

# SAN JUAN COUNTY PLANNING COMMISSION TRAINING

Thursday, April 10, 2025  
Monticello, Utah

1. Report on ALJ Decision in Northern San Juan County Coalition Appeal on Love's Travel Stop Application Approval
2. Land Ownership Issue and Determination
3. Permitted Uses within the Highway Commercial (CDh) Zone
4. Other Uses in Harmony and Similar in Nature
5. Conclusions of Law and Findings of Fact

**17-27a-304 State and federal property.**

Unless otherwise provided by law, nothing contained in this chapter may be construed as giving a county jurisdiction over property owned by the state or the United States.

Renumbered and Amended by Chapter 254, 2005 General Session

**Effective 5/1/2024**

**17-27a-103 Definitions.**

As used in this chapter:

- (1) "Accessory dwelling unit" means a habitable living unit added to, created within, or detached from a primary single-family dwelling and contained on one lot.
- (2) "Adversely affected party" means 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.
- (3) "Affected entity" means a county, municipality, special district, special service district under Title 17D, Chapter 1, Special Service District Act, school district, interlocal cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, specified property owner, property owner's association, public utility, or the Department of Transportation, if:
  - (a) the entity's services or facilities are likely to require expansion or significant modification because of an intended use of land;
  - (b) the entity has filed with the county a copy of the entity's general or long-range plan; or
  - (c) the entity has filed with the county a request for notice during the same calendar year and before the county provides notice to an affected entity in compliance with a requirement imposed under this chapter.
- (4) "Affected owner" means the owner of real property that is:
  - (a) a single project;
  - (b) the subject of a land use approval that sponsors of a referendum timely challenged in accordance with Subsection 20A-7-601(6); and
  - (c) determined to be legally referable under Section 20A-7-602.8.
- (5) "Appeal authority" means the person, board, commission, agency, or other body designated by ordinance to decide an appeal of a decision of a land use application or a variance.
- (6) "Billboard" means a freestanding ground sign located on industrial, commercial, or residential property if the sign is designed or intended to direct attention to a business, product, or service that is not sold, offered, or existing on the property where the sign is located.
- (7)
  - (a) "Charter school" means:
    - (i) an operating charter school;
    - (ii) a charter school applicant that a charter school authorizer approves in accordance with Title 53G, Chapter 5, Part 3, Charter School Authorization; or
    - (iii) an entity that is working on behalf of a charter school or approved charter applicant to develop or construct a charter school building.
  - (b) "Charter school" does not include a therapeutic school.
- (8) "Chief executive officer" means the person or body that exercises the executive powers of the county.
- (9) "Conditional use" means a land use that, because of the unique characteristics or potential impact of the land use on the county, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.
- (10) "Constitutional taking" means a governmental action that results in a taking of private property so that compensation to the owner of the property is required by the:
  - (a) Fifth or Fourteenth Amendment of the Constitution of the United States; or
  - (b) Utah Constitution, Article I, Section 22.

- (a) recording a subdivision plat; or
  - (b) development of a commercial, industrial, mixed use, or multifamily project.
- (27) "Improvement warranty" means an applicant's unconditional warranty that the applicant's installed and accepted landscaping or infrastructure improvement:
- (a) complies with the county's written standards for design, materials, and workmanship; and
  - (b) will not fail in any material respect, as a result of poor workmanship or materials, within the improvement warranty period.
- (28) "Improvement warranty period" means a period:
- (a) no later than one year after a county's acceptance of required landscaping; or
  - (b) no later than one year after a county's acceptance of required infrastructure, unless the county:
    - (i) determines for good cause that a one-year period would be inadequate to protect the public health, safety, and welfare; and
    - (ii) has substantial evidence, on record:
      - (A) of prior poor performance by the applicant; or
      - (B) that the area upon which the infrastructure will be constructed contains suspect soil and the county has not otherwise required the applicant to mitigate the suspect soil.
- (29) "Infrastructure improvement" means permanent infrastructure that is essential for the public health and safety or that:
- (a) is required for human consumption; and
  - (b) an applicant must install:
    - (i) in accordance with published installation and inspection specifications for public improvements; and
    - (ii) as a condition of:
      - (A) recording a subdivision plat;
      - (B) obtaining a building permit; or
      - (C) developing a commercial, industrial, mixed use, condominium, or multifamily project.
- (30) "Internal lot restriction" means a platted note, platted demarcation, or platted designation that:
- (a) runs with the land; and
  - (b)
    - (i) creates a restriction that is enclosed within the perimeter of a lot described on the plat; or
    - (ii) designates a development condition that is enclosed within the perimeter of a lot described on the plat.
- (31) "Interstate pipeline company" means a person or entity engaged in natural gas transportation subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.
- (32) "Intrastate pipeline company" means a person or entity engaged in natural gas transportation that is not subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.
- (33) "Land use applicant" means a property owner, or the property owner's designee, who submits a land use application regarding the property owner's land.
- (34) "Land use application":
- (a) means an application that is:
    - (i) required by a county; and
    - (ii) submitted by a land use applicant to obtain a land use decision; and
  - (b) does not mean an application to enact, amend, or repeal a land use regulation.
- (35) "Land use authority" means:

- (iv) a bona fide division or partition of land in a county other than a first class county for the purpose of siting, on one or more of the resulting separate parcels:
    - (A) an electrical transmission line or a substation;
    - (B) a natural gas pipeline or a regulation station; or
    - (C) an unmanned telecommunications, microwave, fiber optic, electrical, or other utility service regeneration, transformation, retransmission, or amplification facility;
  - (v) a boundary line agreement between owners of adjoining subdivided properties adjusting the mutual lot line boundary in accordance with Sections 17-27a-523 and 17-27a-608 if:
    - (A) no new dwelling lot or housing unit will result from the adjustment; and
    - (B) the adjustment will not violate any applicable land use ordinance;
  - (vi) a bona fide division of land by deed or other instrument if the deed or other instrument states in writing that the division:
    - (A) is in anticipation of future land use approvals on the parcel or parcels;
    - (B) does not confer any land use approvals; and
    - (C) has not been approved by the land use authority;
  - (vii) a parcel boundary adjustment;
  - (viii) a lot line adjustment;
  - (ix) a road, street, or highway dedication plat;
  - (x) a deed or easement for a road, street, or highway purpose; or
  - (xi) any other division of land authorized by law.
- (74)
- (a) "Subdivision amendment" means an amendment to a recorded subdivision in accordance with Section 17-27a-608 that:
    - (i) vacates all or a portion of the subdivision;
    - (ii) alters the outside boundary of the subdivision;
    - (iii) changes the number of lots within the subdivision;
    - (iv) alters a public right-of-way, a public easement, or public infrastructure within the subdivision; or
    - (v) alters a common area or other common amenity within the subdivision.
  - (b) "Subdivision amendment" does not include a lot line adjustment, between a single lot and an adjoining lot or parcel, that alters the outside boundary of the subdivision.
- (75) "Substantial evidence" means evidence that:
- (a) is beyond a scintilla; and
  - (b) a reasonable mind would accept as adequate to support a conclusion.
- (76) "Suspect soil" means soil that has:
- (a) a high susceptibility for volumetric change, typically clay rich, having more than a 3% swell potential;
  - (b) bedrock units with high shrink or swell susceptibility; or
  - (c) gypsiferous silt and clay, gypsum, or bedrock units containing abundant gypsum commonly associated with dissolution and collapse features.
- (77) "Therapeutic school" means a residential group living facility:
- (a) for four or more individuals who are not related to:
    - (i) the owner of the facility; or
    - (ii) the primary service provider of the facility;
  - (b) that serves students who have a history of failing to function:
    - (i) at home;
    - (ii) in a public school; or
    - (iii) in a nonresidential private school; and

## **CHAPTER 12**

### **CONTROLLED DISTRICT CD**

#### **12-1 Purpose**

To provide, in appropriate locations, a district where agriculture, industrial, commercial and residential uses may exist in harmony, based on planned development for mutual benefit and flexible location of uses.

#### **12-2 Permitted Uses**

Agriculture, Residential, Commercial, Highway Commercial, and Industrial (Industrial subject to approval). In addition to the uses regulated in RR-22 districts, the following uses may be permitted by variance within each sub-zone.

#### **Community Commercial CD**

Grocery Store

Drug Store

Automobile Service Station

Bakery

Dry Cleaning and Laundry Pickup

Beauty Shop

Barber Shop

Child Care

Ice Cream Store

Variety Store

Medical and Dental Offices

Professional Office

Public Utilities, public and quasi-public

Stores, shops and offices supplying commodities or performing services such as department stores, specialty shops, banks, business offices, and other financial institutions and personal service enterprises.

Restaurants, beer taverns, pool hall lounges, theaters, similar enterprises provided that all uses be conducted within buildings.

Business and technical schools, and schools and studios of photography, art, music and dance.

Bowling alley, dance hall, roller skating rink.

Carpenter shops, electrical, plumbing, heating and air conditioning shops, printing and publishing or lithographic shops, mortuaries, and furniture upholstering shops, provided all uses shall be within and enclosed building.

New car dealers.

Garages for minor repairs of automobiles.

Garages for storage of automobiles, commercial parking lots.

Hotels and Motels.

Any other similar retail business or service establishments which the Planning and Zoning Commission finds to be consistent with the purpose of this chapter and which will not impair the present or future use of adjacent properties.

### **Highway Commercial CDh**

Restaurant or drive-in cafe

Motels

New and Used Automobile Agency

Farm Machinery and Equipment Sales

Nurseries and Greenhouses

Mobile Home Sales

Mobile Home Park

Drive-in Theater

Bowling Alley, other commercial recreation facilities

Automobile Service Station, Auto Accessories

Accessory Buildings and uses

Other uses approved by the Planning Commission as being in harmony with the intent of the neighborhood commercial zone and similar in nature to the above listed uses.

### **12-3 Conditional Uses**

All other uses than those listed.

### **12-4 Special Provisions**

- (1) Within the CD District there may exist three sub-zones, CD- Community Commercial, CDh - Commercial Highway, CDi - Industrial. Designation of such sub-zones shall be the responsibility of the Board of County Commissioners upon the recommendation of the County Planning Commission.
- (2) Applications for conditional uses or requests for variances in CD district must first have appropriate sub-zone designation. Such designation shall become part of the official county zone plan. Applicants are required to provide a reproducible mylar or linen and three (3) copies of detailed site plan drawings of their proposed use and sub-zone boundary including:
  - (a) Format size not less than 8 1/2" x 11" or greater than 24" x 36".
  - (b) Precise dimension at a convenient engineering scale.
  - (c) Location of all existing structures and improvements (buildings, roads, fences, ditches and canals, utility systems), and other information as required by Planning Commission within five hundred (500) feet of the proposed sub-zone boundary.
  - (d) Proposed methods of providing utility needs including water, sewer, electrical, and fuel services, access and parking, and appropriate methods from dealing with any special site problems such as storm water drainage.
- (3) No commercial or industrial building shall be erected within twenty-five (25) feet of a residential building or residential district boundary. Commercial or industrial buildings

within one-hundred (100) feet of a residential district boundary shall not exceed the height limitations of that district.

- (4) The Planning Commission shall review all pertinent information on the proposed sub-zone designation and submit their recommendation to the County Commission. Upon receiving the Planning Commission's recommendation(s), the Board of County Commissioners shall advertise for and hold a public hearing to receive public input in order to make an informed decision whether or not to designate the sub-zone by ordinance.
- (5) The following uses require an approval from the Planning and Zoning Commission prior to any use:

### **Industrial Cdi**

Manufacture of any of the following products from raw materials: acids, asphalt, carbide, caustic soda, carbon or bone black, cellulose, charcoal, chlorine, creosote, fertilizer, hydrogen, industrial alcohol, nitrates of an explosive nature, plastics, portland cement, potash, synthetic and resins, fibers. Any of the following processes: distillation of wood or bone; filtrating of cotton or other materials; reduction, refining, smelting and alloying of metals or metal ores and radioactive materials; refining of petroleum and petroleum products; slaughtering and packing of animals larger than poultry and rabbits; tanning of raw, green, or salted hides of skins. Automobile salvage and wrecking operations, and industrial metal, rag, glass or paper salvage operations provided that all operations are conducted within a solid view obscuring wall or fence not less than eight (8) feet in height.

## **12-5 Signs**

- (1) Business signs shall be allowed after approval of a "Request for Business Sign Permit" and shall be governed by Federal and State Highway rules and regulations, provided, that the Planning Commission may require that signs shall not exceed one (1) sq. ft. of sign area for each one (1) linear foot of street frontage abutting the development portion of the property, provided that any one sign for any one business shall not exceed one-hundred (100) sq. ft. in total surface area and the number of signs for each business may not exceed three (3), the total area of which shall not exceed the total sign area allowance.
- (2) Non-business signs shall be permitted or provided with no more than two (2) signs for each use or occupancy. The total allowable square footage for signage are as follows:
  - (a) Development - maximum 40 square feet
  - (b) Civic - maximum 14 square feet
  - (c) Real Estate - maximum 32 square feet
  - (d) Residential - maximum 2 square feet
- (3) All signs are to be flat wall or free standing and such signs shall not be revolving or have moving parts, flashing or intermittent lighting.



## **12-6 Boundaries**

- (1) Boundaries for all Controlled District (CD) zones shall be established by the Board of County Commissioners who may amend the number, shape and area of such districts, provided, it has received a recommendation from the Planning Commission concerning a proposed amendment and a public hearing has been held by either body.
- (2) Description of all Controlled Districts (CD) zones should be included as part of this section of the County Zoning Ordinance, and changes in some shall be written in similar language and made part of this section.
- (3) Controlled District (CD) boundaries.
  - (a) An area parallel to all State Highways extending outwardly one thousand (1000) feet each direction from the center line of said highways and terminating at County Boundaries, or municipal corporate.
  - (b) All of the area, except that within the corporate limits of Monticello City, in Township 33 South, Range 23 East Sections 25 and 36; Township 33 South, Range 24 East, Sections 30 and 31.
  - (c) All of the area, except that within the corporate limits of Blanding City, in Township 36 South, Range 22 East, Sections 22, 23, 26, 27, 34, and 35; Township 37 South, Range 22 East, Sections 2, 3, 10, 11, 14, and 15
  - (d) All of the area in Township 40 South Range 21 East, Sections 23, 24, 25, 26; and Township 40 South Range 22 East, Sections 19 and 30.
  - (e) All of the area in Section 14, Township 30 South Range 20 East
  - (f) All of the area in the West half of Section 4 and the East Half of Section 5, Township 29 South Range 23 East
  - (g) All of the area in Sections 10, 11, 12, 13, 14 and 15 Township 37 South, Range 18 East.
  - (h) All of the area, except that in the boundaries of Natural Bridges National Monument, in Sections 14,15, 22 and 23, in Township 37 South, Range 18 East.
  - (i) All of the area in Sections 21 and 28, Township 39 South, Range 16 East.
  - (j) All of the area within the boundaries of San Juan County in Sections 14, 15, 16, 17, 20, 21, 22, 23, 26, 27, 28, 29 mad 30 in Township 38 South Range 11 East.
  - (k) All of the sections and 7 in Township 42 South, Range 19 East.

San Juan County, Utah Administrative Law Judge

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Northern San Juan County	)	
Coalition,	)	
<i>Petitioner,</i>	)	Administrative Law Judge Lyn L. Creswell
vs.	)	Background,
	)	Factual Summary, Legal Framework,
San Juan County, Utah,	)	Findings, Conclusion,
<i>Respondent,</i> and	)	Decision, Instruction
	)	
Love's Travel Stops & Country	)	28 August 2024
Stores, Inc.	)	
<i>Intervener</i>	)	

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Background

On 15 February 2024 Petitioner Northern San Juan County Coalition ("Coalition")<sup>1</sup> filed a notice of administrative appeal with San Juan County pursuant to the Utah State County Land Use, Development, and Management Act (CLUDMA) [Utah Code Ann. § 17-27a-7 *et seq.*] and San Juan County Zoning Ordinance No. 2024-02.<sup>2</sup>

The Coalition appealed decisions (including findings of fact and conclusions of law) made by the San Juan County Planning and Zoning Commission on 8 February 2024 with respect to the 3 May 2019 application of Love's Travel Stops & Country Stores, Inc. ("Love's")<sup>3</sup> and the State of Utah School and Institutional Trust Lands Administration (SITLA) for land use approval to build a truck center in the San Juan County-portion of Spanish Valley.

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<sup>1</sup> Northern San Juan County Coalition on 3 April 2020 registered as a "social advocacy organization" with the Utah Division of Corporations and Commercial Code. The registered agent was Carolyn Dailey.

<sup>2</sup> Ordinance No. 2024-02 amended but did not repeal San Juan County Ordinance No. 2023-03 (An Ordinance Amending and Updating San Juan County Code Provisions Relating to Administrative Appeals).

<sup>3</sup> Love's was founded in 1964 and is headquartered in Oklahoma City. Love's operates more than 600 locations in 42 states. On 27 December 2004 Love's registered as a "gasoline stations" and "miscellaneous store retailers" business with the Utah Division of Corporations and Commercial Code. The business was registered as "Love's Travel Stop" and "Love's Travel Stops & County Stores, Inc." Love's registered agent in Utah is CT Corporation System of Midvale, Utah.

3. Important to the determination of whether Love's proposed uses are permitted are the uses listed after the title "Highway Commercial CDh" in section 12-2. Five of the listed uses may apply to the SITLA/Love's 3 May 2019 application. The listed uses or categories are: "Restaurant or drive-in café," "Automobile Service Station," "Accessory Buildings," "Accessory uses," and "Other uses approved by the Planning Commission as being in harmony with the intent of the neighborhood commercial zone and similar in nature to the above listed uses."

Note that *only* "other uses" requires that the Planning Commission determine whether the use is in harmony with the intent of the neighborhood commercial zone and similar in nature to the other ("above") listed uses.

Since each listed use under the title "Highway Commercial CDh" has meaning, the following interpretations are reasonable in applying Chapter 12 to Love's 3 May 2019 application.

a. "Restaurant or drive-in café"

Neither "restaurant" or "drive-in café" is defined in Section 1-5 of the 2011 Zoning Code.

The Utah Tax and Revenue Code defines "restaurant" to include "any coffee shop, cafeteria, luncheonette, soda fountain, or fast-food service where food is prepared for immediate consumption." Utah Code Ann. §59-12-602 (11).

Ogden City defines a restaurant as "any place where food and beverages are prepared, served and sold for human consumption on or off the premises." Ogden City Code §5-14-1.

Webster defines a "drive-in" as a business (as a movie theater or restaurant) set up so that customers can be served or provided for while remaining in their automobiles.

b. “Automobile Service Station”

An “automobile service station” is not defined in Section 1-5 of the 2011 Zoning Code.

Decades earlier, “automobile service stations” provided a narrow or select range of services to those traveling on streets, road, highways, and freeways. Over the years the needs of those who travel have changed. The number and types of motor vehicles have increased and diversified. Besides passenger vehicles, travelers may travel on streets and roads on or in electric vehicles, street legal ATVs, motorcycles, commercial and heavy vehicles, passenger cars, light trucks, vans, and recreational vehicles.<sup>18</sup> We have also become a “convenience” culture, which means we prefer to purchase our needs at a single location – rather than at several retail stores.

The result is that “automobile service stations” have changed their services and support for the traveling customer.

In the United States, various services and industries are evaluated under the North American Industry Classification System (NAICS) standard – which is used by the federal government for statistical analysis. The NAICS Association (an organization formed in Sandy, Utah in 1993) collects and publishes statistics on many industries in the United States. The “gasoline service station” industry in the United States is one of the industries among the NAICS Association statistical profiles. The NAICS Association defines “gasoline service stations” as “service stations primarily engaged in selling gasoline and lubricating oils. These establishments frequently sell other merchandise, such as tires, batteries, and other automobile parts, or perform minor repair work. Gasoline stations combined with other activities, such as grocery stores, convenience stores, or carwashes, are classified according to the primary activity.” The NAICS Association further classifies “gasoline service stations” in subcategories including fueling stations, marine service stations, truck stops, and gasoline service

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<sup>18</sup> These and other vehicles are recognized by the Utah Division of Motor Vehicles.

stations with convenience store. These classifications are defined based on the primary service provided by the “gasoline service station.”

Because of these changes and regulatory requirements, the term “automobile” no longer appropriately represents the motor vehicles which travel the roadways. Relevant to the word “automobile” are the following.

Utah Administrative Code R307-354-4 regulates automotive refinishing operations to limit volatile organic compound (VOC) emissions. That Administrative Code section includes a definition for “automotive.” "Automotive" means passenger cars, vans, motorcycles, trucks, buses, golf carts and all other mobile equipment.

On occasion, local governments in Utah may include services besides fueling and service of motor vehicles in their definitions of “automobile services stations.” The Bountiful City Code section 14-3-102 defines “automobile service station” as “a place where gasoline, and other motor fuel or lubricating oil or greases for operating motor vehicles is offered for sale to the public and deliveries are made directly into motor vehicles and where services performed may include tube and tire repair, battery charging, storage of merchandise, lubricating of automobiles, replacement of spark plugs, lights, fans and other small parts, but not including automobile repair such as body and fender work, engine rebuilding and overhaul, transmission and differential repairs, or welding of any kind or vehicle or trailer sales and rental. This definition shall include self-service, mini-market, and live-in service as accessory uses.”

The Utah Code includes “service stations” within the “motor vehicle business” category. Utah Code §31A-22-301. A “motor vehicle business” includes “public parking spaces.” The Utah Code defines “motor vehicle” as “a self-propelled vehicle intended primarily for use and operation on the highways.” Utah Code Ann. §41-1a-102 (41)

Finally, a definition of “automobile service station” which provides services to any motor vehicle which uses and operates on the highways - and provides a range of services to those motor vehicle operators – is consistent with the purposes of the Controlled District. Among the purpose or objective of the agricultural, industrial, commercial, and residential uses in the Controlled District is that the uses be of “mutual benefit.” 2011 San Juan County zoning code Section 12-1 (Purpose). An “automobile service station” increases its benefit if it provides enhanced services.

In this matter, the phrase “automobile service station” is defined as a “a business which sells gasoline and other motor fuel, lubricating oil or greases, roadside electric car charging, and similar services for motor vehicles (including but not limited to passenger cars, vans, motorcycles, trucks, buses, or any self-propelled vehicle intended for use and operation on the highways), which provides minor repair and maintenance for motor vehicles and electric vehicles, which may provide motor vehicle and electric vehicle washing services, which may include a convenience store or mini-market, and which may provide public parking.”

c. "Accessory Building or uses"

Section 1-5 of the 2011 Zoning Code defines an "Accessory Building" as a "Building not used for human occupancy which is secondary to the main structure on the same piece of property such as a shed or garage."

"Accessory uses" are not defined in the 2011 Zoning Code. Commonly, an "accessory use" is defined as "a land use which is subordinate and incidental to the main use on the lot or parcel." *See* West Valley City (Utah) Code §7-1-103

d. "Other uses approved by the Planning Commission as being in harmony with the intent of the neighborhood commercial zone and similar in nature to the above listed uses"

This category allows for multiple uses – not named or listed within the CDh subzone. Each use must meet two requirements: be "in harmony with the intent of the neighborhood commercial zone" and be "similar in nature to the above [other] listed uses." Applying this category includes three factors.

1) "Other uses"

Section 12-2 does not limit or qualify where the Planning Commission must find or identify these "other uses." The only qualification is that such uses must be "in harmony with the intent of the neighborhood commercial zone" and be "similar in nature to the above listed uses."

Potential "other uses" – which may be related to the SITLA/Love's proposed project – are found in the 2011 Zoning Code.

- "Commercial Parking Lots" (similar to accessory uses) – a use listed in the Community Commercial (CD) subzone.

- “Service stations” (similar to automobile service station uses) – a land use identified in Section 5-8 of the 2011 Zoning Ordinance.
- “Gasoline pumps” and “pump islands” (similar to automobile service station uses) – a land use found in Section 5-9 of the 2011 Zoning Ordinance.
- “Parking spaces” (similar to accessory uses) – a use listed in Section 5-5 of the 2011 Zoning Ordinance.

Potential “other uses” – which may be related to Love’s proposed project – are found in the Utah Code and in other Utah local government codes.

- “Convenience stores” (similar to restaurants and accessory uses) – a land use in the West Valley City Municipal Code.
- “Travel center” (similar to automobile service station uses and accessory uses) – a land use in the Cedar City Municipal Code.

2) “being in harmony with the intent of the neighborhood commercial zone”

The phrase “neighborhood commercial zone” is not defined in the 2011 Zoning Code. It is only used this once in the 2011 Zoning Code.

The “commercial zone” here is the Highway Commercial subzone, which extends 1,000 feet from Highway 191.

“Neighborhood” is defined<sup>19</sup> as “the surrounding area;” “situated near;” “proximity;” and “adjoining.”

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<sup>19</sup> See Miriam-Webster Dictionary, Cambridge Dictionary, American Heritage Dictionary, and The Century Dictionary.



Based on the application of the meaning and use of the terms “neighborhood” and “commercial zone,” the phrase “neighborhood commercial zone” associated with the SITLA 13.06 acres *may* be the properties within 1,000 feet from Highway 191 and north of the 13.06 acres to the Grand County/San Juan County line *and* the properties within 1,000 feet south of the 13.06 acres an equidistance as the distance from to the Grand County/San Juan County line from the north border of the 13.06 acres.

That a proposed land use be in “harmony” with the intent or purpose of the zoning district is a requirement here. “Harmony” is not defined in the 2011 Zoning Code.

3) “similar in nature to the above listed uses”

“Similar” is not defined in the 2011 Zoning Ordinance. The dictionary definitions for “similar” include: “resembling without being identical” (Oxford Languages) and “having characteristics in common” (Mirriam-Webster Dictionary).

### **State of Utah and San Juan County Business and Commercial Land Use Compliance**

After approval by the San Juan County Planning Commission of Love’s 3 May 2019 proposed project as a permitted land use in the Highway Commercial CDh subzone, Love’s will be required to comply with several State of Utah and San Juan County code requirements. Representative of these requirements are the following.

- a. Compliance with the International Codes for Residential, Plumbing, Mechanical, Fuel Gas and Fire; the International Building Code and the National Electric Code; the International Fuel Gas Code – as required by Chapter 150 of the San Juan County Code. These building and structure standards assure that the persons served on the premises of a commercial business will be safe.

f. The proposed land uses (namely a convenience store, fast food restaurant with drive-through, interior fast-food restaurant, auto area fueling stations, auto area parking spaces, truck area fueling stations, and truck area parking spaces) in the 3 May 2019 land use application are permitted land uses because they are uses included in the meaning of listed uses in the Highway Commercial CDh subzone: restaurant or drive-in café, automobile service station, accessory buildings, and accessory uses. *Or*

- The proposed uses are “other use(s)” which the Planning Commission finds to be in harmony with the intent of the neighborhood commercial zone and similar in nature to the CDh named uses.

42. The phrase “permitted by variance” in Chapter 12 of the 2011 San Juan County zoning ordinance conflicts with the Utah Code and is prohibited. Being in conflict with, and prohibited by the Utah Code, the phrase “permitted by variance” has no meaning or application in determining authorized land uses in the CDh Highway Commercial subzone.

43. Important in determining whether the SITLA/Love’s proposed land use is permitted in the San Juan County CDh subzone are the following words and phrases with definitions or meanings including the following.

- “Restaurant” is “any coffee shop, cafeteria, luncheonette, soda fountain, or fast-food service where food is prepared for immediate consumption.”
- “Drive-in café” is “a restaurant set up so that customers can be served or provided food and beverages while remaining in their motor vehicles.”
- “Automobile service station” is “a business which sells gasoline and other motor fuel, lubricating oil or greases, roadside electric car charging, and similar services for motor vehicles (including but not limited to passenger cars, vans, motorcycles, trucks, buses, or any self-propelled vehicle intended for use and operation on the highways) and electric vehicles, which provides minor repair and maintenance for motor

vehicles and electric vehicles, which may provide motor vehicle/electric vehicle washing services, which may include a convenience store or mini-market, and which may provide public parking.”

- “Accessory building” is “a building not used for human occupancy which is secondary to the main structure on the same piece of property such as a shed or garage.”
- “Accessory use” means “a land use which is subordinate and incidental to the main use on the lot or parcel.”
- “Similar in nature to the above listed uses” means the “other uses” resemble without being identical to the named uses in the Highway Commercial (CDh subzone).

44. Regarding the list of permitted uses in the CDh Highway Commercial subzone, a determination of whether a use is “in harmony with the intent of the neighborhood commercial zone and similar in nature to the above listed use” is *only* required for “other uses” and is *not* required for the uses listed “above” (named) in the CDh Highway Commercial subzone.

45. Prior to the 8 February 2024 Planning Commission meeting, when the Planning Commission considered the 3 May 2019 SITLA/Love’s land use application, planning commissioners were provided with legal analysis from three attorneys (including attorneys representing the Coalition) and the following documents or information.

- a. Utah Property Rights Ombudsman Advisory Opinion No. 115
- b. The 3 May 2019 Love’s/SITLA application
- c. The 2 February 2023 Utah Court of Appeal ruling
- d. The Seventh Judicial District Court order
- e. The Seventh Judicial District Court judgment
- f. 25 April 2019 email exchanges among San Juan County, SITLA, and Love’s
- g. 7 April 2020 declaration of Marlene Huckabay