Eminent Domain Reform in the 2006 Legislative Session: Florida's Explosive Reaction to the Kelo Decision

By Janet Bowman

In response to the decision of the *United States Supreme Court in Kelo v. City of New London*, 125 S.Ct. 2655 (2005), upholding the use of eminent domain power by the City of New London for economic development purposes, the Florida Legislature passed HB 1567 to address the use of eminent domain authority by political subdivisions and community redevelopment agencies. House Bill 1567 (Ch. 2006-11 Laws of Florida) which was signed by Governor Bush became effective on May 11, 2006 amends chapter 73, Florida Statutes, to prohibit the use of eminent domain for the purpose of preventing or eliminating slum or blight conditions or to abate or eliminate a public nuisance. The bill specifically states that the elimination of slum or blight, or the abatement of a public nuisance does not satisfy the public-purpose requirement of s. 6(a), Art. X of the State Constitution.

In addition, the bill prohibits a condemning authority from conveying property obtained through the exercise of eminent domain authority to a private entity unless the conveyance is to be used for certain "common carrier," public infrastructure or utility purposes. Restrictions are made on the conveyance of property already acquired by a condemning authority based on the length of time the entity has held title to the property. If the condemning authority has held the property for less than ten years, the authority can convey the property without restriction if the authority no longer needs the property for the purpose for which it was taken and the owner of the property prior to the taking is given the opportunity to repurchase the property at the price he received from the condemning authority. If ten or more years have elapsed since the taking, the local government can convey the property after public notice and competitive bidding.

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The bill makes a number of changes to the Community Redevelopment Act in addition to the elimination of slum and blight as a public purpose for which CRA's were authorized to exercise eminent domain authority. First, the bill changes the assignment of community redevelopment powers from a community redevelopment agency created under the CRA act to each county or municipality who "may delegate" such powers to a CRA. The authority of a CRA to acquire property is limited to acquisition by purchase, lease, option, gift, grant, bequest, devise or other voluntary method and the disposal of property by a CRA that was originally acquired by eminent domain is subject to the limitations on transfer to a private entity created by the bill. Yet, the bill does not change the ability of CRAs to use tax increment financing and issue bonds to finance redevelopment activity.

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velopment plans and may lead to the demise of CRAs as a vehicle for urban redevelopment. From a growth management perspective, this may encourage urban sprawl as one consequence of the legislation may be to slow urban revitalization thereby reducing incentives for developers to build in existing urban areas as opposed to raw land outside of existing urban service areas. On the other hand, the displacement of residents of affordable housing that might have been condemned under the broad "slum and blight" definition of the Community Redevelopment Act will end as CRAs no longer have the authority to exercise eminent domain authority by employing the abatement of "slum and blight" as the public purpose justifying the condemnation.

Ironically, the Second District Court of Appeal issued an opinion on May 31, 2006 in the case of *Fullmore et. al. v. Charlotte County and Murdock Village Community Redevelopment Agency*, affirming the constitutionality of the Charlotte County's exercise of eminent domain, under the Community Redevelopment Act, to take property that was part of an 1,100-acre antiquated subdivision that contains approximately 3,000 platted lots for redevelopment. Clearly, under the new legislation, a local government or CRA will be unable to undertake such a redevelopment project.

In addition to HB 1567, the legislature also approved House Joint Resolution 1569, a proposed constitutional amendment to appear on the November 2006 ballot, that states that private property taken by eminent domain following a petition to initiate condemnation proceedings filed on or after January 2, 2007, "may not be conveyed to a natural person or private entity except as provided by general law passed by a three-fifths vote of the membership of each house of the Legislature." The proposed amendment hence leaves it to the legislature to decide the circumstances under which condemned property can be conveyed to a private entity rather than a total ban on such a conveyance.

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