State Mandated Rules

CHAPTER 10

1. Future Streets and Highways – Corridor Preservation

Local governments have the right to plan ahead for transportation systems—whether roads, rail systems, or even airports. They also have the duty to do so. In today's climate of growth and expansion with no end in sight, it would be folly to do anything else. In anticipation of this need, the Utah Legislature worked with the Utah Department of Transportation, the Utah League of Cities and Towns, and others interested in the subject to enact the Utah Corridor Preservation Act (UCPA).[1] The goal of the UCPA is to properly balance the community's need to keep future transportation corridors open, with the right of property owners to use their land as they choose and is allowed by law.

In past years, both state and local agencies would designate a corridor for a future roadway and then attempt to ban all development in that corridor, whether the proposed new construction was a single home or a subdivision. The constitution prohibits imposing the disproportionate burdens of a public project on a single property owner without the payment of just compensation. Such action may be challenged as a violation of private property rights.

The UCPA has attempted to provide guidelines that are clear and specific. Communities following these guidelines will not likely have a problem with a private property "takings" claim.

The purpose of the UCPA is to preserve corridors, of course, but within two balancing restraints:

1. Corridor preservation is a public purpose, but
2. the acquisition of private property rights for transportation corridors should be done voluntarily and not through the power of condemnation.[2]

In order to preserve corridors, both state agencies and local governments may adopt official maps that show where future roads are planned. These government entities can then regulate land in the corridor to limit development and acquire property in those corridors for many years in advance of need.[3]

However, those same government entities must protect constitutional property rights. The agency or municipality must respond to requests from landowners who would prefer to sell the entire property instead of an easement for a road.

The real impact of the UCPA will be found when a property owner wishes to develop his or her property. The UCPA defines "development" as: (a) the subdividing of land; (b) the construction of improvements, expansions, or additions; or(c) any other action that will appreciably increase the value of and the future acquisition cost of land.[4]

If the property owner wishes to "develop" their land, and the local government will not allow it, then the property owner may request that all or part of the property be purchased at fair market value. If the state or local government entity involved refuses to purchase part or all of the property, as the property owner requests, then development must be allowed.[5]

This all sounds good to property owners, of course, but there are some severe practical limitations at work that all need to understand. First and foremost, a court would need to determine what actions by the municipality or agency would "limit or restrict development."

Courts are hesitant to say that a local government or agency has "limited or restricted development," until the property owner has applied for such and been turned down even after exhausting their administrative remedies.

In Chapter 15, we discuss how difficult exhausting one's administrative remedies can be. The courts are unlikely to start making governments shell out money to property owners until the community or state agency has had ample opportunity to avoid such a result.

Although it is far better to negotiate development and work out a solution, sometimes a lawsuit is the only way to resolve the violation of a clear property right. If the situation merits drawing a line in the sand, a property owner is entitled to press for

development approvals and get an official denial so he can sue and force the government to buy the land at fair market value.

Another dilemma may exist for a property owner who has a home or parcel of land in a planned corridor but wants to sell it, not develop it. They may not find many buyers who wish to take over the property not knowing when the bulldozers will finally come to build the new road.

The same dilemma would face a potential buyer when the future of the land is somewhat in doubt. Why buy a house slated for demolition when there are other homes or land available where the future would be more certain?

There may be relief in the UCPA, but only if the landowner is willing to force the city's hand by pressing a development application and demanding that the city purchase the land. Although the harsh result of pre-planning for roads and rails may be easily understood by those in the crosshairs of transportation projects, the prospects of not planning ahead also are unsavory. How would the property owner who improves his home or even buys a new home in a subdivision in the path of progress feel if government officials did not disclose that the house is slated to be scraped for a highway?

The UCPA attempts to strike a balance for property owners and planners alike. I do not believe it has eroded pre-existing rights—there was a specific effort to be sure that constitutional rights were protected and to weigh all factors fairly.[6]

2. Moderate Income Housing

This is an issue of growing importance to Utah land use decision-makers. Under state law, local governments are obligated to adopt a plan to encourage an adequate supply of moderate-income housing.[7] The Utah Department of Workforce Services is charged with (1) assisting counties and municipalities in meeting this duty, (2) monitoring community compliance with the requirements for housing, and (3) assisting with grants and expertise.[8]

Each city and county must adopt a plan.[9] Towns and cities with 5,000 residents or less are not required to adopt a plan with the same sophistication as for the larger communities.[10]

As a practical matter, these plans are developing new teeth. As the legislature beefs up the requirements for having a housing plan, it also increases the penalties for not having one. The folks on Capitol Hill can be very persuasive in a political climate when there is a need to advocate for work force housing and against exclusionary zoning that has the effect of artificially eliminating moderate income people who may wish to locate in the community.

There have been some lawsuits over moderate income housing plans. A series of actions filed against Bluffdale in Salt Lake County resulted in a settlement that allowed apartments to be built in a development called "The Bluffs" near the intersection of Redwood Road and Bangerter Highway.[11]

Imagine a similar case, where a developer might claim that a certain zoned density must be given him to accommodate mandated moderate-income housing. His claim would fizzle if sufficient acres of undeveloped land already so zoned exist within the community and its moderate-income housing plan is up to date. The local government would have met its duty to accommodate moderate income housing by providing the precise zone the developer demands, albeit not in the location the developer demands it. Any litigation over this would likely fail.

While it is yet to be seen if the duty to provide moderate income housing plans results in real and measurable improvement in modestly priced housing, our Utah political leadership on Capitol Hill seems energetically dedicated to addressing issues of housing affordability. It is certain that more state mandates on local government to facilitate moderate income housing will be considered at every general session of the legislature in coming years.

3. Accessory Dwelling Units.

With the growing pressure to solve Utah's shortage of moderate-income housing, the legislature has also required each community to allow a second dwelling unit in most homes. A city, county, or town must allow "ADUs" in no less than 75% of the areas zoned for residential use within its boundaries.[12]

The specific type of ADU that is mandated would be one that is located within the owner's primary residence and is:

- built within the footprint of the existing home,

- on a lot with more than 6,000 square feet,
- does not change the single-family character of the home's appearance, and
- rented for more than 30 days at a time.[13]

Regarding ADUs, local governments may (1) license the rental of ADU's[14], (2) prohibit a second utility meter, (3) require additional parking, (4) prohibit an ADU in a mobile home, and (5) file a notice of record at the county recorder's office that the property is subject to local regulations related to such an ADU.[15]

Since the state statute narrowly defines the type of ADU that must be allowed, others may be prohibited including separate dwelling units on the same lot which are not within the original footprint of the primary residence. Nightly rentals may still be banned in all residential zones, at the option of the city or county council or county commission.

4. Design Regulations

In 2021, the Utah Legislature prohibited counties and municipalities from imposing many design requirements on one-or-two-family homes in newer neighborhoods.[16] For both manufactured homes and any other type of one-or-two-family structure, the local government may not impose land use regulations that restrict:

1. exterior color,
2. type or style of exterior cladding material,
3. style, dimensions, or materials of a roof structure, roof pitch, or porch,
4. exterior nonstructural architectural ornamentation,
5. location, design, placement, or architectural styling of a window or door,
6. location, design, placement, or architectural styling of a garage door, not including a rear-loading garage door,
7. number or type of rooms,
8. interior layout of a room,
9. minimum square footage over 1,000 square feet, not including a garage,
10. rear yard landscaping requirements,

11. minimum building dimensions, or
12. a requirement to install front yard fencing.[17]

There are exceptions in the code for historic districts, flooding or wildland urban interface areas, areas zoned for residences which were substantially developed before 1950, where a property owner requests design restrictions in a development agreement, and other narrowly defined categories.[18]

Note that the state law does not regulate design guidelines that may be imposed by the covenants associated with a subdivision lot. Only local governments, and not a homeowners association, would be restricted by this part of the land use statute.

4. Manufactured Homes

For many years, the state code has prohibited the barring of manufactured housing from any zone where houses can be built.[19] This statute is widely ignored. Until 2021 the statute left a massive loophole by stating that a manufactured home must comply with local land use requirements.[20] Local governments used a few devices to limit manufactured homes, including:

1. minimum square footage for houses,
2. minimum roof slopes,
3. requirement for brick veneers, and
4. manipulation of builders' covenants when subdivisions are approved.

Except for the 1,000 square foot minimum size regulation, local governments no longer have some of the tools they once had to eliminate manufactured homes in most areas. Some "double-wide" homes would also meet the minimum square footage requirement and thus can be built in any residential zone unless the area is in an historic district or one of the other exceptions. The newly revised design restrictions may open the door for manufactured housing in most residential zones throughout the state.

Provisions requiring that a manufactured home comply with federal manufacturing codes are surely legal. Local codes related to construction standards for manufactured housing are preempted by federal law.[21]

One person's cabin is another person's palace, or so it may seem. Some dread a typical manufactured home that is more trailer than home. Others, in defense of lower cost housing point to permanent homes with landscaping and garages, and wonder why they should not be allowed wherever similar sized homes can be "stick built".

Local ordinances also can prohibit homes manufactured before federal codes applied in 1978. There have been horrific events in Utah where the lack of second exits and adequate safeguards on propane tanks or heating devices has caused tragic loss of life. These rules are legal and must be followed.

5. Ten-Year Vesting for Subdivisions

The 2021 legislature also amended the land use statutes to provide that, for a period of ten years, the construction of new single-family homes within a subdivision may proceed under the land use regulations as they read at the time that the plat was recorded.[22] This allows the developers to construct houses under the rules in place when they planned the development and prepared their original cost estimates. The new home is still subject to changes in the building, fire, health, and other similar codes.[23]

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1 Utah Code Ann. §72-5-401 et. seq.

2 Utah Code Ann. §72-5-402.

3 Utah Code Ann. §72-5-403(1)(c) limits the acquisition of property in the corridor for anticipated needs up to a maximum of 30 years in the future.

4 Utah Code Ann. §72-5-401(3).
5 Utah Code Ann. §72-5-405(3)(3)(b).
6 Utah Code Ann. §72-5-405(1) declares that all constitutional rights of property owners are to be protected in application of the Act.
7 Utah Code Ann. §§10-9a-401(3)(a), 10-9a-403(2)(a)(iii), 10-9a-401(3)(a), 403(2)(b), and 408 (municipalities) and §§17-27a-401(3)(a), 17-27a-403(2)(a)(iii), 403(2)(b), and 408 (counties).
8 Utah Code Ann. §10-9a-408 (municipalities) and §17-27a-408 (counties).
9 Utah Code Ann. §10-9a-403(2)(iii) (municipalities) and §17-27a-403(2)(iii) (counties).
10 Utah Code Ann. §10-9a-401(3)(b).
11 *Anderson Development v. Bluffdale City*, Civil No. 990401941, (Third Jud. Dist. Court of Salt Lake County, 1999, Judge Matthew B. Durrant, Presiding).
12 Utah Code Ann. §10-9a-530 (municipalities) and Utah Code Ann. §17-27a-526 (counties).
13 Utah Code Ann. §10-9a-530(4) (municipalities) and Utah Code Ann. §17-27a-526(4) (counties).
14 Utah Code Ann. §10-9a-530(4)(e) (municipalities) and Utah Code Ann. §17-27a-526 (4)(e) (counties) specifically allow municipalities to license ADRs. For licensure of rental dwellings in general, see Utah Code Ann. §10-8-85.5 (municipalities) and Utah Code Ann. §17-27a-526(4) (counties).
15 Utah Code Ann. §10-9a-530(4) and (6) (municipalities) and Utah Code Ann. §17-27a-526(4) and (6) (counties).
16 Utah Code Ann. §10-9a-534 (municipalities) and Utah Code Ann. §17-27a-530 (counties).
17 Id.
18 Utah Code Ann. §10-9a-534(3) (municipalities) and Utah Code Ann. §17-27a -530(3) (counties).
19 Utah Code Ann. §10-9a-514 (municipalities) and Utah Code Ann. §17-27a -513 (counties).
20 Code Ann. §10-9a-514(2) (municipalities) and Utah Code Ann. §17-27a -513(2) (counties).
21 The federal standards are found at 24 C.F.R. §§3280.1-3280.904. These regulations established a comprehensive building code and inspection process for the construction of manufactured homes nationwide. The code also forbids local imposition of local building codes on manufactured housing at 24 C.F.R. §5403(d). The federal law does not require that manufactured homes be allowed in any residential zone. That is a provision of state law.
22 Utah Code Ann. §10-9a-509(4) (municipalities) and §17-27a-508(4) (counties).
23 Utah Code Ann. §10-9a-509(4)(b) (municipalities) and §17-27a-508(4)(b) (counties).