

Board limits eminent domain

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Rowan County Board of Commissioners have tentatively approved amendments to its code of ordinances intended to limit its use of eminent domain.

After holding a public hearing Monday, commissioners voted 3-1 to approve the changes, and a second reading will take place at the March 15 meeting. Commissioner Chad Mitchell was unable to attend or vote.

The amendments state that commissioners will not use the power of eminent domain to take property for development of greenways or public trails, or for use in economic development initiatives.

The new text has been written in response to a request for Rowan County's support of a proposed 15-county network of trails. The Carolina Thread Trail would link communities and sites of interest from Iredell County to Lancaster County, S.C., and from Cherokee County to Anson County.

Part of the proposed trail would be made up of existing trails and greenways, while other sections would be new and could require crossing private lands.

In May 2009, Rowan County commissioners unanimously rejected a resolution in support of the Carolina Thread Trail, expressing concerns about the possibility of condemning private property for the trail. In November, it passed a resolution against using the power of eminent domain for those purposes.

Dale Wagstaff, of Salisbury, said during the public hearing that it isn't the trail itself that has gathered opposition.

"I don't know of anybody that I've talked to that is against the greenway itself," Wagstaff said. "What we are against is the methods that can be used, and have been used across this state, in order to get the property necessary for that greenway."

He read excerpts from a greenway plan in the town of Carrboro that allows for government condemnation of private property "when it becomes apparent that obtaining consent for purchase would be difficult."

Salisbury resident Jim Sides, a former commissioner currently running for a seat on the board, also spoke in favor of the ordinance but said commissioners weren't going far enough to restrict eminent domain.

"This particular ordinance is not law," Sides said. "It does not change North Carolina law, and it does not take away from this board of commissioners or any future board of commissioners the right to eminent domain."

The proposed amendments recognize the legal authority granted to local governments by state law to condemn private land for public use, and they do not prohibit the use of that power for other purposes.

"I have been the victim of eminent domain processes twice, and let me tell you, it's a very unfair process," Sides said. "Not only do the ordinances in Rowan County need to be changed and strengthened — much more than what you intend to do tonight — but the eminent domain laws for the state of North Carolina need to be changed."

Commissioner Carl Ford asked County Attorney John Dees if there was a way to add "teeth" to the text.

"This is a step beyond the resolution you adopted, but this is subject to change like any other administrative ordinance," Dees said. "If you want to include additional restrictions, you certainly can."

Ford suggested the commissioners pass the ordinance now and look into expanding it later.

"I'd like to go a bit further," he said.

Commissioner Raymond Coltrain voted against the ordinance. He said that while he would not vote to use eminent domain for a bicycle trail, he doesn't want to rule out using it for economic development.

"If it came down to an industrial site that was going to provide employment for a significant number of people... I don't want to say that I would never do that," Coltrain said. "Therefore, I cannot support this text amendment."

The portion of the text regarding economic development was added in response to the U.S. Supreme Court decision in *Kelo v. City of New London*.

The City of New London, Conn., condemned the property of Susette Kelo and her neighbors to redevelop the land for a business that would bring jobs to the area. After the land was seized and houses destroyed or moved, the expected project never came.

"I think Rowan County is trying to say to our citizens that we're not going to do that kind of thing," said Commissioner Tina Hall.

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