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Office of the Homeowners'
Association Ombudsman
UTAH DEPARTMENT OF COMMERCE

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ADVISORY OPINION NO. 2026-17

<u>Applicant Name:</u>	David Ferguson
<u>Association Name:</u>	Northmoor Southmoor Homeowners Association
<u>Association Type:</u>	Community Association
<u>Governing Statutes:</u>	Utah Community Association Act Utah Revised Nonprofit Corporation Act
<u>Advisory Opinion Date:</u>	04/28/2026

LEGEND OF DEFINED TERMS

Association	Northmoor Southmoor Homeowners Association
CC&Rs	Declaration of Covenants, Conditions & Restrictions of Northmoor Subdivision Phase 1, dated March 20, 2007, as subsequently amended
Board	Board of Directors
Bylaws	Bylaws of Northmoor Southmoor Homeowners Association, dated February 7, 2017, as subsequently amended
Governing Documents	The Declaration (CC&Rs), Bylaws, and Rules/Policies of the Association
Mr. Ferguson	David Ferguson
Office	Office of the Homeowners' Association Ombudsman
Ranches	Ranches Master HOA

Summaries of each legal question are included at the start of each section. These summaries aim to provide a clear and straightforward answer to the question and should be read in conjunction with the complete analysis.

INTRODUCTION & BACKGROUND FACTS

A dispute has arisen between Mr. Ferguson and the Association regarding the Board's authority to fund new community amenities. Mr. Ferguson asserts that the Board lacks the authority to use association funds for "capital improvements," specifically a concrete pad and a proposed pavilion, rather than for "maintenance." Conversely, the Association argues that the Board possesses the fiduciary and legal authority to allocate funds for park enhancements and to approve assessment increases.¹ The material facts and timeline, as presented to the Office, are as follows:

- On March 20, 2007, the CC&Rs were executed subject to and as a sub-association of the Ranches.
- On February 7, 2017, the Bylaws were formally adopted with 69% member consent through the written consent procedure pursuant to [Utah Code § 16-6a-707](#).
- In 2017, the Ranches was dissolved following a \$14 million lawsuit.
- On March 13, 2019, the Board discussed using operating funds to finish Southmoor Park, noting the receipt of a gifted swing set.
- Between September 17, 2019, and June 13, 2023, the Board held multiple meetings to discuss completing Southmoor Park, but the project was repeatedly delayed due to a lack of funds.
- During the October 29, 2024, Board meeting, the Board discussed the 2025 budget, including a proposed \$5,000 allocation for a concrete pad and the eventual construction of a pavilion at Southmoor Park.
- On January 14, 2025, the Association presented two bids for the Southmoor Park concrete pad.
- On April 8, 2025, the Board reviewed bids for a Southmoor Park pavilion estimated between \$4,000 and \$5,000 and considered increasing the size of the concrete pad.
- On July 15, 2025, the Board deferred construction on the pavilion structure but decided to update the bid for a larger concrete pad.
- On October 14, 2025, the Board reviewed the 2026 budget, approved an assessment increase from \$50 to \$55 for reserve expenses, and approved a \$5,200 bid to pour a 14x16 concrete pad at Southmoor Park in the spring.
- Mr. Ferguson attended a January 20, 2026, Board meeting and challenged the Board's authority to construct a pavilion or gazebo, characterizing it as an unauthorized capital improvement rather than maintenance.
- On January 27, 2026, the Association emailed Mr. Ferguson excerpts from the CC&Rs and Bylaws cited by the Board as the basis for their authority to make park improvements.
- On February 9, 2026, Mr. Ferguson submitted his request for an Advisory Opinion to the Office.

Since the dispute remains unresolved, the Office issues this Advisory Opinion pursuant to [Utah Code § 13-79-104](#).

¹ Mr. Ferguson also raises allegations of improper amendment and adoption of the Bylaws, the validity of certain documents based on the dissolution of the original master association, and maintenance of certain property. However, these allegations were known or should have been known by Mr. Ferguson more than one year before he submitted his request for an Advisory Opinion. Accordingly, the Office does not address these concerns pursuant to [Utah Code § 13-79-104\(2\)\(a\)\(iii\)](#).

ANALYSIS OF QUESTIONS PRESENTED & GOVERNING LEGAL PRINCIPLES

This dispute raises the following legal question for the Office: (1) What are the rights and limitations of an association's board to raise assessments for the purpose of investing in common area improvements?

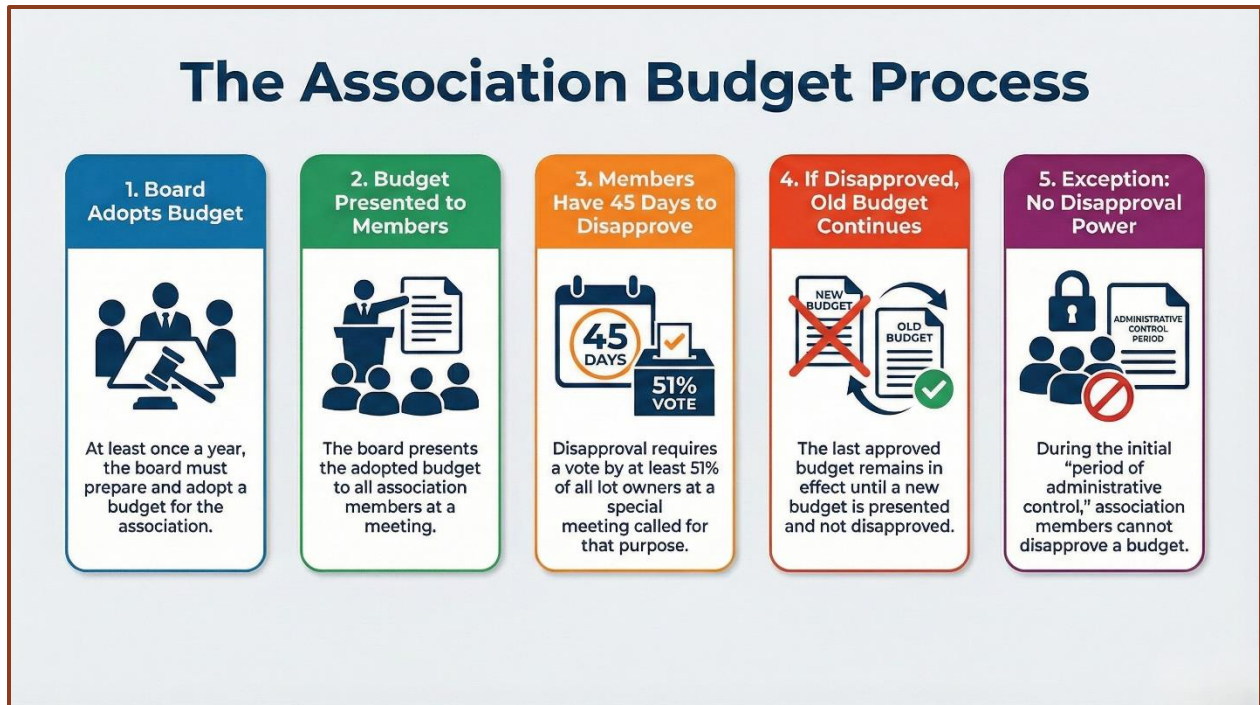
1. [What are the Rights and Limitations of an Association's Board to Raise Assessments for the Purpose of Investing in Common Area Improvements?](#)

Summary: Under Utah law, association boards are responsible for maintaining common areas and have the authority to set annual budgets and levy assessments against homeowners to cover those costs, with homeowners having the right to vote to disapprove a budget within 45 days of its presentation. In this matter, Mr. Ferguson argued that the Association violated Utah law and its Governing Documents by raising annual assessments to fund the expansion and completion of a community park, claiming that the bylaws permitted only the maintenance of existing common areas, not new improvements. However, the Bylaws require only a minimum standard of upkeep and do not prohibit improvements. Additionally, the CC&Rs authorize the Board to manage and improve common areas, including parks, and to raise assessments for that purpose, subject to member voting requirements if the increase exceeded 25% of the prior year's amount. Because the Association followed its Governing Documents in budgeting for and pursuing the park project, and because Mr. Ferguson did not use the available budget disapproval process, the Association did not violate Utah law by increasing annual assessments to fund the park's completion.

General Legal Principle: [Utah Code § 57-8a-224\(2\)](#) provides that “an association is responsible for the maintenance, repair, and replacement of common areas” while “a lot owner is responsible for the maintenance, repair, and replacement of the lot owner’s lot.” [Utah Code § 57-8a-102\(5\)](#) defines common areas as “property that the association owns, maintains, repairs, or administers.” [Utah Code § 57-8a-102\(17\)](#) defines a lot as “a lot, parcel, plot, or other division of land designated for separate ownership or occupancy and shown on a recorded subdivision plat or the boundaries of which are described in a recorded governing document.” Therefore, once the areas within an association have been defined as either common areas or an individual owner’s lot, the requirements of [Utah Code § 57-8a-224\(2\)](#) control the maintenance and repair obligations of those specific areas.

[Utah Code § 57-8a-215\(1\)](#) requires an association to prepare and adopt an annual budget. This adopted budget must then be presented to homeowners during a board meeting under [Utah Code § 57-8a-215\(2\)](#). Importantly, the adopted budget is operable against the association unless the homeowners vote to disapprove the budget within 45 days of the meeting, which under [Utah Code § 57-8a-215\(3\)](#), requires the homeowners to comply with the requirements of [Utah Code § 16-6a-702](#) and the association’s governing documents in calling a special meeting for the purpose of disapproving the budget and then having at least 51% of the total membership interests vote in favor of disapproval. The association’s board will use this budget to determine the amount of assessments to be levied against the association’s homeowners. [Utah Code § 57-8a-201\(1\)](#) requires that each owner “pay the owner’s share of the common expenses and any other assessments levied by the association.” These payments “shall be in the amount and at the time determined by the board of directors in accordance with the terms of the declaration or bylaws.” [Utah Code § 57-8a-102\(6\)](#) defines a common expense as “costs incurred by the association to exercise any of the powers provided for in the association’s governing documents.”

The Association Budget Process



Application to Matter: In this matter, Mr. Ferguson argues that the Association is violating Utah law and the Association’s Governing Documents by budgeting for and expending funds on the expansion and completion of the local park. Specifically, Mr. Ferguson argues that because the Bylaws state only that the Association must keep the common areas in good maintenance and repair, the Association is not permitted to engage in further development or improvement of those common areas and cannot raise annual assessments for that purpose. The Association contends that the developer's plan to complete the park was part of the original plan, but the developer ultimately lacked the funds to carry it out. Additionally, the Association argues that over the past several years, efforts to complete the park have been hampered by budget constraints and the need for additional bids and information, which have prevented its completion to this point. However, through the October 2025 annual assessment increase, the Association will be able to complete the park project.

Mr. Ferguson argues that Article VII, Section 3(G) of the Bylaws prevents the Association from engaging in improvements or activities beyond the maintenance of common areas. Article VII, Section 3(G) of the Bylaws states that “the Board shall cause the common areas and any other real and personal property for which the Association may be responsible or as to which the Association may have duties and obligations to be kept in a good state of maintenance and repair.” Mr. Ferguson reads this as prohibiting anything beyond keeping what currently exists in good condition, including making improvements or additions. However, nothing in this language prevents the Association from going beyond maintaining what is currently there; it only requires that they, at a minimum, ensure that the current conditions do not fall into a state of disrepair.

Section 9.06 of the CC&Rs states that “the affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the articles and Bylaws of the Association.” Section 9.09(B) states that “from and after January 1, 2007, the annual assessment may be increased above twenty-five percent (25%) per year limit by a vote of sixty-six and two-thirds percent (66.66%) of the members.” Taken together, these provisions of the CC&Rs give the Board the authority

to impose annual assessments in an amount it deems prudent, subject to the voting requirement if the assessment exceeds 25% of the previous year's assessments. While the Board has the authority to impose assessments and determine the budget, that does not mean that homeowners are without any recourse or involvement in the process. If Mr. Ferguson and other homeowners believed that the Board was acting outside its authority by increasing assessments to finish the park, they could have used the disapproval process outlined in [Utah Code § 57-8a-215\(3\)](#); however, they did not.

Section 5.02 of the CC&Rs states that “parks located in the project will be made available to the lot owners, tenants and their accompanied guests or invitees. The Association shall maintain the parks, either directly or by contract with the master association or its manager.” The parties do not dispute that, under the Governing Documents or the common use of the space, the area in question is designated as a park and is subject to the Association's control under Section 5.02 of the CC&Rs. Section 9.15 of the CC&Rs states that “the Association, or its duly delegated representative, shall maintain, operate, insure and otherwise manage all common areas in the project, including the pool and any parks, park strips or landscape areas, if any...The Board shall be the sole judge as to the appropriate maintenance of all common areas.”

Beyond these specific provisions, the Governing Documents have multiple references to the Association's authority to improve the property. For example, the recitals contained within the CC&Rs state that the “Declarant hereby declares that the Project is and shall be henceforth be owned, held, conveyed, encumbered, leased, **improved**, used, occupied and enjoyed subject to this Declaration.” (Emphasis added). According to *Black's Law Dictionary*, improve means “to increase the value or enhance the appearance of (something),” and “to develop (land), whether or not the development results in an increase or a decrease in value.” Additionally, Section 14.04 of the CC&Rs states that “the provisions of this Declaration shall be liberally construed to effectuate their purposes of creating a uniform plan for the development of the Lots subject hereto and of **promoting and effectuating the fundamental concepts** of the Project as outlined in the Recitals and other provisions of this Declaration.” (Emphasis added). Therefore, the CC&Rs contemplate the Association's discretion to engage in activities, including improvements, that effectuate the Association's overall development purpose.

Based on the information provided to the Office, the Association has been attempting for several years to complete the park as intended by the developer. However, due to a lack of financial resources, those efforts have been unsuccessful to this point. The Board's decision to continue to obtain bids for the purpose of moving forward with the project once the necessary funds were obtained, including through the increase in annual assessments as outlined in the Association's budget, is a permissible use of the Board's authority under the Governing Documents to manage and improve the common areas. Therefore, the Association did not violate Utah law by raising annual assessments in October 2025, as the increase was made in accordance with the Governing Documents for the purpose of improving and maintaining the park's intended purpose, as required by [Utah Code § 57-8a-224\(2\)](#).

CONCLUSION

Based on the information provided by the parties and the governing Utah statutes, the Office concludes as follows:

1. **Common Area Improvements:** Mr. Ferguson argued that the Association violated Utah law and its Governing Documents by raising annual assessments to fund the expansion and completion of a community park, claiming that the bylaws permitted only the maintenance of existing common areas, not new improvements. However, the Bylaws require only a minimum standard of upkeep and do not prohibit improvements. Additionally, the CC&Rs authorize the Board to manage and improve common areas, including parks, and to raise assessments for that purpose, subject to member voting requirements if the increase exceeded 25% of the prior year's amount. Because the Association followed its Governing Documents in budgeting for and pursuing the park project, and because Mr. Ferguson did not use the available budget disapproval process, the Association did not violate Utah law by increasing annual assessments to fund the park's completion.



[Erin Rider \(Apr 28, 2026 09:57:41 MDT\)](#)

Erin Rider

Director



INFORMATION REGARDING ADVISORY OPINIONS

This document is an Advisory Opinion issued by the Office of the Homeowners' Association Ombudsman as an alternative dispute resolution method pursuant to [Utah Code § 13-79-104](#). The Office's jurisdiction is limited to alleged violations of state statutes, as outlined in [Utah Code § 13-79-103](#) and [Utah Code § 13-79-104](#). The opinions here are based on a review of the specific facts provided and may not correspond with outcomes in other cases where circumstances or laws differ. This opinion is not legal advice, does not establish an attorney-client relationship, and does not represent the official views of the State of Utah or the Department of Commerce. All parties are encouraged to seek legal counsel to protect their interests.

While this Advisory Opinion is not legally binding on any party, it could have potential consequences if the matter proceeds to litigation. Under Utah law, the opinion and related findings are not admissible as evidence in court, except for the specific purpose of evaluating attorney fees and costs. If a cause of action discussed in this opinion is litigated and resolved according to it, the prevailing party may recover reasonable attorney fees and court costs incurred from the date this opinion was issued. A court may also impose a civil penalty if it finds that the opposing party knowingly and intentionally violated the law. The decision to grant such awards rests within the court's discretion.

NOTICE TO ASSOCIATIONS

Condominium Associations must register with the Department of Commerce through the Office of the Homeowners' Association Ombudsman under [Utah Code § 57-8-13.1](#), and Community Associations must register under [Utah Code § 57-8a-105](#). Due to an updated registration system, any association that registered prior to September 2025 is required to complete a new registration, regardless of whether they have previously registered with the Department of Commerce. All associations must also renew their registration annually. Information about this process and the registration application is available at <https://commerce.utah.gov/hoa/new-registration/>.