



EMINENT DOMAIN REFORM IN NEW JERSEY

DESCRIPTION

NJBIA believes there are appropriate uses of eminent domain for redevelopment purposes. However, in using this power, the rights of property owners must be protected, owners must be compensated for lost property and the standards for what constitutes “blight” must be appropriately applied. There also must be transparency in the process that offers an opportunity for property owners to be heard. As such, NJBIA supports legislation that would move toward achieving those goals.

BACKGROUND

NJBIA became involved in the eminent domain debate shortly after the 2005 US Supreme Court decision in *Kelo v. New London CT*. The *Kelo* decision supported the concept that local governments had the right to use the power of eminent domain for redevelopment purposes. The case brought nationwide attention to the use of eminent domain, and what constituted a “public purpose.” However, the court’s decision did not materially affect the practice of eminent domain in New Jersey because New Jersey’s 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 constituted the appropriate use of eminent domain and what standards should apply.

In early 2006 the New Jersey Legislature took up the issue of eminent domain reform. NJBIA participated in a number of legislative hearings aimed at fixing New Jersey’s eminent domain structure. During those hearings, 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 how to reform New Jersey’s eminent domain laws.

In June 2007 a NJ State Supreme Court decision, *Gallenthin Realty Development, Inc. v. Borough of Paulsboro*, more narrowly defined what is meant by “blight,” making it more difficult for municipalities to condemn and take private property for redevelopment. In this decision, the Court had to determine whether the municipality properly interpreted the New Jersey State Constitution and Local Redevelopment and Housing Law (LRHL). The high court’s stricter interpretation of “blight” raised the bar for many municipalities that had previously used a more liberal interpretation. Specifically, municipalities believed that property was eligible to be taken via eminent domain merely because it was stagnant or not fully productive. The court stated 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. This stricter definition offers more protection to businesses and other property owners seeking to prevent the condemnation of their properties for redevelopment purposes.

NJBIA POSITION

The New Jersey Business & Industry Association is encouraged by the high court’s decision in *Gallenthin*. 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. Even so, the Legislature still needs to address the outstanding issues in New Jersey’s eminent domain process. NJBIA looks forward to working with the Legislature on real reform measures that strike a balance between property rights and the tools necessary for redevelopment.

LEGISLATIVE HISTORY

There were several bills introduced that attempted to address the use of eminent domain for redevelopment purposes. Some called for an outright ban. Others tried to address concerns without mandating an outright prohibition.

NJBIA worked with sponsors of two pieces of legislation that attempted to strike a balance between the use of eminent domain for economic development and the rights of property owners, both residential and corporate. A-3257 was introduced on June 8, 2006 and passed the Assembly on June 22, 2006 by a vote of 58-18-11. A competing bill, S-1975, was introduced on June 12, 2006, but stalled in the Senate Community and Urban Affairs Committee.

A-3257 changed the LRHL to provide more notice and transparency in the process. The bill increased relocation assistance and compensation. The bill also specifically gave business owners compensation for their business, separate and distinct from the land on which the business is located. This was modeled after a California law where businesses are compensated for “goodwill.” Under the bill “goodwill” means the benefits that accrue to a business as a result of its location, reputation for dependability, skill or quality, and any other circumstances resulting in probable retention of old or acquisition of new patronage.”

S-1975 changed the LRHL by creating a bifurcated system whereby different standards were established for areas in need of rehabilitation and areas in need of redevelopment. The former describes an area where eminent domain would not be used, but rather, incentives would be provided to rehabilitate the problem sites. The latter is the language used to describe what is commonly referred to as a blighted area that will be taken using eminent domain. The bill also specifically gave business owners compensation for their location. It should be noted that these changes were in proposed amendments that were never actually incorporated into the bill because it was never released from committee.

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