

Advisory Opinion 306

Parties: Weber Housing Authority, Ogden City
Issued: July 2, 2025

TOPIC CATEGORIES:

Compliance with Land Use Regulations
Interpretation of Ordinances
Requirements Imposed on Development
Entitlement to Application Approval

The Housing Authority seeks to convert an assisted living facility into a 32-unit permanent supportive housing project for individuals with disabilities. The Planning Commission recommended denial, which the Housing Authority challenges.

Question 1: The project does not require Department of Health licensing until occupancy and qualifiers as a residential facility for persons with disabilities. It is not subject to multifamily density limits since units lack full kitchens and bathrooms. The General Plan does not prohibit this use, so it complies.

Question 2: The project must meet zoning code and General Plan requirements. While zoning compliance alone isn't enough, the site plan conforms with the General Plan.

Question 3: Land use decisions affecting persons with disabilities must follow federal law. Though not briefed, we find the denial improper on other grounds and offer no further analysis.

Conclusion: The Planning Commission's reasons for denial lack legal or factual support. The denial is therefore unlawful.

DISCLAIMER

The Office of the Property Rights Ombudsman makes every effort to ensure that the legal analysis of each Advisory Opinion is based on a correct application of statutes and cases in existence when the Opinion was prepared. Over time, however, the analysis of an Advisory Opinion may be altered because of statutory changes or new interpretations issued by appellate courts. Readers should be advised that Advisory Opinions provide general guidance and information on legal protections afforded to private property, but an Opinion should not be considered legal advice. Specific questions should be directed to an attorney to be analyzed according to current laws.



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

(801) 530-6391
1-877-882-4662
www.propertyrights.utah.gov
propertyrights@utah.gov



SPENCER J. COX
Governor

DEIDRE M. HENDERSON
Lieutenant Governor



MARGARET W. BUSSE
Executive Director

JORDAN S. CULLIMORE
Division Director

ADVISORY OPINION

Advisory Opinion Requested by: Brandan Quinney, Esq.
Local Government Entity: Ogden City
Property Owner: Weber Housing Authority
Type of Property: Residential
Date of this Advisory Opinion: July 2, 2025
Opinion Authored By: Marcie M. Jones, Attorney
Office of the Property Rights Ombudsman

Issues

1. Did the planning commission err when it denied the site plan application for a residential facility for persons with a disability?
2. Does the project meet the requirement to conform to the general plan when the proposed use of the building is explicitly permitted by zoning ordinance?
3. Is the City's denial of the residential facility for persons with a disability subject to Federal Fair Housing and Americans with Disabilities laws and if so, how might those laws affect this decision?

Summary of Advisory Opinion

The Housing Authority plans to renovate an existing assisted living facility into a 32-unit permanent supportive housing facility for individuals with disabilities. The planning commission recommended denial which the Housing Authority now challenges. The planning commission erred when it denied the site plan application.

Question 1: We first find that the Project does not require licensing from the Department of Health until occupancy begins, and the structure may still appropriately meet the definition of a residential facility for persons with disabilities. Furthermore, the Project is permitted as a residential facility for persons with a disability and not subject to the density ceiling for multifamily dwelling units because the units do not have separate and independent bathrooms, showers, or full kitchen facilities. Furthermore, when interpreted in favor of the property owner, the General Plan's policies

and guidance do not expressly prohibit residential facilities for persons with disabilities or office space, therefore the use is in conformance.

Question 2: The Project must separately meet the requirements outlined in the zoning code and be in conformance with the General Plan. Meeting the requirements of the zoning code is not sufficient; however, we find that the site plan is in conformance with the General Plan.

Question 3: Finally, a land use decision to deny a use affecting persons with disabilities must also comply with federal laws such as the Fair Housing Act and the Americans with Disabilities Act, but because these issues were not addressed in the briefing, and we otherwise have determined that the denial was improper for other reasons, we do not offer any further analysis on this question.

In summary, the factors cited in support of the Planning Commission's recommendation for denial are not supported by applicable law or the record. The denial of the Project is therefore unlawful.

Evidence

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

1. Request for Advisory Opinion submitted by Brandan Quinney, Esq. on behalf of the Weber Housing Authority, received Lawrence and Kabrina Allen, with attachments, received January 12, 2024.
2. Letter from James A. Tanner on behalf of Ogden City on March 7, 2024.
3. Letter from Brandan Quinney on behalf of Weber Housing Authority on April 4, 2024.
4. Letter from James A. Tanner on behalf of Ogden City on May 30, 2024.

Background

The Weber Housing Authority (Housing Authority) plans to renovate the now vacant Aspen Care assisted living facility into a 32-unit supportive housing facility for individuals with disabilities (the Project). The Project will also include four office spaces to support on-site services, staff, as well as administrative offices.

The renovated facility will consist of 32 individual residential units with communal living and dining areas and showers shared by all residents. Each unit will have a small seating area, hot plate, and small sink. Some units will have private bathrooms while others will share bathroom facilities with adjacent units. The renovated facility will retain four office spaces from its use as an assisted living facility. These offices were originally used for facility administrative operations and will now serve a combination of supportive services for the Projects as well as a second main office for the Housing Authority.

The Housing Authority submitted a site plan application to Ogden City (City) for approval. The City Planning Commission (Planning Commission) reviewed the Project and recommended denial because the Commission determined the application failed to conform to the General Plan. The denial was supported by five factors for consideration:

- A. The proposed use does not qualify as a residential facility for persons with a disability.
- B. The proposed residential density exceeds that allowed in the R-3EC Zone.
- C. The proposed residential density is not consistent with the General Plan.
- D. The General Plan discourages additional group homes in the East Central Community, and
- E. The proposed office use is not consistent with the General Plan.

The Housing Authority has appealed the Planning Commission decision. In reviewing the decision, the City has conceded that some of the factors relied upon by the Commission were misinterpreted or misapplied but nonetheless maintain that there is still adequate justification for denial.

The Housing Authority contends that the City's denial is mistaken and has requested this Advisory Opinion to determine whether the denial is legally valid. The Housing Authority also questioned whether the Project must conform to the General Plan where the proposed use of the building is explicitly permitted by applicable zoning ordinances as well as whether the denial implicates the Federal Fair Housing Act and ADA laws.

Analysis

Question 1. The Planning Commission erred in its denial of the application and adoption the five negative “factors for consideration.”

This Advisory Opinion first evaluates whether the Planning Commission erred in its application of each of the negative “factors for consideration” cited in its denial of the Project. Each factor refers to an ordinance provision or to the general plan and purports to justify the Project's denial based on noncompliance.

To determine whether a municipality correctly interpreted and applied the language of the various applicable regulations in determining the factors for consideration, a court will follow established rules of statutory construction. *Foutz v. City of South Jordan*, 2004 UT 75, ¶8. Because the interpretation of regulations is a pure question of law, local governments are afforded no deference in interpreting their own regulations; rather, courts review a local government's interpretation of an ordinance for correctness. *Outfront Media, LLC v. Salt Lake City Corp.*, 2017 UT 74, ¶ 12 n.13, 416 P.3d 389, 394 (noting that the court's past practice of affording some level of “non-binding deference” to a local agency's interpretation could not stand in view of subsequent developments in precedent).

Interpretation begins with an analysis of the plain language of the ordinance. *Carrier v. Salt Lake County*, 2004 UT 98 ¶ 30, 104 P.3d 1208. The primary goal of interpretation 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.” *Foutz*, 2004 UT 75, ¶ 11, 100 P.3d 1171. In doing so, it is presumed that the legislative body used each word advisedly. *Selman v. Box Elder County*, 2011 UT 18, ¶ 18, 251 P.3d 804.

Note that where a reasonably well-informed person could understand a land use ordinance to have more than one meaning, the ordinance should be strictly construed in favor of the property owner’s desired interpretation, because such ordinances are in derogation of an owner’s common-law right to unrestricted use of the owner’s land. *See, Patterson v. Utah County Bd. Of Adjustment*, 893 P.2d 602 (Utah Ct. of App. 1995). Namely, “provisions [in land use regulations] restricting property uses should be strictly construed, and provisions permitting property uses should be liberally construed in favor of the property owner.” *Id.* quoting *Sammons v. Village of Batavia*, 53 Ohio App. 3d 87, 557 N.E.2d 1246, 1249 (Ohio App. 1988); *see also* 83 Am. Jur. 2d Zoning & Planning § 977 (1992).

Land use decisions by land use authorities are administrative acts. Utah Code § 10-9a-306(3). In light of this, our Advisory Opinion does not evaluate what is ‘best for the community’ in review of such a decision. That policy judgment occurs when land use ordinances are originally adopted. Evaluating whether to approve or deny a site plan application is an administrative decision whereby the evaluator must approve the application unless it is prohibited by plainly stated, unambiguous standards.

The Housing Authority is “entitled to approval of [its site plan application] if the application conforms to the requirements of the applicable land use regulations, land use decisions, and development standards in effect when the applicant submits a complete application and pays application fees . . .” UTAH CODE § 10-9a-509(1)(a)(ii). The application must be approved unless the proposed use is plainly restricted by law.

A. The Project Does Not Need to Be Licensed as a Residential Facility for Persons with a Disability Prior to Site Plan Approval

The first negative factor asserts that the Project “does not qualify as a residential facility for persons with a disability because it is not yet licensed.” *City Planning Commission Report Agenda Item – 5*, December 6, 2023.

The subject property lies within the R-3EC zone, where “Residential Facility for Persons with a Disability” is a permitted use. The City argues the Project does not qualify as such because it is not currently licensed. The applicable definition reads:

“Residential Facility For Persons With a Disability: A residence in which more than one person with a disability resides, together with any incidental domestic staff, and which is:

A. Licensed or certified by the Department of Human Services under title 62A, Chapter 2, of the Utah Code, Licensure of Programs and Facilities; or

B. Licensed or certified by the Department of Health under title 26, chapter 21, of the Utah Code Health Care Facility Licensing and Inspection Act.¹

CITY CODE § 15-2-19. Crucially, the same ordinance also provides:

“Prior to the occupancy of any [residential facility for persons with a disability], the person or entity must be licensed or certified . . .”

(Emphasis added). CITY CODE § 15-2-19.

The City has not shown that any ordinance requires licensing prior to building permit approval. No policy rationale has been offered to support that interpretation. The plain language requires licensing before *occupancy*, not construction.

We find that the Project is not disqualified as a permitted residential facility due to lack of current licensure. Licensing is only required prior to occupancy. The Planning Commission therefore erred when it relied upon this factor of consideration to support the denial.

B. The Multifamily Housing Density Restrictions Do Not Apply to the Project

The City next argues that the Project proposes 32 “dwelling units” on a one-acre lot, exceeding the 20-unit-per-acre limit for multifamily housing in the R-3EC zone. *See* CITY CODE § 15-36-4.A.1. However, this argument fails for two reasons:

1. The Project Does Not Include “Dwelling Units”

A “dwelling unit” is defined as “Any building or portion thereof designed, occupied, or intended as a residence for a family *with complete, and independent facilities for living, sleeping, eating, cooking and sanitation.*” CITY CODE § 15-2-5 (emphasis added). The Housing Authority acknowledges that each room has a space for sitting, a table, and a hot plate and mini sink, however they correctly note that individual rooms lack independent bathrooms and showers (23 toilets for 32 rooms and shared showers). The main living and dining areas are large, communal spaces. The Project units therefore do not amount to “complete and independent facilities”.

2. “Residential Facility for Persons with a Disability” is a Separate, Permitted Use.

The ordinance separately defines “residential facility for persons with a disability” and permits that use by right. CITY CODE §§ 15-2-19, 15-15-2. Thus, the Project need not meet multifamily dwelling standards because multifamily housing is not the proposed use.

¹ Note that references have since changed to UTAH CODE § 26B-2.

The City next challenges the site development standards applicable to the Project. The City would have multifamily dwelling standards applied, however, the Housing Authority notes that the applicable ordinance subjects the Project to density, setback, and parking requirements established for single family homes. The Code states that “Each facility shall be subject to minimum site development standards applicable to a *single family dwelling or other similar dwelling* in the zone in which the facility is located. . .” CITY CODE § 15-13-15.C(1)(a) (emphasis added).

The City argues the Project is not “similar” to a single-family dwelling and must instead meet established multifamily standards. This result, however, is not supported by the plain language of the ordinance. Rather, the Code provides that the project achieves compliance by the minimum site development standards of a single-family dwelling “*or*” other similar dwellings. In essence, the Code provides two options for compliance, resulting in an ambiguous standard.

Additionally, the City’s argument that single-family dwelling development standards are not applicable to the Project because it is “not similar” to a single-family dwelling is further called into question by the very next provision, which more plainly states that the “minimum number of parking spaces required for a residential facility for persons with a disability *shall be the same as those for a single-family dwelling* located in the same zoning district in which the facility is located.” *Id.* at (1)(b) (emphasis added). Ambiguity, if any, must be resolved in favor of the property owner. The “or similar dwelling in the zone” is an option provided for the property owner to select if they desire, but the Project is still otherwise compliant with site development standards of single-family dwellings.

The Project is therefore not subject to multifamily density limits and complies with site development standards by meeting standards for a single-family dwelling. The Planning Commission therefore erred when it relied upon this factor of consideration to support the denial.

C. The Project is Not Clearly Out of Conformance with the General Plan.

The final three negative factors allege that the Project does not conform to the General Plan, in some aspect or another, and will be analyzed together. These factors state:

- c. The proposed residential density is not consistent with the General Plan.
- d. The General Plan discourages additional group homes in the East Central Community.
- e. The proposed office use is not consistent with the General Plan.

Utah Code Section 10-9a-406 provides that “[a]fter the legislative body has adopted a general plan, no publicly owned building or structure... may be constructed or authorized until and unless it conforms to the current general plan.” For the purpose of this analysis, we assume, where not challenged by either party, that the Project qualifies as a publicly owned building and is thus subject to this statutory requirement that makes compliance with the General Plan mandatory.

It is important to recognize that this conformity requirement applies only to publicly owned buildings and structures. For private development, the General Plan serves only as an advisory tool. The language of the General Plan, including that of the East Central Community Plan, is aspirational by design. The Plan is not a zoning ordinance and does not clearly articulate binding development standards or requirements.

The City maintains that in evaluating conformity, the Planning Commission is tasked with “ensuring the vitality and sustainability of the city as a whole, and each community within the city.” *City’s Second Response* dated May 30, 2024. Furthermore, the City contends that the Planning Commission must determine whether the project conforms to each Commissioner’s independent determination of the needs of the community and that interpretation of the General Plan is a determination of what is best for the community. *Id.*

This misunderstands the role of the Planning Commission in an administrative review context. This is not a legislative action (e.g., rezoning), where discretion may be exercised to shape policy. Instead, the Commission is performing an administrative function, applying previously adopted standards to a specific application. Administrative decisions must be made based on existing rules, not new policy judgments. The Commission’s task is essentially ministerial: it must approve the Project if it meets the applicable standards. Any ambiguity in those standards must be resolved in favor of the proposed use.

The Project falls with the East Central Community section of the City General Plan (individually and together, the General Plan). Much of the General Plan is descriptive in nature, outlining the area’s history, architecture, factors influencing buildings development, perceptions, and use. Residential facilities for persons with disabilities are expressly addressed in the general plan as a type of “group home.” *East Central Community Plan 14.B.13*, amended November 15, 2022.

Item 13 is titled “Ensure Group Homes do not impact the stability of residential neighborhoods” and provides a “community vision” with “specific, attainable objectives to realize that vision.” Item 13 describes the concern that the City has experienced a negative impact created by more group homes occupying a block than homeowners, creating a social area rather than a neighborhood. To address this, however, the plan notes that the City should adopt a separation requirement in its zoning code between such uses “to stop this type of neighborhood impact from expanding,” and that the adopted requirement “reduce[s] the potential that these land uses will alter the fabric of a community.”

The specific problem the plan identifies, then, is that there are many existing group homes that are established in the neighborhood as nonconforming uses as to the enacted spacing requirement, and that of these existing nonconforming uses, the plan goes on to say “[o]n occasion, these facilities can present problems to the community that go beyond the impact on a neighborhood’s property taxes. It is for these reasons the City should consider steps to eliminate these uses over time by means of amortization or other regulations.” Additionally, “Consider amortization and other appropriate options for group homes that do not meet spacing requirements and present demonstrated problems to the community in order to stabilize neighborhood character. High Priority.”

The City concludes, based on the discussion and objectives in Item 13, that the Project is out of conformance with the General Plan. However, Item 13 only identifies a problem with existing nonconforming uses that do not meet the City's suggested spacing requirements, whereas the General Plan has concluded that the proposed spacing requirement serves to stop the identified negative impact of altering a community. Otherwise, the Plan does not include any mandatory language explicitly prohibiting new group homes. In light of this, the current proposal, which meets the enacted spacing requirements poses no conflict with the General Plan. As such, nothing in the General Plan plainly prohibits this Project. Under the required interpretive standards, this lack of prohibition must be read in favor of the applicant.

The City also maintains that “adding a new office use in this residentially zoned area would conflict with general plan goals” but quotes goals from a past iteration of the East Central Community Plan and mentions a “tendency to convert homes to offices and higher density units” the practice of which “has altered the residential character of the neighborhood.” *City's Second Response* dated May 30, 2024.

The City contends that the inclusion of office space is inconsistent with the General Plan's goals. However, the Project includes the same number of offices—four—as the previous facility. The offices are not replacing any existing residential units. The General Plan does not prohibit this configuration, nor does it categorically prohibit ancillary office uses within residential areas. It merely warns that creating additional office uses conflicts with general plan goals, particularly where homes are converted to offices.

The City's conclusion that the Project is out of conformance with the General Plan because it includes four office spaces lacks a basis in any plain language prohibition. Under the required interpretive standards, this lack of prohibition must be read in favor of the applicant.

The City also challenges the inclusion of any office spaces used for general Housing Authority administration—and not facility management—as not consistent with the zoning code. While this was not technically one of the reasons supporting the denial by the Planning Commission, because this point relies on compliance with zoning code rather than the General Plan, we will nonetheless address the question as it gets to the heart of the overall question of “is the Project permitted.”

The City argues that historically, the assisted living facility included a few offices that supported the treatment of the residents. Thus, the entirety of the building was used for a singular purpose. Converting some of the office space to administration splits the use which is contrary to City Code Section 15-13-15(C)(4) which provides “The [residential facilities for persons with a disability] is nontransferable and shall terminate if: the facility is devoted to a use other than a residential facility for persons with a disability. . .” The City claims that the administrative office space taints the residential facility. We note, however, that the plain language does not prohibit a split use.

The Housing Authority counters that the administrative office space falls under “public building” which is a permitted use in the zone. We note also that the zone permits “accessory . . . uses customarily incidental to the proposed use.” CITY CODE § 13-36-2. Either option allows administrative offices as a permitted use.

We concede that the language cited by the City gives us pause. However, where there are two or more plausible interpretations of a Code, the one favoring the property owner must be adopted. In this case, because the Code does not explicitly prohibit a split use, and because administrative office space is permitted as either a public building or an accessory use customarily incidental to the proposed use, it must be allowed.

In summary, because the General Plan does not contain language plainly prohibiting residential homes for persons with a disability that meet enacted spacing requirements or office uses, the Project is not out of conformance with the General Plan. Additionally, because split uses are not plainly prohibited and public building and accessory uses are specifically permitted, the Project conforms to zoning code requirements. Therefore, we find that the City's denial of the site plan application is not supported by applicable law. The record does not justify denial of the site plan for the project.

Question 2: The Project Must Be Both in conformance with the General Plan and Meet the Requirements of the Relevant Ordinances.

The Housing Authority next asks whether the Project meets the requirement of being in conformance with the General Plan where the proposed use of the building is plainly permitted by ordinance.

In interpreting the meaning of a statute or ordinance, we begin with the plain language. Each word in an ordinance is presumed to have been chosen intentionally. *Carrier v. Salt Lake County*, 2004 UT 98 ¶ 30, 104 P.3d 1208.

As indicated briefly above, Utah Code Section 10-9a-406 specifically requires that “no publicly owned building or structure . . . may be constructed or authorized until and unless it conforms to the current general plan.” The statute’s plain language makes clear that publicly owned buildings must *both* conform to applicable provisions of the local government’s General Plan *and* to applicable land use ordinances.

While City ordinances expressly allow Residential Facilities, this permissive zoning standard alone does not satisfy the separate requirement of conformance with the General Plan. To conclude otherwise would render the statutory requirement for General Plan conformance superfluous.

In sum, publicly owned buildings and structures must meet *two* independent criteria: (1) compliance with local ordinances, and (2) conformance with the General Plan. The Project must clear both standards. As discussed in the analysis of the previous questions, the Project here meets each of these criteria.

Question 3: Fair Housing and ADA Considerations Not Necessary

The Housing Authority next inquires whether the denial of the residential facility implicates the Federal Fair Housing Act and the Americans with Disabilities Act, and if so, how those laws might affect the decision.

All applicable requirements of federal fair housing and disability laws must indeed be followed. However, neither party has presented specific arguments regarding how these laws apply to the Project. In the absence of adversarial briefing, we decline to construct and resolve such arguments on our own. Moreover, the core issue—whether the application was properly denied—has been decided under state and local land use law. An analysis of compliance with federal statutes is therefore not necessary.

Conclusion

We find that the Project does not require licensing from the Department of Health until occupancy begins, and the structure may still appropriately meet the definition of a residential facility for persons with disabilities.

Furthermore, the Project is permitted as a residential facility for persons with a disability and not subject to the density ceiling for multifamily dwelling units because the units do not have separate and independent bathrooms, showers, or full kitchen facilities.

We further find that the Project is not out of conformance with the General Plan, as required by state law. Interpreted in favor of the property owner, the General Plan's policies and guidance do not plainly prohibit residential facilities for persons with disabilities or office space.

Accordingly, the factors cited in support of the Planning Commission's recommendation for denial are not supported by applicable law or the record. The denial of the Project is therefore unlawful.

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

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. Additionally, a civil penalty may also be available if the court finds that the opposing party—if either a land use applicant or a government entity—knowingly and intentionally violated the law governing that cause of action.

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 and civil penalty provisions, found in § 13-43-206 of the Utah Code, 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.