

Date: September 9, 2005

City: Reno, Nevada

NAHB Resolution

Title: Preserving Private Property Rights  
Original Sponsor: Senior Officers

WHEREAS, recent U.S. Supreme Court decisions in *Kelo v. City of New London* and *San Remo Hotel v. San Francisco* will have a significant impact on private property rights;

WHEREAS, the National Association of Home Builders continues to advocate that it is essential to protect the private property rights afforded by the U.S. Constitution;

WHEREAS, the Fifth Amendment to the U.S. Constitution allows federal, state, and local governments to take private property for public use if just compensation is paid;

WHEREAS, it is generally accepted that “public use” includes property which provides physical access to members of the general public and is owned or controlled by federal, state or local government, including but not limited to government buildings, schools, libraries, parks, and roads;

WHEREAS, it is generally accepted that “public use” also includes infrastructure necessities shared by the public at large, such as public utilities, water and sewer treatment plants, and airports;

WHEREAS, court rulings have determined that elimination of a present harm to protect public health, safety and welfare is a “public use,” as in the case of the redevelopment of slums, blighted areas, contaminated sites, nuisance and other similarly situated properties, as defined by federal and state law;

WHEREAS, NAHB recognizes that many local communities benefit from these interpretations of “public use,” and that NAHB supports the power of governmental entities to use eminent domain as a legitimate planning tool for projects that primarily serve a public purpose;

WHEREAS, the U.S. Supreme Court’s decision in *Kelo* opens the door for state and local governments to take land from one private property owner and transfer it to another private property owner if the government merely pronounces that doing so will benefit the community economically by increased tax revenue or more job opportunities;

WHEREAS, such a broad interpretation of “public use” imposes almost no checks or balances on eminent domain actions by state and local governments;

WHEREAS, following *Kelo*, a state or local government now may be free to take undeveloped land or existing non-blighted, affordable single- and multi-family housing units and transfer ownership to another private property owner claiming higher revenue potential;

WHEREAS, communities adopting no-growth policies may use the *Kelo* interpretation of “public use” to transfer land in order to limit growth;

WHEREAS, the *Kelo* court specifically leaves it to legislative bodies to determine what constitutes a public use; and, therefore, Congress and several state and local legislatures have introduced legislation to limit the power of eminent domain within their jurisdictions;

WHEREAS, the U.S. Supreme Court decision in *San Remo Hotel v. San Francisco* upheld a lower court ruling that essentially prevents property owners from having a Fifth Amendment takings case heard in Federal Court;

WHEREAS, access to federal courts in constitutional cases ensures a check and balance against government actions; and

WHEREAS, *San Remo* dramatically weakens the ability of property owners to challenge the constitutionality of a taking and *Kelo* sanctions the use of eminent domain outside of traditional uses or blighted properties,

NOW, THEREFORE, BE IT RESOLVED that the National Association of Home Builders (NAHB) supports legislation to prevent federal, state and local governments from abusing the power of eminent domain provided by the Fifth Amendment to the U.S. Constitution,

BE IT FURTHER RESOLVED that NAHB supports the use of eminent domain, with just compensation, when a governmental entity will maintain ownership or control over the property (1) if the development or redevelopment of the property will be used by members of the general public, or (2) if the project addresses infrastructure necessities, like public utilities or roads,

BE IT FURTHER RESOLVED that NAHB supports the use of eminent domain, with just compensation, when a private party will maintain ownership or control over the property when the development or redevelopment plan meets the requirements of state slum, blight, contaminated site, nuisance, or however designated, and

BE IT FURTHER RESOLVED that NAHB will seek and support federal legislation that allows property owners expeditious access to federal district court review of property takings cases,

BE IT FURTHER RESOLVED that NAHB should seek and support federal legislation and regulation that will justly compensate land owners in an expeditious and fair manner for the value or their property, which is taken or deemed unusable temporarily or permanently by federal, state, county, regional, or local government.

Board of Directors Action:

Executive Board Action:

*[Adopted At the Summer Executive Board Meeting July 30, 2005]*

***Approved***

*Approved*