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Supreme Court Affirms Government's Eminent Domain Powers

On June 23, 2005, the United States Supreme Court decided the case of *Kelo v. City of New London*, revisiting the issue of a government's power to take private property by means of eminent domain proceedings for "public use". The divided court reviewed a taking by the City of New London, Connecticut of residential properties which the City contended was necessary to further a City-backed project. The project was intended to create new jobs and economic development through the construction of hotels, conference centers, museums, office space, parking and retail shops. The owners of the affected properties argued that the City had no right to take their land except for projects with a clear public use, such as roads or schools, and that the proposed project did not qualify.

The property owners asked the Supreme Court to rule that a government's decision to take property for the purpose of economic development does not satisfy the "public use" requirement of the Fifth Amendment. The Court declined to do so, holding that promoting economic development is a long-accepted government function. The Court also rejected the owners' argument that takings by eminent domain should require a "reasonable certainty" that the expected public benefit will actually come to fruition. In its ruling, the Supreme Court gave great deference to the powers of local governments. Justice O'Connor wrote a strong dissent, arguing that cities should not have unlimited authority to uproot families and businesses to accommodate private developers.

The Court did observe in its decision that land cannot simply be taken to confer a private benefit on a particular private party. The Court held that the City of New London had carefully considered an economic development plan

that was not adopted to benefit a particular individual or identifiable class.

It has been reported that over 10,000 properties have been threatened or condemned in recent years by eminent domain proceedings. Based upon the Court's ruling in this case, it appears that the number of these proceedings may increase, including proceedings in our own community.

Just Compensation How Much is Enough?

The *Kelo* decision did not modify the rules governing compensation in eminent domain proceedings. While a real estate transaction between a willing buyer and seller ordinarily results in a negotiated fair market price, this is not the case when the government takes a property through the use of eminent domain. In an eminent domain proceeding, a property owner is entitled to receive the "fair market value" for its property, which has been defined as the value based on the most profitable use of the property. This somewhat ambiguous concept requires expert valuations based on appraisal reports. Further, a taking by eminent domain does not ordinarily reimburse a property owner for loss or disruption of its business or for moving expenses. As the compensation process is often uncertain and arduous, all parties involved in a potential eminent domain proceeding should consult counsel.

For more information regarding "just compensation" and other eminent domain issues, contact John R. Varney, David G. Linger or James S. Skloda.



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