

Advisory Opinion #147

Parties: Camm & Jan Arrington and Town of Mantua

Issued: October 31, 2014

TOPIC CATEGORIES:

Exactions on Development Impact Fees

A fee charged to fund capital facilities (including water rights), which is imposed as a condition of approval, is an impact fee, and must comply with the Impact Fees Act. A fee that was not imposed as a condition of approval is not necessarily an impact fee, but may be an exaction, which must satisfy rough proportionality analysis.

DISCLAIMER

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



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ADVISORY OPINION

Advisory Opinion Requested by: Camm & Jan Arrington
Local Government Entity: Town of Mantua
Property Owner: Camm & Jan Arrington
Type of Property: Residential Subdivision
Date of this Advisory Opinion: October 31, 2014
Opinion Authored By: Elliot R. Lawrence
Office of the Property Rights Ombudsman

Issues

Is a “water supply fee” an impact fee?

Summary of Advisory Opinion

A fee to help fund public facilities charged by an entity with authority to permit or deny a development application, must comply with the Impact Fees Act. An impact fee that does not comply with the Act is invalid and cannot be imposed. Required contributions that are not impact fees may still be exactions, which must satisfy rough proportionality analysis.

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 UTAH CODE § 13-43-205. 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 Camm and Jan Arrington on May 29, 2014. A copy of that request was sent via certified mail to Robert Ash, of the Town of Mantua at 417 So. Willard Peak Road, Mantua, Utah. According to the return receipt, the City received the Request on June 13, 2014.

Evidence

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

1. Request for an Advisory Opinion, with attachments, submitted by the Arringtons, received by the Office of the Property Rights Ombudsman on May 29, 2014
2. Response submitted on behalf of the Town of Mantua, including attachments, submitted by Bruce L. Jorgensen, Olson & Hoggan, PC, received on July 3, 2014.
3. Reply submitted the Arringtons, received August 20, 2014.
4. Response submitted by Mantua, received September 10, 2014.

Background

Camm and Jan Arrington purchased a four-acre parcel in Mantua, Utah, intending to divide the parcel, creating two lots, build a home on one (“the East Lot”), and sell the other lot (“the West Lot”). In the spring of 2010, the Arringtons sought approval from the Town of Mantua to divide their property. Representatives from the Town’s Planning and Zoning Committee assisted them, and explained the requirements for subdivision approval.

One of the requirements concerned securing adequate water for the proposed development. This requirement could be met by transferring water rights (or shares in a water company) to the Town, or by payment of a “water supply fee,” for the purchase of water rights or shares. The Water Supply Fee is calculated based on the projected water usage for a lot. For one of the Arrington’s lots, a total 4.07 acre-feet was determined to be needed.¹

The Town explains that it implemented a policy to defer payment of the Water Supply Fee for the first lot in a subdivision. The fee for that lot would be included in the impact fees paid due when a development permit was approved. The Arringtons paid the fee, which totaled \$12,769.26.² The subdivision was approved by the Town Council on June 3, 2010.³

¹ The amount of water was the total projected annual use for culinary (indoor) water (.45 a-f), and outside watering (3.62 a-f per acre). The area to be watered totaled about 1 acre, so the total water use was 4.07 a-f (3.62 + .45). When the Arringtons subdivided their property in 2010, the applicable fee was determined to be \$3,137.41 per acre-foot, for a total of \$12,769.26. An acre-foot is the volume needed to cover one acre with one foot of water.

² According to the information provided for this Opinion, the Town has not used the Arrington’s Water Supply Fee to purchase water rights for the lots.

³ The Arringtons paid the Water Supply Fee when the subdivision was approved. The fee was charged per lot. Since the Town deferred payment for the first lot in a subdivision, the fee was required for only one lot. It appears that no Water Supply Fee has been paid for the other lot.

Although the Arrington's subdivision was approved in June of 2010, they did not immediately begin construction. In September of 2012, they sold the West Lot to Frank Fullmer, who owned the property adjacent to that lot. According to the Arringtons, the Water Supply Fee was not discussed or included in the purchase of the West Lot. In November of 2013, the Arringtons state that Mr. Fullmer requested that the Town approve a transfer of the Water Supply Fee they had paid from the East Lot to the West.

In the fall of 2012, the Arringtons decided against building their new home, due to health concerns. In December of 2013, Mr. Fullmer tendered a written offer to purchase the East Lot. The offer included the "prepaid water impact fee."⁴ The Arringtons sold the East Lot to Mr. Fullmer in April of 2014. The sale contract specifically stated that no water rights or water shares were being transferred with the property. With the purchase in April of 2014, Frank Fullmer owned both the East and West Lots, but, prior to that purchase, the Town Council had evidently agreed that the Water Supply Fee could be "transferred" to Mr. Fullmer, although the Arringtons have not approved of any fee transfer.⁵

In addition to the Water Supply Fee, the Town also charges water impact fees. According to the Town, the Water Supply Fee may be deducted from the water impact fee.⁶ Thus, if the Arringtons had built their home, their impact fees would have been reduced by the amount of the Water Supply Fee they paid. As of the date of this Opinion, there has been no new construction on either the East or the West Lot, so no impact fees have been collected.⁷

Throughout the subdivision approval process, the Water Supply Fee was referred to as an "impact fee," including several times in recorded remarks by Town officials. The Town, however, explains that the Water Supply Fee is not an impact fee, nor has it ever been, and that statements calling the Water Supply Fee an impact fee are in error.⁸ The Arringtons argue that the Water Supply Fee is (or should be) considered an impact fee, and that they are entitled to a refund, because they have not undertaken any development.

⁴ November 27, 2013 Letter to Cam Arrington from Frank Fullmer (Offer to purchase Lot 2). This offer letter was dated after the Town Council meeting on November 21, so it is possible that Mr. Fullmer was asking if it was possible to transfer the Water Supply Fees so that they applied to the other lot, meaning that the Water Supply Fee requirement for that lot would be fulfilled. Since Mr. Fullmer owns both lots, the transfer issue may be moot.

⁵ It is not clear what the "transfer" of the Water Supply Fee meant to any of the parties involved. The Town Council's minutes from November 21, 2013 notes that "[t]he Council is in agreement that the water impact fees be transferred from Cam Arrington to Frank Fullmer." In the materials submitted for this Opinion, the Town clarified that a fee transfer "could" happen, but only if the Arringtons agreed.

⁶ Town of Mantua, Ordinance 2008-07-24A, § 7. ("Water rights portion of the Impact Fee to be waived if equivalent water rights or shares are dedicated to the Town.") The water impact fees include storage and other infrastructure costs, in addition to water rights.

⁷ If both lots are developed, the water impact fee for one of them will include the full charges for water rights, because the Water Supply Fee has been paid for one lot only.

⁸ The Town states that "impact fee" was used as more of a "generic" term for any fee charged to a new development or subdivision, and that the Town's ordinances clearly distinguish between impact fees and other types of development fees.

Analysis

I. The Water Supply Fee is an Impact Fee, and Must Satisfy the Impact Fees Act.

A. The Water Supply Fee is an Impact Fee

1. The Water Supply Fee Must be Considered an Impact Fee

The Water Supply Fee is an impact fee, and is thus subject to the Impact Fees Act. An impact fee is “a payment of money imposed upon new development activity as a condition of development approval to mitigate the impact of the new development on public infrastructure.” UTAH CODE ANN. § 11-36a-102(8)(a). Subdivision plat approval constitutes “development activity,” because it is a “change[] in the use of land that creates additional demand and need for public facilities.” *Id.* § 11-36a-102(3).⁹ The Water Supply Fee fits that definition, because it is a payment of money required as a condition of the subdivision plat approval. Since the Arrington's subdivision was a change in land use that created an additional demand for water, the Town's Water Supply Fee must be considered as a type of impact fee.¹⁰

This conclusion follows from the Utah Supreme Court's analysis in *Washington County Water Conservancy District v. Keystone Conversions LLC*, 2004 UT 84, 103 P.3d 686 (“*Keystone*”). In that matter, the Court reviewed a “water availability fee” imposed by the Washington County Water Conservancy District when a developer requested water service.¹¹ Keystone Conversions proposed a residential subdivision in Toquerville, and was required to secure irrigation water as a condition of development approval. Keystone objected to the water availability fee, arguing that it was an impact fee.¹²

The Court disagreed, concluding that the district's water availability fee was not a condition of development approval, and so it could not be an impact fee. The Court reasoned that the availability fee was not part of the approval process, because it did not authorize any development activity. *Id.*, 2004 UT 84, ¶26, 103 P.3d at 693.¹³ If the fee had authorized development activity, it would need to comply with the impact fees act.

⁹ Development approval includes “any written authorization from a local political subdivision that authorizes the commencement of development activity.” UTAH CODE ANN. § 11-36a-102(4)(a). *See also Call v. West Jordan*, 614 P.2d 1257 (Utah 1980)(Impact fee imposed as condition of subdivision approval).

¹⁰ The Water Supply Fee was imposed to purchase enough water rights to serve one lot in the subdivision.

¹¹ *Keystone*, 2004 UT 84, ¶ 6, 103 P.3d at 689. The *Keystone* decision did not explain the District's justification for the availability fee. The *Keystone* decision was issued in 2004, and cites a previous version of the Impact Fees Act. The Act was renumbered in 2011, but the language of the previous act was preserved. *See* 2011 Utah Laws 47 (S.B. 146).

¹² *Id.*, 2004 UT 84, ¶ 9, 103 P.3d at 689. Keystone argued that the water availability fee was “necessary predicate” for subdivision approval, and was thus an impact fee under the definition found in the Impact Fees Act.

¹³ “Although a developer would need the Water District's written approval if he or she desires to connect to the Water District's System, a developer does not require the Water District's approval in or to build on its own property. Consequently, any approval given by the Water District does not actually ‘authorize the commencement of development activity.’” *Keystone*, 2004 UT 85, ¶ 26, 103 P.3d at 693 (internal quotation in original). In 2010, the

The Impact Fees Act contemplates that if an entity with the power to permit or prevent certain development activities imposes a fee as a condition of proceeding with development in order to fund public facilities and services that will be dissipated by the development, then that entity must satisfy the various requirements of the Impact Fees Act.

Id., 2004 UT 84 ¶25, 103 P.3d at 693.

The Water Supply Fee imposed by the Town of Mantua has the element that was missing in the fee analyzed in *Keystone*. The Town had the power to permit or deny the Arrington’s subdivision, and the fee was imposed to finance public facilities required because of the proposed development.¹⁴ Thus, the Court’s analysis in *Keystone* demands the conclusion that the Water Supply Fee is in fact an impact fee.

2. The Water Supply Fee Does Not Qualify as Exempt From the Impact Fees Act

The Water Supply Fee is not exempt from the Impact Fees Act. It is not a “fee for project improvements” because the proceeds from the fee are intended to purchase water rights for the Town. Section 11-36a-102(8)(b) provides that some types of fees, including fees for project improvements, are not considered “impact fees.”

“Project improvements” means site improvements and facilities that are:

- (i) planned and designed to provide service for development resulting from a development activity;
- (ii) necessary for the use and convenience of the occupants or users of development resulting from a development activity; and
- (iii) not identified or reimbursed as a system improvement.

UTAH CODE ANN. § 11-36a-102(14)(a). In order to remove the Water Supply Fee from the definition of “impact fee,” it must be for a *site* improvement or facility that is designed to provide service for the convenience of the users of the development. While the water rights purchased with the Water Supply Fee are facilities which provide service needed because of the development on the Arrington’s subdivision, and which are necessary for the convenience of the future occupants of that subdivision, the rights are not *exclusive* to that lot. In other words, they are not *site* improvements or facilities.

The water rights, if purchased, belong to the Town, and become part of the Town’s supply of water for all of its residents. To illustrate, if a home were built on the West Lot, and the occupants use less water than what is calculated for the property, the occupants would not be able to sell or lease the “extra” water. The water rights do not belong to the property owners, and

definition of “development approval” was amended to include authorization from a water supplier to reserve a water right. *See* 2010 Utah Laws 203 (S.B. 37).

¹⁴ Water rights are “public facilities” under the Impact Fees Act. *See* UTAH CODE ANN. § 11-36a-102(16)(a). The Water Supply Fee was to be used by the Town to purchase water rights.

they are not limited to any single lot. Thus, they cannot be considered “project improvements,” and the Water Supply Fee is not excluded from the definition of impact fee.¹⁵

The Water Supply Fee must be considered an impact fee, because it meets the definition found in the Impact Fees Act, despite the Town’s insistence that it is some other type of fee.

(1) A fee that meets the definition of impact fee under Section 11-36a-102 is an impact fee subject to this chapter [Chapter 11-36a, the Impact Fees Act], regardless of what term the local political subdivision or private entity uses to refer to the fee.

(2) A local political subdivision or private entity may not avoid application of this chapter to a fee that meets the definition of an impact fee under Section 11-36a-102 by referring to the fee by another name.

UTAH CODE ANN. § 11-36a-204. In addition, the Town’s officials referred to the Water Supply Fee as an “impact fee” on numerous occasions, and the Town’s ordinances provide that the Water Supply Fee may be deducted from the Town’s water impact fees. Finally, the Town’s policy deferring payment of the Water Supply Fee for the first lot of a subdivision until impact fees are paid for that lot bolsters the conclusion that the Water Supply Fee must be treated as an impact fee.

B. The Water Supply Fee Must Comply With the Impact Fees Act.

Since the Water Supply Fee is an impact fee, it must comply with the Impact Fees Act in order to be valid. “A local political subdivision or private entity shall ensure that any imposed impact fees comply with the requirements of this chapter.” UTAH CODE ANN. § 11-36a-201(1). An impact fee that does not comply with the Impact Fees Act is invalid and cannot be charged. By the Town’s own admission, the Water Supply Fee does not comply with the Impact Fees Act.¹⁶ The Water Supply Fee is therefore invalid, and should be refunded.¹⁷

In addition, even if the Water Supply Fee were a validly-imposed impact fee, the Arringtons could claim a refund as provided in the Impact Fees Act:

A local political subdivision shall refund any impact fee paid by a developer, plus interest earned, when:

- (1) the developer does not proceed with the development activity and has filed a written request for a refund;
- (2) the fee has not been spent or encumbered; and

¹⁵ In addition, the Town’s water systems include water rights. See “Town of Mantua Impact Fee Analysis” (April 28, 2008). A “system improvement” (such as publicly-owned water rights) cannot be “project improvements.” UTAH CODE ANN. § 11-36a-102(14)(b).

¹⁶ In the materials submitted for this Opinion, the Town stated that the Water Supply Fee was not enacted in accordance with the requirements of the Impact Fees Act.

¹⁷ The Town imposes a water impact fee, which evidently includes the amount necessary to purchase water rights. If the Arrington subdivision is ever developed, the water impact fees may ensure that the Town has sufficient water to serve whatever development occurs on the property.

(3) no impact has resulted.

Id., § 11-36a-603.¹⁸

II. The Water Supply Fee is Also a Type of Exaction, Which Must Satisfy Rough Proportionality Analysis.

Even if the Water Supply Fee is not an impact fee, it would still be considered an exaction, which must satisfy rough proportionality analysis. “A development exaction is a government-mandated contribution of property imposed as a condition of approving a developer’s project.” *B.A.M. Development, LLC v. Salt Lake County*, 2012 UT 26, ¶16, 282 P.3d 41, 45 (“*BAM III*”). The Water Supply Fee was mandated by the Town as a condition of the Arrington’s subdivision. It therefore qualifies as an exaction.¹⁹ “[M]onetary exactions’ must satisfy the nexus and rough proportionality requirements” *Koontz v. St. Johns River Water Management District*, 133 S.Ct. 2586, 2599 (2013).²⁰

In order to be valid, exactions must satisfy the “rough proportionality” analysis found at § 10-9a-508 of the Utah Code.

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

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

UTAH CODE ANN. § 10-9a-508(1).²¹

The Utah Supreme Court observed that the language of § 10-9a-508 was borrowed directly from the U.S. Supreme Court analyses in *Nollan v. California Coastal Comm’n*, 483 U.S. 825, 107 S.Ct. 3141 (1987) and *Dolan v. City of Tigard*, 512 U.S. 374, 114 S.Ct. 2309 (1994). (See *B.A.M. Development v. Salt Lake County*, 2006 UT 2, ¶ 41, 128 P.3d 1161, 1170). In those two landmark cases, the U.S. Supreme Court promulgated rules for determining when an exaction may be

¹⁸ The Town argues that the Arringtons had the responsibility to ask if the Water Supply Fee was refundable prior to paying it. However, under the Impact Fees Act, the governmental entity imposing the fee clearly has the responsibility of ensuring that any impact fee complies with the Act.

¹⁹ An impact fee is a type of exaction as well. See *Keystone*, 2004 UT 84, ¶3, 103 P.3d at 688. The analysis required by the Impact Fees Act satisfies the “rough proportionality” analysis required for exactions.

²⁰ The U.S. Supreme Court explained that rough proportionality test “protects the Fifth Amendment right to just compensation for property the government takes when owners apply for land-use permits.” *Koontz*, 133 S.Ct. at 2594 (citations omitted).

²¹ Subsection (3) of § 10-9a-508 requires that any exactions for water interests must be limited to the amount of water needed to provide service. It appears that the Town’s required Water Supply Fee is based on the amount of water needed for one of the lots in the Arrington subdivision.

validly imposed under the federal constitution's Takings Clause.²² This has come to be known as the *Nollan/Dolan* "rough proportionality" test, and that two-part analysis has been codified in § 10-9a-508.

The Utah Supreme Court further honed the "rough proportionality" analysis in *B.A.M. Development, LLC v. Salt Lake County*, 2008 UT 45, 196 P.3d 601 ("*B.A.M. II*"), which was a second appeal stemming from the same development project at issue in the earlier decision. This opinion explained that rough proportionality analysis "has two aspects: first, the exaction and impact must be related in nature; second, they must be related in extent." *B.A.M. II*, 2008 UT 45, ¶ 9, 196 P.3d at 603. The "nature" aspect focuses on the relationship between the purported impact and proposed exaction. The court agreed that the approach should be expressed "in terms of a solution and a problem . . . [T]he impact is the problem, or the burden which the community will bear because of the development. The exaction should address the problem. If it does, then the nature component has been satisfied." *Id.*, 2008 UT 45, ¶ 10, 196 P.3d at 603-04.

The "extent" aspect of the rough proportionality analysis measures the impact against the proposed exaction in terms of cost:

The most appropriate measure is cost—specifically, the cost of the exaction and the impact to the developer and the municipality, respectively. The impact of the development can be measured as the cost to the municipality of assuaging the impact. Likewise, the exaction can be measured as the value of the land to be dedicated by the developer at the time of the exaction.

Id., 2008 UT 45, ¶ 11, 196 P.3d at 604. The court continued by holding that "roughly proportional" means "roughly equivalent." Thus, in order to be valid, the cost of an exaction must be roughly equivalent to the cost that a local government would incur to address (or "assuage") the impact attributable to a land use.

Utah's Supreme Court later summarized the analysis, tying the exaction to the needs created by the development. "[N]ot only must the *nature* of an exaction relate to government purpose or need (in that the exaction must alleviate the burdens imposed on infrastructure by the development), but the *extent* of the exaction must also be roughly proportional to the government's need for infrastructure improvements created by the development." *BAM. III*, 2012 UT 26, ¶26, 282 P.3d at 47.

In 2010, the Town of Mantua imposed the Water Supply Fee as a means of acquiring sufficient water for the Arrington's proposed home. However, that development was not carried out, and it appears that for the foreseeable future, no development is planned for the property. The

²² See U.S. CONST., amend. V. ("nor shall private property be taken for public use, without just compensation"). The Supreme Court has interpreted the Takings Clause as limiting a government's ability to impose conditions on development. Furthermore, "[t]he Utah Constitution reinforces the protection of private property against uncompensated governmental takings . . ." *B.A.M. I*, 2006 UT 2, ¶ 31, 128 P.3d at 1168. See also UTAH CONST. art. I, § 22 ("Private property shall not be taken or damaged for public use without just compensation").

Arringtons have thus paid an exaction that is not roughly proportional to the Town's need for water. Since the exaction is not proportionate to the Town's need, it should be returned.²³

Conclusion

The Town's required water supply fee meets the definition of an impact fee, as provided in the Utah Code. It was required as a condition of proceeding with the Arrington's subdivision, and does not qualify for one of the exceptions to the definition of "impact fee." It is not related to an improvement or facility exclusive to a single development, but is intended to increase the Town's water supply available to all residents.

Since the Water Supply Fee meets the definition of an impact fee, it must comply with the Impact Fees Act, regardless of what name it is given. The Town admits that the fee was not adopted in accordance with the Impact Fees Act, so it cannot be a valid impact fee. Since it is not valid, it must be refunded.

Even if the Water Supply Fee were not considered an impact fee, it would still qualify as an exaction, which must satisfy the "rough proportionality" analysis required by the U.S. Supreme Court and the Utah Code. In summary, an exaction must be proportional to the public needs for infrastructure attributable to the development. Since there has been no development on the Arrington subdivision, the Water Supply Fee is disproportional to the impact caused by the subdivision. If there is development in the future, the Town may require transfer of sufficient water rights to meet the needs of the development.

Brent N. Bateman, Lead Attorney
Office of the Property Rights Ombudsman

²³ As stated above, if homes are built on the lots, the Town could require as an exaction transfer of sufficient water rights as a condition on a building permit (or enough funds to purchase such rights). If that exaction satisfies rough proportionality analysis, it would be valid.

NOTE:

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

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

An advisory opinion issued by the Office of the Property Rights Ombudsman is not binding on any party to a dispute involving land use law. If the same issue that is the subject of an advisory opinion is listed as a cause of action in litigation, and that cause of action is litigated on the same facts and circumstances and is resolved consistent with the advisory opinion, the substantially prevailing party on that cause of action may collect reasonable attorney fees and court costs pertaining to the development of that cause of action from the date of the delivery of the advisory opinion to the date of the court's resolution.

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 provisions, found in Utah Code § 13-43-206, 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 Ann. § 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:

Robert Ash
Town of Mantua
417 S. Willard Peak Rd.
Mantua, Utah 84324

On this _____ Day of October, 2014, 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