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VIA EMAIL & REGULAR U.S. MAIL

██████████
██████████ County Recorder
██████████
██████████ UT ██████████

Re: Plats submitted by ██████████, Professional Land Surveyor

Dear Recorder ██████████:

I represent ██████████, a Professional Land Surveyor and member of your community. I address a pattern which causes concern. Mr. ██████████ appreciates the service you provide, safeguarding land records for the past, present, and future. We too often observe your office reject plats without legal cause, interfering with the professional independence of land surveyors. One such interference, occurred recently when Mr. ██████████ sought to record his ██████████ Subdivision Plat.

BACKGROUND

Mr. ██████████ was retained some months back to prepare a plat for subdivision of the ██████████ property in ██████████. Mr. ██████████ located and reviewed records as to this land and adjoining. He measured the location of objects on the ground with precise surveying tools. Mr. ██████████ compared these ground measurements with those recited in the land records. He determined that calls made in the documents, commenced at centerlines of intersecting roads, and were based on the old ██████████ Townsite Plat. Mr. ██████████ exercised skill and judgment as a professional land surveyor, to determine the location of boundaries. Mr. ██████████ then prepared a plat to show his findings as to exterior boundaries. He collaborated with his client to arrive at optimal interior boundaries, to propose as lines of subdivision.

Next, Mr. ██████████ made changes requested by the City of ██████████'s consultant. Mr. ██████████ appeared before the ██████████ Planning Commission to obtain the signature of its chairman; and before the ██████████ City Council to obtain the signature of the mayor. The plat was circulated for other signatures. The City Attorney asked questions about title. Last-minute reviews occurred. At length, every approval was secured, and the plat was ready to record. Mr. ██████████ presented the plat for recording, but your office refused to accept it, on the basis that the plat failed to show the property's distance and direction from a section corner.

Hoping to stop the resulting financial hemorrhage of his client, Mr. [REDACTED] modified his plat to comply with your requirements. Your demands being met, you recorded the plat. Though Mr. [REDACTED] succumbed to your pressure, he first shared concern about tinkering with an old description by injecting a “paper” tie, likely inaccurate and confusing to those later seeking to retrace his survey. You reasoned to Mr. [REDACTED] that you sought this information to enhance your Geographic Information System, though Mr. [REDACTED] had already displayed for each property corner, the coordinates he computed under your county’s system.

Each year, Mr. [REDACTED] assists several citizens (voters) of your county, as a licensed professional land surveyor. Surveying is a learned profession which requires special expertise. The determination of land boundaries is no light matter. Many of your county’s residents have their entire life savings invested in their houses and lands. As Mr. [REDACTED] protects their property rights through ascertaining land boundaries, he must use sound and independent professional judgment. In each case he undertakes, Mr. [REDACTED] must use care to ascertain and plat the correct boundary locations, since the conclusions of a land surveyor are memorialized for decades to come. The surreptitious rejection of his plats, interferes with his independent professional judgment, and places a great burden upon Mr. [REDACTED] at a time often crucial to the economic survival of his clients.

When Mr. [REDACTED] fulfills every requirement for the recoding of a subdivision plat, yet your office rejects the plat, this creates a cloud on Mr. [REDACTED]’s professional reputation for performing adequate surveys. Each time a plat is rejected by your office, Mr. [REDACTED]’s clients ask why, and wonder whether Mr. [REDACTED] failed to perform a proper survey. [REDACTED] County is a tight community, where developers and other professionals speak to one another. Each such client (including three whom [REDACTED] recalls this year), then complains to Mr. [REDACTED] that they cannot afford to have their subdivision plat rejected, because it causes them to lose money with each day of delay.

Every year Mr. [REDACTED] presents approximately twenty subdivision plats for recording at your office. The requirement of adding a tie to a section corner, is but one of several occasions of Mr. [REDACTED] observing your office undertaking to rule upon the validity of his judgments as to land boundaries. Your office has refused to record plats until a gap or overlap is “cleaned up” with a boundary line agreement. You have told Mr. [REDACTED] that he cannot make a boundary determination as to a gap or overlap, but instead must negotiate boundary line agreements of the parties, even though the location of the boundary, in the judgment of Mr. [REDACTED], is not reasonably disputed. Within the last two years, you informed Mr. [REDACTED] that in the absence of a boundary line agreement, you refused to record his plat which showed property extending 2 or 3 feet beyond record, to a fence in place for probably 80 years.

It may be proper – indeed helpful – for the Recorder to provide a surveyor feedback as to the Recorder’s lay perceptions of correctness. But it is improper – indeed harmful – for the Recorder to use the powers of his office to override the professional judgment of the land surveyor.

**PRINCIPLES OF LAND SURVEYING,
DO NOT REQUIRE THAT EVERY PLAT
CALL TO A SECTION CORNER**

The recorder's office serves as a repository of land records, an essential function of county government. However, your role does not extend to judging the sufficiency of land surveys. Since you enter the arena, some discussion is included of surveying principles.¹ Utah Code section 10-9a-603 (as amended in 2007) governs the content of subdivision plats, by expressing:

- (1) ... whenever any land is laid out and platted, the owner of the land shall provide an accurate plat that describes or specifies: ...
 - (b) the boundaries, course, and dimensions of all of the parcels of ground divided, by their boundaries, course, and extent, ...;

- (4) ... (b) The surveyor making the plat shall certify that the surveyor:
 - (ii) has completed a survey of the property described on the plat in accordance with Section 17-23-17 and has verified all measurements; and
 - (iii) has placed monuments as represented on the plat.

Thus, section 10-9a-603 does not require that a subdivision plat show measurements to a section corner.

Even Utah Code section 17-23-17, which sets forth what a surveyor shall include in his record of survey (filed with the County Surveyor, rather than Recorder), does not in every instance require that the survey state the direction and distance to a section corner. Section 17-23-17(3) provides that: "This type of map shall show: ... (d) the distance and course of all lines traced or established, giving the basis of bearing and the distance and course to two or more section corners or quarter corners, including township and range, or to identified monuments within a recorded subdivision;" (emphasis added).² Thus, even if a subdivision plat under section 10-9a-603 were governed by the same standards as a record of survey under section 17-23-17, the [REDACTED] subdivision plat complies with these by tying to Plat [REDACTED] of the [REDACTED] Townsite Survey.

¹ Though counsel acts as an attorney in this matter, he is also licensed as a land surveyor.

² The Model Standard of Practice for Boundary Surveys (1999), adopted by the Utah Council of Land Surveyors, does not require in all cases, a call to a section corner: "Surveyors should: ... 5. call for complete and detailed descriptions of physical monuments, both natural and artificial, such as to facilitate future recovery and to enable positive identification ..." Model Standard section 4(4)(5). Standards adopted jointly by the American Land Title Association, and the National Society of Professional Surveyors (2005 paragraph 5) require that "The point of beginning of the surveyor's description shall be shown as well as the remote point of beginning if different. A bearing base shall refer to some well-fixed line, so that the bearings may be easily re-established." Thus, the ALTA standard imposes no general rule that a description be tied to a section corner. The treatises of the surveying profession are also in accord, even as to metes and bounds descriptions, which are often less certain than those created by subdivision plats. "For metes and bounds descriptions, a competent and verifiable point must be either in existence, or properly established in relation to an acceptable point, or points, for the beginning and control of the land described from it." Wattles, Writing Legal Descriptions (1979) page 11.9.

UTAH LAW
1) PROHIBITS THE COUNTY RECORDER
FROM IMPOSING ADDITIONAL REQUIREMENTS
UPON THE SURVEYOR,
AND 2) AUTHORIZES THE COURTS TO
ORDER PERFORMANCE OF A STATUTORY DUTY

Utah Code section 10-9a-604 lists those who must sign and approve a subdivision plat prior to recording. Note that the County Recorder is not listed as a person who must approve the plat. Utah Code section 17-21-20(1) provides as follows: "Subject to Subsections (2), (3), and (4), each paper, notice, and instrument required by law to be filed in the office of the county recorder shall be recorded unless otherwise provided." (2007)(emphasis added).^{3, 4} Here, Surveyor ██████ presented to your office a subdivision plat, which under Utah Code section 10-9a-603(3) must be filed in the office of the County Recorder. No statute empowers the County Recorder to impose such additional requirements for recording, as he may think useful, proper, or even in the public good. It was your statutory duty to record the plat.

As mentioned above, his clients, and therefore Surveyor ██████, are placed at financial risk each time a finalized plat is rejected by your office.⁵ Mr. ██████ sees no alternative but to assert in

³ Subsection (5) of 17-21-20 in turn provides: "Subsections (2), (3), and (4) do not apply to: (a) a map;" Thus, section 17-21-20 declines to grant the recorder discretion to reject a map. Utah statutes do provide limited exceptions to the duty to record. Specifically, the recorder can reject an instrument, if names of signatories are not typed, Utah Code section 17-21-25, or if the instrument fails to contain "a legal description of the real property affected." Utah Code section 57-3-105(2). Your office noted no such defects as to the ██████ plat.

⁴ It is generally recognized that a county recorder performs a purely ministerial function, and must record documents tendered, unless a statute authorizes rejection. "The administrators of American recording systems have very little authority to reject instruments presented for recordation." 11 Thompson on Real Property section 92.06. "[A] recorder of deeds is a purely ministerial officer who must receive and record an instrument that is executed in compliance with the controlling statutes. Applicable provisions of the statute generally prescribe exactly what is required for a deed to be a legally sufficient instrument and entitled to be recorded." Powell on Real Property section 82.03 n8., citing *Bionomic Church of R.I. v. Gerardi*, 414 A.2d 474 (R.I. 1980). "The county recorder is a ministerial officer whose powers and duties are limited to those prescribed by statute or necessarily implied therefrom." Ohio 1996 Op. Att'y Gen. No. 96-019, citing *Preston v. Shaver*, 172 Ohio St. 111, 173 N.E.2d 758 (1961). "A clerk/recorder performs a purely ministerial function and is obliged to record any instrument relating to land that meets formal requirements." Arkansas Attorney General Opinion number 2006-058.

⁵ And it appears that you and your county risk financial liability for such damages, without the benefit of governmental immunity: "Except as may be otherwise provided in this chapter, each governmental entity and each employee of a governmental entity are immune from suit for any injury that results from the exercise of a governmental function." Utah Code section 63-30d-201(1). " 'Employee' includes: (i) a governmental entity's officers, employees, servants, trustees, or commissioners;" Utah Code section 63-30d-102(2)(a)(i).

Utah Code section 63-30d-301 provides in part as follows:

(4) Immunity from suit of each governmental entity is waived as to any injury proximately caused by a negligent act or omission of an employee committed within the scope of employment.

(5) Immunity from suit of each governmental entity is not waived under Subsections (3) and (4) if the injury arises out of, in connection with, or results from:

the future, his legal right to have plats duly accepted for recording. "Where no other plain, speedy and adequate remedy is available, a person may petition the court for extraordinary relief on any of the grounds set forth in ... paragraph (c) ..." Utah Rule of Civil Procedure 65B(a). "Appropriate relief may be granted: (A) where a person ... unlawfully ... exercises a public office, ..." Rule 65B(c)(2).⁶ Mr. [REDACTED] seems powerless on his own, to prevail upon your office to obey your duty to record his subdivision plats. He feels obliged to seek the assistance of the courts, upon next encountering the illegal rejection of a subdivision plat.

As set forth above, this matter of entitlement to record his subdivision plats, is not merely an academic question for Mr. [REDACTED]. He experiences the economic consequences with each rejection. Under these circumstances of receiving pressure from his clients on the one hand, and from your office on the other, Mr. [REDACTED] has no choice but to assert his legal right to have his plats recorded. He takes this matter seriously, because the economics of it force him to be serious. Not only is he concerned about clients lost, but also having his professional judgment compromised. Accordingly, it is respectfully requested that in the future, when Mr. [REDACTED] presents his subdivision plats for recording, that you kindly obey your statutory duty and record them.

Sincerely,



Mark J. Gregersen
Attorney at Law

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(a) the exercise or performance, or the failure to exercise or perform, a discretionary function, whether or not the discretion is abused;
(b) ... libel, slander, deceit, interference with contract rights, ...;
(c) the issuance, denial, suspension, or revocation of, or by the failure or refusal to issue, deny, suspend, or revoke, any permit, license, certificate, approval, order, or similar authorization;"

Here, subpart (4) waives immunity for your negligence. You cannot invoke as an exception, subpart (5)(a), since as shown above the recording of a document is not a discretionary function. As to subpart (5)(b), even if your rejection of a plat is termed libel and arguably immune, there is an independent basis for the damages you cause directly to the clients of Mr. [REDACTED]. You cannot invoke subpart (5)(c) as the recording of a plat is not the denial of a permit or license. As shown by section 10-9a-604, the Legislature chose not to designate the County Recorder as one of the persons who must approve a subdivision plat.

⁶ Relief of the type previously sought in a writ of mandamus, is now governed by Utah Rule of Civil Procedure 65B. Rice v. Utah Securities, 2004 UT App 215, 95 P.3d 1169 (Utah App. 2004). To obtain a writ of mandate, one must show the court that the officer had a clear statutory duty to perform certain acts, yet refused to do so. Garcia v. Jones, 510 P.2d 1099, 1100 (Utah 1973).

Utah Code section 78-35-10 empowers the Court to enforce a writ of mandate, in the event that the writ is disobeyed: "When a peremptory writ of mandate or writ of prohibition has been issued and directed to an inferior tribunal, corporation, board or person, if it appears to the court that any member of such tribunal, corporation, board or person upon whom such writ has been personally served has, without just excuse, refused or neglected to obey the same, the court may, upon motion, impose a fine not exceeding \$500. In cases of persistence in a refusal of obedience, the court may order the party to be imprisoned until the writ is obeyed, and may make any orders necessary and proper for the complete enforcement of the writ."