

By Councilman Jerry J. Helfer

RESOLUTION

Expressing the Disapproval by the Town Board of the Town of Greece of the Majority Opinion of the United States Supreme Court in the Case of *Kelo v. City of New London* that Nullifies the Protections Afforded Private Property Owners in the United States Constitution; Adopting a Town Policy to Protect Private Property Owners' Rights; and Petitioning the State Legislature to Enact State Constitutional and Statutory Protections for Property Owners

Whereas, the Takings Clause of the Fifth Amendment to the United State Constitution states “nor shall private property be taken for public use without just compensation”;

Whereas, the Fourteenth Amendment extended the application of the Fifth Amendment to every state and local government;

Whereas, the Takings Clause of the Fifth Amendment has historically been interpreted and applied by the United States Supreme Court to be conditioned upon the necessity that government assumption of private property through eminent domain must be for the public use and requires just compensation;

Whereas, the opinion of the majority in *Kelo v. City of New London* justifies the forfeiture of a person’s private property through eminent domain for the sole benefit of another private person rather than for public use;

Whereas, the dissenting opinion in *Kelo v. City of New London* upholds the historical interpretation of the Takings Clause and affirms that “the public use requirement imposes a more basic limitation upon government, circumscribing the very scope of the eminent domain power: government may compel an individual to forfeit her property for the public’s use, but not for the benefit of another private person”;

Whereas, the dissenting opinion in *Kelo v. City of New London* holds that the “standard this Court has adopted for the Public Use Clause is therefore deeply perverse” and the beneficiaries of this decision are “likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms” and “the government now has license to transfer property from those with fewer resources to those with more”; and

Whereas, all levels of government have a Constitutional responsibility and a moral obligation to always defend the property rights of individuals and only to execute the power of eminent domain for the good of public use and contingent upon the just compensation of the individual property owner;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN BOARD OF THE TOWN OF GREECE, as follows:

Section 1. The Town Board of the Town of Greece —

- (A) disagrees with the majority opinion in *Kelo v. City of New London* and its holdings that effectively negate the public use requirement of the Takings Clause; and
- (B) agrees with the dissenting opinion in *Kelo v. City of New London* in its upholding of the historical interpretation of the Takings Clause and its deference to the rights of individuals and their property.

Section 2. It is the sense of the Town Board of the Town of Greece that—

- (A) state and local governments should only execute the power of eminent domain for those public uses that comply with the Takings Clause of the Fifth Amendment;
- (B) state and local governments must always justly compensate those individuals whose property is assumed through eminent domain in accordance with the Takings Clause of the Fifth Amendment;
- (C) any execution of eminent domain by state and local government that does not comply with subparagraphs (A) and (B) of this section constitutes an abuse of government power and an usurpation of the individual property rights, contrary to the Takings Clause of the Fifth Amendment;
- (D) eminent domain should never be used to advantage one private party over another;
- (E) eminent domain should never be used solely for the purpose of economic development and/or to increase tax revenues; and
- (F) eminent domain should be solely used to acquire private property for public use, e.g., highways, bridges, schools, parks, public utilities and other civic works directly used by the public.

Section 3. The Town Board of the Town of Greece hereby establishes a policy to limit its use of eminent domain to the public uses expressly outlined in this resolution and in accordance with the dissenting decision in *Kelo v. City of New London*.

Section 4. The Town Board of the Town of Greece hereby petitions the State Legislature to adopt State constitutional and statutory limitations on the use of eminent domain by the State of New York and its departments, agencies, development corporation, and authorities to limit the use of eminent domain to the public uses expressly outlined in this resolution and in accordance with the dissenting decision in *Kelo v. City of New London*.

Section 5. The Town Clerk is authorized and directed to transmit copies of this resolution to the Governor of the State of New York, the Members of the New York State Legislature representing the Town of Greece, the County Executive of the County of Monroe, the President of the County Legislature of the County of Monroe, and the Members of the County Legislature of the County of Monroe representing the Town of Greece.

Section 6. This resolution shall take effect immediately.