



INSTITUTE FOR JUSTICE

February 23, 2006

House Judiciary Committee
Georgia House of Representatives
Room 132 State Capitol
Atlanta, GA 30334

RE: House Bill 1313

Dear Mr. Chairman and Members of the Committee:

I would like to thank you, again, for the opportunity to testify before your committee last month on eminent domain reform. I understand there were some significant developments during Tuesday's House Judiciary Committee's hearing on HB 1313. The substitute language was not available yesterday, but I understand that there were a few changes that make the bill much weaker than what was introduced. I know that all of you are committed to substantive eminent domain reform and therefore I wanted to draw your attention to the changes that raise the most concern before you vote on the amended bill today.

My main recommendation is that the Committee restore "is conducive to ill health, transmission of disease," etc. to an overarching factor that must be the result of two of the other conditions on the list of blighting factors in Sections 4 (Code Section 8-4-3) and 25 (Code Section 36-61-2). Otherwise, there will still be vagueness problems with the definition of blight. If the Committee is concerned that the tax-delinquency factor does not lend itself to a requirement that it result in "ill health, transmission of disease," etc. then it could make tax delinquency exceeding the value of the property into a free-standing factor that, by itself, could allow condemnation (see below) **and** then ensure that all the other factors, in order to allow a designation of blight, must result in "ill health, transmission of disease," etc.

As I understand the amendments, this is what the new sections on blight will look like:

(1) 'Blighted property' or 'blight' means any urbanized or developed property which, as shown by government maintained statistics or other studies, presents two or more of the following conditions:

- (A) Substandard, deteriorated, or deteriorating structures;
- (B) Inadequate provisions for ventilation, light, air sanitation, or open spaces;
- (C) An imminent harm to life or other property by fire, flood, hurricane, tornado, earthquake, storm, or other catastrophe respecting which the Governor of the state has certified the need for disaster assistance under federal law;
- (D) Tax or special assessment delinquency exceeding the fair value of the land;
- (E) Impairment of development by airport or transportation noise;

(F) A superfund site identified by any state or federal environment agency or environmental contamination to an extent that requires remedial investigation or feasibility study;

(G) Repeated illegal use of individual structures and maintenance of property below state, county, or municipal codes for at least one year after notice of the code violation; and

(H) Is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime in the area's present condition and use.

Property which may be deemed esthetically substandard or deteriorating shall not meet the definition of blighted property unless the overall condition of the property results in ill health, transmission of disease, infant mortality, juvenile delinquency, or crime.

As I mentioned in my testimony, abuse often occurs when blight is defined with vague, subjective factors. Unfortunately, this language includes such problematic conditions. Before changes were made, the saving element was the overall, encompassing qualifier that the property had to result in "ill health, transmission of disease," etc. (We remain concerned about the use of "juvenile delinquency, or crime" because that language makes law-abiding citizens who live in neighborhoods impacted by crime vulnerable to condemnation.) Thus, even if a property could easily be identified with two or more vague factors, it still had to be truly harmful property. Now, that all-encompassing qualifier has just been moved to become another condition (condition (H)).

This is a problem because many of the factors (A, B, & E) are vague and easily manipulated. For example, "substandard, deteriorated, or deteriorating" are very open-ended terms. As we have seen during our litigation of eminent domain cases across the country, those terms are so vague and subjective that they can mean (and have meant) that a house doesn't have two full bathrooms or three full bedrooms. "Impairment of development by airport or transportation noise" can be applied to any neighborhood where there are busy streets—or busy streets (or a highway or interstate) nearby. And "inadequate provisions for ... open spaces" could mean that a bureaucrat (or a developer) believes that homes and businesses are too close together.

I understand that the Committee is concerned that the tax delinquency condition doesn't fit neatly with an over-arching harm requirement, and that may be a reason for the change described above. This concern could be better addressed by simply defining blight as property, "which as shown by government maintained statistics or other studies, (1) has tax delinquency exceeding the value of the property or (2) presents two or more of the following conditions: . . ." **and** then requiring that the listed conditions (other than tax delinquency) result in "ill health, transmission of disease," etc.

It is possible that there are other problems with the Committee substitute, but until we see the language we will not know. However, the use of vague factors, without the safeguard of an over-arching requirement that they result in conditions that threaten public health and safety, substantially weakens the bill's protections and keeps the door to the abuse of eminent domain open in Georgia.

Sincerely,



Bert Gall
Staff Attorney

cc: Representative Steven Davis, Sponsor of HB 1313
Representative Rich Golick, Sponsor of HB 1313
Representative Glenn Richardson, Sponsor of HB 1313
Representative Jay Roberts, Sponsor of HB 1313
Representative Vance Smith, Sponsor of HB 1313
Jud Turner, Deputy Executive Counsel to the Governor