

HB 232 Land Use Amendments
Representative Mike Schultz
February 2, 2017

HB 232 clarifies language in the Land Use Development and Management Act to codify important land use decisions in an effort to better align local land use practice with existing state law and legislative expectations.

This bill is the product of extensive work by the Land Use Task Force, a group of over 100 land use professionals who represent the spectrum of public and private land use stakeholders. This year, the LUTF effort helped to resolve several contentious issues (from local discretion, to code interpretations, to short term rentals, to historic districts, to subdivision issues, to conditional use and other “discretionary” permits).

At the heart of what would appear to be dissimilar issues are two compelling truths:

- 1. Many local jurisdictions are unaware of, or have failed to enact, fundamental distinctions between legislative and administrative decision making in the land use context.*
- 2. Those distinctions must be clarified in state law to help local jurisdictions understand, identify and remove deficiencies in their local land use systems.*

After dozens of small and large group meetings, hundreds of hours of research, deliberations in mind numbing detail and over 23 drafts to arrive at this language it is an understatement to say that HB232 is the result of “extreme vetting”.

The Utah Association of Realtors, the Property Rights Coalition, the Utah League of Cities and Towns, the Utah Association of Counties, the Utah Homebuilders’ Association and the Office of Property Rights Ombudsman (to the extent allowed) have all endorsed this legislation.

What does it do?

1. Plain Language Enforced

Most people are unaware of the rule of law that each property owner has the common law right to use their property as they see fit, unless the law plainly and clearly restricts that use. This bill clarifies that local land use restrictions must be properly enacted and *plainly written* to overcome the common law right of use. Too often, local land use authorities have enforced unwritten practices or have extrapolated from legislative “intent” to interpret and administer unclear provisions in their land use codes. The bill will end this practice.

2. All Local Land Use Regulations Must Be Properly Enacted

The bill revises the term “land use ordinance” to a more inclusive term, “land use regulation” to emphasize that all of the local rules and regulations that limit common law property rights must be enacted properly to have effect. Some jurisdictions have allowed

staff to adopt requirements, engineering standards or other regulations—without a formal and transparent legislative process. This bill requires local jurisdictions to enact all land use regulations in the same manner as all land use laws. After the effective date of this bill, a local jurisdiction may not enforce a land use regulation that was not properly enacted by the local legislative body.

3. *Administrative vs. Legislative Discretion*

The LUTF consensus was and is that local jurisdictions should have broad discretion to *enact* the land use regulations that are consistent with state and federal law. Courts should defer to local legislative discretion to enact land use regulations within the law. Each jurisdiction is unique.

In contrast, local jurisdictions should and do have little discretion with respect to how they *apply or administer* the regulations they enact. Some courts have been reluctant to review local administrative decisions under an objective “correctness” standard. A bigger problem is that some jurisdictions believe the courts will defer to their interpretation of otherwise vague regulations.

Local jurisdictions should understand that they are subject to full judicial review of their land use administration.

4. *Conditional Use Process Example*

The conditional use process provides a good example of how the current language in LUDMA has led to poor outcomes:

In 2005, the legislature limited local discretion to administer conditional use permit applications: in most cases, a local jurisdiction *must issue* a conditional use permit if the use is listed as conditional in the zone. However, since 2005, very few local jurisdictions revised their codes in response to the 2005 law. Many still use broad discretion to deny conditional uses.

Applicants who know how to enforce their rights, or to seek assistance from the Office of Property Rights Ombudsman have been protected for over a decade. However, those who are not aware of their rights will not enjoy the benefit of existing statutes without this legislation.