

# Planning Commission Staff Report

September 24, 2015

## Item 4

**Applicant:** Steve Fountaine  
& Lynn Bateman

**Location:** 866 E 1600 S

**Prepared by:** Sean Conroy,  
Community Development  
Director

**Public Hearing:** No

**Zone:** A-2

**Attachments:**

1. Application materials.
2. Zoning verification.

### REQUEST

To discuss a zoning verification letter issued by staff regarding property located at 866 East and 1600 South.

### BACKGROUND AND PROJECT DESCRIPTION

When property owners or potential buyers are interested in the legal status of a property, they can apply for a zoning verification with the City. When an application is filed, staff will research the history of the property and prepare a letter summarizing the history and indicating whether the parcel is considered a legal lot of record. Some of the questions staff researches include:

- When was the parcel created?
- What were the zoning and subdivision standards that were in place at the time of its creation?
- Was the parcel created through a legal subdivision process or through a process that was acceptable at the time of its creation?
- If the parcel was not created legally, what options exist to bring it into conformance?

The subject property consists of a 2.2 acre lot owned by Steve and Cynthia Fountaine that is developed with a single family residence, and a 2.09 acre parcel owned by Lynn Bateman that is undeveloped. The attached zoning verification letter was issued to Mr. Bateman on May 25, 2011. A summary of the findings of the letter include:

- The home on the Fountaine lot was originally built in 1939 with an addition remodel in 1980.
- Prior to 2003 the two parcels were combined into one.
- In 2003 a previous owner divided the property into two lots without applying for a subdivision with the City, and sold both lots.
- The creation of the two lots is considered an illegal subdivision. Neither lot is eligible for a building permit.

The following options were identified to rectify the illegality:

- Recombine the two lots into one lot. This option is difficult since both lots are owned by separate parties.
- Apply for a subdivision to legally plat each lot. This option is difficult for the property owners as it would likely require the installation of improvements along 1600 South along with other cost.

The Fountaines are attempting to sell their home. They contend that they were never sent a copy of the zoning verification letter and were unaware of its existence until a potential buyer of the home obtained a copy from the City. Both the Fountaines and Mr. Bateman are hoping for a reasonable solution.

## **EVALUATION**

**Zoning:** Both lots are located in the A-2 zone. This zone requires a minimum lot size of two acres and a minimum frontage of 200 feet on a city road. Both lots meet the minimum lot size requirement but the Bateman lot only has 185 feet of frontage. Mr. Bateman also owns the lot just west of the vacant lot that lacks frontage. He is willing to do a boundary line adjustment to give the vacant lot the needed frontage.

**Subdivision:** State law and City code both require that a subdivision plat be recorded whenever property is subdivided. The City's zoning verification letter accurately states that the creation of the two subject lots was not legal. A strict reading of City code would require the applicants to work together to prepare and record a subdivision plat. This would likely include:

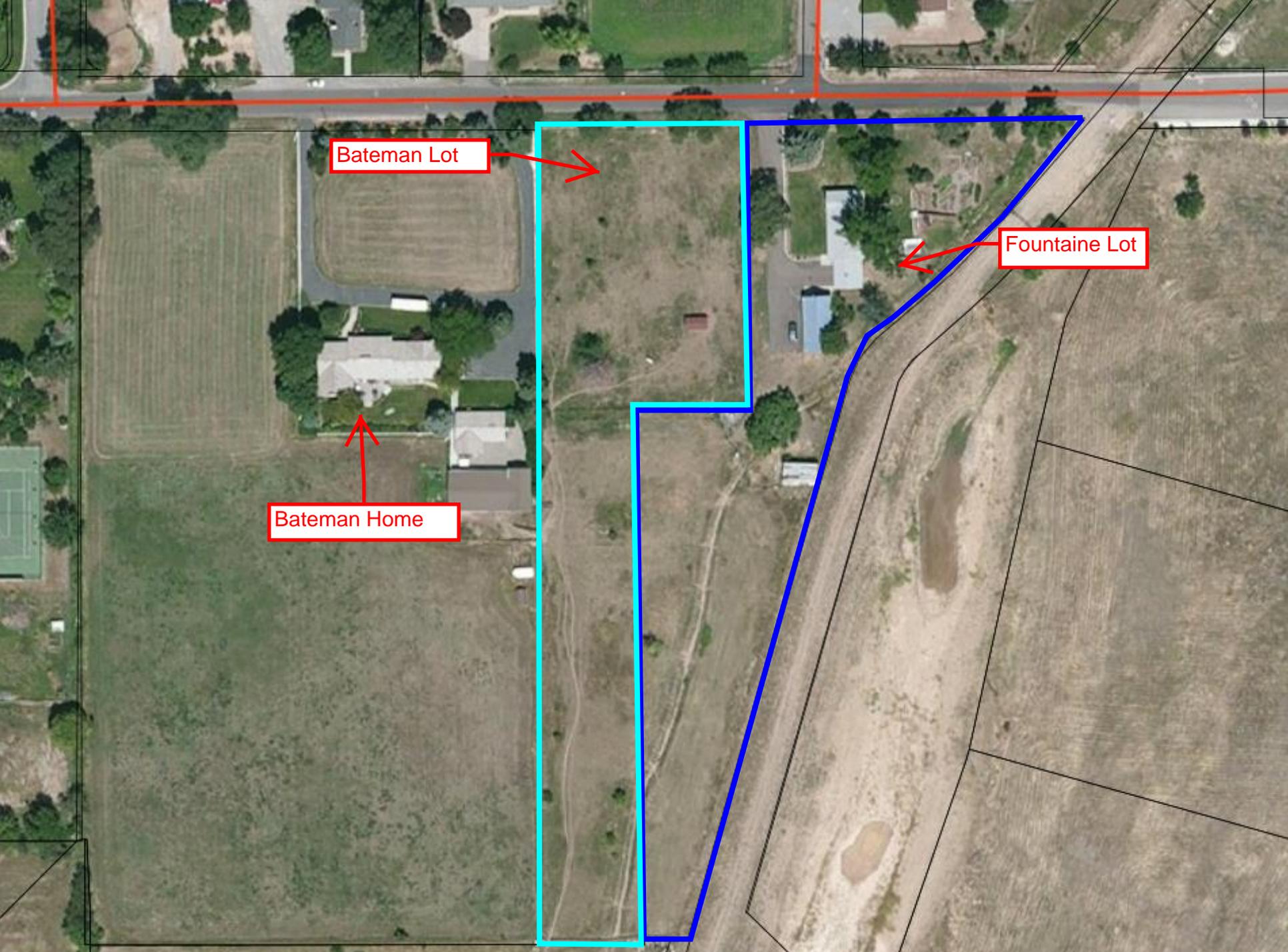
- Installation curb, gutter and sidewalk along both lots as well as street widening.
- Dedication of water shares for the vacant lot.
- Payment of impact fees for the vacant lot.

One possible option could include:

- Allow the Fontaine lot to be classified as a legal lot of record. The home on the lot has been there since 1939 and the lot meets the minimum size and width requirements.
- Require Bateman to do a boundary line adjustment to obtain the full 200' of frontage.
- Once someone is ready to build on the Bateman lot, a plat would need to be prepared for the vacant lot. This would include installation of improvements.

## **STAFF RECOMMENDATION**

Provide direction to staff and the applicant.



Bateman Lot

Fontaine Lot

Bateman Home

September 10, 2015

To: Mapleton City

From: Steven Fontaine

1016 E. 1600 S.

Mapleton, Ut 84604

Lot Size 2.2 acres

We purchased our property July 2010 and moved to Mapleton, Ut. In 2011 we had our property surveyed so that we could install a fence for animals. When the survey was finished the surveyor suggested that we have our survey signed by our neighbor Dr. Lynn Bateman. This was done.

Now fast forward to current time August 28<sup>th</sup> 2015. My family is moving and we have had our home for sale for one month. Our Agent found a buyer for our home and the sale was moving forward. However, the buyer went to Mapleton City to check on the home. While there he was told that the city would not allow anyone to get a permit to remodel or make building improvements. The buyer was told our lot was an illegal lot. Needless to say this information caused the buyer to back out of purchase of our home and we lost the sale of our property.

This information was passed on to us by our agent so I went down to the city to see why our buyer was given this information. That is when I talked to Sean Conroy about this issue.

In our due diligence when purchasing our home in 2010, neither ourselves, title company, or the bank that gave us the loan had any information as to what our buyer was told by Mapleton City.

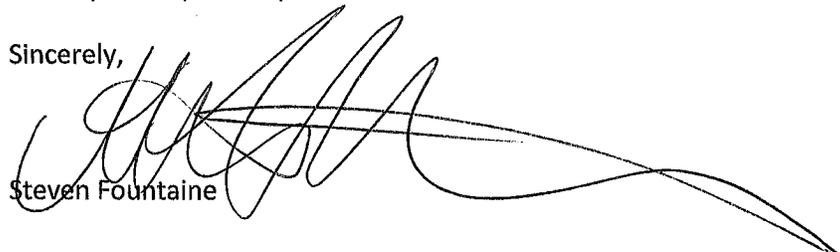
In short I was told by Sean Conroy that in 2003 the previous home owner sold 2.01 acres to Dr. Bateman and according to the city it was not done in the proper manner. In 2011 after I completed my survey Dr. Bateman went to the city to get a building permit for the lot and was told of the mistake.

I was never informed by Dr. Bateman or Mapleton City as to the outcome of meetings held in 2011 regarding the 2.01 acre lot and how it encumbered my property. However, since talking with Sean Conroy and Dr. Bateman we have been seeking a solution to remedy this oversight that will allow both lots to be recognized as legal. A solution has been suggested.

I respectfully request that my 2.2 acre lot be recognized as a legal lot. It is zoned A2 and meets all the requirements for this zoning. What was done by the previous owners and Dr. Bateman was not known to me, my title company, bank or any known associates.

Thank you for your help.

Sincerely,

  
Steven Fontaine



## MAPLETON CITY CORPORATION

May 25, 2011

Lynn Bateman  
866 East 1600 South  
Mapleton, UT 84664  
(801) 376-3444

**RE: Zoning Verification**  
**Utah County Parcel #: 27:034:0053**  
**Also Concerning Utah County Parcel #: 27:034:0054**

Dear Mr. Bateman,

As per your request, I am writing you concerning the above-mentioned parcels. We have compiled the following information:

1. According to Mapleton City records, the subject parcels are located in the A-2 (Agricultural-Residential) Zone. The minimum lot size for the A-2 Zone is 2 acres, with a minimum 200 feet of street frontage. According to Mapleton City zoning maps, the subject parcels have been zoned A-2 since approximately 1970. Prior to that time, from approximately 1950-1970, the parcel was zoned RA-1, which required a minimum lot size of 6,000 square feet, with a minimum 60 feet of frontage. Prior to 1950, Mapleton City did not have any zoning ordinances.
2. Mapleton City's Subdivision Code requires land splits to go through subdivision plat approval process with Mapleton City (See Mapleton City Code Title 17: DEVELOPMENT CODE, PART II; SUBDIVISIONS). Mapleton City's subdivision code was originally passed in 1971. The intent of the subdivision code is stated in Mapleton City Code 17.01.020: INENT:

*"The intent of this title is as follows:*

- A. To facilitate the orderly development of the city.*
- B. To implement the city's transportation and circulation element of the general plan.*
- C. To facilitate the development of a safe and efficient street system.*
- D. To facilitate the orderly transfer of the ownership of building sites in a manner consistent with state law.*
- E. To ensure adequate water, sewer, drainage, utilities, and other services to developing areas of the city.*

*F. To establish the rights, duties, and responsibilities of subdividers with respect to the development of subdivisions within the city.*

*G. To facilitate the development of a trail system.”*

3. Mapleton City Code 17.02.010: SUBDIVISION PLATS REQUIRED; TO BE RECORDED states: *“No person shall subdivide, as defined by section 17.32.010 of this title, any tract of land within the incorporated limits of the city; nor shall any person sell, exchange, purchase or otherwise convey a parcel of land which is part of a larger tract, if such sale or agreement would have the effect of creating a "subdivision" as defined by this title, unless and until a final plat, prepared in accordance with the provisions of this title, shall have been first considered by the planning commission and approved by the city council and recorded in the office of the county recorder.”*
4. The following information applies to parcel # 27:034:0053:
  - a. According to Utah County records, the parcel is currently owned by the Lynn L. Bateman, M.D. Inc. Pension Plan.
  - b. According to Utah County records, the parcel is approximately 2.001 acres in size, with approximately 185 feet of frontage on 1600 South Street.
  - c. According to Utah County records, the property is currently vacant (there is no home on the property).
  - d. According to Utah County records, the parcel was created by Warranty Deed (Entry # 81763 – 2003) from Clyde L. Willard & Dorothy S. Willard to the Lynn L. Bateman, M.D., Inc. Pension Plan, recorded May 30, 2003. This Warranty Deed also created current parcel # 27:034:0054 (see # 5 below for more information). Mapleton City has no record of approving this Warranty Deed. The parent parcel was parcel # 27:034:0004, also known as parcel # I 1996-A-A under the old Utah County parcel numbering system.
  - e. According to Utah County records, the parent parcel (parcel # 27:034:0004, also known as parcel # I 1996-A-A under the old Utah County parcel numbering system) was approximately 3.82 acres in size, with approximately 470 feet of frontage on 1600 South Street, and was created by Warranty Deed Entry #13222-1970 from Calvin W. Monk & Norma B. Monk to Ferris D. Earley & Afton Kay Earley, recorded December 16, 1970.
5. The following information applies to parcel # 27:034:0054:
  - a. According to Utah County records, the parcel is currently owned by Steven F. Fountaine, Cynthia Fountaine, and Dessa Lynn Fountaine.
  - b. According to Utah County records, the parcel is approximately 1.82 acres in size, with approximately 285 feet of frontage on 1600 South Street.
  - c. According to Utah County records, there is a single family home on the parcel (1016 East 1600 South) that was built in 1939, with an effective year built (i.e. addition or remodel) of 1980. According to Mapleton City records, a building permit (# 1843) for a carport was issued to Clyde L. Willard in November 1978. The legal description / site plan / parcel # submitted with the permit matches the legal description for former parcel # 27:034:0004, also known as parcel # I 1996-A-A under the old Utah County parcel numbering system. A special inspection for an electrical service change was approved for Clyde Willard on July 18, 2005. Mapleton City has no record of any other building permits being issued for the property. Prior to 1948, Mapleton City did not have an adopted building code, and did require building permits.
  - d. According to Utah County records, the parcel was created by Warranty Deed (Entry # 81763 – 2003) from Clyde L. Willard & Dorothy S. Willard to the Lynn L. Bateman, M.D., Inc. Pension Plan, recorded May 30, 2003. This Warranty Deed also created

current parcel # 27:034:0053 (see #4 above for more information). Mapleton City has no record of approving this Warranty Deed. The parent parcel was parcel # 27:034:0004, also known as parcel # I 1996-A-A under the old Utah County parcel numbering system.

- e. According to Utah County records, the parent parcel (27:034:0004, also known as parcel # I 1996-A-A under the old Utah County parcel numbering system) was approximately 3.82 acres in size, with approximately 470 feet of frontage on 1600 South Street, and was created by Warranty Deed Entry #13222-1970 from Calvin W. Monk & Norma B. Monk to Ferris D. Earley & Afton Kay Earley, recorded December 16, 1970.
6. Mapleton City Code 18.20.060(E): Illegal Lots states, in part: *“Any lot that does not meet the strict definition of a “zoning lot” as described in section 18.08.475 of this title, and has been created illegally, shall not be issued a building permit. Any home located on a lot that was created illegally, shall not be issued a building permit to expand, enlarge, or rebuild the home, or a building permit to construct an accessory building or structure.”*

#### **Conclusion:**

From the above facts, it is the opinion of Staff that parcels # 27:034:0053 and 27:034:0054 are illegal lots, due to the fact that they were split by Warranty Deed, and not by a subdivision plat approved by Mapleton City, and because parcel # 27:034:0053 does not meet the minimum frontage requirements for the A-2 zone, and parcel # 27:034:0054 does not meet the minimum acreage requirements for the A-2 zone. These lots shall not be issued any building permits until the situation is remedied by recombining the lots into the originally approved configuration (the configuration of former parcel # 27:034:0004), or by receiving subdivision approval from Mapleton City and recording a subdivision plat to subdivide the property. Any subdivision application must meet all of the requirements of Mapleton City’s zoning and subdivision ordinances, including, but not limited to: rezoning, right of way dedication, required improvements, Transferable Development Rights (TDR) usage, payment of impact fees, bonding, dedication of water shares, etc.

#### **Severability & Appeals:**

The statements and interpretations of Mapleton City Code sections given in this letter are hereby declared severable, and the invalidity of any statements in this letter shall not affect the validity or enforceability of any other statements or parts thereof (see Mapleton City Code 1.01.060: PROVISIONS SEVERABLE).

If you have any additional information that may affect the conclusions of this letter, please contact Mapleton City Community Development Department. Also, please keep in mind that you do have the right to appeal the above decisions to the Board of Adjustment by filing an application with the Board within a period not to exceed forty-five (45) days from the above date, as per Mapleton City Code 16.04.050: APPEALS TO BOARD; TIME; PERSONS ENTITLED; TRANSMISSION OF RECORDS.

If you have any questions about this determination, please call me at (801) 806-9108 or e-mail me at [mbrady@mapleton.org](mailto:mbrady@mapleton.org).

Sincerely,



Matt Brady  
Planner I



Cory Branch  
Planning Director