

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

SENATE BILL 1035

By: Shurden

AS INTRODUCED

An Act relating to eminent domain; amending 11 O.S. 2001, Sections 38-111 and 40-102, which relate to urban renewal and neighborhood redevelopment; limiting statements of public use; limiting use of eminent domain; providing for sale of certain property taken by eminent domain; providing for codification; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 11 O.S. 2001, Section 38-111, is amended to read as follows:

Section 38-111. A. After the adoption by the municipal governing body of an urban renewal plan and a resolution declaring that the acquisition of real property described in the plan is necessary to the execution of the plan, the Urban Renewal Authority designated as the agency to execute such plan shall have the right to acquire by condemnation or otherwise, any interest or right or combination of rights in real property, including a fee simple title thereto, necessary to the execution of the approved plan.

~~Condemnation~~ Subject to the limitations in Section 5.1 of Title 27 of the Oklahoma Statutes, condemnation for the urban renewal of blighted areas is declared to be a public use, and property already devoted to any other public use or acquired by the owner or his predecessor in interest by eminent domain may be condemned for the purpose of this article. The award of compensation for real property taken for such a project shall not be increased by reason of any increase in the value of the real property caused by the assembling, clearance, reconstruction, or proposed assembly,

clearance or reconstruction in the project area. No increment of value shall accrue to such property as the result of any illegal or unlawful use thereof. No allowance shall be made for the improvements begun on real property after notice to the owner of such property or the institution of proceedings to condemn such property. Evidence shall be admissible bearing upon the insanitary, unsafe, or substandard condition of the premises, or the lawful use thereof.

B. Except as otherwise provided by ~~subsection~~ subsections A and C of this section, the Urban Renewal Authority shall have the right to acquire by condemnation any interest in real property, including a fee simple title thereto, which it may deem necessary for or in connection with an urban renewal project under this article.

C. If an Urban Renewal Authority intends to acquire unimproved real property pursuant to the power of condemnation authorized by this article, the Urban Renewal Authority shall specifically identify the parcels or tracts of real property which it intends to acquire through condemnation to the governing body of the municipality. The governing body of the municipality shall consider the proposed acquisition of the unimproved real property during an open meeting and shall be required to approve the proposed acquisition by a majority vote of those persons constituting the governing body of the municipality. No Urban Renewal Authority shall acquire unimproved real property by condemnation unless the acquisition has been specifically approved by the governing body of the municipality as required by this subsection. An acquisition by an Urban Renewal Authority of unimproved real property made without the approval of the municipal governing body shall be void and notwithstanding the completion of other proceedings an action may be maintained by a person with a legal or equitable interest in the subject real property to recover title to the real property or

possession of the real property or both title and possession of the real property.

D. The procedure prescribed for railroad companies in ~~Sections~~ Section 51 et seq.⁷ of Title 66 of the Oklahoma Statutes, shall be followed in acquiring property by eminent domain. Property already devoted to public use may be acquired in like manner; provided, that no real property belonging to the state or any political subdivision thereof may be acquired without its consent.

E. In the event any Urban Renewal Authority in exercising any of the powers conferred by this article makes necessary the relocation, raising, rerouting or changing the grade of or altering the construction of any railroad, common carrier or public utility property or facility, all such relocation, raising, rerouting, changing of grade or alteration of construction shall be accomplished at the expense of the Urban Renewal Authority, provided that the Urban Renewal Authority shall not disturb the possession or operation of any railroad, common carrier, or public utility in or to the appropriated property or facility until the relocated property or facilities are available for use and until marketable title thereto has been transferred to the railroad, common carrier or public utility.

F. In any proceeding to fix or assess compensation for damages for the taking (or damaging) of property, or any interest therein, through the exercise of the power of eminent domain or condemnation, evidence or testimony bearing upon the following matters shall be admissible and shall be considered in fixing such compensation or damages, in addition to evidence or testimony otherwise admissible:

1. Any use, condition, occupancy, or operation of such property, which is unlawful or violative of, or subject to elimination, abatement, prohibition, or correction under, any law or any ordinance or regulatory measure of the state, county, municipality, other political subdivision, or any agency thereof, in

which such property is located, as being unsafe, substandard, ~~insanitary~~ unsanitary or otherwise contrary to the public health, safety, or welfare; and

2. The effect on the value of such property, or any such use, condition, occupancy, or operation, or of the elimination, abatement, prohibition, or correction of any such use, condition, occupancy, or operation.

G. The foregoing testimony and evidence shall be admissible notwithstanding that no action has been taken by any public body or public officer toward the occupancy or operation. Testimony or evidence that any public officer charged with the duty or authority to do so has rendered, made or issued any judgment, decree, determination or order for the abatement, prohibition, elimination or correction of any such use, condition, occupancy, or operation shall be admissible and shall be prima facie evidence of the existence and character of such use, condition or operation.

H. In any condemnation proceedings in which a jury trial is had, if the verdict of the jury exceeds the award of the court appointed commissioners, the court may award a reasonable attorney fee to the defendant or defendants, which shall be paid by the condemner.

SECTION 2. AMENDATORY 11 O.S. 2001, Section 40-102, is amended to read as follows:

Section 40-102. It is declared to be the purpose of the Neighborhood Redevelopment Act to promote, stimulate, and develop the general and economic welfare of this state and its communities and to assist in the development and redevelopment of commercial, industrial and residential neighborhoods, thus promoting the general welfare of the citizens of this state, by authorizing cities and towns to establish redevelopment trust authorities, and to authorize such authorities to undertake redevelopment activities within such neighborhoods. The powers conferred by the Neighborhood

Redevelopment Act are for public uses and purposes for which public money may be expended and the power of eminent domain exercised, subject to the limitations provided by Section 5.1 of Title 27 of the Oklahoma Statutes. The necessity in the public interest for the provisions enacted as the Neighborhood Redevelopment Act is hereby declared as a matter of legislative determination. The municipal governing body may do all things necessary and proper in its discretion pursuant to the authority granted to it by the Constitution and laws of this state to redevelop and maintain its commercial, industrial and residential neighborhoods.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5.1 of Title 27, unless there is created a duplication in numbering, reads as follows:

Section 5.1 Notwithstanding any other provision of law, no governmental entity may take private property by eminent domain and sell, lease, or otherwise transfer it to a private person, partnership, corporation, business, or other private entity with the primary purpose being the benefit of such private entity. Provided, however, that in the event that private property taken by eminent domain is not used for the purposes for which it was condemned or for another public use, the condemning authority shall not sell such property without first offering it for sale to the person from whom the property was taken, or the person's heirs or assigns, at the price the condemning authority paid the property owner for the property or for fair market value, whichever is less. If the offer is not accepted within ninety (90) days from the date it is made, the property may be sold only by public sale.

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby

declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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