



Land Use Development  
and Management Act  
Task Force Report

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**Political Subdivisions Interim  
Committee**

**October 20, 2004**

# 2004 LUDMA Task Force

- Initiated by Senator Greg Bell
- Legislative and non-legislative participant mix
- Comprehensive overview of the state of land use law
- 50+ participants representing:
  - Appointed and elected local government officials (cities, counties, special districts)
  - Private property ombudsman
  - Homebuilders, realtors, developers
  - Surveyors, engineers
  - Lawyers of all sizes, shapes and temperaments
- Consensus-based re-write of the LUDMA
- Goal: One bill

# Task Force Participants

1. Suzanne Allen, St. George City
2. Kevin E. Anderson, Parry Anderson
3. Bruce Baird, Hutchings, Baird & Jones
4. Ralph Becker, State Rep.
5. Greg Bell, State Senator
6. Junior Baker, Spanish Fork City
7. Des Barker, Kennecott Land
8. Rolf Berger, Kirton & McConkie
9. Taz Besinger, Utah Homebuilders'
10. Jody Burnett, Williams & Hunt
11. Gregg Buxton, State Rep.
12. Brad Cahoon, Snell & Wilmer
13. Craig Call, PPO
14. Gene Carr, University of Utah
15. Kimberly Chytraus, O'Melveny & Myers
16. Tom Christensen, SL County
17. Matt Clark, Surveyor
18. Nicole Cottle, West Valley City
19. Gary Crane, Layton City Attorney
20. Wes Quinton, Utah Farm Bureau
21. Mont Evans, Mayor, Riverdale City
22. Fred Finlinson, SS Dist. Assoc.
23. Chris Gamvroulas, Ivory Homes
24. Brent Gardner, UAC
25. Robert Grow, O'Melveny & Myers
26. Andy Hall, Payson City Manager
27. Ann Hardy, State Representative
28. Gary Hill, Park City
29. Phil Hill, Midvale City CDD

# Task Force Participants

30. Jodi Hoffman, ULCT
31. Steve Keisel, Salt Lake County
32. Chuck Klingenstein, AICP,  
President Utah Chapter APA
33. Chris Kyler, UAR
34. Neil Lindberg, Provo City
35. Robert McConnell, Parr  
Waddoups
36. Gary McKean, Davis County
37. Gill Miller, Mayor, Bear River City
38. Lynn Pace, Salt Lake City
39. Bruce Parker, AICP Planning and  
Development Services
40. Jeff Richards, PacifiCorp
41. Robert Rees, Leg. Research &  
General Counsel
42. Neka Roundy, Kaysville City
43. Ernest D. Rowley, Weber County
44. George Shaw, Sandy City
45. Wilf Sommerkorn, Davis County
46. John Stahl, Cornerstone PLS
47. Susan Tanner-Holmes,  
Farmington
48. Dave Thomas, State Senator
49. Rich Thorn, Association of  
General Contractors
50. Tim Twardowski, Park City
51. Joseph Wade, Leg. Research
52. Carlene Walker, State Senator
53. Gary Uresk, Woods Cross
54. Arie Van De Graaf, UAC
55. James Wingate, Blue Stakes (UT)

# Our Mission:

1. Respond Proactively to Perceived Issues
  - Codify clearly established common law principles
  - Minimize state barriers to streamlined local land use processes
  - Enable local governments to establish locally-relevant processes
  - Provide flexible appeal options (hearings examiner, etc.)
2. Do No Harm: Pass legislation which allows jurisdictions to keep current codes or adopt more flexible codes
3. Reinforce a “lay person” process

# 26 Topic Areas

1. **Planning Commission Alternates**
2. **Timing of Appeals**
3. **Conditional Use**
4. **Special Exception Permits**
5. **Master Planned Developments**
6. **Specially-Planned Areas**
7. **Court of Appeals v. Supreme Court appellate jurisdiction**
8. **Non conforming uses**
9. **Exactions**
10. **Standardized Notice**
11. **Non complying structures**
12. **Development Agreements**
13. **DEQ subdivision issues**
14. **Board of Adjustment**
15. **Hearings Examiner**
16. **Planned Unit Developments**
17. **Adverse Possession**
18. **Vested Rights—Western Land Equities**
19. **Pending Ordinance Doctrine**
20. **Conflict of Interest**
21. **Hearing standards for general plan changes**
22. **Three Hats—legislative, administrative, quasi-judicial**
23. **Scope of Appellate Review**
24. **Exhaustion**
25. **Subdivisions**
26. **Ex Parte Communications**

<b>Little Disagreement</b>	<b>Moderately Hot Issues</b>	<b>Mind Benders</b>
<b>Planning Commission Alternates</b>	<b>Timing of Appeals</b>	<b>Conditional Use/Special Exceptions/MPDs/ SPAs</b>
<b>Court of Appeals v. Supreme Court</b>	<b>Non conforming use</b>	<b>Exactions</b>
<b>Standardized Notice</b>	<b>Non complying structures</b>	<b>Development Agreements</b>
<b>DEQ subdivision issues</b>	<b>Board of Adjustment/Hearings Examiner Issues</b>	<b>Planned Unit Developments</b>
<b>Adverse Possession</b>	<b>Vesting—Western Land Equities Pending Ordinance Doctrine</b>	<b>Conflicts of Interest</b>
<b>Hearing standards for plan changes</b>	<b>Three Hats—legislative, administrative, quasi-judicial</b>	
	<b>Scope of Appellate Review</b>	
	<b>Exhaustion</b>	
	<b>Subdivisions</b>	
	<b>Ex Parte Communications</b>	

**Tasks Completed****Tasks Abandoned****Planning Commission  
Alternates****Vesting—Western Land  
Equities/Pending Ordinance****Specially-Planned Area****Court of Appeals v.  
Supreme Court****Non conforming use/  
Non complying structures****PUDs—Allowed Use****Standardized Notice****Development Agreement****Ex Parte Communications—  
No Change recommended****DEQ subdivision  
issues****Scope of Appellate Review****Conflict of Interest—No  
change recommended****Hearing standards for  
general plan changes****Exhaustion****Adverse Possession—  
Beyond the Scope****Special Exception  
Permits****Exactions****County/School Exemption****Timing of Appeals****Subdivision and Platting****Board of Adjustment  
Scope Narrowed****Conditional Use/Master Planned  
Developments****Hearings Examiner  
Authorized****Streamlined Review (Homeland  
Security)****Three Hats—legislative,  
administrative, quasi-judicial**

# Top 10 Highlights

1. Non Conforming Use—*Rock Manor*
2. Exactions—*Dolan v. Tigard, OR*
3. Vesting—*Western Land Equities*
4. Conditional Use—common law principles codified
5. Hearings Examiner/appeal authority enabled and refined
6. Board of Adjustment jurisdiction narrowed
7. “Routine and Uncontested” process emphasized (staff administration encouraged)
8. 30 day appeal window/exhaustion concept refined
9. Subdivision laws streamlined
10. Reorganized and consolidated

# Nonconforming uses and Noncomplying structures

1. Clarifies the distinction between a nonconforming use and a noncomplying structure
2. Clarifies that the nonconforming use “runs with the land”
3. Requires municipalities to allow the owner of a nonconforming structure or a nonconforming use to rebuild after natural disaster
  - This change will greatly enhance the financing and marketability of these structures
4. Fortifies neglect and abandonment concepts
5. Establishes the burdens of proof and an orderly process to fix nonconforming use status

# Exactions

- Regulation of Exactions.** *A county may impose an exaction or exactions on proposed land use development and/or plat provided that:*
- (1) *an essential nexus exists between a legitimate governmental interest and each exaction; and*
  - (2) *each exaction is roughly proportionate, both in nature and extent, to the impact of the proposed development.*

# Vesting

## **Land use approval standards.**

**(1) (a) An applicant is entitled to approval of a land use application if the application conforms to the requirements of an applicable land use ordinance in effect when a complete application is submitted and the applicant thereafter proceeds with reasonable diligence, unless:**

**(i) the governing body, on the record, finds that a compelling, countervailing public interest would be jeopardized by approving the application; or**

**(ii) in the manner provided by local ordinance and before the application is submitted, the municipality has formally initiated proceedings to amend its ordinances in a manner that would prohibit approval of the application as submitted. If the proceedings initiated to amend the ordinance do not result in an enactment, which prohibits the approval of the application as submitted within 180 days after the proceedings have been initiated, any affected application shall be processed without regard to the initiated proceedings.**

**(b) An application for a land use approval shall be deemed submitted and complete when the application is provided in a form that complies with the requirements of applicable ordinances.**

**(2) A county is bound by the terms and standards of applicable land use ordinances and shall comply with mandatory provisions of those ordinances.**

# Conditional Use

*A conditional use shall be approved if reasonable conditions are proposed, or can be imposed, to substantially mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards. If the reasonably anticipated detrimental effects of a proposed conditional use cannot substantially be mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards, the conditional use may be denied.*

# Simplify Process



Routine and Uncontested

First Step for all CUPs, Subdivisions, Nonconforming Use determinations, etc:

**Informal**—either staff or Planning Commission

95% of all cases

Ordinance sets level of formality

Statute to emphasize that applicant shall have "adequate" opportunity to present application during any public process

No standing requirement to prompt formal process

At any time, if contested (by applicant, public or staff) the process converts to:

**Formal**—process in which a "record" is made

Expect lawyers to participate at this level

5%

Standing for appeal will remain as currently provided: "Adversely affected"

Statute provides that **parties** shall be provided "due process" throughout the progress of the appeal

30 days to appeal to a body designated by ordinance (Board of Land Use Appeals, City Council, Hearings Examiner)

Sober second look/time to assert "takings" concerns

Local ordinance determines standard of review

Written decision is required

Appeal completes "exhaustion" requirement

2%

The local government shall designate the standard of review, which may range from "de novo" to "on the record" and may designate deference to the lower body or an "error of law" standard

Findings of Fact and Conclusions of Law recommended—should they be required?

Ordinance determines when action is final: Statute assumes "upon adoption of the written decision"

District Court appeal "on the record"

Statutory standard of review: substantial evidence/error of law

< 1%

# Subdivision and Platting

1. Comply with DEQ administrative rules
2. Remove unnecessary process mandates
3. Refine/consolidate definitions
4. Increase incentives for small cities and towns to adopt a platting ordinance
5. Revise surveyor's certificate