



Fighting Urban Blight or Trashing Property Rights?

by Donald J. Kochan

Summary

A proposal in the Legislature aimed at fighting “urban blight” would make it easier for local governments to confiscate private property in the name of the “public interest.” This proposal is a bad idea because some municipalities—most notably, Detroit—have in the past abused their powers of eminent domain to unjustly take land from some citizens only to convey it to private developers.

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The Michigan Constitution clearly limits the government’s power of eminent domain to condemnation or “taking” of private property for “public use” only.

A bill that would expand the government’s power of “eminent domain”—the power to condemn private property for public use—far beyond what is allowed under Michigan’s Constitution is currently working its way through the Legislature.

If passed in its current form, the so-called Michigan Blighting Program, sponsored by Rep. Andrew Richner, R-Grosse Pointe Park, would allow local governments to use “the public interest” as an excuse to bestow favors upon private developers.

Under the legislation, “blighting property” is defined as having some negative financial impact on adjoining property or on a neighborhood because it is dangerous, vacant, or out of use. But what is particularly alarming is that the bill specifically mentions the removal of “blight” as serving the public interest by definition, and instructs that judicial review of local decisions with regard to “blighting property” be treated with deference. In other words, if a municipality decides a property is “blighting,” the burden of proof is going to be on the owner to show that it’s not.

Even worse, the bill would allow municipalities to condemn property not just for public use, as stipulated in the state Constitution, but for the private use of developers. A municipality could condemn property as “blighting,” pay its owner “just compensation”—an amount likely to be far less than the property could have reaped on the free market—and take title away from the property owner. The bill then specifically authorizes the municipality to turn around and give that title to a private developer if a deal is struck that is “reasonable and valuable.” In short, the legislation allows municipalities to use “blight” as a cover to avoid legal scrutiny for taking property.

The Michigan Constitution clearly limits the government’s power of eminent domain to condemnation or “taking” of private property for “public use” only. Unfortunately, there is legal precedent for broadly defining “public use” to allow such a transfer to private owners.

In *Poletown Neighborhood Council v. City of Detroit*, the Michigan Supreme Court in 1981 upheld as a “public use” the city of

Detroit's exercise of eminent domain to acquire a large tract of land to convey to General Motors for an assembly plant site. The city argued that the condemnation served economic revitalization interests recognized by the Michigan Legislature in the Economic Development Corporations Act, and therefore the condemnation served a "public interest" or a "public purpose." The Court later held that the Legislature can deem the condemnation of a property for purposes of redevelopment as serving a "public purpose" and that there is almost no room for courts to question such transfers.

Such a system sets up dangerous incentives. Suppose Company X wants to build a new factory, but there are some old homes in its way. The homeowners, for reasons either economic or sentimental or both, refuse to sell.

So Company X finds a cheaper way. These are old homes and undoubtedly need some repairs. The company uses its political clout to convince the city to designate these properties as unfit or unsafe and therefore "blighting." The city condemns the properties, forces the owners out, and grants Company X title, which it can do in exchange for a "reasonable and valuable" return to the municipality, to be determined by city officials. Company X might follow this course even when the owners are willing to sell, since the transaction will cost far less than if the company had to buy on the open market.

Municipalities will want to engage in such transactions to curry favor with private companies and because the new owners will likely bring in significantly more tax revenue. At the end of the process, the coercive power of eminent domain has been used to kick a private owner out for the mutual benefit of the developer and the municipality.

Such transfers give private developers access to the coercive power of eminent domain and an incentive to seek out such arrangements. Property owners are bound to suffer when the Legislature makes it easier for government to take property and convey it to private special interests—and declares such transfers essential to public purposes.

Blighting the property rights of Michigan citizens is no way to deal with urban blight.

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