

LAND USE

ROLES & RESPONSIBILITIES

OBJECTIVES

- Understand the legal framework for making land use decisions in South Weber 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 in South Weber City

STATE LAW



- South Weber City is a political subdivision of the State of Utah
- All land use decisions in South Weber City must comply with the Land Use Development and Management Act (“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

LAND USE DECISIONS

	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

LAND USE DECISIONS – LIMITATIONS



- 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 DECISIONS

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 – 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

DISCUSSION

Roles & Responsibilities

South Weber City
Matrix of Current Land Use Decision-Making Roles Responsibilities

DECISION	Recommending Body	Land Use Authority	Appeal Authority
<i>Legislative decisions:</i>			
<i>Adoption or amendment of the General Plan</i>	Planning Commission	City Council	unbiased attorney with expertise in land use
<i>Adoption or amendment to the land use ordinance (includes subdivision language)</i>	Planning Commission	City Council	unbiased attorney with expertise in land use
<i>Historic Site Designation</i>	NA	City Council	unbiased attorney with expertise in land use
<i>Temporary land use regulation</i>	NA	City Council	unbiased attorney with expertise in land use
<i>Annexation applications</i>	Planning Commission	City Council	unbiased attorney with expertise in land use
DECISION	Recommending Body	Land Use Authority	Appeal Authority
<i>Administrative decisions:</i>			
<i>Conditional use permit approval</i>	Planning Commission	City Council	unbiased attorney with expertise in land use
<i>Conditional use permit amendment</i>	Planning Commission	City Council	unbiased attorney with expertise in land use
<i>Conditional use permit revocation</i>	Mayor	City Council	unbiased attorney with expertise in land use
<i>Site plan, preliminary</i>			
<i>Site plan, final</i>	Planning Commission	City Council	unbiased attorney with expertise in land use
<i>Change of use</i>	Non Residential Zone: Planning Commission Residential: NA	City Council Planning Commission	unbiased attorney with expertise in land use

South Weber City
Matrix of Current Land Use Decision-Making Roles Responsibilities

<i>Temporary use permit</i>	Planning Comission	City Council	unbiased attorney with expertise in land use
<i>Home occupations, phone and mail only</i>	Unknown	Planning Comission	unbiased attorney with expertise in land use
<i>Home occupations, with customers</i>	Unknown	Planning Comission	unbiased attorney with expertise in land use
<i>Number of off street parking stalls in the FR zones</i>	Unknown	Planning Comission	unbiased attorney with expertise in land use
<i>Site plan in Sensative Lands</i>	Unknown	Unknown	unbiased attorney with expertise in land use
<i>Site Development Master Plan (SDMP) in an R/M-U Zone and amendments</i>	Plannning Commission	City Council	unbiased attorney with expertise in land use
<i>Planned unit development</i>	Planning Comission	City Council	unbiased attorney with expertise in land use
<i>Lot line adjustment</i>	Unknown	Unknown	unbiased attorney with expertise in land use
<i>Vacation/amendment of a public street</i>	Planning Comission	City Council	unbiased attorney with expertise in land use
<i>Subdivision plat amendment</i>	Planning Comission	City Council	unbiased attorney with expertise in land use
<i>Consolidation of parcels</i>			unbiased attorney with expertise in land use
<i>Building permit, zoning compliance</i>	Unknown	Unknown	unbiased attorney with expertise in land use
<i>Street identification change</i>			unbiased attorney with expertise in land use

South Weber City
Matrix of Current Land Use Decision-Making Roles Responsibilities

<i>DECISION</i>	<i>Recommending Body</i>	<i>Land Use Authority</i>	<i>Appeal Authority</i>
<i>Quasi-judicial:</i>			
<i>Administrative interpretations</i>			unbiased attorney with expertise in land use
<i>Nonconformity determinations</i>			unbiased attorney with expertise in land use
<i>Variances</i>	Planning Commission	City Council	unbiased attorney with expertise in land use
<i>Zone boundary or map interpretation</i>			unbiased attorney with expertise in land use
<i>Revocation of a conditional use permit</i>	Planning Commission	City Council	unbiased attorney with expertise in land use
<i>Enforcement of provisions of this title</i>	Undetermined		unbiased attorney with expertise in land use