“This Land is Your Land: This Land is My Land”: Land Use in New Jersey

Prepared by: New Jersey Civic for Civic Education, Rutgers University, Piscataway, NJ

Lesson Grade Level: 9-12

New Jersey Social Studies Standards:


6.1.12.EconNE.6.a: Analyze the impact of money, investment, credit, savings, debt, and financial institutions on the development of the nation and the lives of individuals.

6.1.12.HistoryCC.8.a: Make evidence-based inferences to explain why the Great Migration led to heightened racial tensions, restrictive laws, a rise in repressive organizations, and an increase in violence.

6.1.12.GeoPP.13.a: Make evidence-based inferences to determine the factors that led to migration from American cities to suburbs in the 1950s and 1960s and describe how this movement impacted cities.

6.1.12.EconNE.13.b: Evaluate the effectiveness of social legislation that was enacted to end poverty in the 1960s and today by assessing the economic impact on the economy (e.g., inflation, recession, taxation, deficit spending, employment, education).

6.1.12.CivicsPI.14.c: Analyze how the Supreme Court has interpreted the Constitution to define and expand individual rights and use evidence to document the long-term impact of these decisions on the protection of civil and human rights.


Source: http://www.plansmartnj.org/core-practices/land-use-and-regional-planning/
6.1.12.GeoHE.14.a: Evaluate the impact of individual, business, and government decisions and actions on the environment and climate change and assess the efficacy of government policies and agencies in New Jersey and the United States in addressing these decisions.

6.1.12.HistorySE.14.c: Analyze the use of eminent domain in New Jersey and the United States from the perspective of local, state, and the federal government as it relates to the economy.

6.1.12.GeoHE16.a: Explain why natural resources (i.e., fossil fuels, food, and water) continue to be a source of conflict and analyze how the United States and other nations have addressed issues concerning the distribution and sustainability of natural resources and climate change.

6.1.12.HistoryCC.16.b: Determine past and present factors that led to the widening of the gap between the rich and poor, and evaluate how this has affected individuals and society.

6.3.12.CivicsPD.1: Develop plan for public accountability and transparency in government related to a particular issue(s) and share the plan with appropriate government officials.

Objectives: Students should be able to:

- Identify the source of the right to own property
- Identify the source of the government’s authority to take property for a public purpose
- Explain the term “eminent domain” and how it works
- Analyze the varying perspectives on the issue of eminent domain.
- Describe the current state of eminent domain law in New Jersey
- Explain why government should sometimes encourage the preservation of certain land
- Analyze the varying perspectives regarding the government’s preservation of open spaces
- Explain the NJ Supreme Court’s decision in Mt. Laurel and the varying perspectives on land development

Lesson Length: 4 – 5 days

Compelling question: When should the government limit individual use of private property for public purposes?

The right to hold property without interference by the government is enshrined in the Fifth Amendment to the U.S. Constitution (“nor be deprived of life, liberty or property without due process of law”) and applied to states in the Fourteenth Amendment (“nor shall any state deprive any person of life, liberty, or property, without due process of law”).

The New Jersey State Constitution includes the right to property in the first paragraph in the list of rights: “All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.” (NJ Const., Art. I, para. 1). Yet, clearly the right to own private property is not without its limitations since the federal and state governments have often imposed many limitations for the common good.

Land use and zoning laws regulate the use and development of public and private real estate. Three lessons involving the regulation of private land for public purposes are included:

1. The use of eminent domain
2. The state’s efforts to protect environmentally sensitive areas
3. Exclusionary zoning

Teachers may want to use only one or two or all of the lessons.
I. The use of Eminent Domain

Background

While drafting the U.S. Constitution, conflicting ideas about private property and public uses resulted in a compromise: the final clause of the Fifth Amendment provides that private property shall not be taken “for public use, without just compensation”. The New Jersey Constitution repeats this requirement: “Private property shall not be taken for public use without just compensation. Individuals or private corporations shall not be authorized to take private property for public use without just compensation first made to the owners.” (NJ Const., Art. I, Para. 20—see Handout 1). Both provisions make it clear that the government MAY take private property for public use but that the owner must be paid just compensation. This process is called “eminent domain”.

The practice of eminent domain came to the American colonies as part of British common law. The use of eminent domain to seize private property for public use has been upheld by the Supreme Court. (See United States v. Gettysburg Electric Railway Co., 160 U.S. 668 (1896), where a railway was seized for Gettysburg Battlefield historic preservation). Over the years, municipal, state and federal governments have taken land needed for roads, post offices, parks, town halls, schools and other public uses, paying the property owner the fair market value, without much dispute. A 1954 Supreme Court decision in Berman v. Parker upheld the government’s power to use eminent domain to ensure that the community is not only healthy, clean, and safe, but that it is also beautiful, spacious, and well balanced. Although takings that are not “for public use” would likely violate due process rights under the Fourteenth amendment, the term “public use” could properly be construed to include anything in the public’s interest, or for the public’s welfare.

The government entity seeking to take land from a private owner and use it for a public purpose first tries to negotiate fair compensation with the property owner. If such negotiations fail, the government entity will institute a lawsuit in a New Jersey Superior Court to determine if the government entity has the authority to exercise eminent domain. If the court determined that the proposed purpose is a public use, the judge will then appoint three commissioners to determine the compensation to be paid.

Activity 1: What is eminent domain?

Students should use Handout 1: the United States Constitution and Article I of the New Jersey Constitution and Handout 2: Hypothetical case involving eminent domain:

Rita is a 78 year old retired grandmother who was born and raised in New Jersey. In fact, Rita has lived in the same house in Old Style, New Jersey for over fifty years. Although the area is run down, she loves where she lives and enjoys her frequent walks to downtown Old Style. She knows most of her neighbors and even knows some of the local politicians.

One day, Rita starts to hear rumors that the city government wants to tear down some of the houses within her development to build a highway connecting Old Style with New Style. She is frightened by the prospect of losing her home and her identity, but is sure that she has some rights.

Questions for Class Discussion:

1. Does Rita have any legal rights to stay in her home?

2. What are Rita’s rights under the U.S. Constitution?

3. What are Rita’s rights under the New Jersey Constitution?

4. Is building a highway a legitimate reason for the state to take private property?

5. Do you think that the following should be considered “public use”?
   - The city government wants to take a house to build a new high school
   - The city government wants to take a store from a recently arrived immigrant to build a new public parking lot in the business district
   - The county government wants to take a place of worship to build a county jail
   - The state government wants to remove graves from a portion of a cemetery to construct a highway

6. Can the government take the private property even if the owner has no desire to part with it?

7. How should “just compensation” for the property be determined?

8. Do you think that it is fair that the government can take someone’s private property?

Student answers may vary according to their ideas on public use. Both Constitutions explain that the government can take private property for public use. Public use is not defined by either Constitution, but rather has been left up to the Courts. The development of a highway would meet the standard for public use since it will benefit the public by providing a more direct route between Old and New Style.

A strict reading of the federal and state Constitutions would suggest that if the government provides you with just compensation and the land is used for public use, they can take private property even if the owner does not want to give it up.
“Just compensation” is supposed to leave the homeowner in the same relative position, insofar as this is possible, as if the taking had not occurred. This is often determined by reference to the fair market value of the property at the date of the taking. Fair market value is the price for which the property would sell if there was a willing buyer who was under no compulsion to buy and a willing seller under no compulsion to sell. A comparable sale approach is often used when the subject property is similar to other properties which have been sold, or perhaps are currently for sale in the subject property neighborhood. This method works well for residential properties and for vacant land.

Some students may feel very sympathetic to Rita’s cause and that taking her house would be unfair. They are accurately reflecting that condemnation—the forced sale of property—is a harsh remedy. Others may argue that because the highway is going to benefit the community, the acquisition of her property is necessary.

Activity 2: How expansive is the term “public use”?

Background

Beginning in the 1950s, states and municipalities began to use eminent domain to redevelop run-down urban areas. For example, ramshackled homes in an impoverished neighborhood in San Francisco were replaced with cosmopolitan hotels and other modern edifices, evicting more than 4,000 poverty-stricken residents, and over 700 businesses. Such actions were approved by the courts.

In a 5/4 decision in Kelo v. City of New London, 545 U.S. 469 (2005), the U.S. Supreme Court permitted the taking of private property and transferring it to a private developer. In that case, the Court concluded that economic redevelopment met the constitutional mandate of public use. The plan was to raze a run-down area of New London, Connecticut in order to revitalize the neighborhood and attract large companies, bringing with them much-needed jobs. Pfizer Pharmaceutical expanded to New London, and an upscale hotel, athletic center, conference center, and office park were planned to further update the area. However, the pharmaceutical company packed up and left town a mere five years after the ruling, taking with it its more than 1,000 jobs. The 70-acre stretch of land remains mostly empty since the plan for more than 100 rental condominiums to take the place of the previously planned buildings has been held up in a contract dispute.

Kelo v. New London: Expanding the Parameters of Eminent Domain: After reviewing the basic facts (Handout 3) and decision (Handout 4) in the Supreme Court case, Kelo v. New London, 545 U.S. 469
(2005), have students complete *Handout 5: Defining the Parameters of Eminent Domain* (completed chart is below) and then discuss whether they think that the government’s acquisition of the property serves a “public use” or whether this is an unnecessary expansion of the taking clause.

*Kelo v. New London*: Expanding the Parameters of Eminent Domain

<table>
<thead>
<tr>
<th>QUESTIONS</th>
<th>ANSWERS</th>
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<tbody>
<tr>
<td>1. For what purpose did the government attempt to take the private property?</td>
<td>The government wanted to take the private property to economically revive this area in Connecticut. According to the government, this area was not thriving and therefore improving the area could help develop the city.</td>
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<td>2. Do you think that the government’s reason for taking the land was to benefit the public? Explain.</td>
<td>Answers will vary. Students may argue that taking the land would benefit the community by reviving a struggling economy and providing more jobs. On the other hand, students may recognize that the requested action would not benefit the public in the same way as building a school or a highway. Rather, the taking of this property would merely benefit the private companies and not the entire community.</td>
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<td>3. Did the homeowners want to move? Why did they oppose the government’s use of power?</td>
<td>No, some homeowners did not want to move. They asserted that the government’s attempted acquisition of their property was not Constitutional. They further averred that economic development and revitalization is not a “public use” as mandated by the Fifth Amendment.</td>
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<td>4. What additional questions would you want answered to determine whether this was a valid exercise of the government’s power?</td>
<td>Answers will vary but may include the following: 1. How many new jobs would be created? 2. Could this lead to a slippery slope where the government seized land to “revitalize” it? 3. Did the people of New London agree with the government’s actions? 4. Where would the poor people who live in the area be able to live?</td>
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<td>5. What was the major issue raised before the United States Supreme Court?</td>
<td>Could the government constitutionally take property and sell it to a private company to revitalize an area? Does this action fall within the meaning of the Fifth Amendment’s “public use” requirement?</td>
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<td>6. Based on the information provided, what is your opinion? Do you think that the government acted properly in acquiring the private property?</td>
<td>Answers will vary. Some may argue that the government should be able to take the property because this area was blighted and struggling economically. By using the power of eminent domain, the area could improve dramatically and create new jobs and increased wealth. On the other hand, some students may see a potentially dangerous slippery slope issue. If the government has the right to seize this property for economic revitalization, what is to stop the government from taking almost any property to make it more economically valuable.</td>
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Activity 3: New Jersey’s struggle to define eminent domain

Background

The U.S. Supreme Court decision in *Kelo v. New London* that it was consistent with the U.S. Constitution for the government to take private property for economic development and revitalization was a surprise for much of the nation. Many states responded by enacting laws to afford property owners greater protection against the wrongful seizure of their property through eminent domain; others created or tightened restrictions on the use of eminent domain for any purpose other than “traditional” purposes such as roads, schools, parks and other typical government purposes.

New Jersey is a state that has traditionally welcomed the powers of eminent domain. Not only does Article I, Clause 20 of the New Jersey Constitution allow the government to take private property “for public use” and pay the owner “just compensation”; Article VIII, Section 3, Clause 1 further explains that “The clearance, replanning, development or redevelopment of blighted areas shall be a public purpose and public use, for which private property may be taken or acquired”. The question, therefore, became: would this decision embolden the New Jersey government to use their power to take more property and potentially revitalize areas or would the legislature try to curtail the government’s actions?

The New Jersey Legislature first defined the term “blighted” in 1949 and has since expanded its definition. The most significant change came in 1992 when the New Jersey Legislature changed the term “blighted” to an “area in need of redevelopment.” Blight came to be land that is “underutilized” or “not fully productive” or “consistent with smart growth planning principles.” (See Public Advocate Ronald Chen’s Remarks, May 18, 2006). However, since the *Kelo* decision, efforts have been made to limit the government’s power of eminent domain. After several tries, a bill was finally enacted in New Jersey in 2013 to set a higher bar for municipalities to use eminent domain laws to claim underutilized properties as part of a redevelopment plan. Municipalities would need to prove with substantial evidence that the building meets the criteria of blight, which is “deterioration or stagnation that negatively affects surrounding properties.”

Activity 3A: Compare the New Jersey Superior Court decision in *Casino Reinvestment Development Authority v. Birnbaum* with *Kelo v. City of New London*.

The Atlantic City Reinvestment Development Authority wanted to take Charlie Birnbaum’s three-story brick walkup in Atlantic City that his family has owned for 45 years through eminent domain as part of a redevelopment project slated near the vacant Revel Casino Hotel. After reconsideration in light of the uncertainty surrounding Atlantic City and fear that the property might lie idle, a New Jersey Superior Court asked for reasonable assurances that the casino redevelopment project will actually be built before approving eminent domain in 2016. The lower court dismissed the complaint for condemnation of a residential property in furtherance of its mandate to promote tourism in Atlantic City. The NJ Appellate Court affirmed this decision in a 2019 decision and dismissed the petition for condemnation because there was only an interest in acquiring the land for future tourism needs and it was not certain that the property would be redeveloped for a public purpose within the foreseeable future. *Casino Reinvestment Development Authority v. Birnbaum* at https://law.justia.com/cases/new-jersey/appellate-division-published/2019/a0019-16.html.

Ask students: What do you think?

1. Does the *Kelo* decision give the government too much power by allowing the government to look at land and think how it could be better utilized? Support your opinion.
2. Does the *Birnbaum* decision better balance the rights of private property owners and the governmental desire to more productively use property in areas in need of redevelopment?  
3. How would you balance the rights of property owners and the government’s interest in redeveloping areas that are blighted and economically struggling?

II. Protecting Environmentally Sensitive Land

New Jersey is the most densely populated state in the nation, crisscrossed by highways, railroads, industry, commercial property and sprawling suburbs. In spite of its name as the ‘Garden State,” a large amount of the land area is paved over and developed. Yet, the state is also the site of environmentally sensitive meadowlands and pinelands, which protect our water and provide routes for migratory birds and animals. Even before the Environmental Protection Agency was created by the federal government in 1970, New Jersey began efforts to protect its fragile natural resources. One method of protection is to use eminent domain to purchase environmentally sensitive areas to preserve them from development. Another method is to establish procedures for land use that private owners must comply with in order to maintain environmentally sensitive areas.

Teachers may want to divide students into three groups to consider the environmentally protected areas in New Jersey’s Meadowlands, Pinelands, and Highlands. After the small groups have come to their conclusions, teachers may want to have the three groups jigsaw and share their responses and reasoning with the other two groups or present their responses and reasons to the whole class.

The Meadowlands

![The Meadowlands](http://www.njsea.com/njmc/about/meadowlands-district.html)

Background

According to a report by the New Jersey Audubon Society, the Meadowlands is a major part of the Atlantic Flyway migration route. Two hundred and sixty-five species of birds, including great and snowy egrets, tree swallow, peregrine falcon, osprey, black-crowned night heron, ruddy duck, red-tailed hawk, double-crested cormorant, and American bald eagle, have been spotted in the Meadowlands. But the area had been used as a dumping ground, and the Hackensack River and its marshes were often seen as places to fill for commercial and industrial development. Bordered by Route 46 on the north; Routes 1 and 9 (also known as Tonnelle Avenue) and the freight lines owned by Norfolk Southern and CSX Corp. on the east; the Port Authority of New York and New Jersey’s Trans-Hudson (PATH) commuter rail lines and the Pulaski Skyway on the south; and Route 17, the Pascack Valley rail line and the
Kingsland rail line on the West, the Meadowlands is an area of wetlands in 14 municipalities in Hudson and Bergen counties. In 1969, the New Jersey Meadowlands Commission (NJMC) was created as a regional zoning, planning and regulatory agency to protect the delicate balance of nature, provide for orderly development, and manage solid waste activities in the New Jersey Meadowlands District.

The NJMC has acquired more than 1,800 acres of the remaining wetlands in the Meadowlands District for preservation and enhancement. The research performed by the Natural Resources Management Department has developed ways to improve and protect vital natural resources in the Meadowlands District. The Commission operated as an independent state agency between 1969 and 2015, loosely affiliated with the New Jersey Department of Community Affairs. In 2015, it was merged with the New Jersey Sports and Exposition Authority through legislative action but continues to protect the Meadowlands area.

**Activity 4:** Have your class identify the advantages and disadvantages of having a regional authority to coordinate zoning, planning and regulation in an environmentally delicate area.

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<tr>
<th>Advantages</th>
<th>Disadvantages</th>
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**Activity 5: For Small Group #1:** New Jersey would like to sell 400 acres of the protected 1,800 acres regulated by the New Jersey Meadowlands Commission to a private university for a research facility similar to Woods Hole in Massachusetts. The sale of the land could bring over $100 million in revenue to New Jersey and provide important scientific research for the future. An estimated 5,000 people would be employed in this facility. Determine if this proposal should be placed on the ballot for voters to decide.

**The Pinelands**

**Background**

New Jersey’s Pinelands include over a million acres of pine oak forests, tea-colored streams and rivers, spacious farms, crossroad hamlets, and small towns stretched across southern New Jersey. In the country’s early years, the area was a source of lumber, iron and glass. Although it continues to be a site for growing cranberries and blueberries, as these early industries died out and major roads bypassed the area, the "Pine Barrens" gradually became a remote part of New Jersey with local legends, such as the "Jersey Devil". By the end of the 1960s, the area was being considered for potential housing and other development, which would have compromised this unique environmental asset. In 1978 Congress created the Pinelands National Reserve, the country’s first. The Reserve was to be a place where governments at every level -- from Washington to local planning boards -- could help shape the Pinelands'
future in keeping with some basic guidelines. The state was to take the lead in evaluating the Pinelands’ resources and planning how best to balance their protection with new development.

Governor Brendan T. Byrne established the Pinelands Commission by executive order on February 8, 1979 and gave it responsibility for these tasks. At Governor Byrne’s request, the New Jersey Legislature passed the Pinelands Protection Act in June, 1979, affirming the temporary limitations on development that the Governor had put into effect while a plan to protect the Pinelands was being created. It also established a requirement that county and municipal master plans and land use ordinances be brought into conformance with the Comprehensive Management Plan that the Commission developed.


“...a certain portion of the pinelands area is especially vulnerable to the environmental degradation of surface and ground waters which would be occasioned by the improper development or use thereof; that the degradation of such waters would result in a severe adverse impact upon the entire pinelands area; that it is necessary to designate this portion as a preservation area, wherein more stringent restrictions on the development and use of land should be utilized and public acquisition of land or interests therein should be concentrated; and, that in order to facilitate such acquisition, and otherwise to effectuate the provisions of this act and the Federal Act, it is further necessary to establish certain notice requirements and procedures for the purchase of land or interests therein in such area. “

“...the current pace of random and uncoordinated development and construction in the pinelands area poses an immediate threat to the resources thereof, especially to the survival of rare, threatened and endangered plant and animal species and the habitat thereof, and to the maintenance of the existing high quality of surface and ground waters; that such development and construction increase the risk and extent of destruction of life and property which could be caused by the natural cycle of forest fires in this unique area; and, that, in order to effectuate the purposes and provisions of this act and the federal
act, it is necessary to impose certain interim limitations upon the local approval of applications for development in the preservation area, and upon certain State and local approvals in the pinelands area...”

Land Acquisition in the Pinelands

The Commission proposed that the state acquire about 100,000 acres in the Pinelands, adding to the then current total of 265,000 acres of publicly owned open space in the area. This would be done through negotiation with the private owners or eminent domain. The estimated cost was $81 million, which would be obtained from various federal and state sources. The federal government approved the plan and a $8.25 million federal acquisition expenditure for 11,000 acres in Ocean County’s environmentally critical Cedar Creek watershed. Governor Christine Todd Whitman signed the Garden State Preservation Trust Act in June 1999, which allocated nearly $1 billion over ten years to purchase one million mostly rural acres. As of June 2016, nearly half of the Pinelands Area (460,000 acres) has been permanently preserved, the majority through purchases using state and federal funds.

Local implementation
The 1979 Pinelands Protection Act envisioned that local governments would be primarily responsible for implementing the Plan. The Act set forth a procedure under which county and municipal master plans and land use ordinances would be made consistent with the Plan, including mandatory density limitations and the requirement that growth areas accept development credits. All seven counties and 53 Pinelands Area municipalities have completed the ordinance revision process. Anyone who wants to undertake any form of development as defined by the Plan must file an application with both the Commission and municipality. Applications are first reviewed by Commission staff to determine whether they are complete. Once the Commission has reviewed a project, the normal municipal review process begins. Municipal authorities are required to notify the Commission when they are scheduled to consider an application and when it receives preliminary or final local approval. These local approvals are then subject to Commission review to ensure that they are consistent with the Pinelands Comprehensive Management Plan.

Sounds like a great idea! Where is the controversy? As NJ Monthly Magazine explained in a 2008 article about the Pinelands: “Developers itch to transform the Northeast’s last seaboard wilderness, especially with the U.S. Census showing the state’s largest 1970s population spurts in Monmouth and Ocean counties. Among their proposed “improvements”: a supersonic jetport four times larger than Newark, LaGuardia, and JFK combined. (https://njmonthly.com/articles/towns-schools/30-and-counting-the-pinelands-protection-act-2/)

**Activity 6:** Have your class discuss how the desire to develop land can be balanced against the need to protect fragile ecosystems.
Activity 7: For Small Group #2: A private wind energy company has made a proposal to purchase 4,000 acres of protected land in the Pinelands to create a wind farm of 5,500 wind turbines to provide safe and clean energy for the 10 counties south of the Raritan River. Each wind turbine can produce electricity for about 400 homes. The cost to purchase the land would be $80,000 per acre, for a total gain of $320 million to the State of New Jersey. In addition, there would be continuing annual income to the state from property and corporate taxes, as well as clean energy and lower energy costs for approximately 2.2 million people. The advantage of the location in the Pinelands Protection Area is both its proximity to offshore winds and a longitudinal distance of some 75 miles.

The Pinelands Commission needs to approve or disapprove of this development request in the Pinelands Protected Area before submitting it to the 53 municipalities in the Pinelands area. Their decision will also establish a precedent for other requests for developmental use including a large airport, ecotourism, and a research facility. The economic needs of New Jersey have changed since the Pinelands Protection Act was passed in 1979 and revenue from the sale of land and income from development is needed by local and state governments. Should the Pineland Commission approve or disapprove this development request?

Protecting the Highlands

The Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 et seq. was signed in 2004 to protect drinking water for over 5.4 million people (more than half the population of the state) and to help preserve New Jersey’s dwindling open space. New Jersey Highlands Region includes over 800,000 acres in 88 municipalities in seven counties (Bergen, Hunterdon, Morris, Passaic, Somerset, Sussex and Warren). The Highlands Commission has developed rules for land use, water resource and environmental protection and established a consolidated Highlands permitting review and approval process for activities constituting major Highlands development proposed in the Preservation Area. The regulations do not apply to the Highlands Planning area.

Unlike the Meadowlands or the Pinelands, which were not highly developed before the imposition of regulations, the Highlands region was a well-developed suburban area. The act grandfathered in existing homes, houses of worship, mining, quarrying, or recycling, federal military installations, or approvals for land development that existed in 2004.

The act requires approval from the Department of Environmental Protection for “Major Highlands development,” which includes (1) any non-residential development in the preservation area; (2) any
residential development in the preservation area that requires an environmental land use or water permit or that results in the ultimate disturbance of one acre or more of land or a cumulative increase in impervious surface by one-quarter acre or more; (3) any activity undertaken or engaged in the preservation area that results in the ultimate disturbance of one-quarter acre or more of forested area or a cumulative increase in impervious surface by one-quarter acre or more on a lot; or (4) any capital or other project of a State entity or local government unit in the preservation area that requires an environmental land use or water permit or that results in the ultimate disturbance of one acre or more of land or a cumulative increase in impervious surface by one-quarter acre or more.

Instead of the state or local government exercising eminent domain and purchasing the private property of landowners in the Highlands region, the property owner’s ability to expand, change or revise its use is subject to regulation. Some homeowners and builders protested that this reduced the value of their private property to the point where it constituted a taking without compensation.

Activity 8: What is Fair? Balancing Needs and Rights

Have students consider the following: There are 244 municipalities in 16 New Jersey counties, most of them outside of the Preservation area, that rely on the Highlands for part of their water supply (See Handout 6 or for an Interactive Map go to: https://www.nj.gov/njhighlands/gis/interactive_map/#/-74.66142/40.81373/3).

"In the Upper Passaic River Watershed Management Area, encompassing parts of Morris, Sussex and Essex counties, the deficit could grow from the current 2 million gallons per day to 5 million daily by 2020. The Arthur Kill WMA is estimated to double its deficit by 2020. And “masked” within larger watersheds are smaller watersheds – for example, in the Highlands – that are also in deficit as documented by the Highlands Regional Master Plan.

According to the report, total peak water demands are currently estimated at about 1.3 billion gallons of water per day, leaving a water supply surplus of 212 million gallons. But a surplus in Sussex County
doesn’t help Cape May. Water supplies are not often readily transportable to places with water deficits.

And the surplus will quickly dwindle. By 2020, demand for potable water will rise by an additional 120 million gallons a day, cutting the surplus by more than half."

Should the owners of private property in the Highland Preservation area be restricted in their use of their property in order to make sure that clean water is available for New Jersey residents who live outside the Preservation area?

Activity 9: For Small Group #3:

In 1980, you bought a small house on a 100-acre piece of property that is now in the Highlands Preservation area. You want to sell your property to a developer and retire now. For the last several years, you have been negotiating with a developer to purchase your property. Since the developer is limited in the number of houses he can place on the property, the selling price has been reduced in half, greatly reducing your profit, which is what you were planning on living on during your retirement.

- Do you think this is fair?
- How restrictive can regulations be before they constitute a taking by the state that should be compensated under the U.S. and N.J. Constitutions?
- Do you think the plan for the Highlands should be revised to include fair compensation for lost property values?

III. “Not in My Backyard”: Restrictive Covenants, Redlining, Exclusionary Zoning and Mt. Laurel

Background

Public and private efforts to keep out “undesirables”—often people of color, other ethnicities, or those with little wealth—have existed for many years, including restrictive deeds, redlining and exclusionary zoning. These policies have resulted in a state that has wealthy—primarily white—suburbs with public amenities and high quality schools, and poor—primarily black and Hispanic—cities often with failing schools and high crime rates.

Although the U.S. Supreme Court held in Buchanan v. Warley, 245 U.S. 60 (1917) that a city ordinance prohibiting the sale of real property to blacks violated the Fourteenth Amendment, it only dealt with public statutes. Instead the practice of private, racially restrictive covenants or deeds evolved as a way to require residential segregation in response to the Great Migration of Southern blacks to the North during the period 1910-1960. A restriction written into a deed to a home could require a homebuyer to abstain from selling to certain categories of people. E.g.: "This lot shall be owned and occupied by people of the Caucasian race only." The imposition of private restrictions on real estate is a concept that had been in use for centuries. At common law, the right to own and enjoy real estate was considered to include, as an element of ownership, the right to restrict how that property might be used in the future. Therefore, it was not uncommon for a landowner to convey his or her property subject to any one of a number of possible restrictions. Such covenants or deed restrictions were legally binding on the buyer. In 1948, the U.S. Supreme Court ruled that states could not enforce such racial restrictions. In 1968, Congress outlawed them altogether. But for a century after the Civil War, such
practices were legal and resulted in the exclusion of unwanted immigrant groups—primarily African-Americans—from large parts of northern cities and towns, including many in New Jersey.

**Redlining** is the practice by lenders of denying or limiting financial services to specific neighborhoods, generally because its residents are people of color or are poor. While discriminatory practices existed in the banking and insurance industries well before the 1930s, the New Deal’s Home Owners’ Loan Corporation (HOLC) instituted a redlining policy by developing color-coded maps of American cities that used racial criteria to categorize lending and insurance risks. New, affluent, racially homogeneous housing areas received green lines while black and poor white neighborhoods were often circumscribed by red lines denoting their undesirability. Banks and insurers soon adopted the HOLC's maps and practices to guide lending and underwriting decisions. In addition, the Federal Housing Administration, created in 1934, used the HOLC's methods to assess locations for federally insured new housing construction, legalizing and institutionalizing racism and segregation by denying mortgages based upon race and ethnicity.

Although Title VIII of the Civil Rights Act of 1968 (Fair Housing Act) outlawed discrimination in the sale, rental and financing of dwellings based on race, color, religion, sex or national origin (amended in 1988 to include disability or familial status), and enabled the Justice Department to bring suits on behalf of victims in federal district courts, the practice still exists. A real estate broker may “forget” to show an African American family houses in certain areas. A bank may decline to provide a mortgage.

As recently as 2022, a New Jersey bank, Lakeland Bank, accused by the Justice Department of redlining between 2015 and 2021 to avoid making loans in predominantly Black and Latino neighborhoods in and around Newark, settled the case by agreeing to create a $12 million fund to help provide opportunities for Black and Latino borrowers. Borrowers in affected communities will be eligible for up to $15,000 to make it easier to purchase or maintain homes. Lakeland is merging with Provident Bank to become one of the largest banks in the state. This agreement follows similar settlements regarding redlining with lending institutions in Houston, Memphis and Philadelphia.

**Zoning** is the most common form of land-use regulation, used by municipalities to control local property development. Zoning regulations typically divide a municipality (such as a city) into residential, commercial, and industrial zones in order to keep each zone optimized for its intended purpose. For example, zoning laws reassure homeowners that a factory or department store will not open across the street. Zoning laws also regulate specific requirements for the types of buildings allowed in each zone (height restrictions, etc.), location of utility lines, parking requirements, and other regulations.

Zoning laws began in this country around the turn of the 20th century with the concentration of populations in cities and the development of automobiles, roads and rapid transit. States and municipalities developed laws and regulations based on their police powers to regulate behavior and enforce order for the betterment of the health, safety, morals, and general welfare of their inhabitants. The courts have generally supported ordinances forbidding the erection in designated residential districts of businesses, retail stores, and other like establishments. They have also supported municipal zoning ordinances that excluded apartment houses in single-family areas as within the police powers of the municipality to protect public health, safety, morals, or general welfare. In *Village of Euclid v. Ambler Realty Co.*, 272 US 365 (1926), the U.S. Supreme Court affirmed that the use of zoning was constitutional so long as it was for a public purpose. See [http://www.law.cornell.edu/supct/html/historics/USSC_CR_0272_0365_ZO.html](http://www.law.cornell.edu/supct/html/historics/USSC_CR_0272_0365_ZO.html).

In 1927, an amendment was added to the 1844 New Jersey Constitution authorizing the legislature to permit municipalities to enact zoning ordinances. Starting after World War II, many growing suburban
New Jersey communities regulated the use of land in their borders to specifically prevent the development of housing affordable to lower income households. By the late 1960s, such regulations, commonly known as exclusionary zoning, had become extremely widespread. The zoning ordinances employed by municipalities to accomplish this goal included minimum lot sizes, homes with minimum square footage, and prohibitions against multifamily housing or mobile homes. The legality of such zoning requirements was routinely upheld by the New Jersey courts until the Mt. Laurel decision by the New Jersey Supreme Court in 1975.

The Mt. Laurel decision

During the 1960s, while the mostly white, middle class residents of Camden, NJ, were fleeing to the suburbs, primarily Cherry Hill; nearby Mt. Laurel Township, mostly farmland less than 20 miles away in Burlington County, was attempting to transform itself into an affluent suburb with more than 10,000 new homes, industrial parks and commercial center. A black community had resided in Mt. Laurel since the Revolutionary War, with many residents tracing their lineage to slaves who escaped from the South and came North by way of the Underground Railroad. Mt. Laurel was both a railroad stop and a destination point. Black residents were being forced from their homes to make way for the planned development, which did not include any plans for low-income housing. A group of low-income African-Americans, many of them longtime residents, and the Southern Burlington County NAACP joined forces with the Camden County NAACP and black and Hispanic residents of the City of Camden to file class action litigation against Mt. Laurel Township. The case reached the New Jersey State Supreme Court by 1975.

In South Burlington County N.A.A.C.P. v. Township of Mount Laurel, 67 NJ 151 (1975) (Mt. Laurel I), the court held that zoning ordinances which make it physically and economically impossible to provide low and moderate income housing violated the New Jersey Constitution and set forth important guidelines for implementing its decision. The decision was controversial from the start. The court was accused by political leaders of violating the separation of powers clause. Local municipalities refused to yield their home rule powers. The decision initially produced more litigation than lower cost housing because many municipalities refused to implement it.

Eight years later in South Burlington County N.A.A.C.P. v. Township of Mount Laurel, 92 N.J. 158 (1983) (Mt. Laurel II), the Supreme Court put teeth in the original decision by creating a fair share formula to measure each municipality's obligation to provide affordable housing, and by fashioning a "builder's remedy" to force municipalities to fulfill that obligation. The responsibility for working out the details of this decision was assigned to three specially designated trial judges.

The New Jersey Legislature responded in 1985 by passing the Fair Housing Act. Accepting the premise that there was a constitutional obligation for municipalities to foster the development of some degree of affordable housing, this legislation created an administrative agency--the Council on Affordable Housing (COAH)--to establish regulations whereby the obligation of each municipality in terms of the number of units and how the obligation could be satisfied. A municipality which elected to participate in COAH's administrative process prior to being sued was provided with protection from litigation and especially the builder's remedy. The Supreme Court upheld the Fair Housing Act in Hills Development Corp. v. Bernards Township, 103 NJ 1 (1986) and most cases previously being heard by designated judges were transferred to COAH. In 1986, COAH released the First Round rules (1987-1993), which required 10,849 low- and moderate-income homes per year statewide. In 1994, COAH released the Second Round rules (1993-1999 extended to 2003), which required 6,465 low- and moderate-income homes per year statewide.
Forced by the Court to adopt new rules, COAH did so in 2005 but cut the housing obligations of NJ’s municipalities in half—to 3,515 units per year—and permitted municipalities to restrict half of their units to seniors and transfer half of their obligation to poor municipalities. An appeal was filed by the Fair Share Housing Center, the New Jersey Builders Association, the Coalition on Affordable Housing and the Environment, and ISP Management Co., Inc. on the grounds that COAH’s rules were unconstitutional. The New Jersey State League of Municipalities and New Jersey Institute of Local Government Attorneys supported the regulations. In 2007, the New Jersey Appellate Division found that the regulations violated the constitutional mandate of Mt. Laurel and the statutory requirements of the Fair Housing Act. The Court required a check on municipal discretion, writing that “If municipalities with substantial amounts of vacant land and access to infrastructure can decide for themselves whether and how much to grow, it is highly likely that housing opportunity will fall far short of identified housing need.” The Court prohibited COAH from allowing municipalities to restrict half of their units for seniors, finding that doing so “discriminates against low- and moderate-income households with children.” COAH missed the deadline to adopt revised regulations set for it by the Appellate Division and finally adopted them in October 20, 2008.

The New Jersey Supreme Court’s 1983 ruling in the Mount Laurel fair-housing case is regarded as one of the most important civil rights decisions of modern times. The ruling, which greatly influenced fair-housing policy across the nation, limited the use of exclusionary zoning as a means of preventing the construction of affordable housing in wealthy communities. However, NJ Governor Chris Christie tried to abolish COAH twice and ultimately was told by the courts that he did not have the authority to do so. Legislators have sought to do the same, but have not been able to agree with Christie on a new mechanism to replace the COAH process. The council has met only once since the court ordered its reinstatement in 2015. And, while COAH has not been functioning, little affordable housing has been built.

Municipalities had been arguing before Superior Court judges — who are setting the housing obligations for communities — that because the FHA only specifies that towns are required to provide for past unfilled needs, present units in poor condition and projected future needs, they should not have to provide homes for people who couldn’t afford housing between 1999 and 2015. During that time, called the “gap period,” the state had no housing rules because COAH was unable to adopt regulations that were constitutional in the eyes of the courts. The New Jersey Supreme Court ruled in 2017 that New Jersey municipalities must build thousands more units for its low-income residents to make up for the 16 years that the state didn’t address those needs.

Support and Opposition

Opposition to Mt. Laurel rests on fears that opening the doors to the poor will result in suburban sprawl, more traffic on roads, destruction of historic New Jersey small town architecture, an influx of school age children, an increase in crime, and a reduction in property values. Some of these fears are based on fact. For example, higher density low-income housing may affect the tax rate and the character of the community. However, many of the fears are unfounded. According to a report from Princeton University, the Mt. Laurel approach has led to the creation of 60,000 homes for low- and moderate-income working families, with another 40,000 units in the pipeline. Comparing current and former residents of a Mt. Laurel development that opened in 2000, with similar families who had applied for housing but wound up elsewhere, the study found that the development’s residents had higher rates of employment and family income and significantly lower rates of welfare dependency. They were also more closely involved in educating their children, who did well academically, even though they had moved to more competitive schools. Surrounding property values did not go down, and taxes did not go
up. The development blended in so well with the surrounding area that many people were not aware that it existed.

A 2017 Quinnipiac University poll found that two-thirds of New Jerseyans favor the placement of low and moderate-income housing in their communities, with only 14 percent having an unfavorable view. However, 53 percent also said they think their community has “the right amount” of affordable housing. Voters applaud the decision, but they say their own community has the right amount of affordable housing, meaning they might not be happy to see any more.”

![Mt. Laurel law and moderate-income housing](http://www.njspotlight.com/stories/17/08/09/will-coah-decision-be-derailed-by-judge-s-ties-to-developer/)

**Activity 10:** Have students read Handout 7: Background and Handout 8: Directions and hold the planning board hearing.

**Fact Pattern**

Hidden Hills is a quiet, scenic, up-scale residential community in New Jersey. Most of its residents (population 5000 in the 2000 census) live on several acre lots and small farms. It is approximately 15 miles from highly urbanized Rock City (population 60,000). The population of Hidden Hills remained fairly stable until recently when the construction of a major highway directly connected Hidden Hills and Rock City to the cities in the east and the farmland to the west. New office buildings have sprung up along the highway and old farms have been broken up causing the population of Hidden Hills to increase to 12,000 by 2015. Many Rock City residents work in the stores and office buildings along the highway. Hidden Hills has a one-acre minimum lot requirement. Houses sell for $500,000 to $3 million.

In 2017, the Slimprofit Corporation, which has an excellent reputation for building good quality, esthetically pleasing moderate-income housing in the northeast, proposed to build 300 townhouse condominiums in Hidden Hills. The Slimprofit proposal includes 240 market rate houses, which will sell for $400-500,000 and 60 Mt. Laurel units, which would sell for $120-200,000. Access to the proposed townhouses would be off of a busy road, Raceway Road, which currently runs through one to four acre lots, surrounded by a few remaining farms. Slimprofit’s expert, Jim Jump, a planner, has estimated that the proposed development would generate approximately 150 school-age children for Hidden Hills, as well as $4 million in additional taxes and $4.5 million in additional annual local spending.
Many of the residents of Hidden Hills are outraged and vehemently opposed to the proposed development. Slimprofit’s application is scheduled for a hearing before the Hidden Hills Planning Board. The board is composed of five members: Dave Dental, a local dentist; Larry Love, an attorney who works in Rock City and lives on a two-acre lot in Hidden Hills; Hilda Hip, a real estate broker with Hidden Hills Homes; Ali McGee, a manager at a new office building that recently opened along the new highway; and Sam Shoemaker, who owns an upscale shoe store in Hidden Hills and is the board’s chairperson.

Sandy Bates, who lives in a $2 million house on two acres around the corner from the proposed development, objects that it will lower the value of her house, which she has owned since 1980. Bates recently wrote an article in the local newspaper arguing that a regional contribution agreement with Rock City would be a better way for Hidden Hills to meet its Mt. Laurel obligation.

Manny Mumford, who recently moved into a nearby house on Racetrack Road objects that the proposed development will create terrible traffic jams and accidents. Mumford is also concerned that expanding the sewer capacity will create more pressure for development in the area and that the alternative of an on-site sewer system will be unsightly and smelly.

Nick Nevermore, who has four school-aged children and a large mortgage on his $800,000 house in Hidden Hills, objects that the proposed development will place a heavy burden on the local school system and local taxpayers.

The Rock City NAACP, led by its president, Ida Known, supports Slimprofit’s proposed development because it will provide much needed housing opportunities for poor and moderate-income families in the region, and enable them to improve their lives and the lives of their children.

**Directions for Conducting a Planning Board Hearing**

- Have students read the background and discuss any questions.

- Assign students to roles: Depending on the number of students in your class, you might have several groups of 11 working simultaneously or assign only 11 students and have the rest of the class observe as a goldfish bowl and answer questions.
  1. Matt Finish
  2. Jim Jump
  3. Dave Dental
  4. Hilda Hip
  5. Larry Love
  6. Ali McGee
  7. Sam Shoemaker
  8. Sandy Bates
  9. Manny Mumford
  10. Nick Nevermore
  11. Ida Known

- **Preparation**
  If there is more than one group doing a planning board meeting, have the individuals playing the same roles meet to identify their interests, questions they might want to ask or have answered or what they might say at the Planning Board Hearing. Make sure everyone is on task.
The Hearing (est. 30 mins.)
1. The chairperson of the Planning Board calls the meeting to order and announces that they will be hearing an application from the Slimprofit Corp.
2. Matt Finish, president of Slimprofit Corp., presents the company’s proposal.
3. Jim Jump, the expert for the Slimprofit Corp., testifies.
4. Objecting neighbors make their objections and ask questions of the president and expert witness for Slimprofit Corp.
5. Supporters state their reasons for support and ask questions.
6. The members of the Planning Board ask questions of any and all witnesses.
7. The Planning Board deliberates and decides, giving specific reasons for its decision.
8. The chairperson thanks everybody.

Invite an outside resource person familiar with land use law to join your class to enhance the lesson and talk with the students afterwards.

Debrief the activity: Questions for discussion
1. Do you think the Planning Board of Hidden Hills made the right decision? Why or why not?
2. What did you learn about the local planning process?
3. What did you learn about the Mt. Laurel decisions and the Fair Housing Act?
4. What do the Mt. Laurel decisions require of municipalities?
5. Do you think the requirements of Mt. Laurel and the Fair Housing Act are fair?
6. Do you think that the Mt. Laurel decisions and the Fair Housing Act can change the pattern of segregated housing in New Jersey?
7. Do you think that the government should be involved in changing the housing patterns in the state?

Connecting to your community: Have your students research the existence and location of Mt. Laurel (low and moderate-income) housing in your community and the community’s Mt. Laurel plan.
- Identify the area designated for affordable housing in your community.
- Is it in a desirable location within your community?
- How many houses or units are there?
- What are the costs for purchasing or renting?
- What are the eligibility requirements for purchasing affordable housing in New Jersey? (See http://www.state.nj.us/dca/divisions/codes/publications/developments.html)

Assessment

Have students write an essay explaining how eminent domain, land preservation or Mt. Laurel represent a challenge between providing for the common good over that of one class of citizens or one person. Students should raise and discuss the following concerns:
- Many property owners fear they will not be fully compensated for the seizure of their land.
- Many taxpayers feel that the requirement of paying for land acquired through eminent domain places a monetary burden too great for the perceived benefit of the project.
- Who decides what is in the public interest?

Extension
1. Have students write a letter to their member of the New Jersey Legislature explaining their position on eminent domain, Mt. Laurel or other land use issue and any proposed legislation.
2. Students research a particular area in New Jersey that may be affected by the government’s taking of private property and write either in support or against the local government’s proposed taking of private property.
3. Write an editorial to the local paper either in support or against the government’s use of their eminent domain power, Mt. Laurel requirements or other land use issue.
4. Invite a speaker representing the interests of the homeowners or a developer in an area where the local government has attempted to take property or has failed to develop a Mt. Laurel plan.
5. Invite a local attorney or judge to speak on the issues of eminent domain, Mt. Laurel, or other land use issue.
6. Have students identify possible locations for Mt. Laurel housing in your community and share these ideas with the town council and mayor.
Handout 1: **Constitutional Provisions Protecting Private Property**

**U.S. Constitution, Fifth Amendment:**

“No person shall be...deprived of life, liberty or property without due process of law; nor shall private property be taken for public use, without just compensation.”

Applied to states in the Fourteenth Amendment, Sec. 1.

...“nor shall any state deprive any person of life, liberty, or property, without due process of law”.

**New Jersey State Constitution, Article I:**

“All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.” (NJ Const., Art. I, Para. 1).

“Private property shall not be taken for public use without just compensation. Individuals or private corporations shall not be authorized to take private property for public use without just compensation first made to the owners.” (NJ Const., Art. I, Para. 20).

“The clearance, replanning, development or redevelopment of blighted areas shall be a public purpose and public use, for which private property may be taken or acquired.” (NJ Const., Art. VIII, Sec. 3, Para. 1)
Handout 2: **Hypothetical case involving eminent domain**

Rita is a 78 year old retired grandmother who was born and raised in New Jersey. In fact, Rita has lived in the same house in Old Style, New Jersey for over fifty years. Although the area is run down, she loves where she lives and enjoys her frequent walks to downtown Old Style. She knows most of her neighbors and even knows some of the local politicians.

One day, Rita starts to hear rumors that the city government wants to tear down some of the houses within her development to build a highway connecting Old Style with New Style. She is frightened by the prospect of losing her home and her identity, but is sure that she has some rights.

1. Does Rita have any legal right to stay in her home?

2. What are Rita’s rights under the U.S. Constitution?

3. What are Rita’s rights under the New Jersey Constitution?

4. Is building a highway a legitimate reason for the state to take private property?

5. Do you think that the following should be considered “public use”?
   - The city government wants to take a house to build a new high school
   - The city government wants to take a store from a recently arrived immigrant to build a new public parking lot in the business district
   - The county government wants to take a place of worship to build a county jail
   - The state government wants to remove graves from a portion of a cemetery to construct a highway

6. Can the government take private property even if the owner has no desire to part with it?

7. How should “just compensation” for the property be determined?

8. Do you think that it is fair that the government can take someone’s private property?
Susette Kelo lived in New London, Connecticut. She resided with her husband in the working-class section of Fort Trumbull where she bought her pink house in 1997 for $50,000. She loved her house and admired its waterfront view. The area overlooked the Thames River and the Long Island Sound. As Ms. Kelo stated, "It was like I’d been here all my life. It was just a warm and inviting feeling."

City officials did not agree with Ms. Kelo’s outlook on the area. According to the government, the area of Fort Trumbull suffered economically. In fact, it was zoned as an industrial area since 1929 even though there were several private homes. As a local government official stated, "This area had a junkyard, which had to be cleaned up at great expense. They had oil tanks, commercial big storage tanks...[t]here is a railroad yard down there."

The city of New London decided that they wanted to improve the economic stability of New London and the Fort Trumbull area in particular. They hoped to build a conference center, hotel complex, offices, condominiums and eventually an aquarium. It was projected that this “revitalization” would create over 1,000 jobs. The city and state of Connecticut would give millions of dollars to this project. They would use their eminent domain power to take the private property and then sell the land to a private company who would economically revive the area.

The government offered compensation for the private homes within the Fort Trumbull area, yet fifteen owners refused to move. These owners were informed that if they did not sell their property, the government would take their land through the eminent domain provision.

The homeowners challenged the government’s use of the eminent domain clause. They argued that the government did not have the right to take their private property to economically develop the area. The case was appealed to the United States Supreme Court where they examined the major issue, whether the government’s taking of private property would violate the Fifth Amendment’s public use restriction. In other words, could the government take private property so that a private company could economically revitalize the neighborhood?
After approving an integrated development plan designed to revitalize its ailing economy, respondent city, through its development agent, purchased most of the property earmarked for the project from willing sellers, but initiated condemnation proceedings when petitioners, the owners of the rest of the property, refused to sell. Petitioners brought this state-court action claiming, inter alia, that the taking of their properties would violate the “public use” restriction in the Fifth Amendment’s Takings Clause. The trial court granted a permanent restraining order prohibiting the taking of the some of the properties, but denying relief as to others. Relying on cases such as Hawaii Housing Authority v. Midkiff, 467 U.S. 229, and Berman v. Parker, 348 U.S. 26, the Connecticut Supreme Court affirmed in part and reversed in part, upholding all of the proposed takings.

Held: The city’s proposed disposition of petitioners’ property qualifies as a “public use” within the meaning of the Takings Clause.

(a) Though the city could not take petitioners’ land simply to confer a private benefit on a particular private party, see, e.g., Midkiff, 467 U.S., at 245, the takings at issue here would be executed pursuant to a carefully considered development plan, which was not adopted “to benefit a particular class of identifiable individuals,” ibid. Moreover, while the city is not planning to open the condemned land—at least not in its entirety—to use by the general public, this “Court long ago rejected any literal requirement that condemned property be put into use for the ... public.” Id., at 244. Rather, it has embraced the broader and more natural interpretation of public use as “public purpose.” See, e.g., Fallbrook Irrigation Dist. v. Bradley, 164 U.S. 112, 158—164. Without exception, the Court has defined that concept broadly, reflecting its longstanding policy of deference to legislative judgments as to what public needs justify the use of the takings power. Berman, 348 U.S. 26; Midkiff, 467 U.S. 229; Ruckelshaus v. Monsanto Co., 467 U.S. 986.

(b) The city’s determination that the area at issue was sufficiently distressed to justify a program of economic rejuvenation is entitled to deference. The city has carefully formulated a development plan that it believes will provide appreciable benefits to the community, including, but not limited to, new jobs and increased tax revenue. As with other exercises in urban planning and development, the city is trying to coordinate a variety of commercial, residential, and recreational land uses, with the hope that they will form a whole greater than the sum of its parts. To effectuate this plan, the city has invoked a state statute that specifically authorizes the
use of eminent domain to promote economic development. Given the plan’s comprehensive character, the thorough deliberation that preceded its adoption, and the limited scope of this Court’s review in such cases, it is appropriate here, as it was in Berman, to resolve the challenges of the individual owners, not on a piecemeal basis, but rather in light of the entire plan. Because that plan unquestionably serves a public purpose, the takings challenged here satisfy the Fifth Amendment.

(c) Petitioners’ proposal that the Court adopt a new bright-line rule that economic development does not qualify as a public use is supported by neither precedent nor logic. Promoting economic development is a traditional and long accepted governmental function, and there is no principled way of distinguishing it from the other public purposes the Court has recognized. See, e.g., Berman, 348 U.S., at 24. Also rejected is petitioners’ argument that for takings of this kind the Court should require a “reasonable certainty” that the expected public benefits will actually accrue. Such a rule would represent an even greater departure from the Court’s precedent. E.g., Midkiff, 467 U.S., at 242. The disadvantages of a heightened form of review are especially pronounced in this type of case, where orderly implementation of a comprehensive plan requires all interested parties’ legal rights to be established before new construction can commence. The Court declines to second-guess the wisdom of the means the city has selected to effectuate its plan. Berman, 348 U.S., at 26.

268 Conn. 1, 843 A. 2d 500, affirmed.

Stevens, J., delivered the opinion of the Court, in which Kennedy, Souter, Ginsburg, and Breyer, JJ., joined. Kennedy, J., filed a concurring opinion. O’Connor, J., filed a dissenting opinion, in which Rehnquist, C. J., and Scalia and Thomas, JJ., joined. Thomas, J., filed a dissenting opinion.

Summary from Cornell University Legal Institute at https://www.law.cornell.edu/supct/html/04-108.ZS.html
Handout 5: *Kelo v. New London*: Expanding the Parameters of Eminent Domain

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<tr>
<th><strong>QUESTIONS</strong></th>
<th><strong>ANSWERS</strong></th>
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<tr>
<td>1. For what purpose did the government attempt to take the private property?</td>
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<td>2. Do you think that the government’s reason for taking the land was to benefit the public? Explain.</td>
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<td>3. Did the homeowners want to move? Why did they oppose the government’s use of power?</td>
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<td>4. What additional questions would you want answered to determine whether this was a valid exercise of the government’s power?</td>
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<td>5. What was the major issue raised before the United States Supreme Court?</td>
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<td>6. Based on the information provided, what is your opinion? Do you think that the government acted properly in acquiring the private property?</td>
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For an Interactive Map go to: https://www.nj.gov/njhighlands/gis/interactive_map/#/-74.66142/40.81373/3

1. There are 244 municipalities in 16 New Jersey counties, most of them outside of the Preservation area, that rely on the Highlands for part of their water supply.

   Should the owners of private property in the Highland Preservation area be restricted in their use of their property in order to make sure that clean water is available for New Jersey residents who live outside the Preservation area?

2. In 1980, you bought a small house on a 100-acre piece of property that is now in the Highlands Preservation area. You want to sell your property to a developer and retire now. For the last several years, you have been negotiating with a developer to purchase your property. Since the developer is limited in the number of houses he can place on the property, the selling price has been reduced in half, greatly reducing your profit, which is what you were planning on living on during your retirement.

   Do you think this is fair? How restrictive can regulations be before they constitute a taking by the state that should be compensated under the U.S. and N.J. Constitutions?
Handout 7: Mt. Laurel Exclusionary Zoning Fact Pattern

Hidden Hills is a quiet, scenic, up-scale residential community in New Jersey. Most of its residents (population 5000 in the 2000 census) live on several acre lots and small farms. It is approximately 15 miles from highly urbanized Rock City (population 60,000). The population of Hidden Hills remained fairly stable until recently when the construction of a major highway directly connected Hidden Hills and Rock City to the cities in the east and the farmland to the west. New office buildings have sprung up along the highway and old farms have been broken up causing the population of Hidden Hills to increase to 12,000 by 2015. Many Rock City residents work in the stores and office buildings along the highway. Hidden Hills has a one-acre minimum lot requirement. Houses sell for $500,000 to $3 million.

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Many of the residents of Hidden Hills are outraged and vehemently opposed to the proposed development. Slimprofit’s application is scheduled for a hearing before the Hidden Hills Planning Board. The board is composed of five members: Dave Dental, a local dentist; Larry Love, an attorney who works in Rock City and live on a two-acre lot in Hidden Hills; Hilda Hip, a real estate broker with Hidden Hills Homes; Ali McGee, a manager at a new office building that recently opened along the new highway; and Sam Shoemaker, who owns an upscale shoe store in Hidden Hills and is the board’s chairperson.

Sandy Bates, who lives in a $2 million house on two acres around the corner from the proposed development, objects that it will lower the value of her house, which she has owned since 1980. Bates recently wrote an article in the local newspaper arguing that a regional contribution agreement with Rock City would be a better way for Hidden Hills to meet its Mt. Laurel obligation.

Manny Mumford, who recently moved into a nearby house on Racetrack Road objects that the proposed development will create terrible traffic jams and accidents. Mumford is also concerned that expanding the sewer capacity will create more pressure for development in the area and that the alternative of an on-site sewer system will be unsightly and smelly.

Nick Nevermore, who has four school-aged children and a large mortgage on his $800,000 house in Hidden Hills, objects that the proposed development will place a heavy burden on the local school system and local taxpayers.

The Rock City NAACP, led by its president, Ida Known, supports Slimprofit’s proposed development because it will provide much needed housing opportunities for poor and moderate-income families in the region, and enable them to improve their lives and the lives of their children.
Handout 8: Directions for Conducting a Planning Board Hearing

- Read the fact pattern

- Assign roles
  1. Matt Finish
  2. Jim Jump
  3. Dave Dental
  4. Hilda Hip
  5. Larry Love
  6. Ali McGee
  7. Sam Shoemaker
  8. Sandy Bates
  9. Manny Mumford
  10. Nick Nevermore
  11. Ida Known

- Preparation
  If there is more than one group doing a planning board meeting, have the individuals playing the same roles meet to identify their interests, questions they might want to ask or have answered or what they might say at the Planning Board Hearing. Make sure everyone is on task.

- The Hearing (est. 30 mins.)
  1. The chairperson of the Planning Board calls the meeting to order and announces that they will be hearing an application from the Slimprofit Corp.
  2. Matt Finish, president of Slimprofit Corp., presents the company’s proposal.
  3. Jim Jump, the expert for the Slimprofit Corp., testifies.
  4. Objecting neighbors make their objections and ask questions of the president and expert witness for Slimprofit Corp.
  5. Supporters state their reasons for support and ask questions.
  6. The members of the Planning Board ask questions of any and all witnesses.
  7. The Planning Board deliberates and decides, giving specific reasons for its decision.
  8. The chairperson thanks everybody.

- Debrief the activity
  1. Do you think the Planning Board of Hidden Hills made the right decision? Why or why not?
  2. What did you learn about the local planning process?
  3. What did you learn about the Mt. Laurel decisions and the Fair Housing Act?
  4. What do the Mt. Laurel decisions require of municipalities?
  5. Do you think the requirements of Mt. Laurel and the Fair Housing Act are fair?
  6. Do you think that the Mt. Laurel decisions and the Fair Housing Act can change the pattern of segregated housing in New Jersey?
  7. Do you think that the government should be involved in changing the housing patterns in the state?