John (Jack) R. Venrick

From: "Frank M Penwell" <iwp@rockisland.com>
To: "Frank M Penwell" <iwp@rockisland.com>
Sent: Saturday, June 25, 2011 10:54 PM
Subject: Article about Rosa Koire

For those interested, here is an article Fred Kelly Grant wrote about Rosa Koire:

Kelo, The Great
Fighting Eminent Domain in Santa Rosa, California
By Fred Kelly Grant

The mere mention of Kelo stirs emotion in Americans tired of government abuse. Santa Rosa, California, residents have converted emotion to action – striking directly at their city's anti-private property rights' agenda.

While Sonoma County aims its General Plan amendments at taking private property for easements and buffer zones, its county seat, Santa Rosa, has entered into a 30-year face-lift of "redevelopment," to which private property stands as an obstacle. The city has focused its plan on their historic downtown where small businesses and homes have existed for decades.

The goal of the city, as in the case of most "redevelopment" schemes, is to attract new big corporate business to spur a growing economy. To accomplish the goal here, as in New London, Connecticut of Kelo fame, the city will run roughshod over any property owners who are in the way.

Labeling the leading edge of its "redevelopment" the Gateways Redevelopment Project Area, the city and its clone Redevelopment Agency, which has been given eminent domain authority, plans to "open up" the paths to new commerce, thus creating "Gateways."

While Kelo has spurred local efforts in some parts to pressure local and state legislative bodies to adopt laws that prohibit condemnation for economic benefit, such action is too slow to help the residents of Santa Rosa. So, the Santa Rosa Area Business Association has turned to the Sonoma County Superior Court to block such condemnations.

A lawsuit filed by the Association and its Special Projects Coordinator, Kay Tokerud, challenges the validity of the city ordinance approving the Redevelopment Plan, which authorizes eminent domain through the next 12 years. The complaint seeks an injunction against implementation of the Plan, which includes the heart of the city and over 1,100 acres on which 10,000 people live and work.

Facelift or Theft?

A consulting firm was hired by the city to study the area and prepare a report as to whether redevelopment justification existed based on alleged physical and economic "blight." The report, nearly 500 pages in length, found "blight" existing in conditions typical of virtually every town and city in America. On the basis of the findings, there is hardly a downtown area anywhere in the country that could survive eminent domain and "redevelopment," when creative remodeling and repair would do the job nicely.

The report makes it clear that the goal is not simply to "redevelop" the downtown; it is to change the entire structure of the downtown to serve as a pathway to the big developers and corporate businesses which are prepared to invest in shopping centers - if the city will use public revenues to subsidize them. CLICK HERE TO READ THE LETTER FROM SIMON PROPERTY GROUP, THE WORLD'S LARGEST SHOPPING

CENTER DEVELOPER ASKING FOR REDEVELOPMENT MONEY FOR A PARKING GARAGE.

City Rejects Public Outcry

During the planning process, which led up to the city's approval of Gateways Redevelopment, a Project Area Committee (PAC) was elected by the community to serve as advisers to the Redevelopment Agency and the City. After examining the consultant's report, and hearing testimony at two well attended town hall meetings, the PAC advised the city not to proceed with the Project. The advice was based on the PAC members' belief that there was insufficient evidence of "blight conditions" to justify a Redevelopment Project.

But, since the goal is not simply face lifting of an historic downtown, the city council rejected the PAC's advice, ignored the public testimony of hundreds of citizens, and adopted the ordinance approving the Project and Plan.

Rosa Koire, Vice President of the plaintiff Association, served as a business owner representative on the PAC. She specifically supplemented the PAC's opinion with a letter and public testimony pointing out the errors in the consultant's report. Koire is a commercial real estate appraiser with nearly 25 years experience in eminent domain valuations. She has experience conducting appraisals in redevelopment areas, and is familiar with the extremely vague statutory definition of "blight."

Koire told the city that she was "deeply concerned about the City's methods" and the errors in the consultant's report which "consistently supported [an] opinion that the area was blighted." She further stated, "I felt that it was possible that [the consultant] had deliberately misidentified conditions."

Consistent with her statements, the complaint alleges that the Redevelopment Agency and the city "utilized false and/or misleading data, improper and contradictory definitions of conditions, and inconsistent and irrelevant survey results and data which did not relate to or describe conditions in the Project Area," concluding that "there is no substantial evidence in the record of the Redevelopment Plan to support a finding of blight as specifically required by law."

The complaint specifically alleges that the Plan includes a substantial amount of property, which is admittedly non-blighted. Under the redevelopment statute, non-blighted property is supposed to be included only when there is substantial evidence that its inclusion is necessary for effective redevelopment of the entire area. The complaint alleges that there is no legal or factual evidence of such necessity.

Citizens of two city areas known as Julliard Park and Olive Park were able to secure their release from the Project Area by serving on the city petitions signed by residents, workers and owners opposed to the Project. Both areas contained property, which the consultant's report had identified as fitting within the definition of "blight." Even though these areas were removed from the Project Area, the "blight" found in them was still used by the consultant and the city as justification for redeveloping the rest of the Area.

Specifically, the complaint alleges that such misleading inclusion amounts to an abuse of discretion by the city:

"The findings were based on the Report which contained data from areas which had been deleted from the Project Area but were nevertheless used to attempt to support a finding of blight within the Project Area. A total of 17.5% of the acreage of the Project Area, as it was constituted when the Preliminary Report was prepared, was deleted from the Project Area after the Preliminary Report was submitted to the City. This deletion of acreage was made prior to the submission of the Existing Conditions and Financial Feasibility Report to the City. This was a material change in the Project Area. While the Existing Conditions and Financial Feasibility Report did note the elimination from the Project Area of the South Santa Rosa Avenue sub area, the majority of the Julliard Park sub area, and the Olive Park residential neighborhood of the Railroad Square sub area, it did not eliminate the blighting factors that it claimed had been identified in those sub areas, but included them as blighting factors impacting the determination of whether blight existed in the Project Area."

The complaint asks the Court to enjoin the provisions of the Plan, which authorize eminent domain for the next 12 years.

This "taking" power tops the priority list of objections stated by the plaintiff Association. In her letter to the city, Koire stated:

"The Redevelopment Agency will have the power of eminent domain over all but owner-occupied single family residences in the project area for 12 years. Eminent domain is subject to abuse by the city in its rush to attract developers of retail and large residential projects. No property owners should have to fear that at some time in a 12 year period their property may be identified by a developer as integral to his project, and be the subject of an eminent domain action."

Koire says "Santa Rosans deserve protections from eminent domain and against windfalls for big developers. It's un-American [to use eminent domain] to transfer private property to private individuals."

As evidence of one of the "windfalls" for a big developer, Koire points out that the Project includes a shopping center known as Coddingtown Mall, recently purchased by Simon Property Group, which the Association identifies as "one of the world's largest shopping center owner/developers with $42 Billion in assets." The Association was able to obtain, and release for public review, a letter from Simon to the Santa Rosa city manager making it clear that Simon expects to receive redevelopment funds sufficient to help construct a new parking garage for its Mall. The Association says that "conservative estimates of cost [for the garage] are $25-$30 million."

Greed Trumps Private Property

It is clear in Santa Rosa, as in virtually every site of "redevelopment," that the big businesses being courted by city officials expect to be subsidized. If ranchers, farmers, the elderly, the disabled, small business people are subsidized, the "liberals," and some "conservatives" call it "welfare" as in "welfare ranchers," "welfare farmers," "welfare small business" and "welfare entitlement" But when offered through Redevelopment and other projects which harm the average working person, it is called "municipal pride and progress."

Redevelopment statutes, which authorize eminent domain for private economic benefit, allow diversion of huge amounts of public funds to private corporations for land and business development. That attribute of the municipal action that resulted in the now infamous Kelo decision, flamed a firestorm of outrage throughout the land. It struck a nerve in the American people – people who had watched, mostly in silence, for the last half century, as government methodically took property through a variety of means not subjected to the spotlight of general knowledge or criticism.

Kelo brought the nation's attention to the practice, but, for at least 50 years, private property owners have been plagued by land use plans, laws and regulations leading to Kelo similar results. The anti-private property impact did not spark a general uprising – perhaps because often there was no complete physical taking of property, perhaps because the individual's rights were being subjected to the "good of the public." One whose property value was protected by a zoning regulation, which adversely affected a neighbor didn't see the harm. One who loved to walk the ocean beach didn't see the harm of restricting use by those who owned property on the beach.

As rights were restricted by such regulations, an even greater threat to private property was mounted by a shadow government – a government which operated under the radar of legislative or judicial oversight, a government administered by appointed agencies created by statute and empowered to control and take private property for the "public good." Some of the earliest of these appointed agencies were created to implement and oversee federally funded Urban Renewal projects. Their tragic impact on poor home owners went largely unnoticed, precisely because the impact was mainly on the poor residents and small business owners located in the inner cities which had been deserted by middle and upper class residents.

The Unknown Government

On the heels of Urban Renewal came Redevelopment Agencies under statutes designed by the same model statute writers who created modern urban planning concepts, which subvert private property ownership to the overriding public good. A California organization warned of the threat of such agencies in "Redevelopment: The Unknown

Government" published in August, 1998:

There is an unknown layer of government in California, which few understand. The unknown government currently consumes 8 percent of all property taxes statewide, $1.5 billion in 1997. It has a total indebtedness of over $41 billion. It is supported by a powerful Sacramento lobby, backed by an army of lawyers, consultants, bond brokers and land developers. Unlike new counties, cities and school districts, it can be created without a vote of the citizens affected. Unlike other levels of government, it can incur bonded indebtedness without voter approval. Unlike other government entities, it may use the power of eminent domain to benefit private interests. This unknown government provides no public services. It does not educate our children, maintain our streets, protect us from crime, nor stock our libraries. It claims to eliminate blight and promote economic development, yet there is no evidence it has done so in the half century since it was created. This unknown government is Redevelopment. Out of California's 471 cities, 359 have created redevelopment agencies. No vote of the residents affected was required. Californians often confuse redevelopment with federal 'urban renewal' projects typical of large eastern cities of the 1940s-60's. Sadly, the methods and results are often similar. Yet redevelopment is a state-authorized layer of government without federal funds, rules or requirements. It is entirely within the power of the California legislature and voters to control, reform, amend or abolish.

The government's authority to take private property for public use is as old as the concept of government itself. Such authority was founded in the concept that the sovereign was the source of title to property, thus had the power to take back title when necessary for sovereign survival. In Montesquieu, Spirit of Laws, Book 26, Chapter 15, it is said that "if the political magistrate would erect a public edifice, or make a new road, he must indemnify those who are injured by it." The author points out that Beaumanoir's work on jurisprudence, written in the 12th Century, reports that when a new highway had to be built, the owners of the land taken for the road were indemnified.

The Magna Carta contained provisions by which King John was forced to agree that a taking by the sovereign would be accompanied by compensation. The nobles who forced the issue at Runnymeade did not question the power of the crown to take private property, but insisted that the crown pay the owner for the property taken.

The need for a Bill of Rights to the U.S. Constitution was heartily debated, with many of the founders believing that the main body of the document provided enough limitations on the government to satisfy basic needs of liberty. But, when the first Congress convened, James Madison was prepared to introduce language to be included in amendment, which would constitute a Bill of Rights.

As the first Congress convened, there were suggestions of as many as 110 amendments by the states. When he first tried to speak to introduction of the Bill of Rights, he was not allowed the floor for the purpose. But, he was relentless, and finally, apologizing for taking up the important time of the Congress, he read into the record a form of amendment which would have said that a person was "obliged to relinquish his property where it may be necessary for public use, with a just compensation." The language would have allowed eminent domain for necessary public works, but it might have been very difficult to mold the words to the current status of "redevelopment eminent domain" spreading through the country.

Historically, it is clear that the concept of eminent domain held that government could take private property for uses important to the defense of the government, to channels of movement for travel and trade, and for buildings from which government would work. When noted Constitutional scholar, David P. Currie of the University of Chicago School of Law wrote "The Constitution of the United States, A Primer for the People" in 1987, he summarized the Fifth Amendment's property provision as follows: "The Fifth Amendment also forbids the taking of private property for public use without just compensation; if the government wants to build a post office on my land, it must pay for it."

Traditionally, Americans who knew anything at all about eminent domain thought about it in terms of the government taking property for government, i.e. "public," use. It never would have occurred to Madison and others who contended for the Bill of Rights, that a city in California would look to eminent domain as a means of subsidizing private corporations and land developers.

The Kelo decision made it clear, though, that through the years the meaning of "public use" in the Fifth Amendment has been changed to mean more than government buildings, dams, bridges, culverts, arsenals and transportation routes. As Justice O'Connor bemoaned the change of meaning, Justice Thomas pointed out that one of her opinions helped grease the slippery slope.

As the meaning of "public use" changed, so changed the methods by which government at all levels could seek eminent domain. The planners who always put the "public good" on a higher priority than private property ownership prepared and sold the concept of urban renewal and redevelopment, to provide an easier way to get control of private property and use it for "big money" advantage.

And, as the world turns, such "public good" planners and bureaucrats will continue to look for creative ways to gain control of private property.

In Santa Rosa, the city has again targeted the downtown with zoning changes which will restrict the established businesses as "non-conforming uses," pursuing a course which might lead to their overall goal even if the Association's lawsuit is successful.

When asked about the impact of Sonoma County's General Plan revisions on city dwellers, Kay Tokerud said "our plate is so full with the city's efforts, we hardly have time to keep up on what the county is doing." Of course, that is the approach, which these plaintiffs must take - one step at a time, take back their immediate community.

***

Standing Ground is published by: Stewards of the Range, American Land Foundation & Liberty Matters
Executive Editors: Dan and Margaret Byfield
Editorial Office:
P.O. Box 1190
Taylor, TX 76574
(512) 365-8038

Stewards of the Range is a 501 (c)(3) non-profit organization