

WATERFRONT REVITALIZATION CONDEMNS HOMES

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In the case of *Kelo v. City of New London, Connecticut*, 125 S. Ct. 2655; 162 L. Ed. 2d 439 (U.S. 2005), the Supreme Court of the United States considered whether the government's taking of private property qualified as a proper "public use" within the meaning of the Takings Clause of the Fifth Amendment to the United States Constitution. The Takings Clause prohibits the taking of private property for public use without just compensation. Generally, just compensation is the fair market value of the property at the time of the taking by the government.

FACTS OF THE CASE

In January 1998, the State of Connecticut authorized a \$5.35 million bond issue to support the city of New London's planning activities and a \$10 million bond issue toward the creation of a Fort Trumbull State Park. Shortly thereafter, a pharmaceutical company announced that it would build a \$300 million research facility on a site immediately adjacent to Fort Trumbull. City planners hoped that this private research facility would draw new business to Fort Trumbull and serve as a catalyst for the area's rejuvenation.

In 2000, the city of New London approved a development plan to revitalize the city's economically distressed downtown and waterfront areas. The city's development agent was authorized to purchase land and property needed for the project. The city intended to use its "power of eminent domain to acquire the remainder of the property from unwilling owners in exchange for just compensation." In addition to creating jobs, generating tax revenue, and helping to "build momentum for the revitalization of downtown New London," the plan was also designed to make the City more attractive and to create leisure and recreational opportunities on the waterfront and in the park.

The state planning office reviewed the city's redevelopment plan and found the proposed project was "consistent with relevant state and municipal development policies." Upon obtaining state-level approval, the city finalized an integrated development plan focused on 90 acres of the Fort Trumbull area. The Fort Trumbull area comprised approximately 115 privately owned properties, as well as the 32 acres of land formerly occupied by a formal naval facility. Trumbull State Park occupied 18 of those 32 acres. The development plan encompassed the following seven parcels:

Parcel 1 is designated for a waterfront conference hotel at the center of a "small urban village" that will include restaurants and shopping. This parcel will also have marinas for both recreational and commercial uses. A pedestrian "riverwalk" will originate here and continue down the coast, connecting the waterfront areas of the development.

Parcel 2 will be the site of approximately 80 new residences organized into an urban neighborhood and linked by public walkway to the remainder of the

development, including the state park. This parcel also includes space reserved for a new U.S. Coast Guard Museum.

Parcel 3, which is located immediately north of the Pfizer facility, will contain at least 90,000 square feet of research and development office space.

Parcel 4A is a 2.4-acre site that will be used either to support the adjacent state park, by providing parking or retail services for visitors, or to support the nearby marina. Parcel 4B will include a renovated marina, as well as the final stretch of the riverwalk.

Parcels 5, 6, and 7 will provide land for office and retail space, parking, and water-dependent commercial uses.

The city council approved the plan in January 2000, and reactivated the New London Development Corporation (NLDC) to act as the city's development agent in charge of implementation. NLDC, a private nonprofit entity, had been established some years earlier to assist the City in planning economic development. The city council also authorized the NLDC to purchase property or to acquire property by exercising eminent domain in the City's name.

NLDC successfully negotiated the purchase of most of the real estate in the 90-acre area, but its negotiations with several property owners failed. As a consequence, in November 2000, the NLDC initiated condemnation proceedings that gave rise to the lawsuit which ultimately went to the U.S. Supreme Court.

The named plaintiff in the lawsuit, petitioner Susette Kelo had lived in the Fort Trumbull area since 1997. She had made extensive improvements to her house, which she prized for its water view. Petitioner Wilhelmina Dery was born in her Fort Trumbull house in 1918 and had lived there her entire life. Her husband Charles (also a petitioner) had lived in the house since they married some 60 years ago. In all, the nine petitioners in the case before the Supreme Court owned 15 properties in Fort Trumbull -- 4 in parcel 3 of the development plan and 11 in parcel 4A. Ten of the parcels were occupied by the owner or a family member; the other five were held as investment properties. There was no allegation that any of these properties was blighted or otherwise in poor condition. Rather, they were condemned only because they happened to be located in the development area.

STATE COURT

In December 2000, petitioners (hereinafter referred to collectively as "Kelo") brought this action in the New London superior court. Kelo claimed, among other things, that the taking of their properties would violate the "public use" restriction in the Fifth Amendment.

After a 7-day bench trial, the trial judge granted a permanent restraining order prohibiting the taking of the properties located in parcel 4A (park or marina support). The trial judge, however, denied petitioners relief as to the properties located in parcel 3 (office space).

While this litigation was pending before the superior court, the NLDC announced that it would lease some of the parcels to private developers in exchange for their agreement to develop the land according to the terms of the development plan. Specifically, the NLDC was negotiating a 99-year ground lease with Corcoran Jennison, a developer selected from a group of applicants. The negotiations contemplated a nominal rent of \$1 per year, but no agreement had yet been signed.

After the trial court ruled, both sides took appeals to the Supreme Court of Connecticut. The state supreme court held, over a dissent, that all of the City's proposed takings were valid. The state supreme court began by upholding the lower court's determination that the takings were authorized by chapter 132, the State's municipal development statute. Conn. Gen. Stat. § 8-186 et seq. (2005). This state statute expressed a legislative determination that the taking of land, even developed land, as part of an economic development project was a "public use" and in the "public interest." As a result, the state supreme court held that such economic development qualified as a valid public use under both the Federal and State Constitutions.

In so doing, the state supreme court determined that the takings of the particular properties at issue were "reasonably necessary" to address "reasonably foreseeable needs" in achieving the City's intended public use. The state supreme court, therefore, reversed the trial court's restraining order which had prohibited the taking of the properties located in parcel 4A (park or marina support). In the opinion of the state supreme court, the intended use of this land was sufficiently definite and had been given "reasonable attention" during the planning process.

The U.S. Supreme Court granted Kelo's petition to review this decision to determine whether the city's decision to take property for the purpose of economic development satisfied the "public use" requirement of the Fifth Amendment.

CAREFULLY CONSIDERED

According to the Supreme Court, the Takings Clause would prohibit the City from taking Kelo's land for the purpose of conferring a private benefit on a particular private party.

A purely private taking could not withstand the scrutiny of the public use requirement; it would serve no legitimate purpose of government and would thus be void. Nor would the City be allowed to take property under the mere pretext of a public purpose, when its actual purpose was to bestow a private benefit.

However, in this particular instance, the Supreme Court found that the challenged taking of private property was "executed pursuant to a 'carefully considered' development plan."

The trial judge and all the members of the Supreme Court of Connecticut agreed that there was no evidence of an illegitimate purpose in this case. Therefore, the City's development plan was not adopted "to benefit a particular class of identifiable individuals."

And while the City intends to transfer certain of the parcels to a private developer

in a long-term lease -- which developer, in turn, is expected to lease the office space and so forth to other private tenants -- the identities of those private parties were not known when the plan was adopted.

It is, of course, difficult to accuse the government of having taken A's property to benefit the private interests of B when the identity of B was unknown.

In reaching this determination, the Supreme Court acknowledged that the City was not "planning to open the condemned land -- at least not in its entirety -- to use by the general public." Further, the Court recognized that the private parties who would eventually lease the condemned lands would not be required to make their services available to all comers like railroads or other common carriers. The Court, however, found that the "public use" requirement of the Takings Clause did not impose "any literal requirement that condemned property be put into use for the general public." Rather, the Court would apply a "broader and more natural interpretation of public use as "public purpose" which reflected the Court's "longstanding policy of deference to legislative judgments in this field."

Accordingly, in determining whether the City's development plan served a "public purpose," the Court held that "community redevelopment programs need not, by force of the Constitution, be on a piecemeal basis -- lot by lot, building by building." Moreover, the Court found that it was not the role of the Court to determine whether a particular "project is or is not desirable." On the contrary, the Court found, "[i]t is only the taking's purpose, and not its mechanics" that matters in determining public use.

The concept of the public welfare is broad and inclusive The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled...

Viewed as a whole, our jurisprudence has recognized that the needs of society have varied between different parts of the Nation, just as they have evolved over time in response to changed circumstances. Our earliest cases in particular embodied a strong theme of federalism, emphasizing the "great respect" that we owe to state legislatures and state courts in discerning local public needs. For more than a century, our public use jurisprudence has wisely eschewed rigid formulas and intrusive scrutiny in favor of affording legislatures broad latitude in determining what public needs justify the use of the takings power.

Applying this reasoning to the facts of the case, the Supreme Court concluded that the City's decision to condemn and acquire private property through eminent domain was entitled to deference by the Court. In according such deference, the Court found the City was justified in developing a program of economic rejuvenation for a sufficiently distressed area of the City, "even though the City was not confronted with the need to remove blight in the Fort Trumbull area."

The City has 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. As with other exercises in urban planning and development, the City is endeavoring to coordinate a variety of commercial, residential, and recreational uses of land, with the hope that they will form a whole greater than the sum of its parts. To effectuate this plan, the City has invoked a state statute that specifically authorizes the use of eminent domain to promote economic development. Given the comprehensive character of the plan, the thorough deliberation that preceded its adoption, and the limited scope of our review, it is appropriate for us... to resolve the challenges of the individual owners, not on a piecemeal basis, but rather in light of the entire plan. Because that plan unquestionably serves a public purpose, the takings challenged here satisfy the public use requirement of the Fifth Amendment.

On appeal, Kelo had urged the Supreme Court to “adopt a new bright-line rule that economic development does not qualify as a public use.” In the opinion of the Court, logic and case law precedent did not support such a narrow definition of “public use.” Moreover, the Court was not convinced that “the City’s plan will provide only purely economic benefits.”

Clearly, there is no basis for exempting economic development from our traditionally broad understanding of public purpose... Promoting economic development is a traditional and long accepted function of government. There is, moreover, no principled way of distinguishing economic development from the other public purposes that we have recognized.

LEGISLATIVE WISDOM

On appeal, Kelo had further contended that the use of “eminent domain for economic development impermissibly blurs the boundary between public and private takings.” The Supreme Court rejected this argument. In so doing, the Court recognized that “the government’s pursuit of a public purpose will often benefit individual private parties.”

The public end may be as well or better served through an agency of private enterprise than through a department of government.... We cannot say that public ownership is the sole method of promoting the public purposes of community redevelopment projects.

Without a “bright-line rule,” Kelo had also argued that “nothing would stop a city from transferring citizen A’s property to citizen B for the sole reason that citizen B will put the property to a more productive use and thus pay more taxes.” The Court, however, found that no such “one-to-one transfer of property, executed outside the confines of an integrated development plan,” was presented by facts of this particular case.

In the alternative, for such takings of private property, Kelo had urged the Court to “require a ‘reasonable certainty’ that the expected public benefits will actually accrue.” The Court,

however, found that such a requirement “would represent an even greater departure from our precedent.”

A constitutional rule that required postponement of the judicial approval of every condemnation until the likelihood of success of the plan had been assured would unquestionably impose a significant impediment to the successful consummation of many such plans...

When the legislature's purpose is legitimate and its means are not irrational, our cases make clear that empirical debates over the wisdom of takings -- no less than debates over the wisdom of other kinds of socioeconomic legislation -- are not to be carried out in the federal courts...

It is not for the courts to oversee the choice of the boundary line nor to sit in review on the size of a particular project area. Once the question of the public purpose has been decided, the amount and character of land to be taken for the project and the need for a particular tract to complete the integrated plan rests in the discretion of the legislative branch.

“In affirming the City's authority to take petitioners' properties,” the Supreme Court acknowledged “the hardship that condemnations may entail, notwithstanding the payment of just compensation” to private property owners. Further, the Court emphasized that the holding in this case “extends only to determining whether the City's proposed condemnations are for a ‘public use’ within the meaning of the Fifth Amendment to the Federal Constitution.” Accordingly, the Court underscored the fact that “nothing in our opinion precludes any State from placing further restrictions on its exercise of the takings power.”

Indeed, many States already impose "public use" requirements that are stricter than the federal baseline. Some of these requirements have been established as a matter of state constitutional law, while others are expressed in state eminent domain statutes that carefully limit the grounds upon which takings may be exercised.

For example, under California law, the Supreme Court noted that “a city may only take land for economic development purposes in blighted areas.” Cal. Health & Safety Code Ann. §§ 33030-33037 (West 1997).

As a result, having considered “over a century of our case law interpreting” the Takings Clause of the Fifth Amendment, the U.S. Supreme Court, in a 5-4 vote, affirmed the judgment of the Connecticut state supreme court in favor of the City of New London.