

PREREQUISITES TO THE LAWFUL EXERCISE OF EMINENT DOMAIN IN A COMMUNITY REDEVELOPMENT AREA



Eminent Domain Section

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Two recent local eminent domain cases involving private properties situated within the boundaries of a community redevelopment area ("CRA") merit an evaluation of the unique prerequisites to taking property in a CRA. This article will discuss these prerequisites. First, that the condemnor has been delegated authority to condemn lands in a CRA. Second, that the proposed public project is specifically identified on the CRA plan. Finally, that the condemnor receives permission from the creator of the CRA prior to exercising its eminent domain authority.

The Community Redevelopment Act ("Act") authorizes the creation of a Community Redevelopment Agency ("Agency") to prepare and adopt redevelopment plans to eliminate and prevent conditions of slum and blight. The intent of the Act is to allow for the creation of a deliberate, cohesive and comprehensive plan ("Plan") that can be implemented for up to a thirty-year period. Once a Plan has been adopted, all private and public development must conform to the Plan. To ensure that the integrity of the Plan is always maintained, § 163.362, Fla. Stat. requires that a CRA Plan specifically identify any publicly funded capital projects and show by diagram, individual property that is intended for public use.

In *City of Tampa v. Cherokee Associates, et al.*, Case No: 00-4495, Thirteenth Judicial Circuit ("Cherokee"), the City of Tampa condemned land

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located within the Ybor City CRA for a municipal parking garage, which was not a CRA purpose, to be utilized primarily by Hillsborough Community College faculty and students. The parking garage was not depicted on the property in the Ybor City CRA plan. Next, in *Hillsborough Area Regional Transit Authority v. Ligori, et al.*, Case No: 00-3056, Thirteenth Judicial Circuit ("Hartline"), Hartline condemned property located within Tampa's Downtown CRA for an intermodal transportation facility that was also not identified on the CRA plan. In addition, it appears that Hartline was not delegated legal authority to condemn property within a CRA. In both of these cases, the jurisdiction that created the CRA was the City of Tampa.

Section 163.375, Fla. Stat., is unique to eminent domain law in that it limits

the otherwise broad eminent domain powers of counties and cities. The exercise of eminent domain authority in a CRA is limited to federal and state governments, for any public purpose, and to counties, cities and the governing community redevelopment agency, solely for redevelopment purposes. Other entities that have eminent domain authority, such as school boards, transit authorities and the like, are prohibited from exercising their power within the sanctuary of a CRA. If condemnation authority was not restricted to redevelopment purposes, Hillsborough County could, for example, condemn land within the Ybor City CRA without the CRA's consent, and place a use that could destroy the integrity of the Ybor City CRA Plan, such as a sewer plant in proximity to the multimillion dollar Centro Ybor project.

In both the *Cherokee* and *Hartline* cases, the condemnor neglected to obtain a resolution from the creator of the CRA authorizing the taking. In addition, the CRA Plan failed to depict the public improvements sought to be constructed by the condemnors. Therefore, it appears that in these cases, the prerequisites to the proper exercise of eminent domain were not fulfilled and the takings should not have been allowed.

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