

Advisory Opinion 278

Parties: Shawn Cronquist / Cache County

Issued: November 7, 2023

TOPIC CATEGORIES:

Compliance With Land Use Regulations

Interpretation of Ordinances

A property owner's removal of large quantities of gravel, rock, and other non-soil materials to be sold through a landscaping company was not legally permissible in the applicable agricultural zone, as such activity is considered mineral extraction, which is prohibited. The owner obtained a site grading permit, which allows the owner to level a site in preparation for construction of a building by removing or adding fill, but which caps the amount of material which may be removed. The owner obtained a zoning clearance letter permitting him to level a building pad site, but never began construction, and continued to remove material in excess of the permit. While activity incidental to normal cultivation associated with agricultural operation might include some grading of the property in preparation of growing crops, the material would need to remain on the same lot to be exempted from mineral extraction regulations under the county's ordinances.

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ADVISORY OPINION

Advisory Opinion Requested By: Shawn Cronquist
Local Government Entity: Cache County
Applicant for land Use Approval: Crazy R. Longhorn Ranch
Type of Property: Agriculture
Date of this Advisory Opinion: November 7, 2023
Opinion Authored By: Marcie M. Jones, Attorney
Office of the Property Rights Ombudsman

ISSUE

Is removing and selling large quantities of gravel, rock, and other non-soil material from agricultural property (1) legally permissible as site grading incidental to agricultural use, or (2) unlawful mineral extraction?

SUMMARY OF ADVISORY OPINION

The property owner has been removing large quantities of gravel, rock, and other non-soil materials from his property which is located in the A10 Agricultural zone. The removed materials are later sold or used by the owner's landscape company. The owner maintains that the removal is necessary to prepare the property for growing crops to feed his cattle, which is a permitted agricultural use. Ultimately however, such excavation and removal are not permitted in the A10 zone.

First, the property owner has secured a site grading permit and maintains that this grants permission for excavation to make room for growing crops to feed his cattle. The language of the ordinance does not support this interpretation. A site grading permit allows the owner to level a site in preparation for construction of a building by removing or adding fill. Site grading caps the amount of material which may be removed at 1,500 cubic yards. Site grading is not intended for, and does not grant permission for, removal of material to prepare the ground for raising crops, nor does it address the normal cultivation associated with agricultural operations. The property owner obtained a zoning clearance letter permitting him to level a building pad site but has subsequently removed in excess of 1,500 cubic yards of material and not begun construction of the building. No additional material may lawfully be removed based on this site grading zoning clearance letter.

Second, the zoning code categorizes the action of extracting metallic or nonmetallic minerals as mineral extraction. The A10 Agricultural Zone does not permit this use. This mineral extraction section of code excepts materials relocated on-site from regulation, however. Therefore, activities incidental to normal cultivation associated with agricultural operation, which could include some grading of the property in preparation of growing crops, would be permitted as long as the material remains on the same lot or an adjoining lot owned by the same owner.

EVIDENCE

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

1. Request for an Advisory Opinion was received from Wayman Stodart and Brad Bearson on behalf of Shawn Cronquist, Crazy R. Longhorn Ranch on March 9, 2023.
2. Letter received from Taylor Sorensen on behalf of Cache County on April 3, 2023.
3. Submittal received May 24, 2023 from Brad H. Bearson on behalf of Shawn Cronquist.

BACKGROUND

The Property Owner has asked us to answer whether the property owner's actions of removing large quantities of gravel, rock and other non-soil material are (1) legally permissible as site grading incidental to agricultural use or (2) unlawful mineral extraction.

Shawn Cronquist, as Crazy R. Longhorn Ranch (the "Property Owner" or "Owner"), owns property located at 1929 Canyon Road in Cache County, Utah identified as Parcels #08-046-009 and #08-020-0009 in Cache County (the "Subject Property" or "Property"). The Property is zoned A10 Agricultural pursuant to Cache County Code 17.09.030 and according to the Owner, he is raising longhorn cattle onsite.

In 2020, the Owner approached Cache County regarding his desire to remove large quantities of fill material from the Property. He noted that gravel, rock and other non-soil material would be removed and offered for sale or use in several of the Owner's businesses, including Birch Canyon Landscape, Inc.

Long-term, continuous extraction of material is not a permitted use in the A10 zone. The Owner has nonetheless made several attempts to obtain some form of approval for his proposed use of the property.

First, Minor Mineral Extraction Operations of less than 5 acres are permitted in the A10 zone with approval of a Conditional Use Permit. Accordingly, Cache County instructed the Owner to apply for a Conditional Use Permit for mineral extraction which the Owner did. Following significant resistance from the public, the Owner withdrew his application noting that the application failed to accurately define the focus of his intentions for the Property.

Next, the zoning code permits removal of up to 1,500 cubic yards of material per parcel after securing a zoning clearance letter for site grading to prepare a pad site for building construction. The Owner divided the largest parcel into 16 separate parcels with the apparent intention of securing site grading clearance for removal of 1,500 cubic yards from each of the individual

parcels. However, the division did not provide the Owner with the anticipated benefits under County Code and the property was recombined as one parcel a few months later.

As an alternate path forward, the Owner next sought permission to grade a single site for a future building pad. As required by ordinance, the Owner secured a Zoning Clearance letter dated November 2020¹ approving Owner's request to perform site grading in connection with leveling a pad site for construction of a 12' x 24' loafing shed. As required in the Code, the County requires, among other issues not in dispute, no more than 1,500 cubic yards be removed from the parcel and monthly reporting and verification. To date, verification of material removed has not been provided and no additional zone changes, permits, permissions, or clearances for earth moving have been sought by the Owner or approved by the County. According to the record, construction of the loafing shed has not commenced.

In September of 2022, County staff became aware of significant, regular, recurring excavation and extraction activity on the Property. The record contains allegations that the Owner has been engaged in the extensive on-going excavation and extraction of gravel, soil and rock from the Property. For instance, neighbors allege that three to four bottom-dump loads were regularly taken on a daily basis and as many as twelve loads were hauled offsite by large dump trucks on numerous occasions. In response, the County issued the Owner a Notice of Violation in October 2022 advising the Owner that his actions violated the relevant County Code regulating this activity and informed him of the consequences for noncompliance with the Notice of Violation.

The County alleges that the gravel extraction, excavation, hauling, and site grading has led to surrounding property owners calling, writing letters, and generally expressing concern. The activities, allegedly, also have a negative effect on the environment. The work has caused massive changes to the topography of the properties, causing erosion and damage to the watershed as the hillside is excavated. The County alleges in the Notice that an excess of 1,500 cubic yards of material has already been removed from the Property. The Property Owner has not disputed this claim.

The Property Owner now maintains that the recent work done on the property is intended to create a hayfield for his cattle, and constitutes "grading incidental to agricultural activities" which he alleges is permitted in this zone, according to his interpretation of the zoning code. The Owner also maintains that his activities are *not* material extraction and excavation, and are therefore lawful and may continue.

On the other hand, the County maintains that for the excavation work to fall under "grading incidental to agricultural activities" as maintained the by the Property Owner, the excavated material may be moved to accommodate the growing of crops, but must remain on the property, and cannot be removed from the site. The County maintains that the removal of materials, in the amounts at issue here, is prohibited.

¹ It also appears that the Property Owner received a grading permit in connection with construction of a pole barn in September of 2014, which similarly limited excavation to 1,500 cubic yards. It is not clear from the record whether this site work was completed, and thus, the allowed material already removed from the site.

Accordingly, the Property Owner has requested this Advisory Opinion to determine whether the actions of removing gravel, rock, and other non-soil material are (1) legally permissible as grading incidental to agricultural use or (2) unlawful mineral extraction.

ANALYSIS

It is undisputed that the Owner has been removing large quantities of gravel, rock, and other non-soil materials from the Property. What is at dispute is whether this site work (1) is lawful, as site grading incidental to normal cultivation associated with agricultural operation, or (2) mineral extraction, which is not permitted in the A10 Agricultural zone.

County Code provides that “any uses that are not specifically permitted or conditionally permitted are prohibited.” CACHE COUNTY CODE 17.09.020(C)(2). Therefore, to be lawful, the excavation must fall into one of the permitted or conditionally permitted use categories.

I. Site Grading allows for removal of up to 1,500 cubic yards of material when leveling a pad site for construction of a building. Site grading does not allow extraction for activities incidental to normal cultivation associated with agricultural operation.

The Property Owner maintains that his removal of materials is to prepare the ground for growing crops to feed cattle he runs on the Property, and therefore “incidental to the normal cultivation associated with agricultural operations.” The Owner maintains that by securing a site grading permit, which allows grading for a building pad, but excludes “normal cultivation associated with agricultural uses” his actions are lawful. The Owner’s conclusion results from an incorrect reading of the County Code.

The Cache County Code 17.07.030(6420) defines site grading as follows:

SITE GRADING: the act of excavation or filling or combination thereof or any leveling to a smooth horizontal or sloping surface on a property in preparation for the construction of a building, *but not including normal cultivation associated with agricultural operation*. Excavation shall be less than one thousand five hundred (1,500) cubic yards per parcel. Additional excavation may only be permitted with a variance.

(Emphasis added.) In plain English, with a site grading permit, the Property Owner can secure permission to remove up to 1,500 cubic yards of material to prepare a building pad site. “Normal cultivation associated with agricultural operations” is excluded from site grading, and is therefore not addressed in this use category.

We are therefore tasked with determining whether removing large quantities of gravel, rock, and other non-soil materials is permitted as “site grading” yet exempt from the 1,500 cubic yard material removal limit.

To make this determination, we look first to the plain language of the ordinance. Utah courts “interpret municipal and county ordinances and resolutions according to our well-settled rules of statutory interpretation and construction.” *Pinetree Assocs. v. Ephraim City*, 2003 UT 6, ¶ 13. Thus,

we “first examine the plain language of the ordinance and resort to other methods of interpretation only if the language is ambiguous.” *Gardner v. Perry City*, 2000 UT App 1, ¶ 17. An ordinance is ambiguous when “its terms remain susceptible to two or more reasonable interpretations.” *Marion Energy, Inc. v. KFJ Ranch P’ship*, 2011 UT 50, ¶ 15.

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

The Property Owner has not disputed the County’s allegations that the material excavated is well in excess of 1,500 cubic yards. Instead the Property Owner claims that the current site work is excepted from the material cap because the activity is properly categorized as “normal cultivation associated with agricultural operation.”

This interpretation is not supported by the plain language of the ordinance.

The definition of site grading allows for a property owner to level a building pad site by the excavation or filling of material, and limits the amount of material which can be removed from the property for such activity to 1,500 cubic yards. This definition specifically excepts “normal cultivation associated with agricultural operations.” The Property Owner attempts to stretch the language to mean “normal cultivation” is excluded from the site grading 1,500 cubic yard material removal maximum. This interpretation misses the purpose of the language. The language simply excludes “normal cultivation” from the definition of site grading entirely.

The ordinance could instead be worded as “Property owners may remove up to 1,500 cubic yards to prepare a building pad site by securing a zoning clearance letter for site grading. If a property owner is moving material for normal cultivation associated with agricultural operations, such activity does not constitute site grading as defined in the Code.” One would therefore need to look elsewhere in the code to determine whether and how grading the site in preparation for planting crops to feed livestock is regulated.

In this case, “normal cultivation associated with agricultural operations” is not specifically defined in the Code, so we look to plain and ordinary meaning. *Pinetree Assocs.*, 2003 UT 6, ¶ 13. The County maintains that “normal cultivation” taken at its face value and commonly accepted definition means the general and average harrowing, plowing, or other furrowing of an existing agricultural operation. The Property Owner interprets “normal cultivation” to mean the unlimited excavation of material as long as the owner eventually intends to plant crops to feed cattle on the property. We agree with the County’s proffered interpretation of the plain meaning. Indeed, if the Property Owner’s interpretation was used, the language governing site grading would become inoperative or superfluous. And Utah courts have been clear that ordinances are to be read to give each provision of the Code meaning, and to read ordinances in a way that doesn’t lead to an absurd result. *Perrine*, 911 P.2d at 1292.

Note here that the Property Owner does have permission to remove 1,500 cubic yards of material in connection with the construction of a loafing shed, in accordance with the Zoning Clearance

Approval secured in 2020.² The Approval includes the condition that “No more than 1,500 cubic yards of material shall be removed from the parcel and verification of the amount of material excavated from the site must be provided. To accomplish this, the applicant must provide a monthly report to the Development Services Office that accurately tracks and reports: (a) the number of truckloads of material removed from the site; and (b) the amount of material per truck; and (c) the total amount of cubic yards of material that has been removed from the site.”

The Property Owner has not disputed that well over 1,500 cubic yards of material has been removed and that monthly reports have not been submitted. Additionally, there appears to be no established plan to erect the proposed loafing shed. Therefore, even the removal of 1,500 cubic yards of material in connection with this site grading zoning clearance letter has not been conducted in accordance with the ordinance.

In conclusion, site grading is permitted in the A10 Zone with a zoning clearance letter. Such clearance gives the Owner permission to level a building pad site by removing or filling the site but caps the amount of material which may be removed to 1,500 cubic yards. Site grading does not include “normal cultivation associated with agricultural operations,” but, as explained above, the Owner’s activity in this case does not constitute normal cultivation associated with agricultural operations. Because it is acknowledged that an excess of 1,500 cubic yards of material has been removed, the Owner may not excavate from the site any additional material under the approved site grading zoning clearance letter.

II. Removal of metallic and non-metallic minerals or materials constitutes Mineral Extraction which is not lawful in the A10 Agricultural zone.

The County maintains that the work on the Property constitutes mineral extraction which is prohibited by Cache County Code 17.09.030(6400)³. Mineral Extraction is defined in the code as:

MINERAL EXTRACTION: The extraction of metallic or nonmetallic minerals or materials; including the accessory uses of rock crushing, screening, and storage of explosives; except where such excavation is for purposes of grading for a building lot or roadway, where grass sod is recovered to be used for landscaping, or where materials are excavated from a lot for use on that same lot or adjoining parcel by the owner of the property. Includes stone quarries and sand/gravel pits.

In other words, according to the plain language of the ordinance, removal of “metallic or nonmetallic minerals or materials” is mineral extraction. Mineral extraction is not a permitted use in the A10 zone. Based on the information presented to our Office, the ongoing removal of material from the Property meets the definition of mineral extraction, and such actions are therefore not lawful in this zone.

However, the definition does exclude “such excavation for purposes of grading for a building lot or roadway . . . or where materials are excavated from a lot for use on the same lot or adjoining

² Zoning clearance letter issued in November of 2022. Approval was also granted for a site grading permit in association with the installation of a pole barn on-site in 2014.

³ In the event that the extracted material includes top soil, such removal would require approval of a conditional use permit. CACHE COUNTY CODE 17.09.030(6410).

parcel by the owner of the property.” In plain English, grading for a lot or roadway is not excavation and material moved from one location to another on the same property or an adjoining lot owned by the same entity is not considered excavation. Therefore, the Owner may grade the site in order to cultivate crops for livestock, but must keep all of the material onsite or on an adjoining property owned by the same party.⁴

In conclusion, extracting metallic or nonmetallic minerals or materials constitutes mineral extraction and is not permitted in the A10 zone. It is not lawful to remove material from the Property for off-site sale as landscaping materials.

CONCLUSION

The property owner has been removing large quantities of gravel, rock, and other non-soil materials from his property which is located in the A10 Agricultural zone. The removed materials are later sold or used by the owner’s landscape company. The owner maintains that the removal is necessary to prepare the property for growing crops to feed his cattle, which is a permitted agricultural use. Ultimately however, such excavation and removal are not permitted in the A10 zone.

First, the property owner has secured a site grading permit and maintains that this grants permission for excavation to make room for growing crops to feed his cattle. The language of the ordinance does not support this interpretation. A site grading permit allows the owner to level a site in preparation for construction of a building by removing or adding fill. Site grading caps the amount of material which may be removed at 1,500 cubic yards. Site grading is not intended for, and does not grant permission for, removal of material to prepare the ground for raising crops, nor does it address the normal cultivation associated with agricultural operations. The property owner obtained a zoning clearance letter permitting him to level a building pad site but has subsequently removed in excess of 1,500 cubic yards of material and not begun construction of the building. No additional material may lawfully be removed based on this site grading zoning clearance letter.

Second, the zoning code categorizes the action of extracting metallic or nonmetallic minerals as mineral extraction. The A10 Agricultural Zone does not permit this use. This mineral extraction section of code excepts materials relocated on-site from regulation, however. Therefore, activities incidental to normal cultivation associated with agricultural operation, which could include some grading the property in preparation of growing crops, would be permitted as long as the material remains on the same lot or an adjoining lot owned by the same owner.

Jordan S. Cullimore, Lead Attorney
Office of the Property Rights Ombudsman

⁴ Subject to other requirements in state law and local ordinances. For instance, according to Cache County Code 15.32.30 a land disturbance permit is required to disturb 5,000 square feet or more of land. However, Cache County does state in the record that “The excavation and grading of earth material on properties associated with [the Property] could be associated with normal cultivation of an agricultural operation, as long as the material remains on these contiguous parcels.” Cache County / Shawn Cronquist, Notice of Violation dated October 18, 2022, page 4 of 6.

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.

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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 § 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.