Planning and Development Services
860 Levoy Drive, Suite 300 • Taylorsville, UT 84123
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Emigration Canyon Planning Commission

Public Meeting Agenda

Thursday, March 12, 2026, 8:30 A.M.

Location:
Microsoft Teams meeting
https://teams.microsoft.com/meet/26242065572715?p=d6AJyIbFAIG5NzianD
Meeting ID: 262 420 655 727 15
Passcode: 6Av76Ki7
Dial in by phone
+1 213-357-4434,,181369850# United States, Los Angeles
Find a local number
Phone conference ID: 181 369 850#

Anchor Location: Emigration Canyon Fire Station
5025 Emigration Canyon Road

UPON REQUEST, WITH 5 WORKING DAYS NOTICE, REASONABLE ACCOMMODATIONS FOR QUALIFIED INDIVIDUALS MAY BE PROVIDED. PLEASE CONTACT WENDY GURR AT 385-391-8268.
TTY USERS SHOULD CALL 711.

The Planning Commission Public Meeting is a public forum where, depending on the agenda item, the Planning Commission may receive comment and recommendations from applicants, the public, applicable agencies and MSD staff regarding land use applications and other items on the Commission's agenda. In addition, it is where the Planning Commission takes action on these items, which may include: approval, approval with conditions, denial, continuance, or recommendation to other bodies as applicable.

BUSINESS MEETING

1) Planning Commissioner Training – Conditional Uses. **Counsel:** Claire Gillmore
2) 19.84 Conditional Use Ordinance Update. (Discussion Only)
3) Approval of December 11, 2025, January 8, and February 12, 2026, Planning Commission Meeting Minutes. (Motion/Voting)

Next meeting date: April 9, 2026

ADJOURN

Rules of Conduct for Planning Commission Meetings

PROCEDURE FOR PUBLIC COMMENT

1. Any person or entity may appear in person or be represented by an authorized agent at any meeting of the Commission.

2. Unless altered by the Chair, the order of the procedure on an application shall be:

   a. The supporting agency staff will introduce the application, including staff's recommendations and a summary of pertinent written comments and reports concerning the application.

   b. The applicant will be . up to 15 minutes to make their presentation.

   c. The Community Council representative can present their comments as applicable.

   d. Where applicable, persons in favor of, or not opposed to, the application will be invited to speak.

   e. Where applicable, persons opposing the application, in whole or in part will be invited to speak.

   f. Where applicable, the applicant will be allowed 5 minutes to provide concluding statements.

   g. Surrebuttals may be allowed at the discretion of the Chair.

CONDUCT FOR APPLICANTS AND THE PUBLIC

1. Speakers will be called to the podium by the Chair.

2. Each speaker, before talking, shall give his or her name and address.

3. All comments should be directed to the Commissioners, not to the staff or to members of the audience.

4. For items where there are several people wishing to speak, the Chair may impose a time limit, usually 3 minutes per person, or 5 minutes for a group spokesperson. If a time limit is imposed on any member or spokesperson of the public, then the same time limit is imposed on other members or spokespersons of the public, respectively.

5. Unless otherwise allowed by the Chair, no questions shall be asked by the speaker or Commission Members.

6. Only one speaker is permitted before the Commission at a time.

7. The discussion must be confined to essential points stated in the application bearing on the desirability or undesirability of the application.

8. The Chair may cease any presentation or information that has already been presented and acknowledge that it has been noted in the public record.

9. No personal attacks shall be indulged in by either side, and such action shall be sufficient cause for stopping the speaker from proceeding.

10. No applause or public outbursts shall be permitted.

11. The Chair or supporting agency staff may request police support to remove offending individuals who refuse to abide by these rules.

12. After the public comment portion of a meeting or hearing has concluded, the discussion will be limited to the Planning Commission and Staff.

Effective 11/6/2025

10-20-506 Conditional uses.

(1)

(a) A municipality may adopt a land use ordinance that includes conditional uses and provisions for conditional uses that require compliance with objective standards set forth in an applicable ordinance.

(b) A municipality may not impose a requirement or standard on a conditional use that conflicts with a provision of this chapter or other state or federal law.

(2)

(a)

(i) A land use authority shall approve a conditional use if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards.

(ii) The requirement described in Subsection (2)(a)(i) to reasonably mitigate anticipated detrimental effects of the proposed conditional use does not require elimination of the detrimental effects.

(b) If a land use authority proposes reasonable conditions on a proposed conditional use, the land use authority shall ensure that the conditions are stated on the record and reasonably relate to mitigating the anticipated detrimental effects of the proposed use.

(c) If the reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards, the land use authority may deny the conditional use.

(3) A land use authority's decision to approve or deny conditional use is an administrative land use decision.

(4) A legislative body shall classify any use that a land use regulation allows in a zoning district as either a permitted or conditional use under this chapter.

Renumbered and Amended by Chapter 15, 2025 Special Session 1

Advisory Opinion 271

Parties: Lauren Halcik / Summit County

Issued: June 13, 2023

TOPIC CATEGORIES:

Appealing Land Use Decisions

Conditional Use Applications

Interpretation of Ordinances

A conditional use proposal was not inconsistent with the stated purpose of the County's development code because the proposed use was expressly anticipated by the list of conditional uses allowed in the zoning district, and the County appropriately approved the conditional use permit by finding that the conditions imposed achieved compliance with its enacted standards.

A procedural error cannot be the basis for overturning a land use decision on appeal unless it is shown that there is a reasonable likelihood that the legal defect changed the outcome of the proceeding. Approval of a conditional use is an administrative decision, in which the consent of neighboring landowners may not be a factor. Because the County's decision complied with its standards and was supported by substantial evidence, an alleged defect in public hearing requirements found in local ordinance was not reasonably likely to have changed the outcome of the administrative proceedings, especially where public input was still considered, and cannot be the basis for reversing the County's decision.

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Division Director, Office of the Property Rights Ombudsman

ADVISORY OPINION

Advisory Opinion Requested By:	Lauren Halcik
Local Government Entity:	Summit County
Applicant for Land Use Approval:	Brendan and Carly Coyle
Type of Property:	Agricultural
Date of this Advisory Opinion:	June 13, 2023
Opinion Authored By:	Richard B. Plehn, Attorney Office of the Property Rights Ombudsman

ISSUES

Did Summit County properly approve a conditional use permit in an agricultural zone for a proposed "farm-to-table" cidery/distillery with capacity for events and overnight accommodations?

SUMMARY OF ADVISORY OPINION

Conditional use applications are administrative decisions, and must be approved if compliance with enacted standards can be achieved by imposing reasonable conditions on reasonably anticipated detrimental effects, if any. State law does not require public hearings for administrative proceedings, but cities and counties may choose to require public hearings in their ordinances, although the consent of neighboring landowners may not be a factor for approval or denial. The role of public input, then, in administrative conditional use proceedings, is usually limited to providing factual information that could help the land use authority evaluate compliance with its standards. In challenging a land use decision on some procedural error, the challenging party must show a reasonable likelihood that the legal defect changed the outcome of the proceeding.

Here, Summit County properly approved a conditional use permit for a cidery/distillery where the proposed use was anticipated by the zoning district's allowance for microbreweries and guest lodges as conditional uses, the County made appropriate findings that existing road facilities could accommodate increased traffic, and the County imposed reasonable conditions to achieve

compliance with its standards, including conditions supported by information provided from public input. Because the County's decision complied with its standards and was supported by substantial evidence, an alleged deviation from local ordinance on specific public hearing requirements would not have changed the outcome of the proceedings, especially where public input was still considered, and cannot be the basis for reversing the County's decision.

EVIDENCE

The Ombudsman's Office reviewed the following relevant documents and information prior to completing this Advisory Opinion:

1. Request for Advisory Opinion submitted by Blaine K. Anderson, on November 2, 2022.
2. Letter from Matthew Holmes, on behalf of the City of Hyrum, on November 9, 2022.
3. Email from Blaine K. Anderson, on November 10, 2022.
4. Email from Matthew Holmes on November 18, 2022, with attached letter from Hyrum Irrigation Company, dated November 10, 2022.

BACKGROUND

Brendan and Carly Coyle own a 20-acre parcel in Marion, a community in unincorporated area of Summit County ("County"). The Coyles' property is located in the Eastern Summit County Planning District, in the Agricultural-10 or AG-10 zone, just off of SR 32. Lauren Halcik is a nearby Marion resident that also lives on SR 32.

The Coyles submitted an application for a conditional use permit for a project named the "Dendric Estates Cidery," and described as a "farm-to-table estate cidery, with food and beverage tasting room and three overnight guest rooms." The application requested: 1) fifteen of the twenty acres to be planted with apple trees; 2) construction of a 3,350 square foot facility to process the apples; 3) construction of a 3,000 square foot tasting room; 4) construction of two greenhouses; and 5) construction of three guest rooms of approximately 700 square feet, each.[1] The applicants also proposed to make the facility available for events such as meetings, conferences and weddings.

Staff reports noted that the property was already being put to use for agricultural purposes, a permitted use in the AG-10 zone, while Distilleries and Guest Ranches are conditional uses in the AG-10 zone. The Staff report concluded that the proposed conditional uses would comply with the County's standards if certain conditions of approval were imposed, and recommended approval of the conditional use permit, as conditioned in the staff report.

The County scheduled a public hearing for October 6, 2022 before the Eastern Summit County Planning Commission to consider the application. Prior notice of the public hearing was mailed to surrounding property owners according to County ordinance, including the Halciks. The notice indicated that the meeting was being held electronically, via Zoom, and provided instructions on how the public could attend and participate in the meeting remotely, or obtain in-person assistance from staff at the designated "anchor" location where the zoom meeting would be broadcast,

[1] This last item was not part of the application as initially submitted, but was added in response to comments from the Planning Commission.

identified as the Ledges Center in Coalville. The notice did not otherwise identify a single physical meeting location where commissioners and other meeting participants would all be present. Upon receiving the notice, Ms. Halcik called County offices to find out that the meeting would actually be held in person at the Summit County Services building in Kamas, which was also to serve as the anchor location for the electronic meeting. The County later corrected the anchor location when it published the agenda ahead of the October 6th meeting.[2]

At the October 6th public hearing, following a presentation by the Coyles, the Commission opened up the meeting to public comment, where members of the public physically present at the meeting spoke both in favor of the application and against it, including comments by Mr. Halcik. The Planning Commission also took several comments from people online attending the meeting remotely. The Planning Commission then noted that it closed public comment and discussed the proposal and several conditions with the applicants, and as a result of the meeting, the applicants indicated that they would return with a modified proposal.

The application was scheduled for consideration at the next Planning Commission meeting on October 20, 2022, and when the commission called that item on the agenda, the planner presenting stated his assumption that most of the people in attendance at the meeting were there for that application. However, the Commission did not open the meeting up for public comment because it determined that a public hearing was previously held on October 6th, and it had formally closed public comment at the prior meeting, and because the October 20th meeting was not noticed as a public hearing, the County could not "reopen" public comment without first continuing the matter for a later meeting and re-noticing the meeting as a public hearing.

The presenting planner did note, however, that following the October 6th meeting, word of the proposal spread among the community, and planning staff received several emails from residents expressing concerns and issues about the project and urging the Commission to not approve the permit. The presenter noted that these emails were forwarded to the commission members, and then provided a summary of the emails, stating that "most of the concerns resolved [sic] around traffic on SR 32, lights, noise and impacts on the neighbors or those types of things."[3] It was then noted that as the commission had instructed staff to go back and revise the conditions of approval, these public concerns were taken into account with the revised conditions which were now being presented to the Planning Commission for consideration at the October 20th meeting.

The Planning Commission therefore considered the revised conditions of approval contained in the new staff report, and approved the conditional use permit with several stated conditions, including hours of operation, lighting, parking, privacy fencing, and certain limitations on nighttime events and outdoor music.

The Halciks and several other nearby residents filed appeals of the Planning Commissions approval of the conditional use permit. Ms. Halcik also requested an Advisory Opinion from this Office as to whether the County's approval was proper.

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[2] *Agenda, Eastern Summit County Planning Commission meeting October 6, 2022*, (published September 30, 2022), https://www.summitcounty.org/AgendaCenter/ViewFile/Agenda/_10062022-3633.
[3] Transcript of October 20, 2022 Eastern Summit County Planning Commission Meeting, pages 4–5.

ANALYSIS

Ms. Halcik asks for an opinion as to whether the County's approval of the conditional use permit was proper in light of several challenges that were raised on appeal: (1) that the proposed use is not consistent with the purpose of the County Code, (2) that the evidence addressing parking concerns was insufficient, and (3) that the public input process was not adequate.

As addressed below, we conclude that (1) the proposed use complies with the County's standards, as conditioned, (2) the County's decision was proper and supported by substantial evidence, and (3) based on these conclusions, because the public in fact participated in the proceedings, any alleged deficiency in public notice or hearing requirements would not have changed the outcome, and the County's decision cannot therefore be challenged on any alleged procedural error.

I. Purpose Statements Are Informed by the Specifics of Enacted Standards

Ms. Halcik first looks to the Eastern Summit County Development Code's "Statement of Purpose," section 11-1-1, which states that "all development and change within Eastern Summit County will occur in a manner that is consistent with the goals and expectations of residents," and that "new development will not bring about change that is inconsistent with the underlying community values and resources." SUMMIT COUNTY CODE § 11-1-1.

Ms. Halcik asserts that in conversations with local residents and neighbors, "over 600 signatures were gathered from neighbors identifying that an event center/guest lodge or ranch, intended to draw patrons on a daily basis, that offers alcohol consumption at large gatherings is ***not consistent with our underlying community values.***" (emphasis in original).[4] Ms. Halcik argues that "the purpose of the code outlined in Summit County Code 11-1-1 . . . should supersede the nuanced details disclosed within the code, as *the code exists to protect rural Summit County and its residents.*" (emphasis in original).[5]

To discern the meaning of "community values" as stated in the County Code's statement of purpose, it is unnecessary to poll residents every single time there is a land use application to consider. Rather, the meaning of purposes language like this is contained in the code itself, in the resulting standards that have been enacted to implement the stated policy.

In *Price Development Co. v. Orem City*, the Utah Supreme Court discussed the role of legislative statements of purpose as compared with the operative provisions. 2000 UT 26. Distinct sections of purpose, found in many ordinances and statutes, serve as a "preamble" to the operative provisions of a statute, and "as such, a preamble is nothing more than a statement of policy which confers no substantive rights." *Id.*, at ¶ 6. The Court explained that these provisions "provide guidance to the reader as to how the act should be enforced and interpreted, but they are not a substantive part of the statute." *Id.* Accordingly, these provisions "do not create rights that are not found within the statute, nor do they limit those actually given by the legislation." *Id.*

[4] *Appeal of a Land Use Determination - Dendric Estates Cidery*, Appellants Lauren & Michael Halcik, Melissa & Ted Guy Peterson ("Halcik Appeal"), dated October 27, 2022.
[5] *Id.*

The legislative meaning of the statement of purpose in County Code, therefore, is evidenced by the plain language of its operative provisions. *See Foutz v. City of S. Jordan*, 2004 UT 75 (legislative intent is evidenced by a statute's plain language, in light of the purpose the statute was meant to achieve).

The County Code provides that the conditional uses allowed in the AG-10 zoning district include both "[d]istillery/microbrewery" as well as "[g]uest ranches or lodge intended to attract visitors/patrons on a daily basis or an extended stay." There is no argument made that the proposed Dendric Cidery does not fit these conditional uses as defined; rather, the argument is that, despite the Code's allowance for these conditional uses in the AG-10 zone, this proposal should nevertheless not be approved because it would not be consistent with the community's values.

However, the Code's inclusion of these uses in this particular zone *is* a statement of the community's values, having resulted from a public and legislative land use process that included a public hearing and recommendation by the Planning Commission, whereby the County's legislative body, as the persons who are publicly accountable for their choices as elected officials, then balanced the competing interests to make a policy-based decision that put these provisions into law. *See*, *Bradley v. Payson City Corp.*, 2003 UT 16, ¶ 11.

That moment in time was when the community's values were considered by the County's elected policy-makers, and the established allowed uses in the County's respective zoning districts are the result. Now, when a property owner comes seeking approval to use his/her property according to those enacted standards, it is incumbent the County "to act in good faith and not to reject an application because the application itself triggers zoning reconsiderations that result in a substitution of the judgment of current city officials for that of their predecessors." *W. Land Equities v. Logan*, 617 P.2d 388, 396 (Utah 1980). Whereas the County's legislative body decides policy upon public input, the role of the Planning Commission, on the other hand, who County Code designates as the land use authority,[6] is to "apply the plain language of land use regulations . . . [as] an administrative act." UTAH CODE § 17-27a-308.

A land use authority's decision to approve or deny a conditional use is an administrative land use decision. UTAH CODE § 17-27a-506(3). The only question for the Planning Commission, then, is whether the proposed use complies with the Code's enacted standards, as conditioned. If it does, a decision to approve an application that complies with the County's express standards satisfies the statement of purpose found in the preamble of the County's development code.

II. The County's Decision Was Supported by Substantial Evidence

Summit County Code provides the applicable standards for approval of conditional uses, as follows:

> Before an application for a conditional use permit is approved, the Planning Commission must conclude that factual evidence exists to verify the following findings:

[6] *See*, SUMMIT COUNTY CODE § 11-4-7.C.2.

1. The proposed use, as conditioned, shall be appropriate in the particular location, taking into account the nature of the use, its relationship to surrounding uses and its impact on the natural environment.
2. The proposed use, as conditioned, shall be in compliance with the development evaluations standards in chapter 2 of this title.
3. The applicant shall present evidence to show approval of the landowner for the particular use, unless the land is owned by the applicant and, in such case, the applicant shall submit proof of ownership.
4. There are reasonable conditions that can be imposed which mitigate the reasonably anticipated detrimental effects of the proposed use.

SUMMIT COUNTY CODE § 11-4-7.B.

On appeal, a land use decision is presumed valid and will be upheld unless it is arbitrary and capricious, or illegal. UTAH CODE § 17-27a-801(3). When a land use decision is made as an exercise of administrative powers, such decisions are not arbitrary and capricious if they are supported by "substantial evidence." *Bradley v. Payson City Corp.*, 2003 UT 16, ¶ 10; *see also*, UTAH CODE § 17-27a-801(3). The term "substantial evidence" in the administrative context includes a requirement to make findings of fact and conclusions of law that "inform the parties of the basis of the administrative agency's decision such that the parties knew why the agency ruled the way it did, afford the parties notice of what they would need to challenge on appeal, and allow an appellate court to perform a meaningful review." *Staker v. Town of Springdale*, 2020 UT App 174, ¶ 40 (internal quotations and citations omitted).

Here, the Planning Commission adopted findings of fact and conclusions of law as contained in the Planning Commission staff report, which thoroughly evaluated each of the County Code's defined standards. Ms. Halcik challenges the Planning Commission's findings as to one particular issue, the adequacy of parking and traffic concerns. Specifically, Ms. Halcik alleges that a particular UDOT Conditional Access Permit that the applicants presented to the Planning Commission may not have been truly reflective of the actual use proposed by the Dendric Estates Cidery.

Ms. Halcik, however, has not tied her concern over the UDOT permit back to a particular finding or conclusion made by the Planning Commission that was made in error, or otherwise demonstrated that the County's standards were not appropriately applied, and that the proposed use in fact does not comply with applicable standards.

Providing a copy of a Conditional Access Permit from UDOT was not, itself, an express requirement for obtaining a conditional use permit. Rather, the applicable standard that addresses parking and traffic for conditional use permits is the requirement that "[t]he proposed use, as conditioned, shall be in compliance with the [County's] development evaluations standards," SUMMIT COUNTY CODE § 11-4-7.B, which, in turn, provides as follows:

> B. Traffic Volume: No development shall cause the traffic volume on any public road or intersection thereon, affected by the proposed [development], to fall below

> the design capacity of the roadway, as measured by the "Highway Capacity Manual" (Transportation Research Board, Special Report 209, 1985).
> …
> C. Traffic Volume: No development shall be approved which generates traffic volumes that require roads to be built or existing roads to be expanded in a manner not consistent with the rural infrastructure standards identified in chapter 6 of this title.

Id. §§ 11-2-5.B, 11-2-6.C.

These are the standards with which the application must comply, and here, the Planning Commission found, according to this standard, that "the roads and public services in the area are sufficient to accommodate the increase in intensity of the use."[7] From the Planning Staff report, it does not appear that the County's findings and conclusions relied on the applicant's representations about the issued UDOT permit, having noted that "[t]his application was reviewed by the County Engineering department who stated that the existing infrastructure was adequate for the site," and that "[n]o expansion of existing County infrastructure, facilities and services will be necessary because of this application."[8]

The Planning Commission made appropriate findings to support its decision with substantial evidence, and on appeal, it is the appellant that has the burden of proving that the land use authority erred. UTAH CODE § 17-27a-705.

Even accepting that the information presented to obtain the UDOT permit may have differed from what was ultimately proposed to the Planning Commission, this does not equate to a conclusion that the applicable County standards have been violated. Ms. Halcik has not martialed any evidence to explain how the Planning Commission erred in its findings that the applicable County standards for traffic were satisfied by the application, as conditioned, nor produced any contrary evidence to suggest that the proposed use will instead result in traffic volume that causes any road to fall below its designated design capacity, or requires new roads or existing roads to be expanded.

III. The County's Alleged Procedural Errors Did Not Appear to Prejudice its Decision

Ms. Halcik argues that the County's approval of the conditional use permit was in error because it failed to comply with its ordinances regarding public notice and input. Specifically, she argues that the required notice of the planning commission meeting mailed to surrounding property owners provided information on how to attend the meeting remotely, but failed to identify the actual physical meeting place. Additionally, she argues that the Commission wrongfully denied the public an opportunity to comment at the second planning commission meeting on October 20th when the commission determined that it had prematurely closed public comment at the first planning commission meeting on October 6th, and could no longer "reopen" public comment without postponing the matter and re-noticing a public hearing.

[7] Summit County Staff Report, Date of Meeting October 20, 2022, page 6.
[8] *Id.*, pages 4–5.

State law does not make a public hearing a requirement for a conditional use permit, because it is an administrative decision. *See* UTAH CODE § 17-27a-507(3). Nevertheless, state law allows counties to choose, by ordinance, the application processes it will require, which may include public hearings.[9] Summit County Code provides that "[A]fter holding a public hearing, the Planning Commission shall take final action on the application for a conditional use permit." SUMMIT COUNTY CODE § 11-4-7.C.2. Having chosen to require a public hearing for its conditional use proceedings, the County is "bound by the terms and standards of [its ordinances] and shall comply with mandatory provisions of those regulations." UTAH CODE § 17-27a-508(2).

However, when challenging a land use decision on appeal, it is not enough to merely allege that some procedural error occurred; rather, "proof prejudice is required," in that the challenging party must "show that there is a reasonable likelihood that the legal defect in the [county]'s process changed the outcome of the proceeding." *Potter v. S. Salt Lake City*, 2018 UT 21, ¶ 33.

The public plays an important role in the land use *planning* process, as when the planning commission is fulfilling its planning duties, it must hold a public hearing before it may make recommendations to the county's elected legislative body for various kinds of legislative actions. *See* UTAH CODE § 17-27a-302(2).

In contrast, when the planning commission is designated as the land use authority to act on a particular application, it is not fulfilling planning duties. Rather, "when a conditional use permit is approved, no new law is created. Instead, existing law has been applied to the particular facts presented by the applicant. That is the essence of administrative—not legislative—action." *Krejci v. City of Saratoga Springs*, 2013 UT 74, ¶ 35. The role of the land use authority in making an administrative decision is therefore to only apply the plain language of its land use ordinances, UTAH CODE § 17-27a-308, and a conditional use must be approved if reasonable conditions can be imposed to mitigate the reasonably anticipated detrimental effects of the proposed use according to applicable standards. *Id.* § 17-27a-506(2)(a)(i).

Because of this, public input in an administrative setting has a much narrower purpose than in the public-centric planning process, usually limited to the role of providing relevant information on which the administrative decision-maker may base a decision according to enacted standards. *See, Thurston v. Cache Cnty.*, 626 P.2d 440, 445 (Utah 1981) ("the consent of neighboring landowners may not be made a criterion for the issuance or denial of a conditional use permit, [but] there is no impropriety in the solicitation of, or reliance upon, information which may be furnished by other landowners in the vicinity of the subject property at a public hearing.").

Because the Planning Commission was required to base its decision on facts and its enacted standards, and not the general opposition of neighbors or the public, the only relevant harm from a procedural error that may have effectively limited some public comments would be the potential loss of some factual information the commission may not have otherwise received.

However, in this particular case, Ms. Halcik has not demonstrated that the County's alleged noncompliance with notice and hearing requirements resulted in any material loss of factual

[9] *See, e.g.,* UTAH CODE § 17-27a-202(1)(a) (the county must notify an applicant "of each *public hearing* and public meeting to consider the application")(emphasis added).

information that the County did not already consider, much less that there is a reasonable likelihood that any potential information from public comments not considered would have changed the outcome of the proceeding.

For example, while Ms. Halcik alleges that the public hearing notice she received failed to identify the physical meeting place, the notice nevertheless provided instruction on how to participate in the meeting remotely, and Ms. Halcik further acknowledges that she did, in fact, attend and comment at the public hearing after calling to find out the physical location. In Ms. Halcik's case, then, there is no factual information that the County did not ultimately consider because of an alleged faulty notice. Similarly, in regards to the County's alleged failure to not allow public comment at the second planning commission meeting on October 20th, the transcript from that meeting reflects that the public's concerns all centered around common issues, that being "traffic on SR 32, lights, noise and impacts on the neighbors or those types of things,"[10] and that these common public concerns were all reviewed at the previous meeting, and as a result, the commission had instructed staff to go back and revise the conditions of approval, which was what was before the Planning Commission for consideration at the October 20th meeting.

It is apparent, then, that the record before the Planning Commission included these common public concerns, and that the Planning Commission took these comments into account in imposing revised conditions of approval. Ms. Halcik has not demonstrated what additional information, if anything, the planning commission would not have had by not allowing public comment that it didn't already have in the record.

The bottom line is that despite the validity of whether the public notice or comment opportunities were deficient according to local ordinance, the Planning Commission made its decision to approve the conditional use permit according to its enacted standards, and supported that decision by substantial evidence in the record.

Ms. Halcik's identified concerns, as well as the comments from other members of the public received by email or during public comment, all only help establish that the proposed use would have detrimental effects. However, the County already acknowledged as much, the staff report noting that the "combination of the distillery and guest ranch could have a negative impact on surrounding properties as it relates to noise, traffic [etc.]."[11] Truly, the very nature of a conditional use is the concept that it is a use that "may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts." UTAH CODE § 17-27a-103(9). But identifying detrimental impact is only half of the analysis.

State law provides that the standard is that a conditional use must be approved if the "reasonably anticipated detrimental effects of the proposed use" can be mitigated by reasonable conditions. *Id.* § 17-27a-506(2)(a). Further, this requirement to "reasonably mitigate anticipated detrimental effects of the proposed conditional use does not require elimination of detrimental effects." *Id*. In response to identifying potential negative impacts, the Planning Staff Report notes that "[t]o

[10] Transcript of October 20, 2022 Eastern Summit County Planning Commission Meeting, pages 4–5.
[11] Summit County Staff Report, Date of Meeting October 20, 2022, page 4.

mitigate these effects staff has proposed several conditions of approval relating to hours of operation, outdoor amplification, number of events allowed per week, etc."[12]

Accordingly, the Planning Commission adopted the findings and conclusions from the staff report and imposed a number of conditions on approval that addressed the various concerns of the public, including hours of operation, lighting, parking, limits on nighttime events, privacy fencing, limitations on when and where outdoor music is allowed, etc.

The County's decision was proper, as it was based on applicable County standards as opposed to the general consent of the public, and it appropriately imposed various conditions to reasonably mitigate the anticipated detrimental effects of the proposed use. The County's decision may not, therefore, be reversed for mere procedural error where it has not been established that there is a reasonable likelihood that the error changed the outcome of the proceeding.

CONCLUSION

While the public plays an important role in legislative land use planning, once development standards are enacted into law, a property owner is entitled to approval of a land use application under those existing standards if the application conforms to applicable standards. The County's Planning Commission, acting as the administrative land use authority for conditional use applications, properly approved a conditional use permit for the Dendric Estates Cidery as microbreweries and guest lodges are allowed as conditional uses in the applicable zoning district, and the Planning Commission made appropriate findings and imposed conditions on approval to reasonably mitigate the anticipated detrimental impacts of the proposed use according to County standards. A procedural error that may have affected the specific manner of public comment did not prejudice the County's administrative decision, and cannot serve as a basis to reverse the County's approval.

Jordan S. Cullimore, Lead Attorney
Office of the Property Rights Ombudsman

[12] *Id.*, page 5.

NOTE:

This is an advisory opinion as defined in Section 13-43-205 of the Utah Code. It does not constitute legal advice, and is not to be construed as reflecting the opinions or policy of the State of Utah or the Department of Commerce. The opinions expressed are arrived at based on a summary review of the factual situation involved in this specific matter, and may or may not reflect the opinion that might be expressed in another matter where the facts and circumstances are different or where the relevant law may have changed.

While the author is an attorney and has prepared this opinion in light of his understanding of the relevant law, he does not represent anyone involved in this matter. Anyone with an interest in these issues who must protect that interest should seek the advice of his or her own legal counsel and not rely on this document as a definitive statement of how to protect or advance his interest.

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Advisory Opinion 263

Parties: Washington School House LLC / Park City

Issued: December 14, 2022

TOPIC CATEGORIES:

Conditional Use Applications

Interpretation of Ordinances

Nonconforming Uses & Structures

Substantive Land Use Review

When an application proposes to change from a legal nonconforming use to some other defined land use, the government must review the proposal on its own merits for compliance with applicable zoning standards, without regard to prior conditions or entitlements of the soon-to-be discontinued nonconforming use.

The owner of a legal nonconforming Bed & Breakfast Inn applied for approval as a Minor Hotel, a defined use allowed in the zone with a conditional use permit. Park City wrongfully denied the CUP by treating the proposal as an "expansion" or "increase" of the existing use, instead of reviewing the proposal for approval on its own merits as a minor hotel. The denial was also based on a misinterpretation of city code finding that certain accessory uses expressly included in the code's definition of hotel were instead standalone uses prohibited in the zone. The denial was arbitrary and capricious as the city's reasons were not legally sufficient.

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ADVISORY OPINION

Advisory Opinion Requested By:	Washington School House LLC
Local Government Entity:	Park City
Applicant for Land Use Approval:	Washington School House LLC
Type of Property:	Residential, Historic Site
Date of this Advisory Opinion:	December 14, 2022
Opinion Authored By:	Richard B. Plehn, Attorney Office of the Property Rights Ombudsman

ISSUES

Did Park City wrongfully deny a conditional use permit application seeking to convert an existing legal nonconforming Bed & Breakfast Inn use to a Minor Hotel use?

SUMMARY OF ADVISORY OPINION

A local government may deny a conditional use permit only where it makes supportable findings that reasonable conditions cannot mitigate the use's identified detrimental effects to comply with objective, ordinance-based standards. The government must base these required findings on applicable regulations relevant to the application.

Land use ordinances commonly restrict the expansion of a legal nonconforming use; however, when an applicant proposes to change from a nonconforming use to some other defined land use, the government must review the proposal on its own merits for compliance with applicable zoning standards, without regard to prior conditions or entitlements of the soon-to-be discontinued nonconforming use.

The applicant operates a Bed & Breakfast Inn as a legal nonconforming use, but has applied for approval as a Minor Hotel, which is another defined land use allowed with a conditional use permit. Park City wrongfully denied the conditional use permit application by treating the proposal as an "expansion" or "increase" of the prior bed & breakfast use,

instead of reviewing the proposed minor hotel for approval on its own merits. The city made several findings of detrimental effects based on the proposal's noncompliance with prior permits for the bed & breakfast use that do not pertain to a change in use. The city also misinterpreted its code to find that use of dining and meeting facilities within the hotel constituted additional standalone uses that were prohibited in the zone. From this errant basis, the city concluded that the application did not conform with the land use code and that reasonable conditions could not mitigate the detrimental effects it had identified. The denial was arbitrary and capricious as the city's reasons were not legally sufficient.

The application proposes a minor hotel, which is a defined use that includes accessory uses of dining and meeting facilities commonly associated with a hotel, and is allowed in the zone with a conditional use permit irrespective of how the property has been used in the past. Accordingly, the city must review the application as a proposal for a minor hotel use, only, and make appropriate findings regarding compliance with objective, ordinance-based standards. If reasonable conditions mitigate anticipated detrimental effects of the minor hotel use in the zone, the application is entitled to be approved as conditioned.

EVIDENCE

The Ombudsman's Office reviewed the following relevant documents and information prior to completing this Advisory Opinion:

1. Request for Advisory Opinion submitted by attorney Wade R. Budge, on behalf of Washington School House, LLC, on June 30, 2022.
2. Letter from Nicole M. Deforge, on behalf of a group of Park City Citizens and Neighbors, on July 22,2022.
3. Letter from Mark D. Harrington, on behalf of Park City, on July 26, 2022.
4. Letter from Wade R. Budge, on behalf of Washington School House, LLC, on August 30, 2022, in response to Ms. Deforge's letter, dated July 22, 2022.
5. Letter from Wade R. Budge, on behalf of Washington School House, LLC, on August 30, 2022, in response to Mr. Harrington's letter, dated July 26, 2022.
6. Letter from Nicole M. Deforge, on behalf of a group of Park City Citizens and Neighbors, on September 9, 2022.

BACKGROUND

Washington School House, LLC ("WSH") owns the historic Washington School House in Park City ("City"), a landmark structure built in in 1889 and considered a historic structure in city code. The property is located in the "Old Town" area, situated between Park Avenue at the front of the property, and Woodside Avenue at the rear. The property is surrounded on three sides by residential housing in the "Historic Residential (HR-1)" zoning district.

Existing Use as a Bed & Breakfast Inn

The property has been operating as a Bed & Breakfast Inn under a conditional use permit ("CUP") initially issued in 1983. At the time, hotels and other lodging facilities were not allowed in the HR-1 zone, but city ordinances gave the Historic District Commission the

authority to approve uses that were not consistent with the zoning regulations when such an approval was necessary to preserve a historic structure.[1] As a result, in order to "save the building from demolition or accidental loss,"[2] the Historic District Commission approved a CUP allowing renovation of the schoolhouse to operate as a Bed & Breakfast together with approved nonconforming parking—a private agreement for 11 parking spots in an off-site parking structure across the street.[3]

Over the years, WSH has received several other approvals in furtherance of the CUP for the Bed & Breakfast use. Of note, in 2001, the City approved a renovation of a detached accessory garage into a flat-roof terrace, concluding it was allowed by the HR-1 zoning and consistent with the 1983 CUP, though cautioning that "programming the flat-roof/terrace for outdoor commercial activities which are inconsistent with the character and scope of bed and breakfast inn operations is not permitted under the 1983 conditional use permit or the HR-1 district regulations."[4]

In 2010, the City approved a "Private Recreation Facility" CUP to construct a lap pool on WSH grounds behind the schoolhouse. Again, the City found that "passive use of the grounds by patrons of the Inn are a permitted use in the HR1 zone and consistent with the 1983 conditional use permit . . . [but] [o]rganized events for the Washington School Inn patrons and/or the general public including parties, weddings, and other public assemblies, are not permitted in the HR1 zone and are outside the scope of the 1983 conditional use permit."[5] Finally, in 2011, the City approved the internal remodel of WSH to reduce the number of rooms from 15 to 12, which is its current operation. The current guest occupancy is approximately 30 as a Bed & Breakfast use.

Application for a Change in use to a Minor Hotel

From the time in 1983 when the schoolhouse was initially approved as a nonconforming bed & breakfast use in the HR-1 district, not only has Bed & Breakfast Inn been added as an allowed use in the district, but several other types of allowed lodging uses have been added, including "Nightly Rental," "Boarding House, hostel," and, "Hotel, Minor."[6]

In 2020, WSH applied for a new conditional use permit to convert the existing 12-room Bed & Breakfast use to a 12-room Minor Hotel use. According to the City's initial staff report reviewing the proposal, "A Bed & Breakfast . . . is limited to guest rooms and facilities for guest meals, whereas a Minor Hotel allows for accessory facilities like

[1] June 8, 2022 Planning Commission Packet, Item 5.B, Exhibit E: 1983 Conditional Use Permit Approval Letter.
[2] *Id.*, Item 5.B, Exhibit D: 1983 CUP Application for Bed & Breakfast.
[3] *Id.*, Item 5.B, Exhibit F. The Staff Report noted that the proposal did not conform to existing parking requirements because "the parking structure would be located off the property, it does not meet side yard setback requirements of the zone, and it exceeds the maximum amount of hard surfaced area allowed for parking." Additionally, "Two parking stalls are 9' x 20' when 10' x 20' is the minimum for outside spaces."
[4] Planning Commission Staff Report, The Washington School Inn, dated April 28, 2021.
[5] *Id.*
[6] *See,* PARK CITY LAND MANAGEMENT CODE ("LMC") § 15-2.2-2 (2022); *see also*, LMC § 15-15-1 (definitions).

restaurants, bars, spas, meeting rooms, group dining facilities, and other activities customarily associated with Hotels."[7]

In WSH's conditional use permit application, WSH asserted that "[f]unctionally, the proposed [Minor Hotel] use will continue much the same as the existing, Bed and Breakfast use," but that the "one exception to the current operation that the applicant seeks to permit[] is the ability of Overnight Guests to invite/host Non-Resident Guests for dining or small gatherings." These small gatherings might include "an informal meeting, corporate meeting, or other social gathering."[8]

When first submitted, WSH's proposal initially sought for both indoor and outdoor facilities to be utilized for special events, and that dining facilities could be available to patrons without overnight accommodations. This proposal received a significant amount of public opposition over the course of four public meetings on the application.[9]

A group of self-organized citizens that reside in the area surrounding the property ("Citizens"), represented by legal counsel, appeared and spoke against the application at scheduled public hearings, and submitted arguments to the Planning Commission as well as to this Office in response to WSH's request for an advisory opinion. Citizens argued, generally, that organized events—including weddings, parties, reunions, and corporate retreats—had already occurred onsite and violated the CUPs for the Bed and Breakfast use. Public comments also focused the gradual but consistent expansion of the use of the property over the years. Citizens' attorney submitted a letter to the Planning Commission lamenting that WSH was "seeking permission to double the use of its property to allow the very things it was expressly prohibited from doing in prior CUPs."

Planning staff also expressed concern that WSH's proposal for its dining facilities effectively opened the use to the general public and likely exceeded the limits of an accessory use of a Minor Hotel, and instead would constitute an additional primary use as a "Restaurant" that could operate irrespective of whether the hotel had any overnight guests (a Restaurant, as a primary use, is not allowed in the HR-1 zone). Planning Staff sought input from the Planning Commission whether the dining facility proposal would constitute an accessory use of a Minor Hotel or a standalone use as a Restaurant.

However, WSH revised the scope of its application in several aspects over the course of the review process with planning staff and public hearing input. As ultimately reviewed by the Planning Commission, the proposed dining and gathering activities would only take place inside the hotel. Non-resident guests were also defined to only include the invitees of overnight guests using the dining facility and indoor gathering areas. WSH proposed a maximum occupancy of 60 guests (plus 8 employees), up to 30 of which would be overnight patrons of the hotel rooms, while the remaining 30 people would be the non-

[7] Planning Commission Staff Report, The Washington School Inn, dated April 28, 2021.
[8] *Id.*
[9] Consisting of two work meetings in 2021 and later two public hearings, the first of which was held in November of 2021 and noted as "brief," and was continued to the second and last public hearing held on June 8, 2022.

resident guests invited by the hotel's overnight patrons. Invited non-resident guests would be limited to certain operating hours, and no walk-ins would be permitted.

Parking Reduction

City code provides an initial parking requirement for a Minor Hotel as 1 parking space per room, but also allows the Planning Commission to approve exceptions. The application sought a parking reduction under city code to satisfy parking requirements for a 12-room Minor Hotel with the existing 11 parking spaces used currently for the Bed and Breakfast Inn. WSH submitted a traffic study concluding that the existing spots were more than sufficient for the demand of the new hotel use.

As for invited non-resident guests, WSH did not anticipate providing any parking for these invitees, who would instead arrive by "private shuttle, ride share, taxi, public transit, or on foot." Finally, delivery and service vehicles serving the hotel would park on Park Avenue with the exception of smaller sized vehicles that could park in the driveway as long as they did not block the sidewalk. Pool service and delivery vehicles would continue to use Woodside Avenue as they had for the Bed & Breakfast Inn use under the 2010 CUP.

As an alternative, should the Planning Commission insist on the full requirement for 12 parking spots under the code, WSH optionally proposed adding one additional parking spot in the rear of the property off of Woodside Avenue to satisfy the required 12th spot. This option, according to Staff Report, would require removal of existing landscaping and vegetation, and a steep slope conditional use permit.

Denial of Conditional Use Permit

WSH notes that it worked with the City's planning department on its current proposal for over two years, and its conditional use application included 42 draft conditions aimed at mitigating any anticipated detrimental effects caused by the Minor Hotel use. Staff recommend approval of the application as ultimately revised by the applicant, and as conditioned by the 42 proposed conditions. At the final Planning Commission meeting, during public comment, Citizens continued to speak against the application.

The Planning Commission ultimately moved to deny the conditional use permit application, the minutes reflecting the reasons being "there was not sufficient parking mitigation for the additional use, there would be a detrimental effect on the surrounding neighborhood, and there were concerns about the number of non-resident guests." The Planning Commission thereafter prepared a written Notice of Planning Commission Action detailing a list of 14 findings of fact, as well as conclusions of law.

The written findings added that the Planning Commission found that (1) the property is subject to two CUPs and that the proposed Minor Hotel use was an "expansion" of the existing Bed & Breakfast use; and (2) the proposed use of dining and other facilities by non-resident guests constituted standalone primary uses of "Restaurant", "Private Event", and "Outdoor Uses", which the Commission found were all prohibited in the HR-1 zone and violated certain restrictions of existing CUPs. Based on these findings, the Planning

Commission additionally found that a parking reduction could not be approved because it would increase traffic and violate existing CUPs, and, alternatively, an added parking space also would increase traffic and violate existing CUPs, and disturb significant vegetation and steep slopes. From these findings, the Planning Commission concluded that the applicant's "request to allow use of the site for Private Events," and to "increase the use of the site" was not compatible with the surrounding structures in use, scale, and circulation and reasonable conditions could not be proposed to mitigate the anticipated detrimental effects of the proposed use.

WSH requested an advisory opinion to determine whether the City erred in denying the application for a conditional use permit.

ANALYSIS

A conditional use is a land use allowed in a particular zoning district, *see* UTAH CODE § 10-9a-507(1), but because of unique characteristics or potential impact of the land use on the municipality, surrounding neighbors, or adjacent land uses, may not be compatible in some areas of the district or may be compatible only if certain conditions are required that mitigate or eliminate detrimental impacts. *Id.* § 10-9a-103(8).

A land use authority's decision to approve or deny conditional use is an administrative land use decision, *id.* § 10-9a-507(3), which must be supported by substantial evidence in the record. *Id.* § 10-9a-801(3)(c)(i). If the land use authority imposes conditions, it must "ensure that the conditions are stated on the record and reasonably relate to mitigating the anticipated detrimental effects of the proposed use." *Id.* § 10-9a-507(2)(b). Similarly, in denying an application, the land use authority "must make findings of fact and conclusions of law that are adequately detailed so as to permit meaningful appellate review." *McElhaney v. City of Moab*, 2017 UT 65, ¶ 35. Findings are "sufficiently detailed [when they] disclose the steps by which [the authority] reaches its ultimate factual conclusions." *Id.* ¶ 36.

A municipality acts arbitrarily and capriciously in denying a conditional use permit where its reasons either have no factual basis or are not legally sufficient. *See, Davis County. v. Clearfield City*, 756 P.2d 704, 713 (Utah Ct. App. 1988).

Here, the Planning Commission made a number of incorrect findings that resulted from mischaracterizing the proposal as well as misinterpreting city code. The City's conclusions were therefore not supported by substantial evidence, and its decision to deny the application was not legally sufficient.

Park City's enacted conditional use ordinance provides three conditional use standards:

1. The Application must comply with all requirements of the land use code;
2. The proposed use must be compatible with surrounding structures in use, scale, mass and circulation; and

3. The effects of any differences in use or scale have been mitigated through careful planning.

See, PARK CITY LAND MANAGEMENT CODE ("LMC") § 15-1-10.D.

The Planning Commission made conclusions for each of these standards in the negative, namely, that: "The Conditional Use Permit is not consistent with the Land Management Code . . . is not compatible with surrounding Structures in Use, scale, mass, and circulation . . . and reasonable conditions cannot be proposed to mitigate the anticipated detrimental effects of the proposed Use." We conclude, however, that the Planning Commission provided either insufficient factual support, or legally insufficient bases for each of the above standards.

First, the Planning Commission made several findings regarding compliance with requirements that were not relevant to the information shown in the application. As a result, the conclusion that the proposal was not compatible with surrounding structures was not supported by substantial evidence as it was based on these irrelevant findings. As to the final standard, the Planning Commission provided no factual support for its conclusion that no reasonable conditions could be proposed to mitigate the anticipated detrimental effects of the proposed use. The applicant had proposed 42 conditions for review, and the Planning Commission's findings are almost silent as to the efficacy of these conditions, instead making conclusory findings that the effects could not be mitigated by condition.

I. The Planning Commission's Findings Were Insufficient Where the Proposal was Reviewed as if it was an Expansion of a Nonconforming Use and Under Regulations Irrelevant to the Use Proposed

Utah's Land Use Development and Management Act ("LUDMA"), as applied to municipalities, provides that a land use application should be substantively reviewed under the land use regulations applicable to the application or to the information shown on the application. UTAH CODE § 10-9a-509(1)(a)(i)(B). That also means that the inverse should be true—if an application does not propose a particular land use, it would be wrong to review the application and make findings under land use regulations not applicable to the application.

A. The application sought a change in use, and prior approvals/conditions for the former Bed & Breakfast Inn have no relevance in determining whether the proposed Minor Hotel complies with applicable conditional use standards.

Here, the applicant proposed a Minor Hotel, a use allowed in the zoning district with a conditional use permit. While the property currently operates as a legal nonconforming Bed & Breakfast Inn, and the applicant's purpose in changing uses sought mostly to "maintain" the current operation with certain exceptions, the Minor Hotel use is legally distinct from a Bed & Breakfast Inn under city code, and as such, should only be reviewed under the land use regulations applicable to a Minor Hotel as a conditional use, without

regard to the existing nonconforming use. By changing land uses, the nonconforming use is being discontinued, and the minor hotel application is therefore not an application that seeks to "expand" or "increase" the nonconforming bed & breakfast use.

This distinction is important because nonconforming use regulations often presume that a nonconforming use should not be expanded or increased, but should rather be reduced—and Park City is no exception.[10] However, conditional use applications are reviewed under an entirely different presumption. Namely, LUDMA considers a conditional use to be a use allowed in the zone, and directs that a land use authority "shall approve a conditional use if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards," and may only deny the conditional use "[i]f the reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards." UTAH CODE § 10-9a-507(2).

Here, the City improperly treated the application as if it were an expansion or increase of a nonconformity. A good portion of the staff report analyzed the proposal according to the differences between the conditions currently imposed on the Bed & Breakfast Inn by prior CUPs and the current Minor Hotel proposal. Public comment on the application, too, largely focused on the proposal as an "increase" or "expansion" of the existing bed & breakfast use. But most importantly, the Planning Commission's findings centered around the proposal as "expanding the Bed & Breakfast Use to a Minor Hotel Use . . . ," Park City, *Notice of Planning Commission Action* ("Notice"), at Findings of Fact #2 (June 27, 2022), and as a request to "increase the use of the site . . . ." *Notice*, Finding #10.

The Planning Commission also explicitly found that the property continued to be subject to prior CUPs, erroneously finding that the proposal violated these CUP conditions in several ways. As a result, the City's conclusion that the application did not conform to enacted conditional use standards wrongfully relied in almost its entirely on the legal fiction that the nonconforming bed & breakfast use still existed for purposes of the application and that this proposal was an "increase [of] the use of the site."

A change in use starts with a clean slate, and is to be reviewed entirely on its own merits for compliance with all existing land use ordinances. The City's conclusions regarding its conditional use standards were legally insufficient because they wrongfully relied on purported noncompliance or other detrimental effects relating to existing CUP conditions, which have nothing to do with a new application for a Minor Hotel use.

[10] Park City has enacted an ordinance on nonconforming uses and structures "intended to limit enlargement, alteration, restoration, or replacement which would increase the discrepancy between existing conditions and the Development standards prescribed by this Code." LMC § 15-9-1 (2000). City Code gives direction that land use applications involving nonconformities "are reviewed to ensure that they are reducing the degree of non-conformity and improving the physical appearance of the Structure and site through such measures as landscaping, Building design, or the improved function of the Use in relation to other Uses." *Id.*

B. The application's proposed use of dining and indoor facilities are accessory uses of a Minor Hotel, not standalone primary uses prohibited by the HR-1 zone

The Planning Commission also wrongfully concluded that WSH proposed operating standalone uses of "Restaurant", certain "Private Events", and/or "Outdoor Uses", all of which are prohibited in the HR-1 district.

First, we note that the finding that Outdoor Uses is prohibited is incorrect on its face as it applies to WSH's application. This is because the ordinance referenced in the Planning Commission's findings, LMC Section 15-4-21 (which does prohibit all outdoor uses unless the zone allows by permit) was not enacted until September of 2020,[11] after WSH submitted its conditional use application on February 18, 2020. Because WSH is "entitled to substantive review . . . under the land use regulations[] in effect on [that] date," UTAH CODE § 10-9a-509, this section prohibiting outdoor uses does not apply to WSH's application.

As for regulations regarding Private Events and Restaurants, when interpreting land use ordinances, the standard rules of statutory construction apply, in which Utah courts will look first to the plain language of the ordinance, *Brendle v. City of Draper*, 937 P.2d 1044, 1047, reading the ordinance "as a whole, [interpreting] its provisions in harmony with other [ordinances] in the same chapter and related chapters." *Foutz v. South Jordan*, 2004 UT 75, ¶ 11. In doing so, the primary goal is "to give effect to the legislative intent, as evidenced by the plain language, in light of the purpose the [ordinance] was meant to achieve." *Id.*

City code provides that a minor hotel is a hotel with fewer than 16 rooms, *See* LMC § 15-15-1 (2019), while defining "Hotel" as:

> A Building containing sleeping rooms for the occupancy of guests for compensation on a nightly basis that ***includes accessory facilities such as restaurants, bars, spas, meeting rooms, on-site check-in lobbies, recreation facilities, group dining facilities, and/or other facilities and activities customarily associated with Hotels***, such as concierge services, shuttle services, room service, and daily maid service.

Id. (emphasis added). Additionally, the HR-1 zone provides that "Accessory Building and Use[s]" are permitted uses. LMC § 15-2.2-2.A. City code defines Accessory use as "[a] land Use that is customarily incidental and subordinate to the to the primary Use located on the same Lot." LMC § 15-15-1 (2019).

Part of the dispute here is how the use of dining and other facilities was initially submitted, amended, and ultimately reviewed by the Planning Commission. As originally submitted,

[11] *See*, PARK CITY, Ordinance 2020-42. This section on prohibited outdoor uses was previously only part of the Historic Recreation Commercial (HRC) district, but the City amended the Code to move that section to its current location as Section 15-4-22 under the Chapter for "Supplemental Regulations," which "qualify or supplement, as the case may be, the regulations appearing elsewhere in [the] Code." LMC § 15-4-1.

WSH had initially desired that its definition of "non-resident guest" not only mean "guests of overnight guests," but also, "guests using the dining facility and indoor areas that have not reserved overnight accommodations but have made reservations for dining or indoor gathering."

The City's staff report concluded that inasmuch as use of hotel facilities and dining area are tied to guests of the hotel and their invited guests, they should be considered accessory uses of the hotel. However, the as applicant's initial broader definition of non-resident guest would open the inn to anyone, it might no longer be considered an Accessory Use, but rather an additional primary use that would be able to operate irrespective of whether the hotel has any overnight guests. Staff suggested limiting the definition to only "the guests of overnight guests using the dining facility and indoor gathering areas." This amended definition was what was ultimately proposed by WSH when the application came before the Planning Commission at the June 8, 2022 meeting.

We agree that the application's proposed use of dining and indoor meeting facilities by invitees of hotel guests is expressly anticipated in the Code's very definition of minor hotel as "include[d] accessory facilities," as mentioned above. Therefore, as Accessory Uses are a permitted use in the HR-1 zone, and the proposed use pertains to accessory uses of a Hotel, the only relevant land use proposed by WSH's application is a Minor Hotel, and the Planning Commission erred by interpreting its code in a way that considered WSH's application as a proposal for standalone "Restaurant" and "Private Events" uses when plainly permitted as accessory uses of a Minor Hotel. See Utah Code § 10-9a-306(2) ("If a land use regulation does not plainly restrict a land use application, the land use authority shall interpret and apply the land use regulation to favor the land use application").

II. The Planning Commission's Conclusion that the Proposal Was Incompatible with Surrounding Structures was Legally Insufficient as Based on Irrelevant Findings

The City's conditional use standards require that a proposed use be compatible with surrounding structures in use, scale, mass and circulation, or, at least, that the effects of any differences in use or scale have been mitigated. LMC § 15-1-10.D. In other words, a finding that a proposal is ***not*** compatible with surrounding structures is essentially a finding of a detrimental effect under state law. The City's conditional use standards provide a list of 16 items that the Planning Commission "must review" when considering impacts and mitigation, essentially constituting the available "reasons" why a use could be found to be incompatible. *See, id.* § 15-1-10.E.

The Planning Commission's errant findings regarding compliance with the existing CUP conditions or standalone primary uses not applicable to WSH's application are inescapably entangled with its conclusion that the application did not comply with its conditional use standards. Specifically, what the Planning Commission determined was not compatible with surrounding structures in use, scale, and circulation was "the Applicant's request to ***allow use of the site for Private Events***, to allow use of the dining

facilities by non-overnight guests, and to ***increase the use*** of the site from approximately 30 guests to 60 guests for dining ***and Private Events***." (emphases added).

We do not believe that the proper analysis on review would be to attempt to strike out only the illegitimate considerations of the findings and try to make assumptions about to what extent this finding of incompatibility was otherwise partly based on any legitimate factors under the City's conditional use standards. The findings explicitly state as its basis considerations that are irrelevant. This inclusion of irrelevant considerations inherently results in findings of fact and conclusions of law that are inadequate "to permit meaningful appellate review," *See, McElhaney v. City of Moab*, 2017 UT 65, ¶ 35, and are therefore legally insufficient.

As a result, "where [a municipality's] reasons . . . are not legally sufficient," denial of a conditional use permit is arbitrary and capricious. *Davis County*, 756 P.2d 704, at 713.

III. The Planning Commission's Determination that Detrimental Effects Could Not be Mitigated was Conclusory and Not Supported.

A conditional use permit may only be denied if the land use authority finds that the "reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards." Utah Code § 10-9a-507(2).

The applicant worked with planning staff to propose a list of 42 conditions that could be imposed on the proposed use to mitigate anticipated detrimental effects. Other than its findings regarding the applicant's proposed parking reduction, and a conclusory finding that the applicant's "reliance on public parking facilities as a mitigation strategy was unreasonable," the Planning Commission's findings are almost silent as to any possible conditions, either those proposed or those that could be imposed.

Conclusory statements that detrimental effects cannot be mitigated by condition, without any discussion of the efficacy of conditions proposed or able to be imposed, fail to disclose the steps by which the authority reaches its ultimate factual conclusions, and are inadequate for review. *McElhaney,* 2017 UT 65, at ¶ 36.

Here, it would appear that the Planning Commission's findings did not address conditions in detail perhaps because it had concluded, erroneously, that the proposal categorically did not comply with city code as it proposed standalone Restaurant, Private Event, and Outdoor Uses, and otherwise violated prior CUP conditions on the property for the Bed & Breakfast use. Again, these irrelevant findings result in a legally insufficient conclusion regarding whether the identified detrimental effects could be mitigated by reasonable condition. As a result, the decision to deny the conditional use permit was arbitrary, capricious, and illegal.

Ultimately, WSH's application proposed only a minor hotel with relevant accessory uses. The City must therefore review the application as such and make appropriate findings on

that basis. If the application complies with the stated requirements in city ordinances pertaining to a minor hotel use, and the application's 42 proposed conditions—or other reasonable conditions—will mitigate anticipated detrimental effects of that use in the HR-1 zone in accordance with relevant CUP standards outlined in city ordinances, the application is entitled to approval as conditioned.

CONCLUSION

The City's decision to deny WSH's conditional use application for a Minor Hotel in the HR-1 zone was both arbitrary and capricious, and illegal. The decision was illegal as it was based on an incorrect interpretation of applicable ordinances as well as ordinances that were not applicable to WSH's application. The decision was arbitrary and capricious because the Planning Commission's findings were not ordinance-based, not sufficiently detailed, or otherwise not factually supported. The City must review the proposal for compliance with objective code requirements for a Minor Hotel use only, which anticipates the accessory use of its dining and meeting facilities as proposed, and if reasonable conditions will mitigate the anticipated detrimental effects of this Minor Hotel use in this area of the HR-1 zone, the application is entitled to approval.

Jordan S. Cullimore, Lead Attorney
Office of the Property Rights Ombudsman

NOTE:

This is an advisory opinion as defined in Section 13-43-205 of the Utah Code. It does not constitute legal advice, and is not to be construed as reflecting the opinions or policy of the State of Utah or the Department of Commerce. The opinions expressed are arrived at based on a summary review of the factual situation involved in this specific matter, and may or may not reflect the opinion that might be expressed in another matter where the facts and circumstances are different or where the relevant law may have changed.

While the author is an attorney and has prepared this opinion in light of his understanding of the relevant law, he does not represent anyone involved in this matter. Anyone with an interest in these issues who must protect that interest should seek the advice of his or her own legal counsel and not rely on this document as a definitive statement of how to protect or advance his interest.

An advisory opinion issued by the Office of the Property Rights Ombudsman is not binding on any party to a dispute involving land use law. If the same issue that is the subject of an advisory opinion is listed as a cause of action in litigation, and that cause of action is litigated on the same facts and circumstances and is resolved consistent with the advisory opinion, the substantially prevailing party on that cause of action may collect reasonable attorney fees and court costs pertaining to the development of that cause of action from the date of the delivery of the advisory opinion to the date of the court's resolution. Additionally, a civil penalty may also be available if the court finds that the opposing party—if either a land use applicant or a government entity—knowingly and intentionally violated the law governing that cause of action.

Evidence of a review by the Office of the Property Rights Ombudsman and the opinions, writings, findings, and determinations of the Office of the Property Rights Ombudsman are not admissible as evidence in a judicial action, except in small claims court, a judicial review of arbitration, or in determining costs and legal fees as explained above.

The Advisory Opinion process is an alternative dispute resolution process. Advisory Opinions are intended to assist parties to resolve disputes and avoid litigation. All of the statutory procedures in place for Advisory Opinions, as well as the internal policies of the Office of the Property Rights Ombudsman, are designed to maximize the opportunity to resolve disputes in a friendly and mutually beneficial manner. The Advisory Opinion attorney fees and civil penalty provisions, found in Section 13-43-206 of the Utah Code, are also designed to encourage dispute resolution. By statute they are awarded in very narrow circumstances, and even if those circumstances are met, the judge maintains discretion regarding whether to award them.

MAILING CERTIFICATE

Section 13-43-206(10)(b) of the Utah Code requires delivery of the attached advisory opinion to the government entity involved in this matter in a manner that complies with UTAH CODE § 63-30d-401 (Notices Filed Under the Governmental Immunity Act).

These provisions of state code require that the advisory opinion be delivered to the agent designated by the governmental entity to receive notices on behalf of the governmental entity in the Governmental Immunity Act database maintained by the Utah State Department of Commerce, Division of Corporations and Commercial Code, and to the address shown is as designated in that database.

The person and address designated in the Governmental Immunity Act database is as follows:

Matt Dias, City Manager
Park City
445 Marsac Avenue
Park City, Utah 84060

On this ___ Day of _____, 2022, I caused the attached Advisory Opinion to be delivered to the governmental office by delivering the same to the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the person shown above.

_____
Office of the Property Rights Ombudsman

Chapter 19.84 CONDITIONAL USES

19.84.010 Purpose

19.84.020 Conditional Use Permit Required When

19.84.030 Application Requirements--Fee

19.84.040 Application Review

19.84.050 Approval/Denial Authority

19.84.060 Standards For Approval

19.84.075 Graffiti Preventative Materials Or Design

19.84.080 Appeals

19.84.095 Preliminary And Final Approval Of Conditional Use Applications

19.84.100 Revocation Of Conditional Use Permits

19.84.110 Hearing Officer

19.84.120 Inspection

19.84.010 Purpose

The purpose of this chapter is to provide for a reasonable application, review, and approval process for land uses that are specified as "conditional," such that proposed new land uses meet Metro Township standards and are properly integrated into the community and that those that appear to violate Metro Township standards are effectively mitigated or prohibited. Conditional uses shall be approved on a case-by-case basis provided the applicant adequately demonstrates that negative impacts of the use can be mitigated through the imposition of reasonable conditions of approval.

19.84.020 Conditional Use Permit Required When

A conditional use permit shall be required for all uses listed as conditional uses in the district regulations or elsewhere in this title.

19.84.030 Application Requirements--Fee

Only when the following elements are satisfied is a conditional use application deemed complete:

A. Application for a conditional use permit shall be made by the property owner or certified agent thereof in writing upon the form(s) designated by the director or director's designee.
B. Accompanying Documents. Detailed site plans and specifications drawn to scale, unless waived by the director or director's designee, shall be submitted with the application.
C. Fee. The initial application fee for any conditional use permit, as provided for in Section 3.52.040 of this code, shall be paid. The payment of a partial application fee, or the submittal of plans for a pre-submittal review, does not constitute a complete application.

19.84.040 Application Review

A. The director or the director's designee shall administer an application review procedure in which the proposed use and the proposed site development plan are evaluated for compliance with all applicable ordinances and codes and for anticipated detrimental effects.

B. The application review procedure shall contain the following components:

1. Referral of the application to all affected entities;

2. A review of the proposed site plan for compliance with applicable sections of the zoning ordinance;

3. A review of the proposed use and site plan to ascertain potential negative impacts and whether reasonable conditions can be imposed to mitigate those impacts.

C. The application review procedure may include the following:

1. Referral of the application to government or regulating entities for recommendations;

2. A pre-application meeting, in which preliminary site plans are reviewed and discussed prior to finished plans being submitted for review;

3. An on-site review of the proposal by the director, director's designee or staff;

4. A requirement that the applicant submit impact studies or other technical studies regarding grading, drainage, traffic, geologic hazards, etc.

D. The director, director's designee or staff shall present a review, summary and recommendation to the planning commission after having provided the applicant with a copy as required by state law. The recommendation shall remain part of the public record.

19.84.050 Approval/Denial Authority

The planning commission has the authority to approve, deny, or approve with conditions conditional use applications.

A. Planning Commission Approval.
    1. The planning commission shall review and approve or deny each application during a public meeting.
    2. The planning commission's decision shall be based on information presented through the public meeting process, including: the materials submitted by the applicant, the recommendation of the director or director's designee, and input from interested parties and affected entities.
    3. If conditions are specified, the director or director's designee shall issue a final approval letter upon satisfaction of the planning commission's conditions of approval.
    4. If the applicant fails to meet all conditions of approval within twelve months of the planning commission's decision, the application is deemed denied. A twelve-month extension may be granted upon the payment of an additional filing fee equal to the original filing fee.
    5. A planning commission decision shall be made on a complete conditional use application within a reasonable time frame, not to exceed ninety days. The planning commission is authorized to review and take action on an application as outlined in Section 19.84.040 after having notified the applicant of the meeting date.
    6. Failure by the applicant to provide information that has been requested by the planning commission, the director or director's designee to resolve conflicts with the standards in Section 19.84.060 (above) may result in an application being denied.
B. Decision. Each conditional use application shall be:
    1. Approved if the proposed use, including the manner and design in which a property is proposed for development, complies with the standards for approval outlined in Section 19.84.060; or
    2. Approved with conditions if the anticipated detrimental effects of the use, including the manner and design in which the property is proposed for

development, can be mitigated with the imposition of reasonable conditions to bring about compliance with the standards outlined in Section 19.84.060; or

3. Denied if the anticipated detrimental effects of the proposed use cannot be mitigated with the imposition of reasonable conditions of approval to bring about compliance with the standards outlined in Section 19.84.060.

19.84.060 Standards For Approval

Prior to approval, all conditional uses and accompanying site development plans must be found to conform to the following standards:

A. The proposed site development plan shall comply with all applicable provisions of the zoning ordinance, including parking, building setbacks, and building height.

B. The proposed use and site development plan shall comply with all other applicable laws and ordinances.

C. The proposed use and site development plan shall not present a serious traffic hazard due to poor site design or to anticipated traffic increases on the nearby road system which exceed the amounts called for under the Metro Township transportation master plan.

D. The proposed use and site development plan shall not pose a serious threat to the safety of persons who will work on, reside on, or visit the property nor pose a serious threat to the safety of residents or properties in the vicinity by failure to adequately address the following issues: fire safety, geologic hazards, soil or slope conditions, liquifaction potential, site grading/topography, storm drainage/flood control, high ground water, environmental health hazards, or wetlands.

E. The proposed use and site development plan shall not adversely impact properties in the vicinity of the site through lack of compatibility with nearby buildings in terms of size, scale, height, or noncompliance with community general plan standards.

19.84.075 Graffiti Preventative Materials Or Design

A. Whenever the planning commission determines that there is a reasonable likelihood that graffiti will be placed on the surfaces of proposed improvements it shall require, as part of the conditional use approval, that the applicant apply an anti-graffiti material, approved by the development services division, to each of the surfaces to be constructed. The anti-graffiti material shall be used on surfaces from ground level to a height of nine feet. The planning commission may approve dense planting or appropriate design measures in place of anti-graffiti materials.

B. Whenever the planning commission becomes aware of graffiti having been placed on any surfaces constructed as part of development approved as a conditional use, it may require that the applicant or his/her successor in interest apply an anti-graffiti material to such surfaces where no such material was previously required.

19.84.080 Appeals

Any adversely affected person shall have the right to appeal to the land use hearing officer any decision rendered by the planning commission, the director or director's designee by filing in writing, stating the reasons for the appeal with the land use hearing officer, within ten days following the date upon which the decision is made. Appeals to the land use hearing officer shall comply with the following procedures:

A. Upon scheduling a hearing date, the land use hearing officer shall notify the planning commission coordinator at least two weeks prior to the hearing to allow preparation of the record.
B. The planning commission coordinator shall prepare a copy of the record of the proceedings and decision being appealed for presentation to the land use hearing officer.
C. The hearing officer shall review the record, and may not accept or consider any evidence outside the record unless the evidence was offered to and was excluded by the planning commission, the director or director's designee and the hearing officer determines that it was improperly excluded.
D. The land use hearing officer shall review the planning commission's or the development services division's actions to determine whether the decision was arbitrary, capricious, or illegal.
E. The filing of an appeal does not automatically stay the decision; however, the land use hearing officer has the authority to stay the decision while the appeal is pending.
F. After review of the record and written and oral argument on both sides, the hearing officer may affirm, reverse, alter, or remand to the planning commission, the director or director's designee for further review and consideration the action taken by the planning commission, the director or director's designee.

19.84.095 Preliminary And Final Approval Of Conditional Use Applications

A. Unless otherwise designated, a decision approving a conditional use application shall be a preliminary approval of the application.

B. Except as specified in subsection C of this section, the planning and development services director is authorized to grant final approval of conditional use applications after

all of the conditions and requirements of the preliminary approval which are necessary for the final approval have been met. Final approval of a conditional use application shall be in the form of a letter to the applicant which, together with the approved site plan if required, shall constitute the conditional use permit.

C. The planning commission may require as a condition of preliminary approval that a conditional use application be brought before the planning commission for consideration of final approval.

19.84.100 Revocation Of Conditional Use Permits

A conditional use permit may be revoked by the planning commission upon a finding of failure to comply with the terms and conditions of the original permit or for any violation of this title occurring on the site for which the permit was approved. Prior to taking action concerning revocation of a conditional use permit, a hearing shall be held by the planning commission. Notice of the hearing and the grounds for consideration of revocation shall be mailed to the permittee at least ten days prior to the hearing.

19.84.110 Hearing Officer

The planning commission may appoint, with the concurrence of the Metro Township Council Chair, a hearing officer or officers to make recommendations to the planning commission as to whether cause exists for the planning commission to consider revoking any conditional use permit. Prior to making any recommendation to the planning commission, an evidentiary hearing shall be conducted by the hearing officer to determine whether the permittee has failed to comply with the terms and conditions of the original permit or has otherwise violated any provision of the zoning ordinance occurring on the site for which the permit was approved. The hearing officer shall notify the planning commission if any violations have been corrected by the permittee prior to the issuance of the hearing officer's recommendations.

19.84.120 Inspection

Following the issuance of a conditional use permit by the planning commission the building official shall approve an application for a building permit pursuant to Chapter 19.94 of this title and shall ensure that development is undertaken and completed in compliance with the permits.

LAYTON CITY CONDITIONAL USE PERMIT ORDINANCE

19.14.020 Conditional Use Permit

A conditional use permit shall be required for all uses listed as conditional uses in the zoning district regulations or elsewhere in this Title. A conditional use permit may be revoked upon failure to comply with conditions precedent to the original approval of the permit.

1. **Application**. A conditional use permit shall be made by the property owner or certified agent thereof to the Community and Economic Development Department. The Development Staff review of a conditional use application shall comply with the process and criteria outlined in 19.03 of the Layton City Municipal Code as well as the requirements listed therein.
2. **Considerations of conditional use procedure**. The application shall be accompanied by maps, drawings, or other documents sufficient to meet the requirements of a site plan review (see Chapter 19.13), for those conditional uses which require such a review, and sufficient to demonstrate that the general and specific requirements of this Title will be met by the construction and operation of the proposed building, structure, or use. In considering an application for a conditional use permit, the Land Use Authority as defined in Section 19.01.135 shall give due regard to the nature and condition of adjacent uses and structures.
    a. A conditional use shall be approved if reasonable conditions are proposed or can be imposed, to mitigate the reasonable anticipated detrimental effects of the proposed use in accordance with applicable standards.
    b. If the reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards, then the conditional use may be denied.

The granting of a conditional use permit shall not exempt the application from other relevant provisions of this or other ordinances of the City of Layton.

1. **Fee**. The application for any conditional use permit shall be accompanied by the appropriate fee as authorized in the City's Consolidated Fee Schedule.

HISTORY

Ord. No. 97-19, Enacted, 4/17/1997

Ord. No. 97-35, Recodified, 6/19/1997

Ord. No. 04-69, Recodified, 12/16/2004

Ord. No. 17-13, Amended, 6/15/2017

Ord. No. 24-03, Amended 1/18/2024

Ongoing ordinance history can be viewed by clicking the gavel in the top right corner.

CHAPTER 7-8CONDITIONAL USES

Sections:

- 7-8-101Conditional Use Permit Required.
- 7-8-102Conditional Use Application.
- 7-8-103Conditional Use Standards.
- 7-8-104Termination, Revocation, and Enforcement.

7-8-101.CONDITIONAL USE PERMIT REQUIRED.

(1) A Conditional Use Permit shall be required for all Conditional Uses within the City.

(2) The Applicant shall comply with all requirements of this Title and with all requirements imposed by the Planning Commission before commencing the Conditional Use unless specifically approved by the Planning Commission.

7-8-102.CONDITIONAL USE APPLICATION.

All applications for new Conditional Uses or Conditional Use amendments shall be made upon forms or by electronic means designated by the City and shall include the following:

(1) All Development Plans and supporting materials required by this Title;

(2) The full fee set forth in the Consolidated Fee Schedule; and

(3) The names and addresses of all property Owners, as contained in the current records of the Salt Lake County Recorder, within a 300-foot radius of the subject property.

7-8-103.CONDITIONAL USE STANDARDS.

(1) The Planning Commission shall approve complete Conditional Use applications if reasonable conditions are proposed or can be imposed to mitigate the reasonably anticipated detrimental effects of the proposed Use.

In addition to the requirements of the West Valley City Municipal Code, the Planning Commission may impose reasonable conditions to mitigate reasonably anticipated detrimental effects of the proposed Use.

(2) Conditional use permits are granted subject to review by the Planning Commission. The Planning Commission or City staff may initiate a review of a conditional use permit to determine whether the conditions of approval are being met and/or effectively mitigating reasonably anticipated detrimental effects of the proposed Use. Any such review shall include a public hearing with notice given to the property owner and others as required by

state law. Following such review, the Planning Commission may impose additional conditions to mitigate the reasonably anticipated detrimental effects of the proposed Use and shall establish a reasonable timeline for compliance with such conditions.

(Ord. No. 18-13 Amended 05/08/2018)

7-8-104.TERMINATION, REVOCATION, AND ENFORCEMENT.

(1) A Conditional Use Permit shall automatically terminate without notice if the Applicant fails to do any of the following within 12 months of Planning Commission approval:

a. If construction is proposed, obtain a building permit for and complete the construction of the foundation of at least one Primary Building;

b. Obtain a business license; or

c. Fulfill all conditions imposed by the Planning Commission.

(2) If the approved Use or activity should cease for any reason for a continuous period of one year or more, the Conditional Use Permit shall automatically terminate without notice. Approval of a new Conditional Use application shall be required prior to any subsequent reinstatement of the Use.

(3) Conditional Use Permits may be revoked by the Planning Commission if the Applicant or the Applicant's successors and assigns fail to comply with this Title or the conditions imposed by the Planning Commission. No Conditional Use Permit shall be revoked until a hearing is held by the Planning Commission. The permittee shall be notified in writing of such hearing. The notification shall state the grounds for complaint, or reasons for revocation, and the time and location at which the hearing is to be held. At the hearing, the permittee shall be given an opportunity to be heard and he may call witnesses and present evidence on his behalf. Upon conclusion of the hearing, the Planning Commission shall determine whether or not the permit should be revoked.

(4) The City may enforce the requirements of this Chapter or the conditions imposed by the Planning Commission by any method legally available, including but not limited to revocation of the Conditional Use Permit or business license, administrative code enforcement, civil action, or criminal prosecution.

(Ord. No. 18-13 Amended 05/08/2018)

EMIGRATION CANYON

Planning and Development Services
860 West Levoy Drive, Suite 300
Taylorsville, Utah 84123

MEETING MINUTE SUMMARY
EMIGRATION CANYON PLANNING COMMISSION MEETING
Thursday, December 11, 2025, 8:30 a.m.

Approximate meeting length: 2 hours 4 minutes
Number of public in attendance: 12
Summary Prepared by: Wendy Gurr
Meeting Conducted by: Commissioner Harpst

*NOTE: **Staff Reports** referenced in this document can be found on the State website, or from Planning & Development Services.

ATTENDANCE

Commissioners and Staff:

Commissioners	Public Mtg	Business Mtg	Absent
Andrew Wallace	x	x	
Jim Karkut	x	x	
Dale Berreth	x	x	
Tim Harpst (Chair)	x	x	
Jodi Geroux (Vice Chair)	x	x	

Planning Staff / DA	Public Mtg	Business Mtg
Wendy Gurr	x	x
Jim Nakamura	x	x
Brian Tucker	x	x
Curtis Woodward	x	x
Justin Smith	x	x
Polly McLean		
Claire Gillmor	x	x
Adam Long		

LAND USE APPLICATION(S)
Meeting began at – 8:33 a.m.

SUB2025-001345 – (Continued from November 13, 2025) - Evan Glassman is applying for a three-lot subdivision. **Acres:** 1.68. **Location:** 1128-1162 North Pinecrest Canyon Road. **Zone**: FR-1. **Planner:** Justin Smith (Motion/Voting)

Speaker # 1: Applicant
Name: Evan Glassman
Address: 2030 South 900 East
Comments: Mr. Glassman said his background is in fine art and design, not a land or housing developer. Brought artwork that represents what his plan for the property is. Mr. Glassman said his proposal meets all codes and ordinances.

Speaker # 2: Citizen
Name: Amy Cutting
Address: 1121 North Burnt Fork Road
Comments: Ms. Cutting read from her statement and is speaking on behalf of herself and the neighbor's. (attached)

Speaker # 3: Citizen
Name: Laura Gray
Address: 1195 Pinecrest Canyon
Comments: Ms. Gray said she concurs with what Amy said. She believes the lots were never developed due to the slope. Has code been violated by not providing a bond? And why was work not able to be completed 2 ½ years with regards to excavation permit? Expressed concerns with Mr. Glassman's behavior: Trespassed and parked on their property; Retaining walls have gone unfinished, and sediment has fallen into the creek and acted in bad faith. Trucks parked on their property.

Speaker # 4: Civil Engineer - CMT Technical Services
Name: Mathieu Perron
Address: South Jordan
Comments: Mr. Perron said he is the applicant's civil engineer and here to answer questions. They have made an effort to follow the codes when planning and working with Evan for a year.

Speaker # 5: Citizen
Name: David Grunwald
Address: 1146 North Burnt Fork Road
Comments: Mr. Grunwald asked what the relationship between a pledge to build the road and retaining walls versus applying for the permit.

Greater Salt Lake Municipal Services District Senior Planner Curtis Woodward provided clarification from reviewing agencies.

Commissioners and staff had a brief discussion regarding parcel zones FR-0.5 and FR-20 staff recommendations, site plan, slope, and conditions, adding one additional condition "F" – septic drainage fields and slope protection waivers are not approved as part of this plat. Parcel 1146 needs access to 1128, condition number 4 should have referenced 18.10.040 not 18.16.010, buildable area, failure to record, findings as to applicable standards, and judgement.

Motion: To approve application #SUB2025-001345 Evan Glassman is applying for a three-lot subdivision with staff recommendations and additional conditions:
12.F. Septic drainage fields and slope protection waivers are not approved as part of this plat.
13. (4) The municipality may withhold an otherwise valid plat approval until the owner of the land provided the legislative body with a tax clearance indicating that all taxes, interest, and penalties owing on the land have been paid.
14. (b) A failure to record a plat within the time period designated by ordinance renders the plat voidable by the municipality

Motion by*:* Commissioner Geroux
2nd by: Commissioner Wallace
Vote*:* Commissioners voted unanimously in favor

One additional Note: the draft "Cross Access, Utilities Easement" uploaded April 21, 2023, will need to include the legal description and parcel number of all properties subject to or granted rights of access within the easement as described. It is also recommended that the easement specifically states that one of the conditions of granting the easement to the subject properties is that future maintenance and upkeep of the right of way is a shared responsibility of all property owners abutting and/or using the easement for access.

BUSINESS MEETING

Meeting began at – 9:55 a.m.

1) Approval of October 9, 2025, Planning Commission Meeting Minutes. (Motion/Voting)
Motion: To approve October 9, 2025, Planning Commission Meeting Minutes with amendments.
Motion by*:* Commissioner Berreth
2nd by: Commissioner Karkut
Vote*:* Commissioners voted unanimously in favor

Approval of November 13, 2025, Planning Commission Meeting Minutes. (Motion/Voting)
Motion: To approve November 13, 2025, Planning Commission Meeting Minutes with amendments.
Motion by*:* Commissioner Wallace
2nd by: Commissioner Karkut
Vote*:* Commissioners voted unanimously in favor

2) 2026 Planning Commission Schedule. (Discussion)
Motion: To approve 2026 Planning Commission Schedule as presented.
Motion by*:* Commissioner Berreth
2nd by: Commissioner Karkut
Vote*:* Commissioners voted unanimously in favor

3) Other Business Items. (As Needed)

Commissioners discussed the Forestry zone 19.24 and asked if the setback table should be applied to all the zoning chapters and that all setbacks are identified from a public or private right-of-way. The Commission would like legal counsel to discuss with the Emigration Canyon City Council to determine if setbacks shall be measured from road edge or center line and include on the January 8th agenda.

Two commissioner appointments expire March 1st. Commissioner Karkut and Commissioner Geroux both expressed interest in reappointment. Ms. Gurr will advise Diana to add reappointment to the Council agenda.

Chair and vice chair election in January. For chair and vice chair, both have expressed their interest in remaining.

Commissioner Karkut adjourned.

MEETING ADJOURNED

Time Adjourned – 10:37 a.m.

Amy Cutting + neighbors

Recommendation to Deny the Current Preliminary Plat Application for Juniper Ridge Subdivision

Based on the submitted documents and regulations, we still believe that the current Preliminary Plat Application for the Juniper Ridge Subdivision should be **denied** in its current form due to concerns related to proposed building density, compliance with site standards, soil/fill usage, and potential negative impacts on adjacent properties.

1. Building Density and Insufficient Site Capability

While the formal application is for a three-lot subdivision, we are all aware that the true intent of the proposed purchaser is to build five homes to make the venture financially profitable.

- My neighbors and I feel that any more than 2 homes in the preliminary plat, and 3 homes in total, exceeds the available space and strains the site's capability.
- As a comparison, the neighboring Burr Fork Subdivision contains five average-sized homes (approximately 3,000 sq. ft. with 3 bedrooms/3 bathrooms). If you overlay the aerial photo from the County Assessors maps onto the Juniper Ridge Subdivision property, you can see that Juniper Ridge is considerably smaller.
- After a detailed review of the plans and my personal experience looking at the site, I believe that Building pad 5 is not a viable location for a home.
- If Building pad 5 is non-viable, only pads 3 and 4 are potentially usable within this application, which should prompt the Commission to reconsider this application for 3 homes. If the builder were to seek future approval for the two additional lots, there appears to be only one more (Building pad 2) that looks large enough, bringing the realistic total to 3 homes, not 5. Building pad 1 is in 2 parts, neither of which has enough land less than a 30% slope to be realistic sites.

2. Site Selection and Aesthetic Standards

The inclusion of Building Pad 5 as a viable site fundamentally conflicts with the Emigration Canyon Municipal Code 19.73.030 on Site Selection And Planning Standards.

- This code requires that buildings **"shall be sited off of highly visible places and designed so they are not obtrusive, do not loom out over the hillside and break prominent skylines"**.
- Given the significant drop-off to the south, any structure on Building Pad 5 would be clearly visible from Pinecrest Canyon Road, from homes across the road, and from the adjacent Burnt Fork Subdivision property.
- A structure on this site would most certainly loom over the northernmost home in the Burnt Fork Subdivision and significantly impact sightlines for all adjacent homes.

3. Geotechnical and Soil Hazards

The known characteristics of the soil and the steep slopes present significant challenges that require substantial, disruptive engineering solutions, thereby increasing the risk and potential impact of development.

- The geotechnical report identified the top 12–18 inches of topsoil as Clayey Silt and Silty Sand soils that are moisture-sensitive.
- The problematic soils require removal and replacement with structural fill. Work progress would be significantly limited and difficult during wet and cold periods of the year due to the nature of the silt soils.
- References made by Mr. Glassman and Justin Smith that the Burr Fork Subdivision is precedent for this approval is not valid. The subdivision is 40 years old and was approved prior to many current regulations, including the FCOZ. It is our belief that if that subdivision were to be built today, there is a good chance it would not be approved for the same reasons I am raising about Juniper Ridge. Our history and experience building and maintaining the subdivision highlight the inherent, ongoing issues with the soil and slope angle in this specific area of the canyon.

We urge the Commission to look closely at the realistic density the site can support and the compliance issues related to visual standards before moving forward. The potential negative impacts on adjacent properties and the environment are too great to approve the application in its current form.

EMIGRATION CANYON

Planning and Development Services
2001 S. State Street N3-600 • Salt Lake City, UT 84190-4050
Phone: (385) 468-6700 • Fax: (385) 468-6674

MEETING MINUTE SUMMARY
EMIGRATION CANYON PLANNING COMMISSION MEETING
Thursday, January 8, 2026, 8:30 a.m.

Approximate meeting length: 2 hours 13 minutes
Number of public in attendance: 12
Summary Prepared by: Wendy Gurr
Meeting Conducted by: Commissioner Harpst

*NOTE: **Staff Reports** referenced in this document can be found on the State website, or from Planning & Development Services.

ATTENDANCE

Commissioners and Staff:

Commissioners	Public Mtg	Business Mtg	Absent
Andrew Wallace		x	
Jim Karkut		x	
Dale Berreth		x	
Tim Harpst (Chair)		x	
Jodi Geroux (Vice Chair)		x	

Planning Staff / DA	Public Mtg	Business Mtg
Wendy Gurr		x
Jim Nakamura		x
Brian Tucker		x
Polly McLean		
Claire Gillmor		x

BUSINESS MEETING

Meeting began at – 8:33 a.m.

1) **OAM2025-001463** - Consideration of removing the words 'from a public right of way' from the Front Yard and Street Side Yard Setback Requirements in Table 19.24.050. **Planner** Brian Tucker, Planning Manager (Discussion, Action)

   Greater Salt Lake Municipal Services District Planning Manager Brian Tucker provided an analysis of the ordinance update.

   Commissioners, counsel, and staff had a brief discussion regarding the public right of way or property line whichever is lesser and use the more restrictive requirement. Language that remains is maintain the 10- foot setback in the spirit of which it was written from any road, from edge of paved surface on private and public road. Add "site building setback requirements" to the top of the table.

Commissioner Harpst invited the public to speak.

Speaker # 1: Citizen
Name: Robert MacFarlane
Address: 6102 Emigration Canyon Road
Comments: Mr. MacFarlane said he sent a letter last evening (attached). Pavement is two feet from the property line. How many homes immediately become non-compliant or condemned? There is no rush and feels like an end around. Due diligence needs to be done and feels attacked. Take your time.

Speaker # 2: Citizen
Name: Gary Bowen
Address: 6486 Emigration Canyon Road
Comments: Mr. Bowen said he has a history of living in the canyon. Road up where they live is wider than when he was a child. The canyon is much narrower from the firehouse than it is where he lives. Even though he built a new house it qualified as a remodel. Right of way is 66 feet up the canyon and he found a map from 1931, and it was only 33 feet wide. Suggest the environmental variety does not govern the wideness of the road.

Speaker # 3: Citizen
Name: Jessica Steed
Address: 6111 Emigration Canyon Road
Comments: Ms. Steed said it feels this change is being brought forth and has nothing to do with road widening.

Speaker # 4: Citizen
Name: Justin Kahn
Address: 6586 East Emigration Canyon Road
Comments: Mr. Kahn said he echoes Jessica's sentiment and has many questions like Bob. Accusing the city council and planning commission to do this quickly and accept grant funds. He brought up the issue with the title and tax situation and now this. Who came up with this language? Suspicious and ridiculous. Not allowing the constituents proper time to challenge. Setback should be from the centerline and should be able to get a Variance. From the asphalt edge will encroach on all properties.

Speaker # 5: Citizen
Name: Trent Alvey
Address: 5705 Emigration Canyon Road
Comments: Ms. Alvey said concerned and confused about arbitrariness of setbacks and should serve the roadway and the resident. They lived there 25 years and installed the blacktop out as far as they could. The center has moved depending on the slope. The creek is right there six inches off the blacktop. The creek adds money to property value and endangered trout. How can you write 10 feet from what?

Commissioners and staff had a brief discussion regarding edge of front right of way is the property line. Consider adding the word "width" to number two at the right of way exceeds 66' and factors should be increased to include view corridors, stream corridors, water quality, traffic safety, septic system location and viability, and adding factors including but not limited to. Consider combining number one and two. Consider adding safety of the public and general character of the canyon. Add the word safety after public, and the goals of the Emigration Canyon General Plan. Determine measurement from "the edge of a public or private right of way". Staff will relate the level of discussion and thought of the planning commission and views from the public.

PUBLIC PORTION OF HEARING CLOSED

Motion: To recommend file #OAM2025-001463 Consideration of removing the words 'from a public right of way' from the Front Yard and Street Side Yard Setback Requirements in Table 19.24.050 to the Emigration Canyon Council for approval with the amendments and relate the level of discussion and thought of the planning commission and views from the public.

Motion by*:* Commissioner Karkut
2nd by: Commissioner Geroux
Vote*:* Commissioners voted unanimously in favor

2) Election of Chair and Vice Chair 2026. (Motion/Voting)
Election of Chair for 2026
Motion: To nominate Commissioner Harpst as Chair, Commissioner Harpst accepted.

Motion by*:* Commissioner Wallace
2nd by: Commissioner Berreth
Vote*:* Commissioners voted unanimously in favor

Election of Vice Chair for 2026
Motion: To nominate Commissioner Geroux as Vice Chair, Commissioner Geroux accepted.

Motion by*:* Commissioner Harpst
2nd by: Commissioner Berreth
Vote*:* Commissioners voted unanimously in favor

3) Discussion on prioritizing Title 19 Chapters. Brian Tucker and Claire Gillmor

Ms. Gillmor stated she met with Mayor Brems agreed with the subdivision ordinance and planning commission is involved much earlier and providing clarity to the developer early on and familiarize the planning commission with the proposal and clarify the requirements and if met. Ms. Gillmor would like to make the modifications and bring forth.

Second, it is worth looking at the general plan and identifying areas that the planning commission doesn't want developed at all. If there are areas controversial and problematic, see fit to keep open space in specific areas. Sit down with the general plan and determine worst case scenarios, most impactful from a land use standpoint. Priorities are whatever the strongest priorities are and what the council wants the planning commission to work on. Road improvement project is the current priority for the city council. A lot of misinformation out circulating, what it means, raised issues, and public clamor. Goal is to implement what the planning commission wants. New statute will cut into the way we look at architectural features and colors in design requirements.

Bring the Subdivision updates with changes and present at the February planning commission meeting. Break up the general plan, going zone by zone to begin at the March meeting. Map in the forestry zone as it is completely hidden and the undetermined zones.

4) Other Business Items. (As Needed)
No other business items to discuss.

MEETING ADJOURNED

Time Adjourned – 10:46 a.m.

Subject: Objection to Proposed Setback Amendment (OAM2025-001463)

Dear Emigration City Council and Planning Department,

My name is Robert Macfarlane, and I reside at [redacted]. I am writing to express strong opposition to the proposed zoning amendment OAM2025-001463, which would remove the words “from a public right-of-way” from the front-yard and street-side setback requirements in Table 19.24.050.

This change is improper, unnecessary, and carries significant implications for property rights, public trust, and the integrity of the City’s planning process.

First, removing the reference to the public right-of-way would fundamentally alter how setbacks are measured. Setbacks are intended to be tied to a legally defined boundary. Eliminating that anchor point would give the City broad discretion to redefine where setbacks begin—whether from the edge of pavement, a future planned roadway, or any administratively chosen point. This would weaken long-standing protections for homeowners and create uncertainty about the status of existing structures.

Second, this amendment appears directly connected to the proposed road-widening project. The City and County have acknowledged unresolved right-of-way and title issues dating back to the 1950s. Changing the setback definition now would effectively sidestep those unresolved legal deficiencies by allowing the City to treat private property as if it were already part of the roadway. This is not an appropriate use of zoning authority and risks being perceived as an attempt to expand the road footprint without formally acquiring land or compensating affected residents.

Third, the amendment would expose homeowners to significant risk. If setbacks are no longer tied to the public right-of-way, many existing homes could be reclassified as non-conforming through no fault of the owners. This could limit future improvements, reduce property values, and create conflict between residents and the City. Zoning changes should not retroactively disadvantage long-standing property owners.

Finally, this proposal runs counter to the overwhelming sentiment of canyon residents. Ninety-six percent of residents surveyed by WFRC oppose the widening project, and more than one hundred residents have signed a petition against it. Introducing a zoning amendment that facilitates widening—before resolving right-of-way issues, before addressing resident concerns, and before any transparent public process—undermines confidence in the City’s stewardship.

For these reasons, I respectfully request that the City withdraw or vote against this amendment. Any changes to setback rules should be based on clear planning needs, legal clarity, and genuine community support—not as a workaround to unresolved issues related to the road-widening proposal.

Thank you for your attention and for considering the concerns of those who live directly along the affected corridor.

Sincerely,

Robert Macfarlane
[redacted]
Salt Lake City, UT 84108
[redacted]

EMIGRATION CANYON

Planning and Development Services
2001 S. State Street N3-600 • Salt Lake City, UT 84190-4050
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MEETING MINUTE SUMMARY
EMIGRATION CANYON PLANNING COMMISSION MEETING
Thursday, February 12, 2026, 8:30 a.m.

Approximate meeting length: 1 hour 42 minutes
Number of public in attendance: 1
Summary Prepared by: Wendy Gurr
Meeting Conducted by: Commissioner Harpst

*NOTE: **Staff Reports** referenced in this document can be found on the State website, or from Planning & Development Services.

ATTENDANCE

Commissioners and Staff:

Commissioners	Public Mtg	Business Mtg	Absent
Andrew Wallace		x	
Jim Karkut		x	
Dale Berreth		x	
Tim Harpst (Chair)		x	
Jodi Geroux (Vice Chair)		x	

Planning Staff / DA	Public Mtg	Business Mtg
Wendy Gurr		x
Jim Nakamura		x
Brian Tucker		x
Curtis Woodward		x
Polly McLean		
Claire Gillmor		x

BUSINESS MEETING

Meeting began at – 8:48 a.m.

Ms. Gillmor asked to address items out of order and request to move to the closed session as the first item. Commissioner Berreth motioned to approve, Commissioner Wallace seconded that motion.

1) Code Update Process. (Discussion)

Ms. Gillmor said we need to do housekeeping in reformatting and editorial. The supervisors from each public body need to ensure with the public that nothing nefarious or change is going on without going through the process. Will need to put into the process a developed spreadsheet, so there is no question from here.

Mr. Woodward said we were tasked with trying to rewrite FCOZ and redo the whole thing. The attorney's office did something similar to our proposal and that was to move things around. He was asked to make a side-by-side comparison to what is now, the proposal, and what's changed when FCOZ was rewritten. The spreadsheet became so big, because of the special interest groups chiming in. Address certain hot button issues and can key in the big ones and put up front. Staff should

implement a clear process in terms of the update. Potentially with questions or concerns, they could bounce off the supervisors for input. The best way to do two things at the same time, housekeeping and chapters reviled and have identified key concerns with current ordinance to align and protect. He advised Conditional use and subdivisions need to be revisited.

The Planning Commission priorities are for their meetings, time sensitivity, code rewrite, and training. May have something to work on a process and/or training in March.

Commissioner Harpst motioned to adjourn, Commissioner Wallace seconded that motion.

MEETING ADJOURNED

Time Adjourned – 10:30 a.m.