

EI-787
RJA

THE GARDNER LAW FIRM

A PROFESSIONAL CORPORATION
745 EAST MULBERRY AVENUE, SUITE 100
SAN ANTONIO, TEXAS 78212-3149

DAVID F. BARTON
WM. RICHARD DAVIS
JAY K. FARWELL
GREGORY M. HUBER
R. WES JOHNSON¹
BRAD L. SKLENCAR²
WILLIAM W. SOMMERS
THOMAS J. WALTHALL, JR.
KEVIN M. WARBURTON

TELEPHONE
(210) 733-8191

TELECOPIER
(210) 733-5538

E-MAIL ADDRESS
gardner@tgllf.com

FD 34284

¹Board Certified-Consumer & Commercial Law
²Board Certified-Labor & Employment Law
Texas Board of Legal Specialization

April 22, 2004

received
4/22/04

Ms. Victoria J. Rutson
Chief of Section of Environmental Analysis
Surface Transportation Board
ATTN: STB Finance Docket No. 34284
1925 K Street, NW
Washington, DC 20423-0001

VIA TELEFAX: (202) 565-9000
& CM-RRR #7001 2510 0002 0226 6031

RE: STB Finance Docket No. 34284 -- Analysis under the National Environmental Policy Act and Endangered Species Act of:

- (1) Vulcan Materials Company's planned Medina County stone quarry; and
- (2) Vulcan Materials Company subsidiary Southwest Gulf Railroad Company's proposed rail line to serve Medina County stone quarry.

Dear Ms. Rutson:

This letter is a further comment by the Medina County Environmental Action Association (MCEAA) regarding the application of the Southwest Gulf Railroad Company's ("SGR") proposed rail line to serve its parent company's, Vulcan Materials Company ("Vulcan"), stone quarry. The purpose of this letter is to bring to your attention the Wall Street Journal, April 22, 2004, Editorial "Let There Be Blight." Attached.

This editorial speaks to the point raised by us in regard to Vulcan's application - following its inability to convince landowners to sell it the property needed for its railroad - to seek acquisition of eminent domain power of condemnation through the application by the SGR to become a common carrier pursuant to the rail regulations. SGR's application for common carrier status for a rail service for which there is no evidence it will ever serve anyone other than Vulcan is no less a sham than the sham blight ordinance application in Norwood, Ohio, which is referenced in the editorial. It is clear the proposed rail line is not a public use consistent with a public necessity. This fact is not merely tangential to the proposed EIS process.

THE GARDNER LAW FIRM

A PROFESSIONAL CORPORATION

Ms. Victoria J. Rutson
Chief of Section of Environmental Analysis
Surface Transportation Board
April 22, 2004
Page -2-

The EIS is "more than a disclosure document. It shall be used by Federal officials in conjunction with other relevant material to plan actions and make decisions." 40 CFR § 1502.1. Allowing the vast power of eminent domain and its potentially adverse impact on the culture and history of a community is inextricably intertwined with the EIS process and the ultimate permitting process.

Very truly yours,

THE GARDNER LAW FIRM
A Professional Corporation


David F. Barton

DFB:cf

Enc.

dfb1/8675.001/NEPA/I-rutson-42204eminent domain

cc: Rini Ghosh, STB-SEA
Surface Transportation Board
ATTN: STB Finance Docket No. 34284
1925 K Street, NW
Washington, DC 20423-0001
(w/enc.)

Let There Be Blight

And, lo, the city fathers looked upon a choice piece of property and declared, "Let there be blight." And there was blight.

And it was good too—at least for the Ohio businessman who wants that land for a \$125 million development, and for the city of Norwood, which wants that developer for the new tax dollars it hopes he'll bring in.

There's just one hitch: A handful of small businesses and homeowners don't want to sell. Earlier this week, with the help of the Washington, D.C.-based Institute for Justice, they took their case to state court, arguing that the designation of their neighborhood under the city's blight ordinance was a sham. It sure didn't help Norwood's case that even the author of the study used by the city to justify that finding conceded in court that it would not be "reasonable" to describe the area as "blighted" or "deteriorated."

Alas, this abuse of eminent domain is part of a larger pattern across America. We've written about some of these cases before, most recently the effort by a California city (rightly thwarted by a federal judge) to condemn land purchased by a church so it could be sold to Costco. Last month in Connecticut, the state's high court narrowly upheld the city of New London's right to transfer its powers of eminent domain to a private corporation for economic development. In New Jersey, owners of ocean-front property in the shore town of Long Branch are fighting city efforts to take their homes and replace them with condos and townhouses.

And yesterday Michigan's Supreme Court reconsidered a controversial 1981 decision—a landmark case in eminent domain law—that saw the blue-collar neighborhood of Poletown

condemned and delivered on a platter to General Motors. Notwithstanding the millions in taxpayer subsidies GM received, and the razing of 1,200 homes, the plant ended up delivering only about half the number of jobs promised.

*Governments find more ways
to take your property.*

Notice anything similar about all these cases? Whereas years ago the "public use"

provision of the Fifth Amendment meant invoking eminent domain for, say, a highway or school, expansive court rulings now allow local politicians to seize private property from Citizen A and hand it over to a Citizen B they believe will prove a better class of taxpayer.

The slippery slope here is obvious. Because businesses will always pay governments more than homeowners (and large businesses will yield more than small), it's no coincidence that governments tend to invoke eminent domain powers on behalf of the rich and politically well-connected at the expense of the mom-and-pop shop or the family that simply wants to keep the home it's lived in for generations.

We grant that in Norwood's case all but a handful of holdouts have agreed to sell their land to the developer. We might even concede that the city, now swimming in red ink, would do better fiscally with the Crate & Barrel it's hoping to entice to the spanking new mall it has planned. But the thing about Constitutional property rights—the reason we have a Fifth Amendment—is that they're not supposed to be hostage to what the majority wants. To the contrary, the Founders wrote the right to property into the Constitution not only to secure a citizen's right to his home and livelihood but to serve as a check on government power.

At the very least, shouldn't the burden be on those who would take the homes and businesses of others rather than on those who want only to keep what's theirs?