

The Danger of Eminent Domain

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Eminent domain is becoming a tool inconsistent with what it was initially intended. Obtaining private land for public infrastructure that cannot accommodate the existing private landownership is appropriate if it is secured for the greater good of the community. Clear examples of this are the construction of a new highway, a public transportation hub, a public park, or a government building. Though it will upset the private landowners to have their property taken from them, generally everyone understands that this is a necessary situation and as long as the owners are adequately compensated as per the prevailing land value, then it is acceptable. New public infrastructure is an appropriate application of eminent domain.

However, that has not been the way that eminent domain land acquisitions have been conducted recently. The Supreme Court's position on the *Kelo vs. City of New London* case demonstrates this shifting attitude regarding eminent domain. The ultimate result is the seizure of private land to be given to another private party for redevelopment. When did the government get the authority to so brazenly burden one group of private citizens to reward another group of private citizens? This is more than "for the public good" - this is the government actively redistributing private assets in such a manner that they can expand their tax revenues under the guise of public service. America has a Constitution to protect us from this kind of injustice. Apparently five of our esteemed Supreme Court justices do not agree, or they do not care.

For another extreme example, take the case of the City of Lakewood, Ohio. City officials attempted to use eminent domain to reclaim a section of the city containing over fifty houses, several apartment buildings and a dozen businesses in order to build high-priced condos and a shopping mall. The city admitted that the purpose was to raise the city's property tax base. To attempt this, the city labeled the 100-year-old neighborhood as "blighted". Their definition of a blighted home as it applied to this case was ludicrous. They defined it as any home that didn't have "three bedrooms, two baths, an attached two-car garage, and central air conditioning". That is probably not what you had in mind when the word blight was used. Fortunately, through ballot initiatives decided upon by the residents of Lakewood, the development plan was rejected, and the blight designation was removed thus saving a long established neighborhood.

As architects, we have to think very carefully about how eminent domain is going to be used before we embrace it. If the land your house is on could generate double or triple the tax revenue to the town by being used for something else, what stops your town from taking your land under the premise of eminent domain and giving it to a private developer "for the public good"? There are few properties that could not be made more valuable through some type of redevelopment. This is a very slippery slope and it is apparent that the *Kelo* case has opened the doors wide legally for others to do the same. This is an abuse of government power. Political cronies, large corporations and developers now have an established legal precedent to transfer property from those with less resources, to those with more. Why should your town let you live in your house if you are an impediment to them expanding their tax revenues? Why should you complain? You are in favor of the "public good" aren't you?

We should be in favor of sensible urban redevelopment and improving our built environment. However, eminent domain has a long established history of negative impact to less economically fortunate individuals and families. In Justice Thomas' dissent in the *Kelo* decision, he stated "Allowing the government to take property solely for public purposes is bad enough, but extending the concept of public purpose to encompass any economically beneficial goal guarantees that these losses will fall disproportionately on poor communities. Those communities are not only systematically less likely to put their lands to the highest and best social use, but are also the least politically powerful". Those with less influence are more likely to be slighted.

The first, and most important job of a government is to protect its citizens. This protection, as outlined in our Constitution and Bill of Rights, includes the right to own private property without the fear of that property being stolen from us. The egregious abuse of eminent domain is a clear violation of this fundamental concept to our society. The fact that it is sanctioned by the very institution that is supposed to protect us is a truly astonishing notion.

Eminent domain is a necessary tool to bring public projects to fruition that will aid infrastructure. Using it as a means to force people from their homes in order to make way for other private development is something that a socially conscious architect should have a problem endorsing. A potentially more poignant circumstance for those of us who live in the Highlands region of New Jersey is realizing that it isn't too much of a stretch to put the land-grab approach of the Highlands Act together with the imposing mechanism of eminent domain.