

APPEAL OF CASE NO.: CONDITIONAL USE PERMIT 2021-01

Scope of CUP Application: Consideration and/or action on a conditional use permit for short term rental use at 3563 North Creekside Way, Eden, UT, 84310

Staff Recommendation: Approval subject to the following conditions

- A business license shall be obtained prior to issuance of this conditional use permit.
- Parking shall occur only in designated areas within the development.

Ogden Valley Planning Commission Decision: Denied

Reason for Decisions: The parking/safety impact of the short term rental cannot be adequately mitigated.

Appeal:

The Ogden Valley Planning Commission failed to adhere to Utah Municipal Code 10-9A-507 Conditional Uses. The Planning Commission failed to impose reasonable conditions that would substantially mitigate concerns despite the repeated attempts by Deputy County Attorney Courtlan Erickson to inform the Commission of the requirements dictated by law.

Mr. Erickson directed the Commission that they must provide credible evidence that detrimental effects cannot be substantially mitigated. The commission responded with hypothetical scenarios and assumptions that lack any credibility as evidence in this case. The commission further stated that laws and rules (CC&R's in this case) would not be "listened" to. A decision cannot be passed based on a broad assumption that the general public will break laws, rules and regulations.

The primary concern of the Commission related to vehicle parking on Wolf Lodge Drive. A reasonable mitigation would be to condition the approval upon vehicle parking on-premises only or further mitigated by required parking in-garage only. The broader concern of public parking on Wolf Lodge Dr can also be mitigated by the County itself by instituting a No Parking Zone.

A secondary concern was related to the safety on site related to snow removal/emergency access. The Commission claimed that the site was not designed appropriately for snow removal, however, it was the commission itself that approved the overall development. If a legitimate concern exists, it should have been addressed by the Commission during the approval stage of the development. The fact that the development was approved is evidence that the project was designed to County specifications and the concern lacks credibility under law. Further, the CC&R's restrict parking on private streets to mitigate this concern: "*Vehicles may be parked in garages*

and Driveways and in other designated parking areas as Declarant may establish in the Project. No vehicle (including any trailer connected to such vehicle) may extend into any Private Street or other thoroughfare. No vehicle, equipment or item may be parked on any portion of the Common Area that has not been clearly designated as a parking space or parking area. Parking within the Project may be further regulated by Rules and Regulations adopted by the Board from time to time.”

There was also concern regarding boat trailer parking on premises. The Covenants, Conditions, and Restrictions for The Village At Wolf Creek expressly prohibit the parking or storing of trailers, boats, etc outside of unit garages: *“14.8 Trucks, Trailers, Campers and Boats Any motor vehicles with a manufacturer rating exceeding 3/4-ton, as well as recreational vehicles, mobile homes, travel trailers, tent trailers, trailers, camper shells, detached campers, boats, boat trailers, commercial vehicles or other similar equipment or vehicle must be parked and maintained in garages only”*. While this concern is already mitigated by a legally enforceable CC&R, it could be further mitigated by requiring the permittee to prohibit trailers in the property listing/rental agreement.

Based on the Planning Commission’s failure to adhere to Utah Municipal Code 10-9A-507 the Applicant requests that the County issue the Conditional Use Permit subject to the Conditions found under the Staff Recommendation of the Staff Report to the Ogden Valley Planning Commission.

It is also recommended that the Board view the video recording and/or meeting minutes to review the conduct of the Commission despite the attempts by Courtlan Erickson-Deputy County Attorney to interject as it relates to Utah Municipal Code 10-9A-507 Conditional Uses.

Excerpts of Mr. Erickson’s statements to the Commission:

“If you deny short term rental as a use in a zone where they are a conditionally permitted use, you need to have findings that basically say we are unable to impose conditions that substantially mitigate the detrimental effects and make sure that you put some findings in there that are going to hold up if it gets challenged which do need to be based on credible evidence that it cannot be substantially mitigated.”

“I feel bound to speak up here again to say can you impose conditions to mitigate that issue? Is requiring them to park in the garage and to comply with the CC&R’s regarding all kinds of other parking. Is that a reasonable condition you can impose that mitigates those concerns? The concerns are real, absolutely, but can you impose reasonable conditions that would substantially mitigate those concerns. That is a crucial question here.”