Great Rivers Habitat Alliance News

New Suit Against FEMA

In December, Great Rivers Habitat Alliance and the National Wildlife Federation notified the Federal Emergency Management Agency (FEMA) of their intent to file a lawsuit against the agency for failing to protect endangered pallid sturgeon and interior least tern from the impacts of its Federal Flood Insurance Program, which promotes development in floodplain areas vital to the survival of these species. Issuing flood insurance without first determining whether the development will harm endangered species or their habitat violates the Endangered Species Act.

Because many private insurers refuse to insure floodplain homes, FEMA's insurance program allows development to occur where it otherwise would not. FEMA also sets eligibility rules for communities that want to participate in the flood insurance program - rules that currently fail to limit development in high-risk floodplains and fail to consider the impacts of development on environmentally sensitive lands. As part of their lawsuit, the National Wildlife Federation and Great Rivers Habitat Alliance will seek an injunction that would require FEMA to consult with the U.S. Fish and Wildlife Service on the effects of its flood insurance program.

NWF and GRHA are being represented by counsel at NWF and Great Rivers Environmental Law Center in St. Louis, Missouri. Great Rivers Environmental Law Center is a nonprofit public interest environmental organization whose mission includes aiding citizens and organizations in asserting and defending their interests in environmental values before administrative officials, and, as a last resort, before the courts. The Center's web site address is www.greatriverslaw.org.

"Well functioning floodplains are vital to the ability to species and communities to survive the more severe weather climate change will bring," said Jim Murphy, Wetlands and Water Resources Counsel at the National Wildlife Federation "FEMA must change its policies to meet the climate challenge. We have previously sued FEMA for its failure to be protective of species and prevailed. The science and the law are firmly on our side in this case as well."

Great Rivers will send updates as this case progresses.

Legal Update

St. Peters TIF Case

The case challenging the blighting of flood plain and productive farm ground by the city of St. Peters continues to move forward. Great Rivers and its attorneys are still gathering information from the city through the discovery process. A trial date for later this year has been tentatively set, while the tedious case building process continues. Thank you to all who have helped get us this far in the battle to end the blighting of irreplaceable flood plain and some of the most productive farm ground in the state of Missouri.

Great Rivers is also actively pursuing other actions against threats to the Confluence Flood Plain, and we will reveal new information as it becomes available.

An Opinion Piece from George Will on Blight

Avaricious developers and governments twist the meaning of 'blight'

The Washington Post

By George F. Will

Sunday, January 3, 2010

BROOKLYN - On Aug. 27, 1776, British forces routed George Washington's novice army in the Battle of Brooklyn, which was fought in fields and woods where today the battle of Prospect Heights is being fought. Americans' liberty is again under assault, but this time by overbearing American governments.

The fight involves an especially egregious example of today's eminent domain racket. The issue is a form of government theft that the Supreme Court encouraged with its worst decision of the past decade -- one that probably will be radically revised in this one.

The Atlantic Yards site, where 10 subway lines and one railway line converge, is the center of the bustling Prospect Heights neighborhood of mostly small businesses and middle-class residences. Its energy and gentrification are reasons why 22 acres of this area -- the World Trade Center site is only 16 acres -- are coveted by Bruce Ratner, a politically connected developer collaborating with the avaricious city and state governments.

To seize the acres for Ratner's use, government must claim that the area -- which is desirable *because* it is vibrant -- is "blighted." The cognitive dissonance would embarrass Ratner and his collaborating politicians, had their cupidity not extinguished their sense of the absurd.

The condo of Daniel Goldstein, his wife and year-old daughter, which cost Goldstein $590,000 in 2003, is on part of the land where Ratner's $4.9 billion project would be built -- with the assistance of more than $1 billion in corporate welfare from the state and city governments, which are drowning in red ink. The Goldsteins' building would not seem blighted to anyone not paid to see blight for the convenience of the payers. Which is of constitutional significance.

The Constitution says that government may not take private property other than for a "public use." By "public," the Framers, who did not scatter adjectives carelessly, meant uses -- roads, bridges, parks, public buildings -- directly owned or primarily used by the general public. In 1954, however, in a case concerning a crime- and infectious-disease-ridden section of Washington, D.C., the court expanded the notion of "public use" to include removing "blight."

Since then, that term, untethered from serious social dangers, has become elastic in the service of avarice. In 2005, the court held, 5 to 4, that New London, Conn., could take the property of a middle-class neighborhood and transfer it to a corporate developer who would pay more taxes to the city government than the evicted homeowners had paid. Justice Sandra Day O'Connor, dissenting, warned that the consequences of the decision would "not be random."

The beneficiaries would be people "with disproportionate influence and power in the political process."

Enter Ratner, with plans to build a huge complex of high-rise residences, commercial properties and a basketball arena for the NBA's New Jersey Nets, which he bought. The city and state governments salivated at the thought of new revenue -- perhaps chimerical -- to waste. The problem was, and is, that people live and work where Ratner wants to build.

So blight had to be discovered. It duly was, by a firm that specializes in such discoveries. New York's highest court ratified that finding, 6 to 1.

But a week later, Columbia University, which has plans for a $6.3 billion expansion in Manhattan, was stymied in its attempt to wield the life-shattering power of eminent domain against several local businesses that do not want to be shattered. A state court held, 3 to 2, that condemnation proceedings had been unconstitutional. The court said the blight designation was "mere sophistry": "Even a cursory examination of the study reveals the idiocy of considering things like unpainted block walls or loose awning supports as evidence of a blighted neighborhood." The idiocy was written on Columbia's behalf by the same firm that Empire State Development Corp. hired to find blight at the Brooklyn site. Both Columbia and Ratner are operating in partnership with the ESDC, an arm of the state government. Both Columbia's and Ratner's attempts at seizing property are "pretextual takings," using trumped-up accusations of blight to concoct a spurious "public use" for a preconceived project.

The Atlantic Yards nonsense was compounded when Ratner, to bolster his balance sheet after the real estate collapse, sold the Nets to a Russian billionaire, who stands to benefit from Ratner's government-subsidized seizure of other people's property. Those people can only hope that New York's highest court will grant their appeal for reconsideration on the grounds that Ratner's argument is about as good as the Nets are. Through Saturday, their record was 3-30.

Judge Finds Corps of Engineers Liable for Katrina Flooding

Congressman Urges the Feds to Settle

David Grunfeld - The Times-Picayune

The Mississippi River-Gulf Outlet, left, has been closed at Bayou la Loutre.Federal authorities should negotiate a settlement with residents of the Lower 9th Ward and St. Bernard Parish who are likely to demand damages in the aftermath of a successful lawsuit that found corps mismanagement of the Mississippi River-Gulf Outlet contributed to the flooding of their homes and businesses, U.S. Rep. Charlie Melancon, D-Napoleonville, said Tuesday.

"These families cannot afford to endure years in court while their government continues to frustrate their hopes of a resolution, " stated Melancon, a candidate for the U.S. Senate seat held by David Vitter, R-Metairie, in a letter to U.S. Attorney General Eric Holder. "In light of the president's steadfast dedication to recovery and (U.S. District Judge Stanwood) Duval's findings, I request that your office begin negotiations with these plaintiffs to resolve their claims and allow them to continue rebuilding their lives."

A Justice Department spokesman had no comment about Melancon's letter. The agency has not yet decided whether it will appeal the decision, although it already has unsuccessfully requested Duval reconsider his Nov. 18 ruling.

Vitter said Tuesday that he also would like to see the Justice Department settle the case.

"I applauded the judge's ruling when it first came out last November and had been very supportive of the Corps settling the litigation and not drawing it out further, " Vitter said in a statement. "This ruling confirmed what I've been saying for some time -- that the Corps chose to disregard common-sense engineering practices and safety standards and that this gross irresponsibility resulted in the loss of lives and property."

Duval found the corps liable for a share of the damages resulting from storm surge during Hurricane Katrina after a lengthy trial in which experts for both sides argued over how the flooding after Hurricane Katrina occurred.

"The failure of the Corps to recognize the destruction that the MR-GO had caused and the potential hazard that it created is clearly negligent on the part of the Corps, " Duval wrote in his 156-page decision.

"The Corps' lassitude and failure to fulfill its duties resulted in a catastrophic loss of human life and property in unprecedented proportions."

His decision could result in the federal government paying $700,000 in damages to three people and a business in those areas, but also sets the stage for judgments worth billions of dollars against the government for damages suffered by as many as 100,000 other residents, businesses and local governments in those areas who filed claims with the corps after Katrina.

The day after Duval's ruling, attorneys for the plaintiffs issued a letter similar to Melancon's.

But negotiating a settlement may be difficult for the government because of concerns it would set a precedent that could spark similar lawsuits around the nation.

In addition to the Duval MR-GO ruling, the corps and Justice Department must also contend with a separate lawsuit pending in the U.S. Court of Federal Claims in Washington, D.C., which argues that construction of the MR-GO devalued the property of residents and businesses in St. Bernard Parish and parts of New Orleans, for which they should be compensated.

On Dec. 10, U.S. Federal Claims Judge Susan Braden lifted a stay in that lawsuit put in place until Duval ruled in the first MR-GO lawsuit.

Braden scheduled a status hearing in that case for Feb. 9, which plaintiff's attorneys said should result in a resumption of discovery motions in advance of a yet-to-be-scheduled trial.

That lawsuit is based on a provision in the U.S. Constitution that prohibits the federal government from taking property without just compensation for the owner.

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