

LAND USE 101:

THE BASICS OF PLANNING, ZONING, AND LAND USE REGULATION



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OBJECTIVES

Overview of

Land Use Authorities

General Plan & Zoning Ordinances

Public Notice & Public Meetings

Development Approvals

Subdivisions

Vested Rights

Exactions & Impact Fees

Conditional Uses

Variances

Appeals & Appeal Authorities

LAND USE AUTHORITIES

THE ADMINISTRATIVE CONTROL OF THE GOVERNMENT REMAINS
EVERYWHERE

Land Use Authorities

Consider Land Use Applications

- ★ Local Legislative Body (city council or county commission)
- ★ Planning Commission
- ★ Appeal Authority (Board of Adjustment)
- ★ Staff

GENERAL PLAN & ZONING ORDINANCE

THOSE WHO FAIL TO PLAN, PLAN TO FAIL



General Plan

GENERAL PLAN:

General Guidelines for Proposed Future Development

Adopted by Legislative Body

Recommended by Staff & Planning Commission

Advisory Only, Not Necessarily Binding

Ordinance May Require That General Plan be Followed

Zoning Ordinances

ZONING ORDINANCE:

Specific Legislative Act

Binding Regulation of Land Use

All Property is Subject to Zoning

Recommended by Staff & Planning Commission

Ordinances Should be Reasonably Specific

Doesn't Have to be the "Best" Choice

"Reasonably Debatable" to Promote General Welfare

PUBLIC NOTICE & PUBLIC MEETINGS

THERE IS NO SUCH THING AS TOO MUCH PUBLIC INPUT

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Public Notice

NOTICE REQUIREMENTS (§§ 10-9a-201 to -212)

Required Notice Must be Given

Failure to do so May Void the Actions Taken

Summary of Notice Requirements in Handout

Agendas Should Explain Upcoming Items

Public Meetings & Hearings

PUBLIC MEETING:

Convening a public board to discuss or act upon matters

Public Comments Do Not Have to be Part of a
“Meeting”

Public Comments ARE Part of a “Hearing”

Public Meetings & Hearings

Agenda Should Announce Items for Discussion

State Whether Public Comments Will be Taken

All Public Meetings & Hearings Should be Recorded

Pending Minutes & Recordings Available to Public

Approved Minutes Posted on State Website

DEVELOPMENT APPROVALS & CONDITIONS

PROPERTY CANNOT BE CONCEIVED WITHOUT THE RIGHT TO
DEVELOP IT FOR USEFUL PURPOSES

Development Approval

Decisions on Development Applications:

Based on Substantial Evidence

Evidence Introduced in a Public Record

Not Based on “Public Clamor”

Decision Within a Reasonable Time

Applicant May Request Action

If Requested, Decision Must be Made Within 45 Days

Development Conditions

Conditions May Be Imposed On New Development
Specific Requirements
Development Standards

Must Be Stated At Time of Approval
Imposed by Ordinance
Added by Approval Process

After Approval, Conditions Cannot Be Changed

SUBDIVISIONS

GIVE ME JUST A PLOT OF—NOT A LOT OF—LAND



Subdivisions

SUBDIVISION:

ANY division of land into two or more parcels
Created by Any Document

Exceptions:

Combining Parcels

Boundary Adjustment

Division of Parcel to Combine with Agricultural Parcel

Subdivisions

Plat Requirements

- Signatures of ALL Property Owners

- Approval From Water, Sewer, & Utilities

- Approval From Local Government

- Signature of Licensed Surveyor

Failure to Follow Requirements Voids the Plat

- Affects Land Sales

- Failure to Record May Void the Plat

Subdivisions

MINOR SUBDIVISION:

Ten Lots or Less

Does not Require a Plat

Approval is Required

DIVISION OF AGRICULTURAL LAND:

Plat Not Required

Land Must Remain Agricultural

Subdivisions

Vacation or Amendment:

Any Owner May Request

Other Owners Notified

Utility Owners Notified

Granted if Good Cause

Additional Considerations if Street is Vacated

VESTED RIGHTS

HE WHO RESTS LESS, VESTS BEST



Vested Rights

Substantive review under ordinances in place when an application is submitted

Utah Code § 10-9a-509(1)

Vested Rights

Applicant entitled to approval if development meets the zoning requirements in place on the date that complete application is submitted

Utah Code § 10-9a-509(1)

Vested Rights

Application is “complete” when it has all information needed for review, and all fees have been paid

Applicant may request determination that application is complete within 30 days

Vested Rights

Two Exceptions:

1. Compelling public interest
2. Pending ordinance change

EXACTIONS & IMPACT FEES

EXACT NO MORE THAN THAT WHICH IS APPOINTED YOU

Exactions

EXACTION:

A government-mandated contribution imposed as a condition of development approval

Includes: Property
 Construction of Improvements
 Cash

Exactions

Rough Proportionality Analysis:

1. Impact on Public Infrastructure
2. “Essential Link” to a government purpose
3. Exaction must be “Roughly Proportionate” to the impact

Exactions

Roughly Proportionate in Nature and Extent

1. Proportionate in Nature: Exaction must address impact
2. Proportionate in Extent: Cost of exaction must be roughly equal to public expense to address impact

Impact Fees

IMPACT FEES:

One-time charges on development to fund needed infrastructure

Authorized by Impact Fees Act,: Title 11, Chapter 36a

Impact Fees

Impact Fees may only be used to fund Public Facilities:

1. Water Supply
2. Sewer
3. Stormwater/Flood Control
4. Municipal Power
5. Roads
6. Parks
7. Public Safety (Police & Fire)
8. Environmental Mitigation

Fees must be used within 6 years

Impact Fees

Impact Fees may NOT be used for:

1. Facilities Not Listed in Impact Fees Act
2. Salaries
3. Maintenance
4. Curing Infrastructure Deficiencies

Impact Fees

Calculating Impact Fees:

1. Capital Facilities Plan – Establishes Level of Service
2. Impact Fee Analysis
 - Future Growth Estimate
 - Anticipated Costs to Provide Service
3. Fee is the Cost for Each New Unit

Impact Fees

Cost of Service:

Estimated Cost to Build Infrastructure

Actual Cost of Existing Infrastructure

Impact Fees

Adopting Impact Fees:

Specific Notice Requirements

Ordinance & Fee Schedule

CONDITIONAL USES

IF YOU HAVE THE CONDITIONS, YOU GET THE RESULT

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Conditional Uses

CONDITIONAL USE:

A use with unique impacts that requires “special attention”

Authorized by § 10-9a-507

Conditional Uses

Designating Conditional Uses:

Use Designated as “Conditional” in Zoning Ordinance
Standards to Guide Decisions Identified

Consideration of Conditional Use Permit:

Identify Negative Impacts of the Proposal
Propose Conditions to Address Impacts

Conditional Uses

Decisions Must be Based on Substantial Evidence

May Not be Based on “Public Clamor”

Permit May Only be Denied if Negative Impacts
Cannot be Mitigated

NONCONFORMING USES & STRUCTURES

THERE'S NOTHING A NONCONFORMIST HATES MORE THAN ANOTHER
NONCONFORMIST

Nonconforming Uses

NONCONFORMING USE:

A use that was allowed when established, but is now illegal because of ordinance changes

Nonconforming Uses May Continue Until Abandoned

Abandonment After One Year of Non-Use

Uses may be amortized (or phased out)

Uses still subject to safety regulations

Noncomplying Structures

NONCOMPLYING STRUCTURES:

Structure that met zoning regulations when built, but no longer complies with new regulations

Noncomplying Structures do not Need to be Modified

Voluntarily Demolished

Structure Becomes Unsafe

See Utah Code § 10-9a-511

VARIANCES

ONE SIZE DOES NOT FIT ALL

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Variations

VARIATION:

A modification to a zoning ordinance to allow for special conditions on a property

Variation is NOT an “Escape Clause”

Granted by an Appeal Authority

Variations

Variance Requirements:

1. Unreasonable Hardship
2. Special Circumstances on Property
3. Variance Needed to Enjoy Property Right
4. Public Interest & General Plan Not Affected
5. “Spirit” of the Zoning Ordinance Observed

Variances

Unreasonable Hardship:

- Due to Literal Enforcement of Ordinance
- Must be Associated with Property
- Unique to the Property Itself
- May not Economic or Self-Imposed

Special Circumstances

- Must Relate to the Hardship
- Deprive Property of Development Opportunity

Variations

No Variation For:

“Use” Variation

Hardship That is Economic or Self-Imposed

Relief From an Unwanted Requirement

Conditions May be Imposed to Mitigate Impacts

APPEALS & APPEAL AUTHORITIES

YOU CAN FIGHT CITY HALL



Appeals

LEGISLATIVE DECISIONS:

Create new law

Generally Applicable

Considers Policy

ADMINISTRATIVE DECISIONS:

Apply Existing Laws

Specific Application

No Policy Consideration

Appeals

LEGISLATIVE DECISIONS:

Appealed to District Court

Review is “Rational Basis”

Direct Votes on Legislative Acts:

Actions May be Voted on (Referendum)

New Laws Enacted (Initiative)

Appeal Authority

ADMINISTRATIVE DECISIONS:

Appealed to Appeal Authority

Administrative Process Must be Followed

After Administrative Process, Decision May be Appealed to District Court

Review is “Arbitrary & Capricious”

Record of Proceedings Must be Kept

**YOUR
FRIENDLY
NEIGHBORHOOD
OMBUDSMAN**

THANK YOU

The Office of the Property Rights Ombudsman



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