

PRIVATE PROPERTY OMBUDSMAN AMENDMENT

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Evan L. Olsen

AN ACT RELATING TO CITIES AND TOWNS, COUNTIES, STATE AFFAIRS IN GENERAL, AND THE JUDICIAL CODE; MODIFYING DEFINITIONS; PROVIDING FOR A TOLLING OF THE TIME TO FILE A PETITION FOR COURT REVIEW UPON THE FILING OF A REQUEST FOR ARBITRATION WITH THE PRIVATE PROPERTY OMBUDSMAN; MODIFYING THE CONDITIONS UNDER WHICH A STAY OF A BOARD OF ADJUSTMENT DECISION MAY BE REQUESTED; PROVIDING FOR A STAY OF AN EMINENT DOMAIN ACTION; AND MAKING TECHNICAL CORRECTIONS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

10-9-103, as last amended by Chapters 37 and 89, Laws of Utah 1998

10-9-708, as enacted by Chapter 235, Laws of Utah 1991

10-9-1001, as last amended by Chapter 30, Laws of Utah 1992

17-27-103, as last amended by Chapter 89, Laws of Utah 1998

17-27-708, as enacted by Chapter 235, Laws of Utah 1991

17-27-1001, as last amended by Chapter 79, Laws of Utah 1996

63-34-13, as last amended by Chapter 295, Laws of Utah 1998

78-34-21, as enacted by Chapter 295, Laws of Utah 1998

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **10-9-103** is amended to read:

10-9-103. Definitions -- Notice.

(1) As used in this chapter:

(a) "Billboard" means a freestanding ground sign located on industrial, commercial, or residential property if the sign is designed or intended to direct attention to a business, product, or service that is not sold, offered, or existing on the property where the sign is located.

(b) "Chief executive officer" means:

(i) the mayor in municipalities operating under all forms of municipal government except the council-manager form; or

(ii) the city manager in municipalities operating under the council-manager form of municipal government.

(c) "Conditional use" means a land use that, because of its unique characteristics or potential impact on the municipality, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.

(d) "Constitutional taking" has the meaning as defined in Section 63-34-13.

~~[(d)]~~ (e) "County" means the unincorporated area of the county.

~~[(e)]~~ (f) "Elderly person" means a person who is 60 years old or older, who desires or needs to live with other elderly persons in a group setting, but who is capable of living independently.

~~[(f)]~~ (g) (i) "General plan" means a document that a municipality adopts that sets forth general guidelines for proposed future development of the land within the municipality, as set forth in Sections 10-9-301 and 10-9-302.

(ii) "General plan" includes what is also commonly referred to as a "master plan."

~~[(g)]~~ (h) "Legislative body" means the city council or city commission.

~~[(h)]~~ (i) "Lot line adjustment" in a subdivision means the relocation of the property boundary line between two adjoining lots with the consent of the owners of record.

~~[(i)]~~ (j) "Municipality" means a city or town.

~~[(j)]~~ (k) "Nonconforming structure" means a structure that:

- (i) legally existed before its current zoning designation; and
- (ii) because of subsequent zoning changes, does not conform with the zoning regulation's setback, height restrictions, or other regulations that govern the structure.

~~[(k)]~~ (l) "Nonconforming use" means a use of land that:

- (i) legally existed before its current zoning designation;
- (ii) has been maintained continuously since the time the zoning regulation governing the land changed; and

(iii) because of subsequent zoning changes, does not conform with the zoning regulations that now govern the land.

~~[(t)]~~ (m) "Official map" means a map of proposed streets that has the legal effect of prohibiting development of the property until the municipality develops the proposed street.

~~[(m)]~~ (n) (i) "Residential facility for elderly persons" means a single-family or multiple-family dwelling unit that meets the requirements of Part 5 and any ordinance adopted under authority of that part.

(ii) "Residential facility for elderly persons" does not include a health care facility as defined by Section 26-21-2.

~~[(n)]~~ (o) "Special district" means all entities established under the authority of Title 17A, Special Districts, and any other governmental or quasi-governmental entity that is not a county, municipality, school district, or unit of the state.

~~[(o)]~~ (p) "Street" means public rights-of-way, including highways, avenues, boulevards, parkways, roads, lanes, walks, alleys, viaducts, subways, tunnels, bridges, public easements, and other ways.

~~[(p)]~~ (q) (i) "Subdivision" means any land that is divided, resubdivided or proposed to be divided into two or more lots, parcels, sites, units, plots, or other division of land for the purpose, whether immediate or future, for offer, sale, lease, or development either on the installment plan or upon any and all other plans, terms, and conditions.

(ii) "Subdivision" includes:

(A) the division or development of land whether by deed, metes and bounds description, devise and testacy, lease, map, plat, or other recorded instrument; and

(B) except as provided in Subsection (1)~~[(p)]~~(q)(iii), divisions of land for all residential and nonresidential uses, including land used or to be used for commercial, agricultural, and industrial purposes.

(iii) "Subdivision" does not include:

(A) a bona fide division or partition of agricultural land for the purpose of joining one of the resulting separate parcels to a contiguous parcel of unsubdivided agricultural land, if neither the

resulting combined parcel nor the parcel remaining from the division or partition violates an applicable zoning ordinance;

(B) a recorded agreement between owners of adjoining properties adjusting their mutual boundary if:

(I) no new lot is created; and

(II) the adjustment does not result in a violation of applicable zoning ordinances; or

(C) a recorded document, executed by the owner of record, revising the legal description of more than one contiguous parcel of property into one legal description encompassing all such parcels of property.

(iv) The joining of a subdivided parcel of property to another parcel of property that has not been subdivided does not constitute a "subdivision" under this Subsection (1)[~~(p)~~](q) as to the unsubdivided parcel of property or subject the unsubdivided parcel to the municipality's subdivision ordinance.

[~~(q)~~] (r) "Unincorporated" means the area outside of the incorporated boundaries of cities and towns.

(2) (a) A municipality meets the requirements of reasonable notice required by this chapter if it:

(i) posts notice of the hearing or meeting in at least three public places within the jurisdiction and publishes notice of the hearing or meeting in a newspaper of general circulation in the jurisdiction, if one is available; or

(ii) gives actual notice of the hearing or meeting.

(b) A municipal legislative body may enact an ordinance establishing stricter notice requirements than those required by this subsection.

(c) (i) Proof that one of the two forms of notice authorized by this subsection was given is prima facie evidence that notice was properly given.

(ii) If notice given under authority of this section is not challenged as provided in Section 10-9-1001 within 30 days from the date of the meeting for which the notice was given, the notice is considered adequate and proper.

Section 2. Section **10-9-708** is amended to read:

10-9-708. District court review of board of adjustment decision.

(1) Any person adversely affected by any decision of a board of adjustment may petition the district court for a review of the decision.

(2) In the petition, the plaintiff may only allege that the board of adjustment's decision was arbitrary, capricious, or illegal.

(3) (a) The petition is barred unless it is filed within 30 days after the board of adjustment's decision is final.

(b) (i) The time under Subsection (3)(a) to file a petition is tolled from the date a property owner files a request for arbitration of a constitutional taking issue with the private property ombudsman under Section 63-34-13 until 30 days after:

(A) the arbitrator issues a final award; or

(B) the private property ombudsman issues a written statement under Subsection 63-34-13(4)(b) declining to arbitrate or to appoint an arbitrator.

(ii) A tolling under Subsection (3)(b)(i) operates only as to the specific constitutional taking issues that are the subject of the request for arbitration filed with the private property ombudsman by a property owner.

(iii) A request for arbitration filed with the private property ombudsman after the time under Subsection (3)(a) to file a petition has expired does not affect the time to file a petition.

(4) (a) The board of adjustment shall transmit to the reviewing court the record of its proceedings including its minutes, findings, orders and, if available, a true and correct transcript of its proceedings.

(b) If the proceeding was tape recorded, a transcript of that tape recording is a true and correct transcript for purposes of this subsection.

(5) (a) (i) If there is a record, the district court's review is limited to the record provided by the board of adjustment.

(ii) The court may not accept or consider any evidence outside the board of adjustment's record unless that evidence was offered to the board of adjustment and the court determines that it

was improperly excluded by the board of adjustment.

(b) If there is no record, the court may call witnesses and take evidence.

(6) The court shall affirm the decision of the board of adjustment if the decision is supported by substantial evidence in the record.

(7) (a) The filing of a petition does not stay the decision of the board of adjustment.

(b) (i) Before filing [~~the~~] a petition under this section or a request for mediation or arbitration of a constitutional taking issue under Section 63-34-13, the aggrieved party may petition the board of adjustment to stay its decision.

(ii) Upon receipt of a petition to stay, the board of adjustment may order its decision stayed pending district court review if the board of adjustment finds it to be in the best interest of the municipality.

(iii) After [~~the~~] a petition is filed under this section or a request for mediation or arbitration of a constitutional taking issue is filed under Section 63-34-13, the petitioner may seek an injunction staying the board of adjustment's decision.

Section 3. Section **10-9-1001** is amended to read:

10-9-1001. Appeals.

(1) No person may challenge in district court a municipality's land use decisions made under this chapter or under the regulation made under authority of this chapter until that person has exhausted his administrative remedies.

(2) (a) Any person adversely affected by any decision made in the exercise of the provisions of this chapter may file a petition for review of the decision with the district court within 30 days after the local decision is rendered.

(b) (i) The time under Subsection (2)(a) to file a petition is tolled from the date a property owner files a request for arbitration of a constitutional taking issue with the private property ombudsman under Section 63-34-13 until 30 days after:

(A) the arbitrator issues a final award; or

(B) the private property ombudsman issues a written statement under Subsection 63-34-13(4)(b) declining to arbitrate or to appoint an arbitrator.

(ii) A tolling under Subsection (2)(b)(i) operates only as to the specific constitutional taking issues that are the subject of the request for arbitration filed with the private property ombudsman by a property owner.

(iii) A request for arbitration filed with the private property ombudsman after the time under Subsection (2)(a) to file a petition has expired does not affect the time to file a petition.

(3) The courts shall:

(a) presume that land use decisions and regulations are valid; and

(b) determine only whether or not the decision is arbitrary, capricious, or illegal.

Section 4. Section **17-27-103** is amended to read:

17-27-103. Definitions -- Notice.

(1) As used in this chapter:

(a) "Billboard" means a freestanding ground sign located on industrial, commercial, or residential property if the sign is designed or intended to direct attention to a business, product, or service that is not sold, offered, or existing on the property where the sign is located.

(b) "Chief executive officer" means the county executive, or if the county has adopted an alternative form of government, the official who exercises the executive powers.

(c) "Conditional use" means a land use that, because of its unique characteristics or potential impact on the county, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.

(d) "Constitutional taking" has the meaning as defined in Section 63-34-13.

~~[(d)]~~ (e) "County" means the unincorporated area of the county.

~~[(e)]~~ (f) "Elderly person" means a person who is 60 years old or older, who desires or needs to live with other elderly persons in a group setting, but who is capable of living independently.

~~[(f)]~~ (g) (i) "General plan" means a document that a county adopts that sets forth general guidelines for proposed future development of the land within the county, as set forth in Sections 17-27-301 and 17-27-302.

(ii) "General plan" includes what is also commonly referred to as a "master plan."

~~[(g)]~~ (h) "Legislative body" means the county legislative body, or for a county that has adopted an alternative form of government, the body exercising legislative powers.

~~[(h)]~~ (i) "Lot line adjustment" means the relocation of the property boundary line between two adjoining lots with the consent of the owners of record.

~~[(i)]~~ (j) "Municipality" means a city or town.

~~[(j)]~~ (k) "Nonconforming structure" means a structure that:

- (i) legally existed before its current zoning designation; and
- (ii) because of subsequent zoning changes, does not conform with the zoning regulation's setback, height restrictions, or other regulations that govern the structure.

~~[(k)]~~ (l) "Nonconforming use" means a use of land that:

- (i) legally existed before its current zoning designation;
- (ii) has been maintained continuously since the time the zoning regulation governing the land changed; and
- (iii) because of subsequent zoning changes, does not conform with the zoning regulations that now govern the land.

~~[(l)]~~ (m) "Official map" means a map of proposed streets that has the legal effect of prohibiting development of the property until the county develops the proposed street.

~~[(m)]~~ (n) (i) "Residential facility for elderly persons" means a single-family or multiple-family dwelling unit that meets the requirements of Part 5 and any ordinance adopted under authority of that part.

(ii) "Residential facility for elderly persons" does not include a health care facility as defined by Section 26-21-2.

~~[(n)]~~ (o) "Special district" means all entities established under the authority of Title 17A, Special Districts, and any other governmental or quasi-governmental entity that is not a county, municipality, school district, or unit of the state.

~~[(o)]~~ (p) "Street" means public rights-of-way, including highways, avenues, boulevards, parkways, roads, lanes, walks, alleys, viaducts, subways, tunnels, bridges, public easements, and other ways.

~~[(p)]~~ (q) (i) "Subdivision" means any land that is divided, resubdivided or proposed to be divided into two or more lots, parcels, sites, units, plots, or other division of land for the purpose, whether immediate or future, for offer, sale, lease, or development either on the installment plan or upon any and all other plans, terms, and conditions.

(ii) "Subdivision" includes the division or development of land whether by deed, metes and bounds description, devise and testacy, lease, map, plat, or other recorded instrument.

(iii) "Subdivision" does not include:

(A) a bona fide division or partition of agricultural land for agricultural purposes;

(B) a recorded agreement between owners of adjoining properties adjusting their mutual boundary if:

(I) no new lot is created; and

(II) the adjustment does not result in a violation of applicable zoning ordinances; or

(C) a recorded document, executed by the owner of record, revising the legal description of more than one contiguous parcel of property into one legal description encompassing all such parcels of property.

(iv) The joining of a subdivided parcel of property to another parcel of property that has not been subdivided does not constitute a "subdivision" under this Subsection (1)~~[(p)]~~(q) as to the unsubdivided parcel of property or subject the unsubdivided parcel to the county's subdivision ordinance.

~~[(q)]~~ (r) "Unincorporated" means the area outside of the incorporated boundaries of cities and towns.

(2) (a) A county meets the requirements of reasonable notice required by this chapter if it:

(i) posts notice of the hearing or meeting in at least three public places within the jurisdiction and publishes notice of the hearing or meeting in a newspaper of general circulation in the jurisdiction, if one is available; or

(ii) gives actual notice of the hearing or meeting.

(b) A county legislative body may enact an ordinance establishing stricter notice requirements than those required by this subsection.

(c) (i) Proof that one of the two forms of notice authorized by this subsection was given is prima facie evidence that notice was properly given.

(ii) If notice given under authority of this section is not challenged as provided in Section 17-27-1001 within 30 days from the date of the meeting for which the notice was given, the notice is considered adequate and proper.

Section 5. Section **17-27-708** is amended to read:

17-27-708. District court review of board of adjustment decision.

(1) Any person adversely affected by any decision of a board of adjustment may petition the district court for a review of the decision.

(2) In the petition, the plaintiff may only allege that the board of adjustment's decision was arbitrary, capricious, or illegal.

(3) (a) The petition is barred unless it is filed within 30 days after the board of adjustment's decision is final.

(b) (i) The time under Subsection (3)(a) to file a petition is tolled from the date a property owner files a request for arbitration of a constitutional taking issue with the private property ombudsman under Section 63-34-13 until 30 days after:

(A) the arbitrator issues a final award; or

(B) the private property ombudsman issues a written statement under Subsection 63-34-13(4)(b) declining to arbitrate or to appoint an arbitrator.

(ii) A tolling under Subsection (3)(b)(i) operates only as to the specific constitutional taking issues that are the subject of the request for arbitration filed with the private property ombudsman by a property owner.

(iii) A request for arbitration filed with the private property ombudsman after the time under Subsection (3)(a) to file a petition has expired does not affect the time to file a petition.

(4) (a) The board of adjustment shall transmit to the reviewing court the record of its proceedings including its minutes, findings, orders and, if available, a true and correct transcript of its proceedings.

(b) If the proceeding was tape recorded, a transcript of that tape recording is a true and

correct transcript for purposes of this subsection.

(5) (a) (i) If there is a record, the district court's review is limited to the record provided by the board of adjustment.

(ii) The court may not accept or consider any evidence outside the board of adjustment's record unless that evidence was offered to the board of adjustment and the court determines that it was improperly excluded by the board of adjustment.

(b) If there is no record, the court may call witnesses and take evidence.

(6) The court shall affirm the decision of the board of adjustment if the decision is supported by substantial evidence in the record.

(7) (a) The filing of a petition does not stay the decision of the board of adjustment.

(b) (i) Before filing ~~[the]~~ a petition under this section or a request for mediation or arbitration of a constitutional taking issue under Section 63-34-13, the aggrieved party may petition the board of adjustment to stay its decision.

(ii) Upon receipt of a petition to stay, the board of adjustment may order its decision stayed pending district court review if the board of adjustment finds it to be in the best interest of the county.

(iii) After ~~[the]~~ a petition is filed under this section or a request for mediation or arbitration of a constitutional taking issue is filed under Section 63-34-13, the petitioner may seek an injunction staying the board of adjustment's decision.

Section 6. Section **17-27-1001** is amended to read:

17-27-1001. Appeals.

(1) No person may challenge in district court a county's land use decisions made under this chapter or under the regulation made under authority of this chapter until that person has exhausted all administrative remedies.

(2) (a) Any person adversely affected by any decision made in the exercise of the provisions of this chapter may file a petition for review of the decision with the district court within 30 days after the local decision is rendered.

(b) (i) The time under Subsection (2)(a) to file a petition is tolled from the date a property

owner files a request for arbitration of a constitutional taking issue with the private property ombudsman under Section 63-34-13 until 30 days after:

(A) the arbitrator issues a final award; or

(B) the private property ombudsman issues a written statement under Subsection 63-34-13(4)(b) declining to arbitrate or to appoint an arbitrator.

(ii) A tolling under Subsection (2)(b)(i) operates only as to the specific constitutional taking issues that are the subject of the request for arbitration filed with the private property ombudsman by a property owner.

(iii) A request for arbitration filed with the private property ombudsman after the time under Subsection (2)(a) to file a petition has expired does not affect the time to file a petition.

(3) The courts shall:

(a) presume that land use decisions and regulations are valid; and

(b) determine only whether or not the decision is arbitrary, capricious, or illegal.

Section 7. Section **63-34-13** is amended to read:

63-34-13. Private property ombudsman -- Powers -- Arbitration procedures.

(1) As used in this section:

(a) "Constitutional taking" or "taking" means a governmental action that results in a taking of private property so that compensation to the owner of the property is required by:

(i) the Fifth or Fourteenth Amendment of the Constitution of the United States; or

(ii) Utah Constitution Article I, Section 22.

(b) "Takings law" means the provisions of the federal and state constitutions, the case law interpreting those provisions, and any relevant statutory provisions that require a governmental unit to compensate a private property owner for a constitutional taking.

(2) (a) There is created a private property ombudsman in the Department of Natural Resources.

(b) The executive director of the Department of Natural Resources shall hire a person with background or expertise in takings law to fill the position.

(c) The person hired to fill the position is an exempt employee.

- (3) The private property ombudsman shall:
- (a) develop and maintain expertise in and understanding of takings law;
 - (b) assist state agencies and local governments in developing the guidelines required by this chapter and ~~[Title 63,]~~ Chapter 90a, Constitutional Takings Issues;
 - (c) at the request of a state agency or local government, assist the state agency or local government in analyzing actions with potential takings implications;
 - (d) advise private property owners who have a legitimate potential or actual takings claim against a state or local government entity;
 - (e) identify state or local government actions that have potential takings implications and, if appropriate, advise those state or local government entities about those implications;
 - (f) provide information to private citizens, civic groups, government entities, and other interested parties about takings law and their rights and responsibilities under it; and
 - (g) if appropriate and requested to do so by the private property owner, mediate or conduct or arrange arbitration for disputes between private property owners and government entities that involve:
 - (i) takings issues law;
 - (ii) actions for eminent domain under Title 78, Chapter 34, Eminent Domain; or
 - (iii) disputes about relocation assistance under Title 57, Chapter 12, Utah Relocation Assistance Act.
- (4) (a) (i) In conducting or arranging for arbitration, the private property ombudsman shall follow the procedures and requirements of Title 78, Chapter 31a, Utah Arbitration Act.
- (ii) In applying the Utah Arbitration Act, the arbitrator and parties shall treat the matter as if:
- (A) it were ordered to arbitration by a court; and
 - (B) the private property ombudsman or other arbitrator chosen as provided for in this section was appointed as arbitrator by the court.
- (iii) For the purpose of arbitrations conducted under this section, if the dispute to be arbitrated is not already the subject of legal action, the district court having jurisdiction over the

county where the private property involved in the dispute is located shall act as the court referred to in Title 78, Chapter 31a, Utah Arbitration Act.

(iv) The award from an arbitration conducted under this chapter may not be vacated under the provisions of Title 78, Chapter 31a, Subsection 14(1)(e), Utah Arbitration Act, because of the lack of an arbitration agreement between the parties.

(b) The private property ombudsman shall ~~[decline]~~ issue a written statement declining to arbitrate or to appoint an arbitrator when, in the opinion of the private property ombudsman:

- (i) the issues are not ripe for review;
- (ii) assuming the alleged facts are true, no cause of action exists under United States or Utah law;
- (iii) all issues raised are beyond the scope of the ombudsman's statutory duty to review; or
- (iv) the arbitration is otherwise not appropriate.

(c) (i) The private property ombudsman shall appoint another person to arbitrate the dispute when:

(A) either party objects to the private property ombudsman serving as the arbitrator and agrees to pay for the services of another arbitrator; or

(B) the private property ombudsman declines to arbitrate the dispute for a reason other than those listed in Subsection (4)(b) and one or both parties are willing to pay for the services of another arbitrator.

(ii) In appointing a person other than himself to arbitrate a dispute, the private property ombudsman shall appoint an arbitrator who is:

- (A) agreeable to both parties; or
- (B) agreeable to the party paying for the arbitrator and the private property ombudsman.

(iii) The private property ombudsman may, on ~~[his own]~~ the initiative of the private property ombudsman or upon agreement of both parties, appoint a panel of arbitrators to conduct the arbitration.

(d) In arbitrating a dispute, the arbitrator shall apply the relevant statutes, case law, regulations, and rules of Utah and the United States in conducting the arbitration and in determining

the award.

(e) The property owner and government entity may agree in advance of arbitration that the arbitration shall be binding and that no de novo review may occur.

~~[(e)]~~ (f) Arbitration by or through the private property ombudsman is not necessary before bringing legal action to adjudicate any claim.

~~[(f)]~~ (g) The lack of arbitration by or through the private property ombudsman does not constitute, and may not be interpreted as constituting, a failure to exhaust available administrative remedies or as a bar to bringing legal action.

~~[(g)]~~ (h) Arbitration under this section is not subject to ~~[Title 63,]~~ Chapter 46b, Administrative Procedures Act, nor Title 78, Chapter 31b, Alternative Dispute Resolution.

~~[(h)]~~ (i) Within 30 days after the arbitrator issues the final award and except as provided in Subsection (4)(e), any party may submit the award or any issue upon which the award is based to the district court for de novo review.

(5) The filing with the private property ombudsman of a request for mediation or arbitration of a constitutional taking issue does not stay any county or municipal land use decision, including the decision of a board of adjustment.

~~[(5)]~~ (6) The private property ombudsman may not be compelled to testify in a civil action filed with regard to the subject matter of any review or arbitration by the ombudsman.

~~[(6)]~~ (7) (a) Except as provided in Subsection ~~[(6)]~~ (7)(b), evidence of a review by the private property ombudsman and his opinions, writings, findings, and determinations are not admissible as evidence in an action subsequently brought in court and dealing with the same dispute.

(b) Subsection ~~[(6)]~~ (7)(a) does not apply to:

(i) actions brought under authority of Title 78, Chapter 6, Small Claims Court;

(ii) a judicial confirmation or review of the arbitration itself as authorized in Title 78, Chapter 31a, ~~[the]~~ Utah Arbitration Act; or

(iii) actions for de novo review of an arbitration award or issue brought under the authority of Subsection (4)~~[(h)]~~(i).

~~[(7)]~~ (8) The private property ombudsman may not represent private property owners, state

agencies, or local governments in court or in adjudicative proceedings under [Title 63,] Chapter 46b, Administrative Procedures Act.

Section 8. Section **78-34-21** is amended to read:

78-34-21. Dispute resolution.

(1) In any dispute between a condemner and a private property owner arising out of this chapter, the private property owner may submit the dispute for mediation or arbitration to the private property ombudsman under Section 63-34-13.

(2) An action submitted to the private property ombudsman under authority of this section does not bar or stay any action for occupancy of premises authorized by Section 78-34-9.

(3) (a) (i) A mediator or arbitrator, acting at the request of the property owner under Section 63-34-13, has standing in an action brought in district court under this chapter to file with the court a motion to stay the action during the pendency of the mediation or arbitration.

(ii) A mediator or arbitrator may not file a motion to stay under Subsection (3)(a)(i) unless the mediator or arbitrator certifies at the time of filing the motion that a stay is reasonably necessary to reach a resolution of the case through mediation or arbitration.

(b) If a stay is granted pursuant to a motion under Subsection (3)(a) and the order granting the stay does not specify when the stay terminates, the mediator or arbitrator shall file with the district court a motion to terminate the stay within 30 days after:

(i) the resolution of the dispute through mediation;

(ii) the issuance of a final arbitration award; or

(iii) a determination by the mediator or arbitrator that mediation or arbitration is not appropriate.

~~[(3)]~~ (4) (a) The private property owner or displaced person may request that the mediator or arbitrator authorize an additional appraisal.

(b) If the mediator or arbitrator determines that an additional appraisal is reasonably necessary to reach a resolution of the case, the mediator or arbitrator may:

(i) have an additional appraisal of the property prepared by an independent appraiser; and

(ii) require the agency to pay the costs of the first additional appraisal.

