Advisory Opinion 257

Parties: Steve Christensen / Washington County

Issued: June 14, 2022

TOPIC CATEGORIES:

Nonconforming Uses & Structures

Interpretation of Ordinances

Prior ordinances that do not plainly restrict a particular use, or are ambiguous, should be interpreted in favor of an asserted use for purposes of establishing a legal nonconforming right. Establishing a particular legal use of property under prior ordinances is not precluded merely by the fact that an occasional illegal use of the property may have also occurred during the same period.

The landowner has a cabin in the Forest Residential Zone serving as income property used as a short-term rental by families as well as by certain groups of unrelated persons. The County's prior ordinances did not plainly restrict the use of single-family dwellings by one family as a short-term rental, but multi-family use was not permitted, and owner-occupied short-term rental was only allowed with a conditional use permit. The landowner therefore has a legal nonconforming use to continue short-term rental of the property to a single family as a permitted use despite current County ordinances additionally restricting short-term rentals. The County, however, may enforce its ordinances against any continued illegal multi-family use of the property.

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ADVISORY OPINION

Advisory Opinion Requested By:	Steve Christensen
Local Government Entity:	Washington County
Type of Property:	Residential
Date of this Advisory Opinion:	June 14, 2022
Opinion Authored By:	Richard B. Plehn, Attorney Office of the Property Rights Ombudsman

ISSUES

(1) Was use of a single-family dwelling as a short-term rental historically a permitted use in the County's Forest Residential Zone prior the County enacting certain restrictions on short-term rentals in recent years? and, if so,
(2) May the County subject the property owner to its current short-term rental ordinance?

SUMMARY OF ADVISORY OPINION

In reviewing claims of a legal nonconforming use, if the plain language of applicable prior ordinances do not plainly prohibit the asserted use, or are ambiguous, the land use authority must interpret in favor of the use for purposes of establishing a legal nonconforming right. Additionally, the establishment of a particular legal use of property under prior ordinances is not precluded merely by the fact that an occasional illegal use of the property may have also occurred during the same period.

In this case, the County's prior ordinances did not plainly restrict the short-term rental of single-family dwellings in the Forest Residential Zone during the applicable period, though such permitted rental use was necessarily limited to use by one family, as opposed to a multi-family rental, or owner-occupied bed-and-breakfast inns. Here, the property is not owner occupied, and appears to have been historically rented both to single families as well as certain groups of unrelated persons.

It is undisputed that the County's current ordinances will not allow for short-term rental of the property. However, because the County's prior ordinances did not plainly restrict the short-term rental use of a single-family dwelling by one family at the time rental use of the property began, the owner has a legal nonconforming use for one-family short-term rental of the property that is not subject to existing County ordinances that additionally restrict short-term rentals. The property owners may therefore continue to rent the property to single families, and the County may not subject the rental to current regulations that conflict with that established legal use. As the use of a single-family dwelling as a short-term rental for multiple families was never allowed under prior ordinances, the County may enforce its ordinances against any continued illegal use of the property other than as a one-family short-term rental.

EVIDENCE

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

1. Request for an Advisory Opinion, submitted by Steve Christensen, received on December 8, 2022.
2. Washington County Response to Advisory Opinion Request, submitted by Victoria H. Hales, Deputy County Attorney, dated January 7, 2022.
3. Steve Christensen Reply to County's Response, dated February 7, 2022.

BACKGROUND

Steven and Denise Christensen purchased a lot in the Pine Valley Ranchos subdivision in 2002, located in the unincorporated area of Washington County called Pine Valley, and built a single-family cabin on the lot in about 2003. The subdivision is in the Forest Residential zone ("FR Zone), 13,500 sq. ft. minimum lot size.[1]

Beginning in approximately August of 2012, the Christensen's began renting the cabin as a short-term rental. The cabin is not owner occupied; Mr. Christensen is retired, and states that the short-term rental is an important part of his income. Very little information is provided by the Christensen's about how the cabin was rented, or who it was rented to, except that they used the rental services Airbnb and Vrbo. As best as can be discerned from the information made available by the owner's Airbnb listing, the cabin appears to accommodate up to 12 guests.[2] The

[1] While County ordinances provide that "zone" is synonymous with "district," County ordinances historically defined "districts" as "portion[s] of the area of a zone as shown on a map attached to the zoning ordinance and given a district name. WASHINGTON COUNTY CODE Ch. 28, Section 22 (1978). The Christensen property is therefore considered to be in the FR-13.5 district of the larger FR Zone.

[2] *See* Pine Valley, Utah Cabin, AIRBNB.COM, available at https://www.airbnb.com/rooms/578299?location=Pine%20Valley%2C%20Utah%2C%20United%20States&federated_search_id=211bc684-f6e1-4087-8858-333d6ec69d89&source_impression_id=p3_1649712316_YvbEXRXOqdIGPOCN.

Christensen's Vrbo listing likewise states that the cabin can sleep 12 in a total of four bedrooms.[3] Several included guest reviews almost all refer to rentals by families.

In 2016, the County amended its land use ordinances to add "Tourist Homes" as a permitted use in the FR Zone. In order to be considered a Tourist Home under the County's land use ordinances, one must be registered with the state, have a county business license and have completed a tourist home rental application, among other requirements. The Christensen's have never obtained a County business license or submitted a tourist home rental application.

In October of 2021, the County enacted a Short Term Rental ("STR") ordinance that added additional restrictions to short-term rentals, including that the property be the primary residence of the owner. On November 19, 2021, the County sent a letter to the Christensen's informing them that they were in violation of both the Tourist Homes Policy and the County's new STR ordinance. The County asked Mr. Christensen to obtain a license pursuant to the ordinance. This will not be possible under the current STR ordinance as the cabin is not the Christensen's primary residence.

Mr. Christensen alleges that when he then asked the County for an application to be "grandfathered" under prior ordinances, the County responded that it had no such application, and was not grandfathering anyone for the new license.

Mr. Christensen filed a Request for an Advisory Opinion on December 8, 2021 to review whether the County's prior ordinances would have allowed for the short-term rental of his cabin, and if he therefore would be entitled to a legal nonconforming use in renting his cabin.

ANALYSIS

I. Timeliness and Appropriateness of the Request

In responding to the Request for an Advisory Opinion, the County initially challenges the timeliness and appropriateness of the Request, arguing that the Christensen's have not applied for or sought any County approvals for the short-term rental during the times claimed, and the Request is based merely on the November 19, 2021 letter informing the Christensen's of the short-term rental violation. The County believes that because it asked the owners to complete a short-term rental application and obtain a business license to come into compliance with the 2021 rules, the Request for an Advisory Opinion is premature because the Christensen's have not submitted the responsive application and subsequently been denied or rejected.

We disagree with the County and believe its position overlooks the asserted basis of the Christensen's request. The Christensen's argue that short-term rental of their cabin was legal at the time they undertook that use, and believe that they are therefore entitled to a legal nonconforming use under state law. The Christensen's argument, if true, would make applying for any permissions under the current regulatory scheme unnecessary, because they would be considered to already have a permitted use.

[3] *See* Over Looking Pine Valley With Beautiful Views and Things To Do, VRBO.COM, available at https://www.vrbo.com/512351.

Further, the Christensen's claim that they did, in fact, attempt to "apply" to have their legal nonconforming use recognized by the County. Not only did the County respond that no such application exists, the Christensen's allege that the County affirmatively told them that they were not allowing any grandfathered uses for the short-term rental requirements. That considered, the Christensen's appear to have tried to comply with whatever application procedure the County has in place regarding legal nonconforming uses, and their request was received and acted upon by the County in the form of a denial.

We therefore believe the issue is appropriate and timely for an Advisory Opinion on the question of whether the County's prior ordinances allowed for short-term rental of the cabin. However, whether the Christensen's have established that they have a legal nonconforming use under state law is yet to be determined, as the Christensen's have yet been given an opportunity to present any evidence of their use to the County. Based on the County's own conclusions in its submissions for this Advisory Opinion, we assume that this burden can be met.

II. Nonconformity Rights

A legal nonconforming, or "grandfathered" use means "a use of land that: (a) legally existed before the current land use designation; (b) has been maintained continuously since the time the land use ordinance regulation governing the land changed; and (3) because of one or more subsequent land use ordinance changes, does not conform to the regulations that now govern the use of the land."[4]

The property owner has the burden of establishing the legal existence of a legal nonconforming use which requires both a factual determination, and a legal interpretation. The County does not appear to dispute the fact that the Christensen's have rented their cabin since approximately 2012. It is also undisputed that the cabin is not owner occupied. The dispute therefore lies in whether the rental of the Christensen's cabin at that time it began would have been a legal use without any additional permission from the County.

As such, we view our task as simply a question of interpreting the uses permitted under the County's prior ordinances. In reviewing whether local ordinances permit a particular land use, a land use authority is to apply the plain language of applicable land use ordinances, and if a land use regulation does not plainly restrict a particular use, the land use authority must interpret and apply the land use regulation to favor the use.[5] This is because, as "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."[6]

Therefore, in reviewing prior versions of the County's ordinances, if the applicable ordinances do not plainly prohibit the short-term rental of a single-family dwelling in the FR-13.5 district, the County must consider the use as permitted for purposes of nonconforming rights.

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[4] UTAH CODE § 17-27a-103(47).
[5] UTAH CODE § 17-27a-308.
[6] *Patterson v. Utah County Bd. of Adjustment*, 893 P.2d 602, 606 (Utah Ct. App. 1995).

III. Legality of Short-term Rentals under Prior Ordinances

The County briefly reviews the history of applicable land use ordinances for the FR 13.5 Zone during the lifetime of the property. Comprehensive revisions were made to the zoning ordinances in 2004, which were the zoning ordinances in effect during the relevant period when the Christensen's began using their cabin for short-term rentals in 2012.

The County's 2004 ordinances provided in the FR Zone a selection of permitted uses, as well as a list of conditional uses. Conditional uses are those uses which, because of potential impacts, may not be compatible without certain conditions to mitigate or eliminate detrimental impacts.[7]

The 2004 County ordinances provided, in the FR Zone, for the following permitted uses:

- Accessory buildings and uses after a building permit has been issued for a permanent dwelling;
- Agriculture;
- Residential facility for persons with a disability; and
- Single-family dwellings for year-round use.

Additionally, the following conditional uses were provided:

- Bed and breakfast inn;
- Lodges and dude ranches (only applicable to FR 5 or FR 10 districts);
- Overnight camping facilities;
- Private recreation and facilities;
- Public buildings;
- Public utilities; and
- "Other uses approved by the Planning Commission as being in harmony with the intent of the zone and similar in nature to the above listed uses."

The County's position is that, at the time the Christensen's began renting their cabin in 2012, the use of the cabin for short-term rental was considered a "lodge" under the 2004 County ordinances, which was not permitted in the FR 13.5 zone, or, alternatively, a bed and breakfast inn, which required a conditional use permit.

In 2016, the County added "Tourist Homes (County business license required)" as a permitted use in the FR Zone. The County's land use ordinance defined Tourist Home in a way that only allowed short-term rental as a permitted use if a number of requirements were met, including obtaining a county business license, registering with the state, and completing a tourist home rental application.[8] It is undisputed that the Christensens's never obtained a county business license or

[7] WASHINGTON COUNTY CODE § 10-18-1 (2004).

[8] TOURIST HOME: An establishment used for short term dwelling purposes in which the entire dwelling or rooms, with or without meals, are rented or otherwise made available to transient guests for compensation; including establishments listed, or advertised online, or known as bed and breakfasts. All tourist homes shall be required to register with the state, obtain a business license and complete the tourist home rental application. The licensee for tourist homes shall be the home owner who shall be deemed the responsible party for the tourist home. All tourist

completed the rental application required by the 2016 ordinances. It is therefore the County's position that there is no legal nonconforming right for the Christensen's cabin rental as a Tourist Home under the 2016 ordinances as it did not meet many of the substantive provisions of that permitted use, as defined.

We agree with the County that because the Christensen's' never obtained County business license or complete a short-term rental application, rental of the Christensen's cabin did not qualify as a permitted use under the 2016 "Tourist Home" provisions during that time. However, we do not believe that the earlier 2004 ordinances, effective at the time the cabin began to be rented in 2012, plainly restricted *all* short-term rental uses of a single-family dwelling without a conditional use permit in the FR-13.5 district. Namely, the FR Zone permitted the short-term rental of a single-family dwellings as a permitted residential use, so long as occupied by one family, not multiple families.

We turn to the permitted uses, which include "single-family dwellings for year-round use." A "single-family dwelling" is a structure, not a use. Therefore, the County's ordinances appear to allow "year-round use" of single-family dwellings without much further elaboration. It can safely be inferred, from the title of the ordinance, that "residential use" may be permitted in the "Forrest Residential" Zone.[9]Turning to the County's definitions, "residential use" is defined as "[c]ustomarily includes overnight use of a room or rooms with independent facilities for sleeping combined with a private bath and/or kitchen." Unlike the definition of "residence,"[10] this definition of "residential use" appears not to be limited to permanent residents, only, but more generally allows "overnight use" of the structure so long as it features facilities for sleeping, bathing, and eating. Nonresidents, then, such as "temporary guests"—defined as "Guests, who are not family members, whose duration of visit shall be less than thirty (30) days during a consecutive one hundred eighty (180) day period"—do not appear to be plainly restricted.[11] In other words, use of

homes must have a managing agent who will serve as the primary contact for the tourist home. All tourist homes shall be properly managed. As a condition to holding a valid business license for a tourist home, or homes, the licensee agrees to provide or arrange for adequate property management services including; housekeeping, yard maintenance, structural maintenance and compliance with general building health and safety requirements, trash collection which insures that trash cans are not left on the street for any period in excess of twenty four (24) hours, and assurance and enforcement of guest meeting the requirements of good neighbor practices. Good neighbor practices includes: no loud music, unruly parties, guest vehicles shall be parked on off street parking and be courteous to neighbors. Failure to comply by the above mentioned rules may result in a citation, fines and/or the business license being revoked. COUNTY ORD.10-4-1 (2016).

[9] *See, Blaisdell v. Dentrix Dental Sys.*, 2012 UT 37, ¶ 10, 284 P.3d 616, 620 (Holding that "[t]he title of a[n ordinance] is not part of the text of [an ordinance], and absent ambiguity, it is generally not used to determine [an ordinance]'s intent. However, it is persuasive and can aid in ascertaining [the ordinance's] correct interpretation and application"); *See also, Price Dev. Co. v. Orem City*, 2000 UT 26, ¶ 23, 995 P.2d 1237, 1246 (holding that legislative preambles or policy sections are not substantive parts of an ordinance, but "provide guidance to the reader as to how the [ordinance] should be enforced and interpreted," and "may be used to clarify ambiguities

[10] Defined as "any building or portion thereof where an individual is actually living at a given point in time and intends to remain, and not a place of temporary sojourn or transient visit." WASHINGTON COUNTY CODE 10-4-1 (2004). Contrast this with "temporary guests," which are as "Guests, who are not family members, whose duration of visit shall be less than thirty (30) days during a consecutive one hundred eighty (180) day period." *Id.*

[11] This is consistent with *Brown v. Sandy City Bd. Of Adjustment*, 957 P.2d 207 (Utah Ct. App. 1998), where the Utah Court of Appeals concluded that, in absence of any plain restriction on duration of use, a city's zoning ordinance did not prohibit the leasing of property for less than thirty days. In that case, Sandy City's ordinance permitted use of a single-family dwelling, defined as allowing for occupancy by one family, and defining family as "an individual or two

a single-family dwelling by temporary guests is not inconsistent with residential use of a single-family dwelling under the County's 2004 ordinances.

However, while "single-family dwelling" is a structure, it also may reasonably be inferred as a qualifier to the allowable uses of the dwelling, in that use of a *single*-family dwelling is reasonably limited to use of the structure by one singular "family," and not use by multiple families.[12] Here, the County's 2004 ordinances defined "family" as one or more persons related by blood, marriage, adoption or guardianship, "or a group of not more than five (5) unrelated persons living together as a single nonprofit household keeping unit . . . ."

Because of this, and in construing the plain language of land use ordinances liberally in favor of the property owner, the County's 2004 ordinances for the FR-13.5 district's listed permitted use of "single-family dwelling for year-round use" does not, itself, exclude the short-term rental of a single-family dwelling to one family as a "residential use."

However, to the extent that a short-term rental use is captured in one of the County's other defined uses, particularly those listed as conditional uses in the FR zones, it must appropriately be defined to be a conditional use. In other words, "single-family dwellings for year-round use" may include short-term rental except where otherwise qualified as a "bed and breakfast inn," "lodge or dude ranch," "overnight camping facilities," or "Private recreation and facilities."[13] The County argues that the Christensens's use of the property should be considered either a "bed and breakfast inn" or "lodge."

"Bed and breakfast inn" is not defined by County ordinances. Where a statutory term is undefined, courts endeavor to determine its plain and ordinary meaning.[14] And while it could be

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or more persons related by blood, marriage or adoption, or a group not to exceed four unrelated persons living together as a single housekeeping unit." The ordinance prohibited a building from being used for any purpose or manner other than is included among the uses listed as permitted or conditional uses. Sandy City began to interpret this as prohibiting rental of any single-family dwelling for fewer than 30 days. The Court of Appeals rejected the city's interpretation, holding that the code specifically permitted use of a dwelling for *occupancy* by a single family, without any express durational limit. "Thus, if a single family occupies a home, the structure is being used as permitted." *Id.* at 211.

[12] In *South Weber v. Cobblestone*, 2022 UT App 63, the city in that case adopted an ordinance regulating short-term vacation rentals, requiring a conditional use permit and a business license. A property owner sought a legal nonconforming use for short-term rental of a residence in an agricultural zone in light of the new ordinances. The agricultural zone listed as a permitted use, "dwellings, one-family." The property owner argued that use of the property for short-term rental prior to the new ordinance was permitted as a "dwelling," because dwelling was merely defined as a "building designed and used for residential purposes." The Utah Court of Appeals rejected this argument, finding it focused only on the building as a structure itself rather than the structure's use, and wholly ignored the restriction that all dwellings located in the agricultural zone be limited to "one-family" dwellings. *Id.,* at ¶21.

[13] *See, for example, Town of Alta v. Ben Hame Corp.*, 836 P.2d 797, 802 (Utah 1992). That case involved regulations and circumstances very similar to this matter. Salt Lake County ordinances applicable to the property, adopted by Alta upon annexation, provided for three permitted uses in the Forest Recreation zone: (1) agriculture, (2) single-family dwellings, and (3) accessory uses and structures customarily incidental to a permitted use. However, the Court noted that not included in single-family dwelling were hotels, apartment hotels, boarding houses, lodging houses, mobile homes, tourist courts and apartment courts, which were separately defined uses under the ordinances. The Court ultimately concluded that, while the structure was a single-family dwelling, the use of the structure in that case met the broad definition of a lodging facility adopted by Alta, and held that using a single-family dwelling as a lodging facility did not constitute an "accessory use[] . . . customarily incidental to a permitted use" under the ordinances

[14] *Muddy Boys, Inc. v. DOC*, 2019 UT App 33, ¶ 16, 440 P.3d 741, 745.

argued that the rental of a single-family dwelling on a website like Airbnb quintessentially makes it a bed and breakfast (after all, "Airbnb" literally stands for "Air Bed and Breakfast"), a contrary argument could be made that what traditionally constitutes a bed and breakfast is both an element of owner occupancy, as well as the inclusion of a full breakfast by the host.[15] It is the experience of this office, however, that across Utah, municipalities have varied in their definitions of bed and breakfasts, with some hinging on owner occupancy,[16] while others not,[17] and yet others requiring a meal to be provided,[18] while optional in others.[19]

We conclude that the FR Zone, interpreted as a whole, provides guidance that the meaning of Bed and Breakfast inn at least anticipates an element of owner occupancy. As discussed, the FR zone allows use of single-family dwellings by single families. However, a Bed and Breakfast inn is called out as requiring a conditional use permit in order to mitigate or eliminate anticipated detrimental impacts. It is assumed, therefore, that use of a single-family dwelling as a bed and breakfast inn would have some additional impact beyond that use of the same dwelling by a single-family. Were the Christensen's to use the cabin as their primary residence, *and also* begin inviting other families as guests to come occupy available rooms of their cabin overnight for compensation, this would unquestionably add an additional impact to the property and surrounding uses.

At any rate, in absence of a definition by County ordinances, the reference in prior code to "Bed and Breakfast" is, at best, ambiguous, and must be interpreted favorably for the property owner's proposed use. In this case, that would mean that as the Christensen's short-term rental of their cabin since 2012 has been without owner occupancy or provided meals, it would *not* be considered a bed and breakfast requiring a conditional use permit, but rather a permitted use of their single-family dwelling for residential use by temporary guests.

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[15] *See, for example*, USATODAY.com, How is an Airbnb different from a B&B? Which is better for your vacation? https://www.usatoday.com/story/travel/hotels/2020/01/24/airbnb-vs-b-b-whats-difference-and-which-is-better-for-you/4552257002/.

[16] *See, for example*, CITY OF CEDAR HILLS CITY CODE § 10-2-1, "BED AND BREAKFAST FACILITY: A one-family dwelling, ***occupied by a residing family*** and containing one or more sleeping rooms intended for the occupancy by persons unrelated to the residing family on a short term basis (overnight and up to 2 weeks)" (emphasis added); *see also*, AMERICAN FORK CITY CODE § 17.4.608, Section 8 (Definitions): Bed and Breakfast: an ***owner-occupied*** lodging type offering up to 5 bedrooms, permitted to serve breakfast in the mornings to guests (emphasis added).

[17] *See, for example,* EAGLE MOUNTAIN MUNICIPAL CODE § 17.10.030 "Bed and breakfast facility" means a limited commercial activity conducted within a structure, which includes dining and bathroom facilities with sleeping rooms, on a residential scale for short-term guest rental. This definition will typically involve overnight accommodations, limited food services, parking facilities and open space in a natural setting.

[18] *See, for example,* PLEASANT GROVE CITY CODE §10-6-2: BED AND BREAKFAST: A residential building of historic or neighborhood significance in which not fewer than three (3) but not more than nine (9) rooms are rented out by the day, offering overnight lodgings to tourists, and where ***one meal shall be provided*** to overnight paying guests" (emphasis added); *see also* SALEM CITY MUNICIPAL CODE § 14-1-040(G) "'Bed and Breakfast Inn'--Any building which is used to provide temporary lodging ***and simple meals*** for no more than two or three days and nights to the traveling public" (emphasis added).

[19] *See, for example,* SARATOGA SPRINGS CITY CODE § 19.02.02(23): "'Bed and Breakfast' means a transient lodging establishment, generally in a single family dwelling or detached guesthouses which is owner or operator occupied, primarily engaged in providing overnight or otherwise temporary lodging for the general public for compensation, and where meals may or may not be provided"; *see also* SANTAQUIN CITY CODE § 10-2-2: "BED AND BREAKFAST HOME: A single-family dwelling with not less than two (2) and not more than eight (8) guestrooms where lodging, with or without meals, is provided for compensation with stays not to exceed twenty nine (29) days."

As for "lodge," the code defines "lodge" as a "***multiple*** family dwelling where lodging only is provided for compensation to persons related or unrelated" (emphasis added). Because the County defines "family" as "not more than five (5) unrelated persons," it seems that renting the Christensen's cabin at full capacity (apparently 12 guests) to a group of unrelated persons would make the use of the Christensen's property an illegal "lodge," as lodging *multiple* families—whether persons related or unrelated—for compensation.

The fact that the Christensen's may have illegally used their cabin as a "lodge" under the County's 2004 ordinances where rented to more than five unrelated persons does not negate the fact that it was also legally used for residential use where rented to single families under the same ordinances. For purposes of establishing a legal nonconforming use, it must only be shown that the particular *use* in question "legally existed" before a change in ordinances, and was maintained continuously,[20] not necessarily that the property itself was, in all respects, put only to that legal use.

The Christensen's bear the burden of establishing the existence of a legal nonconforming use. The Christensen's attempted to initiate a formal process with the Count to have a legal nonconforming right recognized, and were turned away because there was no such process. The Christensen's must have an opportunity to present their evidence to the County, however, the County appears to accept as true the Christensen's assertions that they began renting their cabin in 2012, and has also concluded from its investigation that the Christensen's cabin has not been owner occupied. Because the County's 2004 ordinances, in effect at that time, do not plainly restrict the short-term rental of a single-family dwelling not amounting to a bed-and-breakfast inn, and assuming the factual burden has sufficiently been met, the Christensen's should be considered to have a legal nonconforming use to rent their property on a short-term basis- to single families. This grandfathers their use to the extent it conflicts with the County's 2016 Tourist Home ordinances, and the recent short-term rental ordinances.

CONCLUSION

The County does not challenge the Christensen's assertions that they have used their cabin as a short-term rental continuously, beginning in 2012, and concedes that the cabin is not owner-occupied. Because the County's 2004 ordinances, in effect during the applicable period of the asserted use, do not plainly restrict short-term rental of single-family dwellings by one family as a permitted residential use, the Christensen's have met their burden of establishing a legal nonconforming use that is not subject to the County's subsequent changes to the law regulating short-term rentals.

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[20] UTAH CODE § 17-27a-103(47).

NOTE:

This is an advisory opinion as defined in Section 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. Additionally, a civil penalty may also be available if the court finds that the opposing party—if either a land use applicant or a government entity—knowingly and intentionally violated the law governing that cause of action.

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 and civil penalty provisions, found in Section 13-43-206 of the Utah Code, 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.