# Advisory Opinion 258

Parties: Lorrie and Robert Morris / Washington County

Issued: June 14, 2022

**TOPIC CATEGORIES**:

**Nonconforming Uses & Structures**

**Interpretation of Ordinances**

Except where explicitly incorporated into applicable land use regulations, a failure to comply with other requirements unrelated to zoning, such as business license requirements, does not preclude the establishment of a legal nonconforming use. Similarly, 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 landowners have 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 owners therefore have 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

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| Advisory Opinion Requested By: | Lorrie and Robert Morris |
| Local Government Entity: | Washington County |
| Type of Property: | Residential |
| Date of this Advisory Opinion: | June 14, 2022 |
| Opinion Authored By: | Richard B. Plehn, Attorney<br>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, except where explicitly incorporated into applicable land use regulations, a failure to comply with other requirements unrelated to zoning, such as business license requirements, does not preclude a determination that a land use was legally established. Similarly, 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 has historically been 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 Lorrie and Robert Morris, received on January 10, 2022.
2. Washington County Response to Advisory Opinion Request, submitted by Victoria H. Hales, Deputy County Attorney, dated January 31, 2022.
3. Lorrie Morris comments on County's Response, received February 4, 2022.

## BACKGROUND

Lorrie and Robert Morris purchased a lot in the Pine Valley Ranchos subdivision in 2015, located in the unincorporated area of Washington County called Pine Valley. The lot is improved with a single-family residence which was constructed in the 1970s. The subdivision is in the Forest Residential zone ("FR Zone"), 13,500 sq. ft. minimum lot size.[1]

The Morris's purchased the Pine Valley property as a rental property, as they also own some other rental properties, including another property in Washington County located in Ivins, Utah, for which the Morris's have a business license with the City, and operate under a state-registered business entity under the name "Adventurous Getaways." The Morris's allege that after purchasing the property in Pine Valley in 2015, they visited Washington County offices to apply for a short-term rental license, but claim that they were told by the clerk that there was no County license requirement, specifically that there was no licensing requirement or application required for short-term rentals.

From the time of purchase in 2015, the Morris's have never occupied the property as their primary residence, but used the dwelling as a short-term cabin rental, using online-booking services like Airbnb and Vrbo. The cabin is not owner occupied, and the Morris's allege that bookings are

[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 Morris property is therefore considered to be in the FR-13.5 district of the larger FR Zone.

generally limited to "family sizes of 8 or less." While the information provided by the Morris's contain several statements that the cabin is rented for "young families" or occasional "family reunions," the information also suggests that the cabin also serves certain non-familial groups, such as a boy scout troop, and church youth groups.

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 Morris'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 Morris's informing them that they were in violation of both the Tourist Homes Policy and the County's new STR ordinance. The Morris's acknowledge that because the cabin is not their primary residence, they do not qualify for short-term rental under the new STR ordinance, but are willing to obtain any required license and argue that they should have a grandfathered right according to their established use.

The Morris's 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 the cabin, entitling the Morris's to a legal nonconforming use in renting the cabin.

## ANALYSIS

### I. 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."[2]

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 Morris's have rented their cabin since 2015. It is also undisputed that the cabin is not owner occupied. The dispute therefore lies in whether the rental of the Morris's cabin at that time it began would have been a legal use without any additional permission from the County.

### II. Compliance with regulations unrelated to land use approval

Part of the dispute, we recognize, is that aside from any requirement under the zoning code, the County appears to be taking a position that, because the County required a business license to operate a business in the County, a failure to obtain a business license, alone, would preclude the

[2] UTAH CODE § 17-27a-103(47).

Morris's from establishing that their business-use of their property for short-term rental "legally existed" before current regulations.

This is not supported by the law on nonconforming uses. A use "legally existed" if it was allowed under previous zoning ordinances, however, "[a] nonconforming use may not be established through a use which from its inception violated *a zoning ordinance*."[3] Noncompliance with ordinances not directly associated with land use regulation does not bar the legal establishment of a use.

The Utah Court of Appeals addressed the question of whether a use "legally existed" in *Hugoe v. Woods Cross City*. In that case a city sought to bar business owners from operating a "transfer company," and using a parcel for "parking, staging, and storing the large trucks and trailers used in their trucking business."[4] There was no question that when the property owners established the use, the city's zoning ordinance permitted parking and storing large trucks and trailers. "Hence, because transfer company is a permitted use under [the city's former zoning] ordinance, [the owner's] use of the property 'legally existed before its current zoning designation.'"[5]

In *Hugoe*, the court rejected the city's argument that the property use was not legally established because the property owners failed to comply with a requirement that the owners needed to file a site plan. The court held that "a site plan was not needed to be legal . . .. The city has failed to demonstrate—by way of statute, ordinance, case law, or other authority—how failure to file a site plan can defeat or invalidate an otherwise legal nonconforming use."[6] In other words, because the use was permitted, it could "legally exist" until the zoning ordinance was amended. Failure to comply with requirements unrelated to the regulation of the land did not invalidate the use.

This approach is further confirmed by decisions from other states. "Courts have repeatedly found that licensing and other regulations unrelated to land use approval, whether business licensing, business and occupation tax regulations, or building permits, are not per se determinative of the continuance of a nonconforming use."[7]

As such, we view our task as simply a question of interpreting the uses permitted under the County's prior ordinances. Granted, however, that the County may incorporate various requirements, including obtaining a business license, into the very definitions of certain permitted uses, effectively pulling in those requirements for land use approval.[8] This at least appears to be the case with the County's Tourist Home definition, and the STR regulations, as discussed herein.

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[3] *Town of Alta v. Ben Hame Corp.*, 836 P.2d 797, 802 (Utah 1992) (emphasis added)
[4] 1999 UT App 281, ¶ 2, 988 P.2d at 457.
[5] *Id.*, 1999 UT App 281, ¶ 8, 988 P.2d at 459 (quoting language from former Utah Code Ann. § 10-9-103(1)(l)(i) (Supp. 1999) (amended 2006)).
[6] *Id.*, 1999 UT App 281, ¶10, 988 P.2d at 459.
[7] *Van Sant v. City of Everett*¸ 849 P.2d 1276, 1282 (Wash Ct. App. 1993) (emphasis in original); *See also,* Hooper v. St. Paul, 353 N.W.2d 138 (Minn. 1984).
[8] *See South Weber City v. Cobblestone Resort LLC*, 2022 UT App 63 (upholding injunction on use of property as a short-term rental without a business license in violation of a land use ordinance—which allowed short-term rentals with a conditional use permit, where a business license is a mandatorily imposed condition for the permit.)

Therefore, 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.[9] 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."[10]

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.

## III. Legality of Short-term Rentals under Prior Ordinances

The County briefly reviews the history of applicable land use ordinances for the FR 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 Morris's began using their cabin for short-term rentals in 2015.

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.[11]

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."

[9] UTAH CODE § 17-27a-308.
[10] *Patterson v. Utah County Bd. of Adjustment*, 893 P.2d 602, 606 (Utah Ct. App. 1995).
[11] WASHINGTON COUNTY CODE § 10-18-1 (2004).

The County's position is that, at the time the Morris's began renting their cabin in 2015, 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, just one year after the Morris's began renting the property in 2015, 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.[12] It is undisputed that the Morris's never obtained a county business license or 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 Morris'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 Morris's never obtained County business license or complete a short-term rental application, rental of the Morris'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 2015, 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 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.[13] 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

[12] 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 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).

[13] *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").

combined with a private bath and/or kitchen." Unlike the definition of "residence,"[14] 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.[15] In other words, use of 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.[16] 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

[14] 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 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." *Id.*

[15] 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 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.

[16] 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.

ranch," "overnight camping facilities," or "Private recreation and facilities." [17] The County argues that the Morris'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.[18] And while it could be 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.[19] 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,[20] while others not,[21] and yet others requiring a meal to be provided,[22] while optional in others.[23]

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[17] *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

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

[19] *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/.

[20] *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).

[21] *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.

[22] *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).

[23] *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."

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 Morris'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 Morris's short-term rental of their cabin since 2015 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.

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 any instances of the Morris's renting the cabin to a group of more than five unrelated persons, such as scout troops or church youth groups, would make the use of the Morris's property an illegal "lodge," as lodging *multiple* families—whether or not the persons are related or unrelated—for compensation.

The fact that the Morris'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 as a short-term rental 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,[24] not necessarily that the property itself was, in all respects, put only to that legal use.

The County accepts as true the Morris's assertions that they began renting their cabin in 2015, and has also concluded from its investigation that the Morris's cabin has not been owner occupied. The information provided by the Morris's also establishes that the cabin has been rented to single families, despite some occasional use by unrelated groups. Therefore, 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, the Morris's should be considered to have a legal nonconforming use to continue renting 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. [25]

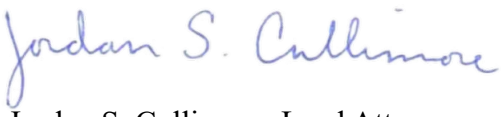
[24] UTAH CODE § 17-27a-103(47).

[25] While this may mean that the Morris's cannot be subjected to obtaining a *land use* license under the STR ordinance, the Morris's must still obtain any business license that may be required by the County to carry on business activity within the County.

## CONCLUSION

While other County ordinances have long-required a business license to legally operate a business within the County, this requirement does not speak to whether a particular land use was permitted, except where such land use ordinances defined a particular land use so as to depend on the presence of a business license, as the County did with Tourist Homes beginning in 2016. Other than this, County business regulations do not preclude establishing that a nonconforming use legally existed.

The County does not challenge the Morris's assertions that they have used their cabin as a short-term rental continuously, beginning in 2015, 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 Morris'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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**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.**