



Polly McLean, Esq.

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VIA EMAIL

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Office of the Property Rights Ombudsman
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Re: Advisory Opinion Request for the Wohali Partners, LLC Project in Coalville, Utah

Dear Jordan,

I represent the citizen's group Coalville for Responsible Growth and, for purposes of this request, several adjacent neighbors to the proposed project. ("CFRG"). CFRG requests an advisory opinion from your office determining whether an applicant, Wohali Partners, LLC ("Wohali") is entitled to approval of a land use application for an Master Planned Development ("MPD"), Density Bonus, and permitted uses consisting of 125 units and 125 accessory dwellings and 303 "nightly rental units" in the Agricultural zone because the application lacks conformity to the local land use maps, zoning maps, and land use ordinances (vesting) and whether a local government is complying with the mandatory provisions of applicable land use ordinances. CFRG would like legal guidance for the citizens and the City Council in interpretation of the Coalville City Code. This letter describes the issues CFRG would like the advisory opinion to address.

I. Issues

- a. Are dwellings used as short term rentals in conjunction with a golf course counted against the allowed density in Coalville City's Agricultural zone?
- b. In the alternative, if no density is required, what method should be used to determine the allowed number of Nightly Rentals.
- c. Are the numerous Resort Structures and Uses (Spa, Amphitheater, Kids Cabin, Café/Pub) permitted as "support facilities customarily associated with the recreational facility"?
- d. Is an Appeal Authority required for a land use decision?

II. Background

In 2018, Coalville City annexed several properties which included the Wohali property. As part of the annexation, the property was zoned Agricultural. Later that fall, Wohali applied for a rezone and a master plan approval of the property. The application for was an MPD (with a Development Agreement), Zone Amendment and Phase I Preliminary Plat. ("Application 1"). The project site is comprised of 1,525 acres and was proposed as a rural golf resort community. The development master

plan included a core resort village, custom cabins, cottages, support commercial and recreational community amenities and estate lots surrounded by dedicated open space. Despite community opposition, the City Council approved the application by a 3-1 vote. CFRG filed for a referendum and collected the requisite number of signatures. The referendum was certified to be on the ballot for June 30, 2020.

On January 17, 2020, Wohali, concurrent with the initial application, filed a second application (“Application #2”). The second application included a full preliminary subdivision plan, a request for a density bonus, and an MPD application. A development agreement would be entered into as a condition of the MPD. The second application proposes one hundred twenty-five (125) residential lots under the existing Agriculture (AG) Zoning of the property (using the density bonus in the code), three hundred and three (303) detached nightly rental units and a Master Planned Development (MPD) including deed restricted open space, residential lots, resort nightly rental units, resort amenities and recreational uses. The project is located in the Agricultural Zone which permits 1 unit per 20 acres. The project size is 1,664.04 acres which allows for up to 83.2 units. Wohali also requesting a density bonus as permitted in the MPD section of the code, if certain conditions are met, which allows a 50% density bonus permitting 124.80 units. Wohali is also requesting all of the same Resort Amenities that they had in their original rezone application. Wohali has indicated that the nightly rental use would be limited to members and their guests.

The planning commission held a work session for Application #2 on February 18, 2020 and May 18, 2020. The Planning Commission had reservations and numerous questions regarding the application.

On April 14, 2020, Don Sargent, the City Project Coordinator approved Wohali’s application for an excavation and building permit to construct the golf course on the property. CFRG appealed that decision to the City Council which denied the appeal on May 11, 2020.

On May 14, 2020, Wohali withdrew Application 1. Based on the withdrawal, there was no need for a referendum and CFRG consented to removing it from the ballot.

The Planning Commission held a public hearing on Application #2 on June 17, 2020 where they forwarded a positive recommendation to the City Council. The City Council, who is the Land Use Authority for MPDs, is scheduled to hold a public hearing on July 13, 2020. There is no appeal mechanism in the Coalville Code to appeal this decision.

III. Analysis

- a. *Are dwellings used as short-term rentals in conjunction with a golf course counted against the allowed density in Coalville City’s Agricultural zone?*

Wohali is proposing 303 Nightly Rental Units for use by their members as part of their “permitted use” application. They are proposing the Nightly Rental Units as a Lodge and Golf Cabins.

They have not defined the size of the Nightly Rental Units other to say that they could be up to five bedrooms. They gave no specifics as to what a nightly rental Lodge would be. The Nightly Rental Units is almost 2.5 times the underlying density for the project.

The proposed Nightly Rental Units are not included in the underlying density associated with the AG zone since the 125 Lots uses all the density (including a density bonus) permitted by the zone. The code does not permit additional density by labelling it a nightly rental. The definition of “Nightly Rental” is the “rental of a room, apartment, house or lockout unit for a time period of less than thirty (30) days.” (Coalville Code 10-2-145)). Nightly rentals are based on there being an underlying approved dwelling and is an additional use for a dwelling. Coalville Code 10-2-77 defines Dwelling as “A building or portion thereof designed for use as the residence or sleeping place of one or more persons or families with cooking and bathroom facilities, but not including hotel, motel, lodge, or nursing home rooms.” The Coalville Code distinguishes a nightly rental use from a hotel/motel use. Hotel/Motel is defined as “A building containing sleeping rooms for the temporary occupancy of guests. Accessory facilities may include a lobby, meeting rooms, recreation facilities, group dining facilities and/or other facilities or activities customarily associated with hotels or motels. This does not include lock-out units or boarding houses.” Coalville Code 10-2-109. Here, Wohali is proposing Nightly Rentals of detached single-family homes. Therefore, a Nightly Rental use must be associated with a Dwelling. The Nightly Rental cannot be a lodge or a hotel.

The AG zone minimum lot standard is listed in Coalville Code 10-9-060: MINIMUM LOT STANDARDS A. Density: One (1) Lot per 20 acres. Coalville Code 10-2-70 defines Density as “The intensity or number of non-residential and Residential Uses per acre or Lot, or units per acre.” The Coalville Code defines Intensity of Use as “The maximum number of residential units, commercial space, or industrial space within a specified land area designated for that purpose.” (Coalville Code 234 (A)). Coalville Code 10-9-050 only allows **ONE DWELLING PER LOT** “Not more than one (1) primary single-family dwelling and accompanying accessory dwelling may be placed upon a lot or parcel of land in the AG Zone.” Since the maximum density per lot is 1 per 20 acres, and only one dwelling is permitted per lot, putting 303 Nightly Rental Units on a lot would violate the density permitted, the intensity of use, and the requirement for only one dwelling per lot. The Dwelling needs to have underlying density associated with it. Therefore, the 303 Nightly Rental Units is not permitted under the Coalville Code.

The argument put forth by Wohali is that the AG zone allows “recreational facilities” as an allowed use and the definition of recreational facilities includes “golf courses” and “support facilities customarily associated with the recreational facility.” They argue that many high-end golf courses have nightly rentals therefore the 303 nightly rentals are allowed as support facilities customarily associated with the golf course. This argument fails for several reasons. First, nightly rentals are not “support facilities.” Although Support Facility is not easily defined, Webster’s defines facility as “something (such as a hospital) that is built, installed, or established to serve a particular purpose.” Even if looking at the definition in favor of the applicant single family homes used as nightly rentals are not a facility. Second, “a golf course” is listed under Recreation Facility which is an allowed use in the zone. But all the trappings associated with a high-end luxury resort golf course is not part of the definition of “golf

course.” There are numerous golf courses in the Wasatch Front and the Wasatch Back which do not have housing (let alone nightly rentals) associated with them. Third, even if “golf course” was interpreted to mean a high-end golf course, many high-end golf courses, even if they have houses surrounding them, don’t have nightly rentals associated with them. They give examples of local developments which have housing along with a golf courses, but all of those developments have density associated with the homes, and many of those developments don’t allow nightly rentals. Under Wohali’s interpretation, they could have additional houses regardless of density because there are customarily houses associated with high end golf courses. Their interpretation fails because the only thing permitted is support facilities customarily associated with a golf course. Homes and Nightly rentals are not “support facilities.” Four, the golf course is a support facility for a development, not the other way around. As seen in the definition of hotel, recreational facilities are accessory facilities to a hotel. (“Accessory facilities may include a lobby, meeting rooms, recreation facilities, group dining facilities and/or other facilities or activities customarily associated with hotels or motels.”) Therefore, because nightly rentals are not “support facilities customarily associated with” a golf course, the nightly rental single family “Golf Cabins” and a Nightly Rental Lodge are not permitted.

- b. In the alternative, if no density is required, what method should be used to determine the allowed number of Nightly Rentals.

Under Wohali’s interpretation there is no limitation to the number of Nightly Rental Golf Cabins and/or a Lodge. Wohali suggests that the 303 Nightly Rental Units is based on the “critical mass” of what is needed to support the membership of the Golf Club. However, the number of members to a golf club isn’t tied to the number of places for them to sleep. It is customary for a golf club can have members who do not stay near the golf course. If this interpretation is followed, please give guidance on how many nightly rental units would be permitted.

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

Wohali didn’t amend any of the Resort Uses when they submitted Application #2. They are claiming that all the Resort Uses are “support facilities customarily associated with the golf course.” Recreation facilities is defined by the Coalville Code as “such as parks and areas of active recreation use, including neighborhood community centers or clubhouses, swimming pools, golf courses, tennis courts, equestrian centers, skating rinks, playgrounds, campgrounds, and similar uses as well as support facilities customarily associated with the recreational facility.”

While CFRG doesn’t dispute that a clubhouse (which is explicitly listed as part of a recreational facility) or a mechanical shed would be a “support facility,” structures and uses such as a “Kids Cabin” “Amphitheater” or a “Spa” are not “support facilities” to a golf course. Just because one might find an occasional example where a spa is in the same development as a golf course, that does not rise it to the level of a support facility or customarily associated with the golf course. Additionally, Wohali has made

statements which jumble which use is support for the other. Wohali, at the Planning Commission, stated that the Nightly Rental Units are to also support the spa.

The impacts from the additional uses would be large and would violate the purpose of the AG zone. The AG zone purpose “is to provide areas where the growing of crops and the raising of livestock can be encouraged and supported within the City limits. The AG Zone is intended to protect agricultural uses, natural resources, and environmentally sensitive lands from encroachment of urban development.” Furthermore, Coalville Code 10-9-020 states, “PERMITTED USES: Uses permitted in the AG Zone, in addition to agricultural uses, should be incidental thereto and should not change the basic agricultural character of the zone.” While the golf course use falls under a permitted use of the zone, 303 extra units, a commercial spa, a restaurant, a day care all are outside of the intent of the zone.

It should also be noted that the golf course counts as open space for the project, and that open space is what allows for the density bonus. Open Space is defined as “Land area that is unoccupied or unobstructed by any aboveground buildings or real property so designated as open space.” Landscaped Open Space is defined as “Landscaped Areas, which may include local government facilities, necessary public improvements, and playground equipment, recreation amenities, public landscaped and hard-scaped plaza's, and public pedestrian amenities, but excluding Buildings or Structures.” It is hard to imagine how 303 nightly rental units in the form of homes and a lodge, and resort amenities meet the requirements of these definitions.

Moreover, there are impacts from the additional density and structures proposed. Instead of being “support facilities” the structures and uses are going to require significant resources and services from the City. Each nightly rental will have to have water and sewer. A spa or a restaurant also require water and sewer and would be large structures in support of the open space.

In addition, would the support facilities have any limitations? For example, if a café/pub was permitted (which we question), would the hours have to be limited to the recreational facility? If the golf course was closed, the café/pub would have to be closed. Similarly, if Nightly Rental Units were allowed, could they only be used to support the golf course? How big could a “spa” be? How about the café/pub? How many square feet could the nightly rentals be? Would the area where they are located be counted as open space?

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

Utah Code 10-9a-701(1)(b) requires an appeal authority for appeals from decisions applying the land use ordinances. The Coalville Code states that the City Council is the Land Use Authority for master planned developments. (Coalville Code 8-6-040 (C)). However, the appeal process laid out in Coalville Code 10-3-040 has no means to appeal such decisions. See Table 3-1 (no provision for appeals of City Council Land Use Decisions).

IV. Conclusion

In conclusion, no Nightly Rental Units (and certainly not 2.5 times the allowed density) should be allowed under the Coalville Code. What is allowed as "Support facilities customarily associated with the recreational facility" should be narrowly defined in order to reflect the purpose and intent of the Agricultural zone. Coalville City is required to have an appeal process for this land use decision.

Should you have any questions, please contact me.

Sincerely,

PEAK LAW



Polly Samuels McLean

cc: clients

Enclosures:

1. Coalville City Land Management Code
<http://www.coalvillecity.org/title-8-subdivision-ordinance.htm>
<http://www.coalvillecity.org/title-10-land-use.htm>
2. Application Materials
<https://www.dropbox.com/sh/klngqb7spm1zjhh/AABnbBlkRr8NRLWv98edKtvja?dl=0>
3. Planning Staff Report
https://media.rainpos.com/3855/021820_wohali_pc_work_session_staff_report_packet.pdf
4. Link to audio from 2/18 and 5/18
<https://www.dropbox.com/sh/8d63y9v33btk8ko/AAAg2C9QGLPiZ7X5TEG1ui5Wa?dl=0>
5. Link to audio from 6/17 was requested on 6/18 but still has not been received. No draft minutes for any of the meetings have been provided by the City nor are they on the website. The 2/18 minutes were requested on 6/18 but still have not been received. In lieu of the City minutes, a summary of the meetings from a member of CFRG can be found here:
[http://ilovecoalville.com/05-18-20-planning-commission-meeting/;](http://ilovecoalville.com/05-18-20-planning-commission-meeting/)
[http://ilovecoalville.com/05-15-20-planning-commission-work-session-public-hearing/;](http://ilovecoalville.com/05-15-20-planning-commission-work-session-public-hearing/)
<http://ilovecoalville.com/6-15-2020-insights-from-the-planning-commission-meeting-work-session-and-public-hearing/>
6. Letter from David Church (with input from Wohali and City, but not CFRG)