



**Kaysville City Planning Commission
Meeting Notice and Agenda**

The Kaysville City Planning Commission will hold a regular meeting on February 23, 2023, at 7:00 PM in the Council Chambers of the Kaysville City Municipal Building located at 23 East Center Street.. The public is encouraged to attend in person or may view the meeting online via www.Kaysvillelive.com.

1. Opening
2. Approval of the minutes from the February 9, 2023 Planning Commission Meeting
3. Conditional Use Permit for a Major B Home Occupation for Peachtree Wellness, a Functional Nutritionist located at 724 West Old Mill Lane
4. Public Hearing for Text Amendment for Title 17 Chapter 30 Conditional Uses and all other sections of Title 17 - Planning and Zoning which pertain to the Planning Commission approval of conditional uses.
5. Affordable Housing Q&A Session with University of Utah Master of Social Work Students
6. Call to the Public
7. Other matters that properly come before the Planning Commission
 - a. Reports
 - b. Correspondence
 - c. Calendar
8. Adjournment

On February 17, 2023 a Notice of Meeting was posted in accordance with Utah State Code Section 52-4-202 (3).

Mindi Edstrom
Community Development Department



Kaysville City Planning Commission Meeting Minutes February 9, 2023

The Planning Commission meeting was held on February 9, 2023 at 7:00 pm in the Kaysville City Hall located at 23 East Center Street.

Planning Commission Members in Attendance: Chair Toby Barrus, Commissioners Steve Lyon, Rachel Lott, Paul Allred, Josh Sundloff, Cody Branch and Wilf Sommerkorn

Staff Present: Mindi Edstrom and Melinda Greenwood

Public Attendees: Rhett Bolton, Steven Adams, Trek Loveridge, and City Councilmember Abbi Hunt

1-OPENING

Chair Toby Barrus opened the meeting by welcoming all in attendance to the January 26th Planning Commission meeting.

2- APPROVAL OF THE MINUTES FROM THE JANUARY 12, 2023 PLANNING COMMISSION MEETING

Commissioner Lyon made the motion to approve the minutes from the January 12, 2023 meeting and Commissioner Allred seconded the motion. The vote was unanimous (7-0) in favor of the motion.

3- CONDITIONAL USE PERMIT FOR A MAJOR B HOME OCCUPATION FOR FORSETI, LLC, A HOME BASED FIREARMS AND SPORTING ACCESSORY RETAILER LOCATED AT 71 NORTH GRAY FOX CIRCLE Introduced by Mindi Edstrom

This Conditional Use Permit came before Planning Commission January 26, 2023 and the applicant was unable to attend. The Planning Commission tabled the item from that meeting and is back before the Commission for consideration.

Ms. Edstrom explained that the Conditional Use Permit is for a Major B Home Occupation for the business Forseti, LLC, which belongs Rhett Bolton. Forseti is a home based firearms and sporting accessory retailer. Mr. Bolton meets with customers by appointment only to help them identify the parts and accessories they need for their firearms. Mr. Bolton is also a Certified Concealed Firearm Instructor and will be teaching on-site firearm safety courses.

Staff recommended approval of this application based on regulations in KCC 17-26-4.

Commissioner Lyon asked the applicant, Rhett Bolton, how many classes, and how many times he would be holding classes, and asked about the number of students in the home and what the parking looks like for the neighbors.

Mr. Bolton said he has been teaching certification classes for several years and he averages 4 to 5 people per class and classes are around 5 hours. He prefers not to teach in his home and is looking for a location to rent in the community.

Commissioner Allred made the suggestion to the applicant to look to the Recreation Department for space to rent. He feels that firearm safety is great for the public to learn more about.

Commissioner Sundloff asked staff if there is a minimum or maximum class size stated in the Kaysville City Code.

Ms. Edstrom referred to Kaysville City Code 17-266-4:

12c: Major home occupations B may include, but are not necessarily limited to the following:

- 1. Any use allowed as a minor home occupation;*
- 2. Photo studios and developing;*
- 3. Organized classes (limits shall be placed on the number of students and/or the number of vehicles transporting students to prevent congestion);*

She explained that in 12c there is not a number on allowed participants in organized classes, which allows for a number to be determined by Planning Commission.

Commissioner Sundloff said that having a class with parking and students is a different scenario than daily drop off and pick-up of 12 preschool students. The impact would be far less.

Commissioner Allred feels that the Planning Commissioners have a responsibility to allow for public streets to be used for public parking and as long as classes do not block driveways or mailboxes and does not see using the street for public parking as an issue.

Commissioner Sundloff said that not all right of ways are created equal. Some right of ways are more heavily used than others and more conducive to accommodating more parking than others. He felt that allowing up to twelve cars would be a good condition.

Commissioner Allred made a motion to approve the Conditional Use Permit with the following conditions for approval:

- The instructional courses be limited to no more than 12 students and 12 cars with the encouragement for the applicant to communicate with class participants that they are prohibited to park in the adjacent private driveway or to block any mailbox, fire hydrant, or other access to private property.

Commissioner Sundloff said that he would second the motion if it just said 12 cars and not limit it to 12 participants.

Commissioner Allred accepted the friendly amendment to the motion from Commissioner Sundloff.

Commissioner Sundloff seconded the motion. The vote was approved unanimously in favor of the motion (7-0).

4- CONDITIONAL USE PERMIT FOR A MAJOR B HOME OCCUPATION FOR HELPFUL HOME BUYERS, LLC, ADAM STEVENS FOR A REMODELING CONTRACTOR BUSINESS LOCATED AT 605 SOUTH 400 EAST

Introduced by Mindi Edstrom

Helpful Home Buyers is owned by Adam Stevens and he is a General Contractor who remodels kitchens and bathrooms. Mr. Stevens has a single axle dump trailer that he uses to dispose materials and will occasionally be parking on property, however it is usually stored on the job site. He explained that most supplies will be stored in a detached garage behind the home and he has supplies delivered to the jobsite.

Ms. Edstrom said staff recommends approval of this application with any conditions the Planning Commission felt were appropriate.

Chair Barrus invited Mr. Adams to approach and asked the Commissioners if they had any questions for the applicant.

Commissioner Allred asked what the trailer would be attached to. Mr. Stevens responded by telling Commissioner Allred that he has a truck he pulls it with.

Commissioner Allred also asked staff if this Conditional Use Permit was coming before the Planning Commission because of the applicant's detached garage.

Ms. Edstrom responded by telling Commissioner Allred that the application was before the Planning Commission because the applicant is a Contractor and in the Kaysville City Code, Contractors fall under a Major B Home Occupation.

Commissioner Sundloff asked the applicant what he will be storing in the detached garage.

Mr. Stevens responded that he stores as little as he can and he has all project materials delivered directly to the job site.

Commissioner Lyon made the motion to approve the Major B Home Occupation for Helpful Buyers LLC.

Commissioner Branch seconded the motion and the motion was approved unanimously (7-0).

5- FINAL PLAT SUBDIVISION APPROVAL FOR PINTAIL ESTATES (PRELIMINARY PLAT APPROVAL UNDER MANOR ESTATES) LOCATED AT 67 NORTH ANGEL STREET

Introduced by: Melinda Greenwood

This subdivision came before the Planning Commission for Preliminary Plat approval as Manor Estates. The City Council approved the Preliminary Plat Subdivision on December 6, 2022. The Preliminary Plat originally had 11 lots so the final plat is one lot less than what was previously proposed. There were conditions that accompanied the preliminary approval including having the temporary turnaround noted on the plat and sidewalks installed as part of the construction process. The City Council added another condition to include an escrow agreement for the removal of the temporary turnaround and installation of the rest of the curb, cutter and sidewalk outside of the temporary easement which is required as per Kaysville City Code.

Ms. Greenwood said that the Final Plat has been reviewed by staff and the City Engineer and is recommending approval for the Pintail Subdivision.

Chair Barrus asked about the strip of land discussed in the previous meeting at the end of the subdivision and if that needed to be placed on the plat.

Ms. Greenwood said that it has been added to the plat. The plat shows the right-of-way lines going all the way to the edge of the neighboring property.

Commissioner Allred asked for clarification on the turnaround. The plat says it is a 40 foot diameter but indicated it should be an 80 foot diameter.

Mr. Trek Loveridge, the applicant, said that they can change the plat to say 80 foot diameter.

Commissioner Allred also asked about public utility easements and how the utilities will run when there are no easements on the side boundaries?

Ms. Greenwood said that the city does typically require a 10 foot public utility easement around the property and that it is not being shown on the plat.

Commissioner Allred referred to the general notes on the construction drawings which stated the contact information as Andy Thompsons name for the City Engineer. He asked if that needs to be changed.

Trek Loveridge said that he would have their engineer change the name on the construction drawings to Kaysville's current City Engineer, Dexter Fisher.

Commissioner Allred made the motion to recommend approval of the Final Plat for Pintail Estates with the corrections as previously noted, which are changing the plat to have 40 foot radius or 80 foot diameter on the temporary turnaround, correcting the name of the city's engineer on the construction drawings and having staff to work with the applicant on adding in an easement between 5-7 ½ feet on the sides of all the properties.

The motion was seconded by Commissioner Lyon and the vote was unanimous in favor of the motion (7-0).

6- CALL TO THE PUBLIC

There was no one present.

7- OTHER MATTERS THAT PROPERLY COME BEFORE THE PLANNING COMMISSION

Ms. Greenwood reported that there have been 10 applicants for the Planning Commissioner Alternate position.

She also informed the Planning Commission that Commissioner Branch has resigned due to accepting a new job.

Ms. Greenwood had a discussion with the Commissioners to better help staff understand what they need from staff to have the confidence level that reviews have been completed and meet code. She shared the information that was requested in a GRAMA request regarding the subdivision application for Kum & Go and explained that much of it was very technical reports. Ms. Greenwood asks the Commissioners if they are wanting all the see reports and information that staff receives in regards to a subdivision included in the Planning Commission packet.

Commissioner Barrus appreciated the technical expertise that staff has and said he is good to trust staff in their review.

Commissioner Sommerkorn said that he has seen some very large Planning Commissioner packets in previous positions and most Planning Commissioners didn't go through all of the packet, but it did show that the required information had been submitted. He said that he makes a point to ask staff if the application is in compliance and if staff has reviewed it, and if the answer back is yes, then that is good enough for him because he has a level of trust due to his experience.

Commissioner Lott agrees with previous comments and said staff if has said that it has been done then she is good to trust staff.

Commissioner Allred feels that a written statement from the City Engineer stating that the packet had been reviewed and found adequate would be very helpful.

Commissioner Lyon also suggested a written statement from the City Engineer or to include a checklist in the packet.

Commissioner Sundloff feels that the Commissioners do not need to have all the technical details included in the packet. He feels that what the public needs is an understanding that the requirements listed in the code have been submitted and satisfied by staff. He feels that a statement from staff is all the Planning Commissioners need to satisfy their trust.

Ms. Greenwood said that she would work with engineering to get some type of statement to include in future packets.

Ms. Greenwood shared with the Commissioners that staff has received a Text Amendment application from the neighbor in the Westgate Subdivision and they are wanting to amend code to have stronger proximity requirements for the sale of alcohol or tobacco products.

Ms. Greenwood mentioned that the Conditional Use Permit text amendment to assign authority to staff will be coming on the next Planning Commission meeting.

She held a brief discussion regarding the sign height allowance along Legacy Parkway, Highway 89, and I-15 in regards to height allowance for signs on West Davis Corridor. She stated that Legacy Parkway is State Route 67 and when she asked the Public Works Director what SR 67 is, he answer that it is the West Davis Highway. Staff has concluded that the numbering in the Major Street Plan was meant to be for the West Davis Highway, and therefore, it would be designated as a “principal arterial” and the allowed sign height for the Kum & Go project would then be 30’. She feels that is adequate and reported to the Commission that based on that, pursuing the amendment to the sign code as previously directed was unnecessary.

Commissioner Sommerkorn quickly shared some his thoughts on what has been coming out of the Utah State legislative session.

8- ADJOURNMENT

Commissioner Lyon motioned to adjourn the meeting at 7:45 p.m.

PLANNING COMMISSION STAFF REPORT

To: Kaysville City Planning Commission

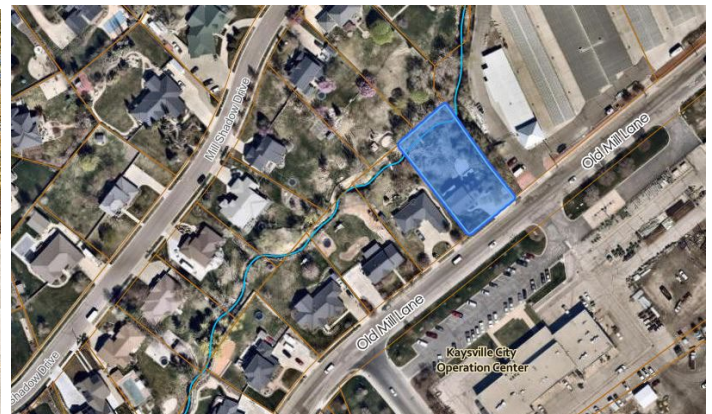
From: Mindi Edstrom

Date: February 16, 2023

Agenda Item #: 3 Conditional Use Permit for a Major B Home Occupation for Peach Tree Family Wellness, owner Valerie Neslen located at 724 West Old Mill Lane

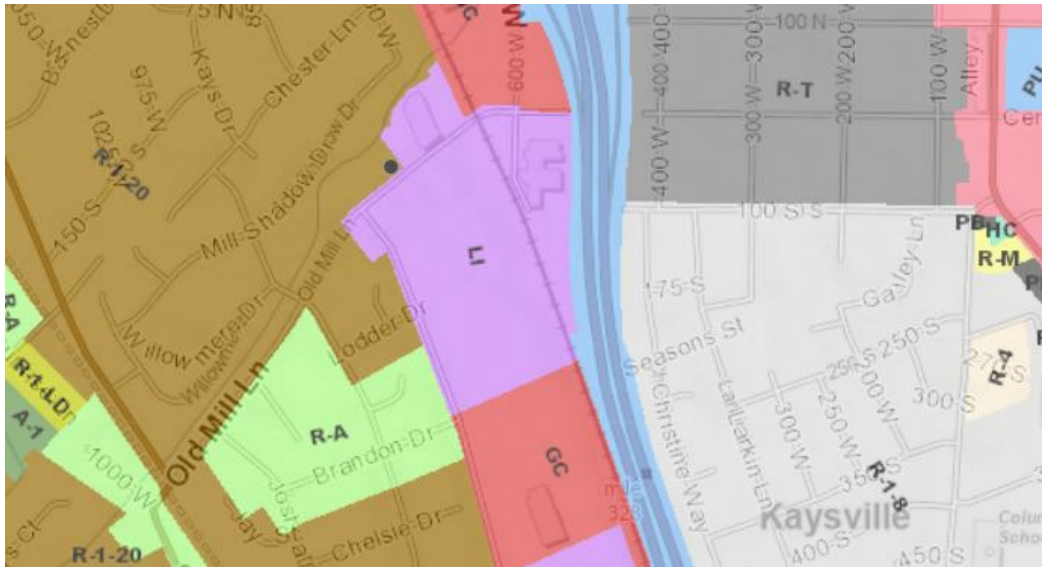
Meeting Date	February 23, 2023
Application Type	Conditional Use Permit
Applicant Owner	Valerie Neslen
Address Parcel ID Number	724 West Old Mill Lane 11-447-0301
Zoning	R-1-20
Current Use	Single Family Dwelling
Conditional Use	Major B Home Occupation

- 1. BACKGROUND:** Valerie Neslen is the owner of the business, Peach Tree Family Wellness. Peach Tree Family Wellness supports families and individuals to improve health through one-on-one nutrition coaching as well as in-person and online classes. Ms. Neslen is not currently holding in-person classes, however, in the future she plans to provide classes. Classes would be clusters of classes once a week for five weeks. Ms. Neslen has a large driveway that can absorb much of the parking for students in attendance. As part of the one on one consultation and classes, Ms. Neslen will recommend supplements for her clients which they can purchase. These would be incidental retail sales that are made in connection to the permitted home occupation.



2. ZONING

- A. The property is zoned R-1-20. [KCC 17-26-4 Major Home Occupations B](#) allows for and regulates business such as this.



3. PUBLIC NOTICING AND PUBLIC COMMENT

A sign was placed on the property on February 17, 2023.

4. RECOMMENDATION

Staff is recommending approval of this application based on regulations in KCC 17-26-4.



PLANNING COMMISSION STAFF REPORT

To: Kaysville City Planning Commission

From: Melinda Greenwood, Community Development Director

Date: February 17, 2023

Agenda Item #4: Public Hearing for Title 17 Chapter 30 Conditional Uses and all other sections of Title 17 Planning and Zoning which pertain to the Planning Commission approval of conditional uses

Meeting Date	February 23, 2023
Application Type	Text Amendment
Applicant	Kaysville City
Chapter Title Section	17-30 Conditional Uses, Title 17 Planning and Zoning (See Attached)

1. BACKGROUND

Conditional Use Permits (CUP) are the most frequent applications processed by the Community Development Department. In 2022, 20 CUP applications were processed, another 23 CUPS were received in 2021 and there were 20 in 2020. Our current land use code assigns the authority of CUP approval to the Planning Commission. This process causes staff to draft reports for Planning Commission meetings, delays the issuance of business licenses and creates opportunities for appeals due to misunderstanding of complex code or over-reach on application of conditions. We had one such incident in the fall of last year when illegal conditions were applied to a CUP that came before the Planning Commission. The CUP was appealed and three of the four conditions were overturned. The appeal process was detrimental to the applicant and delayed his project for approximately 90 days. In addition, the appeal created additional work for staff and caused the City to unnecessarily expend city funds.

Trainings delivered through the American Planning Association's Utah Chapter and the Utah State Property Rights Ombudsman's Office advises cities that best practices for approval for CUPs is to have that administrative authority assigned to professional staff. This creates an expedient process and reduces the probability of appeals such as the one mentioned above.

The proposed text amendments include the removal of that authority from the purview of the Planning Commission and assigns it to Community Development staff. Staff believes this is the best course to the issuance of CUPs.

To better understand the complexities of Conditional Uses, staff has attached a briefing prepared by Craig M. Call, J.D. which can be found on the Utah Land Use Institute's Library.

2. PUBLIC NOTICING AND PUBLIC COMMENT

A Public Hearing Notice for this matter was posted on February 10, 2023. As of the time of the drafting of this memo, one email has been received from a resident expressing opposition to the change and citing concerns of the impact certain businesses would have on neighborhoods and property values. The resident expressed the need to continue public noticing to allow for conditions to be placed that will have minimal negative impact on the neighbors. They would like to see Conditional Use Permits approved by Planning Commission and continue public noticing.

Assigning this administrative authority to staff would not override our ability to apply lawful conditions to mitigate impacts of a conditional use. Further, we have provisions in [KCC 17-26 Home Occupations](#) which already address and prohibit the concerns expressed in the public comment.

3. RECOMMENDATION

Staff recommends the Planning Commission send a recommendation of approval to the City Council for the proposed text amendments for Title 17 Planning and Zoning as presented.

ATTACHMENTS:

1. Redlined proposed text amendments Kaysville City Code 17 Planning and Zoning
2. The Law and Practice of Conditional Uses, By Craig M. Call, J.D.

17-4-3 Powers And Duties [Edit](#)

The Planning Commission shall:

1. Make a recommendation to the City Council for:
 1. A general plan and amendments to the general plan,
 2. Land use ordinances, zoning maps, official maps, and amendments,
 3. An appropriate delegation of power to at least one designated land use authority to hear and act on a land use application,
 4. An appropriate delegation of power to at least one appeal authority to hear and act on an appeal from a decision of the land use authority,
 5. Application processes,
 6. Actions on subdivision applications, and
 7. Other matters as the City Council directs;
2. Hear and act on land use applications as specified in land use ordinances, ~~including conditional use permits;~~ and
3. Exercise other authority that is necessary to enable the Planning Commission to perform its duties or delegated to it by the City Council.

17-8-4 Conditional Uses [Edit](#)

Compliance with standards shall be determined by the Land Use Authority designated in Planning Commission ~~by reference to~~ [KCC 17-30](#).

1. Major home occupations A and B subject to the provisions of [KCC 17-26](#).
2. Agricultural home occupations subject to the provisions of [KCC 17-26](#).
3. Golf courses subject to the provisions of [KCC 17-31-8](#).
4. Greenhouse and nursery limited to the sale of plants, landscaping materials, fertilizer, pesticide and insecticide products, tools for garden and lawn care and the growing and sale of sod.
5. Public or quasi-public buildings of the educational, recreational, religious, cultural, or public service type, not including corporation yards, storage or repair yards, warehouses, and similar ~~uses~~.
6. Public utility substation or storage facilities developed by a public agency.
7. Animal hospital or clinic, dog breeding, dog kennels, dog training school, provided any building or enclosure for animals shall be located not less than one hundred feet (100') from a public street and not less than fifty feet (50') from any dwelling or adjacent property.
8. Accessory building larger than three thousand (3,000) square feet in area, subject to the provisions of [KCC 17-31-2](#).

17-9-4 Conditional Uses [Edit](#)

Compliance with standards shall be determined by the Land Use Authority designated in Planning Commission ~~by reference to~~ [KCC 17-30](#).

1. Major home occupations A and B subject to the provisions of [KCC 17-26](#).
2. Instructional Home Occupation Subject to the provisions of [KCC 17-26](#).
3. Agricultural home occupations subject to the provisions of [KCC 17-26](#).
4. Golf courses subject to the provisions of [KCC 17-31-8](#).

5. Greenhouse~~uses~~ and nursery limited to the sale of plants, landscaping materials, fertilizer, pesticide and insecticide products, tools for garden and lawn care and the growing and sale of sod.
6. Public or quasi-public buildings of the educational, recreational, religious, cultural, or public service type, not including corporation yards, storage or repair yards, warehouse~~uses~~, and similar ~~uses~~.
7. Public utility substation or storage facilities developed by a public agency.
8. Animal hospital or clinic, dog breeding, dog kennels, dog training school, provided any building or enclosure for housing~~ing~~ animals shall be located not less than one hundred feet (100') from a public street and not less than fifty feet (50') from any dwelling on adjacent property.
9. Accessory building larger than three thousand (3,000) square feet in area, subject to the provisions of [KCC 17-31-2](#).

17-10-4 Conditional Uses [Edit](#)

Compliance with standards shall be determined by the [Land Use Authority designated in Planning Commission](#) ~~by reference to~~ [KCC 17-30](#).

1. Public or quasi-public buildings of the educational, recreational, religious, cultural, or public service type, not including corporation yards, storage or repair yards, warehouse~~uses~~, and similar ~~uses~~.
2. Major home occupations A and B subject to the provisions of [KCC 17-26](#).
3. Instructional Home Occupation Subject to the provisions of [KCC 17-26](#).
4. Public utility substations subject to the provisions of [KCC 17-31-15](#).
5. Golf courses subject to the provisions of [KCC 17-31-8](#).
6. Plant nurseries occupying one-half (1/2) acre or more.

17-11-2 Site Plan Review [Edit](#)

Conditional uses in an R-T zone district, except for temporary buildings and temporary offices and the keeping of farm animals, shall be subject to a site plan review as specified in [KCC 18-4](#). On a case-by-case basis, the [Commission-designated Land Use Authority](#) may also require temporary buildings to obtain site plan approval.

17-11-4 Conditional Uses [Edit](#)

Compliance with standards shall be determined by the [Land Use Authority designated in Planning Commission](#) ~~by reference to~~ [KCC 17-30](#).

1. Public or quasi-public buildings of the educational, recreational, religious, cultural, or public service type, not including corporation yards, storage or repair yards, warehouse~~uses~~ and similar ~~uses~~.
2. Major home occupations A and B subject to the provisions of [KCC 17-26](#).
3. Instructional Home Occupation Subject to the provisions of [KCC 17-26](#).
4. Residential child care subject to the provisions of [KCC 17-26](#).
5. Public utility substations subject to the provisions of [KCC 17-31-15](#).
6. Farm animals other than those allowed as a permitted use subject to the provisions of [KCC 17-24](#).
7. Swimming clubs subject to the provisions of [KCC 17-31-10](#).

17-12-2 Site Plan Review [Edit](#)

Conditional uses in an R-1 Zone District, except for temporary buildings and temporary offices and the keeping of farm animals, shall be subject to a site plan review as specified in [KCC 18-4](#). On a case-by-case basis, the [Commission-designated Land Use Authority](#) may also require temporary buildings and temporary offices to obtain site plan approval.

17-12-4 Conditional Uses [Edit](#)

Compliance with standards shall be determined by the Land Use Authority designated in Planning Commission ~~by reference to~~ [KCC 17-30](#).

1. Public or quasi-public buildings of the educational, recreational, religious, cultural, or public service type, not including corporation yards, storage or repair yards, warehouses, and similar uses.
2. Major home occupations A and B subject to the provisions of [KCC 17-26](#).
3. Instructional Home Occupation Subject to the provisions of KCC 17-26.
4. Residential child care subject to the provisions of [KCC 17-26](#).
5. Public utility substations subject to the provisions of [KCC 17-31-15](#).
6. Farm animals other than those allowed as a permitted use subject to the provisions of [KCC 17-24](#).
7. Swimming clubs subject to the provisions of [KCC 17-31-10](#).
8. Two-family dwellings. Not more than two duplexes (4 units) may be allowed within 500 feet of any duplex (2 units). The 500 feet shall be measured in a straight line from the center of a duplex site to the boundary of any other duplex or twin home property.
9. Twin homes subject to the provisions of [KCC 17-28](#). Must also be permitted as two-family dwellings.

17-13-2 Site Plan Review [Edit](#)

Conditional uses in an R-D Zone District, except for temporary buildings and temporary offices and the keeping of farm animals, shall be subject to a site plan review as specified in [KCC 18-4](#). On a case-by-case basis, the Commission-designated Land Use Authority may also require temporary buildings and temporary offices to obtain site plan approval.

17-13-4 Conditional Uses [Edit](#)

Compliance with standards shall be determined by the Land Use Authority designated in Planning Commission ~~by reference to~~ [KCC 17-30](#).

1. Public or quasi-public buildings of the educational, recreational, religious, cultural, or public service type, not including corporation yards, storage or repair yards, warehouses, and similar uses.
2. Major home occupations A and B subject to the provisions of [KCC 17-26](#).
3. Instructional Home Occupation Subject to the provisions of [KCC 17-26](#).
4. Residential child care subject to the provisions of [KCC 17-26](#).
5. Twin homes subject to the provisions of [KCC 17-28](#). Must also be permitted as two-family dwellings.
6. Farm animals other than those allowed as a permitted use subject to the provisions of [KCC 17-24](#).
7. Swimming clubs subject to the provisions of [KCC 17-31-10](#).
8. Public utility substations subject to the provisions of [KCC 17-31-15](#).

17-14-2 Site Plan Review [Edit](#)

Conditional uses in an R-2 Zone District, except for temporary buildings and temporary offices and the keeping of farm animals, shall be subject to a site plan review as specified in [KCC 18-4](#). On a case-by-case basis, the Commission-designated Land Use Authority may also require temporary buildings and temporary offices to obtain site plan approval.

17-14-4 Conditional Uses [Edit](#)

Compliance with standards shall be determined by the Land Use Authority designated in Planning Commission ~~by reference to~~ [KCC 17-30](#).

1. Public or quasi-public buildings of the educational, recreational, religious, cultural, or public service type, not including corporation yards, storage or repair yards, warehouse **uses**, and similar **uses**.
2. Major home occupations A and B subject to the provisions of [KCC 17-26](#).
3. Residential child care subject to the provisions of [KCC 17-26](#).
4. Twin homes subject to the provisions of [KCC 17-28](#).
5. Farm animals subject to the provisions of [KCC 17-24](#).
6. Swimming clubs subject to the provisions of [KCC 17-31-10](#).
7. Public utility substations subject to the provisions of [KCC 17-31-15](#).

17-15-2 Site Plan Review [Edit](#)

All permitted and **conditional uses** in an R-4 Zone District, except for one-family and two-family (duplex) dwellings, temporary buildings, temporary offices, and the keeping of farm animals, shall be subject to a site plan review as specified in [KCC 18-4](#). On a case-by-case basis, the ~~Commission-designated Land Use Authority~~ may also require temporary buildings and temporary offices to obtain site plan approval.

17-15-4 Conditional Uses [Edit](#)

Compliance with standards shall be determined by the ~~Land Use Authority designated in Planning Commission by reference to~~ [KCC 17-30](#).

1. Public or quasi-public buildings of the educational, recreational, religious, cultural, or public service type, not including corporation yards, storage or repair yards, warehouse **uses**, and similar **uses**.
2. Major home occupations A and B subject to the provisions of [KCC 17-26](#).
3. Residential child care subject to the provisions of [KCC 17-26](#).
4. Twin homes subject to the provisions of [KCC 17-28](#).
5. Farm animals subject to the provisions of [KCC 17-24](#).
6. Swimming clubs subject to the provisions of [KCC 17-31-10](#).
7. Public utility substations subject to the provisions of [KCC 17-31-15](#).

17-16-2 Site Plan Review [Edit](#)

All permitted and **conditional uses** in an R-M Zone District, except for single-family and two-family (duplex) dwellings, temporary buildings and temporary offices, and the keeping of farm animals, shall be subject to a site plan review as specified in [KCC 18-4](#). On a case-by-case basis, the ~~Planning Commission-designated Land Use Authority~~ may also require temporary buildings and temporary offices to obtain site plan approval.

17-16-4 Conditional Uses [Edit](#)

Compliance with standards shall be determined by the ~~Land Use Authority designated in Planning Commission by reference to~~ [KCC 17-30](#).

1. Public or quasi-public buildings of the educational, recreational, religious, cultural, or public service type; not including storage or repair yards, warehouse **uses**, and similar **uses**.
2. Major home occupations A and B subject to the provisions of [KCC 17-26](#).
3. Residential child care subject to the provisions of [KCC 17-26](#).
4. Twin homes subject to the provisions of [KCC 17-28](#).
5. Public utility substations subject to the provisions of [KCC 17-31-15](#).
6. Farm animals subject to the provisions of [KCC 17-24](#).
7. Business, professional, and government offices.
8. Swimming clubs subject to the provisions of [KCC 17-3-10](#).

17-19-4 Conditional Uses [Edit](#)

Compliance with standards shall be determined by the Land Use Authority designated in Planning Commission ~~by reference to~~ [KCC 17-30](#).

1. Single family dwellings which are an integral part of a commercial use and serves as housing for the proprietor or an employee.
2. Light industry/research **uses** subject to the provisions of [KCC 17-23](#).
3. Buildings of height greater than thirty-five feet (35').
4. Recreational vehicle parks subject to the provisions of [KCC 17-31-24](#).
5. Public utility substations.
6. Sale of beer for consumption on the premises of a full-service restaurant, limited service restaurant, beer-only restaurant, banquet or reception center.
7. Sale of liquor for consumption on the premises of a full-service restaurant, limited service restaurant, banquet or reception center.

17-20-4 Conditional Uses

Compliance with standards shall be determined by the Land Use Authority designated in Planning Commission ~~by reference to~~ [KCC 17-30](#).

1. Theaters.
2. Motels or hotels.
3. Light industry/research **uses** subject to the provisions of [KCC 17-23](#).
4. Dwellings and household pets.
5. Social halls, lodges, fraternal organizations.
6. Automotive repair that does not break the continuity of retail store frontage for pedestrians, does not impose a nuisance on residences or other surrounding **uses**, does not create traffic hazards or undue traffic congestion, and has pump islands located so that vehicles serviced or awaiting service do not block any public sidewalk or driveway.
7. Amusement arcades.
8. Public utility substations.
9. Sale of beer for consumption on the premises of a full-service restaurant, limited-service restaurant, beer-only restaurant, banquet or reception center.
10. Sale of liquor for consumption on the premises of a full-service restaurant, limited-service restaurant, banquet or reception center.

17-21-4 Conditional Uses [Edit](#)

Compliance with standards shall be determined by the Land Use Authority designated in Planning Commission ~~by reference to~~ [KCC 17-30](#).

1. Food and kindred product manufacturing or processing.
2. Textile products manufacturing.
3. Furniture and fixtures manufacturing.
4. Stone, clay and glass products manufacturing.
5. Fabricated metal products industries (not to include primary metal industries).
6. Contract construction services.
7. Buildings of height greater than thirty-five feet (35') or less than ten feet (10').

8. Sale of beer for consumption on the premises of a full-service restaurant, limited-service restaurant, beer-only restaurant, banquet or reception center.
9. Sale of liquor for consumption on the premises of a full-service restaurant, limited-service restaurant, banquet or reception center.

17-23-4 Industrial Performance Standards [Edit](#)

1. **Purpose.** The following performance standards are intended to ensure that all industries will provide necessary modern control methods to protect the city from hazards and nuisances; to set objective, quantitative standards for the maximum tolerated levels of frequently-hazardous or annoying emissions; and to protect any industry from arbitrary exclusion or persecution based solely on the characteristics of that type of industry's past uncontrolled operation.
2. **General**
 1. No land or building devoted to uses authorized by this chapter shall be used or occupied in any manner so as to create dangerous, injurious, noxious, or otherwise objectionable fire, explosive, or other hazard; noise or vibration, smoke, dust, odor, or other form of air pollution; heat, cold, dampness, glare, electrical or other disturbance; liquid or solid refuse or waste; or other substance, condition, or element in such a manner or in such an amount as to affect adversely the surrounding area or adjoining premises. The foregoing are hereinafter referred to as "dangerous or objectionable elements."
 2. In addition to meeting other application requirements for a conditional use permit, parties seeking a conditional use permit for a light industry/research use shall include in the application a description of the proposed machinery, products, and processes to be located at the development. If, in its opinion, the proposed use may cause the emission of dangerous or objectionable elements, the ~~Planning Commission~~Land Use Authority may refer the application for investigation and report to one or more expert consultants qualified to advise as to whether a proposed use will conform to the applicable performance standards specified in Subsection (3). Such consultant shall report as promptly as possible. A copy of such report shall be promptly furnished to the applicant. The cost of such expert report shall be borne by the applicant.
 3. Within twenty (20) days after the ~~Commission~~Community Development Department has received the aforesaid application or report, if a report was required, or within such period as agreed to by the applicant, the ~~Commission~~Community Development Department shall determine whether reasonable measures are being employed to assure compliance with the applicable performance standards. On such basis, the ~~Commission~~Community Development Department may authorize or refuse to authorize issuance of a Conditional Use Permit or may require a modification of the proposed plans, construction specifications, device or operation, and shall so inform the Building ~~Inspector~~Official.
 4. Any Zoning Certificate so authorized and issued shall evidence only that reasonable measures are being taken. It shall not relieve the applicant of the responsibility of meeting such standards when the plant is actually in operation; and, in case of a failure to perform in accordance with the standards, whatever additional devices or modifications in process shall be necessary to achieve full compliance with the standards shall be the sole responsibility of the applicant.
 5. The ~~Zoning Administrator~~Community Development Department shall investigate any purported violation of performance standards; and, if necessary for such investigation, may request that the ~~Planning Commission~~City employ qualified experts. If, after public hearing and due notice, the Planning Commission finds that a violation has existed or does exist, it shall order the ~~Zoning Administrator~~City to serve notice that compliance with the performance standards must be

achieved within a specified period of time or the plant will be shut down. Should the violation of performance standards threaten the public health, convenience, or welfare, the Community Development Department Planning Commission may order the offending plant to cease operation until proper steps are taken to correct the conditions which cause the violation. The services of any qualified experts, employed by the Planning CommissionCity to advise in establishing a violation, shall be paid by the violator if said violation is established, otherwise by the city.

6. The determination of the existence of dangerous and objectionable elements shall be made at any point; provided, however, that the measurements having to do with noise, vibration, odors, or glare, shall be taken at the lot line of the establishment or use.

3. Dangerous and Objectionable Elements

1. Noise. No use shall emit or cause the emission of sound from a stationary source creating a ninetieth percentile sound pressure level (L90) for any measured period (not less than 10 minutes) that exceeds the limits set forth for the following receiving land use districts:

District	7 a.m. - 10 p.m.	10 p.m. - 7 a.m.
Agricultural	60 dB(A)	55 dB(A)
Residential	55 dB(A)	50 dB(A)
Commercial	60 dB(A)	55 dB(A)
Industrial	60 dB(A)	55 dB(A)

2. Vibration. No vibration (other than from transportation facilities or temporary construction work) shall be permitted which is discernible without instruments at the points of measurement specified in Subsection (2)(f).
3. Odors. No emission of odorous gases or other odorous matter shall be permitted in such quantities as to be readily detectable when diluted in the ratio of one volume of odorous air to four volumes of clean air at the points of measurement specified in Subsection (2)(f) or at the point of greatest concentration. Any process which may involve the creation or emission of any odors shall be provided with a secondary safeguard system, so that control will be maintained if the primary safeguard system should fail.
4. Glare. No direct or sky-reflected glare, whether from flood lights or from high temperature processes such as combustion or welding or otherwise, shall be permitted to be visible at the points of measurement specified in Subsection (2)(f). This restriction shall not apply to signs or lighting of buildings or grounds for advertising or protection otherwise permitted by the provision of this chapter.
5. Fire and Explosion Hazards. All activities involving, and all storage of flammable and explosive materials shall be provided at any point with adequate safety devices against the hazard of fire and explosion and adequate fire fighting and fire suppression equipment and devices as required by the Uniform Fire Code, Uniform Fire Code Standards, and Life Safety Code.

6. Air Pollution. No particulate or gaseous pollutants shall be emitted into the air in violation of the Utah Environmental Quality Code, its amendments, or resulting regulations.
7. Liquid or Solid Wastes. No discharge at any point into a public sewer, public waste disposal system, private sewage system, or stream, or into the ground shall be allowed contrary to the Utah Environmental Quality Code, its amendments, or resulting regulations.

17-24-4 Other Requirements [Edit](#)

In zoning districts where farm animals are allowed as a **conditional use**, the provisions of this chapter shall be the minimum requirements. The ~~designated Land Use Authority Planning Commission~~ may add additional conditions as provided in [KCC 17-30](#).

17-25-5 Distance Between Residential Structures, Exemptions Or Modifications

1. The width of one side yard may be reduced or eliminated when authorized by the ~~Planning Commission~~ [Community Development Department](#) to a width not less than three feet (3') provided the sum of the width of the two side yards is not less than the sum of the required minimum yards and further provided the distance between the proposed dwelling and another dwelling, existing or proposed, on an adjacent lot is not less than the sum of the two (2) side yards regularly required in this title. Such reduction may be authorized only when the ~~Community Development Department Planning Commission~~ finds it to be warranted by the location of existing buildings or conducive to the desirable development of two (2) or more lots.
2. A side yard along the side street lot line of a corner lot, which abuts in the rear the side lot line of another lot in an R-District, shall have a width of not less than one-half (½) of the required depth of the front yard on such other lot fronting the side street.

17-26-4 Major Home Occupations B

A Major Home Occupation B is a home business which may generally have more materials or larger vehicles than other home businesses and may provide services to groups of a limited size.

The following regulations shall apply to all major home occupations B:

1. The use shall be conducted primarily within the dwelling site and carried on by the inhabitants thereof and no others.
2. The use shall be clearly incidental and secondary to the use of the dwelling for dwelling purposes, and the appearance of the structure shall not be altered or the occupation within the residence be conducted in a manner which would cause the premises to differ from its residential character either by the use of colors, materials, construction, lighting, or the emission of sounds, noises, or vibrations.
3. No more than 400 square feet, or 20 percent of the gross floor area of the dwelling, may be used for the home occupation. (The least restrictive shall apply.) Accessory buildings as allowed in the zone district may be used for the home occupation as permitted. The home occupation shall occupy no more than five percent (5%) of the lot area.
4. There shall be no signs present on the property except for one wall sign, not to exceed one square foot, indicating the address and the occupant's name, for example, Joe Doe - Accountant. See Name Plates in KCC 17-33, Sign Regulations.
5. There shall not be conducted on the premises the business of selling stocks of merchandise, supplies, or products, provided that incidental retail sales may be made in connection with other permitted home

occupations; for example, a single-chair beauty parlor would be allowed to sell combs, hair spray, and other miscellaneous items to customers. However, a dressmaker would be required to do only custom work for specific clients and would not be allowed to develop stocks of dresses for sale to the general public on-site.

6. There shall be no exterior storage on the premises of material used in the home occupation nor of any explosive material. No activity shall be allowed which would interfere with radio or television transmission in the area; nor shall there be any offensive noise, vibration, smoke, dust, odors, heat, or glare noticeable at or beyond the property line.
7. The home occupation, including studios or rooms for instruction, shall provide additional off-street parking area reasonably adequate to accommodate needs created by the home occupation of not less than one parking space for each 200 square feet of floor area devoted to the home occupation.
8. Deliveries from commercial suppliers may not be made more than once each week, and the deliveries shall not restrict traffic circulation.
9. Parties for the purpose of selling merchandise or taking orders shall not be held more often than four times each month.
10. Notwithstanding any provision contained herein to the contrary, garage, basement, yard, or other similar sales shall be permitted not more than twice a year, and each sale shall not last more than two (2) consecutive days.
11. The allowable number and size of vehicles and equipment used by the home occupation shall be as determined by the ~~Planning Commission~~Community Development Director or their designee. Only one (1) vehicle over twenty-two feet (22') in length shall be used in the home occupation. Vehicles over twenty-two feet (22') in length including trailers shall not be parked on the street nor within a yard abutting a street.
12. Major home occupations B may include, but are not necessarily limited to the following:
 1. Any use allowed as a minor home occupation;
 2. Photo studios and developing;
 3. Organized classes (limits shall be placed on the number of students and/or the number of vehicles transporting students to prevent congestion);
 4. Television and other electrical repairs excluding major appliances such as refrigerators, or storage;
 5. Small engine repairs, excluding automobiles, motorcycles, and snowmobiles;
 6. Upholstering;
 7. Woodworking;
 8. Preschools with no more than 12 students in any class;
 9. Contractors that have equipment such as a trailer stored at the home;
 10. Ceramics (kilns smaller than six (6) cubic feet);
 11. Carpet or upholstery cleaning;
 12. Gun repair;
 13. Plant nurseries; and
 14. Pest or weed control service.

17-26-4b Instructional Home Occupation [Edit](#)

An instructional Home Occupation is a business which may provide services to individuals or groups of a limited size where academics or skills are taught.

The following regulations shall apply to all instructional home occupations:

1. The ~~Planning Commission~~ designated Land Use Authority shall in consideration of an instructional home occupation place a limit on the number of instructors, vehicles, and/or students involved with the business.
2. The use shall be conducted on a property occupied by a primary dwelling.
3. The resident of the dwelling on site need not own or work for the business, but the business shall provide proof of consent for use of the home or property from the property owner.
4. No more than 4 instructors or employees may work at any given time. The Land Use Authority Planning Commission may place more strict limits on the number of instructors allowed as part of the conditional use review process.
5. No more than 12 students or clients may be on site at any given time. The Land Use Authority Planning Commission may in the process of reviewing the conditional use permit further limit the number of students allowed at any given time.
6. The use shall be clearly incidental and secondary to the use of the dwelling for dwelling purposes, and the appearance of the structure shall not be altered or the occupation within the residence or dwelling site be conducted in a manner which would cause the premises to differ from its residential character either by the use of colors, materials, construction, lighting, or the emission of sounds, noises, or vibrations.
7. An application for an Instructional Home Occupation must be accompanied by a description of the business including hours of operation, number of instructors, length and number of sessions, number of students per session, and a plan to handle traffic generated by the business.
8. Instructional Home Occupations shall teach a skill or lesson only and may not use the home or on site facility for tournaments or spectator events.
9. Accessory buildings as allowed in the zone district may be used for the home occupation.
10. There shall be no signs present on the property except for one wall sign, not to exceed one square foot, indicating the address and the occupant's name, for example, Joe Doe - Accountant. See Name Plates in KCC 17-33, Sign Regulations.
11. There shall not be conducted on the premises the business of selling stocks of merchandise, supplies, or products, provided that incidental retail sales may be made in connection with the instructional home occupation; for example, a tennis instructor may sale a tennis racket to a client but would not be allowed to develop stocks of tennis rackets for sale to the general public on-site.
12. There shall be no exterior storage on the premises of material used in the home occupation nor of any explosive material. No activity shall be allowed which would interfere with radio or television transmission in the area; nor shall there be any offensive noise, vibration, smoke, dust, odors, heat, or glare noticeable at or beyond the property line.
13. An instructional home occupation shall not require deliveries from commercial suppliers.
14. Notwithstanding any provision contained herein to the contrary, garage, basement, yard, or other similar sales shall be permitted not more than twice a year, and each sale shall not last more than two (2) consecutive days.
15. No vehicles exceeding 22 feet in length shall be permitted in conjunction with an instructional home occupation business.
16. Instruction sessions shall have a minimum of 10 minutes between scheduled sessions to reduce pick-up and drop-off vehicle congestion. The Land Use Authority Planning Commission may in consideration of the conditional use approval require additional time between sessions.
17. Instructional Home Occupations may include, but are not necessarily limited to the following:
 1. Tutoring (groups larger then 2 students or involving multiple instructors)
 2. Swimming Lessons
 3. Tennis / Pickleball / Basketball instruction
 4. Group Music Lessons

17-29-4 Substitution, Extension, Etc. [Edit](#)

A non-conforming use shall not be enlarged, extended, or changed unless the use is changed to a use permitted in the district in which it is located, and a non-complying structure shall not be reconstructed or structurally altered unless such alteration shall result in removing those conditions of the building which render it non-conforming, except as follows:

1. When authorized by the ~~designated Land Use Authority Planning Commission~~ in accordance with this title, a nonconforming use which is determined to be a more desirable nature may be substituted for another non-conforming use.
2. Whenever a non-conforming use has been changed to a conforming use, such use shall not thereafter be changed to a non-conforming use.
3. When authorized by the ~~Land Use Authority Planning Commission~~ in accordance with this title, a building devoted to a non-conforming use may be completed upon the lot occupied by such building provided that such completion is necessary and incidental to the existing use of such building.
4. Repairs and structural alterations may be made to a non-conforming building provided that the floor space of such building is not increased.
5. A non-conforming use may be extended to include the entire floor area of the existing building in which it is conducted at the time the use became non-conforming.
6. A non-conforming use or non-complying structure which is involuntarily destroyed in whole or in part due to fire, flood, wind, earthquake, or other calamity may be restored and the occupancy or use of such building structure or part thereof which existed at the time of such destruction may be continued or resumed unless the structure or use has been abandoned.
7. Application for substitution or extension of a non-conforming use as provided in this section shall be made and considered in the manner set forth in [KCC 17-30](#) for a **Conditional Use** Permit.

Chapter 30 Conditional Uses [Edit](#)

[17-30-1 Purpose](#)

[17-30-2 Conditional Use Permit](#)

[17-30-3 Determination](#)

[17-30-4 Appeals Of Decision](#)

[17-30-5 Inspection](#)

[17-30-6 Time Limit](#)

[17-30-7 Temporary Uses](#)

[17-30-8 Standards](#)

17-30-1 Purpose [Edit](#)

To allow the proper integration into Kaysville City of **uses** which may be suitable only in certain locations in the City in accordance with applicable standards.

17-30-2 Conditional Use Permit [Edit](#)

1. A **Conditional Use** Permit shall be required for all **uses** listed as **conditional uses** in the 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.

2. ~~The Land Use Authority for approval of Conditional Use Permits are issued by the~~ shall be the ~~Planning Commission~~ Community Development Director or their designee. The granting of a Conditional Use Permit shall not exempt the application from other relevant provisions of this or other ordinances of Kaysville City.
3. Application for a Conditional Use Permit shall be made by the property owner or certified agent thereof to the ~~Zoning Administrator~~ Community Development Department.
4. The application shall be accompanied by maps, drawings, or other documents sufficient to meet the requirements of a site plan review (see [KCC 18-4](#)) for those conditional uses which require such a review, and sufficient to demonstrate that the reasonably anticipated detrimental effects of the proposed use will be mitigated in accordance with applicable standards. In considering an application for a Conditional Use Permit, the ~~Land Use Authority~~ Planning Commission shall give due regard to the nature and condition of adjacent uses and structures.
5. The application for any Conditional Use Permit shall be accompanied by the appropriate fee as established from time to time by resolution of the City Council.

17-30-4 Appeals Of Decision [Edit](#)

Any person shall have the right to appeal the decision of the ~~Land Use Authority~~ Planning Commission to the Administrative Law Judge, within seven (7) days of the date of the action of the ~~Land Use Authority~~ Planning Commission, by filing with the ~~Planning Commission and~~ City Recorder a notice of appeal, in writing, specifying the ground thereof.

17-30-5 Inspection [Edit](#)

Following the issuance of a Conditional Use Permit, the ~~Land Use Authority~~ Zoning Administrator shall approve an application for a Building Permit and shall insure that development is undertaken and completed in compliance with said certificate and permit.

17-30-6 Time Limit [Edit](#)

Unless the uses and conditions prescribed in a Conditional Use Permit are implemented within a maximum period of one (1) year of its issuance, the Conditional Use Permit shall expire. The ~~Land Use Authority~~ Planning Commission may grant a maximum extension of six (6) months under exceptional circumstances.

17-31-15 Public Utility Substations [Edit](#)

Public utility substations shall be conditional uses in all R-Districts and shall be screened from neighboring uses with a masonry wall, solid board fence, or shrubbery as required by the ~~Land Use Authority~~ Planning Commission. Public utility substations may be allowed with less than the required lot area, width and yards for the zone in which located.

17-31-24 Recreational Vehicle Parks [Edit](#)

1. Recreational vehicle parks are a conditional use in the GC - General Commercial District.
2. The development of a recreational vehicle park shall conform to the following standards and requirements:
 1. No recreational vehicle park shall be used by one individual recreational vehicle for more than thirty (30) consecutive days, nor shall any space be rented or leased to any one individual for a period longer than thirty (30) days.

2. The design shall meet all applicable standards and requirements of this Title and other regulations of Kaysville City, Davis County, and the State of Utah.
3. The design has the written approval of the Davis County Health Department.
4. The developer shall improve all recreation areas and facilities, landscaping, streets, and utilities as required by [KCC 19-2-1](#) of the Subdivision Ordinance.
5. The site shall be in one ownership.
6. The site shall be adjacent to a major street.
7. All entrances and exits from the recreational vehicle park shall be by forward motion only.
8. No entrance or exit from a recreational vehicle park shall be through a residentially developed area.
9. All recreational vehicle spaces or pads shall be set back at least twenty feet (20') from any public street.
10. All one-way roadways shall be at least twelve feet (12') in width and all two-way roadways at least twenty feet (20') in width, and all roadways shall be hard-surfaced.
11. All areas within the park which are not hard-surfaced, including the twenty foot (20') setback space, shall be landscaped and maintained with lawns, trees, and shrubs designed to provide privacy and noise containment, and shall be equipped with adequate sprinkling devices as determined by the City.
12. In a recreational vehicle park, the number of spaces shall be limited to twenty (20) units per acre. The spaces may be clustered, provided that the total number of units does not exceed the number permitted on one acre, multiplied by the number of acres in the development. The remaining land not contained in individual spaces, roads or parking shall be set aside and developed as park, playground, or service areas for the common use and enjoyment of occupants of the development and visitors thereto.
13. Each recreational vehicle space shall be at least twenty feet (20') in width and at least thirty feet (30') in length, for spaces planned to have the recreational vehicle and a towing vehicle park side-by-side; and at least fifteen feet (15') in width and at least forty-five feet (45') in length for spaces planned as drive-through spaces in which the towing vehicle parks in front of the recreational vehicle. Drive-through spaces are recommended whenever the size and shape of the property permits this design.
14. All storage and solid waste receptacles must be housed in a closed structure compatible in design and construction to the character of the park.
15. The service buildings shall be constructed to standard commercial practice and kept in good repair as approved by the Building Inspector.
16. Off-street and off-roadway parking spaces shall be provided for visitors at the rate of one (1) such space for each two (2) recreational vehicle spaces in the recreational vehicle park; such spaces shall have a minimum width of ten feet (10') and a minimum length of twenty feet (20') and may be grouped in appropriate locations.
17. A minimum of two tenths (0.2) foot candles of light shall be required for protective yard lighting the full length of all streets, sidewalks, and central parking areas.
18. Storm drainage facilities shall be so constructed as to protect those who will reside in the park as well as adjacent property owners by insuring rapid drainage and preventing accumulation of pools of water.
19. One manufactured home may be allowed in a recreational vehicle park if used as the residence of the park manager.
3. Every recreational vehicle park shall provide utility service to every recreational vehicle stand as required by Kaysville City ordinances and as required by the [Land Use Authority](#) ~~Planning Commission~~.

4. For recreational vehicle parks, adequate and reasonable guarantees must be provided as determined by the ~~Land Use Authority~~ ~~Planning Commission~~ for permanent retention of open space and for the maintenance of roadways, storage facilities, service facilities, and landscaping resulting from the application of these regulations. Guarantees may be in the form of a bond or a mortgage on real estate or in other form to be determined by the ~~Land Use Authority~~ ~~Planning Commission~~, which form must be approved by the City Council and City Attorney.
5. The owner shall establish and appoint a park manager. The manager shall be a resident of the park and shall be authorized to receive, process, and represent fully the interests of the owner in respect to management and maintenance of the park.
6. No recreational vehicle park shall be operated in Kaysville City until an annual business license has been obtained from Kaysville City.
7. The premises on which any recreational vehicle park is located shall be maintained in a clean, orderly and sanitary condition. The accumulation of any rubbish, waste, weeds, or other unsightly material thereon shall constitute a nuisance and a violation of this Title. The City Council may, after inspection by the Inspector, cancel the license to operate the park if the inspection reveals that maintenance does not conform to required standards.

17-31-25 Telecommunications Towers [Edit](#)

1. Each person or company desiring to locate a telecommunication tower within the City shall submit a Site Location Master Plan. This plan shall be submitted and accepted by the ~~Planning Commission~~ Community Development Department prior to the processing of any permits for telecommunication towers. The plan shall identify existing locations of facilities, and approximate proposed locations of new facilities to provide service within City boundaries and the surrounding area for the ten (10) years following the date the plan is submitted. These estimates shall be based on projected population growth and anticipated development. The applicant shall provide the City with the owner's current name, address, and an emergency telephone number for each facility.
2. Applicants for telecommunication tower permits shall co-locate their facilities on existing towers, unless it can be shown by substantial evidence that all existing towers are inadequate to serve the applicant's reasonable needs due to the location, height or other reason; and shall pay reasonable compensation to the tower owner to fairly share past and future costs.
3. Telecommunication towers shall be located, designed, and constructed to be as unobtrusive and as few in number as possible. They shall be subject to requirements that minimize the impact on surrounding properties and the City. No telecommunications tower shall exceed one hundred twenty feet (120') in height from the finished grade of the ground to the highest point on the structure.
4. Monopoles, antennas, and any associated buildings or equipment shall be painted to blend with the surroundings by which they are most commonly seen. The color shall be reviewed and approved on a case-by-case basis by the ~~Planning Commission~~ designated Land Use Authority. Within six months after the facility has been constructed, the ~~Land Use Authority~~ ~~Planning Commission~~ may require the color be changed if it is determined that the original color does not blend with the surroundings.
5. Telecommunication Towers and equipment shall not be permitted on any buildings ~~used~~ as a dwelling.
6. The following Wireless Telecommunication equipment may be allowed according to the applicable requirements:
 1. **Wall Mounted Antennas.** Wall mounted antennas shall be considered a telecommunication tower and must comply with the following criteria in addition to the general requirements of

this chapter:

1. Wall mounted antennas shall not extend above the roof line of the building more than four feet (4').
 2. Wall mounted antennas shall not be located on a building facade which faces a public street.
 3. Antennas and all associated equipment shall be painted to match the color of the building or surrounding area.
 4. A maximum of forty (40) square feet may be allowed on any building facade for the placement of a wall mounted antenna. The area is determined by drawing straight lines around the outermost portions of the antennas until enclosed.
 5. All equipment associated with the use (excluding the antenna) must be screened by a view obstructing structure.
 6. If the associated equipment is located on the ground it must be appropriately landscaped.
2. **Roof Mounted Antennas.** Roof mounted antennas shall be considered a telecommunication tower and must comply with the following criteria in addition to the general requirement of this chapter:
1. Roof mounted antennas can only be mounted on structures with flat roofs. Exceptions may be granted ~~by the Planning Commission~~ with the following stipulation:
 1. The tower will be mounted on the roof of a building such that the building will obstruct the view of the antenna from the front of the building.
 2. The antenna will be less visible from ground level than the typical antenna mounted on a flat roof.
 2. All roof mounted antennas must be setback from the building edge one foot (1') for every one foot (1') of antenna height to a maximum of fifteen feet (15).
3. **Monopole Towers.** Where permitted, all monopole towers require a **conditional use** approval from the ~~designated Land Use Authority~~ ~~Planning Commission~~. In addition to the general requirements of this chapter, all monopole towers must comply with the following:
1. All towers must be of a mono-pole construction. No lattice constructed towers of any kind shall be allowed.
 2. All towers must allow for co-location and supply engineering calculations by a state certified engineer that will allow for as many as three (3) separate users on a single pole. Certification must be provided by the applicant stating that the owners of the tower will allow for co-location and that the structure has been constructed to allow for co-location as required.
 3. No tower may be located within a two thousand foot (2,000') radius of another mono-pole tower unless grid documentation is supplied by an independent consultant demonstrating the need to locate near an existing tower and also showing that co-location is either not feasible or that co-location will create an unreasonable hardship. Evidence of an unreasonable hardship shall be provided by an independent engineering study provided to the City at cost to the applicant.
 4. Co-location on an existing mono-pole structure is a permitted use and is handled administratively.

4. **Stealth Tower.** A tower is considered stealth if it is disguised as a tree listed on the Kaysville City Tree List or is attached to a pre-existing light pole, utility pole, or similar structure in order to significantly reduce its visual impact.
 1. The ~~Planning Commission~~Land Use Authority may require the owner of a stealth tower to consent to at least one co-location (in addition to the owner's).
 2. No Stealth Tower shall be permitted to exceed ninety feet (90') in height.
7. The following shall be considered by the Land Use Authority ~~Planning Commission~~ for conditional uses.
 1. Compatibility of the proposed structure with the height and mass of nearby existing buildings and utility structures.
 2. Location of the antenna in relation to existing vegetation, topography including ridge lines, structures, and buildings to obtain the best visual screening.
 3. Installation of, but not limited to curb, gutter, sidewalk, landscaping, and fencing for the purpose of blending the site with the surrounding environment and providing screening for the tower and associated equipment.
8. Cables shall be installed on the interior of any monopole for telecommunications structure.
9. Each application for a permit to construct a telecommunication tower shall be certified by a licensed professional engineer that the design of the facility meets all applicable standards for the facility including, but not limited to, electrical safety, material and design integrity, wind and seismic safety according to applicable building code adopted by Kaysville City.
10.
 1. The applicant must certify in writing that if technology renders the tower obsolete or the tower is vacated, that the agent will remove the tower, all apparatus associated with it, the top three feet (3') of the footing, and restore the site to its original condition within ninety (90) days of the vacation of the tower.
 2. The tower owner shall maintain the tower, site, and improvements in a state of good repair. If not maintained, the ~~Zoning Administrator~~City may notify the owner of the tower that it must be repaired and used within thirty days after the notice was sent, or the facility must be removed. If the communication facility is not repaired, or removed within thirty days after notice was sent, the ~~Zoning Administrator~~City may order the removal of the facility and the restoration of the property at the owner's expense. Any conditional use permit issued for the facility will be automatically revoked.
 3. If a telecommunication tower is not used for more than six months, it shall be deemed to be abandoned for the purposes of subsection 10(a).
11. Notwithstanding being listed or not as an approved use in any zoning district, telecommunication towers shall be permitted in Kaysville City's zoning districts as follows:

<u>Zone</u>	<u>Wall Mount</u>	<u>Roof Mount</u>	<u>Mono-pole</u>	<u>Stealth</u>
A-1, A-5	C	C	-	C*
R-A, R-1 zoning districts	C**	C**	-	C**

PU	C	C	-	C*
PB	-	-	-	-
LI	C	C	C	C
CC	C	C	-	C
GC	C	C	C	C
HC	C	C	-	-

17-32-5 Number Of Parking Spaces Required

1. Except as may be provided elsewhere in this Title, there shall be provided at the time of erection of any building or at the time any main building is enlarged or increased in capacity, minimum off-street parking space with adequate provisions for ingress and egress by standard-sized automobiles. If any land, structure, or use is changed from one use to another which requires more off-street parking spaces as specified in Subsection (2), there shall be provided such additional off-street parking for the new use as is required by this chapter.
2. **Specific Requirement for Each Land Use.** Required off-street parking shall be provided for each use as listed below. Requirements calculated on floor areas shall be based upon [KCC 17-32-2\(4\)](#). Parking for uses not specifically listed below shall be provided in the same ratio as the use most nearly approximating the characteristics of the unlisted use, as determined by the ~~Planning Commission~~[appropriate Land Use Authority](#). Parking shall be provided as follows, with spaces based upon one or a combination of uses listed:

Use	Parking Requirement
Residential	
Single-unit Dwelling	Two Parking Spaces
Two-unit Dwelling	Two Parking Spaces Per Unit
Three-unit Dwelling	Two Parking Spaces Per Unit
Four-unit Dwelling	Two Parking Spaces Per Unit

Multi-unit Dwelling	Minimum of eight (8) spaces, with 1.5 spaces for each additional unit over five (5)
Apartment House	Minimum of eight (8) spaces, with 1.5 spaces for each additional unit over five (5)
Golf courses, tennis courts and similar recreation areas	Determined by specific review by Planning Commission <u>Community Development Department</u>
Hotel, motel and lodge	One space per each one and one-half (1.5) rental units, plus one space per 200 square feet of assembly, banquet, and restaurant area
Intensive retail commercial	3.5 spaces for each 1,000 square feet of shops selling directly to the floor area public
Less intensive commercial	1.5 spaces for each 1,000 square feet of business as furniture, appliance floor area and lumber sales
Offices	
Personal services including medical and dental clinics	Two (2) spaces for each 1,000 square feet of floor area plus one (1) space for each employee per shift
Business	3.5 spaces for each 1,000 square feet of floor area
Restaurants, bars, dining rooms	One (1) space for every four (4) seats
Churches, auditoriums, assembly halls, theaters	One (1) space for every five (5) seats
Bowling alleys, skating rinks	Two (2) spaces for every 1,000 square feet of floor area
Industrial and wholesale	1.2 spaces for each employee per shift establishments
Mortuary	One (1) space for every three hundred (300) square feet of floor area
Hospitals, schools, civic buildings	Determined by specific review by Planning Commission <u>Community Development Department</u>

Shopping centers, or complexes, or rentable commercial space	At least three and one-half (3.5) spaces per 2,000 square feet of floor area
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17-33-7 General Sign Provisions [Edit](#)

1. **Signs to Conform with Other Codes and Regulations.** All signs shall conform with the provisions of the Uniform Sign Code, National Electric Code, and other codes duly adopted by or applicable in Kaysville City. If any provision of this Chapter conflicts with any provision of other codes, then the more restrictive provision shall apply.
2. **Traffic Hazard.** Signs shall not be erected at the intersection of any streets or driveways in such manner as to obstruct free and clear vision (see [KCC 17-31-18](#)); or at any location where by reason of the position, shape or color, it may interfere with, obstruct the view of or be confused with any authorized traffic sign, signal device, or make use of the words "Stop," "Drive-in," "Danger," or any other words, phrases, symbol or character in such manner as to interfere with, mislead or confuse vehicle operators.
3. **Clearances.** Clearances shall be as specified in the Uniform Sign Code. Clearances over utility easements shall be a minimum of fourteen feet (14').
4. **Setbacks.** Unless otherwise specified, the setback for all signs shall be at least eighteen inches (18") from the property line as measured from the leading edge of the sign.
5. **Signs On and Over Public Property.** No sign shall be located on publicly owned land or inside a street right-of-way except signs required and erected by permission of an authorized public agency and "A" Frame, Pedestal and Projecting signs as allowed herein. Signs not permitted include, but are not limited to, handbills, posters, advertisements or notices that are fastened, placed, posted, painted or attached in any way upon any curbstone, lamp post, telecommunications pole, electric light or power pole, hydrant, bridge, tree, rock, sidewalk, or street. Projecting signs may project over public property up to three feet (3'), but in no case be closer than two feet (2') to the curb line or edge of street, whichever is more restrictive. Other signs may not project over public property.
6. **Lighted Signs.** A lighted sign shall not be installed which permits the light to penetrate beyond the property in such a manner as to annoy or interfere with the use of adjacent properties. Such lights alleged to violate the above by the adjacent property owners or Building Official shall be subject to a [an investigation by the City public hearing before the Planning Commission](#) as to the validity of the alleged violation. If such light is determined to be in violation, the owner of said light shall take appropriate corrective action as directed.
7. **Size Computation.** The following shall be used when calculating sign sizes: When more than one use occupies a lot, the frontage may be used to calculate the sign sizes for one total of a ground or projecting sign, not for each use. The total may then be divided between the uses. There may be any number of flat or wall signs provided their total does not exceed the percentage of wall area coverage allowed.
8. **~~Planning Commission/~~Conditional Use Permits.** For a site that is five (5) acres or larger, the ~~Planning Commission~~ [designated Land Use Authority](#) may consider an ~~on-premise~~ [on premise](#) sign proposal that is less restrictive than regulations set forth herein. Such sign plans shall be considered a [conditional use](#) and a determination shall be made that the proposed sign exceptions are not in conflict with the purpose of this Chapter and are in architectural harmony with the development and other buildings and [uses](#) adjacent to the development.

9. **Maintenance of Signs.** All signs and advertising structures shall be maintained in a safe, presentable, and good condition including the replacement of defective parts, repainting, cleaning, and other acts required for the maintenance of said sign.
10. **Abandonment of Signs.** Signs not maintained as required in Subsection (9), or relating to a product no longer available for purchase or to a business which has moved, shall be removed within thirty (30) days of such unavailability, closure or re location. If an abandoned sign is not maintained and **used** within ten (10) working days after written notice is delivered to or sent by certified mail to the person having charge or control or benefit of such sign, the ~~Zoning Administrator~~**City** may at once abate and remove said sign and the person having charge, control or benefit of any such sign shall pay to Kaysville City the costs incurred in such removal within thirty (30) calendar days after written notice of the cost is delivered to or mailed to such person.

11. 17-33-9 Signs Permitted By Zone

12. Sign(s) paid for by applicant and installed only by Kaysville City subject to complying with the Kaysville City Directional Sign Policy. sq. ft. maximum 6 ft. maximum — residential zones; 12 ft. maximum — other zones 3 ft. maximum when free standing. Installed by City only when approved. Each business occupying a separate space in the building and having a separate exterior building entrance may display one such sign while the business is open for business.

ZONE	SIGN	SIZE	HEIGHT	LOCATION	OTHER
All	Construction	32 sq. ft. plus 1 sq. ft. for each 10 ft. of frontage over 30 ft. to a maximum of 96 sq. ft. per development	12 ft. maximum	On private property	Sign must be removed within 30 days from final building or inspection that allows occupancy or when 100% of the facilities are occupied whichever occurs first.
	Directional			In City right-of-way	
	Development	32 sq. ft. plus 1 sq. ft. for each 10 ft. of frontage over 30 ft. to a maximum of 96 sq. ft. per development	12 ft. maximum	On private property	Permitted use in all zones. Allowed on property that is under development for a new subdivision or has an active building permit. Only allowed in residential development on projects where there are 3 or more units for sale/lease. Sign must be removed within 30 days from when 100% of the units/suites are occupied.
	Governmental				By government entity only

	Identification	36 sq. ft. maximum		Attached to main structure	Allowed with public or quasi-public uses. May be floodlighted, but not within 50 feet of a dwelling
	Interior				
	Low Profile	32 sq. ft. plus 1 sq. ft. for every 10 feet of frontage over 30 ft. to a maximum of 64 sq. ft.	4 ft. maximum	On private property and set back 6 ft. from property lines	One sign per street frontage and appropriately landscaped for the site. Conditional use in agricultural and residential zones. May be lighted by conditional use.
	Name Plate	1 sq. ft. maximum per use — residential zones; 3 sq. ft. maximum per use — other zones		Attached to main structure	
	Open House	3 ft. maximum; 2 ft. in view obstruction area	Within 1,000 feet of real estate open for inspection. On private property not closer than one foot to sidewalk or property line.	Only displayed from one hour before to one hour after the time the real estate is open for actual inspection and not more than 5 continuous hours. Not more than four signs per open house. Not more than one sign on a parcel of property. Must have property owner's permission.	
	Political	32 sq. ft. maximum	6 ft. maximum	On private property and not closer than 10 ft. to a driveway	
	Property (Real Estate)	6 sq. ft. maximum — residential zones; 32 sq. ft.	On private property	Shall be removed within 30 days after the property is sold	

		maximum — other zones			
	Public Necessity				By public agency only
	Service	sq. ft. maximum	On private property	May be lighted in GC, CC and LI zones	
Public Use (PU), Profess ional Busine ss (PB), Genera l comme rcial (GC), Central Comm ercial (CC), Light Industr ial (LI), Health Care (HC)	Flat or Wall	25% of a wall area maximum	Not higher than building it is on	Attached to a building	Up to 40 sq. ft. may be promotional sign. Flat signs exposed to dwellings on adjacent property shall not be illuminated within 50 feet of such dwellings.
	Monument	32 sq. ft. plus 1 sq. ft. per every 5 ft. of frontage over 30 ft. to a maximum of 64 sq. ft.	5 ft. maximum	1 sign per frontage on private property.	The supporting structure of architectural detail of a monument sign is not calculated as sign area if the structure is incorporated into the surrounding landscaping design or with other structural or architectural aspects of the site. Architectural detail may extend beyond the 5 ft. height maximum by as much as 2 ft. and a horizontal distance of 2 ft. of the sign cabinet.
PU, GC, CC, LI	Banner	Limited to the difference between the size of the on- premise, ground sign, flat or wall sign and the size allowed.	Not higher than the sign or wall it is on.	On a on-premise, ground sign or building wall.	Shall only be displayed for up to one calendar year. Shall be maintained and kept in good repair.

	Menu Board	35 sq. ft. maximum	6 ft. maximum	Behind the front landscaped setback area on private property.	May be two (2) per site
	On-Premise, Ground	1.5 sq. ft. per foot of frontage, up to 300 sq. ft. maximum within 300 feet of I-15; 1.5 sq. ft. foot of frontage, up to 200 sq. ft. maximum within 3,000 feet of I-15 or within 1,320 feet of another Principal Arterial Street; 1.5 sq. ft. per foot of frontage, up to 120 sq. ft. maximum at other locations.	45 ft. maximum within 300 feet of I-15; 30 ft. maximum within 3,000 feet of I-15 or within 1,320 feet of another Principal Arterial Street, 8 feet maximum at other locations.	1 sign per frontage on private property.	Up to 40 sq. ft. may be promotional sign. Illumination may be built into or attached to signs. more than one sign on one parcel shall be separated by 100 ft. The base and structure of all on-premise <u>on premise</u> ground signs beyond 300 ft. of I-15 shall be the same method of construction, style and design of the materials used in the construction of the building(s). The sign element shall be an integral part of the architecture and design of the site. The colors shall be subdued and unobtrusive. Signs with exposed metal supports or metal masking shall not be permitted.
PB, GC, CC, LI	Electronic Message Center (EMC)	Allowable EMC size shall not exceed 50% of total allowed sign size and not more than 75% of any sign cabinet.			EMC signs shall not cause glare or rapid blinking, nor be intensely lighted so as to create a nuisance or hazard to vehicular traffic, pedestrians, or adjacent properties. EMC signs shall be capable of being programmed to automatically dim according to ambient light conditions. Conditional use in zones where permitted. Allowed only as part of monument and ground signs. As part of the conditional use review the <u>Land Use Authority Planning Commission</u> may consider hours of operation, sign height, sign size, and/or setbacks from property lines.

GC, CC, LI	Animated				Conditional use
	Awning	% of wall area maximum		Attached to a building	May be lighted, but not within 50 feet of a dwelling
	Balloon			On private property	Conditional use for the period permitted
	Canopy		Structure limit in zone	Attached to a building	Must have building permit
	Marquee		Structure limit in zone	Attached to a building	Must have building permit
	Right-of-Way				
	Window				
GC, CC	"A" Frame or Pedestal	4 feet maximum width	6 feet maximum	On the private property on which the business is located or in the area between the street curb or shoulder and the front lot line of the property on which the business is located, but not obstructing the roadway or pedestrian ways.	
	Projecting	32 sq. ft. maximum	Not higher than building it is on	Attached to a building	

The Law and Practice of Conditional Uses

By Craig M Call, J.D.¹

The Utah Land Use Institute

The Office of the Property Rights Ombudsman has provided funding for the Utah Land Use Library from the 1% surcharge on all building permits in the State of Utah.

Introduction

A land use ordinance typically focuses first on identifying districts within the jurisdiction and assigning to those districts a schedule of uses that are appropriate. Hence, the traditional and common reference to these regulations as zoning ordinances. It is most common for the regulation to treat uses in at least these three categories: Permitted Uses, Prohibited Uses, and Conditional Uses.

Permitted uses are allowed as a matter of right. If a person applies for a permitted use, and otherwise meets the requirements of the ordinance, that use is automatically allowed. Processes imposed on permitted uses include building plan review for a building permit, a site plan review for zoning compliance, calculation of impact fees, a construction staging plan, review of the outdoor lighting plan, and other specific regulations.

Prohibited uses are simply not allowed. If the use is prohibited in an ordinance, then the only means of allowing the use is by means of a zoning text amendment or by citing a higher law, such as the Fair Housing Act or constitutional case law, such as that related to adult businesses. Since only an ordinance amendment or the imposition of federal or state law may

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legalize a once-prohibited use, so an appeal authority may not grant a use variance. Generally, zoning ordinances list permitted and conditional uses. All other uses are then deemed a prohibited use.

Conditional Uses, however, are neither of these. Generally, they are assumed to be like “permitted uses *with conditions*” because the state law imposes a strong presumption that a conditional use application will be granted:

A land use authority *shall approve* a conditional use if reasonable conditions are proposed or can be imposed to mitigate the reasonably anticipate detrimental effects of the proposed use in accordance with applicable standards.²

It should be noted that *elimination* of the detrimental effects of the conditional use is not necessary for the conditional use applicant to reasonably mitigate anticipated detrimental effects.³ While a conditional use application may be denied (see below), to do so is generally understood to be the exception rather than the rule. In other words, the review of a conditional use generally involves considering whether certain conditions of approval should be attached to the permit, rather than determining if the use is appropriate or desirable in the general zone area. By law, it is. The legislative body already determined the appropriateness and compatibility of said use when it crafted the ordinance and included the conditional use as approved for the zone. While not a binding opinion, the Utah Property Rights Ombudsman has supported this interpretation of the conditional use statute, finding that when a conditional use has been allowed within a given zone, that designation has determined that said use is a desirable use. The land use authority must grant the use unless it can show that detrimental effects of the use cannot be

² UTAH CODE ANN. §10-9a-507(2)(a)(i) (municipalities)(LexisNexis 2022); UTAH CODE ANN. §17-27a-506(2)(a)(i) (Counties) (emphasis added). *Krejci v. Saratoga Springs*, 322 P.3d 662 (Utah 2013) (if an applicant meets the standards in the ordinance, the permit “shall” be approved).

³ UTAH CODE ANN. §10-9a-507(2)(a)(ii) (municipalities)(LexisNexis 2022); UTAH CODE ANN. §17-27a-506(2)(a)(ii) (Counties)(LexisNexis 2022).

mitigated.⁴ If the conditional use were not both appropriate and desirable, it would not have been listed as allowed in the ordinance. This is not to say that the use must be allowed on every lot in the zone. As will be discussed later, a given conditional use, while generally desirable in the zone, may include some reasonably anticipated detrimental effects which might not be compatible in some areas of the zone, even if attempts are made to mitigate those effects.

State law acknowledges that any conditional use is presumed to come with some attributes that justify the consideration of conditions to address negative aspects of the use. As defined in the state code:

“Conditional use” means a land use that, because of its 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 or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.⁵

The Utah Property Rights Ombudsman has suggested that if a Conditional Use Permit (CUP) application is made pursuant to an enacted ordinance, the proper Land Use Authority must review the CUP or risk violating the law.⁶ The issues for discussion in the typical Land Use Authority review of a conditional use permit application would therefore include:

- 1) What potentially detrimental impacts of the proposed use are addressed by the standards found in the CUP section of the local ordinance?

⁴ Supported by OFFICE OF THE PROP. RIGHTS OMBUDSMAN, Advisory Op. 92, *Christine Erickson Davis and City of Cottonwood Heights* (2010). While not binding or precedential, this advisory opinion concluded that when a local jurisdiction deems a certain use a conditional use, it has also determined that the use is desirable. The land use authority must approve the use unless it can demonstrate by substantial evidence in the record that the detrimental effects of the use cannot be mitigated.

⁵ UTAH CODE ANN. §10-9a-103(8) (municipalities)(LexisNexis 2022).

⁶ OFFICE OF THE PROP. RIGHTS OMBUDSMAN, Advisory Op. 246, *Geist and Summit Cty.* (2006).

- 2) Applying those standards from the ordinance, what reasonable conditions should be imposed to accomplish the substantial mitigation of those detrimental impacts of the use?

It is to be noted that the conditions need to substantially “mitigate” the detrimental impacts, not eliminate them. It can be assumed that the legislative body, when it deemed the use both appropriate and beneficial within the zoning district, was aware of the detrimental impacts of the use and yet still allowed it in the zone.

Procedures in Reviewing an Application for a Conditional Use

The process of reviewing a conditional use can be conducted by any designated Land Use Authority, including staff.⁷ It may not be conducted, however, by the city or county council in a city using the council/mayor form of government.⁸ Review of a conditional use is an executive or administrative function, and a purely legislative body may not conduct such a review.⁹ This would include any attempt for the voters to act as the Land Use Authority for a conditional use permit.¹⁰

There is no requirement in the state land use act that notice of a pending conditional use be given to anyone other than the applicant.¹¹ Unless the application is considered by more than

⁷ *Busche v. Salt Lake County*, 26 P.3d 862 (Utah Ct. App. 2001) (decided under former version of LUDMA. Current version even more clearly allows staff review of CUP application).

⁸ The Council/mayor form of government is not the norm in Utah. About thirteen cities use this form including Salt Lake City, Ogden, Provo, Sandy, and Logan.

⁹ *Salt Lake Cty. Cottonwood Sanitary Dist. v. Sandy City*, 879 P.2d 1379, 1382 (Utah Ct. App. 1994).

¹⁰ Voters may impose a land use regulation requiring a conditional use permit for a coal-fired electricity generation power facility by initiative (see *Sevier Power v. Bd. of Sevier Cty. Comm’rs*, 196 P.3d 583 (Utah 2008))(it is to be noted that the Supreme Court decision to validate the initiative was limited to the question before the court. In its decision, the court expressed no opinion on the wording of the initiative, which, according to other decisions by the Court, illegally proposed that the voters could act as the Land Use Authority acting on an application to obtain a conditional use for a power plant. The voters would have no such power, which is an executive/administrative function only. See also *Salt Lake County Cottonwood*, 879 P.2d at n.3).

¹¹ The state enabling acts provide for no specific notice requirement with regard to conditional use applications. See UTAH CODE ANN. §§10-9a-507 (municipalities), §17-27a-506 (counties)(LexisNexis 2022); UTAH CODE ANN. §10-9a-201 sets forth the formalities for Required Notice. The same section

one person, there is no requirement for a public hearing or even a public meeting. Thus, if someone such as the planning director or an administrative hearing officer reviews the application, no public meeting or hearing is needed. The process can be as simple as obtaining a building permit or site plan approval, or as complicated as obtaining approval for a subdivision or planned development. This is entirely up to the local legislative body, which can delegate these duties and powers as it sees fit.

Since the legislative body can deem any use to be a permitted use, it can certainly adopt an amendment to the land use regulations converting a formerly permitted use into a conditional use. The land use regulation may then spell out the nature and extent of the review that a conditional use application is subject to. The ordinance may provide for only a limited review prior to granting or denying the use, or impose quite a lot of complexity. “Imposing additional steps in issuing conditional use permits has both costs and benefits, the value of which, and nature of which, are left to the consideration of the (legislative body). . .”¹²

Interpreting and Applying the Land Use Ordinance

Conditions must be both reasonable and consistent with the standards in the ordinance, not exceeding the authority conferred upon the land use authority reviewing a conditional use application. To better understand what these limitations are, one must understand how a local ordinance is to be interpreted and applied.

states that a municipality, by ordinance, “may” require greater notice. The parallel county statute is at UTAH CODE ANN. §17-27a-201. Where notice was provided to the neighboring landowners during the initial process of approving a conditional use, no additional notice is required where the denial of the use was later reversed by the court and the Land Use Authority met to reconsider that denial. *Blackburn v. Washington City*, 101 P.3d 391, 393–94 (Utah Ct. App. 2004).

¹² *Sevier Power*, 196 P.3d at 587–88.

1. In interpreting the meaning of an ordinance, begin first by looking to the plain language of the ordinance.¹³

2. If the plain language of the ordinance is ambiguous, we may resort to other modes of construction, keeping in mind that “when interpreting an ordinance, it is axiomatic that the primary goal is to give effect to the city's intent in light of the purpose that the ordinance was meant to achieve.”¹⁴

3. Importantly, ordinance terms should be interpreted and applied according to their commonly accepted meaning unless the ordinary meaning of the term results in an application that is either unreasonably confused, inoperable, or in blatant contradiction of the express purpose of the ordinance.¹⁵

4. If there is doubt or uncertainty as to the meaning or application of the provisions of an ordinance, it is appropriate to analyze the ordinance in its entirety, in light of its objective, and to harmonize its provisions in accordance with its intent and purpose.¹⁶

5. Because zoning ordinances are in derogation of a property owner's common-law right to the unrestricted use of their property, provisions therein restricting property uses should be strictly construed, and provisions permitting property uses should be liberally construed in favor of the property owner.¹⁷

6. It is axiomatic that an ordinance should be given a reasonable and sensible construction and that the legislative body did not intend an absurd or unreasonable result.¹⁸

¹³ *Carrier v. Salt Lake Cty.*, 104 P.3d 1208, 1216 (Utah 2004).

¹⁴ *Id.* at 1216–17.

¹⁵ *M&S Cox v. Provo City*, 169 P.3d 789, 796 (Utah Ct. App. 2007).

¹⁶ *Id.*

¹⁷ *Patterson v. Utah Cty. Bd. of Adj.*, 893 P.2d 602, 606 (Utah Ct. App. 1995).

¹⁸ *State ex rel. Div. of Consumer Prot. v. GAF Corp.*, 760 P.2d 310, 313 (Utah 1988).

7. The interpretation must precede the conclusion. To attempt to retroactively redefine the terms of the ordinance to achieve a predetermined result is both inappropriate and unlikely to be supported on review.¹⁹

Applying Standards in the Ordinance

Once the standards are identified, the work of the assigned land use authority, which reviews an application for a conditional use, is to determine the detrimental impacts of the proposed use and apply conditions to reasonably mitigate them. Note that the Utah Property Rights Ombudsman Office has concluded in a non-binding advisory opinion, that the standards must be found in the ordinances and not created at the time an application is reviewed.²⁰

The case of *Wadsworth v. West Jordan* is illustrative of how the standards in the ordinance are to be applied to a conditional use application.²¹ In *Wadsworth*, one of the standards in the ordinance provided that a conditional use could be denied if it was found to constitute a nuisance.²² The Court dismissed the city's conclusions with regard to this standard because the record showed that the Land Use Authority found only that the use “*may be considered to be a nuisance*” based on concerns raised by neighboring landowners about “rodent traffic” and dust.²³ According to the Court, the Land Use Authority did not find that the applicant's storage would actually constitute a nuisance. According to the Court, determining

¹⁹ *Carrier*, at 1219.

²⁰ OFFICE OF THE PROPERTY RIGHTS OMBUDSMAN, Advisory Op. 25, *Stapel and Cottonwood Heights City* (2007). Advisory opinions are not binding and do not set legal precedent, but can provide useful analysis and citations to authority.

²¹ *Ralph L. Wadsworth Constr. V. West Jordan City*, 999 P.2d 1240 (Utah Ct. App. 2000).

²² *Id.* at 1243.

²³ *Id.* at 1243–44.

that the use “may” constitute a nuisance did not meet the requirement that the use be “deemed a nuisance” by substantial evidence in the record, as required by both Utah statutes and case law.²⁴

It is inappropriate, however, to attempt to base a conditional use decision on standards that are not found in the ordinance. In *Uintah Mtn. RTC*, the Duchesne County Commission was held to inappropriately base a denial on whether or not the proposed use would be economically viable. Despite evidence in the record in the form of statements by the applicants that their use would not be viable if limited to ten residents of the proposed group home (a condition imposed by the Planning Commission), the County could not use that evidence to support denial because economic viability was not one of the criteria included in the ordinance’s standards for review of the use.²⁵

If an existing conditional use is expanded or modified, thus requiring a new land use application to do so, current law may be applicable to the review of that new application even though the original use was approved under prior law. A new application review may be necessary even though the use is a legal non-conforming use.²⁶

Must Follow the Ordinance

It is essential to comply with the provisions of the ordinance. If the ordinance states, for example, that conditional uses are only to be allowed if each item in a long list of items is addressed and dealt with, then each item in the list must be dealt with.²⁷ While it seems inadvisable to create such technicalities and complications in an ordinance, the ordinance is what

²⁴ *Id.* (it is noted that the opinion of the Court of Appeals specifically emphasizes the duty to comply with the standards by underlining for emphasis the statement that West Jordan “did not find that appellant’s storage would actually constitute a nuisance.”).

²⁵ *Uintah Mt. RTC v. Duchesne Cty*, 127 P.3d 1270, 1275 (Utah Ct. App. 2005).

²⁶ *Carrier*, 104 P.3d 1208.

²⁷ *Springville Citizens v. Springville*, 979 P.2d 332, 337–338 (stating the City was not entitled to disregard its mandatory ordinances by approving a subdivision/PUD plat that did not meet technical requirements).

the ordinance is. Unless the ordinance is followed with specificity, the review of the conditional use is flawed and can be challenged by any person with standing who challenges the review in front of the local appeal authority.²⁸

Substantial Evidence in the Record

It must be kept in mind that any consideration of both the nature and extent of a potentially detrimental impact, as well as the type of condition that might reasonably and substantially mitigate that impact, must be based in substantial evidence, and not on speculation, clamor, or unfounded apprehensions of either members of the land use authority, the staff, nearby landowners, or the public in general.

This means the only information that is to be considered in reviewing a proposed conditional use and imposing conditions includes an appropriate interpretation of the relevant law and substantial evidence in the record.²⁹

Substantial evidence has been defined as "that quantum and quality of relevant evidence that is adequate to convince a reasonable mind to support a conclusion."³⁰ In *Staker v. Town of Springdale*, the Utah Court of Appeals sustained the local Land Use Authority's denial of a request to construct a parking lot in a residential zone because the municipality provided sufficient substantial evidence to support the denial.³¹ In the Land Use Authority's decision, they thoroughly discussed the anticipated impacts on surrounding properties and explained how any remedying efforts would be insufficient to mitigate the conditional uses' detriment to the area.³²

²⁸ *Id.* (stating that in order to have standing, the person bringing the appeal must demonstrate actual injury from the failure to follow the ordinance).

²⁹ *J.P. Furlong Co. v. Bd. of Oil, Gas & Mining*, 424 P.3d 858, 862 (Utah 2018).

³⁰ *First Nat'l Bank of Boston v. Cty. Bd. of Equalization*, 799 P.2d 1163, 1165 (Utah 1990); *Bradley v. Payson City Corp.*, 70 P.3d 47, 52 (Utah 2003). Utah Code Ann. 10-9a-103 and 17-27a-103 also define the term using these words.

³¹ *Staker v. Town of Springdale*, 481 P.3d 1044 (Utah Ct. App. 2020).

³² *Id.* at 1055.

The Court found the Land Use Authority’s discussion sufficient, because the facts would only allow “a reasonable mind [to] conclude that ‘proposed conditions could not be imposed that would substantially mitigate the reasonably anticipated detrimental effects on the surround properties’ from increased in both ‘both vehicular and foot traffic’ and the ‘inevitable noise created when cars and people enter and exit the location.’”³³ It is worth noting that this was not a unanimous decision, and one member of the panel of three judges deciding the case dissented, stating that in her mind the evidence provided was not sufficient to support the denial.³⁴

It is essential that the Land Use Authority provide a clear statement in the record of the proceedings as to the law and facts that support its conclusions. Without findings and conclusions, the task of a court reviewing the decision becomes highly impractical because there is no way to determine from the record what the decision maker’s thinking was when it took action.³⁵

³³ *Id.*

³⁴ *Id.* at ¶¶ 56-57. “While I have no doubt that a parking lot will generate noise and traffic and therefore have some impact on neighboring properties, I hesitate to equate presumed impacts with substantial evidence. See *Ralph L. Wadsworth Constr., Inc. v. West Jordan City*, 2000 UT App 49, ¶ 17, 999 P.2d 1240 (“[T]he decision to deny an application for a conditional use permit may not be based solely on adverse public comment.”); see also *Uintah Mountain RTC, LLC v. Duchesne County*, 2005 UT App 565, ¶ 32, 127 P.3d 1270 (concluding that the denial of a conditional use permit was “impermissibly based solely on adverse public comment” where there was “no record evidence detailing actual safety issues” with the proposed use (quotation simplified)). Absent some attempt to measure those impacts, it is difficult to assess whether those impacts would not just interfere with the right to quietly and peaceably enjoy one’s property, but whether they would unreasonably interfere. But even if the assumptions about generalized impacts inherent in a commercial lot equate to substantial evidence, I cannot agree with the district court’s conclusion that there was substantial evidence to support the Appeal Authority’s determination that reasonable conditions could not be imposed to mitigate those detrimental effects.” This dissent prompted the Utah legislature to change the definition of substantial evidence in the most recent iteration of UTAH CODE ANN. §§10-9a-103 (municipalities)(LexisNexis 2022), §17-27a-103 (Counties)(LexisNexis 2022)).

³⁵ *Davis Cty. v. Clearfield*, 756 P.2d 704, 712 (Utah Ct. App. 1988), quoting *City of Barnum v. County of Carlton*, 386 N.W.2d 770, affirmed on remand, 394 N.W.2d 246 (Minn.Ct.App. 1986); see also *McElhaney v. City of Moab*, 423 P.3d 1284 (Utah 2017).

Public Clamor is Not Substantial Evidence

It is perhaps more helpful in this context to define what substantial evidence is not. Substantial evidence is not public clamor, which is an insufficient basis upon which to deny a conditional use permit.³⁶ The Land Use Authority must rely on facts, and not mere emotion or local opinion, in making such a decision.³⁷ The leading case on the subject involved Davis County, which attempted to locate treatment facilities for those dealing with substance abuse on State Street in Clearfield almost thirty years ago. The Clearfield City Council refused to allow a conditional use for the treatment facilities after an eruption of public clamor against the proposed facilities.

In *Davis County v. Clearfield*, the Court clearly stated that the opposition of neighbors is not one of the considerations to be taken into account when determining whether to issue a development permit.³⁸ The Land Use Authority must rely on facts, and not mere emotion or local opinion, in making such a decision.³⁹ A decision cannot be upheld, if challenged, when it is based on the vague reservations expressed by either the neighbors to the proposed use or members of the Land Use Authority.⁴⁰ On the other hand, in a non-binding advisory opinion, the Utah Property Rights Ombudsman has concluded that an approval of a CUP in the face of public clamor from neighbors is entirely acceptable.⁴¹

³⁶ *Id.* at 711–13 & n.3.

³⁷ *Id.* at 712 (accord *Chanhassen Estates Residents Ass'n v. City of Chanhassen*, 342 N.W. 2d 335, 340 (Minn. 1984) (“Denial of a conditional use must be based on something more concrete than neighborhood opposition and expressions of concern for public safety and welfare.”)).

³⁸ *Id.* at n.3, quoting *Board of County Comm’rs v. Teton County Youth Servs. Inc.*, 652 P.2d 400, 411 (Wyo. 1982).

³⁹ *Id.* at 712, quoting *City of Barnum v. County of Carlton*, 386 N.W.2d 770, affirmed on remand, 394 N.W.2d 246 (Minn. Ct. App. 1986).

⁴⁰ *Id.* at 711, quoting *C.R. Invs., Inc. v. Village of Shoreview*, 304, N.W.2d 320, 325 (Minn. 1981).

⁴¹ OFFICE OF THE PROPERTY RIGHTS OMBUDSMAN, Advisory Op. 117, *Cottonwood Partners and Cottonwood Heights City* (2012).

Public Clamor May Raise Relevant Issues

Attached to this summary are extended excerpts from the *Davis County* opinion. A quick review of the few pages of *Davis County* will leave the reader with a clear view of how the courts view the balancing of public clamor and substantial evidence. Indeed, it is worth noting that while the decision against Clearfield was based on lack of credible evidence, it was not based on a flaw in the issues raised:

[I]n response to the concern that the proposed facility would create a danger or nuisance because of its proximity to the junior high school, the court noted that neither the Davis County School District nor the junior high administrators appeared at the public hearings to oppose the proposed facility. Similarly, the police department made a presentation suggesting that crime would not increase in the area if the facility were permitted. With regard to the concern over real estate values, the court found that no studies were made and no opinions were given by professional real estate appraisers nor was any evidence of reduced property values produced at the hearings. In a similar vein, two professional planners were employed by the city, but neither voiced any objection to granting the application.⁴²

Putting *Davis County* into 2022 perspective, we can conclude that if the standards in the ordinance cited issues of public safety and property values, those issues were fair consideration. The failure of the City's decision was a failure of evidence, and not that the concerns raised were irrelevant to the consideration of the conditional use.

In the *Wadsworth* case discussed above, the same rules were again applied to a specific context. The Court of Appeals again found that the denial of a conditional use for an outdoor storage yard in an industrial zone was based on insufficient evidence and in response to public clamor. In denying the use, the City Council adopted a finding that “the city has made a significant investment in bringing (an important neighboring landowner and large employer) to

⁴² *Id.*

the area . . . outdoor storage is detrimental to the area and injurious to the goals of the city.”⁴³

However, the only evidence in the record supporting this finding were the concerns expressed by neighboring landowners. The record did not reveal whether the Commission’s staff actually investigated the concerns raised at the public hearing or why they concluded that outdoor storage on the applicant’s property – which is located in an industrial zone – would be adverse to the city’s goals. Because the decision to deny a conditional use permit may not be based solely on adverse public comment, the Court concluded that this finding was insufficient to support the denial.⁴⁴

It follows that the consent of neighboring landowners cannot be made a criteria for the issuance or denial of a conditional use permit.⁴⁵ The *Davis County* Court expresses surprise that at a hearing on the proposed conditional use, the Land Use Authority allowed a show of hands of those who were in favor of the use. Only one person voted yes. The decision to deny came as a result of the public clamor, leading the Court to strike down the decision down.

Substantial Evidence is Relevant, Credible, and Independent

In *Uintah Mtn. RTC*, the opinion expressed by a real estate professional was not considered substantial evidence by the court because it was of “questionable probative value”, not cited by the County Commission to support a decision denying the use, and admittedly the product of the professional’s speculation. In that case, the professional stated that “additional research of this issue is needed.” This, according to the court, was not substantial evidence.⁴⁶

⁴³ *Ralph L. Wadsworth Constr.*, 999 P.2d at 1243.

⁴⁴ *Id.*

⁴⁵ *Thurston v. Cache County*, 626 P.2d 440, 445 (Utah 1981); but see, *Sevier Power v. Hansen*, 196 P.3d 583 (discussing a citizen initiative proposal of a public vote as a requirement of a conditional use for a coal-fired power generation facility and allowing the vote without reviewing the substance of the proposed law.) (see also *Sevier Power*, 196 P.3d 583).

⁴⁶ *Uintah Mt. RTC*, 127 P.3d at n.4.

Consistency and Precedent

An additional consideration when reviewing evidence in the record is whether the evidence presented is credible. Again in *Uintah Mtn.*, the decision to deny a conditional use was based in part on a determination by the Land Use Authority there that the proposed group home use was not compatible with neighboring land uses.⁴⁷ The Court of Appeals took exception to that conclusion, stating that the record of the decision showed that County authorities had approved a larger group home in a similar location six years previously.⁴⁸ Since there did not appear to be any evidence in the record showing that the proposed conditional use differed from that previously approved use with regard to its compatibility with neighboring land uses, a failure of credible substantial evidence was found.⁴⁹

This followed a similar finding in *Wadsworth*, where outdoor storage was denied for one land user, despite the fact that the evidence showed that there were several other parcels near the applicant's parcel which had outdoor storage areas similar to that proposed by the applicant. The Court failed to see how allowing the applicants to engage in outdoor storage in an industrial zone would be detrimental to other businesses in the area that also used their land for outdoor storage.⁵⁰

Imposing Reasonable Conditions

According to the statute, a conditional use shall be approved if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the

⁴⁷ *Id.* at 1273–74.

⁴⁸ *Id.* at 1276.

⁴⁹ *Id.*

⁵⁰ *Ralph L. Wadsworth Constr.*, 999 P.2d at 1243–44.

proposed use in accordance with applicable standards.⁵¹ Absolute elimination of the detrimental effects is not necessary to demonstrate the reasonable mitigation of a detrimental effect.⁵²

It is to be noted that the burden of establishing this entitlement to approval is on the applicant. Where there is no evidence in the record to support the conclusion that the detrimental effects of the use can be mitigated by reasonable conditions, the applicant is not entitled to approval.⁵³

The imposition of reasonable conditions involves several steps, in sequence:

- 1) Determine the anticipated detrimental effects of the use in the proposed location.
- 2) Determine how the standards in the ordinance are to be applied to those effects.
- 3) Draft conditions to be included in the approval of the use which are:
 - a. Appropriate - within the authority of local government to regulate.
 - b. Relevant – that is, consistent with the standards in the ordinance.
 - c. Proportionate.
 - d. Otherwise reasonable.⁵⁴

Detrimental Effects. The detrimental effects to be considered are those deemed reasonable anticipated by the Land Use Authority. The Authority may ignore any suggested effect if the suggestion is not supported by substantial evidence. It must disregard an effect which, as discussed below, is not considered by the standards in the ordinance.

⁵¹ UTAH CODE ANN. §10-9a-507 (LexisNexis 2022).

⁵² UTAH CODE ANN. §§10-9a-507(2)(a)(ii) (municipalities)(LexisNexis 2022), §17-27a-506(2)(a)(ii) (Counties)(LexisNexis 2022).

⁵³ *Staker v. Town of Springdale*, 481 P.3d 1044 (Utah Ct. App. 2020) (it should be noted that a Judge in *Staker* offered a dissenting opinion stating that there was not substantial evidence to permit denial because the findings were not substantiated by evidence or tests showing the severity of any proposed damages. This dissent prompted the Utah legislature to change the definition of substantial evidence in the most recent iteration of UTAH CODE ANN. §§10-9a-103 (municipalities)(LexisNexis 2022), §17-27a-103 (Counties)(LexisNexis 2022)).

⁵⁴ While not binding, OFFICE OF THE PROPERTY RIGHTS OMBUDSMAN, Advisory Op. 192, *Cedar Hills Farm Land LLC and Cedar Hills City* (2017) offers support for these draft conditions.

Standards in the Ordinance. Read in a manner consistent with the rules for interpreting ordinances outlined above, the Land Use Authority next determines if conditions related to the identified detrimental effects would be within the standards in the ordinance, and whether conditions can be imposed that will substantially mitigate the detrimental effects.

Drafting Conditions. The Authority then crafts the conditions, noting the requirements that those conditions be appropriate, relevant, proportionate, and otherwise legal.

Appropriateness. Local government can only regulate the aspects of land use that are within or reasonably implied by the appropriate Land Use, Development, and Management Act⁵⁵ and other state and federal law. A conditional use permit process does not trump mandatory provisions of state or federal law, or constitutional free speech provisions as applied to adult businesses, for example.

Some aspects of those uses protected by state or federal law are simply irrelevant to conditional use discussions. Since local government has no authority to regulate some land uses, a backdoor attempt to impose conditions and restrictions can be both illegal and costly. Utah statutory law requires, in cases involving the Fair Housing Act, Utah communities to rescind conditional use requirements illegally imposed and force violating parties to pay legal fees for their overreaching attempts.⁵⁶

Relevant. The standards in the ordinance are like a road map or checklist to the identification of detrimental effects for consideration as well as the means of dealing with them. Any conditions must be logically related to standards in the ordinance. If they are not, they may be successfully challenged on appeal.⁵⁷

⁵⁵ UTAH CODE ANN. §10-9a-101 et seq. for municipalities or §17-27a-101 et seq. for counties.

⁵⁶ UTAH CODE ANN. §57-21-11(1) (LexisNexis 2022).

⁵⁷ *Id.* at 1275..

Those conditions must also be relevant to the proposed development or use. A Land Use Authority cannot require the property owner to solve a problem that the proposed use does not cause or aggravate. There must be some logical connection, or “essential nexus” between the problem that the use is suggested to create and the authority of the government to resolve that problem through the condition that is proposed. If the local government has no jurisdiction over the matter, or if the proposed use has no impact on the issue, imposing a condition to address these improper goals not only violates state law, but constitutional safeguards to private property.⁵⁸

Proportionate. An “exaction” is a requirement imposed on a development application that requires the dedication of property to a local government entity as a condition of development approval. These exactions include dedications of land and easements for roads, schools, parks and utilities, fees in lieu of dedications, in kind provision of public utility infrastructure such as roads and pipelines, water or sewage connection fees, and impact fees.⁵⁹

The courts and Utah statutes have provided that whenever an exaction is imposed on development it must be proportionate or “roughly equivalent”, which means fair. The burden imposed on the development must be roughly equivalent to the burden that the development imposes on the public infrastructure.⁶⁰

⁵⁸ *Nollan v. California Coastal Comm’n*, 483 U.S. 825, 842 (1987); cited in *BAM Development v. Salt Lake County (BAM II)*, 2005 UT 89, ¶36 (Utah 2005) (also codified in state statute at §10-9a-507 (Municipalities) and §17-27a-507 (Counties)).

⁵⁹ *BAM Development v. Salt Lake County (BAM I)*, 87 P.3d 710, 715 (Utah Ct. App. 2004).

⁶⁰ *BAM Development v. Salt Lake County (BAM III)*, 2008 UT 45, ¶8 (Utah 2008) (applying the “rough equivalent” standard to the subdivision approval process).

Where conditions are proposed that impose undue burdens on development, significantly in excess of the burdens imposed on the public by that development, those conditions are illegal and in violation of constitutional private property rights.⁶¹

Otherwise Reasonable. It is to be noted that the statutes specifically and repeatedly refer to the imposition of “reasonable” conditions as part of the conditional use review process. If a condition is determined to be imposed solely to frustrate the viability of the use or perhaps render it impossible or impractical to implement an approved conditional use, that condition is subject to being overturned on appeal.

Denial of a Conditional Use

The relevant state statute includes language providing:

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 ~~may be denied~~.⁶²

One of the most controversial aspects of reviewing conditional use applications has to do with the intersection of this statute with the political pressures of public clamor at hearings held to consider those applications. There is indeed a provision allowing denial of a conditional use, when the right circumstances are present. That said, it is a rare occurrence when neighbors opposing a conditional use show up with suggested conditions to mitigate its detrimental effects. As a rule, they simply demand outright denial of the proposed use.

We have but one Utah case supporting the denial of a conditional use on the merits since the 2005 revisions to the land use enabling act where the current language of the conditional use

⁶¹ *BAM I*, 87 P.3d at 711 (citing *Dolan v. City of Tigard, Oregon*, 512 U.S. 374 (1994)).

⁶² Utah Code Ann. §10-9a-507(2)(c) (municipalities)(LexisNexis 2022); Utah Code Ann. §17-27a-506(2)(c) (counties)(LexisNexis 2022).

statute was first enacted.⁶³ There are a number of cases where a denial was overturned.⁶⁴ That is not to say that a denial could not be supported if the statutory requirements are met.⁶⁵

According to the statute, an application for a conditional use permit can only be denied 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*.⁶⁶ We will analyze each of the highlighted aspects of a potential denial.

Reasonably anticipated detrimental effects. As stated above, any potential detrimental effects must be considered within the scope of the ordinance and the standards for review of conditional uses. There has to be substantial evidence in the record, as defined above, that the supposed detrimental effects are reasonably anticipated. Not by public clamor or vague expressions of concern, but by substantial evidence in the record.

Substantially mitigated. It is noted that the word chosen is “mitigate” not “eliminate”. When interpreting statutes, we assume that the words used in the statute were considered and measured by the legislative body. If the legislature intended to use the word “eliminate”, it would have. Likewise, the term “substantially” was intended to modify the word “mitigated” in

⁶³ *Staker v. Town of Springdale*, 481 P.3d 1044 (Utah Ct. App. 2020). There are cases where the revocation of a conditional use was affirmed, including *Derian v. West Point City*, 2005 UT App 243 (Utah Ct. App. 2005), *Stevens Repair v. LaVerkin City*, 183 P.3d 1059 (Utah Ct. App. 2008), and *Salon Tropicana Midvale v. Midvale*, 2009 UT App 327 (Utah Ct. App. 2009); where the ability to perform the conditions lapsed, as in *Keith v. Mtn. Resorts Dev.* 337 P.3d 213 (Utah 2014); other cases deal with procedural issues involved with denial or refusal to consider a CUP such as in *SLC Mission v. SLC*, 184 P.3d 599 (Utah 2008) (failure to properly apply for permits or appeal a denial); *Diamond B-Y Ranches v. Tooele County*, 91 P.3d 841 (Utah Ct. App. 2004) (issue of futility of providing costly analysis when denial was certain and viability of a takings claim) and *Butler, Crockett and Walsh v. Salt Lake County*, 2005 UT App 402 (Utah Ct. App. 2005) (CUP issue dismissed for failure to prosecute);

⁶⁴ i.e. *Wadsworth, Davis County, Uintah Mtn RTC*.

⁶⁵ UTAH CODE ANN. §10-9a-507(2)(c) (municipalities); UTAH CODE ANN. §17-27a-506(2)(c) (counties).

⁶⁶ *Id.*

the section of the code describing when a CUP may be denied. If the mitigation expected is only minimal, and not “substantial” the CUP could be refused.⁶⁷

A conditional use, therefore, cannot be denied if its detrimental effects can be mitigated to a substantial degree. The Land Use Authority has no ability to require the complete elimination of the effect. The Land Use Authority also has the right, however, to deny the proposed use if the mitigation anticipated by the imposition of reasonable conditions is not “substantial”.

Reasonable conditions. The determination of what is reasonable and what is not is a question of fact, and local officials are given deference in making this kind of determination.⁶⁸ The use of the term here is somewhat problematic, of course, because if an applicant agrees to an unreasonable condition that substantially mitigates the detrimental effect, the use should be allowed.

Standards in the ordinance. Again, a denial could only be based on standards in the ordinance which are properly interpreted and applied under the guidelines outlined above in these materials. The cases discussed above provide examples:

If, as in *Uintah Mtn RTC*, the standards are silent with regard to the effect, a denial may not be based on that effect.

If, as in *Wadsworth*, there is no proof that the negative effects cannot be substantially mitigated, a denial is inappropriate. *Wadsworth* also demonstrates that a denial may only be issued if the standards are properly applied.

⁶⁷ *Staker*, 481 P.3d at 1053–54 (finding that land use authority’s record discussing that the “mitigation efforts were unconvincing..., given the finds that the proposed lot is situated so close to other residences” was sufficient to show no opportunity for substantial mitigation). Utah Code Ann. . §10-9a-506(2)(c) (municipalities) . §17-27a-507(2)(c) (counties).

⁶⁸ Utah Code Ann. §10-9a-801(3)(a) (municipalities)(LexisNexis 2022); §17-27a-801(3)(a) (counties)(LexisNexis 2022).

A denial will also be overturned if, as in *Uintah Mtn RTC* and *Wadsworth*, similar applications under similar circumstances have been approved. If other uses have been allowed, the Land Use Authority must allow the use again unless there is substantial evidence in the record that the factual aspects of the proposed use are significantly and relevantly different than the factual aspects of past uses previously allowed. Unless, however, the standards changed through amendments to the land use ordinances and the new application is being considered under different standards, in which case the precedent set in previous interpretations of the former standards may be irrelevant.

It is also to be kept in mind that all parts of an ordinance are to be read together to reconcile and unify the whole.⁶⁹ It would be inappropriate, for example, to apply the standards related to conditional uses in such a manner that a named conditional use would be denied in every circumstance in a specific zone. If the use was deemed appropriate and desirable by the legislative body in the text of the zoning ordinance, it must follow that there are locations within the zone as shown on the municipality's or county's zoning map where the use must be allowed.

It is logical to assume that the legislative body was generally aware of the detrimental effects of the use in general. It knew, for example, that a convenience store has extended hours; that a successful restaurant will require parking; and the remote ordering facilities of a drive-up window are going to be noisy. If they are allowed, those effects are deemed reasonable and anticipated. Standing alone, they cannot be the basis for the denial of a conditional use.

Any argument that the detrimental effects of the use cannot be substantially mitigated, therefore, must be made with a discussion of why the circumstances of this particular use in this particular location would be different from the same use in other locations within the same

⁶⁹ *Bd. of Educ. Of Jordan Sch. Dist. V. Sandy City*, 94 P.3d 234, 236–37 (Utah 2004).

zoning district where, by definition, it must be allowed. If the extended hours of a convenience store cannot be substantially mitigated because a retirement home is already next door and no effective buffer can be installed; if the only parking available to a restaurant in this particular location is on-street and fully utilized by others; and if the only location for that drive-up window speaker is next to a home two feet from the property line, then perhaps, in those specific instances, the effects cannot be substantially mitigated. It is for the Land Use Authority to decide.

Bear in mind, however, that the biases run in favor of approval; that any denial must be based a reasonable and logical interpretation of the standards in the ordinance as well as substantial evidence in the record and may not be based solely on public clamor.

Failure to Meet the Burden of Proof.

However, if, as described in *Uintah Mtn RTC* and *Diamond B-Y Ranches v. Tooele County*, the applicant fails to meet the burden of demonstrating compliance with the standards, the use may be denied, so long as the demands made on the applicant are reasonable. In *Diamond B-Y*, the applicant was not required to incur excessive environmental reviews where members of the county commission had already expressed their intention to deny the application. To do so would have been futile.⁷⁰

Enforcement of Conditions after the Conditional Use is Initiated

Once issued, the conditional use permit runs with the land and can be freely assigned to subsequent owners and occupants of the property, absent conditions in the permit to the contrary.⁷¹

⁷⁰ *Diamond B-Y Ranches v. Tooele County*, 91 P.3d at 847.

⁷¹ PATRICIA E. SALKIN, *AMERICAN LAW OF Zoning* (5th Ed. 2008) §14.32 ("The power of a municipality to control the land through zoning regulations does not include authority to control the ownership and transference of property. Hence, an ordinance is invalid which purports to invalidate building permits

If the owner or occupant of the property fails to comply with the conditions imposed, the conditional use may be terminated. In a relevant case, the City of West Point's revocation of a conditional use for a home occupation was upheld by the Court of Appeals where the ordinance included requirements that the person who owned the use must reside on the property and that the use be carried on by inhabitants of the property and no others. The use could also only be conducted on the property and not elsewhere. The facts were that the holder of the permit carried on the business while away from the property for extended periods of time while others lived in the home.⁷²

In another case, the Utah Court of Appeals upheld Midvale City's revocation of a conditional use. The property owner/business operator agreed to conditions requiring that the business "prevent its patrons from becoming a problem to its neighbors and to ensure that no drinking, loitering, or any illegal activities would be allowed in the parking lot, or adjacent property." The substantial evidence sufficient to validate the revocation included (1) sworn affidavits from neighbors impacted by Plaintiff's conduct; (2) written police reports documenting numerous arrests that occurred on Plaintiff's premises; (3) testimony from a police detective describing the arrests conducted on Plaintiff's premises and adjacent property; and (4) testimony from affected neighbors and other business owners in the area describing specific violations of the CUP. This evidence is "adequate to convince a reasonable mind" that Plaintiff violated the CUP and that revocation was appropriate.⁷³

upon their assignment or transfer."); see also *Weinrib v. Weisler*, 27 N.Y.2d 592 (N.Y. 1970); In the past, many jurisdictions have attempted to tie approvals to the current owner. A day care center, for example, is a conditional use that that land use authorities have attempted to tie to the current operating family. This is not allowed.

⁷² *Derian v. West Point City*, 2005 UT App 243(Ut. Ct. App. 2005).

⁷³ *Salon Tropicana Midvale*, 2009 UT App 327.

Standing to Enforce the Requirements of a Conditional Use

The right of neighbors to challenge a property owner's lack of compliance with a CUP and a county's lack of enforcement of the conditions of a CUP exists in the vested property interest that the neighbors have in the quiet enjoyment and use of their property. For example, because it failed to comply with county ordinances and the conditions in the CUP, the Court ordered a defendant shopping center developer to demolish part of the shopping center and restore the property of the neighbors to its preexisting status, which included creating access to code compliant public streets and giving adequate accessibility to emergency and public service vehicles. It is to be noted that this dramatic remedy only followed notice to the developer by the trial court prior to the construction of the shopping center that in building the buildings it was proceeding at its own risk.⁷⁴

However, although a neighbor may have a right to challenge a property owner's violation of a CUP if they have a vested property interest, it is not guaranteed they have a right to participate in the revocation hearing or any subsequent appeal.⁷⁵ In *Northern Monticello All. v. San Juan Cty.*, the Utah Supreme Court held that if the Utah Code, County Zoning Ordinance, or the conditions in the CUP itself do not create a protected property interest in the challenger, then that person does not have due process rights, including the right to attend a non-public hearing and present evidence related to the enforcement of the CUP.⁷⁶

Vested Property Rights in an Existing Conditional Use or Application

A development approval does not create independent free-floating vested property rights. The rights obtained by the submission and later approval of a development plan are necessarily

⁷⁴ *Johnson v. Hermes Assoc.*, 128 P.3d 111 (Utah 2005).

⁷⁵ *Northern Monticello All. v. San Juan County*, 2022 UT 10 (Utah 2022).

⁷⁶ *Id.* at ¶¶22–38.

conditioned on compliance with the approved plan. A conditional use permit can transfer with the title to the underlying property so that an applicant may convey or assign an approved project without losing the approval, so long as all conditions continue to be met.⁷⁷ If the conditions can no longer be met because of actions by the land owners, the approved use and development rights are no longer vested.⁷⁸

If the provisions of a conditional use require renewal, and if the nonrenewal of the use does not leave the property economically idle, then no taking of private property without just compensation occurs by a non-renewal. The property owner has no property interest in a CUP subject to renewal. This does not mean, however, that the property owner should not be afforded due process when the renewal is considered.⁷⁹

The issuance of a conditional use does not create a vested right to use the property without complying with other codes and rules, even if those requirements are onerous and not openly disclosed during the process of obtaining the conditional use permit. Where the requirement to install fire sprinklers was not known to the property owner until after considerable cost was incurred in proceeding with the use, the city could still require them.⁸⁰

Standard for Reviewing Land Use Authority Decisions and subsequent Trial Court Decisions and Review

Any district court's review of a Land Use Authority's decision shall be treated as a review of an administrative decision. A court shall "(i) presume that a decision, ordinance, or regulation . . . is valid; and (ii) determine only whether or not the decision, ordinance, or

⁷⁷ PATRICIA E. SALKIN, *AMERICAN LAW OF Zoning* (5th Ed. 2008) §14.32. "The power of a municipality to control the land through zoning regulations does not include authority to control the ownership and transference of property. Hence, an ordinance is invalid which purports to invalidate building permits upon their assignment or transfer." *Weinrib v. Weisler*, 27 N.Y.2d 592 (N.Y. 1970);

⁷⁸ *Keith v. Mtn. Resorts Dev.*, 337 P.3d 213 (Utah 2014).

⁷⁹ *Stevens*, 183 P.3d at n.5. *Diamond B-Y*, 91 P.3d at 847..

⁸⁰ *Cloud v. Washington City*, 2012 UT App. 348.

regulation is arbitrary, capricious, or illegal.”⁸¹ However, in the appeal of an administrative order, the appellate court will “review the intermediate court's decision. [The Court will] afford no deference to the intermediate court's decision and apply the statutorily defined standard to determine whether the court correctly determined whether the administrative decision was arbitrary, capricious, or illegal.”⁸²

In *McElhaney v. City of Moab*, the Utah Supreme Court reviewed a Utah district court decision in which they overturned the Moab City Council’s (Moab’s) denial of a CUP to a bed-and-breakfast operation in a single-family housing residential community. Moab denied the CUP, despite the applicant's adequate attempts to mitigate specific negative impacts, because neighbors expressed concern over the proposed use. Moab’s land use authority did not enter any written findings explaining or supporting the denial, but each councilmember provided their rationale behind their decision.

The district court overturned the council’s decision, finding that most of the councilmember’s reasoning was based upon speculative evidence. The district court further explained that Moab did not articulate specific unaddressed negative effects needing mitigation before approval could be made. Moab appealed the decision. The Supreme Court reviewed the district court’s finding, ultimately upholding its decision because of Moab’s failure to comply with the statutory requirements. Thus, when on appeal, the reviewing court will look plainly at the Land Use Authority’s decision and determine its compliance with the statutory requirements for CUPs. If they are lacking, the Court is not to create a record of evidence but to remand the matter back to the Land Use Authority to try again.

⁸¹ *McElhaney*, 423 P.3d at 1291; UTAH CODE ANN. 10-9a-506(b)(2).

⁸² *McElhaney*, 423 P.3d at 1290.

Guidelines for Drafting Standards in an Ordinance

Because we are a relatively small jurisdiction, Utah does not have extensive case law on many legal topics, including the finer points of land use law. Most of the considerations offered here are better described as “best practices” than strict legal mandates.

1. Remember that laypeople will invariably be involved in understanding, applying, and attempting to comply with conditions that result from the guidelines. Make every attempt to keep it simple.

2. Limit the use of conditional uses as a tool. Some communities have made virtually every commercial use a conditional use; at least one has made single family homes a conditional use in residential zones (!). The modern alternative to the conditional use is the overlay zone. Many uses that are listed as conditional uses in land use codes are more appropriately subject to legislative discretion afforded to designing and locating an overlay zone.

3. Hedge against any standard that will tempt a land use authority to drift off track and impose conditions that are not within the proper role of local government and land use regulations in general. For example, ensure that separately stated standards for specific uses such as adult businesses, churches, or group homes do not run afoul of the limitations of the First Amendment, religious land use laws (RLUIPA), or the Fair Housing Act. To do otherwise not only invites litigation, but also exposes the city or county to legal fees and perhaps other sanctions.

4. Provide a road map to proper and appropriate review. Set up what could almost be styled as a checklist for legal and reasonable consideration of an application for a conditional use. That said, however, DO NOT make every item in a long list of criteria mandatory. To do so creates a pitfall for lay administrators. For example, if every issue must be considered and

resolved, but the staff does not put substantial evidence in the record to support each one of them, an approval will be fatally flawed. Provide necessary flexibility.

5. Focus on strong, tried and true bases for conditions, such as commonly acknowledged nuisances such as noise, dust, light, traffic flow, traffic generation, off-street parking, and odors.

6. Set the stage for the incorporation of objective criteria in the standards such as decibel levels, pollution measurements, traffic counts, or similar standards. Encourage the creation of conditions which are as specific as can be reasonably justified.

7. Avoid overly broad standards such as those that state that conditions may be imposed to promote the general welfare, advance the purposes of the general plan, or protect property values. They lead those administering the standards, and the neighbors and public, to mischaracterize the breadth of options available in imposing conditions. They are likely an unconstitutional delegation of legislative power to an administrative branch of the local jurisdiction.

8. Guide the process away from annual reviews or other periodic re-evaluations, which in many cases may prove to be unreasonable on their face. Any conditional use requiring the investment of significant capital and resources cannot be made subject to arbitrary periodic reviews without interfering with vested rights. Annual reviews are administratively burdensome, may create continuing public controversy, and would discourage knowledgeable property owners from attempting to invest or develop the kind of improvements that your community may both want and need.

9. Avoid limiting a conditional use permit to the existing applicant. To require a new application if the property or business involved is sold may be held as unreasonable.⁸³

Best Practices – Imposing Conditions

Much of the heavy work is done if the ordinance is well-written and clear. Stick with the ordinance. It is improper, unreasonable, and illegal to impose on land use applicants restrictions and requirements that were never intended to be imposed when the legislative body adopted the land use regulations.⁸⁴

Overuse and over-management of conditional uses invites significant mischief, delay, false expectations, and administrative frustrations in the ordinary process of putting land to a beneficial use. The conditional use process must not become an opportunity for one layperson or group of laypeople to impose whimsical conditions on anyone wanting to initiate a use.

Absent specific authority in the ordinance, a board may not impose conditions which relate to the detailed conduct of the applicant's business rather than to zoning limitations on the use of land. For example, a permit to construct an airstrip may not be conditioned by requiring that the residents of adjoining subdivisions be permitted to use the facility; a permit for a charter school used to set the course of study, or a permit for a business conditioned upon limitations on aspects of the applicant's business which is not part of the conditional use and has nothing to do with the identified negative aspects of a proposed use.⁸⁵

⁸³ PATRICIA E. SALKIN, *AMERICAN LAW OF Zoning* (5th Ed. 2008).

⁸⁴ For example, when the California Coastal Commission imposed requirements that protected the views of the shoreline from the ocean. There was no indication whatsoever that the legislature ever "sought to protect the occasional boater's view of the coastline at the expense of a coastal landowner." *Schneider v. California Coastal Com.* 44 Cal. Rptr. 3rd 867, 871 (2d. Dist. 2006).

⁸⁵ For an excellent discussion, see PATRICIA E. SALKIN, *AMERICAN LAW OF Zoning* (5th Ed. 2008) §14:32. A copy of the complete treatise is kept up to date for free public use in the Utah State Law Library, 450 S State Street, Salt Lake City.

Those making land use decisions must avoid the temptation to simply make up a list of their personal preferences about how development should be conducted, what amenities should be provided, and which subjective aesthetic considerations are to be implemented just because they have the authority to impose conditions on a land use permit.

Conclusion

Over time, the use of the conditional use process to improve planning and land use regulation has been shown to be beneficial in a variety of ways. Where appropriate, conditional use review can bring appropriate resources to bear on mitigating the impact of necessary but potentially problematic uses so they can be well-integrated into the community.

Land use professionals must exercise care and wisdom in directing the process of reviewing, implementing, and managing conditional uses so that individual rights and preferences are respected while the interests of the community are preserved and enhanced.