

Delaware man wins his battle against eminent domain

by Randy Bright <http://www.tulsabeacon.com/?p=3965#more-3965>

The Sam Adams Alliance has awarded one of its annual “Sammie” awards to Ed Osborne, an auto repair shop owner in Wilmington, Delaware, who fought a three-year long battle to save his property from being taken by eminent domain and his drive to enact legislation that protects others from becoming victims in the same way that he was.

The Alliance was founded in 2006 and has been making its annual award since 2007. Their website states, “Our mission is to help Americans understand free-market-based principles and policies, and to help ensure the vision of Sam Adams and our Founding Fathers flourishes in the 21st Century.” They take their inspiration from Sam Adams, who fostered a popular movement against the British by encouraging grassroots communications between colonists.

Ed Osborne was one of six people who were awarded a 2010 Sammie award. Their website said that he had won the award “for his vigorous defense of property rights against eminent domain in Delaware. Osborne gained his notoriety as an activist when he and 61 other Wilmington business owners received notification that their businesses were on the city’s property acquisition list. Osborne resisted government offers for his land, and instead went on to lead a three-year battle in the Delaware General Assembly for legislation against eminent domain abuse. Despite heavy opposition and a gubernatorial veto, the legislation eventually passed, and transformed Delaware’s once-vulnerable property rights environment into one that protects private ownership.”

The boldness behind Wilmington’s attempt to seize Osborne’s property in order to give it to a private developer was inspired by the Supreme Court’s *Kelo vs. New London* case, in which Suzette Kilo and others lost their homes to a developer who was going to build offices and a hotel to support the presence of pharmaceutical giant Pfizer. Reportedly, \$78 million was spent to remove the homes, but, in 2009, Pfizer closed its facilities, leaving the bulldozed area vacant.

Wilmington wanted the 62 properties, most of which were closed businesses, for their South Walnut Street Renovation Plan, which would have given the property to a developer. Osborne had invested his business in the area since 1994, and because it was a high-crime area, had taken the risk to do so when few others would.

Osborne first learned that his property was going to be taken when he received a condemnation notice. Neither the city or the developer had offered to purchase his property prior to the condemnation notice.

Osborne sued, stating that his rights had been violated because he was not being offered fair compensation, and because the use of his property would be for a private, not public, use.

As a result of Osborne's case, Senate Bill 245 was passed to define and restrict the use of eminent domain, but the governor vetoed it.

The law that eventually passed was Senate Bill 7, which amended their existing laws regarding eminent domain. The synopsis of the bill stated that "This bill requires state, county, or municipal governments or state agencies or other condemning entities to use their eminent domain authority solely for 'public use' and defines that term. The bill specifically states that benefits derived from economic development do not constitute a public use." (emphasis mine.)

The bill itself states that "the policy of the provisions of this chapter pertaining to eminent domain is to ensure that eminent domain is used for a limited, defined public use. Public use does not include the generation of public revenues, increase in tax base, tax revenues, employment or economic health, through private land owners or economic development." (Again, emphasis mine.)

The bill still allows the use of eminent domain for the removal of blighted areas or "slums," as well as buildings that are unfit for human habitation or abandoned properties.

While it is gratifying that Osborne won against huge odds, there are many cases that aren't won, or even fought against, because of lack of funding for legal defense, or lack of knowledge of laws or how to change them. Osborne proved that with endurance and resourcefulness the little guy can be successful, but the real answer is that much more legislation needs to be done to protect individual property rights in other states, including Oklahoma.

©2010 Randy W. Bright

Randy W. Bright, AIA, NCARB, is an architect who specializes in church and church-related projects. You may contact him at 918-582-3972, rwbrightchurcharch@sbcglobal.net or www.churcharchitect.net.

This entry was posted on Thursday, April 29th, 2010 and is filed under [Columns](#).