



THE UTAH LAND USE INSTITUTE

Reviewing Land Use Applications

Utah Land Use Regulation Topical Series

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REVIEWING LAND USE APPLICATIONS

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Introduction

This summary provides a practical guide to ensuring that local land use ordinances are up to date with changing state statutes and appellate court decisions. It is supported by individual checklists for a variety of land use application types at the Land Use Library at www.utahlanduse.org. A video of a presentation by the author of this article is also available there.

Those reviewing this may also be interested to read other topical summaries of Utah land use law at the Land Use Library.

This summary includes changes made to the code by the 2023 General Session of the Utah State Legislature.

Land Use Applications – General Review Procedures

- I. Purpose:** The purpose of this document is to assist in establishing standard decision-making procedures that will enable the City, the applicant, and the public to reasonably review land use applications and participate in the local decision-making process in a timely and effective way, while maintaining compliance with applicable State and local laws and preserving the interests of the community.
- II. Applicability:** The procedure “type” applicable to each land use application should govern the review and decision-making process for that permit or approval, provided that certain land use applications may include certain additional standards or requirements beyond others of the same type. There are five types of review procedures as described below. Table 1, below, provides a key for determining the review procedures and the decision-making authority and criteria for particular approvals in accordance with the generally applicable minimal State standards and requirements. Note that certain approval types include an asterisk next to the Type of procedure contained in Table 1, below, indicating that such approvals include additional procedural

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² The Office of the Property Rights Ombudsman has provided funding for this update from the 1% surcharge on all building permits in the State of Utah. Appreciation is also expressed to the Division of Housing and Community Development of the Department of Workforce Services for funding the project which produces these topical summaries of land use regulations. The Utah Land Use Institute also expresses continuing appreciation for the ongoing funding provided by the S. J. and Jessie E. Quinney Foundation and the Dentons Law Firm.

requirements and decision-making standards—see the specific checklist for the particular approval required for an application. Type I, II, and III applications require an administrative (not legislative) review and decision, and do not require any liberal use of discretion (i.e., there are clear and objective standards) but require strict adherence to the applicable State and City laws and must be supported by substantial evidence.

- a. Type I Procedure (Administrative/Staff Review without Notice).** Type I applications are considered and determined are made by a City administrative staff member, or his or her designee, without the requirement of any public notice or input. A Type I application is to be reviewed and determined in accordance with applicable City standards and criteria set out in the City’s ordinances.
- b. Type II Procedure (Administrative Review with Notice).** Type II applications are considered and determined by either a City administrative body or an administrative member, or his or her designee, that is required to provide public notice by City ordinance or by the State’s Open Meetings Act (see Utah Code Ann. § 52-4-202(3). Although the State’s Land Use, Development, and Management Act (“LUDMA”) does not include any requirements for either public notices or conducting any public meetings applicable to Type II applications, Type II application reviews must abide by the notice/meeting requirements in the Open Meetings Act or applicable City ordinance.
- c. Type III Procedures (Quasi-Judicial Review).** Type III applications are considered and determined by an appeal authority, as such is designated by the City Council and set forth in applicable City ordinance. Although appeal authorities may be governed by the public notice/meeting requirements of the Open Meetings Act or other applicable City ordinance, the State’s LUDMA does require the appeal authority to act in a quasi-judicial manner, involving some discretion but still applying applicable standards and requirements, which includes the authority to conduct closed-meeting deliberations of a Type III application, even where an appeal authority would be a public body, otherwise subject to the Open Meetings Act,
- d. Type IV Procedure (Legislative Review with Class A Notice).** Type IV applications involve the enactment or revision of public policy that do not have an immediate and direct affect to specified real property (e.g., general plan amendments, vacation of public streets), which require a Class A public notice (see Utah Code Ann. § 63G-28-102(1)) for applicable public hearings and public meetings considering the application. Type IV applications are considered by the City Planning Commission in a public hearing, following which the Planning Commission makes a recommendation to the City Council. Following the required public hearing and consideration of the recommendation of the Planning Condition, the City Council makes the final decision on the Type IV application.
- e. Type V Procedure (Legislative Review with Class B Notice.** Type V applications involve the enactment or revision of public policy that have an immediate and direct affect to specified real property (e.g., adoption of regulations, zone changes, annexations), which require a Class B public notice (see Utah Code Ann. § 63G-28-102(2)) for public hearings and a Class A public notice for subsequent public meetings considering the application. Type V applications are also considered by the City Planning Commission in a public hearing, following which the Planning Commission makes a recommendation to the City Council.

Following the required public hearing and consideration of the recommendation of the Planning Commission, the City Council makes the final decision on the Type V application.

Table 1 – Summary of Approvals / Permits by Application Type		
Approvals*	Application Type	Applicable Regulations
Access to a Street	Type [I/II]	Standards of the road authority (City/County/UDOT)
Adjustment – Lot Line (part of subdivision plat)	Type II	Utah Code Ann. §§10-9a-523(2), 524, and 608
Adjustment – Parcel Boundary (not part of subdivision plat)	Type I/(review not required in some cases)	Utah Code Ann. §§10-9a-523(1), (3), and 524
Annexation	Type V	Utah Code Ann. §§10-9a-506, 10-2-403, and 63G-28-102(2)
Building Permit*	Type I*	Utah Code Ann. §§15A-a-104 et al.
Conditional Use Permit*	Type [I/II]*	Utah Code Ann. §10-9a-507
Development Agreement	Type [I/II]/V	Utah Code Ann. §§10-9a-532, 502 (where ordinance enactment/amendment required), and 63G-28-102(2)
General Plan – Amendment	Type IV	Utah Code Ann. §§10-9a-404, 204, 203, and 63-G-28-102(1)
Land Use Decision - Appeal	Type III	Utah Code Ann. §§10-9a-701 et al.
Land Use Ordinances, Rules or Code – Interpretation	Type I/II or III	Utah Code Ann. §§10-9a-701 et al.
Land Use Ordinances, Rules or Code – Amendment	Type V	Utah Code Ann. §§10-9a-205, 503, and 63G-28-102(2)
Legal Lot Determination	Type I	
Non-Conforming Use or Structure, Expansion of	Type [I/II]	Utah Code Ann. §10-9a-511
Street or Public Utility Easement Vacation or Amendment	Type IV	Utah Code Ann. §§10-9a-208, 609, and 609.5
Subdivision (2-10 lots)*	Type I*	Utah Code Ann. §10-9a-605 (if exemption from plat requirement not fully met, then review must be done as outline below)
Subdivision (11+ lots)* Preliminary Plat Final Plat	Type [I/II]* Type [I/II]*	Utah Code Ann. §10-9a-603 *Utah Code Ann. §§10-9a-604.1, 604.2, and 604.9 (applicable to certain subdivision plat applications effective 2/1/2024 for specified municipalities and 12/31/2024 all other municipalities)
Subdivision – Amendment*	Type II/V*	Utah Code Ann. §§10-9a-207 and 608
Variance*	Type III*	Utah Code Ann. §§10-9a-701 and 702
Zoning Code – Amendment*	Type V*	Utah Code Ann. §§10-9a-205(1), (2), (3)*, 503, and 63G-28-102(2)
Zoning Map – Amendment*	Type V*	Utah Code Ann. §§10-9a-205(1), (2), (4)*, 503, 505, and 63G-28-102(2)

TYPE I PROCEDURE

Administrative Review by Staff – No Notice

- I. Purpose:** Type I applications are reviewed and approved/denied the City administrative staff member designated as the land use authority for such application by City ordinance, or his or her designee, without the requirement of any public notice or public hearing. A Type I application is to be reviewed and the appropriateness for its approval determined in accordance with applicable State laws and applicable City standards and criteria set out in the City's ordinances.
- a. **Nature of Decision.** A Type I application decision must not be a discretionary decision (i.e., there are clear and objective standards that must be strictly adhered to) but should strictly adhere to the City's standards and criteria set forth in the applicable City ordinances. Each application must be approved if the application meets all of the following criteria (and must be rejected if the application fails to meet all of the mandatory criteria):
- i. The application is sufficiently complete and includes all of the relevant information, with sufficient detail for review and action, on the application form;
 - ii. The application includes all plans, specifications, or other documents required for such application;
 - iii. The application is submitted with the required fee; and
 - iv. The application complies with all applicable City ordinances, rules, standards, and codes in effect on the date that the complete application is submitted, and the full payment of the required fee is made.

II. Checklist -Type I Application Review/Approval:

- ☐ **Complete Application.** Confirm the application is complete in accordance with the applicable City ordinance, including determination that each of the following are true:
 - ☐ Application Form. The City required form is sufficiently complete, including all the relevant information, with sufficient detail for review and action.
 - ☐ Submittals. All plans, specifications, documents, and other exhibits required by the applicable City ordinance are included with the submittal of the application form.
 - ☐ Application Fee. Full payment of the total amount of the fee required for such application has been made.
- ☐ **Ordinance Review.** The land use authority confirms the appropriateness of the application and availability of the proposed land use decision, by confirming (i) the zoning district of the property in question is correctly identified; and (ii) the standards and requirements of the zoning code applicable to such zoning district permit the land use decision being requested.

- ☐ **Conduct Meeting.** Although no public meeting is required for the review of a Type I application, due to the land use authority being an individual administrative staff member and not a public body, subject to the State's Open Meetings Act, if required or permitted by applicable City ordinances, the land use authority is to conduct meetings with the applicant to permit the applicant to provide any additional information or evidence supporting the approval of the application.
- ☐ **Deliberation.** The land use authority considers the applicable City ordinances, including the zoning codes applicable to the zoning district of the property in question, the information and documentation provided by the applicant and all other applicable evidence to determine whether the application must be approved or denied.
- ☐ **Final Determination.** Based on its deliberations and review of the application, applicable State and City laws, and the evidence provided or otherwise available, the land use authority is to make one of the following determinations:
 - ☐ Approve. Approve the application, specifying in the record findings of fact relating to substantial evidence in the record and conclusions of law which indicate that the application and the requested land use decision are in compliance with applicable State laws and City ordinances.
 - ☐ Deny. Deny the application, specifying in the record findings of fact relating to substantial evidence in the record and conclusions of law which indicate that the application and the requested land use decision are not in compliance with applicable State laws and City ordinances, or, in the alternative, determining that the person bearing the burden to establish that the application complies with applicable State laws and City ordinances has failed to meet that burden and that the application must therefore be denied.
 - ☐ Allow Modifications. With the consent of the applicant, allow the applicant to modify the application so as to bring the application into compliance with all applicable State laws and City ordinances.
- ☐ **Notice of Determination.** The City is to provide the required notice of the decision on the application to the applicant.
- ☐ **Record of Review & Determination.** The City is to preserve the applicable/required documentation relating to the application review and determination, including the following:
 - ☐ Notices. Preserve the proof of notices to applicant and any other parties requiring notices regarding the application, meetings, and final decision on the application.
 - ☐ Meetings. Preserve the record of all meeting proceedings, including findings, orders, and, if available, a true and correct transcript of the proceedings, to document the law and evidence that was considered by the land use authority in making the decision on the application.

- ☐ **Basis of Decision.** Preserve in the record support for the decision on the application, specifying the application of the law and identifying the specific evidence the land use authority relied upon to determine whether the approval of the application was appropriate. The support for the decision must include substantial evidence, which must be contained in the record.

III. Type I Notes & Practice Tips:

- a. **Effective Date of Decision.** Unless conditions of approval specify otherwise, the approval of a Type I application becomes effective on the date when the land use authority issues a written decision, or as otherwise set forth in City ordinance.
- b. **Appeal of a Type I Decision.** The decision for a Type I application may be appealed to the appeal authority, as designated by City ordinance. The notice of appeal must be filed to the designated appeal authority within the timeframe specified in the applicable City ordinance; provided that this may not be less than 10 days following the issuance of the written decision and if the City ordinance does not include a specified timeframe for the appeal, the timeframe for appeal is on or before 10 days following the issuance of the written decision.
- c. **Accompanying Applications.** If a Type I application is accompanied by or otherwise required additional applications/petitions (e.g., amendments to the zoning designation applicable to the party in question), the Type I application and the accompanying application must be considered separately and the review and determination of each application must comply with the respective standards and requirements applicable to each (e.g., a subdivision plat application falling under a Type I application should follow the requirements outlined in this section and a separate petition to amend the zoning map should follow the requirements and checklists for a Type V application review).
- d. **Legality of Decision.** A decision on a Type I application must receive substantial deference in the event of a judicial review seeking to invalidate the decision. The district court must presume that the decision was legally proper and correct unless the decision is deemed (i) *arbitrary and capricious*, or (ii) in violation of the applicable City, State, or federal law. The decision *must be deemed arbitrary and capricious* if the decision is not properly supported by “substantial evidence” *in the record*. This would be the case even if the land use authority did in fact properly rely on substantial evidence in making its decision but failed to include the substantial evidence in the record.
 - i. **Substantial Evidence.** Substantial evidence requires that the evidence is both (i) relevant and appropriately applied to the applicable City ordinance or State law in question, and (ii) credible, being both objective and independent. Substantial evidence does not include the opinions of the average person, whether as member of the appeal authority or as a citizen. The only opinions that may be substantial evidence are professional opinions of planners, real estate appraisers, engineers or other experts, that are made in their field of expertise that are appropriately applicable, relevant, and credible in their support of the decision being made.
 - ii. **Compliance with City Ordinances.** Generally speaking, if all required notices are properly given, and the Type I application complies with all standards and requirements set out in the applicable City ordinances, including the completion of the application form, inclusion

of all other required information and documentation, and the full payment of applicable fees, then the land use authority must approve the Type I application. The City ordinances applicable to the Type I application, which must be complied with or those are in effect on the date (i) the complete application is submitted by the applicant, and (ii) full payment of applicable fees are made by the applicant. The application may not be denied for noncompliance with ordinances which were enacted or amended in a manner that would prohibit approval of the application after the date on which the complete application has been submitted and the full payment of any required fees have been made, excepting only in the rare cases set forth in Utah Code Ann. §§10-9a-509(1)(a)(ii)(A) and (B).

TYPE II PROCEDURE

Administrative Review by a Public Body – Notice Required

- I. **Purpose:** Type II applications are reviewed and approved/denied the City administrative staff member or public body (e.g., the Planning Commission or City Council) designated as the land use authority for such application by City ordinance, or his or her designee, with the requirement of public notice and a public meeting or public hearing to consider the application. A Type II application is to be reviewed and the appropriateness for its approval determined in accordance with applicable State laws and applicable City standards and criteria set out in the City's ordinances.
- a. **Nature of Decision.** A Type II application decision must not be a discretionary decision (i.e., there are clear and objective standards that must be strictly adhered to) but should strictly adhere to the City's standards and criteria set forth in the applicable City ordinances. Each application must be approved if the application meets all of the following criteria (and must be rejected if the application fails to meet all of the mandatory criteria):
- i. The application is sufficiently complete and includes all of the relevant information, with sufficient detail for review and action, on the application form;
 - ii. The application includes all plans, specifications, or other documents required for such application;
 - iii. The application is submitted with the required fee; and
 - iv. The application complies with all applicable City ordinances, rules, standards, and codes in effect on the date that the complete application is submitted, and the full payment of the required fee is made.

II. Checklist - Type II Application Review/Approval:

- ☐ **Complete Application.** Confirm the application is complete in accordance with the applicable City ordinance, including determination that each of the following are true:
 - ☐ **Application Form.** The City required form is sufficiently complete, including all the relevant information, with sufficient detail for review and action.
 - ☐ **Submittals.** All plans, specifications, documents, and other exhibits required by the applicable City ordinance are included with the submittal of the application form.
 - ☐ **Application Fee.** Full payment of the total amount of the fee required for such application has been made.
- ☐ **Pre-Meeting Tasks.**
 - ☐ **Agenda Scheduling.** Place the item on the agenda for the land use authority.
 - ☐ **Notices for Public Meeting.** Provide the required notice of the required public meeting and any additional public meetings or public hearings to consider the application.
 - ☐ **Applicant Notice.** Provide notice to the applicant no later than three (3) days prior to such public meeting, with the following:

- ☐ The date, time, and place of the public meeting to consider the application; **and**
- ☐ A copy of each staff report regarding the applicant and the pending application before the public meeting.
- ☐ **Public Notice.** Publish notice of the *agenda, date, time, and place* of the public hearing no less than twenty-four (24) prior to such public meeting, in the following manner:
 - ☐ Posting written notice in, on, or near (i) the anchor location for the meeting, or (ii) the structure or other areas where the public meeting is to be held;
 - ☐ The City's official website; **and**
 - ☐ Posting written notice on the Utah Public Notice Website (www.utah.gov/pmn/).
- ☐ **Ordinance Review.** The land use authority confirms the appropriateness of the application and availability of the proposed land use decision, by confirming (i) the zoning district of the property in question is correctly identified; and (ii) the standards and requirements of the zoning code applicable to such zoning district permit the land use decision being requested.
- ☐ **Conduct Public Meeting.** Conduct at least the required public meeting and any additional meetings or public hearings required by applicable City ordinance to consider the application in accordance with the applicable City and State standards and requirements for the conduct and proceedings for such meetings.
- ☐ **Deliberation.** The land use authority considers the applicable City ordinances, including the zoning codes applicable to the zoning district of the property in question, the information and documentation provided by the applicant and all other applicable evidence to determine whether the application must be approved or denied.
- ☐ **Final Determination.** Based on its deliberations and review of the application, applicable State and City laws, and the evidence provided or otherwise available, the land use authority is to make one of the following determinations:
 - ☐ **Approve.** Approve the application, specifying in the record findings of fact relating to substantial evidence in the record and conclusions of law which indicate that the application and the requested land use decision are in compliance with applicable State laws and City ordinances.
 - ☐ **Deny.** Deny the application, specifying in the record findings of fact relating to substantial evidence in the record and conclusions of law which indicate that the application and the requested land use decision are not in compliance with applicable State laws and City ordinances, or, in the alternative, determining that the person bearing the burden to establish that the application complies with applicable State laws and City ordinances has failed to meet that burden and that the application must therefore be denied.

- ☐ **Allow Modifications.** With the consent of the applicant, allow the applicant to modify the application so as to bring the application into compliance with all applicable State laws and City ordinances.
- ☐ **Notice of Determination.** The City is to provide the required notice of the decision on the application to the applicant.
- ☐ **Record of Review & Determination.** The City is to preserve the applicable/required documentation relating to the application review and determination, including the following:
 - ☐ **Notices.** Preserve the proof of notices to applicant and any other parties requiring notices regarding the application, the public meeting, other meetings, and final decision on the application.
 - ☐ **Meetings.** Preserve the record of the public meeting proceedings, including minutes, findings, orders, and, if available, a true and correct transcript of the proceedings, to document the law and evidence that was considered by the land use authority in making the decision on the application.
 - ☐ **Basis of Decision.** Preserve in the record support for the decision on the application, specifying the application of the law and identifying the specific evidence the land use authority relied upon to determine whether the approval of the application was appropriate. The support for the decision must include substantial evidence, which must be contained in the record.

III. Type II Notes & Practice Tips:

- a. **Effective Date of Decision.** Unless conditions of approval specify otherwise, the approval of a Type II application becomes effective on the date when the land use authority issues a written decision, or as otherwise set forth in City ordinance.
- b. **Appeal of a Type I Decision.** The decision for a Type II application may be appealed to the appeal authority, as designated by City ordinance. The notice of appeal must be filed to the designated appeal authority within the timeframe specified in the applicable City ordinance; provided that this may not be less than 10 days following the issuance of the written decision and if the City ordinance does not include a specified timeframe for the appeal, the timeframe for appeal is on or before 10 days following the issuance of the written decision.
- c. **Accompanying Applications.** If a Type II application is accompanied by or otherwise required additional applications/petitions (e.g., amendments to the zoning designation applicable to the party in question), the Type II application and the accompanying application must be considered separately and the review and determination of each application must comply with the respective standards and requirements applicable to each (e.g., a subdivision plat application falling under a Type II application should follow the requirements outlined in this section and a separate petition to amend the zoning map should follow the requirements and checklists for a Type V application review).
- d. **Legality of Decision.** A decision on a Type II application must receive substantial deference in the event of a judicial review seeking to invalidate the decision. The district court must

presume that the decision was legally proper and correct unless the decision is deemed (i) *arbitrary and capricious*, or (ii) in violation of the applicable City, State, or federal law. The decision *must be deemed arbitrary and capricious* if the decision is not properly supported by “substantial evidence” *in the record*. This would be the case even if the land use authority did in fact properly rely on substantial evidence in making its decision but failed to include the substantial evidence in the record.

- i. Substantial Evidence. Substantial evidence requires that the evidence is both (i) relevant and appropriately applied to the applicable City ordinance or State law in question, and (ii) credible, being both objective and independent. Substantial evidence does not include the opinions of the average person, whether as member of the appeal authority or as a citizen. The only opinions that may be substantial evidence are professional opinions of planners, real estate appraisers, engineers or other experts, that are made in their field of expertise that are appropriately applicable, relevant, and credible in their support of the decision being made.
- ii. Compliance with City Ordinances. Generally speaking, if all required notices are properly given, and the Type II application complies with all standards and requirements set out in the applicable City ordinances, including the completion of the application form, inclusion of all other required information and documentation, and the full payment of applicable fees, then the land use authority must approve the Type II application. The City ordinances applicable to the Type II application, which must be complied with or those are in effect on the date (i) the complete application is submitted by the applicant, and (ii) full payment of applicable fees are made by the applicant. The application may not be denied for noncompliance with ordinances which were enacted or amended in a manner that would prohibit approval of the application after the date on which the complete application has been submitted and the full payment of any required fees have been made, excepting only in the rare cases set forth in Utah Code Ann. §§10-9a-509(1)(a)(ii)(A) and (B).

TYPE III PROCEDURE

Appeal Authority – Quasi-Judicial Review

- I. Purpose:** Type III applications are reviewed and approved/denied by a City administrative staff member or public body (e.g., the Planning Commission) designated as the appeal authority for the appeal or variance request, as set forth in the applicable City ordinance. A Type III application is to be reviewed in a quasi-judicial manner and in accordance with applicable State laws and applicable City standards and criteria set out in the City's ordinances.
- a. **Nature of Decision.** A Type III application decision must not be a discretionary decision (i.e., there are clear and objective standards that must be strictly adhered to) but should strictly adhere to the City's standards and criteria set forth in the applicable City ordinances. Each application must be approved if the application meets all of the following criteria (and must be rejected if the application fails to meet all of the criteria):
- i. The application is sufficiently complete and includes all of the relevant information, with sufficient detail for review and action, on the application form;
 - ii. The application includes all plans, specifications, or other documents required for such application;
 - iii. The application is submitted with the required fee; and
 - iv. The application complies with all applicable City ordinances, rules, standards, and codes in effect on the date that the complete application is submitted, and the full payment of the required fee is made.

II. Checklist - Type III Application Review/Approval:

- ☐ **Jurisdiction Issues.** Where the Type III application is to appeal an administrative land use decision, confirm that the applicable land use decision has been made by the land use authority and that the request for appeal was made within the time frame allowed by local ordinance after the land use decision was issued. If a final land use decision has not been issued or the request for appeal was not timely made, the appeal authority has no jurisdiction and may not hear the matter.
- ☐ **Complete Application.** Confirm the application is complete in accordance with the applicable City ordinance, including determination that each of the following are true:
- ☐ Application Form. The City required form is sufficiently complete, including all the relevant information, with sufficient detail for review and action.
- ☐ Submittals. All plans, specifications, documents, and other exhibits required by the applicable City ordinance are included with the submittal of the application form.
- ☐ Application Fee. Full payment of the total amount of the fee required for such application has been made.

☐ **Pre-Meeting Tasks.**

- ☐ Confirm Impartiality. Verify that the appeal authority is impartial and free from bias due to any conflicts of interest with regards to the applicant or the application.
- ☐ Agenda Scheduling. Place the item on the agenda for the appeal authority.
- ☐ Notices for Public Meeting. Provide the required notice of the required public meeting and any additional public meetings or public hearings to consider the application *if the appeal authority is a public body*.
 - ☐ Applicant Notice. Provide notice to the applicant no later than three (3) days prior to such public meeting, with the following:
 - ☐ The date, time, and place of the public meeting to consider the application; **and**
 - ☐ A copy of each staff report regarding the applicant and the pending application before the public meeting.
 - ☐ Public Notice. Publish notice of the *agenda, date, time, and place* of the public hearing no less than twenty-four (24) prior to such public meeting, in the following manner:
 - ☐ Posting written notice in, on, or near (i) the anchor location for the meeting, or (ii) the structure or other areas where the public meeting is to be held;
 - ☐ The City's official website; **and**
 - ☐ Posting written notice on the Utah Public Notice Website (www.utah.gov/pmn/).
- ☐ Legal Review. The appeal authority confirms the appropriateness of the application and availability of the proposed land use decision in accordance with the applicable legal standards, by:
 - ☐ Variance. Where the Type III application is to obtain a variance from an applicable zoning ordinance, the appeal authority is to determine whether the proposed variance is justified by meeting each of the conditions required by Utah Code Ann. § 10-9a-702, which includes (i) strict enforcement of the ordinance at issue would cause unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the City's ordinances (unreasonable hardship exist only if the alleged hardship: (a) is located on or associated with the property, (b) comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood, and (c) is not self-imposed or economic); (ii) there are special circumstances attached to the property that do not generally apply to other properties in the same zone district (special circumstances exist only if the special circumstances (y) relate to the alleged hardship, and (z) deprive the property of privileges granted to other properties in the same zone district); (iii) the proposed variance will not substantially affect the general plan and be contrary to the public

interest; and (iv) the spirit of the applicable City ordinance is observed, and substantial justice is done.

- ☐ *Appeal*. Where the Type III application is appeal of an administrative land use decision, the appeal authority is to review the matter in accordance with the standard of review set forth in the applicable City ordinance. If no standard of review is set forth in the City's ordinances, the appeal authority is to review the matter "de novo", conducting its own review of the relevant City ordinance and finding of facts relating to the appeal without giving deference to the land use authority's interpretation of applicable laws and application of factual matters contained in the land use decision being appealed. The appeal authority is to determine the correctness of the land use authority's interpretation and application of the plain meaning of the relevant City ordinances, by interpreting and applying any ambiguity in the City ordinance in favor of the applicant and the land use application unless applicable City ordinances plainly restrict the land use application.
- ☐ **Conduct Public Meeting**. Conduct any required public meeting and any additional meetings or public hearings required by applicable City ordinance to consider the application in accordance with the applicable City and State standards and requirements for the conduct and proceedings for such meetings.
- ☐ *Appeal*. Where the Type III application is appeal an administrative land use decision, the appeal authority is to allow the applicant to bring evidence supporting the appeal. As the appellant has the burden to show the land use decision was made in error, if the applicant fails to provide applicable evidence to show such error, the appeal authority must deny the appeal.
- ☐ *Third Party*. If a person that may be adversely affected by the granting of the appeal appears in opposition to the appeal, allow the adverse party to bring evidence supporting the opposition to the appeal.
- ☐ **Finding of Facts**. In an impartial manner, gather the relevant evidence and review such as it relates to the Type III application and the legal standards and conditions required for approval. All information applicable to the applicant and the application must be made available to all members of the appeal authority and the applicant.
- ☐ *Due Process*. Provide the applicant with due process, including the rights of notice (set forth above) to be heard, to confront witnesses, and respond to evidence submitted by others. This includes the restriction of ex-parte communications between any member of the appeal authority and any individual wanting to discuss the application.
- ☐ **Deliberation**. As a quasi-judicial body, the appeal authority may conduct its deliberations in private. Consider evidence that is both relevant and credible related to the application and the legal standards and considerations required for approval. Based on the evidence before the appeal authority, determine whether the applicant has met the applicant's burden to prove their position is justified.

- ☐ **Final Determination.** Based on its deliberations and review of the applicable legal standards and requirement, its factual findings and meeting discussions with the applicant, and the evidence provided or otherwise available, the appeal authority is to make one of the following determinations:
 - ☐ Approve. If, in the opinion of the appeal authority, the appellant has met its burden of proof, providing substantial evidence in the record to support the application, the appeal authority will approve the application.
 - ☐ *Additional Requirements.* Where applicable (e.g., as a condition of approval of a variance), the appeal authority may approve the application with conditions imposed upon the applicant that (i) are directly related to the approval, (ii) mitigate harmful effects of the approval of the applicant's proposed land use, and (iii) otherwise service the purpose of the standards or requirements of the applicable City ordinances.
 - ☐ Deny. If in the opinion of the appeal authority, the appellant has failed to meet its burden of proof, providing substantial evidence, or sufficiently to outweigh any substantial evidence to the contrary, in the record to support the application, the appeal authority will deny the application.
- ☐ **Notice of Determination.** The City is to provide the required notice of the decision on the application to the applicant.
- ☐ **Record of Review & Determination.** The City is to preserve the applicable/required documentation relating to the application review and determination, including the following:
 - ☐ Notices. Preserve the proof of notices to applicant and any other parties requiring notices regarding the application, the public meeting, other meetings, and final decision on the application.
 - ☐ Meetings. Preserve the record of the public meeting proceedings, including minutes, findings, orders, and, if available, a true and correct transcript of the proceedings, to document the law and evidence that was considered by the land use authority in making the decision on the application.
 - ☐ Basis of Decision. Preserve in the record support for the decision on the application, specifying the application of the law and identifying the specific evidence the land use authority relied upon to determine whether the approval of the application was appropriate. The support for the decision must include substantial evidence, which must be contained in the record.

IV. **Type III Notes & Practice Tips:**

- a. **Effective Date of Decision.** Unless conditions of approval specify otherwise, the approval of a Type III application becomes effective on the date when the appeal authority issues a written decision, or as otherwise set forth in City ordinance.

- b. **Appeal of a Type III Decision.** The decision for a Type III application may be appealed to the district court for a judicial review only if the applicant or other adversely affected party has exhausted the administrative remedies. The petition for review of the land use decision must be made to the district court within 30 days after the decision is final. The district court must limit the scope of its review to only what is contained in the record, presuming that the final land use decision to be valid unless the land use decision is either (i) arbitrary and capricious, or (ii) illegal. The land use decision is to be deemed arbitrary and capricious if the decision is not supported by substantial evidence in the record. A land use decision is illegal if the decision was (a) based on an incorrect interpretation of the City's ordinances, (b) made outside the scope of authority granted under State laws, or (c) otherwise contrary to federal, State, or local laws.
- c. **Accompanying Applications.** The decision to approve or deny a Type III application is an administrative act but is distinct from other land use decisions due to the quasi-judicial nature of the decision. Such decisions are to be made by the appeal authority, as designated by the City's legislative body and set forth in the applicable City ordinance.
- i. Variance. Unlike the review of facts and their application to and compliance with the applicable City ordinance required for making land use decisions, the decision on a variance application is to specifically permit the non-compliance with specified requirements of the applicable City ordinances by factually meeting each of the conditions required to justify a variance approval, as set forth by State law within the LUDMA, and in effect waiving or modifying a requirement of the applicable City ordinance applicable to the zoning district of a specified parcel of property. The aim of a variance is generally to fix inequitable outcome to the rights of the owner to enjoy their property due to unique attributes affecting the property. Accordingly, variances are not regarding *use* of the property but are only applicable standards or requirements of the property, which would run with the land when approved.
- d. **Legality of Decision.** A Type III application decision must receive substantial deference in the event of a judicial review seeking to invalidate the decision. The district court must presume that the decision was legally proper and correct unless the decision is deemed (i) *arbitrary and capricious*, or (ii) in violation of the applicable City, State, or federal law. The decision *must be deemed as arbitrary and capricious* if the decision is not properly supported by "substantial evidence" *in the record*. This would be the case even if the appeal authority did in fact properly rely on substantial evidence in making its decision but failed to include the substantial evidence in the record.
- i. Substantial Evidence. Substantial evidence requires that the evidence is both (i) relevant and appropriately applied to the applicable City ordinance or State law in question, and (ii) credible, being both objective and independent. Substantial evidence does not include the opinions of the average person, whether as member of the appeal authority or as a citizen. The only opinions that may be substantial evidence are professional opinions of planners, real estate appraisers, engineers or other experts, that are made in their field of expertise that are appropriately applicable, relevant, and credible in their support of the decision being made.

TYPE IV PROCEDURE

Legislative Acts by the Legislative Body – No Required Hearing – Class A General Notice

- I. **Purpose:** Type IV applications are decided (i) by the public elected City Council, as the solely delegated authority for legislative actions, as Type IV applications include requests for proposed actions that are legislative and policy making, or legislative acts, (ii) only after (a) the planning commission conducts a public hearing on such Type IV application, and (b) the planning commission has provided its recommendation on the Type IV application to the City Council.
- a. **Nature of Decision.** A Type IV application decision may be a discretionary decision, without any restriction of consideration of “Public Clamor”, as would be applicable to decisions on a Type I, II, or III application. Broad public input is encouraged during the review process for a Type IV Application. No factual findings or substantial evidence standards are required to support the legal validity of decision on a Type IV Application. The City Council is given “Legislative Discretion” in making a decision on a Type IV application. Accordingly, any such decisions will be deemed legally permissible if (i) it is “reasonably debatable” that the decision promotes the general welfare or otherwise advances any of those policies objectives set out in LUDMA, and (ii) the decision does not otherwise violate federal, State, or City laws.

II. Checklist - Type IV Application Review/Approval:

- ☐ **Complete Application.** Confirm the application is complete in accordance with the applicable City ordinance, including determination that each of the following are true:
 - ☐ **Application Form.** The City required form is sufficiently complete, including all the relevant information, with sufficient detail for review and action.
 - ☐ **Submittals.** All plans, specifications, documents, and other exhibits required by the applicable City ordinance are included with the submittal of the application form.
 - ☐ **Application Fee.** Full payment of the total amount of the fee required for such application has been made.
- ☐ **Pre-Hearing Tasks – Planning Commission.** The planning commission must conduct at least one public hearing and provide its recommendations on the application to the City Council before the City Council may make a decision.
 - ☐ **Agenda Scheduling.** Place the item on the agenda for the planning commission.
 - ☐ **Notices for Public Hearing.** Provide the required notice of the public hearing for the planning commission to consider the application.
 - ☐ **Applicant Notice.** Provide notice to the applicant *no later than three (3) days prior* to such public hearing, with the following:
 - ☐ The date, time, and place of the public hearing to consider the application; ***and***
 - ☐ A copy of each staff report regarding the applicant and the pending application before the public hearing.

- ☐ *Public Notice.* Publish notice of the *agenda, date, time, and place* of the public hearing no later than ten (10) calendar days prior to such public hearing, to the following:
 - ☐ *Class A Notice.* Published for the City, as a class A notice (see Utah Code Ann. §63G-28-102), for at least ten (10) days, including:
 - ☐ On the Utah Public Notice Website (www.utah.gov/pmn/);
 - ☐ On the City Website;
 - ☐ In the affected area; *and*
 - ☐ *Affected Entities.* Mailing such notice to each affected entity, including a county, municipality, special district, special services district, school district, interlocal cooperation entity, specified public entity, a property owner, a property owners association, or the Utah Department of Transportation, if (i) the entity's services or facilities that are likely to require expansion or significant modification because of an intended use of land; (ii) the entity has filed with the municipality a copy of the entity's general or long-range plan; or (iii) the entity has filed with the municipality a request for notice during the same calendar year and before the municipality provides notice to an affected entity in compliance with the requirements imposed under LUDMA.
- ☐ Initial Recommendation. The planning commission provides the City Council an initial recommendation on the proposed amendment (to approve, deny, or modify the proposed amendment). The planning commission considers relevant evidence and opinion related to the proposed amendment, its conformity with State law, including the following considerations:
 - ☐ the proposed amendment is in the general interest of the community;
 - ☐ the proposed amendment advances one or more of the policy objectives of LUDMA (outlined in Notes and Practice Tips);
 - ☐ (in the case of amendments to the City general plan) the proposed amendment confirms with State law, including as it relates to the required elements for a general plan contained in in Utah Code Ann. §10-9a-403(2); and
 - ☐ (in the case of City ordinance amendments) the proposed amendment can be construed as generally consistent with one or more of the elements of the City general plan.

- ☐ **Conduct Public Hearing – Planning Commission.** Conduct the public hearing for the planning commission to consider the application in accordance with the applicable City and State standards and requirements for the conduct and proceedings for such meetings.
- ☐ **Planning Commission Recommendation.** Following the public hearing, the planning commission may modify its initial recommendation and forward the proposed amendment, with any such modified recommendation, to the City Council, based on those considerations set forth above in the Initial Recommendation checklist items.
- ☐ **Pre-Meeting Tasks – Legislative Body.** The City Council is to review the recommendation of the planning commission and relevant evidence and information to make its decision.
 - ☐ Agenda Scheduling. Place the item on an agenda for the City Council to consider and make its determination of the application.
 - ☐ Notices for Public Meeting. Provide the required notice of the public meeting for the legislative body to consider the application.
 - ☐ *Applicant Notice.* Provide notice to the applicant no later than three (3) days prior to such public meeting, with the information set forth in the Applicant Notice for the Notices for Public Hearing checklist above.
 - ☐ *Public Notice.* Publish notice of the *agenda, date, time, and place* of the public meeting/hearing no less than twenty-four (24) prior to such public meeting, as a class A notice, in accordance as set forth above in the Public Notice for the Notices for Public Hearing checklist above.
- ☐ **Conduct Public Meeting.** Conduct the public meeting for the City Council to consider the application in accordance with the applicable City and State standards and requirements for the conduct and proceedings for such meetings.
- ☐ **Consideration of Approval.** The City Council should take into consideration the planning commission's recommendation, relevant evidence, and other information related to whether the proposed amendment is:
 - ☐ in the best interest of and promotes the general welfare of the community;
 - ☐ advances one or more of the policy objectives of LUDMA (outlined in Notes and Practice Tips) and includes any required elements (e.g., required elements of a general plan); and
 - ☐ (in the case of City ordinance amendments) able to be construed as generally consistent with one or more of the elements of the general plan.
- ☐ **Final Determination.** Based on its findings and opinion, the City Council will make a decision on the proposed amendment, by one of the following:

- ☐ Deny. Reject the proposed amendment by denying the application.
- ☐ Approve. Adopt the proposed amendment and approve the application.
- ☐ Adopt Revised Amendment. Adopt the proposed amendment with revisions that it deems appropriate.
- ☐ **Notice of Determination**. The City is to provide the required notice of the decision on the application to the applicant.
- ☐ **Record of Review & Determination**. The City is to preserve the applicable/required documentation relating to the application review and determination, including the following:
 - ☐ Notices. Preserve the proofs of notices required for any public hearings or meetings and final decision on the application.
 - ☐ Meetings. Preserve the record of the meeting and hearing proceedings, including the minutes, findings, orders, and, if available, a true and correct transcript of the proceedings, to document the law and evidence that was considered by the planning commission and legislative body before it made a decision related to the application.

III. Type IV Notes & Practice Tips:

- a. **General Authority**. The authority to plan and zone is derived from LUDMA. As such, all land use ordinances must advance at least one of the purposes of LUDMA, which include the following:
 - i. To provide for the health, safety, and welfare, and promote the prosperity, improve the morals, peace and good order, comfort, convenience, and aesthetics of each municipality and its present and future inhabitants and businesses;
 - ii. To protect the tax base;
 - iii. To secure economy in governmental expenditures;
 - iv. To foster the state's agricultural and other industries;
 - v. To protect both urban and nonurban development;
 - vi. To protect and ensure access to sunlight for solar energy devices;
 - vii. To provide fundamental fairness in land use regulation; and
 - viii. To protect property values.

- b. **Legality of Decision.** Public opinion and even individual preferences and opinions of the planning commission or City Council are relevant and adequate for consideration in contemplating a Type IV application. State law does not restrict consideration of “Public Clamor” as would be applicable for establishing a basis for a decision on a Type I, II, or III application. Broad public input is encouraged during this process. No findings or evidence are required to support a decision to approve a Type IV application, but it is wise to provide in the record what the basis for the decision is so as to allow the public and applicant to understand more clearly what the rationale was for the action. This may avoid conjecture and assist the city in avoiding the argument that an inappropriate or illegal reason prompted the decision.
- i. Reasonably Debatable. The City Council is given “Legislative Discretion” in making its decision on a Type IV application. Accordingly, such decisions will be deemed legally permissible if (i) it is “reasonably debatable” that the decision promotes the general welfare or otherwise advances any of those policies set out in LUDMA as noted above and (ii) the decision does not otherwise violate the City’s ordinance, State law, or federal law. As such, this standard provides substantial difference to the City Council and rarely are such legislative acts ruled as not being legally permissible.

TYPE V PROCEDURE

Legislative Act by City Council – Specific Notice to Designated Persons

- I. **Purpose:** Type V applications are decided (i) by the public elected City Council, as the solely delegated authority for legislative actions, as Type V applications include requests for proposed actions that are legislative and policy making, or legislative acts, (ii) only after (a) the planning commission conducts a public hearing on such Type V application, and (b) the planning commission has provided its recommendation on the Type V application to the City Council.
- a. **Nature of Decision.** A Type V application decision may be a discretionary decision, without any restriction of consideration of “Public Clamor”, as would be applicable to decisions on a Type I, II, or III application. Broad public input is encouraged during the review process for a Type V Application. No factual findings or substantial evidence standards are required to support the legal validity of decision on a Type V Application. The City Council is given “Legislative Discretion” in making a decision on a Type V application. Accordingly, any such decisions will be deemed legally permissible if (i) it is “reasonably debatable” that the decision promotes the general welfare or otherwise advances any of those policies objectives set out in LUDMA, and (ii) the decision does not otherwise violate federal, State, or City laws.

II. Checklist: Type V Application Review/Approval:

- ☐ **Complete Application.** Confirm the application is complete in accordance with the applicable City ordinance, including determination that each of the following are true:
 - ☐ **Application Form.** The City required form is sufficiently complete, including all the relevant information, with sufficient detail for review and action.
 - ☐ **Submittals.** All plans, specifications, documents, and other exhibits required by the applicable City ordinance are included with the submittal of the application form.
 - ☐ **Application Fee.** Full payment of the total amount of the fee required for such application has been made.
- ☐ **Pre-Hearing Tasks – Planning Commission.** The planning commission must conduct at least one public hearing and provide its recommendations on the application to the City Council before the City Council may make a decision.
 - ☐ **Agenda Scheduling.** Place the item on the agenda for the planning commission.
 - ☐ **Notices for Public Hearing.** Provide the required notice of the public hearing for the planning commission to consider the application.
 - ☐ **Applicant Notice.** Provide notice to the applicant *no later than three (3) days prior* to such public hearing, with the following:
 - ☐ The date, time, and place of the public hearing to consider the application; ***and***

- ☐ A copy of each staff report regarding the applicant and the pending application before the public hearing.
- ☐ *Public Notice.* Publish notice of the *agenda, date, time, and place* of the public hearing no later than ten (10) calendar days prior to such public hearing, to the following:
 - ☐ *Class B Notice.* Published for the City, as a class B notice (see Utah Code Ann. §63G-28-102), for at least ten (10) days, including:
 - ☐ On the Utah Public Notice Website (www.utah.gov/pmn/);
 - ☐ On the City Website;
 - ☐ In the affected area;
 - ☐ Mail or otherwise the public notice or a notice summary statement (as defined in *Utah Code Ann. § 63G-28-101(3)*) to each residence within the designated geographic area];
 - ☐ Mail or other otherwise the public notice or a notice summary statement (as defined in *Utah Code Ann. § 63G-28-101(3)*) to each designated person and real property owner]; **and**
 - ☐ *Affected Entities.* Mailing such notice to each affected entity, including a county, municipality, special district, special services district, school district, interlocal cooperation entity, specified public entity, a property owner, a property owners association, or the Utah Department of Transportation, if (i) the entity's services or facilities that are likely to require expansion or significant modification because of an intended use of land; (ii) the entity has filed with the municipality a copy of the entity's general or long-range plan; or (iii) the entity has filed with the municipality a request for notice during the same calendar year and before the municipality provides notice to an affected entity in compliance with the requirements imposed under LUDMA.
- ☐ ***Notice of Zoning Code Text Amendment.*** Where the proposed amendment includes a text amendment applicable to specified zoning districts, in addition to the notices required immediately above, such notices required above must:
 - ☐ Include a summary of the effect of the proposed modification to the text of the zoning code designated to be understood by a lay person; and
 - ☐ Be provided to any person upon written request.
- ☐ ***Notice of Zoning Map Amendment.*** Where the proposed amendment includes a zoning map enactment or amendment, in addition to the notices required immediately above, an additional courtesy notice no less than ten (10) days prior to the public hearing to each owner of record of real property located or partially located within the proposed zoning map amendment with such courtesy notice identifying with specificity each such affected real property owner, and state the following:

- ☐ the current zone of the affected real property;
 - ☐ the new zone of the affected real property pursuant to the proposed zoning map amendment;
 - ☐ information regarding or a referenced to the regulations, prohibitions, and permitted uses of the affected real property pursuant to the proposed zoning map amendment;
 - ☐ the owner may file written objection to the inclusion of the affected real property in the proposed zoning map amendment within ten (10) days of the initial public hearing and the address to which such written objections are to be filed; and
 - ☐ that each such timely filed written objection will be provided to the legislative body.
- ☐ **Initial Recommendation.** The planning commission provides the City Council an initial recommendation on the proposed amendment (to approve, deny, or modify the proposed amendment). The planning commission considers relevant evidence and opinion related to the proposed amendment, its conformity with State law, including the following considerations:
- ☐ the proposed amendment is in the general interest of the community;
 - ☐ the proposed amendment advances one or more of the policy objectives of LUDMA (outlined in Notes and Practice Tips); and
 - ☐ (in the case of City ordinance amendments) the proposed amendment can be construed as generally consistent with one or more of the elements of the City general plan.
- ☐ **Conduct Public Hearing.** Conduct the public hearing for the planning commission to consider the application in accordance with the applicable City and State standards and requirements for the conduct and proceedings for such meetings.
- ☐ **Planning Commission Recommendation.** Following the public hearing, the planning commission may modify its initial recommendation and forward the proposed amendment, with any such modified recommendation, to the City Council, based on those considerations set forth above in the Initial Recommendation checklist items.
- ☐ **Pre-Meeting Tasks – Legislative Body.** Following the public hearing of the planning commission to consider the application, the City Council is to review the recommendation and relevant evidence and information to make its decision.
- ☐ **Agenda Scheduling.** Place the item on an agenda for the City Council to consider and make its determination of the application.
- ☐ **Notices for Public Meeting.** Provide the required notice of the public meeting for the City Council to consider the application.

- ☐ **Applicant Notice.** Provide notice to the applicant *no later than three (3) days prior* to such public meeting, with the information set forth in the Applicant Notice for the Notices for Public Hearing checklist above.
- ☐ **Public Notice.** Publish notice of the *agenda, date, time, and place* of the public meeting no less than twenty-four (24) prior to such public meeting, to the following, as a class A notice (see Utah Code Ann. §63G-28-102), including:
 - ☐ On the Utah Public Notice Website (www.utah.gov/pmn/);
 - ☐ On the City Website; and
 - ☐ In the affected area.
- ☐ **Conduct Public Meeting.** Conduct the public meeting for the City Council to consider the application in accordance with the applicable City and State standards and requirements for the conduct and proceedings for such meetings.
- ☐ **Consideration of Approval.** The City Council should take into consideration the planning commission's recommendation, relevant evidence, and other information related to whether the proposed amendment is:
 - ☐ in the best interest of and promotes the general welfare of the community;
 - ☐ advances one or more of the policy objectives of LUDMA (outlined in Notes and Practice Tips) and includes any required elements (e.g., required elements of a general plan); and
 - ☐ (in the case of City ordinance amendments) able to be construed as generally consistent with one or more of the elements of the general plan.
- ☐ **Final Determination.** Based on its findings and opinion, the City Council will make a decision on the proposed amendment, by one of the following:
 - ☐ Deny. Reject the proposed amendment by denying the application.
 - ☐ Approve. Adopt the proposed amendment and approve the application.
 - ☐ Adopt Revised Amendment. Adopt the proposed amendment with revisions that it deems appropriate.
- ☐ **Notice of Determination.** The City is to provide the required notice of the decision on the application to the applicant.
- ☐ **Record of Review & Determination.** The City is to preserve the applicable/required documentation relating to the application review and determination, including the following:
 - ☐ Notices. Preserve the proofs of notices required for any public hearings or meetings and final decision on the application.
 - ☐ Meetings. Preserve the record of the meeting and hearing proceedings, including the minutes, findings, orders, and, if available, a true and correct transcript of the

proceedings, to document the law and evidence that was considered by the planning commission and legislative body before it made a decision related to the application.

III. Type V Notes & Practice Tips:

- a. **General Authority.** The authority to plan and zone is derived from LUDMA. As such, all land use ordinances must advance at least one of the purposes of LUDMA, which include the following:
 - i. To provide for the health, safety, and welfare, and promote the prosperity, improve the morals, peace and good order, comfort, convenience, and aesthetics of each municipality and its present and future inhabitants and businesses;
 - ii. To protect the tax base;
 - iii. To secure economy in governmental expenditures;
 - iv. To foster the state's agricultural and other industries;
 - v. To protect both urban and nonurban development;
 - vi. To protect and ensure access to sunlight for solar energy devices;
 - vii. To provide fundamental fairness in land use regulation; and
 - viii. To protect property values
- ix. **Legality of Decision.** Public opinion and even individual preferences and opinions of the planning commission or City Council are relevant and adequate for consideration in contemplating a Type V application. State law does not restrict consideration of "Public Clamor" as would be applicable for establishing a basis for a decision on a Type I, II, or III application. Broad public input is encouraged during this process. No findings or evidence are required to support a decision to approve a Type IV application, but it is wise to provide in the record what the basis for the decision is so as to allow the public and applicant to understand more clearly what the rationale was for the action. This may avoid conjecture and assist the city in avoiding the argument that an inappropriate or illegal reason prompted the decision.
- x. **Reasonably Debatable.** The City Council is given "Legislative Discretion" in making its decision on a Type V application. Accordingly, such decisions will be deemed legally permissible if (i) it is "reasonably debatable" that the decision promotes the general welfare or otherwise advances any of those policies set out in LUDMA as noted above and (ii) the decision does not otherwise violate the City's ordinance, State law, or federal law. As such, this standard provides substantial difference to the City Council and rarely are such legislative acts ruled as not being legally permissible.