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We're From the Government and We're Here to Build a Bike Path.

Municipal officials are using eminent domain to take private property for recreational uses.

A handful of farmers in Ohio's Mahoning County are getting an unpleasant lesson in government power at the hands of a local park district. Mill Creek MetroParks, a public agency governed by five unelected commissioners, wants to take over an abandoned railroad line running through about a dozen local farms for a recreational bike path. Last year, when landowners balked at the idea of strangers wandering across their properties, the park district decided to invoke eminent domain and gain right of way.

"I asked the park representatives if there was any way we could negotiate on this, and they told me, 'The time for talking is over. We're taking this property,' " says Ohio state Rep. Don Manning, who tried to intervene on the farmers' behalf. Rep. Manning, a Republican, has sponsored legislation that would limit the use of eminent domain in Ohio.

The practice of government taking land for recreational uses—typically bike lanes, hiking paths and fashionable "rail trails" and "greenways"—is spreading across the country, marking a sharp and troubling expansion of eminent domain. The Takings Clause of the Constitution's Fifth Amendment grants government the authority to seize property to be used for the public good, as long as government pays "just compensation" to the owner. Over the years, the Supreme Court has consistently expanded what is considered a "public good" to justify government seizures. In 2005, for instance, the high court upheld the taking of Susette Kelo's waterfront home by the city of New London, Conn., so that a local development corporation could build high-end condos and a hotel. The redevelopment was intended to boost property values and increase municipal tax revenues.

Meanwhile, cities and towns across America have in recent years developed an appetite for different types of lengthy, sometimes intrusive hiking and bike paths. Advocates contend that such recreational amenities are vital because they promote alternative forms of transportation. Bike trails "are increasingly being used as a nonrecreational means of transportation, particularly by lower-income residents without access to a motor vehicle," testified Jason Segedy, director of planning and urban development for Akron, Ohio, in opposition to Rep. Manning's bill.

Municipal land grabs often result in bitter confrontations. Officials in Sioux City, Iowa, sought to complete a riverfront recreation trail in 2017 by offering Brad Lepper half of what an independent county commission had ruled his property was worth. Rather than pay up in full, the city invoked eminent domain, prompting Mr. Lepper to wage a two-year legal battle. He represented himself for much of the time.

"It can be an intimidating process for a small-business owner to fight this, and many people probably wouldn't risk it," Mr. Lepper says. "I took this on myself because I couldn't afford to run up big legal bills, but I knew the property was worth much more." Hiring his own appraiser and planning expert,

Mr. Lepper ultimately won an $82,500 settlement. Still, it was an uncomfortable experience. “I’m a local businessman. I have to do business here. I didn’t want to fight the city.”

Eminent domain also divides communities. A plan by the town of Swampscott, Mass., to construct a 2-mile trail through the North Shore Boston suburb sparked a yearslong battle pitting officials and some supportive residents against those whose property the path would cross. One property owner, Kim Nassar, published a letter in the local newspaper claiming that she and other opponents had been “vilified and maligned” and branded as “selfish” for lobbying against the project.

Since residents voted in a divisive June 2017 election to dedicate some $850,000 to the Swampscott trail, including an unspecified amount of money for eminent-domain seizures, the town has continued to work to design and fund the project. But an attorney hired by 28 homeowners says he has warned town officials that this battle may be more costly than they anticipate. “There are properties along this path whose value could be substantially diminished,” says Peter E. Flynn. “Juries tend to be sympathetic to property owners if they can afford to fight a case like this in court, and I have seen court awards that can bust the budget of a town.”

The issue also divides elected officials. In 2017 Wisconsin ended the use of eminent domain for recreational projects in a bill signed by then- Gov. Scott Walker, a Republican, after objections from landowners. According to Wisconsin Active Communities Association, a recreational group, 17 bike- and walking-trail projects for which the use of eminent domain was planned have stalled since Mr. Walker’s action. Current Gov. Tony Evers, a Democrat, has sought to re-establish government’s authority to take property in these cases, but so far he’s been blocked by Republicans in Madison. “Somebody else’s recreational opportunity should not be forced on my property,” argues state Rep. Rob Stafsholt, who helped push through the ban.

The Kelo decision provoked a backlash. Some states passed laws restricting eminent domain for economic development. But as local governments, park systems and state agencies become bolder about seizing property for recreational use, don’t be surprised if the next eminent-domain case with national significance involves a bike path in your backyard.

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By Steven Malanga

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