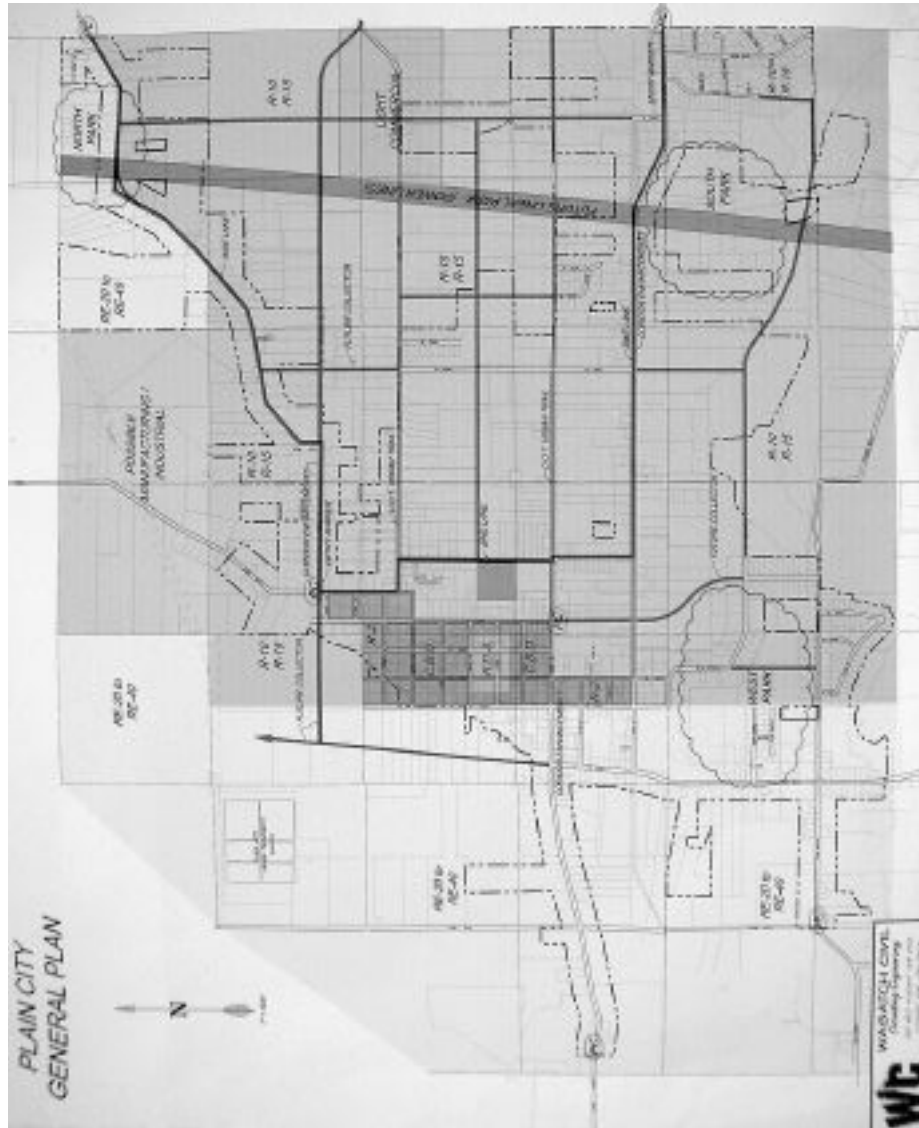

“In the Beginning”: Adopting the General Plan and Land Use Ordinances

Step One: Adopting the General Plan

Once a community decides it wants land use planning, what do those with a stake in the process do to start? In Utah, the first step is to appoint a planning commission and proceed to adopt a general plan. Every town, city, or county that has land use controls has to have a general plan if it intends to control land uses.

The tendency when a specific issue looms importantly over the municipal landscape, however, is for government officials and citizens alike to skip the preliminaries involved in understanding the general plan and how the land use ordinance came to be. That is short-sighted. The entire concept of local land use planning was intended to move from the general to the specific and to make lot-by-lot decisions in light of general community goals. Land use decisions that avoid this context are more likely to fail if challenged and more likely to breed cynicism in those most affected.

An extended discussion of how to create a general plan is beyond the scope of this discussion; my goal is to help you negotiate the permitting process once the general plan is in place and the land use ordinances adopted. But it is still worthwhile to pause at the beginning and describe what a general plan is—and isn't.



Most General Plans include a map showing the eventual development of compatible uses throughout the community.

It should be noted that since cities and counties in Utah are "creatures of statute and limited in powers to those delegated by the legislature,"¹ they can only pass land use laws that are enabled by state statute or "necessarily implied to carry out such responsibilities."² Where the state laws are specific, the local governments have no discretion to go beyond them.

As stated above, the general plan is mandatory. As the statute reads:

In order to accomplish the purposes set forth in this chapter, each municipality shall prepare and adopt a comprehensive, long-range general plan for: (a) present and future needs of the municipality; and (b) growth and development of the land within the municipality or any part of the municipality.³

According to code, the plan may provide for:

1. health, general welfare, safety, energy conservation, transportation, prosperity, civic activities, aesthetics, and recreational, educational, and cultural opportunities;
2. the reduction of the waste of physical, financial, or human resources that result from either excessive congestion or excessive scattering of population;
3. the efficient and economical use, conservation, and production of the supply of:
 - a. food and water; and
 - b. drainage, sanitary, and other facilities and resources;
4. the use of energy conservation and solar and renewable energy resources;
5. the protection of urban development;
6. the protection and promotion of air quality;

7. historic preservation; and
8. an official map . . . ⁴["official map" refers to a transportation plan for future street and highway improvements].

The statute concludes that the municipality may determine the comprehensiveness, extent, and format of the general plan within certain guidelines. Unless otherwise provided by local ordinance, the general plan is advisory only so any decision related to it would be almost impossible to challenge legally. The adoption of the plan is really a conversation about what direction the community wants to go in its land use, traffic, housing, and other goals. If there is no ordinance mandating that local land use decisions be consistent with the general plan, there is usually no need to worry about appealing a general plan decision.⁵

Counties must also adopt a general plan if they wish to engage in land use planning; the wording of the statute is somewhat different, though generally similar.

There is a specific process that must be followed to adopt a general plan, and it must involve the planning commission. As you will learn in dealing in land use issues, the planning commission's role cannot be ignored. Only the planning commission can propose a general plan, and the city council or county commission cannot approve one without the recommendation of the planning commission.⁶

If you are involved in advocating for one side or the other of a controversial land use decision, take the time to review the general plan and note the guidance it provides for your situation. Using quotations from the municipality's own general plan in support or opposition of your arguments before a land use panel can be persuasive and will be a significant part of the record of the decision if it is appealed and reviewed in litigation or arbitration.

The general plan does not control with an iron hand the land use decisions that a community makes, but also it is not mere window dressing. If the local decision-makers ignore a clear directive from the plan, their decisions may be more effectively challenged as arbitrary and capricious. Often the consideration of a request for a change in the zoning for a particular property will include an amendment to the general plan to be certain that there is philosophical consistency between the plan and the re-zoning, if granted.

Remember, every local government that wants to be in the business of regulating land use must have a general plan. If the planning department or recorder is unable to provide one on request, zoning decisions may be struck down as void and illegal. If the local officials refuse to provide one, an interested citizen can demand to review it under the Government Records Administration and Management Act (GRAMA).⁷ For more information about GRAMA, see Appendix A.

The general plan is adopted under specific procedures. There must be at least one public hearing and open discussion to enhance the chances that the legislative decision by the city council or county commission to adopt the plan represents community consensus.⁸

Adoption of the general plan is a legislative decision, and the judgments made by the citizen planners in adopting it are virtually unchallengeable if the relevant statutes are followed.

Step Two: The Land Use Ordinances

A general plan alone cannot be used to enforce land use controls. The "teeth" behind the general plan are the land use ordinances. Every community which desires to control land use also must have a land use ordinance.⁹ As you would expect, land use ordi-

nances come in all shapes and sizes, running from a few pages that regulate uses that have the most negative impact on a neighborhood to those with complicated overlay zones that comprise more than half the local code book.

Land use ordinances can be adopted on a temporary basis if property in the community is unregulated and the legislative body decides that there is a compelling public interest in doing so. A temporary land use ordinance (a "TO") cannot be effective for more than six months, but the state statutes anticipate that the need for a quick "time-out" is sometimes important. A "TO" must be adopted by the council or commission in a public meeting but may be adopted without holding a public hearing and without the input of the planning commission.¹⁰

Permanent land use ordinances, on the other hand, can only be imposed after review by the planning commission and hearings held before the city council or county commission. Specific times and notice periods are set out in statute.¹¹

The land use ordinance and land use decisions made in enforcing it must conform with the state statute that allows local government to regulate land use. The statutes require that each community have a zoning map, for example. If that and similar specific requirements are not met, the land use ordinance may be declared null and void.¹² For example, Weber County's decision to sell property without a review by the planning commission, as required by an obscure sentence in the former state land use statute, was declared void by the Utah Supreme Court in 2002.¹³

There are some essential attributes of any land use ordinance. A valid ordinance must regulate land use and development.¹⁴ It must provide enough information that someone reviewing the ordinance can determine how a given parcel of property is zoned and how it may be used.¹⁵ The use of properties within a zoning

district is to be regulated in a uniform manner.¹⁶

Land use ordinances are adopted by legislative action, so they are entitled to significant deference by the courts, as was discussed in Chapter 3. It is very difficult to challenge the substance of the ordinance. Efforts to invalidate ordinances only succeed when the local action is extraordinarily harsh or clearly prompted by some motivation that the courts have condemned such as racial discrimination or interference with free speech.

The essential thing to know about land use ordinances is that you must read the ordinance that applies to the issue about which you care. Since each community has its own, there is no way of knowing how to approach a land use issue without a copy of the local ordinance to review.

¹*State v. Hutchinson*, 624 P.2d 1116 (Utah 1981). *Ritholz v. City of Salt Lake*; 283 P.2d 702, 703 (Utah 1955).

²*Dairy Product Services v. Wellsville*, 2000 UT 81, 13 P.3d 581 (Utah 2000).

³Utah Code Ann. §10-9a-401(1).

⁴Utah Code Ann. §10-9a-401(2) (municipalities); Utah Code Ann. §17-27a-401(2) (counties).

⁵Utah Code Ann. §10-9a-401(3) (municipalities); Utah Code Ann. §17-27a-401(5) (counties).

⁶Utah Code Ann. §10-9a-302(1) and 403(1)(a) (municipalities); Utah Code Ann. §17-27a-302(1)(a) and 403(1)(a) (counties).

⁷Utah Code Ann. §63-2-101, et seq.

⁸Utah Code Ann. §10-9a-404 (municipalities); Utah Code Ann. §17-27a-404 (counties).

⁹Utah Code Ann. §10-9a-501 (municipalities); Utah Code Ann. §17-27a-501 (counties).

¹⁰Utah Code Ann. §10-9a-504 (municipalities); Utah Code Ann. §17-27a-504 (counties).

¹¹Utah Code Ann. §10-9a-205(1)(a), 502, 503 (municipalities); Utah Code Ann. §17-27a-205(1)(a), 502, 503 (counties).

¹²See, for example, *Hatch v. Boulder Town*, 2001 UT App 55, 21 P. 3d 245 (Utah App. 2001).

¹³*Toone v. Weber County*, 2002 UT 103, 57 P.3d 1079 (Utah App. 2002).

¹⁴Utah Code Ann. §10-9a-501 to 519 (municipalities); Utah Code Ann. §17-27a-501 to 519 (counties).

¹⁵*Hatch, supra*, note 12.

¹⁶Utah Code Ann. §10-9a-505(2) (municipalities); Utah Code Ann. §17-27a-505(2) (counties).

