

Advisory Opinion #26

Parties: Francis D. Eickbush, Oak Hills Surveying Associates, LC and Utah County

Issued: November 29, 2007

TOPIC CATEGORIES:

K: Compliance with Mandatory Land Use Ordinances

R(iv): Other Topics (Lot Line Adjustment within a Subdivision)

The Utah Code requires that any boundary line adjustment involving an exchange of title to property be reviewed and approved. The exchange of title to property through a boundary line adjustment is subject to County's procedures of review and approval even though it does not create a subdivision.

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: Francis D. Eickbush
Oak Hills Surveying Associates, L.C.

Local Government Entity: Utah County

Applicant for Land Use Approval: Brandi Tanner

Project: Lot Line Adjustment in Vivian Estates Subdivision

Date of Advisory Opinion: November 29, 2007

Issue

Does Utah County have the authority to require review and approval of a boundary line adjustment by adjoining owners of property within a subdivision adjusting their mutual boundary?

Summary of Advisory Opinion

Utah County ("County") has the authority, pursuant to *Utah Code Ann.* § 17-27a-608, to require review and approval of a boundary line adjustment by adjoining owners of property within a subdivision.

Request for Review

Francis D. Eickbush submitted a Request for an Advisory Opinion with the Office of the Property Rights Ombudsman dated August 6, 2007. Notice of the Request for an Advisory Opinion was sent by the Office of Property Rights Ombudsman to Utah County as the opposing party in the matter. Pursuant to *Utah Code Ann.* § 13-43:206, the parties agreed to have Lisa G. Romney as a neutral third party issue the advisory opinion.

Evidence

The following documents and information with relevance to the issue involved in this advisory opinion were reviewed and analyzed in preparation of this opinion:

1. Vivian Park Subdivision Plat dated September 21, 1915, and recorded in the Utah County Recorder's Office on October 5, 1915, as Entry No. 5535.
2. Boundary Line Agreement dated October 30, 2006, and recorded in the Utah County Recorder's Office on November 6, 2006, as Entry No. 148240:2006.
3. Boundary Line Agreement Survey Map dated August 2, 2007, for Lot 10 and Lot 11, Block B, of the Vivian Park Subdivision, Provo, Utah.
4. Letter dated August 6, 2007, from Francis D. Eickbush to Brent Bateman regarding lot line adjustment procedures.
5. Request for an Advisory Opinion dated August 6, 2007, as filed with the Office of the Property Rights Ombudsman by Francis D. Eickbush.
6. Memo dated September 30, 2007, by Francis D. Eickbush regarding lot line adjustments, definitions, purpose and process.
7. Email dated October 4, 2007, from David H. Shawcroft to Brent Bateman regarding advisory opinion request.
8. Letter dated October 17, 2007, from Francis D. Eickbush to Brent Bateman regarding advisory opinion request, including copy of Interior Lot Line Adjustment Survey Map for Coonradt Estates, Kamas, Utah, dated November 30, 2005.
9. Letter dated October 30, 2007, from David H. Shawcroft to Lisa G. Romney regarding Utah County's position on boundary line adjustments and procedures, including copy of Utah County Application for Lot Line Adjustment and Notice of Approval of Boundary Adjustments.
10. Fax dated October 31, 2007, from Francis D. Eickbush to Lisa G. Romney, including copy of Petition to Adjust Lots and Utah County Application for a Large Scale Development.
11. Fax dated November 14, 2007, from Francis D. Eickbush to Lisa a Romney, including copy of Warranty Deed dated May 14, 2004, and recorded in the Utah County Recorder's Office on May 18, 2004, as Entry No. 57215:2004, and copy of Quit Claim Deed dated June 10, 1980, and recorded in the Utah County Recorder's Office on June 12, 1980, as Entry No. 19947, Book 1839, Page 831.

Assumed Facts

1. The Vivian Park Subdivision Plat, dated September 21, 1915, was recorded in the Utah County Recorder's Office on October 5, 1915.
2. The boundary line adjustment at issue involves a boundary adjustment between existing subdivided lots within the Vivian Park Subdivision.
3. Utah County requires Planning Commission review and recommendation and County Commission review and approval of any boundary line adjustments between existing lots within a platted subdivision.

Background

Utah County requires adjacent property owners within a subdivision seeking to adjust their mutual boundaries to file an application for lot line adjustment with the County. The County requires all such applications for lot line adjustments to be reviewed by the Planning Commission and approved or denied by the County Commission. At the time of submittal of the request for an advisory opinion, Utah County required persons seeking a lot line adjustment to file an application entitled "Utah County Application for Large Scale Development." Since the filing of the request for an advisory opinion, in order to eliminate any future confusion or misunderstanding regarding procedures for lot line adjustments, the County has developed a revised application entitled "Application for Lot Line Adjustments." While the newly proposed form provides more clarity and guidance regarding lot line adjustments, the form of the application does not impact or alter the substantive issues in this matter, and it is therefore assumed that either form may be used by the County for purposes of this opinion.

Analysis

Mr. Eickbush has requested an advisory opinion as to whether Utah County has the authority to require review and approval of lot line adjustments between adjacent property owners within a subdivision. Pursuant to *Utah Code Ann.* § 17-27a-103(23), a "lot line adjustment" is defined as "the relocation of the property boundary line in a subdivision between two adjoining lots with the consent of the owners of record."¹ The term "subdivision" is defined in Subsection 17-27a-103(42), and provides that a subdivision does not include, among other listed matters, "a recorded agreement between owners of adjoining subdivided properties adjusting their mutual boundary if: (A) no new dwelling lot or housing unit will result from the adjustment; and (B) the adjustment will not violate any applicable land use ordinance." Thus, by definition, a lot line adjustment is not a subdivision of property.

¹ While the term "lot line adjustment" is defined in Section 17-27a-103, it is not used elsewhere in Chapter 27a. For purposes of this opinion, I find no current definitional distinction between lot line adjustment and boundary line adjustment and will use the terms interchangeably. Under previous versions of the State statutes, a distinction between the two terms could have been made depending upon whether the boundary line adjustment was within a subdivision; *i.e.*, a lot line adjustment; or between two unsubdivided parcels; *i.e.*, a boundary line adjustment.

Lot line adjustments are also addressed in Section 17-27a-608. Subsection (7)(a) of this statute provides: "The owners of record of adjacent parcels that are described by either a metes and bounds description or a recorded plat may exchange title to portions of those parcels if the exchange of title is approved by the land use authority in accordance with Subsection (7)(b)." Subsection (7)(b) requires the land use authority to approve an exchange of title if the exchange of title will not result in a violation of any land use ordinance. If an exchange of title is approved by the land use authority, a notice of approval must be recorded in the county recorder's office executed by each owner included in the exchange and the land use authority and containing the information set forth in Subsection (7)(c).

It is Mr. Eickbush's position that since a mutual boundary adjustment agreement between owners of adjoining subdivided properties is not by definition a subdivision of property, such lot line or boundary line adjustment is not subject to regulation under the provisions of Part 6 of Title 17, Chapter 27a regarding subdivisions. In particular, it is Mr. Eickbush's position that a lot line adjustment is not subject to the provisions or procedural requirements of Section 17-27a-608. It is the County's position that the provisions of Section 17-27a-608 apply and authorize the County to require review and approval of lot line adjustments as currently regulated by the County.

The resolution of this issue is essentially a matter of statutory interpretation under applicable rules of construction. When interpreting a statute or statutes, the courts have noted that the goal is to give effect to the legislature's intent and purpose. *Grappendorf v. Pleasant Grove City*, 589 Utah Adv. Rep. 49, 2007 UT 84 (citations omitted). To that end, we must first look to the statute's plain language. *Id.* We are to read the plain language of the statute as a whole, and interpret its provisions in harmony with other statutes in the same chapter or related chapters. *Bluffdale Mountain Homes, LC v. Bluffdale City*, 167 P.3d 1016, 2007 UT 57. In addition, when conducting a textual analysis, we must consider the literal meaning of each term and avoid interpretations that will render portions of the statute superfluous or inoperative. *Id.* (citations omitted), As more specifically stated in *State v. Anderson*, 169 P.3d 778, 2007 UT App 304 ¶ 11 (quoting 2A Norman J. Singer, Sutherland Statutory Construction § 46:06 (4th ed. 1984)), "It is an elementary rule of construction that effect must be given, if possible, to every word, clause and sentence of a statute... .No clause[,] sentence or word shall be construed as superfluous, void or insignificant if the construction can be found which will give force to and preserve all the words of the statute."

Under the plain language of the statutes at issue, "subdivision" is defined to exclude a recorded agreement between owners of adjoining subdivided properties adjusting their mutual boundary so long as no new dwelling lot or housing unit will result from the adjustment and the adjustment will not violate any applicable land use ordinance. It is agreed and acknowledged that a mutual boundary line agreement does not constitute a subdivision under the terms of the statutes. However, the plain language of this definition must be read in context and harmony with the plain language of other statutes in this section and chapter. The exclusion of a lot line adjustment from the definition of subdivision excludes such lot line adjustments from the

subdivision plat requirements as set forth in *Utah Code Ann.* 17-27a-603 and -604. Specifically, Section 17-27a-603 provides that "[u]nless exempt under Section 17-27a-605 or excluded from the definition of subdivision under Section 17-27a-103(39), whenever any land is laid out and platted, the owner of the land shall provide an accurate plat" describing and specifying those matters required by statute.² Since a boundary line adjustment is excluded from the definition of subdivision under Section 17-27a-103, such boundary line adjustments are not subject to the *plating* requirements and procedures of Section 17-27a-603 and -604.

The legislature has also addressed lot line adjustments in Section 17-27a-608. As previously noted, Section 17-27a-608 requires that any boundary line adjustment involving an exchange of title to property be reviewed and approved by the applicable land use authority. Adhering to applicable statutory rules of construction, we must assume that each term or phrase included in the statute was used advisedly by the legislature and we must attempt to interpret such words and phrases in a manner which will give force and effect to all provisions. *State v. Anderson*, 169 P.3d 778, 2007 UT App 304 ¶ 11. Thus, it is assumed the legislature intended to require review by the local land use authority of boundary adjustments involving an exchange of title under Section 17-27a-608. In addition, such Section must be read in context with the definition of "subdivision" and in a manner to provide meaning to all provisions to the extent possible. Pursuant to these rules of construction, it is my opinion that although a boundary line adjustment between adjoining owners of property is not subject to subdivision plat requirements, the exchange of title of property through a boundary line adjustment is subject to the procedures set forth in Section 17-27a-608.

It is also a general rule of construction that the more specific provisions of a statute will prevail over the more general. *State v. Anderson*, 169 P.3d 778, 2007 UT App 304 ¶ 13. In this instance, the more specific procedures set forth in Section 17-27a-608 should prevail over the more general provisions set forth in the definitions or headings of the statutes. I am also not persuaded by the argument that Section 17-27a-608 should not apply in this case because it is entitled "Vacating or Changing a Plat." While the title or heading of a statute may be used under certain circumstances to construe a statute, it cannot generally be used to control the plain language of the statute. *American Smelting & Refining Co. v. State Tax Commission*, 16 Utah 2d 147, 393 P.2d 67 (Utah 1964). In this instance, the plain language provisions of Section 17-27a-608 regarding procedures for approval of boundary line adjustments involving the exchange of title to property is clear and unambiguous. The heading of this Section, although unfortunate, does not prevent the application of specific and detailed provisions therein regarding the procedure for boundary line adjustments involving the exchange of title to property.

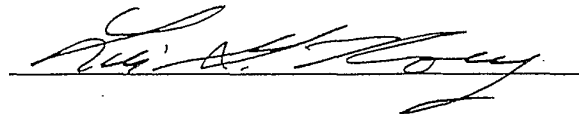
Although Section 17-27a-608 requires approval of boundary line adjustments by the land use authority and the recording of a notice of approval, it does not specify or address the procedures to be used for such approval. Based on general authority granted to the local land use

² The reference to Section 17-27a-103(39) refers to the definition of "sending zone." It is assumed that this is a technical reference error which has not been updated to accommodate more recent amendments to the definitions provided in Section 17-27a-103 and should actually refer to Subsection (42) regarding the definition of "subdivision."

authority, the procedures for approval of boundary line adjustments requiring review and recommendation by the Planning Commission and approval by the County Commission appears reasonable and within the County's discretion and authority. *Utah Code Ann.* § 17-27a-102 provides that "counties may enact all ordinances, resolutions, and rules that they consider necessary for the use and development of land within the county." In addition, *Utah Code Ann.* § 17-27a-104 provides that a county may enact an ordinance imposing stricter requirements or higher standards than are required by Chapter 27a. This authority is only restricted for ordinances or regulations regarding school districts, charter schools, manufactured homes, residential facilities for elderly persons, and residential facilities for persons with a disability. For these types of facilities or uses, counties are prohibited from imposing stricter requirements or higher standards than provided by statute. The list does not include subdivision or lot line adjustment provisions. Under the broad delegation of power to local entities provided by these statutes, the County is authorized to adopt all ordinances it considers necessary for the use and development of land within the County and can arguably impose stricter procedural requirements or higher standards regarding such development, including requirements and standards for the review and approval of lot line adjustments. Any review and approval must, however, comply with Section 17-27a-608(7)(b), which requires the land use authority to approve an exchange of title if the exchange will not result in a violation of any land use ordinance.

Conclusion

Based upon the rules of statutory construction and the plain language of the relevant statutes, it is my opinion that the County has the authority to require review and approval of boundary line adjustments involving the exchange of title pursuant to the provisions of *Utah Code Ann.* § 17-27a-608. Pursuant to applicable rules of construction, we must read the statutes in a way that provides meaning and effect to all provisions. As outlined herein, the applicable terms and provisions of Chapter 27a may be read in harmony giving each provision effect. As noted, the revised application for lot line adjustments as submitted by the County provides greater clarity to the procedure and requirements for lot line adjustments. It is advised that the County adopt and implement these forms for future use in accordance with applicable statutes. Any review and approval of boundary line adjustments by the County must also comply with Section 17-27a-608(7)(b), which requires the land use authority to approve an exchange of title if the exchange will not result in a violation of any land use ordinance.



Lisa G. Romney
Mazuran & Hayes, P.C.

Note:

This advisory opinion has been prepared in accordance with and subject to the provisions of the Property Rights Ombudsman Act, including, but not limited to *Utah Code Ann. § 13-43-205*, regarding advisory opinions by a neutral third party. It does not constitute legal advice. The opinions expressed herein are 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 or her understanding of the relevant law, he or she 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 or her interest.

MAILING CERTIFICATE

Utah Code Ann. § 13-43-206 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 the 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 as designated in that database.

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

Bryan E. Thompson
Utah County Clerk/Auditor
100 East Center Street, Suite 3600
Provo, UT 84606

On this 29th day of November, 2007, 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. I also caused the attached advisory opinion to be delivered by United States Postal Service, postage prepaid, and addressed to the following interested parties:

Francis D. Eickbush
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Pleasant Grove, UT 84062

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Deputy Utah County Attorney
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