

Advisory Opinion 309

Parties: Conner Dickson / Wasatch County

Issued: August 1, 2025

TOPIC CATEGORIES:

Appealing Land Use Decisions

Proceeding with Reasonable Diligence

Requirements Imposed on Development

A decision to suspend or revoke a permit after issuance, if merely a reconsideration of the previous approval decision, is subject to timelines for land use appeals in ordinance—with which even the county must comply. County ordinances require proof of legal access for building permit applications. The County approved and issued a residential building permit but later suspended the permit upon a neighboring landowner's complaints that the applicant did not, in fact, have legal access (by crossing the complainant's property) to his property.

The landowner's access requirement for purposes of development approval was a question that was both considered and answered by the County's issuance of the permit. The County's ability to reconsider the question of whether the permit holder's use of the road met legal access requirements was limited to the process for appealing the permit approval, which had expired. By failing to timely appeal the permit issuance, the County wrongfully suspended the permit to reconsider access requirements and must allow construction under the issued permit.

DISCLAIMER

The Office of the Property Rights Ombudsman makes every effort to ensure that the legal analysis of each Advisory Opinion is based on a correct application of statutes and cases in existence when the Opinion was prepared. Over time, however, the analysis of an Advisory Opinion may be altered because of statutory changes or new interpretations issued by appellate courts. Readers should be advised that Advisory Opinions provide general guidance and information on legal protections afforded to private property, but an Opinion should not be considered legal advice. Specific questions should be directed to an attorney to be analyzed according to current laws.



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
Lieutenant Governor



MARGARET W. BUSSE
Executive Director

JORDAN S. CULLIMORE
Division Director

ADVISORY OPINION

Advisory Opinion Requested By: Conner Dickson

Local Government Entity: Wasatch County

Applicant for Land Use Approval: Conner Dickson

Type of Property: Residential

Date of this Advisory Opinion: August 1, 2025

Opinion Authored By: Richard B. Plehn, Attorney
Office of the Property Rights Ombudsman

ISSUE

Did Wasatch County properly suspend an issued residential building permit in response to third-party allegations that the property lacked adequate access?

SUMMARY OF ADVISORY OPINION

A county has continuing jurisdiction over an issued building permit to enforce its land use ordinances according to the terms of the issued permit. However, a decision to suspend or revoke a permit after issuance, if merely a reconsideration of the previous approval decision, is subject to timelines for land use appeals in ordinance—with which even the county must comply.

Upon being informed of a neighboring landowner's complaints that the private road approved for access to the building permit holder's property was not built with proper permits and did not meet the code's access standards, Wasatch County issued a stop work order and eventually suspended the permit. The terms of the suspension not only required the road to be constructed in a manner that was compliant with the terms of the permit, but also required the permit holder to prove he had legal rights to the use of the road itself to satisfy county standards for access for development.

The landowner's access requirement for purposes of development approval was a question that was both considered and answered by the County's issuance of the permit. The County has authority to ensure the authorized construction activity adheres to the terms of the issued permit,

but the County’s ability to reconsider the question of whether the permit holder’s use of the road met legal access requirements was limited to the process for appealing the permit approval, which had expired. The County wrongfully suspended the permit to reconsider access requirements and must therefore allow construction to continue under the issued permit.

EVIDENCE

The Ombudsman’s Office reviewed the following relevant documents and information prior to completing this Advisory Opinion:

1. Request for an Advisory Opinion, submitted by Conner Dickson, received May 3, 2023.
2. Submission 1 from Wasatch County, received June 1, 2023.
3. Submission 2 from Jordan Westgate, Attorney for Conner Dickson, received March 28, 2024.
4. Submission 3 from Wasatch County, received June 25, 2024.
5. Submission 4 from Connor Dickson, received July 25, 2024.

BACKGROUND

In May of 2022, Connor Dickson was issued a residential building permit to build a cabin on property in the area of Wasatch County known as Lime Canyon. After Mr. Dickson began construction, the County issued a stop-work order and suspended the permit following complaints from a neighboring landowner, John Barrick, that Mr. Dickson’s property did not have legal access to his property via the road presented in his application, and that the road itself also did not meet applicable county standards.

This dispute centers on disagreement about the information provided in Mr. Dickson’s application about his proposed access, and some general disagreements about the relevant history and legal status of certain roads in this area of Lime Canyon that would provide access to Mr. Dickson’s property. The parties disagree on a number of facts comprising the background for this opinion, which will be noted.¹

Mr. Dickson acquired his property in 2015. Prior to this, sometime in 2013, several property owners in Lime Canyon (including Mr. Dickson’s predecessor-in-interest, as well as Mr. Barrick) approached the County about what needed to be done to obtain building permits. The County did provide each property (including Mr. Dickson’s) with a Certificate of Zoning Verification, recognizing them as lots of record that would allow one single-family dwelling to be built on the property, though subject to certain conditions, one stating, “[t]he applicant shall show proof of a

¹ Both parties have submitted and referenced two attorney letters exchanged in early 2022, one addressed to Mr. Barrick from an attorney representing other Lime Canyon property owners (including Mr. Dickson), as well as a response letter from Mr. Barrick’s attorney. These letters generally address the parties’ allegations of the history of road access to these properties, discussions between the owners as to potential agreements for shared access, or, to the contrary, why such agreements never materialized, and events that occurred after getting an approved plan from the County for road improvements.

legal access to a public road. That access shall be improved to a County standard of a fire apparatus road to the future dwelling on this lot.”²

The County notes that all of these properties fronted an old two track road of unknown legal status, that was not improved to county standards, nor could it be because of intense slope (accessible by ATV only). This “old two track road” continued west from the intersection of existing “Valley Drive” and “Canyon Road” at the edge of the Oak Haven subdivision, and (depending on the survey) generally runs either on or parallel to the property boundaries between four parcels to the south of the road (Mr. Dickson’s parcel being the most westward of these) and several contiguous parcels to the north of the road (“Barrick” parcels).

After the County’s issuance of Zoning Verification letters, the landowners that fronted the historic road (including Mr. Barrick) hired an engineer to design a new access road intended to meet County standards. Because of the steep grade, this newly designed road would generally have to snake back and forth across the properties while following the general direction of the historic two-track road. To facilitate this new route, Mr. Barrick and other landowners entered into discussions about executing mutual easements for the new road across the respective properties.

Despite obtaining some easements, it appears that the owners could not all come to a complete agreement on the material terms of what building this new road would entail. Nevertheless, Mr. Barrick and another landowner appear to have decided to “mov[e] forward in the most judicious way for all involved,” and thereafter submitted improvement plans to the County to officially review.³

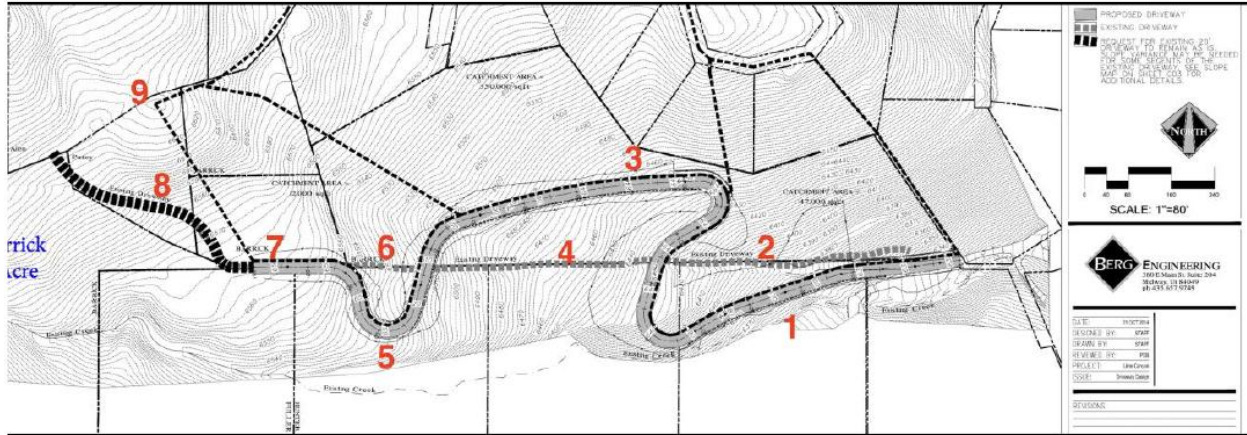
The document submitted to the County for approval consisted of 12 pages of civil engineering plans dated October 21, 2014 titled “Lime Canyon Driveway Improvements.”⁴ Mr. Dickson has prepared the following notated illustration using the Berg engineering documents and adding numbered labels depicting different segments of both the historic two-track road, and the subsequently improved access road.⁵

² Submission 2 (Dickson), Exhibit 3.

³ Submission 1 (County), Exhibit 5.

⁴ Submission 2 (Dickson), Exhibit 5.

⁵ Submission 4 (Dickson).



As shown above, the old two-track historic road is depicted by the gray and black “hashed” line, as indicated in the legend, noting the gray hash represents the “existing driveway.” The existing two-track road begins with the section labeled “2” that starts as a continuation of the Oak Haven road intersection, seen at the very right of the map image, and continuing west with the sections labeled “4” and “6”, continuing past label “7” and finally concluding with the meandering section labeled “8” in black hashes, which then connects with Upper Canyon Drive, labeled as “9.” Labels “1”, “3”, and “5” all depict the improved sections of the new access road, with label “7” showing where the improvements end and reintegrate back into the historic road.⁶ In the above image, Mr. Dickson’s property is labeled as the “Fuller” parcel (Mr. Dickson’s predecessor), which is depicted as the parcel situated to the south of the road where the driveway improvements reintegrate back into the existing road, at the label “7”.

As noted in the legend of the Berg documents, the black hash section (that Mr. Dickson has notated as “8”) indicates a “request for existing 20’ driveway to remain as is. Slope variance may be needed for some segments [sic] of the existing driveway.” According to these plans, then, there is provided two directions of access to Mr. Dickson’s property – (1) coming westward up the canyon from the subdivision and over the newly improved road, as proposed, or (2) accessing the property by coming off Upper Canyon Drive and heading southeast over the portion of the existing historic road that the plans propose to “remain as is.”

These Berg documents were submitted to the County by the owners to request a variance from the County’s road standards, which the County approved on November 5, 2014. The relevant minutes from the meeting are as follows:

***DISCUSSION/CONSIDERATION ON A ROAD VARIANCE
IN LIME CANYON – PAUL BERG***

⁶ Mr. Dickson notes that with the installation of the new access road, sections “2”, “4”, and “6” of the old-two track roads are no longer accessible, the new access road having created “cliffs” in the bends that cuts off the old sections of the historic road.

*Paul Berg, from Berg Engineering, addressed the Wasatch County Council and indicated that Lime Canyon has a handful of lots of record which need to have improved access so that a building permit can be obtained. Paul indicated that early this summer road plans were submitted to Wasatch County. Andy Dahmen, Assistant Wasatch County Engineer reviewed the plan to have twelve percent slopes and ready to approve. Part of that process is to ask the Wasatch County Council for a variance. Mike Davis, the Wasatch County Manager, addressed the Wasatch County Council and indicated that he and Andy Dahmen met with Paul Berg and with the property owners and we agree that it because it is a mountain situation and this solution is probably the best plan to give the property owners access to their properties. Paul also indicated that his [sic] would also provide another loop for the upper end of Oak Haven which the Wasatch County Fire Chief Ernie Giles saw as a benefit. **Councilman McPhie made a motion that we approve the variance in Lime Canyon and take the recommendation of the Wasatch County Manager and Engineer and grant the variance to the Lime Canyon Road. Councilman Bangerter seconded the motion and the motion carries***

Submission 1 (County), Exhibit 1 – Minutes of the Wasatch County Council November 5, 2014 (emphasis in original).

The County also included, as part of the record of the variance decision, a letter submitted to the County Council by the Wasatch County Engineer, stating as follows:

Property owners in the Lime Canyon area outside of Midway are requesting to build a shared road to access their properties. The location of the proposed road is relatively steep. To reduce the amount of cut and the amount of retaining walls required to build the road they are requesting a variance to the county code to allow them to build the road at a 12% grade as opposed to the maximum 10% grade required by the code. I have reviewed the plans submitted by Paul Berg for this project. The plans consisted of 12 sheets dated October 21, 2014.

In my opinion the greatest risk for the steeper road is safety and erosion. The engineer has done a good job of mitigating both of those risks. For this application, I recommend approving the variance for the following reasons;

- *The new road will be substantially better than what is present and the home owners will be responsible for the maintenance of the road.*
- *The road will only service three lots currently and the chances for it to service more are minimal.*
- *The owners have chosen to use the mountain standard road section which is 24' wide but does not require an asphalt surface. The wider road platform is a safer scenario. The engineer included guardrail as required by the county code.*
- *The drainage plan address' the erosion concerns. The engineer has included rip rap in all the ditches. The storm drain plan includes numerous inlet boxes to get the water out of the ditch as soon as possible. They have included 2 detention basins to detain the added runoff due to the hard surface of the road.*

Because the lots are already recorded, the applicant is not required to get approval from the planning commission. The next step for the applicant is to get final approval of the plans and apply for a grading permit through the engineering department. I have been working with the engineer . . . and do not foresee any problems moving this project through to the next step and approving for construction.

Id.

The above illustrates the County’s approval of the plans exactly as they were proposed, which, as noted above, included leaving a portion of the existing historic road “as is,” noting the benefit of providing a “loop” from the new road improvements to Upper Canyon drive.

Unfortunately, it appears that this “next step” of obtaining a grading permit approval as anticipated in the variance approval did not occur. The County notes that the owners moved ahead with work to install road improvements (later called “Autumn Drive”) without obtaining proper grading permits.

According to information submitted by both parties,⁷ it appears that while in the months leading up to the County’s approval of the variance, the parties generally discussed material terms of what agreements would be needed in the way of granting easements, compensation, and other issues, none of this appears to have been settled at the time the variance was approved. And just weeks after the County’s approval, Mr. Barrick noted that he and select others had moved forward with road construction, which would be finished in the spring, and that there would still need to be discussions about how those bearing the costs will be recouped. Ultimately, due to disagreements over these terms, Mr. Barrick never executed written easements for his parcels, and eventually, around the spring of 2020, Mr. Barrick erected gates on the road to block off any portion of the road that crossed his property.

Around this same time, Mr. Dickson and one other property owner submitted building permit applications to the County in March and April of 2020. Mr. Dickson thereafter applied for a grading permit in April of 2021 to improve his driveway.

When he initially applied for his building permit in 2020, Mr. Dickson used the property’s existing address of 170 N. Canyon Dr., Midway UT. However, at the County’s direction, Mr. Dickson chose a new address for the property as 2001 W. Autumn Drive, whereas the newly improved road had been given the name of Autumn Drive by the other owners.

In reviewing Mr. Dickson’s submitted grading permit, the County first raised some questions regarding his access rights. On May 26, 2021, Andy Dahmen, County Engineer, emailed Mr. Dickson stating “Looking at the counties parcel map I don’t see where you have frontage on a road. The parcel between your property and the road, which is shown as Autumn Drive, is owned

⁷ See footnote 1, supra.

by John Barrick. Do you have an easement, access agreement, or other access to your property that I am not seeing?”⁸

Whereas the surveys used as the basis for the engineering plans (discussed above) depict Mr. Dickson’s property as fronting directly on the existing road, the County engineer had initially concluded that the Dickson property did not, in fact, intersect with a road because the County’s online parcel viewer map depicted the respective property lines differently, notably that Mr. Barrick owned a nuisance parcel between him and the road. Mr. Dickson claims that he responded by providing additional surveys that showed he had access (those that were the basis of the engineering plans), and invited the County engineer to the property to observe survey markers. Mr. Dickson alleges that after the onsite visit, the County engineer agreed there was access. On June 8, 2021, the County managers office confirmed they had received an email from Andy Dahmen concluding that Mr. Dickson did have road access, and asked Mr. Dickson to resubmit his grading permit application. Mr. Dickson resubmitted his grading permit application on June 20, 2021, with the Autumn Drive address as directed by the County, and the permit was approved by the County on June 21, 2021.

Mr. Dickson then resubmitted a building permit application March 5, 2022. Mr. Dickson provided a site plan, dated March 30, 2022, that showed his property as fronting on “Valley Road or North Canyon Drive,” and depicting his property boundary situated on the centerline of the right of way, reflecting a total width of 40’. Mr. Dickson’s building permit application included recorded warranty deed documents from his predecessor-in-interest referencing a 40’ right-of-way, a survey of his property, and a warranty deed for the Barrick property through which the existing historic road traversed to connect Mr. Dickson’s property to Upper Canyon Drive. The conveyance in this Barrick deed reflected “less any portion of said land lying within the boundaries of Lime Canyon Road.”⁹

The County approved Mr. Dickson’s building permit on May 2022, although the County has since argued that the permit was mistakenly issued because it was “reviewed for access issues by a new planner that was not aware of the history of Autumn Drive,” and because the submitted plans were misleading as they showed access to “Valley Road or North Canyon Drive” while listing the address as “2001 W. Autumn Drive.”¹⁰ Shortly after this, Mr. Barrick approached the County about access issues, and County officials met with Mr. Barrick on site on June 8th and inspected the improved portions of Autumn Drive. Mr. Barrick voiced his concerns that the road was not built per the original plans prepared by Paul Berg, and the County concluded that the actual alignment of the road did not match the proposed alignment, the grades were steeper than the approved 12% going around some of the curves, no guardrails were installed as anticipated, and that there was no storm water work, no pipe crossings, and no detention basins.¹¹

The County issued a notice of violation to each property owner along the improved portions of Autumn Drive, stating that the road “was built without obtaining a grading permit, and has not

⁸ Submission 2 (Dickson), Exhibit 8.

⁹ Submission 4 (Dickson), Wasatch County Ent 484356, Bk 1311 Pg 1219-1220.

¹⁰ Submission 1 (County).

¹¹ Submission 3 (County), Exhibit 6.

been constructed to county standards.”¹² The notices instructed each owner to apply for and obtain a grading permit as soon as possible to remediate the compliance issues. Notably, however, these notices that referenced the noncompliance of Autumn Drive were sent to all owners *except Mr. Dickson*. While Mr. Dickson also received a notice of violation, his notice cited a different basis for a violation, namely, that he had filled natural drainage without a grading permit, as well as an issue with the Utah Division of Water Quality. (Mr. Dickson alleges that the County had forgotten it previously granted a grading permit to Mr. Dickson, and thereafter withdrew its notice).

Nevertheless, the County thereafter issued Mr. Dickson a letter dated September 22, 2022 (“Suspension Letter”), wherein the County formally suspended Dickson’s building permit pending resolution of issues concerning legal access, citing Mr. Barrick’s complaints as a basis, and instructed Mr. Dickson to do the following:

- a. Establish he had legal access to and across Autumn Drive to meet the “recorded right of way” requirements of county code.
- b. Obtain a grading permit and construct Autumn Drive in a manner that complies with the permit requirements.

On April 6, 2023, Mr. Dickson submitted to the County a letter from Professional Land Surveyor Joseph Carr describing an easement that the surveyor concludes grants Mr. Dickson access over the Barrick property to Autumn Drive. On April 18, 2023, the County Attorney responded that the information provided was not “sufficient evidence of a legal right of access.”¹³

Following the County’s rejection of this information provided by Mr. Dickson, a request for an Advisory Opinion was filed to determine whether the County lawfully suspended Mr. Dickson’s building permit after issuance based on the access complaints of the neighboring landowner.

ANALYSIS

I. Mr. Dickson’s Permit Did Not Expire Prior to Requesting the Advisory Opinion.

In responding to Mr. Dickson’s request for an Advisory Opinion, the County raises a jurisdictional argument that Mr. Dickson’s building permit expired pursuant to County ordinances, and therefore without a valid building permit or pending building permit application, Mr. Dickson’s complaint to the Ombudsman lacks standing. Because the County’s argument speaks to the requesting party’s standing to request an opinion, we will address this argument first.

Wasatch County Code addresses the expiration of building permits as follows:

A building permit shall expire if construction is not begun within one hundred eighty (180) days from the date the building permit was issued, **or if the work authorized by such permit is suspended or abandoned for a period of one hundred eighty (180) days after the time the work is commenced**, or if an

¹² Submission 3 (County), Exhibit 8.

¹³ Submission 3 (County), Exhibit 11.

inspection is not requested within one hundred eighty (180) days from the previous inspection. The building official is authorized to grant, in writing, one or more extensions of time, for periods of not more than one hundred eighty (180) days each. The extension shall be requested in writing and justifiable cause demonstrated. A building permit shall expire if construction is not completed and a certificate of occupancy and land use compliance is not obtained within five (5) years from the date the building permit was issued. The building department may, for good cause shown, extend the expiration date for a period of time not to exceed one additional year.

WASATCH COUNTY CODE 2002 (“WCC”) § 14.01.05 (emphasis added).

In the County’s response to the advisory opinion request, it notes that Mr. Dickson’s building permit was issued on May 3, 2022. The County then argues that whereas it had no record of Mr. Dickson ever requesting an extension, Mr. Dickson’s permit has been expired since October 30, 2022. The County’s calculation is incorrect, however, because the ordinance only takes into account the date of permit issuance for purposes of expiration *when construction does not begin* within 180 days of the permit’s issuance. That is not applicable here, as it does not seem generally disputed that Mr. Dickson undertook construction activity within six months of the permit’s issuance, as evidenced by the fact that the County issued “stop-work” orders within that six-month period. Rather, the ordinance otherwise provides that the permit expires 180 days from three other identified events: (1) *suspension* of the authorized work; (2) *abandonment* of the authorized work; or (3) *an inspection is not requested* within 180 days from the previous inspection.

We note that the County formally suspended Mr. Dickson’s permit with the September 22, 2022 letter. We also note that Mr. Dickson filed his request for an advisory opinion on May 3, 2023, which is more than 180 days after the date of the Suspension Letter. Nevertheless, we hesitate to jump to the conclusion that this means that Mr. Dickson’s permit had expired before requesting an advisory opinion based on the information provided, as follows.

The submissions indicate that, following the County’s Suspension Letter, Mr. Dickson made several efforts to remedy the issues cited as the basis for the suspension according to the instructions of the Suspension Letter.

Specifically, the Suspension Letter requests that Mr. Dickson demonstrate he has legal access to Autumn Drive, which the County notes could be accomplished by a recorded right of way agreement with Mr. Barrick, a court order, or by other means that the County would need to review, “and make a determination with the information provided.” The County invites Mr. Dickson to reach out with additional information as it becomes available regarding access, and the County states that it would evaluate the status.

First, despite the County’s claim that it had no record of Mr. Dickson requesting an extension, in response, Mr. Dickson provided some documentation that he had, in fact, requested an extension in approximately November of 2022, not long after the Suspension Letter. Specifically, an email dated December 6, 2022 from the County Building Department to Mr. Dickson has the subject

“Extension Request Rejection.” The content of the email suggests that an extension requested by Mr. Dickson was being rejected for apparent formatting reasons, namely, it states “Please include a brief explanation as to why no inspections have occurred and include your signature and date the letter.”¹⁴ Mr. Dickson contends that he did, in fact, resubmit the request following this email, and while not documented, Mr. Dickson alleges that in inquiring with the County after this point, he was informed verbally that his extension had been approved. It is at least apparent that an extension was at least requested and perhaps informally accepted, if not formally approved in writing, within the six-month period following the suspension.

Next, Mr. Dickson attended a zoom meeting on March 13, 2023 with the County Engineer and County attorney to discuss the status of his permit.¹⁵ As a result of that meeting, the parties identified several action items for Mr. Dickson to address the issues set forth in the Suspension Letter.

On April 6, 2023, Mr. Dickson submitted Joseph Carr’s letter to the County, setting forth the arguments that Mr. Dickson did have legal right-of-way to access his property.¹⁶

Finally, Mr. Dickson met again with the County attorney and planning department officials on May 4, 2023 over zoom.¹⁷ Mr. Dickson had submitted his request for an advisory opinion the day before, though the Ombudsman’s Office did not send a notice letter to the County until May 9, 2023.

State law provides that the “continuing validity of an approval of a land use application is conditioned upon the applicant proceeding after approval to implement the approval with reasonable diligence.” UTAH CODE §17-27a-508(1)(e). While a legislatively enacted process of normal permit expiration in local ordinance can necessarily inform what constitutes “reasonable diligence” under this standard, the standard may also act as a state preemption to the enforcement of a local expiration provision if it is being applied in a way that does not allow or recognize the reasonable diligence of the applicant’s efforts to implement the approval.

Here, where the County expressly invited the subsequent submission of information by Mr. Dickson to be evaluated for further determination of the County as means of lifting the suspension to continue work on the issued permit, we hesitate to conclude that his permit was clearly expired according to County ordinance prior to the date he requested the advisory opinion where he applied for an extension and continued to meet with County officials regarding his permit, and submitted information in response to the County’s request, and where the County continued to respond with determinations on the submitted information as late as April 18, 2023, just days before the request for an advisory opinion was submitted.

While our office provides no opinion on whether the permit has since expired on the basis of any action since the advisory opinion has been requested, we at least decline to dispose of this advisory opinion request on the allegation that the permit had already expired before making the request.

¹⁴ Submission 4 (Dickson), December 6, 2022 email from Callie Payne to Connor Dickson.

¹⁵ Submission 4 (Dickson).

¹⁶ Submission 3 (County), Exhibit 10.

¹⁷ Submission 4 (Dickson).

II. The Factual Basis to Determine Right to Access and Road Standards Was Available in the Evidence in the Record at the Time of Building Permit Approval.

The County's two identified compliance issues cited as the basis for suspending the issued building permit both reference the following provision in County Code:

Must Prove Right To Access: No building permit . . . shall be issued for a building that is to be constructed on a lot or parcel that does not either abut a dedicated public street or highway, or a private roadway, built to county standards that is either owned by the property owner requesting the permit, dedicated to the county, or has a recorded right of way sufficient to meet county standards.

WCC § 16.27.31(A). Citing this provision, the County's Suspension Letter identified two specific issues regarding access to be addressed: "First, in light of the legal dispute between Mr. Barrick, yourselves, and others regarding the right to access Autumn Drive, you need to demonstrate that you do have legal access to and across Autumn Drive to meet the 'recorded right of way' requirement." And "[s]econd, we have taken a closer look at the status of Autumn Drive in regards to whether [it] has been built to county standards," and "Autumn Drive as it is currently constructed does not meet county standards, nor was it permitted when it was recently improved."

As detailed in the background section, we find that the following facts were evidenced in the record at the time the County issued the building permit on May 3, 2022:

- The County approved a variance on November 5, 2014 according to plans submitted to the County from Berg Engineering dated October 21, 2014 titled "Lime Canyon Driveway Improvements."
- The approved improvement plans were based on survey information showing the historic road as being consistent with the property boundary between the parcels generally situated north and south of the historic road, respectively, and show Mr. Dickson's property as having access via the historic road.
- While the approved plans depict Mr. Dickson's property as benefitting from improved access from the newly designed road segment, they also depict Mr. Dickson's property as having alternative access from an existing segment of the historic road, with the notation regarding this segment as "request for existing 20' driveway to remain as is."
- Following approval of the variance, no grading permit for the road was ever obtained.
- In or around April 2021, Mr. Dickson applied for a grading permit to improve his driveway, and while this application was under review, the County Engineer raised questions regarding access but ultimately concluded that Mr. Dickson did have legal access for the purpose of obtaining a permit.
- Mr. Dickson resubmitted a building permit application March 5, 2022, and provided a site plan, dated March 30, 2022, that showed his property as fronting on "Valley Road or North Canyon Drive," his property boundary situated on the centerline of

the right of way, reflecting a total width of 40', and also included recorded warranty deed documents from his predecessor-in-interest referencing a 40' right-of-way, a survey of his property, and a warranty deed for Barrick property over which he would be traversing for access.

Based on the above, the County had everything it needed in the existing record at the time the complete building permit application was submitted in order to make a decision regarding the application's compliance with applicable access requirements in County ordinances. The County thereafter rendered a decision and approved the permit. While arguably information about Autumn Drive's noncompliance was "new" information brought to the County's attention after it had approved Mr. Dickson's permit, the County's own records (including the lack of any grading permits for the road following the variance approval) were certainly available to the County at the time to be able to inform its decision.

III. The County Has Continued Jurisdiction Over the Issued Permit for Enforcement Purposes, but May Only Reconsider its Approval Within the Process in Ordinance for Appealing a Land Use Decision.

While not directly addressed in Utah, it is the general rule, followed by several states, that "a building permit issued in violation of law or under mistake of fact confers no right, and may be revoked upon discovery of the error, even after business operations have begun." 13 Am. Jur. 2d Building § 11. *See also, St. Raymond v. City of New Orleans*, 99-2438 (La. App. 4 Cir 08/02/00), 769 So. 2d 570, 576, *Godson v. Surfside*, 150 Fla. 614, 618, 8 So. 2d 497, 498 (1942) (quoting the same).

However, not dissimilar from the County, Mr. Dickson likewise makes a jurisdictional argument that in suspending his building permit months after its issuance in reliance on the neighbor's allegations, the County in essence authorized an unlawful appeal of its building permit decision well after the applicable time for appeal according to state law.

A county maintains jurisdiction over an issued permit for purposes of enforcement, up until the point of finally issuing a certificate of occupancy. *See, UTAH CODE §15A-1-104(5) (2024)* (once occupancy is issued, issuing entity "may not . . . exert additional jurisdiction over the elements of the project"). The Wasatch County Code provides that "the building department is authorized to "conduct investigations" and "make final decisions related to code compliance" and "exercise judgement related to continuance or discontinuance of projects for reasons related to safety, standards or project objectives," WCC § 14.01.02(B)-(C), and to issue stop work orders on construction sites. *Id.* § 14.01.08(2)(e).

However, state law makes a distinction between a matter of enforcement, and a challenge to a land use decision. Utah courts have explained that "when the alleged violation arises directly from a municipal land use decision," a land use appeal is required, whereas an enforcement action is applicable when "parties seek redress from an alleged ordinance violation in circumstances where the alleged violation is not authorized by or embodied in a municipal land use decision." *Fuja v. Woodland Hills*, 2022 UT App 140, ¶ 15 (quoting *Foutz v. City of S. Jordan*, 2004 UT 75, ¶ 17).

Therefore, “when the alleged violation arises directly from a municipal land use decision, the parties *must* comply with the requirements of the statutory provision that specifically addresses appeals from land use decisions.” *Foutz*, 2004 UT 75, at ¶ 17 (emphasis added).

Utah courts have also determined that the mandatory provisions for timely appeals established in local ordinance is jurisdictional, not advisory. It is therefore not up to the City’s discretion whether to consider a matter that is outside of the relevant appeal period. *See, Brendle v. City of Draper*, 937 P.2d 1044, 1048 (Utah Ct. App. 1997) (a city council lacked jurisdiction to hear a neighboring landowner’s untimely appeal of a building permit and therefore acted unlawfully in issuing a stop work order).

For land use decisions of a county, specifically, the County Land Use, Development, and Management Act (CLUDMA) provides that “[t]he land use applicant, a board or officer of the county, or an adversely affected party may, within the time period provided in ordinance, appeal that decision to the appeal authority by alleging that there is error in any order, requirement, decision, or determination made by the land use authority in the administration or interpretation of the land use ordinance.” UTAH CODE §17-27a-703(1) (emphasis added). CLUDMA provides, then, that even county officers must adhere to applicable processes for land use appeals.

The County’s Suspension Letter, signed by both the assistant planning director and building director, stated that the planning director had determined that “additional evidence needs to be provided in order to *demonstrate you meet Wasatch County Code access requirements for a building permit*, which in turn has caused the Building Director to determine that *the requirements for the building permit* have not been demonstrated.” (emphasis added).

This Suspension Letter, signed by “officer[s] of the county,” is an appeal of the building permit decision, insofar as it “alleg[es] that there is error in [the] order, requirement, decision, or determination” in the issued building permit, issued by the building department acting as the “land use authority in the administration or interpretation of the land use ordinance.” As such, the County is required to comply with the statutory provisions for appeals from a land use decision.

IV. The County’s Suspension of Mr. Dickson’s Building Permit on the Basis of Access Requirements Was Foreclosed by the County’s Appeal Process.

Wasatch County Code provides that “[a]ppeals of land use decisions, final administrative decisions, or enforcement actions applying Land Use and Development Code shall be filed in the office of the Planning Department within ten (10) days of the date the county official issues the administrative decision.” WCC § 2.02.02(G).

Utah law provides one caveat as to when the clock for such a time period begins. In *Fox v. Park City*, the Utah Supreme Court held that the appeal period begins when the affected party receives actual or constructive notice that the permit has been issued—except that, a party must not only have notice that a building permit has been issued, but must also have knowledge of the *facts that form the basis* of the party’s objection to the permit before the appeal period begins. *Fox v. Park City*, 2008 UT 85, ¶¶ 27-28. Typically, “[s]uch facts are generally contained in the permit or permit

application,” and as such, “if the facts that form the basis for the party’s appeal can be ascertained by a review of the permit application, the party is charged with knowledge of those facts once he or she has actual or constructive notice of the permit’s issuance. If, on the other hand, the permit application does not contain the facts, and the party is not charged with knowledge of the facts, then the appeal period does not begin until the party receives knowledge of those facts *from some other source.*” *Id.* at ¶ 28 (emphasis added).

Consistent with the general rule that a building permit issued in violation of law or under mistake of fact may be revoked *upon discovery of the error*, the applicable appeal window for such a revocation, according to *Fox*, is either (1) from the date of issuance if the factual basis for the alleged error is contained in the record evidencing approval of the permit, or, (2) from the date of the discovery of the error, if the record at the time of approval does not contain the facts demonstrating the error, but instead come from some other source.

Here, the County issued Mr. Dickson’s building permit on May 3, 2022. According to the County, the County Engineer inspected the road and surrounding properties on June 8, 2022, and discovered several reasons why the improved road providing access to Mr. Dickson’s property did not comply with the proposed road design approved by the 2014 variance.

Therefore, even if we assume that the Autumn Drive improvements’ noncompliant status was not evident to the County at the time it issued the permit, and was only discovered upon its inspection on June 8, 2022, the County was required to appeal the building permit approval within 10 days of the discovery. Even accepting the County’s Suspension Letter as constituting an “appeal” of the building permit approval, *see, e.g., N. San Juan Cnty. Coal. V. San Juan Cnty.*, 2023 UT App 12 (a letter did not specifically need to include the word “appeal” in order to serve as an appeal under requirements in local ordinance), this came well after the 10-day timeline allowed by County ordinances and state law.

Whereas the County did not timely appeal the building permit approval upon discovery of an error that formed the basis of the approval, the County’s jurisdiction to reconsider the matter was foreclosed by state law.

We also finally note that, even apart from the allegations that the improved portions of Autumn Drive were noncompliant with the County’s road standards—as approved by the 2014 variance—at the time of the building permit issuance, this fails to take into account that the 2014 variance also approved a portion of the existing historic road “as is” without the need for further improvements or approvals. The access proposed in Mr. Dickson’s building permit application likewise allows access via this portion of existing road (Section “8” of the illustration in the background section), which would not be affected by a loss or closure of access via the improved portions of Autumn Drive.

Apart from the road’s status, the County’s Suspension Letter also separately noted as a basis for suspension that Mr. Barrick claimed that Mr. Dickson did not have legal rights to access the road itself, and the County requested that Mr. Dickson demonstrate that he met the “recorded right of

way” requirements in County code for a building permit to demonstrate that he had deeded access to the road itself.

This is very blatantly a reconsideration of the building permit approval upon nothing more than the same information that was already in the existing record and available to the County at the time it approved the building permit. Prior to Mr. Dickson’s building permit application, at the time of his grading permit application in 2021, the County engineer raised the very same access concerns, based on the very same survey data, that is now being argued by Mr. Barrick. There is therefore no discovery of an error based on any new information as it relates to Mr. Dickson’s right to access Autumn Drive itself, particularly relating to the existing portion of the historic road accepted “as is” in the 2014 variance approval.

It is generally undisputed that there has been conflicting survey information for the properties over the years that, when compared, creates either gaps or overlaps in the parties’ respective property boundaries. It is well accepted that the land use approval process is not the appropriate venue to resolve quiet title disputes.¹⁸ As such, it was never the County’s responsibility to make a legal determination of the parties’ respective claims to title. Rather, in acting as a land use authority, the County’s only role is limited to making a determination that a land use application meets the requirements of applicable County ordinances that govern the use and development of property.

To the extent that the County Code has made the development of property contingent on a requirement that the applicant “prove right to access” upon a road that is “either owned by the property owner requesting the permit . . . or has a recorded right of way,” WCC § 16.27.31(A), the County has taken it upon itself to make a *factual* determination that a particular recorded right of way proffered by an applicant satisfies this requirement for a right to access, for purposes of applying its regulations.

So, while the determination that a recorded right-of-way exists may be a legal conclusion as it relates to the respective property interests of Mr. Barrick and Mr. Dickson *as claimants to title in dispute*, when it comes to the County’s purposes, that determination is simply a factual conclusion in support of its determination that its access requirements have been met. The County’s factual conclusions supporting a building permit approval do not alter or affect the parties’ actual deeded property rights in any way, it simply authorizes the applicant to commence construction activity on his own property consistent with the requirements imposed by the County. Should Mr. Barrick believe that Mr. Dickson’s actual intended use of the road to access his property for residential purposes exceeds any established right Mr. Dickson may have to cross Mr. Barrick’s property, Mr. Barrick may file a quiet title or trespass action to enforce his claimed property rights and seek

¹⁸ See, e.g., *Borough of Braddock v. Allegheny County Planning Department*, 687 A.2d 407 (Pa. Cmwlth. 1996) (a zoning board is an inappropriate vehicle to deal with complex issues of title, which the opposing parties should resolve by a quiet title action); see also, *Cybulski v. Planning & Zoning Comm’n*, 43 Conn. App. 105, 110, 682 A.2d 1073, 1076 (1996) (planning commission does not have the authority to determine whether a claimed right-of-way is a public highway, since that conclusion can be made only by a judicial authority in a quiet title action); c.f., *Clermont Terrace Site Plan & Zoning Permit Approvals*, 2006 Vt. Envtl. LEXIS 73, *10 (once an applicant has put forth some evidence on their interest and right in the property proposed for development, any further claims to title, or claims attacking the same, must be presented to the appropriate Superior Court for adjudication).

injunctive relief of further construction activity. This remedy as a property owner is not preempted or replaced by the land use approval process.

Here, the mere presence of conflicting claims to title does not preclude the County from making factual conclusions to apply the terms of its ordinances in approving a particular land use. Administrative land use decisions must be supported by substantial evidence, and a decision is supported by substantial evidence if there is a quantum and quality of relevant evidence that is adequate to convince a reasonable mind to support a conclusion. *Caster v. West Valley City*, 2001 UT App 212, ¶ 4.

In the context of administrative decision-making under the substantial evidence standard, where there exists a “possible conflict in the evidence, it is the province of the [administrative authority] . . . to resolve conflicting evidence, and where inconsistent inferences can be drawn from the same evidence, it is for the [authority] to draw the inferences.” *Cook v. Labor Comm’n*, 2013 UT App 286, ¶ 19 (internal quotations omitted).

So while the County building department may have been faced with conflicting survey information regarding the properties’ respective boundaries in relation to the location of the existing road, as the fact finder, the County may choose to give certain evidence more weight than other evidence, and it was ultimately the County’s “responsibility to resolve conflicts in the evidence that came before it.” *Id.* ¶ 20. In this instance, the County approved not only Mr. Dickson’s grading permit in 2021 after considering the conflicting survey information, it also subsequently approved the building permit that required finding that the property had a “prove[n] right to access.” This may not have been the *only* conclusion that could be reached in light of the conflicting survey evidence, but a land use decision is supported by substantial evidence as long as a reasonable mind could be convinced to reach the same conclusion.

The County’s explanation as to why the permit was wrongfully approved hinged partly on a new planner “that was not aware of the history of Autumn Drive” that failed to “explor[e] the issues of access beyond the misleading plans.”¹⁹ Nevertheless, the information necessary for the County to render a land use decision was readily available in the record, and whether the County’s initial factual conclusions should be deemed right or wrong, there did exist a mechanism for other county officials to officially challenge the building department’s approval of the building permit, or even for the building department to reconsider its own decision. That recourse, however, expired when the applicable timeline for appealing the building permit approval lapsed. It was therefore unlawful for the County to later suspend Mr. Dickson’s building permit based on questions of code compliance that were decided by the permit approval.

CONCLUSION

After issuance of a building permit, the County has continued jurisdiction to enforce the terms of the permit to ensure that construction activity complies with the permit as issued. However, the County’s ability to reconsider questions of code compliance that are decided as a matter of course

¹⁹ Submission 1 (County).

of approving the building permit is subject to the land use appeal process. Because the County did not challenge the permit issuance within the timeframe afforded for land use appeals in county ordinances, the County acted unlawfully in suspending Mr. Dickson's permit after the fact, based on compliance issues related to the decision approving the permit.

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.