Advisory Opinion #59

Parties: The Utah Valley Home Builders Association and City of Lehi

Issued: January 13, 2009

TOPIC CATEGORIES:

A: Impact Fees

Property leased by the City is not a park or open space, and is not even owned by the City. Under the Impact Fees Act, it is not eligible to be used as a basis for the park fee. Using calls for service as a basis for a law enforcement impact fee is acceptable, because it is an accurate measure of the level of police services being provided. However, the cost of the proposed facilities should not include costs for incarceration or offices for personnel that are not part of the City's police force.

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ADVISORY OPINION

FOR THE PRIVATE PROPERTY OMBUDSMAN

Advisory Opinion Requested by:	Kevin E. Anderson of ANDERSON, CALL & WILKINSON, a*ttorneys for* THE UTAH VALLEY HOME BUILDERS ASSOCIATION
Local Government Entity:	LEHI CITY
Opinion Authored by:	J. CRAIG SMITH SCOTT M. ELLSWORTH SMITH HARTVIGSEN, PLLC
Date of this Advisory. Opinion:	January 13, 2009

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I. ISSUES

Do the Park and Law-Enforcement Impact Fees adopted pursuant to Lehi City Ordinance No. 02-26-08.8, constitute improper impact fees or illegal exactions, deriving from a flawed analysis of acreage and levels of service, which improperly inflates true impact and resulting impact fees?

II. BACKGROUND

A Request for Advisory Opinion ("**RAO**") 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 Annotated ("**UCA**") § 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 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.

The request for this Advisory Opinion was properly submitted, pursuant to UCA § 13-43-206(1), by Kevin E. Anderson of Anderson Call, P.C., the attorneys for the Utah Valley Home Builders Association ("UVHBA"), on July 25, 2008. The office of the Property Rights Ombudsman delivered appropriate notice under UCA § 13-43-206(4)&(5), and a neutral third party—Smith Hartvigsen, PLLC—was selected to prepare the Advisory Opinion as mandated by UCA § 13-43-206(6).

In connection with UVHBA's July 25, 2008, RAO submission, the Parties submitted the following documents (including the RAO itself):

1. **a. Form: UVHBA REQUEST FOR AN ADVISORY OPINION** (Kevin E. Anderson, Esq.), date stamped Ju1y29, 2008;

   b. Letter REQUESTING ADVISORY OPINION (Anderson Call, PC), dated July 25, 2008 (the "RAO");

2. **LEHI CITY RESPONSE** to the UVHBA RAO (Lewis Young Robertson & Burningham, Inc. ("LYRB")), dated October 8, 2008 (the "**Response**");

3. **UVHBA REPLY** to the Lehi Response (Anderson Call, PC), dated October 28, 2008 (the "**Reply**");

4. **LEHI CITY REBUTTAL** of the UVHBA Reply (LYRB), dated November 19, 2008 (the "**Rebuttal**"); and

5. **UVHBA REPLY** to Lehi City's Rebuttal, dated December 5, 2008 (the "**Sur-Reply**"). III.

III. INTRODUCTION

In March of 2008, LYRB presented to Lehi City ("**Lehi**" or the "**City**") the final copy of an Impact Fee Analysis (the "**Analysis**"), undertaken at the City's request. Based upon the LYRB Analysis, the City adopted, on or about April 22, 2008, **Ordinance No. 02-26-08.8 (Exhibit A),** repealing Chapter 15.30 of the Lehi City Municipal Code (the "**LMC**")—"Impact Fees"—and enacting an entirely new Chapter 15.30. The purpose of this revision was to bring the municipal impact fees into conformity with the City's recently updated Capital Facilities Plan (The "**CFP**"). In connection with the new LMC Chapter 15.30, the City adopted the current impact fee schedule.

UVHBA filed a formal request for an Advisory Opinion on July 29, 2008, pursuant to UCA §§ 13-43-205(3) and 13-43-206, as a "potentially aggrieved person" thereunder. UVHBA asserts that the analysis performed by LYRB is "fatal[ly] flaw[ed] exaggerat[ing] and inflat[ing] the value of preexisting benefits and previous levels of service to justify impact fees that are much higher than are legally permitted." (RAO at 3.) As a result, UVHBA argues, "the proposed impact fees do not properly determine the proportionate share of the costs of impacts and are illegal" as improper impact fees under UCA Chap. 11-36 (*id.)* and illegal exactions under UCA § 10-9a-508 (RAO at 1-2).

UVHBA challenges, generally, both (**a**) the financial and (**b**) the acreage premises upon which the LYRB analysis is based as well as, particularly, (**c**) Lehi City's Park & Recreation impact fees ("**P&R Fees**") and (**d**) its Law-Enforcement impact fees ("**LE Fees**"). In addition, UVHBA

seeks (**e**) the 15% reduction of Lehi City's impact fees pursuant to an alleged April 22, 2008, Lehi City Council motion to that effect which remains, as yet, ineffective.

IV. ANALYSIS: ARE THE IMPACT FEES IMPROPER?

1. IMPACT FEES: CONTROLLING LAW.

UVHBA's principal complaint—the inference UVHBA draws from the issues addressed herein—is that the LYRB analysis "do[es] not properly determine the proportionate share of the costs of impacts" (RAO at 3). Pursuant to the requirements of the Utah Impact Fees Act (the "**Act**"), UCA Chapter 11-36, a "proportionate share" must be "roughly proportionate and reasonably related" to the impact caused by the development activity. UCA § 11-36-201(5)(a); *see also Banberry Development Corp. v. South Jordan City*, 631 P.2d 899, 901 (Utah 1981).[1] To ensure these conditions are met, the Act mandates that, before a local government may impose and impact fee, it must first undertake or cause to be undertaken an analysis

> **(1)** identifying development impact on system improvements;
>
> **(2)** demonstrating a *reasonable relationship* between these impacts and development activity;
>
> **(3)** estimating the *proportionate share* of impact costs on system improvements reasonably related to the new development activity; and
>
> **(4)** explaining the fee calculation.

UCA § 11-36-201(5)(a) (emphasis added).

The rationale behind the reasonable-and-proportionate requirement is the premise that new development should pay the costs associated with new growth; existing residents, conversely, should have to bear only the costs of improving existing services.[2] In other words, a local government seeking to enact an impact fee or fees must make certain that service recipients be burdened in

[1] These standards echo those employed in analyzing exactions (*see* Section II, below), deriving from *Dolan v. Tigard*., 512 U.S. 374 (1994).

[2] Dennis H. Ross & Scott Ian Thorpe. "Impact Fees: Practical Guide for Calculation and Implementation," *Journal of Urban Planning and Development*. September 1992: *2.

proportion to the burden each imposes and the benefit each receives. Therefore, as the *Banberry* Court explained,

> [W]here the fee charged a new subdivision or a new property hookup exceeds the direct costs incident thereto (as a means of sharing the costs of common facilities), the excess must survive measure against the standard that the total costs "fall equitably upon those who are similarly situated and in a just proportion to benefits conferred." Stated otherwise, to comply with the standard of reasonableness, a municipal fee ... must not require newly developed properties to bear more than their equitable share of the capital costs in relation to benefits conferred.

631 P.2d at 903 (quoting *Deerfield Estates, Inc. v. Township of E. Brunswick*, 286 A.2d 498, 505 (NJ 1972)). In balancing the relative benefits and burdens in connection with new development, the enacting county or municipality must consider and identify seven factors:

(i) the cost of existing public facilities;

(ii) the financing of existing public facilities: user charges, special assessments, etc.

(iii) the relative contribution of newly developed and other properties to the cost of existing public facilities: user charges, special assessments, or general taxes;

(iv) the relative *future* contribution of newly developed and other properties to the cost of existing public facilities;

(v) any credit to which newly developed properties are entitled for providing common facilities provided by the local government (or a private entity) elsewhere in the service area;

(vi) any extraordinary costs in servicing newly developed properties; and

(vii) the time-price differential inherent in fair comparisons of amounts paid at different times.

UCA § 11-36-201(5)(a). The *Banberry* Court, in laying out this seven-factor test—some 14 years prior to its codification—was careful to note that “Precise mathematical equality ‘is neither feasible nor constitutionally vital,’” 631 P.2d at 904 (quoting *Airwick Industries, Inc. v. Carlstadt Sewerage Authority*, 270 A.2d 18, 26 (NJ 1970)), and that "the courts must concede municipalities the flexibility necessary to deal realistically with questions not susceptible of exact measurement," *id*. Therefore, once a municipality or county has disclosed the basis of its impact-fee calculations, "the

burden of showing failure to comply with the constitutional standard of reasonableness ... is on the challengers." *Id*. at 904-05 (citing *Home Builders Ass 'n of Greater Kansas City v. City of Kansas City, Mo*., 555 S.W.2d 832 (1977).

In the present dispute, UVHBA does not claim that the bases for the LYRB recommendations have not been disclosed (since they have), but that reasonable and proportionate impact fees cannot be established thereon. The burden, as a result, is upon UVHBA to demonstrate a flaw in the calculations upon which the LYRB Analysis bases its recommended impact fees; that is, UVHBA must identify a failure on the part of LYRB to properly consider one or more of the seven factors listed above or establish that some other clear irregularity or error renders a given impact fee unreasonable or disproportionate.

2. PARK & RECREATION IMPACT FEES: IS THE 76-ACRE PECK PROPERTY A "PUBLIC FACILITY"?

UVHBA argues that Lehi has only 130.27 acres of developed park land. The LYRB Analysis, however, assumes 210.15 acres of available park land, makes its calculations based on 210.15 acres. The disputed 75.88 acres consists of undeveloped property the City leases from Thomas J. Peck and Sons, Inc. ("**Peck**"), a Utah corporation, pursuant to a Lease dated December 29, 2005 (the "**Peck Lease**"). Depending on one's perspective, the issue may be characterized as either (**a**) unlawful inflation of impact fees based on a level-of-service assumption 161% of the actual acreage; or (**b**) the improper deflation of Lehi's Park & Recreation impact fees based on the improper omission of over 36% of the appropriate level-of-service acreage (the 75.88 acres, the "**Peck Property**"). Herein, of course, we approach the matter from the latter perspective—Lehi's—since the law places the burden of proof upon the party challenging the impact fees: in this case, UVHBA.

Should UVHBA prove its claim that the Analysis relied on an improperly inflated level-of-service, it shall have established a breach of, or at least called into question the Analysis' responses to, the first four *Banberry* factors, requiring the P&R Fees' repeal and recalculation.

UVHBA's argument focuses on the Peck Lease, claiming that the Peck Property cannot be considered a public facility as defined by Utah state statute:

> "Public facilities" means ***only*** ... capital facilities that [**1**] have a life expectancy of ten or more years and [**2**] are owned or operated by or on behalf of a local political subdivision ... [including] [**3**] parks, recreation facilities, open space, and trails ....

UCA § 11-36-102(12)(emphasis added). At present, according to UVHBA, the Peck Property lies vacant, nothing but a disused gravel pit, that it does not belong to the City, and that, as a result, it cannot be counted as park land for purposes of the Analysis. Lehi, in contrast, characterizes the Peck Property as land "set aside to facilitate future development of parks and amenities" (Response at 1, para.3), and insists that it does satisfy the statutory definition of public facilities:

> Current residents contributed to the cost of these "Public Facilities," which facilities meet the definitions identified in § 11-36-102(12), including [**1**] having a useful life of ten or more years, [**2**] owned by the City and is [**3**] either parks, recreation facilities, open space or trails. Undeveloped land is a "public facility" .... LYRB's conclusion was that this should be included in the level of service since it was a cost borne by existing users that benefits new and future development.

(*Id*.) We address these three characteristics in order.

2.1 Does the Peck Property have "a useful life of ten years or more"?

Land (e.g., earth, dirt, rocks, etc.) cannot be described as having a "useful life of ten or more years" since land is intrinsically useful in perpetuity[3] (how would it wear out?). Thus the useful life of the Peck parcel is indefinite as the useful life of land itself is perpetual for purposes of a park. The only limitations would be upon the facilities constructed and the term of ownership and control by Lehi. There are no facilities constructed on the Peck parcel. The lease term is ten years. (See Intra Section 2.2) Arguably, the Peck parcel meets this requirement, but just barely.

[3] It is true that certain *uses* of land can have a "useful life": agricultural land can become nitrogen depleted, for instance, or a vein of ore finally run out, but such periods have to do with something *in* the land, not the land itself. Park landscaping and equipment are not depletable resources like this (nor is open space). There are, however, some things that *can* effectively deprive land of all use: nuclear irradiation, chemical or biological contamination, geological instability, and so forth. Mercifully, these calamities are not sufficiently numerous to warrant "undestroyed" as a common adjective for land.

2.2 Is the Peck Property Owned or Operated by the City?

2.2.1 *Is the Peck Property owed by the City?*

Both UVHBA and Lehi lay heavy stress on the Peck Lease, arguing, respectively, (**a**) that the Lease demonstrates that Lehi is merely a tenant upon, not the owner of, the Peck Property; and **(b**) that the Lease actually memorializes a ten-year installment purchase agreement. We turn, therefore, to the Peck Lease to resolve the issue of ownership.

2.2.1.1 *Integration*

Utah law includes a long-standing protocol for the interpretation of contracts such as the Peck Lease: "If the language within the four corners of [a] contract is unambiguous, the parties' intentions are determined from the plain meaning of the contractual language, and the contract may be interpreted as a matter of law. *Saleh v. Farmers Ins. Exchange*, 2006 UT 20, 1121, 133 P.3d 428 (quoting *Green River Canal Co. v. Thayn*, 2003 UT 50, ¶17, 84 P.3d 1134).

The Peck Lease consists of 32 sections over 18 pages (single-spaced), accompanied by three exhibits: the land description, title commitment, and a recorded memorandum summarizing the lease. Section 27 of the Peck Lease—which bears especially upon the present issues—declares that

> [t]his Lease (and all exhibits thereto) is deemed to have been jointly prepared by the parties hereto, and any uncertainty or ambiguity existing herein, if any, shall not be interpreted against any party, but shall be interpreted according to the application of the rules of interpretation for arm's-length agreements. Landlord and Tenant each confirm and agree that (**a**) it has read and understood all of the provisions of this Lease; (**b**) [each] is familiar with transactions such as that contemplated by this Lease; (**c**) it has negotiated with the other party at arm's length with equal bargaining power; and (**d**) it has been advised by competent legal counsel of its own choosing or has had the opportunity to do so.

This language, a painstaking summation of both Parties' entire awareness of the terms of the Lease, leads us to believe the Lease to be a comprehensive and final declaration of the understanding between Lehi and Peck. The length and thoroughness of the Peck Lease corroborates this determination, and, we believe, satisfies the test set forth in *Tangren Family Trust v. Tangren*, 2008

UT 20, 182 P.3d 326:

"[W]hen parties have reduced to writing what appears to be a complete and certain agreement, it will be conclusively presumed, in the absence of fraud, that the writing contains the whole of the agreement between the parties." (2008 UT 20, ¶12 (quoting *Bullfrog Marina, Inc. v. Lentz*, 501 P.2d 266, 270 (1972).) By definition, such a document constitutes an integrated agreement. (*Id*. (quoting *Restatement (Second) of Contracts* § 209 (1981).)

2.2.1.2 *The Nature of the Peck Lease*

Although Lehi argues that the Peck Lease is not a mere lease, but is actually a ten-year purchase agreement, we have not found anything in the Lease to substantiate its claim. The Peck Lease expressly calls itself "THIS LEASE, dated as of December 29, 2005" (Lease introduction, emphasis in original); names the two Parties "**Landlord**" (Peck) and "**Tenant**" (Lehi) (*id*.); describes "Landlord [a]s the record owner" of the Peck Property (Recital A); and specifies a ten-year lease term, "upon the expiration or sooner termination" of which Lehi must "return the Property to Landlord in good condition ...." (Section 3). Although the Lease contemplates the use of the Peck Property "primarily as a park containing such recreational facilities and related improvements as [Lehi] may desire to construct" (Section 6), the Lease also specifies that any such improvements "shall at the end of the Lease Term become a part of the realty and shall not be removed from the Property" (Section 8) — hardly the sort of provision one would expect in an installment contract which would leave the buyer (presumably the tenant) in fee ownership of the affected land.

The Lease does contain a "Purchase *Option*" (Section 31, emphasis added), but this supports rather UVHBA's position than it does Lehi's, since, except in unusual circumstances (which do not appear to apply in the present case), there is little need for a "Purchase Option" in a sales contract.[4] And indeed, to the contrary, Section 31 actually prohibits Lehi's purchase of the Property until "no earlier than one hundred eighty (180) days prior to the end of the Lease Term" (Section 31, para. 1).

[4] See§ 2.1.1, above.

In addition, while Lehi is to pay $300,000 per year as rent for the use of the Peck Property (Section 1, "Annual Fixed Rent")—a total of $3 million by Lease-end in December of 2015—the Purchase Option specifies a $4.2 million "Purchase Price" (Section 31, ¶ 1), not a final "balloon payment," as Lehi would have it (Rebuttal at 3).[5]

2.2.1.3 *Lehi's Intent*

As we have already noted, nothing in either the Lease or the record before us suggests that the Peck Lease is anything other than the complete and final terms of a ten-year lease agreement with an option to purchase which does not take effect until Thursday, July 2, 2015. However, Lehi has provided "a letter from former Lehi City Mayor Ken Greenwood and former Lehi City Administrator Ed Collins" (*id*.). This letter conspicuously calls the Property the "Peck Park," and stresses the City's position that the Peck Lease is actually an installment purchase agreement.[6] Unfortunately for the City, neither the views expressed in the Greenwood-Collins memorandum nor the arguments and claims set forth in Lehi's Rebuttal as regards the intent of the Peck Lease, can have any effect on its plain language. Any such evidence is barred by the parol evidence rule, which,

> [s]imply stated, ... operates, in the absence of fraud or other invalidating causes, to exclude evidence of contemporaneous conversations, representations, or statements offered for the purpose of varying or adding to the terms of an integrated contract.... [It] is admissible only to clarify ambiguous terms; .... The application of the parol evidence rule is therefore a two-step process: "First, the court must determine whether the agreement is integrated. If the court finds the agreement is integrated, then parol evidence may be admitted only if the court makes a subsequent determination that the language of the agreement is ambiguous."

Tangren, 2008 UT 20, ¶11, 182 P.3d 326 (citing and quoting *Hall v. Process Instruments & Control*,

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[5] The fact that the Lehi's annual rent pays, not for the Peck Property itself, but only for its *use*, renders moot Lehi's argument that it is purchasing the Property in much the same fashion it would had it bonded for the funds. As UVHBA notes, however, a lease is completely different from a lease revenue bond. The revenue stream backing a lease revenue bond arises from lease payments from the occupier to the government which developed the facility. (Reply at 4 (quoting the California State Administrative Manual, § 6872).)

[6] We note that this letter was suggested by the Lehi City Attorney and signed by former Lehi City officials, but the letter includes nothing about Peck's understanding of the agreement set forth in the Peck Lease. Contracts, however, are by nature bilateral, and one Party's afterthoughts as to the correct interpretation thereof carry very little weight—especially since these afterthoughts are put forth in an unnotarized letter rather than a proper affidavit. The point, however, is academic, since we do not believe the letter to be admissible evidence.

Inc., 890 P.2d 1024, 1206 (Utah 1995) (citations omitted in original).

> To permit [otherwise] would be to cast doubt upon the integrity of all contracts and to leave a party to a solemn agreement at the mercy of the uncertainties of oral testimony given by one who in the subsequent light of events discovers that he made a bad bargain.

E. A. Strout Western Realty Agency, Inc. v. Broderick, 522 P.2d 144, 146 (Utah 1974).

The *Strout Western* facts are instructive in the present dispute. There, defendant, Broderick, had signed a listing agreement with Strout Western that contained a provision requiring him (Broderick) to pay Strout Western a 6% commission "if a buyer or transferee ready, willing and able to buy or exchange for this property is procured by you or by anyone else, including myself ...." 522 P.2d at 144. The "6%" had been written into a blank in one provision of the form contract. Broderick had successfully presented parol evidence to the trial court that this paragraph was a mistake: that he had believed he owed no commission to Strout Western. The Utah Supreme Court reversed and remanded, declaring Broderick's testimony barred by the parol evidence rule:

> Parole evidence may be received to clarify ambiguous language in a contract, to show what the agreement was relative to filling in blanks, and to supply omitted terms which were agreed upon but inadvertently left out of the written agreement. However, under the general rule, which is applicable here, parole evidence may not be given to change the terms of a written agreement which are clear, definite, and unambiguous....
> .... [Even so], the defendant here does not seek to explain the meaning of a paragraph. He simply wants the court to eliminate it in its entirety. This the courts cannot do.

522 P.2d at 145-46 (footnotes omitted).

The lease is a lease only. The information, in addition to the lease document itself, provided by Lehi only goes to the intent of Lehi to purchase the Peck parcel and make it a Park.

2.2.2 *Is the Peck Parcel Operated by the City?*

As the Peck Parcel is not owned by the City, the next logical question is it operated by or on behalf of the City, UCA § 11-36-102(12). Again, since the Peck Parcel is not currently functioning as a Park in the traditional sense, thus it is difficult to determine that it is being operated. Operation cannotes some use. At the present, any operation of the Peck Parcel is unknown.

2.3 Is the Peck Property Either Park or Open Space?

Lehi characterizes the Peck Property as "Park" land, as well as asserting, alternatively, that if it is not "Park," it is without question "Open Space" (Response at 1).

2.3.1 *Is the Peck Property a Park?*

The LMC does not define "park" explicitly. Lehi contains numerous parks of various sizes, nearly all of which are fully developed, the only exceptions being the Peck Property, which is entirely devoid of any development, and Dry Creek Trail Park (CFP 2008 at 21). The Dry Creek Park is instructive in its undevelopment: the park comprises five acres, only one of which is "developed" (*id*.). In the table of City parks, Dry Creek is flagged with an asterisk, directing one to the comment "Includes on a portion of the park acres, the remaining undeveloped acres are intended to serve as open space ..." (*id*. at 22). Accordingly, "park" clearly implies a certain level of development and particular amenities that "open space" does not share.

But, given this *de facto* definition, the Peck Property is not currently a park: It contains no baseball diamonds, no soccer fields, no restrooms, no walking or jogging paths, no monkey bars or swing sets, no picnic tables, no sandboxes ... not even a lawn. It is of a different scale than the general run of Lehi's parks, the largest of which is nearly 50 acres smaller than it is (North Lake Park: 28.5 acres (*id*. at 21)), and the average size of which is only about six acres.[7] Moreover, although the CFP calls the Peck Property "Pecks Sports Park," the land did not appear on Lehi City's website's list and map of parks as of Saturday evening, December 13, 2008. The Peck Parcel is what it is, a 76 acre undeveloped Parcel formally used as a gravel pit.

Lehi seems to realize this, as it turns from its park argument to assert that the Peck Property is at least "open space," even if it cannot rightly be classified as a park:

> Utah law does not require park land to be "developed." If it did, it would need to provide

[7] If we exclude parks under 10 acres (all but four of them), the mean comes to only about 3.2 acres, and the median drops from 3.5 to 3.0 acres.

> extensive definitions of what constitutes "developed" park land. Rather, the law only states that impact fees may be calculated for "parks, recreation, trails and open space" (Utah code 11-36-102(12)(f)). Open space is not developed land but is included in the definition of "Public Facilities." The impact fee report thus includes the land values for the undeveloped parks to ensure that current service levels are maintained and perpetuated.

(Response at 1.) Thus, we believe—as apparently Lehi City does as well—that the Peck Property is not a park. But is it, as Lehi asserts, still a public facility because it is "open space"?

2.3.2 *Is the Peck Property Open Space?*

Despite the LMC's omission of a definition for "park," it defines "Open Space":

> **Open Space -** means and refers to the following:
>
> **1. Active Open Space**, or any park and recreational facility that is not dependent upon a specific environmental or natural resource, which is ***developed with recreation and support facilities*** that can be provided anywhere for the convenience of the user. Activity-based recreation areas include, but are not limited to, ***baseball or softball fields, football or soccer fields, basketball courts, tennis courts, picnic areas, playgrounds, and trails***; and
>
> **2. Passive Open Space**, or areas in and located due to the presence *of a particular natural or environmental setting* and which may include conservation lands providing for both active and passive types of resource-based outdoor recreation activities that are less formalized and more ***program-oriented than activity-based recreation. Resource-based outdoor recreation means and refers to activities requiring a natural condition that cannot easily be duplicated by man and includes, but is not limited to, boating, fishing, camping, enhancement areas, nature trails, nature study, and view areas***.
>
> **3.** Roadway areas including rights of way, parking lots, lawns, setback areas or other undisturbed portions of building lots shall not constitute open space.

(LMC Chap 36 "Open Space" (emphasis added).)

The Peck Property cannot lay claim to the status of either condition: active or passive. It is self-evidently not "active open space," since it does not contain the "developed ... recreation and support facilities" of any sort whatsoever. But it is plainly not "passive open space" either. No "particular natural or environmental setting" drew attention to the Peck Property as a possible park: there's little in it but scrub oak and dust. The absence of everything makes "resource-based outdoor recreation" impossible. The Peck Property is thus not "open space" either, at least for impact-fee purposes.

2.4 Conclusion to Section 2.

In our opinion, the Peck Property is not currently a park. It contains none of the facilities, amenities, or even landscaping that characterize a park. It cannot satisfy the *de facto* definition of park as Lehi employs the term, not does it fall within the ambit of Lehi's *de jure* definition of "open space." Also, the Peck Property does not belong to Lehi City, but to Thomas J. Peck and Sons, Inc., who lease it to Lehi on an annual basis.

As a result, the classification of Peck Property is not easy. We believe that while a close question, the Peck Property does not currently qualify as a public facility under UCA § 11-36-102(12) for all of the reasons above. However, if Lehi can show that it is taking steps to create a Park on the Peck Property and it is in the process of developing a Park, it may qualify. In other words, this is an issue that could easily be decided in favor of either Lehi or UVHBA by a court. Hopefully, our analysis will be informative to the parties and aid in resolution of this issue.

3. WERE LEHI'S LAW ENFORCEMENT IMPACT FEES PROPERTY CALCULATED?

We turn next to Lehi's LE impact fees, to which UVHBA objects as, first, improperly calculated and, second, based upon "facilities that are completely unnecessary" (RAO at 5). Again, we address each claim in turn.

3.3 The Correct Law Enforcement Level of Service Measure.

"The industry standard for measuring law enforcement levels of service," argues UVHBA (RAO at 4), "is the number of officers per 1000 residents":

> This method is used by every law enforcement agency in the State of Utah and by the Department of Justice's Federal Bureau of Investigation. Contrary to the industry standard, the City chose a level of service based on 'calls for service.' That is not a proper standard and ... inflates and exaggerates the LOS and the resulting impact fee.[8]

[8] The FBI does maintain a website that measures number of sworn (and civilian) law enforcement personnel per 1,000 inhabitants *(http://www.fbi.gov/ucr/cius2007/police/index.html);* this website, however, does not impose a standard number of personnel per 1,000 inhabitants, as seems to be implied by UVHBA. It is descriptive, not prescriptive. A study discovering the number of big box stores, for instance, per 1,000 people in Utah County could certainly not be turned around and used to limit the number of big box stores, nor to require a certain number of big box stores. In the same way, the fact that the FBI uses a per-1,000 scale in measuring law enforcement personnel does not mean such a measurement must be employed; nor does it mean that other measurements might be

(RAO at 4-5). Despite its citation to "every law enforcement agency in the State of Utah," as well as the FBI, UVHBA does not cite any sources confirming the information. Lehi concedes that officers-per-1,000 is "one measurement used in the law enforcement industry, it is not the only standard, nor is it the most commonly-used standard for impact fees" (Response at 2-3), but, like UVHBA, does not direct us to any sources in support of the assertion.

We must, nevertheless, agree with Lehi on this point. Although we are unable to locate any provision of either State statute or local ordinance specifying a particular algorithm for calculating law-enforcement impact fees, we note that current scholarship on the subject of levels of service is nothing like as dogmatic as the position UVHBA desires us to accept.

Those who address the calculation of impact fees describe essentially two approaches to such calculations, giving them various names dictated by their focus, but recognizing each as equally valid—the "average cost [recoupment]" approach versus the "marginal cost" method;[9] "inductive" versus "deductive" calculation,[10] and "consumption-based" versus "improvements-based" impact fees.[11] These names (along with several others extant in the profession) define an impact fee

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preferable in determining levels of service.

[9] Blake Smith, Development Impact Fees: *A Role for State Enabling Legislation*, NAHB: http://www.nahb.org/generic.aspx?sectionID=634&genericContentID=17510. These approaches are takes on cliometric inference (*Clio* "history" (from the muse) + *metric* "measurement"). The premise of cliometry is that measurements over past periods will remain valid into future periods as well; that is, established trends or relationships shall continue—more or less predictably—into the future. The *average cost* approach assumes a set of heuristics based on past experience and applies it to future development. The *marginal cost* method, however, begins with the facilities contemplated in the general plan to provide a specified level of service for future development. The service area of each facility is examined to determine planned densities, land uses, and populations, and cost of service in each service area derives from the same kind of engineering cost estimates used to prepare the capital budget. *Id*.

[10] The inductive or "prototype" approach extrapolates from a known, existing facility the costs of any future facility at issue. The "deductive" approach is very similar to the marginal cost methodology explained above. Dennis H. Ross, Fellow, ASCE, and Scott Ian Thorpe, RCS Principal, *Impact Fees: Practical Guide For Calculation And Implementation*, Journal of Urban Planning and Development, September 1992: http://www.impactfees.com/publications%20pdf/impactfees-Practical Guide %5B1 %5D.pdf.

[11] As the name implies, "consumption-based" fees are calculated from the value of infrastructure consumed per unit, as opposed to "improvements-based" impact fees based upon the costs of planned improvements in a given area. Florida City and County Management Association, *Impact Fees in Florida: Their Evolution, Methodology, Current Issues and Comparisons with Other States* (Summary), HUD Regulatory Barriers Clearinghouse (2005:

calculation based on past expense and a different calculation based on increase in marginal value.

Either system—in any of its various avatars—typically drives a straightforward formula constructed of three simple ratios (see figure 1):[12]

> The first ratio, shown in the [top] box, specifies the relationship between demand units and development units. Determining the "best" demand indicator for each type of infrastructure [or facility] is an important step that may highlight or mask relative variation in service demands by type of [development]. The second ratio, shown in the middle box, is the typical level-of-service standard that most people associate with impact fees. Quantitative measures, such as acres of parks per thousand people, establish the relationship between infrastructure units and demand units. The third ratio ... is also an important quantitative standard because cost factors vary significantly across the country.[13]

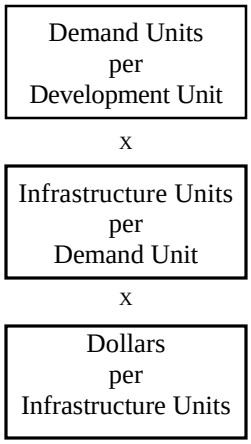

Fig. 1: The Basic Impact Fee Algorithm

In the present case, the "infrastructure units" (bottom box) are square feet of police station expansion space; the "demand units" (middle box) are sworn officers; and the "development units" (top box) are the calls for service arising from new residents (directly or indirectly); and the algorithm runs (1) sworn officers per call by (2) square-feet per officer by (3) dollars per square-foot.

In the present dispute, UVHBA asserts that "calls for service' is not a proper measure" (Reply at 4-5); that is, in terms of the Figure 1 algorithm, that, “calls for service” is not the correct development unit. We disagree: It makes little sense to us to condemn an estimation of future need because it is based upon what future residents' actions instead of their simply being there.

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http://www.huduser.org/rbc/search/rbc details.asp?DocId=1236).

[12] Arthur Chris Nelson, et al., A Guide to Impact Fees and Housing Affordability 25-26 (Island Press 2008) *(http://www.islanclpress.com/bookstore/details.php?prod id=1703).*

[13] So, for example, a particular development consists of 750 residential development units, and there are demand costs for fire protection, police protection, wastewater treatment, and hospital beds. The demand for hospital beds (including construction of necessary additional hospital space), let us say, has been calculated at one bed for every 75 single-family residences in the community. This is the demand-to-development ratio (the top box in fig. 1). Now, given the demand, the new development will require ten new beds (what the table calls "infrastructure units") at one per 75 residences (the units-per-demand ratio (the second box)). At two beds a room, the hospital will need five new rooms, fully equipped and patient-ready (final box). Let us say that the cost of this expansion comes to $250,000 at $50,000 per bed. The impact fee is thus $250,000 divided by 750 residences: $333.33 per residence to maintain triage status quo.

Quite the reverse: it seems to us that the number of calls for service—so long as such calls are in fact bona fide requests for law enforcement to which law-enforcement officers respond[14] (such that they are unavailable to respond to other such calls)—makes an excellent barometer for demand-per-development calculation. Moreover, we note that the LYRB Analysis explains that, "[u]nlike fire protection, police protection does not depend on the distance of responding units to fixed locations. Officers generally patrol throughout the City, and the units closest to a call will typically be the call's first respondents." (Analysis at 28.) And this description indicates an analysis based upon bona fide requests for law-enforcement services rather than incidental communication.[15]

In any case, neither Party has offered any legal precedent or persuasive evidence as to the propriety or impropriety of calls for service as a valid measure of development. This being so, and the LYRB Analysis having properly set forth the basis for and the calculations deriving from that standard (Banberry, 631 P.2d at 904-05; see *also* Part IV, *below*)—shifting the burden to UVHBA—we must conclude that Lehi's LE calls-for-service development measure is proper, fair, and reasonable, UVHBA having failed to demonstrate noncompliance with "the constitutional standard of reasonableness" (*id.*).

3.3 "Unnecessary Facilities?

UVHBA also denounces Lehi's LE impact fee as based upon "facilities that are completely unnecessary" (RAO at 5). Specifically, UVHBA points to incarceration facilities—for which "[n] such plan is indicated in [Lehi's] Capital Facilities Plan" (*id.*)—including "a booking/processing

[14] UVEBA raises a valid concern when it points out that "there is not a common definition of what constitutes a call for service. Does it include a traffic stop? Does it include a personal call? Does it include an interagency jurisdictional call? Or is it limited to action calls, resulting in a request for police assistance[?]" (Reply at 5). That this is obvious as well as critical to the legitimacy of the Lehi's LE impact fees (as contemplated in the Analysis) leads us to say, with Horatio, "[t]here needs no ghost, my lord, come from the grave to tell us this." (*Hamlet* I.iv). We are not, however, prepared to accuse Lehi of willful inflation by including personal calls and the like. Lehi, however, would be well advised to address both its definition of "call for service" and the nature of each such call upon which it relies.

[15] We also note, for the Parties' consideration, that a *call* or *request* for law enforcement need not be limited to a telephone call, but could also include radio, email, regular mail—even a scream. We are, after all, trying to establish sufficient police protection for *human beings*, not just trying to laud the right equation.

room, secured sally port, holding cells, SWAT room and interview room" (*id*.). "Including these fictitious, costs in[the Analysis] render[s] the resulting impact fee disproportionate, unfair and illegal{.]" (*Id*.) Lehi responds that "[t]he capital facilities included in the law enforcement fees are those presented by Lehi City's police department as 'required components of a well-functioning police department' (Response at 3).

Lehi, like any other local government entity, cannot expend impact fees on (nor collect them for) anything but "system improvements for public facilities [(**a**)] identified in the capital facilities plan" and (**b**) of the "specific public facility type for which the fee was collected." UCA § 11-36-302(1). *System improvements*, of course, refers to expansion or enhancement of public facilities either already in existence or planned for future installation (i.e., identified in the CFP) to serve particular service areas. UCA § 11-36-102(16)(a). Together, these provisions create, as UVHBA correctly observes,

> The test for determining impact fees[:] ... not simply what law enforcement may need in the future, but whether the City has these types of facilities now that will be impacted by future development. If they do not, then this constitutes an increased level of service which is not allowable by use of impact fee revenue. If law enforcement does not presently have certain law enforcement improvements, the City cannot claim it is entitled to have them funded through impact fees. Consequently, the controlling question is not what the City wants or needs, but does the City have that level of components now? If not, the City cannot obtain them through impact fees.

(Reply at 5.) What cannot be paid through impact fees the City must obtain through other mechanisms: taxation, improvement districts, special assessments, and so forth. There is, in addition, an explicit prohibition against the use of impact fees for "a jail, prison, or other place of involuntary incarceration." UCA § 11-36-102(13)(b).

The question, then, is which law enforcement components are (**1**) permitted system improvements (expansion or enhancement of ***existing*** or law enforcement facilities); (**2**) impermissible ***increases*** in law-enforcement level of service (i.e., ***new*** facilities); or (**3**) proscribed

incarceration facilities. The Analysis lists the 25 police station components Lehi contends to be necessary for a well-functioning police department as follows:

1. chief of police's office
2. captain's office
3. lieutenant's office
4. sergeant's office
5. executive secretary's office
6. division of commander's office
7. patrol command room
8. detective offices or room w/ cubicles
9. victim advocate office
10. booking/processing room
11. secured sally port
12. **three holding cells**
13. evidence room
14. area for report filing and files
15. tactical/SWAT room w/ attached bathroom & shower
16. firearms room used for storing and cleaning firearms
17. bathrooms
18. training room
19. interview room w/ camera and audio
20. secure storage room
21. janitorial room
22. computer server room
23. dispatch/front desk area
24. data entry clerk area
25. adult probation and parol area

Table 1. The 25 law-enforcement components listed in the CFP.

(CFP at 19.) The holding cells plainly run afoul of the incarceration-facility prohibition (bolded in the above table for ease of reference).

As far as impermissible new facilities, it is sometimes difficult to distinguish between updating or extending existing facilities and augmenting one's services with previously unavailable facilities. With the exception of (**#2**), an office for a "captain" (no such officer appears on the Lehi Police personnel tables in the 2007-08 operating budget),[16] none of the listed components appears to be something new to Lehi's law-enforcement infrastructure—certainly not the tactical/SWAT room, which, as Lehi has an active and operating SWAT team, seems a reasonable extension of an existing facility for such a team's increasing activity as demand for protection rises with population.

We therefore conclude that the incarceration-related facility we have named above—the three holding cells (**#12**)—together with the "captain's office" (**#2**), are ineligible for impact fee financing, and must be removed from the Analysis. Sums related to all of the other items listed in the CFP appear to us both reasonable and valid targets for impact-fee financing.

[16] *http://www.lehi-ut.gov/administration/files/budget/Section%208.pdf.*

3.3 Conclusion to Section 3.

Although we conclude that calls-for-service, as employed in the LYRB Analysis, is a valid standard for calculation of LE impact fees (see Subsection 3.1, *above*), we nevertheless find ourselves compelled to disallow the inclusion of holding cells from the reckoning, as well as the captain's office.

The Analysis should be reviewed and refigured accordingly.

IV. ANALYSIS: ARE THE IMPACT FEES ILLEGAL EXACTIONS?

UVHBA correctly notes that "[i]mpact fees that do not comply with governing statute and case authority may also violate ... [Utah's] prohibit[ion on] illegal exactions" (RAO at 1-2).

Utah law follows the well-known essential-nexus and rough-proportionality tests deriving from *Nolan v. California Coastal Commission*, 483 U.S. 825 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374 (1994), common throughout the United States:

> 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.

UCA § 10-9a-508(1) (emphasis added). This same requirement appears in Utah's Impact Fee Act, where the burden falls upon the Analysis to show both link and proportionality:

> [E]ach local political subdivision ... intending to impose an impact fee shall prepare a written analysis of each impact fee that ... identifies the impact on system improvements required by the development activity; demonstrates how those impacts on system improvements are ***reasonably related*** to the development activity; [and] estimates the ***proportionate share*** of the costs of impacts on system improvements ....

UCA § 11-36-201(5)(a) (emphasis added).

Insofar as reasonable relation to impact and proportionate share of costs, we have addressed, and, we believe, resolved each of UVHBA's specific complaints—exaggeration and inflation of "preexisting benefits and previous levels of service" (RAO at 3)—in Sections 2 and 3 hereof (above). Except as noted therein, we believe that the LYRB Analysis capably and indeed meticulously

demonstrates both reasonable relation (*aka* "essential link" and "rational nexus") and the computation of proportionate share necessary to ensure that "total costs 'fall equitably upon those who are similarly situation and in a just proportion to benefits conferred,'" *Banberry*, 631 P.2d at 903 (quoting *Deerfield Estates, Inc. v. Township of E. Brunswick*, 286 A.2d 498, 505 (NJ 1972)).

UVHBA has neither raised nor claimed any violation of exaction law beyond the particular objections we have examined herein, and, as all deliberative bodies must, we "concede [to Lehi] the flexibility necessary to deal realistically with questions not susceptible of exact measurement." (*id*.) Thus, to the extent that violation of exaction law requires determination *beyond* the particular infringements already dealt with, we conclude that the remaining impact fees, together with their respective analyses and reckoning, do not violate Utah exaction law: they are both reasonably related to the burdens imposed by the impacts they are designed to address, and they distribute those burdens equably.

IV. MUST LEHI CITY REDUCE ITS IMPACT FEES BY 15%?

In its final allegation, UVHBA urges us to declare Lehi in violation of its own law, having decreed a 15% decrease in impact fees which does not appear in the new impact fee schedule:

> On Tuesday, April 22, 2008[, UVHBA explains,] the Lehi City Council approved a motion to reduce impact fees by 15%. The minutes of that meeting reflect the following: "We are recommending that the impact fee be reduced by 15% in an effort to be sensitive to the position of the development community."

(RAO at 5). In fact, as it appears in the minutes of the April 22nd meeting, the motion was "to approve the amendm*ents to the Lehi City Impact Fee Schedule as presented" (*Minutes of the Lehi City Council Meeting, April 22, 2008 (the "Minutes"), Item No. 2). The 50-minute course of events was duly recorded as follows (the language to which UVHBA draws our attention has been emphasized):

> **Public Input and consideration for approval of amendments to the Lehi City Impact Fee Schedule.**
>
> Mayor Johnson opened the public hearing at 7:10 p.m. and announced to those present that the council would now receive input from the community.
>
> Attorney Rushton reported that one important element in adopting impact fees is to acknowledge the study done for the impact fees. The fees adopted in February have just a minor change with Park Impact Fees that have been reduced somewhat from the fees recommended by the consultant. An issue was raised at the last council approval regarding the city acquiring some of its property by land dedication for Planned Community zone and should be factored in that way. It was hard to determine the value

with the developers choosing other zoning options that makes it not consistent as in the past.

We are recommending that the impact fee be reduced by 15% in an effort to be sensitive of the position of the development community. The gross reduction is for single $4,493.00 to $3,819.00 and multi from $3,762.00 to $3,198.00.

There was no citizen input.

Mayor Johnson closed the public hearing at 8:00 p.m.

MOTION: a motion to approve the amendments to the Lehi City Impact Fee Schedule as presented by Council member Johnson, seconded by Council member Holbrook. Motion passed. (Revill-yes, Barnes-yes, Dixon-yes, Johnson-yes, Holbrook-yes)

Id. (emphasis added).

Although the Minutes mention both a recommendation[17] to reduce "the impact fee"[18] and a City Council motion "approving the [impact fee] amendments ... as presented," neither possesses the force of law.[19] The same statutes that give cities the power to legislate also specify that "the governing body of each municipality shall exercise its legislative powers through ordinances," UCA § 10-3-701, and the Impact Fee Act likewise requires that impact fees be controlled by "municipal ordinance," UCA § 11-36-102(5)(a). Of course, the Record *does* include a copy of the ordinance passed at the April 22nd meeting—Lehi City Ordinance No. 04-22-08.23—the preamble[20] of which alludes to the motion at issue:

the City Council [has] determined that it was appropriate to reduce the Parks and

[17] Although it is not clear who is doing the recommending.

[18] Presumably, the P&R impact fee (although one must review the actual impact fee schedule to see this clearly).

[19] Obviously, approving such a recommendation without following through with it thereafter would tarnish the City's reputation and raise some serious good-faith issues.

[20] "According to traditional rules of statutory construction, the body of a statute consists of all that material ***following*** the enacting clause, while the preamble consists of statements that ***precede*** the enacting clause.*"* *PRB Enterprises, Inc. v. South Brunswick Planning Bd.*, 518 A.2d 1099, **xxxx** (New Jersey 1987) (citing 1A Sutherland, *Statutory Construction* § 20.07 (4th ed.) (emphasis added)). The preamble—commonly known as the recitals—consists of a "prefatory statement, an explanation or a finding of fact by the municipal legislative body, to show the purpose, reason or occasion for enacting the ordinance." *Id*. (citing 56 Am.Jur.2d, Municipal Corporations, Sec. 347.)

> Recreation impact fee as well as to make certain modifications to Exhibit A of this ordinance reflecting said reduction and also simplifying the impact fee calculation procedures ... .

(RAO, Exhibit A, seventh recital.) And UVHBA correctly observes that "upon inspection of the impact fee schedules, it appears that the impact fees have not in fact been reduced by 15%.... a 15% portion was deferred for 2008, but the fee schedule in 2009 implements the full impact fee" (RAO at 5).[21]

Bear in mind, however, that despite its being generally held that "[t]he preamble may be used to aid in the interpretation of the ordinance to which it is affixed, and may be used for purposes of clarification," *United Dry Forces v. Citizens for a Progressive Community*, 635 S.W.2d 478, 481 (Kentucky 1982) (citations omitted), it is equally true that, "[o]rdinarily, the contents of the preamble are not given substantive effect, particularly where the enacting portion of the ordinance is expressed in clear and unambiguous terms." *PRB Enterprises, Inc. v. South Brunswick Planning Bd.*, 518 A.2d 1099, (New Jersey 1987) (emphasis added) (citing 2A Sutherland, *Statutory Construction* §§ 47.04 (4th ed.); other citations omitted). Even if this preamble recital of City intent were part of the effective provisions of the Ordinance, language in the preamble simply does not take precedence over the clear language of the enactment, and cannot "limit []or extend the meaning of a[n ordinance] which is clear," *PRB Enterprises, Inc. v. South Brunswick Planning Bd.*, 500 A.2d 732, 735 (N.J. Super. 1985).

Again, this being the case, despite the clear intention of the City to reduce the P&R impact fees, there is simply no enactment making such a change. We believe the City should certainly revisit this matter, if only to protect its credibility to say nothing of its honor; there is, however, no legal

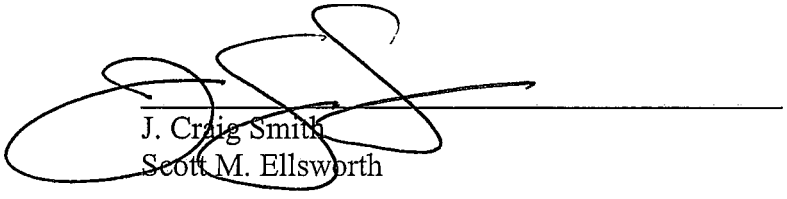
[21] We note that the language of Ordinance No. 04-22-08.23, recited above, says nothing about either the percentage or the duration of the contemplated reduction. The 2008 deferral may very well satisfy the language of the Ordinance.

ground upon which we (in our advisory capacity) can base a legal obligation on Lehi's part to make such a reduction.[22]

VII. CONCLUSION

We conclude, in sum, as follows: (**1**) The Peck Property is not currently a public facility pursuant to UCA § 11-36-102(12), that being said it is ineligible for P&R impact-fee expenditure under UCA § 11-36-302(1), and therefore would be omitted from both the LYRB Analysis and the Lehi CFP. (**2**) The calls-for-service standard employed in the LYRB Analysis is a valid standard for calculation of LE impact fees, although several items listed in the Analysis have to do with involuntary incarceration and must be deleted from the Analysis and the CFP pursuant to UCA § 11-36-102(13)(b). (**3**) Except as we have otherwise concluded, the LYRB Analysis amply demonstrates that the impact fees are reasonably related to the burdens imposed by the impacts they address, UCA § 11-36-201(5)(a), and are therefore not illegal exactions. (**4**) Finally, we conclude that there is no legal basis for requiring the 15% decrease in the P&R impact fees, since the sole ground for it is a discussion on the minutes and an allusion thereto in the preamble of the April 22nd Ordinance. We do recommend, however, that Lehi review this matter, as it appears that its legislative will was not properly followed in the Ordinance prepared for it.

Dated this 13th day, of January, 2009



J. Craig Smith
Scott M. Ellsworth

[22] We believe that UVHBA might be able successfully to pursue mandamus on this issue and perhaps succeed in obliging Lehi to act according to its word, but that is outside the scope of this analysis.

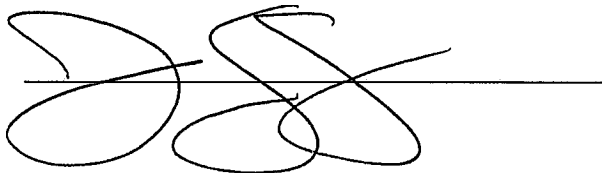
VII. CERTIFICATE OF MAILING

I hereby certify that on this 13th day of January, 2009, I caused to be mailed, via U.S. first class mail, postage pre-paid, a true and correct copy of the **Advisory Opinion for the Private Property Ombudsman** to:

Office of the Property Rights Ombudsman
c/o Brent Bateman
Utah Department of Commerce
PO Box 146702
Salt Lake City, UT 84114-6702

Lehi City
c/o Jamie Davidson
53 North 100 East
Lehi, UT 84043

Utah Valley Home Builders Association
c/o Kevin Anderson
1200 Eagle Gate Tower
60 E. South Temple
Salt Lake City, UT 84111

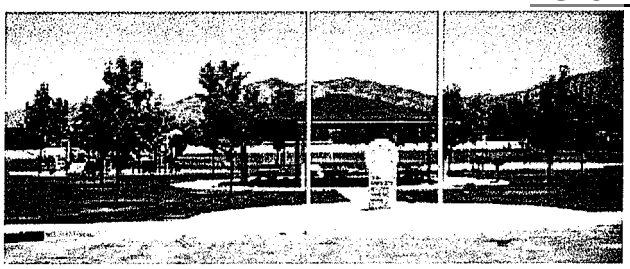


VIII Exhibit X

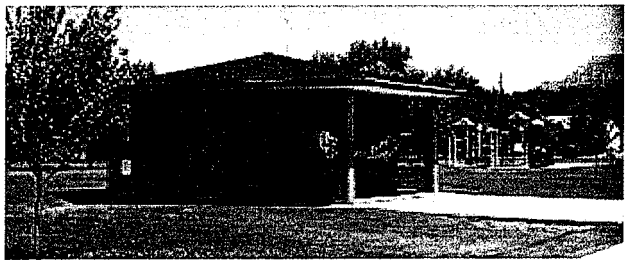
http://www.lehi-ut.gov/parks/parks.php 2008.12.13 —20:48

Lehi Parks and Pavilions

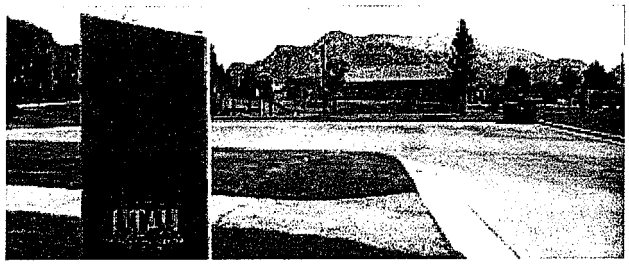
- Click for map -



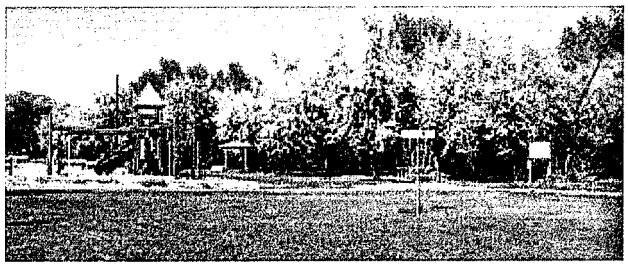
Allred Park
560 North 750 West
5 acres
1 Pavilion, 10 Tables, Playground, Volleyball, Basketball and Restrooms



Bandwagon Park
900 North 200 West
2.1 acres
2 Pavilions, 16 Tables, Playground and Restrooms



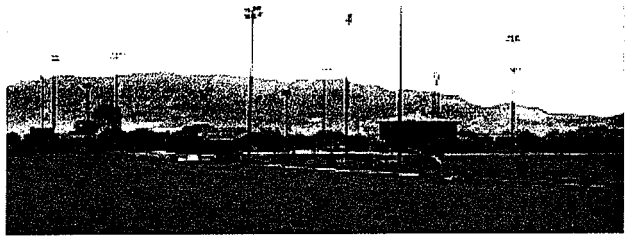
Centennial Park
2250 North 600 West
3.9 acres
1 Pavilion, 12 Tables, Basketball and Skate Park



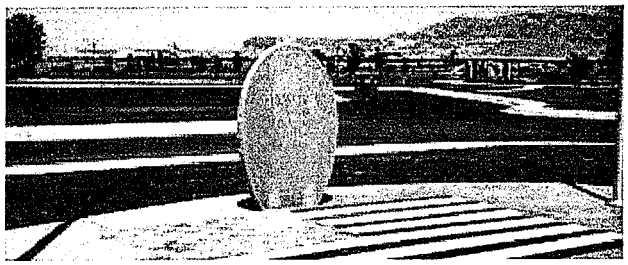
Dry Creek Trail Park
100 W. And 1500 N. - Hillcreek Subdivision
10 acres along Dry Creek
1 Pavilion, 8 tables, Playground with mini zip line, Rustic 9 hole Disc Golf Course
Download Disc Golf Card

Gateway Park
1450 West 1870 North
2 acres
Restrooms and Playground
Please note that the pavilion and ballpark do NOT belong to Lehi City; they belong to The Church of Jesus Christ of Latter-Day Saints

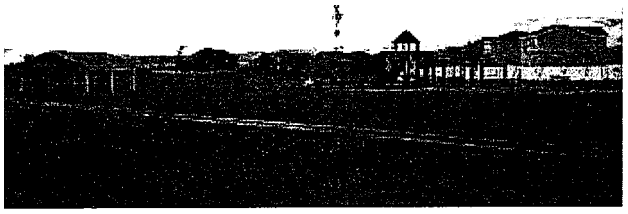
Greens Park
1900 North 1700 West
3.75 acres
1 Pavilion, 8 Tables, Playground and Basketball



Lehi City Sports Park
(Under construction)
2000 West 700 South
26 acres
Pavilions, 80 Tables, Playground, Horseshoe pits, Basketball, Volleyball, Restrooms, Football, Soccer and Tennis

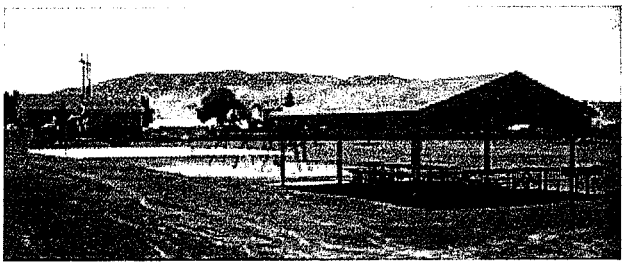


Olympic Park
1650 North 2650 West - Parkside Subdivision
15 acres
1 Pavilion, 20 Tables, Playground, Volleyball, Basketball, Horseshoe pits and Restrooms

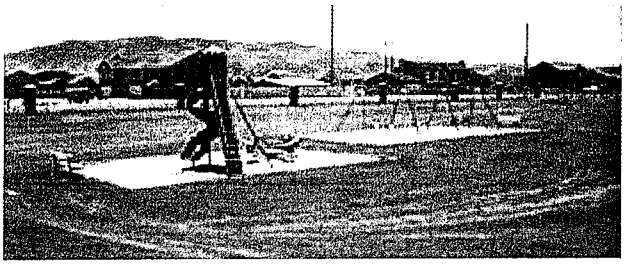


Pilgrims' Landing
3000 West Pilgrims Loop Road
1 Pavilion, 8 Tables, Playground

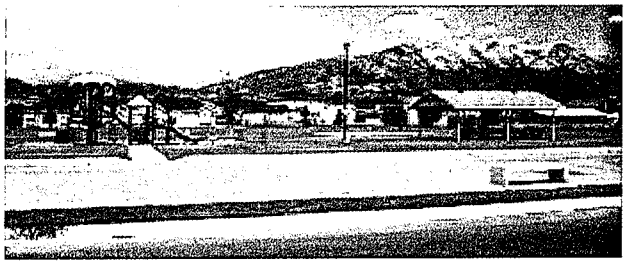
Pool Park
451 East 200 South
2 acres
1 Pavilion, 16 Tables, Playground, Volleyball, Basketball, Horseshoe pits and Restrooms
Although the swimming pool will be closed this year, the park will still be available for use



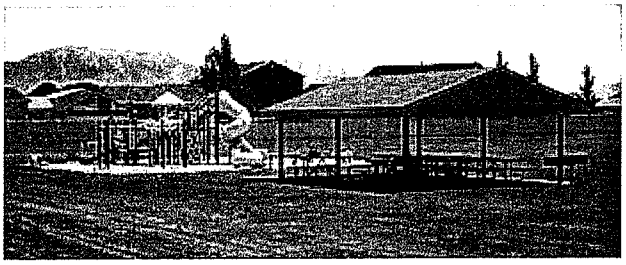
Stagecoach Crossing A
1900 West 550 South
3 acres
Playground, 1 Pavilion, 6 Tables and Basketball



Stagecoach Crossing C
1500 West 700 South
1 acre
Playground



Summer Crest Park
1900 North 1150 East
3 acres
1 Pavilion, 5 Tables and Playground



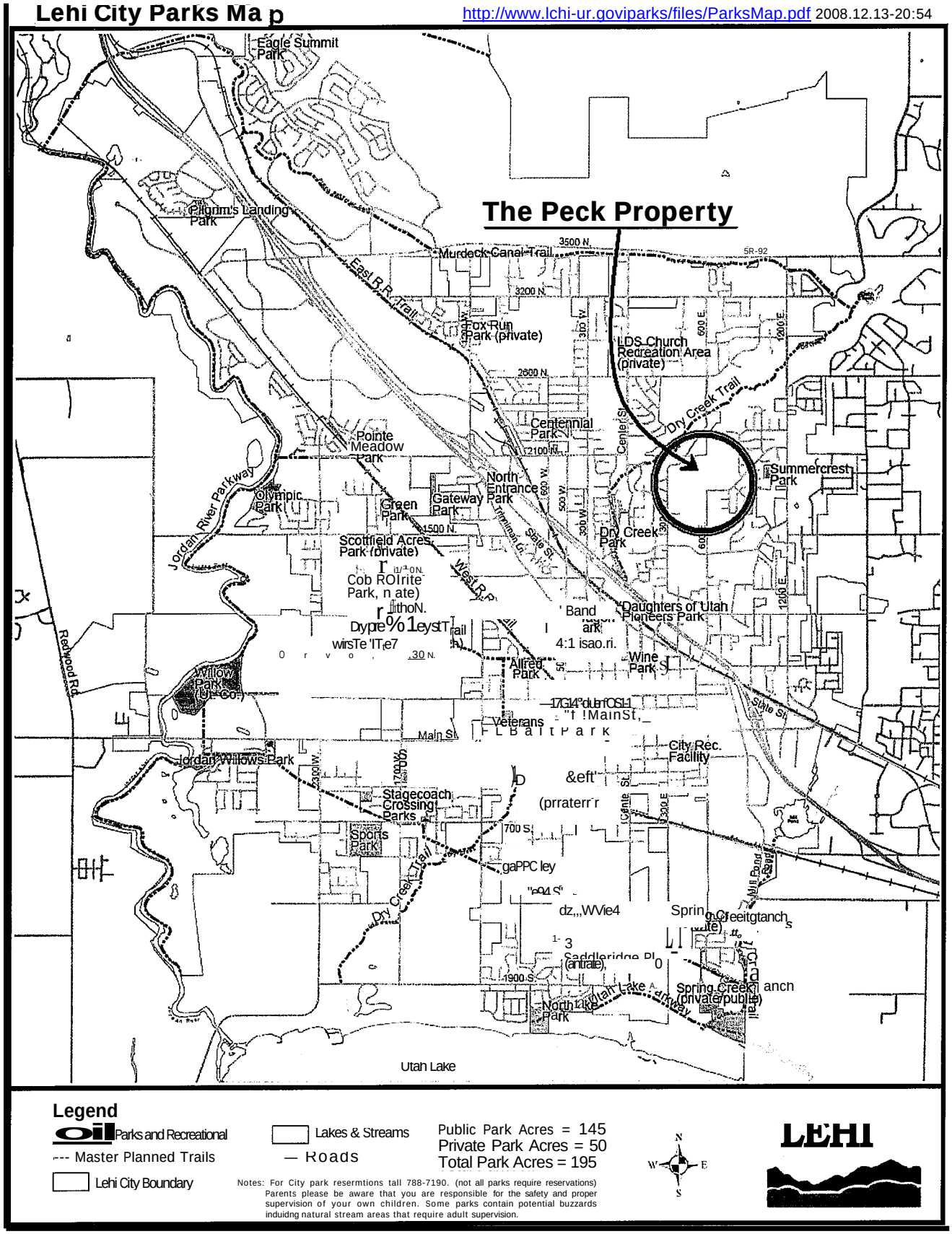
Sommerset (large)
200 South 1700 West
3 acres
Playground, 1 Pavilion and 6 Tables

Sommerset (small)
1500 West 50 South
2.2 acres
Playground, Pavilion and 6 Tables

Vets Ball Park
850 West Main St.
12.75 acres
Restrooms, Playground and Baseball

Wines Park
500 North Center St.
3.5 acres
4 Pavilions, 48 Tables, Playground and Restrooms

Exhibit Y


Lehi City Parks Map
http://www.lchi-ur.goviparks/files/ParksMap.pdf 2008.12.13-20:54
The Peck Property
Eagle Summit Park
Pilgrim's Landing Park
Murdock Canal Trail
East R.R. Trail
Fox Run Park (private)
LDS Church Recreation Area (private)
Dry Creek Trail
Centennial Park
Pointe Meadow Park
Summercrest Park
Olympic Park
Green Park
Gateway Park
North Entrance
Jordan River Parkway
Scottfield Acres Park (private)
Dry Creek Park
Daughters of Utah Pioneers Park
Band Park
Wine Park
Alfred Park
Willow Park (Un-Co-)
Redwood Rd
Veterans Memorial Park
Main St
City Rec. Facility
Jordan Willows Park
Stagecoach Crossing Parks
Sports Park
Dry Creek Trail
Spring Creek Ranch (private/public)
North Lake Park
Utah Lake
Legend
Parks and Recreational
Master Planned Trails
Lehi City Boundary
Lakes & Streams
Roads
Public Park Acres = 145
Private Park Acres = 50
Total Park Acres = 195
Notes: For City park reservations call 788-7190. (not all parks require reservations) Parents please be aware that you are responsible for the safety and proper supervision of your own children. Some parks contain potential buzzards induidng natural stream areas that require adult supervision.
LEHI