



INSTITUTE FOR JUSTICE

March 24, 2006

The Honorable Jeff Chapman
Georgia Senate
18 Capitol Square Legislative Office Building
Room 327-A
Atlanta, GA 30334

RE: House Bill 1313 and House Resolution 1306

Dear Senator Chapman:

At your request, I am writing you to explain why certain amendments that you wish to make to HB 1313 and HR 1306 are both important and necessary so that Georgians can enjoy complete protection against the abuse of eminent domain for private development.

Changes to HB 1313

First, changing the “or” to an “and” in the definition of public use provided on line 34 of page 9 is important in order to prevent courts from misinterpreting the Senate’s intent, which is clearly to curb takings for private development. Defining public use as the “possession, occupation, *or* enjoyment of the land by the general public or by state or local government entities” could lead a court to conclude that the legislature has created a large loophole. For example, the “or” could be interpreted as allowing the taking of property (including property that is not designated as “blighted”) for a shopping center on the theory that the public will have “enjoyment” of it. Also, the “or” could be interpreted to allow a city to condemn property (including, once again, property that is not designated as “blighted”) and then lease it out for private development. Indeed, that’s exactly what New London wanted to do in the *Kelo* case. In order to make sure that HB 1313 does not inadvertently provide a large loophole for private development condemnations, it is important that the “or” be changed back to an “and.”

Second, removing the words “prevention of the” in front of “reduction of blight” on line 5 of page 4 of the bill makes it absolutely clear that the Senate is only allowing transfers of “blighted” property to private parties for redevelopment, and that it is not allowing transfers of property that someone argues *may*, at some distant and unknown point down the road, begin to show signs of “blight.”

Third, inserting “provided, however, that no property owner who has taken positive steps within one year of the natural catastrophe to protect his or her property in such circumstances shall be subject to condemnation” is a good amendment because it ensures that a person whose home or business is damaged in a hurricane or other disaster will not automatically be in danger of losing

his property to eminent domain for private development. He should be given an appropriate opportunity to begin rebuilding.

Fourth, inserting “shall” in place of “may” on line 5 of page 6 and on line 24 of page 33 makes it clear that objective studies, not subjective speculation, should be used to justify a designation of “blight.”

Changes to HR 1306

In its current condition, HR 1306 falls short of providing strong constitutional reform because it does not contain a clear prohibition against the use of eminent domain for private development. Although it states that property can only be condemned for redevelopment if it is “blighted,” it ties the definition of blight to that found in Georgia statutes. Thus, in the future, if that definition is changed to once again make it vague and overly broad, the constitution will not be able to stop cities and towns from approving condemnations under that definition. For that reason, HR 1306 needs to be strengthened with the addition of language that will clearly stop that from happening.

The strongest way to do this is in the language that you are offering that will only allow condemnations for “public use,” and that then defines public use with its traditional meaning in Article I, Section III, Paragraph I: “necessary for the possession, occupation, and enjoyment of land by the public at large, or by public agencies, common carriers, or public utilities.” The language you propose also removes authority for all redevelopment condemnations in Article IX. Such a change would make it impossible for “blight” to be a back-door way to condemn property for economic development.

If it is decided that there needs to be a constitutional exception for blight, you can also do that with language that makes it clear that, in order to transfer private property from one person to another (except in the case of utilities and common carriers), the property must both meet the definition of blight under general law and, in its current condition, pose an existing affirmative harm to public health and safety. I note that the “existing affirmative harm” standard that you wish to add to Article IX, Section II, Paragraph VII is not any tougher for governments to meet than the current definition of “blight” in HB 1313. Indeed, it simply enshrines HB 1313’s tough standard as a constitutional protection for home and business owners so that blight cannot be defined down in the future to once again include practically any neighborhood in the state. Similarly, the language you have offered for Article IX, Section II, Paragraph V would ensure that the definition of “public use” in HB 1313 could not later be changed to mean “economic development.” Unless it is amended so that, at the very least, the constitutional protection against eminent domain abuse is at least as strong as the statutory protection is, Georgians will not get the complete protection against eminent domain abuse that they deserve.

Thank you for addressing these very important matters.

Sincerely,



Bert Gall
Attorney
Institute for Justice