



JAMES SORENSEN  
COMMUNITY DEVELOPMENT  
DIRECTOR

MONICA ZOLTANSKI  
MAYOR

SHANE E. PACE  
CHIEF ADMINISTRATIVE OFFICER

## Supplemental Memorandum

March 7, 2024

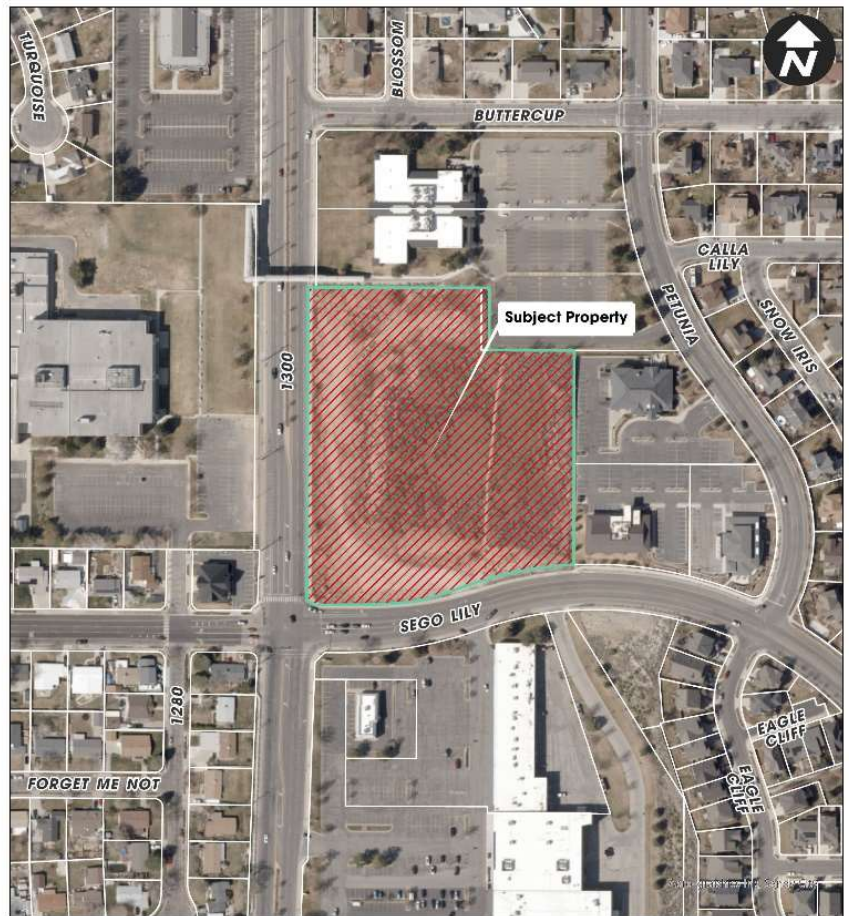
To: Planning Commission  
From: Community Development Department  
Subject: Interpretation of the term "Mixed Use Development"

MSC03202023-006505

Request The Community Development Director, James Sorensen, is requesting the Planning Commission provide the interpretation of the term "mixed use development" as applied in the context of a conditional use permit application on a property located at 10165 South 1300 East. The application is to seek review and approval of a mixed use development for this site. This property is zoned Neighborhood Commercial (CN) which generally allows only commercial uses, but also allows for a mixed use development as a conditional use. The key determination to be made is whether this proposal qualifies as a mixed use project under the Sandy City Code. If not, the use is not allowed in this zone or at this location. If yes, then the applicant will proceed with their conditional use application.

### Background

This property is surrounded by professional and medical office buildings to the east and the Salt Lake County Public Library to the north (zoned SD(PO/R), Professional Office subdistrict). To the south is the Alta View retail shopping center (zoned Community Commercial (CC)). The Eastmont Middle School (zoned R-1-8) is located to the west of the property.



MSC03202023-006505  
Mixed Use Interpretation  
10165 S 1300 East

Community Development Department  
Cartography Eleanor Mearns

Staff received a conditional use permit application (see Exhibit “A”) that seeks review and approval of a mixed use development land use in the Neighborhood Commercial (CN) zone district from Wade Budge of Snell & Wilmer, LLP (applicant) which is representing the property owner Magna Investment & Development, LTD.

The interpretation question was originally scheduled for determination by the Planning Commission on [April 20, 2023](#). That meeting was cancelled. The applicant then submitted a request for an [advisory opinion](#) from the [Office of the Property Rights Ombudsman](#) (OPRO). It was later rescheduled at the request of the applicant for [August 3, 2023](#). The Planning Commission did not come to a conclusive decision on the question but did table the item to allow the applicant to work with surrounding property owners to further develop their plan. As part of that effort, a neighborhood meeting was held on [August 9, 2023](#) (passcode: w9W0yp!6), to present their application and receive feedback from the neighborhood. A work session was held with the Planning Commission on [October 5, 2023](#), to review the proposed revisions that the applicant had made to their request (see Exhibit “B” for latest version). On December 28, 2023, the OPRO released their advisory opinion (see Exhibit “C”) on the matter.

### **Public Notice and Outreach**

This item has been noticed to property owners within 500 feet of the subject property and public notice signs posted to the property. A neighborhood meeting has been held on the related conditional use permit application.

### **Analysis**

Staff presented a full analysis of the request for interpretation in our initial Staff Report Memo dated August 3, 2023 (see Exhibit “D”). This report seeks to supplement and not restate the analysis initially presented to the Planning Commission in August of 2023. Staff intends to only address the new information that has surfaced since that time.

The Planning Commission correctly pointed out during the August 3, 2023 meeting that this proposed development does not further the purpose of the Neighborhood Commercial (CN) Zone District as found in [Sec. 21-4-11\(6\)](#):

*Neighborhood Commercial District (CN).* This district is established to allow for the creation of commercial centers to serve the convenience shopping and service needs of neighborhood areas of Sandy City within planned commercial centers. The Neighborhood Commercial District designation is intended for commercial developments that will relate to residential neighborhoods and will be compatible with residential character.

The primary purpose of this zone is to provide additional convenient shopping and service areas that relate and serve the surrounding residential neighborhoods. This development proposal is focused on creating a multi-unit dwelling development (which is a use that is not permitted as a standalone use in the CN Zone) and does not provide sufficient office/retail elements to serve the purpose of the zone and create a true mixed use development.

The applicant has not demonstrated significant changes that have caused Staff to alter the analysis and conclusions from the original report. The property remains in isolation with no significant coordination with the neighboring property owners. It is not part of “coherent plan” that would achieve a true mixed use development. As such, the subject property is not “of sufficient size and physical improvement to protect surrounding areas and the general community, and to ensure a harmonious integration into the neighborhood.” The proposed mix of uses has not changed nor has there been any additional information provided that would change staff’s recommendation.

As stated in the OPRO advisory opinion, it is a non-binding opinion that does not constitute legal advice, nor does it reflect the opinions of the State of Utah. It is not binding on either party but it’s solely advice. Staff believes that the author of the opinion incorrectly interpreted and applied the City’s Land Development Code. Here are a couple of examples:

- A) The opinion asserts that the Mixed Use Standards found in Sec. 21-23-24 do not apply to Mixed Use Development outside of a property zoned Mixed Use. The author took the analogous phrase used in the staff report “similar to an overlay zone” and interpreted that to mean that we are attempting to apply these standards inappropriately. While staff has never asserted that the Mixed Use Zone is a floating or overlay zone, we have asserted that the standards of section 21-23-24 do apply to every proposed mixed use development. It is the only section of code that provides regulation necessary for the unique circumstances that come from introducing residential uses into a commercial zone and mixing them together rather than separating them from one another as our existing “Euclidean” type zoning regulations are established to provide. These standards are not listed with the other zone specific regulations found in Sec. 21-23-21 but are a standalone section applicable to all mixed use development in all contexts and zone districts. Section 21-23-24 has been consistently followed by uniform application of the standards to all mixed use developments in the City. This section of code isn’t being used to disallow a proposed land use, but to regulate the unique situation that comes with mixing uses together.
- B) Since the author of the Advisory Opinion deems the additional regulations found in the Mixed Use Development Standards as not applicable, they rely solely on the definition of the term “mixed use development”. The analysis of the term “mixed use development” is perfunctory and conclusory. Staff has two concerns with this approach:
- 1) They apply just one of the mixed use definitions from the code, break it down into three main points and cursorily conclude that this proposed development achieves each of those elements. Specifically, they quote the following:

“Mixed-use development” is defined as “a development project that includes residential and one or more of the following land uses: retail, service, commercial, or office; and which vertically or horizontally, integrates critical massing of physical and functional components into a coherent plan the promotes walkability through uninterrupted pedestrian connections, and reduces traffic and parking impacts.” CITY CODE § 21-37-14(11).

However, they ignore parts of this single definition in their analysis, specifically, “integrates critical massing” and “a coherent plan”.

- 2) Because they ignore the other definitions of mixed use, they also failed to apply definitional standards such as:
  - a. “*mixture of residential and commercial uses with an approved ratio*”;
  - b. “*developed according to a master site plan*”;
  - c. “*of sufficient size and physical improvement to protect surrounding areas and the general community, and to ensure a harmonious integration into the neighborhood*”;
  - d. “*designed in a village manner*”;

Staff has articulated in our previous staff report that these other definitional elements, that were ignored in the advisory opinion, have not been met.

## **Recommendation**

Staff recommends that the Planning Commission determine that this request does not meet the definitional standard of a “Mixed Use Development” as outlined in the Land Development Code based on the following findings:

### **Findings:**

1. A mixed use development must consist of more than just a collection of types of uses that are adjacent (vertically or horizontally) to one another. It requires that they be designed to function as a walkable village center providing a

variety of housing, employment opportunities, goods and services that support the existing and proposed residents of a given area (see Sec. [21-37-14\(10-14\)](#) & [21-23-24](#)). The proposal does not meet this requirement.

2. A mixed use development is required to function as a walkable village center, providing a mix of uses within close proximity, and uninterrupted pedestrian connections, thereby reducing traffic and parking impacts (see Sec. [21-37-14\(10-14\)](#) & [21-23-24](#)). The proposal does not meet this requirement.
3. A mixed use development requires coordination and master planning to successfully create a walkable community (see Sec. [21-37-14\(10-14\)](#) & [21-23-24](#)). The proposal does not meet this requirement.
4. The development proposal does not meet the definition of a “Mixed Use Development” as found in [section 21-37-14\(10-14\)](#).
  - a. The proposal shows that there has been no effort to coordinate and master plan with surrounding property owners and integrate those existing uses or future development. After evaluating this proposal within its development area only, and not including the surrounding existing properties and uses, and finds there is not a sufficient mix of uses.
  - b. The proposal is not of sufficient size and physical improvement to protect surrounding areas and the general community, and to ensure a harmonious integration into the neighborhood.
  - c. The proposal does not integrate critical massing of physical and functional components into a coherent plan that promotes walkability through uninterrupted pedestrian connections and reduces traffic and parking impacts.
  - d. The proposal is not designed in a walkable village manner.
  - e. The proposal shows “live/work units” that are not designed to function as such because the spaces are disconnected. The amount of area designated for “work” within these buildings is too small to function as standalone office space and will likely be utilized for storage and maintenance spaces.
  - f. The amount of proposed retail uses represents only 6% of the overall building square footage (not including the structured parking areas).
  - g. The amount of live/work “office” space represents only 1% of the overall building square footage (not including the structured parking areas).
5. This development proposal is focused on creating a multi-unit dwelling development, which is a use that is not permitted as a standalone use in the CN Zone (see [Sec. 21-8-2](#)). It does not provide sufficient office/retail elements to serve the purpose of the CN zone (see [Sec. 21-2-11\(6\)](#)).
6. A development that is focused on commercial retail and office uses that harmoniously integrates a residential element into the overall development scope to create a village center would be an appropriate application of a mixed use development (see Sec. [21-2-11\(6\)](#) & [21-23-24](#)).

Planner:



Mike Wilcox  
Planning Director

File Name: S:\USERS\PLN\STAFFRPT\2023\MSC03202023-006505 - MIXED USE INTERPRETATION\Supplemental Report.DOCX

Exhibit "A"  
See the attached file for full information.

**ALTA VIEW ELEMENTARY**  
**EASTMONT MIDDLE SCHOOL**  
**SANDY LIBRARY**  
**ALTA VIEW HOSPITAL**  
**ALTA VIEW INSTACARE**  
**VCA MOUNTAIN VIEW ANIMAL HOSPITAL**  
**BIG BEAR PARK**  
**BUTTERCUP PARK**  
**SEGO LILY GARDENS**  
**DIMPLE DELL Regional Park**

**SANDY - SEGO LILY VICINITY ZONING USE TYPES**

**Snell & Wilmer** | **DE DESERT EDGE architecture**

**SANDY - SEGO LILY DR. & 13TH EAST**

Exhibit “B”

*See the attached file for full information*

**Snell & Wilmer**  
Committed to being your perfect fit.®

**Conditional Use Permit  
CUP12282021-006239**

October 5, 2023

Sandy City Planning Commission

Albuquerque | Boise | Denver | Las Vegas | Los Angeles | Los Cabos | Orange County | Phoenix | Portland | Reno | Salt Lake City | San Diego | Seattle | Tucson | Washington, D.C.

Exhibit “C”

See the attached file for full information



SPENCER J. COX  
Governor  
DEIDRE M. HENDERSON  
Lieutenant Governor

UTAH DEPARTMENT OF COMMERCE  
Office of the Property Rights Ombudsman

MARGARET W. BUSSE  
Executive Director

JORDAN S. CULLIMORE  
Division Director, Office of the Property Rights Ombudsman

ADVISORY OPINION

Advisory Opinion Requested by:	Magna Investments & Development, LTD
Local Government Entity:	Sandy City
Property Owner:	Magna Investments & Development, LTD
Type of Property:	Mixed-use
Date of this Advisory Opinion:	December 28, 2023
Opinion Authored By:	Marcie M. Jones, Attorney Office of the Property Rights Ombudsman

Issues

1. Does the proposed development, which includes residential, retail, and live/work units, qualify as a “mixed-use development” as defined in the city code?
2. Is the developer entitled to have its conditional use permit application for the proposed development processed?

Summary of Advisory Opinion

The proposed development includes residential, retail, and live/work space vertically integrated in one building with uninterrupted pedestrian connections and reduced parking and/or traffic impacts. Accordingly, it meets the definition of a “mixed-use development” provided in city code. Such a mixed-use development is a conditional use in the applicable CN – Neighborhood Commercial zone. As such, the developer is entitled to have its conditional use permit application processed, including review by the planning commission.

The city may not lawfully impose the requirements contained in a separate “MU – Mixed-use” zoning district upon the proposed development. These requirements only apply to property in the MU – Mixed-use zone and do not apply “similar to an overlay zone” onto the subject property which is zoned CN – Neighborhood Commercial.

Exhibit “D”  
See the attached file for full information



SANDY CITY COMMUNITY DEVELOPMENT

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COMMUNITY DEVELOPMENT  
DIRECTOR  
  
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**Staff Report Memorandum**  
August 3, 2023

To: Planning Commission  
From: Community Development Department  
Subject: Interpretation of the term “Mixed Use Development” MSC03202023-006505

**Request**

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**Background**

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Cartography: Ekaterina Meznar

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