Urban Redevelopment Agency of the City of Stockbridge V. Gramm

The City of Stockbridge has been at the epicenter of the eminent domain debate in Georgia since the Kelo decision. In the wake of the Kelo case, the public outcry for reform was deafening. The timing for the City could not have been worse, they had a meeting scheduled to move forward with the condemnation process the day after the Kelo decision was announced.

People were outraged that the Supreme Court had ruled that private property could be taken for reasons other than legitimate public use. Traditional uses are schools, roads, parks and many other uses that are owned by the public for the direct benefit of the public.

The City's planned project included condominiums, office space, retail space and civic space. The City eventually condemned six properties and displaced the tenants of some. Of the six properties condemned two property owners chose to challenge the City's right to take of their property. Both property owners were proven to be right in their position.

Possibly, the other four property owners wanted to sell their property (at the price offered) to the City; more likely, they did not want to fight with the City over the taking. Of the four, one settled with the City for about the same price she was offered from a private developer and the other three sold their property (via court order) to the City and are awaiting a jury trial, to determine the final price they will be paid.

That was Ms Gramm's position until October 9, 2007, when the court entered an order requiring her to return the City's money (less condemnation expenses) and accept the return of her property.

Ms Gramm's story is possibly the most troubling of all. She did not challenge the City's right to take her property, but is now faced with the very real prospect of

being forced to buy it back from the City.

The City engaged in the real estate development business, but unlike traditional private sector developers they did not have to bother with the details of assembling property for their planned project, because they were willing to force private property owners to sell their property to the City whether they wanted to or not. They did not follow free market rules then, and they do not intend to now. They simply messed up and now expect Ms Gramm to suffer the consequences of their misdeeds.

In considering the history of the Gramm case, keep in mind the City's claims, as to the meaning of the cases cited; opposed to the facts in each case and the court's opinions in those cases.

The City Council of the City of Stockbridge adopted a Resolution on November 8, 2004, "that one or more slum areas exist in the City and that the rehabilitation, conservation, and redevelopment, or a combination thereof, of such area or areas

is necessary in the interest of the public health, safety, morals or welfare of the residents of the City." Ms Gramm's property is located within the designated "slum area." The City chose to condemn Ms Gramm's property in November, 2005, to make way for a planned Town Center Development.

During the negotiation stages of the property acquisition Ms Gramm indicated that she preferred to develop her own property to be consistent with the proposed Town Center Development. The City placed numerous restrictions and conditions on the participation of Ms Gramm in the new development, and was ultimately successful in acquiring Ms Gramm's property through the powers of "eminent domain." January 16, 2006, the City was awarded fee simple title to the property, upon depositing $430,000.00 into the Registry of the Court.

The funds were disbursed to Ms Gramm, without her waiving any claims for additional sums as full and adequate compensation. The City of Stockbridge/ Urban Redevelopment Authority owned the property fee simple. Ms Gramm was granted a jury trial that was scheduled for February 5, 2007; however, on that very day the City dismissed the condemnation against Ms Gramm's property and demanded that she, in effect, purchase the property from the City. The City alleged that the property could no longer be put to a public use and would be an unfair burden on the citizens of Stockbridge. The City did not confess that they had abandoned their plans for Ms Gramm's property, or that Ms Gramm's property is surrounded on three sides by property they were not successful condemning.

Ms Gramm's dilemma began when the Horvath Family (their property completely surrounds Ms Gramm's) challenged the City's right to take their property to develop for private uses. When the Horvath

Family was successful in their challenge and the condemnation was set aside in that case, the City was stuck with land locked "slum" property. If the City's November 8, 2004, Resolution required the City to rehabilitate Ms Gramm's property when it was convenient and profitable for them to do so; they should not be relieved of their responsibility when the potential profit, for the City, has been greatly diminished.

When the City engaged in the real estate development business, they had a decided advantage over their private sector competitors. They operated under government rules instead of free market rules. They controlled the zoning process, and they used their eminent domain powers to assemble the needed property at below market prices. Unfortunately, for the citizens of Stockbridge, the City achieved government results instead of free market results. The City claims that they have been planning this project since 1999, they started construction in 2007, on a private/ public project that will lose money.

The City was content to own, fee simple, Ms Gramm's former property for more than a year. But now that they cannot perform on their business plan, they claim that they have no public use for the property and are attempting to force Ms Gramm to purchase it back.

What a racket, the irony is that a private sector developer, with the power to limit competition and acquire property on their terms, would own the world. The City is going to be lucky to recover from this financial disaster. People with a government mindset should leave business ventures to people with a business mindset.

The outcome of this case will affect Ms Gramm on a personal level, but it will also affect every Georgian. If this case is allowed to stand on appeal, the precedent (case law) will be set for any property owner in Georgia to be subject to the forced sale and forced re-purchase of their property if the condemnor's plans change. The power of condemnation is a "high power" that should not be used as a business tool for governmental entities. This power was granted by the founders to provide, a last resort method, for governments to acquire property for legitimate public use and was never intended to be used to compete with traditionally private sector enterprises.

The Court's Order, October 9, 2007, found that, (a) "the condemnation action was dismissed after it appeared the condemnor would not be able to use the property for a public purpose and the condemnee contended that she could obtain a higher price if she were allowed to develop the property herself." The court fount that, (b) "the condemnor contends that the law has always been that while a condemnor may not simply abandon a condemnation action, public policy (and indeed, the law) mandates that a condemning authority ought not be forced to keep property it does not need and can not use for a public purpose."

The court further found that, (c) "It has long been the law in this State that a "condemnor can not ***just*** abandon a condemnation proceeding." Housing Authority of Atlanta v. Mercer, 123 Ga. App. 38, 43, 179 S. E. 2d 275 (1970) (emphasis added). Instead, the condemnor must pay "all expenses accrued to the condemnee." Id. This is in accord with the other cases in which this principal is cited." The Court cited other cases, Marist Society v. City of Atlanta, Gatefield Corp. v. Gwinnett County, City of Griffin v. McKemie and Lamar Co., LLC v. State. The Court found, (d) "In Gatefield, the Court of Appeals made clear that while the condemnor can not simply abandon a condemnation, neither can it be required to keep property "that it neither wants nor needs;" such a result being "inimical to the public interest."

The court found, (e) "When the General Assembly amended the eminent domain statutes in 2006, it provided for how a condemnor may go about accomplishing a reconveyance. If property is not put to a public use, O.C.G.A. 22-1-2 (c) (1) (A) provides that the property may be reconveyed by quitclaim deed with the condemnor being paid "compensation not to exceed the amount paid by the condemnor at the time of acquisition." O.C.G.A. 22-1-12 provides that a condemnee is to be paid her reasonable expenses incurred if the condemnation "proceeding is abandoned by the condemning authority."

"When read in conjunction with one another, the prior case law and the new statutes make clear that (1) if the Condemnor decides that it does not need property for a public purpose, not only can, it must return the property to the Condemnee; (2) the reconveyance may be accomplished via quitclaim deed; and (3) in that event, the Condemnee must pay the condemnor "compensation not to exceed the amount of compensation paid by the condemnor at the time of acquisition" less the actual, reasonable expenses incurred as a result of the condemnation. As a result, the dismissal must stand and the only matter left to be

determined is what amount of expenses the Condemnee in this action has incurred as a result of the condemnation."

The Mercer case, the Court cited, "all expenses accrued to the condemnee.," but the Appeals Court ruled, (a) "1. After the award of the appraisers, a condemnation proceeding cannot be dismissed by the condemnor." (b) The Court further ruled, "The lower court did not err in making the award (if the assessors the order and the judgment of the court; in directing the condemnor to pay the amount of the award into court, and ordering that upon the payment of the award into court the property was condemned and title was vested in the condemnor." The title was vested in the City, January 2006, and therefore, the City is not entitled to amend or dismiss its petition. The Mercer case dealt with a condemnor that was unwilling to complete the condemnation when unhappy with the assessor's award and the court ordered the condemnor to complete the condemnation. This case cannot be reasonably construed to mean that a condemnor, once vested, can simply abandon the condemnation and demand a refund because their circumstances have changed.

The Gatefield case dealt with a condemned sewer easement, permanent and construction located within the Gatefiled property, which was condemned in error by relying on a faulty survey. The county was allowed to abandon the condemnation with the condition that it reimbursed the Gatefield Corp. for their condemnation related expenses. In this case the condemnee's property was not harmed by the county, no construction or eviction occurred. The Court ruled that Gatefield must be compensated for the expenses incurred in defending against the condemnation proceeding.

The McKemie case dealt only with the award of attorney fees. The lower court awarded the McKemies' when the City of Griffin abandoned their condemnation proceeding and redesigned the sewer line. The McKemies' did not challenge the dismissal, they only sought attorney fees incurred in defending against the condemnation. The City challenged the attorney fees award and the Appeals Court, vacated the award. The case was taken up by the Georgia Supreme Court and reversed. This would be relevant to the City of Stockbridge's argument if, Ms Gramm had been awarded attorney fees and the City was trying to overturn the award. Since the question of the legitimacy of the dismissal was not raised, it was not addressed.

The Lamar case, was about a property owner and their tenant, the Lamar Co. The State condemned both the property owner and the tenant and both appealed the value award. Before the appeal hearing, the State settled with the property owner for almost twice the amount of the special master award. The State required the property owner to terminate the lease with the Lamar Co.; according to the terms of the lease, if the property was sold the property owner could terminate the lease, with 90 days notice. After the settlement agreement, the State voluntarily dismissed the condemnation proceeding. Lamar, challenged the dismissal. Once the lease was terminated, they had no actionable interest in the property. The court, however, ruled that the State must reimburse Lamar for their attorneys fees. This case may have some relevance to Ms Gramm's tenant, dependent upon their lease agreement, but it does not address the question in Ms Gramm's case.

When the General Assembly amended the eminent domain statutes their intent was not to allow condemnors to force the return of unneeded or unwanted property. More specifically O.C.G.A. 22-12-2 (c) (1) (A), was enacted to provide for property owners a remedy if property was,

in fact, taken and not used for the declared purpose (an effort to stop "land banking" by condemnors) and cannot be read to mean that condemnors can return property at will and demand a refund. This statute is written for property owner protection and states that a property owner "may" apply for the return of their property or for additional funds. It in no way binds the property owner to the return of their property at the whim of the condemnor. O.C.G.A. 22-1-12 provides for compensation to a condemnee if, 1. The final judgment is that the condemning authority cannot acquire by condemnation, or 2. The proceeding is abandoned by the condemning authority. This statute does not provide unfettered powers to the condemning authority to abandon a condemnation at any time; it simply describes the remedies available to a condemnee in the event of a valid abandonment of a condemnation. Title cannot be vested in a condemning authority until all, non-value, challenges to the condemnation are decided and once vested there can be no further challenges to the taking; it logically follows that once vested a condemnation is complete and cannot be modified if a condemning authority changes its mind.

If this ruling stands no property owner can ever know, with certainty, who will ultimately own the condemned property until it is put to the alleged "public use." It will constrain a prudent condemnee, of average means, from replacing the condemned property until the condemnor has actually put it to use, which could be years. It will allow the condemnation process to become even more abusive than it became after the Supreme Court interpreted "public use" to mean "public purpose."

This ruling puts the condemnee in a severely disadvantaged position to the condemnor, it must not be allowed to stand.

The Case Law Game

The City relies on the Mercer Case. " condemnor can not just abandon a condemnation proceeding." In the Mercer case, the Housing Authority, refused to move forward after the special master judgment and was forced to complete the condemnation.

The Marist case, " condemnor can not just abandon a condemnation proceeding.," was used by the City (Atlanta) to argue that their condemnation should not be set aside. The Court ruled, "In absence of proof that the City is asserting a right to abandon the project, or that the condemnation proceedings were not in good faith, the condemnation of lands for highways will not be enjoined."

The Gatefield case, the **City**: "neither can it be required to keep property "that it neither wants nor needs;" such a result being "inimical to the public interest." The **Court**: "As a matter of law, the County ***was not*** entitled to amend or dismiss its petition." "(if a condemnor elects to use the Special Master Act, it is bound by the provisions of that law)." "OCGA 5-6-8 empowers the appellate court to "make such order and to give such direction as to the final disposition of the case by the lower court as may be consistent with the law and ***justice of the case***." (emphasis added)

Centuries of case law, provide a wealth of guidance in legal arguments. However, justice demands that if we are to rely on case law, we must do so accurately, relying on the intent of a case law being cited. Citing case law out of context, is stooping to trickery in an attempt to make them appear to support an argument, that may or may not be defensible.

#6

DRAFT - August 14, 2006 for 28,862 sq ft City Hall and land costs at higher range

THE CITY OF STOCKBRIDGE
POTENTIAL FIVE (5) YEAR REDEVELOPMENT "SMART GROWTH" PLAN
(Calculations per August 2005 Amended Site Plan)

Assumptions:	Site- Approx. 19.2 total acres	SF or Units Per Use	Units	Notes
Yield-	City Hall	28,862	SF	
	Retail/Office Mixed Use	93,232	SF	
	Restaurant	10,000	SF	
	Multi-Family	298,321	SF	assuming 1300sf (20'x50') per Multi-Family=238 Units
	Town Home	132,690	SF	assuming 1600sf (two floors@20'x45') per town home=81 Units
	TND (zero lot line)	31	Units	
	Phase 1 Surface Parking at City Hall location	134	Spaces	
	Surface Parking	381	Spaces	

Preliminary Financial Analysis for Five (5) Year Program

Revenue:					Notes
Retail		58319	@ $20/SF	$1,166,380	Out of the Mixed Use category, I assumed the same ratio as previous study (3:4 or 57% retail to 43% office)
Restaurant	3units		@350,000 per unit	$1,050,000	
Office		34913	@$10/SF	$349,130	See note on Retail
Multi-Family		298321	@$16/sf	$4,773,136	
Town Home		132690	@$20/sf	$2,653,800	
TND	31 Units		@40,000 pre unit	$1,240,000	
Potential Site Development Revenue:				$11,232,446	

The City's estimated revenues, including the Horvath property $11,232,466.00. The Horvath property surrounds the Gramm property. To reduce land acquisition expenses by $1,075,000.00, while reducing revenues by $5,403,936.00, is not a good business decision. Its not a good decision period.

Expenses:			Notes
Site Development-			
Land	19.2 acres	$6,593,000	@$150,000/Acre
Infrastructure		$2,324,928	
Surface Parking		$434,867	Surface Parking 515 Spaces @ $1500/ Parking Space
City Parks		$0	@ $60,000/acre
Pavers for Main Park		$0	For Pavers at main park only. This is a $12/sf upcharge.
Site Development Soft Costs-			
Engineering, Architecture, Testing & Environmental		$250,000	
Finance		$208,000	
Capitalized Interest		$2,646,669	Total Expenses x 1.055 x 1.055 - Total Expenses
Development Fee (Public/Private Sector Coordination)		$250,000	
Contingency @ 1%		$500,000	
Site Subtotal Expenses:		$13,207,464	
Phase 1 Costs			
City Hall (Hard Cost, Soft Costs & FF&E)		11,220,103	28,862 sf x $388.75
Infrastructure		$555,072	
Surface Parking		$337,633	$12,855,878
City Parks including Pavers for Main Park		$493,070	
Design for Site Development - Engineering, Architecture, Testing & Environmental		$250,000	
Total Expenses:		$26,063,342	
NET:		-$14,830,896	

Potential Offsetting Funds:		
Bond Financing		
LCI grant from the Atlanta Regional Commission for further streetscapes to offset development costs	$0	Potential money only. May be $0
Revised NET:	-$14,830,896	

#6

THE CITY OF STOCKBRIDGE
POTENTIAL FIVE (5) YEAR REDEVELOPMENT "SMART GROWTH" PLAN
(Calculations Subtracting the Horvath Property)

Horvath =7.65 acres;
Gramm =.898 acres

Assumptions:	Site- Approx. 11.6 total acres	SF or Units Per Use	Notes
Yield-	City Hall	28,862	
	Retail/Office Mixed Use	72,394	
	Restaurant	10,000	
	Multi-Family	183,295	assuming 1300sf (20'x65') per Multi-Family Unit=149 Units
	Town Home	0	assuming 1800sf (two floors@20'x45') per town home=7 Units
	TND (zero lot line)	16	
	Phase 1 Surface Parking at City Hall location	134	
	Surface Parking	314	

Preliminary Financial Analysis for Five (5) Year Program

Revenue:					Notes
Retail		48185	@ $20/SF	$963,700	Out of the Mixed Use category, I assumed the same ratio as previous study (3:4 or 57% retail to 43% office)
Restaurant	3units		@350,000 per unit	$1,050,000	
Office		24209	@$10/SF	$242,090	See note on Retail
Multi-Family		183295	@$16/sf	$2,932,720	
Town Home		0	@$20/sf	$0	
TND	16 Units		@40,000 pre unit	$640,000	
Potential Site Development Revenue:				$5,828,510	

The City's estimated revenues, less the Horvath property, $5,828,510.00. What would motivate anyone to squander, $5,403,936.00 to save $1,075,00.00?

Expenses:				Notes
Site Development-				
	Land	12 acres	$5,518,000	
	Infrastructure	10.8 acres	$1,064,928	@$150,000/Acre
	Surface Parking		$334,367	Surface Parking 448 Spaces @ $1500/ Parking Space
	City Parks and Pavers for Main Park		$0	@ $80,000/acre Pavers are used at the main park only. This is a $12/sf upcharge
				For Pavers at main park only. This is a $12/sf upcharge.
Site Development Soft Costs-				
	Engineering, Architecture, Testing & Environmental		$250,000	
	Finance		$208,000	
	Capitalized Interest		$2,371,397	Total Expenses x 1.055 x 1.055 - Total Expenses
	Development Fee (Public/Private Sector Coordination)		$250,000	
	Contingency @ 1%		$500,000	
Site Subtotal Expenses:			$10,496,692	
Phase 1 Costs				
City Hall (Hard Cost, Soft Costs & FF&E)			11,220,103	28,862 sf x $388.75
	Infrastructure		$555,072	$12,855,875
	Surface Parking		$337,633	
	City Parks including Pavers for Main Park		$493,070	
	Design for Site Development - Engineering, Architecture, Testing & Environmental		$250,000	
Total Expenses:			$23,352,570	
NET:			-$17,524,060	

Potential Offsetting Funds:		
Bond Financing		
LCI grant from the Atlanta Regional Commission for further streetscapes to offset development costs	$0	Potential money only. May be $0
Revised NET:	-$17,524,060	

Gramm property

Horvath Property