

Advisory Opinion 274

Parties: Park City School District, Summit County

Issued: August 2, 2023

TOPIC CATEGORIES:

Compliance with Land Use Regulations Interpretation of Ordinances

This Advisory Opinion answers whether a county may lawfully require a school district to comply with generally applicable land use ordinances. The example development included a requirement to secure a Conditional Use Permit as well as go through a Master Planned Development process.

The core of this dispute revolves around interpreting the state's broad grants of authority to both school districts and local governments, and whether Utah's Land Use, Development, and Management Act requires the School District to conform to certain aspects of County land use ordinances. While state code says that each school district shall conform to local land use ordinances, it also provides a list of items for which local governments are prohibited from regulating on school district projects, including county building codes and the location of a school.

The plain language of state statutes regarding local land use authority and school district autonomy over school construction projects, when read together, require the School District to generally abide by the County's land use regulations to secure a CUP and MPD approval for the Jeremy Ranch Elementary School.

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: Park City School District
Local Government Entity: Summit County
Applicant for land Use Approval: Park City School District
Type of Property: Schools
Date of this Advisory Opinion: August 2, 2023
Opinion Authored By: Marcie M. Jones, Attorney
Office of the Property Rights Ombudsman

ISSUE

May the County lawfully impose generally applicable land use ordinances on Park City School District school construction projects?

SUMMARY OF ADVISORY OPINION

This Advisory Opinion answers whether a county may lawfully require a school district to comply with generally applicable land use ordinances. The example development included a requirement to secure a Conditional Use Permit as well as go through a Master Planned Development process.

The core of this dispute revolves around interpreting the state's broad grants of authority to both school districts and local governments, and whether Utah's Land Use, Development, and Management Act requires the School District to conform to certain aspects of County land use ordinances. While state code says that each school district shall conform to local land use ordinances, it also provides a list of items for which local governments are prohibited from regulating on school district projects, including county building codes and the location of a school.

The plain language of state statutes regarding local land use authority and school district autonomy over school construction projects, when read together, require the School District to generally

abide by the County's land use regulations to secure a CUP and MPD approval for the Jeremy Ranch Elementary School.

However, in this and all other land use ordinance applications, state law severely limits the County in what conditions may be imposed, and development at the location may only be denied upon the County finding that it is "necessary to avoid unreasonable risks to health or safety."

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 Title 13, Chapter 43, Section 205 of the Utah Code. 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 this 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 Park City School District via counsel at Fabian VanCott: Joan Andrews, Matt Anderson, and Mason Kjar dated December 16, 2022. A copy was sent via certified mail to Jenna Young, Interim County Manager, Summit County, 60 North Main, PO Box 128, Coalville, Utah 84017.

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 Park City School District via counsel at Fabian VanCott: Joan Andrews, Matt Anderson, and Mason Kjar dated December 16, 2022.
2. Response from J. Mason Kjar, Fabian VanCott on behalf of Park City School District dated February 10, 2023.
3. Response from Margaret H. Olson on behalf of Summit County dated January 4, 2023.

BACKGROUND

This Advisory Opinion questions whether Summit County (the "County") may lawfully require the Park City School District (the "School District" or "District") to comply with generally applicable land use ordinances, including subjecting the District to a conditional use permit and master planned development approval processes.

The School District has several school renovation and construction projects planned and underway in the County. In accordance with its understanding of the law, the School District has worked with the County on plans for the many school projects, but had not gone through planning and zoning or building permit application processes.

Issues were brought to light when excavation on Jeremy Ranch Elementary School renovation began. The County notified the School District that approved land use permits would be required before construction could continue. Specifically, the County required the School District to obtain a Conditional Use Permit (“CUP”) to expand an existing elementary school because schools are a conditional use within the applicable Rural Residential Zone. The County also required the District to apply for the Master Planned Development (“MPD”) process if the expansion was over 15% or over ten thousand (10,000) square feet.

To keep the project moving forward, the District made application to the County for both the CUP and the MPD but did not pause the excavation work. Shortly thereafter, the County issued the District a Stop Work Order and Notice of Violation. The District continued to proceed with excavation and installation of a lateral sewer line while it worked with the County. As a result, the County issued an Administrative Citation. Again, to keep things moving forward, the District paid the Administrative Citation and the CUP and MPD were approved the following month.

Utah Code grants broad authority to local County governments to regulate land use within jurisdictional boundaries. *See generally* Utah Code §17-27a-101 *et seq.* However, this authority is refined and somewhat restricted as it relates to school districts in Utah Code §17-27a-305. The core of the dispute is what portions of the County’s broad land use authority applies to the School District.

School districts have powers which are co-ordinate with that of local land use authorities. Courts, as well as portions of Utah Code, suggest that it was not intended to invest cities with any powers over school buildings. However, Section 17-27a-305 states that school construction projects must comply with local land use ordinances *but also* that the county is restricted from regulating a list of standard, fundamental land use categories.

In the Jeremy Ranch Elementary School construction example, the District acquiesced to the County’s demands to continue work on a delayed project. The District is now looking for clarity on whether the County’s land use authority applies to the School District on on-going and future school renovations.

Accordingly, the School District has requested this Advisory Opinion to determine whether the County may impose generally applicable land use ordinances upon the School District when building or expanding public schools.

ANALYSIS

As a threshold matter, the County maintains that the Office of the Property Rights Ombudsman does not have authority to issue an Advisory Opinion on this topic, so that issue will be addressed first.

I. The Office of the Property Rights Ombudsman has authority to issue an Advisory Opinion on whether the County may lawfully require the School District to comply with generally applicable land use ordinances as contained in Utah Code Sections 17-27a-505.5 and 17-27a-506 through 17-27a-510.

The County maintains that the issue at hand falls outside the scope of authority granted to the Office of the Property Rights Ombudsman. We disagree.

The Office of the Property Rights Ombudsman (the “Ombudsman”) was created by state statute and the authorities of the office are delineated therein, *see* UTAH CODE §13-43-101 *et seq.* Among other things, the statute creates the authority of the Ombudsman to issue Advisory Opinions, which is limited to covering certain defined topics. Specifically, for disputes involving land use law, the Ombudsman may review compliance with (1) certain sections of the Land Use, Development, and Management Act (“LUDMA”) governing cities and towns, (2) certain sections of LUDMA governing counties, and (3) compliance with the Impact Fees Act. (UTAH CODE §13-43-205(1)(a)).

In this instance, we are only concerned with the second topic – those sections of LUDMA that govern counties. Specifically, Utah Code Section 13-43-205(1) provides in relevant part that “A local government, private entity, or potentially aggrieved person, may . . . request a written advisory opinion: from a neutral third party to determine compliance with . . . Section 17-27a-505.5 and Sections 17-27a-506 through 17-27a-510.”

The Ombudsman may issue Advisory Opinions on the following County land use topics:

- 17-27a-505.5 Limit on single family designation
- 17-27a-506 Conditional uses
- 17-27a-507 Exactions
- 17-27a-508 Applicant’s entitlement to a land use application approval
- 17-27a-509 Limit on fees
- 17-27a-509.5 Review for application completeness
- 17-27a-509.7 Transferable development rights
- 17-27a-510 Nonconforming uses and noncomplying structures

It is acknowledged that the issue at hand is addressed in Utah Code Section 17-27a-305, which addresses a school district’s compliance with certain county land use ordinances. The County correctly points out that this section of Utah Code is not included in the list of sections for which an Advisory Opinion may be requested.

However, the core of the dispute involves whether the County may impose its typically plenary land use authority on the School District. In the Jeremy Ranch Elementary School construction example, at issue is the County’s requirement that the District obtain a CUP and MPD. Conditional Use Permits are included in the available topics for an Advisory Opinion. Conditional Uses are regulated within UTAH CODE §17-27a-506. Similarly, whether an applicant is entitled to a land use application approval is also an appropriate topic for an Advisory Opinion, included within UTAH CODE § 17-27a-508. If an Advisory Opinion may opine on whether a CUP or land use application was rightfully withheld, it follows that an Advisory Opinion may opine on whether they may be required at all.

Similarly, the County maintains that the initial dispute over construction work completed at the Jeremy Ranch Elementary School has been resolved and therefore the question is moot. We decline to dismiss the Advisory Opinion on this point. First, our governing state statute does not require a live case or controversy when the opinion issues. It requires only that a *request* for an Advisory Opinion be made before “a final decision on a land use application by a local appeal authority” or

“the deadline for filing an appeal with district court . . . if no local appeal authority is designated to hear the issue that is the subject of the request for an advisory opinion.” UTAH CODE §13-43-205(b). This opinion was timely requested. Also, as the School District has several construction projects planned, this issue is imminent and on-going and has not expired.

As such, the issue falls within our authority and we accordingly provide the following Advisory Opinion.

II. According to the plain meaning of Utah Code Section 17-27a-305, the County may require the School District to follow local land use ordinances but is restricted from regulating several key issues and if a school location is denied the decision must include a finding of “unreasonable risks to health or safety.”

The core of this dispute revolves around the interpretation of Utah Code Section 17-27a-305 and whether it requires the School District to conform to the County land use ordinances in question, in light of other statutory references to a School District’s control over its property and the construction of school buildings.

Utah courts first addressed this apparent conflict of authority as early as 1918, and found at that time that “the Legislature had all of these matters in mind, and did not intend to confer unnecessary powers on the city authorities respecting the control of public school buildings, and did not intend to hamper the school boards in the control of such buildings.” *Salt Lake City v. Board of Educ.*, 52 Utah 540, 553, 175 P. 654 (Utah 1918). As such, the court held that “it was not intended to invest cities with any powers over school buildings *except in case such buildings should become a menace and a danger* . . . and that school boards are not required to obtain permits from the cities.” *Id.* (emphasis added).

Similarly, state law today states that “Each school district shall be controlled by its local school board and shall be independent of municipal and county governments” and also, “The local school board shall have direction and control of all school property in the district” UTAH CODE § 53G-3-202(1)(a) and (b). School construction projects are subject to the requirements and oversight imposed by the Utah State Board of Education. (“Board of Education”). *See generally* UTAH CODE § 53E-3-701 *et seq.*

School districts generally secure building permits through the Board of Education instead of the local land use authority. The Board of Education is similarly authorized to issue certificates of occupancy.¹

However, current state code also plainly stipulates that “each . . . school district . . . shall conform to any applicable land use ordinance of any county when installing, constructing, operating, or otherwise using any area, land, or building situated within . . . the unincorporated portion of the county.” UTAH CODE §17-27a-305(1)(a). This section plainly allows the County to impose applicable land use ordinances on the planned and on-going school construction and renovations.

¹ Charter schools have slightly different regulations and need to obtain a building permit from the local land use authority.

The core of the controversy is discerning which local land use ordinances are “applicable” to be imposed on school district projects.

Section 17-27a-305 includes several important prohibitions from local regulation. The code states, in relevant part, “A county may not . . . impose requirements for landscaping, fencing, aesthetic considerations, construction methods or materials, additional building inspections, county building codes, building use for educational purposes, or the placement or use of temporary classroom facilities on school property . . . [and may not] impose regulations upon the location of an educational facility except as necessary to avoid unreasonable risks to health or safety.” UTAH CODE §17-27a-305(3)(a) and (f).

To summarize, the code says that each school district shall conform to local land use ordinances, while expressly narrowing which kinds of local land use requirements are not “applicable” to be imposed on school districts, such as county building codes and the location of a school (unless as necessary to avoid unreasonable risks to health or safety).

The primary goal in statutory interpretation is to evince the true intent and purpose of the legislature. *Marion Energy, Inc. v. KFJ Ranch P'ship*, 2011 UT 50, ¶ 14. This interpretation begins by first looking to the statute’s plain language. *Carrier v. Salt Lake City.*, 2004 UT 98, ¶ 30. Courts read the plain language of the statute as a whole, and interpret its provisions in harmony with other statutes in the same chapter and related chapters. *Bryner v. Cardon Outreach, LLC*, 2018 UT 52, ¶ 10. If the plain language of an ordinance is sufficiently clear, the analysis ends there. *General Construction & Development, Inc. v. Peterson Plumbing Supply*, 2011 UT 1, ¶ 8.

Despite what the parties may deem to be apparent internal inconsistencies, the statutory language is not ambiguous. It is clear from the statute’s plain language *both* that the School District must abide by County land use ordinances *and* that the County may not impose certain regulations regarding a laundry list of items including the “building use for educational purposes” and “location except as necessary to avoid unreasonable risks to health or safety.” UTAH CODE §17-27a-305(3)(a) and (f).

Therefore, the School District must generally conform to the County’s land use code except where expressly prohibited by state law. In the Jeremy Ranch School Example, the County required that the School District secure a Conditional Use Permit and go through the Master Planned Development process. This is lawful, as long as the process and conditions did not regulate items on the restricted list.

For the CUP, for instance, State code provides that “a land use authority shall approve a conditional use permit if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards.” UTAH CODE §17-27a-506(2)(a). The scope of these “applicable standards,” when it comes to schools, however, needs to be read in light of the list of items the County is prohibited from regulating on School District projects, including: landscaping, fencing, aesthetic considerations, construction methods or materials, additional building inspections, county building codes, building use for educational purposes, or the placement or use of temporary classroom facilities on school property. UTAH CODE §17-27a-305(3)(a). Similarly, if the local land use ordinances require an MPD process

for development or expansion of a school, the County may require such. However, the process may not result in regulation of restricted items.

Also, there is heightened standard for outright denial. The CUP or MPD may not be denied unless it is found “necessary to avoid unreasonable risks to health or safety” because the County may not “impose regulations upon the location of an educational facility except” as necessary to avoid such risks. UTAH CODE §17-27a-305(3)(f). The denial of a CUP or MPD could amount to “regulat[ing] the location” and therefore violate state law.

Utah Code and caselaw do not define “unreasonable risks to health or safety.” Based on interpretations in surrounding jurisdictions, however, the language implies a heightened and immediate risk. For instance, when the transportation of certain materials in commerce may pose an “unreasonable risk to health and safety,” the federal government has the authority to designate that material as hazardous, and prescribe regulations governing the safety aspects of its transportation. *People v. Union Pacific Railroad Co.*, 141 Cal. App. 4th 1228, 1245, 47 Cal. Rptr. 3d 92, 102 (2006). As another example, when determining whether a faulty sidewalk constitutes an “unreasonable risk to health and safety” to the public, the Colorado district court notes that “unreasonable” means “exceeding the bounds of reason or moderation” and also, because the term unreasonable modifies the word risk, it requires “more than a foreseeable risk of harm.” *Williss v. City of Littleton*, 2022 Colo. Dist. quoting *Maphis*, 2022 CO 20. This usage indicates that there is some evident, unique fact regarding the situation that compels non-standard action.

We therefore conclude that the County may require the School District to generally abide by the land use code and in the case of Jeremy Ranch Elementary School lawfully required the District to secure a CUP and MPD. However, the County is strictly limited in what conditions may be imposed and if development at the location is denied, the County must find that it was “necessary to avoid unreasonable risks to health or safety.”

III. The County may impose generally applicable land use regulations upon the school district as long as they do not regulate issues state law prohibits them from regulating.

The Jeremy Ranch Elementary School example illustrates the on-going dispute involving the County requiring the School District to secure a Conditional Use Permit as well as going through the Master Planned Development process, which we specifically address above.

However, the Advisory Opinion was requested to help the parties guide future issues in planned-for school construction and renovation projects. The School District broadly asked which land use regulations the County is restricted from imposing. As such, we provide this list derived directly from Section 17-27a-305 of regulatory categories the County *may not* impose upon the School District when constructing schools:²

- Landscaping, fencing, aesthetic considerations. UTAH CODE §17-27a-305(3)(a).
- Construction methods or materials. UTAH CODE §17-27a-305(3)(a).

² This section of code also restricts the County from imposing certain fees and restrictions on charter schools and other school buildings not used for educational purposes which are not at issue here and therefore are not discussed.

- Additional building inspections, or provide for inspection unless the school district is unable to provide for inspection by a qualified inspector. UTAH CODE §17-27a-305(3)(a) and (d).
- County building codes.³ UTAH CODE §17-27a-305(3)(a).
- Building use for educational purposes.⁴ UTAH CODE §17-27a-305(3)(a).
- Placement or use of temporary classroom facilities on school property. UTAH CODE §17-27a-305(3)(a).
- Regulation upon the location of an educational facility except as necessary to avoid unreasonable risks to health or safety. UTAH CODE §17-27a-305(3)(f).
- Certificate of Occupancy. UTAH CODE §17-27a-305(7)(e).

The School District does have several obligations to work with the County through the process, however. The School District has an obligation to “coordinate the siting of a new school with the county in which the school is located” to avoid or mitigate traffic hazards and maximize safety. UTAH CODE §17-27a-305(4). The School District must also “submit to the land use authority a development plan and schedule as early as practicable in the development process, but no later than the commencement of construction and with sufficient detail to enable the land use authority to assess compliance with applicable land use ordinances” and to determine demand for public facilities and any applicable fees. The County must respond to the School District with reasonable promptness. UTAH CODE §17-27a-305(8). Also, at the County’s discretion, the County may “provide a walk-through of school construction at no cost and at a time convenient to the school district” and may “provide recommendations based upon the walk-through.” UTAH CODE §17-27a-305(5).

By applying the plain language of the respective statutes, an overarching obligation emerges. The School District is obligated to coordinate siting and submit a development plan, and in turn, the County may require the School District to comply with applicable land use regulations which would often involve coordinating the siting and submitting a development plan.

In summary, the County should not hamper or delay the construction of public schools, but may require the School District to generally abide by applicable land use regulations. However, the County is restricted from regulating landscaping, fencing, aesthetic considerations, construction methods or materials, additional building inspections, or provide for inspection unless the school district is unable to provide for inspection by a qualified inspector, County building codes, building use for educational purposes, placement or use of temporary classroom facilities on school property, regulation upon the location of an educational facility except as necessary to avoid unreasonable risks to health or safety, and requiring a County inspector to issue a certificate of occupancy.

³ “County building codes” is not defined. It is not entirely clear what this language intends to restrict. One reading indicates that the County may not enforce the uniform building code adopted by the state and routinely enforced at the county level. This reading corresponds to the restriction on the County to conduct building inspections or require approval for a Certificate of Occupancy. An alternate reading suggests that the County is restricted from enforcing building codes which are County specific. However, state law prohibits counties to “adopt or enforce a rule, ordinance, ore requirement that applies to a subject specifically addressed by, and that is more restrictive than, the State Construction Code.” (UTAH CODE §15A-1-204).

⁴ “Building use for educational purposes” is similarly not defined and open to various interpretations.

CONCLUSION

The County may require the School District to generally abide by the land use code regulations. In the Jeremy Ranch Elementary School example, the County lawfully required the District to secure a CUP and MPD. However, in this and all other land use ordinance applications, the County is limited in what conditions may be imposed and if development at the location is denied, the County must find that it is “necessary to avoid unreasonable risks to health or safety.”

Jordan S. Cullimore, 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. 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 § 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.