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Continuing Education Requirements:

- Planning Commissioners: Sign Roster, Pick up generic certificate. We will keep a record of your attendance.
- Attorneys: In Person: Sign Roster. Pick up generic certificate. We will report your CLE hours to the Utah Bar within 30 days.
- Planners: AICP through its website, as usual.
- Real Estate: In Person
 - Sign Roster when arriving at the seminar.
 - Sign Roster again during the break.
 - Bring Evaluation Form to the registration desk after the session. Fill out certificate form. Get signature from ULUI today. Otherwise, no credit.

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The Office of the Property Rights Ombudsman has provided funding for this training program from the 1% surcharge on all building permits in the State of Utah.

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Programs of the Utah Land Use Institute are funded, in part, by generous grants from the

S. J. and Jessie E. Quinney Foundation.

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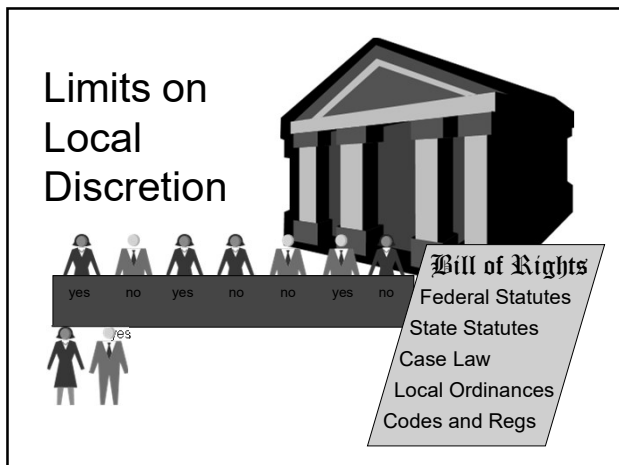
We appreciate our co-sponsors:

- The Utah League of Cities and Towns
- The Utah Chapter of the American Planning Association
- The Salt Lake Board of Realtors
- Home Builders of Utah
- Real Property Section, Utah State Bar

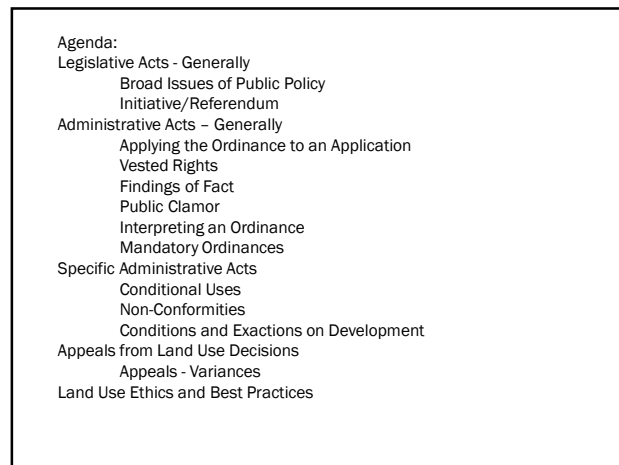
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We will be quoting Ground Rules in this seminar – copies are available at Amazon.com

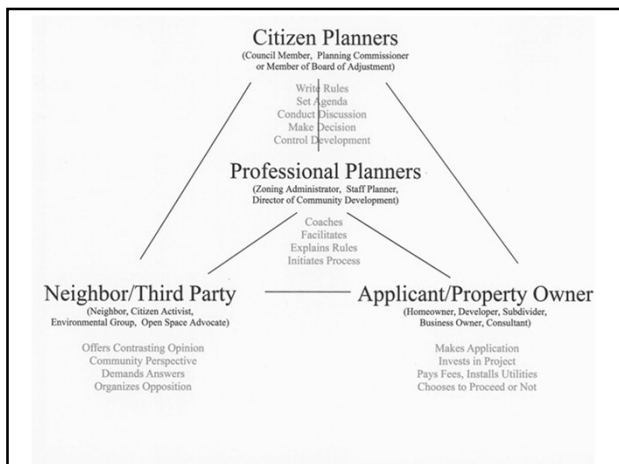
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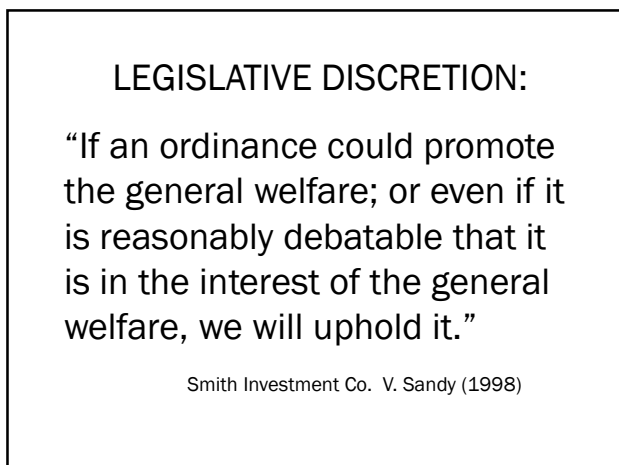
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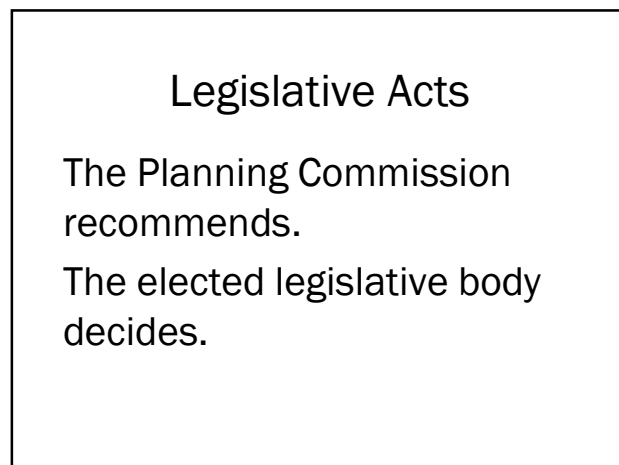
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ADMINISTRATIVE DISCRETION

“An administrative land use decision will be upheld if it is supported by substantial evidence on the record and is otherwise legal.”

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Vested Rights

An applicant is entitled to approval of a land use application if the application conforms to the requirements of the applicable land use regulations, land use decisions, and development standards in effect when the applicant submits a complete application and pays application fees, UNLESS

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Vested Rights

(i) the land use authority, on the record, finds that a compelling, countervailing public interest would be jeopardized by approving the application and specifies the compelling, countervailing public interest in writing; or

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Vested Rights

(ii) in the manner provided by local ordinance and before the applicant submits the application, the municipality formally initiates proceedings to amend the municipality's land use regulations in a manner that would prohibit approval of the application as submitted.

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ADMINISTRATIVE DECISIONS

The Land Use Authority must thus determine whether, legally and factually, the application complies. If it does, approve the application. If it does not, deny. In either case, explain why on the record.

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Legislators Acting Administratively

A land use decision of a land use authority is an administrative act, even if the land use authority is the legislative body.
Utah Code Ann. 10-9a-306; 17-27a-308

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Conditional Use Permits

U.C.A. 10-9a-507(2)(a) - Conditional uses.

A conditional use shall be approved if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards.

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STANDARDS IN THE ORDINANCE

The analysis therefore includes at least three questions:

1. What are the reasonably anticipated detrimental effects of this use?
2. Can they be reasonably mitigated?
3. If so, what reasonable conditions does the ordinance allow to be imposed?

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SUBSTANTIAL EVIDENCE

“Substantial Evidence” means evidence that (1) is beyond a scintilla and (2) a reasonable mind would accept as adequate to support a conclusion.

Utah Code Ann. 10-9a-103(67)

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SUBSTANTIAL EVIDENCE

Evidence is:

- Relevant
- Independent
- Expert or otherwise credible

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Findings of Fact

. . . it was the Council’s responsibility to define the basis for its decision, not the district court’s. . . Simply stated, if a city council is going to sit as an adjudicative body, it needs to produce findings of fact capable of review on appeal. *McElhaney v. Moab*, 2017 UT 65

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Public Clamor

Indeed, there is almost uniform public clamor when any mental health facility, halfway house, jail or prison is proposed. The public realizes the need for such facilities, but they should always be located somewhere else Citizen opposition is a consideration which must be weighed, but cannot be the sole basis for the decision to deny an application. *Davis County v. Clearfield*, 756 P.2d 704

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Uintah Mtn RTC v. Duchesne County

2005 UT App 565

County's conditional use denial based on economic viability invalid because the applicable criteria in the county code did not include a test for economic viability.

The County's decision to grant a similar permit in 1997 was used to show the current denial was arbitrary.

Public clamor not a sufficient reason for denial

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Interpretation of Ordinance

A land use authority shall apply the plain language of land use regulations.

If a land use regulation does not plainly restrict a land use application, the land use authority shall interpret and apply the land use regulation to favor the land use application.

Utah Code Ann. 10-9a-306; 17-27a-308

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Interpretation of Ordinance

The best evidence of the ordinance's intent is the plain language of the ordinance itself. We presume that the city council was deliberate in its choice of words and used each term advisedly and in accordance with its ordinary meaning. Where an ordinance's language is unambiguous and provides a workable result, we need not resort to other interpretive tools, and our analysis ends. *2 Ton Plumbing v. Thorgaard*, 2015 UT 29

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Nonconforming Uses

U.C.A. 10-9a-103(43) – Nonconforming Use.

A use which:

- 1) Was legally established originally, in conformance with the ordinance.
- 2) Is not legal under the current ordinance, but
- 3) Has been maintained continuously since it became nonconforming. (No abandonment for a year or more).

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Interpretation of Ordinance

"Because zoning ordinances are in derogation of a property-owner's common-law right to unrestricted use of his or her property, provisions therein restricting property uses should be strictly construed, and provisions therein permitting property uses should be liberally construed in favor of the property owner."

Brown v. Sandy Bd of Adj (1998)

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Ordinances are Mandatory

Municipal zoning authorities are bound by the terms and standards of applicable zoning ordinances and are not at liberty to make land use decisions in derogation thereof.

Springville Citizens v. Springville, 1999 UT 25.

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Standing to Challenge

The City's failure to pass the legality requirement does not automatically entitle plaintiffs to the relief they request. Rather, plaintiffs must establish that they were prejudiced by the City's noncompliance with its ordinances or, in other words, how, if at all, the City's decision would have been different and what relief, if any, they are entitled to as a result. *Springville Citizens v. Springville*

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Standing to Challenge

An "Adversely Affected Party" means a person other than the land use applicant who:

- (a) Owns real property adjoining the property that is the subject of a land use application or land use decision; or
- (b) Will suffer a damage different in kind than, or an injury distinct from, that of the general community as a result of the land use decision. Utah Code Ann. 10-9a-103(2)

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... where the encroachment is deliberate and constitutes a willful and intentional taking of another's land, equity may require its restoration, without regard for the relative inconveniences or hardships which may result from its removal.

Culbertson v. Salt Lake Co., 2001 UT 108

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On the record before us, the uncontested facts support only one conclusion: That Hermes acted willfully and deliberately when it constructed its buildings after plaintiffs put both Hermes and the County on notice that the proposed construction would violate county ordinances.

Culbertson v. Salt Lake Co., 2001 UT 108

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By allowing Hermes to proceed, the County stepped into the quagmire which we condemned in *Springville Citizens for a Better Community v. City of Springville*, where we emphasized that local zoning authorities "are bound by the same terms and standards of applicable zoning ordinances and are not at liberty to make land use decisions in derogation thereof."

Culbertson v. Salt Lake Co., 2001 UT 108

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Conditions on Development

A development exaction may only be imposed on a land use application if:

- 1. An essential link exists between a legitimate governmental interest and each exaction, and
- 2. Each exaction is roughly proportionate, in both nature and extent, to the impact of the proposed development.

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Conditions on Development

In other words:

1. Do we have the authority to impose this requirement?
2. Does it address some burden imposed on the community by the development?
3. Is the burden imposed on the development roughly equivalent to the burden the development imposes on the community?

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What's an Applicant to Do?

1. Provide a complete application and pay the applicable fee.
2. Demonstrate that the application complies with the ordinance legally and factually.
3. If denied, appeal the Land Use Authority's decision to the Appeal Authority, or
4. Ask the Appeal Authority for a variance.
5. If denied, appeal the Appeal Authority's decision to the District Court.

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Variances – Only Granted If:

1. Unnecessary Hardship
2. Circumstances Attached to the Property
3. Substantial Property Right
4. Consistent with Public Interest
5. Spirit Observed, Justice Done

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Due Process of Law - Rights

1. Notice
2. To be heard and to present evidence
3. To respond to the evidence presented by others
4. Impartial decision maker

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Due Process – Administrative Acts

1. The decision-maker is neutral and unbiased.
 - a. No undisclosed ex-parte communications.
 - b. No personal stake in the outcome.
2. Anyone with a protected interest in the proceeding:
 - a. Receives adequate notice;
 - b. Is heard and able to present evidence on the issues;
 - c. Can review and respond to evidence in a reasonable manner.
3. The decision must be based in fact and law. Findings of fact and conclusions of law are preserved in the record of the proceeding. Otherwise the decisions is arbitrary, capricious, and unreasonable.
4. The procedure must also comply with local ordinance and state statutes.

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Zoning Ethics

1. Will this decision exclude some individuals unfairly?
2. Does the decision unreasonably interfere with the marketplace and produce financial windfalls to some?
3. Are we taking into account our duty to share regional burdens?
4. Are our aesthetic and design requirements excessive?
5. Are we imposing conditions and burdens on applicants that exceed our authority and/or the burdens their projects impose on the city?

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The Office of the Property Rights Ombudsman

- Information
- Mediation
- Advisory Opinions
- Arbitration

www.propertyrights.utah.gov

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Land Use Resources

Land Use Academy of Utah

www.luau.Utah.gov

- Training Videos
- Publications
- Links to Legislative Changes
- Focus on Citizen Planners

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Land Use Resources

Utah Land Use Library

www.utahlanduse.org/library/

- Advisory Opinion Database
- Topical review of land use regulation
- Detailed summaries of law on specific topics
- Streaming video of ULUI Fall Conference
- Utah Law of Eminent Domain (coming soon)

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Land Use Resources

Land Use Politics Blog (Wilf Sommerkorn)

www.utahlanduse.org/blog/

Regular updates on pending legislation

Legislative recap of bills passed

Thoughtful summaries of political trends

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Land Use Resources

Property Rights Ombudsman

www.propertyrights.Utah.gov

- Full text of all advisory opinions
- Portal for information and dispute resolution
- Recent case law updates
- Information about eminent domain

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