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Fulton at center of fight over public powers to take land

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BY [DAVID WICKERT](#) - THE ATLANTA JOURNAL-CONSTITUTION

A recent state appeals court decision could let Fulton County taxpayers off the hook for spending millions of dollars to buy land that county officials say they don't want or need.

But critics say the decision also could leave private property owners statewide at the mercy of governments that abuse their powers to take land for public purposes.

The Court of Appeals of Georgia last month ruled Fulton County was within its rights when it withdrew a condemnation lawsuit against a property owner after a court-appointed special master said the land was worth about \$5.2 million – far more than the county wanted to pay.

The decision voided a lower court ruling that Fulton County would have to buy the land even though it claimed it no longer needed it.

The decision could spare taxpayers the cost of the land. But an attorney for the property owner says it could give governments an unfair advantage in eminent domain cases. It would allow governments to file lawsuits against property owners, then change their minds if a court decision on the value of the property didn't go their way.

Attorney Charles Pursley Jr., who represents Dillard Land Investments, the property owner, said he plans to appeal the court's decision to the Georgia Supreme Court.

"This is the exercise of one of the greatest constitutional powers a government has, to take the property of its citizens," Pursley said. "When the property owner can't just dismiss the result and walk away, and the government can, it puts them in an unequal position."

Fulton County Commission Chairman John Eaves declined to comment in detail about the issue, citing the pending litigation.

"I'm optimistic about our chances," Eaves said of the lawsuit.

Eminent domain has long given governments the power to coerce property owners to sell land for public projects. But state law requires governments to affirm they need the property for a public purpose and requires them to pay just compensation.

Fulton County did that last year when it sought to acquire about 12.5 acres on Hollywood Road for a new west Atlanta library. The county filed a condemnation lawsuit against Dillard Land Investments and asked Superior Court Judge Todd Markle to appoint a special master to determine the value of the property.

In May 2012 the special master set the value at \$5.2 million. Court records indicate that's more than the county thought the property was worth. In a bankruptcy proceeding in 2011 Dillard Land Investments had valued the property at \$3 million.

After the special master's determination, the judge issued an order adopting the price of \$5.2 million. But two days later the county filed a voluntary dismissal of its condemnation lawsuit without prejudice – indicating it could refile the lawsuit.

In court filings, the county argued that the judge entered his order prematurely. It also argued that under state law it could dismiss the lawsuit because it had not yet paid the owner and never obtained title to or possession of the property.

Dillard Land Investments claimed the special master's award and the judge's final order ended the case, and the county should pay up. The owner also claimed Fulton County's attempt to dismiss the case contradicted

its own pledge that the property was needed for the new library.

Pursley said the county could have appealed the special master’s value but did not. He said dismissing the case after the award and judge’s order is not allowed under state law.

Markle agreed with Pursley. But earlier this month the Court of Appeals sided with the county.

If that decision stands, it would save Fulton taxpayers money. Earlier this year the county bought a nearby parcel for the west Atlanta library for \$1.5 million. It says it doesn’t need the Hollywood Road property.

The case also could clarify when governments can and can’t withdraw a condemnation lawsuit when a special master determines a fair price.

“Government entities must know the parameters of when and how they can elect to abandon or dismiss condemnation proceedings because vast amounts of taxpayer dollars are at stake,” the county argued to the Court of Appeals.

J.D. Van Brink, chairman of the Georgia Tea Party, said the Court of Appeals decision appears to be “a very one-sided ruling that favors the county over property owners.” He said state lawmakers may need to clarify the issue with legislation.

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