

Advisory Opinion #223

Parties: Nic Porter and Logan City

Issued: May 5, 2020

TOPIC CATEGORY:

**Compliance with Land Use Ordinances
Interpretation of Ordinances
Requirements Imposed on Development
Subdivision Plat Approval**

The City may require plats for single-family residential subdivisions with forty-six lots to use the sixty-foot-wide Residential Street cross section rather than the twenty-foot-wide Private Street cross section as required in the City's Land Use Code and Logan Standard & Specifications Manual. The narrower Private Street cross section is not an option for subdivisions serving single-family residential lots.

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: Nic Porter

Local Government Entity: Logan City

Applicant for Land Use Approval: Nic Porter

Type of Property: Residential

Date of this Advisory Opinion: May 5, 2020

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

ISSUE

May Logan City require plats for single-family residential subdivisions to use the Residential Street cross section rather than the Private Street cross section from the Logan City Standards & Specifications Manual?

SUMMARY OF ADVISORY OPINION

Logan City may require plats for single-family residential subdivisions with forty-six lots to use the sixty-foot-wide Residential Street cross section rather than the twenty-foot-wide Private Street cross section as required in the Logan Land Use Code and Logan Standard & Specifications Manual. The narrower Private Street cross section is not an option for subdivisions serving single-family residential lots.

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 Nic Porter on March 2, 2020. A copy of that request was sent via certified mail to Teresa Harris, City Recorder, Logan City, 290 North 100 West, Logan, Utah 84321 on March 4, 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 Nic Porter on March 2, 2020.
2. Response letter submitted by Kymber D. Housely, City Attorney, Logan City, on March 16, 2020.
3. Email response from Nic Porter on March 30, 2020.
4. Email response from Kymber Housely on March 31, 2020.

BACKGROUND

Nic Porter is seeking plat approval for a forty-six lot single-family residential subdivision in Logan City, Utah. When the plat was submitted for review, the Logan City Standards & Specifications Manual¹ included a twenty-foot-wide Private Street cross section which Mr. Porter would like to use to serve lots on the plat.

Logan City maintains that the required street profile for the proposed development is the sixty-foot-wide Residential Street cross section and that the narrower Private Street cross section is only permitted as a private driveway in multi-family developments.

Mr. Porter has requested this Advisory Opinion to determine whether Logan City may require the Residential Street cross section rather than the narrower Private Street cross section of the Logan City Standards & Specifications Manual to be used in the forty-six lot single-family residential subdivision plat he has submitted for approval.

ANALYSIS

Ordinance interpretation requires application of the canons of statutory construction.² An analysis of the plain language of the ordinance always comes first,³ with the primary goal “to

¹ 2007 APWA Standard Plans, APWA Appendix A, Appendix of Logan Specific Plans.

² *Foutz v. City of South Jordan*, 2004 UT 75, ¶8.

give effect to the legislative intent, as evidenced by the plain language, in light of the purpose the statute was meant to achieve.”⁴ If the plain language of an ordinance is sufficiently clear, the analysis ends there.⁵

The Logan City Land Development Code requires that streets serving subdivisions with more than twenty lots have a minimum of three connections.⁶ Smaller subdivisions may be served by cul de sacs (one connection) or loop roads (two connections). The subdivision Mr. Porter proposes includes forty-six lots, and therefore, according to the Development Code, the interior roads must have three connections.

The Logan City Public Works Standard & Specifications Plan, Residential, #269S requires a standard road profile of sixty feet for residential streets with three connections. Therefore, by applying the plain language of the ordinances, Mr. Porter’s subdivision must be served by interior roads matching the required sixty-foot-wide Residential Street profile.

The Private Street Cross Section, Plan #264S, with a right of way of only twenty feet, is not noted as an option for subdivisions serving single family residential lots. Furthermore, the Private Street cross section detail includes a note which states “If planned to be a future city right-of-way, must comply with current city standards.”⁷ The current city standard, as outlined in the Logan City Development Code states that “all private streets . . . must be designed, built, and maintained to the same standard as public streets . . .”⁸ Therefore, to meet current street standards, the proposed streets must meet public street standards, which are those outlined above which requires forty-six lot subdivisions to be served by streets matching the sixty-foot-wide Residential Street profile.

Potential confusion could have been avoided had the Private Street cross section included a note indicating that it was only to be used for driveways in multi-family residential projects. Logan City has since removed the cross section from the Standards & Specifications Manual, so future confusion on this issue will be avoided.

In conclusion, Logan City may require Mr. Porter to follow the ordinances and standards set forth in the Logan City Land Development Code, as well as the Standard & Specifications Manual, which requires forty-six lot subdivisions to use the sixty-foot-wide right-of-way detailed on the Residential Street cross section, Plan #269S.

CONCLUSION

Logan City may require plats for single-family residential subdivisions with forty-six lots to use the sixty-foot-wide Residential Street cross section rather than the twenty-foot-wide Private Street cross section as required in the Logan Land Use Code and Logan Standard &

³ *Carrier v. Salt Lake County*, 2004 UT 98 ¶30.

⁴ *Foutz*, 2004 UT 75, ¶11.

⁵ *General Construction & Development, Inc. v. Peterson Plumbing Supply*, 2011 UT 1, ¶ 8.

⁶ Logan City Land Development Code § 17.30.170.E.2: Minimum Number of Street Connections by Size of Residential Development.

⁷ Logan City Standards & Specifications Manual, Private Street Cross Section, Plan No. 264S, Note 1.

⁸ Logan City Land Development Code § 17.29.120.

Specifications Manual. The narrower Private Street cross section is not an option for subdivisions serving single-family residential lots.

Jordan Cullimore, Lead Attorney
Office of the Property Rights Ombudsman

NOTE:

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

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

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

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 § 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:

Teresa Harris, City Recorder
Logan City
290 North 100 West
Logan, Utah 84321

On this 8th day of May, 2020, 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