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At Issue

NJ High Court Decision Gives More Protection to Business

A recent state Supreme Court decision has more narrowly defined what is meant by “blight,” making it more difficult for municipalities to condemn and take private property for redevelopment. The high court’s decision gives more protection to businesses and other property owners fighting condemnation proceedings.

The NJ Supreme Court issued its decision in *Gallenthin Realty Development, Inc. v. Borough of Paulsboro*, where it had to determine whether the municipality properly interpreted the New Jersey State Constitution and Local Redevelopment and Housing Law.

The New Jersey Business & Industry Association is encouraged by the high court’s decision. It would appear to accomplish one of the Association’s goals, namely to more fully protect business property owners from “takings” that are based more on a municipality’s desire to redevelop a property than to remove blight.

NJBIA got involved in the eminent domain debate shortly after the 2005 US Supreme Court decision in *Kelo v. New London, CT*. The *Kelo* decision said local governments can use the power of eminent domain for redevelopment purposes. The case brought nationwide attention to the use of eminent domain and what constitutes a “public purpose.” However, the court’s decision did not materially affect the practice of eminent domain in New Jersey. This is because our Constitution and statutes already authorize the use of eminent domain to redevelop “blighted” areas. Even so, it sparked a debate between municipalities, small business owners and residents over what constitutes the appropriate use of eminent domain and what standards apply.

In early 2006, the New Jersey Legislature decided to take up the issue of eminent domain reform. NJBIA believes there are appropriate uses of eminent domain for redevelopment if the rights of property owners are protected, the owners are compensated for lost property, the standards for what constitutes blight are appropriately adhered to, and there is transparency in the

process that lets property owners be heard.

Unfortunately, the state’s Constitution and its Local Redevelopment and Housing Law have been so liberally interpreted by municipalities over the past few decades that it no longer is clear what actually constitutes “blight.”

I participated in several legislative hearings aimed at fixing New Jersey’s eminent domain structure. During those hearings, small business owners came forward telling personal stories about how their business properties had been taken under eminent domain, changing their lives forever. Despite these hearings, the Legislature was unable to reach a consensus on a piece of legislation to reform New Jersey’s eminent domain laws. However, the aforementioned *Gallenthin* case may change that.

In that case, the NJ Supreme Court said the Borough of Paulsboro did not meet the constitutional definition of blight in its attempt to take a property designated as “an area in need of redevelopment.” The court reviewed the constitutional origin of the word and clarified its meaning, noting that “blight” must be characterized by “a deterioration or stagnation that negatively affects surrounding properties.” This means that if a property has deteriorated but does not affect the surrounding areas, it can no longer be designated as blighted.

The high court’s stricter interpretation of blight raised the bar for many municipalities that had made a more liberal interpretation of a property as eligible for eminent domain merely because it was “stagnant” or “not fully productive.” The court decision, therefore, offers more protection to businesses seeking to prevent the condemnation of their properties for redevelopment purposes.

If the Supreme Court’s standard of blight is enforced, just compensation is provided and sufficient notice is offered to property owners, municipalities can still have the tools necessary to ensure the proper use of eminent domain for redevelopment purposes. However, in order for this process to be viewed as both responsible and equitable, we must provide critical safeguards to property owners and small business owners who have made NJ their home.