

Supreme Court Rules on Condemnation: *Understanding Kelo v. City of New London*

By James M. Susag
& Neil S. Davis



JIM SUSAG is a shareholder in the firm's Real Estate Litigation practice group. He practices in real estate litigation, including: construction, valuation (condemnation, real estate tax appeals and special assessments), lease and zoning matters. Jim may be reached at 952-896-1572 or jsusag@larkinhoffman.com.



NEIL DAVIS is an associate with the firm. His practice is concentrated in the areas of municipal law, prosecution and condemnation. Neil may be reached at 952-896-3260 or ndavis@larkinhoffman.com.

In a major victory for public planning and development authorities, the United States Supreme Court ruled in favor of the government and against private landowners in the recent decision, *Kelo v. City of New London* (No. 04-108). In *Kelo*, the Supreme Court concluded that use of condemnation for redevelopment of privately-owned property in an economically distressed area qualified as a "public use" under the Fifth Amendment to the United States Constitution. Therefore, the action was a proper use of the City's eminent domain authority. The Supreme Court reasoned that legislative bodies are entitled to "broad latitude in determining what public needs justify the use of the takings power."

THE CASE

The United States Supreme Court ruling, issued on June 24, 2005, will have a wide-reaching effect on the ability of municipalities and other governmental agencies to take private property through eminent domain. In *Kelo*, homeowners challenged the City's right to use its power of eminent domain to condemn land that was neither blighted nor to be used for what it is traditionally viewed as a public use (e.g., roads, schools or parks).

Instead, in *Kelo*, the City of New London had commenced eminent domain proceedings to take land to implement an economic development plan the City had approved. The residential property would be used for public and private economic rejuvenation — in this case a state park and private commercial facilities.

The Fifth Amendment of the United States Constitution states that, "No person shall be ... deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation." The question before the Supreme Court was what constitutes public use. The Supreme Court moved away from a strict interpretation of "public use" in an earlier case, adopting a broader standard demonstrating "public purpose," such as the taking of blighted property for public and private revitalization.

In *Kelo*, the property was not considered blighted, but the plan would increase the tax base, provide jobs and attract new business to the area. The City had determined that the area in question was economically distressed and sought to remedy this distress by replacing residential property with, in some instances, private business. The homeowners challenged this taking, claiming that the City's economic plan did not satisfy a public use. The Supreme Court, voting 5-4, determined that it did.

THE POSSIBLE OUTCOMES

The Supreme Court decision gave great deference to the City's legislative judgment as to what public needs justify the use of eminent domain. The Supreme Court determined the City had "carefully formulated an economic development plan that it believes will provide appreciable benefits to the community, including — but by no means limited to — new jobs and increased tax revenue."

It may now become easier for condemning authorities to pass constitutional muster when it comes to taking private land for public use. The Supreme Court, however, stated that it remains unconstitutional for a public entity to take private property from one party and transfer it to another private party, even if the party losing its property is paid just compensation. Yet, this case makes it clear that under a carefully considered development plan, a municipality may take private property, even homes, to complete such a plan if it will benefit the public. ■

Larkin Hoffman
Daly & Lindgren Ltd.

1500 Wells Fargo Plaza
7900 Xerxes Avenue South
Minneapolis, Minnesota 55431-1194

GENERAL: 952-835-3800
EMAIL: info@larkinhoffman.com
WEB: www.larkinhoffman.com

Exploring The Constraints Of Power: *The future of eminent domain in Minnesota*

By Peter J. Coyle & Molly Mc Kee



PETER COYLE is chair of Larkin Hoffman's Government Relations practice group and a member of the Land Use and Real Estate group. He represents private developers and landowners before state agencies, the Metropolitan Council, county boards and city councils. Peter may be reached at 952-896-3214 or pcoyle@larkinhoffman.com.

The *Kelo v. City of New London* (No. 04-108) decision punctuated what many pundits have described as a slow, but steady, departure from the generally-understood constraints on the power of eminent domain. The *Kelo* decision raises several questions about the scope and limitations of eminent domain power, such as whether the decision of the U.S. Supreme Court will affect the current eminent domain jurisprudence of several states and, if that is indeed the case, can and should anything be done from a political or legislative standpoint to curtail the scope of the decision.

CONDEMNATION IN MINNESOTA

The Supreme Court in *Kelo* determined that a condemning authority may take the private property of one owner and transfer that property to another private owner if the transfer would benefit the public. In *Kelo*, the benefit would be increased economic development. This holding does not expand the scope of eminent domain authority in Minnesota, which, along with Kansas, Maryland, New York, North Dakota and Connecticut, has already determined under the state constitution that private economic development projects constitute a "public purpose." In many respects, the *Kelo* decision complements the Minnesota rule, which provides that condemnation will be constitutional if a public purpose is furthered by the transfer of land through a public entity to a private entity.

Opponents argue that the problem with both the *Kelo* decision and the current Minnesota rule is that the government may seize property from one private entity to give to another private entity if doing so would produce higher tax revenues. Taken to an extreme, tax-exempt properties, such as churches and service organizations, could be condemned by the government to make way for tax-paying businesses.

LEGISLATIVE ACTION

The fervor over the *Kelo* decision has spurred both federal and state legislators to action. At the federal level, the Protection of Homes, Small Businesses, and Private Property Act of 2005 seeks to limit the power of eminent domain of the federal government, and of state and local governments using federal funds for projects, to those projects that are for the "public use." The Act defines "public use" to exclude economic development projects.

The most far-reaching legislative proposal being discussed at the Minnesota Legislature would restrict the use of condemnation solely to public projects, e.g. streets, parks, schools, etc. Variations would require that the condemning authority demonstrate that the decision primarily benefits a public and not a private interest. Expedited review in the appellate courts, coupled with de novo review of the facts, would allow for timely resolution of the "public purpose" question. Finally, there has been some support in the legislature to allow recovery of attorney's fees in the event a property owner demonstrates that the condemning authority's offer to purchase land in lieu of condemnation was undervalued to a substantial degree.

Although it is too early to tell the impact that *Kelo* will have on the scope of eminent domain authority in Minnesota, it is unlikely, without legislative action, that the decision will mark a radical departure in the way — or the purpose for which — condemning authorities have gone about their business in recent years. The forces on both sides of this issue already are mobilizing to defend or change the status quo through new legislation when the legislature reconvenes in 2006. ■



MOLLY MC KEE is an associate with Larkin Hoffman. Her practice is concentrated in the areas of real estate law, municipal law, property tax and condemnation. Molly may be reached at 952-896-3263 or mmckee@larkinhoffman.com.

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