

Schroader, Kathy



From: Orjiako, Oliver
Sent: Tuesday, August 25, 2015 4:53 PM
To: Euler, Gordon; Alvarez, Jose
Cc: Schroader, Kathy
Subject: FW: MRSC - Eminent Domain - For the Public Record

FYI

From: Carol Levanen [mailto:cnldental@yahoo.com]
Sent: Tuesday, July 07, 2015 2:47 PM
To: Stewart, Jeanne; Mielke, Tom; Madore, David; Silliman, Peter; Orjiako, Oliver; Susan Rasmussen; Leah Higgins; Rick Dunning; Rita Dietrich; Jerry Olson; Fred Pickering; Jim Malinowski; Frank White; Benjamin Moss; Lonnie Moss; Melinda Zamora; Nick Redinger; Curt Massie; Marcus Becker; Zachary McIsaac; Carol Levanen; Clark County Citizens United Inc.
Subject: Fw: MRSC - Eminent Domain - For the Public Record

Dear Councilors,

The cities have indicated they want large lot zoning to remain in place because they want large parcels in tact, when and if the particular city decides to expand their urban growth areas onto that parcel. The urban reserve zone, which is not really a land use zone, is an example of what they are talking about. One could argue that this preservation is necessary for the benefit of the public. But, when the lands are designated for this use, it falls into the eminent domain arena, whereby the public agency must first compensate the landowner for the land. Using large lot resource zoning to set aside land for the cities is not what the Growth Management Act intended, when they directed counties to designate prime agricultural and forest land that has long term commercial significance for the preservation of the resource. Corrections to the Comprehensive Plan must be made that compensates the landowner for development losses, when their land is placed in a situation that mimics eminent domain activity.

Sincerely,

Carol Levanen, Ex. Secretary
Clark County Citizens United, Inc.
P.o. box 2188
Battle Ground, Washington 98604

----- Forwarded Message -----

From: susan rasmussen <sprazz@outlook.com>
To: "cnldental@yahoo.com" <cnldental@yahoo.com>; susan rasmussen <sprazz@outlook.com>
Sent: Tuesday, July 7, 2015 9:11 AM
Subject: MRSC - Eminent Domain

property can also be taken through the regulatory actions of local government through the imposition of development requirements and restrictions.

MRSC - Eminent Domain

Eminent Domain

<http://mrsc.org/Home/Explore-Topics/Legal/General-Government/Eminent-Domain.aspx>

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Eminent Domain

Introduction

Eminent domain is the exercise of the power of government to acquire private property necessary for a public use on the payment of just compensation and following due process of law. Proceedings to take property under eminent domain are referred to as "condemnation" proceedings. The property that governments may condemn includes fee title as well as lesser interests in real property, such as easements, and also "non-physical" interests such as air rights.

Under long-standing case law, for a proposed condemnation to be determined by a court to be lawful, the condemning authority must prove that: (1) the use is really public; (2) the public interest requires it; and (3) the property appropriated is necessary for that purpose.

Private property may not be taken for private uses, except for limited purposes authorized by article 1, section 16 of the state constitution. That section states, in part, that "Private property shall not be taken for private use, except for private ways of necessity, and for drains, flumes, or ditches on or across the lands of others for agricultural, domestic, or sanitary purposes." Nevertheless, the 2005 U.S. Supreme Court decision in *Kelo v. City of New London* (<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=000&invol=04-108>), 545 U.S. 469 (2005), raised concerns over whether the state constitution allows local governments to exercise the power of eminent domain for economic development purposes. See [The Kelo Decision and Condemnation for Economic Development \(/Home/Explore-Topics/Legal/The-Kelo-Decision-and-Condemnation-for-Economic-De.aspx\)](#).

Whether the proposed use of the property to be condemned is a public use is a judicial question; the courts are not bound by the determination of a municipal governing body that a proposed use is a public one.

While the state has the inherent power or authority to condemn private property, cities and counties, and certain other municipal corporations are delegated that authority by the state through statutory law. That law governs what property may be condemned and the procedures for condemning it. For example, cities may condemn property outside their limits (RCW 8.12.030 (<http://app.leg.wa.gov/rcw/default.aspx?cite=8.12.030>)), including property owned by the county or by the state (if not already put to a public use), while counties have no authority to condemn city or state property (RCW 8.08.010 (<http://app.leg.wa.gov/rcw/default.aspx?cite=8.08.010>)).

If a government effectively takes or damages property or a property interest without instituting condemnation proceedings, a property owner may receive compensation for damages through an "inverse condemnation" action. Examples include damages from aircraft noise or the discharge of water onto property.

Property can also be taken through the regulatory actions of local governments, such as by the imposition of development requirements and restrictions. The subject of regulatory takings of property is covered in our [Regulatory Takings \(/Home/Explore-Topics/Legal/Planning/Regulatory-Takings.aspx\)](#) webpage.

Statutes and Constitutional Provisions

- Washington State Constitution [art. I, § 16 \(http://www.leg.wa.gov/LawsAndAgencyRules/Documents/12-2012-WAStateConstitution.pdf#page=6\)](#) - Eminent Domain
- [8 \(http://app.leg.wa.gov/rcw/default.aspx?cite=8\)](#) Title RCW - Eminent Domain
- [Ch. 8.08 RCW \(http://app.leg.wa.gov/rcw/default.aspx?cite=8.08\)](#) - Eminent Domain by Counties
- [Ch. 8.12 RCW \(http://app.leg.wa.gov/rcw/default.aspx?cite=8.12\)](#) - Eminent Domain by Cities
- [Ch. 8.25 RCW \(http://app.leg.wa.gov/rcw/default.aspx?cite=8.25\)](#) - Additional Provisions Applicable to Eminent Domain Proceedings

- [RCW 35.81.080](http://app.leg.wa.gov/rcw/default.aspx?cite=35.81.080) (<http://app.leg.wa.gov/rcw/default.aspx?cite=35.81.080>) - Community Renewal Law - Eminent domain
- [RCW 36.100.240](http://app.leg.wa.gov/rcw/default.aspx?cite=36.100.240) (<http://app.leg.wa.gov/rcw/default.aspx?cite=36.100.240>) - Public Facilities Districts - Eminent domain authorized
- [RCW 85.38.180](http://app.leg.wa.gov/rcw/default.aspx?cite=85.38.180) (<http://app.leg.wa.gov/rcw/default.aspx?cite=85.38.180>)(5) - Special districts - Powers, eminent domain (Note: Statutes applicable to specific types of special districts, such as port, fire, public hospital, and water and sewer districts, may also include provisions addressing the power of eminent domain)

Selected Washington State Court Decisions

- *Cowlitz County v. Martin* (<http://courts.mrsc.org/mc/courts/zappellate/142wnapp/142wnapp0859.htm>), 142 Wn. App. 859 (2008) - condemnation for salmon passage not authorized

The court held that the county condemned property without proper authority because the condemnation was to enable salmon passage in the creek, and Washington's Salmon Recovery Act, chapter 77.85 RCW, did not grant the county the authority to condemn private property for this purpose; nor did such a purpose qualify as a "public use" under RCW 8.08.010. The commissioners chose to proceed under the Salmon Recovery Act and authorized condemnation for no other public purpose. In this situation, the county could not proceed under RCW 8.08.020, a broader grant of condemnation power.

- *Yakima County v. Evans* (<http://courts.mrsc.org/mc/courts/zappellate/135WnApp/135WnApp0212.htm>), 135 Wn. App. 212 (2006) - necessity for condemnation

Property owners challenged the county's condemnation of property for a road project, arguing that there was no public necessity for the condemnation and alleging various procedural errors. The court affirmed the condemnation, holding that, whether it is necessary for a government agency to condemn property is largely a question for the agency's legislative body to determine, and that the court will not overturn the finding of public necessity unless it was arbitrary. The court also determined that a property owner does not have a statutory or due process right to personal notice of a public meeting at which a government agency determines that there is a necessity for condemning property.

- *In re Petition of the Seattle Popular Monorail Authority* (<http://courts.mrsc.org/mc/courts/zsupreme/155wn2d/155wn2d0612.htm>), 155 Wn.2d 612 (2005) - condemnation by city transportation authority

A city transportation authority, created pursuant to chapter 35.95A RCW, possesses the power of eminent domain, as that power may be inferred from its authorizing statute and from other statutes. Although the authorizing statute does not specify what procedures must be followed for condemnation, by implication, the procedures applicable to cities, chapter 8.12 RCW, should be followed. The determination of necessity and of extent of the property interest that must be condemned to carry out the public purpose of a condemnation is a legislative decision that will be upheld by the court absent fraud or arbitrary and capricious conduct. The courts give deference to the legislative body's determination.

- *City of Blaine v. Feldstein* (<http://courts.mrsc.org/mc/courts/zappellate/129wnapp/129wnapp0073.htm>), 129 Wn. App. 73 (2005) - condemnation for public boardwalk

Public boardwalk proposed by the city was a public use under RCW 8.12.030, where the boardwalk would be used to convey pedestrians, allowed the public to access scenic views, and would fall under the "any other public use" provision of the statute. The property owner did not show that the city's decision to locate the boardwalk between certain streets was arbitrary and capricious.

- *City of Tacoma v. Zimmerman* (<http://courts.mrsc.org/mc/courts/zappellate/119wnapp/119wnapp0738.htm>), 119 Wn. App. 738, review denied, 152 Wn.2d 1028 (2004) - condemnation of blighted structure

The plaintiffs appealed an order adjudicating a public use for the property, declaring it a blight and subject to the City's power of eminent domain. The plaintiffs claimed the building was not of sufficient value to be repairable and that it is more economical to demolish the building. The court held that the city council did not abuse its discretion when it decided to exercise its eminent domain power under the Derelict Building Procedure of the city's code, concluding that "A landowner who allows his property to fall into disrepair endangering the community thus transfers decision-making authority over the property to the elected representatives of that community."

- *City of Long Beach v. Wong* (<http://courts.mrsc.org/mc/courts/zappellate/119wnapp/119wnapp0628.htm>), 119 Wn. App. 628, *review denied*, 152 Wn.2d 1015 (2004) - recreational trail

A city may condemn land outside of its city limits for a "park" within the meaning of RCW 8.12.030. The court determined that a trail designed primarily for pedestrians and bicyclists and meant to teach the story of the Corps of Discovery expedition fits the definition and purposes of a park.

- *City of Lynnwood v. Video Only, Inc.* (<http://courts.mrsc.org/mc/courts/zappellate/118wnapp/118wnapp0674.htm>), 118 Wn. App. 674 (2003), *review denied*, 150 Wn.2d 1030 (2004) - incidental private component

The court determined that a shopping center was acquired by a public facilities district for a lawful public use (convention center parking and future expansion), even though there was an incidental private component when the PFD leased the property as an interim financing device for construction and operation of a regional center.

- *State v. Allerdice* (<http://courts.mrsc.org/mc/courts/zappellate/101wnapp/101wnapp0025.htm>), 101 Wn. App. 25 (2000), *review denied*, 143 Wn.2d 1003 (2004) - timeliness of stipulation to immediate use and possession

Under RCW 8.25.070(3), the owner of property that is the subject of an eminent domain proceeding in which an order of public use and necessity has been entered has 15 days after the order becomes final to stipulate to immediate use and possession of the property. The order does not become final until an appeal of the order is resolved. Property owners who turn over their property within that 15-day period are entitled to attorney fees if the jury verdict is at least 10 percent more than the government's highest settlement offer.

- *City of SeaTac v. Cassan* (<http://courts.mrsc.org/mc/courts/zappellate/093wnapp/093wnapp0357.htm>), 93 Wn. App. 357 (1998) - determination of just compensation

Just compensation is the difference between the fair market value of the entire property and the fair market value of the remainder. It includes the value of the property taken and the damages, if any, caused to the remainder by reason of the taking, offset by the amount of special benefits, if any, accruing to the remainder of the property as a result of the project that necessitated the condemnation action.

- *Schreiner v. City of Spokane* (<http://courts.mrsc.org/mc/courts/zappellate/074wnapp/074wnapp0617.htm>), 74 Wn. App. 617 (1994) - condemnation for multi-purpose arena

Development of a multi-purpose community center under chapter 35.59 RCW and the acquisition of a sports and entertainment facility under chapter 36.100 RCW represent a similar goal: provision of a facility for civic entertainment, cultural, and educational events. The multi-purpose community centers statute, as well as the eminent domain statute (RCW 8.12.030), specifically provides general authority to condemn for this purpose.

- *Pelley v. King County* (<http://courts.mrsc.org/mc/courts/zappellate/063wnapp/063wnapp0638.htm>), 63 Wn. App. 638 (1991), *review denied*, 119 Wn.2d 1003 (1992) - no separate action for damages

After the county began condemnation proceedings, the property owners brought an action against the county seeking damages for inverse condemnation, nuisance, and the tort of outrage in connection with the county's plan to build an access road. The property owners alleged that building an access road according to the county's plan would have denied them reasonable access to their land. The court determined that the proper forum for resolution of the property owners' issues was in the superior court during the valuation phase of the county's condemnation proceeding.

- *In re City of Seattle* (<http://courts.mrsc.org/mc/courts/zsupreme/104wn2d/104wn2d0621.htm>), 104 Wn.2d 621 (1985) - condemnation for public park

The condemnation of property to establish a park does not violate the constitutional requirement that private property be taken only for a public use merely because the park is a component of an overall governmental plan for the area and will benefit adjacent private property.

- *In re Seattle* (<http://courts.mrsc.org/mc/courts/zsupreme/096wn2d/096wn2d0616.htm>), 96 Wn.2d 616 (1981) - not a public use

Where the purpose of a proposed condemnation is to acquire property and devote only a portion of it to truly public uses, the remainder to be rented or sold for private use, the project does not constitute public use. No statutory authority exists to condemn property for an urban "focal point," or an urban shopping center, or facilities to be leased for private use as retail establishments, restaurants, or theaters.

- *King County v. Farr* (<http://courts.mrsc.org/mc/courts/zappellate/007wnapp/007wnapp0600.htm>), 7 Wn. App. 600, review denied, 81 Wn.2d 1009 (1972) - authorizing ordinance

The property owners moved for dismissal of the condemnation proceeding because that there had been no showing that the county had made a determination that acquisition of their property was necessary for the proposed park. The court of appeals held that a condemning authority is not required to set forth the precise reasons for the necessity of taking land in the ordinance authorizing the condemnation proceeding. Even if the authorizing ordinance had been defective because it had not stated that determination of necessity, there was substantial evidence in the record to support the trial court's finding that the acquisition was necessary.

- *King County v. City of Seattle* (<http://courts.mrsc.org/mc/courts/zsupreme/068wn2d/068wn2d0688.htm>), 68 Wn.2d 688 (1966) - county cannot condemn city property

The court held that the county did not have the power to condemn the property owned by the city because the condemnation statutes, RCW 8.08.010-.080, did not delegate to the county any specific authority to condemn lands or property belonging to another municipal corporation, or to the state, regardless of the use to which that property is being put.

Other Washington State Information

- **Eminent Domain - The Basics**
([/Corporate/media/MediaLibrary/SampleDocuments/ArtDocMisc/eminentdomain.pdf](#)), by Steve Dijulio, Foster Pepper & Shefelman, and Susan Jones, Preston Gates Ellis, Legal Notes No. 509, WSAMA, Spring 2001 - Predates the U.S. Supreme Court *Kelo* decision
- **MRSC Inquiries regarding Property Management - Condemnation** ([/Home/Search.aspx?i=34&q=condemnation](#))

Sample Condemnation Ordinances and Other Condemnation Documents

- Bellingham Ordinance No.2008-02-013
([http://www.cob.org/web/legilog.nsf/0/D53F1C2A877A5DE7882573FB006A467F/\\$file/200802013.pdf](http://www.cob.org/web/legilog.nsf/0/D53F1C2A877A5DE7882573FB006A467F/$file/200802013.pdf)) - Street Improvements, 02/2008

- Bothell [Ordinance No. 2006](#) ([/Corporate/media/MediaLibrary/SampleDocuments/Ords/B67o2006.pdf](#)) - Acquisition for Crossroads Project, 12/2008
- Edmonds [Ordinance No. 3299](#) (http://www.ci.edmonds.wa.us/images/COE/Government/City_Clerk/Ordinances/2000/Ord3299.htm) - Sanitary Sewer Improvements, 03/2000
- Fife [Resolution No. 1276](#) (http://cityoffife.org/downloads/city_council/meeting_archives/2009/Packets/1_January_13_2009/10E_Res_1276_critte) - Approves settlement agreement of a condemnation action, 01/2009
- Kent [Notice of Planned Final Action](#) ([/Corporate/media/MediaLibrary/SampleDocuments/GovDocs/K44Eminent.pdf](#)) - Eminent Domain Proceedings, sample, 08/2008
- Normandy Park [Resolution No. 845](#) ([/Corporate/media/MediaLibrary/SampleDocuments/Ords/n65r845.pdf](#)) - States that city does not support the use of and does not intend to use eminent domain authority in the city, 10/2011
- North Bend [Ordinance No. 1275](#) ([/Corporate/media/MediaLibrary/SampleDocuments/Ords/N66o1275.pdf](#)) - Street Extension, 06/2007
- Puyallup
 - [Ordinance No. 2936](#) ([/Corporate/media/MediaLibrary/SampleDocuments/Ords/P83o2936.pdf](#)) - Street Widening, 06/2009
 - [Ordinance No. 2741](#) (<http://www.cityofpuyallup.org/files/library/111cd3bc879a49b4.pdf>) - Trail Project, 03/2003
- Sammamish [Ordinance No. 02009-252](#) (<http://www.ci.sammamish.wa.us/files/ordinance/5359.pdf>) - Street Improvements, 02/2009
- Spokane and Spokane Valley
 - [Interlocal agreement](#) (http://www.spokanecity.org/services/documents/file/ViewAttachment.aspx?FILUP_ID=10653) between Spokane and Spokane Valley regarding acquisition of property by eminent domain for bridge project, 04/2009
 - [First amendment to interlocal agreement](#) (http://www.spokanecity.org/services/documents/file/ViewAttachment.aspx?FILUP_ID=10654) between Spokane and Spokane Valley, 07/2009
- Union Gap [Ordinance No. 2577](#) ([/Corporate/media/MediaLibrary/SampleDocuments/Ords/U5o2577.pdf](#)) - Acquisition by condemnation for the improvement of Valley Mall Boulevard, 03/2009
- Wenatchee [Ordinance No. 2008-24](#) (<http://www.wenatcheewa.gov/Modules/ShowDocument.aspx?documentid=3462>) - Creation of Public Roadway, 11/2008

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