

Laurie Davis

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Research Form

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**Eminent Domain:  
What Is It and What Can You Do About It?**

Susette Kelo did not consider the resort hotel and conference center, new state park, 80-100 new residence, research, office and rental space, that the city of New London, Connecticut was proposing to construct where her house was, as public use. The Supreme Court of Connecticut, however, disagreed. They found that if an economic project creates new jobs, increases tax and other city revenues, and revitalizes a depressed urban area, it qualifies as public use (*Kelo v. New London* 2004). The case was then appealed to the United States Supreme Court. Kelo had spent time and money doing extensive improvements to her house, which she “prize[d] for its water view,” and did not want to have all of her hard work demolished. The final decision, which decided that New London’s plans were, in fact, considered public use, came on June 23, 2005 (*Kelo v. New London* 2005). Since the case ended, and became the new standard for eminent domain rulings, homeowners have been wondering what the future holds for their own property.

Homeowner rights that have stood for centuries are now being violated because of these recent changes in legislation. The ruling of *Kelo v. New London* allowed private-to-private property transfers through the use of eminent domain. Because of these changes in legislation, it has become increasingly important for homeowners to understand the history of eminent domain, the various definitions of public use, ways in which it is being used, both sides of the issue and the current legislation in different states. When a homeowner who is uninformed of the issue and their rights

comes face to face with a property dispute, they're sure to get the bad end of the deal. Enacting state legislation that restricts that use of eminent domain is a solution beneficial to all.

Eminent domain is the right of the government to seize private property for public uses. According to the Fifth Amendment of the US Constitution, "private property [shall not] be taken for public use, without just compensation" (US Const., amend. V). The right of the government to take private property was a power predating the Fifth Amendment, which only implemented the idea of just compensation (Annotated Constitution, amend. V).

The definition of public use has never been clear. In *Berman v. Parker*, the Court said the scope of a full definition is impossible because such "definition is essentially the product of legislative determinations addressed to the purposes of government, purposes neither abstractly nor historically capable of complete definition." In the past, public use has been "synonymous with 'use by the public' and that if [the public was not going to have the] right to use or enjoy the property taken, the taking was invalid" (*Clark v. Nash*). That makes the traditional use of eminent domain "facilitat[ing] transportation, the supplying of water, and the like," and more recently, "the use of the power to establish public parks, to preserve places of historic interest, and to promote beautification has substantial precedent" (Annotated Constitution, amend. V, par. 5). Since the *Kelo v. New London* ruling, public use is "[equated]... with the police power in the furtherance of the public interest" (*Berman v. Parker*). The term public use now includes privately owned shopping centers, auto malls and movie theaters. Public use is now anything a developer wants to do with another individual's land. Eminent domain is now used in what once were purely private transactions.

To better understand the issue of eminent domain and its importance for homeowners, case studies are useful, providing valuable insights into a typical situation. The Village of Lake Zurich, Illinois is a town of 20,000 that possesses a "dated downtown known for its hodgepodge of Swiss-flavored architecture." Ten years ago, Lake Zurich started changing - becoming more popular and gaining population. It has been evolving ever since, and in 2004 a new business plan to revamp to

village was approved (Tsouderos). This revitalization plan intends to “create an environment where new businesses flourish and existing businesses thrive, revive Lake Zurich’s heritage as a family destination with a vibrant downtown, make downtown pedestrian friendly, build a stronger, unified community identity and gathering place, relocate Route 22 to minimize traffic, capitalize on lakefront vistas, address parking with ample downtown options, retain and improve existing parks, replace dilapidated and obsolete buildings, and rebuild aging streets and sidewalks” (Downtown Lake Zurich - Our Vision). Completing these tasks entailed taking existing properties along the waterfront and demolishing them.

Lake Zurich sued seven property owners in 2005 for the ability to condemn the properties for redevelopment. Six of those accepted the financial settlement out of court (Kuczka). According to the March 23, 2005 issue of The Chicago Tribune, Robert and Sarah Hudson had had the last remaining property in their family for decades. They did not want to sell their apartment building, which they had been renting out, no matter what. Located directly across the street from Lake Zurich’s 233-acre lake, Mrs. Hudson explained that, “you will never see a more gorgeous sunset” (Tsouderos). This close proximity to the lake, which had always been a blessing, was now turning into a nightmare of legal litigation because of eminent domain.

The Grandview building, which is to be the “gateway” into Lake Zurich’s new downtown, is to be built where there were already two restaurants and the Hudson’s apartment building. This is where the issue of eminent domain and public use came into play. The Grandview will be a retail and residential building, with four levels of condominiums built over first floor retail space and 13 townhomes on the perimeter of the site (Downtown Lake Zurich - The Grandview Gateway Building). This means that Lake Zurich would be replacing the Hudson’s residential apartment for more residential condos and two restaurants for retail space, which, according to the Lake Zurich Downtown website, will actually be more restaurants (Downtown Lake Zurich - Our New Look). The two restaurants sold their property to the village and were justly compensated. The Hudson’s

didn't think that replacing their property with similar property was considered a public use, so they claimed eminent domain abuse. A legal battle ensued until April 2006 when they "decided to accept the village's \$390,000 offer to buy their building," which was their original asking price (Kuczka).

There are many sides to the eminent domain debate. Typically, the situation is developers versus homeowners / neighborhoods. It is not as simple as public interest versus homeowners or public interest versus developers. Public interest is variable depending on who is being asked. Some may think that replacing a house with a restaurant is in the public interest because everyone would get somewhere to eat out of the deal. Some others may think that keeping that house is in the public interest because that house was there first and if it was taken down, that might open the floodgates for the community to take more houses for more restaurants.

It's easy to see why eminent domain is such an issue. It is not only a negative entity. It can be beneficial to a community as a whole. It's too early to tell if it will stay this way, but in Lake Zurich, the community has embraced the new changes for their downtown. Citizens are excited to visit the open houses of the new townhomes, walk on the newly finished sidewalks and find out which restaurants will open adjacent to the promenade.

It is never known what will happen to a town over time which makes the homeowner's knowledge of eminent domain laws in their city and state is essential as communities change. Suzanne Branding is a bed and breakfast owner in Lake Zurich who "fears that her home's location ... makes it vulnerable to a takeover." Branding is someone who knows how quickly places change; "we thought we'd come here, remodel the house, grow old and die, but it's turned out to be anything but that" (Kuczka).

There is a solution to this issue. Any state can amend their constitution regarding eminent domain. Lake Zurich's property battle began before "Illinois and other states began rewriting their laws on eminent domain ... to give property owners more protection against seizures." The

legislation that was later approved in the Illinois General Assembly “put more stringent requirements on local municipalities to claim private properties for the public’s benefit” (Kuczka).

According to UrbanPlan.org, since the *Kelo* ruling, eight states prohibited the use of eminent domain, except to eliminate blight, which is property that is detrimental to the physical, social, and/or economic well being of a community. These states are Arkansas, Florida, Illinois, Kentucky, Maine, Montana, South Carolina, and Washington. Alabama has banned takings like those sanctioned in *Kelo*. California, Florida, Michigan, New Jersey and Texas are considering constitutional amendments for the same principle. As of January 2007, 34 states had enacted some kind of legislation reforming eminent domain laws, while 13 had failed to enact any legislation regarding eminent domain. Seventeen of those thirty-four states either prohibited the use of eminent domain for private development purposes or substantially strengthened their definitions of blight, while the other seventeen increased eminent domain protections (Eminent Domain - Wikipedia).

If a property owner is not aware there are no additional state laws regarding eminent domain in their own state, they are open to future property disputes. Enacting a state amendment restricting the use of eminent domain would still allow the benefits of economic development, but only on the terms of property owners.

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