

1 **AMENDMENTS TO LAND USE DEVELOPMENT**
2 **AND MANAGEMENT ACT**

3 2007 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Gregory S. Bell**

6 House Sponsor: Michael T. Morley

7
8 **LONG TITLE**

9 **General Description:**

10 This bill modifies county and municipal land use, development, and management
11 provisions.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ modifies language relating to the purposes of the county and municipal land use,
15 development, and management provisions;
- 16 ▶ enacts provisions relating to a county or municipality's processing of a land use
17 application; and
- 18 ▶ modifies the standard that applies in determining the validity of a county or
19 municipal decision, ordinance, or regulation.

20 **Monies Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 **AMENDS:**

26 **10-9a-102**, as renumbered and amended by Chapter 254, Laws of Utah 2005

27 **10-9a-509**, as last amended by Chapters 257 and 289, Laws of Utah 2006



28 **10-9a-801**, as renumbered and amended by Chapter 254, Laws of Utah 2005

29 **17-27a-102**, as renumbered and amended by Chapter 254, Laws of Utah 2005

30 **17-27a-508**, as last amended by Chapters 257 and 289, Laws of Utah 2006

31 **17-27a-801**, as renumbered and amended by Chapter 254, Laws of Utah 2005

32 ENACTS:

33 **10-9a-509.5**, Utah Code Annotated 1953

34 **17-27a-509.5**, Utah Code Annotated 1953



36 *Be it enacted by the Legislature of the state of Utah:*

37 Section 1. Section **10-9a-102** is amended to read:

38 **10-9a-102. Purposes -- General land use authority.**

39 (1) The purposes of this chapter are to provide for the health, safety, and welfare, and
40 promote the prosperity, improve the morals, peace and good order, comfort, convenience, and
41 aesthetics of each municipality and its present and future inhabitants and businesses, to protect
42 the tax base, to secure economy in governmental expenditures, to foster the state's agricultural
43 and other industries, to protect both urban and nonurban development, to protect and ensure
44 access to sunlight for solar energy devices, to provide fundamental fairness in land use
45 regulation, and to protect property values.

46 (2) To accomplish the purposes of this chapter, municipalities may enact all
47 ordinances, resolutions, and rules and may enter into other forms of land use controls and
48 development agreements that they consider necessary or appropriate for the use and
49 development of land within the municipality, including ordinances, resolutions, rules,
50 restrictive covenants, easements, and development agreements governing uses, density, open
51 spaces, structures, buildings, energy efficiency, light and air, air quality, transportation and
52 public or alternative transportation, infrastructure, street and building orientation and width
53 requirements, public facilities, ~~[and]~~ fundamental fairness in land use regulation,
54 considerations of surrounding land uses and the balance of the foregoing purposes with a
55 landowner's private property interests, height and location of vegetation, trees, and landscaping,
56 unless expressly prohibited by law.

57 Section 2. Section **10-9a-509** is amended to read:

58 **10-9a-509. When a land use applicant is entitled to approval -- Exception --**

59 **Municipality may not impose unexpressed requirements -- Municipality required to**
60 **comply with land use ordinances.**

61 (1) (a) An applicant is entitled to approval of a land use application if the application
62 conforms to the requirements of the municipality's land use maps, zoning map, and applicable
63 land use ordinance in effect when a complete application is submitted and all fees have been
64 paid, unless:

65 (i) the land use authority, on the record, finds that a compelling, countervailing public
66 interest would be jeopardized by approving the application; or

67 (ii) in the manner provided by local ordinance and before the application is submitted,
68 the municipality has formally initiated proceedings to amend its ordinances in a manner that
69 would prohibit approval of the application as submitted.

70 (b) The municipality shall process an application without regard to proceedings
71 initiated to amend the municipality's ordinances if:

72 (i) 180 days have passed since the proceedings were initiated; and

73 (ii) the proceedings have not resulted in an enactment that prohibits approval of the
74 application as submitted.

75 (c) An application for a land use approval is considered submitted and complete when
76 the application is provided in a form that complies with the requirements of applicable
77 ordinances and all applicable fees have been paid.

78 (d) The continuing validity of an approval of a land use application is conditioned upon
79 the applicant proceeding after approval to implement the approval with reasonable diligence.

80 (e) A municipality may not impose on a holder of an issued land use permit a
81 requirement that is not expressed:

82 (i) in the land use permit or in documents on which the land use permit is based; or

83 (ii) in this chapter or the municipality's ordinances.

84 (f) A municipality may not withhold issuance of a certificate of occupancy because of
85 an applicant's failure to comply with a requirement that is not expressed:

86 (i) in the building permit or in documents on which the building permit is based; or

87 (ii) in this chapter or the municipality's ordinances.

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

90 ~~[(3) Each municipality shall process and render a decision on each land use application~~
91 ~~with reasonable diligence.]~~

92 Section 3. Section **10-9a-509.5** is enacted to read:

93 **10-9a-509.5. Reasonable diligence -- Application sufficiency and process.**

94 (1) (a) Each municipality shall, in a timely manner, determine whether an application is
95 complete for the purposes of subsequent, substantive land use authority review.

96 (b) After a reasonable period of time to allow the municipality diligently to evaluate
97 whether all objective ordinance-based application criteria have been met, if application fees
98 have been paid, the applicant may in writing request that the municipality provide a written
99 determination either that the application is:

100 (i) complete for the purposes of allowing subsequent, substantive land use authority
101 review; or

102 (ii) deficient with respect to a specific, objective, ordinance-based application
103 requirement.

104 (c) Within 30 days of receipt of an applicant's request under this section, the
105 municipality shall either:

106 (i) mail a written notice to the applicant advising that the application is deficient with
107 respect to a specified, objective, ordinance-based criteria, and stating that the application must
108 be supplemented by specific additional information identified in the notice; or

109 (ii) accept the application as complete for the purposes of further substantive
110 processing by the land use authority.

111 (d) If the notice required by Subsection (1)(c)(i) is not timely mailed, the appeal shall
112 be considered complete, for purposes of further substantive land use authority review.

113 (e) (i) The applicant may raise and resolve in a single appeal any determination made
114 under this Subsection (1) to the appeal authority, including an allegation that a reasonable
115 period of time has elapsed under Subsection (1)(a).

116 (ii) The appeal authority shall issue a written decision for any appeal requested under
117 this Subsection (1)(e).

118 (f) (i) The applicant may appeal to district court the decision of the appeal authority
119 made under Subsection (1)(e).

120 (ii) Each appeal under Subsection (1)(f)(i) shall be made within 30 days of the date of

121 the written decision.

122 (2) (a) Each land use authority shall substantively review a complete application and an
123 application considered complete under Subsection (1)(d), and shall approve or deny each
124 application with reasonable diligence.

125 (b) After a reasonable period of time to allow the land use authority to consider an
126 application, the applicant may in writing request that the land use authority take final action
127 within 45 days from date of service of the written request.

128 (c) The land use authority shall take final action, approving or denying the application
129 within 45 days of the written request.

130 (d) If the land use authority denies an application processed under the mandates of
131 Subsection (2)(b), or if the applicant has requested a written decision in the application, the
132 land use authority shall include its reasons for denial in writing, on the record, which may
133 include the official minutes of the meeting in which the decision was rendered.

134 (e) If the land use authority fails to comply with Subsection (2)(c), the applicant may
135 appeal this failure to district court within 30 days of the date on which the land use authority
136 should have taken final action under Subsection (2)(c).

137 (3) Subject to Section 10-9a-509, nothing in this section and no action or inaction of
138 the land use authority relieves an applicant's duty to comply with all applicable substantive
139 ordinances and regulations.

140 (4) There shall be no money damages remedy arising from a claim under this section.

141 Section 4. Section **10-9a-801** is amended to read:

142 **10-9a-801. No district court review until administrative remedies exhausted --**

143 **Time for filing -- Tolling of time -- Standards governing court review -- Record on review**
144 **-- Staying of decision.**

145 (1) No person may challenge in district court a municipality's land use decision made
146 under this chapter, or under a regulation made under authority of this chapter, until that person
147 has exhausted the person's administrative remedies as provided in Part 7, Appeal Authority and
148 Variances, if applicable.

149 (2) (a) Any person adversely affected by a final decision made in the exercise of or in
150 violation of the provisions of this chapter may file a petition for review of the decision with the
151 district court within 30 days after the local land use decision is final.

152 (b) (i) The time under Subsection (2)(a) to file a petition is tolled from the date a
153 property owner files a request for arbitration of a constitutional taking issue with the property
154 rights ombudsman under Section 63-34-13 until 30 days after:

155 (A) the arbitrator issues a final award; or

156 (B) the property rights ombudsman issues a written statement under Subsection
157 63-34-13(4)(b) declining to arbitrate or to appoint an arbitrator.

158 (ii) A tolling under Subsection (2)(b)(i) operates only as to the specific constitutional
159 taking issue that is the subject of the request for arbitration filed with the property rights
160 ombudsman by a property owner.

161 (iii) A request for arbitration filed with the property rights ombudsman after the time
162 under Subsection (2)(a) to file a petition has expired does not affect the time to file a petition.

163 (3) (a) The courts shall:

164 (i) presume that a decision, ordinance, or regulation made under the authority of this
165 chapter is valid; and

166 (ii) determine only whether or not the decision, ordinance, or regulation is arbitrary,
167 capricious, or illegal.

168 (b) A decision, ordinance, or regulation involving the exercise of legislative discretion
169 is valid if [~~the decision, ordinance, or regulation~~] it is reasonably debatable that the decision,
170 ordinance, or regulation promotes the purposes of this chapter and is not otherwise illegal.

171 (c) A final decision of a land use authority or an appeal authority is valid if the decision
172 is supported by substantial evidence in the record and is not arbitrary, capricious, or illegal.

173 (d) A determination of illegality requires a determination that the decision, ordinance,
174 or regulation violates a law, statute, or ordinance in effect at the time the decision was made or
175 the ordinance or regulation adopted.

176 (4) The provisions of Subsection (2)(a) apply from the date on which the municipality
177 takes final action on a land use application for any adversely affected third party, if the
178 municipality conformed with the notice provisions of Part 2, Notice, or for any person who had
179 actual notice of the pending decision.

180 (5) If the municipality has complied with Section 10-9a-205, a challenge to the
181 enactment of a land use ordinance or general plan may not be filed with the district court more
182 than 30 days after the enactment.

183 (6) The petition is barred unless it is filed within 30 days after the appeal authority's
184 decision is final.

185 (7) (a) The land use authority or appeal authority, as the case may be, shall transmit to
186 the reviewing court the record of its proceedings, including its minutes, findings, orders, and, if
187 available, a true and correct transcript of its proceedings.

188 (b) If the proceeding was tape recorded, a transcript of that tape recording is a true and
189 correct transcript for purposes of this Subsection (7).

190 (8) (a) (i) If there is a record, the district court's review is limited to the record provided
191 by the land use authority or appeal authority, as the case may be.

192 (ii) The court may not accept or consider any evidence outside the record of the land
193 use authority or appeal authority, as the case may be, unless that evidence was offered to the
194 land use authority or appeal authority, respectively, and the court determines that it was
195 improperly excluded.

196 (b) If there is no record, the court may call witnesses and take evidence.

197 (9) (a) The filing of a petition does not stay the decision of the land use authority or
198 authority appeal authority, as the case may be.

199 (b) (i) Before filing a petition under this section or a request for mediation or
200 arbitration of a constitutional taking issue under Section 63-34-13, the aggrieved party may
201 petition the appeal authority to stay its decision.

202 (ii) Upon receipt of a petition to stay, the appeal authority may order its decision stayed
203 pending district court review if the appeal authority finds it to be in the best interest of the
204 municipality.

205 (iii) After a petition is filed under this section or a request for mediation or arbitration
206 of a constitutional taking issue is filed under Section 63-34-13, the petitioner may seek an
207 injunction staying the appeal authority's decision.

208 Section 5. Section **17-27a-102** is amended to read:

209 **17-27a-102. Purposes -- General land use authority.**

210 (1) (a) The purposes of this chapter are to provide for the health, safety, and welfare,
211 and promote the prosperity, improve the morals, peace and good order, comfort, convenience,
212 and aesthetics of each county and its present and future inhabitants and businesses, to protect
213 the tax base, to secure economy in governmental expenditures, to foster the state's agricultural

214 and other industries, to protect both urban and nonurban development, to protect and ensure
215 access to sunlight for solar energy devices, to provide fundamental fairness in land use
216 regulation, and to protect property values.

217 (b) To accomplish the purposes of this chapter, counties may enact all ordinances,
218 resolutions, and rules and may enter into other forms of land use controls and development
219 agreements that they consider necessary or appropriate for the use and development of land
220 within the unincorporated area of the county, including ordinances, resolutions, rules,
221 restrictive covenants, easements, and development agreements governing uses, density, open
222 spaces, structures, buildings, energy-efficiency, light and air, air quality, transportation and
223 public or alternative transportation, infrastructure, street and building orientation and width
224 requirements, public facilities, [~~and~~] fundamental fairness in land use regulation,
225 considerations of surrounding land uses and the balance of the foregoing purposes with a
226 landowner's private property interests, height and location of vegetation, trees, and landscaping,
227 unless expressly prohibited by law.

228 (2) Each county shall comply with the mandatory provisions of this part before any
229 agreement or contract to provide goods, services, or municipal-type services to any storage
230 facility or transfer facility for high-level nuclear waste, or greater than class C radioactive
231 waste, may be executed or implemented.

232 Section 6. Section **17-27a-508** is amended to read:

233 **17-27a-508. When a land use applicant is entitled to approval -- Exception --**
234 **County may not impose unexpressed requirements -- County required to comply with**
235 **land use ordinances.**

236 (1) (a) An applicant is entitled to approval of a land use application if the application
237 conforms to the requirements of the county's land use maps, zoning map, and applicable land
238 use ordinance in effect when a complete application is submitted and all fees have been paid,
239 unless:

240 (i) the land use authority, on the record, finds that a compelling, countervailing public
241 interest would be jeopardized by approving the application; or

242 (ii) in the manner provided by local ordinance and before the application is submitted,
243 the county has formally initiated proceedings to amend its ordinances in a manner that would
244 prohibit approval of the application as submitted.

245 (b) The county shall process an application without regard to proceedings initiated to
246 amend the county's ordinances if:

247 (i) 180 days have passed since the proceedings were initiated; and

248 (ii) the proceedings have not resulted in an enactment that prohibits approval of the
249 application as submitted.

250 (c) An application for a land use approval is considered submitted and complete when
251 the application is provided in a form that complies with the requirements of applicable
252 ordinances and all applicable fees have been paid.

253 (d) The continuing validity of an approval of a land use application is conditioned upon
254 the applicant proceeding after approval to implement the approval with reasonable diligence.

255 (e) A county may not impose on a holder of an issued land use permit a requirement
256 that is not expressed:

257 (i) in the land use permit or in documents on which the land use permit is based; or

258 (ii) in this chapter or the county's ordinances.

259 (f) A county may not withhold issuance of a certificate of occupancy because of an
260 applicant's failure to comply with a requirement that is not expressed:

261 (i) in the building permit or in documents on which the building permit is based; or

262 (ii) in this chapter or the county's ordinances.

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

265 ~~[(3) Each county shall process and render a decision on each land use application with~~
266 ~~reasonable diligence.]~~

267 Section 7. Section **17-27a-509.5** is enacted to read:

268 **17-27a-509.5. Reasonable diligence -- Application sufficiency and process.**

269 (1) (a) Each county shall, in a timely manner, determine whether an application is
270 complete for the purposes of subsequent, substantive land use authority review.

271 (b) After a reasonable period of time to allow the county diligently to evaluate whether
272 all objective ordinance-based application criteria have been met, if application fees have been
273 paid, the applicant may in writing request that the county provide a written determination either
274 that the application is:

275 (i) complete for the purposes of allowing subsequent, substantive land use authority

276 review; or

277 (ii) deficient with respect to a specific, objective, ordinance-based application

278 requirement.

279 (c) Within 30 days of receipt of an applicant's request under this section, the county

280 shall either:

281 (i) mail a written notice to the applicant advising that the application is deficient with

282 respect to a specified, objective, ordinance-based criteria, and stating that the application must

283 be supplemented by specific additional information identified in the notice; or

284 (ii) accept the application as complete for the purposes of further substantive

285 processing by the land use authority.

286 (d) If the notice required by Subsection (1)(c)(i) is not timely mailed, the appeal shall

287 be considered complete, for purposes of further substantive land use authority review.

288 (e) (i) The applicant may raise and resolve in a single appeal any determination made

289 under this Subsection (1) to the appeal authority, including an allegation that a reasonable

290 period of time has elapsed under Subsection (1)(a).

291 (ii) The appeal authority shall issue a written decision for any appeal requested under

292 this Subsection (1)(e).

293 (f) (i) The applicant may appeal to district court the decision of the appeal authority

294 made under Subsection (1)(e).

295 (ii) Each appeal under Subsection (1)(f)(i) shall be made within 30 days of the date of

296 the written decision.

297 (2) (a) Each land use authority shall substantively review a complete application and an

298 application considered complete under Subsection (1)(d), and shall approve or deny each

299 application with reasonable diligence.

300 (b) After a reasonable period of time to allow the land use authority to consider an

301 application, the applicant may in writing request that the land use authority take final action

302 within 45 days from date of service of the written request.

303 (c) The land use authority shall take final action, approving or denying the application

304 within 45 days of the written request.

305 (d) If the land use authority denies an application processed under the mandates of

306 Subsection (2)(b), or if the applicant has requested a written decision in his application, the

307 land use authority shall include its reasons for denial in writing, on the record, which may
308 include the official minutes of the meeting in which the decision was rendered.

309 (e) If the land use authority fails to comply with Subsection (2)(c), the applicant may
310 appeal this failure to district court within 30 days of the date on which the land use authority
311 should have taken final action under Subsection (2)(c).

312 (3) Subject to Section 10-9a-509, nothing in this section and no action or inaction of
313 the land use authority relieves an applicant's duty to comply with all applicable substantive
314 ordinances and regulations.

315 (4) There shall be no money damages remedy arising from a claim under this section.

316 Section 8. Section **17-27a-801** is amended to read:

317 **17-27a-801. No district court review until administrative remedies exhausted --**

318 **Time for filing -- Tolling of time -- Standards governing court review -- Record on review**

319 **-- Staying of decision.**

320 (1) No person may challenge in district court a county's land use decision made under
321 this chapter, or under a regulation made under authority of this chapter, until that person has
322 exhausted the person's administrative remedies as provided in Part 7, Appeal Authority and
323 Variances, if applicable.

324 (2) (a) Any person adversely affected by a final decision made in the exercise of or in
325 violation of the provisions of this chapter may file a petition for review of the decision with the
326 district court within 30 days after the local land use decision is final.

327 (b) (i) The time under Subsection (2)(a) to file a petition is tolled from the date a
328 property owner files a request for arbitration of a constitutional taking issue with the property
329 rights ombudsman under Section 63-34-13 until 30 days after:

330 (A) the arbitrator issues a final award; or

331 (B) the property rights ombudsman issues a written statement under Subsection
332 63-34-13(4)(b) declining to arbitrate or to appoint an arbitrator.

333 (ii) A tolling under Subsection (2)(b)(i) operates only as to the specific constitutional
334 taking issue that is the subject of the request for arbitration filed with the property rights
335 ombudsman by a property owner.

336 (iii) A request for arbitration filed with the property rights ombudsman after the time
337 under Subsection (2)(a) to file a petition has expired does not affect the time to file a petition.

338 (3) (a) The courts shall:

339 (i) presume that a decision, ordinance, or regulation made under the authority of this
340 chapter is valid; and

341 (ii) determine only whether or not the decision, ordinance, or regulation is arbitrary,
342 capricious, or illegal.

343 (b) A decision, ordinance, or regulation involving the exercise of legislative discretion
344 is valid if ~~[the decision, ordinance, or regulation]~~ it is reasonably debatable that the decision,
345 ordinance, or regulation promotes the purposes of this chapter and is not otherwise illegal.

346 (c) A final decision of a land use authority or an appeal authority is valid if the decision
347 is supported by substantial evidence in the record and is not arbitrary, capricious, or illegal.

348 (d) A determination of illegality requires a determination that the decision, ordinance,
349 or regulation violates a law, statute, or ordinance in effect at the time the decision was made or
350 the ordinance or regulation adopted.

351 (4) The provisions of Subsection (2)(a) apply from the date on which the county takes
352 final action on a land use application for any adversely affected third party, if the county
353 conformed with the notice provisions of Part 2, Notice, or for any person who had actual notice
354 of the pending decision.

355 (5) If the county has complied with Section 17-27a-205, a challenge to the enactment
356 of a land use ordinance or general plan may not be filed with the district court more than 30
357 days after the enactment.

358 (6) The petition is barred unless it is filed within 30 days after land use authority or the
359 appeal authority's decision is final.

360 (7) (a) The land use authority or appeal authority, as the case may be, shall transmit to
361 the reviewing court the record of its proceedings, including its minutes, findings, orders and, if
362 available, a true and correct transcript of its proceedings.

363 (b) If the proceeding was tape recorded, a transcript of that tape recording is a true and
364 correct transcript for purposes of this Subsection (7).

365 (8) (a) (i) If there is a record, the district court's review is limited to the record provided
366 by the land use authority or appeal authority, as the case may be.

367 (ii) The court may not accept or consider any evidence outside the record of the land
368 use authority or appeal authority, as the case may be, unless that evidence was offered to the

369 land use authority or appeal authority, respectively, and the court determines that it was
370 improperly excluded.

371 (b) If there is no record, the court may call witnesses and take evidence.

372 (9) (a) The filing of a petition does not stay the decision of the land use authority or
373 appeal authority, as the case may be.

374 (b) (i) Before filing a petition under this section or a request for mediation or
375 arbitration of a constitutional taking issue under Section 63-34-13, the aggrieved party may
376 petition the appeal authority to stay its decision.

377 (ii) Upon receipt of a petition to stay, the appeal authority may order its decision stayed
378 pending district court review if the appeal authority finds it to be in the best interest of the
379 county.

380 (iii) After a petition is filed under this section or a request for mediation or arbitration
381 of a constitutional taking issue is filed under Section 63-34-13, the petitioner may seek an
382 injunction staying the appeal authority's decision.

Legislative Review Note

as of 1-26-07 11:43 AM

Office of Legislative Research and General Counsel

S.B. 215 - Amendments to Land Use Development and Management Act

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
