

Kelo - A Victory for the People

On June 23, 2005, the United States Supreme Court in *Kelo v. New London*, No. 04-108, upheld the City of New London, Connecticut's right to exercise eminent domain for the purpose of furthering economic redevelopment.

The decision reaffirmed the use of eminent domain as a legal tool to encourage urban redevelopment, preserve wild lands and further the preservation of historic structures.

One has only to look around the City of Chicago to observe the many benefits of eminent domain. New schools, parks, police stations and fire stations were all built on land acquired by the city through the eminent domain process. Whole sections of the city were redeveloped by private parties using land assembled by city government.

Richard F. Friedman, partner at Neal & Leroy, LLC, an authority on eminent domain issues and author of articles on eminent domain topics and frequent lecturer on the subject wrote in an opinion piece published by the *Chicago Tribune*:

The Supreme Court eminent domain decision in *Kelo v. City of New London* was not, as some people, including the Tribune, described it, an expansion of cities' power to acquire property ("Eminent domain expanded; Court rules cities can seize homes for economic development," Page 1 and "Is your home safe?" Editorial, June 24). Moreover, the *Kelo* decision was a great victory for the people.

More than 50 years ago, the Court in its *Berman v. Parker* decision upheld the power of cities to acquire private property for redevelopment projects in blighted areas. Economic revitalization was a purpose of such acquisitions.

Since then the cities have acquired private property and successfully fostered redevelopment by private investment in such historic projects as Lake Meadows and North and South Loop projects in Chicago.

Justice John Paul Stevens' opinion in the *Kelo* case cited *Berman v. Parker* extensively and noted that economic development has always been a goal of cities in acquiring private properties in blighted areas.

Stevens took great pains to show that a well-thought-out and comprehensive plan was a prerequisite to these private acquisitions 50 years ago and remains so today.

Thus, the court did not enlarge the right of eminent domain but reaffirmed that economic development is a proper goal for the exercise of eminent domain.

The *Kelo* decision also was a victory for democratic government. The court noted that elected officials are responsible for determining the kinds of projects that best suit their localities. Judges, who are not responsible to the electorate, should not, and are not equipped to, determine whether a project is in the best interest of the community or is likely to be successful. If a project does not have a substantial purpose or creates undue burden on private homeowners, democratically elected officials should respond or the voters who elected them will respond at the ballot box.

In my experience as a condemnation lawyer, city government is extremely sensitive to displacement of families for public projects, even where the right to condemn is unchallenged as a legal matter.

Recently, Chicago officials cancelled a courthouse project on the west side because the community objected to the displacement of too many residents.

Another of many examples is the modification of a police station project on the Northwest side to avoid displacing any homes.

These kinds of projects were clearly public and the right to acquire private property for court buildings, police and fire stations, and schools is undoubted. These are instances where elected officials accommodate communities' concerns without judicial oversight.

Stevens expressed faith in the role of representative government. Thankfully, the democratic process was the victor in the *Kelo* decision.

Chicago Tribune, Editorial, June 28, 2005