



June 16, 2020

Dear Planning and Zoning Commission,

This letter is the Bear River Canal Company comment concerning the Zach Anderson subdivision (SS20-022). This comment is outlined by law in UCA 17-27a-603. After discussions with the developer, their engineering staff, and reviewing the subdivision zoning 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 with the developer and 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 two concerns we would like on the record and would like this document to be included in the minutes of the meeting. Those are as follows:

Issue 1: Structures with basements in close proximity to canal. As can be seen from the plat of the subdivision, the Hammond East Canal resides on the east side of the development and is located at a higher elevation. The Hammond East 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 basement to be constructed and then fill with water when the canal goes into operation in the spring because of a higher water table. 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 been found to be not at fault. But they have been costly, thus violating our rights to be able operate without additional costs associated with the externality of development.

The required percolation testing was undertaken during the non-operating season of the canal company 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 have discussed this concern with the developer.

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.