

CUNNINGHAM, VOGEL & ROST, P.C.

legal counselors to local government

2008 CONSTITUTIONAL
INITIATIVE “EMINENT
DOMAIN” PETITIONS – *THE
GATHERING STORM*

Thomas A. Cunningham

July 19, 2008

MMAA Summer Seminar

November 2008:

Imagine...

Your City without:

- **Zoning & Subdivision**
- **Nuisance Regulation**
- **Building & Fire Codes**

November 6, 2008:

**Effective Date for Two
Constitutional Amendments**

Art. I §§ 26, 28 Art. VI § 21

- **Initiative Petitions Approved**
- **Signatures Collected**
- **Filed with Secretary of State**

Potential Effects:

Art. I §26

- **Limit “Police Power” Authority**
 - “Necessary for a Public Use”
 - After “Just Compensation”
- **No Exceptions for Health & Safety, Local Criminal Laws**

Potential Effects:

Art. VI §21

- **Eliminates Redevelopment**
- **Substitutes “Common Law” Nuisance**
 - **Court Determined**
 - **Process Could Require a Year or More for City Action**

Art. I §26:

- “That the power of eminent domain shall be vested in no other than the state, or political subdivisions of the state whose officials are **directly responsible** to elected officials and...”

Art. I §26 cont'd:

“...that private property, or the right to the use, sale or enjoyment of private property, shall not be directly or indirectly taken or damaged **unless** such taking is necessary for a public use and just compensation is rendered...

Art. I §26 cont'd:

“...The value of property may be determined by, but is not limited to, appraisal methods typical to the ordinary course of business and any evidence which would be considered by an appraiser in the ordinary course of business shall be relevant and admissible....”

Art. VI §21:

- “Laws may be enacted...which protect property owners from **public nuisances**, as defined by the **Common Law**. In the event that an owner of property is found by a court of competent jurisdiction to be harboring such a nuisance...

Art. VI §21 cont'd:

“...and has not fully abated the nuisance within a reasonable time **after** final judgment, any political subdivision of the state in which the nuisance exists may expend funds to abate the nuisance...”

Is This Intended?

- Amendments Characterized as “Eminent Domain”
- Ballot Title Language Limited
 - Local Government Costs “could be significant”
 - Individual Claims in Oregon’s Measure 37 topped **\$850,000**

What Is Being Done About It?

- **Legal Challenge(s)**
 - **“Partner Organizations”**
- **MML-sponsored Public Information Campaign**
 - **Speakers Bureau**
 - **Presentations to Officials**
 - **Informational Materials**

What Can You Do About It?

- **Local Government Support**
 - Volunteer Participation
 - Financial Support
 - Spread the Word
 - Other Ideas?
- **The Time Is *Now*....**

CUNNINGHAM, VOGEL & ROST, P.C.

legal counselors to local government

For More Information Visit Our Website:

www.municipalfirm.com

These materials and the related presentation are intended for discussion purposes and to provide those attending the meeting with useful ideas and guidance on the topics and issues covered. The materials and the comments of the presenters do not constitute, and should not be treated as, legal advice regarding the use of any particular technique, device, or suggestion, or its legal advantages or disadvantages. Although we have made every effort to ensure the accuracy of these materials and the presentation, neither the attorneys presenting at this meeting nor Cunningham, Vogel & Rost, P.C. assume any responsibility for any individual's reliance on the written or oral information presented. All rights reserved.

July 19, 2008

MMAA Summer Seminar