Advisory Opinion #108

Parties: Bret Barry and Weber County

Issued: November 8, 2011

TOPIC CATEGORIES:
R(v): Other Topics (Interpretation of Ordinances)

The County's Ordinances permit staff to act upon and grant requests for permitted uses. The Landowners' meat cutting and packaging operation is not simply ancillary to an agricultural use. It is part of a larger hunting, cutting, and packing business undertaken there and at other locations. The County's Ordinance expressly prohibits that type of agricultural industry and business.

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OFFICE OF THE PROPERTY RIGHTS OMBUDSMAN

ADVISORY OPINION

Advisory Opinion Requested by:	Bret Barry
Local Government Entity:	Weber County
Applicant for the Land Use Approval:	Rulon Kent Jones
Type of Property:	Agricultural Lot
Date of this Advisory Opinion:	November 8, 2011
Opinion Authored By:	Brent N. Bateman, Lead Attorney Office of the Property Rights Ombudsman

Issues

(1) Is a custom butchering and meat packing business a prohibited use in the County's AV-3 zone? and

(2) Does the Weber County Code authorize the planning staff to serve as the land use authority in this matter?

Summary of Advisory Opinion

The Weber County Ordinances permit staff to act upon and grant requests for permitted uses. The ordinance also permits ancillary agricultural uses such as meat cutting and packing in the AV-3 zone. This is especially so in light of the maxim that ordinances are to be interpreted broadly to permit land uses, along with the limited deference that the County has to interpret its own ordinances. However, the Landowners' meat cutting and packaging operation is not simply ancillary to an agricultural use at the Parcel. It is part of a larger hunting, cutting, and packing business undertaken at the Parcel and other locations. The Weber County Ordinance expressly prohibits the type of agricultural industry and business undertaken by the Landowners in the AV-3 Zone. Those considerations of interpretation and deference do not extend far enough to permit the type of agricultural business or industry that the Landowners have undertaken here.

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 Jodi S. Hoffman, on behalf of Bret Barry, on August 24, 2011. A copy of that request was sent via certified mail to Alan D. McEwan, County Clerk/Auditor, for Weber County, at 2380 Washington Blvd, Suite 320, Ogden, Utah 84401. The return receipt was signed and delivered on September 7, 2011, indicating it had been received by the County. A copy of the materials regarding the request was also sent to Mr. Rulon Kent Jones, owner of the subject parcel, at 3985 North 3775 East, Liberty, Utah 84310. Mr. Jason K. Nelsen, Attorney for Rulon Kent Jones, submitted a response to the Office of the Property Rights Ombudsman on October 6, 2011, which included a copy of the Staff Report to the Weber County Board of Adjustment, dated August 25, 2011 along with several other attachments. Mr. Christopher F. Allred submitted a response on October 13, 2011. Ms. Hoffman submitted a response on October 18, 2011 and October 19, 2011. Over the ensuing several weeks, all parties sent multiple submissions, by email and regular mail, some with attachments and exhibits.

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, submitted by Jodi S. Hoffman, on behalf of Brett Barry, and received by the Office of the Property Rights Ombudsman, August 24, 2011.
2. Response submitted on behalf of Rulon Kent Jones by Jason K. Nelsen of Nelsen Law Offices, P.C., dated October 5, 2011, and all attached documents.
3. Letter dated October 8, 2011 from Ms. Hoffman.
4. Response submitted on behalf of the County by Christopher F. Allred, Deputy Weber County Attorney, dated October 11, 2011
5. Letter dated October 17, 2011 from Ms. Hoffman with attachments.
6. Letter dated October 27, 2011 from Mr. Allred.
7. Staff Report to the Weber County Board of Adjustment on the appeals of the Weber County Planning Commission on its decision to issue a Land Use Permit, dated August 25, 2011.
8. Letter dated November 3, 2011 from Mr. Nelsen.

Background

Richard Ralph and Rulon Kent Jones ("Landowners") own a parcel located at 3788 E 4100 N in Liberty, Weber County, Utah (the "Parcel"). The Parcel consists of approximately 6.15 acres and lies within the Agricultural Valley-3 (AV-3) Zone. Next to the parcel is a cluster subdivision known as, with irony that will soon be apparent, Elk Ridge Estates.

During June, 2011 a representative of the Landowners submitted a land use permit application for the Parcel, which according to the County included a site plan and a written narrative describing the subject property and the proposed land use. According to the County, the Landowners proposed utilizing an existing 1200 sq.ft. building on the Parcel for meat cutting and preparation. The Landowners indicated to the County, and continue to assert now, that the building will only be used for cutting and preparing elk meat and no other game.[1] On June 27, 2011 staff at the Weber County Planning Division reviewed the land use permit application and subsequently issued a land use permit. Since the permit was issued, the Landowners have undertaken improvements of the building on the Parcel to facilitate the meat cutting operation, and have apparently received a business license.

Bret Barry is a resident of the Elk Ridge Estates and, according to his attorney, lives less than 200 feet from the meat cutting building at the Parcel. He and several of his neighbors object to Weber County's approval of the land use application. Mr. Barry and/or his neighbors have made timely appeal of that approval to the Weber County Board of Adjustment, claiming that the permits were issued in violation of Weber County Code. Through his attorneys, Hoffman Law, Mr. Barry has requested this Advisory Opinion to address two questions: (1) Is a custom butchering and meat packing business a prohibited use in the County's AV-3 zone? and (2) does the Weber County Code authorize the planning staff to serve as the land use authority in this matter? The County has agreed to postpone the Board of Adjustment appeal pending release of the requested Advisory Opinion.

Analysis

I. Standard for Reviewing Land Use Decisions

In *Fox v. Park City*, 2008 UT 85, the Utah Supreme Court recently explained the standard of review for land use decisions. A review of a decision by a land use authority "is limited to whether a land use authority's decision is arbitrary, capricious, or illegal." *Id*. at ¶11. *See* UTAH CODE § 17-27a-801(3)(a)(ii). The Court goes on to explain that there are two parts to the "arbitrary, capricious or illegal" analysis:

[1] The County indicates that they received no indication that any animal besides elk would be processed at the property, and that there would be a limited number of carcasses (approximately 100) cut and prepared during the fall months only. Further, the Landowners indicate that in an average week, only 6-8 elk carcasses are processed at the facility, and that no more than 15 elk have been processed in a single week.

> First, a land use authority's decision is arbitrary or capricious only if it is not supported by substantial evidence in the record. A land use authority's decision is illegal if it violates a law, statute, or ordinance in effect at the time the decision was made.

Fox, 2008 UT 85 at ¶11 (citations omitted). Accordingly, a decision is not arbitrary and capricious if it is supported by substantial evidence on the record. On the other hand, a decision is illegal where it violates a law or ordinance in effect. Mr. Barry claims that the decision is illegal because the permit was issued in violation of the Weber County Code.

Where a determination of illegality must be based upon the interpretation of an ordinance, the standard of review is correctness. *Fox,* 2008 UT 85 at ¶11. Review of an ordinance interpretation for correctness requires consideration of the principles of statutory interpretation. "In interpreting the meaning of . . . [o]rdinance[s], we are guided by the standard rules of statutory construction." *Brown v. Sandy City Bd. of Adjustment*, 957 P.2d 207, 210 (Utah Ct. App. 1998). Interpretation of an ordinance begins with the plain language of the ordinance, and a court is to "give effect to the plain language unless the language is ambiguous." *Lovendahl v. Jordan School Dist.*, 2002 UT 130, ¶ 21; *see also Mountain Ranch Estates v. Utah State Tax Comm'n*, 2004 UT 86, ¶ 9. The "primary goal . . . 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 v. City of South Jordan*, 2004 UT 75 ¶ 11. Statutes should be construed so that "all parts thereof [are] relevant and meaningful." *Perrine v. Kennecott Mining Corp.*, 911 P.2d 1290, 1292 (Utah 1996). Furthermore, it must be presumed "that each term included in the ordinance was used advisedly." *Carrier*, 2004 UT 98, ¶30.

In addition, the *Fox* court explained, "we also afford some level of non-binding deference to the interpretation advanced by the land use authority." *Fox,* 2008 UT 85 at ¶11. However, this deference must be tempered by the principle that land use provisions are to be construed in favor of permitting the land use:

> [B]ecause zoning ordinances are in derogation of a property owner's common-law right to unrestricted use of his or her 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.

Rogers v. West Valley City, 2006 UT App 302, ¶15. Accordingly, land use ordinances allowing uses should be liberally construed to allow the use, and ordinances restricting uses should be narrowly construed. Moreover, this deference is further tempered by the principle that a local government must follow the mandatory provisions of its own ordinance: "(2) A county is bound by the terms and standards of applicable land use ordinances and shall comply with mandatory provisions of those ordinances." UTAH CODE § 17-27a-508(2). Accordingly, the local jurisdiction, while given deference in interpreting its own ordinances, is not free to use that deference to interpret a meaning contrary to the ordinances it creates.

II. The County Has Properly Interpreted Its Own Code to Permit Staff to Act as Land Use Authority in This Matter

Barry objects to the decision by the County to grant the permit by arguing that staff was not the land use authority authorized to make the decision. Under Utah law, the land use authority is "a person, board, commission, agency, or other body designated by the local legislative body to act upon a land use application." UTAH CODE § 17-27a-103(27). Weber County Code Section 1.1 reads as follows:

> 1.1 Short Title
> The Ordinance shall be known as the "Uniform Land Use Ordinance of Weber County, Utah." The Township Planning Commissions are to be the Land Use Authority, with due responsibility to administer the Land Use Ordinance. Any appeals of the Land Use Authority will be heard by the Board of Adjustment as outlined in Chapter 29 of the Land Use Ordinance. Appeal of Conditional Use applications will be heard by the Board of County Commissioners.

By its plain language, this provision designates the township planning commissions as the land use authority under the entire code. This designation complies with the statute and is effective.

Nevertheless, a County can designate more than one land use authority, assigning each to make decisions on specific applications. *See* UTAH CODE § 17-27a-302(1)(c). Weber County argues that Weber County Code Section 30.4 designates a different land use authority for issuing permitted and conditional use permits:

> 30-4 Land Use Permit Required
> In order to verify zoning requirements and setbacks for permitted or conditional uses, no structure, including agricultural structures, shall be constructed, changed in use, or altered, as provided or as restricted in the Weber County Zoning Ordinance, until and unless a Land Use Permit is approved and issued by the Planning Director or designee.

This ordinance says that a Land Use Permit for permitted or conditional uses shall be approved and issued by the Planning Director or designee. Although this designation of the Planning Director or designee as a land use authority could certainly be clearer, this designation suffices to meet the definition in UTAH CODE § 17-27a-103(27). To the extent that those two ordinance provisions conflict, the County's interpretation designating the Planning Commission is the general land use authority, while the Planning Director or designee is the specific land use authority to issue permits for permitted uses, is reasonable. This interpretation is necessary in order to make both ordinances relevant and meaningful.[2]

Moreover, where land use permits for permitted uses are concerned, it is eminently reasonable and good policy to delegate that responsibility to staff rather than to the Planning Commission.

[2] Statutes should be construed so that "all parts thereof [are] relevant and meaningful." *Perrine v. Kennecott Mining Corp.*, 911 P.2d 1290, 1292 (Utah 1996).

Where a County has listed a particular use as a permitted use, the County has already indicated that it desires that use in the zone, and will allow the use without conditions. In other words, where an applicant for a permitted use submits an application, the only decision to be made is whether that application complies with the ordinance in effect – not whether or not the use is acceptable or should be allowed in the zone. The policy decision regarding that use has already been made. To require a planning commission to review and decide on every application for a permitted use is at best, a waste of time and resources, and at worst, a potential violation of the County Land Use and Management Act, in that the policy decision regarding the use will be made again and again despite the ordinance. The County, under its authority and limited deference to interpret its own ordinances, has determined that the ordinance designates staff to make such decisions. That interpretation has support in the language of the Weber County Code, and is within the County's discretion.

Barry further argues that, because he and his neighbors objected openly to the issuance of the permit, that he raised a conflict regarding the permit. Therefore, according to Barry, the following provision in the Weber County Code returns the decision to the Planning Commission:

> 1-4 Conflict
> This Ordinance shall not nullify the more restrictive provisions of covenants, agreements, or other ordinances or laws, but shall prevail notwithstanding such provisions which are less restrictive. Where a conflict exists between various provisions of this ordinance, the Planning Commission shall rule on which provision applies.

The County counters that if such a conflict exists, it is incumbent on the party raising the conflict to appeal the conflict to the Planning Commission under this ordinance. This interpretation is preferable to one where the Planning Commission is obligated to provide its interpretation *sua sponte* whenever an interested party objects. It does not appear that, despite the clear action by Barry and his neighbors to oppose the permit, that any party invoked this ordinance as the proper forum to appeal or review of the decision. In any event, this ordinance cannot be read to designate or change the designation of a land use authority under the ordinance. This section 1-4 states that the Planning Commission shall rule on which of two conflicting provisions apply. It does not appoint the Planning Commission to act upon the application, as required by statute in such a designation. Accordingly, this interpretation of the County's ordinances is within the County's discretion, and meets the correctness standard.

III. The Agricultural Use of the Parcel Does not Comply with the Zoning Code

Mr. Barry further objects to the issuance of the permit on the basis that the meat cutting activities on the Parcel are prohibited within the AV-3 zone. The County has interpreted its code to determine that meat cutting is an ancillary and incidental use to agriculture as permitted in the zone, and has issued the permit on that basis. There is ample justification in the language of the code to support the County's interpretation that general ancillary agricultural uses are permitted within the AV-3 zone, which could include certain meat cutting activities. However, the specific

operation and activities of the Landowners goes beyond what is permitted in the zone. Even when strictly construed,[3] the ordinance prohibits the elk meat cutting operation of the Landowners as a prohibited agricultural industry or business.

The Weber County Zoning Ordinance not only lists agriculture as a permitted use, but designates it as a preferred use in the AV-3 Zone.

> Agriculture is the preferred use in Agricultural Valley, AV-3. All agricultural operations shall be permitted at any time, including the operation of farm machinery and no agricultural use shall be subject to restriction because it interferes with other uses permitted in the zone.

Weber County Code section 5B-1A. The Ordinance states that, as part of that preferred use, "all agricultural operations shall be permitted at any time" within the zone. Also, where agricultural operations conflict with other uses in the zone, the agricultural activities shall not be restricted.

The Ordinance further defines "Agriculture" as:

> AGRICULTURE: Use of land for primarily farming and related purposes such as pastures, farms, dairies, horticulture, animal husbandry, and crop production, but not the keeping or raising of domestic pets, nor any agricultural industry or business such as fruit packing plants, fur farms, animal hospitals or similar uses.

Weber County Code section 1-6. Accordingly, any agricultural operations that fit this definition are permitted in the AV-3 Zone at any time. As the County points out, *animal husbandry* is included in the definition or agriculture. According to the Code, any animal husbandry activities are permitted in the zone at any time, and shall not be restricted when they conflict with other uses in the zone. Moreover, Section 5B-3 of the Code mentions the use of slaughterhouses in the AV-3 zone. For the County to interpret "animal husbandry" to include ancillary activities such as meat cutting is within its discretion. The definition of agriculture is quite broad, and contains significant room for interpretation.

Barry notes correctly that elsewhere in the County ordinances meat cutting is listed as a conditional use, but not so here, and should be considered prohibited on that basis. Although this reasoning is sound, section 5B-1A states that "*all* agricultural operations shall be permitted at any time" within the zone. That statement should be given meaning, and provides room to include as permitted in the AV-3 Zone a wide variety of agricultural operations, even if they are not specifically listed. Accordingly, the language in the Ordinance provides ample support for the County's interpretation that ancillary meat cutting is a permitted agricultural activity within the AV-3 Zone.

However, other statements in the County ordinances should also be given meaning, such as the remainder of the County's definition of agriculture in section 1-6: "but not the keeping or raising

[3] As stated above, ordinances restricting land uses are to be strictly construed. *Rogers v. West Valley City*, 2006 UT App 302, ¶15.

of domestic pets, nor any agricultural industry or business such as fruit packing plants, fur farms, animal hospitals or similar uses." Also, Weber County Code section 1-3 states that: "Specific uses listed as Permitted or Conditional uses in a zone are allowed; uses not listed are not allowed in that zone." These must be read in concert with Weber County Code section 5B-1A and the remainder of the Code. Ordinances should be construed so that "all parts thereof [are] relevant and meaningful." *Perrine v. Kennecott Mining Corp.*, 911 P.2d 1290, 1292 (Utah 1996).

In order to make all parts of that ordinance relevant and meaningful, the restriction on agricultural industry and businesses must be read to limit terms such as farming and animal husbandry. Accordingly, although it may be reasonable to interpret terms like "animal husbandry" to include ancillary farming activities such as meat cutting and packing, as the County has done, that activity is prohibited if it is an agricultural industry or business such as those listed.[4] The ordinance then lists the kind of agricultural industries and businesses that are prohibited. Nevertheless, even under a narrow interpretation of this restriction, the restriction is not limited to those industries or businesses listed – fruit packing plants, fur farms or animal hospitals. The ordinance also restricts businesses similar to those listed – "or similar uses."

The elk cutting and packing business at the Parcel is an agricultural business or industry inescapably similar to those prohibited in the ordinance, and go well beyond meat cutting ancillary to animal husbandry. The Landowners are in the business not just of selling livestock produced on a farm, but of selling the opportunity to hunt an elk on private property, under a guided hunt, and offering cutting and packaging services when an elk is successfully obtained.[5] The Landowners indicate that the elk are taken from the Landowners private herd located in the Ogden Valley.[6] The property owners acknowledge that very few elk are kept on the Parcel, and the vast majority of elk processed at the Parcel are obtained and killed elsewhere. The elk are then brought to the parcel for processing. It does not appear that the Landowners are farming domesticated elk as that term is defined in UTAH CODE § 4-39-102,[7] and processing that elk for consumption on or off of the farm. Rather, the Landowners are offering for sale guided hunts of wild elk on private lands, and processing and packing that elk meat as part of that business. This is very similar to a business that permits customers to pick their own fruit on or off of the parcel, and to bring it to the parcel for processing and packing. A fruit packing business or industry is expressly excluded from the definition of agriculture in Weber County. The facility for cutting and packing meat is quite similar to a fruit packing plant in this respect. The Landowners' operation can also be said to be similar to a fur farm or animal hospital in multiple respects, such

[4] It seems clear from this definition, as well as many other provisions of the code, some of which are discussed later, that the AV-3 zoning designation is intended for agricultural uses, but residential purposes are also of high import. The agricultural uses, while permitted, are to be carried out on a scale more compatible with the residential uses.
[5] It appears that such hunts, at least in some circumstances, are guaranteed.
[6] It is presumed for purposes of this Advisory Opinion, but not conclusive, that those hunts are conducted exclusively on land owned by Landowners but not on land owned by the public or others.
[7] The Domesticated Elk Act, UTAH CODE § 4-39-102 *et seq*., has strict rules and requirements that must be followed in order to farm domesticated elk. The Act prohibits activities such as releasing domesticated elk into the wild and requires certain procedures such as such as specific fencing, marking, and transportation requirements. The information provided for this Advisory Opinion indicates that the Landowners' activities are outside of the requirements of the Domesticated Elk Act, which leads to the conclusion that the elk being processed at the Parcel are not domesticated elk under the act, but instead are a private herd of wild elk.

as the animals that are no longer living are processed and stored at the facility. As an agricultural industry or business similar to those listed, the elk cutting and packing activity is prohibited by the Code.

The activities of the Landowners at the Parcel go well beyond meat cutting ancillary to farming or animal husbandry. This is especially evident where the elk cutting business is processing wild elk that are not raised or kept on the Parcel, but are obtained from wild areas.[8] Moreover, if the hunted elk are wild elk and not domesticated elk, whether found on the Landowners' property or otherwise, it is difficult to see how they can be said to be farmed or otherwise fit under a definition or agriculture. Only Domesticated Elk are included in the Utah Code statutory Definition of "Livestock." *See* UTAH CODE § 4-1-8. Wild elk are not included. Accordingly, the cutting and packing of wild elk obtained off of the Parcel would not be ancillary to the farming operation at the Parcel, even if the Parcel was used to farm domesticated elk. In addition, it is neither the size of the operation at the Parcel, nor the actual number of animals processed, nor the actual level of noise or disturbance to the neighbors which takes the operation beyond cutting and packing ancillary to farming. It is the use – an agricultural industry or business – that the County has prohibited in its ordinances.

As the County points out, the Code does permit some agricultural industry or business. However, a review of those ordinances further indicates that the Landowners' activities are an industry or business prohibited in the AV-3 Zone, even when viewed broadly. The AV-3 zone designation for a parcel more than 5 acres in area (such as the Parcel) permits the following activities:

> 5B-3 Permitted Uses Requiring Five (5) Ares Minimum Lot Area
> 1. Dairy farm and milk processing and sale provided at least fifty (50) percent of milk processed and sold is produced on the premises.
> 2. Farms devoted to the hatching, raising (including fattening as an incident to raising) of chickens, turkeys, or other fowl, rabbits, fish, frogs or beaver.
> 3. Fruit and vegetable storage and packing plant for produce grown on premises.
> 4. The keeping and raising of not more than ten (10) hogs more than sixteen (16) weeks old, provided that no person shall feed any such hog any market refuse, house refuse, garbage or offal other than that produced on the premises.
> 5. The raising and grazing of horses, cattle, sheep or goats as part of a farming operation, including the supplementary or full feeding of such animals provided that such raising and grazing when conducted by a farmer in conjunction with any livestock feed yard, livestock sales or slaughter house shall:
>
> 1. not exceed a density of twenty-five (25) head per acre of used and;
> 2. be carried on during the period of September 15 through April 15 only;
> 3. be not closer than two hundred (200) feet to any dwelling, public or semi-public building on an adjoining parcel of land; and,
> 4. not include the erection of any permanent fences, corrals, chutes, structures or other buildings normally associated with a feeding operation

[8] Those elk are hunted, and therefore located presumably in wild areas. They certainly would not be hunted while standing in a corral or pen.

The Landowners' operation on the Parcel cannot be reconciled with the agricultural industries or businesses permitted here. For example, milk processing and sale is permitted where no less than 50% of the milk is produced on the premises. Attempting the analogy, it appears undisputed that more than 50% of the animals processed at the Parcel are produced away from the Parcel. It seems unlikely that the County would place greater restrictions on the processing and sale of milk than the processing and sale of elk meat.

Most importantly, however, is that this list is extraordinarily specific regarding the types of animals that can be raised, and what businesses or industry can be undertaken with each type of animal. The ordinance permits horses, cattle sheep, goats, hogs, chickens, turkeys, fowl, rabbits, fish, frogs, and beaver. Permitted operations related to each of these animals are listed.[9] This listing is specific and complete enough to include frogs and beaver. No provision or language can be found to indicate that other animals not listed may be included or added. Even the phrase "or other livestock" cannot be found.[10] When interpreting a statute, it must be presumed "that each term included in the ordinance was used advisedly." *Carrier*, 2004 UT 98, ¶30. Moreover, the Weber County Code states that "Specific uses listed as Permitted or Conditional uses in a zone are allowed; uses not listed are not allowed in that zone." Weber County Code section 1-3. The rules of ordinance interpretation compel the conclusion that only those specific agricultural businesses or industries, related to those specifically listed animals only, are permitted. Elk, or an agricultural business or industry related to elk, are not listed and therefore not permitted.[11]

The important maxim from *Rogers v. West Valley City*, that zoning ordinances restricting property uses should be strictly construed to permit the use, does not justify a complete abandonment of the ordinance language or the principles of ordinance interpretation, and cannot be stretched so far. Likewise, the deference given to the County to interpret its own ordinances – "some level of non-binding deference" – is limited by, among other things, the statutory principle that a local government must follow the mandatory provisions of its own ordinance. UTAH CODE § 17-27a-508(2). The ordinance language prohibiting agricultural industry or business and excluding elk from the very specific and complete list of permitted agricultural businesses must be given effect. An attempt to fit the Landowners' elk cutting and packing business into this definition, when so similar to the expressly restricted business, renders the plain language of the ordinance, even when narrowly interpreted, ineffective and meaningless. Accordingly, neither a narrow interpretation of the restrictions in this Ordinance, nor the County's limited deference to interpret its own ordinances, can permit the Landowners' elk processing and packing business in the zone.

[9] The code mentions, and presumably therefore permits, slaughter houses but only in conjunction with horses, cattle, sheep, or goats.

[10] Not even state law provisions that add domesticated elk to a definition or livestock can add to the local ordinance that so specifically lists the types of animals the word livestock refers to or businesses that can be undertaken on a parcel with those specific animals.

[11] It appears for the same reasons that even general farming of domesticated elk may be prohibited in the AV-3 Zone.

Conclusion

Ordinance language is readily found to support the County's interpretation of its own ordinance that County staff is the land use authority to issue permits for permitted uses in the zone, and that meat cutting ancillary to farming is permitted in the AV-3 Zone. The County's interpretation of those ordinances is correct, and accordingly not illegal. However, the County ordinance language, as it presently stands, prohibits certain agricultural industry or business in the AV-3 Zone. The business undertaken by the Landowners, guided hunting with cutting and processing wild elk obtained off the lot, is inescapably of that type and 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.

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:

Alan D. McEwan, County Clerk/Auditor
Weber County
2380 Washington Blvd, Suite 320
Ogden, Utah 84401

On this _____ Day of November, 2011, 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