

September 5, 2024

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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:

a land use authority **shall approve** a conditional use *if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards.* UTAH CODE 10-9a-507(2) (Emphasis added).

Likewise, Sandy City Code states:

“A conditional use permit **shall be approved** if conditions are proposed or can be imposed to **mitigate** the reasonably anticipated detrimental effects of the proposed use in accordance with the standards set forth herein.” *Sandy City Code* 21-33-5 (Emphasis added).

These laws unambiguously require the Planning Commission to approve Willow Creek's CUP, if reasonable conditions can be imposed to mitigate any reasonably anticipated detrimental effects of the CUP. That happened here. Accordingly, the Planning Commission had no choice but to approve the CUP.

The Planning Commission considered multiple reasonably anticipated detrimental effects of the CUP (including those raised by this very group of Neighbors in two separate Resident Meetings and public comment at Planning Commission), such as potential noise, obstruction of views, traffic and odors, among others. To mitigate these purported detrimental effects, the Planning Commission imposed four conditions on the CUP and seven conditions on the site plan, including a 50-foot setback from the property line, a requirement to follow the Salt Lake County noise ordinance, and a limitation on the hours of operation, among others. All of these conditions “reasonably relate to mitigating the anticipated detrimental effects of the proposed use.” UTAH CODE 10-9a-507(2). Willow Creek intends to fully comply with these conditions.

The Planning Commission also found that the proposed uses under the CUP “are existing and will be continued with new building and site improvements, consistent with Sandy City Code requirements and conditions[,]” and “all the proposed site improvements will allow continuation of the prior maintenance area functions with better buffering of the existing neighboring properties in better facilities with less environmental impacts.” See July 18, 2024 Planning Commission Meeting Minutes, at 9.

Because the reasonably anticipated detrimental effects could be mitigated by the imposition of conditions, the Planning Commission was justified in approving the CUP and the site plan. On this basis alone, the Board of Adjustment must uphold the approval of the CUP and the site plan review and dismiss the Appeal.

II. Neighbors Fail to Overcome their Burden of Proof.

In their appeal, Neighbors primarily argue is that the City did not adequately consider the anticipated detrimental effects, or that the City did not impose stringent enough conditions. In other words, Neighbors request that this body replace the judgment of the Planning Commission, the legally appointed land use authority, with Neighbors' judgment. The law, however, has rejected this approach.

The Planning Commission's approval of the CUP is *presumed valid* unless Neighbors can show the decision is "arbitrary and capricious" or "illegal." UTAH CODE 10-9a-801(3). "A land use decision is arbitrary and capricious if the land use decision is not supported by substantial evidence in the record." *Id.* Substantial evidence is "that quantum and quality of relevant evidence that is adequate to convince a reasonable mind to support a conclusion." *Bermes v. Summit Cnty.*, 2023 UT App 94, ¶ 29, 536 P.3d 111, 119. "A land use decision is illegal if the land use decision: is based on an incorrect interpretation of a land use regulation; conflicts with the authority granted by this title; is contrary to law." UTAH CODE 10-9a-801(3). The Planning Commission's decisions regarding detrimental effects and conditions to impose are supported by significant evidence. Thus the decision is not arbitrary or capricious. Likewise, the Planning Commission's decision accords with the existing law. Thus it is not illegal.

Throughout their appeal, Neighbors argue that "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." They also allege that the "building size and height, lighting impacts, hazardous materials management, and safety concerns, all of which are critical to the well-being of nearby residents." However, nowhere in their appeal do they provide *actual evidence* that these conditions will happen. In fact, the existing evidence (presented in the CUP application, site plan materials, at two resident meetings and the July 18 public meeting), considered by the Planning Commission, indicates that those things will not happen. Each of Neighbors' arguments is meritless and addressed below.

First, Neighbors argue the "invalid ordinance amendment renders the approval of the CUP invalid." Neighbors are wrong. The ordinance that Neighbors are claiming is invalid was not adopted by the City Council until after the CUP was granted. Accordingly, the CUP could not have been based on the ordinance. Even if the ordinance is invalid (which is not the matter under appeal today), the CUP would still exist. Neighbors are incorrect to state that approval of the CUP was conditioned upon the successful and valid adoption of the ordinance amendment. Rather, the Planning Commission placed a condition of the CUP that the City Council ratify the CUP decision by final approval of the ordinance ("Subject to final approval of the proposed Code Amendment CA07032024-0006794, by the City Council before final approval and building permit issuance"). That condition was fulfilled by the City Council giving final approval of the ordinance. There was no condition placed on the CUP that the ordinance itself must be and remain fully valid and beyond challenge or else the CUP is terminated. Final approval was given. The Condition was fulfilled.

Neighbors also argue that the Planning Commission erred by not holding separate public meetings and not providing sufficient opportunity for public comment on the ordinance amendment application. This argument is also in error. The ordinance amendment application was an agenda item separate from the CUP/site plan agenda items, and Neighbors had the opportunity to comment on the ordinance amendment application, but chose not to. See July 18, 2024 Planning Commission Meeting Minutes, at 3. Neighbors voiced their opposition to the CUP at July 18 meeting (and the two resident meetings). *Id.* at 4-5. Neighbors had more than sufficient opportunity to be heard, and were heard, as evidenced by the imposed conditions. The Planning Commission therefore did not err.

Second, Neighbors argue the Planning Commission “did not provide adequate findings of fact or substantial evidence in the record regarding (a) building size, height and setback (b) lighting (c) pollution and hazardous materials, (d) property values, (e) visual impacts and (d) noise pollution.” This is contrary to the extensive evidence. Willow Creek presented evidence in its CUP application and site plan materials and at the July 18 public meeting and the two resident meetings, demonstrating that these purported detrimental effects are non-existent or could be reasonably mitigated by imposition of conditions. Based on this evidence, the Planning Commission found the “proposed site improvements will allow continuation of the prior maintenance area functions with better buffering of the existing neighboring properties in better facilities with less environmental impacts.” See July 18, 2024 Planning Commission Meeting Minutes, at 9. After hearing significant evidence from Neighbors regarding these detrimental effects, the Planning Commission also imposed several conditions to mitigate these purported detrimental effects, including among other things, increasing the setback significantly. This meets the legal standard of substantial evidence to support the Planning Commission’s decision. Moreover, Neighbors argue sub-textually that the Planning Commission’s responsibility is to *eliminate* detrimental effects. But the obligation is to reasonably *mitigate* them. The difference between *eliminate* and *mitigate* matters, because it creates a balance between competing property rights.

Third, Neighbors argue the CUP “includes specified not-permitted uses” including “automotive service and repair”, “auto, truck, RV, equipment storage”, “automotive service station, non-mechanical”, “plant nursery” and a “professional office”. But the CUP does not fall under any of these uses. The CUP is to reconstruct and relocate an existing maintenance building and greenhouse that *are ancillary to a golf course*. Neighbors mischaracterize the CUP uses and disregard the use of the Property as a golf course.

Fourth, Neighbors argue Willow Creek’s site plan was incomplete. This is not the case. The site plan is robust and contains all necessary information, as determined by the Planning Commission. Indeed, the plans for landscape, grading and drainage, utilities, architecture, lighting and others were revised and resubmitted to the City after addressing residents’ concerns. Furthermore, site plan contains substantial evidence, sufficient itself on which to base the decision of the Planning Commission. But even if the site plan application was incomplete, the Planning Commission’s conditions on the site plan review allow Willow Creek to address any purported deficiencies prior to final site plan approval.

Fifth, Neighbors argue the CUP uses are inconsistent with the Open Space District. Neighbors are wrong. According to the Sandy City Code, “The Open Space District is designed to provide for an enhanced natural environment, protecting the City’s limited natural and developed open spaces from further intrusions. The intent of the Open Space District is to establish areas in the City where only open and generally undeveloped lands are to be permitted . . . Restrictions in this zone are designed to prevent the encroachment of residential, commercial, and industrial uses into these open space areas that would be contrary to the objectives and characteristics of this zone.” *Sandy City Code* Sec. 21-10-1(a). The CUP uses of buildings ancillary to a golf course are consistent with the purposes of the Open Space District. The CUP uses are not new uses; they are existing uses that are being reconstructed and relocated on the same Property. These CUP uses are not residential, commercial or industrial uses but are ancillary to and support the Willow Creek’s country club golf course. Indeed, the CUP uses allow Willow Creek

to maintain the country club in pristine condition and promote the purposes of the Open Space District.

Although an “accessory structure (unless otherwise specified)” is listed as a non-permitted use in the Open Space District under Sandy City Code 21-10, the Planning Commission made clear that the intent of this language is to restrict accessory structures in the Open Space District unless the accessory structure are associated with and support a primary use, in which case they would be allowed. Thus, an accessory structure with this type of use is “otherwise specified.” The Planning Commission’s interpretation here is consistent with Sandy City’s longstanding interpretation and practice of allowing structures in its open space zoning districts accessory to the primary uses.

III. At Least Some Neighbors Lack Standing to Appeal

Finally, it is worth noting that at least some of the Neighbors lack standing to appeal. Standing to appeal land use decisions is limited to the land use applicant (Willow Creek in this case) and an “adversely affected party”. UTAH CODE 10-9a-704(2). The term “adversely affected party” is defined as “a person other than a land use applicant who: (a) owns real property adjoining the property that is the subject of a land use application or land use decision; or (b) will suffer a damage different in kind than, or an injury distinct from, that of the general community as a result of the land use decision. UTAH CODE 10-9a-103(2) (emphasis added).

While some of the Neighbors have standing because they own real property adjoining the Property, according to Salt Lake County title records, some apparently do not. Those parties without standing must be dismissed from this appeal.

For all of these reasons, the appeal authority should dismiss the Appeal and affirm the Planning Commission’s approval of the CUP and site plan.

Very truly yours,

DENTONS DURHAM JONES PINEGAR, P.C.



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