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Legislation would help developers

By **JEFF CULL**, jcull@news-press.com

Published by news-press.com on April 26, 2004

Florida's constitution allows governments to take your land for a public purpose, such as a road or school, as long as you receive a fair price.

But legislation — which could be approved this week — would allow a city or county to take an individual's land, with fair compensation, and sell it to a private developer for a shopping center or office building.

Opponents of the proposed law say it's little more than a government-sponsored land grab for developers.

"This bill is a shocking grant of wholesale power to counties to condemn very large amounts of property just to assemble it for private development," said Dana Berliner, senior attorney at the Washington, D.C.-based Institute for Justice, a public interest law firm.

Frank Schnidman, a professor of community and economic development at Florida Atlantic University and an expert in land planning, agreed.

"They basically want to loosen up the definition of public purpose so land can be taken for development," he said.

Proponents say it's necessary so that communities such as Cape Coral and Lehigh Acres, which have thousands of small residential lots and not enough commercial land, can ensure they have enough property for future businesses.

"For some of these communities it's absolutely essential," said Sen. Mike Bennett, R-Bradenton, the Senate bill sponsor.

The bill proposes to broaden the "public use" restriction in condemnation, or eminent domain, laws to include any reason a county or city may have, such as increasing tax revenue or promoting economic development.

Cape Coral resident Tom Clark said a government's right to condemn property for the public good is necessary at times. He pointed to the taking of homes for the Midpoint Bridge as a good example — but never for private development.

"I have a big problem with that," he said.

"I'm scared," said Sue LaBonte, a five-year Matlacha Isles resident. "No government should be able to take land without the vote of the people."

Lehigh Acres land owner Rick Angilicks said giving government expanded condemnation powers is not a good idea.

"My concern is what vested rights are curtailed for me," he said.

Government support

Government officials from counties and cities with thousands of small residential lots such as Cape Coral, Lehigh Acres and Charlotte County say the bill is needed to better plan for the future.

Cape Coral City Manager Terry Stewart has been to Tallahassee to lobby for the legislation. He sees a city expanding to more than 400,000 people without enough land designated for the businesses needed to serve that population.

"If we developed all the commercial and industrial land we have today we'd still fall way short

WHAT'S NEXT

• **House Bill 1513** has been approved by three House committees; the subcommittee on local affairs, local government and veteran's affairs and judiciary. It could be voted on this week by the entire House.

• **Senate Bill 2548**, a companion to the House bill, has been approved by the Senate comprehensive planning committee. The bill is scheduled to get its first hearing on the floor today and will be subject to amendments. It could be voted on by the entire Senate this week.

The legislative session ends Friday.

of our needs," he said.

The Cape, Stewart added, needs large commercial building parcels today. That's something the city's original developer never considered when it designed the city nearly 50 years ago. The legislative bill would help the city accumulate those properties it says it needs.

But Schnidman said developers, if they see the need, will assemble the large sites on their own.

It already has happened in Cape Coral.

Developers assembled hundreds of small residential lots to build the 28-acre Midpoint Center with Target and Publix as its anchors at the corner of Santa Barbara Boulevard and Veterans Parkway.

Lee County Commissioner Bob Janes also supports the bill. He said that even though expanded powers to take property would be available to the commission, commissioners would likely not use it.

"The political will, I would say, is nonexistent," he said while conceding that future commissions may not be as reluctant as the current board.

Cape Coral Mayor Arnold Kempe, however, said the expanded condemnation power is key to the bill.

"No one likes the idea of eminent domain," he said. "But it's the only way to assemble land."

Bennett said he was originally concerned with the added condemnation powers but is satisfied that they won't be abused. He predicted that the Senate would pass the measure.

LEHIGH could benefit

Lehigh Acres officials estimate that they'll need to nearly double the amount of commercial and industrial land in their community.

Lee County Lands Director Karen Forsyth said the bill gives government the flexibility to acquire and reassemble land into larger tracts for a commercial development that a community may need.

"It's difficult to plan an area when you have such small lots with so many owners," she said.

Wayne Daltry, director of Lee County's Smart Growth initiative, said that Lehigh Acres is the "poster child" for the bill.

Many of its thousands of unused, small residential lots in Lehigh could be assembled and used to trade for other property the county may need for schools, parks or shopping, Daltry said.

"If you have a holdout, that's when eminent domain kicks in," he said.

But Lehigh Acres Chamber of Commerce officials said that with the rising value of land in the west Lee County community, assembling large tracts will be difficult. That could also force the county to condemn more land to assemble the property.

"I'm not sure it's going to work now," said Ollie Conover, executive director of the chamber.

Unique law

Berliner said the proposed Florida law is unique and a shift in the direction other states are taking.

"I've not seen a statute that says government can take land for a private developer," she said.

USES OF EMINENT DOMAIN

Some governments are already using eminent domain powers to condemn property for private development. They're saying that increasing tax revenue or expanding economic development qualifies as a public purpose. Nearly all of these cases are decided by judges.

Riviera Beach

The city wants to bulldoze at least 1,700 homes and apartments and displace 5,100 residents of this coastal Florida town in order to assemble land for commercial yachting, shipping and tourism.

Toledo, Ohio

In 1999, the city condemned 83 homes to make way for the expansion of a manufacturing plant.

Merriam, Kansas

The city condemned a used-car dealership to make way for the expansion of a BMW dealership next door. The city council said the project served the public interest because of increased tax revenue the city stood to gain.

Canton, Miss.

A Mississippi economic development authority condemned three homes in 2001 and sold the land to a manufacturing company for a plant. Some of the residents removed had lived on their property for more than 40 years.

Hurst, Texas

The city condemned 10 homes in the way of a parking lot expansion at a neighboring shopping mall. Some of the residents had lived in their condemned homes for about 30 years.

Source: The Castle Coalition

Other states, such as Colorado and Arizona, have recently passed laws limiting the government's power to condemn property, she added.

But some governments are stretching the "public use" requirement of the current law. When that happens, it invariably ends up in a lawsuit. Some courts, Berliner said, have sided with governments, while others agree with property owners.

Land owners in Charlotte County are fighting a proposed taking of nearly 1,100 acres of mostly vacant land to be sold to a developer. Murdock Village is a community redevelopment agency project that government officials determined was a slum.

Officials said the redevelopment is a public necessity and is meant to eliminate blight even though most of the area is undeveloped. Owners of more than 100 lots are fighting the condemnation in state court, said Bill Moore, a Sarasota attorney who represents some of those land owners.

The city of Longwood, Ohio, recently voted to stop the taking of a neighborhood that city officials wanted to bulldoze and turn over to private developers. It was the subject of a "60 Minutes" expose on the changing use of eminent domain powers nationwide.

"The problem with property rights is that they're taken for granted," said Andrew Brigham, a partner in the Jacksonville law firm of Brigham Moore, one of the nation's largest eminent domain firms. "People don't get involved until it's their property."

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