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WEBER COUNTY BOARD OF ADJUSTMENT

In re: APPEAL OF ADMINISTRATIVE DECISION: GREEN VALLEY ACADEMY 9091 EAST 100 SOUTH	**BRIEF OF GREEN VALLEY ACADEMY** Case No.: BOA 2011-01

Green Valley Academy ("Green Valley") submits the following Brief in opposition to the appeal by the Johnsons, Ms. Granath and the Verhaals ("Appellants") of a Staff Decision classifying Green Valley as a "School".

INTRODUCTION

Appellants argues that County Staff was incorrect in determining that Green Valley, which indisputably provides "a curriculum similar to that ordinarily given in grades one through twelve in the public school system" was a "School" (and thus a permitted use in the relevant AV-3 Zone)[1]. Instead, in the face of a controlling Utah Supreme Court decision and the clear definitions in the Zoning Code, Appellants contends that Green Valley is either a "Residential Facility for Troubled Youth" or a "Residential Facility for Disabled Persons". To prove the point

[1] Appellants' Memorandum also mis-states the "substantial evidence" test as it applies to the Staff's decision. Staff clearly had "substantial evidence" to determine that Green Valley was a "School" because, as noted above and more fully explained below, Green Valley proposes to have the appropriate curriculum to qualify as such.

that Appellants' argument is utterly without merit the Board needs to only look at the fact that Appellants' Memorandum does not even bother to provide the Board with the definitions of a "Residential Facility for Disabled Persons", a "Residential Facility for Troubled Youth" or "Troubled Youth".[2]

Simply put, none of the students at Green Valley will be "Troubled Youth" as the Zoning Code defines that term and thus, literally by definition, Green Valley cannot be classified as a "Residential Facility for Troubled Youth". On those same lines, since Green Valley is not "[a] single-family or multiple family dwelling unit [ ] operated by or operated under contract with [the Department of Social Services]". Thus, again literally by definition, Green Valley cannot be classified as a "Residential Facility for Disabled Persons".

And all of the irrelevant red herrings and scare stories in Appellants' Memorandum do not and cannot change the simple facts and the clear law.

RELEVANT DEFINITIONS

Because, as noted in the Introduction above, Appellants' Memorandum utterly fails to provide the Board with the crucial definitions from the County's Zoning Code (definitions that are fatal to almost all of Appellants' argument) this Memorandum will reproduce below all of the relevant definitions[3] verbatim:

[2] It is ironic to note that Appellants' Memorandum, which frequently trumpets the admonishment of the Utah Supreme Court in *Springville Citizens v Springville City*, 979 P.2d 332 (Utah 1999), that governments need to follow their own rules should so blatantly ignore the all-important "Definitions" in the County's Zoning Code and attempt to invent provisions that don't exist and mis-apply others.

[3] At several places Appellants' Memorandum appears to conflate various provisions from Sections 23-13 and 23-14 of the County's Zoning Code, detailing "Facility Requirements" for "Persons with a Disability" and "Troubled Youth", respectively, with the "Definitions" of those types of facilities. It seems fairly obvious that since Green Valley does not fall within the "Definitions" of those types of facilities that the "Requirements" for those facilities are irrelevant. (It also appears that many of the supposed "Requirements" for these "Facilities" may violate the State and Federal Fair Housing Acts but that issue is, also, irrelevant here so Green Valley will not waste the Board's time analyzing that issue.)

Section 1.6: [Definitions]

SCHOOL

A public elementary or secondary school, charter, seminary, parochial school, or private educational institution having a curriculum similar to that ordinarily given in grades one through twelve in the public school system. The term "education institution" for the purpose of this Ordinance does not include post high school educational facilities.

RESIDENTIAL FACILITY FOR DISABLED PERSONS

A single-family or multiple family dwelling unit, consistent with existing zoning of the desired location, that is occupied on a 24-hour per day basis by eight or fewer persons with a disability in a family-type arrangement under the supervision of a house family or manager, and that conforms to all applicable standards and requirements of the Department of Social Services[4], and is operated by or operated under contract with that department.

RESIDENTIAL[5] FACILITY FOR TROUBLED YOUTH

A residential facility that is occupied on a 24-hour basis by no more than eight (8) qualified youth in a family type arrangement that conforms with applicable standards of, and is inspected and licensed by the State Department of Human Services, and is consistent with Chapter 23, Section 27 [sic][6] of the Zoning Ordinance.

TROUBLED YOUTH

Any individual, male or female, between the ages of ten and eighteen years of age who by virtue of their arrest, detention or supervision by the Utah State Department of Human Services for offenses other than aggravated assaults, arson, or sex offenses generally and who do not suffer from psychiatric problems which would render them a danger to themselves or others, qualify for placement in homes for troubled youth as determined by the Utah State Department of Human Services.

[4] This appears to be an error as there is no such thing in Utah as the "Department of Social Services". Appellants' Memorandum attempts to "fix" this error by arrogating unto Appellants (instead of leaving with the County Commission where it resides pursuant to the Constitution of the State of Utah) the power to amend the County's Zoning Code and changing the reference to be to the "Department of Human Services".

[5] At several places in the Appellants' Memorandum the Appellants (playing legislator again) unilaterally add the word "Treatment" to the title of this definition. (See, e.g., Appellants' Memorandum at pages 10, 13 and 15.) That word is simply not found in the actual language of the County's Zoning Code. The sheer repetition of this error hints that it is more of an intentional misrepresentation than an accident.

[6] This cross-reference from the County's Wiki of its Zoning Code appears to be inaccurate. The actual reference should be to Chapter 23, Section 14.

(Emphasis added.)

FACTS

1. The land on which Green Valley will be built and operated is zoned Agricultural Valley - 3 (AV-3). (See Staff Report for the Planning Commission consideration of Design Review on January 25, 2011.)

2. A "School" is a "permitted use" in the Agricultural Valley - 3 (AV-3) zoning district. (See Staff Report for the Planning Commission consideration of Design Review on January 25, 2011.)

3. Green Valley is a "School" as it provides "a curriculum similar to that ordinarily given in grades one through twelve in the public school system." (See letter dated September 1, 2010 from the Utah State Office of Education attached and incorporated as Exhibit 1. See, also, Application and Staff Report for the Planning Commission consideration of Design Review on January 25, 2011.)

4. Green Valley is not a "Residential Facility for Troubled Youth" because none of the children who will live in the facility will be there "by virtue of their arrest, detention or supervision by the Utah State Department of Human Services for offenses".[7] (See Application.) Nor is Green Valley a "Residential Facility for Troubled Youth" because none of the children who will live in the facility will "qualify for placement in homes for troubled youth as determined by the Utah State Department of Human Services."

5. Green Valley is not a "Residential Facility for Disabled Persons" because it is not "[a] single-family or multiple family dwelling unit" nor is it "operated by or operated under

[7] By their repeated and deliberate conflation of the term "Troubled Youth" with the actual intended student population of Green Valley the Appellants seem to be implying that all children who have any kind of emotional or learning disabilities are either now, or are destined to become, criminal "offen[ders]". That argument, in addition to being facially absurd, is itself also a form of discrimination which heaps insult on the psychological injuries already suffered by the children and their families.

contract with [the Department of Social Services]". (See Application.)

6. The Staff decided, based on these simple facts, that Green Valley was a "School". (See Staff Report for the Planning Commission consideration of Design Review on January 25, 2011.)

RESPONSE TO APPELLANTS' "FACTS"

Appellants' Facts No's. 1 and 2: Facts No's. 1 and 2 are, essentially correct with only a few clarifications. Staff determined that Green Valley was an "Educational Institution (private)" based on the "narrative provided by the applicant" (and also supporting information such as the State Office of Education's letter of September 1, 2010, Exhibit 1) because that is what Staff was supposed to do. Despite the implications in Appellants' Memorandum, it would not have been appropriate for Staff to have done anything else (such as consider non-applicable code provisions, prior applications for different things or the operation of different facilities by different applicants in different local governments under different zoning codes). The Narrative provided with the Application specifies:

> Green Valley Academy will be fully accredited school through the Utah Department of Education as a non-public school.
> In addition, the Academy will be accredited by the North-West Association of Schools and Colleges. (This accreditation allows for the transfer of credits to any public schools within the U.S.)
>
> * * *
>
> The curriculum both meet and exceeds the guidelines for a public high-school graduation requirement (i.e. students will have the ability to obtain a high school diploma and graduate from the Academy).

Appellants' Fact No. 3: Fact No. 3 is the first indication of where Appellants' Memorandum begins to go completely off track. First, Appellants' Memorandum tries to

demean the proposed curriculum of Green Valley by calling it "supposed". Do Appellants really think that a "supposed" curriculum would obtain required licensing and certification from the State of Utah (or that the parents of the students of Green Valley would pay tuition for a "supposed" curriculum)? There is no reason to "suppose" that Green Valley will have an appropriate curriculum. Instead, there is no doubt that Green Valley will have an actually appropriate and required curriculum.

Appellants' Memorandum then states that Green Valley's application narrative "omits any reference to the Academy's function as a treatment center for troubled youth." Of course, as noted above, no "troubled youth" are going to be residents of Green Valley. But, as even Appellants' Memorandum acknowledges in the very next "Fact", Green Valley's Narrative clearly explained the ancillary and enhance "therapeutic support" that Green Valley will provide to its students. Nothing was concealed and the implication to the contrary in Appellants' Memorandum is belied by their own next "Fact".

Thus, all of the references in the rest of Appellants' Memorandum to a prior application to the County to create an entirely new zoning use in a different zoning district are not only irrelevant they are inadmissible. The Board should not consider these arguments in Appellants' Memorandum and should not waste any time at oral argument listening to them. They are, also, as will be more fully illustrated below, simply a scare tactic to divert attention to the clear fact that Green Valley is a "School" and, thus, a permitted use.

Moreover, Appellants' Memorandum implies, and Appellants seem to believe, that the application to create the new zoning use was denied by the County. It was not. Instead, County Staff recognized that because of the vehemence of the opposition to that proposal it would be better to modify what was being proposed and to apply for development approval as a "School"

which was a permitted use.

Appellants' Fact No. 4: It is true, as stated in Appellants' Fact No. 4, that the residents of Green Valley will "require therapeutic support by a licensed professional as a specialized service beyond what a 'traditional' school provides in the form of counseling". Nothing in the County's definition of "School" precludes any additional student activities outside of the daily educational curriculum and that matter has been clearly decided by the Utah Supreme Court as will be demonstrated below.

Of course, many schools (both public and private) have activities associated with the school but which occur outside the daily curriculum. These include, but are certainly not limited to: sports (both on and off campus), debate (both on and off campus), music/band (both on and off campus), art, film, and religious instruction (off campus but during the school day). (See Exhibit 2.) The weekly "therapy" aspect of Green Valley totals 5 hours per student. That is miniscule compared to the 41.25 hours per week of formal, credit-earning education and 5 hours per week of supervised study hall.

As to the "life skills curriculum" referenced in Fact No.4, the only appropriate lawyerly response is "so what"? What is wrong with teaching children how to "shop, cook, [ ] maintain a bank account and self care"? As anyone (including counsel for Green Valley) who has a school-aged child knows, there isn't a public school in the State of Utah that does not have classes (e.g., health and nutrition, "teen living", etc.) that teach these same skills. And, as any parent will attest, most kids need that kind of education.[8] These classes are not in any way unique to educating "troubled youth" or "disabled persons" and do not remove Green Valley from within

[8] Appellants are apparently ignorant of (or intended to conceal from the Board) the fact that in 2009 the Utah Legislature enacted Sections 53A-13-108 and 110 of the Utah Code requiring that all public schools include from Grades 9 - 12 "instruction that stresses general financial literacy from basic budgeting to financial investments, including bankruptcy education."

the scope of the definition of "School". In fact, the existence of these types of class work at Green Valley makes Green Valley more like a "School" instead of less.

Appellants' Facts No's. 5 and 6: Appellants' Facts No's 5 and 6 return to the irrelevant prior efforts to ask the County to consider creating a new zoning use in a different zoning district. Whatever "use" might have been proposed for that zoning district is completely irrelevant and inadmissible regarding Green Valley's application for this use at this address that is the subject of this appeal. And, again, the Board should not waste any time or thought on this irrelevancy and should not allow it to be presented at oral argument.

The crucial difference between the application proposing a new use in a different district and Green Valley's application here is demonstrated by the completely false statement in Appellants' Memorandum at page 4 that "the schooling nature of the Academy is secondary to its primary purpose as a Therapeutic School".[9] As shown above, Green Valley's "schooling" is more than 9 times the amount of "counseling/therapy". Whatever may have been considered under the proposed new use in a different zoning district is not what is before the Board on this appeal.

Appellants' Fact No. 7: The discussion in Fact No. 7 about the Daniels Academy is just an attempt by Appellants at mis-direction and a complete waste of time. Green Valley included Daniels Academy (as well as the School for the Deaf and Blind in Ogden and Washington High School) in its Application merely to illustrate that it would not be the only school in the State that includes in its student population children with non-traditional needs.

The Daniels Academy is a different facility with a different population of students focusing on a different mission involving a different curriculum in a different Town/County with

[9] See the exegesis of *Crist v Bishop*,520 P. 2d 196(Utah 1974) in Point I below.

a completely different set of zoning districts, permissible uses and definitions. Nothing about the Daniels Academy and its operation gives succor to Appellants. Whether Daniels Academy would qualify as a "School" under Weber County's Zoning Code is, simply, not at issue here and the Board should not waste time on the issue at oral argument.

Appellants' Fact No. 8: Just as stated above regarding the Daniels Academy in Fact No. 7, the references to Oakley School in Fact No. 8 are irrelevant and inadmissible. As with the Daniels Academy, the Oakley School is completely different than Green Valley. Further, the statement in this non-"Fact" alleging that Dr. Balmer is engaged in serial misrepresentations to governments is not only untrue and unfounded it is also defamatory and insulting. The allegation should be stricken from Appellants' Memorandum and not considered by the Board. It is more than a little ironic that Appellants' Memorandum, which completely and consistently misrepresents and conceals from the Board the definition of key terms and creates or misinterprets other terms, would accuse a respected clinician of dishonesty.

Appellants' Fact No. 9: Even worse than "Facts No.'s 7 and 8" is the discussion in Fact No. 9 regarding the Island View Academy. Just because one of the principals of Green Valley happens to have also been involved in the past with Island View means nothing except for the blatant attempt to confuse the Board about the two facilities. Green Valley and Island View are completely different. Island View is, in direct contrast to Green Valley, a "locked down" facility licensed by DHS as a "intermediate secure facility".[10]

Appellants' Fact No. 10: Beginning with "Fact No. 10" Appellants' Memorandum veers not only off track but careens into the ditch of scare tactics and fear-mongering either at the

[10] For the Board's information, Green Valley believes that the Chief of Police of Syracuse (where Island View is located) has provided the Staff with a letter stating that there has never been an arrest or chargeable offense committed by an Island View student.

behest of or to pander to Appellants. Again, Appellants starts off with continuing to refuse to acknowledge that no "troubled youths" will be residents of Green Valley. Then Appellants appear to imply that the residents of Green Valley will have to somehow earn their right to have "access to shoes" as, allegedly, they have to do at the Cedar Ridge Academy in Roosevelt. Nothing could be further to the truth and no evidence supports that paranoid conjecture.

Unfortunately, "Fact No. 10" continues out of control downhill from there. Obviously pandering to their fears that the Appellants hope to infect the Board with, Appellants' Memorandum discusses assaulting and binding a staff member and the "escape" of some residents from Cedar Ridge. Instead of being a legal brief Appellants' Memorandum resorts, in "Fact No. 10", to tabloid journalism. Nothing relating to the Cedar Ridge scare story has any relevance to Green Valley and this non-"Fact" should be stricken from the record and ignored by the Board. Should all "schools" be banned from the County because of an occasional incident of violence, hazing, drug use, etc. at the public schools?

Appellants' Fact No. 11: Continuing with the irrelevant horror story theme of Appellants' Memorandum, non-"Fact No. 11" raises another "escape" at the Provo Canyon facility and attempts to (not very) subtly imply that the residents of all private boarding schools are in those schools somehow "involuntarily" (hoping that the Board will mistakenly assume that to mean that the residents have been ordered there by some court proceeding).

For some inexplicable reason Appellants' Memorandum then raises, apparently believing it to be some form of *per se* proof that Green Valley's students must be "troubled", the issue of how much some facilities cost per month per student. This "fact" is so irrelevant that it doesn't even qualify as a red herring. The only appropriate legal response is to ignore it and not respond at all. The fact that Appellants' Memorandum stoops to these depths shows the weakness of

Appellants' position.

Appellants' Fact No. 12: The Staff did receive a letter from prior counsel for Appellants raising all of the issues contained in Appellants' Memorandum. That letter from Mr. Rampton at least had the honesty and candor to provide the Planning Commission with the definition of "Troubled Youth" as Appellants' Memorandum to this Board, unfortunately, did not. Staff considered Mr. Rampton's letter prior to the Planning Commission hearing and did not change its mind that Green Valley was, in fact, a "School". Given that Appellants' Memorandum to the Board raises no new relevant information or analysis Green Valley is confident that Staff will stick with its obviously correct analysis when it provides the Board with its Staff Report on this appeal after reading the positions of both parties.

Appellants' Fact No. 13: The allegations in Fact No. 13 simple establish that Appellants' current counsel was not at the Planning Commission hearing. While the Planning Commission was correctly instructed that it could not consider the validity of the Staff's determination that Green Valley was a "School" the Planning Commission, nonetheless, heard more than an hour of testimony on that very subject. Staff and the County Attorney were clearly correct in instructing that under the County's Zoning Code the Planning Commission was not the appropriate body to consider that question. (Just as Staff and the County Attorney will be correct in, presumably, advising the Board to disregard the numerous irrelevancies in Appellants' Memorandum and Green Valley trusts that the Board will follow those instructions if given in conducting the hearing on this Appeal.)

Appellants' Fact No. 14: Fact No. 14 is almost as unintelligibly written as it is irrelevant. Green Valley will comply with the International Building Code in all of its construction. Whatever the IBC classifies the buildings of Green Valley as is irrelevant to the

question before the Board: Was Staff correct in determining that Green Valley is a "School" because it clearly complies with the definition in the County's Zoning Code of a "School".

Appellants' Fact No. 15: It is fitting that Appellants end their Memorandum on the same lost track as it began. Whatever the Zoning Code says about "Residential Facilities for Troubled Youth" is irrelevant. Since no resident of Green Valley will be a "Troubled Youth" "by virtue of their arrest, detention or supervision by the Utah State Department of Human Services for offenses" nor will they "qualify for placement in homes for troubled youth as determined by the Utah State Department of Human Services" then Green Valley is not a "Residential Facility for Troubled Youth" and, therefore, who cares what the Zoning Code may say about such facilities?

ARGUMENT

POINT I

THE GREEN VALLEY ACADEMY IS A "SCHOOL"

The definition of a "School" is pretty simple in the County's Zoning Code and, undoubtedly, Green Valley meets that definition. Even Fact No. 2 in Appellants' Memorandum acknowledges this fact:

> [T]he Narrative provided by the Applicant [ ] detailed the educational aspects of the Academy's proposed use. [ ] The narrative proposes that the Academy will be accredited with a curriculum that meets high school graduation requirements (specifically stating that "students will have the ***ability*** to obtain a high school diploma… " [Emphasis added, inexplicably, in Appellant's Memorandum.[11]]) It also lists proposed staff positions.

In light of these facts how could Staff have not determined Green Valley to be a "School"?[12]

[11] Use of the word "ability" as it relates to earning a diploma from Green Valley relates to the fact that children may not complete their education at Green Valley for the same set of reasons that they might not complete their education at any other school. The word "ability" was not intended to have any nefarious meaning.

[12] The discussion at page 14 of Appellants' Memorandum about the State's definition of "Boarding School" is

The first touchstone for the Board in consideration is specified by the Utah Supreme Court in *Carrier v Salt Lake County*, 2004 UT 98 at ¶ 31, 104 P.3d 1208 (adopting the holding of the Utah Court of Appeals in *Patterson v Utah County Board of Adjustment*, 893, P.2d 602, 606 (Ut. App. 1995)):

> Since zoning ordinances are in derogation of a property owner's use of land, we are also cognizant that any ordinance prohibiting a proposed use should be strictly construed in favor of allowing the use.

(Citations omitted.)[13] Thus, even if there were any ambiguity in the Code's definition of "School" (which there is not) that ambiguity would have to be decided in favor of Green Valley.

But, of course, the Utah Supreme Court has essentially decided this same issue in *Crist v Bishop*, 520 P. 2d 196 (Utah 1974). In *Crist* the Court considered whether the Provo Canyon School was, indeed a "school". Utah County's Zoning Code did not define "School" but merely listed "schools" as a permitted use in the zoning district in question. *Id* at 197. In addition to a regular educational curriculum, the Provo Canyon School employed "elements of forcible restraint and severe methods of discipline" (*Id* at 199) and its students included "maladjusted boys with mental or emotional problems, who need detention[14] and control in connection with their education and training; that they will take 'failing students in a fantasy world,' or who are 'adversely influenced by drugs,' boys with 'brain damage,' with 'schizophrenia symptoms.' " (*Id*

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irrelevant to the County's definition of "School" which Green Valley clearly meets. "Boarding School" is defined in Section 62A-2-101(2), Utah Code Ann., as one of the many types of living arrangements regulated by the Department of Human Services where children are not living with their parents. A "Boarding School" is just a type of "School" and the greater definition logically and legally incorporates the lesser. As the Supreme Court noted in *Crist* (which was a boarding school) and as the very definition of "Boarding School" in Section 62A-2-101(2) states, the living arrangements are "ancillary" to the educational purposes.

[13] In their continuing practice of irony, Appellants rely on *Carrier* for other purposes but fail to offer the Board this key quotation from that same case.

[14] The Court did note that the Provo Canyon School which is a boarding school (like Green Valley) was not (like Green Valley) a "detention and correctional institution" because " the boys are sent to this school by a voluntary choice of their parents; and they can similarly be withdrawn. There is not, nor can there be, any absolute right of detention in the sense there is in public penal or correctional institutions." (*Id* at 199.)

at 197.)

Without a great deal of difficulty the Court decided that, put simply, a school that had the educational curriculum of a school was a "school". Citing with approval[15] *Wiltwyck School v Hill*, 182 N.E.2d 268, 11 N.Y. 2d 182, the Utah Supreme Court held:

> Looking at the circumstances shown in our case in the light of what has been said above, we think it was reasonable and proper for the trial court to take the view that the meaning of "schools" as used in the ordinance in question was in the sense it is most commonly used and understood in that locality: institutions for education and training. The requisites of such a school are: some physical facility, teachers, a curriculum for study or training, and students who are the objective thereof. If these requisites are met, the status of the institution is not changed because of variation in methods of teaching or of training, or of discipline or control. These are all present in greater or lesser degree in practically all schools; and they may vary greatly without preventing one from being properly so characterized.

(*Id* at 198. Emphasis added, footnotes omitted.)

Appellants' Memorandum claims that the Board should ignore *Crist* for only one reason: that, as noted above, Utah County's Zoning Ordinance did not have a definition of a "School" whereas Weber County's Zoning Code does. Given the Court's analysis in *Crist* that argument is unavailing. In *Crist* the Court read into Utah County's lack of a definition for the word "school" almost the exact same definition that Weber County's Zoning Code makes explicit. The Court adopted in *Crist*, and Weber County's Zoning Code follows suit, a very simple "quacks like a duck" test. A *de facto* school is a *de jure* "School" if it has a "physical facility, teachers, a curriculum for study or training, and students who are the objective thereof" (*Id* at 198) or, put the same but in only marginally different words, a "private educational institution having a

[15] "Upon a lucid discussion of the terms: education, training and school, as applying even to the maladjusted, delinquent and mentally handicapped, the court concluded that their education and training came within the meaning of "school" where there was no qualification or limitation upon that term." (*Id* at 198.)

curriculum similar to that ordinarily given in grades one through twelve in the public school system". (Code, Section 1.6.) Green Valley is a "School".

Appellants base the rest of their legal argument on *Carrier v Salt Lake County*, 2004 UT 98, 104 P.3d 1208. *Carrier* involved a challenge to a proposed expansion of a gravel pit in Parley's Canyon. The issue before the Court was "whether the Board [of Adjustment's] approval of the requested gravel pit expansion violated the requirements of the FR-20 Zone and FCOZ." (*Id* at ¶*2.*) The Court concluded that "a gravel pit operation does not qualify as 'mineral extraction and processing' and is therefore not a permitted conditional use . . . " (*Id at ¶2.)* The Court reached that conclusion for the simple reason that both of the terms "gravel pit[s]" and "mineral extraction" were used separately in Salt Lake County's Zoning Code (*Id* at 35¶) and:

> Applying the assumption that each term in the ordinances was used advisedly, and giving effect to the fact that the term "gravel pits" is explicitly used in other ordinances but omitted from the FR-20 Zone ordinance, *see Biddle, 1999 UT 110 at P14*, the omission of "gravel pits" as an enumerated permitted conditional use suggests that a gravel pit operation is not an authorized conditional use in the FR-20 Zone.

(*Id at* ¶35.)

The Court also noted that:

> [U]nder Utah's Mined Land Reclamation Act, *Utah Code Ann. §§ 40-8-1 to -23* (1998 & Supp. 2004), sand, gravel, and rock aggregate are explicitly excluded from the definition of the term "mineral deposit," *id.* § *40-8-4(6)(a)* (Supp. 2004), and the extraction of sand, gravel, and rock aggregate is explicitly excluded from the definition of the term "mining operation," *id.* § *40-8-4(14)(a)*. This suggests that gravel pit operations are not necessarily included within the context of other types of mineral extractions, and that it is reasonable to interpret the term "mineral extraction and processing" to exclude gravel pit operations.

(*Id at* ¶38. Emphasis added.)

Of course, the facts here completely different. The County's definitions of "Residential Facility for Troubled Youth" and "Residential Facility for Disabled Persons" are, as more fully established in Points II and III below, completely inapplicable to Green Valley. More importantly, as established above, the Utah Supreme Court has made it clear in *Crist* that Green Valley should be classified as a "School"[16].

POINT II

GREEN VALLEY IS NOT A "RESIDENTIAL FACILITY FOR TROUBLED YOUTH"

No resident of Green Valley will be a "troubled youth" (i.e., "by virtue of their arrest, detention or supervision by the Utah State Department of Human Services for offenses"). Nor will any of the children who will live in the facility "qualify for placement in homes for troubled youth as determined by the Utah State Department of Human Services." Therefore, Green Valley is not a Residential Facility for Troubled Youth. That should be the end of this argument however may times Appellants try to make it by misleading the Board through their failure to provide the Board with the relevant definitions.

The problem here seems to be a confusion on behalf of Appellants between persons being "supervis[ed] by the Utah State Department of Human Services for offenses", which the residents of Green Valley are not, and the fact that Green Valley itself is regulated by the Utah State Department of Human Services. Just because Green Valley has to be licensed by DHS is not tantamount to the residents themselves being supervised by DHS. Youths "supervis[ed]"by DHS for offenses" requires, by definition, that the youths have committed "offenses". No youths in Green Valley will have committed "offenses. Youths who have committed "offenses can

[16] In *Carrier* the Court discussed extensively whether "mineral extraction" encompassed "gravel pits" and noted a serious divergence in the case law across the country on that issue. (*Id at* ¶32 - 34.) There is no similar issue here in light of *Crist*.

come under the "supervision" of DHS by virtue of being placed in a facility by the Division of Child and Family Services or by the Department of Corrections. Such youths would be under the supervision of a caseworker assigned to monitor the progress of the child. One more time - that will not be the case at Green Valley. (See, letter of March 1, 2011 from Ken Stettler, Director, Office of Licensing, Utah Department of Human Services, Exhibit 3.)

POINT III

GREEN VALLEY IS NOT A "RESIDENTIAL FACILITY FOR DISABLED PERSONS"

Green Valley will not be "operated by or operated under contract with [the Department of Social Services]" or even with the Department of Human Services assuming that was the intent of the definition. Therefore, Green Valley is not and cannot be a "Residential Facility for Disabled Persons". That is the end of that argument. Frankly, it appears that Appellants must acknowledge this fact because other than a few cursory references to "disability" Appellants' Memorandum makes no serious arguments on this point.[17]

POINT IV

CLUDMA'S PROVISIONS REGARDING "EDUCATIONAL FACILITY" ARE IRRELEVANT

For reasons that aren't entirely clear, Appellants seem to believe that the definition in CLUDMA of an "Educational Facility" helps their case. Nothing could be further from the truth. The relevant portion of the definition in Section 17-27a-103(11) of CLUDMA reads as follows: "'Educational facility': (a) means: (i) a school district's building at which pupils assemble to receive instruction in a program for any combination of grades from preschool through grade 12,

[17] As noted in footnote 5 above, at several places the Appellants' Memorandum intentionally misquotes the Zoning Code by suggesting that Green Valley should be declared to be a "residential treatment facility" (sometimes capitalized as "Residential Treatment Facility" implying that it as a defined term - which it isn't - while sometimes left without capital letters tacitly admitting that the term does not exist). Of course, the problem with Appellants' argument on this point is that the County's Zoning Code has no such use classification.

including kindergarten and a program for children with disabilities."

First, note that this definition only relates to "school district[ ] buildings" (i.e., "public" schools) while the County's Zoning Code specifically includes "private educational institution[s] having a curriculum similar to that ordinarily given in grades one through twelve in the public school system". Second, and most importantly, the reason for defining public "educational facilit[ies]" is to then exempt public School Districts from complying with County Zoning Codes on locating schools "except as necessary to avoid unreasonable risks to health or safety". Section 17-27a-305(4)(f), Utah Code Ann. How this CLUDMA zoning exemption for public schools is supposedly relevant to this appeal is simply incomprehensible.

POINT V

CLASSIFICATIONS IN THE INTERNATIONAL BUILIDNG CODE ARE IRRELEVANT

Appellants waste the Board's time discussing how various buildings are classified under the International Building Code. Put simple, IBC classifications have nothing to do with zoning codes and the "uses" therein. Nothing in CLUDMA, the IBC, the County's Zoning Code or any reported case ever decided in American history (to the best of the knowledge of Green Valley's counsel) has ever made a zoning "use" issue contingent upon an IBC classification.

CONCLUSION

Green Valley is a "School", and thus a permitted use in the AV-3 Zone because it provides for its residents "a curriculum similar to that ordinarily given in grades one through twelve in the public school system" which is the definition of a "School" in the County's Zoning Code and which is mandated by the Utah Supreme Court's decision in *Crist*. Green Valley is not a "Residential Facility for Troubled Youth" because no resident of Green Valley will be a "Troubled Youth" pursuant to the definition of that term in the County's Zoning Code. Nor is

Green Valley a "Residential Facility for Disabled Persons" because it is not "operated by or operated under contract with that department". Thus, Staff's decision should be sustained and the appeal should be denied.

DATED this 3rd day of March, 2011.

BRUCE R. BAIRD, PC
Attorney for Green Valley Academy

By: /s/
Bruce R. Baird

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the Third day of March, 2011, a true and correct PDF copy of the foregoing BRIEF OF GREEN VALLEY ACADEMY was served by email:

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