

# **Recommendations on CUP Checklist Procedures**

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## **Background**

As indicated by Peg, the current checklist and numerical score process for evaluating CUP applications was developed to correct previous issues with arbitrary reviews. The existing rules and worksheets (checklists) were adopted by Ordinances 2021-2 and 2021-5. The current process and standards represents a great deal of work by the PC members and I respect the effort and what was achieved.

However, since adoption the PC discussions have contained multiple mentions of “CUP procedure training needs” and “confusion” about the specifics of applying the rules. Mr. Nellis has correctly indicated that the PC will learn as experience is gained in using the worksheet system.

State law constrains what Boulder can require regarding conditional uses. The plain language of the Utah Municipal Code makes clear that the General Plan is advisory and that any conditions recommended by the PC must be based on objective standards in the ordinances. Further, an application must be approved if reasonable conditions can be imposed to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards. Relevant text from the Municipal Code is copied as an Appendix to this report.

I have read conditional use ordinance provisions from other jurisdictions, including towns recommended by Mr. Nellis, as well as more general information on conditional uses provided by Utah League of Cities and Towns, Utah Land Use Institute, and the State Property Rights Ombudsman office. The process that has been adopted by Boulder is unusual. The use of checklists is discussed in the resources I consulted, but I have found no example of the scoring worksheet being codified in the ordinances. Rather, any checklist authorized in the ordinance is an administrative form handled by staff. Likewise, the summing of plus and minus scores is very rare.

I recommend to the commission that we apply what has been learned from working with the current Commercial Standard and Home Businesses CUP worksheets over the past year and a half, and make our process comply more closely with state law by developing ordinance updates to send to the Town Council.

## **Summary of Recommendations**

At the April 2023 meeting I mentioned four items for discussion at the May PC meeting. Each listed recommendation will be discussed below.

1) Adopt the revised application form and worksheet / checklist prepared by Lee Nellis as an administrative procedure document.

2) Have the applicant work with the Zoning Administrator and, if appropriate, a single Planning Commission representative, to resolve issues prior to the public meeting and then document the applicant's responses for all the items on the worksheet.

3) Clarify in revised ordinance text the numerical score definitions, impacts of concern, and expected mitigation measures with sufficient clarity so that an applicant can understand what is required or prohibited for approval.

4) Remove the existing worksheets from the codified ordinance which then allows us to modify the details of the new forms as we learn.

### #1 Application Form

The revised application form which Mr. Nellis prepared is a great improvement. Items have been renumbered to match the underlying ordinance requirements. The form now has spaces for the applicants statement of how compliance or mitigation of each item will be achieved. By making this an administrative form it will be possible to make changes in the application that are consistent with the ordinance. For example; terms can be clarified, requested information can be made more specific, form layout can be changed to facilitate use. The new, evolving form will facilitate PC review of the submittal prior to sending the recommendation to Town Council.

Background and procedural information for the applicant can be put in an administrative handout similar to what Mr. Nellis prepared for subdivisions.

### #2 Review of Application Materials

Expecting all PC members to individually review the applicant's submittal in detail then discuss it for the first time in a public meeting is cumbersome, inefficient, and subject to errors and omissions. More importantly this process does not facilitate either correction of deficiencies in absolute items or negotiation with the applicant on mitigation measures for relative standards. Meeting time is limited, rules of procedure apply, and applicants might be uncomfortable speaking freely in the public meeting.

In most jurisdictions CUP applications are reviewed by staff working together with the applicant until issues are resolved and the application package sent to the planning commission is accompanied by a detailed staff report either recommending approval or identifying specific items that need a policy decision.

Colleen's suggestion that the "staff review" include a planning commission member (assigned by the chair on a rotating basis) is excellent. Having two people review the application and communicate with the applicant provides diversity of opinion on issues and provides additional support for the staff recommendation.

April O'Neal has expressed concern regarding review of relative standards. I agree that the Planning Commission is responsible for making the recommendation to Town Council after reviewing all materials including comments at the required public hearing. However, the plain language of the ordinance plus the experience gained from processing prior CUP applications should allow the ZA (and assigned PC representative) to evaluate

the proposed impact mitigation measures and recommend to the applicant whether improvements in the project design are recommended before finalizing the documents for public hearing. If the applicant and ZA cannot resolve the impact issues sufficiently to get a passing score then that should be noted as part of the staff report.

### #3 Ordinance Text Changes

State law requires that conditional use applications be evaluated based on objective standards identified in the ordinances. A number of provisions currently appear only in the worksheets. Replacing the current worksheets with the new application form suggested by Mr. Nellis will require moving the underlying standards into ordinances.

To avoid errors and contradictions the details of the changes need to be reviewed carefully by Mr. Nellis with checking by a PC member. At this time I recommend the PC consider the changes as a bullet point list of goals.

A) Add language specifically authorizing the PC to use the worksheet process. For example: “The planning commission may use a checklist or numerical scoring worksheet to document the evaluation of applications in accordance with the standards in the applicable land use ordinances.”

The definitions for +2, +1, 0, -1, -2 and the relative weights for each standard are seemingly quantitative but actually highly subjective. This review system is helpful in focusing discussion but should be advisory to making the final PC recommendation. By state law a conditional use application may be denied only if the reasonably anticipated detrimental impacts cannot be substantially mitigated by reasonable conditions.

B) Supplement the ordinance description of Zoning Administrator duties, especially 153.044 and 153.051, to clarify that the ZA evaluation of applications includes not only verifying completeness” but also a staff evaluation and recommendation whether the submitted materials comply with the ordinances.

The ZA duties found in Section 153.044 (B) (1) ” Ensure all procedures and provisions of the town’s land use ordinances, including this chapter, are consistently and equitably applied,” 153.044 (B) (3) “Render interpretations of the text of this chapter,” and 153.044 (B) (5) “Carry out all other functions, duties and actions as may be necessary to administer this chapter and as may be identified herein,” are very broad, but also non-specific.

C) Consider rewording the commercial development standards to more closely parallel state law by explicitly identifying objective standards for the impacts of concern and the criteria for evaluating mitigation.

The current worksheets have items like “setbacks” and “buffers” but the authorizing language (153.415) does not state what impacts need to be mitigated by greater setbacks nor is there a standard for what is sufficient. . I recommend adding language identifying and stating objective standards for evaluating the impacts of concern: visual appearance from public streets and highways, light trespass on adjacent properties, noise, sanitation, and traffic. Visual appearance is the most challenging and reference the community goals in the general plan is a start.

I suggest that a committee consisting of two PC members and Mr. Nellis be delegated to craft ordinance revision text for discussion at a future meeting.

#### #4 Deletion of Superseded Items.

Remove the current checklists (Commercial, Home Business) from the codified ordinance and correct any ordinance cross references to avoid contradiction with the new application form.

### **Appendix 1 Quotations from Utah Municipal Code**

#### **10-9a-507 Conditional uses.**

(1) (a) A municipality may adopt a land use ordinance that includes conditional uses and provisions for conditional uses that require compliance with objective standards set forth in an applicable ordinance.

(b) A municipality may not impose a requirement or standard on a conditional use that conflicts with a provision of this chapter or other state or federal law.

(2) (a) (i) 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.

(ii) The requirement described in Subsection (2)(a)(i) to reasonably mitigate anticipated detrimental effects of the proposed conditional use does not require elimination of the detrimental effects.

#### **10-9a-405 Effect of general plan.**

Except as provided in Section 10-9a-406, the general plan is an advisory guide for land use decisions, the impact of which shall be determined by ordinance.

#### **10-9a-406 Public uses to conform to general plan.**

After the legislative body has adopted a general plan, no street, park, or other public way, ground, place, or space, no publicly owned building or structure, and no public utility, whether publicly or privately owned, may be constructed or authorized until and unless it conforms to the current general plan.