Redevelopment and Condemnation

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Local powers of eminent domain to deal with blight.
Definition of Eminent Domain

- Definition: the right of the people or government to take private property for public use.
Definition of Eminent Domain

• Fifth Amendment of the U.S. Constitution: “nor shall private property be taken for public use, without just compensation.”

• Georgia Constitution; Sec. III, Par. I: private property shall not be taken or damaged for public purposes without just and adequate compensation being first paid.
Types of takings:

- Physical takings;
- Exactions;
- Regulatory takings/Inverse condemnations.
Physical Takings.

Three key elements:

• Private Property

• Taken for a Public Purpose

• Without Just Compensation
Kelo - Facts:

• In 2000, the City of New London, CT acquired and consolidated a number of water-front properties as part of an economic development and revitalization project.

Kelo - Ruling:

• The project was to be owned and operated by private entities.

• A number of property owners declined to sell and challenged the condemnation.
Kelo - Claim:

Executing the economic development plan envisioned by the city did not constitute a “public use”.
Kelo - Ruling:

•Absent evidence that the public use was a pretext;

•Courts should show “great respect” for state and local determinations of public need;

•The public purpose of executing a “carefully formulated economic redevelopment plan” was entitled to local deference.
Kelo - Ruling:

After the case the Ms. Kelo accepted an offer of approximately $440,000 for her house, which was more than $300,000 more than the initial appraised value.
Kelo - Christmas Card:

Here is my house that you did take
From me to you, this spell I make
Your houses, your homes
Your family, your friends
May they live in misery
That never ends.
I curse you all
May you rot in hell
To each of you
I send this spell
For the rest of your lives
I wish you ill
I send this now
By the power of will
Aftermath:

45 States enacted some form of reforms to eminent domain procedures in the three years following Kelo.
Georgia’s Response:

Constitutional Amendment

Landowner's Bill of Rights and Private Property Protection Act (2006)
Georgia’s Response:

• Economic development could not be considered a "public use".

• Economic development = activities to increase tax revenue, improve the tax base, increase employment, or other improve economic health.
Georgia’s Response:

Redevelopment allowed to eliminate "blight".
Blight

The property must also meet **two** of six "dangerous" conditions.
Blight

• Uninhabitable, unsafe or abandoned structures
• Inadequate provision of ventilation, light air or sanitation
• Imminent harm to life or property caused by natural catastrophe where property owner has not taken reasonable efforts to remedy the problem after being notified by the relevant government agency
• Superfund site due to environmental contamination
• Repeated illegal activity on the individual property of which the property owner knew or should have known
• Maintenance of the property below code for a year after notice of the code violation
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Other Limitations & Landowner Protections

Any authorities engaged in redevelopment must seek approval of the elected city or county governing body to exercise eminent domain.
Other Limitations & Landowner Protections

• Authorities must negotiate in good faith with landowners before considering condemnation.

• Procedures outlined in OCGA § 22-1-9.
Other Limitations & Landowner Protections

• Courts are directed to determine at the outset whether a condemnation is exercised for a public purpose.

• Burden of proof is place on the condemnor to establish a public use.
Other Limitations & Landowner Protections

- Property owner entitled to reimbursement of costs if condemnation is unsuccessful or abandoned.

- Condemnee may petition to reclaim the property if it is not put to a public use within 5 years of condemnation.

- The public use must be maintained for at least 20 years.
Other Limitations & Landowner Protections

• People displaced by a condemnation are entitled to recovery of relocation expenses for moving their home or business,

• Direct losses resulting from moving or closing a business, and

• Other relocation expenses.

• The City condemned a flower shop as part of an Urban Redevelopment Plan to build "public facilities".

• The City did not further specify the public purpose in pleadings or before the special master.
City of Stockbridge v. Meeks

• On appeal from the special master the trial court reversed stating that the City had not shown a public purpose for which condemnation would be authorized.

• Upheld by the Georgia Court of Appeals: "the City's claim to the contrary notwithstanding, it is clear that the burden to show a taking for a public purpose lies with the condemnor, not the condemnee, here therefore, with the City, not the Meeks".
City of Stockbridge v. Meeks

- Decided in 2007, though the litigation was ongoing for years and the trial court's order predates the 2006 Georgia eminent domain amendments.

- Hailed as "Georgia's Kelo", and informed the drafting those amendments.
Condemnation Process

- Board of Assessors
- Special Master
- Superior Court
- Other Special Purpose Condemnations
Board of Assessors:

• Condemnor selects an assessor.

• Condemnee selects an assessor.

• These two assessors select a third assessor.

• All must be certified real estate appraisers.
Board of Assessors:

• The three assessors hold an evidentiary hearing.

• The majority have to agree on an award of just compensation, which is submitted to the superior court.

• Assessors only determine value.

• Challenges to the validity of the taking must be addressed in a separate suit filed in the superior court.
Special Masters Hearing

- An experienced attorney is appointed by the superior court to act as special master.

- The special master holds an evidentiary hearing to decide all issues connected with the condemnation.

- The findings are submitted to the superior court, which may adopt or reject them in part or in total.

- The condemnee can opt to choose an assessor to serve with the special master, in which case the condemnor also chooses one to form a special masters panel.
Nuisance Abatement

Remember that eminent domain & condemnation are distinct from nuisance abatement process under OCGA § 41-2-1 et seq.
Nuisance Abatement

OCGA § 4-2-9 authorizes local ordinance to address nuisances posed by dwellings, buildings, or structures within such county or municipality which are:

- unfit for human habitation, or commercial, industrial, or business uses, and not in compliance with applicable codes:

- which are vacant and being used in connection with the commission of drug crimes,

- or which constitute an endangerment to the public health or safety as a result of unsanitary or unsafe conditions.
Nuisance Abatement

• Whenever a request is filed by a public authority or at least 5 residents, an officer of the locality shall initiate an investigation.

• If the above conditions are satisfied, the officer may issue a complaint *in rem* against the property.

• Court can then order the repair or demolition of the structure and the clearing of the property.

• If the owner fails to comply with this order, the officer may direct that the structure be repaired or demolished.

• All costs associated with the abatement action can be attached to the property a lien superior to all other liens save tax liens.
Nuisance Abatement

This does not interfere with the authority of courts to respond to nuisance complaints and order their abatement.
Blight Tax

• Georgia Constitution - Article IX, Sec. 2, Par. VII (d)

• The **Community Redevelopment Tax Incentive Program** allows counties and municipalities to enact an ordinance to establish a tax incentive program to encourage property owners to remediate or redevelop blighted properties.

• It increases property taxes on blighted properties and subsequently decreases them for a period of time once the property is remediated or redeveloped.
Blight Tax

Requirements:

1. standards for determining whether a property is blighted;

2. a procedure for identifying blighted properties that provides the property owner with notice and a hearing opportunity;

3. an increased tax rate that applies to designated blighted properties;

4. standards for remediating or redeveloping properties in order to remove a blighted property designation; and

5. a decreased tax rate and the period of time it applies for eligible remediated properties.
Blight Tax

• Cannot be used on properties occupied as a primary residence.

• Revenues may only be used for community development projects.
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Examples of Blight Tax Ordinances

• City of Albany
• City of Perry