Hoffvest, LLC-- Appeal of Land Use Determination
August 14, 2020
Appellant's Reply

I. Overview

The County Council must reverse the Snyderville Basin Planning Commission ("Commission") because the reasoning set forth in the Commission's Amended Motion for Denial[1] was illegal, arbitrary, and capricious.[2] The Commission's decision was illegal because the County Council has already held in its *Silver Moose Ranch* decision that an LLC, legally in title to the real estate and operating a Bed and Breakfast Inn, qualifies as an "owner occupied residence."[3] The Commission's decision was arbitrary and capricious when it claimed that Appellant made no showing that the LLC was an owner occupier because of the undisputed evidence that Appellant holds fee title to the property.[4]

II. Appellant's Legal Arguments

1. The County Council has already held that an LLC, legally in title to property, operating a Bed and Breakfast Inn qualifies as an "owner occupied residence."

As acknowledged by counsel for the Commission, the County Council has already interpreted the County Code to define "owner occupied residence" in the matter of the Silver Moose Ranch ("SMR") conditional use permit ("CUP") appeal.[5] In that matter, SMR, a limited liability company, operated a nightly rental business that the County later required go through a conditional use permit process to operate as a Bed and Breakfast Inn. SMR did not own the property. Instead, an individual, William R. Kelley, Jr., held fee title. The Moorings, who leased the property, operated SMR and the nightly rental business through a Management Agreement with Mr. Kelley. The Management Agreement included language indicating that Mr. Kelley retained one hundred percent ownership of the property. Before the Commission, the CUP was denied due to access and water issues. On appeal, the County Council held:

> [W]e conclude that the Management Agreement did not grant a leasehold interest to SMR at all, but was merely a license to operate the Property as a 'Bed and Breakfast Inn.' . . . Mr. Kelley expressly reserved to himself, not the SMR business, 'one hundred percent ownership' of the Property. SMR does not currently meet the definition of 'owner occupied' for purposes of the Code. *For SMR to qualify, Mr. Kelley needs to convey to SMR title to the Property, together with the rights to the access right-of-way granted by the 1988 Deed and Water Right No. 35-8439, in the*

[1] R:329-330; *see also* Commission Response at 3.
[2] *See generally* UT Code § 17-27a-801(3)(c).
[3] A decision is illegal if the decision is based on an incorrect interpretation of a land use regulation. UT Code § 17-27a-801(3)(c).
[4] A decision of a land use authority is arbitrary and capricious if it is not supported by substantial evidence in the record. *See id*.
[5] Commission Response at 1.

form of fee simple, fee simple determinable, tenancy in common, or other legal or equitable title.[6]

(emphasis added). The County Council granted the CUP, provided that SMR comply with the following relevant conditions: "SMR must have a deeded ownership interest in the Property, including in the access right-of-way granted pursuant to the 1988 Deed and in Water Right 35-8439, which cannot be simply a leasehold interest. . . . Caretaker quarters shall be limited to the owners and staff of the "Bed & Breakfast Inn"."[7] No other conditions or requirements were imposed related to ownership or occupancy of the property.

Thus, the Commission's Amended Motion for Denial requiring that Appellant must show something beyond Appellant's deeded ownership interest in the property illegally contravenes the County Council's prior interpretation of this section of the County Code. Consequently, the decision of the Commission must be reversed.

2. The Commission's decision that Appellant does not qualify as an owner-occupier was without substantial evidence because there is undisputed evidence in the record that Appellant holds fee title to the property.

As discussed above, like SMR, all that Appellant must do to show that its Bed & Breakfast Inn will be an "owner occupied residence" is to have a deeded ownership interest in the property, and the caretaker quarters must be limited to the owners and staff of the Bed and Breakfast Inn. Appellant presented undisputed evidence before the Commission that it holds fee title to the property.[8] Thus, the Commission lacked any evidence that Appellant's operation of a Bed and Breakfast Inn does not qualify as an "owner occupied residence." The Commission's decision must therefore be reversed.

The Commission appears to assert in the Commission's Response that any leasehold arrangement at the property is impermissible. At no time has Appellant made the allegation that it need only have a leasehold interest in the property. Nevertheless, the Commission claims without merit that Appellant's execution of a lease with a live-in caretaker is contrary to the *Silver Moose Ranch* precedent and renders Appellant's application deficient on the element of "owner occupied residence."[9] Here, the Commission misunderstands the County Council's conclusions in that decision. In *Silver Moose Ranch*, the County Council held that the Moorings (the live-in caretakers) could not be eligible for the CUP because they held a leasehold interest in the property only, which the County Council concluded did not meet the definition of owner. Likewise, SMR could not be eligible for the CUP because it only had a license (in the form of the Management Agreement) to operate the business.[10] In order to make SMR eligible for the CUP, the County Council required Mr. Kelley to deed the property to SMR. In Appellant's case, Appellant already holds fee title to the property. Contrary to the Commission's claim, there is no suggestion in *Silver*

[6] *In the Matter of Silver Moose Ranch Conditional Use Permit Appeal*, Findings of Fact and Conclusions of Law, page 11 ¶7 (April 17, 2013).
[7] *Id*. pg. 15.
[8] The Commission does not dispute this on appeal. *See* Commission Response at 8.
[9] Commission Response at 5-6.
[10] *In the Matter of Silver Moose Ranch Conditional Use Permit Appeal*, Findings of Fact and Conclusions of Law, page 11 ¶7 (April 17, 2013).

Moose Ranch that the Mooring's lease rendered the building not their residence or would stand as an impediment to satisfying the "owner occupied residence" element of a Bed & Breakfast Inn. Rather, the County Council expressly envisioned that staff of SMR would reside at the property. Therefore, any lease arrangement between Appellant and its live-in caretaker does not conflict with the County Council's prior decision in *Silver Moose Ranch* and is entirely consistent with the language of the County Code.

3. The County Code must be liberally construed in favor of approving Appellant's proposed use.

While Appellant meets the "owner occupied residence" element of Bed & Breakfast Inn according to *Silver Moose Ranch*, even if no such precedent existed the County Code must be liberally construed in favor of approving Appellant's proposed use.[11] Thus, in the absence of language in the County Code prohibiting an LLC from being an "owner" or specifying that "owner occupied" must be a natural person who holds fee title to the property, the County Code should be interpreted to encompass Appellant's form of ownership and type of occupancy.

The Commission denied Appellant's application because Appellant could not show "how a staff member residing in the building satisfies the 'owner occupied' requirement where [the] staff member does not own title to the property or title to the company that owns the property."[12] Again, this reasoning is error as it disregards the *Silver Moose Ranch* precedent and impermissibly applies a narrow interpretation of the element of "owner occupied residence." As discussed above, the County Council in *Silver Moose Ranch* expressly allowed live-in staff of SMR to meet the "residence" element.[13] The Commission's interpretation would seem to prohibit anyone from asserting that a building was their "residence" unless they had an irrevocable fee interest in the real property. This is an absurd result and unsupported by the County Code or any generally accepted definition of residence. Residence at the property by staff of the fee owner occupant is all that the County Council reasonably required in *Silver Moose Ranch* and all the County Code can reasonably be interpreted to require in accordance with Utah law.

4. Interpreting "owner occupied residence" to prohibit ownership of the property by a business entity is contrary to the norms of operating a business.

The Commission claims that Appellant was required to show "how an LLC, as an entity, will occupy the building as a residence."[14] Appellant maintains, consistent with the County Council's decision in *Silver Moose Ranch*, that an LLC occupies the building by being the fee title owner of the property and the legal operator of the subject business conducted at the property. In the physical sense, the Commission requiring an LLC – a noncorporeal entity – to show how it will occupy anything amounts to a prohibition on a business owning a Bed & Breakfast Inn. After all, such a showing would be impossible. Thus, requiring such a showing is not a genuine

[11] R:459-463.
[12] Commission Response at 7.
[13] *In the Matter of Silver Moose Ranch Conditional Use Permit Appeal*, Findings of Fact and Conclusions of Law, page 15 (April 17, 2013).
[14] R:329; Amended Motion for Denial No. 3.

requirement, but an arbitrary prohibition that would give the Commission license to ignore the County Code's definitions of "person" and "owner."

The Commission further strays from the County Council's precedent by claiming that Appellant's proposed use and "the occupation of a single-family home would convert that use to a commercial rather than residential use."[15] The County Council has already identified that line of inquiry as irrelevant to whether an applicant has satisfied the requirements to receive a CUP to operate a Bed and Breakfast Inn. In its *Silver Moose Ranch* decision, the County Council stated: "While there was substantial evidence presented during the March 27, 2013 hearing about whether or not a "Bed & Breakfast Inn" is a commercial use and thus incompatible with the neighborhood, *we find that such labeling is not helpful to this inquiry. A "Bed & Breakfast Inn" by definition is placed within residential neighborhoods.*" (emphasis added).[16] The County has already concluded that this type of business is allowed within the rural residential zone, along with other business operations for agricultural, multi-family, and resort purposes. Almost any modern lodging establishment (bed and breakfast, Airbnb, hotel, yurt rental) is going to take advantage of the tax and liability benefits of operating through a legally recognized business entity. To require Appellant's principal, or any other natural person, to own and operate a Bed & Breakfast Inn and the associated real estate without such benefits ignores modern business practices.

5. The Commission mischaracterizes the legal concepts of "elements" and "standard of proof" in a manner that misconstrues the concepts of notice and due process.

Appellant does not dispute, and has never disputed, that it has the burden to show that it meets every element of the definition of Bed and Breakfast Inn. However, Appellant strenuously objects that it must also meet some unspecified *legal* standard of "owner" or "occupation" or "residence" that appears nowhere in the County Code. Throughout the proceedings the Commission failed to appreciate the distinction between the "elements" of the definition of Bed & Breakfast Inn and the "burden of proof." The proceedings before the Commission could be summarized briefly as follows:

Appellant: Appellant meets the element of "owner occupied residence" because it owns the property in fee simple and will operate the business in compliance with the size and live-in caretaker requirements.

Commission: Appellant does not meet the definition of "owner occupied residence."

Appellant: What are the County's requirements to meet this legal standard? Must the caretaker own an undivided fee interest in the real estate? Must the caretaker own an interest in Appellant?

Commission: We do not know. It is not our job to tell you that.[17]

[15] Commission Response at 8.
[16] *In the Matter of Silver Moose Ranch Conditional Use Permit Appeal*, Findings of Fact and Conclusions of Law, page 8 ¶24 (April 17, 2013).
[17] *See also* Commission Response at 7.

"'[A] standardless ordinance is subject to facial attack under the due process clause through the vagueness doctrine' if the ordinance 'does not give a person of ordinary intelligence a reasonable opportunity to comply with the law,' meaning that 'there is no notice of what the law requires,' or that the ordinance 'lacks explicit standards for its application . . . .'"[18] Even though the Appellant indicated that, if required, it would grant its full-time caretaker an undivided interest in the property or a membership interest in the Appellant, the Commission held that Appellant's fee ownership of the property "is not sufficient to meet the criteria of an owner-occupied resident"[19]. Even now, Appellant is at a loss concerning what that "criteria" is. The additional "criteria" is the new, undefined, "threshold" that the Commission has imposed in a manner that is contrary to law. Imposing this unwritten "criteria" deprived the Appellant of a reasonable opportunity to present evidence that it met that criteria and thus satisfied the element of "owner occupied residence." Thus, the decision of the Commission must be reversed.

6. The Commission's argument relies on definitions that the Commission did not apply in its Amended Motion for Denial.

The Commission claims that "[u]nder commonly accepted norms of statutory interpretation, courts attempt to give effect to the legislative intent of statutes as evidenced by the statute's plain language."[20] But the Utah Supreme Court has made clear that an inquiry into the purported "plain language" begins only after determining that the word or phrase in question is not defined in the relevant text.[21] By contrast, "words and phrases used in a statute, if also defined by statute, must be construed according to that definition."[22]

The Commission similarly insists that Utah courts "interpret statutes to give meaning to all parts, and avoid rendering portions of the statue superfluous."[23] If that is the case, then the interpretation of any defined term surely must look first to the definition of the words in question when those same words are defined in the statute. The Commission also correctly observes that the provisions of a statutory regime must be read together and harmonized as a whole.[24] If that is the case, then we would expect that definitions of words and phrases found in the General Definitions of the County Code would have direct bearing on the interpretation of the phrase "owner occupied residence." The terms "owner" and "occupancy" are defined in the General Definitions and, therefore, leave no room for speculation about their ordinary meaning or the intent of the County Code's drafters.

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[18] State v. Robinson, 254 P.3d 183, FN 52 (Utah 2011).
[19] R:329; Amended Motion for Denial No. 4.
[20] Commission Response at 2 (citing *Marion Energy, Inc. v. KFJ Ranch Partnership*, 2011, UT 50, ¶ 14, 267 P.3d 863).
[21] *See State v. Winward*, 907 P.2d 1188, 1191 (Utah Ct. App. 1995) (stating that only if a statutory term is not defined by statute do "we look to its commonly understood meaning").
[22] *Utah State Bar v. Summerhayes & Hayden*, 905 P.2d 867, 871 (Utah 1995); *see also* Utah Code Ann. § 68-3-11 ("Words and phrases . . . defined by statute, are to be construed according to such peculiar and appropriate meaning or definition.").
[23] Commission Response at 2-3 (quoting *State v. Watkins*, 2013 UT 28, ¶ 23, 309 P.3d 209).
[24] *Id.* (citing *State v. Barrett*, 2005 UT 88, pp. 29, 127 P.3d 682 (Utah 2005)).

The Commission insists that the General Definition's definition of "owner" is not relevant because it does not appear in the Snyderville Basin Development Code.[25] This proposition is entirely meritless. The Snyderville Basin Development Code is *part* of the County Code and the defined terms found in the latter are necessarily applicable to the former. Indeed, the express purpose of the General Definitions section of the County Code is to define for the *entire code* the meaning of certain terms and to foreclose the necessity of re-defining each term every time it is separately used in a different section of the County Code. The General Definitions section makes this purpose emphatically clear: "Whenever the following words or terms are used in *this code*, they *shall* have such meanings herein ascribed to them . . . ."[26] Reference to "this code" includes the Snyderville Basin Development Code, which is Title 10 of the County Code. Thus, there is no serious dispute that for the purposes of the Development Code, the General Definition's definition of "owner" applies.

In the absence of a definition for the phrase "owner occupied residence" Appellant used the individual terms that are defined in the County Code ("owner," "person," "occupant," etc.) to show that its proposed use qualifies as a Bed & Breakfast Inn. The Commission, without support, claims that in absence of a definition for the phrase "owner occupied residence" the Commission had license to take any definition it chose from any source[27] or create its own ad hoc definition[28]. In its Response the Commission appears to assert that the Commission could have applied the definition of "Owner-Occupant"[29] from a website called Investopedia, or the definition of "Primary Residence" from the portion of the County Code dealing with residential property tax exemptions.[30] This approach is not a reasoned attempt to discover the plain meaning or commonly accepted definition for this phrase. Rather, it is an attempt by the Commission to ignore the County Code's definitions of "person" and "owner," which clearly permit Appellant to operate a Bed & Breakfast Inn on property it owns, particularly where, as is the case herein, the Bed & Breakfast Inn will be occupied by a full-time employee that will occupy the Bed & Breakfast Inn as their primary residence

The Commission claims that the meaning of "owner occupant" is "well known to mean 'a resident of a property who holds the title to that property.'"[31] It is hard to see how this definition is helpful to the Commission's argument. To begin with, as noted above, if the County Council departs from its findings in *Silver Moose Ranch* and requires Appellant to have an employee with an ownership interest living on the property at all times such a person would be an "owner" under the Code's definition, and would meet the Commission's proffered definition in every particular. It is also telling that the Commission cites Investopedia and only Investopedia to support its argument that the "plain meaning" of the defined terms of this section are well known and require "fee title," when neither the defined terms nor the definition cited by the Commission imposes any

[25] Commission Response at 9. (emphasis added).
[26] County Code § 1-3-2.
[27] Commission Response at 5.
[28] R: 140.
[29] We note that as a factual matter, the County Code's definition of Bed & Breakfast Inn does not use the compound word "owner-occupied." The Commission's attempts to do so now misstates the plain language of the County Code. Moreover, even if "owner occupied" is a compound word, it is a compound of two words with respect to which definitions can be found in the County Code making the Commission's resort to outside sources unwarranted.
[30] Commission Response at 5.
[31] *Id*. (quoting a definition of "Owner-Occupant" found at the website Investopedia.com).

such requirement. The Commission has cited no evidence for the proposition that fee title or one-hundred percent ownership interest is a necessary implication of the phrase "owner occupant." What if the "owner occupant" were a couple who subsequently divorced, who split the ownership of the bed and breakfast, though only one member of the former couple remained living on the property and operating the business? Certainly, that partial owner would qualify as an owner under the County Code's definition, and his or her use of the property could not be terminated merely because he or she was a partial owner. What if the owner occupant were to die leaving a divided interest in the property? If one child were to stay on to reside in and manage the property, while other children retain a divided interest, the resident child would certainly qualify as an owner occupant, even with a divided interest.

The Commission's reliance on the *Silver Moose Ranch* matter is entirely inapposite.[32] In *Silver Moose Ranch*, the County Code provision addressed required that an owner hold "legal or equitable" title of the subject property.[33] But the Management Agreement at issue in that case made clear that the non-operating owner "maintain[ed] one hundred percent ownership of [the Property]."[34] *Silver Moose Ranch* does not address, and does not purport to address, the Appellant's proposal where a resident will hold part ownership interest in the property, and, as such, meets the statutory definition of "owner." Nor does the County Code's definition of "owner" impose a requirement of fee title. All that is required is "*any* part owner, joint owner, tenant in common, joint tenant or lessee of the whole or of a part of such building or land." (emphasis added).[35] Appellant's CUP application and representations before the Commission contemplated such an interest, and the denial of the CUP should be reversed.

IV. Conclusion.

Like SMR, Appellant is entitled to a CUP to operate a Bed & Breakfast Inn because it owns the real property on which the Bed & Breakfast Inn will operate and will employ a live-in caretaker. As a matter of uniform application of the County's laws, the County Council's prior interpretation of "owner occupied residence" set forth in *Silver Moose Ranch* should have guided the Commission in considering Appellant's application, and its failure to do so constitutes reversible error. Even if the Commission was ignorant of the County Council's ultimate conclusion in *Silver Moose Ranch*, the Commission's Amended Motion for Denial was arbitrary and capricious because it reflects the Commission's disregard for definitions of various terms in the County Code, and such disregard is manifest error. The County Council should reverse the decision of the Commission and conclude that Appellant's proposed use of its property meets the plain language definition of Bed and Breakfast Inn according to the County Code. In connection with such reversal, Appellant respectfully requests that the County Council approve the CUP application subject to the conditions of approval 2-5 set forth in the Staff Report prepared for the Commission's June 23, 2020 meeting.

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[32] Commission Response at 4 (citing *In the Matter of Silver Moose Ranch Conditional Use Permit Appeal*, Findings of Fact and Conclusions of Law, page 9 ¶5 (April 17, 2013)).
[33] *Id.* (citing *Silver Moose Ranch* at 10).
[34] *Id.*
[35] R:363.