

Advisory Opinion #17

Parties: Uinta Academy, LC and Cache County
Issued: June 28, 2007

TOPIC CATEGORIES:

Appealing Land Use Decisions
Entitlement to Application Approval (Vested Rights)
Substantive Land Use Review
Temporary Land Use Ordinances

County is not required to enact a temporary ordinance in order to deny Property Owner's application. Since the County's zoning ordinance prohibited the proposed use, it could deny the application. Property Owner may appeal the Zoning Administrator's decision, because all decisions by a land use authority that administer or interpret land use ordinances may be appealed.

DISCLAIMER

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OFFICE OF THE PROPERTY RIGHTS OMBUDSMAN

ADVISORY OPINION

Temporary Land Use Regulations and the Authority to Deny Applications

Advisory Opinion Requested by: Uinta Academy, LC

Local Government Entity: Cache County

Applicant for the Land Use Approval: Uinta Academy, LC

Project: Application for a Residential Facility for Persons with a Disability Located in Wellsville

Date of this Advisory Opinion: June 28, 2007

Opinion Authored By: Elliot R. Lawrence, Attorney
Office of the Property Rights Ombudsman

Issues

- I. Is Cache County required to enact a temporary ordinance in compliance with Utah Code § 17-27a-504 in order to deny an application pursuant to § 17-27a-508?
- II. Can a local government impose a "moratorium" (via a temporary land use regulation) on residential facilities for persons with a disability?
- III. Did the County enact a temporary land use regulation to delay a decision on the application, and was the time taken to review the application unreasonable?
- IV. Is the letter from a County plaining official an appealable action, or must Uinta Academy wait until a new ordinance is enacted and a decision announced by the County?

Summary of Advisory Opinion

- I. Is a county required to enact a temporary ordinance in compliance with Utah Code § 17-27a-504 in order to deny an application pursuant to § 17-27a-508?**

As provided in § 17-27a-508 of the Utah Code, local governments may deny land use applications if there a compelling, countervailing public interest, but that determination does not necessarily require a action by a legislative body, because the statute anticipates that a decision

denying a land use application could be made by a person, as well as a board or commission. In addition, an application could be denied if an ordinance change is pending. A temporary land use regulation is not required to announce that an ordinance is pending.

II. Can a local government impose a "moratorium" (via a temporary land use regulation) on residential facilities for persons with a disability?

A county may enact temporary regulations that affect any land use, including residential facilities for persons with a disability. Section 17-27a-519 of the Utah Code provides that residential facilities for the disabled are permitted in any zone that allows similar residential facilities. Nothing in that section exempts those facilities from local zoning regulation. A local government may enact a temporary regulation that temporarily prohibits residential facilities for persons with a disability, provided, however, that the action does not unduly discriminate.

III. Did the County enact a temporary land use regulation to delay a decision on the application, and was the time taken to review the application unreasonable?

The time taken by the County to process the application and issue a decision was not unreasonable. First, the delay on Uinta Academy's application directed by the Cache County Council did not constitute a temporary land use regulation pursuant to § 17-27a-504. A "temporary land use regulation" imposes some sort of control or limitation on land use. The action taken by the County Council did not control or limit any particular use, but was a directive to county staff.

Second, local governments are required to render a decision on land use applications "with reasonable diligence. The Utah Code does not specify how much time constitutes "reasonable diligence." The amount of time that is reasonable depends upon a variety of factors. Cache County issued its decision 71 calendar days (50 business days) after Uinta Academy submitted the application. The delay was ordered by the County Council to review the application and the relevant law. Nothing suggests that the time taken by the County was unreasonable.

IV. May the letter from the County' Zoning Administrator be appealed?

The May 30, 2007 letter from the Cache County Zoning Administrator may be appealed to the County's Board of Adjustment. That decision interprets provisions of the Cache County land use ordinance, which may be appealed to the board of adjustment. This Opinion takes no position on whether an earlier letter from the Zoning Administrator constitutes a final decision that may be appealed.

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 U.C.A. §13-43-205. The 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.

The request for this Advisory Opinion was received from Uinta Academy, LC on May 3, 2007. A letter with the request attached was sent via certified mail, return receipt requested, to Jill N. Zollinger, Cache County Recorder, at 179 N. Main, #102, Logan, Utah 84321. The return receipt was signed and was received on May 15, 2007, indicating that Ms. Zollinger had received it on behalf of Cache County.

Evidence

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

Documents

1. Request for an Advisory Opinion dated May 3, 2007, filed with the Office of the Property Rights Ombudsman by Todd Hallock, representing Uinta Academy, LC
2. Materials submitted with the Request, including copies of the application and correspondence with Cache County
3. A "Statement of Facts" prepared by Mr. Hallock, submitted with the Request for Advisory Opinion
4. An "Addendum" to the Notice of Appeal and Application filed with Cache County, prepared by Mr. Hallock, and submitted with the Request for Advisory Opinion
5. Minutes of the Meeting of the Cache County Council, April 10, 2007
6. "Zoning Clearance Request for Parcel #11-068-0026," Letter to Jeffrey Simpson from Josh Runhaar, Cache County Zoning Administrator, dated May 30, 2007, including numerous attachments.

Statutes and Laws

1. Title 42, United States Code, § 3601 (42 U.S.C. § 3601. *et seq.* "The Fair Housing Act")
2. 42 U.S.C. § 3602 ("Definitions")
3. 42 U.S.C. § 3604 ("Discrimination in the sale or rental of housing and other prohibited practices")
4. Utah Code Ann. § 17-27a-103 ("Definitions")
5. Utah Code Atm. § 17-27a-504 ("Temporary Land Use Regulations")
6. Utah Code Ann. § 17-27a-508 (2006) ("When a land use application is entitled to approval")
7. Utah Code Ann. § 17-27a-519 ("Residences for persons with a disability")

8. Cache County Code § 17.02.020 ("Board of Adjustment")
9. Cache County Code § 17.02.090 ("Interpretation of authorized permitted or conditional uses")
10. Cache County Code § 17.05.170 ("Residential facilities for persons with a disability")
11. Cache County Code § 17.06.120 ("Appeals of permitted use, conditional use, or temporary use decision")
12. Cache County Code § 17.07.020 ("Definitions")
13. Cache County Code § 17.08.020 ("Schedule of uses by zones")

Background

On March 20, 2007, Uinta Academy, LC submitted an application to Cache County, requesting approval for a Residential Facility for Persons with a Disability ("Facility"). The Facility was proposed for an existing home located at 3869 S. Highway 23, near Wellsville, Utah. The application was submitted by Jeff Simpson, a principal in Uinta Academy.

A The Proposed Facility

The Facility is proposed to be a "group home" for adolescent women with mental health disabilities. Up to twelve young women would live in the Facility at any given time, and would receive training and counseling to help them transition to independent living. According to information submitted by Uinta Academy, the clients of the Facility would have already participated in other aspects of the Uinta Academy "program." The Facility would represent the last phase of their training, and only the "most responsible and mature girls" would be able to live in the home. No clients would be accepted with a criminal history, that exhibited violent behavior, with current drug or alcohol use, or with an IQ lower than 80.

The Facility would be licensed by the Utah Department of Human Services, and would be staffed full-time, with a staff-to-client ratio of 1 to 4. The women would be supervised at all times, with the staff responsible for each client's health and well-being. At least two staff members would be on duty at night. Classes, training and other activities would be conducted during the day with staff supervision. Teachers would come to the Facility on a part-time basis to assist with academic studies. Clients would be assigned household chores such as cooking, cleaning, and gardening. Off-site activities would be included, such as shopping, exercise, and social events.

Uinta Academy is a nationwide program, and reports that similar facilities have received a high level of acceptance in other communities. The Facility would be secured, not only by full-time staff, but with an alarm system. The owners report that over the past 4 years, only 2 women have run away from their facilities. These women were promptly found and were immediately discharged.

None of the young women assigned to the Facility would be allowed to drive. There are expected to be approximately 4-5 vehicles parked at the Facility at any given time, depending on what activities are being conducted. The Facility will have a television, a piano, and computers. Clients would be allowed to have a personal stereo with headphones.

The parcel proposed for the Facility is approximately 3.3 acres, and contains a home built in 2000. The home is approximately 1,667 square feet. The property is accessed via a private lane adjoining Highway 23. The area containing the parcel is zoned "Agricultural," and several other residences are located nearby. There appears to be adequate parking at the site.

B. The Application/Approval Process

Jeff Simpson submitted the Uinta Academy application on March 20, 2007. According to Mr. Simpson, a County employee had previously informed him that the application would be processed "within 24 hours." On March 21, a County employee informed Mr. Simpson that the County Council wished to discuss group homes such as the Facility, and that a "moratorium" had been placed on all such applications. The employee stated that the application would be received, but would not be processed or approved. The employee also stated that the issue was scheduled to be considered by either the Planning Commission or the Cache County Council.

The minutes of the April 10, 2007 meeting of the County Council show that the Council voted to "delay the approval of the Uinta Academy request for a facility . . . to allow time for Planning and Zoning to do a review to determine if there is a compelling reason to deny the permit . . ." Minutes of the Cache County Council, April 10, 2007 at 4. The reason for this action was to allow a review into whether the Facility will change the general character of the neighborhood. The Council was informed that two similar facilities were already operating in the Wellsville area, and that delay was needed so that the County's ordinances could be reviewed. The Council minutes noted that a public hearing was scheduled before the County Planning Commission on May 3, 2007. *See Zoning Clearance request for Parcel #11-068-0026*, dated May 30, 2007, attachment F.

The April 10 minutes indicate that Todd Hallock, attorney for Uinta Academy, attended the County Council meeting, although nothing in the minutes shows that he participated in any discussion. Mr. Hallock, however, objected that he (and, presumably, his client) did not receive adequate notice of that meeting. The County agreed to reschedule the matter for to the meeting held on May 22. In the meantime, the application remained on hold. In a letter dated April 12, 2007, Josh Runhaar, the County's Zoning Administrator explained that a decision on the application would be delayed pending a review of the relevant ordinances.

The application was pulled from the agenda of the May 22 meeting. In a letter dated May 30, Mr. Runhaar denied the application on behalf of Cache County. The letter explained that the Facility was a "Residential Treatment Facility," which is a conditional use in commercial or industrial zones under the Cache County Zoning Code. The County reasoned that since the Utah Department of Human Services would license the Facility under Residential Treatment, the County's land use ordinance also considers it a "Residential Treatment Facility." Such a facility is a conditional use under the zoning ordinance. Since such a facility was only allowed in commercial or industrial zones, the County did not provide further analysis of the application as a conditional use.

Analysis

I. Cache County is not required to enact a temporary land use regulation in order to deny an application pursuant to § 17-27a-508 of the Utah Code.

Section 17-27a-508 of the Utah Code provides that an applicant is entitled to approval of a land use application that conforms to all applicable laws and ordinances, but a county has latitude to deny an application if there is a countervailing interest or a pending zoning amendment.

An applicant is entitled to approval of a land use application if the application conforms to the requirements of the county's land use maps, zoning map, and applicable land use ordinance in- effect when a complete application is submitted and all fees have been paid, unless:

(i) the land use authority, on the record, finds that a compelling, countervailing public interest would be jeopardized by approving the application; or

(ii) in the manner provided by local ordinance and before the application is submitted, the county has formally initiated proceedings to amend its ordinances in a manner that would prohibit approval of the application as submitted.

UTAH CODE ANN. § 17-27a-508(1)(a) (2006).¹

This statute uses language very similar to § 17-27a-504, which provides that a county may enact temporary land use regulations without obtaining a recommendation from a planning commission. A county's "land use authority" may deny the application if there is a compelling, countervailing public interest, or if a pending ordinance is approved which would prohibit the use. "'Land use authority' means a person, board, commission, agency, or other body designated by the local legislative body to act upon a land use application." *Id* §17-27a-103(18). Since the statute anticipates that a person authorized by a county legislative body may deny an application on behalf of the county, that person may act without specific authorization or ratification from the legislative body.

As a threshold matter, though, § 508 anticipates that the county must necessarily determine whether an application proposes a use that is even allowable under current zoning regulations and maps. Cache County has authorized the appointment of a Zoning Administrator to enforce the County's zoning ordinances. Cache County Code § 17.02.030. The Zoning Administrator is authorized to interpret zoning ordinances to determine whether a proposed use is permitted, conditional, or prohibited. *Id* § 17.02.090. In those determinations the Zoning Administrator may act without further authorization from the County Council.

¹ This section was amended by the 2007 *Utah Legislature. The amendments took effect after Uinta Academy submitted its application. The language of subsection (1)(a) is unchanged.

A denial under § 17-27a-508 thus does not necessarily require action by a legislative body. To illustrate, consider the following hypothetical situations:

- (1) An application is submitted and all fees paid. The county's Zoning Administrator may review the application and determine that it does not conform to the land use map, zoning map, or applicable land use ordinances.² This determination would not require a temporary regulation enacted by a legislative body, but could take the form of a written analysis explaining the determination.
- (2) An application is submitted that conforms to all existing requirements, but the county discovers that the property may be susceptible to landslides or other instability. A zoning administrator may determine that susceptibility constitutes a compelling, countervailing public interest, and deny the application. The statute requires that such a finding be "on the record." This requirement is satisfied if the zoning administrator prepares written findings showing that the decision was based on reliable evidence.³
- (3) There is a pending ordinance change that if enacted would prohibit approval when an application is submitted. It would hardly be necessary for a legislative body to enact a temporary land use regulation announcing that an ordinance change is pending. If the county can show that an ordinance change has been "formally initiated," an application may be denied once the ordinance is enacted.

Local governments⁴ have enacted temporary ordinances that place "moratoria" on all development, but the denial of a specific application is still carried out under authority of § 17-27a-508.⁵ In short, a temporary land use regulation may be enacted which could result in the denial of an application under § 17-27a-508, but the statute does not *require* such action by a legislative body.

The Cache County Zoning Administrator has determined that Uinta Academy's Facility is not allowed under the present zoning regulation for the proposed site. This determination was within the Zoning Administrator's authority, and it may be appealed to the County's Board of Adjustment, as is discussed below.⁶

² This scenario would include an interpretation as to whether a proposed land use is permitted, conditional, or prohibited.

³ This scenario is for illustrative purposes only, and is not intended as a statement interpreting or defining what constitutes a "compelling, countervailing public interest."

⁴ Parallel sections applicable to municipalities are found at §§ 10-9a-504 and -509.

⁵ The term "moratorium" is often used, but is not found in the statute. A temporary land use regulation may operate as a moratorium on new applications, but it may also be used (when appropriate) to modify regulation of new applications.

⁶ An analysis of that determination is beyond the scope of this Opinion.

II. The County may impose a "moratorium" (via a temporary land use regulation) on a residential facility for persons with a disability.

There is no question that a county's authority to deny or limit applications extends to all permitted uses, provided the county meets the threshold requirements established in the Utah Code. Nothing in the Utah Code exempts residential facilities for the disabled from temporary land use regulations, provided that those regulations do not improperly discriminate against the disabled.

The Utah Code requires that "Residential Facilities for Persons with a Disability" be permitted in any zone where similar residential dwellings are allowed:

- (1) Each county shall adopt an ordinance for residential facilities for persons with a disability.
- (2) Each ordinance under Subsection (1) shall:
 - (a) comply with Title 57, Chapter 21, Utah Fair Housing Act, and the federal Fair Housing Amendments Act of 1988, 42 U.S.C. Sec. 3601 et seq.; and
 - (b) to the extent required by federal law, provide that a residential facility for persons with a disability is a permitted use in any zone where similar residential dwellings that are not residential facilities for persons with a disability are allowed.

UTAH CODE ANN. § 17-27a-519(1-2) (2006). This statute, along with state and federal fair housing legislation, guarantees equal treatment for persons with a disability insofar as housing opportunities, but does not provide preferential treatment or outright exemption from zoning regulation. *See e.g., Community Services, Inc. v. Wind Gap Municipal Authority*, 421 F.3d 170 (3rd Cir. 2005) (a local sewer authority could define a residential facility for the disabled as a "multi-adult rooming facility," which was charged a higher rate for sewer service).

As is discussed in greater detail below, a county may enact a temporary regulation imposing a "moratorium" on any or all uses. Nothing in the Utah Code limits the uses that may be subject to a temporary regulation. It therefore follows that a local government may enact a temporary regulation imposing a moratorium on residential facilities for persons with a disability. However, if such an action is taken, not only must it be justified by compelling reasons, but the action also must not constitute improper discrimination.⁷

⁷ This Opinion addresses the question of whether a county may impose a "moratorium" on facilities for the disabled, and does not take a position on whether Cache County's actions were discriminatory.

III. The County did not enact a temporary land use regulation to delay a decision on Uinta Academy's application, and the time taken to review the application was reasonable.

The County Council's directive to postpone approval of Uinta Academy's application did not constitute a temporary land use regulation, pursuant to § 17-27a-504, but was an instruction to county staff. Since the directive was not a temporary land use regulation, it is not necessary for the County to justify the directive with a compelling, countervailing public interest.

A The County's Directive was not a Temporary Land Use Regulation

Local governments are authorized to enact temporary land use regulations, which do not need a recommendation from a planning commission:

17-27a-504. Temporary land use regulations.

(1) (a) A county legislative body may, without prior consideration of or recommendation from the planning commission, enact an ordinance establishing a temporary land use regulation for any part or all of the area within the county if:

- (i) the legislative body makes a finding of compelling, countervailing public interest; or
- (ii) the area is unregulated.

(b) A temporary land use regulation under Subsection (1)(a) may prohibit or regulate the erection, construction, reconstruction, or alteration of any building or structure or any subdivision approval.

UTAH CODE ANN. § 17-27a-504(1) (counties); *see also* § 10-9a-504 (municipalities). This statute enables local governments to address important needs that need immediate attention.

The statute authorizes enactment of temporary *regulations*, or provisions which control or restrict land use. "'To regulate' means to adjust by rule, method or established mode; to subject to governing principles or laws." *Ogden City v. Leo*, 54 Utah 556, 560, 182 P. 530, 532 (1919) (internal quotations omitted). "Regulation" evokes actions described as directing, controlling, prohibiting, and limiting. *See e.g. Farmington River Company v. Town Plan and Zoning Commission of Town of Farmington*, 197 A.2d 653 (Conn. 1963). Thus, a "temporary land use regulation" necessarily must direct, control, limit, or prohibit land use in some manner.

This approach is supported by the language of § 17-27a-504(1); which is quoted above. First, one of the justifications for a temporary regulation is because an area is "unregulated." The language used in subsection (b) provides that a temporary ordinance may "prohibit or regulate" buildings or subdivisions. Finally, the title of § 17-27a-504 (while having only persuasive authority), identifies the authorized acts as "regulations." For these reasons, it must be

concluded that a "temporary land use regulation" includes acts meant to . do such things as control,

direct, or limit property use and development.

The County Council's directive instructing staff to delay a decision on Uinta Academy's application was not a "temporary land use regulation," because the action did not "regulate" any land use. Since the Council's directive was not a temporary land use regulation, but merely an administrative instruction, there was no need to justify it with a compelling, countervailing public interest.

B The Delay in Processing the Application was Reasonable

Although the County Council's action was not a temporary land use regulation, there remains the question as to whether 71 calendar days (50 business days) was reasonable to review Uinta Academy's application. At the time of the application, the County was required to act "with reasonable diligence." *See* UTAH CODE ANN. § 17-27a-508(3) (amended 2007). The statute did not specify how much time constituted "reasonable diligence."

The 2007 Utah Legislature amended § 17-27a-508, removing the "reasonable diligence" language, and moving it to a new section, 17-27a-509.5, which provided some guidance on how much time is "reasonable." While this new statute did not take effect until after Uinta Academy's application, it is nevertheless instructive to determine if Cache County's delay was unreasonable.

Section 17-27a-509.5 maintains the requirement that counties reach a decision to approve or deny an application "with reasonable diligence." After a reasonable time has passed with no action, an applicant may request that a final decision be made within 45 days. It is thus, axiomatic that a "reasonable time" cannot be less than 45 days. How much time is "reasonable" depends upon such factors as the complexity of the application, the resources available to the County for processing, and the need to clarify facts and legal issues.

Uinta Academy submitted its application on March 20, 2007. The next day, the staff informed Uinta that the County had decided to hold the application in abeyance. On April 10, 2007, the County Council voted to delay approval of the application, but did not give a time frame for a decision. The County Council scheduled a re-hearing on the matter for May 22, 2007, but the matter was withdrawn from the agenda prior to the meeting. The County's Zoning Administrator issued a decision on May 30, 2007. A total of 71 calendar days (50 business days) had passed.

According to the County Council, the delay was enacted because the County's staff needed time to review not only the application but the ordinances which governed residential facilities. The Council also noted that two other group homes were located in the same area, and that there was a question over how the application would affect the character of the neighborhood.

The delay to review and process the application was reasonable. The County was required to act "with reasonable diligence," which allows time for review of facts and legal issues. A careful analysis of the application and interrelated laws was appropriate, because of the complexity of

both state and federal laws, and the consequences should those laws be violated. Given the

complexity of the issue, it cannot be said that 71 days is unreasonable.

IV. The Zoning Administrator's decision may be appealed to the County's Board of Adjustment.

The Zoning Administrator's decision, announced in the May 30, 2007 letter, may be appealed to the County's Board of Adjustment. Decisions interpreting or applying land use ordinances may be appealed:

The applicant, a board or officer of the county, or any person adversely affected by the land use authority's decision administering or interpreting a land use ordinance may, within the time period provided by ordinance, appeal that decision to the appeal authority by alleging that there is error in any order, requirement, decision, or determination made by the land use authority in the administration or interpretation of the land use ordinance.

UTAH CODE ANN. § 17-27a-703. Each county is required to establish an "appeal authority," which may be a board of adjustment. *See id.*, § 17-27a-701. Since the May 30 letter from the Zoning Administrator is a decision interpreting Cache County's land use ordinance, it may be appealed to the County's Board of Adjustment. *See Cache County Code* § 17.02.020.

The Zoning Administrator's decision was issued after the request for this Opinion was submitted. It is presumed that the person requesting this Opinion wished to determine whether or not the previous letter from the Zoning Administrator (dated April 12, 2007) could be appealed. The April 12 letter informed Uinta Academy that a decision on the application would be delayed. Because the subsequent letter from the Zoning Administrator renders questions on appealing the April 12 letter moot, this Opinion does express a conclusion on whether the April 12 letter was a final decision that could be appealed.⁸

Conclusion

A county may exercise its rights to deny an application, as provided in § 17-27a-508 of the Utah Code, without enacting a temporary land use regulation. Local governments may deny applications if there is a compelling, countervailing public interest, but that determination does not necessarily require a temporary land use regulation because the statute anticipates that a decision could be made by an authorized person, as well as a board or commission. While a temporary land use regulation enacted pursuant to § 17-27a-504 may result in a denial, such action by a legislative body is not required.

A county may enact temporary regulations that affect any land use, including residential facilities for persons with a disability. There is nothing in § 17-27a-519 which completely exempts

⁸ It appears that Uinta Academy filed an appeal of the April 12 letter, so its rights are preserved regardless of whether that letter constitutes a final decision or not.

residential facilities from local zoning regulation. It is within the power of a local government to enact a temporary regulation that has the effect of temporarily prohibiting a residential facility for persons with a disability, provided, however, that the action does not unduly discriminate against the disabled.

The delay on Uinta Academy's application imposed by Cache County Council did not constitute a temporary land use regulation pursuant to § 17-27a-504. A "regulation" imposes some sort of control or limitation on land use. The action taken by the County Council did not control or limit any particular use, but was a directive to county staff. Thus, it was not a "temporary land use regulation." Moreover, the time taken by the County to process the application and issue a decision was not unreasonable.

Finally, the May 30, 2007 letter from the Cache County Zoning Administrator may be appealed to the County's Board of Adjustment. That letter constitutes a decision interpreting provisions of the Cache County land use ordinance, which may be appealed to the board of adjustment. This Opinion takes no position on whether an earlier letter from the Zoning Administrator is a final decision that may be appealed.

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

NOTE:

This is an advisory opinion as defined in Utah Code Annotated, §13-43-205. 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 delivment 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.

MAILING CERTIFICATE

U.C.A. §13-43-206(10)(b) requires delivery of the attached advisory opinion to the government entity involved in this matter in a manner that complies with U.C.A. §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 -Le 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:

Jill Zollinger
Cache County Clerk
179 N. Main, #102
Logan, UT 84321

On this _____ Day of June 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.

Office of the Property Rights Ombudsman