



## Staff Report to the Weber County Commission

### Synopsis

#### Application Information

**Application Request:** Consideration and action on an appeal of a Conditional Use Permit (CUP) 2014-16 for a dog kennel in the Agricultural (AV-3) Zone.

**Agenda Date:** Tuesday, December 09, 2014

**Applicant:** Stacey Bowman

**Appellants:** Cleon P. Butterfield and Adam Shane Phelps

**File Number:** CUP 2014-16

#### Property Information

**Approximate Address:** 5784 East 2300 North

**Project Area:** 3 acres

**Zoning:** Agricultural (AV-3) Zone

**Existing Land Use:** Agricultural/Residential

**Proposed Land Use:** Residential dwelling with a dog kennel

**Parcel ID:** 22-309-0003

**Township, Range, Section:** T7N, R1E, Section 35

#### Adjacent Land Use

|                            |                            |
|----------------------------|----------------------------|
| <b>North:</b> Agricultural | <b>South:</b> Agricultural |
| <b>East:</b> Agricultural  | <b>West:</b> Agricultural  |

#### Staff Information

**Report Presenter:** Jim Gentry  
jgentry@co.weber.ut.us  
801-399-8767

**Report Reviewer:** SW

### Applicable Ordinances

- Weber County Land Use Code Title 104 Zones Chapter 6 Agricultural (AV-3)
- Weber County Land Use Code Title 108 Standards Chapter 4 (Conditional Uses)
- Weber County Land Use Code Title 108 Standards Chapter 7 (Supplementary and Qualifying Regulations)
- Weber County Land Use Code Title 110 Signs Chapter 2 (Ogden Valley Signs)

### Type of Decision

**Administrative Decisions:** When the Planning Commission is acting as a land use authority, it is acting in an administrative capacity and has much less discretion. Examples of administrative applications are design reviews, flag lots, and subdivisions. Administrative applications must be approved by the Planning Commission if the application demonstrates compliance with the approval criteria.

### Background

The applicant is requesting approval of a Conditional Use Permit for a Pet Vacation Station (dog kennel) on a 3 acre lot in the AV-3 Zone. The Agricultural AV-3 zone allows dog breeding, dog kennels, or dog training schools on a minimum of three acres as a conditional use, with the following requirements:

- The number of dogs cannot exceed 10 dogs of more than 10 weeks old, per acre, at any time.
- Buildings or enclosures for animals shall be located not less than 100 feet from a public street and not less than 50 feet from any rear or side property line.

The kennel site is located on a 3-acre subdivision lot in Country Gardens Subdivision Phase 1. The lot has 244 feet of frontage with the proposed structure being at least 100 feet from 2300 North. The building, common area, and outdoor kennel will be located in the middle of the property. The lot also has an existing house with an outbuilding. The kennel will be located more than 40 feet from the house. The proposal is to have between 2 and 20 dogs. The applicant is proposing a 30 foot by 50 foot air conditioned building for the dogs. There will be dog runs to the east of the building with pea gravel. A fenced common area that will be grassed will be to the north of the building. The applicant is proposing to plant trees in this area. The applicant is also proposing an asphalt drive from 2300 North to the building, and will have two parking stalls. The applicant is considering placing signs at the entrance of the asphalt drive to identify the entrance points to the dog day care. No business signs are being proposed at this time. Any signs will have to meet Title 110 Signs Chapter 2 (Ogden Valley Signs), and be approved by Planning Staff. The hours of operation will be 8:00 AM to 6:00 PM daily.

The Ogden Valley Planning Commission heard this application on August 26, 2014 and approved the Conditional Use Application on a voted 4-2 with the following conditions:

- No signs have been proposed. Any signs will have to meet Title 110 Signs Chapter 2 (Ogden Valley Signs), and be approved by Planning Staff.
- The numbers of dogs are not to exceed 20.
- Providing an asphalt drive with two parking stalls at the building.
- A metal building with sound proofing insulation that is air conditioned.
- Setbacks as per the site plan.
- The metal building will be painted the same color as the house.
- A grassed area of at least 420 square feet with 2 quaking aspens and an evergreen tree.
- The hours of operation will be 8:00 AM to 6:00 PM daily.
- The dogs will have to be in their kennels by 10:00 P.M. and not out earlier then 7:00 A.M.
- Removal of animal waste to be done by double bagging with normal trash removal and the area where there is urine will be sprayed and washed down daily.
- Requirements of the Weber County Engineering Division.
- Requirements of the Weber-Morgan Health Department.
- Requirements of the Weber County Building Inspection Division.
- Requirements of the Weber Fire District.
- Requirements of Weber County Animal Services.

Two appeals of this approval were filed with one of the appellants filing a request for an Advisory Opinion from the State of Utah Department of Commerce Office of the Property Rights Ombudsman (see attached Advisory Opinion). The conclusion of the advisory opinion is as follows: "The Planning Commission did not abuse its discretion when it approved the Bowman's Conditional Use Permit. A dog kennel is authorized as a conditional use on the Bowman's property, and the Commission adopted appropriate conditions to mitigate the detrimental impacts of the kennel. The County Code indicates standards that may be used as a reference for the types of conditions that could have been imposed. The Planning Commission has authority to approve a conditional use on behalf of the local jurisdiction. In doing so, the Commission has discretion to impose conditions to mitigate them to the point that the Commission is satisfied. While the Commission should seek input from planning staff, the applicant, neighboring property owners, and other interested parties, it is not required that all parties be satisfied. The ultimate decision rests with the Planning Commission.

If reasonable conditions are proposed to mitigate the detrimental impacts, the conditional use permit should be approved. The Utah Code Does not require substantial mitigation of all impacts".

The Property Rights Ombudsman opinion also concluded that only ten dogs instead of the 20 dogs would be allowed.

## Summary of County Commission Considerations

The County Commission must determine whether or not the Planning commission made the correct decision in approving the dog kennel. The County Commission should also determine if the conditions of approval are adequate for this use. In making these determinations, the following questions should be considered:

- Does the proposed use meet the requirements of applicable Land Use Codes?
- Are there any potentially detrimental effects that can be mitigated by imposing conditions of approval, and if so, what are the appropriate conditions?

In order for a conditional use permit to be approved it must meet the requirements listed under "Criteria for Issuance of Conditional Use Permit." The County Commission needs to determine if the proposed use meets these requirements.

### **Sec. 108-4-4 Criteria for issuance of conditional use permit:**

Conditional uses shall be approved on a case-by-case basis. The Planning Commission shall not authorize a conditional use permit unless evidence is presented to establish:

1. Reasonably anticipated detrimental effects of a proposed conditional use can be substantially mitigated by the proposal or by the imposition of reasonable conditions to achieve compliance with applicable standards. Examples of potential negative impacts are odor, vibration, light, dust, smoke, or noise.
2. That the proposed use will comply with the regulations and conditions specified in the Land Use Code and other applicable agency standards for such use.

After reviewing this conditional use request staff has determined that the criteria listed above have been met in the following ways:

1. The potential detrimental effects of this kennel relating to noise, smell, and loose dogs have been reasonably mitigated. Noise is mitigated by the size of the lot, location of the building, the hours of operation, and the commitment to house excessively noisy dogs inside a building. The potential for foul smells is mitigated by removal of animal waste by double bagging with normal trash removal and the urine will be sprayed daily. Loose dogs have been mitigated by having a secure outdoor kennel, play area, and a building to secure the dogs.
2. The Ogden Valley Architectural, Landscape, and Screening Design Standards, Parking and Loading Space Vehicle Traffic and Access Regulations, and Ogden Valley Lighting code do not apply because under section 108-2-3 Applicability "single-family residential use and its approved accessory shall be exempt". The Agricultural AV-3 states "dog kennels are allowed as an accessory use to a single family dwelling", therefore the only applicable standards in the Land Use Code that apply to this case are: setback for animals, which is 100 feet from a public street; 50 feet from the side or rear property lines; number of dogs (cannot exceed 10 dogs of more than 10 weeks old, per acre, at any time); and the area requirement of 3-acres. The applicant meets or exceeds these standards.

However, the applicant is proposing to do additional improvements as follows:

- No signs have been proposed except two entrance signs to identify the entrance location.
- The applicant is willing to providing an asphalt drive with two parking stalls at the building.
- The applicant is willing to construct a metal building with sound proofing insulation that will be air conditioned for the comfort of the dogs. The metal building will be painted the same color as the house.
- A grassed area of 420 square feet with 2 quaking aspens and an evergreen tree will be provided for the dogs.

## Conformance to the General Plan

The proposed use complies with applicable County Ordinances and the Ogden Valley General Plan.

## Conditions of Approval

- Requirements of the Weber County Engineering Division

- Requirements of the Weber-Morgan Health Department
- Requirements of the Weber County Building Inspection Division
- Requirements of the Weber Fire District
- Requirements of Weber County Animal Services

### **Planning Commission Approval**

The Ogden Valley Planning Commission heard this application on August 26, 2014 and approved the Conditional Use Permit on a 4-2 vote.

### **Exhibits**

- A. Location Map
- B. Site plan
- C. Applicant's narrative
- D. Appellants appeal letters
- E. Opinion from State of Utah Department of Commerce Office of the Property Rights Ombudsman
- F. Ogden Valley Planning Commission minutes from August 26, 2014 approving Conditional Use Permit 2014-16 for a dog kennel



# CUP 2014-16

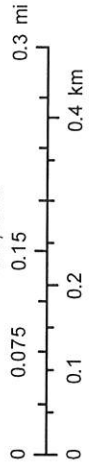


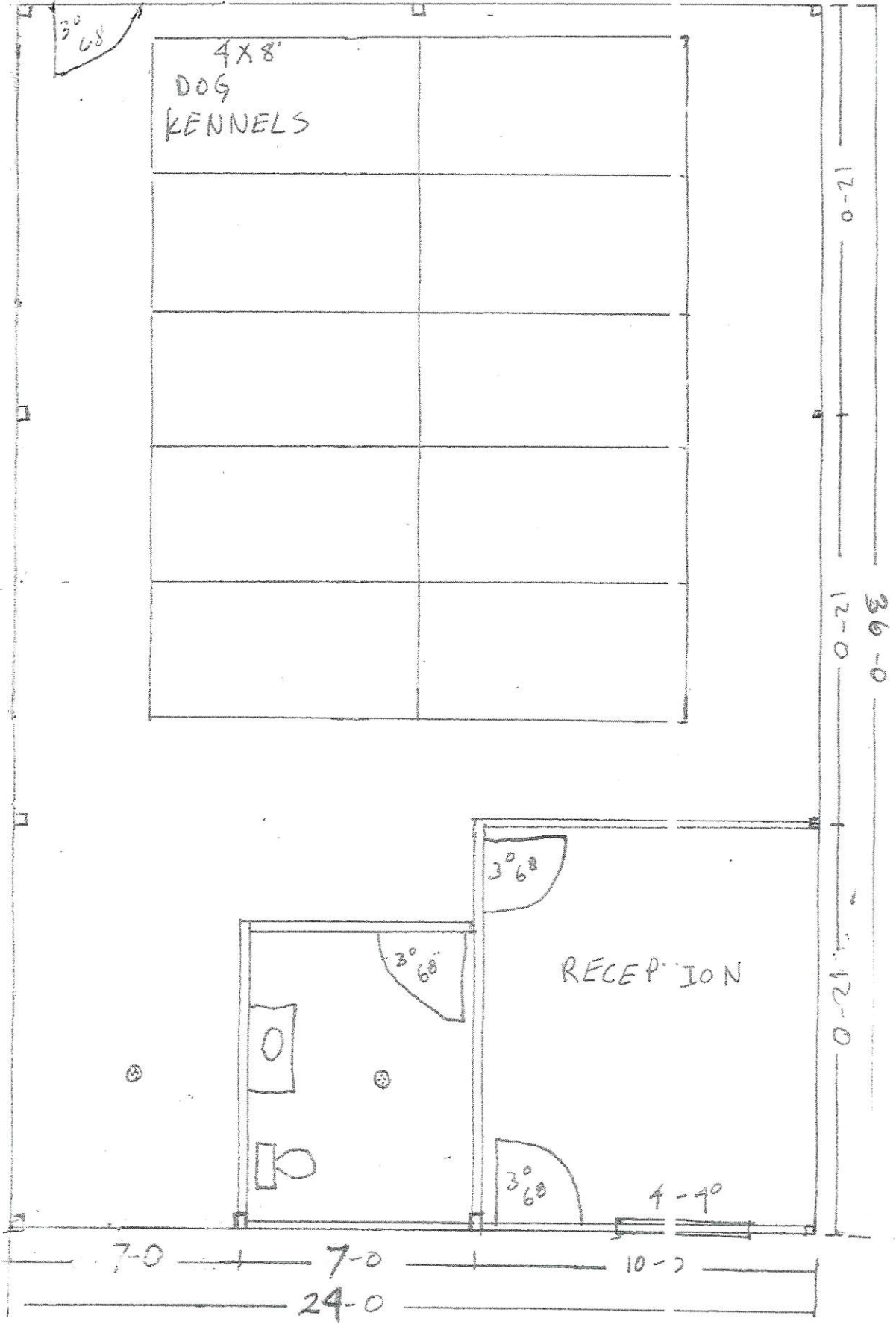
July 15, 2014

Street Labels

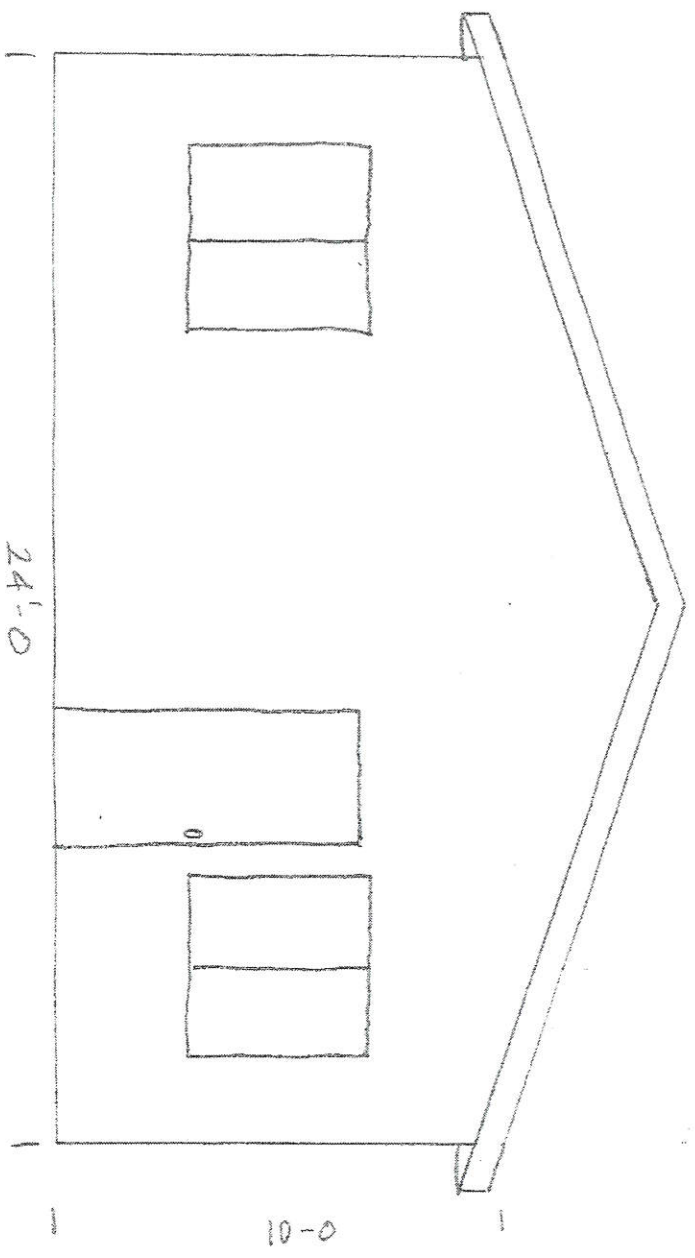
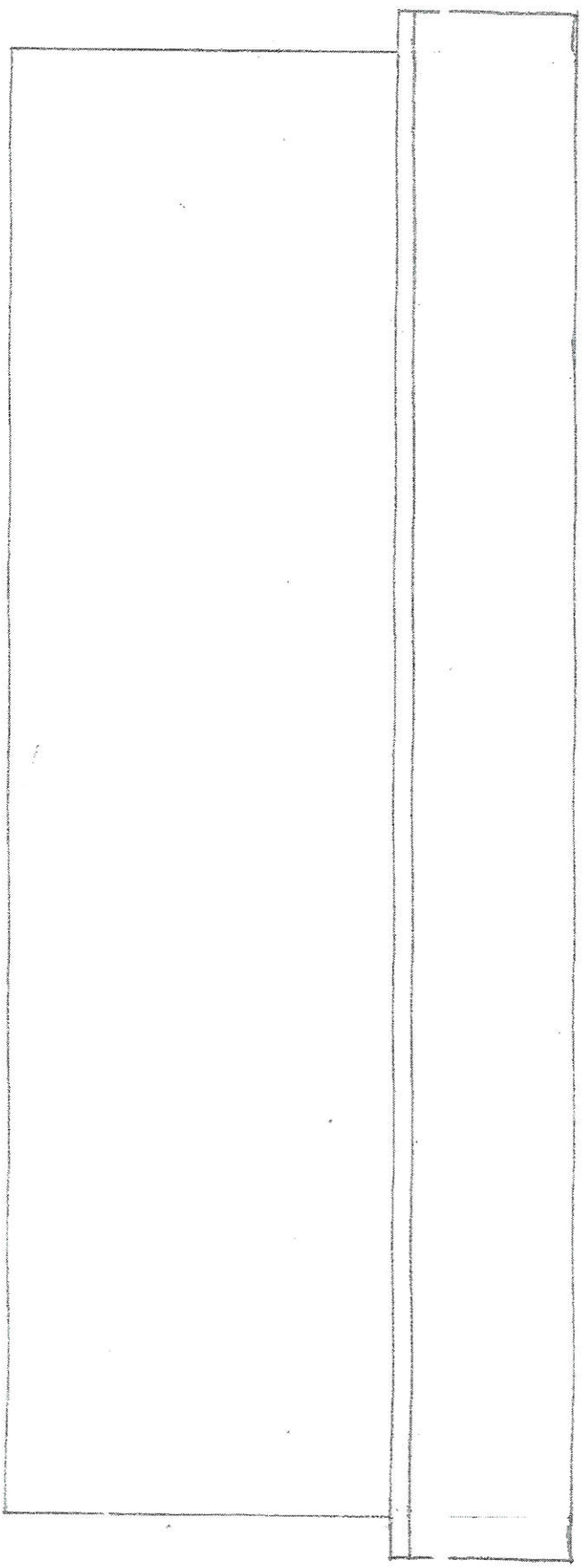
City Labels

1:9,028





Proposed  
 Dog Day Care  
 Building



Proposed  
Dog Daycare  
Building

# Weber County Conditional Use Permit Application

Application submittals will be accepted by appointment only. (801) 399-8791. 2380 Washington Blvd. Suite 240, Ogden, UT 84401

|  |                                    |  |  |
|--|------------------------------------|--|--|
| Date Submitted / Completed<br><i>1/21/14</i> | Fees (Office Use)<br><i>225.00</i> | Receipt Number (Office Use)<br><i>3138</i> | File Number (Office Use)<br><i>CUP 2014-16</i> |
|--|------------------------------------|--|--|

### Property Owner Contact Information

|   |     |  |  |
|---|-----|--|--|
| Name of Property Owner(s)<br><i>Stacey Bowman</i>         |     | Mailing Address of Property Owner(s)<br><i>5784 E. 2300 N.</i>   |  |
| Phone<br><i>801-390-1718</i>                              | Fax | <i>Eden, UT. 84310</i>   |  |
| Email Address (required)<br><i>staceybowman@yahoo.com</i> |     | Preferred Method of Written Correspondence<br><input checked="" type="checkbox"/> Email <input type="checkbox"/> Fax <input type="checkbox"/> Mail |  |

### Authorized Representative Contact Information

|  |     |  |  |
|--|-----|--|--|
| Name of Person Authorized to Represent the Property Owner(s)<br><i>Stacey Bowman</i> |     | Mailing Address of Authorized Person<br><i>5784 E. 2300 N.</i>   |  |
| Phone<br><i>801-390-1718</i>   | Fax | <i>Eden, UT. 84310</i>   |  |
| Email Address<br><i>staceybowman@yahoo.com</i>                                       |     | Preferred Method of Written Correspondence<br><input checked="" type="checkbox"/> Email <input type="checkbox"/> Fax <input type="checkbox"/> Mail |  |

### Property Information

|   |   |  |
|---|---|--|
| Project Name<br><i>Your Pet's Vacation Station</i>                      | Total Acreage<br><i>3 acres</i>             | Current Zoning<br><i>A-<del>V</del>3</i> |
| Approximate Address<br><i>5784 E. 2300 N.</i><br><i>Eden, UT. 84310</i> | Land Serial Number(s)<br><i>22-309-0003</i> |  |

Proposed Use  
*To board animals for people going on vacation.*

Project Narrative  
*I want to provide a safe and loving location ~~for~~ for those that are wanting to go on vacation and don't want to have to worry about their dogs. They can leave them with me and trust that they are receiving excellent care. I will have separate boarding kennels for nighttime as well as area's to separate the large dogs from the small dogs.*

### Basis for Issuance of Conditional Use Permit

Reasonably anticipated detrimental effects of a proposed conditional use can be substantially mitigated by the proposal or by the imposition of reasonable conditions to achieve compliance with applicable standards. Examples of potential negative impacts are odor, vibration, light, dust, smoke, or noise.

My building will be constructed to eliminate the noise of barking. It will be fenced so that no animals will be able to roam off. Their poop will be removed by double bagging and pickup removal. Urine will be sprayed down daily.

That the proposed use will comply with the regulations and conditions specified in the Zoning Ordinance and other applicable agency standards for such use.

All requirements will be met and will be done so according to all ordinances and other standards that are set for allowing to have this done.



August 27, 2014

Cleon P. Butterfield  
609 Oakview Lane  
Bountiful, UT 84010

Weber County Commission  
2380 Washington Boulevard  
Ogden, UT 84401

RE: Appeal of the Ogden Valley Township Planning Commission's Decision to Approve a Conditional Use Permit (CUP) 2014-16 for a dog kennel in the Agricultural (AV-3) Zone.

Honorable Commissioners:

I am writing to appeal the Ogden Valley Township Planning Commission's decision to approve a conditional use permit for a Commercial Dog Kennel on August 26th, referred above. I am requesting that the Planning Commission's decision be reversed and deny the conditional use permit because the detrimental effects of the kennel cannot be substantially mitigated. This dog kennel is not appropriate for this residential location and will not achieve compliance with county standards.

State Law for Conditional Uses 17-27a-506, states that a conditional use may be denied "if the reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards."

State law allows for denial and the conditional use should be denied, for the proposed dog kennel at 5784 East 2300, Eden Utah, lot 3 of the Country Garden Subdivision, because the detrimental effects cannot be substantially mitigated with reasonable conditions.

Here are some examples of possible ways to mitigate detrimental effects but are deemed not reasonable conditions: The planning commission discussed and proposed muzzles for the dogs, which would be used only on barking dogs causing a noise problem. The Planning Commission did not require muzzles as an condition because it was considered not reasonable. The Planning Commission discussed and proposed multiple landscaping barriers or mounds as a condition that would help mitigate detrimental effects of the dog kennel on lot 3 of a residential subdivision. The landscaping barriers were not required as a condition because it was considered not reasonable.

Staff's report to the Commission states that "potential detrimental effects of this kennel relating to noise, smell, and loose dogs have been reasonably mitigated." The state law requires substantially mitigated not reasonably. The context of staff's report, not only the wording is evidence that the detrimental effects have not been substantially mitigated.



Based on the evidence, and the fact that the identified detrimental effects have not be substantially mitigated with reasonable conditions, the conditional use permit should not be allowed. The permit should and must be denied.

In addition, there are many more detrimental effects of a commercial dog kennel in a residential subdivision other than noise, smell, and loose dogs. There are issues of health, safety, traffic, screening design standards, parking and other negative impacts of the subdivision. These issues have not been mitigated nor do the required conditions of the permit address these detrimental effects. Staffs report states that this commercial dog kennel is exempt from other standards because " dog kennels are allowed as an accessory use to a single family dwelling."

The accessory use is a reference for a limit of ten dogs on a legal nonconforming lots on a minimum of two acres. That reference in the Land Code Use and the Zoning Ordinance is not applicable, because Lot 3, the proposed site of the commercial dog kennel, is a conforming three acre lot, and is not being limited to ten dogs. Three acre lots reference for conditional use may allow, in certain locations more dogs, a limit of 30 dogs, but the standard nor the ordinance make reference to an accessory use. Therefore, it is reasonable to point out, that the Land Code Use intent was to allow a ten dog limit for a single family accessory, not a commercial enterprise. If it is not an accessory use to a single family dwelling limited to ten dogs, it is not exempted from other county standards. Furthermore, the Ogden Valley Architectural Landscaping and Screening Design Standards states that it shall apply to all commercial uses. Other county standards that have been deemed exempted may also apply.

I own lots 1 and 2 to adjacent lot 3 in the County Garden Subdivision. Lot 3 is the first to be built on at this time. Our plan is to build a home on our lots after retirement. The Country Gardens Subdivision requires all homes to have a minimum 1,800 square feet homes with attached two car garages. It requires exterior material on the home to be 100% masonry material; stone, stucco or brick. Exposed metal flues, vent, ventilators visible from the road shall be coated or painted a neutral color. It does not allow evaporative coolers. These are \$200,000+ lots within a residential subdivision. A commercial dog kennel on lot 3 next door will be detrimental to the other lots in the subdivision and the neighborhood. I am aware of no neighbor who lives on the street that is in favor and I believe all have voiced opposition. Many of these neighbors have attended the planning meeting to voice their opposition to the Planning Commission.

Zoning ordinances allow "Permitted Uses" to only include household pets which do not constitute a kennel. There is a reason why kennels are only authorized by "conditional use" and that is because they are detrimental in certain locations. A commercial dog kennel in a subdivision like ours is severely detrimental and incompatible. Our subdivision must be protected by zoning ordinances not destroyed by unwise conditional use decisions. This is not the appropriate location in Ogden Valley for a 30 dog kennel. A commercial dog kennel by definition and fact, is the epitome of detrimental effects in terms of land use.

The County Zoning Ordinance states that conditional uses "may be appropriate only in certain locations and/or under specific conditions that mitigate potential impacts. If impact cannot be mitigated, the

Cleon P. Butterfield, Letter Dated August 27, 2014

conditional use may be deemed incompatible." The facts in this case are irrefutable. Based on the evidence presented, the detrimental impact will not be mitigated. The Commercial Dog Kennel is incompatible and not appropriate for lot 3 of the Country Garden Subdivision. The proposed dog kennel, because of the facts and evidence presented, will not be in compliance with applicable Weber County standards.

Additionally, as presented above, State law does allow the Ogden Valley Township Planning Commission the ability, under these circumstances to deny this particular request for conditional use. Some of the Commission Members stated at the meeting, that state law required a vote of approval, to avoid legal action. Best planning decisions are based on facts and evidence and merits of individual cases, not on legal risks. State law can and should be used to deny this application for conditional use, not to approve it. The Ogden Valley Township Planning Commission's four to two decision must be reversed and the conditional use permit denied.

Thank you for your consideration.

Sincerely,



Cleon P. Butterfield

Cc: Weber County Planning Commission

September 9, 2014

Adam Shane Phelps  
Eden, Utah 84310

RE: Appeal of the Ogden Valley Township Planning Commission's Decision to Approve a Conditional use permit (CUP) 2014-16 for a dog kennel in the Agricultural (AV-3) Zone

Honorable Commissioners:

I am writing to appeal the Ogden Valley Township Planning Commission's decision to approve a conditional use permit for a Commercial Dog Kennel in lot 3 of Country Gardens Subdivision. Besides the point of being the wrong location for a commercial dog kennel I would ask that the accessory to a single family home would be considered by allowing a maximum of 10 dogs. *I FEEL THAT THE PLANNING COMMISSIONERS FAILED TO CONSIDER THE APPLICABLE ORDANLES.*

Thank you for your consideration

Adam Shane Phelps





GARY R. HERBERT  
*Governor*

SPENCER J. COX  
*Lieutenant Governor*

State of Utah  
Department of Commerce

OFFICE OF THE PROPERTY RIGHTS OMBUDSMAN

FRANCINE A. GIANI  
*Executive Director*

BRENT N. BATEMAN  
*Lead Attorney, Office of the Property Rights Ombudsman*

## ADVISORY OPINION

Advisory Opinion Requested by: Cleon Butterfield

Local Government Entity: Ogden Valley Township (Weber County)

Property Owner: Blair and Stacey Bowman

Type of Property: Conditional Use (Dog Kennel)

Date of this Advisory Opinion: October 31, 2014

Opinion Authored By: Elliot R. Lawrence  
Office of the Property Rights Ombudsman

### Issues

Is it necessary to substantially mitigate all negative impacts before a conditional use permit may be approved?

### Summary of Advisory Opinion

A local government has discretion to approve a conditional use permit, when such uses are authorized by statute. Even generalized standards are sufficient to guide a land use authority's decisions. The detrimental impacts specific to a proposed use must be identified, and conditions imposed to address the impacts. If reasonable conditions mitigate the impacts, the conditional use permit should be approved. It is not necessary that all impacts be substantially mitigated.

### 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 Cleon Butterfield on September 10, 2014. A copy of that request was sent via certified mail to Ricky D. Hirsch, Weber County Clerk/Auditor, at 2380 Washington Blvd., Suite #230, Ogden, Utah. According to the return receipt, the County received the Request on September 15, 2014.

## **Evidence**

The following documents and information with relevance to the issue involved in this Advisory Opinion were reviewed prior to its completion:

1. Request for an Advisory Opinion, with attachments, submitted by Cleon Butterfield, received by the Office of the Property Rights Ombudsman on September 10, 2014.
2. Response submitted on behalf of Weber County, including attachments, received via email from Christopher F. Allred, Weber County Attorney's Office, on September 25, 2014.
3. Reply submitted by Mr. Butterfield, received September 30, 2014.

NOTE: The property owners, Blair and Stacey Bowman, were also notified of this Opinion, but did not submit any response.

## **Background**

Blair and Stacey Bowman own property in Weber County, which is part of the Ogden Valley Township.<sup>1</sup> Their property is about 3 acres, and is located within an Agricultural Valley ("AV-3") zone. The Bowmans applied for permission to construct and operate a commercial dog kennel on their property.<sup>2</sup> The Bowmans proposed a 30 x 50 foot building which would house between 2 and 20 dogs. The building would include outdoor dog runs, and would adjoin a fenced area with grass and trees. The Bowmans' plan included a driveway with two parking stalls, and possibly signage to identify the business.

In Weber County's ordinances, a dog kennel is listed as a conditional use in the AV-3 zone. The minimum requirements for conditional use permit (CUP) for a dog kennel as an accessory use to a residential building are as follows:

- 1) Minimum lot size: 2 acres
- 2) No more than 10 dogs (10 weeks or older).

---

<sup>1</sup> A township is an area of a county established with its own local planning commission. *See* UTAH CODE ANN. § 17-27a-306. A Township planning commission (like the Ogden Valley Township), performs the same functions as any planning commission, including approval of development and other applications when authorized. The township planning commission is subject to the ordinances of the County. Although the Ogden Valley Township acted as the land use authority in this matter, this Opinion shall refer to Weber County as the governing jurisdiction.

<sup>2</sup> The kennel would be in a new structure. There is a home and outbuilding on the lot.

- 3) Buildings shall be at least 100 feet from a public street, and at least 50 feet from the rear and side property lines, and 40 feet from a residential structure.<sup>3</sup>

The Bowmans' proposed Kennel met the minimum requirements.<sup>4</sup> The County's staff recommended these additional conditions:

- 1) Insulation for the building, to minimize noise, and air conditioning to provide comfortable surroundings;
- 2) A commitment to house "excessively noisy" dogs during the day, and to ensure that the Kennel is secure to prevent dogs from running at large;
- 3) Strict observance of operating hours;
- 4) A commitment to daily waste removal, including spraying for urine,
- 5) Landscaping for the grass area (3 trees), and
- 6) Two entrance signs.

The County staff recommended approval of the CUP with these conditions.<sup>5</sup> The Township Planning Commission approved the CUP on August 26, 2014.

Cleon Butterfield owns property adjacent to the Bowman's, and he objects to the Kennel.<sup>6</sup> Mr. Butterfield does not believe that the detrimental impacts of the Kennel have been substantially mitigated. Specifically, he states that noise concerns were not adequately addressed, and that the Planning Commission should have required that the dogs be muzzled.<sup>7</sup> He also wanted more landscaping to visibly screen the Kennel from the street and other properties. Finally, he argues that the Commission did not consider other negative effects, including health, safety, traffic, and parking.<sup>8</sup>

Mr. Butterfield also argues that the Ogden Valley Architectural Landscaping and Screening Design Standards should have been applied to the CUP, meaning that greater landscaping and screening should have been required.<sup>9</sup> He reasons that the Kennel is a commercial business, and

---

<sup>3</sup> WEBER COUNTY CODE, § 104-6-5(2)(b).

<sup>4</sup> The building met the minimum distance requirements. The Bowmans proposed to house a maximum of 20 dogs, but the County ordinance limits the number in an accessory structure to 10.

<sup>5</sup> Staff Report, CUP 2014-16, Ogden Valley Planning Commission, August 26, 2014. The Commission did not discuss a limit on the number of dogs that could be boarded, other than what was expressed in the County Code.

<sup>6</sup> Mr. Butterfield owns two lots adjoining the Bowmans. He plans to build a home on his property, but no buildings currently occupy the lots. Mr. Butterfield also stated that other property owners in the area are opposed to the Kennel.

<sup>7</sup> Apparently, the Commission considered this idea, but rejected it as unreasonable.

<sup>8</sup> In the materials submitted for this Opinion, Mr. Butterfield did not identify specific problems in these areas, nor did he suggest any conditions, other than additional landscaping.

<sup>9</sup> The landscaping standards are found at §§ 108-2-4 to -9 of the Weber County Code. Mr. Butterfield and other neighbors argued that the Planning Commission should have applied these standards, but the Commission declined to do so.

the County Code requires the more stringent landscaping requirements on commercial businesses. The Planning Commission rejected this argument, because the Kennel is an accessory use to the Bowman's home, it is exempt from the landscaping standards.<sup>10</sup>

In response, Mr. Butterfield cites § 104-6-5(2)(b), which provides that dog kennels may be approved as accessory uses for residential homes on lots of two acres, but that the number of dogs is limited to ten only.<sup>11</sup> He argues that the exemption from the landscaping requirements for an accessory use should not apply, because the Kennel is on a "conforming three acre lot" and not a "nonconforming" lot (as stated in § 104-6-5(2)(b)). Hence, Mr. Butterfield concludes, the Kennel does not qualify as an "accessory use," and cannot be exempt from the landscaping standards of §§ 108-2-4 to -9.

In addition to these objections, Mr. Butterfield also argues that the CUP should have been denied, because the detrimental impacts of the Kennel were not "substantially" mitigated. The staff report and the Planning Commission's approval state that the negative impacts of the Kennel could be "reasonably" mitigated by the proposed conditions. Mr. Butterfield cites § 17-27a-506 of the Utah Code, which provides that a conditional use permit may be denied if the detrimental impacts of the use cannot be substantially mitigated by reasonable conditions. He argues that the state law requires denial unless the detrimental impacts can be substantially mitigated. The County's approved conditions only provide "reasonable" mitigation, so the CUP should have been denied (or at least have been subject to more stringent conditions).

The County maintains that the Planning Commission acted within its authority, considered the impacts of the Kennel, and imposed reasonable conditions on its operation.

## **Analysis**

### **I. There is no Reason to Conclude That the County Abused its Discretion by Approving the Conditional Use Permit.**

There is no reason to conclude that the County abused its discretion when it approved the conditional use permit for the Bowman's Kennel. The County's ordinances specifically allow dog kennels as conditional uses. The Township Planning Commission considered the impacts of the Kennel, and imposed conditions meant to address those impacts. The County was thus within the authority granted it by the Utah Code and its own ordinances.

#### *A. Conditional Uses*

Local governments may designate uses as conditional, meaning that specific approval of each use is required.

---

<sup>10</sup> Weber County Code, § 108-2-3 ("Single-family residential use and its approved accessory uses . . . are exempt [from the landscaping standards].")

<sup>11</sup> Weber County Code, § 104-6-5(2)(b). "Dog breeding and dog kennels on a minimum of two acres, on a legal nonconforming lot, as an accessory use to a single family dwelling, limited to ten dogs of more than ten weeks old." The subsection also requires minimum setbacks for any buildings, which are similar to those found in Subsection (2).

(1) A land use ordinance may include conditional uses and provisions for conditional uses that require compliance with standards set forth in an applicable ordinance.

(2)(a) A conditional use shall be approved if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards.

(b) If the reasonably anticipated detrimental effects of a proposed use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards, the conditional use may be denied.

UTAH CODE ANN. § 17-27a-506.<sup>12</sup> The Utah Code anticipates four specific steps: First, a use is designated as conditional in a land use ordinance; Second, standards are adopted to guide evaluation of each application; Third, the reasonably anticipated detrimental effects of each use are identified; and Fourth, conditions are proposed to mitigate the detrimental effects. The use shall be approved if the detrimental effects can be mitigated, and it may be denied only if the effects cannot be substantially mitigated. The County has already completed the first step, by designating dog kennels as conditional uses in the AV-3 zone.

### *B. Applicable Standards*

The Utah Code does not define “applicable standards,” nor does it explain the nature or extent expected of the required standards for conditional use analysis. Several years ago, however, the Utah Supreme Court deferred the choice of standards to a local government’s judgment:

While it is true that a zoning ordinance must set some ascertainable boundaries on the exercise of discretion by a zoning authority, such boundaries are not required to be unduly rigid or detailed. A generalized exposition of overall standards or policy goals suffices to direct the inquiry and deliberation of the zoning authority, and to permit appellate review of its decision.

*Thurston v. Cache County*, 626 P.2d 440, 443-44 (Utah 1981). The reference to the design and landscaping standards of the County’s ordinance thus provides sufficient standards to direct the inquiry and deliberation of the Bowman’s conditional use application.

In order to be considered as a conditional use, a kennel must satisfy minimum criteria (that is, minimum standards) including parcel size, setback distances, etc. Although the County admits that its ordinance contains “very few” applicable standards specifically for dog kennels, the Weber County Code provides general design and landscaping standards. Each application for a conditional use permit shall include:

---

<sup>12</sup> “‘Conditional use’ means a land use that, because of its unique characteristics or potential impact on the county, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.” UTAH CODE ANN. § 17-27a-103(6).

Detailed building plans and site plans [sic] specifications shall be drawn to scale including electronic copies showing details and other applicable zoning requirements as which are outlined in chapter 1 of this title [Title 108] Design review, and chapter 2 of this title, Ogden Valley Architectural, Landscape and Screening Standards.

WEBER COUNTY CODE, § 108-4-3(1)(e). Thus, even though the Bowman's kennel is exempt from compliance with the Ogden Valley Architectural, Landscape and Screening Standards, the Planning Commission could still look to those standards, as well as the Design Guidelines to guide its decision on the Bowman's application.<sup>13</sup> It is within the Commission's discretion to use those standards when evaluating the CUP.

### *C. Reasonably Anticipated Detrimental Effects*

As part of its decision to grant or deny a conditional use permit, a local government must identify the detrimental impacts associated with the specific use proposed in the application. This is necessary to determine what conditions may be imposed to mitigate the detrimental effects. The detrimental impacts, like all aspects of a conditional use application, must be established by substantial evidence. Since local government is claiming the need for additional conditions to address the impacts, the local government has the burden of proving both the existence of the impacts, and the need for conditions.

The detrimental effects must be identified for each particular use in each particular location. The negative effects of the specific use must be shown to be potentially detrimental to the community, neighboring properties, or nearby land uses. It is not sufficient to merely cite generalized conclusions about a use.<sup>14</sup> Moreover, the detrimental effects must be connected to a distinct adverse impact on the use and enjoyment of nearby properties or the community at large.<sup>15</sup> No detrimental impacts may be claimed without substantial evidence of a connection to a negative effect.

---

<sup>13</sup> As noted above, uses accessory to a residential building are exempt from *compliance* with the landscaping standards. This does not exclude the Planning Commission from referring to the landscaping and design standards as a guide to decisions on conditional use permits.

<sup>14</sup> Uses are designated as conditional because of potential impacts on the county, neighboring properties or neighboring land uses. Therefore, it must be shown that each specific use has impacts that detrimentally affect the county, neighboring property owners, or nearby land uses. Any reliable and relevant information about a use may serve as evidence of the use's impact, including information based on past experience with similar uses; but all information must be considered in relation to the specific situation being evaluated, and the impacts determined individually for the each use. Generalized information is not by itself sufficient justification to determine detrimental impacts.

<sup>15</sup> Conditional use permits are not evaluated "in a vacuum," but as an actual use in an actual setting. The specific location of the use, and the general characteristics of the surrounding neighborhood are relevant factors when deciding both the extent of the impacts and the conditions which may be imposed. For example, the Bowman's property is located in a rural area. Mr. Butterfield noted the presence of dogs on other properties (he stated that a dog barking could be heard approximately 900 feet away). Those facts are relevant to the Planning Commission's evaluation.



#### *D. Mitigating Impacts With Reasonable Conditions*

Once detrimental impacts associated with a particular use have been established, reasonable conditions to mitigate those impacts may be proposed and evaluated. Since the purpose of the conditions is to mitigate the detrimental impacts, the conditions must directly address those impacts. Conditions not tied to a negative impact cannot be imposed, even if they would be beneficial to the community. As is the case with all land use decisions, the conditions must be established by substantial evidence.<sup>16</sup> The land use authority may consider not only the effectiveness of a proposed condition, but also the cost, convenience, and burden on the property owner (among other things) could also be factors in the analysis.

In this matter, the Planning Commission required landscaping and building design conditions, along with a requirement to curb dogs that were excessively noisy, and to remove waste on a regular basis. These conditions appear to be appropriate and reasonably designed to address the negative impacts expected from a dog kennel. In addition, the Commission limited the number of signs for the Bowman's business, which can be reasonably tied to reducing the overall impact of commercial signs on the neighborhood. In all, there does not appear to be any evidence that the conditions are unreasonable, or not connected to a negative impact. Thus, the Commission did not abuse its discretion when it selected the conditions.

#### *E. "Substantially" Mitigating the Negative Impacts*

The Utah Code allows denial of a conditional use permit only if the detrimental impacts cannot be "substantially" mitigated.<sup>17</sup> Ultimately, the conclusion that the negative impacts have been successfully mitigated rests with the Planning Commission. During review of a conditional use application the Commission may solicit input from the applicant, planning staff, neighbors, and other interested parties, but the final decision rests with the Commission. Even though neighbors, staff, and the applicant may not be completely happy with the decision, the Commission must decide, on behalf of the County, that the negative impacts have been sufficiently mitigated.<sup>18</sup>

"Substantially mitigated" does not mean the same as "completely eliminated." Any land use will impact neighboring properties and the community at large. If a use is allowed in an area, the local government has decided that the impacts of that use on the neighborhood and community are acceptable. Uses may be designated as conditional because the impacts of the use require closer attention and customized conditions to reduce the impacts. Those uses are allowed, despite the impacts, if reasonable conditions address the negative effects.

---

<sup>16</sup> "A local government's land use decision [concerning the granting or denial of a conditional use permit] is arbitrary and capricious [only] if it is not supported by substantial evidence." *Uintah Mountain RTC, LLC, v. Duchesne County*, 2005 UT App 565, ¶ 19, 127 P.3d 1270, 1275 (alterations in original).

<sup>17</sup> See UTAH CODE ANN. § 17-27a-506(2)(b).

<sup>18</sup> It is not necessary to mollify every neighbor or even the applicant, but the decision should reflect the County's satisfaction that the impacts have been mitigated. For example, in this matter, the negative impacts of the Bowman's dog kennel included noise from the animals. A neighbor proposed that all animals be muzzled, a condition which would reduce (but not eliminate) the noise. The Planning Commission rejected this idea, but approved a condition that noisy animals be detained in the kennel building. This condition also reduces, but does not eliminate the noise. The Commission made the ultimate decision on how to best mitigate the noise impact of the kennel.

Section 17-27a-506 does not *require* that a conditional use permit be denied if detrimental impacts cannot be substantially mitigated, only that a permit *may* be denied. Mr. Butterfield argues that a conditional use permit may be approved only if the negative impacts are substantially mitigated. He continues that since the Planning Commission concluded only that the impacts could be “reasonably” mitigated (not “substantially”), the Bowman’s CUP should be denied.

This argument, however, focuses only on § 17-27a-506(2)(b), and ignores the requirements of subsection (2)(a). That subsection *requires* approval “if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use . . .” UTAH CODE ANN. § 17-27a-506(2)(a).<sup>19</sup> The statute imposes no requirement that the impacts be either “substantially” or “reasonably” mitigated, only that they be mitigated. It is within the discretion of the Planning Commission to determine that the impacts have been successfully mitigated to the point that the County is satisfied, and that the CUP should be approved.

## II. The County Code Limits the Number of Dogs to Ten.

Because the Bowman’s kennel is considered an accessory use to a residential building, the Weber County Code limits the number of animals to ten. It appears that the proposed kennel was determined to be an accessory use, as provided in § 104-6-5(2)(b) of the County Code. The County concluded that the use is exempt from compliance with the Ogden Valley Architectural, Landscape and Screening Design Standards, because it is an accessory use, under paragraph (2)(b), as opposed to a primary use, under paragraph (2).

Kennels which are accessory uses may only house ten dogs at a time. Conditional uses in the AV-3 zone include: “Dog breeding and dog kennels on a minimum of two acres, on a legal nonconforming lot, as an accessory use to a single family dwelling, limited to ten dogs of more than ten weeks old.” WEBER COUNTY CODE, § 104-6-5(2)(b). The Bowman’s proposed kennel is accessory to their residence, and is on three acre lot. It is reasonable to conclude that this language authorizes a dog kennel as a conditional use on the Bowman property.<sup>20</sup> That subsection, however, limits the number of dogs to ten.<sup>21</sup> It is not necessary to impose this limit as a condition, because it is a requirement from the County Code.

## Conclusion

The Planning Commission did not abuse its discretion when it approved the Bowman’s Conditional Use Permit. A dog kennel is authorized as a conditional use on the Bowman’s property, and the Commission adopted appropriate conditions to mitigate the detrimental impacts of the kennel. The County Code indicates standards that may be used as a reference for the types of conditions that could have been imposed.

---

<sup>19</sup> In contrast, subsection (2)(b) provides that a CUP *may* be denied if the impacts cannot be substantially mitigated.

<sup>20</sup> It would not be plausible to limit the language of subsection (2)(b) by allowing dog kennels on legal nonconforming lots, with a minimum of two acres, and which are accessory to a single-family residence only. If the property meets one of those criteria, a kennel may be allowed as a conditional use.

<sup>21</sup> The limit is ten dogs which are more than ten weeks old.

The Planning Commission has the authority to approve a conditional use on behalf of the local jurisdiction. In doing so, the Commission has discretion to impose conditions that may mitigate negative impacts. It is not necessary to eliminate the impacts, only to mitigate them to the point that the Commission is satisfied. While the Commission should seek input from planning staff, the applicant, neighboring property owners, and other interested parties, it is not required that all parties be satisfied. The ultimate decision rests with the Planning Commission.

If reasonable conditions are proposed to mitigate the detrimental impacts, the conditional use permit should be approved. The Utah Code does not require substantial mitigation of all impacts.

A handwritten signature in black ink, appearing to read "Brent N. Bateman". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

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

Minutes of the Ogden Valley Planning Commission Regular meeting August 26, 2014, in the Weber County Commission Chambers, commencing at 5:00 p.m.

**Present:** Ann Miller, Vice Chair; John Howell; Kevin Parson; Greg Graves; Will Haymond; Laura Warburton

**Absent/Excused:** Pen Hollist, Chair

**Staff Present:** Sean Wilkinson, Planning Director; Jim Gentry, Principal Planner; Scott Mendoza, Principal Planner; Chris Allred, Legal Counsel; Kary Serrano, Secretary

***Pledge of Allegiance***

***Roll Call:***

1. **Minutes:** Approval of the July 22, 2014 and August 5, 2014 meeting minutes

**MOTION:** Vice Chair Miller approved the meeting minutes as written.

Vice Chair Miller asked if there was any ex parte communication to declare. Commissioner Warburton stated that she was contacted by Steve Waldrip by email and she sent the response to the Planning Division so they have that on record.

2. **Consent Agenda:**

- 2.1. **CUP 2014-19:** Consideration and action on a Conditional Use Permit (CUP) for the removal and replacement of the existing Sundown Ski Lift located at Powder Mountain Ski Resort in the Forest-40 (F-40) Zone (Summit Mountain Holding Group) SMHG

**MOTION:** Commissioner Warburton moved to approve consent agenda item CUP 2014-19. Commissioner Parson seconded. A vote was taken with all members present voting aye and Vice Chair Miller said that the motion carried (6-0).

3. **Petitions, Applications and Public Hearings**

- 3.1. **Administrative Items**

- a. **Old Business**

1. **CUP 2014-16: Consideration and action on a Conditional Use Permit (CUP) application for a dog kennel at approximately 5784 E 2300 N in the Agricultural Valley-3 (AV-3) Zone (Stacey Bowman, Applicant)**

Jim Gentry said this item was before the Planning Commission and was tabled for certain items and they have now received those and they are included in the meeting packet. This is a dog kennel that staff considers an accessory use to the main use within the agricultural zone. The zoning ordinance has a couple of standards within the AV-3 Zone: It has to be within 100 feet from the property line; and it has to be 50 feet from any side property line, and those standards have been met. The conditional use criteria for issuance were listed and after reviewing the criteria, the criteria have been met in the following ways: The potential detrimental effects for this kennel to noise, smell, and loose sods have been recently mitigated. Under the conditional use it doesn't have to completely mitigate but reasonably mitigate. Noise is mitigated by the size of the lot, the location of the building, the hours of operation, and the commitment to house accessory noise of barking dogs inside the building. The potential for foul smells is mitigated by removal of animal waste by double bagging with normal trash removal and the urine will be washed and sprayed down daily. The loose sod has been mitigated by having a secured outdoor kennel play area and a building to secure the dogs.

Jim Gentry said that the Ogden Valley Architectural Landscaping and Screened Design Standards do not apply as this is an accessory use to a single family dwelling in the agricultural use and this is not a commercial zone. The applicant is doing additional things as far as improvement to this site. There would be no signs proposed except for the entrance to identify the driveway to the building. The applicant is willing to do an asphalt driveway to the parking stalls at the building. The applicant is willing to construct a metal building with sound proofing insulation that would be air conditioned for the comfort of the dogs. The metal building would be painted similar to the house. A grass area of 420 sq. ft. with two Quaking Aspens and an Evergreen tree will be provided for the dogs.

Commissioner Warburton asked is it true under the current conditional uses, that animal hospitals and animal breeding with a maximum of 500 rabbits are allowed. There is also slaughtering, dressing, and marketing on a commercial scale of chickens, turkeys, or other fowls with no limit of chickens and turkeys. Jim Gentry replied that is allowed under the



current zoning and if this was on a five acre lot, she could slaughter 500 rabbits there. What is under the current ordinance is what they have to work with.

Stacey Bowman, applicant, who resides in Eden, said that she spoke with Dr. Clayne White, Owner of Bayview Veterinary, Farmington UT, and with Becky, Owner of Doggy Day Park in Woods Cross. There is no law or stated fact as to how much footage per dog is needed; the basic recommendation is an area that works for the animal. When she sought out a professional opinion, she noticed Dr. White has a building of about 40 x 50 and he watches up to 100 dogs in that size area. His common area is 60 x 10 feet divided in half, where he takes his dogs for walks and potty breaks. These dogs can be kenneled up to 8 hours per day. As to the size her building, it is more than adequate and the size of the kennel can accommodate the number of dogs she is proposing with both large and small dogs. As far as noise, she looked into a buffer for walls and insulation and the key issue is ventilation for these dogs. With her proposal she knows that noise would not be an issue. The Doggy Day Park that's in Wood Cross is located in a subdivision where the neighbors are within 40 feet and they have 10 houses off of the main street. There are dog parks within a huge subdivision and Idlewre backs up to 300,000 plus homes in South Ogden and they kennel dogs. She is at she is doing a service for a community that doesn't offer anything for people that have a need for this type of service and this would be an asset.

Commissioner Howell asked if these dogs would be able to go outside at night. Stacey Bowman replied no.

Cleon Butterfield, who resides in Bountiful, said he is owner of Lots 1 and 2 adjacent to this proposed use. He is confused about what was allowed under the AV-3 Zone Ordinance, where it states household pets are allowed, but it does not constitute a kennel. In permitted uses it does not allow a kennel, it is only allowed as a conditional use, unless the Planning Commission approves it as a conditional use. According to the ordinance conditional uses may not be appropriate in every location, depending on the terms of a request; there are times where it is appropriate to say no. Staff has made their recommendation based on the listed criteria. The criteria listed in your document states, "shall not authorize unless the evidence presented that it has reasonably mitigated the detrimental effects; and that it is in compliance with all of the regulations, specifically the land use code." This does not meet the standards and Lot 3 is an appropriate place for a dog kennel. The criteria has not been met and there are restrictive covenants and this dog kennel is detrimental to his adjacent lots.

Vice Chair Miller asked Legal Counsel to clarify two issues; whether or not this is a commercial activity and the difference between conforming and nonconforming lots on three acres, and whether it's an accessory kind of use. Chris Allred replied that the ordinance is trying to draw a distinction of what you can do on a conformed lot on three acres or more and nonconforming lots that are smaller. On a nonconforming lot they can only have a dog when it is accessory to a home. The distinction is they don't need a home on three acres; it can stand alone. It cannot stand alone as a use on something smaller than three acres. While it's called out as an accessory use on something smaller than two acres, it can't stand alone and that is what the ordinance is trying to distinguish. The fact that it is listed in the agricultural zone; it is either a permitted or conditional use and suggests that we are treating them as a commercial use. There is a commercial zone in which conditional and permitted uses are listed and those are considered commercial and he understands Mr. Butterfield's position is that it has a commercial aspect to it. For our purpose, it is identified as commercial use in a commercial zone and this does not have the commercial feel to it.

Commissioner Warburton said to clarify on a conditional use that is basically a permitted use with possible detrimental effects, it's the Commission's job to look for those detrimental effects and mitigate them if possible. If it's not possible, state code states very clearly that if it's not, then they can deny it. It is a very high standard, and must be proven in courts as they don't want to be sued, so they have to make sure they are covering the law. Our job is to identify detrimental effects, and they can't base their decision based on the CC&R's but what is in the law.

Kirk Langford, who resides in Eden, said for tonight there are anticipated detrimental affects with 20-30 barking dogs and what is substantially mitigated. Staff has indicated that 150 feet should mitigate these dogs. His house is almost 5,000 feet away from the Browning Ranch who have a couple of Blue Healers and he can hear those dogs barking every evening when coyotes come down. With 20 barking dogs, it is an absolute anticipated detrimental effect and it is not reasonable to mitigate that at 150 feet. He understood about the feces being bagged and hauled away but what about the urine; where does that go after the applicant sprays it down? It's not the commission's job, but the Health Department's job to have those permits issued before this is granted as a conditional use, and it's clear in the ordinance that they are required to have those first before the permit is issued. Let's approve this conditional use for one year and see whether



the dead space will mitigate the barking dogs, if squirting out the building will take care of the urine and smell, or if the traffic coming and going will not affect the children coming and going since there are not sidewalks in this area.

Commissioner Warburton said that the Utah State Ombudsman came to give them some training, and they specifically talked to him about putting in time limits, and there is nothing in code that gives them that right to do that, so they can't legally stipulate a time limit of one year. What is in place is if there are enough complaints, then they can pull the permit, but this Planning Commission does not issue permits; that is left to the various departments when the permit is issued.

Steve Waldrip, who represents the landowners to the north, said it doesn't seem that the permits are in place but his question to Legal Counsel is the definition of detrimental effects. Detrimental effects is a broad, vague standard; and intentionally so because that gives the Planning Commission the opportunity to investigate all possible outcomes, detriments, and negative impacts of a conditional use. Although this commission does not have any jurisdiction on CC&R's, it does give them notice that there is one in place and would seem to be a detrimental effect if this goes into a lawsuit and it would seem wise to have this resolved prior to granting any conditional use. What is the definition of detrimental effect and how do they define that sufficiently that they are not putting it back to two people that have an issue with each other. The other question is in reference to noise and there should be some sort of standard as to what is acceptable, at what distance, and noise abatement that would be more concrete than I hear a dog barking.

Vice Chair Miller said they base their decision according to the ordinances and the CC&R's is a separate issue as to whether or not they follow the ordinances to see if they are mitigated.

Cleon Butterfield asked to clarify if that meant that the Planning Commission never says no to a conditional use. Vice Chair Miller replied that she has found out that they do approve conditional uses, and they do look at mitigation factors and work with those factors, but it is difficult to say no unless there is an overwhelming circumstance.

Steve Waldrip said that he didn't hear of what standard is being proposed if there is an issue with noise or odor to any future complaints would be. Commissioner Parson replied that our complaints are the standard and it falls upon the community.

Commission Warburton asked Mr. Gentry if there was a way that they could mitigate more of the noise and what detrimental effect could possibly happen. Jim Gentry suggested not having dogs in the dog runs after 10 p.m. and not allowing them out prior to seven in the morning.

**MOTION:** Commissioner Parson moved for approval of a Conditional Use Permit CUP 2014-16, for a dog kennel at approximately 5784 E 2300 N in the AV-3 Zone. Commissioner Howell seconded.

**DISCUSSION:** Commissioner Parson said he appreciated the work the applicant did to mitigate noise, how to house dogs, and seeking professional people in looking at the insulation panels, putting up some landscaping, and learning how the neighbors feel about this kennel. He takes his dogs to Miller Kennels, one of the best facilities of dog kennels, it maintains 75-100 dogs that stay outside, and it is out in the industrial part of town so it can handle all that noise. He suggested that the applicant look at the commercial aspect of berming and she would be better off doing that.

Commissioner Warburton said she would like to see a restriction placed of operating from 8 a.m. to 9 p.m. She asked if they could require that the applicant have bark collars on hand, they are very humane, could take care of the barking problem. She asked if everyone was comfortable with the time of 8 a.m. to 9 p.m. Vice Chair Gibson Miller replied that is too restrictive, they should set it up like the campgrounds from 7 a.m. to 10 p.m. Commissioner Parson said it should relate to work, from sunup to sundown. Commissioner Warburton said that she appreciated the comment but believes saying from sunup to sundown needs to be more specific, so she is okay with saying from 7 a.m. to 10 p.m. As for the shock collars, if it was set on a low setting it seems to be okay. Chris Allred said that they could be bordering upon unreasonable to institute that as a requirement, because some people think of shock collars as inhumane and he didn't think they could put her in that position. Sean Wilkinson said if the dog becomes a nuisance and they have substantiated claims with the Sherriff's office visiting and those reports are provided, those are grounds for the Planning Commission to reconsider this conditional use and revoke it if it's approved. Commissioner Haymond asked what happens if they revoked the conditional use permit, as she already had her structure and business there. Sean Wilkinson replied at that point the use goes away.



**FRIENDLY AMENDMENT:** Commissioner Warburton suggested that the dogs are not out any earlier than 7 a.m. and are put away by 10 p.m. Commissioner Parson said he was okay with the amendment.

**AMENDED MOTION:** Commissioner Parson moved for approval of Conditional Use Permit CUP 2014-16, for a dog kennel at approximately 5784 E 2300 N in the AV-3 Zone contingent upon staff and review agency requirements based on the proposed kennel complying with applicable Land Use Code standards listed in the staff report and to include the hours that the dogs cannot being outside the kennel prior to 7 a.m. and after 10 p.m.

**VOTE:** A vote was taken with Commissioner’s Warburton, Howell, Graves and Chair Miller voting aye and Commissioner’s Parson and Haymond voting nay. Vice Chair Miller said motion carried (4-2).

- 4. **Public Comment for Items not on the Agenda:** No public comments.
- 5. **Remarks from Planning Commissioners:** Commissioner Parson said that they need to revisit the zoning for the AV-3 Zone because some of the conditions in there were made a long time ago. They have looked at this but maybe it was just the commercial aspect. Commissioner Graves said it is one thing that they need to consider when looking at some of these uses. They are getting a mix of urban and rural starting to come together. Something that they need to keep in mind is what they want this community to be when they are done. If they eliminate every single thing that has a rural feel because somebody objects, let’s not get it in their heads that they are going to maintain rural character of the valley when they made a law that prohibited all the stuff that made it that way to exist.
- 6. **Report of the Planning Director:** Sean Wilkinson said they sent out an email asking for responses to those that are interested in attending the APA Conference coming up in October; be sure to get those responses to Sherri within the next few days. Also, there is potentially going to be some asphalt paving on Powder Mountain and with that comes additional trucks hauling the asphalt up and down Wolf Creek Drive. They don’t have a specific date but it will potentially be in the next few weeks.
- 7. **Remarks from Legal Counsel:** Chris Allred said that this Planning Commission had some training from the State Ombudsman and he hoped that was useful and informative. If they would like some additional information or training, he would be happy to provide that.
- 8. **Adjourn to a Work Session:**

**WS1. Cluster Subdivision Bonus Density Discussion**

Sean Wilkinson introduced the new Planner II Ronda Kippen from Morgan County who has replaced Steve Parkinson who transferred to a position in Roy.

Scott Mendoza said that tonight’s discussion is about the Ogden Valley Cluster Subdivision Bonus Density. He wanted to just review a couple of things and just remind the members of what they did in the last couple of work sessions as it related to the Cluster Subdivision Code and what do they want to do with Ogden Valley Cluster Subdivision Bonus Densities.

1. Review of previous work sessions:

On March 4<sup>th</sup> they did talk about TDR’s and the question was if they could be made mandatory and it would be within the code and the answer is yes. They also decided that there was going to be Utah State University student presentation coming up and they were hoping to get more information, background, and education on TDR’s. They didn’t get much information but students did get the concept of the TDR’s. Staff prepared an outline on the effect of TDR’s to date and there was only one project to report on and that was Snowbasin.

On June 24<sup>th</sup> they presented the first three sections of the draft cluster subdivision code: The purpose and intent, the approval procedure section, and the sketch plan endorsement section. They went through the draft in the first three sections and have continued work on the draft. The draft is to a point where they need guidance on where they would like to go on Cluster Subdivision Bonus Densities.