

# Summit County

## Public Hearing Handbook

**DRAFT**

**1/30/2023**

**Not for public distribution**

## SECTION 1: THE PUBLIC HEARING

### A. What exactly is a public hearing and why is a hearing part of the process?

A public hearing is the designated time during a public meeting when the applicable board or commission takes comment from the public regarding a pending application subject to the jurisdiction of the board or commission. It is the public's reasonable opportunity to give testimony and offer evidence for or against the subject of the hearing.

A public hearing process ensures that individuals will be given a meaningful opportunity to be heard before a decision is rendered that may affect their personal or property rights. It is important for community members to understand that public hearings are usually governed by specific review criteria. Therefore, to be effective, community members must understand the relevant criteria applicable to each public hearing or land use decision.

### B. Noticing: Legal Notice, Posted and Published, Mailed

Notice of a public hearing must be given in order to fulfill the requirement of due process. The notice requirement is important since it ensures that people affected by the matter at hand will have sufficient opportunity to attend the public hearing and thus have the opportunity to be heard concerning their interest in the matter.

A legal notice is the notice required by state and local law, which varies depending on the particular action.

Notices must contain a description of the proposed action affecting the property, the time, place, and date of the public hearing. Notice is given in several ways.

(1) **Posted and Published Notice:** Published notice shall be given by publication in a newspaper having general circulation in Summit County. Additionally, state law requires notice to be posted at: [www.utah.gov/pmnl/index.html](http://www.utah.gov/pmnl/index.html).

- a. Snyderville Basin: *Park Record*
- b. Eastern Summit County: *Summit County News*

(2) **Mailed Notice:** Properties within 1,000 feet of the subject property are notified only of specific applications, including those that require a public hearing. Mailed notice must be provided a minimum of ten days prior to the final action. Below, see example applications that require mailed notice and the (governing body with final land use authority).

- a. Snyderville Basin: As noted in [Chapter 3](#).
  - Lot combinations and lot line adjustments (Planning Commission)

- Subdivision plat amendments (Planning Commission)
- Final site plan (Planning Commission)
- Conditional use permit (Planning Commission)
- Zoning variances (Board of Adjustments)
- Special exceptions (County Council)
- Master Planned Developments (County Council)
- Specially Planned Area (County Council)

b. Eastern Summit County: As noted in [Chapter 4](#)

- Lot combinations and lot line adjustments (Planning Commission)
- Subdivision plat amendments (Planning Commission)
- Final site plan (Planning Commission)
- Conditional use permit (Planning Commission)
- Zoning variances (Board of Adjustments)
- Special exceptions (County Council)
- Master Planned Developments (County Council)

**C. Who attends and why?**

- (1) **Council, Commission, or Board members:** A quorum of the body must be present to conduct official business, including public hearings. Each body will have a chairperson who is responsible for running the meeting and controlling the public hearing.
- (2) **County Staff:** A staff member is usually at each meeting to advise the body on technical issues. For the County Council, it is the County Manager; for the Planning Commissions and Board of Adjustment, it is usually the Community Development Director or appointed staff member. Individual employees assigned to pending applications are also available to present their staff reports. A member of the County Attorney's Office is typically present to answer legal questions.
- (3) **Recorder:** All meetings must have meeting minutes recorded and this is typically done by combination of manual notes by a staff member and an electronic recording device. The body subsequently must adopt each set of meeting minutes at a public meeting. Meeting minutes and tapes are subject to retention requirements to ensure public access and preservation of official meeting records.
- (4) **Applicant/Owner:** When the public hearing is regarding a particular application rather than a legislative matter, like a code amendment, the Applicant or a designated representative (i.e. attorney or architect) is usually present. Since the Applicant is also entitled to due process, the Applicant is generally given an opportunity to address the body after the staff presentation and again in rebuttal to issues raised in the public hearing.
- (5) **Public/Press:** State open meeting laws require all public meetings to be open to all citizens unless closed pursuant to specific and narrow exceptions: litigation,

property disposition, security, or personnel. Representatives of the press are usually present so public hearing participants should not be surprised to see their comments in the local media.

- (6) **Peace Officer:** Rarely, but on occasion, the body may request the presence of a peace officer for security purposes and to keep the peace. This is typically only used in unusually large and contentious meetings.

#### **D. Public Hearing Process**

- a. Chairperson reads agenda title
- b. County Staff presentation: Report and recommendation
- c. Applicant presentation or comments
- d. Council/Board/Commission member questions, Applicant and/or City Staff respond to questions
- e. Chairperson opens public hearing and invites public to comment
- f. Public comment is taken
- g. Staff/Applicant given opportunity to respond
- h. Chairperson closes public hearing
- i. Council/Board/Commission discussion: Public comment is no longer allowed unless recognized by the Chairperson
- j. Council/Board/Commission takes action: Members vote on a motion or provide direction

#### **E. Types: Legislative vs. Administrative and Quasi-Judicial**

There are three types of powers under which a governing body, such as the Planning Commission, County Council, and Board of Adjustments, take action in considering issues presented by Applicants.

##### ***Legislative***

A legislative act is a decision made by a public vote of the County Council that results in (1) a new ordinance, (2) an amendment to an existing ordinance, (3) adoption of a general plan, (4) an amendment to the general plan, (5) amendment to zoning map or (6) the creation of an official policy, rule, or code of general community-wide application. Only a body of elected officials can make legislative land use decisions and only after receiving a recommendation on the proposed action from the planning commission. The legislative power granted to local governing bodies allows them to determine public policy for the general health, safety, and welfare of the county. Applications that require legislative review include Special Exceptions, Master Planned Developments, and Specially Planned Areas.

##### ***Administrative***

Administrative actions are when a council, planning commission, board of adjustment, or their staff enforce a legislatively adopted plan, ordinance, rule, or standard. These non-legislative decisions must be supported by substantial evidence that must be

included in a formal record of each decision. In other words, an administrative act is one in which existing law is applied to a particular application. An example of an application requiring administrative action is a Conditional Use Permits (CUP). An application for a CUP requires the Applicant to meet certain requirements as set forth in the Development Code. The Planning Commission acts in its administrative capacity to approve or deny the CUP application based on whether or not all requirements have been fulfilled pursuant to the current law.

**Quasi-Judicial**

A term applied to actions of a governing body requiring it to investigate facts, or ascertain the existence of facts, hold hearings, and draw conclusions from them as a basis for official action and to exercise discretion of a judicial nature. These actions include variances and appeals.

Action Type	Legislative	Administrative
Making laws	X	
Generally applicable	X	
Weighing of broad or open-ended policy considerations	X	
Public Hearing	X	X
Evidence (facts relevant to the decision)		X
Unbiased decision maker		X
Written determination		X
Opinions (clamor)	X	
Referable to voters	X	

**F. The Utah Public Clamor Doctrine**

“Public Clamor” is simply citizen opposition (regardless of facts or technical compliance) to an application or decision by the reviewing body acting in an administrative or quasi-judicial capacity. It usually involves the protests and concerns of interested, and often neighboring, property owners who object to the matter.

The “Public Clamor Doctrine” states that while “there is no impropriety in the solicitation of or reliance on the advice of neighboring landowners, the consent of neighboring landowners may not be made a criterion for the issuance or denial of a conditional use permit.” *Thurston v. Cache County*, 626 P.2d 440, 445 (Utah 1981).

A reviewing body presented with an application must rely on facts, and not mere emotion or local opinion, in making such a decision whether to deny or approve such application. A reasonable basis on the record must exist to support the decision, not just the opinions of neighbors.

In other words, the governing body may take into consideration the public input surrounding an application since it is within the scope of due process to allow for public

hearings and to allow any interested parties to give information and to present ideas on the matter at hand. However, the governing body cannot solely base its decision on opinions. It is the duty of the governing body to gather all available, pertinent information from all possible sources in rendering its decision and apply the applicable standard of review.

Accordingly, citizen petitions stating merely support or opposition to a project are of little use in an administrative proceeding such as a CUP application. On the other hand, public input regarding facts that apply to the application (actual data regarding impacts such as traffic, noise, development conditions, parking, safety, etc.) are very useful. Getting this data is a heavy burden on neighbors when faced with technical information from staff and/or the applicants' experts. If you can't research the matter further, you may offer testimony based upon your personal observations that either support or contradict the evidence offered by staff or applicant. Another option may be to request that the reviewing body direct staff or the applicant to further research a particular issue and return with the requested information.

### **Top Tips**

**For Administrative items, frame your comment in terms of the development code!**

Try this sentence starter:

*This application does or does not meet the requirements of the development code because....*

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**For Legislative items, frame your comment in terms of existing plans and future land use maps!**

Example of Public Clamor: *We don't want Wal-Mart. We hate Wal-Mart. Why is no one listening? All of my friends hate Wal-Mart also!*

Example of a Strong Public Comment: *This application is inconsistent with the area planning recommendation of the General Plan that says big box retail should be avoided due to its negative impacts on existing small retail and our pedestrian oriented business district. The specific application is inconsistent with the applicable CUP criteria because...*

When a legislative body acts in a purely law making, altering, amending, or repealing capacity, the public clamor doctrine is not in effect. *Gayland v. Salt Lake County*, 358 P.2d 633, 635-36 (Utah 1961). This is because when acting in a legislative capacity, the body is acting in a direct representative manner of the citizens to determine public policy, rather than applying existing administrative criteria in a process that must also respect the due process rights of the Applicant.

Similarly, state initiative and referendum options are only applicable to legislative matters, and not administrative land use decisions. For example, the amendment of a law may be subject to voter referendum, but the approval of a CUP is not.

**G. Non-Public Hearing Items: Work Sessions**

Often, items are placed on the “work session” agenda. The work session is the part of the meeting where staff and the board or commission typically discuss projects early in the process or handle administrative matters. Applicants may use work sessions prior to public hearings on their projects to get preliminary input early in the process. Public input may be allowed at the discretion of the board or commission. If there isn’t time or public input isn’t allowed, you may always provide comment to the board or commission at the beginning of the regular meeting at the time called “public input.” However, comment at that time is usually not part of the “record” since the applicant probably won’t have notice of, or be present for, your informal input. Therefore, you should separately submit your comments to the staff person and request that they are included in the next public hearing staff report.

## SECTION 2: PROCEDURAL DUE PROCESS

### A. What is procedural due process?

In general, due process refers to “how” and “why” laws are enforced. It applies to all persons, citizen or alien, as well as to corporations. The concept of due process is enumerated in the United States Constitution and reiterated in the Utah Constitution. A law must be clear, fair, and have a presumption of innocence to comply with procedural due process.

The *minimum* requirements of procedural due process are (1) adequate notice and (2) an opportunity to be heard in a meaningful manner. Affording citizens their due process right is the reasoning behind public hearing and notice requirements.

To be considered a meaningful hearing, the concerns of the affected parties should be heard by an impartial decision maker.

### B. Vesting

Vesting typically occurs at the time a complete application is filed with the County. Vesting generally means a pending application is free from subsequent zoning amendments or requirements.

## SECTION 3: FINDINGS OF FACT, CONCLUSIONS OF LAW, AND CONDITIONS OF APPROVAL

### A. Findings of Fact

Findings of fact are typically presented as a list of specific facts about the application that the reviewing body has found to be true. These facts indicate that the application conforms, or fails to conform, to one or more applicable approval criteria. Findings of fact are legal footprints – the factual foundation for the decision-making body’s conclusions as to whether the appropriate standards are met by the Applicant. The decision-making body’s decision must be based on the facts supported in the record and the facts must address the appropriate standards. The burden of proof is on the Applicant to meet the standards.

### B. Conclusions of Law

Conclusions of law are the statements of law by the decision-making body based on the findings of fact. For example, if the findings of fact state that an Applicant met the requirements of a conditional use permit, then the conclusions of law will state the legal requirement. The decision-making body looks to the actual law i.e. the Utah Code Annotated, the Summit County Development Code, and other legal authority to formulate its conclusions of law.

### C. Conditions of Approval

After consideration of, and deliberation about, the factual information presented to the decision-making body, the decision-making body renders its findings of fact and conclusions of law. The decision-making body may also render “conditions of approval” which are conditions required to be fulfilled by the Applicant in order to make the project comply. For example, an Applicant may be required to provide a landscaping plan that conforms to the specified standards before a building permit may be obtained.

Courts in Utah have found that as long as the decision-making body is acting reasonably, a condition of approval will be upheld. The standard of reasonableness is a constitutional standard and the condition must reasonably relate to an adverse or noncompliant impact that would otherwise exist in the project. Conditions cannot be made up subjectively and must relate to specific standards or they can be challenged as “arbitrary and capricious,” a denial of due process or unlawful use of legislative authority.

However, Utah case law has established that when courts review the actions of an administrative body like a planning commission, that body's actions are "endowed with a presumption of correctness and validity which the courts should not interfere with unless it is shown that there is no reasonable basis to justify the action taken." Xanthos at 1034. (*quoting Cottonwood Heights Citizens Ass'n v. Board of Comm'rs*, 593 P.2d 138, 140 (Utah 1979). The Applicant has the burden of proving such condition of approval is not reasonable when challenging the decision-making body’s action.

If, as a community member at a public hearing, you intend to recommend conditions of approval on a project, you should link those conditions to the requirements of the specific review criteria or adverse impacts as substantiated by the findings of fact and conclusions of law.

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## SECTION 4: STANDARDS OF APPROVAL

Standards of approval are those requirements that an applicant must meet in order to be eligible for approval from the final land use authority. The list below includes a hyperlink to the appropriate code section for each application type based on the zoning district. Low Impact and Conditional Use permits are most commonly seen, so the standards of approval for both have been included below. *Always check the current code as the standards may have changed.*

### A. Low Impact Permit

- [Snyderville Basin \(10-3-4\)](#)
  1. The use does not significantly increase vehicular traffic, unless the increases are consistent with previously approved plans for which appropriate mitigation has been contemplated and which has been implemented in an appropriate manner to accommodate the proposed amendment;
  2. The use does not significantly increase the demand for parking; unless the increases are consistent with previously approved plans for which appropriate mitigation has been contemplated and which has been implemented in an appropriate manner to accommodate the proposed amendment;
  3. The use does not intensify the likelihood of pedestrian and vehicular conflicts;
  4. The use does not create unsightly conditions, including, but not limited to, unscreened storage and other environmental concerns;
  5. Buildings and other structures shall provide a human scale consistent with adjacent development and appropriate to residential uses and consistent with adjacent conforming development in the zoning districts. The massing, scale, and architectural design shall be consistent with the design guidelines established in section [10-4-19](#) of this title;
  6. The use does not intensify noise levels or odors;
  7. The use does not create significant dust and dirt conditions, which cannot be adequately mitigated;
  8. The use does not intensify lighting and glare conditions;
  9. The site shall be landscaped according to section [10-4-20](#) of this title;
  10. The use does not create a sudden change in privacy for adjacent property owners;
  11. The proposed use shall be in compliance with the standards of approval of development permits in chapter 4 of this title; and
  12. The use is generally consistent with the goals and policies of the general plan.
  
- [Eastern Summit County \(11-4-8\)](#)
  1. The use conforms to all applicable requirements of this chapter and State and Federal regulations.
  2. The use is consistent with the goals and policies of the General Plan.
  3. The use conforms to all requirements in chapter 2, "Development Evaluation Standards", of this title.
  4. The use is not detrimental to public health, safety and welfare.

5. The use is appropriately located with respect to public facilities and services.
6. The natural topography, ridgelines, soils, critical areas, watercourses and vegetation shall be preserved where possible through careful site planning and design of access routes, circulation areas, buildings and other structures, parking areas, utilities, drainage facilities and other features.

## **B. Conditional Use Permit**

- Snyderville Basin ([10-3-5](#))
  1. The use is in accordance with the general plan;
  2. The use conforms to all applicable provisions of this title, including, but not limited to, any applicable provisions of this section and chapter 4 of this title, the general plan, and state and federal regulations;
  3. The use is not detrimental to public health, safety and welfare;
  4. The use is appropriately located with respect to public facilities; and
  5. The use is compatible with the existing neighborhood character and with the character and purpose provision of the applicable zoning district, and will not adversely affect surrounding land uses.
  
- Eastern Summit County ([11-4-7](#))
  1. The proposed use, as conditioned, shall be appropriate in the particular location, taking into account the nature of the use, its relationship to surrounding uses and its impact on the natural environment.
  2. The proposed use, as conditioned, shall be in compliance with the development evaluations standards in chapter 2 of this title.
  3. The applicant shall present evidence to show approval of the landowner for the particular use, unless the land is owned by the applicant and, in such case, the applicant shall submit proof of ownership.
  4. There are reasonable conditions that can be imposed which mitigate the reasonably anticipated detrimental effects of the proposed use.

## **C. Master Planned Development**

- Snyderville Basin ([10-2-18](#))
- Eastern Summit County ([11-4-12](#))

## **D. Subdivision Review**

- Snyderville Basin ([10-3-14](#))
- Eastern Summit County ([11-4-5](#))

## **E. Plat Amendment**

- Snyderville Basin ([10-3-18](#))
- Eastern Summit County ([11-4-5](#))

**F. Variance**

- Snyderville Basin ([10-3-6](#))
- Eastern Summit County ([11-4-10](#))

**G. Special Exception**

- Snyderville Basin ([10-3-7](#))
- Eastern Summit County ([11-4-11](#))

**H. Specially Planned Area**

- Snyderville Basin ([10-3-11](#))

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## SECTION 5: PREPAREDNESS AS A PARTICIPANT

### A. Agenda

An agenda is the schedule of business for a particular meeting. It lists all items to be considered by the reviewing body at the meeting. You should always get a copy of the agenda in advance so that you have an idea of what time the matter will be heard and how the item is scheduled (for example, is it a work session or a public hearing with possible action?)

Visit: <https://www.summitcounty.org/AgendaCenter> and search by date or category.

### B. Staff Report

Almost every meeting item will have a staff report prepared by a member of the County staff. These reports discuss the background of an application, standards of review, discussion issues, and options for action including proposed findings of fact, conclusions of law, and conditions of approval. Most reports are available a few days before the meeting. In order to be fully prepared for a public hearing, read the staff report prior to the start of the meeting.

### C. GRAMA

State law ensures public access to records via the Government Records Access and Management Act (GRAMA). In addition to the staff report, there may be other County records that will aid your analysis of a project, such as engineer reports or building files, and these records can be obtained by filing a GRAMA request. The forms are available at here: <https://www.summitcounty.org/1267/GRAMA-Government-Records-Access-and-Management> and usually require a response within ten business days. The County may charge for the cost of copying/producing records. There are exemptions for some types of records, and release of some records may require the permission of the owner of those records.

### D. Site Visits / Photos

It is extremely important to know the site that is subject to the discussion and there is no better way to accomplish this than by going to the property. You should view the property from the adjoining public right of way unless you have permission to go on the Applicant's property. Photos for use at the hearing are often helpful but should be specific to a point and used judiciously. Meeting the applicant or County staff on-site prior to the hearing might result in a solution that resolves your concern.

### E. Meet the Applicant Outside of the Regulatory Process

Local governments, like judges, rarely make everyone happy. Once applied for, land use approvals are governed by fairly strict review criteria. When possible, you should always try to talk to the Applicant prior to the public hearing. Hearings can be formal and defensive, and a meeting in advance may give you an opportunity to understand the Applicant's goals and limitations, determine mutual interest, and find win-win solutions up-front.

**F. Pay Attention to and Participate in Zoning Amendments**

The most important thing you can understand what zoning currently permits and the criteria by which the local board or commission must review an application. Even Conditional Uses are permitted if their adverse impacts can be mitigated. Such permits are NOT discretionary. Whenever you see a general plan, zoning, or land management code amendment, you should actively investigate and participate in that process because such an amendment may dictate a result later in an actual development application. Engage your community leaders to ensure zoning and planning is consistent with your expectations prior to actual applications.

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## SECTION 6: SUCCESSFUL CONDUCT AT A PUBLIC HEARING

- Know the standards of approval for each application and direct your comments toward the findings of fact and conclusions of law.
- Be kind and address the Board or Commission, not the applicant.
- Share new ideas rather than repeating those already shared by others.
- Avoid debates by being solutions oriented.
- Come prepared with a list of comments.
- Be aware of your audience.
- Respect the complexity of the decision-making process given multiple competing interests.
- For administrative items, present facts rather than opinions.
- Be aware of the time you are taking.
- Remember, if the Board or Commission's decision is contrary to your desire, it doesn't mean you weren't heard. Reasonable people can disagree.
- Being respectful will only enhance your credibility.

## SECTION 7: KNOW THE PLAYERS

### A. County Council

The County Council serves as the legislative branch of Summit County Government. Council members are elected for 3-year, staggered terms with no term limits. Current council members can be found here: <https://www.summitcounty.org/314/County-Council>.

Council meetings are held weekly on Wednesdays. Currently, meetings can be attended in person (locations rotate throughout the County) or online via Zoom. Public comment is open each Wednesday at 6:00pm.

### B. Planning Commissions

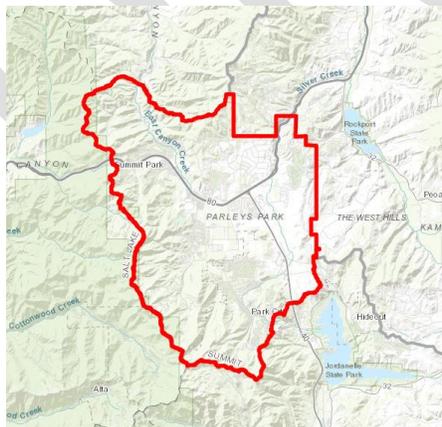
There are two planning commissions in Summit County, representing their respective planning districts. Typically, the planning commissions act administratively.

Planning commissioners are appointed by the County Council to three-year terms which typically expire on the 28th of February each year. Commissioners may not serve more than three terms. Each planning commission consists of seven members.

- Snyderville Basin

The Snyderville Basin Planning Commission (SBPC) serves the interests of community members living in the more urban western side of the county in the unincorporated areas surrounding Park City.

SBPC meets on the second and fourth Tuesday of the month. Currently, meetings can be attended in person (typically the Richins building) or online via Zoom.



- Eastern Summit County

The Eastern Summit County Planning Commission (ESCPC) serves the interests of community members living in the more rural eastern side of the county in the unincorporated areas surrounding the cities of Henefer, Coalville, Oakley, Kamas, and Francis.

ESCPC meets on the first and third Thursday of the month. Meetings can currently be attended in person (location alternates) or online via Zoom.

**C. Board of Adjustments**

Members of the Board of Adjustments (BOA) are appointed to three-year terms which typically expire at the end of November each year. Members may not serve more than three terms. Members are appointed by the County Manager with the advice and consent of the County Council. The Board of Adjustments consists of five members.

The BOA meets on the fourth Thursday of the month. Currently, meetings can be attended in person (typically Ledges Event Center) or online via Zoom.

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## **SECTION 8: LAND USE APPEALS**

For Eastern Summit County, see [11-7-16](#). For Snyderville Basin, see [10-9-22](#).

### **1. Final Action**

Once a reviewing body votes on a matter and adopts findings and conclusions of law, the action is final and may be appealed to the next level. The appellate body will vary depending on the type of action, but it is typically the County Council.

### **2. Timeline**

Most appeals have to be filed within a certain number of days, usually ten. If you wish to challenge a determination, be sure to check the appeal deadline in the code or with the County.

### **3. Process**

Most appeals are quasi-judicial and formal in nature. Typically, the County Attorney will establish procedures with the appellant prior to the hearing. Appeal hearings are typically NOT public hearings and only the official parties have the right to address the reviewing body. The body's final vote and adoption of findings and conclusions of law is final appellate action, appealable to Court.

### **4. Takings**

If you believe the local government approval/denial constitutes a taking of your property, you may request a local review from the Office of the Property Rights Ombudsman. The Utah Office of the Property Rights Ombudsman is within the Department of Commerce for the State of Utah and is a non-partisan, neutral state office and charged with advising government officials and citizens with respect to takings issues to help resolve disputes and problems between property owners and Utah governmental entities. The attorneys in the Office of the Ombudsman do not take sides in a dispute, but rather advocate for fairness and compliance with state and local laws and ordinances. It can help determine whether state government actions are fair and reasonable. It can investigate and recommend solutions if a government action may violate private property rights or otherwise involve land use regulation by either the state or local government. Prior to appealing to court, a citizen can request mediation, formal arbitration, or an advisory opinion through the office of the Property Rights Ombudsman. For more information, go to: <http://propertyrights.utah.gov/>

### **5. Judicial Appeal**

Appeals usually cannot be made unless the person exhausted their right to appeal within the County process (call "exhaustion of administrative remedies"). The appeal must be filed within thirty days of the final action within the County. The requirements and standards of review are set forth in Utah Code Section 10-9a-801.