

# Advisory Opinion #175

Parties: William Conley, Lehi City

Issued: November 17, 2016

## TOPIC CATEGORIES:

**Compliance with Mandatory Ordinances**

**Interpretation of Ordinances**

Lehi City followed proper procedures, appropriately based factual findings on substantial evidence, and correctly interpreted the Lehi Development Code when it approved the Family Search Office Building Site Plan, and the Thanksgiving Village Stake Center Site Plan and Conditional Use Permit.

## DISCLAIMER

The Office of the Property Rights Ombudsman makes every effort to ensure that the legal analysis of each Advisory Opinion is based on a correct application of statutes and cases in existence when the Opinion was prepared. Over time, however, the analysis of an Advisory Opinion may be altered because of statutory changes or new interpretations issued by appellate courts. Readers should be advised that Advisory Opinions provide general guidance and information on legal protections afforded to private property, but an Opinion should not be considered legal advice. Specific questions should be directed to an attorney to be analyzed according to current laws.



The Office of the Property Rights Ombudsman  
Utah Department of Commerce  
PO Box 146702  
160 E. 300 South, 2<sup>nd</sup> Floor  
Salt Lake City, Utah 84114

(801) 530-6391  
1-877-882-4662  
Fax: (801) 530-6338  
[www.propertyrights.utah.gov](http://www.propertyrights.utah.gov)  
[propertyrights@utah.gov](mailto:propertyrights@utah.gov)



GARY R. HERBERT  
*Governor*

SPENCER J. COX  
*Lieutenant Governor*

# State of Utah Department of Commerce

## OFFICE OF THE PROPERTY RIGHTS OMBUDSMAN

FRANCINE A. GIANI  
*Executive Director*

BRENT N. BATEMAN  
*Lead Attorney, Office of the Property Rights Ombudsman*

### ADVISORY OPINION

Advisory Opinion Requested By: William P. Conley  
Local Government Entity: Lehi City  
Applicant for Land Use Approval: Corporation of the Presiding Bishopric of the LDS Church  
Type of Property: Commercial/Religious  
Date of this Advisory Opinion: November 17, 2016  
Opinion Authored By: Jordan S. Cullimore  
Office of the Property Rights Ombudsman

### ISSUES

Did Lehi City correctly interpret and apply the Lehi Development Code when it approved the Family Search Office Building Site Plan, and the Thanksgiving Village Stake Center Site Plan and Conditional Use Permit?

### SUMMARY OF ADVISORY OPINION

Lehi City followed proper procedures, appropriately based factual findings on substantial evidence, and correctly interpreted the Lehi Development Code when it approved the Family Search Office Building Site Plan, and the Thanksgiving Village Stake Center Site Plan and Conditional Use Permit.

### 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 William P. Conley on March 4, 2016. A copy of that request was sent via certified mail to Marilyn Banasky, City Recorder for Lehi City, at 153 North 100 East, Lehi, Utah. The return receipt does not specify the date the City received the request.

## **EVIDENCE**

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

1. Request for an Advisory Opinion, with attachments, and subsequent supporting documentation, submitted by William P. Conley from April 13, 2016 to May 23, 2016.
2. Response from Ryan V. Wood, Attorney for Lehi City, received June 22, 2016.
3. Responses from Robert D. Walker, Attorney for the Corporation of the Presiding Bishopric of the Church of Jesus Christ of Latter-day Saints, received June 29, 2016.

## **BACKGROUND**

In 2015, the Corporation of the Presiding Bishopric of the Church of Jesus Christ of Latter-day Saints (the "LDS Church") purchased the Thanksgiving Point Golf Course driving range property to redevelop it and construct two commercial buildings. After consulting Lehi City (the "City") and receiving input from city residents, the LDS Church modified its plans to construct one of the structures as an office building, and the other as a meeting house for worship services.

Accordingly, the LDS Church submitted to the City a one-lot subdivision application to establish the lot on which the two structures would sit. City staff administratively approved this subdivision on July 9, 2015. Subsequently, the LDS Church submitted separate site plan applications for the office building and the meeting house. The meeting house additionally required a conditional use permit application since it was a conditionally approved use in the applicable Resort Community Zone.

The Lehi City Planning Commission approved the office building site plan on March 24, 2016 and the meeting house site plan and conditional use permit on April 28, 2016. The applicant for this advisory opinion, William P. Conley lives near the proposed project. He contends that the approvals were incorrectly granted, and that several items were overlooked or misinterpreted. Accordingly, he appealed the office building and meeting house approvals to the Lehi Board of Adjustment—the City's appeal authority—on March 30, 2016 and May 11, 2016 respectively.

Pending consideration of these appeals, Mr. Conley also contacted the Ombudsman's Office to request an independent analysis of the matter in an advisory opinion.

## ANALYSIS<sup>1</sup>

Mr. Conley's advisory opinion request raises several questions, including some that involve issues outside this office's purview. The issues on which we cannot opine include the Family Search Subdivision approval<sup>2</sup> and the special warranty deed condition.<sup>3</sup>

The Family Search Subdivision application, as indicated above, was approved on July 9, 2015, but Mr. Conley's appeal was submitted on March 30, 2016, which is beyond the 30-day appeal deadline established by the Lehi City Code. *See* LEHI DEVELOPMENT CODE § 32.010(A). Once this appeal period runs, a land use decision becomes final and we no longer have jurisdiction to opine upon the issue. *See* UTAH CODE § 13-43-205(1)(b).

Additionally, the question involving the legal force and applicability of a special warranty deed condition is wholly outside of our purview since our office possesses authority only to determine a local government's compliance with certain sections of the Utah Land Use Development and Management Act and the Utah Impact Fees Act. *See* UTAH CODE § 13-43-205(1)(a). Consequently we decline to address these issues.

### **I. The City Correctly Determined that the Project is Compatible and Harmonious with Surrounding Uses**

Several of Mr. Conley's arguments assert that the City improperly approved the development proposal because it doesn't comply with development and design standards. Those standards require or encourage compatibility with surrounding uses and structures in architecture, scale, massing, roof shape, materials, and bulk. He also cites provisions requiring consideration of the health, safety, and welfare of the community.<sup>4</sup> He asserts that the proposed development is not in fact compatible in design and architecture, is not harmonious with surrounding uses, and does not advance the general welfare.

For example, Mr. Conley alleges that the approved office building violates the Resort Community Zone's development standard for building design, which states the "proposed structures shall be complimentary to the surrounding architecture in terms of scale, massing, roof shape and exterior materials." LEHI DEVELOPMENT CODE § 28.070(A). Mr. Conley contends that the surrounding architecture, which includes single family homes, a club house, the Thanksgiving Point Curiosity Museum, and another office building, is not complimentary or similar to the proposed office building.

---

<sup>1</sup> The applicant, in his initial request for an advisory opinion, submitted a great deal of material addressing a broad range of subjects. After reviewing the submitted materials, this office requested that the applicant identify and clarify specific issues he would like to have addressed in an advisory opinion. On April 26, 2016, he submitted a document entitled "Thanksgiving Point Office Development Site (in brief)." This advisory opinion addresses the relevant legal issues presented in that document.

<sup>2</sup> Presented in alleged violations 8-10 in Mr. Conley's advisory opinion request.

<sup>3</sup> Presented in alleged violation 11.

<sup>4</sup> These assertions are made throughout the advisory opinion request, including in alleged violations 2, 3, 4, 7, 12, 14.

The question of whether a structure is “complimentary to” or “harmonious with” surrounding architecture or neighboring uses is highly subjective and prone to a broad range of interpretations that are heavily dependent on the specific facts of a given case. When a planning commission makes a determination based on specific factual findings, a court will uphold the commission’s decision as long as the decision is supported by “substantial evidence in the record.” *Bradley v. Payson City Corp.*, 2003 UT 16 ¶ 10. Substantial evidence is “that quantum and quality of relevant evidence that is adequate to convince a reasonable mind to support a conclusion.” *First Nat’l Bank of Boston v. County Bd. of Equalization*, 799 P.2d 1163, 1165 (Utah 1990).

Moreover, and in this context, a court will uphold the Commission’s determination as supported by substantial evidence as long as the Commission has carefully reviewed and considered the submitted application and evidence such as site plan drawings, elevations, material samples, architectural renderings, technical studies, etc., and made a reasonable, evidence-based determination in accordance with applicable ordinance provisions. *See Springville Citizens v. City of Springville*, 1999 UT 25, ¶¶ 25-30, 979 P.2d 332 (the city’s decision was based upon substantial evidence, and not arbitrary or capricious, because it held required meetings, carefully considered the materials submitted, and reached a decision that a reasonable person could have reached).

We conclude that the Lehi Planning Commission supported its determinations of compatibility and harmony with substantial evidence in the record. The submitted materials show that the Planning Commission reviewed and carefully considered the proposed architectural treatments and scale/massing proposals and reasonably determined that, in each case, the proposals were compatible and harmonious. Consequently, we decline to disturb the Commission’s determinations even though the provisions of the ordinance may be interpreted differently by others.

## **II. Lehi City Correctly Interpreted Applicable Code Provisions**

Mr. Conley next asserts that the City misinterpreted several provisions of its Development Code when it approved the office building site plan and meeting house site plan and conditional use permit. We review the City’s interpretations of its ordinance below.

### *A. Rules of Statutory Interpretation*

The correct interpretation of an ordinance begins with an analysis of the plain language of the ordinance. *Carrier*, 2004 UT 98 ¶ 30, 104 P.3d 1208. The primary goal of interpretation is “to give effect to the legislative intent, as evidenced by the plain language, in light of the purpose the statute was meant to achieve.” *Foutz v. City of South Jordan*, 2004 UT 75, ¶ 11, 100 P.3d 1171.

Ordinances should be construed in a manner that renders all parts of the ordinance “relevant and meaningful,” *Foutz*, 2004 UT 75, ¶ 11, 100 P.3d 1171. A correct reading should not “impose an unreasonable and unworkable construction,” *Miller*, 2003 UT 12, ¶ 19, 66 P.3d 592, or “render some part of a provision nonsensical or absurd.” *Perrine*, 911 P.2d at 1292.

Moreover, zoning ordinances should be strictly construed in favor of allowing a property owner's desired use, since such ordinances are in derogation of an owner's common law right to the unrestricted use of land. *Carrier*, 2004 UT 98 ¶31, 104 P.3d 1208.

### *B. Building Design & Height Limitation*

Mr. Conley asserts that the 4-story office building should not have been approved because the development standards in the Resort Community Zone indicate that buildings “*adjacent* to single family detached units should be limited to two stories or thirty-five feet.” LEHI DEVELOPMENT CODE § 28.070(A) (emphasis added). “Adjacent”, in this context, is defined by the Development Code as “[all] properties immediately contiguous<sup>5</sup> to a development site, including those that are separated from the site only by a road or other right-of-way or easement.” LEHI DEVELOPMENT CODE CHAPTER 39 (Adjacent). Consequently, any structure on a parcel that touches another parcel containing a single-family detached unit, or that is immediately across the road from a parcel containing single-family detached unit, should<sup>6</sup> be limited to two stories or thirty-five feet.

An examination of Utah County's Online Parcel Map shows that the parcel on which the office building will sit does not touch a parcel on which a single-family detached unit sits. The parcel immediately across the road from the site contains a golf course, or recreational use. Single family residential parcels are separated from the office parcel by additional non-residential parcels. Accordingly, the City made the correct decision to not apply the additional height limitation.

### *C. Access and Traffic*

Mr. Conley also asserts that the approval of the Family Search Office Building Site Plan violated Lehi Development Code § 28.070(C), which states that “[d]irect access from an arterial or collector street to the office and professional service uses must be provided.” Mr. Conley asserts that because Garden Drive, which is the street that serves the proposed development, is not identified on the City's Master Transportation Plan as a collector or arterial street, the project proposal violates this direct access requirement in the Code.

The City asserts that the Master Transportation Plan is a planning document for new growth, not a document intending to classify every existing street within the City. The City further asserts that the City Engineer correctly designated Garden Drive as a collector street for purposes of this development because the street carries similar volumes, and has similar access, roadway striping, parking restrictions, and width as other collector streets in the City.

It appears that the City Code doesn't specifically identify which criteria a public thoroughfare must satisfy to be classified as an arterial or collector street. The Utah State Code uses the Federal Highway Administration Functional Classification Guidelines to classify collector and

---

<sup>5</sup> Contiguous is defined by Webster's as “being in actual contact: touching along a boundary or at a point.” *Contiguous*, Merriam-Webster Dictionary, <http://www.merriam-webster.com/dictionary/contiguous>.

<sup>6</sup> Note that the Development Codes interpretation section indicates that “[t]he words ‘shall’ or ‘must’ are mandatory. The words ‘should’ and ‘may’ are permissive.” Lehi Development Code 02.010(B)(1). So even if it were determined that the office building was adjacent to single family units, the height limitation would not be mandatory.

arterial streets for state purposes. *See* UTAH CODE § 72-4-102.5(1). The FHA’s Functional Classification Guidelines identify the following characteristics for urban minor collector streets:

- Serve both land access and traffic circulation in lower density residential and commercial/industrial areas.
- Penetrate residential neighborhoods, often only for a short distance.
- Distribute and channel trips between Local Roads and Arterials, usually over a distance of less than three-quarters of a mile.
- Operating characteristics include lower speeds and fewer signalized intersections.

*Highway Functional Classification Concepts, Criteria and Procedures.* FHA Website. [https://www.fhwa.dot.gov/planning/processes/statewide/related/highway\\_functional\\_classification/section03.cfm#Toc336872983](https://www.fhwa.dot.gov/planning/processes/statewide/related/highway_functional_classification/section03.cfm#Toc336872983).

When a court reviews a local jurisdiction’s interpretation of its ordinance it affords the local government’s interpretation “some level of non-binding deference.” *Carrier*, 2004 UT 98 ¶ 28, 104 P.3d 1208. The City’s interpretation of Garden Drive as a collector street aligns with the criteria listed above. Garden Drive provides land access, circulation to residential and commercial uses, and distributes vehicles between local roads and arterials at lower speeds for a short distance. Consequently, we conclude that the City reasonably and appropriately classified Garden Drive as a collector street.

Moreover, we agree with the City that the Master Transportation Plan should not be relied on as an authoritative determination of which streets within the city are arterials, collectors, or local streets. There are several streets visible on the map that may be appropriately defined as collector street that aren’t, likely because they are in developed areas where growth is not anticipated, so street standards do not need to be identified for new growth. This supports the conclusion that the Master Transportation Plan is not a comprehensive reference for street classification within the City.

Mr. Conley also asserts here that a traffic study was never performed, but sufficient evidence has been submitted by the City and the LDS Church to confirm that a traffic study was conducted and mitigation measures have been, or are being considered by the appropriate agencies.

#### *D. Roof Design*

Mr. Conley next asserts that the approved office building violates LEHI DEVELOPMENT CODE § 28.070(D), because the building has a flat roof design, even though the Code states that “[f]lat or low-pitched roofs shall be avoided.” LEHI DEVELOPMENT CODE § 28.070(D). Interpretation of this code provision would be simple if it clearly prohibited flat roofs, but it doesn’t. Instead, the Code requires that flat roofs be *avoided*.<sup>7</sup> While the use of *shall* makes the provision mandatory, *see* Lehi Development Code § 02.010(B)(1), the additional use of *avoided* renders the provision permissive in application. The Code, for instance, does not articulate in which cases flat roofs are

---

<sup>7</sup> To avoid is “to stay away from (someone or something).” *Avoid*, Merriam-Webster Dictionary, <http://www.merriam-webster.com/dictionary/avoid>.

unavoidable, or who determines whether they may be avoided or not, or what sufficiently constitutes adequate avoidance.

City staff, in DRC meetings, even noted that flat roofs should be avoided and recommended that the developer make an effort to “break up the roof line” with additional architectural features. The City ultimately determined that these mitigation measures were sufficient to comply with the Code. Due to the ambiguous nature of the provision in question, and because we construe land use ordinances in favor of the property owner’s desired use, *see Carrier*, 2004 UT 98 ¶31, 104 P.3d 1208, we conclude that the Code allows flat roof designs since it does not expressly prohibit flat roofs, but only requires that they be *avoided*.

### **III. The Development Proposal Complies with Applicable Ordinance Requirements**

Mr. Conley alleges several other specific violations of the Lehi Development Code. We address these remaining allegations in turn.

#### *A. Scheduling for Planning Commission Consideration*

Mr. Conley alleges that the Lehi City staff (“city staff”) presented the Thanksgiving Point Office Site Plan prematurely because notes from the City’s Development Review Committee (“DRC”) meeting on February 24, 2016, state that the City engineer needs to review a traffic study before scheduling the item for a Planning Commission meeting. Despite this, the Planning Commission considered the application on March 24, 2016, even though the final traffic study allegedly wasn’t submitted to the City until April 13, 2016.

It is important to understand the different roles played by the Planning Commission and the DRC in this context. The Planning Commission is a board of appointed laypersons—residents of the city who may or may not have technical expertise in fields related to land use and development. The members of the Lehi Planning Commission are tasked with hearing, reviewing, and acting on development applications in accordance with the City’s development code provisions. *See* LEHI DEVELOPMENT CODE § 03.030(6).

The DRC in this context provides support to the Planning Commission by conducting technical review of development applications for which the Planning Commission is the decision making body, or land use authority. *See* LEHI DEVELOPMENT CODE § 03.060. The DRC is composed of city staff members who are professionals in the fields of planning, engineering, building construction, public facilities maintenance, public safety, etc. The DRC meets regularly and ensures that development applications are technically feasible and will be able to comply with City Code requirements prior to Planning Commission review. In most cases, once the DRC is comfortable that the development proposal is or will be feasible and compliant, city staff schedules the application for Planning Commission review. *See* LEHI DEVELOPMENT CODE § 03.060(E)(4). This process is typical and appropriate in the development approval process.

A review of DRC redline comments for the Family Search Office site plan leading up to the Planning Commission meeting on March 24, 2016 indicate that the DRC required the applicant to submit for review a traffic study to confirm the project’s feasibility. The comments also



indicate that the application would not be scheduled for Planning Commission consideration before reviewing the study. This is an appropriate request by the DRC because “the applicant may be required to provide...information required by the Reviewing Departments...necessary to evaluate the merits of the proposed site plan.” LEHI DEVELOPMENT CODE § 11.240(C). Further, the development standards of the Resort Community Zone require traffic impact studies for Area Plans. LEHI DEVELOPMENT CODE § 28.070(C). Accordingly, requiring a traffic study to determine project feasibility and plan for traffic mitigation measures is appropriate.

While the February 24, 2016 DRC comments includes the statement that a traffic study needs to be submitted for review before going to the Planning Commission, the March 16, 2016 DRC comments do not contain such a statement, and the comments indicate that the item may be scheduled for Planning Commission review on March 24, 2016. From this it may be inferred that the DRC received the information it needed between February 24 and March 16, and that members of the committee had the information they needed to pass the item on to the Planning Commission for review. Since it was within the DRC’s discretion to make this judgement, and since there are no formal code provisions requiring otherwise, the decision was appropriate.

#### *B. Parking Requirements*

Mr. Conley expresses several concerns that the site will not have adequate parking for the office building and meeting house uses. He speculates that there will not be room for incredibly large crowds or long-term RV parking. Several of these concerns are speculative in nature and do not allege specific violations of the Lehi Development Code. The City indicates that for a 124,000 square foot building, the Development Code requires 442 parking stalls. The approved site plan contains 514 parking spaces to satisfy this requirement. Accordingly, we find no violation of applicable parking requirements.

#### *C. Setback & Landscaping Requirements*

Mr. Conley argues that the approved site plan violates applicable setback and landscaping requirements of the Resort Community Zone. The City acknowledges that the site plan does not meet the standard setback and landscaping requirements of the zone, but relies on Lehi Development Code § 28.110 for the discrepancy. This section states that the City Council may approve variations to Code requirements in properly approved area plans within the Resort Community Zone. Proposed setbacks and landscaping for the project comply with the applicable Area Plan that was approved by the Council for this development. Since the project complies with the requirements of a properly approved area plan, we find that the setbacks and landscaping complies with applicable requirements.

## CONCLUSION

Lehi City followed proper procedures, appropriately based factual findings on substantial evidence, and correctly interpreted the Lehi Development Code when it approved the Family Search Office Building Site Plan, and the Thanksgiving Village Stake Center Site Plan and Conditional Use Permit.

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

**NOTE:**

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

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

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

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

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