

## Missouri's Appellate Courts Rule in Two City-Sponsored Private Redevelopments

by

James R. Keller

This article appeared in *St. Louis Construction News & Real Estate*, p. 52-53, July-August 2007.

In two highly publicized cases, Missouri's Supreme Court and the Court of Appeals for the Eastern District have ruled recently on landowners' rights in cases involving condemnation.

In one—the Supreme Court decision—the result favors landowners and has halted Centene's plans to expand its headquarters by acquiring and developing property in the 7700 block of Forsyth in Clayton. The Supreme Court has concluded the area was not blighted under Missouri law.

In the other, the Court of Appeals decided that the City of Sunset Hills was immune from a lawsuit by homeowners who entered into contracts for the purchase of their property by Novus Development Company to avoid condemnation proceedings. The area was to be developed into a large shopping complex at the corner of Interstate 44 and Lindbergh Boulevard. Novus did not go through with the sale contracts.

The cases are *Centene Plaza Redevelopment Corp. v. Mint Properties*, 2007 WL 1695163 (Mo.) and *Parish v. Novus Equities Company*, 2007 WL 1673199 (Mo.App. E.D.).

The City of Clayton had sought proposals from developers to redevelop the entire block of Forsyth bordered by South Bemiston Avenue, Hanley Road and Carondelet Avenue. Centene submitted the only proposal. It wanted to expand its present facility with a \$210 million office and retail tower on the property.

The City of Clayton commissioned Peckham, Guyton, Albers & Viets (PGAV) to analyze the area to determine whether it qualified as a blighted area and thus could be subject to condemnation and redevelopment. PGAV concluded the area qualified as being blighted.

The City passed an ordinance declaring the area blighted. Centene could proceed with condemnation as a redevelopment corporation.

At the condemnation hearing the trial court concluded that there was sufficient evidence to support Clayton's legislative decision that the area was blighted.

Section 353.020 of Missouri's Statutes sets out the definition of blighted area as being those portions of a city that "by reason of age, obsolescence, inadequate or outmoded design or physical deterioration have become economic and social liabilities, and that such conditions are conducive to ill health, transmission of disease, crime or inability to pay reasonable taxes...." Centene had to prove that the area was both an economic liability and a social liability.

Social liability focuses on health, safety and the welfare of the public. Prior cases link this to concerns such as morals, juvenile delinquency, infant mortality, crime and disease.

The Supreme Court was not convinced—contrary to the trial court's findings—that this area in Clayton fit the definition of social liability. In particular there was not enough evidence of fire, police and emergency service reports to support such a conclusion.

This decision dealt a real blow to Centene's plans to redevelop the area. However, many legal experts question the long-term impact of the case, given the narrow legal grounds for the result. The high court did not offer broad statements about condemnation in general, leaving many to conclude that the court's narrow focus offers little precedent for future cases.

Others, however, point out that this was the first time in Missouri that the Supreme Court reversed a decision of a legislative body (Clayton's lawmakers) over the issue of whether an area was blighted. Both landowners and developers will be arguing over the impact of this case on future cases for years to come.

In *Parish v. Novus*, the City of Sunset Hills entered into an agreement with Novus for the development of land from existing neighborhoods in Sunset Manor into a shopping area. The City passed an ordinance declaring the area to be blighted. This gave Novus the ability to file condemnation proceedings against those homeowners who did not agree to sell their properties.

This lawsuit, however, involved those homeowners who did enter into real estate contracts to purchase the properties in the redevelopment area for above-market prices with specified closing dates. Novus failed to obtain the necessary financing to close on the properties.

The homeowners sued Novus and the City of Sunset Hills on a variety of legal grounds relating to this situation. The present appellate decision dealt only with the homeowners' claims against Sunset Hills. The trial court dismissed Sunset Hills from the lawsuit and granted its motion for summary judgment based on sovereign immunity.

The primary question on appeal was whether the City of Sunset Hills was engaged in a governmental function when it entered into the agreement with Novus to develop the area. If so, immunity existed for the City's actions and it could not be sued.

Governmental functions typically are activities such as keeping the peace, enforcing laws and preserving public health. Did this agreement fit that definition? The Eastern District has concluded that it did.

The appellate court decided that the City's involvement—including its monitoring of Novus' financial commitments—was in line with its governmental functions to promote general health, safety and welfare within the City's boundaries.

James R. Keller is a partner at Herzog Crebs LLP where he concentrates his practice on construction law, complex business disputes, real estate and ADR. He also is an arbitrator and a mediator.