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Attorneys for Intervening Respondent Deer Valley Development Company

**IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SUMMIT COUNTY,
STATE OF UTAH**

AMERICAN FLAG HOMEOWNERS
ASSOCIATION, et al.,

Petitioners,

v.

PARK CITY MUNICIPAL CORPORATION,

Respondent.

DEER VALLEY DEVELOPMENT
COMPANY,

Intervening-Respondent.

**ORDER GRANTING IN PART
AND DENYING IN PART
MOTION TO DISMISS**

Case No.: 240500015

Judge: Richard Mrazik

On December 2, 2024, the Court held a hearing on Intervening Respondent Deer Valley Development Company's ("DVDC") *Motion to Dismiss* (the "**Motion**"), in which Respondent Park City Municipal Corporation ("**Park City**") joined. Eric Lee appeared on behalf of Petitioners. Margaret Plane appeared on behalf of the Park City. Ben Welch and Benjamin Mills

appeared on behalf of DVDC. Having thoroughly reviewed the Motion and all the related filings, heard oral argument, and for the reasons stated on the record and provided below, the Court **GRANTS** in part and **DENIES** in part the Motion.

Based on the text of Municipal Land Use, Development, and Management Act (“**LUDMA**”), most notably that of Utah Code § 10-9a-609.5, *Sears v. Ogden City*, 572 P.2d 1359, 1361 (Utah 1977), and application of the factors announced in *Krejci v. City of Saratoga Springs*, 2013 UT 74, 322 P.3d 662, the Court concludes that the ordinance enacted by Park City to effectuate the partial road vacation at issue in this case was a legislative land use regulation under LUDMA. The Court further concludes that Utah Code § 10-9a-801 grants statutory standing to certain classes of persons to petition for judicial review of land use regulations, and that Petitioners lack statutory standing in this case because they are not adversely affected parties. The Court therefore dismisses Petitioners’ statutory judicial review claims in the *Amended Petition for Review* with prejudice under Utah R. Civ. P. 12(b)(1) and (6).

With respect to a separate procedural due process claim, the Court notes that a challenge to traditional standing has not yet been raised and that it makes no ruling on that issue. The Court preliminarily determines that Petitioners have sufficiently alleged a protectable property interest in that Utah Code § 10-9a-609.5(4) appears to create a mandatory or prohibitive condition that a legislative body make both of the enumerated findings, which is sufficiently mandatory to create a protectable property interest to the extent Petitioners have traditional standing.

The Court does not decide the issue of whether Petitioners failed to exhaust administrative remedies because the Court concludes that the ordinance at issue in this case was a legislative action, not subject to that exhaustion requirement under LUDMA. The issue is therefore moot.

IT IS SO ORDERED.

-----END OF ORDER-----

Pursuant to Rule 10(e) of the Utah Rules of Civil Procedure, this Order will be entered by the Court's signature at the top of the first page.

APPROVED AS TO FORM:

SNELL & WILMER L.L.P.

/s/ Ben T. Welch

Ben T. Welch

Benjamin J. Mills

Attorneys for Intervening-Respondent Deer Valley Development Company

HOGGAN LEE HUTCHINSON

/s/ Eric P. Lee

(E-signed with email permission on 12/17/2024)

Eric P. Lee

Trevor J. Lee

Attorneys for Petitioners

PARK CITY MUNICIPAL CORPORATION

/s/ Margaret D. Plane

(E-signed with email permission on 12/13/2024)

Margaret D. Plane

Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on December 17th, 2024, I caused a true and correct copy of the foregoing [proposed] **ORDER GRANTING IN PART AND DENYING IN PART MOTION TO DISMISS** to be served via the Court's electronic filing system to the following parties:

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