



Insufficient "Blight" Finding Results in Court of Appeal's Invalidating Redevelopment Plan

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As we reported yesterday on our blog, the Court of Appeal issued an opinion this week invalidating a redevelopment plan based on the agency's failure to provide substantial evidence in support of its blight findings. The Court's willingness to scrutinize an agency's blight findings likely can be traced back to the Supreme Court's 2005 decision in *Kelo v. City of New London*, in which the Court upheld the right to condemn property for purely economic motives, triggering a nationwide outcry against eminent domain – and especially eminent domain for redevelopment purposes. That decision prompted some changes to California's eminent domain laws, but more importantly, it led to a heightened sentiment that courts need to intervene where an agency does not comply with the requirements for a blight finding.

In *County of Los Angeles v. Glendora Redevelopment Project* (June 15, 2010) __ Cal.App.4th __, the Court invalidated Glendora's redevelopment plan, concluding that no substantial evidence existed to support Glendora's finding that the areas involved suffered from "physical blight." For public agencies, and redevelopment agencies in particular, the case is a reminder that the impacts from *Kelo* are still being felt. The decision also serves as a wake up call to agencies that any blight findings will be closely scrutinized, and if not adequately supported, the agency may find itself without the power of eminent domain for redevelopment purposes.

The Kelo Decision and Its Impact

Kelo itself involved the City of New London, Connecticut's use of eminent domain for purely economic motives; the city did not even pretend it was acting to eliminate blight, yet, the Supreme Court upheld the city's right to take as a proper public use. *Kelo* had little direct impact on California's eminent domain law, because even before the Supreme Court issued its 2005 opinion, California law allowed eminent domain for redevelopment purposes only upon a proper showing of blight. In other words, California law did not allow eminent domain for pure economic development.

Following *Kelo*, however, public scrutiny of eminent domain and, in particular, eminent domain for redevelopment purposes, resulted in a nationwide fire storm. Most states responded by enacting some eminent domain reform. In California, the reforms included SB 1206, which contained some tweaks to the law involving blight findings. More importantly, however, it seemed clear that courts would be more likely to examine critically an agency's blight findings in the wake of the *Kelo* backlash.

Based on the *County of Los Angeles v. Glendora Redevelopment Project* decision, the prognosis with respect to court scrutiny appears to have been accurate.

Glendora Redevelopment Project Facts and Procedural Background

Over the years, Glendora has adopted redevelopment plans for five project areas. In September 2006, the County of Los Angeles filed an action challenging four of the five project areas, alleging violations of the Community Redevelopment Law and lack of sufficient evidence to support Glendora's blight findings. In February 2008, the trial court issued a 62-page statement of decision. The Court of Appeal describes the trial court's ruling as follows:

"Glendora's findings of blight are not supported by substantial evidence" in the administrative record. Furthermore, the court concluded, given the absence of blight, "Glendora is without eminent domain authority in this instance."

Glendora appealed the decision, claiming sufficient evidence existed to support its findings.

The Court of Appeal's Decision

The Court of Appeal examined the requisites for a proper blight finding, each of which must be established to support the finding:

1. The area must be "predominantly urbanized";
2. The area must be "characterized by" one or more conditions of physical blight;
3. The area must be "characterized by" one or more conditions of economic blight; and
4. These "blighting conditions must predominate in such a way as to affect the utilization of the area, causing a physical and economic burden on the community."

In a painstaking analysis, the Court held that Glendora had not met the "physical blight" test. The Court analyzed each of four statutory bases for a physical blight determination: (1) unsafe or unhealthy buildings; (2) code violations; (3) dilapidation and deterioration; and/or (4) defective design or construction.

Recognizing the "progressively narrowed and tightened" definition of "blight," the Court of Appeal agreed with the county that there was no substantial evidence in the record of any of these conditions. The Court therefore upheld the trial court's invalidation of Glendora's redevelopment plan. (Having concluded that Glendora failed to establish "physical blight," the Court did not analyze the other prongs of the test.)

Lessons Learned

The significance of this opinion lies not just in the holding itself, but in the trial court's willingness to scrutinize the blight findings, rather than merely deferring to the agency's determination. This is precisely the type of analysis that seemed likely in *Kelo*'s wake. Whether this is the start of a trend remains to be seen.

For public agencies wishing to avoid this situation in the future, a close reading of the *Glendora Redevelopment Project* case is highly recommended. The Court details the findings necessary to support a blight determination, and it provides examples of what evidence agencies may need to gather in order to support such a decision.

Finally, agencies should consider retaining an eminent domain attorney early in the process of implementing a redevelopment plan in order assist in packaging the evidence and documenting the blight findings. This is especially important any time the agency believes there will be substantial opposition to the proposed plan, as documenting the findings properly could well make the difference between an agency's plan being upheld or struck down in court.