

EMINENT DOMAIN VALUATION

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Pete Suazo

Craig L. Taylor

AN ACT RELATING TO EMINENT DOMAIN; REQUIRING AGENCIES THAT DISPLACE PROPERTY OWNERS TO REIMBURSE EXPENSES FOR RELOCATION; REQUIRING RELOCATION ASSISTANCE FOR SMALL BUSINESSES AND FAMILY FARMS; PROVIDING FOR DISPUTE RESOLUTION; ALLOWING INDEPENDENT APPRAISAL; PROVIDING THAT APPEALS OF CONSTITUTIONAL TAKINGS ISSUES UNDER LOCAL ORDINANCES ARE OPTIONAL; AND MAKING TECHNICAL CORRECTIONS.

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

AMENDS:

57-12-3, as enacted by Chapter 24, Laws of Utah 1972

57-12-5, as enacted by Chapter 24, Laws of Utah 1972

57-12-7, as enacted by Chapter 24, Laws of Utah 1972

63-90a-4, as enacted by Chapter 91, Laws of Utah 1994

78-34-9, as last amended by Chapter 220, Laws of Utah 1967

ENACTS:

57-12-14, Utah Code Annotated 1953

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

Section 1. Section **57-12-3** is amended to read:

57-12-3. Definitions.

As used in this [act] chapter:

(1) "Agency" means a department, division, agency, commission, board, council, committee, authority, political subdivision, or other instrumentality of the state or of a political subdivision of the state whether one or more.

[~~(5)~~] (2) "Business" means any lawful activity, excepting a farm operation, conducted primarily:

(a) for the purchase, sale, lease, or rental of personal or real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

(b) for the sale of services to the public;

(c) by a nonprofit organization; or

(d) for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

(3) "Displaced person" means any person who, after the effective date of this act, moves from real property, or who moves his personal property from real property, or moves or discontinues his business or moves his dwelling as a result of the acquisition of the real property, in whole or in part, or as a result of a written order of the acquiring agency to vacate real property for a program of purchase undertaken by an agency or as a direct result of code enforcement activities or a program of rehabilitation of buildings conducted pursuant to a federal or state assisted program.

(4) "Family farm" means a farm operation which is conducted:

(a) on two sections (1280 acres) or less; or

(b) as a sole proprietorship or through an entity which is wholly owned by members of the same immediate family.

~~[(6)]~~ (5) "Farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

~~[(4)]~~ (6) "Non-profit organization" means all corporations, societies, and associations whose object is not pecuniary profit, but is to promote the general interest and welfare of the members, whether temporal, social, or spiritual.

~~[(2)]~~ (7) "Person" means any individual, partnership, corporation, or association.

(8) "Small business" means a business which has a gross annual income of less than \$1,500,000.

Section 2. Section **57-12-5** is amended to read:

57-12-5. Reimbursement of owner for expenses.

Any agency acquiring real property for its use shall as soon as practicable after the date of payment of the purchase price or the date of deposit into court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, reimburse the owner~~[, to the extent the agency deems fair and reasonable,]~~ for expenses the owner necessarily incurred for:

- (1) recording fees, transfer taxes, and similar expenses incidental to conveying the real property to the agency;
- (2) penalty costs for prepayment for any preexisting recorded mortgage entered into in good faith encumbering the real property; ~~[and]~~
- (3) the pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the agency, or the effective date of possession of such real property by the agency, whichever is the earlier~~[-]; and~~
(4) relocation costs.

Section 3. Section **57-12-7** is amended to read:

57-12-7. Replacement property.

(1) No person shall be required to move or be relocated from land used ~~[as]~~ for his residence and acquired under any of the condemnation or eminent domain laws of this state until he has been offered a comparable replacement dwelling, including the curtilage, which is a decent, safe, clean, and sanitary dwelling, including the curtilage, adequate to accommodate ~~[this person,]~~ the occupants, available on the private market, and reasonably accessible to public services and places of employment~~[, and available on the private market]~~.

(2) If a program or project cannot proceed to actual construction because comparable sale or rental housing is not available~~[, and the head of the agency determines that this housing]~~ and cannot otherwise be made available, ~~[he may take]~~ such action shall be taken as is necessary or appropriate to provide this housing by use of funds authorized for the project.

(3) No person shall be required to move from his dwelling, including the curtilage, after the

effective date of this act~~[, on account]~~ because of any project of the agency, unless ~~[the agency head is satisfied that]~~ replacement housing is available to ~~[this person]~~, and offered to the property owner.

(4) The agency shall assist owners of small businesses and family farms in identifying replacement properties available on the private market, located within the jurisdiction of the agency.

Section 4. Section **57-12-14** is enacted to read:

57-12-14. Dispute resolution -- Additional appraisal.

(1) If the agency and the private property owner or displaced person disagree on any issue arising out of this chapter, the private property owner may submit the dispute for mediation or arbitration according to the procedures and requirements of Section 63-34-13.

(2) (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.

Section 5. Section **63-90a-4** is amended to read:

63-90a-4. Appeals of decisions.

(1) Each political subdivision shall enact an ordinance that:

(a) establishes a procedure for review of actions that may have constitutional taking issues;

and

(b) meets the requirements of this section.

(2) (a) (i) Any owner of private property whose interest in the property is subject to a physical taking or exaction by a political subdivision may appeal the political subdivision's decision within 30 days after the decision is made.

~~[(3)]~~ (ii) The legislative body of the political subdivision, or an individual or body designated by them, shall hear and approve or reject the appeal within 14 days after it is submitted.

~~[(4)]~~ (iii) If the legislative body of the political subdivision fails to hear and decide the appeal within 14 days, the decision is presumed to be approved.

(b) The private property owner need not file the appeal authorized by this section before bringing an action in any court to adjudicate claims that are eligible for appeal.

(c) A property owner's failure to appeal the action of a political subdivision 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.

Section 6. Section **78-34-9** is amended to read:

78-34-9. Occupancy of premises pending action -- Deposit paid into court -- Procedure for payment of compensation.

The plaintiff may move the court or a judge thereof, at any time after the commencement of suit, on notice to the defendant, if he is a resident of the state, or has appeared by attorney in the action, otherwise by serving a notice directed to him on the clerk of the court, for an order permitting the plaintiff to occupy the premises sought to be condemned pending the action, including appeal, and to do such work thereon as may be required. The court or a judge thereof shall take proof by affidavit or otherwise of the value of the premises sought to be condemned and of the damages which will accrue from the condemnation, and of the reasons for requiring a speedy occupation, and shall grant or refuse the motion according to the equity of the case and the relative damages which may accrue to the parties. If the motion is granted, the court or judge shall enter its order requiring the plaintiff as a condition precedent to occupancy to file with the clerk of the court a sum [~~equivalent to at least 75% of] equal to the condemning authority's appraised valuation of the property sought to be condemned. The amount thus fixed shall be for the purposes of the motion only, and shall not be admissible in evidence on final hearing. The rights of just compensation for the land so taken or damaged shall vest in the parties entitled thereto, and said compensation shall be ascertained and awarded as provided in Section 78-34-10 and established by judgment therein, and the said judgment shall include, as part of the just compensation awarded, interest at the rate of 8% per annum on the amount finally awarded as the value of the property and damages, from the date of taking actual possession thereof by the plaintiff or order of occupancy, whichever is earlier, to the date of judgment; but interest shall not be allowed on so much thereof as shall have been paid into court. Upon the application of the parties in interest, the court shall order that the money~~

deposited in the court be paid forthwith for or on account of the just compensation to be awarded in the proceeding. A payment to a defendant as aforesaid shall be held to be an abandonment by such defendant of all defenses excepting his claim for greater compensation. If the compensation finally awarded in respect of such lands, or any parcel thereof, shall exceed the amount of the money so received the court shall enter judgment against the plaintiff for the amount of the deficiency. If the amount of money so received by the defendant is greater than the amount finally awarded, the court shall enter judgment against the defendant for the amount of the excess. Upon the filing of the petition for immediate occupancy the court shall fix the time within which, and the terms upon which, the parties in possession shall be required to surrender possession to the plaintiff. The court shall make such orders in respect to encumbrances, liens, rents, assessments, insurance and other charges, if any, as shall be just and equitable.