Advisory Opinion #90

Parties: Jennifer Josephs and Park City

Issued: August 26, 2010

TOPIC CATEGORIES:
J: Requirements Imposed Upon Development
R(v): Other Topics (Interpretation of Statutes)

A local government may enact an ordinance providing for mandatory review and approval of lots created by illegal subdivisions. Property should not be subject to greater setbacks from a right-of-way that will never be developed as a roadway.

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OFFICE OF THE PROPERTY RIGHTS OMBUDSMAN

ADVISORY OPINION

Advisory Opinion Requested by:	Jennifer Josephs
Local Government Entity:	Park City
Applicant for the Land Use Approval:	J.L. Josephs Family Trust
Project:	Duplex
Date of this Advisory Opinion:	August 26, 2010
Opinion Authored By:	Elliot R. Lawrence, Attorney, Office of the Property Rights Ombudsman

Issues

I. May a local government require that a parcel created by an improper subdivision be subject to approval as a "one-lot subdivision?"

II. May a local government require a greater setback from a right-of-way that will never be used as a public street?

Summary of Advisory Opinion

The City may establish a process to review and approve parcels created by improper subdivision, in order to avoid hardship and inequities on innocent property owners. Reliability of property descriptions and compliance with zoning standards are legitimate governmental interests, and a "post-division approval" process is a reasonable means to promote those interests, encourage the development of property, and address a situation that arises from time to time. However, this approval option should be adopted as part of the City's ordinances, to ensure fairness and uniformity.

The City may not impose a greater setback from a non-existent street, even if the property is a publicly-owned right-of-way. The City has formally determined that the right-of-way will not be used as a street (*i.e.,* for vehicular travel). Since the right-of-way is no longer a "street," the lot

cannot be considered a "corner lot" subject to greater setbacks. The normal sideyard and front setbacks may be required, however.

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. 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.

A request for an Advisory Opinion was received from Jennifer Josephs on April 1, 2010. A copy of that request was sent via certified mail to Janet Scott, City Recorder of Park City. A certified mail receipt, indicating that the City received the copy, was delivered to the Office of the Property Rights Ombudsman on April 12, 2010. The City submitted a response to the Office of the Property Rights Ombudsman, which was received on May 17, 2010. The Property Owner, and the City also submitted several emails, which were received during April and May of 2010.

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 from Jennifer Josephs, filed April 1, 2010 with the Office of the Property Rights Ombudsman.
2. Response from Park City, submitted by Polly Samuels McLean, Assistant City Attorney, received on May 17, 2010.
3. Additional materials submitted by both Ms. Josephs and the City, including minutes of the Park City Planning Commission, and email correspondence between the City's staff and Ms. Josephs.
4. Maps and plats of the property.
5. Records of the Summit County Recorder.

Background

J.L. Josephs Family Trust owns an undeveloped parcel located at 518 Deer Valley Drive in Park City ("Josephs Parcel"). Jennifer Josephs, on behalf of the Trust, seeks to develop the parcel by constructing a duplex. The parcel is situated between Deer Valley Drive and Deer Valley Loop Road. A lot with a triplex is on one side, and the other side is "Provo Street," a 40 foot wide right-of-way that has never been developed or used as a public street, although it has utility

easements.[1] The Josephs Parcel is quite steep, with a level portion along Deer Valley Drive. Most of the height gain is towards the rear of the lot, leading up to Deer Valley Loop Road. The "Provo Street" strip has the same topography. The overall slope between the front and rear roads is approximately 47%. Most of the properties nearby have been developed as residential properties.[2] There is one home on the other side of "Provo Street." Beyond that home, Deer Valley Loop Road intersects with Deer Valley Drive.

Sometime prior to 1979, the parcel was created when a larger lot was split in two.[3] The triplex was built on one of the resulting parcels, but Josephs Parcel was not developed.[4] Josephs purchased the parcel in 1991, and submitted a plat, which was recorded in June of that year. That plat shows the Josephs Parcel, and gives what appears to be an accurate metes and bounds description. It does not appear that the plat was signed or approved by any City official. The Summit County Recorder's Office has no record of an approved subdivision plat for the Josephs Parcel or the neighboring parcel.

The City informed Ms. Josephs that it does not consider the Parcel to be a "legal lot of record," because it was not created by a lawful subdivision process. The City Code requires that all building permits be for a "lot of record."[5] Therefore, the City proposed that Ms. Josephs apply for a "one-lot subdivision," requiring approval from the City's Planning Commission and City Council. As part of that process, the City could also impose additional conditions on the parcel which would affect development. A planner for the City explained that the "one-lot subdivision" was the only way to ensure that development complies with City standards such as lot area, width, and frontage.

Ms. Josephs' application to construct a duplex on the Parcel envisioned a building oriented towards Deer Valley Drive. Vehicle access would be from that street, and there was none from Deer Valley Loop Road, although there could be pedestrian access. This configuration is similar to several other properties along Deer Valley Drive, including the triplex located next door.[6] Deer Valley Drive is rather narrow, and meanders along the natural topography. Despite being narrow and winding, Deer Valley Drive is one of the major road arteries in the Greater Park City area. Because of the high level of traffic, the City prefers to restrict access directly onto Deer

[1] The City owns the land comprising "Provo Street," which was apparently created by a townsite plat recorded many years ago. In its Transportation Master Plan, the City designated "Provo Street" as an "unbuildable" and "excess" right-of-way. However, the City has also indicated that right-of-way may be used for utility easements, pedestrian walkways, or open space.

[2] There appears to be a few undeveloped parcels along Deer Valley Loop Road, but development is hampered by steep slopes. From a practical standpoint, the Josephs Parcel is one of few remaining undeveloped properties in the immediate area.

[3] A cursory search of the property records in the Summit County Recorder's Office shows that the parcel in its current configuration existed before 1979. (The property was the subject of a deed between previous owners) The history of the parcel's ownership was not researched earlier than that year.

[4] The description of the neighboring parcel (identified as 522 Deer Valley Drive) contains the Josephs Parcel description as an exclusion from the over all description.

[5] The City defines "Lot" as "A unit of land described in a recorded Subdivision Plat." PARK CITY MUNICIPAL CODE, § 15-15-1.145.

[6] Homes on the "upper" side of Deer Valley Loop Road use that road for access. The homes on the opposite, or "lower," side of the road use Deer Valley Drive for vehicle access.

Valley Drive. Several nearby properties are configured so that vehicles may turn around and access the street "frontways," without backing, although some properties still use the "backout" configuration.[7]

Because of concerns about traffic on Deer Valley Drive, the City proposed that the Josephs Parcel use Deer Valley Loop Road as its primary access. This required a revision to the duplex. Ms. Josephs stated that the alternate access required that the duplex have garages accessed by bridges on its second story, with living space above and below. This configuration had structural issues and was impractical if not impossible to construct. The City agreed to allow access from Deer Valley Drive as long as there was no "backout" access. At a Planning Commission hearing in October of 2009, Ms. Josephs indicated that it may be possible for vehicles to turn around and access Deer Valley Drive "frontways," if the City allowed use of its right-of-way.[8] The Planning Commission considered approving the "one lot subdivision" application with a condition that "backout" access would be prohibited.[9]

The City also required a 10-foot setback from the "Provo Street" right-of-way, even though the City acknowledged that the street will never be built, and there are no current plans for any use other than utility easements. The City points out that the 10-foot setback requirement is consistent with other properties located at street intersections. Ms. Josephs objects to the "Provo Street" setback because it restricts development of the Parcel. A larger building could be built if the setback were smaller.[10] In addition, Ms. Josephs feels that the City should not impose a setback from a street that does not and will not exist. The City contends that "Provo Street" is a public right-of-way whether it is actually used or not, and that the setback cannot be altered, unless a variance is granted.[11]

Analysis

I. The City May Require Approval of the Subdivision to Ensure Compliance with City Standards in Place When the Lot was First Created.

The City may require "official" approval of the Josephs Parcel as a subdivision, because the City has a legitimate interest in promoting accurate land descriptions as well as compliance with zoning standards. Local governments have long been charged with regulating division of properties, as a way to ensure both reliability in property descriptions and compliance with zoning ordinances. *See* EDWARD H. ZIEGLER, JR., RATHKOPF'S THE LAW OF ZONING AND

[7] Ms. Josephs identified 40 nearby properties with access directly from Deer Valley Drive. Most had direct access, although some had a "no backing" restriction. A few properties had no access.
[8] It is not clear if Ms. Josephs was referring to the Provo Street parcel or Deer Valley Drive.
[9] At Ms. Josephs' request, the Planning Commission tabled consideration of the one lot subdivision application. According to Ms. Josephs, the City proposed other conditions affecting development of the parcel.
[10] The Parcel is also subject to setbacks from Deer Valley Drive and Deer Valley Loop Road. The combination of the three setbacks reduces the Parcel's useable area. The normal side-yard setback would be five feet.
[11] The City acknowledges that "Provo Street" will never be built as a roadway. However, it does not rule out the possibility that the right-of-way could be used as a pedestrian stairway.

PLANNING, § 89:3 (5th ed. 2005).[12] Unfortunately, parcels have been created through divisions without local government approval, creating a dilemma for both good-faith purchasers and government officials.[13]

A division of land without proper approval is illegal, and, strictly speaking, should be void and the property treated as if it were never divided. Unfortunately, this is not always an equitable or practical outcome, especially when it involves innocent, good-faith purchasers. Sales could be voided due to the illegality (*See* UTAH CODE ANN. § 10-9a-604(3)), but voiding a sale might serve as a windfall to the original property owner, and may not be acceptable to the purchaser. Another alternative is to create a sort of tenancy in common, with shared ownership of the original parcel. Again, the tenancy in common alternative may not always be workable or equitable, especially if the owners are not cooperative. A final option is to create some means to legitimize the division after the fact.

The City followed this last option, and proposed a so-called "one-lot subdivision," whereby the previously-divided parcel may receive official approval, so long as it complies with City's zoning requirements, such as minimum area, width, and street frontage. Supposedly, this approval would be recorded, and the Josephs Parcel would then become a "lot of record," removing any doubt as to its validity. This procedure is not found in either the City's ordinances, the Utah Code, or in Utah case law, but the concept is nevertheless a reasonable means to solve the problem. Unapproved subdivisions should be discouraged and even voided if necessary, but it is also acceptable to provide a means to legitimize unapproved land divisions, particularly to avoid imposing greater burdens on innocent property owners.

Statutorily, however, there can be no such thing as a "one-lot subdivision." The Utah Code defines "subdivision" as "any land that is divided . . . into two or more lots, parcels, sites, units, plots, or other division of land . . .." UTAH CODE ANN. § 10-9a-103(44)(a).[14] At least two lots must be created. The term "one-lot subdivision" is somewhat misleading, and does not

[12] Among the public objectives of local subdivision control are: "(1) protecting the interests of future lot purchasers; (2) assuring adequate roads and other public facilities related to the proposed development; and (3) assuring that proposed subdivision development is consistent with existing local land development policies and goals." ZIEGLER, RATHKOPF'S THE LAW OF ZONING AND PLANNING, § 89:3; *see also* UTAH CODE ANN. § 10-9a-603(1) (subdivision plats required to address similar objectives).

[13] Technically, a division of property undertaken without approval of a local government is illegal and void. The current language of the Utah Code provides that "[a] subdivision plat recorded without [required] signatures [and approval from a local government] is void." UTAH CODE ANN. § 10-9a-604(2). Furthermore, any "transfer of land pursuant to a void plat is voidable." *Id.*, § 10-9a-604(3). These subsections apply to *plats* recorded without proper approval, and not necessarily divisions created by deed or metes and bounds descriptions. However, even a metes and bounds division must be approved by a local land use authority. *See Id.*§ 10-9a-605 (Divisions into 10 or fewer lots do not require a plat, but do require approval).

[14] The Park City Municipal Code echoes the state statute's definition of subdivision: "Any land, vacant or improved, which is divided or proposed to be divided into two (2) or more Lots . . .." PARK CITY MUNICIPAL CODE, § 15-15-33(1.251).

accurately describe the process seemingly envisioned by the City. Instead, the process appears to be sort of a "post-division approval" of a metes and bounds land division.[15]

A possible means to accomplish a "post-division approval" is to simply treat it as a minor subdivision of the original parcel. The City's Code provides for minor subdivisions, which involve three or fewer parcels on an existing street, so long as no new street is created. The division which created the Josephs Parcel fits this definition. A minor subdivision requires approval from the City's Planning Commission and City Council, and would require the creation of a plat for recording. *See* PARK CITY MUNICIPAL CODE, § 15-7.1.3.[16] However, this option may not be possible if the owner of the adjoining parcel refuses to cooperate, because approval from all owners is required.[17]

It is the opinion of the Office of the Property Rights Ombudsman that a local government may adopt a reasonable method of approving unrecorded or illegitimate land divisions in order to avoid imposing inequitable hardships on those who purchased property in good faith. Such an approach is consistent with the principles of proper planning and good governance, and is also consistent with the purposes of subdivision approval. Although not specifically authorized by the Utah Code, post-division approval comports with the state code's requirement that subdivisions be approved by local authorities.

This is also a reasonable approach to resolve very real situations. Land transfers and land records are not always "neat and tidy." Through ignorance or simply because of convenience, property is sometimes divided and deeded without following the proper rules.[18] These discrepancies are often not discovered for many years, when it is impractical to undo sales and deeds, and inequitable to force financial hardship on a good-faith purchaser. Local governments have a legitimate interest in promoting reliable and accurate land descriptions, and in enforcing zoning ordinances. A post-division approval option promotes that interest by eliminating long-standing problems, while providing the flexibility needed to correct discrepancies.

A local government should adopt a post-division approval process in its subdivision ordinances, to ensure that the process is applied fairly and comprehensively.[19] Approval by either a planning commission or the local legislative body is necessary, to be consistent with state statutes. *See id.*, § 10-9a-604 (approval by land use authority required). The local government should approve the subdivision if it complies with the zoning ordinances and standards in effect when the property was first divided, if that date can be determined. If the exact division date cannot be determined,

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[15] "Metes and bounds" means that the property's boundaries are described by a surveyor's measurements, using compass directions and distances, from a recognizable starting point. *See* BLACK'S LAW DICTIONARY 991 (6th Ed. 1990). A metes and bounds description may be used to subdivide land, with proper approval. *See* UTAH CODE ANN. § 10-9a-103(44)(b)(i), or § 17-27a-103(applicable to counties).

[16] Minor subdivisions are allowed under the Utah Code. *See* Utah Code Ann. § 10-9a-605.

[17] The current owners, including Ms. Joseph, could request the minor subdivision.

[18] For example, land may be divided by a will, a judicial order, a private settlement of a dispute, or through dissolution of a business.

[19] Without an ordinance governing post-division lot approval, the City would not have authority to invoke such approval.

perhaps the local government could rely upon the zoning standards in effect on the date when the parcel can first be identified in the records of the county recorder's office.[20]

A local government should not use the process to impose conditions or requirements that would not have been imposed if the subdivision had followed proper procedures. There is no basis to require additional conditions, even if the original property was illegally divided in the first place. As has already been stated, accurate property descriptions and compliance with zoning standards are legitimate governmental interests. The process to retroactively approve a subdivision should be no more than necessary to promote those interests, and only those conditions and limitations which would apply to similar subdivisions should apply. In other words, the process should only serve to treat all similarly-situated subdivisions the same.

Finally, a post-division or retroactive approval should not be used to legitimize improper divisions carried out in defiance of the law or local governmental authority. Illegal subdivisions must be treated as such, and voided. Retroactive approval ought to be applied only in limited situations to avoid hardships on innocent purchasers.[21]

To sum up, the Josephs parcel appears to have been illegally subdivided. Accordingly, it is not a "lot of record," as required by City ordinances. The City may require that the property owner take steps to make the Josephs Parcel a legal lot of record. Until that is done, the lot will remain an illegally subdivided lot. The City has some discretion to determine how the parcel can be approved, and it should adopt an ordinance setting forth the procedure and requirements for legitimizing the division. The City may adopt a one-lot subdivision ordinance, or follow existing procedures such as the minor subdivision ordinance, if possible. The City should not, however, adopt an *ad hoc* policy for legitimizing the lot. Passage of an ordinance will ensure consistency of application, legality, and authority to act. It appears that in this matter, the City's one lot subdivision procedure has not been adopted by ordinance. Accordingly, the Josephs Parcel is presently an illegal lot. The procedure proposed by the City is improper because it does not follow a City ordinance.

II. The Provo Street Right-of-Way Will Never be a Street, and So the Ten-Foot Setback Should not Apply.

Because Provo Street will never be used as a public street, the City may not require a ten foot setback from the right-of-way boundary. According to the materials submitted for this Opinion, the City considers the Josephs Parcel to be a "corner lot," requiring a ten foot setback from both Deer Valley Drive and the Provo Street Right-of-way. This is based on § 15-2-15-3(G)(4) of the Park City Land Management Code: "On Corner Lots, the Side Yard that faces a Street is ten feet

[20] Another potential problem arises if the original, illegitimate subdivision created substandard parcels, which have never met zoning standards. Each local government should consider an ordinance governing development of substandard lots (regardless of how they were originally created), including provisions eliminating such lots when feasible, by combining them with other parcels.

[21] Possible ways to accomplish this limitation is to prohibit retroactive approval if sought by the property owner who illegally divided the parcel, or by permitting retroactive approval only if the current owners show that combining the illegally-divided parcels is impractical or inequitable.

(10') for both Main and Accessory Buildings." Park City Land Management Code, § 15-2-15-3(G)(4) The term "Corner Lot" is defined as a "Lot situated at the intersection of two (2) Streets, the interior angle of such intersection not exceeding 135 degrees (135°)" *Id.*, § 15-15-1.145(A). The City's application of these sections, however, does not appear to be correct.

Statutory interpretation begins with the language of the ordinance. *See Biddle v. Washington Terrace City*, 1999 UT 110, ¶ 14, 993 P.2d 875, 879. The "primary goal . . . is to give effect to the legislative intent, as evidenced by the plain language, in light of the purpose the statute was meant to achieve." *Foutz v. City of South Jordan*, 2004 UT 75 ¶ 11, 100 P.3d 1171, 1174. Statutes should be construed so that "all parts thereof [are] relevant and meaningful." *Perrine v. Kennecott Mining Corp.*, 911 P.2d 1290, 1292 (Utah 1996). Furthermore, it must be presumed "that each term included in the ordinance was used advisedly." *Carrier v. Salt Lake County*, 2004 UT 98, ¶30, 104 P.3d 1208, 1216. The meaning and application of a zoning ordinance may be derived from "the general purpose of the ordinance." *Patterson v. Utah County Bd. of Adjustment*, 893 P.2d 602, 606 (Utah Ct. App. 1995), *see also Town of Alta v. Ben Hame Corp.*, 836 P.2d 797, 801 (Utah Ct. App. 1992).

Other standards of statutory interpretation are important to this analysis: First, "the expression of one should be interpreted as the exclusion of another." *Biddle*, 1999 UT 110, ¶ 30, 993 P.2d at 879. In other words, an omission in an ordinance should be given effect by a presumption that the omission was purposeful. *See Carrier*, 2004 UT 98, ¶ 30, 104 P.3d at 1216. Secondly, "since zoning ordinances are in derogation of a property owner's use of land . . . any ordinance prohibiting a proposed use should be strictly construed in favor of allowing the use." *Id.* 2004 UT 98, ¶31, 104 P.3d at 1217. Finally "'statutory enactments are to be so construed as to render all parts thereof relevant and meaningful, and . . . interpretations are to be avoided which render some part of a provision nonsensical or absurd.'" *Perrine*, 911 P.2d 1290, 1292 (*quoting Millet v. Clark Clinic Corp.*, 609 P.2d 934, 936 (Utah 1980).

The Park City Code provides definitions for "Street, Public Street, and Right-of-Way." A "Street" is "[a]ny highway, avenue, boulevard, parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, easement, or other way." A "Street, Public" is a "Street that has been dedicated to and accepted by the City Council; that the City has acquired and accepted by prescriptive right; or that the City owns in fee." PARK CITY LAND MANAGEMENT CODE, § 15-15-11.247. Finally, a "Right-of-Way" is a "strip of land, dedicated to public use, that is occupied or intended to be occupied by a Street, crosswalk, trail, stairway, ski lift, railroad, road, utilities, or for another special Use." *Id.*, § 15-15-1.215.

With one exception, the words used to define "Street" refer to land used for motorized travel. The one exception is "walk," which usually implies pedestrian travel. The use of these words, and not the words used in the definition of "Right-of-Way" indicate that "Street" ought to be limited to parcels used for vehicular travel only. It is especially significant that the City no longer considers Provo Street to be a "Street," because it has already determined that property to be "unbuildable" and an "excess" right-of-way, meaning that Provo Street will never be used for

vehicular traffic.[22] Moreover, the topography of Provo Street precludes any use as a roadway, because it is far too steep for traffic. Therefore, in spite of its name, Provo Street should be considered a "Right-of-Way," not a "Street." Since it is not a "street," the Josephs Parcel cannot be a "Corner Lot" subject to double setbacks.

This interpretation follows the purpose of the setback ordinance, which is to enhance neighborhoods by encouraging landscaping and other improvements on properties along public roadways. Since there is no street, there is no need for such improvements in a greater setback. Moreover, the ordinance must be construed in favor of the owner's right to use the property, which means that the City cannot impose the ten-foot setback from a "Right-of-Way." Finally, construing the City's code in this fashion also avoids the nonsensical result that a setback is required from a non-existent street, and the implication that the City is arbitrarily choosing when Provo Street is a "Street" and when it is merely an excess "Right-of-Way."

Instead of requiring a ten-foot setback from the Provo Street right-of-way, the City should only require the normal five-foot sideyard setback.[23] The normal setback would still apply to the frontage along Deer Valley Drive.

Conclusion

In order to promote reliability of property descriptions and to avoid inequity, a local government may require review and approval of a parcel that was not created by proper subdivision approval. A "post-division approval" process may be adopted as part of a City's ordinances, and may be invoked, but only to the extent necessary to establish the correct property boundaries and require compliance with zoning standards in place when the parcel was first divided. No other conditions should be imposed, except those which apply to all similarly-situated property. This process should only be invoked sparingly to avoid hardship or inequities on innocent property owners.

The City's conclusion that the Josephs Parcel is a "corner lot" subject to greater setbacks is not a correct interpretation of its ordinances. The City has determined that Provo Street is unbuildable and an excess right-of-way, so it will never be used as a street. The definition for "right-of-way" better suits the strip. Since Provo Street is not actually a "street," the Josephs Parcel cannot be a "corner lot," and the greater setback should not apply. The normal sideyard setback should be followed.

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

[22] The right-of-way may be used for other purposes, such as open space, a pedestrian walkway, or for utility easements. It is already being used for a utility easement.
[23] Even if the Josephs Parcel is found to be a "Corner Lot," the owners could apply for a variance of the setback requirement.

NOTE:

This is an advisory opinion as defined in § 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.

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 Utah Code Ann. § 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:

Janet M. Scott, City Recorder
Park City
445 Marsac Avenue
Park City, Utah 84060

On this _____ Day of August, 2010, 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