Advisory Opinion # 158

Parties: Steve Glezos, Salt Lake County, and the Unified Fire Authority

Issued: June 2, 2015

TOPIC CATEGORIES:

Compliance With Land Use Ordinances
Requirements Imposed on Development

A public agency is not obligated to transfer a portion of its property to another public entity for a public use, simply because it is a public agency. It may choose to do so, but it is not required to do so.

Local districts must comply with land use laws when they participate in the development approval process, except regarding development aspects not within the district's direct control.

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.

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ADVISORY OPINION

Advisory Opinion Requested by:	Steve Glezos
Local Entity:	Unified Fire Authority
Property Owner:	Steve Glezos
Type of Property:	Residential Subdivision
Date of this Advisory Opinion:	June 2, 2015
Opinion Authored By:	Elliot R. Lawrence Office of the Property Rights Ombudsman

Issues

May a public agency, the Unified Fire Authority require that a developer purchase a portion of the Authority's property for use as a public sidewalk?

Summary of Advisory Opinion

A public agency is not obligated to provide any of its property for a public road or other facility, even if the road or facility is required by another government agency as a condition of development approval. It may provide its property if it chooses; however, it is under no obligation simply because it is a public entity.

Local districts must comply with the Land Use, Development, and Management Act, when they participate in the development approval process along with a local government. However, a district's obligation to comply stems from its approval of aspects under its direct control, and therefore should be limited to those aspects only. Approvals of development aspects not within the district's direct control should not subject it to an obligation to comply with LUDMA.

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 § 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.

A Request for an Advisory Opinion was received from Steve Glezos on February 18, 2015. A copy of that request was sent via certified mail to the Unified Fire Authority at 3380 South 900 West, Salt Lake City, Utah. According to the return receipt, the Authority received the Request on March 2, 2015.

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, with attachments, submitted by Steve Glezos, received by the Office of the Property Rights Ombudsman on February 18, 2015
2. Response from Karl Hendrickson, counsel for the Unified Fire Authority, received on March 6, 2015.
3. Reply from Steve Glezos, received March 20, 2015.

Background

Steve Glezos has proposed a residential subdivision located at approximately 3800 South and 8300 West in Salt Lake County.[1] Mr. Glezos's parcel includes a 25-foot wide driveway or lane extending from the main portion of the parcel to 8000 South.[2] As a condition of approval for the subdivision, Salt Lake County requires that Mr. Glezos pave that lane for use as a secondary access.[3] The County also requires that Mr. Glezos install a curb, gutter, and sidewalk along (but not within) one side of the lane.[4] Since Mr. Glezos does not own the properties along either side of the lane, about twelve additional feet for the sidewalk and gutter would need to be acquired.

The property adjoining much of the southern boundary of the driveway is owned by the Salt Lake Valley Fire Service Area, a public service area that is a member of the Unified Fire Authority (Authority), an interlocal entity which provides firefighting service throughout Salt

[1] The subdivision is located between Highway 111 and 8000 West, near the Denver and Rio Grande Rail Line. The proposed subdivision is next to another development, and uses some of the same roads from that subdivision.
[2] The driveway has apparently been used for access to the property now being developed.
[3] The paved access would evidently be an extension of "Kappa Drive," which is proposed as a road within the subdivision. Kappa Drive borders privately-owned land not within the subdivision which could possibly be developed in the future. Evidently, the 25-foot strip would be built as a "half-road," anticipating that the remainder would be constructed in the future.
[4] The County apparently would be satisfied with a sidewalk on either side of the lane.

Lake County.[5] The Authority uses the property as a fire training facility ("Facility").[6] The property had been owned by Kennecott Copper Corporation, but was donated to Salt Lake County in 1995, provided that the property would be used only for public purposes.[7] In 2009, the County transferred ownership to the Salt Lake Valley Fire Service Area "for so long as [the Fire Service Area] . . . remain[s] a member entity of the Unified Fire Authority."[8] Because a fire training facility is a public purpose, Salt Lake County was not in violation of Kennecott Copper's deed restriction.[9]

In an effort to comply with the County's requirements, Mr. Glezos asked the Unified Fire Authority to construct a curb, gutter, and sidewalk on the northern 12 feet of the Facility property, alongside the 25-foot driveway.[10] Mr. Glezos reasons that since the Facility property is already publicly owned, there is no reason why a small portion cannot be used as a public sidewalk.

The Authority denied Mr. Glezos's request, in part because the Authority felt that it was constrained by the deed restrictions, and to transfer even a small portion of the Facility parcel for a public right-of-way could trigger the reverter provision, resulting in loss of the entire property.[11] The Authority felt that transferring the 12-foot strip was not in its best interests, because it would not benefit the Facility's operation.[12] Additionally, a new sidewalk would possibly require changes to a retention basin located near the northern boundary of the property.[13]

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[5] An interlocal entity is created through an interlocal agreement between jurisidictions, pursuant to Chapter 11-13 of the Utah Code. It is a political subdivision of the state independent of the entities that created it. For clarity, this Opinion shall refer to the "Authority" as including both the Unified Fire Authority and the Salt Lake Valley Fire Service Area.

[6] The Facility includes classrooms and structures for fire training, along with administrative buildings and a fire station. It was built shortly after the County acquired the property from Kennecott Copper.

[7] *See* "Special Warranty Deed," Kennecott Copper Corp., Grantor and Salt Lake County, Grantee (December 15, 1995), recorded as Entry Number 6275155, in Book 7325, Page 2222 of the Records of the Salt Lake County Recorder. The Deed specifically restricts the uses of the property to public purposes. If the property is used for another purpose, ownership reverts back to Kennecott Copper.

[8] Deed, Salt Lake County, Grantor, and Salt Lake Valley Fire Service Area, Grantee (August 12, 2009), recorded as Entry Number 10797399 in Book 9762 at Page 9867 in the Records of the Salt Lake County Recorder. If the Fire Service Area left the Unified Fire Authority, and the property was no longer used as a fire training facility, it would revert back to the County.

[9] The Kennecott Deed allows the property to be transferred, as long as the new owner complies with the public purpose restriction.

[10] It is not clear whether the 12-foot strip (*i.e.*, the sidewalk, curb, and gutter) would be transferred to Salt Lake County, or if it would remain as part of the Facility property.

[11] The Authority argues that the deed from Salt Lake County restricts the use to fire training purposes only, and that a sidewalk would be inconsistent with that use, triggering the reverter in the County deed.

[12] In a hearing on Mr. Glezos's request, the Authority's Board of Trustees stated that the sidewalk would provide no direct benefits to the Facility, and indicated that space on the parcel was already limited. The Board also noted problems with vandalism that could be exacerbated by a public sidewalk.

[13] The Facility includes a narrow retention basin to help control stormwater. A portion of the 12-foot strip proposed for transfer borders the basin. The Authority claims that transferring the 12-foot strip would require "complete reconstruction" of the basin. Mr. Glezos disputes that the basin would need to be extensively rebuilt, and offered to complete any necessary changes to the basin.

The Authority notes that as an interlocal entity it is independent of Salt Lake County, and thus not part of the subdivision approval process. Because of this, the Authority explains that it is not obligated to sell or transfer its property if does not wish to do so. In addition, the Authority claims that transferring the property could constitute a transfer of public assets to aid a private development, potentially violating state law prohibiting transferring public property without receiving value.

Analysis

I. The Unified Fire Authority is Not Obligated to Transfer the Property, Even to Another Public Entity for a Public Use.

Although the Unified Fire Authority is a public agency, it is not obligated to allow a use or to transfer any portion of the Facility if it does not wish to do so. As the Authority explains, it owns the property, and has the right to determine whether any part of that property is transferred or sold. It does not matter if the property is sought for a public or private purpose. In this respect, the Authority acts like any other property owner.

Even though Mr. Glezos needs only a small portion of the Facility property to fulfill a condition required to obtain approval for his subdivision, the Authority is not obligated to provide that property. It may *choose* to do so (subject to deed restrictions and other legal concerns), but it is not *required* to do so.

In short, there is no difference between the Authority and the owners of the property to the north of the 25-foot lane. According to Mr. Glezos, the County would also accept a sidewalk, curb, and gutter on the north side of the lane. The owner of that property is no more obligated to provide property for a sidewalk than the Authority. If Mr. Glezos can reach an agreement with that owner, he may install the sidewalk and satisfy the County. If no such agreement is possible, then the condition may need to be modified.

II. The Authority is Not Obligated to Comply With Land Use Laws, Because it is Not Participating in Land Use Approval with the County

Unless the Authority is part of the subdivision approval process, it is not subject to the same regulations as the County. Local districts must comply with the Land Use, Development, and Management Act (LUDMA), when they participate in the development approval process with a city or county.

> A local district shall comply with Title 10, Chapter 9a, Municipal Land Use, Development, and Management Act, and Title 17, Chapter 27a, County Land Use, Development, and Management Act, as applicable, if a land use authority consults with or allows the local district to participate in any way in a land use authority's land use development review or approval process.

UTAH CODE ANN. § 17B-1-119. In this situation, it does not appear that the Unified Fire Authority participated in or consulted with the County on Mr. Glezos's proposed subdivision, at

least as far as the secondary access road is concerned.[14] Without this direct participation, the Authority has no obligation to comply with LUDMA.

Even if the Authority participates in the development approval process, its responsibility to comply with LUDMA would be limited to its approval of development aspects under its direct control. The language of § 17B-1-119 recognizes that since local districts often play a role in development approval, they should be subject to the same laws as cities and counties when they participate in the approval process.[15] It stands to reason that a district's obligation would stem from its participation, and so it should not be responsible for approval activity conducted exclusively by a local government (or another local district).

As has been discussed, the Authority is not requiring the secondary access road for Mr. Glezos's subdivision, nor is it requiring him to dedicate property for the road. Because the Authority is not directly involved in the requirement for a secondary road, it should not incur any obligation to comply with LUDMA due to that requirement.

Conclusion

In this situation, the Unified Fire Authority is no different than any property owner. Although Mr. Glezos needs only a small portion of the Authority's property to complete a public roadway, the Authority is not obligated to transfer any of its property simply because it is a public entity. It may transfer the property if it chooses, as would any private landowner, but it is not obligated to provide any property interest to Mr. Glezos.

Local districts which participate or consult on development approval must comply with the same LUDMA in the same manner as a local government, to the extent that compliance is mandated by the district's approvals of development aspects under its direct control. A district's participation in the development approval process does not equate to a general liability for all aspects of development approval.

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

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[14] It appears that the secondary access road is required by the County, not the Unified Fire Authority. The Authority may be involved in the subdivision plat approval process. *See* UTAH CODE ANN. § 17-27a-603(2)(b) (Fire authority recommendation on subdivision plats "encouraged," but not required.)

[15] For example, many areas receive water and sewer service from local districts, not from a city or county. Because a subdivision plat requires approval from a water authority, participation by a local water district may be necessary. *See id*, § 17-27a-603(2)(a). The water district would be required to comply with LUDMA insofar as its activity concerned water system approval. Its responsibility could not be tied to approvals for other aspects of the development, such as roads.

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.

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 provisions, found in Utah Code § 13-43-206, 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.

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:

Unified Fire Authority
3380 South 900 West
Salt Lake City, Utah 84119

On this ___________ Day of June, 2015, 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.

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Office of the Property Rights Ombudsman