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CLR e-Briefs

A legal information resource for Community Legal Resources' clients

August 30, 2004

"CLR e-Briefs" is intended to introduce important legal topics that may be of interest to Community Legal Resources' clients.

This edition offers information on the recent County of Wayne v. Hathcock decision and the upcoming foreclosure auctions.

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Poletown and Hathcock: What's it all about?

"[T]he Poletown majority concluded, for the first time in the history of our eminent domain jurisprudence, that a generalized economic benefit was

***sufficient under art 10, § 2 [of Michigan's 1963 Constitution] to justify the transfer of condemned property to a private entity. Before Poletown, we had never held that a private entity's pursuit of profit was a 'public use' for constitutional takings purposes simply because one entity's profit maximization contributed to the health of the general economy.*" Michigan Supreme Court, July 2004**

On July 30, 2004, the Michigan Supreme Court in Hathcock overturned their own 1981 Poletown decision. The Hathcock decision has generated many articles and lots of discussion.

A brief summary of what it all means:

The government's power of eminent domain (i.e., power to take private land for public use, as long as it provides compensation to the private landowner) was at the heart of the matter. At issue, first in Poletown, and now in Hathcock, was what counts as "public use" under the Takings Clause of the [Michigan Constitution](#). Art 10, § 2 of Michigan's 1963 Constitution provides that "[p]rivate property shall not be taken for public use without just compensation therefor being first made or secured in a manner prescribed by law."

Poletown Neighborhood Council v. City of Detroit (1981) The Poletown case arose when the City of Detroit sought to condemn property to transfer it to General Motors for construction of its Poletown Plant. General Motors had announced that it was closing two plants located in Detroit, but would build a new plant in the city if a suitable site could be found. On the one hand, the condemnation took 1,200 homes, 6 churches and a hospital. On the other hand, failure to build the new plant in Detroit would have meant the loss of at least 6,000 jobs. A majority of the Poletown Supreme Court approved the condemnation on the basis that it was "primarily to accomplish the essential public purposes of alleviating unemployment and revitalizing the economic base of the community" with the benefit to a private interest as "merely incidental." The case expanded the justifications for eminent domain seizures to include "economic development."

County of Wayne v. Hathcock (2004) In Hathcock, the current Supreme Court expressly overruled Poletown. The case arose when Wayne County sought to condemn property near Detroit Metro Airport. The condemned property was intended to be handed over to private developers to construct a business and technology park.

The court was unanimous in the view that Poletown should be overruled since a mere showing that the economy will generally benefit from the condemnation is not sufficient to establish a public use, but was divided in its views on the precise formulation of the proper test for a "public use." However, it is likely that all would agree that condemnation is justified when the "controlling purpose" is to "remedy urban blight for the sake of public health and safety."

Fall County Foreclosure Auctions Upcoming

Wayne County Auction September 8 - 15

Public Act 123 of 1999 dramatically reformed the method by which Michigan County Governments manage tax-delinquent real-estate.

Under prior law, liens on parcels were offered to private investors at the annual May tax sale. Property owners were then subject to foreclosure of these liens and ultimately the loss of their property. Those property liens not purchased by private investors (usually the less desirable properties) ultimately reverted directly to the State of Michigan, which processed them and sold them at regional 'scavenger sales' held by the Michigan Department of Natural Resources.

Under the new law, the sale of liens has been replaced by direct foreclosure to the County Treasurer, or to the State of Michigan if the County 'opts out' of participating in the process. The properties are then sold by deed at auction.

There are up to 3 annual sale dates for these parcels, with the first two sales requiring a minimum bid to purchase the lands. This minimum bid consists of the property taxes for which the parcel reverted, as well as accrued interest, penalties, and other costs associated with the foreclosure process. These minimum bid auctions take place in July and/or September at the discretion of the seller. The third auction, which takes place annually in November, is an absolute sale, where the highest bidder becomes the buyer with no minimum bid requirement.

51 Michigan counties 'opted out' of the new system, and the sale of lands foreclosed by these county treasurers is being handled by the [State of Michigan](#). Those [counties that 'opted in'](#) handle their own foreclosure auctions (or contract with a private entity to conduct the auction, see below).

[Title Check, LLC](#), a private corporation, currently act as the liquidation agent for 11 Michigan counties (Alcona, Allegan, Alpena, Antrim, Cheboygan, Genesee, Kent, Lake, Presque Isle, Van Buren, and Wexford).

[Wayne County](#), the largest county in the State, annually auctions over a thousand properties. This year, the [preliminary catalog](#) of properties runs for 226 pages. Of those 226 pages, 198 pages list property located in the City of Detroit.

- [State of Michigan 2004 Foreclosure Auction Information](#)
- [Wayne County 2004 Foreclosure Auction Information](#)
- [Title Check 2004 Foreclosure Auction Information](#)

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