Advisory Opinion #183

Parties: Wasatch School District, Heber City
Issued: April 28, 2017

TOPIC CATEGORIES:
Impact Fees

Heber City has imposed various impact fees against school construction projects of the Wasatch School District. Some of the imposed fees are valid under the Impact Fees Act, while others are not.

- A local government may charge an impact fee for development activity that impacts its system, even if outside of the designated impact fees service area.

- A local government may never impose an impact fee greater than the maximum fee permitted in its impact fee documentation, even if the fee is for extraterritorial development activity.

- A local government may charge impact fees to a school district if the district's development activity directly results in the need for additional public facilities. Accordingly, impact fees cannot be assessed on impacts that occurred in the past.

- A local government is free to discount or waive impact fees as long as any resulting deficiency is paid for by some means other than impact fees. Those fees may be paid from general funds or other sources. Doing so does not result in illegal double-taxation. Nevertheless, the fact that some impact fees may be inapplicable to schools under the Act does not mean that those fees are being discounted or waived. The City is not discounting those fees, because it is not entitled to those fees.

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ADVISORY OPINION (PART 2)

Advisory Opinion Requested By:	Wasatch School District
Local Government Entity:	Heber City
Applicant for Land Use Approval:	Wasatch School District
Type of Property:	Multiple projects
Date of this Advisory Opinion:	April 28, 2017
Opinion Authored By:	Brent N. Bateman Office of the Property Rights Ombudsman

ISSUE

Do the various impact fees charged to the Wasatch School District by Heber City comply and conform to the Utah Impact Fees Act and the provisions of Utah law?

SUMMARY OF ADVISORY OPINION

Heber City has imposed various impact fees against school construction projects of the Wasatch School District. The District objects to those fees with a variety of arguments. Some of the imposed fees are valid under the Impact Fees Act, while others are not. Some will require further information and discussion between the parties.

A local government may charge an impact fee for development activity that impacts its system, even if outside of the designated impact fees service area. However, a local government may never impose an impact fee greater than the maximum fee permitted in its impact fee documentation, even if the fee is for extraterritorial development activity.

A local government may charge impact fees to a school district if the district's development activity directly results in the need for additional public facilities. Accordingly, impact fees cannot be assessed on impacts that occurred in the past. Moreover, impact fees for replacement schools can only be charged on the net increase in demand or need for additional facilities caused

by the new school. Impact fees for a replacement school will usually be unavailable for past demands or needs, or to rectify existing deficiencies.

And finally, a local government is free to discount or waive impact fees as long as any resulting deficiency is paid for by some means other than impact fees. Those fees may be paid from general funds or other sources. Doing so does not result in illegal double-taxation. Nevertheless, the fact that some impact fees may be inapplicable to schools under the Act does not mean that those fees are being discounted or waived, and certainly does not justify disregarding the plain provisions of the Act. The City is not discounting those fees, because it is not entitled to those fees. Local governments may charge what the Act and their documentation permits them to charge, which in the case of a school, may be different or less. This is not a discount or waiver.

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 Mr. Jared L. Anderson, on behalf of the Wasatch County School District, on August 27, 2015. A copy of that request was sent via certified mail to Mayor David R. Phillips, Heber City, 75 North Main Street, Heber, Utah 84032.

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 Mr. Jared L. Anderson, on behalf of the Wasatch County School District, on August 27, 2015.
2. Letter submitted by Mr. Jared L. Anderson, received July 18, 2016, requesting the Office of the Property Rights Ombudsman proceed with the Advisory Opinion.
3. Response submitted by Mr. J. Mark Smedley, Attorney for Heber City, via email, on July 19, 2016.
4. Response submitted by Mr. Anderson, via email, on August 10, 2016.
5. Letter, dated August 5, 2016 and supplemental letter, dated August 9, 2016, submitted by Mr. Smedley on August 15, 2016.
6. Response submitted by Mr. Anderson, via email, on September 1, 2016.
7. Response submitted by Mr. Smedley, via email, on November 8, 2016.
8. Response submitted by Mr. Anderson, via email, on November 11, 2016.

BACKGROUND

Wasatch County School District has multiple school-related construction and development projects underway both inside and outside the boundaries of Heber City, Utah. As Heber City has imposed various impact fees on the District's projects, multiple disputes have arisen. The District and the City have attempted over several months to resolve their disputes over the impact fees, but have been unsuccessful. The District has thus requested this Advisory Opinion.

Part 1 of this Advisory Opinion, dated November 30, 2016 and designated as Advisory Opinion #177, addressed the most time-sensitive issues. This Part 2[1] addresses the following remaining issues:

- Daniel Elementary lies adjacent to, but outside of, the boundaries of Heber City. Part 1 of this Advisory Opinion addressed whether Heber City had the discretion to deny Daniel Elementary's extraterritorial connection to its sewer system. Here Heber City seeks to charge Daniel Elementary an impact fee rate of 1.5 times the normal impact fee, as it has done with the extraterritorial service fee. Conversely, the District challenges whether Heber City is able to charge an extraterritorial impact fee at all.

- The District has constructed a bus garage in Heber City. The District argues that the garage will house the District's existing bus fleet only, previously stored outdoors at the same location. Thus, the District argues, the garage is not impacting Heber City streets – it will not result in any additional trips on Heber City roads – and the City cannot therefore charge road impact fees. The City points out that over time the District has added buses and bus trips, and thus has had an impact of Heber City roads. The City argues that construction of the bus garage is evidence of those impacts. Thus, since the City had no opportunity to charge impact fees at the time the impacts did occur, retroactive impact fees on the bus garage are legal and equitable.

- The District has relocated and reconstructed Wasatch High School. Although that project has been complete for some time, the parties still dispute the impact fees due. The District claims entitlement to a net credit on road impact fees once the impact fees are applied from the old Wasatch High to the new. Heber City strongly disputes that such credits are due and appropriate.

- The District has completed additions to Wasatch High School and Heber Valley Elementary School. The District feels that these additions have not added capacity to the schools, and thus have not added impacts for which the City can charge impact fees.

- Finally, the City argues that it is illegal and inequitable for it to adjust, discount, waive, or otherwise change any of the impact fees it has charged to the District, including if some fees are found to be inapplicable to the District. The City argues that because the City represents only a portion of the District's area, City residents will have to pay a disproportionate share

[1] Part 1 and Part 2 of this Advisory Opinion both represent full and separate Advisory Opinions under UTAH CODE § 13-43-205.

of the costs to assuage the District's impacts, since the City has no ability to recoup those costs from residents outside of City boundaries.

ANALYSIS

I. The Impact Fees Act

The Utah Impact Fees Act (Act), found in Chapter 11-36a of the Utah Code, defines an impact fee as "a payment of money imposed upon new development activity as a condition of development approval to mitigate the impact of the new development on public infrastructure." UTAH CODE § 11-36a-102(8)(a). Development activity, including the building of schools, causes an impact on public infrastructure. Impact fees are one way that development pays for what it consumes. *See* UTAH CODE § 11-36a-304(d).

Impact fees are an exaction, *Salt Lake County v. Bd. of Educ.*, 808 P.2d 1056, 1058 (Utah 1991), and must therefore be roughly proportional, both in nature and extent, to the impacts created by the development activity. *See* UTAH CODE § 10-9a-508(1). Impact fees are always a function of *impacts*. The amount of the fee must be roughly proportional to the amount of impact. As with all exactions, if development activity has no impacts, there can be no impact fee. *See B.A.M. Development, LLC v. Salt Lake County*, 2008 UT 74, ¶12 (holding that the exaction and the costs of assuaging the impact must be roughly equivalent); *see also* UTAH CODE § 11-36a-603(3). Moreover, an impact fee that requires a developer to pay more than its share, to pay disproportionately for impacts it did not create, is unconstitutional in violation of the takings clause. *See generally Call v. City of West Jordan*, 614 P.2d 1257 (Utah, 1980).

The Impact Fees Act contains multiple regulations and restrictions, all meant to ensure that impact fees are estimated, calculated, imposed, and spent in proportion to the impact upon public infrastructure. Because schools present particular needs and provide particular benefits to a community, schools have a unique impact. Accordingly, the Act contains several provisions specifically applicable to schools. Among them, UTAH CODE § 11-36a-202(2)[2] includes a

[2] UTAH CODE § 11-36a-202:
(2)(a) Notwithstanding any other provision of this chapter, a political subdivision or private entity may not impose an impact fee:
. . . .
(ii) on a school district or charter school for a park, recreation facility, open space, or trail;
(iii) on a school district or charter school unless:
(A) the development resulting from the school district's or charter school's development activity directly results in a need for additional system improvements for which the impact fee is imposed; and
(B) the impact fee is calculated to cover only the school district's or charter school's proportionate share of the cost of those additional system improvements;
. . . .
(b)(i) Notwithstanding any other provision of this chapter, a political subdivision or private entity may not impose an impact fee on development activity that consists of the construction of a school, whether by a school district or a charter school, if:
(A) the school is intended to replace another school, whether on the same or a different parcel;
(B) the new school creates no greater demand or need for public facilities than the school or school facilities, including any portable or modular classrooms that are on the site of the replaced school at the time that the new school is proposed; and

prohibition on charging any impact fees to schools that do not "directly result" in the need for "additional system improvements." UTAH CODE § 11-36a-202(2)(a)(iii)(A). This statute also prohibits charging an impact fee to a replacement school unless the new school creates a "greater demand or need for public facilities than the school being replaced." UTAH CODE § 11-36a-202(2)(b)(i)(B).

II. The Principles of Statutory Construction

Examination of these matters also requires employment of the principles of statutory construction. When interpreting a statute, we look first to the plain language to determine its meaning. *Bd. of Educ. of Jordan Sch. Dist. v. Sandy City Corp.*, 2004 UT 37 ¶9. The primary goal of interpretation is "to give effect to the legislative intent, as evidenced by the plain language, in light of the purpose the statute was meant to achieve." *Foutz v. City of South Jordan*, 2004 UT 75, ¶11. 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.

Further, "our interpretation of a statute requires that each part or section be construed in connection with every other part or section so as to produce a harmonious whole." *State in Interest of J.M.S.*, 2011 UT 75 ¶13. In addition, "it is axiomatic that a statute should be given a reasonable and sensible construction and that the legislature did not intend an absurd or unreasonable result." *State ex rel. Div. of Consumer Prot. v. GAF Corp.*, 760 P.2d 310, 313 (Utah 1988).

III. Daniel Elementary

The District plans construction of Daniel Elementary on a parcel of land outside of the boundaries of Heber City, but adjacent to the boundary road. Daniel Elementary will use the boundary road as its primary access, and will connect to the Heber City-owned sewer main that exists beneath the road. Heber City has imposed sewer impact fees upon the District because of this connection. The District disputes these fees. The District challenges whether the City has the legal authority to impose impact fees outside of City boundaries. The District further argues that an impact fee is inappropriate because the City has excess capacity at the hookup point. The District also challenges the City's decision to charge the District an extraterritorial rate of 1.5 times the normal impact fee, as it has done with the service fee.

A. Impact Fees Outside of the Service Area

Heber City has established its city boundaries as the impact fees service area under UTAH CODE § 11-36a-402(1)(a). Thus, the District argues, the City has no legal basis for charging impact fees to properties outside of its service area. However, the triggering event for impact fees is impact. UTAH CODE § 11-36a-102(8)(a). The service area, while required under UTAH CODE § 11-36a-

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(C) the new school and the school being replaced are both within the boundary of the local political subdivision or the jurisdiction of the private entity.
(ii) If the imposition of an impact fee on a new school is not prohibited under Subsection (2)(b)(i) because the new school creates a greater demand or need for public facilities than the school being replaced, the impact fee shall be based only on the demand or need that the new school creates for public facilities that exceeds the demand or need that the school being replaced creates for those public facilities.

402(1)(a) and important to establish areas where impact fees are imposed according to various categories, is not the critical factor in determining whether or not to impose impact fees. Many within a service area will not pay impact fees where the development activity has no impact. Conversely, some outside of a service area may need to pay impact fees if their development activity will impact the system.

This Office previously opined[3] that, because of its proximity to the available sewer line, Daniel Elementary is required to attach to that sewer line, and Heber City is required to accept that attachment. The school's attachment to that line will have an impact upon the Heber City sewer system. Impact is the triggering event. Accordingly, if there is an impact, the school must pay the impact fee.

Likewise, the fact that excess capacity exists at the point of connection does not excuse payment of an impact fee. Developers frequently pay impact fees as a buy-in to existing capacity. This is specifically contemplated and permitted under the Act. UTAH CODE § 11-36a-304.[4] The City is justified in charging an impact fee to pay for its existing capacity as that existing capacity is consumed by development activity. Accordingly, the District is not excused from paying the sewer impact fee for Daniel Elementary School.

B. Extraterritorial Impact Fee Rate

Heber City has proposed charging Daniel Elementary a monthly service fee of 1.5 times the normal service rate. This is not in dispute. The District does however dispute the City's decision to impose impact fees at a like 1.5 times the normal impact fee rate.

The Impact Fees Act requires that the impact fee be based upon "realistic estimates, and the assumptions underlying those estimates shall be disclosed in the impact fee analysis." UTAH CODE § 11-36a-305(2). Nothing in the Act justifies or permits charging an increased fee for development activity simply because that development activity takes place outside of the service area boundaries. Fees are based upon impacts, and any amount charged must be estimated and included in the Impact Fee documents. *Id*. An Impact Fee Analysis provides a maximum fee that can be charged per unit of impact. A municipality is not free under the Act to charge an impact fee that exceeds that maximum. UTAH CODE § 11-36a-401.

Accordingly, Heber City's plan to charge Daniel Elementary 1.5 times the normal impact fee rate is not permitted under the Impact Fees Act. *Id*. In order to do so, Heber City would need to justify the higher fee in their Impact Fee Analysis by disclosing and including the increased cost assumptions that make the higher fee necessary. A simple decision to increase those charges over

[3] Advisory Opinion #177.

[4] As will be discussed in further detail below, UTAH CODE § 11-36a-202(2)(a)(iii)(A) states that a City cannot charge an impact fee to a school district unless "the development resulting from the school district's or charter school's development activity directly results in a *need for additional system improvements* for which the impact fee is imposed." (emphasis added). This "need for additional system improvements" could include a need for either new construction of system improvements or a need to consume existing capacity. Existing capacity is an additional system improvement and is always an alternative to construction of new improvements. Statutes should be given a sensible construction in order to produce a harmonious whole. *Interest of J.M.S.*, 2011 UT 75 ¶13; *GAF Corp.*, 760 P.2d at 313.

the documented maximum will not do it. Accordingly, without a major revision of its documentation showing the increased costs, Heber City cannot charge Daniel Elementary school 1.5 times its maximum fee rate simply because the school is outside of the city boundaries.

IV. The Bus Garage

The District has constructed a new maintenance and storage facility for its school bus fleet. The new facility is located at the same location where the District currently stores and maintains its buses. According to the District, the facility is intended to house and service the current fleet of buses only. No excess capacity is included, nor new buses planned. Thus, the District argues that the bus garage will not create any additional impact upon Heber City roads. Nevertheless, Heber City has imposed significant road impact fees upon the District's new bus garage.

The City justifies the impact fees by noting that the district has increased the number of buses and bus trips over a course of years, and thus has had a gradual impact upon Heber City streets. The City points out that it has been unable to charge fees for increases in impacts every time the District adds a bus. The City feels that construction of the new bus garage is a triggering event for which it can charge fees for the previous impacts. In other words, the City is charging road impact fees today for impacts that have occurred in the past.

This violates the Impact Fees Act. Without examining whether under normal circumstances a City can charge impact fees for past impacts, the City's attempt to charge these impact fees to the District run afoul of the Act's specific provisions concerning schools. UTAH CODE § 11-36a-202(2)(a) states that a City cannot charge an impact fee to a school district unless "the development resulting from the school district's or charter school's development activity *directly results* in a need for *additional system improvements* for which the impact fee is imposed." *Id*. (emphasis added). By the Act's plain language, impact fees can only be charged to school districts for system improvements that directly result from the District's development activity. The meaning of *directly results* and *additional system improvements* is not vague. The words *results* and *additional* work in one direction – the development activity first, the need for additional system improvements resulting. The impacts must arise from the development activity. Impact fees cannot be charged to schools for past impacts. 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. Heber City can only charge the school district impact fees for additional road capacity needed as a *direct result* of the construction of the bus garage.

When impact fees are viewed as a simple square-footage based formula imposed upon any development activity within the City, the City's argument makes sense. Certainly the District has added buses over time, and certainly that has gradually had an impact upon Heber City roads. However, that view mischaracterizes impact fees. Impact fees are not automatic. Impact fees have specific requirements and limitations, and cannot be applied abstractly or by rote to every development application that comes in. Impact fees are a way to help pay for impacts from new development activity. But some development activity has little or no impact, and some impacts are not eligible for impact fees under the specific provisions of the Act. Thus, some impacts may need to be absorbed or paid in some other way. The bus garage illustrates this. Although the gradual addition of buses may have a real impact on Heber City, impact fees are not available

under the Act to pay for that impact. Accordingly, the development activity of the bus garage, to the extent not directly resulting in the need for additional roads but simply housing existing fleet, is not eligible for impact fees under the Act.

V. The New Wasatch High School

The District has relocated and reconstructed Wasatch High School. Although that project has been complete for some time, the impact fees due for that project remain in dispute. The District claims entitlement to a credit for road impact fees once the impact fees are applied from the old Wasatch High to the new. Heber City strongly disputes that such credits are due and appropriate.

Under the plain language of the Act, a local government may assess impact fees only on the increase in demand or need for public facilities caused by the replacement school over the demand caused by the original school. UTAH CODE § 11-36a-202(2)(iii)(B).[5] This provision makes no distinction between types of impact fee. It is essentially a statement that a City cannot charge any impact fees to a new school in order to cure deficiencies in public facilities that existed under the old school. This is consistent with the Act's general prohibition against using impact fees to cure existing deficiencies. UTAH CODE § 11-36a-202(1)(a)(i).

Although not clear, the parties' dispute over this matter appears to arise over how the net increase in demand has been calculated. The District's position appears to be that the new school will not impose any more traffic than the old school, and thus no traffic impacts fees are due. The City's position appears to be that it already applied a credit to the new high school's impact fees based upon the old high school, but the new high school nevertheless required significant road widening and other expansion to accommodate the students.

The plain language of the Act indicates that the correct impact fee is probably somewhere in between. The Act bases impact fees upon the "demand or need that the new school creates for public facilities." The increase is not based on square footage or number of students, but a factor of "demand or need" for public facilities created by the new school over the old school. Thus, impact fees cannot be charged to the new school to pay for preexisting demand or need. If roads needed to be improved or widened before the replacement school was built, the replacement school does not pay impact fees therefor. But if the replacement school causes a road to be added or widened, and that addition or widening would not have been needed with the original school, those road costs could be included in the impact fees to the replacement school.

The parties have not provided sufficient information, and frankly this Office is not equipped to determine which new roads the new Wasatch High School required, and thus which impact fees the City can charge. As always with this kind of calculation, some communication and cooperation between the parties is needed to resolve the details of these fees in accordance with the plain language of the Act.

[5] UTAH CODE § 11-36a-202(2)(iii)(B): "[T]he impact fee [for a replacement school] shall be based only on the demand or need that the new school creates for public facilities that exceeds the demand or need that the school being replaced creates for those public facilities."

VI. Expansion of Wasatch High School and Heber Valley Elementary

Two years after construction of its new high school, the District expanded the high school's cafeteria. The City imposed an additional street impact fee on the district as a result of that expansion. Also, the District recently completed an 8600 square foot addition to Heber Valley Elementary School. The District imposed significant road impact fees for that project, based upon the increase in square footage. The District disputes these fees because the District feels that these additions have not added any student capacity to the schools. Thus, the additions have not added impacts for which the City can charge impact fees.

The Act's provisions that apply to these fees have been discussed. Impact fees may only be charged on development activity where an impact arises, and cannot be charged by rote to all development activity based upon one factor such as square footage. *See* UTAH CODE § 11-36a-402 (requiring an impact fee enactment to contain provisions to allow adjustments in specific circumstances, to permit adjustment based upon submission of studies and data, to allow credits for dedication and construction of improvements to reduce impacts, and for fees to be imposed fairly). Where a school district believes that its impact requires a different calculation, the Act expressly entitles that district to provide information regarding that impact to the local government for adjustment of the fee. *Id*. at (1)(c)(i)(B). Most importantly, as discussed above, impact fees may only be charged to schools for additional public facilities that directly result from the school development activity. UTAH CODE § 11-36a-202(2)(iii)(B).

Accordingly, these school additions must be examined further. If the additions increase need for an additional system improvement, then impact fees can be charged for those new facilities. A simple addition of square footage does not necessarily equate to an increase in need for additional system improvements, and so charging an impact fee based solely on square footage is inadequate. Whether either of these expansion projects do that is a question that requires honest examination by engineers, city, and school officials working together, or if they cannot do so, the factual discovery process in a court of law. We have neither the capacity nor expertise to decide such factual matters. We strongly urge, however, that the parties communicate about the straightforward effects of these expansions and whether they will directly create a need for additional system improvements.

VII. Double Assessment to Heber City Citizens

Finally, the City has expressed a grave concern, and frankly these concerns appear to have prompted the City's position on many of these disputes, that asking it to waive or discount impact fees, even those impact fees found inapplicable to the District under the Act, would essentially result in a double assessment upon Heber City residents. The City has argued multiple times that this situation is at least inequitable, and perhaps even illegal. Thus, the City believes that it cannot reduce the assessed fees.

The City's concern essentially is that if the School District does not pay for these facilities, then its citizens must, and since much of these facilities are for the benefit of non-city residents, then Heber City citizens must pay for problems not their own. Such a concern is legitimate and

exactly the kind of concern that a conscientious City council will have for its citizens. However, that concern is misdirected.

In the experience of this Office, the situation that the City describes is common. In many cases, city residents must pay through taxation for facilities that could be paid through impact fees. Many communities do not charge impact fees. Many charge them or discount them or waive them, which is perfectly permissible under the Impact Fees Act. UTAH CODE § 11-36a-403. If impact fees are waived, the Act prohibits local governments from charging the shortfall to other new development activity. *Id*. But nothing prohibits the local government from paying for the waived fees in some other way, including through general funds. In reality, cities frequently waive impact fees. Citizens frequently pay for that waiver. Heber City may find this objectionable, but it is not illegal.

The provisions of the Act impose limits upon what can be charged, who can be charged, what types of facilities can be included, etc. A city may only charge impact fees in accordance with the Act's limitations. UTAH CODE § 11-36a-201. Where the Act prohibits charging an impact fee, the fee cannot be charged even if that means that all costs will not be paid. A city must make up any shortfall in some other way. Schools are entitled to special treatment that often makes certain impact fees inapplicable. The fact that those reduced fees result in an obligation by citizens to make up the difference is not relevant to whether or not the City can legally charge those fees to the District. If the Act prohibits those fees, the local government cannot charge them.

Nevertheless this discussion is academic, because the fact that certain fees or portions of fees are inapplicable to schools does not mean that not charging those fees is a discount or waiver of fees. The allocation of costs, and the fact that those costs are allocated differently to different uses, residential, commercial, schools, etc., is a part of the impact fee process. In other words, a City allocates impact fees in accordance with the Act, and may use collected fees to pay for the new infrastructure in compliance with the Act. In a perfect situation, the allocations to different users will be considered in the estimates, and the overall allocation will perfectly match the cost of needed infrastructure. Practically, this is unlikely. Nevertheless, the fact that a school may be charged a different fee than another use does not mean that the city has discounted or waived the fees charged to the school. The city is not discounting those fees, because it is not entitled to those fees.

CONCLUSION

Heber City must charge impact fees in accordance with the Impact Fees Act. The Act allows some of the fees that the City has charged to the Wasatch School District, and prohibits others. The parties have long disputed impact fees. Careful examination of the fees and compliance with the Impact Fees Act, along with an effort to communicate and earnestly examine the effects of development activity on both sides, is needed to avoid further disputes.

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 § 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:

Mayor Alan W. McDonald
Heber City
75 North Main Street
Heber City, Utah 84032

On this _____ Day of May, 2017, 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