

1 **EMINENT DOMAIN AUTHORITY OF**
2 **COMMUNITY DEVELOPMENT AND RENEWAL**
3 **AGENCIES**

4 2007 GENERAL SESSION

5 STATE OF UTAH

6 **Chief Sponsor: Stephen H. Urquhart**

7 Senate Sponsor: Curtis S. Bramble

8
9 **LONG TITLE**

10 **General Description:**

11 This bill modifies provisions relating to community development and renewal agencies.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ authorizes community development and renewal agencies to acquire property by
15 eminent domain in an urban renewal project area under certain circumstances and in
16 an earlier established project area if, under prior law, the agency made a finding of
17 blight and other conditions are met;
- 18 ▶ conditions an agency's authority to acquire by eminent domain single-family owner
19 occupied residential property or commercial property on the owner's consent or on a
20 petition by other property owners and a 2/3 vote of the agency board;
- 21 ▶ modifies requirements for notice of a blight hearing;
- 22 ▶ imposes prerequisites on community development and renewal agencies before they
23 may acquire property by eminent domain;
- 24 ▶ authorizes a property owner to bring a civil action against a community
25 development and renewal agency for the agency's violation of a requirement to
26 provide a written declaration;
- 27 ▶ requires an agency to keep a record of its good faith negotiations with the property
28 owner; and
- 29 ▶ authorizes a court to award court costs, attorney fees, relocation expenses, and

30 compensation for damage to fixtures or other personal property.

31 **Monies Appropriated in this Bill:**

32 None

33 **Other Special Clauses:**

34 None

35 **Utah Code Sections Affected:**

36 AMENDS:

37 **17C-1-206**, as renumbered and amended by Chapter 359, Laws of Utah 2006

38 **17C-2-503**, as renumbered and amended by Chapter 359, Laws of Utah 2006

39 ENACTS:

40 **17C-2-601**, Utah Code Annotated 1953

41 **17C-2-602**, Utah Code Annotated 1953

42 **17C-2-603**, Utah Code Annotated 1953



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

45 Section 1. Section **17C-1-206** is amended to read:

46 **17C-1-206. Use of eminent domain prohibited -- Exception.**

47 (1) Except as provided in Subsection (2), an agency may not use eminent domain to
48 acquire property.

49 (2) An agency may use eminent domain to acquire:

50 (a) any interest in property within an urban renewal project area, subject to Chapter 2,

51 Part 6, Eminent Domain in an Urban Renewal Project Area; and

52 (b) any interest in property that is owned by an agency board member or officer and
53 located within a project area, if the board member or officer consents.

54 Section 2. Section **17C-2-503** is amended to read:

55 **17C-2-503. Additional requirements for notice of a blight hearing.**

56 Each notice under Section 17C-2-502 for a blight hearing shall include:

57 (1) a statement that:

58 ~~[(1)]~~ (a) an urban renewal project area is being proposed;

59 ~~[(2)]~~ (b) the proposed urban renewal project area may be declared to have blight;

60 ~~[(3)]~~ (c) the record owner of property within the proposed project area has the right to

61 present evidence at the blight hearing contesting the existence of blight;

62 ~~[(4)]~~ (d) except for a hearing continued under Section 17C-2-402, the agency will

63 notify the record property owners referred to in Subsection 17C-2-502(1)(b)(i) of each

64 additional public hearing held by the agency concerning the urban renewal project prior to the

65 adoption of the urban renewal project area plan; and

66 ~~[(5)]~~ (e) persons contesting the existence of blight in the proposed urban renewal

67 project area may appear before the agency board and show cause why the proposed urban

68 renewal project area should not be designated as an urban renewal project area~~[-];~~ and

69 (2) if the agency anticipates acquiring property in an urban renewal project area by

70 eminent domain, a clear and plain statement that:

- 71 (a) the project area plan may require the agency to use eminent domain; and
- 72 (b) the proposed use of eminent domain will be discussed at the blight hearing.

73 Section 3. Section **17C-2-601** is enacted to read:

74 **Part 6. Eminent Domain in an Urban Renewal Project Area**

75 **17C-2-601. Use of eminent domain in an urban renewal project area -- Conditions**

76 **-- Acquiring single family owner occupied residential property or commercial property --**

77 **Acquiring property already devoted to a public use -- Relocation assistance requirement.**

78 (1) Subject to Section 17C-2-602, an agency may use eminent domain to acquire

79 property:

80 (a) within an urban renewal project area if:

81 (i) the agency board makes a finding of blight under Part 3, Blight Determination in

82 Urban Renewal Project Areas;

83 (ii) the urban renewal project area plan provides for the use of eminent domain; and

84 (iii) the agency commences the acquisition of the property within five years after the

85 effective date of the urban renewal project area plan; or

86 (b) within a project area established after December 31, 2001 but before April 30, 2007

87 if:

88 (i) the agency board made a finding of blight with respect to the project area as
89 provided under the law in effect at the time of the finding;

90 (ii) the project area plan provides for the use of eminent domain; and

91 (iii) the agency commences the acquisition of the property before January 1, 2010.

92 (2) (a) As used in this Subsection (2):

93 (i) "Owner occupied property" means private real property:

94 (A) whose use is single-family residential or commercial; and

95 (B) that is occupied by the owner of the property.

96 (ii) "Relevant area" means:

97 (A) except as provided in Subsection (2)(a)(ii)(B), the project area; or

98 (B) the area included within a phase of a project under a project area plan if the phase
99 and the area included within the phase are described in the project area plan.

100 (b) For purposes of each provision of this Subsection (2) relating to the submission of a
101 petition by the owners of property, a parcel of real property is included in the calculation of the
102 applicable percentage if the petition is signed by:

103 (i) except as provided in Subsection (2)(b)(ii), owners representing a majority
104 ownership interest in that parcel; or

105 (ii) if the parcel is owned by joint tenants or tenants by the entirety, 50% of the number
106 of owners of that parcel.

107 (c) An agency may not acquire by eminent domain single-family residential owner
108 occupied property unless:

109 (i) the owner consents; or

110 (ii) (A) a written petition requesting the agency to use eminent domain to acquire the
111 property is submitted by the owners of at least 80% of the owner occupied property within the
112 relevant area representing at least 70% of the value of owner occupied property within the
113 relevant area; and

114 (B) 2/3 of all agency board members vote in favor of using eminent domain to acquire
115 the property.

116 (d) An agency may not acquire commercial property by eminent domain unless:

117 (i) the owner consents; or

118 (ii) (A) a written petition requesting the agency to use eminent domain to acquire the
119 property is submitted by the owners of at least 75% of the commercial property within the
120 relevant area representing at least 60% of the value of commercial property within the relevant
121 area; and

122 (B) 2/3 of all agency board members vote in favor of using eminent domain to acquire
123 the property.

124 (3) An agency may not acquire any real property on which an existing building is to be
125 continued on its present site and in its present form and use unless:

126 (a) the owner consents; or

127 (b) (i) the building requires structural alteration, improvement, modernization, or
128 rehabilitation;

129 (ii) the site or lot on which the building is situated requires modification in size, shape,
130 or use; or

131 (iii) (A) it is necessary to impose upon the property any of the standards, restrictions,
132 and controls of the project area plan; and

133 (B) the owner fails or refuses to agree to participate in the project area plan.

134 (4) (a) Subject to Subsection (4)(b), an agency may acquire by eminent domain
135 property that is already devoted to a public use and located in:

136 (i) an urban renewal project area; or

137 (ii) a project area described in Subsection (1)(b).

138 (b) An agency may not acquire property of a public entity under Subsection (4)(a)
139 without the public entity's consent.

140 (5) Each agency that acquires property by eminent domain shall comply with Title 57,
141 Chapter 12, Utah Relocation Assistance Act.

142 Section 4. Section **17C-2-602** is enacted to read:

143 **17C-2-602. Prerequisites to the acquisition of property by eminent domain -- Civil**
144 **action authorized -- Record of good faith negotiations to be retained.**

145 (1) Before an agency may acquire property by eminent domain, the agency shall:

146 (a) negotiate in good faith with the affected record property owner;

147 (b) provide to each affected record property owner a written declaration that includes:

148 (i) an explanation of the eminent domain process and the reasons for using it,

149 including:

150 (A) the need for the agency to obtain an independent appraisal that indicates the fair
151 market value of the property and how the fair market value was determined;

152 (B) a statement that the agency may adopt a resolution authorizing the agency to make
153 an offer to the record property owner to purchase the property for the fair market value amount
154 determined by the appraiser and that, if the offer is rejected, the agency has the right to acquire
155 the property through an eminent domain proceeding; and

156 (C) a statement that the agency will prepare an offer that will include the price the
157 agency is offering for the property, an explanation of how the agency determined the price
158 being offered, the legal description of the property, conditions of the offer, and the time at
159 which the offer will expire;

160 (ii) an explanation of the record property owner's relocation rights under Title 57,
161 Chapter 12, Utah Relocation Assistance Act, and how to receive relocation assistance; and

162 (iii) a statement that the owner has the right to receive just compensation and an
163 explanation of how to obtain it; and

164 (c) provide to the affected record property owner or the owner's designated
165 representative a notice that is printed in a type size of at least ten-point type that contains:

166 (i) a description of the property to be acquired;

167 (ii) the name of the agency acquiring the property and the agency's contact person and
168 telephone number; and

169 (iii) a copy of Title 57, Chapter 12, Utah Relocation Assistance Act.

170 (2) A person may bring a civil action against an agency for a violation of Subsection
171 (1)(b) that results in damage to that person.

172 (3) Each agency shall keep a record and evidence of the good faith negotiations
173 required under Subsection (1)(a) and retain the record and evidence as provided in:

174 (a) Title 63, Chapter 2, Government Records Access and Management Act; or

175 (b) an ordinance or policy that the agency had adopted under Section 63-2-701.

176 (4) A record property owner whose property is being taken by an agency through the
177 exercise of eminent domain may elect to receive for the real property being taken:

178 (a) fair market value; or

179 (b) replacement property under Section 57-12-7.

180 Section 5. Section **17C-2-603** is enacted to read:

181 **17C-2-603. Court award for court costs and attorney fees, relocation expenses,**
182 **and damage to fixtures or personal property.**

183 If a property owner brings an action in district court contesting an agency's exercise of
184 eminent domain against that owner's property, the court may:

185 (1) award court costs and a reasonable attorney fee, as determined by the court, to the
186 owner, if the amount of the court or jury award for the property exceeds the amount offered by
187 the agency;

188 (2) award a reasonable sum, as determined by the court or jury, as compensation for
189 any costs and expenses of relocating an owner who occupied the acquired property, a party
190 conducting a business on the acquired property, or a person displaced from the property, as
191 permitted by Title 57, Chapter 12, Utah Relocation Assistance Act; and

192 (3) award an amount, as determined by the court or jury, to compensate for any fixtures
193 or personal property that is:

194 (a) owned by the owner of the acquired property or by a person conducting a business
195 on the acquired property; and

196 (b) damaged as a result of the acquisition or relocation.