



## vantage point

# The “Little Guy” Fights Back (and Sometimes Wins)



cannot run against the City, thinking it had closed the case. Galdo did not give up.

On March 23, 2018, the Commonwealth Court of Pennsylvania made a different determination, clarifying that while the Commonwealth itself is immune to adverse claims, municipalities and counties (Philadelphia is both) are not, citing a variety of cases to support its decision. Because the trial court had made its decision based on its supposition that Galdo was unable to adversely possess against Philadelphia, it made no findings of fact regarding the elements of the adverse claim to determine if Galdo had satisfied those requirements. The upper court (by majority and not unanimously) vacated the trial court's decision and remanded the case for consideration of whether he has met all the necessary criteria. The Statute of Limitations in Pennsylvania is 21 years, so now we wait to see how the lower court views use of Galdo's Notorious Parcel for 21-plus years in terms of sufficiency for open, notorious, hostile, continuous occupation for the statutory period of time (Pennsylvania does not require color of title or payment of taxes). While encouraged about the remand, it remains to be seen if Philadelphia appeals the Commonwealth Court decision to prevent any decision about Galdo having met (or not) the necessary elements for his adverse possession claim.

Let's move a little northeast of Philadelphia, to Bayonne, New Jersey for a slightly different argument about a city's power. A Texaco fuel processing, storage, and distribution facility had occupied the southern part of this peninsular city since the early part of the 1900s. After its closure, Bayonne

*continued on page 37*

**I**t is always interesting to me to find out that people actually read what I write (I have no way to know unless someone contacts me or this magazine). One email recently arrived from a surprise source—the subject of the piece I wrote about the Notorious Galdo Parcel in Philadelphia (“Fighting City Hall Over Land,” February 2018). In mid-April I received a short message from Frank Galdo to tell me that his Notorious Parcel was now case law, giving me the link. As a result I found out the result of his appeal of the initial

trial court decision favoring the City about a week before it hit the papers and newsfeed.

To refresh your memory, this was a case about adverse possession against the City of Philadelphia for land that had been condemned by the City in 1974, but never used for any public purpose. The parcel remained dormant until Frank Galdo moved in across the street from it in 1989 and began using and building on it. When the City finally filed its ejectment action in 2014, Galdo counterclaimed adversely. The trial court ruled that adverse possession

**Lathrop**, continued from page 40

decided to undertake a redevelopment plan to repurpose and revitalize the area, including an additional 13 separate properties beyond the former Texaco site. A 2004 plan showed a large scale mixed-use development of about 71 acres, envisioning “new urbanism” with 1200 residential units, recreational facilities, “and other amenities,” an estimated \$500 million project to be called “The Promenade at Bayonne”. Among the non-Texaco sites were two active businesses, one being a local pub called “Starting Point Bar and Grill” and the other being a storage facility called “White Glove Storage and Moving Company.”

After the City selected Kaplan Properties as the principal developer, Kaplan approached the owners of both businesses, who were not interested in selling. As a result, Kaplan pressured Bayonne to move forward with condemnation. If the properties could be considered blighted, they could be considered “in need of redevelopment,” a public purpose for which the City could acquire them through eminent domain.

A new redevelopment study by Bayonne of just these two holdouts, completed in May of 2017, found that they could not be classified as blighted, but that they should still be included as necessary for effective redevelopment of the larger area. Arguments ensued about the need to raise the grade of the site and of public streets to meet new flood hazard regulations. A report commissioned by the holdout landowners noted that Kaplan’s approach was not the one and only way that elevation could be accomplished and offered alternative concepts. Bayonne may have been swayed; it has not moved forward with condemnation.

But there is not yet (in May) any formalized settlement agreement to nullify that threat, although the property owners provided an outline in January to do so. The issue has provided fodder for the upcoming mayoral election, framing this as a battle between rich developers and hard-working small business owners. Many of the rest of us, meanwhile, are remembering *Kelo v. New London*, with Suzette Kelo’s Little Pink House that is now part of a redevelopment that never happened and also the subject of a new movie released this April. ■

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**Wendy Lathrop** is licensed as a Professional Land Surveyor in NJ, PA, DE, and MD, and has been involved since 1974 in surveying projects ranging from construction to boundary to environmental land use disputes. She is a Professional Planner in NJ, and a Certified Floodplain Manager through ASFPM.