

# Handbook for Appeal Authorities

A resource for staying sane, legal, and fair.



Utah League of Cities and Towns

## **Introduction**

### **Part I. The Legal Basis for the Appeal Authority**

#### A. State Code

1. Establishment
2. Organization and Procedures
3. Powers and Duties
4. Ethics
5. Meetings and Minutes

### **Part II. Responsibilities, Duties, Limitations, and Standards**

#### A. Appeals of a Land Use Authority Decision

1. Definition
2. Standards of Review
3. Cautions

#### B. Variances

1. Definition
2. Standard of Review
3. Cautions

#### C. Municipal Land Use Ordinances

**Part III. Understanding Your Role as an Individual Member**

**Part IV. Questions Most Often Asked about Appeal Authorities**

**Part V. Resources for Decision Making**

**Part VI. Additional Resources**

**Part VII. Definitions of Planning, Zoning, and Development Terms**

## **Introduction**

### **Congratulations! You are an Appeal Authority!**

You have taken on a big job. The decisions you make will have a long- lasting impact on your community. Even more important, “how” you make decisions may impact your municipality’s planning efforts, its finances, (law-suits are expensive) and its credibility.

### **Now what?**

This pamphlet explains the laws that govern the Appeal Authority. We have tried to present them in such a way as to make them easily understood, and have included examples that will illustrate the legal principles.

When specific law is quoted, the citation or reference is noted. We have also provided practical suggestions that you might find helpful in your new role.

### **Where do we start?**

In 2005 and 2006, the Utah State Legislature revamped the laws that regulate planning and zoning for municipalities in Utah. In addition to the state and federal constitutions, the law that governs most land use decisions in Utah, is called LUDMA (Land Use Development Management Act). It is found in Title 10, Chapter 9, of the Utah State Code. The direct website address is [www.le.state.ut.us](http://www.le.state.ut.us)

Some of the most significant changes dealt with the role of the group that is known as the Board of Adjustment. Those changes are the focus of this handbook.

The changes in the law introduced new land use terminologies. An “Appeal Authority” is now defined as the individual, board, or other body that is designated to hear variances and or appeals of certain matters. Traditionally, in many communities, the Board of Adjustment may have performed the review of both these duties. Under the new concept, there may be one or more appeal authorities, depending on the type of question presented.

Here are the new legal definitions:

**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.

**Land Use Application.** An application required by a municipality's land use ordinance.

**Land Use Ordinance.** A planning, zoning, development, or subdivision ordinance of the municipality, but does not include the general plan.

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

Prior to the law changes, a municipality was required to appoint a five-member Board of Adjustment. Boards of Adjustment positions were often difficult to fill. Boards of Adjustment typically met infrequently. Members often were uncertain as to the limits of their authority or the quasi-judicial, not legislative, nature of their role.

Now, a municipality can now choose to retain its Board of Adjustment (with some procedural adjustments), or to streamline the system in its entirety. The law requires an Appeal Authority. However, it can be in the form of the traditional Board of Adjustment, another board or committee, or even an individual, such as a hearings examiner. It is extremely flexible designed to suit the direct needs of each municipality.

Each municipality must decide what is the best appeals system for that municipality. A municipality must, by ordinance, choose which person or body will hear appeals and/or variances. For example, a council can decide to have an Appeal Authority that hears both variance and appeals (for example a land use appeals board); it could decide to split up the duties designate an individual to hear appeals and a board to review variances.

This handbook is intended to help you in the applying the law for both variances and appeals whether you have a Board of Adjustment, Land Use Appeals Board, an individual or any combination of options.

The quasi-judicial system your city or town council picks is your choice – the process, to a great extent, is not. We are here to help you understand the differences between the two and how to fairly review appeals and variance criteria.

We recommend that you read this handbook and then get a copy of your own local land use ordinances. That should start you on your way!

## **Part I - The Legal Basis for the Appeal Authority**

Whether you currently sit as an Appeal Authority or are in the process of being appointed, there is a lot you need to know. “Good common sense” is necessary, but not sufficient.

Often, what the law requires an Appeal Authority to do, and what seems right, are two different impulses. For example, a crowded hearing of irate or supportive citizens cannot inform an Appeal Authority on how to vote. In fact, the elected or appointed Appeal Authority who might try to accommodate a vocal crowd may in fact violate the law that he or she is sworn to uphold.

Accepting the role of an Appeal Authority is not the place for a person who cannot say “no” or who believes that land use laws are wrong and that “people should be able to do whatever they want with their property.” An Appeal Authority must both know the law and possess the courage to follow it.

Unlike the council or the planning commission, an Appeal Authority does not have the power to rewrite or create new law. Even if it believes the law under consideration is silly, unwise, inappropriate, or unclear, the first responsibility is to determine whether the matter before it is consistent with the law.

Unlike a legislative body that creates law, (like the city or town council) an Appeal Authority is a quasi-judicial body that works within the strict rules of the law as it is written. It is a very narrow area of land use law.

### **The State Code**

#### **1. Establishment**

The section of the Utah Code Annotated (U.C.A.) that deals specifically with the duties of the Appeal Authority is Title 10 Section 9a-701. It states:

**10-9a-701. Appeal Authority required - Condition precedent to judicial review -Appeal Authority duties.**

- (1) Each municipality adopting a land use ordinance shall, by ordinance, establish one or more appeal authorities to hear and decide:
  - (a) requests for variances from the terms of the land use ordinances;
  - (b) appeals from decisions applying the land use ordinances; and
  - (c) appeals from a fee charged in accordance with Section [10-9a-510](#).
- (2) As a condition precedent to judicial review, each adversely affected person shall timely and specifically challenge a land use authority's decision, in accordance with local ordinance.
- (3) An appeal authority:
  - (a) shall:
    - (i) act in a quasi-judicial manner; and
    - (ii) serve as the final arbiter of issues involving the interpretation or application of land use ordinances; and
  - (b) may not entertain an appeal of a matter in which the appeal authority, or any participating member, had first acted as the land use authority.
- (4) By ordinance, a municipality may:
  - (a) designate a separate appeal authority to hear requests for variances than the appeal authority it designates to hear appeals;
  - (b) designate one or more separate appeal authorities to hear distinct types of appeals of land use authority decisions;
  - (c) require an adversely affected party to present to an appeal authority every theory of relief that it can raise in district court;
  - (d) not require an adversely affected party to pursue duplicate or successive appeals before the same or separate appeal authorities as a condition of the adversely affected party's duty to exhaust administrative remedies; and
  - (e) provide that specified types of land use decisions may be appealed directly to the district court.
- (5) If the municipality establishes or, prior to the effective date of this

chapter, has established a multi person board, body, or panel to act as an appeal authority, at a minimum the board, body, or panel shall:

- (a) notify each of its members of any meeting or hearing of the board, body, or panel;
- (b) provide each of its members with the same information and access to municipal resources as any other member;
- (c) convene only if a quorum of its members is present; and
- (d) act only upon the vote of a majority of its convened members.

## 2. Organization and Procedures

A city or town council may choose a variety of forms in which to hear appeals and/or variances. A municipality may have an Appeal Authority that hears variance and appeals (for example a Board of Adjustment) or split up the duties and assign them to different boards or individuals.

The law is intended to give a municipality flexibility in deciding how to administer variances and appeals. The Planning Commission must make a recommendation to the Council on whom they think should hear appeals in specific circumstances, and variances. Once the decision is made it must be written down in the land use ordinance so a person can look to the town or city code and know who will be the Appeal Authority for their particular issue and how the process will work. This is key to starting the process!

If you decide to have a group or a board decide one or both of the matters, it is then up to the members of that board to elect a chair and establish rules of procedure for members of the board know how to interact with one another. At a minimum, the board must:

- (a) notify each of its members of any meeting or hearing of the board, body, or panel;
- (b) provide each of its members with the same information and access to municipal resources as any other member;

- (c) convene only if a quorum of its members is present; and
- (d) act only upon the vote of a majority of its convened members. (10-9a-701(5))

If you have a single member Appeal Authority, these coordinating mandates are unnecessary.

The Appeal Authority whether a group or individual, meets only as needed. Appeal Authority meetings, or hearings, are public meetings, subject to the Open and Public Meetings Act (OPMA). Title 52, Chapter 04. The Appeal Authority or someone on their, behalf of must draft and then the Appeal Authority must adopt, accurate minutes summarizing the essential aspects of each meeting. (52-4-203, U.C.A.)

If you have only one Appeal Authority, then they are not subject to the OPMA as the law only goes into effect with two or more members. We recommend that you follow the same procedures to be open and transparent.

### 3. Powers and Duties (10-9a-701)

An Appeal Authority is empowered to hear and decide:

1. Appeals from zoning decisions applying the land use ordinance;
2. Variances from the provisions of the land use ordinance.

In the past, many municipalities may have used a Board of Adjustment for deciding appeals and hearing variances. In addition, they may have made decisions regarding the expansion of nonconforming uses and noncomplying structures. Under the new law, initial nonconforming use and noncomplying structure decisions should be made by the designated land use authority, rather than the Appeal Authority.

Your land use ordinance should clearly state the board, body or person you have chosen as the Appeal Authority and, if different boards, bodies or persons have been chosen to decide different

types of appeals, the specific duties that each entity may have been given. The language can be as simple as the example that is provided below:

Appeal Authorities.

1. The Board of Adjustment shall hear and decide variances from the terms of the zoning ordinance.
2. The Hearings Examiner shall hear and decide appeals from decisions of the land use authority

The process for appeals and variances will be defined and explained in detail in Section II.

4. Ethics.

Ethical regulations that apply to members of the Appeal Authority can be found in two sections of the State code. Those that apply to all government employees, and officers, are found in Title 67 Chapter 16, U.C.A. Further, 10-9a-701 provides that Appeal Authorities must act in a “quasi-judicial” manner.

Following is a brief summary of these sections.

- You may not use your office for personal or financial benefit. This applies to receiving materials, money, special favors, and the use of information received in your position that results in a benefit to you. As an elected or appointed official, you may not personally or financially benefit from your position any more than any other citizen does.
- You may not receive a gift of substantial value that is given with any connection to a case or a person that will be appearing before the Appeal Authority.

- You are required to file a public disclosure with the city recorder as to any business interest that you may have that is regulated by the city. This document is required when you first take your position with the Appeal Authority and should be updated each time you are reappointed or each time your business interests change in a way that is material to the disclosure.
- Any personal interest or investment which creates a conflict with your public duties must be disclosed in open meeting and submitted to the municipality annually in a disclosure form.

The appearance of fairness doctrine requires you to abstain from voting on a matter on which you have a material conflict of interest. Always consult with your City Attorney as to whether you should abstain from a decision based on your personal or financial interest.

## 5. Meetings and Minutes

In most cases, a meeting will be called because an appeal, or variance application, has been submitted for review and response. A meeting may also be called for training or for other purposes relating to the Appeal Authority.

All meetings of the Appeal Authority are subject to the Open and Public Meetings Act (OPMA), Title 52, Chapter 04. As such, the meetings must be summarized in written and adopted minutes. Additionally, all meetings must be voice recorded.

Minutes of the meeting are very important. If the Appeal Authority is sued (it is the most likely body in a city or town to be sued because all appeals go to the court), the judge will base his or her decision, in part, on what is found in the minutes.

It is important, therefore, that minutes be taken by someone trained in the skill and that they reflect not only final decisions but the reasons for making the decision.

“Findings”, the written facts and evidence used in making a decision, are more important to the court than is the decision itself. A court has no interest in making land use decisions for you; it is interested in making sure that you followed due process, obeyed the law as written, and protected the rights of everyone involved. The Findings of Fact are often a separate document from the meeting minutes. However, the substance of the Findings of Fact must be reflected in the minutes.

Minutes and tape recordings are public property and will be made available to the public on request. As you review the minutes of a meeting, make sure that they reflect the important points of the discussion, the findings, decision, final vote and any conditions that may have been attached to the project. You are not allowed to change the minutes after the meeting to reflect what you wish had been said but did not.

Approval of the minutes should not be automatic or perfunctory; they should be read for accuracy and completeness, before being approved.

There is a great deal more that needs to be known about how minutes are kept and how records must be handled and your staff needs to be fully informed. It is prudent, therefore, that the clerk attend training for the Appeal Authority, as well as that offered by the Clerks and Records Association.

## **Part II - Responsibilities, Duties, Limitations, and Standards of Review** **Appeal of a Land Use Authority Decision (10-9a-703)**

### **1. Definition**

An appeal is a challenge to a decision of the land use authority. A land use authority “is a person, board, commission, agency, or other body designated by the local legislative body to act upon a land use application.” In most cases the land use authority will be the planning commission or the municipal staff.

Anyone adversely affected by a land use authority decision, including the city staff, may appeal the decision of the land use authority.

**10-9a-703. Appealing a land use authority’s decision** The applicant, a board or officer of the municipality, or any person adversely affected by the land use authority’s decision administering or interpreting a land use ordinance may, within the time period provided by ordinance, appeal that decision to the appeal authority by alleging that there is error in any order, requirement, decision, or determination made by the land use authority in the administration or interpretation of the land use ordinance.

The person who files the appeal must identify how and where land use authority made an error in applying the municipality’s land use ordinances.

An applicant has a minimum of ten days to file an appeal unless your ordinance specifies a longer review period. You cannot have an appeal period shorter than 10 days. **(10-9a-704)**

Here are examples of the types of appeals that you might encounter:

1. A building project is stopped by the building inspector because a foundation wall is in what should be the required dimensions of a side yard;
2. An applicant believes that the Land Use Authority made a final decision in error and wants to appeal it;
3. A disagreement between a contractor and your zoning enforcement officer as to location of a zoning line;
4. A developer has been granted a building permit for a house that the neighbors believe exceeds the allowed height limitation for that zoning district. The neighbors would like the house redesigned, or lowered, prior to construction.

## **2 Standard of Review**

The Appeal Authority's decision must be based on the law as it is written in the land use ordinance.

State law gives municipalities the option of adopting their own standards of review for appeals. The municipality could require the Appeal Authority to hear all evidence, including new evidence, and decide the matter as if the land use authority had not already made a determination of rights. This is called "de novo". Alternatively, the municipality could require the Appeal Authority to review an appeal "on the record", to look only at what had been submitted to the land use authority, and then decide.

Many jurisdictions will allow the review authority to take new evidence and hear the matter as if it were new or "de novo". If the city or town does not designate the standard of review, state law assumes that the review will be "de novo". As such, the Appeal Authority would be required to allow the appellant and the respondent to submit any relevant evidence on the appeal.

Whether the Appeal Authority takes new evidence (de novo) or

relies only on the record before the land use authority, the Appeal Authority must determine whether the decision of the land use authority was a correct interpretation and application of the law. This “correctness” standard is found in 10-9a-707(3).

In processing each petition it is necessary that the Appeal Authority cite the law, have the minutes reflect that the law was read and interpreted to the facts of the case, and that every effort was made to apply the law as written to the specific situation.

The Appeal Authority is not empowered to create new law, even if they think the law is outdated, impractical, or just plain dumb. The law can only be changed by a process that requires the involvement of the planning commission and the legislative body.

Your job on these appeals is very limited in scope. You should ask:

1. “Did the land use authority correctly interpret the factual situation?”
2. “Did the land use authority correctly apply the law as written?”
3. “Did the land use authority violate due process or any rule of procedure?”

If you can find no error in the land use authority’s actions, then you must uphold their final decision.

Often, there are two, three or four parties to an appeal, representing two, three, or four different perspectives on the land use authority’s decision. You must also treat each party to the appeal, with respect and follow all procedures as detailed in your ordinance.

10-9a-706. Due process.

- (1) Each appeal authority shall conduct each appeal and variance request as provided in local ordinance.
- (2) Each appeal authority shall respect the due process rights of each of the participants.

### 3. Cautions

The Appeal Authority may not:

- consider amendments to the land use ordinance;
- consider public clamor, or allow public comment, during an appeal;
- ignore the law; or
- use the appeal process to waive, modify, or “vary” the terms or requirements of the land use ordinance. (Do not treat an appeal as an application for a variance - they are two very different processes, with different standards.)

In the process of hearing an appeal, it is important that you understand your role. You are not responsible for coming up with new conditions or for deleting conditions that the planning commission or staff may have attached. You must decide only whether the facts were interpreted correctly and whether the law was correctly applied.

Remember: the person making the appeal has the burden of proving that an error has been made.

### **Variances (10-9a-702)**

#### 1. Definition

A variance is a waiver or modification of a requirement of the land use ordinance that is granted under vary limited circumstances, generally to prevent a “taking” of private property from the strict application of the law.

It is a request to deviate from the letter of the law as established in the land use ordinance. The standards for granting a variance are very strict and the responsibility for showing that the

requirements for granting a variance are met is on the petitioner.

## 2. Standards of Review.

The standards that must be met before an Appeal Authority can grant a variance are narrow and difficult to meet. The State code is very clear. There are five conditions, of which **ALL** must be met before a variance can be granted. Not one or two, all five!

The conditions are:

- (a) literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinances;
- (b) there are special circumstances attached to the property that do not generally apply to other properties in the same zone;
- (c) granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;
- (d) the variance will not substantially affect the general plan and will not be contrary to the public interest; and
- (e) the spirit of the land use ordinance is observed and substantial justice done.

This may sound like a lot of “legalese” so it is important that, at some training session, each of these is discussed more fully and in clearer language.

The state code goes on to further clarify that in order for the petitioner to claim an “unreasonable hardship” the following standards must apply.

The hardship:

- Must be associated with the property. (It cannot be

that the people who will live on the property cannot do the work themselves, or afford to comply with the standards);

- Must be peculiar to this piece of property and one that is not general to the neighborhood;
- Cannot be purely economic or self-imposed. (The hardship cannot exist because of something for which the owner of the property is responsible);
- Cannot be a “use” variance (No variance can change the general purpose of the property. A variance cannot be used to allow a commercial use in a residential zone, nor a duplex in a single home residential zone).

The exact language detailing these standards for an unreasonable hardship is:

10-9a-702. Variances.

(b) (i) In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Subsection (2)(a), the appeal authority may not find an unreasonable hardship unless the alleged hardship:

(A) is located on or associated with the property for which the variance is sought; and

(B) comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.

(ii) In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Subsection (2)(a), the appeal authority may not find an unreasonable hardship if the hardship is self-imposed or economic.

(c) In determining whether or not there are special circumstances attached to the property under

Subsection (2)(a), the appeal authority may find that special circumstances exist only if the special circumstances:

- (i) relate to the hardship complained of; and
- (ii) deprive the property of privileges granted to other properties in the same zone.

It is also important to note that a variance runs with the land, not with the property owner, and that the burden of proof for meeting all of the standards outlined above rests with the petitioner.

### **3. Cautions**

1. In order to grant a variance, all five conditions must be met. Your minutes must reflect that you considered and got a correct response to all five. (Needless to say, motions to approve are going to be very long.)
2. In denying a motion, failure to meet any one or more of the five conditions can be stated as a reason for denial.
3. It is not enough to say that a hardship was found, the hardship must be stated and the connection between the hardship and the need must be shown.
4. All appeals of a variance go directly to the district court. The planning commission, the mayor, or the city or town council never deal with a variance or the appeal of a variance.
5. If all of this sounds very legalistic and complicated that is because it is all very legalistic and complicated. Training is available, your attorney should be consulted, and you need to be able to read and understand the law.
6. If in doubt about approving a variance, table the request and get advice. This is the area of municipal law that is

notorious for lawsuits.

## *B.* The Municipal Land Use Ordinance

The State Code allows municipalities flexibility in the establishment and management of the Appeal Authority. The broad powers, duties, limitations, organization, and procedure, are all spelled out as reviewed above in 10-9a-701.

The important step that municipalities must take is to reflect their choices in the land use ordinance. Provisions applying to the Appeal Authority should be in a single section that clearly specifies the powers and duties and any additional standards of review that the municipality has created.

### **Part III-Understanding Your Role as an Individual Authority Member**

Other than knowing and adhering to the Open Meetings Act and Rules of Ethics, there are no absolute rules that are written any place about how you should act as an Appeal Authority. There are, however, a lot of suggestions from many different sources.

Here are some very basic rules that apply if you have a Board of Adjustment as your Appeal Authority:

- Remember that you are a member of a board that has power, but the power lies in the vote of three members, not with the individual member.
- Remember that you are not there representing a specific neighborhood, business, or interest. Your responsibility is to protect “the public good” and apply the law which has been defined in the land use ordinances and state law.
- You are subject to the same rules of ethics and procedure as elected officials.

Perhaps the easiest way of defining the role of an Appeal Authority member is to look at a list of “shalts” and “shalt nots”.

## The Shalts:

1. attend meetings and vote;
2. preview materials for cases and take field trips when appropriate;
3. pay attention to the information that is presented by all parties in the meetings;
4. ask questions if you need to;
5. represent the good of the community rather than the good of the few;
6. be knowledgeable and respectful of Constitutional rights;
7. become familiar with, and respect the laws of the country, the state, and the city or town in which you live;
8. treat others with dignity, regardless of how you may view their issue or point of view;
9. be able to say “no” when it is appropriate (a good Appeal Authority usually says “no” more often than it says “yes”);
10. make decisions based on the law, and good planning, rather than on public sentiment or pressure;
11. become knowledgeable about planning, both in theory and practice.

## The Shalt Nots:

1. be afraid to make difficult decisions even though they may be unpopular;
2. have meetings one-on-one with petitioners;

3. ignore the law;
4. have a closed mind to arguments or new ideas;
5. make up your mind before hearing all the available information;
6. represent a single point of view or base your vote on a single personal experience;
7. violate the open meetings law or the ethics act of the State of Utah or of the municipality in which you live;
8. use your position, or information given to you as a result of your position, to benefit yourself, friends, or family;
9. take information about an appeal outside of the Open and Public Meeting;
10. be afraid to ask questions.

#### **Part IV- Questions Most Often Asked About Appeal Authorities**

##### ***How much time will serving on an Appeal Authority take?***

Unlike the council, mayor, and planning commission, the Appeal Authority need meet only when a petition has been filed to which the Authority must respond. In large communities, or when there is a lot of development going on, an Appeal Authority may meet as often as once a month and may meet for several consecutive days on a particular matter. In some communities, they meet far less often.

In addition to meetings, you may be asked to meet occasionally for training, for organizational purposes, or to discuss possible litigation.

### ***Can I be personally sued for votes I make?***

The only way someone can appeal a decision made by the Appeal Authority is to appeal to a district court. This means that it is very likely that the Appeal Authority will be sued, in its official capacity, in the normal course of events. The likelihood of being sued personally is very small.

When the Appeal Authority is sued, the city's insurance company and your municipal attorney will protect the Appeal Authority on behalf of the city. As long as you are acting in good faith, have not acted for personal benefit, and have acted under a reasonable interpretation of the written law, then you have no need to fear of "losing the ranch".

### **How do we interface with the Mayor and City/Town Council?**

You are appointed by the mayor with the advice and consent of the council. After that, you should have little interface. You act independently of elected officials while paying a lot of attention to the law. They should not try to interfere or influence the decisions you are called on to make. If one appears before you on an issue, it should be only as a party to an appeal, not as an elected official. (There may be an occasional exception but that will be very rare.)

Your budget, and therefore your level of staffing, is determined by elected officials as part of their budgetary responsibilities. If you have needs that will impact the municipal budget, you should have an avenue for getting that information to the legislative body.

### ***How do we interface with the Planning Commission?***

Each body has its own duties and responsibilities as established by state law. No Appeal Authority may decide a matter on which it has also acted as the land use authority. As such, there should be no overlap between members of the

Appeal Authority and members of the Planning Commission.

### **Who sets the agenda and “runs” Appeal Authority Meetings?**

The Chair is in charge of all Appeal Authority meetings if it is in a board format. The Authority should have written procedures that are reviewed and a chair who is elected by members of the Appeal Authority once a year.

One of your procedures should deal with how a meeting is called. A petitioner should meet with the clerk or recorder, or the land use staff, and fill out an application form. The chair is then notified and she/he sets the date of the meeting and everyone is notified.

The agenda is usually determined by the staff and the chair. It is the chair’s responsibility to make sure that the meeting is conducted in a fair, legal, and efficient manner.

If the Appeal Authority consists of one individual the same noticing and agenda process should be followed.

## **Part V-Resources for Decision Making**

Because the law, in all its forms, must be the basis of the decisions that you make as an Appeal Authority, it is important that you have access to all relevant laws and that you make reference to it in your decision making.

Here is a brief list of materials that should be made available to you:

1. A copy of your municipality's land use zoning ordinance and subdivision ordinance;
2. A copy of the Utah State Code, Sections, Title 10, Chapter 9a
3. A copy of the Open Meetings Act, Title 52, Chapter 04, U.C.A.;
4. A copy of any municipal ethics requirements;
5. Established written procedures developed by the municipality

In addition, the group, as a whole, or the individual should be given access to the municipal attorney as needed.

## **Part VI - Additional Resources**

The League offers technical assistance to help with specific problems and ordinance clarification. For this type of assistance, call our toll free number at 1-800-852-8528 and ask to be put in touch with our land use staff.

The Annual Conference, the Midyear Conference, and the Water Conference presented by the Utah League of Cities and Towns contain several workshops specifically for those involved in planning. A schedule of upcoming conferences, detailed information, and registration is available on our website, [www.ulct.org](http://www.ulct.org), or call our office for more information.

## Part VII- Definitions

*These definitions are compiled from the Utah State Code, the Illustrated Book of Development Definitions, "The Job of the Planning Commission", (Albert Solnit, 1987), the "Planning commissioners Handbook" published by the League of California Cities.*

*The lists were edited by the Utah League of Cities and Towns staff. They are intended for general reference only. For specific legal definitions consult your municipal attorney.*

**Abandonment:** The relinquishment of property, or a cessation of the use of the property by the owner, with the intention neither of transferring rights to the property to another owner nor of resuming the use of the property.

**Abutting:** Having property or zone district boundaries in common.

**Access:** A way of approaching or entering a property. In zoning and subdivision regulations, lots of record usually are required to have direct access to a public street or highway or to a private street meeting public standards. In the context of land use controls, access includes ingress, the right to enter, and egress, the right to leave.

**Accessory Use:** A use of land or of a building or portion thereof customarily incidental and subordinate to the principal use of the land or building and located on the same lot with such principal use.

**Aesthetic Zoning:** The regulation of building design and site developments in the interest of appearance. (Yes, this is legal)

### **Affected Entity:**

"Affected entity" means a county, municipality, independent special district under

Title 17A, Chapter 2, Independent Special Districts, local district under Title 17B, Chapter 2, Local Districts, school district, interlocal cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, specified public utility, a property owner, a property owners association, or the Utah Department of Transportation, if:

(a) the entity's services or facilities are likely to require expansion or significant

modification because of an intended use of land;

(b) the entity has filed with the municipality a copy of the entity's general or long-range plan; or

(c) the entity has filed with the municipality a request for notice during the same calendar year and before the municipality provides notice to an

affected entity in compliance with a requirement imposed under this chapter.

**Air Rights:** The right to use the air space over the property of someone else, typically, but not always, over railways and highways.

**Amortization:** A method of eliminating nonconforming uses by requiring the termination of the nonconforming use after a specified period of time.

**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.

**Appeal:** When a person believes a decision was made in error, an appeal may be filed so that a higher decision-making body can review the case.

**Assessment Ratio:** The relation between the assessed value of a property and true market value.

**Bonuses:** (Also known as incentive zoning): The awarding of bonus credits to a development in the form of allowing more intensive use of the land if the developer is willing to provide for greater public benefits than those required.

**Buffer Zone:** A strip of land zoned to protect one type of land use from another with which it is noncompatible. Where a commercial district abuts a residential district, for example, additional use, yard, or height restrictions may be imposed to protect the residential property. The term may also be used to describe any zone that separates two unlike zones.

**Building Area:** The total square footage of a lot covered by a building measured on a horizontal plane at mean grade level exclusive of uncovered porches, terraces, and steps.

**Building Code:** Regulations governing building design, construction, and maintenance. In Utah, all construction is covered under the Uniform Building Code.

**Building Envelope:** The net cubic space that remains for placing a structure on a site after building line, setback, side yard, height, and bulk regulations are observed.

**Building Official:** The person responsible for the administration and enforcement of the building, housing, plumbing, electrical, and related codes. All such officials in Utah need to be certified by the State of Utah.

The Building Official is the land use authority for the purposes of issuing building permits and initial decisions interpreting each of the aforementioned codes.

**Capital Improvement:** A government acquisition of real property, major construction project, or long lasting, expensive equipment.

**Capital Improvements Program:** A proposed timetable or schedule of all future capital improvements to be carried out during a specific period and listed in order of priority, together with cost estimates and the anticipated means of financing each project.

**Carrying Capacity:** The level of land use that can be permanently accommodated with an irreversible change in the quality of air, water, land, or plant and animal habitats.

**Cluster Development:** A type of development that allows the reduction of lot sizes below the zoning ordinance's minimum requirements if the land thereby gained is preserved as permanent open space for the community.

**Compatibility:** The characteristics of different uses or activities that permit them to be located near each other in harmony and without conflict. The conditions established in a Conditional Use process should be based on making sure that the use granted is compatible with the permitted use of the land.

**Condemnation:** The taking of private property by a government unit for public use when the owner will not relinquish it through sale or other means. The owner is recompensed by payment of "market value". The term "to condemn" is used to indicate determination by a government agency that a building is unfit for use because it is structurally or otherwise unsafe or unhealthy.

**Conditional Use:** A conditional use is 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. In order for a conditional use to be considered, it must be listed as such in the applicable zone.

**Condominium:** The legal arrangement in which a dwelling unit in a building or residential development is individually owned but in which the common areas are owned, controlled, and maintained through an organization consisting of all the individual owners.

**Conservation Easement:** A tool for acquiring open space with less than full-fee purchase; the public agency buys only certain specific rights from the owner.

**Conversion:** The partitioning of a single-dwelling unit into two or more separate households or the conversion of the use of an existing building into another use. Such a conversion without required process is usually illegal.

**Covenant:** A private legal restriction on the use of land contained in the deed to the property or otherwise formally recorded. Covenants held by homeowner associations are not enforced by the municipality.

**Culinary Water Authority:** The department, agency, or public entity with responsibility to review and approve the feasibility of the culinary water system and sources for the subject property.

**Dedication:** Gift or donation of property by the owner to another party.

**Density:** The number of families, individuals, dwelling units, or housing structures per unit of land; usually that unit is expressed as an acre. The control of density is one of the basic purposes of zoning. Gross density includes land for streets, schools and parks. Net density does not include area for public spaces.

**Density, Control of:** A limitation on the occupancy of land. Density can be controlled through zoning by one or a combination of the following methods: use restriction (single or multiple dwellings), minimum lot-size requirements; floor-area ratios; setback and yard requirements; minimum house-size requirements; establishing ratios between lot and house size; limitations on units per acre; and other means.

**Design Review:** Review of commercial, industrial, residential structures and some signs to ensure project design and design consistency with structures and the general environment of the surrounding area.

**Development Fees:** A fee or charge imposed on developers to pay for the actual costs of a new development. Fees pay for the on-site improvements that are directly related to the development. Examples would be streets, sidewalks, water, sewer, etc. They do not include the costs of offsite impacts. (See impact fees)

**Development Rights:** One of many rights that a property owner may expect to have on a given piece of property. It is not a guaranteed right assumed by ownership but one predicated on many other issues and

rights. It is possible to sell or acquire development rights without selling or acquiring the property.

**Downzoning:** A change in a zoning classification of land that allows for a less intensive use of the land than had been previously allowed.

**Easement:** A right given by the owner of land to another party for specific limited use of that land. For example, a property owner may give or sell an easement on his/her property to allow for such uses as egress, infrastructure, etc. Once granted or sold it is assumed to be permanent.

**Eminent Domain:** The authority of a government to take, or to authorize the taking of, private property for public use. The Fifth Amendment requires just compensation for any taking and implicitly prohibits the taking of private property for private use unless declared blighted.

**Exaction:** A contribution or payment required as a precondition for receiving a development permit. (Before requiring an exaction, consult with your city attorney – there has been recent case law concerning what you can and cannot demand.)

**Exclusionary Zoning:** Zoning which has the effect of keeping certain types of people out of a community or a neighborhood. There are a number of zoning techniques that can and often are employed such as large-lot zoning, minimum floor space, building requirement controls, etc. There have been a number of recent court cases challenging this type of zoning.

**Fair Market Value:** The price of a building or land which would be agreed upon voluntarily in fair negotiations between a knowledgeable owner willing, but not forced, to sell and a knowledgeable buyer willing, but not forced, to buy.

**Feasibility Study:** An analysis of a specific project or program to determine if it can or should be successfully carried out.

**Final Subdivision Map:** A map of an approved subdivision map filed in the county recorder's office. It usually shows surveyed lot lines, street right-of-ways, easement monuments, and distances, angles, and bearings, pertaining to the exact dimensions of all parcels, street lines, and so forth.

**Finding or Findings of Fact:** A determination or conclusion based on the evidence presented by the deciding body in support of its decision. When it presents its decision, the body is often required to demonstrate in writing

that the facts presented in evidence support its decision in conformance with the law.

**Frontage:** The area that sits between a structure and the street.

**General Plan:** A legal document in the form of a map and accompanying text adopted by the local legislative body. The plan is a compendium of its policies regarding the long-term development of its jurisdiction. It is sometimes called a comprehensive or master plan.

**Grading Permit:** Issued for earthwork construction before grading or filling is begun.

**Improved Land:** Usually refers to vacant land that has been improved with basic facilities such as roads, sewers, water lines, and other public infrastructure facilities that meet development standards.

**Incentive Zoning:** The granting by the local authority of additional development capacity in exchange for the developer's provision of a public benefit or amenity. The local ordinance would have to clearly spell out the incentives that could be considered.

**Inclusionary Zoning:** Regulations which increase housing choice by providing the opportunity to construct more affordable, diverse, and economical housing to meet the needs of low and moderate income families.

**Indirect Source:** An indirect pollution source that by its nature attracts large numbers of polluting sources while not actually releasing the pollutant itself.

**Infrastructure:** Facilities and services needed to sustain industry, residential and commercial activities. It includes water and sewer lines, streets and roads, communications, and public facilities such as fire houses, parks, etc.

**Inverse Condemnation:** The taking of private property as a result of governmental activity without any formal exercise of eminent domain. An example would be the expansion of an airport runway that brings airplanes so low over residences so as to make them uninhabitable.

**Just Compensation:** Payment made to a private property owner by an agency with power of eminent domain when the private property is taken for public use.

**Historic District:** A designated area given special consideration because of its significant cultural, historical, or architectural value. Permits issued in such an area require additional procedural action.

**Historical Landmark Designation:** If an individual building or lot has significant cultural, historical, or architectural value, it may be designated an historic landmark. (For more specific information, contact the Utah Heritage Foundation.)

**Home Owner's Association:** A non-profit organization operating under recorded legal agreements running with the land. Generally, each lot owner in a condominium or similar planned development becomes a member upon purchase and each lot is subject to a charge for a proportionate share of the expenses for the organization's activities such as maintaining common areas, e.g. landscaping, recreation facilities, and parking areas.

**Impact Analysis:** A study to determine the effects of a proposed development on activities, utilities, circulation, surrounding land uses, community facilities, environment, and other factors directly, indirectly, or potentially affected. In Utah an impact analysis must be completed before impact fees can be charged.

**Land Use Application:** An application required by a municipality's land use ordinance.

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

**Land Use Ordinance:** A planning, zoning, development, or subdivision ordinance of the municipality, but does not include the general plan.

**Leapfrog Development:** Development that occurs well beyond the existing limits of urban development and thus leaves intervening vacant land behind. Such a practice results in greater service costs and is, therefore, discouraged.

**Lot:** The basic development unit- an area with fixed boundaries, used or intended to be used by one building and its accessory buildings. Characteristics of lots for zoning purposes include: buildable area, lot coverage, lot depth, and lot width. A buildable lot must meet the requirements of the zoning district in which it is located and must front on a public street or an approved private street.

**Metes and Bounds:** A system of describing and identifying land by measures (metes) and direction (bounds) from a point of reference. (In Utah law its use is often to suggest an alternative to a formal surveyors plat. See Minor Subdivision)

**Minor Subdivision:** A subdivision of fewer than ten lots. A minor subdivision may be sold by metes and bounds if it meets all other procedural and actual requirements of a subdivision.

**Mixed Use Zoning:** A zone that is specifically designed to encourage uses that are different yet compatible. The most common is a residential zone that allows for small retail and professional uses that will fit in a neighborhood and be used by local residents. Such zones are encouraged as part of a “walkable” communities design.

**Noncomplying Structure:** A structure that:  
(a) legally existed before its current land use designation; and  
(b) because of one or more subsequent land use ordinance changes, does not conform to setback, height restrictions, or other regulations, excluding those regulations that govern the use of land.

**Nonconforming Use:** A use of land that:  
(a) legally existed before its current land use designation;  
(b) has been maintained continuously since the time the land use ordinance regulation governing the land changed; and  
(c) because of one or more subsequent land use ordinance changes, does not conform to the regulations that now govern the use of the land.

**Nuisance:** Anything that interferes with the use or enjoyment of property, endangers personal health or safety, or is offensive to the senses.

**Occupancy Permit:** A permit needed for a new tenant to move into a new structure. This is considered part of the building-permit process.

**Off-site Improvements:** Conditions that can be required of a project that involves the installation of streets, curbs, gutters, sidewalks, street trees, etc. that are located adjacent to the project on city-owned property.

**Overlay Zones:** A set of zoning requirements in addition to those of the underlying district. Developments within the overlay zone must conform to the requirements of both zones or the more restrictive of the two. Such zones are usually employed to deal with special physical characteristics such as flood plains, historical areas, soils, or hillsides.

**Parcel:** A lot or contiguous group of lots in single ownership or under single control, and usually considered a unit for purposes of development.

**Permitted Use:** A use by right which is specifically authorized in a particular zoning district. It is contrasted with conditional uses which are authorized only if certain requirements are met and after review and approval by a designated body.

**Phased Development:** A term referring to programs or techniques to guide the timing and sequence of development. Such zones are used as a growth management tool and must be part of the General Plan of the municipality.

**Planned Unit Development (PUD):** A self-contained development, often with a mixture of land uses and densities, in which subdivision and zoning controls are applied to the project as a whole rather than to individual lots. They are supposedly used to benefit both the developer, often by allowing for greater density, and the municipality, by preserving more open space or safeguarding sensitive areas. A community should make sure that they are receiving adequate benefit before agreeing to the use of this tool.

**Planning Commission:** The land use authority that is charged with the development of the General Plan, formulation and administration of the Zoning Map and Ordinance and the review of any other land use matters designated by the Mayor and Council. It is an advisory board.

**Planning Director:** The chief administrator in the planning department. Usually works as staff and professional advisor to the Planning Commission. The Zoning Ordinance can give certain powers and responsibilities to the Director as a land use authority.

**Police Power:** The inherent right of a government to restrict an individual's conduct or use of property in order to protect the health, safety, welfare, and morals of the community.

**Policy:** A statement of a public body that forms the basis for enacting legislative decisions. The policies under which zoning ordinances are enacted and administered should be found in a community's General Plan.

**Preliminary Subdivision Map:** The first formal submission by a subdivider is usually in the form of a map with accompanying documents providing the information about the proposed subdivision required by the local subdivision ordinance. Before formally accepting the material, it should be reviewed to make sure that all necessary information is included.

**Principal Use:** The main use of area, land, or structures as distinguished from Conditional Uses and accessory or secondary uses. A house is a principal use in a residential area; a garage or pool is an accessory use.

**Public Hearing:** A hearing at which members of the public are provided a reasonable opportunity to comment on the subject of the hearing.

**Public Meeting:** A meeting that is required to be open to the public under Utah Title 52, Chapter 4, Open and Public Meetings.

**Revenue/Cost-Impact Analysis:** A technique used to assess the revenue and impact of a proposed project on a community. If costs exceed the revenue, the project should be modified, denied, or have special development charges attached in order to sufficiently offset costs.

**Right-of-Way:** The right of passage over the land of another. Once a right-of-way is granted, it becomes a “legal” right that can only be removed via purchase, relinquishment, or court action.

**Sanitary Sewer Authority:** The department, agency, or public entity with responsibility to review and approve the feasibility of sanitary sewer services or onsite wastewater systems.

**Setback Requirements:** The requirements that a building be set back a certain distance from the street or lot line. They are specified in a zoning ordinance or a site-development plan.

**Sign Permit:** This permit allows for a sign to be erected in compliance with stated policies and conditions.

**Site Plan:** A plan, to scale, showing uses and structures proposed for a parcel of land. It includes lot lines, streets, building sites, public open space, buildings, major landscape features -both natural and man-made-and, depending on requirements, the locations of proposed utility lines.

**Site-Plan Review:** The process whereby local officials, usually the Planning Commission and staff, review the site plans of a developer to assure that the plans meet the purposes and standards of the zone, provide for necessary public facilities such as streets, parks, and schools, and protect adjacent properties through appropriate placement of structures and landscaping.

**Special District:** An entity established under the authority of Utah Title 17A, Special Districts, and any other governmental or quasi-governmental

entity that is not a county, municipality, school district, or unit of the state.

**Street, Collector:** A street which collects traffic from local streets and connects with minor and major traffic arteries.

**Street, Expressway:** A divided multi-lane major arterial street for through traffic with partial control of access and with grade separations at major intersections.

**Street, Local:** A street designed to provide vehicular access to abutting property and to discourage through traffic.

**Street, Minor Arterial:** A street with signals at important intersections and stop signs on the side streets, and which collects and distributes traffic to and from collector streets.

**Street System:** The classification of streets and highways by their diverse functions and design. The following is the commonly used hierarchy of streets and highways for planning purposes: local, collector, major, expressway, arterial, parkway, and freeway.

**Strip Development:** Commercial or retail development, usually one-store deep that fronts on a major street.

**Strip Zoning:** A zone normally consisting of a ribbon of uses fronting both sides of a major street and extending inward for approximately half a block. Strip commercial development is the most common form. It usually is characterized by an assortment of gas stations, drive-in and fast-food restaurants, motels, tourist shops, and automobile sales and service operations.

**Subdivision:** The process and the result of dividing a parcel of raw land into smaller buildable sites. Complete plans will eventually include streets, blocks, open space, public areas, and other improvements. A subdivision may be established any time a new boundary line is drawn.

**Temporary Zoning (TZO):** In land use, a freeze or moratorium, on all or specific types of new development pending the completion and adoption of certain planning and/or zoning ordinance requirements, e.g. General Plan, zoning ordinance amendment, sewer line installations, or growth management programs. TZO's can only last up to six months. Consideration of a TZO must be on a council's agenda but no public hearing is required.

**Transfer of Development Rights (TDR):** The removal of the right to

develop or build, expressed in dwelling units per acre, from land in one zoning district to land in another district where greater density is preferred. TDR is often used as a tool for the preservation of agricultural land, open space, or historical preservation.

**Trip Generation:** The total number of vehicle trips produced by a specific land use or activity. It is used to calculate traffic impact of a proposed use.

**Variance:** A device which grants a property owner relief from certain provisions of a zoning ordinance, when, because of particular physical surrounding, shape, or topographical condition of the property, compliance would result in a particular hardship upon the owner, as distinguished from a mere inconvenience or a desire to make more money. The petitioner must prove that a physical hardship exists, and that the request would not be alien to the design or intent of the area. Only the Appeal Authority is vested with the authority to grant variances. Any appeal of the decision must be made to the District Courts. There is no legal way to grant a variance that would change the use of a piece of property.

**Vested Right:** Generally, a developer is “vested” when a complete application has been submitted and accepted by the municipality. It is not vested with the zoning at the time of purchase or with the expression of an intended use by the developer. If no plans have been submitted and formally accepted, the use of the property is not vested.

**Zero-Lot-Line Development:** A development approach in which a building is sited on one or more lot lines with no yard. Conceivably, three of the four sides of the building could be on lot lines. The intent is to allow more flexibility in site design, and to increase the amount of usable open space on the lot.

**Zoning:** A police-power measure, enacted primarily by units of local government, in which the community is divided into districts, or zones, within which permitted and special uses are established, as are regulations governing lot size, building bulk, placement, and other development standards. Requirements vary from district to district but they must be uniform within districts. The zoning ordinance consists of two parts: the text and a map

**Zoning Administrator:** A land use authority that is an official in charge of carrying out the municipal policy as determined by the council, and also empowered to make decisions as stated in a municipalities' zoning ordinance. The Administrator may also act to enforce the zoning law.

**Zoning Districts:** A geographical area of a city or county, zoned with

uniform regulations and requirements.

**Zoning Map:** The officially adopted zoning map of the municipality, specifying the uses permitted within certain areas.