

# Island attorneys taking eminent domain seriously

Despite the Supreme Court's decision saying private developments can serve a public purpose – economic development – Long Island lawyers don't predict a governmental rush to take private land by eminent domain.

"I don't think it's going to have a great impact in New York State under current law," said Tom Levin, municipal law chair of Mineola-based Meyer, Suozzi, English and Klein. "You can't just go out and take property for the fun of it .... This case really leaves it to the states to decide what their local governments can do."

As it is, Levin pointed out, the pre-June 23 state law remains. Eminent domain takings could include blighted areas and commonly known public purposes, such as roads. Neither the state Legislature nor local courts have yet added in the June 23 court decision's idea that taking private land for a private development can serve a public purpose, except in the case of urban renewal, Levin said.

John M. Armentano, a partner at Farrell Fritz in Uniondale whose bailiwick is land use, environmental and zoning law, said Long Island governments will need a well-studied comprehensive plan to be able to employ the Supreme Court decision's interpretation of how private development can serve a public purpose. The takings power can be used as a last resort to, for instance, affect smart growth, he said. "This seems to be more of an additional tool to bring that

about," he said.

Michael H. Sahn, the founding member of Sahn, Ward and Baker of Garden City, said Nassau and Suffolk counties have a lot of municipalities that cannot afford to pay extremely large sums to acquire land for comprehensive plans. (Eminent domain still requires governments to give landowners just compensation for taking their property.)

"On Long Island," he said, "most of our cases do not involve eminent domain, but concern municipalities using the zoning power to regulate and control development or to encourage a particular type of development."

"It is conceivable," he continued, "that this decision could cause municipalities to reexamine the use of eminent domain as a method to get redevelopment going in places they want."

But in the majority opinion he wrote, Justice John Paul Stevens highlighted the fact that the eminent domain decision dealt with studied master plans, not one-to-one property transfers. New London, the municipality in this case, has a comprehensive plan aimed at economic development. "Because that plan unquestionably serves a public purpose, the takings challenged here satisfy the public use requirement of the Fifth Amendment," Stevens said, later adding, "Promoting economic development is a traditional and long-accepted function of government."

– Heather Fletcher