

Farmland

IN PERSPECTIVE

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GOODWIN

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Why Energy Prices are Important to Agriculture

Energy prices are important to agriculture for three reasons, according to the Economic Research Service of the U.S. Department of Agriculture:

- **Energy-related inputs – such as gasoline, diesel fuel, electricity, and fertilizer – had been 15% of farm expenses until recently.** Gasoline, diesel fuel, and natural gas prices paid by farmers are directly influenced by crude oil prices. Electricity prices, while not as directly and immediately responsive to crude oil prices, move up with oil prices over the long term. Natural gas – the price of which is influenced by crude oil, as industrial and commercial users substitute among energy sources – is key to the production of nitrogen-based fertilizer. As seen in the winter of 2000-01, fertilizer prices rose sharply when natural gas prices soared.
- **Energy prices influence U.S. economic growth, driving domestic demand for food and fiber.** U.S. economic growth, while only half as dependent on energy as in the 1970s, still is constrained by restrictions on available energy. Widespread agreement exists that low energy prices contributed to the strong growth and low inflation

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The Right of Eminent Domain Revisited...Reinterpreted...or Destroyed?

By Robert C. Suter

During the summer of 2005, the United States Supreme Court ruled that the City of New London, Conn., could take the land, homes, and businesses belonging to Susette Kelo and her neighbors and build a luxury hotel along with upscale condominiums and private offices to accommodate Pfizer, a major pharmaceutical company.

The Supreme Court's ruling indicates that today any and all private property can be taken and transferred from its current owner to another owner whenever the property can be upgraded and used in whatever way the local bureaucracy deems to be beneficial to the community. The ruling is an open invitation for the use and abuse of the right of eminent domain by every political entity in the country. Any special interest group can now petition its favorite most-likely-to-listen group of politicians and acquire whatever property is desired. The beneficiaries hold a disproportionate influence in the political process. They are the citizens with the largest political clout.

The Constitution

Private property has long been a fundamental institution in this country. When the Founding Fathers wrote the Constitution and later amended it with the Bill of Rights, they hoped to secure a citizen's right to his home and his livelihood and for it to serve as a check against government power.

The citizen with a small property holding held the same rights as he who owned the larger estate. The little property owner essentially held a guarantee providing him with a long-term incentive to work and to save.

At the same time, all property in our nation is held subject to the paramount power of the United States of America and of the state where it is located. All federal, state, and local governments hold the right to expropriate property when the necessity exists and when the public's interest cannot be served otherwise. Of particular interest to every property owner is the Fifth Amendment to the Constitution which states "...No person shall be...deprived of life, liberty, or property, without due process of law; ...nor shall private property be taken for public use without just compensation..."



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Eminent Domain

The early intent of the right of eminent domain was to protect the individual property owner and to prevent the untrammelled government power over property. While the Bill of Rights did not define the Takings Clause specifically, the plain and historic interpretation with regard to it has generally required that eminent domain be invoked only when the land taken is for a genuine public use such as a road, a bridge, a school, or a public building and with the resulting improvement to be owned and used directly and primarily by the general public.

Court Cases

Sometime starting around the last half of the twentieth century, courts began to add “urban renewal” and “economic development” to the concept of “public use.” Consider the following two cases: both controversial, one later reversed.

Southwest Washington, in 1954, condemned an area of slum property. Most of the dwellings which were involved had no baths, no indoor toilets, and were without central heating. The rates of tuberculosis and syphilis in the neighborhood were high. The court’s ruling stretched the concept of public use to public purpose, which was to cure a blighted area presumed to be harmful to the larger community.

The Michigan Supreme Court, in 1981, ruled that the City of Detroit could condemn 1,400 houses and 140 businesses in its Poletown neighborhood to make way for a General Motors Plant. The transfer was to serve a greater “public purpose.” It was to enhance “economic development.” That ruling established a

precedent which has continued to embolden unseemly coalitions of private developers and tax-hungry municipalities elsewhere to use the power of eminent domain to take other people’s properties the country over.

Thirteen years later, the Michigan Court reversed. In August of 2004, the court decided that eminent domain should protect the people’s property rights and preserve the legitimacy of the judicial branch as the interpreter of, rather than the creator of, property law. Their reversal was referred to as “Poletown’s Revenge.”

Fair Compensation

These changing legal connotations have raised numerous questions. A second one – pertaining to value – also has raised its ugly head. Increasingly, takers have questioned property owners on what they paid for their property when they acquired it. If a taking agency’s offer is twice (sometimes three times) that amount, the thought is that the property owner’s financial situation is being greatly enhanced and the offer is “more-than-acceptable.” The market value of the property can be ignored. An interesting twist occurred in Port Chester, New York, a working class city on Long Island. Redevelopment officials offered a private property owner \$250,000 for land that the local tax authority had assessed at \$560,000. (The assessor claimed that appraisals and assessments serve different functions.)

Kelo v. New London

The Kelo v. New London case involved the taking of 90 acres on which were a number of well-kept modest homes, some of which had been owned and lived in by the families involved for generations. Some

of the property owners sold their property willingly. However, 15 of the homeowners refused, and the city condemned their properties. One of them, Susette Kelo, had done an extensive remodeling of her home. She hoped to continue to enjoy her waterfront view. The taking was essentially of a middle-class neighborhood; however, it was located next to a new \$300 million research center built by Pfizer, a pharmaceutical giant. The area was a prime location for a new luxury hotel, up-scale condominiums, private office buildings, and a marina along with other facilities.

The Kelo v. New London taking does not fit the earlier concept of “public use.” The city was not taking the property to make way for sidewalks, a drainage way, a right-of-way for a utility, or a new school house. It was not seizing a blighted area to make way for affordable housing. The city was taking the property in order to generate several hundred new jobs and to generate certain economic benefits for the city. The ruling expanded the Fifth Amendment’s Takings Clause by changing the emphasis if not the terminology; “public use” became “public benefit.”

Tax Revenue

The New London body politic had determined that the current owners were not rich enough to pay the taxes that could be extracted from a wealthier group of owners to whom they would give the property. By taking the property and transferring its ownership, the city would increase its tax base and add a possible \$680,000 to its tax revenues.

Thus, the take was not a public taking for public use. It was the taking of private property belonging to one group of property owners to be given to another private owner based on

experienced in the 1990s. This growth in turn spurred continually increasing demand for food and fiber products, supporting farm cash receipts.

- **Energy prices affect the growth of non-oil producing countries, particularly developing economies, which are increasingly important customers of U.S. food exports.**

Developing countries, which tend to focus on manufacturing, are far more dependent on oil for growth than are developed countries, which rely relatively more on services. China, for example, requires four to six times more energy to produce one more dollar of GDP than the United States. A large increase in energy prices has a significantly negative impact on Chinese growth. (The quick turnaround from the 1997-98 financial crisis was in part due to low crude oil prices.) Slower Asian economic growth from higher energy prices means smaller increases in U.S. farm exports.

Upward Pressure Continued on Farmland Prices

Reports across the United States, from Florida to Indiana and Minnesota, indicate that the average value per acre of farmland has probably continued to increase during 2005.

the assumption that the new owner could put it to a higher and better use and generate additional tax revenue.

Historic Perspective

The *Kelo v. New London* ruling is likely to become one of the five or ten most far-reaching changes in our country's legal history. Comparable, perhaps, to:

- *Marbury v. Madison* in which the Supreme Court in 1803 declared itself unique and indicated it held the right to rule over any federal or state law or activity and declare such unconstitutional.
- The *Dred Scott* decision which in 1857 overturned the Missouri Compromise of 1820 and split the country apart in an attempt to resolve the slavery question. Unfortunately, the question was not quickly resolved and the Civil War soon followed.
- *Congress v. General Welfare* (The Social Security Act) which in 1935-37 was thought by many citizens to destroy individual initiative, discourage individual thrift, and stifle individual responsibility.
- *Roe v. Wade* which in 1973 made abortion legal and has created considerable concern and division among the nation's citizens ever since.
- *United States v. Nixon* which in 1974 questioned and restricted the unlimited powers being claimed by a President of the United States and, by threatening impeachment, led to the Nixon resignation.

The Supreme Court's ruling on *Kelo v. New London* allows any property owned by a current property owner to be taken and transferred to another private property owner if and when it benefits the taking agency.

An acreage of farmland can be taken and replaced with a retail establishment – a Target, Cosco, or Wal-Mart. A neighborhood of homes can be taken and replaced with a shopping mall. A low-class restaurant can be taken and replaced by a fancy hotel. Each course of action need only claim that they will add to the labor force, “grow” the community, and provide additional tax revenue for the political entity. Any taking now is possible as long as it benefits the community.

A Way Out

Fortunately, there is somewhat of a way out. Several members of the Congress of the United States, as well as many of the state legislatures, have quickly commenced introducing legislation to place restraints on this expanded power of eminent domain. The Congress has begun a move to curtail the use of federal funds to be spent on any state or local economic development project and not just those in which eminent domain powers are used. As of August 3, 2005, more than half of the State Legislatures had started to review their state laws, recognizing that *Kelo v. New London* differed from the intent of the framers of the United States Constitution and from the intent of those who added amendments to the Bill of Rights. Many appear to prefer the earlier interpretations of the Takings Clause.

An unexpected backlash has sprung up with one organization of property owners declaring the revised version of eminent domain to be a present-day equivalent of the Boston Tea party. The only difference being that property owners must now fight five robed justices in the United States Supreme Court rather than a monarch in England. Soon after the Supreme Court's ruling, an

enraged citizen, Logan D. Clements, announced the start of a process to build a hotel on property owned by the Justice David Souter and of his neighbors. Clements claimed that rather than allow Mr. Souter to continue to use his land as he sees fit, the City of Wears, by building a hotel on 34 Cilley Road would gain tax revenue and economic benefits. He planned to name his new improvement the Lost Liberty Hotel. If the “Paved Paradise” editorial, which recounted this story in the *Wall Street Journal*, was correct, the Justice may soon get an up-close-and-personal lesson in property ownership rights.

Summary

Private property rights have traditionally been the bedrock of a vibrant, free-enterprise economy, rooted in the principle of equality before the law whereby the little property owner was protected from the more powerful. Yet today property can be taken from one owner and given to another as a part of development, urban planning, and of whatever other action City Hall desires. More and more politicians now believe that “public interest” is whatever they want it to be. Unless partially restored by the Congress and/or the state Legislators, it looks as though the long-held American Dream of private property ownership may be in jeopardy.



Robert C. Suter is Professor Emeritus of Agricultural Economics at Purdue University. While on the staff, he taught the farm appraisal and advanced farm management courses, and he authored books on *The Appraisal of Farm Real Estate*, *The Professional Farm Manager and Agricultural Consultant*, and on *Estate Planning for Farmers*. After retiring and moving to Texas in April of 1992, he authored the book *Farm Appraisal Principles: Gentlemen, Scoundrels, and Professionals*.

Farmland experts attribute this to many factors including:

- Historically low interest rates
- Good crop yields
- Farm income
- Tax-free treatment of transactions involving 1031 property exchanges
- Government programs and payments
- Strong investment demand, and
- Return on other investments.

“Land rental income is comparable to or larger than what an investor can earn from treasury bills or a certificate of deposit at financial institutions,” says David Bau, University of Minnesota Extension Service. “The bond market has provided a good return on investment as the rates fell, but 2005 experienced several interest rate increases. With interest rates slowly rising, the bond return will fall and possibly turn negative. The stock market has generated negative or low

returns since 9-11, and many people have not returned to investing in the stock market.”

Factors working against greater increases include:

- Lower current grain prices
- The high costs of farm inputs and machinery
- Low profitability in general, and
- An uptrend in interest rates.

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