

# Advisory Opinion #172

Parties: Tina Kelley, Morgan County

Issued: August 30, 2016

**TOPIC CATEGORIES:**  
**Interpretation of Ordinances**

The Morgan County Council did not amend the County's zoning map to change the Commercial Buffer zone to the Business Park zone because it did not follow the proper procedures required by law to do so. However, despite the ambiguity created by Ordinance No. CO-16-01, the County Council correctly approved the applicant's conditional use permit because a proper application of established rules of statutory interpretation to relevant provisions in the County Code leads to the conclusion that the intent of the ordinance amendment was to rename the Commercial Buffer zone to the Business Park zone, which permits pet crematoriums as a conditional use.

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## OFFICE OF THE PROPERTY RIGHTS OMBUDSMAN

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### ADVISORY OPINION

Advisory Opinion Requested By: Tina Kelley

Local Government Entity: Morgan County

Applicant for Land Use Approval: Steve Ford  
Cottonwood Commercial Properties, LLC

Type of Property: Commercial

Date of this Advisory Opinion: August 30, 2016

Opinion Authored By: Jordan S. Cullimore  
Office of the Property Rights Ombudsman

### ISSUE

Did the Morgan County Council correctly approve a conditional use permit application for a pet crematorium?

### SUMMARY OF ADVISORY OPINION

The Morgan County Council did not amend the County's zoning map to change the Commercial Buffer zone to the Business Park zone because it did not follow the proper procedures required by law to do so. However, despite the ambiguity created by Ordinance No. CO-16-01, the County Council correctly approved the applicant's conditional use permit because a proper application of established rules of statutory interpretation to relevant provisions in the County Code leads to the conclusion that the intent of the ordinance amendment was to rename the Commercial Buffer zone to the Business Park zone, which permits pet crematoriums as a conditional use.

### 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 UTAH CODE § 13-43-205. 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 Tina Kelley, on April June 14, 2016. A copy of that request was sent via certified mail to Jann L. Farris, Morgan County Attorney, 451 South State Street, Salt Lake City, Utah 84111.

## **EVIDENCE**

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

1. Request for Advisory Opinion, with attachments, submitted by Tina Kelley on June 14, 2016.
2. Response, with attachments, from Bill Cobabe, Director of Planning and Development Services for Morgan County, received June 20, 2016.
3. Reply from Tina Kelley, received June 24, 2016.

## **BACKGROUND**

On February 2, 2016, the Morgan County Council enacted Ordinance No. CO-16-01, making changes to, among other sections, Morgan County Code sections 8-5C-1 and 8-5C-3. Section 8-5C-1 lists the purposes of the various commercial and industrial districts in the County, while section 8-5C-3 establishes what uses are permitted or conditionally permitted in commercial and industrial zones. Prior to the enactment of Ordinance No. CO-16-01, section 8-5C-1 listed the purposes of the following seven districts (the "original districts"): Neighborhood Commercial (CN), Commercial Shopping (CS), Highway Commercial (CH), General Commercial (CG), Commercial Buffer (CB), Manufacturing Distribution (MD), and General Industrial (MG). Section 8-5C-3 listed the permitted and conditionally permitted uses in each of these zoning districts on a land use table.

According to the submitted materials, Ordinance No. CO-16-01, amended section 8-5C-1 to eliminate the CS and CH districts, rename the CB district to the Business Park District (BP) with a clarification of that district's purpose, and tweak some of the names and abbreviations of the remaining districts. The five resulting zoning districts (the "resulting districts") are: Neighborhood Commercial (NC), General Commercial (GC), Business Park (BP), Light Manufacturing (LM), and General Industrial (I). The ordinance amendment also changed the land use table in section 8-5C-3 to reflect the resulting districts and identify which uses are permitted and conditionally permitted in those districts.

The County zoning map, however, was not amended to reflect zoning district name changes and consolidations, and the submitted materials give no indication that other references in the County

Code to the original districts were modified to align with the changes made in sections 8-5C-1 and 8-5C-3.<sup>1</sup>

It is against this backdrop that Steve Ford, on February 8, 2016, submitted to the County a land use application for approval of a conditional use permit to operate a pet crematorium in an existing building at 4090 West 5800 North, Mountain Green (the “Property”). At the time the application was submitted, the Property, according to the County’s zoning map, was located in the Commercial Buffer zone. However, as a result of Ordinance No. CO-16-01, the Commercial Buffer zone was no longer listed on the land use table in section 8-5C-3 of the County Code. Further, the Business Park zone was listed, and the land use table allowed pet crematoriums in the Business Park zone as conditional uses.

County staff accepted the application under the stated belief that the County zoning map was subordinate to the language of the County Code, and since Ordinance No. CO-16-01 apparently renamed the Commercial Buffer zone to the Business Park zone in parts of the land use ordinance, this change automatically applied to the zoning map as well. Consequently, staff determined that a pet crematorium was permitted on the Property, and the application was scheduled for Planning Commission review.

The Planning Commission considered the application on February 25, 2016. Under the County Code, the Commission’s role was to make a recommendation on the application to the County Council, which would act as the land use authority to make a final decision. In February 25 meeting, the Commission decided to postpone the item to the April 14, 2016, Planning Commission meeting for the stated reason that the County zoning map indicated that the Property was zoned Commercial Buffer. Since pet crematoriums were not permitted in the Commercial Buffer zone prior to the enactment of Ordinance No. CO-16-01, the Commission determined that the application did not comply with the County Code, and the Commission decided to wait to see if the County Council would change the zoning designation of the Property to Business Park on the zoning map, which would permit the crematorium.

On April 14, 2016, the Commission again considered the application, and the zoning map had still not been modified. According to the minutes of the meeting, Commissioner Sessions indicated that “the current zone for the application is Commercial Buffer, which does not support crematoriums,” and that “there is no current Business Park zone anywhere in the County.” The Commission considered further postponing the application. Mr. Ford, however, requested an answer and decision from the Planning Commission at that time. He did not want the Commission to postpone the application again. Accordingly, the Commission voted unanimously to recommend denial of the application to the County Council based on the following findings:

1. That the current zone for the application is Commercial Buffer and not Business Park as stated on the Planner’s Report.

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<sup>1</sup> Section 8-5-1 of the County Code still lists the original districts referenced above. Additionally, sections 8-5C-4 and 8-5C-5, regulating height, area, width, frontage, yard, and coverage in commercial and industrial districts, still list regulations for the original districts. Nothing in the submitted materials, or in the online version of the Morgan County Code, gives any indication that these sections were updated by Ordinance No. CO-16-01, or subsequent amendments.

2. That crematoriums are not an allowed use in the Commercial Buffer zone.

A third finding was made recommending that the applicant's fee be refunded because the application was improperly accepted.

This recommendation was forwarded to the Morgan County Council, which considered the item at its regularly scheduled meeting on May 3, 2016. The issue of whether Mr. Ford's property was located in the Commercial Buffer zone or the Business Park zone was discussed thoroughly among staff and the Council members, with differing opinions about the intent and effect of Ordinance No. CO-16-01. Some councilmembers felt that the change to the land use ordinance did not make any changes to the zoning map, because procedures were never initiated to amend the map. Other councilmembers agreed with staff's position that the changes to the land use ordinance automatically changed zoning designations on the map.

After some discussion, Councilmember Cannon moved to deny the application in accordance with the Planning Commission's recommendation, but the motion failed. Subsequently, the Council went into an executive session.<sup>2</sup> When the Council came out of executive session, Councilmember Ballantyne moved to approve Mr. Ford's conditional use permit application. This motion passed by a vote of 4-2 with one abstention.

Tina Kelley, a Morgan County resident, submitted a request for Advisory Opinion to this office on June 14, 2016, asking us to examine the question of whether the County Council properly approved Mr. Ford's conditional use permit application.

## ANALYSIS

The submitted materials clearly indicate a disagreement, and some confusion, among members of the County Council, Planning Commission, staff, and County residents about the effect of Ordinance No. CO-16-01. Members of the Planning Commission, some members of the County Council, and certain residents including the applicant for this Advisory Opinion, understood that Ordinance No. CO-16-01 only changed the name of zoning districts in the text of the land use ordinance, and that further action must be taken, through formal amendments to the County zoning map, to apply the resulting zoning district designations to parcels in the County.

However, County staff asserts that the intent and effect of Ordinance No. CO-16-01 was to rename the Commercial Buffer zone to the Business Park zone and consolidate the Commercial Shopping, Highway Commercial, and General Commercial zones into a single "General Commercial" zone. Specifically, "[i]t was the understanding of staff that the [zoning] map designations were subordinate to the actual code, and that the designations on the map would naturally follow the changes made to the code." Response from Bill Cobabe, July 20, 2016. Several members of the County Council agreed with this interpretation, which resulted in the approval of Mr. Ford's conditional use permit application.

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<sup>2</sup> A record of what was discussed in the executive session was not submitted for consideration.

## **I. Morgan County Ordinance No. CO-16-01 Did Not Amend the Morgan County Zoning Map.**

We first consider the question of whether Ordinance No. CO-16-01 effectively changed the zoning designation of the Property from Commercial Buffer to Business Park. The Utah Code provides only one method for amending a County's zoning map. Subsection 17-27a-503(3) of State Code provides that a county council "*shall* comply with the procedure specified in Section 17-27a-502 in preparing and adopting an amendment to a land use ordinance *or* a zoning map." UTAH CODE § 17-27a-503(3) (emphasis added). Section 17-27a-502 indicates that a planning commission must provide proper notice, hold a public hearing, and consider any written objections "on a proposed land use ordinance *or* zoning map." UTAH CODE § 17-27a-502(1) (emphasis added). Further, the planning commission must "prepare and recommend to the legislative body a proposed land use ordinance...and zoning map that represent the planning commission's recommendation for regulating the use and development of land within" the county's jurisdiction. *Id.*

After the planning commission forwards a recommendation, including a map if anything on the zoning map is being changed, the legislative body must "consider each proposed land use ordinance and zoning map recommended to it by the planning commission, and, after providing [notice] and holding a public meeting, the legislative body may adopt or reject the proposed ordinance or map" either as proposed or with revisions. UTAH CODE § 17-27a-502(2).

Based upon the plain language of the above code provisions,<sup>3</sup> we conclude that Morgan County, since it did not provide notice for a zoning map amendment or prepare a map representing any changes to the Property on the zoning map, did not amend the zoning map to apply the Business Park zone to the Property. It is clear from the plain language in State Code, that the land use ordinance and zoning map are distinct but related documents in the County Code, and that following the proper procedures to change one, does not automatically change the other. If the County intended to amend the zoning map and change the zoning designations of certain properties, then it should have prepared a map "representing the planning commission's recommendation for regulating the use and development of land" including at least the portion of the County subject to a change. *See* UTAH CODE § 17-27a-502(1). This includes not just boundary changes to the map, but also any changes to text on the map.

Moreover, since local authority to regulate land is delegated to counties by the state through enabling statutes, the County "must strictly comply with the statute delegating [it] the authority to act." *Hatch v. Boulder Town Council*, 2001 UT App 55 ¶ 7, 21 P.3d 245. Since Morgan County did not strictly comply with the requirements to amend a zoning map in Utah Code 17-27a-502(2), it did not amend the County's zoning map to change the zoning designation of the Property from Commercial Buffer to Business Park.

The purpose of the map requirement when changing the zoning of a parcel is to "give notice of the [local jurisdiction's] zoning proposal so that, before adoption, residents may object or make suggestions, and after adoption, land purchasers may acquaint themselves with the zoning

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<sup>3</sup> "In interpreting the meaning of a statute or ordinance, we begin first by looking to the plain language of the ordinance." *Carrier v. Salt Lake County*, 2004 UT 98, ¶ 30, 104 P.3d.

restriction.” *Hatch*, 2001 UT App 55 ¶ 8, 21 P.3d 245. A map provides notice to interested parties of what land will actually be affected by an amendment. A property owner needs to be able to reference a map and the land use ordinance and determine what regulations apply to his or her property. This did not happen. Accordingly, because the property procedures were not followed, the map was not amended. Because the map was not amended, the zoning designation of the property was not changed.

## **II. In Light of Established Rules of Statutory Interpretation, the Morgan County Council properly approved Mr. Ford’s Conditional Use Permit Application**

The conclusion that the County’s zoning map has not been amended does not resolve the matter. Even though the County did not amend the zoning map, the submitted materials give no indication that the text amendment was enacted improperly, so we presume the changes to the land use ordinance are valid, including the changes to the land use table. This leaves us with an unmistakable ambiguity between the land use ordinance and the zoning map. The County Code, as presently constituted, includes a map that locates the Property in the Commercial Buffer zone, but the land use ordinance does not state what uses are allowed or prohibited in that zone. The land use table simply does not list the Commercial Buffer zone, as if it did not exist. This scenario produces an unpredictable and unacceptable result because it prevents a land owner or purchaser from “acquainting themselves with the zoning restriction[s]” on their property. *Id.* Consequently, we must apply established rules of statutory construction to determine how the Code should be interpreted to determine what rules apply to Mr. Ford’s conditional use permit application.

### *A. Rules of Statutory Interpretation*

Courts apply various rules of statutory construction to determine the correct interpretation of an ordinance in a given circumstance. As indicated above, ordinance interpretation begins with an analysis of the plain language of the ordinance. *Carrier*, 2004 UT 98 ¶ 30, 104 P.3d 1208. The primary goal of interpretation is “to give effect to the legislative intent, as evidenced by the plain language, in light of the purpose the statute was meant to achieve.” *Foutz v. City of South Jordan*, 2004 UT 75, ¶ 11, 100 P.3d 1171. A court’s “primary responsibility in construing legislative enactments is to give effect to the [legislative body’s] underlying intent.” *Perrine v. Kennecott Mining Corp.*, 911 P.2d 1290, 1292 (Utah 1996).

Moreover, it is important to “read the plain language of the [ordinance] as a whole, and interpret its provisions in harmony with other [provisions] in the same chapter and related chapters.” *Miller v. Weaver*, 2003 UT 12, ¶17, 66 P.3d 592. Each part or section of an ordinance “should be construed in connection with every other part or section so as to produce a harmonious whole.” *Id.* Further, ordinances should be construed in a manner that renders all parts of the ordinance “relevant and meaningful,” *Foutz*, 2004 UT 75, ¶ 11, 100 P.3d 1171. A correct reading should not “impose an unreasonable and unworkable construction,” *Miller*, 2003 UT 12, ¶ 19, 66 P.3d 592, or “render some part of a provision nonsensical or absurd.” *Perrine*, 911 P.2d at 1292.

B. *The Morgan County Council Properly Approved Mr. Ford's Conditional Use Permit Application*

A literal reading of the Code, as presently constituted, leads to the conclusion that the Property has no use restrictions. The land use table makes no reference to the Commercial Buffer zone, so the use of land in that zone is therefore unregulated.<sup>4</sup> We decline to adopt this interpretation because it would render “some part of a provision nonsensical or absurd.” *Id.* The purpose, or overall scheme, *see Miller*, 2003 UT 12, ¶ 22, 66 P.3d 592 (examining the language, purpose, and overall scheme of a statute to reach a correction interpretation), of the land use ordinance and zoning map is to regulate the use of land to ensure orderly growth and compatibility of nearby uses. To conclude that the Property’s use is unregulated would contravene this purpose and produce an unworkable result. The land use ordinance conveys a clear intention to regulate the use of the Property because the map identifies a zoning designation for the Property. To conclude that Morgan County intended to create a zone but not impose use restrictions on properties in the zone is nonsensical.

When the plain language of an ordinance produces an ambiguous or unreasonable interpretation, the courts may “resort to other modes of construction,” *Carrier*, 2004 UT 98, ¶ 31, 104 P.3d 1208, and “seek guidance from legislative history and other accepted sources.” *N. Fork Special Serv. Dist. v. Bennion*, 2013 UT App 1, ¶ 35, 297 P.3d 624. In doing so, the primary goal continues to be to “give effect to the [legislative body’s] intent in light of the purpose...the [ordinance] was meant to achieve.” *Carrier*, 2004 UT 98, ¶ 31, 104 P.3d 1208. The parties involved in this matter present planning commission and county council meeting minutes, as well as staff reports, as “legislative history” that supports positions on both sides of the argument.

It is important to note that courts may be reticent “to examine the legislative history for added illumination” into the actual intent of the law, because legislative histories, such as meeting minutes and staff reports, present “uncertain facts.” *See Miller*, 2003 UT 12 ¶ 24, 66 P.3d 592. The legislative process is rarely neat or linear. It involves several individuals with differing perspectives and intentions. Any law produced by the process is usually a result of compromise and the reconciliation of several interests. Consequently, it is often difficult to derive a single, collective legislative intent from documents described as “legislative history”. This reality is evidenced by the fact that members of the County Planning Commission and Council disagree about the actual intent of Ordinance No. CO-16-01, and cite to meeting minutes and staff reports to support their assertions. Consequently, we examine evidence from legislative histories conservatively, and in context of the resulting enactment.

In that light, we conclude that Mr. Ford’s conditional use permit was properly approved by the Morgan County Council, because, although the land use ordinance, read in conjunction with the zoning map, produces an ambiguous result, Ordinance No. CO-16-01, and its accompanying drafts in staff reports and meeting minutes, provide persuasive evidence that the purpose and intent of the ordinance amendment was to redesignate property zoned Commercial Buffer to Business Park. This is clear from drafts of the ordinance that produced the final enactment that

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<sup>4</sup> As mentioned in a footnote above, there are still sections of the County Code that address setbacks and other dimensional requirements in the Commercial Buffer zone.



became Ordinance No. CO-16-01. In every draft of amended Morgan County Code section 8-5C-1, the name “Commercial Buffer” was crossed out and replaced with “Business Park”. This is the clearest evidence that the collective intent of the ordinance amendment was to rename the Commercial Buffer zone to the Business Park zone. Consequently, because the Business Park zone, at the time Mr. Ford submitted his permit application, allowed pet crematoriums as a conditional use, Mr. Ford’s permit was properly approved.<sup>5</sup>

A final rule of construction uniquely applicable to land use matters further supports this conclusion. “[B]ecause zoning ordinances are in derogation of a property owner’s common-law right to unrestricted use of...property, provisions...restricting property uses should be strictly construed, and provisions permitting property uses should be liberally construed in favor of the property owner.” *Patterson v. Utah County Bd. of Adjustment*, 893 P.2d 602, 606 (Utah App. 1995). It follows from this rule that any ambiguities in a land use ordinance should be resolved in favor of the property owner’s desired use of the property, as we have done here.<sup>6</sup>

## CONCLUSION

The Morgan County Council did not amend the County’s zoning map to change the Commercial Buffer zone to the Business Park zone because it did not follow the proper procedures required by law to do so. However, despite the ambiguity created by Ordinance No. CO-16-01, the County Council correctly approved Mr. Ford’s conditional use permit because a proper application of established rules of statutory interpretation to relevant provisions in the County Code leads to the conclusion that the intent of the ordinance amendment was to rename the Commercial Buffer zone to the Business Park zone, which permits pet crematoriums as a conditional use.

Brent N. Bateman, Lead Attorney  
Office of the Property Rights Ombudsman

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<sup>5</sup> This opinion does not address the appropriateness of every aspect of the conditional use permit approval, only the fact that the approval complied with the use requirements of the County Code. Other aspects of the approval were not contested in the submitted materials.

<sup>6</sup> We note here that this conclusion does not resolve the fact that the land use ordinance and the zoning map do not agree with one another. The discrepancies need to be reconciled as soon as possible to prevent ongoing confusion and potentially illegal decisions in the near future.

**NOTE:**

**This is an advisory opinion as defined in § 13-43-205 of the Utah Code. It does not constitute legal advice, and is not to be construed as reflecting the opinions or policy of the State of Utah or the Department of Commerce. The opinions expressed are arrived at based on a summary review of the factual situation involved in this specific matter, and may or may not reflect the opinion that might be expressed in another matter where the facts and circumstances are different or where the relevant law may have changed.**

**While the author is an attorney and has prepared this opinion in light of his understanding of the relevant law, he does not represent anyone involved in this matter. Anyone with an interest in these issues who must protect that interest should seek the advice of his or her own legal counsel and not rely on this document as a definitive statement of how to protect or advance his interest.**

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**Evidence of a review by the Office of the Property Rights Ombudsman and the opinions, writings, findings, and determinations of the Office of the Property Rights Ombudsman are not admissible as evidence in a judicial action, except in small claims court, a judicial review of arbitration, or in determining costs and legal fees as explained above.**

**The Advisory Opinion process is an alternative dispute resolution process. Advisory Opinions are intended to assist parties to resolve disputes and avoid litigation. All of the statutory procedures in place for Advisory Opinions, as well as the internal policies of the Office of the Property Rights Ombudsman, are designed to maximize the opportunity to resolve disputes in a friendly and mutually beneficial manner. The Advisory Opinion attorney fees 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.**