

A BRIEF REVIEW OF UTAH EMINENT DOMAIN LAW

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I. Pre-Condemnation Requirements

A. Approval of the Condemnation by the governmental condemnor.

(i) Property may not be taken by a political subdivision of the state unless the governing body of the political subdivision approves the taking. (UCA 78b-6-504).

B. Notice of the Public Meeting.

(i) Before taking a final vote to approve the filing of an eminent domain action, the governing body of each political subdivision intending to take property shall provide written notice to each owner of property to be taken of each public meeting of the political subdivision's governing body at which a vote on the proposed taking is expected to occur and allow the property owner the opportunity to be heard on the proposed taking. (UCA 78b-6-504).

(ii) The notice requirement is satisfied by the governing body mailing the written notice to the property owner: (a) at the owner's address as shown on the records of the county assessor's office; and (b) at least 10 business days before the public meeting. (UCA 78b-6-504).

C. Mandatory Pre-Condemnation Negotiation. (UCA 78b-6-505).

(i) before taking a final vote to approve the filing of an eminent domain action, [the condemnor] must make a reasonable effort to negotiate with the property owner for the purchase of the property; and

(ii) as early in the negotiation process as practicable but no later than 14 days before a final vote is taken to approve the filing of an eminent domain action, unless the court for good cause allows a shorter period before filing:

(a) advise the property owner of the owner's rights to mediation and arbitration, including the name and current telephone number of the property

rights ombudsman, established in Title 13, Chapter 43, Property Rights Ombudsman Act; and

(b) provide the property owner a written statement explaining that oral representations or promises made during the negotiation process are not binding upon the person seeking to acquire the property by eminent domain.

II. Key Issues in a Condemnation Case

- A. Date of valuation: Typically just compensation in a condemnation case is the date of the service of to summons and complaint.
- B. Interest: Interest accrues if the condemnor took immediate occupancy of the subject property before completion of the trial and resolution of the case. Interest accrues only on the amount of the condemnation award that is in excess of the money deposited into court in connection with the issuance of the order of immediate occupancy (the approved appraised value of the condemnor). Interest accrues at the rate of 8% per annum, simple interest.
- C. Lost Business Profits: Lost business profits are *not* generally recoverable in a condemnation case in Utah.

III. Just Compensation/Damages Recoverable in a Condemnation Case (UCA 78-6-511)

- A. Article I Section 22 of the Utah Constitution provides that: “Private property shall not be taken or damaged for public use without just compensation.”
- B. Just Compensation: Typically Just Compensation in a condemnation case includes:
 - (i) the value of the property sought to be condemned and all improvements pertaining to the realty;
 - (ii) if the property sought to be condemned constitutes only a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned and the construction of the improvement in the manner proposed by the plaintiff.
- C. Crop Damages: If land is sought to be condemned on which crops are growing at the time of service of summons, the damages include the value that those crops would have had after being harvested, taking into account the expenses that would have been incurred cultivating and harvesting the crops.
- D. Water Rights: if the property sought to be condemned consists of water rights or part of a water delivery system or both, and the taking will cause present or future damage to or impairment of the water delivery system not being taken, including impairment of the system's carrying capacity, damages shall be awarded in amount to compensate for the damage or impairment.

- E. Damages without a taking: If the property, though no part of it is taken, will be damaged by the construction of the proposed improvement, the amount of the damages that will result may be considered.
- F. Special Benefits: Special benefits accruing to the remainder property after condemnation may be offset against severance damages. But no such offset is permitted against the value of the property condemned. No offset from severance damages is permitted for general benefits resulting from the condemnation project.
- G. Individual Analysis of Damages: As far as practicable compensation shall be assessed for each source of damages separately

IV. Resolution of Condemnation Cases in Utah

- A. In Utah the property owner has the right to request a mediation or an arbitration of the case through the Utah Property Rights Ombudsman's Office, pursuant to Title 13, Chapter 43, Property Rights Ombudsman Act.
- B. There is a right to Jury Trials in condemnation cases in Utah.

V. Reimbursement for Litigation Expenses

- A. Historically under Utah law attorneys fees were not recoverable in a condemnation action.
- B. Court costs were recoverable, but were generally limited to recovery of filing fees paid to the court and witness fees paid pursuant to subpoena. Only rarely could expert witness fees or depositions fees be recovered.
- C. Recently, by statutory enactment (UCA 78B-6-509) attorneys fees, expert witness fees, and appraisal fees can be recovered by the prevailing party under certain limited circumstances set forth in the statute. However, such reimbursement is limited to \$50,000 if there is one defendant and \$100,000 if there are multiple defendants. The prevailing party is limited to a party who prevails in the condemnation proceeding and is awarded more than it offered to settle the case in a formal statutorily prescribed settlement offer.

VI. Authority to Condemn for Pipelines

- A. Utah law authorizes the use of the power of eminent domain for certain public uses. Theoretically, any person or entity may exercise that eminent domain power if it is for an approved public use.
- B. Utah Code 78B-6-501 provides in pertinent part: "Subject to the provisions of this part, the right of eminent domain may be exercised on behalf of the following public uses: . . . [3](b)reservoirs, canals, aqueducts, flumes, ditches, or pipes for conducting water for the use of the inhabitants of any county, city, or town, or for the draining of any county, city, or town; . . . [6](d) gas, oil or coal pipelines, tanks or reservoirs,

including any subsurface stratum or formation in any land for the underground storage of natural gas, and in connection with that, any other interests in property which may be required to adequately examine, prepare, maintain, and operate underground natural gas storage facilities; . . . (10) canals, reservoirs, dams, ditches, flumes, aqueducts, and pipes for supplying and storing water for the operation of machinery for the purpose of generating and transmitting electricity for power, light or heat;”.

C. Consequently, entities that seek to condemn pipeline corridors for the purposes set forth above may do so, “subject to the provisions” of the condemnation code (UCA 78B-6-501, et seq.).

D. However, pursuant to UCA 78B-6-504, (Conditions precedent to taking):

“(1) Before property can be taken it must appear that:

(a) the use to which it is to be applied is a use authorized by law;

(b) the taking is necessary for the use;

(c) construction and use of all property sought to be condemned will commence within a reasonable time as determined by the court, after the initiation of proceedings under this part;”.

E. Utah Case authority also requires that the project for which the condemnation is being made must have adequate financing and any required approvals prior to condemnation.