

May 27, 2025

Via Email and First Class Mail

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Re: Evidentiary Hearing Brief Regarding Sky Ranch Estates Subdivision Phase II

Dear Sirs and Madams:

This firm represents Karl Spielman regarding the San Juan County Board of Commissioners' (the "Board") approval of the Sky Ranch Estates Subdivision Phase II ("Sky Ranch Phase II" or "Phase II") and the subsequent litigation. Mr. Spielman hereby requests that the Board deny approval of Sky Ranch Phase II or condition approval on removal of the airstrip, consistent with District Court Judge Torgerson's Ruling and Order.

Background

I. History of Sky Ranch

The Sky Ranch airfield began as a small, dirt airstrip in the 1980s used by Bud Tangren for ranching activities.¹ The airstrip itself was used infrequently during the late 1990s and early 2000s. Mr. Tangren owned approximately 40 acres of land surrounding the airstrip, all of which he transferred to his son in or around 2003. Mr. Tangren's son subsequently sold the property, including the airstrip, to Mike Bynum.

In 2001, before the property was transferred, Mr. Tangren obtained approval for a 6-lot subdivision at the south end of the airstrip called Sky Ranch Estates Subdivision Phase I ("Phase I") but did not build homes on the lots.² Mr. Tangren never paved the airstrip with asphalt or developed the property other than to chip seal the runway over native dirt and bring electricity to the lots of Phase I. Shortly after approval of Phase I, the airstrip fell into a state of disrepair when Mr. Tangren abandoned the six-lot subdivision and returned the land to "greenbelt" status.³

In or around 2007 or 2008, entities affiliated with Business Resolutions, LLC ("Business Resolutions"), owned and/or operated by Mike Bynum, acquired Sky Ranch but did not use or improve the property until 2017. In December 2017, industrial-size earth-moving and paving equipment was used to re-grade and widen the runway and pave it with asphalt for the first time.⁴ This new runway was reoriented and extended to the north by approximately 550 feet, into a separate tax parcel north of Sky Ranch, where the airstrip had not previously extended.⁵ Such was done without obtaining a conditional use permit or a building permit.

In 2017 and early 2018, Business Resolutions created plans for developing Sky Ranch into a large residential "fly-in-fly-out" community, spurring an outpouring of negative public sentiment.⁶ In early 2018, Mr. Bynum sought approval of a plat map for Sky Ranch Phase II, a precursor of the current version. However, at the conclusion of its April 12, 2018 meeting, the Planning & Zoning Commission (the "P&Z Commission") did not approve this plan and voted to table it. After learning that the County would require him to apply for a conditional use permit, Mr. Bynum withdrew the proposal.⁷

¹ See Declaration of Karl Spielman ("Spielman Decl."), at ¶ 4; Record Prepared by County at 428, attached hereto as Exhibit A (hereinafter "R.")

² See *id.* at ¶ 5. (R. at 428).

³ See *id.* at ¶ 6. (R. at 429)

⁴ See *id.* at ¶ 7. (R. at 429.)

⁵ See *id.*

⁶ See *id.* at ¶¶ 9-11. (R. at 430-433).

⁷ See *id.* at ¶ 12. (R. at 433-434).

In May 2019, concerned citizen, William (“Bill”) Love, sent emails to Walter Bird, County Administrator, questioning if permits, including a conditional use permit, had been issued for the runway construction.⁸ Mr. Bird replied in an email, with a blind copy to Mike Bynum, that “no permits” had been issued; erroneously stated that the runway had been in “continuous use” since the 1970’s; and claimed that the construction was a “resurfacing project.”⁹ Mr. Love responded by email and clarified that the major construction project was not just a resurfacing project; that the runway was being greatly extended in physical size; and that the expected increase in use represented a significant expansion of any historical use.¹⁰ Mr. Love specifically asked, “Was the Land Use Code followed by the County and the Developer?”¹¹ Mr. Bird responded, again blind copying Mike Bynum, that, “there was no conditional use application and no permit was granted,” and that the County is in a “no win situation.”¹²

Mr. Spielman has owned property in the Spanish Valley since 1998, which is located immediately to the south of Sky Ranch. The airstrip, as realigned in 2007 or 2008, ends only a few feet from Mr. Spielman’s property to the south and at a public road to the north, beyond which is land owned by SITLA, effectively using these private and public properties as run-off zones to contain the hazards of landing and departing aircraft.¹³ Mr. Bynum does not hold aviation easements that would allow use of airspace over Mr. Spielman or SITLA’s properties, and he does not have permission to use these lands as safety zones. Mr. Bynum has previously offered several times to purchase a portion of Mr. Spielman’s property.

II. The Board’s Erroneous Approval of Sky Ranch Phase II

In or around October of 2020, Mr. Bynum submitted a revised plat map for Sky Ranch Phase II to the County.¹⁴ The plat map submitted with the application proposed a long, narrow subdivision with 51 residential lots lined up on either side of the airstrip, six of which were already part of Phase I, as well as 30 additional residential lots immediately to the northwest of the airstrip.¹⁵ On February 11, 2021, the P&Z Commission approved Phase II without considering any FAA guidelines or any of the airport planning materials attached to the Area Plan

⁸ See May 2019 Emails, attached hereto as Exhibit B.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ See Spielman Decl, at ¶ 8 (R. at 429-430); see also Utah Code § 72-10-116(2)(b) (“The use of private landing fields must not impose a hazard upon the person or property of others.”).

¹⁴ See Plat Map. (R. at 366-368).

¹⁵ See *id.* (R. at 366-368).

adopted by the County in 2018.¹⁶ Nor did they consult with FAA planners or private aviation planners even though the County had done so in the past with respect to other airports located within the County.¹⁷

On February 16, 2021, the Board of Commissioners (the “Board”) approved Sky Ranch Phase II despite two of the Commissioners’ uneasiness about approving Phase II without consulting with safety experts regarding citizens’ safety concerns. In particular, these Commissioners wanted to know whether additional buffer zones should be required between the runway and the proposed residential housing.¹⁸ Commissioner Maryboy summarized his views as follows: “[S]end this back to the safety experts regarding the location of the airport and also recognize the residential zoning. Maybe that way we will have a clear picture [before] making a decision with each other.”¹⁹

County staff responded to the Board’s concerns with misinformation. County Administrator Mack MacDonald stated incorrectly that “the airport’s already been approved,” “it’s an FAA approved airport,” the airport is “grandfathered,” and “we don’t have a safety expert” to assess the public’s safety concerns (even though there are three such airports in San Juan County which have been designed by notable aviation engineering consultants hired by San Juan County administrators).²⁰ The matter was tabled until a legal opinion could be obtained.²¹ Toward the end of the meeting, Assistant County Attorney Alex Goble joined the meeting to provide the requested legal opinion. Incorrectly believing that the airport had already been approved, Mr. Goble advised the Board to approve Phase II to avoid legal trouble.²²

Although the Board first voted to table the matter “until we get in touch with the right appropriate people to give us some guidance and also a recommendation of how it’s being dealt with in other rural cities,”²³ Mr. Goble insisted that to table the matter would be equivalent to denying it. Based on this erroneous information and advice from their staff, the Board then voted

¹⁶ Note that after the Area Plan was adopted, the County created a new zoning ordinance for the Spanish Valley (“Spanish Valley Sub-Ordinance”) which eliminated airports and airstrips from the list of permitted and conditional uses previously allowed under the 2011 Zoning Ordinance.

¹⁷ See 2/11/2021 Transcript, (R. at 370-381).

¹⁸ See 2/16/2021 Transcript (R. at 399-403).

¹⁹ *Id.* (R. at 400).

²⁰ *Id.* (R. at 400, 402).

²¹ *Id.* (R. at 403).

²² See Missing Pages from 2/16/2021 Transcript (near 4:28:57 timestamp), attached hereto as Exhibit C. The transcript submitted to the ALJ included the pages shown in Exhibit C. Mr. Spielman presumes their omission from the record submitted by the County was clerical in nature.

²³ *Id.* (around 4:33:34 timestamp); 2/16/2021 Transcript (R. at 404).

to approve Phase II, subject to the condition that the community and aviation regulators be consulted by the P&Z Commission.²⁴

On November 18, 2021, Mr. Bynum's counsel presented additional information to the P&Z Commission, including certain covenants, conditions, and restrictions that Business Resolutions claimed to have adopted to improve the safety of operations at the Sky Ranch airstrip.²⁵ Other than a brief comment as a member of the public, Mr. Spielman was denied the opportunity to present to the P&Z Commission or submit the opinions of his retained aviation expert. The P&Z Commission considered Bynum's presentation to be informational only and took no action on it.²⁶ Further, the P&Z Commission did not consult with any aviation regulators or airport design professionals, contrary to the desire of the Board at the time of the February 16, 2021 vote.²⁷

III. The ALJ's Erroneous Decision

Pursuant to Utah's County Land Use, Development, and Management Act, Mr. Spielman appealed the Board's approval on February 26, 2021.²⁸ Appeal proceedings were first conducted under Administrative Law Judge Lyn Creswell during 2021 and 2022, who reached similar conclusions about the approval as Judge Torgerson later would in 2024. However, in 2023, Administrative Law Judge Cheryl Luke was assigned to conduct the appeal in place of Judge Creswell. On August 29, 2023, Judge Luke heard oral argument after receiving briefing from the parties.

On September 21, 2023, Judge Luke issued a ruling entitled "Findings of Fact, Conclusions of Law, and Order Regarding the Appeal of the Board of Commissioner's [sic] Decision Approving Sky Ranch Estates Subdivision Phase II" (the "ALJ Decision") in which she ultimately upheld the Board's approval of Phase II.²⁹ The ALJ Decision began with findings of fact, several of which were not supported by substantial evidence in the record. For example, Finding No. 4 of the ALJ Decision states that "[t]he airstrip is not included in the subdivision boundaries of Sky Ranch Estates phase II" despite the fact that the proposed subdivision incorporates the existing airstrip into the subdivision lots.³⁰

²⁴ *Id.* (R. at 408-409).

²⁵ *See* 11/18/2021 Transcript. (R. at 552-563).

²⁶ *See* 11/18/2021 Agenda (showing Sky Ranch as an "INFORMATIONAL"). (R. at 469). *See also* 11/18/2021 Minutes (showing Sky Ranch as an "INFORMATIONAL" with no action taken). (R. at 565).

²⁷ *See* 2/16/2021 Transcript. (R. at 408).

²⁸ *See* Appeal to ALJ. (R. at 410-421).

²⁹ *See* ALJ Decision, attached hereto as Exhibit D.

³⁰ *Id.* at 2.

The ALJ Decision also concluded that “subdivision approval . . . was not a review of the legal status of the airstrip as it was not even included in the formal boundaries of the subdivision plat map and had been previously acknowledged and approved in the original Sky Ranch Estate development.”³¹ This is also untrue given that the airstrip clearly falls within the boundaries of the subdivision and runs through the backyards of most of the lots, as shown on the plat map.

Additionally, the ALJ Decision ruled that “the safety concerns expressed in the [parties’ expert] reports were the same as those that were being voiced at the Commission meeting” on February 16, 2021.³² However, there is no evidence that hearing concerns from its lay citizens constitutes substantial evidence. Instead, the Board should have considered expert opinions regarding the safety of the airstrip before declaring it to be safe enough for Phase II to be approved.

IV. The District Court’s Ruling and Order

After receiving the ALJ Decision, Mr. Spielman petitioned the District Court to review the land use decision concerning Sky Ranch Phase II on October 20, 2023.³³ On April 19, 2024, Mr. Spielman filed a Motion for Summary Judgment. After receiving the parties’ subsequent briefing, Judge Torgerson issued his Ruling and Order on August 19, 2024 (“District Court Order”).³⁴

In the District Court Order, Judge Torgerson held that certain parts of the ALJ Decision were not supported by substantial evidence in the record, making it arbitrary and capricious under Utah’s County Land Use, Development, and Management Act.³⁵ Specifically, all of Judge Luke’s findings that the airstrip is not included in Sky Ranch Phase II were not supported by substantial evidence given that several pieces of evidence in the record show the exact opposite.³⁶ The District Court Order states that “[b]y overlaying the airstrip onto the new lots and imposing a permanent easement, Intervenor’s have raised issues related to the airport that do not appear to have been addressed by the ALJ’s decision or the County Commission. . . . And that

³¹ *Id.* at 5.

³² *Id.*

³³ *See* Petition, attached hereto as Exhibit E.

³⁴ *See* District Court Order, attached hereto as Exhibit F.

³⁵ *See id.*; *see also* Utah Code Ann. § 17-27a-801(3)(c)(i).

³⁶ *See* District Court Order at 2 (“But those findings are erroneous on the record before the court. The proposed subdivision incorporates the existing airstrip into the subdivision lots . . . And the runway location within the boundaries of the proposed new subdivision significantly affects the habitable portion of each building lot.”) (citing R. 367-369).

might impact property tax obligations, easements, potential safety concerns, and other considerations that should be considered by the Commission as part of its decision.”³⁷

The District Court Order also held that the portions of the ALJ Decision which “significantly references the aviation safety experts reports and ‘finds that the safety concerns expressed in the reports were the same as those that were being voiced at the commission meeting’” were also not supported by substantial evidence.³⁸ Judge Torgerson recognized that while certain individuals had voiced safety concerns to the Board, “there is insufficient evidence in the record to demonstrate the Commission’s decision was based on substantial evidence rather than mere conjecture about the airport’s safety.”³⁹ Moreover, Judge Torgerson found it to be arbitrary and capricious that “the ALJ’s decision implies that the public clamor about safety concerns was sufficient, even though the opinions of the safety experts did not feature in the Commission’s decision in any way.”⁴⁰

Given that the District Court Order held that the aforementioned findings in the ALJ Decision were arbitrary and capricious, Judge Torgerson remanded the case back down to the Administrative Law Judge to reconsider its decision and to potentially remand the case back down to the Board “for further proceedings if additional findings are necessary.”⁴¹

V. Remand Back to the Board

On remand from the District Court, Administrative Law Judge Cheryl Luke was unable to make a final determination consistent with the District Court Order given the insufficiency of the record. As such, Judge Luke issued an Order of Remand, remanding the case back to the Board on December 16, 2024.⁴²

In the Order of Remand, Judge Luke set forth the following two findings that the Board is required to accept as part of its reopened proceedings:

1. The airstrip in controversy is included in the formal subdivision boundaries of the proposed new subdivision. The County Commssion [sic] shall consider that as part of its decision.

³⁷ *Id.* at 3.

³⁸ *Id.* (quoting the ALJ Decision at 5).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at 4.

⁴² See generally ALJ Order of Remand, attached hereto as Exhibit G.

2. The Commission shall consider evidence in this matter and shall take evidence regarding safety concerns under applicable law.⁴³

The Order of Remand’s final remark was that, “[a]ll proceedings shall be held consistent with the County Land Use, Development, and Management Act.”⁴⁴ Judge Luke’s Order of Remand did not specifically address the District Court’s ruling that the Board simply heard the safety concerns of citizens did not constitute sufficient evidence “to demonstrate the Commission’s decision was based on substantial evidence rather than mere conjecture about the airport’s safety.”⁴⁵ However, requiring the Board to consider additional evidence on the safety of the airstrip incorporates this finding and the Board must follow these instructions.

Based on this procedural history, this matter is once again before the Board and an evidentiary hearing is set to be held on June 3, 2025. During this hearing, the Board is to consider additional evidence on the safety of the airstrip in relation to Sky Ranch Phase II, including, but not limited to, the aviation safety expert’s reports presented to Judge Luke and Judge Torgerson on appeal. In addition, the Board should utilize the advice and/or services of either of the two aviation engineering firms that have designed Monticello Airport, Blanding Airport, and Cal Black Airport rather than attempting to rationalize a three-dimensional hazard such as an airport, piecemeal at the Planning and Zoning level.⁴⁶ Subsequently, the Board must make a new decision regarding the Sky Ranch Phase II application that is consistent with the District Court Order.

Argument

I. The County Must Deny Approval of Sky Ranch Phase II Because There is No Way to Properly Address the Safety Concerns as Phase II is Currently Proposed

San Juan County’s Subdivision Ordinance provides in relevant part that:

Where the property to be subdivided is subject to natural or **man-made hazards** . . . , such hazards or conditions shall be **identified** and the subdivider shall provide **stamped engineered documentation as to how the hazards or conditions have been eliminated**, or will be eliminated, through the design and construction of the subdivision.⁴⁷

⁴³ *Id.* at 1–2.

⁴⁴ *Id.* at 2.

⁴⁵ District Court Order at 3.

⁴⁶ *See generally* Wicks Group Report (setting forth the aviation safety considerations that the Board failed to consider when approving the plans of the Sky Ranch developers). (R. at 574-593.)

⁴⁷ Subdivision Ordinance at Art. II, Section 5, Design Standards, Subpart A.2, (R. at 209) (emphasis added).

This requirement to identify and eliminate hazards applies regardless of whether the potentially hazardous feature complies with zoning laws. For example, a nuclear waste dump or gravel pit might be lawful, but before a developer can build a subdivision in that location, any hazards must be identified and eliminated.

Here, the airstrip that is currently incorporated into Sky Ranch Phase II constitutes the type of hazard contemplated by the Subdivision Ordinance given its proximity to the proposed residential lots. Prior to approving Phase II, the P&Z Commission and the Board did not consider whether the “man-made hazard” of airplanes landing and taking off in the backyards of the residential lots had been “eliminated,” nor did the applicant provide “stamped engineered documentation,” as required by the Subdivision Ordinance.

This requirement also was not satisfied through the supplemental materials submitted by Intervenor on November 18, 2021. These materials were never considered and voted on by either the P&Z Commission or by the Board; rather, the County considered the presentation to be “informational.”⁴⁸ Moreover, such materials did not include “stamped engineered documentation,” and failed to eliminate or even significantly mitigate the risks identified by Petitioner’s expert.⁴⁹ The report prepared by Petitioner’s expert, which was admitted into the record by the ALJ, shows that Sky Ranch Airport does, in fact, pose significant hazards to the potential residents and visitors of Sky Ranch because of the altitude, geography, winds, and lack of buffer zones.⁵⁰

In light of the District Court Order holding that the airstrip is a part of Sky Ranch Phase II, any argument that the safety of the subdivision should be analyzed separately is null. Given that the contemplated Sky Ranch Phase II incorporates the airstrip as the central defining element of the “fly-in-fly-out” community and seeks to expand the current airstrip, the Board must consider the safety of the airstrip in conjunction with its decision regarding Phase II. Indeed, the

⁴⁸ *Supra* notes 19-20.

⁴⁹ *See generally* CC&Rs (not addressing risks identified by Wicks Group). (R. at 638-670.) *See* Wicks Group Report at pp. 11-12 (criticizing backwards and mislabeled flight pattern diagrams proposed by Intervenor). (R. at 584-585.)

⁵⁰ *See generally* Wicks Group Report. (R. at 574-593.) *See id.* at p. 17 (“The Sky Ranch Airport is situated in a particularly challenging environment for light aircraft flying. Pilots must contend with very high density altitudes (“hot and high” conditions), rising mountainous terrain, and strong and gusting winds including strong crosswinds. In such an environment, the developers, despite having expressly admitted all of these antecedent conditions, have proposed a runway only 3,700 feet long and with a significant upward slope. This runway will be insufficient for many typical light aircraft to take off safely on many hot days. The developer is also proposing minimal safety buffers such as set-offs for proposed houses, RSAs and ROFZs. It has admitted that its proposed design does not comply with recommended FAA standards. The runway bumps up against a busy local road, further exacerbating the foregoing concerns.”). (R. at 590.)

Board must now obtain substantial evidence showing that the airstrip meets the applicable safety guidelines in order to approve Sky Ranch Phase II. However, based on the proximity of the airstrip to the proposed lots, this will not be possible.

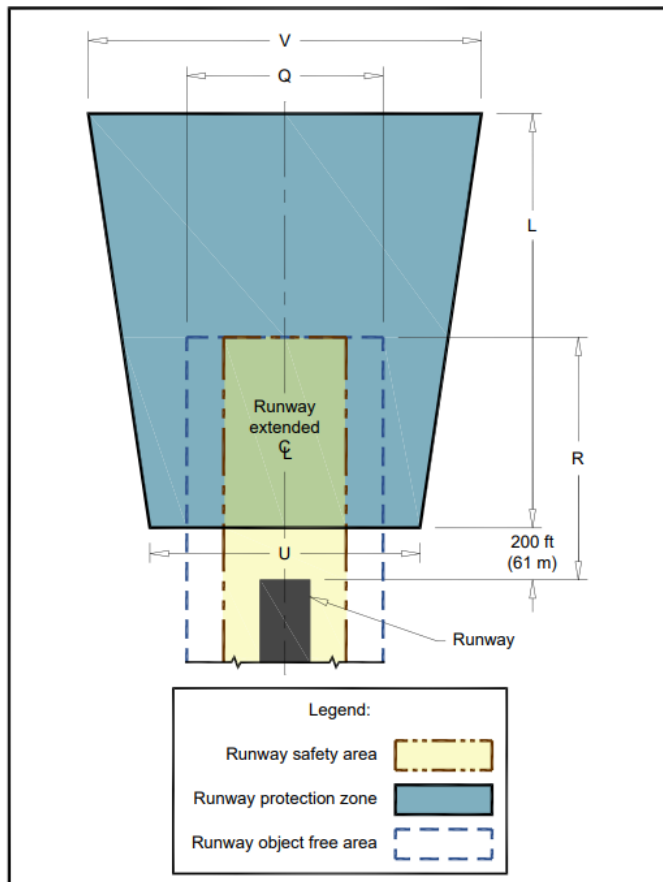
According to the most recent plat map for Sky Ranch Phase II, most lots include easements to accommodate the airstrip and suggests that houses would be built approximately 125 feet from the centerline of the new runway.⁵¹ This proximity of residential houses to the runway is contrary to the safety practices promulgated by the Federal Aviation Administration (“FAA”) in Advisory Circular AC 150/5300-13B (the “FAA Advisory Circular”).⁵²

Among other things, the FAA Advisory Circular prescribes that runways be surrounded by enough open space to accommodate an airplane that is out of control. The following is Figure 3-26 from the FAA Advisory Circular, which shows the amount of open space that should surround a runway, referred to as the “Runway Protection Zone” or “RPZ.”

⁵¹ See Plat Map. (R. at 366-368).

⁵² A copy of the FAA Advisory Circular AC 150/5300-13B is available at https://www.faa.gov/documentLibrary/media/Advisory_Circular/AC-150-5300-13B-Airport-Design-Chg1-w-errata.pdf.

Figure 3-26. Runway Protection Zone (RPZ), Runway Object Free Area (ROFA), and Runway Safety Area (RSA)



L = 1,000 feet (in addition to 200 feet)
 U = 250 feet
 V = 450 feet
 Runway Object Free Area = 125 feet
 on each side of runway centerline

Note: See Appendix G or online Runway Design Standards Matrix Tool for dimensions.

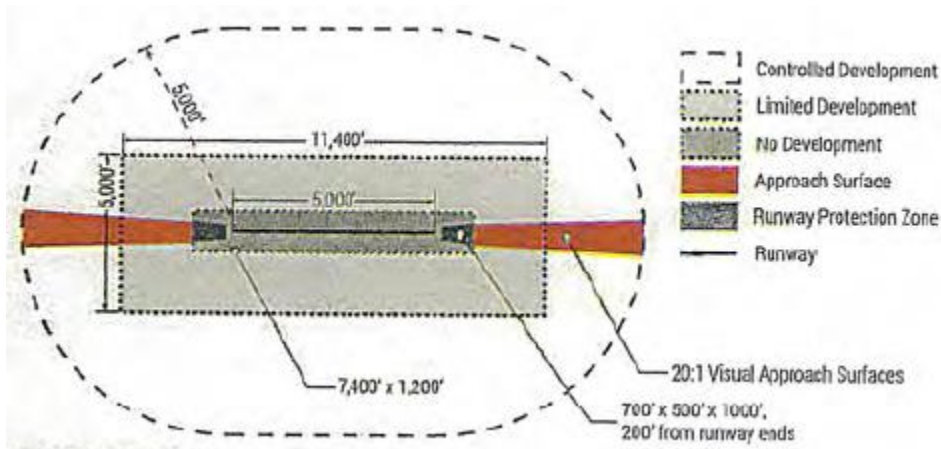
While adherence to the FAA Advisory Circular is not mandatory for private airports, the owners of private airports should and generally do follow these safety practices to protect human life and to protect themselves from tort liability in the event of accidents, which are unfortunately common among small aircraft and amateur pilots.

Moreover, according the Spanish Valley Area Plan adopted by the County in 2018 (the “Area Plan”), “Sky Ranch is a private airfield located in the northern reaches of the Study Area. Since San Juan County does not have specific ordinances in place to ensure the operation of such facilities are sage and the impacts on surrounding users is understood, Federal Aviation Administration (FAA) rules should apply.”⁵³

Appendix K to the Area Plan summarized airport safety guidelines from the FAA and the Compatible Land Use Planning Guide for Utah Airports, which was created by the Utah

⁵³ Area Plan at 33. (R. at 275).

Department of Transportation and the Mountainland Association of Governments to assist communities and counties as they consider land use regulation surrounding an airport.⁵⁴ Appendix K notes that “500 feet on either side of the runway centerline [should] be a ‘no development zone,’ where only structures used for maintenance of the airport and storage of aircraft should be allowed.”⁵⁵ Appendix K further instructs that the “‘Limited Development Zone’ should be the width of the airport’s longest runway and extend 3,200 feet beyond the end of either runway. Residential uses in this zone should be prohibited to protect residents.”⁵⁶ The following figure is a visual representation of the no development and limited development zones included in Appendix K.



As currently proposed, Sky Ranch Phase II contemplates residences being built within the zones prohibited by the Area Plan and the FAA Advisory Circular, or at the very least into the backyards of the proposed residences. If a plane were to lose control during takeoff or landing, it is easily foreseeable that the wreckage could cause injury to Phase II residents or guests, as well as damage or injury to neighboring persons or property.

Moreover, the RPZ for the new runway currently extends approximately 1,200 feet into Mr. Spielman’s property to the south of Sky Ranch and the same distance past East Mount Peale Drive onto SITLA lands to the north, effectively appropriating the property of others for run-off space. The no development and limited development zones described in the Area Plan similarly extend into the property of others and effectively preclude the safe use of such property. Based on the foregoing considerations, adequate open space *must* be provided surrounding the runway, which Sky Ranch Phase II as currently before the Board does not include. Additionally, should

⁵⁴ *Id.* at Appendix K. (R. at 356-361).

⁵⁵ *Id.* (R. at 358).

⁵⁶ *Id.* (R. at 358).

the RPZ run off area be “displaced” back onto the Sky Ranch property, the resulting shortened runway would not meet even the most basic FAA requirement for length in the common high density altitude environment of Spanish Valley.⁵⁷ As such, Phase II must be denied as it currently stands, and any effort to preserve the runway in any form with its current safety challenges should be thoroughly vetted by the County using the County’s previously approved aviation consultants like Armstrong Consultants or Woolpert, formerly Aviation.

II. The County Must Deny Sky Ranch Phase II Under the Spanish Valley Sub-Ordinance

The County is “bound by the terms and standards of applicable zoning ordinances.”⁵⁸ The 2019 Spanish Valley Sub-Ordinance does not allow airports or airstrips.⁵⁹ It provides for certain enumerated “Permitted Uses” and “Conditional Uses” for the Spanish Valley Residential District, and those uses do not include airports, airstrips, or “fly-in-fly-out” communities.⁶⁰

Utah courts have previously applied the canon of *unius est excludio alterius* to find that enumerated land uses in a statute are the exclusive uses for that zone.⁶¹ In *Carrier v. Salt Lake County*,⁶² the Utah Supreme Court held that Salt Lake County had “acted illegally” when it approved as a conditional use a gravel pit that was not enumerated as a conditional use in the zoning ordinance. Furthermore, airports and airstrips were identified as conditional uses in the 2011 Zoning Ordinance but were omitted from the Spanish Valley Sub-Ordinance, giving rise to a strong presumption that the omission was intentional.⁶³ Bynum’s own request to County

⁵⁷ See Wicks Group Report at pp. 1-6 (addressing the safety of the Sky Ranch Airport). (R. at 574-579.)

⁵⁸ *Springville Citizens for a Better Community v. City of Springville*, 1999 UT 25, ¶ 30, 979 P.2d 332.

⁵⁹ A different zoning ordinance governed when Sky Ranch Phase I was approved and then amended.

⁶⁰ See Spanish Valley Sub-Ordinance at pp. 1-2 (Ch. 1), (R. at 54-55).

⁶¹ See, e.g., *Marion Energy, Inc. v. KFJ Ranch P’ship*, 2011 UT 50, ¶ 14, 267 P.3d 863

(“[W]e presume that the expression of one term should be interpreted as the exclusion of another.” (alterations accepted, citations omitted)).

⁶² 2004 UT 98, ¶ 44, 104 P.3d 1208, *abrogated on other grounds by Outfront Media, LLC v. Salt Lake City Corp.*, 2017 UT 74, ¶ 35, 416 P.3d 389.

⁶³ Compare Spanish Valley Sub-Ordinance at pp. 1-2 (Ch. 1), (R. at 54-55), with 2011 Zoning Ordinance at p. 39 (Ch. 11-2, looking at RR-1 zone), (R. at 38-39). See *Duncan v. Walker*, 533 U.S. 167, 173 (2001) (“It is well settled that where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.” (alteration accepted, citation omitted)); *Kaanaana v. Barrett Bus. Servs., Inc.*, 483 P.3d 144, 151 (Cal. 2021) (“When the Legislature alters statutory language, as for example when it deletes express provisions of the prior version, the presumption is that it intended to change the law’s meaning.” (citation omitted)); *Carrier v. Salt Lake Cnty.*, 2004 UT 98, ¶ 35, 104 P.3d 1208, 1212, *abrogated on other grounds by Outfront Media, LLC v. Salt Lake City Corp.*, 2017 UT 74, ¶ 15, 416 P.3d 389 (“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, the omission of ‘gravel pits’ as an enumerated permitted conditional use

officials and Landmark Design to include airports in the Spanish Valley Sub-Ordinance, which was denied, also confirms that the omission was not an oversight.⁶⁴

The reasons for the omission of airports from the Spanish Valley Sub-Ordinance become plain when that ordinance is viewed in the context of the Area Plan, which called for the well-planned, coordinated development of the Spanish Valley, with the principal land uses of residential housing, community/neighborhood centers, and outdoor facilities.⁶⁵ The Area Plan also called for revising existing ordinances to remedy “unsafe conditions.”⁶⁶ Accordingly, the Sub-Ordinance omitted many of the conditional uses identified in the 2011 Zoning Ordinance, including kennels, mines, quarries, gravel pits, rock crushers, concrete batching plants, asphalt plants, oil wells, horse stables, wind turbines, **airports**, and **airstrips**.⁶⁷

The applicant of Sky Ranch Phase II is likely to argue that the airstrip as envisioned in Phase II is “grandfathered” as a “nonconforming use.” However, there is no evidence that the airstrip “legally existed before its current land use designation” or that it was “maintained continuously since the time the land use ordinance regulation governing the land changed.”⁶⁸ To the contrary, the 1978 zoning ordinance made no allowance for airports or airstrips.⁶⁹ Moreover, the record shows that the airport was not “maintained continuously” because it was used only infrequently between 1998 and 2008, and was in a state of disuse and deterioration between 2002 and 2017.⁷⁰

In addition, the record shows that the airport underwent a significant transformation beginning in 2017, which *extended it onto a lot where the airstrip had never previously been located*,⁷¹ caused it to be realigned, and caused it to be covered in asphalt for the first time. No conditional use permit was requested or issued for this work. This transformation of the airstrip would have erased any residual non-conforming use status because “in order for a nonconforming use to retain its lawful character once the applicable law changes, it must continue in essentially the same form as when it began.”⁷² Finally, the contemplated expansion of Sky Ranch into a 71-lot “fly-in-fly-out” community with new taxiways and increased traffic

suggests that a gravel pit operation is not an authorized conditional use in the FR-20 Zone.” (citation omitted)).

⁶⁴ See 11/6/2019 Correspondence. (R. at 608).

⁶⁵ See Area Plan at pp. 30-32 (under “Key Uses”). (R. at 272-273).

⁶⁶ *Id.* at p. 38 (under “Key Principles to be Considered . . .”). (R. at 280-281).

⁶⁷ Compare Spanish Valley Sub-Ordinance at pp. 1-2 (Ch. 1), (R. at 54-55), with 2011 Zoning Ordinance at p. 38-39 (Ch. 11-2, looking at RR-1 zone), (R. at 38-39).

⁶⁸ See Utah Code § 17-27a-103(46); see also *id.* § 17-27a-510.

⁶⁹ See generally 1978 Zoning Ordinance. (R. at 144-183.)

⁷⁰ See Declaration of Karl Spielman at ¶¶ 5-6. (R. at 428).

⁷¹ See *id.* at ¶ 11 and related diagram. (R. at 430-433.)

⁷² *Hatch v. Kane Cty. Bd. of Adjustment*, 2013 UT App 119, ¶¶ 11, 12, 302 P.3d 146.

would be yet another change and intensification of the use that would cause any possible nonconforming use status to be lost.⁷³

Given that the District Court Order explicitly held that the airstrip is a part of Sky Ranch Phase II and both the airstrip and the subdivision must be considered together, Phase II cannot be approved under the Spanish Valley Sub-Ordinance as proposed. The airstrip would have to be removed from Phase II to be a legal development under the applicable laws and regulations. And, for the foregoing reasons, even if removed, the airstrip would still be illegal.

For the foregoing reasons, the Board should deny Sky Ranch Phase II. There is no possible way to make the development safe as it is currently proposed given the proximity of the airstrip to the contemplated residential lots, the proximity of the RPZ, and the fact that there are no development and limited development zones to Mr. Spielman's property and other existing property. Additionally, approval of Sky Ranch Phase II would violate the County Subdivision Ordinance and the Spanish Valley Sub-Ordinance unless the airstrip is removed. As such, Phase II should be denied, consistent with the District Court Order.

Very truly yours,



James W. Anderson
Emma D. Tanner
Katherine B. Tatum

4917-7674-1959, v. 1

⁷³ Although the 2011 Zoning Ordinance in effect during the 2017 expansion of the airport allowed airports and airstrips as a conditional use, the Sky Ranch principals did not submit a conditional use application or receive a building permit and therefore do not hold any vested rights under that ordinance.

EXHIBIT A

See County Prepared Appeal Record

EXHIBIT B

From: William Love <william.e.love75@gmail.com>

Date: Wed, May 1, 2019 at 11:42 AM

Subject: Sky Ranch Airport Runway

To: Walter Bird <walterbird@sanjuancounty.org>

*Cc: <nsjc-coalition@googlegroups.com>, Moab Sun News editor
<moabsunnewseditor@gmail.com>*

I am trying to verify the rumor that the Sky Ranch Airport runway was built without an permits and the airport needed a Conditional Use Permit. I have contact Moab 's Building Department as they are contracted by San Juan County for inspection and they have issued no permits of any kind for the construction.

1. Does the SJC Land use Code require a Conditional Use permit for the enlarged Sky Ranch runway?

2. Was a permit of any kind issued by SJC for the construction of the runway? I have contact the Grands County Building Department, who is contracted for inspections, and they have issued no permits of any kind for the runway.

3 Who is responsible for closing down a facility built without the proper permits. The SJC Land Use Code mentions first the Building Inspector, then the Commission and Courts.

4. Do I petition the Commission to close down the airport if a permit was not issued?

5 I will be at the next May Commission meeting and would like to discuss any problems with the permits for the runway with the Commissioners. I can make a Grama request at that time for your information.

Bill love
Please advise

SUBJECT: Re: Sky Ranch Airport Runway
FROM: "Bird, Walter" <walterbird@sanjuancounty.org>
TO: William Love <william.e.love75@gmail.com>
BCC: Mike Bynum <mike@bzrez.com>
DATE: 06/05/2019 13:32

Bill:

No permits were issued for the Sky Ranch resurfacing project. Sky Ranch has existed as an airport since the early 1970s and has been in continuous use as an airport since that time. The county has never issued permits for such projects as road resurfacing, patios, basketball slabs, etc. on properties. When Mike Bynum contacted the county several years ago about resurfacing the runway he was told that no permit would be needed and proceeded as such. I hope this is helpful.

Walter J. Bird
SJC Planning and Zoning Director
(435) 587-3225

SUBJECT: Sky Ranch Airport and SJC Land Use Code
FROM: William Love <william.e.love75@gmail.com>
TO: Walter Bird <walterbird@sanjuancounty.org>
CC: nsjc-coalition@googlegroups.com
DATE: 06/05/2019 16:44

I could not find an airport listed in any of the zones as P or C in the SJC Land Use Code. Therefore under section 12-3 of the land use Code the enlargement of the airport is an Conditional Use. Is this correct? This is not a resurfacing of an existing runway. Most of the runway did not exist to be resurfaced prior to the enlargement. The Commission needs to determine if this is just a resurfacing project or a major enlargement. Moab City currently has a lawsuit when the City made a determination that almost doubling the size of a resort was a minor change and not major. San Juan County does not need another lawsuit. I need to see the Conditional Use Application for the airport and the approval of the use. The enlarged airport has not been in existent for many years. The number of landings and takeoffs will increase several hundred times and the runway does not meet the suggested No Development Zones beyond the end of the runway recommended by the FAA or by the San Juan County Spanish Valley Area Plan -April 17, 2018. A major road is only 5 to 10 feet off the end of the runway.

Can you email me information from the Conditional Use Application and Permit or I can review the information in the Courthouse. MY feeling is this airport expansion is illegal. I need information that shows the airport met the requirements of the Land Use Code and information that will change my mind about the legal status of the airport. The County has a large liability if the Land use Code was not followed and a school bus or other vehicle is hit by an aircraft. The primary question is "Was the Land Use Code followed by the County and the Developer? If not we need to notify the County's Insurance Company and the Commission. An illegal airport needs to be closed ASAP before someone is killed. This subject needs to reviewed by your new County Administrator if hired tomorrow (Tuesday)

Bill Love

OM: "Bird, Walter" <walterbird@sanjuancounty.org>

TO: William Love <william.e.love75@gmail.com>

BCC: Mike Bynum <mike@bzrez.com>

DATE: 07/05/2019 08:07

Bill:

As stated, there is no conditional use application and no permit was granted. UCIP, the county's indemnity pool, is fully aware of this airport issue that has been vetted for several years now by many parties. This is far from a new issue. The county is in a no win situation - one side sword rattling that we haven't followed code and that the airport is dangerous, and the other side alleging that any infringement on an existing property right may lead to legal action. So if the goal is avoid a lawsuit that may not happen.

Walter J. Bird

SJC Planning and Zoning Director

SUBJECT: Re: Sky Ranch Airport and SJC Land Use Code

FROM: William Love <william.e.love75@gmail.com>

TO: "Bird, Walter" <walterbird@sanjuancounty.org>

DATE: 08/05/2019 14:55

The county's goal should be to protect the health and welfare of the residents around Sky Ranch Airport and not try to avoid a lawsuit for being negligent in not enforcing SJC's land Use Code.

Property rights of one person is not an excuse to intrude on your neighbors property and endanger their lives or the lives of their children. A land Use Code needs to at least do the following:

1. Separate commercial areas from residential areas. Large "Truck Stops" do not belong in residential areas. "Overnight Rentals" do not belong in residential areas.
2. Protect residents from airports where the developer builds runways up to the edge of a primary access street. The lives of children going to school near the airport are far more important than a developers concern for property rights when developing his land. A strong land Use Code will protect property owners from the intrusions of their neighbors. Intrusions include bright lights, noise, high buildings blocking views, air pollution, water pollution, or trash which is a habitat for rats, mosquitoes, and other disease carrying creatures. SJC does not have a Land Use that is adequate to protect the residents from the intrusions of their neighbors.

The Land Use Code has never been properly enforced in SJC by the County Commissioners or their staff. The County was negligent in allowing the Sky Ranch Airport to open without requiring a Conditional Use Permit. The County needs to close the airport immediately until the runway is safe for the traffic on the access road to the surrounding properties. The lives of children and other residents should be more important than the property rights of the airport owners. SJC liability for the death of a child will be far more than the cost of a Lawsuit for the protection of property rights.

Bill Love

EXHIBIT C

Time	Participant	
		consideration today. The regulations and rules and then guidelines that the airport falls under is the FAA's guidelines and nothing, has nothing to do with the county's guidelines. And, so, what we're looking at today is and only applying the ordinance as it was adopted in 2019, and so all of this, the airport predates our current ordinances. They're not asking to change the ordinance or land use request to allow for the airport because that's already something grandfathered in. Because of that, all we're really looking at is does the plat map comply and meet the requirements of the zone that this is in as far as plat maps are concerned.
4:28:09	Goble	Okay, so there's a lot of information in there, um. What's the – which question do you want me to hit first?
	Comm'r Adams	I'll ask you the question.
	Goble	Okay.
	Comm'r Adams	In my opinion, we're just being asked to approve or deny the Sky Ranch Estates Subdivision Phase 2. The planning and zoning board has determined that they meet all the requirements and recommended that we approve. If we don't approve it and we deny it, are we putting ourselves in any legal jeopardy?
4:28:57	Goble	That would depend on the reason for denying it. So, all land use decisions are, um, made one at a time probably isn't the right way to describe it, but, um, as it has been described to me, the airport was approved years ago, and the question before this body is the residential development around it.
	Comm'r Adams	But, I think. . .
	Goble	Denying the residential development absent a reason in the ordinance itself could land the county in legal trouble.
	Comm'r Adams	But to deny it because there's an airstrip in the, in the subdivision itself, does that place us in legal jeopardy?
	Goble	To deny it because an airstrip exists nearby?
	Comm'r Adams	Yup.
	Goble	Yes, because I've – at least in looking at the ordinance, the Spanish Valley Sub-ordinance that was adopted in 2019, it makes no discussion in that residential zone about there being a barrier or anything around that airport. And, since there's nothing in the ordinance that says that you can't build residential homes around the airport in that residential area, you're – those are the rules that the county adopted and those are the ones we have to live by.
	Comm'r Adams	So, if we deny this, we could possibly be sued by the developer – the county could?
	Goble	Correct. I mean, all land use decisions . . . let me think of the best way to phrase this. All land use decisions come fraught with the possibility that somebody somewhere is going to sue the county over it. The purpose for this commission is to review whether or not the Spanish Valley Sub-

Time	Participant	
		ordinance has been complied with. If it has been complied with, then you risk a denial that will be overturned and will cost the county. If that's a lawyer-enough answer for you. So, um, my understanding in speaking with Scott about this is it's his opinion that they are in compliance with the Spanish Valley Ordinance in making this request. And, if that is the determination of county staff and it's been approved by the planning and zoning commission, then the commission cannot deny it just because. There has to be a reason based in law, either, hey, we found something that's in violation of the ordinance; we found something that's in violation of state law. If there's been no such finding, then there's no basis for the denial.
4:31:53	Comm'r Adams	Okay. That's all I have. [inaudible]
	McDonald	Commissioner Maryboy, did you have any questions for our attorney? I know that you – that was one of the things that you wanted and asked for.
	McDonald	Commissioner Maryboy, are you there?
4:32:29	Comm'r Maryboy	There you go. Which attorney is that?
	Goble	This is Alex.
	Comm'r Maryboy	Whoa.
	McDonald	The illustrious.
	Comm'r Maryboy	Um, well, um, I think every individual, every group of people, everybody has a right and right now, I've asked, I think, Bruce asked for legal opinion, and I said, why isn't our attorney available? Why can't we have an attorney there that will be sitting there to give us information when it's readily available? Now, it's after the fact that we're dealing with it. I thought I tabled this thing. Now, we're talking about it again at the end of the agenda. So, Section 17 was brought up that needs to be looked at.
	McDonald	Yeah, chapter 17.
4:33:34	Comm'r Maryboy	And, everybody has a right. Anybody. The community that lives there and resides there are concerned. And, I'm also concerned about this. So, if the attorney that's advising us is saying what he's saying then what's the point in discussing it. He sounds like he's already ready to make an approval without even thinking about this whole thing thoroughly. So, if that's the case, if we can bring it back up again then my motion would be to table this item until we get in touch with the right, appropriate people to give us some guidance. And also, the recommendation of how it's being dealt with in other rural cities. And, earlier we heard these people making statements. What if that happens? What if this happens? And, if it's in the middle of a subdivision, it would be ludicrous for anybody to develop any kind of an operating establishment. You never know what would happen. That's my concern. I think that should be a concern to all of us. Otherwise, if you don't think like that, then write a letter to the community saying we don't care what happens to you. We're going to go

EXHIBIT D

Cheryl D. Luke
Attorney at Law
Utah State Bar 2013
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Marysvale, UT 84750
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cdluke@live.com

BEFORE THE SAN JUAN COUNTY ADMINISTRATIVE LAW JUDGE

KARL SPIELMAN:

Plaintiff,

vs.

SAN JUAN COUNTY, UTAH,

Respondents

BUSSINESS RESOLUTIONS, LLC, as Trustee of Moab
Development Trust, MIKE BYNUM, as Manager, and
JOHN RAMSEY, as individual

Intervenors

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER REGARDING
THE APPEAL OF THE
BOARD OF COMMISSIONER'S
DECISION APPROVING SKY RANCH ESTATES
SUBDIVISION PHASE II

The above-entitled matter came before Acting Administrative Law Judge, Cheryl D. Luke after the disqualification of the original assigned Judge. The parties were given an opportunity to submit exhibits into the record, to brief their positions and a hearing was held before me on August 29, 2023 for oral argument.

RELEVANT FINDINGS OF FACT

1. In October 2020, the Moab Development Trust, through its Trustee, Business Resolutions, LLC, submitted a residential subdivision application with San Juan County for the Sky Ranch Subdivision Estates Phase II (the "Application") to be developed near the Sky Ranch Airstrip (the "Airstrip").
2. Approval of the Sky Ranch Airstrip was not at issue in the Application. It had been recognized by the FAA as a private airport since at least 1985 and does not fall within the boundaries of the proposed subdivision, Sky Ranch Phase II.
3. The Airstrip was included in the plat map and approval for a 6 lot subdivision known as Sky Ranch Estates. It has been a rural dirt airstrip since the 1980's. In 2017 the Airstrip was paved; its' location was slightly realigned and the length and width of the Airstrip were slightly extended.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER REGARDING THE APPEAL OF THE BOARD OF COMMISSIONER'S DECISION APPROVING SKY RANCH ESTATES SUBDIVISION PHASE II - 1

- 1 4. The Airstrip is not included in the subdivision boundaries of Sky Ranch Estates phase II.
- 2 5. On February 11, 2021, the San Juan County Planning Commission considered the Application.
- 3 6. On February 16, 2021 the San Juan Board of Commissioners considered the Sky Ranch Estates Phase II
- 4 application for approval.
- 5 • Discussion was held with community input as well as staff input. The transcript of the proceeding shows
- 6 that a plethora of misinformation including the legal status of the airstrip, the availability of obtaining input
- 7 regarding safety concerns related to approving a subdivision that is not only in close proximity to the airstrip
- 8 but also includes plans for interactive fly in and fly out access from the residences in the proposed
- 9 subdivision. After hearing the discussion including discussing safety concerns because of the proximity of
- 10 the Airstrip, a motion was made to table the matter. The motion to table was made by Commission Vice-
- 11 Chair Maryboy and was seconded by Commissioner Adams. The motion was voted "yea by two
- 12 Commissioners with Commissioner Adams voting Nay. After the vote a representative of the County
- 13 Attorney's office told the Commission that tabling the approval of the subdivision was considered a denial.
- 14 A motion to recall the matter was made by Commissioner Adams and was seconded by Commission Vice-
- 15 Chair, Maryboy. All Commissioners voted in favor of recalling the matter.
- 16 7. On February 16, 2021 the Board of Commissioners having considered the Application voted to approve the
- 17 Sky Ranch Subdivision Estates Phase II, upon condition.
- 18 8. The condition was that "the community is being consulted with the party that's going to be developing is
- 19 being consulted and bring that information to the planning commission."
- 20 9. On February 26, 2021, "Petitioners" (Karl Spielman, Tim O'Niell and Beverly O'Niell) appealed the
- 21 February 16, 2021 decision of the San Juan County Board of Commissioner approving Sky Ranch Estates
- 22 Subdivision Phase II. The O'Niell later asked to be dismissed from the proceeding and they were
- 23 dismissed with the Stipulation of all parties by the previous ALJ. The previous assigned ALJ also stayed
- 24 development of the Sky Ranch Estates Phase II subdivision pending a decision on the appeal.
- 25 10. On November 18, 2021 the San Juan County Planning Commission held further proceedings which were a
- 26 condition of approval from the Board of Commissioners.

1 11. Those further proceedings on November 18, 2021 included the San Juan County Planning Commission
2 receiving an informational presentation which addressed safety issues associated with the Sky Ranch Estates
3 Subdivision Phase II. Including a report from Larry Williams, a retired FAA safety inspector, in which he
4 concluded the airstrip would be safe for the proposed subdivision. Additional information was provided by Mr.
5 Ramsey, a licensed pilot and a homeowner living adjacent to the airstrip with his own hanger and direct access
6 and use of the airstrip. Mr. Spielman, as well as other members of the public, also made comments concerning
7 the Airstrip at the public hearing. The San Juan County Planning Commission took no action after hearing this
8 informational presentation. The information was never presented to or acted upon by the San Juan Board of
9 Commissioners.

10 12. Presented to this Court and admitted over objection the Applicant provided a report from the Wicks Group
11 aviation consultant. The conclusion of that report is that the development of Sky Ranch Estates Phase II would
12 create safety concerns because of the existing Airstrip.

14 LEGAL STANDARD

15
16 Any Person that is adversely affected by the County's land use decision may appeal said decision
17 under the County Land Use, Development, and Management Act ("CLUDMA") found in Utah Code Section
18 17-27-101 et seq. The party challenging the County's decision has the burden of proof on appeal, as set forth in
19 Utah Code Section 17-27-705. The appeal authority reviews the record and determines whether the
20 government's decision was "arbitrary, capricious, or illegal."

21 A decision will not be considered arbitrary or capricious if there is substantial evidence in the
22 record to arrive at the decision.¹ "Substantial evidence" is sufficient evidence for a reasonable person to arrive
23 at the same decision arrived at by the County.² A decision will not be considered illegal if it does not violate
24

25
26
27 ¹ Patterson v. Utah Cty. Bd. Of Adjustment, 893 P.2d at 604

28 ² Id.

existing laws or ordinances of the County.³ The County is afforded broad latitude and discretion and its decisions are afforded a strong presumption of validity.⁴

ANALYSIS

The questions this ALJ deems necessary to answer in reviewing this appeal are:

1. Did the land use authority (the San Juan Board of Commissioners) correctly interpret the factual situation?
2. Did the land use authority (the San Juan Board of Commissioners) correctly apply the law as written?
3. Did the land use authority (the San Juan Board of Commissioners) violate due process or any rule of procedure?

One need only to review the transcript of the February 16, 2021 Commission [Exhibit 10] in which the application for the SkyRanch Estate Phase II subdivision application was discussed to see the level of conflicting and confusing information that was being given to the Commission regarding the Airstrip status, the extent of the Commissioners authority, what resources could be obtained to further review the safety concerns that were being discussed. The Commissioner's considered and in fact voted to table the matter for further consideration. They then recalled the matter after receiving further information from their Assistant County Attorney. The Commission then approved the matter with instructions that further development was to include Planning and Zoning oversight regarding safety concerns.

The developer and the Planning and Zoning Board did in fact work together to review and consider the safety concerns. This included a report from an FAA aviation expert and the taking of further statements from Plaintiff and other community members regarding the development. That information was never reported to the San Juan County Board of Commissioners and thus cannot be used to bolster their grasp of the factual situation to support their decision. Likewise, a competing expert report obtained by Plaintiffs was never reviewed or presented to the San Juan County Board of Commissioners so cannot be considered against their decision to approve the subdivision.

³ Id.

⁴ Id.

1 It is important to understand that the matter before the San Juan Board of Commissioners was the
2 subdivision approval and was not a review of the legal status of the Airstrip as it was not even included in
3 the formal boundaries of the subdivision plat map and had been previously acknowledged and approved in
4 the original Sky Ranch Estate development. Decisions are not made in a vacuum and thus the proximity
5 of the subdivision to the Airstrip should have and did include safety issues. This ALJ finds that the
6 Petitioner has used the proceeding before the County Commission and also this appeal to try to collaterally
7 attack the existence of the Airstrip. That is not, nor has that ever been within the scope of this matter. Thus,
8 while briefed and argued the issues of nonconforming use and collateral estoppel would be appropriate in
9 an action in which the existence of the Airstrip was at issue and not the approval of the nearby subdivision.

10 The Court finds that the application for a residential subdivision was properly found to comply
11 with existing governing laws and that the San Juan Board of Commissioners had a proper grasp of the facts
12 and law when they approved Sky Ranch Estates Phase II for residential development. Although not
13 eloquently presented at the Commission meeting this Court has reviewed both of the aviation safety experts
14 reports and finds that the safety concerns expressed in the reports were the same as those that were being
15 voiced at the Commission meeting. Including concerns about the runway proximity to homes and roads.
16 Nothing presented to either the Planning Board or this forum makes the San Juan Board of Commissioners
17 decision arbitrary or capricious. Every pancake has two sides and in this case the information concerning
18 this subdivision could be found reasonable to support approval or denial of the subdivision application. The
19 County is afforded broad latitude and discretion and its decisions are afforded a strong presumption of
20 validity. The Board of Commissioners acted in a thoughtful way and provided a safety net to support their
21 decision to approve the application for the subdivision by requiring that the County continue oversight of the
22 development with the safety issues in mind as each step of the development process continued.

23 Petitioner alleges that there was a violation of the San Juan County rules of procedure governing
24 the February 2021 San Jaun County Commission meeting. Applicant submits that the vote to reconsider
25 the matter after it had been tabled was procedurally improper under San Juan Policy and Procedure
26 governing San Juan County Commission meetings. Applicant notes that Commissioner Adams had voted
27 in the minority on the motion to table. Applicant notes that the Policies and Procedures provide that a

1 motion to reconsider may be introduced only by a commissioner who had voted with the prevailing side
2 and therefore Commissioner Adams was out of order. I find that while this procedural error did occur the
3 Motion was properly seconded and resulted in a final unanimous vote in favor of reconsideration. It was
4 procedural and not substantive and at best constitutes harmless error.

5 **ORDER**

6 **IT IS HEREBY ORDERED** that the stay place in the matter by Judge Creswell be rescinded and
7 that the decision of approval of the Sky Ranch Estate Phase II subdivision is AFFIRMED.

8 Dated this 21st day of September 2023.

9
10
11 *Cheryl D. Luke*

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13 _____
14 Cheryl D. Luke
15 Administrative Law Judge
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I HEREBY CERTIFY that a true and correct copy of the Findings of Fact, Conclusions of Law and Order in appeal of Sky Ranch Estates Subdivision Phase II has been sent to the following on this 21st day of September 2023 by USPS.:

Cheryl D. Luke

Administrative Law Judge

Jimmy Anderson
Shaundra L. Mc Neill
Clyde Snow & Sessions
201 South Main Street, Suite 2200
SLC, Ut 84111-2216

Jens Nielson, San Juan deputy county attorney
297 South Main
PO Box 850
Monticello, UT 84535

Justin Matkin
Parr Brown Gee & Loveless
101 South 200 East, Suite 700
SLC, UT 84111

San Juan County Administrator
Mac McDonald
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Montecello, UT 84535

EXHIBIT E

Matthew A. Steward (#7637)
James W. Anderson (#9829)
Shaunda L. McNeill (#14468)
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Attorneys for Plaintiff/Petitioner

If you do not respond to this document within applicable time limits, judgment could be entered against you as requested.

**IN THE SEVENTH JUDICIAL DISTRICT COURT
IN AND FOR SAN JUAN COUNTY, STATE OF UTAH**

KARL SPIELMAN,

Plaintiff/Petitioner,

v.

SAN JUAN COUNTY, BOARD OF SAN
JUAN COUNTY COMMISSIONERS,

Defendant/Respondent

and

BUSINESS RESOLUTIONS, LLC, as Trustee
for MOAB DEVELOPMENT TRUST; JOHN
RAMSEY,

Defendants/Intervenors.

**COMPLAINT / PETITION FOR
REVIEW OF LAND USE DECISION**

Case No. _____

Judge _____

TIER 2

Plaintiff Karl Spielman (“Spielman”), by and through counsel, hereby petitions the District Court to review a land use decision by San Juan County (the “County”) in which Business Resolutions, LLC, as Trustee for Moab Development Trust (“Business Resolutions”), and John Ramsey (“Ramsey”) have intervened (collectively “Intervenors”). Spielman also asserts claims against Business Resolutions and Ramsey.

PARTIES

1. Spielman is an individual who owns and previously resided at property located in San Juan County Utah.
2. Defendant San Juan County is a county of the State of Utah.
3. Intervenor Business Resolutions, LLC, as Trustee for Moab Development Trust, is a Colorado limited liability company that is registered to do business in Utah and whose registered agent in Utah is Michael H. Bynum.
4. Intervenor John Ramsey is an individual residing in San Juan County, Utah.

JURISDICTION AND VENUE

5. Jurisdiction is vested in this Court by virtue of Utah Code § 78A-5-102 and § 17-27a-801.
6. Venue is proper in this Court by virtue of Utah Code §§ 78B-3-307.

GENERAL ALLEGATIONS

I. History of Sky Ranch Airport

7. This action pertains to Sky Ranch Airport, which beginning in the 1980s was a dirt airstrip used occasionally by the landowner at the time, Bud Tangren.

8. Sky Ranch Airport is situated in the Spanish Valley of San Juan County, Utah. The Spanish Valley was formerly a rural area in the northernmost portion of San Juan County but development has accelerated in recent years. The Spanish Valley is now considered part of greater Moab.

9. Since 1998, Spielman has owned property in the Spanish Valley immediately to the south of Sky Ranch Airport (Spielman's "Property"). Spielman himself is a licensed pilot and also had a dirt airstrip on his property, of which he made occasional personal use.

10. Mr. Tangren used Sky Ranch Airport infrequently to commute between the Spanish Valley and Las Vegas, Nevada in his private plane.

11. In 2001, Mr. Tangren obtained approval for a 6-lot subdivision at the south end of the airstrip. He named the subdivision Sky Ranch Estates ("Phase I") but did not build homes on the lots.¹

12. Mr. Tangren never paved the airstrip with asphalt or developed the property other than to chip seal the runway over native dirt and bring electricity to six lots of Sky Ranch Phase I.

¹ Much later, one residence (currently home to Ramsey) was constructed on a lot in Phase I. The other five lots remain vacant.

13. The runway fell into a state of disrepair beginning around 2001, when Mr. Tangren abandoned the six-lot subdivision and returned the land to “greenbelt” status. The surface of the runway deteriorated, and it was covered with rabbitbrush and unusable for aircraft.

14. Business Resolution (or a close affiliate) acquired Sky Ranch around 2008 but did not begin developing the property until 2017.

15. In 2017, Business Resolutions brought in industrial-size earth-moving and paving equipment to re-grade and widen the runway and pave it with asphalt for the first time. The new runway was extended by approximately 550 feet, into a separate 15-acre tax parcel to the north. A building on the property was partially demolished to make way for the new runway orientation.

16. The extended runway ends only a few feet from Spielman’s property to the south and a public road to the north. Thus, the extended runway effectively uses these private and public spaces as run-off zones for any mishaps that may take place on the runway.

17. In 2017 and early 2018, Business Resolutions created plans for developing Sky Ranch into a large residential fly-in-fly-out community. There was an outpouring of negative public sentiment in the newspapers and during County scoping meetings where new zoning standard for the Spanish Valley were discussed.

18. In early 2018, Mr. Bynum sought approval of a plat map for Sky Ranch Phase II (a pre-cursor of the current plat map). At the conclusion of its April 12, 2018 meeting, the Planning & Zoning Commission (“P&Z Commission”) did not approve Sky Ranch Phase II but rather voted to table it.

19. After learning that the County would require him to apply for a conditional use permit, Mr. Bynum withdrew the proposal.

II. The Board's Erroneous Approval of Sky Ranch Phase II

20. In or around October 2020, Business Resolutions submitted to the County a residential subdivision for Sky Ranch Subdivision Estates Phase II ("Sky Ranch Phase II").

21. The plat map submitted with the application proposed a long, narrow subdivision with 51 residential lots lined up on either side of the Sky Ranch Airport. A copy of the plat map is attached as Exhibit A.

22. Six of the residential lots are part of the previously approved Sky Ranch Subdivision Estates Phase I, and 45 of the residents lots would be part of the proposed Sky Ranch Phase II.

23. The plat map shows the airstrip running through the backyards of each of the 51 lots over a series of easements.

24. In addition to the 51 lots running alongside the airstrip, Sky Ranch Phase II proposed 30 additional residential lots immediately to the northwest of the airstrip.

25. On February 11, 2021, the P&Z Commission approved Phase II without considering any FAA guidelines or any airport planning materials. Nor did the P&Z Commission consult with FAA planners or private aviation planners even though the County had done so in the past with respect to other airports within the County.

26. On February 16, 2021, the San Jaun County Board of Commissioners (the "Board") approved Sky Ranch Phase II in a contentious meeting in which "a plethora of misinformation" was exchanged and formed the basis for the approval.

27. Two of the Commissioners were uneasy about approving Sky Ranch Phase II. These Commissioners suggested that the P&Z Commission consult with safety experts regarding the citizens' concerns and report the experts' recommendations to the Commissioners before they voted. In particular, these Commissioners wanted to know whether additional buffer zones should be required between the runway and the proposed residential housing. Commissioner Maryboy summed up his views, as follows: "[S]end this back to the safety experts regarding the location of the airport and also recognize the residential zoning. Maybe that way we will have a clear picture [before] making a decision with each other."

28. County staff responded to the Board's concerns with misinformation. County Administrator Mack MacDonald stated incorrectly that "the airport's already been approved," "it's an FAA approved airport," the airport is "grandfathered," and "we don't have a safety expert" to assess the public's safety concerns.

29. The matter was tabled until a legal opinion could be obtained. Toward the end of the meeting, Assistant County Attorney Alex Goble joined the meeting to provide the requested legal opinion. Mr. Goble reiterated the misinformation of the other County staff, stating, "As it was described to me, the airport was approved years ago." Based on this incorrect premise, Mr. Goble went on to advise the Board that to deny approval to Phase II because an approved airstrip exists nearby could "land the County in legal trouble" because "there is nothing in the ordinance that says that you can't build residential homes around an airport in that residential area."

30. The Board again voted to table the matter "until we get in touch with the right appropriate people to give us some guidance and also a recommendation of how it's being dealt with in other rural cities."

31. Mr. Goble stated that “tabling” the matter was equivalent to denying it, and Mr. MacDonald argued against the Board’s decision, stating that the developer had created “a private airport” and could do what he wanted “with his own property.”

32. Mr. MacDonald further instructed the Board that it was “illegal” for them to deny the application “without cause.”

33. Based on this erroneous information and advice from their staff, the Board voted to approve Phase II, subject to the condition that the community and aviation regulators be consulted by the P&Z Commission.

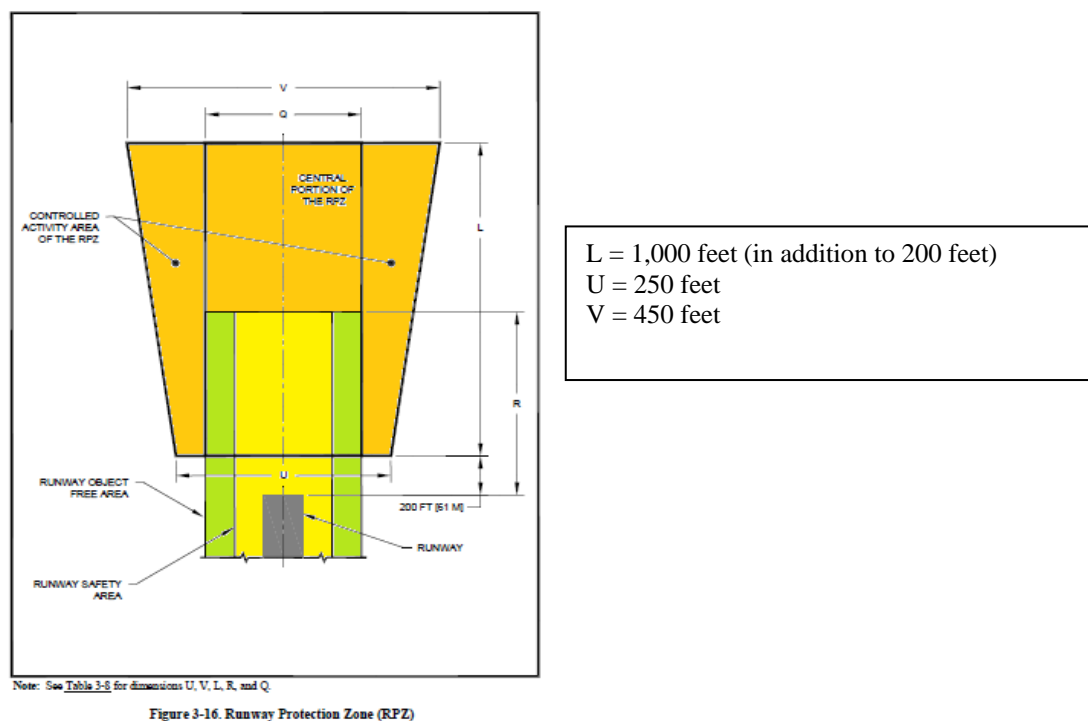
34. The Board’s approval of Sky Ranch Phase II (the “Phase II Approval”) on February 16, 2021 was an appealable land decision under the County Land Use, Development, and Management Act, Utah Code Section 17-27a-101, et seq. (“LUDMA”).

35. The erroneous information provided to the Board is directly contrary to statements by FAA Community Planner John Sweeney in his email to then-County Administrator Kelly Pehrson in April 2018:

[T]he FAA has no authority to tell the county/city or private land owners what they can and cannot do in reference to private use airports. **The FAA would urge you to consider some of the design standards that we apply to public use airports, such as safety areas and Runway Protection Zones.** You are not required to, but it might be in the best interest of the users of the airport and the ground. . . . **Our office would be happy to provide guidance and offer any assistance if the county would like it.**

36. In general aviation (as opposed to commercial aviation), aborted take-offs and out-of-control landings happen with some frequency, which is why the Federal Aviation Administration (“FAA”) recommends substantial setbacks and no-build areas around airports, including private airports. Among other things, the FAA Advisory Circular (AC 150/5300-13A)

prescribes that runways be surrounded by enough open space to accommodate an airplane that is out of control. The following Figure 3-16 from the FAA Advisory Circular shows the amount of open space that should surround a runway, referred to as the “Runway Protection Zone” (“RPZ”), the “Runway Safety Area” (“RSA”) and the “Runway Obstacle Free Area” (“ROFA”). Color-coding has been added for ease of reference.



37. In approving Sky Ranch Phase II, the County failed to consider these or similar FAA recommendations for private airports. This dereliction of responsibility is particularly problematic because the FAA does not regulate private airports but relies on local counties and cities to oversee the design and safety aspects of private airports.

38. The County also failed to consult with Grand County, its neighbor to the north, which lies under one approach and departure path of Sky Ranch Airport. Grand County

submitted a letter to the prior Administrative Law Judge, expressing concern for the health, safety, and welfare of its residents, including the pupils who travel in Grand County buses on the road immediately to the north of the runway.

39. On November 18, 2021, Intervenor’s counsel presented additional information to the P&Z Commission. This presentation included certain covenants, conditions, and restrictions (collectively “CC&Rs”) that Business Resolutions claimed to have adopted to improve the safety of operations at Sky Ranch Airport.

40. Other than a brief comment as a member of the public, Mr. Spielman was denied the opportunity to make a presentation to the P&Z Commission or to submit the opinions of his retained aviation expert.

41. The P&Z Commission considered Bynum’s presentation to be informational only and took no action on it.

42. The P&Z Commission did not consult with any aviation regulators, contrary to the desire of the Board at the time of the February 16, 2021 vote, and despite the open offer of Mr. Sweeney for the FAA to consult with the County about Sky Ranch.

III. Exhaustion of Administrative Remedies

43. On February 26, 2021, Spielman timely and specifically challenged the Phase II Approval through a notice of appeal delivered to the San Juan County appeal authority.

44. Appeal proceedings were conducted under Administrative Law Judge Lyn Creswell during 2021 and 2022.

45. In 2023, Administrative Law Judge Cheryl Luke was assigned to conduct the appeal in place of Judge Creswell.

46. Judge Luke made findings with respect to the documents constituting the record on appeal.

47. Judge Luke then received briefing from the parties and heard oral argument on August 29, 2023.

48. Judge Luke issued a ruling dated September 21, 2023, entitled “Findings of Fact, Conclusions of Law, and Order Regarding the Appeal of the Board of Commissioner’s Decision Approving Sky Ranch Estates Subdivision Phase II.”

49. Judge Luke’s September 21, 2023 ruling constitutes the “Final Decision” of the County with respect to Spielman’s appeal of the Phase II Approval. A copy of the Final Decision is attached as Exhibit B.

IV. The Final Decision Was Arbitrary, Capricious, and Illegal

50. The Final Decision is subject to reversal by this Court because it was arbitrary, capricious, and illegal.

51. A decision is “arbitrary and capricious” within the meaning of LUDMA if it is not supported by substantial evidence in the record.

52. The Final Decision was arbitrary and capricious because many of the findings and much of the analysis were not supported by substantial evidence and/or were directly contrary to the evidence in the record.

53. The following are examples of findings and analysis that are not supported by the record or are contrary to the record:

- a. “Approval of the Sky Ranch Airstrip was not at issue in the Application.” (Final Decision, ¶ 2.)

- b. The “Sky Ranch Airstrip” “does not fall within the boundaries of the proposed subdivision, Sky Ranch Phase II.” (*Id.*; *see also id.* at ¶ 4 and at page 5.)
- c. “In 2017 the Airstrip was paved; its[] location was *slightly* realigned and the length and width of the Airstrip were *slightly* extended.” (*Id.* at ¶ 3, emphasis added to show points of disagreement.)
- d. “[T]he safety concerns expressed in the [parties’ expert] reports were the same as those that were being voiced at the Commission meeting” on February 16, 2021. (*Id.* at page 5.)

54. A decision is “illegal” within the meaning of LUDMA if it was based on an incorrect interpretation of a land use regulation, conflicts with the authority granted by LUDMA, or is contrary to law.

55. The Final Decision was illegal for numerous reasons, including at least the following:

- a. The Final Decision failed to apply the County’s Subdivision Ordinance, which requires man-made hazards located within a subdivision to be eliminated before the subdivision can be approved.
- b. The Final Decision failed to apply applicable County zoning ordinances, which do not permit airstrips or airports in the applicable zone.
- c. The Final Decision failed to make any determination regarding the nonconforming use status of Sky Ranch Airstrip.

- d. The Final Decision included a determination that “the matter before the San Juan Board of Commissioners was the subdivision approval and was not a review of the legal status of the Airstrip.”
- e. Similarly, the Final Decision included a determination that the legal status and “existence of the Airstrip” were not “within the scope” of the administrative appeal.
- f. The Final Decision implied that there was no error with the Phase II Approval and that the Phase II Approval was supported by substantial evidence for each essential finding of fact.

56. Because the Final Decision was arbitrary, capricious, and illegal, Spielman requests that the Court reverse the Final Decision and remand the matter to the land use authority with instructions to issue a land use decision consistent with the Court’s decision.

V. Hazards Created by Sky Ranch Airport

57. Even in its current form, without the additional 75 lots contemplated by Sky Ranch Phase II, Sky Ranch Airport creates a hazard for surrounding landowners and residents, including Spielman.

58. Business Resolutions and Ramsey do not control or even monitor use of Sky Ranch Airport, do not maintain adequate policies, procedures, or CC&Rs and do not enforce the CC&Rs that have purportedly been adopted.

59. A recent incident is illustrative of the hazards imposed on Spielman and similarly situated landowners and residents by Sky Ranch Airport in its current form and under current ownership.

60. On September 21, 2023, neighbors of Sky Ranch Airport observed five airplanes landing and taking off from Sky Ranch Airport, performing the maneuver known as a “touch-and-go.”

61. This maneuver is prohibited by the CC&Rs that Business Resolutions presented to the Planning & Zoning Commission on November 18, 2021, because the “touch-and-go” maneuver results in unnecessary noise, traffic, and danger to the public.

62. Despite this prohibition in the CC&Rs, on September 21st, no one took action to stop these pilots from misusing the airstrip in this manner. The identity of the pilots is unknown.

63. After performing a “touch-and-go,” the fifth airplane circled back to the runway and landed.

64. This time, the pilot lost control of the plane and skidded with locked up wheels down the last 300 feet of the runway, before leaving the runway and nearly smashing through the fence separating Sky Ranch Airport and the access road to the property of Karl Spielman and the property of neighbors (and previous appellants) Beverly and Tim O’Niell.

65. The tracks of the plane’s landing gear in the dirt show the wheels reaching within approximately one foot of the fence before turning sharply to the left.

66. This aircraft then taxied to John Ramsey’s hangar and spent the next two nights there before departing.

67. Fortunately, no one appears to have been injured in this accident. However, when the plane careened off the end of the runway, it passed through one of the approved residential lots that form part of Sky Ranch Phase I. If a home had been constructed there, significant

property damage and injuries could have resulted. The out-of-control aircraft also missed colliding with a 7200-volt transformer by fewer than 50 feet.

68. If the plans for Sky Ranch Phase II materialize, there would be up to 81 homes clustered around the airstrip, in the path of similar or more tragic aviation mishaps.

69. Even if the plans for Sky Ranch Phase II never materialize, Spielman's Property falls within the zones that the FAA has identified as the highest risk for a general aviation accident. Spielman is effectively impeded from using or developing the northern portion of his Property and has been impeded in efforts to sell his Property.

COUNT I

REVIEW OF COUNTY ACTION (Against Respondent and Intervenors)

70. The allegations contained in the preceding paragraphs are realleged and incorporated herein by reference.

71. Plaintiff has standing to appeal the Final Decision pursuant to Utah Code § 17-27a-801(2)(a) because he owns land immediately to the south of Sky Ranch Airport. The use and marketability of his property, as well as his personal safety, would be adversely impacted by Sky Ranch Phase II.

72. Utah Code §17-27-801(3) establishes that the standard of review by the District Court of County land use appeals is whether the County's decision was "arbitrary, capricious, or illegal."

73. Here, the County's Final Decision was arbitrary, capricious, and illegal for the reasons set forth in paragraphs 50-56.

74. The District Court should reverse the Final Decision and vacate the approval of the Sky Ranch Phase II Subdivision.

COUNT II

NUISANCE

(Against Business Resolutions and Ramsey)

75. The allegations contained in the preceding paragraphs are realleged and incorporated herein by reference.

76. Business Resolutions and Ramsey have caused and are responsible for the substantial invasion of Spielman's Property, impeding his use and enjoyment of the land.

77. Specifically, Business Resolutions and Ramsey have developed and operate Sky Ranch Airport in a manner that creates hazards for surrounding landowners and residents, including Spielman, as set forth in paragraphs 57-69.

78. The Utah Aeronautical Regulatory Act provides that "[t]he use of private landing fields must not impose a hazard upon the person or property of others." Utah Code Section 72-10-116(2)(b).

79. Not only have the actions of Business Resolutions and Ramsey created hazards to Spielman and his family, but they have also impeded Spielman from using or developing the northern portion of his Property and have impeded him from selling the Property.

80. Spielman seeks damages in an amount to be proven at trial and a permanent injunction prohibiting Business Resolutions and Ramsey from flying over his property or permitting others to fly over his property.

COUNT III
TRESPASS
(Against Business Resolutions and Ramsey)

81. The allegations contained in the preceding paragraphs are realleged and incorporated herein by reference.

82. Business Resolutions and Ramsey have physically invaded the airspace above Spielman's Property.

83. Business Resolutions and Ramsey have created a dangerous condition in which physical invasion of the ground space of his Property through a general aviation accident is highly likely. The incident on September 21, 2023, described in paragraphs 59-67, illustrates such risks.

84. Spielman seeks damages in an amount to be proven at trial and a permanent injunction prohibiting Business Resolutions and Ramsey from flying over his property or permitting others to fly over his property.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

1. That the Final Decision be reversed and the matter be remanded to the land use authority with instructions to issue a land use decision consistent with the Court's decision;
2. That damages be awarded in an amount to be proven at trial;
3. That preliminary and permanent injunctions be entered prohibiting Business Resolutions and Ramsey from flying over Spielman's Property or permitting others to fly over his Property;

4. That Spielman be awarded his attorney fees and costs incurred herein to the extent permitted by law; and

5. That such other relief be granted as this Court deems just and equitable.

DATED this 20th day of October 2023.

CLYDE SNOW & SESSIONS

/s/ Shaunda L. McNeill

Matthew A. Steward

James W. Anderson

Shaunda L. McNeill

Attorneys for Plaintiff

EXHIBIT F

IN THE SEVENTH JUDICIAL DISTRICT COURT
SAN JUAN COUNTY, STATE OF UTAH

KARL SPEILMAN,

Petitioner,

vs.

SAN JUAN COUNTY, BOARD OF
SAN JUAN COUNTY
COMMISSIONERS,

Respondents,

BUSINESS RESOLUTIONS, LLC, as
Trustee for MOAB DEVELOPMENT
TRUST; JOHN RAMSEY,

Intervenors.

RULING AND ORDER

Case No. 230700026

Judge Don M. Torgerson

This is a petition for judicial review of a decision from the San Juan County Appeal Authority affirming the County's approval of the Sky Ranch Phase II residential subdivision. The parties filed the record of the proceedings and presented the merits of their arguments by full briefing and oral argument on June 20, 2024. Petitioner was represented by Shaunda L. McNeill. San Juan County was represented by Jens P. Nielson. And Intervenors were represented by Justin P. Matkin. Following oral argument, the court took the matter under advisement. Having reviewed the record and arguments, the petition is now ready for decision.

BACKGROUND

The Sky Ranch subdivision was approved in 2001 as a 6-lot residential subdivision adjacent to a private airstrip. Only one residence has been constructed in the subdivision so far, but Intervenors have improved the airstrip runway and want to develop additional residences next to the airstrip for a "fly-in-fly-out" community. Their application for phase 2 of the subdivision is the application before the court and was filed in 2020.

The airport has existed in some form for a long time and the Administrative Law Judge (ALJ) determined it had been recognized by the FAA as a private airport since at least 1985. It was a dirt strip until 2017 when it was extended, slightly moved, and paved.

On February 16, 2021, the County Commission approved the subdivision with the condition that “the community is being consulted with the party that’s going to be developing is being consulted and bring that information to the planning commission.” About nine months later, the County Commission received additional information when it first heard from Intervenor’s expert about the airport safety. And the ALJ also received a report from Petitioner’s expert. But the County Commission did not act on any of that additional information since it had approved the subdivision earlier in the year.

As part of her decision, the ALJ :

- found that “[t]he airstrip is not included in the subdivision boundaries of Sky Ranch Estates phase II.”, and
- concluded that “subdivision approval ...was not a review of the legal status of the airstrip as it was not even included in the formal boundaries of the subdivision plat map and had been previously acknowledged and approved in the original Sky Ranch Estate development.”

But those findings are erroneous on the record before the court. The proposed subdivision incorporates the existing airstrip into the subdivision lots. The centerline of the runway travels along the rear property lines of the abutting lots and will only exist on the lots by perpetual easement. And the runway location within the boundaries of the proposed new subdivision significantly affects the habitable portion of each building lot.¹

RULING AND CONCLUSIONS OF LAW

Under the County Land Use, Development, and Management Act (“CLUDMA”), this court reviews the appeal authority’s decision to determine whether it was arbitrary

¹ R. 367-369.

and capricious, or illegal.² And a land use decision is arbitrary and capricious if it is not supported by substantial evidence in the record.³

Here, the ALJ characterized Petitioner's appeal as a collateral attack on the airstrip that was not properly at issue since the airstrip was approved long ago and was not a relevant consideration for this straightforward subdivision approval. Accordingly, the airstrip's proximity to the subdivision did not affect the County's determination that the subdivision complied with existing land use law. Without deciding the propriety of that decision, the court finds two errors in how the ALJ arrived at that conclusion that are not supported by substantial evidence in the record.

First, and contrary to the ALJ's finding, the record shows that the airstrip is included in the formal subdivision boundaries of the proposed new subdivision. By overlaying the airstrip onto the new lots and imposing a permanent easement, Intervenor's have raised issues related to the airport that do not appear to have been addressed by the ALJ's decision or the County Commission. As proposed, the airstrip is more than just an adjacent feature. It would be incorporated into the new subdivision. And that might impact property tax obligations, easements, potential safety concerns, and other considerations that should be considered by the Commission as part of its decision.

Second, the ALJ's opinion significantly references the aviation safety experts reports and "...finds that the safety concerns expressed in the reports were the same as those that were being voiced at the commission meeting." While true — Petitioner and others voiced airport safety concerns to the County Commission — there is insufficient evidence in the record to demonstrate the Commission's decision was based on substantial evidence rather than mere conjecture about the airport's safety. The ALJ recognized this, acknowledging that the Commission never heard the expert recommendations about safety before making its decision. But the ALJ's decision implies that the public clamor about safety concerns was sufficient, even though the opinions of the safety experts did not feature in the Commission's decision in any way.

² Utah Code § 17-27a-801(3)(b).

³ *Id.* at (3)(c)(i).

Those two findings were not supported by substantial evidence in the record. This case is remanded to the ALJ to reconsider its decision in light of those corrections. And on remand, the ALJ may consider remanding to the County Commission for further proceedings if additional findings are necessary.

Dated: 8/19/2024

By:


Don M. Torgerson
District Court Judge



CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 230700026 by the method and on the date specified.

EMAIL: JENS NIELSON JENS@JENSPLAW.COM

EMAIL: JUSTIN MATKIN JMATKIN@PARRBROWN.COM

EMAIL: JUSTIN MATKIN JMATKIN@PARRBROWN.COM

EMAIL: SHAUNDA MCNEILL SLM@CLYDESNOW.COM

EMAIL: JAMES ANDERSON JWA@CLYDESNOW.COM

08/20/2024

/s/ CAITLYN VANZANT

Date: _____

Signature

EXHIBIT G

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Attorney at Law
Utah State Bar 2013
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cdluke@live.com

BEFORE THE SAN JUAN COUNTY ADMINISTRATIVE LAW JUDGE

KARL SPIELMAN:

Plaintiff,

vs.

ORDER OF REMAND

SAN JUAN COUNTY, UTAH,

Respondents

BUSSINESS RESOLUTIONS, LLC, as Trustee of Moab
Development Trust, MIKE BYNUM , as Manager, and
JOHN RAMSEY, as individual

Intervenors

The case is subject to a Ruling and Order from District Court Judge Don Torgerson. Judge Torgerson found that the previous Order issued in this case by Administrative Law Judge, Cheryl Luke contained two findings that were not supported by the substantial evidence in the record. Judge Torgerson therefore remanded the matter back to the ALJ for reconsideration in light of the corrected findings.

Judge Torgerson also suggested that the ALJ consider remanding the matter back to the County Commission for further proceedings if additional findings were necessary to reach a decision.

I hereby find that the current record is not sufficient to make a final determination and that the matter must be remanded back to the County Commission to take evidence and make findings that support a decision to grant or deny the subdivision permit at issue in this matter.

IT IS HEREBY ORDERED that the San Juan County Commission shall reopen proceedings in this matter to reconsider their decision. The County Commission SHALL accept the corrected findings of the District Court that;

1. The airstrip in controversy is included in the formal subdivision boundaries of the proposed new subdivision. The County Commssion shall consider that as part of its decision.

1 2. The Commission shall consider evidence in this matter and shall take evidence regarding
2 safety concerns under applicable law.

3 All proceedings shall be held consistent with the County Land Use, Development, and Management Act .
4

5 Dated this 16th day of December, 2024.
6

7 *Cheryl D. Luke*
8

9 Administrative Law Judge
10

11 Certificate of Delivery
12

13 This Order was sent to the following parties via e-mail:
14

15 "jmatkin@parrbrown.com" <jmatkin@parrbrown.com>
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EXHIBIT H
VIDEO LINK

[https://www.youtube.com/watch?
v=bI9-hdyW92o](https://www.youtube.com/watch?v=bI9-hdyW92o)