

State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-0275/P1
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SOON

LRB-0275/
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~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

LPS: There is an insert to an insert.

regh.

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

(Attached)

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

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.

****NOTE: 1. Do you want to define "public agency" for the purpose of sub. (1)?
2. Do you want to define "blighted property" for the purpose of sub. (3)?

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 (6). 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

4-4

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 condemnor 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 condemnor 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.
 2. I did not include your second sentence ("For condemnations to remediate blight the condemnor must show by a preponderance of the evidence in circuit court that the condemnor 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 condemnor intends to convey the acquires property to a private entity, and requires the condemnor to make certain findings prior to condemning blighted property that the condemnor 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?~~

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 (3) Please fix comp. → SECTION 8. 32.07 (4) of the statutes is amended to read:
4 (4) 32.07 (4) ^{e (2m) ← (3)} 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.

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

5-7 →

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.

***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?

5-12 →

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

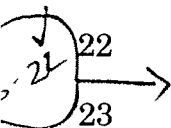
13 66.1311 (3) The provisions of ss. 66.1301 to 66.1329 with respect to the
14 condemnation of real property by a city for a redevelopment corporation prevail over
15 the provisions of any other law are subject to the requirements in ch. 32.

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

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

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^s 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?~~

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:

1-17 →

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).

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

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

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

1 66.1333 (3) (f) An authority is an independent, separate and distinct public
2 body and a body corporate and politic, exercising public powers determined to be
3 necessary by the state to protect and promote the health, safety and morals of its
4 residents, and may take title to real and personal property in its own name. The
5 authority ~~may~~ shall proceed with the acquisition of property by eminent domain
6 under ch. 32, ~~or any other law relating specifically to eminent domain procedures of~~
7 ~~redevelopment authorities.~~

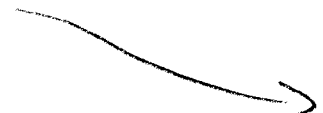
8 **SECTION 18.** 66.1333 (5) (b) 1. of the statutes is amended to read:

9 66.1333 (5) (b) 1. Condemnation proceedings for the acquisition of real property
10 necessary or incidental to a redevelopment project shall be conducted in accordance
11 with ch. 32, ~~or any other law relating specifically to eminent domain procedures of~~
12 ~~redevelopment authorities.~~

13 **SECTION 19.** 66.1333 (5) (c) 1r. of the statutes is amended to read:

14 66.1333 (5) (c) 1r. Condemnation proceedings for the acquisition of blighted
15 property shall be conducted under ch. 32 ~~or under any other law relating specifically~~
16 ~~to eminent domain procedures of authorities.~~ The authority may hold, clear,
17 construct, manage, improve or dispose of the blighted property, for the purpose of
18 eliminating its status as blighted property. Notwithstanding sub. (9), the authority
19 may dispose of the blighted property in any manner. The authority may assist
20 private acquisition, improvement and development of blighted property for the
21 purpose of eliminating its status as blighted property, and for that purpose the
22 authority has all of the duties, rights, powers and privileges given to the authority
23 under this section, as if it had acquired the blighted property.

24 



Section #. 66.1333 (17) of the statutes is amended to read:

66.1333 (17) CONSTRUCTION. This section shall be construed liberally to effectuate its purposes and the enumeration in this section of specific powers does not restrict the meaning of any general grant of power contained in this section or exclude other powers comprehended in the general grant.

History: 1973 c. 172; 1975 c. 4, 94, 350; 1979 c. 89, 110, 221; 1981 c. 20, 112, 232; 1983 a. 24, 189; 1985 a. 219; 1987 a. 27, 403; 1989 a. 31, 89; 1991 a. 316; 1993 a. 16, 112, 172, 184, 268, 301; 1995 a. 27, 225; 1999 a. 9; 1999 a. 150 ss. 441 to 446; Stats. 1999 s. 66.1333; 1999 a. 185 s. 58; 2001 a. 30; 2003 a. 43, 320; 2005 a. 453; 2007 a. 96; 2009 a. 28, 95.

No
FF

This subsection does not apply to
subs. (3)(f), (5)(A) 3., (b) 1., and
(c) 1r., and (6)(b) 3 0

Section #. 66.1337 (5) of the statutes is amended to read:

66.1337 (5) GENERAL POWERS CONFERRED UPON MUNICIPALITIES. The governing body of a municipality has all powers necessary and incidental to effect a program of urban renewal, including functions with respect to rehabilitation and conservation for the restoration and removal of blighted, deteriorated or deteriorating areas, and the local governing body may adopt resolutions or ordinances for the purpose of carrying out that program and the objectives and purposes of this section. In connection with the planning, undertaking and financing of the urban renewal program or projects, the governing body of any municipality and all public officers, agencies and bodies have all the rights, powers, privileges and immunities which they have with respect to a redevelopment project under s. 66.1331.

History: 1975 c. 311; 1977 c. 187; 1979 c. 89; 1983 a. 219; 1991 a. 316; 1993 a. 27; 1995 a. 225; 1997 a. 35; 1999 a. 150 s. 452; Stats. 1999 s. 66.1337.

The acquisition of property by condemnation
is subject to the requirements in
cho 320

INITIAL APPLICABILITY

- In the component bar:
 For the action phrase, execute: create → action: → *NS: → inappl
 For the budget action phrase, execute: create → action: → *NS: → 93XX
 For the text, execute: create → text: → *NS: → inappl
- Nonstatutory subunits are numbered automatically. Fill in the Section # or subsection # only if a "frozen" number is needed. Below, for the budget, fill in the 9300 department code.

SECTION # **[93** **]**. **Initial applicability;**

(#1) ()

The treatment of sections ..

of the statutes

first applies to

- In the component bar:
 For the action phrase, execute: create → action: → *NS: → inappl
 For the text, execute: create → text: → *NS: → inapplA
- Nonstatutory subunits are numbered automatically. Fill in the Section # or subsection # only if a "frozen" number is needed.

SECTION # . **Initial applicability;**

(#1) ()

This act first

applies to *condemnation proceedings commenced on the effective date of this subsection.* @

(END)

Analysis

① This bill makes a number of changes to the laws governing condemnation in general, and to the condemnation of blighted property in particular, including the following:

① 1. ^(A) This bill provides that property may be condemned only for the following public uses:

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

① (b) The establishment or operation of a public utility.

① (c) The elimination of blighted property.

② 2. Current law provides that ^{in general,} ~~property~~ ^{property} that is not blighted may not be condemned if the condemnor intends to convey the property to a private entity. This bill narrows the meaning of blighted property, ^{thus} expanding the scope of the prohibition. The bill also requires a condemnor who intends to convey ~~the~~ ~~condemned~~ ^{written} property to a private entity to make additional findings before commencing the condemnation. The condemnor must find that the property has been cited for one or more violations of state or local building codes; that the violations have not been remedied despite at least two notices to do so, and that the cost of remedying the violations is ^{equal to} more than [↓] one-half the ~~market~~ ~~current~~ assessed value of the property, excluding the value of the land.

(9) 3. Currently, a municipality may use a special procedure to condemn blighted residential property. The special procedure is somewhat streamlined, allows such condemnations to occur more quickly. This bill eliminates the special procedure and also requires all condemnations by a housing authority, redevelopment authority, or community development authority to be conducted using the regular procedure.

(9) 4. The bill specifies that whenever a property owner wishes to contest the right of a condemner to condemn his or her property in court, failure to raise specific objections before receiving the condemner's jurisdictional offer does not preclude the owner's claim. The bill also provides that in an action to contest the right of a

condemnor to condemn ^{the owner's} property; if the
condemnor's intent is to eliminate blight,[^]
the condemnor must prove by a preponderance
of the evidence that the owner's property is
blighted property.

④ s. ^{Currently} in most condemnation proceedings,[^]
the condemnor determines the necessity of
the taking. ^{In certain instances involving} ~~the~~ public utilities,[^] the Public
Service Commission (PSC) must issue a certificate of
public convenience and necessity,[^] which
constitutes the determination of the necessity of
the taking. ^{This bill provides that in all}
cases except those in which a certificate
of public convenience and necessity suffices,[^]
a judge must determine the necessity of the
taking,[^] which must be established by a

preponderance of the evidences. The bill also
 provides that the determination by the
PSC of the necessity of taking an
 undeveloped water power site is
 conclusive only if it is not arbitrary or
 unreasonable.

④ 6. Current law allows a ^{first} class
 city (currently, only the city of Milwaukee) to
 use an alternative procedure to condemn

property ~~for certain enumerated purposes. This~~
~~bill eliminates the list of purposes, allowing~~
~~the city of Milwaukee to use the alternative~~

~~procedure for any lawful purpose. This bill also~~
~~requires ^{laws governing the} that the alternative procedure ~~are to~~~~
~~be strictly construed.~~ Current law requires ^{that} the
 laws governing the alternative procedure
 be ^{construed} liberally ^{to} provide the city

with the largest possible power ~~(circled)~~ ✓

⑨ 7. The bill narrows the definition of "blighted area" and "blighted property" for condemnations conducted by redevelopment authorities and eliminates the provision ~~that~~ requiring that the grant of eminent domain authority to redevelopment authorities and the procedures governing such condemnations be liberally construed. ③

FE - SL ✓

✓ This bill requires that the laws governing the alternative procedure be strictly construed. ③

(A)

(Not)

Under current law, an entity vested with the power of eminent domain may acquire property by condemnation for any public purpose. Although certain condemnations are limited to certain purposes. For example

4-4

No 99

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

defined in s. 32.03(6) 1990

Connect with scored text immediately preceding.

5-7

Section #. 32.51 (1) (intro.) of the statutes is renumbered 32.51(1) and amended to read:

32.51 (1) PURPOSES. (intro.) ~~In addition to the powers granted under subch. I, any city may condemn or otherwise acquire~~ property under this subchapter for: the purposes

History: 1983 a. 236, 538, 1995 a. 378

specified in s0 3200150

SEC. # RP, 32.51 (1) (a) to (g) ✓

5-12:1

Section #. 66.1201 (10) ^(u) of the statutes is amended to read:

66.1201 (10) ~~EMINENT DOMAIN~~ (a) The authority may acquire by eminent domain any real property, including fixtures and improvements, which it deems necessary to carry out the purposes of ss. 66.1201 to 66.1211 after the adoption by it of a resolution declaring that the acquisition of the property described in the resolution is in the public interest and necessary for public use. The authority ^{shall} ~~may~~ exercise the power of eminent domain pursuant to ch. 32 ~~or pursuant to any other applicable~~ ^{statutory provisions.}

~~(b) At any time at or after the filing for condemnation, and before the entry of final judgment, the authority may file with the clerk of the court in which the petition is filed a declaration of taking signed by the duly authorized officer or agent of the authority declaring that all or any part of the property described in the petition is to be taken for the use of the authority. The declaration of taking is sufficient if it sets forth all of the following:~~

- ~~1. A description of the property.~~
- ~~2. A statement of the estate or interest in the property being taken.~~
- ~~3. A statement of the sum of money estimated by the authority to be just compensation for the property taken, which sum shall be not less than the last assessed valuation for tax purposes of the estate or interest in the property to be taken.~~

~~(c) From the filing of the declaration of taking under par. (b) and the deposit in court of the amount of the estimated compensation stated in the declaration, title to the property specified in the declaration vests in the authority and the property is condemned and taken for the use of the authority and the right to just compensation for the property vests in the persons entitled to the compensation. Upon the filing of the declaration of taking the court shall designate a day not exceeding 30 days after the filing, except upon good cause shown, on which the person in possession shall surrender possession to the authority.~~

5-12:2

SEC. # RP, 66.1201 (10) (b) to (g)

6-22:1

Section #. 66.1327 (1) of the statutes is amended to read:

66.1309 and
ss. 66.1313 to

66.1327 (1) Sections 66.1301 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.

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

6-22:2

Section #. 66.1331 (2) of the statutes is amended to read:

66.1331 (2) FINDINGS AND DECLARATION OF NECESSITY. It is found and declared that there have existed and continue to exist in cities within the state, ~~substandard, insanitary, deteriorated, slum and~~ blighted areas which constitute a serious and growing menace, injurious and inimical to the public health, safety, morals and welfare of the residents of the state. The existence of these areas contributes substantially and increasingly to the spread of disease and crime (necessitating excessive and disproportionate expenditures of public funds for the preservation of the public health and safety, for crime prevention, correction, prosecution, punishment, and the treatment of juvenile delinquency and for the maintenance of adequate police, fire and accident protection, and other public services and facilities), constitutes an economic and social liability, substantially impairs or arrests the sound growth of cities, and retards the provision of housing accommodations. This menace is beyond remedy and control solely by regulatory process in the exercise of the police power and cannot be dealt with effectively by the ordinary operations of private enterprise without the aids provided in this section. The acquisition of property for the purpose of eliminating ~~substandard, insanitary, deteriorated, slum or blighted~~ conditions or preventing recurrence of these conditions in ~~the area, the removal of structures and improvement of sites,~~ ^{areas} the disposition of the property for redevelopment incidental to ~~these activities,~~ ^{this activity} and any assistance which may be given by cities or any other public bodies, are public uses and purposes for which public money may be expended and the power of eminent domain exercised. The necessity in the public interest for the provisions of this section is declared as a matter of legislative determination.

History: 1975 c. 94, 311; 1981 c. 112; 1983 a. 24; 1983 a. 189 ss. 58, 329 (7); 1983 a. 207 s. 95; 1991 a. 156, 316; 1993 a. 112, 184, 213; 1995 a. 225; 1999 a. 150 ss. 297, 434 to 440; Stats. 1999 s. 66.1331; 2001 a. 30, 103; 2009 a. 95.

7-17

Section #. 66.1331 (15) of the statutes is amended to read:

66.1331 (15) CONSTRUCTION. This section shall be construed liberally to effectuate its purposes and the enumeration in this section of specific powers does not restrict the meaning of any general grant of power contained in this section or to exclude other powers comprehended in the general grant.

History: 1975 c. 94, 311; 1981 c. 112; 1983 a. 24; 1983 a. 189 ss. 58, 329 (7); 1983 a. 207 s. 95; 1991 a. 156, 316; 1993 a. 112, 184, 213; 1995 a. 225; 1999 a. 150 ss. 297, 434 to 440; Stats. 1999 s. 66.1331; 2001 a. 30, 103; 2009 a. 95.

NOT

This subsection does not apply to subs. (2) and
~~sub~~ (4)(a) 3.

Grant, Peter

From: Lee McGrath [lmcgrath@ij.org]
Sent: Wednesday, December 01, 2010 3:26 PM
To: Burri, Lance
Cc: Grant, Peter; Jason Adkins
Subject: Draft of Senator Lazich's blight/ eminent domain reform legislation
Lance:

The draft legislation looks terrific.

I have the following two suggestions for you and Peter to consider. Both relate to changing parts of the statute that address a judge interpreting Wisconsin's condemnation law using strict statutory construction. (In other words, if a court is uncertain about what a statute means, the court will interpret it in favor of the property owner and against the condemnor.)

1. Page 8 line 8: I think we should change it:
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2. Page 12 line 16. I could not ~~track~~ these cites back to the statute. Could you? May be something is missing or it could be presented ~~more clearly~~.

I welcome your thoughts.

Once again, you and Peter have done a great job.

This is fun!!!

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
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Grant, Peter

From: Lee McGrath [lmcgrath@ij.org]
Sent: Thursday, December 02, 2010 2:04 PM
To: Grant, Peter
Cc: Burri, Lance
Subject: RE: Page 12 Line 16

OK. I get it. Thanks.

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From: Grant, Peter [mailto:Peter.Grant@legis.wisconsin.gov]
Sent: Thursday, December 02, 2010 1:06 PM
To: Lee McGrath
Cc: Burri, Lance
Subject: RE: Page 12 Line 16

Hi Lee,

Below I've addressed the three citations that you identify as problematic:

- Sec.66.1333 (5) (a) 3. is not affected by the draft, but it's in the statutes:

66.1333(5)(a)3. Within the boundaries of the city, acquire by purchase, lease, eminent domain, or otherwise, any real or personal property or any interest in the property, together with any improvements on the property, necessary or incidental to a redevelopment or urban renewal project; hold, improve, clear or prepare for redevelopment or urban renewal any of the property; sell, lease, subdivide, retain or make available the property for the city's use; mortgage or otherwise encumber or dispose of any of the property or any interest in the property; enter into contracts with redevelopers of property containing covenants, restrictions and conditions regarding the use of the property in accordance with a redevelopment or urban renewal plan, and other covenants, restrictions and conditions that the authority considers necessary to prevent a recurrence of blighted areas or to effectuate the purposes of this section; make any restrictions, conditions or covenants running with the land and provide appropriate remedies for their breach; arrange or contract for the furnishing of services, privileges, works or facilities for, or in connection with a project; temporarily operate and maintain real property acquired by it in a project area for or in connection with a project pending the disposition of the property for uses and purposes that may be deemed desirable even though not in conformity with the redevelopment plan for the area; within the boundaries of the city, enter into any building or property in any project area in order to make inspections, surveys, appraisals, soundings or test borings, and obtain a court order for this

purpose if entry is denied or resisted; own and hold property and insure or provide for the insurance of any real or personal property or any of its operations against any risks or hazards, including paying premiums on any insurance; invest any project funds held in reserves or sinking funds or the funds not required for immediate disbursement in property or securities in which savings banks may legally invest funds subject to their control; redeem its bonds issued under this section at the redemption price established in the bonds or purchase the bonds at less than redemption price, all bonds so redeemed or purchased to be canceled; develop, test and report methods and techniques, and carry out demonstrations and other activities, for the prevention and elimination of slums and blight; and disseminate blight elimination, slum clearance and urban renewal information.

- Sec. 66.1333 (5) (b) 1. is in fact listed on page 12, line 16. Below I've bolded and underlined it. It's a little confusing, but this is the way we cite statutory strings:

apply to subs. (3) (f), **(5)** (a) 3., **(b) 1.**, and (c) 1r., and (6) (b) 3.

- Sec. 66.1333 (6) (b) 3. is not affected in the draft, but it's in the statutes:

66.1333(6)(b)3. Approval of a redevelopment plan of a project area by the authority, which may be given only after a public hearing conducted by the authority and a finding by the authority that the plan is feasible and in conformity with the general plan of the city. Notice of the hearing, describing the time, date, place and purpose of the hearing and generally identifying the project area, shall be published as a class 2 notice, under ch. 985, the last insertion to be at least 10 days before the date set for the hearing. At least 20 days before the date set for the hearing on the proposed redevelopment plan of the project area a notice shall be transmitted by certified mail, with return receipt requested, to each owner of real property of record within the boundaries of the redevelopment plan. If transmission of the notice by certified mail with return receipt requested cannot be accomplished, or if the letter is returned undelivered, then notice may be given by posting the notice at least 10 days before the date of hearing on any structure located on the property or, if the property consists of vacant land, a notice may be posted in some suitable and conspicuous place on the land. The notice shall state the time and place at which the hearing will be held with respect to the redevelopment plan and that the owner's property might be taken for urban renewal. For the purpose of ascertaining the name of the owner of record of the real property within the project boundaries, the records, at the time of the approval by the redevelopment authority of the project boundaries, of the register of deeds of the county in which the property is located are conclusive. Failure to receive the notice does not invalidate the plan. An affidavit of mailing or posting of the notice filed as a part of the records of the authority is prima facie evidence of the giving of notice. All interested parties shall be afforded a full opportunity to express their views on the proposed plan at the public hearing, but the hearing shall only be for the purpose of assisting the authority in making its determination and in submitting its report to the local legislative body. Any technical omission in the procedure outlined in this subdivision does not invalidate the plan. Any owner of property included within the boundaries of the redevelopment plan who objects to the plan shall state the owner's objections and the reasons for objecting, in writing, and file the s document with the authority before the public hearing, at the time of the public hearing, or within 15 days after the hearing. The owner shall state his or her mailing address and sign his or her name. The filing of objections in writing is a condition precedent to the commencement of an action to contest the right of the redevelopment authority to condemn the property under s. 32.06 (5).

Let me know if this helps..

Take care,

Peter .

From: Lee McGrath [mailto:lmcgrath@ij.org]
Sent: Thursday, December 02, 2010 12:10 PM
To: Grant, Peter

12/2/2010

Cc: Burri, Lance
Subject: Page 12 Line 16

Peter:

Thanks for the email below.

Let me address the points in your email one by one.

- I now see (3) (f). Thank you.
- I cannot find (5) (a) 3 in the text of the statute or in our changes to (5). It is listed on Page 12 Line 16. I suspect it should be deleted from Page 12 Line 16.
- Further to your email below, I now see 5(b) 1 in the text of our changes to (5) but it is not listed on Page 12 Line 16. I suspect it should be added to Page 12 Line 16
- I now see (5) (c) (1r). Thank you.
- I cannot find (6) (b) 3 in the text of the statute or in our changes. It is listed on Page 12 Line 16. I suspect it should be deleted from Page 12 Line 16.

Does this make sense?

Many thanks, my friend

Best regards,
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From: Grant, Peter [mailto:Peter.Grant@legis.wisconsin.gov]
Sent: Thursday, December 02, 2010 8:14 AM
To: Lee McGrath; Burri, Lance
Cc: Jason Adkins
Subject: RE: Draft of Senator Lazich's blight/ eminent domain reform legislation

I checked them, Lee, and they seem OK. (Note that three of them, (3) (f), (5) (b) 1., and (5) (c) 1r., are amended in the draft.) Are there others you'd like to add?

Peter

From: Lee McGrath [mailto:lmcgrath@ij.org]
Sent: Wednesday, December 01, 2010 4:38 PM
To: Grant, Peter; Burri, Lance
Cc: Jason Adkins
Subject: RE: Draft of Senator Lazich's blight/ eminent domain reform legislation

12/2/2010

Peter:

Thanks for making the change to item 1.

Regarding item 2, I agree with you about what we are conceptually trying to do. We are identifying parts that are to be construed strictly. I think the problem is that the references are wrong or incomplete. Would you kindly check those?

Many thanks, my friend.

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From: Grant, Peter [<mailto:Peter.Grant@legis.wisconsin.gov>]
Sent: Wednesday, December 01, 2010 4:19 PM
To: Lee McGrath; Burri, Lance
Cc: Jason Adkins
Subject: RE: Draft of Senator Lazich's blight/eminent domain reform legislation

Hi Lee,

Regarding item 1, I understand and will make the change that you suggest.

Regarding the 2nd item, I don't understand what you mean. The first sentence (p. 12, lines 12 to 15) says that s. 66.1333 shall be construed liberally. The second, added sentence, states that the first sentence does not apply to certain specified parts of s. 66.1333; i.e., the specified parts are not to be construed liberally. Is the problem that I have identified the wrong parts?

Peter

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Sent: Wednesday, December 01, 2010 3:26 PM
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12/2/2010

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Grant, Peter

From: Lee McGrath [lmcgrath@ij.org]
Sent: Thursday, December 02, 2010 2:55 PM
To: Grant, Peter
Subject: RE: Section 32.015 Page 3 Line 5

Yes and Yes.

Many thanks

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From: Grant, Peter [mailto:Peter.Grant@legis.wisconsin.gov]
Sent: Thursday, December 02, 2010 2:54 PM
To: Lee McGrath
Subject: RE: Section 32.015 Page 3 Line 5

I think that's better. I still don't know how a public agency may be said to enjoy property, but if you're comfortable with it, I'm OK with it.

Is it OK if I reword the intro to that section (p. 3, lines 3 and 4) so that it reads "...property may be acquired by condemnation only for the following public uses:"? I think it's a little easier to read without two negatives ("...*may not be* acquired by condemnation *other than for*...").

Peter

From: Lee McGrath [mailto:lmcgrath@ij.org]
Sent: Thursday, December 02, 2010 2:36 PM
To: Grant, Peter
Subject: RE: Section 32.015 Page 3 Line 5

Peter:

Yes. You and I both want Hudson to keep the property and NOT sell it to the Vikings if Hudson took the property by eminent domain.

I think your suggestion moves the discussion forward. How about this:

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

12/2/2010

You are right about how blight remediation is a purpose and not a use. Over a beer, we can discuss the evolution of eminent domain law including *Berman v. Parker*, 348 U.S. 26 (1954)

Because the case law is so clear, I think we can leave it unmentioned. But you are right that once a city condemns a blighted property and it is remediated the city can sell the property to a developer. The City does not have to keep it forever.

Go man go!

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

Sent: Thursday, December 02, 2010 1:50 PM

To: Lee McGrath

Subject: RE: Section 32.015 Page 3 Line 5

Lee, I don't think that's right. In your example, if Hudson sells the property to the Vikings, Hudson no longer owns, occupies, possesses, or enjoys the property. Therefore, Hudson has violated the provision. I think that under the the bill, it's not sufficient for Hudson to own, occupy, possess, and enjoy the property *temporarily*. It has to *continue* to own, possess, occupy and enjoy. If temporary ownership (etc.) were sufficient, then keeping the "and" isn't going to help. Hudson could simply own, occupy, possess, and enjoy the property temporarily. And *then* sell the property to the Vikings.

As written, the provision requires one of two things:

1. The general public must possess, occupy, own, and enjoy the property; or
2. A public agency must possess, occupy, own, and enjoy the property.

Here's my problem: I understand how the general public may enjoy property, such as a park or a road. But I don't understand how the general public may *possess, occupy, or own* property. Doesn't a public agency possess, occupy, or own property *on behalf of* the public? By the same token, I don't see how a public agency may *enjoy* property.

I suggest that sub. (1) be broken up into two subsections, as follows:

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

Does that make sense?

Another question, which perhaps you would rather this draft not address, is this: If a condemnor acquires property to eliminate blight, which is allowed under sub. (3), may the property then be used *only* under sub. (1) or (2)? Or can it be then be used for some other purpose? (I think the root of this question goes back to my question a couple of weeks ago, when I pointed out that sub. (3) is a purpose, not a use.)

Peter

From: Lee McGrath [mailto:lmcgrath@ij.org]
Sent: Thursday, December 02, 2010 12:33 PM
To: Grant, Peter
Subject: Section 32.015 Page 3 Line 5

Peter:

Thanks for the email below.

No, the government has to own and use the property for its own use or the use of the general public.

If we use the word "or," the City of Hudson, Wisconsin could condemn private land and sell it to the Vikings for the Vikings to own. "Or" allows the Vikings to own it.

That would be wrong on many levels. For our concerns here, the government must do all four things.

How does that sound to you?

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Sent: Thursday, December 02, 2010 11:35 AM
To: Lee McGrath
Subject: RE: Draft of Senator Lazich's blight/ eminent domain reform legislation

Lee, on p. 1, line 5, shouldn't "and" be "or"? In other words, aren't any of those uses sufficient; e.g., isn't occupation sufficient without ownership?

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Sent: Wednesday, December 01, 2010 4:38 PM
To: Grant, Peter; Burri, Lance
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