

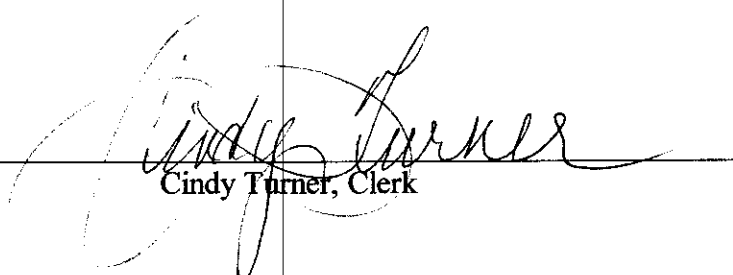
Ordinance # 031203 of the Town of Kanosh

Section 2-4-060 Constitutional Taking Issues.

- (a) **Purpose.** The purpose of the Section is to provide advisory guidelines for the City to assist the City in identifying actions that involve physical taking or exaction of private real property that may have constitutional taking issues.
- (b) **Definitions.** As used herein:
 - (1) "Constitutional taking issues" means actions involving the physical or regulatory taking of private real property by the City that might require compensation to a private real property owner under:
 - (i) The Fifth or Fourteenth Amendment of the Constitution of the United States;
 - (ii) Article I, Section 22 of the Utah Constitution; or
 - (iii) Any recent court rulings governing the physical or regulatory taking of private real property by a governmental entity.
- (c) **Guidelines.** The following guidelines shall be considered by the City when taking any action that might result in the physical or regulatory taking of private real property.
 - (1) **Identification.** The City should review the following to determine and identify whether a proposed governmental action raises constitutional taking issues.
 - (2) Does the action result in a permanent physical occupation of private property?
 - (3) Does the action require a property owner to dedicate property or grant an easement to the City?
 - (4) Does the action deprive the property owner of all economically viable uses of the property?
 - (5) Does the action have a severe impact on the property owner's economic interest?
 - (6) Does the action deny a fundamental attribute of ownership?
- (d) **Analysis.** If the City determines that a governmental action involves constitutional taking issues, the proposed action should be reviewed by the City to analyze the possible taking and to determine the action to be taken. In reviewing the proposed action, the following factors may be analyzed.
 - (1) The affect the potential taking would have on the use of value of the private property;
 - (2) The likelihood that the action may result in a constitutional taking;
 - (3) Any alternatives to the proposed action that would fulfill the City's lawful objectives and reduce the risk of a constitutional taking;

- (4) The cost to the City for payment of compensation if a taking is determined;
 - (5) The governmental interest involved and its nexus to the potential taking; and
 - (6) If the action is roughly proportionate or reasonably related to the impact of any proposed development.
- (e) Appeals. Any owner of private property whose interest in the property is subject to a physical or regulatory taking by the City, pursuant to a final and authoritative decision or action of the City, may appeal the City's decision or action by filing a written notice of appeal and statement of the grounds for the appeal in the City Recorder's Office within thirty (30) days from the date of the City's decision or action. The City Council or its designee shall hear all evidence regarding the appeal and render its decision and findings in writing within fourteen (14) day from the date the appeal was filed. If the City fails to hear and decide the appeal within fourteen (14) days, the City's decision or action is presumed to be approved.
- (f) Limitations. The guidelines set forth herein are advisory only and shall not be construed to expand nor limit the scope of the City's liability for a constitutional taking. The City shall have no legal liability to any person, firm or entity of any nature whatsoever and a court may not impose liability upon the City for failure to comply with the provisions of this Chapter.
- (g) Legal Action. A property owner's failure to appeal the action of the City 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.

Terry Higgs, Mayor



Cindy Turner, Clerk

ORDINANCE NO. 641295

AN ORDINANCE ESTABLISHING A PROCEDURE FOR THE REVIEW OF ACTIONS BY THE *KANOSH TOWN* 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 *KANOSH TOWN* 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 *KANOSH TOWN* 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 *KANOSH TOWN*
COUNCIL AS FOLLOWS:

SECTION 1. REPEALER

SECTION 2. ENACTMENT

Section I: Policy Considerations. There is an underlying policy in the *KANOSH TOWN*, 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 *KANOSH TOWN* to lawfully regulate real property and fulfill its other duties and functions.

Section II: Definitions.

1. "Constitutional Taking" means actions by the (City/County) involving the physical taking or exaction of private real property that might require compensation to a private real property owner because of:

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

b. Article I, Section 22, of the Utah Constitution;

c. Any Court ruling governing the physical taking or exaction of private real property by a government entity;

2. Actions by the ~~(CITY/COUNTY)~~ *(TOWN)* involving the physical taking or exaction of private real property is not a Constitutional Taking if the physical taking or exaction:

a. Bears an essential nexus to a;

b. Legitimate governmental interest; and,

c. Is roughly proportionate and reasonably related, on an individualized property basis, both in nature and extent, to the impact of the proposed development on the legitimate government interest.

Section III: Guidelines Advisory. The guidelines adopted and decisions rendered pursuant to the provisions of this section are advisory, and shall not be construed to expand or limit the scope of the (City's/County's) liability for a Constitutional Taking. The reviewing body or person, shall not be required to make any determination under this ordinance except pursuant to Section IV.

Section IV: Review of Decision. Any owner of private real property who claims there has been a Constitutional Taking of their private real property shall request a review of a final decision of any officer, employee, board, commission, or council. The following are specific procedures established for such a review:

1. The person requesting a review must have obtained a final and authoritative determination, internally, within the (City/County), relative to the decision from which they are requesting review.

2. Within thirty (30) days from the date of the final decision that gave rise to the concern that a Constitutional Taking has occurred, the person requesting the review shall file in writing, in the office of the *TOWN* ~~CLERK~~ *RECORDS*, a request for review of that decision. A copy shall also be filed with the *TOWN* attorney.

3. The (City Council, or an individual, or body designated by the (City Council 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;

k. All listings of the property for sale or rent, price asked and offers received, if any, within the previous three years;

l. 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;

m. For income producing property, itemized income and expense statements from the property for the previous three years;

n. Information from a title policy or other source showing all recorded liens or encumbrances affecting the property; and

o. The (City Council, or their designee may request additional information reasonably necessary, in their opinion, to arrive at a conclusion concerning whether there has been a Constitutional Taking.

5. An application shall not be deemed to be "complete" or "submitted" until the reviewing body/official certifies to the applicant, that all the materials and information required above, have been received by the (City. The reviewing body/official shall promptly notify the applicant of any incomplete application.

6. The (City Council or an individual or body designated by them, shall hear all the evidence related to and submitted by the applicant, (City, or any other interested party.

7. A final decision on the review shall be rendered within fourteen (14) days from the date the complete application for review has been received by the (City Recorder. The decision of the (City Council regarding the results of the review shall be given in writing to the applicant and the officer, employee, board, commission or council that rendered the final decision that gave rise to the Constitutional Takings claim.

8. If the City Council fails to hear and decide the review within fourteen (14) days, the decision appealed from shall be presumed to be approved.

Section V: Reviewing Guidelines. The (City Council shall review the facts and information presented by the applicant to determine whether or not the action by the (City constitutes a Constitutional Taking as defined in this chapter. In doing so, they shall consider:

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,

3. Is the property and exaction taken, roughly proportionate ^{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 KANONH Utah, this 12 day of APRIL, 1995

ATTEST:

Cindy Turner

Larry Higgs