

# WHAT EVERY ATTORNEY SHOULD KNOW ABOUT LAND USE LAW

## 1. THE VESTED RIGHTS RULE:

- A. An applicant is entitled to approval of a land use application if it conforms to the applicable zoning laws in place on the date a complete application is submitted.
  - i. UTAH CODE ANN. §§ 10-9a-509(1)(b) (Cities); 17-27a-508(1)(b) (Counties)
  - ii. *Western Land Equities v. Logan*, 617 P.2d 388 (Utah 1980).
    - 1. After a complete application is filed, zoning ordinances cannot be changed.
    - 2. An application is entitled to consideration under the zoning laws in place when the application is filed.
  - iii. Exceptions:
    - 1. Pending Ordinance Change
    - 2. Compelling, Countervailing Interest

## 2. EXACTIONS:

- A. A government-mandated contribution of property imposed as a condition of development approval.
  - i. UTAH CODE ANN. §§ 10-9a-508; 17-27a-507
  - ii. *B.A.M. Development, LLC v. Salt Lake County*, 2006 UT 2
  - iii. *B.A.M. Development, LLC v. Salt Lake County*, 2008 UT 74
  - iv. *B.A.M. Development, LLC v. Salt Lake County* 2012 UT 26
- B. Each exaction must be roughly proportional to the impact created by the new development.
  - i. There must be an essential link to a governmental interest
  - ii. The exaction must be proportionate in *nature* to the impact of the development
    - 1. The impact on public services is the “problem”
    - 2. The exaction is the “solution” to the problem
  - iii. The cost of the exaction must also be roughly equal to the expense needed to address the impact on public services.

### **3. IMPACT FEES:**

- A. Fees charged on new development, to ensure that the development pay a fair share of the costs for public infrastructure.
  - i. UTAH CODE ANN. Ch. 11-36a
  - ii. Impact Fees are a type of exaction
  
- B. Impact fees are calculated using a complex analysis of a community's current service and anticipated growth.

### **4. CONDITIONAL USES**

- A. Uses with unique characteristics or impacts that may be approved with conditions to mitigate the impacts
  - i. Utah Code Ann. §§ 10-9a-507; 17-27a-506
  - ii. *Wadsworth v. West Jordan*, 2000 UT App 49
  - iii. *Uintah Mountain RTC v. Duchesne County*, 2005 UT App 565
- B. Conditional uses may be identified in a zoning ordinance.
  - i. The ordinance should also identify standards to guide decisions on the type and extent of the conditions
  - ii. Decisions on conditional uses must be based on substantial evidence, and not "public clamor."
  - iii. A conditional use application may only be denied if the negative impacts cannot be mitigated by reasonable conditions
- C. A conditional use is not an excuse to "re-legislate" a zoning ordinance, or an opportunity to deny an application because it is unpopular.

### **5. APPEALS OF LAND USE DECISIONS:**

- A. Land use decisions may be appealed, but the statutory procedures must be followed.
  - i. UTAH CODE ANN. §§ 10-9a-701 to 708; 17-27a-701 to 708
  - ii. Check local ordinances
  
- B. Exhaustion of Administrative Remedies
  - i. All administrative hearings must be held before an appeal may be taken to district court, failure to do so may forfeit the appeal.

- ii. The time frame for most appeals is very short (a little as 10 days).
- C. Preservation of the Administrative Record:
  - i. Most appeals to district court are limited to the record of the administrative proceedings.
  - ii. No new evidence may be presented, and new arguments will not be considered by the district court.

## **6. NONCONFORMING USES:**

- A. A use (or building) that was lawful when established, but is prohibited because of an ordinance change.
  - i. UTAH CODE ANN. §§ 10-9a-511; 17-27a-510.
  - ii. *Vial v. Provo*, 2009 UT App 122
- B. A nonconforming use may be continued, unless it is abandoned or voluntarily discontinued.
  - i. A use which was not lawful when established cannot qualify for nonconforming status
  - ii. Nonconforming uses may be amortized, by allowing the owner a reasonable time to recover any investment in the use.

## **7. VARIANCES:**

- A. A modification in a zoning ordinance which is needed so that property owner may enjoy a the use of property
- B. Setbacks, height requirements, landscaping rules are examples of regulations that can be varied.
- C. Variance not allowed for:
  - i. Prohibited Uses
  - ii. If hardship is economic or self-imposed.
- D. Criteria for a variance: (UTAH CODE ANN. §§ 10-9a-702; 17-27a-702)
  - i. Literal enforcement would create unreasonable hardship
  - ii. Special circumstances attached to the property
  - iii. Variance essential to enjoy a substantial property right
  - iv. Variance not contrary to the public interest, and general plan not affected
  - v. Spirit of the zoning ordinance observed
- E. All five criteria must be considered, and found in favor of the variance.
- F. *Save Our Canyons v. Salt Lake County*, 2005 UT App 285

## **8. DEVELOPMENT AGREEMENTS:**

- A. An agreement between a developer and a local government governing development of property
- B. Useful tool, particularly for large-scale projects
  - i. Must be drafted carefully—Avoid promising zoning changes
  - ii. Could be used to confirm exchanges between the parties (i.e., density bonuses)

## **9. REFERENDA AND INITIATIVES:**

- A. REFERENDUM: Citizens may petition to have any legislative act put to a public vote for repeal or ratification (a type of appeal)
- B. INITIATIVE: Citizens may also initiate legislative changes through a petition and public vote.
- C. Because zoning changes are legislative, both are subject to voter referenda or initiatives.

## **10. TAKINGS AND EMINENT DOMAIN:**

- A. Eminent domain is the authority of a local government to compel the sale of property, for just compensation.
  - i. UTAH CODE ANN. §§ 78B-6-501 to -522
  - ii. Eminent Domain must follow specific procedural rules and prerequisites.
    - 1. Agency must first negotiate with owner, and attempt to reach an agreement.
    - 2. Owner must be notified of legal rights.
- B. A taking is any substantial interference with a property right, so that compensation ought to be paid.
  - i. Regulations which cause substantial interference with property rights may be takings.
    - 1. Requiring physical occupation of property
    - 2. Destroying all economic value of the property
    - 3. Other significant interference which arises to a “virtual” taking of property for a public use.

# **Your Friendly Neighborhood Ombudsman**

Advise and educate on takings and land use issues.

Mediate disputes concerning property takings.

## **Office of the Property Rights Ombudsman**

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