Land Use Case Law Update

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Categories of Land Use Actions – Administrative Acts

- **Courts presume that a final land use decision is valid <u>unless</u> it is arbitrary and capricious or illegal.****
  - Will be "arbitrary and capricious" if not supported by "**<u>substantial evidence</u>**" in the record
  - Will be "**<u>illegal</u>**" if contrary to a land use regulation or misinterprets the law

***UCA 10-9a-103(32) (Municipalities) and UCA 17-27a-103(36) (Counties)**
****UCA 10-9a-801(3) (Municipalities) and UCA 17-27a-801(3) (Counties)**

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Substantial Evidence

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What Constitutes "Substantial Evidence?"

- "*A decision is supported by substantial evidence if there is* ***a quantum and quality of relevant evidence that is adequate to convince a reasonable mind to support a conclusion***." *Caster v. West Valley City*, 2001 UT App 212, ¶ 4.
- "***[C]onsider all the evidence in the record, both favorable and contrary****, and determine whether a reasonable mind could reach the same conclusion as the [agency].*" *M & S Cox Invs., LLC v. Provo City Corp.*, 2007 UT App 315, ¶ 36.
- **Courts do not "*reweigh the evidence and independently choose which inferences [it] find[s] to be the most reasonable*.** *Instead, [a court] defer[s] to an administrative agency's findings because when reasonably conflicting views arise, it is the agency's province to draw inferences and resolve these conflicts. Provo City v. Utah Labor Comm'n*, 2015 UT 32, ¶ 8.
- ***Public clamor***, including hearsay evidence, ***is not substantial evidence***

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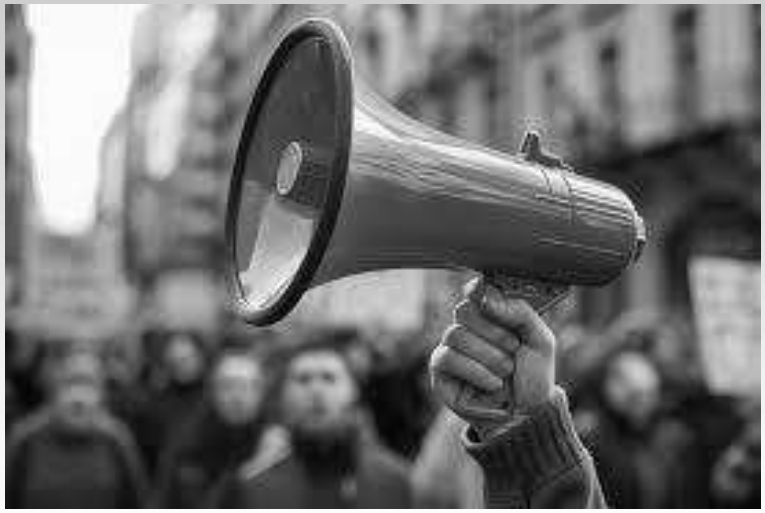
VR CPC v. Park City, 2025 UT App 130
Public Comment vs. Public Clamor

- Ski resort sought an expedited administrative conditional use permit (ACUP) to upgrade lifts at Park City Mountain Resort
- Development agreement allowed resort to use ACUP if application satisfies six criteria
- City planning director approved permit, but citizens challenged approval before the planning commission



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VR CPC v. Park City – Continued

- Planning Commission:
  - Denied application for failing to meet two ACUP requirements, including adequate parking
  - Made findings, some of which were based on public comments that challenged parking mitigation plan

- District Court upheld the planning commission's decision

- Court of Appeals upheld District Court
  - While the public comments that were submitted were not presented by experts, the planning commission's denial was not arbitrary or capricious because the comments and other information submitted "*was sufficient to convince a reasonable mind that the Parking Mitigation Plan did not mitigate the impact on parking….*"

- *<u>Takeaway</u>: public rebuttal of expert studies <u>can qualify</u> as substantial evidence when it reveals discrepancies in expert studies*

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Illegal Actions

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Cook v. Ivins City, 2025 UT App 85
Due Process – Rule of Order and Procedure

- City Council held a hearing on proposed re-zone of residential development for a resort
  - First motion to deny failed 3-2;
  - Second motion to approve failed 3-2;
  - Third motion to approve the re-zone passed 3-2, with one changed vote who made the motion

- Residents challenged approval, arguing that Council's approval was invalid because:
  - Third motion violated the City's rules of procedure regarding motions to reconsider; and
  - Therefore, violated their due process rights be depriving them of a meaningful opportunity to be heard

- The district court ruled in favor of the City, finding no reversable error

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Cook v. Ivins City, Continued

- **Utah Court of Appeals affirmed the district court's ruling in the city's favor because:**
  - **The city did not violate the plaintiff's due process rights because he and other citizens had meaningful opportunity to be heard during the public hearing; and**
  - **Therefore, the plaintiff did not show that they were prejudiced by any procedural error that may have occurred**

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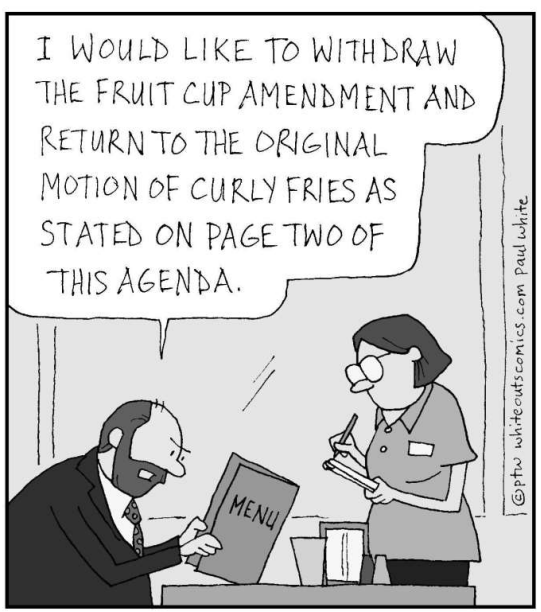
Cook v. Ivins City, Continued

- ***Takeaways:***
  - **Failure to follow rules of order and procedure doesn't automatically violate due process rights, at least for legislative actions; but**
  - **Can prompt costly and burdensome litigation; and**
  - **In some cases, it may be easier to simply re-do a motion or action if there are questions about its validity or proposed challenges**



Robert's Rules of Ordering.

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RAPS Investments v. North Logan, 2025 UT App 55
Specificity in Local Regulations

- **LUDMA requires land use authorities to apply land use regulations in favor of an application, unless the regulation "plainly restricts" the application. *See* e.g., UCA 10-9a-30**

- **This case deals with city ordinances involving "improper lots," which:**
  - **Were subdivided without complying with applicable subdivision ordinances but otherwise complied with the applicable standard at the time the lot was created; and**
  - **Allowed an "innocent owner" to develop the lot in accordance with certain standards**

- **Owner applied for a building permit to construct a home on an improper lot**

- **The city denied the application, arguing that the lot lacked adequate access under the city's standards for new developments (i.e., the road leading to the property was too narrow)**

- **Owner appealed city decision, arguing that the ordinance limited the city's review to condition on the lot itself, not on existing roads outside of the property**

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RAPS Investments v. North Logan, Continued

- Utah Court of Appeals reversed the district court, finding:
  - City's ordinance was ambiguous and did not "plainly restrict" the owner's application, therefore requiring the ordinance to be interpreted in favor of the application;
  - City had improperly engaged in a "strained analysis" to apply standards for new subdivisions to a pre-existing road;
  - City's ordinances and technical manual did not provide a clear basis for denying the permit due to the off-side road conditions; and
  - City could not use a separate ordinance designed to govern new subdivision roads to deny a permit for an already existing lot

- ***Takeaways:***
  - Local ordinances must provide clear authority to deny land use permits
  - Otherwise, ambiguities must be resolved in the applicant's favor
  - Be careful when using ordinances for something other than their intended purpose

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Eminent Domain

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UDOT v. Boggess-Draper, 2025 UT App 58
Severance and General Damages in Condemnation Actions

- **UDOT condemned a portion of property to build new freeway interchange in Draper**
- **A jury awarded the owners over $1.7M**
- **UDOT appealed, which resulted in *UDOT v. Boggess-Draper*, 2020 UT 35, which:**
  - **Allowed the use of post-valuation facts and circumstances to prove severance damages; and**
  - **Remanded the case back to the district court for a new trial**
- **Prior to the second trial, the property owner sold the remainder of the property**
  - **UDOT argued that this "post-valuation" evidence was relevant to proving the property's value at the time of the taking;**
  - **The district court admitted some of this evidence; and**
  - **The jury awarded $300k with no severance damages**

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UDOT v. Boggess-Draper, Continued

- Utah Court of Appeals affirmed the district court's decision to admit post-valuation evidence
  - It found that there is no categorical rule that bars such evidence in a condemnation case; and
  - That such evidence can help juries determine a property's potential value at the tie of the taking by "checking assumptions" made by appraiser

- The Utah Court of Appeals held that the district court erred in allowing UDOT to introduce evidence of "general benefits" conferred by the freeway interchange project
  - It reasoned that a condemning entity can only use evidence of "special benefits" that apply to the property in question to offset severance damages; and
  - That evidence regarding "general benefits" that apply to the entire community (e.g., the interchange increased consumer traffic) rather than the particular property are inadmissible

- *<u>Takeaway</u>: Understand the different between "general" and "specific" benefits when performing valuations in condemnation proceedings*

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Wild County v. WE Five, 2025 UT App 54
Limitations on Private Use of Condemnation Authority

- **UCA 78B-6-507 states that a plaintiff in an eminent domain action should be "the corporation, association, commission or person in charge of the public use for which the property is sought"**
- **Owner of landlocked parcel sought to condemn a utility easement for water and sewer infrastructure to facilitate a private development**
- **District court held that eminent domain statute did not apply**

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Wild County v. WE Five, Continued

- On appeal, the Utah Court of Appeal affirmed and further expounded:
  - Mere installation of pipes is not a public use supporting condemnation;
  - In this case, the pipes would solely benefit the developer;
  - Possibility that a municipality or sewer district may use the pipes in future does not qualify a private condemnation as a public use; and
  - "Though the word 'person' as used in Section 507 can apply to private entities, such a person must also be 'in charge of the public use' to have eminent domain power;" and
  - The developer in this case would not be "in charge" of the sewer and water pipes

- ***Takeaway:*** Private parties seeking to exercise condemnation authority must provide the appliable public use themselves

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R.O.A. General v. Salt Lake City, 2025 UT App 122
Equitable Estoppel

- Equitable estoppel requires:
  - A statement, admission, act, or failure to act by one party that is inconsistent with a claim later asserted;
  - Reasonable action or inaction by one party take or not taken on the basis of the first party's actions; and
  - Injury to the second party that would result from allowing the first party to contradict or repudiate such statement, admission, act, or failure to act

- State law requires land use authorities to condemn billboards and pay just compensation if they deny billboard relocation applications under certain situations

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R.O.A. General v. Salt Lake City, Continued

- Owner applied to relocate and increase size of an existing billboard
- Owner demolished billboard due to expiring lease while awaiting decision
- City denied application but informed Owner <u>in writing</u> that it could:
  - Seek credit for the demolished sign under city ordinances; or
  - Modify its request to relocate under State law, which allowed the City to waive its ordinances

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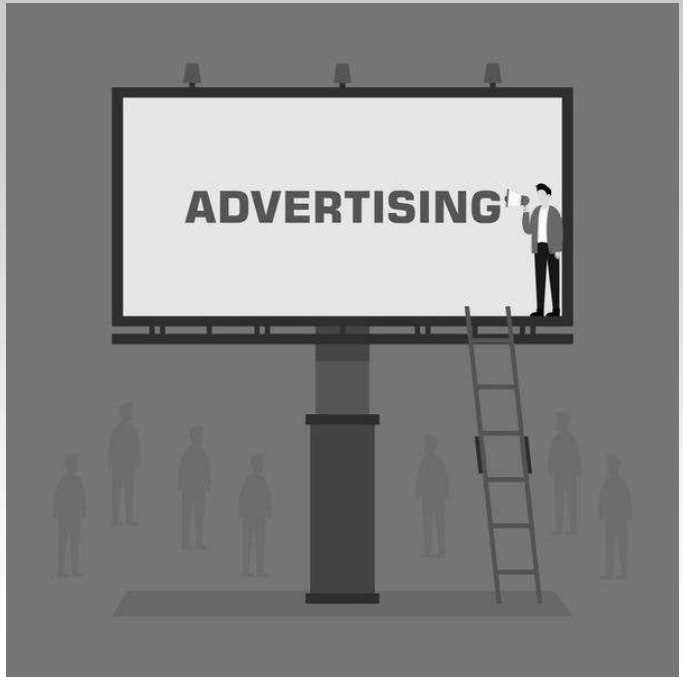
R.O.A. General v. Salt Lake City, Continued

- Owner litigated City's denial and lost
- Meanwhile, the city allowed another billboard to relocate to the same spot Owner initially requested
- Owner then accepted City's prior offer, but City denied request and refused to pay just compensation because:
  - **The sign had been demolished and no longer qualified as an "existing" sign; or**
  - **In the alternative, the request did not qualify with spacing requirements because the City approved the other billboard's relocation**



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R.O.A. General v. Salt Lake City, Continued

- **Court of Appeals held equitable estoppel applies and that the City was barred from not providing adequate compensation**

- ***<u>Takeaway</u> – Although few cases have applied equitable estoppel against government entities, it can still happen if the elements are satisfied, especially if there is something in writing***

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Standing

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Living Rivers v. San Juan County, 2024 UT App 162
Associational Standing Available Under LUDMA

- **LUDMA allows "adversely affected parties" to appeal land use decisions**
  - **"Adversely affected party" includes "a person [who either] (a) owns real property adjoining the subject land use application or land use decision; or (b) will suffer a damage different than, or an injury distinct from, that of the general community as a result of the land use decision." *See* UCA § 10-9a-103(2) and UCA § 17-27a-103(2)**
  - **"Person" means "an individual, corporation, partnership, association, trust, governmental agency, or any other legal entity"**
  - ***See* UCA 10-9a-103(56) and 17-27a-103(59)**

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Living Rivers v. San Juan County, Continued

- San Juan County approved a conditional use permit for tent camping on a property that sits on an aquifer that supplies water to San Juan and Grand Counties

- NGO appealed the decision, arguing that
  - The permit would personally harm its members, which are residents of the counties; and
  - It had grants to conduct research and other investments that would be wasted

- Appeal authority dismissed the appeal, finding that the NGO lacked standing because
  - Alleged harms were not different in kind or distinct from those of the general community; or
  - That any alleged individualized harms were not inevitable

- The district court affirmed the appeal authority's decision, finding that LUDMA does not allow for associational standing (i.e., the right of an organization to sue obo of its members)

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Living Rivers v. San Juan County, Continued

- **The Court of Appeals ruled that the district court erred in holding that LUDMA didn't have a mechanism for associational standing**
  - **LUDMA's definition of "person" for purposes of appeal includes corporations;**
  - ***Tooele County v. Erda Community Ass'n*, 2022 UT App 123, held that associations meeting the definition of "person" can have standing if the participation of its individual members is not necessary to the resolution of the case; and**
  - **Unlike *Tooele County*, where none of the organization's members that filed land use appeals joined the petition for review, the NGO in this case participated in both eh administrative and judicial appeal**

- **However, the Court of Appeals held that the NGO nevertheless lacked standing because:**
  - **Potential harms were shared with the general community; or**
  - **NGO could not connect alleged individual harms to some of its members to those members that resided in San Juan County specifically**

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Living Rivers v. San Juan County, Continued

- ***Takeaways***:
  - **Associational standing is possible under LUDMA, but**
  - **Harms must not be shared with general community; and**
  - **Harms to individual members must pertain to individuals who own land within the applicable land use authority per *Cedar Mountain Env't, Inc. v. Tooele County ex rel Tooele County Comm'n*, 2009 UT 48**

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Federal Update

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Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024)

- U.S. Supreme Court overturned *Chevron U.S.A. v. Natural Resources Defense Council, Inc.* 603 U.S. 369 (2024)
  - *Chevron* required courts to defer to an administrative agency's interpretation of a statute in rulemaking if Congress' intent was: (1) ambiguous; and (2) the agency's interpretation is reasonable or permissible
  - *Loper Bright* held that *Chevron* deference conflicted with the Administrative Procedures Act
  - The courts – not federal agencies – are now responsible for interpreting ambiguities in federal laws and are no longer required to defer to federal agency interpretations

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Loper Bright Enterprises v. Raimondo, Continued

- What does this mean for land use in Utah?
  - *Loper Bright* applies to federal actions, so state courts in Utah will still interpret LUDMA and other state laws that largely govern land use
  - Utah courts have also rejected judicial deference, but defer to an agency's fact-finding if the interpretations are based on "substantial evidence"

- *Loper Bright* will have a large impact on federal laws with a land use nexus:
  - Clean Water Act and the "Waters of the U.S." rule
  - Safe Drinking Water Act
  - Endangered Species Act
  - NEPA
  - CERLA

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Other Notable Cases

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Other Notable Cases

- ***Haney v. Tooele County*, 2025 UT 30 – county zoning referendum mooted by incorporation of applicable land into municipality**
- ***Barrani v. Salt Lake City*, 2025 UT 25 – public duty doctrine precludes nuisance claim against mgmt of city property**
- ***Compagni v. Klemesrud,* 2025 UT App 71 – city sidewalk ordinance does not create private civil liability**
- ***Freestone v. Walton*, 2025 UT App 41 – conflating doctrines of boundary-by-agreement with acquiescence**
- ***Golden Spike v. Montgomery*, 2024 UT App 179 – county recorders have a duty to accurately record, not to correct**

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