Advisory Opinion 260

Parties: Kristopher Sorensen; City of Saratoga Springs
Issued: October 5, 2022

TOPIC CATEGORIES:

Exactions

The City may require the dedication and improvement of the half-width of the local roadway adjacent to the property as a condition of issuing the building permit for a single-family residence on a large agricultural parcel but may not lawfully require the builder to install and dedicate an 8" [water/sewer] connection because it exceeds the impact of the proposed development.

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ADVISORY OPINION

Advisory Opinion Requested By:	Kristopher Sorensen
Local Government Entity:	City of Saratoga Springs
Applicant for Land Use Approval:	Kristopher Sorensen
Type of Property:	RA-5 Residential Agriculture, 5-acre minimum lot size
Date of this Advisory Opinion:	October 5, 2022
Opinion Authored By:	Marcie M. Jones, Attorney Office of the Property Rights Ombudsman

ISSUES

(1) Can the city require that the property be served by roads and utilities meeting the minimum city standard before issuing a building permit for a single-family residence on a large-lot agricultural residential property?
(2) Can the city require that the home builder construct said roadway and utility improvements and dedicate them to the public in connection with his request for a single-family building permit?

SUMMARY OF ADVISORY OPINION

The city may require that the subject property be served by streets and utilities meeting current minimum standards as a condition of building permit approval. These improvements include pavement, curb, gutter, sidewalk, and connection to existing sewer and water lines. These standards must be met even where the requested building permit is for a single-family residence on a large agricultural parcel. Establishing the standards themselves is a public policy determination left to the city council.

The requirement that these improvements be in place prior to issuing a building permit is a different question than whether the city may require the home builder to donate these improvements and land they occupy to the city.

Requiring the home builder to improve and dedicate the roadway half-width adjacent to the developing property is "roughly proportional" to the impact the development creates, according to a commonly accepted rule of thumb as well as the established legal standard, and is therefore lawful.

On the other hand, requiring the installation of a nearly 600 feet water line extension beyond the subject property requires the home builder to provide improvements beyond his own impact. Therefore, the requirement that the home builder install and dedicate a culinary water line that extends nearly 600 feet from the subject property boundary to connect to existing facilities cannot constitute a valid exaction.

Note that while the city may not require the home builder to install the water line extension, the city may nonetheless withhold issuance of a building permit on the property until the subject property is served by sufficient water flows and facilities. The home builder is therefore left to decide whether he wants to wait until another property owner or the city brings the water to the property, or if he wants to install it himself. This distinction, while in the home builder's favor from a legal point of view, may not provide him the desired relief.

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 Kristopher Sorensen on January 6, 2022. A copy of that request was mailed to Mark Christensen, City Manager, City of Saratoga Springs, 1307 N. Commerce Drive, Suite 200, Saratoga Springs, Utah 84045.

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 Kristopher Sorensen on January 6, 2022.

2. Letter from Fredric J. Donaldson, on behalf of the City of Saratoga Springs, on March 29, 2022.
3. Letter from Kristopher Sorensen on April 25, 2022.
4. Letter from Fredric J. Donaldson, on behalf of the City of Saratoga Springs, on June 24, 2022.
5. Email from Kristopher Sorensen on June 27, 2022.
6. Letter from Fredric J. Donaldson, on behalf of the City of Saratoga Springs, on July 19, 2022.

BACKGROUND

Kristopher Sorensen ("Sorensen") owns approximately 14.7 acres[1] located at 1158 W. Fairfield Road, Saratoga Springs, Utah (the "Property"). The Property is undeveloped and used to graze cattle. Public infrastructure including sewer services, water lines, and fully improved access roads, have not yet been installed adjacent to the Property. Similarly, the closest water trunk line dead ends approximately 585 feet beyond the Property boundary.

Sorensen desires to construct a single-family residence on the Property and has filed a building permit request with the City of Saratoga Springs ("City") to that end. In accordance with local ordinances, the City is requiring Sorensen to dedicate and improve the half-width of Fairfield Road right-of-way adjacent to the Property. The required improvements include:

(1) Dedicate property for roadway: Dedicate a portion of the Property for the right-of-way for Fairfield Road along the Property frontage;
(2) Install pavement and other improvements: Pavement widening as needed to bring the road to City standards for a local residential road and install curb, gutter, and sidewalk across the Property frontage to City standards and install fire hydrants as required by the fire code;
(3) Install off-site utility connections: Extend 8" City-owned culinary water trunk line to connect with new improvements.

Sorensen objects to the required improvements on several grounds. Primarily, the improvements will cost over $487,000[2] to install. Further, Sorensen maintains that several similar properties in the City limits use private wells and septic tanks and were not, apparently, required to connect to City sewer and utilities. Sorensen also maintains that because he is not subdividing the property, he is not a developer or subdivider, and therefore, the improvement requirements should not apply to him. He would like to construct his single-family home without the roadway improvements to Fairfield Road,

[1] Listed as 12.6 acres in some of the submitted materials.
[2] Request for Advisory Opinion. Several different total amounts were given in the various responses. Each appears to be an estimation, and vary in what they include. In all cases, the estimated totals include the cost of the building permit, the cost of underlying land, the required improvements, and the impact fees paid.

and without connecting to existing water and sewer lines.[3] Sorensen has an on-site well and ample room for a septic system.

Sorensen's objections are nicely summed up in one response where he stated "Developer/subdivider restrictions and requirements should not be placed on farmers, ranchers, farmland, agriculturally zone land, or protected lands. Allowing a government entity to impose these requirements upon those seeking to expand agricultural services and production [creates] a heavy financial burden and impact on those that choose to continue ag practices within a municipality and pay to enrich said municipalities with development and permit revenues every time a farmer/rancher grades/discs a field, constructs a fence, or disturbs more than 3,000 square feet of land. Ag producers should be exempt from these requirements and have the right to farm their land and continue ag practices."[4] Further, he maintains that these requirements "should not be imposed on the Sorensens until they seek a land use change, rezone, or decide to develop the property into a subdivision."[5]

Presenting the issue from a different perspective, the City maintains that building a home on the Property meets the Utah State Code definition of "development activity"[6] and creates demand and need for public facilities. Further, the City Code states that "All developments will be required to install, and in some cases dedicate, to the City or homeowner association, all offsite and onsite improvements necessary to mitigate the impacts created by the new development."[7]

The City concedes that, historically, City Code[8] permitted large lot rural agricultural properties to develop without connecting to the public sewer or water or improving the adjacent roadway. However, the City ordinances have changed since those uses were approved. The City states that they "are not obligated to maintain practices that are outdated and not consistent with current applicable law and policies."[9] Further, the City maintains that it is "not treating Mr. Sorensen differently than it would treat any other property owner in the RA-5 zone who chooses to develop a residence on his or her property in the City at this time."[10]

The City offers the reasoning below in connection to each requirement:

(1) Dedicate a portion of the Property for the right-of-way for Fairfield Road along the Property frontage. *The City maintains that Sorensen is required to dedicate only 29' which is the minimum half-width required for a local road right-of-way.*

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[3] Sorensen has also argued that the property will lose its favorable "Green Belt" tax status once the improvements are installed. However, the property tax status is immaterial to the legal analysis and conclusion we draw in this Advisory Opinion and is outside our authority to opine on.
[4] Ombudsman Response received from Sorensen dated April 23, 2022.
[5] Saratoga Sorensen response dated June 26, 2022.
[6] UTAH CODE § 10-9a-103(11) defines "development activity" as "any construction or expansion of a building, structure, or use that creates additional demand and need for public facilities; any change in a use or a building or structure that creates additional demand and need for public facilities; or any change in the use of land that creates additional demand and need for public facilities."
[7] Saratoga Sorensen Ombudsman response dated June 26, 2022 quoting Saratoga Springs City Code 19.13.08.
[8] Such development may have occurred under Utah County land use ordinances before Saratoga Springs incorporated.
[9] Saratoga Sorensen Ombudsman response dated June 26, 2022.
[10] Saratoga Sorensen Ombudsman response dated June 26, 2022.

(2) Pavement widening as needed to bring the road to City standards for a local residential road and install curb, gutter, and sidewalk across the Property frontage to City standards.
City Code states that "[e]very developer is required to construct curb, gutter, and sidewalk to and along their property frontage to ensure that safe and efficient vehicle traffic and pedestrian traffic are facilitated to and across their development."[11] *Further, in "good faith and in an effort to be collaborative," the City has agreed not to require Sorensen to install certain storm water or secondary water improvements.*

(3) Install utilities from existing City connections to the Property as well as along the adjacent Property frontage. Utilities include an 8" culinary water trunk line which currently dead ends 585 feet from the Property boundary.
The 8" line is the minimum sized water line that can be connected to the City system per City Code and the City's development and engineering standards.[12] *Further, all residential improvements are required to provide for adequate fire flows to protect life and property. This entails either the construction of fire hydrants and water lines sufficient to provide adequate fire flows, construction of a water tank for fire protection, or installation of sprinklers in compliance with International Fire Code and City standards.*

The City's arguments can be summed up as "the requirements the City has requested from Mr. Sorensen are the minimum necessary for the development of the residence Mr. Sorensen is seeking to undertake. The City is only requiring Mr. Sorensen to construct infrastructure necessary for his development activity and compensate for the impacts his development activity will create on existing infrastructure."[13] Furthermore, "the City is not requiring any more than necessary to serve the needs of this residence."[14]

As Sorensen and the City are at an impasse, Sorensen has requested this Advisory Opinion to determine whether the City may require him to dedicate and improve the half-width of Fairfield Road and to install a water trunk line extension to connect his development with the existing water line.

ANALYSIS

I. Cities can require that roads and utilities meet minimum established standards before issuing a building permit for a single-family residence.

It has not been disputed that the language of the City Code requires that the roadway half-width adjacent to the Property be dedicated and improved, including utility improvements, as a prerequisite to getting a building permit. Sorensen has not disputed

[11] Saratoga Springs response dated June 23, 2022 quoting Saratoga Springs City Code 19.13.08(1).
[12] Saratoga Springs response dated June 24, 2022 quoting Saratoga Springs City Code 19.13.08(3).
[13] Saratoga Sorensen Ombudsman response dated June 27, 2022.
[14] Saratoga Springs response dated June 24, 2022.

that the language of the City Code requires these improvements, even for his building permit for a single-family home on nearly 15 acres. The question, therefore, is whether the City may legally set such standards, and also, whether these standards are lawful as applied to Mr. Sorensen in particular.

It is established that an owner of property holds it subject to zoning ordinances enacted pursuant to a state's police power.[15] Police power is "the capacity of the states to regulate behavior and enforce order within their territory for the betterment of the health, safety, morals, and general welfare of their inhabitants."[16] The U.S. Supreme Court has further held that the valid exercise of police power includes land use regulations.[17] The enactment of a standard land use ordinances is a legislative decision subject to the "reasonably debatable" test whereby a reviewing court must presume that a properly enacted land use regulation is valid and determine only whether "it is reasonably debatable that the land use regulation is consistent with [applicable state law]"[18] and therefore in the interest of the general welfare.

The answer to "can the city do this?" is nearly always yes under this legal test. On its face, it is "reasonably debatable" that the disputed requirements are in the interest of the general welfare of the citizens where the City has a duty to provide streets, sewage disposal, and clean water for residents. Whether or not a city enacts ordinances that allow for more affordable rural development that would permit construction of a single-family residence on a large agricultural parcel using septic systems and water wells as well as the existing roadways without improvement is a policy decision left to the local elected officials.

Therefore, the answer to the first question is yes, the City can require that roads and utilities meet minimum established standards before issuing a building permit for a single-family residence on a large-lot agricultural residential property.

II. Requiring Sorensen to dedicate and improve the Fairfield Roadway half-width adjacent to the Property offsets the impact of development and therefore is a valid exaction, however, requiring the installation of a 585 feet culinary water line extension beyond the property boundary exceeds the impact of development and therefore cannot constitute a valid exaction.

The next question is whether the City may require Sorensen to install the required improvements and donate these and the underlying land to the public as a requirement for receiving a building permit for one single-family home.

[15] *Euclid v. Ambler Realty Co.*, 272 U.S. 365, 71 L. Ed. 303, 47 S. Ct. 114 (1926).
[16] Police Power, Encyclopedia Britannica.
[17] *See, e.g. Euclid v. Ambler Realty,* 272 U.S. 365 (1926).
[18] UTAH CODE § 10-9a-801(3)(a).

A. The legal standard for development exactions

Saratoga Springs' requirement that the Sorensen dedicate land, roadway, and utility improvements to the City as a condition of receiving a building permit is a development exaction. A development exaction "is a government-mandated contribution of property imposed as a condition" of development approval.[19]

The Takings Clause of the U.S. Constitution[20] protects private property from governmental taking without payment. It reads, "[n]or shall private property be taken for public use, without just compensation."[21] "One of the principal purposes of the takings clause is to 'bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.'"[22]

As a result, generally speaking, the government may not require a property owner to donate land or improvements to the public unless they are prepared to pay for that dedication. As an exception, however, a government entity may require dedication of land and/or improvements as a condition of development approval to the extent the dedication offsets the impact the development will put on the community.

An exaction is valid and proportionate only when it offsets the costs of a development's impact, and no more. An excessive exaction requires a property owner to pay for impacts beyond his own.[23] A principal objective of the test is to "bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole."[24] Therefore, the community may require dedication of land or construction of public resources such as roadways and water trunk lines as long as they offset the impact of proposed development.

The determination of how to measure whether the dedication offsets the impact of development has been termed the "rough proportionality test," and is codified in UTAH CODE § 10-9a-508(1).[25]

> A municipality may impose an exaction or exactions on development proposed in a land use application . . ., if:
> (a) an *essential link* exists between a legitimate governmental interest and each exaction; and,
> (b) each exaction is *roughly proportionate, both in nature and extent*, to the impact of the proposed development.

[19] *B.A.M. Dev., L.L.C. v. Salt Lake County,* (BAM III), 2012 UT 26, ¶16.
[20] Also Article I Section 22 of the Utah Constitution.
[21] United States Constitution, 5th Amendment.
[22] *Dolan v. City of Tigard*, 512 U.S 374 (1994) quoting *Armstrong v. United States,* 364 U.S. 40, 49, L. Ed. 2d 1554, 80 S. Ct. 1563 (1960).
[23] *Banberry Development Corporation v. South Jordan City,* 631 P.2d 899, 903 (Utah 1981).
[24] *Armstrong v. United States*, 364 U.S. 40, 49 (1960).
[25] Codifies the groundbreaking U.S. Supreme Court cases *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987) and *Dolan v. City of Tigard*, 512 U.S 374 (1994).

UTAH CODE § 10-9a-508(1) (*emphasis added*). If a proposed exaction satisfies this test, and is otherwise legal, it is valid. If the exaction fails the test, it violates protections guaranteed by the Takings Clauses of the Utah and U.S. Constitutions and is illegal.[26] Accordingly, we next analyze the exactions to determine whether they satisfy the rough proportionality test.

B. Essential link exists between legitimate governmental interest and exaction

The first part of UTAH CODE § 10-9a-508(1) requires an essential link between a legitimate governmental interest and the exaction imposed. The City's requirement to dedicate and improve property along the right-of-way along Sorensen's frontage is based in the City's legitimate interest in protecting and promoting public health, safety, and welfare. "In order for a government to be effective, it needs the power to establish . . . public throughways. . . for the convenience and safety of the public."[27]

Similarly, the City's requirement that Sorensen install the 585' culinary water trunk line extension to connect the proposed facilities to the existing water main is based in the City's legitimate interest in protecting and promoting public health, safety, and welfare. This extension of the water line is necessary to connect the proposed home to the existing water main.

Accordingly, the *essential link* portion of the rough proportionality test is satisfied.

C. Nature and Extent aspect of the rough proportionality test

The next step in the rough proportionality test requires that "each exaction is roughly proportionate, both in *nature and extent*, to the impact of the proposed development."[28] The *nature* aspect of the rough proportionality test requires an exaction provide a solution to a problem the proposed development presents. Sorensen proposes to construct a single-family residence on the Property. The roadway adjacent to and directly serving the Property lacks an improved roadway and water line.

The required land dedication, roadway and utility improvements are immediately adjacent to the Property, running along the edge of the Property and intended to serve the residents and visitors of the proposed residence. Similarly, extending the water line from existing terminus will directly serve the Property. Without this connection, the Property will not have access to water. Therefore, the required roadway and utility improvements directly provide a solution to the problem the proposed development creates. Accordingly, the *nature* aspect of the test is satisfied.

In the final step of the rough proportionality test, the City must "compare the government's cost of alleviating the development's impact on infrastructure with the cost to [the

[26] *Call v. West Jordan*, 614 P.2d 1257, 1259 (Utah 1980).
[27] Saratoga Springs response dated March 29, 2022 quoting *Carrier v. Lindquist*, 2001 UT 105, ¶ 18.
[28] UTAH CODE §10-9a-508(1)(b).

developer] of the exaction,"[29] therefore looking at whether the exaction is proportional in *extent*.

The Utah Supreme Court has provided a single example of how to balance *extent.*[30] In B.A.M. II, the Court held that requiring the dedication of 13 feet of right-of-way for the expansion of an adjacent roadway as a condition of approval of a fifteen-acre residential subdivision satisfied the extent aspect of the rough proportionality test. In that case, traffic engineers estimated increased traffic from the planned subdivision represented 5% of the total area-wide traffic increase yet the cost of the disputed dedication amounted to only 1% of area-wide road improvement projects.[31] Therefore, the Court concluded that the exaction was less than the impact and did not violate the extent aspect of the rough-proportionality standard.

In the case at hand, "*[n]o precise mathematical calculation is required"*[32] however, the City must nonetheless make "some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development."[33]

The City has not provided a monetary cost for the impact of the proposed development.[34] Instead, the City provides a logical argument that, we conclude, fits the established legal framework. The City argues that the requirement for a developer to dedicate and improve the half-width of the local roadway fronting the property is a common standard, and one that appears to be widely credible throughout the development community. It is grounded in the need for a practical, straight-forward standard to apply in the thousands of building permit approvals made across the state each year. The half-width standard fits the legal standard explained in B.A.M. II and is reasonable on its face. If everyone in the City improves the local roadway half-width adjacent to their property when they build their home or their business, we have local roadways that we all can use. Larger lots require more roadway and smaller lots require less roadway - thus balancing proportionality.

As argued by the City, this rule of thumb to evaluate *extent* has been used in past Advisory Opinions:

> *It is common for a City to exact the dedication and construction of a half-width of a road, curb, gutter, etc., along the entire frontage of the property. This half-width frontage dedication and construction is common practice and generally accepted as roughly proportionate to a typical road impact. An abutting half-width generally does not require one developer to provide*

[29] *B.A.M. Dev., L.L.C. v. Salt Lake County*, 2012 UT 26, ¶5, 282 P.3d 41.
[30] *Id.*
[31] The estimated value of total area-wide road improvements was $6,748,700 and the value of the property to be dedicated was $83,997, representing 1.2% of the total.
[32] *See Dolan*, 512 U.S. at 391-92.
[33] *Id.*
[34] This is consistent with all prior exaction analysis requests to our office. Our office has never received a monetary cost estimate for the impact of development. We assume that this estimate cannot readily be calculated, or, is otherwise not realistically available.

improvements that others should provide — i.e., the opposite abutting landowner typically provides the other half-width.[35]

When we apply the standard rule of thumb, that "*a city may exact the dedication and construction of a half-width of a road, curb, gutter, etc., along the entire frontage of the property"* the extent of the requirement to dedicate and improve the half-width adjacent to the property offsets the impact of development and appears legal.

However, the City is also asking for improvements beyond the half-width adjacent to the Property. Even were Sorensen to install and dedicate the roadway and utility improvements adjacent to the Property, the new water trunk line would be dry because it wouldn't connect to the existing water line. As a result, and in order for the Property to have access to water rather than just remain an empty pipe, the City is requiring that Sorensen extend the new water trunk line nearly 600 feet beyond the edge of his property to connect with the now dead-ended water line. Because this extension extends beyond the edge of the Property, it exceeds the half-width standard. More importantly, the condition with require Sorensen to address more than his own impact on the City's ability to provide him water service. Consequently, the City's requirement to install this off-site improvement exceeds Sorensen's impact on development and appears violate the takings clause.

To summarize, the *extent* aspect of the rough proportionality test is satisfied with respect to the half-width roadway dedication and improvements, including the utility improvements adjacent to the property, and appears legal. However, the requirement to install and dedicate the water trunk line extension extending nearly 600 feet beyond the Property to connect to existing facilities exceeds the impact of development and therefore does not appear legal.

Conclusion

Saratoga Springs may require that the Property be served by streets and utilities meeting current standards, including pavement, curb, gutter, sidewalks, and a connection to existing sewer and water lines as a condition of building permit approval. This is true even where the requested building permit is for a single-family residence on a large agricultural parcel. The City Council has the authority to regulate use of property for the health, safety, and welfare of the citizens, including establishing these standards.

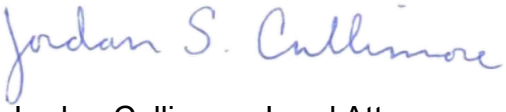
However, the requirement that these improvements be in place prior to issuing a building permit is a different question than whether the City may require that the builder install them and give them and the underlying property, to the City.

The requirement that Sorensen dedicate and improve the roadway half-width adjacent to the Property is "roughly proportional" to the impact the development creates and is

[35] Saratoga Springs Response dated July 19, 2022 quoting Ombudsman Advisory Opinion 205. *See also* Ombudsman Advisory Opinions 221 and 180. While not legally binding, our Office does endeavor to issue opinions using consistent analysis and reasoning.

therefore lawful. However, the requirement that Sorensen install and dedicate a water line extension that extends nearly 600 feet beyond the Property boundary to connect to existing facilities requires that the property owner be responsible for improvements beyond his own impact. This requirement therefore cannot constitute a valid exaction.

Note that the City cannot require that Sorensen install the water line extension and dedicate it to the public. However, the City may require that this disputed water line be in place before a building permit on the Property is issued. As a result, Sorensen is left to decide whether he wants to wait until another property owner or the City brings the water to the edge of the Property, or if he wants to install it himself to bring the needed infrastructure to his property. This distinction, while in Sorensen's favor, may not provide him the relief he presently seeks.



Jordan Cullimore, Lead Attorney
Office of the Property Rights Ombudsman

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.