

COMMONLY USED LAND USE PLANNING TERMS

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Acting Without Authority (Ultra vim): If a local government regulates the use of land in a manner that has not been authorized by the state, it is invalid and can have no force or effect. Illegal means the decision is outside the authority of the board making the decision or is contrary to some required procedure.

Adequate Public Facilities: A program that prohibits development where necessary public facilities are not available. The listed facilities, defined in the ordinance, could include such things as: sewer, water, roads, tire protection, storm damage.

Amend: To improve to change for the better by removing defects, faults, or inappropriate or inoperable provisions.

Annexation: To absorb by legal incorporation, to bring previously unincorporated land into municipal incorporation.

Application: The formal preparation and submission of a specific request that asks a decision of a planning commission and legislative body. A jurisdiction should have established forms for the submission and processing of requests.

Approve: To ratify, confirm, or sanction or approve. Planning can mean either to make formal recommendation to the legislative body of local government or to make specific determination of an application. Where the approval is a recommendation, the legislative body can accept or reject it. Where the approval is a determination, it is final (except as it may be made subject to judicial review).

Arbitrary and Capricious: Derived from mere opinion, without rational basis. Not supported by substantial evidence.

Board: A committee of persons legally organized to exercise responsibilities of management, direction, or superintendence or to control specified matters, or to discharge certain functions that constitute a public office. A board of adjustment is a quasi-judicial board that can grant a specific parcel of real property relief from the strict application of the zoning ordinance. A board of county commissioners is the legislative-administrative unit for unincorporated county government.

CAVE: Citizens Against Virtually Everything

Capital Facilities Program (Capital Improvements Program): Plans to meet the capital needs of a government over a set period of time. The CFP sets forth the essential facilities and services necessary to support future growth and development as well as to serve the existing population. Included are planning for future streets, water and sewer facilities, parks, libraries, police headquarters, jails, city buildings and all other "capital" expenditures to be funded from public tax support or dedicated revenue bonds.

Consistency with General Plan: Many states require by statute that zoning ordinances conform to a comprehensive master or general plan. Although Utah law does not currently require consistency, the Utah code provides that a local jurisdiction can require consistency. In any event, the General Plan should provide the best reference source for explaining why

and how regulations were adopted.

CLAMP: Citizens Lobby Against Most Projects

Cluster Development: A design technique permitted by some zoning ordinances allowing the clustering of residential units on smaller lots while still maintaining the same densities or number of lots for the zoning district. The remaining land is utilized for common open space or public use.

Concurrency: A tuned growth element in growth management plans which ensures that those public facilities and services necessary to support new development are adequate and available at the time development occurs.

Conditional Use: A use that may locate in certain zoning districts provided it will not be detrimental to the public health, morals, and welfare and will not impair the integrity and character of the zoned district. Examples of conditional use permitted in a commercial, industrial, or an agricultural zone are temporary carnivals, religious revivals, and rock concerts. The duty of the commission approving such applications is to condition the use so that it will not be unsuitable to the surrounding area or community at large.

Delegation of Power: Local legislative bodies may not delegate their legislative or policymaking authority to administrative agencies. However, legislators may delegate substantial discretion to such agencies, so long as this delegation is accompanied by a clear-cut policy guideline to control the exercise of the delegated authority.

Due process: Probably the most important constitutional protection for land owners comes from the 5th and 14th amendment to the U.S. Constitution. The Fifth amendment states: *No person shall be deprived of life, liberty or property, without due process of law...* Due process of law is perhaps the most important constitutional principle that those involved in planning must understand. Due process imposes substantial limitations on the law as an instrument of community planning. The term refers to the constitutional protection provided to ensure that laws are reasonable and not arbitrary or capricious. In a word, due process means fairness.

Procedural Due Process - Procedural due process is guaranteed when a governmental body applies an established land use policy that is applicable to a specific parcel of property. Procedural due process includes; adequate and effective notice of hearing, opportunity to participate, and an unbiased decision based on the record supported by reasons and finds of facts.

Substantive Due Process -The land use regulation must not only advance a legitimate public interest but also be a reasonable way to further legitimate governmental purposes. This relationship between the regulation and public interest should be documented. The due process clause of the Fourteenth Amendment also prohibits any state from depriving "a person of life, liberty or property, without due process of law." This clause imposes both substantive and procedural due process requirements.

Down zoning: Down zoning occurs when a land use classification is changed from a more intensive to a less intensive use, which increases the restriction on the development of the property. It is an exercise of the government's police power, but it must not transgress the constitutional rights of property owners. It is implemented only after following all proper procedures must be used when there is a strong compelling public purpose.

Eminent Domain: The power of government to acquire property for public use for which the owner must receive "just compensation." Property can be acquired by the governmental unit through negotiation and purchase, or, if this is unsuccessful, it can be "taken" through the use of the "condemnation" process under the right of eminent domain. Compensation must be fair and is set by appraisals.

Enabling Statutes: Standard Enabling Act: State statutes that confer permissive powers to do planning, zoning, and subdivision. In 1925, the Utah State legislature adopted Chapter 9, Title 10 of the Utah Code that enabled municipalities to conduct planning and zoning. Some years later, in 1941, similar enabling language was enacted to apply to counties. County enabling laws are found in Chapter 27, Title 17.

Environmental Impact: Any consequences to the physical, economic, cultural, aesthetic, or social environment that affect the quality of life in general and the subsequent utility or value of real property. Some federal legislation and state statutes require an environmental impact statement (EIS) to assess the probability and severity of impacts that specific development proposals could generate.

Executive Session: A non-deliberative meeting. An executive meeting has the express and limited purpose of administering internal commission affairs. No testimony may be mentioned, applications discussed, deliberations joined, or decisions made. Executive sessions are open to the public.

Equal Protection: The Fourteenth Amendment to the U.S. Constitution provides that no state or any of their local governments *"shall deny to any person within its jurisdiction the equal protection of its laws."* Equal protection assures that all citizens will be treated alike unless a legitimate reason exists for treating them differently.

Equitable Estoppel: Based on the concept of fairness. For example, if a builder justifiably depends on a government action, such as the issuance of a building permit, and the reliance is made to the builders detriment, the government is "estopped" from denying or revoking that permit. An affirmative act on the part of the jurisdiction must have taken place. Unauthorized statements or promises from city officials are usually insufficient to invoke equitable estoppel.

Findings of Fact: A complete record of the determinations made. Findings provide a record that the action taken was based on substantial evidence received in hearings. Adequate findings identify the pertinent standards or criteria in the ordinance and identify facts relied on to make the decision. The connection between the facts and decision should be made clear. Putting reasons for action on the record allows the court to understand why the decision was made. If the decision is "reasonably debated" the action will generally be sustained.

Foundation Elevation Standard: Foundation sile plate is either 12" higher than the street level or at a prescribed height, set by the City Engineer.

Freedom of Speech and Religion: *Congress shall make no law... abridging the freedom of speech, or of the press...* Local governments commonly run into constitutional issues when dealing with sign regulations, location of churches and sexually oriented businesses (SOB). As with other land use issues, when there is any question about proper handling, it is best to seek out expert advice.

Functional Road Classifications: The classification of streets and highways by their diverse functions and design. The following is the commonly used hierarchy of streets and highways for planning purposes:

Local Street: A roadway allowing access to abutting land, serving local traffic only.

Collector: A street whose function is to channel traffic from local streets to major arterial; it limits direct access to abutting properties.

Major Arterial: A road that serves through traffic movement across urban areas, often subject to controlled access from properties fronting on the right-of-way.

Expressway: A divided multilane highway whose purpose is to move large volumes of through traffic from one part of a metropolitan area to another; intersections are separated by under- or overpasses at major intersections. It does not provide land-access service between intersections.

Freeway: A multilane highway with full grade separation, total control of access, median strips, and fencing, or landscaping strips along the sides. It basically serves intercity and interstate traffic.

General Plan: (often referred to as Master Plan or Comprehensive Plan)

(g) (i) "General plan" means a document that a municipality adopts that sets forth general guidelines for proposed future development of the land within the municipality, as set forth in Sections 10-9-301 and 10-9-302. (County definitions contain the same statement.) The General Plan contains goals that state broad public purposes and which describe a desired state for the future. The General Plan also contains policies that are statements of intent against which individual actions and decisions are evaluated. Together, the goals and policies guide the future direction, growth and development of the jurisdiction. The General Plan provides direction to the capital improvements and maintenance programs, and most importantly, forms the legal foundation for the application of zoning, subdivision and other regulations.

Impact Fees: A fee charged by jurisdictions to new development to assure that new growth pays its way. A list of the capital facilities for which impact fees can be charged includes: water rights and supply, treatment and distribution facilities; wastewater collection and treatment; storm water drainage and flood control; municipal power; roads; parks, recreation facilities open space, and trails; public safety facilities (not jails); certain habitat conservation measures. It is important to remember that the fee charged to new development can not be used to mitigate existing deficiencies or in the general fund. Utah law has adopted strict guidelines for the adoption of impact fees that must be carefully followed which includes the adoption of a Capital Facilities Program.

.... to determine the equitable share of the capital costs to be borne by newly developed properties, a municipality should determine the relative burden previously borne and yet to be borne by those properties in comparison with the other properties in the municipality. As a whole, the fee in question should not exceed the amount sufficient to equalize the relative burdens of newly developed properties and other properties.... Excerpt from the opinion by the Supreme Court of Utah on 631 p 2d Banber Development Corp. v South Jordan City (Utah 1981)

Land Use Plan: A basic element of a general plan that designates the future use or reuse of the land within a jurisdiction's planning area, and the policies and reasoning used in arriving at the decisions in the plan. The land use plan serves as a guide to official decisions in regard to the distribution and intensity of private development, as well as public decisions on the location of fixture public facilities and open spaces. It is also a basic guide to the

structuring of zoning and subdivision controls, urban renewal and capital improvement programs.

LULU: Locally Unpopular Land Use

Majority Vote: a formal and functional act of decision-making by a deliberative body requiring a plurality of votes. The by-laws of a planning commission should clearly specify when a majority must be of the full membership and when it may be of those in attendance and at a

quorum. An extraordinary majority is a simple majority plus one.

Moderate Income Housing: Housing occupied or reserved for occupancy by households with a gross household income equal to or less than 80% of the median gross income of the metropolitan statistical area for households of the same size. *10-9-307 (3) before December 3, 1998 each municipal legislative body shall, as part of its General Plan, adopt a plan for moderate income housing.*

Nexus: A sufficiently developed relationship between the burden imposed on the development and the need for which the development is said to have created.

NIMBY: Not In My Back Yard

NIMFYE: Not In My Front Yard Either

NIMTO: Not in My Term Of Office

Nonconforming Uses: 10-9-103/17-27-IO3 (1) As used in this chapter:

(J) "Nonconforming structure" means a structure that legally existed before its current zoning designation; and because of subsequent zoning changes, does not conform to the zoning regulation's setback, height restrictions, or other regulations that govern the structure.

(K) "Nonconforming use " means a use of land that legally existed before its current zoning designation; and has been maintained continuously since the time the zoning regulation governing the land changed; and because of subsequent zoning changes, does not conform to the zoning regulations that now govern the land.

Nuisance: Any activity arising from unreasonable, unwarranted, or unlawful use of property that causes substantial and continuing annoyance, inconvenience, or damage to the property or others or to the public.

Open and Public Meeting Act: (Title 52 Chapter 4 Utah Code): *....the Legislature finds that the state, its agencies and political subdivisions, exist to aid in the conduct of the peoples business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.*

Open Lands: 63-38-1.4 Means *land that is preserved in or restored to a predominantly natural, open, and undeveloped condition; and used for wildlife habitat: cultural or recreational use: watershed protection: or another use consistent with the preservation of the land in or restoration of the land to a predominantly natural, open and undeveloped condition "Open land" does not include land whose predominate use is as a developed facility for active recreational activities, including baseball, tennis, soccer, golf or other sporting or similar activity.*

PITBY: Put It In Their Back Yard

Planned Unit Development (PUD): A self-contained development, often with a mixture of housing types and densities, in which the subdivision and zoning controls are applied to the project as a whole rather than to individual lots, as in most subdivisions. Therefore, densities are calculated for the entire development, usually permitting a tradeoff between clustering of houses, provision of common open space and other amenities.

Police power: The 10th Amendment to the constitution reserves to the states all powers, not delegated to the federal government, among which is the power to regulate for the public

benefit of health, safety, welfare. Police power is the term used to describe the legislative or policy making power in each state to establish laws and ordinances to preserve public order and tranquility and to promote the public health, safety, morals, and general welfare of the public. The zoning of property derives from the states' police power. The states delegate the power to zone and exercise other land use controls through enabling legislation to cities and counties. Regulations must bear a reasonable, substantial relationship to the health, safety, morals or welfare of the public.

Policy: An imperative or prescriptive principle that directs future action. A policy usually has three components: (1) specific definition of the action to be performed; (2) statement of the conditions under which it is to be performed; and (3) identification of the individuals or officers responsible for performing it. Policies may be positive (prescriptive) or negative (proscriptive); they may be strict commands (employing such performatory verbs as shall or must) or discretionary (employing such performatory verbs as will or may).

Presumption of Constitutionality: When a land use regulation is challenged as not furthering a legitimate government purpose, the court will begin its review and analysis with a legal presumption that the regulation is constitutional. The person challenging the regulation has the burden of presenting evidence sufficient to overcome this presumption of constitutionality. "A court should not set aside the determination of public officers unless it is clear that their action has no foundation in reason and is a mere arbitrary or irrational exercise of power having no substantial relation to the public health, the public morals, the public safety or public welfare in its proper sense".

Public Hearing: A formally announced meeting of a public body, the express purpose of which is to receive written and oral testimony on specific matters. It is open to the public both for attendance and for testimony. Commission and/or board members may ask questions but generally, no deliberation takes place during the hearing. The full record of information should be reviewed by the staff and incorporated into its report for subsequent commission deliberation. The notice requirement is more stringent than for public meetings.

PUPUS: Particularly Undesirable Public Utilities.

Setback Regulations: The building laws require that a building be set back a certain distance from the street. The aim is to allow more room for the pedestrian or reduce the obstruction to sunlight reaching the streets and lower stories of adjoining buildings. It also allows emergency equipment to get to the rear of the building and space for utility easements.

SOB: Sexually Oriented Business

Spot Zoning: *'Spot zoning' is the unjustifiable singling out of a piece of property for preferential treatment. It is not a statutory term; it is a judicial epithet signifying legal invalidity.* Spot zoning is zoning a relatively small area differently from the surrounding area, usually for an incompatible use and often to favor the owner of a particular piece or pieces of property.

Subdivision Regulations: Regulations governing the division and development of land so as to assure definitive legal title, assure proper design and compatibility with surrounding area, provision of necessary services and to guarantee health, safety, and welfare to both users and the public.

Sunshine Act: Refers to the open meeting act, which requires that all government business be conducted openly with proper notice being given. (See Open and Public Meeting Act)

Taking without just compensation: From the 5th Amendment to the United States Constitution: *"nor shall private property be taken for public use without just compensation."* Before a taking claim is made, the property owner must first exhaust administrative remedies, absent futility, and obtain a final administrative decision before making a taking claim. This is commonly called the "exhaustion of remedies" and "ripeness". There is no set precise formula for determining a taking, questions asked by the court in determining a taking may include:

1. Does the regulation relate to and substantially advance, a legitimate state interest?
(Where government can equally accomplish a valid public purpose through regulation or through a requirement of dedicating property, government should use the less intrusive regulation, for example, prohibiting development in a flood plain property.)
2. Does regulation permit or require a physical invasion of the property?
3. Does regulation deny the property owner of "all economically beneficial use of the property"?
4. Does the regulation impose a burden or cost on the landowner that does not bear a "reasonable relationship" to the impacts of the project on the community?

Temporary Zoning Regulations: The purpose of moratoria is to provide a community time to adopt a plan to remedy the problem or problems that existed prior to adoption of a temporary freeze on development. The moratorium is temporary while the community in good faith studies ways of alleviating the problem. In Utah, the enabling legislation provides for Temporary regulations in section 10-9-404 (Cities and Towns) and 17-27-204 (Counties) which states that the jurisdiction may adopt a temporary zoning regulation's ordinance (T.Z.R.O) if the jurisdiction makes a finding of compelling, countervailing public interest, or the area is un-zoned. The TZRO may prohibit or regulate the erection, construction, reconstruction, or alteration of any building or structure or subdivision approval. The TZRO shall not exceed six months.

Testimony: The presentation of information by an interested or affected party regarding an application pending before a planning commission or legislative body. Testimony becomes part of the public record of deliberation; persons providing it are held responsible for their comments.

Transfer of Development Rights: (TDR) where development rights are transferred from one property to another, which commonly results in a higher density on one property and leaves the other in open space.

Vested Rights: The concept is that after a certain point in the approval process the landowner acquires a property interest in the property that should be protected. Vesting determinations vary from state to state. In Utah three threshold inquiries must be made in order to determine whether vested rights exist.

1. Was an application for building permit or subdivision approval filed that conformed to the version of the code in existence at the time of filing?
2. Has the applicant proceeded with reasonable diligence toward completing application procedures and the proposed development?
3. Is the public interest served by the Code or General Plan Amendment so compelling as to warrant its enforcement against the pending application?

Void for Vagueness: Courts will invalidate a regulation that is so unclear or ambiguous that a person of normal intelligence will not be able to comprehend what the regulation forbids or permits. Vagueness can also be applied if the regulation lacks sufficiently explicit standards for its application by an administrative body and thereby impermissibly delegates to that body the freedom to decide basic policy matters on an ad hoc and subjective basis.

Zoning: A police power measure that establishes land use and density in advance of applications for development. Zoning Laws are intended to promote the health, safety, welfare, convenience, morals, and prosperity of people in the community, as a whole, rather than to further the economic interest of any particular property owners.

State Code Definitions: (Please see an updated Utah State Code for most current listing)
Municipalities

10-9-103. Definitions - Notice.

- (1) As used in this chapter:
- (a) "Billboard" means a freestanding ground sign located on industrial, commercial, or residential property if the sign is designed or intended to direct attention to a business, product, or service that is not sold, offered, or existing on the property where the sign is located.
 - (b) "Chief executive officer" means:
 - (i) the mayor in municipalities operating under all forms of municipal government except the council-manager form; or
 - (ii) the city manager in municipalities operating under the council-manager form of municipal government.
 - (c) "Conditional use" means a land use that, because of its unique characteristics or potential impact on the municipality, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.
 - (d) "Constitutional taking" has the meaning as defined in Section 63-3E13.
 - (e) "County" means the unincorporated area of the county.
 - (f) "Elderly person" means a person who is 60 years old or older, who desires or needs to live with other elderly persons in a group setting, but who is capable of living independently.
 - (g)
 - (i) "General plan" means a document that a municipality adopts that sets forth general guidelines for proposed future development of the land within the municipality, as set forth in Sections 10-9-301 and 10-9-302.
 - (ii) "General plan" includes what is also commonly referred to as a "master plan."
 - (h) "Legislative body" means the city council or city commission.
 - (i) "Lot line adjustment" in a subdivision means the relocation of the property boundary line between two adjoining lots with the consent of the owners of record.
 - (j) "Municipality" means a city or town.
 - (k) "Nonconforming structure" means a structure that:
 - (i) legally existed before its current zoning designation; and
 - (ii) because of subsequent zoning changes, does not conform with the zoning regulation's setback, height restrictions, or other regulations that govern the structure.
 - (l) "Nonconforming use" means a use of land that:
 - (i) legally existed before its current zoning designation;
 - (ii) has been maintained continuously since the time the zoning regulation governing the land changed; and
 - (iii) because of subsequent zoning changes, does not conform with the zoning regulations that now govern the land.
 - (m) "Official map" means a map of proposed streets that has the legal effect of prohibiting development of the property until the municipality develops the proposed street.
 - (n)
 - (i) "Residential facility for elderly persons" means a single-family or multiple family dwelling unit that meets the requirements of Part 5 and any ordinance adopted under authority of that part.

- (ii) "Residential facility for elderly persons" does not include a health care facility as defined by Section 2621-2.
 - (o) "Special district" means all entities established under the authority of Title 17A, Special Districts, and any other governmental or quasi-governmental entity that is not a county, municipality, school district, or unit of the state.
 - (p) "Street" means public rights-of-way, including highways, avenues, boulevards, parkways, roads, lanes, walks, alleys, viaducts, subways, tunnels, bridges, public easements, and other ways.
 - (q)
 - (i) "Subdivision" means any land that is divided, re-subdivided or proposed to be divided into two or more lots, parcels, sites, units, plots, or other division of land for the purpose, whether immediate or future, for offer, sale, lease, or development either on the installment plan or upon any and all other plans, terms, and conditions
 - (ii) "Subdivision" includes:
 - (A) the division or development of land whether by deed, metes and bounds description, devise and testacy, lease, map, plat, or other recorded instrument; and
 - (B) except as provided in Subsection (1)(q)(iii), divisions of land for all residential and nonresidential uses, including land used or to be used for commercial, agricultural, and industrial purposes.
 - (iii) "Subdivision" does not include:
 - (A) a bona fide division or partition of agricultural land for the purpose of joining one of the resulting separate parcels to a contiguous parcel of un-subdivided agricultural land, if neither the resulting combined parcel nor the parcel remaining from the division or partition violates an applicable zoning ordinance,
 - (B) a recorded agreement between owners of adjoining properties adjusting their mutual boundary if:
 - (I) no new lot is created; and
 - (II) the adjustment does not result in a violation of applicable zoning ordinances; or
 - (C) a recorded document, executed by the owner of record, revising the legal description of more than one contiguous parcel of property into one legal description encompassing all such parcels of property
 - (iv) the joining of a subdivided parcel of property to another parcel of property that has not been subdivided does not constitute a "subdivision" under this Subsection (1)(q) as to the un-subdivided parcel of property or subject the un-subdivided parcel to the municipalities subdivision ordinance.
 - (r) "Unincorporated" means the area outside of the incorporated boundaries of cities and towns.
- (2) (a) A municipality meets requirements of reasonable notice required by this chapter if it:
- (i) posts notice of the hearing or meeting in at least three public places within the jurisdiction and publishes notice of the hearing or meeting in a newspaper of general circulation in the jurisdiction, if one is available; or
 - (ii) gives actual notice of the hearing or meeting.
- (b) A municipal legislative body may enact an ordinance establishing stricter notice requirements than those required by this subsection,

- (c)
 - (i) Proof that one of the two forms of notice authorized by this subsection was given is prima facie evidence that notice was properly given
 - (ii) if notice given under authority of this section is not challenged as provided in Section 10-9-1001 within 30 days from the date of the meeting for which the notice was given, the notice is considered adequate and proper.