

January 5, 2007

VIEWPOINTS

Eminent domain needs to remain towns' last resort

Mount Laurel Township 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 of land.

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

Many had visions of large developers convincing towns to condemn homes to make room for new strip malls or to get rid of older, smaller houses to make way for McMansions.

This remains a threat throughout the country.

The New Jersey Legislature has moved toward state legislation that would prevent the use of eminent domain for private development, but has not yet acted.

The N.J. Supreme Court's decision 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.

Given the benefits of open space and the limited amount of land left, that's not a hard case to make.

Using eminent domain, however, 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 only use eminent domain 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 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 proposed for a generations-old family farm, local officials should plan ahead to acquire and preserve them for the public good.

Contact me at info@njconservation.org or visit www.njconservation.org, for conservation information.

Michele S. Byers is executive director of the New Jersey Conservation Foundation based in Far Hills.



**The State
We're In**

Michele S. Byers