

Utah Municipal Attorneys' Association
2015 Spring Conference
May 8, 2015

RECENT JUDICIAL DECISIONS AND RECURRING ISSUES OF INTEREST IN THE AREA OF LAND USE, ZONING AND EMINENT DOMAIN

Jody K Burnett
WILLIAMS & HUNT
257 East 200 South, Suite 500
P. O. Box 45678
Salt Lake City, UT 84145
Telephone: (801) 521-5678
Email: jburnett@williamsandhunt.com

I. EMINENT DOMAIN ISSUES

- A. Be aware of the substantial lead time necessary to obtain an order of immediate occupancy before firing up the bulldozers. *See* Utah Code Ann. §§ 78B-6-504, 505 regarding conditions precedent to initiate an eminent domain action.
- B. Determining the range of public uses for which the exercise of eminent domain has been authorized. *See* *UDOT v. Carlson*, 2014 UT 24; 332 P.3d 900.
- C. Inverse condemnation claims as a “shot across the bow” or as a means to determine existing right-of-way width. *See* *UDOT v. Walker Development Partnership*, 2014 UT App 30; 320 P.3d 50.

II. IMPACT FEES

- A. Determining the level of service for capital facilities and the question of whether all “ERU’s” are created equal. *See* *Settlers Landing LLC v. Westhaven Special Service District*, 2015 UT App 54.

Awaiting decision: *Washington Townhomes LLC, et al. v. Washington County Water Conservancy District*, pending on appeal, Case No. 20150258-SC.

III. FIRST AMENDMENT CHALLENGES TO SIGN ORDINANCES

- A. Will regulations regarding the size, duration and location of temporary directional signs to a small church be the vehicle for the U.S. Supreme Court to resolve a split among the Circuits as to the level of scrutiny to be applied to such challenges?
See Reed v. Town of Gilbert, 707 F.3d 1057 (9th Cir. 2013) (writ of certiorari granted by *Reed v. Town of Gilbert*, 134 S. Ct. 2900, 189 L. Ed. 2d 854, 2014 U.S. LEXIS 4687, 83 U.S.L.W. 3011)

IV. CASES INVOLVING CONTRACT DISPUTES WITH LOCAL GOVERNMENTS: IS THERE ANY SUCH THING IN TODAY'S WORLD AS A CLEAR, PLAIN AND UNAMBIGUOUS AGREEMENT?

See E&H Land, Ltd v. Farmington City, 2014 UT App 237.

V. RECURRING FAIR HOUSING CHALLENGES

See Utah Code Ann. §10-9a-516 and 520.

Most situations involve an evaluation of a request for a reasonable accommodation for the number of unrelated persons living together in a single family dwelling on the grounds of financial necessity.

VI. RECURRING PROCEDURAL DUE PROCESS CONCERNS FOCUSING ON EX PARTE COMMUNICATIONS

A few war stories and lessons from the trenches.

VII. SENSITIVE LANDS: THE ULTIMATE "DAMNED IF YOU DO, DAMNED IF YOU DON'T" DILEMMA FOR LOCAL GOVERNMENT

Evaluating the public duty doctrine and special relationship exception in the arena of land use, zoning and related issues.