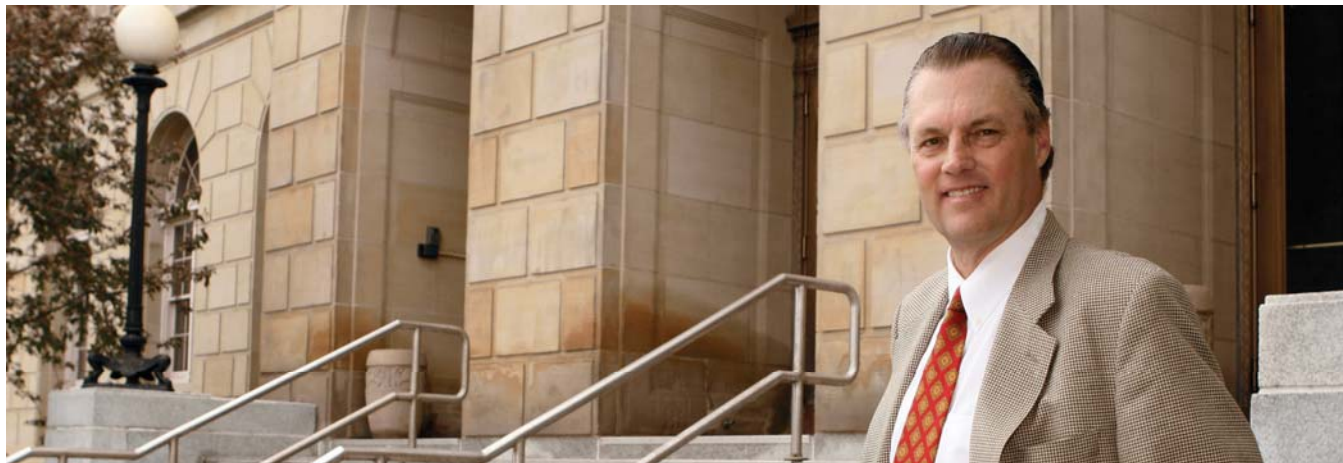


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Ohio's New Eminent Domain Law

by Lane D. Williamson and Jeffrey M. Stopar

Governor Strickland recently signed Ohio Senate Bill 7 into law, narrowing the power of eminent domain held by Ohio public entities. The new law, effective October 10, 2007, is the culmination of much debate over the regulation of eminent domain to preserve the necessary taking of property for the public good, while protecting landowners from governmental interference with their property rights.

Eminent domain is the constitutional right of the government to take private property for public use upon providing just compensation to the owner. Although the requirements of public use and just compensation are long-established, recent judicial interpretations have given public use a broad meaning. Courts have defined a public use as a public purpose, not requiring that the property is intended to be used by the public, but that a public benefit accrues from state ownership of the property. Under this standard, courts have found the elimination of blight to create urban renewal to be a valid public purpose to permit the exercise of eminent domain. This broadening trend peaked in the case of *Kelo v. City of New London*, in which the U.S. Supreme Court ruled that a public entity could take private property for eventual transfer to another private owner for the public purpose of "economic development," even in the absence of blight. While stating that the U.S. Constitution allows for takings of private property to transfer to other private parties for economic development, the Court indicated that states were free to restrict the power of eminent domain to avoid such takings.

Locations

Columbus Office:

100 E. Broad Street Ste. 600
Columbus, Ohio 43215
Telephone: 614-280-1770
Fax: 614-280-1777

Toledo Office:


One Seagate, 24th Floor
P.O. Box 10032
Toledo, Ohio 43699-0032
Telephone: 419-241-6000
Fax: 419-247-1777

Findlay Office:

725 S. Main Street
Findlay, Ohio 45840
Telephone: 419-424-5847
Fax: 419-424-9860

Website:

www.eastmansmith.com



On August 1, 2007, the Ohio Supreme Court decided, in *City of Norwood v. Horney*, that “although economic factors may be considered in determining whether private property may be appropriated, the fact that the appropriation would provide an economic benefit to the government and community, standing alone, does not satisfy the public-use requirement.” In other words, the Court held that pure economic development in itself did not satisfy the public use requirement of the Ohio Constitution. The Court also ruled that the City of Norwood’s definition of “blight,” including areas that were “deteriorating,” was unconstitutionally vague because it required speculation as to a property’s future condition. In the aftermath of *Kelo* and *Norwood*, SB 7 emerged as the Ohio’s effort to modify eminent domain law to better balance the competing interests of public entities and private property owners.

Senate Bill 7 significantly changes Ohio eminent domain law, and is a major departure from the *Kelo* decision. First, the Act provides a narrow definition of blight, by defining “blighted parcel” to require specific factors or conditions on the property, and generally excludes agricultural property. The new law defines a “blighted area or slum” to require at least 70% of the parcels within it be blighted parcels that negatively impact the area in one of three specifically defined manners. Significantly, the law mandates that the determination of whether a parcel or area is blighted does not to involve considerations of the comparative better use or the potential increase in generated tax revenues from a different use of the property. Instead, the Ohio public entity or subdivision exercising eminent domain over blighted property must:

1. adopt a comprehensive development plan at the entity’s expense
2. include at least one study documenting the public need for the subject property, and
3. pass a resolution affirming the public need for the property.

The taking entity cannot get around these procedural requirements by finding that a property is blighted by emergency ordinance or resolution. All of these provisions denote a legislative attempt to narrow the scope of what constitutes blight, and create a standard definition for all Ohio public entities afforded the power of eminent domain.

The narrowed definition of blight is significant because the Act, in its most crucial change, specifically excludes economic development or increase of public revenue as valid public uses under Ohio law when appropriating property to a private entity, unless the property in question is considered blighted under Ohio law. Thus, if a property is not blighted according to the narrow definitions in the Act, that property cannot be taken by any Ohio public entity for ownership by a private entity using the power of eminent domain to promote economic development. This provision effectively nullifies the *Kelo* holding in Ohio, stating that economic development alone is not a sufficient purpose or use justifying the exercise of eminent domain for appropriation to a private entity. The new law not only states that blight is necessary for economic development to be a valid public use in these cases, it narrowly defines blight to remove opportunities for abuse in the labeling of properties as blighted.

The Act also contains other important changes involving pre-appropriation procedures by public entities, the potential award of costs and attorney's fees to property owners, and the right of property owners to repurchase the property if the appropriating entity decides not to use the property for the stated public purpose. These changes, along with the narrowed definition of blight and the exclusion of economic development in the absence of blight from valid public use, signify statutory limitation on the power of eminent domain in Ohio. Moreover, the new law may raise new issues regarding the eminent domain powers of cities and villages. Overall, the intended and likely effect of SB 7 is that the power of Ohio public entities to appropriate private property will be limited. The extent of this limitation will be decided by Ohio courts in the application of the new law.

For more information on the new eminent domain laws, please contact Mr. Williamson or Mr. Stopar (419-241-6000).



Mr. Williamson, a Northwest Ohio native, is a member of the Firm. His practice focuses on the areas of real estate acquisition and development with a concentration on land use, zoning, and planning law.



Mr. Stopar is an associate. He practices in the areas of professional liability, land use, zoning and appellate litigation.

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