




THE UTAH
LAND USE
INSTITUTE

Processing Administrative Applications

What the Courts have said since 2017.

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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.



The Division of Housing and Community Development in the Utah Department of Workforce Services has provided funding for this workshop.

Arbitrary and Capricious

An administrative land use decision is arbitrary and capricious if it is not supported by substantial evidence in the record or is otherwise illegal.

Utah Code Ann. 10-9a-801

Two kinds of land use actions:

Legislative – by the City Council or County Commission or Council

Administrative – by any entity appointed to be the land use authority which is to act on a land use application.

Three Kinds of Uses under Utah Code:

- ▶ Permitted Uses
- ▶ Conditional Uses
- ▶ Prohibited Uses

Conditional Uses

WHEN CONSIDERING A CONDITIONAL USE APPLICATION,
THE REVIEW MUST INCLUDE THESE STEPS:

1. Identify the reasonably anticipated detrimental effects (RADEs).
2. Determine whether, in this specific location and under the specific aspects of this particular proposal, the RADEs can be “mitigated”. (Note that “mitigated” is not “eliminated”. If mitigation cannot occur, deny the application.)
3. If mitigation can occur, impose reasonable conditions which mitigate the RADEs and approve the proposed application.

Utah Code Ann. § 10-9a-507 (municipalities) § 17-27a-506

(counties).



McElhaney v. Moab

2017 UT 65

1. A LAND USE APPLICATION IS ENTITLED TO APPROVAL IF IT COMPLIES WITH THE ORDINANCES IN PLACE WHEN THE APPLICATION IS FILED AND ALL APPLICABLE FEES ARE PAID.

- If it complies, it must be approved.
- The review of an application thus involves only the question “Does this application comply with the ordinances?” Utah Code Ann. § 10-9a-509 (municipalities) and § 17-27a-508 (counties).

McElhaney v. Moab

2017 UT 65

2. SUBSTANTIAL EVIDENCE IS REQUIRED FOR EACH PART OF THE DECISION TO APPROVE OR DENY A CONDITIONAL USE.

- Evidence to support the identification of the RADEs.
- Evidence to support the decision as to whether each RADE can be mitigated or not.
- Evidence to support the determination that specific conditions will mitigate the RADEs and that they are not unreasonable.

McElhaney v. Moab

2017 UT 65

3. THE TERM “SUBSTANTIAL EVIDENCE” IS A LEGAL TERM OF ART. THIS MEANS THAT THOSE WORDS CONVEY THE MEANING OF THOUSANDS OF COURT CASES IN ADMINISTRATIVE LAW AND INCLUDE THAT ENTIRE BODY OF LAW. SUBSTANTIAL EVIDENCE ONLY EXISTS WHEN THE RECORD OF THE DECISION ADEQUATELY EXPLAINS THE BASIS FOR THE DECISION. *MCELHANEY*, ¶ 34.

McElhaney v. Moab

2017 UT 65

4. IT IS NOT THE JOB OF THE DISTRICT COURT TO CREATE A RECORD AND FIND SUBSTANTIAL EVIDENCE TO SUPPORT A DECISION. IF THE LOCAL LAND USE AUTHORITY OR APPEAL AUTHORITY DOES NOT DO THAT, INCLUDING THE STATEMENT ON THE RECORD OF THE REASONS FOR ITS DECISION, THEN NO ONE ELSE CAN.

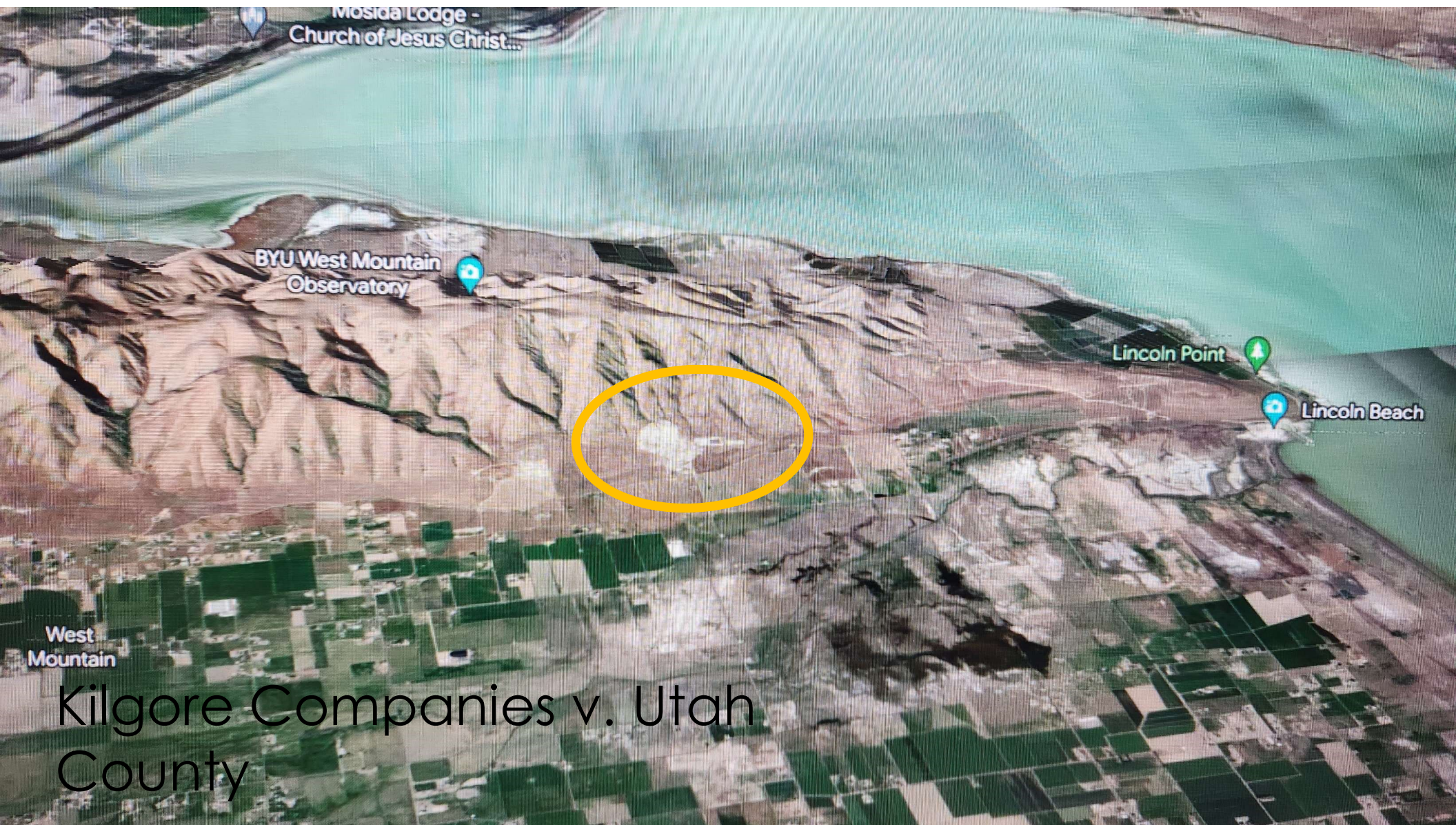
McElhaney v. Moab

2017 UT 65

5. IF THERE IS NO BASIS IN THE RECORD TO REVIEW THE LOCAL DECISION, THE COURT IS TO SEND THE MATTER BACK TO THE LAND USE AUTHORITY TO TRY AGAIN.



Kilgore Companies v. Utah
County



Kilgore Companies v. Utah
County



Kilgore Companies v. Utah
County



Kilgore Companies v. Utah
County

Kilgore Companies v. Utah County Board of Adjustment
2019 UT App 20

6. THE EVIDENCE PROVIDED BY COMPANY OFFICIALS
BASED ON THEIR EXPERTISE WAS HELD TO BE
SUBSTANTIAL EVIDENCE.

7. THE ANALYSIS BY THE COUNTY PLANNING STAFF WAS
HELD TO BE SUBSTANTIAL EVIDENCE.

8. THE STATEMENTS OF THE GENERAL PUBLIC ABOUT
MATTERS OF PROFESSIONAL EXPERTISE, INCLUDING
HEARSAY STATEMENTS ABOUT WHAT A REALTOR SAID,
WAS HELD TO NOT BE SUBSTANTIAL EVIDENCE.

Kilgore Companies v. Utah County Board of Adjustment
2019 UT App 20

9. IN A LAND USE APPLICATION FOR A CONDITIONAL USE, THE ISSUE IS LIMITED TO THE EFFECT OF THE SPECIFIC PROPOSED CONDITIONAL USE. THE ISSUE DOES NOT INCLUDE THE GENERAL OPERATION OF AN EXISTING USE WHERE THE CONDITIONAL USE HAS NO EFFECT ON THE IMPACT OF THE EXISTING USE.

Kilgore Companies v. Utah County Board of Adjustment 2019 UT App 20

10. PERHAPS UNLIKE THE SITUATION IN *MCELHANEY*, KILGORE COMPANIES PERFORMED ITS TASK WELL. KILGORE ESTABLISHED BY A PREPONDERANCE OF PROFESSIONAL, RELEVANT, AND SUBSTANTIAL EVIDENCE THAT ITS APPLICATION COMPLIED WITH THE STANDARDS IN THE ORDINANCE.

Kilgore Companies v. Utah County Board of Adjustment 2019 UT App 20

11. THOSE OPPOSING CONDITIONAL USE PERMITS SHOULD CONSIDER PLACING THEIR FOCUS ON:

- PROPOSING REASONABLE CONDITIONS TO MITIGATE THE RADES (REASONABLY ANTICIPATED DETRIMENTAL EFFECTS),
- NOT SOLELY ON ARGUING THAT THE RADES CANNOT BE MITIGATED – (THAT THE PROPOSED CONDITIONAL USE MAY BE DENIED)
- THE STATUTE SPECIFICALLY REMINDS THOSE INVOLVED THAT “MITIGATED” DOES NOT MEAN THAT THE RADES MUST BE “ELIMINATED” BY THE PROPOSED CONDITIONS.

Utah Code Ann. § 17-27a-506(2)(a)(ii).







Staker v. Springdale
2020 UT App 174

12. SPRINGDALE TOWN SURVIVED THIS CHALLENGE BECAUSE OF EXTENDED ANALYSIS OF THE ISSUES ON THE RECORD. THROUGH THE THREE LEVELS OF REVIEW CONDUCTED BY THE TOWN'S LAND USE DECISION-MAKERS, THERE WERE ADEQUATE FINDINGS OF FACT AND CONCLUSIONS OF LAW TO SUPPORT THE DECISION.

Staker v. Springdale
2020 UT App 174

13. THE COURT'S DUTY TO DEFER TO THE LOCAL DECISION MAKERS MAY HAVE CARRIED THE DAY IN THIS CASE. WHILE THE RECORD WAS DEEMED BARELY ADEQUATE, IT WAS SUFFICIENT TO PRESERVE THE TRADITION THAT A COURT WILL NOT OVERTURN LOCAL DECISIONS IF THEY CAN BE UPHOLD.

Staker v. Springdale
2020 UT App 174

14. THE APPLICANT COULD HAVE PROVIDED A BETTER RECORD TO SUPPORT HIS POSITION IF HE HAD ENGAGED PROFESSIONAL EXPERTISE TO DEMONSTRATE THAT HIS PROPOSED MITIGATION MEASURES WOULD HAVE ACTED TO MITIGATE THE RADE'S. HAD HE DONE SO, THE RESULT MIGHT HAVE BEEN DIFFERENT, AS INDICATED BY THE DISSENTING OPINION.



Northern Monticello Alliance v. San Juan County
2023 UT App 18

15. THERE IS ONLY ONE ENTITY THAT CAN CREATE THE REQUIRED RECORD. IF THAT'S THE ORIGINAL LAND USE AUTHORITY, THEN NEITHER THE APPEAL AUTHORITY NOR THE COURT CAN SUPPLEMENT THE RECORD. EITHER DO IT THE FIRST TIME OR PLAN ON DOING IT AGAIN.

Northern Monticello Alliance v. San Juan County
2023 UT App 18

16. APPLICANTS AND THIRD PARTIES CANNOT RELY ON AN APPROVAL IN THEIR FAVOR UNLESS THEY DO THEIR PART TO PROVIDE EVIDENCE AND ANALYSIS TO SUPPORT THE DECISION.

- IF THE LOCAL BODY DOES NOT HAVE THE ABILITY TO PROVIDE AN ADEQUATE RECORD, ANYONE WHO WISHES TO SEE THAT DECISION UPHELD MUST PROTECT ITS OWN INTERESTS BY PROVIDING THAT RECORD THEMSELVES.

Northern Monticello Alliance v. San Juan County 2023 UT App 18

17. IN TODAY'S LAND USE CLIMATE, THERE ARE THREE ENTITIES – THE MUNICIPALITY, THE APPLICANT, AND THIRD PARTIES WITH “STANDING” TO CHALLENGE A DECISION – THEY ALONE HAVE THE ABILITY TO INTERVENE AND UNDO APPROVALS OR DENIALS.

Northern Monticello Alliance v. San Juan County

2023 UT App 18

18. THERE ARE TWO OPTIONS FOR HOW AN APPEAL AUTHORITY IS TO REVIEW THE DECISION OF A LAND USE AUTHORITY.

1. AS THIS SAN JUAN COUNTY CASE – ON THE RECORD.

- Many jurisdictions would prefer that the land use authority have the last word because that entity might be the legislative body itself or might have expertise and local knowledge that a hearing officer or little-used board of adjustment might lack.

2. THE DEFAULT BY STATE LAW IF THE OTHER STANDARD IS NOT ADOPTED BY THE CITY OR COUNTY, IS “DE NOVO”. THIS MEANS THAT THE APPEAL AUTHORITY CAN MAKE THE DECISION “ANEW”.

- In this latter option, any deficiencies in the record can be cured by creating a new record that includes the original decision plus more evidence and reasoning.
- This second option may better set the stage for district court review when it comes to that – there are two chances to get it right.

Land Use Resources

Land Use Academy of Utah

www.luau.Utah.gov

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

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)

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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