

Advisory Opinion #18

Parties: Uintah County and Galway Group, LLC
Issued: August 2, 2007

TOPIC CATEGORIES:

Exactions on Development

A subdivision plat may be amended or vacated as provided in the Utah Code, even if property owners do not agree with the proposal. No person may be required to accept ownership of property, if the property is not wanted.

DISCLAIMER

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



The Office of the Property Rights Ombudsman
Utah Department of Commerce
PO Box 146702
160 E. 300 South, 2nd Floor
Salt Lake City, Utah 84114

(801) 530-6391
1-877-882-4662
Fax: (801) 530-6338
www.propertyrights.utah.gov
propertyrights@utah.gov



JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

State of Utah Department of Commerce

OFFICE OF THE PROPERTY RIGHTS OMBUDSMAN

ADVISORY OPINION

Amending or Vacating Subdivision Plats

Advisory Opinion Requested by: Uintah County

Local Government Entity: Uintah County

Property Owner: Galway Group, LLC (Petitioner)

Project: Lucky Acres Subdivision

Date of this Advisory Opinion: August 2, 2007

Advisory Opinion Prepared By: Elliot R. Lawrence, Office of the Property Rights Ombudsman

Issues

- 1) May a Local Government Amend a Subdivision Plat if Some Lot Owners Oppose the Action?
- 2) May the Local Government Require a Lot Owner to Accept an Addition of Property to a Lot as a Result of a Subdivision Plat Amendment?

Summary of Advisory Opinion

A subdivision plat may be amended or vacated a even if property owners do not agree with the proposal. A local government may act with or without a petition, and may approve an amendment or vacation if it is found that no material injury would occur, and if there is good cause to approve the proposal. If there is opposition to a proposal, or if there are property owners who do not join a petition for an amendment, the local government must conduct a public hearing on the proposed changes. If a proposed amendment alters or vacates a street, a public hearing must be held, the planning commission must recommend approval or denial, and any affected entities must be notified. The local government may approve the alteration to a street as part of the overall plat amendment.

No person may be required to accept responsibility or ownership of property, if the property is not wanted. Local governments should work with property owners to avoid circumstances where a proposed subdivision amendment requires a lot owner to involuntarily accept additional property.

Review

A request for an advisory opinion may be filed at any time prior to the rendering of a final decision by a local land use appeal authority under the provisions of Utah Code Ann. § 13-43-205. An advisory opinion is meant to provide an early review, before any duty to exhaust administrative remedies, of significant land use questions so that those involved in a land use application or other specific land use disputes can have an independent review of an issue. It is hoped that such a review can help the parties avoid litigation, resolve differences in a fair and neutral forum, and understand the relevant law. The decision is not binding, but, as explained at the end of this opinion, may have some effect on the long-term cost of resolving such issues in the courts.

The request for this Advisory Opinion was received from Uintah County on July 12, 2007. A letter with the Request attached was sent via certified mail to: Galway Group, LLC. The return receipt was signed and was received on July 18, 2007, indicating that the Galway Group had received it.

Evidence

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

1. Request for an Advisory Opinion filed July 12, 2007 with the Office of the Property Rights Ombudsman by Uintah County
2. Copies of Subdivision Plats, including the proposed “Lucky Acres Subdivision”
3. Telephone conversation with Edwin T. Peterson, Deputy County Attorney, Uintah County

Statutes and Ordinances

1. Utah Code Ann. § 17-27a-103
2. Utah Code Ann. § 17-27a-208
3. Utah Code Ann. § 17-27a-601 through -611

Background

In 2005, Uintah County approved a subdivision located near Vernal along the Steinaker Service Canal at approximately 1500 West. That subdivision created nine lots, five of which were rectangular and about 17,000 square feet apiece. The remaining four parcels ranged from three to six acres in size, and radiated out from a cul-de-sac. The street which terminated in the cul-de-sac also accessed the five smaller lots.

By 2006, the five small lots had been sold, but the larger parcels remained unsold. The larger parcels were acquired by a new developer, who proposed an amendment to the original plat,

creating 41 smaller lots where the four large parcels had been. The five small lots in the original plat would remain unchanged, except for Lot #5, which would be slightly altered. Lot #5 was originally located on the cul-de-sac, and a portion of the lot's total frontage was curved. Under the amended plat, the street no longer included a cul-de-sac, but continued in a straight line past Lot #5. Consequently, the amendment proposed that a portion of the original cul-de-sac would be added to Lot #5, increasing its area by about 570 square feet. As a result, Lot #5 would be nearly identical in size and shape to the other original lots.

The owner of Lot #5 has expressed opposition to the proposed amendment, and has also indicated opposition to accepting the slight increase in the lot area. The Lot owner did not sign the petition to amend the plat. There are alternatives which avoid the increasing the area of Lot #5, including realigning the road so that it bends at that point, or simply keeping that portion of the original cul-de-sac as part of the public roadway.

Analysis

I. Uintah County May Amend the Original Plat, Even if the Owners of Lots Within the Subdivision Oppose the Amendment.

Uintah County may approve the plat amendment, even if some lot owners are against the proposal. An existing subdivision may be vacated or amended by a local government:

Subject to Section 17-27a-609.5, and provided that notice has been given pursuant to local ordinance and Section 17-27a-208, the land use authority may, with or without a petition, consider and resolve any proposed vacation, alteration, or amendment of a subdivision plat, or any lot contained in a subdivision plat.

UTAH CODE ANN. § 17-27a-608(1)(a) (counties); *see also* § 10-9a-608(1)(a) (municipalities). According to the statute a proposed change to a subdivision does not require a petition from property owners. If a petition is filed, a public hearing is required if a property owner objects, or if there are property owners who have not signed a revised plat. *Id.* § 17-27a-608(1)(b).

The owner of any land within a subdivision may petition to amend the subdivision, or any portion of it. *Id.* § 17-27a-608(5) A petition must identify the owners of all land contained in the entire plat (even if only a portion of the plat is affected), the names of any owners adjacent to any street that is proposed to be altered or vacated, and the signatures of any property owners consenting to the petition. *Id.* § 17-27a-608(6).

A local government may approve the amendment or vacation if there is no material injury, and if there is good cause that the proposed change should be made:

If the land use authority is satisfied that neither the public interest nor any person will be materially injured by the by proposed vacation, alteration, or amendment, and that there is good cause for the vacation, alteration, or amendment, the land use

authority may vacate, alter, or amend the plat or any portion of the plat, subject to Section 17-27a-609.5.

Id. § 17-27a-609(1) (counties); § 10-9a-609(1) (municipalities).¹ Although it is necessary to hold a hearing if any property owner objects to the proposal, there is no requirement that all property owners agree to the amendment or vacation. The land use authority has discretion to determine whether the proposal would cause a material injury to either the public interest or to any person. If there is no material injury, and there is good cause, the land use authority may approve the change to the subdivision.

If the proposal includes vacating or altering a public street, the planning commission must, and recommend approval or denial, and a public hearing must be held:

If a petition is submitted containing a request to vacate or alter any portion of a street or alley within a subdivision:

- (i) the planning commission shall, after providing notice pursuant to local ordinance and Section 17-27a-208, make a recommendation to the land use authority concerning the request to vacate or alter; and
- (ii) the land use authority shall hold a public hearing in accordance with Section 17-27a-208 and determine whether good cause exists for the vacation or alteration.

Id. § 17-27a-609.5(1)(a) (counties); § 10-9a-609.5(1)(a) (municipalities).² If a street is vacated or altered, the local government relinquishes ownership in the street. Any easements or franchises by landowners or other public utilities are not impaired by the local government's action. *Id.* § 17-27a-609.5(3). The owner of an easement or franchise may, however, voluntarily agree to alter the property right in a manner consistent with the street alteration or vacation.

These provisions of the Utah Code allow Uintah County to consider a proposal to amend the subdivision plat. The County must conduct a public hearing, and receive a recommendation from its Planning Commission. The owners of land within the subdivision have proposed an amendment. Since it appears that not all property owners in the subdivision agree with the proposal, the County must consider the proposal at a public hearing. If there is good cause, the County may approve the amendment, even though some lot owners may be opposed to the proposal.

¹ A "Land Use Authority" is a person, board, commission, or agency authorized by a local government to act upon an application. This may be a county commission or city council, or another body designated by ordinance. See UTAH CODE ANN. § 17-27a-103(18) (counties); § 10-9a-103(15) (municipalities).

² Section 17-27a-208 requires that notice be given to any "affected entity," including the State, other governmental units, school districts, special service districts, and public utilities that may be impacted by the proposal. See Utah Code Ann. § 17-27a-103(1) (counties); § 10-9a-103(1) (municipalities).

Because the proposed amendment alters a street, the County must comply with § 17-27a-609.5. Any affected entities must be identified and notified, and the planning commission must give a recommendation on the proposal. The County must conduct a public hearing to consider the street alteration as part of the plat amendment. The County is not required to approve the street alteration separately from the overall plat amendment. The alteration to the street does not automatically change any easements or franchises that may exist in the street, although such rights may be voluntarily altered.

II. The County May not Require a Property Owner to Accept Additional Property as a Result of the Subdivision Amendment.

A local government cannot require that anyone accept property, even if it is offered free of charge. It is axiomatic that no person may be forced to take ownership or responsibility for property that is not wanted.

The proposed plat amendment would require alteration of the street that served the original lots. Instead of a cul-de-sac, the petitioners propose extending the street to serve several more lots. The petition proposes that Lot #5 be enlarged, and receive about 570 square feet of land that was originally part of the cul-de-sac. However, the County cannot force the owner of Lot #5 to accept this increase. It appears, however, that there are alternatives that allow the proposed plat amendment without adding property to Lot #5.

Conclusion

A local government does not need unanimous consent to approve an amendment to a subdivision. If there are property owners who object, a public hearing must be conducted. The amendment may be approved if there is good cause, and if no material injury would result. If the proposed amendment alters or vacates a street, a public hearing must be held, and the planning commission must recommend approval or denial. Entities affected by the street alteration must be notified and allowed opportunity to participate in the public hearing. The proposed street alteration may be approved if there is good cause.

No person may be forced to accept responsibility for additional property if the extra property is not wanted. If a plat amendment calls for an unwanted addition to any lot, the local government and the person petitioning for the amendment should develop an alternative that avoids the problem.

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

NOTE:

This is an advisory opinion as defined in Utah Code Annotated, § 13-42-205. 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 based on a summary review of the factual situation involved in this specific matter, and may or may not reflect the opinion that might be expressed in another matter where the facts and circumstances are different or where the relevant law may have changed.

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

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

Evidence of a review by the Office of the Property Rights Ombudsman and the opinions, writings, findings, and determinations of the Office of the Property Rights Ombudsman are not admissible as evidence in a judicial action, except in small claims court, a judicial review of arbitration, or in determining costs and legal fees as explained above.

MAILING CERTIFICATE

Section 13-43-206(10)(b) of the Utah Code requires delivery of the attached advisory opinion to the government entity involved in this matter in a manner that complies with § 63-30d-401 (Notices Filed Under the Governmental Immunity Act).

These provisions of state code require that the advisory opinion be delivered to the agent designated by the governmental entity to receive notices on behalf of the governmental entity in the Governmental Immunity Act database maintained by the Utah State Department of Commerce, Division of Corporations and Commercial Code, and to the address shown is as designated in that database.

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

Dave Haslem
County Commissioner
152 E. 100 North
Vernal, UT 84078

On this _____ Day of _____, 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