

From: [Fred Sr Lowry](#)
To: [Mike Wilcox](#)
Subject: [EXTERNAL] Bell Canyon
Date: Thursday, November 17, 2022 6:38:28 PM

Mike, sorry that I was unable to attend the meeting. I am in full support of the code amendments presented tonight (I hope that I am not too late with my response.p

Sent from my iPhone

From: [Kate McConaughy](#)
To: [Mike Wilcox](#)
Subject: [EXTERNAL] Bell Canyon Acres Proposal
Date: Tuesday, November 15, 2022 12:05:29 PM

Dear Mr. Wilcox and members of the planning commission:

I have several concerns about the proposed amendments that are being proposed at this afternoon's meeting-these concerns would probably exceed the allotted public comment time that will be available during the meeting for each participant and I would imagine there will be interest in this meeting.

I am a property owner in the subdivision. I do applaud the work to clarify what is and isn't allowed as I do believe that the area is unique and has the potential to be a great community. Unfortunately, I view the proposed amendments as antithetical to achieving a great community in a unique area.

The primary reason I say that is this:

1. The amendment allows for commercial boarding of up to 10 horses without a business license or, really, any oversight (outside of the special use permit). For some reason which I do not understand, if you go through the special use process you can have a horse on as little as 3,000 square feet (not even an amount that is typically accepted for a horse) but you have to allow 7,500 per horse outside of the special use. I don't understand why someone who wishes to engage in commercial boarding would be allowed to reduce the amount available for said horses by 4,500 square feet per horse. I am not sure why the original proposal of 5,000 square feet was revised but I do believe that should be the minimum per horse. I do understand, given the size of our lots, what 3,000 square feet per horse would look like and the problems that would accompany that. Ten horses seems excessive (although desirable given the income that would bring) and the square footage allowance seems cruel unless they were taken out and exercised regularly which brings me to my second concern.
2. 10 horses per lot would increase the risk for everyone in the neighborhood. I read Mr. Parker's opinion and I agree with him in terms of each person (boarder or owner) brings the same amount of risk. But, if you increase the number of horses to 10 you increase the risk since those 10 horses would be out on the bridle paths whereas now you may only have 4 (or 6) horses out on the path (per lot). I noted that Mr. Parker opined that as long as the bridle paths are maintained the finding of negligence against them would be without basis. However, that would actually be left for a judge to rule on and it will not keep someone from suing if an accident occurs. I agree, it will help the owner defend themselves, but it won't stop the time and expense associated with that defense. Further, anyone who has ever filed an insurance claim knows that your rate will increase and/or your insurance will be cancelled. In fact, insurance rates are based, in part, on claim rates both for you as an individual and for the area in which you live. I think it is great that State Farm says that they won't do that-perhaps every property owner could be provided that in writing as part of these amendments. But, based on my experience, insurance carriers will increase the rates if this change results in more claims. So he is right-there won't be increases just because horse boarding is allowed-but there will be if the number that is allowed begins to result in more accidents and more claims. Horseback riding can be dangerous and is risky, so it is not a leap to associate more horses with more accidents and higher claims.

3. I applaud the attempt to reign in the establishment of commercial businesses by amendment changes around owner occupied. However, I can see several work arounds and I continue to believe that if you are going to establish a home based business you should be required to obtain a business license. One of the neighbors was advertising for boarding, lessons and children's parties with horses. That website has been taken down and the lessons have stopped (since these regulations were proposed) but work on the property towards that outcome has, interestingly, continued. Further, the URL continues to be active. This property is near my property and the constant dust, noise, loud music associated with events, and people and vehicles going up and down the bridle path when the lessons were occurring was a nuisance. While I looked aside at the time, these regulations would allow that very thing to multiply, become widespread, and the property owner would not have to comply with any requirement that comes with having a business license. I firmly believe that if horses are going to be a source of income for property owners, a business license should be a requirement. Just the vehicles alone associated with boarders for 10 horses coming in and out on a regular basis is concerning. But boarders, parties, and lessons - that is a commercial establishment, and that does not keep the unique neighborhood that we are all trying to achieve.

4. The larger outbuildings will continue to invite commercial establishments since there is not a requirement to use them for animals. We have already begun to see that happen in the neighborhood. Yes, the outbuilding have to be constructed in such a way that they can be converted. A request for a larger outbuilding has already been made and it is in no way going to be used for animals-it is going to be used for a commercial establishment. We have several home businesses already in the neighborhood, they all have to have a business license-I have to wonder why people who want to make money from boarding horses get to be exempted from that requirement.

In summary, I view the proposed amendments as leading to the establishment of unregulated horse businesses along with several commercial establishments only some of which will need to comply with business regulations. I fail to see how this preserves the unique nature of the community. I would ask that if individuals want to board horses that they become a licensed business, that a minimum of 5,000 sq. feet exist per horse, and that the outbuilding size not be changed. I realize that there are a variety of opinions about this issue and there are no easy answers. I am very concerned about the increased risk to me as a homeowner (again, more horses equals more risk to everyone just as more cars on the road increases the risk of accidents), and I am concerned about the increased use of my property (the bridle path) for other's personal gain. I am not against resolving the boarding issue-but these amendments appear to be more geared to building commercial unregulated businesses then in resolving the boarding issue or preserving the community.

Thank you for your time and for your work-again, none of this is easy. I was optimistic when the proposal came out that this could be resolved but these amendments only seem very geared to transforming the community and not preserving it.

Thank you, again, for your time and work on this issue.

Kate

From: [PHIL BLAIR](#)
To: [Mike Wilcox](#)
Subject: [EXTERNAL] Bell Canyon Equestrian Estate
Date: Thursday, November 17, 2022 9:36:27 AM

I believe that there shouldn't be an ordinance against residents living in the Bell Canyon Equestrian Estate neighborhood boarding non resident's horses on their property. All other ordinances regarding their animals should continue to be enforced.

Thank you
Phil Blair
1452 E. Thistle Down Dr.
Sandy, Utah 84092
801-599-4836
Sent from my iPad

From: [deb mertens](#)
To: [Mike Wilcox](#)
Subject: [EXTERNAL] Code amendment
Date: Wednesday, November 16, 2022 2:50:22 PM

Hi Mike,

Thanks in advance.

Please let it be known that we are in support of the code amendment.

We feel it is long overdue and are grateful that it is finally being addressed!

Please read this aloud at the meeting as we are unfortunately out of town and unable to attend.

Thanks again,

Debbie and Tom Mertens

Bell canyon acres residents for past twenty years!

From: [Chase](#)
To: [Mike Wilcox](#)
Subject: [EXTERNAL] No on new zone amendment
Date: Thursday, November 17, 2022 11:20:55 AM

I live at 1443 E Ascot Circle in Bell Canyon Equestrian Acres. My wife and I are 100% opposed to the city trying to change our zone rules and regulations. First off this is a blatant self serving move by Mayor Zoltanski . Her and the previous administration failed to enforce the current ordinance and in doing so several civil suits have gone on because of it. Not enforcing horse boarding but harassment by animal control and code enforcement for anything else is blatant targeting on those not in the inner circle of Mayor Zoltanski. Trespassing , loitering , destruction of property , evidence destruction by Sandy Police all just few things Sandy City is guilty of . The city has zero right to increase our liability when they are guilty of negligence and non enforcement. Trust me when I say , law suits will crush this amendment attempt and put the city in a world of investigations .

Chase and Tonya Schaeffer

From: kerry@fitnessrealty.com
To: [Mike Wilcox](#); [James Sorensen](#)
Subject: [EXTERNAL] Recent court order for Bell Canyon Acres
Date: Thursday, November 17, 2022 4:40:25 PM
Attachments: [Final Ruling 8-22-22.pdf](#)
[BCA Covenants.pdf](#)

Good afternoon. I thought I'd share this information to you so you're aware of the recent outcome of the litigation of Bell Canyon Acres. I know that other neighbors will be referencing this ruling tonight at the meeting.

Attached is the court order dated September 12, 2022 regarding the properties of Bell Canyon Acres and the rules associated with the community. Per line #14 it states that the Protective Covenants, including, but not limited to B-6, are applicable, valid, and enforceable to and against all lots and property owners in Bell Canyon Acres.

Question many homeowners have...don't the protective covenants take precedent over city law for individual communities that were set up 50+ years ago? Now there is a ruling stating the legality of the rules. The Protective Covenants for this community state in part B that this is Residential Area Covenants. In B-1...no lot shall be used except for residential purposes. In B-6...the easement is for utilities, drainage and enjoyment on the bridle path. B-7...states No noxious or offensive activity shall be carried on upon any lot. B-11...pets, livestock and fowl which are generally associated with estate type living and which are kept only for family use and not for any commercial purpose.

Please let me know if you have any questions.
Thank you.

Kerry McLelland
Fitness Realty
801-694-2010
kerry@fitnessrealty.com



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2326965

BOOK 2844 PAGE 97

Recorded APR 3 1970 at 4:15 p.m.
 Request of WESTERN STATES TITLE
 Fee \$10.00
 Recorder, Salt Lake County, Utah
 \$ 6.00 By *[Signature]* Deputy
 Ref. _____

PROTECTIVE COVENANTS

WESTERN STATES TITLE COMPANY, a Utah Corporation, as Trustee, MC KEAN CONSTRUCTION COMPANY, a Utah Corporation, G. EUGENE ENGLAND and DORA H. ENGLAND, his wife, owners of the following described property located in Salt Lake County, State of Utah,

to-wit:
 PART A.

Beginning on the East side of a ditch 268 feet more or less East of the West 1/4 corner of Section 16, Township 3 South, Range 1 East, Salt Lake Base and Meridian; thence South 768 feet; thence West 268 feet to the Section line; thence South 1872 feet along the Section line; thence East 2,618.8 feet; thence North 60.91 feet; thence West 660 feet; thence North 2394 feet; thence North 47°06' West 271.4 feet; thence West 1492 feet, more or less to the point of beginning.

In consideration of the premises and as part of the general plan for improvements of said property do hereby declare the property hereinabove described subject to the restrictions and covenants as follows:

The residential area covenants in Part B, in their entirety shall apply to BELL CANYON ACRES SUBDIVISION, according to the official plat thereof on file and of record in the office of the Salt Lake County Recorder.

PART B. RESIDENTIAL AREA COVENANTS:

B-1. LAND USE AND BUILDING TYPE. No lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single family dwelling not to exceed two and one half stories in height, a private garage or carport for not more than three cars and such other accessory buildings as are approved by the Architectural Control Committee.

B-2. ARCHITECTURAL CONTROL. No building or fencing shall be erected, placed, or altered on any lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the Architectural Control Committee as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography, other residences and finish grade elevation.

B-3: DWELLING COST, QUALITY AND SIZE. No dwelling shall be permitted on any lot at a cost less than \$28,000.00 including the lot, based upon the cost levels prevailing on the date these covenants are recorded, it being the intention and purpose of the covenants to assure that all dwellings shall be of a quality of workmanship and materials substantially the same or better than that which can be produced on the date these covenants are recorded at the minimum cost stated herein for the minimum permitted dwelling size. The ground floor area of the main structure exclusive of one-story open porches, and garages shall be not less than 1300 square feet for a one-story dwelling, nor less than 1100 square feet for a dwelling of more than one story.

B-4: BUILDING LOCATION.

a. No building shall be located on any lot nearer to the front lot line or nearer to the side street line than the minimum building setback lines described under S-1A Zoning. In any event no building shall be located on any lot nearer than 30 feet to the front lot line, or nearer than 20 feet to any side street line.

b. No building shall be located nearer than 15 feet to an interior lot line except that a one foot yard shall be required for a garage or other permitted accessory building located 50 feet or more from the minimum building setback line.

c. For the purpose of this covenant, eaves, steps and open porches shall not be construed to permit any portion of a building on a lot to encroach upon another lot.

B-5: LOT AREA AND WIDTH. No dwelling shall be erected or placed on any lot having a width of less than 100 feet at the minimum building setback line nor shall any dwelling be erected or placed on any lot having an area of less than three-fourths of an acre.

(2)

B-6: EASEMENTS. Easements for installation and maintenance of utilities, drainage facilities and bridle path are reserved as shown on the recorded plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements or to obstruct the free, safe and sanitary use and enjoyment of the bridle path. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

B-7: NUISANCES. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

- (a) No clothes drying or storage of any articles is permitted in carports unless in enclosed areas designed for the purpose.
- (b) No storage of any articles, materials, equipment or vehicles of any nature is permitted in the front yard portion of any lot except that regularly used passenger cars and light pick-up trucks can be parked on driveway areas. Trailers, trucks, campers, boats and all types of accessory equipment are permitted to be stored or repaired only in garages, carports or on the rear yard areas of each lot.
- (c) Each lot, together with its portion of the bridle path, is to be developed and maintained by its owner in an attractive, safe and sanitary manner.

B-8 TEMPORARY STRUCTURES. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently.

B-9: SIGNS. No sign of any kind shall be displayed to the public view on any lot except one professional sign of not more than one square foot, one sign of not more than five square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales period.

B-10: OIL AND MINING OPERATIONS. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

B-11: Pets, livestock and fowl which are generally associated with estate type living and which are kept only for family use and/or food production and not for any commercial purpose are permitted on all lots except that mink, swine and goats are not permitted on any lot either temporarily or permanently. However, there shall be permitted no more than two head of cattle in any combination of not more than four head of horses or cattle. All permitted animals and fowl are to be adequately maintained in a sanitary and healthful manner.

B-12: GARBAGE AND REFUSE DISPOSAL. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

B-13: SIGHT DISTANCE AT INTERSECTIONS. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the roadways shall be placed or permitted to remain on any corner lot within the tri-angular area formed by the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight line limitations shall apply on any lot within 10 feet from the intersection of a street property line with the edge of a driveway pavement or bridle path. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

PART C. ARCHITECTURAL CONTROL COMMITTEE.

C-1: MEMBERSHIP. The Architectural Control Committee is composed of RICHARD F. MC KEAN, 1209 Wilmington Avenue, Salt Lake City, Utah; A. NEFF TAYLOR, 2070 East 3580 South, Salt Lake City, Utah, and GEORGE K. PROTHERO, 2901 East 3300 South, Salt Lake City, Utah. A majority of the committee may designate a representative to act

for it. In the event of death or resignation of any member of the committee, the remaining members shall have full authority to designate a successor. Neither the members of the committee, nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. At any time, the then record owners of a majority of the lots shall have the power through a duly recorded written instrument to change the membership of the committee or to withdraw from the committee or restore to it any of its powers and duties.

C-2. PROCEDURE. The committee's approval or disapproval as required in these covenants shall be in writing. In the event the committee, or its designated representative, fails to approve or disapprove within 30 days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related covenants shall be deemed to have been fully complied with.

PART D. GENERAL PROVISIONS.

D-1. TERM. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of forty years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of 10 years unless an instrument signed by a majority of the then owners of the lots has been recorded, agreeing to change said covenants in whole or in part.

D-2. ENFORCEMENT. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or recover damages. Enforcement may be by the Architectural Control Committee or by any affected property owner or owners.

D-3. SEVERABILITY. Invalidation of any one of these covenants by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

Dated this 2nd day of JANUARY 1970.

WESTERN STATES TITLE COMPANY

BY: Lewis S. Livingston
Lewis S. Livingston, President

STATE OF UTAH)
) : ss
COUNTY OF SALT LAKE)

On the 2nd day of January, 1970, personally appeared before me LEWIS S. LIVINGSTON, who being by me duly sworn, did say that he is the President of WESTERN STATES TITLE COMPANY, Salt Lake City, Utah, and that said instrument was signed in behalf of said Company by authority of a resolution of its Board of Directors, and said LEWIS S. LIVINGSTON, acknowledged to me that said WESTERN STATES TITLE COMPANY executed the same.

Richard Walker
Notary Public

My Commission Expires 9/15/73
Residing in Salt Lake County, Utah
RICHARD WALKER
NOTARY PUBLIC
STATE OF UTAH

MC KEAN CONSTRUCTION COMPANY

BY: Richard F. McKean
Richard F. McKean, President

STATE OF UTAH)

COUNTY OF SALT LAKE)

On the 2nd day of January 1970, personally appeared before me RICHARD F. MC KEAN who being by me duly-sworn, did say that he is the President of MC KEAN CONSTRUCTION COMPANY, a Utah Corporation, and that said instrument was signed in behalf of said corporation by authority of a resolution of its Board of Directors, and said RICHARD F. MC KEAN acknowledged to me that said MC KEAN CONSTRUCTION COMPANY executed the same.



Richard F. McKeane
Notary Public

My Commission Expires 9/15/73
Residing in Salt Lake County, Utah.

Richard F. McKeane
Richard F. McKeane

Maurine G. McKeane
Maurine G. McKeane

STATE OF UTAH)

COUNTY OF SALT LAKE)

On the 2nd day of January 1970, personally appeared before me RICHARD F. MC KEAN and MAURINE G. MC KEAN, his wife, signers of the within instrument who duly acknowledged to me that they executed the same.



Richard F. McKeane
Notary Public

My Commission Expires 9/15/73
Residing in Salt Lake County, Utah.

Lavar H. Whittaker
Lavar H. Whittaker

Vivian T. Whittaker
Vivian T. Whittaker

STATE OF UTAH)

COUNTY OF SALT LAKE)

On the 9 day of January 1970, personally appeared before me LAVAR H. WHITTAKER and VIVIAN T. WHITTAKER, his wife, signers of the within instrument who duly acknowledged to me that they executed the same.

My Commission Expires 9/15/73
Residing in Salt Lake County, Utah.

Richard F. McKeane
Notary Public

Stephen H. Mitchell
Stephen H. Mitchell

Janice M. Mitchell
Janice M. Mitchell

STATE OF UTAH)

COUNTY OF SALT LAKE)

On the 19th day of January 1970, personally appeared before me STEPHEN H. MITCHELL and JANICE M. MITCHELL, his wife, signers of the within instrument who duly acknowledged to me that they executed the same.

My Commission Expires 9/15/73
Residing in Salt Lake County, Utah.

Richard F. McKeane
Notary Public

The Order of the Court is stated below:

Dated: September 12, 2022
12:06:11 PM

/s/ KENT HOLMBERG
District Court Judge



Gregory S. Moesinger (#10680)
Adam M. Kaas (#13267)
KIRTON MCCONKIE
36 South State Street, Suite 1900
Salt Lake City, UT 84111
Telephone: (801) 328-3600
Facsimile: (801) 321-4893
gmoesinger@kmclaw.com
akaas@kmclaw.com

Attorneys for Plaintiffs

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

McCULLOUGH, et al.,

Plaintiffs,

vs.

McLELLAND, et al.,

Defendants.

JUDGMENT

Civil No. 160907281

Judge Kent Holmberg

Tier 2

This matter came before the Court for a jury trial, commencing on August 22, 2022. Plaintiffs Craig F. McCullough and Patricia A. McCullough, Trustees of The Patricia A. McCullough Trust, Zachary E. Frankel and Wendy E. Fisher, Barry Seymour Stout and Bonnie F. Stout, Trustees of The Barry and Bonnie Stout Family Living Trust dated June 4, 2008, Val Craig Walker and Kathleen Burton Walker, Trustees of the Val Craig Walker Trust, Kathleen Burton Walker and Val Craig Walker, Trustees of the Kathleen Burton Walker Trust, Robert B. Perkins and Janice E. Perkins, Thomas M. Tuft and Megan Keller-Tuft, Elizabeth Ream Madsen Wood, Trustee of The Elisabeth Ream Trust dated December 16, 1994, Leonard I. Christofferson,

Trustee of The Leonard I. Christofferson Revocable Trust dated June 4, 1991, Donna Runia Dapses and Robert C. Larson and Marilyn S. Larson (collectively the “Plaintiffs”) were represented by attorneys Gregory S. Moesinger and Adam M. Kaas of the law firm of Kirton McConkie. Defendants Michael Sean McLelland and Kerry Dee McLelland, Trustees of The Michael Sean McLelland and Kerry Dee McLelland Trust dated 3-15-2013, Chris Carl Wohlhueter and Veronica Marie Wohlhueter, Jeffrey E. Stoppenhagen (“Stoppenhagen”), and Michael Nordhoff (collectively, the “Defendants”) were represented by attorneys Stewart B. Harman and Carson M. Fuller of the law firm of Plant Christensen & Kannell. (The Plaintiffs and the Defendants are each individually, a “Party” and collectively the “Parties.”)

After two days of trial, on the third day, August 24, 2022, the Parties met through counsel and reached an agreement and stipulation for the entry of a judgment to fully resolve this matter. Counsel for the parties set forth the proposed terms for the judgment to the Court on the record in the afternoon of trial.

The Court, having considered the evidence taken at trial, having heard the oral stipulation of counsel for the Parties, and having considered the pleadings, papers, and prior orders and rulings in this matter, hereby finds, orders, adjudicates, decrees, and enters judgment as follows:

1. Bell Canyon Acres is a subdivision of approximately 114 homes on large lots designed to accommodate the ownership, housing, and riding of horses.
2. Plaintiffs are, or at least were at the time of the filing of the Complaint, property owners in Bell Canyon Acres.
3. Defendants are property owners in Bell Canyon Acres.

4. At the time of their property purchase in Bell Canyon Acres, all purchasers are on notice of the publicly recorded Protective Covenants for Bell Canyon Acres, including phase numbers 1, 2, 3, 4, 5, and 6, which were marked and introduced as Plaintiffs' Exhibits 7 thru 12, respectively, and received into evidence on August 22, 2022 (collectively, the "Protective Covenants"), which are collectively attached hereto as "Exhibit A"; and all purchasers are on notice of the publicly recorded plat maps for Bell Canyon Acres, including phase numbers 1, 2, 3, 4, 5, and 6, which were marked and introduced at trial as Plaintiffs' Exhibits 13 thru 18, respectively, and received into evidence on the same day (collectively, the "Plat Maps"), which are collectively attached hereto as "Exhibit B". The Protective Covenants for the Bell Canyon Acres subdivision as a whole were recorded in the 1970s, before the Parties' purchases of their respective lots. Section D-2 of the Protective Covenants permits an affected property owner to enforce the Protective Covenants through legal proceedings.

5. The properties within the Bell Canyon Acres subdivision, including those of the Plaintiffs (or formerly of some of the Plaintiffs) and the Defendants, are subject to an easement for a bridle path as set forth in the recorded Protective Covenants, including Section B-6, and the recorded Plat Maps (the "Bridle Path Easement"). While separate Protective Covenants documents and the Plat Maps were recorded for each phase of construction of Bell Canyon Acres, the Protective Covenants and Plat Maps, taken together, collectively have established the full extent of the Bridle Path Easement throughout the entire Bell Canyon Acres subdivision. Property subject to the bridle path easement is private property, subject to the Bridle Path Easement.

6. The Bridle Path Easement runs throughout the Bell Canyon subdivision. It burdens each lot with an easement, but also provides the owners of the subdivision's lots with the benefits of an extensive bridle path throughout the entire Bell Canyon Acres subdivision, along with providing vehicular access to the rear portions of lots in the subdivision.

7. Section B-6 of the Protective Covenants establishes the Bridle Path Easement, with the following language:

B-6. EASEMENTS. Easements for installation and maintenance of utilities, drainage facilities and bridle path are reserved as shown on the recorded plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements or to obstruct the free, safe and sanitary use and enjoyment of the bridle path. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.¹

8. The Protective Covenants make clear that the Bridle Path Easement is not just for riding horses. Section B-7 of the Protective Covenants and the Plat Maps clarify that the Bridle Path Easement was also intended to permit Bell Canyon Acres property owners to drive vehicles through the easement to the rear portions of their properties. Specifically, B-7 mandates:

B-7. NUISANCES. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

b. No storage of any articles, materials, equipment or vehicles of any nature is permitted in the front yard portion of any lot except

¹ There may be some minor variation in the language in Section B-6 and other provisions in Protective Covenants 1 thru 6; however, substantively, they are effectively the same.

that regularly used passenger cars and light pick-up trucks can be parked on driveway areas. Trailers, trucks, campers, boats and all types of accessory equipment are permitted to be stored or repaired only in garages, carports or on the rear yard areas of each lot.

This provision in B-7 mandates that, if a Bell Canyon Acres property owner has a trailer, truck, camper, boat or other accessory equipment that does not fit in his or her garage or carport, then that owner must store these items in the rear of his or her lot.

9. The Bridle Path Easement provides the only means of vehicular access to the rear portions of many lots in the Bell Canyon Acres subdivision. Without vehicular access by the Bridle Path Easement, such lot owners would not be able to comply with Section B-7 by parking at the rear of their properties such large trailers, trucks, campers, boats or other accessory equipment. Thus, lot owners can only avoid causing a storage nuisance as defined in Part B-7(b) by driving their vehicles through the Bridle Path Easement.

10. Lots in Bell Canyon Acres subdivision are large, about an acre in size with some variation. The subdivision was specifically designed to allow owners to maintain horses on their properties. It is foreseeable that such horse owners would need to use and store vehicles and equipment on their lots in connection with their ownership of horses – such as horse trailers, hay hauling trailers, and similar equipment. The Protective Covenants make plain that the Bridle Path Easement facilitates an equestrian community by both (a) providing a trail for horses, and (b) providing access to the rear of lots for vehicles and equipment associated with the maintenance of horses.

11. The Bridle Path Easement has been in its continuous use since its inception in 1970 for horseback riding, utility access, and Bell Canyon Acres owner access to the rear portions of their property for storage of boats, RVs, and tractors. The Bridle Path Easement has

also been used for delivery of hay and feed for animals (primarily horses), and equipment, veterinary equipment, access, and removal of diseased or dead animals.

12. Use of the Bridle Path Easement to access the back portions of various lots is a part of the private property rights for each individual lot owner in the Bell Canyon Acres subdivision.

13. The Protective Covenants and Plat Maps are enforceable to allow the Plaintiffs, the Defendants, and all property owners in the Bell Canyon Acres subdivision and their guest(s) or invitee(s), including, but not limited to, farriers, hay delivery, veterinarians, emergency vehicles, etc., to have the full benefit of the Bridle Path Easement.

14. The Protective Covenants, including, but not limited to Section B-6, and the Plat Maps are applicable, valid, and enforceable to and against all the lots and property owners in Bell Canyon Acres.

15. The Defendants shall, within thirty (30) days of the entry of this judgment, remove all obstructions from the Bridle Path Easement on their respective lots, consistent with the Protective Covenants and Plat Maps, including, but not limited to, all gates, fences, trees, and personal property. However, based upon the Parties' stipulation, the historical rock on the north side of the McLelland property, Lot 231 of Bell Canyon Acres, is not subject to this judgment, as it has been in place since at least 1978.

16. Moreover, the Plaintiffs are entitled to a permanent injunction against the Defendants, precluding the Defendants from obstructing the Bridle Path Easement in the future. The Defendants are hereby permanently enjoined and prohibited from obstructing the Bridle Path Easement or otherwise violating Section B-6 of the Protective Covenants.

17. The Parties agree that any Party to this action may record this Judgment with the Salt Lake County Recorder's Office and no Party shall oppose or object to the recordation of the same.

18. In the event there is any dispute arising out of this judgment in the future, and the intervention of the Court is sought, the prevailing party shall be entitled to recovery its attorneys' fees and costs.

19. Each Party shall bear its own attorneys' fees and costs in this matter.

THE COURT'S SIGNATURE APPEARS AT THE TOP OF THE FIRST PAGE

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

SO STIPULATED BY THE PARTIES:

KIRTON McCONKIE

By: /s/ Gregory S. Moesinger
Gregory S. Moesinger
Adam M. Kaas
Attorneys for Plaintiffs

PLANT, CHRISTENSEN & KANELL

By: /s/ Stewart B. Harman (signed with permission)
Stewart B. Harman
Carson M. Fuller
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of August, 2022, a true and correct copy of the foregoing **JUDGMENT** was served on the following by the method indicated below:

Stewart B. Harman
Carson M. Fuller
PLANT, CHRISTENSEN & KANELL
136 East South Temple, Suite
1700
Salt Lake City, UT 84111

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile
- E-filing/E-mail

/s/ Teena Sanders _____

4885-1792-6192

From: kerry@fitnessrealty.com
To: [Mike Wilcox](#); [James Sorensen](#)
Subject: [EXTERNAL] Recent court order for Bell Canyon Acres
Date: Thursday, November 17, 2022 4:40:25 PM
Attachments: [Final Ruling 8-22-22.pdf](#)
[BCA Covenants.pdf](#)

Good afternoon. I thought I'd share this information to you so you're aware of the recent outcome of the litigation of Bell Canyon Acres. I know that other neighbors will be referencing this ruling tonight at the meeting.

Attached is the court order dated September 12, 2022 regarding the properties of Bell Canyon Acres and the rules associated with the community. Per line #14 it states that the Protective Covenants, including, but not limited to B-6, are applicable, valid, and enforceable to and against all lots and property owners in Bell Canyon Acres.

Question many homeowners have...don't the protective covenants take precedent over city law for individual communities that were set up 50+ years ago? Now there is a ruling stating the legality of the rules. The Protective Covenants for this community state in part B that this is Residential Area Covenants. In B-1...no lot shall be used except for residential purposes. In B-6...the easement is for utilities, drainage and enjoyment on the bridle path. B-7...states No noxious or offensive activity shall be carried on upon any lot. B-11...pets, livestock and fowl which are generally associated with estate type living and which are kept only for family use and not for any commercial purpose.

Please let me know if you have any questions.
Thank you.

Kerry McLelland
Fitness Realty
801-694-2010
kerry@fitnessrealty.com



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