

**LUDMA Turns Ten:
Reflections on a Decade of Retuned Land Use
Regulation**

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In 2005, the Utah State Legislature enacted **SB-60 Local Land Use Management and Development Act Amendments**. The Act was the culmination of a multi-year process to evaluate and resolve a large number of perceived issues/problems with the administration of the prior Land Use Management and Development Act (LUDMA). Originally enacted in 1992, and amended in virtually every year thereafter, the land use legislation in effect prior to the 2005 re-codification process was misleading and failed to reflect common principals of constitutional law.

Despite many amendments throughout the years, the development community (realtors, lenders, surveyors, homebuilders etc.), along with the Private Property Ombudsman, had amassed a long list of complaints about local land use administration in Utah. Their individual stories of unconstitutional administration of land use laws were compelling and reminiscent of the parade of bad and embarrassing stories that produced the impetus for the Impact Fees Act throughout the 1990s. The local regulatory community (elected officials, planners, city attorneys, county recorders, etc.) also perceived that the law needed reform and hoped to avert the antagonism that was the hallmark of the Impact Fees Act wars.

Former Lt. Governor, and at that time State Senator, Greg Bell convened a 55 member, non-legislative task force representing all stakeholder groups in the local land development matrix. The League of Cities and Towns hosted, facilitated and coordinated the task force. The challenge was to reach consensus on issues where there was conflict.

The Task Force proposed 28 areas for reform of LUDMA and succeeded in reaching consensus on 25 of the 28 topics. The consensus resulted in literally scores of changes to LUDMA, by codifying well-established common law land use principles. Among them are the requirements for exactions (nexus and proportionality), established in the *Dolan v. Tigard, OR* decision; the law of vested rights, established in the *Western Land Equities Case*, the "right to rebuild" principles for non-complying structures/non-conforming uses that were suggested in the *Rock Manor* case and the law limiting local discretion with respect to conditional use permits.

Against allegations of intentional process delays and a backdrop of pressure for legislation that would require that all land use applications be processed or approved within a fixed period of time (60-90 days), the LUDMA Task Force reached consensus to remove many of the time munching process constraints that were mandated by state law and granted local governments the flexibility to adapt their local land use codes to expedite "routine and uncontested" development review and approval.

In retrospect, the success of the 2005 legislation led to unrealistic expectations for immediate results. For example, consistent with the requirements of the former LUDMA, local land use codes required more notice and a more formal process than were required by the new law. While some local jurisdictions immediately revised their notice requirements and streamlined their processes to authorize staff approvals for a broad array of land use actions, by midsummer of 2005, most local jurisdictions had not.

The development community concluded that local jurisdictions needed additional legislative “incentives” to change. They formed a member-based organization, named the Property Rights Coalition (PRC) and inspired Senate President Mansell to sponsor SB170--a bill that purported to criminalize land use planning errors and penalize the public for community planning.

The severity of SB170 united public officials and galvanized their opposition to the bill and arguably to PRC members themselves. Ultimately, they abandoned SB170 in favor of two consensus-based bills: one which provided recourse for perceived process delays (SB267), and another, which provided a prompt, inexpensive and meaningful opportunity for third party review through an advisory opinion process supervised by the Office of the Property Rights Ombudsman (SB268).

Since its inception, the Land Use Task Force has met in each legislative interim to resolve disputes and to collaborate on over 40 bills affecting land use decisions throughout Utah.

2005 LUDMA Tasks Completed		Tasks Deferred
Non conforming use/ Non complying structures	Vesting—Western Land Equities/Pending Ordinance	Specially-Planned Areas
Court of Appeals v. Supreme Court	Planning Commission Alternates	Subdivision—recording, surveys, public interest in infrastructure
Special Exceptions-eliminated	Conditional Use/Master Planned Developments	Minimum Base Zoning
Hearing standards for general plan changes	Streamlined Review (Homeland Security routine and uncontested model)	
DEQ subdivision requirements	Exhaustion defined	
Standardized Minimum Notice	Exactions	
Timing of Appeals	Spot Zoning	
Board of Adjustment--Scope Narrowed	Development Agreements	
Hearings Examiner Authorized	Scope and timing of Appellate Review	
Ex Parte Contacts—No Change recommended	Three Hats—legislative, administrative, quasi-judicial	
Conflicts of Interest—No change recommended	PUDs—Allowed Use	