

Introduction

For some of us, land use planning is a career—an evolving process about how to manage change. For others, land use planning is like a transaction: a one-time event or experience involving getting a building permit or subdividing the family farm. Those in small business probably have more interaction with the process than most of us, but it is not something most lives revolve around.

If you are new to the land use process, perhaps your interest comes from wanting to influence the way some parcel of land near you is being developed. Perhaps you are concerned about the foothills or the lakeshore. Perhaps you are worried about a big-box retailer coming into town and the impact it may have on local merchants or the traffic you encounter on your way to take the kids to school.

Whatever the direction from which you approach land use issues, I hope this book is of some help. Thirty years ago, my wife and I restored an old house in Provo to put a restaurant in it. There were residences on two sides of our corner lot, but we got our approvals with no hearings before any public body, and the process involved a few visits from the building inspector and the health department. We had amazingly good relationships with the two retired couples who lived next door and looking back, I am amazed at the accommodations we made for each

other and how uncomplicated the process was. That is not to say that I think the resulting development was optimal—or even good. We could have done a lot more to make things more compatible.

Today, such a development would never occur. Our use would now be a “conditional use” and there would have been a series of meetings and hearings. Our neighbors would have had more opportunity to comment and express concerns. At the end of the process, we would surely have been told that we could not shoe-horn a restaurant into that residential area—even though it was located on an arterial street and zoned for commercial use.

If you live on a suburban lot surrounded by hundreds of similar homes in an area recently developed and insulated by land use controls, you may not think about land use regulation much. You read in the paper about battles over some “LULU” (Locally Unwanted Land Use) such as a big-box retailer or apartment complex, but it may not be of much concern.

It should be.

Land use controls have evolved over time, and they are based on a premise that some would really call fiction. The concept is that the community, together, in a democratic process, determines what it would like to be. Various proposals for land uses are sorted out and a consensus supposedly develops that results in a community that all consider to be optimal.

Granted, the structure is in place so that an optional result might occur, but as you would expect, most land use decisions are made by the few people who are most fervently engaged in a particular debate. When the process works, adequate notice is given to everyone who should care about a proposal before decisions are made. In the process of approval, those “stakeholders”

sort out a balance between the rights of a property owner to use the land as considered to be the most advantageous, and the counterbalancing interests of the community in avoiding nuisances, managing traffic, providing for adequate utilities, and promoting good appearances.

In reality, a few people who care a lot—property owners and citizen planners—often make all these decisions without the quantity or quality of public input that is anticipated by the theory behind the process. Citizens, in general, have a lot of other things going on in their lives and do not find endless planning commission meetings to be a very attractive place to be on Wednesday nights.

Our first encounter with land use regulation may be when we feel some development poses an immediate threat and we show up to comment—sometimes in a pretty shrill and unorganized manner—and wonder how those in charge of land use could be so short-sighted or stupid as to even consider the proposed development we oppose. We wonder how we are supposed to influence a process that seems as complicated and structured as it is. For lack of a better option, we create petitions and call the media—without knowing that in most cases “public clamor” and “community opinion” are supposed to be irrelevant to administrative decision-making.

Or our first encounter may be when we, as the applicant, hit a wall of complexity and a gauntlet of procedures that convinces us that we never should have attempted to get approval for our proposed land use in the first place. We wonder who gave local government so much control over us and our property. We may wish to get back some of that control.

If we really wish to be engaged in the land use arena and have some long-term impact on what is going on there, we need to

understand the rules, the process, and the options that are available to the local decision-makers. We ought to know the legal limits on local discretion. We should be able to pick the right step in the process where our input, and that of others who agree with us, can have the most influence.

We ought to know about our rights and how to defend them.

This book is my attempt to help you do that. In it I have attempted to outline the general process and some specific suggestions on how to influence land use decisions. I hope it is helpful.

This process is not worth much—perhaps it's more trouble than it's worth—if people do not participate. At its best, some wise people with good taste and sound judgment will produce for us communities of grace and beauty, where all the necessary functions of society, from mansions to junkyards, will co-exist in harmony and order.

At its worst, a few people with narrow agendas and minds will force out minorities, ignore private property rights, and build walls around a community. This will make life more expensive for everyone and push all the noxious uses to some other places where the locals have less political clout and savvy.

At the heart of all this has to be a respect for the dignity of the individual. We believe, as Americans, that all are equal before the law. If the result of our planning and zoning is to make sure those that have wealth get more, those who have power make all the decisions, and those with one way of looking at the world get to impose that perspective on everyone else, then we could hardly call this a democracy.

This book is provided in the hope it will help you participate and engage in land use decisions. I believe we need more people involved, not less. Even the brightest and best-intentioned citi-

zens who serve on local decision-making boards cannot guess by some kind of intuition what the citizens they serve want. If we are to share responsibility in building our communities together, we need to join in early rather than late, and with more tools in our tool boxes.

We need to keep the perspective that individual rights and responsibilities are fundamental to a democracy. There is only so much the community can do and, when it comes right down to it, we will fail if we insist on perfection when life simply does not allow for that as a practical matter.

We wish to have a tradition of open space, of preservation of historic buildings and tremendous resources, of peace and order. But we would be short-sighted and foolish in choosing to do so by destroying something even more important—the fundamental dignity that each citizen and each property owner has before the law. We need to remember that the Bill of Rights was written after the king was already out of the picture. It was not created to protect us from the crown, but to protect some of us from the rest of us, those who may have the tendency to use power too broadly and to restrict freedom in the name of all manner of noble pursuits.

One of my favorite quotes is from Colonel Potter on the television program *M*A*S*H*, who wisely said: “There is a right way and a wrong way to do everything. And the wrong way is to try to get everyone to do things the right way.”

Perhaps Edward Markham said it best:

We are all blind until we see,
That in the human plan,
Nothing is worth the making,
Unless it also makes the man.

Why build these cities glorious,
If man unbuilted goes?
In vain we build the world unless,
The builder also grows.

My hope would be that this book helps us build our communities in a manner that all participate, all share the responsibility, and all grow as a result of our common efforts and successes.

If we respect individual rights, participate as an entire community in our planning and vision, and realize that we can make the world a lot better without having to make it perfect, we will all be better for the effort.

Craig M. Call
September 2005

To the Reader—How to Understand Legal Citations:

Not everyone reading this book is a lawyer, so it seems appropriate to point out a few things about the footnotes. When a legal case is shown as a reference, lawyers use a system of abbreviations that efficiently identifies a case in the law books. For example:

Patterson v. American Fork City, ¶26, 2003 UT 7; 67 P. 3d 468, 474 (Utah 2003)

There are several rules about how cases are named and footnoted.

- The first name is the party bringing the action, or the plaintiff. If there are several plaintiffs, usually only the first one is named in a citation to that case.
- After the “v.” which stands for “versus,” the defendant’s name is mentioned. The defendant is the one brought into court by the filing of a complaint against them.
- After the names of the parties, there is a “citation” to a place in a law book or system of case files. In the case above, as you would expect, the number “2003” is the year of the decision.
- The use of the letters “UT” means that the case was decided by the Utah Supreme Court. Other appellate courts are identified in other ways. “U.S.” means the United States Supreme Court. “10th Cir.” means the Tenth Federal Circuit Court headquartered in Denver, CO. Utah belongs to the 10th Circuit and cases heard by federal judges in Utah are appealed there.
- The letters “UT App.” mean the Utah Court of Appeals, which was founded in 1986, and which has been involved in a number of land use cases since that time.

- The number “7” in this instance, is the case number for that year. So “2003 UT 7” means that this was the seventh decision published by the Utah Supreme Court in 2003. This simple identification is unique to the case, and those doing legal research can quickly find the case by reference to this exclusive citation.

Recently the Utah appellate courts also have begun numbering the paragraphs in their opinions. Reference to a specific part of a case might therefore be shown as “2003 UT 7, ¶26.” With this short combination of numbers and letters, we can quickly zero in on the exact place in a case where we find our issue addressed.

Using this ingeniously efficient system, we can easily identify where the case we may want to look up can be found. With the extensive resources of the internet and powerful search engines, legal research and access to written opinions have never been easier.

The “67 P. 3d 468” citation refers to the placement of the case in a series of published legal reporters. If the case citation is shown as “67 P. 3d 468 (Utah 2003),” that case is found in volume 67 of the third set of legal volumes of what is known as the Pacific Reporter, on page 468. Prior to 1999, when Utah began using the current system, the published reporters were the easiest (and perhaps the only) way to access cases. Thus, for example, in a case like *Xanthos v. Bd. of Adjustment*, 685 P.2d 1032 (Utah 1984), there would be no equivalent to “2003 UT 7.”

Again, these cases can be found on the internet or in the law library. You can locate them by carefully reproducing the exact citation. If you go to the Utah Supreme Court Law Library in the Matheson Courthouse in Salt Lake City or to the library at either of the law schools at the University of Utah or Brigham Young University, all those volumes are available and you can easily find what you are looking for. Some city and county libraries, as

well as university collections, also contain extensive legal holdings. Every county and city attorney also needs access to the body of the law, so he or she usually has a law library. Ask around if you want to read these cases. They are in a collection near you or easily accessible on the internet.

Statutes are simpler. In Utah, the statutes are commonly referred to as the "Utah Code Annotated," or U.C.A., so the reference "Utah Code Ann. §63-34-13" would be to the Utah Code Annotated, Title 63, Chapter 34, Section 13. Subsections are shown in parentheses such as "§63-34-13(4)(a)." Utah statutes also are available on-line and on CD. Just about every court, attorney, and legal office in the state has a copy of the Utah code, as do most libraries, city clerks, and other government offices.

My favorite internet sites:

Recent Utah cases can be found at
<http://www.utcourts.gov/opinions/>

Utah statutes are located at:
<http://www.utah.gov/government/utahlaws.html>

For general national research, statutes, and cases, see:
<http://www.findlaw.com/>

The United States Supreme Court collection I like best is at:
<http://straylight.law.cornell.edu/supct/index.html>

