

A Collection of Terms

Commonly heard in Local Government And in Land Use Planning

*The reader is cautioned to seek legal counsel for definitive answers.
Because this collection was put together for use by public officials in Utah, there are occasional
references to Utah law. Generally the terms are fairly generic. Recommendations of terms to be
included and any corrections are welcomed.*

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Acting Without Authority (Ultra Vires). If a local government regulates the use of land in a manner that has not been authorized by the state, it is invalid and can have no force or effect. Illegal means the decision is outside the authority of the board making the decision or is contrary to some required procedure. *Failure to strictly follow the statutory requirements in enacting the ordinance renders it invalid.* Call v. City of West Jordan, 727 P.2d, 183 (Utah 1986). *If local government does not adopt zoning laws in specific conformance with state enabling statutes, the zoning laws will be struck down.* Hatch v. Boulder Town, 2001 UT App 55. *Municipal zoning authorities are bound by the terms and standards of applicable zoning ordinances and are not at liberty to make land use decisions in derogation thereof.* Thurston v. Cache County, 626 P.2d 440-45

Actions and Powers

Actions by local government officials have different levels of discretion.

Legislative acts are decisions made by a public vote of the city council or county commission/council that results in an ordinance, amendment to an ordinance, adoption of or amendment to the General Plan, or creation of an official policy. These actions by the elected officials are afforded greater deference by the courts. A legislative action is not arbitrary or capricious so long as the grounds for the decision are reasonably debatable. *■ If an ordinance could promote the general welfare; or even if it is reasonable debatable that it is in the interest of the general welfare, we will uphold it.* • Utah Supreme Court. Examples of legislative actions include: adopting or amending the General Plan or zoning ordinances.

Administrative actions are applying existing law to a particular application. Subdivision, site plan approvals, and consideration of conditional uses are typical administrative actions. Administrative actions require findings of fact and there should be substantial evidence on the record that justifies the action. The courts will only uphold administrative acts if they are based on substantial evidence on the record that justifies the action. *■.. When a land use decision is made as an exercise of administrative or quasi-judicial powers, we have held that such decisions are not arbitrary and capricious if they are supported by ■substantial evidence.* • Xantos v. Bd. Of Adjustment of Salt Lake City, 685 P.2d 1032, 1034-35

Quasi-judicial is a term applied to actions of a body requiring it to investigate facts, or ascertain the existence of facts, hold hearing, and draw conclusions from them as a basis for official actions and to exercise discretion of a judicial nature. These actions include variances and appeals. The substantial evidence standard is applied. The Board of Adjustment and or the Appeal Authority acts in a quasi-judicial manner in their hearings.

Adult Use. An adult use is a business that provides sexual entertainment or services to customers. Adult uses include: X-rated video shops and bookstores, live or video peep shows, topless or fully nude dancing establishments, combination book/video and "marital aid" stores, non-medical massage parlors, hot oil salons, nude modeling studios, hourly motels, body painting studios, swingers clubs, X-rated movie theaters, escort service clubs, and combinations thereof. Also referred to as sexually oriented businesses (S.O.B.)

Annex: to absorb by legal incorporation; to bring previously unincorporated land into municipal incorporation

Approve: to ratify, confirm, or sanction. To approve in planning can mean either to make formal recommendation to the legislative body of local government or to make specific determination of an application. Where the approval is a recommendation, the legislative body can accept, reject or modify the request. Where the approval is a determination, it is final (subject to judicial review).

Arbitrary and Capricious: Arbitrary is an action not supported by fair or substantial evidence or reason. Capricious: unpredictable and subject to whim.

Board: a committee of persons legally organized to exercise responsibilities of management, direction, or superintendence or to control specified matters, or to discharge certain functions that constitute a public office. A board of adjustment is a quasi-judicial board that can grant a specific parcel of real property relief from the strict application of the zoning ordinance. A board of county commissioners is the legislative-administrative unit for unincorporated county government.

Capital Facilities Program (Capital Improvements Program). An element of the General Plan. A combination of text, maps and tables that show what capital improvements will be built, when, and how much each will cost. The CFP/CIP sets forth the essential facilities and services necessary to support future growth and development as well as to serve the existing population. Included are planning for future streets, water and sewer facilities, parks, libraries, police headquarters, jails, city buildings and all other capital expenditures to be funded from public tax support or dedicated revenue bonds.

Citizen Actions. Initiative is the power of the people to propose legislation, and to enact or reject them at the polls, independent of legislative assembly. A right reserved to the people themselves to propose laws to be enacted by the legislature. Different from a “referendum” which is a right of the people to have legislative acts referred to the voters for final approval or rejection.. (Utah Code – Title 20A – Chapter 7)

Cluster Development. A design technique permitted by some zoning ordinances allowing the clustering of residential units on a smaller lot per unit than would normally be allowed.. The controlling factor is that the normal average density for the zone must be maintained. If the zoning regulations permits three units to an acre, a developer’s plan could be approved in which the units are clustered on individual parcels provided the density of three units per acre is maintained. The remaining land is typically utilized for common open space or public use.

Concurrency. A timed growth element in growth management plans, which requires that those public facilities and services necessary to support new development are adequate and available at the time development, occurs. Intended to insure that adequate public facilities are in place, planned, or provided for as demands for service occur from new development. Concurrency prevents a decline in service as development proceeds. Does not insist that developers pay for public improvements, only that such developments be made when development occurs

10-9a-507. Conditional uses.

(1) A land use ordinance may include conditional uses and provisions for conditional uses that require compliance with standards set forth in an applicable ordinance.

(2) (a) A conditional use shall be approved if reasonable conditions are proposed, or can be

imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards.

(b) If the reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards, the conditional use may be denied.

Amended by Chapter 245, 2005 General Session

(10-9a-507/ 17-27a-506 Land Use Development and Management Amendments - LUDMA)

Conflict of Interest. To allow due process, members of planning commissions, councils, county commission and appeal boards, who have an interest in a project should not take part in the discussion nor vote.

Consistency with General Plan. Many states require by statute that zoning ordinances conform to a general plan or comprehensive, master plan. The general plan provides the best reference source for explaining why and how zoning ordinances and other regulations were adopted.

Covenants, conditions and restrictions: commonly called ■CC&R.s.● Written rules, limitations and restrictions on use, mutually agreed to by all owners of homes in a subdivision or condominium complex. CC&Rs may limit the size of homes, exterior colors, pets, ages of residents etc. They are a private legal restriction on the use of land, contained in the deed to the property or otherwise formally recorded. Generally, covenant restrictions are enforced by home owner associations and not local governments.

Dedication. The giving of land by a private person or entity to the government, typically for a street, park or school site, as part of and a condition of a real estate development. The local town, city or town must accept the dedication before it is complete. (It is not unusual to see ■dedicated● areas on subdivision maps which were never officially accepted and in effect belong to no one.).

Delegation of Power. Only the elected legislative bodies have legislative ability and they may not delegate their legislative or policy making power to administrative agencies. However, legislators may delegate substantial discretion to such agencies, so long as this delegation is accompanied by a clear-cut policy guideline to control the exercise of the delegated authority.

Due process. Probably the most important constitutional protection for land owners comes from the 5th and 14th amendment to the U.S. Constitution. The Fifth Amendment states: *No person shall be deprived of life, liberty or property, without due process of law . . .* Due process of law is also an important constitutional principle that those involved in planning must understand. Due process prescribes the limits of the ability of the government to regulate for the health, safety and the general welfare of the public. The term refers to the constitutional protection provided to ensure that laws are reasonable and not arbitrary or capricious. In a word, due process means fairness.

Procedural Due Process: Rights to have certain rules followed before significant changes occur to one's rights, responsibilities, or property. Procedural due process applies when a governmental body applies an established land use policy that is applicable to a specific parcel of property. It is important to understand the difference in administrative or quasi-judicial decisions, and legislative actions. This distinction is important because certain procedural requirements do not apply to legislative decision-making but are required in quasi-judicial and administrative decisions. The

courts have held that a legislative decision is valid if “reasonably debatable” and not “illegal” while an “Administrative or quasi-judicial” decision is valid if supported by “substantial evidence” and not “illegal.”

Procedural due process includes: adequate and effective notice of hearing; an opportunity to participate and be heard; full disclosure – all parties have full access to information, statements and evidence relied upon to make decisions; an unbiased decision based on the record supported by reasons and findings of fact: avoidance of conflicts of interest and ex parte communications: and prompt decision making.

52-4-102. Declaration of public policy.

In enacting this chapter, the Legislature finds and declares that the state, its agencies and political subdivisions, exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

(See footnotes for more state law on Public Meeting)

Substantive Due Process: The right to have rules adopted which are reasonable in aim and scope, and which are designed to accomplish a valid public purpose.. Rules should be related to health, safety and welfare issues.

The land use regulation must not only advance a legitimate public interest but also be a reasonable way to further legitimate governmental purposes. This relationship between the regulation and public interest should be documented. *A municipality's land use restriction does not violate the substantive component of the due process clause unless it lacks a reasonable relation to public health, safety, or general welfare.* UT Ct. App. 1998

The due process clause of the Fourteenth Amendment prohibits any state from depriving "*any person of life, liberty or property, without due process of law.*" This clause imposes both substantive and procedural due process requirements.

Down zoning. Down zoning occurs when a land use classification is changed from a more intensive to a less intensive use, which increases the restriction on the development of the property. It is an exercise of the government's police power, but it must not transgress the constitutional rights of property owners. Down zoning affects large areas of land in diverse ownership. It is implemented only after following authorized and proper procedures.(See Smith Investment Company v. Sandy City, 958 P.2d 245, 342 Utah Adv. Rep 10, 1998 Utah App. LEXIS 30 (1998) for an excellent overview of due process and takings law in Utah.)

Eminent Domain. The right of the state to take private property for public use. The Fifth Amendment to the United States Constitution requires that just compensation be made whenever private property is taken for public use.

Equal Protection. The Fourteenth Amendment to the U.S. Constitution provides that no state or any of their local governments "*shall deny to any person within its jurisdiction the equal protection of its laws.*" Equal protection assures that all citizens will be treated alike unless a legitimate reason exists for treating them differently.

Equitable Estoppel. Based on the concept of fairness. For example, if a builder justifiably depends on a government action, such as the issuance of a building permit, and the reliance is made to the builders detriment, the government is "estopped" from denying or revoking that permit. In order to claim estoppel, the property owner must show that the local government committed an act or omission upon

which he relied in good faith by making substantial changes in position or in incurring extensive expenses. Unauthorized statements or promises from city officials are usually insufficient to invoke equitable estoppel.

Exaction. In Utah, a municipality may impose an exaction or exactions on development proposed in a land use application if an essential link exists between a legitimate governmental interest and each exaction is roughly proportionate, both in nature and extent, to the impact of the proposed development. (10-9a-508 LUDMA.)

Findings of Fact. A Finding of Fact is a complete record of determination that statutory ordinance requirement has been satisfied. Adequate findings identify the pertinent standards or criteria in the ordinance and identify facts relied on to make the decision. Findings provide a record that the action taken was based on substantial evidence received in hearings.

The connection between the facts and decision should be made clear. Putting reasons for action on the record allows the court to understand why the decision was made. Findings apply to administrative/ quasi-judicial actions such as Board of Adjustment actions, Conditional use permits, Special exceptions etc.

Freedom of Speech and Religion. *Congress shall make no law . . . abridging the freedom of speech, or of the press . . .* Local governments commonly run into constitutional issues when dealing with sign regulations and sexually oriented businesses (S.O.B.) As with other land use issues, when there is any question about proper handling, it is best to seek expert legal advice.

General Plan. The General Plan is a document that a municipality adopts that sets forth general guidelines for proposed future development of the land within the municipality. The Planning Commission shall make and recommend a General Plan to the legislative body who makes the approval. The General Plan serves as a basic guide to the structuring of zoning and subdivision controls, urban renewal, and capital improvement programs. A basic element of a general plan designates the future use or reuse of the land within a jurisdiction's planning area. The plan includes policies and the reasoning used in arriving at the decisions in the plan.

As a policy document, the General Plan provides the legal basis for all subdivision, zoning and related ordinances. . . .”*the trial court also correctly determined that the city’s denial of the rezoning decision did not result in arbitrary and capricious “reverse spot zoning” or a violation of their substantive due process rights because the denial was based on the requirements contained in the city’s general plan.* 2007 UT APP 260

All jurisdictions in Utah “shall” adopt a General Plan that includes the following elements: Land Use; Transportation & traffic circulation; Moderate Income Housing. (General Plan is a term used in Utah statutes; commonly called Comprehensive or Master Plan in other states.)

Impact Fees. An impact fee is a charge levied against new development in order to generate revenue for funding capital improvements made necessary by that development.. Impact fees are generally levied at the time a building permit is issued. Since the purpose of a impact fee is to finance a specific expenditure, the fee amount must be reasonably equivalent to the cost of the activity regulated. U.C.A. 11-36-101 *et seq.*

In Utah, Banberry Development Corp. v South Jordan City, 631 P.2d 899 (Utah 1981), established guidelines to be followed, which include: a written analysis of each impact fee that identifies the

impact on system requirements generated by new development, system requirements and existing, as well as future public improvements providing service to the community. The analysis identifies how the new demand is reasonably related to new development, and estimates the proportionate cost of meeting the increased demand attributable to the new development. It also identifies how the impact fee is calculated. In calculating the fee the analysis may include: the cost of land, improvements, materials and fixtures, cost of planning, surveying and engineering fees and debt service charges. The Utah Code should be carefully studied before adopting impact fee regulation. It is well to seek professional help.

Laches. The property owner cannot wait to challenge an action by a municipality until it is too late for the municipality to avoid onerous losses. A citizen cannot plat coy while a municipality digs a deep pit of liability and then come forth with a lawsuit after it is too late for the government to mitigate the injury its actions may have caused.

Land Use Ordinances and Zoning. A police-power measure, enacted primarily by local governments, in which the community is divided into districts or zones within which permitted and special uses are established, as are regulations governing lot size, building bulk, placement, and other development standards. The planning commission shall prepare and recommend a proposed zoning ordinance, including both a map and the full text of the zoning ordinances that represents the commission's recommendations for zoning all or any part of the area within the municipality. The legislative body then holds a properly noticed public hearing and then may: adopt the zoning ordinance and map as proposed; amend the zoning ordinance and map; or reject the ordinance and map. Amendments and rezoning are handled with the same procedures. The legislative body may not make any amendments unless the amendment was proposed by the planning commission or is first submitted to the planning commission for its approval, disapproval, or recommendation. **Land-use ordinance** means a planning, zoning, development, or subdivision ordinance of the municipality but does not include the General Plan. (10-9a-502 / 17-27a-501 LUDMA.)

Levels of Service: a measure of the desired level of public facilities provided by the community. Examples: 5 acres of park per 1,000 residents; ■C• levels of service on arterial roads; 2,000 gals. minute fire flow; maximum of 30 students for each teacher in each classroom.

Metes and Bounds. A method of describing the territorial limits of property by means of measuring distances and angles from designated landmarks, and in relation to adjoining properties, which results in a legal description.

Mitigation. Theoretic offsets to the impacts of a project required of a developer bt government.

Moderate income housing plan. ■Moderate income housing• means housing occupied or reserved for occupancy by households with a gross household income equal to or less than 80% of the median gross for households of the same size of the same size in the county in which the city is located. In counties "... 80% of the median gross income of the county statistical county for households of the same size.". All cities and counties shall, as part of its General Plan, adopt a plan for moderate income housing within that city or county.

Moratoria / Temporary zoning regulations. The purpose of moratoria is to provide time to adopt a plan to remedy the problem or problems that existed prior to adoption of a temporary freeze on development. The moratorium is temporary while the community in good faith studies ways of alleviating the problem. In Utah, the enabling legislation provides for **Temporary regulations** 10-9a-503 /17-27a-503 LUDMA) which states that the jurisdiction may adopt a temporary zoning regulation ordinance (TZRO) if the jurisdiction makes a finding of compelling, countervailing public interest, or the area is unregulated. The T.Z.R.O. may prohibit or regulate the erection, construction, reconstruction, or alteration of any building or structure or subdivision approval. The T.Z.R.O shall not exceed six months. `

Nonconforming uses and structures: means a structure or use that legally existed before its current zoning designation. Because of subsequent zoning changes, the structure or use does not conform to the zoning regulation setback, height restrictions, or other regulations that now govern the structure. 10-9a-511/ 17-27a-510 of Land Use Development and Management Amendments states in *Except as provided in this section, a nonconforming use or noncomplying structure may be continued by the present or a future property owner.*The term “Grandfathering is sometimes used when referring to the non-conforming uses.

Nuisance. A public nuisance is any unreasonable interference with some right that is common to the general public. Generally, a nuisance is any use, or condition of land, or any structure thereon, which endangers the public safety, health, or welfare, or creates damage to others. Generally a nuisance is shown to be an ongoing rather than an isolated instance.

Overlay Zones. A set of zoning requirements that are in addition to those of the underlying district. Developments within the overlay zone must conform to the requirements of both zones, or the more restrictive of the two. It usually is employed to deal with special physical characteristics such as flood plains, historical areas, soils, or hillsides.

Permitted Uses. A “use by right” specifically authorized in a particular zoning district.

Planned Unit Development (PUD). A self-contained development, often with a mixture of housing types and densities, in which subdivision and zoning control is applied to the project as a whole rather than to individual lots, as in most subdivisions. Densities are calculated for the entire development and often permit clustering of houses to encourage provision of common open space.

Police power. A term used to describe the legislative or policymaking power in each state to establish laws and ordinances to preserve public order and tranquility and to promote the public health, safety, and morals, and general welfare of the public. The zoning of property derives from the states police power. The states delegate the power to zone and exercise other land use controls through enabling legislation to cities, towns and counties. Jurisdictions must strictly comply with the statute delegating them the action to act, failure to strictly follow the statutory requirements in enacting the ordinance renders it invalid. The 10th Amendment guarantees the States possess the police power to regulate for the public benefit of health, safety, and welfare. In *Berman v. Parker* (1954), the United States Supreme Court stated that the police power, on which local land use regulation rests, is for the protection of the public welfare, which is broad and inclusive. "The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine

that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled

Policy: an imperative or prescriptive principle that directs future action. A policy usually has three components: a specific definition of the action to be performed, a statement of the conditions under which it is to be performed, and identification of the individuals or officers responsible for performing it. Policies may be positive (prescriptive) or negative (proscriptive); they may be strict commands (employing such verbs as shall or must) or discretionary (employing such verbs as will or may)

Presumption of Constitutionality. When a land use regulation is challenged in the as not furthering a legitimate government purpose, the court will begin its review and analysis with a legal presumption that the regulation is constitutional. The person challenging the regulation has the burden of presenting evidence sufficient to overcome this presumption of constitutionality. *"If an ordinance could promote the general welfare; or even if it is reasonably debatable that it is in the interest of the general welfare, we will uphold it."* • Utah Supreme Court.

Proportionality. "We think a term such as 'rough proportionality' best encapsulates what we hold to be the requirement of the Fifth Amendment. No precise mathematical calculation is required, but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development." U.S. Supreme Court 1994, Chief Justice Rehnquist.)

Public Hearing: a formally announced meeting of a public body, the express purpose of which is to receive written and oral testimony on specific matters. It is open to the public both for attendance and for testimony. Commission members may ask questions, but no deliberation should take place during the hearing. The full record of information should be reviewed by the staff and incorporated into its report for subsequent commission deliberation.

Remand. It is not uncommon that in hearing a case, the court will rule that the procedure or formalities were flawed and send the case back to the body from which the matter was appealed for further deliberation.

Ripeness, Exhaustion of Administrative Remedies. Generally speaking, a person cannot appeal a zoning decision to the court until the application has been denied and the applicant has exhausted the normal appeal procedure.

Spot Zoning: *Spot zoning* is the unjustifiable singling out of a piece of property for preferential treatment. It is not a statutory term: it is a judicial epithet signifying legal invalidity. It is zoning a relatively small area differently from the surrounding area, usually for an incompatible use and often to favor the owner of a particular piece or pieces of property. Spot zoning is not favored, since it smacks of favoritism and usually annoys neighbors.

Street System. The classification of streets and highways by their diverse functions and design.

Collector street: A street, which collects traffic from local streets and connects with minor and major arterials.

Expressway: A divided multi-lane major arterial street for through traffic with partial control of access and with grade separations at major intersections.

Local street: A street designed to provide vehicular access to abutting property and to discourage through traffic.

Minor Arterial: A street with signals at important intersections and stop signs on the side street, and which collects and distributes traffic to and from collector streets.

Subdivision. The process and the result of dividing a parcel of raw land into smaller build able sites. Complete plans for a subdivision should include streets, blocks, open space, public areas, and other improvements. *■Subdivision•means any land that is divided, resubdivided or proposed to be divided into two or more lots, parcels, sites, units, plots, or other division of land for the purpose, whether immediate or future, for offer, sale, lease or development.... (10-9a-601 / 17-27a-601 LUDMA)*

Taking without just compensation. From the Fifth Amendment to the United States Constitution: *"nor shall private property be taken for public use without just compensation."* Before a taking claim is made, the property owner must first exhaust administrative remedies, absent futility, and obtains a final administrative decision before making a taking claim. This is commonly called the "exhaustion of remedies" and "ripeness." There is no set precise formula for determining a taking, questions asked by the court in determining a taking may include:

- A. Does the regulation relate to, and substantially advance, a legitimate state interest?
- B. Does regulation permit or require a physical invasion of the property?
- C. Does regulation deny the property owner of "all economically beneficial use " of the property?
- D. Does the regulation impose a burden or cost on the landowner that does not bear a *■reasonable relationship•* to the impacts of the project on the community?

The term *Inverse condemnation* is also sometimes used in discussion of regulatory taking.

Transfer of Development Rights (TDR). The removal of the right to develop or build, expressed in dwelling units per acre, from land in one zoning district to land in another district where greater density is preferred. TDR is often used as a tool for the preservation of agriculture land, open space or historical preservation.

Variance. A device which grants a property owner relief from certain provisions of a zoning ordinance, because of particular physical surroundings, shape or topographical conditions of the property and special circumstances attached to the property that do not generally apply to other properties in the same district. A variance can be granted when compliance would result in a particular hardship upon the owner, as distinguished from a mere inconvenience or a desire to make more money. The petitioner must prove that a physical hardship exists, and that the request would not be alien to the design or intent of the area. Only the Board of Adjustment is vested with the authority to grant variances. Any appeal of the board decision must be made to the district courts.

Vested Rights. (Sometimes referred to as "grand fathered".) The concept is that after a certain point in the approval process the landowner acquires a property interest in the property that should be protected. A determination that a property owner has *■vested rights•* is a determination that the government is precluded from applying newly-adopted land use regulations (without compensation) to

the property owner. Criteria for ascertaining the applicability of vested rights, the scope of vested rights, and issues pertaining to the divestment of vested rights are complicated.

In Utah the code states:

10-9a-509. When a land use applicant is entitled to approval -- Exception -- Municipality required to comply with land use ordinances.

(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 all fees have been paid, unless:

(i) the land use authority, 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.

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

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

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

(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.

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

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

Many states require a building permit be issued before development rights can vest however vesting determinations vary from state to state. Boards and commissions should seek legal advice when considering vesting issues. (See 10-9A-509 and 17-27a-508 (County) Land Use Approval Standards and Vested Rights and Western Lands Equities v. City of Logan, 617 P.2d 388 (1980))

Void for Vagueness. Courts will invalidate a regulation that is so unclear or ambiguous that a person of normal intelligence will not be able to comprehend what the regulation forbids or permits. *Standards must be written with sufficient precision to give fair warning as to what the commission will consider in making its decision.* Vagueness can also be applied if the regulation lacks sufficiently explicit standards for its application by an administrative body and thereby impermissibly delegates to that body the freedom to decide basic policy matters on an *ad hoc* and subjective basis. *because zoning ordinances are in derogation of a property owner's common-law right to unrestricted use of his or her property, provisions therein restricting property uses should be strictly construed, and provisions permitting property use should be liberally construed in favor of the property owner.* • Patterson v. Utah County Bd. Of Adjustment, 893 P.2d 602, 606 (Utah Ct. App.1 995).

Ambiguity- "Any ambiguity in the language must be resolved in favor of the property owner." Allen v. Adami, 39 NY 2d 275, New York Court of Appeals

Welfare: the state of being or doing well; condition of health, happiness, and comfort; well-being; prosperity.

The concept of the public welfare is broad and inclusive. The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well balanced as well as carefully patrolled.

Justice William O. Douglas

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