THE UTAH LAND USE INSTITUTE

The Law and Practices of Conditional Uses

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The Law and Practice of Conditional Uses

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The Utah Land Use Institute

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This outline has been updated to reflect changes in the citations to Utah Code which were enacted in 2025.

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

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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 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

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[2] UTAH CODE ANN. §10-20-506(2)(a)(i) (municipalities)(LexisNexis 2022); UTAH CODE ANN. §17-79-506(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. §10-20-506(2)(a)(ii) (municipalities)(LexisNexis 2022); UTAH CODE ANN. §17-79-506(2)(a)(ii) (Counties)(LexisNexis 2022).

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 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?

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[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. §10-20-102(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

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[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. §§10-20-506 (municipalities), §17-79-506 (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.

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

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states that a municipality, by ordinance, "may" require greater notice. The parallel county statute is at UTAH CODE ANN. §17-79-501. 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.

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

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]

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]

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[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).
[19] *Carrier*, at 1219.

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 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

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[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.
[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.").

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 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

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[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).
[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).

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] 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

[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. 10-20-102 and 17-79-102 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.
[33] *Id*.

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]

[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. §§10-20-102 (municipalities)(LexisNexis 2022), §17-79-102 (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]

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[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 the area . . . outdoor storage is detrimental to the area and injurious to the goals of the city."[43]

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[42] *Id.*
[43] *Ralph L. Wadsworth Constr.*, 999 P.2d at 1243.

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]

Consistency and Precedent

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[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.

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 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]

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[47] *Id.* at 1273–74.
[48] *Id.* at 1276.
[49] *Id*.
[50] *Ralph L. Wadsworth Constr.*, 999 P.2d at 1243–44.
[51] UTAH CODE ANN. §10-20-506 (LexisNexis 2022).
[52] UTAH CODE ANN. §§10-20-506(2)(a)(ii) (municipalities)(LexisNexis 2022), §17-79-506(2)(a)(ii) (Counties)(LexisNexis 2022).

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.

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

[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. §§10-20-102 (municipalities)(LexisNexis 2022), §17-79-102 (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.

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 Act[55] 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]

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

[55] UTAH CODE ANN. §10-20-103 et seq. for municipalities or §17-79-101 et seq, for counties.
[56] UTAH CODE ANN. §57-21-11(1) (LexisNexis 2022).
[57] *Id.* at 1275..

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]

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.

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[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 §10-20-506 (Municipalities) and §17-*79-812 (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).
[61] *BAM I*, 87 P.3d at 711 (citing *Dolan v. City of Tigard, Oregon*, 512 U.S. 374 (1994)).

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

[62] Utah Code Ann. §10-20-506(2)(c) (municipalities)(LexisNexis 2022); Utah Code Ann. §17-79-506(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. §10-20-506(2)(c) (municipalities); UTAH CODE ANN. §17-79-506(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.

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[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. . §10-20-603(2)(c) (municipalities) . §17-79-812(2)(c) (counties).

[68] Utah Code Ann. §10-20-1109(3)(a) (municipalities)(LexisNexis 2022); §17-79-1009(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]

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[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]

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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

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[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.

Guidelines for Drafting Standards in an Ordinance

[81] *McElhaney*, 423 P.3d at 1291; UTAH CODE ANN. 10-9a-506(b)(2).
[82] *McElhaney*, 423 P.3d at 1290.

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]

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[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.