

Bond Case Briefs

Municipal Finance Law Since 1971

EMINENT DOMAIN - UTAH

Salt Lake City Corporation v. Kunz

Court of Appeals of Utah - October 16, 2020 - P.3d - 2020 WL 6106942 - 2020 UT App 139

City initiated action against owners of land south of airport acquired by city to obtain aviation easement by condemnation over airspace south of airport runway.

The Third District Court dismissed condemnation action. City appealed and owners cross-appealed.

The Court of Appeals held that:

- Owners' admissions at hearing on motion for partial summary judgment were limited in applicability to then-pending motions before trial court;
- Ruling on partial summary judgment motion did not rule on issue of whether city complied with notice and disclosure requirements;
- Notice to owners of eminent domain proceedings was inadequate to initiate condemnation for aviation easement;
- Actual notice and previous opportunities to be heard did not amount to compliance with notice and disclosure requirements;
- Owners were not required to show prejudice with respect to violation of notice statute; and
- Trial court did not err by not allowing city to amend complaint.

Land owners' admissions in May 2009 hearing on motion for partial summary judgment, on issue of city's authority to condemn air rights over owners' land, that certain facts were "undisputed for the purposes of the current motions" were limited in their applicability to the then-pending motions before the district court, and thus trial court did not err in failing to consider ruling when dismissing city's condemnation complaint for failing to follow notice and disclosure requirements, where admissions came in response only to issue of extraterritorial eminent domain power, owners never withdrew immediate occupancy deposit including defense that city had not followed notice procedures, and city propounded discovery request for documents related to that defense.

Language in prior ruling for partial summary judgment on issue of city's extraterritorial eminent domain power in action to obtain aviation easement over airspace south of airport, that one of undisputed issues was that owners "were provided with timely and proper notice regarding condemnation efforts" did not amount to ruling on issue of whether city gave land owners proper notice and disclosure required by statute, and thus reconsideration of issue was unnecessary on appeal; partial summary judgment ruling merely identified that notice issue was not in dispute as it related to city's extraterritorial eminent domain power.

Notice to land owners of eminent domain proceedings regarding airspace over land they owned south of airport did not adhere to statute's directive regarding timing of that notice, and thus was inadequate to initiate condemnation for aviation easement, although notice for first meeting complied with statutory requirements, where owners were allowed to speak at second meeting but were not sent written notice of meeting at least ten business days in advance, and notice for third meeting arrived only three business days before meeting and owners were not allowed opportunity

to be heard.

Statute governing notice requirements for condemnation proceedings required strict compliance, and thus actual notice to land owners of eminent domain proceedings regarding air rights over land they owned south of city's airport, and previous opportunities to be heard on issue did not fulfill purposes of statute to provide abundant procedural fairness to property owners.

Trial court did not err by not allowing city to amend complaint to obtain avigation easement over airspace south of airport through condemnation; city failed to adequately explain why amendment should be granted, failed to provide proposed amended complaint for consideration, and amendment would be futile since city could not retroactively follow statutory preconditions for condemning private property rights.