

Advisory Opinion 298

Parties: Worthington Ranch, LLC, Grantsville City

Issued: November 14, 2024

TOPIC CATEGORIES:

Application Review Fees

Infrastructure improvement inspection fees may not exceed the reasonable cost of conducting the inspection and must be calculated in reference to studies, reports, or some other method, contained in a record, and for which an itemized fee statement can be provided upon request. It is not possible to determine the 3% fee exceeds the actual reasonable cost of providing inspection services based on the information provided.

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ADVISORY OPINION

Advisory Opinion Requested by:	Barry Gittleman, Hamlet Homes
Local Government Entity:	Grantsville City
Property Owner:	Worthington Ranch, LLC
Type of Property:	Residential
Date of this Advisory Opinion:	November 14, 2024
Opinion Authored By:	Marcie M. Jones, Attorney Office of the Property Rights Ombudsman

Issue

Do the infrastructure improvement inspection fees charged by Grantsville City comply with state law?

Summary of Advisory Opinion

The City may only impose inspection fees that (1) do not exceed the reasonable cost of conducting the inspection, and (2) are calculated in reference to studies, reports, or some other method, contained in a record, and for which an itemized fee statement can be provided upon request.

The City has established an inspection fee of 3% of the estimated cost of public improvements for inspecting the water, sewer, stormwater, and sidewalk infrastructure serving residential developments. This fee schedule is based on a 2021 study, which concluded that a 5% fee was too high, but that 3% was a reasonable compromise. However, the study does not provide sufficient details, such as expected or actual inspection tasks, personnel, time, or hourly wages, to verify that the 3% fee accurately reflects the actual costs of inspection services. Furthermore, Utah law requires that cities provide an itemized fee statement upon request which the City did not provide.

It is therefore not possible to determine whether the 3% fee exceeds the actual reasonable cost of providing inspection services based on the information provided.

Until and unless the City can demonstrate that the 3% fee reflects the reasonable cost of inspections for this development and provides an itemized fee statement as required by law, the current fee structure is not lawful.

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 Advisory Opinion submitted by Barry Gittleman, on May 10, 2023, including copies of correspondence with the City regarding the inspection fee.
2. Email from Dallin Littlefield, on behalf of the City of Grantsville, on May 31, 2024.
3. Email from Barry Gittleman on June 4, 2024.

Background

Worthington Homes, LLC (Property Owner) is seeking approval of Phase 1 of a residential subdivision in Grantsville City (City). City charged Property Owner \$99,000 in improvement inspections fees for Phase 1 of the Worthington Ranch development which includes 30 lots. The fee covers the cost of inspecting the water, sewer, stormwater, and sidewalk infrastructure that is part of the development. The City issued a partial refund of just over \$14,000¹, but even with this refund, the Property Owner believes the \$85,000 fee paid is well above the reasonable cost to the city of providing the inspection services.

The City maintains that they conducted a fee study in 2021 to evaluate their Planning and Zoning and Engineering Fees. The engineering inspection fee was set at 3% of the estimated improvement costs “which covers the cost of inspecting the water, sewer, stormwater, and sidewalk infrastructure for developments.” *Letter from Sherrie Broadbent dated May 10, 2023*. The City maintains generally that these inspections include multiple site visits, testing, fees, materials, and meetings. Time for the Mayor, City Engineer, Infrastructure Inspector, and Public works Director were also considered when the fee was established. The fee was reportedly reduced from 5% to 3% in response to information gathered from the study. The fee was kept as a percentage of the engineering cost estimate due to the increased inspection time required as infrastructure is added. According to the City, “exact hours spent were not calculated due to the large variance in development sizes.” *Id.* Furthermore, the City claims that “inspection fees are used to cover the direct cost of the time of specific employees or contractors for Grantsville City.” *Email from Dallin Littlefield, City Attorney, dated May 31, 2021*.

The Property Owner argues that the fee study does not include enough detail to be useful. The fee study is entirely comprised of two Excel spreadsheets. One focuses on the expected time spent on plat review and includes only a one-line explanation of the 3% inspection fee. The second spreadsheet gives a fee comparison between the past process and the process adopted in 2021.

¹ It is not clear from the record why \$14,000 was refunded.

Neither spreadsheet includes any breakdown of anticipated staff, hours, tasks, hourly wages, tests to be conducted, etc. for providing infrastructure inspection.

Furthermore, the study does not provide justification for charging a percentage of the overall cost of the improvement. The City maintains that cost of inspection “tends to correlate” with the overall cost of the development, but also that “the extent and number of necessary inspections for each development varies.” *Letter from Dallin Littlefield dated May 31, 2024.*

The Property Owner maintains that this is not sufficient support for establishing the inspection fee at 3%. The Property Owner further disputes that inspection costs increase in direct proportion to improvement costs. The materials submitted by the City that are apparently part of the 2021 study similarly do not find inspection costs going up in connection to the number of lots. The information provided in the 2021 study list three example subdivision costs which do not support charging inspection fees as a percentage of infrastructure costs.

Subdivision	Number of Lots	Inspection Fee of 3% of improvement costs
Subdivision 1	20	\$26,731
Subdivision 2	26	\$15,304
Subdivision 3	31	\$41,525

2021 Zoning Fee Schedule Calculations Revised

The study does not include a corresponding break down of estimated time for inspection fees. The study only concludes that “Multiple site visits, testing, fees, materials, and meetings” is allocated 3% of the estimated cost of improvements. There similarly is no information on the actual cost to provide the inspection for this development.

The Property Owner has alleged that the inspection fee imposed far exceeds the standard cost in other jurisdictions which means it is higher than the “reasonable cost” of providing the service. Accordingly, the Property Owner has requested this Advisory Opinion to answer whether the City may lawfully charge a flat 3% of the estimated improvement costs as the established inspection fee as a condition of subdivision plat approval.

Analysis

- I. The City may not impose or collect an inspection fee that exceeds the reasonable cost of performing the inspection and must provide an itemized fee statement showing how the inspection fee charged was calculated.**

Utah law permits local government to impose service fees to recover costs for services or benefits provided. In *V-I Oil Co. v. Utah State Tax Commission*, 942 P.2d 906 (Utah 1996), the Utah Supreme Court discussed the concept of fees charged by government entities:

[A] fee raises revenue either to compensate the government for the provision of a specific service or benefit to the one paying the fee or to defray the government's costs of regulating and policing a business or activity engaged in by the one paying the fee.

942 P.2d at 911 (*quoting* BLACK'S LAW DICTIONARY).

However, this must be done within the confines set by state law. Utah Code Section 10-9a-104(2) states, “. . . a municipality may not impose a requirement, regulation, condition, or standard which conflicts with this chapter, other state law, or federal law.” Therefore, the City may adopt inspection fee schedules and/or impose fees, but they must be in conformance with state law.

As related to charging inspection fees, state law requires that “A municipality may not impose or collect an inspection fee . . . that exceeds the reasonable cost of performing the inspection . . .” UTAH CODE § 10-9a-510(4)(b). Furthermore, “If requested by an applicant . . . the municipality shall provide an itemized fee statement that shows the calculation method for each fee.” In other words, a city may not charge inspection fees that exceed the reasonable cost of conducting the inspection and must provide an itemized statement for fees charged when requested.

The City has adopted and is applying a flat inspection fee of 3% of the estimated cost of the improvements. The basis for this fee is a 2021 study that concludes without justification or reasoning that “multiple site visits, testing, fees, materials, and meetings” are allocated 3% of the estimated cost of improvements. There is nothing in the materials provided to indicate that the 3% charged does not exceed the reasonable cost of performing the actual work of inspecting the improvements. Furthermore, the information provided by the City does not suffice as “an itemized fee statement” showing the calculation method for each fee even when requested by the Property Owner.

Without data to justify such, relying on the cost of the improvements is not a reliable method to keep fees proportional to actual reasonable costs of providing the inspection. The inspection fee must be tied to the actual reasonable cost of providing the actual inspections for that development. The study the City is basing their 3% inspection fee on does not provide any data on inspection costs incurred. While a generalized flat fee, based upon accurate studies and data, may be appropriate as a starting point for imposing a fee, the authority to charge the inspection fee comes with the burden of providing, at the applicant's request, an itemized fee statement for the inspection work performed which must not exceed the reasonable cost of conducting the inspection. This framework ensures that if an applicant believes the standard fee does not accurately reflect the cost of inspecting the applicant's project, the applicant can obtain the data and conclusions used to calculate the fee and determine whether the standard fee is excessive for the particular project.

In conclusion, the City may only lawfully impose inspection fees (1) which do not exceed the reasonable cost of conducting the inspection and (2) for which they provide an itemized fee statement when asked. Until these two criteria are met, the imposition of the 3% of improvement costs as a flat inspection fee is not lawful.

Conclusion

The City may only impose inspection fees that (1) do not exceed the reasonable cost of conducting the inspection, and (2) are calculated in reference to studies, reports, or some other method, contained in a record, for which an itemized fee statement showing the calculation method can be provided upon request.

The City has established an inspection fee of 3% of the estimated cost of public improvements for inspecting the water, sewer, stormwater, and sidewalk infrastructure serving residential developments. This fee schedule is based on a 2021 study, which concluded that a 5% fee was too high, but that 3% was a reasonable compromise. However, the study does not provide sufficient details, such as expected or actual inspection tasks, personnel, time, or hourly wages, to verify that the 3% fee accurately reflects the actual costs of inspection services. Furthermore, Utah law requires that cities provide an itemized fee statement upon request which the City did not provide. It is therefore not possible to determine whether the 3% fee exceeds the actual reasonable cost of providing inspection services based on the information provided.

Until and unless the City can demonstrate that the 3% fee reflects the reasonable cost of inspections for this development and provide an itemized fee statement as required by law, the current fee structure is not lawful.

Jordan S. Cullimore, Lead Attorney
Office of the Property Rights Ombudsman

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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.

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