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Eminent Domain – The Pendulum Swings Back To Protect Property Owner's Rights In Ohio

Analyzing the Ohio Supreme Court Decision of *City of Norwood v. Horney*

What a difference a year makes! On July 26, 2006, the Ohio Supreme Court reached a unanimous decision in *City of Norwood v. Horney*, which halted the taking of private homes by the City of Norwood to make way for a development complex. In the Norwood ruling, Ohio's highest court established that an economic benefit to the community alone does not justify the government's taking of private property. This ruling was a significant departure from the June 2005 United States Supreme Court ruling in *Kelo v. City of New London* (as was detailed in the September 2005 Courting Success newsletter, which can be found at www.wileslaw.com/industry_updates.aspx).

Both *Kelo* and *Norwood* dealt with the situation where “holdout” landowners challenged a municipality's use of the eminent domain process to take private property for private development. To understand the significance of *Norwood*, it is important to be familiar with the ruling in *Kelo*. In *Kelo*, the City condemned property pursuant to a Connecticut statute, not because the property was blighted or in poor condition, but because it was located in a proposed development area. Justice Steven's majority opinion essentially upheld the takings as valid by deferring to New London's “carefully considered development plan.” Ultimately the Court held that “because the plan unquestionably serves a public purpose (of providing benefits to the community including increased taxes and jobs), the takings challenged here satisfy the public use requirement of the Fifth Amendment.”

Ohio's *Norwood* case was the first eminent domain case to reach a state Supreme Court since the *Kelo* decision. In Norwood, private developers approached City officials with a proposal to redevelop a 10-acre residential and commercial area into a new apartment, retail and office complex. Only five of the seventy-one property owners objected to the proposal and declined buyout offers. The City Council voted to use its eminent domain powers to acquire the remaining holdout properties despite the fact that most structures in the target area were determined to be sound. The Ohio Supreme Court held that although economic factors may be considered in determining whether private property may be appropriated, an economic benefit to the community standing alone does

not justify the taking of property under the Ohio Constitution, which requires eminent domain be for a “public use.” In addition, the Court overturned as unconstitutional a portion of Ohio's eminent domain statute regarding the use of “deteriorating area” as a standard and also set a heightened level of scrutiny for Ohio courts to apply when considering eminent domain cases.

In the year following *Kelo*, twenty-five states also reacted legislatively to the *Kelo* decision, and Ohio was no exception. The 126th General Assembly enacted S.B. 167, which placed a moratorium on the use of eminent domain for economic development purposes that would ultimately result in the property being transferred to another private party in an area that is not blighted until December 31, 2006. The bill also created a task force to study eminent domain issues. As mandated by S.B. 167, the task force released its final report on August 1, 2006, which came a few short days after the *Norwood* decision was released. The task force made several recommendations including that local governments can seize truly blighted property, but can not take property solely for

the purpose of generating addition tax revenue. The report can be found at www.greaterohio.org/documents/final_tf_report.pdf. The legislature will now consider the task force's recommendations, likely after the November 2006 election.

The significance of *Norwood* is that an economic benefit to the community alone does not justify the government taking private property. Wiles, Boyle, Burkholder & Bringardner is proud to represent both municipalities and private landowners in eminent domain matters. Regardless of your stance on eminent domain, it is important to understand your rights in these matters. The pendulum has swung back and forth with the recent *Kelo* and *Norwood* decisions and may continue to swing should the legislature act upon recommendations in the task force report.

If you would like further information on eminent domain or the *Norwood* case, please contact Mike Close, Gene Hollins, or Corey Colombo.

By Eugene L. Hollins and J. Corey Colombo



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Featured Attorneys



Jay B. Eggspuehler

An experienced litigator, Jay is a member of the exclusive Million Dollar Advocates Forum – the most prestigious group of trial lawyers in the United States. Membership is limited to attorneys who have won million and multi-million dollar verdicts, awards and settlements.

Jay is an Ohio State graduate with a law degree from Ohio Northern University. He is a member of local, state and national bar associations and several industry trade associations.

A long time resident of central Ohio residing in the Dublin area, he has been an avid pilot since receiving his training from OSU. Jay is also engaged to Christine Carrillo.



James M. Hughes

Jim's practice area includes probate, estate planning, contracts and real estate. Prior to joining the firm he was an assistant prosecutor for both Franklin County and the City of Columbus.

He currently serves the citizens of central Ohio as a member of the Ohio House of Representatives for the 22nd District.

Jim is an Ohio State graduate with a law degree from Capital University and is a member of the Columbus and Ohio State Bar Associations. His many civic involvements include Charity Newsies, Agonis Club of Columbus, Shamrock Club, and Ohio Crime Prevention Association.

Jim and his wife, Susan, have one child, Kaela.

Airline Travel – “Seeing Orange”

With the recent five year anniversary of the September 11, 2001 attacks, the tightening of airport security and the raising of the terrorist threat level to orange we are constantly reminded that the threat of terrorism, here and abroad, continues to be an everyday part of our lives. Opponents to the new airport security measures view them as an unnecessary inconvenience and invasion of privacy. Proponents view the inconvenience as crucial to our national security. Regardless of your viewpoint, the fact remains that the Transportation Security Administration (TSA) was given unfettered discretion to regulate security at our airports.

Prior to the TSA's creation, security checkpoints were operated by private companies that contracted with either the airlines or the airport authorities/operators, be they a port authority, county or city. The TSA is a federal government agency created when the Aviation and

Transportation Security Act became law (49 U.S.C.A. § 114) on November 19, 2001. While the TSA was originally organized under the U.S. Department of Transportation, the agency was transferred to the U.S. Department of Homeland Security in 2003 (6 U.S.C.A. § 203(2)).

The preemptive strike by law enforcement in London, England on August 10, resulted in the TSA further regulating certain personal items that a passenger may or may not carry on an airline flight. Recently, TSA adjusted this ban on personal items. Travelers may now carry through security checkpoints travel-size toiletries (3 ounces or less) that fit comfortably in one, quart-size, clear plastic, zip-top bag. After clearing security, travelers can now bring beverages and other items purchased in the secure boarding area on-board aircraft. We recognize that many of our clients are frequent fliers. We encourage you to regularly consult the

official TSA web site (<http://www.tsa.gov/>) as the list of prohibited carry-on items and TSA policies are constantly evolving.

These additional inconveniences are supported by federal law and will continue as long as the threat of terrorism permeates airline travel. With every newly discovered plot by terrorists, new restrictions will be placed on travel. Thus, the TSA, as a governmental agency, should be commended for their efforts in protecting our airports and airways. There have been no major breaches of airline security in the United States since 9/11. While airport security may be frustrating and annoying at times, it is a part of our everyday world. So if you find yourself, “seeing orange” as you proceed through the airport security checkpoints, acknowledge their efforts and recognize that safe airline travel for you, your family and friends is in their hands.

By Jay B. Eggspuehler

Know The Candidates Before Casting Your Ballot – Voting Is A Right And A Responsibility

Fall is upon us and with fall the general election in November is fast approaching. An educated voter is powerful and every vote in the upcoming election will have influence and determine the future direction of Ohio.

Facing us this November is the choice between voting for proven leaders with track records of getting things done for the people of Ohio, or voting for untested and unproven candidates. More than ever before, knowing who we are voting for, what they stand for, what their history has been and what their character is proven to be is critical. We need more

than 60 second television commercials to know these things. We need to really know that the person we vote for is going to lead Ohio into a bright future.

Because of the current political climate, the media is reporting that voters are cynical. Reporters say that voters will only take a surface view of candidates, which, if true, will impact the incumbents, the most. Voters, with little knowledge of the candidates for which they vote, could throw out some of the most effective leaders we have.

We disagree with the current position of the media. We know how important the

right to vote is and we know that the vast majority of voters take their voting action very seriously. From the earliest days of this nation's history, voters have proven that the right to vote matters and that the action of voting sets the course for what is to come. We know that the future is in our hands.

When you vote this November, examine those candidates for which you will be able to vote with a careful eye. By knowing who the candidates really are and what they have done in the past, we can select the best leaders for tomorrow.

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