Eminent domain raw deal for property owners

Posted by the Asbury Park Press on 05/7/06

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The rusted beams of the C-8 building came down April 29 in Asbury Park. Henry Vaccaro built it; Henry Vaccaro detonated it. Between those markers, 20 years elapsed. The building was an icon of a redevelopment project gone wrong. Twenty years is too long to let a city wallow in a state of blight.

New Jersey has 1,000 redevelopment projects planned or under way. The deck is stacked against the residential property owner, the small business owner, and even industry. If our politicians are not serious about reform, we might as well change our license plates to read "The State of Eminent Domain."

Current New Jersey eminent domain law is grounded in the New Jersey Constitution, the Eminent Domain Act of 1971, the Local Redevelopment Housing Law and the Relocation Assistance Act and its regulations. New Jersey needs an immediate Eminent Domain Revision Committee, a bipartisan effort including representatives of the judiciary, academia, property owners and condemning authorities. This panel should conduct a comprehensive review of the laws with an eye toward recommending to both the Legislature and the governor sweeping changes in the laws governing eminent domain.

During oral argument before the U.S. Supreme Court in the Kelo case, Justice Anthony M. Kennedy said, "Blight is in the eye of the beholder."

"Blight" does not exist in the U.S. Constitution, but it appears in the New Jersey Constitution in Article VIII, Section three, which links blight with a public use. The definition of blight was expanded by the Legislature, approved by the courts and is now synonymous with "an area in need of redevelopment." It would not be so easy to seize property if the definition were not so broad.

A March poll of 504 people by the New Jersey Chamber of Commerce revealed that 18 percent believe eminent domain should be used only when property is vacant, unused or blighted. A blight designation should not be valid for more than five years, and the date of valuation should not be the date of the blight designation.

Current valuation dates do not deliver just compensation to property owners. True compensation should reflect the current real estate market so the property owner is able to buy back into the market. The "Scope of the Project" rule does not allow the property owner to claim the highest and best use of the project.

Bruce MacCloud, whose property was seized in 2002 for the Beachfront North Phase I in Long Branch, cannot claim that his 10,000-square-foot property could be used for condominiums like the ones that now stand on his former lot and sell for $630,000 to $1.2 million. He's stuck in the residential zone that existed at the time his property was taken.

Long Branch changed the zone to C-6 with a minimum lot size of 80,000 square feet, effectively zoning MacCloud and his neighbors into non-utility. Nothing could be developed unless you owned

approximately eight to 12 lots. Who owns or can assemble lots of that size except real estate developers? Certainly not the residents of the bungalows and oceanfront cottages that exist on small lots in the MTOTSA (Marine Terrace, Ocean Terrace, Seaview Avenue) area. These residents were denied permits to improve or develop their properties, or forced to sign waivers they would not claim the value of their improvements in an ensuing condemnation trial. The requested waivers were illegal, but that didn't stop the city from trying to obtain them.

Relocation regulations need to further reflect compensation for businesses, business discontinuance and business loss resulting from acquisitions and temporary takings. Battista Auto Body, a business that will be taken for the arena project in Newark, recently lost the beneficial use of its business because access to the property was obstructed for more than one month prior to the taking itself. While the owner waits for his property to be condemned, he has already lost his livelihood and the ability to carry the property and pay employees and related expenses.

Ronald Chen, the newly appointed state Public Advocate, is looking into the eminent domain horror stories of private citizens. This is not a solution to Gov. Corzine's campaign promise to halt eminent domain abuse. The law must be balanced so local officials can't just designate whole neighborhoods areas in need of redevelopment, then seize and condemn them for another vague standard, economic benefit.

As reported in the Asbury Park Press, a poll of 800 people conducted by Monmouth University/ Gannett New Jersey newspapers last September revealed that 81 percent of people aware of eminent domain issues believe private developers benefit more from eminent domain than the municipalities. Looking at the enormous profits the developers stand to gain at the expense of senior citizens and families in Long Branch, the concept of public use remains questionable.

The Supreme Court in the Kelo decision gave us economic benefit as public use when it affirmed New London, Conn.'s authority to take the petitioners' properties. But Justice John Paul Stevens also said, "We emphasize that nothing in our opinion precludes any state from placing further restrictions on its exercise of the takings power. Indeed, many states already impose "public use' requirements that are stricter than the federal baseline. The necessity and wisdom of using eminent domain to promote economic development are certainly matters of legitimate public debate."

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