

Advisory Opinion #38

Parties: Weston Ault and Town of Cedar Fort
Issued: April 16, 2008

TOPIC CATEGORIES:

Nonconforming Uses and Noncomplying Structures Interpretation of Ordinances

The Town's ordinance states that "buildings and storage sheds" are subject to setbacks. Even though "storage shed" is not defined, its inclusion in the ordinance cannot be ignored. A storage shed is commonly understood to mean a structure used for shelter. Given this ordinary meaning, it is reasonable for the Town to conclude that the proposed structure was a storage shed, and thus subject to the Town's setback ordinances.

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OFFICE OF THE PROPERTY RIGHTS OMBUDSMAN

ADVISORY OPINION

Interpretation of Setback Ordinance

Advisory Opinion Requested by: Weston Ault

Local Government Entity: Town of Cedar Fort

Applicant for the Land Use Approval: Josh Weidauer

Project: Construction of a hay barn/horse shed.

Date of this Advisory Opinion: April 16, 2008

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

Issues

Did the Town of Cedar Fort Correctly Interpret its Ordinances Requiring Setbacks?

Summary of Advisory Opinion

The Town's ordinance requiring setbacks identifies three types of structures: Dwellings, Buildings, and Storage Sheds. The terms "dwelling" and "building" are defined, but "storage shed" is not. The inclusion of the term "storage shed" in addition to the defined term "building" implies that the scope of the ordinance reaches structures that are used for storage, but do not otherwise meet the definition of "building." Since "storage shed" is not defined, the common, ordinary meaning of the term should be used. Dictionary definitions agree that a "shed" is a structure used to shelter or protect property, and that it may or may not be enclosed. A "storage shed" is thus a structure used to store or deposit property so that it may be protected from the elements or loss. The structure at issue was described as a "hay barn" or "horse shed," and is intended to provide shelter to protect feed or livestock. It thus falls within the parameters of the term "storage shed," and it is thus subject to the Town's side yard setback requirements.

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 U.C.A. §13-43-205. The 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.

The request for this Advisory Opinion was received from Weston and Laura Ault on February 4, 2008. A letter with the request attached was sent via certified mail, return receipt requested, to Jeanine Cook, Town of Cedar Fort, at 155 N. Church, Cedar Fort, Utah 84013. Ms. Cook's name was listed on the State's Governmental Immunity Database, as the contact person for the Town. The return receipt was signed and was received by the Office of the Property Rights Ombudsman (OPRO) on February 27, 2008, indicating that the Town had received it. Howard Anderson, Mayor of Cedar Fort, contacted the OPRO office by telephone, and discussed the request. He felt that the Town was bound to interpret its ordinance in the way it did. The Town did not submit a written response.

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 filed February 4, 2008 with the Office of the Property Rights Ombudsman by Weston and Laura Ault, with attachments.
2. Telephone conversation with Howard Anderson, Mayor of Cedar Fort.

Statutes and Ordinances

1. Town of Cedar Fort Planning and Zoning Ordinance.

Background

This Opinion concerns a dispute over a structure built by Josh Weidauer in Cedar Fort. In the summer and fall of 2007, Mr. Weidauer began construction on what has been characterized as a "hay barn/horse shed" on a corner of his property. The structure is evidently a "canopy" supported by columns, with no more than one solid wall. It also appears that the purpose of the structure is to store hay or protect livestock. The structure was constructed very near the property lines for

Mr. Weidauer's parcel, and it evidently crosses the property lines into the Ault's property and into a publicly-owned right-of-way.¹

The Aults complained to the Town about the building being too close to the property lines. The Town requested that the Weidauers stop construction until the Ault's complaint could be evaluated. The chair of the planning commission determined that the structure was not a "building" under the Town's planning and zoning ordinance, and was thus exempt setback requirements. Based on this determination, the Town granted a permit for the structure.

The decision was appealed and considered by the Town Council. The Council voted to uphold the permit on the basis that the structure was not a "building," as the chair of the planning commission had determined. Since the structure was not a "building," it did not have to adhere to the "building stipulations" such as setbacks. The Council noted that the Town's Planning and Zoning Ordinance required that buildings and storage sheds. The structure was approved, provided that it had no more than one wall. The Weidauers were also asked to move the structure so that it was no longer located on the neighboring properties, although no time frame to move the structure was given.

Analysis

I. Did the Town Correctly Interpret its Planning and Zoning Ordinance?

The first question addressed in this Opinion concerns whether the Town correctly interpreted and applied its Planning and Zoning Ordinance to exempt the structure from "building stipulations." In all zones within the Town, minimum side yard setbacks are ten feet. "Every dwelling will have a minimum of 10 feet between the dwelling and the side yard lot line and will have a total of at least 24 feet for both side yards combined. *Other buildings or storage sheds will have the same side clearance.*" Town of Cedar Fort Planning and Zoning Ordinance, § 11(B)(3). The Town's Ordinance defines "building" as "[a]ny structure enclosed on two or more sides, built for the support, shelter, or enclosure of person, animals, chattels, or property of any kind." *Id.*, § 15. The term "storage shed" is not defined.

A. Standards of Statutory Interpretation

Statutory interpretation begins with the language of the ordinance. *See Biddle v. Washington Terrace City*, 1999 UT 110, ¶ 14, 993 P.2d 875, 879. 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, 100 P.3d 1171, 1174. 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 v. Salt Lake County*, 2004 UT 98, ¶30, 104 P.3d 1208, 1216. "[I]nterpretations are to be avoided that render some part of a provision nonsensical or absurd." *Millet v. Clark Clinic Corp.*, 609 P.2d 934, 936 (Utah 1980). The meaning

¹ The information submitted to the OPRO did not provide any details on the design of the structure, or how far it encroaches across the property lines. From what was submitted, it appears that the structure is located in a corner of the Weidauer parcel.

and application of a zoning ordinance may be derived from “the general purpose of the ordinance.” *Patterson v. Utah County Bd. of Adjustment*, 893 P.2d 602, 606 (Utah Ct. App. 1995), *see also Town of Alta v. Ben Hame Corp.*, 836 P.2d 797, 801 (Utah Ct. App. 1992).

B. Interpreting and Applying Cedar Fort’s Setback Ordinances.

There is no question that the Town’s Planning and Zoning Ordinance requires that structures be setback from front, rear, and side property lines. *See Town of Cedar Fort Planning and Zoning Ordinance*, § 11. The setback requirements, in fact, are the same regardless of the zoning designation for the property. *See Id.* (all zoning designations refer back to § 11(B) for setback requirements). In general, setback and yard area requirements promote the public welfare by allowing more open spaces between structures for landscaping, privacy, and noise control. Such requirements also generally promote more attractive and pleasing development, and allow access for emergency equipment.² Setback requirements also reduce the impacts that a building may impose on neighboring properties by casting shadows, restricting views, and causing stormwater runoff or other invasions of dust and debris.³

With an understanding of the general purpose the setback requirement is intended to achieve, the focus turns to the language of the ordinance, which should be interpreted to accomplish that purpose. The language at issue reads as follows:

Every dwelling will have a minimum of 10 feet between the dwelling and the side yard lot line and will have a total of at least 24 feet for both side yards combined. Other buildings or storage sheds will have the same side clearance.

Town of Cedar Fort Planning and Zoning Ordinance, § 11(B)(3). This subsection establishes the side yard requirements for all zones. The minimum allowable distance between any structure and a side lot line is 10 feet. The subsection anticipates three types of structures: dwellings, buildings, and storage sheds. The terms “dwelling” and “building” are defined, and it can be said that while every “dwelling” is a “building,” not every “building” is a “dwelling.”⁴ The term “storage shed” is not defined, but it must be presumed that the term was used advisedly, and was intended to have meaning within the ordinance.

There is no question that a residential dwelling or any other fully enclosed building would be required to comply with the setback. There is also no question that a “storage shed” must comply as well. The ordinance implies that there is a difference between structures that are “buildings”

² *See* EDWARD H. ZIEGLER, ET AL., RATHKOPF’S THE LAW OF ZONING AND PLANNING, § 53:2 (2006); *see also Gorieb v. Fox*, 274 U.S. 603, 47 S.Ct. 675 (1927), (U.S. Supreme Court upheld setback ordinances as valid means to promote public welfare).

³ It is understood that not all of the factors supporting setback requirements would necessarily apply to the structure proposed by the Weidauers.

⁴ A “Dwelling” is “[a]ny building which is used for residential purposes, except a hotel, tourist court, boarding or rooming house, rest home, child care home, batching apartment or trailer house and the like.” A “Building” is [a]ny structure enclosed on two or more sides, built for the support, shelter, or enclosure of persons, animals, chattels, or property of any sort.” Town of Cedar Fort Planning and Zoning Ordinance, § 15

and those that are “storage sheds.” Since there is no definition provided in the ordinance, the common, ordinary meaning of the term should be used. The word “shed” is defined as follows:

- A large low structure often open on all sides. (*The American Heritage Dictionary of the English Language, 4th Ed.*, (2006))
- A slight or rude structure built for shelter, storage, etc; a large, strongly built structure, often open at the sides or end. (from *Random House Unabridged Dictionary*, (2006))
- A slight or temporary structure built to shade or shelter something; a structure usually open in front; an outbuilding; a hut; as, a wagon shed; a wood shed. (*Webster’s Revised Unabridged Dictionary* (1998)).⁵

Since “shed” is a common word, most reasonable people would agree as to what a “shed” would be. Along the same lines, “storage” is also commonly-used word, and so a “storage shed” is a structure, which could be open on all sides, built to shade or shelter something. The Town Council minutes refer to the Weidauer structure as a “hay barn” or “horse shed.” Such structures are relatively common in rural areas, and are intended to protect feed or livestock from the elements.

Thus, the ordinance requires structures that are “buildings or storage sheds” be set back at least 10 feet from the side property line. The term “storage shed” must be read as including something other than a “building,” otherwise the term is only surplus and has no meaning. Such an outcome should be avoided, as all terms of an ordinance should be given meaning and effect. In order to give the term “storage shed” relevance and meaning, it must include those structures that do not necessarily fit the definition of “building;” in other words structures which are intended for storage or protection of property, and which may have fewer than two walls. Such structures must meet the Town’s side yard requirements.

This interpretation fulfills the purpose of the ordinance, by bringing most, if not all, structures within the required setbacks. It also serves a valid public purpose by reducing the impact a structure may have on neighboring properties. It should be noted that the ordinance for rear yard setbacks reads differently, and establishes a 10-foot minimum setback for “accessory buildings,”⁶ and a 30-foot setback for dwellings. There is no provision in that ordinance for “buildings” or “storage sheds,” which leads to the conclusion that rear-yard setbacks only apply to dwellings or accessory buildings, but not to other structures. For the purposes of this Opinion, however, it is understood that a rear yard setback is not an issue for the Weidauer structure.

Thus, the Town of Cedar Fort may apply its side yard setback ordinance to the Weidauer’s structure. The Town’s ordinance includes storage sheds that do not otherwise meet the definition

⁵ The word “shed” also has several other meanings, such as “cast off” “pour out” or “emit,” etc. which are not relevant to this Opinion.

⁶ An “accessory building” is defined as “[a] subordinate building the use of which is incidental to that of a main building.” In other words, an accessory building can only exist when there is a “main” building to which the accessory building is subordinate. Structures that are not dwellings or accessory buildings are not included in the rear yard ordinance.

of “building.” This interpretation is necessary to give meaning and effect to all of the terms of the statute, and to carry out the purposes of the setback requirements.

Conclusion

The Town’s side yard setback ordinance includes “storage sheds” in addition to “buildings.” Using standard guidelines to interpret and apply ordinances, the term “storage shed” must include structures that are not “buildings.” Otherwise, the term is meaningless surplus language. In order to give meaning and effect to all terms, and to carry out the general purposes of the ordinance, the term “storage shed” must be interpreted using its common, ordinary meaning of a structure used to shelter property, which may or may not be enclosed. The Weidauer’s structure appears to meet that definition, and, as a “storage shed,” is subject to the side yard setbacks required in the Town’s Planning and Zoning Ordinance.

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Office of the Property Rights Ombudsman

NOTE:

This is an advisory opinion as defined in Utah Code Annotated, §13-43-205. 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.