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The Constitution and the Legislature

Deborah A. Dyson Updated: August 2006

Eminent Domain: Public Use

The state and federal constitutions require a taking to be for a public use. Under both the state and federal constitutions, the power of eminent domain may only be used to acquire property for "public use." The Takings Clause of the Fifth Amendment of the U.S. Constitution provides that private property must not be taken for public use without just compensation. The Minnesota Constitution provides in article 1, section 13, "Private property shall not be taken, destroyed or damaged for public use without just compensation therefore, first paid or secured."

The U.S. Supreme Court has allowed a broad definition of public use for federal constitutional purposes and generally deferred to legislative decisions on what is a public use. What is included in the scope of "public use" has been controversial. In the summer of 2005, the U.S. Supreme Court, consistent with its prior decisions, held that the use of eminent domain to further redevelopment and increase tax revenues for an economically distressed area that was not blighted met the "public use" requirement of the federal constitution. *Kelo v. City of New London*, 545 U.S. 469, 125 S. Ct. 2655 (2005). The Minnesota Supreme Court had similarly upheld the use of eminent domain for economic development. *E.g., City of Duluth v. State,* 390 N.W.2d 757, 762-764 (Minn. 1986) (citing *City of Minneapolis v. Wurtele*, 291 N.W.2d 386 (Minn. 1980)).

The U.S. Supreme Court also stated, however, that legislatures could enact more stringent limits on the use of eminent domain. "We emphasize that nothing in our opinion precludes any State from placing further restrictions on its exercise of the takings power." *Kelo*, 125 S. Ct. at 2668.

Minnesota was among the states that enacted new laws governing "public use" and otherwise limited the exercise of eminent domain. Under the law passed by the 2006 Legislature, private property may not be taken for economic development alone. Minn. Stat. §§ 117.012, subd. 2, 117.025, subd. 11, para. (b) (enacted in Minn. Laws 2006, ch. 214, generally effective May 20, 2006).

The new law also limits takings related to redevelopment. [In addition, the law makes changes intended to protect property owners, including changes in procedures, providing for attorney fees in certain instances, and providing for or increasing other elements of compensation.]

The substantive limitations on public use in the new law are largely found in the definitions. Minn. Stat. (2006) § 117.025. " 'Public use' or 'public purpose' means, exclusively:

> (1) the possession, occupation, ownership, and enjoyment of the land by the general public, or by public agencies;
>
> (2) the creation or functioning of a public service corporation; or
>
> (3) mitigation of a blighted area, remediation of an environmentally contaminated area, reduction of abandoned property, or removal of a public nuisance."

A public service corporation is a public utility, gas, electric, telephone, or cable communications company, and other listed utilities, and also a municipality or public corporation when operating an airport, a common carrier, a watershed district, or a drainage authority, and an entity operating a regional distribution center within an international economic development zone.

Abandoned property is property that has not been legally occupied or used for any commercial or residential purpose for at least one year, that has not been maintained, and for which taxes have not been paid for at least two years.

Blighted area means an area that is in urban use and where more than 50 percent of the buildings are structurally substandard. A building is structurally substandard if it was inspected and cited for code violations that have not been fixed after two notices and for which it would cost more than 50 percent of the taxable market value of the building to fix.

An area is *environmentally contaminated* if more than 50 percent of the parcels are contaminated and for which the estimated costs of investigation, monitoring, testing, and clean-up are more than the estimated market value of the parcel, or a court has issued a clean-up order and the owner has not complied within a reasonable time.

A *public nuisance* for eminent domain purposes arises by an intentional act or failure to perform a legal duty that: (1) maintains or permits a condition that unreasonably annoys, injures, or endangers the safety, health, morals, comfort, or repose of any considerable number of members of the public; (2) interferes with, obstructs, or renders dangerous for passage, any public highway or right of way, or waters used by the public; or (3) is declared by law to be a public nuisance and for which no sentence is specifically provided.

The new law trumps other existing provisions in statute that conflict with it. The new law does not expressly repeal conflicting provisions in statute that authorize takings for economic development alone or that do not impose the same standards for determining blight or contamination. However, the new law expressly preempts any charter provision, ordinance, statute, or special law. Under the statutes governing statutory interpretation, a general provision enacted at a later session trumps previously enacted provisions. In addition, "when the provisions of two or more laws passed at different sessions of the legislature are irreconcilable, the law latest in date of final enactment shall prevail." Minn. Stat. § 645.26, subds. 1, 4.

There are exceptions for Tax Increment Financing (TIF) projects. The new definition of public use or public purpose does not apply to eminent domain actions for qualifying TIF projects and abatements. For information on what constitutes a qualifying TIF project or abatement, see Laws 2006, chapter 214, section 22.

Other states have enacted eminent domain legislation in response to the* Kelo *decision. As of July 2006, at least 27 other states had enacted legislation to limit the use of eminent domain.

For more information: See the House Research publications *Eminent Domain: Just Compensation*, August 2006, and *Eminent Domain: Regulatory Takings*, August 2006.