

The wrong(s) of the right of eminent domain

The use of eminent domain to take private property, like a house fire, probably doesn't matter much to most people - unless it's your house.

The threat of condemnation to accomplish the taking seldom is carried through to actual use. Property owners in areas coveted by government are seldom wealthy and even more infrequently challenge the action legally.

In Cheyenne, it is inconceivable that the use of condemnation will ever be threatened in Bar X or Mustang Ridge. The westside of downtown and the southside are much more likely targets. Such has proven to be the case.

But such hasn't always been the case throughout Wyoming. Major landowners in other parts of the state, in which mineral rights are not held by the surface land property owners, are being bitten and will increasingly be bitten more.

The Landowners Association of Wyoming (LAW) is proposing changes to Wyoming statutes which, had they been enacted before the confiscation of property for the library and a viaduct, would have benefited those property owners greatly.

The U.S. Supreme Court recently ruled that the right of eminent domain could be exercised to take private property for private use. In the past, whether restricted by law or not, most takings were for the "public good". Even the taking of land involuntarily from home owners for the new county library was justified on the basis of public benefit - public use - even though the library could have been located elsewhere and accomplished the same end result.

In other parts of the United States, attempts have been made, some successful and some unsuccessful, to take private land for private use which would more benefit government. In other words, if eight older, less valuable houses can be taken down and replaced by 20 four-plexes, the property taxes on newly built

four-plexes is almost certain to generate more tax revenue than the older homes. And twenty multifamily units could hold two and a half times as many residents as the older houses so sales tax revenue would also increase.

Under Wyoming law as it exists today, the owners of the eight older houses would be paid only fair market value for their properties. Money that would not buy them comparable replacement homes at current prices.

But when you can shut out the idea that these displacements take homes from owners who have raised families in them, the notion that they can't find a comparable house with the money provided them in the confiscation shouldn't bother most. It can be considered a sacrifice to growth and progress.

LAW has learned that efforts toward the use of condemnation for even public purposes is often done silently and in secret. The first anyone knows they are going to be evicted is when it's too late to mount an effective defense to the action.

They use an example near Cheyenne. For five years, LAW alleges, the City of Cheyenne and its Board of Public Utilities were pursuing development of a reservoir on private land. The City and BOPU is currently under no obligation to inform anyone of its efforts or actions. Under current Wyoming law, real estate transactions are exempt from public notice and can be conducted in secret.

In this case, the government does not have to conduct its behavior surreptitiously. The price of that land is not negotiable. An appraisal will determine the price and the seller has no real choice but to accept that appraisal. To litigate will not change the action, and seldom the price. The owner has to ask themselves whether any increase likely in a government-friendly courtroom in Laramie County will result in enough of a higher price to even pay an attorney.

What the takers fear is that the confiscee

can turn public reaction in their favor. That is one thing that elected officials do fear. Not always, but sometimes.

Relying on that recent U.S. Supreme Court decision, those with the power to use the right of eminent domain will almost certainly abuse it. Instead of taking land for roadways, bridges, etc., local governments such as Cheyenne's will begin to calculate potential revenue.

Government can acquire private property at appraised value. Then sell it to the private developer at that price. A private user dealing directly with the seller would have to negotiate the price and would most certainly have to pay more than the appraised value for the land they covet.

If you were Wal-Mart and wanted to enter a market, which approach would you prefer? Pay the municipality "x" dollars, or a private seller three times "x"?

Allowed to progress unchecked, the use of condemnation to take private property will go unabated. The time could come when a governing body is not fond of an operation such as Wal-Mart, with their low wages, imported goods and drain on local social agencies. Let's say that Costco approached this mayor and convinced him that their operation would generate much higher sales volume than Sam's Club and pay significantly higher wages and guarantee \$2 million a year to LEADS? Or Kohl's vs. Penney's.

If economic justification is all that is required to confiscate private land for private use, why wouldn't this mayor and city council pursue that option?

LAW alleges that non-profit organizations have more protection under Wyoming law than do private property owners. That, should their (the non-profit's) property be taken through the right of eminent domain, they are entitled to recover fair market value plus 50%.

One of the displaced home owners on Thomes Avenue told the Herald that he would have to move to Pine Bluffs to find a house he could buy, and that he could not once again qualify under a first-time homebuyers plan. He also could not remove fixtures (fans, lights, etc.) he had installed even though the house would be demolished and the items would be destroyed in the demolition.

There are those who are involved in this confiscation process who do have a conscience. Some will believe that the seller of these older, less valuable houses are better off than before. And you can get away with that if you dismiss the possibility that people like living where they do and in the house that they do. But it is easier if you believe that those evicted are the lucky ones, not library patrons.

There has been an interesting development in Hercules, California, over the past year. Wal-Mart bought bayside land to build one of their ugly stores. Residents balked and city officials listened. In an effort to salvage their plans, Wal-Mart changed the design to try to fit in to its surroundings and downsized the building. The City refused to approve the plans and announced to Wal-Mart that they wanted to buy the 17 acres. They are now in the process of taking the land by use of eminent domain. While Wal-Mart decried the action, they themselves were pursuing eminent domain actions elsewhere.

What goes 'round, comes 'round.

Draft legislation in Wyoming will require notice of an intent to take land by the right of eminent domain, "as early as is reasonably possible, about the potential of taking their private land."

Another change will require that the purchase price be "replacement value" not appraised value. It is worded: "The cost of functional replacement ..." and "The cost of relocating and rehabilitating improvements taken ..." and "The cost of betterments and enlargements required by law or current construction and utilization standards for similar facilities."

Confiscation of private property via the use of the right of eminent domain should be the last resort, not the first.

When a public library in Cheyenne will cost taxpayers upwards of \$27 million, it is unconscionable to force a property owner or renter to take legal action to increase moving costs from \$3,500 to \$7,500. It is also unconscionable to negotiate with different property owners in different manners. Those who have the means to resist are treated more respectfully than those who do not.

Fees are paid to those who somehow represent the public interest (a library, etc.) in some cases. In others, public employees handle the negotiations. All money used on that side of the equation is public funds. Those who object to the confiscation must hire their own attorneys at their own cost.

Wyoming must pass legislation to prevent the taking of private property for private use in almost every instance. The right to own property is a constitutional right that must not be abridged. Those whose property is taken must be made whole - whatever that may constitute and whatever that may cost. If a person living on Thomes and 22nd had been entitled to acquire a house like he was removed from - say a 3 bedroom house in Bar X - at public expense, the right of eminent domain would be sparingly used. As it should be.

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