

Advisory Opinion #116

Parties: Red Hawk Wildlife Preserve Foundation and Summit County

Issued: September 20, 2012

TOPIC CATEGORIES:

B: Conditional Use Applications

Other Topics(v): Interpretation of Ordinances

A local government may impose “threshold” requirements that must be met before a use can be considered as a conditional use. These requirements are no different than minimum requirements for other permitted uses. If the minimum requirements cannot be satisfied, then the use is not eligible to be approved as a conditional use, even if there are no detrimental impacts.

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OFFICE OF THE PROPERTY RIGHTS OMBUDSMAN

ADVISORY OPINION

Advisory Opinion Requested by: Red Hawk Wildlife Preserve Foundation

Local Government Entity: Summit County

Applicant for the Land Use Approval: Red Hawk Wildlife Preserve Foundation

Type of Property: Residential Subdivision

Date of this Advisory Opinion: September 20, 2012

Opinion Authored By: Elliot R. Lawrence
Office of the Property Rights Ombudsman

Issues

Is a County obligated by State law to approve an application for a conditional use regardless of qualifying requirements established in a zoning ordinance?

Summary of Advisory Opinion

A local government may designate uses as permitted or conditional, and may adopt requirements that each use must satisfy in order to be eligible for further consideration. Section 17-27a-506 of the Utah Code impacts, but does not supplant, local authority to designate, regulate, and consider conditional use applications. A local government may impose minimum “threshold” requirements that must be met before an application for a conditional use may be considered. These requirements are no different than minimum requirements for permitted uses, and if the threshold standards cannot be satisfied, the use is not eligible to be considered as a conditional use, even if there are no detrimental impacts.

Review

A Request for an Advisory Opinion may be filed at any time prior to the rendering of a final decision by a local land use appeal authority under the provisions of UTAH CODE ANN. § 13-43-205. An advisory opinion is meant to provide an early review, before any duty to exhaust administrative remedies, of significant land use questions so that those involved in a land use

application or other specific land use disputes can have an independent review of an issue. It is hoped that such a review can help the parties avoid litigation, resolve differences in a fair and neutral forum, and understand the relevant law. The decision is not binding, but, as explained at the end of this opinion, may have some effect on the long-term cost of resolving such issues in the courts.

A Request for an Advisory Opinion was received from Paxton R. Guymon, on behalf of Red Hawk Wildlife Preserve Foundation on July 20, 2012. A copy of that request was sent via certified mail to Bob Jasper, Summit County Manager, at 60 North Main Street, Coalville, Utah. 84017. The County received that copy on July 25, 2012.

Evidence

The following documents and information with relevance to the issue involved in this Advisory Opinion were reviewed prior to its completion:

1. Request for an Advisory Opinion, with attachments, submitted by Red Hawk Wildlife Preserve Foundation, received by the Office of the Property Rights Ombudsman on July 20, 2012.
2. Response from Summit County, submitted by Jami R. Brackin, Deputy County Attorney, received August 27, 2012.
3. Reply from Red Hawk via email, dated August 29, 2012, with attachments.

Background

The Red Hawk Wildlife Foundation (“Red Hawk”) operates as a Homeowner’s Association for “Ranches at the Preserve,” a residential development in the Snyderville Basin area of Summit County. The development consists of several large lots (ranging from 10 to 60 acres) on a hilly area above Kimball Junction.¹ The internal roads within the Ranches are all owned and maintained by Red Hawk on behalf of the lot owners. Although the internal roads are private, they eventually connect to public roads on more than one side of the development, so it is possible for traffic to pass through the subdivision.

The subdivision plat was approved in 1997, along with a consent agreement which governed development. In November of 2001, the County issued a building permit to construct a small guard house along Red Fox Trail, near the western entrance to the development. The guard house was constructed on Lot 6 of the subdivision. The County states that it understood that the guard house was an “entry feature,” marking the boundary of the Ranches at the Preserve development. In 2004, the County issued a building permit to construct a home on Lot 6.² The County states that the permit application for the home did not refer to the guard house which had already been constructed. In April of 2008, the owner of Lot 6 quit claimed a small portion of

¹ Kimball Junction is the intersection of Interstate 80 and State Road 224 near Park City.

² According to the subdivision plat, Lot 6 contains about 27.64 acres.

the lot where the guard house stood.³ The County notes that this division was a plat amendment which was not approved by the County.

Sometime after the guard house was constructed, Red Hawk approached the County with plans to improve the entrance with landscaping and a planter which divided the travel lanes, along with a rock wall and a gate across the road to control vehicle access to the subdivision.⁴ The County acknowledges that the plans were discussed, but that Red Hawk was told that additional review was needed, and that a gate would not be allowed. According to the County, there was no additional review, and no approvals given for the improvements. Nevertheless, Red Hawk completed the improvements, including the rock wall and gate.⁵

By 2010, the County became aware that the improvements had been installed. Red Hawk was informed that the gates had to be removed, unless the County granted approval for them. The County began to monitor the guard house and gates, to ensure that they remained open.⁶ Since then, Red Hawk has not used the gate to restrict entry, and has sought approval from the County.

Vehicle control gates are listed as conditional uses in the HS and MR zones, and are governed by § 10-8-12 of the County Code.⁷ In addition to compliance with the standards listed for any conditional use permit, § 10-8-12 lists 13 review criteria that must be met before control gates may be approved.⁸ The first criteria requires that the applicant demonstrate “a need for a vehicle control gate to effectively control an ongoing health, safety, and welfare situation, or, in unique circumstances, to mitigate traffic, parking congestion, or through traffic on streets within a neighborhood.” SUMMIT COUNTY CODE, § 10-8-12(A)(1). The section also states that “[v]ehicle control gates are generally not appropriate in any zone.” *Id.* § 10-8-12(A). There are control gates in the vicinity, apparently on cul-de-sac roads.

Red Hawk applied for a conditional use permit to obtain permission to use the gate. On June 26, 2012, the Snyderville Basin Planning Commission denied the permit. The planning commission found that Red Hawk did not satisfy all of the criteria required for a vehicle control gate permit. Specifically, the commission found that Red Hawk had not shown that a gate was necessary to promote the health, safety, or welfare of the area; that the gate was not appropriate on a through road; that a gate was not necessary because it was not close to a major traffic or parking facility; and Red Hawk did not have an approved gate management plan. The commission also found

³ Presumably, the smaller portion was quit-claimed to Red Hawk, which operates as an HOA. This small portion was later designated “Lot 6A.”

⁴ The County states that a construction company brought the proposal for discussion.

⁵ The materials submitted for this Opinion do not clearly state when the gate and other improvements were completed.

⁶ The gates are motorized, but are inoperative because they have not yet been connected to electrical service. The County requires a permit for electrical connections.

⁷ The County states that the subdivision is located in the Mountain Remote (MR) zone. The property owners indicate that the zoning is Hillside Stewardship (HS). A vehicle control gate is a conditional use in either zone.

⁸ In addition, there is a “general” conditional use permit ordinance. *See* SUMMIT COUNTY CODE, § 10-3-5. The language of §§ 10-3-5 and 10-8-12 are included in this Opinion as Attachment A.

that Red Hawk had not satisfied aspects of the "general" conditional use permit ordinance.⁹ Red Hawk appealed that decision.

Red Hawk argues that it is entitled to the conditional use permit, because the County did not identify any detrimental affects of the gate or any conditions meant to mitigate those affects, as required by § 17-27a-507 of the Utah Code. Red Hawk states the Utah Code section requires approval of its application, unless the County can show that the detrimental impacts of the gate cannot be mitigated with reasonable conditions.

Analysis

The County's Zoning Ordinance Establishing Standards for Vehicle Control Gates is Consistent With State Law, and Within the County's Discretion.

Because the Utah Code requires local governments to adopt standards for conditional uses, § 10-8-12 is consistent with state law, and the standards chosen are within the County's discretion. Section 17-27a-506 authorizes counties to designate conditional uses, provided that standards are also adopted to guide decisions on whether or not to grant the uses.

- (1) A land use ordinance may include conditional uses and provisions for conditional uses that require compliance with standards set forth in an applicable ordinance.
- (2) (a) A conditional use shall be approved if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards.
(b) If the reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards, the conditional use may be denied.

UTAH CODE ANN. § 17-27a-506. The standards apply to the uses, and establish guidelines that each use must meet. The standards are no different than development guidelines or standards imposed on permitted uses. All property is subject to land use regulation, and local governments may impose controls or standards which regulate how, where, and when a use may be carried out. *See Western Land Equities v. City of Logan*, 617 P.2d 388, 390 (Utah 1980); *see also* UTAH CODE ANN. § 17-27a-102(1)(b).

A conditional use is a land use with unique characteristics or impacts that warrants special consideration, and conditions to mitigate the impacts. *See* UTAH CODE ANN. § 17-27a-103(6). Designating a use as conditional, however, does not remove it from a local government's authority to impose development standards and guidelines. While § 17-27a-506 generally

⁹ The County noted that because the application did not comply with § 10-8-12, it also did not satisfy § 10-3-5(B)(2), which requires compliance with other ordinances and statutes. In addition, the County stated that the gate would interfere with service providers and the free flow of traffic, both of which are standards established in § 10-3-5(C).

dictates the type of conditions that may be imposed, it does not supplant local authority to adopt qualifying requirements or standards which must be satisfied in order for a conditional use to be considered. An application for a conditional use permit must first meet any threshold requirements before there is any consideration of detrimental impacts or reasonable conditions to mitigate those impacts.¹⁰ If a proposed land use cannot satisfy the standards imposed by local ordinance, it cannot be approved, regardless of whether the use is permitted or conditional.

To illustrate, consider this example: A local ordinance establishes that commercial buildings up to 50 feet high are conditional uses, if the building is located at least 1,000 feet from a residential property. If the building is less than 1,000 feet from a residential property, a 40 foot building cannot be built, even if there are no detrimental impacts. The 1,000 foot separation is a threshold requirement that must be satisfied before the conditional use analysis starts.

Summit County adopted an ordinance governing how, when, and where vehicle control gates may be installed. The County decided that such gates should be discouraged, and chose to allow them as conditional uses only in certain zones. The County also adopted strict requirements that must be satisfied before a gate is eligible to be considered. Among other things, the County's ordinances require that a gate be placed only on cul-de-sacs, not on through streets. SUMMIT COUNTY CODE, § 10-8-12(A)(2). The proposed gate does not meet this requirement, because it is proposed to be installed on a through street.¹¹

Secondly, there must be a "major traffic or parking generator" within 900 feet of the private street. *Id.*, § 10-8-12(A)(4). The term "major traffic or parking generator" is not defined, but it apparently means a site or amenity that attracts people (and their vehicles), causing traffic or parking congestion. The County states that there is no traffic or parking generator within 900 feet of the proposed gate.¹² Third, a vehicle control gate management plan must be submitted and approved, and the owner must agree to keep the gate open at all times, except as provided in the agreement. *Id.*, § 10-8-12(A)(13). Red Hawk submitted a plan, which stated that the gate would be closed at all times, except to authorized users. The County rejected the plan, stating that closing the gate at all times does not comply with the intent of the ordinance.

Finally, the applicants must show that a gate is needed to control an ongoing health, safety, or welfare situation, or to control traffic or parking. Red Hawk explained that the property owners are concerned about trespassers and criminal activity, and that the gate is needed to address those

¹⁰ In addition, the County is obligated to comply with its own ordinances. UTAH CODE ANN. § 17-27a-508(2).

¹¹ A map of the subdivision shows that there are at least three entrances to the subdivision, even though the interior roads are all private. The proposed gate would block the road at the northwest entrance, on a road which continues through the subdivision, into other developments, and eventually back to public roads. In other words, a person is able to drive from a public road through the Ranches at the Preserve back to a public road. The County noted that the road is used by pedestrians and cyclists as well as automobiles, and that the gate would allow pedestrian, bicycle, and equestrian traffic. *See* SUMMIT COUNTY CODE, § 10-8-12(A)(7).

¹² According to the County, the nearest potential "major traffic or parking generator" is a trail crossing which does not generate much parking congestion. Red Hawk argues that this trail crossing generates unauthorized *pedestrians*, but evidently it does not claim that parking or traffic congestion is a problem.

problems.¹³ The County stated that the reports did not constitute a sufficient threat to the public welfare, and that there were no unique traffic or parking circumstances that warranted a vehicle control gate. This Opinion does not attempt to determine if Red Hawk has established that a gate is needed to control an ongoing public health, safety, or welfare situation, but it only notes that as long as the question is not fully resolved, the gate cannot be considered as a conditional use.

Since these basic, threshold standards cannot be met, the application is not eligible to be a conditional use, even if there are no detrimental impacts.¹⁴ Until those basic standards are met, the County is not obligated to consider or approve the application.

Conclusion

A local government may designate uses as conditional, as long as it adopts standards which apply to those uses. Those standards may include threshold requirements that an application must satisfy in order to be eligible as a conditional use. This is no different than minimum requirements for permitted uses. Section 17-27a-506 of the Utah Code does not supplant the County's authority to adopt ordinances and standards applicable to conditional uses. Although the state statute mandates that a conditional use may only be denied if the detrimental impacts cannot be mitigated, a use must meet threshold requirements to *be* conditional before there is a consideration of any detrimental impacts. A local government is not obligated to consider an application for a conditional use that does not satisfy the threshold requirements.

Brent N. Bateman, Lead Attorney
Office of the Property Rights Ombudsman

¹³ Red Hawk stated that the trespassers are on foot as well as in vehicles. As already noted, the proposed gate would not restrict pedestrian, bicycle, or equestrian traffic, although the gate may discourage entry. Red Hawk argues that since the interior roads are private, pedestrians may be excluded.

¹⁴ In addition, the County argues that the application does not satisfy aspects of the "general" conditional use statute (§ 10-3-5 of the County Code). Specifically, the application does not comply with § 10-8-12, a gate would be detrimental to the public welfare, and it would impact service providers as well as traffic flow. These criteria must also be met in order for an application to be considered as a conditional use.

ATTACHMENT A

SUMMIT COUNTY CODE, §§ 10-8-12 and 10-3-5

10-8-12: VEHICLE CONTROL GATES:

A. Purpose: Vehicle control gates are generally not appropriate in any zone. In the event that a vehicle control gate is necessary to protect the public's health, safety, and welfare, a vehicle control gate may be approved in residential zones on private streets as a conditional use. In order to approve a conditional use for a vehicle control gate, all applicable findings and review standards as required for a conditional use permit in section [10-3-5](#) of this title shall be met. In addition, all of the following review criteria shall be met:

1. The applicants have demonstrated a need for a vehicle control gate to effectively control an ongoing health, safety, and welfare situation or, in unique circumstances, to mitigate traffic, parking congestion, or through traffic on streets within a neighborhood.
2. The street is a private street, is a cul-de-sac, and is not a through street. The proposed vehicle control gate does not impact traffic circulation through the neighborhood.
3. The private street serves primarily single-family or duplex residences with individual or shared driveways.
4. There is a major traffic or parking generator or use within a nine hundred foot (900') walking distance of the private street entrance and there is evidence of spillover parking or other vehicular activity on a regular basis throughout the season.
5. The vehicle control gate is located outside of the county right of way and maintains all setbacks of the zone.
6. The vehicle control gate does not impact existing utility easements.
7. The vehicle control gate is designed to permit unimpeded pedestrian, bicycle and equestrian access through the neighborhood and to existing public trails and walkways. A minimum gap of four feet (4') shall be allowed for these nonvehicular uses.
8. The vehicle control gate is designed to be minimal in height, scale, and mass to accomplish the goal of preventing unauthorized vehicle traffic, parking, and/or other impacts on the neighborhood. There shall be a minimum bottom clearance of two feet (2') from the bottom of the gate rail to the road surface. A diagonal structural support may cross through the two foot (2') opening to provide additional structural strength for the cantilevered gate and keep the overall gate mass to a minimum. The gate shall be no more than three feet (3') or thirty six inches (36") in height from the bottom rail to the top rail, although allowance may be made for decorative elements. The gate shall open inward allowing a vehicle to stop while not obstructing traffic on the roads. Design and materials shall result in a visually open gate. Any walls associated with the entry gate shall be pedestrian in scale and shall generally not exceed a height of five feet (5').

Column elements may be added for architectural interest, but these column elements shall not exceed a height of nine feet (9').

9. The method of access for emergency, service, and delivery vehicles shall meet all requirements of the county planning, engineering, and building departments and the Park City fire service district prior to issuance of a building permit for the gate construction.
10. If the gate is electronically operated, a receiver shall be installed that will permit emergency services access with a transmitter. If the gate can be locked, a lock box approved and provided by PCFSD and the county sheriff will be located on the exterior side of the gate to provide for emergency equipment access to the property through the gate.
11. Vehicle control gates on private streets are not permitted in all zones. Gates on private streets are allowed as a conditional use in the following zoning districts: RR, HS, MR, RC.
12. Any signs associated with the gate and/or walls are subject to section 10-8-2 of this chapter.
13. A vehicle control gate management plan shall be submitted for approval to address times and situations when the gate will be closed. Applicants shall agree to leave the gate open at all times, except as specified in the approved management plan. (Ord. 708, 12-10-2008)

10-3-5: CONDITIONAL USE PERMIT:

A. Applicability:

1. Conditional uses are those uses which are generally compatible with the permitted uses in a zoning district, but which, because of their size, scale, intensity of use, traffic generation, or other characteristics, require individual review of their location, design and configuration and the imposition of conditions in order to ensure the appropriateness of the use at a particular location within a given zoning district.
2. Only those uses that are enumerated as conditional uses in a zoning district (section 10-2-10 of this title) shall be authorized by the commission.
3. Conditional uses may be established only upon approval of a conditional use permit pursuant to this section.

B. Criteria For Approval: No conditional use permit shall be approved unless the applicant demonstrates that:

1. The use is in accordance with the general plan;
2. The use conforms to all applicable provisions of this title, including, but not limited to, any applicable provisions of this section and chapter 4 of this title, the general plan, and state and federal regulations;
3. The use is not detrimental to public health, safety and welfare;
4. The use is appropriately located with respect to public facilities; and
5. The use is compatible with the existing neighborhood character and with the character and purpose provision of the applicable zoning district, and will not adversely affect surrounding land uses

C. Special Standards For Conditional Uses: In addition to the standards established in this section and in chapter 4 of this title for particular uses, all conditional uses within a zoning district shall conform to the following standards and criteria:

1. The commission may require the applicant or the owner of the property subject to an application for development approval for a conditional use permit to establish an escrow account, post a bond or provide other financial security, in such form and sum as the commission shall determine, with sufficient surety running to the county to offset any extraordinary costs or expenses associated with the following: a) construction of any highways, roads, water or sewer mains, drainage facilities, or other public infrastructure;

b) landscaping; c) compliance with the requirements of this section, any applicable special requirements set forth in this section and chapter 4 of this title, and the conditions attached to the development permit; and d) any expense requirements set forth in this section and chapter 4 of this title, and the conditions attached to the development permit, including the provision of facilities or structures, maintenance or construction work, or the execution or fulfillment of conditions of a continuing nature.

2. The proposed development shall not cause a reduction in the adopted level of service for any public facility.
3. Lighting shall not be directed or reflected upon adjoining land and shall meet all other related requirements of section 10-4-21 of this title with respect to exterior lighting.
4. The natural topography, soils, critical areas, watercourses and vegetation shall be preserved and used, where possible, through careful location and design of circulation ways, buildings and other structures, parking areas, recreation areas, open space, utilities and drainage facilities.
5. All roads shall provide free movement for safe and efficient use within the development. Local roads shall provide access to the site in a manner that discourages unsafe and congested conditions, and which provides convenient accessibility to parking areas, arterial and collector roads that shall be free of backing movement from adjoining parking areas and free from congestion and public safety problems.
6. Vehicular and pedestrian passageways shall be separated from public rights of way. Where appropriate, a system of walkways and bicycle paths connecting buildings, open spaces, recreation areas, public facilities, and parking areas shall be provided and appropriately lighted for night use.
7. Buildings and other structures shall provide a human scale consistent with adjacent development and appropriate to residential uses in the RR, HS, MR, CC, SC, and NC zoning districts, and consistent with adjacent conforming development in the zoning districts. The massing, scale and architectural design shall be consistent with the design guidelines established in section 10-4-19 of this title.
8. Site design shall avoid, to the extent practicable, the placement of obstructions in any sensitive lands, other watercourses, and shall be maintained free from any obstruction not authorized by a site plan, and any pool of standing water which is formed in any watercourse within the county on account of any unauthorized obstruction shall be deemed to be a public nuisance.
9. The volume rate of post development runoff shall not exceed predevelopment runoff. Runoff calculations shall be submitted with the application for site plan approval and shall be based upon: a) the 25-year, twenty four (24) hour design storm event; b) a fully developed contributing drainage area; c) the specific location of the proposed

development; d) the proposed land use and use density or intensity; and e) the specific location and amount of impervious surfaces, in square feet.

10. The site shall be landscaped in accordance with the requirements of section 10-4-20 of this title.

D. Submission Requirements: An applicant shall submit a conditional use permit application and pay the fee for the review thereof; the conditional use permit shall contain enough information, in graphic and text form to adequately describe the applicant's intentions with regard to site layout and compliance with the general plan, this title, and any applicable development permit, consent agreement or development agreement, including, but not limited to:

1. A detailed site plan, drawn to a scale, of not more than one inch equals one hundred feet (1" = 100') that includes:

- a. A vicinity map and north arrow;
- b. The location and arrangement of all proposed uses, including the building area;
- c. The height and number of floors of all buildings, other than single-family dwellings, both above and below or partially below the finished grade;
- d. A cross section elevation plat depicting all buildings, structures, monuments, and other significant natural and manmade features of the proposed development;
- e. Setbacks from the property lines for all structures;
- f. The traffic and pedestrian circulation system, including the location and width of all roads, driveways, entrances to parking areas, trails, and pedestrian pathways;
- g. Off road parking and loading areas and structures, and landscaping for parking areas;
- h. Architectural elevations and features of typical proposed structures, including lighting fixtures, signs and landscaping;
- i. When the development is to be constructed in stages or units, a final sequence of development schedule showing the order of construction of such stages or units, and approximate completion date for the construction of each stage or unit;
- j. A final statement in tabular form which sets forth the following data, when such data is applicable to a given development plan:
 - (1) The area of the parcel, including total acreage of roads or other easements;

- (2) Total number of dwelling units, by development phase or total amount of square footage for nonresidential uses;
- (3) Residential and/or nonresidential density and units per acre;
- (4) Total floor area and floor area ratio for each type of use;
- (5) Total area in open space and trails;
- (6) Total area in development recreational open space; and
- (7) Total number of off road parking and loading spaces

E. Review Procedure:

1. The CDD or designated planning staff member shall review the conditional use permit application and make preliminary findings as to whether the application complies with the development approval criteria established in this title and all applicable provisions of the general plan.
2. The CDD or designated planning staff member shall secure input regarding the proposed development from all affected agencies and service providers. Upon receiving such information, the CDD or designated planning staff member shall prepare a report and make findings and recommendations and shall schedule a public hearing before the commission as soon thereafter as may be practicable.
3. The commission shall review the application and staff report. After conducting a public hearing, the commission shall approve, approve with conditions, or deny the proposed conditional use permit. The commission may impose conditions or requirements in addition to those prescribed in this section and chapter 4 of this title in order to ensure that the proposed use is compatible with other uses permitted in the applicable zoning district and to mitigate or eliminate the adverse impacts of the proposed use, as set forth in subsection D of this section

F. Time Limit For Action:

1. An approval of a conditional use permit shall be valid for a period of time not to exceed one year from the date of such approval, but said approval may be extended for a period not to exceed one year by the commission upon the property owner submitting to the commission satisfactory evidence indicating that reasonable progress is being made to provide project infrastructure and to complete construction. If a conditional use permit is allowed to expire, the applicant or property owner will be required to submit a new proposal for review and approval under the development regulations in place at that time.

G. Mandatory Review Process:

1. Conditional use permits are subject to periodic reviews by the CDD or designated planning staff member to assess if the conditions of approval are being satisfied. If the original conditions associated with the conditional use permit are not being satisfied, the commission may commence the conditional use permit revocation process.

H. Establishment Of A Conditional Use Permit: Final approval of a conditional use permit shall be in the form of a letter to the applicant specifically identifying each condition together with the approved site plan and any other accompanying documents determined to be relevant by the CDD or designated planning staff member and stamped approved.

I. Amendments To Conditional Use Permits:

1. Minor Amendment: A "minor amendment" is defined as an amendment that does not increase the square footage, density, or intensity of a previously approved conditional use permit, which may be approved administratively. A minor amendment may be commenced by filing a low impact permit application and paying the fee for the review thereof. Refer to section 10-3-4 of this chapter for detailed submission requirements and review process.
2. Major Amendment: A "major amendment" is defined as an amendment that increases square footage, density, and/or intensity of a previously approved conditional use permit. A major amendment may be commenced by filing a conditional use permit application and paying the fee for the review thereof. Refer to this title for detailed submission requirements and review process.

J. Adult/Sex Oriented Facilities And Businesses:

1. Findings; Zones Permitted As Conditional Use: The county council finds that the appropriate location for adult/sex oriented facilities and businesses within the county is within concentrated areas of the county where it can be better regulated by county officials and law enforcement, and outside of residential or recreational (park) areas where the quality of life will not be as greatly impacted. Within the unincorporated county, adult/sex oriented facilities and businesses shall be allowed as specified herein, and shall conform to the criteria mandated under this subsection and title 3, chapter 5 of this code, governing such activities. This title is hereby amended to allow adult/sex oriented facilities and businesses as outlined in section 10-2-10 of this title.
2. Conditional Use Permit Required: Adult/sex oriented facilities and businesses must be approved in accordance with the provisions of this subsection and title 3, chapter 5 of this code. In all cases, a design and site plan diagramming the premises shall be provided as part of the application process. A public hearing shall be required in all cases prior to the issuance of a conditional use permit. The applicant shall receive notice of the public hearing. The procedures for issuance of conditional use permits, as

found in the appropriate development code, shall be followed in all cases. A final decision by the county as to the issuance of a conditional use permit for an adult/sex oriented facility or business shall be made within ninety (90) days of receipt of a completed application by the department of community development, unless a delay is requested or agreed upon by the applicant, or where the applicant is causing the delay by not providing needed information. The CDD or designated planning staff member shall communicate the final decision to the applicant.

3. Nonconforming Uses:

- a. Right To Continue: Adult/sex oriented facilities and businesses already existing within the unincorporated area of the county shall have the right to continue in their businesses without a conditional use permit. However, all such businesses shall be subject to compliance with the criteria, mandatory general conditions, and mandatory design of premises conditions, as provided in this subsection and title 3, chapter 5 of this code, within ninety (90) days of the adoption of the ordinance codified herein. A time extension may be granted where the county manager determines, on a case by case basis, that a hardship exists for a business owner/operator.
 - b. Change Or Extension/Enlargement Of Use: Any nonconforming use herein may not be materially changed, nor extended/enlarged unless it comes into compliance with the then existing development code.
 - c. Cessation Of Use: If active and continuous operations are not carried on in a nonconforming use during a continuous period of one year, the building or land where such nonconforming use previously existed shall thereafter be occupied and used only for a conforming use. Intent to resume active operations shall not affect the foregoing.
4. Right Of Appeal: All appeals from denials by the planning commission or county manager of conditional use permit applications shall be as provided in this title, the Eastern Summit County development code (as applicable), and Utah Code Annotated, section 17-27a-801, to the district court within thirty (30) days of the planning commission/county manager's final action.
 5. Penalty: Violations of any of the provisions of this subsection J shall subject the offender to the penalties as provided in this title, other applicable state law, or where no penalty is otherwise provided, a fine of not more than seven hundred fifty dollars (\$750.00) and a ninety (90) day jail sentence. (Ord. 708, 12-10-2008)

NOTE:

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

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

An advisory opinion issued by the Office of the Property Rights Ombudsman is not binding on any party to a dispute involving land use law. If the same issue that is the subject of an advisory opinion is listed as a cause of action in litigation, and that cause of action is litigated on the same facts and circumstances and is resolved consistent with the advisory opinion, the substantially prevailing party on that cause of action may collect reasonable attorney fees and court costs pertaining to the development of that cause of action from the date of the delivery of the advisory opinion to the date of the court's resolution.

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

MAILING CERTIFICATE

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

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

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

Bob Jasper, County Manager
Summit County
60 N. Main Street
Coalville, UT 84017

On this _____ day of September, 2012, I caused the attached Advisory Opinion to be delivered to the governmental office by delivering the same to the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the person shown above.

Office of the Property Rights Ombudsman