

**SUMMARY OF ISSUES AND ARGUMENTS IN SUPPORT  
OF LAND USE PERMIT LUP64-2011  
(Richard Ralph & Rulon Kent Jones)**

**INTRODUCTION AND BACKGROUND:**

Richard Ralph and Rulon Kent Jones (the "Landowners"), the owners of Parcel No. 220100001 in Weber County, Utah (the "Property"), previously applied for and obtained Land Use Permit No. LUP64-2011 (the "Permit"). The Permit was granted on June 27, 2011. A copy of the application for the Permit and a copy of the Permit are attached hereto as **Exhibit 1** and **Exhibit 2** respectively. The Permit authorized the Landowners to utilize an existing 1200 sq. ft. building on the Property for a small, domesticated elk meat cutting and wrapping operation.

In reliance on the permissions given by the Permit, the Landowners have spent approximately \$70,000.00 renovating and improving the building to make it suitable for the cutting and wrapping of domesticated elk meat. Pictures of the Property are included in **Exhibit 3** attached hereto. All required building permits were obtained for renovations and improvements done on the Property. Copies of the building permit and related records are attached hereto as **Exhibit 4**. The small building and the meat cutting operation have also been inspected, approved and licensed to conduct their operations by Utah Department of Agriculture and Food. A copy of the license from the Utah Department of Agriculture and Food is attached hereto as **Exhibit 5**.

For approximately twelve weeks through the fall months, the meat cutting and wrapping operation was conducted pursuant to the permission granted by the Permit. The operation has had little, if any, impact on the surrounding property owners. Several of these property owners have signed a statement attached hereto as **Exhibit 6** asserting that the operation has not had a negative impact on the surrounding area. The building that houses the meat cutting operation is almost entirely underground and, as a result, the operation emits little, if any, noise, odors or other nuisances.

The Property is zoned as AV-3. The preferred use of property in the AV-3 zone is agriculture. Historically, the Property has been used for various forms of agriculture. In recent years, the Property has been used as part of the Landowners domesticated elk farm operation. The Landowners raise domesticated elk on the Property (and on other nearby parcels in the Ogden Valley). Some of the domesticated elk are then hunted on a nearby, fenced ranch and the meat harvested from the elk is brought back to the building on the Property for cutting and wrapping. No elk are slaughtered or killed on the Property. Elk are only raised, fed and then cut and processed on the Property. The Utah Department of Agriculture and Food has granted the Landowners an "Elk Farm License" and regularly inspects their operation. A copy of the "Elk Farm License" is attached hereto as **Exhibit 7**.

Cody James, the Bureau Chief of Animal Identification for the Utah Department of Agriculture and Food, has been kind enough to provide a letter confirming that domesticated elk on Utah elk farms are viewed and regulated by the State of Utah as agricultural businesses. A copy of Mr. James letter is attached hereto as **Exhibit 8**. For

all intents and purposes, domesticated elk are regulated the same as other domesticated livestock in the State of Utah. In fact, the State of Utah even includes the term “domesticated elk” as one of the specifically enumerated examples of “livestock” in its statutory definition of that term (see Utah Code 4-1-8(6), a copy of which is attached hereto as **Exhibit 9**).

Following the issuance of the Permit, Mr. Bret Barry (who owns a parcel of land adjacent to the Property) filed an appeal requesting review of the issuance of the Permit by the Weber County Board of Adjustments. Mr. Barry asserted several perceived deficiencies related to the issuance of the Permit. The Weber County Planning staff prepared an official report in anticipation of a hearing before the Board of Adjustments (the “Staff Report”). In the Staff Report, the planning staff described in detail why it believed the Permit was properly issued. A copy of the Staff Report is attached hereto as **Exhibit 10**.

Mr. Barry’s appeal was never brought before the Board of Adjustments, because the parties agreed to request a nonbinding advisory opinion from the Office of the Utah Property Rights Ombudsman prior to proceeding with the appeal. On November 8, 2011, the Ombudsman issued a nonbinding advisory opinion concluding that the Landowners’ meat cutting operation, in his opinion, was not proper within the AV-3 zone. A copy of the Ombudsman opinion letter is attached hereto as **Exhibit 11**. The Landowners believe that the Ombudsman based the opinion on undisputedly inaccurate information and that the opinion is therefore unhelpful and reaches the wrong conclusion.

However, based only on the Ombudsman’s nonbinding advisory opinion, effective December 6, 2011, Weber County revoked the Permit. The revocation of the Permit came as a shock to the Landowners because it resulted in Weber County taking a position completely contrary to its prior positions, statements, findings and opinions in this matter. Prior to the issuance of the Ombudsman opinion, Weber County had strongly defended the issuance of the Permit. For examples of Weber County’s defense of the Permit issuance, see the Staff Report attached as **Exhibit 10** and the position taken by the Weber County Attorney’s office in communicating with the Ombudsman’s office in letters attached hereto as **Exhibit 12**. In revoking the Permit, Weber County did not provide any new findings, evidence or reasoning. The only reason given to support revocation was the mere existence of the Ombudsman’s nonbinding opinion letter (which Weber County’s planning staff knew or should have known was based upon inaccurate factual information). This does not constitute “substantial evidence” to support the revocation of the Permit. For this reason and the others detailed below, the Landowners believe that the revocation of the permit was arbitrary, capricious and illegal.

As a result, the Landowners have timely appealed this matter to the Board of Adjustments for review. A copy of the appeal documents is attached hereto as **Exhibit 13**. The Landowners have requested that the revocation of the Permit be reversed and that the Permit either be reissued or issued anew immediately.

**LEGAL ARGUMENT:**

In presenting their legal arguments in support of the issuance of the Permit, the Landowners will paraphrase (and in some cases directly quote) the logic and arguments presented by the Weber County planning staff and the Weber County Attorney's office in the documents contained in **Exhibit 10** and **Exhibit 12** attached hereto. The Landowners believe the rational presented by these Weber County representatives fairly and accurately describes how this issue (and the Weber County zoning ordinance) should be interpreted.

When reviewing a land use application, the Utah Court of Appeals has plainly stated:

[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.

USES NOT RESTRICTED . →

↳ GENERAL DEF. OF AGRICULTURE

*Patterson v. Utah County Board of Adjustment*, 893 P.2d 602, 606 (Ut. App. 1995). Thus, even if there are ambiguities in Weber County's zoning ordinance, Weber County staff, the Board of Adjustments (and any other reviewing entity) must decide those ambiguities in favor of the Landowners.

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." (emphasis added) The zoning ordinance lists "agriculture" as a permitted use, and Chapter 1 of the zoning ordinance 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. (emphasis added)

**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 the Landowners meets the definition of an "agricultural parcel" and, as will be explained below, the proposed use of the parcel for a meat cutting and wrapping operation ancillary to the Landowners' elk farming operation is "agriculture" (i.e. "primarily farming" and a "related purpose"). Therefore, it is a permitted use of the Property.

*I. Elk Farming is "Agriculture"*

As noted above, the definition of "agriculture" is quite broad in the Weber County zoning ordinance. It is an open-ended definition that chooses to be inclusive of all farming

and related purposes rather than exclusionary. One cannot argue in good faith that the Landowners' domesticated elk farming operation is anything other than "farming" or "animal husbandry" as those terms are used in the definition "agriculture" in the Weber County zoning ordinance. As such, it is easy to arrive at the conclusion that the elk farming operation is a permitted use of the Property and constitutes "agriculture" as that term is used in the Weber County zoning ordinance. Therefore, the lone remaining question, is whether a cutting and wrapping the meat derived from the Landowners' domesticated elk farming and agricultural operation is a purpose or activity related to agriculture.

*II. The Meat Cutting and Wrapping Operation Constitutes Agriculture or a Use Related to Agriculture and is Permitted by the Weber County Zoning Ordinance*

The Weber County zoning ordinance does not contain an exhaustive list of all of the activities related to agriculture that are permitted in the AV-3 zone (as noted above, the zoning ordinance chooses an open-ended rather than exclusionary approach). Therefore, to obtain insight into the types of activities that are typically considered agriculture in the State of Utah, the definition of the term "agriculture" utilized in the Utah Code is very helpful.

Utah Code 4-1-8(1) 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. (emphasis added)

The Landowners (as well as the Weber County Planning staff and the Weber County attorney's office based on their previous written statements) believe that "meat cutting and wrapping" is part of the "preparation...for human use" as included in the above definition of "agriculture." Consistent with this interpretation, the Utah Code provides the following definitions of "prepared" and "process":

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

Utah Code 4-32-3(37)(emphasis added).

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

U.C.A. §4-32-3(38)(emphasis added). After reviewing the foregoing definitions, it seems obvious to the Landowners that the cutting and wrapping of domesticated elk meat from their lawful elk farming operation constitutes "agriculture" or a purpose or activity related to agriculture. Such activities and uses of property in the AV-3 zone are expressly permitted by the Weber County zoning ordinance. Even the Utah Property Rights Ombudsman agreed with this conclusion in his opinion when he stated that "the language of the [Weber County zoning ordinance] provides ample support for the County's

interpretation that ancillary meat cutting is a permitted agricultural activity within the AV-3 Zone.” See Page 7 of **Exhibit 11** attached hereto.

*III. The Activities of the Landowners Do Not Extend Beyond the Cutting and Wrapping of Domesticated Elk Meat Ancillary to Their Domesticated Elk Farming Operation*

As noted earlier, the Ombudsman assumed incorrect factual information in formulating his opinion and this unfortunately led to the Ombudsman reaching an incorrect conclusion about the legality of the Landowners’ use of the Property. In his opinion (see **Exhibit 11** attached hereto), the Ombudsman incorrectly assumed that the Landowners are processing “wild game” (i.e. animals other than the domesticated elk that are part of the Landowners’ elk farming operation) on the Property. As a result, the Ombudsman concluded that the animals being processed at the building on the Property are not “livestock” and therefore the meat cutting operation is not ancillary to the Landowners’ agricultural use of the Property. This is simply incorrect. The Landowners have repeatedly represented (and continue to represent) to Weber County that the building will only be used to cut and wrap meat derived from the domesticated elk that are part of their elk farming operation in the Ogden Valley. Thus, the meat cutting and wrapping is directly related, and ancillary, to the Landowners’ use of the Property as a domesticated elk farming operation. This leads to the unavoidable conclusion that the meat cutting and wrapping operation is a permitted use of the Property, because it is agricultural in nature.

The Landowners believe the above-described conclusion is the only reasonable conclusion that can be reached when the Weber County zoning ordinance is interpreted so that “provisions permitting property uses [are] liberally construed in favor of the property owner.” *Patterson v. Utah County Board of Adjustment*, 893 P.2d 602, 606 (Ut. App. 1995).

*IV. A Domesticated Elk Cutting and Wrapping Business is Not Prohibited in the AV-3 Zone*

In his nonbinding opinion, the Ombudsman tried unsuccessfully to describe how the Landowners’ elk farming operation (and the ancillary meat cutting and wrapping activities) was a “similar use” to a “fruit packing plant” (which the Ombudsman mistakenly believed was a prohibited use for AV-3 property – see explanation in footnote).<sup>1</sup> Even if the Ombudsman had not misread the Weber County Code, the Landowners believe the “fruit packing plant” analogy is a stretch, especially in light of the fact that the Ombudsman once again incorrectly assumed that the elk being cut and wrapped are wild (not domesticated) elk in making arriving at his conclusion.

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<sup>1</sup> The Ombudsman was under the mistaken impression that a “fruit packing plant” is a prohibited business in the AV-3 zone. It is true that a fruit packing plant is excluded from the definition of “agriculture” in the Weber County Code. However, section 5B-3 of the Weber County Code specifically permits the use of property in the AV-3 zone for a “fruit packing plant” provided the property is at least 5 acres in size. So, while a fruit packing plant is not considered “agriculture” in Weber County, property in the AV-3 zone may still be used as a fruit packing plant. Thus, even if the logic and analogy of the Ombudsman is adopted, the Landowner’s proposed use of the Property should be permitted in the AV-3 zone.

The Landowners believe that a farming operation involving horses, cattle sheep or goats (all of which are considered domesticated agricultural animals by the State of Utah just like domesticated elk) presents a much better analogy to the Landowners' elk farming operation. Coincidentally, Chapter 5B-3 of the Weber County zoning ordinance specifically allows the "raising and grazing of horses, cattle, sheep or goats as part of a farming operation..."<sup>2</sup> If one is looking to stretch the language of the zoning ordinance in search of an analogous operation that is either permitted or prohibited, the Landowners believe that the raising of cattle would be a far better choice.

There seems to be little, if any, debate that a cattle farmer could cut and wrap the meat from his cattle on his AV-3 zone land.<sup>3</sup> However, when the concept of a domesticated elk is substituted in lieu of cattle, some individuals believe that a dramatically different interpretation of the zoning ordinance should be adopted. The Landowners fail to understand why this is the case. The process, reasoning and conclusion should be the same regardless of whether cattle or domesticated elk are involved. Both are expressly considered "livestock" by the State of Utah. Both are expressly considered to be "agricultural" in nature by the State of Utah. Therefore, the zoning ordinance should apply similarly to operations involving either of these domesticated animal species.

The Weber County Zoning Ordinance does not prohibit the cutting and wrapping of domesticated elk meat. In fact, the expressly enumerated permitted uses for the AV-3 zone all appear to allow for this type of business use. Therefore, since the activity is undeniably agricultural (which is the preferred use in the AV-3 zone) in nature, and since the zoning ordinance does not prohibit the type of business being conducted, the use must be allowed.

#### V. *Weber County Should be Estopped from Revoking the Permit*

Utah courts have recognized the doctrine of estoppel to prevent the unjust or inequitable enforcement of a zoning ordinance. See *Salt Lake County v. Kartchner*, 552 P.2d 136 (Utah 1976). In this case, the Landowners: (1) lawfully applied for and obtained the Permit, (2) substantially relied upon the authority granted by virtue of the Permit in spending approximately \$70,000.00 in renovating and improving the building on the Property that was to be used for meat cutting and wrapping, (3) lawfully operated the meat cutting and wrapping operation on the Property for approximately twelve weeks, and (4) inquired and fully advised Weber County officials, in advance, about the activities that would take place on the Property, (5) did not act fraudulently or in bad faith. Based on the foregoing, the Landowners believe that Weber County will be estopped from trying to

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<sup>2</sup> Chapter 5B-3 of the Weber County zoning ordinance also specifically allows "slaughter houses" for livestock within the AV-3 zone (on parcels which are larger than 5 acres – the Property is 6.15 acres in size). The Landowners operation is not a slaughter house because it does not include the activities customarily involved in "slaughtering." However, the process of cutting and wrapping meat is certainly more analogous to the activities of a slaughter house than it is to a fruit packing plant as the Ombudsman suggests in his opinion. In fact, it can be validly argued that the activity of cutting and wrapping meat is simply a subset of the more "full service/all inclusive" activities of a slaughter house, which is expressly permitted by the Weber County zoning ordinance.

<sup>3</sup> As noted above, the zoning ordinance would appear to expressly allow this cattle farmer to set up a full-fledged slaughter house on his AV-3 zones property if he so desired.

prevent the Landowners from continuing the operation of their meat cutting and wrapping business on the Property ancillary to their domesticated elk farming operation.

**CONCLUSION:**

Based on the foregoing, and based on other submissions and arguments subsequent hereto, the Landowners hereby request that the revocation of the Permit be reversed and that the Permit either be reissued or issued anew immediately.