

Staying Ahead

with Saul Ewing

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Environmental Law

Supreme Court to Reconsider Whether Governmental Bodies Can Condemn Land for "Public Use" When That Land Will Be Used by Other Private Parties

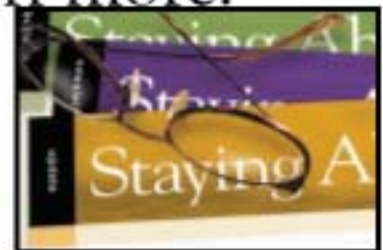
What happened?

On September 28, 2004, the United States Supreme Court granted certiorari and will now review a Connecticut Supreme Court case that has vast importance for land developers, private property owners, governments, redevelopment agencies and others who are impacted by governmental redevelopment efforts.

What does it mean?

A ruling on this case may have a very serious impact on the ability of government bodies to condemn property for redevelopment.

Learn more.



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On September 28, 2004, the United States Supreme Court granted certiorari and will now review a Connecticut Supreme Court case that has vast importance for land developers, private property owners, governments, redevelopment agencies and others who are impacted by governmental redevelopment efforts. *Kelo v. City of New London*, No. 04-108.

It is well settled that government has the power to take private property for public use. The Fifth Amendment to the United States Constitution requires that government provide “just compensation” whenever it condemns private property for public use or whenever a statute or regulation takes so much property that it has, in essence, condemned the property.

Since the 1950’s, governmental agencies and some private development corporations have taken private property and have paid just compensation, but then have redistributed that property to other private parties who redeveloped the property. The ability of governmental agencies and private corporations to continue this practice has been called into question by the Supreme Court’s decision to review the Connecticut court’s decision in *Kelo*.

In *Kelo*, the City of New London, Connecticut and a private development corporation condemned private property to redevelop an area in the Fort Trumbull section of New London. A total of 115 land parcels were located on the 90 acres that made up the redevelopment area. Most of the land owners willingly sold their property. Seven landowners who owned homes and rental properties in the Fort Trumbull area, however, refused to sell their property and the city and redevelopment corporation utilized their powers of eminent domain to condemn their property. The landowners sought an injunction to block the taking of their property. The trial court ruled in favor of three of the landowners and against four of the landowners. The case was appealed to the Connecticut Supreme Court.

The Connecticut Supreme Court, citing precedent, noted that the legislative power to declare a taking for a public use, “requires a degree of elasticity to be capable of meeting new conditions and improvements in the ever increasing necessities of society.” The court asserted that the elimination of substandard, unsanitary, deteriorated, slum or blighted areas is for the public welfare. The Connecticut court ruled that the taking of private property for the purpose of eradicating such blighted areas is a taking for a “public use.” The court went on to hold that the public use continues even “after the property is transferred to private persons.”

Rejecting the plaintiffs’ arguments, the Connecticut Supreme Court ruled that “municipal economic development can be, in and of itself, the constitutionally valid public use under the well established broad, purposive approach that we take on this issue under both the Federal and State Constitutions.” The court found that any benefit that may accrue to private parties is only secondary to the public benefit.

Perhaps as a precaution to governments that might overuse the power of eminent domain, the Connecticut Supreme Court stated that: “an exercise of the eminent domain power is unreasonable, in violation of the public use clause, if the facts and circumstances of the particular case reveal that the taking specifically is intended to benefit a private party. Thus, we emphasize that our decision is not a license for the unchecked use of the eminent domain power as a tax revenue raising measure.”

The plaintiffs filed a Petition for Certiorari to the United States Supreme Court which was granted on September 28, 2004. The single question that has been presented for review by the court is:

What protection does Fifth Amendment public use requirement provide for individuals whose property is being condemned, not to eliminate slums or blight, but for the sole purpose of “economic development” that will perhaps increase tax revenues and improve the local economy?

Governments have relied heavily on the precedent established by earlier Supreme Court cases to justify the taking of privately held land for redevelopment purposes. The mere fact that the Supreme Court is revisiting this issue raises the possibility that it will modify its earlier decisions. A ruling on this may have a very serious impact on governmental bodies, landowners and developers. Briefing and oral argument will take place in the winter and spring of 2004-2005. It is not expected, however, that the court will issue a ruling in this case until spring of 2005.

This Update was prepared by Joel R. Burcat, Partner and Chair of Saul Ewing’s Environmental Department. Mr. Burcat can be reached at (717) 257-7506 or jburcat@saul.com. The information in this Update is intended for informational purposes only, and its contents should not be considered legal advice.

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