

# UTAH AND WYOMING LAND USE CASES

Presented by:

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# Zoning and Referendum

[Utah]

*Krejci v. Saratoga Springs*, 2013 UT 74

City rezones of a 12 acre parcel from low density to medium density residential.

Citizens starts referendum process to overturn the zoning ordinance and City places the question on ballot.

Developer sues to strike the issue from the ballot, claiming site-specific zoning not subject to referendum.

UTAH CODE § 20A-7-102 allows referendum for “an ordinance, resolution, master plan, and any comprehensive zoning regulation adopted by ordinance or resolution,” but excludes “individual property zoning decisions.”

# Zoning and Referendum (cont'd)

[Utah]

Issue: do citizens have a constitutional right to referenda on site-specific zoning decisions?

Question depends on whether site-specific re-zoning is a legislative or an administrative act.

Supreme Court continues what it started last year in *Carter v. Lehi City*.

It overturns several past decisions and confirms, despite the limitations of the statute, that site-specific zoning decisions are inherently legislative and thus subject to referenda.

Also confirms that conditional use and variance decisions will continue to be regarded as administrative, and not subject to referenda.

# Time to Challenge Municipal Action

[Utah]

*Olsen v. Park City*, 315 P.3d 1055 (UT App 2013)

§ 10-9a-801(5) “[A] challenge to the enactment of a land use ordinance or general plan may not be filed with the district court more than 30 days after the enactment.”

The subdivision ordinance in question stated that it shall “take effect upon publication.”

District Court: enactment is date ordinance passed by City Council, and challenge ruled untimely.

Court of Appeals: “Enactment involves everything required for the law to become enforceable, including signature by mayor, attestation by city recorder, approval by city attorney and, in this case, publication.

Challenge ruled timely.

# Schools vs. Treatment Centers

[Utah]

*Johnson v. Weber County*, 302 P.3d 1243 (UT App 2013)

County BOA approves under school zoning designation a residential facility operating as a “private, non-public specialty school serving students with specific needs in the areas of learning, depression, anxiety, and pervasive developmental problems.”

Ordinance defines a school as public, parochial, or private educational institution having a curriculum similar to that ordinarily given in the public school system.

Neighbors challenge the BOA’s decision claiming the facility was in reality a residence for troubled youth.

Decision affirmed. Held: If a facility offers a curriculum similar to public school, (i.e., “if it quacks”) it’s a school.

# Schools vs. Treatment Centers (cont'd)

[Utah]

Decision based on 1976 Utah Supreme Court decision in *Crist v. Bishop*, 520 P.2d 196

This case involved an institution for “maladjusted boys” who would receive “a therapeutically designed round-the-clock living program including medical care, psychiatry, and professional discipline, including the use of forcible restraints like chains and manacles.”

The court held: “the status of the institution is not changed because of variation in methods of teaching or of training, or of discipline or control. These are all present in greater or lesser degree in practically all schools...”

# Schools vs. Treatment Centers (cont'd)

[Utah]

Later that year, Pink Floyd records “The Wall”



# Mobile Home Zoning and Federal Preemption

[Wyoming]

*Schanzenbach v. Town of Opal*, 706 F3d 1269 (10th Cir. 2013)

*Schanzenbach v. Town of La Barge*, 706 F3d 1277 (10th Cir. 2013)

Towns enact a “10-Year Rule”: “Any building moved into the town shall be no more than ten (10) years of age.”

Schanzenbach claims ordinance is pre-empted by the federal Manufactured Housing Act Housing Act, 42 U.S.C. §§ 5401–5426.

Issue: Is the 10-Year Rule a construction and safety standard that that protect consumers from hazards associated with manufactured housing? Or, is it a zoning requirement seeking to control the aesthetic quality of a municipality's neighborhoods?

Holding: “the 10–Year Rule does not purport to supplant any specific standard imposed by the Act or its regulations—Rather, the rule simply embodies the town council's judgment that the aesthetics and property values of its neighborhoods would be protected by preventing the installation of homes older than 10 years.”

No preemption. Opal and LaBarge can enforce the 10-Year Rule.

# Opal, looking North



# Opal, looking South



# Opal, looking East



# Opal, looking West



STREET VIEW

601-599 N Forest St

Opal, WY 82224 — approximate address

# Valuation of Utility Easements

[Wyoming]

*Barlow Ranch v. Greencore Pipeline*, 301 P.3d 75 (WY 2013)

*Bison Pipeline v. 102 Acres of Land*, 732 F.3d 1215 (10th Cir 2013)

Valuation of an easement – a “partial taking”

Federal Rule – difference in value of property before and after taking

Utah Rule – value of part taken plus damage to remainder

Wyoming Rule – greater of the value of rights taken or before and after value

Issue: whether amounts that utilities pay for negotiated easements are relevant as “comparable sales”

Argument against: property owners are not willing sellers; and the utility has no choice but to buy the easement in question.

Court recognizes that “prices paid in condemnation actions or under actual threat of condemnation are not proper comparable sales because they are not arms' length transactions,”

But court holds: 1) “the mere fact that property is purchased by one vested with the power of eminent domain does not preclude admission of evidence regarding the sale;” and 2) rejects earlier case law that that a transaction is not arms' length simply because the project developer “requires” the easement be placed in a certain location.

# Inverse Condemnation & Govt. Immunity

[Wyoming]

*Smith v. Park County*, 291 P3d 947 (WY 2013)

Inverse condemnation actions are covered by the Wyoming Governmental Claims Act, including two year statute of limitations.

Overturms previous Wyoming case law.

Statute of limitations for inverse condemnation is eight years.