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Department of Commerce

OFFICE OF THE PROPERTY RIGHTS OMBUDSMAN

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ADVISORY OPINION

Advisory Opinion Requested By:	Coalville for Responsible Growth, and neighbors
Local Government Entity:	Coalville City
Applicant for Land Use Approval:	Wohali Partners, LLC
Type of Property:	Agricultural / Master Planned Development (MPD)
Date of this Advisory Opinion:	September 15, 2020
Opinion Authored By:	Richard B. Plehn, Attorney Office of the Property Rights Ombudsman

ISSUE

Is a proposed Master Planned Development for a high-end luxury private-member golf resort in Coalville's Agriculture Zone allowed under existing ordinances as a permitted use?

SUMMARY OF ADVISORY OPINION

A land use authority shall apply the plain language of land use regulations, and is bound by the terms and standards of applicable land use regulations in reviewing a land use application. Coalville City's regulatory scheme for Master Planned Developments (MPD) does not give applicants any flexibility to deviate from existing zoning regarding the use of land. The plain language of the City's Agriculture Zone ordinances does not permit uses that are not incidental to agricultural uses and would serve to change the zone's basic agricultural character. A high-end luxury private-member golf resort with various resort amenities is not a Recreational Facility with customarily associated support facilities within the meaning and intent of the City's land use code.

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 Title 13, Chapter 43, Section

205 of the Utah Code. 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 Polly McLean, Attorney for Coalville for Responsible Growth (CFRG) and adjacent neighbors, on July 12, 2020. A copy of that request was sent via certified mail to Trevor Johnson, Coalville City Mayor, 10 North Main, Coalville Utah 84017 on July 16, 2020.

EVIDENCE

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

1. Request for an Advisory Opinion, submitted by Polly McLean, attorney for Coalville for Responsible Growth (CFRG) and Adjacent Neighbors, received July 12, 2020 ("CFRG Request").
2. Letter from David L. Church, of counsel, to Sheldon Smith, Coalville City Attorney, dated June 12, 2020 ("Church Letter")
3. Letter from Wade R. Budge, attorney for Wohali Partners, LLC re: Response to Request for an Advisory Opinion ("Wohali Response").
4. Letter from Polly McLean re: Reply to Wohali Partner's Response, received July 31, 2020.
5. Letter from Wade R. Budge re: Wohali's Reply to CFRG's Reply Letter, received August 7, 2020.
6. Letter from Polly McLean re: CFG 8.12.20 Reply to Wohali's 8.7.20 Reply, received August 12, 2020.

BACKGROUND

Wohali Partners, LLC ("Wohali") owns property that was annexed into Coalville City in 2018 and included in the AG Agricultural Zone (1 Lot per 20 acres). After annexation, Wohali initially applied for a large mixed-use development on a 1,664.04 acre site. The application included a request for a Zone Map Amendment and Master Planned Development (MPD) proposal. Wohali first met with planning officials beginning in January 2019, and after several work session meetings over the course of a year, a preliminary plan for the first phase of development was recommended by the Planning Commission and approved by the City Council on December 9, 2019. Shortly thereafter, a citizen's group known as Coalville for Responsible Growth ("CFRG") filed a local referendum seeking to reverse the approval, as well as a petition for judicial review of the decision in district court. Wohali eventually withdrew this initial application, rendering moot the referendum and court complaint.

In response to the opposition by CFRG, Wohali filed a new MPD application ("Application") in January 2020 that reconfigured certain aspects of the proposal and abandoned any effort to amend existing zoning requirements. This new Application seeks MPD approval under the existing Agriculture zone, and, in part, relies on several aspects of the development being interpreted as permitted uses as listed in the Agriculture zone.

In both iterations of the proposed development, Wohali application materials make reference to the project as "Wohali Resort". The proposal, as noted by the February 18, 2020 Staff Report, is likewise described as "proposed as a rural golf resort community", and consists of:

1. One hundred twenty-five (125) residential lots under the existing Agriculture (AG) zoning of the property.
2. Three hundred and three (303) nightly rental units[1].
3. Master Planned Development (MPD) including deed restricted open space, residential lots, resort nightly rental units, resort amenities and recreation uses.[2]

The proposal included a large amount of dedicated open space to achieve a density bonus under MPD ordinances. Apart from the residential uses and open space, the golf-oriented resort aspect of the development has been proposed as a "Recreation Facility"—a listed permitted use in the AG Zone. Of controversy in the plan is whether the inclusion of 303 nightly rentals in either shared-wall or freestanding structures for exclusive use of resort members affects the density limits of the project or can otherwise be considered "support facilities" to a golf course within the definition of Recreation Facility; moreover, whether certain other resort amenities, including the café/pub, spa, kid's cabin, and amphitheater[3], likewise qualify as support facilities to a golf course as a Recreational Facility within the AG zone.

The Planning Commission returned a favorable recommendation for Phase I of the new Application following a public hearing on June 17, 2020, and forwarded approval of Phase I to the City Council, who acts as the Land Use Authority for MPDs.

CFRG and other neighbors submitted a Request for an Advisory Opinion on July 10, 2020 seeking a determination whether the new Application complies with local land use ordinances and is entitled to approval, and whether Coalville City has complied with the mandatory provisions of its land use ordinances, and is correctly interpreting those ordinances in allowing the application to proceed, as evidenced by the Planning Commission's recommended approval.

ANALYSIS

A developer typically has two paths to develop property that is subject to existing land use regulations—comply or modify. The State of Utah gives cities broad discretion in how to address

[1] While the Staff Report describes these as "detached" nightly rental units, later meetings and discussions clarified that some units are freestanding, while others are shared-wall units. Nevertheless, the nightly rental units are not accessory units to or associated with the 125 residential dwellings units.
[2] Staff Report, Coalville City Project Coordinator, February 18, 2020, pg 1.
[3] There are other featured amenities that have not been challenged, assumedly because those features are less controversial as possible recreational facilities or otherwise permitted uses in the AG zone, such as the resort's pools, chapel, boathouse, and tennis/pickleball courts.

land development through enacted ordinances and other land use controls, including legislative action to amend those controls.[4] Once land use regulations are in place, a City is bound by the terms and standards of those ordinances and is not at liberty to make land use decisions in derogation thereof.[5] So short of a request to amend ordinances through rezone or text amendment to accommodate a proposed development, the proposal in a land use application is reviewed as an administrative decision in which the mandatory provisions and existing standards of relevant land use ordinances must be applied.[6]

In this matter, Wohali initially approached the City with its proposed development by requesting a rezone of the entire property from its Agriculture zoning designation into areas of residential and commercial zoning to match the various uses and density of the project to the City's existing zones, while also suggesting text changes to the MPD ordinance in order to gain approval of the Wohali development through legislation. But, when faced with CFRG's opposition efforts that threatened to significantly delay the legislative process by referendum, Wohali adapted by going back to the drawing board and returned with a new application and an amended proposal that now seeks administrative approval for the project under the AG Zone's existing ordinances.

This Office is tasked with interpreting the Coalville City Land Use and Development Management Code as applied to the Wohali proposal. In matters of ordinance interpretation, the standard rules of statutory construction apply.[7] Looking to the plain language of the ordinance is considered the first step of interpretation,[8] wherein we "read the plain language of the [ordinance] as a whole, and interpret its provisions in harmony with other [ordinances] in the same chapter and related chapters."[9] In doing so, the primary goal is "to give effect to the legislative intent, as evidenced by the plain language, in light of the purpose the [ordinance] was meant to achieve."[10]

This Opinion answers whether the plain language of the regulations in the Agriculture zone allows a high-end luxury private-member golf resort with various commercial amenities as a permitted use. This Office concludes it does not.

I. Coalville's Regulatory Scheme for MPD and Zoned Land Uses

a. Master Planned Development Standards

Wohali's development proposes a Master Planned Development (MPD), a subdivision classification under Coalville Municipal Code that applies either because a proposed subdivision is split into phases, or is optionally requested in order to gain certain zoning advantages.[11] The

[4] *See* UTAH CODE ANN. § 10-9a-102(2).
[5] *Thurston v. Cache County*, 626 P.2d 440, 444-45 (Utah 1981).
[6] UTAH CODE ANN. § 10-9a-509(2).
[7] *Brendle v. City of Draper*, 937 P.2d 1044, 1047 (Utah Ct. App. 1997).
[8] *Carrier v. Salt Lake County*, 2004 UT 98, ¶ 30, 104 P.3d 1208.
[9] *Foutz v. South Jordan*, 2004 UT 75, ¶ 11, 100 P.3d 1171.
[10] *Id.*
[11] COALVILLE MUNICIPAL CODE § 14.04.020 (Subdivision Classification and Changes). We note that since the submission of the Request for An Advisory Opinion, the Coalville Municipal Code (hereafter "CMC") appears to have undergone an update and renumbering. For purposes of this opinion, it does not appear that any sections cited

purpose of MPD provisions is "to encourage imaginative and efficient utilization of land in mixed use development and to further the objectives of the Coalville City General Plan."[12] The MPD provides greater flexibility in locating buildings, consolidating development, and may result in bonuses to density and structural placement regulations. However, "An MPD cannot be used as an instrument or vehicle to accomplish a primary use that would have been prohibited if the project were to be submitted and applied for as a conventional subdivision,"[13] and "[u]ses permitted in the MPD shall be limited to those uses permitted in the Zone District in which the MPD is proposed."[14]

In other words, despite the flexibility aims of the MPD in anticipating larger, mixed use developments, MPD's do not help a developer with any flexibility on *land uses* allowable in any particular zone. Because Wohali's current MPD application seeks approval under existing zoning and abandoned any rezone requests found in the original application, the land uses proposed by Wohali in the current application must squarely fit within existing Agricultural zoning.

b. Coalville Zoning Districts and Allowed Land Uses

The Coalville Land Use and Development Management Code contains a general provision applicable to all zones, as follows:

> Uses of land which are not expressly either permitted or conditional within a particular zone, and are not identified as permitted or conditional uses in any other zone that is included in this title, are hereby expressly declared to be not permitted in all zones, pursuant to the express authority given under terms of this code. The Land Use Authority shall only permit such a use within a zone by the terms of chapter 8 of this title.[15]

The Coalville Code anticipates that the use of land, though serving one or more purposes, shall have a principal, or "primary" use.[16] "Recreation facilities, or uses" is listed as a permitted use in the AG and all residential zones.[17] The city-wide definition of Recreation Facilities is, "[r]ecreation facilities 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."[18] In the City's Commercial Districts and Light Industrial Zone, in lieu of a direct reference to recreation facilities or uses, those zones instead have a use table containing an entire section for "Recreation" or "Recreation and

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to have changed substantively. Therefore, we will cite to the current numbering of the applicable code sections, while including the appropriate section headers so as to aid the reader and avoid any confusion as to section numbers cited by the parties in their legal briefs or in city records.

[12] CMC § 14.14.010 (Master Planned Developments - Purpose and Objectives).

[13] *Id.*

[14] CMC § 14.14.020 (Master Planned Developments - Uses).

[15] CMC § 15.01.110 (Uses Not Permitted In Zones).

[16] *See* CMC § 15.02 (Definitions), "Use"; *see also*, *id.*, "Primary Use".

[17] *See* CMC § 15.08.020 (AG Zone), CMC § 15.09.020 (RA Zone), CMC § 15.10.020 (R-1 Zone), CMC § 15.11.020 (R-2 Zone), CMC § 15.12.020 (R-4 Zone), CMC § 15.13.020 (R-8 Zone).

[18] CMC § 15.02 (Definitions) (emphasis added).

Entertainment" wherein various kinds of recreation facilities are further broken down and listed as either permitted or conditional uses.[19]

Notably, the regulations for both the Commercial Districts and Light Industrial Zone provide that the land use authority "shall have the authority to identify and categorize unlisted uses within the listed permitted or conditional uses of this Chapter, based on a finding of substantial similarity of character, origin, and impact, etc., to a listed use, and when so categorized such use shall thereafter be recognized and treated the same as a listed use."[20] No similar provision exists in the Agriculture Zone. As a result, a use not expressly listed in the AG zone is not allowed, even if the uncategorized use may be similar of character, origin, and impact to that of a listed use.

II. Defining Wohali's Land Use

The nature of Wohali's proposed land use must first be ascertained before a defined permitted land use can be found to apply. A land use applicant does not secure land use approval just by attaching the label of a permitted use to what is being proposed. Wohali's legal briefings analyze the proposal as a "golf course", and therefore a permitted use, rather matter-of-factly. But where exists dozens, if not hundreds, of pages of application materials, staff reports, and meeting minutes that further explain the nature of proposed use in more detail, the applicant's self-applied label of golf course to the use should not be taken at face value.

Wohali has described its development in many ways. The application materials have called it a "primarily resort oriented, second home project." The materials often refer to it either as a "community" or "resort", distinguishing the two as separate halves of the development—the "Community" consisting of the residential subdivision half of the project, described as "a primarily second home community," and the resort, or "Village" half of the project, consisting of the golf courses, nightly rentals, and other commercial amenities. As to the resort aspect including the overnight rentals, in meeting minutes from the May 18, 2020 planning commission meeting, Wohali stated that it would be "just like going to a hotel on vacation. It would be a resort destination."[21]

Specifically, other than the residential dwellings, the "Village Plan" provided with the application materials lists the following structures and/or facilities:

- Wohali Village Cabins (189 standalone nightly rental units)
- Village Lodge (lodging facility consisting of 98 shared-wall nightly rental units)
- Lodge Pool (adjacent Village Lodge)
- Golf House (lodging facility consisting of 16 shared-wall nightly rental units)
- Club pool (adjacent Golf House)
- Village Plaza
- 18 Hole Championship Golf Course
- 9 Hole Short Golf Course

[19] *See* CMC § 15.14.020 (Commercial Districts – Codes And Symbols), CMC § 15.15.020 (Light Industrial Zone – Codes And Symbols).
[20] *See* CMC § 15.14.110 (Commercial Districts – Uses Not Listed), CMC § 15.15.030 (Light Industrial Zone – Uses Not Listed).
[21] Agenda and Minutes, Coalville City Planning Commission Meeting and Work Session, May 18, 2020, page 4.

- Tennis and Pickleball Courts
- Kids Cabin
- Golf Teaching Center
- Café/Pub
- Wohali Pond, and Boathouse
- All Faiths Chapel
- Amphitheater and lawn

Simply put, the project is a proposal for a resort. The varying descriptions of the project is to be expected as it relates to land use approvals, because the very nature of a resort is the aspect of multiple, mixed-use activity on a given property.[22] While the effort to classify resorts has been a debate within the hospitality and tourism industry, generally, a resort consists of full-service lodging that provides access to or offers a range of amenities and recreation facilities to emphasize a leisure experience.[23] Golf Resorts, more specifically, have been distinguished as full service lodging facilities "that cater specifically to the sport of golf, and provide access to a golf course"; a Golf Resort is a "self-contained establishment that provides for most of a vacationer's needs while remaining on the premises (lodging, food, drink, sports, entertainment, shopping, etc.)."[24]

Wohali compares itself to other resort communities in the area, including Victory Ranch, Glenwild, and Promontory. Victory Ranch, located in Washington County, describes itself as a real estate community and refers to its 18-hole golf course as an amenity to the community.[25] Promontory, found in Summit County, describes itself as a "master-planned, residential and recreational community," and lists its golf courses among the other amenities serving the "Club" or "Community".[26] Glenwild, also in Summit County, refers to itself as a "Golf Club", which consists of a "Private Country Club" that is "surrounded by" the golf course; the golf course is listed as an amenity to the Country Club along with other amenities serving the Club, including dining, spa facilities, and "Camp Glenwild".[27]

Wohali's use the label "golf course" to encompass the entirety of the project belies the fact that a resort—even one themed or oriented around the game of golf—is not a "golf course" in its ordinary meaning, nor are the wide array of proposed amenities customarily associated with a

[22] Industry professionals have identified minimum qualifications that set resorts apart from other lodging or recreation facilities, including:

- Provide one signature amenity or anchor attribute;
- Provide five secondary recreation, leisure, or entertainment experiences;
- Provide one full-service food and beverage outlet;
- Include short-term or overnight lodging in the bed-base;
- Comprise a minimum of twenty five rooms or other accommodations; and
- Emphasize a leisure or retreat-environment experience.

Eric T. Brey, *A Taxonomy for Resorts*, Vol 52, Issue 3 CORNELL HOSPITALITY Q., 283, 286 (2011).

[23] *Id.*, at 285.

[24] *Golf Resort Definition / Meaning*, XOTELS.COM (Aug. 3, 2020), https://www.xotels.com/en/glossary/golf-resort/.

[25] VICTORY RANCH (last visited Aug. 28, 2020), https://victoryranchutah.com/

[26] The Promontory Vision, PROMONTORY CLUB (Jan. 28, 2019), https://www.promontoryclub.com/wp-content/uploads/2019/01/2019-Promontory-Vision-1-28-19.pdf

[27] *The Club*, GLENWILD GOLF CLUB AND SPA (last visited Aug. 28, 2020), https://www.glenwildgolfclub.com/the-club.

golf course, but are, rather, customarily associated with a resort (whether or not it includes a golf course).[28] One prime example of this is the fact that while Wohali is adamant that its 303 nightly rentals are necessary support facilities *to the golf course*, it was also stated at the May 18, 2020 meeting that not all of the rental units would be located on the golf course, but would also be located "around the Spa or other *resort* facilities," and that not everyone that stayed there would play golf, but "could take advantage of the Spa and trails, etc;" the purpose "was about getting the critical mass for the *Resort*."[29]

These comments illustrate that Wohali's legal position has recreation facilities and support facilities backwards. The resort amenities, including the overnight rentals, do not actually support a golf course use; rather, all of the amenities—including the golf courses—support a resort use. The principal, or primary, use of the Wohali property is, therefore, a resort; more particularly, a golf resort, to which the golf course(s) serves as its signature amenity, or anchor attribute,[30] in addition to the many other secondary amenities that all service the resort use.

III. A Resort is not a Recreational Facility in the AG Zone

The argument underlying both the David Church opinion obtained by the City and, in turn, Wohali's legal briefs, appears to conclude that as "Recreation facilities or uses" is listed as a permitted use in the AG zone, and that because the city provides a definition for Recreation facilities that mentions "golf courses,"[31] Wohali's golf-centric resort is, at best, expressly permitted as a golf course (*but see* discussion, above), or else is at the very least ambiguous, requiring interpretation in favor of allowing the proposed use.

Wohali appears to misconstrue the plain language standard by asserting that the City "must apply the plain meaning . . . *in a way that favors the land use application*."[32] But that is not the standard. The standard is that the City "shall apply the plain language of land use regulations."[33] Both the David Church opinion and Wohali support their respective conclusions by citing to the Utah Court of Appeals in *Patterson v. Utah County Bd. of Adjustments.*[34]

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[28] CFRG argues that what determines a support facility is whether you would have such a facility without the underlying use/facility, and concedes that golf course support facilities would include a parking lot, a pro shop, restrooms, maintenances storage buildings, and a driving range. CFRG's view of golf course support facilities might be a little too narrow, failing to account for other facilities "customarily associated" with a golf course, such as a club house with limited retail/food/meeting activities. For example, Salt Lake City's land use code defines Golf Course as follows: "An outdoor area of land laid out for golf with a series of holes each including tee, fairway and putting green and often one or more natural or artificial hazards. *A golf course may also consist of a club house or building where activities associated with golf take place including retail sales and/or services, a cafe venue where meals are prepared and served, an office and area where private or public events and other similar activities associated with a golf course takes place*." SALT LAKE CITY CODE § 21A.62.040 (emphasis added).

[29] Agenda and Minutes, Coalville City Planning Commission Meeting and Work Session, May 18, 2020, page 3 (emphases added).

[30] *See supra* note 22.

[31] *See supra* note 18 and accompanying text.

[32] Wohali Response (July 23, 2020), at page 4.

[33] UTAH CODE ANN. § 10-9a-306(1).

[34] 893 P.2d 602 (Utah App. 1995).

In *Patterson*, the Court did not turn to any modes of construction until it had first determined that it "[could not] rely on the plain language of the ordinances to guide our interpretation."[35] And even then, the Court first turned to the "Whole-Text" cannon,[36] where, in the case of ambiguity or uncertainty in a portion of a statute, the court looks "to an entire act in order to discern its meaning and intent . . . and divine[s] the meaning of a provision in [local] zoning ordinance . . . from the general purpose of the ordinance."[37] Only then did the court note that, "[f]urthermore, because zoning ordinances are in derogation of a property owner's common-law [property rights], provisions therein restricting property uses should be strictly construed, and provisions permitting property uses should be liberally construed in favor of the property owner."[38]

The common law rule of strict/liberal construction of zoning laws is not an exception to plain language construction, in fact, it serves to further elicit plain language; "strictly construed" is to say, literally interpreted,[39] while "liberally construed" is to say broadly interpreted *with the object of effectuating the spirit and broad purpose of the text.*[40] It is only if the plain language, appropriately construed, does not restrict a land use application that a land use authority must then interpret and apply in favor of the land use application.[41]

Wohali and the City[42] find ambiguity prematurely and gloss over the plain language of the Agriculture zone's substantive restrictions as a coherent whole. The fact that parties may offer differing constructions of an ordinance does not mean that the ordinance is "ambiguous".[43] Plain language of an ordinance is read as a whole, and its provisions are to be interpreted in harmony with other provisions in the same chapter and related chapters.[44] Some statutory text might not appear plain when read in isolation but may become so in light of its linguistic, structural, and statutory context.[45] It is only after conducting this plain language review that if competing reasonable interpretations remain, there is statutory ambiguity.[46]

The Coalville Code Chapter for the Agriculture Zone states that the purpose of the zone 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."[47]

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[35] *Id.*, at 606.
[36] *See, e.g., Bryner v. Cardon Outreach, LLC*, 2018 UT 52, ¶ 12, 428 P.3d 1096 ("[T]he whole-text canon . . . calls on the judicial interpreter to consider the entire text, in view of its structure and of the physical and logical relation of its many parts") (quoting Antonin Scalia & Bryan A. Garner, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 167 (2012)).
[37] *Patterson*, 893 P.2d 602, 606.
[38] *Id.*
[39] BLACK'S LAW DICTIONARY 945 (10th ed. 2014).
[40] BLACK'S LAW DICTIONARY 944 (10th ed. 2014) (emphasis added).
[41] *See* UTAH CODE ANN. § 10-9a-306(2).
[42] The City has noted, for purposes of responding to CFRG's request for An Advisory Opinion, that it concurred with the opinions of David Church and Wohali's legal briefs.
[43] *See Epperson v. Utah State Ret. Bd.*, 949 P.2d 779, 783 n.6 (Utah Ct. App. 1997) (citing *Alf v. State Farm Fire & Cas. Co.*, 850 P.2d 1272, 1274 (Utah 1993) (Ambiguous means capable of two or more plausible meanings).
[44] *Bryner*, 2018 UT 52 at ¶ 10.
[45] *Id.* at ¶ 12.
[46] *Id.* at ¶ 10.
[47] CMC § 15.08.010 (Purpose).

According to that purpose, "[u]ses 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."[48] This provision immediately precedes the list of permitted uses, which includes "Recreation facilities or uses."[49] While "Recreation facilities and uses" is also listed as permitted in the city's residential zones, unlike the AG zone, the provisions of the residential zones provide the list of uses without prefacing it with similar restrictive language.[50]

As discussed above, Wohali's proposed use is a resort, not a golf course. Resorts are not named in the list of permitted uses, but even if a resort use was analyzed independently as a type of recreation facility, such would not be permitted in the Agriculture zone.[51] While Wohali and the City readily jump outside of the AG Zone chapter[52] to the enlist the help of the Land Use Code's Definitions chapter[53] to inform the plain language of the terms found within the Agriculture chapter, they fail to yield to the more immediate restriction language found in the Agriculture Chapter itself. While the Agriculture chapter provides a list of permitted uses, that list is first qualified in the very same provision that any permitted uses, "in addition to agricultural uses, should be incidental thereto and should not change the basic agricultural character of the zone."[54]

Reading the chapters for Definitions and the Agriculture Zone as a whole, it is clear that while the definition of "Recreation facilities or uses" provides a non-exhaustive list of examples, not every use that might be considered a recreation facility, generally, is permitted in the Agriculture zone. Therefore, the inclusion of "golf course" in the definition's list of examples for recreation facilities does not create ambiguity as to whether such a "high-end luxury golf course," as it has been put by Wohali—representing the resort-style aspects proposed—is permitted. The use is not incidental to agricultural uses, and is therefore not permitted in the AG zone.[55] This language prohibiting uses not incidental to agriculture is unambiguous.

IV. Remaining Issues

Because we conclude that the resort proposed by Wohali is not a permitted use in the Agriculture zone, this largely resolves the questions presented. However, the letter accompanying CFRG's

[48] CMC § 15.08.020 (Permitted Uses).
[49] *Id*.
[50] *See* CMC § 15.09.020 (RA Zone), CMC § 15.10.020 (R-1 Zone), CMC § 15.11.020 (R-2 Zone), CMC § 15.12.020 (R-4 Zone), and CMC § 15.13.020 (R-8 Zone).
[51] Wohali does itself no favors by comparing its development to other resorts in the area. Both Promontory and Glenwild are also located in Summit County, but in the Snyderville Basin Planning District, which distinctly defines resort uses separately from recreational facilities. *See generally* COUNTY CODE OF SUMMIT COUNTY § 10-11-1. Victory Ranch, located in Washington County, is zoned within the Jordanelle Basin Overlay Zone, wherein the Victory Ranch property is carved up into several land use classifications, including "Residential" (of varying densities), "Residential Resort", "Openspace Recreational Use", "Openspace Resort", "Openspace Golf Course", and "Commercial Resort: Mixed Use". *See* Wasatch County Online Base Map, WASATCH COUNTY, https://www.arcgis.com/apps/webappviewer/index.html?id=fe65f93c14a84f44814a81f97fa0fa5b (select icon "Layer List"; then select "Map Layers"; then select "Jordanelle Landuse").
[52] Chapter 8 of the Coalville City Land use and Development Code (Title 15).
[53] Chapter 2 of the Coalville City Land Use and Development Code (Title 15).
[54] CMC § 15.08.020 (Permitted Uses).
[55] There is also something to be said for the scale of the project, as its 1,664.04 acre site amounts to a very large portion of the city's entire AG zone, and converting such a large portion of the zone into a commercial resort legitimately risks changing "the basic agricultural character of the zone." CMC 15.080.020.

Advisory Opinion request is broken down into several questions which will be addressed to the extent that they have not been otherwise resolved.

a. Do Nightly Rentals Affect Density?

CFRG argued that the 125 residential Lots proposed by Wohali uses all of the density permitted by the AG Zone, including the allowable density bonus as an MPD, and that the separate 303 nightly rental units are considered "Dwellings" under Coalville code, and therefore exceed the density allowed for the project. Wohali disagrees that the rentals are dwellings that affect density.

Because our analysis of the nightly rental units is limited to whether the City properly interpreted its ordinances to allow the units as support facilities to a golf course as a recreation facility, we will not answer the broader question of whether nightly rental units are independently allowed in the Agriculture Zone or other designated zones in Coalville.

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

The purpose of CFRG's inclusion of this question is not adequately briefed or explained. The parties agree that Utah Code requires an appeal authority for appeals from decisions applying land use ordinances,[56] and appear to acknowledge that under the circumstances, there is no viable local appeal under Coalville's Code for the application.[57]

Whereas state law provides that no person may challenge a land use decision in district court "until that person has exhausted the person's administrative remedies . . . *if applicable*,"[58] assumedly, the dispute here may center on what effect, if any, the fact that no local appeal is available has on the approval of the application. But inasmuch as such a question is not briefed, this Office declines to address it in this case.

c. Events following submission of the Request for an Advisory Opinion

In CFRG's July 31, 2020 Reply letter to Wohali's Response, CFRG mentions for the first time subsequent decisions by the City at City Council Meeting held after the Request for an Advisory Opinion was submitted. Wohali "objects" to the expanding the initial inquiry made to the Ombudsman.

We note, initially, that the rules of civil procedure and rules of evidence, applicable to proceedings in Utah courts, are not controlling here. Advisory opinions serve the purpose of a dispute resolution tool,[59] and are not binding on any party to, nor admissible in, a court action involving land use law—with the exception that certain remedies are available where the results

[56] UTAH CODE ANN. § 10-9a-701(1).
[57] MPDs are a classification of subdivision, the approval for which the City Council acts as the land use authority, and where no other body is designated as the appellate body. *See* CMC § 15.03.040 (Land Use Decisions and Appeal Process).
[58] UTAH CODE ANN. § 10-9a-801(1) (emphasis added).
[59] *See* Checketts v. Providence City, 2018 UT App 48 (Advisory opinions serve as a quasi-mediation tool).

of an advisory opinion are later litigated on the same facts and circumstances at issue in the advisory opinion.[60] Because of this, we simply acknowledge the objection for the record.

Ultimately, however, because we find that the application is not entitled to approval as it does not propose a use that is permitted in the Agriculture Zone, we feel no need to address any other procedural arguments arising subsequent to the request.

CONCLUSION

Wohali's new Application was submitted as a land use application seeking approval under existing zoning. The City must therefore comply with the mandatory provisions of its land use regulations and apply the plain language of those ordinances in regards to the application. Because the Agriculture Zone plainly restricts uses that are not incidental to agricultural use, a recreation facility with support facilities does not include a high-end luxury private-member resort and associated commercial resort amenities. Such a resort use is not otherwise permitted in the Agriculture Zone, and the application is therefore not entitled to approval as proposed.

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[60] UTAH CODE ANN. § 13-43-206(11) – (12).

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.

An advisory opinion issued by the Office of the Property Rights Ombudsman is not binding on any party to a dispute involving land use law. If the same issue that is the subject of an advisory opinion is listed as a cause of action in litigation, and that cause of action is litigated on the same facts and circumstances and is resolved consistent with the advisory opinion, the substantially prevailing party on that cause of action may collect reasonable attorney fees and court costs pertaining to the development of that cause of action from the date of the delivery of the advisory opinion to the date of the court's resolution.

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.