

REVISED
MINUTES OF THE
POLITICAL SUBDIVISIONS INTERIM COMMITTEE
Wednesday, August 22, 2001 - 9:00 a.m. - Room 223 State Capitol

Members Present:

Sen. Carlene M. Walker, Senate Chair
Rep. David L. Hogue, House Chair
Sen. Beverly Ann Evans
Rep. Stephen D. Clark
Rep. David N. Cox
Rep. Scott Daniels
Rep. Fred J. Fife III
Rep. Kory M. Holdaway
Rep. Joseph G. Murray
Rep. Darin G. Peterson

Members Excused:

Sen. David L. Gladwell
Sen. Paula F. Julander
Rep. Richard M. Siddoway
Rep. Max W. Young

Staff Present:

Mr. Joseph Wade,
Research Analyst
Mr. Keith Woodwell,
Associate General Counsel
Ms. Joy L. Miller,
Legislative Secretary

Note: A list of others present and materials distributed are on file in the Office of Legislative Research and General Counsel.

1. Welcome and Committee Business

Chair Hogue called the meeting to order at 9:10 a.m.

MOTION: Rep. Holdaway moved to approve the minutes of the July 18, 2001 meeting. The motion passed unanimously.

2. History of School Impact Fees

Mr. Woodwell explained that in Utah impact fees for schools are prohibited by statute. He referred to H.B. 32, School Impact Fees, from the 1995 General Session, which placed the prohibition on school impact fees. Mr. Woodwell distributed a copy of Title 11, Chapter 36 - Impact Fees Act. He noted there is a process in place which requires that impact fees imposed by municipalities, counties, and special districts be reasonable and that there is a rational connection between the fees imposed and the capital facilities needed by local government. He explained that if the Legislature were to consider allowing school impact fees, they would probably fall under these same requirements. Mr. Woodwell indicated that in general school impact fee laws have been upheld against constitutional challenges. From a legal standpoint, impact fees are not considered a tax because they are assessed on a developer at the time the builder is issued a permit.

Mr. Burke Jolley, Business Administrator, Jordan School District, explained that at the time school impact fees were implemented in Park City, he was the business administrator for

Park City School District. At that time, Park City was experiencing double digit student growth. Many citizens were upset that taxes were going up every year. In an effort to find an alternative funding source, they thoroughly researched the possibility of impact fees. They worked closely with both Park City and Summit County. It was determined that for every new home in the district there was a \$12,000 impact for capital outlay construction. After much consideration, a \$3,400 impact fee per new resident was assessed. They collected the fee for 1½ years and generated approximately \$2.4 million. Many concerns were raised over the fee which led to passage of the legislation in 1995. After the law was changed, the Park City School Board refunded the money to all who had paid the impact fees. Mr. Jolley said the concurrency process initiated at that time was beneficial from the school district's perspective because it gave them an opportunity to be involved in the planning process.

Ms. Brenda Hales, Assistant Superintendent, Jordan School District, said they are asking for recognition that schools are impacted by development. She referred to the Sun Crest subdivision which straddles Salt Lake and Utah counties. Jordan School District has 16,068 new dwelling units already approved for construction in the school district. There is one subdivision in South Jordan that has over 13,000 lots approved. She said there are 24,000 dwelling units pending approval. The district wants to ensure students have a safe and appropriate place to learn. She noted concurrency and impact fees have worked in the past.

Mr. Blaine Walker, Utah Association of Realtors, indicated the legislature has responded very well to the needs of schools. He said an impact fee is a tax on a developer and passed on to the homebuyer. There is an affordability issue that needs to be considered. He is not opposed to taxing when it is necessary for schools. Impact fees are a tax where there is no representation and sidestep the truth in taxation requirements.

Mr. Taz Biesinger, Utah Homebuilders Association, said the association would be opposed to a school impact fee.

Mr. Wes Quinton, Utah Taxpayers Association, said they do not support the use of impact fees. There have been several school districts that have justifiably shown their residents why they need to increase property taxes. Revenues should be as direct and visible as possible. Impact fees are a way of circumventing that process.

3. Disclosure Requirements to Potential Buyers

Mr. Chris Kyler, Utah Association of Realtors, distributed reference materials concerning disclosure requirements. He reviewed the requirements of real estate agents and the practice materials created to comply with Utah law. Mr. Kyler stated the agent is obligated to tell the seller or buyer all material information which the agent learns about the buyer or the transaction.

They also have a duty of confidentiality which prohibits the agent from disclosing any information given to the agent by the seller or lessor which would likely weaken the seller or lessor's bargaining position if it were known. Buyers are strongly encouraged to engage the services of appropriate professionals to conduct inspections, investigations, tests, surveys, and other evaluations of the property at the buyer's expense. Mr. Kyler said if a realtor knew about a boundary issue, it would be illegal for the realtor to surmise what the legal ramifications would be. Realtors cannot engage in the practice of law. If realtors know of problems that affect the property, they are trained to err on the side of disclosure.

4. Review Draft Legislation - County Boundary Issues

Mr. Woodwell briefly reviewed the draft legislation contained in the mailing packet. "Prohibiting Residential and Commercial Lots From Crossing County Lines" would prohibit residential lots and commercial lots under one acre in size from crossing county boundary lines. "Voter Residence Where Lot is Bisected by County Boundary Line" provides that if a person's principal place of residence is a residential parcel that is bisected by the boundary line between two counties, that person shall be considered a resident of the county in which a majority of the residential parcel lies. Mr. Woodwell discussed "Notice of Subdivisions Crossing or Affecting County Boundaries." He said in the case of a subdivision which crosses, abuts, or comes within ½ mile of a boundary line between counties reasonable notice must be given to the affected counties. The legislation includes requirements that the plat show the boundary lines.

Mr. Brent Gardner, Utah Association of Counties, stated the association has not yet taken a position on any of the legislation. He said notification alone may not solve the problem. There may need to be some county approval or some authority for the county to deal with the problem.

Mr. Woodwell reviewed draft legislation "Review of Subdivisions Crossing or Affecting County Boundaries." The bill proposes that rather than sending a notice to the affected counties, the affected counties would have to approve the subdivision and in the process the county would have to consider a list of factors that affect the subdivision.

Mr. Vaughn Butler, Salt Lake County Surveyor, explained in 1987 the Recordation Act was passed which requires any private surveyor that performs a survey in the state to file a record of that survey with the county surveyor. The surveyor must consider boundary issues, junior and senior rights, fence lines vs. title lines, and other issues. Anyone needing property information should check with the county surveyor to determine if a record of a survey was filed and that it meets the requirements of the Recordation Act. Mr. Butler stated when property transferred from the federal government to private ownership, the county surveyor was charged with the maintenance and preservation of the original corners. In 1912, the Salt Lake County and Utah County surveyors surveyed the boundary line between the two counties. The surveyors set

sandstones marking the boundary. In 1943, the county surveyors resurveyed the line. They located many of the original markers from 1912. Those they were not able to locate were reestablished using the original plat and new markers were set. Mr. Butler said in the 1990s he resurveyed the boundary line with GPS equipment to put more accurate values between existing corners which must remain as the original corners by act of congress. He distributed a copy of the 1912, 1943, and 1990s surveys. He assured the committee that the boundary line between Salt Lake and Utah counties is in the same position it was in 1912.

Mr. Ed Grampp, Vice President of Terrabrook, said the property for the Suncrest project was purchased in 1997 by the company. It will take approximately ten years to complete the development. Mr. Grampp said it has been represented to him that from the time they attempted to purchase the property, both Salt Lake and Utah county officials were approached and were unable to obtain a determination as to the boundary line. They have spent many hours talking with school districts, infrastructure providers, officials from both counties, and others and have been pleased with the cooperation they have received. Mr. Grampp indicated they are concerned about the policy considerations that are opened up through the proposed legislation. There are no provisions that specify the practical processes for resolving issues. He said they are concerned about prohibiting the bisecting of property lines.

Mr. John Bennett, Utah Advisory Council on Intergovernmental Relations, said the council has established its own subcommittee to address the issue. The subcommittee supports a statute that would prohibit any residential property from being bisected by boundary lines. The subcommittee believes the commercial parcel issue needs more study. He urged the committee to develop a solution that would allow a developer to make a minor change to a county boundary.

Mr. James Smith, Draper City Manager, commented that Draper City was not favorable to the Suncrest project. The project will have a net deficit on the city of \$1 million per year. After review of case law and history of property rights legislation they concluded it was Draper City's responsibility to find solutions to the many problems. He said in their second meeting with Utah County and Salt Lake County surveyor staff an agreement was finally reached as to where the county line is. Mr. Smith stated if the ½ mile issue includes a complicated approval process it will create serious problems for cities and county commissioners. He said they support the notice and voting provisions and feel the distance should be no more than 1/4 mile. He noted they also support the restriction of bisecting lots.

MOTION: Rep. Murray moved to adjourn. The motion passed unanimously, with Sen. Evans, Rep. Holdaway, and Rep. Peterson absent for the vote. Chair Hogue adjourned the meeting at 12:40 p.m.