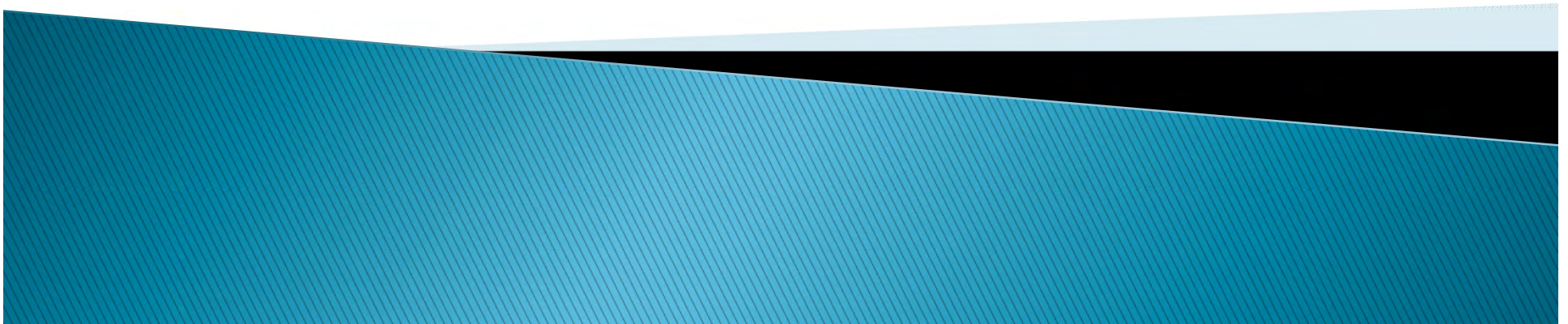


Recent Utah Land Use Cases and Legislation

Rocky Mountain Land Use Institute

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Presented by Neil Lindberg



Referendum

- ▶ *Friends of Maple Mountain v. Mapleton City*
 - Adoption of “new zone” is per se a legislative act subject to referendum
 - Any action by a council in a council-mayor government is legislative
 - *Marakis* test still applies to any council exercising legislative and administrative power
 - Probably includes county commissions as well
 - Court ignored statutory rule that an “individual property zoning decision” is not a local law subject to referendum
 - See UCA 20A-7-102(12) and 20A-7-601(3)
 - Most recent appellate case in dispute that started in early 1990s



Rezoning Standard of Review

▶ *Petersen v. Riverton City*

- Rezoning is a legislative act subject to “reasonably debatable” standard of review
 - Developer argued rezoning subject to more strict “substantial evidence” standard of review
 - Decision to rezone property is a political, policy-making act
 - Fundamentally legislative, not administrative or quasi-judicial
 - “Reasonably debatable” standard of review most appropriate for rezoning
 - Consistent with long line of Utah cases
 - Equal protection “class of one” claim also rejected
 - No evidence of malice or bad faith



Development Agreement

▶ *Tooele Associates v. Tooele City*

- Mistrial after \$20 million verdict for breach of agreement
 - 1995 agreement for 7,500 unit planned community
 - Developer claimed city deliberately slowed inspections and misapplied ordinances
 - City counterclaimed developer failed to construct promised improvements
 - Jury found both parties breached
 - Developer damages \$22.5 million
 - City damages \$1.8 million
 - One year after verdict court declared mistrial
 - Inconsistencies in 33 question jury verdict form
 - Court could not reconcile findings, struck verdict and declared mistrial
 - Now on appeal to Supreme Court



Enforcement of Development Agreement

▶ *Tooele Associates v. Tooele County*

- Specific performance cannot be granted unless agreement terms are clear
 - Agreement had no provision requiring city to maintain seventeen waster water storage lakes
 - Duty must be in the agreement
 - Extrinsic evidence not permitted
 - Courts reluctant to apply equitable doctrines against governmental bodies
 - 4 page opinion



Constitutionality of Inspection Fee

▶ *Tooele Associates v. Tooele City*

- Constitutionality of fee based on reasonableness, not adoption method
 - Inspection charges are a regulatory fee
 - To determine constitutionality:
 - Government must first disclose fee basis
 - Challenger has burden to show fee is unreasonable
 - A fee is reasonable if “not so disproportionate to services rendered as to attack good faith of law”
 - Unreasonableness not shown here
 - City used 5 years of data to establish fee
 - Developer’s data unreliable



Zoning Ordinance Validity

▶ *Gillmor v. Summit County*

- Timely petition for review allows assertion of all possible claims
 - 1998 - County enacts general plan and development code
 - 2004 - Gillmor timely appeals denial of subdivision application
- Trial court:
 - Appeal was facial challenge to 1998 plan and code
 - Barred because 30 day appeal period expired 6 years earlier
- Supreme Court:
 - Any adversely affected person may assert a claim related to any alleged arbitrary, capricious or illegal act
 - Gillmor's claim not ripe until County denied subdivision



Importance of the Record

▶ *Morra v. Grand County*

- Failure to submit record violates land use act (LUDMA)
 - Citizens sought to void rezone and development agreement
 - District court: no record needed
 - Rezoning is a legislative act subject to reasonably debatable standard of review
 - Supreme court: LUDMA requires record to be transmitted to reviewing court
 - Record useful even under discretionary reasonably debatable standard
 - Helps determine whether decision is “illegal”



Importance of the Record

- ▶ *Pen & Ink, LLC, v. Alpine City*
 - City properly interpreted annexation agreement
 - Required open space preservation on part of each lot
 - Court review limited to City record of proceedings
 - Reviewing court:
 - Must presume validity of LUDMA-based decision
 - Cannot overrule a decision unless it is arbitrary, capricious or illegal
 - City's interpretation of agreement upheld
 - Substantial evidence in record to support City's decision



Importance of the Record

- ▶ *Pacific West Communities, Inc., v. Grantsville City*
 - District court review of city council land use decision limited to council record
 - Developer's amended development plan denied
 - On appeal, developer advanced additional reasons for approval not given to the council
 - Council record contained "vast amount" of evidence justifying denial



Legislation - 2011 Session

▶ HB 78 - Developer Fees

- Intended to prevent fees that exceed service cost
 - Fee basis must be provided on request
 - Fee appeal process
 - Applicable to all service providers
 - Local government
 - Local district
 - Private entity



Legislation - 2011 Session

- ▶ SB 126 - Local District Service Amendments
 - Requires local districts to follow same rules applicable to municipalities and counties
 - Improvement bond standards and appeal process
 - Exaction standards
 - "Rip cord" right
 - If administrative process not conducted with reasonable diligence applicant can "pull a rip cord" to require decision



Legislation - 2011 Session

- ▶ SB 146 - Impact Fee Amendments
 - Reorganizes the Impact Fees Act in more user-friendly format
 - Clarifies definitions and several rules
 - Consensus bill



Legislation - 2011 Session

▶ SB 178 - Nonconforming Rental Dwellings

- Modifies rule enacted in 2010

- Local governments prohibited from imposing safety requirements on nonconforming rental dwellings
- Municipalities may now require:
 - Smoke detectors
 - GFI outlets
 - Bedroom egress windows (typically in a basement apartment)



Legislation - 2011 Session

▶ SB 243 - Historic Sites

- Bill imposes year-long historic preservation moratorium in Salt Lake City
 - Dispute between preservationists and property rights advocates over possible local historic district
 - Petition not yet considered by City Council
 - Bill sponsor wants to ensure “fair process” to establish district
 - Issue will go to “summer study”
 - State-mandated process may be enacted next year



Legislation - 2011 Session

- ▶ TDR Programs Performance Audit
 - Recommends legislation to establish minimum standards
 - TDR programs exist in five Utah counties and municipalities
 - Four "traditional" programs using a structured framework
 - Summit County negotiated TDRs on case-by-case basis during rezoning process
 - Legislative Auditor General conducted performance audit
 - Administrative program structure enables predictable and fair results
 - No legislation this year

