



Eminent Domain Constitutional Amendment
Statement of Position
as adopted December 2, 2011

Virginia Beach Vision has engaged in a measured review of the provisions detailed in House Joint Resolution 693 as passed by the 2011 session of the Virginia General Assembly, that would, upon second passage, authorize a Constitutional amendment expanding the prohibition on the taking of private property for public use. Given the potential impact proposed changes may have on the ability to construct and expand essential public infrastructure including roads, utility and stormwater services in the future, the Virginia Beach Vision Board of Directors encourages the legislature to put the Constitutional amendment on hold and instead address the issues of concern through changes to the Code of Virginia only.

The pending amendment removes the existing authority of the General Assembly to define what constitutes a public use and expands the definition of "just compensation" to include lost profits and lost access, terms that are to be defined at a later time by the legislature and may well result in significant increased claims for damages to adjacent properties. It further requires that compensation include consideration for damages to the residue caused by the taking but does not allow for an offset of those awards resulting from enhancements to the residue. This could result in windfall profits to a property owner at taxpayer expense.

Language to be included in the Constitution would restrict the taking to no more private property "than necessary to achieve the stated public use." This language might prohibit the acquisition of right-of-way necessary to the future expansion or phased improvement of public infrastructure resulting in significantly increased future costs or the inability to acquire necessary properties.

The Virginia General Assembly wisely developed the legislative practice of requiring that a fiscal impact statement be done on legislation that would impact the cost of government. While the proposed Constitutional amendment will impact the cost of developing public infrastructure, no fiscal impact statement has been provided.

A change to the Constitution will make it very difficult, if not practically impossible, to address the type of unintended consequences suggested above. The legislature and the Commonwealth will be better served by putting the desired property rights protections that the Constitutional amendment envisions into the Code of Virginia.

Virginia Beach Vision was founded in 1993 by a small assemblage of prominent business and civic leaders who saw the need for a non-partisan, issue-oriented group to provide private sector leadership that would create a vision and advance initiatives necessary to the City of Virginia Beach and the Hampton Roads region's future development, prosperity and quality of life. Today, Virginia Beach Vision's Board of Directors is comprised of 115 business and community leaders.