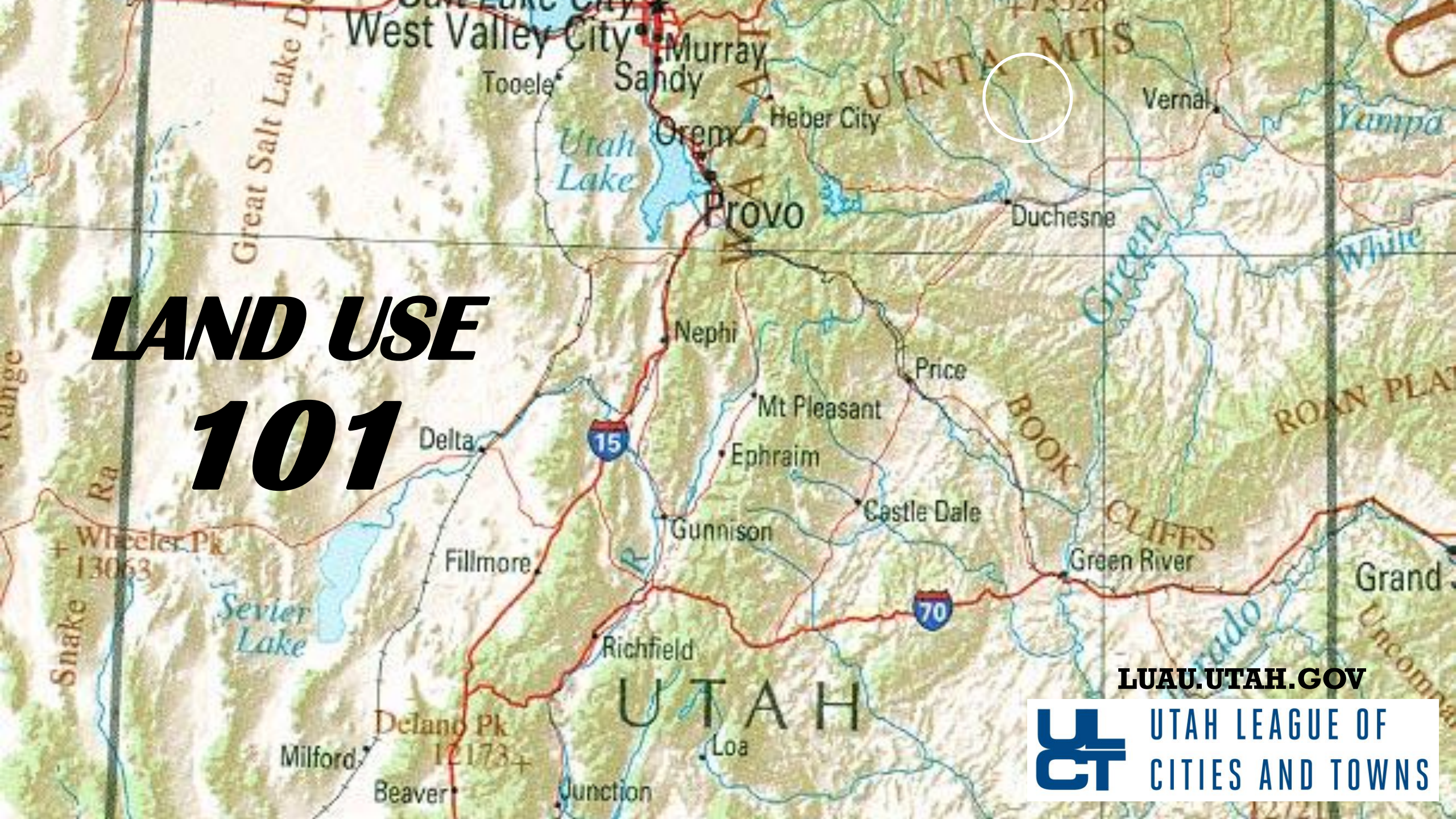


LAND USE 101



LUAU.UTAH.GOV



**UTAH LEAGUE OF
CITIES AND TOWNS**

LAND USE 101 AGENDA

BECAUSE EVERY EFFECTIVE MEETING HAS ONE

1. What is my Job? 9:00- 10:00 am
Meg: Review of statutory duties /Utah's LUDMA
2. What are the tools? 10:00-10:50 am
John: General Plan & Zoning Ordinances
3. In the clouds, On the ground, In court 10:50-11:00am
Brent Bateman Video
(Legislative, Administrative, Quasi Judicial)

BREAK 11 AM





**DID
YOU
HEAR
ME?**

**TODAY
IN THE NEXT
50 MINUTES..**

YOU WILL LEARN:

1. LOTS OF ACRONYMS
2. WHY YOU CARE ABOUT
LAND USE FOR YOUR
COMMUNITY
3. WHAT THE LAW SAYS
4. WHO DOES WHAT
5. WHAT TO DO/WHERE TO
GET HELP
6. LOTS OF ACRONYMS





PLANNING ACRONYMS HOW MANY DO YOU KNOW?

LUDMA
CLUDMA
OPMA
GRAMA
CUP
LUA
CC
PC
PU



LAND USEWHY SHOULD YOU CARE?



LAND USEWHY SHOULD YOU CARE?

The Utah State Legislature

Utah Municipalities are
created & authorized
by the State

Because the state mandates it

Because you care about where you live

Since 2005 there have been over 50 substantive changes to land use law in Utah.
These effect your community! You must comply to retain the right to plan your community



The State Rules...

The governing law for municipalities in **Land Use
Land Use Development and Management Act**

Municipalities: Title 10, Chapter 9a

Counties : Title 17, Chapter 27a

le.utah.gov

LUDMA



CLUDMA



LUDMA / CLUDMA.....WHAT DOES IT TELL YOU?

RESPECTS LOCAL CONTROL

1. Authorizes land use regulation to City Council

(Legislative body)

2. Mandates the creation of:

- **Planning Commission**
- **Land Use Authorities**
- **Appeal Authorities**
- **Land Use General Plan**

(Advisory body)

Cities Utah Code Title 10, 9a
County Utah Code Title 17, 27a



WE DO WE PLAN?

BECAUSE.....

WE LIVE IN AND RUN OUR COMMUNITIES...

We Shape destiny/identity through local planning laws

The Health of our residents

The Safety of our residents

A Balance of services

For Fiscal stability

A Balance of private property and community rights

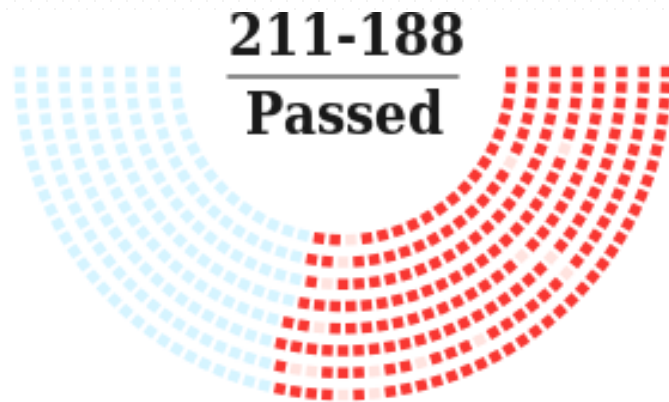
And because we have the requirements and authority to do so....

WHAT DOES IT TAKE?

Political Will

&

Priorities

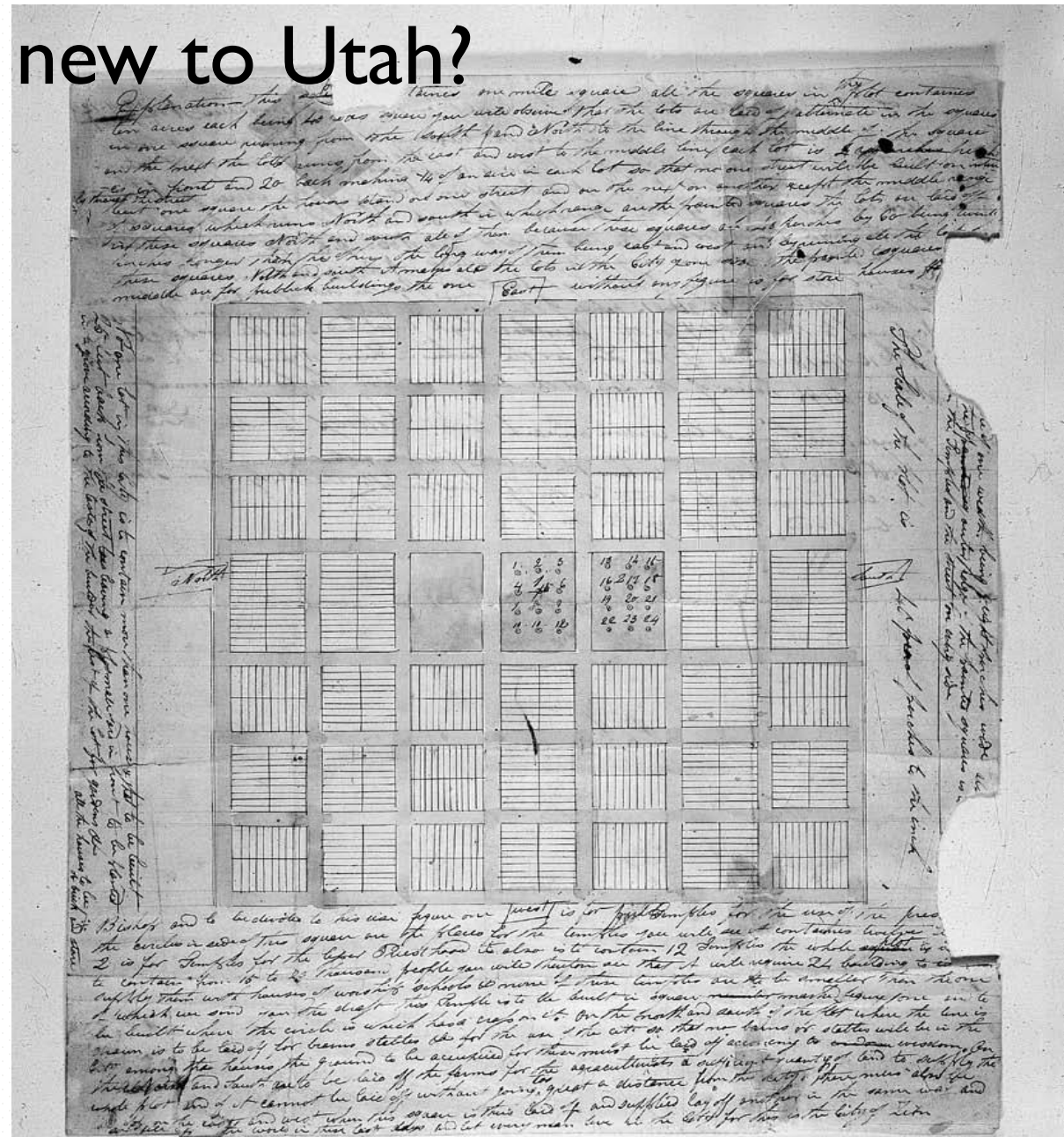


Is Planning new to Utah?

Features of the City of Zion plat

The size is limited to one square mile.

- Regular, uniform grid pattern is laid out in a north-south orientation, with straight streets crossing at right angles.
- All ten-acre blocks are square (as much of SLC), with unusually wide streets
- Blocks are divided into 20 half-acre lots.
- There is one house per lot, set back 25 feet from the street, and with houses located on alternate sides of the blocks
- Gardens are planted in the back, and shrubs and trees in the front. One fruit tree in each yard.
- All houses are constructed of brick or stone.
- All farms, barns, and livestock are located just outside the residential section.

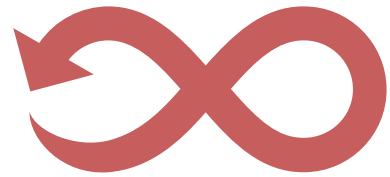


The City of Zion Plat, prepared by Joseph Smith in 1833

1. KNOW YOUR LIMITATIONS AND YOUR POSSIBILITIES WITHIN THE LAW

- What are you really allowed to do and not to do?

2. DON'T GET TO COMFORTABLE



Nothing is constant but change ..
adapt to it



Zoning is for the future ...
but it is not static

3.ENJOY IT /WORK TOGETHER

This is your
community



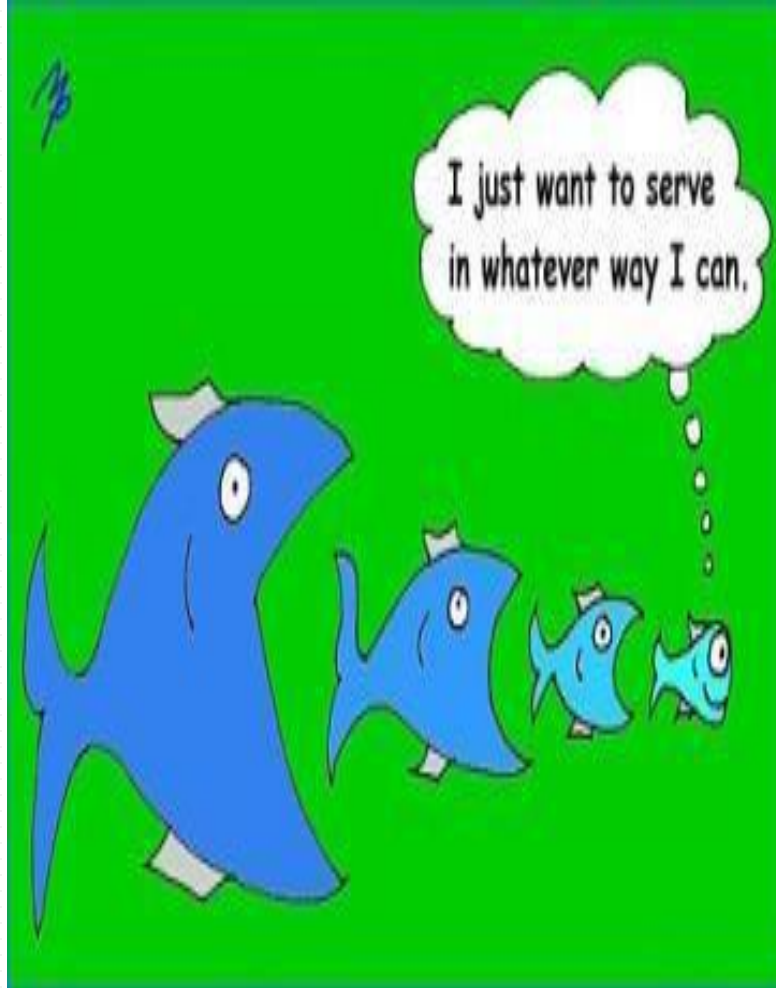
You are a
Collective
not
Individuals



Your strength
is working to
together for
collective
goals



The governmental food chain and your local zoning code



Federal Constitution
Federal Supreme and Appellate Court
Decisions

Federal Statutes

Federal Administrative Rules

State Constitution

State Supreme and Appellate Court Decisions State

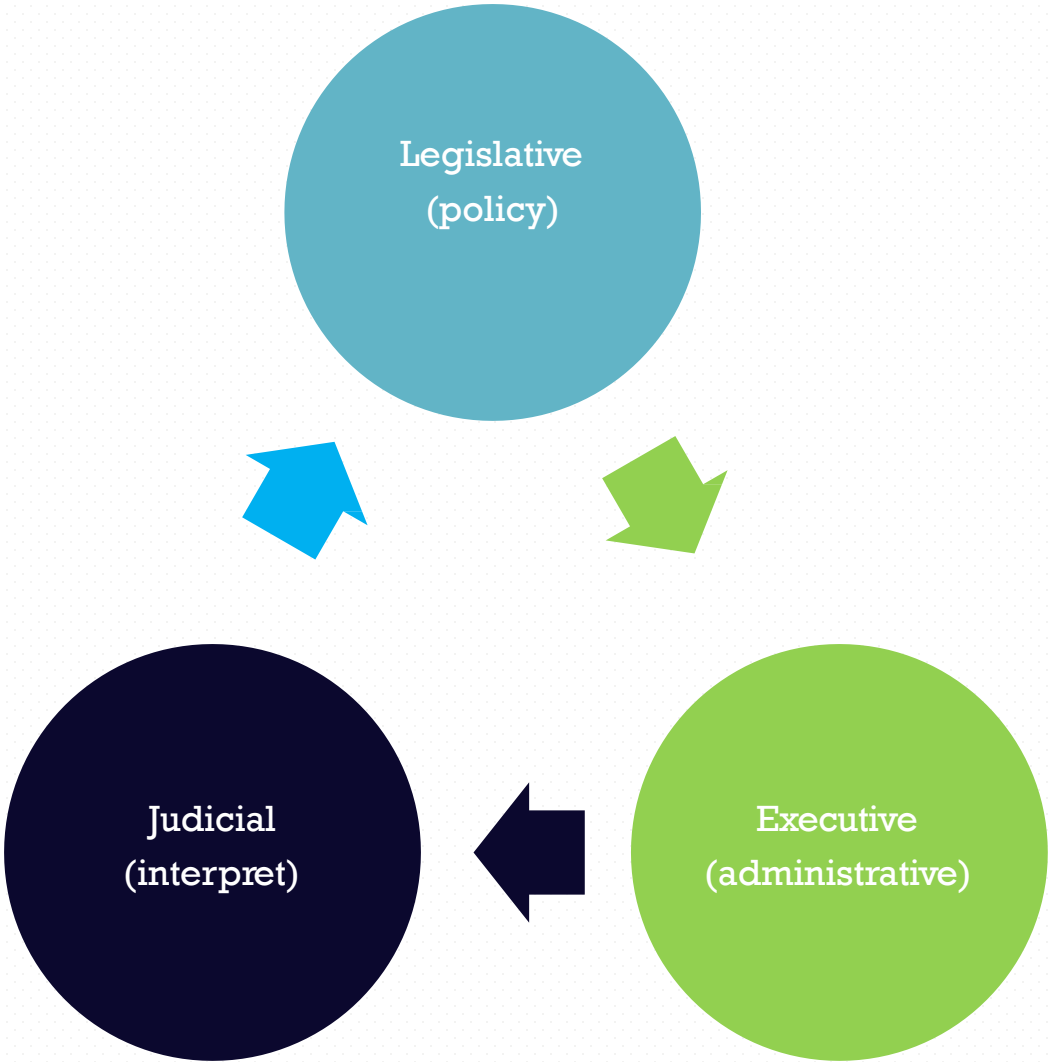
Statutes (LUDMA)

State Administrative Rules

Local Land Use Code



SEPARATION OF GOVERNMENTAL POWER



**Preserve
Fundamental Freedoms
Through:**
Checks and Balances
Offsetting Roles
Accountability



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

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

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

LUDMA / CLUDMA THEMES:

1

Private Property Rights: Individuals are free to use private property as they wish, unless valid, written land use laws conflict

2

Must clearly write it down: Community has broad discretion to regulate private property.

3

Must abide by it: Land use authority is bound by the terms and standards of applicable land use ordinances and shall comply with the provisions of those ordinances.

4

Unlimited Property Rights Can Be Restricted Only With Plain Regulations: Individuals are free to use private property as they wish, unless validly enacted land use laws **plainly restrict** their use.

5

Broad Discretion to Regulate: City Councils have broad discretion to regulate the use of private property in the Legislative Capacity.

6

Land Use Authorities Have Little Administrative Discretion: Land Use Authority is bound by the terms and standards of applicable land use ordinances and shall comply with the provisions of those ordinances. AND has to be designated!

7

Less Process for Administrative Decisions: Formality of noticing has been eliminated for applications that simply process permitted (and conditional uses too!) uses in your codes.

BASIC THEMES OF LUDMA

8

“Tie Goes to the Runner”:

“A land use authority shall apply the **plain language** of land use regulations.

If a land use regulation does not plainly restrict a land use application, the land use authority shall interpret and apply the land use regulation to favor the land use application.”



“Tie Goes to the Runner”



Plain language Rule



Strive for Objective... Not Subjective in your zoning language



“LAND USE AUTHORITY”

“A person, board, commission, agency, or other body **designated** by the local legislative body to **act** upon a land use application.”

Creation: 

Planning Commission recommends to Council

Council takes final action and appoints

Can be: 

Permit counter Employee

City Council Designated Staff

Planning Commission

“APPEAL AUTHORITY”

2 SPECIFIC TASKS UNDER THE LAW

Hears appeals of final
land use decisions
and variances from
your code

Can be just one
person or a Board
(no set number)

City process then
can go to Court



APPEALS &

MUNICIPALITY SETS
STANDARD OF REVIEW:
“DE NOVO” OR
“ON THE RECORD”

Applicant has the burden
of proving that the Land
Use Authority has erred

Impartial decision
makers

DUE PROCESS

No public hearing
required for either.



VARIANCES

State provides mechanism to vary
the rules of your land use
ordinances

The state sets the five
criteria. **10-9a-702**
All five must be met.

Very rare that all five
are met

After decision is rendered in both cases any further action is heard in Court



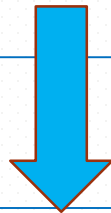
The land use tools

General Plan

(LEGISLATIVE)

**“A practical
vision for the
future”**

**Sets roots for the zoning
code**



Zoning - Land Use Code

(ADMINISTRATIVE)

**“Where the rubber meets
the road”**

Detailed specifics

Process




**1. Planning
Commission:
creates, holds a
public hearing and
recommends to
the Council**

**2. Council
approves,
modifies/denies**





DECISION MAKING IN A MEETING AND HOW THE LAW APPLIES

	<u>LEGISLATIVE</u>	<u>ADMINISTRATIVE</u>	<u>QUASI- JUDICIAL</u>
Characteristics	Very Broad Authority <u>Broad Public Input</u>	Much More Restrictive <u>Limited or no public input</u>	Very Restricted <u>Input restricted to parties in case</u>
	<ul style="list-style-type: none"> Creates new law Allows for citizen input as basis of decision Based on vision and goal setting Use of judgment 	<ul style="list-style-type: none"> Enforces the current law and makes reference to it in a decision Bound by the law rather than public opinion Does not create or “bend” the law <ul style="list-style-type: none"> The application of the law to a specific situation 	<ul style="list-style-type: none"> Based on established state law Looks for errors made in the process Not a judgmental decision Public input for information only
Responsible Body	<u>Land Use Authority (ies)</u> <ul style="list-style-type: none"> Planning Commission* City Council/Town Board <p>*Acts as an advisory board to the legislative body</p>	<u>Land Use Authority (ies)</u> <ul style="list-style-type: none"> Planning Commission City Council Staff Appeal Authority 	<u>Appeal Authorities/Courts</u>
Types Of Land Use Actions			

LEGISLATIVE AND ADMINISTRATIVE DECISIONS NEED TO BE CONSISTENTLY APPLIED IN YOUR ENTIRE ORDINANCE

State Law actually says that Administrative land use applications, “shall be approved”.

This means that conditional uses, site plans, and subdivision plats are not discretionary. You have to process them with what you have in your ordinances.

Vesting.....You get what you applied for.....

Title 10 Utah Municipal Code

Chapter 9a Municipal Land Use, Development, and Management Act

Part 5 Land Use Regulations

Section 509 Applicant's entitlement to land use application approval -- Municipality's requirements and limitations -- Vesting upon submission of development plan and schedule.

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

(i) An applicant who has filed a complete land use application, including the payment of all application fees, is **entitled to substantive** land use review of the land use application under the land use regulations in effect on the date that the application is **complete** and as further provided in this section.





EDUCATION A TWO WAY STREET

THINK IN MEETINGS ABOUT YOUR ROLE AND YOUR MESSAGE

PLANNING COMMISSION

1. What do we do? Listen, Gather & Recommend

What did the Council authorizes us to do? What's in my local ordinance?

Am I an appeal authority? If not who is? What is that again?

2. How do we act?

All PC's and CC's must have written rules of procedure adopted and posted/placed

- Open Meetings Act (OPMA)
- Government Record Management Act (GRAMA)
- Ethics Act

From the Utah State Statute:

1. *CREATION OF THE GENERAL PLAN (MANDATED)
2. LAND USE/TRANSPORTATION/ AND HOUSING (TOWNS EXEMPT)
3. *CREATION OF ZONING ORDINANCES (OPTIONAL)
4. ADVISE COUNCIL ON APPEALS AND PROCESS FOR ADMINISTERING THE ZONING CODE

*Public Hearing





And now for something completely different

What is my role in Land Use?

1. Give your Planning commissioner clear direction on their job and their duties

(talk to them)

2. Know if you act as a Land Use Authority and if not who you appointed.....

3. Know if you act as an Appeal Authority

4. Delegate if reasonable
(trust your Planning Commission and Staff)

4

CITY COUNCIL



KNOW THE LAW – MAKE SURE YOUR CODE COMPLIES

Asking "Why" Leads to a Simpler, Better Zoning Code

- Understand the difference between an administrative decision and a legislative one
- Conduct a Word search throughout your code for key words, such as:
 - DENY !**
 - “approve, deny or approve with conditions”**
 - “in its sole discretion” “compatibility with the neighborhood”**
- Update your notice provisions – mailers, property signs, State web site, agendas. Update your PC introductory recitals.....What sort of input are you seeking?



YOUR TRAINING RESOURCES

ULCT

LAND USE 101'S
2 CONFERENCES
April & September
REGIONAL
TRAINING
LUAU.UTAH.GOV

UAC

2 CONFERENCES
Spring and Fall
ATTORNEY
RESOURCES

OPR

TRAININGS
&
WEB SITE

[propertyrights.
utah.gov](http://propertyrights.utah.gov)

Utah

APA

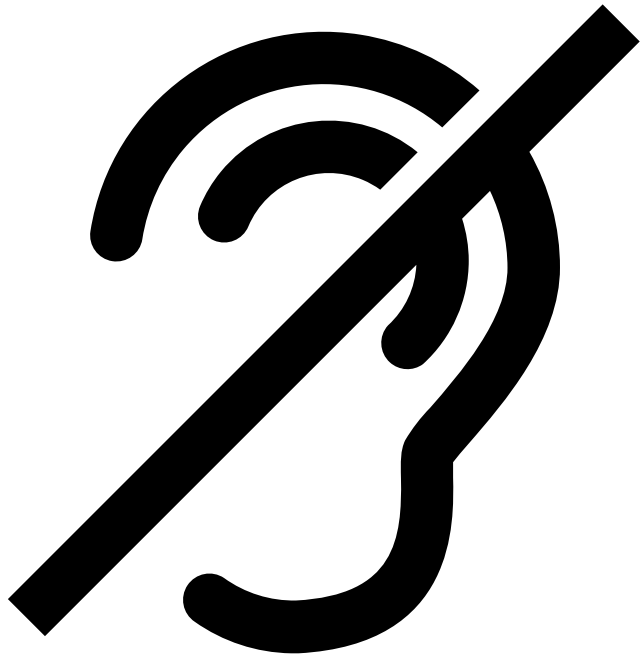
2 ANNUAL
CONFERENCES
May and October

APA LIST SERVE
www.apautah.org

ULUI

FALL
CONFERENCE
October

utahlanduse.org



**WHAT ARE LEGISLATIVE &
ADMINISTRATIVE ITEMS?
WHY DO I CARE?**

TODAY

YOU LEARNED:

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