.

Both R-1-8 and R-1-10 residential zones permitted the use of single-family dwelling structures. The relevant zoning provisions stated that the purpose of the zones was to establish “a residential environment” with “a minimum of vehicular traffic and quiet residential neighborhoods favorable for family life.” The Sandy City zoning code further stated:

“No building or part thereof or other structure shall be erected, altered, added to or enlarged, nor shall any land, building, structure, or premises be used, designated, or intended to be used for any purpose or in any manner other than is included in the uses hereinafter listed as permitted or conditional uses in the district in which such building, land or premises are located.”

A permitted use in the subject residential zones was “Dwelling, Single Family.” The Sandy City Code defined the terms “Dwelling, Single Family” and “Family.”

- “Dwelling, Single Family. A detached housing unit within a structure with kitchen and sleeping facilities, designed for occupancy by one family, excluding accessory apartments or extended living areas which may be approved for in [this Code].”
- Family is “an individual or two or more persons related by blood, marriage, or adoption, or a group not to exceed four unrelated persons living together as a single housekeeping unit.”

The Sandy City Code did not explicitly prohibit short-term rentals in Sandy’s residential districts.

The Browns, Cloward, and Bowers homes were single-family dwellings as defined by the Sandy City Code. They rented or leased their homes to families for periods from several days to several months.

In December 1995 Sandy City planning staff informed the owners that they were prohibited from renting their homes for fewer than thirty days. The owners appealed the Sandy City staff decision to the Sandy City Board of Adjustment, and later to district court – both of which upheld the decision of Sandy City staff.

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

- The sole issue for review is whether the Sandy City Code prohibits leasing of property for less than thirty days.
- “The [Sandy City] ordinance unambiguously requires that a single-family dwelling located in the two residential zones at issue be used as a building for occupancy by either related people or no more than four unrelated people operating as a household.”
- “The Code never places an express durational limit on the use of the property.”
- “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 Code specifically permits use of a dwelling for occupancy by a single family. . . The Code does not limit the permitted use by referencing the type of estate the occupying family holds in the property or the duration of the occupancy. Thus, it is irrelevant what type of estate, if any estate at all, the occupying family has in the dwelling, i.e., whether the family holds a fee simple estate, a leasehold estate, a license, or no legal interest in

the dwelling. It is equally irrelevant whether the occupying family stays one year or ten days. The only relevant inquiry is whether the dwelling is being used for occupancy by a single family.”

- While the Sandy City ordinance states that the purposes of the residential zones were to establish “a residential environment,” and “quiet residential neighborhoods favorable to family life,” Sandy City did not – in its zoning code – specifically prohibit renting residential property for less than thirty days. “Despite Sandy’s ability to pass an ordinance to restrict short-term leasing, . . . we must construe existing ordinances strictly against the city. Thus, we must conclude that short-term leases of residential properties are not prohibited by the zoning ordinance. . . 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.”

South Weber City v. Cobblestone Resort LLC, 511 P.3d 1207 (2022), 2022 Utah App. 63.

In August 2018 Cobblestone Resort LLC (Cobblestone) purchased a residence with a pool located in South Weber. At the time of the purchase, Cobblestone’s intended to operate the property as a “successful Airbnb business.” After purchasing the property, Cobblestone began renting it as a short-term rental.

The property was located within South Weber’s agricultural land use district. On appeal, Cobblestone argued that short-term rentals are authorized under the permitted use (in the agricultural district) of “Dwelling, one-family.” The Court of Appeals found that that short-term rentals were not allowed uses within the definition of “Dwelling, one-family.”²⁷ The Court of Appeals analysis follows.

- The South Weber Code states: “No land shall be used or occupied, no building or structure shall be designed, altered, used, or occupied for use, except for uses specifically permitted upon the land upon which the building or structure is located or erected or use established as permitted in the regulation for the zone in which said land is located.”
- The Cobblestone property was in an agricultural zone with permitted uses expressly enumerated in the South Weber Code. One of the permitted uses in the Code was “Dwellings, one-family.” The Code defined “Dwelling” as a “building designed and used for residential purposes including one-, two-, three-, or four-family units, but not including apartments, boarding houses, hotels, lodging houses or tourist courts.”

²⁷ The Court’s analysis was part of a non-conforming use determination.

- The South Weber Code defined “boarding house and/or rooming house” as a “building used for the purpose of providing meals or *lodging*, or both meals and lodging for pay or compensation of any kind for three (3) or more persons.”
- While the South Weber Code did not define the word “lodging,” the usual meaning of the “lodging” is defined in the Oxford English Dictionary as a “place in which someone lives or stays temporarily” and in the Merriam-Webster Dictionary as including “sleeping accommodations” and “a temporary place to stay.”
- Short-term rentals fall within the definition of “boarding house and/or rooming house” and therefore are exempt from being classified as a “dwelling.” Cobblestone’s use of the property as a short-term rental does not fit within the definition of dwelling.

From the preceding appellate cases the following legal framework applies to the subject appeal.

- Where the controlling phrase in the governing document (HOA restrictive covenant or local government land use ordinance) is “single family residential purposes only” *and* the governing document does not define “family” *and* the governing document does not require that the property be exclusively owner-occupied *and* the governing document does not address an acceptable length of time for a rental or lease of property *and* the residential property is used for living purposes, or a dwelling, or a place of abode *then* the transitory or temporary nature of such use does not defeat the residential use of the property.
- Generally, where a governing document (HOA restrictive covenants or local land use ordinance) restricts use of property to “residential purposes,” the property may be used as short-term rentals (when such short-term use is for eating, sleeping and recreation) notwithstanding:
 - o the property owners receive rental income; and
 - o the use is transitory rather than permanent.
- Where the governing document (HOA restrictive covenants or local government land use ordinance) prohibits “commercial” uses in a residential community or a zoning district, the short-term rental of residential property does not generally constitute a prohibited “commercial use” *even if* the owners of the property realize some pecuniary gain *and* the property owners remit lodging taxes to a government body, *so long as* no mercantile or similar activity occurs on the property *and* the financial transactions associated with the

property occur off-site *and* renters are not solicited on-site *and* the rental activity does not transform the neighborhood like the operation of a mobile-home park or hotel would.

- Where a governing body (HOA or local government) intends to restrict or limit the use (including short-term rental) of residential property, such restriction or limitation should be expressed in the governing document.
- Where the governing document (HOA restrictive covenants or land use ordinance) declares that property shall be used exclusively or primarily for “residential purposes” *and* the governing document does not define “residential purposes,” it is appropriate to conclude that the occupation of the residence or dwelling may be for an indefinite period of time and includes short-term rentals.
- If a local government land use ordinance does not define the word “lodging,” the local government may rely on the usual meaning of the word from credible dictionaries. The usual meaning of “lodging” is defined in the Oxford English Dictionary as a “place in which someone lives or stays temporarily” and in the Merriam-Webster Dictionary as including “sleeping accommodations” and “a temporary place to stay.” These definitions of “lodging” are the equivalent of short-term rentals where the word “lodging” is used as follows “building used for the purpose of . . . lodging for pay or compensation of any kind for three (3) or more persons.”

2011 San Juan County Zoning Code

On 5 June 1978 San Juan County adopted its first zoning ordinance. On 12 September 2011 San Juan County adopted an amended Zoning ordinance.

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

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 1-16 (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.

Chapter 10 (Zoning Districts) of the 2011 San Juan County Zoning Code establishes five zoning districts: Multiple Use District (MU-1); Agricultural District (A-1), Rural Residential (RR-1), Controlled District (CD), and Indian Reservation District (IR).

Two of these zoning districts, Agricultural District (A-1) and Controlled District (CD), covered the Spanish Valley community of San Juan County prior to 19 November 2019. The uses (permitted, conditional, and prohibited) for the A-1 and CD zoning districts were set forth in chapters 11 and 12 of the 2011 Zoning Code.

The subject property was in Agricultural District A-1 prior to the 19 November 2019 adoption of the Spanish Valley Development Ordinances (Spanish Valley Sub-Ordinance).

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, ‘-’.”

Spanish Valley Development Ordinances 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.

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 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.” After adoption, the Spanish Valley Development Ordinances were consistently referred to as the “Spanish Valley Sub-Ordinance (SVSO)” by County staff and the Office of the County Attorney.²⁸

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) District²⁹.

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

Chapter 3 of the Spanish Valley Development Ordinances addresses permitted uses in the Spanish Valley Residential Flex Planned Community (RF) District. A “range” of uses are permitted in the RF district, including “a wide-range” of residential and housing (which are the

²⁸ Examples include the 11 March 2021 San Juan County Staff Report titled “Short Term Rental Staff Update” prepared for the San Juan County Planning Commission.

²⁹ 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.

primary uses permitted in this district), commercial, business and similar uses. Chapter 3 qualifies the identified uses with the following.

“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.”

Chapter 4 of the Spanish Valley Development Ordinances addresses permitted uses in the Spanish Valley Business Flex Planned Community (BF) District. In this district, “a wide-range of business operations shall be the primary uses.” Included in the BF district “a range of residential uses, including . . . short-term visitor housing and similar specialty housing” are permitted. Chapter 4 qualified the identified uses with the following.

“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.”

Chapter 5 of the Spanish Valley Development Ordinances addresses permitted uses in the Spanish Valley Highway Flex Planned Community (HF) District. In this district, a wide range of commercial uses are permitted. Additionally, the district allows for “a wide-range of residential uses, including . . . short-term visitor housing, and similar uses.” Chapter 5 qualifies the identified uses with the following.

“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.”

Chapter 6 of the Spanish Valley Development Ordinances addresses permitted and conditional uses in the Spanish Valley Highway Commercial (HC) District. While Chapter 6 includes a “list of typical permitted uses” within the HC district, the Planning Commission is authorized to identify other uses which are consistent with the Spanish Valley Area Plan for commercial activity along U.S. Highway 191. Chapter 6 qualifies the uses with the following.

“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.”

The referenced “Spanish Valley Overnight Accommodations Overlay” in chapters 3, 4, 5, and 6³⁰ 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.

³⁰ In March 2023 the San Juan County Planning Commission requested clarification regarding whether Chapter 10 and its Overnight Accommodations Overlay requirements applied to the four Spanish Valley zoning districts. On 20 March 2023 the Office of the County Attorney issued an opinion finding that the application of the Chapter 10 requirements applied to the four subject zoning districts.

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
- Landscape standards and maintenance
- Parking requirements

Since the adoption of the Spanish Valley Development Ordinances, the County Commission has approved overnight accommodations in Spanish Valley. Among these projects are proposals for residential properties to be used for nightly rental.

- 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.

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 difference 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).

The subject properties are 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, Manufactured³¹
- 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

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.

³¹ 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 subject appeal, the following definitions (from Chapter 1 of the 2011 Zoning Code) apply to the SVR District Table of Uses.

“Dwelling. 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.”

“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.”

“Dwelling, Single-family. A building arranged or designed to be occupied by one (1) family, the structure having only one (1) dwelling unit.”

“Dwelling, Two-family. A building arranged or designed to be occupied by two (2) families, the structure having only two (2) dwelling units.”

“Bed & Breakfast/Boarding House. A building with not more than five guest rooms, where, for compensation, meals are provided for at least five (5) but not more than fifteen (15) persons.”

“Lodging House. A building where lodging only is provided for compensation to five (5) or more, but not to exceed fifteen (15) persons.”

“Tourist Court. 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, and motor lodges.”

“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.”

Chapter 1 does not include the “Subject to the Spanish Valley Overnight Accommodations Overlay” language included in chapters 3, 4, 5, and 6 of the Spanish Valley Development Ordinances. Chapter 1 does not have a process or requirements for approving “large-scale master-planned communities” as found in Chapter 2.

After the adoption of the Spanish Valley Development Ordinance, the San Juan County Planning Commission – and San Juan County staff – were unsure how to deal with short-term rentals in the SVR District³². On 8 March 2021 the San Juan County Office of the County Attorney published a legal opinion which addressed short-term rentals in the SVR District. That legal opinion was shared with the San Juan County Planning Commission, and discussed in a public meeting, on 11 March 2021. 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.’

³² At the time the Spanish Valley Development Ordinances were adopted, in the SVR District there were many residential properties used as nightly rentals. After 19 November 2019 Planning Commission members and the County Zoning Administrator were unsure how to advise property owners regarding the continued operation of properties for guest accommodations or property owners intending to establish new overnight accommodations. During most of 2020 the Planning Commission regularly discussed possible ordinance language to address short-term rentals throughout the County. In early 2021 the County Attorney was asked to weigh in on the issue of short-term rentals in the SVR District. A deputy county attorney was present during the 11 March 2021 Planning Commission meeting, where the topic of short-term rentals was discussed among the deputy county attorney, the county chief administrative officer, members of the Planning Commission, and property owners. Near the end of the discussion, the deputy county attorney recommended that property owners who operated short-term rentals prior to 19 November 2021 seek legal advice. The chief administrative officer offered to work individually with property owners. See minutes of the monthly San Juan County Planning Commission meetings during 2020 and early 2021.

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

Select words and phrases in the San Juan County land use ordinance

The San Juan County land use ordinance uses the following phrases: “lodging houses,” “tourist courts,” and “all other variations of overnight accommodations intended for nightly rentals.” Other phrases relevant to this appeal include “bed & breakfast/boarding house” and “All other household living uses (5th wheels, trailers, etc.)”

The phrases “bed & breakfast/boarding house,” “lodging house,” and “tourist court” were defined in the San Juan County Zoning Code when it was first adopted on 5 June 1978. The 2011 San Juan County Zoning Code retained the terms “bed & breakfast/boarding house,” “lodging house” and “tourist court” among property use exceptions to the definitions of “dwelling” and “family.”

The phrases “all other variations of overnight accommodations intended for nightly rentals” and “All other household living uses (5th wheel, trailers, etc.)” were added to the San Juan County land use code on 19 November 2019 with the adoption of the Spanish Valley Development Ordinances.

Bed & Breakfast/Boarding House. The 1978 San Juan County definition of “Bed & Breakfast/Boarding House” was “A building with not more than five guest rooms, where, for compensation, meals are provided for at least five (5) but not more than fifteen (15) persons.”

The San Juan County definition for “Bed & Breakfast/Boarding House” does not require that the property owner occupy the building.

Lodging House. The 1978 San Juan County definition of “lodging house” was “A building where lodging *only* is provided for compensation to five (5) or more, but not to exceed fifteen (15) persons.”

The phrase “lodging house” was relevant in the Utah Court of Appeals case *Town of Alta v. Ben Hame Corporation*, 836 P.2d 797 (Utah Ct. App. 1992). That case involved the interpretation of a Salt Lake County and Town of Alta land use ordinances which defined uses in a zoning district. The subject zoning districts permitted single family dwellings. “Single-family dwellings, however, did not include hotels, apartment hotels, boarding houses, *lodging houses*, mobile homes, tourist courts or apartment courts. Salt Lake County, Utah, Ordinances § 22-1-6(21) (1966).” In the Salt Lake County and Town of Alta land use ordinances “lodging houses” were defined. “A ‘lodging house’ is defined as ‘[a] building where lodging only is provided for compensation of five (5) or more, but not exceeding fifteen (15) persons.’ Salt Lake County, Utah, Ordinances § 22-1-6(41) (1966).” [Later found at Alta, Utah, Ordinances § 22-9-3A (1979).]

In *Town of Alta v. Ben Hame Corporation*, Ben Hame Corporation owned a single-family residence which was initially in Salt Lake County and later in the Town of Alta (after the Town of Alta annexed the subject property). Ben Hame Corporation (BHC) owned the residence and advertised the home for rent which could “accommodate 12 to 20 people.” The standard BHC booking was “7 days — Saturday to Saturday.” A service charge applied “if shorter bookings are accepted.” From 1980 to 1988, the number of rental occupants ranged from eight to fifteen.

BHC applied three times to Alta's town clerk for a business license to operate a “lodging facility.” The clerk issued licenses for six months beginning November 1, 1983, and November 1, 1984, and for twelve months on November 1, 1986. No business licenses thereafter were issued. In December of 1988 Alta filed an action for injunctive relief to prohibit BHC's ongoing short-term rentals of its home in violation of Alta's zoning ordinance.

In *Town of Alta v. Ben Hame Corporation*, an affidavit submitted by the Town of Alta explained the justification for restricting “lodging houses” or short-term rentals in the neighborhood where the BHC residence was located. BHC did not contest the affidavit and the Court of Appeals concluded that BHC’s operation of the residential property was in violation of

the land use ordinance. (The Court of Appeals opinion dealt with whether the structure was a permitted “accessory” use or whether zoning estoppel had occurred.)

The Merriam-Webster dictionary defines “lodging” as including “sleeping accommodations” and “a temporary place to stay.” When a residential short-term rental provides only lodging to temporary guests, such use would fall within the definition of “lodging house.”

A challenge with the phrase “lodging house” arises when the property use involves services *in addition to* “only” lodging. If the property owner or host provides meals, provides guest transportation, or provides other non-lodging services, the property use would not qualify as a “lodging house.”³³

Tourist Court. The 1978 San Juan County definition of “tourist court” was “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 space conveniently located to each unit, including auto courts, motels, or motor lodges.” (This definition was retained in the 2011 San Juan County Zoning Code.)

The use of the words and phrases “temporary use” and “automobile tourists” or “transients” suggest the property use is like a short-term rental, nightly rental, or vacation rental. However, the words “court” and “each unit” would cause a single-family residential structure – used as a short-term rental – to fall outside of the definition of “tourist court.”

Another challenge of equating the phrase “tourist court” with a short-term rental is determining available parking associated with “each unit” of the tourist court.

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.

³³ Of interest, in *Town of Alta v. Ben Hame Corporation*, BHC provided other services beyond lodging to its guests. If requested, guests were provided with an on-site chef and airport shuttle services. These additional services were not addressed by the Court of Appeal in relationship to land use definition of “lodging house.” However, the land use ordinance exceptions to a single-family residence included other uses beside “lodging houses.”

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” after 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 § 17-50-338³⁴ 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.”

All other household living uses (5th wheels, trailers, etc.). A conditional use in the SVR District is “All other household living uses (5th wheels, trailers, etc.).” This phrase is not defined in the San Juan County land use code. Nevertheless, a definition of “all other household living uses” is assisted with examples attached to (following) the phrase.

The two examples (5th wheels, trailers) are followed by “etc.” The Merriam-Webster dictionary states that “etc.” is short for the Latin phrase “et cetera” which means “others especially of the same kind.” In determining within which “same kind” the two examples fall, an analysis should consider what the two examples (5th wheels and trailers) have in common.

³⁴ Utah Code §17-50-338 was adopted 9 May 2017.

A “5th wheel” is a towable recreational vehicle that requires a large pickup or truck to tow. (The “fifth wheel” refers to the U-shaped coupling component found on the back of the towing vehicle.) A “5th wheel” is a category or class of recreational vehicles (RVs). RV classes include Travel Trailers, 5th Wheels, Lightweight RVs, and Toy Haulers (along with Class A, Class B, and Class C recreational vehicles).

It is likely that the second example here, “trailer,” is a travel trailer within the class of recreational vehicles. The “trailer” here is not a horse trailer, cargo trailer, dump trailer, boat trailer, flatbed trailer, or livestock trailer – since the trailer’s intended use is for “household living.” The “trailer” here is with the class of recreational vehicles, which class includes 5th wheels.

A conclusion is that the conditional use of “other household living uses” means recreational vehicles.

Findings relating to item 3 of petitioner's notice of claims

1. On 19 November 2019 San Juan County amended its land use ordinance to create six zoning districts in the community of Spanish Valley, south of Moab (Grand County) and on the northern border of San Juan County.
2. One of the six zoning districts was the Spanish Valley Residential (SVR) District.
3. The governing San Juan County land use ordinance relevant to petitioner's property is the 2011 San Juan County Zoning Code (adopted 12 September 2011) as amended on 19 November 2019 by the Spanish Valley Development Ordinances.
4. The 2011 San Juan County Code includes the following provisions.
 - Chapter 1 includes several definitions of terms which are used in the Table of Uses (Table 1-1) for the Spanish Valley Residential (SVR) District.
 - Section 11-2 (Use Regulations) describes how the County land use code will consider and identify permitted, conditional, and prohibited (not allowed) uses within each zoning district. Specifically, 11-2 states: "If a use is not allowed in the district, it is either *not named* or it is indicated in the appropriate [table of uses] column by a dash, '-'" and "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]."
5. After the 17 April 2018 adoption of the Spanish Valley Area Plan, from 17 May 2018 to 30 October 2019 the San Juan County Planning Commission worked on creating a land use ordinance for Spanish Valley. On 19 November 2019 the San Juan County Board of Commissioners approved Ordinance 2019-02 adopting the Spanish Valley Development Ordinances. The adoption language states: "The San Juan County Zoning Ordinance is hereby amended to include the attached Spanish Valley Development Ordinances." After adoption, the Spanish Valley Development Ordinances were commonly referred to as the "Spanish Valley Sub-Ordinance."

6. The Spanish Valley Sub-Ordinance created six (6) zoning districts which replaced two prior 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.

7. In the Spanish Valley Sub-Ordinance were six chapters – one each for the six zoning districts.

8. Chapter 3 of the Spanish Valley Development Ordinances addresses permitted uses in the Spanish Valley Residential Flex Planned Community (RF) zoning district. A “range” of uses are permitted in the RF district, including “a wide-range” of residential and housing (which are the primary uses permitted in this district), commercial, business and similar uses. Chapter 3 qualifies the identified uses with the following. **“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.”

9. Chapter 4 of the Spanish Valley Development Ordinances addresses permitted uses in the Spanish Valley Business Flex Planned Community (BF) district. In this district, “a wide-range of business operations shall be the primary uses.” Included in the BF district “a range of residential uses, including . . . short-term visitor housing and similar specialty housing” are permitted. Chapter 4 qualified the identified uses with the following. **“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.”

10. Chapter 5 of the Spanish Valley Development Ordinances addresses permitted uses in the Spanish Valley Highway Flex Planned Community (HF) District. In this district, a wide range of commercial uses are permitted. Additionally, the district allows for “a wide-range of residential uses, including . . . short-term visitor housing, and similar uses.”

Chapter 5 qualifies the identified uses with the following. **“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.”

11. Chapter 6 of the Spanish Valley Development Ordinances addresses permitted and conditional uses in the Spanish Valley Highway Commercial (HC) District. While Chapter 6 includes a “list of typical permitted uses” within the HC district, the Planning Commission is authorized to identify other uses which are consistent with the Spanish Valley Area Plan for commercial activity along U.S. Highway 191. Chapter 6 qualifies the uses with the following. **“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.”

12. The referenced “Spanish Valley Overnight Accommodation Overlay” in chapters 3, 4, 5, and 6 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 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 the overnight accommodations will be developed, and 3) approval of County staff of a development agreement, project plan and/or subdivision plat.
13. 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; developments standards, including density and heights; lot dimensions, configuration, and shape; lot access; open space requirements; streets and road access; bicycle facilities; storm water management; landscape standards and maintenance; and parking requirements.
14. Since the adoption of the Spanish Valley Development Ordinances, the County Commission (from 16 February 2021 to 20 June 2023) has approved nine (9) overnight accommodations projects in Spanish Valley. Among these projects are approximately 282 residential units to be used for nightly rental.
15. Chapter 2 of the Spanish Valley Development Ordinances set forth a process for approval of “large-scale master-planned communities” within a Spanish Valley Planned Community (PC) District. Chapter 2 establishes a process 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 difference 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.”

16. Chapter 2 does not include the “Subject to the Spanish Valley Overnight Accommodation Overlay” provisions which were 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).

17. Substantive languages for the creation of nightly rentals (short-term rentals, vacation rentals) are included in five the six Spanish Valley zoning districts, *except* in the Spanish Valley Residential (SVR) District.

18. Petitioner’s property 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 Sub-Ordinance.

19. 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.”

20. Chapter 1 of the Spanish Valley Development Ordinances include 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, Manufactured; Educational Facilities, Public; Places of Worship; Parks and

Open Spaces, Public; Farmland, Grazing and Pasture; Animal Husbandry – small animals (pigs, goats, lambs, etc.); and Animal Husbandry - large animals (cows, cattle, horses, etc.) on greater than 1 acre lots only.

21. The Chapter 1 (SVR District) Table 1-1 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; and Parks and Open Spaces, Private.
22. Accessory uses may be either permitted or conditional uses in the SVR District.
23. In the subject appeal, several definitions (included in Chapter 1 of the 2011 Zoning Code) apply to the SVR District Table of Uses.
24. The following terms in the SVR District purpose/intent statement and in the Table 1-1 are not defined, either in the 2011 Zoning Code or in Chapter 1 of the Spanish Valley Sub-Ordinance.
 - “Residential uses”
 - “All other household living (5th wheels, trailers, etc.)”
25. Chapter 1 does *not* include the “Subject to the Spanish Valley Overnight Accommodation Overlay” provision which were included in chapters 3, 4, 5, and 6 of the Spanish Valley Development Ordinance. Chapter 1 does *not* have a process or requirements for approving “large-scale master-planned communities” (which may include “diversity of housing types” and “residential uses of various types” and “mixed-use housing”) as found in Chapter 2.
26. Chapter 1 (SVR District) makes no reference to commercial use.

27. The following are findings are relevant to the interpretation of the San Juan County Zoning Code (as amended by the Spanish Valley Development Ordinances) in the subject appeal.
- a. Chapter 1 (Spanish Valley Residential District) of the Spanish Valley Development Ordinances includes no reference to “commercial use(s).” For the purposes of interpreting uses in the Spanish Valley Residential (SVR) District a “commercial use,” without other express provisions in the San Juan County Zoning Code, would not be prohibited in the SVR District.
 - b. Consistent with common law cases, petitioner’s proposed operation of a short-term rental is not a “commercial use” in the San Juan County Zoning Code.
 - c. Chapter 1 of the Spanish Valley Development Ordinances includes the following purpose statement: “The Spanish Valley Residential (SVR) District is designed primarily to accommodate *residential uses*.” The phrase “residential use” is not defined in the San Juan County Zoning Code. In interpreting land use restrictions in the SVR District, the use of “residential use” in Chapter 1’s purpose paragraph does not act to define or identify permitted, conditional, or prohibited uses.
 - d. The Spanish Valley Sub-Ordinance plainly and expressly addresses short-term rentals, vacation rentals, overnight accommodations, and related business activities. In four of the six Spanish Valley zoning districts “all other variations of overnight accommodations intended for nightly rentals” are specifically identified as allowed uses subject to the requirements of an Overnight Accommodations Overlay (contained in Chapter 10 of the Spanish Valley Sub-Ordinance). In the four chapters describing uses in the four zoning districts, the reference to “all other variations of overnight accommodations intended for nightly rental” is mentioned early in the chapter and is highlighted in bold font (“**Uses Subject to the Spanish Valley Overnight Accommodations Overlay**”). These four districts include residential, business, and commercial uses.

- e. Since the adoption of the Spanish Valley Sub-Ordinance until June 2023 approximately 282 residential units have been approved for use as nightly rental. The Spanish Valley Sub-Ordinance has been effective in allowing the establishment of short-term rentals in Spanish Valley.
- f. Another zoning district in Spanish Valley, the Spanish Valley Planned Community (PC) District, also authorizes residential properties used as short-term rentals. As part of the approval process for large-scale master-planned communities, the Spanish Valley Development Ordinance specifically allows “diversity of housing types,” “residential uses of various types,” and “mixed-use housing.” The Spanish Valley Planned Community (PC) District plainly and expressly allows short-term rental residential housing, subject to the requirements of Chapter 2 of the Spanish Valley Sub-Ordinance.
- g. Chapter 1 (Spanish Valley Residential District) does *not* include reference to “all other variations of overnight accommodations intended for nightly rental” (plainly and expressly included in four of the six zoning district provisions) or reference to “diversity of housing types,” “residential uses of various types,” and “mixed-use housing” found in Chapter 2 (Spanish Valley Planned Community District).
- h. In interpreting permitted, conditional, or prohibited uses in a zoning district table of uses, the San Juan County Zoning Code plainly and expressly states: “If a use is not allowed in the district, it is either *not named* or it is indicated in the appropriate [table of uses] column by a dash, ‘-.’”
- i. “All other variations of overnight accommodations intended for nightly rental” is not named in Table 1-1 for the SVR District and is consequently plainly and expressly a prohibited use.
- j. The Spanish Valley Development Ordinances were adopted on 19 November 2019 after the State of Utah adopted of Utah Code §17-50-338. That Code section included

a definition for short-term rentals ["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.] Considering the broad meaning “*all other variations*” *and* the fact that the phrase “short-term rental” is used in the list of overnight accommodations examples - the San Juan County use category “all other variations of overnight accommodations intended for nightly rental” includes the Utah Code §17-50-33 definition of short-term rental.

- k. The phrase “all other variations of overnight accommodations intended for nightly rental,” as a prohibited use category, directly and specifically restricts length of occupancy and type of occupancy of all permitted and conditional use structures in the SVR District.
- l. Notwithstanding the restrictions imposed by the prohibited use category of “all other variations of overnight accommodations intended for nightly rental,” it is important to review the SVR District Table 1-1 permitted and conditional use categories which could allow short-term rental activity.
- m. The SVR District Table 1-1 includes three “residential uses” which potentially could allow short-term rentals.
 - 1) A “Dwelling, single-family” is permitted in the SVR District. “Dwelling” is defined in the San Juan County Zoning Code as “Any building, or portion thereof, which is designed for residential purposes, *except* hotels, apartment hotels, bed & breakfast/boarding house, *lodging house*, tourist courts, and apartment courts.” The Merriam-Webster dictionary defines “except” as to “leave out from a number or whole” or “exclude.” In other words, any of the uses which follow the word “except” would not be permitted uses in the SVR District. These exclusions (exceptions) are restated again in the definition of “family.” The San Juan County Zoning Code defines “family” as “One or more persons occupying a dwelling unit as a single housekeeping unit, *as distinguished from* a group occupying a boarding

house, *lodging house*, or hotel, as herein defined.” The Merriam-Webster dictionary defines “as distinguished from” as “rather than” and “not.”

- 2) Two of the “except” or “as distinguished from” uses for “Dwelling, single-family” include “lodging house,” and “bed & breakfast/boarding house.”
 - a. A “lodging house” is defined in the San Juan County Zoning Code as “A building where lodging only is provided for compensation to five (5) or more, but not to exceed fifteen (15) persons.” The Merriam-Webster dictionary defines “lodging” as including “sleeping accommodations” and “a temporary place to stay.” To the extent a residential short-term rental provides only lodging to temporary guests, such use would be a lodging house and excepted from (not included in) the definition of “Dwelling-single family” and is not a permitted use in the SVR District.
 - b. A “bed & breakfast/boarding house” is defined by the San Juan County Zoning Code as “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.” There is no requirement that the building be owner-occupied. Nevertheless, a bed & breakfast or boarding house is excepted from (not included in) the definition of “Dwelling, single-family” and is thus not a permitted use in the SVR District.
- 3) “Accessory Building and Uses” may be permitted or conditional uses in the SVR District. An “accessory building” is defined in the San Juan County Zoning Code as a “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.” Since an accessory building cannot be used for human occupancy, an accessory building used as a short-term rental, bed & breakfast, or a similar use would not be permitted in the SVR District.

- 4) “All other household living uses (5th wheels, trailers, etc.)” are permitted uses in the SVR District. The terms in this use category are not defined in the San Juan County Zoning Code. Nevertheless, a definition of “all other household living uses” is assisted with examples attached to (following) the phrase. The two examples (5th wheels, trailers) are followed by “etc.” The Merriam-Webster dictionary states that “etc.” is short for the Latin phrase “et cetera” which means “others especially of the same kind.” In determining within which “same kind” the two examples fall, an analysis should consider what the two examples (5th wheels and trailers) have in common. A “5th wheel” is a towable recreational vehicle that requires a large pickup or truck to tow. (The “fifth wheel” refers to the U-shaped coupling component found on the back of the towing vehicle.) A “5th wheel” is a category or class of recreational vehicles (RVs). RV classes include Travel Trailers, 5th Wheels, Lightweight RVs, and Toy Haulers (along with Class A, Class B, and Class C recreational vehicles. It is likely that the second example here, “trailer,” is a travel trailer within the class of recreational vehicles. The “trailer” here is not a horse trailer, cargo trailer, dump trailer, boat trailer, flatbed trailer, or livestock trailer – since the trailer’s intended use is for “household living.” The “trailer” in Table 1-1 is with the class of recreational vehicles, which class includes 5th wheels. A conclusion is that the conditional use of “other household living uses” means recreational vehicles.
- 5) Unlike “Dwelling, single-family,” the conditional use category “All other household living uses (5th wheels, trailers, etc.)” does not include “except” or “as distinguished from” uses which qualify the conditional use category. If it were not for the restriction imposed by the prohibited use category “all other variations of overnight accommodations intended for nightly rental,” short-term rentals would be allowed as conditional uses in recreational vehicles in the SVR District.
- n. The San Juan County Zoning Code interpretation that uses which fall within the definition of “all other variations of overnight accommodations intended for nightly rental” are prohibited in the SVR District is consistent with the structure of the

Spanish Valley Sub-Ordinance which specifically and plainly authorizes overnight accommodations in five of the six Spanish Valley zoning districts, but *omits* any reference to such use in Chapter 1 which addresses the uses in the SVR District.

- o. The San Juan County Zoning Code (as amended by the Spanish Valley Sub-Ordinance) plainly and expressly prohibits short-term rentals and “all variations of overnight accommodations intended for nightly rental” in the SVR District.
- p. As set forth in §11-2 of the 2011 San Juan County Zoning Code, San Juan County’s omission (“not named”) of bed & breakfast/boarding house, lodging houses, short-term rentals, and “all variations of overnight accommodations intended for nightly rental” in Table 1-1 of Chapter 1 (Spanish Valley Residential District) of the Spanish Valley Sub-Ordinance was a plain and express prohibition of bed & breakfast/boarding house, lodging houses, short-term rentals, and “all variations of overnight accommodations intended for nightly rental” in the SVR District.
- q. Nothing in the San Juan County Zoning Code restricts or prohibits a property owner from leasing or renting residential property in the SVR District for mid-term (beyond 30 days) or fixed terms.

Findings relating to item 2 of petitioner's notice of claims

1. During late 2017 and early 2018 San Juan County engaged the residents of Spanish Valley to help create a Spanish Valley Area Plan. During the public outreach (which lasted five months) associated with preparing a Spanish Valley Area Plan, San Juan County received complaints about nightly rentals in the Spanish Valley residential neighborhood. The Spanish Valley residents reported late-night parties, with loud noise. Some nightly rentals involved large groups of people, which impacted the neighborhood streets. The adopted Spanish Valley Area Plan included a planning principle that no tourist activities should be located in the Spanish Valley neighborhoods.
2. With the 17 April 2018 adoption of the Spanish Valley Area Plan, the San Juan County Board of Commissioners declared the Spanish Valley Area Plan "is an official document intended to guide future development in the San Juan County portion of Spanish Valley."
3. In February 2019 Harold Saunders considered subdividing property (Lot 49) he and his wife owned. Saunders' intent was to construct a new single-family dwelling on the subdivided property for use as a nightly rental. The Saunders property was located in the Spanish Valley residential neighborhood.
4. From March to September 2019 Harold Saunders had regular contact with the San Juan County Zoning Director Walter Bird and two San Juan County Planning Commissioners Lloyd Wilson and Cole Cloward. Bird, Wilson, and Cloward were aware of Saunders' intent to construct a structure for overnight accommodations. All three orally informed Saunders that the constructed residence would be approved for use as a nightly rental.
5. Throughout 2019 and until 19 November 2019, the San Juan County Planning Commission was considering six new zoning districts for Spanish Valley to replace two zoning districts under the 2011 San Juan County Zoning Code.

6. Among the proposed zoning districts was the Spanish Valley Residential (SVR) District which would govern land uses for any subsequent use of Lot 49. Consistent with the Spanish Valley Area Plan, the SVR zoning district prohibited short-term rentals.
7. Throughout 2019 and until 19 November 2019 Planning Commissioners Wilson and Cloward, and County Zoning Director Walter Bird, participated in the process to create a land use ordinance for the San Juan County portion of Spanish Valley.
8. Saunders prepared a subdivision amendment for Lot 49. That amendment was first considered by the Planning Commission on 12 September 2019. On that date the amendment was tabled pending consideration of a pending lot size ordinance.
9. On 19 November 2019 the San Juan County Board of Commissioners adopted the Spanish Valley Development Ordinances – which included the SVR District.
10. On 9 January 2020 the Planning Commission recommended approval of the subdivision amendment which approved what would become Lot 49-B. At least two of the Planning Commissioners (Wilson and Cloward) and the San Juan County Zoning Director (Bird) were aware that the intended land use for the subdivided lots would be nightly rental. However, the minutes of the 9 January 2020 Planning Commission meeting do not mention the intended use of the subdivided property as a short-term rental.
11. On 4 February 2020 the San Juan County Board of Commissioners approved the Planning Commission-recommended subdivision amendment creating Lot 49-B. The minutes of the Commission meeting do not mention the intended use of the parcel as a short-term rental business.
12. Had the Board of Commissioners approved the subdivision amending creating Lot 49-B for short-term rental business activity, the Commission’s action would have violated §152.020 (A) which authorizes the Board of Commissioners to approve subdivision amendments “if the proposal does not violate other land use ordinances” contained in the San Juan County Code.

13. In July 2020 Saunders submitted a building permit application for Lot 49-B. A building permit was approved and issued on 17 August 2020.
14. The building permit for construction on Lot 49-B states: “It shall be unlawful to occupy this building until a Certificate of Occupancy is issued.”
15. From 17 August 2020 until 27 May 2021 Saunders was continuously involved in constructing a single-family structure on Lot 49-B. During these months San Juan County Building Inspector Cole Cloward (who also served as a Planning Commissioner when the Lot 49-A subdivision amendment was approved) regularly inspected construction on Lot 49-B.
16. On 15 December 2020 the San Juan County Board of Commissioners adopted a business licensing ordinance. That ordinance states: “It is unlawful for any person, firm or corporation or any employee thereof, to commence, engage in, carry on or operate a business in the unincorporated county without first applying for and obtaining a license from the county to do so.”
17. From August 2020 to February 2021 the San Juan County Planning Commission regularly discussed short-term rentals in the County.
18. On 11 March 2021 the San Juan County Planning Commission met to consider and discuss a legal opinion authored by Deputy County Attorney Alex Goble. That opinion held that nightly-rentals were prohibited uses in the SVR District. As part of an extended discussion during the Planning Commission meeting, the following information was recorded.
 - a. For months the Planning Commission had questions about short-term rentals and had been discussing the need for a county-wide short-term rental ordinance.
 - b. The Planning Commission assumed (prior to 11 March 2021) that the County’s land use ordinances, including the Spanish Valley Development Ordinances, did not comprehensively or effectively address short-term rentals.

- c. Prior to March 2021 the Office of the County Attorney had not been asked to offer a legal opinion about short-term rentals in the SVR District.
- d. Prior to 11 March 2021 members of the Planning Commission and San Juan County Zoning Director Walter Bird believed that short-term rentals were allowed uses in the SVR District.
- e. In March 2021 there may have been fifty (50) short-term rental properties in the SVR District.
- f. Reportedly, there were several property owners who cumulatively spent “millions” in building structures after 19 November 2019 in the SVR District as short-term rentals – after being informed that short-term rentals were allowed in the SVR District.
- g. Some short-term rentals in the SVR District negatively affected the neighborhoods as a result of nuisance activities.
- h. Since the adoption of the Spanish Valley Development Ordinances, San Juan County had approved short-term rental projects in the SVR District and informed owners of short-term rental property to apply for business licenses.
- i. The Spanish Valley Development Ordinances allowed short-term rentals in some zoning district – through an overlay district – but not in the Spanish Valley Residential District.
- j. Property owners felt that they had, in good faith, sought to comply with the County requirements and were frustrated at the after-the-fact announcement that short-term rentals are prohibited in the SVR District.

19. During the 11 March 2021 Planning Commission meeting, it was determined that an odd footnote in the Spanish Valley Development Ordinance influenced the Planning Commissioners and San Juan County Zoning Director Walter Bird to conclude – prior to 11 March 2021 – that short-term rentals were allowed in the Spanish Valley Residential District.
20. Regarding that footnote, it was the opinion of the Office of the County Attorney the footnote did not allow short-term rentals in the SVR District.
21. The referenced footnote did not make short-term rentals permitted or conditional uses in the Spanish Valley Residential District.
22. Saunders relied on the opinion of the San Juan County Zoning Director in seeking approval of his Lot 49 subdivision for short-term rentals. Saunders' situation was not unusual since other property owners in the SVR District had sought approval for and constructed short-term rentals.
23. Saunders did not misrepresent his Lot 49-A project with San Juan County officials and employees.
24. Prior to 11 March 2021 Saunders acted in good faith by informing San Juan County regarding his intended use of Lot 49-B, by seeking San Juan County Planning Commission approval of his project, by apply for a building permit, and by engaging the County's building inspector and planning commissioner throughout the building permit inspection process.
25. Saunders expended over \$250,000 before being informed on 11 March 2021 that Lot 49-B could not be operated as a nightly rental.
26. After receiving information on 17 March 2021 from Harold Saunders about his Lot 49-B project, on 7 May 2021 Mack McDonald wrote a letter to Harold Saunders informing him that Lot 49-B could not be operated as a short-term rental in the Spanish Valley Residential District.

27. On 25 May 2021, Building Inspector Cole Cloward conducted a final inspection of Lot 49-B with instructions to “fix and call” once Saunders completed a number of tasks, including posting the address, finishing electrical work, and caulking plumbing fixtures and backsplashes. Once Saunders completed these tasks, he called Cloward who changed the status of the final inspection to “passed.” Cloward informed Saunders he (Cloward) would take care of the certificate of occupancy. However, a certificate of occupancy was not thereafter recorded.
28. Without a certificate of occupancy, Harold Saunders rented 171 E. Peale Drive (or allowed occupancy of 171 E. Peale Drive) after 25 May 2021 – including on or about the following dates: 31 December 2022, 24 January 2023, 23 February 2023, 30 March 2023, 19 April 2023, and 1 May 2023.
29. Without a business license, Harold Saunders rented 171 E. Peale Drive and conducted business at 171 East Mt. Peale Drive – including on or about the following dates: 31 December 2022, 24 January 2023, 23 February 2023, 30 March 2023, 19 April 2023, and 1 May 2023.

Conclusions relating to item 3 of petitioner's notice of claims

1. The San Juan County land use ordinance prohibits the operation of a bed & breakfast/boarding house, lodging house, short-term rental, and "all variations of overnight accommodations intended for nightly rental" in the Spanish Valley Residential District.
2. Absent an equitable estoppel determination, Lot 49-B (171 East Mount Peale Drive) may not be operated or occupied as a nightly rental or similar uses.

Conclusions relating to Item 2 of Petitioner's Notice of Claims

1. San Juan County, through its Spanish Valley Area Plan and the adoption of the Spanish Valley Development Ordinances, intended to prohibit short-term rentals in the Spanish Valley Residential (SVR) District.
2. The San Juan County's action to prohibit short-term rentals in the SVR District represents the legislative intent of the elected San Juan County Board of Commissioners.
3. The operation of short-term rentals in the Spanish Valley Residential District are associated with nuisance and disruptive activity.
4. The oral statements of San Juan County Commissioners Wilson and Cloward, and of San Juan County Zoning Director Walter Bird, were not sufficiently definite and affirmative to bind San Juan County or support a finding of equitable estoppel.
5. The oral statements of San Juan County Commissioners Wilson and Cloward, and of San Juan County Zoning Director Walter Bird, were made in error and did not constitute wrongful conduct by authorized agents of San Juan County.

6. In light of many Spanish Valley Residential District property owners operating short-term rentals contrary to San Juan County's land use ordinance, Harold Saunders' petition for equitable estoppel does not present an exceptional or unusual circumstances to support a finding of equitable estoppel against San Juan County.
7. To find equitable estoppel in this matter would nullify a strong public policy, adopted by the San Juan County Board of Commissioners, to benefit the residents of the Spanish Valley Residential District.
8. Harold Saunders acted in good faith relying on the oral representations of two San Juan County Planning Commissioners and of the San Juan County Zoning Director by expending costs in constructing a structure on Lot 49-B, seeking approvals from the County Board of Commissioners, and submitting a building permit application.
9. The San Juan County Board of Commissioners' approval of the subdivision amendment was not an "official act" upon which Harold Saunders could rely to assert a claim of equitable relief.
10. Notwithstanding Saunders' reliance on oral representations of two Planning Commissioners and of the County Zoning Director, costs expended in constructing a structure on Lot 49-B, seeking approvals from the County Planning Commission/Board of Commissioners, and submitting a building permit application; San Juan County is not estopped from prohibiting Harold Saunders' use of his structure at 171 East Mt. Peale Drive as a short-term rental for the following reasons.
 - Harold Saunders acted in bad faith in renting, conducting a business, and allowing occupancy at 171 East Mt. Peale after failing to obtain a certificate of occupancy and after being denied a business license.
 - The representation of the two planning commissioners were advisory and not binding on San Juan County.

- The oral representations of the San Juan County Zoning Director were not explicit and not sufficiently clear, definite, and affirmative.
- Harold Saunders' circumstances are not sufficiently unusual or exceptional, or of sufficient gravity, as to constitute an injustice.
- There is a strong public purpose in enforcing the prohibition of short-term rentals in the SVR zoning district.
- The public purpose is not outweighed by the impacts on Harold Saunders.

Decision

San Juan County is not estopped from prohibiting or sanctioning Harold Saunders from operating Lot 49-B at 171 East Mount Peale as a nightly rental or similar use.

The Spanish Valley Development Ordinances plainly prohibit short-term nightly rentals in the Spanish Valley Residential (SVR) District.

This decision shall be recorded or reported in the San Juan County property record of 171 East Mount Peale.

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

Lyn Loyd Creswell
San Juan County Administrative Law Judge

1 April 2024