

Georgia insight

Sue Ella Deadwyler, 4168 Rue Antoinette, Stone Mountain, Georgia 30083

"She hath done what she could." Mark, 14:8a

February 17, 2006

Eminent Domain: Dangerous if Triggered by Blight

Like Beauty, blight is in the eye of the beholder. One man's blight is another man's home. Last summer's 5 – 4 Supreme Court decision, *Kelo v. City of New London*, allows homes or businesses to be taken and transferred to developers if it's thought developers might generate more economic gain with the property. Also, a foreseeable use is not necessary for property to be taken. That allows property to be taken first and marketed to developers later. The four dissenting justices agreed that the Court's prior decisions did not dictate the *Kelo* decision.

Senate Committee Studied Georgia's Use of Eminent Domain

Major grievances from property owners informed the Senate Eminent Domain and Economic Development Study Committee (SEDEDSC) of needed changes in the law and the constitution. Committee Chairman Chapman's January 9, 2006 report to the House Judiciary Committee outlined ways to improve the use of eminent domain in Georgia.

SEDEDSC Recommendations

I. Pass a 120-Day Moratorium. The SEDEDSC first recommended immediate passage a stop-gap moratorium bill to halt further condemnations for economic development until the state's law and constitution are changed.

[S.B. 391 requiring a 120-day moratorium on eminent domain passed the Senate February 3rd and is in the House judiciary Committee.]

II. Eliminate Blight as Basis for Eminent Domain. The second recommendation of SEDEDSC was to eliminate the use of eminent domain as a remedy for blight. He referred to the dissenting opinion of Justice Clarence Thomas in the *Kelo* Supreme Court decision, explaining that the traditional uses of regulatory powers are adequate for abating a nuisance, rendering eminent domain a useless overkill.

[Justice O'Connor said in her Kelo dissent: "The specter of condemnation hangs over all property. Nothing is to prevent the State from replacing any Motel 6 with a Ritz-Carlton, any home with a shopping center, or any farm with a factory."]

III. Prohibit Use of Eminent Domain for Economic Development. Final recommendation was for a constitutional amendment to prohibit eminent domain for economic development. Since 1955 *The Constitution of the State of Georgia* has allowed eminent domain for "public purposes" to include takings for economic development. SEDEDSC recommends replacing "public purposes" with "public use" so property can be taken *only* for actual government ownership or public use by a common carrier, such as railroads or toll roads.

[City and county governments can prosper without unlimited eminent domain¹ by using economic development districts, tax breaks, bonding, creative financing, Main Street programs, infrastructure improvements, special permits, grants and loans.]

¹ Source: Briefs by the Goldwater Institute and the Former mayor of Milwaukee John Norquist, who is now President of the Center for New Urbanism, on behalf of the petitioners in the *Kelo* decision

H.B. 1313, Eminent Domain Reform Needs More Reforming

Big Problem in H.B. 1313: Blight as Basis for Condemnation

H.B. 1313 leaves in the “blight” loophole. Despite recommendations from the Senate Eminent Domain and Economic Development Study Committee, along with pleas from property owners and experts citing national abuse of blight for condemnations of property, H.B. 1313 contains a list of blight conditions, two of which could cause property to be condemned.

Your urban property may be “blighted” if at least two of these conditions exist . . .

- Structures are substandard, deteriorated, or deteriorating.
- Ventilation, light, air sanitation, or open spaces are deemed inadequate.
- It poses imminent harm to life or other property by fire, flood, hurricane, tornado, earthquake, storm, or other catastrophe the Governor certifies for disaster assistance.
- A tax or special assessment delinquency exceeds the fair value of the land.
- Development is impaired by airport or transportation noise.
- It’s a super-fund site identified by any state or federal environment agency or environmental contamination requiring remedial investigation or a feasibility study.
- There’s repeated illegal use of individual structures and the lack of property maintenance results in conditions conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime. Property deemed esthetically substandard or deteriorating shall *not* meet the definition of blighted property unless those conditions exist.

H.R. 1306, Amend Eminent Domain in State Constitution

Two Big Problems in H.R. 1306: Blight and “Public Purpose”

H.R. 1306 would amend the state Constitution with a two-edged sword.

A. It repeals the current Article IX, Section II, Paragraph VII (a) to

- *Withdraw eminent domain power from housing authorities and prohibit the sale or other disposition of property acquired by eminent domain to private enterprise for private uses;*

B. But replaces the paragraph-to-be-repealed with a new paragraph to

- *Authorize elected governing authorities of cities or counties to condemn private property for redevelopment and* [That’s good.]
- *Designate blight as a constitutional basis for eminent domain action.* [That’s bad.]

C. It leaves intact Article IX, Section II, Paragraph V of the Constitution, authorizing

- *Eminent domain for any “public purpose,” although the SEDEDSC recommended that it be replaced with the term “public use.”* [That’s bad. Public purpose is often interpreted to allow the transfer of property from one private owner to another for economic development. “Public use” is the tried and true term that limits the use of eminent domain for government structures *only*.]

Status: The House Judiciary Committee met for an overview of H.B. 1313 and H.R. 1306 February 16th. Speakers included members of the Governor’s staff, the Housing Authority and Representative Steve Davis. Section-by-section consideration is to begin February 21st.

ACTION – Beginning February 21st, the Judiciary Committee will offer changes and so can you. Ask for these amendments: (a) Remove “blight” in H.B. 1313 and (b) “blight” and “public purpose” in H.R. 1306.

Contact House Judiciary Non-Civil Committee Representatives Ralston, Ch., 404 656-5943, dralston1@tds.net; Mumford, V-Ch., 656-0254; Setzler, Sec., 656-0126, lesetzler@mactec.com; Abdul-Salaam, 656-0325; Bearden, 656-0287, bearden4house68@aol.com; Bordeaux, 656-6372; Cooper, 656-5024; Franklin, 656-5087; Jacobs, 656-0325, mike@meetmikejacobs.com; Knox, 656-6831, tknox@legis.state.ga.us; Miller, 656-0188; Randall, 656-0109, nrandall@legis.state.ga.us

A SPAM-Blocker Registry for Georgia

The Issue: Can companies market to minors products they cannot legally purchase?

"If the history of previous technologies like video tape and the Internet are any indication, mobile devices also will soon be a hugely profitable opportunity for producers of adult content. Analysts from the Yankee Group estimate that mobile porn will be at least a \$1 billion global business by 2008, while Juniper Research says the numbers could go as high as \$2.1 billion by 2009."

"Will Mobile Adult Boom?" by Daniel Terdiman, XBiz, March 30, 2005

S.B. 425, The Georgia Child, Family & School Communication Protection Act

passed the Senate, unanimously, February 8th. The same thing happened in Utah and Michigan, where they now have the privilege of NOT receiving material illegal to minors.

S.B. 425 will create a Georgia family and school communication protection service with which families could register email addresses, mobile phone numbers or instant messenger addresses to be off-limits to adult product advertisements, such as pornography, gambling, alcohol and tobacco. Other Georgia institutions primarily serving minor children could register their domain with the service. This service would allow parents to block inappropriate messages being sent to their minor children, even though the minor might consent to receiving inappropriate material.

The right of parents to do this was upheld in 1970 when the U.S. Supreme Court unanimously held that parents with children under age 19 in their household may register with the U.S. Post Office to prevent the delivery of adult matter to their mail box. S.B. 425 would extend that ruling to the "online world."

A SPAM-Blocker registry is needed. A Juniper survey indicated that in 2006, (a) online gambling messages to mobile devices will be a \$5.7 billion industry and (b) pornographic messages sent to mobile devices will become a \$790 million business. A CNN report led off with this header: *"If you thought your spam problems couldn't get any worse, check your mobile phone."*

Did the Federal Trade Commission Report nullify the concept of a Do-Not-Email List?

Yes, but they were wrong when they raised the same arguments in 1991 about the creation of a national do-not-call list.

In 1992, Florida became the first state to create such a list, followed by Hawaii in 1994. By 2003, do-not-call laws were so successful at stopping unwanted phone calls that the Federal Government did a complete about-face and created a law of their own.

In spite of the FTC report, Michigan and Utah successfully implemented Child Protection Registries of their own, choosing technology that directly answers the concerns raised in the 2003 FTC report. The same secure technology is available to Georgia citizens.

Chamber of Commerce opposes S.B. 425. Although it passed the Senate, unanimously, it ran into opposition from Georgia Chamber of Commerce efforts to protect business rather than children. Businesses could be charged \$10 per thousand addresses monthly to scrub their lists against a Georgia registry on which consumers could voluntarily register free-of-charge.

ACTION – Support. This is, also, in the House Judiciary Non-Civil Committee. Please contact Representatives Ralston, Ch., 404 656-5943, dralston1@tds.net; Mumford, V-Ch., 656-0254; Setzler, Sec., 656-0126, lesetzler@mactec.com; Abdul-Salaam, 656-0325; Bearden, 656-0287, bearden4house68@aol.com; Bordeaux, 656-6372; Cooper, 656-5024; Franklin, 656-5087; Jacobs, 656-0325, mike@meetmikejacobs.com; Knox, 656-6831, tknox@legis.state.ga.us; Miller, 656-0188; Randall, 656-0109, nrandall@legis.state.ga.us

H.B. 661 Parental Notification of School Clubs¹

Passed House 143 – 25, February 15, 2006, Now in the Senate

The House debate on H.B. 661 was sprinkled with efforts to defeat the bill by legislators who wouldn't have protested if they knew what's available for children to join at school. They argued about "too much paper work for schools", "trust in your children", "bring it up in PTA", phrases given them by lobbyists hired to protect the interests of their educator-employers.

Representative Bobby Reese kept his cool and did a tremendous job explaining that H.B. 661, simply, requires local school boards to come up with a plan requiring schools to notify parents of school clubs and extracurricular activities students may join. With that information, parents could help students decide which clubs their children *should* join and which they *shouldn't* join. Then, parents could notify the school of clubs their children *couldn't* join. What's so hard about that?

Representative Len Walker was Hero of the Day with this dynamic speech from the well.

"I went to public school in three different counties – Cobb, Elbert and Upson. There was a time in my life when there was no need for this kind of legislation. Local school systems and boards worked in partnership with parents and respected guidance from parents. They were honorable and did what was right for the kids. But, it's a tragedy we no longer live in a state like that.

"This is a committee substitute which, regrettably, is a weaker bill than the original one introduced by Representative Reese. This one sets forth the intent of the General Assembly that I would like to change if I were to offer an amendment, which I won't in respect to my colleague that introduced this bill. But, if I could change the intent, I would say something like this, 'The General Assembly intent is, to a somewhat limited degree and if it doesn't disturb the status quo, to the extent the local board deems appropriate and convenient to its purposes we offer this recommendation.' That's how the General Assembly intent would read if I could amend it. Are penalties in place if schools don't comply with this bill? I see none.

"My daughter is a high school freshman. Now and then we have a permission slip come home, for example, for a class trip to the state capitol in Atlanta. The same is true for your children today. If they ask for a Tylenol or Advil or cough syrup, a record is made and permission is required. This bill does not require an administrative nightmare and it's not a ton of paper. Some say, 'I'm a strong proponent of local control' so, let's dismantle the State Board of Education here in Atlanta.

"I want to say this as kindly and gently as I know how. I find it utterly distasteful for any member to say my call as a parent and my control of my child is subservient to a school board in my area. That's outrageous and I'm gonna vote for this bill. I wish there were more to it. If the Education Committee had left it alone, it would've been better for it. I don't offer an amendment out of respect to my friend from District 98, but I certainly encourage a YES vote on this bill."

ACTION – Support. Contact Senate Education & Youth Committee Senators Moody, Ch., 404 463-8055, dmoody@legis.state.ga.us; Carter, 463-1363, joseph@josephcarter2004.com; Don Thomas, 656-6436, dthomas@legis.state.ga.us; Balfour, 656-0095, ss9balfour@aol.com; Douglas, 656-0503, jfdouglas@aol.com; Fort, 656-5091, vfort@legis.state.ga.us; Jack Hill, 656-5038, jhill@legis.state.ga.us; Starr, 656-7586; Regina Thomas, 463-7784, rthoas@legis.state.ga.us; and Weber, 463-2260, djweber@bellsouth.net

¹ Correction: St. Pius Catholic High School club listed as gay-straight alliance in 2-10-06 newsletter, is "Freedom of the Heart". See GLSEN web site: http://www.glsen.org/cgi-bin/iowa/student/student/club/index.html?state_club=12