

Effective 5/13/2014

13-43-206 Advisory opinion -- Process.

- (1) A request for an advisory opinion under Section 13-43-205 shall be:
 - (a) filed with the Office of the Property Rights Ombudsman; and
 - (b) accompanied by a filing fee of \$150.
- (2) The Office of the Property Rights Ombudsman may establish policies providing for partial fee waivers for a person who is financially unable to pay the entire fee.
- (3) A person requesting an advisory opinion need not exhaust administrative remedies, including remedies described under Section 10-9a-801 or 17-27a-801, before requesting an advisory opinion.
- (4) The Office of the Property Rights Ombudsman shall:
 - (a) deliver notice of the request to opposing parties indicated in the request;
 - (b) inquire of all parties if there are other necessary parties to the dispute; and
 - (c) deliver notice to all necessary parties.
- (5) If a governmental entity is an opposing party, the Office of the Property Rights Ombudsman shall deliver the request in the manner provided for in Section 63G-7-401.
- (6)
 - (a) The Office of the Property Rights Ombudsman shall promptly determine if the parties can agree to a neutral third party to issue an advisory opinion.
 - (b) If no agreement can be reached within four business days after notice is delivered pursuant to Subsections (4) and (5), the Office of the Property Rights Ombudsman shall appoint a neutral third party to issue an advisory opinion.
- (7) All parties that are the subject of the request for advisory opinion shall:
 - (a) share equally in the cost of the advisory opinion; and
 - (b) provide financial assurance for payment that the neutral third party requires.
- (8) The neutral third party shall comply with the provisions of Section 78B-11-109, and shall promptly:
 - (a) seek a response from all necessary parties to the issues raised in the request for advisory opinion;
 - (b) investigate and consider all responses; and
 - (c) issue a written advisory opinion within 15 business days after the appointment of the neutral third party under Subsection (6)(b), unless:
 - (i) the parties agree to extend the deadline; or
 - (ii) the neutral third party determines that the matter is complex and requires additional time to render an opinion, which may not exceed 30 calendar days.
- (9) An advisory opinion shall include a statement of the facts and law supporting the opinion's conclusions.
- (10)
 - (a) Copies of any advisory opinion issued by the Office of the Property Rights Ombudsman shall be delivered as soon as practicable to all necessary parties.
 - (b) A copy of the advisory opinion shall be delivered to the government entity in the manner provided for in Section 63G-7-401.
- (11) An advisory opinion issued by the Office of the Property Rights Ombudsman is not binding on any party to, nor admissible as evidence in, a dispute involving land use law except as provided in Subsection (12).
- (12)

- (a) Subject to Subsection (12)(d), 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:
 - (i) the substantially prevailing party on that cause of action:
 - (A) 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; and
 - (B) shall be refunded an impact fee held to be in violation of Title 11, Chapter 36a, Impact Fees Act, based on the difference between the impact fee paid and what the impact fee should have been if the government entity had correctly calculated the impact fee; and
 - (ii) in accordance with Subsection (12)(b), a government entity shall refund an impact fee held to be in violation of Title 11, Chapter 36a, Impact Fees Act, to the person who was in record title of the property on the day on which the impact fee for the property was paid if:
 - (A) the impact fee was paid on or after the day on which the advisory opinion on the impact fee was issued but before the day on which the final court ruling on the impact fee is issued; and
 - (B) the person described in Subsection (12)(a)(ii) requests the impact fee refund from the government entity within 30 days after the day on which the court issued the final ruling on the impact fee.
- (b) A government entity subject to Subsection (12)(a)(ii) shall refund the impact fee based on the difference between the impact fee paid and what the impact fee should have been if the government entity had correctly calculated the impact fee.
- (c) Nothing in this Subsection (12) is intended to create any new cause of action under land use law.
- (d) Subsection (12)(a) does not apply unless the resolution described in Subsection (12)(a) is final.
- (13) Unless filed by the local government, a request for an advisory opinion under Section 13-43-205 does not stay the progress of a land use application, the effect of a land use decision, or the condemning entity's occupancy of a property.

Amended by Chapter 59, 2014 General Session