



SANDY CITY COMMUNITY DEVELOPMENT

JAMES SORENSEN COMMUNITY
DEVELOPMENT DIRECTOR

MONICA ZOLTANSKI
MAYOR

SHANE E. PACE
CHIEF ADMINISTRATIVE OFFICER

Staff Report Memorandum September 12, 2024

To: Board of Adjustment
From: Community Development Department
Subject: Appeal to Review Alleged Error
of the Planning Commission
Conditional Use Permit Willow Creek Country Club
8505 S. Willow Creek Dr.
(Community #18, Willow Creek)

BOA08232024-006819
Open Space (OS) Zone
Approx. 2.75 Acres

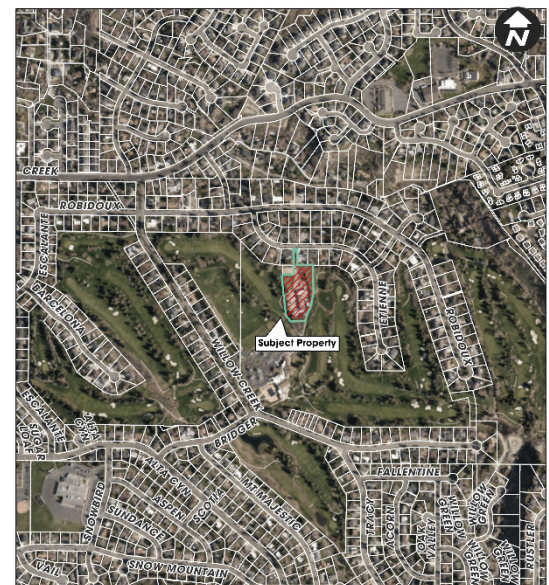
Public Meeting Notice: This item has been noticed to property owners within 500 feet of the subject area, posted on public websites and at public locations.

Request

The appellants Steven Harries, Erin Harries, Brad Fogg, Mindy Fogg, Vivian Vonk, and Leonard Furus are represented by Amy C. Walker of Miller Harrison, LLC (“**Appellants**”). On the Appellants’ behalf, Amy Walker has filed a request with the Sandy City Board of Adjustment to review an alleged error of the Planning Commission’s decision regarding the Willow Creek Country Club’s Conditional Use Permit and Preliminary Site Plan Review for the reconstruction and relocation of the existing maintenance area facilities for the property located at approximately 8505 Willow Creek Drive (as shown on the adjacent vicinity map). The **Appellants’ Application** packet is included as Exhibit A of this report.

Background

The Willow Creek Country Club complex consists of 158 acres containing a golf course, driving range, clubhouse with restaurant, golf pro shop, outdoor swimming pool, a maintenance area with buildings and a green house and a large vehicle parking lot for members of the club. The complex was developed entirely while the property was located within the zoning jurisdiction of Un-incorporated Salt Lake County. Sandy City annexed the country club property in December of 2018, and zoned the entire country club property as Open Space (OS). Upon annexation into Sandy City, the country club’s existing land uses, facilities and property automatically became either conforming or legal non-conforming to the Sandy City zoning ordinance as to land use classifications and physical site improvements. Since the property was annexed, the County is no longer the land use authority. The application for reconstruction and relocation of the existing maintenance area facilities was the first land use application sought by the Willow Creek Country Club to amend any of the physical site improvements since being annexed into Sandy City in 2018.



BOA08232024-006819
Alleged Error Appeal
Willow Creek Country
Club Maintenance Area
8505 S Willow Creek Dr.

Relevant Case History	
Case Number	Case Summary
SPR05172024-006771 CUP05172024-006775	Preliminary Site Plan and Conditional Use Review for the Willow Creek Country Club. The project is for the reconstruction and relocation of the existing maintenance area facilities on the northern portion of the golf course property at 8505 S. Willow Creek Dr. (July 18, 2024)
CA07032024-0006794 Ordinance #24-15	Code Amendment to Sec. 21-10-2, to clarify that accessory structures are permitted for parks and golf courses with conditional use review in the Open Space District. (July 30, 2024)
Ordinance #18-35	Sandy City annexed the subject property and designated the zoning classification as Open Space (OS). Adopted December 26, 2018.

Conditional Use Permit and Site Plan Review Application: On May 17, 2024, the Willow Creek Country Club applied for Conditional Use Permit and Site Plan Review for the reconstruction and relocation of the existing maintenance area facilities. The project area includes approximately 2.75 acres and is located on the northern boundary of the golf course property and abutting existing single-family homes. (These existing homes front onto Etienne Way and are located within the unincorporated Salt Lake County zoning jurisdiction.) The development will construct: a new 16,663 square foot, single story, maintenance equipment storage, repair shop, and office use building; a 4,160 square foot greenhouse; a parking lot and other related improvements (such as landscaping). The new maintenance area complex is proposed to be located between the existing single-family homes to the north and the current maintenance buildings to the south. After the new construction is completed, the old maintenance facilities will be demolished and that area re-landscaped.

Neighborhood Meeting: Prior to the Planning Commission meeting, a neighborhood meeting was conducted on June 10, 2024, as well as June 25, 2024. Notes from each neighborhood meeting was included in the staff report for the Planning Commission's review and consideration (see Exhibit A.26 - A.29).

In response to the issues raised at the neighborhood meetings, the applicant / property owner made revisions to their original plans. Chief among those revisions are voluntary concessions by the property owner to 1) reduce the height of the building from 35 feet to 22 feet, 2) increase the setback away from the Appellant's property line from 20 feet to 30 feet, and 3) to increase the landscaping material within the 30-foot setback buffer between the Appellant's property line and the proposed new maintenance building. This is discussed in detail in the staff report presented to the Planning Commission (pp A.17 - A.20).

Planning Commission Meeting: On July 18, 2024, the Planning Commission held a public meeting to consider the Willow Creek Country Club's application for Conditional Use Permit and Preliminary Site Plan Review for reconstruction and relocation of the existing maintenance area facilities. The Appellants included the agenda, staff report, and minutes from the July 18, 2024, Planning Commission meeting in their application material (see Exhibits A.10 to A.42). The record of the Planning Commission meeting is also accessible at <https://sandyutah.legistar.com> and includes all application materials, staff reports, meeting minutes, and meeting recordings. The following links provide direct reference to the Planning Commission meeting held on [July 18, 2024](#), under case permit numbers [SPR05172024-006771](#) and [CUP05272024-006775](#).

After allowing for public comment and deliberating on the matter, the Planning Commission decided on the Conditional Use Permit and Preliminary Site Plan Review for reconstruction and relocation of the existing maintenance area facilities. As shown in the [July 18, 2024, meeting minutes](#), the Planning Commission made the following decisions:

1. The Planning Commission determined the preliminary site plan review application is complete for the proposed relocation and reconstruction of the Willow Creek Country Club Maintenance Area facilities, located at approximately 8505 S Willow Creek Dr., based on the two findings and subject to the six conditions detailed in

the staff report and *with a modification to add a 7th condition - That the structures on the site be setback no closer than 50' from the property line.*

2. The Planning Commission approved a Conditional Use Permit for the proposed reconstruction and relocation of the Willow Creek Country Club's Maintenance Area, which is an accessory and ancillary use to the "Park, Public and Private" and "Recreation, Outdoor" primary land use, and based upon the staff report analysis and the two findings and three conditions detailed in the staff report and *with an amendment to add Condition #4 - That the applicant follows the Salt Lake County noise ordinance.*

Both decisions for Conditional Use Permit and Preliminary Site Plan Review included a condition of approval that the City Council grant final approval of an associated code amendment related to accessory structures in the Open Space District, as described immediately below. See also Exhibit A.22 & A.23 for this condition of approval.

Code Amendment – Planning Commission Meeting: At that same meeting on July 18, 2024, the Planning Commission held a public hearing on a code amendment to amend Title 21, *Land Development Code*, Chapter 10, *Open Space Districts*, Section 2, *Permitted Land Uses in the Open Space District*. The code amendment clarifies that accessory structures are permitted for parks and golf courses with conditional use review in the Open Space District. After allowing for public comment and deliberating on the matter, the Planning Commission decided to forward a positive recommendation to the City Council to amend Title 21, of the Sandy Municipal Code, related to accessory structures in the Open Space District as shown in the exhibits and based on the four findings detailed in the staff report. The staff report with exhibits for this code amendment is attached to this report as Exhibit B. Reference to this information may also be accessed at <https://sandyutah.legistar.com> under the [July 18, 2024](#), Planning Commission meeting under case number [CA07032024-0006794 \(PC\)](#).

Code Amendment – City Council Meetings: Subsequent to the Planning Commission meeting, the City Council held two meetings on the code amendment. Direct reference to these meeting materials may also be accessed at <https://sandyutah.legistar.com>. On [July 23, 2024](#), the City Council held a work session on the code amendment under case number [CA07032024-0006794 \(CC WS\)](#), and on [July 30, 2024](#), the Council held a regularly scheduled meeting on the code amendment under case number [CA07032024-0006794 \(CC\)](#). At the July 30th meeting and after deliberating on the matter, the City Council approved the code amendment to clarify that accessory structures are permitted for parks and golf courses with conditional use review in the Open Space District by adopting Ordinance #24-15 (see Exhibit C).

Public Notice

The city issued notice of this public meeting on public websites, posted in three public locations, and mailed to property owners within 500 feet of the subject property prior to the Board of Adjustment meeting in accordance with the LDC Sec. 21-36-1 and -2 and the Utah State Code § 10-9a-205.

Analysis

It is the Appellants' belief that the Planning Commission erred in its application of the Sandy City Land Development Code in approving with conditions the Conditional Use Permit and in determining that the Site Plan Review application is complete for the Willow Creek Country Club. Their letter is very detailed (see Exhibit A.1 - A.9).

The intention of this report is not to provide a rebuttal of the Appellants' arguments, but to provide the facts of the case, a sequence of events and references to the record for the Board of Adjustment's deliberation. The party most impacted by this appeal is the original applicant and property owner for the Conditional Use Permit and Site Plan Review, which is the Willow Creek Country Club and its representatives. As such, representatives of the Willow Creek Country Club have provided a rebuttal to the Appellants' arguments for the Board of Adjustment's consideration, which is included as Exhibit D to this report.

Legal Standards for an Appeal

The LDC, Section 21-35-1 sets the standards for reviewing an appeal. The following excerpt of this section establishes the proper standards and procedures for reviewing an appeal:

Sec. 21-35-1. Appeals**(e) Information to be Presented.**

- (1) An appellant must first present any and all information to the land use authority which it intends to raise before the appeal authority. The appellant may not bring new information for consideration before the appeal authority that had not been previously presented to the land use authority during its consideration of the matter.
- (2) An appellant must present to the designated appeal authority every theory of relief that it can raise in District Court.
- (3) No new information that was not previously presented to the land use authority may be presented on appeal.

(f) Review of the Record of the Land Use Authority.

- (1) The appeal authority's review of decisions of a land use authority shall be confined to the administrative record developed by the land use authority unless the appeal authority determines that the record is incomplete or deficient.
- (2) If the appeal authority determines that the record is incomplete or deficient, it may review the matter de novo.

(g) Burden of Proof. The appellant has the burden of proving that the land use authority erred.**(h) Standard of Review.**

- (1) **Legal Issues; Correctness Standard.** The appeal authority shall determine the correctness of a decision of the land use authority or administrative official in its interpretation and application of a land use ordinance. Because no specialized knowledge is necessary to make such a determination, no deference is given to the land use authority or administrative official; provided, however, the appeal authority shall not overrule that decision as a matter of law without the advice of its legal counsel.
- (2) **Factual Issues and Other Issues; Arbitrary and Capricious Standard.** Land use authorities and administrative officials have specialized knowledge in the field of planning and land use and are charged with and are experienced in implementing the goals and policies of the community as adopted by and under the supervision of elected representatives of the public. Accordingly, they should be allowed a comparatively wide latitude of discretion; and their actions endowed with a presumption of correctness and validity which an appeal authority should not interfere with unless it is shown that there is no reasonable basis to justify the action taken, and that, therefore, the determinations made were so unreasonable as to be arbitrary and capricious. It is not the appeal authority's prerogative to substitute its judgment for that of the land use authority where the record discloses a reasonable basis for the land use authority's determination.

(i) Scope of Authority. Only those decisions in which a land use authority has applied a land use ordinance to a particular application, person, or parcel may be appealed to an appeal authority.

The Board's review of the Planning Commission's decision is to determine whether a reasonable mind could reach the same conclusion as the Planning Commission did, in light of the evidence the Planning Commission had before it. The Appellant must marshal all the evidence in support of their claim that the Planning Commission decision was made in error and show that in spite of the facts which support the decision, and in light of conflicting or contradictory evidence, the decision is not supported by substantial evidence. Substantial evidence is evidence which is adequate to convince a reasonable mind to support a conclusion. *See Carlsen v. Board of Adjustment of City of Smithfield* 2012 UT App 260 ¶¶ 4, 5, 7.

Conclusion and Recommendation

The applicant has not met their burden of proving that the Planning Commission decision was so unreasonable as to be arbitrary and capricious. As stated in the ordinance cited, the appellant bears the burden of proving that the land use authority erred. It is not enough to show that one could reasonably reach a different conclusion on the facts if there is a reasonable basis for the decision reached by the Planning Commission.

Based upon the foregoing the Board of Adjustment should conclude that the Planning Commission did not err in making their determination to approve with conditions the Conditional Use Permit and Preliminary Site Plan Review, and adopt the following findings:

Findings:

1. The record of this decision is sufficient and not deficient as demonstrated in the referenced staff reports and associated exhibits and other information in the record; therefore, this matter can be reviewed on the record, and not de novo.
2. The appellants have not shown that there was no reasonable basis to justify the action taken, and the determinations made were so unreasonable as to be arbitrary and capricious.
3. Based on the findings cited in their motion and evidence cited in the record, the Planning Commission determination was processed as required by the Sandy Land Development Code.
4. Therefore, the Planning Commission's decision was correct in its interpretation and application of the Land Development Code.

Planner:



Melissa Anderson
Zoning Administrator

References

The record of the Planning Commission meetings is accessible at <https://sandyutah.legistar.com> and includes all application materials, staff reports, meeting minutes, and meeting recordings. The links below provide direct reference to the meetings held related to this appeal:

1. Planning Commission meeting on [July 18, 2024](#), under case numbers [SPR05172024-006771](#), [CUP05272024-006775](#), and [CA07032024-0006794 \(PC\)](#).
2. City Council work session on [July 23, 2024](#), under case number [CA07032024-0006794 \(CC WS\)](#).
3. City Council regular session on [July 30, 2024](#), under case number [CA07032024-0006794 \(CC\)](#).

Exhibits

- A. Appellant's Application Materials
 - Appeal Application Letter (pp. 1-9)
 - Agenda for the July 18, 2024, Planning Commission Meeting (pp. 10-12)
 - Staff Report for the Preliminary Site Plan and Conditional Use Review (pp. 13-29)
 - Meeting Minutes from the July 18, 2024, Planning Commission Meeting. (pp. 30-42)
 - Letter from Erin and Steven Harries to Mike Wilcox, Sandy City Planning Director (pg. 43)
 - List of the Etienne Way Residents and their addresses (pg. 44)
- B. Staff Report for Code Amendments to the Open Space District
- C. Ordinance 24-15, adopting Code Amendments to the Open Space District
- D. Willow Creek Country Club's rebuttal to the Appellants' arguments

Exhibit "A"
See separate file for the full document



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ADMITTED TO PRACTICE IN UTAH

August 23, 2024

Sandy City Attorney Office/Civil
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CC: Sandy City Attorney
Lynn Pace
lpace@sandy.utah.gov

Sent via e-mail and Submitted with Online Application for Alleged Error

**Re: Notice of Appeal; Willow Creek Conditional Use Permit (CUP) and
Equal Protection Concerns**

This appeal is submitted through counsel in compliance with Sandy City Code Sec. 21-35-1 on behalf of Steven Harries, Erin Harries, Brad Fogg, Mindy Fogg, Vivian Vonk, and Leonard Furus ("Etienne Way Residents"), adjacent property owners directly affected by the Sandy City Planning Commission's (the "Planning Commission") decision regarding the Willow Creek Country Club's Conditional Use Permit and site plan for the property located at approximately 8505 Willow Creek Dr, Sandy, UT 84093 (the "CUP"). The Etienne Way Residents have standing to bring this appeal because the proposed maintenance building will be directly impeding the views from their backyards, where they will also experience increased noise and exposure to hazards. These impacts are expected to diminish their property values and negatively affect their quality of life.

As required by Sec. 21-35-1(c), the Etienne Way Residents allege errors in the interpretation and application of relevant land use ordinances. This appeal is timely filed within ten calendar days of the publication of the official meeting minutes on August 16, 2024, per Sec. 21-35-1(d).

In accordance with Sec. 21-35-1(e), all relevant information and legal theories were presented to the land use authority during its proceedings, and no new information is being introduced on appeal. The appeal requests a review of legal issues under the "Correctness Standard" (Sec. 21-35-1(h)(1)) and a determination of whether the Planning

Exhibit “B”

See separate file for the full document



SANDY CITY COMMUNITY DEVELOPMENT

JAMES SORENSEN
COMMUNITY DEVELOPMENT
DIRECTOR

MONICA ZOLTANSKI
MAYOR

SHANE E. PACE
CHIEF ADMINISTRATIVE
OFFICER

Staff Report Memorandum

July 18, 2024

To: City Council via Planning Commission
From: Community Development Department
Subject: Amendments to Title 21 of the Land Development Code related to Accessory Structures in the Open Space District CA07032024-0006794

Public Hearing Notice: This item has been noticed on public websites, sent to affected entities and posted in three public locations at least 10 days prior to the Public Hearing.

Request

The proposed Code Amendment would amend Title 21, *Land Development Code*, Chapter 10, *Open Space Districts*, Section 2, *Permitted Land Uses in the Open Space District*. The code amendment clarifies that accessory structures are permitted for parks and golf courses with conditional use review in the Open Space District. The specific amendments to the Land Development Code are included as Exhibit “A” (red-lined version) and Exhibit “B” (clean version).

Background

Through on-going administration of Sandy’s Land Development Code, staff has identified an ambiguity in the code regarding whether accessory structures are allowed in the Open Space (OS) District. The proposed code amendment is intended to clarify that accessory structures are permitted for parks and golf courses in the OS district.

Case History	
Case Number	Case Summary
N/A	Previously referenced in the 2008 Land Development Code under § 15A-10-02.
Ord. No. 13-13 CODE-4-13-2884	Code amendment to coordinate the land use matrices for Residential, Commercial, Institutional Care, and the Open Space Districts. This Code Amendment also includes eliminating provisions for new Recreational Vehicle Parks, as well as adding or amending definitions that are for specific uses listed in the land use matrices. (6-5-2013)
Ord. No. 13-19 CODE-7-13-3045	Code Amendment is to add “solid waste conversion facility” and “waste transfer station” as new allowed land uses within the Industrial Zone, with associated definitions, including prohibiting the use in the Open Space District. (8-15-2013)

Exhibit “C”

See separate file for the full document

ORDINANCE # 24-15

AN ORDINANCE REVISING TITLE 21 OF THE SANDY CITY MUNICIPAL CODE, CHAPTER 10, “OPEN SPACE DISTRICT”, SECTION 2, “PERMITTED LAND USES IN THE OPEN SPACE DISTRICT”; ALSO PROVIDING A SAVING CLAUSE AND EFFECTIVE DATE FOR THE ORDINANCE.

WHEREAS, a request has been made to revise Title 21 of the Sandy City Municipal Code, Chapter 10, “Open Space District”, Section 2, “Permitted Land Uses in the Open Space District”. The code amendment clarifies that accessory structures are permitted for parks and golf courses with conditional use review in the Open Space District; and

WHEREAS, the Planning Commission held a public hearings on July 18, 2024, which meeting was preceded by notice posting in Sandy City Hall, the Sandy City Parks & Recreation Building, Salt Lake County Library – Sandy, on the Sandy City Website – <http://www.sandy.utah.gov>, and the Utah Public Notice Website – <http://pmm.utah.gov> on July 3, 2024; and

WHEREAS, following the public hearing before the Planning Commission, the Commission made a recommendation to the City Council regarding the amendment; and

WHEREAS, a public meeting was held by the Sandy City Council on July 30, 2024, to consider adoption of the proposed amendment; and

WHEREAS, the City Council has been given specific authority in Title 10, Chapter 9a, Utah Code Ann. to adopt land use regulations to regulate the erection, construction, reconstruction, alteration, repair and uses of buildings and structures, and the uses of land; and

WHEREAS, the State legislature has granted welfare power to the City Council, independent, apart from, and in addition to, its specific grants of legislative authority, which enables the City to pass ordinances which are reasonable and appropriate to the objectives of that power, i.e., providing for the public safety, health, morals, and welfare; and

WHEREAS, the forgoing legitimate governmental objectives are achieved by reasonable means, in that any adverse impact on private property value or use has been carefully balanced against the corresponding gain to the public; and the regulations have been calculated to permit property owners to beneficially use their properties for the practical purposes to which the property is reasonably adaptable; and procedures have been established by the Land Development Code and Utah Code Ann. whereby appeals can be heard and decided if it is alleged that there is legislative or administrative error, or where a special exception or variance to the ordinance is required.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Sandy City, State of Utah, as follows:

Section 1. Amendment. Title 21 is amended as shown on Exhibit “A”, which is attached hereto and by this reference made a part hereof.

Section 2. Severable. If any part of this ordinance or the application thereof to any person or circumstances shall, for any reason, be adjudged by a court of competent jurisdiction to be

Exhibit "D"

See separate file for the full document



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September 5, 2024

Sandy City Attorney Office/Civil
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Sandy City Attorney
Lynn Pace
lpace@sandy.utah.gov

Re: Willow Creek Country Club | Response to Notice of Appeal of CUP

Dear Sandy City Board of Adjustment:

This law firm represents Willow Creek Country Club ("**Willow Creek**"), the applicant in the decision currently under appeal. In response to the Notice of Appeal ("**Appeal**") filed by Steven Harries, Erin Harries, Brad Fogg, Mindy Fogg, Vivian Vonk, and Leonard Furus (collectively, "**Neighbors**") on August 23, 2024, Willow Creek requests that the Sandy City Board of Adjustment **dismiss the Appeal and affirm Willow Creek's conditional use permit ("CUP")** for reconstruction and relocation of a maintenance building and greenhouse, and the associated site plan at 8505 Willow Creek Drive, Sandy, UT 84093 ("**Property**").

I. The Planning Commission Legally Approved the CUP and Site Plan.

The Property is a privately owned golf course, located in the Open Space District. "Parks, Public and Private" and "Recreation, Outdoor", are both listed as conditional uses in the Open Space District. "Public/private park" is defined in the Sandy City Code as "an open space, playground, swimming pool, golf course . . ." *Sandy City Code* 21-37-17(41). "Recreation Outdoor" is defined as "an area free of buildings except for restrooms, dressing rooms, equipment storage, maintenance buildings, and open air pavilions, and used primarily for recreation activities not involving motor vehicles, animals, or overnight use." *Id.* at 21-37-19(9). "Accessory structure, accessory building" is defined as a "detached, incidental subordinate building customarily incidental to and located upon the same lot occupied by the main use or building. Detached garages, sheds, workshops, and barns are examples of accessory structures." *Id.* at 21-37-2(4).

Because the new maintenance facility and greenhouse are proposed to be reconstructed and relocated on the private property owned by Willow Creek, and are ancillary to and in support of Willow Creek's "Recreation/Outdoor Use," the CUP application for a maintenance building and equipment storage falls squarely in the conditional use permit schemes under State Law ("**LUDMA**") and Sandy City Code and is consistent with the current use of the property which already has an old, dilapidated maintenance facility and greenhouse.

LUDMA states: