

ORDINANCE NO. 1-95

AN ORDINANCE ESTABLISHING A PROCEDURE FOR THE REVIEW OF ACTIONS BY THE (CITY/COUNTY) THAT MAY HAVE CONSTITUTIONAL TAKING ISSUES.

WHEREAS, recent changes in the State Code require local governments to consider and adopt guidelines relating to potential Constitutional Taking issues; and

WHEREAS, in light of these statutory requirements, the (City/County) deems it to be in the best interest of it's citizens to adopt both guidelines and to establish a procedure for review of actions by it's officers, employees, boards, commissions or councils that may involve the issue of a physical taking or exaction of private real property without just compensation; and

WHEREAS, said guidelines are meant to instruct and inform the (City/County), its officials, employees, boards, commissions and councils, of the standards for a Constitutional Taking and process for review of such actions; and

WHEREAS, the guidelines intended neither to expand nor limit the scope of any political subdivisions liability for a Constitutional Taking, nor impose any liability upon a political subdivision for failure to comply with the guidelines.

NOW, THEREFORE, BE IT ORDAINED BY THE (CITY COUNCIL/COUNTY COMMISSION) OF ~~LAYTON~~ CITY AS FOLLOWS:
Bear River

SECTION 1. REPEALER

SECTION 2. ENACTMENT

Section I: Policy Considerations. There is an underlying policy in the (City/County), strongly favoring the careful consideration of matters involving Constitutional Taking claims, in fairness to the owner of private property bringing the claim and in view of the uncertainty and expense involved in defending law suits alleging such issues. At the same time, the legitimate role of government in lawfully regulating real property must be preserved and the public's right to require the dedication or exaction of property consistent with the Constitution. Consistent with this policy, it is desired that a procedure be established for the review of actions that may involve the issue of a Constitutional Taking. These provisions are to assist governments in considering decisions that may involve Constitutional Takings. It is intended that a procedure for such a review be provided, as well as guidelines for such considerations. This ordinance is further intended and shall be construed to objectively and fairly review claims by citizens that a specific government action should require payment of just compensation, yet preserve the ability of the (City/County) to lawfully regulate real property and fulfill its other duties and functions.

3. The (City Council/~~County Commission~~), or an individual, or body designated by the (City Council/~~County Commission~~) shall immediately set a time to review the decision that gave rise to the Constitutional Takings claim.

4. In addition to the written request for review, the applicant must submit, prior to the date of the review, the following:

- a. Name of the applicant requesting review;
- b. Name and business address of current owner of the property, form of ownership, whether sole proprietorship, for-profit or not-for-profit corporation, partnership, joint venture or other, and if owned by a corporation, partnership, or joint venture, name and address of all principal shareholders or partners;
- c. A detailed description of the grounds for the claim that there has been a Constitutional Taking;
- d. A detailed description of the property taken;
- e. Evidence and documentation as to the value of the property taken, including the date and cost at the date the property was acquired. This should include any evidence of the value of that same property before and after the alleged Constitutional 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;
- f. Nature of the protectable interest claimed to be affected, such as, but not limited to, fee simple ownership, leasehold interest;
- g. Terms (including sale price) of any previous purchase or sale of a full or partial interest in the property in the three years prior to the date of application;
- h. All appraisals of the property prepared for any purpose, including financing, offering for sale, or ad valorem taxation, within the three years prior to the date of application;
- i. The assessed value of and ad valorem taxes on the property for the previous three years;
- j. All information concerning current mortgages or other loans secured by the property, including name of the mortgagee or lender, current interest rate, remaining loan balance and term of the loan and other significant provisions, including but not limited to, right of purchasers to assume the loan;

1. Whether the physical taking or exaction of the private real property bears an essential nexus to a legitimate governmental interest.

2. Whether a legitimate governmental interest exists for the action taken by the (City/ County).

3. Is the property and exaction taken, roughly proportionate ~~and~~^{and} reasonably related, on an individual property basis, both in nature and extent, to the impact caused by the activities that are the subject of the decision being reviewed.

Section VI: Results of Review. After completing the review, the reviewing (person/body) shall make a determination regarding the above issues and where determined to be necessary and appropriate, shall make a recommendation to the officer, employee, board, commission or council that made the decision that gave rise to the Constitutional Takings claim.

SECTION 3. SEVERABILITY

SECTION 4. EFFECTIVE DATE

PASSED AND ADOPTED by the (City Council/County Commission) of Bear River City Utah, this 9th day of January, 1994₅.

Robert E. Nelson

ATTEST:

Carol S. Andreasen