

“Inverse Condemnation” Talking Points

Association County Commissioners of Georgia

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Background

A number of proposals have been debated in Georgia in recent years that would expand the definition of “inverse condemnation” to include “regulatory takings.” In short, these measures would require state and local governments to compensate property owners when land-use regulations prevent the owner from using the property to maximize profits in any way they see fit, regardless of its impact on neighboring property rights and values. If the government (read: taxpayers) could not compensate, then the property owner would be granted a variance from the regulation(s). If such proposals succeed, regulations such as zoning, tree ordinances, erosion and sedimentation ordinances, stream buffers, historic preservation ordinances or other land use regulations are all at great risk. Without effective land use and environmental regulations, citizens could be directly impacted by:

- multifamily housing next door;
- big-box retailers dotting our neighborhoods;
- a hog farm, scrap yard, trash transfer station or processing plant setting up down the street;
- establishments catering to prurient interests next to schools and churches;
- the abolishment of safeguards preventing upstream developments from flooding our homes or impairing the quality of our drinking water; or
- the end of regulations limiting advertising signs, household inhabitant densities, clear cutting or other public nuisances.

Current Law Has Protections

The U.S. Supreme Court and state constitution have established standards for government takings that spell out when local governments must compensate property owners. In addition, if a county imposes a regulatory decision that does not advance a legitimate police power purpose, is not reasonably effected or deprives the property owner of all economic use of the property, the county is subject to an inverse condemnation claim. This approach has served Georgia well.

Current law requires counties and cities to balance the interests of property owners that, for example, are looking to rezone property to a denser use. The county must balance the interest of the public against the detriment to the property owner. If the balance is not properly struck, the courts will overturn the decision as being unconstitutional, and order the county to revisit their decision so that they can make a proper constitutional decision. If the General Assembly effectively takes away even the limited tools county commissioners have now, those homeowners will be banging on their doors to find out why they’ve let them down.

One Person’s Rights is another Person’s Ruin

The single most important asset for the vast majority of Georgian families is their home. The value of a home depends in significant part on its location and, in particular, on the quality and character of the surrounding community. Land use and environmental laws protect community, environmental and property values by creating a stable investment environment and assuring that adjacent properties are not negatively impacted from others’ land use decisions. ACCG believes individual property rights must be defined in relation to the property rights of all citizens, and counties have the duty to protect these rights and the public interest through sound regulation. Local zoning and environmental ordinances are enacted by counties to protect property rights and a community’s vision of its future.

Zoning and other ordinances are a give-and-take endeavor and apply to a broad cross-section of the community. While a property owner may be burdened by restrictions, they simultaneously benefit, as does their property value, from the application of the regulations on their neighbors.

No Right to Use Property in a Manner that Negatively Impacts Others

Proponents argue that, because the community at large benefits from environmental ordinances, then the community should compensate those affected by these ordinances. To the contrary, environmental ordinances are not aimed solely at benefiting the community; rather, they are enacted to safeguard the environment by preventing property owners from further degrading land, air and/or water quality. Private property rights are important and paramount; however, landowners have no right to use their property in a way that harms others, and they certainly cannot expect to be compensated for being prohibited from doing so.

Regulations are Required and Benefit Future Growth and Economic Development

If the State of Georgia and its local governments fail to protect the environment (i.e., carry out their responsibilities under the Clean Air Act, Clean Water Act, Safe Drinking Water Act, etc.), then the Federal government will be obliged to step in, take over enforcement, place a moratorium on issuing environmental permits and, thus, prevent future development and growth from occurring. Such a likely action will effectively halt all future growth and economic development in Georgia as water is its lifeblood.

Opening the Floodgates of Litigation

Local governments must regulate to carry out their functions. Proponents often fail to take into account the interests of homeowners who bought their property and were willing to pay more for it because they knew that zoning would protect their land value. Under inverse condemnation (by any other name), if your neighbor files a claim and the government is forced to grant a variance, an incompatible land use and/or environmental degradation could result, thus dramatically decreasing the value of surrounding properties. Those negatively impacted, in turn, would likely then file suit for compensation as a government regulation (i.e., the variance granted to the developer to avoid compensation) was unreasonably burdensome to their property rights and values. A cottage industry for trial lawyers and consultants will spring up and they'll all have to be paid, as will any damages that are awarded. Taxpayers will be forced to pick up the tab. How much? No one knows, but the sky is the limit.

Intimidating Local Governments into Inaction or Property Tax Increases

A serious and likely result would be that counties and cities would find that implementing land use and environmental regulations would come at a very high cost. If the local government chooses to compensate instead of granting a variance, all other property owners in the community will be impacted as their property taxes will be raised to generate the needed compensation. ACCG believes this is unreasonably burdensome.

Summary

Passage of these measures will usurp community preferences, lead to a very significant unfunded state mandate, expand government bureaucracy through requiring a regulatory takings claims and litigation process, intimidate local governments by making land use and environmental regulations too expensive to maintain, could effectively halt all future zoning and land use measures, and would be the gravest attack on property rights to date in Georgia.

Such measures would, in our opinion, do irreparable harm to the taxpayers of this state – the “little guy.” The well connected will do well. Land speculators and developers will do just dandy. The lawyers and consultants will come out smelling like a rose.