

March 20, 2002

## PROPERTY REPORT

# Condemnation Suffers Setback In Connecticut State Court

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Property owners won another victory in a condemnation case, the latest in a string of rulings in which courts have blocked or delayed local government takings of private property for economic development and other purposes.

A state judge in Connecticut permanently blocked the condemnation of 11 homes and a business, saying the city of New London and a nonprofit group given condemnation powers weren't explicit enough in stating what they intended to do with the land once they took it.

"More people are challenging the right to take, and more property owners are winning," says Gideon Kanner, professor emeritus at Loyola Law School in Los Angeles and longtime critic of condemnation. "That's just an arithmetical fact."

In a wide-ranging 249-page decision issued last week, Judge Thomas J. Corradino of Superior Court, New London, said the reasons given by the city and its designated developer, New London Development Corp., were "vague, shifting and noncommittal" in their plans for the land.

The judge said the city's 2000 plan, which said the land could be used for retail, parking or "a marina-training facility," left him no basis to decide whether the project would serve a "public use," the standard for government takings under the U.S. Constitution and most state constitutions.

Under the ruling, the four owners will keep the land, though the city and nonprofit group are free to reword the document, known as a municipal development plan, on which a future condemnation case could be based.

Dana Berliner, a lawyer with the Institute for Justice, a Washington nonprofit law firm that specializes in property-rights cases and brought the case on behalf of seven plaintiffs, says the decision was a "landmark" that established the principle that local authorities must at least articulate a specific plan for condemned property. "You can't condemn property now and figure out what you're going to do with it later," she says.

But Edward B. O'Connell, a lawyer for New London Development Corp., calls the decision "decidedly mixed" and says Judge Corradino rejected the plaintiffs' most sweeping arguments against government condemnations. Instead, he says, the judge blocked the takings on a

"subordinate" argument, one that could be easily remedied by the city and the nonprofit. "Their assault on the validity of eminent domain failed miserably," Mr. O'Connell says.

Thomas J. Londregan, a lawyer for the city, says the judge ruled that the three proposed uses for the land were, in fact, public uses, but the city is required to "pick one." He says the city didn't need to appeal and hadn't decided whether to amend its plan.

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*Updated March 20, 2002*

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