

# INTRODUCTION to the LAWS & RULES of LAND USE PLANNING

Presented by:  
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## I. OVERVIEW

### A. **Utah Code Ann. § 17-27a-102(1)(a)** :

“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 county 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, and to protect property values.”

### B. **Village of Euclid, Ohio v. Amber Realty Co.**, 272 U.S. 365, 387, 47 S.Ct. 114, 71 L.Ed. 303, 54 A.L.R. 1016 (1926)

“Building zone laws are of modern origin. They began in this country about 25 years ago. Until recent years, urban life was comparatively simple; but, with the great increase and concentration of population, problems have developed, and constantly are developing, which require, and will continue to require, additional restrictions in respect of the use and occupation of private lands in urban communities.”

## II. DISTINCTIONS

### A. CITIES V. COUNTIES

1. Annexations, De-annexations and annexation areas.  
Bluffdale Mtn. Homes v. City of Bluffdale, 2007 UT 57

### B. TRADITIONAL (HARD OR EUCLIDIAN) ZONING V. PERFORMANCE (INCENTIVE) ZONING

### C. OTHER DISTINCTIONS

1. Incentives: Rewards for granting community benefits which take the form of increased allowed density.
2. Exactions: Exactions are conditions imposed by governmental entities on developers for the issuance of a building permit or subdivision plat approval. B.A.M. Development L.L.C. v. Salt Lake County, 2006 UT 2, ¶ 34 *citing* Salt Lake County v. Bd. Of Educ., 808 P.2d 1056, 1058 (Utah 1991).

“They may ‘serve more than a single development’ and ‘may take the form of: (1) mandatory dedication of land for roads, schools or parks, as a condition to plat approval, (2) fees-in-lieu of mandatory dedication, (3) water or sewage connection fees, and (4) impact fees.’” B.A.M. Development L.L.C. v. Salt Lake County, 2006 UT 2, ¶ 34 *quoting* Salt Lake County v. Bd. Of Educ., 808 P.2d 1056, 1058 (Utah 1991).

**Utah Code Ann. § 17-27a-507:**

A county may impose an exaction or exactions on development proposed in a land use application provided that:(1) an essential link exists between a legitimate governmental interest and each exaction; and(2) each exaction is roughly proportionate, both in nature and extent, to the impact of the proposed development

CASES TO KNOW: Nollan v. Cal. Coastal Comm’n, 483 U.S. 825 (1987)  
Dolan v. City of Tigard, 512 U.S. 374, 386 (1994)  
B.A.M. Development L.L.C. v. Salt Lake County, 2006 UT 2  
Salt Lake County v. Bd. Of Educ., 808 P.2d 1056, 1058 (Utah 1991)

3. Recent Trends

- a. Trails
- b. Give backs
- c. No 3<sup>rd</sup> party exactions (running in 2015 legislative session)

4. Impact Fees:

**Utah Code Ann. § 11-36-102(7):**

(a) "Impact fee" means a payment of money imposed upon development activity as a condition of development approval.(b) "Impact fee" does not mean a tax, a special assessment, a building permit fee, a hookup fee, a fee for project improvements, or other reasonable permit or application fee.

**Utah Code Ann. § 11-36-201 and § 11-36-202** sets forth process & criteria

**Utah Code Ann. § 53A-20-100.5** prohibits school impact fees

CASES TO KNOW: Heideman v. Washington City, 2007 UT App 11  
Salt Lake County v. Bd. Of Educ., 808 P.2d 1056, 1058 (Utah 1991)

5. Extortion?

Gillmor v. Thomas et. al., (district court docket no. 2:05-cv-00823, appellate court docket no. 06-4124 )

C. LEGISLATIVE V. ADMINISTRATIVE DECISIONS

1. What kind of decisions are you making and why?
2. Is the decision creating, changing or adopting policy and laws?
3. Standard of Review

**Utah Code Ann. § 17-27a-801:**

(3) (a) The courts shall:

(i) presume that a decision, ordinance, or regulation made under the authority of this chapter is valid; and

(ii) determine only whether or not the decision, ordinance, or regulation is arbitrary, capricious, or illegal.

(b) A decision, ordinance, or regulation involving the exercise of legislative discretion is valid if the decision, ordinance, or regulation is **reasonably debatable and not illegal**.

(c) A final decision of a land use authority or an appeal authority is valid if the decision is supported by **substantial evidence in the record and is not arbitrary, capricious, or illegal**.

(d) A determination of illegality requires a determination that the decision, ordinance, or regulation violates a law, statute, or ordinance in effect at the time the decision was made or the ordinance or regulation adopted.

*See* BRAVE v. Beaver County et. al., 2009 UT 8

4. Exhausting Administrative Remedies

**Utah Code Ann. § 17-27a-801(1):**

(1) No person may challenge in district court a county's land use decision made under this chapter, or under a regulation made under authority of this chapter, until that person has exhausted the person's administrative remedies as provided in Part 7, Appeal Authority and Variances, if applicable.

*See* Green v. Brown, 2014 UT App 155  
Gillmor v. Summit County, 2010 UT 69

OTHER CASES TO KNOW:

Harmon City v. Draper, 2000 Ut App 31

Springville Citizens for a Better Cmty. v. City of Springville, 1999 UT 25, 979 P.2d 332.

Bradley v. Payson City Corp., 2003 UT 16

Patterson v. American Fork City, 2003 UT 7

### III DECISION MAKERS

#### A. PLANNING COMMISSIONS

1. Created and controlled by Ordinance
2. Powers and duties set forth in County Ordinance (Development Code) *see also Utah Code Ann. § 17-27a-302*
3. Due Process, Public Hearings and Noticing  
*See generally Utah Code Ann. § 17-27a-201 through § 17-27a-210 and § 17-27a-404*
  - a. What is “public input” and when is it appropriate?
  - b. *Ex parte* communications  
Murray v. Neth, 783 N.W.2d 424, 434 (Neb. 2010), the court held that *ex parte* communications with a decision maker can give rise to violations of due process  
Professional Air Traffic Controllers Org. v. Federal Labor Relations Authority, 685 F.2d 547, 567 (CA10 1982) the federal court ruled that where the process was “irrevocably tainted” so as to make the ultimate judgment of the agency unfair, due process has been violated.

#### B. BOARDS OF ADJUSTMENT OR OTHER APPELLATE BODIES

1. Created and controlled by Ordinance *see Utah Code Ann., § 17-27a-701*
2. Powers and duties set forth in County Ordinance *see also Utah Code Ann. § 17-27a-702* (variances) and *§ 17-27a-703* (administrative appeals)
3. Due Process: **Utah Code Ann. § 17-27a-706:**  
(1) Each appeal authority shall conduct each appeal and variance request as described by local ordinance.(2) Each appeal authority shall respect the due process rights of each of the participants.

#### C. LEGISLATIVE & EXECUTIVE AUTHORITIES

1. When can you say “no”?
2. Conditional Use Permits

#### D. PLANNING DIRECTORS AND STAFF

1. “We’re from the Government and we’re here to help.”

E. RESOLVING CONFLICTS OF INTEREST

1. Should I recuse myself or just abstain?

**Utah Code Ann. §67-16-9** (State ethics act) requires no participation if it would “create a substantial conflict between his private interests and his public duties.”

**Utah Code Ann. §17-16a-8** (Counties) requires only a disclosure if there is a pecuniary interest.

2. Annual conflict statements (§17-16a-7)

IV WHAT SHOULD YOU KNOW?

A. GENERAL PLAN AND DEVELOPMENT CODE

B. COUNTY LAND USE, DEVELOPMENT & MANAGEMENT ACT (CLUDMA)  
(Utah Code Ann. § 17-27a-101 et. seq.) on line at <http://le.utah.gov/UtahCode/title.jsp>

C. STANDARDS OF REVIEW

1. Variances
2. Administrative Appeals and Exhaustion
3. District Court Review
4. Legislative v. Administrative Decisions

D. VESTING (ZONING ESTOPPEL) & PENDING ORDINANCE DOCTRINE

1. Western Land Equities v. City of Logan, 617 P.2d 388 (Utah 1980)

2. **Utah Code Ann. § 17-27a-508** codified the principles of *Western Land Equities*.

- a. An applicant with a completed application that complies with the ordinances is entitled to an approval. (§17-27a-508(1)(a) and (d)).
- b. The County must process applications in a timely manner (§17-27a-508(1)(e))
- c. An application “vests” for processing on the date a completed application is submitted. (§17-27a-508(1)(f) and (4)).
- d. Only those requirements legally adopted may be imposed on an application (§17-27a-508(1)(h) and (i)).

- e. Counties can't require schools approve applications or give "willing to serve letters (§17-27a-508(3)).

V. REMEMBER . . .

"In the area of planning and zoning It is not a matter of if litigation will be filed but when. The keys to avoiding lawsuits include these pithy reminders.

- ★ Procedure is as important as substance.
- ★ Substance is as important as process.
- ★ Just because you can, doesn't mean you should.
- ★ Just because you got away with it, doesn't make it right.
- ★ Not getting caught is not the same as creating binding precedent.
- ★ Public clamor doesn't necessarily equate to the public will.
- ★ The public will doesn't necessarily equate to the public good.
- ★ You are the government that the Bill of Rights was written to protect the people from."

David Church, Esq., *Land Use Primer*, Utah League of Cities & Towns web page <http://ulct.org>