

Pros and Cons of Eminent Domain

**By Reg P. Wydeven
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As a kid, I grew up on the west edge of Kimberly. To the west of my house was a ravine that led to a small woods and a vast field that ran from the river south to Kimberly Avenue. On the other side of the field was Appleton, where we'd walk to play at the park in the Colony Oaks subdivision.

In the mid-1980s, suddenly many huge fluorescent pink Xs were spray-painted on tons of trees in the small woods. We were told these trees were being marked to be cleared out to make way for the expressway that would be coming in. We didn't think much of it, as there was talk of a highway going in for years.

Well, sure enough, a few years later the trees with the pink Xs disappeared and Tri-County Expressway 441 arrived. Exercising its right of eminent domain, the Wisconsin Department of Transportation condemned the field and woods, taking it from the private owners for the benefit of the greater community. As a result, homeowners with houses abutting the highway were compensated by the DOT for the unsightly view of the highway and the noise from the passing traffic.

I now live in a house two doors down from the one I grew up in, so I still hear the traffic and still have the obstructed view of the sun setting on the Fox River. I don't complain, however, because I drive on 441 both to and from work every day.

Not everyone, however, sees the value of the greater good.

Five years ago, Harvey and Phyllis Karan filed suit after a large protective sand dune was built between their home and the New Jersey shore in Harvey Cedars, N.J. The Karans sued, claiming the dune blocked their beautiful oceanic views. The court agreed, awarding the Karans \$375,000.

Earlier this month, however, the New Jersey Supreme Court overturned the award and ordered that a new trial take place. The Court held that the trial court erred by instructing the jury to only consider whether the obstruction of the ocean views by the dune had monetary value. The Supreme Court said that a new trial is needed so that a jury can also consider the monetary value of the protective benefits the dune provides.

In the time between the original trial and the Supreme Court's decision, the eastern seaboard has been bombarded with hurricanes, including the devastating Superstorm Sandy last October. The Karans are fortunate that the dune protected their home from destruction; at the same time, however, the salvation of their home also hurts the Karans' case when they argue against the financial benefits of the dune.

State officials are watching the case closely, as there are plans to build protective dunes along the entire 127 miles of New Jersey's coastline. The plans are on hold out of fear of waterfront homeowners demanding huge payouts to make up for lost views.

I'm just proud that throughout this entire column about the Jersey Shore, I took the high road and didn't even make one Snooki joke.

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