

Adventures in Land Use Dispute Resolution –
Utah’s Innovative Program
to Provide “Free” Legal Advice
to Local Government,
Neighbors, and Property Owners

ULUI Fall Conference – October 26, 2021

Office of the Property Rights Ombudsman – Timeline

1997 - Private Property Ombudsman.

Department of Natural Resources.

Eminent Domain and “Takings”.

Staff of One - Craig Call

1998 - Mandatory Arbitration as a Tool for Eminent Domain and Takings.

2004 - Eminent Domain Reform – Free Second Appraisals.

Name of Office Changed to Property Rights Ombudsman

2006 - Advisory Opinions.

Land Use and Eminent Domain Advisory Board.

Office Moves to Department of Commerce.

Staff of Four.

Office of the Property Rights Ombudsman – Timeline

2007 - Brent Bateman becomes Lead Attorney.

2009 - Selman v. Box Elder County – SCOU supports OPRO

2011 - Advisory Opinion #100

2015 - All Advisory Opinions searchable on website

2018 - Advisory Opinion #200

2018 - LUAU Training Videos published

2020 - Jordan Cullimore becomes Lead Attorney.

2021 - Jordan continually denies Brent's AOs

OPRO ADVISORY OPINIONS

Advisory Opinions

Can be requested at any time before a final decision is made by a local appeal authority or the deadline to appeal a decision to District Court.

OPRO ADVISORY OPINIONS

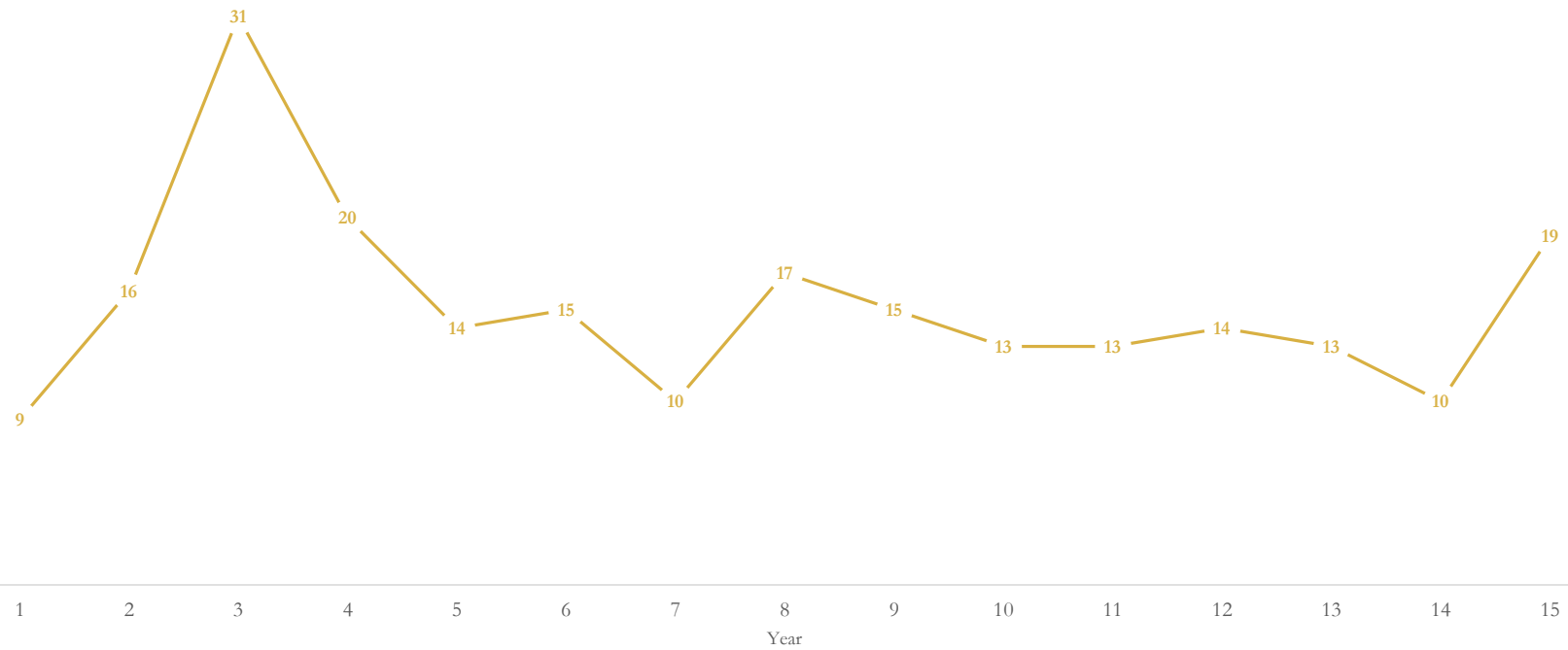
Advisory Opinions

Issues can involve:

- review of land use issues such as review of applications,
- non-conforming uses, non-complying structures,
- conditional use permits,
- exactions on development,
- vested rights,
- transferable development rights,
- plan review fees,
- impact fees, and
- condemnation – eminent domain

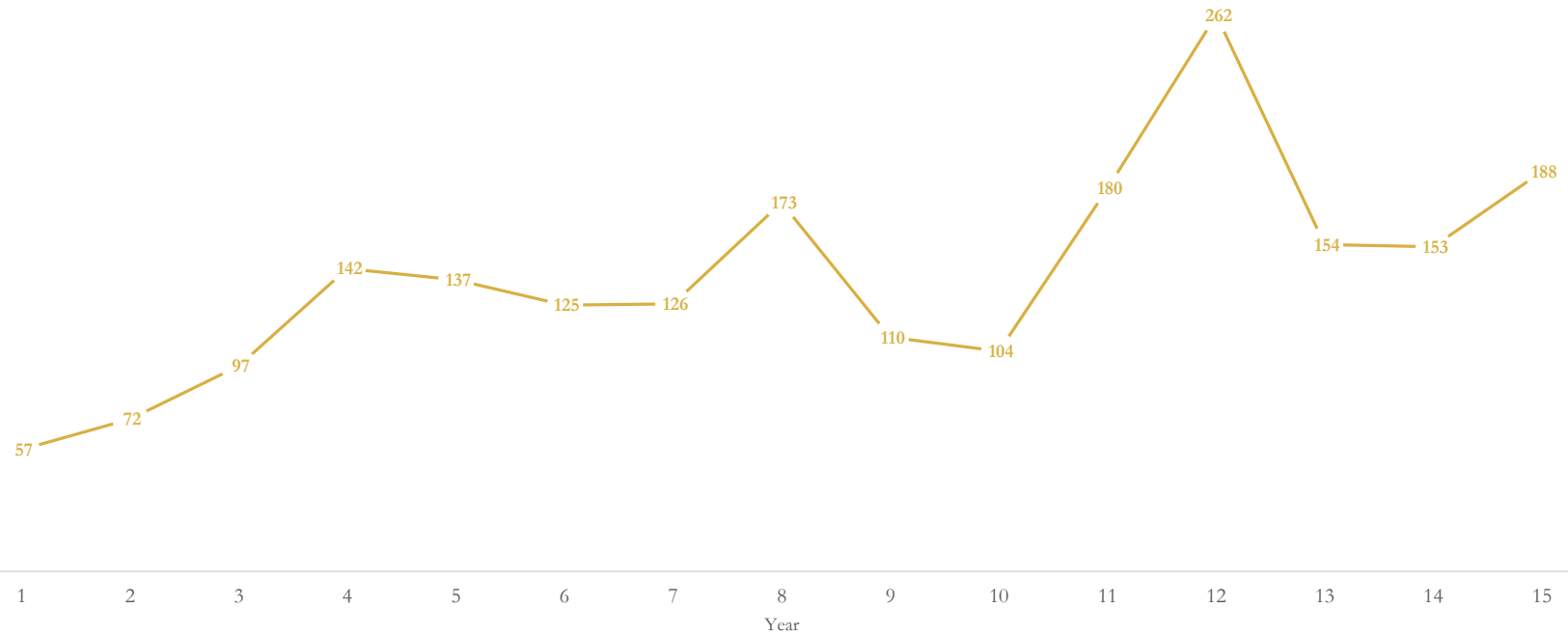
OPRO ADVISORY OPINIONS

NUMBER OF ADVISORY OPINIONS PUBLISHED



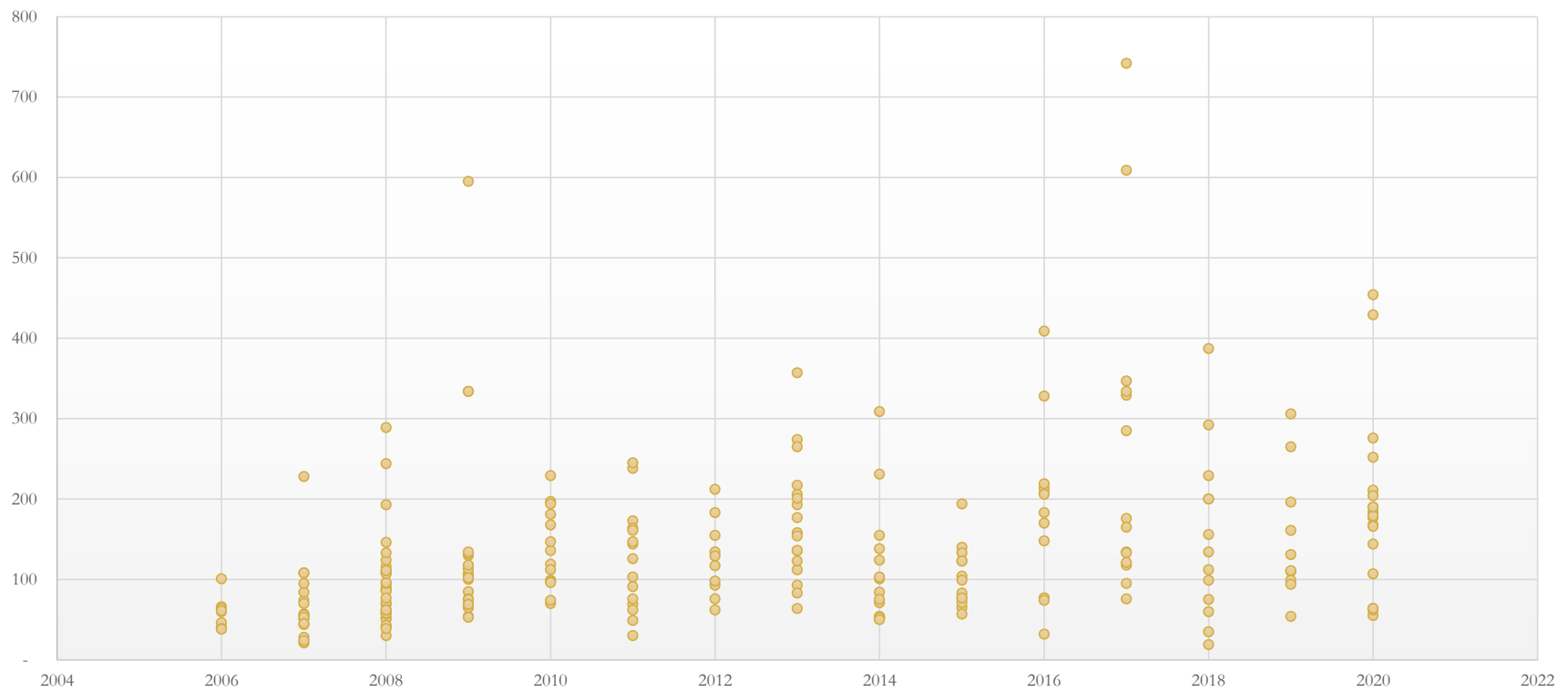
OPRO ADVISORY OPINIONS

AVERAGE DAYS FROM REQUEST TO PUBLICATION



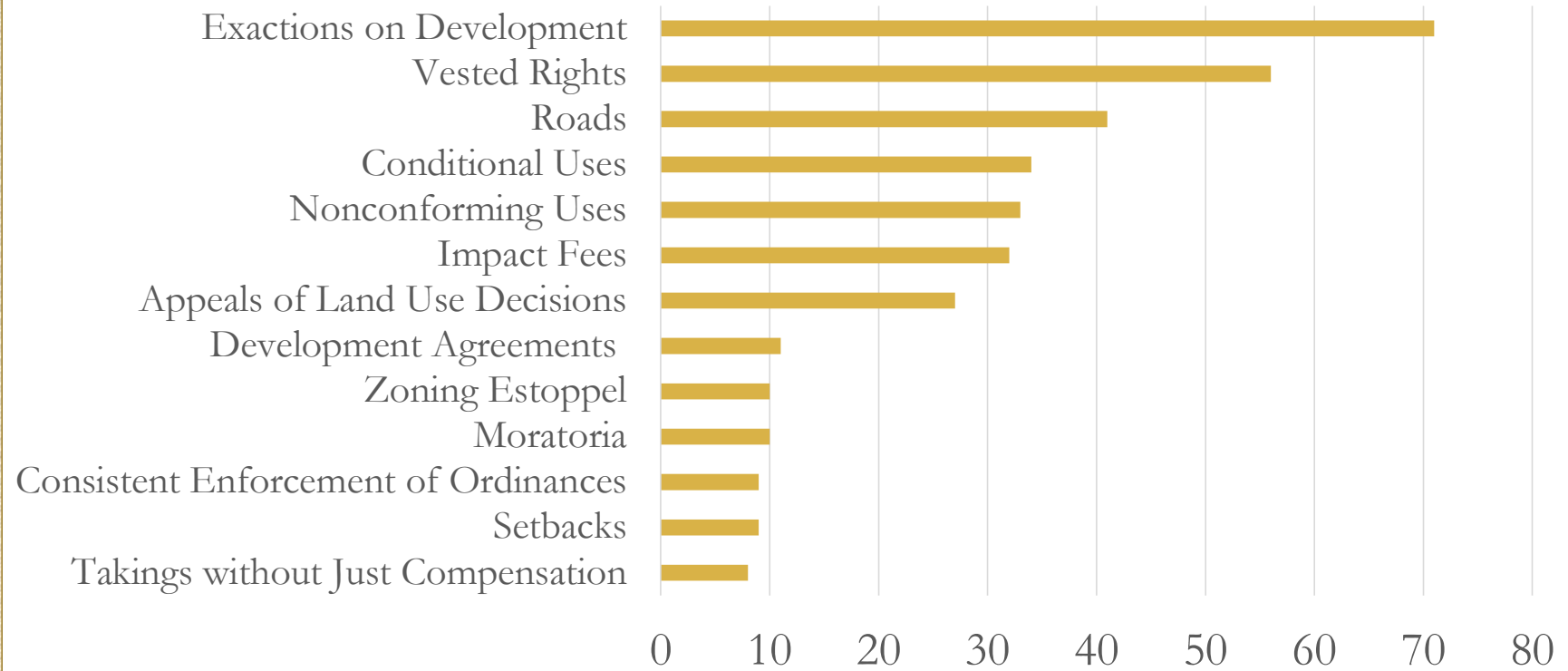
OPRO ADVISORY OPINIONS

Days Between Advisory Opinion Request and Publication



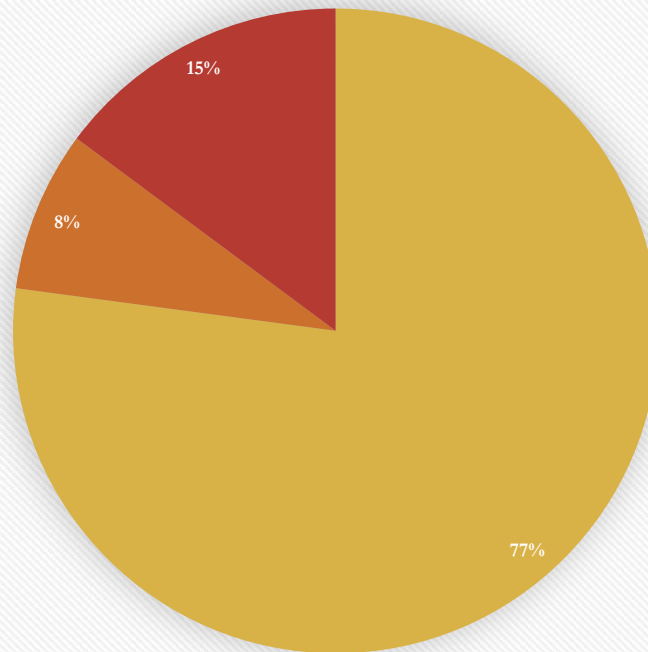
OPRO ADVISORY OPINIONS

Common Issues in Advisory Opinions



OPRO ADVISORY OPINIONS

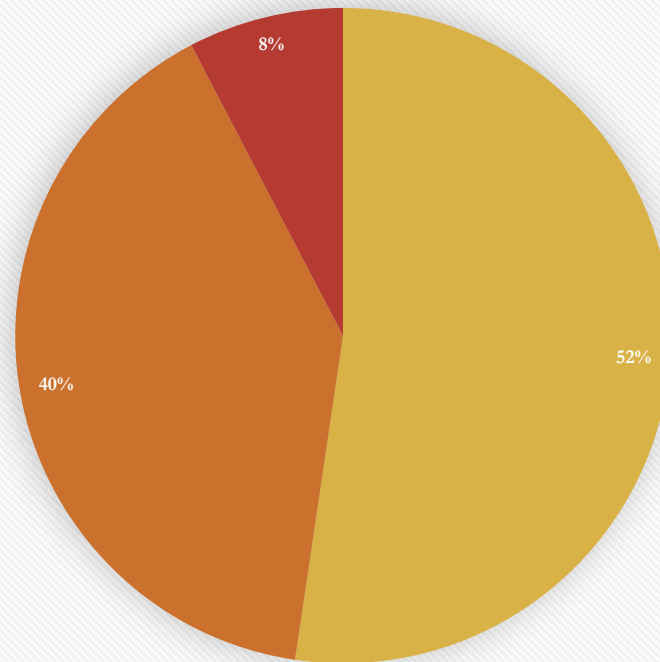
Who Requested an Advisory Opinion?



■ Prop Owner ■ Govt. Entity ■ Neighbor

OPRO ADVISORY OPINIONS

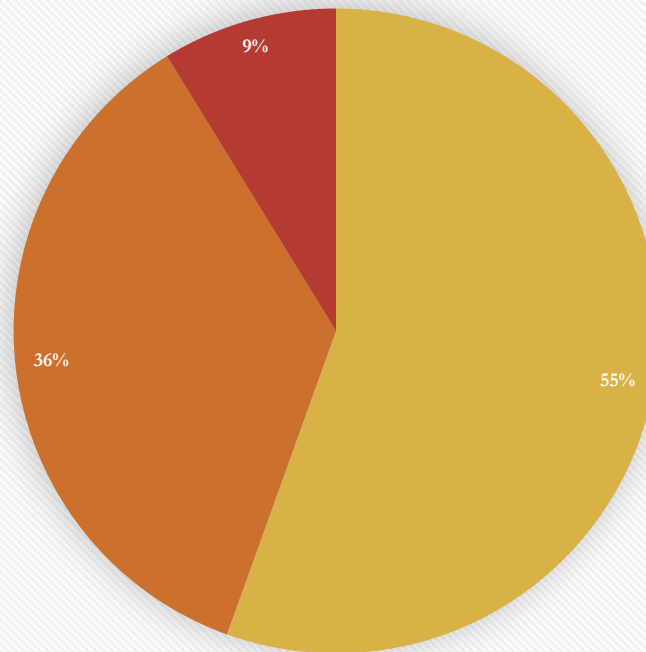
Did the Person Asking for the Opinion Prevail?



■ Yes ■ No ■ Yes and No

OPRO ADVISORY OPINIONS

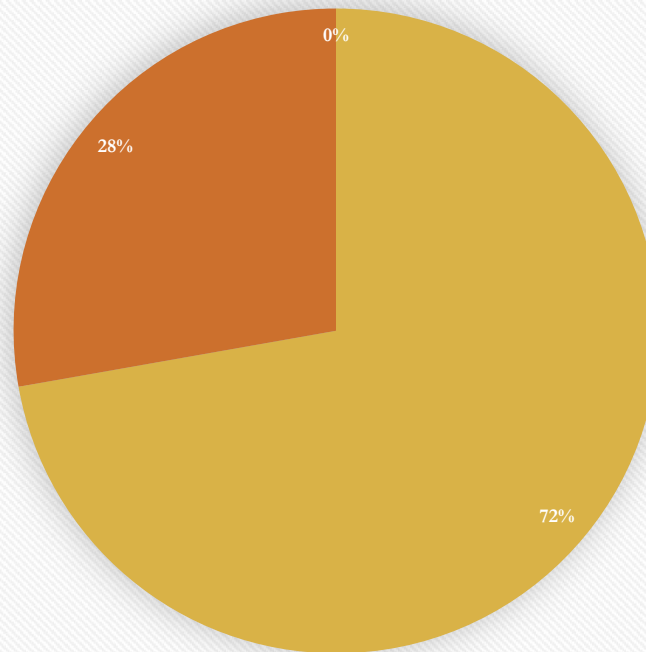
Did Property Owners Who Asked for an Opinion Prevail?



■ Yes ■ No ■ Yes and No

OPRO ADVISORY OPINIONS

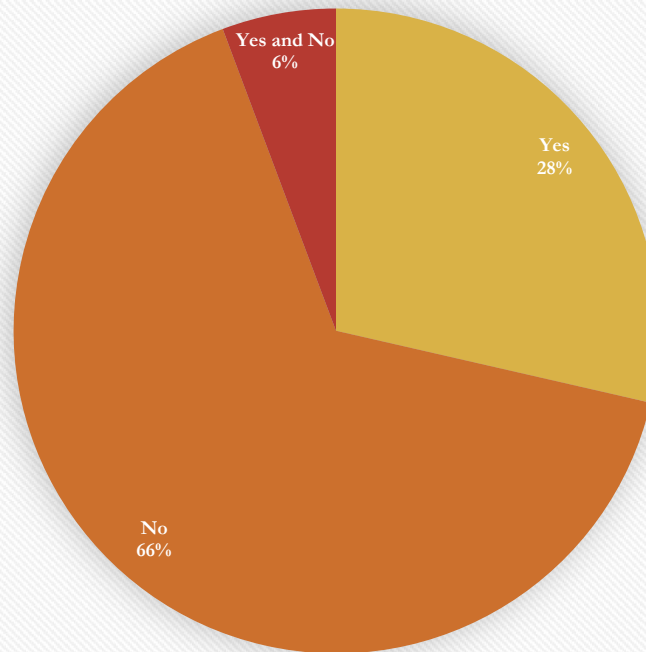
Did Government Entities Who Asked for an Opinion Prevail?



■ Yes ■ No ■ Yes and No

OPRO ADVISORY OPINIONS

Did Neighbors Who Asked for the Opinion Prevail?



■ Yes ■ No ■ Yes and No

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 OFFICE OF THE PROPERTY RIGHTS OMBUDSMAN
www.utahlanduse.org/land-use-library/

TOPIC	NO.	PROP. OWNER	GOVT ENTITY	THIRD PARTY	DATE	SUMMARY	PROPERTY TYPE
Conditional Use - commercial - substantial evidence - where approval was supported by substantial evidence it was valid.	34	Walker	Cottonwood Heights City	Brown	3/25/2008	Approval of CUP opposed by neighbors was valid and supported by substantial evidence in the record.	Commercial Development
Conditional Use - residential treatment facility - applicant is presumed to understand the local ordinances	62	Alliance Youth Services	Pleasant Grove City	None	2/11/2009	An appeal authority may remand a matter back to the land use authority. A new record can be created on remand. A person has not exhausted their administrative remedies until the appeal process is completed. Purchase of property is not sufficient reliance to establish estoppel. The applicant bears the duty to become aware of and understand the local ordinances.	Residential Treatment Facility
Conditional Use - cell tower - deadline - citizen must timely file an appeal.	74	KEG Company	Delta City	Western	9/6/2009	Since neighbor did not challenge a local decision approving a cell tower within the time allowed by ordinance, the approval stands whether it was correct or not. Footnote 4 - makes no difference if city personnel tells citizen nothing can be done.	Telecommunications Tower
Conditional Use - fertilizer storage - detrimental effects - if neighbor identifies detrimental effects they must be addressed and public has right to respond.	81	Bear River Valley Co-op	Corrine City	Neighborhood Non-profit Housing Corp	1/14/2010	Owner of neighboring subdivision has standing to appeal CUP approval. Application must meet requirements of ordinance. If neighbor identifies with substantial evidence the detrimental effects of proposed CUP they must be addressed. Public must have opportunity to respond to submittals.	Fertilizer Storage
Conditional Use - short term rental - Individual analysis of each application required.	92	Davis	Cottonwood Heights City	None	11/1/2010	If a conditional use is allowed in a zone it is determined that the use is a desirable use. The City must grant the use unless it establishes that detrimental effects cannot be mitigated. City's determination that too many STR's exist may constitute a detrimental effect but it must process the CUP applications and make individual determinations that detrimental effects cannot be mitigated.	Condo

Jordan Cullimore, Lead Attorney
Office of the Property Rights Ombudsman

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Dentons Durham Jones Pinegar

Craig Call, Executive Director
Utah Land Use Institute