GOLDWATER INSTITUTE

Property Ownership Fairness Act: Eminent Domain

AN ACT relating to eminent domain.

Section 1. Property may be taken only for public use consistent with this article

Eminent domain may be exercised only if the use of eminent domain is both

(A) Authorized by this state, whether by statute or otherwise; and

(B) For a public use as defined by this article.

Section 2. Just compensation; slum clearance and redevelopment

In any eminent domain action for the purpose of slum clearance and redevelopment, if private property consisting of an individual's principal residence is taken, the occupants shall be provided a comparable replacement dwelling that is decent, safe, and sanitary as defined in federal relocation laws, 42 USC 4601 et seq., and the regulations promulgated thereunder. At the owner's election, if monetary compensation is desired in lieu of a replacement dwelling, the amount of just compensation that is made and determined for that taking shall not be less than the sum of money that would be necessary to purchase a comparable replacement dwelling that is decent, safe, and sanitary as defined in the state and federal relocation laws and regulations.

Section 3. Burden of proof

(A) In all eminent domain actions, whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined without regard to any legislative assertion that the use is public.

(B) In any eminent domain action for the purpose of slum clearance and redevelopment, this state or a political subdivision of this state shall establish by clear and convincing evidence that the condemnation of each parcel is necessary to eliminate a direct threat to public health or safety caused by the property in its current condition, including the removal of structures that are beyond repair or unfit for human habitation or use, or to acquire abandoned property, and that no reasonable alternative to condemnation exists.

Section 4. Attorney fees and costs

(A) A property owner is not liable to this state or any political subdivision of this state for attorney fees or costs in any eminent domain action.

(B) A property owner shall be awarded reasonable attorney fees, costs and expenses in every eminent domain action in which the taking is found to be not for a public use.

(C) In any eminent domain action for the purpose of slum clearance and redevelopment, a property owner shall be awarded reasonable attorney fees in every case in which the final

amount offered by the municipality was less than the amount ascertained by a jury or the court if a jury is waived by the property owner.

Section 5. Definitions

In this article, unless the context otherwise requires:

(A) "Fair market value" means the most likely price estimated in terms of money which the land would bring if exposed for sale in the open market, with reasonable time allowed in which to find a purchaser, buying with knowledge of all the uses and purposes to which it is adapted and for which it is capable.

(B) "Owner" means the holder of fee title to the subject real property.

(C) "Public use":

1. Means any of the following:
    a. The possession, occupation, and enjoyment of the land by the general public, or by public agencies;
    b. The use of land for the creation or functioning of public utilities;
    c. The acquisition of property to eliminate a direct threat to public health or safety caused by the property in its current condition, including the removal of a structure that is beyond repair or unfit for human habitation or use; or
    d. The acquisition of abandoned property.
2. Does not include the public benefits of economic development, including an increase in tax base, tax revenues, employment or general economic health.

(D) "Taken" and "taking" mean the transfer of ownership or use from a private property owner to this state or a political subdivision of this state or to any person other than this state or a political subdivision of this state.

Section 6. Applicability

If a conflict between this article and any other law arises, this article controls.

Section 7. Severability

If any provision of this act or its application to any person or circumstance is held invalid that invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.