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Common Legal Issues in Land Use

Legislative/Administrative Decisions	Role of the Planning Commission	Subdivisions
Vested Rights	Exactions	Public Input vs "Clamor"
Nonconforming Uses	Conditional Use Permits	"Illegal" Lots
Impact Fees	Adequate public facilities for development	Short-term Rentals/ADUs
Annexation	Development Agreements	Roads & Trails

Legislative vs Administrative Decision-making

Legislative decisions generally involve making laws of general applicability, and are based on the weighing of broad, competing policy considerations.

Typical Legislative Decisions

- Adoption & amendment of the general plan
- Enactment & amendment of land use ordinances and development standards
- Enactment of a zone map & approval of a zone change
- Annexation decisions
- *Maybe* development agreements

Legal Standard of Review

1. Decision must be consistent with applicable state and federal law (cannot be illegal)
2. It must be “reasonably debatable” that the decision could advance the general welfare or public interest

Administrative decisions generally involve applying existing codes to a particular development proposal, based on individual facts and circumstances.

Typical Administrative Decisions

- Subdivisions
- Conditional use permit
- Site plan
- Building Permit
- Variances
- *Maybe* development agreements

Legal Standard of Review

1. Decision must be consistent with relevant state and federal law, local ordinances, and any vested rights (cannot be illegal)
2. Regarding factual determinations, the decision must be supported with substantial evidence

Considerations When Making Legislative Decisions

- Local legislative decisions may not violate applicable state or federal law
- If it is “reasonably debatable” that the decision is consistent with the public interest, a court will uphold the decision as legal
- The legislative body should attempt to strike an appropriate balance between the public interest and private property rights, where the two conflict or may simply not align



Considerations When Making Legislative Decisions

Role of the Public in Legislative Decisions

The legislative body should take into consideration input from the public, property owners, and other interested parties, including preferences and opinions. It is up to the legislative body to determine how much weight to give to any preference or opinion

The legislative body may also receive input from the public for the purpose of gathering facts and evidence to support its conclusions and its decision



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Considerations When Making Administrative Decisions

- The land use authority must apply the “plain language” of land use regulations to a land use application
 - Where a regulation “does not plainly restrict the land use application,” or could reasonably be read to support different interpretations, the land use authority must interpret and apply the regulation to “favor” the proposals in the land use application
- Where the land use authority must draw inferences or conclusions from a set of facts, or when the land use regulation gives discretion to the land use authority to make decisions subject to applicable standards or criteria, the land use authority must support its decision with “substantial evidence”
 - Evidence, as a general matter, must be factual, credible, and relevant
 - Substantial evidence is evidence that “a reasonable mind would accept as adequate to support a conclusion”



Considerations When Making Administrative Decisions

Role of the Public in Administrative Decisions

The land use authority may *not* rely on public opinion or preferences when making an administrative decision

The land use authority may receive input from the public for the purpose of gathering facts and evidence to support its conclusions and its decision



Vested Rights

"A property owner should be able to plan for developing his property in a manner permitted by existing zoning regulations with some degree of assurance that the basic ground rules will not be changed in midstream."

"It is incumbent upon a city...to act in good faith and not to reject an application because the application itself triggers zoning reconsiderations that result in a substitution of the judgment of current city officials for that of their predecessors."

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



Vested Rights

An applicant who has submitted a complete land use application..., including the payment of all application fees, is entitled to substantive review of the application under the land use regulations:

- (A) in effect on the date that the application is complete; and
- (B) applicable to the application or to the information shown on the application.

Utah Code 10-9a-509



Exceptions to the Vested Rights Rule

Once the application substantively complies with all the requirements in the local ordinance, the application is entitled to approval, *unless*:

1. Approval would jeopardize a compelling, countervailing public interest, or
2. A pending ordinance had been initiated, in the manner provided by local ordinance, prior to submission of the application that may affect the application
 - a. The city then has 180 days from the initiation of the pending ordinance to enact something



What is an Exaction?

A mandatory contribution required by a governmental entity as a condition of approval for a development application.

May include:

1. Dedication of property
2. Construction and dedication of public improvements
3. Money payments
 - a. (includes impact fees)



The Rough Proportionality Test

An exaction is validly imposed when it satisfies the following two-part “rough proportionality” test:

A municipality may impose an exaction...on development proposed in a land use application...if:

- (a) an essential link exists between a legitimate governmental interest and each exaction; and
- (b) each exaction is roughly proportionate, both in nature and extent, to the impact of the proposed development.

Utah Code Ann. § 10-9a-508(1).



Finding the Right Balance

It starts with following your ordinances and development standards.

RED FLAG: If a requirement in your code, *when applied to a specific development proposal*, requires the property owner to address impacts beyond their own, then it may be unlawful.



Tools for Thinking about Rough Proportionality

System Improvement or Project Improvement?

Requiring a developer to build improvements that will clearly serve only, or at least primarily, the proposed development, typically satisfies the rough proportionality test, and is lawful

Requiring the developer to bear the burden of constructing a system improvement that will benefit and serve a larger region, or the community as a whole, likely violates the rough proportionality test, and is unlawful



Unlawful Exaction?

Provo City Code 15.18 - Review of Constitutional Taking Issues

15.18.050 Review Criteria.

The Municipal Council or its designee shall review the information submitted by the appellant to determine whether or not the action by the City may be a constitutional taking as defined in this Chapter. In making such determination, the Municipal Council or its designee shall consider whether:

- (1) the City has a legitimate governmental interest to support its action;
- (2) the City can accomplish the same result through the use of a less intrusive action;
- (3) the property owner has been denied all economically viable use of the property;
- (4) the action forces the property owner to allow a nonowner to enter the property;
- (5) the decision appealed from has an essential nexus to the legitimate governmental interest;
- (6) the action taken is roughly proportional, both in nature and extent, to the impact caused by the activities that are the subject of the decision being appealed; and
- (7) the City has made an attempt to quantify its findings.



Variances

The Appeal Authority may grant a variance only if:

- (i)** 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;
- (ii)** there are special circumstances attached to the property that do not generally apply to other properties in the same zone;
- (iii)** granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;
- (iv)** the variance will not substantially affect the general plan and will not be contrary to the public interest; and
- (v)** the spirit of the land use ordinance is observed and substantial justice done.

Unreasonable hardship may not be self-imposed or economic, and must be “peculiar” to the property.

Special circumstances must relate to the hardship and must deprive the property of privileges others in the same zone enjoy.

