

No. 666, S.]

[Published September 10, 1959.

CHAPTER 410

AN ACT to amend 32.07 (1) and (2), as amended by chapter 3, laws of the special session of 1958, 66.431 (3) (f), (5) (b), (6) (e) and (7) (a), as created by chapter 3, laws of the special session of 1958, of the statutes, relating to eminent domain and blight elimination and slum clearance to clarify eminent domain procedures of a redevelopment authority.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 32.07 (1) of the statutes is amended to read:

32.07 (1) If the application * * * is by a municipal corporation, or by a redevelopment authority created under s. 66.431, the filing of the petition under s. 32.04 shall be deemed the commencement of an action for the determination of the necessity of the taking. Within 20 days after the service of notice, * * * of the filing of such petition, any person owning or interested in any property proposed to be condemned, may serve and file an answer. After the expiration of the time for answering, the action may be brought on for hearing on a 3 days' notice to all parties who have answered and shall have precedence over all other matters not on trial. The court shall thereupon impanel a jury and the question of the necessity of the taking shall thereupon be tried as a question of fact. Juries shall be obtained in the manner provided for circuit courts * * *. If no answer to the petition is interposed the trial by jury shall proceed ex parte. The costs in such proceedings shall be paid by the municipality, or the redevelopment authority, as the case may be. The court may, in its discretion, submit to a single jury the determination of such necessity as to one or

more than one or all of the parcels of land sought to be taken for the same purpose, or for one or more streets or alleys. If the jury find that the taking of such lands is not necessary the owner thereof shall recover * * * his necessary disbursements and taxable costs not to exceed \$25.

SECTION 2. 32.07 (2) of the statutes, as amended by chapter 3, laws of the special session of 1958, is amended to read:

32.07 (2) If the application is by a town or county, or by a board, commission, *the state department of public welfare*, public officer or housing authority created under ss. 66.40 to 66.404 * * *; or for the right of way for a railroad or a street or interurban railway up to 100 feet in width, or a telegraph, telephone or electric line; or for the right of way for a gas-pipe line, main or service; or for easements for the construction of any elevated structure or subway for railroad, street or interurban railway purposes, the petitioner shall determine the necessity.

SECTION 3. 66.431 (3) (f), (5) (b), (6) (e) and (7) (a) of the statutes, as created by chapter 3, laws of the special session of 1958, are amended to read:

66.431 (3) (f) In carrying out this section, the authority is deemed an independent, separate and distinct public body and a body corporate and politic, exercising public powers determined to be necessary by the state to protect and promote the health, safety and morals of its residents, and is authorized to take title to real and personal property in its own name; and * * * *such authority shall proceed with the acquisition of property by eminent domain under ch. 32.*

(5) (b) Condemnation proceedings for the acquisition of real property necessary or incidental to a redevelopment project shall be conducted in accordance with ch. 32 * * *.

(6) (e) After a project area redevelopment plan of a project area has been adopted by the authority * * *, and the local legislative body has by a two-thirds vote approved the redevelopment plan the authority may at any time certify said plan to the local legislative body, whereupon the authority shall proceed to exercise the powers granted to it for the acquisition and assembly of the real property of the area. The local legislative body shall upon the certification of such plan by the authority direct that no new construction shall be permitted, and thereafter no new construction shall be authorized by any agencies, boards or commissions of the city in such area unless as authorized by the local legislative body, including substantial remodeling or conversion or rebuilding, enlargement, or extension or major structural improvements on existing buildings, but not including ordinary maintenance or remodeling or changes necessary to continue the occupancy.

(7) (a) Following the approval of redevelopment plan by the local legislative body, which approval is evidenced by a resolution adopted by a two-thirds vote thereof, a certified copy of such resolution together with a statement concerning its substance shall be served by the sheriff as is a summons, or if not found, then by registered mail to the address appearing on the written objection, to each owner of property filing written objections as provided in sub. (6) (b) 3, within 5 days following the approval of such resolution, and any owner of property directly affected by the redevelopment plan, and feeling himself aggrieved by the inclusion of his property within such plan, and such owner has filed written objections to such plan as provided in sub. (6) (b) 3, may petition the circuit court in the county in which such property is located within 30 days from the date of service of said certified copy and statement thereof. If an

owner of property fails to file written objections to such plan as provided in sub. (6) (b) 3, he shall be precluded from filing a petition in the circuit court. Such verified petition shall state that the owner of the property is directly affected by the redevelopment plan, that his property is included within the boundaries of the redevelopment plan, and the basis for his petition. Within 15 days following the service of a copy of such petition, which shall be served in the same manner as a circuit court summons, the authority shall answer, and the proceedings shall thereafter be scheduled for trial before a judge. The circuit court shall advance such case so that it may be tried at the earliest possible time. If the petitioner demonstrates to the satisfaction of the court that the inclusion of petitioner's property is fraudulent, arbitrary or capricious, the court shall order that such property be excluded from the plan, and the petitioner shall recover his actual disbursements, including his actual expert witness fees and actual attorney's fees, as approved by the judge, but not otherwise. Technicalities in the procedure applicable to the designation of boundaries or the approval of the plan shall not affect the validity of the plan unless substantial rights of any party are affected. Following the court's order, after hearing is held on the petition, either party to the proceedings may appeal to the supreme court within 30 days from the date of the order. In the event more than one petition is filed in the circuit court within the 30-day period, the proceedings may be consolidated for the purpose of trial in the discretion of the circuit court. The filing of such petition shall not act to either delay or stay the proceeding with the redevelopment plan, and the authority shall continue to exercise all of its powers with respect thereto. If the property is excluded from the plan by virtue of the court's determination, such result shall not affect the remaining parcels of the plan. The proceedings herein authorized shall constitute an exclusive remedy to such owner as to the taking power of the authority, *except as to the verdict of necessity under ch. 32.*

SECTION 4. If Bill No. 483, A. (1959) is enacted into law, the provisions of SECTIONS 1 and 2 of this act shall supersede the provisions of such chapter relating to section 32.07 (1) and (2) of the statutes. If Bill 483, A. (1959) becomes law the reference to section 32.04 shall be changed to section 32.05 (7) (e) or 32.06 (7).

Approved September 3, 1959.
