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IN THE FOURTH JUDICIAL DISTRICT COURT – PROVO
UTAH COUNTY, STATE OF UTAH

UTAH SAGE, INC. a Utah corporation dba
HOBBY TRACTORS & EQUIPMENT,
LARKIN TIRES, INC. a Utah corporation,
GARY LARSON, an individual,

Plaintiffs,

v.

PLEASANT GROVE CITY,

Defendant.

**PETITION FOR DECLARATORY
JUDGMENT**

Case No. _____

Judge _____

COMES NOW Plaintiffs (“Plaintiffs”), through counsel, and hereby submit the following

Petition for Declaratory Judgment:

PARTIES

1. Plaintiff Utah Sage Incorporated d/b/a Hobby Tractors & Equipment is a Utah Corporation with its principal place of business in Pleasant Grove, Utah.

2. Plaintiff Larkin Tires, Inc. is a Utah Corporation and has a place of business in Pleasant Grove, Utah.

3. Plaintiff Gary Larson is an individual residing in Pleasant Grove, Utah.

4. Defendant Pleasant Grove City (the “City”) is a municipality classified as a city of the third class under Utah Code § 10-2-301.

JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to Utah Code Ann. § 78A-5-102 and Utah Code Ann. § 78B-6-401.

6. Venue is proper in Utah County under Utah Code § 78B-3-307(1)(b).

FACTS

7. In 2011 the Pleasant Grove City Council (the “City Council”) commissioned a road analysis from J-U-B Engineers (JUB) which included the assessment of all roads within the City and assigning a Pavement Condition Index (PCI) to each road.

8. From 2011 to 2014 the City Council discussed several options to increase road funding including but not limited to: increasing franchise fee to 6%, bonding, road fee, and use of general fund monies.

9. In the summer of 2014 the City Council commissioned JUB to conduct another study of the costs of road improvement over the next 10 years.

10. On January 27, 2015 based on both JUB studies a report was presented stating that 62% of the City’s roads had a PCI of less than 70, the City set a goal of maintaining all roads at a minimum PCI of 70, and to be able to achieve the 70 PCI goal the city would need to invest \$3.8 million a year for 20 years. On March 10, 2015 JUB presented an updated plan that increased that amount to \$4 million a year over 20 years.

11. In March 2015 the state legislature passed a fuel tax increase. It also passed HB 362 which gave counties the option to increase sales tax by .25% if the electorate passed it in the November 2015 election. Both measures would increase city revenue for road maintenance. For example, the fuel tax increase was estimated to provide Pleasant Gove an additional \$180,000 annually for road funding. Residents of Utah County, however, did not pass Proposition 1, which was Pleasant Grove's attempt to implement the tax increase permitted by HB 362 in the November 2015 election.

12. As early as the summer of 2015 the City Council had determined to move forward with implementing a road fee structure to raise part of the needed revenue for annual road maintenance. The City commissioned a Road Fee Study through Lewis Young Robertson & Burningham (LYRB), a self-proclaimed independent municipal financial advisory and consulting firm. The purpose of the study was to determine the logistics of implementing a road fee. LYRB was tasked with calculating what it would take to generate \$1 million in new revenue each year.

13. On December 1, 2015 the City unveiled a Three-Year Coordinated Road and Utilities plan which focused on updating the city with new roads and utilities. This plan focused on what projects would be completed and the cost of said projects but was not a plan for revenue generation.

14. On January 19, 2016, LYRM presented its Road Fee Study, which calculated road fee structures based on the County parcel database, the City business license database, and the roadway demands. (Study attached hereto as Exhibit A.) The land uses were divided into three categories comprised of residential, non-residential, and public use, and the study analyzed peak

day adjusted trips, total square footage, address counts, and units. The road fees were calculated at an annual rate and then broken down into monthly payments. The original report provided by LYRM had an example monthly fee structure with ten different classifications ranging from \$3.50 a month for an apartment to \$492.40 for a convenience store. Other categories included churches, schools, general offices, medical and dental offices, fast food restaurants, small retail space, and large retail space.

15. In November 2017, residents of Pleasant Grove overwhelmingly rejected the Fund Roads First ballot initiative that would have required the City to put \$2.65 million from the general fund into road maintenance – \$2.3 million more than what is currently taken from the general fund annually for road maintenance. Upon rejection of this initiative, the City Council continued its course in trying to raise additional funds for road maintenance through a road fee. Although its statutory options included raising the property tax, issuing bonds, and creating a local district for road maintenance, it opted to pursue the “road fee” route, an option for which the City Council cited no legal authority in any of its public hearings or publications.

16. From January 2016 to April 2018, the City Council continued to discuss the road fee issue and held public hearings on the issue. Although much opposition was presented at the public hearings, the City Council was set on its course in passing a road fee despite it being the most legally tenuous option.

17. On April 10, 2018, the City Council passed Resolution No. 2018-021 which established a Transportation Utility Special Revenue Fund (the “Fund”) and adopted a Transportation Utility Fee (TUF). (Attached hereto as Exhibit B.) Although the definition of

“Public Utility” in the Utah Code does not include an organization that maintains roads or otherwise involves transportation, this did not stop the City Council from giving the law the misleading title of “utility,” presumably an attempt to give their proposal some legal justification.

18. In the TUF ordinance a three-tier system was established by dividing up the City into residents and businesses. The residential fee was fixed for all residential units. The business fees were divided into those business that make less than 4 trips a month and those that make more than 4 trips a month, the former being charged \$41.27 per month and the latter being charged \$236.06 per month. This classification system was in part based on the Peak Day Adjusted Trips analysis made by LYRM, but that analysis set forth a four-tier system as opposed to the two-tier system implemented by the City in its ordinance. Why the City Council deviated from its consulting firm’s recommendation of a four-tier system is unclear.

19. Three months later, the City Council scrapped its own trip-based classification system by rescinding Resolution No. 2018-021 on July 17, 2018 and instead passed an Amended Resolution. The City Council also passed Ordinance No. 2018-19 to replace the April ordinance and gave it an effective date of August 1, 2018. (Resolution and Ordinance attached hereto as Exhibit C.)

20. The new classification system, and ultimately the system that is enforced beginning August 1, 2018, is as follows:

a. Residential – this is based on a per residential unit standard and makes no differentiation between a single-family home, apartment, condo, or vacation home and

implements the same standard fixed fee regardless of how many people live in a residential unit, how many vehicles they own, or how many drivers live in the single unit.

b. Tier one business – this includes every business that is not a gas station/convenience store, restaurants with drive-thru service, and businesses with more than 250 parking stalls (except for churches).

c. Tier two business – this includes gas station/convenience store, restaurants with drive-thru service, and businesses with more than 250 parking stalls (except for churches).

There is no explanation why a restaurant that services the same number of customers as a restaurant with a drive thru is assessed a fee nearly six times lower than restaurants with drive thrus, especially in light of the fact that the drive thru portion of business is on private property rather than public property. Further, there is no explanation how 250 parking stalls became the arbitrary number for implementing the engorged tier-two fee.

21. The business classifications bear no resemblance to the original classifications or to the study commissioned by LYRB. Similarly, the monthly fees to be collected are unsupported, or at the most loosely supported, by road use statistics or other measurable means to determine a proportional and equitable cost per user. The fees for the three classifications are respectively \$8.45 (residential), \$41.27 (Tier 1 business), and \$236.05 (Tier 2 business) – the exact same amounts as the original ordinance, but applicable now to completely different classifications. These amounts appear to have been arbitrarily created as they have no support in LYRB's study and are not otherwise supported by empirical evidence, although the ordinance itself states that the amounts attributed to commercial users are based on intensity of use using

the LYRB study as a “guideline.” The established residential fee has no intensity of use basis, or at least none is cited in the ordinance, and it is unclear how the City Council determined the fee amount for residential units.

22. By eliminating the classification system based on number of trips, the amended TUF removed approximately a third of the businesses out of the highest fee tier set by the original ordinance in April 2018.

23. Additionally, the amounts of the fees for the two business tiers are based on a 45% exemption, where the residential fee has 0% exemption. (See Roads FAQ, page 3, attached hereto as Exhibit D.) The explanation for this disparity between residential and businesses is that residents get a 45% exemption on property taxes while businesses do not, yet that was the extent of the analysis in justifying the business exemption.

24. On August 1, 2018 the TUF went into effect.

FIRST CAUSE OF ACTION

(Declaratory Judgment that the TUF is a tax)

25. Plaintiffs hereby incorporate all preceding paragraphs in this Petition in this cause of action.

26. A justiciable controversy exists between Plaintiffs and the City, specifically that the TUF is a tax and not a fee.

27. The interests of the parties are adverse as the City refuses to recognize the TUF as a tax and not a fee.

28. Plaintiffs have a legally protected interest in the controversy, that is, they have been adversely affected by or are interested in the TRU.

29. The issues between the parties involved are ripe for judicial determination because the TUF is currently being collected by the City.

SECOND CAUSE OF ACTION

(Declaratory Judgment that the City does not have authority to impose the TUF as a tax)

30. Plaintiffs hereby incorporate all preceding paragraphs in this Petition in this cause of action.

31. A justiciable controversy exists between Plaintiffs and the City, specifically the city has no authority to impose the TUF as a tax.

32. The interests of the parties are adverse as the City has passed an illegal tax to Plaintiffs' detriment.

33. Plaintiffs have a legally protected interest in the controversy, that is, they have been adversely affected by or are interested in the TRU.

34. The issues between the parties involved are ripe for judicial determination because there is a dispute as to whether the City has the authority to collect the TUF as a tax.

THIRD CAUSE OF ACTION

(Declaratory Judgment that the City exceeded its legal authority in passing the TUF as a fee)

35. Plaintiffs hereby incorporate all preceding paragraphs in this Petition in this cause of action.

36. A justiciable controversy exists between Plaintiffs and the City, specifically whether the City exceeded its legal authority in passing the TUF as a fee.

37. The interests of the parties are adverse as the City has exceeded its authority in passing the TUF as a fee to Plaintiffs' detriment.

38. Plaintiffs have a legally protected interest in the controversy, that is, they have been adversely affected by or are interested in the TRU.

39. The issues between the parties involved are ripe for judicial determination because there is a dispute as to whether the City exceeded its legal authority in passing the TUF as a fee.

FOURTH CAUSE OF ACTION

(Declaratory Judgment that the TUF is not a Legitimate Fee for Service)

40. Plaintiffs hereby incorporate all preceding paragraphs in this Petition in this cause of action.

41. A justiciable controversy exists between Plaintiffs and the City, specifically the TUF is not a legitimate fee for service.

42. The interests of the parties are adverse as the City has passed an illegitimate fee to Plaintiffs' detriment.

43. Plaintiffs have a legally protected interest in the controversy, that is, they have been adversely affected by or are interested in the TRU.

44. The issues between the parties involved are ripe for judicial determination because there is a dispute as to whether the TUF is a legitimate fee for service.

FIFTH CAUSE OF ACTION

(Declaratory Judgment that the TUF is not a Legitimate Regulatory Fee)

45. Plaintiffs hereby incorporate all preceding paragraphs in this Petition in this cause of action.

46. A justiciable controversy exists between Plaintiffs and the City, specifically the TUF is not a legitimate regulatory fee.

47. The interests of the parties are adverse as the City has passed an illegitimate fee to Plaintiffs' detriment.

48. Plaintiffs have a legally protected interest in the controversy, that is, they have been adversely affected by or are interested in the TRU.

49. The issues between the parties involved are ripe for judicial determination because there is a dispute as to whether the TUF is a legitimate regulatory fee.

PRAYER FOR RELIEF

1. For declaratory judgment that the TUF is a tax.
2. For declaratory judgment that the City does not have authority to collect the TUF as a tax.
3. For declaratory judgment that the City exceeded its legal authority in passing the TUF as a fee.
4. For declaratory judgment that the TUF is not a legitimate fee for service.
5. For declaratory judgment that the TUF is not a legitimate regulatory fee.
6. For an order enjoining the City from further collecting the TRU.

7. For injunctive relief staying the TUF.
8. For an order that any and all fees collected be placed in escrow until a final decision on this case is entered.
9. For an order than any and all fees collected be returned to the taxpayers.
10. For an order awarding plaintiffs their attorney's fees.
11. For any other order the court deems just and equitable.

DATED this 1st day of August 2018.

SALCIDO LAW FIRM PLLC

/s/ Gerald M. Salcido
Attorneys for Plaintiff