



Staff Report for Administrative Approval

Weber County Planning Division

Synopsis

Application Information

Application Request:	Reconsideration and action for final plat approval of Middle Fork Ranches 3rd Amendment
Type of Decision:	Administrative
Agenda Date:	Tuesday, September 29, 2020
Applicant:	Troy Green
File Number:	UVM071120

Property Information

Approximate Address:	7522 E 1400 N
Project Area:	5.87 total acres
Zoning:	Forest Valley 3 (FV-3), Agricultural Valley 3 (AV-3)
Existing Land Use:	Residential
Proposed Land Use:	Residential
Parcel ID:	21-048-0008, 21-005-0036
Township, Range, Section:	T6N, R2E, Section 6, SW

Adjacent Land Use

North:	Vacant	South:	Vacant Residential
East:	Vacant Residential	West:	Residential

Staff Information

Report Presenter:	Scott Perkes sperkes@co.weber.ut.us 801-399-8772
Report Reviewer:	RG

Applicable Ordinances

- Title 104 Chapter 6, Agricultural Valley Zone
- Title 104, Chapter 14, Forest Valley Zone
- Title 104, Zones, Chapter 28, Ogden Valley Sensitive Lands Overlay Districts
- Title 106, Subdivisions, Chapter 1-8 as applicable
- Title 108, Natural Hazards Areas
- Title 108, Drinking Water Source Protection

Background and Summary

The applicant is requesting final approval of Middle Fork Ranches 3rd Amendment, consisting of one lot. The proposed Lot 25 was originally Lot 8 of the Middle Fork Ranches Subdivision. The proposed amendment adds Parcel 21-005-0036 into the subdivision boundary to widen the resulting lot (see **Exhibit A**).

When first submitted, Planning Staff requested that this amendment be used to dedicate a full half-width right-of-way along the eastern property line for future roadway connectivity. This plat configuration was originally approved during September 2nd, 2020 Administrative Review Meeting. However, the applicant appealed the decision to dedicate the half-width right-of-way, and requested that the decision be reviewed by the Utah Office of The Property Rights Ombudsman. In response, the Ombudsman issued an advisory opinion (dated July 16th, 2021) (see **Exhibit B**), the summary of this opinion reads as follows:

"The County's requirement to dedicate a 33-foot wide strip of land for a future right-of-way to serve future development does not solve a problem created by the Green's development proposal. The Greens' amended plat simply merges two parcels without changing the use of the land or increasing the use's density. Requiring the dedication would force the Greens' to offset impacts beyond their own. The requirement therefore fails the applicable rough proportionality test, and is unlawful. Accordingly, the County may not impose the requirement as a condition of amended plat approval."

In reviewing the Ombudsman's opinion with the Weber County Attorney's Office, planning staff recommended that the applicant resubmit a subdivision plat that removes the originally requested ROW dedication. This revised plat could then be rescheduled for Administrative Review.

Analysis

General Plan: The request is in conformance with the Ogden Valley General Plan as it is intended to preserve private property rights while also preserving the rural characteristics of the Valley.

Zoning: The northern third of the subject property is located in the Forest Valley Zone (FV-3). The southern two-thirds of the subject property are located in the Agricultural Valley 3 Zone (AV-3). The purpose and intent of these zones is described in LUC §104-6-1 & §104-14-1 as follows:

AV-3 Zone:

The AV-3 Zone is both an agricultural zone and a low-density rural residential zone. The purpose of the AV-3 Zone is to:

- (a) Designate low-intensity farm areas, which are anticipated to develop in a rural residential development pattern;*
- (b) Set up guidelines to continue agricultural pursuits, including the keeping of farm animals; and*
- (c) Direct orderly low-density residential development in a continuing rural environment.*

FV-3 Zone:

The purpose of the Forest Valley Zone, FV-3 is to provide area for residential development in a forest setting at a low density, as well as to protect as much as possible the naturalistic environment of the development.

As part of the subdivision process, the proposal has been reviewed against the current subdivision ordinance standards for both the AV-3 and FV-3 zones in LUC §104-6 & §104-14 respectively. The proposed subdivision is in conformance with county code. The following is a brief synopsis of the review criteria and conformance with the LUC.

Lot area, frontage/width and yard regulations:

Both the AV-3 and FV-3 zones require a 3-acre minimum lot area and a minimum lot width of 150 feet. The amended lot will result in 5.914 acres in area and will have 311 feet of frontage on 1400 North Street.

Access: Access to this lot is provided by a 15-foot wide access easement across the northern boundary of Lot 21 as depicted on the Middle Fork Ranches First Amendment mylar. The current owner of Lot 21 has indicated that this easement hugs the fence line from west to east along its northern property line from 7425 East Street. This alignment has been disputed in the past between the owner of Lot 21 and the applicant which has resulted in a court ruling to clarify that this access easement is immediately adjacent to the existing fence line. This court ruling has been recorded as Entry #: 3065929.

Natural Hazards Areas: The proposed subdivision is located in both a geologic hazard area and a FEME Flood Zone "AE". This AE Zone is determined by FEMA to be a High Risk Area and has been depicted on the plat along with base flood elevations.

As the existing lot already has a single-family home built, a geologic hazard assessment was not required for subdivision review. However, as a condition of approval, a "Natural Hazards Disclosure" document will be required to be recorded with the plat to provide adequate notice for future property owners that the lot is located within a geologic hazard area.

Stream Corridors: Per the Ogden Valley Sensitive Lands map, the subject property has a natural ephemeral stream that traverses through the already identified flood zone. Evidence of this stream is not readily visible on-site. As such, the determination of any high-water marks will need to be reviewed by the County engineer and 50-foot setbacks will need to be determined prior to the issuance of building permits on this lot.

Culinary water and sanitary sewage disposal: Feasibility letters were not required with the proposal as this lot has been previously platted.

Public Well-Head Protection Zones: The subject property is located within Zone 4 of a public well head protection zone. As such, any development on the lot is subject to LUC §108-18 (Drinking Water Source Protection)

Review Agencies: Prior to the subdivision being released for Mylar, all remaining review agencies comments will need to be addressed.

Tax clearance: The 2020 property taxes have been paid in full. The 2021 property taxes will be due in full on November 1, 2021.

Public Notice: The required noticing for the final subdivision plat amendment approval has been mailed to all property owners of record within 500 feet of the subject property per noticing requirements outlined in LUC §106-1-6(c).

Staff Recommendation

Staff recommends final approval of Middle Fork Ranches Third Amendment. This recommendation for approval is subject to all applicable review agency requirements and is based on the following conditions:

1. A "Natural Hazards Disclosure" document will be required to be recorded to provide adequate notice of any geotechnical and geological recommendations for future property owners.

This recommendation is based on the following findings:

1. The proposed subdivision amendment conforms to the Ogden Valley General Plan.
2. With the recommended conditions, the proposed subdivision amendment complies with all previous approvals and the applicable County ordinances.

Administrative Approval

Administrative final approval of Middle Fork Ranches 3rd Amendment is hereby granted based upon its compliance with the Weber County Land Use Code. This approval is subject to the requirements of applicable review agencies and the conditions of approval listed in this staff report.

Date of Administrative Approval: 9/29/21


Rick Grover
Weber County Planning Director

Exhibits

- A. Middle For Ranches 3rd Amendment Plat (ROW Dedication Removed)
- B. Advisory Opinion - Utah Office of The Property Rights Ombudsman

Location Map 1



MIDDLE FORK RANCHES THIRD AMENDMENT
AMENDING LOT 8, MIDDLE FORK RANCHES SUBDIVISION
WEBER COUNTY, UTAH
A PART OF THE SOUTHWEST QUARTER OF SECTION 6,
TOWNSHIP 6 NORTH, RANGE 2 EAST, SALT LAKE BASE & MERIDIAN
JUNE 2020

FINAL

SURVEYOR'S CERTIFICATE

I, BOBIE C. SLADE, REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF UTAH IN ACCORDANCE WITH TITLE 63A, CHAPTER 10, SECTION 2-101, HAVE CONDUCTED A SURVEY OF THE PROPERTY DESCRIBED IN THE SUBDIVISION PLAN AND HAVE COMPLETED A SURVEY OF THE PROPERTY DESCRIBED IN THE SUBDIVISION PLAN AND HAVE COMPLETED A SURVEY OF THE PROPERTY DESCRIBED IN THE SUBDIVISION PLAN...



SUBDIVISION BOUNDARY DESCRIPTION

A PART OF THE SOUTHWEST QUARTER OF SECTION 6, TOWNSHIP 6 NORTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN. BEGINNING AT THE NORTHEAST CORNER OF LOT 21, MIDDLE FORK RANCHES FIRST AMENDMENT, RECORDED AS ENTRY NO. 2790908 IN THE WEBER COUNTY PUBLIC RECORDS...

WEBER COUNTY PLANNING COMMISSION APPROVAL

THIS IS TO CERTIFY THAT THIS SUBDIVISION PLAN WAS ONLY APPROVED BY THE WEBER COUNTY PLANNING COMMISSION. SIGNED THIS 15th DAY OF 2021.

WEBER COUNTY ENGINEER

I HEREBY CERTIFY THAT THE REQUIRED PUBLIC IMPROVEMENT STANDARDS AND DRAWINGS FOR THIS SUBDIVISION CONFORM WITH THE COUNTY STANDARDS AND THE AMOUNT OF THE FINANCIAL GUARANTEE IS SUFFICIENT FOR THE INSTALLATION OF THESE IMPROVEMENTS. SIGNED THIS 15th DAY OF 2021.

WEBER COUNTY ATTORNEY

I HAVE EXAMINED THE FINANCIAL GUARANTEE AND OTHER DOCUMENTS THAT SUPPORT THE PROPOSED PLAN, AND IN MY OPINION THEY COMPLY WITH THE APPLICABLE LAWS AND ORDINANCES OF WEBER COUNTY. SIGNED THIS 15th DAY OF 2021.

WEBER COUNTY COMMISSION ACCEPTANCE

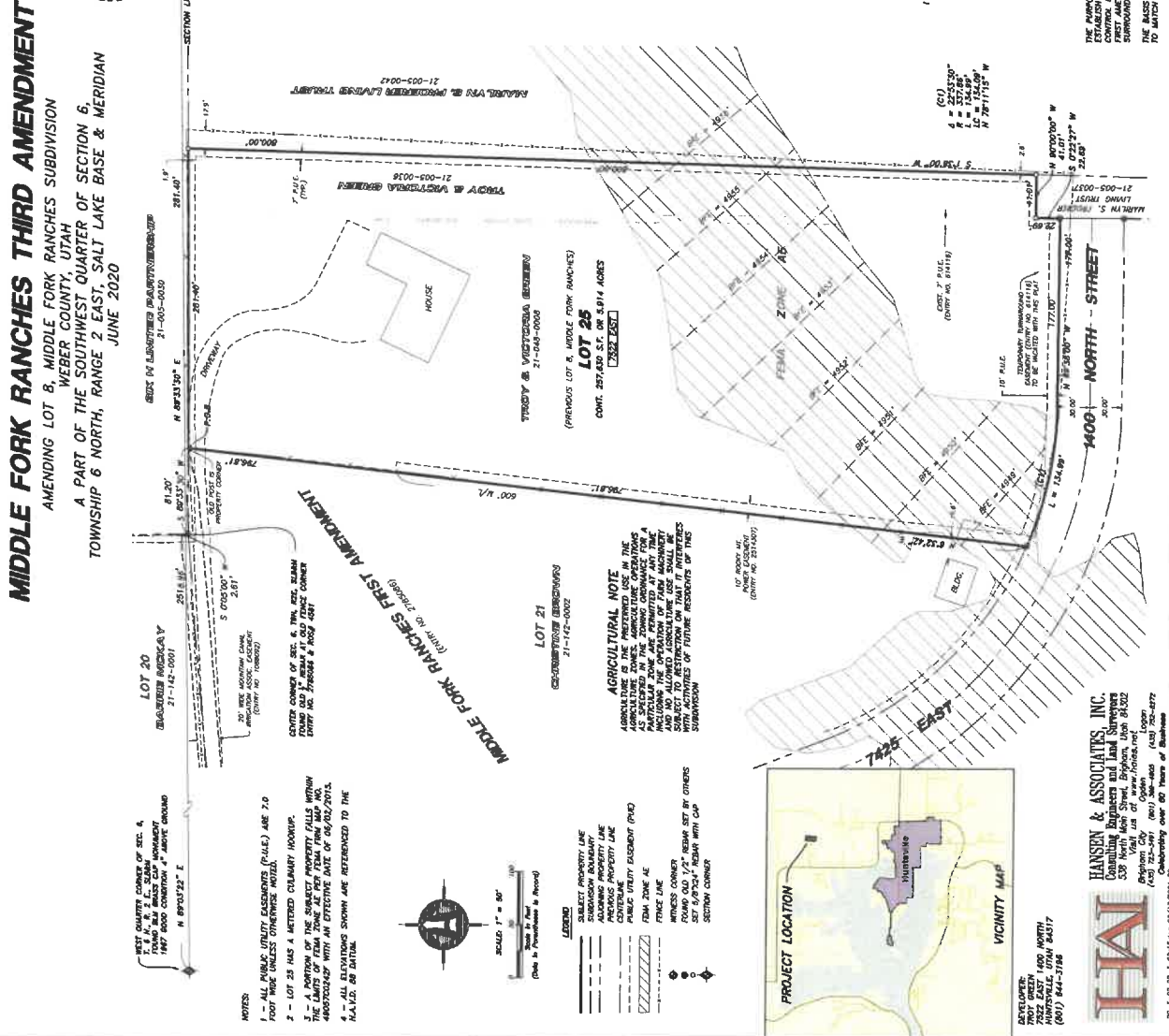
THIS IS TO CERTIFY THAT THIS SUBDIVISION PLAN, THE LOCATION OF STREETS AND OTHER PUBLIC WORKS AND FINANCIAL GUARANTEE OF PUBLIC IMPROVEMENTS ASSOCIATED WITH THIS SUBDIVISION, THEREON ARE HEREBY APPROVED AND ACCEPTED BY THE COMMISSIONERS OF WEBER COUNTY UTAH. SIGNED THIS 15th DAY OF 2021.

WEBER COUNTY SURVEYOR

I HEREBY CERTIFY THAT THE WEBER COUNTY SURVEYOR'S OFFICE HAS REVIEWED THIS PLAN AND ALL CONDITIONS FOR APPROVAL BY THIS OFFICE HAVE BEEN MET. THE SURVEYOR'S OFFICE DOES NOT BELIEVE THE RECORDED LAND SURVEYOR WHO HAS PREPARED THIS PLAN DOES NOT BELIEVE THE RECORDED LAND SURVEYOR WHO HAS PREPARED THIS PLAN FROM THE RESPONSIBILITIES AND/OR OBLIGATIONS ASSOCIATED THEREWITH. SIGNED THIS 15th DAY OF 2021.

MARRIATIVES

THE PURPOSE OF THIS SURVEY WAS TO AMEND LOT 8, MIDDLE FORK RANCHES SUBDIVISION AND PROPERTY IN S. 1/4, SEC. 6, TWP. 6N, R. 2E, S. 1/4, MERIDIAN 12N, RANGE 2E, SALT LAKE BASE AND MERIDIAN. THIS SURVEY WAS CONDUCTED BY BOBIE C. SLADE, REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF UTAH, LICENSE NO. 1188202. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE REQUIREMENTS OF THE UTAH SUBDIVISION ACT AND THE REQUIREMENTS OF THE UTAH PUBLIC RECORDS ACT. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE REQUIREMENTS OF THE UTAH SUBDIVISION ACT AND THE REQUIREMENTS OF THE UTAH PUBLIC RECORDS ACT. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE REQUIREMENTS OF THE UTAH SUBDIVISION ACT AND THE REQUIREMENTS OF THE UTAH PUBLIC RECORDS ACT.



- 1 - ALL PUBLIC UTILITY EASEMENTS (P.U.E.) ARE 7.0 FOOT WIDE UNLESS OTHERWISE NOTED.
- 2 - LOT 25 HAS A RETIRED CULINARY HOOPERS.
- 3 - A PORTION OF THE SUBJECT PROPERTY FALLS WITHIN THE LIMITS OF FARM ZONE AE PER FIRM MAP NO. 4800022024 WITH AN EFFECTIVE DATE OF 06/02/2015. M.A.D. 80 DATING.



AGRICULTURAL NOTE
AGRICULTURAL ZONES, APPLICABLE OPEN SPACES, PARTICIPATION ZONE, AND FARM ZONE AE ARE SUBJECT TO THE OPERATION OF FARM MOBILE HOME ACT AND SUBJECT TO RESTRICTIONS ON THAT IT INTERFERES WITH THE INTERESTS OF FUTURE RESIDENTS OF THIS SUBDIVISION.



DEVELOPER:
7022 EAST 7000 NORTH
HURRICANE, UTAH 84317
(801) 644-3116

HAI
HANSEN & ASSOCIATES, INC.
Consulting Engineers and Land Surveyors
530 North Main Street, Eppahon, Utah 84302
Eppahon, Utah
Phone: (801) 644-3116
Fax: (801) 644-3177
Established 1980
Celebrating over 40 Years of Business

ACKNOWLEDGMENT
TRISTY GREEN
VICTORIA GREEN
STATE OF UTAH
COUNTY OF WEBER
SIGNED THIS 15th DAY OF 2021.

OWNER'S DEDICATION AND CERTIFICATION
WE THE UNDERSIGNED OWNERS OF THE HEREIN DESCRIBED TRACT OF LAND DO HEREBY SET APART, LEASE AND SUBDIVIDE THE SAID TRACT INTO LOTS AS SHOWN ON THE ATTACHED SUBDIVISION PLAN AND WE HEREBY DEDICATE TO THE PUBLIC THE SAID TRACT OF LAND FOR THE PURPOSES OF THE UTAH SUBDIVISION ACT AND THE UTAH PUBLIC RECORDS ACT. WE HEREBY DEDICATE TO THE PUBLIC THE SAID TRACT OF LAND FOR THE PURPOSES OF THE UTAH SUBDIVISION ACT AND THE UTAH PUBLIC RECORDS ACT. WE HEREBY DEDICATE TO THE PUBLIC THE SAID TRACT OF LAND FOR THE PURPOSES OF THE UTAH SUBDIVISION ACT AND THE UTAH PUBLIC RECORDS ACT.

WEBER COUNTY RECORDER
ENTRY NO. _____ FEE AND
RECORDED _____ FILED FOR RECORD AND
BY BOOK _____ OF OFFICIAL
RECORDS, PAGE _____ RECORDED
FOR _____
COUNTY RECORDER
BY _____ DEPUTY



SPENCER J. COX
Governor

DEIDRE M. HENDERSON
Lieutenant Governor

State of Utah Department of Commerce

Exhibit B

OFFICE OF THE PROPERTY RIGHTS OMBUDSMAN

MARGARET W. BUSSE
Executive Director

JORDAN S. CULLIMORE
Division Director, Office of the Property Rights Ombudsman

ADVISORY OPINION

Advisory Opinion Requested By: Troy Green

Local Government Entity: Weber County

Applicant for Land Use Approval: Troy & Victoria Green

Type of Property: Residential

Date of this Advisory Opinion: July 16, 2021

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

ISSUE

Is Weber County's requirement to dedicate to the County a 33-foot wide strip of land for a future road as a condition of approval for an amended plat application a legal exaction?

SUMMARY OF ADVISORY OPINION

The County's requirement to dedicate a 33-foot wide strip of land for a future right-of-way to serve future development does not solve a problem created by the Greens' development proposal. The Greens' amended plat simply merges two parcels without changing the use of the land or increasing the use's intensity. Requiring the dedication would force the Greens' to offset impacts beyond their own. The requirement therefore fails the applicable rough proportionality test, and is unlawful. Accordingly, the County may not impose the requirement as a condition of amended plat approval.

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 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 Troy Green, on September 23, 2020. A copy of that request was sent via certified mail to Ricky D. Hatch, Weber County Clerk/Auditor, 2380 Washington Blvd., STE 320, Ogden, Utah.

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 Troy Green on September 23, 2020.
2. Response submitted by Scott Perkes, Planner for Weber County, received on October 21, 2020.
3. Reply submitted by Zane Froerer, Attorney for Troy Green, received April 6, 2021.
4. Reply submitted by Scott Perkes, Planner for Weber County, received May 3, 2021.

BACKGROUND

Troy and Victoria Green's home sits on an approximately 5-acre lot located at 7522 East 1400 North in Huntsville, Utah. Recently, the Greens submitted an application to the Weber County Planning Division to combine their 5-acre lot with an adjacent 0.88-acre strip of land that the Greens already own and have already been using as part of their property. The purpose of the proposed merger was to make the property large enough to qualify for tax treatment as a "greenbelt" parcel.¹ The Greens' did not propose to change the use of the property.

The County approved, with conditions, the Greens' amended plat application to combine the parcels in a public Administrative Review Meeting on September 2, 2020. Among the conditions the County imposed was a requirement to dedicate a 33-foot right-of-way along the full length of the eastern boundary of the proposed lot for a future roadway that would eventually provide access to adjacent, undeveloped land. The dedication would comprise approximately 0.6 acre and would provide for a half-width of the future roadway. The County's condition only requires dedication of the land, and does not require installation of any improvements for the road.

¹ See generally Utah Code Chapter 59-2, Part 5. The Utah Farmland Assessment Act, referred to as the "greenbelt law" is a law that "allows qualifying agricultural property to be assessed and taxed based upon its productive capabilities instead of the prevailing market value." "Utah Farmland Assessment Act," *Utah County Assessor*, July 15, 2021, available at <https://www.utahcounty.gov/dept/assess/new/Greenbelt.html>.

The Greens view the County's requirement to dedicate 0.6 acre of the Greens' land for a roadway as an excessive, and therefore unlawful, exaction. The County disagrees. Consequently, Mr. Green submitted a Request for Advisory Opinion to this office asking us to determine whether the County's exaction is lawful, in order to resolve the dispute.

ANALYSIS

I. Development Exactions Must Satisfy the "Rough Proportionality" Test to be Lawful

The County requirement to dedicate land for a roadway as a condition of amended plat approval is a development exaction. Utah law defines development exactions as "conditions imposed by governmental entities on developers for the issuance of [development approval]" that "typically require the permanent surrender of private property for public use."²

Exactions implicate the Takings Clause of the U.S. Constitution and Article I Section 22 of the Utah Constitution, which protect private property from governmental taking without just compensation. The standard for measuring whether an exaction imposed by a county is lawful is found at Utah Code § 17-27A-507(1):

A county may impose an exaction or exactions on development proposed in a land use application...if:

- (a) an essential link exists between a legitimate governmental interest and each exaction; and
- (b) each exaction is roughly proportionate, both in nature and extent, to the impact of the proposed development.

This standard lays out a two-part "rough proportionality" test for determining whether an imposed exaction appropriately offsets the impacts of a development proposal. If the proposed exaction satisfies the legal test, the exaction is a proper exercise of the local government's police power to regulate for health, safety, and welfare.³ If, however, the exaction lacks an essential link to a legitimate government interest, or is disproportionate to the impact of the proposed development, the exaction is excessive and an unlawful taking of property without compensation.⁴ A principal objective of the test is to "bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole."⁵

This test was originally established in the U.S. Supreme Court decisions of *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987) and *Dolan v. City of Tigard*, 512 U.S. 374 (1994). The Utah

² *B.A.M. Dev., LLC v. Salt Lake County* (BAM I), 2006 UT 2, ¶ 34.

³ See Shelley Ross Saxer, *Exactions and Impact Fees*, 7 Brigham-Kanner Property Rights Conf. J. 77, 83 (2018) ("Insisting that landowners internalized the negative externalities of their conduct is a hallmark of responsible land-use policy....").

⁴ See *Banberry Development Corporation v. South Jordan City*, 631 P.2d 899, 903 (Utah 1981).

⁵ *Armstrong v. United States*, 364 U.S. 40, 49 (1960).

Supreme Court has also provided additional guidance on how to apply this test to a given situation in *B.A.M. Development, LLC v. Salt Lake County* (BAM II), 2008 UT 74.

In BAM II, the court explained that the second part of the test—the rough proportionality analysis—has two aspects: “first, the exaction and impact must be related in nature; second, they must be related in extent.”⁶ The “nature” aspect of rough proportionality focuses on the relationship between the anticipated impact and the proposed exaction. The court described the approach “in terms of a solution and a problem.... [T]he impact is the problem, or the burden which the community will bear because of the development. The exaction should address the problem. If it does, then the nature component has been satisfied.”⁷

The “extent” aspect of the rough proportionality analysis measures the impact against the proposed exaction in terms of cost.⁸ (“The most appropriate measure is cost—specifically, the cost of the exaction and the impact to the developer and the municipality, respectively.”). The court explained that “roughly proportional” means “roughly equivalent.”⁹ Thus, in order to be valid, the cost of an exaction must be roughly equivalent to the cost that a local government would incur to mitigate impacts attributable to development.

In a third “B.A.M.” decision, the Utah Supreme Court summarized the entire analysis, firmly tying a proposed exaction to infrastructure needs *created by the development*:

[N]ot only must the nature of an exaction relate to government purpose or need (in that the exaction must alleviate the burdens imposed on infrastructure by the development), but the extent of the exaction must also be roughly proportional to the government’s need for infrastructure improvements created by the development.¹⁰

Accordingly, the County’s requirement that the Greens dedicate thirty-three feet of land for a future right-of-way must satisfy all parts of the rough proportionality test to be lawful.

Finally, the City possesses the burden to show the proposed exaction is proportionate to the development’s impacts.¹¹ “*No precise mathematical calculation is required*, but the city must make some sort of *individualized determination* that the required dedication is related both in nature and extent to the impact of the proposed development.”¹²

Accordingly, we will analyze the County’s reasons for imposing the dedication requirement to determine “whether [their] findings are constitutionally sufficient to justify the conditions imposed” on the Greens’ amended plat application.¹³

⁶ *Id.* at ¶ 9.

⁷ *Id.* at ¶ 10.

⁸ *Id.* at ¶ 11.

⁹ *Id.* at ¶ 8.

¹⁰ *B.A.M. Development, LLC v. Salt Lake County*, 2012 UT 26.

¹¹ *See Dolan*, 512 U.S. at 391-92.

¹² *Id.* at 391 (emphasis added).

¹³ *Id.* at 389.

II. An Essential Link Exists between the County's Proposed Exaction and a Legitimate Government Interest

The first part of Utah Code section § 17-27A-507(1) requires an essential link between a legitimate governmental interest and the imposed exaction. In this case, the County's legitimate governmental interest is safe and efficient access and traffic flow. Constructing new roadways is a vital component in accomplishing this objective.¹⁴ Requiring roads to serve proposed development satisfies this interest. Accordingly, the County's dedication requirement complies with the first part of the rough proportionality test.

III. The County's Dedication Requirement Fails the Nature Aspect of the Rough Proportionality Analysis

Next, we turn to the second requirement under Utah Code § 17-27A-507(1)—that the proposed exaction be “roughly proportionate...to the impact of the proposed development.”¹⁵ As described above, this part of the test requires the County, on a case-by-case basis, to “make some sort of individualized determination that the required [exaction] is related both in nature and extent to the impact of the proposed development.”¹⁶

A. *The Nature Aspect of Rough Proportionality*

The nature aspect of the rough proportionality analysis requires that the proposed exaction solve a problem, or impact, created by the proposed development. In this case, and for reasons explained below, the County's requirement to dedicate land for a future right-of-way to access adjacent land fails this aspect of the analysis. When a proposed exaction fails to meet any portion of the rough proportionality test, the exaction is unlawful.

The County, in its submission to our office, states that the purpose of the dedication requirement is to “preserve the area for a future road” for future development. The County states the area of the Greens' land “represents a future north-south road alignment to provide adequate access near a quarter-section line for adjacent, undeveloped property.”

Nowhere here does the County assert the Greens are changing the use of their land to a more intense use or creating additional impact on County services to the lot. In fact, it appears undisputed that the use of the land is not changing at all. Moreover, the county has nowhere indicated the 33-foot right-of-way is needed to provide access to *Mr. Green's* development or address an impact created by the amended plat proposal. The dedication requirement here will prospectively offset the impact of some future development proposal with impacts unrelated to the Greens' current application.

¹⁴ See *Carrier v. Lindquist*, 2001 UT 105, ¶ 18, 37 P.3d 1112, 1117 (“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.”) See also Utah Code § 10-8-8.

¹⁵ Utah Code § 17-27A-507(1)(b).

¹⁶ *Dolan*, 512 U.S. at 391.

To satisfy the nature aspect of the rough proportionality analysis, the County would need to show the dedication requirement is addressing a problem created by the Greens' development proposal. The County has failed to make this showing.

Because the Greens' amended plat does not create any new traffic impacts that would need to be addressed by land dedications for roads, it would be improper for the County to impose a dedication requirement for right-of-way to ostensibly offset such impacts. Finally, the dedication requirement would require the Greens to offset impacts beyond their own, which is also improper.¹⁷

The County cites Weber County Code § 106-2-1(a) as support for its dedication requirement. This provision states, in relevant part that the street arrangement in subdivisions "must be such as to cause no unnecessary hardship to owners of adjoining property when they plat their own land and seek to provide for convenient access to it."

The Greens have not proposed new street arrangements as part of the amended plat. No one has indicated the Greens need new streets for access to their property. The County is requiring a through connection to benefit *adjacent*, undeveloped land.¹⁸ There is no indication here that the adjacent property owner currently has legal access through the Greens' land. Accordingly, if the Greens decline to provide access to that land for whatever reason, it would not cause unnecessary hardship to the adjacent landowners who have lost nothing.¹⁹ The County may not require, as an exaction, that the Greens' dedicate right of way to serve adjacent, undeveloped land simply because the adjacent land does not currently have access.²⁰ This is not an impact created by the Greens' development proposal.

The County also cites Weber County Code § 106-2-2(a) to support its position that the Greens must dedicate the 33-foot right-of-way. This provision states that County may require public dedication of streets for major or loop road access in "mountain land subdivisions". Even if the local code allows the County to require dedication generally, if the requirement violates constitutional principles when applied to a specific development proposal, as it does here, then the County may not impose the requirement.²¹

¹⁷ See *Banberry Development Corporation v. South Jordan City*, 631 P.2d 899, 903 (Utah 1981).

¹⁸ The County, in its submission, states that an adjacent owner of 196.56 acres of undeveloped property located immediately to the north of the Greens' property will need the future roadway for his development. Again, this is an impact created by the adjacent owner's future development whenever it develops, and not by the Greens.

¹⁹ Nothing here would prevent the landowners from negotiating for access to the undeveloped land.

²⁰ This is not to say that the County may not plan for future corridors, limit development in those areas, and acquire land for future rights-of-way. It is simply to say that when the development proposal at issue doesn't warrant acquisition by exaction, as is the case here, the County, or the adjacent landowner seeking access, must potentially negotiate and pay for the land when they are ready to acquire it. See generally Utah Code Chapter 72-5, Part 4.

²¹ See generally *B.A.M. Dev., LLC v. Salt Lake County* (BAM I), 2006 UT 2 (Noting that exactions resulting from a legislative scheme, as well as those imposed administratively, are subject to the rough proportionality test.)

B. Unnecessary to Consider Extent Aspect of Rough Proportionality

Since the County's requirement to dedicate thirty-three feet of the Greens' land for a future right-of-way does not satisfy the nature aspect of the rough proportionality analysis, the requirement fails the entire rough proportionality test and the County may not legally impose it. Accordingly, we do not need to consider the extent aspect of the test in this case.

CONCLUSION

The County's requirement to dedicate thirty-three feet of land for a future right-of-way to serve future development does not solve a problem created by the Greens' development proposal and it would require the Greens' to offset impacts beyond their own. The requirement therefore fails the rough proportionality test, and is unlawful. Accordingly, the County may not require the Greens to dedicate the 33-foot right-of-way as a condition of amended plat approval.



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

NOTE:

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

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

An advisory opinion issued by the Office of the Property Rights Ombudsman is not binding on any party to a dispute involving land use law. If the same issue that is the subject of an advisory opinion is listed as a cause of action in litigation, and that cause of action is litigated on the same facts and circumstances and is resolved consistent with the advisory opinion, the substantially prevailing party on that cause of action may collect reasonable attorney fees and court costs pertaining to the development of that cause of action from the date of the delivery of the advisory opinion to the date of the court's resolution. Additionally, a civil penalty may also be available if the court finds that the opposing party—if either a land use applicant or a government entity—knowingly and intentionally violated the law governing that cause of action.

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

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