THE UTAH LAND USE INSTITUTE

Vested Rights

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VESTED RIGHTS

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Land-use applicants are generally entitled to have their applications processed under the land-use regulations in effect at the time each application is complete and submitted.[3] In other words, rights in a completed application "vest" upon submission.[4] Utah's "vested rights" doctrine thus establishes a definite date at which a property owner may rely on local ordinances. This rule strikes a balance between conflicting public and private interests in land development, as stated by the Utah Supreme Court:

> A property owner should be able to plan for developing his property in a manner permitted by existing zoning regulations with some degree of assurance that the basic ground rules will not be changed in midstream . . . . An applicant for approval of a planned and permitted use should not be subject to shifting policies that do not reflect serious public concerns.[5]

This chapter analyzes the requirements for the application of the vested-rights doctrine, the nature of vested rights, as well as the exceptions to the rule. Finally, a closely related doctrine—zoning estoppel—is briefly addressed.

A. Requirements

To acquire (and maintain) vested rights, an applicant must (1) submit a completed application that (2) complies with the land-use regulations then in effect as to the required content of the application and (3) implement the development with reasonable diligence once it is approved.

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[3] Utah Code § 17-27a-508(1)(a)(i) and § 10-9a-509(1)(a)(i).

[4] *Keith v. Mountain Resorts Dev., L.L.C.*, 2014 UT 32, ¶ 31, 337 P.3d 213, 223.

[5] *W. Land Equities, Inc. v. City of Logan*, 617 P.2d 388, 396 (Utah 1980). The Utah Supreme Court first formulated the "vested rights" doctrine in 1980. The legislature codified the doctrine in 2005. The vested rights statutes apply to both counties (in Title 17) and municipalities (in Title 10). This chapter includes citations to both titles as applicable.

1. Completed Application

An application is considered "complete" and "submitted" when "the applicant provides the application in a form that complies with the requirements of applicable ordinances and pays all applicable fees."[6] Accordingly, if an application omits required information, it is incomplete and consequently insufficient to give rise to vested rights.[7]

After receiving a land-use application, the relevant land-use authority[8] must determine "in a timely manner" whether the application is complete for purposes of review.[9] After a "reasonable period of time" for the authority to determine whether all ordinance-based application criteria have been met, the applicant may request in writing that the authority provide a determination that the application is either complete or deficient.[10] The authority must respond within 30 days of receiving the notice and either accept the application as complete, or point out a "specified, objective, ordinance-based" criteria that the application lacks, giving notice for the applicant to supplement the application with additional information.[11] If the authority does not respond within the 30 day window the application is considered complete and vested.[12]

2. Conformance

If the application is complete, the applicant's rights vest and the application must be approved if it "conforms to the requirements of the applicable land use regulations, land use decisions, and development standards in effect" on the date of submission.[13] If the application does not conform it cannot be used to vest any rights and does not serve as a "placeholder" until the application is corrected.[14]

Land use "regulations" include ordinances, laws, codes, maps, resolutions, specifications, fees, or rules enacted by the legislative body that govern the use or development of land, as

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[6] Utah Code § 17-27a-508(1)(c) and § 10-9a-509(1)(c).

[7] Similarly, if an applicant intends to apply for a certain approval, but only provides information sufficient for a lesser approval, rights will only vest in connection with the lesser approval.

[8] A land-use authority is either the local legislative body or a person, board, commission, agency, or body the local legislative body designates to act on any given land-use application. Different land use authorities may be appointed to review different types of applications. Utah Code § 17-27a-103(34) and § 10-9a-103(30).

[9] Utah Code § 17-27a-509.5(1)(a) and § 10-9a-509.5(1)(a).

[10] Utah Code § 17-27a-509.5(1)(b) and § 10-9a-509.5(1)(b).

[11] Utah Code § 17-27a-509.5(1)(c) and § 10-9a-509.5(1)(c).

[12] Utah Code § 17-27a-509.5(1)(d) and § 10-9a-509.5(1)(d).

[13] Utah Code § 17-27a-508(1)(a)(i)(A) and § 10-9a-509(1)(a)(i)(A); *see also Stucker v. Summit Cnty.*, 870 P.2d 283, 286 (Utah App. 1994) (holding that date of application determined which ordinances would apply to application). Additionally, the authority is required to correctly apply all relevant regulations. *See Springville Citizens for a Better Cmty. v. City of Springville*, 1999 UT 25, ¶ 30, 979 P.2d 332, 338, (noting that an authority "cannot disregard its mandatory ordinances" and "change the rules halfway through the game").

[14] *See Scherbel v. Salt Lake City Corp.*, 758 P.2d 897, 901 (Utah 1988) ("Allowing persons to obtain vested rights under a zoning ordinance merely by filing preliminary and incomplete papers would defeat the very purpose of zoning regulations.")

well as the adoption or amendment of a zoning map or the text of the zoning code.[15] Land use "decisions" mean administrative decisions of a land use (or appeal) authority regarding a land use permit or application.[16]

Utah's referendum process can also affect an application's conformance. Utah's constitution allows citizens to submit new laws or ordinances to the voters by referendum before the relevant law or ordinance takes effect.[17] Referendum sponsors must file their application to initiate the referendum process within seven days after the local law was passed.[18] Accordingly, a land-use application cannot be deemed to conform with a newly enacted regulation that is still subject to a referendum because the new regulation has technically not yet taken effect.[19] So, rights cannot vest in an application subject to a new regulation until the deadline to file a petition has passed or the referendum itself has run its course, either by voter approval or denial.[20]

3. Reasonable Diligence

Finally, even if an applicant receives approval, the approval is conditioned on the applicant implementing the approval with "reasonable diligence".[21] If the applicant fails to do so the approval—and the associated vested rights—will lapse, requiring a new application. The application will then be evaluated pursuant to the land-use regulations in effect at the time of the submission of the new application. This is also the result when the land is not used in a manner consistent with the original approval.[22]

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[15] Utah Code § 17-27a-103(37) and § 10-9a-103(33). Importantly, they do not include a land use decision of the legislative body acting as the land use authority (even if expressed in a resolution or ordinance), or a temporary revision to an engineering specification that does not materially increase the applicant's cost of development or impact the applicant's use of land. *Id.* at § 17-27a-103(37) and § 10-9a-103(33).

[16] Utah Code § 17-27a-103(35) and § 10-9a-103(31).

[17] Utah Const. Art. 6, § 1(2)(b).

[18] Utah Code § 20A-7-601(6).

[19] *See Mouty v. The Sandy City Recorder*, 2005 UT 41, ¶ 14, 122 P.3d 521, 526 ("Sandy City may have approved development applications that were in conformity with newly-enacted zoning requirements, but considering that the effective date of those requirements was tolled pending the exercise of the referendum right, the new zoning requirements had not yet taken effect. Consequently, the development applications were not in conformity with 'the zoning requirements in existence at the time of ... application.'").

[20] A project owner can also stop the referendum process and revisit its application. If a referendum petition is determined sufficient, the project owner can submit a notice to the local clerk rescinding the project's land-use approval. Utah Code § 17-27a-508(5)(a) and § 10-9a-509(5)(a). Once the notice is delivered, the land-use approval and any regulation specifically passed in connection with that approval are deemed rescinded. *Id.* at § 17-27a-508(5)(b) and § 10-9a-509(5)(b). The applicant can then submit a new (likely revised) application. Of course, any rights to the new application would only vest as of the date of the new submission.

[21] Utah Code § 17-27a-508(1)(d) and § 10-9a-509(1)(e); *see also Spencer v. Pleasant View City*, 2003 UT App 379, ¶ 18, 80 P.3d 546, 551 (noting that there is no vested property right in a "contemplated development or subdivision" and to hold otherwise would "allow property owners who fail to act for many years on a granted variance to frustrate a city's ability to update its land use regulations).

[22] *Keith v Mountain Resorts Development, L.L.C.*, 2014 UT 32, ¶ 31, 337 P.3d 213, 223 ("Development approval does not create independent free-floating vested property rights—the rights obtained by the

4. Nature of Vested Rights

Applicants have vested rights to an evaluation only under official ordinances and other land-use regulations, not under private agreements not approved or adopted by official procedures.[23] Additionally, an applicant acquires vested rights regarding the information included in the application.[24] For example, an application for a building permit for one lot does not then vest rights for future applications for building permits.[25] That said, once an application is approved and final, the corresponding vested rights cannot be revoked.[26] This is true even if different officials later feel that the original application did not in fact comply with the applicable ordinances.[27]

B. Exceptions to the Rule

An applicant's vested rights are not absolute. The land use authority is not required to approve an otherwise complete application if at least one of the following exceptions applies: (1) a compelling, countervailing public interest or (2) pending legislation.

1. Compelling Public Interest

The land-use authority may deny a complete application if the authority "on the record, formally finds that a compelling countervailing public interest would be jeopardized by approving the application," and then specifies the interest in writing.[28] A compelling countervailing interest is something that is fundamental, seriously threatening public health, safety, or welfare.[29] Accordingly, economic considerations or compatibility concerns (typical run-of-the mill land use issues) do not qualify. Instead, the land-use authority must point out extraordinary circumstances, like newly discovered geologic risks or previously unknown environmental hazards. If the authority decides to deny a completed application

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submission and later approval of a development plan are necessarily conditioned upon compliance with the approved plan.").

[23] Utah Code § 17-27a-508(2) and § 10-9a-509(2).

[24] Utah Code § 17-27a-508(1)(a)(i)(B) and § 10-9a-509(1)(a)(i)(B).

[25] *See Stucker v. Summit Cnty.*, 870 P.2d 283, 288 (Utah App. 1994) (declining to hold that that "some development within a subdivision creates a vested right for all subdivision lot owners to develop their lots at any future date under the zoning ordinance in place at the time the initial 'development'").

[26] Of course, the decision on an application is "final" when the time to appeal the decision has passed (appeal deadlines vary from locale to locale). For administrative applications, the failure to file an appeal strips the appellate authority's jurisdiction and the decision becomes final—whether the application conformed to the relevant ordinances is irrelevant. *See Brendle v. City of Draper*, 937 P.2d 1044, 1048 (Utah App. 1997) (holding that the city council lacked jurisdiction to entertain an appeal filed after the applicable 14-day deadline); *see also Holladay Towne Ctr., LLC v. Holladay City*, 2008 UT App. 301, ¶ 8, 192 P.3d 302, 305 (noting that even if denied application in fact complied with the zoning ordinance, applicant did not acquire vested rights because it did not timely pursue an appeal).

[27] *See W. Land Equities, Inc. v. City of Logan*, 617 P.2d 388, 396 (Utah 1980) ("It is incumbent upon a city, however, to act in good faith and not to reject an application because the application itself triggers zoning reconsiderations that result in a substitution of the judgment of current city officials for that of their predecessors.").

[28] Utah Code § 17-27a-508(1)(a)(ii)(A) and § 10-9a-509(1)(a)(ii)(A).

[29] *W. Land Equities, Inc. v. City of Logan*, 617 P.2d 388, 396 (Utah 1980).

because of a compelling countervailing reason, it must do so on the record and should specifically and comprehensively list the facts justifying its decision.

2. Pending Legislation

Finally, an application may be denied if, prior to the date that the complete is submitted and the appropriate fees are paid, the government "formally initiates proceedings to amend the [jurisdiction's] land use regulations in a manner that would prohibit approval of the application as submitted."[30] The amendment proceedings must begin before the complete application and fees are submitted. As a result, even a moratorium (a temporary land-use regulation[31]) cannot prevent rights from vesting unless its proceedings started before the application was submitted. Importantly, if no enactment has occurred within 180 days after the proceedings started, this exception is inapplicable.[32]

Note that the statute provides that an application *may* be denied—not that it *must* be denied—if the pending ordinance would act to prohibit it. The local government may choose to approve pending applications even though they could not be approved after the pending ordinance is adopted. It is also important to note that the pending ordinance must exist in some form which would allow an applicant to determine whether or not the proposed ordinance would actually prohibit approval of the application as submitted. A pending ordinance is just that—an "ordinance"—not a pending philosophy or concept which may or may not affect any given proposal.

One wrinkle to the pending-legislation exception deserves brief attention. In addition to government-initiated legislation, a citizen initiative to amend land-use regulations could easily qualify as "pending legislation" sufficient trigger the exception.[33] Caution is urged before denying an application on that basis, however; Utah courts have not yet addressed the issue, and the statutory language may be interpreted as limiting the "pending legislation" exception exclusively to law-making processes the government started.[34]

C. Zoning Estoppel

Zoning estoppel is a close relative of (and is sometimes confused with) the statutory vested rights doctrine. When applied, the rule prevents the government from using its zoning powers to prohibit a proposed land use. Although parties invoking zoning estoppel are rarely successful,[35] the doctrine remains available in Utah and deserves brief discussion.

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[30] Utah Code § 17-27a-508(1)(a)(ii)(B) and § 10-9a-509(1)(a)(ii)(B).

[31] Utah Code § 17-27a-504 and § 10-9a-504. A temporary land use regulation, sometimes called a moratorium, also takes effect for a maximum of 180 days. A local government entity cannot use both the moratorium statute and the pending ordinance statute to extend delays in application review for more than 180 days. Utah Code § 17-27a-504(2)(b) and § 10-9a-504(2)(b).

[32] Utah Code § 17-27a-508(1)(b) and § 10-9a-509(1)(b).

[33] In addition to having the ability to second-guess land use regulations by referendum (as discussed previously), citizens can create new laws by initiative. Utah Const. Art. 6, § 1(2)(b).

[34] The code states that the exception applies when the "county" or "municipality" initiates formal proceedings. Utah Code § 17-27a-508(1)(a)(ii)(B) and § 10-9a-509(1)(b).

[35] In fact, the only reported case in which a property owner was successful occurred in 1976 in front of a divided Utah Supreme Court. *See Salt Lake Cnty. v. Kartchner*, 552 P.2d 136, 138 (Utah 1976).

Zoning estoppel applies when (1) there is a "clear, definite and affirmative" act or omission by the government upon which (2) a property owner reasonably relies in good faith by making "a substantial change in position" or incurring "extensive obligations or expenses".[36] Additionally, before zoning estoppel will apply, a property owner must demonstrate that some exceptional circumstances exist, making it "highly inequitable" to deprive the owner of the right to complete its proposed development. [37] When the required circumstances are present, the court can stop the relevant authority from using zoning laws to prohibit certain land use.

These requirements set a high bar for property owners. First, the government's action must be significant—ministerial acts and even the failure to enforce zoning laws in the past will likely be insufficient.[38] The act must also be official—a formal action taken by some local government entity such as the legislative body or land use authority, or an official such as the building inspector or zoning administrator empowered to take such actions. The traditional laws related to the ability of agents of private corporations to bind those corporations do not apply to governmental units. Local elected officials, planners, members of public bodies acting on their own, or even the entity's attorney cannot bind the local government entity they represent without an official act by the entity.[39] Additionally, if the owner claims reliance on the government's alleged failure to do something, the omission will not qualify unless the government had a duty to act but did not.[40]

Second, the government's act or omission must be the central reason the property owner acted the way it did, and that action must be significant.[41] Merely purchasing or owning property will not satisfy the standard, nor will spending money on options or engineering or planning

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[36] *See Checketts v. Providence City*, 2018 UT App 48, ¶ 21, 420 P.3d 71, 78; *Grand Cnty. v. Rogers*, 2002 UT 25, ¶ 23, 44 P.3d 734, 739.

[37] *See Utah County v. Baxter*, 635 P.2d 61, 65 (Utah 1981) (declining to apply estoppel when the property owner was not misled); *Salt Lake Cnty. v. Kartchner*, 552 P.2d 136, 138 (Utah 1976). (holding that discriminatory enforcement of zoning law constituted circumstances that justified denial of a request for an injunction).

[38] *S. Weber City v. Cobblestone Resort LLC*, 2022 UT App 63, ¶ 29, 511 P.3d 1207, 1213 (holding that failing to require a business license was insufficient); *Grand Cnty. v. Rogers*, 2002 UT 25, ¶ 23, 44 P.3d 734, 739 (holding that accepting and recording conveyances did not qualify); *Town of Alta v. Ben Hame Corp.*, 836 P.2d 797, 803 (Utah Ct. App. 1992) (holding that issuance of three business licenses and failure to enforce ordinance on lodging house did not qualify); *Morrison v. Horne*, 12 Utah 2d 131, 133, 363 P.2d 1113, 1114 (1961) (holding that an assessors erroneous description of residential property as commercial does not preclude the enforcement of zoning laws).

[39] *See Thimmes v. Utah State Univ.*, 2001 UT App 93, ¶ 8, 22 P.3d 257, 259 (noting that estoppel can only apply to "very specific representations made by authorized government entities"); *Dansie v. Murray City*, 560 P.2d 1123, 1124 (Utah 1977) (holding that city was not bound by employee's representation);

[40] *Utah Cnty. v. Young*, 615 P.2d 1265, 1268 (Utah 1980) (holding that a building inspector's failure to object was insufficient).

[41] *Vial v. Provo City*, 2009 UT App 122, ¶ 27, 210 P.3d 947, 954 (holding that there was no reliance when property owner "did not have the relevant document in mind" when she purchased her home); *Town of Alta v. Ben Hame Corp.*, 836 P.2d 797, 803 (Utah App. 1992) (holding that no reliance occurred when owner used residential property as a business long before government act (issuance of a business license) occurred).

costs.[42] Instead, the property owner likely must show significant physical construction or other development of the land. The owner's knowledge is also key to the analysis—if the owner did not actively confer with the authority about acceptable uses of the land, or otherwise knew the use would not be permitted, any resulting reliance is unlikely to be considered reasonable and in good faith.[43] Ignorance is no excuse; the applicant has a duty to understand the relevant laws, even if a government employee gives incorrect direction.[44]

Finally, the circumstances must be truly out of the ordinary; mere economic hardship will not do.[45] For example, the government's patently discriminatory enforcement of a zoning ordinance could qualify.[46] Government acts that serve to mislead a property owner would also likely tip the scales in the property owner's favor.[47] But absent significant events that make it enforcement seriously unfair to the property owner, courts are unlikely to stop the government from applying the zoning laws on the books.

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[42] *Stucker v. Summit Cnty.*, 870 P.2d 283, 290 (Utah App. 1994) ("The Utah cases discussing equitable estoppel in the context of zoning ordinances uniformly consider the mere purchase or actual ownership of land as inadequate to establish a substantial change in position or the incurrence of extensive expenses.").

[43] *See Xanthos v. Bd. of Adjustment of Salt Lake City*, 685 P.2d 1032, 1038 (Utah 1984) (noting that owner improved a structure to make it appear habitable and knew he did so illegally); *Utah Cnty. v. Young*, 615 P.2d 1265, 1268 (Utah 1980) (property owner knew zoning variance would need to be obtained for commercial use). In other words, because estoppel is an equitable remedy, the owner must come to the court with "clean hands". *See Salt Lake Cnty. v. Kartchner*, 552 P.2d 136, 138 (Utah 1976).

[44] *See Morrison v. Horne*, 12 Utah 2d 131, 133, 363 P.2d 1113, 1114 (1961).

[45] *See Utah Cnty. v. Baxter*, 635 P.2d 61, 65 (Utah 1981) (nothing that use of the property was due to economic pressure, not actions of the government).

[46] *Salt Lake Cnty. v. Kartchner*, 552 P.2d 136, 138 (Utah 1976).

[47] *Fox v. Park City*, 2008 UT 85, ¶ 36, 200 P.3d 182, 192 (using the example of the issuance of a building permit); *but see Checketts v. Providence City*, 2018 UT App 48, ¶ 23, 420 P.3d 71, 78 (decline to apply estoppel when building permit application was approved, but other circumstances negated any misleading effect of the approval).

Checklist

Has an applicant acquired vested rights?

YES	NO	
_____	.....	**1. Submitted and Complete Application**. Has the applicant (1) submitted an application in a form that complies with the requirements of applicable ordinances and (2) paid all associated fees?
_____	.....	**2. Conformance**. Does the application conform to the requirements of the applicable land use regulations, land use decisions, and development standards in effect on the date the application was submitted?
.....	_____	**3. Referendum.** Are any of the laws to which the application conforms still subject to modification or repeal by referendum or citizen initiative?
.....	_____	**4. Pending Legislation**. Before the date the application was submitted, were proceedings formally initiated to amend land use regulations that, if enacted, would prohibit approval of the application? AND If 180 days have passed since initiation of the formal proceedings, has the proposed legislation been officially enacted?
.....	_____	**5. Countervailing and Compelling Public Interest**. Would approval of the application jeopardize a countervailing and compelling public interest (that seriously threatens public health safety or welfare)? AND Has the land-use authority formally and specifically identified on the record the nature of the compelling public interest?

If there is a check on any dashed line, the applicant probably has **not** acquired vested rights. Otherwise, it is likely that rights have vested and the application must be approved.