

# Utah Planner

APA

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**Presidents Message**  
John Janson, AICP

We had a great conference in Provo last month. I'd like to thank Gary McGinn and his helpers for putting together another great opportunity for the Utah APA to say hello to our fellow planners and learn something new. The setting was terrific in the historic Provo Library at Academy Square, home to the predecessor to BYU, the BYA. I learned it was also a high school for many years as George Shaw, kept telling me that he took math in this room, English in that, and snoozed in social studies over there (just kidding). Al Mickelson told me that he walked through the building just a few days before a decision to rehab or demo was to be made, and the place was literally crumbling. Today it is a wonderful "living room" that Provo displays proudly. Plus it is the home of the funniest librarian that I have ever encountered. Actually I have never met a funny librarian before. If you missed his version of "Mister Roberts" at lunch, maybe we can get him to visit a new neighborhood (Davis County) next year.

By the time you read this, National Community Planning Month will be over. If you haven't gotten the word (and done your homework assignment), National APA has initiated an annual planning promotion program for the month of October. I really think that we need, as an organization, to begin to reach out in a positive way, and promote our profession. Last month the Chapter tried to get into the spirit of the month with planners writing letters to the editor and visiting their kid's schools all over the State. Don't worry, if you procrastinated too long and didn't get your homework assignment done, there will be a chance to get caught up next year! We will be getting a committee together to make this a grand, annual event.

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I just attended a great thought provoking conference put on by the Utah Intergovernmental Roundtable group. They had some very good discussions about the future of Utah and the changes we can expect. A presentation by Robert Grow, discussed Utah's values: we want to be safe and secure, live in a good environment with good schools, we want to achieve financial security, we need good mobility, and we want varied and exceptional recreational opportunities. He also suggested that more communities need to engage in "Strategic Visioning", (visioning with strategies to preserve options for the future). Dan Jones provided a planning related survey that is available through the League of Cities and Towns. Many questions indicated a growing awareness of the importance of planning in this State. 37% of the respondents said that local planning commissions should have the most input on land use decisions. To me, that is an amazing statistic. Who would have thought that most folks even knew anything about planning commissions? In addition, 57% knew that some sort of planning process was occurring in their community! Just think what will happen next year after we really get a united effort going for National Community Planning Month!

## U of U PSO

Tristan Last  
Secretary

The Utah Chapter of the American Planning Association publishes the Utah Planner. Circulation is to APA members. The Utah Planner welcomes submission of original articles, editorial letters, and any other information of interest to both professional and citizen planners. [utah-apa@utah-apa.org](mailto:utah-apa@utah-apa.org)

Utah Planning Student Organization at the University of Utah is off to a fantastic start for the 2006 - 2007 school year. In September the Planning Student Organization headed to the mountains for an opening social hike and barbeque. Participants of this event hiked up Granduer Peak to view the Salt Lake Valley from above followed by a delicious dinner of grilled hamburgers. Over dinner students talked about what they wanted to get out of their participation and set the tone for the year. Commonalities in students answers included: networking, working on planning skills, hearing from members in the planning community and, of course, having fun.

With school in full swing in October, the Planning Student Organization got down to some serious business. John English, general manager for the Utah Transit Authority, visited the University of Utah to give a guest lecture. Students enjoyed a personal history of public transportation development in Utah. John was great at answering students' questions about the decisions that have changed the face of public transportation in Utah. Overall students had a great time and found the lecture to be very insightful.

The Planning Student Organization will be focused on the planning charrette in November. Students will have the ability to participate in a mock-charrette so they can learn first hand the importance of this planning tool. The mock-charrette will be based on a location on the University of Utah campus so everyone will be familiar and have a chance to tour the site. The outcomes of this event will be displayed near the Planning Student Organization blackboard on the second floor of the Architecture Building during the month of December.

The planning student organization looks forward to sharing our thoughts and feelings with you as the year develops.



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## The Origins of the Western Planner

The Western Planner movement began during a time characterized by intense land use issues, with a vision of a western states network of planners to cope with these issues. In the summer of 1979 at Chico Hot Springs, Montana, representatives from several states gathered at the annual conference of the Montana Association of Planners to talk over the prospects of forming an alliance. A mood for innovation took over at the meeting and The Western Planner dream was given definition.

The next few months following the conference the presidents of the planning associations in Montana, Wyoming, North Dakota, South Dakota and a support crew busied themselves gaining the support of their associations and packaging the jointly sponsored professional journal. The first issue was launched in January 1980.

Of the original Editorial Board, Stan Steadman emerged after the 2nd year as the Owner/Managing Editor, a position he held for the next 8 years. Then he sold his ownership to Western Planning Resources, Inc (WPR, Inc).

WPR, Inc. continues to operate as a non-profit organization that is run by a volunteer board of directors. Eight journals are produced each year. In addition, WPR works with state organizations that hold the annual Western Planner conference. This conference provides an opportunity for planners to network in person and the proceeds allow the magazine to continue to be produced.

The magazine has approximately 1600 readers in the states of Wyoming, Colorado, Arizona, Nevada, New Mexico, Utah, North Dakota, South Dakota, Montana, Washington, Idaho

and Alaska. The outline of the July-August issue can be seen by clicking the Current Issue link on the webpage at [www.westernplanner.org](http://www.westernplanner.org).

Our goal is to serve as a network for planning professionals who are separated by the expanses of the open plains. Our organization has a strong set of traditions and values that guide this commitment to a professional network.

We encourage you to browse the site and get involved in WPR.

### You can participate in the Western Planner network by:

1. Subscribe to The Western Planner by sending an email to [debe@wlcwyo.com](mailto:debe@wlcwyo.com) or calling Debbie at 307-266-2524.
2. Reading and writing articles for the magazine.
3. Attending our conferences in the West's most scenic locations.
4. Volunteering to work on conference planning committees.
5. Contacting board members to work on WPR projects.



### The Utah Chapter APA Representative is:

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Work Continues on  
Possible LUDMA  
Amendments  
by Neil Lindberg, Esq.,  
AICP, Legal Committee  
Chair

About three years ago, representatives from the development industry and local government (including Utah APA) began a process to address developer and property owner complaints that Utah's planning and zoning process was being implemented unfairly. After a year of negotiation and compromise the group produced a bill, later denominated SB 60, to address the concerns identified. Even though the bill made many changes to the County and Municipal Land Use, Development, and Management Acts ("LUDMA"), it passed unanimously in the Senate and by a margin of 59-15 in the House. Many trusted that one result of this good-faith, consensus-based, effort would be more stability in Utah's land use laws, at least for awhile.

But it was not to be. Some developers believed SB60 had not gone far enough. Almost immediately after the 2006 legislative session began last January, Senator Al Mansell, backed by group of developers calling themselves the Property Rights Coalition ("PRC"), launched a frontal assault on local government planning and zoning by introducing SB 170 (Local Government Land Use and Impact Fee Revisions). SB 170 would have changed things significantly. Fortunately, because many were able to see the bill's numerous problems, it died in committee.

Still, the issues raised by SB 170 got a lot of attention during the session. One result was enactment of two new bills, SB 267 and SB 268, also sponsored by Senator Mansell. They were negotiated during the session to address PRC's complaints about the unfairness of the planning and development process.

SB 267 added more land use process requirements to address the developer complaints. In brief, SB 267 requires local government to:

- Provide more accountability regarding impact fee collection and expenditure,
- Give more notice about pending general plan changes,
- Give staff reports to land-use applicants three days prior to a meeting where an application will be considered, and
- Process land-use applications with "reasonable diligence."

SB 268 made changes to Property Rights Ombudsman law. This bill:

- Created a Land Use and Eminent Domain Advisory Board to oversee the Ombudsman's activities,
- Increased the Ombudsman's staff to four, and
- Moved the Ombudsman's Office to the Utah Department of Commerce, and
- Most significantly, created a procedure to allow affected parties unsatisfied with the processing of a local government land use application a means of achieving resolution short of a formal appeal.

To date, the advisory opinion process has been invoked about 15 times, not only by developers and property owners, but by local government and aggrieved neighbors as well. In short, the changes made by SB 267 and 268 seem to be working.

Some may have thought these further compromises would reduce conflicts, if not end the battle. But, again, it didn't. Since the end of the 2006 legislative session the Property Rights Coalition has made clear its continuing unhappiness with how Utah local governments handle zoning and development issues. In a continuing good-faith effort to see if more common ground could be found, the Utah League of Cities and Towns (again with Utah APA involvement) facilitated discussions between the PRC and a small group of local government representatives. A report given at a recent meeting of the League's Legislative Policy Committee indicated that PRC's membership has increased to include a number of more moderate voices. Those



participating in the discussion group appear to be reaching consensus regarding four issues:

- Further educational efforts must be undertaken. How that will be done and who will provide it are still open questions.
- LUDMA should be amended to authorize a land use applicant who feels "stuck" in a local review process to request a quick decision so the matter may be appealed.
- Referenda regarding "individual property zoning decisions" should be limited. This apparently will be an attempt to blunt the effect of last year's *Mouty v. Sandy* decision (where the Utah Supreme Court said that any decision made by a legislative body in a council mayor form of government is per se legislative and thus subject referendum).
- LUDMA should be amended to codify common-law principles of fundamental fairness in considering land-use applications.

Notably absent from this list are two other issues of concern for the PRC (as expressed earlier this year):

- The need for so-called "minimum base zoning" to be automatically provided in every community, and
- A desire to have some matters now considered to be legislative, notably individual property rezonings, to be decided and judged on an administrative basis.

Local government representatives would not agree to support these proposed changes in LUDMA because to do so would fundamentally restrain the traditional discretionary legislative authority of local legislative bodies to determine how growth and development occurs in their communities. As someone once observed, council members usually run for office for two reasons: to control land use and taxes. To recharacterize legislative matters, such local rezonings, as administrative would simply be unacceptable to most elected officials.

If a bill is enacted at the next session to address the latest areas of seeming agreement, will that mean LUDMA may finally be left alone for a while? I would like to think so, but my crystal ball isn't working very well. So where do we go from here?

Planners must continue to articulate why good planning, and good process, is in the public interest. We must help the public understand the reasons for planning and zoning and that government regulations are enacted to further public purposes embodied in our general plans.

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We must also help the public understand that legislative action—deciding what the law should be—is fundamentally a political process. Thus the courts have always avoided substituting their judgment for policy decisions made by a legislative body. As long as a legislative decision is made using a fair process and does not violate the constitution, state law or local ordinance, then it is very likely to be upheld. By contrast, administrative action—applying already made law to a particular circumstance—is subject to much greater judicial scrutiny. Administrative decisions must be based on substantial evidence in the record and are subject to more exacting

procedural rules to ensure decisions are made fairly.

Some members of the PRC want to move the line between what is deemed legislative or administrative. They appear to want local rezonings and other legislative decisions

to be made, and judged, on the same basis as administrative decisions. Unfortunately they don't seem to appreciate the legislative-administrative dichotomy and the reasons for the difference. Moreover, they apparently fail to understand the balancing-of-interests process that a legislative body must undergo in deciding whether particular legislation, like a rezoning, is, ultimately, in the public interest.

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## November 8 National Day to Celebrate Planning and Community

November 8, 2006, marks the 57th worldwide celebration of World Town Planning Day (WTPD), a special day to recognize how urban, rural, and regional planning help to create healthy and vibrant communities.

Founded in 1949 by the late Professor Carlos Maria della Paolera of the University of Buenos Aires, WTPD is currently celebrated in about 30 countries on four continents as a way to promote awareness and support for community planning. Within the United States, the American Planning Association (APA) and its professional institute, the American Institute of Certified Planners (AICP) sponsor celebrations to highlight how planning contributes to positive changes within communities.

"World Town Planning Day is one day each year when the planning movement calls to the role of planning in making great communities throughout the world," said APA Executive Director Paul Farmer, AICP. "To help publicize the importance of planning across the country, APA members work in their communities, regions, and states to organize special activities and events."

APA and AICP have promoted excellence in the field of planning for more than 80 years. WTPD is one example of APA's commitment to promoting planning as a way for citizens to shape a sustainable strategy for the future.

For more information about WTPD and how to advocate good planning in your community, visit [www.planning.org/worldtown](http://www.planning.org/worldtown).

Contact

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*"Today's problems cannot be solved by the level of thinking that created them." - Albert Einstein*



## Plan on it!

November 2-3 ~ IAP2 Training UDOT office  
November 8 ~ World Town Planning Day  
November 13 11:30~ Creating Community Identity  
December 11, 2006, 11:30~ The Public- Friend or Foe?  
March 22-23, 2007~ Spring Conference, Spring Dale  
September 27-28, 2007~ Fall Conference; Davis County

*We architects and urban planners aren't the visible symbols of oppression, like the military or the police. We're more sophisticated, more educated, and more socially conscious. We're the soft cops.*  
*- Robert Goodman, After the Planners*

## 2005 Utah APA Executive Board

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