



STAFF REPORT

MEETING DATE: July 10, 2025

ITEM TITLE, PRESENTER: Reconsideration after partial reversal and remand from ALJ Creswell of the Love's Travel Stop proposed along HWY 191 within Spanish Valley on 13.06 acres as a permitted mixed use under the Controlled District Highway Commercial (CDh) Zone.

Jens Nielson, Deputy San Juan County Attorney.

RECOMMENDATION: Staff recommendation is to approve the following findings and conclusions in support of the Planning Commission's 8 February 2024 decision that Love's proposed use is permitted:

1. Love's is the land use applicant and it is not exempt from the County's land use regulations under Utah Code § 17-27a-304.
 - A. A "land use application" must be brought by a land use applicant, Utah Code § 17-27a-103(43)(a)(ii);
 - B. A "land use applicant" is "a property owner, the property owner's designee," who submits a land use application, Utah Code § 17-27a-103(42);
 - C. Love's has provided a purchase and sale agreement it has entered into with the School and Institutional Trust Lands Administration that the Planning Commission determines to be a binding and enforceable land sale contract; and
 - D. The Planning Commission adopts the San Juan County Attorney Office's opinion that, given a binding and enforceable land sale contract, the parties' positions are treated as if the conveyance has been made and therefore Love's is considered the property owner here.
2. Love's proposed use is permitted in the CDh Zone based upon the following findings:
 - A. The proposed use fits within combined uses listed as permitted for the CDh zone, as follows:

i. Restaurant or drive-in cafe:

a. The proposed use includes a fast food restaurant with drive-through and an interior fast food restaurant; and

b. The drive-through fast food restaurant qualifies as a drive-in cafe.

ii. Automobile service station:

a. The proposed use includes a convenience store, which in the Planning Commission's experience is often a part of an automobile service station;

b. The proposed use includes eight automobile gas dispenser stations with 16 positions, which is consistent with an automobile service station;

c. The proposed use includes 90 automobile parking spaces, which is high but not inconsistent with an automobile service station, especially one with a nearly 8,000 s.f. convenience store, an approximately 3,300 s.f. drive-through, and an approximately 2,500 s.f. interior restaurant; and

d. The proposed use includes five truck bays and 53 truck parking spaces, which is a little more than half the fueling positions and parking spaces allotted to automobiles, which the Planning Commission concludes is insufficient to alter the predominant use as an automobile service station.

B. Alternatively, the Love's use is in harmony with the intent of the neighborhood commercial zone and similar in nature to the listed permitted uses in the CDh zone because:

i. The proposed use is in harmony with the intent of the neighborhood commercial zone:

a. "Neighborhood" is not defined in the County ordinances;

b. "Neighborhood" in common usage means "a place or region near";

c. The commercial zone is CDh and it extends 1,000 feet from Highway 191;

d. The intent of Controlled Districts like CDh is 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.” SJZO 12-1;

e. The Love’s use is in harmony with the intent of the neighborhood CDh because it borders the highway and abuts a mix of some residential but mostly industrial and commercial uses, including automobile service station/auto accessories, and restaurant or drive-in café, and additionally updated lists within this zone including automobile fuel sales and associated convenience stores, automobile service stations including minor and major auto repair work (providing all repair work is conducted wholly within a completely enclosed building), auto accessories, farm machinery and equipment sales, restaurants, groceries/supermarkets, general retail/services, electric vehicle charging stations, and bus terminals; and

f. The Love’s sketch plan sets back paved areas from adjoining parcels used as residences a minimum of 20 feet, which promotes the harmonious coexistence of uses intended for the CDh zone.

ii. And the Love’s proposed use is similar in nature to the listed permitted uses:

a. The Love’s proposed use is similar in nature to an automobile service station and to a restaurant or drive-in cafe based on the findings regarding those uses made above regarding the combined permitted uses.

SUMMARY

This project returns to the Planning Commission on partial reversal on appeal before the ALJ.

The ALJ has instructed the Planning Commission to adopt conclusions of law and findings of fact regarding whether: (1) Love’s is a land use applicant and whether the property is subject to the County’s zoning; (2) the Love’s use is contained within one or more of the listed permitted uses for the CDh Zone; and (3) if the Love’s use is not contained within one or more of the listed permitted uses for the CDh Zone, the Love’s use is an “other use” that is “in harmony with the intent of the neighborhood commercial zone and similar in nature to the” listed permitted uses, SJZO 12-2.

The ALJ’s August 28, 2024 written decision has previously been provided to the Planning Commission and written comments from both Love’s and the Coalition were received and included in the Planning Commission’s packets for this meeting.

The training that the ALJ instructed to be given to the Planning Commission was given at a meeting held on April 10, 2025.

HISTORY/PAST ACTION

On May 6, 2019, the County received the Love's sketch plan application for a proposed travel stop to be located on the east side of U.S. Highway 191 south of Sunny Acres lane in Spanish Valley. The County Planning Administrator at the time issued a letter on May 10, 2019, approving the application.

The Northern San Juan County Coalition (the Coalition) challenged the County's decision in the Seventh Judicial District Court, case no. 20070010. On October 2, 2023, that court issued an order directing the Planning Commission to "determine from substantial evidence whether [the Love's] project is 'an automobile service station,' a 'restaurant,' or both. And if so, whether two or more permitted uses can be combined and still be in harmony with the Highway Commercial zone." The court held that "the Planning Commission must decide those questions and determine whether the use also requires a variance or conditional use permit."

On February 8, 2024, the Planning Commission found that the Love's application was complete and that the San Juan County Zoning Ordinance (2011) (SJZO) applied. The Planning Commission also found that the Love's proposed uses were permitted uses under the SJZO's CDh zone due to their similarity to the listed permitted uses and were in harmony with the zone's intent. The Planning Commission found the Love's uses similar to a restaurant, drive-in cafe, automobile service station, and commercial parking lot.

The Coalition appealed the Planning Commission's determinations to the San Juan County land use appeal authority, Administrative Law Judge Creswell, who issued a written decision on August 28, 2024. ALJ Creswell affirmed the Planning Commission's determinations that the Love's application was complete and accompanied by the required fee. He also affirmed the Planning Commission's conclusion that the Love's application was not barred or impaired by either a May 21, 2019, temporary land use regulation or the formal initiation and adoption of the Spanish Valley Development Ordinance on November 19, 2019. Finally, ALJ Creswell affirmed the Planning Commission's decision that the ordinance applicable to Love's application is the SJZO.

ALJ Creswell reversed, however, the Planning Commission's determination that the Love's uses were permitted uses. He found that the Planning Commission failed to make the required findings of fact to support the inclusion of a "commercial parking lot" as a permitted use, failed to adopt findings of fact relating each of the Love's uses to a listed permitted use, and lacked any evidence that allowed the County to exercise jurisdiction over what appeared to be state-owned property. ALJ Creswell remanded to the Planning Commission for it to make the relevant conclusions and factual findings.

The Coalition petitioned for judicial review of the ALJ's decision in the Utah Seventh Judicial District Court, case no. 240700028, which is stayed pending the Planning Commission's determination.

ANALYSIS

1. Is Love's a land use applicant and is the property is subject to the County's zoning?

Staff answers yes to both questions. A land use application must be submitted by a land use applicant, which is a property owner or the property owner's designee. Utah Code § 17-27a-103(42)-(43).

Although according to County records the property is owned by the School Institutional Trust Lands Administration (SITLA), Love's has provided with its submission a purchase and sale agreement executed between it and SITLA. Staff has concluded that the agreement is a binding and enforceable land sale contract. The San Juan County Attorney's Office has been consulted, and it has provided its opinion that, given the binding and enforceable land sale contract, the parties are treated as if the conveyance has been made. Love's is therefore considered the property owner and Utah Code § 17-27a-304's exclusion of state land from the County's zoning jurisdiction does not apply.

2. Is the Love's use permitted in the CDh Zone?

Staff concludes that the Love's use is permitted in the CDh Zone. Listed permitted uses in the CDh Zone include a restaurant or drive-in cafe and an automobile service station. Staff determines that the Love's use is a combination of those two permitted uses.

Love's proposed use includes a fast food restaurant with a drive-through and interior fast food restaurant. The planned restaurant is plainly allowed and the planned drive-through qualifies as a drive-in cafe. Merriam-webster.com/dictionary/drive-in (defining "drive-in" as "an establishment (such as a theater or restaurant) so laid out that patrons can be accommodated while remaining in their automobiles").

The Love's proposed use also includes a convenience store, which staff concludes is often a part of an automobile service station. *See, e.g., Southland Corp. v. City of Minneapolis*, 279 N.W.2d 822, 825-26 (Minn. 1979) (finding a 7-Eleven convenience store with self-service gas pumps an "automobile service station"). The proposed use also includes eight automobile gas dispenser stations with 16 positions. Automobile gas dispensers are features of an automobile service station. In addition to the automobile gas dispensers, the proposed use includes 90 automobile parking spaces. These parking spaces qualify as an accessory use, which is separately permitted in the CDh Zone. While this number is high, staff finds that it does not diverge from the definition of an automobile service station. Under the County's own ordinances, the restaurants themselves must have a minimum of 29 parking spots (1 stall for every 200 s.f. and the combined restaurant area is 5,800 s.f.). SJZO 5-4(5). The SJZO does not specify convenience store parking, so it likely falls within SJZO 5-4(7)'s catchall of one space for every two employees. That is, however, a minimum. Applying the restaurant standard would yield an additional 40 spaces (8,000 s.f. convenience store) for a total of 69. Again, however, the SJZO sets only minimum requirements. Staff concludes that an additional approximately 20 parking stalls beyond the minimum that would be applicable using the County's restaurant standard for the total square footage does not remove the use from a combination restaurant/drive-in cafe and automobile service station.

Love's application also includes five truck bays and 53 truck parking spaces. Love's itself therefore distinguishes between automobile fueling dispensers and parking and truck fueling stations and parking. Staff concludes that adding approximately half as many truck bays and parking spaces as automobile fuel dispensers and parking spaces is insufficient to transform what is primarily a permitted automobile service station into a different, non-permitted use. *See, e.g., Canterbury v. Dick*, 385 F. Supp. 1004, (S.D. Texas 1973) (mem. dec.) (rejecting classification of establishment as truck stop where it did not cater principally to trucking industry); *Flying J., Inc. v. City of New Haven*, 855 N.E. 1035, 1039-41 (Ind. Ct. App. 2006) (rejecting argument that including fueling stations for trucks fell outside permitted use for "Automobile services, including but not limited to . . . Service station[s]").

Staff does not believe that Property Rights Ombudsman Advisory Opinion No. 115 requires denial. The only uses allowed in the commercial zone at issue there were all conditional. There were no permitted uses. Nor was there, as here, a provision that allowed the Planning Commission to approve as permitted other uses that are in harmony with the zone's intent and similar in nature to the other permitted uses. The opinion even acknowledges that a truck stop is similar to fuel sales and auto/truck service.

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3. Is the proposed Love's use in harmony with the intent of the neighborhood commercial zone and similar in nature to the listed permitted uses in the CDh zone?

Staff concludes that, if the proposed Love's use does not qualify as a permitted use as a combination of a restaurant/drive-in cafe and automobile service station, then alternatively it is permitted because the use is in harmony with the intent of the neighborhood commercial zone and similar in nature to the listed permitted uses in the CDh zone.

The term "neighborhood" is not defined in the SJZO. In common usage it means "a place or region near." Merriam-webster.com/dictionary/neighborhood. The CDh Zone extends 1,000 feet from U.S. Highway 191. According to the County's ordinances, the purpose of Controlled Districts like CDh is 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." SJZO 12-1.

The property at issue is within the CDh Zone and abuts the east side of the highway. Commercial uses predominate the property's other two sides. Where the property along the proposed travel center's southeast border is in use, it is entirely commercial. Although the uses on the proposed travel center's northeast border include residential, several commercial uses exist there as well. Consequently, the Love's proposed commercial use is consistent both with CDh Zone's intent and the actual uses of the adjoining land. Moreover, Love's setback of paved areas a minimum of 20 feet from properties adjoining the northeast boundary supports a harmonious coexistence of uses.

The same reasons given for why staff concludes that Love's proposed use is permitted in the CDh Zone support staff's conclusion that the proposed use is similar in nature to an automobile services station and to a restaurant or drive-in cafe.