BEFORE THE ADMINISTRATIVE HEARING OFFICER
FOR THE TOWN OF SPRINGDALE, UTAH

IN THE MATTER OF THE APPEAL FILED BY FSFTW CORP. REGARDING THE DENIAL OF A MODIFIED DESIGN/DEVELOPMENT REVIEW FOR AN ADDITION TO THE COMMERCIAL BUILDING LOCATED AT 180 ZION PARK BOULEVARD IN THE TOWN OF SPRINGDALE, UTAH	**FINDINGS AND DECISION DISMISSING THE APPEAL OF THE DENIAL OF A MODIFIED DESIGN/DEVELOPMENT REVIEW FOR AN ADDITION TO THE COMMERCIAL BUILDING LOCATED AT 180 ZION PARK BOULEVARD IN THE TOWN OF SPRINGDALE, UTAH.** **PUBLIC MEETING DATE: JUNE 12, 2018.**

This matter came before the Appeal Authority for the Town of Springdale on June 12, 2018 for a public meeting on Appellant FSFTW Corp's (Jack Fotheringham) appeal of the denial of a modified design/development review for an addition to the commercial building located at 180 Zion Park Boulevard. Mr. Fotheringham represented himself at the meeting, with the assistance of Mr. Charles Timpson, project manager. The Town was represented at the meeting by its counsel, Devin Snow. Having considered the written submissions and oral presentations of the parties, and based on a review of the administrative record, the Appeal Authority makes the following findings and decision.

Background

Application and Appeal Timeline

1. January 17, 2018: Jack Fotheringham applied for an addition to an existing structure at 180 Zion Park Boulevard. The proposed addition maintained the same roof height as the then existing building, approximately 22 feet in height. The Planning Commission approved the addition, a building permit was subsequently issued, and construction began.

2. March 20, 2018: The Project Manager for the construction, Charles Timpson, notified the Town that some changes to the approved plans were necessary due to drainage concerns on the back of the building and submitted revised drawings for review. The new plans showed a different roofline on the addition than the approved plans. Planning staff reviewed the drawings, identified a potential issue with the height of the newly proposed roofline, and contacted Mr. Timpson to notify him of the height problem.

3. April 6, 2018: Mr. Timpson provided a revised set of plans with the roof height dimension called out at 26 feet. Subsequent to this submittal construction on the roof as presented in these plans proceeded.

4. April 26, 2018: Planning staff notified Mr. Timpson that the as built roof appeared to violate the 26-foot height limit for the zone. Mr. Timpson acknowledged there was a potential height issue and requested a meeting to resolve the issue.

5. May 8, 2018: Planning staff met with Mr. Timpson and Mr. Fotheringham on site to discuss the building height. Mr. Timpson informed staff the building measured 27 feet, 4 inches in total height. After discussing options to rectify the building height issue Mr. Timpson and Mr.

Fotheringham elected to ask the Planning Commission for a modified approval of the project, based on using the "uniform grade" method of building height measurement instead of the more restrictive "cut grade" method of measurement.

6. May 16, 2018: The Planning Commission reviewed the modified plans for the building and the request to use uniform grade to measure building height rather than cut grade. Using the uniform grade height measurement method could have made the as built structure compliant with the 26-foot building height standard. The Planning Commission disagreed that building site qualified for use of uniform grade and found that cut grade was the appropriate method to measure the building height. Using cut grade put the as built structure out of height compliance. Based on this finding the Commission denied the requested plan modification.

7. May 22, 2018: Mr. Fotheringham appealed the Planning Commission's decision.

8. After filing this appeal, Mr. Fotheringham modified the Addition to bring it within the allowable height in the zone.

Standard of Review

"[M]unicipal land use decisions should be upheld unless those decisions are arbitrary and capricious or otherwise illegal." *Bradley v. Payson City Corp*., 2003 UT 16, ¶ 10, 70 P.3d 47. The planning commission decision is "'endowed with a presumption of correctness and validity'" which will not be interfered with "'unless it is shown that there is no reasonable basis to justify the action taken.'" *Dairy Product Servs., Inc. v. City of Wellsville,* 2000 UT 81, ¶ 41, 13 P.3d 581 (quoting *Xanthos v. Board of Adjustment*, 685 P.2d 1032, 1034 (Utah 1984) (citation omitted)). The burden is always on the appellant to demonstrate that the Town Planning Commission decision was arbitrary, capricious, or illegal. *See* Utah Code § 10-9a-705; Springdale Town Code § 10-3-11(C).

Analysis and Decision

As stated in his notice of appeal, Mr. Fotheringham argues that "the planning commission completely misinterpreted the cut/variable grade ordinance." The issue on appeal is which grade specified in Section 10-15A-5 applies.

After the appeal was filed, however, the Town notified the Appeal Authority in its June 1, 2018 response, that Mr. Fotheringham subsequently changed his building addition at issue and brought it into compliance with the height restrictions imposed by the Planning Commission. Specifically, the Town asserts: "Mr. Fotheringham has already abandoned the plans that were reviewed by the planning commission, and he has voluntarily modified the Addition to make it comply with the allowable height in the zone. The plans examined by the planning commission are no longer of any relevance because the as-modified Addition is shorter. This appeal is therefore moot."

At the public meeting, Mr. Fotheringham and his representative, Mr. Timpson, both confirmed that the Addition was modified and now complies with the allowable height in the zone. They also confirmed that the height of the building would not change, regardless of the Appeal Authority's decision on this appeal.

Still, Mr. Fotheringham requests the Appeal Authority consider his appeal. He confirmed at the public meeting that his purpose in pursuing the appeal is to obtain a decision that the planning commission's interpretation of the Town Code was in error, and to avoid future erroneous application of the three grade scenarios found in Section 10-15A-5. That is not something the Appeal Authority can provide.

"'An appeal is moot if during the pendency of the appeal circumstances change so that the controversy is eliminated, thereby rendering the relief requested impossible or of no legal effect.'" *Cedar Mountain Environmental, Inc. v. Tooele County*, 2009 UT 48, ¶ 20, 214 P.3d 95 (quoting *Baker v. Stevens*, 2005 UT 32, ¶ 9, 114 P.3d 580 (citation omitted)). Here, neither party questions that the building is now in compliance with the Town's ordinance, and Mr. Fotheringham has confirmed that the building height will not change regardless of the outcome of this appeal. Thus, the issue is now moot.

Though Mr. Fotheringham requests the Appeal Authority to address the issue to provide guidance for future application, the Appeal Authority is not vested with the power to issue advisory opinions. *See* Springdale Town Code § 10-3-11. Specific to this issue, determining the appropriate application of the three different grade scenarios in Section 10-15A-5 of the Town Code must be tied to a specific plan for a specific parcel. Consideration of a hypothetical scenario is beyond the scope of the Appeal Authority and would have no legal effect. It would be advisory only.

Under Utah law, the Appeal Authority acts in a "quasi-judicial manner." Utah Code § 10-9a-701(3)(a)(i). Like our courts, the Appeal Authority is prohibited from addressing moot questions and issuing decisions that would constitute nothing more than advisory opinions. *See Transportation Alliance Bank v. Int'l Confections Co.*, 2017 UT 55, ¶ 15 (reiterating that where the case is moot, "anything we might say about the issues would be purely advisory" and "in 'the absence of a justiciable controversy' the court lacks the power to issue a decision") (quoting *Utah Transit Auth. v. Local 382 of Amalgamated Transit Union*, 2012 UT 75, ¶¶ 15, 19, 289 P.3d 582).

Accordingly, because the appeal is moot, the Appeal Authority has no authority other than to dismiss it. *See Transportation Alliance Bank*, 2017 UT 55, ¶ 1 (explaining that dismissal is appropriate on a moot appeal "because there is no relief requested that this court has the power to grant").

Conclusion

The appeal, as presented, has no basis for action by the Appeal Authority. The appeal is moot and is therefore dismissed.

Dated this 14th day of June 2018

ADMINISTRATIVE HEARING OFFICER

Kenneth L. Sizemore

BEFORE THE ADMINISTRATIVE HEARING OFFICER
FOR THE TOWN OF SPRINGDALE, UTAH

IN THE MATTER OF THE APPLICATION OF SANCTUARY RANCH LLC FOR A VARIANCE FROM SECTION 10-24-3 (SIGN REGULATIONS) OF THE AGRICULTURE ZONE IN THE TOWN OF SPRINGDALE, UTAH	**FINDINGS AND DECISION DENYING REQUEST FOR VARIANCE** PUBLIC MEETING DATE: June 12, 2018

1. Section 10-24-3 of the Town Code establishes standards for signage in the Agricultural, Residential, and Public Use zones. This section limits freestanding signs to twelve square feet in area and four feet in height. Building mounted signs are limited to twelve square feet in area and eight feet in height.

2. Section 10-24-4 of the Town Code establishes standards for signage in the Commercial zones. This section limits freestanding signs to 40 square feet and twelve feet in height. Building mounted signs are limited to 20 square feet in area and 15 feet in height. (Note: the size allowance for building mounted and freestanding signs may be interchanged, 20 SF for freestanding and 40 SF for building mounted.)

3. The applicant is requesting the commercial sign standards in section 10-24-4 be applied to the subject property rather than the standards in 10-24-3.

4. The property was originally developed as an organic fruit orchard. It has been operated as a fruit orchard for many years. In the past a retail fruit market and restaurant have also been operated on the property. In 1999 signage was installed on the property for the market, and later for the restaurant. This signage did not comply with the standards of section 10-24-3, but it appeared to comply with the standards of section 10-24-4 (except for the height limit for building mounted signs.)

5. Minutes of the Planning Commission meetings of June 30, 1998 and April 27, 1999 demonstrate the Town was aware these signs did not meet the standards for the AG zone, but the Town wanted to accommodate the needs of commercial uses in the AG zone by allowing signage consistent with commercial sign standards. The minutes indicate the Commission had intentions to amend the sign ordinance for signs in the AG zone, however this ordinance amendment was never finalized.

6. Because the signs were officially approved by the Town but did not meet the sign standards for the zone in which they were located, they were considered legal non-complying signs. Several

years ago, the fruit market and restaurant uses on the property were discontinued. At this time property owner voluntarily removed the signs from the property. When the signs were removed they lost legal non-complying status.

7. The property owner would now like to re-establish the restaurant use on the property. In conjunction with this use the property owner is requesting the variance to allow commercial sign allowances to advertise the restaurant, similar in size to the signs that were previously located on the property.

8. The AG zone is primarily intended for agriculture and agricultural business. The Town ordinance allows agricultural related business (fruit processing facilities, warehouses, retail fruit markets) and has done so since its adoption in 1992. More recently the ordinance was amended to also allow restaurants in the AG zone as a conditional use (around 2007). The ordinance was further revised in 2017 to change restaurants from a conditional to a permitted use in the AG zone.

9. Sign standards for AG zone are the same as those for the residential and public use zones. These standards were adopted in 1992 and have remained relatively unchanged since that time.

Title 10-3-3(B) of the Springdale Town Code provides the following standards to the Appeal Authority when considering variance requests:

a. Literal enforcement of the provisions of this title would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of this title

FINDING:
The applicant asserts that literal enforcement of the sign regulations of the Agriculture zone will "deny effective identification of a commercial business." The record shows that elected Town officials have identified the need to address sign regulations for this parcel, the only parcel with an agriculture zone designation in the Town.

b. There are special circumstances attached to the property that do not generally apply to other properties in the same district;

FINDING:
No other property in the Town has an Agriculture Zone designation. It is therefore impossible to apply this test.

c. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district;

FINDING:
The subject parcel has all property rights provided by the Agriculture Zone district.

d. The variance will not substantially affect the general plan and will not be contrary to the public interest;

FINDING:
The General Plan States: "*These are areas of historic and continuing agriculture as the primary use. Orchards, pastures, and fields are characteristic of this area. These areas should continue to have agriculture as the primary use. Other uses accessory to or supporting agriculture may also be developed."*

Specific sign guidelines for the Agriculture Zone are in place. Varying those standards for the sole agriculturally zoned parcel in the Town does adversely affect the general plan, as implemented by the existing sign regulations.

e. The spirit of this title is observed and substantial justice done.

FNDING:
Section 10-10-12 E of the Town Code states "All signs within the AG zone shall comply with the provisions of chapter 24 of this title." Varying the provisions of the title does not conform to the spirit of the title, as currently in place.

10. After consideration of the evidence provided by the applicants, and consideration of the request, the administrative hearing officer determines that the variance request should be denied.

11. The Administrative Hearing Officer will not impose its judgement in the place of the duly elected Town Council and Mayor. Remedies for the issues brought forth in this application are more appropriately addressed through amendments to the Town Code. Such amendments can be proposed by the applicant, or initiated by Town officials.

Dated this _____ day of June 2018

ADMINISTRATIVE HEARING OFFICER

Kenneth L. Sizemore