Briefly…

Victory… of Sorts

In one small Chicago suburb, the concept of targeting only self storage for an "accommodations tax" was halted, at least for now. Oakbrook Terrace tabled the idea indefinitely after an outcry from the affected operators and the self storage community.

Legal Webcasts

It's become one of the most popular monthly SSA programs: the free *Legal Webcast* featuring the lawyers from the Self Storage Legal Network. Make sure to sign up early for tips you won't find anywhere else, and at no cost. It's one of your benefits SSA membership. Visit the SSA website (www.selfstorage.org) to take advantage.

SSA Mondays

The weekly SSA *Monday Morning Memo* has been replaced with the *Monday Morning Globe.* As has been the case with the SSA MMM for the past six years, the SSA *Monday Morning Globe* will highlight the latest activities and developments affecting storage owner/operators, such as legislative updates, information about SSA events and other news. Visit www.ssaglobe.org for a virtual issue of this magazine, past issues and daily updates.

Self Storage operator Nick Sprayregen stands near one of the buildings that he says Columbia University bought and let fall into disrepair to create the perception of blight.

Storage Operator 'Hopeful' Supreme Court Will Hear Eminent Domain Case

By Tim Dietz – SSA VP, Communications & Government Relations

Nick Sprayregen, the New York-area self storage operator who has dedicated more than a small fortune to fight an elite university's "land grab," as he terms it, says he will ask the U.S. Supreme Court to hear his eminent domain case following an unfavorable appellate court decision earlier this summer. Although it is considered a long shot, if the high court were to agree to consider the case it would set up a landmark property rights case that many have sought since a controversial decision five years ago.

"I am deeply disappointed at the Court of Appeals decision," said Sprayregen, owner/operator of Tuck-it-Away Self Storage, which includes two properties in the West Harlem area of New York City where Columbia University is planning a 17-acre campus expansion.

"Not only does this decision represent a continuation of eminent domain abuse across both New York and the country, but, in reality, it results in an even greater ability for the powerful and connected to take advantage of others' rights," said Sprayregen. "I am therefore truly hopeful that the United States Supreme Court will take this case for review."

Sprayregen has maintained that the condemnation process represented a "web of conflict of interest and bad faith on the part of the government." His contention was bolstered by a December appellate court decision that went in his favor. In that ruling one of the judges wrote that the ESDC was guilty of "idiocy" and had trumped up a blight finding in order to justify taking properties from private owners."

Sprayregen hired a civil liberties attorney, Norman Siegal, who said the blight had been created by the University, not his client. "So what you have is a pattern

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wherein Columbia buys a property, within two years it is empty, and two or three years later, after they let the building decline, the appearance of blight is created, which benefits their very argument."

On June 24, however, Sprayregen received bad news when New York's top court, the Court of Appeals, issued the decision that overturned the lower court's original finding, ruling that eminent domain could indeed proceed. The Court of Appeals, in a 7-0 decision, found that the Manhattan appellate court improperly ruled for Sprayregen, as precedent clearly is on the side of the state, the area is indeed blighted and the courts generally are deferential to the state authority—the Empire State Development Corp (ESDC).

Judge Robert Smith wrote, "The finding of 'blight' in this case seems to me strained and pretextual, but it is no more so than the comparable finding in *Goldstein*," Smith wrote—referring to another recent New York eminent domain case. "Accepting *Goldstein* as I must, I agree in substance with all but [one section] of the majority opinion."

Since 2005, eminent domain has been debated widely following the United States Supreme Court ruling that states could permit private property to be seized for the redevelopment by another private owner. Since that decision, lawmakers in 43 states have created stringent requirements for eminent domain; however New York is one of the seven that have not.

New York SSA President Chris McGrath raised his family in New York City and knows the area well. "When the NY Court of Appeals ruled in favor of Columbia University and against Nick Sprayregen in the eminent domain case involving the proposed expansion of this private educational institution into Manhattan's West Harlem neighborhood, it killed another part of New York City as we knew and loved it," said McGrath.

"Even though the Sprayregens will be compensated, it will in no measure equal the contributions that this family has made to the West Harlem community and its residents over the years," McGrath continued. "Instead of recognizing and applauding this family's contributions, the court ignored and trashed them. Every business and owner should thank Nick and his family for their courage and fortitude in this long and complex litigation."

Columbia plans to build a series of 16 buildings over many years to expand its campus along the Hudson River, where the streets had previously been active with industrial use properties. The university easily acquired most of the land for the development, but Sprayregen and two gas stations refused to sell.

Siegel says going to the Supreme Court is the only alternative, but he thinks they have a chance because, although state law allows eminent domain to be used for educational purposes, it did not explicitly permit a private institution to benefit from it. "The decision sets a terrible precedent regarding the use of eminent domain," he told the New York Times.

The decision was not unexpected, said Michael Rikon, another attorney who specializes in condemnation law. Rikon said, "Even though the courts say they won't be a rubber stamp, that's in essence what they've become."

Despite his setback, Sprayregen is unwavering. "For the first time ever, a New York court has now ruled that it is a permissible use of eminent domain for a purely private school to expand at the expense of its neighbors. Further, this decision gives the court's seal of approval for powerful interests and the government to routinely collude together in justifying the need for eminent domain." ❖