

Conditional Use Permits

Legal Framework

Presumption of Approval

MUST Approve if:

- Reasonable conditions
 - Proposed in application
 - OR
 - Imposed by Commission
- Mitigate reasonably anticipated detrimental effects
- In accordance with applicable standards set forth in County ordinance.

MAY Deny if:

- Detrimental effects cannot be substantially mitigated, OR
- Effects can only be mitigated through unreasonable conditions,
- All as judged by standards in County ordinance.

“Detrimental Effects”

- Public Health
- Safety
- Public Welfare
- Negative impacts on legitimate governmental interests
- Or other detrimental effects identified in County Code.
- May ONLY consider the effects of the use currently proposed.
 - CUPs are evaluated on a case-by-case basis.
 - MAY NOT consider what future development in that area may look like.

“Applicable Standards”

- Conditional Use Statute: LUC 108-4-4
 - Odor, vibration, light, dust, smoke, or noise.
- Design review, if applicable: LUC 108-1-4
 - Traffic safety and congestion, outdoor advertising, landscaping, building design and site layout.
- Zone Purpose and Intent Language.
 - Example: LUC 104-11-1, CVR-1 zone
 - “compatible with the general surrounding natural environment . . . ensure that the natural environment is preserved to the greatest possible extent.”
- Standards of the particular use.
- Other standards unique to the zone.
 - Example: CVR-1 design standards, LUC 104-11-5
 - “proposed buildings and uses . . . sized in proportion to the recreational amenities for which they will provide goods and services.”

Support for the Decision – “Substantial Evidence”

Evidence IS:

- FACTS
- Staff reports
- Reports from other agencies/departments (e.g. fire, water, sewer, engineering)
- Plans, studies and analysis from the applicant,
- Plans, studies, etc., submitted by affected landowners,
- Personal testimony (e.g. “This will personally affect me and the enjoyment of my property because . . .”)

Substantial evidence is “that quantum and quality of evidence that is adequate to convince a reasonable mind to support a conclusion.”

Uintah Mtn. RTC, L.L.C. v. Duchesne County, 2005 UT App 565

Evidence IS NOT:

- Public opinion
- Clamor or discontent
- Speculation on:
 - Economic viability
 - Property values
 - Possible future development in the area
- Expressions of emotion, positive or negative.
- General support for or opposition against a particular application or development in general.
- Unknowns.

The Importance of Findings

- All administrative land use decisions can be challenged as “arbitrary and capricious”, if there is a lack substantial evidence.
- This is particularly true where a CUP is denied or additional conditions are imposed on the applicant. (Remember: the legal presumption is in favor of approval).
- Explicit findings based on the evidence show the reviewing body your reasoning.
- Adequate findings help protect the decision from reversal on appeal.

Findings That Must Be Made

- What are the specific detrimental effects we anticipate from this particular use?
 - What is the specific evidence that leads us to believe these effects will occur?
- Are the conditions proposed by the applicant sufficient to mitigate the detrimental effects?
- What other conditions could be imposed to mitigate detrimental effects? How?
- Are the conditions designed to bring the use into compliance with applicable standards in County ordinance? Which standards?
- Are these conditions reasonable? Why or why not?
- Will the conditions be successful in mitigating the detrimental effects? Why or why not?
 - What specific evidence is this finding based on?

How to Make Findings

- Planning Commission Rules of Order F.1:
 - “The motion shall include not only the direction of the motion, but shall also include the recitation of specific findings of fact supporting such motion. A second shall be required for each motion citing compatible findings. Other members of the Commission may support the motion adding compatible findings.”

Possible Decisions

- Approve the application as submitted.
 - Virtually unchallengeable under state law.
- Approve the application with additional conditions.
 - Must be based on substantial evidence.
 - Likely to withstand challenge if conditions are reasonable and related to applicable standards.
- Deny the application.
 - Must be based on substantial evidence.
 - High burden to withstand challenge.
 - Must demonstrate that no reasonable conditions or combination of conditions would substantially mitigate the detrimental effects of the use.