



CELEBRATING
55 YEARS

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Robert Baldwin - Rhode Island Builders Association president's message

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I'm sure I speak for all members of RIBA when I say that our state, our industry and our businesses do not need any more challenges as we work toward an economic recovery.

We have a new challenge, however, in the form of the justices of the R.I. Supreme Court, some of whose decisions are doing serious harm to property rights in this state. That's ironic, since the job of an American judge is to interpret the law so as to safeguard our rights.

The most recent example of the Supreme Court's activist, anti-property-rights attitude is its decision in Michael West et al. vs. James McDonald et al., handed down on May 6.

As outlined in the article on page 1 of this issue, one of our members, Michael West of Michael West Builders, was denied the right to build a subdivision on his own land in East Providence even though his application passed muster with that city's zoning and subdivision regulations. The court held that language in the city's Comprehensive Plan, which stated that the area where West wanted to build should have a lighter density in the future, overrode all existing regulations.

The court decided this despite the fact that state law mandates that every municipality bring its zoning and subdivision regulations into line with its Comprehensive Plan within 18 months of adoption of the plan. East Providence never did that.

The impact of this court decision on our industry and on our state is extremely serious because it is a significant assault on property rights.

Property rights are the fundamental foundation of the U.S. Constitution. As a matter fact, property rights are the whole point of the United States of America. You can have all the civil liberties in the world, but if you can't go out and conduct business for the benefit of your family and yourself on your own property, all those civil liberties are worthless.

This court has demonstrated a clear pattern of disregard for these most fundamental rights. At the end of the day, West's property rights were taken away by a judge without compensation. Our forebears fought against taxation without representation. This court is upholding confiscation with compensation.

Isn't one just as bad as the other?

Unless something is done to mitigate the effects of this case, it will set a precedent whereby any government agency can argue its way toward confiscating your property without exercising eminent domain or providing compensation.

The U.S. Supreme Court seems to be on the bandwagon with this trend as well. In 2005, the high court allowed the city of New London, Conn., to seize the homes of private citizens and transfer the property to another private owner in the name of economic development.

Right here in R.I., the U.S. Supreme Court pulled the rug out from under 80 year-old Anthony Palazzolo in 2001 after the man had fought since 1959 to subdivide and build on his waterfront land

in Westerly.

Apparently, the government can take anything you own if some judge says so.

As West's attorney, RIBA member Michael Kelly, has pointed out, the only remedy to this worsening property-rights situation locally is to get on the phone and the e-mail with our state lawmakers. We must insist that they clarify legislatively that regulations-in-force are not negated by some vague language in town comprehensive plans.

The courts are bound by the legislature. If the law clearly and specifically protects property rights in this regard, the courts must uphold it. We must take action on this in the 2012 General Assembly session. If we do not, every R.I. property owner will remain vulnerable.

Watch for more on this issue as it develops.

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