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October 11, 2011

Mr. Brent Bateman
Office of the Property Rights Ombudsman
PO Box 146702
Salt Lake City, Utah 84114

RE: Weber County's Response to Advisory Opinion Request – Bret Barry

Dear Mr. Bateman:

Weber County hereby responds to the request for advisory opinion as follows:

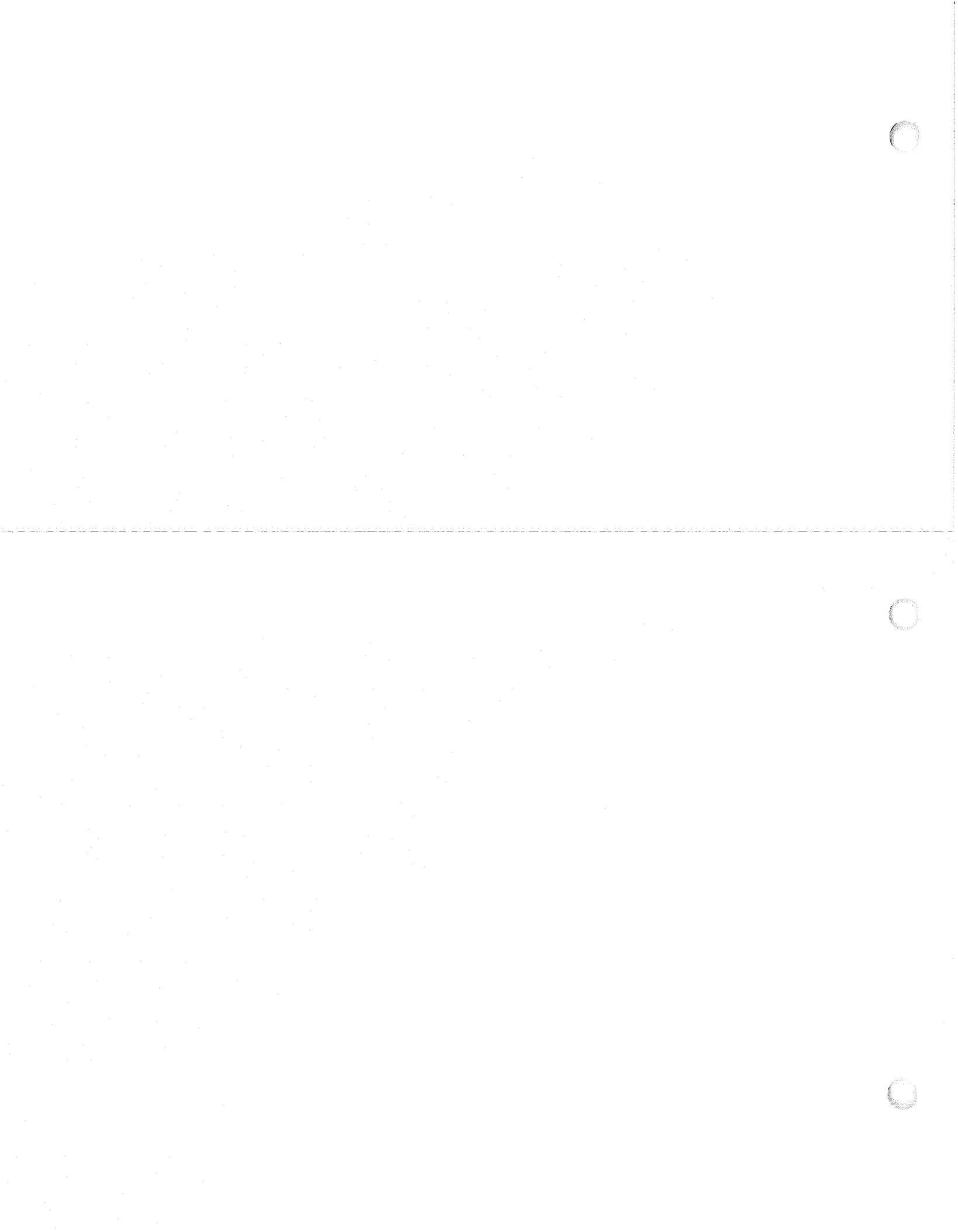
In her request for an advisory opinion Ms. Hoffman repeatedly accuses planning staff of providing a "result-oriented" interpretation of the zoning ordinance, suggesting that staff has somehow been improperly influenced by the fact that Rulon Jones played football in the NFL – over 20 years ago. These accusations are completely unsupported and unprofessional. Staff has no personal interest whatsoever in the outcome of this matter. Staff's only interest is in correctly applying the law to Jones' application.

Summary of Planning Staffs Decision to Issue a Land Use Permit

On pages 4 - 5 of her argument, under the heading "Staff Interpretation Was Result-Oriented," counsel constructs a thoroughly confusing rendition of what is alleged to be planning staff's rationale for issuing the land use permit. The analysis is simply wrong. An accurate statement of staffs rationale is described below.

On June 27, 2011 the Weber County Planning Division reviewed a land use permit application and subsequently issued a permit for, what has been interpreted by the planning staff to be, an agricultural use on a parcel located at 3788 E 4100 N in Liberty, Utah. The agricultural parcel (Tax ID# 22-010-000 1) for which the land use permit was issued, is owned by Richard Ralph and Rulon Kent Jones (hereinafter "Jones"). It consists of approximately 6.15 acres and lies within the Agricultural Valley – 3 (AV-3) Zone which lists "agriculture" as a permitted use. During the third week of June, 2011 an authorized representative of the landowners submitted a land use permit application, a site plan, and a written narrative that describes the subject

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property and the proposed land use. As described in the narrative, the Jones' have proposed to expand their current agricultural activities by utilizing an existing 1200 sq. ft. agricultural building for meat cutting/preparation. It has been represented that the building will only be used for cutting/preparing domesticated elk meat, and not for slaughtering, butchering, or custom cutting other animals including deer or moose.¹ It has also been represented that there would be a limited number of animals (approximately 100) cut and prepared during the fall months only. This would result in an average of about one elk per day.

The first touchstone for staff when reviewing a land use application is specified by the Utah Court of Appeals in *Patterson v. Utah County Board of Adjustment*, 893 P.2d 602, 606 (Ut. App. 1995):

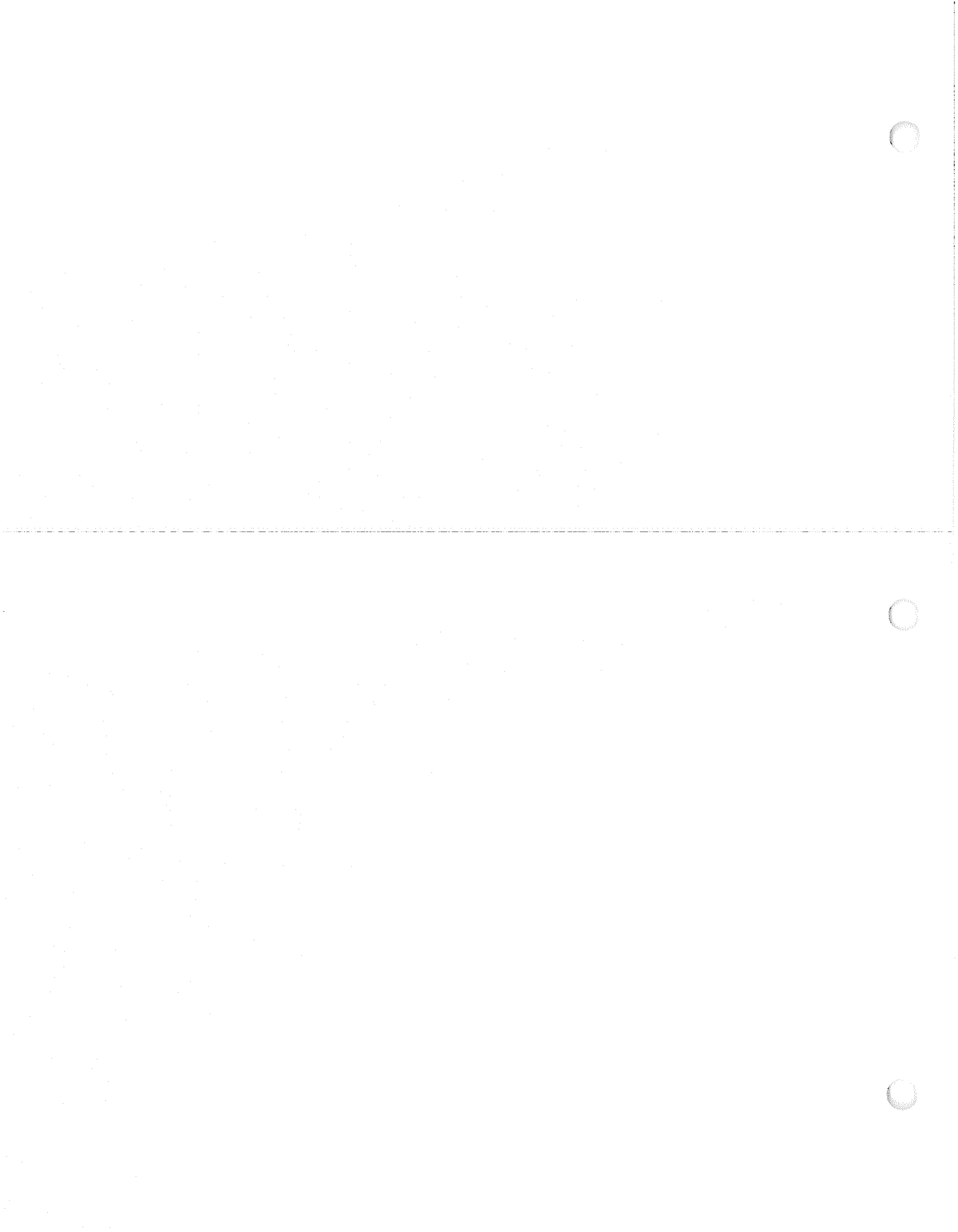
[B]ecause zoning ordinances are in derogation of a property owner's common-law right to unrestricted use of his or her property, provisions therein restricting property uses should be strictly construed, and provisions permitting property uses should be liberally construed in favor of the property owner.

Thus, even if there were any ambiguities in the zoning ordinance, staff (and any other reviewing entity) would have to decide those ambiguities in favor of Jones.

In issuing the land use permit, the Planning Division relied on information provided by Jones, the Weber County Zoning Ordinance, and Utah State Code. Chapter 5B of the Weber County Zoning Ordinance states that "agriculture is the preferred use in Agricultural Valley, AV-3. All agricultural operations shall be permitted at any time, including the operation of farm machinery and no agricultural use shall be subject to restriction because it interferes with other uses permitted in the zone." It lists "agriculture" as a permitted use, and Chapter 1 defines "agriculture" and an "agricultural parcel" in the following ways:

AGRICULTURE: Use of land for primarily farming and related purposes such as pastures, farms, dairies, horticulture, animal husbandry, and crop production, but not the keeping or raising of domestic pets, nor any agricultural industry or business such as fruit packing plants, fur farms, animal hospitals or similar uses.

¹Although limited hunting for deer and moose might occur on Jones properties, Jones has never indicated that he intends to include deer or moose in his meat cutting activity. In fact, he specifically assured staff that he would not be cutting and preparing deer or moose.



AGRICULTURAL PARCEL: A single parcel of land, at least 5.0 acres in area if vacant, or 5.25 acres with a residential dwelling unit. This definition needs to be fulfilled in order to qualify for the agricultural building exemption.

The parcel owned by Jones meets the definition of an "agricultural parcel" and staff determined that the proposed use is "agriculture" ("primarily farming" and a "related purpose"); therefore, it is permitted.

The following describes the rationale behind the planning staff's decision to issue the Land Use Permit:

1. A complete land use permit application packet, certified to be true and correct, was submitted.
2. The Jones property site plan, submitted as a part of their packet, represented that the subject building is in compliance with the development standards found in the zoning ordinance, e.g., use type, structure setbacks, and structure height.
3. After consideration was given to the Weber County Zoning Ordinance, the proposed use was interpreted to be "agriculture" which is a permitted use in the AV-3 Zone.

Because the County's definition of "agriculture" is quite broad, i.e., agriculture is "primarily farming and related purposes," the planning staff considered whether the proposed meat cutting activity would be a related agricultural purpose. Staff relied, in part, on definitions found in the Utah Agricultural Code in determining that cutting domesticated elk is a related agricultural purpose. The Agricultural Code defines agriculture as follows:

"Agriculture" means the science and art of the production of plants and animals useful to man including the preparation of plants and animals for human use and disposal by marketing or otherwise.

Utah Code Ann. §4-1-8(1).

4. The planning staff considered the proposed "meat cutting" activity to be a part of the "preparation" as included in the above definition of "agriculture." Consistent with staff's interpretation, the Agricultural Code provides the following definitions of "prepared" and "process":



"Prepared" means slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed.

U.C.A. §4-32-3(37).

"Process" means to cut, grind, manufacture, compound, smoke, intermix, or prepare meat or poultry products.

U.C.A. §4-32-3(38).

Even though the Utah Agricultural Code includes "slaughter" in its definition of "prepared," the staff determined that the proposed use was not a "slaughterhouse" due to the lack of activities customarily involved with "slaughtering." That is, the proposed use (meat cutting building) will not include customary activities such as stunning or causing the animals to become unconscious/insensible, exsanguinations (the killing of the animal) skinning, removal of internal organs, or rendering waste materials.

5. Livestock is undoubtedly a product of agriculture; therefore, the planning staff, prior to issuing the land use permit, verified that "domesticated elk" are specifically listed and considered to be "livestock" according to the Utah State Agricultural Code:

"Livestock" means cattle, sheep, goats, swine, horses, mules, poultry, **domesticated elk** as defined in Section 4-39-102, or any other domestic animal or domestic furbearer raised or kept for profit.

U.C.A. §4-1-8(6) (emphasis added).

Meat Cutting is Not Prohibited in The AV-3 Zone

Counsel asserts that Jones is using his property for "Meat Custom Cutting and Wrapping, not Slaughtering" – a use specifically allowed only in C-2 and C-3 zones. Counsel argues that Jones may not use his AV-3 property for "meat cutting" because "Meat Custom Cutting and Wrapping, not Slaughtering" is not listed as a permitted use in that zone. However, while it is generally true that only those "permitted" or "conditional" uses listed in a particular zone are allowed, some uses are broad enough to include other more specific uses described in other zones.

For example, the AV-3 zone and the R-1, Single Family Residential zone each list "Single Family Dwelling" as a permitted use. Private swimming pools are commonly considered to be uses allowed with single family dwellings, even though "Private Swimming Pool" is not separately listed as a permitted or conditional use in either of



these zones. If we applied counsel's rigid interpretation, swimming pools would not be allowed in connection with single family dwellings because "Private Swimming Pool" is specifically listed as a permitted use in the CVR-1 zone but not in the AV-3 or R-1 zones. Similarly, a "Ski Resort" is permitted in the FV-5 3 zone. An overly-strict interpretation would prohibit a cafeteria or restaurant commonly associated with a ski resort because those uses are specifically listed as permitted uses in the CV-1 and CV-2 zones but not in the FV-3 zone. Examples like this can be found throughout the zoning ordinance.

As explained previously, it is the county's position that Jones' use of his property for cutting up domesticated elk, or "livestock," falls within the broad definition of "agriculture." Just because a small and specific component of agriculture ("Meat Custom Cutting and Wrapping") happens to also be permitted in a non-agricultural zone, it does not mean it is not also permitted in the AV-3 zone along with a range of other uses under the broad definition of "agriculture."

Meat Cutting is Also an Accessory Use in The AV-3 Zone

The AV-3 zone also specifically permits an "Accessory building or use customarily incidental to any permitted or conditional use." The AV-3 zone permits a wide variety of agricultural uses. It even contemplates a "livestock feed yard, livestock sales or slaughter house." See *Weber County Zoning Ord. §5B-3(5)*. Given these identified uses, the definitions in the Utah Agricultural Code, and the broad range of agricultural uses generally permitted in the AV-3 zone, it is apparent that meat cutting would properly be considered an accessory use as well as a "related purpose" under the zoning ordinance definition of agriculture.

The AV-3 Zone is Not a Transition Zone

Counsel characterizes the AV-3 zone as a "transition zone from agriculture to more urban residential development." Although the "Elk Ridge Estates Subdivision" (irony original) happens to be close to the 6.15 acre Jones property, the AV-3 zone is not a transitional zone. In fact, it is the only agricultural zone in the Ogden Valley. Further, while agriculture is a permitted use in some other zones in the Valley, the AV-3 zone is the only zone where agriculture is designated as the "preferred use." *Weber County Zoning Ord. §5B-1a*. To emphasize the primacy of agriculture uses over other uses in the zone, §5B-1a states, "All agricultural operations shall be permitted at any time, including the operation of farm machinery and **no agricultural use shall be subject to restriction because it interferes with other uses permitted in the zone.**" (Emphasis added).



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Staff Did Not Circumvent The Clear Role of its Land Use Authority

On page 8 of her argument counsel suggests that the planning commission should have been involved in the determination of whether to issue the land use permit: "Staff's determination was not reviewed or approved by the WC Code-designated Land Use Authority." *Weber County Zoning Ord. § 1-4* states as follows: "Where a conflict exists between various provisions of this ordinance, the Planning Commission and/or Board of Adjustment shall rule on which provision applies." First, as we have pointed out, no conflict exists between provisions of the zoning ordinance. Second, it would be incumbent on the party alleging a conflict to raise the matter to the planning commission or the board of adjustment. In this case, nobody has sought any review from the planning commission, so Section 1-4 is irrelevant.

Please feel free to contact me if you need any additional information from Weber County.

Sincerely,



Christopher F. Allred
Deputy Weber County Attorney

pc: Jason K. Nelson
Jodi Hoffman



October 27, 2011

Mr. Brent Bateman
Office of the Property Rights Ombudsman
PO Box 146702
Salt Lake City, Utah 84114

RE: Bret Barry / Weber County Advisory Opinion

Dear Mr. Bateman,

There are just a couple of brief points that need to be made in response to Barry's *Reply to County Response* dated October 17, 2011.

I. THE AV-3 ZONE DOES PERMIT SOME AGRICULTURAL BUSINESS.

Counsel argues that the term "agriculture" in the zoning ordinance "specifically excludes agricultural industry or business." However, the entire definition is as follows:

Use of land for primarily farming and related purposes such as pastures, farms, dairies, horticulture, animal husbandry, and crop production, but not the keeping or raising of domestic pets, nor any agricultural industry or business **such as fruit packing plants, fur farms, animal hospitals or similar uses.** (Emphasis added)

Therefore, it is evident that not all agricultural business is excluded; rather, only certain types of "industry or business" are excluded from the definition.

The AV-3 ordinance itself clearly permits some agricultural business. For example, it permits a "dairy farm and milk processing and sale provided at least fifty (50) percent of milk processed and sold is produced on the premises." *Weber County Zoning Ordinance, 5B-3(1)*. Significantly, this permitted agricultural business use even permits 50% of the product sold to come from off premises. Other permitted agricultural business uses include, but are not limited to, "livestock sales," and "slaughtering, dressing and marketing on a commercial scale of chickens, turkeys or other fowl, rabbits, fish, frogs or beaver. . ."

II. THE PLANNING COMMISSION IS NOT THE CORRECT BODY TO ISSUE LAND USE PERMITS.

Counsel argues that the decision to issue a land use permit should have been made by the planning commission rather than planning staff. This is incorrect. While the planning commission may be a land use authority, Section 30-4 of the Weber County Zoning Ordinance designates the Planning Director or his designee to approve and issue land use permits:

In order to verify zoning requirements and setbacks for permitted



or conditional uses, no structure, including agricultural structures, shall be constructed, changed in use or altered, as provided or as restricted in the Weber County Zoning Ordinance, until and unless a Land Use Permit is approved and issued by the Planning Director or designee.

The county also disagrees with the remainder of the arguments set out in Barry's *Reply*. However, we feel our Response dated October 7, 2011 adequately addresses those issues. Please let us know if you need any additional information.

Sincerely,

Christopher F. Allred
Deputy Weber County Attorney

