

Center for Government Services

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

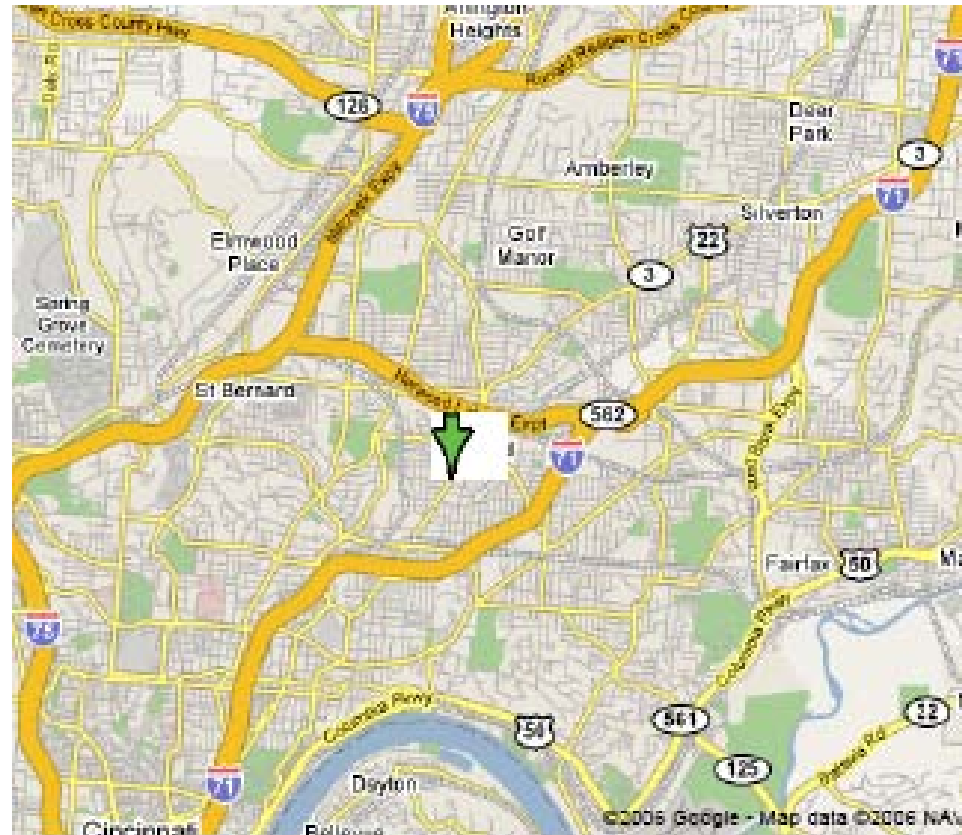
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*NJAPA Annual Conference
Hyatt New Brunswick, November 3, 2006*

City of Norwood, Ohio

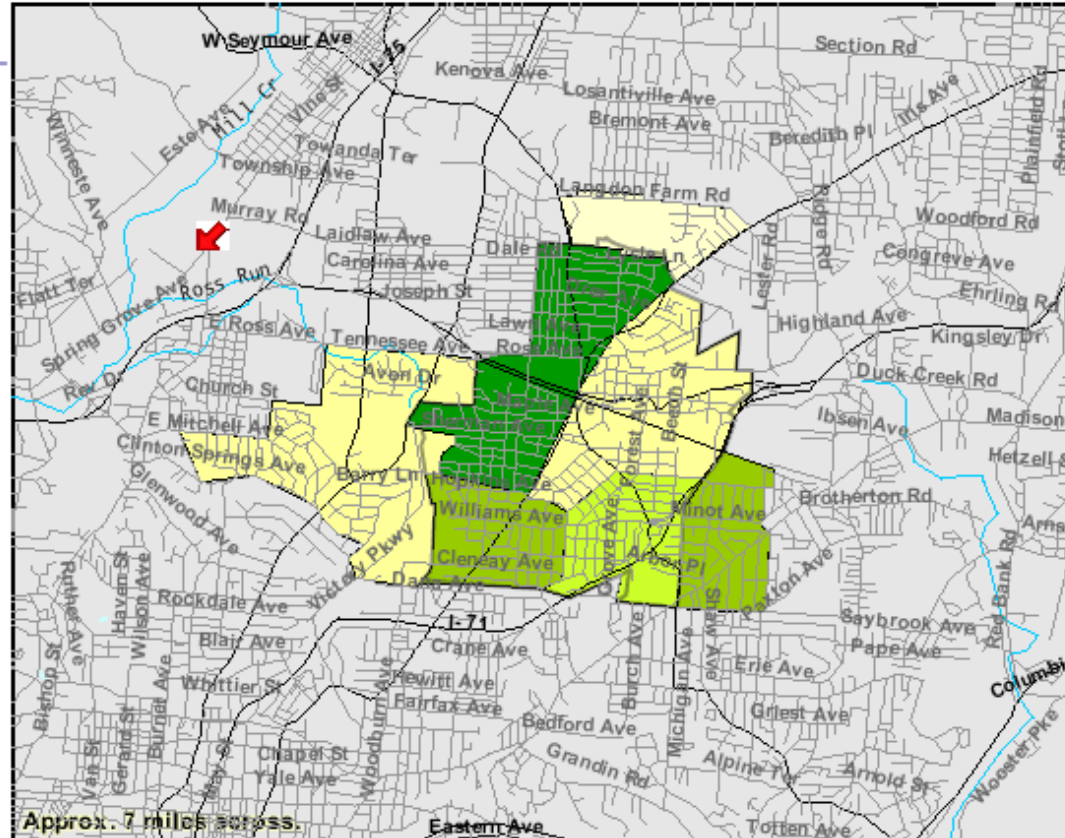
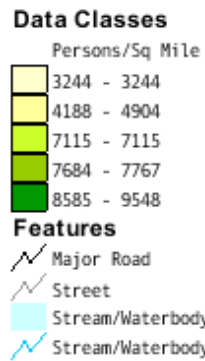
- Blue-collar Cincinnati suburb of 20,000
- Neighborhoods composed of s.f. homes and duplexes
- Sits astride Interstate 71
- Eroding industrial base

Norwood, Ohio



Norwood, Ohio

Legend



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

Norwood, Ohio



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 “deteriorating” area, but not “deteriorated”

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 “deteriorating”
- 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

