

# CARLTON FIELDS

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## REAL ESTATE AND MORTGAGE FINANCING PRACTICE CASE SUMMARY

### *Kelo v. City of New London*

On June 23, the Supreme Court announced its opinion in one of the most closely-watched property rights cases in recent years, expressly rejecting the contention of property rights activists that condemnation of land for resale to private developers necessarily amounts to a taking for private use in violation of the Fifth Amendment. Instead, the Court has held, a locality may condemn land for private redevelopment provided it has deliberatively considered and documented the public purposes to be accomplished by the subject condemnation proceedings, and provided there is no evidence of any back-room dealings tending to show that the true purpose of the condemnation was for private benefit.

The case, *Kelo v. City of New London*, concerned the efforts by a small city in coastal Connecticut to use its power of eminent domain to condemn a 32-acre swath of land for purposes of economic redevelopment. Specifically, after years of economic decline in which the City had been designated a “distressed municipality,” and in which a U.S. Naval facility had been closed and the population of the City had declined to its lowest levels since 1920, the City formed a nonprofit corporation to assist it in crafting a plan for redevelopment of the waterfront property surrounding the former site of the facility. Over the course of several years, a plan emerged that would include recreational, commercial, residential and office uses, including, among other things, a pedestrian “riverwalk” and a \$300 million research facility for Pfizer. The City gradually acquired most of the land in the vicinity, but several small landowners resisted the plan, resulting in the commencement of condemnation proceedings against them. In response to such proceedings, the landowners claimed that the proposed condemnation violated the Fifth Amendment to the U.S. Constitution because the proposed taking of the land for development by private developers was not a taking for “public use.”

The Supreme Court rejected this argument, relying heavily on the lower courts’ findings regarding the exhaustive procedures that had preceded the condemnation proceedings, and affording broad deference to the local government’s conclusions that redevelopment was necessary and that acquisition of all land in the area was the best feasible means by which the anticipated benefits could be achieved. The Court took pains to stress that in the absence of such factual circumstances its result might be different. In addition, the Court refused to accept the contention that the condemnation of land for resale to other private entities always amounts to a taking for private use, dismissing this argument as mere confusion between the actual purpose to

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be achieved and the “mechanics” employed to do so. Finally, the Court was careful to note that its ruling pertained only to the baseline standards established by the United States Constitution, noting that several states and localities had more restrictive legal requirements regarding the purposes for which land could be condemned; further, the Court also specifically noted that it had not been presented with the question of what would constitute “just compensation” for the City’s taking. In all, the Court concluded that there was “no basis for exempting economic development from [its] traditionally broad understanding of public purpose,” thereby giving constitutional imprimatur to the types of redevelopment efforts that have become increasingly common in localities nationwide.

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