

Scott A. DuBois (7510)
PARSONS BEHLE & LATIMER
1441 West Ute Blvd., Suite 330
Park City, UT 84098
Telephone: (435) 962-9930
sdubois@parsonsbehle.com

If you do not respond to this document within applicable time limits, judgment could be entered against you as requested.

Jared C. Fields (10115)
Mustang Development, LLC
2720 Homestead Road, Ste. 200
Park City, UT 84098
Telephone: (435) 901-5376
jfields@mustangdevelopment.com

Attorneys for Plaintiffs

**IN THE FOURTH JUDICIAL DISTRICT COURT
WASATCH COUNTY, STATE OF UTAH**

**MUSTANG DEVELOPMENT, LLC, a
Utah limited liability company**

Plaintiffs,

v.

**TOWN OF HIDEOUT, a Utah
municipality,**

Defendant.

COMPLAINT

Tier 3

Civil No.

Honorable

Plaintiffs Mustang Development, LLC hereby submits the following Complaint against the Town of Hideout, a Utah municipality, as follows:

PARTIES, JURISDICTION, AND VENUE

1. Mustang Development, LLC (“Mustang”) is a Utah limited liability company, with its principal place of business in Summit County, Utah.

2. Town of Hideout (the “Town”) is a Utah municipality. The Town is located in Wasatch County, Utah.

3. Jurisdiction is proper in this Court pursuant to UTAH CODE § 78A-5-102 and UTAH CODE § 10-9a-509.5(2)(e).

4. Venue is proper in this Court pursuant to UTAH CODE §§ 78B-3-301 and 78B-3-307.

5. Under the Utah Rules of Civil Procedure, Plaintiff files this Complaint as a Tier 3 Complaint because the economic impact of the actions giving rise to the complaint exceeds \$300,000.

MASTER DEVELOPMENT AGREEMENT AND VESTED LAWS

6. Mustang is a real estate development company with extensive experience developing residential and commercial property. For over 20 years, Mustang has been centrally involved in the development of property on the east side of the Jordanelle Reservoir, in what is now incorporated as the Town of Hideout.

7. The Town was incorporated as a municipality of the State of Utah in 2008.

8. In March 2010, Mustang and the Town of Hideout entered into a formal development agreement, titled “Master Development Agreement for the Hideout Canyon Master Planned Community,” and referred to herein as the MDA. The MDA replaced and superseded previous development agreements between Mustang and the Town.

9. The MDA was recorded in the official records of Wasatch County as Entry 360737 on July 9, 2010, and it remains in effect.

10. The MDA was adopted subject to, and Mustang's rights became vested under, Hideout's Municipal Code as it existed at the time the MDA was adopted (referred to herein as the "Vested Laws").

11. Generally speaking, the Vested Laws are the original Town Code adopted by the Town of Hideout's Town Council in Ordinance 09-07 on or about March 25, 2009.

12. The Vested Laws included several provisions that gave effect to and regulated the terms of development agreements between the Town of Hideout and developers of property within the Town.

13. For example, Section 10.03.501 provided that a "developer/property owner and the town may enter into a development agreement that outlines the duties, responsibilities, obligations, commitments and promises of the developer/property owner and the commitments of the town."

14. The Vested Laws also provided, at Section 10.03.502(5), that a development agreement "may provide limitations on the number of building permits issued and/or phases of the project to be approved subject to the completion of the improvements."

15. The Vested Laws further provided that a development agreement "shall include any provisions for security for completion of the subdivision improvements and/or schedule of utility construction and restoration bond requirements[.]" (§ 10.03.502(7))

16. Pursuant to the Vested Laws, the MDA between the Town and Mustang included certain limited conditions on the issuance of building permits and certificates of occupancy in the areas of property that are subject to the MDA.

17. Specifically, paragraph 10.6.1 of the MDA provides that “no permanent Certificate of Occupancy shall be issued by the Town and no residential occupancy shall be permitted unless all infrastructure (except for [landscaping]) required pursuant to an approved Development Application are [*sic*] installed and Substantially Complete.” The term “Substantially Complete” under the MDA means “a point in the progress of a construction project where the work has reached the point that it is sufficiently complete such that any remaining work will not interfere with the intended use or occupancy of the project. For work to be substantially complete it is not required that the work be 100% complete.”

THE TOWN APPROVED THE GOLDEN EAGLE SUBDIVISIONS

18. In recent years, Mustang has planned and begun development of a new subdivision within the Town of Hideout, in the hills to the east and north of State Highway 248. The new subdivision is known as Golden Eagle, and the property boasts unparalleled views of the Jordanelle Reservoir, Mount Timpanogos, and the Bald Mountain/Deer Valley area.

19. The Golden Eagle subdivision is a planned residential community with large lots designed for upscale luxury homes. The real estate is highly desirable, eminently marketable, and very valuable. Currently, an average price for a building lot in Golden Eagle ranges from approximately \$410,000 to over \$750,000.

20. In June 2017, both the Planning Commission of the Town of Hideout and the Town Council considered the development plan for Golden Eagle.

21. On June 20, 2017, the Planning Commission for the Town of Hideout held a meeting, at which one item for public hearing was to consider the Golden Eagle development

plan.¹ The Planning Commission unanimously approved a motion to send the Golden Eagle subdivision plan to the Town Council.

22. On June 29, 2017, the Town Council held a special meeting to consider the Golden Eagle subdivision plan.

23. The Town Council considered the Golden Eagle subdivision plan. The minutes reflect that a principal discussion item was the responsibility for plowing the subdivision's roads in the winter. As a result, the Town Council approved the subdivision plan subject to a single condition: "conditional on the Applicant contributing \$5,000 a year to assist in snow plowing cost until the development is fifty percent (50%) built out (completed buildings)."²

24. No other conditions were imposed on the Town's approval of the Golden Eagle subdivision plan in June 2017.

25. In 2018, Mustang Development submitted subdivision plats to the Town consistent with the approved Golden Eagle subdivision plan. For plat recording purposes, the area was divided into three phases.

26. Phase 1 of Golden Eagle was submitted in April 2018, and was signed by the Mayor and Town Attorney among other required municipal approvals before being recorded with Wasatch County on May 17, 2018.

27. On July 19, 2018, Mustang submitted the applications for approval of Phases 2 and 3 of the Golden Eagle to the Town. The plats were signed by the Mayor and the Town Attorney

¹ Formally, the proposal in June 2017 was an amendment of an earlier proposed development plan for Golden Eagle.

² The Town has not yet assumed responsibility for plowing roads in Golden Eagle; as a result, no payment toward plowing costs has yet been made.

among other required approvals before each being recorded with Wasatch County on March 28, 2019.

28. Collectively, the Golden Eagle subdivisions, as amended, include 315 residential lots. Many of these lots have already been sold to purchasers who intend to construct homes.

29. Since approval of the plats and subdivisions phases, Mustang has devoted substantial resources to actively construct significant improvements and infrastructure to serve the Golden Eagle subdivisions (e.g., roads, water infrastructure, sewer infrastructure).

30. At this juncture, all infrastructure is substantially complete, as that phrase is defined in the MDA.

**THE TOWN ARBITRARILY AND WITHOUT LEGAL BASIS REFUSED TO ISSUE
BUILDING PERMITS IN THE GOLDEN EAGLE SUBDIVISIONS**

31. In early 2022, despite previously issuing building permits, the Town communicated to multiple individual parties that it would no longer issue building permits to any applicant in the Golden Eagle subdivision.

32. That refusal was without any proper basis and was contrary to the Vested Code applicable to the subdivision or the MDA itself.

33. In addition to refusing to issue building permits to applicants, the Town also informed parties who were considering purchasing lots in the Golden Eagle subdivisions, and their real estate agents and brokers, that no building permits would be issued in Golden Eagle.

34. The actual reason that the Town stopped issuing building permits was in retaliation for Mustang bringing an unrelated lawsuit against the Town and Town officials, including Thomas Eddington and Mayor Philp Rubin.

35. Representatives of the Town including its Director of Engineering/Public Works, Timm Dixon, told applicants that “no permits are going to be given while the town is in Litigation with Golden Eagle [*sic*] per our Town Attorney request.”

36. This unlawful and improper reason was repeated on several occasions by Mr. Dixon.

37. The Town and Mustang are currently parties to another litigation matter commenced by Mustang as a result of public misrepresentations by Mr. Eddington and Mayor Rubin regarding Mustang’s remaining density and development rights in the Town of Hideout (the “Density Lawsuit”).

38. The pendency of the Density Lawsuit has no connection to the issuance of building permits in Golden Eagle and is not a lawful basis to deny building permits.

39. The Town of Hideout and its representatives are using a variety of pretexts to justify what is ultimately a policy of deliberately obstructing development by Mustang. Indeed, the refusal to issue building permits in Golden Eagle appears to be either retribution for filing of the pending lawsuit or an effort to gain unfair leverage in that unrelated litigation, or both.

40. Mustang has suffered substantial damages as a result of lost sales caused by the Town’s actions, including harm to relationships with individuals that have purchased lots and are unable to secure building permits, lost sales and harm to its reputation in the Summit and Wasatch County real estate communities.

41. As a result of the Town’ actions, Mustang filed a lawsuit against the Town on February 4, 2022, regarding its improper refusal to issue building permits (the “Permit Lawsuit”).

42. In connection with the Permit Lawsuit, Mustang filed a Motion for Temporary Restraining Order and Preliminary Injunction on March 30, 2022 (the “First TRO”).

43. On July 7, 2022, the Court entered an Order granting the First TRO. In its Order, the Court ruled as follows:

The Court concludes that Plaintiff is likely to prevail on its claim that the Defendant’s blanket refusal to issue building permit in the Golden Eagle subdivision is improper and appears to be in retaliation for Mustang bringing unrelated litigation against the Town. The evidence before the Court is that an official of the Town stated that “no building permits are going to be issued in this development while we are in litigation with the developer.” The Court finds this statement and reason for denying building permits to be problematic, inappropriate and prohibited by law. In addition, the Court finds that the other reasons offered by the Town in connection with the TRO and Injunction for the refusal to issue building permits came after the fact, are not supported by evidence or admissible testimony and that the reason stated in writing by the town official is sufficient to create an inference that the reasons that are being offered now by the Town for the blanket refusal to issue building permits are *appear to be* pretextual ***based upon the information produced by Plaintiff regarding prior testing that has been conducted, and prior permits that have been issued.*** As such, the Court finds that there would be a substantial likelihood that Mustang would prevail on the merits of the underlying claim. [Emphasis in original].

44. The Court also held that “if the Town is not restrained from making a blanket denial with regard to the issuance of building permits within the Golden Eagle development based on pending litigation between the Town and Mustang Development, Mustang Development will suffer ongoing irreparable harm.”

45. Unfortunately, after the First TRO was issued, the Town doubled down and issued a number of pretextual reasons to deny building permits.

46. Accordingly, on March 3, 2023, Mustang filed a Second TRO (the “Second TRO”), seeking a restraining order and injunction preventing the Town from relying on the new pretextual reasons for denying building permits.

47. On June 28, 2023, the Court granted the Second TRO. In so doing, the Court stated:

Given the history and context of this case, and in light of the briefing and arguments of the parties as well as the evidentiary hearings held in this matter, the Court finds that each of the requirements identified by Plaintiffs are not appropriate bases that the Town can use to avoid issuing building permits within Plaintiffs' development of Golden Eagle.

48. After the Order granting the Second TRO was entered, the Town began issuing building permits to property owners in Golden Eagle.

**THE TOWN DOUBLES DOWN AGAIN AND IS NOW IMPROPERLY REFUSING TO
ISSUE CERTIFICATES OF OCCUPANCY**

49. The owner of lot 67 in Golden Eagle named John Blamer received a building permit before the Town changed its policy and stopped issuing building permits, as set forth above. Mr. Blamer then constructed his home and it was completed several months ago.

50. However, the Town had refused to issue a CO to Mr. Blamer after his home was fully constructed, citing the same pretextual reasons it had been using to attempt to deny building permits.

51. Ultimately, after the Court's ruling regarding the Second TRO, on or about August 4, 2023, the Town finally issued a CO to Mr. Blamer, allowing him and his family to move into their home.

52. However, despite the Court's Order regarding the Second TRO, and issuing Mr. Blamer a CO, the Town has now taken the position that it will not issue COs to any property owner in Golden Eagle.³

³ The Town has issued a public statement regarding issuance of COs on August 3, 2023, stating that it will follow the requirements of the MDA, which states that COs will be issued when all infrastructure is complete. However, both before and after issuing the public statement, the Town has consistently taken

53. For example, Timm Dixon, the Town's Director of Engineering, told a Golden Eagle property owner on August 4, 2023 that no COs would be issued unless and until the Town decided to formally accept ownership of all infrastructure in Golden Eagle, regardless of whether the infrastructure is substantially complete. This statement is contrary to the MDA and the Vested Code. Acceptance of the infrastructure by the Town, that could be delayed or refused by the Town, is not the appropriate standard for the issuance of COs. Instead, as noted above, the standard is whether the infrastructure is substantially complete.

54. In addition, despite repeated requests to the Town to clarify its position in writing on this topic - namely asking for a "yes or no" affirmation that the infrastructure is complete and regarding whether COs would be issued or not - both the Town attorney, Polly McLean and Mayor Rubin have refused to directly respond.

55. And, despite the Court's ruling on the Second TRO, Ms. McLean has put in writing that it is the Town's position that the infrastructure in Golden Eagle is not substantially complete. The obvious effect of this position is that COs will not be issued by the Town.

56. Mr. Rubin has issued similar statements in public meetings.

57. The Town has provided no explanation or rationale for its position that the infrastructure is not substantially complete, as that phrase is defined in the MDA.

58. The refusal to issue CO's is the Town's "new battleground" in its ongoing campaign to use the power of government to deny legitimate property rights, all in retaliation for Mustang's ongoing litigation with the Town and Mr. Rubin.

the position that it will not issue COs in meetings and direct email correspondence with Mustang and property owners.

59. The refusal to take a clear position on whether the infrastructure is complete and whether COs will be denied on that basis has created a cloud of uncertainty over development rights in Golden Eagle.

60. For example, potential purchasers of property have refused to complete transactions to purchase property in Golden Eagle because they have been told that the Town will not issue COs once construction of homes in Golden Eagle is completed.

61. In addition, individual owners of lots have elected to not apply for building permits because they have concluded that it would make little sense to obtain a building permit and spend significant money constructing a home if the Town will not issue COs and they would be prevented from moving into their home.

62. Other property owners are actively trying to sell their lots in Golden Eagle because of the uncertainty caused by the Town's ongoing animosity, retaliation and attacks on development rights in Golden Eagle.

63. Mustang has suffered damages as a result of lost sales caused by the Town's actions, including harm to relationships with individuals that have purchased lots and are unable to secure COs when homes are built, lost past and future sales and harm to its reputation in the Summit and Wasatch County real estate communities. The amount of damages will be demonstrated at trial, but is no less than \$10,000,000.

**FIRST CAUSE OF ACTION
(Breach of Contract)**

64. Plaintiffs reincorporate the preceding paragraphs as if fully set forth herein.

65. The MDA is a binding contract between Mustang and the Town of Hideout.

66. The MDA directs that COs cannot be denied if the infrastructure in Golden Eagle is substantially complete.

67. The infrastructure is substantially complete.

68. The Town, in refusing to affirm that it will issue COs because infrastructure is not substantially complete constitutes a material breach of the terms of the MDA.

69. The Town, in stating its position that the infrastructure in Golden Eagle is not substantially complete could reasonably be interpreted to mean that it will not perform its contractual obligation to issue COs and thus constitutes an anticipatory breach of the MDA.

70. Mustang has been damaged as a result of the Town's breach of the MDA. The amount of damages will be demonstrated at trial, but is no less than \$10,000,000.

71. Mustang is also entitled to an award of its attorney fees incurred in this matter.

**SECOND CAUSE OF ACTION
(For Preliminary and Permanent Injunctive Relief)**

72. Plaintiffs reincorporate the preceding paragraphs as if fully set forth herein.

73. As set forth above, the Town's new attack on Mustang's property rights and breach of the MDA have caused and will continue to suffer irreparable harm.

74. The infrastructure in Golden Eagle is substantially complete and the Town has no basis to deny COs under the MDA and vested laws.

75. Despite this fact, the Town is taking the position that infrastructure is not complete and that it will not issue COs until the infrastructure is accepted by the Town, in contravention of the MDA.

76. The Town ongoing deprivation of property owners' right to receive a CO and to reside in their property is based on unlawful pretexts and falsehood.

77. The Town should be preliminarily and permanently enjoined from enforcing conditions and restrictions on issuing COs that are not valid under the MDA, Vested Laws, or other applicable law.

**THIRD CAUSE OF ACTION
(For Intentional Interference With Prospective Economic Relations)**

78. Plaintiffs reincorporate the preceding paragraphs as if fully set forth herein.

79. The Town, through its authorized representatives, has willfully misrepresented that COs cannot be issued because infrastructure in Golden Eagle is not substantially complete, which is false.

80. This conduct constitutes interference with economic relations through an improper means.

81. The Town was aware of such current or prospective economic relationships between purchasers of lots in Golden Eagle and Mustang and/or its assigns, and made such misrepresentations with the intent to impede such relationships and cause damage to Mustang.

82. Mustang has in fact suffered damage in the form of lost transactions, lost future transactions and damage to its reputation as a result of the Town's misrepresentations.

**FOURTH CAUSE OF ACTION
(For Breach of the Covenant of Good Faith and Fair Dealing)**

83. Plaintiffs reincorporate the preceding paragraphs as if fully set forth herein.

84. The Master Development Agreement is a binding contract between Mustang and the Town of Hideout.

85. Inherent in the MDA, as in all contracts, is an implied covenant of good faith and fair dealing.

86. The Town of Hideout, in imposing restrictions on obtaining COs as set forth in the MDA, as governed by the Vested Laws, has materially breached the covenant of good faith and fair dealing.

87. The Town's actions have been clearly intended to deprive Mustang of the benefits bargained for in the MDA.

88. Mustang has suffered damages as a result of the Town's bad faith actions and is entitled to compensation in an amount to be demonstrated at trial, but not less than \$10,000,000.

WHEREFORE, Mustang respectfully pray for the following relief:

1. For a relief under each of the causes of action set forth above;
2. For damages in an amount to be determined at trial;
3. For an award of its attorney fees;
4. For preliminary and permanent injunctive relief; and
5. For such other relief as this Court deems appropriate.

DATED this 11th day of August, 2023.

/s/ Scott A. DuBois

Scott A. DuBois

Jared C. Fields

Attorneys for Plaintiffs

Plaintiffs' Address:
2720 Homestead Road, Suite 200
Park City, UT 84098