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HB 232 -- LAND USE AMENDMENTS

2017 GENERAL SESSION
STATE OF UTAH

Chief Sponsor: Mike Schultz
Senate Sponsor: J. Stuart Adams

10 Highlighted Provisions:

- 11 This bill:
- 12 ▶ enacts and modifies definitions applicable to county and municipal land use
 - 13 provisions;
 - 14 ▶ addresses a provision relating to the imposition of stricter requirements or higher
 - 15 standards than required by state law;
 - 16 ▶ enacts a provision directing a land use authority on how to interpret and apply land
 - 17 use regulations and specifying the nature of a land use authority's land use decision;
 - 18 ▶ addresses provisions relating to the preparation, recommendation, and enactment of
 - 19 land use regulations;
 - 20 ▶ addresses a provision relating to the authority to adopt and amend land use
 - 21 regulations; and
 - 22 ▶ addresses provisions relating to appeals of land use decisions.

58 10-9a-103. Definitions.

204 (23) "Land use applicant" means a property owner, or the property owner's designee,
205 who submits a land use application regarding the property owner's land.

206 ~~[(23)]~~ (24) "Land use application":

207 (a) means an application that is:

208 (i) required by a [municipality's land use ordinance.] municipality; and

209 (ii) submitted by a land use applicant to obtain a land use decision; and

210 (b) does not mean an application to enact, amend, or repeal a land use regulation.

216 ~~[(25) "Land use ordinance" means a planning, zoning, development, or subdivision~~
217 ~~ordinance of the municipality, but does not include the general plan.]~~

218 (26) "Land use decision" means a final action of a land use authority or appeal
219 authority regarding:

220 (a) a land use permit;

221 (b) a land use application; or

222 (c) the enforcement of a land use regulation, land use permit, or development
223 agreement.

224 ~~[(26)]~~ (27) "Land use permit" means a permit issued by a land use authority.

225 (28) "Land use regulation":

226 (a) means an ordinance, law, code, map, resolution, specification, fee, or rule that
227 governs the use or development of land; and

228 (b) does not include:

229 (i) a general plan;

230 (ii) a land use decision of the legislative body acting as the land use authority, even if
231 the decision is expressed in a resolution or ordinance; or

Commented [BB1]: Condensed from the full bill for relevance and brevity. I have added these comments as well for purposes of this presentation. They are not part of the legislation.

Commented [BB2]: The new designation for administrative actions, to distinguish them from legislative actions.

Commented [BB3]: Amendments to ordinances or zoning regulations are legislative acts. Thus, although one may file an "application" to change the zoning on a property, that application is not a "Land Use Application" under this definition. Instead it would be an application to change a "Land Use Regulation."

Commented [BB4]: The new designation for legislative actions, to distinguish them from administrative actions.

Commented [BB5]: Whether an action is legislative or administrative depends on the action, not on who makes the decision.

232 (iii) a temporary revision to an engineering specification that does not materially;
233 (A) increase a land use applicant's cost of development compared to the existing
234 specification; or
235 (B) impact a land use applicant's use of land.

407 **10-9a-104. Stricter requirements or higher standards.**

408 (1) Except as provided in Subsection (2), a municipality may enact ~~[an ordinance]~~ a
409 land use regulation imposing stricter requirements or higher standards than are required by this
410 chapter.
411 (2) A municipality may not impose ~~[stricter requirements or higher standards than are~~
412 ~~required by:]~~ a requirement or standard that conflicts with a provision of this chapter, other
413 state law, or federal law.
414 [(a) Section 10-9a-305; and]
415 [(b) Section 10-9a-514.]

Commented [BB6]: This replacement of old terms for new occurs throughout this bill, and many replacements are not shown here. Please refer to the full bill.

Commented [BB7]: The answer to the continually asked question, "Stricter in what way?"

487 **10-9a-306. Land use authority requirements -- Nature of land use decision.**

488 (1) A land use authority shall apply the plain language of land use regulations.
489 (2) If a land use regulation does not plainly restrict a land use application, the land use
490 authority shall interpret and apply the land use regulation to favor the land use application.
491 (3) A land use decision of a land use authority is an administrative act, even if the land
492 use authority is the legislative body.

Commented [BB8]: An attempt to summarize the applicable caselaw on applying local regulations for lay councils and commissions.

Commented [BB9]: Important because of the differences in discretion, standard of review, public input, etc. A legislative body should not approach an administrative act legislatively.

495 **10-9a-501. Enactment of land use regulation.**

496 (1) ~~[The]~~ Only a legislative body may enact a land use ~~[ordinances and a zoning map]~~
497 regulation.
498 (2) (a) Except as provided in Subsection (2)(b), a legislative body may enact a land use
499 regulation only by ordinance.
500 (b) A legislative body may, by ordinance or resolution, enact a land use regulation that
501 imposes a fee.
502 (3) A land use regulation shall be consistent with the purposes set forth in this chapter.

Commented [BB10]: Some local governments mishandled this.

524 **10-9a-503. Zoning district or land use regulation amendments -- Historic district**
525 **or area.**

526 (1) ~~[The]~~ Only a legislative body may amend:
527 (a) the number, shape, boundaries, or area of any zoning district;
528 (b) any regulation of or within the zoning district; or
529 (c) any other provision of a land use ~~[ordinance]~~ regulation.

705 **10-9a-707. Scope of review of factual matters on appeal -- Appeal authority**
706 **requirements.**

707 (1) A municipality may, by ordinance, designate the ~~[standard]~~ scope of review of
708 factual matters for appeals of land use authority decisions.
709 (2) If the municipality fails to designate a ~~[standard]~~ scope of review of factual matters,
710 the appeal authority shall review the matter de novo, without deference to the land use
711 authority's determination of factual matters.
712 (3) If the scope of review of factual matters is on the record, the appeal authority shall
713 determine whether the record on appeal includes substantial evidence for each essential finding
714 of fact.
715 [(3)] (4) The appeal authority shall:
716 (a) determine the correctness of ~~[a decision of]~~ the land use ~~[authority in its]~~ authority's
717 interpretation and application of [a] the plain meaning of the land use [ordinance.] regulations;
718 and
719 (b) interpret and apply a land use regulation to favor a land use application unless the

Commented [BB11]: Again, a summarization of existing law for easier and more consistent application.

720 land use regulation plainly restricts the land use application.
721 (5) An appeal authority's land use decision is a quasi-judicial act, even if the appeal
722 authority is the legislative body.
723 [(4)] (6) Only [those decisions] a decision in which a land use authority has applied a
724 land use [ordinance] regulation to a particular land use application, person, or parcel may be
725 appealed to an appeal authority.

727 ~~10-9a-801. No district court review until administrative remedies exhausted --~~
728 ~~Time for filing -- Tolling of time -- Standards governing court review -- Record on review~~
729 ~~-- Staying of decision.~~

748 (3) (a) ~~[The courts] A court shall:~~
749 (i) presume that a ~~[decision, ordinance, or] land use regulation [made] properly enacted~~
750 under the authority of this chapter is valid; and

751 (ii) determine only whether ~~[or not the decision, ordinance, or regulation is arbitrary,~~
752 ~~capricious, or illegal.];~~

753 ~~[(b) A decision, ordinance, or regulation involving the exercise of legislative discretion~~
754 ~~is valid if it is reasonably debatable that the decision, ordinance, or regulation promotes the~~
755 ~~purposes of this chapter and is not otherwise illegal.]~~

756 ~~[(c) A final decision of a land use authority or an appeal authority is valid if the~~
757 ~~decision is supported by substantial evidence in the record and is not arbitrary, capricious, or~~
758 ~~illegal.]~~

759 ~~[(d) A determination of illegality requires a determination that the decision, ordinance,~~
760 ~~or regulation violates a law, statute, or ordinance in effect at the time the decision was made or~~
761 ~~the ordinance or regulation adopted.]~~

762 ~~(A) the land use regulation is expressly preempted by, or was enacted contrary to, state~~
763 ~~or federal law; and~~

764 ~~(B) it is reasonably debatable that the land use regulation is consistent with this~~
765 ~~chapter.~~

766 (b) A court shall:

767 (i) presume that a final decision of a land use authority or an appeal authority is valid;

768 and

769 (ii) uphold the decision unless the decision is:

770 (A) arbitrary and capricious; or

771 (B) illegal.

772 (c) (i) A decision is arbitrary and capricious unless the decision is supported by
773 substantial evidence in the record.

774 (ii) A decision is illegal if the decision is:

775 (A) based on an incorrect interpretation of a land use regulation; or

776 (B) contrary to law.

Commented [BB12]: Ditto.

Commented [BB13]: "Illegal" in the context of a legislative action (land use regulation).

Commented [BB14]: "Arbitrary and capricious" in the context of a legislative action (land use regulation).

Commented [BB15]: "Arbitrary and capricious" in the context of an administrative action (land use application).

Commented [BB16]: "Illegal" in the context of an administrative action (land use application).