

# Advisory Opinion #287

Parties: Kamas 3530 LLC; Summit County

Issued: May 28, 2024

## TOPIC CATEGORIES:

**Legal non-complying structure  
Interpretation of Ordinances**

State statute allows for the continuation of noncomplying structures and gives only two scenarios in which a County may prohibit the reconstruction of a noncomplying structure – (1) written notice that the structure is uninhabitable and failure to repair within six months and (2) voluntary demolition of the majority of the structure. The facts at hand do not fit either of these scenarios, as while some portion of the structure had been voluntarily demolished, it was not a majority as anticipated by the statute. Because the property owner’s removal of the dilapidated porch addition did not amount to a demolition of the majority of the structure, the County, therefore, may not lawfully prohibit reconstruction of the demolished addition.

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### ADVISORY OPINION

Advisory Opinion Requested by: Blake Kapp

Local Government Entity: Summit County

Property Owner: Kamas 3530 LLC

Type of Property: Residential

Date of this Advisory Opinion: May 28, 2024

Opinion Authored By: Marcie M. Jones, Attorney  
Office of the Property Rights Ombudsman

### Issue

May the County prohibit reconstruction of an addition to a legal noncomplying structure that had been voluntarily demolished?

### Summary of Advisory Opinion

The property owner owns a cabin in Summit County. The cabin is a legal noncomplying structure because it was built in the 1960's before the County adopted land use regulations. As such, the cabin is "grandfathered" and may remain despite not meeting current setback requirements.

The owner tore down an enclosed porch addition which was dilapidated due to lack of maintenance and is now seeking a building permit to reconstruct the same. As with the rest of the cabin, the proposed reconstruction cannot meet current side yard or stream setbacks. In accordance with its ordinances, the County is requiring the Property Owner to either meet these setback requirements or secure a variance from the Board of Adjustment.

State statute allows for the continuation of noncomplying structures and gives only two scenarios in which a County may prohibit the reconstruction of a noncomplying structure – (1) written notice that the structure is uninhabitable and failure to repair within six months and (2) voluntary demolition of the majority of the structure. The facts at hand do not fit either of these scenarios, as while some portion of the structure had been voluntarily demolished, it was not a majority as anticipated by the statute. Because the property owner's removal of the dilapidated porch addition did not amount to a demolition of the majority of the structure, the County, therefore, may not lawfully prohibit reconstruction of the demolished addition.

## **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 Advisory Opinion submitted by Blake Kapp on September 19, 2023.
2. Response submitted by Margaret H. Olson, Summit County Attorney, dated October 9, 2023.
3. Additional information submitted by Blake Kapp dated November 2, 2023.

## **Background**

Kamas 3530 LLC (Property Owner) owns property in Eastern Summit County Planning District (County). There is a log cabin (Cabin) on the property which was apparently built in the early 1960's before the County adopted any land use regulations. Both parties agree that because it was built prior to the adoption of setback and other requirements, the Cabin is a legal noncomplying structure.

The Cabin structure included an enclosed porch addition which was apparently built after construction of the main Cabin. Both parties discuss the addition as though it was similarly built before the County adopted land use regulations, so we will treat it as such.

In 2022 the Property Owner demolished the addition because it had suffered water and rodent damage due to an apparent lack of maintenance by previous owners. According to the Property Owner, the demolished addition was approximately 12' by 30'. The remaining Cabin is 30' by 30' with a loft above. Therefore, the addition was less than a majority of the overall structure.

The Property Owner recently applied for a building permit to rebuild the torn-down addition. The current County Code (Code) requires that structures be at least 12 feet from any property line and 100 feet from the high-water mark of any perennial stream. The Cabin does not meet current Code as it is approximately 15 feet from Beaver Creek and is closer than 12 feet from the side property line.

The County maintains that because the proposed addition would not meet current side yard or stream setbacks, the building permit for cannot be issued without a first securing a variance from the County's Board of Adjustment.

The Property Owner maintains that the entire structure is a legal noncomplying structure, and therefore, the addition is "grandfathered" and may be rebuilt without securing a variance.

The Property Owner has requested this Advisory Opinion to answer whether the addition is "grandfathered" as part of a legally noncomplying structure which may be rebuilt without further paperwork.

## **Analysis**

The heart of this dispute is whether the proposed addition lost its "grandfathered" protections when it was voluntarily demolished.

According to state statute, the Cabin is a legal noncomplying structure, as was the addition before it was torn down. Utah Code Section 17-27a-103(45) defines "noncomplying structure" as a

structure that: (a) legally existed before the structure’s current land use designation; and (b) because of one or more subsequent land use ordinance changes, does not conform to the setback, height restrictions, or other regulations, excluding those regulations that govern the use of land.”

Now that we’ve established that the Cabin is a legal noncomplying structure, we next look to state law restricting regulation of such “grandfathered” buildings. These regulations are found in Utah Code Section 17-27a-510, which provides in part that “Except as provided in this section, a nonconforming use or a noncomplying structure may be continued by the present or a future property owner.” Utah Code § 17-27a-510(1)(a). In other words, once established, a noncomplying structure may remain except for those circumstances addressed in the statute.

The statute next specifies two scenarios whereby the County may prohibit reconstruction. The first scenario is if the structure is rendered uninhabitable and not repaired after receiving written notice from the County. Utah Code Section 17-27a-510(3)(b) reads “A county may prohibit the reconstruction or restoration of a noncomplying structure or terminate the nonconforming use of a structure if: (i) the structure is allowed to deteriorate to a condition that the structure is rendered uninhabitable and is not repaired or restored within six months after the day on which written notice is served to the property owner that the structure is uninhabitable and that the noncomplying structure or nonconforming use will be lost if the structure is not repaired or restored within six months.” This section does not apply given the facts because the County has not issued a letter to the Property Owner indicating that any portion of the Cabin was uninhabitable.

And the second scenario the statute addresses is where the property owner voluntarily demolishes *a majority* of the noncomplying structure. Utah Code Section 17-27a-510(3)(b) reads “A county may prohibit the reconstruction or restoration of a noncomplying structure or terminate the nonconforming use of a structure if: . . . (ii) the property owner has voluntarily demolished a majority of the noncomplying structure or the building that houses the nonconforming use.” According to the Property Owner, the torn-down addition was not *the majority* of the noncomplying structure. Again, this portion of the statute does not apply given the facts.

The state statute gives only these two scenarios – (1) written notice that the structure is uninhabitable and failure to repair within six months and (2) voluntary demolition of the majority of the structure – for a County to prohibit reconstruction. Outside these two scenarios, “grandfathering” protects reconstruction of the structure.

The Utah Supreme Court has given us instructions on how to interpret state statutes.

It is well settled that when faced with a question of statutory interpretation, “our primary goal is to evince the true intent and purpose of the Legislature.” “The best evidence of the legislature's intent is 'the plain language of the statute itself.’” “Thus, “[w]hen interpreting a statute, we assume, absent a contrary indication, that the legislature used each term advisedly according to its ordinary and usually accepted meaning.” *Additionally, we “presume [] that the expression of one [term] should be interpreted as the exclusion of another.” We therefore seek to give effect to omissions in statutory language by presuming all omissions to be purposeful.*

*Marion Energy, Inc. v. KFJ Ranch P'ship*, 2011 UT 50, ¶ 14 (cleaned up).

Accordingly, because the statute includes two scenarios whereby reconstruction may be prohibited, we must interpret this as an exclusion of scenarios not mentioned.

To summarize, the state statute gives only these two scenarios – (1) written notice that the structure is uninhabitable and failure to repair within six months and (2) voluntary demolition of the majority of the structure – for a County to prohibit reconstruction. The County, therefore, may not lawfully prohibit reconstruction with other scenarios, including where a minority portion of the structure was demolished.

The County must, therefore, allow the Property Owner to reconstruct the addition.

We note that any County Code prohibiting reconstruction of a legal noncomplying structure outside the two scenarios mentioned in state statute would be unenforceable. According to Utah Code Section 17-27a-104(2), “a county may not impose a requirement, regulation, condition, or standard that conflicts with a provision of this chapter, other state law, or federal law.”

We also note that state law gives the County greater leeway to regulate *nonconforming uses*. Utah Code § 17-27a-510(2) reads: “the legislative body may provide for (a) the establishment, restoration, reconstruction, extension, alteration, expansion, or substitution of *nonconforming uses* upon the terms and conditions set forth in the land use ordinance; . . .” and “the termination of a *nonconforming use* due to its abandonment.” (emphasis added). However, the Cabin and the addition are legal noncomplying structures rather than nonconforming uses, so these sections do not apply.

### **Conclusion**

State statute gives only these two scenarios – (1) written notice that the structure is uninhabitable and failure to repair within six months and (2) voluntary demolition of the majority of the structure – for a County to prohibit reconstruction of a legal noncomplying structure. The facts at hand do not fit these scenarios. The County, therefore, may not lawfully prohibit reconstruction of the demolished addition.

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Office of the Property Rights Ombudsman

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