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Somerville Urban Renewal Taking Survives Challenge: Pierce Atwood

In *Cobble Hill Center LLC v. Somerville Redevelopment Authority* (pdf), the Massachusetts Supreme Judicial Court (SJC) upheld the eminent domain taking by the Somerville Redevelopment Authority (SRA) of 3.99 acres of land located at 90 Washington Street in Somerville.

Cobble Hill, the owner of the parcel, argued that the taking was improper because there was no approved urban renewal plan that covered its property, and the SRA could only take by eminent domain property that is included within an approved urban renewal plan. The SRA countered that the provisions of M.G.L. c. 121B, § 46(f) (§ 46(f)) authorized the taking.

Takings by the Boston Redevelopment Authority (BRA) under § 46(f) were the subject of a 2019 SJC opinion in *Marchese v. Boston Redevelopment Authority*, in which the court upheld the BRA's taking of easement rights which rights were then transferred to the Boston Red Sox for use for Fenway Park. While *Marchese* was decided on standing grounds, *Cobble Hill* allowed the SJC to fully analyze and decide whether c. 121B authorizes eminent domain takings for projects undertaken pursuant to § 46(f). The court found only one 2002 Superior Court decision, Tremont on the *Common Condominium Trust v. Boston Redevelopment Authority* (pdf) (authored by then-Superior Court Justice Margot Botsford), that analyzed this issue. That decision determined that a BRA taking under § 46(f) was proper for the expansion of the Opera House in downtown Boston.

Urban renewal authorities are authorized by c. 121B § 46 (subsections b, c and d) to undertake urban renewal projects in accordance with urban renewal plans. Section 46(f) allows for urban renewal authorities to "carry out demonstrations for the prevention or elimination of slums and urban blight" and makes no mention of undertaking any such demonstration in accordance with an urban renewal plan. These projects are commonly known as "demonstration projects." Cobble Hill argued that eminent domain powers granted to urban renewal authorities under c. 121B, § 11(d) could not be used for demonstration projects.

The court started its analysis with the statute and focused on the language of § 46(f) and other sections of c. 121B, especially § 11(d) with respect to the eminent domain powers of urban renewal authorities. "[I]t is clear that § 11(d) grants the SRA eminent domain power to effect demonstrations for the purposes articulated in § 46(f) itself…" The court went on to analyze c. 121B § 45 with respect to the purposes of urban renewal projects and found that nothing in this section prohibits the use of eminent domain for demonstration projects.

Cobble Hill also argued that the demonstration project utilized by the SRA in this instance (for a mixed-use project involving the construction of a public safety building and other private development) was flawed and was not a true "demonstration," but instead was the type of project that should have been included in an urban renewal plan. The court analyzed the meaning of the word "demonstration," including by looking to legislative history at both the federal and state levels regarding urban renewal. The court found that § 46(f) "clearly contemplates the development and testing of new or different projects that may lead to future use and improvement, which is consistent

with the common understanding of a demonstration." The court also reviewed the demonstration project plan put forth by the SRA and found that it is a valid demonstration project under § 46(f).

The court did note that future demonstration projects undertaken by urban renewal authorities "should identify with more specificity the unique or innovative nature of the demonstration, the difference in or improvement of the means used, and the manner in which reporting of the demonstration will be useful as a model for future plans." Lastly, the court found that the taking was constitutional, relying on *Kelo v. New London, Conn.*, 545 U.S. 469 (2005) and other Massachusetts takings cases.

This new decision, coupled with the SJC's decision in Marchese, shows that urban renewal is alive and well for urban renewal authorities in the Commonwealth and remains an important tool to accomplish municipal planning goals.

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