

Under the Fifth Amendment to the U.S. Constitution, "No person shall ... be deprived of life, liberty, or property, without due process of law." A bedrock feature of due process is **fairness** to parties who may be affected by legal proceedings.

# “Ex parte”

[Latin, On one side only.] Done by, for, or on the application of one party alone.

*Webster's*

“A **judicial** proceeding, order, injunction, etc., is said to be ex parte when it is taken or granted at the instance and for the benefit of one party only, and without notice to, or contestation by, any person adversely interested.”

-----Black's Law Dictionary

Should City Council members meet or talk with residents or property owners outside Council meeting?

*Mouty, et al v. Sandy City, et al (July 2005)*

“We are also mindful that the [Utah State] legislature has allocated only *legislative authority* to city councils operating under the *council-mayor form of government . . .*”

“. . . *All acts* taken by a city council in a city organized pursuant to the council-mayor form of government *are necessarily legislative . . .*”

HATS

*Unless a decision of the City Council  
(Legislative Body)  
is found by a court to be*

***arbitrary, capricious, or illegal,***

*a court will uphold the decision of the City  
Council, even if there are good reasons for  
making a contrary or alternative decision.*

So when is something NOT  
arbitrary and capricious?

A rational connection between  
the facts found and the choice made:

“reasonably debatable”



It does not mean there may be other  
“rational” or “good” reasons for  
deciding another way



Affordable dwellings for our children who are  
starting out in life

-or-

Added crime and traffic congestion to our  
community?

“Rational” or “good” reason can be:

Opinion

Gut Feeling

Personal Preference

Individual Experience



of a council member

AND

can be based upon or influenced by the:

Lay opinions

Gut Feelings

Personal Preferences

Individual Experiences



of residents (“Public Clamor”)

Compare the last slide of “public clamor” or “subjective opinion” to this conditional use application presented to a Planning Commission:



“This multi-family housing will increase crime, will bring an unacceptable volume of traffic, and will decrease the value of surrounding single family dwellings”

PC must find “substantial evidence” of the alleged detrimental impacts and that the impact on property values, crime and traffic cannot be reasonably mitigated

Ex parte communication in administrative and quasi-judicial decision making is unfair and inappropriate; it may be the basis for a legal challenge to the decision of an administrative or quasi-judicial body

Communication between an elected official and a constituent is part of the legislative process and **expected** by the constituents. Residents, including property owners, expect their elected officials to listen to them. Conversations by a councilmember outside a formal council meeting do not carry the same potential for legal challenge

**HOWEVER**

Misrepresentation

Perceived Unfair by residents

Perceived Unfair by fellow  
councilmembers

Inaccurate information

Perception of commitment by the elected  
official involved in a conversation