

Freedom Matters

A News & Opinion Paper

Dane County, Wisconsin

Preserving Property Rights

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Our republic limits government to securing individual unalienable rights to life, liberty, and property. These rights are eroded by legislatures, and by courts complicit with them. To encourage wise jurists and journalists to help, *Freedom Matters* dedicates itself to the fight to restore that republic.

Kelo v New London, Conn.: a Law that the American People Asked For

by Bob Bowman

When government hits us in our purse or home, it gets our attention. Otherwise, most of us don't care.

Well, it seems every American voter has heard of the Kelo decision, since by report one poll found that **80% of us** were **against** it. Kelo was the U.S. Supreme Court decision in 2005 that declared it legal for local government to take people's private property, including their homes, to give to other private parties for the latter's profit. New London did it to get more taxes.

As our last issue (#27) pointed out, the Kelo decision was not a fiat of the Supreme Court. It was merely the next step in fulfilling 60 years of **local politics** by **average American people**, whereby those citizens have been destroying their own private property rights.

Of course, those average people did not think they were destroying their own property rights. They thought of it as merely "controlling" the property rights of **their neighbors**. Yet, even after Kelo struck like a thunderbolt, *the American people have kept on taking away their neighbor's property rights, and hence their own.*

Government takes away private property rights via zoning and land use planning. Those laws got political support by seeming more benign than menacing. They came onto the American scene in the 1920s, at which time the U. S. Supreme Court abdicated land use control to **local politics**, and refused to judge on it for some 50 years (roughly, from 1928 to 1988).

The roles of comprehensive planning and zoning were first introduced into U.S. politics in the 1920s via two official federal documents prepared under the direction of then U. S. Secretary of Commerce – a mining engineer named Herbert Hoover. [Our Great Depression started while he was POTUS – President of the United States. Coincidental? Maybe, but I digress.]

As long as zoning and comprehensive planning were constrained merely to keeping development **orderly**, those laws were useful and mostly benign. However, they quickly became methods of control used for selfish ends. This happened in a massive way following World War 2, when zoning was used for exclusionary purposes that

often included racial discrimination. With the Kelo decision, the zoning and planning laws that had been transformed into benefiting selfish land owners have now turned around. They now threaten the worth of everyone's property, including that of selfish landowners whose support motivated selfish land use laws.

Yet, I can hear the counter argument. Indeed, I have heard it, even from a prominent town chair in Dane County. Its essence is: "But these controls won't cause any bad effects on us, the perpetrators."

Well, if bad effects of selfish land use controls have not hit certain landowners, they don't have far to travel to do so. They are already endemic in Wisconsin.

Example: In Janesville this past summer, a group of citizens organized to try to stop the city of Janesville from tearing down private buildings by ordinance instead of by condemnation. Apparently, the municipal government there has taken original jurisdiction without any pretense of ownership, or without any need to provide just compensation.

Example: One Wisconsin town is in a dispute that may soon go to court on the allegation that the town took away a split (the right to make a residential land division) from one farm owner and gave it to another. For a landowner entitled to five splits on his farm, that is akin to confiscating \$100,000 from his \$500,000 bank account and giving it to the bank account of another landowner. Is this what our property rights laws are coming to in rural Wisconsin? Is this the power we have given to local governments?

Example: In certain northern Wisconsin counties, regulations on lake shore property, instigated by DNR, made large numbers of existing homes nonconforming. When enforced, this is a death knell on such homes, and the affected landowners rose up in a storm of protest. Two issues are at odds. One is "grandfathering" (i.e., by the federal constitution, congress can enforce no law that makes a previously legal act illegal. The other is the constitutional right to equal protection of the laws; i.e., the law must affect all citizens the same. If it is now illegal for Jones to build a rural home on a certain kind of land, then all existing homes on that kind of land become "nonconforming" in place of being outright illegal. After some suitable time for the owner to realize a reasonable value from a nonconforming home, it must then be destroyed. Yes, it's true. *To be continued.*

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