

SUMMARY OF RECENT LAND USE TRAINING

By Duncan Torr Murray

As the Perry City Attorney, I have trained the Perry City Mayor and Council regarding Utah land use law, most recently regarding zone change ordinances. The reason for the training was because the Council and Planning Commission have had zone changes and other land use applications on their agendas recently and there was a desire to fully understand the differences between the Council's powers as a land use authority for different types of issues. The Council wanted to act appropriately and within their powers.

The training at recent meetings has focused on the legal limits on the City's land use powers, as set forth in the federal and state constitutions, as well as in Utah law (primarily in Utah Code Title 10, Chapter 9a). The 10th Amendment of the United States Constitution declares that: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Since the United States Constitution enumerates only limited powers to the federal government regarding land use, the States and the people have reserved all of the remaining land use powers to themselves. The State of Utah and its citizens have delegated, in the Utah Constitution, the power to the State legislature to enact land use laws. There is a similar delegation of authority to allow cities and towns ("municipalities") to exist, reserving the right to citizens to elect Mayors and Council members (who may approve and administer land use ordinances, subject to State law).

The State legislature has specifically enacted Utah Code Title 10, Chapter 9a, called the Land Use Management and Development Act ("LUDMA"), and other provisions, to provide a codified and simplified set of land use laws for the municipalities in the State to follow. I have explained in my training that (whether or not we think it was the right thing to do) LUDMA delegates a lot of power to the local land use authorities established in each municipality. With this significant delegation of authority, however, comes a lot of responsibility. Therefore, even though local governments have been delegated a vast amount of land use power, this does *not* mean that they can do whatever they want, nor can they ignore or supersede private property rights, other specifically enumerated constitutional rights, or any other "unalienable rights" referred to by the 9th Amendment of the United States Constitution, which states: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

Any municipality's land use power is also subject, of course, to the public notice, public hearing, and other due process requirements of not only LUDMA, but of the 5th and 14th Amendments of the United States Constitution. Perry City has been very committed to providing far more public notice and public input than the legal minimums required by State law (and the council recently approved an ordinance requiring additional public notice and public input).

Furthermore, State law allows for the flexibility of ordinances to be changed at any time, but simultaneously requires certain constitutional protections. For example, once a land use application (other than one requesting a change in the ordinance) is filed, only an ordinance currently in place (or pending) may be applied to a property owner. Thus, the rules may not be changed and new requirements may not be imposed (that are not already pending or in the ordinance).

Just because a certain proposed zone change or other proposed ordinance or change in the law is constitutional, legal, and permissible, this does not necessarily mean that the proposed ordinance is moral, ethical, advisable, or in the citizens' best interest. Elected officials have a duty to act in the best interest of all of the citizens in the community.

Elected officials also have a duty as guardians of the rights of the citizens to act appropriately, especially with regards to rights involving life, liberty, and property (as specifically protected by the 5th and 14th Amendments of the United States Constitution). These rights, referred to and enshrined in the

Declaration of Independence as “life, liberty, and the pursuit of happiness,” are among the “unalienable rights” or sovereign rights of man, as stated by the English philosopher John Locke. Thus, citizens, without the involvement of government, already have property rights, but it is the responsibility of the government to recognize and protect these rights, and to assist in coordinating the balancing of the property rights of individual people with each other.

Thomas Jefferson, the principal drafter of the Declaration of Independence, taught that the best government is a limited government and one that is “closest to the people.” Municipalities have limited budgets and limited authority, but are close to the people, are an important part of our daily lives, and provide many meaningful services on a daily basis. And even though Perry City’s elected officials and employees are not perfect and are not able to provide every service or remedy every concern, hopefully, as citizens and residents of Perry City, you feel that these public servants are ready and willing to listen and to provide reasonable assistance wherever and whenever they can.