



Eminent Domain and Your Farm Property

The words “eminent domain” strike fear in most hobby farmers’ hearts. Find out what really happens should the government come calling.

By Gretchen Heim Olson

We Americans have grown accustomed to convenience. Our food comes out of a box, we require instant computer connections, and we fall asleep at night in homes close to shopping, recreation and workplaces.

For hobby farmers, though, that proximity may carry a heavy price: encroachment by ever expanding urban populations around us. Our nightmare is a knock on the door; standing there is Uncle Sam, dressed as the dreaded specter, Eminent Domain.

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Once a dry subject for lawyers and a handful of amateur constitutionalists, eminent domain became a hot topic for concerned citizens all over the country when the Supreme Court of the United States handed down its ruling in the Kelo vs. City of New London case in 2005.

In Kelo, the highest judicial branch of government upheld years of legal precedent by siding with local governments in their right to seize land for use that benefits the municipality. In this high profile, urban case, Suzette Kelo of New London, Conn., faced losing her little, pink house on the water so that businesses with a higher tax base could move in—the big business won.

In a recent case involving rural residents, the Halper family of Piscataway, N.J., fought eviction from their farm after the city seized it to develop a park on the outskirts of town.

© Julie Walker Politicians and homeowners have reacted strongly to both the Kelo case and to local situations like the Halper’s. Americans, shocked that local governments could legitimately force property owners out of their homes for economic development and recreational purposes, have been pressuring state legislatures to put limits on the property seizure cases in their own constituencies.

The reality of eminent domain, however, isn’t likely to disappear soon, so whether you are just thinking of someday owning a hobby farm or have lived on the same acreage for years, it is important to understand how to avoid eminent domain, and, if necessary, how to meet challenges to your property rights.

An Ounce of Prevention

“An ounce of prevention is worth a pound of cure.” We don’t know if this saying was foremost in founding father Benjamin Franklin’s mind when he contemplated property rights in the early Colonies. However, it is good advice when shopping for a rural home, particularly given the rapidly increasing population around the United States.

According to the 2000 Census Bureau reports, the country’s population grew more during the 1990s than during any other ten-year period in American history, increasing by some 33 million people, mostly in western and southern states. It was also the first decade in which no state declined in population, and even traditionally slow-growth states such as Nebraska and Iowa posted their greatest increases since the early part of the 20th century.

Dwain Fagerlund, a Crookston, Minn., attorney who has handled many cases involving rural land issues, says that folks who want to reside near urban areas, even small communities, need to anticipate growth in their direction.

Resolve To Be a Good Citizen

Avoiding eminent domain requires more than the ability to hire an experienced lawyer when property is threatened. Hobby farmers benefit by being educated about community growth issues that affect land around cities and towns, and anticipating potential eminent domain issues.



Here's a quick guide for good citizenship: Be a good neighbor. Gather for coffee instead of conflict. Vote in every election. Follow local news through media outlets and personal relationships. Get to know board representatives in your local ruling municipality (town, village, county, parish, township) and talk with them regularly about growth issues. Watch for and attend public information meetings about issues affecting nearby areas. Do background research, including local bylaws and constitutions. Be open to legitimate needs for growth and carefully consider proposals. Do not assume all rumors are true, or that all public officials are corrupt. Do legal homework before making accusations or forming coalitions. Learn about candidate plans and positions. "You have to accept the risk," he explains. According to a recent survey by the editors of Hobby Farms, 46 percent of reader respondents live within 15 minutes of town, which is well inside the range Fagerlund says is most affected by urban sprawl issues.

So what type of homework should future hobby farmers do before signing a real estate contract? First, says Fagerlund, be sure to secure a good Realtor--one who is educated about growth issues. Agents do have areas of expertise, so before you contract with them, find out how long they have lived in the community and how knowledgeable they are about future development plans. Let them know you want to avoid potential conflicts and request that they guide you accordingly.

Second, visit the office of the ruling municipality where you'd like to live (village, town, city, township and county) and ask to see maps pertaining to short-term and long-term development plans. Look carefully at the area you are considering, specifically at what will surround it, remembering that open space may not stay that way.

Most officials, such as city and county engineers, and zoning regulators, are happy to answer questions and appreciate citizens who do research before buying property. Fagerlund concedes that despite changes in real estate practices that protect the buyer, the guiding legal principle is still caveat emptor, or "buyer beware," particularly when important information is readily accessible in the public record. In short, the property owner is ultimately responsible for decisions about property purchases, not the government or developers.

Next, take a good, long look around potential hobby farm property. Drive at least a five mile perimeter around the site and observe any signs of development. Do you see subdivisions nearby? Survey workers or equipment? New fire hydrants on a country road or freshly paved roads coming to a dead-end in a farm field? Be sure to look up, since cell towers, utility poles, transformers and wind generators can all give clues about future plans for the area.

Also, read the local newspaper before, during and after the search for rural property. Virtually all public information regarding development plans is announced in the media; often this is the only way residents find out about growth in their communities. Take time to read back issues, as well, since relevant facts are often released to the press a year or more before any actual development begins.

Naturally, neighbors will also be ripe sources of information about the area, especially if any controversial plans are in the works. Remember, folks impacted by future development usually have strong opinions and rumors run rampant, so check the facts with local government officials before making your final decision.

The Not-so-friendly Skies

My husband and I learned first hand about eminent domain negotiations when an airport near our home was being improved and the city next door began "seizing" the airspace above houses in the affected area. Some folks hired attorneys, others decided to hear the details before paying out legal fees. We decided to ask a lot of questions and enjoyed talking with the negotiator hired by the city. In our first meeting, over coffee, he told us about the process and we joked together about his first compensation offer, \$1.

As time passed, and legitimate offers were made and accepted, we listened carefully to the rumor mill. Most of the neighbors happily shared information that helped save everyone time and money. In the end, we all had to follow a few restrictions on lawn structures and trees, and an aviation easement was permanently put on our property titles. We also received fair financial compensation and spent no money on attorney's fees.

Later our home was sold to a young couple unconcerned with the airport plans. Today we are high on a hill, watching houses spring up nearby. Maybe we'll talk with officials again. And maybe that will turn out well, too. And finally, when you find a hobby farm that fits your needs, investigate the property title thoroughly. Fagerlund strongly recommends that buyers have the title work done by a real estate attorney, rather than by a financial institution, so that the best interests of the homeowner are maintained. This is vital, he says, because many eminent domain issues faced by farm residents do not involve their homes, but the land around them. The Wetlands Act of 1985, for example, mandates easements on



private property to facilitate wildlife preservation. The government also may legitimately seize land for improvements to railroads, utility infrastructure, water and drainage, and private and public services such as cell phone towers, gas lines, wind towers and recreational facilities.

Property owners within a few miles of airports should know, too, that the air above them is subject to eminent domain restrictions. An aviation easement must be purchased whenever additional or lengthened runways create new aircraft approach patterns over homes. Aviation easements give the airport the right to unobstructed airspace above the property and the right to cause noise, dust, etc. related to aircraft flight.

It also gives them the right to prohibit certain lights, electromagnetic signals and land uses that might attract birds. Early on, Fagerlund urges, “talk to your lawyer about your intentions for the property to make sure nothing is in the title that would be a problem.”

Fighting City Hall

Even with the best intentions and plenty of preparation, private contract negotiators, hired by the government, may still come to call, ready to offer a dollar or two (literally) for the privilege of tearing down your home or adding easements to your property title.

Fagerlund advises homeowners, from the very beginning, to listen respectfully to the government’s initial offer, even if emotions are running high. Many homeowners “get mean,” he says, which doesn’t help in working for the best possible outcome. He compares dealing with the government in eminent domain cases to visiting your local Department of Motor Vehicles office. “The motor vehicles person won’t do more for you if you get mad.” Home ownership issues may be deeply personal to the homeowner, Fagerlund acknowledges, but to the bureaucrats, they aren’t. Therefore, he says, be polite and professional during all communications.

His second recommendation, if necessary, is to hire an attorney with extensive experience in eminent domain issues. When projects affect several land owners, Fagerlund urges them to quickly organize neighbors and pool resources to help offset the costs of retaining legal services. Lawyers with the proper expertise are able to research the individual situation and investigate issues from a number of different angles, he says. In his experience, sometimes simple facts about a property can be fatal to an easement issue, and he believes spending money on legal counsel is worth the effort and cost. “Is there a scientific reason it shouldn’t be done here?” is one of the best questions a lawyer can ask, he says.

However, Fagerlund concedes, eminent domain proceedings are almost never dropped because of property owner objections, even when attorneys are involved. His third step, then, involves hiring the best appraiser money can buy. He says that someone with extensive experience in eminent domain issues, as well as property values, can work out strong, and sometimes clever, solutions to compensation issues. “There is room for creativity,” he admits.

But he tells property owners plainly not to expect additional monies for “pain and suffering” or other circumstances not directly related to the property value. “You don’t get reimbursed for that.”

When, finally, all the facts have been gathered and settlement negotiations have begun, it’s time to become a good listener. Property owners have a vested interest in details of the deal, so relax and hear what is being said when meeting with representatives from the government. Don’t be afraid to ask questions, but avoid accusations and debate. The person meeting with you is not the one with whom you disagree, but merely “the messenger”; he will not be able to effectively answer any political or personal concerns. Also, stay cordial with others who may be affected by the same government seizure since you can glean substantial and helpful information from their experiences with negotiators.

All Politics are Local

Most homeowners facing seizure of their property through eminent domain feel they have had no say in the matter. However, the courts at all levels have stood by the local government’s right to determine what’s best for the community, which means the politicians in your district are the ones ultimately responsible for eminent domain decisions.

All citizens, then, should exercise the right to vote in local elections and become knowledgeable about the candidates who are running for office. Voters should also expect accountability from officeholders after they are elected, then either support them for re-election or withhold support based on their representation. Politicians who lose their jobs after approving unpopular developments set a precedent for those who follow.

As the population of the United States grows, avoiding and appropriately managing eminent domain issues will continue to



be a primary concern for hobby farmers all over the United States. The best way to wisely fight and win eminent domain is to do your homework, choose property well and become an active, voting American.

About the Author: Gretchen Olson writes from her ridge-top hobby farm in northern central Illinois.

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