



# State of Utah

DEPARTMENT OF NATURAL RESOURCES  
UTAH GEOLOGICAL SURVEY

Michael O. Leavitt  
Governor

Ted Stewart  
Executive Director

M. Lee Allison  
State Geologist

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September 11, 1997

Joe Dundac  
Wasatch County Attorney  
25 N. Main  
Heber City, UT 84032

Dear Joe:

I understand that the Canyon Meadows Homeowners Association is planning to hire a consultant to perform the work recommended by AGECEC as a result of their preliminary evaluation of the stability of the Hoover landslide at the Canyon Meadows subdivision. As you know, the AGECEC study funded by Wasatch County was only meant to be a preliminary geotechnical-engineering evaluation, as outlined in our Guidelines for Investigating Landslide Hazards in Utah (UGS Circular 92, 1995). The purpose of that study was to use the best available geotechnical data for input into a slope-stability computer program to evaluate whether or not a detailed geotechnical-engineering study was necessary. We agree with AGECEC's conclusion that a detailed study is necessary. Their results indicate possible static factors-of-safety less than 1.5, and dynamic (earthquake) factors-of-safety less than 1.0. Therefore, we cannot reasonably rule out the possibility that the landslide is unstable.

UGS Circular 92 also gives general guidelines for a detailed geotechnical-engineering study, which is now proposed by the Homeowners Association. Note that the guidelines recommend that a team including both a qualified engineering geologist and geotechnical engineer perform the work. To clarify the scope of work for the detailed study (for example, determining the location, number, and depth of borings; number, sample depth, and type of soil tests; need for inclinometers and piezometers; appropriate computer software; etc.), we suggest that a panel of technical experts representing the various interested parties (the Homeowners Association, the developer, UDOT, Wasatch County, and UGS) be invited to review the consultant's proposed scope of work and comment up-front before the work is done. A mechanism would be needed to ensure that comments are incorporated, but such a panel will hopefully allow everyone involved to understand the issues and cost trade-offs, provide input into the process so that their concerns are addressed, and help ensure a reliable result that everyone can accept. I would not like to see this process result in a legal or "permit-approval"



battle between “experts” arguing over the scope of work and results of the study after it is complete. The Canyon Meadows Homeowners Association has also expressed to me a concern that the UGS and Wasatch County are attempting to acquire a pre-determined result from these studies, and hopefully this process would also help to dispel that concern.

Please call me or Gary Christenson of my staff if we can be of further assistance.

Sincerely,

A handwritten signature in cursive script that reads "M. Lee Allison". The signature is written in dark ink and is positioned above the printed name.

M. Lee Allison

cc. Canyon Meadows Homeowners Association  
Robert Mathis, Wasatch County Planner

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\*ALSO LICENSED IN WASHINGTON STATE  
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August 13, 1998

VIA FACSIMILE: (801) 785-0853

Gordon N. Duval  
DUVAL, HANSEN, WITT & MORLEY, P.C.  
110 South Main Street  
Pleasant Grove, UT 84062

Re: *Gardner v. Wasatch County*

Dear Gordon:

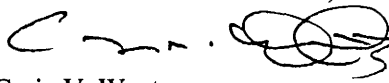
Jim Nordquist, P.E., of Applied Geotechnical Engineering Consultants, Inc., relayed a request from one of plaintiffs' consultants or engineers for a copy of AGECE's final report on soil strength testing at the Canyon Meadows site. AGECE's report to this office in that regard is dated August 10, 1998. We are willing to provide that report to you subject to your agreement and stipulation that the disclosure of the August 10, 1998 AGECE report shall not constitute a waiver of the attorney-client privilege or work product immunity for any other document entitled to such protection since the inception of this litigation until its conclusion. We will assume that your stipulation and agreement is also binding on your co-counsel unless you otherwise advise.

As a further condition of our production of the August 10 report, you will provide to us, subject to the same stipulations regarding privileges, your clients' reports and/or evaluations of all testing that has occurred at the Canyon Meadows site since the inception of this case. We had particularly expected copies of your inclinometer readings and coil boring results by the mid part of July, 1998.

Please call if you have any questions.

Sincerely,

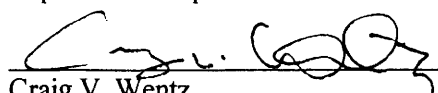
CHRISTENSEN & JENSEN, P.C.

  
Craig V. Wentz

CVW/tlc

cc. Joseph T. Dunbeck, Jr. (via facsimile)

Stipulation accepted:

  
Craig V. Wentz  
Christensen & Jensen, P.C.  
Attorneys for Defendants

Stipulation accepted:

\_\_\_\_\_  
Gordon Duval  
Duval, Hansen, Witt & Morley, P.C.  
Attorneys for Plaintiffs

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August 14, 1998

VIA FACSIMILE: 537-3400

ORIGINAL MAILED

Gary E. Christenson  
Manager of Applied Geology  
Utah Geological Survey  
PO Box 146100  
Salt Lake City, UT 84114-6100

Re: Gardner (and other Canyon Meadows Homeowners Association members)  
v. Wasatch County  
Utah Federal District Court, Case No. 2:97CV794

Dear Gary:

I called you yesterday morning to ask if UGS would be willing to comment on soil/slope stability reports for the Canyon Meadows area prepared at my request as attorney for Wasatch County by Applied Geotechnical Engineering Consultants, Inc. (AGEC). The reports at issue are addressed to me and are dated July 30 and August 10, 1998 ("Reports"). In the course of our conversation, you informed me that County staff had already given you copies of the Reports.

As we briefly discussed yesterday and this morning, the production of the AGEC Reports to UGC was premature and without my knowledge since they were not to have been distributed to any third party, including UGS, until the Canyon Meadows plaintiffs had agreed (1) to produce to the County their inclinometer readings and core drilling results with respect to the Canyon Meadows slide area and (2) to stipulate that any exchange of expert reports by parties to the pending litigation did not constitute a waiver of the attorney-client privilege or the work-product immunity. A copy of the stipulation we have proposed to the plaintiffs/homeowners for signature is attached.

CHRISTENSEN & JENSEN

Gary E. Christenson  
Utah Geological Survey  
August 14, 1998  
Page 2

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In view of the inadvertent or premature disclosure of the Reports, may we ask you to request that any member of the public, including any of the plaintiffs/homeowners or their consultants, who desire a copy of the Reports be required first to file a written GRAMA request and that you immediately notify us when any such GRAMA requests are received.

Upon receiving your notice, we will seek a protective order from the Federal District Court on the grounds that the production of the AGECE Reports to UGS was an inadvertent disclosure of attorney work product and that no further distribution should be allowed until an appropriate agreement is reached with the requesting party. You will be notified of the filing of our motion for a protective order and UGS will be included within the terms of any such application for protective order, so that its rights as a neutral party are protected.

All this said, we doubt that this matter will ripen into a serious dispute, since we fully expect the plaintiffs/Homeowners Association members to enter into the attached stipulation.

Thank you for your cooperation.

Sincerely,

CHRISTENSEN & JENSEN, P.C.



Craig V. Wentz

CVW/tlc  
Enclosure

cc. Joseph T. Dunbeck, Jr., Esq. (via facsimile)

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August 17, 1998

VIA FACSIMILE: 537-3400

Gary E. Christenson  
Manager of Applied Geology  
Utah Geological Survey  
PO Box 146100  
Salt Lake City, UT 84114-6100Re: Gardner (and other Canyon Meadows Homeowners Association members)  
v. Wasatch County  
Utah Federal District Court, Case No. 2:97CV794

Dear Gary:

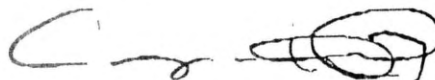
Following up on my recent correspondence and our telephone conversation of this morning, we're pleased to report that plaintiffs have entered into the stipulation regarding the confidentiality of the Applied Geotechnical/Jim Nordquist reports to this office. A copy of that stipulation is attached.

Thank you for your cooperation. We're pleased, of course, that this matter did not turn into a serious controversy.

Within a day or two, I expect to be in a position to ask you to take the steps you deem appropriate to make formal comment on the August 10 report regarding soil strength and slope stability.

Sincerely,

CHRISTENSEN &amp; JENSEN, P.C.



Craig V. Wentz

CVW/tlc  
Enclosure

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August 31, 1998

VIA FACSIMILE: (801) 785-0853 (w/o enc.)

ORIGINAL MAILED (w/enc.)

Gordon N. Duval

DUVAL, HANSEN, WITT & MORLEY, P.C.

110 South Main Street

Pleasant Grove, UT 84062

Re: *Gardner v. Wasatch County*

Dear Gordon:

As we discussed a few days ago, it was our judgment that it would not be wise to provide the Wasatch Wave or other press representatives copies of the Applied Geotechnical Engineering consultant reports on soil strengths testing and soil stability in Canyon Meadows until you are also prepared to disclose Terracon's inclinometer readings, core drilling results, and Terracon's evaluation of that data, together with the forthcoming comments of the Utah Geological Survey. Otherwise, the reader has only part of the picture with the attendant risks of confusion and premature judgment.

We have just received your fax indicating that one of the plaintiffs intends to provide a copy of at least one of the reports to the Wasatch Wave. We emphasize that plaintiffs make such a premature disclosure at their own risk and subject to our objections for the reasons stated.

Pursuant to our agreement at the pretrial hearing before Judge Jenkins, we hereby submit Applied Geotechnical Engineering Consultants, Inc.'s first report on slope stability issues dated July 30, 1998. That report is also accompanied by gradation test results. Also herewith submitted is AGEC's second report on slope stability issues dated August 10, 1998. As per our pretrial agreement, we'll expect to receive Terracon's inclinometer readings and core drilling results no later than this coming Wednesday, September 2. We also trust that Terracon will provide its written evaluation of those findings and results at the earliest possible date.

CHRISTENSEN & JENSEN

Gordon N. Duval  
August 31, 1998  
Page 2

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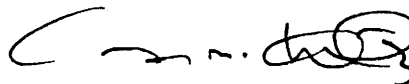
We would like to suggest a joint meeting between Terracon, Applied Geotechnical Engineering Consultants, your clients, county staff, all counsel, Gary Christenson and Francis Ashland of the Utah Geological Survey as soon as possible to review and evaluate the assembled information and to discuss its implications on pending building permit applications for Canyon Meadows. We propose the following dates and times for your consideration: Friday, September 4, early afternoon or Friday, September 11, a.m. or p.m. Please respond as soon as possible.

Wasatch County will not be in a position to make a final decision as to the issuance of building permits in the Canyon Meadows area until it has received, evaluated and approved comments from the Utah Geological Survey. You can appreciate the fact that Mr. Christenson and Mr. Ashland will need some time to review all relevant materials. It is, therefore, crucial that we receive your submissions on Wednesday and Terracon's evaluation as soon thereafter as possible.

Consistent with our prior representations, the County will continue to accept applications for building permits in Canyon Meadows. However, final review of those applications cannot be completed until the Utah Geological Survey comments have been submitted and accorded the consideration they require from County staff.

Sincerely,

CHRISTENSEN & JENSEN, P.C.



Craig V. Wentz

CVW/tlc  
Enclosures

cc. Gary E. Christenson (w/enc.)  
Jim Nordquist (wo/enc.)  
Joseph T. Dunbeck, Jr. (wo/enc.)  
Robert Mathis (wo/enc.)



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September 10, 1998

Gordon N. Duval  
Brian Haws  
DUVAL, HANSEN, WITT & MORLEY, P.C.  
110 South Main Street  
Pleasant Grove, UT 84062

Re: *Gardner v. Wasatch County*

Dear Gordon and Brian:

I have just been informed by Wasatch County that Vic Orvis is alleging that Wasatch County is delaying the process with respect to review of building permit applications. If this information is accurate, we would appreciate it if you would make sure Mr. Orvis is fully advised of the relevant facts.

As you will recall, we did not receive Terracon's inclinometer data until September 3, 1998, long after it was promised. In our letter to Gordon dated August 31, we pointed out that it was also crucial that we receive Terracon's engineering evaluation of the inclinometer data. We explained that Wasatch County would not be in a position to make a final decision as to the issuance of building permits in the Canyon Meadows area until it received, evaluated and approved comments from the Utah Geological Survey. We in turn made it clear that Mr. Christenson and Mr. Ashland of UGS would not be in a position to make their comments until they had received and reviewed Terracon's engineering evaluation.

In our letter dated September 9, 1998, we reaffirmed the fact that UGS would not be in a position to comment on the AGECE reports or upon Terracon's inclinometer data until it had received Terracon's engineering evaluation of the inclinometer data. We again suggested that you provide that engineering evaluation to us at your earliest convenience.

CHRISTENSEN & JENSEN

Gordon N. Duval  
Brian Haws  
September 10, 1998  
Page 2

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In summary, fundamental fairness dictates that the County not be charged with delay when it is only waiting for your geotechnical consultant to provide essential, additional data. We trust that you will take appropriate steps to inform your client that the County will act fairly and expeditiously, but only after it receives the material that both it and the Utah Geological Survey have requested.

Sincerely,

CHRISTENSEN & JENSEN, P.C.

A handwritten signature in black ink, appearing to read 'Craig V. Wentz', with a stylized, cursive flourish at the end.

Craig V. Wentz

CVW/tlc

cc. Joseph T. Dunbeck, Jr.  
Robert Mathis  
Gary E. Christenson

# DUVAL HANSEN WITT & MORLEY, P.C.

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JAMES "TUCKER" HANSEN  
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FORMERLY HARDING & ASSOCIATES, P.C.

September 17, 1998

Mr. Craig Wentz  
175 South West Temple  
Suite 510  
Salt Lake City, Utah 84062

Re: Gardner v. Wasatch County

Dear Craig:

The basis of our clients' hesitation to attend your meeting on September 30, 1998, stems from Wasatch County's actions after the July 17 meeting. In that meeting it was clearly stated that Wasatch County agreed that Ordinance 97-13 had expired, that no moratorium existed, and that applications for building permits from Canyon Meadows would be treated like any other application submitted in the county. However, this is not taking place.

Robert Perez, a lot owner in Canyon Meadows, has submitted an application for a building permit, has taken the permit through the appropriate departments and received their approval, including approval from Phil Wright for the septic system. However, after receiving the required approvals, Mr. Perez's application has been detained by the planning department until the Utah Geological Survey gives its comments on Canyon Meadows. This is certainly not the treatment that "any other" application would receive.

I understand from your letter of September 10, 1998, that it is Bob Mathis' position that until the UGS gives its comments the planning department will not finish processing building permit applications for Canyon Meadows. This directly contradicts what the county said in the July 17 meeting. First, at that meeting there was no mention whatsoever of requiring further test results for the applications to be processed and treated like any other application. The representatives of the homeowners association and I all understood the permits could be processed and approvals given.

Second, the county's own report done by AGECE clearly shows Canyon Meadows is stable and has a high safety factor. It is remarkable that the county is insisting on having the comments from the UGS in the first place. Nevertheless, we have not received any requests for information on the inclinometers from the UGS, and in fact we have been informed by Mr. Christenson that he is hesitant to give another evaluation of Canyon Meadows.

Third, with regard to the technical information and the inclinometer readings, it was first agreed that the engineers would exchange information without the need of going through the attorneys. The long delay referred to in your September 10 letter is only the result of a breakdown of communications on the part of your engineers. At the beginning of the study, Walt Jones was authorized to make available whatever raw data information was requested, and this fact was reemphasized to him again in the first part of August. However, Mr. Jones did not receive any requests for the inclinometer readings from your engineers or from the UGS. It was only after we received your request and in turn relayed it to Mr. Jones that he was aware you wanted the information. Terracon was authorized and willing to release any information it had completed, unlike your engineers who flatly refused to release the AGECE report when the homeowners requested it. As you recall, I had to call and discuss the release of the AGECE report with you before your engineers would provide that information to my clients.

Finally, your letter dated August 31, 1998, stated that you required the information by September 2. The readings were provided by September 3. Your clients have now had the inclinometer readings in their possession for nearly two weeks. If it is so important to the county that the UGS have the readings why can't the county just provide that information directly?

The homeowners association sees these delays as a retraction of commitments made by the county in the July meeting. The homeowners were told that their applications would be treated as any other, and yet they have clearly been subjected to defacto rejection. Even when they have passed this elevated standard of review, as Mr. Perez's application has, the planning commission still refuses to grant the building permit. With such a history to depend on, the homeowners are hesitant to spend the time and money to meet again with the county.

Since Ordinance 97-13 is no longer in effect and as the suit against the county is not a proper legal basis for refusing to issue a building permit, we are in the process of preparing a petition for writ of mandamus on the Perez application.

Craig Wentz  
September 17, 1998  
Page 3

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Mr. Perez has obtained the required approvals from the various county departments, including approval of the septic system from Phil Wright, and the only step remaining is for the planning department to carry out its ministerial function of issuing the permit.

If Wasatch County would comply with the representations it made in the meeting on July 17, 1998, it would not be necessary to go forward with the writ of mandamus and the homeowners would be more than willing to meet with the county on September 30. However, if the county will not comply with previous representations then the homeowners are placed in a position in which they must take whatever steps are necessary to secure their rights. Time is of the essence in this matter as the building season is quickly coming to a close. If the county's arbitrary and capricious delays of the building permits causes the 1998 season to be lost, as was the 1997 season, the lot owners will again suffer serious economic harm.

So you understand where our clients stand, I want you to know that if circumstances remain unchanged we will be filing our petition for writ of mandamus within the week. Please contact me so that we may discuss the matter and determine how you wish to proceed.

Sincerely,

DUVAL HANSEN WITT & MORLEY, P.C.



Gordon Duval

cc: Vic Orvis  
Joseph T. Dunbeck, Jr.  
Gary E. Christensen

c:\\*\*\orvis\federal\meeting.ltr

# Fax

**To:** Mark Mascaro  
**Of:** Kirton & McConkie  
**Fax:** 801-321-4893  
**Phone:** 801-328-3600  
**Pages:** 1, including this cover sheet.  
**Date:** September 18, 1998

Your letter of September 17, 1998, arrived by fax yesterday. **Your conclusion that the information verifies your presumptions that the mountainside is not sliding in the Canyon Meadows subdivision area is not correct!** It is too early to make that conclusion. You should use this material only after having it studied by your own experts. We have been advised by Frank Ashland of UGS that the report from AGECEC may not be conclusive and that the Terracon suggestion about a rebound may be inaccurate. An additional report is still due from Terracon before UGS will finish its recommendations. It was my hope that this matter would be concluded by now. It is not.

Cc: Joe Dunbeck, Craig Wentz, Frank Ashland,

From the desk of...

Robert A. Mathis  
Wasatch County Planner  
Wasatch County  
25 North Main Street

Heber City, Utah 84032  
801-654-3211  
Fax: 801-654-5116

SEP 17 '98 04:31PM KIRTON McCONKIE ETAL

P.2

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MARC N. MASCARO

FAX (801) 321-4093  
TELEPHONE (801) 326-3800  
E-Mail: mmascaro@kmcclaw.com

September 17, 1998

Via Facsimile: (435) 654-5116

Mr. Robert A. Mathis, AICP  
Wasatch County Planner  
25 North Main Street  
Heber City, UT 84032

**RE: Canyon Meadows Testing**

Dear Mr. Mathis:

I received your fax dated September 16, 1998, with the AGECE reports dated July 30<sup>th</sup> and August 10<sup>th</sup>, together with the Terracon report dated September 1, 1998. As you indicated, the reports are not conclusive at this point. Would you please let me know how soon you anticipate them finalizing their reports. I believe that the information date verifies our presumptions that the mountainside is not sliding in the Canyon Meadows Subdivision area.

Please contact me regarding this matter.

Sincerely,

KIRTON &amp; McCONKIE



Marc N. Mascaro

MNM:ep

cc: Arden Engebretsen

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September 22, 1998

Gordon N. Duvall  
DUVAL, HANSEN, WITT & MORLEY, P.C.  
110 South Main Street  
Pleasant Grove, Utah 84062

Re: *Gardner v. Wasatch County*

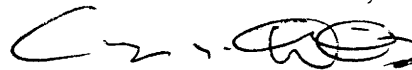
Dear Gordon:

This is just another reminder that it would be extremely helpful if we could receive Terracon's engineering analysis of the inclinometer data before our meeting on September 30. Could we aim for submission of your report by Friday, September 25<sup>th</sup>? That would give our consultant and the Utah Geological Survey time to evaluate Terracon's conclusions.

Please give me a call if you have any questions.

Sincerely,

CHRISTENSEN & JENSEN, P.C.



Craig V. Wentz

CVW/lm

cc Gary Christenson, Utah Geological Survey  
Joseph Dunbeck, Esq., Wasatch County  
James E. Nordquist