

Advisory Opinion #193

Parties: Carol Abbott; Sevier County

Issued: January 25, 2018

TOPIC CATEGORIES:

Requirements Imposed Upon Development Compliance with Mandatory Land Use Ordinances

Counties possess broad authority to regulate and permit subdivision of land in unincorporated areas within its borders. If a property owner desires to subdivide land to create new building lots, she must follow the county ordinance's applicable procedures and requirements.

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: Carol Abbott
Local Government Entity: Sevier County
Type of Property: Recreational
Date of this Advisory Opinion: January 25, 2018
Opinion Authored By: Jordan S. Cullimore
Office of the Property Rights Ombudsman

ISSUE

May Sevier County require Ms. Abbott to comply with the County's subdivision requirements prior to obtaining additional building permits for development?

SUMMARY OF ADVISORY OPINION

Counties possess broad authority to regulate and permit subdivision of land in unincorporated areas within its borders. If a property owner desires to subdivide land to create new building lots, she must follow the county ordinance's applicable procedures and requirements.

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 Carol Abbott on August 22, 2017. A copy of that request was sent via certified mail to Steve C. Wall, County Clerk/Auditor, Sevier County, at 250 North Main Street, Richfield, Utah. The County received the request on August 29, 2017.

EVIDENCE

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

1. Request for an Advisory Opinion, submitted by Carol Abbott on August 22, 2017.
2. Sevier County Subdivision Submittal Requirements, submitted by Jason Mackelprang, Building Inspector and Zoning Administrator for Sevier County, on December 7, 2017.

BACKGROUND

Ms. Abbott originally owned 960 acres of seasonally-accessible mountain property in rural Sevier County (the "County"), 41 miles from the town of Monroe. According to the materials submitted, Ms. Abbott has, over a period of time, sold separate portions of the 960 acres to three interested buyers. 320 acres remain under Ms. Abbott's control. The remaining land is located in the County's GRF-20S Grazing, Recreation, and Forestry Seasonal Zone.

When Ms. Abbott recently approached the County about further dividing and selling off additional building lots, County officials instructed her she would need to go through the formal subdivision process required by the Sevier County Code (the "County Code") to create sellable building lots and qualify for additional building permits.

Upon learning this, Ms. Abbott submitted a Request for Advisory Opinion to this Office. The Request asks us to examine the question of whether it is reasonable and lawful for the County to require her to go through the County's formal subdivision process to create new building lots.

ANALYSIS

The Utah State Code grants each county in Utah broad authority to "provide for the health, safety and welfare" of the county and its residents by enacting "ordinances...and rules...that [the county] consider[s] necessary or appropriate for the use and development of land within the unincorporated area of the county." UTAH CODE § 17-27a-102(1)(a)-(b). Pursuant to the County Land Use, Development, and Management Act¹ a county may enact a subdivision ordinance governing how unincorporated land within its boundaries may be divided and developed. *See* UTAH CODE §§ 17-27a-601, 603.

Sevier County has enacted such an ordinance. Sevier County Code § 13.04.010 provides that "[n]o person shall divide, resubdivide, or propose to divide land which is located...in Sevier County into two or more (any division of land) lots...for the purpose, whether immediate or future, for offer, sale lease or development..., except in compliance with" the County's

¹ Title 17-27a of the Utah Code.

subdivision ordinance and other applicable regulations. SEVIER COUNTY CODE § 13.04.010(A). Moreover, Section 13.04.040 of the Code further provides the following:

[T]he building official shall not grant a permit, nor shall any officer of Sevier County grant any license or permit for the use of any land or the construction or alteration of any building or structure on a lot which would be in violation of any of the provisions of [the subdivision ordinance]...*until a subdivision plat thereof has been recorded, or approved as required by [the subdivision ordinance].*

SEVIER COUNTY CODE § 13.04.040 (emphasis added).

Consequently, if Ms. Abbott desires to further subdivide her remaining 320 acres, she must comply with existing provisions of the County Code and follow the County's formal subdivision process to create new building lots that qualify for additional building permits. The fact that Ms. Abbott was apparently able to divide off and sell parcels of land in the past without following the formal subdivision process is irrelevant to the present circumstance. The County is obligated to require compliance with the *existing* ordinance when new development is proposed. *See* UTAH CODE § 17-27a-508(2) (indicating that “[a] county is bound by the terms and standards of applicable land use regulations and shall comply with mandatory provisions of those regulations”).

If Ms. Abbott plans to subdivide her remaining 320 acres into 5 or more building lots, she will need to follow the full subdivision process outlined in Title 13 of the County Code. If she plans to subdivide the land into 4 building lots or fewer she may apply to have her proposed subdivision designated as a “minor subdivision” if the proposal meets certain additional conditions. *See* SEVIER COUNTY CODE §§ 13.12.060-070. The minor subdivision process may take less time to complete than the full subdivision process since the preliminary and final plats may be considered at the same Planning Commission meeting, instead of separately. SEVIER COUNTY CODE § 13.04.070.

In either case, she will be obligated to also comply with applicable zoning standards and requirements, and any other applicable regulations.

CONCLUSION

Sevier County possesses authority under Utah law to require Ms. Abbott to comply with the County's subdivision ordinance. Consequently, she will need to comply with all applicable County Code requirements if she plans to subdivide her land into new building lots that will qualify for additional building permits.

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

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:

Steven C. Wall
Sevier County Clerk/Auditor
250 North Main Street
Richfield, UT 84701

On this _____ Day of _____, 2018, 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