Advisory Opinion #112

Parties: Rob Haertel and City of Saratoga Springs

Issued: March 29, 2012

TOPIC CATEGORIES:
R(v): Other Topics (Interpretation of Ordinances)

A Master Agreement, and an Amendment to that Agreement, are valid, even though the City does not have an original copy. The Agreements exist, and were used to guide development. The Agreements and an overlay zone should be read along with the underlying zoning ordinances as one regulatory scheme. The City's interpretation of the Agreements and its ordinances are entitled to deference.

DISCLAIMER

The Office of the Property Rights Ombudsman makes every effort to ensure that the legal analysis of each Advisory Opinion is based on a correct application of statutes and cases in existence when the Opinion was prepared. Over time, however, the analysis of an Advisory Opinion may be altered because of statutory changes or new interpretations issued by appellate courts. Readers should be advised that Advisory Opinions provide general guidance and information on legal protections afforded to private property, but an Opinion should not be considered legal advice. Specific questions should be directed to an attorney to be analyzed according to current laws.

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OFFICE OF THE PROPERTY RIGHTS OMBUDSMAN

ADVISORY OPINION

Advisory Opinion Requested by:	Rob Haertel
Local Government Entity:	City of Saratoga Springs
Applicant for the Land Use Approval:	Capital Assets Income Fund I
Type of Property:	Residential Subdivision
Date of this Advisory Opinion:	March 29, 2012
Opinion Authored By:	Elliot R. Lawrence Office of the Property Rights Ombudsman

Issues

I. Is the City bound by the terms of a development agreement if the City no longer has a record that the Agreement was approved?

II. Is the City's determination of the number of allowable units, including multi-family units, supported by its zoning regulations?

III. Is a Planned Unit Development Overlay Zone subordinate to the underlying zoning ordinances, and does and ordinance's policy language control the City's ability to approve development?

Summary of Advisory Opinion

The 2000 Master Development Agreement is valid, even if the City no longer has the original agreement. There is evidence that the City considered and approved the agreement, and the City has consistently followed it since 2000. A 2004 Amended MDA references the original agreement, and controls development of the owners' property. Finally, a PUD Overlay Zone was adopted, and controls development, along with the Agreements, and the underlying zoning ordinances. All of these documents and ordinances should be read as a single zoning ordinance for the property. Policy or purpose statements in the PUD ordinance provide general guidance, but are not substantive parts of the ordinance, and do not control decisions on development.

There has been no reason presented which disputes the City's conclusion that 77 Units may be constructed on Plat 17, including multi-family units. The City states that the Agreements and the PUD Overlay Zone allow for 77 Units, and multi-family units are specifically permitted. The City's interpretation is entitled to deference, and so it should stand.

Review

A Request for an Advisory Opinion may be filed at any time prior to the rendering of a final decision by a local land use appeal authority under the provisions of UTAH CODE § 13-43-205. An advisory opinion is meant to provide an early review, before any duty to exhaust administrative remedies, of significant land use questions so that those involved in a land use application or other specific land use disputes can have an independent review of an issue. It is hoped that such a review can help the parties avoid litigation, resolve differences in a fair and neutral forum, and understand the relevant law. The decision is not binding, but, as explained at the end of this opinion, may have some effect on the long-term cost of resolving such issues in the courts.

A Request for an Advisory Opinion was received from Rob Haertel on December 2, 2011. A copy of that request was sent via certified mail to Ken Leetham, Saratoga Springs City Manager, at 1307 North Commerce Drive #240, Saratoga Springs, Utah 84043. The return information indicates that the City received the Request on December 7, 2011.

Evidence

The following documents and information with relevance to the issue involved in this Advisory Opinion were reviewed prior to its completion:

1. Request for an Advisory Opinion, with attachments, submitted by Rob Haertel, received by the Office of the Property Rights Ombudsman, December 2, 2011. An additional clarifying statement was received from Mr. Haertel on February 1, 2012.
2. Response submitted on behalf of the City of Saratoga Springs, by Kevin S. Thurman, City Attorney, received December 29, 2011. Additional materials from the City were received on December 27, 2011, January 3, 2012, and February 28, 2012.
3. Response submitted by Sam Bell, attorney for Robert Krejci and other neighboring property owners, received January 19, 2012, with additional material received from Mr. Krejci on February 14, 2012.
4. Sections of the Saratoga Springs City Municipal Code.

Background

Rob Haertel and a group of investors own "Plat 17," a twelve acre parcel in the Saratoga Springs Development, a residential community that was originally platted and developed in 2000.[1] Plat 17 is one of the last areas of undeveloped land in that development.[2] In the summer of 2011, Mr. Haertel proposed a development on the Plat, entitled "Green Springs Manor." The development would consist of 77 residential units, clustered into a central area, with open space surrounding the housing. The residences would consist of single homes, duplexes, and triplexes, but each home, including duplexes and triplexes, would be on a separate lot.

The Saratoga Springs Development was part of a Master Development Agreement (MDA), approved in April of 2000. The MDA, along with a Planned Unit Development Overlay Zone (PUD) created at the same time, governed development of the area, including residential uses, a golf course, and other recreational and open space amenities. The PUD allowed densities above that which would normally be permitted under the City's zoning regulations.[3] The 77 units proposed for the Green Springs Manor project was the maximum allowed for that parcel under the PUD. According to the City, the MDA specifically stated that Plat 17 (the Green Spring Manor parcel) could have a maximum of 77 units.

Despite the importance of the MDA, the City does not have a signed copy of the Agreement. The developers provided a signed copy of the MDA (showing the City's seal as well as the signature of its Mayor) and a copy of the April 13, 2000 minutes, which shows that the MDA was unanimously approved. Apparently, the City no longer has the April 13 minutes in its records. The City submitted a copy of the agenda from the April 27, 2000 City Council meeting, which shows that the minutes from the April 13 meeting were to be approved. Other than that, the City has no record of the MDA. Nevertheless, the development proceeded according to the terms of that agreement. According to neighboring property owners, the MDA was not recorded with the Utah County Recorder's Office.

By its own terms, the MDA expired after 10 years, in April of 2010. However, the PUD that was approved along with the MDA was not repealed, and remains in effect for the parcel. In December of 2004, the City adopted an amended MDA, which applied to Plat 17.[4] The Amended MDA provided that

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[1] The parcel is identified as Plat 17 of the Saratoga Springs Development. The owner is listed as: Capital Assets Income Fund I, Capital Assets 401(k) Plan, Source One Financial, Prisbrey Investment Company, PRM Investment Co., Real Enterprises, LLC.

[2] Saratoga Springs Development is a large residential community centered on a golf course and other open space. According to the City, it is a "thriving community and homeowners association." Letter from Kevin S. Thurman, December 29, 2011 at 2. The development also includes some commercial properties.

[3] The PUD allowed "density bonuses" for the property if certain conditions were met, such as open space and other recreational amenities. In April of 2000, the underlying zoning for the area was R-2, and the PUD Overlay Zone added additional rights and obligations. Planned Unit Developments are authorized by the City Code. *See* SARATOGA SPRINGS CITY MUNICIPAL CODE, §§ 19.07.010 to 19.07.120.

[4] The Amended MDA approved a master development plan for Phases 3 and 4 of the Saratoga Springs Development. *See* Amended Master Development Plan Agreement for Saratoga Springs Development Phases 3 and 4 (December 14, 2004). Plat 17 is part of Phase 3.

> [s]ubject to the terms and conditions of this Amended Agreement, the Developers shall have the vested right to preliminary and final subdivision and site plan approval to develop Developer's Land in the manner provided in the approved Amended Master Development Plan and this Amended Agreement. The Amended Master Development Plan shall be deemed to constitute Concept Plan Approval for all developments provided for in the Amended Master Development Plan.

Amended Master Development Plan Agreement, at ¶ 2.3. The Amended Agreement provides a termination date eight years from the effective date of its approval, or on December 14, 2012. *See id.*, at ¶ 4.2.

In April of 2005, the City changed the underlying zoning governing the parcel from R-2 to R-3, but the PUD Overlay Zone remained in effect. In February 2007, a new zoning map was prepared, to reflect the zoning designation for the Saratoga Springs Development. That map designated Plat 17 as having R-6 zoning, although the City states that it never adopted that zoning. Mr. Haertel claims that the City represented to him that the R-6 zoning was valid, and that he relied upon that representation. Although the City denies that the R-6 zone was approved for Plat 17, it acknowledges that the PUD Overlay Zone and the two Master Development Agreements allow for densities that are equivalent to the R-6 zone.

When Mr. Haertel proposed development on Plat 17, a group of property owners in the area opposed the project, arguing that the City's zoning regulations did not permit 77 units. The neighbors argue that there is no reliable record showing that the MDA was approved in 2000, and even if it was, it expired in 2010. They also claim that the MDA, even if properly approved, was voided, because the agreement was not recorded. They also disagree that the MDA, the Amended MDA, and the PUD Overlay Zone would allow 77 units, but would only allow a maximum of 36 to 48 units.

The neighbors also dispute that the development on Plat 17 may include duplex and triplex structures. They contend that the zoning only allows for single family detached structures. Mr. Haertel explains that each residence will be on a separate lot, even if the structure were a duplex or triplex. The City points out that the MDA Agreements allow multi-family residences on the property.

The neighbors also state that the proposed development violates the "purpose" of the PUD Ordinance, because they feel that the proposal is not "attractive or desirable." The PUD Ordinance includes a section which states:

> The purpose of the Planned Unit Development (PUD) Overlay zone is to encourage imaginative and efficient utilization of land by providing greater flexibility in the location of structures on land, the consolidation of open spaces, and the clustering of dwelling units. These provisions are intended to create more attractive and more desirable environments within residential and mixed use areas.

SARATOGA SPRINGS CITY MUNICIPAL CODE, § 19.07.010. Invoking this section, the neighbors believe that the proposed development is detrimental to the larger Saratoga Springs Development.

Analysis

I. Development of Plat 17 is Governed by the Master Development Agreement of 2000, the Amended Master Development Agreement of 2004, and the PUD Overlay Zone.

A. The Master Development Agreement of 2000 is Valid.

There is sufficient evidence showing that the Master Development Agreement was approved by the City in April of 2000. Although the City cannot find a copy of the MDA, the resolution which approved it, or even the minutes of the meeting in which it was approved, the developers provided a signed copy, and the City has abided by the MDA over the past several years. The copy provided by the developers show that the MDA was signed, presumably by the City's mayor or a designee, and it has the City's seal and signature of the City Recorder—strong evidence that the City approved the agreement. Furthermore, over the past 10 years, the Saratoga Springs Development has followed the MDA, and the City has consistently approved different phases and subdivisions according to the agreement's provisions.[5] Finally, in 2004, the City approved the Amended MDA, which referenced the 2000 Agreement. This shows that both the City and the property developers considered the MDA as a valid governing document.

Therefore, it is reasonable to conclude that the MDA was validly approved and followed by the City. The owners of Plat 17 may claim the rights associated with the MDA and PUD, particularly because the Amended MDA applies to Plat 17. While it would be preferable that the City's records be properly archived and available for review, there is nothing in Utah Law that automatically invalidates an agreement simply because the original documentation of approval by a municipal body cannot be found.[6] The Master Development Agreement was valid, and governed development of the Saratoga Springs Development.

B. The Amended MDA Directly Governs Development of Plat 17.

The Amended Master Development Agreement, adopted in 2004, directly governs development of Plat 17. There does not appear to be any question that the Amended MDA was adopted by the City, and it will remain in force until December of 2012. According to its terms, the Amended MDA clarified issues that arose from the original MDA concerning timing, scope, and the type of

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[5] Continued reliance on the MDA also raises the possibility that the City could be estopped from claiming that the agreement is invalid. The doctrine of zoning estoppel prevents "a government entity from exercising its zoning powers to prohibit a proposed land use when a property owner, relying reasonably and in good faith on some governmental 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." *Fox v. Park City*, 2008 UT 85, ¶ 35, 200 P.3d 182, 191.

[6] The neighbors also argue that the original MDA was not recorded. However, there is no provision that invalidates a development agreement due to failure to record.

development for Phases 3 and 4. The City and the property owners agreed that Phases 3 and 4 of the Saratoga Springs Development would develop "in accordance with the Amended Master Development Plan." Amended Master Development Plan Agreement, at ¶ B.

Thus, even though the original MDA expired in 2010, development of Plat 17 (which is a part of Phase 3) is governed by the Amended MDA. The current owners of the plat are entitled to the same rights and obligations as the original parties, because the agreement "runs with the land."[7] If the owners submit a subdivision plat that is consistent with the Amended MDA, they are entitled to proceed with development.

C. The City Properly Enacted the PUD Overlay Ordinance to Govern Development.

1. The PUD was properly adopted, and is essentially an amendment to the underlying zoning ordinances.

There is no reason to conclude that the PUD Overlay Ordinance was not properly adopted by the City. Local governments "may enact all ordinances, resolutions, and rules and may enter into other forms of land use controls and development agreements that they consider necessary or appropriate for the use and development of land . . .." UTAH CODE ANN. § 10-9a-102(2). A planned unit development overlay ordinance is included in the broad array of approaches available to a local government. Property owners may claim vested rights from a PUD ordinance, in the same way that vested rights may be created by any zoning ordinance.

A PUD overlay zone constitutes a "tailor made" zoning ordinance for a particular development, and its requirements control over those of the underlying zoning. A PUD overlay ordinance is essentially an amendment to the underlying zoning ordinance which applies to a specific development or property. The PUD language would control over the underlying ordinance as if that ordinance were amended to include the PUD language.[8]

2. The Agreements and the PUD are not subordinate to the zoning ordinance.

Language from both the MDA and the Amended MDA does not subordinate the agreement or the PUD to the language of the underlying ordinance. Neighboring property owners point to the following language of the MDA: "Except as otherwise provided, the requirements of the [development agreements] shall be in addition to and not in lieu of the requirements of the City Development Code . . .." Amended Master Development Agreement at 2.4.[9] The neighbors argue that the preceding sentence means that the MDA, the Amended MDA, and the PUD are

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[7] Paragraph 5.1 of the Amended MDA provides that "[t]he agreements contained herein shall be deemed to run with the land and shall be binding on all successors in ownership of Developer's Land." Neighboring property owners questioned whether the current owners of Plat 17 would be entitled to claim development rights under the MDA or the Amended MDA, because they were not parties to the agreements. However, since the agreements "run with the land," the current owners can claim the same rights as the original parties.

[8] *See Hall v. Utah State Dep't of Corrections*, 2001 UT 34, ¶ 15. (A specific provision controls over a general provision). Since a PUD ordinance applies to a specific property, its provisions control over the general provisions of the underlying ordinance.

[9] *See also* Master Development Agreement, at ¶ 2.4.

subordinate to and controlled by the underlying zoning ordinances. This interpretation, however, is not supportable. The language simply means that the two Agreements and the PUD apply specifically to the Saratoga Springs Development, as additions to the underlying zoning ordinance. In other words, there is no "conflict" between the PUD and the underlying zoning ordinance, because the two operate in conjunction with each other. Development agreements and PUD ordinances are acceptable means for a local government to regulate land use. Subordinating the language of agreements or PUD ordinances to the provisions of an underlying ordinance defeats the purpose of such actions, and undermines the authority of a local government to promote land use.[10] The Agreements, PUD Overlay Zone, and the underlying zoning ordinances should thus be considered together as a single regulatory scheme governing development on the property.

It must also be remembered that the City has approved development of the entire Saratoga Springs Development consistent with the MDA, the Amended MDA, and the PUD overlay zone for several years. The City's interpretation of its own agreements and ordinances should be given deference.[11] Furthermore, the owners of Plat 17 should expect the same treatment as other property owners within the Saratoga Springs Development.[12]

There has been no evidence submitted that the PUD overlay zone was improperly enacted, or that it has been repealed. Thus, the PUD overlay is the zoning regulation for the Saratoga Springs Development, and its provisions control as if they were adopted into the underlying zoning ordinance. The City and the Developer agree that the PUD and the Master Development Agreements allow for a total of 77 units on Plat 17, even though the underlying zoning regulations would allow far fewer units.

D. The Amended MDA Provides a "Conditional" Vested Right, Because the Property Owner Must Submit a Subdivision Plat to Claim Development Rights.

Because the property owner must submit a subdivision plat that complies with the development envisioned in the agreement, the Amended MDA provides a type of "conditional" vested right. The Amended MDA expressly states that the property owner has a vested right to develop according to the terms of the agreement, and even incorporates language from the vested rights statute limiting the City's ability to alter the development criteria.[13] In order to claim this right, however, the developer must submit a subdivision plat that complies with the agreement and

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[10] *See* UTAH CODE ANN. § 10-9a-102(1) (Purposes of land use regulation).

[11] *Carrier v. Salt Lake County*, 2004 UT 98, ¶ 30, 104 P.3d 1208, 1216 (Local governments allowed a "level of non-binding deference" to their interpretations of ordinances and policies). *See also Cottonwood Heights Citizens Ass'n v. Bd. of Commissioners*, 593 P.2d 138, 140 (Utah 1979) (Because local planning officials "have specialized knowledge . . . they should be allowed a comparatively wide latitude of discretion . . . ." in factual and policy decisions.)

[12] The owners claim that the City has stated that the proposed subdivision is permitted. The City may possibly be estopped from stating otherwise.

[13] <u>Amended Master Development Plan</u>, ¶¶ 2.3 and 2.4. The Amended MDA references "the vested rights doctrine of the State of Utah." The City may only modify the owner's vested rights "based upon policies, facts and circumstances meeting the compelling and countervailing public interest exception to the vested rights doctrine . . .." *Id.*, ¶ 2.4.

with the PUD.[14] "Developers' vested right of development . . . is expressly subject to and based upon strict compliance and performance by Developer of all of the terms, conditions and obligations . . . under [the] Amended Agreement." Amended Master Development Agreement, ¶ 2.3. Although the Amended MDA specifically grants "the vested right" to develop according to the agreement, until a plat is submitted and approved, the right to development does not fully vest.[15]

In this sense, the Owner's right to develop is similar to a property owners rights under a "normal" zoning ordinance. Under the vested rights doctrine, an owner's right of development vests upon submission of an application that complies with a locality's zoning ordinances.[16] Until a complete and compliant application has been submitted, an owner cannot claim the right to develop. The Owners of Plat 17 are similarly situated. Despite the language of the Amended MDA, their rights to develop fully vest only upon submission of a complete and compliant subdivision plat.

II. The Amended MDA Anticipates Construction of Multi-Family Units.

The Developer may construct duplexes or triplexes on Plat 17, because the Amended MDA allows construction of multi-family dwellings. Exhibit C of the Amended MDA "Design Guidelines," contains a reference to multi-family housing in Phase 3. (Plat 17 is part of Phase 3). Therefore, the City has agreed that at least some of the units in Plat 17 may be duplexes or triplexes, and the Developer has the right to construct them, consistent with the terms of the Agreement and the PUD.

The neighboring property owners argue that the underlying zone for the development does not allow multi-family dwellings, only single family homes. The City notes, however, that the PUD permits "single family attached," which is defined as a dwelling "attached to two or more one-family dwellings by common vertical walls" SARATOGA SPRINGS CITY MUNICIPAL CODE, § 19.02.020. In other words, the PUD allows duplexes and trizplexes. As was already discussed, the PUD language supercedes the prohibition in the underlying zoning ordinance, and single family attached homes are permitted. The Developer states that each unit, including duplexes and triplexes will be located on individual lots, an arrangement which is evidently acceptable to the City.[17]

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[14] The Amended MDA constitutes concept plan approval, and the developer is entitled to preliminary and final plat approvals, and site plan approval, provided the plans comply with the agreement. *Id.*, ¶ 2.3.

[15] When the Amended MDA expires, the rights expressed in that agreement also expire. A property owner would no longer be able to claim the development rights from the agreement. The property would still be subject to the PUD, unless the City amends that ordinance.

[16] *See Western Land Equities v. Logan*, 617 P.2d 388, 396 (Utah 1980); *see also* UTAH CODE ANN. § 10-9a-509(1) "[A]n applicant is entitled to approval of a land use application if the application conforms to the requirements of the municipality's land use maps, zoning map, and applicable land use ordinance in effect when a complete application is submitted and all application fees have been paid . . ."

[17] The City appears to agree that the MDA Agreements and the PUD allow multi-family residential buildings. The Amended MDA includes multi-family residences as being acceptable in Phase 3, but there is no language in the Agreement requiring that the units be on individual lots.

III. Expressions of Policy and Purpose do Not Limit Development.

Because policy statements are not considered to be substantive parts of ordinances, the purpose expressed in the PUD should not be read as limiting the type of development allowed on Plat 17. Neighboring property owners argue that the PUD limits development on Plat 17 to what is "attractive and desirable." The neighbors point to the purpose section of the PUD Ordinance, which reads as follows:

> The purpose of the Planned Unit Development (PUD) Overlay zone is to encourage imaginative and efficient utilization of land by providing greater flexibility in the location of structures on land, the consolidation of open spaces, and the clustering of dwelling units. These provisions are intended to create more attractive and more desirable environments within residential and mixed use areas.

SARATOGA SPRINGS CITY MUNICIPAL CODE, § 19.07.010 ("Purpose"). The neighbors feel that the development proposed for Plat 17 is not attractive and desirable, and so it should not be allowed.

Policy and purpose statements are not substantive parts of an ordinance. The Utah Supreme Court explained that "a statement of legislative purpose . . . is nothing more than a statement of policy which confers no substantive rights." *Price Development Co. v. Orem City*, 2000 UT 26, ¶ 23, 995 P.2d 1237, 1247. In other words, a purpose statement does not establish rights or limit activities. A purpose statement may "provide guidance to the reader as to how the act should be enforced and interpreted, but they are not a substantive part of the statute." *Id.*

Furthermore, the terms expressed in the purpose are not enforceable, because they are not based upon objective, measureable standards. A local government may impose requirements upon development, provided the requirements are expressed in an ordinance or as part of the approval process. *See* UTAH CODE ANN. § 10-9a-509(h). Those requirements must be based upon objective, measureable facts, and "denial of a permit is arbitrary when the reasons are without sufficient factual basis." *Davis County v. Clearfield*, 756 P.2d 704, 711 (Utah Ct. App. 1988). There is simply no way to objectively measure or enforce such vague concepts as attractiveness, desirability, imaginativeness, efficiency, or flexibility.

Finally, even if the purpose statement was a substantive part of the PUD Overlay ordinance, the City may interpret and apply the terms, and that interpretation will be given deference. Local governments have authority over land use decisions, and discretion to determine how to best carry out that authority. "[A] municipality may have a myriad of competing choices before it, [and] the selection of one method . . . in preference to another is entirely within the discretion of the city; and does not, in and of itself, constitute an abuse of discretion." *Bradley v. Payson City*, 2003 UT 16, ¶ 24, 70 P.3d 47, 54 (alterations in original omitted). The City thus may decide what is "attractive and desirable," through its ordinances and planning processes, and its decisions are entitled to broad deference.[18]

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[18] *Carrier v. Salt Lake County*, 2004 UT 98, ¶ 30, 104 P.3d 1208, 1216.

Conclusion

There is strong evidence to conclude that the City approved the Master Development Agreement in 2000. There is evidence from the City records that the MDA was adopted, and the City has consistently followed it, approving development on the other phases of the Saratoga Springs Development. In addition, the City approved an Amended Master Development Agreement in 2004, which referenced the earlier MDA, and which directly governs development on Plat 17. Finally, the City has adopted a Planned Unit Development Overlay Zone for the area, which governs development of the property.

Development of Plat 17 is governed by the 2000 MDA, the 2004 Amended MDA, and the PUD Overlay Zone, along with other applicable zoning and development ordinances. The City may enact a PUD Overlay Zone to govern a specific development or property, and the City may approve development agreements which also govern development. The Agreements, the PUD provisions, and the City's other zoning ordinances comprise the regulation for the entire development; and all should be read together, with the specific provisions controlling over the more general. A purpose or policy statement in the City's PUD ordinance is not a substantive part of the ordinance, and does not limit the City's authority, or control the type of development that is allowed.

The City has concluded that 77 Units may be constructed on Plat 77, based on its interpretation of the Agreements and the PUD Overlay Zone. There does not appear to be any reason to dispute the City's interpretation. A city's interpretation of its own ordinances and agreements are granted a degree of deference.

The Agreements grant the owner of the property a "conditional" vested right, which is similar to vested rights established under any zoning ordinance. The owners' rights do not fully vest until a plat which complies with the Agreements is submitted and approved. Until then, the owner does not have the vested right to develop.

Muli-family residential units are permitted on Plat 17, because the Amended MDA specifically provides that such units may be built. Since the Agreements and PUD Overlay Zone control development, multi-family units may be built, even if they are prohibited by the underlying zoning ordinance.

Brent N. Bateman, Lead Attorney
Office of the Property Rights Ombudsman

NOTE:

This is an advisory opinion as defined in § 13-43-205 of the Utah Code. It does not constitute legal advice, and is not to be construed as reflecting the opinions or policy of the State of Utah or the Department of Commerce. The opinions expressed are arrived at based on a summary review of the factual situation involved in this specific matter, and may or may not reflect the opinion that might be expressed in another matter where the facts and circumstances are different or where the relevant law may have changed.

While the author is an attorney and has prepared this opinion in light of his understanding of the relevant law, he does not represent anyone involved in this matter. Anyone with an interest in these issues who must protect that interest should seek the advice of his or her own legal counsel and not rely on this document as a definitive statement of how to protect or advance his interest.

An advisory opinion issued by the Office of the Property Rights Ombudsman is not binding on any party to a dispute involving land use law. If the same issue that is the subject of an advisory opinion is listed as a cause of action in litigation, and that cause of action is litigated on the same facts and circumstances and is resolved consistent with the advisory opinion, the substantially prevailing party on that cause of action may collect reasonable attorney fees and court costs pertaining to the development of that cause of action from the date of the delivery of the advisory opinion to the date of the court's resolution.

Evidence of a review by the Office of the Property Rights Ombudsman and the opinions, writings, findings, and determinations of the Office of the Property Rights Ombudsman are not admissible as evidence in a judicial action, except in small claims court, a judicial review of arbitration, or in determining costs and legal fees as explained above.

MAILING CERTIFICATE

Section 13-43-206(10)(b) of the Utah Code requires delivery of the attached advisory opinion to the government entity involved in this matter in a manner that complies with Utah Code Ann. § 63-30d-401 (Notices Filed Under the Governmental Immunity Act).

These provisions of state code require that the advisory opinion be delivered to the agent designated by the governmental entity to receive notices on behalf of the governmental entity in the Governmental Immunity Act database maintained by the Utah State Department of Commerce, Division of Corporations and Commercial Code, and to the address shown is as designated in that database.

The person and address designated in the Governmental Immunity Act database is as follows:

Ken Leetham, City Manager
City of Saratoga Springs
1307 North Commerce Drive, # 240
Saratoga Springs, UT 84043

On this ___________ Day of March, 2012, I caused the attached Advisory Opinion to be delivered to the governmental office by delivering the same to the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the person shown above.

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Office of the Property Rights Ombudsman