Recent Utah Land Use Cases and Legislation

Rocky Mountain Land Use Institute
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Presented by Neil Lindberg
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)
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