

Advisory Opinion 202

Parties: Eric Thomas v. Marriott-Slaterville

Issued: August 31, 2018

TOPIC CATEGORIES:

**Interpretation of Ordinances
Entitlement to Application Approval**

The principles of ordinance interpretation require Marriott-Slaterville City to apply the plain language of the ordinance to the land use application. The plain language expressly prohibits heavy trucks and commercial vehicles within the zone, leaving no discretion to the City. The fact that the City has approved similar uses within the zone, or that the zoning provision is otherwise problematic, does not excuse the City from applying the plain meaning of the ordinance.

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ADVISORY OPINION

Advisory Opinion Requested By: Eric Thomas

Local Government Entity: Marriott-Slaterville

Type of Property: Commercial

Date of this Advisory Opinion: August 31, 2018

Opinion Authored By: Brent N. Bateman
Office of the Property Rights Ombudsman

ISSUE

Does the Marriott-Slaterville City Code prohibit establishment of a Peterbilt truck dealership in the C-3P Commercial Zone?

SUMMARY OF ADVISORY OPINION

The principles of ordinance interpretation require Marriott-Slaterville City to apply the plain language of the ordinance to the land use application. The plain language expressly prohibits heavy trucks and commercial vehicles within the zone, leaving no discretion to the City. It must deny the Peterbilt dealership. The fact that the City has approved similar uses within the zone, or that the zoning provision is otherwise problematic, does not excuse the City from applying the plain meaning of the ordinance.

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 § 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 Eric Thomas on July 2, 2018. A copy of that request was sent via certified mail to Dana Spencer, City Recorder, City of Marriott-Slaterville, 1570 West 400 North, Marriott-Slaterville, Utah.

EVIDENCE

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

1. Request for an Advisory Opinion, submitted by Eric Thomas on July 2, 2018.
2. Email regarding Sierra RV's opposition to Mr. Thomas's project, with attachments, submitted by Bill Morris, Marriott-Slaterville, on August 6, 2018.
3. Reply submitted by Eric Thomas, received via email on August 20, 2018.

BACKGROUND

Eric Thomas owns a vacant 18.6 acre parcel in Marriott-Slaterville. The parcel is situated very near the I-15 12th Street exit, next door to a Pilot Travel Center and hotel, and not far from the local Sierra RV dealership. The parcel is located in the C-3P Commercial zone.

Mr. Thomas would like to establish a Peterbilt truck dealership on his parcel. His proposed use will include a truck sales facility, along with truck part sales, on-site repairs, and the service of vehicles with a greater than 26,000 lbs Gross Vehicle Weight rating.

The Marriott-Slaterville Municipal Code, section 13.10.040, *Use Regulation*, lists the land uses available in the City's commercial zones. Therein, it states that the following is a permitted use in the C-3P zone:

Automobile and recreational vehicle sales, service, repair, carwash, convenience store with fuel. No body work, heavy trucks or equipment, or commercial vehicles.

Further, the same section 13.10.040 states that "Uses that are not listed . . . are not allowed in these zones."

This dispute concerns the legal interpretation of this ordinance, and whether the Peterbilt dealership should be allowed in this zone. Marriott-Slaterville City has determined that this language does not allow a Peterbilt dealership. Mr. Thomas, however, feels that the City's interpretation of the code is incorrect. Mr. Thomas feels that this language is confusing and vague, without definitions of terms such as *heavy trucks*, *commercial vehicles*, *sales*, etc. He argues that the Sierra RV dealership has been approved in the zone and provides sales and

service of heavy vehicles, and carries on an essentially similar function to his proposed use.¹ In addition heavy trucks and commercial vehicles access the Pilot Center and the RV dealership daily. Finally, he argues that the provision is nonsensical --- it is a commercial zone, and thus commercial vehicles should be allowed.

Mr. Thomas has requested this Advisory Opinion, with the cooperation of Marriott-Slaterville City, to seek our opinion regarding whether the Peterbilt dealership can be approved in the C-3P zone.

ANALYSIS

Section 13.10.040 of the Marriott-Slaterville Municipal Code would benefit from revision. It contains less than clear objectives, and as pointed out by Mr. Thomas, its application results in nonsensical inconsistencies where a similar activity permitted for one user would be prohibited for another. Nevertheless, the principles of ordinance interpretation require application of the plain language of the ordinance to Mr. Thomas's application. The plain language expressly prohibits heavy trucks and commercial vehicles, leaving no discretion to the City. Accordingly, an amendment to the ordinance language will be needed in order to approve Mr. Thomas' requested use.

I. The Rules of Ordinance Interpretation

Ordinance interpretation requires employment of the canons of statutory construction. *Foutz v. City of South Jordan*, 2004 UT 75, ¶8. An analysis of the plain language of the ordinance always comes first. *Carrier v. Salt Lake County*, 2004 UT 98 ¶30. The primary goal of interpretation is "to give effect to the legislative intent, as evidenced by the plain language, in light of the purpose the statute was meant to achieve." *Foutz*, 2004 UT 75, ¶11. If the plain language of an ordinance is sufficiently clear, the analysis ends there. *General Construction & Development, Inc. v. Peterson Plumbing Supply*, 2011 UT 1, ¶ 8.

Further, it is presumed that the legislative body used each word advisedly. *Selman v. Box Elder County*, 2011 UT 18, ¶18. "When the plain meaning of the statute can be discerned from its language, no other interpretive tools are needed." *Id.* "In addition 'statutory enactments are to be so construed as to render all parts thereof relevant and meaningful, and . . . interpretations are to be avoided which render some part of a provision nonsensical or absurd.'" *Perrine v. Kennecott Mining Corp.*, 911 P.2d 1290, 1292 (Utah 1996) (quoting *Millet v. Clark Clinic Corp.*, 609 P.2d 934, 936 (Utah 1980)). Finally, "omissions in statutory language should be taken note of and given effect." *Biddle v. Washington Terrace*, 1999 UT 110, ¶14.

It is also important to recognize that zoning ordinances should be strictly construed in favor of allowing a property owner's desired use, since such ordinances are in derogation of an owner's use of land. *Carrier*, 2004 UT 98 ¶31.

¹ Representatives of Sierra RV dispute that their uses are similar.

II. The Plain Meaning of the Ordinance Language

Unfortunately for Mr. Thomas, we need not proceed any further than a plain language analysis, because although the policies behind the ordinance are less than clear, the language is unequivocal:

Automobile and recreational vehicle sales, service, repair, carwash, convenience store with fuel. *No body work, heavy trucks or equipment, or commercial vehicles.*

Automobile sales and service are permitted uses in the zone. So are recreational vehicle sales and service, which presumably would apply to Sierra RV. Carwash and convenience store with fuel are also permitted, which presumably would include the Pilot Travel Center.

The problematic phrase comes next: *No body work, heavy trucks or equipment, or commercial vehicles.* Grammatically, this is not even a complete sentence. Nothing in the fragment indicates how it applies to or modifies the permitted uses listed above, or if it is an independent provision. Nevertheless, some meaning must be given to this phrase, in a way that renders the entire ordinance relevant and meaningful. *Perrine*, 911 P.2d at 1292. With some applications and with many proposed uses, this may be difficult to do.

But in this case, the plain language is enough. The plain language of the ordinance states that heavy trucks or equipment and commercial vehicles are not an allowed use in the zone. Without regard to what other properties in the zone do, no question exists regarding whether the Peterbilt dealership will feature heavy trucks and commercial vehicles.² What the Peterbilt dealership proposes to do is plainly prohibited by the plain language of the ordinance. Thus, the City has no option but to deny Mr. Thomas's proposed use.

III. Other Considerations

As Mr. Thomas correctly points out, much about this ordinance may not make sense. It may not make sense to prohibit commercial vehicles in a commercial zone. It may not make sense to approve the Pilot Center and Sierra RV in the same area that a Peterbilt dealership should be prohibited. Certainly a recreational vehicle dealer (permitted in the zone) and convenience store with fuel (also permitted in the zone) will both receive occasional and perhaps frequent visits by heavy trucks or commercial vehicles (not permitted in the zone). However, the fact that the provision does not make sense does not mean the provision is null and void, and need not be followed. We must presume that the legislative body used each word advisedly, and we are not free to ignore portions of an ordinance. *Selman*, 2011 UT 18, ¶18. This ordinance has problems, but its plain language is clear at least to the extent that it prohibits heavy trucks and commercial vehicles.

² Although no definition of the terms *heavy trucks* or *commercial vehicles* can be found in the Marriott-Slaterville City Code, *commercial vehicles* are defined in the Utah State Code. See UTAH CODE § 72-9-102 (Commercial vehicles have a "gross vehicle weight rating or gross combination weight rating of 10,001 or more pounds"). There is no question that this definition applies to the vehicles to be sold and serviced at the Peterbilt Dealership.

The fact that the Sierra RV dealership has been approved in the same zone provides no relief. Recreation vehicle sales and service are expressly permitted in the zone. Moreover, assuming that the Sierra RV dealership or the Pilot Travel Center were approved improperly due to their use of heavy trucks and commercial vehicles, their approval does not mandate approval of the Peterbilt dealership. Land use authorities are obligated to follow and comply with the law. UTAH CODE § 10-9a-509(2). The City must follow its own code, whether or not they have done so in the past. Improper approval in the past does not set a precedent requiring improper approval in the future.

CONCLUSION

We advise Marriott-Slaterville City to consider its desired policies, and revise this section of the code for clarity and compliance with those policies. When zoning ordinances and the purposes behind them are well-drafted and clear, disputes such as this are much more easily avoided. In that process, Mr. Thomas is free to request a change of the zoning language to permit his desired use. The City is free to accept or reject that request. In any event, without a change in the plain language of the statute, Mr. Thomas' proposed Peterbilt dealership is prohibited in the zone.

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

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.

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

MAILING CERTIFICATE

Section 13-43-206(10)(b) of the Utah Code requires delivery of the attached advisory opinion to the government entity involved in this matter in a manner that complies with Utah Code 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:

Dana Spencer, City Recorder
City of Marriott-Slaterville
1570 West 400 North
Marriott-Slaterville, Utah 84404

On this _____ Day of _____, 2018, 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