



Grantsville City Board of Adjustment Training - 2025

Jay L. Springer, Esq.



Understanding Government Actions: Legislative v. Administrative Actions

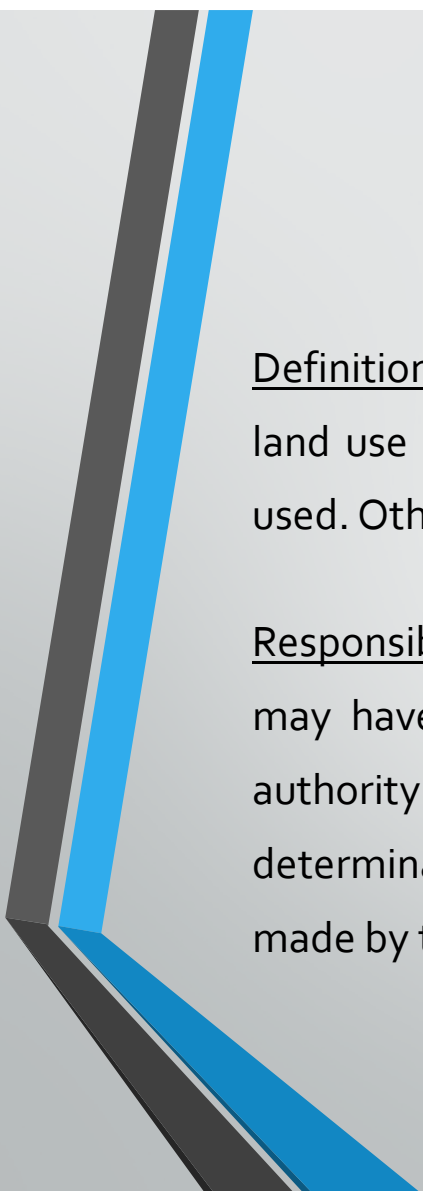
Legislative	Administrative
Council	Planning Commission/Staff/Council
Elected	Appointed/ employed
High level of discretion	Less discretion
High level of public involvement and transparency	Lower public matters, transparency varies
Policy and large-scale management	Facilitating and following policies

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Land Use Review Process

Review Bodies

- Recommending Body
 - Staff or Planning Commission
- Land Use Authority
 - Planning Commission or City Council
- Land Use Appeal Authority
 - Board of Adjustment
- Utah Court of Appeals & Utah Supreme Court



Land Use Appeal Authority

Definition: The land use appeal authority is a body or entity that handles appeals related to land use decisions made by the land use authority. In Grantsville, a Board of Adjustment is used. Other examples in land use hearing officers, the City Council, or others.

Responsibilities: If a party is dissatisfied with a decision made by the land use authority, they may have the right to appeal the decision to the land use appeal authority. The appeal authority reviews the case, considers arguments from all parties involved, and makes a final determination on the appeal. Its decisions may uphold, modify, or reverse the original decision made by the land use authority.



Land Use Hearing

- Application/Supporting Documents (Review Before Meeting)
- Staff provides an overview
- Applicant may present additional information
- Public can comment
- Opportunity to ask clarifying questions
 - Applicant, Staff, Members of the Public

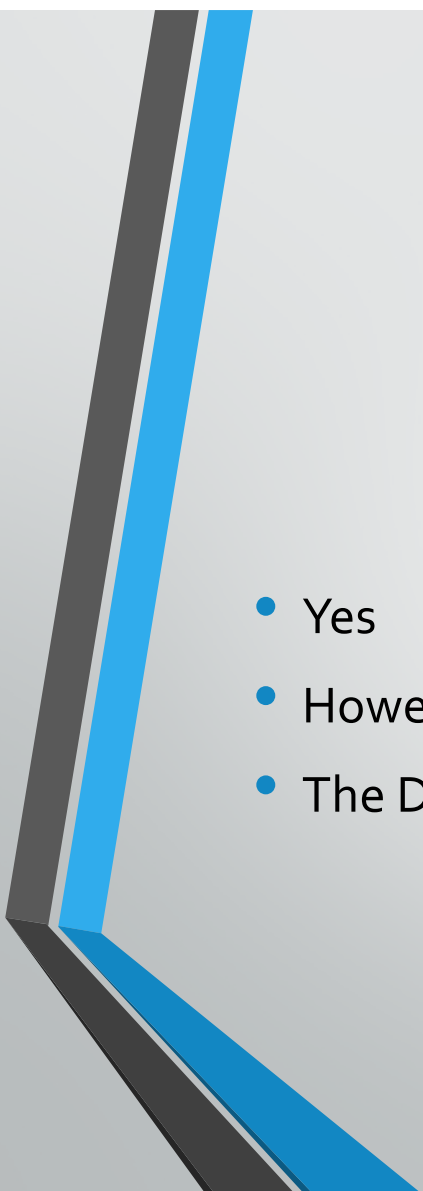
Public Clamor vs. Evidence

Public Clamor

- Traffic will be worse
- Light will be bright at night
- The event is noisy
- Building is too close to property line

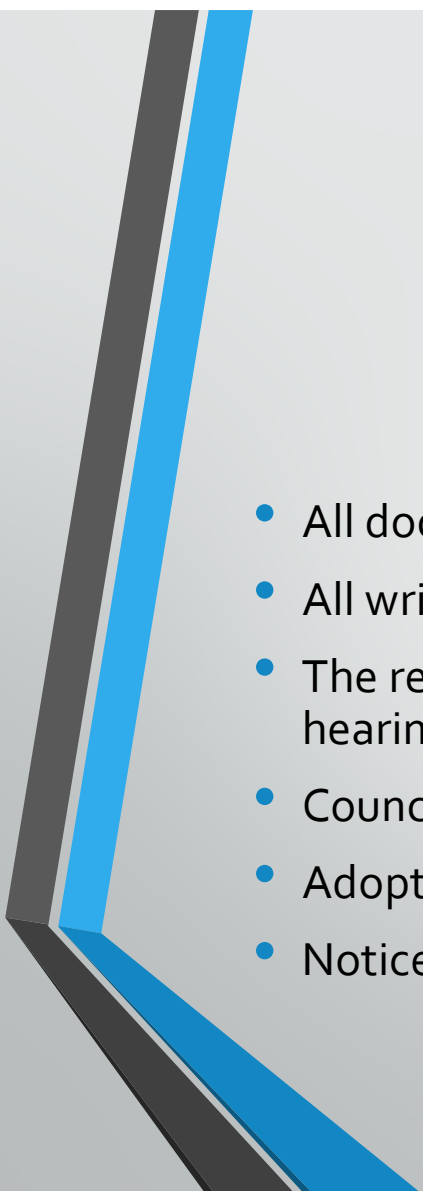
Evidence

- Submission of a Traffic Study showing projected increases
- Light meter readings
- Decibel readings
- I've measured the Property and its 45 inches from the property line



Can I Consider Public Comment

- Yes
- However, Public Clamor cannot be the sole basis for the decision
- The Decision must be supported by additional evidence



The Record

- All documents that were reviewed by the land use authority
- All written public comments
- The recorded meeting (i.e. staff comments, comments made during the public hearing)
- Council Discussion
- Adopting Documents (Resolution/Findings and Decisions)
- Notices of Decision

Decision

- Findings of Fact
 - What are the important facts upon which you are basing your decision?
- Conclusion of Law
 - How are you interpreting the applicable code or terms?
- Decision
 - Approve, Approve with Conditions, Deny

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Land Use Principles

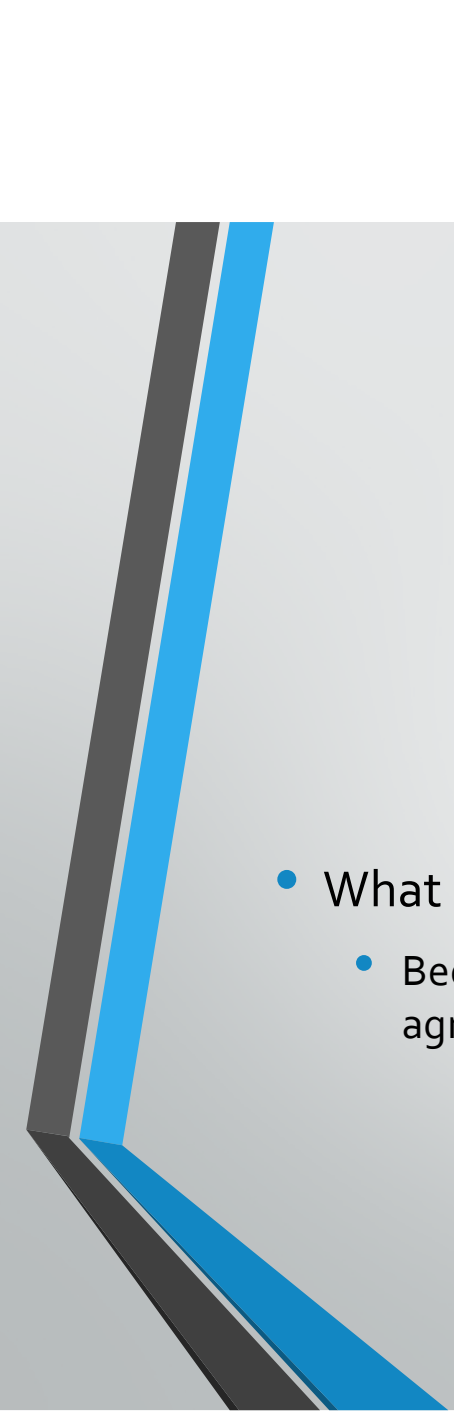


Sources of Authority

- Utah Code: Land Use Development and Management Act (“LUDMA”)
- Grantsville Municipal Code
- Court Opinions

Vested Rights

- A municipality cannot apply laws that are enacted after an application has vested rights.
- The “Complete” application?
- UCA 10-9a-509(1)(a)
 - (i) An applicant who has submitted a complete land use application as described in Subsection (1)(c), 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.
 - (ii) An applicant is entitled to approval of a land use application if the application conforms to the requirements of the applicable land use regulations, land use decisions, and development standards in effect when the applicant submits a complete application...



Vested Rights - Developments

- What about the Development Agreement?
 - Because the PUD modifies and establishes the applicable standards, the development agreement is implementing those standards and is administrative, not legislative.

Conditional Uses

- Conditional uses (Utah Code § 10-9a-507)
 - Allowed but with conditions to mitigate “reasonably anticipated detrimental effects” (RADE)
 - “Shall be approved” if “reasonable” conditions can be imposed to mitigate RADEs
 - RADEs do not need to be eliminated
 - If substantial mitigation can occur, the use must be approved
 - Most RADEs can be mitigated
 - As a result, most conditional uses are essentially permitted uses with extra steps
 - This is why “substantial evidence” is needed in the record, particularly if the use is denied

Conditional Uses

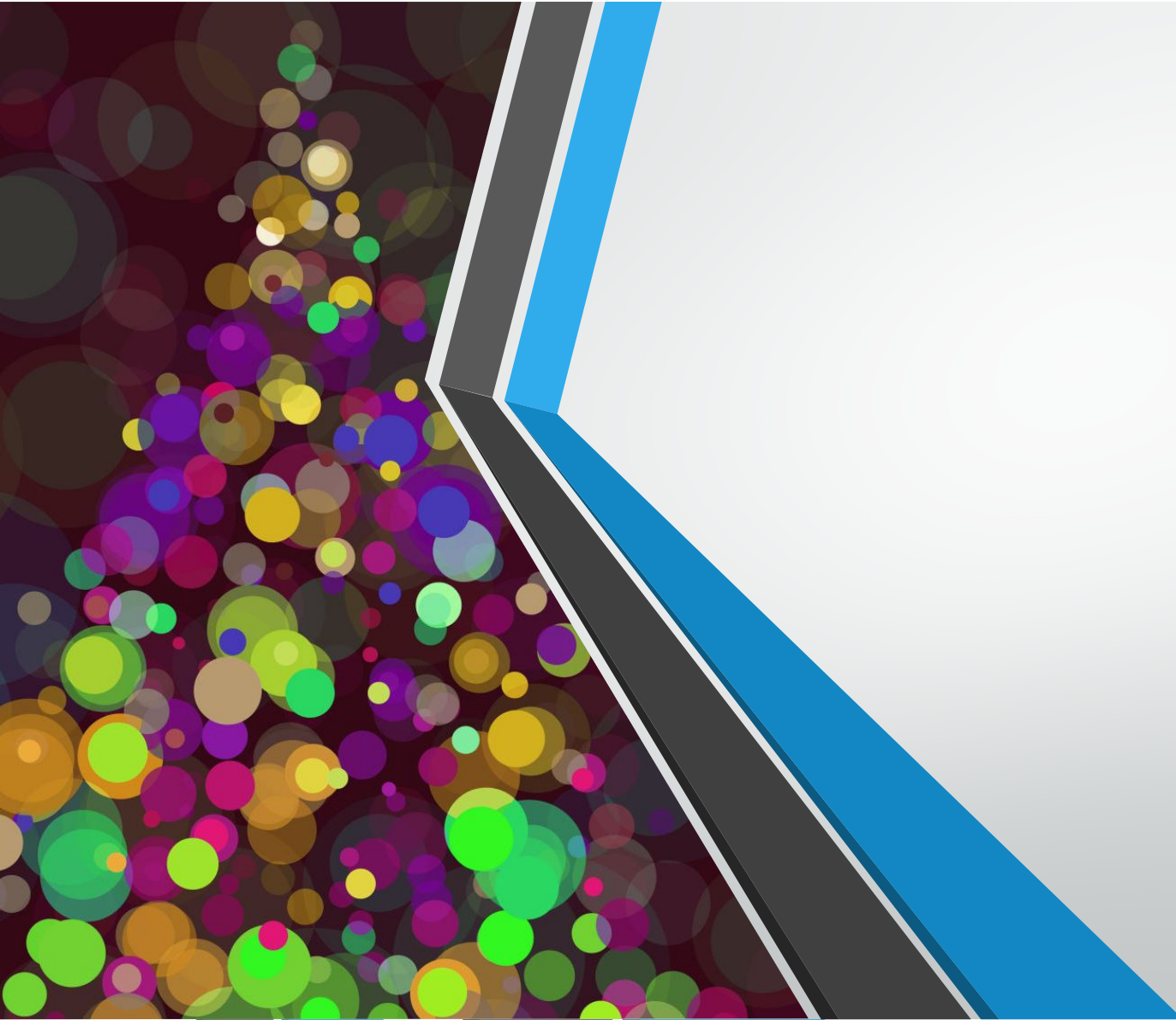
- Grantsville Municipal Code – Land Use Development and Management Code – Section 15.7, Table 15.1

<u>MISCELLANEOUS</u>	R-1-8	R-1-12	R-1-21	RM-7	RM-15
Public/Private Utility Transmission Wires, Lines, Pipes and Poles	P	P	P	P	P
Public/Private Utility Buildings and Structures	C	C	C	C	C
Cluster subdivision or Planned Unit Developments	C	C	C	C	C
Cemetery	C	C	C	C	C



Conditional Uses

- Grantsville Municipal Code – Land Use Development and Management Code – Section 12.1:
 - (1) A planned unit development is a distinct category of conditional use.

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Appeal of Decisions

Final Decision

Utah Code § 10-9a-708. Final decision.

- (1) A decision of an appeal authority takes effect on the date when the appeal authority issues a written decision, or as otherwise provided by ordinance.
- (2) A written decision, or other event as provided by ordinance, constitutes a final decision under Subsection 10-9a-801(2)(a) or a final action under Subsection 10-9a-801(4).

Grantsville Code 8-3-20(H):

Decisions of the Board of Adjustment become effective at the meeting in which the decision is made, **unless a different time is designated in the board's rules or at the time the decision is made.**



Final Decision

Grantsville Code 8-3-20(G) requires 3 votes “to reverse any order, requirement, decision, or determination of any administrative official or agency.”

Decisions of the Board of Adjustment become effective at the meeting in which the decision is made, unless a different time is designated in the board's rules or at the time the decision is made.

Consideration of Prior Decision Deference and Interpretation

Utah Code § 10-9a-707

(2) If the municipality fails to designate a scope of review of factual matters, the appeal authority shall review the matter de novo, without deference to the land use authority's determination of factual matters.

...

(4) The appeal authority shall:

- (a) determine the correctness of the land use authority's interpretation and application of the plain meaning of the land use regulations; and
- (b) interpret and apply a land use regulation to favor a land use application unless the land use regulation plainly restricts the land use application.



Standards of Review

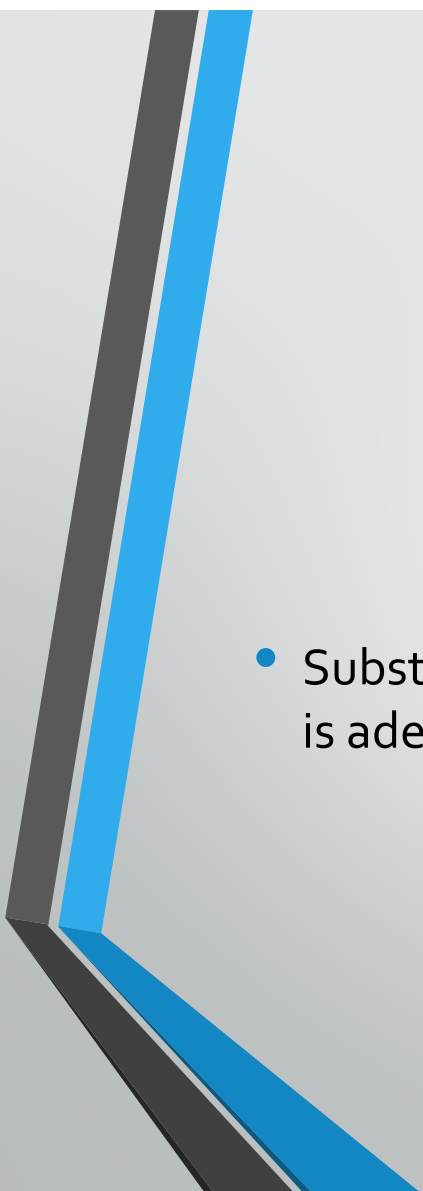
- Arbitrary & Capricious
- Illegal
- Reasonably Debatable

Arbitrary & Capricious

- The courts shall:
 - (a) presume that land use decisions and regulations are valid; and
 - (b) determine only whether or not the decision is arbitrary and capricious, or illegal.
- A land use authority's decision is arbitrary or capricious only if it is not supported by substantial evidence in the record.

Detailed Decision

- McElhaney v. Moab – A Cautionary Tale
- Must disclose the steps by which the decision was reached
- No written articulation = No Basis
- Simply stated, if a city council is going to sit as an adjudicative body, it needs to produce findings of fact capable of review on appeal.
- If you don't, the decision will come back with a court order to articulate the basis for the Decision



Substantial Evidence

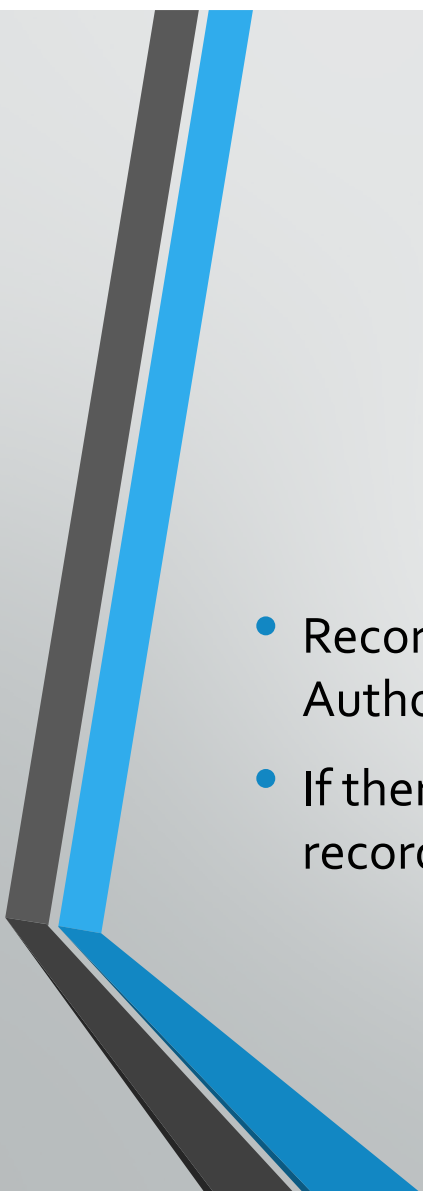
- Substantial evidence is that quantum and quality of relevant evidence that is adequate to convince a reasonable mind to support a conclusion.

Substantial Evidence

- “A decision is supported by substantial evidence if there is **a quantum and quality of relevant evidence that is adequate to convince a reasonable mind to support a conclusion.**” *Caster v. West Valley City*, 2001 UT App 212, ¶ 4 (internal quotation marks omitted).
- “When determining whether substantial evidence supports a decision, **courts consider all the evidence in the record, both favorable and contrary**, and determine whether a reasonable mind could reach the same conclusion as the [agency].” *M & S Cox Invs., LLC v. Provo City Corp.*, 2007 UT App 315, ¶ 36.
- Courts do not “**reweigh the evidence and independently choose which inferences [it] find[s] to be the most reasonable.**” Instead, [a court] defer[s] to an administrative agency’s findings because when reasonably conflicting views arise, it is the agency’s province to draw inferences and resolve these conflicts. *Provo City v. Utah Labor Comm’n*, 2015 UT 32, ¶ 8.

Illegal

- Does the decision violate the law?
 - Follow Correct Process (Public Notice, Hearing, Etc.)
 - Municipal Land Use, Development and Management Act
 - Discriminatory Basis



Appellate Review – On the Record

- Record – The testimony and documents considered by the Land Use Authority in making the decision.
- If there is a record, then the appealing body reviews only the evidence in the record.



A Primer on Open and Closed Meetings



Open Meetings

- Most common
- Require at least 24 hour notice
- SB43 introduced “Class A” and “Class B” notices
- Agendas, all functions requiring a public body (PC or CC) must be on an agenda
- Discussion items, reports
- “Chance meetings” and “social gatherings”
- Electronic and hybrid meetings
- Recording, minutes, materials

Open Meetings

Quick Reference					
	Must Be Seconded	Open for Discussion	Can be Amended	Vote Count Required to Pass	May Be Reconsidered or Rescinded
Main Motion	✓	✓	✓	Majority	✓
Amend Motion	✓	✓		Majority	✓
Kill a Motion	✓			Majority	✓
Limit Debate	✓		✓	2/3 ^{rds}	✓
Close Discussion	✓			2/3 ^{rds}	✓
Recess	✓		✓	Majority	
Adjourn (End meeting)	✓			Majority	
Refer to Committee	✓	✓	✓	Majority	✓
Postpone to a later time	✓	✓	✓	Majority	✓
Table	✓			Majority	
Postpone Indefinitely	✓	✓	✓	Majority	✓

- Credit: Cornell.edu



Public Hearings

- All public hearings are public meetings
- Not all public meetings are public hearings
- Public comment v. public hearings
- Required public hearing and subsequent public hearings
- Time limits for speakers
- Maintaining order

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Ethics



Ethics

Authorities:

- Utah Municipal Officers' and Employees' Ethics Act (Utah Code Ann. § 10-3-1301 et seq.)
- Utah Public Officers' and Employees' Ethics Act (Utah Code Ann. § 67-16-1 et seq.)
- Stricter provisions of local rules/authorities

Ethics

- Section 1304 Use of office for personal benefit prohibited.
- Section 1305 Compensation for assistance in transaction involving municipality -- Public disclosure and filing required.
- Section 1306 Interest in business entity regulated by municipality -- Disclosure statement required.
- Section 1307 Interest in business entity doing business with municipality -- Disclosure.
- Section 1308 Investment creating conflict of interest with duties -- Disclosure.
- Section 1309 Inducing officer or employee to violate part prohibited.
- Section 1310 Penalties for violation -- Dismissal from employment or removal from office.
- Section 1311 Municipal ethics commission -- Complaints charging violations.
- Section 1312 Violation of disclosure requirements -- Penalties -- Rescission of prohibited transaction.
- Section 1313 Annual conflict of interest disclosure -- City recorder or town clerk -- Posting of written disclosure statement -- Penalties.



Privileged information

- How to work with counsel
- Waiver of confidentiality
- GRAMA considerations



Bias and Perceptions of Favoritism



Recusal

Questions?



Office: (801) 413-1600

Jay L. Springer, Esq. (jspringer@shutah.law)