

WRITTEN COMMENTS

TO: Millard County Commission

FROM: Todd Macfarlane

DATE: March 24, 2014

RE: Millard County Zoning, Land Use & Subdivision Ordinances, including Proposed Amendments

In addition to comments that I have provided to the Millard County Planning Commission, I am submitting the following comments:

1. I commend the County Commission for considering amendments to the Subdivision Ordinance, including temporary amendments that will hopefully allow the Deseret Heritage Foundation project to move forward without being held hostage by continued redtape, resulting from the multitude of problems inherent in the land use ordinances, including the Subdivision Ordinance, that Millard County has now adopted.

2. The approach Millard County has taken, by adopting the current ordinances, including the Subdivision Ordinance, with very little in-depth consideration or discussion, only to learn how impractical and unworkable they are, and then put pending subdivision applications on hold for months as the county makes a feeble attempt to superficially fix a bad ordinance that has problems right to the very core, is an absolute travesty. The county should repeal and suspend application of the current ordinances, including the Subdivision Ordinance, effective immediately, and start over, without holding current applicants hostage to the county's ineffective attempt(s) to address these issues.

3. There are very troublesome discrepancies between what was purportedly passed and adopted by the Millard County Commission, following recommendation by the Millard County Planning Commission, and what has been posted on the Millard County website and other websites, etc., including Sterling Codifiers. What documentation is there of what was actually adopted versus the various versions that have been posted? What evidence is there that the proposed amendments adequately address these discrepancies.

4. Tom Avant made a number of useful and practical comments at one of the planning commission public hearings about changes that should be made to the current subdivision ordinance. He also described effective approaches that have been taken to rural development in Kane County. I agree with all the comments and recommendations made by Mr. Avant, and recommend that they be implemented.

5. Otherwise, from my perspective, Millard County's current Land Use Ordinances, including Subdivision Ordinance constitute a boilerplate, one-size-fits-all monstrosity that is completely out of place, and out of character for Millard County. The ordinances are

completely impractical and unworkable and make no sense in a rural area like Millard County, particularly where the ordinances only apply to unincorporated areas of the county, outside the incorporated municipalities.

6. A good example of this is the AFO permitting regulations the County Commission recently adopted, now seeking to require that any AFO having more than 10 animals secure a permit and comply with applicable regulations, apparently based on concerns stemming from dairies in the Sutherland area. The approach the county commission has taken on this issue is the epitome of a one-size-fits-all approach that makes little sense. Why should small operators from Cove Fort, Kanosh, Meadow, Holden, and Scipio, all the way to Garrison, be subject to such requirements, based on unique concerns in Sutherland, that don't apply elsewhere in the county?

7. The approach Millard County has taken with such ordinances presents a selective enforcement nightmare. The standard response is that these ordinances are a work in progress, and that they can be and will be adjusted, as necessary, based on applications that are submitted, etc., as has been the case with the Deseret Heritage Foundation Application. This opens the door for the county to selectively enforce or not enforce and/or make the whole process as easy or difficult as it wants to, depending on who the applicant is. Obviously, these restrictive and overreaching ordinances are not enforced in much of Millard County, so when the county does attempt to enforce them, it is going to face a serious equal protection issue, not to mention issues based on possible retaliation for legitimate redress of grievances – especially for people who have been labeled as “Trouble with a Capital T” by the Millard County Planning & Zoning Administrator, despite the fact they had never previously had any interaction.

8. Millard County's general approach is an attempt to turn Millard County into one big, bossy, county-wide Home Owners Association, at taxpayer expense. All applicable current Millard County land use ordinances, including the Subdivision Ordinance and Proposed Amendments, reflect urban land-use paradigms that are completely out of place in Millard County. In addition to the fact that they are the products of an urban land-use planner with urban land-use planning paradigms, and appear to have received very little in-depth consideration or discussion by the planning commission and county commission, they also completely disregard fundamental private property rights, and appear to reflect the reality of very unbalanced representation on the planning commission.

9. If people want to live in subdivisions (or anywhere) with CC&Rs, paved streets, and HOAs, with they should have the right to do that. Likewise, if people want to live without any or all of those things, they should have that choice, and there should be a place they can do that. That is one of the reasons why a one a one-size-fits-all approach doesn't work, especially in a county as big and diverse as Millard County. Such freedoms and opportunities should be governed by a free market system, without overreaching governmental regulation that infringes personal liberty and private property rights, and without attempting to stuff one approach down everyone's throat.

10. These ordinances only apply to property outside the incorporated municipalities. Most people who live and/or operate in unincorporated areas of the county, outside the incorporated municipalities, do so for a reason, and have a very different mind-set than those who live in or adjacent to the incorporated municipalities. It does not appear that there is any balanced representation of those interests on the planning commission, which are the interests most affected by these ordinances.

11. Based on such urban paradigms and disregard for private property rights, Millard County's current land use policies and ordinances promote a very clear and unmistakable agenda of total government control of property located in the unincorporated areas, to a large extent by those who reside and own property within the incorporated areas. This is completely out of character with the rural values of Millard County, and is fundamentally unfair to Millard County's residents and property owners.

12. In addition to the ordinances themselves, this is also reflected in the practical application of these ordinances. A good example of this occurred in comments made by Mrs. Dekker to Steve Pratt of Cove Fort before he died a year ago. At that time Mrs. Dekker told Mr. Pratt that the county land-use policy preference was that everyone should live in town, in the incorporated municipalities, where, in Mrs. Dekker's words "we can take care of you." This attitude is further reflected in the fact that even when people ask questions, and seek additional information, they are black-balled and labeled as trouble-makers. These attitudes and realities are clearly reflected in Mrs. Dekker's recent correspondence in response to requests for additional information about proposed amendments to the current ordinances. Although I had never had any previous dealings with Mrs. Dekker when I made the request, when she forwarded my request to Mr. Parker to address, she did so with the comment that "this guy [i.e., Todd Macfarlane] is trouble with a Capital T [and has a number of ulterior political motives]."

13. It is very troublesome to see this kind of attitude and discriminatory and selective approach taken by Millard County land use authorities in response to simple requests for additional information. The attitude has likewise been reflected in many of the comments made by members of the Millard County Planning Commission during the public hearing(s).

14. In terms of why this matters, among other things, Millard County is fundamentally an agricultural county. There is no justification for any policy position that discourages farmers and ranchers and property owners from fully using their property, including living on it, if that is what they desire to do. While clustering may be fine for those who desire that, it should be a matter of choice, and should not be forced on everyone. There is no compelling governmental interest that outweighs the importance of individual freedom of choice. The single most important role of government is to protect and preserve individual liberty rather than infringe upon it.

15. Millard County's stated policy of encouraging people to build and reside only in the incorporated municipalities reflects zero balancing of applicable rights and interests, and is a serious limitation and deprivation of people's fundamental freedom of choice.

16. Consequently, the Subdivision Ordinance and any currently proposed or future amendments, should either be repealed in their entirety, or ultimately amended to be vastly simplified, and to include as much freedom of choice as possible, without excessive and overreaching regulatory requirements, and without the possibility of selective enforcement, which has been a long-standing issue in Millard County.

17. According to multiple provisions of the current Subdivision Ordinance and proposed Amendment(s), both the Planning & Zoning Administrator, Planning Commission and County Commission have discretion as to whether to approve or disapprove applications (see, for example Section 11-12-4, and multiple similar provisions), but according to Utah Code § 17-27a-508, if an applicant has met the requirements of ordinance, the applicant is entitled to approval. Moreover, according to Utah Code §17-27A-602, county commissions have the discretion to reject proposed subdivision ordinances, and operate without an applicable ordinance, based on minimal statutory requirements.

18. Although the proposed amendment to the current Subdivision Ordinance is a small step in the right direction, a better approach would be start from scratch and develop ordinances, including a subdivision ordinance, that better reflects the character, values and needs of Millard County.

19. There is no reasonable justification for limiting parcel sizes, requiring dedicated county road frontage, requiring pavement, requiring home owners associations, or prohibiting shared-well agreements, or prohibiting the use of private shared roads and/or access easements.

20. Most people who choose to live and/or own property in unincorporated areas do so for a reason. If they wanted all the conditions that apply in a town setting, they would live and/or own property in town. They should not have such conditions and requirements forced upon them.

21. Overall, Millard County's current land-use ordinances are very unfriendly to business, business interests, and economic development. A prime example of this is the current sign ordinance which is beyond excessive, and makes no sense.

22. There are several things that attract business and business investment, including the following: 1) low property tax rates (where Millard County scores very low based on its applicable property tax rates); 2) business-friendly land-use ordinances, that encourage economic development, and; 3) simplified approval processes, rather than multiple levels of expensive and time-consuming reviews and requirements. Millard County's current property tax rates and land-use ordinances are a recipe for disaster in terms of attracting outside economic development, which puts the county on a long-term collision course with financial reality as centrally assessed properties continue to depreciate, and the county continues to increase its budget because it refuses to cut spending.

23. Based on the approach Millard County is taking, as I am confronted with situations where either I, or people and clients with whom I work and consult, seek to understand, apply, and live with the unreasonable requirements of these ordinances, in addition to litigation, I will be exploring every other option available, including referenda, initiatives, annexation into applicable municipalities, creating new municipal incorporations, and in some situations, possibly even following statutory provisions governing secession, and splitting-off from the county (which is currently being considered and discussed in Beaver County), to avoid the necessity of dealing with Millard County's unreasonable ordinance(s), approach, and personnel challenges regarding important land use issues.

3-25-2014

County commission meeting

I am Peter C. Vander Meide, I live at Cove Fort.

Right now, this county has approved a huge land use ordinance that basically restricts the land owners in the free use of their own property. I agree there should be some rules, but our basic freedoms and rights have been curtailed with this ordinance as it now stands. This meeting is supposed to correct some of those concerns, by amendments.

The pioneers first went out west for their freedoms. This is how Fillmore got started. Even many years later, towns like Eskdale sprung up for this same freedom. Through legislation, ordinances, and other restrictive laws, most of our freedoms are being taken away.

I have owned property in Millard County since 1963. My kids went to school here and three of them graduated from Millard High

I moved here the first time with my family, and opened a real estate office here on main street, about 1977. I always loved the area and the wide open spaces. Most of the people here wanted to keep it that way. I soon perceived that outsiders were not very welcome here. Many people had wanted to bring jobs here for their kids who graduated from school here. There were few available. People like Bob Edison, who was mayor here for a short time tried to bring in businesses and development that would spur growth. I naively tried the same thing. The mushroom plant came in. But the Asians were not welcomed with open arms, my kids told me how they would all hold their noses when the Asian kids would board the school bus when they got onboard. They stunk like the mushroom farm. We certainly need the set back restrictions to protect the city dwellers from gastly odors, so i am not against the set-back rules. We also need to protect our water supply, so I am in favor of those rules. But it seems that with this new set of ordinances, a lot of our basic property rights will be curtailed. I believe the whole thing should be scrapped, and we should start over with only a few basic, fundamental ordinances for the greater good of the county as a whole. NOT, telling us every little thing we can or cannot do on our own land. The way the new laws are written, they could be enforced or not, depending who is on the other end. If you have good connections, work for the county or city, then you will probably get someone's arm around you to let you know the ordinance won't affect you.

"Don't even come to the meeting, it is only to make a few amendments."

When about 1980 the Federal planners came here to help draft a county master plan, they ran into so much opposition, that they finally asked, "Do you folks want growth and people to move here or not?" The reply was "No, not really, but if people come, we want to be able to pick them". The planners said that was the last straw, and they packed up their bags and went to Delta,

along with half of the county government, and gave up on Fillmore. I had Safeway stores approach me on buying a part of the property I owned by the airport, so they could put in a store and distribution center at the end of the railroad tracks, then on my land. They complained that Duane Bartholomew had tied up every lot on main street to keep them out. I told them that was only self protection, since they could put him out of business. I said that it would not work out if they came in. People would still want to support Duane's, and it was out of town for them to shop. Besides, my subdivision got shot down by the city asking for \$1,000,000. cash bond during a recession. Most of the big companies looking to locate in Fillmore found an unfriendly environment here and went to Cedar City instead. I talked to many of them.

The Union Pacific railroad asked me to attend their Board meeting in SLC to tell the board what the political situation was in Fillmore, since they could not get straight answers from the City. At the meeting, I was asked how long did I think it would take for change in attitude toward growth in Fillmore? I told them, twenty years, when a new generation would take over. They then voted to pull the tracks out of Fillmore, since they were losing money here just to maintain unused rails.

I asked my bishop in Flowell why this anti growth attitude here in the county? He came back with an honest answer. He said that since the Feds had chased out all the illegal Mexicans, who would work the farms cheap, the only salvation for the farmers was to hire the boys who graduated from school here. If they could find decent paying jobs here, then where could farmers like him get their laborers? Also, since both agriculture and motels were exempt from the minimum wage laws, the girls would only find jobs at the many motels here. There were thirteen then. At last I got the real answer as to the anti-growth sentiments. Bob Edison, the mayor quit. I gave up trying to get jobs to move here and I moved out, because I could only sell a few eggs to John Cooper's cafe for income. I raised hogs, cattle and turkeys too.

I was thinking of raising chickens again, and selling eggs to the missionaries, as I did a couple of years ago, but the new ordinance would brand me as a criminal, if I had the forty chickens in my coop where I don't have the prescribed 9 square feet per chicken. See page ?? People want freedom. Not regulations. People don't like too many bosses. Great Lakes Cheese is a family owned business. Too many bosses. Now one of their best managers quit because of this, and he is moving his family away. He is my home teacher and good friend. I know how he feels, I quit a family owned print shop for the exact same reason. We don't need the whole county telling us what we can or cannot do. we want our freedom and property rights.