Curbing Eminent Domain in Ohio: 
*City of Norwood v. Horney*

Stuart Meck, FAICP/PP
Director, Center for Government Services

*NJAPA Annual Conference
Hyatt New Brunswick, November 3, 2006*
City of Norwood, Ohio

• Blue-collar Cincinnati suburb of 20,000
• Neighborhoods composed of s.f. homes and duplexes
• Sits astride Interstate 71
• Eroding industrial base
Norwood, Ohio
Norwood, Ohio

Source: U.S. Census Bureau, Census 2000 Summary File 1, Matrix P1.
Norwood, Ohio

- Rookwood Partners approaches city
- Proposes redevelopment plan
  - 200 apartments/condos
  - 500,000 s.f. of office space
  - Public parking
  - $2.0 million estimated annual revenue
Norwood, Ohio

- Urban renewal study prepared
- Consultants conclude neighborhood was “deterioriating” area, but not “deterioriated”
Norwood, Ohio

- Rookwood enters into redevelopment contract, acquires substantial majority of property
- City institutes eminent domain proceedings to appropriate appellants’ property
“Blighted” Homes in Norwood
“Blighted” Homes in Norwood
Trial court

- City abused discretion in finding area was “slum, blighted, or deteriorated”
- But area was “deterioriating”
- Trial ct. defers, upholds city action
- Norwood upheld on appeal
Ohio Supreme Court

- First ruling on eminent domain since *Kelo v. City of New London* (U.S. 2005)
- Ohio court decided *Norwood* on the basis of Ohio, not U.S., Constitution
Ohio Supreme Court

- Unanimous ruling for homeowners
- Holding: Absent other public benefits, the fact that appropriation of property provides economic benefit does not satisfy public use requirement of Ohio Constitution
Ohio Supreme Court

- Use of “deteriorating area” standard is unconstitutional—too “speculative”
- Points to problems with consultant study
City of Norwood v. Horney: Significance

- Scholarly opinion, clearly aimed at influencing other courts
- Applies “strict scrutiny” in reviewing eminent domain actions in strong home rule state
- Returns eminent domain for redevelopment to dealing with correcting existing conditions of land
City of Norwood v. Horney: Significance

“Judicial review is even more imperative in cases where the taking involves an ensuring transfer of the property to a private entity. . . [and] in cases where there is a showing of discrimination, bad faith, impermissible financial gain, or other improper purpose”
City of Norwood v. Horney: Observations

- Ohio does not have redevelopment statute unlike New Jersey
- No “blight” standard
- No standards for redevelopment plan
- Ethical problem of fait accompli—developer approaches city with proposal, and blight is “discovered” to justify action
Aftermath

• Norwood Council repeals redevelopment plan on August 22, 2006