



January 10, 2021

Dear Planning and Zoning Commission,

This letter is the Bear River Canal Company comment concerning the Riverside Ranchettes Subdivision located at the intersection 16800N and the West Canal of the Bear River Canal Company. This comment is outlined by law in UCA 17-27a-603. After reviewing the plat and associated documentation we feel that our concern with “(A) Access to the Canal, (B) Maintenance of the Canal, (C) Canal Protection; and (D) Canal Safety” as outlined in UCA 17-27a-603(2)(d)(ii) have been addressed. The developer has taken these items into account in their development of the ground. We thank them for their efforts to allow the canal company to continue to operate effectively and efficiently.

As a point of policy, we do not recommend the actions of other entities; however, we feel the developer has taken steps to allow them to proceed. That being said, we do have one concern we would like on the record and would like this document to be included in the minutes of the meeting.

Issue: Structures with basements in close proximity to the canal:

As can be seen from the plat of the subdivision, the West Canal of the Bear River Canal Company resides on the eastern border of the platted area. This canal is one of the largest in the state and operates for seven (7) months of the year in a continuous fashion. The natural hydraulics of the system make this reach of the canal have a fairly high water profile in the conveyance conduit in relation to the surrounding ground. The canal is an earthen canal. All earthen canals have seepage or subterranean water loss. As established by Utah case law, canal companies are not responsible to manage subterranean water or the water table. Bear River Canal Company has the right to operate as it has historically without additional costs associated with development. The potential issue arises with basements. We would not want a home to be constructed and for its entire existence have issue with water intrusion into the basement. We have dealt with this issue in other areas in the past. It has led to lengthy legal engagements. In these endeavors, the canal company has not been found at fault. But they have been costly, thus violating our rights to be able to operate without additional costs associated with the externality of development.

The required percolation testing has been undertaken and a geotechnical assessment for this development has been conducted. Geotechnical assessments are informative but are unable to assess the seepage movements of canals with a strong level of confidence. Since we do not know the subterranean water activity of the area and historically have not observed issues in the area, we are not requesting basements be barred as part of this subdivision, but we feel the issue should be fully assessed and considered especially for the lots adjacent to the canal.

We do want it on record that the canal company has voiced this concern and does so under the “Canal Safety” provision outlined in Part c of UCA 17-27a-603(2)(d)(ii). Bear River Canal Company will take no responsibility if basement structures flood or are damaged as a result of



subterranean water, regardless of source. The canal system existed long before development and has a right to exist as is. Thus, we put the developer on notice that they develop at their own risk. We also put future homeowners on notice that they build and/or purchase at their own risk. We would request the county place this "at the party's own risk" language in the permitting so that it is clear the canal company raised the issue at the planning stage. That being said, we hope that no issues will arise. We wish our position to be clearly understood. We wish to be kind as we hope for the success of all parties now and in the future associated with the subdivision. But we must also be firm. As each situation is unique, we suggest that good judgment be utilized by those wishing to develop, build, and/or purchase homes near the canal.

Thank you again for your time and consideration of our concerns. As the general manager, I represent the Bear River Canal Company in this issue. I can be contacted at the below-listed number if you require additional information or have questions concerning this matter.

Sincerely,

Trevor J. Nielson
General Manager
Bear River Canal Company