

Utah Municipal Attorneys' Association  
2018 Spring Conference  
May 10, 2018

**RECENT JUDICIAL DECISIONS AND RECURRING ISSUES OF INTEREST IN THE  
AREA OF LAND USE AND ZONING**

Jody K Burnett  
SNOW CHRISTENSEN & MARTINEAU  
10 Exchange Place, 11<sup>th</sup> Floor  
Salt Lake City, Utah 84111  
Telephone (801) 521-5678  
Email: [jkb@scmlaw.com](mailto:jkb@scmlaw.com)

\*\*\*\*\*

**I. CLARIFYING OR FURTHER CONFUSING WHAT THE COURT IS  
REVIEWING ON APPEAL OF AN ADMINISTRATIVE LAND USE  
DECISION?**

- A. *McElhaney v. City of Moab*, 2017 UT 65.
- B. *Outfront Media, LLC v. Salt Lake City Corp.*, 2017 UT 74.
- C. How to reconcile these decisions. Does it depend on whether it is a review of the factual record or a question of law?

**II. THE AWARD OF ATTORNEY'S FEES UNDER THE OPRO STATUTE.**

- A. See *Checketts v. Providence City*, 2018 UT App 48.
- B. Compare Language in Utah Code Ann § 13-43-206(12).
- C. A probable legislative fix on the horizon?

**III. IS THE SUPREME COURT INCLINED TO REVISIT THE SPRINGVILLE  
CITIZENS STANDARD?**

- A. For some historical perspective, see *Springville Citizens for a Better Community v. City of Springville*, 979 P.2d. 332 (Utah 1999).; and *Gardiner v. Perry City*, 994 P2d. 811 (Utah App 2000).
- B. Currently pending on appeal, see *Potter v. South Salt Lake*, Case No. 20150931-SC, review of oral argument and watch for decision.

**IV. LEGISLATIVE DISCRETION IN THE CONTEXT OF STATUTORILY MANDATED CRITERIA.**

- A. *Farley v. Utah County*, Case No. 20161078-CA, re: Agricultural Protection Areas; Utah Code Ann. §17-41-101, et. seq. currently pending on appeal while awaiting a decision after oral argument.
- B. See also *Potter* re: street vacations; Utah Code Ann. §10-9a-609.5(3).

**V. A POTPOURRI OF RISK MANAGEMENT RECOMMENDATIONS.**

- A. Should appeal authorities hear and decide equitable estoppel claims?
  - 1. *Checketts v. Providence City*, 2018 UT App 48.
  - 2. How to reconcile a review on the record with the evidentiary showing required to support an equitable estoppel claim?
  - 3. See Utah Code Ann. §§ 10-9a-701(3)(c); 707(1) & (2).
- B. Revisiting development exactions in the context of neighborhood infill and redevelopment: e.g. sidewalk requirements for existing lots.
- C. Bonding for private v. public / essential v. non-essential infrastructure. Review and compare Utah Code Ann § 10-9a-103(22) defining “infrastructure improvement” with Utah Code Ann § 10-9a-604.5 on completing required infrastructure improvements.
- D. The continuing challenge of determining how detailed written decisions need to be and what they must contain in support of land use decisions.
  - 1. See *Baker v. Park City*, 2017 UT App 190; and *McElhaney*.
  - 2. Compare HB377 and Utah Code Ann § 10-9a-507.