

Land Use

Appeal Authorities

Craig M. Call, Executive Director

The Utah Land Use Institute

Citizen Planners

(Council Member, Planning Commissioner
or Member of Board of Adjustment)

Write Rules
Set Agenda
Conduct Discussion
Make Decision
Control Development

Professional Planners

(Zoning Administrator, Staff Planner,
Director of Community Development)

Coaches
Facilitates
Explains Rules
Initiates Process

Neighbor/Third Party

(Neighbor, Citizen Activist,
Environmental Group, Open Space Advocate)

Offers Contrasting Opinion
Community Perspective
Demands Answers
Organizes Opposition

Applicant/Property Owner

(Homeowner, Developer, Subdivider,
Business Owner, Consultant)

Makes Application
Invests in Project
Pays Fees, Installs Utilities
Chooses to Proceed or Not

Role of the Appeals Authority:

1. Consider Appeals From
Decisions Applying the Land
Use Ordinances
2. Grant or Deny Variances.

Appeals

1. Land use ordinances must provide for an appeal authority or refer appeals to the district court.
2. May not require repeated appeals – one decision, one appeal.
3. A decision must be final before it can be appealed.
4. A decision is final when it is made by a land use authority and reduced to writing.
5. If not otherwise provided in local ordinance, the time to appeal is ten calendar days.
6. There is usually no appeal from the appeal authority except to go to court.

When MUST You Appeal?



Quasi-Judicial Functions

1. The decision-maker is neutral and unbiased.
2. Conclusions of law are based on relevant statutes, ordinances, and case law that are identified in the record.
3. Findings of fact are based on substantial evidence included in the record of the proceedings and nothing else.
4. There are no “ex parte” contacts or political pressure.
5. Public clamor is irrelevant to the decision.

Due Process

1. The decision-maker is neutral and unbiased.
2. Anyone with a protected interest in the proceeding receives adequate notice.
3. Anyone with a protected interest in the proceeding is heard on the issues.
4. Anyone with a protected interest in the proceeding can review and respond to evidence in a reasonable manner.
5. The decision must be based in fact and law, which is preserved in the record of the proceeding. Otherwise the decision is arbitrary, capricious, and unreasonable.

Standard of Review

1. Unless otherwise provided in ordinance, the Appeal Authority steps into the shoes of the land use authority which made the decision which is appealed and makes the decision again as if it were making the decision for the first time (*de novo*).
2. Another option – The local ordinances can place a burden on the person appealing to prove error in the first decision and thus require that the Appeal Authority defer to the decision made unless it was not supported by substantial evidence or illegal.



Brown v. Sandy



Brown v. Sandy



Brown v. Sandy

“Because zoning ordinances are in derogation of a property-owner’s common-law right to unrestricted use of his or her property, provisions therein restricting property uses should be strictly construed, and provisions therein permitting property uses should be liberally construed in favor of the property owner.”

Brown v. Sandy Bd of Adj (1998)

Interpreting Ordinances

1. Look first to the plain language of the ordinance.
2. Construe ambiguity in favor of the use of property.
3. Preserve the intent of the ordinance if there is room for interpretation (ambiguity).
4. Do not interpret an ordinance in a manner that creates a conflict with other provisions of the ordinance.
5. Specific provisions in ordinances usually trump general provisions.
6. Give a reasonable and sensible interpretation and avoid absurd results.

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.



Culbertson v. S.L. County



Culbertson v. S.L. County



Culbertson v. S.L. County



Culbertson v. S.L. County



Culbertson v. S.L. County



Culbertson v. S.L. County

. . . where the encroachment is deliberate and constitutes a willful and intentional taking of another's land, equity may require its restoration, without regard for the relative inconveniences or hardships which may result from its removal.

Culbertson v. Salt Lake Co., 2001 UT 108

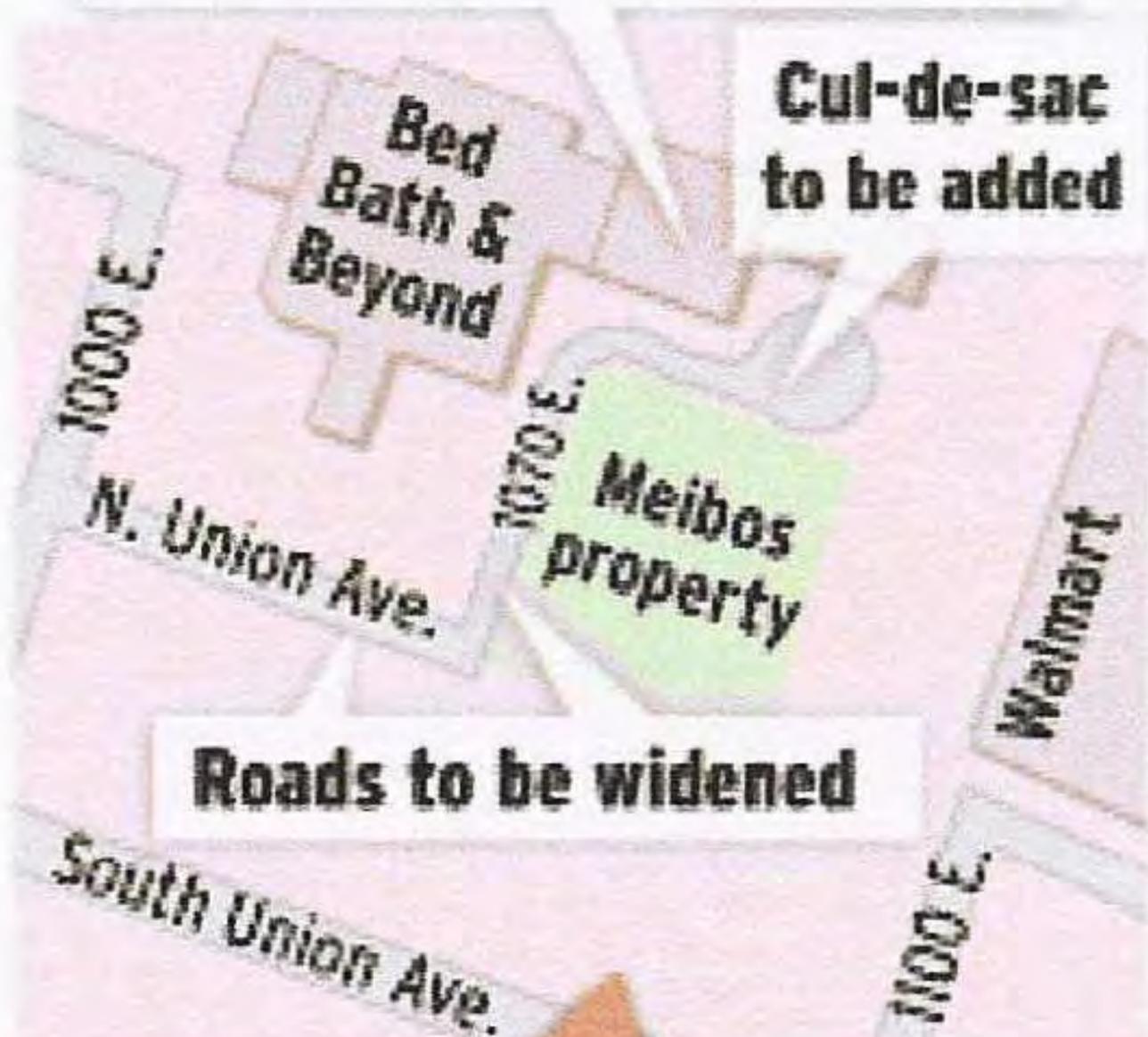
On the record before us, the uncontested facts support only one conclusion: That Hermes acted willfully and deliberately when it constructed its buildings after plaintiffs put both Hermes and the County on notice that the proposed construction would violate county ordinances.

Culbertson v. Salt Lake Co., 2001 UT 108

By allowing Hermes to proceed, the County stepped into the quagmire which we condemned in *Springville Citizens for a Better Community v. City of Springville*, where we emphasized that local zoning authorities "are bound by the same terms and standards of applicable zoning ordinances and are not at liberty to make land use decisions in derogation thereof."

Culbertson v. Salt Lake Co., 2001 UT 108

**Ross building to be replaced
with smaller boutiques**



**Cul-de-sac
to be added**

Roads to be widened

South Union Ave.

Walmart

1100 E.

1000 E.

N. Union Ave.

1070 E.

Meibos
property

Conditional Use Permits

U.C.A. 10-9a-507(2)(a) - Conditional uses.

A conditional use shall be approved 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.



Uintah Mtn RTC v. Duchesne Co – 2005 UT App 565

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Roosevelt, UT

Pointer 40°20'33.41" N 110°00'27.17" W elev 5335 ft

Streaming 100%

Roosevelt



Uintah Mtn RTC v. Duchesne Co – 2005 UT App 565

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5171 ft

Streaming 100%

Eye alt



Uintah Mtn RTC v. Duchesne Co – 2005 UT App 565

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Roosevelt, UT

Pointer 40°20'33.41" N 110°00'27.17" W elev 5335 ft

Streaming 100%

Roosevelt

Uintah Mtn RTC v. Duchesne County

2005 UT App 565

County's conditional use denial based on economic viability invalid because the applicable criteria in the county code did not include a test for economic viability.

The County's decision to grant a similar permit in 1997 was used to show the current denial was arbitrary.

Public clamor not a sufficient reason for denial

Variations – Only Granted If:

1. Unnecessary Hardship
2. Circumstances Attached to the Property
3. Substantial Property Right
4. Consistent with Public Interest
5. Spirit Observed, Justice Done



Wells v. SLC Board of Adjustments



Wells v. Salt Lake Bd. of Adj.



Wells v. Salt Lake Bd. of Adj.

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