

Will a Local Land Use Decision be Overturned?

Checklist:

YES NO

- _____ - - - - - 1. **Legal Ordinance.** Was the decision supported by an ordinance that was legally adopted and complied with in every respect according to the mandates of the state enabling statutes?
- _____ _____ 2. **Public Meeting.** Was the decision made in a meeting by a public body? If no, skip to question 6.
- _____ - - - - - 3. **Due Process.** If the answer to 2 is yes, was notice of the meeting where the decision was made provided as required by law? If a hearing was required, were the parties and public given the right to present relevant evidence?
- _____ - - - - - 4. **Procedure in Compliance.** If the answer to 2 is yes, was the meeting conducted in complete compliance with all mandatory provisions of local and state law?

YES NO

_____ - - - - 5. **Open and Public Meeting.** If the answer to 2 is yes, was the meeting duly noticed with an agenda published twenty-four hours beforehand and posted as required by state statute? Was the decision made in public if quasi-judicial deliberations were conducted in private?

_____ - - - - 6. **Application in Compliance.** If no dashed line is checked above, was the application for the land use approval completed as required?

_____ - - - - 7a. **Sufficient Evidence—Administrative Actions.** If the decision is one administering local land use laws, do the minutes of the meeting or other record show that the person or entity making the decision provided substantial evidence to support the decision?

OR

_____ - - - - 7b. **Public Good—Legislative Actions.** If the decision was made by an elected body in its legislative capacity, is it reasonably debatable that the decision advances the general welfare?

_____ - - - - 8a. **Interpretation of Ordinance.** Is the decision in harmony with the clear provisions of applicable ordinances and regulations? Were any ambiguities limiting the

YES NO

uses of property construed strictly and those permitting property uses construed liberally in favor of the property owner? If yes, skip to 9.

_____ _____ 8b. **Local Appeal.** If the answer to 8a is no, are the provisions in question part of the land use ordinances?

_____ - - - - 8c. **Land Use Appeal Authority.** If the answer to 8b is yes, did a local land use appeal authority hear the issue and uphold the meaning of the ordinance, interpreting it as described in 8a?

- - - - _____ 9. **Fundamental Property Right.** Does the decision illegally interfere with some other fundamental property right (such as reasonable access; air, light, and view; right to freely sell property; right to exclude others; etc.)?

- - - - _____ 10. **Vested Rights.** Does the decision interfere with a vested property right as identified and protected by state law (such as a legally vested building permit, preliminary site plan or subdivision approval, nonconforming use, right to be considered under rules in place when a complete application was submitted, business license, etc.)?

_____ - - - - 11. **Denial of All Use.** Does the decision leave some economic value in the property?

- | YES | NO | |
|-----------|-------|---|
| - - - - - | _____ | 12. Undue Burdens. When balancing the nature of the public interest, the property owner's reasonable investment-backed expectations, and the burdens on the property owner, is the effect of the ordinance grossly unfair? |
| - - - - - | _____ | 13. Illegal Exactions. Does the decision impose an illegal condition or exaction on development or permitting? (See separate exactions checklist.) |
| - - - - - | _____ | 14. Other Constitutional Rights. Does the decision illegally interfere with some other Constitutional right (such as freedom of speech [sexually-oriented businesses or some signs], freedom of religion, freedom of assembly, etc.)? |
| - - - - - | _____ | 15. Equal Protection. Does the decision treat one property owner differently from other property owners that are similarly situated without any debatable justification for treating them differently and for a reason that is obviously discriminatory such as racial animus? |

If no dashed line is checked above, the land use decision is probably legal. If a dashed line is checked above, proceed with the rest of this checklist.

YES NO

- - - - _____ 16. **Variance and Local Appeals.** Have the locally defined variance and appeals procedures been pursued and denied? (Property owner is not required to apply for an appeal under any "takings appeals" procedure, but must appeal to a local land use appeal authority if an appeals procedure is defined in local ordinance.)

- - - - _____ 17. **Standing.** Has the action taken prejudiced the legal position of the person challenging the decision or otherwise harmed the complaining party in some manner where they have standing to bring an action?

- - - - _____ 18a. **Arbitration.** If any dashed line between 9 and 14 is checked, did the property owner file a request for arbitration with the property rights ombudsman within thirty days of the decision?

OR

- - - - _____ 18b. **Legal Action.** If any dashed line between 1 and 16 is checked, was a complaint or petition for review filed in the local court within thirty days of the decision?

If ALL of the dashed lines on questions 16 through 18 have been checked, a viable issue of legality may exist and has probably been preserved for review. Legal action or arbitration may result in the overturning of the land use issue.

CHECKLIST: CONDITIONS AND EXACTIONS IMPOSED ON DEVELOPMENT

YES NO

- | | | |
|-------|---------|---|
| _____ | _____ | 1. Requirement. Is the property owner being required to dedicate property or provide public improvements in order to get an approval or permit to use or develop property? |
| _____ | - - - - | 2. Legitimate State Interest. If the answer to 1 is yes, has the agency shown by substantial evidence that the exaction or improvement is reasonably related to and substantially advances a legitimate public interest that is within the mission of that agency to regulate or advance? |
| _____ | - - - - | 3. Essential Connection. If the answer to 2 is yes, has the agency shown by substantial evidence that the exaction will offset an adverse impact on an identified public interest and thus further the goal of the agency to protect that public interest? |
| _____ | - - - - | 4. Proportionate Burden. If the answer to 3 is yes, has the agency shown by substantial evidence and an individualized determination that the proposed requirement places a burden on the property owner that is roughly proportionate to the burden his-proposed use or development places on that public interest after accounting for any impact fees paid? |

YES NO

_____ - - - - -

5. Minimal Intrusion. If the answer to 4 is yes and if the exaction involves the dedication of real property, has the agency shown by substantial evidence that the identified public interest cannot be reasonably achieved by some regulation short of dedication?

If there is a check on any dashed line, the exaction or condition may be illegal. Verify with your legal counsel for specifics. You may also call the property rights ombudsman for more information.

NOTE: These guidelines are general and are provided by the Utah Property Rights Ombudsman in an effort to provide better understanding of the land use process. They are not meant to constitute legal advice. They simplify and broadly generalize complex issues of law. Specific questions should always be directed to your attorney for specific advice. Questions and comments and suggested improvements to these materials are always welcome. Please contact: Property Rights Ombudsman, 1594 West North Temple Street, Suite 3710, P.O. Box 145610, Salt Lake City, UT 84114-5610.
PHONE: 801-537-3455/ FAX: (801) 538-7315
online: www.utahpropertyrights.com.

