ADMINISTRATIVE HEARING OF AN IMPACT FEE APPEAL

Petition No: PLNAPP2026-00937

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| Appellant: | Bryson Garbett |
| Address Related to Appeal: | 1544 South 900 West |
| Purpose of Brief: | Responding to Bryson Garbett's appeal of certain impact fees imposed in connection with the Brix on Tenth Development Project (Permit No. BLD2026-04007). |
| Brief Prepared by: | Jaysen Oldroyd, Senior City Attorney |

After reviewing the appeal filed by Garbett Homes ("Garbett") challenging the City's collection of Park impact fees in connection with the Brix on Tenth Project (the "Brix Park Impact Fees), the Salt Lake City (hereafter the "City") collection of the Brix Park Impact Fees was proper and should be upheld on appeal.

Garbett argues the City's collection of the Brix Park Impact Fees is improper because (1) the total amount collected exceeds the maximum amount identified in the City's Impact Fee Analysis and Impact Fee Facility Plan (hereafter collectively referred to as the "IFFP"); and (2) the collection of the Brix Park Impact Fees occurred beyond the time period specified in the IFFP. As appellant, Garbett, has the burden of proving the City's decision in this matter is incorrect pursuant to City Code section 18.98.090(B)(2). Garbett's arguments are not supported by the pertinent provisions of the Utah Code, and City Code. Instead, Garbett's arguments propose an extremely strict and overly technical interpretation of an IFFP document and an impact fee process that are not well-suited to such a rigid application.[1] Consequently, neither the total amount of Park impact fees collected under the IFFP, nor the time frame in which the Brix Park

[1] The summary of the Advisory Opinion from the Property Rights Ombudsman in Utah Valley Home Builders Association v. Eagle Mountain City addresses the approximative nature of impact fees as follows: "Because impact fees deal largely with future development activity, the Act's specific requirements to establish impact fees are couched largely in approximative language such as, 'reasonable relationship.' 'generally consider,' 'realistic estimates,' 'assumptions,' 'projected,' and so forth. As a result an impact fee enactment is facially valid so long as the local government has procedurally adhered to all mandatory considerations. It is not enough to merely contest the means used to arrive at fee calculations, the challenger must show the fees to be unreasonable on an as applied basis. (Office of the Property Rights Ombudsman, Advisory Opinion 242, https://commerce.utah.gov/2021/07/30/advisory-opinion-242/)

impact fees were collected invalidates the City's collection and retention of the Brix Parks Impact Fees.

Garbett's Argument that the Total Amount of Park Impact Fees Collected Exceeds the Maximum Amount of Parks Impact Fees is not Supported by the Utah Impact Fees Act, Advisory Opinions, or the Language in the IFFP.

Garbett argues that the City's IFFP established a maximum amount of Park impact fees ($44,960,937) needed to maintain the existing level of service for the duration of the IFFP; and the City's collection of any Park impact fees in excess of $44,960,937 represents an impermissible overcollection of Park impact fees under the IFFP. For the reasons set forth below, Garbett's arguments fail.

The IFFP clearly indicates the $44,960,937 projection Garbett claims is the maximum amount of Park impact fees that can be collected under the IFFP is instead simply a non-binding estimate of fees the City anticipates collecting based on preliminary growth projections. The IFFP expressly states "Based on the expected changes in population of the planning horizon, the City will need to invest approximately $45 million in parks and public lands, including amenities, to maintain the existing LOS as shown in Table 4.5. This assumes the City will grow by 28,208 persons through 2025. (See IFFP Page 12, emphasis in the original). Contrary to Garbett's assertions, the underlined language should not be interpreted as creating a hard cap that prevents the City from collecting impact fees beyond the "approximately $45 million" estimate. There is no requirement in the Utah Impact Fee Act that a municipality establish a hard cap to the aggregate amount of impact fees assessed, and Garbett does not cite to any authority that such a cap must be created. Instead, the underlined language acknowledges the fact that growth and impact amounts are proportionately connected and that actual Park impact fee amounts collected will fluctuate based on the actual growth and development that occurs in the City. The IFFP also indicates that "Future planning for parks and public lands is an ongoing process based on the changes in population and community preference" and recognizes that "actual future improvements will be determined as development occurs and the opportunity to acquire and improve park land arises." (IFFP Page 12). All of these references and statements in the IFFP recognize that the estimates and projections contained in the IFFP will be fluid and subject to change based on the actual development and growth that occurs in the City.

The "Growth-Driven" methodology used to calculate Park impact fees in the IFFP also indicates the $44,960.9437 estimate should not be considered a maximum allowable impact fee limit. After explaining that impact fees are centered around the concepts of proportionality and level of service, the IFFP provides the following explanation of how its Park impact fees are calculated:

*"The calculation of the park impact fee is based on the Growth-Driven Approach, which is based on the increase, or growth, in residential demand. The growth-driven methodology utilizes the existing LOS and perpetuates that LOS into the future. Impact fees are then calculated to provide sufficient funds for the entity to expand or provide additional facilities, as growth occurs within*

*the community. Under this methodology, impact fees are calculated to ensure new development provides sufficient investment to maintain the current LOS standards in the community. This approach is often used for public facilities that are not governed by specific capacity limitations and do not need to be built before development occurs (i.e. park facilities).”* (IFFP Pages 13 - 14).

The IFFP uses this Growth-Driven methodology to develop a proposed impact fee per capita of $1,594, and a proposed impact fee per multi-family unit of $3,078. Garbett acknowledges it believes the City correctly calculated the Park impact fees at the time of the IFFP’s adoption in 2016 and indicates it does not dispute the methodology of the IFA. (See Garbett Appeal, Paragraph 3). Despite this acknowledgement, Garbett now asserts that these impact fee amounts, which are derived using the per capita fees developed by the IFFP and correspond to the growth created by the Brix on Tenth project, cannot be assessed to Garbett because the maximum cumulative amount of impact fees allowed under the IFFP has already been collected. Garbett’s rationale that the City cannot collect the Brix Impact Fees because it has already collected impact fees in excess of the $44,960,937 estimate is contrary to the fundamental impact fee concept that growth should pay its proportionate share of the costs for developing public infrastructure. If Garbett is excused from paying its proportionate share of impact fee for growth created by its development project, then others will be forced to pay for the increased need of public services caused by Garbett’s development project.

Under Utah Code subsection 11-36a-401(1)(b) “An impact fee imposed by an impact fee enactment may not exceed the highest fee justified by the impact fee analysis.” However, contrary to Garbett’s argument, the “highest fee justified by the impact fee analysis” does not refer to an initial estimate of the aggregate amount of impact fees to be collected under the IFFP. Instead, as demonstrated by the Utah Impact Fees Act (Utah Code Chapter 11-36a), pertinent advisory opinions, and the language of the IFFP itself, the “highest fee justified by the impact fee analysis” refers to specific instances of impact fees being imposed on a development project in amounts that exceed the highest fee justified by the impact fee analysis.

For example Utah Code subsection 11-36a-109(9)(a) defines an “impact fee” in the singular 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 section 11-36a-402 similarly indicates the prohibition against excessive fees refers to individual impact fees rather than an aggregate impact fee cap. Specifically, Utah Code section 11-36-402 requires that an impact fee enactment include the formula that the local political subdivision will use to calculate <u>each impact fee</u>, and also includes a provision authorizing the local political subdivision to adjust the standard impact fee at the time the fee is charged in appropriate circumstances. (See Utah Code 11-36a-402(1)(b – c)). In contrast, there are no provisions of the Utah Impact Fees Act that prohibit the collection of aggregate impact fees in excess of an initial estimate of impact fee amounts anticipated to be collected under the IFFP. If impact fees are collected in excess of what a municipality needs to address the actual impacts of growth and

development, then the appropriate remedy under the Utah Impact Fees Act would be to issue refunds pursuant to Utah Code subsection 11-36a-603(2).

Advisory opinions from the Office of the Utah Property Ombudsman also support the proposition that the prohibition against an impact fee that exceeds the highest fee justified by the impact fee analysis applies to specific instances of impact fees imposed on a development project rather than applying to the aggregate amount of impact fees a municipality collects under an IFFP. OPRO Advisory Opinion #183 (Daniel Elementary 2017) states that "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 § 11-36-401." (OPRO Advisory Opinion #183, https://commerce.utah.gov/2017/04/28/advisory-opinion-183/ ). Similarly, OPRO Advisory Opinion #242 (Utah Valley Home Builder's Association, July 30, 2021) provides that "The question of whether the City's calculated fee will ultimately result in causing a particular developer to bear a disproportionate burden in relation to the benefit received must be separately reviewed on an as applied basis where a fee is paid." (OPRO Advisory Opinion #242, https://commerce.utah.gov/wp-content/uploads/2022/08/242-AO-UVHBA-Advisory-Opinion-7-30-2021-1.pdf).

Adopting Garbett's interpretation that the City cannot collect more aggregate park impact fees than the "approximately $45 million" amount provided as the City's initial estimate in its IFFP also promotes bad public policy. If a municipality cannot collect more than the initial estimate of impact fees identified in its IFFP, then all municipalities will be incentivized to ensure their aggregate impact fee projections are as high as possible to avoid a scenario where impact fee collections are disproportionately restricted by an initial estimate that does not adequately account for the actual growth that occurs.

Garbett's Argument that the Brix Project Impact Fees Fall Outside of the Pertinent Time Horizon Is Inaccurate and Does Not Prevent the City From Collecting the Brix Project Impact Fees.

Garbett's assertion that the imposition of the Brix Project Impact Fees in July of 2026 falls outside of the pertinent time horizons is based on a selective interpretation of the information in the City's IFFP that ignores most of the information in the IFFP related to the pertinent time horizons and impact fee methodologies. Specifically, Garbett's challenge of the assessment of the Brix Project Impact Fees relies on the fact that the Parks section of the IFFP refers to a population projection of 220,492 that corresponds to the year 2025 when it estimates Park impact fee amounts needed to maintain the existing level of service shown in Table 4.5 of the IFFP. However, Garbett's narrowly tailored argument fails for multiple reasons.

Although the IFFP does make specific reference to a population number tied to the year 2025, the IFFP also provides similar population and annual growth projections all the way out to the year 2030. (See Table 4.1 of the IFFP). The fact that the IFFP calculates Park Impact Fees using a Growth-Driven Approach based on the increase of residential demand facilitates the calculation of impact fees using such annual growth projections all the way through 2030. Moreover, the

IFFP references a ten year planning horizon specifically in the Parks Impact Fee Section and more generally throughout the IFFP document. The IFFP is dated December 13, 2026, and was not fully in effect until 2017. The Brix Project Impact Fee assessment occurred in July of 2026. Consequently, the ten-year time horizon specified within the IFFP would not be complete until December of 2026 at the earliest. The City's assessment of the Brix Project Impact Fees falls well within the operative ten-year planning horizon described in the IFFP.

Even if we were to assume the Park's IFFP planning horizon concluded at the end of 2025, the City's assessment of the Brix Project Impact Fees should still be upheld. A recent statewide impact fee audit conducted by the Office of the Legislative Auditor General (the "Legislative Audit") determined that roughly half of all impact fee studies had not been updated in the past five years. (See, Utah Impact Fees: A Performance Audit of Current Practices and Policy Considerations, Report No. 2026-33, https://pf.utleg.gov/olag/reports/audits/2026/531dbf7a-2c16-43bb-95d2-ff519f11145a/2026-33_RPT.pdf). The Legislative Audit indicated that several surrounding states required impact fee studies to be updated regularly, but the Legislative Audit did not identify any Utah law requiring regular updates to impact fee studies. Instead, the Legislative Audit simply suggested that the Utah Legislature may want to consider requiring periodic updates to impact fee studies in the future. Because Utah has no law requiring regular updates to impact fee studies, the IFFP's internal planning horizons should be viewed as accounting and forecasting tools rather than as an automatic expiration date that voids any further imposition of the enacted impact fees. Here, the Legislature did not enact a sunset provision in the Utah Impact Fees Act declaring that an impact fee enactment expires, lapses, or becomes unenforceable upon the passing of an IFFP's planning horizon. By contrast, throughout the Utah Code—and within the Impact Fees Act itself—the Legislature demonstrated that when it intends a strict temporal deadline to extinguish municipal rights or create mandatory duties, it states that deadline explicitly. *See* Utah Code Ann. § 11-36a-602(2)(a) (mandating expenditure or encumbrance within *"six years from the day on which the impact fee is paid"*). Absent an express prohibition against the imposition of impact fees after the termination of an IFFP planning horizon, an individual or entity challenging the assessment of an impact fee after a specified IFFP planning horizon should still be required to demonstrate why the specific assessment of challenged impact is invalid as applied in those particular circumstances.

If the City had updated its impact fee analysis and imposed new impact fees based on that analysis, then the fees assessed for Garbett's Brix Park Project would almost certainly be considerably higher. For example, according to the Federal Reserve Bank of St. Louis Database ("FRED"), construction prices have increased by more than 65% between December 2016 and the date of the latest available monthly data. (See, Federal Reserve Bank of St. Lous database, https://fred.stlouisfed.org/series/WPU801). If the City had imposed updated impact fees that accounted for this inflation, then Garbett's proportionate share of development costs through impact fees would be significantly greater than the disputed impact fee amounts at issue here.

Conclusion

For the foregoing reasons, Garbett has failed to carry its burden under Salt Lake City Code Section 18.98.090(B)(2) of proving that the City's assessment and collection of the Brix Park Impact Fees was incorrect. Consequently, the City respectfully requests that the Hearing Officer deny Garbett' appeal and uphold the City's collection and retention of the Brix Park Impact Fees.