

Summary of Existing and Proposed Eminent Domain Authority for the Town of Southern Shores, North Carolina

Like all other municipalities, the Town of Southern Shores may exercise eminent domain to acquire property for various public purposes. A listing of the primary purposes which includes many, though not necessarily all, of those public purposes is attached as Exhibit A. Of the purposes listed, the Town may also use the accelerated procedures under G.S. 40A-42(a) to acquire title property by eminent domain for the purposes shown on Exhibit A in bold and italic print.

The accelerated procedures provided by G.S. 40A-42(a) require additional notice beyond the standard procedures and allows for a municipality to obtain title to the land it is acquiring at the time of filing the lawsuit to exercise eminent domain rather than at a later date in the process. Additionally, affected property owners may file an action to attempt to enjoin the Town from filing the lawsuit to exercise eminent domain via the accelerated procedures of G.S. 40A-42(a). Otherwise, the standard and accelerated processes are predominantly the same and result in just compensation being paid to the owner of the property condemned based on various facts related to the interest, area, time and value of property acquired.

In addition to the purposes listed in Exhibit A, many, if not most, of the local governments located on adjacent to the Atlantic Ocean have been provided additional authority to exercise eminent domain for the following coastal related purposes:

- 1. Engaging in or participating with other governmental entities in acquiring, constructing, reconstructing, extending, or otherwise building or improving beach erosion control or flood and hurricane protection works, including, but not limited to, the acquisition of any property that may be required as a source for beach renourishment. [G.S. 40A-3(b1)(10)]*
- 2. Establishing access for the public to public trust beaches and appurtenant parking areas. [G.S. 40A-3(b1)(11)]*

For all of the local governments who have been granted this coastal related authority, the General Assembly has also authorized the use of the accelerated procedures provided in G.S. 40A-42(a) for these two additional sources of eminent domain authority. The proposed legislation that the Town is considering requesting the General Assembly to adopt would add the Town of Southern Shores to the list of local governments that could exercise the additional coastal related authority and that could use the accelerated processes provided in G.S. 40A-42(a). It would not require that the Town ever use actually use the authority granted, nor would the potentially proposed legislation prevent the Town from providing even greater notice to affected owners than that provided for by the General Statutes.

Exhibit A

General Purposes for Municipal Exercise of Eminent Domain in North Carolina

- (1) ***Opening, widening, extending, or improving roads, streets, alleys, and sidewalks. The authority contained in this subsection is in addition to the authority to acquire rights-of-way for streets, sidewalks and highways under Article 9 of Chapter 136. The provisions of this subdivision (1) shall not apply to counties.*** [G.S. 40A-3(b)(1)]

- (2) Establishing, extending, enlarging, or improving any of the public enterprises listed in G.S. 160A-311 for cities, or G.S. 153A-274 for counties. [G.S. 40A-3(b)(2)]
 - a. ***Electric power generation, transmission, and distribution systems.*** [G.S. 160A-311(1)]

 - b. ***Water supply and distribution systems.*** [G.S. 160A-311(2)]

 - c. ***Wastewater collection, treatment, and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems.*** [G.S. 160A-311(3)]

 - d. ***Gas production, storage, transmission, and distribution systems, where systems shall also include the purchase or lease of natural gas fields and natural gas reserves, the purchase of natural gas supplies, and the surveying, drilling and any other activities related to the exploration for natural gas, whether within the State or without.*** [G.S. 160A-311(4)]

 - e. Public transportation systems. [G.S. 160A-311(5)]

 - f. ***Solid waste collection and disposal systems and facilities.*** [G.S. 160A-311(6)]

 - g. ***Cable television systems.*** [G.S. 160A-311(7)]

 - h. Off-street parking facilities and systems. [G.S. 160A-311(8)]

 - i. Airports. [G.S. 160A-311(9)]

- j. Stormwater management programs designed to protect water quality by controlling the level of pollutants in, and the quantity and flow of, stormwater and structural and natural stormwater and drainage systems of all types. [G.S. 160A-311(10)]
- (3) Establishing, enlarging, or improving parks, playgrounds, and other recreational facilities. [G.S. 40A-3(b)(3)]
- (4) ***Establishing, extending, enlarging, or improving storm sewer and drainage systems and works, or sewer and septic tank lines and systems.*** [G.S. 40A-3(b)(4)]
- (5) Establishing, enlarging, or improving hospital facilities, cemeteries, or library facilities. [G.S. 40A-3(b)(5)]
- (6) Constructing, enlarging, or improving city halls, fire stations, office buildings, courthouse jails and other buildings for use by any department, board, commission or agency. [G.S. 40A-3(b)(6)]
- (7) ***Establishing drainage programs and programs to prevent obstructions to the natural flow of streams, creeks and natural water channels or improving drainage facilities. The authority contained in this subdivision is in addition to any authority contained in Chapter 156.*** [G.S. 40A-3(b)(7)]
- (8) Acquiring designated historic properties, designated as such before October 1, 1989, or acquiring a designated landmark designated as such on or after October 1, 1989, for which an application has been made for a certificate of appropriateness for demolition, in pursuance of the purposes of G.S. 160A-399.3, Chapter 160A, Article 19, Part 3B, effective until October 1, 1989, or G.S. 160A-400.14, whichever is appropriate. [G.S. 40A-3(b)(8)]
- (9) Opening, widening, extending, or improving public wharves. [G.S. 40A-3(b)(9)]