

Advisory Opinion 271

Parties: Lauren Halcik / Summit County

Issued: June 13, 2023

TOPIC CATEGORIES:

Appealing Land Use Decisions

Conditional Use Applications

Interpretation of Ordinances

A conditional use proposal was not inconsistent with the stated purpose of the County's development code because the proposed use was expressly anticipated by the list of conditional uses allowed in the zoning district, and the County appropriately approved the conditional use permit by finding that the conditions imposed achieved compliance with its enacted standards.

A procedural error cannot be the basis for overturning a land use decision on appeal unless it is shown that there is a reasonable likelihood that the legal defect changed the outcome of the proceeding. Approval of a conditional use is an administrative decision, in which the consent of neighboring landowners may not be a factor. Because the County's decision complied with its standards and was supported by substantial evidence, an alleged defect in public hearing requirements found in local ordinance was not reasonably likely to have changed the outcome of the administrative proceedings, especially where public input was still considered, and cannot be the basis for reversing the County's decision.

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ADVISORY OPINION

Advisory Opinion Requested By: Lauren Halcik
Local Government Entity: Summit County
Applicant for Land Use Approval: Brendan and Carly Coyle
Type of Property: Agricultural
Date of this Advisory Opinion: June 13, 2023
Opinion Authored By: Richard B. Plehn, Attorney
Office of the Property Rights Ombudsman

ISSUES

Did Summit County properly approve a conditional use permit in an agricultural zone for a proposed “farm-to-table” cidery/distillery with capacity for events and overnight accommodations?

SUMMARY OF ADVISORY OPINION

Conditional use applications are administrative decisions, and must be approved if compliance with enacted standards can be achieved by imposing reasonable conditions on reasonably anticipated detrimental effects, if any. State law does not require public hearings for administrative proceedings, but cities and counties may choose to require public hearings in their ordinances, although the consent of neighboring landowners may not be a factor for approval or denial. The role of public input, then, in administrative conditional use proceedings, is usually limited to providing factual information that could help the land use authority evaluate compliance with its standards. In challenging a land use decision on some procedural error, the challenging party must show a reasonable likelihood that the legal defect changed the outcome of the proceeding.

Here, Summit County properly approved a conditional use permit for a cidery/distillery where the proposed use was anticipated by the zoning district’s allowance for microbreweries and guest lodges as conditional uses, the County made appropriate findings that existing road facilities could accommodate increased traffic, and the County imposed reasonable conditions to achieve

compliance with its standards, including conditions supported by information provided from public input. Because the County’s decision complied with its standards and was supported by substantial evidence, an alleged deviation from local ordinance on specific public hearing requirements would not have changed the outcome of the proceedings, especially where public input was still considered, and cannot be the basis for reversing the County’s decision.

EVIDENCE

The Ombudsman’s Office reviewed the following relevant documents and information prior to completing this Advisory Opinion:

1. Request for Advisory Opinion submitted by Blaine K. Anderson, on November 2, 2022.
2. Letter from Matthew Holmes, on behalf of the City of Hyrum, on November 9, 2022.
3. Email from Blaine K. Anderson, on November 10, 2022.
4. Email from Matthew Holmes on November 18, 2022, with attached letter from Hyrum Irrigation Company, dated November 10, 2022.

BACKGROUND

Brendan and Carly Coyle own a 20-acre parcel in Marion, a community in unincorporated area of Summit County (“County”). The Coyles’ property is located in the Eastern Summit County Planning District, in the Agricultural-10 or AG-10 zone, just off of SR 32. Lauren Halcik is a nearby Marion resident that also lives on SR 32.

The Coyles submitted an application for a conditional use permit for a project named the “Dendric Estates Cidery,” and described as a “farm-to-table estate cidery, with food and beverage tasting room and three overnight guest rooms.” The application requested: 1) fifteen of the twenty acres to be planted with apple trees; 2) construction of a 3,350 square foot facility to process the apples; 3) construction of a 3,000 square foot tasting room; 4) construction of two greenhouses; and 5) construction of three guest rooms of approximately 700 square feet, each.¹ The applicants also proposed to make the facility available for events such as meetings, conferences and weddings.

Staff reports noted that the property was already being put to use for agricultural purposes, a permitted use in the AG-10 zone, while Distilleries and Guest Ranches are conditional uses in the AG-10 zone. The Staff report concluded that the proposed conditional uses would comply with the County’s standards if certain conditions of approval were imposed, and recommended approval of the conditional use permit, as conditioned in the staff report.

The County scheduled a public hearing for October 6, 2022 before the Eastern Summit County Planning Commission to consider the application. Prior notice of the public hearing was mailed to surrounding property owners according to County ordinance, including the Halciks. The notice indicated that the meeting was being held electronically, via Zoom, and provided instructions on how the public could attend and participate in the meeting remotely, or obtain in-person assistance from staff at the designated “anchor” location where the zoom meeting would be broadcast,

¹ This last item was not part of the application as initially submitted, but was added in response to comments from the Planning Commission.

identified as the Ledges Center in Coalville. The notice did not otherwise identify a single physical meeting location where commissioners and other meeting participants would all be present. Upon receiving the notice, Ms. Halcik called County offices to find out that the meeting would actually be held in person at the Summit County Services building in Kamas, which was also to serve as the anchor location for the electronic meeting. The County later corrected the anchor location when it published the agenda ahead of the October 6th meeting.²

At the October 6th public hearing, following a presentation by the Coyles, the Commission opened up the meeting to public comment, where members of the public physically present at the meeting spoke both in favor of the application and against it, including comments by Mr. Halcik. The Planning Commission also took several comments from people online attending the meeting remotely. The Planning Commission then noted that it closed public comment and discussed the proposal and several conditions with the applicants, and as a result of the meeting, the applicants indicated that they would return with a modified proposal.

The application was scheduled for consideration at the next Planning Commission meeting on October 20, 2022, and when the commission called that item on the agenda, the planner presenting stated his assumption that most of the people in attendance at the meeting were there for that application. However, the Commission did not open the meeting up for public comment because it determined that a public hearing was previously held on October 6th, and it had formally closed public comment at the prior meeting, and because the October 20th meeting was not noticed as a public hearing, the County could not “reopen” public comment without first continuing the matter for a later meeting and re-noticing the meeting as a public hearing.

The presenting planner did note, however, that following the October 6th meeting, word of the proposal spread among the community, and planning staff received several emails from residents expressing concerns and issues about the project and urging the Commission to not approve the permit. The presenter noted that these emails were forwarded to the commission members, and then provided a summary of the emails, stating that “most of the concerns resolved [sic] around traffic on SR 32, lights, noise and impacts on the neighbors or those types of things.”³ It was then noted that as the commission had instructed staff to go back and revise the conditions of approval, these public concerns were taken into account with the revised conditions which were now being presented to the Planning Commission for consideration at the October 20th meeting.

The Planning Commission therefore considered the revised conditions of approval contained in the new staff report, and approved the conditional use permit with several stated conditions, including hours of operation, lighting, parking, privacy fencing, and certain limitations on nighttime events and outdoor music.

The Halciks and several other nearby residents filed appeals of the Planning Commissions approval of the conditional use permit. Ms. Halcik also requested an Advisory Opinion from this Office as to whether the County’s approval was proper.

² *Agenda, Eastern Summit County Planning Commission meeting October 6, 2022*, (published September 30, 2022), <https://www.summitcounty.org/AgendaCenter/ViewFile/Agenda/10062022-3633>.

³ Transcript of October 20, 2022 Eastern Summit County Planning Commission Meeting, pages 4–5.

ANALYSIS

Ms. Halcik asks for an opinion as to whether the County’s approval of the conditional use permit was proper in light of several challenges that were raised on appeal: (1) that the proposed use is not consistent with the purpose of the County Code, (2) that the evidence addressing parking concerns was insufficient, and (3) that the public input process was not adequate.

As addressed below, we conclude that (1) the proposed use complies with the County’s standards, as conditioned, (2) the County’s decision was proper and supported by substantial evidence, and (3) based on these conclusions, because the public in fact participated in the proceedings, any alleged deficiency in public notice or hearing requirements would not have changed the outcome, and the County’s decision cannot therefore be challenged on any alleged procedural error.

I. Purpose Statements Are Informed by the Specifics of Enacted Standards

Ms. Halcik first looks to the Eastern Summit County Development Code’s “Statement of Purpose,” section 11-1-1, which states that “all development and change within Eastern Summit County will occur in a manner that is consistent with the goals and expectations of residents,” and that “new development will not bring about change that is inconsistent with the underlying community values and resources.” SUMMIT COUNTY CODE § 11-1-1.

Ms. Halcik asserts that in conversations with local residents and neighbors, “over 600 signatures were gathered from neighbors identifying that an event center/guest lodge or ranch, intended to draw patrons on a daily basis, that offers alcohol consumption at large gatherings is ***not consistent with our underlying community values.***” (emphasis in original).⁴ Ms. Halcik argues that “the purpose of the code outlined in Summit County Code 11-1-1 . . . should supersede the nuanced details disclosed within the code, as *the code exists to protect rural Summit County and its residents.*” (emphasis in original).⁵

To discern the meaning of “community values” as stated in the County Code’s statement of purpose, it is unnecessary to poll residents every single time there is a land use application to consider. Rather, the meaning of purposes language like this is contained in the code itself, in the resulting standards that have been enacted to implement the stated policy.

In *Price Development Co. v. Orem City*, the Utah Supreme Court discussed the role of legislative statements of purpose as compared with the operative provisions. 2000 UT 26. Distinct sections of purpose, found in many ordinances and statutes, serve as a “preamble” to the operative provisions of a statute, and “as such, a preamble is nothing more than a statement of policy which confers no substantive rights.” *Id.*, at ¶ 6. The Court explained that these provisions “provide guidance to the reader as to how the act should be enforced and interpreted, but they are not a substantive part of the statute.” *Id.* Accordingly, these provisions “do not create rights that are not found within the statute, nor do they limit those actually given by the legislation.” *Id.*

⁴ *Appeal of a Land Use Determination - Dendric Estates Cidery*, Appellants Lauren & Michael Halcik, Melissa & Ted Guy Peterson (“Halcik Appeal”), dated October 27, 2022.

⁵ *Id.*

The legislative meaning of the statement of purpose in County Code, therefore, is evidenced by the plain language of its operative provisions. *See Foutz v. City of S. Jordan*, 2004 UT 75 (legislative intent is evidenced by a statute’s plain language, in light of the purpose the statute was meant to achieve).

The County Code provides that the conditional uses allowed in the AG-10 zoning district include both “[d]istillery/microbrewery” as well as “[g]uest ranches or lodge intended to attract visitors/patrons on a daily basis or an extended stay.” There is no argument made that the proposed Dendric Cidery does not fit these conditional uses as defined; rather, the argument is that, despite the Code’s allowance for these conditional uses in the AG-10 zone, this proposal should nevertheless not be approved because it would not be consistent with the community’s values.

However, the Code’s inclusion of these uses in this particular zone *is* a statement of the community’s values, having resulted from a public and legislative land use process that included a public hearing and recommendation by the Planning Commission, whereby the County’s legislative body, as the persons who are publicly accountable for their choices as elected officials, then balanced the competing interests to make a policy-based decision that put these provisions into law. *See, Bradley v. Payson City Corp.*, 2003 UT 16, ¶ 11.

That moment in time was when the community’s values were considered by the County’s elected policy-makers, and the established allowed uses in the County’s respective zoning districts are the result. Now, when a property owner comes seeking approval to use his/her property according to those enacted standards, it is incumbent the County “to act in good faith and not to reject an application because the application itself triggers zoning reconsiderations that result in a substitution of the judgment of current city officials for that of their predecessors.” *W. Land Equities v. Logan*, 617 P.2d 388, 396 (Utah 1980). Whereas the County’s legislative body decides policy upon public input, the role of the Planning Commission, on the other hand, who County Code designates as the land use authority,⁶ is to “apply the plain language of land use regulations . . . [as] an administrative act.” UTAH CODE § 17-27a-308.

A land use authority's decision to approve or deny a conditional use is an administrative land use decision. UTAH CODE § 17-27a-506(3). The only question for the Planning Commission, then, is whether the proposed use complies with the Code’s enacted standards, as conditioned. If it does, a decision to approve an application that complies with the County’s express standards satisfies the statement of purpose found in the preamble of the County’s development code.

II. The County’s Decision Was Supported by Substantial Evidence

Summit County Code provides the applicable standards for approval of conditional uses, as follows:

Before an application for a conditional use permit is approved, the Planning Commission must conclude that factual evidence exists to verify the following findings:

⁶ See, SUMMIT COUNTY CODE § 11-4-7.C.2.

1. The proposed use, as conditioned, shall be appropriate in the particular location, taking into account the nature of the use, its relationship to surrounding uses and its impact on the natural environment.
2. The proposed use, as conditioned, shall be in compliance with the development evaluations standards in chapter 2 of this title.
3. The applicant shall present evidence to show approval of the landowner for the particular use, unless the land is owned by the applicant and, in such case, the applicant shall submit proof of ownership.
4. There are reasonable conditions that can be imposed which mitigate the reasonably anticipated detrimental effects of the proposed use.

SUMMIT COUNTY CODE § 11-4-7.B.

On appeal, a land use decision is presumed valid and will be upheld unless it is arbitrary and capricious, or illegal. UTAH CODE § 17-27a-801(3). When a land use decision is made as an exercise of administrative powers, such decisions are not arbitrary and capricious if they are supported by “substantial evidence.” *Bradley v. Payson City Corp.*, 2003 UT 16, ¶ 10; *see also*, UTAH CODE § 17-27a-801(3). The term “substantial evidence” in the administrative context includes a requirement to make findings of fact and conclusions of law that “inform the parties of the basis of the administrative agency’s decision such that the parties knew why the agency ruled the way it did, afford the parties notice of what they would need to challenge on appeal, and allow an appellate court to perform a meaningful review.” *Staker v. Town of Springdale*, 2020 UT App 174, ¶ 40 (internal quotations and citations omitted).

Here, the Planning Commission adopted findings of fact and conclusions of law as contained in the Planning Commission staff report, which thoroughly evaluated each of the County Code’s defined standards. Ms. Halcik challenges the Planning Commission’s findings as to one particular issue, the adequacy of parking and traffic concerns. Specifically, Ms. Halcik alleges that a particular UDOT Conditional Access Permit that the applicants presented to the Planning Commission may not have been truly reflective of the actual use proposed by the Dendric Estates Cidery.

Ms. Halcik, however, has not tied her concern over the UDOT permit back to a particular finding or conclusion made by the Planning Commission that was made in error, or otherwise demonstrated that the County’s standards were not appropriately applied, and that the proposed use in fact does not comply with applicable standards.

Providing a copy of a Conditional Access Permit from UDOT was not, itself, an express requirement for obtaining a conditional use permit. Rather, the applicable standard that addresses parking and traffic for conditional use permits is the requirement that “[t]he proposed use, as conditioned, shall be in compliance with the [County’s] development evaluations standards,” SUMMIT COUNTY CODE § 11-4-7.B, which, in turn, provides as follows:

B. Traffic Volume: No development shall cause the traffic volume on any public road or intersection thereon, affected by the proposed [development], to fall below

the design capacity of the roadway, as measured by the "Highway Capacity Manual" (Transportation Research Board, Special Report 209, 1985).

...

C. Traffic Volume: No development shall be approved which generates traffic volumes that require roads to be built or existing roads to be expanded in a manner not consistent with the rural infrastructure standards identified in chapter 6 of this title.

Id. §§ 11-2-5.B, 11-2-6.C.

These are the standards with which the application must comply, and here, the Planning Commission found, according to this standard, that “the roads and public services in the area are sufficient to accommodate the increase in intensity of the use.”⁷ From the Planning Staff report, it does not appear that the County’s findings and conclusions relied on the applicant’s representations about the issued UDOT permit, having noted that “[t]his application was reviewed by the County Engineering department who stated that the existing infrastructure was adequate for the site,” and that “[n]o expansion of existing County infrastructure, facilities and services will be necessary because of this application.”⁸

The Planning Commission made appropriate findings to support its decision with substantial evidence, and on appeal, it is the appellant that has the burden of proving that the land use authority erred. UTAH CODE § 17-27a-705.

Even accepting that the information presented to obtain the UDOT permit may have differed from what was ultimately proposed to the Planning Commission, this does not equate to a conclusion that the applicable County standards have been violated. Ms. Halcik has not marshaled any evidence to explain how the Planning Commission erred in its findings that the applicable County standards for traffic were satisfied by the application, as conditioned, nor produced any contrary evidence to suggest that the proposed use will instead result in traffic volume that causes any road to fall below its designated design capacity, or requires new roads or existing roads to be expanded.

III. The County’s Alleged Procedural Errors Did Not Appear to Prejudice its Decision

Ms. Halcik argues that the County’s approval of the conditional use permit was in error because it failed to comply with its ordinances regarding public notice and input. Specifically, she argues that the required notice of the planning commission meeting mailed to surrounding property owners provided information on how to attend the meeting remotely, but failed to identify the actual physical meeting place. Additionally, she argues that the Commission wrongfully denied the public an opportunity to comment at the second planning commission meeting on October 20th when the commission determined that it had prematurely closed public comment at the first planning commission meeting on October 6th, and could no longer “reopen” public comment without postponing the matter and re-noticing a public hearing.

⁷ Summit County Staff Report, Date of Meeting October 20, 2022, page 6.

⁸ *Id.*, pages 4–5.

State law does not make a public hearing a requirement for a conditional use permit, because it is an administrative decision. *See* UTAH CODE § 17-27a-507(3). Nevertheless, state law allows counties to choose, by ordinance, the application processes it will require, which may include public hearings.⁹ Summit County Code provides that “[A]fter holding a public hearing, the Planning Commission shall take final action on the application for a conditional use permit.” SUMMIT COUNTY CODE § 11-4-7.C.2. Having chosen to require a public hearing for its conditional use proceedings, the County is “bound by the terms and standards of [its ordinances] and shall comply with mandatory provisions of those regulations.” UTAH CODE § 17-27a-508(2).

However, when challenging a land use decision on appeal, it is not enough to merely allege that some procedural error occurred; rather, “proof prejudice is required,” in that the challenging party must “show that there is a reasonable likelihood that the legal defect in the [county]’s process changed the outcome of the proceeding.” *Potter v. S. Salt Lake City*, 2018 UT 21, ¶ 33.

The public plays an important role in the land use *planning* process, as when the planning commission is fulfilling its planning duties, it must hold a public hearing before it may make recommendations to the county’s elected legislative body for various kinds of legislative actions. *See* UTAH CODE § 17-27a-302(2).

In contrast, when the planning commission is designated as the land use authority to act on a particular application, it is not fulfilling planning duties. Rather, “when a conditional use permit is approved, no new law is created. Instead, existing law has been applied to the particular facts presented by the applicant. That is the essence of administrative—not legislative—action.” *Krejci v. City of Saratoga Springs*, 2013 UT 74, ¶ 35. The role of the land use authority in making an administrative decision is therefore to only apply the plain language of its land use ordinances, UTAH CODE § 17-27a-308, and a conditional use must be approved if reasonable conditions can be imposed to mitigate the reasonably anticipated detrimental effects of the proposed use according to applicable standards. *Id.* § 17-27a-506(2)(a)(i).

Because of this, public input in an administrative setting has a much narrower purpose than in the public-centric planning process, usually limited to the role of providing relevant information on which the administrative decision-maker may base a decision according to enacted standards. *See, Thurston v. Cache Cnty.*, 626 P.2d 440, 445 (Utah 1981) (“the consent of neighboring landowners may not be made a criterion for the issuance or denial of a conditional use permit, [but] there is no impropriety in the solicitation of, or reliance upon, information which may be furnished by other landowners in the vicinity of the subject property at a public hearing.”).

Because the Planning Commission was required to base its decision on facts and its enacted standards, and not the general opposition of neighbors or the public, the only relevant harm from a procedural error that may have effectively limited some public comments would be the potential loss of some factual information the commission may not have otherwise received.

However, in this particular case, Ms. Halcik has not demonstrated that the County’s alleged noncompliance with notice and hearing requirements resulted in any material loss of factual

⁹ *See, e.g.*, UTAH CODE § 17-27a-202(1)(a) (the county must notify an applicant “of each *public hearing* and public meeting to consider the application”)(emphasis added).

information that the County did not already consider, much less that there is a reasonable likelihood that any potential information from public comments not considered would have changed the outcome of the proceeding.

For example, while Ms. Halcik alleges that the public hearing notice she received failed to identify the physical meeting place, the notice nevertheless provided instruction on how to participate in the meeting remotely, and Ms. Halcik further acknowledges that she did, in fact, attend and comment at the public hearing after calling to find out the physical location. In Ms. Halcik's case, then, there is no factual information that the County did not ultimately consider because of an alleged faulty notice. Similarly, in regards to the County's alleged failure to not allow public comment at the second planning commission meeting on October 20th, the transcript from that meeting reflects that the public's concerns all centered around common issues, that being "traffic on SR 32, lights, noise and impacts on the neighbors or those types of things,"¹⁰ and that these common public concerns were all reviewed at the previous meeting, and as a result, the commission had instructed staff to go back and revise the conditions of approval, which was what was before the Planning Commission for consideration at the October 20th meeting.

It is apparent, then, that the record before the Planning Commission included these common public concerns, and that the Planning Commission took these comments into account in imposing revised conditions of approval. Ms. Halcik has not demonstrated what additional information, if anything, the planning commission would not have had by not allowing public comment that it didn't already have in the record.

The bottom line is that despite the validity of whether the public notice or comment opportunities were deficient according to local ordinance, the Planning Commission made its decision to approve the conditional use permit according to its enacted standards, and supported that decision by substantial evidence in the record.

Ms. Halcik's identified concerns, as well as the comments from other members of the public received by email or during public comment, all only help establish that the proposed use would have detrimental effects. However, the County already acknowledged as much, the staff report noting that the "combination of the distillery and guest ranch could have a negative impact on surrounding properties as it relates to noise, traffic [etc.]"¹¹ Truly, the very nature of a conditional use is the concept that it is a use that "may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts." UTAH CODE § 17-27a-103(9). But identifying detrimental impact is only half of the analysis.

State law provides that the standard is that a conditional use must be approved if the "reasonably anticipated detrimental effects of the proposed use" can be mitigated by reasonable conditions. *Id.* § 17-27a-506(2)(a). Further, this requirement to "reasonably mitigate anticipated detrimental effects of the proposed conditional use does not require elimination of detrimental effects." *Id.* In response to identifying potential negative impacts, the Planning Staff Report notes that "[t]o

¹⁰ Transcript of October 20, 2022 Eastern Summit County Planning Commission Meeting, pages 4–5.

¹¹ Summit County Staff Report, Date of Meeting October 20, 2022, page 4.

mitigate these effects staff has proposed several conditions of approval relating to hours of operation, outdoor amplification, number of events allowed per week, etc.”¹²

Accordingly, the Planning Commission adopted the findings and conclusions from the staff report and imposed a number of conditions on approval that addressed the various concerns of the public, including hours of operation, lighting, parking, limits on nighttime events, privacy fencing, limitations on when and where outdoor music is allowed, etc.

The County’s decision was proper, as it was based on applicable County standards as opposed to the general consent of the public, and it appropriately imposed various conditions to reasonably mitigate the anticipated detrimental effects of the proposed use. The County’s decision may not, therefore, be reversed for mere procedural error where it has not been established that there is a reasonable likelihood that the error changed the outcome of the proceeding.

CONCLUSION

While the public plays an important role in legislative land use planning, once development standards are enacted into law, a property owner is entitled to approval of a land use application under those existing standards if the application conforms to applicable standards. The County’s Planning Commission, acting as the administrative land use authority for conditional use applications, properly approved a conditional use permit for the Dendric Estates Cidery as microbreweries and guest lodges are allowed as conditional uses in the applicable zoning district, and the Planning Commission made appropriate findings and imposed conditions on approval to reasonably mitigate the anticipated detrimental impacts of the proposed use according to County standards. A procedural error that may have affected the specific manner of public comment did not prejudice the County’s administrative decision, and cannot serve as a basis to reverse the County’s approval.

Jordan S. Cullimore, Lead Attorney
Office of the Property Rights Ombudsman

¹² *Id.*, page 5.

NOTE:

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

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

An advisory opinion issued by the Office of the Property Rights Ombudsman is not binding on any party to a dispute involving land use law. If the same issue that is the subject of an advisory opinion is listed as a cause of action in litigation, and that cause of action is litigated on the same facts and circumstances and is resolved consistent with the advisory opinion, the substantially prevailing party on that cause of action may collect reasonable attorney fees and court costs pertaining to the development of that cause of action from the date of the delivery of the advisory opinion to the date of the court's resolution. Additionally, a civil penalty may also be available if the court finds that the opposing party—if either a land use applicant or a government entity—knowingly and intentionally violated the law governing that cause of action.

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

The Advisory Opinion process is an alternative dispute resolution process. Advisory Opinions are intended to assist parties to resolve disputes and avoid litigation. All of the statutory procedures in place for Advisory Opinions, as well as the internal policies of the Office of the Property Rights Ombudsman, are designed to maximize the opportunity to resolve disputes in a friendly and mutually beneficial manner. The Advisory Opinion attorney fees and civil penalty provisions, found in Section 13-43-206 of the Utah Code, are also designed to encourage dispute resolution. By statute they are awarded in very narrow circumstances, and even if those circumstances are met, the judge maintains discretion regarding whether to award them.