

2012 Land Use Training

Payson

September 26, 2012



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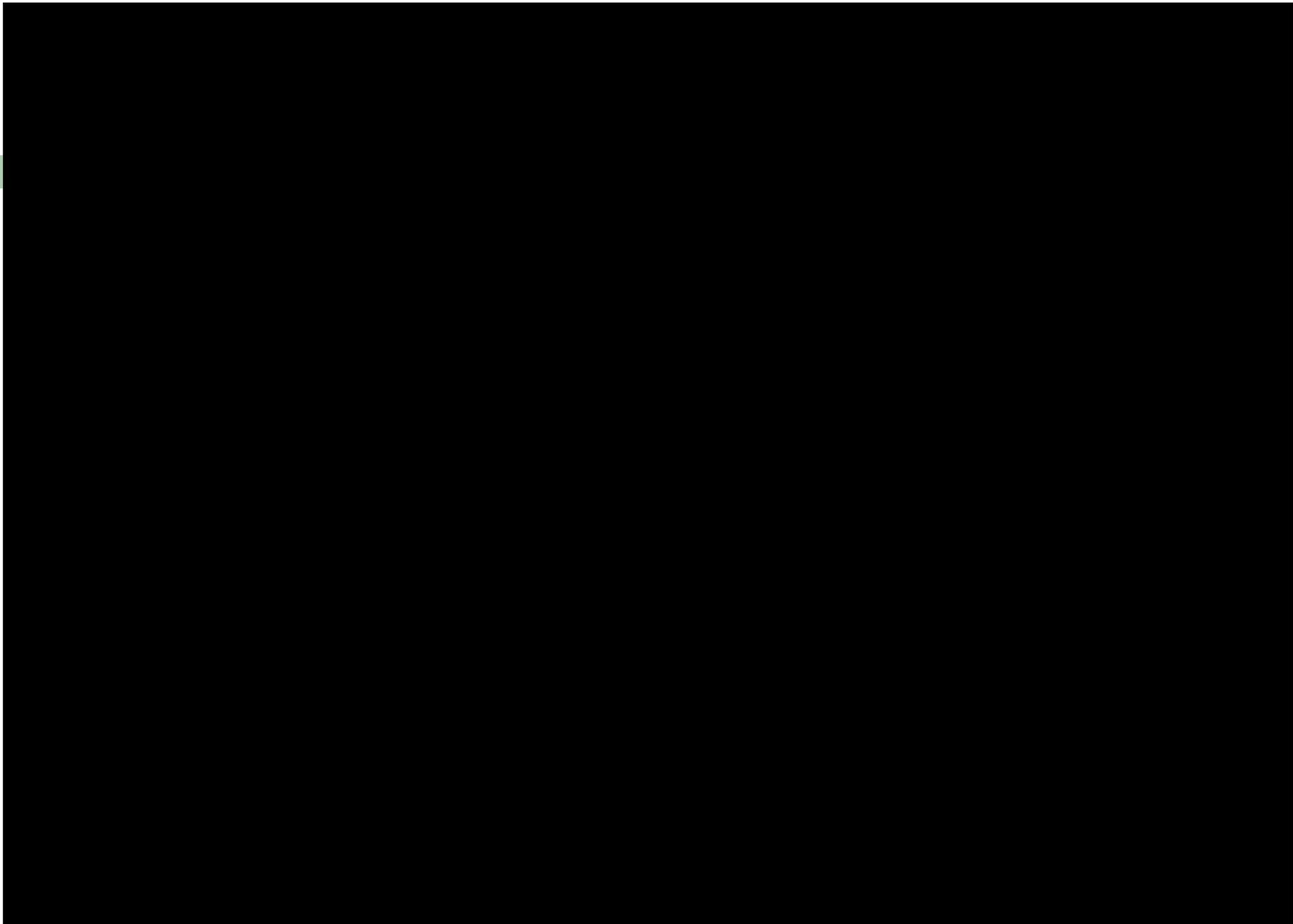
*Utah Local
Governments Trust*

Why Are You Here?

- ↳ **The Utah State legislature**
- ↳ **Compliance is the primary legislative issue**
- ↳ **Knowledge leads to better planning**
- ↳ **Use a Common Language**
- ↳ **Self enforcement - not mandated**

EDUCATION





Regional Land Use Trainings with ULUI

- ✓ 2 hour basic powers & duties
- ✓ 2 hour appeal authority
- ✓ By request land use topics

Web site with resources
Books/Publications
Technical ordinance review



Agenda for tonight

PART 1

1. Review of statutory duties assigned Land Use Authorities -LUDMA
2. Administrative, Legislative & Quasi Judicial Actions
3. Meetings, Public Notice & Public Hearings
4. Conditional Uses

PART 2

1. Open & Public Meetings Act
2. Ethics
3. Legislative Update



Get to the Point!

Think about the message – (*average attention span is 6 minutes*)

You are the government

How are you helping the issue at hand?

- TED.com
- 6 minutes w/ 6 slides



1. Long Term Vision

Utah's system of land use administration by cities and towns has rarely been updated for many decades. State law does not now require the formalities of the past. Rethink your codes and your processes.



2. Know your limitations and your possibilities

- What are you really allowed to do and not to do?



3. Don't get to comfortable

- Nothing is constant but change – adapt to it

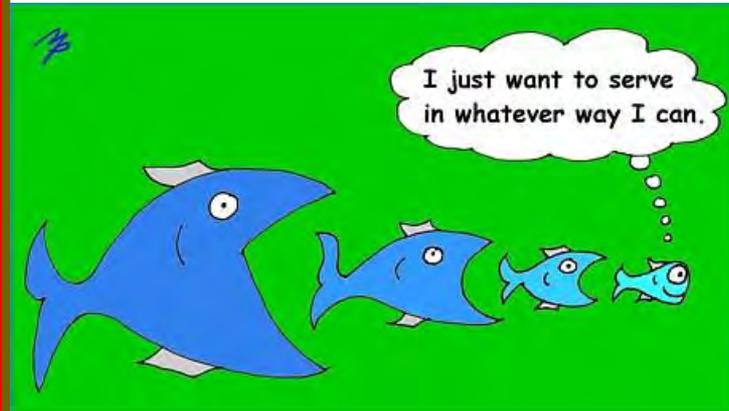


4. Enjoy it

- This is your community – have fun thinking about it and working with your neighbors



The Governmental Food Chain



Federal Constitution

**Federal Supreme and Appellate Court
Decisions**

Federal Statutes

Federal Administrative Rules

State Constitution

**State Supreme and Appellate Court
Decisions**

State Statutes (LUDMA)

State Administrative Rules

Local Land Use Code



Enabling legislation for land use in Utah

Title 10, Chapter 9a Land Use Development and Management Act

“LUDMA”

*Cities & Towns
are creatures of the State*



Respects local control

**Authorizes land use regulation
to City Council**

**Mandates the creation of a
Planning Commission (Advisory body)
& Land Use Authorities
& Appeal Authorities**



10-9a-102. Purposes -- General land use authority.

(1) The purposes of this chapter are to provide for the health, safety, and welfare, and promote the prosperity, improve the morals, peace and good order, comfort, convenience, and aesthetics of each municipality and its present and future inhabitants and businesses, to protect the tax base, to secure economy in governmental expenditures, to foster the state's agricultural and other industries, to protect both urban and nonurban development, to protect and ensure access to sunlight for solar energy devices, to provide fundamental fairness in land use regulation, and to protect property values.

(2) **To accomplish the purposes of this chapter, municipalities may enact all ordinances, resolutions, and rules and may enter into other forms of land use controls and development agreements that they consider necessary or appropriate for the use and development of land** within the municipality, including ordinances, resolutions, rules, restrictive covenants, easements, and development agreements governing uses, density, open spaces, structures, buildings, energy efficiency, light and air, air quality, transportation and public or alternative transportation, infrastructure, street and building orientation and width requirements, public facilities, fundamental fairness in land use regulation, considerations of surrounding land uses and the balance of the foregoing purposes with a landowner's private property interests, height and location of vegetation, trees, and landscaping, **unless expressly prohibited by law.**

What does this mean?



Communities shape their own destiny through local planning laws

Political Will

&

Priorities



Basic LUDMA Themes

Private Property Rights: Individuals are free to use private property as they wish, unless valid, written land use laws direct otherwise.

Must clearly write it down: Community has broad discretion to regulate private property. However, it must do so deliberately and openly.

Must abide by it:

Land use authority is bound by the terms and standards of applicable land use ordinances and shall comply with the provisions of those ordinances. 10-9a-509

Must act with reasonable diligence:

Land use authority must process complete applications promptly.
“Timely manner” / “reasonable period”



LUDMA Stricter requirements. 10-9a-104

“unless expressly prohibited by law.”

(1) Except as provided in Subsection (2), a municipality may enact an ordinance imposing stricter requirements or higher standards than are required by this chapter.

(2) A municipality may not impose stricter requirements or higher standards than are required by:

- (a) Section 10-9a-305;
- (b) Section 10-9a-514;
- (c) Section 10-9a-516; and
- (d) Section 10-9a-520.



School Districts
Manufactured homes
Homes for the elderly
Homes for people with disabilities



Land Use Tools

General Plan

“A practical vision for the future”



Zoning / Land Use Code

“Where the rubber meets the road”

Creation:

1. Planning
Commission creates, holds a public hearing and recommends to the Council
2. Council Approves, modifies/denies



Types of Zoning

- Euclidean - separation of uses
- Form Based Codes- form and scale (Utah model code)
- Smart Zoning – traditional neighborhood development (cluster and pud's and tod's)
- Incentive Zoning – carrot over stick
- Performance Zoning- based on impacts

Most all now web based

State and Federal Law Mandates

General Plan before zoning:

- 1.Land Use element in General Plan**
- 2.Transportation; and**
- 3.Affordable Housing**

Land Use Ordinances that:

- 1. Creates a planning commission and establishes an appeal authority**
- 2. Address Residential Facilities for Elderly/Persons w/Disabilities**
- 3. Allow for Manufactured homes which comply with zone**
- 4. Address Cell Towers – can't prohibit- can regulate**
- 5. Reestablish after calamity nonconforming structure**
- 6. Allows for Charter schools -in all zones**
- 7. Allow for uses protected by freedom of speech (Adult oriented businesses)**

“Land use authority”

A person, board, commission, agency, or other body **designated** by the local legislative body to **act** upon a land use application.

*From permit
counter employee
to City Council*

Staff

Planning Commission

City Council

Creation:

1. Planning Commission recommends to Council
2. Council takes final action and appoints



Due Process and Regulations

- Your process can differ for different types of development – you can set the parameters in your zoning code.

Then follow it



Rules and Procedures

All PC's and CC's must have written rules of procedure adopted and posted

(2011 Leg session)



Ordinances should be clearly written and objective, not subjective

“The Planning Commission shall at its discretion pick any house color they want”

“All applicant shall pick from the 9 approved house colors which are...”

“This use is allowed and all other like and similar uses”

“Arbitrary and capricious”



“Not so good”

Better



“Appeal authority”

A person, board, commission, agency, or other body designated by ordinance to decide an **appeal** of a decision of a land use application or a **variance** from the land use code.

*Can be one person,
or a board,
or share with
another
jurisdiction*

Creation:

1. Planning Commission recommends to Council
2. Council takes final action and appoints





APPEALS &

Municipality sets standard of review-
“De Novo” or “On the Record”

Applicant has the burden of proving that the Land Use Authority has erred.

Impartial decision makers

DUE PROCESS

No public hearing required.

Section III in Land Use Book



VARIANCES

State provides mechanism to vary the rules of your land use ordinances

The state sets the five criteria. All five must be met

Very rare that all five are met

After decision is rendered in both cases any further action is heard in Court



Findings of Fact



Findings of fact are the reasons why a motion is being made or a decision is being made in such a way. They are unique to each permit.

Findings should be part of a motion and recorded carefully in the minutes of the meeting. They cannot legally be added at a later date.

When action is taken to the court, the judge will read the minutes of your meeting, looking specifically at your process and your findings. If both are in order and relevant, the case usually goes no further. Seldom does the judge consider the merits.

A written record also helps with compliance and future owners.



What Hat Do You Wear?



Policy

Legislative



- Properly noticed and adopted?
- Reasonably debatable
- Constitutional?
- Consistent with LUDMA?

Applying the Law

Administrative

- Consistent with ordinance?
- Supported by substantial evidence?
- Uninfluenced by public clamor?



Enforcing & Interpreting the law

- Consistent with ordinance?
- Respect Due Process?
 - Notice
 - Opportunity to be heard

Quasi-Judicial



	<u>LEGISLATIVE</u>	<u>ADMINISTRATIVE</u>	<u>QUASI- JUDICIAL</u>
Characteristics	Very Broad Authority <u>Broad Public Input</u>	Much More Restrictive <u>Limited or no input</u>	Very Restricted <u>Input restricted to parties in case</u>
	<ul style="list-style-type: none"> Creates new law Allows for citizen input as basis of decision Based on vision and goal setting Use of judgment 	<ul style="list-style-type: none"> Enforces the current law and makes reference to it in a decision Bound by the law rather than public opinion Does not create or “bend” the law <ul style="list-style-type: none"> The application of the law to a specific situation 	<ul style="list-style-type: none"> Based on established state law Looks for errors made in the process Not a judgmental decision Public input for information only
Responsible Body	<u>Land Use Authority (ies)</u> <ul style="list-style-type: none"> Planning Commission* City Council/Town Board <p>*Acts as an advisory board to the legislative body</p>	<u>Land Use Authority (ies)</u> <ul style="list-style-type: none"> Planning Commission City Council Mayor Board of Adjustment Enforcement Officer 	<u>Appeal Authorities</u> <ul style="list-style-type: none"> As designated <u>Courts</u>
Land Use Actions	<ul style="list-style-type: none"> General Plan Zoning Ordinance Subdivision Ordinance All Municipal Ordinances Creation and Amendments Annexation Policy Plan 	<ul style="list-style-type: none"> Building Permit Approval Subdivision Approval Conditional Uses Variances 	<ul style="list-style-type: none"> Appeals



Meetings

Public Hearings & Public Notice

Which is the crowd you get?



PUBLIC NOTICES

WHAT'S REQUIRED AND A WAY TO RETHINK HOW WE USE THEM

10-9a-205. Notice of public hearings and public meetings on adoption or modification of land use ordinance.

(1) Each municipality shall give:

- (a) notice of the date, time, and place of the first public hearing to consider the adoption or any modification of a land use ordinance; and
- (b) notice of each public meeting on the subject.



Make it Clear and Simple



"Miss Jones we found this man attempting to read a public notice."

PUBLIC HEARING

The Daggett County Commission will hold a Public Hearing at the Daggett County Courthouse – 95 North 1st West; Manila, Utah on October 19, 2010 at 9:30 am. The Hearing is to obtain comments regarding a proposed change to the **Daggett County Planning and Zoning Ordinance/Map for parcel A300-2 requested by John R and Marion Butler as co-trustees. The request is to change the zoning from A-20 to R-R-1/2.** Additional information can be found on the County website at: www.daggettcounty.org/hearing101910 .

All interested parties are invited to attend or send written comments to the Daggett County Commission; PO Box 400; Manila, UT 84046 before 5 pm on October 14.

For more info call (435) 784-3154. In compliance with the Americans With Disabilities Act, persons needing auxiliary services for this meeting should call the Daggett County Clerk's Office at (435) 784-3154 at least 24 hours prior to the meeting.



Sandy City Public Hearing Research and Development Zone Parking Regulations Notice is hereby given of a public hearing to be held in the Sandy City Hall, City Council Chambers, 10000 South Centennial Parkway (170 West), Sandy, Utah, before the Sandy City Planning Commission on April 5, 2012 at approximately 6:35 p.m., to consider the following: Amend Title 15A, Chapter 23, Commercial, Office, Industrial, & Transit Corridor Development Standards, Revised Ordinances of Sandy City, 2008.

The purpose of the Code Amendment is to consider allowing the Planning Commission, under a Special Exception, to approve parking between the building and the public street. If you have questions or comments concerning this proposal, please attend this Planning Commission Meeting, or call Brian, in the Sandy City Community Development Department, at (801) 568-7268 and your comments will be forwarded to the Sandy City Planning Commission members.



Emery County Community Theater
 Emery County Community Theater will present "The Sound of Music" at the Emery High School on Feb. 8, 9, 10 and 11. There will be a matinee on Feb. 10. Tickets are \$5.

Arts Exhibit
 The museum is open on Saturday from 9 a.m. to 5 p.m.

Sister Study
 Sister Study is seeking women whose sisters had breast cancer to find the environmental and genetic causes. For more information go to www.sisterstudy.org or call 202-842-3600.

Emery Fireside
 Emery Fireside will be held on Friday, Feb. 23, at 7 p.m. at the Emery Stake Center. Activities will include a presentation by the Emery Cub Scouts, Varsity and Varsity Scouts, Scout Leaders, parents and the community.

EMERGENCY PACKAGES - FLOOR PLANS - SEWER USE FROM \$1,995

CIAL ★
 Buy your purchase before February 2007

APPROVED

1245 S. 1950 W. Springville, UT

Wanted: Therapist

Masters Level Therapist needed to provide individual, group, and family therapy in a therapeutic boarding school. The ability to manage a caseload and work independently with good interpersonal skills is required.

Salary based on education and experience.

Silverado Boys Ranch - Panguitch, UT

Please send cover letter and resume to Lee Ann Fielding at lfielding@silveradoboysranch.com or call 435-676-8482.



PUBLIC NOTICES

"Because the People Must Know"

UPAXLP

NOTICE OF PUBLIC MEETING

Taylor's Tub-n-Grub is holding a public meeting to discuss a conditional use permit to allow Doug Taylor to expand his woodworking business and build a suitable shop/garage on the residential property directly south of his home at 432 South 200 West in Emery Town. The meeting will take place immediately following the Emery Town Council meeting on Feb. 13 at 6 p.m. This will also set the groundwork to establish a 501 C-3, non-profit foundation, for a renewable energy resources corporation. Any comments or complaints will be accepted, in writing prior to the meeting at PO Box 648 in Emery, Utah. No calls, please.

Published in the Emery County Progress January 23, 30 and February 6, 2007.

ANNOUNCEMENT OF APPOINTMENT AND NOTICE TO CREDITORS

Estate of John I. Parker, Deceased
 Probate No. 06370015

All persons having claims against the above estate are hereby notified that John Ira Parker, Jr., has been appointed Personal Representative of the above-entitled estate. Creditors of the estate are hereby notified that they must present their claims to the personal representative's attorney of record or to the Clerk of the Court within three months of the date of the first publication of this notice or be forever barred.

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Why Use Social Media?



“The Internet generation is not fighting that battle about who gets to speak; they all get to speak.”

Jennifer Pahlka: “Coding a better government” – TED talks 2012

- The millenium generation
- Improved transparency of information
- Improved responsiveness to citizen needs
- Improved citizen engagement
- Social media creates the possibility of real two-way communications between the audience and the organization.

For example:

Use **Twitter** for emergency information, reminders and short announcements

Use **Facebook** for community building, discussions, and event information

Use **YouTube** to highlight programs, promote your organization



- Planners are in the business of the future- clients are our pre teens...
 - Planning is implementation, not just creating plans

Ideas to Consider

Groupthink- become closed to outside ideas “the search for consensus encourages tepid, lowest common denominator solutions which offend no one rather than excite everyone”

Wisdom of Crowds-
James Surowiecki

Simplify- return to roots. Work with existing patterns- Identify that place that gives you roots in your community work to preserve it – shape a positive future

Smart Codes
smartcodecentral.org



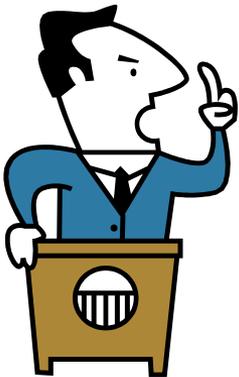
Public Meeting

Public Hearing

- ❑ Posted and Noticed
- ❑ Open to the public
- ❑ Agenda with items listed
- ❑ Public input not required

- Posted and Noticed
- Happens within a public meeting on a specific agenda item
- Input required – anyone can comment
- Can limit time of input – must be uniform (due process)
- Can accept written comments
- Can continue to another night





The State has reduced the required number of public hearings.

How many land use actions actually require a public hearing under State law?





1. General Plan

1 by the PC

2. Land Use Ordinances

1 by the PC

3. Subdivision Ordinance

1 by the PC

4. Vacating/Altering or Amending a Subdivision plat

1 by the LUA

5. Vacating a street/ right of way or easement

1 by the CC

6&7. Annexation policy plan/Annexation Adoption

1 by the PC/1 by CC



Improving the process

EDUCATE

Ask- Why are we regulating this?

Here to say How – Not No

Know when to engage and when not to engage

Purpose of a Public hearing is to

1. to inform and
2. be informed

Not to get consent of crowd

Not in business of creating investments



Decision Fatigue

“Resistance against making decisions is based in fear of giving up options”

Stanford University Researchers & Baumeister *“Willpower: Rediscovering the Greatest Human Strength”* 2011

- The more choices you make each day the harder each one becomes for your brain
- Outcomes: Reckless decisions or the ultimate energy saver – “do nothing”– resist change

“Good decision making is not a trait of the person, in the sense that it’s always there. It is a state that fluctuates. The best decision makers are the the ones who know when not to trust themselves” *Baumeister*





poconorecord.com

Conditional Uses

Uses in a Land Use Ordinance Zoning District

- Permitted :Allowed with set standards
- Conditional: Permitted with conditions
- Prohibited: Not allowed



UTAH STATE CODE

Municipal Land Use, Development, and Management Act

Title 10-Chapter 9a-Section 507.

“Conditional use” means a land use that, because of its unique characteristics or potential impact on the municipality, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.”



What does that mean?

A land use may
fit...
and
It may not



Utah State Code

10-9a-507. Conditional uses.

A land use ordinance may include conditional uses and provisions for conditional uses that require compliance with standards set forth in an applicable ordinance.



Conditional Uses

Standards of Review first

(General or specific or both)

Must be written down!

Then apply Conditions

Will be unique to each permit

Provo council rejects plan to curb Mormon missionary building

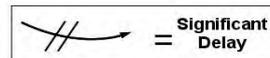
By Donald W. Meyers | The Salt Lake Published Sep 04 2012

The Municipal Council voted 4-3 to reject their proposal to require a conditional use permit for high-rise structures at places such as the training center, where The Church of Jesus Christ of Latter-day Saints is proposing to build a nine-story classroom building. But the council did agree to review the public facilities zone ordinance to address future controversies.

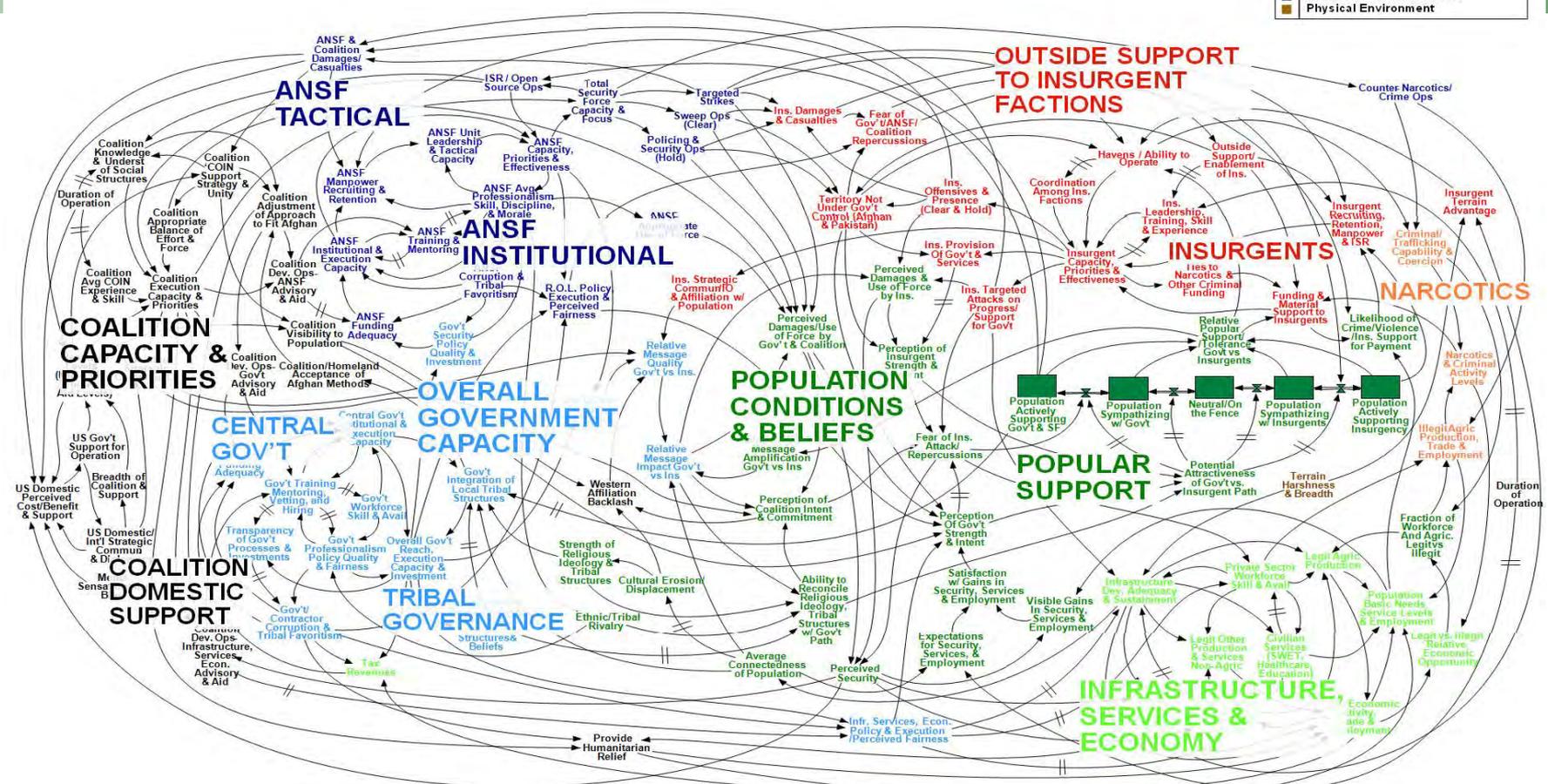
That did not sit well with the residents of Provo's Pleasant View neighborhood, who said the proposed Melvin J. Ballard building will destroy the character of their neighborhood.

The Planning Commission recommended rejecting the ordinance, but revising the public facilities zone. Community Development Director Gary McGinn said the ordinance would have allowed high-rise buildings right next to residential zones, and the conditional-use permit wouldn't stop it as long as there were no health, safety or welfare concerns. **BLOCKING VIEWS AND LOWERING PROPERTY VALUES, THE RESIDENTS' MAIN BEEFS WITH THE MTC PROJECT, WOULD NOT BE GROUNDS FOR DENYING A CONDITIONAL-USE PERMIT, MCGINN AND COUNCIL ATTORNEY BRIAN JONES SAID.**

Afghanistan Stability / COIN Dynamics



- Population/Popular Support
- Infrastructure, Economy, & Services
- Government
- Afghanistan Security Forces
- Insurgents
- Crime and Narcotics
- Coalition Forces & Actions
- Physical Environment



WORKING DRAFT - V3

Seventh Inning Stretch



Utah Open & Public Meetings Act

Utah Code 52-4-1-101

Do I have to follow this law?

Yes...if you are:
An administrative, advisory,
executive or legislative body of
the state or its subdivisions
and;
were created by the Utah
constitution, statute, or rule,
ordinance or resolution.

**Annual
Training
is required**

**Written and
recorded
minutes required**

**Proper notice
of quorum or
majority of
members**



Utah Open & Public Meetings Act

Utah Code 52-4-1-101

Who is subject to this law?

Examples:

DABC
State records
City Council
City or Council Advisory
Boards:
Planning/Appeals/
Project Committees



Utah Open & Public Meetings Act

Utah Code 52-4-1-101

Who is not?

Examples:

Political parties groups &
Caucuses

State Legislative conference,
rules and sifting committees

Community Councils



What is a Meeting?

Meeting means the convening of a public body with a quorum present including a workshop or an executive session whether the meeting is held in person or by means of electronic communication for the purpose of discussing, receiving comments from the public about or acting upon a matter of which the public body has jurisdiction or advisory power.

Emailing on personal computer is not a meeting

All city email is a public record



What does a meeting not mean?

- A chance meeting
- A social meeting
- Meeting of public body with both legislative and executive responsibilities where:
 1. No public funds were appropriated
 2. Meeting where no formal action is required
(administrative)



Closed meetings

An open meeting can be closed for:

1. Discussion of individuals character(personnel)
2. Strategy for collective bargaining
3. Pending litigation
4. Real estate transactions
5. Security
6. Water

The law does not require any meeting to be closed –
discretionary not mandatory



Utah Open & Public Meetings

Act

Utah Code 52-4-1-101

What happens if someone violates the OPMA?

1. A court can void any action in violation of the law
2. Any member who intentionally violates or abets can be convicted of a class B misdemeanor (6 months jail- and/or \$1,000 fine)



ETHICS LAW IN UTAH

(SECTION V LAND USE BOOK)

Utah Code Title 10 Chapter 3

**Work
together –
make it
simple and
clear**

**1. Must disclose interests—on
public file**

2. Cannot accept gift over \$50

**3. Conflict of interest –Financial
vs. Political -must disclose then
can vote**

4. Ex parte communication

1. Municipal Ethics Commission



Legislative Session 2012

HB249 – Clarifies SF occupancy and sets up a grievance system

HB 273 – Changes notice requirements for public improvement specifications

HB 302 – Land Use Penalties

SB118- Transfer of Development Rights

SB165- Redevelopment Agencies

SB174 – Counties only- exemption from plat requirements for agriculture

HB502- Incorporation Amendments

SB177- Gramma – provides training & amends record provisions

League Services for You

Annual Conference –September, Salt Lake City

Mid year Conference-April, St. George

Web site with resources

Books/Publications

Regional Land Use Trainings with ULUI

Spring and Fall schedule online @ULCT.ORG



- Plannersweb.com
- utah-apa.org
- le.utah.gov – state codes
- Envisionutah.org- planning toolbox

ART HAS LEGS

By BARBARA GOLDSMITH Published: March 23, 2012 NEW YORK TIMES



- For about four years, close to the side of their white clapboard home, the gallery owners displayed a Larry Rivers mixed-media construction of a pair of attenuated fiberglass legs, 16 feet tall, modeled on a 1969 work called "40 Feet of Fashion." Rivers, the provocative painter, sculptor and filmmaker, died in 2002. By 2010, Fred W. Thiele Jr., the Sag Harbor village attorney and a state assemblyman, decided that Rivers' "Legs" — which had long been established and exhibited as a work of art — was, in fact, a "structure." As such, it was not a "conforming use," according to the village code. (Mr. Thiele dug in his heels and told a Times reporter, "It's a structure, and a structure is a structure is a structure.") Gayle Pickering, chairwoman of the Zoning Board of Appeals, tried to deflect the issue by saying: "This is not a decision about art. It's about setting a precedent for building structures." Last month there was a public meeting to decide for or against removal. By this time, the board had received so many e-mails, letters and faxes from museum experts, art critics and members of the general public advocating that the Rivers sculpture was a proven work of art and not a so-called structure and should remain in place, that another meeting was scheduled for last Tuesday, when the board voted not to vote on the issue but to postpone a decision until April 17. The board also decreed an end to all public input.



The Sag Harbor board that decides whether to let Larry Rivers' "Legs" stand in place would be wise to remember what Hippocrates wrote around 400 B.C.:

Life is short,

Art long,

Opportunity fleeting,

Experience treacherous,

Judgment difficult.