

A landscape photograph of a golden field at sunset. The sun is low on the horizon, creating a bright sunburst effect with rays of light. The field is a mix of green and gold, with some tracks visible. In the background, there are rolling hills and a line of trees. The sky is a gradient of blue and orange.

# EVOLVING LAND USE LAW

An overview of recent cases, legislative amendments, and the evolving body of Utah Land Use law.

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## Recent topics and questions in Land Use

- How do you support land use decisions?
- Conditional use conundrum
- Appellate review, remand of decisions
- Which actions are subject to referendum or initiative
- Limits on materials and design standards
- Vesting with Plats
- Role of General Plans
- Other emerging problems
- Issues raised by audience

The slide features a decorative background of curved lines in shades of gray, some solid and some dashed, sweeping across the top and sides. On the left, there is a large orange shape resembling a speech bubble or a callout box. The text 'Supporting Decisions' is written in white inside this shape. To the right of the orange shape, there is a bulleted list of three items, each preceded by a small orange square.

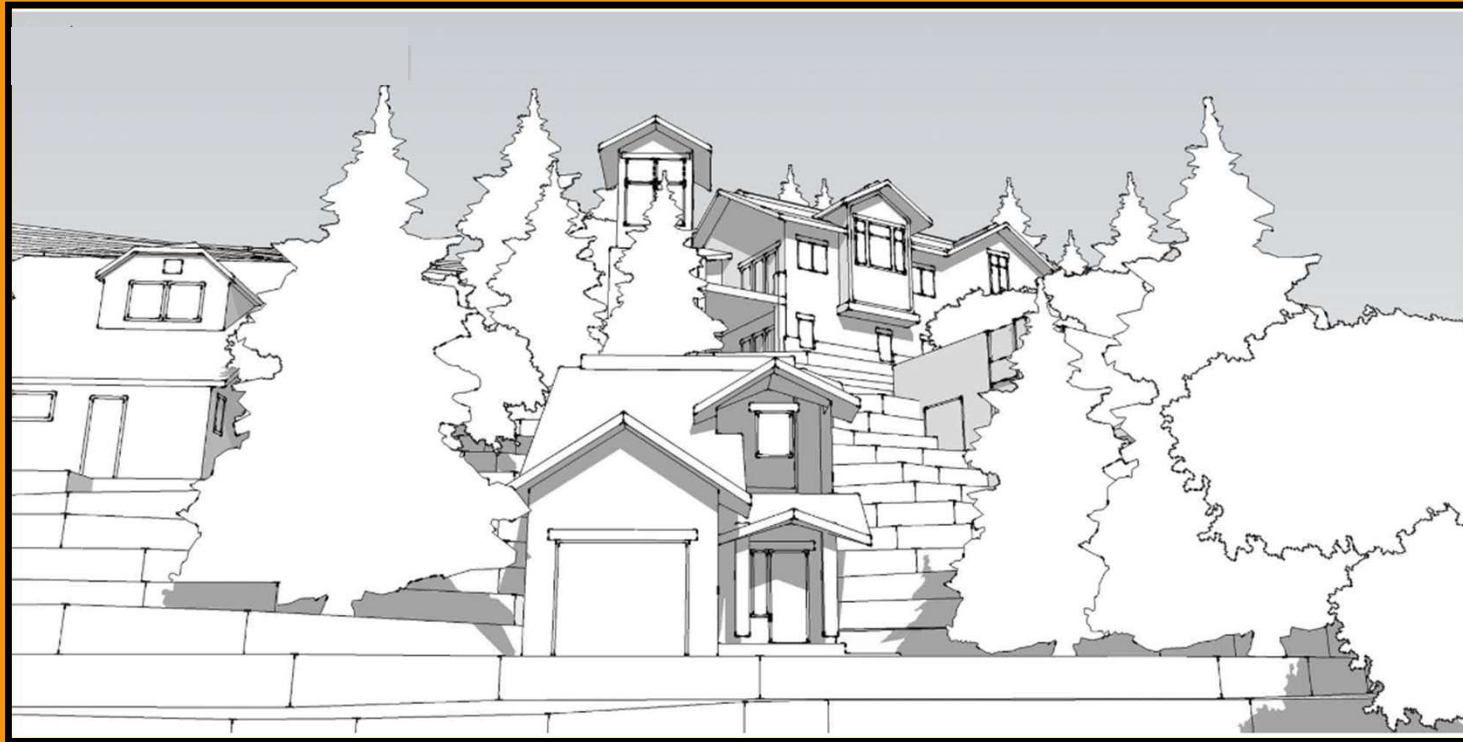
## Supporting Decisions

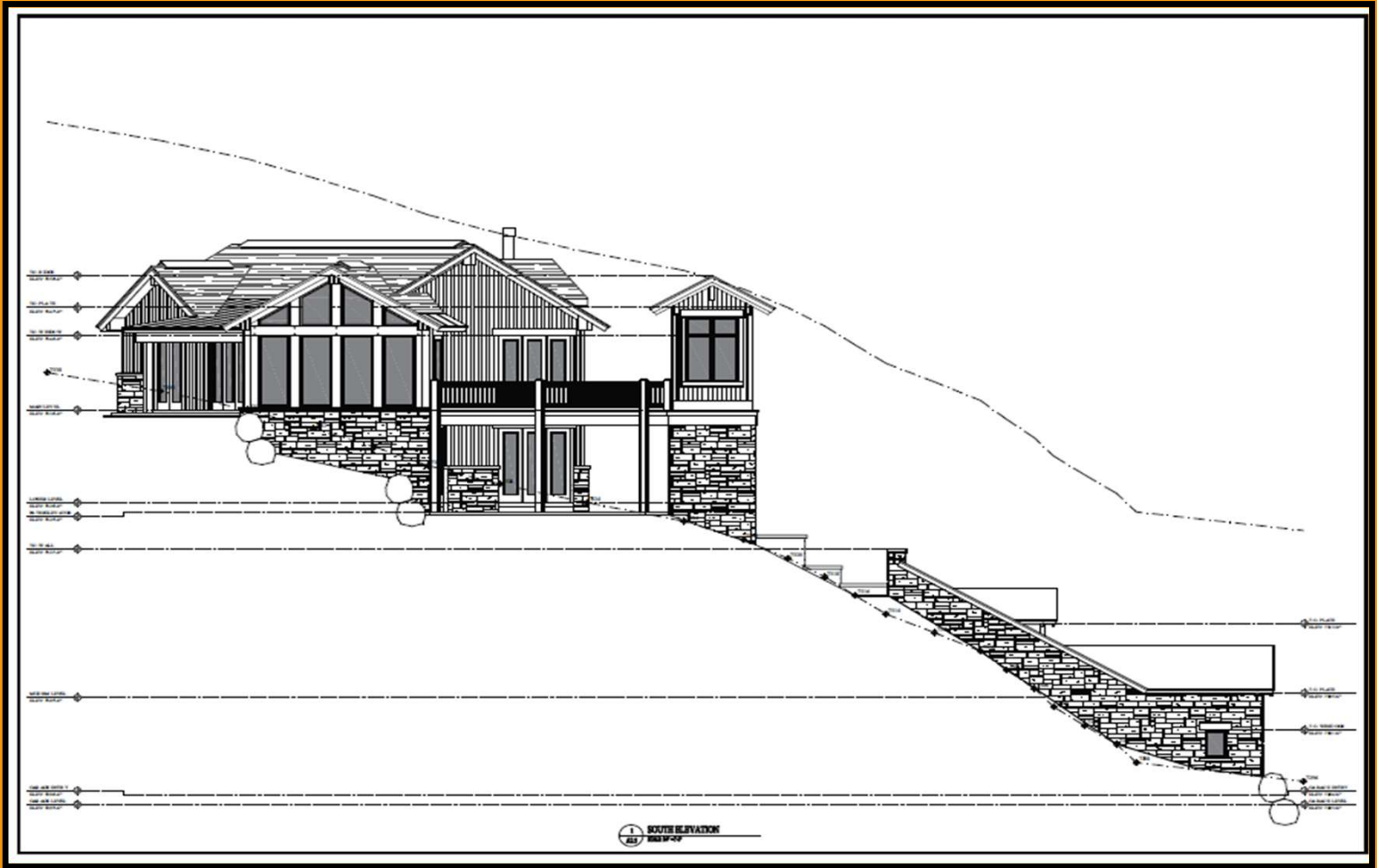
- **How do you support decisions?**
  - **Findings and conclusions**
  - **Support facts with substantial evidence**
  - **Confirm legality**

# Conditional Use Items

- What is a conditional use?
  - An allowed use.
  - Requires tailoring to specifically identified criteria.
  - It is not an opportunity to reconsider whether the use is “right” for the zoning district
  - May a conditional use be denied?
    - Jorgensen offers a good framework (Ombudsman Opinion 139)
    - City and applicant must both propose conditions
    - If not possibly, the may be denied
    - Springdale case

# An Example of a CUP





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## Appellate Review

- **Upon appellate review**
  - **Affirm**
  - **Revise**
  - **Remand**



# Referendum

- **Old rule:** Single property zoning decisions were not referable
- **New rule:** If at all legislative, referable.
- **Considerations:** There are several requirements that must be followed with exactness to challenge a project successfully.





# Initiative

## ■ **Not yet been tested:**

- There have been attempts to zone property by initiative.
- Caselaw is not developed in the land use context.

## ■ **Problematic:**

- Could create problems for cities/service providers.
- Very likely could create constitutional problems for cities and property owners.

# Aesthetic Controls

- **HB 98 (passed during special session as HB1003)**
  - **Affects resubmittal of plans**
  - **Defines application requirements for certain residential buildings**
  - **Prohibits most regulation of “building design elements.”**
    - Including colors, cladding, roofing details, window designs, layout, square footage minimums, rear yard landscaping, front yard fencing
    - Excluding historic districts, FEMA requirements, and development agreement provisions, old neighborhoods (pre-1950), and bonus density situations involving overlay zones or PUD.

# Accessory Dwelling Units

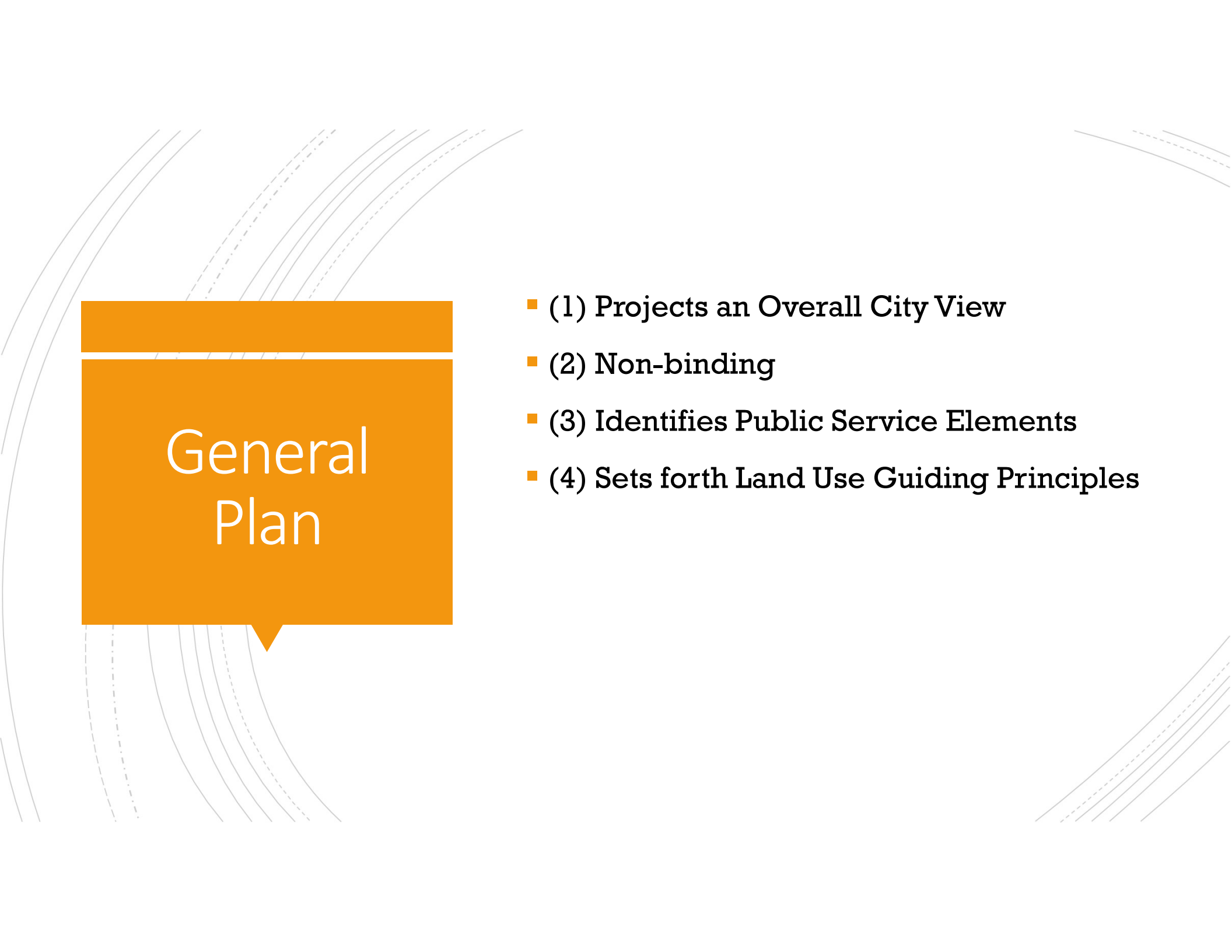
- **HB 82**
- **Allows internal accessory dwelling unit**
- **Revises building codes to allow for internal ADUs**
- **Prevents homeowner's association from preventing the rental of ADUs**
- **Question: Are separate ADUs next?**



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# Vesting

- **What vests at plat approval?**


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# General Plan

- (1) Projects an Overall City View
- (2) Non-binding
- (3) Identifies Public Service Elements
- (4) Sets forth Land Use Guiding Principles

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What can we  
expect in 2022  
on the Hill?



Other Emerging  
Issues (City and  
Landowner  
Perspectives)

- **Development Agreements post Moab, and enactment of Section 532 of LUDMA**
- **Development Standards**
- **Administrative Decisions by Legislative Bodies**
- **Speed in Decision-making/Land Use Application Processing**
- **Vesting**
- **ADU clarification – impact fees, no. of units**
- **Annexation – standing**
- **Short term rentals**