

SALT LAKE CITY LAND USE APPEALS HEARING OFFICER  
APPEAL OF ADMINISTRATIVE DECISION  
PETITION NO. PLNAPP 2021-00406  
NUSANO ZONING DESIGNATION  
PUBLIC HEARING HELD MAY 20, 2021  
CORRECTED DECISION ISSUED JUNE 11, 2021

This appeal addresses the question of the proper zoning designation for a radionuclide production facility planned by Nusano Inc, the appellant in this matter. On April 16, 2021, the Salt Lake City zoning administrator determined that the facility was not a named use in the Zoning Code but was most similar to Chemical Manufacturing or Storage, a use only allowed in the M-2, Heavy Manufacturing Zoning District. As a result, Nusano’s plan to open its facility in the International Center, at 5843 West Amelia Earhart Drive, west of the Salt Lake City airport, was disallowed.

On May 20, 2021, a public hearing was held on this matter and appearances were made by parties speaking for the Appellant along with representatives of Salt Lake City. The Public Hearing along with the written submissions of the parties and the staff report prepared by Salt Lake City form the basis for this review.<sup>1</sup>

Although Salt Lake City issued an administrative decision on this matter, this hearing is de novo, with no deference given to the previous interpretation and findings. *Salt Lake City Code* Section 21A.16.030 (E1).

The appeal in this issue arises out of the parties efforts to determine the appropriate zoning district for the Nusano use, which is the production of radionuclides. The use is described in the record as accelerating particles, directing them toward a target and separating the resulting radionuclide product. The process takes place in an area the size of a vending machine. Following creation of the final medical product, which is placed in sealed and shielded vials, solid waste is also placed in shielded containers to allow radioactive material to properly decay and eventually be transported to an appropriate facility. The radionuclides are used for cancer treatment.

The process might best be described as bioengineering which is not included in the Salt Lake City table of uses. The work touches on physics as well as processes that are biological and chemical. The City administrator determined that the process most similar to that proposed by Nusano is “chemical manufacturing and/or storage,” a use relegated to the M2, heavy industrial zone. And in fact, Webster’s Dictionary, cited by the administrator defines relevant terms as follows;

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<sup>1</sup> On June 8, 2021, this Appeals Hearing Officer issued an opinion in this matter that contained a material error with regard to the Zoning Code. That decision was withdrawn. As a result, this Corrected Decision is issued to properly reflect the relevant law.

Chemical: A substance obtained by a chemical process or producing a chemical effect.

Isotope: Any of two or more species of atoms of a chemical element with the same atomic number and nearly identical chemical behavior but with differing atomic mass or mass number and different physical properties.

This analysis however, encompasses too broad a definition of chemical manufacturing that would expand the scope of M2 zoning district beyond its intention by including any activity that involves a chemical process. Numerous such processes fall within the less intense M-1 zoning category, for example; distilleries and breweries are permitted or conditional uses in the M-1 district, as are crematoriums, blacksmith shops, medical, dental and optical laboratories, testing laboratories, sewage treatment plants, photo finishing labs, concrete or asphalt manufacturing facilities and welding shops. Each of these uses implicates the processing of chemical elements, generally to create an end product. Thus, the presence of a chemical process cannot be sufficient to categorize Nusano's work as heavy industrial chemical manufacturing and/or storage. Salt Lake City Code 21A.33.040.

Both heavy manufacturing and light manufacturing are defined in the Salt Lake City ordinance as "generic definitions" and both are also listed in the use tables in addition to other, more specific uses and activities. Generic definitions "are defined to be inclusive of many uses in order to eliminate overly detailed listings of uses in the zoning districts established by this title. These terms are referred to in this title as "generic" definitions. Examples of generic definitions used in this title are "retail goods establishment", "recreation (indoor)" and "light manufacturing"." Salt Lake City ordinance 21A.62.030(A).

Heavy Manufacturing is defined as: "The assembly, fabrication, or processing of goods and materials using processes that ordinarily have greater than average impacts on the environment, or that ordinarily have significant impacts on the use and enjoyment of adjacent property in terms of noise, smoke, fumes, odors, glare, or health and safety hazards, or that otherwise do not constitute "light manufacturing". Heavy manufacturing generally includes processing and fabrication of large or bulky products, products made from extracted or raw materials, or products involving flammable or explosive materials and processes which require extensive floor areas or land areas for the fabrication and/or incidental storage of the products. The term "heavy manufacturing" shall include uses such as refineries and chemical manufacturing. The term "heavy manufacturing" shall not include any use which is otherwise listed specifically in the table of permitted and conditional uses for the category of zoning district or districts under this title." Salt Lake City ordinance 21A.62.040.

Light Manufacturing is defined as: "The assembly, fabrication or processing of goods and materials using processes that ordinarily do not create noise, smoke, fumes, odors, glare, or health or safety hazards outside of the building or lot where such assembly, fabrication or processing takes place or where such processes are housed entirely within a building. Light manufacturing generally includes processing and fabrication of finished products, predominantly from previously prepared materials, and includes processes which do not require extensive floor areas or land areas. The term "light manufacturing" shall include uses such as electronic equipment production and printing plants. The term "light manufacturing" shall not include any

use which is otherwise listed specifically in the table of permitted and conditional uses for the category of zoning district or districts under this title.” Salt Lake City ordinance 21A.62.040.

Based on the record evidence regarding the nature of the work proposed for the Nusano facility, the appropriate category in the Salt Lake City zoning table is Light Manufacturing, a permitted use in M-1 District in the Salt Lake City use table. This finding is consistent with the standards for use determinations, Salt Lake City Code 21A.12.050:

C. No use interpretation shall allow a proposed use in a district unless evidence is presented demonstrating that the proposed will comply with the development standards established for that particular district.

Finding: The use statement for the M-1 district provides for “an environment for light industrial uses that produce no appreciable impact on adjacent properties, that desire a clean attractive industrial setting, and that protects nearby sensitive lands and waterways.” Salt Lake Code 21A.28.020. The evidence in the record indicates that the production of radionuclides will take place in an indoor facility with no creation of fumes or other impact on the outdoor environment. The record further supports a finding that the accelerator will be approximately the size of a vending machine. The handling of the product and waste will be similar to that of other small, light manufacturing facilities listed in the use table.

D. No use interpretation shall allow any use in a particular district unless such use is substantially similar to the uses allowed in that district and is more similar to such uses than to uses allowed in a less restrictive district.

Finding: The proposed use is light manufacturing and it is similar to a number of other uses which involve chemical or physical processes combined or applied to create or impact a final product; not unlike photo processing labs or breweries, distilleries or even crematoriums.

E. If the proposed use is most similar to a conditional use authorized in the district which it is proposed to be located, any use interpretation allowing such use shall require that it may be approved only as a conditional use pursuant to Chapter 21A.54 of this title.

Finding: Because light manufacturing is listed as a permitted use in the Salt Lake City zoning use tables, it is not subject to the conditional use process.

Based on the substantial evidence in the record, described above, the administrative interpretation of the Salt Lake City code provisions regarding Nusano’s proposed use is set aside. The finding in this matter is that the use, while not specifically listed in the City’s zoning ordinance, falls within the definition of Light Manufacturing in the M1 zone. Salt Lake City Code 19.66.030.

Dated this 11<sup>th</sup> Day of June, 2021.

/Mary J. Woodhead/

Mary J. Woodhead, Appeals Hearing Officer