

# Officials: Eminent domain no threat

## Court's ruling unlikely to affect property owners in Fort Collins

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Fort Collins' interest in creating jobs and boosting economic development does not carry over to acquiring private property so someone else can build on it, local officials said.

The U.S. Supreme Court's controversial ruling that governments have the authority to take land to clear the way for private development is not expected to have an immediate effect locally, said Joe Frank, director of the city's Advance Planning Department.

Even areas that are prime for redevelopment - such as portions of the North College Avenue corridor included in an urban renewal district formed by the city last year - are not likely to see eminent domain used to promote economic revitalization, Frank said.

"Eminent domain is in our tool box, but it's a tool we're reluctant to use," Frank said. "We would prefer to work with property owners on a friendly basis."

The 5-4 ruling issued June 23 stated economic development is a legitimate "public use" of land and can be used by local governments to force the sale of private property.

Most eminent domain cases involve acquiring land for public works projects such as roads or schools. The U.S. Constitution requires governmental entities to pay fair compensation for land they take.

The case considered by the Supreme Court involved the city of New London, Conn., and its efforts to redevelop 90 acres of waterfront property into office buildings, high-end housing and a marina. The development was expected to generate hundreds of jobs and \$680,000 a year in property-tax revenue.

Owners of 15 homes on 1.5 acres of the project refused to sell. The Connecticut Supreme Court upheld the city's plan, a decision that was appealed to the Supreme Court.

Over the years, the concept of "public use" in urban renewal law has evolved to "public purpose," said Paul Eckman, deputy city attorney in Fort Collins.

The court's decision does not change the law or the requirement that "blight" conditions be documented, but it does broaden the definition of public purpose to include economic development.

The city handles a "handful" of eminent domain cases a year, he said, typically for the purpose of acquiring right of way for street or trail projects.

"The city of Fort Collins is not big on condemnations," he said. "We always negotiate."

Eminent domain is the type of governmental tool that makes business owners nervous, said Ron Lautzenheiser, a member of the North Fort Collins Business Association.

"We're always very concerned when the government has the power to control what happens on private property," he said.

Lautzenheiser also is a member of a citizens advisory committee to the North College Urban Renewal Authority, which is governed by the City Council. As the authority, the council has eminent domain power in the North College urban renewal area.

That was a concern for many property owners, he said, but he does not expect condemnation to be used in efforts to bring new businesses and improved infrastructure to North College, even in light of the Supreme Court's ruling.

Chances the city would use eminent domain outside of the urban renewal area to promote economic development are low, he said.

"I think you would see a firestorm of public opinion that would be difficult to contain," he said.

The court's decision "is the kind of thing that makes the hair stand up on the back of my neck," said County Commissioner Kathay Rennels, a Republican and longtime advocate of private-property rights.

Condemnation is rarely used by the county, Rennels said, and she does not support giving eminent domain authority to private entities.

"I think it opens the door to all kinds of abuse," she said. "There are other ways to get things done that include a public process and accountability."

The ruling is likely to spur efforts to clarify state law on eminent domain and how it can be used, said Rep. Angie Paccione, D-Fort Collins.

"We've seen a lot of abuse of eminent domain across the state," she said. "I think we need to clearly spell out how it can be used, especially for private development."

This year the Legislature passed two measures that would prohibit giving condemnation authority to private entities. The laws were aimed at the so-called Super Slab project, which would build a privately financed toll road from Wellington to Pueblo.

Gov. Bill Owens vetoed both measures, saying the state should take a serious look at private financing for costly transportation projects.

In 2004, Paccione supported legislation that prevented municipalities from using eminent domain to acquire land outside their boundaries. The law revolved around an attempt by the town of Telluride to condemn vacant land outside the town. The town planned to preserve the "blighted" land as open space, she said.

The landowner should have been compensated based on the development potential for the property, Paccione said.

"I don't think we should be using eminent domain for someone's economic benefit or aesthetic pleasure," she said.

