

PLAIN LANGUAGE!



“Plain Language”

- HB232 - Section 306

(1) A land use authority shall apply the **plain language** of land use regulations.

(2) If a land use regulation does not plainly restrict a land use application, the land use authority shall interpret and apply the land use regulation to **favor the land use application**.

HB232 – Section 707

(4) The appeal authority shall:

(a) determine the correctness of the land use authority's interpretation and application of the **plain meaning** of the land use regulations; and

(b) interpret and apply a land use regulation to **favor** a land use **application** **unless** the land use regulation **plainly restricts** the land use application.

Patterson v. Utah County Board of Adjustment

1995

“...because zoning ordinances are in derogation of a property owner’s common-law right to unrestricted use of his or her property, provisions therein **restricting** property uses should be **strictly construed**, and provisions **permitting** property uses should be **liberally construed in favor of the property owner.**”



Patterson v. Utah County Board of Adjustment

1995

“In this case, we cannot rely on the **plain language** of the ordinance to guide our interpretation.

“A statute is ambiguous if it can be understood by reasonably well-informed persons to have different meanings.”



Example: Brown vs. Sandy City BOA



City code: “short term rental not specifically permitted in residential zones”

Court: “a short term rental is residential, not differentiated in city code”

“since not specifically prohibited, construed liberally in favor of the land owner and is permitted”

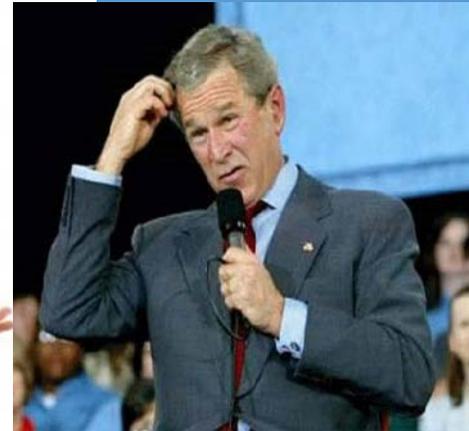
Be Clear and Specific!



Unclear code language

What Does This Mean?

- “In keeping with neighborhood character”
- “Shall not negatively impact the area”
- “Shall not significantly increase traffic, odors, light...”
- “Other similar uses”





LUAU
Land Use Academy of Utah

luau.utah.gov

CALLING ALL ELECTED OFFICIALS

SEPTEMBER 14, 2017

PLEASE....UPDATE YOUR CODES

Brent Bateman, Office of the Property Rights
Ombudsman
Wilf Sommerkorn, Salt Lake County Regional
Planning
Meg Ryan, Utah League of Cities & Towns



WHY SHOULD WE CARE?

Utah Municipalities are
created & authorized
by the State

Basic themes of LUDMA

- **Private Property Rights:**

Individuals are free to use private property as they wish, unless valid, written land use laws direct otherwise.

- **Must clearly write it down:**

Community has broad discretion to regulate private property. However, it must do so deliberately and openly.

Plain language. Objective and Direct.

- **Must abide by it:**

- Land use authority is bound by the terms and standards of applicable land use ordinances and shall comply with the provisions of those ordinances. 10-9a-509

- **Must act with reasonable diligence:**

Land use authority must process complete applications promptly. "Timely manner" / "reasonable period"

- **"Tie goes to the runner":**

Your codes must be clear. If they are at all ambiguous then they are to be interpreted in favor of the applicant.



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All Bills Effective May 8, 2017 (unless noted)

- **General Land Use Bill: HB232** Clarifies Land Use Process Decision Making; requires “Plain Language” in code; requires codification of engineering standards; Reiterates compliance with State Law.
 - **Short-term Rentals: HB253** A city cannot prohibit a person from listing a short-term rental on a website.
 - **Fire Sprinklers: HB281** Repeals provisions for some cities provisions related to structural requirements for fire safety, fire notification systems, and fire suppression systems.
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- **Plan Checks: SB241** Local Government Plan Review Amendments - Requires 14 days and 21 days for single and multi-family plan check reviews of construction plans or lose review authority to review. Sunsets in one year. Dates: July 1,2017-July 1, 2018
 - **Historic Districts: HB30** A City Council will become the appeal authority for decisions made by the Historic Preservation Board.
 - **Food Trucks: SB 250** Cities must honor full reciprocity of each other's licensing, health and fire inspections, and other related requirements.



2017

May 2016
Land use ordinance review
Suggested by the Utah League of Cities and Towns

Items to review in your land use codes:

1. Remove criminal penalties for Land Use Code violations (2016 Gen. Session SB187S1: misdemeanors are now only infractions).
2. Remove any conditional use that your City expects to deny. Make sure you have standards of review in place for those that you keep.
3. Conduct a Word search throughout your code for stale concepts, such as:
 - “approve, deny or approve with conditions”
 - “in its sole discretion”
4. Does your code read in active voice? Or passive voice? (unclear) Strive for objective clear language. If you don’t understand it how can you enforce and how can the public know how to develop their land?
5. Ferret out ambiguity: Could a reasonable person interpret your land use restrictions differently?
6. Does your Council issue Conditional Use Permits/Subdivisions? Should they?
7. Does Council attend Planning Commission meetings? Sit on the Planning Commission?
8. Are development fees based on a % of construction value?
9. Are staff reports sent to applicants at least three days before a hearing/meeting?
10. Does your code postpone vested rights?
11. Are subdivision/engineering standards codified?
12. Have you updated your Impact Fees in this decade?
13. Are non-conforming use permits tied to the applicant or the address?
14. Do you have an independent appeal process?
15. **Annually update your codes.**



2016

Utah League of Cities & Towns
2014
Infrastructure bond law

Two different “sureties” to protect public from subdivisions that fail

- One makes certain the infrastructure is built
- One warranties against latent defect in workmanship and materials

Utah League of Cities & Towns
2015
SB 124 Summary

1. Subdivision for utilities
2. Illegal exactions
3. Security for public infrastructure
4. Modifying areas on common plat
5. Easing state imposed site plan restrictions in 1st class counties

2013 - 2015

Utah League Of Cities & Towns 2006 Implementing SB60

Implementing SB60 may appear to be a daunting task to many jurisdictions and we have heard a number of different approaches to the task by several cities and towns. Nevertheless, criticism from lobbyists and legislators abounds that a large portion of our membership has delayed implementing SB60.

Land use ordinances take a great deal of time, thought and public process to change. Virtually every city's land use code is different from the next (and should be), so a model ordinance to bring all cities into compliance simply will not work. So where should a city begin?

From a pragmatic point of view, there are five substantive components of SB60 (and its progeny) that must be implemented. If implemented, the five changes would solve the lion's share of the complaints that we hear and may stave off future attempts at more objectionable legislation.

A quick check of your land use ordinances in the following five areas would go a very long way:

1. Conditional Use;
2. Exaction;
3. Vested Rights;
4. Nonconforming Use and a Noncomplying Structure
5. Building Permit and Impact Fees



2005-2007

OK ENOUGH ALREADY
WHAT DO WE DO?



Embrace it



USE THE TZO... *(WHAT'S THAT?)

10-9A-504. TEMPORARY LAND USE REGULATIONS.

- Allocate staff and resources to make the changes
- Set aside time at all meetings to review updates
- Use League, APA & Ombudsman resources
- Make State mandated changes first
- Sort out technical versus policy and update the “low hanging fruit”
- Have patience
- Have courage



DISCUSSION
