

BICKNELL TOWN ORDINANCE 1-2003 CONSTITUTIONAL TAKING ISSUES

- I. **PURPOSE.** The purpose of this Ordinance is to provide advisory guidelines for Bicknell Town to assist the Town in identifying action that involves the unconstitutional taking or damaging of private real property without the payment of just compensation as required by the Constitution of the United States and of the State of Utah.

- II. **DEFINITIONS**
 - A. "Constitutional taking issues" means actions involving the physical or regulatory taking of private real property by Bicknell Town that might require compensation to a private real property owner under:
 1. The Fifth or Fourteenth Amendment of the Constitution of the United States;
 2. Article I, Section 22 of the Utah Constitution; or
 3. Any recent court rulings governing the physical or regulatory taking of private real property by a governmental entity.

- III. **GUIDELINES.** The following guidelines shall be considered by Bicknell Town when taking any action that might result in the physical or regulatory taking of private real property. Bicknell Town should review the following to determine and identify whether a proposed governmental action raises constitutional taking issues. It is the policy of Bicknell Town that no individuals bear burdens which, in all fairness and justice, should be borne by the community as a whole. A "Yes" answer to any of the following questions could raise the implication of a taking or damaging of private property for which just compensation may be required:
 1. Does the action result in a permanent or inevitably recurring physical occupation of private property?
 2. Does the action require a property owner to dedicate property or grant an easement to the Town without the payment of just compensation?
 3. Does the action create or otherwise impose a permanent or ongoing Nuisance, originating on Bicknell Town property, that impacts neighboring lands so that their owners or occupants sustain a special and unreasonable interference with the quiet enjoyment of their property?
 4. Does the action interfere with a fundamental attribute of ownership such as the right to reasonable access, the right to light, air and view within the right-of-way of an abutting public street, or the right to exclude others from private property?
 5. Does the action unreasonably interfere with a separately protected and vested right, such as the right to continue a nonconforming use; the right to have an application reviewed under the law that was in effect when a complete application was submitted; legally issued subdivision plat approvals, building permits, or licenses; or other protected property interests.
 6. Does the action impose a severe economic burden that is Inappropriately unfair when considered in light of (a) the burden placed on the property owner, (b) the nature of the government action and benefit, and (c) the property owner's investment-backed expectations?
 7. Does the action deprive the property owner of all economically viable Use of the property in a situation where the proposed use does not constitute a nuisance or a severe threat to health and safety?
 8. Does the action limit the use of private property without substantially Advancing a legitimate public interest?
 9. Has the Town failed to demonstrate by an individualized determination that any conditions, dedications or exactions imposed as a

condition of approval of development applications place only fair and roughly proportionate burdens on development, offsetting the burdens that the proposed development places on public utilities, street and other services but not imposing additional burdens on development that the community as a whole should bear?

10. Does the action discriminate against property owners, imposing Restrictions or burdens on one property owner that other similarly situated property owners do not bear?

IV. ANALYSIS. If Bicknell Town determines that a governmental action involves constitutional taking issues, the proposed action should be reviewed by Bicknell Town to analyze the possible taking and to determine the action to be taken. In reviewing the proposed action, the following factors may be analyzed:

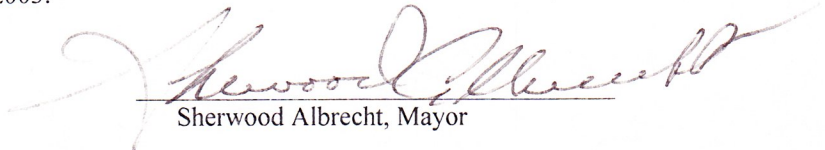
1. The affect the potential taking would have on the use or value of the private property;
2. The likelihood that the action may result in a constitutional taking;
3. Any alternatives to the proposed action that would fulfill Bicknell Town's lawful objectives and reduce the risk of a constitutional taking;
4. The cost to the Town for payment of compensation if a taking is determined.

V. APPEALS. Any owner of private property whose interest in the property is subject to a physical or regulatory taking by Bicknell Town, pursuant to a final and authoritative decision or action of Bicknell Town, may appeal the Town's decision or action by filing a written notice or appeal and statement of the grounds for the appeal in the Town Clerk's office with thirty (30) days from the date of the Town's decision or action. The Town Council or its designee shall hear all evidence regarding the appeal and render its decision and findings in writing within fourteen (14) days from the date the appeal was filed. If Bicknell Town fails to hear and decide the appeal within fourteen (14) days, the Town's decision or action is presumed to be approved.

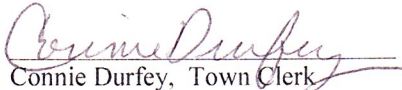
VI. LIMITATIONS. The guidelines set forth herein are advisory only and shall not be construed to expand nor limit the scope of Bicknell Town's liability for a constitutional taking. Bicknell Town shall have no legal liability to any person, firm or entity of any nature whatsoever and a court may not impose liability upon the Town for failure to comply with the provisions of this Ordinance.

VII. LEGAL ACTION. A property owner's failure to appeal the action of Bicknell Town 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.

VIII. ENACTMENT. This ordinance shall take effect upon 4th day of April 2003. This ordinance was approved, passed and adopted by the Mayor and the Town Council on 4th day of April 2003.


Sherwood Albrecht, Mayor

ATTEST:


Connie Durfey, Town Clerk