

**Eminent domain hot topic: Gwinnett (County GA) Daily Post, 11/13/05
By Dave Williams**

The timing wasn't right during this year's General Assembly session for limiting eminent domain in Georgia.

But that was before the U.S. Supreme Court ruled in June that the city of New London, Conn., was legally justified in boosting its tax base by condemning the homes of longtime residents to make way for luxury housing, shops, a hotel and marina.

Now, egged on by property-rights advocates, lawmakers in Georgia and other states are lining up to limit governments' use of eminent domain to purposes that traditionally have been associated with the authority: roads, utility lines and public buildings.

And Georgia Senate Republicans also are working on a bill addressing a second property-rights issue, the loss of an owner's ability to use property as he or she chooses because of government regulations.

"The amount of backlash (since the Supreme Court decision) caught us by surprise," said Larry Morandi, director of the National Conference of State Legislatures' environment, energy and transportation program.

"The ability of private-property advocates to marshal their resources to get to the media with their arguments gave them the momentum they needed."

Georgia Sen. Jeff Chapman was an early convert. The freshman Republican from Brunswick introduced a bill aimed at eminent domain last winter, months before the Supreme Court ruling.

He said he became aware of the issue when he saw a TV news story about a tire dealer in another state whose store was condemned after he refused to sell it to his local government.

"It really stuck in my craw," Chapman said. "I think that was about the most unscrupulous thing I'd ever heard of."

Cities wary

Chapman's bill cleared the Senate easily enough, 40-10, but couldn't get through the House when opposition emerged from the Georgia Municipal Association.

The GMA, which represents city governments across the state, remains the chief opponent to Chapman's bill as a study committee on eminent domain that he is chairing makes its rounds of the state.

During the three meetings the panel has held thus far, the group has questioned whether it's possible to separate projects that serve the "public good," for which eminent domain has long been considered acceptable, and economic development that benefits mainly private businesses.

"How do you define 'economic development?'" asked GMA spokeswoman Amy Henderson. "Running sewer lines is going to improve economic development."

Henderson said that while cities use eminent domain sparingly, the threat of invoking it sometimes is the only way to get uncooperative property owners - particularly absentee landlords - to negotiate a fair sale.

But Chapman said threats are not a proper weapon for local governments to be wielding against property owners.

"The only people I want our government to threaten are terrorists and enemies," he said.

The Association County Commissioners of Georgia, GMA's counterpart for counties, appears to have found some middle ground with recommendations designed to make restrictions on eminent domain acceptable to local governments.

Limits suggested

The ACCG is suggesting that the power be restricted to elected officials, not authorities or other non-elected government boards, and that eminent domain be used only to get rid of blighted neighborhoods, not blighted properties.

Such a provision might have prevented a dispute involving the city of Stockbridge and a flower shop owner that's now in court.

"Henry County is the fourth-fastest growing county in the United States," said Shannon Goessling, executive director of the Southeastern Legal Foundation, which is representing the shop owner. "Under what circumstances could you describe the City of Stockbridge as economically distressed?"

While the ACCG is working toward a compromise on eminent domain, it is willing to go to the mat on behalf of county governments on the second property-rights bill pending in the Senate.

The measure, aimed at what is known as "inverse condemnation," would require that a property owner who cannot use the land as he or she sees fit because of a government regulation be compensated for that lost value.

It stems from a predicament faced by landowners near a planned reservoir in hilly Lumpkin County. A 150-foot stream-buffer requirement in effect there is preventing them from building on the only flat land they own.

Sen. Mitch Seabaugh, R-Sharpsburg, one of the bill's cosponsors, said that regulation is doing the same damage to them as eminent domain, only indirectly.

"Direct condemnation is clear cut, but some of the regulations that have been passed have reduced property values," he said. "The Constitution says if you take a person's property, you pay for it."

Ulterior motive

But Jim Grubiak, general counsel for the ACCG, said inverse condemnation laws are more about intimidating local governments into failing to carry out their duty to protect the public through their power to regulate.

Grubiak cited testimony from an Oregon property-rights advocate at a recent Senate study committee meeting. David Hunnicutt told the panel that of more than 2,000 inverse condemnation claims filed in Oregon since voters there passed the measure by referendum, not a single local government has made a payment.

"They simply rescinded their regulation," Grubiak said.

Since that Senate hearing, the Oregon law has been overturned by a court ruling. Morandi, the official with the National Conference of State Legislatures, said because of uncertainty over the outcome of the appeal in that case, he doesn't believe many states will take up inverse condemnation bills this winter.

But he predicted that the vast majority of the 44 state legislatures that go into session in January will address eminent domain, if for no other reason than congressional pressure.

The U.S. House passed a bill last week requiring states to place restrictions on eminent domain or face a loss of federal aid. While the bill is still pending in the Senate, the writing is on the wall.

"Even in Connecticut, they're likely to pass a law to somewhat restrict eminent domain," Morandi said.