# From the DINER to the Yacht Club:

## Connecticut Redevelopment Law after *Aposporos* and *Pequonnock Yacht Club*

By John J. Louizos and Patricia M. Gaug

> "So great…is the regard of the law for private property, that it will not authorize the least violation of it; no, not even for the general good of the whole community."[1]
>
> —*Sir William Blackstone*

Although most property owners would likely agree with Sir William Blackstone's sacrosanct view of private property rights, his statement is not in accord with American real property law as it has developed over the last one hundred and fifty years. The laws of this country instead recognize that a property owner holds his or her property subject to, among other powers, the government's power of eminent domain—the authority of the government to force transfers of property from private owners to itself. This is an inherent power of a sovereign government,[2] although provisions in both the federal and state constitutions constrain its use.

The Fifth Amendment of the United States Constitution provides, in pertinent part, that "private property [shall not] be taken for public use, without just compensation," and applies to the states through the Fourteenth Amendment.[3] Article I, § 11 of the Connecticut Constitution similarly provides that "[t]he property of no person shall be taken for public use, without just compensation therefor." These provisions impose two conditions on any governmental taking of private property: 1) the property can only be taken for a public use; 2) the government must pay the owner just compensation, which is usually fair market value, for the property taken.

The concept of a legitimate public use has changed over time, influenced to a large degree by governmental objectives and prevailing social policy, with the narrower interpretation requiring the public's actual use of, or right to use, the condemned property for such things as roadways, parks and schools, while the so-called broad view requires only a finding of advantage or benefit to the public as a whole.[4] By the mid-nineteenth century, the judiciary had adopted the broad view to uphold condemnations and subsequent transfers of condemned property to private railroad, utility and water companies.[5] The adoption of redevelopment statutes in the mid-twentieth century in many jurisdictions, including Connecticut, expanded the broad view of public use further still, by allowing the condemnation of properties in blighted urban areas for subsequent transfer to private developers for redevelopment purposes. As with the earlier cases involving railroad and utility companies, the courts reviewing redevelopment statutes found that the benefit to the public resulting from the private redevelopment of slum areas was a sufficient public use, or purpose, to satisfy constitutional restraints.[6] In *Berman v. Parker*,[7] the seminal redevelopment case, the United States Supreme Court sanctioned the deferential treatment that had already been adopted by many state courts, including the Connecticut Supreme Court, toward redevelopment takings.

On the morning of October 25, 2001, the Connecticut Supreme Court heard oral argument on two cases that challenged condemnations premised on the Connecticut Redevelopment Act: *Aposporos v. Urban Redevelopment Comm'n of Stamford*, 259 Conn. 563, 790 A.2d 1167 (2002); and *Pequonnock Yacht Club, Inc. v. Bridgeport*, 259 Conn. 592, 790 A.2d 1178 (2002). As the Court had not reviewed a redevelopment taking for nearly three decades,[8] the scheduling of these two cases on the same morning portended a significant adjustment in judicial interpretation of the Act. This article will review the relevant provisions of and case law construing the Connecticut Redevelopment Act, outline the Supreme Court's decisions

in *Aposporos* and *Pequonnock Yacht Club*, and analyze the effect these decisions may have on future challenges to redevelopment condemnations.

## The Connecticut Redevelopment Act

Connecticut's Redevelopment Act was adopted in the 1940s in response to federal programs providing subsidies to states that implemented urban renewal plans,[9] and is codified in C.G.S. §§ 8-124 through 8-139. Section 8-124 sets out the public policy behind redevelopment, declaring "substandard, insanitary, deteriorated, deteriorating, slum or blighted areas" in municipalities constitute "a serious and growing menace, injurious and inimical to the public health, safety, morals and welfare of the residents of the state;...contribute substantially and increasingly to the spread of disease and crime, necessitating excessive and disproportionate expenditures of public funds… [that] the existence of such areas constitutes an economic and social liability…beyond remedy and control solely by regulatory process in the exercise of the police power and cannot be dealt with effectively by the ordinary operations of private enterprise without the aids herein provided…." It further finds that the acquisition of property for the purpose of eliminating such blighted conditions and preventing any recurrence through redevelopment is a public use and purpose.[10]

The Act delegates the state's power of eminent domain to the local housing authority, the state housing authority or to a redevelopment agency formed by a municipality pursuant to other provisions of the Act.[11] The exercise of that delegated power is predicated on the adoption of a redevelopment plan in accordance with the procedures set out in C.G.S. §§ 8-127 and 8-128. That procedure includes review by the local planning agency, a public hearing on the proposed plan and approval of the plan by both the redevelopment agency and the municipality's legislative body. Prior to approving the plan, an agency must find that the proposed redevelopment is to be located in a redevelopment area and that its implementation will materially improve conditions in that area.[12] The proposed redevelopment plan can be initiated by the redevelopment agency itself, or by any prospective redeveloper, who must submit it to the redevelopment agency for approval and adoption pursuant to the foregoing procedure.[13] The plan must also specify the time for completion of the acquisition of properties affected by the plan.[14] Finally, while the Act contemplates that the actual redevelopment will be undertaken by private redevelopers, the private redevelopers are subject to extensive governmental oversight and funding from the federal and state governments underwrites both the agency's acquisition of the properties and the redeveloper's project itself.[15]

The terms "redevelopment area" and "redevelopment plan" are expressly defined by the Act. A "redevelopment area" is an area "which has deteriorated, is deteriorating, substandard or detrimental to the safety, health, morals or welfare of the community" and can include "structures not in themselves substandard or unsanitary which are found to be essential to complete an adequate unit of development...." A "redevelopment plan" must describe the redevelopment area and discuss the land uses proposed.

Cases brought to the state court in the years following the Act's codification in 1949 challenged its constitutionality on several grounds, including: the validity of the legislative determination in C.G.S. § 8-124 that redevelopment condemnations served a public purpose;[16] the agency's ability to condemn property that is not itself substandard or blighted, if it is within a redevelopment area found to be blighted in general;[17] and the Act's failure to provide those affected by an agency's action with an express right to judicial review of the agency's decisions.[18] All these constitutional challenges failed, although other decisions imposed limitations on redevelopment agencies by overlaying principles grounded in non-redevelopment takings cases, creating a body of case law that defined the contours of challenges to redevelopment takings for the last four decades.

The Court recognized the right of those affected by redevelopment agency decisions to bring a separate action in equity to review the validity of the agency's decision. In such an action, the Court focuses on whether the agency's challenged action was

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## Eminent Domain

### Municipal Development Act vs. Redevelopment Act

The Connecticut Supreme Court will again consider a municipality's exercise of its power of eminent domain in another closely watched condemnation case, *Kelo v. New London* (Docket No. SC 16742). In *Kelo*, the City of New London approved a municipal development plan (MDP) pursuant to Chapter 132 of the Connecticut General Statutes. As part of the approval, the city authorized the New London Development Corporation (NLDC) to acquire properties within the development area. In furtherance of the plan, the NLDC initiated condemnation actions under the power of eminent domain to acquire properties within the development area from the plaintiffs in the case, owners of homes and properties located within the development area who had not been willing to convey their property. They sought injunctive relief to prevent the taking of their homes by eminent domain, arguing, *inter alia,* that the taking of their properties was not for "public use" but, instead, for private business development. Although the trial court found that the taking was for a public use, it granted the plaintiffs' request for permanent injunctive relief, holding that the condemnation of certain homes was not reasonably necessary to accomplish the MDP. The case was appealed to the appellate court and subsequently transferred to the Supreme Court.

Having recently decided *Aposporos* and *Pequonnock*, which involved public use and necessity issues in condemnation cases under the Redevelopment Act, the Court will now consider similar issues in a case involving a taking for economic development purposes under the state's Municipal Development Act. The matter has been briefed and is presently awaiting assignment for oral arguments.

*—Donald D. Philips*

unreasonable, in bad faith or in abuse of its powers.[19] In those cases, the Court has held that an agency's determination that the challenged action served the public purpose, or was necessary to effectuate that purpose, would be considered conclusive, unless shown to be made unreasonably, in bad faith or in abuse of its powers.[20] This deferential review of redevelopment agency decisions was counterbalanced by the requirement that courts strictly construe statutes delegating the state's power of eminent domain.[21] Thus, a redevelopment agency must strictly comply with each of the enumerated steps in the Act and the failure to do so will result in invalidation of its actions.[22]

The cumulative effect of this case law created the perception, if not the reality, that actions challenging an agency's decision on the ground that the agency did not strictly comply with the Act's procedures were more likely to succeed than a broad constitutional challenge to agency decisions or to challenges premised on a public use argument. In *United Oil v. Urban Redevelopment Commission of Stamford*,[23] the Court held that the trial court had improperly granted summary judgment to the defendant agency on the plaintiff's challenge of the redevelopment agency's proposed resale of acquired property on the ground that the agency failed to follow the provisions of C.G.S. § 8-137.

## The *Aposporos* Decision

The history of the case law construing the Act underscores the significance of the Court's decision to review in the fall of 2001 not one, but two challenges to condemnations under the Act. The Court's decision in *Aposporos v. Urban Redevelopment Comm'n of Stamford* was released on March 5, 2002. The plaintiffs, Maria Aposporos and her sister, Ellen Begetis, had instituted the action seeking judicial review of and an injunction prohibiting the proposed taking of their property by the defendant redevelopment agency. The plaintiffs had acquired their property, which is located in downtown Stamford, in 1977, and operated a restaurant known as Curley's Diner on the site.[24] Stamford had adopted a redevelopment plan in March 1963 and while the plaintiffs' property was in the area of the city affected by the plan when they acquired it, it was not identified as a property that the defendant intended to acquire.[25] In the mid-1980s, merchants in the city became concerned about the effect that construction of a mall in another part of the city would have on their businesses. As a result, a study was commissioned to look into the issue.[26] The study recommended that the defendants acquire four new properties, including the property owned by the plaintiffs.[27]

The URC proposed amendments to the 1963 plan to acquire the four properties.[28] Public hearings were held on the amendments, which were then approved by the city's board of representatives in 1988.[29] The defendants actively solicited developers for the properties, but a downturn in the real estate market led to the unavailability of financing, and thus the project fell through.[30] Almost a decade later, the project was reborn with a new private developer and, in November 1999, the defendants began the process of acquiring the plaintiffs' property.[31] When the URC instituted condemnation proceedings, the plaintiffs responded by immediately filing an action against the city and the URC, seeking and obtaining a temporary order restraining the defendants from proceeding with the condemnation pending adjudication of their claims for temporary and permanent injunctive relief.[32] After an evidentiary hearing on the plaintiffs' claim that the URC's actions were unreasonable, arbitrary and in abuse of its powers, the trial court denied the plaintiffs' claim for an injunction against the condemnation proceedings.[33]

On appeal, the plaintiffs made several claims.[34] But the Court addressed just one: whether "the trial court improperly declined to review [the plaintiffs'] claim that the condemnation was invalid in the absence of a renewed finding of blight...," which it found to be dispositive, ruling in favor of the plaintiffs.[35]

The plaintiffs had conceded that the defendants had made a valid finding of blighted conditions in 1963 when they first adopted the redevelopment plan, but they argued that that finding was stale and did not relate to conditions in the redevelopment area when the defendants identified the plaintiffs' property for acquisition in the 1988 amendment to the plan.[36] The trial court had held that "a reasonable inference can be made based upon the extensions of time to complete the current plan that the point of urban blight was recently considered. If new factual findings regarding blight are needed, it is within the Board [of Representative]'s discretion, not that of the court."[37] Noting that it was unclear whether the trial court held that a renewed finding of blight was implicit in the defendants' actions in 1988 and 1997, or that the commission was entitled to rely on the 1963 finding, the Court concluded that, in either case, "the finding was insufficient to validate the condemnation of the plaintiffs' property."[38]

> The Court found that the defendants' failure to consider integration of the plaintiff's property into the redevelopment plan without the need for condemning it was unreasonable and, therefore, the taking of the plaintiff's property by eminent domain was not necessary.

It then noted that it had not "considered the effect of a prolonged lapse of time after an initial finding of blight on the scope of a redevelopment agency's authority to act pursuant to a redevelopment plan."[39] Although the Court acknowledged two opinions from other jurisdictions

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that had considered a similar issue but found in favor of the redevelopment agency's action, the Court distinguished those cases, stating that it could not conclude "that a redevelopment agency may make an initial finding of blight and rely on that finding indefinitely to amend and extend a redevelopment plan to respond to conditions that did not exist, or to accomplish objectives that were not contemplated, at the time the original plan was adopted." To do so, said the Court, would "confer on redevelopment agencies an unrestricted and unreviewable power to condemn properties for purposes not authorized by the enabling statute and to convert redevelopment areas into their perpetual fiefdoms."[40]

The Court therefore found that an "amendment to a redevelopment plan approved decades after the original plan was adopted that addresses conditions and seeks to achieve objectives that were not contemplated in that plan...effectively constitutes, and should be subject to, the same procedural requirements as, a new redevelopment plan."[41] The Court ultimately ruled that the defendants should have complied with the requirements of C.G.S. § 8-127 for adopting a new redevelopment plan, and because they had not, "the redevelopment agency had no statutory authority to adopt the 1988 amendment that, we [the Court] have concluded, constituted a new redevelopment plan, and the condemnation proceedings against the plaintiffs' property were invalid."[42] It expressly noted that its decision "does not require redevelopment authorities to renew a finding of blight if they are merely completing a project as initially planned...."[43] Nevertheless, a redevelopment agency must comply with the requirements of C.G.S. § 8-127 "to avoid being deprived of authority to address conditions and achieve objectives that did not exist at the time that the original plan was adopted."[44] The decision, which was unanimous, reversed the trial court's decision and instructed it to enter an injunction prohibiting the condemnation on the basis of the 1963 redevelopment plan.[45]

## The *Pequonnock* Decision

The Court's decision in *Pequonnock Yacht Club, Inc. v. Bridgeport* was released the same day as the *Aposporos* opinion. In *Pequonnock Yacht Club*, the Connecticut Supreme Court upheld the trial court's grant of a mandatory injunction ordering the defendants to reconvey to the plaintiff its real property, which the defendants had already taken by eminent domain.[46] Its decision was again unanimous.[47] The Court found that the defendants' failure to consider integration of the plaintiff's property into the redevelopment plan without the need for condemning it was unreasonable and, therefore, the taking of the plaintiff's property by eminent domain was not necessary.[48]

The case involved two acres in Bridgeport that the plaintiff owned and operated as a private yacht club and marina for nearly ninety-five years.[49] The property in question was part of a larger, fifty-acre site known as Steel Point, of which approximately forty upland acres had been found to be in a blighted condition.[50] The plaintiff's property was not part of the original plan to redevelop the point, and was only added by a later amendment.[51] The trial court had found that the plaintiff made numerous efforts to discuss with the defendants the integration of its property into the redevelopment plan as an alternative to condemnation, and had indicated that it was willing to invest in its property and to work with the developer toward that end, but the defendants routinely and consistently rejected the plaintiff's efforts to negotiate, maintaining that they needed to take the plaintiff's property.[52]

The plaintiff conceded that the yacht club, while not in a blighted condition itself, is surrounded by property that is deteriorating and in need of redevelopment and further acknowledged the defendants' ability under the Act to take property that is not blighted but is located in a blighted area when the property is essential to complete a redevelopment plan.[53] The plaintiff argued, however, that the defendants acted unreasonably by failing to negotiate with the plaintiff regarding the integration of its property into the redevelopment plan, and that a non-blighted property that is not essential to the plan may not be taken for redevelopment purposes.[54] The Court agreed with the plaintiff.[55]

It went on to hold that the requirement that the taking of property that is not itself in a substandard, blighted condition be essential, requires the redevelopment agency to consider integration of the property into the plan without a taking, because the taking will only be essential if the agency finds that the property cannot be successfully integrated into the overall plan in a manner that allows the plan to achieve its objectives.[56] Finding that there was no evidence in the record that the plaintiff's property was essential to the overall plan, the Court further found the agency's actions to be unreasonable, even under the broad authority conferred by the Redevelopment Act, because it had arbitrarily rejected the plaintiff's numerous offers to discuss assimilation of its property into the plan.[57] The decision also appears to place the burden of establishing that the taking is essential on the redevelopment agency.[58]

## Redevelopment Post *Aposporos* and *Pequonnock*

In a limited interpretation of the *Aposporos* and *Pequonnock Yacht Club* opinions, one could argue that the Supreme Court was simply restating and applying principles it long ago held applicable to redevelopment condemnations, namely that the taking must be for a public purpose and it must be necessary to effectuate that purpose. Under such a reading, the decisions do not curtail a redevelopment agency's powers, but rather are designed to make the agency provide some evidence of the required condi-

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tions—public purpose and necessity—justifying the use of its powers. In this view, the decisions are nothing more than a reiteration of the principle that a redevelopment agency must strictly comply with all the provisions and procedures of the Redevelopment Act. Thus, had the redevelopment agencies in these cases simply met the plaintiffs' challenges by showing strict compliance, in the form of valid, updated blight findings with a determination that integration was not feasible, the outcome might have been much different in both cases.

Certainly, the Court's extensive reliance on and citations to its earlier decisions under the Redevelopment Act in both decisions, and the care taken in the *Aposporos* opinion to distinguish, as opposed to criticize, the decisions from other jurisdictions that had not required new blight findings, supports such a narrow reading. Yet, the fact remains that both cases represented the only times that the Court has enjoined a redevelopment agency's condemnation. And it did so unanimously in both decisions. That result may justify a conclusion that the Court has decided to apply a less deferential, more heightened scrutiny standard in reviewing condemnations that involve reconveyance to private entities similar to that adopted by other courts.[59] Under this standard, the claimed public benefit "cannot be speculative or marginal but must be clear and significant if it is to be within the legitimate purpose as stated by the Legislature."[60] Although the Court declined to review an appellate court decision a year earlier that had expressly rejected the use of a heightened standard of review,[61] its decisions in that case and in *Pequonnock Yacht Club* may represent an implicit adoption of a heightened scrutiny test in such cases.

The *Aposporos* and *Pequonnock Yacht Club* decisions signify, at the very least, a renewed judicial vigor in requiring strict compliance with statutory provisions in exercising the state's delegated power of eminent domain. And while Sir William Blackstone's view remains far afield of the legal reality, these decisions may display the Court's willingness to more highly scrutinize a redevelopment agency's exercise of those eminent domain powers. **CL**

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## Notes

1. William Blackstone, Commentaries at 139.
2. *Water Commissioners v. Johnson*, 86 Conn. 151, 84 A. 727 (1912).
3. Article XIV, § 1 states, in relevant part "…[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." *See also Hawaii Housing Authority v. Midkiff*, 467 U.S. 229 (1984).
4. Lawrence Berger, The Public Use Requirement in Eminent Domain, 57 Or. L. Rev. 203, 205, 209 (1978).
5. *See generally*, Note, The Public Use Clause, Common Sense and Takings, Derek Werner, 10 Boston University Pub. Int. L. J. 335, 342-345 (Spring, 2001).
6. *Berman v. Parker*, 348 U.S. 26, 34, 75 S.Ct. 98, 99 L.Ed.2d 27 (1954).
7. *Id*.
8. *See Fishman v. City of Stamford*, 159 Conn. 116, 267 A.2d 443, *cert. denied, 399 U.S. 905 (1970)*. It is noted, however, that the court reviewed a case involving a very similar statute, the Municipal Development Projects Act, C.G.S. § 8-186 *et seq*., in the preceding term. *See*, *AvalonBay v. Town of Orange*, 256 Conn. 557, 775 A.2d 284 (2001).
9. *Gohld Realty Co. v. Hartford*, 141 Coon. 135, 104 A.2d 365 (1954).
10. C.G.S. § 8-124.
11. C.G.S. § 8-126. This article refers to any such entity so designated under § 8-126 generically as a redevelopment agency.
12. C.G.S. §§ 8-127 and 8-128.
13. *Id*.
14. C.G.S. § 8-128.
15. *See* C.G.S. §§ 8-135 and 137.
16. *Gohld Realty Co. v. Hartford*, 141 Conn. 135, 104 A.2d 365 (1954).
17. *Graham v. Houlihan*, 147 Conn. 321, 160 A.2d 745 (1960).
18. *Bahr Corp. v. O'Brion*, 146 Conn. 237, 247, 149 A.2d 691 (1959).
19. *United Oil Co. v. Urban Redevelopment Comm'n of Stamford*, 158 Conn. 364, 381, 260 A.2d 596 (1969).
20. *Pet Car Products Inc. v. Barnett,* 150 Conn. 42, 184 A.2d 797 (1962).
21. *E.g., Simmons v. State*, 160 Conn. 492, 280 A.2d 351 (1971).
22. *E.g., Sheehan v. Altschuler*, 148 Conn. 517, 524, 172 A.2d 897 (1961).
23. 158 Conn. 364, 381, 260 A.2d 596 (1969).
24. *Aposporos v. Urban Redevelopment Comm'n of Stamford,* 259 Conn. 563, 566-67, 790 A.2d 1167, 1169-70 (2002).
25. *Id*. at 566.
26. *Id*.
27. *Id*.
28. *Id*.
29. *Id*.
30. *Id*. at 567.
31. *Id*. at 568.
32. *Id*. at 568-69.
33. *Id*.
34. *Id*.
35. *Id*. at 570-71.
36. *Id*. at 573-74.
37. *Id*. at 574.
38. *Id*.
39. *Id*. at 574-75.
40. *Aposporos*, at 576-77.
41. *Id*. at 577.
42. *Id*. at 579-80.
43. *Id*.
44. *Id*.
45. *Id*. at 580.
46. *Pequonnock Yacht Club*, 259 Conn. at 593.
47. *Id*.
48. *Id*. at 594.
49. *Id*.
50. *Id*. at 595.
51. *Id*.
52. *Id*. at 595-96.
53. *Id*. at 604-05.
54. *Id*. at 605.
55. *Id*.
56. *Id*.
57. *Id*. at 606.
58. *Id*.
59. *See, e.g, Township of West Orange v. 769 Assoc. LLC*, 172 N.J. 564, 577, 800 A.2d 86, 94 (2002); *Wilmington Parking Auth. v. Land With Improvements*, 521 A.2d 227, 231 (Del.1986); *Poletown Neighborhood Council v. City of Detroit*, 410 Mich. 616, 635, 304 N.W.2d 455, 460 (1981).
60. *Poletown*, 304 N.W.2d at 459-60.
61. *Bugryn v. City of Bristol*, 63 Conn. App. 98, 774 A.2d 1042, *cert. denied, 256 Conn. 927, 776 A.2d 1143, (2001).*