

Eminent Domain: New London's Story

by **Richard Brown**

On June 23, 2005, the United States Supreme Court issued its decision in *Kelo v. City of New London* (125S.Ct.2655). In this case, the United States Supreme Court ruled that New London could take privately owned properties for private sector development under its economic revitalization plan. Because the plan served a public purpose, the takings in question satisfied the U.S. Constitution's public use requirement, which simply bans government from taking land for public use without just compensation. The Supreme Court relied on prior decisions and interpreted "public use" as the equivalent of "public purpose."

The Supreme Court decision has been presented as a taking of privately held property to benefit a specific business. Nothing could be further from the truth. . . .



City Hall, New London, Connecticut.

Some Background on the Case

The city of New London, located in southeastern Connecticut, is bordered on two sides by the Thames River and Long Island Sound. It is six square miles in area and has a population of approximately 26,500. By all measures, the city is a distressed municipality. It has a higher-than-state-average percentage of female-headed households, rental properties, persons in need of social services, individuals using English as a second language, and lower-level achievement on state standardized school tests. Also, the average per capita income of New London's residents and the equalized net-grand list price per capita of properties lag behind the state average.

Local governments within the state of Connecticut rely heavily on the real estate tax; the state does not allow local flexibility in developing alternative sources of revenue. Therefore, communities like New London—older, established urban areas—remain service centers within their regions, even with property values lagging far

behind those of their suburban neighbors.

In New London, 55 percent of the land area is tax-exempt. Clearly, providing services, educating students, and maintaining levels of public safety become fiscal and management challenges. In the mid-1990s, New London found out that a final round of base realignment and closure activities had affected its Naval Undersea Warfare Center (a research facility), and soon some 1,500 jobs and associated subcontractor activities had been relocated to Newport, Rhode Island. The city was left with a large land parcel formerly used by the United States Navy that needed to be remediated and to be made a productive part of New London's tax structure again.

Look to ICMA

Articles on homeland security, economic development, city-county consolidations, youth at risk, and the link between human resource management and local government-level outcomes, as well as a discussion about the Supreme Court's ruling on eminent domain, will be published in The Municipal Year Book 2006 in April. Look for future publication announcements from ICMA.

The case of *Kelo v. New London* arose after the city began to implement a development plan to revitalize its economy. Adopted in 2000, the plan sought to develop 98 acres on the Thames River near Fort Trumbull State Park and Pfizer's Global Research Facility, slated to open in 2001. The area is composed of the closed U.S. Naval Undersea Warfare Center, the regional water-pollution control authority, and residential and commercial properties situated on 115 privately owned parcels.

The Supreme Court noted that New London was economically distressed and had decided to redevelop the area as a way to attract and accommodate new business linked to the Pfizer facility, as well as to generate leisure and recreational opportunities and draw more businesses and people to the city. Consequently, the city had prepared and adopted a plan under a state statute that allowed local governments to acquire, improve, and transfer property for new development.

This statute specifies how localities must implement these tasks and explicitly authorizes them to acquire property through negotiation or eminent domain, the power of a government to take private property for a public use or purpose. New London recognizes that the exercise of eminent domain is a last resort in assembling parcels for redevelopment or for other projects, and that it should be used sparingly.

The city designated the nonprofit New London Development Corporation (NLDC) to write and implement the plan, including acquiring properties slated for redevelopment. NLDC successfully bought 110 parcels but had to begin condemnation proceedings to acquire the other 15 by eminent domain. By a 5-to-4 margin, the Court upheld the Connecticut Supreme Court's ruling that New London's plans served a valued public purpose and that the takings satisfied the Fifth Amendment's public use requirement. It held that the city had carefully prepared the plan and did not adopt it as a way to benefit specific individuals or businesses.

Resources

An Eminent Domain Resource Kit is available online from the International Economic

Development Council at [www.iedconline.org/ Downloads/ Eminent_Domain_Kit.pdf](http://www.iedconline.org/Downloads/Eminent_Domain_Kit.pdf). It includes talking points, case studies, guiding principles for economic developers, and the myths versus realities of how eminent domain is actually used.

The National Conference of State Legislatures' eminent domain Web page can be found at [www.ncsl.org/ programs/ natres/emindomain.htm](http://www.ncsl.org/programs/natres/emindomain.htm). Information on eminent domain can be found on ICMA's Web site at ICMA.org.

The Furor That Erupted

The release of this opinion caused a visceral reaction among conservatives and right-wing bloggers, as well as reactionaries of all stripes. The Supreme Court decision has been presented as a defense of the taking of privately held property to benefit a specific business. Nothing could be further from the truth, in my view.

The Supreme Court noted in its opinion that the takings resulted from a well-crafted plan and a significant public purpose. Eminent domain has been used throughout this country's history, most extensively during the redevelopment processes of the late 1950s and 1960s. I would submit that in this case the individuals who are being displaced are basically a white, middle-class group of working people, rather than the poor and minorities who had been displaced in the '50s and '60s urban renewal projects. It was claimed, however, that the people in this taking were being mistreated, while it was implied that those previous victims of eminent domain had somehow deserved their fate.

Let's run through some of the specific public benefits of the Fort Trumbull Municipal Development Plan. (In fact, the Fort Trumbull Municipal Development Area is situated in a commercial/industrial zone that has performed poorly, with an 80 percent commercial vacancy rate and a 20 percent residential vacancy rate. The redevelopment area adjoins a municipal wastewater treatment facility.) Specific public benefits will comprise: \$18 million in environmental cleanup; the repair of inadequate roads and the addition of a road system designed to accommodate access to a \$20 million state park (the refurbished Fort Trumbull); upgraded water and sewer lines; a raising of the land so that it lies above the floodplain; a 1,500-foot walkway along the riverfront, with public access to the water; and an upgrade of the city's water treatment facility.

In Closing

New London is a distressed community six square miles in area, with 50 percent of its land exempt from taxation. Cities like New London can only remain viable and afford effective resources to its citizens and high-quality education to its school children through redevelopment enhancement of its tax base.

In a city the size and density of New London, the reuse of existing parcels is mandatory. In the case of *Kelo v. New London*, eminent domain is not merely right but also an obligation on the part of the community to advance the standard of living of those who reside in New London.

Richard Brown, ICMA-CM, is city manager of New London, Connecticut (rbrown@ci.new-london.ct.us).

© 2005 International City/County Management Association.