

Do Not Rush To Judgment On Eminent Domain

■ By PAUL FARMER

The Supreme Court decision in *Kelo vs. City of New London* need not strike fear into every property owner's mind as indicated by recent news coverage. Claims that developers can just start taking land amounts to a scare tactic – they can't.

The court's decision did not expand government power to use eminent domain. It maintained more than 200 years of practice and relied on more than 100 years of precedents. No new tests were enunciated and no new powers were given to local governments. The court affirmed that a thorough and engaged planning process protects the values of citizens and their community. The court affirmed that these are local matters, decided within the context of each state's laws.

This decision underscores the importance for a community to have a comprehensive development plan formulated through a democratic planning process with meaningful public participation by everyone. Such planning must involve residents, businesses, civic leaders and elected officials.

Each year, many lose their homes or the value of their homes through economic decline or blight. Eminent domain is just one of many valuable tools to maintain property values and to create communities that enrich people's lives. The American Planning Association (APA) strongly believes that eminent domain should only be pursued in the rarest of circumstances. Citizens must be justly and adequately compensated. And decisions to use eminent domain must remain in the hands of the local community.

Several states have greater restrictions on the use of eminent domain than required by the U.S. Constitution. In California, a property can only be turned over to a private developer after the community's redevelopment plan has been approved and the area designated as blighted. The blight test is not easy to meet and it requires a comprehensive survey of properties and a very public process for review of the blight report and establishment of the redevelopment area.

California is a prime example of a state actively engaging community members in the planning process. Each step of California's redevelopment process is subject to public hearings. Every five years, redevelopment implementation plans must be updated and are subject to a public review.

The state doesn't prohibit the use of eminent domain. Rather, it has established laws that create both procedural and substantive limits to ensure that tools are used and applied fairly. California is an example of how a state can carefully balance the rare use of eminent domain with the needs of its communities and residents.

Using eminent domain for the benefit of the community as a whole is never easy. It should be used with caution, and as always, only as a last resort when citizens and their elected leaders have no other way to meet the inevitable challenges of change and to help ensure their community's economic prosperity.

Communities do not rush to use eminent domain just because it is available. However, without eminent domain, many successful community projects and economic developments would not have come to fruition simply because of holdouts. Eminent domain is most often used to assemble

the final one or two remaining land parcels out of hundreds of parcels necessary for a redevelopment project.

APA filed an amicus brief in the *Kelo* case in support of the City of New London. Our brief acknowledged that eminent domain is concededly a harsh power. "The dangers of eminent domain should be addressed by assuring that it remains the second-best alternative to market exchange as a means of acquiring resources, by encouraging careful planning and public participation in decisions to invoke the power of eminent domain, and by building on current legislative requirements that mandate compensation beyond the constitutional minimum for persons displaced from occupied residences or businesses because of government condemnations."

Anger over the court's decision has moved many to call for more severe restrictions on the ability to use eminent domain. However, if eminent domain were severely restricted, communities would be hamstrung by the unwillingness of a few people, or by those who wish to exploit the community for as much financial compensation as possible. If eminent domain were eliminated, communities across the country would be at a great risk of becoming stagnant by making redevelopment impossible. How fair is that to the community as a whole?

Admittedly, unfair use of eminent domain can happen, but this doesn't mean the tool should be severely restricted or eliminated. The best defense against unfair use of eminent domain is a thorough, open and transparent planning process.

Taking this process out of the hands of community members and local governments will only encourage unfair use. Those who are elected and held accountable for their actions by community members are the best ones to make such difficult decisions. The justices made an important decision not to tie a community's hands by restricting or eliminating the use of eminent domain, instead, leaving that decision up to each state legislature.

Some state legislators have reacted by introducing legislation to restrict the use of eminent domain. APA strongly encourages that any new legislation regarding eminent domain should embrace a comprehensive approach to redevelopment. Redevelopment policy is an essential component of efforts to redirect growth into areas already served by infrastructure and supported by urban services.

If communities are prevented from using tools they have available for addressing changing economic circumstances, then entire neighborhoods may be more at risk. That should give pause to those who would rush ill-considered bills through legislatures.

Some in Congress want federal review of local redevelopment decisions. The most appropriate forum for debate on eminent domain is the state house, not Congress. Federal involvement, while arguably good politics in the aftermath of *Kelo*, is likely to produce unintended consequences and threaten positive efforts of many states and localities.

The opinion, albeit difficult, underscores the importance of the planning process. It's not easy, but a democratic planning process with meaningful public participation is the appropriate way to proceed. Such community engagement is necessary to keep our cities growing and prosperous.

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