

Eminent Domain Cases

1. Selman, Inc. v. Box Elder Co., 2009 UT APP 99 (April 16, 2009).
 - a. **Utah Property Rights Ombudsman Act (Ombudsman Act), Utah Code Ann. §13-43-101, et. seq., does not give the Ombudsman authority to arbitrate a quiet title action.**
 - b. Ombudsman Act provides for nonbinding arbitration. Unless the parties agree before arbitration begins, any party may submit the arbitration award, or any issue upon which the award is based, “to the district court for de novo review.” §13-43-204(3)(i).
 - c. Facts: Box Elder County tried to build a road on a livestock trail that crossed landowners’ property. Landowners brought trespass and inverse condemnation claims. Before the County filed its answer, landowners filed a request for arbitration with the Property Rights Ombudsman (Ombudsman). Ombudsman accepted the request. County responded with a counterclaim to quiet title.
 - i. County filed a motion to: (1) stay arbitration and (2) to bifurcate Selman’s trespass/inverse condemnation claims from County’s quiet title action.
 - ii. District court granted the motion.
 - d. Issue: “whether the district court erred in bifurcating the claims and staying arbitration of the dispute.”
 - e. §13-43-204(1) gives the Ombudsman the power to “mediate, or conduct or arrange arbitration for disputes between private property owners and government entities that involve (a) takings or eminent domain issues; (b) actions for eminent domain under Title 78B-6-5.”
 - f. Landowner argued the term “takings or eminent domain issues” includes title issues.
 - i. Court rejected the argument reasoning **the terms “taking” and “eminent domain” “begin with the premise that a private property owner actually owns the property at issue.”** Selman, 2009 UT APP at *6 (emphasis added). Principle of inverse condemnation “also shares that underlying premise.” Id. at *7.
 - ii. “We conclude that the ownership of property is a threshold issue to the subsequent question of whether there has been a taking. The facts of this case illustrate why such threshold questions are appropriately resolved judicially before arbitration.” Id.
 - g. Held: “The quiet title action in this case does not fall under the statutory responsibility of the Ombudsman; that is, it is not a takings or eminent domain issue. Accordingly, we affirm the district court’s ruling bifurcating the claims and staying arbitration pending the outcome of the quiet title claim.”
 - h. Court did not cite 78B-6-509 which gives the district court power to determine conflicting title claims: “The court shall have the power to: (1)

hear and determine all adverse or conflicting claims to the property sought to be condemned....”

2. Department of Transportation v. Admiral Beverage Corp., 198 P.3d 1003 (Utah Ct. App. 2008), cert. granted April 17, 2009.
 - a. **Applying “Abutment Rule” to bar landowner’s claims for severance damages due to loss of view.**
 - b. Facts: Landowner owns property west of 1-15 in Salt Lake County. The property abuts 500 West, which runs between 1-15 and the property. UDOT condemned landowner’s property as part of the 1-15 reconstruction project.
 - c. Trial court granted UDOT’s motions in limine to preclude landowner from showing “the value of its remaining property had been diminished due to the loss of view and visibility.” Id.
 - d. Description of “Abutment Rule”: “...it seems settled that the landowner’s remaining property must actually abut the property with the view impairing structure.” Id. at 1004, citing Utah State Road Comm’n v. Miya, 526 P.2d 926, 928 (Utah 1974).
 - e. “Admiral’s remaining property does not abut 1-15, the elevation of which impedes the view from Admiral’s property; rather, it abuts 500 West.” Id. at 1004.
 - f. “We acknowledge that application of the abutment rule in this case may seem harsh, give that Admiral’s proximity to the now-elevated 1-15 is very close and that its property abuts land taken for the overall project. Still, the ease of application and the predictability engendered by a bright-line rule are of such obvious benefit in this area of the law that if the abutment rule is to be moderated, it must come at the direction of our Supreme Court rather than of this court.” Id.
 - g. Utah Supreme Court granted cert. One of the issues on appeal is whether the court properly applied Ivers v. Utah Department of Transportation, 154 P.3d 802 (Utah 2007):

Ivers v. Utah Department of Transportation, 154 P.3d 802 (Utah 2007).

- h. An Arby’s restaurant was located on corner of Shephard Lane and Highway 89 in Farmington. In order to decrease the number of accidents, UDOT planned to eliminate the intersection between 89 and Shephard Lane. UDOT condemned a .048-acre portion of Arby’s .416-acre lot in order to build a frontage road parallel to and connecting with the new widened and elevated Highway 89.
- i. No portion of the raised highway was located on Arby’s property. “the condemned land was used for the creation of the frontage road and for improvements to Shephard Lane.” Id. at 804.
- j. “The elevation of the highway has obstructed both the view to the east and the visibility of Arby’s property from the highway.” Id.

- k. “Arby’s sought severance damages claiming that the condemnation and the pursuant loss of view and visibility, diminished the market value of their remaining land.” UDOT filed a motion in limine. Trial court granted the motion which prevented Arby’s from presenting evidence of damages due to loss of view and visibility.
- l. Loss of View: “...Utah law does recognize an easement of view from one’s property as a protectable property right.” citing Utah Code Ann. §72-6-117(5) (highway authority may acquire “property rights for a limited-access facility and service road, including rights of access, air, view, and light”). Id. at 806.
- m. “We have not previously addressed a case, like this, in which the land was condemned as part of a single project to build a structure that would impair the view from the remaining property, but in which that structure was not built on the severed land.” Id. at 806.
- n. “When land is condemned as part of a single-project-even if the view-impairing structure itself is built on property other than which was condemned—if the use of the condemned property is essential to the completion of the project as a whole, the property owner is entitled to severance damages. Logically, if the project could not be built without taking the condemned land, the impairment of view caused by the completion of the project could and would not have arisen ‘but for’ the condemnation....Stated another way, the condemned land is ‘essential’ to the project only if its use is such a critical part of the project that without the taking, the project could not have been completed.” Id. at 807.
- o. Remanded to determine “whether the land taken from Arby’s was essential to the highway project.” Id. at 808.
- p. Loss of Visibility: “Neither the legislature nor this court has recognized a protected property right in visibility of one’s property from the roadway....In Utah, landowners do not have a protected interest in the visibility of their property from an abutting road, even if part of their land was been taken in the process.”

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