Administrative Issues and How They are Resolved

CHAPTER 6

Once the community has hammered out the general plan and the land use ordinances, it is time to get down to the basic work of controlling land use and enforcing the rules. While much of the process is case-specific and community-defined, there are some general observations that may be made about some different types of decisions and procedures.

Again, it is important to remember that each municipality or county that has decided to manage land use has its own ordinances and procedures. When discussing ordinances, it is important to remember three things:

1. You must read the ordinance.
2. You must read the ordinance.
3. You must read the ordinance.

There is no way that a general description of Utah land use can possibly anticipate or cover all the variations that are present in individual local ordinances. The general rules and procedures established in this book relate to the general minimal standards in state statutes and case law. If you just review this chapter and fail to review the local ordinance, you will likely misunderstand the local process.

In discussing local land use procedure, municipal staff are often willing to help describe the process to you. Even though such persons may be well-intentioned, they may not understand your question, or may even misinterpret the law. While such help can often be beneficial, you should still take the time to read the ordinance, because the municipality is not bound by its employee's promises or commitments. The only law that the municipality is bound by are ordinances properly passed by a majority vote of the legislative body or land use authority. If you are misled or the person assisting you did not really understand the question you asked, you cannot fix your misunderstanding by bringing a lawsuit. Governmental entities have immunity and are usually not bound by or liable for the representations of their employees and administrators.

Which Ordinance Applies? – Vested Rights

Unique to Utah is what land use planners around the nation refer to as "early vesting". In most states, a local government can adjust the land use regulations to respond to an application that is deemed in need of some adjustments in the public interest. In those states, an applicant is subject to changes in the zoning ordinance, map, and general plan that are made *after* the application is submitted. Not so in Utah.

In the landmark case *Western Land Equities v. Logan City*, the Utah Supreme Court declared that, in the interest of equity and fairness, a subdivision application must be reviewed under the regulations which were in place when the complete application is filed, and the relevant fees paid.[1] This rule has now been codified into state law with some embellishments.[2]

In *Western Land Equities*, the Supreme Court stated that "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. Clearly it is desirable to reduce the necessity for a developer to resort to the courts. An applicant for approval of a planned and permitted use should not be subject to shifting policies that do not reflect serious public concerns."[3]

The "vesting rule" applies to all administrative applications, but not to legislative changes. The purpose of a legislative amendment is to change the law – the zoning ordinance, the map, the general plan, or the city boundaries. Since the goal is to change the regulations, it is a given that the current regulations are on the table for amendment. The changes would not apply to applications which are already vested, of course, but would apply to development plans which have not yet been submitted with the appropriate fees paid.

But in the administrative setting – whether the land use authority appointed to make the decision on the application is the staff, the planning commission, the appeal authority, or the legislative body, the vesting rules apply. Once the application has been filed and the application fees paid, the issue before the land use authority is simply whether the application complies with the rules in place when it was filed or not. If it complies, it must be approved. It is too late to wish that the laws were

different. Changes can be made to the ordinances and other regulations before the next application is filed, but the current law applies to this one.

There are two narrow exceptions, outlined in both *Western Land Equities* and in the current statute, which allow new regulations to be applied to a "vested" application: (1) the compelling public interest exception, and (2) the pending ordinances exception.

Compelling Public Interests

The first exception to the vesting rule applies if the land use authority finds that a "compelling, countervailing public interest" would be jeopardized by approving the application as filed.

The term "compelling, countervailing public interest" is a term defined by case law. "There may be instances when an application would for the first time draw attention to a serious problem that calls for an immediate amendment to a zoning ordinance, and such an amendment would be entitled to valid retroactive effect. 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."[4]

A compelling, countervailing public interest might arise when newly discovered geological hazard issues exist on the property where development is planned[5] or where a citizen referendum has been formally initiated, as provided in the Utah Constitution, so the public can vote on a project[6]. The public interest, as stated in *Western Land Equities*, must be compelling. This requirement requires a higher public interest than changing political preferences.[7]

Pending Ordinances

The second exception applies if an ordinance was under formal consideration at the time that the application was filed and the application fees were paid. If that pending ordinance would prohibit the approval of the application as filed, then the town, city, or county may apply the pending ordinance to the application (Note the word "may"). The local government entity is not obligated to utilize the "pending ordinance rule", but it may do so.[8]

We do not have firm case law on what "pending" means, but it is safe to state that the pending ordinance (1) must be an ordinance, and (2) It must also be "pending,"

meaning that it is in the process of formal review for adoption. It is not sufficient if the pending ordinance is a vague concept in the mind of the city planner or was discussed at the last meeting of the Chamber of Commerce.

It is sufficient, I am sure, if a draft ordinance has been on the agenda of the planning commission or council or county commission and has been discussed. It is not certain whether posting the issue on the agenda alone is sufficient for the ordinance to be "pending". The safest way for the local entity to support an argument that it has a pending ordinance is to place a draft of the ordinance on the agenda for discussion and circulate a written form to those receiving the agenda.

The maximum time that a proposed ordinance may be applied to development applications without formal adoption is six months.[9] A pending ordinance may not be used in conjunction with a temporary land use regulation (moratorium) to delay processing an application for more than six months.[10]

It is worth noting that the vesting rule does not mean that an application must be approved, but only that it must be approved if it meets the requirements in the relevant land use regulations. Where there is discretion vested in the land use authority, that discretion is not eliminated by this rule. If there are subjective considerations that must be taken into account when reviewing an application, there is no vested entitlement to approval with regard to those considerations.[11]

1. Routine Development Applications—Staff Review

Nature of the decision

This category includes all the run-of-the-mill approvals given by the building inspector, the zoning administrator, and other staff. The Utah Legislature, in a recent major revision of the land use codes, specifically charged the planning commission in each jurisdiction to propose streamlined methods of dealing with routine administrative matters.[12]

This was envisioned to include even subdivision approvals (to the extent allowed by state statute), variances, conditional use permits, and other land use decisions. The concept is to allow uncontested matters to be handled without formality. The options chosen by the legislative body could allow any affect ed party, whether the city, applicant, or neighbors, to trigger a more formal review if desired of more complex or important applications. The state code only requires the appointment of a land

use authority to handle each type of application. It does not preclude the type of creativity and situation-sensitive flexibility that local governments may utilize if they wish to do so.[13]

Who makes the decision?

Each different type of routine review will be outlined in the local ordinance and may involve different decision-makers depending on the nature of the application. The building code which is adopted statewide indicates that the chief building official or his designee will issue building permits, but the land use authority who is to review other applications is not specified. Usually, in every town or county of any size, there are many routine matters that need not be considered by the municipal council or county council or commission.

For example, a site plan review is often done by a committee of staff, appointed by the legislative body. Even subdivisions and conditional use permits could be approved by staff if the local government chose to set up such a procedure. The staff might be the default land use authority for many applications, with the local code providing that the applicant, the municipal staff, or perhaps even third parties (such as the neighbors) could request that the planning commission hear the matter.

What notice is required?

Other than the standard 24-hour notice required before a public body convenes[14], no notice of administrative application review is required in state law.[15] The long-term policy questions have been settled on these matters, so the issuing of permits and approvals by staff should be relatively mundane and standardized. The neighbors are not legally entitled to notice of any part of the process if there is no decision-making body involved or no notice provision in the local ordinance.[16]

What public input is required?

None, unless a means to contest the administrative decision is provided in the local ordinance as described above.[17]

What are the issues?

Does the application comply with the appropriate ordinances, rules, standards, and codes? If so, it should be approved. According to statute, [an] applicant is entitled to approval of a land use application if the application conforms to the requirements

of an applicable land use ordinance in effect when a complete application is submitted," except for narrow exceptions provided in state law.[18]

How is the decision appealed?

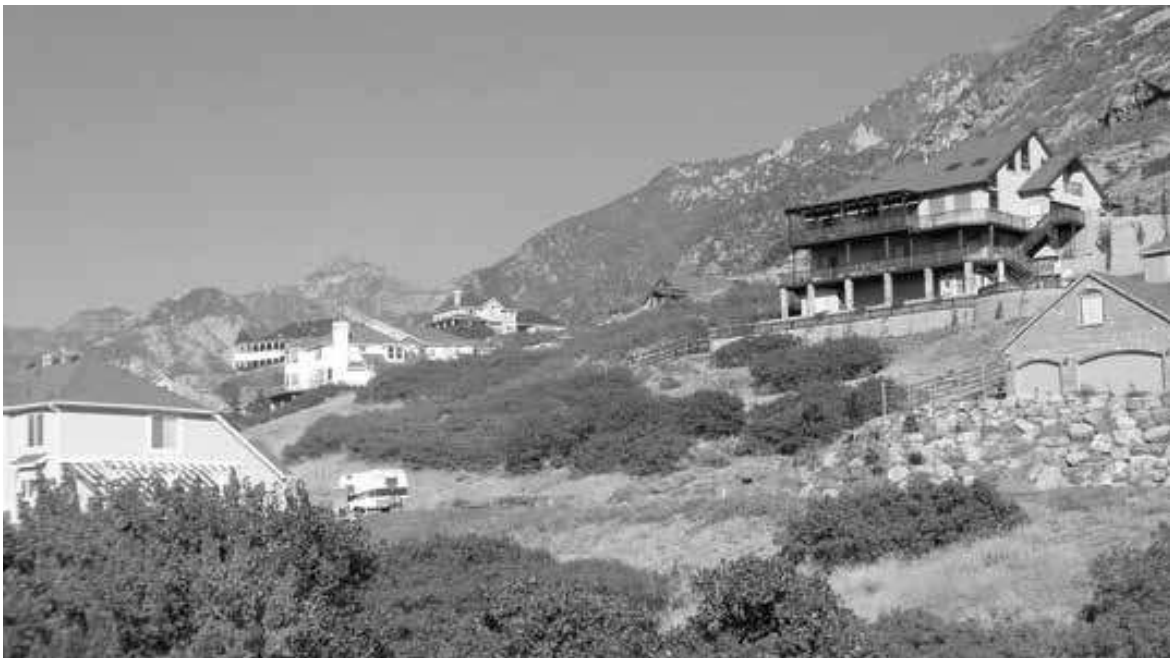
It depends on the specific issue involved. Building permit issues can be appealed to a board of appeals that is provided for in the applicable building code. Health departments also have a board of health that is designated as an appeals body for relevant staff decisions. Appeals of other land use decisions are provided for in state statute (see Chapter 15: Appealing Land Use Decisions) or local ordinances.

Tips for participants

Read the local ordinances. There are many variations on how staff decisions are to be made and how they are appealed. Those who do not agree with staff decisions must comply with the terms of the ordinance with specificity. For example, a case in Draper involved a property owner who had been given building approval. Like many cities along the Wasatch Front, Draper regulates development on steep slopes. A property owner appeared before the planning commission to get permission to build on a slope that exceeded 30 percent. Both the planning commission and the city council turned him down, much to the relief of affected neighbors.

The developer/seller of the lot suggested that the property owner give it another try, however, and so a new application was made to the planning commission. According to the statement of facts in the Court of Appeals decision, the commission was informed that the neighbors no longer opposed the construction. Taking that at face value, the commission blessed the plan. No one appealed the approval within the very short 14-day period provided for in local ordinance.

Naturally, the next step was to pour concrete. This caused an immediate uproar and the neighbors complained that the house was illegally located on the lot. The problem? The 14-day appeal period had run out before the concrete ran in. The Court of Appeals ruled that since the ordinance stated any appeals "shall" be filed within 14 days and no appeal was, in fact, filed within 14 days of the first notice the neighbors had of the issue, there was no opportunity to challenge the approval. The door for appeal was shut. Subsequent deliberations by the planning commission and city council were conducted without any ability to reconsider the matter, said the court.



Residents living in the foothills of Draper challenged the issuance of a permit for a new home on slopes greater than 30 percent. The city council heard their appeal and attempted to revoke the building permit that had been issued. Since neither the residents nor the council had filed the necessary appeal to the city's own appeal authority within the short time allowed by the local ordinance, the Utah Court of Appeals reinstated the permit and the house was completed.

According to the opinion, if the City of Draper wanted to allow more flexibility in such appeals, it could do so. But since the local ordinance said any appeal *shall* be made within 14 days, failure to do so (even by the entity which wrote the law in the first place), was fatal to such an appeal. The property owners built the house.[19]

2. Conditional Use Permits

Nature of the decision

In most zoning ordinances, some "permitted" uses are allowed in each zone with no more review than that required by the building code, health code, or other specific regulations. Staff can review and approve permits for permitted uses without any further input from citizen planners.

Other uses are designated as "conditional" uses, which in state statute are defined as being subject to special case-by-case scrutiny.[20] The conditional use may be allowed, allowed with conditions, or in narrow circumstances, denied.

Conditional uses must be approved if reasonable conditions are proposed, or can be imposed, to mitigate the potential negatives involved. Conditions must relate to applicable standards in the ordinance adopted by the local city or county to regulate conditional uses. A conditional use may not be denied unless it is shown with documented findings of fact and conclusions of law that "the reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards."[21]

Who makes the decision?

Usually, the local ordinance provides that the planning commission or the council or county commission considers conditional use permits. State statute does not impose that duty on any particular body, so local ordinances rule. Conditional use permit applications could be handled by staff, a hearing officer, or other land use authority.[22]

What notice is required?

The local ordinance may provide for hearings, but state statute does not. If the decision is made by a public body, however, an agenda and public meeting would be required.[23]

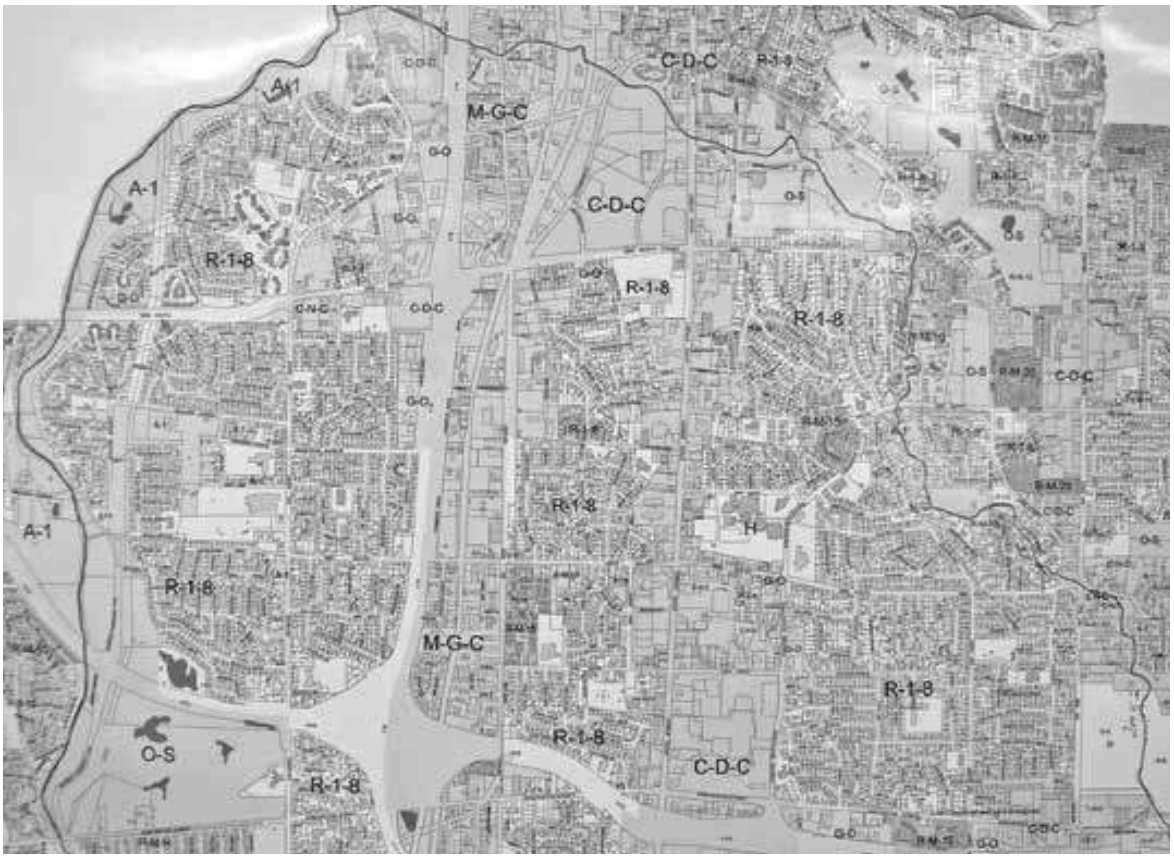
What public input is required?

None is required by state law. If the decision is made by a hearing officer or staff, no public notice or participation in the decision might occur. Local ordinance could allow for notice to the public or neighbors, could provide for an optional protest procedure that would trigger a public process, or otherwise deal with such issues with or without public or neighborhood participation.

Of course, the applicant must be notified of any meeting or hearing where the application is considered.[24]

What are the issues?

Such a review is usually about what conditions to apply to the property, not whether the use will be approved or denied. What reasonable conditions should be imposed on the proposed use so that the negative aspects of the use make it more acceptable in the proposed location and under the proposed method of operation?



All of the commercial and manufacturing zones on the map above have been designated "C-D-C" or "M-G-C". This means, according to the local code, that every use in that zone is a conditional use. Some cities have dramatically increased their detailed management of development by such a strategy, and every proposed use must go through the process of getting a conditional use permit.

The presumption is that the use should be allowed since the ordinance would not provide for a use if the use were not deemed desirable in the first place. The decision as to whether the use is appropriate in the zoned area has already been made by the municipal council or county legislative body. When an application is filed for the permit, the time has passed to determine whether the proposed conditional use is appropriate in that zone.[25]

If the use can be conditioned in a manner that mitigates the negative aspects of the use, then it must be so conditioned and approved. The conditions need only mitigate those negative aspects. There is no duty of the applicant to eliminate them.[26] If no conditions can be imposed to mitigate the negative aspects, then the conditional

use may be denied, but only based on a record including findings of fact based on substantial evidence supporting the denial.[27]

The major issue is the conditions, so the central issue is: what conditions would be appropriate and what conditions might not? For a more thorough discussion, see "Burdens on Development" in Chapter 8. It may be helpful to consider a specific case to illustrate these points.

The significant case of *Davis County v. Clearfield City* involved a battle which was typical of the type of war that goes on when someone proposes to build group homes for the treatment of those with special challenges near a neighborhood or school.

Standards for a Conditional Use

Case Law: Davis County v. Clearfield City

Davis County proposed using a remodeled home as a center for the treatment of those suffering from substance abuse. The house was adjacent to another older home used by the Addiction Recovery Center at the time and across the street from a junior high school. Neighbors appeared and protested. The citizen planners voted to deny the required conditional use permit in response to "public clamor."

In stating that the denial was arbitrary, capricious, and illegal, the Court of Appeals stated:

> Nowhere in the transcripts . . . is there believable information or evidence on which the Clearfield City Council could have rationally believed that the proposed mental health facility would pose any special threat to Clearfield City's legitimate interest.

The court also found that the maps presented and relied upon . . . were arbitrarily drawn and were not presented or explained to the public.

> With regard to concern over real estate values . . . no studies were made and no opinions were given by professional real estate appraisers

This is one of the homes that Davis County wanted to use as treatment facilities in Clearfield. Local residents objected strenuously to the idea. Although the city council denied the conditional use permit, the Utah Court of Appeals overturned the decision since it was only supported by public clamor.

> nor was any credible evidence of reduced property values produced at the hearings.
>
> [The opposition] did not have factual support in the vague reservations expressed by either the single family owners or the commission members . . . [The] reasons did not justify denial of the permit '*even though they would have been legally sufficient had the record demonstrated a factual basis for them.*'[28] (*emphasis added*)
>
> . . . [T]he denial of a permit is arbitrary when the reasons are without sufficient factual basis
>
> . . .[T]he consent of neighboring landowners may not be made a criterion for the issuance or denial of a conditional use permit.[29]
>
> [T]he opposition of neighbors is not one of the considerations to be taken into account when determining whether to issue a development permit.[30]
>
> [Local government] must rely on facts, and not mere emotion or local opinion, in making such a decision.[31]

How is the decision appealed?

Under statute, the local council or county commission can appoint itself or some other body to hear appeals involving conditional use permits.[32] Check the local ordinance to see what the appeal process is. There is no access to district court until the local appeals process has been completed.[33]

Tips for participants

Conditional uses are often used, but not often understood. There is a tendency by members of a planning commission or legislative body, once a matter of some discretion is before them, to attempt to act as if they had legislative discretion and, therefore, that they may impose any decision they consider desirable. As shown in the *Clearfield* case, that is not true.

As an applicant that wants your application for a conditional use permit to be approved, come prepared with factual evidence supporting the application. Be prepared to respond to the evidence you anticipate that those against the idea will use to oppose it.

If you want a conditional use application denied or conditioned, clamor all you wish, but while you are clamoring, provide some substantial evidence that can be placed on the record to justify your opposition. The citizen planners cannot legally support your position if you fail to complete your homework and provide the evidence they need to support a vote in your favor.

If you are among the citizen planners involved, don't deny an application unless you have evidence to support your denial. With a conditional use permit application, the question you are addressing is not "Why?"— it's "Why Not?". In other words, if you intend to deny a conditional use application, make sure that you have evidence to support that you cannot mitigate the "significant anticipated detrimental effects."[34]

Remember that substantial evidence means (1) "beyond a scintilla of evidence" and, (2) "that a reasonable mind would accept [the evidence] as adequate to support a conclusion."[35] While the decision does not have to be based on a majority of the evidence, it still must be based on credible evidence.

3. Subdivision Review and Approval

Nature of the decision

It is not unusual, for a subdivision application to be accompanied by a petition to rezone the property to the desired density. *If a rezone is requested at the same time a subdivision approval, the subdivision application and the rezoning request are considered separate issues, one administrative and one legislative. The two decisions to be made should each be handled according to the rules for that issue.* The information in Chapter 5 about zoning changes for individual parcels would apply just as this discussion about subdivision processes would, and both processes would have to be completed successfully if the development is to proceed.

Before proceeding with a subdivision application, there are a couple of threshold questions to consider; (1) does the proposed change in the configuration of land fall into what the state law defines as a "subdivision", and (2), is this subdivision exempt from the requirement that it be shown on a subdivision "plat"?

Such questions matter because state law makes exceptions to the definition of "subdivision". For example, the definition does not include changes involving two or more parcels of agricultural land where the changes are made for agricultural purposes.[36] Further, boundary line adjustments also are not considered subdivisions, nor are lot consolidations, so long as the resulting parcel is legal.[37]

The local ordinance must provide for subdivisions of land.[38] It can also provide for some subdivisions to be exempt from a platting requirement if they include 10 or fewer lots or involve land which will remain in agricultural use.[39] Be sure to check the state statute if this may apply to a proposed subdivision. The consequences of creating a separate parcel of property with no building rights can be significant to a future owner and the original subdivider as well.[40] A claim that an exempt agricultural parcel is a buildable lot can result in civil liability years later when some future owner buys land and thinks it can be used for nonagricultural purpose only to find out it cannot.

In 2023, the Utah Legislature attempted to make the process of subdivision review simpler, more efficient, and more predictable for low density residential development. Every municipality and county in the state must now follow specific rules in considering most residential subdivision applications.[41]

Who makes the decision?

According the new law, which takes effect in either February (larger cities and counties) or December (smaller cities and counties) of 2024, applications for preliminary subdivision approval for homes, townhomes and duplexes are reviewed by an "Administrative Land Use Authority", which may be any number of individuals or even one individual, but may not be the legislative body or a member of the legislative body.[42] The final plat review is deemed technical only and cannot be performed by either the planning commission or the legislative body.[43] For specific guidance, check the local ordinance.

What notice is required?

State law requires no public notice and no public hearing to approve a new subdivision unless a public street is to be vacated or changed as part of the subdivision approval. When a subdivision plat is amended, however, notice must be provided.[44]

The local government entity must either mail, email, or otherwise notify each "affected entity" that provides a service to the owner of record of the portion of the plat which is being amended. Such notice must be provided at least ten calendar days before the amendment might be approved.[45] Notice must also be provided of at least one public meeting where the plat amendment is to be discussed. This notice may be mailed to the record owner of each parcel within specified parameters of the affected property or by means of a sign posted on the property in a visible location.[46]

A public hearing must also be held within 45 days after the proposed amendment is filed if any owner of land within the affected subdivision plat objects to the amendment in writing or if all the owners in the entire platted subdivision have not signed the revised plat.[47]

A hearing must also be held if the subdivision amendment would vacate or abandon a public street or public utility easement. In this instance, the notice must be

1. mailed to the record owner of each parcel accessed by the street or easement;
2. mailed to "affected entities" as defined in statute; *and*
3. posted on or near the public street or easement; *and*
4. posted on the government entity's website and at *www.pmn.utah.gov*.[48]

As with other notice requirements, local ordinance can require more notice and hearings. Be sure to check the ordinance to verify. Local governments are encouraged by the state land use statutes to develop streamlined approval processes, so while a hearing may be required for subdivision approval, that hearing may only relate to approval of a preliminary plat and cannot be before the city council or county commission. Only one public hearing is allowed and that hearing is optional based on the local ordinance. It must be conducted by the appointed "Administrative Land Use Authority."[49]

What public input is required?

No public hearing is required by state law before the appointed Administrative Land Use Authority that considers a new subdivision application. Proposed subdivision amendments may require a hearing.[50] But local ordinances may provide for the time, place, manner and format of a public hearing if the town, city, or county wishes to require a public hearing on subdivision plat applications.

What are the issues?

In the process of preliminary review of proposed low-density residential subdivisions, there will typically be only one public hearing but there may be several public meetings. (See appendix A – Open and Public Meetings). The issue in preliminary review is forthright: Does the proposed subdivision meet the requirements of the ordinance? If it does, it must be approved.[51]

The preliminary plat review is designed to determine generally that the subdivision concept complies with all the relevant regulations and codes. Once preliminary approval is granted, the applicant will prepare a final plat that will be reviewed by local staff or an appointed group, but not by the planning commission or legislative body.[52]

There is no substitute for reading the local subdivision ordinance to understand how each county or municipality handles subdivision applications. Remember – the 2024 simplified subdivision review process might only apply to low-density residential subdivisions. Commercial, industrial, and multi-family subdivisions may be reviewed in another process as the local ordinances provide."

As with other administrative decisions, the issues are defined by the local ordinance and the search for substantial evidence to support a land use decision. The applicant

proposes a division of the property that he wants approved. The staff is usually involved before the citizen planners hear the matter, but the applicant does not have to agree with staff or adopt all the suggestions made. When the Administrative Land Use Authority hears the proposal, it reviews it in light of the provisions of the applicable local ordinances. It then responds with comments and ultimately a motion to approve or deny.

At any stage, the administrative land use authority may consider the application incomplete, out of compliance with the local ordinances, or otherwise not approvable. At this point, it may simply agree to continue the item so the applicant can revise the proposal. If applicants ask for a vote, however, they are entitled to it. If the subdivision request does not comply with the ordinance, the administrative land use authority must deny it. It must be remembered, however, that under Utah law, if a subdivision application meets the conditions of the land use ordinance it must be approved.[53]

A common issue in subdivision approval is the imposition of conditions on development. For a thorough discussion of what conditions can be legally imposed in subdivision approval, see "Burdens on Development" in Chapter 8.

Remember, the state-mandated process for subdivision review applies only to single-family, duplex and townhome subdivisions. Apartment and commercial subdivisions are reviewed in whatever manner the local jurisdiction provides by ordinance. These reviews are also administrative, of course, and if any proposed subdivision, residential or commercial, meets the requirements of local ordinance it must be approved.

At times an applicant for subdivision approval or for any other local administrative approval may conclude that the process is taking too long. The applicant has the option, for any land use administrative application, to "pull the rip cord" and demand that the application be acted upon within 45 calendar days.[54]

How is the decision appealed?

An administrative appeal is first heard by the local appeal authority.[55] After the local administrative processes are "exhausted," those who disagree with the resulting vote can appeal the matter to district court.[56] Property owners also can appeal decisions that raise constitutional issues to the Property Rights Ombudsman for mediation or arbitration. See Chapter 13.

Tips for participants

Subdivision reviews are common administrative land use issues which most local governments deal with, especially if they are booming bedroom communities. Once the subdivision is finished, the staff usually reviews and approves the construction of homes and commercial buildings without public input or notice.

Superficially, the first issue of density and suitability is resolved at the rezoning phase. The subdivision review involves a lot of technical detail from a variety of codes and regulations, but it is not about density or land use unless combined with a request for a legislative approval to change the zoning of the affected land.

There are some issues that are almost always involved in subdivision review, and appropriately so. These may include:

- Road and sidewalk standards and circulation patterns, as well as street names.
- Public utilities, including storm water management, and the manner in which they are provided and installed
- Minimum lot sizes, dimensions, setbacks, and property addresses.
- Open spaces, trails, greenways, and other amenities.
- Slopes, vistas, sensitive lands, and environmental issues.
- Covenants and restrictions, along with the nature of any homeowners association involved and common area maintenance.
- Clustering, architectural design, and density bonuses allowed in return for project enhancements.
- Completion guarantees and bonding.

Those applying for subdivision approval need to be prepared for an extended, somewhat unpredictable, process. Land use decisions can be routine, but they are notoriously hard to manage since there are many people involved and final approval is usually given with a fair degree of caution because of the finality involved. Once approval is granted, it usually cannot be revoked.[57]

The less development going on in a community, the more unpredictable the process can be. It is common for a first-time, small developer to be naive about the time and cost involved. Remember that no one government official is in charge here, and no

staffer or elected official will usually be able to control the variables even if they are inclined to try. More and more control is imposed beyond the local planning department as the fire department, health department, federal Corps of Engineers, utilities, and others must sign off before development occurs. Talk to someone familiar with the process in your community before embarking on your own to do development.

For neighbors seeking to influence subdivision approval, remember earlier is better. There is a gradual "vesting" that occurs in the process, and the community may not legally roll back decisions after a property owner has expended funds and commenced development under approvals granted.

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1 *Western Land Equities v. Logan City*, 617 P.2d 388 (Utah 1980).

2 Utah Code Ann. §10-9a-509 (municipalities); Utah Code Ann. §17-27a-508 (counties).

3 *Western Land Equities*, 617 P.2d 388 at 396.

4 *Id.*

5 *Gardner v. Bd. of Cty. Comm'rs of Wasatch Cty., 2008 UT 6, ¶ 3, 178 P.3d 893, 897, abrogated by Utah Res. Int'l, Inc. v. Mark Techs. Corp., 2014 UT 59, ¶ 3, 342 P.3d 761* 2008 UT 6 ¶12.

6 *Mouty v. The Sandy City Recorder, 2005 UT 41, ¶ 15, 122 P.3d 521, 526* (Holding that the referendum right is so important that it overrides individual economic interests).

7 *Western Land Equities*, 617 P.2d 388 at 396.

8 Utah Code Ann. §10-9a-509(1)(a)(ii)(B) (municipalities); Utah Code Ann. §17-27a-508(1)(a)(ii)(B) (counties).

9 Utah Code Ann. §10-9a-509(1)(b) (municipalities); Utah Code Ann. §17-27a-508(1)(b) (counties).

10 Utah Code Ann. § 10-9a-509(1)(b)(ii)(B). (2023 General Session)

11 *Farley v. Utah Cty., 2019 UT App 45, ¶ 28, 440 P.3d 856, 863* (Holding that where the criteria for an application may be subjective, no protectable property interest is created).

12 Utah Code Ann. §§10-9a-302(1)(c) and (5) (municipalities); Utah Code Ann. §§17-27a-302(1)(c) and (5) (counties)(These sections allow the legislative body, with the advice of the planning commission, to designate a separate administrative person or body to act on each type of application).

13 *Id.*

14 Utah Code Ann. §52-4-202(1)(a); See also Utah Code Ann. §52-4-103(9(a) (A staff committee designated as a land use authority is subject to the Open and Public Meetings Act since they are public bodies which make decisions regarding the public's business. Such an entity would be required to post an agenda and conduct their business in public under the Act).

15 Utah Code Ann. §10-9a-201 et seq (municipalities) and Utah Code Ann. §17-27a-201 et seq (counties) (describing the notice requirements for land use regulations and decisions. While there are specific requirements for public notice of pending legislative issues such as modifying the general plan or changing the zoning map, there are no public notice requirements provided there for any administrative decisions except for the cases where approval of the application would involve an amendment to a subdivision (section 207 in both chapters); vacation of a public street (section 208 in both chapters); or certain changes to sign regulations (section 213 in both chapters)).

16 *Brendle v. City of Draper*, 937 P.2d 1044, 1048 (Utah Ct. App. 1997) (While the City of Draper would be within its rights to require notice to the public or neighbors before approving an application, it was not obligated to do so. Since there was no such notice requirement in local ordinance, the neighbors were not entitled to notice).

17 *Id.*

18 Utah Code Ann. §10-9a-509 (municipalities); Utah Code Ann. §17-27a-508 (counties).

19 *Brendle*, supra n. 15.

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

21 Utah Code Ann. §10-9a-507(2) (municipalities); Utah Code Ann. §17-27a-506(2) (counties) ("A land use authority shall approve a conditional use 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." The code specifically states that the reasonable conditions are to mitigate the detrimental effects, not eliminate them).

22 Utah Code Ann. §§10-9a-302(1)(c) and (5) (municipalities); Utah Code Ann. §§17-27a-302(1)(c) and (5) (counties) (The legislative body, with the advice of the planning commission, may designate a separate administrative person or body to act on each type of application).

23 Utah Code Ann. §52-4-202(1)(a).

24 Utah Code Ann. §10-9a-202 (municipalities); Utah Code Ann. §17-27a-202 (counties).

25 Utah Code Ann. §10-9a-507 (municipalities); Utah Code Ann. §17-27a-506 (counties). See also *McElhaney v. City of Moab*, 2017 UT 65, ¶ 39, 423 P.3d 1284, 1293, (The Supreme Court holding that the City of Moab could not deem a bed and breakfast use incompatible with the general plan because the use is specifically allowed by ordinance).

26 Utah Code Ann. §10-9a-507(2) (municipalities); Utah Code Ann. §17-27a-506(2) (counties) See f. 20, supra.

27 *McElhaney v. Moab,* 2017 UT 65, at ¶¶39-41.

28 *Davis County v. Clearfield*, 756 P.2d 704, 711 (Utah Ct. App. 1988), citing *C.R. Invs., Inc. v. Village of Shoreview*, 304 N.W.2d 320 (Minn. 1981) (emphasis added).

29 *Id.*, citing *Thurston v. Cache County*, 626 P.2d 440 (Utah 1981).

30 *Id.*, citing *Bd. of County Comm'rs v. Teton County Youth Services, Inc.*, 652 P.2d 400, 411 (Wyo. 1982).

31 *Id.*

32 Utah Code Ann. §10-9a-701 (municipalities); Utah Code Ann. §17-27a-701 (counties).

33 Utah Code Ann. §§10-9a-701(2) and 10-9a-801(1) (municipalities); Utah Code Ann. §§17-27a-701(2) and 17-27a-801(1) (counties).

34 Utah Code Ann. §10-9a-507 (municipalities); Utah Code Ann. §17-27a-506 (counties). See, generally, *Staker v. Town of Springdale*, 2020 UT App 174, where the Utah Court of Appeals, with dissent, determined that substantial evidence supported the denial of a conditional use permit for parking. An extended discussion of what constitutes substantial evidence is provided. Be sure to read the dissent considering the same subject.

35 Utah Code Ann. §10-9a-103(67) (municipalities); Utah Code Ann. §17-27a-103(72) (counties).

36 Utah Code Ann. §10-9a-103(65)(c)(i) (municipalities); Utah Code Ann. §17-27a-103(70)(c)(i) (counties).

37 Utah Code Ann. §§10-9a-103(65)(c)(ii) and 10-9a-524 (municipalities); Utah Code Ann. §§17-27a-103(70)(c)(ii) and 17-27a-523 (counties).

38 Utah Code Ann. §10-9a-602 (municipalities); Utah Code Ann. §17-27a-602 (counties).

39 Utah Code Ann. §10-9a-605 (municipalities); Utah Code Ann. §17-27a-605 (counties).