

TRAILS MASTER PLAN

The canal trail was identified on our Trails Master Plan in 1996. In keeping with the wants of the citizens, the Trails Master Plan identifies all desired trails necessary to create a citywide trails system, with continuity, accessibility and variety. The city regularly seeks to obtain property to meet this goal as parcels are available.

The canal trail was identified as a key recreation asset in 1996, and upon the location of Real Salt Lake, it was also seen as a public safety byway for fans to get to and from their parking location.

BACKGROUND

After Garage 94 expressed their disinterest in the trail, we researched their deed and noticed the canal easement was noted as "less and excepting", meaning they did not own it. The previous owner of the property, Tamie Ogden, informed us it was her express intent to not include the canal easement in the sale of the property. At the same time, she offered to sell us that easement under a Quit Claim Deed. After our purchase of the property and the signing of a construction contract, Garage 94 moved their equipment onto the canal easement and we have not, to-date, resumed our efforts to construct the trail.

SANDY CITY INTENT

Sandy City has no nefarious intent against Garage 94, but simply purchased property that Garage 94 did not own to advance our trail system.

Any grievance by Garage 94 should be directed to those representing them, including their attorney, title company and real estate agent. Sandy City had no knowledge of the history with the land and was acting in good faith on the integrity of the public records showing the land was available for purchase.

As far as the City is concerned, any activity pre-dating the 2007 deed is irrelevant. The state has strict real estate laws showing that a deed is the final expression of all parties' intent. If a purchaser cannot rely on the validity of public records, the entire real estate market would fall apart.

DAN SIMONS

We do not have a dedicated real estate expert on staff, so it is our standard practice to contract with professionals when we have real estate needs.

COMMUNITY ACTION TEAM (CAT)

The CAT team still meets regularly, on the second Wednesday of every month. This group deals with public nuisance issues that involve 2 or more departments within the city or 2 or more agencies.

DIVERSION BOX

The size and flow of the diverter box was independently engineered to meet the projected water flow need. The primary purpose of the canal is to transport irrigation water, with the diversion box in place to prevent overflow and flooding to surrounding businesses and residences in the event storm water is also flowing during inclement weather. The diversion box would take the extra water and dump it into our 9400 South storm drain outfall.

There are similar diversion boxes throughout our city used for the same purpose.

DEED

Tamie Ogden informed the city that the “less and excepting” language was purposefully included on the Warranty Deed to Garage 94 because her title company was aware of the potential conflict with the East Jordan Canal Company. The title company felt it would be negligent to not include it as a method of putting the purchaser (Garage 94) on notice of the canal rights.

The language on the Quit Claim Deed to Sandy was provided by our City Surveyors Office on behest of Ogden using, in part, the placement of the fence that predated the purchase of both Sandy City and Garage 94 and was put in place by the canal company to secure their easement.

Lorraine P. Brown (5189)
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Ogden, UT 84401
Telephone: (801) 476-0303
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Email: lbrown@smithknowles.com

Attorneys for Defendant Tamie N. Ogden

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

M&R RODS/GARAGE 94 INC., a Utah
Corporation,

Plaintiff,

vs.

SANDY CITY, a Municipal Corporation,
TAMIE N. OGDEN, an Individual, and DOE
DEFENDANTS I-X,

Defendants.

**DECLARATION OF TAMIE OGDEN
IN SUPPORT OF
MOTION TO DISMISS**

Civil No. 140906817

Judge: Suchon

Defendant, Tamie Ogden, under penalty perjury, declares as follows:

1. I am a defendant in the above entitled action.
2. I am over the age of 21 and competent to testify in this matter.
3. The statements of this declaration are based on my personal knowledge and experience.
4. I am the wife of Mike Ogden, who is now deceased.
5. My husband, Mike and I took title to the subject property which is now disputed in Plaintiff's complaint, on April 21, 1995, from David and Janet Tanner.

6. We conveyed the subject property to Plaintiff in a Warranty Deed dated October 1, 2007, which was recorded on October 2, 2007. See October 1, 2007 Warranty Deed, attached hereto as Exhibit "1".
7. As long as we owned the subject property, the only access to the canal was over an easement between the existing fence and the canal.
8. The chain link fence divided the commercial property from the easement reserved for the East Jordan Canal Company.
9. While we owned the property, Sandy City used the easement for the canal all the time.
10. Plaintiff, Maupin, said he wanted to buy the property in 2004-2005, and we went to Court over that. We ended up mediating to close the deal. The litigation with Maupin concluded in the creation of the October 1, 2007 Warranty Deed, giving Plaintiff title to the subject property, except the land between the fence and the canal.
11. Even when we owned the property, we knew for years that Sandy had full intention of using the property with the canal easement as an access way. This was why we never moved the fence and specifically excluded the property between the fence and the canal from the 2007 Warranty Deed.
12. I know my husband's understanding was that the land between the fence and the canal was not included in the sale. One of the comments I remember my husband making to me was, that "if Robby (Plaintiff) even tries to move the fence, he will be in big trouble."

13. Neither my husband, Mike Ogden, nor I intended to convey to Plaintiff in the October 1, 2007 Warranty Deed, all the property we owned.
14. We intended to reserve the parcel between the fence and the canal which included the easement to Sandy City, for the purpose of negotiating its sale to Sandy City or the East Jordan Canal Company at a later time.
15. To accomplish this reservation, the October 1, 2007 Warranty Deed contains specific language reserving the parcel of property between the existing fence and the canal as follows: "LESS AND EXCEPTING therefrom any portion lying within the East Jordan Canal and the East Jordan Canal Company Right of Way."
16. This language was clear and conspicuous, and known to Plaintiff when he took title under the Warranty Deed. The easement property is also excluded by the legal description of the title insurance policy we purchased to sell the property to Plaintiff. See Schedule "A" of First American Title Insurance Policy, attached hereto as Exhibit "2".
17. The chain link fence on the property functioned as the boundary between the East Jordan Canal right-of-way and our property (now the M&R Property) for all the years that we retained possession of the subject property.
18. In 2011, Sandy City approached me about purchasing the land between the fence and the canal, which my husband, Mike and I had reserved from the 2007 Warranty Deed to Plaintiff.
19. Sandy City and I entered into an agreement, whereby Sandy City would pay me \$14,817 in exchange for a Quit Claim Deed for the reserved parcel.

20. I signed a Quit Claim Deed for the reserved parcel in favor of Sandy City on July 3, 2012. See Quit Claim Deed, attached hereto as Exhibit "3".
21. The Quit Claim Deed was recorded on July 25, 2012.
22. Sandy City created a legal description for the parcel of land between the existing fence and the canal, which is included in the Quit Claim Deed.
23. My understanding at the time I signed the Quit Claim Deed, was that the legal description created by Sandy City described the identical parcel of land that my husband, Mike, and I had reserved and excluded from the 2007 Warranty Deed to Plaintiff.

DATED this 29th day of October, 2014.

/s/ Tamie N. Ogden

TAMIE N. OGDEN
Defendant

CERTIFICATE OF MAILING

I hereby certify that on this 29th day of October, 2014 I served a true and correct copy of the foregoing **DECLARATION OF TAMIE OGDEN IN SUPPORT OF MOTION TO DISMISS**, by efileing, upon the following:

DEREK COULTER
ROBERT TATEOKA
Counsel for Plaintiff

/s/ Stephen P. Brown

Legal Assistant

Exhibit “1”

10238037
10/2/2007 11:46:00 AM \$10.00
Book - 9521 Pg - 7358
Gary W. Ott
Recorder, Salt Lake County, UT
INTEGRATED TITLE INS. SERVICES
BY: eCASH, DEPUTY - EF 1 P.

WHEN RECORDED, MAIL TO:
Grantee
48 West 9400 South
Sandy, Utah 84070

Warranty Deed

MIKE OGDEN and TAMIE OGDEN, grantor, of Sandy, County of Salt Lake State of Utah, hereby CONVEY and WARRANT to M & R RODS/GARAGE 94 INC, grantee, of Salt Lake City, County of Salt Lake, State of Utah, for the sum of TEN AND NO/100----- DOLLARS, and other good and valuable considerations the following described tract of land in Salt Lake County, State of Utah, to-wit:

BEGINNING at a point on the North Right of Way line of 9400 South Street; said point being West 363.00 feet and North 78.45 feet from the Southeast Corner of Section 1, Township 3 South, Range 1 West, Salt Lake Base and Meridian; and running thence North 88°25'42" West along said North Right of Way line at 9400 South Street 178.18 feet to an existing 6.0 foot chain link fence; thence North 03°15'30" East along said chain link fence line 105.08 feet to a fence corner located in an old wash; thence South 67°34'10" East along the remnants of an old fence line and wash 186.23 feet; thence South 38.74 feet to the point of beginning.

LESS AND EXCEPTING therefrom any portion lying within the East Jordan Canal and the East Jordan Canal Company Right of Way.

Parcel Identification No. 27-01-476-025.

Subject to current general taxes, easements, restrictions, rights of way and reservations appearing of record.

WITNESS the hand of said grantor, this 1st day of October, 2007.

Signed in the presence of

Mike Ogden

MIKE OGDEN
Tamie Ogden

TAMIE OGDEN

STATE OF UTAH
ss.
COUNTY OF SALT LAKE

On the 1st day of October, 2007, personally appeared before me MIKE OGDEN and TAMIE OGDEN, the signer(s) of the above instrument, who duly acknowledged to me that they executed the same.

My Commission Expires: 4-10-10

Tracy Medina

Notary Public
Residing at: Salt Lake City, Utah
TRACY MEDINA
6925 Union Park Center, Suite 360
Midvale, Utah 84047
My Commission Expires
April 6, 2010
State of Utah

WITNESS, the hand of said Grantor, this _____ day of _____,
A.D. 2012.

Tamie Ogden
TAMIE OGDEN

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

On the 3rd day of July, A.D., 2012, personally
appeared before me TAMIE OGDEN, the signer of the within and foregoing instrument,
who being by me duly sworn, acknowledged to me that she executed the same.

NOTARY PUBLIC Molly Spira

My Commission Expires: 7/10/13

Residing at: Sandy UT 84094

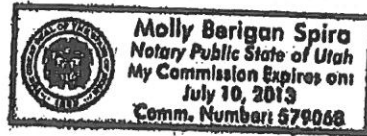


Exhibit "2"

First American Title Insurance Company
SCHEDULE A

Commitment No.: 07-0248

Effective Date of Commitment: June 22, 2007 at 8:00 A.M.

<i>1. Policy or Policies to be issued:</i>	<i>Amount of Insurance</i>	<i>Premium</i>
(a) <i>ALTA Owners Policy</i>	\$ 225,000.00	\$ 1,295.00
<i>Proposed Insured:</i>		
<u>M & R Rods and Restorations</u>		
(b) <i>ALTA Loan Policy</i>	\$	\$
<i>Proposed Insured:</i>		
To Be Determined		
<i>Endorsement Charge(s) (if any): 8.1, 100 & 116</i>		\$

2. *The estate or interest in the land described or referred to in this Commitment and covered herein is fee simple and title thereto is vested in:*

Mike Ogden and Tami Ogden, husband and wife as joint tenants

3. *The land referred to in this Commitment is located in the County of Salt Lake, State of Utah, and described as follows:*

Beginning at a point on the North Right of Way line of 9400 South Street; said point being West 363.00 feet and North 78.45 feet from the Southeast corner of Section 1, Township 3 South, Range 1 West, Salt Lake Base and Meridian; and running thence North 88°25'42" West along said North Right-of-Way line at 9400 South Street 178.18 feet to an existing 6.0 foot chain link fence; thence North 03°15'30" East along said chain link fence line 105.08 feet to a fence corner located in an old wash; thence South 67°34'10" East along the remnants of an old fence line and wash 186.23 feet; thence South 38.74 feet to the point of beginning.

Tax Serial No.: 27-01-476-025

Purported Address:
48 West 9400 South
Sandy, UT 84070

Your escrow officer for this transaction is Janae Kirton. If you have any questions concerning this title commitment, please do not hesitate to call me at (801) 446-4204.

Exhibit "3"

When recorded, mail to:
Molly Spira
Sandy City Recorder
10000 Centennial Parkway
Sandy, Utah 84070

11436124
07/25/2012 11:51 AM \$0.00
Book - 10038 Pg - 7408-7409
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
SANDY CITY
10000 CENTENNIAL PARKWAY
SANDY UT 84070
BY: KLD, DEPUTY - MA 2 P.

QUIT CLAIM DEED

Parcel No. 27-01-476-025

Salt Lake County

TAMI OGDEN of Salt Lake County, State of Utah, **GRANTOR**, hereby **QUIT CLAIMS** to **SANDY CITY**, A MUNICIPAL CORPORATION, at 10000 Centennial Parkway, Sandy, Utah 84070, **GRANTEE**, for the sum of Ten Dollars and other good and valuable consideration, the following described parcel of land in Salt Lake County, State of Utah, to-wit:

A parcel of land situate in the Southeast Quarter of Section 1, Township 3 South, Range 1 West, Salt Lake Base and Meridian being that portion of a parcel of land described by Warranty Deed recorded October 2, 2007 found as Entry No. 10238037 in Book 9521 at Page 7358 in the office of the Salt Lake County recorder, which is described in said Warranty Deed as "~~LESS AND EXCEPTING~~ therefrom any portion lying within the East Jordan Canal and the East Jordan Canal Company Right of Way." said excepted portion is described by metes and bounds as follows:

Beginning at a point on the North Right of Way line of 9400 South Street; said point being West 363.00 feet and North 78.45 feet from the Southeast Corner of Section 1, Township 3 South, Range 1 West, Salt Lake Base and Meridian; and running thence North 88°25'42" West along said North Right of Way line of 9400 South Street 40.52 feet, more or less, to the location of an old chain link fence line which has for many years defined the westerly line of the East Jordan Canal right-of-way; thence along said westerly line of said East Jordan Canal right-of-way, defined by said chain link fence, North 8°05'46" East 51.85 feet, more or less, to intersect grantor's northerly boundary; thence along said northerly boundary, South 67°34'10" East 35.92 feet; thence along grantor's easterly boundary, South 38.74 feet to the point of beginning.

The above described portion of land contains approximately 1,687 square feet in area or 0.039 acre.