Advisory Opinion 238

Parties: Snow Garden Apartments, LLC / Ephraim City

Issued: April 16, 2021

TOPIC CATEGORIES:

Entitlement to Application Approval (Vested Rights)

Pending Ordinances

Temporary Land Use Ordinances

Property owners have a statutory vested right to land use approval at the time of application under ordinances then in effect unless the municipality has already formally initiated proceedings to amend its ordinances in a way that would prohibit approval of the application. Temporary land use regulations are intended for emergency public interest concerns, and should not be used as a "stop-clock" to refuse complete land use applications that the city may otherwise perceive as unfavorable without first making changes to the law applicable to the request.

The owner of a complex of apartment buildings obtained a permit to install solar panels on one of its buildings in accordance with City ordinances at the time. After the initial permit, the owner's contractor emailed plans for other buildings in the complex to the City without an accompanying application. Meanwhile, the City became concerned about increased solar use and improperly passed a moratorium on solar permit applications until it could initiate a change to its ordinances. Despite the moratorium, the City nevertheless encouraged the owner to complete the application for the other buildings, but the owner only did so after the City had lawfully initiated proceedings to amend its ordinances, thus prohibiting the subsequent permits applied for. The owner failed to obtain vested rights under the statute's plain language.

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ADVISORY OPINION

Advisory Opinion Requested By:	Anthony Davis
Local Government Entity:	Ephraim City
Applicant for Land Use Approval:	Snow Garden Apartments, LLC
Type of Property:	Residential
Date of this Advisory Opinion:	April 16, 2021
Opinion Authored By:	Richard B. Plehn, Attorney Office of the Property Rights Ombudsman

ISSUE

Is the land use applicant entitled to approval of permit applications to install solar panels despite a moratorium on solar permit applications enacted by the City Council?

SUMMARY OF ADVISORY OPINION

Property owners generally have a statutory vested right to land use approval when they submit a complete land use application that complies with the land use regulations then in effect. There are, however, exceptions to this rule. One exception is when the municipality has already formally initiated proceedings to amend its ordinances in a way that would prohibit approval of the application.

Separately, temporary land use regulations may also limit development rights, but are intended for emergency public interest concerns only. This tool allows a local legislative body to bypass the normal process of receiving public input and recommendation from the planning commission, and also requires the municipality to make a finding of compelling, countervailing public interest. These "moratoria" should not be used as a "stop-clock" for refusing to accept complete land use applications that comply with a city's existing ordinances that the city may otherwise perceive as unfavorable without first making changes to the law applicable to the request.

The owner of a complex of apartment buildings contracted to install solar panels on its buildings, in accordance with City ordinances at the time. After obtaining an initial permit to install panels on one of the buildings, the owner's contractor emailed plans for the other buildings to the City without an accompanying application. Meanwhile, the City became concerned about increased solar use and improperly passed a moratorium on solar permit applications. The moratorium was improper because it lacked the required compelling public interest basis.

While the moratorium was enacted before the owner learned that their attempt to obtain a permit for the other buildings was incomplete for lack of a formal application, the City nevertheless appears to have encouraged the owner at one point to complete and submit the application despite the moratorium. The owner eventually did this, but not until nearly the end of the moratorium. By that time, the City had lawfully initiated proceedings to amend its ordinances, thus prohibiting the permit applied for. Because the owner's complete application was preempted by the initiation of proceedings to change the applicable ordinances, the owner failed to obtain vested rights entitling them to approval under the statute's plain language.

REVIEW

A Request for an Advisory Opinion may be filed at any time prior to the rendering of a final decision by a local land use appeal authority under the provisions of Title 13, Chapter 43, Section 205 of the Utah Code. An advisory opinion is meant to provide an early review, before any duty to exhaust administrative remedies, of significant land use questions so that those involved in a land use application or other specific land use disputes can have an independent review of an issue. It is hoped that such a review can help the parties avoid litigation, resolve differences in a fair and neutral forum, and understand the relevant law. The decision is not binding, but, as explained at the end of this opinion, may have some effect on the long-term cost of resolving such issues in the courts.

A Request for an Advisory Opinion was received from Anthony Davis on August 3, 2020. A copy of that request was sent via certified mail to Richard Squire, Mayor of Ephraim City, 5 South Main, Ephraim Utah 84627, on August 21, 2020.

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 Anthony Davis, received on August 3, 2020.
2. Letter Response to Advisory Opinion Request, submitted by Brian Page, City Attorney for Ephraim City, dated September 2, 2020.
3. Email in response to City's September 2, 2020 letter, submitted by Anthony Davis, dated September 14, 2020.
4. City's Supplemental Response to Advisory Opinion Request, submitted by Brian Page, dated September 18, 2020.
5. Emails and documents submitted by Anthony Davis, dated December 1, 2020.

6. Emails and documents submitted by Brian Page, dated December 10, 2020.
7. Ephraim City public notices and meeting minutes, obtained from the Utah Public Notice Website, http://www.utah.gov/pmn.

BACKGROUND

Snow Garden Apartments LLC ("SGA") is the owner of an apartment complex of the same name in Ephraim, Utah, comprising a total of six standalone buildings—an office, four apartment buildings numbered 1-4, and a newer apartment building labeled "Building E." SGA contracted with Progressive Power Solutions ("PPS") to install solar panels at the SGA property, and made initial payment to PPS on November 1, 2019 to install solar panels on Building E.

SGA alleges that in early November, PPS met with Ephraim City officials on SGA's behalf to prepare needed permits and notify the City that SGA's project was to have PPS install solar panels on all of its buildings, starting first with Building E, then the four remaining buildings 1-4. The City contends that no formal in-person meeting with SGA ever occurred, and that there was only a short discussion about Building E between PPS and City staff.

On November 13, 2019, the City received a "Net Metering License Application Commercial 25KW or Less" ("NMLA application") to "[i]nstall 79 [solar panel] modules . . . using . . . 25kW Array". Under Ephraim City Utility Billing Account No., the application listed "E Building". PPS emailed a site diagram for the project to City staff on November 20, 2019. The site diagram depicted solar panel modules on building E, only, and did not depict the other buildings in the complex. This application was reviewed and a solar permit was issued on Thursday, November 21, 2019. City staff thereafter sent an email notification that the "solar permit for Snow Gardens building E" had been approved.

The day after SGA submitted its application, the City's Utility Board convened to discuss net metering, stating that "[a]partment complexes are showing an interest in solar," which was cause for concern due to the ordinance's existing definitions of residential and commercial because "apartment buildings are in a gray area as they are a business that is residential use."[1] The board concluded that there were multiple circumstances for solar that needed greater definition in the ordinance. During council reports at the November 20, 2019 City Council meeting, the Utilities Board discussed solar energy and reported that the City may need to pass a moratorium to allow time for City policies to be reviewed and updated.

Meanwhile, following the November 21, 2019 issuance of the approved permit, construction and installation began on Building E, and SGA proceeded to buy panels from PPS for all four remaining buildings.

On December 26, 2019, City staff received an email from PPS, on behalf of SGA, stating PPS had "turned in a permit for Snow Garden Apartments buildings 1-4" and included as attachments to that email site diagrams "for each building for the city approval." The City had not received any

[1] Ephraim City Utilities Board Meeting Minutes, pg. 1, November 14, 2019, *available at* https://www.utah.gov/pmn/files/566672.pdf.

additional NMLA applications for SGA's property, other than the November 13, 2019 application. SGA alleges that it was the understanding of both SGA and PPS that no new NMLA form was required, and that the December 26, 2019 email and attached site diagram was an attempted application seeking approval for the four remaining buildings in the project, as previously communicated to City staff.

On January 27, 2020, PPS emailed City staff to "check on the permission for the installation of solar" on the remaining buildings. A City staff member responded on January 30, 2020 that "[t]here are discussions regarding this project still taking place. I will get back to you with more information regarding those discussions once they have concluded." At the February 5, 2020 City Council meeting, it is noted that the Utilities Board reported "[d]iscussions taking place regarding solar energy."[2] At the February 13, 2020 Utility Board Meeting, the board noted that the entire net metering application process is under review and revisions need to be made, and that a "moratorium on all new solar applications is suggested while all the processes and revisions are done."[3]

SGA alleges that on February 12, 2020, PPS met with City staff in person. In response to being informed that a solar moratorium was in place, PPS asserted that it had already applied for permits. SGA alleges that City staff explained that because no NMLA application was submitted for the other buildings, SGA had failed to properly apply for those permits. The City does not recall a specific discussion with PPS regarding the moratorium, but contends that it did inform individuals of discussions concerning a solar moratorium that was to be on the agenda for the upcoming February 19th City Council meeting, and that if the moratorium was approved, it would prohibit the City from accepting applications at that point. However, the City contends that it never informed anyone that applications would not be accepted prior to a moratorium being put in place, and asserts that it accepted applications as late as February 17th, the day before notice was published of possible action on the moratorium.

On February 18, 2020, notice and agenda for the next day's City Council meeting was posted, which included "Discussion and possible approval of Solar Moratorium."[4] At the February 19, 2020 City Council meeting, the Council approved a six-month moratorium to allow the Utilities Board time to "redo the agreements and meter standards and application process."[5]

Following the enactment of the moratorium, SGA alleges that it contacted City staff directly, and was informed that a moratorium was now in effect, but was not in place at the time PPS met with City staff in February. SGA further alleges that during a three-way call with SGA, PPS, and the City, it was discussed that the application for permits on the remaining buildings was incomplete because of a lack of a NMLA form, and that the City told SGA to go ahead and submit an NMLA.

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[2] This includes significant public comment at the January 16, 2020 Utility Board Meeting from solar customers regarding concerns with the net metering agreement.

[3] Ephraim City Utilities Board Meeting Minutes, pg. 2, February 13, 2020, *available at* https://www.utah.gov/pmn/files/584997.pdf.

[4] Notice of February 19, 2020 Ephraim City Council Meeting Agenda (posted February 18, 2020), *available at* https://www.utah.gov/pmn/sitemap/notice/589329.html.

[5] Ephraim City Council Meeting Minutes, February 19, 2020, pg. 3, *available at* https://www.utah.gov/pmn/files/586201.docx.

Near the end of the six-month moratorium, the City published notice on July 6, 2020 of a July 22, 2020 public hearing before the planning commission to consider amending the land use ordinance regarding solar panels and the City's net metering requirements.[6] On July 13, 2020, SGA attempted to submit a single application form for its remaining buildings and was informed that the City was not currently accepting applications, and that the application form was being revised which may require SGA to resubmit updated application forms following the lift of the moratorium.

On August 5, 2020, the City amended its ordinances to include restrictions that would prohibit a system larger than 15kW for commercial use, including rental residential units such as apartment buildings. Upon passing the ordinance amendment, the solar moratorium was then lifted.

ANALYSIS

SGA argues that the City was well aware of SGA's plans to install solar panels on all of its buildings, and that the City intentionally stopped SGA from installing solar panels that complied with the City's ordinances at the time by enacting a moratorium to disallow permits to install panels on the remaining four of the five buildings.

The two relevant questions for this advisory opinion are therefore (1) whether the City's enacted moratorium on solar permit applications was a valid temporary land use regulation, and (2) whether the applicant has any vested right to approval of the solar permits even though the City initiated proceedings to amend its regulations in a manner that would prohibit approval of the permits.[7]

I. Public Input, Planning Commission Recommendation, and Land Use Regulations

Utah's Land Use Development and Management Act ("LUDMA") provides municipalities considerably broad discretion to regulate land uses for the public interest by enacting land use ordinances. However, State law allows temporary land use regulations, including moratoria on a particular land use, only in limited circumstances. Municipalities considering the use of moratoria should proceed with caution, and should ensure they meticulously follow required procedures to enacting one properly.

a. Deferential Nature of Land Use Regulations

Under LUDMA, the municipality's planning commission is responsible to review and make recommendations to the legislative body for land use regulations, including amendments to existing land use regulations.[8] Before making a recommendation to the legislative body, the planning commission must hold a public hearing at which members of the public are provided a reasonable opportunity to comment on the subject of the hearing.[9] The municipality's legislative

[6] Notice of July 22, 2020 Ephraim City Planning Commission Agenda (posted July 21, 2020), *available at* https://www.utah.gov/pmn/sitemap/notice/615505.html.
[7] We note that our jurisdiction to opine on the issue of vested rights is limited to an analysis of rights under Utah statute, U.C.A. § 10-9a-509. The disputed facts in this matter may support other legal claims, specifically including the doctrine of zoning estoppel. For further discussion, please see footnote 25, *infra*.
[8] UTAH CODE §10-9a-302(1).
[9] UTAH CODE §10-9a-404(1).

body then considers the planning commission's recommendation and adopts, revises, or rejects the land use regulation.[10] The standard of whether an enacted land use ordinance is valid, and constitutional, is merely whether the regulation "could promote the general welfare; or even if it is reasonably debatable that it is in the interest of the general welfare."[11]

So long as a new land use regulation or an amendment to an existing land use regulation goes through the planning commission and public input process, a municipality may make whatever substantive changes to land use regulations that are reasonably debatable to be in the interest of the general welfare, including the prohibition of a particular use in a particular zoning district.

b. Limited Purpose of Moratoria

A moratorium, as a temporary land use regulation, serves a much different purpose than an amendment to a land use ordinance after the planning commission process. LUDMA provides a separate process for a temporary land use regulation, as follows:

> **10-9a-504. Temporary land use regulations.**
> (1) (a) A municipal legislative body may, without prior consideration of or recommendation from the planning commission, enact an ordinance establishing a temporary land use regulation for any part or all of the area within the municipality if:
> (i) the legislative body makes a finding of compelling, countervailing public interest; or
> (ii) the area is unregulated.

Here, the City enacted a moratorium on solar permit applications. Therefore, the City must "make[] a finding of compelling, countervailing public interest" to justify the moratorium.[12]

The February 19, 2020 City Council minutes do not reflect that the council made any such finding, and only mention that the Utilities Board had been talking about a moratorium and "decided to redo the agreements and meter standards and application process" and would like the moratorium "until all documents are in place."[13]

We do not need to opine as to whether these reasons, had they actually been proffered as findings, are sufficient to justify a moratorium under the "compelling, countervailing public interest" standard,[14] because the moratorium otherwise fails because no required findings were made at all.

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[10] UTAH CODE §10-9a-302(2).
[11] *Bradley v. Payson*, 2003 UT 16, ¶ 14 (internal citations omitted).
[12] UTAH CODE §10-9a-504(1)(a)(i). Neither party in this matter has indicated that the area in question is unregulated, so subsection (ii) is inapplicable here.
[13] Ephraim City Council Meeting Minutes, February 19, 2020, at pg. 3.
[14] As for what amounts to a compelling, countervailing public interest, the standard is likely reserved for instances where a proposed use "seriously threatens public health, safety, or welfare," *see Western Land Equities, Inc. v. City of Logan*, 617 P.2d 388, 395-396 (Utah 1980), and may be otherwise comparable to the "compelling state interest" standard found prevalently in our legal jurisprudence, most notably with the protection of constitutional rights. A compelling state interest is a "paramount" interest, one of "the highest order." *Sherbert v. Verner*, 374 U.S. 398, 403 (1963). Such interests are usually associated with fundamental rights. For an in-depth discussion comparing LUDMA's *compelling, countervailing public interest* standard to the *compelling state interest* standard, please this

Moratoria are intended to address "emergency" issues of public interest concerns where there is not sufficient time to go through the processes of public input and planning commission recommendation.[15] Here, the Utilities Board reported the concern on November 20, 2019, but the moratorium was not enacted until months later on February 19, 2020. Notably, within this time frame, the City could have initiated a land use regulation amendment—including a public hearing and planning commission recommendation—to accomplish the same function as the enacted moratorium, but without any of the additional requirements of a temporary land use regulation. However, because the City instead chose to utilize the mechanism of a temporary land use regulation, but failed to meet its heightened standard, the moratorium is invalid and without effect.

II. Statutory Vested Rights

Consistent with the above, when a municipality determines that its enacted development standards or land use ordinances need to be updated to serve the evolving public interest, the municipal legislative body amends those regulations by following the land use amendment process of receiving a recommendation of the planning commission after gathering input from the public.

However, until the City initiates such a change to the law, it is obligated to review and consider land use applications under the existing regulations and not under any intended future standard. In other words, "[i]t is incumbent upon city . . . to act in good faith and not to reject an application because the application itself triggers zoning reconsiderations that result in a substitution of the judgment of current city officials for that of their predecessors."[16]

a. Complete Land Use Applications under LUDMA

LUDMA provides that a land use applicant who has submitted a complete land use application is entitled to substantive review of the application under the land use regulations (a) in effect on the date that the application is complete, and (b) applicable to the application or to the information shown on the application.[17] An application is considered complete when "the applicant provides the application in a form that complies with the requirements of applicable ordinances and pays all applicable fees."[18]

The use of solar panels on a property is regulated by the City's land use regulations, and is allowed as a permitted use for single family consumption in all residential zones.[19] Ephraim City's ordinance on Net Metering Requirements provides that customers desiring to engage in net

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Office's previous opinion: Advisory Opinion #14, *Michael Moyal and MBI, LLC / Ogden City*, April 16, 2007, available at https://propertyrights.utah.gov/advisory-opinions/view-all-advisory-opinions/advisory-opinion-14/

[15] *See id.* Otherwise, as discussed above in subsection (a) of this section, where time allows for a public hearing and planning commission recommendation—noting that the local legislative authority is not beholden to the recommendation of the planning commission nor the suggestions of the public (except, perhaps, politically in the next election cycle)—the City has broad discretion to regulate under the much lower standard of "reasonably debatable," without regard to finding any compelling public interest.

[16] *Western Land Equities,* 617 P.2d 388, at 396.

[17] UTAH CODE §10-9a-509(1)(a)(i).

[18] UTAH CODE §10-9a-509(1)(c).

[19] EPHRAIM CITY CODE ("ECC") §10.20.030 Table B.

metering must enter into a license agreement with Ephraim City Power, and submit a license agreement application that must be accompanied by a system diagram or schematic, together with a filing fee.[20] The system diagram is required to show "every wire and every connection" and discrepancies between the submitted diagram "and the actual installation as built are cause for rejection."[21]

Here, it is undisputed that the only actual NMLA applications submitted for the Snow Garden Apartments were (1) the initial NMLA depicting "Building E" only, submitted on November 13, 2019, and (2) the later NMLA for the rest of the buildings attempted to be submitted on July 13, 2020, and rejected by the City as within the moratorium period. Both of these applications are complete as to the respective dates submitted.

As for SGA's initial application, the City's system diagram requirements make clear that installation of solar panels on additional buildings not depicted in the application diagram would not be permitted without some additional application or amendment thereto. SGA's emailed diagrams for the other buildings was therefore completed by the NMLA application submitted later, but only after the City formally took to lawfully effectuate a change of its ordinances.

b. Preemption by Initiated Legislative Proceedings

A submitted complete land use application is usually entitled to approval if it complies with the regulations then in effect. One important exception to this is if as "provided by local ordinance and before the applicant submits the application, the municipality formally initiates proceedings to amend the municipality's land use regulations in a manner that would prohibit approval of the application as submitted."[22]

Under LUDMA, a municipality amends its land use ordinances by first holding a public hearing on the proposed land use amendment, which requires prior notice be given of the hearing.[23] Therefore, in situations where the local ordinance doesn't explicitly state what event formally initiates proceedings to amend the city's ordinance, as is the case here, it has been this Office's experience that the date the municipality publishes the required notice of proceedings to amend its ordinances is generally accepted to be the effective date it "initiates proceedings" for purposes of preemption to vested rights as provided by statute for a complete land use application.

Here, the City acknowledges that SGA was entitled to approval of the November 19, 2019 application, which was facially limited to installing solar panels on Building E. The City, however, argues that SGA holds no vested right of approval for the application submitted on July 13, 2020 because the moratorium was then in effect. As the moratorium was invalid, this cannot be used as a basis for denying a complete land use application that complies with the regulations then in effect.

[20] ECC § 8.20.020(E)-(F).
[21] ECC § 8.20.020(E).
[22] UTAH CODE §10-9a-509(1)(a)(ii)(B).
[23] UTAH CODE §10-9a-302(2).

Despite this, however, SGA's submitted material also suggest that SGA was actually encouraged to submit an NMLA during the moratorium period anyway. SGA alleges that after the enactment of the moratorium in late February 2020, during a three-way call between SGA, PPS, and the City wherein it was discussed that application for solar permits on the other buildings was incomplete due to the lack of an NMLA, the City told SGA to "go ahead and submit an NMLA."

The record indicates that SGA had an opportunity to submit an NMLA for the remaining buildings during the moratorium, which would have vested this subsequent application under the regulations then in existence, but by the time the application was submitted on July 13, 2020, the City had by then already published its July 6, 2020 notice of the scheduled planning commission hearing (July 22, 2020) to consider an amendment to the land use ordinance regarding solar panels and the City's net metering requirements.[24]

Statutory vested rights are expressly granted, and interpreted plainly. LUDMA provides both the required trigger for vested rights—submission of a complete application as required by local ordinances—as well as specific situations under which vested rights might be preempted, including the initiation of proceedings to amend applicable ordinances. Therefore, because the only NMLA application submitted following SGA's approved permit for Building E came after the City had published notice of proceedings to amend the ordinances relevant to the application, SGA has no vested rights for the remaining buildings.[25]

[24] Notice of July 22, 2020 Ephraim City Planning Commission Agenda (posted July 21, 2020), *available at* https://www.utah.gov/pmn/sitemap/notice/615505.html.

[25] We note that, in addition to statutory vesting, a court may also grant vested development rights under the equitable remedy of zoning estoppel. *See Patterson v. American Fork*, 2003 UT 7, ¶ 7. While the codified vested rights standard under Utah statute has strict application without regard to the surrounding circumstances of the parties, conversely, a court acting in equity is not required to recite its decision in terms of specific factors or to adhere to formulaic tests; rather, its obligation is to effectuate a result that serves equity given the overall facts and circumstances of the individual case.

Vested rights, in the context of zoning estoppel, focuses primarily on the conduct and interests of the property owner, and "whether there has been substantial reliance by the owner on governmental actions related to the superseded zoning that permitted the proposed use." *Western Land Equities v. Logan*, 617 P.2d 388, 391 (Utah 1980). Because estoppel is awarded by the court sitting in equity, and greatly depends on the facts of the individual case, this Office has generally declined to opine on questions of zoning estoppel.

Here, we maintain that this Office has no authority to declare whether zoning estoppel applies in this case to give the applicant a vested right to approval of its solar permits. That said, and in this specific case, we acknowledge that the circumstances presented here involve a somewhat convoluted set of events and disputed facts that could arguably lead to the conclusion that the applicant relied on certain statements made by city officials, to the applicant's detriment, and that the City should be prevented from enforcing the newly enacted ordinance here. We make this observation in hopes that the parties will take this knowledge into consideration when determining how to best resolve this dispute at this point.

CONCLUSION

The Ephraim City Council failed to make the required findings to support a temporary land use regulation without the process of public input and recommendation from the planning commission; therefore, its attempted moratorium on solar applications was improper and cannot, itself, be a basis to deny vested rights to a complete land use application. Here, SGA attempted to complete an insufficient application despite the moratorium. However, because it did so only after the City had formally initiated proceedings to amend its ordinances, SGA does not possess a statutory vested right to approval of its solar permit under the old solar requirements.

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

NOTE:

This is an advisory opinion as defined in Section 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 Section 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.

MAILING CERTIFICATE

Section 13-43-206(10)(b) of the Utah Code requires delivery of the attached advisory opinion to the government entity involved in this matter in a manner that complies with UTAH CODE § 63-30d-401 (Notices Filed Under the Governmental Immunity Act).

These provisions of state code require that the advisory opinion be delivered to the agent designated by the governmental entity to receive notices on behalf of the governmental entity in the Governmental Immunity Act database maintained by the Utah State Department of Commerce, Division of Corporations and Commercial Code, and to the address shown is as designated in that database.

The person and address designated in the Governmental Immunity Act database is as follows:

Mayor John Scott
City of Ephraim
5 South Main
Ephraim, Utah 84627

On this ___ Day of April, 2021, I caused the attached Advisory Opinion to be delivered to the governmental office by delivering the same to the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the person shown above.

_____
Office of the Property Rights Ombudsman