

## **Court decisions put new wrinkles in eminent domain**

*By Denice Gierach – As published in the Naperville Sun – March 13, 2007*

Eminent domain is the law that allows the government to “condemn” your property and take it over for a public purpose. In the past, the public purpose was for a government center, a school, a road or something that would benefit the general public. Recently, there was a United States Supreme Court Case of a municipality in Connecticut that condemned a property so that it could economically revitalize an area. The owners of the property refused to sell their property to a developer. The city council for the municipality expected the new development to attract new jobs, generate tax revenue and build momentum to revitalize the city. The city condemned the property. The owners, who wanted to continue to live there, argued that the city would be taking the property for a private,



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not a public purpose and therefore, the city’s purpose was not legitimate. The city convinced the Supreme Court that the redevelopment of the city, the added economic benefit of the new economic development, the additional tax revenue, were valid purposes under the law. As a result, the city successfully condemned the property and of course, had to pay the owner an amount equal to the fair market value of the property.

As a result of this case, many states, including Illinois, enacted new legislation to make the municipality’s use of eminent domain powers more fair to the existing property owners. The Act still allows the municipality to take property for public ownership and control as they do now for recognized public purposes, i.e. to widen roads, build schools, and perform other vital government functions.

The Act also provides that if property is taken by a government for private ownership or control, the government agency must show by clear and convincing evidence that the acquisition is (1) primarily for the benefit, use, or enjoyment of the public and (2) necessary. The onus is on the government agency to prove these facts. The type of takings that are allowed for this purpose are those for eliminating blight and takings for utilities, public housing, airports, libraries or museums, charter schools and landmarks. The property owners can file a motion to challenge the existence of blight factors within six months of the filing of the complaint to condemn.

Under the Act, the government authority must pay relocation costs to the property owner and any tenants. The government authority must also pay the fair market value of the property usually as of the date that they file their complaint. Appraisers and experts determine the value of the property. The Act also may force the government agency to pay attorney’s fees, expert fees and costs if the property owner has made an offer of settlement and the court determines a compensation that is higher than the last written offer from the property owner.

Why is this change in the law relevant? After all, you rarely read about a government body taking someone’s property, although School District 204 is pursuing this course of action

for their newest high school. Also in Aurora, which has been very active in redevelopment of its downtown area, the city has eminent domain powers at its disposal. As Naperville becomes more built out, the future may lie in these provisions. While you may not remember all of the facts listed in this article, remember that because of the change in the law, as a property owner, you have more power in the face of prospective condemnations that have a private purpose than you did before.

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