What is Land Use Planning?

CHAPTER 1

Before we dive into the specifics of land use planning, it is important to understand the process of community planning and zoning and the permitting of individual projects on a general level.

Land Use Planning is:

Defined. There are land use rules and procedures in place defined by statute and ordinance. When local governments impose land use controls, they are required to adopt specific rules and standards that will govern what landowners can build in the community and what processes they must use for such approval. Following local procedures is essential to obtaining lawful approval. The process does not involve guesswork or assumption but is specific to each local government which writes its procedures down in its codes and ordinances or other rules and regulations.

Deliberate. Local ordinances and state statutes outlining particular steps in the process of regulatory land use must be followed with specificity. Deadlines for applications and appeals will be enforced strictly when and if anyone challenges a land use decision in court. The individual steps involved in the approval process cannot legally be sidetracked or skipped over if someone challenges the process within the time allowed.

Informal. Since land use is local and the final decisions are in the hands of citizen planners who serve on planning commissions, boards of adjustment, and city councils or county commissions[1], the process has resisted efforts to make it more formal. Although the land use decisions by the local council can often be much more significant to a community than the average ruling by the district court, there is no comparison in terms of formality. Issues involving free speech, due process, property rights, and equal protection are common, but the few procedural safeguards to protect constitutional rights are sometimes skirted in the land use process. This is so because we as a public wish it to be so. If every hearing became as formal as the court

room, the inefficiencies would cause the entire system to collapse of its own weight. If those conducting the meetings and making the decisions are open and honest, then somehow the system works better than one might predict it would. Rigid formality and citizen control cannot exist simultaneously.

Public. Land use decisions are not made behind closed doors. In a few cases, public bodies may deliberate in private, but their decisions must be made in open meetings that the public may attend. It is important to note the difference between a public meeting and a public hearing.

At a *public meeting*, any citizen can attend and observe. Anyone has the right to record the meeting, but they have no right to participate by voicing an opinion unless invited to do so. Public meetings include almost all situations where a majority of the members of a local decision-making body gather, whether that be the city council, county commission, planning commission, board of adjustment, or design review committee. Public meetings include study sessions as well as the normally scheduled formal meetings. Public meetings must always be preceded by the posting of official notice and an agenda unless certain emergency criteria are met. Public bodies must not make decisions about issues over which they have control if they have not previously posted the appropriate agenda indicating when and where they will discuss and decide on the topic.

Public hearings, on the other hand, are public meetings where the public can participate and speak. Some public hearings are required by state statute or by local ordinance. Most of the time, local officials cannot make the most significant land use policy decisions until after they have conducted a public hearing as required by law.

Land use matters also involve public documents. With some exceptions for business and trade secrets, virtually all the paper that is generated by the process is public and accessible to any citizen to review and copy. For more information about open meetings and open records, see Appendix A that describes Utah's Government Records Access and Management Act (GRAMA) statute and Appendix B that describes the open meetings act.

Diffused. No one person is ever totally in charge of land use controls. There may or may not be a professional planner working in a community (sometimes there are entire hierarchies and agencies) but there is always a planning commission and a legislative body such as the town board, city council or county commission making final legislative decisions. Sometimes the authority to make a specific approval may be delegated to one individual, but only within guidelines provided in ordinances along with standards adopted by a legislative body. There is always an appeal process available to challenge an administrative land use decision where somebody can second-guess the decision and provide a reality check.

Deferential. On appeal, the decisions of those at the lower levels of the planning hierarchy are usually sustained unless discretion has been abused. The courts have set precedents that clearly establish their obligation to avoid micro-managing local land use unless some local government official has made a decision that clearly violates specific rights or laws. The courts almost never overturn local land use decisions when dealing with the broad public issues involving decisions by a city council or county commission in their legislative roles. The public may more properly challenge such legislative decisions through the referendum process (see Chapter 17).

Local. While there are general rules and protocols that are common to just about every community, there is no land use regulation if the local government does not set up land use procedures. According to the Utah League of Cities and Towns, there are 247 incorporated municipalities in the state of Utah along with 29 counties.[2] This means that there are 276 zoning ordinances, more than 276 planning commissions, and more than 276 zoning maps. There is absolutely no way to make sense of

a planning and zoning issue involving a specific piece of property without reviewing the local zoning ordinance and other related land use regulations. *Local rules govern local problems.*

Self-Contained. There are exterior safeguards, checks, and balances beyond the local land use decision-makers, but pursuing them is, as a rule, cumbersome, expensive, time-consuming, and even less predictable than the local processes. It is usually far cheaper, faster, and friendlier to make every effort to resolve disputes within the local government processes before counting on the courts to resolve local problems.

Complicated. Perhaps the only thing that is predictable about planning and zoning is that anyone who says it is predictable will be proven wrong. Those who work in the arena on a full-time basis realize that there are so many variables involved in the process of developing and administering land use controls that no one really knows it all. For example, the issues that come up in litigation, are usually so individualized by the facts of a particular case that "black and white" tests are impossible to impose.

Each case is unique, each property is unique, and the personalities, motivations, and resources of each individual involved are unique. In response, as time goes by, the rules become more and more complex and tougher to reconcile. The ongoing compounding of the complexities is probably the only reliable prediction that can be made about

land use in the future. This is not to say that citizens should give up and refuse to participate in the process. The natural result of complexity is that those who master the process can better control it and thus influence the result.

Polarizing. Property use conflicts are often emotional and exhausting. Fundamental values like property rights and home and family collide with the economics that drive our civilization. The stage is set for intense and open conflict in a society that is becoming more polarized and impersonal. In an arena where so much is at stake, it is not surprising that attempts by our local governments to forge a consensus and find middle ground are becoming more difficult.

Legal. Here in the West, it is common to rant and rave a little (or a lot) about our freedoms and the unfettered lives our pioneer ancestors enjoyed, free from government regulations and restraints. While that makes for interesting conversation, the fact is that very restrictive land use ordinances have been upheld around the country. In the French Quarter of New Orleans, LA, or historic Charleston, SC, for example, you *are indeed* told precisely what color you may paint your house. These regulations have been upheld under the same U.S. Constitution that we all assume protects our freedoms in Utah, and it is not usually very helpful or constructive to thrash about claiming that harsh regulations are unconstitutional. Since the U.S. Supreme Court decision in *Village of Euclid v. Ambler Realty Co.*[3] where local zoning ordinances were upheld in 1926, any efforts to invite the courts to strike down local land use ordinances on a philosophical basis have met defeat. It is worth noting that this landmark court case was authored by the only Utahn to ever sit on the high court, Justice George Sutherland, a Brigham Young Academy graduate from Provo.

The Utah Supreme Court also held, in a 2003 case, that battles over land use decisions are "run-of-the-mill zoning disputes" and that typical issues raised when a property owner claims that his or her application for a permit was delayed, handled unfairly, or wrongfully denied do not "sound constitutional alarm bells."[4] Zoning and other land use controls have repeatedly been upheld by the courts and are difficult and costly to challenge.

Important. Not least, but last, is this bottom-line aspect of land use regulation: planning and zoning matters. If you care about the property you own and what use you can make of it, if you are engaged in attempting to preserve or improve your neighborhood, or if you aspire to local leadership, land use planning and control must be

important to you. Three recent trends in Utah— exponential population growth, rapidly increasing property values, and a growing concern for our quality of life— have been prime factors in the geometric acceleration of local land use regulation.

If we care about what the world looks like around us or what freedoms we enjoy in using our homes and property, we cannot avoid being engaged in the land use arena. This guidebook is meant to provide a convenient, user-friendly orientation to the rules, the processes, and the players that you will encounter as you become engaged in this very public and spirited effort to plan for Utah's future. Your efforts will not only affect the physical landscape but also the political landscape. The way citizens interact with each other in the public setting and the way local government relates to the people it was created to serve are, to a great extent, defined by how communities plan for land use.

---

1 For simplicity, I use the term "council or county commission" to include all varieties of local legislative bodies, including town boards and county councils.

2 Utah League of Cities and Towns, The Directory for Utah Municipal Officials, 2020-21.

3 *Vill. of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365, 379 (1926); See also *Smith v. Barrett*, 81 Utah 522, 20 P.2d 864, 865 (1933) (upholding zoning ordinances in the state of Utah)

4 *Patterson v. American Fork City*, 2003 UT 7, 67 P.3d 466 (Utah 2003).