



# Use of Eminent Domain by Port Authorities – The Kelo decision today

AAPA Port Real Estate Issues Seminar

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# The Issues

What are the limitations on using the power of eminent domain in connection with public-private economic development?

- Public use – The “A to B” problem.
- Is the taking “reasonably necessary”?
- Is the projected redevelopment “reasonably foreseeable”?
- “Public use” or “public purpose”.

# The facts of Kelo

- Overall blighted old industrial-waterfront area
- Comprehensive plan for renewal -- parkland, convention center, office space, marina, housing
- Existing non-blighted housing sought to be taken
- Prospective benefit to Pfizer to induce it to relocate to neighboring site

# The majority view

- No need that the entire public directly benefit
- Importance of legislative determination that economic development is a public use.
- Importance of “an integrated development plan”
- The Federalism rationale – Different localities can have different needs and solutions.

# The dissent

- Without genuine judicial review, the line between public use and advantaging a private interest is “hortatory fluff”
- “Are economic development takings constitutional? I would hold that they are not.”
- Is a “harmful use” being abated” – “Nothing is to prevent the State from replacing any Motel 6 with a Ritz Carlton.”

# Blight

- Is “blight” necessary in a taking for development? Is “economic underdevelopment and stagnation” a sufficient trigger? The Ohio approach
- Must the entire takings area be blighted? The “impending blight” approach.

# Other issues

- Prior designation of a private developer and the “A to B” problem. Atlantic Yards, and Rosenthal.
- What is the appropriate level of judicial review of the administrative decisions? Is “the proposed taking rationally related to a conceivable public purpose”?
- Disparate impact. Economic, racial.



# “Economic development” alone

- Legislative restrictions on condemnation to advance economic development.
- Jackson v. Dolan, 398 SW3d 472: “The legislature made it difficult, if not impossible, for the Port Authority to advance its purpose through the use of eminent domain.”

# Thank You



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