

DAGGETT COUNTY ORDINANCE NO. 03-05
CONSTITUTIONAL TAKING ISSUES

WHEREAS, in the course of conducting its business, the county, from time to time, may engage in activities that could result in taking of private real property; and,

WHEREAS, the State Legislature has mandated in Utah Code Annotated § 63-90a-1 et seq., that political subdivisions enact advisory guidelines and appeal and review procedures for situations involving constitutional taking of property; and,

WHEREAS, the County desires to provide a means of review of possible takings situations and a procedure for objective and fair consideration of claims by persons asserting deprivation of vested real property rights or interests without just compensation.

NOW, THEREFORE, be it ordained by the Legislative Body of Daggett County, State of Utah that:

SECTION I
PURPOSE

1.0 The purpose of this ordinance is to provide advisory guidelines for the County to assist the County in identifying actions that involve physical taking or exaction of private real property that may raise constitutional taking issues. This ordinance does not apply when the County formally exercises its power of eminent domain.

SECTION II
DEFINITIONS

2.0 Definitions as used herein:

2.1 "Constitutional taking issues" means actions involving the physical taking or exaction of private real property by the County that might require compensation to a private real property owner under:

2.1.1 The Fifth or Fourteenth Amendment to the Constitution of United States;

2.1.2 Article I, Section 2 of the Utah Constitution; or

2.1.3 Any recent court rulings governing the physical or regulatory taking of private real property by a governmental entity.

SECTION III
GUIDELINES

3.0 The following guidelines shall be considered by the County when taking any action that might result in taking of private real property.

3.1 Identification. The County should review the following to determine and identify whether a proposed governmental action raises constitutional taking issues.

- 3.1.1 Does the action result in a permanent physical occupation of private property?
- 3.1.2 Does the action require a property owner to dedicate property or grant an easement to the County?
- 3.1.3 Does the action deprive the property owner of all economically viable uses of the property?
- 3.1.4 Does the action have a severe impact on the property's owner's economic interests?
- 3.1.5 Does the action deny a fundamental attribute of ownership?

SECTION IV ANALYSIS

4.0 If the County determines that a governmental action involves constitutional taking issues, the proposed action should be reviewed by the County to analyze the possible taking and determine the action to be taken.

- 4.1 In reviewing the proposed action, the following factors may be considered:
 - 4.1.1 The effect the potential taking would have on the use or value of the private property;
 - 4.1.2 The likelihood that the action may result in a constitutional taking;
 - 4.1.3 Any alternatives to the proposed action that would fulfill the County's lawful objectives and reduce the risk of constitutional taking;
 - 4.1.4 The cost to the County for payment of compensation if taking is determined;
 - 4.1.5 The governmental interest involved and its nexus to the potential taking;
 - 4.1.6 If the action is roughly proportionate or reasonably related to the impact of any proposed development.

**SECTION V
REVIEW OR APPEAL OF ACTION**

Review of decision by county clerk.

5.0 Any owner of private real property or a real property right who claims there has been an unconstitutional taking of their property, without just compensation, shall petition for a review of a final decision of any County officer, employee, board, commission, or the council. The commission designates the county clerk to hear and consider such petitions.

Review procedures.

5.1 The following procedures for review of a final decision shall be followed:

- 5.1.1 Final Decision. The person petitioning for review shall obtain a final decision before requesting review.
- 5.1.2 Petition for Review. Within thirty days from the date of the final decision, the person requesting the review shall file, in the office of the County clerk, a written petitioner for review of that decision. A copy shall also be filed with the County attorney.
- 5.1.3 Hearing Date. The county clerk shall set a time to review the decision that gave rise to the petition as soon as reasonably practical. The county clerk shall hear and consider the evidence related to and submitted by the petitioner, the County or other interested parties. In the discretion of the county clerk, the hearing may be oral or based upon written submittals.
- 5.1.4 Initial Filing Information. As part of the petition for review, the petitioner shall submit, at least seven days prior to the date of the review, the following:
 - a. The name of the petitioner requesting review;
 - b. The name and business address of the current owner of the property; the form of ownership, i.e., whether sole proprietorship, for-profit or not-for-profit corporation, partnership, joint venture or other; and if owned by other than a real person, name and address of all partners or shareholders owning ten percent or more of the outstanding shares.
 - c. A detailed description of the factual and legal grounds for the claim that here has been an unconstitutional taking, without just compensation;

- d. A legal description of the property allegedly taken and a detailed description of the nature of the property; and
- e. A description of the protectable property interest claimed to be affected.

5.15 Supplemental Information. If the county clerk determines that there may be a taking, and additional information is needed, the county clerk may further require the following to be submitted.

- a. The evidence and documentation as to the value of the property interest claimed taken, including the date and cost at the date the property was acquired. This material should include any evidence of the value of that same property before and after the alleged unconstitutional taking; the name of the party from whom purchased, including the relationship, if any, between the person requesting a review; and the party from whom the property was acquired;
- b. The terms, including sale price, of any previous purchase or sale of a full or partial interest in the property during the three years prior to the date of application;
- c. All appraisals of the property prepared for any purpose, including financing, offering for sale, or ad valorem taxation, within the three years;
- d. The assessed value of and ad valorem taxes on the property for the previous three years;
- e. All information concerning current mortgages or other loans secured by the property, including the name of the mortgage holder or lender, current interest rate, remaining loan balance and term of the loan and other significant provisions, including but not limited to, the right of purchasers to assume the loan;
- f. All listings of the property for sale or rent, price asked and offers received, if any, within the previous three years;
- g. All studies commissioned by the petitioner or agents of the petitioner within the previous three years concerning feasibility of development or utilization of the property;

- h. For income producing property, itemized income and expense statements from the property for the previous three years.
- i. Information from a title policy or other source showing all recorded lien and encumbrances affecting the property; and
- j. The county clerk may request additional information reasonably necessary, in their opinion, to arrive at a conclusion concerning the nature of and the value of the alleged unconstitutional taking.

Review standards.

5.2 The county clerk shall review the facts and information presented by the petitioner and determine if the action by the County constitutes an unconstitutional taking. In doing so, the County attorney's office shall serve as a legal counsel and shall be consulted. The county clerk shall review the facts in light of the applicable state and federal constitutional law.

Time for final decision.

5.3 If the county clerk fails to hear and decide the petition within fourteen days after the filing of the petition, the administrative decision of the County officer, employee, board, or commission shall be deemed approved; provided, however, the county clerk may extend the time to reach a decision, not exceeding an additional one hundred twenty days following the receipt of the information required pursuant to this chapter, if prior to the expiration of the fourteen-day period, the county clerk notifies the petitioner, in writing, of such extension.

Results of review.

5.4 After completing the review, the county clerk shall make a determination regarding the petition and, if determined to be necessary and appropriate, make a recommendation to the appropriate office, employee, board or commission.

**SECTION VI
GUIDELINES ADVISORY**

6.0 The guidelines adopted and decisions rendered pursuant to the provisions of this chapter are advisory, and shall not be construed to expand or limit the scope of the County's liability for an unconstitutional taking of a vested property interest. The decision rendered pursuant to the provisions of this chapter is not admissible in court for any purpose other than to demonstrate that the review has been completed, and in no event shall any recommended compensation be admissible into evidence.

**SECTION VII
RIGHTS OF PROPERTY OWNER NOT AFFECTED**

7.0 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. 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 VIII
EFFECTIVE DATE**

8.0 This Ordinance shall become effective immediately upon adoption and publication/posting.

Passed, adopted, and ordered posted this 17th day of March, 2003.

Commissioner Collett X Aye Nay

Commissioner Walters X Aye Nay

Commissioner Reed X Aye Nay

ATTEST:

Sharon P. Mattes
Daggett County Commission

Wilby M. Kee
County Clerk

I certify that a copy of this ordinance was duly posted on the 25th day of March, 2003, on the front door of the Daggett County Offices in Manila, Utah, and certify that this ordinance was posted at three public places within Daggett County on or before the 25th day of March, 2003.

(ch)dgt30/ord 2-03.wpd

Wilby M. Kee