

# Advisory Opinion 301

Parties: A. Jacob Andersen / Rockville Town

Issued: January 28, 2025

## TOPIC CATEGORIES:

**Compliance with Land Use Regulations  
Entitlement to Application Approval**

The Town Planning Commission's decision that the Andersen Parcel is a legal substandard lot under the Town Code is supported by substantial evidence in the record and is therefore lawful and correct.

Additionally, substantial evidence exists to support a conclusion that Eagle Craggs Road provides public frontage to the Andersen Parcel, for purposes of development approval.

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### ADVISORY OPINION

Advisory Opinion Requested By: Jacob Andersen & Town of Rockville

Local Government Entity: Rockville Town

Applicant for Land Use Approval: Jacob Andersen

Type of Property: Residential

Date of this Advisory Opinion: January 28, 2025

Opinion Authored By: Jordan S. Cullimore, Lead Attorney  
Office of the Property Rights Ombudsman

### ISSUE

1. Is the subject parcel a legally existing lot eligible for permit approval of a single-family residence?
2. Is there evidence to support a conclusion that the road adjacent to the subject parcel provides frontage on a public road for purposes of development approval?

### SUMMARY OF ADVISORY OPINION

The Rockville Town Planning Commission's decision that the Andersen Parcel is a legal substandard lot under the Town Code is supported by substantial evidence in the record and is therefore lawful and correct.

Additionally, substantial evidence exists to support a conclusion that Eagle Crags Road provides public frontage to the Andersen Parcel, for purposes of development approval.

### 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 Mayor Pam Leach on behalf of Rockville Town, received April 26, 2024.

2. Request for an Advisory Opinion, submitted by A. Jacob Andersen on behalf of Zion Holdings, received May 3, 2024.
3. Various documents submitted by both requesting parties, and others, received from approximately May 2024 to July 2024.

## **BACKGROUND**

Jacob Andersen, through Zion Holdings LLC, owns a parcel in Rockville Town (Town) limits referred to as South Mesa Parcel R-1308-D (Andersen Parcel). Mr. Andersen has requested a building permit from the Town to construct a single-family residence on the Andersen Parcel. The property is currently located in the OS-20 Open Space Zone. Current OS-20 Zone regulations allow a single-family dwelling as a permitted use, but only on properties at least 20 acres in size with at least 500 feet of frontage along a public road. The Andersen Parcel contains 1.39 acres. Street frontage is presently undetermined, for reasons discussed below. The Andersen Parcel is one of several metes and bounds described parcels located within Town limits in an area referred to as South Mesa. It has been represented to this Office that a good deal of uncertainty and disagreement surround how the parcels in this area were originally created, and their legal status and eligibility for development approvals.

In an April 9, 2024 meeting, the Rockville Town Planning Commission reviewed Mr. Andersen's building permit application. According to the meeting minutes, the Commission first discussed concerns related to the legality of the property—specifically whether the parcel qualified as a legal substandard lot entitled to development approval despite the fact the property is smaller than the minimum lot sized allowed under the current OS-20 zoning designation. The Rockville Town Code (Town Code) provides that “[any] lot legally held at the passage of this Code which is below the square footage requirement or width for the zone in which it is located may be built on provided it is located in a zone that permits the desired use.” Rockville Town Code § 9.1.5.

Mr. Andersen, in the meeting, asserted that the parcels in South Mesa were divided and created prior to the incorporation of Rockville Town in 1987 and before Washington County—which would have had land use authority over the Andersen Parcel at the time—had any ordinances governing the subdivision of land. It appears undisputed that the South Mesa parcels, generally, were created in the late 1950s and early 1960s. The Andersen Parcel, specifically, appears to have been created by deed in April 1962.

Mr. Andersen further asserted that since Washington County, at the time, did not have a subdivision ordinance, there was no requirement or method for subdividing lots, and therefore the method used, by warranty deed, created a legal and developable lot, and that the Andersen Parcel continues today as a legal substandard lot eligible for development approval, despite not meeting the current OS-20 Zoning lot size requirement.

Mr. Andersen's presentation led to an involved discussion among Planning Commission members about the legal status of the lot and whether the road that leads to it, known as Eagle Crags Road, provides public frontage as required by the local code. This included a discussion with the town's local administrative advisor.

Ultimately, the Planning Commission, by vote of 3-2, approved the application, on the basis that the Andersen Parcel is a legal substandard lot under the Town Code, and therefore eligible for development approval.

The Commission conditioned this approval on the applicant meeting all other relevant and applicable codes and ordinances and conforming with any conditions imposed by the Fire Marshal for access, health, and safety. The Commission also conditioned its approval on the Town Council making a finding that the road adjacent to the Andersen Parcel—Eagle Crags Road—is a public road providing frontage in compliance with Rockville Town Code 9.1.4, which states that every lot “shall have frontage upon a dedicated or publicly-approved street or upon a private street or right-of-way approved by the Town before a building permit may be issued.”<sup>1</sup>

Some members of the Planning Commission felt the question of whether Eagle Crags Road is a public road providing frontage for the Andersen Parcel is unsettled. These individuals expressed they did not feel they were in a position, or possessed expertise, to make such a finding. The Town has welcomed an opinion from this Office regarding the frontage question and the legal status of Mr. Andersen’s lot. *See* Appeal Letter from Matthew D. Ekins, Attorney for Rockville Town, dated June 10, 2024.

Both Mr. Andersen and the Town have approached this Office requesting an advisory opinion regarding the issues described above. While there are several outstanding questions related to the parcels in South Mesa, the Office will attempt to answer only two of them, and only as they relate specifically to the Andersen Parcel: (1) whether Mr. Andersen’s parcel is a legal substandard lot eligible for development approval from the Town (assuming the application can meet other applicable Town Codes), and (2) whether Eagle Crags Road provides public street frontage for the Andersen Parcel, for purposes of development approval under applicable codes and ordinances.

## ANALYSIS

### **I. Substantial Evidence Exists to Support the Commission’s Finding that the Andersen Parcel is a Legal Substandard Lot Under the Rockville Town Code**

The first question concerns whether the Planning Commission correctly determined that the Andersen Parcel is a legal substandard lot eligible for development approval under the Town Code. Utah statute directly addresses the concepts of legal nonconforming *uses* and legal noncomplying *structures*, but it does not address legal nonconforming (or substandard, as the Town Code refers to them) *lots*. Legal nonconforming uses and noncomplying structures are uses and structures that were legally created at the time they were established or constructed, but that are noncompliant with current codes due to subsequent changes to the local ordinances. Such uses and structures may continue to be conducted and occupied so long as the owner or operator does not significantly alter, demolish, or abandon the use or structure. *See generally*, UTAH CODE §§ 10-9a-103(45) and 10-9a-511.

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<sup>1</sup> The parties have not asked us to explore whether the lot fronts upon a private street or right-of-way, so we limit our consideration to the public street requirement.

One Utah Court of Appeals case briefly touched on the concept of legally nonconforming or substandard lots and assumed that “the general principles of nonconforming use apply to a nonconforming subdivision or nonconforming lots,” though the Court in that case did not definitively resolve the issue because it did not rely on the concept of nonconformity to resolve the case. *Hatch v. Kane County Board of Adjustment*, 2013 UT App 199, footnote 7.

Because state statute and Utah appellate courts have not provided statewide guidance on how to resolve questions surrounding the validity of a legal substandard lot, the Town may address the issue in its local ordinance. *See, generally*, UTAH CODE § 10-9a-801(3)(a) (land use regulation not expressly preempted by state law is presumed valid).

The Town Code addresses legal substandard lots similar to nonconforming uses. As indicated previously, the Town Code states the following: “Any lot legally held at the passage of this Code which is below the square footage requirements or width for the zone in which it is located may be built on provided it is located in a zone that permits the desired use.” Rockville Town Code § 9.1.5.

Thus, if it is determined that the Andersen Parcel is a legally held substandard lot of record, then Mr. Andersen is entitled to develop the lot with any of the permitted uses in the OS-20 Zone, assuming he can meet all other Code requirements not related to the legal nonconforming or substandard aspects of the property.

In this case, the Planning Commission determined just this. As stated above, the Planning Commission, on April 9, 2024, considered Mr. Andersen’s application and associated documentation and concluded, based upon the evidence available to them, that the Andersen parcel is a legal substandard lot eligible for development, subject to a finding by the Town Council, which has not occurred yet, that Eagle Crags Road provides public street frontage to the lot.

The Planning Commission’s decision that the Andersen Parcel qualifies as a legal substandard lot eligible for development is correct if the decision is supported by “substantial evidence in the record.” *See* UTAH CODE § 10-9a-801(3)(c)(i) (Stating that a land use decision is arbitrary and capricious, and therefore improper, if it is not supported by substantial evidence in the record.)

A decision is supported by substantial evidence if there is a “quantum and quality” of relevant evidence adequate to convince a reasonable mind to support a conclusion. *Caster v. West Valley City*, 2001 UT App 212, ¶ 4 (internal quotation marks omitted). In determining whether substantial evidence supports a decision, courts “consider all the evidence in the record, both favorable and contrary, and determine whether a reasonable mind could reach the same conclusion as the [decision maker].” *M & S Cox Invs., LLC v. Provo City Corp.*, 2007 UT App 315, ¶ 36. A court does not “reweigh the evidence and independently choose which inferences [it] find[s] to be the most reasonable. Instead, [a court] defer[s] to [the decision-maker’s] findings because when reasonably conflicting views arise, it is the [decision maker’s] province to draw inferences and resolve these conflicts.” *Provo City & Workers Comp. Fund v. Utah Labor Comm’n*, 2015 UT 32, ¶ 8 (cleaned up).

We agree with the Planning Commission that there is substantial evidence to support the conclusion that the Andersen Parcel is a legal substandard lot. At the April 9, 2024 Planning Commission meeting, Mr. Andersen presented evidence that the Andersen Parcel was created in April 1962, some 25 years before the Town was incorporated. Mr. Andersen also asserted that his parcel was created before Washington County, which would have been the land use authority in charge of approving the division at the time, had any ordinances governing the subdivision of land.

This assertion is supported by a letter provided to the Planning Commission. The letter is dated May 2, 2007, and was written by Deon Goheen, a Washington County Planner, on County letterhead. It is addressed to an owner of a lot, apparently unrelated to the present matter, in unincorporated Washington County. Its evidentiary value is found in the following statement in the letter: “If a lot [in unincorporated Washington County] is recorded prior to 1972, the year the County adopted their first Subdivision Ordinance, it is considered to be [a] ‘legal-nonconforming’ lot and we will issue a building permit on it, regardless of size....”

This statement, with the evidence presented above “is adequate to convince a reasonable mind to support a conclusion,” *Caster*, 2001 UT App 220, ¶ 4, that the Andersen Parcel was a legally created lot in 1962 and therefore qualifies as a substandard lot eligible for development approval under the Rockville Town Code. This is the case even when there could potentially be a different conclusion drawn from the same evidence.<sup>2</sup>

Where we already have a decision by the Planning Commission on the legal status of the Andersen Parcel, our task is not to “reweigh the evidence” and decide for ourselves which is the best evidence to rely on, as expressed above, but instead to review the Planning Commission’s decision and decide whether the decision is supported by some amount of relevant, factual, credible evidence—substantial evidence—in the record. Accordingly, we conclude that the Planning Commission’s decision to approve the Andersen Parcel as a legal substandard lot was supported by substantial evidence, and was therefore correct.

## **II. It is Appropriate for the Town Council to Make a Determination that Eagle Crags Road is a Public Use Dedication in Order to Apply the Code’s Public Frontage Requirements for the Andersen Parcel Development Approval**

The Town Code provides that each lot “shall have frontage upon a dedicated or publicly approved street or upon a private street or right-of-way approved by the Town before a public permit may be issued.” Rockville Town Code § 9.1.4. The second question the parties have asked us to examine is whether it would be proper for the Town Council to conclude that Eagle Crags Road is a public road providing frontage to the Andersen Parcel.

We note that the Town Council has not yet made any such conclusion but has welcomed our opinion on whether such a conclusion would be proper. It is our opinion that, for the purpose of

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<sup>2</sup> The City, in its submissions to this office, presented some historical State Code provisions that suggest State Law may have required a subdivision process in certain circumstances even if a local code did not exist or require a process. It is the opinion of this Office that the applicability of those provisions is uncertain and inconclusive, without more context. The Washington County Planning Department letter is much more straightforward and definitive in its relevance to the present situation.

applying a requirement of their ordinances (i.e., that a lot must have public frontage) it is appropriate for the Town to make a factual determination of whether a public road has been created by public use dedication, regardless of any formal court adjudication of the road's status.

Washington County's GIS Map<sup>3</sup> shows Eagle Crags Road (also known as Washington County Road Number 0764) as a dirt or gravel road meandering south off of the junction from Bridge Road to Grafton Road through various privately owned properties in Rockville, until it reaches the South Mesa area and the Andersen Parcel. From the South Mesa area, the road appears to continue on into federally owned land.

It appears that this road leading to the south Mesa has never been formally dedicated as a public road by deed, plat, or otherwise. However, this is not the only way a road becomes public under Utah law. Utah's public use dedication statute provides that a road over private property is dedicated and abandoned to the use of the public when it has been continuously used as a public thoroughfare for a period of 10 years. UTAH CODE § 72-5-104(2).<sup>4</sup> A "thoroughfare" is a place or way through which there is passing or travel. It becomes a "public thoroughfare" when the public have a general right of passage. *Morris v. Blunt*, 61 P. 1127, 1131 (Utah 1916). A public use dedication arises by operation of law at the time the factual conditions of the law are satisfied; no administrative or judicial formalities are required for their establishment. *See, Stichting Mayflower Mt. Fonds v. United Park City Mines Co.*, 2017 UT 42, ¶ 13 n.2 and 3.<sup>5</sup>

From the documentation submitted to this Office, Eagle Crags Road has existed in excess of 10 years, and has been designated by the City as a Class C road, wherein the City receives state funds to maintain the road. It appears generally accepted that the public regularly uses the road for hunting access and recreational access to publicly owned land. Ultimately, neither the Town nor Mr. Andersen have given any indication that the status of Eagle Crags Road as a public road is disputed by any interested party.

Additionally, for the portions of Eagles Crag Road that cross, or historically crossed, federally owned land and that abut the Andersen Parcel, Mr. Andersen, in the documentation he submitted to the Town, provided a document titled, "Acknowledgment and Notice of Acknowledgment of Acceptance of R.S. 2477 Right-of-Way Grant," from the State of Utah.

RS 2477 was a federal law that permitted the creation of public roads across federal lands during the time the statute was in effect.<sup>6</sup> Roads authorized under RS 2477 were established according to the terms of the laws of the state in which the land is situated, which, for roads in this state, is Utah's public dedication statute. *See, S. Utah Wilderness All. v. BLM*, 425 F.3d 735, 779 (10th Cir. 2005).

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<sup>3</sup> Available here: <https://geoprodm.washco.utah.gov/Html5Viewer/?viewer=WashingtonCounty>

<sup>4</sup> Specifically, the statute states that "[a] highway is dedicated and abandoned to the use of the public when it has been continuously used as a public thoroughfare for a period of 10 years."

<sup>5</sup> While the case cited refers to the establishment of roads over public lands under federal statute R.S. 2477, federal law turns to Utah's public dedication statute for the establishment of such roads.

<sup>6</sup> *See, Craig Call, Public Roads and Private Lands: How Public Access Rights are Created, Used, and Abandoned in Utah*, <https://utahlanduse.org/wp-content/uploads/2022/01/Roads-Final.pdf>.

The document provided to the Town by Mr. Andersen addresses the portion of Eagle Crag Road identified as Washington County Road 0769. The document indicates that the State has acknowledged the road as public under United States Revised Statutes 2477 and is supported by an affidavit from Rymal J. Hinton testifying that the road had been used by the public for the requisite period of time to establish an RS 2477 public road.

In light of all this, the available evidence appears adequate to support a conclusion that the portions of Eagle Crag Road crossing private property have been dedicated by public use under Utah's public use dedication statute. As such, a conclusion by the Town that the Andersen Parcel has frontage along a public road is supported by substantial evidence, for purposes of approving a building permit in accordance with the Rockville Town Code.

### **CONCLUSION**

The Rockville Town Planning Commission's decision that the Andersen Parcel is a legal substandard lot under the Town Code is supported by substantial evidence in the record and is therefore lawful and correct.

Additionally, substantial evidence exists to support a conclusion that Eagle Crag Road provides public frontage to the Andersen Parcel, for purposes of development approval.

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Office of the Property Rights Ombudsman

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