

CAN WE CURE CONDEMNATIONS LIKE KELO v. NEW LONDON?

By Tracy Hunsaker Gilroy

WE THE PEOPLE can indeed cure condemnations permitted by the United States Supreme Court in its recently rendered opinion entitled Kelo v. New London, 125 S.Ct. 2655 (2005). But, before the cure, we should be sure to know the disease.

In Kelo, the high court addressed the often-overlooked issue of a city's power of eminent domain whereby a city is able to take (and pay for) private property for the alleged "public use" of another private owner's development that will result in an "economic benefit" to the city ala an increased tax base.

In Kelo, the United States Supreme Court permitted the City of New London, Connecticut to take or "condemn" Ms. Kelo's property for the development of a Pfizer plant. The private development, funded with tax dollars from the city, (therefore also known as a "public-private development") would include office and retail and residential buildings in an area that had been economically deprived for years.

The Supreme Court did not change the law of Connecticut; it simply upheld the existing legislation permitting acquisitions of private property for "public use". The Supreme Court also deferred to the power of the elected officials who engage in the detailed planning of the development project.

But in the Kelo decision, (a 5-4 decision), it was apparent that the Supreme Court was also suggesting that the PEOPLE return to their legislatures to change the written laws in each state and city in which powers of eminent domain and powers of tax increment financing exist.

But changing the law is not easy for independent property owners who are not organized and do not have working lobbyists. Further, property owners having been through the public-private development process are less likely to have the stamina to start a legislative lobbying effort.

Granted, the Institute of Justice and our Missouri Bar Association have served well for property owners. But, the concentration on "eminent domain abuse" has missed other very real issues: (1) treating property owners fairly in the arms-length acquisition of their property as most property owners do not go through eminent domain; and (2) investigating the real costs of tax increment financing of public-private developments wherein tax generated by the development is not received by the city and schools, but rather is first pledged as collateral for the financing of the construction of the project then paid by the developer to the bank in order to pay off the developer's construction loan.

The real issues for property owners are: (1) not wanting to stand in the way of community development, **but** (2) wanting to be respected for owning their land and not having to sell it unless they are enticed to do so.

On any given day, many property owners can not afford to sell their homes or business property and replace their properties with the same or better. So, the real issue for most property owners is “fair treatment” in such public-private developments.

So, WE THE PEOPLE should study all of the state and federal laws and the city ordinances that deal with eminent domain, tax increment financing and property owner relocation issues to find out how the system works (and doesn't work) and lobby the legislature to fix it if necessary. But, we should mostly be focused on the “fair treatment” of property owners. No development should be built at the expense of a few property owners.

The Governor's Eminent Domain Task Force rendered 18 suggested ways to improve the system, none of which (curiously) dealt with the concept of curbing tax increment financing incentives. Yet, the many proposed bills in the house and senate barely address any of the Task Force's suggested improvements.

The purported likely “survivor/winner” of the many proposed “anti-eminent domain” bills in Missouri is House Bill 1944, which does little to assist property owners going through eminent domain. In fact, House Bill 1944 may do more harm to property owners than good.

WE THE PEOPLE should remember that no one is above the power of eminent domain, and we all should become keenly aware of each element of strife endured by a business or a family that suffers through the acquisition process or through the process of eminent domain or forced acquisition. Only after the property owners' concerns are each addressed in a “property owner rights” bill will our state have a good working bill for both property owners and condemning authorities.

So far, WE THE PEOPLE better fight harder for justice for all.

Each property owner should approach his/her governmental officials for well-reasoned and fair legislation under all the circumstances surrounding a public-private development. Both eminent domain and relocation laws of our communities, our state and our federal government need to be reviewed immediately.

At the very least, property owners should encourage their officials to restrict a condemnor's use of eminent domain except in dire circumstances. If a condemning authority would make special effort at the inception of a project to ensure its residents and business owners are treated very well on every aspect of any buy-out effort through the final closing on the property, the need for eminent domain would virtually disappear. Eminent domain could then be used, as it was intended, for “hold-outs” who may or may not have a viable argument of value.

Property owners should also encourage their neighbors to VOTE. And to know if a candidate understands and has opinions about eminent domain, relocation issues and tax increment financing.

Property owners should also encourage their officials to enact an ordinance that permits the citizens of a city to vote on a public project, i.e. not every city has such luxury. As we all know,

candidates running on "public project" issues or "eminent domain" issues may not know enough about the process and project to be able to state with contract certainty that he/she would be for/against a particular project. One just never knows until one is in the situation. So, a public vote may be a worthwhile effort after all.