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Cranbury residents are irate about the township's plan to seize private land and hand it to a developer.



CROSS COUNTRY

A New Jersey Family May Lose the Farm to Eminent Domain

In Cranbury, N.J.—a township of around 3,800 northeast of Trenton—there's a farmhouse. Sitting on a 21-acre parcel, stocked with belted Galloway beef cows, the farm has been held by the Henry family for 175 years. It's "something that you don't see in that area" anymore, says Andy Henry, 72, who owns the farm with his brother, Chris, 71. "Everybody loves it because it's something unique, something different."

The Henrys might not keep the farm much longer. They've leased it to a tenant farmer since 2014, and the township wants the land. A large, open parcel, hemmed in by warehouses, the farm is an obvious target for eminent-domain seizure and handing off to developers.

The township is under legal pressure. Under the "Mount Laurel doctrine," which the state Supreme Court in 1975 established in ordering New Jersey towns to build low-rent housing, Cranbury needs to create 265 new affordable units over the next decade. The Cranbury Township Committee wants the Henry farmland to provide 130 of those units, to be owned and run by the Walters Group, a private developer.

Such takings are allowed under Kelo v. City of New London (2005), a Supreme Court decision holding that the Fifth Amendment empowers the government to seize private property and give it to private developers. The court allowed local authorities to consider economic benefits when using eminent domain to transfer property to private entities for broader public purposes, such as increasing tax revenue or creating jobs. "Public use can be almost anything that the government says it is," says Ilya Somin, a law professor at George Mason University. "For most widely accepted theories of constitutional interpretation," he adds, "you come to the conclusion that *Kelo* is wrong."

Legal scholars and much of the general public decried *Kelo*. In the years after the high court handed it down, many state legislatures and courts passed laws or handed down rulings limiting the use of eminent domain by state and local government.

New Jersey's reforms were limited, as Cranbury residents discovered. "The first thing that I did was went and made a 4x8 sheet of plywood sign, painted it overnight and put it on my front yard," says Timothy Brennan, 55, an elementary school teacher who also started a social-media campaign to save the farm. "This is just flat out wrong," says Anthony Nichols, 56, a plumber, who donated yard signs for the Henry Farm from his home-service company. Audrey Smith, 82, president of the Cranbury Historical and Preservation Society, sold stuffed toy cows and sent the profits to the family for their legal expenses. A Go-FundMe campaign has raised more than \$140,000.

Some Cranbury residents claim the farm isn't a good site for the new housing because it's too far from the center of town and the adjacent land has been built up with warehouses over the years. "It's so far removed from the community," says Jay Taylor, a former mayor of Cranbury. "There are no grocery stores nearby." The farm, Mr. Brennan says, is roughly 2½ miles "from anything in town like the post office, the library and the ice-cream shop." Mr. Brennan, who has filmed videos of himself walking from the center of town to the farm, says that the proposed affordable-housing location is bad for those "who are not of the means to have a car." None of the five members of the township committee would comment for this article.

After calling Mr. Henry personally two hours after she found out about the issue, Agriculture Secretary Brooke Rollins sent a letter to township officials in June urging a halt to the land seizure. The letter warned of noncompliance with federal farmland- protection laws, which Ms. Rollins claimed would apply if federal funds were involved in the town's affordable- housing project.

"For me this isn't just about saving Andy Henry's farm. It's a righteous battle between freedom and tyranny," Ms. Rollins says in an interview. "What was really egregious," she says of the *Kelo* decision, "was that it was a government deciding that . . . it can go in and say, 'Oh no, I'm taking your house, I'm going to give it over there, they're going to pay me more taxes.'" That "is really, really scary."

Despite its unpopularity, *Kelo* remains a powerful instrument. This year, for example, a Brighton, Colo., municipal agency took farmland to aid infrastructure for a private development. The Institute for Justice estimates that 5,800 private properties were taken by local governments for use by developers in the year after *Kelo* was decided.

"The average voter, understandably, isn't going to pay attention to this," Mr. Somin says. "But interest groups will notice—groups that want property to be seized and given to them." Perhaps the Supreme Court will revisit *Kelo* — a 5-4 ruling by a court with only one justice still serving— but it declined an opportunity to do so this spring.

It seems likely that tech companies seeking to build data farms will ask towns to condemn more farms in the near future. In Virginia, an energy company plans to build highvoltage power lines to support a new data center, and one proposed option would use eminent domain to run the lines through private land. In Maryland, farmland is under threat by the state's Public Service Commission because a New Jersey-based power company wants to build new power lines for Virginia's Data Center Alley. "My hope and prayer in all of this," Ms. Rollins says, "is that these farmers realize they're not alone."

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By Faith Bottum

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