

# REAL ESTATE Connection

IT'S ALL ABOUT HAVING THE RIGHT CONNECTIONS

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## A Lawyer's Perspective

# Thank you Mrs. Kelo for a new redevelopment program

BY DENNIS SCARDILLI

Talk all you want about flip-flops in politics this year, on either side, for whatever reason, the greatest turn in the road in legal jurisprudence began a little over three years ago as a result of the celebrated U.S. Supreme Court case *Kelo v New London*. This was the eminent domain case where the City of New London, CT, determined that the entire city would be better off if certain blue-collar workers' homes were replaced by a high-tech, yuppified research park. The Supreme Court decided that legal precedent supported the City's decision that the greater good trumped individual property rights.

Justice Clarence Thomas's brilliant dissent said essentially, "Overturn legal precedent; stand on principle and make new law." People who are significantly down the food chain from the Supreme Court took heed and redevelopment law has never been the same.

Even though the majority of the Court decided that the City of New London could take those homes, the majority decision created a backlash of public outrage that is still being felt. Since then, New London has not developed the project that was to have replaced Mrs. Kelo's house, the New Jersey Supreme Court has determined that less than optimal "highest and best use" does not mean that a property is "blighted," the Pinnacle project's redevelopment area was changed in response to the owner's attorney's legal arguments, anti-eminent domain sentiment was a significant factor in the recent defeat of the incumbent Ventnor City commissioners and Egg Harbor Township's West Atlantic City residents have obtained the support of elected officials against use of sweeping eminent domain in the redevelopment of that section of the Township.

This is not a liberal versus conservative or

Republican versus Democrat issue. It's more of a "pox on all of them" when it's your home or business that is in threat of being taken for a "public purpose." Even the remote possibility of eminent domain gets everybody's attention.

My experience has indicated that sometimes eminent domain is appropriate and sometimes it is not. However, it is always appropriate to have a viable proposal, to bring it to the people who will be affected and to work out a solution with them. Former Atlantic City Mayor Joseph Lazarro told me to do that when I was the housing planner for the City of Atlantic City, 30 ago. He stopped the City's application for a federal redevelopment grant because the people didn't want it. Joe was ahead of his time; God bless his soul.

My policy wonking war stories are not what you need to know or care about. The point is that reasonable people can reasonably agree or disagree when it comes to redevelopment projects. Are you proposing, voting on, living in, or otherwise affected in any way by, a redevelopment project? If so, then you need to know how a redevelopment project is created so that you can address this issue in a reasonable manner.

First, there has to be a redevelopment area. There are different types of redevelopment areas. The state's revaluation phase-in law requires a redevelopment area. The Atlantic City's Housing Authority and Urban Development Agency's Uptown Redevelopment Tract is a federally-designated redevelopment area. Both have elements that may or may not overlap with New Jersey's Local Redevelopment and Housing Law.

We want to focus our attention on the specifics of New Jersey's Redevelopment Law because that law could affect more of our readers. This is because a redevelopment project can only be carried out in New Jersey in a redevel-

opment area or an area in need of rehabilitation. A redevelopment area enables eminent domain; an area in need of rehabilitation does not.

A redevelopment area under the state's Redevelopment Law must be created by a process of "investigation, notice and hearing." The most important substantive component of this is a redevelopment study, prepared by a professional planner. It should include a building-specific study based on statutory requirements and must satisfy specific exacting recent case law requirements to determine blight.

The most controversial reason for a determination of blight is a growing or substantial "proper utilization of areas" that are "stagnant or not fully productive" but yet are potentially valuable for "contributing to and serving" the general welfare. The New Jersey Supreme Court has determined that this "highest and best use" test does not allow a parcel to be blighted merely because its use is not "optimized".

In a redevelopment area a municipality must "satisfy the extensive and demanding procedural requirements (of the Redevelopment Law), which include: a preliminary investigation by the Planning Board, individual notice to affected property owners, general notice in a newspaper of general circulation, and a public hearing".

Let's look at these provisions of the Redevelopment Law, and others, in future columns.

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*Dennis Scardilli practices as an attorney-at-law in the Atlantic City area. The information in this article has been provided only for informational and educational purposes and is not intended to provide legal advice. For legal advice on this, or any other, topic contact a qualified attorney.*