
State Mandated Rules

1. Future Streets and Highways

Local governments have the right to plan ahead for transportation systems—whether roads, rail systems, or even airports. They also have the duty to do so. In today’s climate of growth and expansion with no end in sight, it would be folly to do anything else.

In anticipation of this need, the Utah Legislature worked with the Utah Department of Transportation, the Utah League of Cities and Towns, and others interested in the subject to enact the Utah Corridor Preservation Act of 2001.¹ The goal of the UCPA is to properly balance the needs of the community in keeping future corridors from being developed with the right of a property owner to use his land as he chooses to use it and as the law properly allows him to use it.

In past years, both state and local agencies would designate a corridor for a future roadway and then attempt to ban all development in that corridor, whether the proposed new construction was a single home or a subdivision. The constitution prohibits the imposition of disproportionate burdens of public projects on a single property owner without the payment of just compensation, however, so such actions could have been challenged as a violation of private property rights.

The UCPA has attempted to provide some guidelines that are pretty clear and specific. Communities following these guidelines will not have much of a problem with private property "takings" claims.

The purpose of the UCPA is to preserve corridors, of course, but within two balancing restraints:

1. Corridor preservation is a public purpose, but
2. the acquisition of private property rights for transportation corridors should be done voluntarily and not through the power of condemnation.

In order to preserve corridors, both state agencies and local government may adopt official maps that show where future roads are planned to be built. These government entities can then regulate land in the corridor to limit development and acquire property in those corridors up to 30 years in advance of need.²

However, those same government entities must protect constitutional property rights. The agency or municipality must respond to a request that the proposed acquisition of an easement be changed to the total acquisition of all the property if the property owner would rather sell the entire parcel involved. On the other hand, the government must consider acquiring only the portion of the property needed for road purposes if the landowner prefers to sell only part, even if the government initially wants to buy the whole parcel.³

The real impact of the UCPA will be found when a property owner wishes to develop his or her property. The UCPA defines "development" as:

- (a) the subdividing of land;
- (b) the construction of improvements, expansions, or additions; or

- (c) any other action that will appreciably increase the value of and the future acquisition cost of land.⁴

If the property owner wishes to do any of these things, and the local government will not allow it, then the property owner may request that all or part of the property be purchased at fair market value. If the state or local government entity involved refuses to purchase part or all of the property, as the property owner requests, then development must be allowed.⁵

This all sounds good to property owners, of course, but there are some severe practical limitations at work that all should understand. First and foremost, any court would need to determine what actions by the municipality or agency actually “limit or restrict development.”

My money is on the interpretation the government will not be said to have limited or restricted development until the property owner has applied for development and been turned down in a final decision and also after exhausting administrative remedies. In Chapter 13, we discuss how difficult that exhaustion could be. I do not expect the courts to start making governments shell out money to property owners until the community or state agency has had ample opportunity to avoid such a result.

Although it is far better to negotiate development and work out some solution, there is a clear right involved here. If the situation merits drawing a line in the sand, a property owner is entitled to press for development approvals and get an official denial so he can then sue and force the acquisition of the land at fair market value.

The real dilemma may be for the property owner who has a home or parcel of land in the planned corridor and wants to sell it. They may not find many buyers who wish to take over the property knowing that soon the bulldozers will be idling on the

property line and acquisition for a roadway is certain, if not imminent.

The same dilemma would face a potential buyer when the future of the land is somewhat in doubt. The question would be why buy a house slated for demolition when there are other homes or land available where the future would be more certain. There may be relief in the UCPA, but only if the landowner is willing to force the city's hand by pressing a development application and demanding acquisition.

Although the harsh result of pre-planning for roads and rails may be easily understood by those in the crosshairs of transportation projects, the prospects of not planning ahead also are unsavory. How would the property owner who improves his home or even buys a new home in a subdivision in the path of progress feel if government officials did not disclose that the house is slated to be scraped for a highway?

The UCPA attempts to strike a balance for property owners and planners alike. I do not believe it has eroded pre-existing rights—there was a specific effort to be sure that constitutional rights were protected and to weigh all factors fairly.⁶

2. Moderate Income Housing

Under state law, local governments are obligated to adopt a plan to encourage an adequate supply of moderate income housing.⁷

The Utah Department of Community and Culture is charged with assisting counties and municipalities in meeting this duty, and can help with grants and expertise.⁸

Each community must adopt a plan. Larger cities and counties must provide a copy to the Department of Community and Cul-

ture and the local association of governments, a regional planning and coordinating supported organization by government entities.⁹

As a practical matter, these plans do not have much teeth, but can be persuasive in a political climate when there is a need to advocate for work force housing and against exclusionary zoning that has the effect of artificially eliminating moderate income people who may wish to locate in the community.

There have been some lawsuits over moderate income housing plans. A series of actions filed against Bluffdale in Salt Lake County resulted in a settlement that allowed apartments to be built in a development called “The Bluffs” near the intersection of Redwood Road and Bangerter Highway.¹⁰

Imagine a similar case, where a developer might claim that a certain zoned density must be given him to accommodate the mandated moderate income housing. His claim would fizzle if there are sufficient acres of undeveloped land already so zoned. The local government would have met its duty to accommodate moderate income housing by providing the precise zone the developer demands, albeit not in the location the developer demands it. Any litigation over this would likely fail.

It is yet to be seen if the duty to provide moderate income housing plans results in real and measurable improvement in modestly priced housing.

3. Manufactured Homes

The state code prohibits the barring of manufactured housing from any zone where houses can be built.¹¹ If there ever was a state land use statute that is widely ignored, this is it.

The statute itself leaves a massive loophole by stating that a manufactured home must comply with local land use requirements.¹²

There are a few devices used to limit manufactured homes, including:

1. minimum square footage for houses;
2. minimum roof slopes;
3. requirement for brick veneers; and
4. manipulation of builders' covenants when subdivisions are approved.



One man's cabin is another man's palace, or so it may seem. Some dread a typical manufactured home that is more trailer than home. Others, in defense of lower cost housing point to permanent homes with landscaping and garages, and wonder why they should not be allowed wherever similar sized homes can be "stick built."

Some of these local regulations may be vulnerable if challenged as failing to promote the general welfare as land use ordinances are to do.

Practically speaking, there is currently no effective state requirement that manufactured homes be allowed. The law must either be defined more specifically by the courts or clarified by the legislature in order to have red teeth.

Provisions requiring that any manufactured home which is brought into a community comply with federal manufacturing codes (local codes related to construction standards for manufactured housing are preempted by federal law)¹³ are surely legal. Local ordinances also can prohibit homes manufactured before federal codes applied in 1978. There have been horrific events in Utah where the lack of second exits and adequate safeguards on propane tanks or heating devices has caused tragic loss of life. These rules are legal and must be followed.

¹Utah Code Ann. §72-5-101 et. seq.

²Utah Code Ann. §72-5-403.

³Utah Code Ann. §72-5-405.

⁴Utah Code Ann. §72-5-401(3).

⁵Utah Code Ann. §72-5-405(3).

⁶Utah Code Ann. §72-5-405(1) declares that all constitutional rights of property owners are to be protected in application of the Act.

⁷Utah Code Ann. §10-9a-401(2)(f), §10-9a-403(2)(a)(iii) and (b), §10-9a-404(5)(c), and §10-9a-408 (municipalities); Utah Code Ann. §17-27a-401(2)(f), §17-27a-403(2)(a)(iii), §17-27a-404(6)(c), and §17-27a-408 (counties).

⁸Utah Code Ann. §9-4-1204.

⁹Utah Code Ann. §10-9a-203 (municipalities); Utah Code Ann. §17-27a-203 (counties) both require an extended notice of the consideration and enactment of a general plan to "affected entities" such as school boards, neighboring jurisdictions and others. The moderate income housing plan is a mandatory part of the general plan under §10-9a-403(2) (municipalities) and §17-27a-403(2) (counties).

¹⁰*Anderson Development v. Bluffdale City*, Civil No. 990401941, (Third Jud. Dist. Court of Salt Lake County, 1999, Matthew B. Durrant, Presiding).

¹¹Utah Code Ann. §10-9a-514 (2) (municipalities) and Utah Code Ann. §10-9a-514 (3) (counties).

¹²Utah Code Ann. §10-9a-514 (municipalities); Utah Code Ann. §17-27a-513 (counties).

¹³The federal standards are found at 24 C.F.R. §§3280.1-3280.904. These regulations established a comprehensive building code and inspection process for the construction of manufactured homes nationwide. The code also forbids local imposition of local building codes on manufactured housing at 24 C.F.R. §5403(d). The federal law does not require that manufactured homes be allowed in any residential zone. That is a provision of state law.