

Advisory Opinion 300

Parties: Edge Homes of Utah, LLC, Lehi City
Issued: December 13, 2024

TOPIC CATEGORIES:

**Exactions on Development
Compliance with Land Use Regulations
Requirements Imposed On Development**

The city may lawfully require a developer to pay for publicly owned and managed fiber optic conduit as a condition of approval of a residential subdivision development where the subdivision will be serviced by internet providers using their own private facilities.

The city-wide conduit system not only supports the city's fiber optic network but also provides space for any internet providers to install their own fiber optic cables. Its primary purpose is to facilitate the monitoring of parks, roads, water lines, streetlights, facilitate emergency services, snow removal, and to improve mapping capabilities. The city-wide conduit system is materially different from privately provided high-speed internet services and the requirement to pay the conduit charge is within the government's authority as it serves a valid public purpose. Additionally, the charge constitutes a lawful exaction being roughly proportionate to the development's impact.

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The Office of the Property Rights Ombudsman
Utah Department of Commerce
PO Box 146702
160 E. 300 South, 2nd Floor
Salt Lake City, Utah 84114

(801) 530-6391
1-877-882-4662
www.propertyrights.utah.gov
propertyrights@utah.gov



SPENCER J. COX
Governor

DEIDRE M. HENDERSON
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UTAH DEPARTMENT OF COMMERCE

Office of the Property Rights Ombudsman

MARGARET W. BUSSE
Executive Director

JORDAN S. CULLIMORE
Division Director, Office of the Property Rights Ombudsman

ADVISORY OPINION

Advisory Opinion Requested by: Paxton R. Guymon, Edge Homes of Utah, LLC

Local Government Entity: Lehi City

Property Owner: Edge Homes of Utah, LLC

Type of Property: Residential

Date of this Advisory Opinion: December 13, 2024

Opinion Authored By: Marcie M. Jones, Attorney
Office of the Property Rights Ombudsman

Issue

May the city lawfully require a developer to pay for publicly owned and managed fiber optic conduit as a condition of approval of a residential subdivision development where the subdivision will be serviced by internet providers using their own private facilities?

Summary of Advisory Opinion

The developer is constructing a residential subdivision and plans to provide high-speed internet services by contracting with private internet providers. As part of the city's approval process, the city is requiring developer to pay a materials charge to cover the installation of conduit and boxes within the subdivision. The city asserts these components are necessary for connecting the subdivision to the city's existing city-wide conduit system.

The city-wide conduit system not only supports the city's fiber optic network but also provides space for any internet provider to install their own fiber optic cables. Its primary purpose is to facilitate the monitoring of parks, roads, water lines, streetlights, facilitate emergency services, snow removal, and to improve mapping capabilities. Additionally, the system allows private internet providers, including those chosen by the developer, to place their fiber optic cables within the conduit. The developer objects to paying for connections to the public system because their contracted internet providers will install and use their own private conduit.

We find that the city-wide conduit system materially differs from privately provided high-speed internet services. The requirement to pay the conduit charge is within the government's authority as it serves a valid public purpose. Additionally, the charge constitutes a lawful exaction being

roughly proportionate to the development's impact where the charge pays only for that infrastructure directly serving the proposed subdivision.

Furthermore, we conclude that the conduit charge is not an impact fee governed by the Impact Fees Act, as it is intended solely for the installation and connection of site-specific improvements to service the development. The conduit charge does not fund any system-wide improvements benefitting the community at large. Therefore, the conduit fee is not subject to the provisions of the Impact Fees Act.

While the developer is not required to use the City's public conduit system and may nevertheless opt to independently install its own private fiber optic conduit, the city may still lawfully require the developer to pay the material charge to connect the development to the publicly owned and managed conduit infrastructure as a condition of subdivision approval.

Evidence

The following documents and information with relevance to the issue involved in this Advisory Opinion were reviewed prior to its completion:

1. Request for Advisory Opinion submitted by Paxton R. Guymon, Esq. on January 31, 2024.
2. Request to place matter on hold, February 9, 2024.
3. Submittal from Paxton R. Guymon, Esq. on August 12, 2024.
4. Submittal from Robert Fuller, Esq. on behalf of Lehi City on August 22, 2024.

Background

Edge Homes (Developer) is seeking to develop a residential community on property it owns in Lehi City (City). The project is known as "River Point Phase I" (Subdivision). Consistent with its standard practice, Developer intends to develop and install the subdivision improvements (a.k.a. the "horizontal improvements") before recording the final plat. The City, however, will not allow the development to proceed with construction of the subdivision improvements unless and until certain requirements are satisfied. The requirements include, among other things, required payment of a "fiber material charge" (Conduit Charge) listed in an invoice from Lehi City Power in the amount of \$16,786.

For nearly 30 years, the City has been installing a city-wide network of conduit for fiber optic cable. This conduit houses not only the City's telecommunications network, which provides a variety of governmental services, but also fiber of other telecommunication providers. According to the City, the system provides: (1) wi-fi, sound monitoring and cameras in City parks, trails, and other public spaces, including within subdivisions, for security purposes, including remote locking capabilities; (2) connection to and monitoring of city water sites, and water infrastructure sub-sections; (3) enhancements through fiber connection on school properties; (4) 5G connections to fiber for cell towers on city streetlights; (5) wi-fi connections to emergency services during city-wide emergency events; (6) stop light preemption to change lights for emergency services personnel; (7) live feeds at intersections tied into UDOT's fiber system; (8) real time snow monitoring of snow removal and road deterioration, including within the proposed Subdivision;

(9) enhanced GIS mapping and LIDAR capabilities; and (10) internet connection to inhabitants who would otherwise be in a dead zone or areas entirely without fiber connections.

The city has partnered with several internet service providers that are permitted to use its conduits. However, access to the conduits is open to other providers as well, and any internet service provider may apply to place fiber optic cables within the city's infrastructure, including those the Developer contracts with.

The City has clarified that the Conduit Charge pays only for the conduit itself—the protective tube or channel that houses fiber optic cables and associated boxes. The City is not providing or charging for internet service, nor does the Conduit Charge include any installation of actual fiber cable within the conduit for such a purpose.

The Developer challenges the necessity of the Conduit Charge, as the Developer contracts directly with private companies to provide internet services to the communities the Developer builds. The Developer coordinates with these chosen providers to provide internet service connections to the new homes so that high speed internet will be “live” as soon as possible after buyers move in. The Developer informs the service providers when trenches will be open so they can install their own conduit and equipment during the development process.

While the Developer recognizes the City’s authority to charge developers for costs of providing improvements for traditional utilities such as water, power, and sanitary sewer services, the Developer argues that providing high-speed internet services is not a necessary utility service for life/safety/habitability, and believes that charging for conduit for the City’s own fiber optic system amounts to an unlawful exaction, maintaining that the Subdivision doesn’t create the impact or need for a city-owned fiber optic system, especially when the Developer arranges for internet and telecom services to be installed and provided through their own private contracts.

The Developer contends that the Conduit Fee charge is unlawful for two reasons:

1. **Unlawful Exaction.** The Developer maintains that the charge is an unlawful exaction under Utah Code Section 10-9a-508(1) and applicable case law because (i) there is not an essential link between a legitimate governmental interest and the requirement for developers to pay for Conduit Fee, and (ii) the requirement/exaction is not roughly proportionate in nature or extent to the impact of the proposed Subdivision.
2. **Unlawful Impact Fee.** The Developer also maintains that the Conduit Charge is an unlawful impact fee. Developer asserts that although the City chooses not to refer to the Conduit Fee as an “impact fee,” the charge clearly meets the definition of an impact fee under Utah Code Section 11-36a-102. Here, the Conduit Fee does not comply with the statutory requirements for imposing a lawful impact fee under Utah’s Impact Fees Act.

In contrast, the City asserts that the Developer has misunderstood the scope of the Conduit Charge. The City maintains that it does not provide internet services and does not charge developers for any fiber installed within the conduit or any other component of the City’s telecommunications network more generally. Additionally, any provider including the private companies contracted by the Developer, may apply to install the necessary fiber within the protective conduit.

The Developer and the City have been unable to resolve this dispute. Accordingly, the Developer has requested this Advisory Opinion to determine whether the City may lawfully require the Conduit Charge be paid as a condition of approval of residential development where the City's fiber optic system is not necessary to provide high-speed internet to the Subdivision.

Analysis

This dispute centers on the two interpretations of what the Conduit Charge and the City-wide conduit system provide. The Developer maintains that the Subdivision will be served by private contracts with high-speed internet service vendors which the Developer establishes directly, thus the Subdivision will have no impact on, and no need for, the City-wide conduit system.

Conversely, the City maintains that the Conduit Charge pays for conduit and boxes – protective tubes or channels and connection points in which fiber may be installed, allowing the Subdivision to connect to an existing City-wide system. While one possible use of the conduit is for a private internet-service provider to install fiber serving the Subdivision (including those the Developer privately contracts with) the purpose of the conduit system overall is to allow for the various services provided by the City's telecommunication network, such as monitoring of parks, roads, water lines, enhance streetlight and emergency vehicle service, snow and snow removal monitoring, and to enhance mapping capabilities. The City further maintains that, while the public conduit is open and capable of housing networks from different providers, residents will have the flexibility to switch providers or add telecommunications services in the future without needing to dig up their yards to install new conduit for a different provider.

With those opposing interpretations in mind, we will analyze the Developer's two contentions, first, that the Conduit Charge is an unlawful exaction, and second, that it is an unlawful impact fee.

I. The Conduit Charge is a lawful exaction because an essential link exists between a legitimate governmental interest and each exaction; and, each exaction is roughly proportionate, both in nature and extent, to the impact of the proposed development.

The Developer first argues that the Conduit Charge is an unlawful exaction under Utah Code Section 10-9a-508(1) and applicable case law because (i) there is no essential link between a legitimate governmental interest and the requirement for developers to pay for Fiber Material, and (ii) the requirement/exaction is not roughly proportionate in nature or extent to the impact of the proposed Subdivision.

A. Legal Standard for Development Exactions

The City's requirement that the Developer pay the Conduit Charge is a development exaction. "Development exactions may be defined as contributions to a governmental entity imposed as a condition precedent to approving the developer's project." *Salt Lake Cty. v. Bd. of Educ. of Granite Sch. Dist.*, 808 P.2d 1056, 1058 (Utah Sup.Ct. 1991). Exactions arise from the principle that development causes impacts to a community. To address and offset these impacts, the community may require dedication of land or construction of public resources such as roadways, sidewalks,

and power distribution systems. Such mandatory dedications implicate the Takings Clause of the U.S. Constitution and Article I Section 22 of the Utah Constitution, which both protect private property from governmental taking without just compensation.

An exaction is valid and proportionate if it is related to a legitimate government purpose and only offsets the costs of a development's impact, and no more. An excessive exaction requires a property owner to pay for impacts beyond his own. *Banberry Development Corporation v. South Jordan City*, 631 P.2d 899, 903 (Utah 1981). A principal objective of the test is to “bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.” *Armstrong v. United States*, 364 U.S. 40, 49 (1960).

These principles governing exactions are derived from the U.S. Supreme Court's landmark decisions in *Nollan v. California Coastal Comm'n* and *Dolan v. City of Tigard* which the Utah Legislature has distilled and codified in UTAH CODE § 10-9a-508(1). See *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987) and *Dolan v. City of Tigard*, 512 U.S. 374 (1994). This analysis has been termed the “rough proportionality test,” and provides:

A municipality may impose an exaction or exactions on development proposed in a land use application . . . , if:

- (a) an essential link exists between a legitimate governmental interest and each exaction; and,
- (b) each exaction is roughly proportionate, both in nature and extent, to the impact of the proposed development.

UTAH CODE § 10-9a-508(1). If a proposed exaction satisfies this test, and is otherwise legal, it is valid. If the exaction fails the test, it violates protections guaranteed by the Takings Clauses of the Utah and U.S. Constitutions and is illegal. *Call v. West Jordan*, 614 P.2d 1257, 1259 (Utah 1980).

B. Essential link exists between legitimate government interest and requirement to pay Conduit Charge.

The first part of rough proportionality test codified at UTAH CODE § 10-9a-508(1) requires an essential link between a legitimate governmental interest and the exaction imposed. The Developer maintains that providing high-speed internet services is not a necessary utility service for life/safety/habitability. They argue that “[u]nlike providing power, water, fire protection, roads, stormwater systems, and other municipal services that are essential to the protection of life, health, and safety, high-speed internet services are not essential. Historically, municipalities have wisely refrained from trying to compete with the private sector by becoming internet service providers.” *Request for Advisory Opinion submitted by Paxton R. Guymon, Esq. on January 31, 2024*. Furthermore, the Developer maintains that the City is requiring new development to pay for fiber materials that the City allows certain private internet service providers to use on a retail basis, in essence subsidizing these internet providers. Therefore, the Developer argues, the exaction falls outside any legitimate governmental interest.

We find that the City is not providing internet service to the subdivision, nor compelling the Developer to fund such service. The conduit simply provides a location for fiber cable to be

located, which could include the Developer’s chosen internet providers should they desire to use it. More than this, however, the City maintains that the City-wide conduit system allows for additional municipal services including monitoring of parks, roads, water lines, improves streetlight and emergency vehicle service, snow and snow removal monitoring, and enhances mapping capabilities.

This prong of the rough proportionality test seems to address the core of the dispute. While not explicitly stated, the arguments revolve around the central question of whether the city may require infrastructure that the Developer doesn’t recognize as necessary or useful to Subdivision residents. The Developer argues that a City is authorized to provide “essential” municipal services, which in their view does not include high-speed internet service and implies that cities would lack authority to provide such service, or at least have “wisely refrained” from competing with private internet providers. Legal precedent does not uphold this limited interpretation.

We begin by looking to the US Supreme Court for guidance, which affirms that cities “have substantial authority to regulate land use,” and may place conditions that “further a ‘legitimate police-power purpose...,’” on land use permits provided it is not leveraging its permitting monopoly to exact private property without paying for it. *Sheetz v. Cnty, of El Dorado*, 601 U.S. 267 (2024). *See also, Call v. City of West Jordan*, 606 P.2d 217 (Utah 1979) (finding that cities have authority to preserve the health, safety, and general welfare which includes authority to impose reasonable fees and conditions on land use and development); *Larson v. Pleasant Grove City*, 2023 UT 2 (holding that Utah courts “generally give latitude to local governments in creating solutions to problems, especially in meeting the challenges and needs caused by accelerated urban growth.”)

The Utah Supreme Court recently rejected arguments that Utah statutes “purport[] to create an exhaustive list of the utilities a city is allowed to establish.” *Id.* at ¶ 24, and instead reiterated that the legislature, through what is known as the “General Welfare Statute” found at Utah Code section 10-8-84(1), “has conferred upon cities and counties the authority to enact all necessary measures to promote the general health, safety, morals, and welfare of their citizens,” and provides an “independent source of power to act for the general welfare . . . apart from, and in addition to, specific grants of authority.” *Id.* at ¶¶ 16-17 (citations omitted).

Furthermore, Utah’s Land Use Development and Management Act provides that to “accomplish the purposes of this chapter, a municipality may enact all ordinances, resolutions, and rules . . . that the municipality considers necessary or appropriate for the use and development of land within the municipality . . . governing: uses, density, open spaces, structures, buildings, energy efficiency, light and air, air quality, transportation and public or alternative transportation, *infrastructure*, street and building orientation, width requirements; *public facilities* fundamental fairness in land use regulation; and considerations of surrounding land uses to balance the foregoing purposes with a landowner’s private property interests and associated statutory and constitutional protections.” UTAH CODE § 10-9a-102(2) (emphasis added).

The City asserts that the City-wide conduit system is not a substitute for privately provided high-speed internet. It supports, for instance, the monitoring of public spaces, including subdivisions, for security; monitoring of city water infrastructure; fiber enhancements on school properties; 5G connections for cell towers on streetlights and emergency services; wi-fi during citywide events;

stoplight preemption and live intersection feeds; real-time snow road condition tracking; enhanced GIS mapping capabilities; and internet access in previously underserved areas. The City also maintains that by providing a publicly available conduit system, future changes in services to the subdivision may be made without the need for repeated invasion into lot improvements and landscaping by tearing up yards each time to lay new facilities.

We are persuaded that the purpose and anticipated benefits of the conduit system are materially different from privately provided high-speed internet and fall within the City's statutory authority to enact ordinances that further the legitimate police-power purpose of providing infrastructure and public facilities and conclude that the City has the authority and discretion in deciding which services it will offer. This authority and discretion include a city-wide conduit network that provides various municipal services but is also open to other private users and related services.

For these reasons, and because the conduit connections provide "some demonstrable benefit" to the subdivision, *see Call v. W. Jordan*, 614 P.2d 1257, 1259 (Utah 1980), we find that an essential link exists between legitimate government interest and the conduit infrastructure which is paid for by the Conduit Charge.

C. Conduit Charge is roughly proportional in nature and extent to the impact of the Subdivision.

The next step in the rough proportionality test requires that "each exaction is roughly proportionate, both in *nature and extent*, to the impact of the proposed development." UTAH CODE §10-9a-508(1)(b).

The *nature* aspect of the rough proportionality test requires that an exaction provide a solution to a problem the proposed development presents. The Developer is building a residential subdivision. Whereas the City has chosen to provide the service of a city-wide connected public conduit system, City ordinances require that a Conduit Charge be paid as part of that development to connect the Subdivision with the City-wide fiber conduit system.

Additionally, the exaction must meet the *extent* aspect of the rough proportionality test. The City must "compare the government's cost of alleviating the development's impact on infrastructure with the cost to [the developer] of the exaction." *B.A.M. Dev., L.L.C. v. Salt Lake County*, 2012 UT 26, ¶5, 282 P.3d 41. In other words, the Conduit Charge may only offset the City's cost to provide the Subdivision with the stated service.

The Developer maintains that the charge is not proportionate in nature or extent to the impact of the proposed development. The Developer intends to enter contracts with its own preferred internet service providers to provide high-speed internet service to the residents of the Subdivision. The Developer chooses reputable, experienced providers who coordinate their internet service connections to the new homes so that high speed internet will be "live" as soon as possible after buyers move into their new homes. The Developer informs the service providers when trenches will be open so they can install their own conduit and equipment during the development process. Thus, the Developer ensures that the Subdivision residents will be served by high-speed internet in an efficient manner.

Consequently, the Developer argues, the Subdivision does not need the City's internet services program, nor does the Subdivision create any impacts on the City's internet service. The Developer claims that there is no need whatsoever for the City to install any conduit in or for this Subdivision.

This argument does not take into account the stated purpose of the public conduit system. The City maintains that the "need for the conduit to connect [the Subdivision] to the City's telecommunications system so those subdivision residents can have the benefits of the City's public system beyond those provided by Comcast or another private provider selected by [the Developer]." *Submittal from Robert Fuller, Esq. on behalf of Lehi City on August 22, 2024*. These benefits go beyond simply providing internet services, which is the only service apparently provided by the Developer's vendors. "[The Developer's] assertion that 'there is no need' to connect its developments to the City's public system because it has contracted with private providers relies on an apples to oranges comparison of the services provided" by the private vendors and with the City's system and between the public and private nature of the two systems. *Id.*

We are persuaded that the City-wide conduit system provides benefits materially different than privately provided high-speed internet service. Whereas it is within the City's authority to require a City-wide conduit system, this step in the analysis requires us only to analyze whether the \$16,786 in Conduit Charge pays for an impact beyond that of the Subdivision.

The City maintains that the Conduit Charge is "solely for the conduit necessary to connect the new subdivision to the City's public system, no more and no less." *Id.* The charge covers the cost of the conduit and the boxes for this public infrastructure. Private high speed internet providers can install their cables within this public conduit. The need for connecting conduit is created by the new Subdivision and does not serve any other purpose. Therefore, the Conduit Charge, in paying for only that infrastructure necessary to connect the Subdivision to the City-wide public system, the charge is proportionate in both nature and extent.

Because the Conduit Charge pays only for infrastructure within the proposed Subdivision, the Charge is proportionate in both nature and extent. The Conduit Charge solves a problem created by the Subdivision. The City has established a standard requiring a City-wide conduit system. The Conduit Charge provides the infrastructure to connect the Subdivision to this City-wide system.

Because the Conduit Charge passes both prongs of the rough proportionality test, we find that it is a legal exaction.

II. Because the Conduit Charge provides only project improvements, and not system improvements, it is not considered an impact fee and not subject to the requirements of the Impact Fees Act.

The Developer next questions whether the Conduit Fee is an unlawful impact fee. In Utah, impact fees are governed by the Impact Fees Act, whether they are properly labeled as such or not, and may only be imposed consistent with the requirements in the Act.

Utah law defines an impact fee as "a payment of money imposed upon new development activity as a condition of development approval to mitigate the impact of new development on public

infrastructure” but does excludes “a tax, a special assessment, a building permit fee, a hookup fee, a fee for project improvements, or other reasonable permit or application fee.” UTAH CODE § 11-36a-102(9).

The Developer claims that the Conduit Charge meets the definition of an impact fee because the City required the Developer to pay the charge before it could even schedule a preconstruction meeting, obtain approved construction plans, or proceed with development of the Subdivision improvements before recording the final plat. Therefore, the Developer argues, the Conduit Charge meets the definition of “a payment of money imposed upon new development activity as a condition of development approval to mitigate the impact of new development on public infrastructure” UTAH CODE § 11-36a-102(9)(a).

On the other hand, the City claims that the Conduit Charge falls under the definition’s express exclusions because the charges cover the cost of providing conduit and boxes to serve only the Subdivision and its connection to the City’s system and is therefore more appropriately defined as a “hookup fee” or else “a fee for project improvements . . .” UTAH CODE § 11-36a-102(9)(b).

The Act defines “Project improvements” as “site improvements and facilities that are: (i) planned and designed to provide service for development resulting from a development activity; (ii) necessary for the use and convenience of the occupants or users of the development resulting from a development activity; and (iii) not identified or reimbursed as a system improvement.” UTAH CODE §11-36a-102(15).

“System improvements” on the other hand, are defined as “(i) existing public facilities that are: (A) identified in the impact fee analysis . . . and (B) designed to provide services to service areas within the community at large; and (ii) future public facilities identified in the impact fee analysis . . . that are intended to provide services to service areas within the community at large. (b) ‘System improvements’ does not mean project improvements.” UTAH CODE § 11-36a-102(22).

Whether the Conduit Charge is an impact fee, therefore, is determined by whether the charge is used for infrastructure serving only the Subdivision or the community at large. The Developer maintains that Subdivision residents will be served by private providers of high-speed internet and will not need the City-wide conduit infrastructure – therefore, it cannot be a “project improvement” because the project will not be served. The City maintains that the Conduit Charge covers the cost of conduit and boxes solely serving the Subdivision, and therefore qualifies as a “project improvement.”

We conclude that the Conduit Charge will be used solely to provide conduit and box infrastructure for the Subdivision to connect the same to the City-wide system. The Developer and future residents may or may not choose to use the facilities for high-speed internet service. The City will use the City-wide system to monitor parks, roads, water lines, enhance streetlight and emergency vehicle service, snow and snow removal monitoring, and enhance mapping capabilities. The Conduit Charge funds a project improvement, not a system improvement, and therefore, is not an impact fee. Accordingly, the Conduit Fee is not subject to the requirements of the Impact Fees Act.

Conclusion

The Conduit Charge will be used to provide conduit and box infrastructure to the Subdivision. This will allow the Subdivision to connect to the City-wide conduit system which is used to monitor parks, roads, water lines, enhance streetlight and emergency vehicle service, snow and snow removal monitoring, and enhance mapping capabilities.

We are persuaded that the conduit system is materially different than service provided by a private high-speed internet provider and that the anticipated benefits of the conduit system fall within the City's statutory authority to enact ordinances necessary for infrastructure and public facilities. Therefore, we find that an essential link exists between legitimate government interest and the conduit infrastructure which is paid for by the Conduit Charge.

Because the Conduit Charge pays only for fiber conduit infrastructure within the proposed Subdivision, the fee is proportionate in both nature and extent. The Conduit Charge solves a problem created by the Subdivision. The City has established a standard requiring a City-wide conduit system. The Conduit Charge provides the infrastructure to connect the Subdivision to this City-wide system. Because the Conduit Charge passes both prongs of the rough proportionality test, we find that it is a legal exaction.

Additionally, the Conduit Charge funds a project improvement, not a system improvement, and therefore, is not an impact fee. Accordingly, the Conduit Fee is not subject to the requirements of the Impact Fees Act.

Jordan S. Cullimore, Lead Attorney
Office of the Property Rights Ombudsman

NOTE:

This is an advisory opinion as defined in § 13-43-205 of the Utah Code. It does not constitute legal advice and is not to be construed as reflecting the opinions or policy of the State of Utah or the Department of Commerce. The opinions expressed are arrived at based on a summary review of the factual situation involved in this specific matter and may or may not reflect the opinion that might be expressed in another matter where the facts and circumstances are different or where the relevant law may have changed.

While the author is an attorney and has prepared this opinion in light of his understanding of the relevant law, he does not represent anyone involved in this matter. Anyone with an interest in these issues who must protect that interest should seek the advice of his or her own legal counsel and not rely on this document as a definitive statement of how to protect or advance his interest.

An advisory opinion issued by the Office of the Property Rights Ombudsman is not binding on any party to a dispute involving land use law. If the same issue that is the subject of an advisory opinion is listed as a cause of action in litigation, and that cause of action is litigated on the same facts and circumstances and is resolved consistent with the advisory opinion, the substantially prevailing party on that cause of action may collect reasonable attorney fees and court costs pertaining to the development of that cause of action from the date of the delivery of the advisory opinion to the date of the court's resolution. Additionally, a civil penalty may also be available if the court finds that the opposing party—if either a land use applicant or a government entity—knowingly and intentionally violated the law governing that cause of action.

Evidence of a review by the Office of the Property Rights Ombudsman and the opinions, writings, findings, and determinations of the Office of the Property Rights Ombudsman are not admissible as evidence in a judicial action, except in small claims court, a judicial review of arbitration, or in determining costs and legal fees as explained above.

The Advisory Opinion process is an alternative dispute resolution process. Advisory Opinions are intended to assist parties to resolve disputes and avoid litigation. All of the statutory procedures in place for Advisory Opinions, as well as the internal policies of the Office of the Property Rights Ombudsman, are designed to maximize the opportunity to resolve disputes in a friendly and mutually beneficial manner. The Advisory Opinion attorney fees and civil penalty provisions, found in § 13-43-206 of the Utah Code, are also designed to encourage dispute resolution. By statute they are awarded in very narrow circumstances, and even if those circumstances are met, the judge maintains discretion regarding whether to award them.