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- 1 Eminent Domain Leads to Controversy
- 3 The Legality of Staff Review in Historic Preservation
- 4 Land Use By and For the People: Anderson County, South Carolina, Planning Commission
- 6 The Preservation Element of a Comprehensive Plan
- 10 Resource Finder for Historic Preservation
- 11 Commissioner's Voice
- 12 Union Park Gardens and John Nolen

Eminent Domain Leads to Controversy Jennifer Bradley The Supreme Court's decision about the constitutional uses of eminent domain in *Kelo v. City of New London* has generated tremendous controversy. Within days of the decision's announcement, members of Congress passed resolutions denouncing the ruling and introducing legislation that would sharply limit the ability of state and local governments to use eminent domain—at least if federal funds are involved. State lawmakers vowed to rewrite state eminent domain laws, making it more difficult for local governments to use their condemnation power. If they succeed, the *Kelo* case may turn out to be a victory on paper, but a defeat in practice, for planners and local governments that want to remake their cities to accommodate changing economic and demographic conditions. *continued on page 2*

The City of New London used the tool of eminent domain for redevelopment in part because the neighborhood had suffered a loss of houses, investment, and neighborhood density.



Philip Langdon

continued from page 1 The Constitution imposes two requirements on the government taking of property by eminent domain; first, that it be for a public use, and second, that it be justly compensated. In *Kelo*, the Supreme Court held that economic development, pursuant to an integrated redevelopment plan, is a valid, constitutional public use. *Kelo* is far from a radical change in eminent domain law, as some opponents have charged. Since the first eminent domain cases, the Court has upheld the transfer of property from one private owner to another for economic development. Moreover, the Court has never required that condemned property be blighted, be located in a blighted area, or otherwise used in a way that inflicts harm on society. Condemnations are often used for blight clearance, and many states forbid using eminent domain for economic development except in blighted areas, but these are statutory restraints, not constitutional ones.

In addition to ratifying economic development as a public use, the *Kelo* opinion puts planning at the core of a constitutionally valid eminent domain process. The major-



Paul Farmer, ACP

The Kelo house is located on a street leading to Ft. Trumbull State Park, which is on the waterfront. The waterfront has been undergoing development for several years.

ity opinion written by Justice John Paul Stevens, and the concurrence, written by Justice Anthony Kennedy, place a strong emphasis on the fact that the city of New London had embarked on an extensive planning process before resorting to eminent domain. The city spent almost two years crafting its redevelopment plan for a 90-acre waterfront neighborhood. The plan, which was approved by the city council, called for public amenities like a museum, park, riverwalk, and marina alongside offices, shops, and condominiums. This broad, integrated development plan and publicly accountable process convinced the Court that New London was not giving property from one owner to another purely for the latter's private benefit (which would be a violation of the Constitution's public use requirement). Instead, the Court agreed that New London was embarking on a broad redevelopment project that would benefit all of its citizens.

Unfortunately, the New London project, which would generate more than 1,000 jobs, and similar ones in other states may never get off the ground. Not long after the decision was announced, the Connecticut State Assembly asked the state's municipalities to put their eminent domain projects on hold, because the state's laws were about to change. Alabama has already changed its law, forbidding condemnations for commercial, residential, or industrial redevelopment. Texas recently banned eminent domain's use for

economic development, absent blight (but the law made an exception for a new professional football stadium near Dallas). The National Conference of State Legislatures predicts that more than half of state legislatures will weigh eminent domain restrictions when they convene next year. Before the *Kelo* decision, Nevada made it harder for local governments to acquire open space through condemnation or to use eminent domain to clear blighted areas. In March, Utah passed a law forbidding redevelopment authorities to use eminent domain at all.

State restrictions could jeopardize valuable projects across the country. The Kansas City Speedway, for example, which brought almost \$90 million dollars to the local economy on race days during the first season, and has generated \$70 million in local workers' wages and \$10 million in additional tax collections, was built on land assembled using eminent domain. The local government used the Speedway to spark another major economic development project that will create 4,000 new jobs. Eminent domain was critical for projects like Baltimore's Inner Harbor, New York's Lincoln Center, the original World Trade Center, and the revitalization of Times Square, all of which have contributed significantly to the economic health and quality of life of those cities.

It should be clear to planners and local officials that the Supreme Court victory in the *Kelo* case was the beginning, rather than the end, of the battle over the use of eminent domain for economic

development and urban redevelopment. The backlash over the decision could create an opportunity for genuine, beneficial eminent domain reforms.

These reforms could grant greater compensation to home and business owners, or make sure that renters get full compensation for relocation expenses, or change the process for using eminent domain to make sure that there is genuine public input and public approval for condemnations. The worst outcome is that elected officials could take away the powers that the Supreme Court has validated, which would be a real loss for cities struggling to survive and provide jobs and amenities for their residents.

The *Kelo* ruling rightly said that land-use decisions are best made at the state and local level. That is both a reassuring win and difficult challenge for local officials and planners, because it means that they can never declare victory and go home. Winning, even in the Supreme Court, is not enough. Planners, local officials, and their allies still must convince state lawmakers and the public to support their efforts to create and revive the places where we live. □