

FCO 2006- VIII

An Ordinance Regarding Eminent Domain

(September 5, 2006)

WHEREAS, the Board of Commissioners of the County of Floyd, State of Indiana (the Board) is the legislative body having jurisdiction over Floyd County outside of the corporate limits of the civil cities and towns within Floyd County, and

WHEREAS, throughout history it has been deemed reasonable, necessary and even good in certain circumstances for governments and government agencies to take private property for public use without the consent of, or even against the will of, the owner in service of the greater good and to benefit the community as a whole by exercise of the government's power of "eminent domain," and

WHEREAS, throughout history governments have abused this power, and

WHEREAS, in response to such abuses the framers of the Bill of Rights to the Constitution of the United States did limit the ability of the federal government to take private property by including within the 5th Amendment to the Constitution the following language:

“... nor shall private property be taken for public use without just compensation.”

- Constitution of the United States, Amendment 5.

and

WHEREAS, the framers of the Bill of Rights to the Constitution of the State of Indiana did limit the ability of the state government to take private property by including within in Section 21 of the Constitution the following language:

“No person's property shall be taken by law without just compensation...”

- Constitution of Indiana, Section 21

and

WHEREAS, the U. S. Supreme Court, in the recent decision in *Kelo v. City of New London*, appears to have held that it does not necessarily violate the U. S. Constitution for

a city and, by extension, a state, county, township or other political subdivision, in the exercise of eminent domain, to take private property for a *private* use as long as it serves a public *good*, and

WHEREAS, the courts of Indiana, interpreting Section 21 of the *Indiana* Constitution, have long held as follows:

“The language of this section (Section 21) has been held to mean not only that compensation must be given ... but also that private property cannot be taken for a private purpose.”

- Continental Enters., Inc v. Cain
[(180 Ind App 106, 387 NE 2nd 86 (1979)]

and

“In this state, private property can be taken only for a public use.”

- Great Western Natural Gas & Oil Co. v. Hawkins et al
[30 Ind. App 577, 66 NE 765 (1903)]

and

WHEREAS, the Board is satisfied that the legislature and the courts of the State of Indiana have laws and mechanisms in place to insure that owners of private property in Floyd County are justly compensated when their private property is taken, and

WHEREAS, the Board is *not* satisfied - in light of *Kelo vs. City of New London* - that the legislature and the courts have laws and mechanisms in place to insure that a proposed taking of private property is truly for a public use,

BE IT THEREFORE ORDAINED AND ESTABLISHED AS FOLLOWS:

Section 1: Effective immediately, in Floyd County, outside of the corporate limits of the civil cities and towns within Floyd County, no private property shall be taken in the exercise of “eminent domain” without first seeking the approval of the Board of Commissioners.

Section 2: No approval shall be given unless and until the Board determines that the proposed taking is primarily for a public use and primarily for the benefit of the public at large.

Section 3: An action may be brought for mandatory or injunctive relief as against any person violating the terms and provisions of this Ordinance, which action shall be brought in the name of Floyd County Indiana or the Floyd County Commissioners as appropriate.

Section 4: In all actions under this Ordinance, Floyd County Indiana and or the Floyd County Commissioners shall be represented by the attorney retained by the Commissioners.

Section 5: Should any term of this ordinance be declared by a court of competent jurisdiction to be unconstitutional or invalid, such determination shall not effect the remainder of this ordinance which shall remain in full force and effect.

SO ORDAINED AND ESTABLISHED THIS 5th day of Sept., 2006.

BOARD OF COMMISSIONERS
OF THE COUNTY OF FLOYD



Charles A. Freiberger, President

John Reisert, Commissioner



Steve Bush, Commissioner



Teresa Plaiss, Auditor