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HB 434 - Eminent Domain

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EMINENT DOMAIN

General Provisions: Amend Chapter 1 of Title 22 of the Official Code of Georgia Annotated, Relating to General Provisions Relative to Eminent Domain, so as to Provide for an Exception to the Requirement that Condemnations not be Converted to any Use other than a Public Use for Twenty Years from the Initial Condemnation; Provide for Definitions; Provide for Procedure; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS:	O.C.G.A. §§ 22-1-2 (amended), 22-1-15 (new)
BILL NUMBER:	HB 434
ACT NUMBER:	265
GEORGIA LAWS:	2017 Ga. Laws 754
SUMMARY:	The Act amends Georgia's eminent domain laws by providing an exception to the general rule that condemnations cannot be converted to any use, other than a public use, for twenty years. The Act creates a new procedure which requires the condemnor to petition the jurisdiction's superior court to determine whether the property is blighted property. Additionally, the condemnor must provide notice to all owners of the alleged blighted property. If the court finds the land is blighted property, the condemnor must file a petition to condemn the property according to the established procedure set forth in Article 3 Chapter 2 of Title 22. If the petitioner succeeds, the property may only be used in accordance with its current approved zoning use for the first five years

following the condemnation
proceedings.
EFFECTIVE DATE: July 1, 2017

History

The Fifth Amendment of the United States Constitution guarantees no private property shall “be taken for public use, without just compensation.”¹ Georgia’s constitution contains a similar provision.² Thus, although governments are authorized to take private property, it must be for a public use and the government must compensate the owner.³ This process is known as eminent domain.⁴ Recently, in Georgia, local governments have wielded eminent domain to build a bridge over I-285 and roads to SunTrust Park.⁵ It has also been a powerful tool for developing the Atlanta Beltline.⁶ But, whether economic development and urban revitalization satisfy the “public use” requirement has not always been clear.⁷

In 2005, when the Supreme Court of the United States decided the case *Kelo v. City of New London*, states worried about the expanding power of eminent domain and the unintended consequences.⁸ In *Kelo*, the Court held using eminent domain for economic development satisfied the public use requirement set forth in the United States Constitution.⁹ The Court noted that nothing constrained “any State from placing further restrictions on its exercise of the takings power” and that many states had already imposed stricter

1. U.S. Const. amend. V.

2. Ga. Const. art. I, § 3, ¶ 1.

3. See *Kirby Forest Industries, Inc. v. United States*, 467 U.S. 1, 9 (1984).

4. *Eminent Domain*, Black’s Law Dictionary (10th ed. 2014).

5. Mary Caldwell, *When Can the Government Tear Down Your House?*, ATLANTA J.-CONST. (Jan. 4, 2017, 11:43 AM), <http://www.ajc.com/business/real-estate/when-can-the-government-tear-down-your-house/WHIPsZhXj3RsviJowjpmhM/>.

6. *Id.*

7. See *Kelo v. City of New London*, 545 U.S. 469, 477 (2005) (the Court granted certiorari to determine whether “a city’s decision to take property for the purpose of economic development satisfies the ‘public use’ requirement of the Fifth Amendment”).

8. Jonathan V. Last, *The Kelo Backlash*, *The Wkly. Standard* (Aug. 18, 2006, 3:38 PM), <https://www.cbsnews.com/news/the-kelo-backlash/>.

9. *Kelo*, 545 U.S. 469 at 484.

guidelines than the federal baseline as interpreted by the *Kelo* Court.¹⁰

After the U.S. Supreme Court's controversial decision in *Kelo*, state legislatures across the country—including Georgia—limited the ability of state and local governments to take private property for economic development.¹¹ In 2006, the Georgia legislature amended Code section 22-1-2 and submitted a constitutional amendment to the citizens to restrict the government's use of eminent domain power exclusively to public works for twenty years from the initial condemnation.¹² Additionally, the legislature enacted the Landowner's Bill of Rights and Private Property Protection Act.¹³

As part of the comprehensive reform to Georgia's eminent domain laws, the General Assembly redefined "blighted" property, clarifying, among other things, that property cannot be deemed blighted for purely aesthetic reasons.¹⁴ The legislature did not include, however, a tool for local governments to use in addressing the problem of blighted property.¹⁵ One piece of blighted property has the potential to spread blight to surrounding areas.¹⁶ Further, blighted property invites criminal activity and scares developers and business owners away from the surrounding area.¹⁷ This combination quickly leads to surrounding properties also becoming blighted, creating a snowball effect.¹⁸ Compounding the problem, the restrictive eminent domain laws prevented potential developers from committing to revitalization projects because of the difficulty in acquiring multiple, connected properties and the requirement that condemned property

10. *Id.* at 489.

11. Interview with Rep. Wendell Willard (R-51st) at 0 min., 44 sec. (Apr. 21, 2017) (on file with Georgia State University Law Review) [hereinafter Willard Interview]; *See, e.g.*, HB 1313, as passed, 2006 Ga. Gen. Assemb.; HR 1306, as passed, 2006 Ga. Gen. Assemb.

12. 2006 Ga. Laws 39, § 4, at 42–43 (codified at O.C.G.A. § 22-1-2(a) (2006)); *Election Results*, Ga. Sec'y of State (Nov. 7, 2006, 4:25 PM),

http://sos.ga.gov/elections/election_results/2006_1107/swqa.htm; Ga. Const. art. I, § 3, ¶ 1.

13. 2006 Ga. Laws 39, § 1, at 40 (codified at O.C.G.A. §§ 22-1-2, 22-1-9, 22-1-10, 22-1-10.1, 22-1-11, 22-1-12, 22-1-13, 22-1-14 (2006)).

14. 2006 Ga. Laws 39, § 3, at 40 (codified at O.C.G.A. § 22-1-1(a) (2017)).

15. Willard Interview, *supra* note 11, at 1 min. 55 sec.; Video Recording of House Proceeding at 2 hr. 35 min., 15 sec. (March 3, 2017) (remarks by Chairman Willard (R-51st)), <http://www.gpb.org/lawmakers/2017/crossover-day-28> [hereinafter House Proceedings Video].

16. *See* House Proceeding Video, *supra* note 15.

17. *Id.*; Willard Interview, *supra* note 11, at 2 min. 47 sec.

18. House Proceeding Video, *supra* note 15, at 2 hr. 35 min., 15 sec. (remarks by Chairman Willard (R-51st)).

could not be put to a private use for twenty years.¹⁹ These problems motivated the passage of the Act.²⁰

Encouraging potential developers, however, is not the only concern involved in addressing the problem of blighted property. The Beltline project is one example of the struggle between the use of eminent domain for urban revitalization and its effects on property owners' interests. The project intended to revitalize blighted areas around the city.²¹ At the same time, the Beltline's administrators and the Atlanta City Council wanted to preserve affordable housing in the area.²² Instead, however, housing prices surrounding the Beltline have increased substantially.²³ As blighted property is revitalized, private developers have taken notice, and, consequently, affordable housing options diminish.²⁴ Some criticize Beltline administrators and government officials for being reluctant to enforce their original promises and only paying "lip service" to the issue of affordable housing.²⁵

The lack of affordable housing along the Beltline is not the only problem created by the economic development. Current homeowners are feeling the squeeze as the value of their long-time homes skyrocket.²⁶ Although increased home value helps current owners looking to sell their property, some residents, like Helen Mills of the Old Fourth Ward, are struggling to pay their property taxes.²⁷ Ms. Mills, a ninety-year-old woman, resorted to buying fewer groceries

19. See Daniel B. Kelly, *The Public Use Requirement in Eminent Domain Law: A Rationale Based on Secret Purchases and Private Influence*, 92 Cornell Law Rev. 1, 4 (2006).

20. Willard Interview, *supra* note 11, at 2 min. 47 sec.

21. David Pendered, *Atlanta Beltline: City to Condemn Property to Develop Park, Trail*, Saporta Rep. (June 24, 2013, 4:55 PM), <http://saportareport.com/atlanta-beltline-city-to-condemn-property-for-first-time-to-develop-park-trail/>.

22. Willoughby Mariano, Lindsey Conway, & Anastacia Ondieki, *How the Atlanta Beltline Broke its Promise on Affordable Housing*, ATLANTA J.-CONST. (July 13, 2017, 2:00 PM), <http://www.myajc.com/news/local/how-the-atlanta-beltline-broke-its-promise-affordable-housing/OVXnu1BIYC0IbA9U4u2CEM/>.

23. *Id.*

24. Matthew Cardinale, *30 Percent AMI on the Beltline: Now or Never*, Atlanta Progressive News (Oct. 30, 2016), <http://atlantaprogressivenews.com/2016/10/30/editorial-30-percent-ami-on-the-beltline-now-or-never/>.

25. Mariano, *supra* note 22.

26. *Id.*

27. *Id.*

every week and has even considered selling her home because of the property tax increases caused by the Beltline development.²⁸

The need for a solution to this problem is best evidenced by the union of ostensibly opposing legislative forces that joined efforts to create the Act.²⁹ The Georgia Board of Realtors, a group that protects property rights, joined forces with the Georgia Municipal Association and the Association of County Commissioners of Georgia, two organizations advocating for local governments; together, they worked with Representative Wendell Willard (R-51st) and the rest of the General Assembly to create a way for local governments to solve the problem of blighted properties.³⁰ The goal was to draft legislation that protected the interests of property owners, while still providing local governments with an effective tool for addressing blighted property.³¹

One group left out of the legislative process, however, was the people who stand to be most affected by the bill, residents of communities suffering from blight.³² From a historical perspective, this is nothing new. Atlanta's history of eminent domain is filled with instances of condemnation being used as a cover to displace entire neighborhoods.³³ For example, in the 1960s, the Atlanta Civic Center displaced an entire neighborhood of working-class, predominantly African-American residents.³⁴ Today, the Civic Center is set to be sold and the City Council has no plan to ensure affordable housing takes its place.³⁵ This is a reality all too familiar for people like ninety-three-year-old Mattie Jackson of Summerhill, an Atlanta

28. *Id.*

29. See Willard Interview, *supra* note 11, at 2 min. 47 sec.

30. *Id.* at 3 min., 3 sec.

31. *Id.* at 2 min., 55 sec.

32. Chris Joyner, *Georgia Bill Lets Cities Take Blighted Land for Developers*, ATLANTA J.-CONST. Watchdog (Mar. 29, 2017, 2:00 PM), <http://www.myajc.com/news/state—regional-govt—politics/watchdog-georgia-bill-lets-cities-take-blighted-land-for-developers/CYHllymNbqUH72G1GVT6zI/>.

33. Mariano, *supra* note 22 (Atlanta's history of slum clearance includes "city-backed redevelopment in the last century [that] pushed [lower income residents] out of their homes in the name of progress").

34. Barbara Payne, *Atlanta Council Prepare to Throw Away Civic Center, Despite Thousands Displaced*, ATLANTA PROGRESSIVE NEWS (May 30, 2014), <http://atlantaprogressivenews.com/2014/05/30/atlanta-council-prepares-to-throw-away-civic-center-despite-thousands-displaced/>.

35. *Id.*

neighborhood adjacent to Peoplestown.³⁶ The City of Atlanta has attempted to use eminent domain to take control of large swaths of the Peoplestown area for a \$66 million infrastructure investment.³⁷ Ms. Jackson has lived in her home on the border of Peoplestown and Summerhill her entire life.³⁸ She refused to take the city's offer for her property and fought city officials who insisted they needed her property for the infrastructure project.³⁹ Residents like Ms. Jackson face the threat of displacement in the name of economic development and worry House Bill (HB) 434 could help to accelerate these trends. These are the Georgians that advocates like Tanya Washington, Professor of Law at Georgia State University College of Law, worry about when the state expands its eminent domain powers over blighted property.⁴⁰

Bill Tracking of HB 434

Consideration and Passage by the House

Representatives Wendell Willard (R-51st), Calvin Smyre (D-135th), Ron Stephens (R-164th), Beth Beskin (R-54th), and Barry Fleming (R-121st) sponsored HB 434 in the House.⁴¹ The House read the bill for the first time on February 21, 2017, and committed the bill to the House Judiciary Committee.⁴² The House read the bill for the second time on February 22, 2017.⁴³ The House Judiciary Committee favorably reported the bill on February 24, 2017.⁴⁴ The

36. Katie Leslie, *Hold-Outs in Peoplestown Flooding Plan to Meet with Reed*, ATLANTA J.-CONST. (Oct. 6, 2015, 5:36PM), <http://www.myajc.com/news/local-govt—politics/hold-outs-peoplestown-flooding-plan-meet-with-reed/dldvfwfduCXslc4vC4iYzJ/>.

37. *Id.*

38. *Id.*

39. *Id.* Public outcry in favor of Ms. Jackson led Mayor Kasim Reed to instruct city officials to do everything they can to avoid taking Ms. Jackson's home, and Lillian Govus, spokeswoman for the Department of Watershed Management, promised the city would not use eminent domain to condemn her property. *Id.*

40. Interview with Tanya Washington, Professor of Law, Georgia State University at 3 min., 50 sec. (August 3, 2017) (on file with Georgia State University Law Review) [hereinafter Washington Interview].

41. Georgia General Assembly, HB 434, Bill Tracking, <http://www.legis.ga.gov/Legislation/en-US/display/20172018/HB/434>.

42. State of Georgia Final Composite Status Sheet, HB 434, May 11, 2017.

43. *Id.*

44. *Id.*

House read the bill for a third time on March 3, 2017, and the House passed HB 434 on March 3, 2017, by a vote of 158 to 6.⁴⁵

Consideration and Passage by the Senate

Senator William Ligon, Jr. (R-3rd) sponsored HB 434 in the Senate.⁴⁶ The Senate first read HB 434 on March 6, 2017.⁴⁷ HB 434 was assigned to the Senate Judiciary Committee, which favorably reported the bill on March 20, 2017.⁴⁸ The Committee read the bill for a second time on March 20, 2017.⁴⁹

After the third reading on March 28, 2017, two senators introduced a pipeline moratorium floor amendment. Senator Rick Jeffares (R-17th) and Senator Jack Hill (R-4th) offered a floor amendment to HB 434 that contained the language of HB 413, which extended the moratorium on petroleum pipeline companies using eminent domain and reconstituting the State Commission on Petroleum Pipelines.⁵⁰ The pipeline amendment was added to HB 434 as a back-up option to extend the moratorium, “just in case” the primary pipeline legislation, HB 413, did not pass.⁵¹ Outside of addressing the broad topic of eminent domain, the Senate floor amendment bore little relation to HB 434’s provisions or purpose. Nonetheless, the Senate adopted Amendment 1 over objection by a vote of 26-17.⁵² That same day, the Senate passed HB 434, as amended, by a vote of 42 to 10 and transferred the bill back to the House.⁵³

45. *Id.*; Georgia House of Representatives Voting Record, HB 434, Vote #203 (Mar. 3, 2017).

46. Georgia General Assembly, HB 434, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20172018/HB/434>.

47. State of Georgia Final Composite Status Sheet, HB 434, May 11, 2017.

48. *Id.*

49. *Id.*

50. *See* HB 434 (SFA), 2017 Ga. Gen. Assemb.

51. Video Recording of Senate Proceedings, March 28, 2017, at 1 hr., 8 min., 40 sec. (remarks by Sen. Rick Jeffares (R-17th)), <http://www.gpb.org/lawmakers/2017/day-39> [hereinafter Senate Proceeding Video].

52. *Id.* at 1 hr., 11 min., 25 sec. (remarks by President Pro Tempore David Shafer R-48th)).

53. Georgia Senate Voting Record, HB 434, Vote #283 (Mar. 28, 2017).

Reconsiderations by the House and the Senate

On March 30, 2017, the House offered an amendment to HB 434, as amended by the Senate, that deleted lines one through sixty-two regarding the moratorium for pipelines.⁵⁴ The entire Senate floor amendment was deleted because HB 413 was set to pass and HB 434 was no longer needed as a “backup” plan.⁵⁵

The House agreed to the Senate amendment to HB 434 as amended by the House on March 30, 2017, by a vote of 145 to 17.⁵⁶ The House returned HB 434 to the Senate, without the pipeline moratorium, and the Senate agreed to HB 434 as amended by the House on March 30, 2017, by a vote of 40 to 7.⁵⁷ The House sent the bill to Governor Nathan Deal (R) on April 5, 2017.⁵⁸ The Governor signed the bill into law on May 9, 2017, and the bill took effect on July 1, 2017.⁵⁹

The Act

The Act amends Chapter 1 of Title 22 of the Official Code of Georgia Annotated, relating to eminent domain.⁶⁰ The Act’s overall purpose is to provide an exception to previous eminent domain law that permitted property condemnation only for public use.⁶¹ The Act implements procedural safeguards for the condemned property owners. First, there must be a court hearing to determine the actual condition of the property; then, if blighted, a traditional eminent domain proceeding commences.⁶²

54. Senate Proceeding Video, *supra* note 51, at 1 hr., 8 min., 40 sec. (remarks by Sen. Rick Jeffares (R-17th)).

55. *Id.* at 1 hr., 38 min., 6 sec.

56. Georgia House of Representatives Voting Record, HB 434, Vote #397 (Mar. 30, 2017).

57. Georgia Senate Voting Record, HB 434, Vote #357 (Mar. 30, 2017).

58. State of Georgia Final Composite Status Sheet, HB 434, May 11, 2017.

59. *Id.*; O.C.G.A. § 1-3-4 (2017) (“Any Act which is approved by the Governor . . . on or after the first day of January and prior to the first day of July of a calendar year shall become effective on the first day of July.”).

60. 2017 Ga. Laws 754, §§ 1–2, at 754–57.

61. 2017 Ga. Laws 754, § 1, at 754–55.

62. 2017 Ga. Laws 754, § 2, at 755–57.

Section 1

Section 1 of the Act revises Code section 22-1-2 to include an exception to the public use requirement for taking by eminent domain.⁶³ The new Code section 22-1-15 codifies this exception.⁶⁴ The Act maintains most of the original language of Code section 22-1-2, which details the public use requirement for eminent domain in Georgia.⁶⁵ The Act adds a reference to Code section 22-1-15, which the Act creates.⁶⁶

Section 2

Section 2 of the Act adds Code section 22-1-15.⁶⁷ This new Code section defines terms relating to the public use exception for eminent domain.⁶⁸ It also outlines the procedure for a condemnor to convert condemned property for a purpose other than the previous, strictly-defined public use requirement.⁶⁹ Blight is not redefined in the new Code section and instead retains the same standards codified in section 22-1-1.⁷⁰

In contrast, the definition of public use in the new Code subsection (a)(3) greatly expands the scope of permissible use for property taken by eminent domain.⁷¹ Code section 22-1-1 defines “public use” and explicitly states “the public benefit of economic development shall not constitute a public use.”⁷² However, the new Code section

63. 2017 Ga. Laws 754, § 1, at 754–55.

64. O.C.G.A. § 22-1-2 (Supp. 2017).

65. 2017 Ga. Laws 754, § 1, at 754–55.

66. 2017 Ga. Laws 754, § 1, at 754.

67. 2017 Ga. Laws 754, § 2, at 755–57.

68. O.C.G.A. § 22-1-15(a) (Supp. 2017).

69. O.C.G.A. § 22-1-15 (Supp. 2017). A condemnor is defined in subsection (a)(1) as “a county, municipality, or consolidated government of this state.” *Id.*

70. O.C.G.A. §§ 22-1-15, 22-1-1 (Supp. 2017).

71. *Compare* O.C.G.A. § 22-1-15(a)(3) (Supp. 2017); *with* O.C.G.A. § 22-1-2(b) (2017).

72. O.C.G.A. § 22-1-1(9)(B) (2017);

Public use’ means: (i) The possession, occupation, or use of the land by the general public or by state or local government entities; (ii) The use of land for the creation or functioning of public utilities; (iii) The opening of roads, the construction of defenses, or the providing of channels of trade or travel; (iv) The acquisition of property where title is clouded due to the inability to identify or locate all owners of the property; (v) The acquisition of property where unanimous consent is received from each person with a legal claim

22-1-15 defines public use as “the remedy of blight when economic development is a secondary or ancillary public benefit of condemnation.”⁷³ Further, economic development is defined in subsection (a)(2) as “any economic activity to increase tax revenue, tax base, or employment or improve general economic health.”⁷⁴ Thus, while traditional taking by eminent domain only permits very limited uses of condemned property—all of which must further public use—Code section 22-1-15 allows for greater use of blighted property.⁷⁵ The new Code section, however, restricts economic development by prohibiting: “(A) Transfer of land to public ownership; (B) Transfer of property to a private entity that is a public utility; (C) Lease of property to private entities that occupy an incidental area within a public project; or (D) The legal remedy of blight.”⁷⁶ In a clear departure from the public use requirement, property deemed blighted under Code section 22-1-15(b) is not entirely prohibited from being used for economic development.⁷⁷

Section 2 also details the process a condemnor must follow for the court to deem a property blighted and condemn the property for taking by eminent domain.⁷⁸ Subsection (b) requires a condemnor to first petition the superior court in the county of jurisdiction for an *in rem* judgment against the property.⁷⁹ This judgment seeks a determination as to whether the property is blighted.⁸⁰ Subsection (c) sets forth the requirements of the superior court petition.⁸¹ Notably, the petition must include all facts relevant to the property and the parties with an interest in that property.⁸²

that has been identified and found; or (vi) The remedy of blight

O.C.G.A. § 22-1-1(9)(A) (2017).

73. O.C.G.A. § 22-1-15(a)(3) (Supp. 2017).

74. O.C.G.A. § 22-1-15(a)(2) (Supp. 2017).

75. Compare O.C.G.A. § 22-1-1(9) (2017) with O.C.G.A. § 22-1-15(a)(3) (Supp. 2017).

76. *Id.*

77. O.C.G.A. § 22-1-15(a)(3) (Supp. 2017).

78. O.C.G.A. § 22-1-15(b) (Supp. 2017).

79. *Id.*

80. *Id.*

81. O.C.G.A. § 22-1-15(c) (Supp. 2017).

82. *Id.* The statute holds:

The petition described in subsection (b) of this Code section shall set forth: (1) The facts showing the right to condemn; (2) The property or interest to be taken; (3) The names and residences of the persons whose property or interest are to be taken or otherwise affected, so far as known; (4) A description of any unknown persons or classes of unknown persons whose

Once the condemnor files the petition, subsection (d) requires that the court order all interested parties to appear at the hearing and assert any objections regarding the property's blighted status.⁸³ The court must schedule the hearing no less than thirty days from the date of filing.⁸⁴ Subsection (e) details the service of process for the petition and the order to all interested parties.⁸⁵ In addition to the required service, subsection (f) also provides the court discretion to order additional notice or service as justice so requires or as proper for tax collecting if any unpaid taxes are alleged on the petitioned property.⁸⁶

The Act also adds subsection (g), which permits the court to draft an order, as appropriate, based on the evidence regarding whether "the property shall be deemed blighted."⁸⁷ First, however, subsection (g) requires the court ensure service and notice were properly given to all interested persons.⁸⁸

Finally, the Act details the procedure that must be followed once the court deems a property blighted.⁸⁹ Subsection (h) requires a description of the blighted property in the court's order and a statement of "the then current approved land use of the property, or in the case of vacant property, the last lawful use for which the property was occupied."⁹⁰ Subsection (h) further restricts the property's future use to the same type of land use detailed in the order for at least five years from the date of the order.⁹¹ Once a condemnor obtains an order under subsection (h), subsection (i) adds

rights in the property or interest are to be affected; (5) A description of the appearance of the property and any structures thereon; (6) Such other facts as are necessary for a full understanding of the cause; (7) A statement setting forth the need of the court to review the evidence and determine whether such property meets the definition of blight; (8) A prayer for an order to be issued by the court as may be proper and desired; and (9) Whether any of the persons referred to in this subsection are minors or disabled.

Id.

- 83. O.C.G.A. § 22-1-15(d) (Supp. 2017).
- 84. O.C.G.A. § 22-1-15(d)(2) (Supp. 2017).
- 85. O.C.G.A. § 22-1-15(e) (Supp. 2017).
- 86. O.C.G.A. § 22-1-15(f) (Supp. 2017).
- 87. O.C.G.A. § 22-1-15(g) (Supp. 2017).
- 88. *Id.*
- 89. 2017 Ga. Laws 754, § 2, at 755–57.
- 90. O.C.G.A. § 22-1-15(h) (Supp. 2017).
- 91. *Id.*

that the condemnor must file an action to condemn the property within sixty days of such order.⁹² The condemnation proceeding must follow the eminent domain procedure already codified in Article 3 of Chapter 2 of Title 22.⁹³ Thus, the process detailed in the new Code section 22-1-15 creates an additional procedure through which a property owner may defend his interests in the property.

Analysis

The Act represents the first significant shift away from the General Assembly's 2006 efforts to ensure eminent domain is used exclusively for public works.⁹⁴ In a sense, the Act is a dramatic change from the twenty-year public use rule for condemnations.⁹⁵ While a condemnor still must "condemn property for public use,"⁹⁶ Section 22-1-15 now includes economic development as a permissible "public use,"⁹⁷ something expressly prohibited under Section 22-1-1(9).⁹⁸ This seemingly small concession for economic development has the potential to open the floodgates to the expansive use of eminent domain that the legislature was concerned with in 2006.⁹⁹

However, it is axiomatic that the remedy for blighted property goes hand in hand with economic development. Improving blighted property necessarily requires the injection of capital into the land, either from the government or private industry.¹⁰⁰ Since the government already had the tools to remedy blight by condemning the property for a public use,¹⁰¹ the Act is meant to expand the

92. O.C.G.A. § 22-1-15(i) (2017).

93. *Id.*

94. Joyner, *supra* note 32.

95. *See Id.* The Act allows governments to take private property and immediately transfer that land to private developers, whereas governments were previously required to wait twenty years before converting the condemned property to any use besides a public use. *Compare* O.C.G.A. § 22-1-2 (2017); Ga. Const. art. I, § 3; *with* O.C.G.A. § 22-1-15 (2017).

96. O.C.G.A. § 22-1-15(b) (Supp. 2017).

97. O.C.G.A. § 22-1-15(a)(3) (Supp. 2017).

98. O.C.G.A. § 22-1-1(9)(B) (2017).

99. O.C.G.A. § 22-1-15 (2017) (exception to the general rule that condemnations must be used for a public use for twenty years); *see also* Joyner, *supra* note 32.

100. *See* Willard Interview, *supra* note 11, at 2 min., 48 sec.

101. *See, e.g.,* O.C.G.A. § 22-1-1(9)(A)(vi) (2017); Linda S. Morris, *Commercial Blight: The Epidemic's Next Chapter*, TELEGRAPH (Apr. 25, 2015 8:32PM),

options governments possess to fix blighted property.¹⁰² Although a “condemnor” must still be a “county, municipality, or consolidated government,”¹⁰³ the new Code section allows the government to immediately turn over the condemned blighted property to private industry for re-development.¹⁰⁴

The potential negative consequences of this shift in eminent domain law are all too real for low-income communities and their residents, like Mattie Jackson.¹⁰⁵ Using eminent domain for economic redevelopment often means displacing current residents along the way.¹⁰⁶ Atlanta has a long and troubled history with displacement.¹⁰⁷ Mindful of this history, the legislature attempted to include safeguards in the Act to mitigate the abuse of eminent domain by condemnors.¹⁰⁸ The bill’s drafters knew they had to balance the interests between allowing the government to improve blighted property and respecting private property rights.¹⁰⁹ The Act attempts to retain the spirit of the *Kelo* backlash by installing certain procedural safeguards to prevent eminent domain abuse.¹¹⁰

The Five-Year Same Use Requirement

Most notable among the limitations is the requirement that for five years after the court’s order, the blighted property may only be used for the same purpose as the current approved land use or the last

<http://www.macon.com/news/local/article30229269.html> (using eminent domain to condemn blighted industrial property in Macon); Adam Murphy, *Source: DeKalb Co. Could Condemn Brannon Hill Blight*, WTOC (May 16, 2016 5:51PM), <http://www.wtoc.com/story/31052429/dekalb-county-attempts-to-clean-up-rundown-property> (contemplating the use of eminent domain to condemn blighted property in DeKalb County).

102. HB 434, as passed, 2017 Ga. Gen Assemb; *see also* Willard Interview, *supra* note 11, at 1 min., 25 sec.

103. O.C.G.A. § 22-1-15(a)(1) (2017).

104. Willard Interview, *supra* note 11, at 5 min., 18 sec.

105. Leslie, *supra* note 36.

106. Washington Interview, *supra* note 40, at 4 min., 5 sec.

107. *See* Payne, *supra* note 34; Mariano, *supra* note 22.

108. Willard Interview, *supra* note 11, at 1 min., 9 sec.

109. *See* House Proceeding Video, *supra* note 15, at 2 hr., 35 min., 50 sec. (remarks by Chairman Willard (R-51st)).

110. Joyner, *supra* note 32 (discussing the evolution of Georgia’s eminent domain law after *Kelo* and the safeguards put in place by the Act to prevent eminent domain abuse); *see also* Willard Interview, *supra* note 11, at 10 mins, 26 sec.

known land use of the property.¹¹¹ For example, if the blighted property is zoned for residential use, then the property may only be used for residential purposes for five years. This requirement prevents an investor from tearing down homes or entire neighborhoods to build industrial facilities, commercial properties, or warehouses.¹¹² Since developers tend to view an area as a “blank page,”¹¹³ the five-year same use requirement may prevent wholesale transformations of neighborhoods.¹¹⁴

This five-year limitation, however, offers significantly less protection against eminent domain abuse than the general rule, which states condemnations can only be put to a public use for twenty years.¹¹⁵ Although the Act requires residential property remain residential property, it includes no provisions preventing dramatic shifts in housing prices.¹¹⁶ A developer could easily acquire a large section of blighted residential property to build luxury high-rise apartments or expensive townhomes.¹¹⁷ The former residents are unlikely to be able to afford this new housing, and may be displaced from their community.¹¹⁸ The Georgia Constitution and Code section 22-4-1, the Georgia Relocation Assistance and Land Acquisition Policy Act, both allow the General Assembly to provide for relocation assistance and payments for citizens displaced by eminent domain.¹¹⁹ The Relocation Assistance Act, however, only applies when governments use eminent domain pursuant to a grant of federal funds.¹²⁰ This leaves victims of non-federally funded eminent domain projects out in the cold.

Other studies of gentrification and displacement have downplayed the effects on low-income residents. Columbia University Professor Lance Freeman’s study of the effect gentrification has on communities concluded that “the relationship between gentrification

111. O.C.G.A. § 22-1-15(h) (2017).

112. Willard Interview, *supra* note 11, at 5 min., 18 sec.

113. Washington Interview, *supra* note 40, at 9 min., 30 sec.

114. Willard Interview, *supra* note 11, at 5 min., 18 sec.

115. Compare O.C.G.A. § 22-1-2 (2017); with O.C.G.A. § 22-1-15 (2017).

116. See generally O.C.G.A. § 22-1-15 (Supp. 2017).

117. This trend has already been seen in the re-development along the Atlanta Beltline. Mariano, *supra* note 22.

118. Washington Interview, *supra* note 40, at 4 min., 5 sec.

119. Ga Const. art. I § 3, para 1; O.C.G.A. § 22-4-1 (2017).

120. O.C.G.A. § 22-4-2 (2017).

and displacement is not especially robust.”¹²¹ His research showed new residents moving into a neighborhood may be the more important factor, and his results were consistent with earlier studies “in illustrating that neighborhoods can gentrify without widespread displacement.”¹²² Freeman does note, however, that displacement can occur and because displacement is such a “traumatic experience” for those affected that officials should be concerned when crafting policy.¹²³

Placing the Power in the Courts

The next protection included in the Act grants courts the power to determine blighted status.¹²⁴ Following *Kelo*, Georgia voters passed Amendment 1 to the state’s Constitution requiring elected officials to approve any use of eminent domain.¹²⁵ This requirement remains, but now an extra level of scrutiny is added before blighted property may be subjected to taking by eminent domain.¹²⁶ Additionally, the information required in the condemnor’s petition puts the burden of proof on the condemnor to show that the subject property is blighted.¹²⁷ Employing the principle of checks and balances might slow the process of condemning blighted property, but it protects against the government’s abuse of eminent domain.

However, there are drawbacks to placing the blight determination on a judge. Some have suggested that the definition of blighted property is too malleable.¹²⁸ The requirements can be ambiguous,

121. Lance Freeman, *Displacement or Succession? Residential Mobility in Gentrifying Neighborhoods*, 40 URBAN AFFAIRS REV. 463, 483 (2005).

122. *Id.* at 487–88.

123. *Id.* at 488.

124. O.C.G.A. § 22-1-15(b) (Supp. 2017) (“A condemnor seeking to condemn property for public use . . . shall first petition the superior court of the county having jurisdiction for a judgment in rem against such property seeking a determination as to whether the property complained of in the petition is blighted property.”)

125. Ga. Const. art. IX, § 2, ¶ 5.

126. *See* O.C.G.A. § 22-1-15(i) (Supp. 2017) (condemnor must still go through regular eminent domain procedures after judge deems subject property blighted).

127. *See* OCGA §§ 22-1-15(b), (c)(5), (c)(6), (c)(7), (c)(8) (Supp. 2017) (petition must be filed by condemnor and include, among other things, a description of the subject property, pertinent facts, a statement setting forth the need of the court to review the evidence and determine whether the property is blighted, and a prayer for an order).

128. Washington Interview, *supra* note 40, at 18 min., 3 sec.

thereby giving judges the ability to impose their own personal views of community standards on neighborhoods that have a vastly different socio-economic status and cultural makeup than that with which the judge might be familiar.¹²⁹ For example, the requirement that blighted property be “conducive to ill health” is arguably vague and open to multiple interpretations.¹³⁰ Others have suggested that Georgia defines blight narrowly and thereby avoids ambiguity.¹³¹

An advantage to placing the burden on Georgia’s courts is that all property owners will have an opportunity to voice their concerns at the required hearing.¹³² Giving these property owners their day in court respects due process rights. Further, judges are presented with arguments from both sides and have to face the people who will be affected by a blight determination.

Again, however, Georgia’s low-income residents stand to be the most disadvantaged by the hearing requirement. These individuals often struggle to navigate the legal system due to limited time, money, and access to available resources.¹³³ Although they will be the most affected by a blight determination, low-income residents are already limited in resources and often do not know how to seek out low-cost or pro bono legal services.¹³⁴ Further, low-income residents will be hard-pressed to afford proper legal representation to adequately represent their interests.¹³⁵ The vast majority will be forced to navigate the legal system on their own and may not know what relevant facts and documents are needed to show their property is not blighted.¹³⁶ Further still, affected residents may be unable to attend the hearing because they have a job that they cannot afford to miss or children they must care for by themselves.¹³⁷ These two

129. *See id.* at 18 min., 18 sec.

130. *See* O.C.G.A. § 22-1-1(1)(B) (2017).

131. Ilya Somin, *Blight Sweet Blight*, LEGAL TIMES (August 14, 2006), https://www.law.gmu.edu/assets/files/faculty/Somin_LegalTimesBlight_8-14-06.pdf.

132. O.C.G.A. § 22-1-15(g) (2017).

133. Committee on Civil Justice – Supreme Court of Georgia Equal Justice Commission, *Civil Legal Needs of Low and Moderate Income Households in Georgia*, 2 (June 2009), https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ATJReport/sls_GA_clsns_2008.authcheckdam.pdf (last visited Sept. 19, 2017) [hereinafter *Civil Legal Needs*].

134. *Id.*

135. Washington Interview, *supra* note 40, at 20 min., 15 sec.

136. *Civil Legal Needs*, *supra* note 133, at 2.

137. *See* Paul Gorski, *The Myth of the Culture of Poverty*, 65 EDUCATIONAL LEADERSHIP 32 (2008), <http://www.ascd.org/publications/educational-leadership/apr08/vol65/num07/The-Myth-of-the-Culture->

issues are compounded by the fact that there will be both the initial hearing to determine blight and a second hearing during the condemnation process.¹³⁸

Service and Notice Requirements

The ability to find and notify property owners of the action in superior court was a major concern raised during the passage of the bill.¹³⁹ Representative Clay Cox (R-108th) and Chairman Jimmy Pruett (R-149th) both raised this issue when the bill was first debated in the House.¹⁴⁰ The Act includes multiple provisions that seek to ensure every person with an interest in the subject property is given notice of the hearing and therefore an ability to voice concerns.¹⁴¹ Not only is the condemnor required to file a carefully crafted petition with the superior court that includes the names and residences of every property owner, but each owner must also be served with a copy of the petition and information on the hearing.¹⁴² Additionally, the court is granted discretion to require more effective notice to the property owners if necessary.¹⁴³ Each of these requirements helps ensure property owners are given notice of the petition and an opportunity to oppose their property being deemed blighted.

Property owners, especially owners in blighted areas, often hide behind limited liability companies (LLC) or other corporate entities.¹⁴⁴ While notice could easily be sent to the registered agent or manager of the LLC, many of these organizations are structured as

of-Poverty.aspx (poor working adults spend more hours working each week than their wealthier counterparts, are more likely to work multiple jobs, work evenings, to have jobs without paid leave, and less access to school involvement for their children, despite holding the same attitudes towards education as the rest of the population).

138. O.C.G.A. § 22-1-15(i) (2017).

139. House Proceeding Video, *supra* note 15, at 2 hr. 38 min., 2 sec. (remarks by Rep. Cox (R-108th) and Chairman Pruett (R-149th)).

140. *Id.* at 2 hr. 35 min., 15 sec.

141. *Id.* at 2 hr. 36 min., 50 sec. (remarks by Chairman Willard (R-51st)) (discussing the court proceeding on whether the subject property is blighted that is held after “all parties [] get notice of this filing” and all interested parties can “come, testify, give information to the court” about the subject property).

142. O.C.G.A. §§ 22-1-15(c), (e) (Supp. 2017).

143. O.C.G.A. § 22-1-15(f) (Supp. 2017).

144. Willoughby Mariano, *Nobody Home: How Legal Corporate Secrecy Harmed One Atlanta Neighborhood*, ATLANTA J.-CONST., <http://specials.myajc.com/nobody-home/> (last visited July 8, 2017).

two or even three-tier corporate entities, making the search for the actual, human property owner difficult.¹⁴⁵ This problem could be alleviated, at least in part, by the discretion granted the superior court judge to create additional notice and service procedures in the interest of justice.¹⁴⁶

Multi-tiered business entities are not the only group that could suffer from the notice requirements in the bill. The service and notice provisions address the issue of informing residents about the hearing. But again, notice is irrelevant if the resident is unable to attend the hearing because of inflexible obligations, the inability to afford a lawyer, or the inability to understand the legal burden of proof they must meet.¹⁴⁷ Low-income residents can seek legal aid services to represent their interests, but even this solution is in jeopardy, as already underfunded and overworked legal aid offices are at risk of losing federal level funding.¹⁴⁸

Overall, the bill's drafters crafted this bill to provide local governments with a useful tool to combat and cure blighted property while simultaneously including safeguards to attempt to prevent eminent domain abuse.¹⁴⁹ The protections, however, lack enough force to ensure the remedy of blighted property is completed through "development without displacement."¹⁵⁰ Whether this Act will succeed in increasing development and decreasing eminent domain abuse remains to be seen.

Ashley M. Bowcott & Derek M. Schwahn

145. *Id.*

146. O.C.G.A. § 22-1-15(f) (Supp. 2017).

147. Washington Interview, *supra* note 40, at 20 min., 15 sec.; Civil Legal Needs, *supra* note 132, at 2.

148. See Debra Cassens Weiss, *Trump Budget Eliminates Legal Services Corp. Funding*, A.B.A. J. (Mar. 16, 2017, 8:45 AM), http://www.abajournal.com/news/article/trump_budget_eliminating_funding_for_legal_services_corp/.

149. See Willard Interview, *supra* note 11, at 2 min., 47 sec.

150. Washington Interview, *supra* note 40, at 9 min., 15 sec.