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# The Tyranny of Local Government

BY PAUL MESSINO

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Thanks to the recent decision rendered by the Supreme Court in *Kelo v. City of New London*, citizens across the nation have a new reason to fear government. The decision affirms that the seizure of private property by the government in the name of economic development is consistent with the Takings Clause of the Fifth Amendment. This alone does not destroy the property rights of every landholding individual. But it does give states the power to move in that direction.

In reaction to the rising fear among citizens, a few states have either reiterated or redefined their laws in favor of private property. While this is comforting for the moment, chances are that with the big nod from the Supreme Court, local governments will be moving in on private property once the carrot of tax-base expansion becomes too appealing to ignore.

And why wouldn't this be the case? Local governments have been razing property rights in the name of public interest for years. Just look at the process of annexation and incorporation, a local-government phenomenon that can be particularly invasive.

Let's take, for instance, my home state, North Carolina. While many states have towns and cities with contiguous borders inside county lines, North Carolina has what amounts to "islands" of towns and cities, sometimes separated by miles of rural landscape. Residents who live outside these "islands" are residents of the county only. These areas are "unincorporated."

An unincorporated area might be annexed by a town

or city. This is a state legislative process that ends with the addition of both new land and residents to an already established town or city. An unincorporated area can also incorporate. After successfully completing legislative qualifications, residents in a certain area can then form a town or village. The incorporated area must then provide a number of services to all inhabitants. Annexation or incorporation can and often does occur without the consent of the affected property owners.

Consistent with *Kelo*, sometimes annexation or incorporation is used to "increase the wealth" of an area. Cities and towns eager to extend their tax base open their civic maw to neighbors on the fringe while promising improved services, which in most cases never increase a citizen's standard of living.

But at other times, local governments use either annexation or incorporation to stop progress. Local governments can usurp land, fence out undesirables, and restrict growth patterns as they see fit, all within the boundaries of the law. The destruction of individual freedom that has become commonplace in local arenas leaves many on the losing side lamenting the moral atrophy of civil law.

This is just such a story. It is set in a small community in North Carolina, where the power of incorporation was used to stop economic growth and destroy a man's property rights in the process.

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Our story begins in the unincorporated area of Mis-enheimer, originally home to a nineteenth-century resident, Tobias Barringer. According to various newspaper accounts at the time, Barringer purchased his property sometime in 1824. This simple plantation, small by Southern standards, housed a few slaves and yielded a modest crop. One day while hunting on the property, Barringer noticed golden metallic flecks shimmering in a stream. Digging into the adjacent stream bank, he struck gold. Little did he know, but he had struck it big—one of the largest veins of gold in North Carolina history.

Richard F Knapp of the state Department of Cultural Resources, coauthor of *Gold Mining in North Carolina*, described the discovery of the Barringer Gold Mine as a “watershed event in U.S. gold mining, moving the industry into the age of vein mining.”

The fortune of the mine, however, turned tragic in 1904. Under the ownership of the Whitney Mining Company, eight men were killed when a heavy deluge hit the county on August 11 and flooded the mine. After the tragedy (and the ensuing lawsuits) the mine closed.

On March 25, 1998, Stanly County developer and entrepreneur Joe Carter bought the mine and nearly 240 acres of land. While clearing the land for development, the revenues from which were to go to the creation of a Christian school, Carter, much like Barringer, discovered gold. The discovery led Carter to hire the services of numerous experts who were to assess the viability of mining.

The experts concluded that the mine offered many valuable possibilities for Carter. Not only could this small portion of the land be used for excavating gravel and sand for highway construction, but the mine contained a thin, and in some places extremely pure, vein of gold. In their estimation, only 10 percent of the total gold had been removed.

Carter, along with additional investors, acquired both federal and state mining permits for his newly created company, Barringer Mines, LLC. However, when presenting his intentions to the Planning Board of Stanly County, Carter was denied the right to mine. Residents

feared the dust and noise pollution would harm their way of life. Carter was denied permission to proceed not once but twice by the Planning Board—comprised of a handful of individuals with no background in mining.

Initially, Carter wanted to rezone all 240 acres of his land for mining; but because he realized that some neighbors and the planning board and staff were worried about his intentions, he continually reduced his request for rezoned acreage. At the advice of the planning board, Carter settled for the rezoning of only 50 acres.

### Split Decision

In a final attempt, Carter was able to get a split decision to rezone his property from Residential Agricultural (RA) to Heavy Industrial (M2) with a conditional-use permit. That final split decision led to a public hearing before the county commission on April 8, 2002. Carter and his consultants illustrated their intent to create multiple new businesses and dozens of jobs while staying within the state and federal guidelines for mining.

During the hearing, he and his supporters ran into opposition headed by local resident Peter Edquist and David Ambrose, president of nearby Pfeiffer University. The university, once a Methodist-affiliated college, is attended by some 600 students, four times the number of permanent residents in the area.

Numerous residents, many of them students, testified that they were worried about the effects of the mining process on their daily lives—a legitimate concern. But alarmist rhetoric and fear-mongering pervaded the opposition. Some feared that Carter’s real goal was to start a rock quarry, that the gold and tourism plans were just a ruse, and that the actual intent was to quarry aggregate for construction, even though the aggregate being removed for highway use was a byproduct of the mining process.

Carter’s side countered fear with fact. Concerned that citizens might not understand the lengths to which he was willing to go to placate their fears, Carter paid to bring in experts from across the nation to testify to the safety and importance of the mine.

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Stuart Brashear, a blast expert with Dyna-Nobel, a leading manufacturer and distributor of explosives and their components, told the hearing that neither dust levels nor blast sounds or vibrations would exceed state or federal restrictions. In fact, he said, that due to the use of a “wet mining process,” dust should not be an issue.

Paul Harrison of the Moser Group, Inc., a brokerage and development firm that does commercial appraisals and consulting for the state, was hired by Carter to assess the impact on land values for properties adjacent to a mine similar to the proposed Barringer operation. Harrison concluded that the impact was negligible. But this wasn't enough.

State Sen. Fletcher Hartsell, hired by Pfeiffer University as counsel through his private law firm, said that there was no guarantee that Carter would use his land only to mine. Hartsell could not refute the studies presented by Carter, so he used scare tactics centered on what-ifs. Because M2 includes other uses such as junk-yards and chemical waste sites, Hartsell argued that the M2 zoning would not be harmonious with the county.

The fear-mongering by the political elite worked. Residents voiced their concerns. Astoundingly, one citizen said he opposed the mine because he feared the dust from the crushed rocks would cause cancer. Another resident said that if the mine were allowed, the town would forever be in the shadow of heavy industry.

University President Ambrose testified about the beginning of Carter's endeavor, saying they had had positive discussions about the original residential development. It was only after learning about the mine that he began to have “serious concerns” and helped organize citizen and student opposition.

## Fear Prevails

The collective voice, stirred by little more than fear, won out. County commissioners voted against the rezoning unanimously, ruling, in effect, that it was in the county's best interest to overlook the billions literally beneath its feet. But Carter wasn't finished.

During the late summer of 2002, the adjacent town of Richfield worked with Carter on an annexation strategy that would have allowed for operation of the mine.

Richfield was eager to have the mine within its boundaries, recognizing the environmental soundness of the operation as well as the economic benefits.

Concurrently, both Ambrose and Edquist went on offense. They used their influence to lobby support from alumni, students, and residents, and the legal representation of Hartsell, to take a different approach. County government only has so much power. If Carter could have his land annexed by an adjacent town, he could still mine in the “backyards” of Misenheimer naysayers. But opponents of the mine could block this by petitioning the state to create a new town. Under state law, they could forcibly annex Carter's property and neutralize any rights he and his business partners had to develop the Barringer mine for anything other than homes and farms. This is exactly what occurred.

According to its advocates, the proposed village of Misenheimer was to comprise a handful of small lots, some churches, and two large tracts. Carter's 240 acres would be the largest private tract. The rationale for including Carter's land, Ambrose said, was that projected sewer-line expansions were to occur there. But Stanly County officials said that sewer lines do not run into the Misenheimer area and no such move is projected. No matter: Carter's land was included in the new village, setting him up for sabotage.

Pfeiffer University, the other large tract and exempt from property taxes, would use its police force to serve the entire village. State law stipulates that an incorporated area must provide four of eight specified services, one of which is police protection. The university would pay \$350,000 for the force, which the village could not otherwise afford. Pfeiffer's decision to pay for police not only provided indispensable help, but also elevated its power, prestige, and influence in the eyes of the proposed village's residents.

On February 17, 2003, State Sen. Bill Purcell filed Senate Bill 76 for the incorporation of the village of Misenheimer. It had the support of the Stanly County Commission. According to documents submitted to the General Assembly of North Carolina, supporters of the village claimed that of the 183 registered voters in the area, 154 of them supported incorporation. For an area to be considered for incorporation, 15 percent of registered voters there must sign a petition stating their

assent. However, when asked to supply the petition, no government official associated with the process had a copy of the signatures. There appears to be no way of verifying what the final total actually was or who the signatories were. Based on the numbers supplied by the Board of Elections, 17 percent of the voting population could be Pfeiffer students. With no way to verify the petition, Pfeiffer students, who have no long-term commitment to the area, could have been a deciding factor in the outcome of incorporation.

Before the General Assembly voted on the bill, Carter tried to bring witnesses to a legislative committee meeting, but was told the schedule had been changed. Unbeknown to him, the committee met and voted on incorporation days later.

The legislation was ratified by the General Assembly on June 26, 2003. Hartsell, who had represented Pfeiffer and Edquist, voted aye.

Carter, stripped of his property rights but nevertheless the largest landholder and taxpayer in Misenheimer, cannot develop his tract unless the village council, appointed by the legislature, approves. Ambrose was on the council, but has since moved from Misenheimer. Edquist serves as mayor until this month's municipal elections.

Bound to forced incorporation, Carter has only three options. He can sell his land, but because of zoning restrictions, the property might sell for hundreds of millions of dollars less than in a free market. He can wait until a majority of sympathetic citizens are voted onto the council, but given the influence of Pfeiffer University and its willingness to use local-government power to abridge the property rights of its neighbors, this is not likely to happen soon. Or he can wait and hope that the village falls into financial ruin, emaciated by a low tax base depleted of any viable economy, and is de-incorporated.

It's a shame that the structure of government allows for the legal degradation of property rights. Carter, who played by the rules, supplied voluminous evidence, and promised to bring jobs and prosperity to the community through an influx of wealth, was denied the opportunity to use his land to its utmost potential. Thanks to the ability of a few powerful citizens who skillfully disguised fear as truth, a law biased against property rights, and the inconspicuous dealings of local government, Carter's rights have been reduced by the desires of a few.

Like the *Kelo* case, this story makes it abundantly clear that private property is at the mercy of government.



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