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Eminent domain no substitute for proper planning for open space

By MICHELE S. BYERS

Mount Laurel in Burlington County faced a dilemma. The township wanted to limit development, overcrowded schools, traffic congestion and pollution, but a large housing project had been approved on a former farm. As a last resort, the township condemned the land, calling the preservation of the land a "public purpose" because it was one of the town's few remaining open parcels.

The New Jersey Supreme Court recently upheld Mount Laurel's use of eminent domain to preserve this open

space. This is a critically needed tool in the battle to save what's left of New Jersey's natural areas and farmland, but it should remain an option of last resort and not be used as a substitute for proper planning and zoning.

There are few words in the English language that will get a landowner's attention faster than "condemnation" or "eminent domain" — the legal right of government to forcibly take private property if it's needed for the public good. Despite the anti-government roots of our country, many a home has been condemned and purchased to make way for things like interstate

highways and schools.

But in 2005, the U.S. Supreme Court sent a collective chill down many a spine when it decided "public good" could include private economic development.

This remains a threat throughout the country. New Jersey's Legislature has moved toward legislation to prevent the use of eminent domain for private development, but has not yet acted.

The Supreme Court's decision on Mount Laurel's action restores the balance of power a bit by giving towns the right to condemn and purchase land through eminent domain should they

determine there is a public purpose at stake.

However, using eminent domain is both financially and politically costly to local governments as it can be divisive and unpopular.

Combined with the costs of a lengthy legal battle, there's great incentive for towns to use eminent domain only as a last resort under the most extreme circumstances. It's more cost-effective to use planning and zoning measures to protect natural resources and work with willing landowners using fair market value appraisals than to pay a premium to snatch land away from the

jaws of the backhoes at the last minute.

So it's good to know the option is there as a last resort, but towns can save themselves a great deal of trouble through proper planning for open space and farmland preservation. Rather than waiting for citizens to rise up when a wooded parcel is slated for development, or a strip mall is proposed for a generations-old family farm, plan ahead to acquire and preserve them for the public good.

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