

Utah Land Use Law

Government in the Basin

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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 Utah Land Use Institute

Ground Rules:

Your Handbook to Utah
Land Use Regulation

by Craig M. Call, J.D.



Ground Rules: Utah Land Use Regulation

CALL





Who Cares?



Resident
Home Owners

Who Cares?



Who Cares?



Non-Resident
Owners

Resident
Home Owners

Resident
Renters

Who Cares?

Non-Resident
Owners

Future
Residents

Resident
Home Owners

Resident
Renters

Who Cares?

Non-Resident
Owners

Future
Residents

Resident
Home Owners

Resident
Renters

Visitors/
Workers

Who Cares?

Non-Resident
Owners

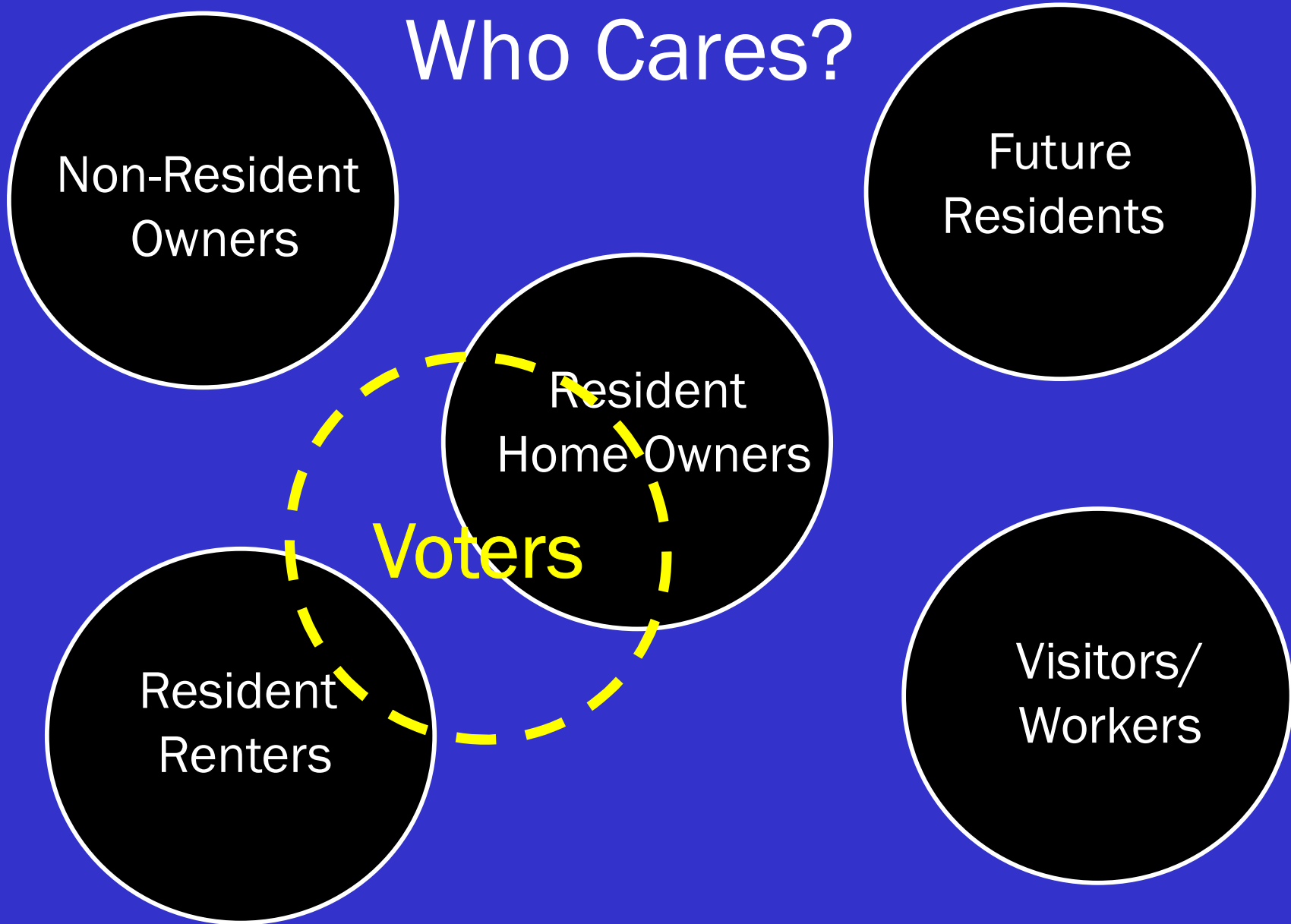
Future
Residents

Resident
Home Owners

Voters

Resident
Renters

Visitors/
Workers



Who Cares?

Non-Resident
Owners

Future
Residents

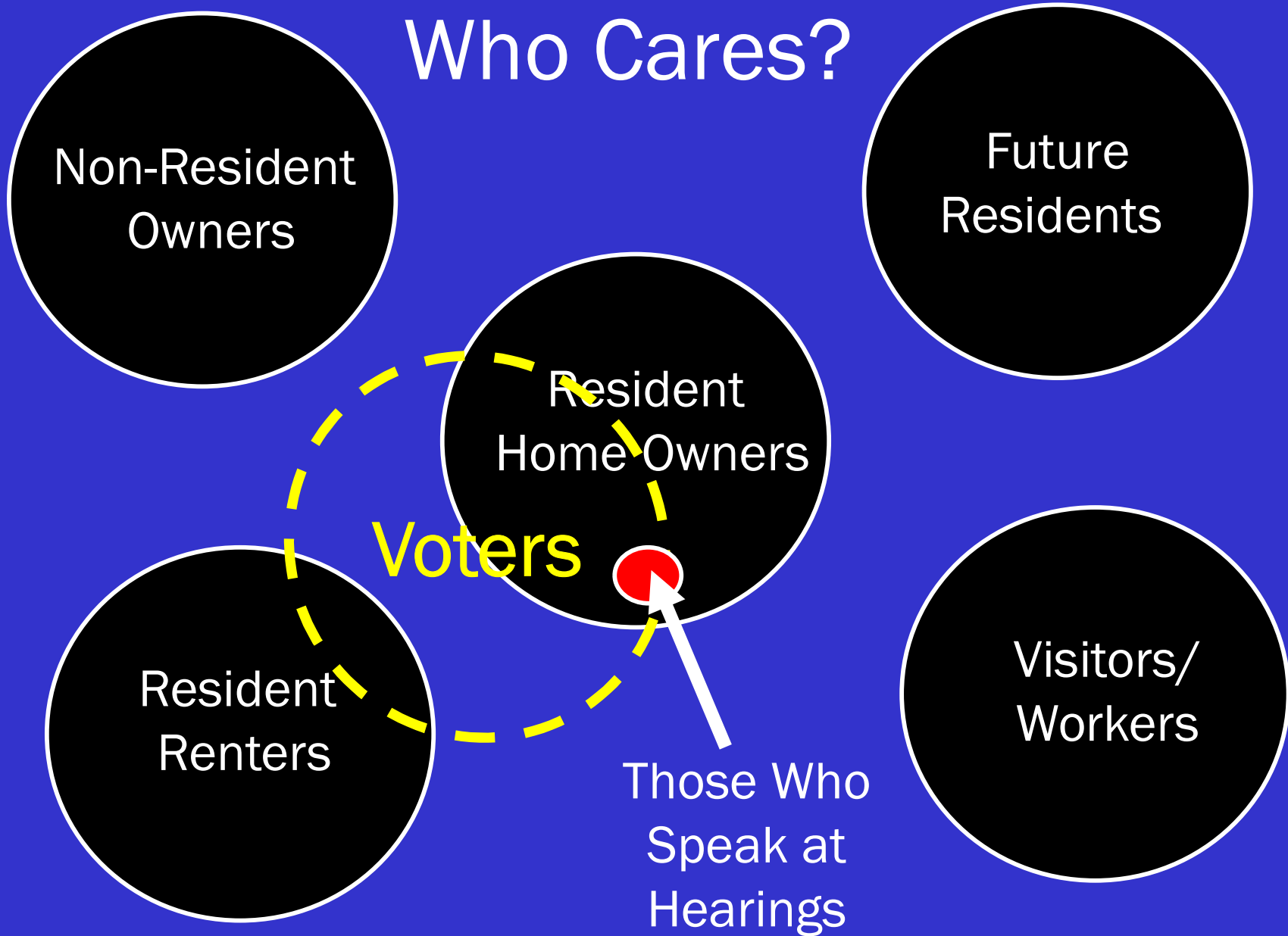
Resident
Home Owners

Voters

Resident
Renters

Visitors/
Workers

Those Who
Speak at
Hearings



Recent Developments in Land Use Regulation:

- Reviewing Applications – On Merits
- Record of Decision – Findings and Conclusions
- Public Engagement
- Due Process and Standing
- Appeals

Legislative Act

- General Plan
- Annexation
- Zoning Ordinance
- Zoning Map
- Development Agreement?
- Planned Unit Dev.?

1. “Reasonably Debatable” that the decision could advance the purposes of LUDMA. (General Welfare).
2. Not illegal under state or federal law or rule.

Administrative Act

- Subdivision
- Conditional Use
- Site Plan Approval
- Building Permit
- Appeal Authority
- Variances

1. Supported by Substantial Evidence in the Record.
2. Consistent with relevant ordinances and laws, including vested rights.



Legislative Acts –
Broad Discretion
(Creating the Rules)

Administrative Acts –
Little Discretion
(Following the Rules)

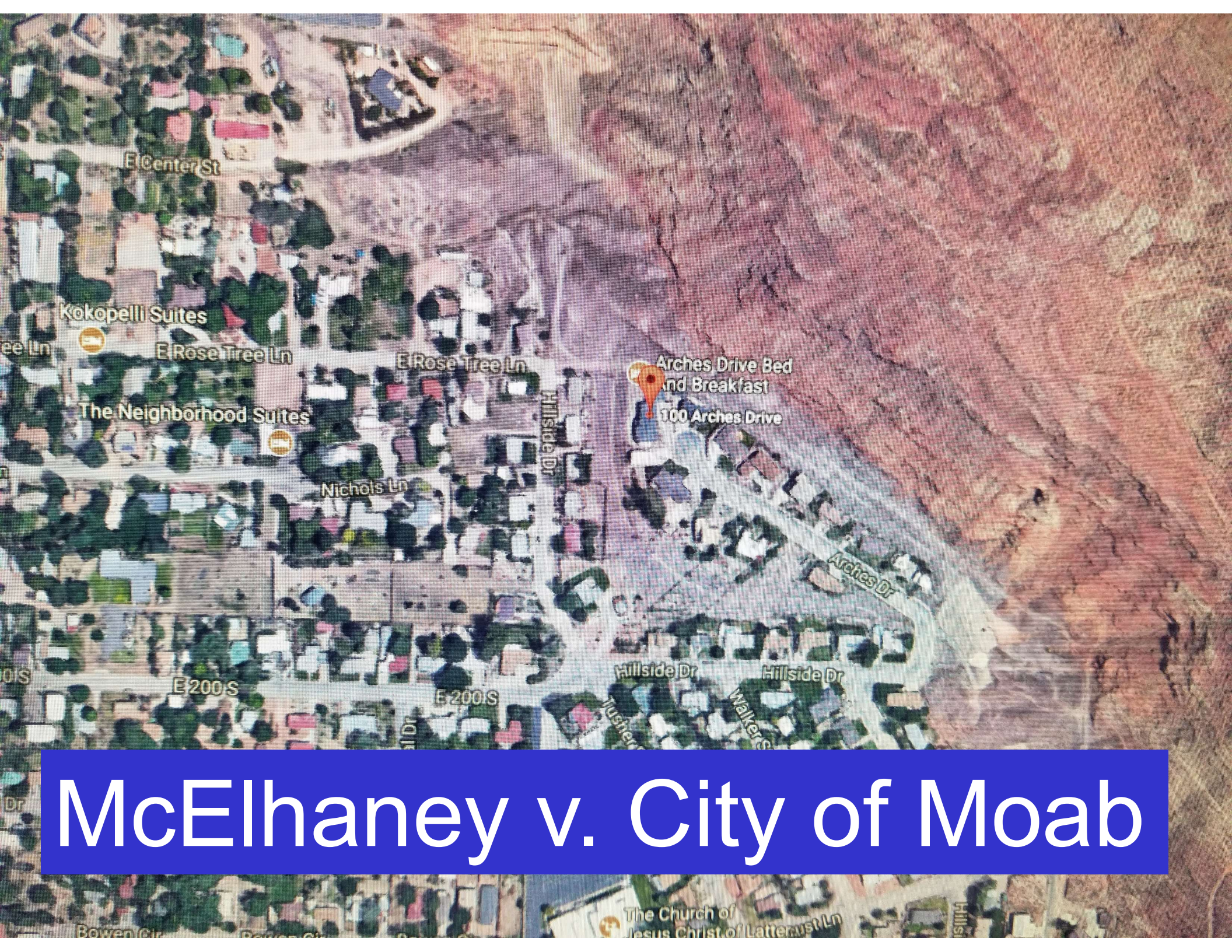
ADMINISTRATIVE DISCRETION

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

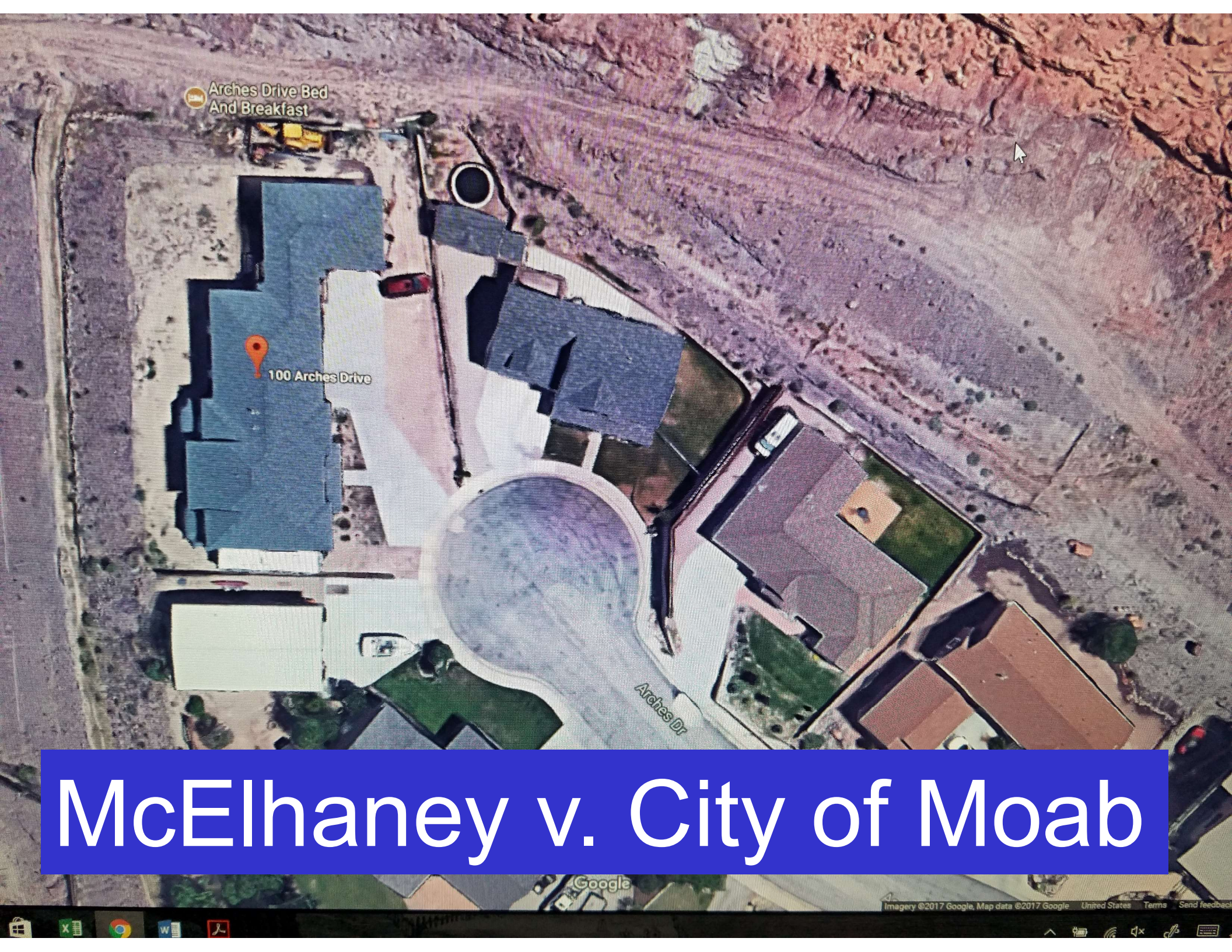
Administrative Decisions by the Legislative Body

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



McElhaney v. City of Moab



McElhaney v. City of Moab

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

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

Vested Rights

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

Vested Rights

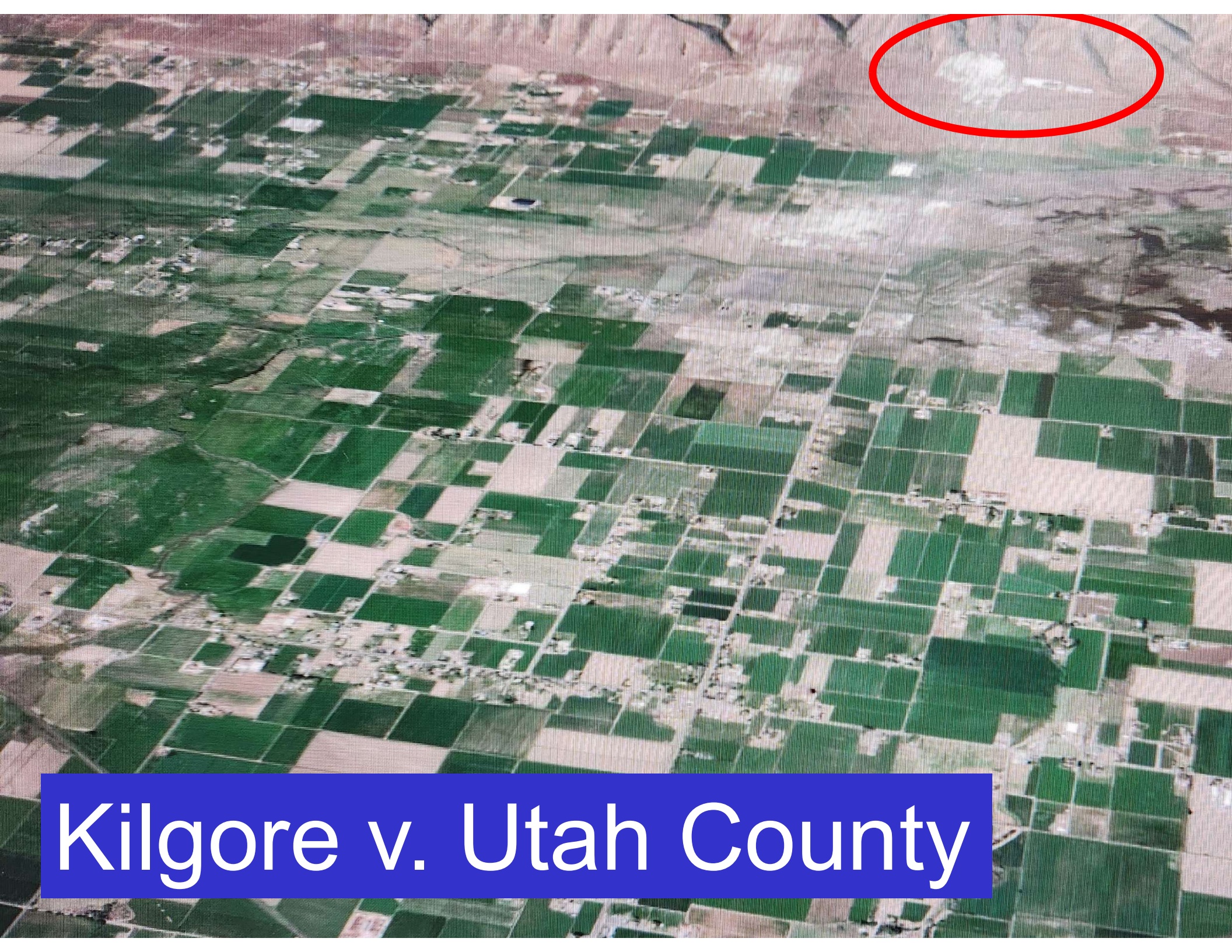
(ii) in the manner provided by local ordinance and before the applicant submits the application, the municipality formally initiates proceedings to amend the municipality's land use regulations in a manner that would prohibit approval of the application as submitted.

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.



Kilgore v. Utah County



Kilgore v. Utah County



Kilgore v. Utah County



Kilgore v. Utah County

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)

SUBSTANTIAL EVIDENCE

Evidence is:

- Relevant
- Independent
- Expert or otherwise credible

Kilgore Companies v. Utah County Board of Adjustment

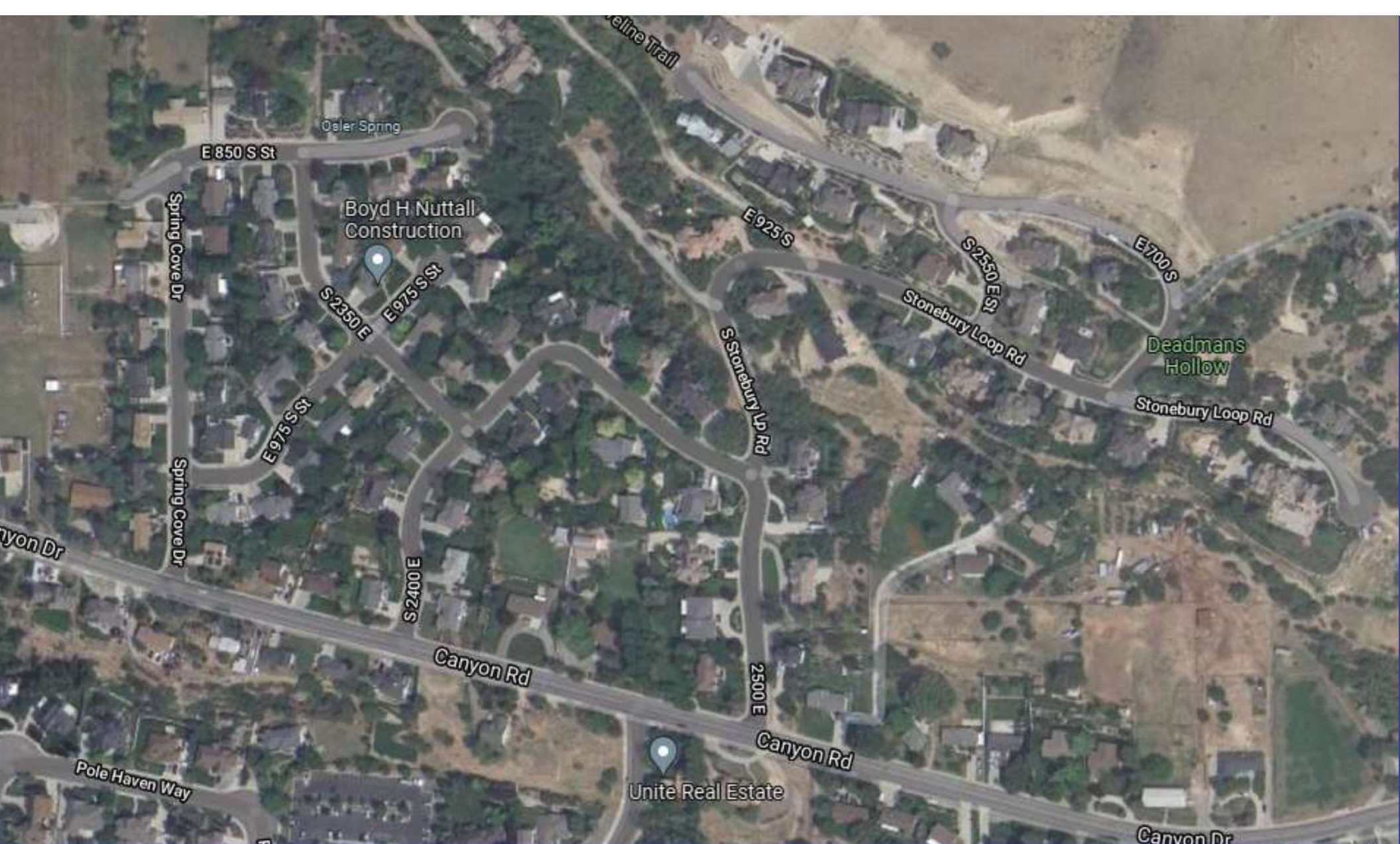
The evidence provided by
company officials based on
their expertise was held to
be substantial evidence.

Kilgore Companies

The analysis by the county planning staff was held to be substantial evidence.

Kilgore Companies

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.



Springville Citizens v. Springville

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

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

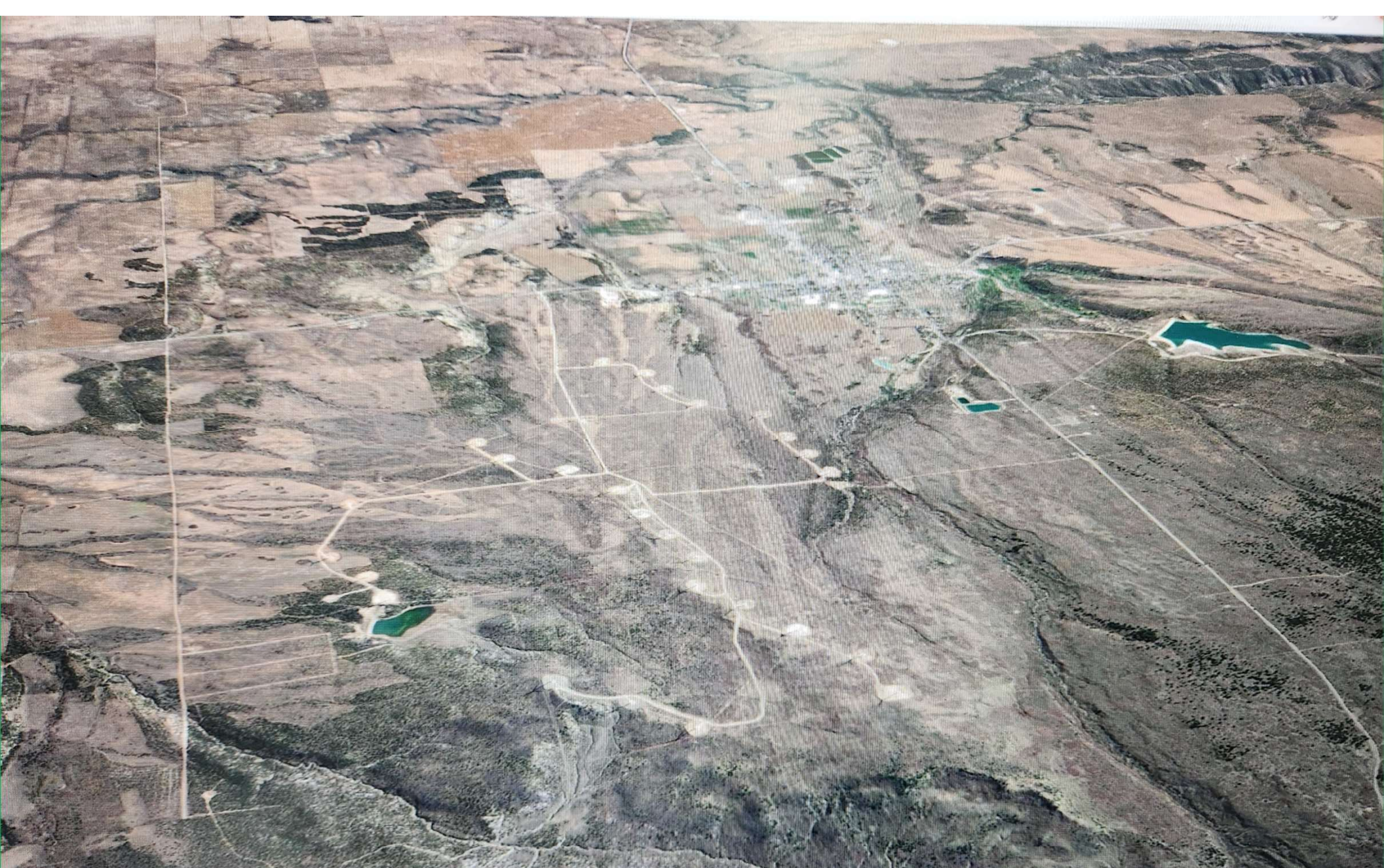
Ordinances are Mandatory

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.

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*



NMA v. San Juan County



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)

Anyone with a protected property interest in the proceeding:

- Receives adequate notice;
- Is heard and able to present evidence on the issues;
- Can review and respond to evidence in a reasonable manner.

A “protected property interest” in the proceeding – examples

- Freedom from government-enforced physical occupancy of property.
- Loss of all economically viable use.

A “protected property interest” in the proceeding – examples

- Imposes actionable common law nuisance.
- Removes reasonable access.

A “protected property interest”
in the proceeding – examples

- Legitimate claim of entitlement such as a current business license, development approval, or nonconforming use.

Who has due process rights?

- Property owner/applicant.
- City or County government.
- Person with protected property interest.
(This may or may not include the person bringing the application or appeal).
- Person given due process rights by code.

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

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

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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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.