

Conditional Uses

Conditional uses can be problems for cities and towns. They are a problem because many cities and towns think that they have more discretion than they actually do in the granting or denying of a conditional use permit application. These cities and towns treat conditional use permit applications like zone change requests. A conditional use permit application is not the same as a request to change a zone.

A conditional use is defined as a use that, because of its unique characteristics for potential impact on the city or town, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.¹

It has been the common practice for Utah cities and towns to include many conditional uses in their land use ordinances. Very often this occurs because the drafters of the ordinances cannot make the hard decisions about whether or not to permit or disallow a particular use. Sometimes conditional uses are used because the city or town thinks that conditional uses give planning commissions or city councils more discretion in whether or not to allow certain uses. This cannot be further from the actual situation.

A conditional use only exists if it is created by the land use ordinance. It is not sufficient to just identify a potential use as a conditional use in a land use ordinance. The state statute requires that standards be set forth in the ordinance for the granting or denying of the conditional use.² A conditional use must be approved if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with standards that are contained in the ordinance. If there are no identifiable standards contained in the ordinance, there will be no basis for denying the permit.

The granting or denial of the conditional use permit is not a legislative act, it is an administrative act. This is a significant distinction. Because it is an administrative act, it will be reviewed by the courts in a less differential manner than a legislative act. In addition, a city or town must provide an appeal process from any decision on a conditional use permit application. This appeal process must allow anyone who is aggrieved by the decision that either granted or denied a conditional use to appeal that decision. This appeal must be to someone other than the body that initially decided on the conditional use permit. After this internal appeals process has been completed, the aggrieved party can petition the district court to review the city's decision.

A court will review and support the city's decision, as it would any other administrative decision if there is a good record of what the city or town did and if the decision is supported by substantial evidence found in the record. If there is a good record of what occurred in the city and if there is not substantial evidence in that record to support the

¹ Utah Code 10-9a-103(6).

² Utah Code 10-9a-507.

city's decision, the court will overturn the city's decision. If the record from the city is insufficient, the court will rehear the entire matter, including taking new evidence, and make its own independent determination and ignore the city's previous decision. The city's record consists of the minutes of the various meetings and the decisions made. A good record will be one that has a transcript of the meetings held and written findings and conclusions regarding the permit.

Another significant difference between the granting of a conditional use and a legislative act is the role of the public. While it is appropriate to take public comment and even hold public hearings on the granting or denial of individual conditional use permits, public clamor is not to be considered. The difference between public clamor and public input is one of substance. It is appropriate to seek from the public factual information about whether or not the applicant for the permit can meet the standards of the ordinance. It is not appropriate to seek from the public their emotional feelings about the application. Whether or not to grant a conditional use permit is not a political decision or a popularity contest; it must be based solely on the standards in the ordinance itself. The applicant can either meet the standards in the ordinance for the permit or not meet the standards.

The best practice is to avoid, as much as possible, having conditional uses. If the use is not appropriate, the ordinance should make it a non-permitted use. If the use is appropriate, it should be a permitted use. Conditional uses should be the exception and not the rule. Putting a conditional use in the ordinance is inviting the use to occur. If a city does not want a particular use in a particular area, the best practice is to not allow it.