Advisory Opinion #230

Parties: Coalville for Responsible Growth, and Neighbors / Coalville City

Issued: October 27, 2020

TOPIC CATEGORIES:

Compliance With Land Use Ordinances

Entitlement to Application Approval (Vested Rights)

Interpretation of Ordinances

The City's regulatory scheme for a Master Planned Development (MPD) supplements the provisions of the zoning district in which the MPD is located, and expressly allows certain types of developments, such as mixed-use planned developments including resort units and support accessory uses.

The plain language of the City's Agricultural Zone and MPD ordinance permits a proposed golf resort as an MPD for mixed use development with resort amenities, including overnight lodging, as support accessory uses. Structures proposed for nightly rental use are resort units and subject to applicable MPD development standards. The City Council, acting as the City's land use authority, must apply the MPD standards and make required findings to determine whether the proposal's configuration and amount of nightly rental resort units complies.

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ADVISORY OPINION (CORRECTED & REVISED)[1]

Advisory Opinion Requested By:	Coalville for Responsible Growth, and neighbors
Local Government Entity:	Coalville City
Applicant for Land Use Approval:	Wohali Partners, LLC
Type of Property:	Agricultural / Master Planned Development (MPD)
Date of this Advisory Opinion:	October 27, 2020
Opinion Authored By:	Richard B. Plehn, Attorney Office of the Property Rights Ombudsman

ISSUES

Is Wohali Partners, LLC entitled to approval of a land use application for a proposed Master Planned Development? Is the City of Coalville complying with the mandatory provisions of applicable land use ordinances?

SUMMARY OF ADVISORY OPINION

A land use authority must apply the plain language of land use regulations, and is bound by the terms and standards of applicable land use regulations in reviewing a land use application. Coalville City's regulatory scheme for a Master Planned Development (MPD) supplements the

[1] After the initial issuance of this opinion, this Office learned that the prior opinion analyzed and cited to an incorrect, outdated version of Coalville City's ordinances, which had been codified and published on the City's online code publishing website. *See generally*, COALVILLE MUNICIPAL CODE ("CMC") (Municode, 2014) (*available at* https://coalville.municipalcodeonline.com/book?type=ordinances#name=Preface. The correct and up-to-date version of the City's ordinances contain relevant and material differences between the outdated provisions cited in the original opinion; in particular, the ordinances governing Master Planned Developments. *See* Title 8, Chapter 6 (effective Aug. 30, 2019). These differences significantly affect the opinion's legal analysis. This Revised Opinion vacates and supersedes the previously issued opinion as the correct analysis of Coalville's existing land use ordinances as to the application in question.

provisions of the zoning district in which the MPD is located, and expressly allows certain types of developments, such as mixed-use planned developments including resort units and support accessory uses.

The plain language of the City's Agricultural Zone and MPD ordinance permits Wohali's proposed golf resort as an MPD for mixed use development with resort amenities, including overnight lodging, as support accessory uses. The structures proposed for nightly rental use are resort units and subject to applicable MPD development standards. The number of allowed units is limited not by a hard density cap, but simply by the proposal's ability to comply with all other applicable code requirements. The Coalville City Council, acting as the City's land use authority, must apply the MPD standards and make required findings to ensure the proposal's configuration and amount of nightly rental resort units complies with applicable ordinances.

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 Title 13, Chapter 43, Section 205 of the Utah Code. 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 Polly McLean, Attorney for Coalville for Responsible Growth (CFRG) and adjacent neighbors, on July 12, 2020. A copy of that request was sent via certified mail to Trevor Johnson, Coalville City Mayor, 10 North Main, Coalville Utah 84017 on July 16, 2020.

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 Polly McLean, attorney for Coalville for Responsible Growth (CFRG) and Adjacent Neighbors, received July 12, 2020 ("CFRG Request").
2. Letter from David L. Church, of counsel, to Sheldon Smith, Coalville City Attorney, dated June 12, 2020 ("Church Letter")
3. Letter from Wade R. Budge, attorney for Wohali Partners, LLC re: Response to Request for an Advisory Opinion, dated July 23, 2020 ("Wohali Response").
4. Letter from Polly McLean re: Reply to Wohali Partner's Response, dated July 31, 2020.
5. Letter from Wade R. Budge re: Wohali's Reply to CFRG's Reply Letter, dated August 7, 2020.

6. Letter from Polly McLean re: CFG 8.12.20 Reply to Wohali's 8.7.20 Reply, dated August 12, 2020.
7. Letter from Wade R. Budge re: Wohali's Reply to CFRG's Reply Letter, dated August 20, 2020.
8. Email from Polly McLean re: 2020 0820 L Budge to Cullimore re Wohali Reply, dated August 21, 2020.
9. Email from Wade R. Budge re: 2020 0820 L Budge to Cullimore re Wohali Reply, dated August 21, 2020.
10. Request for Reconsideration and Letter re: Request for Reconsideration, submitted by Wade Budge on behalf of Wohali Partners, LLC., received September 21, 2020.
11. Response to Request for Reconsideration, submitted by Polly McLean on behalf of CFRG and Adjacent Neighbors, received September 28, 2020.

BACKGROUND

Wohali Partners, LLC ("Wohali") owns property that was annexed into Coalville City in 2018 and included in the AG Agricultural Zoning District (1 Lot per 20 acres). After annexation, Wohali initially applied for a large mixed-use development on a 1,664.04 acre site. The application included a request for a Zone Map Amendment and Master Planned Development (MPD) proposal. Wohali first met with planning officials beginning in January 2019, and after several work session meetings over the course of a year, a preliminary plan for the first phase of development was recommended by the Planning Commission and then approved by the City Council on December 9, 2019. Shortly thereafter, a citizen's group known as Coalville for Responsible Growth ("CFRG") filed a local referendum seeking to reverse the approval, as well as a petition for judicial review of the decision in district court. Wohali eventually withdrew this initial application, rendering moot the referendum and court complaint.

In response to the opposition by CFRG, Wohali filed a new MPD application ("Application") in January 2020 that reconfigured certain aspects of the proposal and abandoned any efforts to rezone the property. This new Application seeks MPD approval in the Agriculture zone, and asserts that all aspects of the development are permitted uses as listed in the Agriculture zone.

Wohali application materials refer to the project as "Wohali Resort". The proposal, as noted by the February 18, 2020 Staff Report, is likewise described as being "proposed as a rural golf resort community", and consists of:

1. One hundred twenty-five (125) residential lots under the existing Agriculture (AG) zoning of the property.
2. Three hundred and three (303) nightly rental units[2].
3. Master Planned Development (MPD) including deed restricted open space, residential lots, resort nightly rental units, resort amenities and recreation uses.[3]

[2] While the Staff Report describes these as "detached" nightly rental units, later meetings and discussions clarified that some units are freestanding, while others are shared-wall units. Nevertheless, the nightly rental units are not accessory units to or associated with the 125 residential dwellings units.
[3] Staff Report, Coalville City Project Coordinator, February 18, 2020, pg. 1.

The proposal included a large amount of dedicated open space to achieve a density bonus under MPD ordinances. Apart from the residential uses and open space, the golf-oriented resort aspect of the development has been proposed as a "Recreation Facility"—a listed permitted use in the AG Zone. Of controversy in the plan is whether the inclusion of 303 nightly rentals in either shared-wall or freestanding structures for exclusive use of resort members affects the density limits of the project or can otherwise be considered "support facilities" to a golf course within the definition of Recreation Facility. Moreover, there is also a question of whether certain other resort amenities, including the café/pub, spa, kid's cabin, and amphitheater[4], likewise qualify as support facilities to a golf course as a Recreational Facility within the AG Zone.

The Planning Commission, acting as an Advisory Body, made a favorable recommendation for Phase I of the new Application following a public hearing on June 17, 2020, and forwarded the Phase I approval recommendation to the City Council, which acts as the Land Use Authority for MPDs.

CFRG and other neighbors submitted a Request for an Advisory Opinion on July 10, 2020 seeking a determination of whether the new Application complies with local land use ordinances and is entitled to approval, and whether Coalville City has complied with the mandatory provisions of its land use ordinances, and is correctly interpreting those ordinances in allowing the application to proceed, as evidenced by the Planning Commission's recommendation.

ANALYSIS

The State of Utah gives cities broad discretion in how to address land development through enacted ordinances and other land use controls.[5] Once land use regulations are in place, a City is bound by the terms and standards of those ordinances and is not at liberty to make land use decisions in derogation thereof.[6] A proposed development in a land use application is reviewed as an administrative decision in which the mandatory provisions and existing standards of relevant land use ordinances must be applied.[7] In this matter, Wohali seeks administrative approval for the project as an MPD within the City's AG Zone.

This Office is tasked with interpreting the Coalville City Land Use and Development Management Code as applied to the Wohali proposal. When interpreting an ordinance, the standard rules of statutory construction apply.[8] Looking to the plain language of the ordinance is considered the first step of interpretation,[9] wherein we "read the plain language of the [ordinance] as a whole, and interpret its provisions in harmony with other [ordinances] in the same chapter and related

[4] There are other featured amenities that have not been challenged, assumedly because those features are less controversial as possible recreational facilities or otherwise permitted uses in the AG zone, such as the resort's pools, chapel, boathouse, and tennis/pickleball courts.
[5] *See* UTAH CODE ANN. § 10-9a-102(2).
[6] *Thurston v. Cache County*, 626 P.2d 440, 444-45 (Utah 1981).
[7] UTAH CODE ANN. § 10-9a-509(2).
[8] *Brendle v. City of Draper*, 937 P.2d 1044, 1047 (Utah Ct. App. 1997).
[9] *Carrier v. Salt Lake County*, 2004 UT 98, ¶ 30, 104 P.3d 1208.

chapters."[10] In doing so, the primary goal is "to give effect to the legislative intent, as evidenced by the plain language, in light of the purpose the [ordinance] was meant to achieve."[11]

This Opinion answers whether the plain language of the City's ordinances allows Wohali's proposal as a permitted use within the Agriculture zone, as a Master Planned Development. This Office concludes that the City's ordinances allow the type of development proposed, as the regulatory provisions for Master Planned Developments supplement the provisions for permitted uses in the Agricultural zoning district. On the question of nightly rentals, the structures proposed for nightly rental use are properly categorized as resort units and do not affect density limits, but are subject to applicable MPD standards such as allowed building types, setback, height limitations, parking, etc.

I. Coalville's Regulatory Scheme for MPD and Zoned Land Uses

a. *Master Planned Development Standards*

Wohali's Application proposes a Master Planned Development (MPD)—a subdivision classification under Coalville Municipal Code that applies either because a proposed subdivision is split into phases, or is otherwise requested to gain certain zoning advantages, such as the option for clustered or mixed-use development and bonus densities.[12] The MPD regulations provide a comprehensive strategy to create projects, including mixed-use developments, that address site conditions, the characteristics of surrounding properties, as well as community and market demands.[13] The goal is to produce superior project design through flexibility and innovation to advance the goals of the general plan.[14] The City Council must make certain required findings to approve a master planned development.[15]

The provisions in the City Code governing a master planned development are supplementary to the provisions of the zoning district or districts in which the MPD is located.[16] The MPD ordinance allows for certain types of development, including mixed use planned developments, and "resort units and subdivisions".[17] Uses permitted under the MPD ordinance are limited to those permitted in the proposed development's base zoning district, "[except] for support accessory uses in mixed use developments."[18]

Prior versions of the City's MPD chapter contained very strong language that "[a]n MPD cannot be used as an instrument or vehicle to accomplish a primary use that would have been prohibited if the project were to be submitted and applied for as a conventional subdivision," and that "[u]ses

[10] *Foutz v. South Jordan*, 2004 UT 75, ¶ 11, 100 P.3d 1171.
[11] *Id.*
[12] COALVILLE, UTAH, SUBDIVISION ORDINANCE, Chapter 2 ("Subdivision Procedures"), 8-2-030(C) (May 23, 2011), *available at* https://media.rainpos.com/3855/title_8_chapter_2.pdf.
[13] COALVILLE, UTAH, SUBDIVISION ORDINANCE, Chapter 6 ("Master Planned Developments"), 8-6-010 (Aug 30, 2019), *available at* https://media.rainpos.com/3855/081219_adopted_title_8_chapter_6_mpd.pdf.
[14] *Id*.
[15] *Id*., 8.6.080.
[16] *Id*., 8.6.030.
[17] *Id*., 8.6.030(C).
[18] *Id*., 8.6.030(D).

permitted in the MPD shall be limited to those uses permitted in the Zone District in which the MPD is proposed."[19] However, in subsequent years this language was repealed and replaced with the existing standards cited above, and applicable to the proposed development at issue here.[20]

CFRG argues that the language change in the MPD ordinances from prior iterations is minor, and that the current language that an MPD "shall become supplementary to [zoning] provisions"[21] is comparable to the prior language that "an MPD cannot be used as an instrument or vehicle to accomplish a primary use that would have been prohibited [under] a conventional subdivision,"[22] and means that MPD's do not provide any flexibility on land uses allowable in any particular zone. The plain language of the current, applicable ordinance does not support CFRG's position.

First, the old language gave clear direction that, despite the flexibility aims of the MPD in anticipating larger developments by granting setback and density exceptions, MPD's did not provide any flexibility on *land uses* allowable in any particular zone. However, that language has been replaced with provisions detailing several types of development that are allowed as a master planned development, including mixed-use development and resort units and subdivisions, and that an MPD becomes "supplementary"[23] to the zoning districts in which the MPD is located.

Second, the current ordinance specifically added an exception to the uses allowed in an MPD, in that uses permitted in the MPD are limited to those permitted in the MPD's base zoning district, "*[except] for support accessory uses in mixed use developments*."[24]

In other words, whereas the former regulatory scheme seems to have viewed MPD's cautiously as a "trojan horse" in which uses incompatible with the zoning district might be introduced, Coalville's existing regulatory scheme for MPDs intentionally provides flexibility to existing zoning in anticipating larger, mixed use developments that provide valued community amenities. So long as the City's Land Use Authority makes the required findings to approve an MPD, the MPD supplements the permitted uses of any zone by adding mixed use development and support accessory uses to the list of permitted uses.

b. Coalville Zoning Districts and Allowed Land Uses

The chapter of the Coalville Land Use and Development Management Code regulating the AG Agriculture Zone provides a list of permitted uses that includes "Recreation facilities or uses."[25] The definition of Recreation Facilities includes, "[r]ecreation facilities such as parks and areas of

[19] CMC § 14.14.010 – 020 (2014).
[20] Master Planned Developments have been given particular legislative attention in recent years. Whereas the rest of the City's subdivision and land use ordinances have not been updated since 2011, the Chapter on Master Planned Developments appears to have changed a number of times, most recently in August of 2019. *See* Ordinance No. 2019-4, Master Planned Development (MPD) Development Code Update Amendments; *cf.* CMC § 14.14.010 – 020 (2014).
[21] COALVILLE, UTAH, Master Planned Developments, 8.6.030.
[22] CMC § 14.14.010 – 020 (2014).
[23] Supplemental is defined as "Supplying something additional; adding what is lacking." BLACK'S LAW DICTIONARY, 1667 (10th ed.). When the words of legislation consist of "common, daily, nontechnical speech," they are construed in accordance with their ordinary meaning. *Olsen v. Eagle Mt. City*, 2011 UT 10, ¶ 9.
[24] COALVILLE, UTAH, Master Planned Developments, 8.6.030(D) (emphasis added).
[25] COALVILLE LAND USE AND DEVELOPMENT MANAGEMENT CODE, Chapter 9 ("AG Agriculture Zone"), 10-9-020 (May 23, 2011), *available at* https://media.rainpos.com/3855/title_10_chapter_9.pdf.

active recreation use, including neighborhood community centers or clubhouses, swimming pools, golf courses, tennis courts, equestrian centers, skating rinks, playgrounds, campgrounds, and similar uses as well as support facilities customarily associated with the recreational facility."[26]

Wohali's application materials describe the project either as a "community" or "resort", sometimes distinguishing the two as separate halves of the development—the "Community" consisting of the residential subdivision half of the project, described as "a primarily second home community," and the resort, or "Village" half of the project, consisting of the golf courses, nightly rental units, and other commercial amenities. Wohali compares itself to other resort communities in the area, including Victory Ranch,[27] Glenwild,[28] and Promontory.[29]

Simply put, the project appears to be a proposal for a resort subdivision. The nature of a resort is the aspect of multiple, mixed-use activity on a given property.[30] While the effort to classify resorts has been a debate within the hospitality and tourism industry, generally, a resort consists of full-service lodging that provides access to or offers a range of amenities and recreation facilities to emphasize a leisure experience.[31] Golf Resorts, more specifically, have been distinguished as full service lodging facilities "that cater specifically to the sport of golf, and provide access to a golf course"; a Golf Resort is a "self-contained establishment that provides for most of a vacationer's needs while remaining on the premises (lodging, food, drink, sports, entertainment, shopping, etc.)."[32]

The arguments of the parties—by defining Wohali's project for a golf course/resort wholly as a "Recreation Facility"—appear to be focused on determining whether the nightly rentals and certain other resort amenities, such as the café/pub, spa, kid's cabin, and amphitheater, qualify as "support

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[26] COALVILLE LAND USE AND DEVELOPMENT MANAGEMENT CODE, Chapter 2 ("Definitions"), 10-2-189 (May 23, 2010), *available at* https://media.rainpos.com/3855/title_10_chapter_2.pdf.

[27] Victory Ranch, located in Wasatch County, describes itself as a real estate community (*see* https://victoryranchutah.com/), and is a mixed-use development zoned for several land use classifications, including residential, resort, open space recreational use, and commercial resort mixed use. *See generally* Wasatch County Online Base Map, WASATCH COUNTY (select icon "Layer List"; then select "Map Layers"; then select "Jordanelle Landuse") https://www.arcgis.com/apps/webappviewer/index.html?id=fe65f93c14a84f44814a81f97fa0fa5b.

[28] Glenwild, in Summit County, refers to itself as a "Golf Club", which consists of a "Private Country Club" surrounded by a golf course; the golf course is listed as an amenity to the Country Club along with other amenities serving the Club, including dining, spa facilities, and "Camp Glenwild". *The Club*, GLENWILD GOLF CLUB AND SPA (last visited Aug. 28, 2020), https://www.glenwildgolfclub.com/the-club.

[29] Promontory, also found in Summit County, describes itself as a "master-planned, residential and recreational community." The Promontory Vision, PROMONTORY CLUB (Jan. 28, 2019), https://www.promontoryclub.com/wp-content/uploads/2019/01/2019-Promontory-Vision-1-28-19.pdf.

[30] Industry professionals have identified minimum qualifications that set resorts apart from other lodging or recreation facilities, including:

- Provide one signature amenity or anchor attribute;
- Provide five secondary recreation, leisure, or entertainment experiences;
- Provide one full-service food and beverage outlet;
- Include short-term or overnight lodging in the bed-base;
- Comprise a minimum of twenty five rooms or other accommodations; and
- Emphasize a leisure or retreat-environment experience.

Eric T. Brey, *A Taxonomy for Resorts*, Vol 52, Issue 3 CORNELL HOSPITALITY Q., 283, 286 (2011).

[31] *Id.*, at 285.

[32] *Golf Resort Definition / Meaning*, XOTELS.COM (Aug. 3, 2020), https://www.xotels.com/en/glossary/golf-resort/.

facilities customarily associated with the recreational facility"[33] and therefore permitted under the AG Agriculture zone requirements. The project proposal is, however, more than simply a golf course with customarily associated support facilities.

The more salient issues, therefore, involve determining how the MPD's supplemental provisions apply to the application; whether the proposed Master Planned Development is a "mixed use development" including "resort units and subdivisions" and whether the challenged amenities are considered "support accessory uses in mixed use developments" expressly allowed by the MPD provisions as supplementing the uses permitted in the AG zone. [34] These issues will be addressed below.

II. The Wohali Application

With the above analysis in mind, we now turn to the letter accompanying CFRG's Advisory Opinion request, which is broken down into several questions, and to which the parties have largely stuck to in their respective submittals.[35] Accordingly, the Office will format the remainder of this Opinion to follow the sequence of those questions in turn.[36]

a. Do Nightly Rental Units Affect Project Density?

CFRG points out that the 125 residential lots proposed by Wohali use up all of the density permitted by the AG Zone, including the allowable density bonus as an MPD, and argues that the separate 303 proposed nightly rental units, consisting of both shared-wall and freestanding structures, exceed allowed density for the project because they are considered "Dwellings" under Coalville code—or must otherwise be associated with a dwelling as distinguished from a hotel/motel under the development code. Additionally, CFRG argues the shared-wall type facilities are specifically prohibited by the MPD provisions regarding "attached units" in the AG zone.[37] Wohali disagrees, believing the "lodges" are neither "units" nor "dwellings" under the code, but are expressly allowed "support facilities customarily associated with" a golf course as a recreation facility, and would not affect density.

The parties, in their submittals to this Office, debate the spectrum of customarily associated facilities to golf courses of varying caliber. CFRG argues that nightly rental units cannot be

[33] *See* COALVILLE, UTAH, Definitions, 10-2-189.
[34] COALVILLE, UTAH, Master Planned Developments, 8.6.030(D).
[35] The parties waged a semantic war on the phrasing or rephrasing of the issue questions. The subsections of this Part will be phrased according to the relevant content of the questions, as presented by both parties.
[36] In addition to the questions stated hereafter, in CFRG's July 31, 2020 Reply letter to Wohali's Response, CFRG added, for the first time, an additional issue regarding subsequent actions by the City at City Council Meeting held after the Request for an Advisory Opinion was submitted. Wohali "objected" to the expanding the initial inquiry made to the Ombudsman. We note that the rules of civil procedure and rules of evidence, applicable to proceedings in Utah courts, are not controlling to Advisory Opinions, and our Office typically will "investigate and consider all responses", UTAH CODE ANN. § 13-43-206(8)(b), and address issues that may serve to resolve the dispute between the parties. However, because the application at this point has only been recommended by an advisory body, and the designated Land Use Authority has yet to make any definitive land use decision regarding approval of the application, we do not find that addressing CFRG's additional question would materially help to resolve the dispute at this juncture.
[37] *See* COALVILLE, UTAH, Master Planned Developments, 8.6.030(B) ("Attached units may be allowed in all residential and commercial zones except the Agriculture (AG) Zone and Residential Agricultural (RA) Zone.").

"support facilities" for a golf course because they do not directly support a golf course, pointing to other golf courses in the Wasatch Front and Wasatch Back that do not have associated lodging. Wohali responds, however, by distinguishing its proposed golf course as a "high-end luxury private-member golf course," of which it points to other similar facilities that do, in fact, have associated lodging.

We conclude that Wohali's proposed nightly rental resort units do not qualify as support facilities customarily associated with a golf course as permitted under the AG zoning, but are nonetheless permitted under MPD provisions. The MPD ordinance specifically allows "mixed use developments" including "resort units", and "support accessory uses in mixed use developments" to supplement permitted uses within a zoning district.[38]

Wohali's development, as indicated previously, is a golf resort. Resorts are a type of mixed-use development that prototypically consist of full-service lodging and offering other supporting amenities and recreation facilities.[39] While overnight lodging may not be customarily associated with a common golf course within the quality spectrum for golf courses, overnight lodging is very clearly associated with resorts as a support accessory use. Structures used for overnight resort lodging are therefore plainly "resort units" in an MPD proposal.

Regarding the effect of these resort units on density, the Coalville Development Code anticipates a number of different types of temporary and commercial lodging, which can either occur in structures wholly dedicated to short-term commercial use, or can occur in designated portions of structures primarily used as dwellings.[40] For Master Planned Developments, specifically, the MPD ordinances, as indicated above, allow for resort units.[41]

Coalville's code provides that '[n]ot more than one (1) ***primary*** single-family dwelling and accompanying accessory dwelling may be placed upon a lot or parcel of land in the AG zone".[42] The word ***primary*** indicates that such is the principle use of the premises. The code also defines Dwelling as "[a] building or portion thereof designed for use as the residence or sleeping place of one or more persons or families with cooking and bathroom facilities, but *not including hotel, motel, lodge, or nursing home rooms*".[43] The code further gives distinct definitions for Apartment, Bed and Breakfast Inns, Boarding House, Dude/Guest Ranch, Guest House, Hotel/Motel, Nightly Rental, and Nursing Home, all of which, when read and considered together, give clear indication that a dwelling is a structure or use of a structure as the principal place where one lives, resides, or abides, and that dwelling does not include these other temporary sleeping arrangements, commercial or otherwise. Nightly rental resort units, therefore, are not dwellings that affect the project's allowed density.

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[38] COALVILLE, UTAH, Master Planned Developments, 8.6.030.
[39] Brey, at 285.
[40] For examples, see the following definitions for: Apartment, Bed and Breakfast Inns, Boarding House, Dude/Guest Ranch, Guest House, Hotel/Motel, Nightly Rental, and Nursing Home. COALVILLE, UTAH, Definitions, Title 10, Chapter 2.
[41] COALVILLE, UTAH, Master Planned Developments, 8-6-030(C).
[42] COALVILLE, UTAH, AG Agriculture Zone, 10-9-050 (emphasis added).
[43] COALVILLE, UTAH, Definitions, 10-2-77 (emphasis added).

b. *Is there a Limit to the Number of Nightly Rental Units Allowed in the Application?*

CFRG asks for guidance as to how many nightly rental units would be permitted under the City's Code. Wohali argues that since the City has no regulations directly setting limitations on nightly rentals, the allowed number is up to the applicant according to market factors and the available space of the property.

While a definition for "Nightly Rental" is provided in city code,[44] it has been noted at public meetings that no other mention of "Nightly Rental" is found in the City's ordinances.[45] Moreover, the MPD chapter does not address numerical density limitations for "resort units" either. This means that the number of nightly rental resort units allowed in the development will be determined only by the proposal's compliance with other City Code requirements and development standards that address the underlying "structure" that the nightly rental "use" occurs in. Therefore, the number of resort units used as nightly rentals is limited by the MPD provisions and any applicable development standards governing setbacks, building height, types of structures allowed,[46] etc. Moreover, the MPD must meet specific minimum requirements related to off-street parking requirements specific to lodging, mitigation of impact and potentially adverse effects, adequate utilities, and connectivity.[47] The City must analyze the development proposal and make required findings with supporting evidence as to all of these requirements. The result of the City's analysis will ultimately determine the number of allowed units.[48]

Therefore, the limit to nightly rentals for an MPD is not as simple as market demand and available space, as Wohali suggests. Rather, it is incumbent on the City Council, acting as the Land Use Authority, to apply its existing set of standards and make required findings[49] as to the allowed arrangement and appropriate number of resort units intended to be used for nightly rentals for a given proposed project. If the development proposal can meet code requirements as explained, the proposed densities will be allowed.

c. *Are the other numerous Resort Structures and Uses (Spa, Amphitheater, Kids Cabin, Café/Pub) permitted as "support facilities customarily associated with the recreational facility"?*

Similar to the arguments on nightly rentals, CFRG challenges whether certain of the resort amenities[50] are allowed as "support facilities customarily associated with" a golf course as a recreation facility. CFRG argues that what determines a support facility is whether you would have such a facility without the underlying use/facility, and concedes that golf course support facilities would include a parking lot, a pro shop, restrooms, maintenances storage buildings, and a driving

[44] COALVILLE, UTAH, Definitions, 10-2-145 ("the rental of a room, apartment, house or lockout unit for a time period of less than thirty (30) days").
[45] Agenda and Minutes, Coalville City Planning Commission Meeting and Work Session, May 18, 2020, page 3.
[46] For instance, s*ee* COALVILLE, UTAH, Master Planned Developments, 8.6.030(B) ("Attached units may be allowed in all residential and commercial zones except the Agriculture (AG) Zone and Residential Agricultural (RA) Zone.").
[47] COALVILLE, UTAH, Master Planned Developments, 8-6-060.
[48] *Id*., 8-6-080.
[49] *See id.*, 8-6-040(C).
[50] Though conceding other certain amenities, such as a clubhouse, or other features not specifically mentioned.

range,[51] but would not include the resort-style amenities proposed. To this Wohali responds much as it did to the nightly rentals, defending the amenities as customarily associated with a "high-end luxury private-member golf course", and expressly permitted in the AG zone by the inclusion of "golf course" in the definition of Recreation Facility.

CFRG additionally argues that uses permitted in the Agriculture zone "should be incidental thereto and should not change the basic agricultural character of the zone,"[52] and that while a golf course is a permitted use, the other resort amenities are outside of the intent of the zone. This restrictive language on incidental agricultural uses immediately precedes the list of permitted uses in the Agriculture zone, which includes "Recreation facilities and uses".[53]

However, this is purpose language, which may "provide guidance . . . as to how [the ordinance] should be enforced and interpreted," and "may be used to clarify ambiguities," but may not otherwise be used to override express, unambiguous provisions.[54]

When interpreting a statute, courts read the plain language of the statute as a whole, and interpret its provisions in harmony with other statutes in the same chapter and related chapters.[55] In cases dealing with MPD's, specifically, the supplemental nature of the MPD chapter helps to resolve any ambiguity inherent in the term "Recreation facilities or uses" as applied in the AG zone, in which the Agriculture zone's purpose language must otherwise yield to the MPD's specific, substantive provisions.[56]

Moreover, because zoning ordinances are in derogation of a property owner's common-law property rights, "provisions therein restricting property uses should be strictly construed, and provisions permitting property uses should be liberally construed in favor of the property owner."[57] If a land use regulation, appropriately construed, does not plainly restrict a land use application,

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[51] Even on this point, CFRG's view of golf course support facilities might be a little too narrow, failing to account for other facilities "customarily associated" with a golf course, such as a club house with limited retail/food/meeting activities. For example, Salt Lake City's land use code defines Golf Course as follows: "An outdoor area of land laid out for golf with a series of holes each including tee, fairway and putting green and often one or more natural or artificial hazards. *A golf course may also consist of a club house or building where activities associated with golf take place including retail sales and/or services, a cafe venue where meals are prepared and served, an office and area where private or public events and other similar activities associated with a golf course takes place*." SALT LAKE CITY CODE § 21A.62.040 (emphasis added).

[52] COALVILLE, UTAH, AG Agriculture Zone, 10-9-020.

[53] *Id.*

[54] *Price Dev. Co. v. Orem,* 2000 UT 26, ¶ 23, 995 P.2d 1237. While "Recreation facilities and uses" is also listed as permitted in the city's residential zones, unlike the AG zone, the provisions of the residential zones provide the list of uses without prefacing it with similar restrictive language. As the term Recreation Facilities itself has no ordinary meaning, but is defined by a broad, non-exhaustive list of examples, considered alone, the AG zone's restrictive language may in certain circumstances serve to interpret and clarify the term to limit certain types of Recreation Facilities as permitted in the AG zone, as opposed to those permitted in other zones. But the AG zone's provisions must also be read in conjunction with the MPD chapter when master planned developments are involved, which here leads to an unambiguous conclusion.

[55] *Hansen v. Eyre*, 2003 UT App 274, ¶ 7.

[56] *Patterson v. Utah County Bd. of Adjustments*, 893 P.2d 602, 606 (Utah App. 1995) ("where there is an ambiguity or uncertainty in a portion of a statute, it is proper to look to an entire act in order to discern its meaning and intent.")

[57] *Id.*

the land use authority shall interpret and apply the land use regulation to favor the land use application.[58]

As discussed, the application proposes an MPD for a golf-themed resort as a mixed-use development. Leisure, recreation, food service, and other retreat-environment experiences have all been identified by industry professionals as hallmark qualifications that distinguish a resort from other lodging or recreation facilities.[59] Therefore, the proposed spa, amphitheater, café/pub, and entertainment for children are all supporting accessory uses to a resort use.

Again, the analysis of the development's proposed uses is not limited to whether the AG zone allows a golf course within the definition of recreation facilities as a permitted use, in light of applicable MPD regulations. Regardless of whether the amenities are "support facilities customarily associated" with a resort as "Recreation facilities or uses" under the AG zone, they are plainly "support accessory uses" to a resort as a mixed-use development, which the MPD provisions plainly allow as supplemental to the permitted uses in the AG zone. Any ambiguity between the AG zone's treatment of the amenities as support facilities to a recreation facility, and the MPD Chapter's treatment of the amenities as support accessory uses in a mixed-use development, must be interpreted and applied to favor Wohali's proposed application. Consequently, the proposed resort amenities must be allowed under the Code.

d. Is an Appeal Authority required for a land use decision?

The purpose of CFRG's inclusion of this question is not adequately briefed or explained. The parties agree that Utah Code requires an appeal authority for appeals from decisions applying land use ordinances,[60] and appear to acknowledge that under the circumstances, there is no viable local appeal under Coalville's Code for the application.[61]

Whereas state law provides that no person may challenge a land use decision in district court "until that person has exhausted the person's administrative remedies . . . *if applicable*,"[62] assumedly, the dispute here may center on what effect, if any, the fact that no local appeal is available has on the approval of the application. But inasmuch as such a question is not briefed, this Office declines to address this issue in this case.

CONCLUSION

Wohali's new Application was submitted as a land use application seeking approval under existing zoning. The City must therefore comply with the mandatory provisions of its land use regulations and apply the plain language of those ordinances in regards to the application. Because the City has enacted a regulatory scheme for Master Planned Developments that expressly allow for mixed

[58] UTAH CODE ANN. § 10-9a-306(1).
[59] Brey, at 285; *see supra* note 30 and accompanying text.
[60] UTAH CODE ANN. § 10-9a-701(1).
[61] MPDs are a classification of subdivision, the approval for which the City Council acts as the land use authority, and where no other body is designated as the appellate body. *See* COALVILLE LAND USE AND DEVELOPMENT MANAGEMENT CODE, Chapter 3 ("Administrative and Development Review Procedures"), 10-3-040 (May 23, 2011), *available at* https://media.rainpos.com/3855/title_10_chapter_3.pdf.
[62] UTAH CODE ANN. § 10-9a-801(1) (emphasis added).

use developments as a supplement to the permitted uses listed in the City's zoning districts, a golf resort as a mixed-use development, and its amenities as supporting accessory uses, is allowed in the Agriculture Zone. The City Council, acting as the Land Use Authority, must review the application under applicable MPD standards. If the application is found by the City Council to comply with MPD standards and is supported by the required written findings, it is entitled to approval.

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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.