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NEW EMINENT DOMAIN RESTRICTIONS AND ZONING NOTICE LAWS

Two new laws relating to governmental units' actions affecting property owners went into effect in April 2006.

2005 Wisconsin Act 233, passed by the legislature and signed by Governor Jim Doyle on March 29, 2006, prohibits condemnation of non-blighted property for transfer to a private entity.

2005 Wisconsin Act 208, passed by the legislature and signed by Governor Jim Doyle on March 27, 2006, creates additional public notice obligations for proposed zoning ordinance and comprehensive planning actions. It also creates a procedure by which a property owner can request personal notification of proposed actions that could affect allowable use of the property.

POST-KELO LIMITATION ON EMINENT DOMAIN

2005 Assembly Bill 657 was among a number of bills introduced in the 2005-2006 legislative session proposing new limits on the use of the condemnation power in response to the 2005 U.S. Supreme Court decision in *Kelo et al. v. City of New London et al.* (125 S.Ct. 2655). The bill, introduced by Representatives Mary Williams and Jeff Wood, with 40 co-authors in the Assembly and Senate, was enacted as 2005 Wisconsin Act 233.

In *Kelo*, the Supreme Court upheld a Connecticut Supreme Court decision which held that the City of New London had not violated state or federal protections against taking property for public use without just

compensation. The city had allowed the New London Development Corporation to acquire and demolish homes in a neighborhood located near a Pfizer, Inc., research facility for the purpose of developing the property for an office complex, convention center, hotel, shops, and other amenities. Although the project would have been a private, for-profit development, New London contended that the "public purpose" of economic development and the expected benefits to the city outweighed the rights of the homeowners to remain in their homes.

Connecticut law, unlike that in most other states, did explicitly provide for such an interpretation of the "public use" requirement, but the court's ruling was controversial and prompted many state legislatures, including Wisconsin's, to consider explicitly restricting the use of eminent domain in similar situations.

2005 WISCONSIN ACT 233

One notable aspect of the affected neighborhood in New London is that the parties generally agreed that the area and the homes were not blighted, but were subject to condemnation nonetheless in hopes of promoting economic development.

In contrast, Act 233 creates a definition of "blighted property" and prohibits condemnation of property that is not blighted if the intention of the condemnor is to convey or lease the property to a private entity, thereby largely avoiding a situation similar to that in the Connecticut case.

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"Blighted property" is defined in Act 233 based on a variety of conditions that would make it "detrimental to the public health, safety, or welfare." Factors contributing to a finding of blight could include abandonment; dilapidation; deterioration; age or obsolescence; inadequate ventilation, light, air, or sanitation; overcrowding; unsafe conditions; and other factors.

For a property with a single-dwelling unit, a finding of blight requires an additional condition, either that it is not occupied by the owner or a relative, or that the crime rate in, on, or adjacent to the property is at least three times the crime rate in the remainder of the municipality in which the property is located.

The law also establishes notification requirements for the condemnor to provide to the property owner, including the scope and description of the redevelopment project, the purpose of the condemnation, and the finding of blight with reasons for that finding.

The prohibition in Act 233 applies only to local governmental units, the Department of Health and Family Services, the Department of Corrections, the University of Wisconsin System, other public boards and commissions, redevelopment and community development authorities, and local cultural arts or exposition districts. Other entities that may exercise power of eminent domain – including railroads, telecommunications companies, and utilities – are not subject to the act's provisions.

2005 WISCONSIN ACT 208

Wisconsin law requires cities, villages, towns, and counties to follow a variety of procedures in adopting or amending zoning ordinances, including public notice and public hearing requirements. Act 208, which was introduced as 2005 Assembly Bill 620 by

Representatives Albers and Lothian with three co-authors, creates additional specifications for public notices published in newspapers. If a proposed zoning ordinance or comprehensive plan, whether new or amended, would have the effect of changing the allowable use of any property, Act 208 provides that the notice must contain a map of the property involved or a description of the property and a statement that a map is available from the local zoning agency.

In addition to the changes in the notice requirements, Act 208 gives property owners the opportunity to register for a mailing list to be used to inform property owners personally of proposed actions that could affect allowable use of their property. The Act allows the relevant zoning agency to charge registrants a fee to cover the costs of providing the notice. The personal notice provisions do not apply to the City of Milwaukee.

Failure to provide notice to a person who requested notice does not invalidate a zoning ordinance, comprehensive plan, or amendment of either.

EFFECTIVE DATES

2005 Wisconsin Act 233 is effective April 13, 2006. 2005 Wisconsin Act 208 is effective April 11, 2006.

FOR ADDITIONAL INFORMATION

View a copy of 2005 Wisconsin Act 233 and Act 208 at www.legis.state.wi.us. Follow the hyperlinks to "Wisconsin Law," then "Acts."

For background information on eminent domain with respect to private economic development, see our *Wisconsin Brief*, "Eminent Domain: Public or Private Purposes?" at: <http://www.legis.state.wi.us/lrb/pubs>.

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