

The Utah Law of Eminent Domain

Utah League of Cities and Towns
September 11, 2008
Craig Call, Executive Director
The Utah Land Use Institute



In a Nutshell:

1. Main issues are political, not legal.
2. There is no “all at once” –
you must plan ahead.
3. The best approach is
to unbundle the issues.
4. There is good, free help available –
Property Rights Ombudsman
801-530-6391
Propertyrights.utah.gov

“(The takings clause) was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole”

Armstrong v. U.S. (1960)

Oregon Measure 37



Kelo v.

New London, CT

©Mike Lester / Rome News Tribune
www.CagleCartoons.com





Kelo v. City of New London, CT



Kelo v. City of New London, CT



Kelo v. City of New London, CT



Kelo v. City of New London, CT



Kelo v. City of New London, CT



Kelo v. City of New London, CT



Kelo v. City of New London, CT



Kelo v. City of New London, CT



Kelo v. City of New London, CT

JOBS for your community

PROVIDED BY EQUAL OPPORTUNITY EMPLOYERS

In partnership with the



U.S. DEPARTMENT OF COMMERCE
Economic Development Administration

By working together we can provide economic opportunities for Americans

Kelo v. City of New London, CT



Kelo v. City of New London, CT



Kelo v. City of New London, CT

Kelo v. New London CT

If allowed by statute and ordinance, local government entities can condemn private property and transfer the property acquired to other private entities for economic development purposes. The legislature can limit this use of eminent domain, but the courts will not.



Ivers v. UDOT , 2007 UT 19





SHIFT INTO
House: Divided
Impeachment...
Cheney's da...

ORIGINAL PERFECT

Arby's
tour
Inside
Weather







Arby's®

1253

5
FOR
\$5⁹⁵

Arby's
Regular
Roast Beef
Sandwiches



Arby's
Orange Cream
Swirl Shake



OUTDO

ARBY'S
NOW
HIRING.
APPLY WITHIN.



UDOT v Harvey Real Estate,
2002 UT 107





Davis County v. Zions Bank
2002 UT App 191

Three Different Issues:

One: Project (Timing)

Two: Compensation

Three: Relocation

LITIGATION ISSUES

- PREREQUISITES (**JURISDICTIONAL**)
NEGOTIATION
NOTICE OF HEARING (14 DAYS)
OPPORTUNITY FOR OWNER TO
SPEAK
- FILE COMPLAINT
- SUMMONS – EVERY NECESSARY PARTY
- TWENTY DAYS TO ANSWER
OCCUPANCY MOTION – ANSWER
DATE
- TOTAL TIME: MINIMUM TWO MONTHS

COMPLAINT:

- JURISDICTION – LOCATION OF PROPERTY
- SEPARATE ACTION FOR EACH PROPERTY?
- PLAINTIFF
- EVERY NECESSARY DEFENDANT
 - OWNERS
 - OCCUPANTS
 - LIEN HOLDERS?
- AUTHORITY OF PLAINTIFF TO CONDEMN
- LOCATION OF PROPERTY (R.O.W. MAP)
- DESCRIPTION OF PROPERTY

ANSWER:

- TWENTY DAYS TO RESPOND
- LEASE WAIVERS – TENANTS/LANDLORDS
- COUNTERCLAIM
 - INVERSE CONDEMNATION?

DISCOVERY

- PROPERTY RIGHTS FAVORED – NOT A TYPICAL AVERSARIAL SITUATION.
- APPRAISALS MUST BE SHARED.

WITNESSES

- PROPERTY OWNER – ONLY HIS OR HER EXPERTISE OR COLLATERIAL FACTS
- APPRAISALS. VALUE ONLY BY LICENSED APPRAISER.
- OTHER WITNESSES – MUST HAVE FOUNDATION.
- QUALIFICATIONS UP TO THE JUDGE.

JURY VERDICTS

- ONLY COMPENSATION.
- ALL OTHER ISSUES ARE FOR THE JUDGE.
- MUST INDICATE VALUE FOR EACH ASPECT OF COMPENSATION AS PER CODE.
- VERDICT MUST BE REASONABLE, BASED ON THE EVIDENCE.

EVIDENCE

- ITS UP TO THE JUDGE.
- HEARSAY.
- OPTIONS TO BUY.
- OFFERS TO BUY.
- NOT PREJUDICIAL.

ABANDONMENT

- CONDEMNOR PAYS ALL DAMAGES.
- INTEREST.
- COSTS OF COURT.
- OTHER DAMAGES.
- ATTORNEYS FEES.

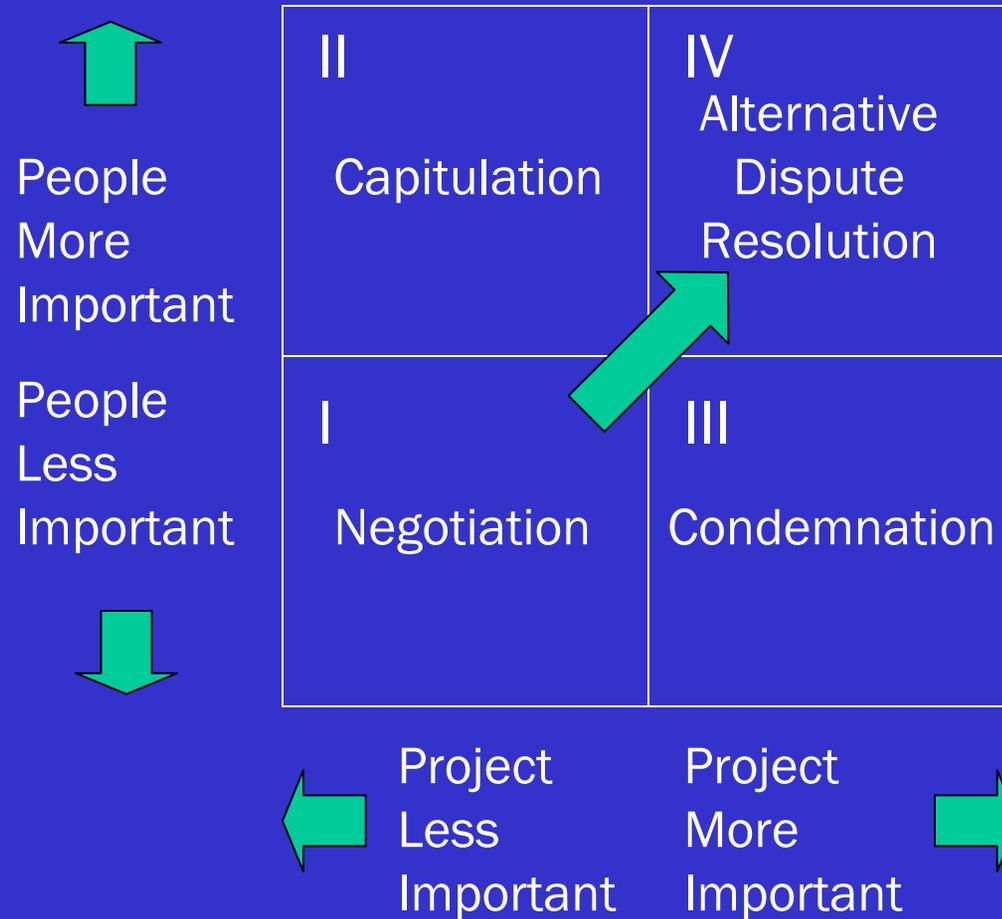
JUDGEMENT

- PAY COMPENSATION WITHIN 30 DAYS.
- PAY ROLL BACK TAXES.
- PAY INTEREST.
- OFFER COMPENSATION IF APPEAL FILED.
- APPELLATE APPEAL – LEGAL ISSUES,
NOT THE FACTUAL ISSUES, TYPICALLY.

POST JUDGEMENT ISSUES

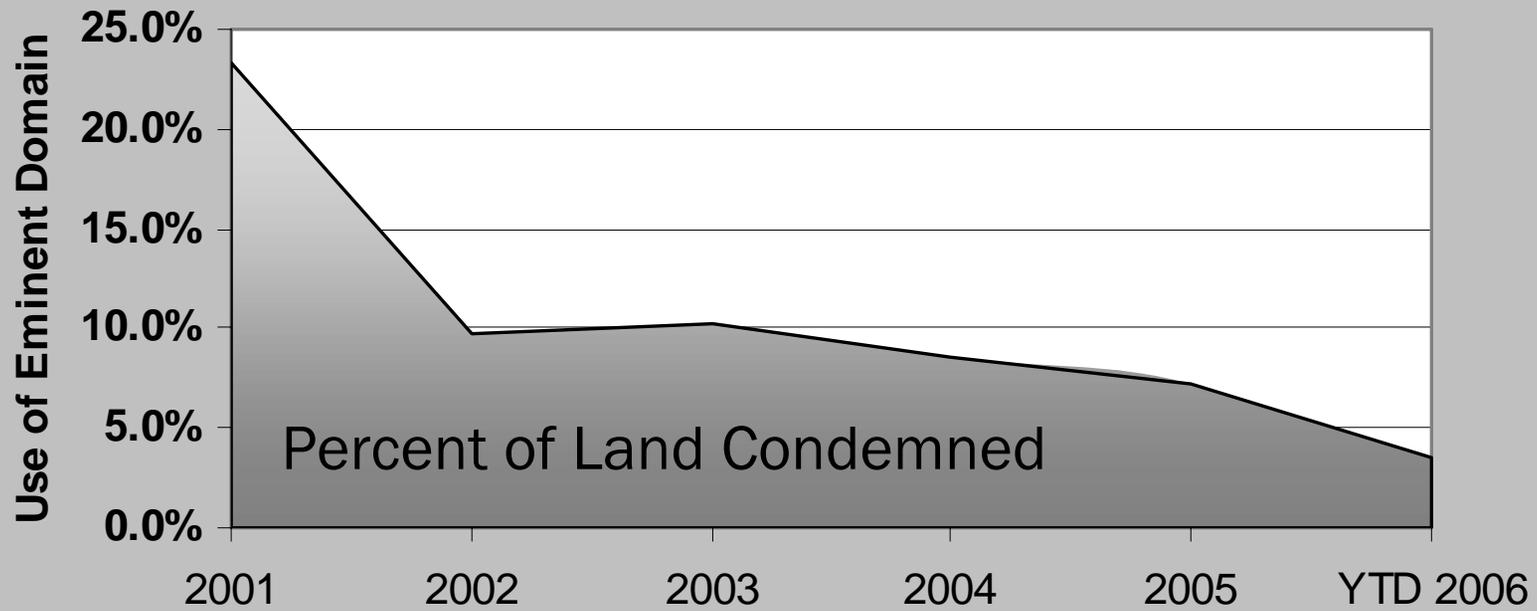
- FAILURE TO COMMENCE OR COMPLETE THE PROJECT.
- CAN'T SELL IF ENHANCE VALUES.
- RESALE OF LAND – FIRST RIGHT OF REFUSAL TO PROPERTY OWNER.
- FAILURE TO RECORD TITLE – FATAL TO A BONA FIDE PURCHASER FOR VALUE.

Eminent Domain ADR Matrix



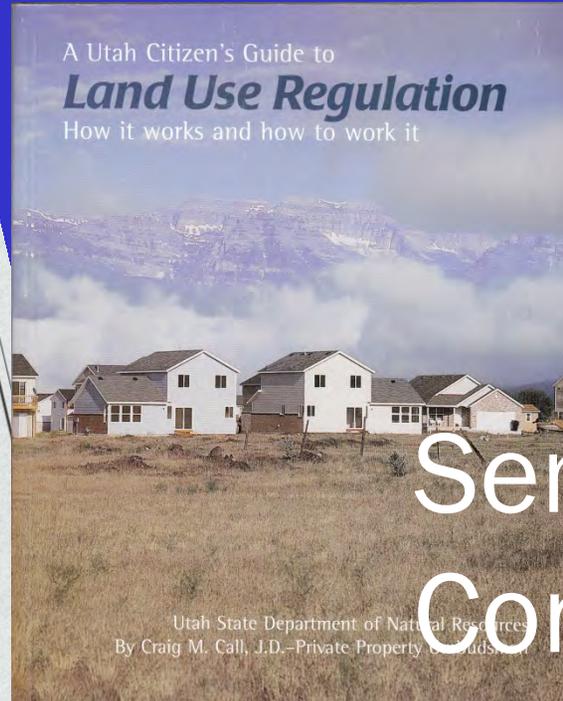
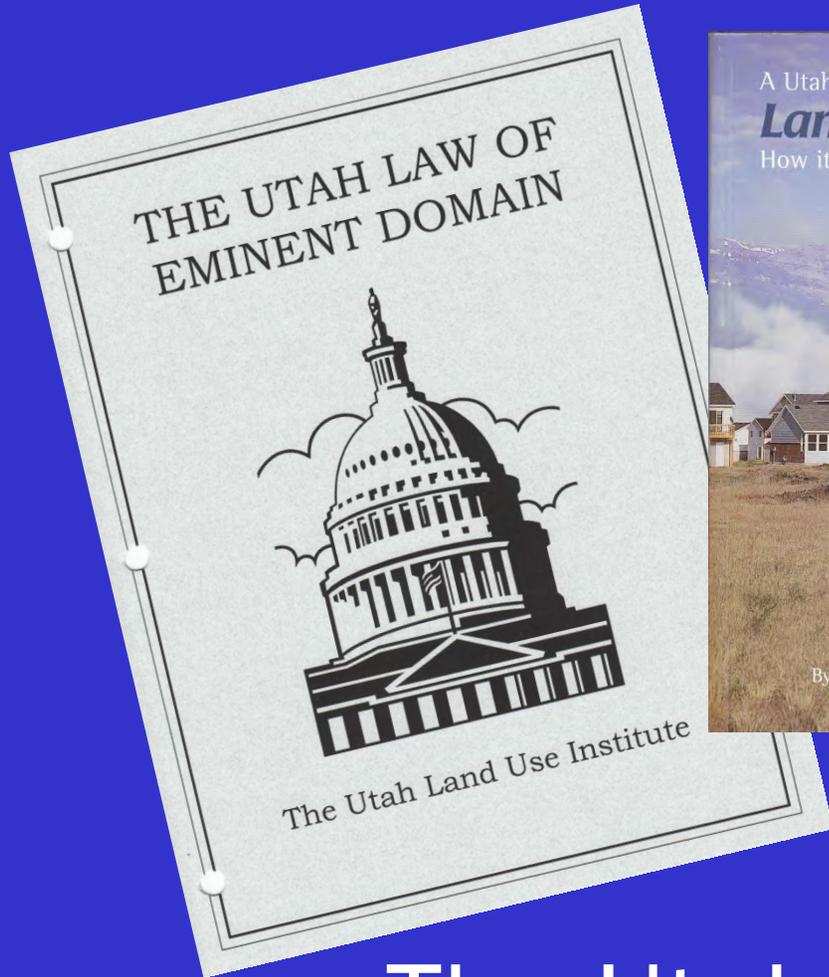
Property Acquisitions

Utah Department of Transportation



In a Nutshell:

1. Main issues are political, not legal.
2. There is no “all at once” –
you must plan ahead.
3. The best approach is
to unbundle the issues.
4. There is good, free help available –
Property Rights Ombudsman
801-530-6391
Propertyrights.utah.gov



Seminars
Conferences
Publications

The Utah Land Use Institute
www.utahlanduse.org

The Utah Land Use Institute
www.utahlanduse.org