Advisory Opinion 242

Parties: Utah Valley Homebuilders Association / Eagle Mountain

Issued: July 30, 2021

TOPIC CATEGORIES:

Impact Fees Act

The Utah Valley Home Builders Association raised a general challenge to Eagle Mountain City's impact fee update by disagreeing with the city's method of identifying the level of service and advancing alternative assumptions or considerations not adopted by the city in its fee calculations. A challenge to a city's enacted impact fee ordinance not arising out of an actual fee payment dispute is limited to whether the ordinance facially complies with the enactment requirements of the Impact Fee Act.

Because impact fees deal largely with future development activity, the Act's specific requirements to establish impact fees are couched largely in approximative language, such as, "reasonable relationship," "generally consider," "realistic estimates," "assumptions," "projected," and so forth. As a result, the City's impact fee enactment is facially valid as the City has procedurally adhered to all these mandatory considerations. It is not enough to merely contest the means used to arrive at fee calculations generally; the challenger must show the resulting fees to be unreasonable on an as applied basis.

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ADVISORY OPINION

Advisory Opinion Requested By:	Utah Valley Home Builders Association
Local Government Entity:	Eagle Mountain City
Scope of Advisory Opinion:	Impact Fee Challenge
Date of this Advisory Opinion:	July 30, 2021
Opinion Authored By:	Richard B. Plehn, Attorney Office of the Property Rights Ombudsman

ISSUES

Does Eagle Mountain's parks impact fee enactment comply with Utah's Impact Fee Act? Has the City violated the Act by not amending its transportation impact fee?

SUMMARY OF ADVISORY OPINION

A challenge to a city's enacted impact fee ordinance not arising out of an actual fee payment dispute is limited to whether the ordinance facially complies with the enactment requirements of the Impact Fee Act. Beyond that, whether enacted fees will result in a payment that is disproportionate is an "as applied" challenge to be reviewed under the facts and circumstances of a payment being made.

Because impact fees deal largely with future development activity, the Act's specific requirements to establish impact fees are couched largely in approximative language, such as, "reasonable relationship," "generally consider," "realistic estimates," "assumptions," "projected," and so forth. As a result, an impact fee enactment is facially valid so long as the local government has procedurally adhered to all mandatory considerations. It is not enough to merely contest the means used to arrive at fee calculations; the challenger must show the fees to be unreasonable on an as applied basis.

The Utah Valley Home Builders Association raised a general challenge to Eagle Mountain City's impact fee update by disagreeing with the city's method of identifying the level of service and

advancing alternative assumptions or considerations not adopted by the city in its fee calculations. However, the association interprets the Act inconsistent with its plain meaning, and infers substantive terms that are not present in the text. Because the City has complied with all mandatory considerations to procedurally enact its impact fee ordinance, its park impact fees are not facially invalid. Whether the adopted fees will disproportionately burden development may have to be determined on an "as applied" basis as qualifying cases arise.

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 this 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 Deann W. Huish of the Utah Valley Home Builders Association on June 23, 2020. A copy of that request was sent via certified mail to Fionnuala Kofoed, City Recorder for Eagle Mountain City, 1650 East Stagecoach Run, Eagle Mountain, Utah 84046, on June 24, 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 Deann W. Huish, Utah Valley Home Builders Association ("UVHBA"), received on June 23, 2020.
2. Supplemental Information and Amended Request for Advisory Opinion, submitted by Deann W. Huish on behalf of UVHBA, dated July 7, 2020.
3. Letter in response to Request for Advisory Opinion, submitted by Jeremy R. Cook, attorney for Eagle Mountain City, dated September 4, 2020.
4. Letter in reply to Eagle Mountain City's response, submitted by Deann W. Huish on behalf of UVHBA, dated September 17, 2020.
5. Oral presentations before the Office of the Property Rights Ombudsman, including presentation by Jeremy R. Cook and Fred Philpot on behalf of Eagle Mountain City, and Deann W. Huish, Brent N. Bateman, and Arthur C. Nelson on behalf of UVHBA.
6. Minutes and agenda packets from June 2, 2020 Eagle Mountain City Council meeting, which included copies of the May 2020 Parks and Recreation Impact Fee Analysis (Lewis Young Robertson & Burningham, Inc.) and May 2020 Parks and Recreation Impact Fee Facilities Plan (Horrocks Engineers).

BACKGROUND

Eagle Mountain City is a fast-growing municipality. In an effort to plan and prepare for the high growth rate, the City updates its Impact Fee Facilities Plan ("IFFP") about every 2-3 years. By ordinance dated June 2, 2020, the City adopted impact fees utilizing an IFFP prepared by Horrocks Engineers and an Impact Fee Analysis ("IFA") prepared by Lewis Young Robertson & Burningham, both dated May 2020.

For its regional park and recreational facilities, the IFFP states that "(T)he City will need to provide its citizens with recreation facilities that are not all measurable by acreage. Therefore, Eagle Mountain will define its level of service in terms of value of regional park recreational facilities per 1,000 residents." The investment level of service is comprised of two components - land value per capita and improvement value per capita. Eagle Mountain has defined its Service Area to include all areas within the City's municipal boundaries.

This "investment" level of service takes an inventory of existing facilities and their value by looking at historic expenditures on regional recreation facilities, and measures against population as the unit of demand. The IFFP identified the City's current population as 39,127 based on "approved demographics" projections for 2019, which the IFFP found to be "relatively close to the actual population" upon review. The IFFP identifies the value of its existing regional parks inventory as $31,755,520. The regional parks level of service is therefore calculated as $31,755,520 / 39,127 residents = $811,601 /1,000 residents.

Excluded from total existing regional park value is $1,100,000 for Mid-valley regional, or "Cory Wride" park. This park was built by a developer under a reimbursement agreement wherein the City has reimbursed the cost through impact fees as a "buy-in" of the facility's excess capacity. The IFFP lists the park as having been constructed in 2002 with an original estimated capacity of 10,000 Equivalent Residential Units ("ERU's"), of which 8,616 is existing used capacity, leaving a current remaining capacity of 1,384 to be funded by impact fees until capacity is met.

The IFFP also lists a number of future facilities that will be built within the next six years and eligible to be funded by impact fees, totaling $23,937,959 in 2019 dollars, with each facility assigned a construction year starting 2020 through 2025.

The City's Impact Fee Analysis ("IFA") calculates impact fees according to the IFFP for new single-family and multi-family units, based on average persons per household from certain census data. Using the level of service of $811,601 /1,000, the IFA provides an estimated impact fee value per capita of $812 per resident (rounded to the nearest dollar). Based on the remaining excess capacity for Cory Wride park and the future facilities listed in the IFFP, the City's IFA has calculated impact fees for each new single-family and multi-family household according to population projections.

Utah Valley Home Builders Association ("UVHBA") has questioned several aspects of Eagle Mountain's updated IFFP and IFA as it relates to its parks/trails impact fees as not complying with Utah's Impact Fee Act. UVHBA's concerns with the IFFP include the chosen level of service method, the inclusion of certain projects or how they are defined, its calculation of capacity for the

buy-in component, and how inflation or the time value of money may be accounted for in certain costs. UVHBA has expressed concerns with the IFA's calculation of fees and whether certain expenditures are eligible to be funded by impact fees as provided.

Additionally, UVHBA also raises a separate concern about the City's transportation impact fee, and argues that the City has failed to appropriately amend its fees based on project completion. UVHBA has submitted a Request for an Advisory Opinion from the Property Rights Ombudsman to determine Eagle Mountain City's compliance with the Impact Fee Act on these issues.

ANALYSIS

Utah Valley Home Builders Association ("UVHBA") is an organization that, among other things, advocates on behalf of homebuilders and those in the construction industry on local, state and national issues.[1] Following Eagle Mountain's enactment of its impact fee ordinance, UVHBA requested an advisory opinion to determine Eagle Mountain's compliance with Utah's Impact Fee Act ("the Act"), but without reference to any specific fee imposition on a particular development proposal.

The Act provides that an "organization, association, or a corporation representing the interests of persons or entities owning property within a service area[] has standing to file a declaratory judgment action challenging the validity of an impact fee."[2] The scope of such declaratory action is limited to a "determin[ation] that an impact fee process was invalid, or an impact fee is in excess of the fee allowed under [the] act"[3]—in other words, whether (1) the enactment *facially* complies with the express procedural requirements of the Act, or (2) *as applied*, improperly results in an excessive fee.

Under this remedy, because no individual fee challenge is presented, UVHBA's standing for this request is limited to a facial challenge to the City's legislative enactments. This opinion therefore reviews whether Eagle Mountain's legislative enactments amount to an invalid process for failure to comply with the procedural requirements of the Act. We cannot, without a fact pattern involving payment of a fee by a particular developer, answer whether the enacted fees are illegal as applied to a particular development.[4]

With that in mind, we will answer each of UVHBA's ten questions presented in its Request for an Advisory Opinion, as appropriate. At the heart of many of UVHBA's contentions is its critique of Eagle Mountain's chosen method of calculating level of service. Because the level of service provides the basis for how impact fees are calculated, the validity of the City's chosen investment per thousand approach greatly directs the outcome of much of UVHBA's other contentions. Accordingly, this will be addressed first.

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[1] About Us, UTAH VALLEY HOME BUILDERS ASSOCIATION, https://www.uvhba.com/about-us/.
[2] UTAH CODE § 11-36a-701(1).
[3] UTAH CODE § 11-36a-703(3).
[4] *See, Call v. West Jordan*, 614 P.2d 1257 (Utah 1980) (upholding the facial constitutionality of a subdivision ordinance requiring exaction, but remanding to allow plaintiffs opportunity to challenge its constitutionality "as applied" to them).

I. Level of Service Requirements[5]

Impact fees are imposed upon new development activity in order to mitigate the impact on public infrastructure; they are not a tax or special assessment and are distinct from other allowable building permit, application, or project fees.[6]

Before imposing an impact fee, each entity must prepare an impact fee facilities plan (IFFP) to determine the public facilities needed to serve new development.[7] The IFFP must "identify the existing level of service" and "establish a proposed level of service."[8] A political subdivision may only impose impact fees on development activity when the IFFP establishes that fees are necessary to maintain a proposed level of service.[9] Impact fees may not be used to raise the established level of service of a public facility serving existing development.[10] Level of service is therefore a critical part of any impact fee enactment.

The Act defines "level of service" as "the defined performance standard or unit of demand for each capital component of a public facility within a service area."[11]

Eagle Mountain defines its level of service in terms of value of park recreational facilities per 1,000 residents. UVHBA contends that the City's chosen method for defining level of service is not allowed by the Act because it is the impact on *facilities* that is to be mitigated by fees, not the impact on *money*. In calculating impact fees based on the value of existing facilities, UVHBA argues that the fees are principally a source of new revenue in the form of an unauthorized tax. In support of the "investment per thousand" approach, the City responds that this approach is commonly found in ordinances of many Utah communities.[12]

It appears that UVHBA interprets "each capital component of a public facility" as limited to tangible components or physical attributes of facilities, positing that the Act requires level of service to be calculated as either acres of parks per 1,000 residents by type of park, or else type of facility (giving the example of number of soccer fields) per 1,000 residents. UVHBA argues that using value as the basis to measure demand ignores the specific language in the Act.

When faced with a question of statutory interpretation, the primary goal is to evince the true intent and purpose of the legislature,[13] which begins by first looking to the statute's plain language.[14] When the words of a statute consist of "common, daily, nontechnical speech," they are construed

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[5] This Part directly answers UVHBA's Question 9 of its Request for an Advisory Opinion, "*Can Eagle Mountain City redefine level of service to be based on money needed per new resident and not 'unit of demand for each capital component of a public facility'?*" This question is therefore not included in the questions listed in Part II.
[6] *See* UTAH CODE § 11-36a-102(9).
[7] UTAH CODE § 11-36a-301(1).
[8] UTAH CODE § 11-36a-302(1).
[9] UTAH CODE § 11-36a-302(3).
[10] UTAH CODE § 11-36a-202(1)(a)(ii).
[11] UTAH CODE § 11-36a-102(12).
[12] We believe that this point is not generally disputed by the parties involved, and note that this also matches our Office's experience in dealing with impact fee ordinances of several cities.
[13] *Marion Energy, Inc. v. KFJ Ranch P'ship*, 2011 UT 50, ¶ 14, 267 P.3d 863.
[14] *Carrier v. Salt Lake Cty.*, 2004 UT 98, ¶ 30.

in accordance with the ordinary meaning such words would have to a reasonable person familiar with the usage and context of the language in question.[15]

UVHBA's reading of "capital component" as limited to tangible items, to the exclusion of money, is not supported by the statute's plain language. The term "capital component" is not defined or used elsewhere in the Act, and the ordinary meaning of the term "capital" is generally defined to mean "[m]oney or assets invested or available for investment,"[16] or otherwise as "the wealth, whether in money or property, owned or employed in business by an individual, firm, corporation, etc."[17] Contrary to what UVHBA has assumed, nothing in the statute's plain language suggests that capital component cannot mean the monetary investment of a facility.

Based on the objectives and defined terms of the Act, *existing* level of service should be descriptive, reflecting the current demand upon the facilities listed in the IFFP—i.e. how those facilities are actually used ("the ***defined*** performance standard . . . of a public facility").[18] The *proposed* level of service, in turn, is aimed at accommodating projected growth at an established rate chosen by the entity, (as mentioned, either equaling the existing level of service, diminishing the level of service, or exceeding the level of service by an increase independent of impact fees).[19] While the Act gives some guidance in regards to the relationship between the existing level of service and proposed level of service (that the proposed level of service is to be less than or equal to existing level of service, or in limited circumstances exceed existing level of service if the increase is provided by means other than impact fees)[20] the Act does not provide any instruction on how to identify the existing level of service.

Describing actual demand on an existing public facility sounds simple enough, but, as the parable of the blind men and an elephant goes, there can be various descriptions of the same phenomenon.[21] Conceptually, as existing level of service is descriptive, it is true that cities do not "choose" existing level of service in that regard. However, the Act's silence as to any further requirement in discerning level of service may result in some differing levels of abstraction in describing actual demand. In absence of a discernible legislative intent concerning a specific issue, a choice among permissible interpretations of a statute is largely a policy determination.[22] These differentiations in defining level of service are permissible policy determinations in carrying out the purposes of the Act.

UVHBA would prefer that the City account for the demand of its parks and recreation facilities by establishing individualized levels of service for each separate physical "component" of a given park or facility according to type, such as number of basketball hoops or soccer fields per resident, or miles per trail as contrasted with acres per park, etc. The City instead has sought to take a simpler

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[15] *Olsen v. Eagle Mt. City*, 2011 UT 10, ¶ 9.
[16] BLACK'S LAW DICTIONARY 250 (10th ed. 2014).
[17] DICTIONARY.COM, "*capital*", available at https://www.dictionary.com/browse/capital.
[18] UTAH CODE § 11-36a-102(12).
[19] UTAH CODE § 11-36a-302(2).
[20] UTAH CODE § 11-36a-302(1).
[21] Thought to have originated in Buddhist text, in the parable, a group of blind men who have never encountered an elephant describe it by touching it. But as each man feels a different part of the elephant's body, they all describe the same elephant very differently, though each description is truthful based on their respective experience.
[22] *Morton Int'l v. Auditing Div. of Utah State Tax Comm'n*, 814 P.2d 581, 589 (Utah 1991).

approach by more broadly defining all of its parks and recreation facilities together (comprising community and regional parks, and trail ways) and measuring its categorical demand in terms of level of investment under two separate components—land value per capita and improvement value per capita. Because this level of service calculation still accurately describes the demand placed on all included facilities by measuring the impact of population on the literal "capital" constituting these facilities, and in a way that allows for a determination on what system improvements may be needed to accommodate new development activity, it facially accomplishes the directives of the Act and does not amount to an invalid process.[23]

II. Responses to UVHBA Questions Posed to the Property Rights Ombudsman[24]

Question 1: "Can Eagle Mountain City collect buy-in fees based on excess capacity that no longer exists?"

Many of the City's existing parks and recreation facilities were constructed by developers using SID Bonds or reimbursement agreements. Outstanding reimbursement is reflected as a buy-in cost for any remaining capacity of the park. Namely, the IFFP names Cory Wride Park as the lone outstanding reimbursement facility with an original capacity to serve 10k equivalent residential units (ERUs), and existing used capacity of 8,616 ERUs based on estimated 2019 population, with a remaining capacity of 1,384 eligible for buy-in costs.

UVHBA believes that the IFA improperly includes impact fees for excess capacity in Cory Wride Park that was already used by the time of adoption. Noting Cory Wride's original capacity to serve 10,000 ERU's, UVHBA looks to the total park ERUs of 10,639 listed for year 2020, and believes that because this number exceeds 10,000, the buy-in capacity has already been achieved and the buy-in component of impact fee would no longer be needed or allowed.

The City responds that ERU capacity for a particular park is calculated as *new* ERU's added from the *time of construction*. Unfortunately, because Cory Wride is the sole facility listed for which buy-in is still being applied to unused capacity, the IFFP has no other comparative example to illustrate the City's explanation. Cory Wride Park, built in 2002, is reflected as having an existing used capacity of 8,616 ERU's of an original capacity for 10,000 ERU's. The IFFP does not indicate how many *total* park ERU's there were at the time in 2002, making it impossible to replicate the City's calculation. Ultimately, however, between the two interpretations, the City's conclusion may be more easily inferred, as the IFFP differentiates between *Total* Park ERU's and *New* Park ERU's. Under UVHBA's reading, if all that were measured were total park ERU's, listing a separate figure for *new* ERUs would serve no purpose.

The Act requires that the IFA "identify how the impact fee was calculated."[25] The City's IFA accomplishes this, and the burden then shifts to UVHBA, as the challenging party, to show that the fee is illegal;[26] UVHBA has not met this burden. However, the IFA serves the purpose of

[23] However, it is not without its potential pitfalls, as discussed herein in Part II, Question 4, below.
[24] The following questions are provided as originally phrased by UVHBA in the request for an advisory opinion.
[25] UTAH CODE § 11-36a-304(1)(e).
[26] *See, Home Builders Ass'n v. City of Am. Fork*, 1999 UT 7, ¶ 16, 973 P.2d 425, 429 (Sup.Ct.).

providing transparency, and is to be "designed to be understood by a lay person."[27] Because UVHBA's assumption was partly as a result of an omission of some information in the City's explanation of its fee calculation, the City should clarify how the buy-in portion of its impact fees for Cory Wride's remaining unused capacity was calculated to avoid misconception that the capacity has already been met. The reasoning provided by the City in its submissions for this advisory opinion provides an easy explanation. Such a simple explanation should be included in the IFA itself.

Question 2: "Can Eagle Mountain City impact fees be based on facilities other than those listed in the IFFP?"

Using the investment level of service method, as the City's existing level of service is $811,601 /1,000 residents (based on the total estimated value of existing regional and community parks, $31,755,520, divided by all city residents, 39,127), the IFA's cost per new resident for future system improvements is $812/resident (rounded to nearest whole dollar) to maintain that level of service.

UVHBA misunderstands the City's investment level of service method and assumes that because the figure of $812/resident is derived from the value of the City's existing facilities (composing the defined performance standard measured by population as the unit of demand), the City must therefore be attempting to expend impact fee funds on system improvements other than those listed in the IFFP, which the Act does not allow.[28] This is not the case, as the City's IFA very clearly explains how the collected fees will be expended on the proposed system improvements identified in the IFFP.

The City is projected to add 32,036 new residents between 2019-2025, and the IFFP identifies proposed "future project" system improvements to meet that demand that are eligible to be funded by impact fees within the next six years. These system improvements are listed as costing an estimated $23,957,959 in 2019 dollars, with progressively scheduled constructions years starting in 2020 through 2025. Based on the projected growth of 32,036 new residents through 2025, The IFA recommends that the City invest approximately $26 million (32,036 x $812 = $26,000,456) in parks and recreation facilities to maintain the existing level of service.

In contesting the City's per capita impact fee of $812/resident, UVHBA looks to the IFFP's sticker cost of $23,957,959 for proposed system improvements and, by its own calculation, comes up with a lesser per capita amount of $748/resident by dividing that figure by the new population number of 32,036 residents ($23,957,959 / 32,036 = $748). The City responds, however, that this fails to consider inflation for construction costs according to the respective year each system improvement will be constructed through 2025. The IFA expressly states that construction cost assumes an inflation rate of 3.34%, and Table 6.2 illustrates the construction year costs for each system improvement listed in the IFFP, with adjusted costs totaling $26,737,551—more than the projected fees to be collected.

[27] UTAH CODE § 11-36a-303(2).
[28] UTAH CODE § 11-36a-602(1) ("A local political subdivision may expend impact fees only for a system improvement . . . identified in the impact fee facilities plan.").

The Act requires an IFFP to determine the public facilities required to serve new development[29] by identifying the existing and proposed levels of service, and the means by which the city will meet growth demands.[30] The IFA in turn requires an estimate of the proportionate share of the costs of impacts on system improvements that are reasonably related to new development activity, which includes consideration of "the cost of system improvements for each public facility," "the relative extent to which development activity will contribute to the cost of existing public facilities and system improvements in the future," as well as "the time-price differential inherent in fair comparisons of amounts paid at different times."[31] In calculating an impact fee, the city may include, among other things, "the construction contract price" and the "the cost of acquiring land, improvements, materials, and fixtures."[32] Amounts must be based "on realistic estimates," and the assumptions underlying those estimates must be disclosed in the IFA.[33]

UVHBA's argument that the City's impact fees were not "based" on its IFFP facilities, but rather on the value of existing facilities, is simply an argument against the City's chosen level of service method—which we have discussed is not disallowed by the Act. Operationally, UVHBA's contention appears to be that instead of the facilities identified in the IFFP as driving the necessity for impact fees by identifying system improvements that would be required to maintain the identified level of service, and the IFA in turn discerning what the proportionate cost of those improvements will be, the City's chosen level of service method starts with a monetary figure in mind for current investment, and the IFFP then must produce enough system improvements of equivalent cost to justify additional investment. In other words, as a result of the chosen level of service, the IFA proportionate cost is a foregone conclusion (because the identified level of service is an investment value ratio of $811,601 / 1,000 residents, or the equivalent of $812/resident, the IFA, not surprisingly, concludes that the proportionate cost for future system improvements is $812/resident).

Ultimately, while UVHBA may prefer a different method, the City's IFFP and IFA do not violate the Act's requirements as a result of the City's chosen level of service method. The level of service identifies the performance standard of existing facilities, and the IFFP provides a list of system improvements intended to serve new population growth at that standard. The IFA identifies the impact of new growth on the City's proposed level of service and makes a recommendation of investment to meet the proposed level of service. The IFA estimates the cost of construction, and discloses the adopted assumption that inflation of 3.34% applies to construction costs incurred at future dates. The calculated fee amounts do not exceed the associated anticipated costs of the IFFP's system improvements, as explained in the IFA.[34] UVHBA has made no particular showing that these assumptions lead to unrealistic estimates in violation of the Act's terms, or are otherwise unreasonable, or that impact fees will not be expended on the system improvements identified in the IFFP.

[29] UTAH CODE § 11-36a-301(1).
[30] UTAH CODE § 11-36a-302(1).
[31] UTAH CODE § 11-36a-304.
[32] UTAH CODE § 11-36a-305(1).
[33] UTAH CODE § 11-36a-305(2).
[34] UVHBA's arrives at its conclusion that the collected fees exceed the estimated costs of IFFP system improvements by disregarding the IFA's assumed construction inflation costs. However, we do express some concern with how the City has estimated its total system improvement costs—particularly, listing "Property Acquisition" separately, and then inflating that entire cost figure by the construction inflation cost. Please see the discussion in footnote 55, below.

Question 3: "Can Eagle Mountain City charge impact fees for a facility for which no level of service standard has been established?"

We have established that prior to charging impact fees, the City must determine the level of service of its facilities. This is the City's first IFA where trails are included in the impact fee. Prior IFAs have excluded trails from the impact fee analysis because they were funded by developers or grants. As discussed, UVHBA's expectation for level of service would have the City establish independent levels of service for each separate component of a public facility based on physical attributes. The City has, instead, chosen to more broadly define all of its recreational facilities together (which include a variety of parks, recreation facilities, open space, and now trails) as a single public facility under its "parks" classification for impact fee purposes—for which a level of service has, in fact, been established.

Because the Act does not direct how level of service is to be determined, defining level of service is a policy determination.[35] The Act identifies "parks, recreation facilities, open space, and trails" under public facilities eligible for impact fees.[36] The City has appropriately defined a "park" classification of public facility that includes community and regional parks and trail ways, and has chosen a method of level of service for that public facility that looks at value per population as the performance standard of each capital component of the facility. Because trails are included in the City's park classification of public facility, the City's parks level of service adequately provides a level of service for trails. The Act does not require an independent or individualized level of service for trails as suggested by UVHBA.

Question 4: "Can Eagle Mountain City include 'revitalization' as an impact fee eligible cost?"

One of UVHBA's initial complaints with the City's IFFP was that it listed expenditures for "revitalization." Specifically, two projects in the IFFP are described as including "pedestrian amenities, parking elements, as well as revitalization of the existing fields." UVHBA argued that a reasonable person would interpret revitalization as an act of "curing deficiencies," which is a prohibited use of impact fees.[37]

At the June 2, 2020 City Council meeting where enactment of the City's impact fee ordinance was considered, the City clarified that the costs and projects included in the IFFP did not relate to curing deficiencies nor included costs related to replacement of existing facilities; rather, it addressed the expansion and completion of installed parks in accordance with growth, not the repair or maintenance of areas within existing parks. Nevertheless, in response to a request by UVHBA to remove the word revitalization to prevent confusion, the City's motion to adopt the updated impact fees was subject to removal of "revitalization" from the verbiage in the IFFP.[38]

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[35] *See* Discussion in Part I, text and footnote 22, above, which cites *Morton Int'l*, 814 P.2d at 589 (In absence of a discernible legislative intent concerning a specific issue, a choice among permissible interpretations of a statute is largely a policy determination).
[36] UTAH CODE § 11-36a-102(17).
[37] UTAH CODE § 11-36a-202(1) ("A local political subdivision . . . may not . . . impose an impact fee to . . . cure deficiencies in a public facility serving existing development.").
[38] *See* EAGLE MOUNTAIN CITY, Eagle Mountain City Council Meeting Minutes June 2, 2020, pg. 16, *available at* https://docs.google.com/gview?url=https%3A%2F%2Femcity.granicus.com%2FDocumentViewer.php%3Ffile%3Demcity_8b8c14c03e9506eca1447e9f33d9078d.pdf%26view%3D1&embedded=true.

Because the City has already removed the term in response to UVHBA's feedback, this issue appears moot because it was not actually part of the City's adopted impact fee enactment, as motioned for and approved by the City Council.[39] However, we feel it appropriate to note that while the City's chosen method of defining level of service is facially valid, it is not without its potential pitfalls, as illustrated by this example.

The City's stated aspiration is that this method allows it flexibility to better fit the needs of new development. Assumedly, this means that instead of cloning all of the City's existing parks so that each new park maintains the same number of basketball hoops, slides, or swings, etc., system improvements in the form of new parks or other facilities can contain diverse recreational opportunities or features responsive to the wants of the growing community at the time, while the overall level of investment remains consistent with that of previous residents that went before, so that the contribution of new development remains proportional.

The danger in this approach is the possible blurring of the lines between adding investment to existing parks in the name of "system improvements" and the Act's prohibition on using impact fees for "costs of operation and maintenance of public facilities,"[40] or otherwise "cur[ing] deficiencies," in public facilities serving existing development.[41] Assuming these dangers are avoided, defining level of service in terms of investment by measuring value of existing facilities per population as the basis for determining needed future facilities is not facially invalid and does not, of itself, amount to an invalid process.

Question 5: "Can the Eagle Mountain City Impact Fee Analysis (IFA) include only part of the time-price differential adjustment?"

The Act requires that an IFA "estimate the proportionate share of . . . the costs of impacts on system improvements that are reasonably related to the new development activity."[42] To accomplish this estimation, the Act further requires that the charging entity "identify, if applicable[,] . . . the time-price differential inherent in fair comparisons of amounts paid at different times," among other things.[43]

The City's IFFP defines impact fee eligible projects within the next six years, and identifies estimated costs for those system improvements in today's (2019) dollars. In attempting to calculate impact fees that will sufficiently fund the system improvements listed in the IFFP, the IFA, in turn, lists a "construction cost" for each project, which takes the 2019 estimated cost for each project and further inflates that number by an assumed 3.34% rate of inflation for the particular project's slated construction year.

[39] While UVHBA continues to argue that the available copy of the report included in the record of the City's June 2, 2020 ordinance doesn't actually remove the terms from the document, the City's adoption of the IFFP by ordinance was nevertheless made expressly subject to removal of "revitalization" from the IFFP, as reflected in the Council's recorded meeting minutes. *Id.*
[40] UTAH CODE § 11-36a-306(1).
[41] UTAH CODE § 11-36a-202(1)(a)(i).
[42] UTAH CODE § 11-36a-304(1)(d)(ii).
[43] UTAH CODE § 11-36a-304(2).

UVHBA argues that the City's impact fee violates the Act by only considering "half of the Act's 'fair comparison' requirement." Namely, UVHBA argues that as the concept of time-price differential looks at present value of future costs, while the city has inflated future costs, it otherwise fails to discount future values to the present, suggesting that this "discount rate" can be the local government borrowing rate or the consumer price index (inflation) rate.

We believe this to be an instance where a facial challenge to the City's impact fee enactment is limited under the circumstances. As to facial validity of the City's impact fee enactment, the City was required to "identify, if applicable" the time-price differential and "estimate" the proportionate share of costs.[44] The City has estimated costs by incorporating a construction cost inflation for costs to be incurred at future dates in an attempt to account for the time-price differential. That is about as much as the City can be expected to do upon enactment. As estimates are borne out over time, other than regular updates to impact fees, the Act also authorizes the City to "adjust the standard impact fee" in response to a "request for a prompt and individualized impact fee review."[45]

As "a presumption of constitutionality attaches to the legislative decisions of municipalities when they establish impact fees,"[46] it is the burden of the party challenging the fee to rebut that presumption by showing that the impact fees "require newly developed properties to bear more than their equitable share of the capital costs in relation to benefits conferred."[47] This cannot be accomplished without a specific example. Challenging the outcome of a given fee because of the City's implemented time-price differential would therefore be more appropriately considered in an "as applied" challenge, which this is not.

Question 6: "Can Eagle Mountain City include items that cannot be construed reasonably as 'facilities' in the IFFP?"

Table 5-1 of the City's IFFP provides a list of proposed improvement projects intended to be constructed within the next six years as eligible for impact fee funding, with an anticipated construction year associated with each listed project. This list includes seven named park phases, two recreational trails, and a final line item labeled "Property Acquisition" in the amount of $3,000,000 and which, as with the other projects in the list, is associated with a correlating "construction year"—in this case 2025.

UVHBA argues that, unlike all the other projects listed in the IFFP, this generic expenditure of $3m for "Property Acquisition" does not specify which public facilities those expenditures are for, and that this lack of specificity violates the Act's requirement to determine **the** public facilities needed to serve new development. Specifically, UVHBA cites to the following provision:

> (1) Before imposing an impact fee, each local political subdivision … shall … prepare an impact fee facilities plan to determine the public facilities required to

[44] UTAH CODE § 11-36a-304(1)(d), (2)(h).
[45] UTAH CODE § 11-36a-402(1).
[46] *Home Builders Association of Utah v. City of North Logan*, 1999 UT 63, ¶ 9, (citing *Banberry Development Corp. v. South Jordan City*, 631 P.2d 899, 904 (Utah 1981).
[47] *Id.*

serve development resulting from new development activity.[48]

In citing to this provision, UVHBA argues that the word "the" connotes defined public facilities, which, in the context of parks, includes "parks, recreation facilities, open space, and trails."[49] UVHBA concludes that the IFFP must include specific facilities described at least to the detail as other facilities to be consistent with the Act.

The City responds that the Act requires the IFFP to identify the facilities the government will spend impact fees on, and that the City's IFFP fulfills this requirement. Further, the City argues, the Act allows for the inclusion of "the cost of acquiring land, improvements, materials and fixtures" when calculating impact fees.[50] The City states that the IFFP will be amended once additional details are known, as specifying the exact location of future property acquisitions will be conditioned upon the location of future growth.

Both parties miss the point to some extent. The City overlooks that while impact fees can lawfully be spent for the cost of acquiring land as cited, Table 5-1, which provides the list of the City's specific impact fee eligible projects, includes "Property Acquisition" as its own line-item on the list without explicit clarification within the table as to what those funds will be supporting. Because "Property Acquisition" is not, itself, a "facility," the contention by UVHBA therefore appears to be that the IFFP's failure to otherwise expressly link the $3m for "Property Acquisition" to some other defined facility falls short of the Act's requirements.

While UVHBA's stated assertion is that failing to define each of the City's facilities violates an express requirement of the Act, we believe the real concern encapsulated by this argument is the contention that impact fees collected for $3m in "Property Acquisition" without further explanation runs the risk of being expended on some improper purpose. So, while UVHBA cites to Section 11-36a-301 as support for its conclusion that the Act requires a certain level of specificity of the IFFP in identifying public facilities,[51] in reality, its concern appears to be more appropriately derived from the Act's requirements regarding expenditures of impact fees. Section 11-36a-602 provides that the local government may only spend impact fees on "system improvement[s] (a) **identified** in the impact fee facilities plan; and (b) for the specific public

[48] UTAH CODE § 11-36a-301.
[49] *See* UTAH CODE § 11-36a-102(17).
[50] UTAH CODE § 11-36a-305(1)(b).
[51] The only substantive provision of the language in Section 11-36a-301 cited by UVHBA is merely that the political subdivision prepare an IFFP before imposing an impact fee. The language that an IFFP "determine[s] the public facilities required to serve development" is merely a statement of the IFFP's purpose, not its own substantive provision. To go any further to say that this particular use of "the" as an antecedent to "public facilities" in this provision, alone, imposes a requirement to name or specify public facilities in the IFFP to some acceptable standard of detail is an impermissible exercise of "inferring a substantive term into the statute." *See Ragsdale v. Fishler*, 2021 UT 29, ¶ 29 (The court "will not infer substantive terms into the text that are not already there . . . and [has] no power to rewrite the statute to conform to an intention not expressed.") (internal citation omitted). As for what is required to be included in the IFFP, that is found in Section 11-36a-302(a), which only states that the IFFP must "identify the existing level of service," "identify any excess capacity to accommodate future growth," "identify demands placed upon existing public facilities," and "*identify the means* by which the political subdivision . . . will meet those growth demands." (emphasis added). The plain language of the Act's IFFP provisions contain no independent requirement to identify specific facilities or improvements, as suggested by UVHBA.

facility type for which the fee was collected."[52] *This* provision, rather, is what establishes a requirement that—in order to collect and spend impact fees—an IFFP must "identify" facilities or improvements and specify for which of those a fee will be used.

UVHBA contends that the IFFP "does not specify what facilities [the property acquisition] expenditures are for anywhere in the IFFP or IFA." However, to the contrary, there is enough information in the IFFP and IFA overall to dissuade any concern that this $3m for "Property Acquisition" is improperly intended to fund some unidentified system improvement for an unrelated public facility in contradiction of Section 11-36a-602. Rather, the IFFP/IFA adequately illustrates that the $3m is not intended for anything other than the applicable acquisition needs of the City's proposed "system improvements," "identified" in Table 5-1 of the capital facilities plan,[53] and which are classified as regional parks and recreation facilities, "the specific type of public facilities for which the fee was collected."[54]

If the City intends to spend the identified $3m in impact fees for acquisition needs of any future park facility at an unspecified time, or "as driven by development" as the IFFP/IFA states, Table 5-1 illustrates that desire very poorly because it correlates that $3m of expenditures to the year 2025, specifically. Perhaps a better practice would have been to include estimated acquisition costs within the individualized estimated cost of each listed project. Instead, by listing the $3m for "Property Acquisition" as its own line-item in Table 5-1 and correlating it to the year 2025 specifically, the City has made it appear that the anticipated $3m for property acquisitions stands

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[52] UTAH CODE § 11-36a-602(1)(a)-(b) (emphasis added).

[53] Table 5-1 contains a total of 10 line-items totaling a 2019 estimated cost of $23,957,959, which include seven line-items for progressive phases of the four named parks (Silverlake Community, Cory Wride Memorial, Smith Ranch Regional, and Pony Express Regional), two line-items each labeled "Recreational Trial," and a final line-item for the "Property Acquisition" in question. Though there seems to be some contradictory references that the $3m may specifically apply to either the four named parks only, or may instead be entirely devoted to the two conceptual recreation trails, either way, the available suggestions point only to facilities listed in Table 5-1, as discussed below:

The IFFP's Capital Facilities Plan does at least state that the "recreational trails are conceptual and no land has been set aside at this time for their planning or construction." Also, the future facility project descriptions associated with the two recreational trails each state that they include "buying and developing new property." It could be argued that the inference to be drawn from these scarce references in the IFFP is that, other than the proposed trails, the City already has the land for the future parks it has planned, and the "Property Acquisition" is limited to the two recreational trails. However, the City's arguments submitted for consideration for this Advisory Opinion suggest that this "Property Acquisition" category may apply generally to acquisition needs for any of the City's impact fee eligible projects.

An alternate conclusion is that the IFFP suggest that the recreation trails and property acquisition costs are all included as part of the costs for the four named parks. The IFFP's executive summary states that the City has identified "four parks" to be constructed in the next six years totaling approximately $23,957,959—the same total figure from Table 5-1 that includes not only the four named parks, but also the two recreation trails and property acquisition costs. The IFFP provides the City's "Conceptual Regional Parks and Recreation Capital Facilities Plan," which details all known future projects spanning up to and beyond 2035. Table 5-1 then lists the specific impact fee eligible projects slated to be built using impact fees within the next six years. All of the line items in Table 5-1 are conceptual projects taken from Table 4-1, except for the line item "Property Acquisition." Additionally, the IFFP provides separate descriptions of each project listed in Table 5-1—all except for "Property Acquisition." Taken together, it is clear that the allocated $3m for property acquisition costs is taken from and included in the overall costs of the planned facilities likewise found in Table 5-1, and does not represent an intention to expend impact fees on some unidentified project.

[54] *See* UTAH CODE § 11-36a-602(1)(a)-(b).

independent of the other listed projects in Table 5-1, and are expected to occur only in 2025,[55] which does not appear to be the City's intention when the IFFP/IFA is considered as a whole.

Ultimately, the City's IFFP/IFA comport to the requirements of the Act in regards to expenditures for property acquisition to the extent that the $3m estimated for acquisition will only be used in support of the other identified parks and recreation system improvements in the IFFP, the type of public facility for which the anticipated $3m in fees will be collected.

Question 7: "Can Eagle Mountain City fail to disclose how average household size was derived when the data in the sources it references do not exist?"

The City's park impact fees per home are calculated as the fee per person multiplied by the average number of people occupying single family and multifamily homes. The IFFP and IFA both cite to "2018 American Community Survey (ACS) Five-Year Estimates" as the basis to establish average household size for single family homes at 4.41 persons per occupied unit and for multifamily homes at 3.09 persons per occupied unit.

In its Request for an Advisory Opinion, UVHBA argues that the ACS, in fact, does not provide the data referenced by the city, and claims that on several occasions the City was asked to provide but failed to disclose the census data used to support the IFFP's/IFA's conclusions. The City has since responded that the data can be found using ACS Census data, specifically Census table DP04 and B25033, and included a copy of the same with its responsive submissions. UVHBA argues that such data was required to be included in the IFFP and IFA, and including it now does not bring those documents into compliance with the Act.

None of UVHBA's submissions, however, make any citation to the Act in asserting a violation. As such, UVHBA has failed to meet its burden to show a violation has occurred as it is not enough to "contest[] the means by which the City arrived at its fee calculations," but the challenger must "articulate why [the city]'s fees are unreasonable" or "would have resulted in a different fee" had the Act been properly applied.[56]

We note that the Act requires a local government to "identify how the impact fee was calculated,"[57] and in calculating an impact fee, base its amounts "on realistic estimates, and the assumptions underlying those estimates shall be disclosed in the impact fee analysis."[58] Without a developed

[55] We believe that the manner of including the $3m in property acquisition in Table 5-1 raises additional concerns with the City's costs estimations, partly discussed earlier in answer to Question 2 (*see* text and footnote 34). Namely, the IFA relies on the estimated construction cost and anticipated construction years for each listed facility when applying the assumed construction cost inflation rate of 3.34%. Where the City has expressed the position that it is not tied to the construction schedule, and that acquisition costs will be incurred as the need or opportunity arises, correlating the $3m to a particular construction year likely has an adverse effect on the total cost estimation when incorporating inflation based on the construction years listed. Additionally, as the rate of 3.34% appears to be an index for construction costs specifically, the costs required for property acquisition do not likely include any actual construction costs, and are more likely encapsulated by some other index looking at the inflation of land value or change in real estate market value. However, as discussed in the answer to Question 5, above, such concerns will become salient when the estimates are borne out in an as applied challenge to a particular fee.

[56] *Home Builders Ass'n v. City of N. Logan*, 1999 UT 63, ¶ 13.

[57] UTAH CODE § 11-36a-304(1)(e).

[58] UTAH CODE § 11-36a-305(2).

argument to the contrary, the City's enactment facially complies with these requirements by disclosing the source of the assumptions used to calculate its impact fees.

Question 8: "Can Eagle Mountain overcharge impact fees by assuming every residential unit is occupied all the time?"

UVHBA notes that the City assesses parks impact fee on all residential building permits without an adjustment for vacancy rates, and argues that because impact fees may not mitigate more than the impact of the new development, by not accounting for vacancy, the fee collected is in excess of mitigation needed. UVHBA suggests that this could be remedied simply by taking the average number of persons per residential unit considering all residential units and not just those that are occupied.

This question is another example of an "as applied" issue that is a nonstarter in a facial challenge. The Act employs approximative language in requiring a local government to "identify the *anticipated* impact" on capacity caused by "the *anticipated* development activity," "demonstrate how the anticipated impacts . . . are *reasonably* related to the anticipated development activity," and to "*estimate* the proportionate share" of costs.[59] The local government must further "base amounts calculated on realistic estimates" and disclose the assumptions underlying those estimates.[60]

UVHBA demands that the City consider an assumption—vacancy rate—in the City's estimation that the City did not, at least formally, consider. In other words, UVHBA believes that the City estimated incorrectly and suggests an alternate way to make an estimation. But ultimately, the level of exactness imposed by the Act's requirements for impact fee enactments are limited to just that—estimations and assumptions. The Act *does* contain a number of factors that *must* be considered by the local government, if applicable.[61] However, vacancy rate is not one of these required factors,

[59] UTAH CODE § 11-36a-304(1) (emphases added).
[60] UTAH CODE § 11-36a-305(1).
[61] *See* UTAH CODE § 11-36a-304(2): "In analyzing whether or not the proportionate share of the costs of public facilities are reasonably related to the new development activity, the local political subdivision or private entity, as the case may be, shall identify, if applicable:

> (a) the cost of each existing public facility that has excess capacity to serve the anticipated development resulting from the new development activity;
> (b) the cost of system improvements for each public facility;
> (c) other than impact fees, the manner of financing for each public facility, such as user charges, special assessments, bonded indebtedness, general taxes, or federal grants;
> (d) the relative extent to which development activity will contribute to financing the excess capacity of and system improvements for each existing public facility, by such means as user charges, special assessments, or payment from the proceeds of general taxes;
> (e) the relative extent to which development activity will contribute to the cost of existing public facilities and system improvements in the future;
> (f) the extent to which the development activity is entitled to a credit against impact fees because the development activity will dedicate system improvements or public facilities that will offset the demand for system improvements, inside or outside the proposed development;
> (g) extraordinary costs, if any, in servicing the newly developed properties; and
> (h) the time-price differential inherent in fair comparisons of amounts paid at different times."

and while possibly relevant, should not be inferred into the statute as mandatory.[62] The City's failure to include a particular assumption preferred by UVHBA in its estimation does not amount to a facial violation of the Act. If, at some point, the City's failure to account for vacancy rates in its estimation results in a paid fee that is actually disproportionate to the paying developer's impact, that may be contested in an "as applied" challenge.

> *Question 10: ". . . Can Eagle Mountain city charge impact fees for projects that have been completed and the city council was duly informed that the impact fee should be reduced to reflect the completed projects costs?"*

On May 5, 2020, Eagle Mountain City Council considered an amendment to their transportation impact fee based on information that some public facility projects had been completed, and therefore the impact fee was proposed to be reduced. Ultimately, however, the decision was tabled. In its request for an Advisory Opinion, UVHBA alleges that this IFA draft still had yet (as of May 2020) to come back to the city council.

The City responds that, based on questions and concerns raised at the city council meeting with respect to Transportation Impact Fee, it was determined that additional analysis was necessary prior to adopting the update. The City disagrees that it must reduce its impact fee immediately because a draft analysis showed a potential reduction.

There does not appear to be any disagreement that an impact fee should be reduced once it is established that adjustment is necessary because of completed costs. The dispute simply appears to be establishing the City's level of obligation, procedurally, in getting impact fees updated timely.

UVHBA, again, bears the burden of showing that the City's impact fee enactments—or in this case, it's failure to enact an amendment—facially violates the requirements of the Act. However, UVHBA articulates no argument as to how the Act has been violated. Therefore, that burden is not met. We note, however, that both the Act and the City's impact fee ordinances allow for exemptions, adjustments, and credits, on a project-by-project basis, where circumstances warrant such.[63]

[62] *See Ragsdale*, 2021 UT 29, ¶ 29 (The court "will not infer substantive terms into the text that are not already there . . . and [has] no power to rewrite the statute to conform to an intention not expressed.") (internal citation omitted).
[63] *See* UTAH CODE 11-36a-402; EAGLE MOUNTAIN CITY, Ordinance No. O__-2020, Section 5 (June 2, 2020).

CONCLUSION

Because Eagle Mountain City's Impact Fee Facilities Plan and Impact Fee Analysis incorporate all mandatory considerations imposed by Utah's Impact Fee Act, the City's impact fee enactment does not amount to an invalid process. Where the challenge presented is not based on an actual fee payment by a developer, Utah Valley Home Builders Association may not challenge the facially valid impact fee enactment by simply disagreeing with the methods, formulas, or assumptions used by the City to arrive at its calculations. The question of whether the City's calculated fee will ultimately result in causing a particular developer to bear a disproportionate burden in relation to the benefit received must be separately reviewed on an as applied basis where a fee is paid.

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:

Fionnuala Kofed, City Recorder
City of Eagle Mountain
1650 East Stagecoach Run
Eagle Mountain, Utah 84043

On this ___ Day of _____, 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