

Briefly...

■ Legislative Targets

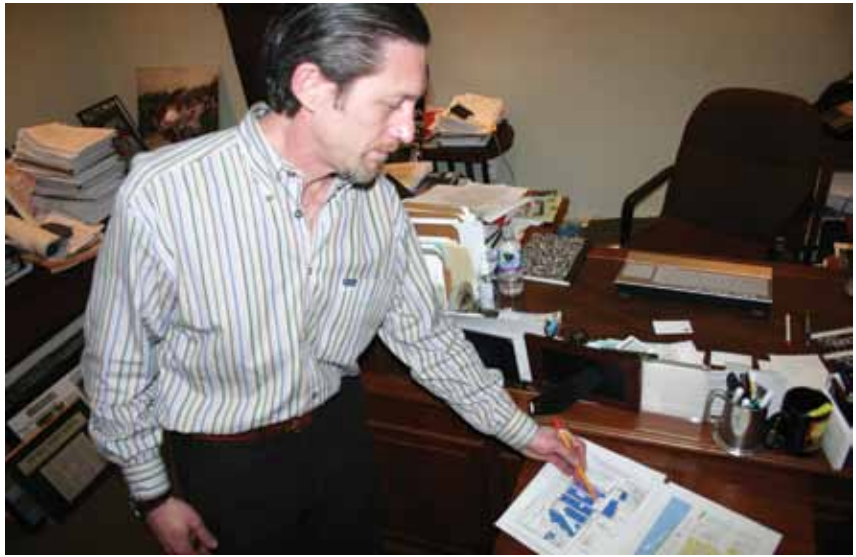
The Self Storage Association Legislative Advisory Committee will meet once again this winter to consider the Association's lobbying agenda for 2010. The group votes on priorities to help improve laws that regulate the industry. At least 12 states are planning to attend the January 13 meeting in Dallas.

■ Michigan Law

The Self Service Storage Act of 2009 was passed by both houses of the Michigan legislature in November and was signed by Governor Granholm in December. In addition to protecting service members deployed overseas in a lien situation, the Michigan SSA also integrated improvements to the notification procedures that will save the state's operators on expenses. The national SSA contributed \$5,000 to the effort.

■ Land of Lincoln

The Self Storage Association has contributed \$2,500 to help the Illinois Self Storage Association battle a sales tax plan in Illinois. The state's proposed financial overhaul threatens to include self storage on a list of new "services" that would be taxed. The SSA maintains that the industry does not provide a service, rather operators rent real space, no different than a commercial office or apartment space.



Nick Sprayregen, shown in his office in New York City, won a major eminent domain decision.

NYC Storage Operator Beats Goliath

By Tim Dietz – SSA VP, Communications & Government Relations

December's 3-2 appellate court decision on the issue of eminent domain, which favored a New York City self storage operator, was hailed as a tremendous victory for all property rights advocates and may setup a landmark case in the nation's highest court.

For the better part of five years Nick Sprayregen, owner of the regional chain branded Tuck-It-Away Self Storage, and civil liberties attorney Norman Siegel, had fought a David-and-Goliathesque battle against Columbia University. The school had attempted to invoke eminent domain to condemn and take Sprayregen's properties so it could move forward with a 6.8 million square foot campus expansion.

Sprayregen and the owners of two gas stations were the only property owners who didn't take the friendly buyout offers in the 17-acre section of West Harlem known as Manhattanville. The January 2009 issue of the *SSA Globe* detailed Sprayregen's decision to stand his ground and fight the condemnation process, which he insisted "smelled from the beginning."

Sprayregen maintained from the start that, by purchasing properties and letting them dilapidate, the school itself had created the condition of blight that was the basis of its condemnation argument. But the centerpiece of his case was what he and Siegel called a "web of conflict of interest and bad faith on the part of the government." They contended that the Empire State Development Corporation (ESDC), the state organization tasked with the condemnation administration, colluded from the beginning with Columbia. As evidence, they pointed to a third-party study completed by an ESDC consultant who had also been doing work for the University.

Last month, the court agreed in dramatic fashion, saying the ESDC was guilty of "idiocy" and had trumped up a blight finding in order to justify taking properties from private owners. Justice James Catterson, writing for the majority said:

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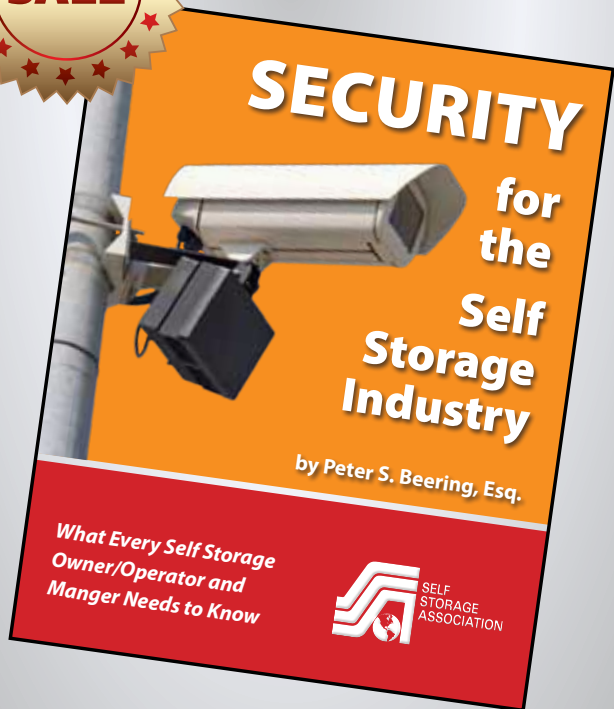
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Sprayregen, from page 4



“The blight ... was utilized by ESDC years after the scheme was hatched to justify the employment of eminent domain but this project has always primarily concerned a massive capital project for Columbia. Indeed, it is nothing more than economic redevelopment wearing a different face.”

For the moment, Sprayregen and Siegel, the former head of the Manhattan office of the American Civil Liberties Union (ACLU), are somewhere between “elated and relieved.” Both realize the court New York State Court of Appeals could go against this ruling. Just a few days before this decision, it had favored the takings under eminent domain for a different private purpose.

Siegel has, from the beginning, considered this case a likely candidate to go all the way to the U.S. Supreme Court and perhaps overturn the controversial 2005 *Kelo v. New London* decision, which affirmed that state and local governments had broad eminent domain powers that included private development projects. The Supreme Court held in a split 5–4 decision that the general benefits to a community from economic growth qualified as a permissible “public use” under the “Takings Clause” of the Fifth Amendment.

“The U.S. Supreme Court has long been willing to classify non-blighted property as blighted if the surrounding area is in disrepair. But the court has not been confronted with a case in which the neighborhood blight was directly caused by the party seeking the benefit of eminent domain,” wrote Jonathon Last of the *Weekly Standard*.

Siegel sees even more potential for a landmark decision. “We are approaching this with a very narrow argument in some ways, but I can also see this case painted in a broad stroke as well. Given the reaction of America to the *Kelo* case, you might find that the nine justices of the U.S. Supreme Court would be willing to look at the case,” he said. ❖