

Eminent Domain and Government Giveaways

by Wyn Achenbaum

It seems to me that there are better ways than eminent domain to provide the incentives that will lead the private sector to develop choice land. I've walked the New London, Connecticut, neighborhood involved in the Kelo case (before I was aware of the case). It sits fairly high above the Thames River near Long Island Sound, overlooking Fort Trumbull, which has been restored in recent years. On the other side is the new Pfizer research facility and a manmade lagoon and wetlands, apparently quite carefully planned and planted, some of it on land reclaimed after being the site for a junkyard.

While at one time this area might have been an appropriate place for a neighborhood of single-family homes, it appeared to me that that time had passed a decade or so ago. It seemed to me that the path of progress would — if the incentives were logical and the market responsive to signals — have caused the private sector to have redeveloped that site. Such re-development might have been painful to the residents of the neighborhood, but would have put now-choice land to a higher and better use than single-family homes.

But our system wasn't designed to send signals all that well — Connecticut law required properties to be reassessed once every decade (and I've heard that once in early '70s and once in the late 80's was construed to satisfy that requirement). Now assessments are required every four years (though my town decided it didn't like the 2003 revaluation and is keeping the 1999 assessment for a few more years).

If the properties had been reassessed regularly, with market-based values assigned first to the land, as though it were vacant, and the residual assigned to the existing buildings, the homeowners themselves would have been in a position to make rational decisions on whether to continue to occupy extremely valuable land (and pay the taxes on it), or to accept an offer from someone who was prepared to put it to a higher and better use, and take that equity and buy elsewhere.

I am sympathetic to those who want to occupy their homes forever, but if those homes are located on land that is valuable (because of its views or water access or transportation services, for example), it seems fair that they compensate the rest of us for holding up progress, for maintaining single-family residences on land which can now be developed into something that produces good results for the entire community.

Most of us know of an older home, or perhaps a diner, or something else that was a highly appropriate use for its site — and typical of the neighborhood — 50 years ago, stubbornly remaining in a neighborhood which has been redeveloped with taller commercial buildings. The home or diner is something everyone else has to walk around, drive around. If that site were well developed, it could prevent the premature development of far less desirable sites on the fringe of town — a well-developed acre downtown can save ten acres on the fringe.

Should we protect the right of elderly people to stay in their homes, at the expense of the rest of the community? Should we protect the right of a young person who shares that home to stay there for an entire lifetime, at the expense of the community? I'm comfortable with the idea of allowing the elderly person to defer payment of property taxes, with interest-bearing debt accruing against the property until it is sold or transferred. It seems to me to be an acceptable tradeoff, even if it creates potholes in the redevelopment. But his heirs should not inherit it until the lien is satisfied, which will usually mean that at last it will be developed consistently with the neighborhood.

But unless the properties are regularly and correctly assessed, we won't have the signals which tell us when it might be time to move on.

In the absence of such a system of regular revaluations and a property tax which is concentrated on land values, New London turned to eminent domain. But eminent domain is not the problem here. Lack of appropriate signals is the problem.

I live at the other end of Connecticut, and near me is a beautiful parkway which runs about 40 miles. For most of its length, it is a rather straight highway. But near its westernmost end, the straight road has some huge curves, which take it around some properties which the builders of the highway did not seek to acquire via eminent domain after the owners chose not to sell. Every driver who uses the westernmost section of the Merritt Parkway must drive extra miles in order to protect those wealthy 1930s landholders and their successors. I estimate that at least 1.3 billion extra miles have been driven by the general public. Had the builders of the parkway exercised eminent domain, this mileage, and the pollution and expense involved, would have been saved. Instead, the costs are shifted onto every driver and onto the taxpayers who maintain the highway and its services. Eminent domain would, I think, have been an appropriate step to prevent that. Today, the properties are among the most valuable residences in Connecticut, but their owners don't compensate the rest of us for our inconvenience and expense.

Our land, particularly the best-located land, is a common asset on which we all depend. Allowing individuals or corporations to occupy it without compensating the rest of us for its value is the underlying problem, and solving that problem through good assessment and rational (that is, land value) taxes is the way to solve it. When we do that, a lot of problems will begin to fall away.