

# Advisory Opinion 297

Parties: Peters Propane Service / Grand County

Issued: October 17, 2024

## TOPIC CATEGORIES:

### Interpretation of Ordinances

The County's land use table lists "fuel service" as a permitted use in the highway commercial zone but does not define that use. The code lists gasoline service stations and convenience stores as examples of fuel service, but also includes "other fuel service uses." A proposed propane business that includes mobile delivery of fuel in addition to certain on-site fueling is not plainly restricted by applicable land use regulations. Therefore state law directs that the County should interpret and apply its ordinances to favor the land use application. Liberally construed, the County's Land Use code allows for the proposal as a fuel service use, which is permitted in the Highway Commercial zone.

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The Office of the Property Rights Ombudsman  
Utah Department of Commerce  
PO Box 146702  
160 E. 300 South, 2<sup>nd</sup> Floor  
Salt Lake City, Utah 84114

(801) 530-6391  
1-877-882-4662

[www.propertyrights.utah.gov](http://www.propertyrights.utah.gov)  
[propertyrights@utah.gov](mailto:propertyrights@utah.gov)



SPENCER J. COX  
*Governor*

DEIDRE M. HENDERSON  
*Lieutenant Governor*

# State of Utah Department of Commerce

## OFFICE OF THE PROPERTY RIGHTS OMBUDSMAN

MARGARET W. BUSSE  
*Executive Director*

JORDAN S. CULLIMORE  
*Division Director, Office of the Property Rights Ombudsman*

### ADVISORY OPINION

Advisory Opinion Requested By: Shad Peters

Local Government Entity: Grand County

Applicant for Land Use Approval: Peters Propane Service LLC

Type of Property: Highway Commercial

Date of this Advisory Opinion: October 17, 2024

Opinion Authored By: Richard B. Plehn, Attorney  
Office of the Property Rights Ombudsman

### ISSUE

Did the County correctly deny a landowner's application and site plan by categorizing the proposal as fuel product storage – a use not allowed in the Highway Commercial zone?

### SUMMARY OF ADVISORY OPINION

The landowner proposes a propane business on a 1.7-acre property in the highway commercial zone that includes certain on-site elements of fueling natural gas vehicles and other dispersing of propane to direct motor vehicle customers, as well as limited direct retail of propane related parts and products, but also includes off-site elements of propane delivery and mobile dispersing of fuel for vehicles, such as fueling motor homes at camp sites. Grand County denied landowner's application by determining the principal use to be "fuel product storage" which is not an allowed use in the highway commercial zone. Fuel product storage is a listed use under the light industrial service category but is not otherwise defined in the land use code.

The County's land use table lists "fuel service" as a permitted use in the highway commercial zone but does not define that use. The code lists gasoline service stations and convenience stores as examples of fuel service, but also includes "other fuel service uses." A fuel service use that includes mobile delivery of fuel in addition to on-site fueling is not plainly restricted by applicable land use regulations. Therefore state law directs that the County should interpret and apply its

ordinances to favor the land use application. Liberally construed, the County’s Land Use code allows for the proposal as a fuel service use, which is permitted in the Highway Commercial zone.

### **EVIDENCE**

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

1. Request for Advisory Opinion submitted by Shad Peters, received June 27, 2024, and supporting documentation;
2. Planning & Zoning Determination letter, dated August 6, 2024;
3. Phone conversations with both parties.

### **BACKGROUND**

Shad Peters is the principal of Peters Propane Service LLC (“Peters”), which purchased property in Grand County (“County”), located in the Highway Commercial (HC) zone, for a proposed propane business. After initially submitting an application and following some discussion with County officials, Peters resubmitted a revised site plan to the County’s Planning and Zoning Department for the County’s review.

The revised narrative resubmitted with the application describes the proposal as “the only auto dispensing propane system in Grand County allowing all vehicles equipped with a propane system for secondary or primary fuel to fill their vehicle,” and makes reference to impending federal regulations that will require many municipal and other government vehicles to run on alternative fuel in coming years. The narrative describes several on-site elements of fueling natural gas vehicles and other dispersing of propane to customers, such as filling smaller propane tanks and bottles, as well as limited direct retail of propane related parts and products, and backup generators. In addition, however, Peters has also described several off-site elements as part of its business plan, including propane delivery and mobile dispersing of fuel for vehicles, such as fueling motor homes at camp sites, and other propane-related service and installation.

The submitted site plan shows a total of 1.13 acres of the 1.7-acre parcel as being disturbed area. The site features a 440sq ft. “office,” two 40’ Conex storage containers (assumed to comprise of a total approx. 640 sq. ft), some designated areas for parking, a smaller 1,000-gal propane tank, and a large 30,000 gal capacity propane tank at the center of the property. The site plan shows a truck path that enters the property, makes a loop around the larger tank and ends in front of the office.

On August 6, 2024, the County’s Interim Planning Director issued a letter in response to the site plan resubmittal, determining that the proposed use is correctly classified as “Fuel Product Storage as the principal use with Vehicle Fuel Service and Other Sales-Oriented Uses as accessory uses,” and concluding that this use is not a permitted use within the HC Zone per Grand County’s Land Use Code. The County concluded, overall, that the large capacity tank in the center of the property evidenced that the business would largely function as bulk propane sales and distribution, which it found more in line with light industrial uses, and that the on-site space for personal and retail sales—found to be more in line with highway commercial uses—was minimal. In making its

determination, the County cites to Section 3.4.1 of the County’s Land Use Code, which provides a list of considerations in determining the appropriate category for certain uses, and made findings under each item.

Peters requested this advisory opinion to determine whether the County is correct in classifying the proposed use and determining the proposal does not comply with the County’s Land Use Code.

## ANALYSIS

Utah’s Land Use, Development, and Management Act (LUDMA), found at Title 17, Chapter 27a of the Utah Code, is the state enabling statute that authorizes counties to enact land use regulations on property in unincorporated areas of a county. LUDMA affords counties broad discretion in enacting land use regulations and adopting development standards. However, the rendering of a decision on a land use application seeking approval under those enacted standards is an administrative act of a designated land use authority. *See*, UTAH CODE § 17-27a-308. A land use authority must apply the plain language of applicable land use regulations when rendering a decision on a land use application, and if a land use regulation does not plainly restrict a land use application, that is, where there exists ambiguity in the regulation, the land use authority must interpret and apply the land use regulation to favor the land use application. *Id.*

This direction in LUDMA to land use authorities is taken from the longstanding recognition in Utah law that whereas “zoning ordinances are in derogation of a property owner’s common-law right to unrestricted use of his or her property, provisions therein restricting property uses should be strictly construed, and provisions permitting property uses should be liberally construed in favor of the property owner. *Patterson v. Utah Cnty. Bd. of Adjustment*, 893 P.2d 602, 606 (Utah Ct. App. 1995).

Grand County’s Land Use Code provides a table of listed land uses allowed in each zoning district as either a permitted or conditional use, with specific instructions on how to classify land uses and activities, including how to apply regulations when a development proposes multiple uses. *See*, LAND USE CODE OF GRAND COUNTY (“LUC”) § 3.4.1. The Land Use Code also provides a definition section of defined terms, and directs that defined words should be given the meanings set forth in the Land Use Code’s definition section, but that “[a]ll other words shall be given their common, ordinary meanings, as the context may reasonably suggest.” *Id.* § 10.2.

### **I. Fuel Product Storage Does Not Most Closely Correspond to the Proposed Use**

The County’s determination letter cites to section 3.4.1 of the Land Use Code, which provides a basis for land use classification, and considerations regarding principal uses. Namely, it provides that “[a] principal use is assigned to the use category that most closely corresponds to its nature as described in the “Characteristics” subsection of each use category. *Id.* § 3.4.1B.

According to the County’s determination letter, it found that Peters Propane was “Fuel Product Storage as the principal use with Vehicle Fuel Service and Other Sales-Oriented Uses as accessory uses,” and that these uses fell into the light industrial use category.

Under the Land Use Code’s industrial use categories, the “characteristics” subsection states as follows:

Firms engaged in the manufacturing, assembly, repair or servicing of industrial, business, or consumer machinery, equipment, products, or by-products mainly by providing centralized services for separate retail outlets. Contractors and building maintenance services and similar uses perform services off-site. *Few customers, especially the general public, come to the site.*

*Id.* § 3.4.10A (emphasis added).

“Fuel product storage” is listed in the land use table under the “light industrial service” category, *see id.* § 3.1, but is not defined in the land use code. However, the land use table references use-specific standards for fuel product storage, which states as follows: “Gasoline, petroleum and gas storage sites and uses shall comply with the following standards”: a Minimum Lot Area of 2 acres, and Minimum Setbacks (All Sides) of 200 feet. *Id.* § 3.4.2B.

The Land Use Code directs that undefined terms “shall be given their common, ordinary meanings, as the context may reasonably suggest.” *Id.* § 10.2.

In absence of a definition, the context the code provides for “fuel product storage” is that it refers to large (over 2 acre) storage sites, not intended for visits from the general public, that exist for the purpose of providing services to separate retail outlets. This does not appear to adequately describe the use proposed in Peters’ application.

Peters, on the other hand, argues that his proposed use should be categorized as a fuel service use.

The Land Use Code’s table of land uses lists “fuel service” as a permitted use in the Highway Commercial zone, under the “Vehicle Sales and Service” category. *Id.* § 3.1. Under the Land Use Code’s Vehicle Sales and Service category, the “characteristics” subsection states: “Direct sales of and service to passenger vehicles, light and medium trucks, and other consumer motor vehicles such as motorcycles, boats, and recreational vehicles.” *Id.* § 3.4.9H. The code then provides a list of examples, which includes “full-service, mini-service, and self-service fuel stations,” and as possible accessory uses, “associated offices,” “sales of parts,” and “vehicle fueling.” *Id.*

The term “fuel service” is also not defined in the Land Use Code. However, the table does reference use-specific standards for that use found in section 3.2.3H, which provides, under a header of “fuel service,” the following: “Gasoline service stations, convenience stores and *other fuel service uses* shall comply with the following standards [listed thereafter].” *Id.* § 3.2.3H (emphasis added). In light of this, “fuel service” appears to comprise an umbrella term of uses wherein gasoline service stations and convenience stores are examples, but also anticipates the inclusion of some “other fuel service uses.” Whereas the Land Use Code directs that undefined terms should be given their common, ordinary meanings, there appears no reason why a fueling station that also includes

mobile fuel delivery, an apparent growing trend in the fuel service industry,<sup>1</sup> would be materially or categorically inconsistent with “fuel service” as an umbrella term.<sup>2</sup> As such, the aspect of fuel delivery included in a fuel station use does not appear to be generally excluded from the ordinary meaning of fuel service.

The County’s determination focuses on aspect of Peters proposed use that provides off-site delivery of propane, and the presence of a large 30,000 capacity storage tank, as the primary reason it concludes that the use should be categorized as fuel product storage.

However, Peters argues that other traditional gasoline service stations also feature similarly large capacity storage tanks to aid that use. The County assumes that the 1,000-gallon storage tank is exclusively for on-site fueling, while the larger 30,000 gallon is exclusively for off-site use. This assumption is not justified by the narrative or site plan and has been rebutted by the property owner. Whereas the larger capacity tank would be a feature of the proposed use even if it were limited to strictly on-site fueling activities, we see no reason why its presence should categorically change its land use classification.

At best, even accepting that the County’s interpretation of fuel product storage could plausibly describe the proposed use, it does not change the fact that the proposed use may also be plausibly described as fuel service use, which does not expressly proscribe off-site fueling services or delivery. Two or more plausible meanings of the same ordinance is the very definition of ambiguity. *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). Ambiguity is significant when it comes to interpreting the meaning and applicability of land use regulations. This is because Utah Courts have repeatedly and consistently held that as zoning laws are in “derogation of a property owner’s common-law right to unrestricted use of his or her property, provisions therein restricting property uses should be strictly construed, and provisions permitting property uses should be liberally construed in favor of the property owner.” *Patterson v. Utah Cnty. Bd. of Adjustment*, 893 P.2d 602, 606 (Utah Ct. App. 1995).

When a statute presents an ambiguity, such that under one plausible meaning the proposed use is not plainly restricted, state law directs that the land use authority must interpret and apply the regulation to favor the land use application. UTAH CODE § 17-27a-308.

Grand County’s Land Use Code, liberally construed as required by state law, allows for the Peters proposed use as a fuel service use, which is a permitted use in the HC zone.

## CONCLUSION

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<sup>1</sup> *See*, FORBES.COM, *Mobile Fuel Delivery Is The Next Big On-Demand Opportunity Say Leaders*, available at <https://www.forbes.com/sites/benjaminlaker/2022/04/06/mobile-fuel-delivery-is-the-next-big-on-demand-opportunity-say-leaders/>.

<sup>2</sup> As an example, the US Bureau of Labor Statistics groups “Gasoline Stations and Fuel Dealers” together under the same National Industry-Specific Occupational Employment and Wage (NAICS) code. US BUREAU OF LABOR STATISTICS, *NAICS 457000 – Gasoline Stations and Fuel Dealers*, bls.gov (last accessed October 17, 2024).

Grand County's Land Use Code lists fuel service use as a permitted use in the Highway Commercial Zone. Fuel service includes various types of fueling stations and direct public retail for consumer vehicles, but is not defined so as to proscribe fuel delivery. The landowners proposed use of a propane fueling station that also features mobile fueling and or delivery of propane is adequately classified as a fuel service use. The County's determination that the use could be characterized as fuel product storage, which is not permitted in the Highway Commercial Zone, even if plausible, at best creates ambiguity requiring the County to interpret its ordinances in favor of allowing the proposal as a fuel service use under its ordinances.

Jordan S. Cullimore, Lead Attorney  
Office of the Property Rights Ombudsman

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