



Eminent Domain

AN IMPORTANT
TOOL FOR
COMMUNITY
REVITALIZATION



Urban Land
Institute

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An Important Tool for
Community Revitalization

Prepared by Douglas R. Porter

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- Bringing together leaders from across the fields of real estate and land use policy to exchange best practices and serve community needs;
- Fostering collaboration within and beyond ULI's membership through mentoring, dialogue, and problem solving;
- Exploring issues of urbanization, conservation, regeneration, land use, capital formation, and sustainable development;
- Advancing land use policies and design practices that respect the uniqueness of both built and natural environments;
- Sharing knowledge through education, applied research, publishing, and electronic media; and
- Sustaining a diverse global network of local practice and advisory efforts that address current and future challenges.

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About ULI Current Issues Reports

This is the first in a series of Current Issues Reports to be published from time to time as important topics are identified and addressed by ULI. These reports will be available from the ULI bookstore as single copies or in packets of ten. They also will be available for download from the ULI Web site for free at www.uli.org/currentissues.

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Executive Summary

Eminent domain is a critical tool for revitalizing cities and improving the quality of life in urban and suburban neighborhoods. The use of eminent domain has been essential to the successful redevelopment of projects across the country. From 42nd Street in New York City and Pennsylvania Avenue in Washington, D.C., to Kansas City, Kansas, and Greenville, South Carolina, public efforts to bring new life to declining areas would not be possible without the power of eminent domain.

This statement represents the conclusions of a ULI policy forum on eminent domain convened at ULI offices in Washington, D.C., during July 2006 at which leading public and private sector experts and practitioners discussed the significant role eminent domain plays in promoting urban revitalization.

In summary, forum participants affirm the following five principles and observations regarding eminent domain and recommend that the following rationales and practices be employed to defend its use in redevelopment to achieve economic development goals.

Principle 1

Private property rights are a cornerstone of American law. The Fifth Amendment to the U.S. Constitution protects ownership of private property by limiting the governmental exercise of the power of eminent domain to acquisition of property required for a public use and by mandating payment of “just compensation” to property owners. Courts have ruled that achieving public benefits through economic development, in accordance with a comprehensive plan, is an acceptable use of the power of eminent domain.

■ The rationale for redevelopment, including public purposes to be served and benefits to be achieved, should be spelled out in a comprehensive redevelopment plan that provides the policy foundation for use of eminent domain.

■ If the ultimate use will achieve defined public benefits, redevelopment to stimulate economic development may legitimately involve the transfer of property from one private owner to another.

■ Government efforts to spur economic development through redevelopment generally favor public acquisition of private property through negotiated sale rather than through the use of eminent domain.



Crawford Square, Pittsburgh, Pennsylvania

Pittsburgh's Hill District is starting to regain the vibrancy and diversity it exhibited in the 1940s and 1950s, when Lena Horne, Duke Ellington, Billy Eckstine, and Sarah Vaughan performed at local jazz clubs and the Pittsburgh Crawfords of the Negro Leagues attracted fans to Ammon Field. After decades of neglect, the district's fortunes began to turn when McCormack Baron Salazar and its public and private partners starting working with residents to envision a future for the neighborhood. More than 400 new apartments and single-family homes—half available to new and existing low-income residents and half at market rates—were constructed. An attractive design and street layout draws on Pittsburgh neighborhood architectural traditions. None of this could have happened without the city's use of its power of eminent domain to assemble the site for redevelopment.

Principle 2

Public and private efforts to rectify abuses of the power of eminent domain should address specific problems rather than broadly prohibit its use for the legitimate public purpose of economic development.

■ While some urban redevelopment projects involving use of eminent domain have razed historic buildings, uprooted families, and failed to realize overly ambitious development goals, any personal hardships stemming from redevelopment usually are unrelated to whether ownership of acquired property has ended up in private rather than public hands.

■ The distinction between final ownership by public or private entities is becoming less significant because redevelopment for economic purposes frequently involves a combination of public and private goals and benefits, especially through the increasingly successful use of public/private partnerships.

Principle 3

The public purposes to be served and specific public benefits expected from proposed redevelopment should be documented in a redevelopment plan determined through resident participation and approved by the government.

■ The public purposes and benefits of proposed redevelopment projects should be identified through a process that incorporates resident participation.

■ Before redevelopment is initiated, a redevelopment plan should be prepared and adopted documenting the public purposes and benefits to be served and describing the character of the proposed development.



Renaissance Place at Grand, St. Louis, Missouri

The St. Louis Housing Authority selected McCormack Baron Salazar as its development partner to work with the residents and community stakeholders to revitalize the Blumeyer public housing complex. A \$35 million HOPE VI grant was used to assist in the construction of more than 500 new mixed-income family and seniors' rental housing units in the renamed Renaissance Place at Grand community. St. Louis also allocated more than \$5 million to assist in the redevelopment process, which included extensive new public improvements—streets, sidewalks, and underground utilities—in addition to new housing and expanded community services.

Principle 4

Public officials and redevelopment agencies should seek out, listen to, and respect the points of view of property owners, residents, and business owners in redevelopment areas.

- Advance notice should be given regarding proposed redevelopment goals and their implications for affected properties and property owners.
- Property owners, residents, and business owners in redevelopment areas should be given opportunities to participate in planning for the redevelopment.

Principle 5

Eminent domain is a powerful tool that should be employed only after other methods of property acquisition are found unworkable.

- Careful consideration should be given to alternatives to property acquisition and demolition of structures.

- Negotiations to purchase private properties should be undertaken in good faith and incorporate offers of just compensation that recognize both tangible and intangible redevelopment costs to property owners, residents, and business owners.

Summary

Forum participants call on public, nonprofit, and private organizations advocating improvement of housing and economic conditions in America to support the use of eminent domain in accordance with this statement of recommended principles and practices, and to assist in informing elected officials and community leaders about the importance of the power of eminent domain as a tool for revitalizing communities.

Introduction

Since colonial times, cities and towns in the United States have acquired property to make land available for public facilities, residential development, and economic growth. For these purposes, hundreds of local governments have found it helpful to use the power of eminent domain to acquire private properties within designated redevelopment areas.

The Fifth Amendment to the U.S. Constitution allows governments to take property for public purposes with appropriate compensation to property owners. Governments may employ the power of eminent domain—sometimes termed condemnation—to acquire land for construction of highways, schools, military bases, and other public facilities; for revitalization of blighted and contaminated areas; and for assembly of sites for industries, railroads, and other developments that will contribute to economic activities.

Many icons of America's urban revitalization have been made possible by government use of eminent domain powers in redevelopment projects—for instance, New York City's Lincoln Center and the revitalized Times Square, Baltimore's Inner Harbor, and San Francisco's Yerba Buena and Mission Bay areas. Redevelopment efforts in other city and suburban neighborhoods, commercial centers, and industrial districts have proved successful at renewing poorly developed and worn-out areas. Although governments generally assemble redevelopment sites by negotiating sales with property owners, it is often necessary to exercise the power of eminent domain to clear titles of abandoned properties and to acquire holdouts at reasonable prices.

On occasion, questions and concerns have arisen about the appropriate use of eminent domain for redevelopment. These include the following:

- the appropriateness of the public purposes to be served by acquisition of private properties;
- the amount of compensation to property owners compared with tangible and intangible costs to these owners;
- the adequacy of public information about the project and the acquisition process; and
- the belief by some property owners that private property should not be subject to condemnation by public jurisdictions.

These issues, which have stirred controversy in a number of communities, deserve discussion and clarification in every locale that is considering the use of eminent domain for redevelopment.

Kelo v. City of New London

A nationwide debate over the public purposes of eminent domain in redevelopment projects has been prompted by the 2005 U.S. Supreme Court decision in *Kelo v. City of New London*. The case concerned the use of eminent domain by the economically challenged city of New London, Connecticut, in order to acquire several privately owned properties within a site it had designated for a major economic development project. The redevelopment was to include a resort hotel and conference center, a new state park, 80 to 100 new residences, and various research, office, and retail uses. The property was being developed by a private corporation selected by the city and under the city's direction. Homeowner Susette Kelo was among 15 landowners of 115 affected who objected to the taking. In its decision, the court affirmed an earlier decision by the Connecticut Supreme Court that New London's "taking" of properties with payment of just compensation was consistent with the eminent domain clause of the U.S. Constitution.

Critics of the court's findings have called for congressional and state legislative actions to limit *Kelo*-like activities, contending that eminent domain was being wrongly used to advance powerful private interests. And in a separate case, the Ohio Supreme Court ruled on July 26, 2006, that Norwood, Ohio, could not justify the taking of six properties to round out a site for economic development by making a vague claim that the area was deteriorating. The court implied that more persuasive evidence was needed to demonstrate the need for use of eminent domain.

Lessons from Urban Renewal

Redevelopment efforts in many communities still suffer from the backlash sparked by urban renewal projects in the decades after authorization of the Housing Act of 1949, which provided federal funding for local redevelopment projects. Support eroded as urban renewal programs indulged in erratic planning, mass displacement of inner-city minority residents, and poorly managed programs for compensating property owners and relocating residents. Also, many ambitious plans for redevelopment were based on unrealistic real estate market projections.

These memories die hard. But redevelopment agencies today have learned from these experiences to plan carefully for revitalization of blighted and functionally obsolete areas. And generally they carry out eminent domain proceedings only when other property acquisition methods prove ineffective.

The forum participants oppose limitations on the use of the power of eminent domain for legitimate public purposes and are worried that the current debate may result in the severe restriction or even the discarding of a valuable tool for promoting urban revitalization. Cities and towns that have struggled to maintain economic viability have welcomed the mounting interest in urban lifestyles that is opening up opportunities for stimulating development in urban and suburban downtowns, in-town neighborhoods and historic areas, and shopping districts. New restrictions on the use of eminent domain would put obstacles in the way of sorely needed revitalization.

The Constitutional Basis for Eminent Domain

In the Fifth Amendment to the U.S. Constitution, the “takings clause” recognizes the right of governments to use the power of eminent domain, but limits its application: “[N]or shall private property be taken for public use, without just compensation.” In other words, governments can “take” private property only for public use and only upon payment of “just compensation.”

The most problematic term in that provision is *public use*. The U.S. Supreme Court has defined the public use requirement as restraining government from taking a private property solely to benefit another private party. But the court also has approved use of the power of condemnation to achieve a variety of broadly defined public purposes. The argument turns on whether public use is defined as government ownership of property for use by the public, such as a civic building or a highway, or is defined as a *public purpose* regardless of the final public or private ownership of the

Reason Institute Finds Libertarian Judge Supports *Kelo* Decision

Judge Alex Kozinski of the U.S. Circuit Court of Appeals for the Ninth Circuit, widely recognized as a libertarian, was asked in the August 28, 2006, issue of the Reason Institute's *Reason* magazine for his opinion of the *Kelo v. City of New London* decision. His response:

“I just can't imagine how it could have come out any other way. They [property owners] were paid for it. What's the difference between taking property for public roads or anything else? Do only public automobiles travel on public roads? If the government thinks the city will benefit by having a road there . . . so that people can drive their private cars on it, then it has to make that decision. Who owns the road really doesn't matter. You are objecting to *Kelo* because property was taken for privately owned businesses. But the businesses provide services to lots of people.”

property, such as a museum owned by a nonprofit corporation or a privately built toll road used by the public.

The U.S. Supreme Court generally has supported the second view: eminent domain can be employed as a means of achieving a public purpose, or, as the court ruled in 1837 in *Charles River Bridge v. Warren Bridge*, to promote “the public interest and convenience.” In two important cases in the 20th century, *Berman v. Parker* (1954) and *Hawaii Housing Authority v. Midkiff* (1984), the Supreme Court defined public use in broad terms—in *Berman*, approving condemnation of private property for redevelopment by private developers, and in *Hawaii Housing Authority*, allowing the state to break up the concentration of land ownership among a few owners by transferring it to lessees.

The court’s decision in the *Kelo* case followed precedent in upholding by a 5-4 majority the city’s exercise of eminent domain. The majority opinion, written by Associate Justice John Paul Stevens, upheld the broader interpretation of public purpose, acknowledging that governmental pursuit of public purpose “will often benefit individual private parties.” The opinion emphasized the positive factor of the city’s adoption of a carefully considered, comprehensive community plan as the basis for actions to employ eminent domain for economic development, in addition to the developer’s contractual requirement to carry out the redevelopment program.

The Conditions of Blight

The courts and the current debate over eminent domain continue to reaffirm the appropriateness of its use to remove blight and to redevelop blighted areas. While state statutes may offer varying definitions of blight, the Housing Act of 1949, as amended, describes the activities that might be undertaken in federally funded urban renewal projects. The approved activities include the acquisition of properties meeting the following basic descriptions, among others:

- ❑ a slum area or a blighted, deteriorated, or deteriorating area;
- ❑ predominantly open areas that—because of obsolete platting, ownership diversity, deterioration of structures, or site improvements—substantially impair or arrest community growth;
- ❑ open land necessary for sound community growth to be developed for predominantly residential uses; and
- ❑ vacant, unused, underused, or inappropriately used land or land occupied by functionally obsolete nonresidential buildings.

The U.S. Department of Housing and Urban Development, which administered the federal urban renewal program, defined slum and blighted areas as those meeting the following criteria, among others: having buildings with serious defects warranting clearance and having environmental deficiencies including, for example, overcrowding of structures, incompatible types of uses, detrimental land uses or conditions, and inadequate public utilities or community facilities.

The strongly worded dissenting opinions by other justices revealed a sharply divided court and encouraged a widening debate over the use of eminent domain, especially for purposes of economic development. Former Associate Justice Sandra Day O’Connor, writing the principal dissenting opinion, argued that acquisition of private property through eminent domain to transfer it to other private parties should be limited to redressing “affirmative harm” to society, such as removing blighted conditions.

Use of eminent domain to eliminate blight has been consistently supported as a legitimate public purpose by past supreme courts, and even by eight of the nine justices in their commentary on the *Kelo* case. However, federal and state statutes define the term “blighted conditions” in a variety of ways, such as dilapidated buildings, lack of basic plumbing or other fixtures, abandoned properties, or obsolete uses. (See sidebar, page 7.)

Helping stir reaction to the decision by the media, federal and state lawmakers, and the public were the minority opinions and Associate Justice Anthony Kennedy’s reminder that states could choose to further limit use of eminent domain. Almost every state has introduced eminent domain reform bills, and the U.S. Congress has passed a resolution expressing disapproval of the majority opinion and is considering several other legislative actions. (See feature box, page 16.)

In June 2006, President Bush issued an executive order outlining limitations on federal taking of private property (most of which appear to reflect longstanding policies). In response to the order, the U.S. Department of Housing and Urban Development on July 17, 2006, published a notice in the *Federal Register* promising to closely examine funding requests for mixed-use housing projects that might employ eminent domain—suggesting that the spiraling effects of the current outcry may influence even smart growth projects.

Why We Should Care

Public action to acquire properties for redevelopment, including use of the power of eminent domain when necessary, can generate benefits by improving housing and neighborhood conditions for residents and by strengthening the local economy. The following are examples of successful projects involving the use of eminent domain; more detailed descriptions are provided in the Case Studies portion of this report.

Residential Redevelopment

Redevelopment can improve opportunities for residents to obtain affordable and market-rate housing through development and rehabilitation of residential areas or the addition of housing components in mixed-use projects. The expansion of residential development in central locations improves access to the downtown job market and to the variety of entertainment and cultural facilities generally available in and near center-city areas. Not only does new housing enhance the stability and livability of older neighborhoods, but also development within already urbanized areas reduces the need for edge-city growth.

The Freetown neighborhood in Greenville, South Carolina, which was developed in the 1880s as a haven for freed slaves, has undergone a complete makeover that replaced decaying housing and junk-strewn lots with 80 affordable new homes, ten rehabilitated residences, a new community center, and upgraded neighborhood infrastructure. The Greenville County Redevelopment Authority accomplished all this by acquiring blighted properties in order to assemble buildable sites for new homes.

The authority used eminent domain only to acquire two holdout properties and to clear title to abandoned and tax-delinquent properties. In 2006, it completed carefully phased redevelopment activities with the successful return of more than one-third of the displaced households to the Freetown community.

In a somewhat different case involving residential redevelopment, the Dudley Street neighborhood, housing a multicultural population of 24,000 people in Boston's Roxbury district, had seen property abandonment, arson, trash dumping, and widespread poverty. The Dudley Street Neighborhood Initiative, a grass-roots community organization, countered the city's plans for large-scale redevelopment with a different vision that focused on reinvigorating the 64-acre heart of the 1.5-square-mile neighborhood. Its strategy was to consolidate vacant, intermingled public and private properties that would provide a sufficient foundation for development that could change the neighborhood's economic environment.



Quality Hill, Kansas City, Missouri

The redevelopment of Quality Hill brought about the rehabilitation of a declining historic neighborhood in downtown Kansas City, Missouri. Through both rehabilitation and new construction, the project created nearly 500 affordable and market-rate apartments and condominiums, and thousands of square feet of commercial space in a multiple-phased development. The developer, McCormack Baron Salazar, brought historic tax credits, foundation support, bank loans, and city funds to the deal. The city's power of eminent domain made possible the assembly of the land.

The Neighborhood Initiative requested and received city authorization to use eminent domain to overcome the complex process of acquiring tax-delinquent and abandoned properties. In this way, the organization was able to assemble enough land to allow construction of more than 400 single-family homes, a new town common, a community center and gym, a child care center, and a community greenhouse. A total of 740 existing houses were refurbished in the community as well. Boston's willingness to entrust the power of eminent domain to the Neighborhood Initiative proved to be a key to successful redevelopment.

In both examples, eminent domain was employed as a backup to acquisition through negotiated agreements with property owners. Also, condemnation was used primarily to overcome problems with determining ownership or the value of tax-delinquent and/or abandoned properties.

Redevelopment to Spur Economic Growth

Redevelopment programs that create sites for new or expanded industries and businesses are launched with the expectation that the increased economic activity will make more jobs available to residents, attract new types of businesses, and in general increase the level of business activity in the community. A well-planned redevelopment effort can overcome obstacles and create opportunities for attracting job- and revenue-generating activities to formerly unmarketable locations.

One successful project, Village West in Kansas City, Kansas, was initiated by the city and county as a joint redevelopment effort. The highly accessible 400-acre site contained 146 homes and farms plus four businesses. Some of the properties were acquired through eminent domain when owners

refused the offered buyout value. Once the property was assembled and made available for development, it attracted entertainment and retail businesses that since 2001 have created 3,500 jobs and drawn 9 million visitors a year. The site is still being developed, with major additions opening in 2007 and more being planned.

On a somewhat smaller scale, the town of Arlington Heights, Illinois, carried out a series of transit-oriented redevelopment projects from

1995 to 2003 that have revitalized its moribund downtown. Redevelopment sites were assembled from town-owned commuter parking lots, and through private acquisitions by a developer and town condemnation of two small holdout parcels. Developers selected by the town undertook development that included the mixed-use, public/private Arlington Town Square and, in subsequent development, 300 condominium units, additional retail and office space, a performing arts complex, and a central park, plus parking structures serving residents, shoppers, and commuters. The town also provided gap financing for several projects, grants and loans for facade improvements and interior renovations of some 35 buildings, and relocation assistance for displaced businesses and residents.

Redevelopment for economic development also aims to generate increased tax revenues for improvement of public services and facilities. Village West in Kansas City produces \$5 million per year in property taxes, compared with \$15,000 before redevelopment, an amount that has enabled the city and county to lower tax rates, increase funds dedicated to revitalizing older areas, and allow early payment of bonds. In Arlington Heights, special districts were established to raise \$27 million in public funding that is generating \$133 million in private investment.

Replacing blighted and functionally obsolete areas with new developments adds luster and life to cities and suburbs, heightening their image in the regional urban spectrum and enhancing residents' identity with their neighborhood or community. In all four of these examples, the power of eminent domain played a small but significant role in assembling sites for redevelopment.



Murphy Park, St. Louis, Missouri

With creative financing, McCormack Baron Salazar in the mid-1980s joined forces with the St. Louis Housing Authority, the U.S. Department of Housing and Urban Development (HUD), and public housing residents to create a new model for inner-city housing by mixing public housing, affordable housing, and market-rate units in one privately owned and managed development. This effort proved so successful that HUD created the HOPE VI program based on the principles of mixed-income residents and mixing public and private financing sources. The city's power of eminent domain was used in the assembly of the additional land necessary to lower the number of units per acre (the existing public housing buildings were high rises) and to provide land for the new non-public housing units—two concepts critical to the success of Murphy Park.

Guiding Principles and Practices for Use of Eminent Domain

The power of eminent domain is a valuable tool for local governments seeking to replace blighted and outmoded land uses with development that can expand a community's economy, employment, and tax base. The proposed constraints on use of eminent domain could block critically needed improvements in cities and suburbs.

It is vital, however, that the power of eminent domain be employed in a fair and equitable manner. Redevelopment programs that acquire private properties must be responsive to the legitimate desire of property owners, neighborhood residents, and businesses for fair treatment, proper notice and other procedures ensuring equitable treatment, and just compensation.

To achieve that objective, forum participants developed a set of guiding principles and best practices that can improve fair and equitable use of eminent domain by public agencies to promote revitalization and redevelopment. These principles suggest approaches that can help government agencies and developers prevent problems that often arise in the use of eminent domain.

Principle 1

Private property rights are a cornerstone of American law. The Fifth Amendment to the U.S. Constitution protects ownership of private property by limiting the governmental exercise of the power of eminent domain to acquisition of property required for a public use and by mandating payment of “just compensation” to property owners. Courts have ruled that achieving public benefits through economic development, in accordance with a comprehensive plan, is an acceptable use of the power of eminent domain.

This principle acknowledges the importance of private property ownership in American life and law and underscores the significance of constitu-

tional safeguards against the unreasonable governmental taking of private property. The nation's founding fathers were property owners; some held thousands of acres of land. They respected the concept of private ownership and sought to protect the rights of property owners against improper seizure of properties by governments at all levels. And they were moved to require appropriate compensation to owners for the value of properties acquired by the government. At the same time, they recognized the necessity of public property acquisition to serve public purposes—for public building sites and roadways, for example.

Thus, the Constitution's takings clause requires that exercise of the power of eminent domain serve a public purpose and create public benefits. These purposes and benefits are best spelled out in a comprehensive redevelopment plan that establishes the policy foundation for use of eminent domain in a proposed redevelopment area.

Definition of public purposes and benefits is even more important when the private property to be acquired through eminent domain will be transferred to another private property owner for redevelopment.

However, because of their experiences over centuries, governments prefer to make sparing use of the power of eminent domain. Generally, they favor negotiation of a reasonable purchase price with a willing seller over engaging in possibly controversial and time-consuming legal proceedings. In most areas designated for redevelopment, public agencies tend to pursue condemnation for only a small proportion of properties—in many instances, only to clear title of vacated or tax-delinquent properties or to acquire properties after attempts to negotiate acquisition have proven fruitless. In the latter circumstance, government possession of the

power of eminent domain for acquisition of hold-out properties can spell the difference between success and failure in achieving redevelopment goals.

Despite the long history of use of eminent domain, and perhaps because of the wide range of its application over time, disputes arise. In particular, the questions of public purpose—especially in government pursuit of economic development—and adequacy of compensation for the tangible and intangible costs of taking private property continue to create controversy.

Putting the Principle into Practice

Government agencies and developers must respect private property rights and should employ the power of eminent domain only in accordance with the practices outlined under the remaining principles.

Principle 2

Public and private efforts to rectify abuses of the power of eminent domain should address specific problems rather than broadly prohibit its use for the legitimate public purpose of economic development.

Calls for drastic limits on the use of eminent domain threaten to stifle community efforts to promote urban and suburban revitalization. There is no doubt that abuses of the power have occurred—in the provision of timely information about the intent and process of proposed property acquisition, in the determination of just compensation, and in the definition of proper public purposes to be served by the acquisition. These problems are preventable, however, without eliminating eminent domain as a useful tool for promoting redevelopment.

Use of eminent domain to foster economic development appears to prompt the greatest oppo-

sition when it involves public acquisition of one owner's private property so it can be sold to and reused by another private owner.

In itself, the public purpose of promoting economic development is unassailable—governments have provided many incentives, including offers of development sites, for this purpose for many years.

Use of the power of eminent domain to assemble such sites, however, has raised questions, especially if the proposed beneficiary of the acquired property is known before its acquisition, as was the case in the controversial condemnation of an entire neighborhood in Detroit to allow development of a General Motors factory. Resolution of the issue, then, depends on the extent to which the project's value to the community at large—manifested through use of the power of eminent domain—outweighs the negative impact the acquisition has on private property owners.

The definition of public purposes to be served by eminent domain frequently involves a combination or overlapping of public and private purposes, as demonstrated in the increasingly successful use of public/private partnerships in urban and suburban redevelopment. The private sector now develops and owns toll roads, public arcades and plazas, government office buildings, stadiums, and streets that previously were considered to be the exclusive province of the public sector. And the public sector sometimes invests in hotels, conference centers, apartment buildings, and industrial parks once thought of as the exclusive province of the private sector.

Is sale of redevelopment land to a private owner to help fund construction of a public convention center a public or a private purpose? What about public open spaces or community centers included by developers in otherwise private projects? Or

commercial space built by developers but supported in part by public parking garages? These developments appear to generate public benefits, but also clearly benefit private participants. Rarely do redevelopment projects serve solely public or private purposes.

Putting the Principle into Practice

To ensure that eminent domain is employed fairly in redevelopment, developers and government agencies should take care to involve residents and property owners in the decision-making process, thereby generating broad agreement on the public good. They also should prepare a realistic redevelopment plan and make displacement as painless as possible for owners and residents.

Principle 3

The public purposes to be served and specific public benefits expected from proposed redevelopment should be documented in a redevelopment plan determined through resident participation and approved by the government.

For redevelopment sites acquired wholly or in part through eminent domain, it is prudent to define the public purposes to be served and the public benefits expected from private use of the properties. For example, among potential public purposes and benefits of privately sponsored economic development efforts, including those that may be assisted by the use of eminent domain, are the following:

- increased property and/or sales tax revenues for the local jurisdiction;
- expanded employment opportunities for local residents;

- greater proximity of residents to local services and jobs;
- increased business activity for existing shopping and service outlets;
- elimination of run-down and unsightly conditions;
- improvement of infrastructure systems;
- spillover enhancement of surrounding areas;
- creation of place-making qualities that improve community identity;
- creation of opportunities for related development of civic and cultural buildings and spaces; and
- attraction of visitors to nearby public and cultural facilities.

The redevelopment plan can spell out in detail aspects of such purposes and the benefits that pertain to the proposed redevelopment area.

Putting the Principle into Practice

To carry out Principle 3, developers and government agencies should take the following steps:

Identify public purposes and benefits. In consultation with property owners, residents, and business owners in the proposed redevelopment area, developers and government agencies should identify specific public purposes to be served and the public benefits to be achieved through redevelopment.

Prepare a plan. Before initiating redevelopment, a local government or redevelopment agency should prepare and adopt a plan that, at a minimum, defines the public purposes and benefits to be served by redevelopment and describes the general character of proposed development, proposed uses, preservation and/or restoration of existing uses, and potential phasing of future development.

These practices reflect recommended local planning practices in general. More particularly, they reflect the emphasis the *Kelo* decision placed on New London's adopted plan for the redevelopment area as a means of establishing the rationale for undertaking the project. Many states require preparation and adoption of such plans before initiation of redevelopment.

Principle 4

Public officials and redevelopment agencies should seek out, listen to, and respect the point of view of property owners, residents, and business owners in redevelopment areas.

The prospect that redevelopment will result in the loss of property ownership, as well as required relocation and substantial changes in the area, can breed anxiety and concern among the residents most directly affected—property owners, homeowners and renters, and business owners and employees. Local public officials should ensure that these concerns and questions can be aired and addressed throughout the redevelopment process, particularly when use of eminent domain is considered.

Putting the Principle into Practice

To carry out Principle 4, the following steps should be taken:

Seek public participation. Property owners, residents, and other interests in proposed redevelopment areas should be given advance notice of and opportunities to participate in planning before public decisions are made on formal designation of the area to be redeveloped, adoption of plans, and decisions to proceed with property acquisition potentially involving use of eminent domain.

Phase acquisition and relocation. The planning process should consider the opportunities for phasing of property acquisition and relocation of residents and businesses to alleviate unnecessary hardships for property owners, residents, and business owners.

Retain existing residents. Relocation activities should take advantage of all opportunities provided by the redevelopment process to rehouse existing residents and businesses within the new development and to make property available there for sale to previous owners of acquired properties.

Local officials should go the extra mile in addressing the impact of property acquisition—including that acquired through the use of eminent domain—on current residents, businesses, and property owners. In the Freetown redevelopment process in Greenville, South Carolina, for example, the Greenville County Redevelopment Authority worked with neighborhood residents to identify homes that could be refurbished rather than demolished, to determine the need for relocation assistance, and to temporarily relocate about one-third of the resident households, then return them to new and rehabilitated homes in Freetown.

Eminent Domain Ballot Initiatives

In the November 2006 elections, nine states passed measures by a significant margin to ban or restrict use of the power of eminent domain for private projects. Only in California and Idaho did voters reject such restrictions. Plans to place similar measures on ballots in other states in 2008 are already underway.

EMINENT DOMAIN BALLOT INITIATIVES, 2006

STATE	BALLOT INITIATIVE	SUMMARY	RESULT
Arizona	Proposition 207	Prohibits use of eminent domain for private projects; requires compensation for regulatory takings.	Passed
California	Proposition 90	Prohibits use of eminent domain for private projects; requires compensation for regulatory takings.	Failed
Florida	Amendment 8	Restricts use of eminent domain for private projects.	Passed
Georgia	Amendment 1	Restricts use of eminent domain for private projects.	Passed
Idaho	Proposition 2	Restricts use of eminent domain for private projects; requires compensation for regulatory takings.	Failed
Michigan	Proposal 4	Restricts use of eminent domain for private projects.	Passed
Nevada	Question 2	Restricts use of eminent domain for private projects.	Passed
New Hampshire	Amendment 1	Restricts use of eminent domain for private projects.	Passed
North Dakota	Amendment 2	Restricts use of eminent domain for private projects.	Passed
Oregon	Measure 39	Restricts use of eminent domain for private projects.	Passed
South Carolina	Amendment 5	Restricts use of eminent domain for private projects.	Passed

Source: American Institute of Architects.

Principle 5

Eminent domain is a powerful tool that should be employed only after other methods of property acquisition are found unworkable.

Redevelopment agencies generally employ eminent domain only as a last resort. Agencies have found through experience that offering generous payments for property, within reasonable, state-established legal limits, can help them and developers avoid or soften objections to its acquisition. They have also learned that property owners who understand the potential benefits of planned redevelopment are more likely to cooperate with property acquisition programs. Many examples exist of redevelopment efforts that manage to obtain ownership of most properties slated for acquisition without use of eminent domain.

Putting the Principle into Practice

To carry out Principle 5, the following steps should be taken:

Consider alternatives to acquisition. Government agencies should give careful consideration during the redevelopment planning process to identifying potential alternatives to property acquisition and demolition of structures, subject to satisfying plan objectives. Among the possible alternatives are structural rehabilitation, adaptive use, lot division to retain structures, property trades, and change of use.

Recognize tangible and intangible costs of displacement. Government agencies should undertake good-faith negotiations to purchase private properties with offers of just compensation that include recognition of both tangible and intangible costs to property owners, residents, and business owners. Especially in view of potential proceedings involving the exercise of eminent domain, redevelopment agencies should interpret the constitu-

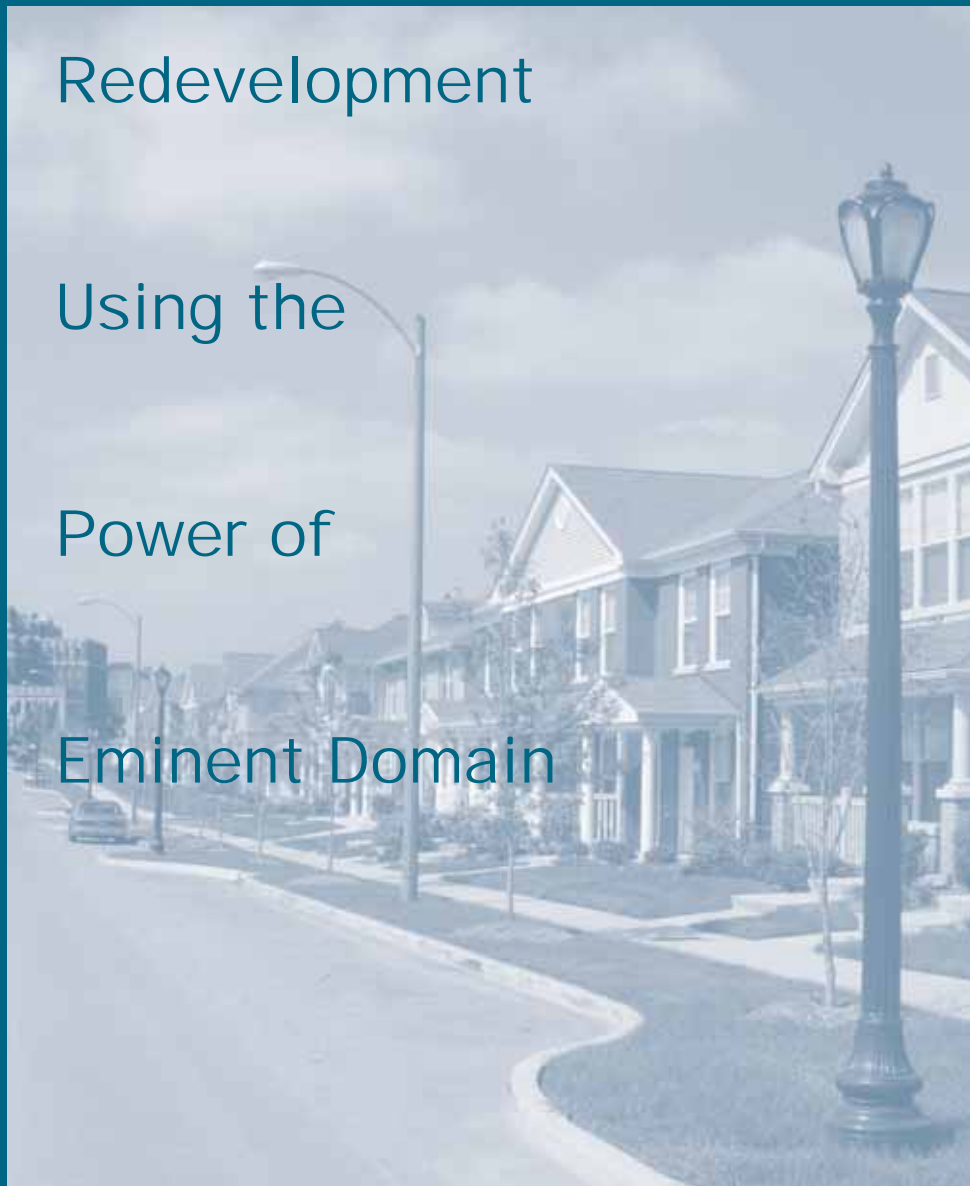
tional requirement for just compensation to emphasize the justice of including not only the assessed or market value of the property, but also other potential costs to residents and businesses such as reasonable relocation expenses, income losses during relocation, and the loss of neighborhood and family ties with the area.

Both of these practices can benefit from efforts by the redevelopment agency to establish strong relationships during the initial planning process with area property owners, residents, and business owners.

Summary

The forum participants call on public, nonprofit, and private organizations advocating improvement of housing and economic conditions in America to support the use of eminent domain in accordance with this statement of principles and recommended practices, and to assist in informing elected officials and community leaders about the importance of the power of eminent domain as a tool for revitalizing communities.

Case Studies:



Redevelopment

Using the

Power of

Eminent Domain

Freetown

Greenville, South Carolina

The Freetown neighborhood in Greenville was developed in the 1880s as a haven for freed slaves. The neighborhood declined over the years: housing became little more than shacks, cracked sidewalks and worn pavement were the norm, and drug dealing and crime rates rose. Residents appealed to the Greenville County Redevelopment Authority for help.

Today, Freetown is a different place after undergoing a complete makeover that replaced decaying housing and junk-strewn lots with 80 affordable new homes and ten rehabilitated residences; neighborhood street, water, and sewer infrastructure also was upgraded. One of the most dramatic improvements is a new \$600,000 community center—equipped with a full-sized gymnasium, meeting rooms, and a kitchen—that replaced a small U.S. Army barracks building previously used as the neighborhood center.

The redevelopment authority accomplished all this beginning in 1998 by acquiring blighted properties in order to assemble buildable sites for new homes. Acquisitions included a 54-unit apartment complex that had been a haven for criminals; it was torn down and replaced by more than a dozen new single-family homes. Most new houses in Freetown have about 1,100 square feet of space and are valued at less than \$75,000.

The authority used the power of eminent domain to acquire only two holdout properties and to clear title to abandoned and tax-delinquent properties. Relocation grants ranging from \$10,000 to \$20,000 helped residents make downpayments on new homes. Having completed a carefully phased redevelopment program in 2006, the authority successfully returned more than one-third of the displaced households to the Freetown community, which now numbers about 200 families.

Sources: Telephone interviews on August 9, 2006, with Martin Livingston, director of the Greenville County Redevelopment Authority, and Gwen Kennedy, former redevelopment authority director; Greenville County Redevelopment Authority, *Community Report, 2004*; and John Boyanoski, "Three's the Charm," *Planning*, April 2005, 22–25.

Dudley Street Neighborhood

Boston, Massachusetts

The Dudley Street neighborhood, made up of a multicultural population of 24,000 and located in Boston's Roxbury district, had seen property abandonment and arson, trash dumping, and widespread poverty. The neighborhood consisted of older one-, two-, and three-family homes, a few larger boarded-up multifamily buildings, and about 1,000 vacant lots; a variety of commercial and community services were available to residents. The Dudley Street Neighborhood Initiative, a grass-roots community organization formed in 1984, countered the city's plans for large-scale redevelopment of the 1.5-square-mile area with a different vision. Focusing on reinvigorating the 64-acre heart of the neighborhood, the group's strategy was to consolidate vacant, intermingled public and private properties to provide a foundation for development sufficient to change the neighborhood's economic environment.

In response to its request to the city, the Neighborhood Initiative received authorization to use eminent domain to overcome the complex process of acquiring tax-delinquent and abandoned properties. It created a community land trust, and from 1991 to 1994 the organization assembled 132 parcels with enough land to allow construction of more than 400 homes in single-family, duplex, and triplex structures. In addition, the organization refurbished 740 houses and constructed a new town common, a community center and gym, a child care center, and a community greenhouse. The willingness of Boston to entrust the power of eminent domain to the Neighborhood Initiative was a key factor in the organization's ability to redevelop the area.

Sources: Robert G. Dreher and John D. Echeverria, "Kelo's Unanswered Questions," unpublished paper from the Georgetown Environmental Law & Policy Institute, 2006; and Enterprise Program, "Program Profile: Dudley Street Neighborhood Initiative," 2000, www.practitionerresources.org.

Village West

Kansas City, Kansas

Creation of Village West in Kansas City, a successful entertainment, shopping, and tourism district, was initiated by the city and county as a joint redevelopment effort. The 400-acre site at the junction of interstates 70 and 435 contained 146 homes and farms, plus four businesses. All but two properties were acquired through negotiated price agreements: one 15-acre parcel held by an absentee owner and another, smaller parcel whose owner refused the offered sales price were acquired through the exercise of eminent domain. The potential use of eminent domain appeared to prompt property owners to enter into serious negotiations toward a reasonable sales price.

Once the properties were assembled and made available for development in 2001, they quickly attracted entertainment and retail businesses, in part due to the popularity of the nearby Kansas Speedway and the prime location of the city and county within a large midwestern region. A key element is the Nebraska Furniture Mart, owned by Berkshire Hathaway Corporation, which built a huge store on a 16-acre site and is adding to it a 360,000-square-foot expansion on eight additional acres. Other major projects include a Dave & Buster's entertainment venue, more than 400 hotel rooms, the first phase of a 750,000-square-foot lifestyle center, and the Community America Ballpark (home of the T-Bones minor league baseball team), plus dozens of other retail and entertainment outlets.

Village West, which in 2006 had 38 businesses that employ nearly 3,500 people, draws nearly 9 million visitors a year. Property values in the redevelopment area now top \$189 million, generating more than \$6 million in real property tax revenues in 2005 for the city and county. The Village West tourist district, a highly successful economic development project, continues to make major additions, and more are planned.

Sources: Telephone interviews with Rob Richardson, Wyandotte County/Kansas City, Kansas, planning director, and project coordinator Denise Hays, August 14, 2006; city/county annual reports, 2004 and 2005; and the Village West home page, www.villagewest.us.

Downtown Arlington Heights, Illinois

Arlington Heights, located about 24 miles northwest of central Chicago, has revived its moribund downtown through a series of public/private redevelopment projects that have relied on land acquisition by public and private organizations, aided by public use of eminent domain powers when necessary to complete assembly of developable sites.

Arlington Heights is a classic suburban community of 77,000 residents living in upscale neighborhoods, but a proliferation of shopping centers dominated the retail market to the detriment of its downtown. By the mid-1980s, with vacant storefronts, run-down buildings, and parking lots all too common in the community's center, the town council began fighting back.

Officials drew up a central business district master plan in 1987 that focused on encouraging mixed-use, high-density development through strategic public actions. It then invested in construction of parking garages, new parks, and improved streetscapes. Two private residential projects were built in the 1980s. The town then launched a series of public/private projects that featured the opening of a major in-town, neotraditional shopping center in 1999, and development of three condominium buildings and a performing arts center in the next two years. Downtown Arlington Heights has been re-created as a walkable, attractive, busy town center.

The town took decisive actions to create these projects. It established financing districts to make available bond proceeds for gap financing of new developments, grants and loans for facade improvements and interior renovations, and business relocation assistance. Over a lengthy period it acquired key downtown properties to serve as a land bank for future projects, meanwhile operating many of them as commuter parking lots.

In the late 1990s, the town sought developer interest for engaging in public/private projects. Town officials worked cooperatively with several developers to shape feasible developments, including acquisition of properties through eminent domain when necessary to produce developable sites. The town also invested in substantial streetscape and park improvements to provide an attractive public framework for private construction.

Sources: In-person and telephone interviews with Arlington Heights planning director William Enright, 2001 through 2005.

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