

# Land Use 101:

THE BASICS OF PLANNING, ZONING, AND LAND USE REGULATION

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## I. Objectives – Overview of:

- a. Land Use Authorities
- b. The General Plan & Zoning Ordinances
- c. Public Notice & Public Meetings
- d. Development Approvals and Conditions
- e. Subdivisions
- f. Vested Rights
- g. Exactions & Impact Fees
- h. Conditional Uses
- i. Nonconforming Uses & Structures
- j. Variances
- k. Appeals & Appeal Authorities

## II. Land Use Authorities – UTAH CODE § 10-9a-103(23)

- a. Public Body or Person Who Acts on Development Applications
- b. City Council/County Commission (Legislative Body)
  - i. Adopts general plan and approves amendments
  - ii. Adopts zoning ordinances and amendments to ordinances
  - iii. May act as Land Use Authority and act on development applications, as provided by ordinance
- c. Planning Commission – § 10-9a-301
  - i. Recommends adoption and amendments to general plan
  - ii. Recommends adoption and amendments to zoning ordinances
  - iii. May recommend action on development applications, as provided by ordinance
  - iv. May be designated as a Land Use Authority and act on development applications, as provided by ordinance
- d. Appeal Authority (Hearing Officer or Board of Adjustment) – § 10-9a-701
  - i. Considers variance applications
  - ii. May determine if a use qualifies for nonconforming status
  - iii. Hears appeals of administrative decisions
- e. Staff Members
  - i. Draft general plan, general plan amendments, and zoning ordinance changes
  - ii. Advise planning commission and legislative body on proposed changes

- iii. May be designated as a Land Use Authority and act on development applications, as provided by ordinance

### **III. The General Plan & Zoning Ordinances**

- a. General Plan required – UTAH CODE § 10-9a-401
  - i. Legislative action adopting guidelines for future development
  - ii. Serves as an advisory guide for growth and future land uses, including development of infrastructure to serve the community
  - iii. Not necessarily binding, but City may decide to follow guidelines of General Plan
- b. Zoning Ordinances – UTAH CODE § 10-9a-501
  - i. Legislative acts regulating the use and development of land
  - ii. Specific, binding requirements for land use and development
  - iii. All property is subject to zoning regulation, and property may be impacted by ordinance changes
  - iv. Zoning ordinances should be reasonably specific, so that any person would know what is and isn't allowed
- c. Planning Commission recommends changes to general plan and zoning ordinances to City Council
  - i. Decisions should be based on what is best for the City
    - 1. Decision does not necessarily need to be the “best” alternative
    - 2. It should be reasonably debatable that the action taken will benefit the general welfare of the community
  - ii. Commission may recommend amendments, or recommend that the ordinance not be adopted

### **IV. Public Notice & Public Meetings**

- a. Notice must be provided of actions related to zoning changes, ordinance amendments, subdivision amendments, etc. – UTAH CODE §§ 10-9a-201 to -212
  - i. The minimum requirements of the applicable statute must be satisfied
  - ii. Failure to provide notice may void the actions taken.
  - iii. Please see the attached summary for information, but consult the Utah Code for specific requirements
  - iv. Meeting agendas should explain the proposed actions with reasonable specificity, so that the public may know what will be discussed
- b. The Open and Public Meetings Act governs all public meetings and hearings – UTAH CODE §§ 54-4-101 to -305
  - i. Any meeting of a public body is a public meeting which must comply with the Act

- ii. A “public meeting” is a meeting of a public body to discuss action, but public comments are not taken
  - 1. A meeting cannot be “opened up” as a public hearing, because there are specific notice requirements for hearings
  - 2. Agendas of hearing and meetings should announce the items to be discussed
- iii. A “public hearing” is a meeting where members of the public may comment on a proposed action
- iv. Most public meeting should be recorded, and minutes taken.
  - 1. Pending minutes and recordings of public meetings should be made available to the public
  - 2. Approved minutes must be posted to the Utah Public Notice Website

## **V. Development Approvals & Conditions**

- a. Applications for land development approval are considered administrative actions, and are approved by Land Use Authorities
  - i. Subdivisions
  - ii. Planned Unit Developments (PUDs)
  - iii. Conditional uses
  - iv. Other applications (Variances, Nonconforming Uses)
- b. Decisions on development applications must be based on substantial evidence
  - i. Substantial evidence is the amount and quality of evidence that is enough to convince a reasonable person to support the decision
  - ii. Evidence must entered into the record of the approval process
  - iii. May not be based on emotional appeals, “public clamor” groundless objections, or personal feelings about the applicant
- c. Decisions on land use applications must be made within a reasonable time
  - i. After a reasonable time, an applicant may request that a final decision be made
  - ii. After the request is made, the land use authority has 45 days to make a final decision
- d. Approval may include reasonable conditions
  - i. Any conditions must be specifically expressed at the time of approval (or required by ordinance)
  - ii. After approval, conditions may not be added or modified (unless the applicant agrees), including changes to development standards

## **VI. Subdivisions– UTAH CODE §§ 10-9a-601 to -611**

- a. Zoning ordinances may govern approval of subdivisions (without an ordinance, approvals governed solely by state law)
- b. Subdivision regulation serves important public interests

- i. Facilitates land development and expedites property transfers
  - ii. Verifies that property boundaries are accurate
  - iii. Verifies that local land use ordinances are followed
  - iv. Verifies that utility services are available
- c. A Subdivision is ANY division of land into at least two parcels – UTAH CODE § 10-9a-103(52)
  - i. Includes plats, metes and bounds descriptions, inheritance (wills), etc.
  - ii. Exceptions:
    - 1. Division of agricultural land, to be combined to another parcel
    - 2. Adjustment of mutual boundaries
    - 3. Combining parcels
    - 4. When otherwise approved by a land use authority
- d. Subdivision Requirements – UTAH CODE § 10-9a-603
  - i. Accurate plat describing the parcels to be created
  - ii. A distinct name
  - iii. Identification of individual lots to be sold (or public areas)
  - iv. Location of public utility easements
  - v. If proposed plat complies with local ordinances, it should be approved.
    - 1. Requires approval from local water and sewer authorities
    - 2. Fire authorities may also be consulted
    - 3. Approval may be withheld until all taxes have been paid
  - vi. Prior to Recording Approved Plat
    - 1. Signatures of ALL property owners are required
    - 2. Certification of licensed surveyor
    - 3. Signatures from affected utilities
    - 4. Other required signatures
      - a. City Council/Mayor
      - b. Planning Commission
      - c. Legal Counsel
  - vii. If plat is not promptly recorded (within time required by ordinance) it may be voided (voidable)
    - 1. Plats recorded without all required signatures are void
    - 2. Land transfers based on a void plat are voidable
- e. “Minor” Subdivisions (10 lots or less) – UTAH CODE § 10-9a-605
  - i. May be approved without a plat (may use metes and bounds)
    - 1. If it meets zoning requirements
    - 2. No streets are dedicated
  - ii. Division of agricultural land may not require a plat
    - 1. Land must be agricultural, and will remain agricultural
    - 2. Comply with zoning requirements
  - iii. Metes and bounds description must be accompanied by certification from land use authority
- f. Amending or Vacating a Subdivision Plat – UTAH CODE § 10-9a-608

- i. Any owner of land within a subdivision may request that a plat be amended or vacated
- ii. If required, the land use authority shall conduct a public hearing on the proposal
  - 1. Owners within plat must be notified
  - 2. Utilities must also be notified
- iii. Approval of proposed amendment or vacation
  - 1. If proposal does not violate land use ordinances
  - 2. There is good cause for approval
- iv. Extra Consideration if Street is Being Vacated
- v. Amended plat (or notice of vacation) should be recorded after approval from land use authority

## **VII. Vested Rights – Utah Code § 10-9a-509**

- a. The Vested Rights Rule: An application that complies with the zoning regulations in place when the application was filed is entitled to consideration and approval according to the ordinances in place.
  - i. Subsequent ordinance changes may not be applied to the application
    - 1. Rights do not vest until the application complies with local ordinances
    - 2. An application is “complete” when it complies with local requirements, and all fees have been paid
      - a. After a reasonable time, an applicant may request a decision on whether the application is complete or not
      - b. After the request, a decision on whether the application is complete must be made within 30 days
        - i. If the application is not complete, the applicant should be told what additional information is needed
        - ii. If a decision is not made, the application is considered complete
  - ii. An application must be evaluated under the ordinances in place on the date of the application
- b. Two exceptions:
  - i. If there is a “compelling, countervailing” public interest that would be jeopardized if the application were approved
  - ii. There is an ordinance change pending when the application is submitted
    - 1. The change must affect the application
    - 2. A change is “pending” when it appears as an agenda item
    - 3. The changes must be implemented within six months

## VIII. Exactions & Impact Fees

- a. An Exaction is a government-mandated contribution of property imposed as a condition of development approval – UTAH CODE § 10-9a-508
  - i. May include:
    1. Dedication of land
    2. Construction of improvements
    3. Payment of cash instead of improvements
    4. Impact Fees
  - ii. Exactions are authorized, as long as they satisfy rough proportionality analysis
- b. Rough Proportionality Analysis
  - i. To begin, there must be an Impact on public services
    1. Impact refers to an increased need for public infrastructure
    2. The extent of the Exaction is measured by the impact
    3. Even a single home causes an impact
  - ii. First part of the analysis: An essential link between the Exaction and a valid government purpose
    1. The proposed exaction must be tied to promoting a legitimate public interest
    2. Without a link, the Exaction is invalid
  - iii. Second part: The exaction must be roughly proportional, both in nature and extent, to the impact caused by the development
    1. Roughly proportionate in *nature*
      - a. Means that the exaction must directly address the needs caused by development's impact
      - b. If the impact is the "problem," then the exaction is the "solution"
    2. Roughly proportionate in *extent*
      - a. This measures the burden of the exaction against the needs created by the impact
      - b. The cost of the exaction (to the developer) must be roughly equal to the public expense that would be needed to address the impact
  - iv. If the Exaction does not meet the rough proportionality test, it cannot be imposed
    1. Exaction could be modified, so that it satisfies the analysis
    2. Developer could pay a share, with the government paying the rest
  - v. Ultimately, a developer may not be asked to pay more than a fair share
- c. Impact Fees – UTAH CODE §§ 11-36a-101 to -705
  - i. Impact Fees are one-time charges on new development, to help fund public infrastructure needed because of the development
  - ii. Impact Fees are a type of exaction
  - iii. Impact fees may be used for:

1. Funding for new public infrastructure (physical facilities only)
  - a. Water Rights and Facilities
  - b. Sewer Facilities
  - c. Stormwater & Flood Control Facilities
  - d. Municipal Power Facilities
  - e. Roads
  - f. Parks
  - g. Public Safety Facilities
  - h. Environmental Mitigation
2. Partial payment for existing infrastructure
- iv. Impact fees may NOT be used for:
  1. Funding for facilities not listed in § 11-36-102(16)
  2. Salaries and regular costs to maintain infrastructure
  3. Funding to “cure” infrastructure deficiencies
- v. Fees may only be based on *actual* infrastructure costs only
  1. Reimbursement for existing facilities must be based on the actual cost, not replacement cost
  2. Funding for new facilities must be based on projected cost
- vi. Impact fees must be adopted following the procedures of the Act.
  1. Specific notice requirements
  2. Fees must be justified by studies and factual information
    - a. Capital Facilities Plan – Defines Level of Service
    - b. Impact Fee Analysis
      - i. Estimates Growth in Near Future
      - ii. Anticipates Costs of Needed Facilities
      - iii. Fee is the Cost Divided by the Number of New Units (Cost per Unit)
- vii. Fees must be spent (or committed) within 6 years of collection, or else they must be refunded, with interest § 11-36a-603

## **IX. Conditional Uses – UTAH CODE § 10-9a-507**

- a. Uses with unique impacts, that need “special attention”
  - i. Because of the type of use
  - ii. Or, because of the location
- b. Conditional uses are designated in a zoning ordinance
- c. Standards must also be adopted to guide decisions on conditional uses
  - i. Standards set the parameters of conditions, and provide the measure of success
  - ii. Ordinance may refer to standards in another ordinance section, or to “outside” documents (such as building standards)
    1. Standards should be objective and measurable
    2. All that is required is that there be some objective guideline, but the more detailed, the better
  - iii. Conditional use permits may be granted, usually by a Planning Commission

1. Review should include identification of specific detrimental impacts attributed to the proposed use
2. Conditions may be imposed to mitigate the impacts
3. Decisions to grant (or deny) permits may not be based on “public clamor,” but must be based on objective facts
- iv. Application may be denied only if the negative impacts cannot be mitigated with reasonable conditions

## **X. Nonconforming Uses & Structures – UTAH CODE § 10-9a-511**

- a. A “Nonconforming Use” is a land use that was allowed when it was first established, but is prohibited because of change in zoning ordinances
  - i. Use may be continued, as long as it is not abandoned
  - ii. Abandonment is usually non-use for at least one year
  - iii. Uses may be amortized, by allowing sufficient time for the owner to recover any investment in the property
  - iv. Uses are still subject to health and safety regulations
- b. A “Noncomplying Structure” is a structure that complied with zoning regulations when built, but no longer complies because of changes to the ordinance
  - i. A noncomplying structure may be allowed to stand, unless voluntarily demolished
  - ii. If structure becomes unsafe, it may be demolished (or repaired)
  - iii. Structures are generally subject to regulation, but there may be some exceptions, particularly if the building is used as a residential rental property (See Utah Code § 10-9a-511(6))

## **XI. Variances – UTAH CODE § 10-9a-702**

- a. A Variance is a means to modify zoning requirements to allow for special circumstances on properties
- b. Variance may be granted by the local Appeal Authority
  - i. May be a hearing officer or a Board of Adjustment
  - ii. Neither the Legislative Body nor the Planning Commission may grant a variance, or review a decision on a variance
- c. Variances may only be granted when all five statutory criteria are in favor
  - i. Literal enforcement creates unreasonable hardship
    1. Hardship must be associated with property
    2. Peculiar to the property itself
  - ii. Special circumstances unique to property
    1. Circumstances must relate to the hardship
    2. Deprives property of development opportunities
  - iii. Variance necessary to enjoy a substantial property right
  - iv. General plan and the Public Interest are not substantially affected
  - v. “Spirit” of the zoning ordinance followed
- d. A Variance is not an “escape clause” from the zoning ordinance



- i. May not be used if hardship is economic or self-imposed
- ii. May not be used to grant a use that is prohibited

## **XII. Appeals and Appeal Authorities – Utah Code § 10-9a-701 to -708**

- a. Legislative vs. Administrative Decisions
  - i. Legislative:
    - 1. Creates New Law
    - 2. Includes Consideration of Policy Options
    - 3. Generally Applicable
    - 4. Appealed to District Court
      - a. Decision will be upheld if there is any rational basis that the action will promote the Public Welfare
      - b. Courts are very deferential to Legislative Decisions
    - 5. Legislative Decisions subject to Voter Initiative and Referenda
  - ii. Administrative:
    - 1. Applies Existing Law
    - 2. Does Not Involve Policy Consideration
    - 3. Specific to a Single Application
    - 4. Appeals to Appeal Authority
    - 5. Administrative Decisions are Not Subjects for Public Votes
- b. Each city and county should appoint an Appeal Authority
  - i. May appoint more than one, each with specific jurisdiction
  - ii. May be a Board of Adjustment or a Hearing Officer
  - iii. Appeal Authority hears administrative appeals from land use decisions, as provided by ordinance
    - 1. Conditional use permits
    - 2. Ordinance interpretation appeals
    - 3. Other administrative decisions
    - 4. Appeal Authority decision may not be overruled by legislative body
  - iv. Appeal authority decisions may be appealed to District Court – UTAH CODE § 10-9a-801 to -803
    - 1. Administrative process must be followed
    - 2. Review is based on the record made by the appeal authority
  - v. Court’s review is whether the decision is “arbitrary or capricious”
    - 1. Decision must be supported by substantial evidence
    - 2. Substantial evidence means enough evidence to convince a reasonable person

## **XIII. Your Friendly Neighborhood Ombudsman**

- a. The Office of the Property Rights Ombudsman has been established to advise local governments

- b. We are a neutral agency, not an advocate for property owners or government agencies
  - i. Advise
  - ii. Help facilitate resolution of disputes
  - iii. Educate
- c. Ombudsman Website: [www.propertyrights.utah.gov](http://www.propertyrights.utah.gov)
- d. Phone: 801-530-6391

ATTACHMENT

## Notice Requirements: LUDMA §§ 201 through 212

### Notice to Applicant – Section 202

Applicants for development approval must receive notice of each public meeting where the application is considered.

Applicants must receive a copy of any staff reports on the application at least 3 days before a meeting.

Applicants must receive notification of any final action on an application.

### Notice to Prepare General Plan or Amendment to General Plan – Section 203

\* For Counties of the First or Second Class (and cities located within such counties):

County of the First Class: Population over 700,000

County of the Second Class: Population between 125,000 and 700,000

Notice that a General Plan (or an amendment) is being prepared must be sent to:

Affected entities (city, county, special districts, etc.)

Automated Geographic Reference Center (state office)

A local association of governments (if one exists that includes the jurisdiction)

Posted on the Utah Public Notice Website

### Notice to Adopt General Plan or Amendment to General Plan – Section 204

Notice of Public **Hearing**. At least 10 days prior to the hearing:

Published in newspaper of general circulation

Posted on Utah Public Notice Website

Mailed to each affected entity (city, county, special districts, etc.)

Posted on locality's website (or posted in 3 public locations).

Notice of Public **Meeting**. At least 24 hours before the meeting:

Submitted to newspaper of general circulation

Posted on Utah Public Notice Website

Posted on locality's website (or posted in 3 public locations).

### Notice to Adopt or Amend Land Use Ordinance – Section 205

Notice of the first Public **Hearing**. At least 10 days prior to the hearing:

Published in newspaper of general circulation

Posted on Utah Public Notice Website

Mailed to each affected entity (city, county, special district, etc.)

Posted on locality's website (or posted in 3 public locations)

Mailed to each property owner directly affected by the proposal

If required, mailed to owners of adjoining properties directly affected by the proposal.

**Notice of Public Meeting.** At least 24 hours before the meeting:

Posted on locality's website (or posted in 3 public locations).

**Notice of Proposed Zone Change.** At least 10 days before a public hearing:

Mailed to each property owner within the area proposed for the zoning change

### **Notice to Third Parties – Section 206**

Cities and Counties may choose to notify third parties, including adjoining property owners.

If notice is mailed to a third party, it must also be mailed to adjoining property owners in other jurisdictions.

### **Notice of Amendment to Subdivision – Section 207**

At least 10 days before a public meeting:

Notice mailed to the record owner of property within subdivision (owner listed on assessor's records)

Sign posted on the property proposed for the amendment.

### **Notice of Road or Easement Vacation – Section 208**

At least 10 days before a public meeting:

Notice mailed to the owners of property access by the road

Mailed to each affected entity (city, county, special districts, etc.)

Published in newspaper of general circulation

Posted on Utah Public Notice Website

Sign posted on the road proposed for vacation.

### **Notice of Changes to Public Improvement in a Subdivision – Section 212**

If a person requests notice when there are proposed changes to a public improvement, it must be mailed at least 30 days prior to implementing the changes.

**Section 209** provides that if the adequacy notice is not challenged within 30 days, it is considered proper.

**Sections 210 – 211** Concern required notices from private universities or owners of canals TO local governments (not to the public)

**NOTE:** There are also specific notice requirements found in other land use statutes. For example, the Impact Fees Act requires notice to specific agencies and groups. These statutes should be consulted to determine the notice requirements