Eminent Domain Project at Standstill Despite Ruling

By WILLIAM YARDLEY

NEW LONDON, Conn. - They have still not moved out. Not Susette Kelo. Not the Derys. Not Byron Athenian or Bill Von Winkle or the others.

Five months after the United States Supreme Court set off a national debate by ruling that the City of New London could seize their property through eminent domain to make way for new private development, no one has been forced to leave.

No bulldozers have arrived to level the last houses still standing, and none are expected soon.

Even though the holdouts lost their case, and the development that would displace them finally seems free to go forward, construction has not begun, and some elements of the project have been effectively paralyzed since the court ruling prompted a political outcry.

"I felt relaxed enough to get my checkbook out and put the new roof on," said Mr. Von Winkle, who owns three buildings with a total of 12 occupied apartments in the Fort Trumbull neighborhood by the Thames River, where the city was sued for claiming 15 properties through eminent domain.

Ms. Kelo, also among the handful of holdouts, said, "We still have hope that we'll get to keep our homes."

It is not that Ms. Kelo and the others have chained themselves to their property in a final dramatic defiance of the law.

Instead, wary of public disapproval and challenges from groups like the Institute for Justice, the law firm that represented the holdouts in court, the state and the city have halted plans to evict the remaining residents. Investors are concerned about building on land that some people consider a symbol of property rights. At the same time, contract disputes and financial uncertainty have delayed construction even in areas that have been cleared.

With so many complications, some people are unsure whether the city's initial vision for the property - a mix of housing, hotel and office space intended to transform part of its riverfront and bolster a declining tax base - is even realistic anymore.

"Winning took so long," said Mayor Jane L. Glover, "that the plan may not be as viable in 2005 or 2006 or 2007."

New London, founded in the 17th century as a port city in southeastern Connecticut, has a high unemployment rate and fewer residents today than it had in 1920. Its court battle over eminent domain started five years ago, when it claimed the property of six Fort Trumbull homeowners, a two-block area within 90 acres set for...
development. Homeowners challenged the move, and the matter eventually made its way to the Supreme Court, which ruled 5 to 4 in June that the city had the right to take the land to improve its financial health, even though doing so would eventually transfer the property to a private developer.

But in a dissent that echoed what property rights activists were saying, Justice Sandra Day O'Connor wrote: "The specter of condemnation hangs over all property. Nothing is to prevent the state from replacing any Motel 6 with a Ritz-Carlton, any home with a shopping mall or any farm with a factory."

Congress and state legislatures across the country have reacted by revisiting eminent domain laws. Over the summer, the United States House of Representatives passed a resolution condemning the court decision. This month, the House voted overwhelmingly to deny federal economic development money for two years to local governments that seize private property for private development.

In September, Gov. M. Jodi Rell of Connecticut demanded that the New London Development Corporation, the city's development agency, rescind eviction orders delivered to tenants in rental units that belong to homeowners who have refused to give up their property.

The Connecticut General Assembly has asked cities to delay using eminent domain while it considers revising state law. Some city and state officials cite the difficulty in finding a balance between using eminent domain to rebuild blighted areas and preventing the potential for abuse that concerned Justice O'Connor.

"We're not writing a law to solve the New London problem," said State Representative Michael P. Lawlor, a Democrat who is co-chairman of the Judiciary Committee. "We're writing a law to fix the Sandra Day O'Connor problem."

Amid all the debate, the Fort Trumbull project has stalled.

"This lawsuit put a chill on the development of the whole 90 acres, no doubt in my mind," said Thomas J. Londregan, the city's director of law. "Any developer knew that whatever they did would most likely be appealed to the courts."

Contentiousness led to stalemate and stumbles. At one point the city severed ties with the New London Development Corporation, only to reverse itself days later under pressure from the state. A key corporation executive was forced out.

Pressure to go forward is considerable, even if momentum is not. The state has already invested $73 million on environmental cleanup and sewer and road improvements. Elegant street lamps, intended to illuminate a gentrified new riverfront, instead shine over empty lots where buildings have been leveled but not replaced.

In recent weeks the city, the state and the developer, Boston-based Corcoran Jennison, have begun discussing ways to jump-start construction in empty areas. Details are not firm.

"We are currently working our way toward what I believe will be something fruitful," said Michael Joplin, president of the New London Development Corporation.

One point of contention: Corcoran Jennison is resisting pressure from the city to build a waterfront hotel first, as was initially planned, out of concern that there is no market for one.

Corcoran Jennison says that Pfizer, which built a major research center next to the site in the late 1990's and
pushed for the Fort Trumbull development, backed away from a commitment to help pay for the hotel as the lawsuit dragged on. And the prospects for a Coast Guard museum, which under one plan could be built on the holdouts' land, are also unclear.

Still, Ron Angelo, deputy commissioner of the state's Department of Economic and Community Development, insists that the project, at least in some form, will get under way soon. "I think for the first time in a number of months, if not years, we have come close to beginning with the project," he said.

If any construction begins soon, it will happen away from the area where the holdouts remain, said Marty Jones, president of Corcoran Jennison, which has been under contract on the project since 1999.

"We need to have some positive things happening so that every lender and investor I go to doesn't say, 'I want to be 100 miles away from here,' " Ms. Jones said. "Eminent domain in Fort Trumbull has been on the front page of every newspaper in the country, and it has not put New London in the most positive light."

Despite losing in court, the holdouts have gained political leverage, largely through the public relations effort led by the Institute for Justice, Mr. Joplin said.

Scott G. Bullock, a lawyer for the Institute for Justice who argued for the resistant property owners before the Supreme Court, said, "We might have lost the battle, but the overall war is really going in our favor."

"What developer is going to want to build on land that was received through probably the most universally despised Supreme Court decision in decades?" Mr. Bullock asked.

Governor Rell has hired a mediator to meet with the holdouts. The goal is to see what, if any, financial terms, beyond the outdated appraised value they have been offered, might persuade them to leave.

"I'm on the road to search for the proverbial win-win," said the mediator, Robert R. Albright. "It's an extraordinarily complex situation. It's not a two-party situation by any means. I'm not sure I can honestly give you an option set or even fully describe the obstacles."

The property owners have their critics in New London. They have been accused of delaying the city's resurgence, and even of taking payoffs from property rights advocates in order to keep up the fight. But at least a few, after seeing most of their neighborhood leveled, say they will consider coming to terms with Mr. Albright if the money is right. Others, however, have not ruled out new lawsuits.

Meanwhile, some renters are moving in, not out. Michelle Cerrato arrived from Pennsylvania in September and found her two-bedroom apartment on Walbach Street through a newspaper ad. Unaware of the fuss over eminent domain, Ms. Cerrato, a 30-year-old casino hostess with three children, soon figured out why neighbors have signs in their windows that say, "Not for Sale."

Confused and concerned that she would be evicted, she called her landlord, Sue Dery, one of the holdouts.

"She said it's not going to happen," Ms. Cerrato said. "It's been going on for eight years."