

SOUTH WEBER CITY

LAND USE TRAINING

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OBJECTIVES

- Understand the legal framework for making land use decisions in the City
- Identify the powers and duties of the City Council, Planning Commission, and Staff for making land use decisions
- Know how to avoid illegal, arbitrary, or capricious decisions by establishing a thorough record for each and every land use decision
- Consider the best framework for making, applying, and enforcing land use decisions

STATE LAW – LAND USE DEVELOPMENT AND MANAGEMENT ACT (“LUDMA”)



- The City is a political subdivision of the State of Utah
- All land use decisions in the City must comply with LUDMA

WHAT DOES LUDMA DO?

AUTHORIZES

- The City may adopt its own land use standards so long as they are consistent with federal and state law

MANDATES

- Creation of a Planning Commission
- Establishment of a Land Use & Appeal Authorities
- Adoption of a General Plan & a process for considering land use applications

LUDMA – GENERAL THEMES

- Respect for private property rights
- Cities may regulate private property
- Once written and duly established, land use regulations are binding
- Land use ordinances must be plainly written to be enforceable
- Process matters
- Tie goes to the applicant/property owner

LUDMA – ROLES & RESPONSIBILITIES

LEGISLATIVE
BODY

LAND USE
AUTHORITY

APPEAL
AUTHORITY

LEGISLATIVE BODY (CITY COUNCIL)

- Only a Legislative Body may enact a land use regulation
- Shall adopt a land use regulation to create or amend a zoning district and designate general uses allowed in each zoning district
- May establish or modify other restrictions or requirements, including the configuration or modification of uses or density, through a land use decision that applies certain criteria or policy elements
- Shall consider (but may adopt, reject, or revise) each proposed land use regulation that the planning commission recommends
- May establish a land use ordinance that includes conditional uses and provisions for conditional uses that require compliance with standards set forth in an applicable ordinance.

LAND USE AUTHORITY

(CITY COUNCIL, PLANNING COMMISSION, OR STAFF)

- Shall apply the plain language of land use regulations
- In the absence of a “plain” restriction, shall interpret and apply the land use regulation to favor the land use application.
- Shall approve a conditional use if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards.

APPEAL AUTHORITY

- Hears and decides requests for variances and appeals from decisions applying the land use ordinances/fees
- 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
- May be an individual or a multi-person board, body, or panel

MUNICIPAL LAND USE ACTIONS

	LEGISLATIVE	ADMINISTRATIVE	QUASI-JUDICIAL
CHARACTERISTICS	<ul style="list-style-type: none"> - Promulgation of laws of general applicability - Based on the weighing of broad, competing policy considerations - Subject to voter referendum 	<ul style="list-style-type: none"> - Applying the law to particular individuals or groups based on individual facts and circumstances - Decision is bound by the law and cannot be based on public opinion 	<ul style="list-style-type: none"> - Defers to established law and Legislative/Land Use Authority - Review limited to error, illegality, or abuse of authority
RESPONSIBLE BODY	City Council or General Electorate	City Council, Planning Commission, or Staff	Appeal Authority or Court
EXAMPLES	<ul style="list-style-type: none"> - Zoning Ordinances (including a site-specific zoning ordinance) - General Plan - Rezones - Annexation 	<ul style="list-style-type: none"> - Conditional Uses - Site Plans - Development Agreements - Subdivisions 	<ul style="list-style-type: none"> - Variance - Appeal - Judicial Review

LIMITATIONS ON LAND USE DECISIONS/REGUALTIONS



- Only a legislative body may amend the number, shape, boundaries, area, or general uses of any zoning district; any regulation of or within the zoning district; or any other provision of a land use regulation
- A legislative body may not make any amendments to a zoning district unless it first submits the amendment to the planning commission for the planning commission's recommendation

LAND USE ACTIONS

APPEAL

- The City establishes the standard of review (“de novo” or “on the record”)
- Applicant has the burden of proving that the Land Use Authority erred
- To be overturned, the decision must have been illegal, or arbitrary and capricious

VARIANCE

- Any person or entity with an interest in a parcel of property may apply to the Appeal Authority for a variance
- The Appeal Authority may grant a variance only if all five of the statutory criteria are met

JUDICIAL REVIEW

- A party may not appeal for judicial review unless it has exhausted all administrative remedies
- Petition for review may come from a land use applicant or an adversely affected party



JUDICIAL REVIEW

VALIDITY OF THE ORDINANCE

- A court shall presume that a properly enacted land use regulation is valid
- A challenge will hinge on whether the regulation is expressly preempted by, or was enacted contrary to, state or federal law

APPLICATION OF THE ORDINANCE

- A court shall presume that a final decision of a Land Use Authority or an Appeal Authority is valid
- It will uphold the decision unless it is found to be (a) arbitrary and capricious, or (b) illegal
- A decision is arbitrary and capricious if it is not supported by substantial evidence in the record of the proceeding

JUDICIAL REVIEW OF LAND USE DECISIONS: ARBITRARY & CAPRICIOUS

- A decision is arbitrary and capricious if it is not supported by substantial evidence found in the record of the proceeding

BEST PRACTICES

- Understand the nature of the decision (administrative/legislative/quasi-judicial)
- Know your role and responsibility (legislative body/land use authority/appeal authority)
- Follow procedural requirements exactly
- Document your decision in writing
- State the reasons for your choices
- For legislative decisions, consider public hearings as opportunities to learn
- For administrative decisions, know the law and apply it exactly
- Delegate whenever reasonable
- If you are delegating authority, give clear directions

PRACTICAL PITFALLS

- “that’s outside the scope of our review tonight”
- Site visits
- Hi, I’m the developer of the site that’s on the agenda tomorrow night. Can we talk for second?
- I get that this meets the ordinance standard, but I really prefer...
- “I’ve had so many people from this neighborhood call and talk to me about this”
- Text communication during a meeting
- Pre-meeting commitments

QUESTIONS?

How to Plat,
How not to Plat that is the
Question...
& Development Standards

*Updated
May 22, 2023*





**For Transportation:
WASATCH FRONT REGIONAL COUNCIL 2023
LEGISLATIVE SESSION WRAP-UP @ [wfrc.org](https://www.wfrc.org)**

So Many Bills!

Local Land Use Planning & Administration

- 35 bills introduced, 19 passed
- 388 lines of code added to LUDMA (400 in County LUDMA)

For all Land Use Bills:



Hot takes:

SB 174 subdivision provisions apply
only to subdivisions for 1- or 2-
family dwellings & townhomes

No more City Council approvals for
these subdivision applications.

Administrative!

&

Planning Commission out of final
plat approval process

Need to Designate “administrative land use authority” for these actions

Capped Review Cycle. Maximum of 4 review cycles permitted for final review only. So in between the Preliminary approval and final approval only four revisions are permitted.

Define a Complete Application-triggers timeclock of review

**Concept Plan cannot be
mandated**

New Appeal Process is created

**You have until to make
updates by Feb 1, 2024 or Dec
1, 2024 (based on size)**



Subdivision Approval Process (SB174)

New LUDMA Section 604.1 – Process for subdivision review and approval

- Designate “administrative land use authority”
- Can be Planning or staff for preliminary review
- Applicant may request pre-application meeting. Can not be mandated. eg no mandate
- A Land Use Authority may complete preliminary plat review by staff, or in public meeting; may hold one public hearing
- Final application **cannot** be reviewed by Council or Planning Commission

Subdivision Review Process (SB174)

Maximum of 4 review cycles permitted for final review only. So, in between the Preliminary approval and final approval only four revisions are permitted. Check with your attorney for this provision.

- **Initial review** of preliminary plat to be completed within **15 business days** of receiving complete application for that stage.
- Review of final plat to be completed within **20 business days** of receiving complete application for final application.
- Applicant must respond to required changes he/she disagrees with in writing.

Appeal Process Changes

SB174 creates two distinct appeal processes after the four review cycles have been exhausted & 20 days have passed.

- ❖ For disputes relating to public improvement or engineering standards, the city shall assemble a three-person panel meeting within 10 days of receiving a request from the applicant.
- ❖ For all other disputes refer to the regular Appeal Authority process



Action Item- When Do I need to do this by?

Municipalities who are required to comply with Moderate Income Housing Provision (MIHP) reporting (all cities with populations > 10,000 and cities with populations > 5,000 located in a county of the 1st, 2nd, or 3rd class) must revise their subdivisions ordinances to comply with this process by **Feb. 1, 2024**.

All other municipalities must revise their subdivision ordinances to comply with this process by **Dec. 31, 2024**.



Other Resources

FAQ Sheet

ULCT Land Use
Summary

Coming soon - July 2023 Statewide
Technical Support for ordinance
assistance under DWS grant fund
appropriated with the bill



www.ulct.org/land-use

Development Standards (HB406)

- “Residential roadway” limited to 32 ft. pavement width, with *exceptions*
- A municipality may still require or allow a residential roadway that is less than 32 feet
- HB 406 defines a “residential roadway”

Action Item:

- Municipalities that require residential road widths greater than 32’ for residential cross sections should review those ordinances for compliance.





HB 406 set a
new appeal
process for
this provision.
(Like SB174)

The applicant can appeal the municipality's requirement under the statutory criteria for residential roadway width in excess of 32' to a panel of technical experts. Those experts include:

- One licensed engineer designated by the municipality.
- One licensed engineer designated by the land use applicant.
- One licensed engineer, agreed upon, and designated by the two designated engineers.

The applicant must pay 50% of the total cost of the panel and the municipality's published appeal fee. The municipality pays the other 50%.

The panel's decision is final, unless the municipality or applicant petition for district court review within 30 days after the final written decision is issued.

Other Land Use Provisions

Development Agreements (HB406)

- HB 406 creates a new requirement for development agreements. If a development agreement restricts an applicant's rights under clearly established state law, the municipality must disclose the rights being waived in the agreement.
- **Reminder:** Don't forget last year's provisions re holding public hearing if land use regulations are modified in the Development Agreement.

Temporary Land Use Regulations/Pending Ordinance Provision (aka "Moratoriums") (HB406)

- HB 406 prohibits municipalities from "stacking" temporary land use regulations. Specifically, it restricts the application of a temporary land use regulation if the application was subject to a prior-temporary land use regulation.





Other Land Use Provisions

Public Landscaping Improvements (HB406)

Bonding for landscaping only for that on public property or to be dedicated, adjacent to trails, or to be maintained by HOA.

So how do you enforce now?

Fines?

- **Lot line adjustment changes (HB406, SB174)** "Subdivision amendment" does not include a lot line adjustment, between a single lot and an adjoining lot or parcel, that alters the outside boundary of the subdivision.