




Planning and Development Services Division

Historic Preservation Office

7447 East Indian School Road

Scottsdale, Arizona 85251

Historic Preservation Commission Meeting Memorandum

Item No. 4
Topic: Private Property Rights Protection Act (a.k.a. Proposition 207)
Action Requested: This is a non-action item. Staff will provide information to and answer questions from the HPC regarding the Private Property Rights Protection Act.
Meeting Date: January 3, 2019
From: Steve Venker, Historic Preservation Officer 

Background

The Private Property Rights Protection Act was placed on the November 2006 ballot as Proposition 207. Funded entirely from outside Arizona, by a New York libertarian real estate developer.

There have been a few lawsuits based on Arizona Revised Statutes, Title 12 - Courts and Civil Proceedings, Chapter 8 Special Actions and Proceedings Relating to Property, Article 2.1 Private Property Rights Protection Act.

1. Turner v. City of Flagstaff 2007: Flagstaff firefighter purchased his home with the intent of adding guest quarters. Historic district overlay prevented him from executing on his plans. The lawsuit was dismissed due to the applicable statutes of limitations.
2. Tucson developer sued the City of Tucson 2008: The developer alleged a \$12.5 million loss of property value. The developer had planned to rear down more than a dozen potentially historic properties and build dormitories for University of Arizona students.
3. Sedona Grand, LLC v. City of Sedona 2012: Property owners filed complaint against the City of Sedona, alleging that an ordinance prohibiting short-term rentals amounted to condemnation under the Private Property Rights Protection Act.

Discussion / Possible Direction

Joe Padilla, Deputy City Attorney, will provide information to and answer questions from the HPC regarding the Private Property Rights Protection Act.

Attachment:

1. Arizona Revised Statutes, Title 12 - Courts and Civil Proceedings, Chapter 8 Special Actions and Proceedings Relating to Property, Article 2.1 Private Property Rights Protection Act

Arizona Revised Statutes

Title 12 - Courts and Civil Proceedings

Chapter 8 Special Actions and Proceedings Relating to Property

Article 2.1 Private Property Rights Protection Act

(a.k.a. Proposition 207)

12-1131 Property may be taken only for public use consistent with this article

Eminent domain may be exercised only if the use of eminent domain is authorized by this state, whether by statute or otherwise, and for a public use as defined by this article.

12-1132 Burden of proof

- A. In all eminent domain actions the judiciary shall comply with the state constitution's mandate that whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such without regard to any legislative assertion that the use is public.
- B. In any eminent domain action for the purpose of slum clearance and redevelopment, this state or a political subdivision of this state shall establish by clear and convincing evidence that each parcel is necessary to eliminate a direct threat to public health or safety caused by the property in its current condition, including the removal of structures that are beyond repair or unfit for human habitation or use, or to acquire abandoned property and that no reasonable alternative to condemnation exists.

12-1133 Just compensation; slum clearance and redevelopment

In any eminent domain action for the purpose of slum clearance and redevelopment, if private property consisting of an individual's principal residence is taken, the occupants shall be provided a comparable replacement dwelling that is decent, safe, and sanitary as defined in the state and federal relocation laws, section 11-961 et seq. and 42 USC 4601 et seq., and the regulations promulgated thereunder. At the owner's election, if monetary compensation is desired in lieu of a replacement dwelling, the amount of just compensation that is made and determined for that taking shall not be less than the sum of money that would be necessary to purchase a comparable replacement dwelling that is decent, safe, and sanitary as defined in the state and federal relocation laws and regulations.

12-1134 Diminution in value; just compensation

- A. If the existing rights to use, divide, sell or possess private real property are reduced by the enactment or applicability of any land use law enacted after the date the property is transferred to the owner and such action reduces the fair market value of the property the owner is entitled to just compensation from this state or the political subdivision of this state that enacted the land use law.
- B. This section does not apply to land use laws that:
 - 1. Limit or prohibit a use or division of real property for the protection of the public's health and safety, including rules and regulations relating to fire and building codes, health and sanitation, transportation or traffic control, solid or hazardous waste, and pollution control;
 - 2. Limit or prohibit the use or division of real property commonly and historically recognized as a public nuisance under common law;
 - 3. Are required by federal law;

4. Limit or prohibit the use or division of a property for the purpose of housing sex offenders, selling illegal drugs, liquor control, or pornography, obscenity, nude or topless dancing, and other adult oriented businesses if the land use laws are consistent with the constitutions of this state and the United States;
 5. Establish locations for utility facilities;
 6. Do not directly regulate an owner's land; or
 7. Were enacted before the effective date of this section.
- C. This state or the political subdivision of this state that enacted the land use law has the burden of demonstrating that the land use law is exempt pursuant to subsection B.
 - D. The owner shall not be required to first submit a land use application to remove, modify, vary or otherwise alter the application of the land use law to the owner's property as a prerequisite to demanding or receiving just compensation pursuant to this section.
 - E. If a land use law continues to apply to private real property more than ninety days after the owner of the property makes a written demand in a specific amount for just compensation to this state or the political subdivision of this state that enacted the land use law, the owner has a cause of action for just compensation in a court in the county in which the property is located, unless this state or political subdivision of this state and the owner reach an agreement on the amount of just compensation to be paid, or unless this state or political subdivision of this state amends, repeals, or issues to the landowner a binding waiver of enforcement of the land use law on the owner's specific parcel.
 - F. Any demand for landowner relief or any waiver that is granted in lieu of compensation runs with the land.
 - G. An action for just compensation based on diminution in value must be made or forever barred within three years of the effective date of the land use law, or of the first date the reduction of the existing rights to use, divide, sell or possess property applies to the owner's parcel, whichever is later.
 - H. The remedy created by this section is in addition to any other remedy that is provided by the laws and constitution of this state or the United States and is not intended to modify or replace any other remedy.
 - I. Nothing in this section prohibits this state or any political subdivision of this state from reaching an agreement with a private property owner to waive a claim for diminution in value regarding any proposed action by this state or a political subdivision of this state or action requested by the property owner.

12-1135 Attorney fees and costs

- A. A property owner is not liable to this state or any political subdivision of this state for attorney fees or costs in any eminent domain action or in any action for diminution in value.
- B. A property owner shall be awarded reasonable attorney fees, costs and expenses in every eminent domain action in which the taking is found to be not for a public use.
- C. In any eminent domain action for the purpose of slum clearance and redevelopment, a property owner shall be awarded reasonable attorney fees in every case in which the final amount offered by the municipality was less than the amount ascertained by a jury or the court if a jury is waived by the property owner.
- D. A prevailing plaintiff in an action for just compensation that is based on diminution in value pursuant to section 12-1134 may be awarded costs, expenses and reasonable attorney fees.

12-1136 Definitions

In this article, unless the context otherwise requires:

1. "Fair market value" means the most likely price estimated in terms of money which the land would bring if exposed for sale in the open market, with reasonable time allowed in which to find a purchaser, buying with knowledge of all the uses and purposes to which it is adapted and for which it is capable.
2. "Just compensation" for purposes of an action for diminution in value means the sum of money that is equal to the reduction in fair market value of the property resulting from the enactment of the land use law as of the date of enactment of the land use law.
3. "Land use law" means any statute, rule, ordinance, resolution or law enacted by this state or a political subdivision of this state that regulates the use or division of land or any interest in land or that regulates accepted farming or forestry practices.
4. "Owner" means the holder of fee title to the subject real property.
5. "Public use":
 - (a) Means any of the following:
 - (i) The possession, occupation, and enjoyment of the land by the general public, or by public agencies;
 - (ii) The use of land for the creation or functioning of utilities;
 - (iii) The acquisition of property to eliminate a direct threat to public health or safety caused by the property in its current condition, including the removal of a structure that is beyond repair or unfit for human habitation or use; or
 - (iv) The acquisition of abandoned property.
 - (b) Does not include the public benefits of economic development, including an increase in tax base, tax revenues, employment or general economic health.
6. "Taken" and "taking" mean the transfer of ownership or use from a private property owner to this state or a political subdivision of this state or to any person other than this state or a political subdivision of this state.

12-1137 Applicability

If a conflict between this article and any other law arises, this article controls.

12-1138 Severability

If any provision of this act or its application to any person or circumstance is held invalid that invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.