

# Advisory Opinion #185

Parties: Residents of Country Way Estates, Washington City

Issued: May 16, 2017

## TOPIC CATEGORIES:

### Compliance with Mandatory Land Use Ordinances

The City possesses broad authority and discretion to regulate and control public streets for the benefit of the public. While the City has no legal obligation to limit commercial traffic on Country Way Lane, it may limit or otherwise mitigate detrimental traffic problems if it decides that doing so would benefit and advance the public interest.

#### 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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# State of Utah Department of Commerce

## OFFICE OF THE PROPERTY RIGHTS OMBUDSMAN

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### ADVISORY OPINION

Advisory Opinion Requested By: Residents of Country Way Estates

Local Government Entity: Washington City

Type of Property: Residential

Date of this Advisory Opinion: May 16, 2017

Opinion Authored By: Jordan S. Cullimore  
Office of the Property Rights Ombudsman

### ISSUE

Does Washington City have a legal obligation to limit commercial and industrial traffic on a public street abutted by residential dwellings?

### SUMMARY OF ADVISORY OPINION

Washington City possesses broad authority and discretion to regulate and control public streets for the benefit of the public. While the City has no legal obligation to limit commercial traffic on Country Way Lane, it may limit or otherwise mitigate detrimental traffic problems if it decides that doing so would benefit and advance the public interest.

### 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 the Residents of Country Way Estates on November 10, 2016. A copy of that request was sent via certified mail to Danice B. Bullock,

City Recorder for Washington City, at 111 North 100 East, Washington, Utah, 84780. The City received the request on November 21, 2016.

## **EVIDENCE**

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

1. Request for an Advisory Opinion, with attachments, submitted by Molly Shaheen on behalf of the Residents of Country Way Estates. Received November 10, 2016.
2. Response submitted by Jeffrey N. Starkey, Attorney for Washington City, on January 25, 2017.

## **BACKGROUND**

This opinion involves a segment of a public street named Country Way Lane, which runs through Phase 2 of the Country Way Estates Subdivision in Washington City (the "City"). When this stretch of Country Way Lane was completed and dedicated to the City as a public street in 2013 it led to a privately-owned bridge that crossed the Virgin River and connected to a dirt road surrounded by undeveloped, residentially-zoned property. The dirt road also leads to the Washington County Landfill further north. According to the submitted materials, Country Way Estates Subdivision – Phase 2 consisted of 8 residential lots. The applicants who submitted this Request for Advisory Opinion (the "Residents") are the individual owners and occupants of 6 of the lots in the subdivision.

After the Residents built their homes, the City purchased the privately-owned bridge sometime in 2016 and opened it to public use. This allowed public traffic to begin crossing the bridge to access the dirt road to the north. The City maintains that the City's Master Transportation Plan has always intended Country Way Lane to cross the Virgin River and serve property to the north of the river. The City further maintains that the Master Transportation Plan has always contemplated that Country Way Lane would eventually function as a 4-lane "major collector," even though it presently functions only as a two-lane street. It appears that the residents were unaware of these intentions when they purchased their lots and built their homes.

Sometime in 2016, large commercial vehicles, including semi-trucks, dump trucks, cement trucks, and garbage trucks began using Country Way Lane to traverse the now-public bridge and the dirt road to access the Washington County Landfill and surrounding area to the north. At the time the Residents submitted their Advisory Opinion request to this office, these vehicles were using Country Way Lane at an approximate rate of 10-20 vehicles per hour.

This abrupt change in commercial traffic volume prompted the Residents to write a letter to the City in December 2016 requesting that it close the bridge to industrial traffic, change the designation of Country Way Lane to a residential collector to limit traffic volume, and ensure that the dirt road on the other side of the bridge develop as a meandering road to discourage commercial use. In addition, the Residents have had conversations with city representatives and

attended City Council meetings in an attempt to reach an agreeable and acceptable solution to the excessive commercial traffic problem on the road.

The City asserts that because the street and bridge are legally established public thoroughfares, the City has a duty to allow all public traffic. Consequently, the City maintains that it may not discriminate against public users of Country Way Lane or limit public use of the street. The City feels that it is legally obligated to permit all forms of public access on Country Way Lane. Because of this, the City has been unwilling to limit commercial vehicle traffic along the street.

The Residents subsequently submitted to this office a Request for Advisory Opinion asking whether Washington City is legally obligated to limit excessive commercial traffic on a street abutted by residential homes.

### ANALYSIS

Public streets belong to the public and are intended for public use. *See* McQuillin, Municipal Corporations, 3d ed., § 30:38. The Utah Supreme Court has observed that [s]treets from side to side, including the sidewalks and all area between are primarily for the public use. The public use is paramount.” *Stringham v. Salt Lake City*, 201 P.2d 758, 762 (Utah 1949). As stated previously, the City argues that this means it is obligated to allow all forms of traffic, regardless of impact, on Country Way Lane, and that it may not discriminate against certain users and give others preferential treatment.

While it is true that public streets are intended primarily for public use, this principle must be applied in context of the fact that public streets are also subject to the reasonable control and regulation of the state. *See* McQuillin, Municipal Corporations, 3d. ed., § 30:38. In Utah, the state legislature has followed the common practice of delegating control and regulation of local streets to the local jurisdictions in which the streets are located. UTAH CODE § 10-8-8 states that cities “may lay out, establish, open, alter, widen, narrow, extend, grade, pave, or otherwise improve streets....” UTAH CODE § 10-8-8. This broad grant of authority enables local governments in Utah to responsively provide for local transportation needs.<sup>1</sup>

In addition, section 10-8-11 of the Utah Code gives municipalities authority to “*regulate the use of streets....*” UTAH CODE § 10-8-11 (emphasis added). Accordingly, while it is true that the City may not specifically regulate *who* may use a public street by excluding certain classes of individuals, it may, in the interest of the public health, safety, or welfare<sup>2</sup>, limit *how*, or in what manner, the public may use public streets. Moreover, elected officials have the legal authority to consider the needs of the community they represent and implement creative, balanced, and mutually-beneficial solutions when providing municipal services such as transportation. *See Banberry v. South Jordan*, 631 P.2d 899, 904 (Utah 1981).

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<sup>1</sup> *See Carrier v. Lindquist*, 2001 UT 105, ¶ 18, 37 P.3d 1112. (In order for a government to be effective, it needs the power to establish or relocate public thoroughways...for the convenience and safety of the general public.)

<sup>2</sup> This authority a city possesses to provide for the health, safety and welfare of the community is referred to as the “police power.” *See Retan v. Salt Lake City*, 226 P. 1095, 1097 (Utah 1924).

Cities regularly impose reasonable limits and restrictions on speed, vehicle weight, vehicle type, etc., on public roads. The City acknowledges it is appropriate for government to prohibit vehicles over a certain weight from using public streets if it is in the public interest to do so. Such a restriction does not prohibit certain individuals, or the public, from using public streets; it simply regulates the type of vehicles the public may use on a public street. It is also common practice, and within a City's authority, to restrict the use of other types of vehicles, such as ATVs, on public streets in the interest of public safety.

Along these same lines, a city may install or allow on public streets a variety of traffic calming devices such as speedbumps, curb extensions (bulb-outs), or raised medians to control and direct traffic and to protect abutting landowners and other users of the public right-of-way. Implementation of such measures is an appropriate exercise of a municipality's authority and duty to provide for the health, safety, and welfare of the community.

It is also true, however, that the City has no legal obligation to impose or install such restrictions and measures in the absence of an existing local ordinance requiring such measures. Whether a city should prohibit vehicles over a certain weight or of a certain type on a street is a legislative, or policy, decision. This is also the case regarding the question of whether a city should implement traffic calming measures along a given street.

A legislative decision is legal and appropriate "so long as the grounds for the decision are 'reasonably debatable.'" *Bradley v. Payson City*, 2003 UT 16 ¶ 10, 70 P.3d 47. This means that a court will deem a city council's decision proper as long as the decision "could promote the general welfare; or even if it is reasonably debatable that it is in the interest of the general welfare." *Bradley*, 2003 UT 16 ¶ 14, 70 P.3d 47. "The selection of one method of solving [a] problem in preference to another is entirely within the discretion of the city." *Id.*

Consequently, the local jurisdiction's elected officials—in this case Washington City Councilmembers—are tasked with determining what will best advance the health, safety, and welfare of the community. The law gives these decision makers broad discretion and deference when making these decisions. Accordingly, while the City has no legal obligation to prohibit or limit commercial traffic on Country Way Lane, the City may nonetheless do so if it decides it would advance or benefit the public interest.

## CONCLUSION

Washington City possesses broad authority and discretion to regulate and control public streets for the benefit of the public. While the City has no legal obligation to limit commercial traffic on Country Way Lane, it may limit or otherwise mitigate detrimental traffic problems if it decides that doing so would benefit and advance the public interest.

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

**NOTE:**

**This is an advisory opinion as defined in § 13-43-205 of the Utah Code. It does not constitute legal advice, and is not to be construed as reflecting the opinions or policy of the State of Utah or the Department of Commerce. The opinions expressed are arrived at based on a summary review of the factual situation involved in this specific matter, and may or may not reflect the opinion that might be expressed in another matter where the facts and circumstances are different or where the relevant law may have changed.**

**While the author is an attorney and has prepared this opinion in light of his understanding of the relevant law, he does not represent anyone involved in this matter. Anyone with an interest in these issues who must protect that interest should seek the advice of his or her own legal counsel and not rely on this document as a definitive statement of how to protect or advance his interest.**

**An advisory opinion issued by the Office of the Property Rights Ombudsman is not binding on any party to a dispute involving land use law. If the same issue that is the subject of an advisory opinion is listed as a cause of action in litigation, and that cause of action is litigated on the same facts and circumstances and is resolved consistent with the advisory opinion, the substantially prevailing party on that cause of action may collect reasonable attorney fees and court costs pertaining to the development of that cause of action from the date of the delivery of the advisory opinion to the date of the court's resolution.**

**Evidence of a review by the Office of the Property Rights Ombudsman and the opinions, writings, findings, and determinations of the Office of the Property Rights Ombudsman are not admissible as evidence in a judicial action, except in small claims court, a judicial review of arbitration, or in determining costs and legal fees as explained above.**

**The Advisory Opinion process is an alternative dispute resolution process. Advisory Opinions are intended to assist parties to resolve disputes and avoid litigation. All of the statutory procedures in place for Advisory Opinions, as well as the internal policies of the Office of the Property Rights Ombudsman, are designed to maximize the opportunity to resolve disputes in a friendly and mutually beneficial manner. The Advisory Opinion attorney fees provisions, found in Utah Code § 13-43-206, are also designed to encourage dispute resolution. By statute they are awarded in very narrow circumstances, and even if those circumstances are met, the judge maintains discretion regarding whether to award them.**

## MAILING CERTIFICATE

Section 13-43-206(10)(b) of the Utah Code requires delivery of the attached advisory opinion to the government entity involved in this matter in a manner that complies with Utah Code Ann. § 63-30d-401 (Notices Filed Under the Governmental Immunity Act).

These provisions of state code require that the advisory opinion be delivered to the agent designated by the governmental entity to receive notices on behalf of the governmental entity in the Governmental Immunity Act database maintained by the Utah State Department of Commerce, Division of Corporations and Commercial Code, and to the address shown is as designated in that database.

The person and address designated in the Governmental Immunity Act database is as follows:

Danice B. Bullock  
City Recorder, Washington City  
111 North 100 East  
Washington, Utah 84780

On this \_\_\_\_\_ Day of \_\_\_\_\_, 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.

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Office of the Property Rights Ombudsman