

LAND USE IN UTAH – A PRIMER OF STATE LAW

UT UTAH LEAGUE OF
CITIES AND TOWNS



Bryce Canyon National Park

Grand Staircase-Escalante National Monument

Manti-La Sal National Forest

Utah Launch Complex
White Sands Missile Range

Arches National Park

Sevier Lake

Delta

Fishlake NF

Ephraim

Joes Valley Reservoir

Castle Dale

Gunnison

Fillmore

Green River

Richfield

Fishlake National Forest

Paiute IR

Desert Range Experimental Station

Canyonlands NP

Moab

Manti-La Sal NF

Milford

Beaver

Loa

Paiute IR

Dixie National Forest

Capitol Reef National Park

Monticello

Manti-La Sal National Forest

Blanding

Panguitch

Cedar Breaks NM

Dixie National Forest

Bryce Canyon National Park

Dixie NF

Paiute Indian Reservation

Glen Canyon NRA

Natural Bridges NM

Zion

5 TAKEAWAYS TODAY

Questions welcome throughout



1. WHERE TO GET HELP / TRAINING REQUIREMENTS
2. WHY YOU CARE ABOUT LAND USE FOR YOUR COMMUNITY
3. WHAT THE STATE LAW SAYS/ WHAT IS ASKS FOR US TO DO
4. LAND USE LANES
5. WHO DOES WHAT IN LAND USE AT THE LOCAL LEVEL
6. Q&A

#1 PLANNING COMMISSION REQUIRED TRAINING

<ul style="list-style-type: none">• 1 HOUR POWER & DUTIES	<ul style="list-style-type: none">• 1 HOUR	<p>4 HOURS ANNUALLY 3 HOURS ELECTIVES – SEE:</p>
<ul style="list-style-type: none">• 1 HOUR	<ul style="list-style-type: none">• 1 HOUR	<p>10-9a-302 Planning commission powers and duties -- Training requirements.</p> <p>A newly appointed planning commission member may not participate in a public meeting as an appointed member until the member completes the training described.....</p>



- (A) appeals and variances;**
- (B) conditional use permits;**
- (C) exactions;**
- (D) impact fees;**
- (E) vested rights;**
- (F) subdivision regulations and improvement guarantees;**
- (G) land use referenda;**
- (H) property rights;**
- (I) real estate procedures and financing;**
- (J) zoning, including use-based and form-based; and**
- (K) drafting ordinances and code that complies with statute.**



WHERE TO GET LAND USE HELP

LAND USE ACADEMY OF UTAH
LUAU.UTAH.GOV

AMERICAN PLANNING ASSOCIATION UTAH CHAPTER
APAUTAH.ORG

UTAH LAND USE INSTITUTE
UTAHLANDUSE.ORG

URBAN LAND INSTITUTE UTAH CHAPTER
UTAH.ULI.ORG

ENVISION UTAH QUALITY COMMUNITIES
ENVISIONUTAH.ORG

OFFICE OF PROPERTY RIGHTS OMBUDSMAN
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Topic #2 WHY WE CARE ABOUT LAND USE

Utah Municipalities are
created & authorized
by the State

We care about Land use because
the state mandates it
&
because you care about where
you live and it is home

- Since 2005 there have been over 100 substantive changes to land use law in Utah.
- These effect your community!
- You must comply to retain the right to plan your community



**We Shape
destiny/identity
through local
planning laws**

**The Health of our
residents**

**The Safety of our
residents**

**A Balance of
services**



**For Fiscal
stability**

**A Balance of
private property
and community
rights**

**And because we
have the
requirements
and authority to
do so....**

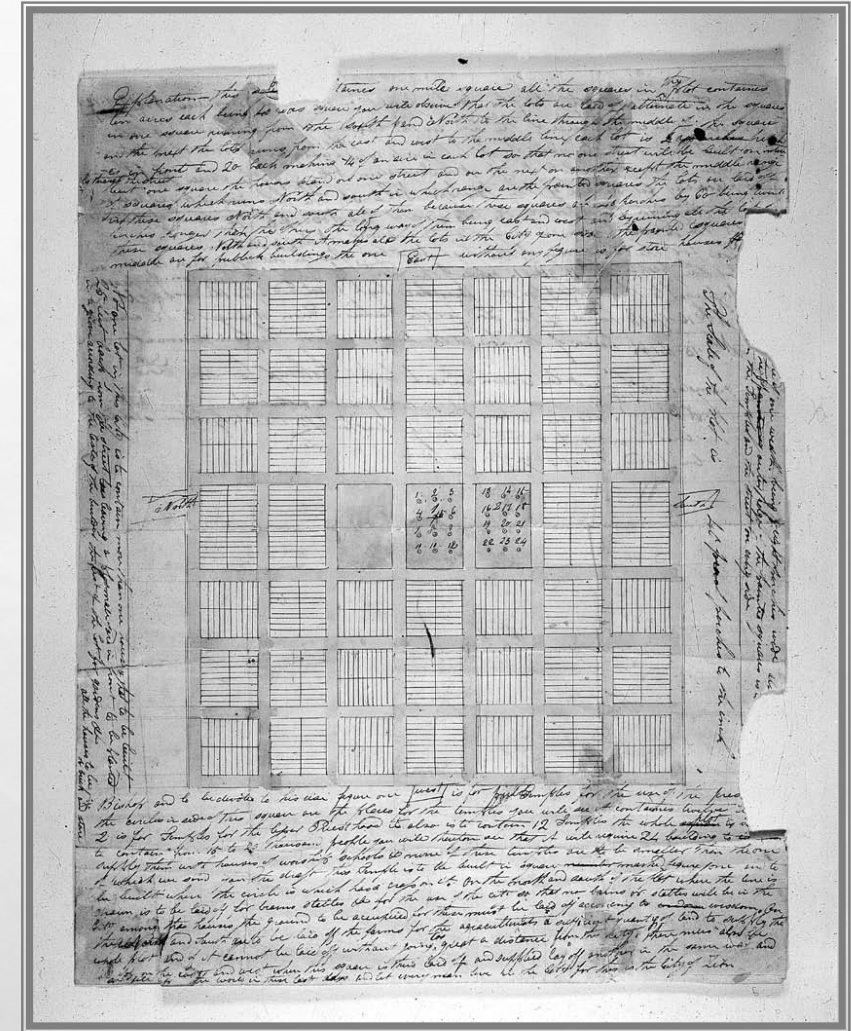
WE DO WE PLAN?

BECAUSE....
WE LIVE IN &
RUN OUR
COMMUNITIES

IS PLANNING NEW TO UTAH?

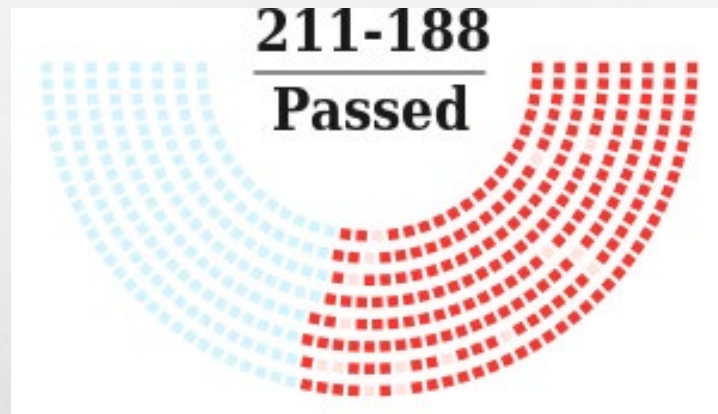
FEATURES OF THE CITY OF ZION PLAT

- THE SIZE IS LIMITED TO ONE SQUARE MILE.
- REGULAR, UNIFORM GRID PATTERN IS LAID OUT IN A NORTH-SOUTH ORIENTATION, WITH STRAIGHT STREETS CROSSING AT RIGHT ANGLES.
- ALL TEN-ACRE BLOCKS ARE SQUARE (AS MUCH OF SLC), WITH UNUSUALLY WIDE STREETS
- BLOCKS ARE DIVIDED INTO 20 HALF-ACRE LOTS.
- THERE IS ONE HOUSE PER LOT, SET BACK 25 FEET FROM THE STREET, AND WITH HOUSES LOCATED ON ALTERNATE SIDES OF THE BLOCKS
- GARDENS ARE PLANTED IN THE BACK, AND SHRUBS AND TREES IN THE FRONT. ONE FRUIT TREE IN EACH YARD.
- ALL HOUSES ARE CONSTRUCTED OF BRICK OR STONE.
- ALL FARMS, BARNs, AND LIVESTOCK ARE LOCATED JUST OUTSIDE THE RESIDENTIAL SECTION.



WHAT DOES IT TAKE?

Political Will



Priorities



COMMUNICATION
&
ENGAGEMENT

BEING OPEN TO
LOTS OF POINTS
OF VIEW ...



KNOWING YOUR LIMITATIONS AND YOUR POSSIBILITIES WITHIN THE LAW

**What are you
really
allowed to do**

**and not to
do?**

DON'T GET TOO COMFORTABLE



Nothing is constant but change ..
adapt to it



Zoning is for the future ...
it is not static



3. ENJOY IT & WORK TOGETHER

**This is your
community**

**You are a
Collective not
Individuals**

**Your strength is
working to
together for
collective goals**





TOPIC #3

WHAT STATE LAW

SAYS

The State Rules...

LUDMA

MUNICIPALITIES: TITLE 10,
CHAPTER 9A

THE GOVERNING LAW FOR MUNICIPALITIES IN
LAND USE IS THE:

LAND USE DEVELOPMENT AND
MANAGEMENT ACT- LUDMA

CLUDMA

- COUNTIES : TITLE 17, CHAPTER 27A

le.utah.gov

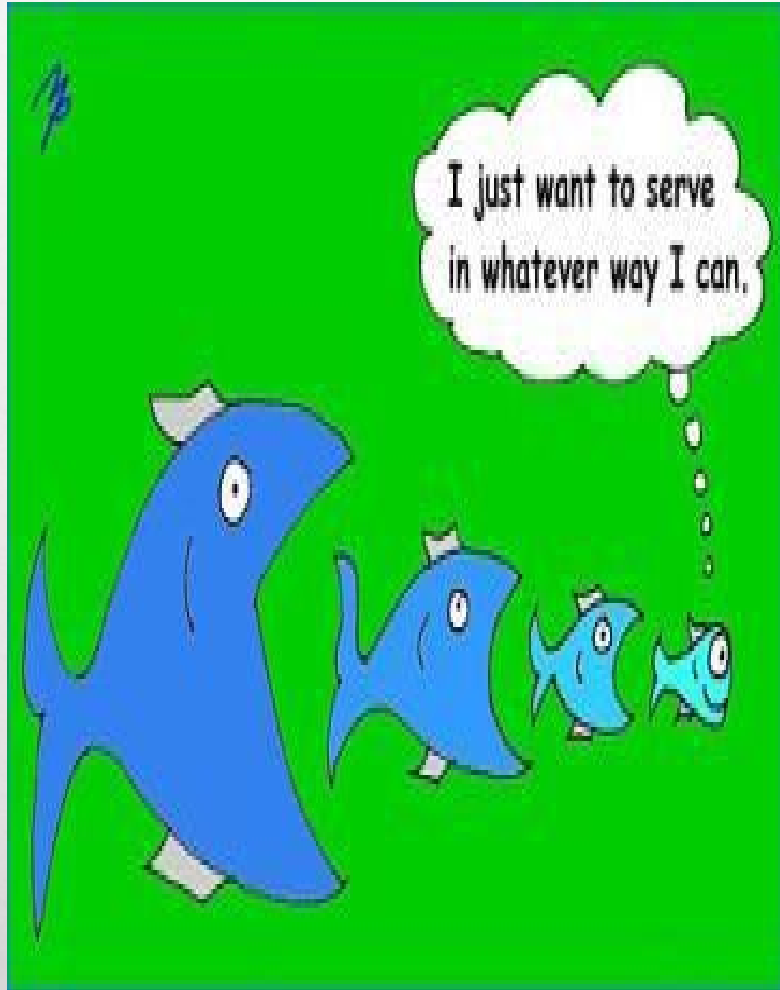
LUDMA / CLUDMA.....WHAT DOES STATE LAW SAY?

1. Authorizes land use regulation to City Council
(Legislative body)

2. Mandates the creation of:

- Planning Commission (Advisory body)
 - Land Use Authorities
 - Appeal Authorities
 - Land Use General Plan
-

The governmental food chain and your local zoning code



Federal Constitution
Federal Supreme and Appellate Court
Decisions

Federal Statutes

Federal Administrative Rules

State Constitution

State Supreme and Appellate Court Decisions State

Statutes (LUDMA)

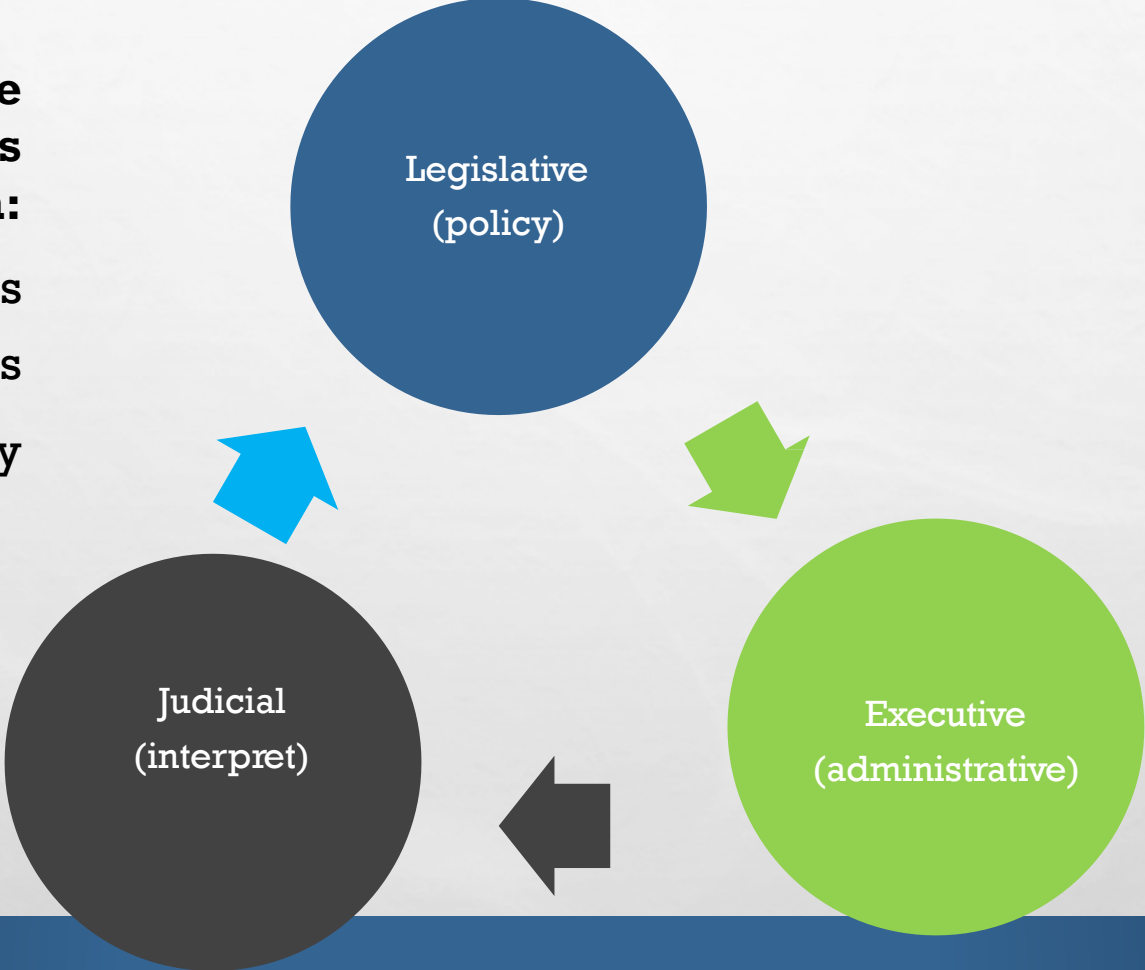
State Administrative Rules

Local Land Use Code

SEPARATION OF GOVERNMENTAL POWER

**Preserve
Fundamental Freedoms
Through:**

- Checks and Balances
- Offsetting Roles
- Accountability



~~10-9a-102~~ Purposes -- General land use authority.

(1) The purposes of this chapter are to provide for the health, safety, and welfare, and promote the prosperity, improve the morals, peace and good order, comfort, convenience, and aesthetics of each municipality and its present and future inhabitants and businesses, to protect the tax base, to secure economy in governmental expenditures, to foster the state's agricultural and other industries, to protect both urban and nonurban development, to protect and ensure access to sunlight for solar energy devices, to provide fundamental fairness in land use regulation, and to protect property values.

(2) To accomplish the purposes of this chapter, municipalities may enact all ordinances, resolutions, and rules and may enter into other forms of land use controls and development agreements that they consider necessary or appropriate for the use and development of land within the municipality, including ordinances, resolutions, rules, restrictive covenants, easements, and development agreements governing uses, density, open spaces, structures, buildings, energy efficiency, light and air, air quality, transportation and public or alternative transportation, infrastructure, street and building orientation and width requirements, public facilities, fundamental fairness in land use regulation, considerations of surrounding land uses and the balance of the foregoing purposes with a landowner's private property interests, height and location of vegetation, trees, and landscaping, ~~unless expressly prohibited by law.~~

LUDMA /CLUDMA BASIC THEMES:

Private Property Rights: Individuals are free to use private property as they wish, unless valid, written land use laws conflict

Must clearly write it down: Community has broad discretion to regulate private property.

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.

Unlimited Property Rights Can Be Restricted Only With Plain Regulations: Individuals are free to use private property as they wish, unless validly enacted land use laws *plainly restrict* their use.

Broad Discretion to Regulate: City Councils have broad discretion to regulate the use of private property in the Legislative Capacity.

Land Use Authorities Have Little Administrative Discretion: Land Use Authority is bound by the terms and standards of applicable land use ordinances and shall comply with the provisions of those ordinances.

Less Process for Administrative Decisions: Formality of noticing has been eliminated for applications that simply process permitted and conditional uses in your codes.

TIE GOES TO THE RUNNER

“A land use authority shall apply the plain language of land use regulations.

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.”



STRIVE FOR
OBJECTIVE
LANGUAGE ...

NOT SUBJECTIVE
LANGUAGE IN
YOUR ZONING
LANGUAGE

Plain Language Rule



The background consists of a dense, overlapping collage of colorful sticky notes in shades of blue, green, yellow, pink, and purple. Each sticky note features a large, black, hand-drawn question mark. A semi-transparent dark grey horizontal band runs across the center of the image, containing the text.

WHAT DOES THE LAW
ASK US TO DO?



THE MUSTS

- **CREATE PLANS AND REGULATIONS (WITH BUMPERS)**
- **APPOINT CERTAIN PEOPLE TO ENACT AND ADMINISTER THEM**
- **SET A PROCESS TO APPEAL THOSE DECISIONS**



THE LAND USE TOOLS WE CREATE

General Plan

(LEGISLATIVE)
“A practical vision for
the future”

Sets roots for the Zoning



Zoning - Land Use Code

(ADMINISTRATIVE)
“Where the rubber meets
the road”

Detailed specifics

Process

1.Planning
Commission:
creates, holds a
public hearing
and
recommends to
the Council

2.Council
approves,
modifies/denies

LAND USE AUTHORITY (LUA)

“A person, board, commission, agency, or other body **designated** by the local legislative body to **act** upon a land use application.”



Creation:



Planning Commission recommends to Council



Council takes final action and appoints



Can be:



Designated staff



City Council



Planning Commission

APPEAL AUTHORITY (AA)

1. Acts on appeal of a final land use decision
2. Acts on request to vary from your code

City process then can go to Court

Can be just one person or a Board (no set number)

2
specific
tasks
under
the law

Appeal

MUNICIPALITY SETS
STANDARD OF REVIEW:
“DE NOVO” OR
“ON THE RECORD”

Applicant has the
burden of proving that
the Land Use Authority
has erred

Impartial decision makers

Applies to both

DUE PROCESS

No public hearing
required for either.

After decision is rendered
in both cases any further
action is heard in Court

Variance

State provides mechanism to
vary the rules of your land
use ordinances

The state sets the five
criteria. **10-9a-702**

All 5 must be met

Very rare that all five are met

VESTING.....

YOU GET WHAT YOU APPLIED FOR.....

Title 10 Utah Municipal Code

Municipal Land Use,

Chapter 9a Development, and
Management Act

Applicant's
entitlement to land
use application
approval --




Section 509 Municipality's
requirements and
limitations -- Vesting
upon submission of
development plan
and schedule.

(c) An application for a land use approval is considered submitted and **complete** when the application is provided in a form that complies with the requirements of applicable ordinances and all applicable fees have been paid.

(I) AN APPLICANT WHO HAS FILED A COMPLETE LAND USE APPLICATION, INCLUDING THE PAYMENT OF ALL APPLICATION FEES, IS **ENTITLED TO SUBSTANTIVE LAND USE REVIEW** OF THE LAND USE APPLICATION UNDER THE LAND USE REGULATIONS IN EFFECT ON THE DATE THAT THE APPLICATION IS COMPLETE AND AS FURTHER PROVIDED IN THIS SECTION.



TOPIC #4 LAND USE LANES

#4 LAND USE LANES	<u>LEGISLATIVE</u>	<u>ADMINISTRATIVE</u>	<u>QUASI- JUDICIAL</u>
Characteristics	<p>Very Broad Authority <u>Broad Public Input</u></p>	<p>Much More Restrictive <u>Limited or no public input</u></p>	<p>Very Restricted <u>Input restricted to parties in case</u></p>
	<ul style="list-style-type: none"> • Creates new law • Allows for citizen input as basis of decision • Based on vision and goal setting • Use of judgment 	<ul style="list-style-type: none"> • Enforces the current law and makes reference to it in a decision • Bound by the law rather than public opinion • Does not create or “bend” the law <ul style="list-style-type: none"> ▪ The application of the law to a specific situation 	<ul style="list-style-type: none"> • Based on established state law • Looks for errors made in the process • Not a judgmental decision • Public input for information only
Responsible Body	<p><u>Land Use Authority (ies)</u></p> <ul style="list-style-type: none"> ▪ Planning Commission* • City Council/Town Board <p>*Acts as an advisory board to the legislative body</p>	<p><u>Land Use Authority (ies)</u></p> <ul style="list-style-type: none"> • Planning Commission • City Council • Staff • Appeal Authority 	<u>Appeal Authorities/Courts</u>
Types Of Land Use Actions			



ACROYNMS BREAK

**Planning
acronyms**

**How
many
do you
know?**

LUDMA
CLUDMA
OPMA
CUP
LUA
AA
CC
PC
GRAMA
PU
MIHP
RDA/ CRA

Who does what at the local level



City Council (CC)
Planning Commission (PC)
Appeal Authority (AA)
Staff



TOPIC #5

PLANNING COMMISSION

4 HOURS OF
ANNUAL
TRAINING
REQUIRED

WHAT DO I DO?

LISTEN, GATHER & RECOMMEND

PROCESSES TO THE CC (ONLY APPROVE IF
CC SAYS SO)

REMEMBER - WHAT DID THE COUNCIL
AUTHORIZES US TO DO?

WHAT'S IN MY LOCAL ORDINANCE?

AM I AN APPEAL AUTHORITY? IF NOT
WHO IS? WHAT IS THAT AGAIN?

HOW DO WE ACT?

*All PC's and CC's must have written rules of procedure
adopted and posted/placed and must abide by the following
laws:*

1. Open Meetings Act (OPMA) (annual training)
2. Government Record Management Act (GRAMA)
3. Ethics Act

FROM THE UTAH STATE STATUTE:



*** CREATION OF THE GENERAL PLAN (MANDATED)**



Required elements: LAND USE/TRANSPORTATION & MODERATE INCOME HOUSING (Towns Exempt)



*** CREATION OF ZONING ORDINANCES (OPTIONAL)**



ADVISE COUNCIL ON APPEALS AND PROCESS FOR ADMINISTERING THE ZONING CODE

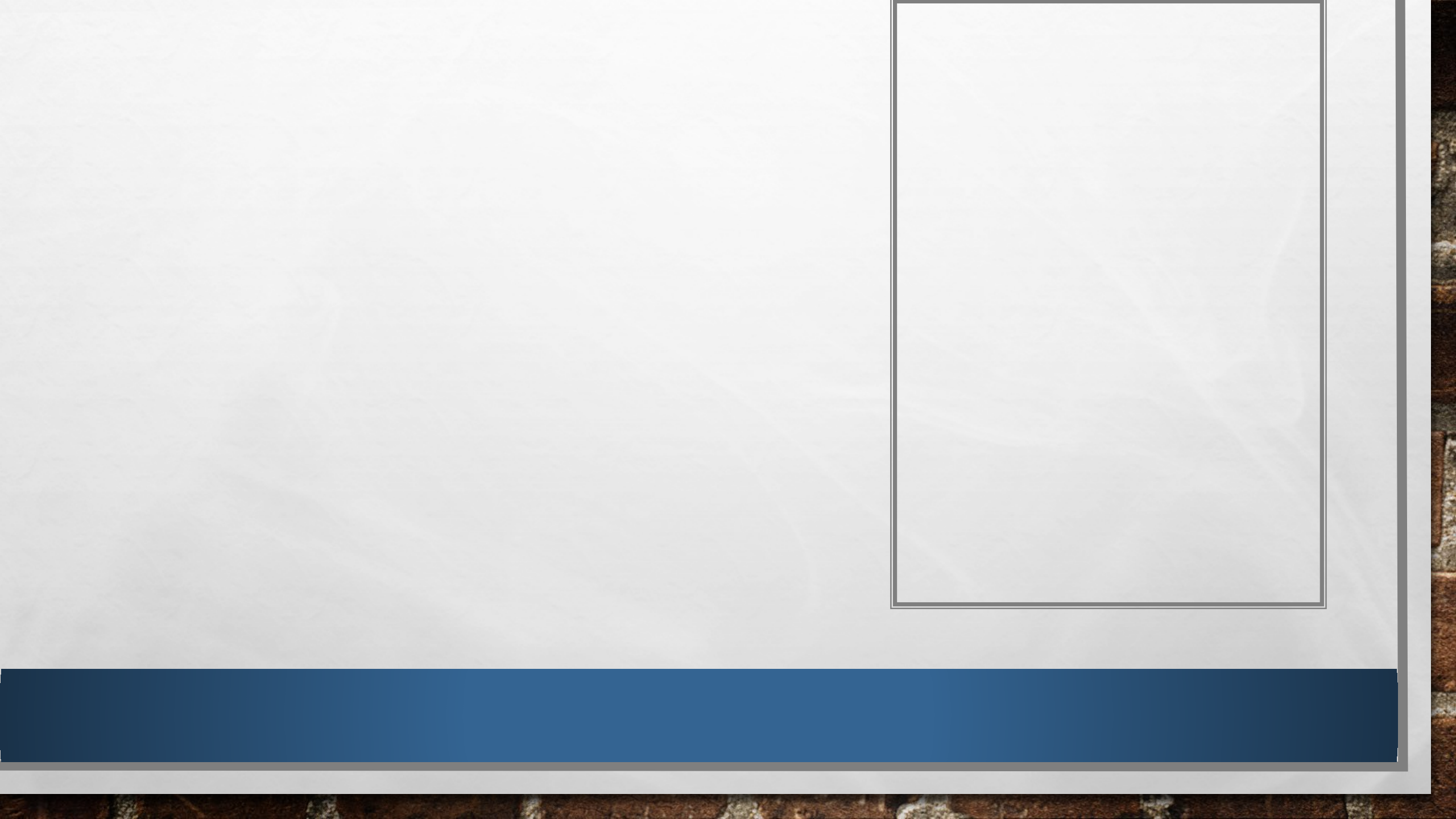
*** Public Hearing required**

CITY COUNCIL MEMBERS

WHAT IS MY ROLE IN LAND USE?

1. GIVE YOUR PLANNING COMMISSIONER CLEAR DIRECTION ON THEIR JOB AND THEIR DUTIES (TALK TO THEM)
2. KNOW IF YOU ACT AS A LAND USE AUTHORITY AND IF NOT WHO YOU APPOINTED.....
3. KNOW IF YOU ACT AS AN APPEAL AUTHORITY (WE RECOMMEND YOU DON'T)
4. DELEGATE IF REASONABLE (TRUST YOUR PLANNING COMMISSION AND STAFF)





STAFF?

A woman with glasses is seated in a chair, looking down with a thoughtful expression. The background consists of a grid of circular patterns, possibly representing a chair's backrest or a decorative wall. The overall image is in grayscale, with a blue star icon on the left side.

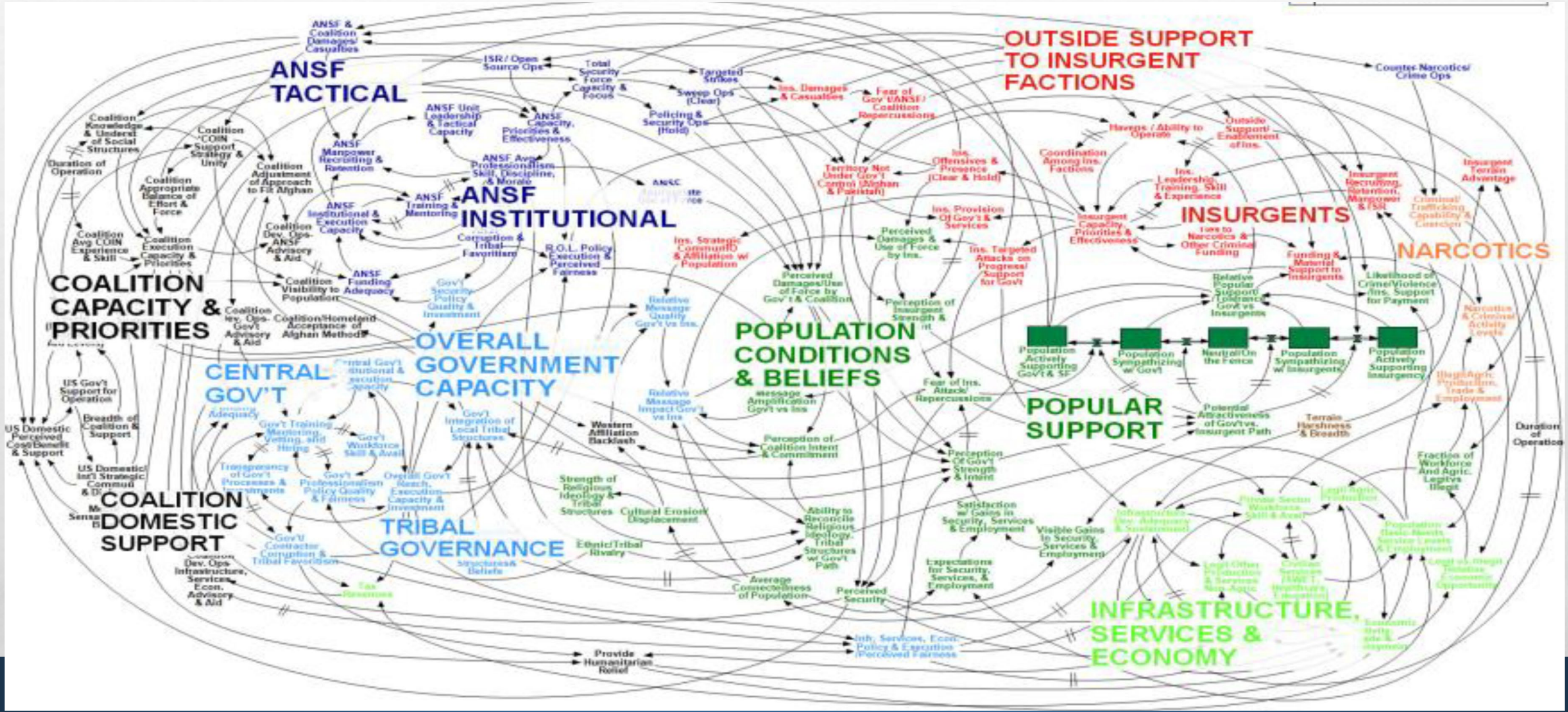
MEETINGS ARE AN EDUCATION

A TWO-WAY STREET

THINK IN MEETINGS ABOUT YOUR ROLE AND YOUR MESSAGE

TODAY

You learned:



AFGHANISTAN STABILITY/ COIN DYNAMICS

**TODAY WE HOPE YOU
LEARNED :**

LOTS OF ACRONYMS

**WHY YOU CARE ABOUT LAND USE FOR YOUR
COMMUNITY**

**WHAT THE STATE LAW SAYS/ WHAT IS ASKS
FOR US TO DO**

LAND USE LANES

**WHO DOES WHAT IN LAND USE AT THE
LOCAL LEVEL**

WHERE TO GET HELP

LOTS OF ACRONYMS

Questions?



Stay connected



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Daily Legislative Recap**

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