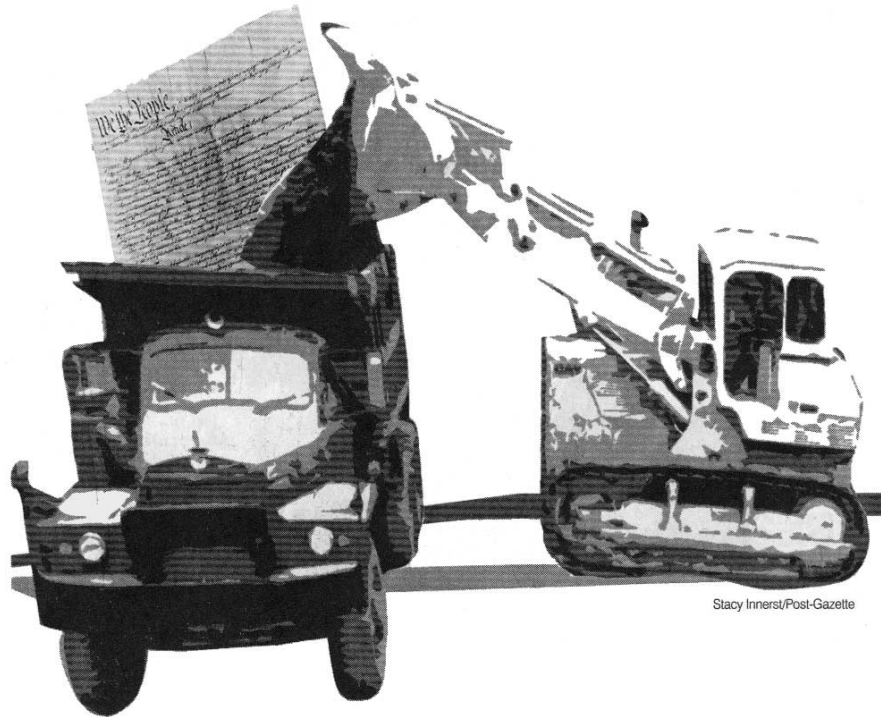


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Stacy Innerst/Post-Gazette

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Eminent domain: a city's shame

Downtown Pittsburgh development cannot take place under coercion and threat

At a rally on March 1 in Market Square, the Institute for Justice, where I am an attorney, announced that it will defend Pittsburgh small business owners faced with condemnation of their property in the Fifth and Forbes area. Mayor Murphy denounced us as "outsiders" trying to interfere with what goes on in his town (a charge made famous by Southern segregationists some 40 years ago). The "outsider" claim is ridiculous, as I will explain later, but Pittsburghers are entitled to an explanation of both why we are in town and why this dispute is important not just to Market Square business owners but to all Pennsylvanians.

As many people in Pittsburgh know, the mayor and the Urban Redevelopment Authority - the government agency

charged with urban planning - propose to condemn major portions of the Market Square area to give to a private developer, Urban Retail Properties of Chicago. The developer will acquire this large amount of space with significant government subsidies as well as favorable tax treatment. Urban Retail will decide which stores will go into its new mall, and although plans are not finalized, most of the stores will be national chains such as The Gap, FAO Schwartz and Tiffany's, all anchored by an AMC multiplex theater.

Under the plan, there are more than 60 buildings slated for condemnation and subsequent razing. Approximately 125 businesses will be displaced.

A number of plans and counterproposals are being floated,

including a plan by the Pittsburgh History & Landmarks Foundation to preserve more facades. Unfortunately, the one element these plans have in common is the intention to use eminent domain to take property against an owner's will "if necessary" or, as the mayor puts it, as a "last resort."

Eminent domain allows the government to take private property, but the constitutions of both the United States and Pennsylvania place two important limitations on the power. First, if the government takes your property, it must pay "just compensation"; but second, and most important, the government can take your property only if it is for a "public use."

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Traditionally, “public use” meant such obviously public projects as roads, bridges, post offices, etc. Starting in the 1950s, however, courts allowed government to expand this definition to include such things as slum clearance and the building of public housing developments. The very reason that the public use clause is in the Constitution, however, is to prevent the government from taking property from one private owner and giving it to another (often more politically connected) private party. And that is the very thing the city proposes to do in the Fifth and Forbes project.

Pittsburgh is not alone in these efforts. The Institute for Justice litigates eminent domain issues throughout the nation because it is a power that is being abused nationwide. As governments increasingly use eminent domain in violation of the Constitution’s public use requirement, courts have begun to crack down, finally swinging the pendulum back in favor of greater protection for property owners. In 1998, for instance, the Institute won a case on behalf of an Atlantic City widow whose house was going to be condemned by a New Jersey government agency at the behest of Donald Trump, who wanted to put up a limousine parking lot for his casino - hardly a public use.

The battle over eminent domain abuse is vitally important not only to the affected Market Square businesses, but to all property owners in Pennsylvania. If the city is allowed to take these businesses and give them to a developer favored by the city, then no property is safe. You can never know when your property, your business or even your home is next on the city’s list.

Although eminent domain abuse is a national problem, perhaps no city is guiltier of eminent domain abuse than Pittsburgh. In trying to defend himself, Mayor Murphy claims that eminent domain will be used only as a “last resort.” That promise, however, is entirely empty. Eminent domain is always used as a last resort when property owners tell

governments in no uncertain terms that they wish to stay.

It is the threat of eminent domain that allows the government to hold all of the cards in these disputes. It is the threat of eminent domain that typically causes the property owner to fold, unable to afford the legal and other expenses necessary to fight the government. In contrast, the city always has the taxpayers to pick up its legal expenses.

A robber rarely has to pull the trigger to get what he wants. He merely demands, “Give me your money - or else.” By claiming that he will use eminent domain only as a “last resort,” Mayor Murphy is really saying, “Give me your property on my terms - or else.” In either case, the mere threat of illegitimate power too often accomplishes the taking of property.

The other charge that Mayor Murphy makes against the Institute is the old standby of entrenched power everywhere: the dreaded “outsider” label. Here, Mayor Murphy veers into desperation and near parody. We were asked by Pittsburgh-based businesses to come to their defense if the city moves against them. In contrast, the mayor wants to condemn Pittsburgh-owned businesses, many of which have been in families for generations, to take a chance on a Chicago developer who wants to bring in national chain stores.

* The city can avoid this fight by doing one simple thing: taking eminent domain off the table as an option and pledging to revitalize Downtown only through voluntary means. If the city decides to exercise eminent domain, however, it will be in for the fight of its life in court - a battle that will undoubtedly take years to decide.

There’s still time to stop this battle. Mayor Murphy should do the right thing and pledge not to use eminent domain. He should obey the Constitution and build a future for Pittsburgh based on the rule of law, not the abuse of power.

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