

Eminent Domain

Creekside Court is a 400-unit apartment complex in Freetown (population 15,000) that primarily rents to low-income residents. The average rent for a two-bedroom apartment is \$475 per month. Many of the residents are recent immigrants to the United States; some are refugees. The longest lease available to renters is one year, so all leases expire within the next 12 months.

Creekside Court was built in 1983 and has been maintained by a professional staff hired by the apartment complex. When residents move out, the vacant apartment is repainted and repairs are made to appliances and fixtures, but none of the apartments has been renovated since construction 30 years ago. The buildings are showing evidence of wear and tear – the exterior staircases that allow second-floor residents access to their apartment are in particularly poor condition. A step recently gave way as a resident was descending the stairs, resulting in a serious head injury. Local government inspectors determined that several other exterior staircases were structurally unsound. Several buildings have termite and other insect infestations, some of the stoves and other original appliances do not meet the safety or energy standards required of new appliances, and some slight water damage from leaky roofs has begun to appear.

The apartment complex was recently purchased by a luxury property management company that announced plans to renovate all 400 units and building exteriors as the current leases expire. The company plans to install granite countertops, new stainless-steel appliances, hardwood flooring, two community pools, a hot tub, sauna, and small recreation center. The company estimates that a renovated two-bedroom apartment will rent for an average of \$1100.

The Mayor of Freetown immediately expressed concern about the pending conversion of a large affordable-housing complex into luxury apartments:

“Those 400 apartments are home to more than 1000 of our most vulnerable residents – where will they move? We need these people here, they are hardworking and valued members of Freetown. I will ask the City Attorney to explore the possibility of using eminent domain to take over Creekside Court and converting it to public housing,” she told the local newspaper.

The new owners of Creekside Court responded in a press release: “It would be an abuse of power for the city to seize our property, simply because it does not like our plan to improve it.”

The Supreme Court has repeatedly held that the Fifth Amendment allows governments to exercise eminent domain over privately-held property. That is, governments are allowed to take over private property for “public use” while offering the owner “just compensation.”