

11/8/10

mtg w Lance & Lee McGrath, exec.
director of Institute For Justice, Minn.
chapter

aim: strict construction of condemnation
for blight

all other condemnations, ok as is -

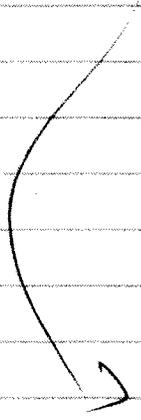
see letter from mtg on draft P.



INSTITUTE FOR JUSTICE
MINNESOTA CHAPTER

Lee U. McGrath
Executive Director

527 Marquette Avenue Suite 1600 Minneapolis, MN 55402-1330
(612) 435-3451 x205 Cell: (612) 963-0296 www.ij.org/minnesota
e-mail: lmcgrath@ij.org



LRB-0275
cont.



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-0275/P1
PG:wj:rs&md

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT to repeal** 32.07 (2) and 32.22; **to amend** 32.03 (6) (a) (intro.), 32.06
2 (intro.), 32.06 (5), 32.07 (3), 32.07 (4), 32.71, 66.1311 (3), 66.1313 (1), 66.1331
3 (4) (b), 66.1333 (3) (f), 66.1333 (5) (b) 1. and 66.1333 (5) (c) 1r.; **to repeal and**
4 **recreate** 66.1331 (3) (a), 66.1333 (2m) (b) and 66.1333 (2m) (bm); and **to create**
5 32.015 and 32.03 (6) (c) 5. to 7. of the statutes; **relating to:** various changes to
6 the eminent domain laws.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

7 **SECTION 1.** 32.015 of the statutes is created to read:
8 **32.015 Public use requirements.** In addition to the restrictions specified in
9 ss. 32.02 and 32.03, property may not be acquired by condemnation other than for
10 the following:

public uses

SECTION 1

1 (1) The possession, occupation, ownership, and enjoyment of the property by
2 the general public or a public agency.

3 (2) The establishment or operation of a public utility, as specified in s. 32.02.

4 (3) The elimination of blighted property. *KS Admin. in 32.03(6)(a)*

****NOTE: 1. Do you want to define "public agency" for the purpose of sub. (1)? *No*
2. Do you want to define "blighted property" for the purpose of sub. (3)? *Yes*

5 SECTION 2. 32.03 (6) (a) (intro.) of the statutes is amended to read:

6 32.03 (6) (a) (intro.) In this subsection, "blighted property" means any property
7 that is not zoned or used for agricultural purposes; that, by reason of abandonment,
8 dilapidation, deterioration, ~~age or obsolescence, inadequate provisions for~~
9 ~~ventilation, light, air, or sanitation, high density of population and overcrowding,~~
10 ~~faulty lot layout in relation to size, adequacy, accessibility, or usefulness, unsanitary~~
11 ~~or unsafe conditions, deterioration of site or other improvements,~~ or the existence of
12 conditions that endanger life or property by fire or other causes, or any combination
13 of such factors, is detrimental to the public health, safety, or welfare. ~~Property that~~
14 ~~consists of only one dwelling unit is not blighted property unless, in addition,; and~~
15 to which at least one of the following applies:

****NOTE: I used "not zoned or used for agricultural purposes" because that is the
phrase used in s. 32.09 (6r). OK?

16 SECTION 3. 32.03 (6) (c) 5. to 7. of the statutes are created to read:

17 32.03 (6) (c) 5. A finding that the owner's property has been cited for one or more
18 violations of applicable state or local building codes involving the roof and roof
19 framing elements; support walls, beams, and headers; the foundation, footings, and
20 subgrade conditions; light and ventilation; *plumbing;* fire protection; public utilities; flooring;
21 or walls, insulation, and exterior envelope.

1 6. The code violations under subd. 5. have not been remedied despite the
2 issuance by the local governmental unit that issued the citations of at least 2 notices
3 to do so.

4 7. The cost of remedying the code violations under subd. 5. would exceed an
5 amount equal to 50 percent of the most recent assessed value of the property,
6 excluding the value of the land.

 ***NOTE: Do the items listed in proposed s. 32.03 (6) (c) 5. constitute an exhaustive
list of possible building code violations? If so, the list is unnecessary. If not, does the list
capture all the code violations you wish to include? Do you want to include plumbing?

7 **SECTION 4.** 32.06 (intro.) of the statutes is amended to read:

8 **32.06 Condemnation procedure in other than transportation matters.**

9 (intro.) The procedure in condemnation in all matters except acquisitions under s.
10 32.05 ~~or 32.22~~, acquisitions under subch. II, acquisitions under subch. II of ch. 157,
11 and acquisitions under ch. 197, shall be as follows:

12 **SECTION 5.** 32.06 (5) of the statutes is amended to read:

13 **32.06 (5) COURT ACTION TO CONTEST RIGHT OF CONDEMNATION.** When an owner
14 desires to contest the right of the condemnor to condemn the property described in
15 the jurisdictional offer for any reason other than that the amount of compensation
16 offered is inadequate, ~~such~~ the owner may within 40 days from the date of personal
17 service of the jurisdictional offer or within 40 days from the date of postmark of the
18 certified mail letter transmitting such offer, or within 40 days after date of
19 publication of the jurisdictional offer as to persons for whom such publication was
20 necessary and was made, commence an action in the circuit court of the county
21 wherein in which the property is located, naming the condemnor as defendant. Such
22 action shall be the only manner in which any issue other than the amount of just
23 compensation or other than proceedings to perfect title under ss. 32.11 and 32.12 may

1 be raised pertaining to the condemnation of the property described in the
 2 jurisdictional offer. Failure to raise specific objections to the condemnation before
 3 the service of the jurisdictional offer does not preclude any claims in an action under
 4 this subsection. The trial of the issues raised by the pleadings in such action shall
 5 be given precedence over all other actions in said court then not on trial. If such
 6 action is not commenced within the time limited the owner or other person having
 7 any interest in the property shall be forever barred from raising any such objection
 8 in any other manner. The commencement of an action by an owner under this
 9 subsection shall not prevent a condemner from filing the petition provided for in sub.
 10 (7) and proceeding thereon. Nothing in this subsection shall be construed to limit in
 11 any respect the right to determine the necessity of taking as conferred by s. 32.07 nor
 12 to prevent the condemner from proceeding with condemnation during the pendency
 13 of the action to contest the right to condemn. This section shall not apply to any
 14 owner who had a right to bring a proceeding pursuant to s. 66.431 (7), 1959 stats.,
 15 prior to its repeal by chapter 526, laws of 1961, effective on October 8, 1961, and, in
 16 lieu of this section, s. 66.431 (7), 1959 stats., as it existed prior to such effective date
 17 of repeal shall be the owner's exclusive remedy.

****NOTE: 1. I'm not sure why the added sentence shown above is necessary. I'm not aware of any provision that would currently bar a claim under s. 32.06 (5) because the issue was not raised before service of the jurisdictional offer. Karl

2. I did not include your second sentence ("For condemnations to remediate blight the condemner must show by a preponderance of the evidence in circuit court that the condemner meets the requirements of s. 32.03 (6).") because it's not clear to me what those requirements are. Section 32.03 (6) provides a definition of "blighted property," prohibits the condemnation of property that is not blighted if the condemner intends to convey the acquires property to a private entity, and requires the condemner to make certain findings prior to condemning blighted property that the condemner intends to convey to a private entity.

3. Do you want to amend s. 32.05 (5) in the same manner that s. 32.06 (5) is amended? No

*Prop. meet
 blighted
 property
 32.03(6)*

18 SECTION 6. 32.07 (2) of the statutes is repealed.

19 SECTION 7. 32.07 (3) of the statutes is amended to read:

1 32.07 (3) In all other cases, the judge shall determine the necessity, which shall
2 be established by a preponderance of the evidence.

3 SECTION 8. 32.07 (4) of the statutes is amended to read:

4 32.07 (4)² The determination of the public service commission of the necessity
5 of taking any undeveloped water power site made pursuant to s. 32.03 (3) shall be
6 conclusive unless the determination is arbitrary or unreasonable. OK

****NOTE: Is the standard provided for "abuse of discretion" the one you intend?

7 SECTION 9. 32.22 of the statutes is repealed.

8 SECTION 10. 32.71 of the statutes is amended to read:

9 **32.71 Liberal Strict construction.** This subchapter, being in derogation of
10 the common law, shall be liberally strictly construed to ~~provide the city with the~~
11 ~~largest possible power and leeway of action.~~ OK is

****NOTE: 1. Your intent here may be clearer if this section is simply repealed. In
addition, that would make this subchapter and subchapter I the same; by amending this
section you may be calling into question the strict construction of provisions in
subchapter I.

2. See ss. 66.1327 (1), 66.1331 (15), and 66.1333 (11) (c) and (17). Do you want to amend
or repeal these provisions? J check all

12 SECTION 11. 66.1311 (3) of the statutes is amended to read:

13 66.1311 (3) The provisions of ss. 66.1301 to 66.1329 with respect to the
14 condemnation of real property by a city for a redevelopment corporation prevail over
15 the provisions of any other law are subject to the requirements in ch. 32.

****NOTE: 1. I did not amend this section to cross-reference ss. 66.1301 to 66.1333.
Instead, I amended the relevant portions of ss. 66.1331 and 66.1333; see the sections
below. OK? Yes

2. Would you also like to amend s. 66.1201 (10) (a)? Yes

16 SECTION 12. 66.1313 (1) of the statutes is amended to read:

17 66.1313 (1) Condemnation proceedings for a redevelopment corporation shall
18 be initiated by a petition to the city to institute proceedings to acquire for the
19 redevelopment corporation any real property in the development area. The petition

more 4
same
(4) to (2)

1 shall be granted or rejected by the local governing body, and the resolution or
2 resolutions granting the petition shall require that the redevelopment corporation
3 pay the city all sums expended or required to be expended by the city in the
4 acquisition of the real property, or for any real property to be conveyed to the
5 corporation by the city in connection with the plan, and the time of payment and
6 manner of securing payment, and may require that the city receive, before
7 proceeding with the acquisition of the real property, such assurances as to payment
8 or reimbursement by the redevelopment corporation, or otherwise, as the city deems
9 advisable. Upon the passage of a resolution by the local governing body granting the
10 petition, the redevelopment corporation shall make 3 copies of surveys or maps of the
11 real property described in the petition, one of which shall be filed in the office of the
12 redevelopment corporation, one in the office of the city attorney of the city, and one
13 in the office in which instruments affecting real property in the county are recorded.
14 The filing of copies of surveys or maps constitutes acceptance by the redevelopment
15 corporation of the terms and conditions contained in the resolution. The city ~~may~~
16 shall conduct condemnation proceedings ~~either under ch. 32 or under other laws~~
17 ~~applicable to the city.~~ When title to real property vests in the city, it shall convey or
18 lease the real property, with any other real property to be conveyed or leased to the
19 redevelopment corporation by the city in connection with the redevelopment plan,
20 to the redevelopment corporation upon payment by the redevelopment corporation
21 of the sums and the giving of the security required by the resolution granting the
22 petition.

23 **SECTION 13.** 66.1331 (3) (a) of the statutes is repealed and recreated to read:

1 66.1331 (3) (a) "Blighted area" means an area, including a slum area but
2 excluding any area that is zoned or used for agricultural purposes, in which all of the
3 following apply to a majority of the buildings:

4 1. They have been cited for one or more violations of applicable state or local
5 building codes involving the roof and roof framing elements; support walls, beams,
6 and headers; the foundation, footings, and subgrade conditions; light and
7 ventilation, ^{plumbing;} fire protection; public utilities; flooring; or walls, insulation, and exterior
8 envelope.

9 2. The code violation [§] under subd. 1. have not been remedied despite the
10 issuance by the local governmental unit that issued the citations of at least 2 notices
11 to do so.

12 3. The cost of remedying the code violations under subd. 1. would exceed an
13 amount equal to 50 percent of the most recent assessed value of the buildings,
14 excluding the value of the land.

****NOTE: 1. I did not include the provision relating to developers who contributed to the existence of blight because:

- a. I'm not sure how to define "developer involved in a redevelopment project."
- b. I'm not sure how to determine, or who would determine, whether a developer contributed to the existence of blight.
- c. I don't understand what is meant by "the contribution by the developer must not be used in the determination of blight."

2. Would you prefer to add a definition of "blighted property" and structure these two definitions as they are structured in s. 66.1333 (2m) (b) and (bm), as repealed and recreated in this draft?

check out if it is used
1331 only use
is used

15 **SECTION 14.** 66.1331 (4) (b) of the statutes is amended to read:

16 66.1331 (4) (b) Condemnation proceedings for the acquisition of real property
17 necessary or incidental to a redevelopment project shall be conducted in accordance
18 with ch. 32 ~~or any other laws applicable to the city.~~

19 **SECTION 15.** 66.1333 (2m) (b) of the statutes is repealed and recreated to read:

1 66.1333 (2m) (b) "Blighted area" means an area, including a slum area but
2 excluding any area that is zoned or used for agricultural purposes, in which a
3 majority of the buildings are blighted properties.

4 **SECTION 16.** 66.1333 (2m) (bm) of the statutes is repealed and recreated to read:

5 66.1333 (2m) (bm) "Blighted property" means any property within a city, other
6 than land zoned or used for agricultural purposes, that by reason of abandonment,
7 dilapidation, deterioration, ^{unsafe conditions,} or the existence of conditions that endanger life or
8 property by fire or other causes, or any combination of such factors, is detrimental
9 to the public health, safety, or welfare, and to which all of the following apply:

10 1. The property has been cited for one or more violations of applicable state or
11 local building codes involving the roof and roof framing elements; support walls,
12 beams, and headers; the foundation, footings, and subgrade conditions; light and
13 ventilation; ^{plumbing;} fire protection; public utilities; flooring; or walls, insulation, and exterior
14 envelope.

15 2. The code violations under subd. 1. have not been remedied despite the
16 issuance by the local governmental unit that issued the citations of at least 2 notices
17 to do so.

18 3. The cost of remedying the code violations under subd. 1. would exceed an
19 amount equal to 50 percent of the most recent appraised value of the property,
20 excluding the value of the land.

****NOTE: 1. Please see the ****NOTE under the section that repeals and recreates s. 66.1331 (3) (a). OK

2. I added "within a city" because that is the current definition of "blighted property." OK? OK

3. Do you want to add "unsafe conditions," as in s. 32.03 (6) (a)?

Yes

21 **SECTION 17.** 66.1333 (3) (f) of the statutes is amended to read:

Grant, Peter

From: Burri, Lance
Sent: Monday, November 15, 2010 10:17 AM
To: Grant, Peter
Subject: FW: Eminent Domain Reform -- Open Issue # 2

Peter, please see Lee's email, below, and let me know what you think.

Do you have an ETA for a new draft?

Thanks for all your help.

Lance Burri
Office of Sen. Mary Lazich
608-266-5400 or 800-334-1442

From: Lee McGrath [mailto:lmcgrath@ij.org]
Sent: Tuesday, November 09, 2010 3:36 PM
To: Burri, Lance
Subject: Eminent Domain Reform -- Open Issue # 2

Dear Lance:

Although I can go either way, I recommend that we say "no" to Paul's thoughtful question #2 on page 7 of his document. ✓

This is because it is only a cosmetic change and such a change will invite more questioning of the Senator than it may be worth.

I welcome your thoughts.

Thank you.

Best regards,
Lee McGrath
Executive Director & Attorney at Law
Institute for Justice Minnesota Chapter
527 Marquette Avenue-Suite 1600
Minneapolis MN 55402-1330
Work: (612) 435-3451
Fax: (612) 435-5875
Cell: (612) 963-0296
Email: lmcgrath@ij.org
web: www.ij.org
<http://twitter.com/LegislativeLee>

This message is sent by an attorney. It contains information that may be private, privileged, and confidential. It is intended solely for the use of the individual named in the message. If you are not the intended recipient, please notify the sender and destroy the message.

11/15/2010

Open Issue # 1

Formatted: Centered

Proposed Changes to 66.1327 (1) and similar changes to 66.1331 (15), 66.1333 (11)(c) and 66.1333 (17)

66.1327 Urban redevelopment; construction of statute; conflict of laws; supplemental powers. (1) ~~Except for sections granting the power and use of eminent domain, sections 66.1301 to 66.1329 shall be construed liberally to effectuate the purposes of urban redevelopment, and the enumeration of specific powers does not operate to restrict the meaning of any general grant of power contained in ss. 66.1301 to 66.1329 or to exclude other powers comprehended in the general grant.~~

Deleted: s

(2) If ss. 66.1301 to 66.1329 are inconsistent with any other law, the provisions of these sections are controlling.

(3) The powers conferred by ss. 66.1301 to 66.1329 are in addition and supplemental to the powers conferred by any other law.

History: 1999 a. 150 ss. 428, 429, 431, 433.

Grant, Peter

From: Grant, Peter
Sent: Monday, November 15, 2010 2:21 PM
To: 'lmcgrath@ij.org'
Cc: Burri, Lance
Subject: Eminent domain draft

Hi Lee,

Lance forwarded your email to me this morning, and I have a question about your suggested changes to ss. 66.1327, 66.1331 (15), and 66.1333 (11) (c) and (17). I also have a few other questions for you.

About s. 66.1327: I think it would be preferable to specify the statutory sections to which s. 66.1327 does not apply, rather than describing them as "the sections granting the power and use of eminent domain." This is how I propose to amend the section; let me know what you think:

66.1327 (1) Sections 66.1301 to 66.1309 and ss. 66.1313 to 66.1329 shall be construed liberally to effectuate the purposes of urban redevelopment, and the enumeration of specific powers in those sections does not operate to restrict the meaning of any general grant of power contained in ~~ss. 66.1301 to 66.1329~~ those sections or to exclude other powers comprehended in the general grant.

About s. 66.1331 (15): The only places in this section where condemnation or eminent domain is mentioned are subs. (2) and (4) (a) 3. So if it's OK with you, I'll amend sub. (15) to explicitly except those provisions. (By the way, sub. (2) speaks of "substandard, insanitary, deteriorated, slum and blighted areas" in two places. Should the phrase be amended to specify only "blighted areas"?)

About s. 66.1333 (11) (c) and (17): In this section, the provisions that use "condemn" or "eminent domain" are subs. (3) (f), (5) (a) 3., (b) 1. and (c) 1r., and (6) (b) 3. So I'll amend sub. (17) to explicitly except those provisions. I think it would make sense to repeal sub. (11) (c), because sub. (17) covers construction for the entire section. Or I could amend (11) (c) to leave only "Substantial compliance is adequate" and the second sentence if you prefer. Let me know.

I will amend s. 66.1201 (10) (a) as we discussed. However, it seems to me that s. 66.1201 (10) (b) to (g) discuss condemnation procedure. If par. (a) is amended to specify that the redevelopment authority must use the procedure in ch. 32, shouldn't pars. (b) to (g) be repealed? I have not had the opportunity to determine whether there are other examples of alternative condemnation procedures in chapter 66, but if there are such examples, shouldn't they be repealed as well?

The first section of the draft, creating s. 32.015, allows property to be acquired by condemnation in only three enumerated circumstances. But s. 32.02 seems to authorize additional circumstances. For example, s. 32.02 (1) states that any of the specified entities may acquire property by condemnation "for any lawful purpose." Sub. (2) allows the governor to condemn land adjacent to Camp Douglas for the use of the Wisconsin National Guard. Sub. (3) allows any railroad corporation (and several other types of corporations) to condemn "for any public purpose authorized by its articles of incorporation." These (and perhaps other) examples seem to conflict with the three enumerated uses. Should the draft modify s. 32.02? Should s. 32.015 "notwithstanding" s. 32.02 instead of saying "In addition to the restrictions specified in s. 32.02...?"

The title of s. 32.015 uses the term "public uses," and we have changed s. 32.015 so that it reads, at the end of the introduction, "...other than for the following *public uses*:" But is sub. (3), "The elimination of blighted property...." a public use? It seems to me that "the elimination of blighted property" describes the *purpose* of the condemnation, not the use to which the property will be put.

Finally, have you gone through s. 32.02 to ensure that the purposes specified there for condemning property all fit into at least one of the "uses" in the new s. 32.015?

Thanks, Lee.

Regards,

Peter

Peter Grant, Managing Attorney

Grant, Peter

From: Grant, Peter
Sent: Monday, November 15, 2010 2:32 PM
To: 'Imcgrath@ij.org'
Cc: Burri, Lance
Subject: Sec. 66.1333 (11) (c)

Hi Lee,

I just reread s. 66.1333 (11) (c), and see no reason to change anything there. The subsection deals with modifying a redevelopment plan. It does not deal with who may condemn, what may be condemned, or what procedure to use when the power of condemnation is exercised. So I retract what I suggested in my previous email. I would amend sub. (17) to except the provisions I mentioned in my previous email, and I would not amend (11) (c). OK?

Peter

Peter Grant, Managing Attorney
Wisconsin Legislative Reference Bureau
608-267-3362
peter.grant@legis.wi.gov

Grant, Peter

From: Lee McGrath [lmcgrath@ij.org]
Sent: Monday, November 15, 2010 5:25 PM
To: Grant, Peter
Cc: Burri, Lance
Subject: RE: Eminent domain draft - it is best to respond in pieces. Here is my response about 66.1327
Peter:

You proposed a good alternative when you suggested changing 66.1327 to read:

66.1327 (1) Sections 66.1301 to 66.1309 and ss. 66.1313 to 66.1329 shall be construed liberally to effectuate the purposes of urban redevelopment, and the enumeration of specific powers in those sections does not operate to restrict the meaning of any general grant of power contained in ~~ss. 66.1304 to 66.1329~~ those sections or to exclude other powers comprehended in the general grant.

I would like to counter propose that we change your proposal slightly to get a little more strict statutory construction. Specifically, I suggest:

66.1327 (1) Sections 66.1301 to 66.1309 and ss. 66.1315 to 66.1329 shall be construed liberally /

This way the condemnor must strictly follow procedures in 66.1333.

How does that look to you and Lance?

Thanks

Lee

Grant, Peter

From: Lee McGrath [lmcgrath@ij.org]
Sent: Monday, November 15, 2010 5:29 PM
To: Grant, Peter
Cc: Burri, Lance
Subject: RE: Eminent domain draft - my comments on 66.1331 (15) nevermind my first email.

Peter:

You wrote about s. 66.1331 (15): The only places in this section where condemnation or eminent domain is mentioned are subs. (2) and (4) (a) 3. So if it's OK with you, I'll amend sub. (15) to explicitly except those provisions. ✓

Oh, I see what you are doing. Yes, that is okay. ✓

You can ignore my first email. ✓

By the way, sub. (2) speaks of "substandard, insanitary, deteriorated, slum and blighted areas" in two places. Should the phrase be amended to specify only "blighted areas"? ✓

2. OK

Grant, Peter

From: Lee McGrath [lmcgrath@jj.org]
Sent: Monday, November 15, 2010 5:36 PM
To: Grant, Peter
Cc: Burri, Lance
Subject: RE: Sec. 66.1333 (11) (c) and 17
OK to both your ideas about 11(c) and 17.

Good work

From: Grant, Peter [mailto:Peter.Grant@legis.wisconsin.gov]
Sent: Monday, November 15, 2010 2:32 PM
To: Lee McGrath
Cc: Burri, Lance
Subject: Sec. 66.1333 (11) (c)

Hi Lee,

I just reread s. 66.1333 (11) (c), and see no reason to change anything there. The subsection deals with modifying a redevelopment plan. It does not deal with who may condemn, what may be condemned, or what procedure to use when the power of condemnation is exercised. So I retract what I suggested in my previous email. I would amend sub. (17) to except the provisions I mentioned in my previous email, and I would not amend (11) (c). OK?

Peter

Peter Grant, Managing Attorney
Wisconsin Legislative Reference Bureau
608-267-3362
peter.grant@legis.wi.gov

Grant, Peter

From: Lee McGrath [lmcgrath@ij.org]
Sent: Monday, November 15, 2010 5:41 PM
To: Grant, Peter
Cc: Burri, Lance
Subject: RE: Eminent domain draft - . 66.1201 (10) (a)

Peter:

You wrote that you will amend s. 66.1201 (10) (a) as we discussed. However, it seems to me that s. 66.1201 (10) (b) to (g) discuss condemnation procedure. If par. (a) is amended to specify that the redevelopment authority must use the procedure in ch. 32, shouldn't pars. (b) to (g) be repealed?

YES, Yes, YES. Excellent catch!

I have not had the opportunity to determine whether there are other examples of alternative condemnation procedures in chapter 66, but if there are such examples, shouldn't they be repealed as well?

Yes, they should. We want the procedures in 32.

Well done.

Grant, Peter

From: Lee McGrath [lmcgrath@ij.org]
Sent: Monday, November 15, 2010 5:49 PM
To: Grant, Peter
Cc: Burri, Lance
Subject: RE: Eminent domain draft - 32.02 (1)

Peter:

You wrote that the first section of the draft, creating s. 32.015, allows property to be acquired by condemnation in only three enumerated circumstances. But s. 32.02 seems to authorize additional circumstances.

For example, s. 32.02 (1) states that any of the specified entities may acquire property by condemnation "for any lawful purpose." This seems okay to me because 32.015 lists the three lawful purposes. I don't see a conflict. Do you?

Sub. (2) allows the governor to condemn land adjacent to Camp Douglas for the use of the Wisconsin National Guard. This also seems okay to me because Camp Douglas is government land use for a public use. It fits into one of the three buckets in 32.015. Don't you agree?

Sub. (3) allows any railroad corporation (and several other types of corporations) to condemn "for any public purpose authorized by its articles of incorporation." This also seems okay to me because railroads are a public utility under the second bucket that we created in 32.015

Should the draft modify s. 32.02? Should s. 32.015 "notwithstanding" s. 32.02 instead of saying "In addition to the restrictions specified in s. 32.02..."? No, I don't think that is necessary.

Thoughts?

Grant, Peter

From: Lee McGrath [lmcgrath@ij.org]
Sent: Monday, November 15, 2010 5:52 PM
To: Grant, Peter
Cc: Burri, Lance
Subject: RE: Eminent domain draft -- "public use"

Peter:

You wrote that the title of s. 32.015 uses the term "public uses," and we have changed s. 32.015 so that it reads, at the end of the introduction, "...other than for the following *public uses*:" But is sub. (3), "The elimination of blighted property...." a public *use*? It seems to me that "the elimination of blighted property" describes the *purpose* of the condemnation, not the use to which the property will be put.

Although it sounds awkward, calling blight elimination a public use will have a beneficial effect of harmonizing the statutes with the 5th Amendment requirement that eminent domain may only be used for a public use. I applaud your keen ear for a bad sound. But we really want this written as a public use.

Thanks

Grant, Peter

From: Lee McGrath [lmcgrath@ij.org]
Sent: Monday, November 15, 2010 6:01 PM
To: Grant, Peter
Cc: Burri, Lance
Subject: RE: Eminent domain draft "finally" -- 32.51

Peter wrote, finally, have you gone through s. 32.02 to ensure that the purposes specified there for condemning property all fit into at least one of the "uses" in the new s. 32.015?

Lance --- I have look through all of chapter 32. I recommend that we delete 32.51 because it is mostly redundant. Of course housing advocates might get upset. But a 1st class city can still use eminent domain to clear blight and then turn around build low income housing. The only power we are taking away is the power of a municipality to take unblighted property and build low income housing. I am okay with stripping cities of that power. It is probably rarely used.

Don't you agree?

Grant, Peter

From: Lee McGrath [lmcgrath@ij.org]
Sent: Tuesday, November 16, 2010 9:34 AM
To: Grant, Peter
Cc: Burri, Lance
Subject: RE: Eminent domain draft "finally" -- 32.51
Peter:

You are correct. You may reword sub 32.51 to leave municipalities with the power in subpart (2). Please delete 32.51 (1). ✓

Thank you.

Best regards,
Lee McGrath
Executive Director & Attorney at Law
Institute for Justice Minnesota Chapter
527 Marquette Avenue-Suite 1600
Minneapolis MN 55402-1330
Work: (612) 435-3451
Fax: (612) 435-5875
Cell: (612) 963-0296
Email: lmcgrath@ij.org
web: www.ij.org
<http://twitter.com/LegislativeLee>

This message is sent by an attorney. It contains information that may be private, privileged, and confidential. It is intended solely for the use of the individual named in the message. If you are not the intended recipient, please notify the sender and destroy the message.

From: Grant, Peter [mailto:Peter.Grant@legis.wisconsin.gov]
Sent: Tuesday, November 16, 2010 9:29 AM
To: Lee McGrath
Cc: Burri, Lance
Subject: RE: Eminent domain draft "finally" -- 32.51

Lee, do you mean to repeal all of 32.51, or only 32.51 (1)? Isn't sub. (2) necessary?

From: Lee McGrath [mailto:lmcgrath@ij.org]
Sent: Monday, November 15, 2010 6:01 PM
To: Grant, Peter
Cc: Burri, Lance
Subject: RE: Eminent domain draft "finally" -- 32.51

Peter wrote, finally, have you gone through s. 32.02 to ensure that the purposes specified there for condemning property all fit into at least one of the "uses" in the new s. 32.015?

Lance --- I have look through all of chapter 32. I recommend that we delete 32.51 because it is mostly redundant. Of course housing advocates might get upset. But a 1st class city can still use eminent domain to clear blight and then turn around build low income housing. The only power we are taking away is the power of a municipality to take unblighted property and build low income housing. I am okay with stripping cities of that power. It is probably rarely used.

Don't you agree?

11/16/2010

Grant, Peter

From: Lee McGrath [lmcgrath@ij.org]
Sent: Tuesday, November 16, 2010 9:37 AM
To: Grant, Peter
Subject: RE: Eminent domain draft - it is best to respond in pieces. Here is my response about 66.1327
 Yes. Ignore this email. Thanks

Best regards,
 Lee McGrath
 Executive Director & Attorney at Law
 Institute for Justice Minnesota Chapter
 527 Marquette Avenue-Suite 1600
 Minneapolis MN 55402-1330
 Work: (612) 435-3451
 Fax: (612) 435-5875
 Cell: (612) 963-0296
 Email: lmcgrath@ij.org
 web: www.ij.org
<http://twitter.com/LegislativeLee>

This message is sent by an attorney. It contains information that may be private, privileged, and confidential. It is intended solely for the use of the individual named in the message. If you are not the intended recipient, please notify the sender and destroy the message.

From: Grant, Peter [mailto:Peter.Grant@legis.wisconsin.gov]
Sent: Tuesday, November 16, 2010 9:31 AM
To: Lee McGrath
Subject: RE: Eminent domain draft - it is best to respond in pieces. Here is my response about 66.1327

Lee, is this the email I should ignore? In other words, you would like to amend 66.1327 (1) as I've shown it below, and not as you've modified my changes?

From: Lee McGrath [mailto:lmcgrath@ij.org]
Sent: Monday, November 15, 2010 5:25 PM
To: Grant, Peter
Cc: Burri, Lance
Subject: RE: Eminent domain draft - it is best to respond in pieces. Here is my response about 66.1327

Peter:

You proposed a good alternative when you suggested changing 66.1327 to read:

66.1327 (1) Sections 66.1301 to 66.1309 and ss. 66.1313 to 66.1329 shall be construed liberally to effectuate the purposes of urban redevelopment, and the enumeration of specific powers in those sections does not operate to restrict the meaning of any general grant of power contained in ~~ss. 66.1304 to 66.1329~~ those sections or to exclude other powers comprehended in the general grant.

 I would like to counter propose that we change your proposal slightly to get a little more strict statutory construction. Specifically, I suggest:

66.1327 (1) Sections 66.1301 to 66.1309 and ss. 66.1315 to 66.1329 shall be construed liberally

This way the condemnor must strictly follow procedures in 66.1333.

How does that look to you and Lance?

Thanks

Lee

Grant, Peter

From: Grant, Peter
Sent: Tuesday, November 16, 2010 11:30 AM
To: 'Lee McGrath'
Cc: Burri, Lance
Subject: Additional sections

Hi Lee,

I've gone through subchapters XII and XIII of ch. 66, and have come up with a list of provisions that I think you might want to take a look at. I was primarily looking for alternative condemnation procedures. I did not find any. However, I found a lot of references to "unhealthful, insanitary or unsafe conditions," "slum clearance," and similar verbiage. I'm wondering if you would take a look at these provisions and let me know if you wish to modify them by substituting "blighted area" or "blighted property" or some other terms.

66.1301 (3) (a)
66.1303 (3) (a)
66.1333 (2)
66.1333 (2m) (d) (intro.) and 6. and (h)
66.1333 (3) (a) 1., 2. and 5. and (d)
66.1333 (5) (a) 3. [see the end of the subdivision] and 4.a.
66.1333 (9) (a) 1.b.
66.1333 (14)
66.1335 (1)
66.1337 (1), (2m) (a) 2. and (b) and (4) (a) 1.

Thanks -

Peter

Peter Grant, Managing Attorney
Wisconsin Legislative Reference Bureau
608-267-3362
peter.grant@legis.wi.gov

Grant, Peter

From: Lee McGrath [lmcgrath@ij.org]
Sent: Tuesday, November 16, 2010 1:39 PM
To: Grant, Peter
Cc: Burri, Lance
Subject: RE: Additional sections
Peter:

Thanks for your email below.

I appreciate and applaud your going the extra mile.

The only thing that I am concerned about is 66.1337 – particularly the general grant of power in subdivision (5). I think my concern can be met by your addition to (5) a sentence that reads something like. "The condemnation of real property under this section is subject to the requirements in ch. 32." 

What do you think?

Best regards,
Lee McGrath
Executive Director & Attorney at Law
Institute for Justice Minnesota Chapter
527 Marquette Avenue-Suite 1600
Minneapolis MN 55402-1330
Work: (612) 435-3451
Fax: (612) 435-5875
Cell: (612) 963-0296
Email: lmcgrath@ij.org
web: www.ij.org
<http://twitter.com/LegislativeLee>

This message is sent by an attorney. It contains information that may be private, privileged, and confidential. It is intended solely for the use of the individual named in the message. If you are not the intended recipient, please notify the sender and destroy the message.

From: Grant, Peter [mailto:Peter.Grant@legis.wisconsin.gov]
Sent: Tuesday, November 16, 2010 11:30 AM
To: Lee McGrath
Cc: Burri, Lance
Subject: Additional sections

Hi Lee,

I've gone through subchapters XII and XIII of ch. 66, and have come up with a list of provisions that I think you might want to take a look at. I was primarily looking for alternative condemnation procedures. I did not find any. However, I found a lot of references to "unhealthful, insanitary or unsafe conditions," "slum clearance," and similar verbiage. I'm wondering if you would take a look at these provisions and let me know if you wish to modify them by substituting "blighted area" or "blighted property" or some other terms.

66.1301 (3) (a)
66.1303 (3) (a)
66.1333 (2)
66.1333 (2m) (d) (intro.) and 6. and (h)
66.1333 (3) (a) 1., 2. and 5. and (d)

11/16/2010

66.1333 (5) (a) 3. [see the end of the subdivision] and 4.a.

66.1333 (9) (a) 1.b.

66.1333 (14)

66.1335 (1)

66.1337 (1), (2m) (a) 2. and (b) and (4) (a) 1.

Thanks -

Peter

Peter Grant, Managing Attorney
Wisconsin Legislative Reference Bureau
608-267-3362
peter.grant@legis.wi.gov

Grant, Peter

From: Lee McGrath [lmcgrath@ij.org]
Sent: Wednesday, November 17, 2010 11:15 AM
To: Grant, Peter
Subject: "as defined in s. 32.03 (6) (a)."

Peter:

Thanks for looking at these issues critically.

Please keep "as defined in s. 32.03 (6) (a)" because the issue on p. 4, line 4, deals with the exact type of condemnation we are concerned about in Chapter 32.

Don't you agree?

Many thanks

Best regards,
Lee McGrath
Executive Director & Attorney at Law
Institute for Justice Minnesota Chapter
527 Marquette Avenue-Suite 1600
Minneapolis MN 55402-1330

Work: (612) 435-3451

Fax: (612) 435-5875

Cell: (612) 963-0296

Email: lmcgrath@ij.org

web: www.ij.org

<http://twitter.com/LegislativeLee>

This message is sent by an attorney. It contains information that may be private, privileged, and confidential. It is intended solely for the use of the individual named in the message. If you are not the intended recipient, please notify the sender and destroy the message.

From: Grant, Peter [mailto:Peter.Grant@legis.wisconsin.gov]
Sent: Wednesday, November 17, 2010 10:39 AM
To: Lee McGrath
Subject: RE: Would you email me a revised copy of Senator Lazich's bill by 1:00 PM today?

By the way, if you recollect our telephone conversation yesterday, I have a related question. On p. 4, line 4, before "The trial..." I am adding this sentence: "If the condemnor's intent in condemning the owner's property is to eliminate blight, the condemnor shall prove by a preponderance of the evidence that the owner's property is blighted property, **as defined in s. 32.03 (6) (a).**" Should we eliminate the material in bold, as we did on p. 2, line 3?

Peter

From: Lee McGrath [mailto:lmcgrath@ij.org]
Sent: Wednesday, November 17, 2010 10:20 AM
To: Grant, Peter
Cc: Burri, Lance
Subject: Would you email me a revised copy of Senator Lazich's bill by 1:00 PM today?

Dear Peter:

I appreciate greatly your hard and thoughtful work on Senator Lazich's bill.

11/17/2010

Grant, Peter

From: Lee McGrath [lmcgrath@ij.org]
Sent: Wednesday, November 17, 2010 3:43 PM
To: Grant, Peter
Subject: RE: "as defined in s. 32.03 (6) (a)."

Ok – you convinced me. Please remove "as defined in s. 32.03 (6) (a)."

Many thanks, Peter

Best regards,
Lee McGrath
Executive Director & Attorney at Law
Institute for Justice Minnesota Chapter
527 Marquette Avenue-Suite 1600
Minneapolis MN 55402-1330
Work: (612) 435-3451
Fax: (612) 435-5875
Cell: (612) 963-0296
Email: lmcgrath@ij.org
web: www.ij.org
<http://twitter.com/LegislativeLee>

This message is sent by an attorney. It contains information that may be private, privileged, and confidential. It is intended solely for the use of the individual named in the message. If you are not the intended recipient, please notify the sender and destroy the message.

From: Grant, Peter [mailto:Peter.Grant@legis.wisconsin.gov]
Sent: Wednesday, November 17, 2010 11:34 AM
To: Lee McGrath
Subject: RE: "as defined in s. 32.03 (6) (a)."

I think the result is odd. Suppose a redevelopment authority wishes to acquire property under s. 66.1333 for the purpose of eliminating blight. Note that on page 8 of the draft, we have redefined "blighted area" and "blighted property" for the purpose of that section. Under 63.1333, the authority may acquire the property if it's blighted property according to that definition. But under 32.06 (5), if the owner contests the right of the authority to condemn his or her property, the authority will have to prove by a preponderance of the evidence that the property is blighted *according to the definition in 32.03 (6) (a)*, which is quite different. If that's the result you intend, wouldn't it make more sense if the definition in 66.1333 was the same as the one in 32.03 (6) (a)?

From: Lee McGrath [mailto:lmcgrath@ij.org]
Sent: Wednesday, November 17, 2010 11:15 AM
To: Grant, Peter
Subject: "as defined in s. 32.03 (6) (a)."

Peter:

Thanks for looking at these issues critically.

Please keep "as defined in s. 32.03 (6) (a)" because the issue on p. 4, line 4, deals with the exact type of condemnation we are concerned about in Chapter 32.

Don't you agree?

Many thanks

11/17/2010

Best regards,
Lee McGrath
Executive Director & Attorney at Law
Institute for Justice Minnesota Chapter
527 Marquette Avenue-Suite 1600
Minneapolis MN 55402-1330
Work: (612) 435-3451
Fax: (612) 435-5875
Cell: (612) 963-0296
Email: lmcgrath@ij.org
web: www.ij.org
<http://twitter.com/LegislativeLee>

This message is sent by an attorney. It contains information that may be private, privileged, and confidential. It is intended solely for the use of the individual named in the message. If you are not the intended recipient, please notify the sender and destroy the message.

From: Grant, Peter [mailto:Peter.Grant@legis.wisconsin.gov]
Sent: Wednesday, November 17, 2010 10:39 AM
To: Lee McGrath
Subject: RE: Would you email me a revised copy of Senator Lazich's bill by 1:00 PM today?

By the way, if you recollect our telephone conversation yesterday, I have a related question. On p. 4, line 4, before "The trial..." I am adding this sentence: "If the condemnor's intent in condemning the owner's property is to eliminate blight, the condemnor shall prove by a preponderance of the evidence that the owner's property is blighted property, **as defined in s. 32.03 (6) (a).**" Should we eliminate the material in bold, as we did on p. 2, line 3?

Peter

From: Lee McGrath [mailto:lmcgrath@ij.org]
Sent: Wednesday, November 17, 2010 10:20 AM
To: Grant, Peter
Cc: Burri, Lance
Subject: Would you email me a revised copy of Senator Lazich's bill by 1:00 PM today?

Dear Peter:

I appreciate greatly your hard and thoughtful work on Senator Lazich's bill.

If possible, it would be great if you would email me a draft of the bill by 1:00 today.

I am meeting with my board tomorrow. I would like to include the Senator's bill in my package of proposals.

Many many thanks

Best regards,
Lee McGrath
Executive Director & Attorney at Law
Institute for Justice Minnesota Chapter
527 Marquette Avenue-Suite 1600
Minneapolis MN 55402-1330
Work: (612) 435-3451
Fax: (612) 435-5875
Cell: (612) 963-0296
Email: lmcgrath@ij.org
web: www.ij.org

11/17/2010

Grant, Peter

From: Lee McGrath [lmcgrath@ij.org]
Sent: Thursday, November 18, 2010 9:26 AM
To: Grant, Peter
Subject: RE: 32.51 (1)

Peter:

It is always a good way to start the day to receive an email that says "Lee, you were right....." Thanks. ☺

I suggest we use (1) Purposes: Any city may condemn or acquire through eminent domain property under this subchapter for the purposes in 32.015.

Is that ok with you?

Best regards,
Lee McGrath
Executive Director & Attorney at Law
Institute for Justice Minnesota Chapter
527 Marquette Avenue-Suite 1600
Minneapolis MN 55402-1330
Work: (612) 435-3451
Fax: (612) 435-5875
Cell: (612) 963-0296
Email: lmcgrath@ij.org
web: www.ij.org
<http://twitter.com/LegislativeLee>

This message is sent by an attorney. It contains information that may be private, privileged, and confidential. It is intended solely for the use of the individual named in the message. If you are not the intended recipient, please notify the sender and destroy the message.

From: Grant, Peter [mailto:Peter.Grant@legis.wisconsin.gov]
Sent: Thursday, November 18, 2010 9:18 AM
To: Lee McGrath
Subject: RE: 32.51 (1)

Lee, you were right about 32.51; eliminating the enumerated purposes in that section would limit Milwaukee to the purposes in the new 32.015. Don't know how I forgot that. So if you'd like to go back to your original idea for 32.51 (1), that would be fine with me. On the other hand, if you feel it can only help to reiterate the 3 purposes in 32.51, that's OK too.

Peter

From: Lee McGrath [mailto:lmcgrath@ij.org]
Sent: Wednesday, November 17, 2010 4:10 PM
To: Grant, Peter
Subject: RE: 32.51 (1)

My aim is only to narrow condemnation powers. Please only limit acquisition by condemnation.

Cities may acquire property from willing sellers until the cows come home. (Dairy humor)

Does that make sense?

Thanks

11/18/2010

Best regards,
Lee McGrath
Executive Director & Attorney at Law
Institute for Justice Minnesota Chapter
527 Marquette Avenue-Suite 1600
Minneapolis MN 55402-1330
Work: (612) 435-3451
Fax: (612) 435-5875
Cell: (612) 963-0296
Email: lmcgrath@ij.org
web: www.ij.org
<http://twitter.com/LegislativeLee>

This message is sent by an attorney. It contains information that may be private, privileged, and confidential. It is intended solely for the use of the individual named in the message. If you are not the intended recipient, please notify the sender and destroy the message.

From: Grant, Peter [mailto:Peter.Grant@legis.wisconsin.gov]
Sent: Wednesday, November 17, 2010 4:03 PM
To: Lee McGrath
Subject: RE: 32.51 (1)

That works except for one question. Current law allows a first class city to condemn *or otherwise acquire* property for the enumerated purposes. Do you want to limit *all* acquisition to the three purposes, or only acquisition by condemnation? Perhaps you want to allow the city to acquire property for any purpose by purchase, gift, etc., but allow condemnation only for the three purposes in 32.015?

From: Lee McGrath [mailto:lmcgrath@ij.org]
Sent: Wednesday, November 17, 2010 3:51 PM
To: Grant, Peter
Subject: 32.51 (1)

Peter:

Thanks for your inquiry. My aim is to limit the eminent domain powers to those listed in our new 32.015.

So how do we address 32.15(1)?

If it is better not to delete it, perhaps we can change subdivision 1 to read:

- (1) Purposes: Any city may condemn or acquire through eminent domain property under this subchapter for the purposes in 32.015.

And then keep (2) unchanged.

How does that look to you?

Best regards,
Lee McGrath
Executive Director & Attorney at Law
Institute for Justice Minnesota Chapter
527 Marquette Avenue-Suite 1600
Minneapolis MN 55402-1330
Work: (612) 435-3451
Fax: (612) 435-5875
Cell: (612) 963-0296
Email: lmcgrath@ij.org

11/18/2010

web: www.ij.org

<http://twitter.com/LegislativeLee>

This message is sent by an attorney. It contains information that may be private, privileged, and confidential. It is intended solely for the use of the individual named in the message. If you are not the intended recipient, please notify the sender and destroy the message.

From: Grant, Peter [mailto:Peter.Grant@legis.wisconsin.gov]

Sent: Wednesday, November 17, 2010 11:40 AM

To: Lee McGrath

Subject: RE: "as defined in s. 32.03 (6) (a)."

I have yet *another* question. You mentioned in an email Monday that you wished to repeal 32.51 (1). In what way does that further your aims? It seems to me that eliminating the enumerated purposes for which Milwaukee may condemn property under subch. II of ch. 32 allows the city to condemn for *any* lawful purpose under that subchapter. The list of purposes limits the city's authority, right? Am I missing something?

From: Lee McGrath [mailto:lmcgrath@ij.org]

Sent: Wednesday, November 17, 2010 11:15 AM

To: Grant, Peter

Subject: "as defined in s. 32.03 (6) (a)."

Peter:

Thanks for looking at these issues critically.

Please keep "as defined in s. 32.03 (6) (a)" because the issue on p. 4, line 4, deals with the exact type of condemnation we are concerned about in Chapter 32.

Don't you agree?

Many thanks

Best regards,

Lee McGrath

Executive Director & Attorney at Law

Institute for Justice Minnesota Chapter

527 Marquette Avenue-Suite 1600

Minneapolis MN 55402-1330

Work: (612) 435-3451

Fax: (612) 435-5875

Cell: (612) 963-0296

Email: lmcgrath@ij.org

web: www.ij.org

<http://twitter.com/LegislativeLee>

This message is sent by an attorney. It contains information that may be private, privileged, and confidential. It is intended solely for the use of the individual named in the message. If you are not the intended recipient, please notify the sender and destroy the message.

From: Grant, Peter [mailto:Peter.Grant@legis.wisconsin.gov]

Sent: Wednesday, November 17, 2010 10:39 AM

To: Lee McGrath

Subject: RE: Would you email me a revised copy of Senator Lazich's bill by 1:00 PM today?

By the way, if you recollect our telephone conversation yesterday, I have a related question. On p. 4, line 4, before "The trial..." I am adding this sentence: "If the condemnor's intent in condemning the owner's property is to eliminate blight, the condemnor shall prove by a preponderance of the evidence that the owner's property is blighted property, **as defined in s. 32.03 (6) (a).**" Should we eliminate the material in bold, as we did on p. 2, line

11/18/2010

3?

Peter

From: Lee McGrath [mailto:lmcgrath@ij.org]
Sent: Wednesday, November 17, 2010 10:20 AM
To: Grant, Peter
Cc: Burri, Lance
Subject: Would you email me a revised copy of Senator Lazich's bill by 1:00 PM today?

Dear Peter:

I appreciate greatly your hard and thoughtful work on Senator Lazich's bill.

If possible, it would be great if you would email me a draft of the bill by 1:00 today.

I am meeting with my board tomorrow. I would like to include the Senator's bill in my package of proposals.

Many many thanks

Best regards,
Lee McGrath
Executive Director & Attorney at Law
Institute for Justice Minnesota Chapter
527 Marquette Avenue-Suite 1600
Minneapolis MN 55402-1330
Work: (612) 435-3451
Fax: (612) 435-5875
Cell: (612) 963-0296
Email: lmcgrath@ij.org
web: www.ij.org
<http://twitter.com/LegislativeLee>

This message is sent by an attorney. It contains information that may be private, privileged, and confidential. It is intended solely for the use of the individual named in the message. If you are not the intended recipient, please notify the sender and destroy the message.

11/18/2010