

ORDINANCE NO. 2001 - 06

AN ORDINANCE AMENDING THE UTAH COUNTY ZONING ORDINANCE AS TO SECTIONS 3-29-B-2, 5-11-G, 5-12-E-1, 6-1-E-6, 6-1-E-7-c, 6-1-E-8, 7-12-C, 7-14, 7-15, 7-18-A, 7-19, 7-21-D, 7-22-A, AND 7-22-B.

THE COUNTY LEGISLATIVE BODY OF THE COUNTY OF UTAH ORDAINS AS FOLLOWS:

PART I:

Section 3-29-B-2 of the Utah County Zoning Ordinance is hereby amended to read as follows:

The notice, to be deemed "sufficient", must be mailed fifteen (15) days or more prior to the time of the Planning Commission, County Commission, or Board of Adjustment meeting wherein the item will be considered, and must contain the applicant's name, the location of the property that is being considered, the type of approval or change in land use requested, and the time, place, and location of the meeting.

PART II:

Section 5-11-G of the Utah County Zoning Ordinance is hereby amended to read as follows:

The Board of Adjustment may grant a variance in the size, distance or elevation requirements of the FPO Zone, according to the standards of zoning section 7-20 and the standards stated below.

1. Items to Consider

In deciding whether to grant a variance and what conditions to attach to its approval, the Board shall consider:

- a. The danger that materials may be swept onto other lands causing injury to others.
- b. The danger to life and property caused by flooding and erosion.
- c. The degree of susceptibility to flood damage of the proposed use or building (including its contents), and the effect of such damage to the owners.

- d. The importance of services provided by the facility to the community.
 - e. The necessity of the facility to be on a waterfront, if applicable.
 - f. The availability of alternate locations for the proposed use or building, which are not subject to flooding or erosion damage.
 - g. The compatibility of the proposed use with the existing and anticipated development.
 - h. The relationship of the proposed use to the comprehensive plan and flood plain management program for the area.
 - i. The safety of access to the property during flooding for ordinary and emergency vehicles.
 - j. The expected flood water height, velocity, duration, rate of rise, sediment transport, and wave action effects at the site.
 - k. The cost of providing governmental and public utility services during and after flood conditions, including the maintenance and repair of roads, bridges, electric lines, gas lines, and water and sewer services.
 - l. Whether the lot to be built on has any buildable area outside of the FPO Zone boundary.
2. Presumptions Relative to Approval
- a. Generally a variance may be granted for the new construction or substantial improvement of a one-family dwelling on a lot of one-half (.5) acre or less in area which is contiguous to and surrounded by lots containing structures constructed below flood base level, after fully considering the "items to consider" of subpart 1 immediately above. As the lot area and human usage increases over one-half acre and one family, the burden of proof becomes more difficult to show that approval can be granted safely.
 - b. With alternate programs to protect life and provide reasonable safety, a variance may be granted to permit the restoration or

rehabilitation of structures on the National Register of Historic Places without regard to the standards contained in zoning sections 5-11-D and 5-11-E.

- c. No variance shall be granted within a floodway if such will increase the flood level during the base flood discharge.
- d. A variance shall be granted only upon the determination that the variance is the minimum amount necessary, in view of the flood hazard, to afford relief.
- e. A variance shall be granted only if such will not result in a threat to public safety, extraordinary public expense, create a nuisance, or cause fraud or victimization of the public.

3. Disclosure

The Zoning Administrator shall give to any applicant receiving a variance a written disclosure statement stating that because the structure will be built below the base flood elevation the cost of flood insurance will be commensurate with the increased risk. All variances shall be reported to the Federal Emergency Management Agency.

PART III:

Section 5-12-E-1 of the Utah County Zoning Ordinance is hereby amended to read as follows:

The Board of Adjustment, when deciding appeals for variances of distance or area within the NHO Zone shall follow both the standards of zoning section 7-20 and the standards stated below.

PART IV:

Section 6-1-E-6 of the Utah County Zoning Ordinance is hereby amended to read as follows:

The developer shall submit to the Planning Director three (3) copies of the application for approval, and all maps, drawings, and other documents, including the statements from the Fire Marshal, Health Department, and County Surveyor, together with a review fee in the current amount set by the County Commission for each building site and/or lot to be included with the development plat. In order for the development to be reviewed by the Planning Director for consideration for placement on the Planning Commission agenda, the application and all maps, drawings, and other documents, including the statements from the Fire Marshal, Health Department, and County

Surveyor, and other supporting documents, must be received by the Planning Director at least forty-five (45) days prior to the regularly scheduled meeting at which the application is requested to be considered (the Submittal Deadline).

PART V:

Section 6-1-E-7-c of the Utah County Zoning Ordinance is hereby amended to read as follows:

Prepare an initial application review at least thirty-five (35) days prior to the regularly scheduled meeting of the Planning Commission at which the application is requested to be considered.

PART VI:

Section 6-1-E-8 of the Utah County Zoning Ordinance is hereby amended to read as follows:

The County Attorney shall review the plat, drawings, and all other documents of the application to determine whether the items appear to be in proper form and in compliance with the requirements of the county ordinances. The County Attorney shall compile the results of his/her review in writing and return them to the Planning Director for placement in the file for public review, at least twenty-five (25) days before the scheduled meeting of the Planning Commission.

PART VII:

Section 7-12-C of the Utah County Zoning Ordinance is hereby amended to read as follows:

The Secretary of the Board of Adjustment may make a tape recording of the proceedings of the Board, and a transcription may be requested from the Secretary. The Board shall establish rules relating to such requests, including a reasonable compensation to be paid for making the transcription. The Secretary shall oversee the making of the transcript and shall be responsible for maintaining the integrity of the tape. Where more than one record exists or is purported to exist, the transcription caused to be prepared by the Secretary and certified to its accuracy before a notary public, shall be the official record of the proceedings of the Board of Adjustment.

PART VIII:

Section 7-14 of the Utah County Zoning Ordinance is hereby amended to read as follows:

The powers and duties of the Board of Adjustment are limited to the judicial and administrative guidelines set forth in this ordinance. The Board shall not have the

authority to amend this ordinance, nor to act outside of the authorized rules set forth in sections 7-11 through 7-23 of this ordinance nor sections 17-27-701 to 17-27-708 of the Utah Code Annotated 1953. Moreover, no decision shall be made in such a way so as to destroy the intent and purpose of the zoning ordinance. Furthermore, the Board of Adjustment does not have the power to sue and be sued; its decisions are subject to review only according to the provisions of section 7-23 of this ordinance and 17-27-708 of the Utah Code Annotated 1953.

PART IX:

Section 7-15 of the Utah County Zoning Ordinance is hereby amended to read as follows:

Any person or entity wishing to appeal a decision made in applying the zoning ordinance, or to appeal for a variance, or to request a special exception, may commence such action by completing the standard forms adopted by the Board of Adjustment and filing the forms in the office of the Board. The Secretary of the Board of Adjustment, or other person designated by the Board to receive and process appeals forms, shall accept and process such forms only if they are properly completed and accompanied by the filing fee in the current amount set by the County Commission. To be heard at any meeting of the Board of Adjustment, such forms must be received in proper form with the filing fee before 5:00 P.M. of the thirtieth (30th) day prior to the date of the meeting. Moreover, any appeal of a decision made in applying the zoning ordinance must be properly filed within forty-five (45) days of the date of the contested decision, or it shall be time-barred and not heard.

PART X:

Section 7-19 of the Utah County Zoning Ordinance is hereby amended to read as follows:

A. PROCEDURAL REQUIREMENTS

Prior to filing the appeal with the Board of Adjustment, the Board shall lack jurisdiction and shall not hear the appeal unless all of the following ~~procedural~~ requirements have been met:

1. Within twenty (20) days of the date of the decision being appealed, the appellant must present the Zoning Administrator, or other person or entity which made the decision in question, with a claim of error which fully sets forth:
 - a. A brief statement of the facts; and

- b. The nature of the claim of error.
2. Within thirty-five (35) days of the date of the decision being appealed, the Zoning Administrator, or other person or entity which made the decision in question may, but is not required to, respond in writing to the claim of error. The claim of error shall be deemed denied if the Zoning Administrator, or other person or entity which made the decision in question, fails to approve or deny the claim of error or otherwise respond.
 3. Within forty-five (45) days of the date of the decision being appealed, the appellant must file with a properly completed application for appeal, together with a copy of the claim of error and any response received. The appellant may also, within the same time period, file a reply to the response, if any, of the Zoning Administrator, or other person or entity which made the decision in question.

B. REQUIRED STANDARDS

When the Board of Adjustment acts under its power to hear and decide appeals in which it is alleged that there is error in an order, requirement, decision, or determination made in the administration or interpretation of the zoning ordinance, the Board shall not grant the reversal or relief appealed for unless it finds that all of the following standards have been met:

1. The appellant has complied with the procedural requirements of Subsection A.
2. The appellant has filed a properly completed application for appeal, which states with specificity the nature of the alleged error and how the appellant has been adversely affected by said alleged error.
3. The application for appeal was properly filed with the Board forty-five (45) days or less after the date of the decision being appealed.
4. The appellant must be a party which was adversely affected by the subject decision applying the zoning ordinance.
5. The decision in question must be one made in applying this, the zoning ordinance, not some other state or county law, office policy, personnel matter, or other decision beyond the purview of the zoning ordinance.

6. Legislative zoning decisions (e.g. decisions made by the County Commission in enacting or amending the zoning ordinance) shall not be the purview of the Board of Adjustment.
7. If the Board of Adjustment grants the appellant's request, the result must be consistent with the provisions of the zoning ordinance, and not waive or modify any of the terms or requirements thereof.
8. The appellant has the burden of proving that an error was made and must clearly meet that burden based on the facts presented for the record; expressions of support or protest alone shall not constitute the basis of approval or denial.

PART XI:

Section 7-21-D of the Utah County Zoning Ordinance is hereby amended to read as follows:

The applicant has the burden of proving that all of the conditions for granting a special exception have been met and must clearly meet that burden based on the facts presented for the record; expressions of support or protest alone shall not constitute the basis of approval or denial.

PART XII:

Section 7-22-A of the Utah County Zoning Ordinance is hereby amended to read as follows:

Within fifteen (15) days after a decision has been made, the secretary shall file a written notice of the decision of the Board of Adjustment in its offices and mail a copy of the notice to the appellant / applicant at the address supplied in the application form. The decision of the Board shall be deemed final at the time it is filed in its offices.

PART XIII:

Section 7-22-B of the Utah County Zoning Ordinance is hereby amended to read as follows:

After each decision of the Board of Adjustment has been filed in its offices and become final, as provided in subsection A, above, said Board shall record the decision with the Utah County Recorder.

PART XIV:

Insert pages reflecting the above amendments are hereby ordered to be filed in the three (3) file copies of the Official Utah County Zoning Ordinance on file with the Utah County Clerk/Auditor.

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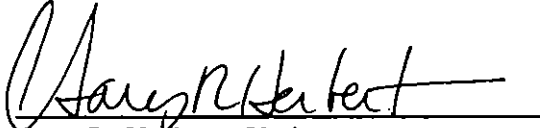
PART XV:

This ordinance shall take effect 1. sixteen (16) days after it is passed, or 2. after it has been published, whichever date is later.

PASSED and ordered published this 20th day of February, 2001.

UTAH COUNTY COMMISSION

VOTE



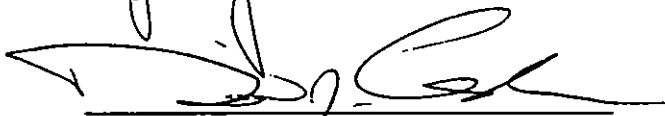
Gary R. Herbert, Chairman

Yes



Jerry D. Grover, Commissioner

Yes



David J. Gardner, Commissioner

Yes

ATTEST:

Arlin V. Kuhni
Utah County Clerk/Auditor

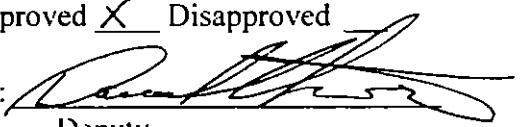
By: 

Deputy

APPROVED AS TO FORM:

C. Kay Bryson
Utah County Attorney

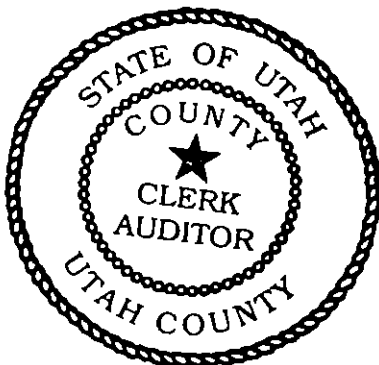
Approved Disapproved

By: 

Deputy

Date of Publication: _____ [one time, as soon as possible]

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PROOF OF PUBLICATION

from

The Daily Herald

STATE OF UTAH

Utah County

SS.

ORDINANCE NO. 2001 - 06

AN ORDINANCE AMENDING THE UTAH COUNTY ZONING ORDINANCE AS TO SECTIONS 3-29-B-2, 5-11-G, 5-12-E-1, 6-1-E-6, 6-1-E-7-c, 6-1-E-8, 7-12-C, 7-14, 7-15, 7-18-A, 7-19, 7-21-D, 7-22-A, AND 7-22-B.

THE COUNTY LEGISLATIVE BODY OF THE COUNTY OF UTAH ORDAINS AS FOLLOWS:

PART I:

Section 3-29-B-2 of the Utah County Zoning Ordinance is hereby amended to read as follows: The notice, to be deemed "sufficient", must be mailed fifteen (15) days or more prior to the time of the Planning Commission, County Commission, or Board of Adjustment meeting wherein the item will be considered, and must contain the applicant's name, the location of the property that is being considered, the type of approval or change in land use requested, and the time, place, and location of the meeting.

PART II:

Section 5-11-G of the Utah County Zoning Ordinance is hereby amended to read as follows: The Board of Adjustment may grant a variance in the size, distance or elevation requirements of the FPO Zone, according to the standards of zoning section 7-20 and the standards stated below.

1. Items to Consider
 - In deciding whether to grant a variance and what conditions to attach to its approval, the Board shall consider:
 - a. The danger that materials may be swept onto other lands, causing injury to others.
 - b. The danger to life and property caused by flooding and erosion.
 - c. The degree of susceptibility to flood damage of the proposed use or building (including its contents), and the effect of such damage to the owners.
 - d. The importance of services provided by the facility to the community.
 - e. The necessity of the facility to be on a waterfront, if applicable.
 - f. The availability of alternate locations for the proposed use or building, which are not subject to flooding or erosion damage.
 - g. The compatibility of the proposed use with the existing and anticipated development.
 - h. The relationship of the proposed use to the comprehensive plan and flood plain management program for the area.
 - i. The safety of access to the property during flooding for ordinary and emergency vehicles.
 - j. The expected flood water height, velocity, duration, rate of rise, sediment transport, and wave action effects at the site.
 - k. The cost of providing governmental and public utility services during and after flood conditions, including the maintenance and repair of roads, bridges, electric lines, gas lines, and water and sewer services.
1. Whether the lot to be built on has any buildable area outside of the FPO Zone boundary.
2. Presumptions Relative to Approval
 - a. Generally a variance may be granted for the new construction or substantial improvement of a one-family dwelling on a lot of one-half (1/2) acre or less in area which is contiguous to and surrounded by lots containing structures constructed below flood base level, after fully considering the items to consider of subpart 1 immediately above. As the

fied to its accuracy before a notary public, shall be the official record of the proceedings of the Board of Adjustment.

PART VIII:

Section 7-14 of the Utah County Zoning Ordinance is hereby amended to read as follows: The powers and duties of the Board of Adjustment are limited to the judicial and administrative guidelines set forth in this ordinance. The Board shall not have the authority to amend this ordinance, nor to act outside of the authorized rules set forth in sections 7-11, through 7-23 of this ordinance nor sections 17-27-701 to 17-27-708 of the Utah Code Annotated 1953. Moreover, no decision shall be made in such a way so as to destroy the intent and purpose of the zoning ordinance. Furthermore, the Board of Adjustment does not have the power to sue and be sued; its decisions are subject to review only according to the provisions of section 7-23 of this ordinance and 17-27-708 of the Utah Code Annotated 1953.

PART IX:

Section 7-15 of the Utah County Zoning Ordinance is hereby amended to read as follows: Any person or entity wishing to appeal a decision made in applying the zoning ordinance, or to appeal for a variance, or to request a special exception, may commence such action by completing the standard forms adopted by the Board of Adjustment and filing the forms in the office of the Board. The Secretary of the Board of Adjustment or other person designated by the Board to receive and process appeals forms, shall accept and process such forms only if they are properly completed and accompanied by the filing fee in the current amount set by the County Commission. To be heard at any meeting of the Board of Adjustment, such forms must be received in proper form with the filing fee before 5:00 P.M. of the thirtieth (30th) day prior to the date of the meeting. Moreover, any appeal of a decision made in applying the zoning ordinance must be properly filed within forty-five (45) days of the date of the contested decision, or it shall be time-barred and not heard.

PART X:

Section 7-19 of the Utah County Zoning Ordinance is hereby amended to read as follows:

A. PROCEDURAL REQUIREMENTS

Prior to filing the appeal with the Board of Adjustment, the Board shall lack jurisdiction and shall not hear the appeal unless all of the following procedural requirements have been met:
1. Within twenty (20) days of the date of the decision being appealed, the appellant must present the Zoning Administrator, or other person or entity which made the decision in question, with a claim of error, which fully sets forth:
a. A brief statement of the facts; and
b. The nature of the claim of error.
2. Within thirty-five (35) days of the date of the decision being appealed, the Zoning Administrator, or other person or entity which made the decision in question may, but is not required to, respond in writing to the claim of error. The claim of error shall be deemed denied if the Zoning Administrator, or other person or entity which made the decision in question fails to approve or deny the claim of error or otherwise respond.
3. Within forty-five (45) days of the date of the decision being appealed, the appellant must file with a properly completed application for appeal, together with a copy of the claim of error and any response received. The appellant may also, within

e Lynn Davis, being first duly pose and say that I am the lling Clerk of the Daily a newspaper of general ion, published seven times each Provo, Utah, County of Utah; notice attached hereto, PO#03066-ORDINANCE N, and which y, was published in said er, the first publication een made on the 8th day of 2001, and the last on the 8th March, 2001; that said notice ished in the regular and entire every number of the paper the period and times of tion, and the same was published newspaper proper and not in the ent.



scribed and sworn before me h day of March, 2001

Lisa Danette Stone
Notary Public

ce: Eagle Mountain, Utah

ission expires February 5, 2005

LISA DANETTE STONE
NOTARY PUBLIC - STATE OF UTAH
1555 N. FREEDOM BLVD.
PROVO, UT 84604
COMM. EXP. 2-5-2005

...may be granted for the construction of a substantial improvement of a family dwelling on a lot of one-half (.5) acre or in area which is contiguous to and surrounded by structures constructed below base level, after fully considering the items to be (a) submitted immediately above. As the (b) and human usage increases over one-half (c) and one family, the burden of proof becomes difficult to show that approval can be granted.

...alternate programs to protect life and property safety. A variance may be granted for the restoration or rehabilitation of structures on the National Register of Historic Places, provided the standards contained in sections 5-11-D and 5-11-E.

No variance shall be granted within a flood such that it will increase the flood level during the flood discharge.

A variance shall be granted only upon the condition that the variance is the minimum necessary in view of the flood hazard to the area.

A variance shall be granted only if such will not create a threat to public safety, extraordinary expense, create a nuisance, or cause a hazard to the public.

The Planning Administrator shall give to any applicant a written disclosure stating that because the structure will be built on a base flood elevation, the cost of flood insurance will be commensurate with the increased risk. Variances shall be reported to the Federal Emergency Management Agency.

Section 5-12-E-1 of the Utah County Zoning Ordinance is hereby amended to read as follows: The Board of Adjustment, when deciding appeals, shall consider the distance or area within the NHO and the standards stated below.

Section 5-12-E-2 of the Utah County Zoning Ordinance is hereby amended to read as follows: The applicant shall submit to the Planning Director copies of the application for approval, including drawings, and other documents, including maps, from the Fire Marshal, Health Department, County Surveyor, and other supporting documents, must be received by the Planning Director forty-five (45) days prior to the regulated meeting at which the application is to be considered (the Submittal Deadline).

Section 5-12-E-3 of the Utah County Zoning Ordinance is hereby amended to read as follows: The applicant shall submit to the Planning Director copies of the application for approval, including drawings, and other documents, including maps, from the Fire Marshal, Health Department, County Surveyor, and other supporting documents, must be received by the Planning Director forty-five (45) days prior to the regulated meeting at which the application is to be considered (the Submittal Deadline).

Section 5-12-E-4 of the Utah County Zoning Ordinance is hereby amended to read as follows: The applicant shall submit to the Planning Director copies of the application for approval, including drawings, and other documents, including maps, from the Fire Marshal, Health Department, County Surveyor, and other supporting documents, must be received by the Planning Director forty-five (45) days prior to the regulated meeting at which the application is to be considered (the Submittal Deadline).

Section 5-12-E-5 of the Utah County Zoning Ordinance is hereby amended to read as follows: The applicant shall submit to the Planning Director copies of the application for approval, including drawings, and other documents, including maps, from the Fire Marshal, Health Department, County Surveyor, and other supporting documents, must be received by the Planning Director forty-five (45) days prior to the regulated meeting at which the application is to be considered (the Submittal Deadline).

Section 5-12-E-6 of the Utah County Zoning Ordinance is hereby amended to read as follows: The applicant shall submit to the Planning Director copies of the application for approval, including drawings, and other documents, including maps, from the Fire Marshal, Health Department, County Surveyor, and other supporting documents, must be received by the Planning Director forty-five (45) days prior to the regulated meeting at which the application is to be considered (the Submittal Deadline).

...question, fails to approve or deny the claim of error or otherwise respond.

3. Within forty-five (45) days of the date of the decision being appealed, the appellant must file with a properly completed application for appeal, together with a copy of the claim of error, and any response received. The appellant may also, within the same time period, file a reply to the response, if any, of the Zoning Administrator, or other person or entity which made the decision in question.

B. REQUIRED STANDARDS

When the Board of Adjustment acts under its power to hear and decide appeals in which it is alleged that there is error in an order, requirement, decision, or determination made in the administration or interpretation of the zoning ordinance, the Board shall not grant the reversal or relief appealed for unless it finds that all of the following standards have been met:

1. The appellant has complied with the procedural requirements of Subsection A.

2. The appellant has filed a properly completed application for appeal, which states with specificity the nature of the alleged error and how the appellant has been adversely affected by said alleged error.

3. The application for appeal was properly filed with the Board forty-five (45) days or less after the date of the decision being appealed.

4. The appellant must be a party which was adversely affected by the subject decision, applying the zoning ordinance.

5. The decision in question must be one made in applying this, the zoning ordinance, not some other state or county law, office policy, personnel matter, or other decision beyond the purview of the zoning ordinance.

6. Legislative zoning decisions (e.g. decisions made by the County Commission in enacting or amending the zoning ordinance) shall not be the purview of the Board of Adjustment.

7. If the Board of Adjustment grants the appellant's request, the result must be consistent with the provisions of the zoning ordinance, and not waive or modify any of the terms or requirements thereof.

8. The appellant has the burden of proving that an error was made and must clearly meet that burden based on the facts presented for the record; expressions of support or protest alone shall not constitute the basis of approval or denial.

PART XI:
Section 7-21-D of the Utah County Zoning Ordinance is hereby amended to read as follows:

The applicant has the burden of proving that all of the conditions for granting a special exception have been met and must clearly meet that burden based on the facts presented for the record; expressions of support or protest alone shall not constitute the basis of approval or denial.

PART XII:
Section 7-22-A of the Utah County Zoning Ordinance is hereby amended to read as follows:

Within fifteen (15) days after a decision has been made, the secretary shall file a written notice of the decision of the Board of Adjustment in its offices and mail a copy of the notice to the appellant / applicant at the address supplied in the application form. The decision of the Board shall be deemed final at the time it is filed in its offices.

PART XIII:
Section 7-22-B of the Utah County Zoning Ordinance is hereby amended to read as follows:

After each decision of the Board of Adjustment has been filed in its offices and become final, as provided in subsection A, above, said Board shall record the decision with the Utah County Recorder.

PART XIV:
Insert pages reflecting the above amendments are hereby ordered to be filed in the three (3) file copies of the Official Utah County Zoning Ordinance on file with the Utah County Clerk/Auditor.

PART XV:
This ordinance shall take effect 1. sixteen (16) days after it is passed, or 2. after it has been published, whichever date is later.

PASSED and ordered published this 20th day of February, 2001.

UTAH COUNTY COMMISSION
Gary R. Herbert, Chairman
Jerry D. Grover, Commissioner
David J. Gardner, Commissioner

ATTEST:
Arin V. Kuhnig, Utah County Clerk/Auditor
Linda Strickland, Deputy
Kay Bryson, Utah County Attorney
Dave Shawcroft, Deputy
Legal Notice No. 505261 Published In The Daily Herald March 8, 2001