

Backgrounder: *City of Norwood v. Horney*, Ohio Supreme Court

Subject: Eminent Domain

Oral argument: Wednesday, January 11, 2006

The issues

Did the City of Norwood properly use its power of eminent domain to take private property in order to expand a complex of shops and offices to promote economic development? Are non-blighted, but deteriorating, properties properly subject to condemnation?

Procedural nature of the case

The lower court (Hamilton County, 1st District) issued its opinion on May 20, 2005 (Case reference nos. C040683 and C040783). The court decided that:

- the city's urban renewal plan substantially complied with the municipal code;
- there was sufficient evidence to support the city council's determination that the urban renewal area, as a whole, was deteriorating into a blighted area;
- the city's goal of remediation of deteriorating conditions by adopting an urban renewal plan was a valid public use;
- the urban renewal plan and the condemnations were not pretextual; and
- the city council did not improperly delegate its power of eminent domain to the developer.

To read the court's entire decision (cites: 161 Ohio App.3d 316, 830 N.E.2d 381).

This decision was issued a month before the U.S. Supreme Court's decision in *Kelo v. City of New London* in which Justice Stephens, writing for the majority, concluded that economic development continues to be a valid public purpose for the use of eminent domain. Read the *Kelo* decision www.planning.org/amicusbriefs/pdf/stevens_kelo.pdf

Parties and amici curiae

Appellants: The property owners are represented by attorneys from the Institute for Justice, Dana Berliner and Scott Bullock.

Appellees: The City of Norwood is represented by Timothy Burke, Daniel McCarthy, and Gary Powell.

Amici: Ten amicus curiae briefs were filed in support of the property owners (appellants) and four amicus curiae briefs were filed in support of the city (appellee). Click here for additional information about the case and amici: www.sconet.state.oh.us/

The American Planning Association and its Ohio chapter, the Ohio Planning Conference, filed in support of the city and are represented by Daniel Linder of Lindner & Jordan, LLP. Click here to read APA's amicus brief www.planning.org/amicusbriefs/pdf/norwood.pdf

Why is this case important?

Eminent domain has received national attention since the Supreme Court's *Kelo* decision in June 2005 in which the Court refused to create a more stringent standard of review but deferred to the states to fashion workable rules and limitations on the power of eminent domain. The *Norwood* case is the first eminent domain case to reach a state supreme court since the *Kelo* decision.

The American Planning Association's Position: *City of Norwood v. Horney*, Ohio Supreme Court

The American Planning Association (APA) supports good planning to help communities offer better choices for residents on where and how people live and work. Communities need a variety of regulatory tools and options to implement their comprehensive plans. Eminent domain is one such important tool.

APA's position

APA believes it is necessary to maintain a community's ability to use redevelopment tools, such as eminent domain when appropriate, to achieve well-defined public purposes. APA supports an open and inclusive public participatory planning process. Eminent domain should only be used as a tool of last resort, after incentives and other efforts have proved unsuccessful. It is important not to let a community's successful revitalization be held hostage by one or two property owners.

Call to action

APA recommends the following actions to ensure that redevelopment projects enrich people's lives:

- Eminent domain should always be used as a tool of last resort, as it was in the City of Norwood. Eminent domain can, when used appropriately, help achieve a greater public good that benefits the entire community.
- The use of eminent domain should be guided by a community's comprehensive plan and a participatory planning process.
- Property owners should be paid just compensation that adequately addresses fair market value as well as other issues of fairness.

Resources

APA's Redevelopment Policy Guide

www.planning.org/policyguides/redevelopment.htm

APA's Amicus Curiae Committee

www.planning.org/amicusbriefs/

Kelo information

www.planning.org/amicusbriefs/kelo.htm

Eminent Domain Legislation Across America

<http://www.planning.org/legislation/eminentdomain/>

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