

The background of the entire image is a photograph of a beach at dusk or dawn. In the foreground, a large, intricate sandcastle sits on the sand. The sandcastle has several tall, rectangular towers and a complex base. The ocean is in the middle ground, with white foam from breaking waves washing onto the shore. The sky is filled with dark, heavy clouds, with some light breaking through near the horizon. The overall mood is dramatic and somewhat ominous.

# OPENING THE FLOODGATES

Eminent Domain Abuse In the Post-*Kelo* World

DANA BERLINER



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JUNE 2006





## Acknowledgments

Collecting this information took an enormous amount of work from everyone at the Institute for Justice. Property owners and attorneys throughout the country also contributed information and photographs. Thank you especially to John Ross; without his persistence and devotion, this project would not have been possible. Thank you also to Isaac Reese, who laid out this report and many of our other eminent domain publications, and Tim Keller, who carefully reviewed this entire report.



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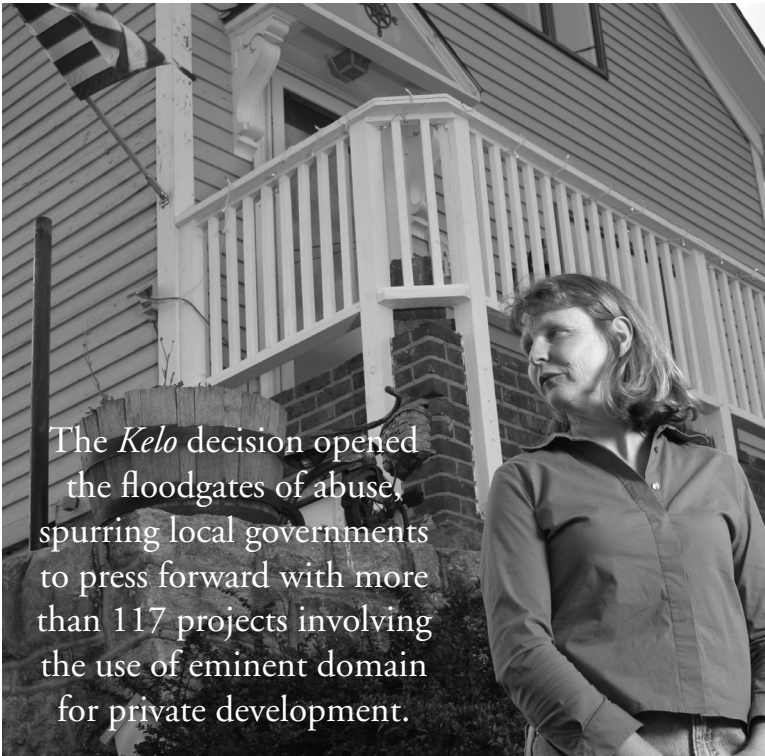
# Introduction

On June 23, 2005, in the now infamous *Kelo v. City of New London* decision, the U.S. Supreme Court held that the U.S. Constitution allows government to use eminent domain to take and bulldoze existing homes and businesses to make way for new private commercial development. The mere possibility that a different private development could produce more taxes or jobs is a good enough reason for condemnation, according to the Court. Municipal officials hailed the decision, while the rest of the nation reacted with shock and outrage.

The *Kelo* decision opened the floodgates of abuse, spurring local governments to press forward with more than 117 projects involving the use of eminent domain for private development. Since the decision was handed down, local governments threatened eminent domain or condemned at least 5,783 homes, businesses, churches, and other properties so that they could be transferred to another private party. Before the Supreme Court's decision, cities already regularly abused the power of eminent domain. But *Kelo* has indeed become the green light that Justice O'Connor and Justice Thomas warned of in their dissents. The decision emboldened officials and developers, who started new projects, moved existing ones forward, and, especially, threatened and filed condemnation actions. Courts, too, relied on *Kelo* in upholding projects that took the property of one private party only to turn around and give it to another. Sadly, the decision profoundly discouraged many owners who wanted to fight the loss of their home or business but believed, after *Kelo*, it would be hopeless to fight.

At the same time that *Kelo* encouraged the use of eminent domain for private development, it has also become a catalyst for national reform. One year after what appeared to be a total victory for local governments allied with private developers, the struggle to limit eminent domain abuse rages more intensely than ever. Many state legislatures responded to the public outcry by beginning to restrict eminent domain in a variety of ways. City officials and developers have lobbied heavily against substantive limits while simultaneously trying to find ways around the new laws.





Susette Kelo, the lead plaintiff in *Kelo v. New London*, stands in front of the home that the U.S. Supreme Court ruled could be taken and given to a private developer in the name of "economic development."

## *Executive Summary*

### ***The Floodgates Open***

The use of eminent domain for private development has skyrocketed in the past year. Since the Court issued its decision in *Kelo*, local governments have threatened or condemned more than 5,783 properties for private projects. That is more than half of the 10,282 properties threatened or taken by eminent domain for the benefit of private parties in the five years between 1998 and 2002.

The threat of condemnation for private development is just as much an abuse of eminent domain as the actual filing of condemnation proceedings. Emboldened by *Kelo*, cities have aggressively threatened owners with takings for private development. They know that now they rarely need to file condemnation actions because owners largely give in rather than fight what they believe, after *Kelo*, to be a hopeless battle. Thus, there were 5,429 threatened condemnations for private use in the past year, as compared to 6,560 in the five years between 1998 and 2002. At the same time, local governments filed or authorized 354



condemnations for private use in one year, in contrast to 3,722 filed in five years. (The 354 includes 175 properties for which news reports confirmed the actual filing of condemnation actions and another 179 properties where the local government specifically voted to condemn or authorized a private party to condemn.)

### ***“Any Motel 6 for a Ritz-Carlton, any home for a shopping mall, any farm for a factory”***

Justice O'Connor predicted that in the wake of the decision, any Motel 6 could be taken for a Ritz-Carlton, any home for a shopping mall, and any farm for a factory. Her predictions are coming true—cities are pushing out motels for commercial development and replacing small businesses with upscale hotels. Homes are certainly being replaced by shopping malls, but the stronger trend has been the replacement of residences with other, more upscale ones. While we have seen no specific instances of farms being taken for factories, agricultural land has been taken for still more retail development. And while Justice O'Connor didn't mention churches, it is worth noting that at least 16 houses of worship—which pay no taxes—are being forced out for private uses that will put the property back on municipal tax rolls. As just a few examples show, no property is safe after *Kelo*:

- Within hours of the *Kelo* decision, Freeport, Texas, brought an eminent domain action against three family-owned seafood businesses in order to transfer the land to a larger private marina.
- Oakland, Calif., took a parking lot from an owner who wanted to build a residential development and replaced it with an auto service business. The City then took two auto service businesses to replace them with residential development.
- Troy, Ill., condemned farmland for a shopping center anchored by a Lowe's Home Improvement store and other national chain stores.
- Lodi, N.J., is seeking to force out 233 low-income and elderly families in favor of a senior community where townhouses will cost more than \$350,000.
- Long Branch, N.J., is trying to replace middle-income, single-family homes on the waterfront with more expensive condominiums.
- Lorain, Ohio, wants to take homes for a casino parking lot.
- St. Louis, Mo., took an elderly woman's house for a shopping mall.
- An elderly woman who lost her home once to business expansion in Clinton, Iowa, will have to move again for another expansion of the same business.
- Riviera Beach, Fla., rushed to sign a development contract before the governor signed reform legislation the following day, in the hopes



of preserving the ability to condemn property, including the homes of many low and moderate income families, for a massive private development project.

- Stockbridge, Ga., condemned several small businesses for private development, even though the businesses already had contracts to sell to a different developer.

## ***Out With the Old and In With the New***

The common element in nearly all the eminent domain projects since *Kelo* has been a trend predicted by both Justice O'Connor and Justice Thomas. Both dissents noted with alarm that the Court's rationale would operate as a one-way ratchet, allowing condemnation to clear out poorer residents and smaller businesses in favor of wealthier ones. And, in fact, the vast majority of eminent domain projects in the past year involved the removal of lower-income residents and small businesses to attract wealthier people or more prominent businesses. Of the 117 projects, nearly half involved taking lower-income homes, apartments and mobile home parks to construct upscale condominiums or other upscale residences and new retail development. Cities across America are working hard to drive out the working poor. And if the cities can't drive them out completely, they try to contain them in centrally-planned buildings of city-approved design, located in city-designated areas.

## ***A Room With a View, But Only for the Rich***

The New London development project in the *Kelo* case reflected many trends that appear all over the country. In addition to replacing middle-income residents with higher-income ones, another national trend following *Kelo* is taking highly desirable waterfront real estate because of the large amounts of money to be made on waterfront property. Apparently, government and developers don't believe that middle-income people and their modest businesses deserve a nice view. The underlying assumption of these waterfront takings is that valuable property should be in the hands of richer people and larger businesses, because they can make more profitable and higher taxpaying use of land, so it's the job of government to oust the current owners and replace them. At least 20 of the projects in this report involved waterfront areas.

## ***Eminent Domain is Never a “Last Resort”***

Local officials love to say that eminent domain is used only “as a last resort.” The Castle Coalition documented that phrase 22 times in this report, but from our experience it is uttered by local officials in nearly every redevelopment project in which eminent domain is authorized. Supposedly, eminent domain is used in areas abandoned by the private sector and only when properties are absolutely necessary for an important project. But in reality, the phrase “last resort” means that any owners who refuse to sell “voluntarily” will have their property condemned to make way for a pre-planned redevelopment project that benefits private interests. Increasingly, eminent domain is being used in areas that are developing well on their own, without governmental interference, meaning that local officials are doing nothing more than favoring one developer over another.

## ***Some State Courts Are Following Kelo***

At least 10 court decisions—in the District of Columbia, Florida, Georgia, Minnesota, Missouri, New Jersey, New York and Ohio—have relied on *Kelo* to rule against owners whose property is being taken for private commercial development. These courts are citing *Kelo* to mean that the judiciary should not “second-guess” city decisions and that instead they should rubber-stamp any eminent domain action that comes across their bench. Some courts have cited *Kelo* with approval. Others regretted having to follow it. One court in Missouri expressed its hope that in the future there would be limits on the eminent domain power, which today “soars and devours.”

## ***The Necessity of Federal and State Legislative Reform***

Every state legislature that has been in session since June 2005 has considered legislative or constitutional reform in response to *Kelo*. This past year shows in the starkest terms the behavior that *Kelo* invited and the abuse that will continue in the absence of state or federal legislative reform to limit this awesome power of government.

Florida’s experience is illustrative. In May 2006, there were at least eight municipalities that were proceeding with private development projects in which eminent domain was being used or threatened. Sixty-seven properties had been condemned in the preceding 11 months, while another 206 were under increasing threat. Three Florida courts had relied on *Kelo* to reject challenges by owners to the condemnation of their property for private development. Florida, a state in which eminent domain abuse was a serious problem before *Kelo*, was becoming much worse as a result of local officials and courts emboldened by the decision.

Legislative change was desperately needed in Florida and the Legislature passed one of the strongest reform bills in the nation. As the legislation’s passage drew near, local governments and developers pulled out all the stops to try to get



their condemnations in under the wire. In Riviera Beach, for example, the City Council hastily signed an agreement with a private developer the night before the governor signed the reform legislation, explaining that it believed by doing so it could evade the new law.

Citizens of some states have been fortunate with the legislative reform passed by their state, others less so. Thus, home and business owners in Georgia have significant protection, but those families would be unwise to move to nearby Virginia, where the legislature failed to pass any reform at all. Making matters even worse, a number of federal economic development programs actually create financial incentives to take property for private development. And, at least under federal law, that's perfectly legal.

One year after *Kelo*, the floodgates of abuse have been thrown open. The phrase "eminent domain," once an obscure legal term, has become a part of the American lexicon. National and local public opinion polls conducted over the course of the past year show that the vast majority of the American public opposes using eminent domain for private commercial development. The force of this reaction is bringing much-needed change, but there is much more to do. Legislative change at the state and federal levels is the quickest and surest way to close the floodgates, given the length of time it takes to litigate an eminent domain case and the possibility that some state courts will follow *Kelo* in lock-step rather than provide an independent reading of their own state constitutional restrictions on eminent domain.

## ***Method of Compiling Information***

The information in this report comes from news stories, public documents and court decisions. Sources appear in the footnotes. "Filed/Authorized Condemnations" are eminent domain actions filed in court to take property or votes by local government to specifically authorize filing eminent domain actions or giving private parties the power to file eminent domain actions. "Threatened Condemnations" are government actions leading up to filing a condemnation action in court or voting to authorize the filing of such action—including blight studies that are used to justify eminent domain, plans that call for replacing existing residents and businesses, statements that eminent domain may be used, and votes to make final offers to purchase property. Because there is no official data available on the use of eminent domain for private parties, there are undoubtedly many other projects, threats and takings for private use that have not been included; this report thus represents merely a fraction of those that have occurred since *Kelo*. There are media reports every day about individual projects or condemnations, and we have done our best to incorporate those events up until early June 2006. Inevitably we will discover events that occurred before this report's publication but that did not appear in published media reports, as well as events that appeared only in local papers that were not available using the various online tools used to research this report.

If you have information and documentation about additional situations or more information on situations already included, please send this information to us at Castle Coalition, Eminent Domain Updates, 901 N. Glebe Rd., Suite 900, Arlington, VA 22203 or at [updates@CastleCoalition.org](mailto:updates@CastleCoalition.org).



# THE NUMBERS SINCE *KELO*

(JUNE 2005 - JUNE 2006)

THREATENED CONDEMNATIONS

5,429

FILED/AUTHORIZED CONDEMNATIONS

354

TOTAL EMINENT DOMAIN FOR PRIVATE  
COMMERCIAL DEVELOPMENT

5,783





# California

## Known Condemnations Benefiting Private Parties <sup>1</sup>

**Filed/Authorized Condemnations**      50

**Threatened Condemnations**    296

Legend  = 10  = 100

### Arcadia

In March 2006, City Council members voted unanimously to move forward with the condemnation of Arcadia Self-Storage, a four-story building on Huntington Drive, whose owners do not want to sell. The property is one of five that city officials threatened to seize to allow for Rusnak Mercedes Benz, a car dealership, to expand.<sup>2</sup> The other properties include a church, a vacant lot, a restaurant and an Elks Lodge.<sup>3</sup>



Arcadia officials have threatened to use eminent domain to seize Rod's Grill so a neighboring Mercedes Benz dealership can expand.

<sup>1</sup> These numbers were compiled from news sources. Many cases go unreported, and news reports often do not specify the number of properties against which condemnations were filed or threatened.  
<sup>2</sup> Gene Maddaus, "Eminent domain vote paves way for Mercedes expansion," *Pasadena Star-News*, March 9, 2006, at NEWS; Gretchen Hoffman, "Arcadia passes bridge project," *Pasadena Star-News*, April 12, 2006, at NEWS.  
<sup>3</sup> Mary Bender, "Dis-Lodged?" *Pasadena Star-News*, January 31, 2005, at News.

## El Monte

In April 2006, the City Council signed an exclusive negotiating agreement with private developer Pete Patel of HNK Land Co. LLC, who wants to build an upscale hotel on land that neither he nor the City owns. The owners of nine properties are now under the threat of condemnation as the negotiating agreement calls for the use of eminent domain. Affected properties include the Banned Board Shop, a home-decorating shop and Kragen Auto Parts. Kragen's owners do not want to sell and have spent \$200,000 renovating and retrofitting their building to withstand earthquakes.<sup>4</sup>

## Fresno (South Stadium Project Area)

In October 2005, City Council members, acting as the redevelopment agency board, voted to expand condemnation powers for a massive project to build retail, entertainment and housing in downtown Fresno. The condemnation power—which officials say will only be used as a last resort—extends over a 10-block project area within which Forest City Enterprises has “exclusive negotiating” privileges to purchase properties. Forest City and partner Johnson Fain are scheduled to begin construction in late 2006.<sup>5</sup>

The Castle Coalition filed several Freedom of Information Act requests to determine the number of properties in the project area (Inyo Street to the North, Highway 41 to the South, Van Ness Avenue to the East and H Street to the West), but City staff was not very forthcoming. Using satellite technology available on the Internet, it appears that, at a minimum, 30 properties sit under the cloud of condemnation, two of which appear to be homes.<sup>6</sup>

Among the businesses that may be displaced are Wilson's Motorcycles, Haron Motor Sales, Valley Pipe & Supply and Evans Electric Service—businesses that survived Fresno's failed 1989 attempt to put a Price Club on their properties. Also threatened by the project are Graves Upholstering & Manufacturing Co. (which was forced from its previous location in Fresno by a redevelopment project around 1980), a Motel 8 and an Arco Garage.<sup>7</sup>

## Fresno (Chinatown)

In April 2006, the Fresno City Council voted 6-1 to expand the Fresno

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4 Naomi Kresge, “City to negotiate hotel plan; Redlands: Council members sign agreement with a developer proposing a 120-room downtown site,” *Press Enterprise*, May 29, 2006, at B1.

5 John Ellis, “Downtown face-lift OK'd; Fresno council approves plans for an ambitious redevelopment around Fulton Mall, stadium,” *Fresno Bee*, October 5, 2005, at A1; John Ellis, “Agency OKs power to take land for project,” *Fresno Bee*, October 12, 2005; Jennifer Bonnett, “Forest City, Johnson Fain begin redevelopment of downtown Fresno,” *California Construction*, March 2006, at [http://california.construction.com/default/CL\\_DN\\_default.asp](http://california.construction.com/default/CL_DN_default.asp) (retrieved May 25, 2006).

6 [www.zillow.com](http://www.zillow.com) (retrieved May 15, 2006).

7 John Ellis, “Downtown face-lift OK'd; Fresno council approves plans for an ambitious redevelopment around Fulton Mall, stadium,” *Fresno Bee*, October 5, 2005, at A1; Russell Clemings, “City agency may control blocks; Fresno Redevelopment Agency could condemn properties near stadium,” *Fresno Bee*, July 15, 2005, at B4; John Ellis, “Fresno agency seeks more eminent domain power,” *Fresno Bee*, September 2, 2005, at A1.



When the cloud of condemnation hangs over an area for an extended period of time, the blight designations become self-fulfilling prophecies because individuals refuse to invest money in properties that could be taken from them by bureaucratic whim.

Redevelopment Agency's ("RDA") authority to use eminent domain to include a 180-acre area in historic Chinatown.<sup>8</sup> Based on satellite images, it appears that the redevelopment area (Fresno Street to the North, Highway 41 to the South, railroad tracks to the East and 99 West to the West) has more than 50 properties, at least 20 of which are homes.<sup>9</sup> The area also includes two churches—the First Mexican Baptist Church and the Harvest of Harmony Community Church—the Fresno Betsuin Buddhist Temple and a homeless shelter.<sup>10</sup> The Agency mailed letters in October 2005 inviting the businesses and property owners in the area to submit proposals for redevelopment within a month's time or face the possibility that the RDA may use eminent domain to seize properties and turn them over to private developers Ed Kashian and Tom Richards, who want to build some combination of new homes, retail, commercial and office space.

The property owners held a press conference to protest, prompting City officials to extend the deadline,<sup>11</sup> but the Council appears set to approve the private developers' plans.<sup>12</sup> Kathy Omachi, vice president of Chinatown Revitalization Inc., a neighborhood business group, says that the RDA is the reason there are vacant buildings and empty lots amid the many well-maintained properties.<sup>13</sup> Considering that the RDA has been pushing various redevelopment schemes for more than 40 years, it is not surprising to see some indicia of blight develop. When the cloud of condemnation hangs over an area for an extended period of time, the blight designations become self-fulfilling prophecies because individuals refuse to invest money in properties that could be taken from them by bureaucratic whim.

## Grass Valley

In October 2005, the City Council approved the South Auburn Street Master

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8 Russell Clemings, "Chinatown property owners divided on eminent domain," *Fresno Bee*, March 13, 2006, at A1; "Chinatown redevelopment project moving forward," *ABC30*, April 4, 2006.

9 [www.zillow.com](http://www.zillow.com) (retrieved May 15, 2006).

10 [http://www.fresno-chinatown.org/right\\_bus\\_church.html](http://www.fresno-chinatown.org/right_bus_church.html) (retrieved May 26, 2006); <http://www.poverellohouse.org/> (May 26, 2006).

11 John Ellis, "Chinatown plan raises fears; Some owners worry that they will be excluded," *Fresno Bee*, November 12, 2005, at B1; John Ellis, "Downtown face-lift OK'd; Fresno council approves plans for an ambitious redevelopment around Fulton Mall, stadium," *Fresno Bee*, October 5, 2005, at A1.

12 "Chinatown redevelopment project moving forward," *ABC30*, April 4, 2006.

13 Russell Clemings, "Chinatown property owners divided on eminent domain," *Fresno Bee*, March 13, 2006, A1.

Plan,<sup>14</sup> which puts 10 owners at risk of having their property condemned. The plan calls for demolishing or renovating all the single story buildings in a 2.5-acre area and replacing them with two- or three-story buildings.<sup>15</sup>

Threatened businesses include two restaurants, a fitness club, a martial arts studio, a real estate and investment office, a title company and a mortgage company as well as a single-family home and an apartment complex.<sup>16</sup>

## Hercules

In May 2006, City Council members, who double as the redevelopment agency, voted unanimously to condemn 17 acres owned by Wal-Mart to prevent the retailer from developing the property. City officials envision a neighborhood with small shops instead of a shopping center anchored by a Wal-Mart. "This resolution means that government agencies can use the really awesome power of eminent domain merely because they don't like the property owner's land use application or the property owner," said Wal-Mart

## Taken for Public Use, Used for Private

Sometimes cities will take someone's home or business for what sounds like an actual public use, only to turn it over to private parties once eminent domain proceedings are concluded. Vaughan Benz had a successful furniture business with three warehouses on the 5900 block of South Western Ave. in Los Angeles until the City used eminent domain to take Benz's property in order to build a public animal shelter. Benz fought the taking, but after "three years of torture" agreed to a settlement in February 2005. Then in November 2005, Councilman Bernard C. Parks, who was not in office when City officials initiated the condemnation action, introduced a motion to consider building the animal shelter at a different site. The City now plans to transfer the property to Cisco Bros., another furniture manufacturer, whose owners, Francisco and Alba Pinedo, have donated \$17,600 to local officials including Parks, Mayor Antonio Villaraigosa, who will have to sign off on the deal, and City Attorney Rocky Delgadillo, who will have to provide the legal justification for it.<sup>1</sup>

14 "51 new homes OK'd by city; South Auburn master plan also approved," *The Union*, October 27, 2005.

15 Becky Trout, "South Auburn St. faces extreme makeover," *The Union*, June 25, 2005.

16 "South Auburn Street plan has potential," *The Union*, August 8, 2005; Becky Trout, "South Auburn St. faces extreme makeover," *The Union*, June 25, 2005.

1 Patrick McGreevy, "Land seized for animal shelter may be sold to developer-donor," *Los Angeles Times*, January 14, 2006, at A1.



spokesman Kevin Lostcoff.<sup>17</sup> That stark truth is something smaller property owners have been facing for years. Large national stores are usually the beneficiaries, not the victims, of eminent domain abuse, but the lesson is the same: When government has the power to use eminent domain to take property from one person and give it to another, no one is safe.

## Los Angeles (Hollywood & Vine)

In March 2006, Community Redevelopment Agency (“CRA”) officials sent eviction notices to about 30 small businesses for a \$400 million project including apartments, commercial space and a luxury W Hotel.<sup>18</sup> In Los Angeles, “Eminent domain is only used as a last resort after a lengthy redevelopment process is followed and extensive negotiations for a purchase of property have failed,” according to Richard Benbow, the CRA’s acting chief executive. “The CRA already ‘self-regulates’ its use of eminent domain.”<sup>19</sup> Considering that the total public subsidy for the project will be about \$4.8 million, with most of the funds being earmarked for land acquisitions, it is not surprising that Bob Blue’s family-owned business, Bernard Luggage, found itself in court.<sup>20</sup>

Since 1950 Bernard Luggage has operated out of the 1929 vintage Herman Building, which is located in an area that has seen substantial development occur in recent years through private investment. California law restricts the use of eminent domain only to those areas that would not otherwise develop, so Blue challenged the designation of the area as “blighted” and contested the authority to use eminent domain. He lost his lawsuit and has asked the California Supreme Court to review his case. He will be evicted on June 26th if his pending legal action fails.<sup>21</sup>

## Los Angeles (Exposition/University Park)

In October 2005, the City Council unanimously approved a redevelopment plan renewing the City’s ability to condemn up to 573 acres of property to construct housing, retail and entertainment facilities near the Los Angeles Memorial Coliseum in the hopes that redevelopment will attract a National Football League team to the city.<sup>22</sup>

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17 Maria L. La Ganga, “Small town rocks retail giant; To keep Wal-Mart out, a Bay Area city votes to use eminent domain to acquire land the firm owns and intends to build on,” *Los Angeles Times*, May 25, 2006, at B3; Patrick Hoge, “Hercules; Wal-Mart pledges to fight eminent domain action in court,” *San Francisco Chronicle*, May 25, 2006, at B3.

18 Art Marroquin, “City council signs off on Hollywood & Vine project,” *City News Service*, April 26, 2006; Bob Pool, “Bit of Old Hollywood Imperiled,” *Los Angeles Times*, March 3, 2006.

19 Howard Fine, “Eminent domain battle is imminent,” *Los Angeles Business Journal*, February 20, 2006.

20 Calvin Milam, “City council approves development at Hollywood and Vine,” *City News Service*, May 31, 2005.

21 Art Marroquin, “City council signs off on Hollywood & Vine project,” *City News Service*, April 26, 2006; Calvin Milam, “City council approves development at Hollywood and Vine,” *City News Service*, May 31, 2005.

22 “LA council approves Coliseum-area redevelopment plan to lure NFL,” *Associated Press*, October 11, 2005, at State and Regional.

## Monrovia

Less than one month after *Kelo* was decided, Monrovia City officials voted unanimously to condemn an auto-shop yard owned by Bernard Buller, 67, at Duarte Road and California Avenue. Buller depends on the rent from his two tenants—a mechanic and a smog-test business—for his income and also works on cars there as a hobby. He bought the property in 1981 and has paid off his mortgage.<sup>23</sup> The City plans to replace these small businesses with 15 to 20 new condos.<sup>24</sup>

## Monterey Park

In October 2005, City Council members, who double as Monterey Park's redevelopment agency, voted unanimously to condemn three commercial buildings to give to private developer Kam Sang Co. to build Atlantic Times Square—condos, a movie theater and retail space. City officials also reached agreements with 18 families living in the Hallman Trailer Park to make way for the project.<sup>25</sup>

## National City

In January 2006, City officials condemned several downtown businesses to make way for Park Village, a 24-story condo tower with retail on the ground floor. Developer Jim Beauchamp tried for years to buy the properties, but the owners and businesses refused. Four businesses operate on the three condemned properties, the Community Youth Athletic Center, which will be relocated, a dry cleaner, a car lot, and an auto repair business, owned by Humberto Rodriguez Sr., who had worked there as an employee for 30 years before purchasing the business himself.<sup>26</sup>

## Oakland

In July 2005, less than a month after the *Kelo* decision, the City evicted two auto businesses so a developer could build an upscale residential development and condemned a parking lot whose owner wanted to construct a residential development on the lot so Sears could put up a tire and auto shop.<sup>27</sup>

In 2004, before City officials got involved, downtown Oakland had two independently-owned auto repair and supply businesses, Revelli Tire and Autohouse, on the 400 block of 20<sup>th</sup> Street, and an essentially vacant lot whose owner wanted to build a residential development. After three condemnations

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23 Sonya Geis, "Monrovia invokes eminent domain," *San Gabriel Valley Tribune*, July 7, 2005; Sonya Geis, "In eminent domain cross-hairs; Monrovia officials eye site of auto repair shop for housing development," *Pasadena News-Star*, July 3, 2005.

24 Sonya Geis, "In eminent domain cross-hairs; Monrovia officials eye site of auto repair shop for housing development," *Pasadena News-Star*, July 3, 2005.

25 "Disaster preparedness forum at PUSD center," *Pasadena Star-News*, October 20, 2005.

26 Tanya Sierra, "Eminent domain OK'd for condos; National City says businesses must go," *San Diego Union-Tribune*, January 11, 2006, at B-1; Tanya Sierra, "Natividad recall based in eminent domain vote," *San Diego Union-Tribune*, January 12, 2006, at B-1.

27 Debra J. Saunders, "Your land is their land – Part 2," *San Francisco Chronicle*, August 4, 2005, at B9.

In other words, Oakland is going to end up with a possibly more upscale version of exactly what it would have had without using eminent domain.

and a huge public subsidy, rather than having two locally-owned auto businesses, the City will have 1,000 new downtown apartments and condos, and instead of allowing an existing owner to develop his lot into residences, a national chain will open an auto repair shop.<sup>28</sup> In other words, Oakland is going to end up with a possibly more upscale version of exactly what it would have had without using eminent domain.

Revelli had planned to challenge the condemnation but gave up after the *Kelo* decision. “We thought we’d win, but the Supreme Court took away my last chance.”<sup>29</sup>

## Ontario

In October 2005, the Ontario Housing Authority filed eminent domain actions against four businesses whose owners did not agree to sell to the City for the Town Center project. Four more properties faced condemnation if their owners refused to sell.<sup>30</sup> The plan calls for replacing viable, existing businesses, including the Yangtze Restaurant, California Stationers and Molly’s Restaurant, with condos and apartments built above stores and restaurants.<sup>31</sup>

The City eventually relented and did not condemn the Yangtze Restaurant.<sup>32</sup> As of May 2006, the City had a tentative or final settlement with three out of the four owners.<sup>33</sup>

## Pittsburg

Using a redevelopment designation that covers nearly 70 percent of the city,<sup>34</sup> officials plan to make way for townhouses, lofts, flats and commercial space to be

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28 Jim Herron Zamora, “City forces out 2 downtown businesses; Action follows high court ruling on eminent domain,” *San Francisco Chronicle*, July 2, 2005, at B3; Heather MacDonald, “Council panel boosts huge Uptown project; \$61 million Oakland subsidy supported for Ohio-based developer,” *Oakland Tribune*, June 23, 2004, at LOCAL & REGIONAL NEWS.

29 Jim Herron Zamora, “City forces out 2 downtown businesses; Action follows high court ruling on eminent domain,” *San Francisco Chronicle*, July 2, 2005, at B3.

30 Mason Stockstill, “Ontario goes to court to get land,” *Inland Valley Daily Bulletin*, October 11, 2005.

31 Mason Stockstill, “Ontario Town Center project gets thumbs up,” *Inland Valley Daily Bulletin*, October 5, 2005; Michelle Knueppel, “Ontario businesses fighting downtown revitalization plan,” *Inland Valley Daily Bulletin*, August 8, 2005, at NEWS.

32 David Allen, “Ontario’s good fortune: Yangtze is saved,” *Inland Valley Daily Bulletin*, January 7, 2006.

33 Mason Stockstill, “Ontario settles property lawsuits,” *Inland Valley Daily Bulletin*, May 16, 2006, at NEWS.

34 Nathaniel Hoffman, “Other cities have faced tough issue; Redevelopment has been a hot topic wherever it has been introduced,” *Contra Costa Times*, February 11, 2004, at R01.



built by private developer AF Evans. The plan calls for demolishing the Scampini Building, which was built in 1925 and is currently being used by the Temple of Prayer Church.<sup>35</sup> As of August 2005, the City owned 28 of the 37 properties it wants to demolish to make way for the project.<sup>36</sup> As of April 2006, a lawsuit filed by local residents seeking to save one of the area's buildings had not yet been resolved.<sup>37</sup>

## Sacramento

In April 2006, City Council members unanimously approved a “resolution of necessity” calling for the City to use eminent domain to seize two K Street properties—a commercial building and a vacant lot—for private developers “as a last resort” if the owners refuse to sell them.<sup>38</sup>

## San Bernardino

In April 2006, the City Council, acting as the redevelopment agency, voted to use eminent domain to acquire a four-unit building at 4<sup>th</sup> and G Streets if the owner does not agree to sell. Two businesses—a liquor store and smog shop—lease space there. Officials are trying to attract developers to the area, to build townhouses and mixed-use commercial development.<sup>39</sup>

## San Diego

In July 2005, the board of the Centre City Development Corp., the downtown's redevelopment agency, voted unanimously to give the owners of a linen and uniform laundry business one month to respond to buyout offers from CLB Partners, a private developer with plans to build a condo and retail project on the Little Italy site. AlSCO, the laundry shop, owns three-quarters of the block bordered by Grape, India, and Fir streets and Kettner Boulevard and employs 150 people. “The stick, the fire to create a sense of urgency for AlSCO to take action is the threat of eminent domain,” said Patrick Rhamey, one of the developers. The private developer had been trying to buy AlSCO since 2000.<sup>40</sup>

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35 Danielle McNamara, “Council approves redeveloping downtown Pittsburg, Calif.,” *Contra Costa Times*, November 8, 2005; Laurie Phillips, “Group sues city to save building,” *Contra Costa Times*, January 12, 2006, at F4.

36 Danielle McNamara, “Pittsburg wants to create old town,” *Contra Costa Times*, August 5, 2005, at F4.

37 Laurie Phillips, “Some fear projects will quash Old Town's identity,” *Contra Costa Times*, April 2, 2006, at LOCAL.

38 Terri Hardy, “Council approves purchase of land for K Street plans; The city can pursue eminent domain to acquire two parcels for developer teams involved in rebuilding downtown area,” *Sacramento Bee*, April 19, 2006, at B1.

39 Kelly Rayburn, “City moves to take downtown property,” *San Bernardino County Sun*, April 17, 2006, at NEWS; Chris Richard, “Redevelopment set to take next step,” *Press Enterprise*, April 17, 2006, at B01.

40 Martin Stolz, “Little Italy laundry threatened with eminent domain,” *San Diego Union-Tribune*, July 19, 2005, at LOCAL B-3.

The Redevelopment Agency has a sordid history of leveling property, promising new jobs and housing for residents and then failing to deliver.

## San Francisco

In May 2006, the Board of Supervisors approved a plan that turns 1,300 acres of residential, commercial and industrial property in Bayview-Hunters Point into a redevelopment area, despite vocal opposition from residents.<sup>41</sup> Indeed, in March 2006, the Coalition for San Francisco Neighborhoods, a civic group comprised of 38 neighborhood associations, voted unanimously to oppose the project.<sup>42</sup> The plan, which has the support of Mayor Gavin Newsom, also gives the redevelopment agency the authority to use eminent domain to seize commercial or industrial property in the redevelopment area over the next 12 years.<sup>43</sup> Nine of the parcels sit along the San Francisco Bay. According to a city map, there are at least 150 blocks included in the project, but it was not possible to identify how many properties were in each block.<sup>44</sup>

The plan calls for private developers to build 3,700 housing units.<sup>45</sup> Of those units, 925 (25 percent) will supposedly be affordable housing.<sup>46</sup>

Residents of Bayview-Hunters Point, the city's last predominantly black neighborhood, are wary of the rosy promises of revitalization proffered by City planners.<sup>47</sup> Although eminent domain is not currently authorized for residential properties, the plan does call for replacing existing housing units. That means residents will have to move. The plan does say residents may not be moved unless clean and safe alternative housing is found for them first.<sup>48</sup> However, the Redevelopment Agency has a sordid history of leveling property, promising new

41 Charlie Goodyear, "San Francisco; Bayview renewal approved," *San Francisco Chronicle*, May 17, 2006, at B5.

42 Willie Ratcliff, "San Franciscans unite to stop Redevelopment's BVHP land grab," *San Francisco Bay View*, March 22, 2006, at <http://www.sfbayview.com/032206/stoppedredevelopment032206.shtml> (retrieved May 26, 2006).

43 Cecilia M. Vega, "San Francisco; Bayview proposal is backed," *San Francisco Chronicle*, March 8, 2006, at B10; Redevelopment Plan for the Bayview Hunters Point Redevelopment Project, <http://www.sfgov.org/site/uploadedfiles/sfra/Projects/BVHPMap2006.pdf> (retrieved May 18, 2006).

44 <http://www.sfgov.org/site/uploadedfiles/sfra/Projects/BVHPMap2006.pdf> (retrieved May 18, 2006).  
45 Justin Jouvenal, "Bayview-Hunter's Point redevelopment plan," *San Francisco Examiner*, April 20, 2006, at [http://www.examiner.com/a-83650-Bayview\\_Hunters\\_Point\\_Redevelopment\\_Plan.html](http://www.examiner.com/a-83650-Bayview_Hunters_Point_Redevelopment_Plan.html) (retrieved May 26, 2006).

46 Charlie Goodyear, "San Francisco; Bayview renewal approved," *San Francisco Chronicle*, May 17, 2006, at B5.

47 Justin Jouvenal, "Bayview-Hunter's Point redevelopment plan," *San Francisco Examiner*, April 20, 2006, at [http://www.examiner.com/a-83650-Bayview\\_Hunters\\_Point\\_Redevelopment\\_Plan.html](http://www.examiner.com/a-83650-Bayview_Hunters_Point_Redevelopment_Plan.html) (retrieved May 26, 2006).

48 Redevelopment Plan for the Bayview Hunters Point Redevelopment Project, <http://www.sfgov.org/site/uploadedfiles/sfra/Projects/BVHP%20Redevelopment%20Plan%20Amendment%2002-27-06a%20Clean.pdf> (retrieved May 26, 2006), at 13 section 1.4.5, 36 section 4.1.1.



jobs and housing for residents and then failing to deliver.<sup>49</sup> “I have no trust in them whatsoever,” says Patricia Wright, who moved to her current home as a girl in the 1960s when the redevelopment agency bulldozed her block in Western Addition. “When I hear the words ‘redevelopment’ and ‘urban renewal,’ I think it really means urban removal.”<sup>50</sup>

The plan area has approximately 34,000 residents who may be displaced by the redevelopment plans.<sup>51</sup>

## Yolo County

Officials in Yolo County have condemned the 17,300-acre Conaway Ranch after the owners refused to sell it.<sup>52</sup> The Ranch is owned by the Conaway Preservation Group, led by environmentally-conscious developer Steve Gidaro. Much of the land is leased to farmers to plant rice, and Gidaro has worked to make farming

49 Ebony Colbert, “Wake up and smell the conspiracy: What Redevelopment really plans for BVHP,” *San Francisco Bay View*, at <http://www.sfbayview.com/050306/wakeup050306.shtml> (retrieved May 26, 2006).

50 Cecilia M. Vega, “Some in Bayview fear the ‘r’ word; Redevelopment proposal stirs painful memories,” *San Francisco Chronicle*, February 28, 2006, at A1.

51 Jason B. Johnson, “Bayview; Third Street businesses strain to recover; Redevelopment causing pain that might dissipate upon completion,” *San Francisco Chronicle*, April 8, 2005, at F1.

52 Ed Fletcher, “Yolo gets key victory on Conaway Ranch; State Supreme Court declines to review the county’s use of its eminent domain power,” *Sacramento Bee*, April 13, 2006, at B3.

## City Won’t Pay the Moving Expenses

The experience of the Lee family provides an unfortunate example of what can happen to small businesses subject to eminent domain. After the Lees fled Cambodia to get away from the Khmer Rouge, they opened a liquor store in the California Square shopping center in Riverside, Calif. The City voted to condemn part of the shopping mall for a redevelopment project, including the building in which the Lees rented space. In August 2005, Riverside told the Lees they would have to move. Supposedly, cities help residents and businesses relocate, but the relocation assistance is often cursory and inadequate. The City sent the Lees a list of potential relocation sites, all of which were too small, too far away, or the landlord did not want to rent to a liquor store. So the Lees hired a relocation specialist and found a new site on their own. They notified 500 potential neighbors and got no negative responses to their move. But in March 2006, the City denied them a permit anyway. The Lees are appealing that decision, but in the meantime, the City is evicting them from their California Square location with nowhere to move.<sup>1</sup> The Lees’ experience is not unique. In fact, small businesses often do not want to move because they know it will be impossible to reopen. Cities could simply offer them permits and allow them to relocate. But in practice, cities show no sympathy and seem to make it as difficult as possible to stay in business.

1 Joan Osterwalder, “Refugees again; Shopkeepers must move out of their store,” *Press Enterprise*, May 13, 2006, at B01; David Schwartz, “Blight fight clash in SB,” *San Bernardino Sun*, July 11, 2005, at NEWS.

## The County's plan for managing and maintaining the land sounds almost identical to what was already happening.

wildlife-friendly.<sup>53</sup> The county claims that it doesn't trust Gidaro or the group to preserve the land and is worried about the Ranch selling water to other California municipalities.<sup>54</sup> Thus, according to County Supervisors, the county should own the land.<sup>55</sup>

Something about the deal doesn't sound right, however, at least to many voters—who overwhelmingly, according to a poll, oppose the project.<sup>56</sup> The problem is that the County doesn't have anything like the amount of money it will take to pay for the property.<sup>57</sup> The owners paid \$60 million in 2004.<sup>58</sup> The County's plan for managing and maintaining the land sounds almost identical to what was already happening. And the Rumsey Band of the Wintun Indians, owners of a phenomenally profitable casino resort in the Capay Valley, pledged to underwrite the County in purchasing land. The tribe had hoped to sit on the joint board controlling the Conaway Ranch once it is acquired but Governor Schwarzenegger vetoed a bill giving them the right to do that.<sup>59</sup> However, no one in County government will explain what kind of financing agreement there is with the tribe or what it will get in return for its tens of millions in financial assistance.<sup>60</sup> Further, though officials claim that condemning Gidaro and his "dirt-peddler" friends' property will make sure the ranch stays undeveloped, at a March 2006 public meeting they couldn't promise that the County wouldn't develop the

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53 Mary Lynne Vellinga, "Steve Gidaro says he wants to protect the bucolic Yolo County farmland he bought with other investors; Local officials have doubts; Conaway Ranch sale sparks fears it will be sold down the river," *Sacramento Bee*, April 10, 2005, at B1.

54 Mary Lynne Vellinga, "Steve Gidaro says he wants to protect the bucolic Yolo County farmland he bought with other investors; Local officials have doubts; Conaway Ranch sale sparks fears it will be sold down the river," *Sacramento Bee*, April 10, 2005, at B1; Mary Lynne Vellinga, "Owners agree to negotiate Conaway sale," *Sacramento Bee*, August 18, 2005, A1.

55 Mary Lynne Vellinga, "Owners agree to negotiate Conaway sale," *Sacramento Bee*, August 18, 2005, A1.

56 Elisabeth Shewin, "Poll backs Conaway foes," *Davis Enterprise*, April 12, 2006, at <http://www.davisenterprise.com/articles/2006/04/12/news/263new0.prt> (retrieved May 19, 2006).

57 Mary Lynne Vellinga, "Steve Gidaro says he wants to protect the bucolic Yolo County farmland he bought with other investors; Local officials have doubts; Conaway Ranch sale sparks fears it will be sold down the river," *Sacramento Bee*, April 10, 2005, at B1.

58 Eric Bailey, "Battle builds over a coveted parcel; Yolo County wants to wrest bucolic Conaway Ranch from developers—and then leave it as it is," *Los Angeles Times*, January 17, 2006, at B1.

59 Hudson Sangree, "Judge: Yolo can buy Conaway; Decision allows county to use eminent domain to acquire the ranch," *Sacramento Bee*, December 1, 2005, at B1.

60 Mary Lynne Vellinga, "Owners agree to negotiate Conaway sale," *Sacramento Bee*, August 18, 2005, at A; Press Release, "Taxpayers and Property Owners Lose Conaway Ranch Ruling: County's greatest challenge to come – how to pay for it?" Yolo County Taxpayers Association, November 30, 2005, at [http://yolotaxpayers.com/pdf/release\\_113005.pdf](http://yolotaxpayers.com/pdf/release_113005.pdf) (retrieved May 26, 2005).



land itself.<sup>61</sup>

In November 2005, a superior court judge ruled that the County had the legal right to seize the land, “but whether this is something the County should do is a political question.”<sup>62</sup> In April 2006, the California Supreme Court declined to hear an appeal.<sup>63</sup>

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61 Dudley Holman, “Breaking the silence; County offers no answers on Conaway,” *Daily Democrat*, March 5, 2006, at [http://www.dailydemocrat.com/portlet/article/html/fragments/print\\_article.jsp?article=3572330](http://www.dailydemocrat.com/portlet/article/html/fragments/print_article.jsp?article=3572330) (retrieved May 26, 2006).

62 Hudson Sangree, “Judge: Yolo can buy Conaway; Decision allows county to use eminent domain to acquire the ranch,” *Sacramento Bee*, December 1, 2005, at B1.

63 Ed Fletcher, “Yolo gets key victory on Conaway Ranch; State Supreme Court declines to review the county’s use of its eminent domain power,” *Sacramento Bee*, April 13, 2006, at B3.

# Colorado

## ***Known Condemnations Benefiting Private Parties***<sup>64</sup>

***Threatened Condemnations***   116

*Legend*  = 100

### **Centennial**

In September 2005, City officials announced a partnership between the City's preferred developer, Alberta Development Partners LLC, and Walton St. Capital, the owner of the 70-acre Southglenn Mall, to raze the existing shopping center and build a newer, fancier one, dubbed the Streets at Southglenn, with a movie theater, bistros and sidewalk cafes.<sup>65</sup> City officials also agreed to use the power of condemnation to force the mall's 116 tenants out of their leases.<sup>66</sup> Construction is set to begin in June 2006.<sup>67</sup>

<sup>64</sup> These numbers were compiled from news sources. Many cases go unreported, and news reports often do not specify the number of properties against which condemnations were filed or threatened.

<sup>65</sup> "Southglenn Mall to be redeveloped," *US States News*, September 16, 2005; Kristi Arellano, "Mall's closing buys a moment of nostalgia," *Denver Post*, March 1, 2006, at C1.

<sup>66</sup> Jessica Peck Corry, "At the Crossroads of Condemnation: The Debate Over the Use of Eminent Domain for Private Development and Open Space," *Independence Institute*, January 2006, at 17.

<sup>67</sup> Kristi Arellano, "Hotels lodge interest in Flatiron Crossing: The Broomfield mall could possibly host two hotels, an official says at an annual shopping-center convention," *Denver Post*, May 23, 2006, at C3.



# Connecticut

## Known Condemnations Benefiting Private Parties<sup>68</sup>

Filed/Authorized Condemnations  1

Legend  = 1

### Bridgeport

City officials have been harassing property owners on the Steel Point peninsula for nearly 30 years. In the early 80s, they tried to bring a retail center called HarborPointe to the peninsula, which was already home to several dozen small businesses. The plan failed to materialize. In the early 90s a plan to bring a casino to Steel Point died in the Connecticut Legislature.<sup>69</sup> Between 1998 and 2000, City officials condemned about a dozen properties, including an oyster harvesting business and a 95-year-old, working-class yachting club, which fought the condemnation and won in the Connecticut Supreme Court. Officials wanted the properties for Harbour Place, another retail project, to be built by private developer Alex Conroy. Approximately a dozen more property owners were also forced to sell under the threat of eminent domain for the project, which failed after Conroy couldn't secure funding.<sup>70</sup>

But Bridgeport leaders aren't ready to give up. Now they are pushing Bridgeport Landing, a 50-acre mixed-use development that officials claim will bring hotels, new residences and office and retail space to the area.<sup>71</sup> The project

<sup>68</sup> These numbers were compiled from news sources. Many cases go unreported, and news reports often do not specify the number of properties against which condemnations were filed or threatened.

<sup>69</sup> Dan Strempel, "RCI gets help for Steel Point," *Fairfield County Business Journal*, June 6, 2005, at 1.

<sup>70</sup> Liam Hegarty, "Businessman condemns Steel Point process," *Fairfield Business County Journal*, October 5, 1998, at 3; "Tallmadge sues Bridgeport over Steel Point move," *Fairfield County Business Journal*, April 17, 2000, at 3; "Court denies Bridgeport's yacht club land grab," *Fairfield County Business Journal*, March 11, 2002, at 1; Dan Strempel, "RCI gets help for Steel Point," *Fairfield County Business Journal*, June 6, 2005, at 1.

<sup>71</sup> "Bridgeport picks RCI to develop Steel Point," *Fairfield County Business Journal*, July 16, 2001, at 1.

depends on taxpayers picking up \$200 million of the \$800 million tab.<sup>72</sup>

In November 2005, the City Council voted to approve a resolution authorizing the Redevelopment Agency to seize a 14.5-acre former industrial site, owned by United Illuminating Co. that sits along the Pequonnock River and Bridgeport Harbor. Originally, UI had supported the project but, according to UI, City officials reneged on several pieces of an agreement so the company pulled out.<sup>73</sup>

City officials want to transfer the property to RCI Marine—a private developer selected by former mayor Joseph Ganim who is in jail after an FBI corruption probe—and its partner Midtown Equities.<sup>74</sup>

In February 2006, UI sued the City to prevent its land from being seized.<sup>75</sup> In May, a Superior Court judge ruled against UI.<sup>76</sup>

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72 David Toth, "Bridgeport to seize UI's Steel Point property," *Fairfield County Business Journal*, October 24, 2005, at 1.

73 Susan Silvers, "UI property may be seized," *Connecticut Post*, September 17, 2005, at LOCAL; Daniel Tepfer, "UI sues to prevent Steel Point transfer," *Connecticut Post*, March 1, 2006, at NEWS.

74 Dan Strempel, "RCI gets help for Steel Point," *Fairfield County Business Journal*, June 6, 2005, at 1; and David Toth, "Bridgeport to seize UI's Steel Point property," *Fairfield County Business Journal*, October 24, 2005, at 1.

75 Daniel Tepfer, "UI sues to prevent Steel Point transfer," *Connecticut Post*, March 1, 2006, at NEWS.



76 "Court rules Bridgeport can take Steel Point," *Associated Press*, May 17, 2006.

# District of Columbia

## Known Condemnations Benefiting Private Parties<sup>77</sup>

**Filed/Authorized Condemnations**       6

**Threatened Condemnations**  10

Legend  = 1  = 10

## Skyland

“The Supreme Court upheld 50 years of precedent today, allowing local officials the continued use of eminent domain to bolster depressed economic neighborhoods,” said Anthony Williams, mayor of Washington D.C. and president of the National League of Cities on the day the *Kelo* decision came down.<sup>78</sup>

Williams was especially pleased with the decision because it supported a project to take Skyland, a fully leased shopping center in Southeast D.C., with a grocery store, restaurants, nail salons and laundromats among other retailers, and replace it with other retailers and, redevelopment officials hope, a big box store.<sup>79</sup> According to Williams a ruling in favor of the *Kelo* homeowners “would have [had] severe long-term effects on many government projects. It would [have] jettison[ed]” the Skyland project.<sup>80</sup>

The shopping center consists of 16 properties with 14 separate owners.<sup>81</sup> In July 2005, the National Capital Revitalization Corporation (“NCRC”) filed

<sup>77</sup> These numbers were compiled from news sources. Many cases go unreported, and news reports often do not specify the number of properties against which condemnations were filed or threatened.

<sup>78</sup> Matthew Vadum, “High court OKs eminent domain, 5-4; Connecticut ruling upheld by justices,” *Bond Buyer*, June 24, 2005

<sup>79</sup> Jen Haberkorn, “2 more Skyland properties go to NCRC,” *Washington Times*, February 28, 2006, at C8.

<sup>80</sup> Kirstin Downey, “Fighting the power to take your home; More owners are challenging government plans to seize land,” *Washington Post*, May 7, 2005, at F1.

<sup>81</sup> Kirstin Downey, “Fighting the power to take your home; More owners are challenging government plans to seize land,” *Washington Post*, May 7, 2005, at F1; Matthew Vadum, “D.C. strip mall in eminent domain flap,” *Bond Buyer*, December 12, 2005, at 1.



condemnations against six of the properties.<sup>82</sup>

Seventeen property owners and lessees sued the NCRC to prevent officials from filing more condemnations. In December 2005, a U.S. District Court judge, citing *Kelo*, ruled in favor of the NCRC.<sup>83</sup>

As of April 2006, the NCRC claims to control two-thirds of the properties.<sup>84</sup>

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82 "Two small domains," *Retail Traffic*, September 1, 2005, at 14.

83 *Rumber v. District of Columbia*, No. 04-1770, 2005 U.S. Dist. LEXIS 33360 (D.D.C. Dec. 12, 2005).



84 Tom Knott, "Skyland project adrift without anchor in sight," *Washington Times*, April 20, 2006, at B2.

# Florida

## Known Condemnations Benefiting Private Parties<sup>85</sup>

**Filed/Authorized Condemnations**        **67**

**Threatened Condemnations**    **206**

Legend  = 10  = 100

## Boynton Beach


In October 2005, after three years of threatening to use eminent domain failed to persuade two churches (the Jesus House of Worship and Triumph the Church & Kingdom of God In Christ) and other property owners to sell, City commissioners agreed to use eminent domain on 15 properties in the first phase of its Heart of Boynton redevelopment project.<sup>86</sup> As of May 2006, 13 of those condemnations are still being contested in court. Boynton Beach is also considering using eminent domain in the second phase of the project.<sup>87</sup> The City planned on approving a resolution of necessity to begin eminent domain proceedings on May 16 to acquire the final four properties for the first phase; those owners have formed a partnership and want to redevelop their land themselves.<sup>88</sup> However, before the City could file papers to initiate the additional eminent domain proceedings, the governor signed a new law governing the use of eminent domain for redevelopment purposes. Fortunately for the property owners, the new Florida law means the City and the developer will no longer be able to take land for

<sup>85</sup> These numbers were compiled from news sources. Many cases go unreported, and news reports often do not specify the number of properties against which condemnations were filed or threatened.

<sup>86</sup> Edward Sifuentes, "Eminent domain plan gets OK; Redevelopment project proceeds in Boynton Beach," *Sun-Sentinel*, October 12, 2005; Edward Sifuentes, "City OKs eminent domain takeover of 12 Boynton sites," *Sun-Sentinel*, October 19, 2005; Will Vash, "2 Boynton churches fear project dooms them," *Palm Beach Post*, October 19, 2005.

<sup>87</sup> Will Vash, "Boynton, Agency rush to settle redevelopment plans," *Palm Beach Post*, May 4, 2006, at 1B.

<sup>88</sup> Will Vash, "Boynton races clock," *Palm Beach Post*, May 6, 2006, at 1B; Will Vash, "Boynton, Agency rush to settle redevelopment plans," *Palm Beach Post*, May 4, 2006, at 1B.



In August 2005, a judge, citing the *Kelo* decision, allowed Daytona Beach officials to seize long-time boardwalk businesses so a private developer can build condo towers and restaurants.

## The First to Cite *Kelo*

In what was probably the first court decision relying on *Kelo* to approve taking property from one owner and giving it to another, a Circuit Court judge in August 2005 upheld the condemnations of three Daytona properties as part of a project to replace one set of boardwalk businesses for another. The City relied on a 1981 finding of “blight” in the area, and the judge agreed that a 24-year-old blight finding was still a legitimate justification for condemning bustling businesses.<sup>1</sup>

Daytona’s previous boardwalk included 17 typical beachfront businesses like Joyland Amusement Center, Midway Fun Center, Fun Fair and Captain Darrell’s Oyster Bar and Restaurant. The businesses, staples of the boardwalk for decades, were thriving. But the City believed a fancier boardwalk development, with two condominium/hotel towers, restaurants, shops and newer arcades, could potentially produce more taxes. The owners of the other 14 properties sold under the threat of condemnation.<sup>2</sup> “We want a new boardwalk,” said Mayor Yvonne Scarlett-Golden. “We approve [eminent domain], if it is necessary and a last resort.”<sup>3</sup> Eventually, all the beachfront businesses settled, and Carlsberg Management Co., a private developer from California, is set to begin the \$120 million project.<sup>4</sup>

1 Ludmilla Lelis, “Joyland owners settle with Daytona, an eminent domain case ends, giving boost to plans for redeveloping the city’s famous boardwalk,” *Orlando Sentinel*, November 2, 2004, at B3; Ludmilla Lelis, “Daytona businesses must sell property,” *Orlando Sentinel*, August 20, 2005, at A1; *City of Daytona Beach v. Maitbas*, No. 2004-31846-CIC1 (Fla. Cir. Ct. August 19, 2005).

2 Joshua Kurlantzick, “Eminent danger: cash-strapped cities use entrepreneurs’ property to lure big businesses; smart,” *Entrepreneur Magazine*, January 1, 2005, at 19; Henry Frederick, “Property takeover may change boardwalk,” *Daytona Beach News-Journal*, April 19, 2003, at <http://www.news-journalonline.com/special/beach/boardwalk041903.htm> (retrieved May 31, 2006); Ludmilla Lelis, “Boardwalk landowners watch court; Daytona Beach merchants fighting a city takeover of their property hope a federal case will help,” *Orlando Sentinel*, February 22, 2005, at A1.

3 Ludmilla Lelis, “Boardwalk landowners watch court; Daytona Beach merchants fighting a city takeover of their property hope a federal case will help,” *Orlando Sentinel*, February 22, 2005, at A1.

4 Tim Barker and Christopher Sherman, “Home today, gone tomorrow? A Supreme Court ruling giving the government more power to take private land for economic development has property owners across the state on edge and law makers debating ways to rein in eminent domain,” *Orlando Sentinel*, April 24, 2006, at A1; Ludmilla Lelis, “Daytona businesses must sell property,” *Orlando Sentinel*, August 20, 2005, at A1.



private development.<sup>89</sup>

The City was apparently also concerned about losing the ability to condemn property for the second phase, although the second phase was not supposed to rely on eminent domain.<sup>90</sup> Thus, City commissioners voted in May 2006 to bypass the normal bidding process for a redevelopment contract for the second phase. They began negotiations with developer Intown Development Group, which is also building the first phase of the project. Intown promised to pay for property reviews and surveys to prepare for eminent domain proceedings against any unwilling sellers in the second phase. The second phase calls for the developer to replace 60 properties with townhomes, cottages and other housing.<sup>91</sup>

Many condemnations in Boynton Beach will be averted by the new law; but the rush to push through projects and eminent domain actions before legal change demonstrates all too clearly what *Kelo* made possible and the need for legislation to prevent such abuse of eminent domain.

## Charlotte County

On August 11, 2005, Charlotte County filed an eminent domain action to acquire 25 properties for “Murdock Village.”<sup>92</sup> The filing was the latest in a series of condemnations of properties for the private development project, which the County hopes will include homes, offices and commercial space, that is slated to replace an 1,100-acre area that was mostly undeveloped but also contained at least 77 homes, 16 commercial properties and two churches.<sup>93</sup>

On May 31, 2006, a Florida appeals court cited *Kelo* in upholding the condemnation of 70 other properties in the project area. The area was declared blighted because, among other things, the roads and other infrastructure were inadequate and not properly maintained.<sup>94</sup> Owners, of course, do not have any control over road or utility maintenance. This was the third Florida decision relying on *Kelo* to rule against owners fighting eminent domain. (See also Daytona Beach below.) The decision shows dramatically that, without reform legislation, *Kelo* was destroying the rights of Florida home and business owners.

89 Chantal Abitbol, “New restrictions on eminent domain seizures to delay Heart of Boynton plan,” *Sun-Sentinel*, May 17, 2006.

90 Will Vash, “Boynton, Agency rush to settle redevelopment plans,” *Palm Beach Post*, May 4, 2006, at 1B; Erika Slife, “Boynton Beach OKs eminent domain use in face of state action,” *Sun-Sentinel*, May 6, 2006, at 1B.

91 Erika Slife, “Boynton Beach OKs eminent domain use in face of state action,” *Sun-Sentinel*, May 6, 2006, at 1B.

92 Petition in Eminent Domain, *Charlotte County v. Estate of Joseph F. Schoenhof, Jr.*, No. 05-1898-CA (filed Fla. 20<sup>th</sup> Cir. Ct. Aug. 11, 2005).

93 *Fulmore v. Charlotte County and Murdock Village Community Redevelopment Ass’n*, 2006 Fla. App. LEXIS 8562 (Fla. App. May 31, 2006); Jamie Manfuso, “County files to condemn 48 Murdock lots; It’s the first step in taking the land for the 1,100-acre Murdock Village redevelopment project,” *Sarasota Herald-Tribune*, January 9, 2004, at A1.

94 *Fulmore v. Charlotte County and Murdock Village Community Redevelopment Ass’n*, 2006 Fla. App. LEXIS 8562 (Fla. App. May 31, 2006); Decision; Devona Walker, “Use of eminent domain upheld; An appeals court sides with Charlotte County in Murdock Village case,” *Sarasota Herald-Tribune*, June 1, 2006, at B1.



A blighted property—according to Daytona Beach officials.

## Dania Beach

Even though the owner of the landmark 1925 Dania Beach Hotel was willing to redevelop it, City commissioners voted unanimously in November 2005 to give City staff permission to use eminent domain to seize six properties on the block if the owners refused to sell.<sup>95</sup> “There is no need for the public to spend ... a few million in paying us, when we already have a willing developer who can move with the project,” said Amir Hayun, owner of the hotel.<sup>96</sup>

The City wanted the hotel turned into a condo and retail tower, so Hayun stopped leasing to his 40 tenants so that he could show he was serious about beginning a condo and retail tower himself, although the City had not yet declared whether they would let Hayun move forward with his project. The tenants had been paying \$155 a week. Most of them were single men working low-paying jobs and some had mental illnesses, according to a hotel clerk.<sup>97</sup>

In December 2005, Hayun sold the hotel to the City’s preferred developer, the Mayan Group, before the City used eminent domain “as a last resort.” Officials hope the owners of the five other properties also sell to the Mayan Group, which plans to build shops and condos.<sup>98</sup>

95 Chris Young, “Dania pushes rebuilding; Officials OK using eminent domain to buy parcels of land,” *Sun-Sentinel*, November 23, 2005, at 4B.

96 Diana Moskovitz, “Land-buy plan advances,” *Miami Herald*, November 23, 2005, at B10.

97 Chris Young, “Tenants evicted from historic Dania Beach Hotel to clear the way for condos,” *Sun-Sentinel*, November 30, 2005, at 1.

98 Chris Young, “Dania reaches deal on hotel; Shops, condos to replace city landmark,” *Sun-Sentinel*, December 23, 2005, at 4B; Chris Young, “Tenants evicted from historic Dania Beach Hotel to clear the way for condos,” *Sun-Sentinel*, November 30, 2005, at 1.

## Daytona Beach (South Atlantic Redevelopment Area)

In another decision citing *Kelo*'s ode to deference, on November 10, 2005, a Circuit Court judge ruled against homeowners contesting City commissioners' decision to designate their properties "blighted." Calling the seven-acre area blighted gave officials the power to seize properties from unwilling sellers. While officials said they had no plans to condemn any of the 48 homes, the blight designation put residents under threat and, under Florida law as of 2005, that threat could have been indefinite.<sup>99</sup>

In the suit, residents argued that their homes were not blighted: in fact, several have been placed on the National Register of Historic Places. In conducting the "blight" study, City staff merely drove through the neighborhood. Of the 48 homes, none were even found to be "dilapidated." However, the judge wrote that, "although it is clear there is substantial disagreement as to whether many of the conditions within the area are such as to support a finding of 'blight,' this court is restricted in its power of review."<sup>100</sup> Further, he rejected the owners' argument that the potential taking of their property was unconstitutional based on *Kelo*.<sup>101</sup> The new Florida legislation hopefully will protect any remaining homeowners from condemnation.

## Hollywood (Bank of America)

City officials voted unanimously in July 2005 to condemn a Bank of America parking lot to turn it over to developer Steve Berman to build condos. When asked what the public purpose of the taking was, City Attorney Dan Abbott didn't hesitate before answering, "Economic development, which is a legitimate public purpose according to the United States Supreme Court."<sup>102</sup> It is not, however, a legitimate public purpose according to the Florida Legislature, which has now forbidden further condemnations for economic development.<sup>103</sup>

## Hollywood (Young Circle)

In April 2006, City commissioners voted to use eminent domain to seize several apartment buildings and two vacant lots on the northeast corner of Young

99 Ludmilla Lelis, "Daytona residents' suit tossed; Fearing federal seizure of homes, they challenged 'blighted' label," *Orlando Sentinel*, November 17, 2005, at A1; *Broadway to Silver Beach Neighborhood Ass'n, Inc. v. City Commission of Daytona Beach*, No. 2001-31496-CICI (Fla. Cir. Ct. Nov. 10, 2005).

100 Ludmilla Lelis, "Daytona residents' suit tossed; Fearing federal seizure of homes, they challenged 'blighted' label," *Orlando Sentinel*, November 17, 2005, at A1.

101 *Broadway to Silver Beach Neighborhood Ass'n, Inc. v. City Commission of Daytona Beach*, No. 2001-31496-CICI (Fla. Cir. Ct. Nov. 10, 2005).

102 Shannon O'Boye, "Hollywood uses eminent domain, again; Second condo development to benefit," *Sun-Sentinel*, July 13, 2005, at 5B.

103 2006 FL H.B. 1567 (signed into law May 11, 2006); William Cooper Jr., "City wrangles with residents over property; Although Riviera Beach's redevelopment agency has come close to fulfilling its mission, the question raised is whether it's worth trampling on rights of citizens," *Miami Herald*, May 29, 2006, at B6.





Moderate, well-maintained home in Riviera Beach, threatened with eminent domain if its owners refuse to sell to developers.

Circle so Chip Abele, a private developer, can build condos and retail space.<sup>104</sup>

The plan also involved seizing a building owned by Katalin Mach, an elderly widow, and her son David; the building houses three small businesses.<sup>105</sup>

The Machs have contested the use of eminent domain to seize their property for the project. At the circuit court hearing in April 2006, Mayor Mara Giuliani testified that the City entered into a contract with Abele in July 2004, obligating commissioners to use eminent domain for the project, even though the City entered into the contract nearly a year *before* it even held a public hearing.<sup>106</sup>

## Lauderhill

In January 2006, Broward County officials decided to create a community redevelopment agency with eminent domain authority over Mission Lake Mall, which includes a hair salon, a Caribbean restaurant and several markets. Officials then began “negotiating” with the owner under threat of eminent domain.<sup>107</sup> If it is not too late for this owner, Florida’s new legislation may offer protection against condemnation in the future.

104 Shannon O’Boye, “Hollywood to help developer seize land; Young Circle lots would pave way for high-rise,” *Sun-Sentinel*, April 7, 2006, at 1B.

105 Shannon O’Boye, “Hollywood moves to seize woman’s storefronts so developer can build condos,” *Sun-Sentinel*, June 22, 2005.

106 John Holland, “Hollywood mayor felt ‘obligation’ to approve eminent domain seizure,” *Sun-Sentinel*, April 22, 2006, at STATE AND REGIONAL NEWS.

107 Toni Marshall, “Lauderhill to redevelop two areas,” *Sun-Sentinel*, January 21, 2006, at 3B.

## Riviera Beach

Riviera Beach officials' plan to remove thousands of mostly low-income, black residents from their waterfront homes and businesses appears to be moving forward. In September 2005, Riviera Beach's Community Redevelopment Agency ("CRA") chose Viking Inlet Harbor Properties, whose spokesman promised to use eminent domain "only as a last resort," to be the master developer.<sup>108</sup> Viking and the City are proposing a luxury housing and yachting complex on 400 acres that will have to be seized if landowners do not want to sell.<sup>109</sup>

The area was declared blighted in 2001, based on a "study" with numerous errors—listing lots with homes on them as vacant, listing homes in good condition as dilapidated.<sup>110</sup>

In December 2005, after a wave of attention, officials and developers trying to assuage national outrage—and keep the project on track—revised down the number of homes to be acquired to 283. One thousand renters could also be displaced. However, City Council chairwoman Liz Wade said no one actually knew how many homes the City would target because plans had not been finalized.<sup>111</sup>

On the night of May 10, 2006, City Council members, who double as the CRA, signed an agreement with Viking in hopes of getting the project under the wire before new legislation banning the use of condemnation to benefit private parties took effect.<sup>112</sup> The agreement was approved by the City Council at a hastily called special meeting, and many believe the lack of advance public notice for the meeting violated Florida law.<sup>113</sup> The governor signed the new legislation the following day, and the day after that, the CRA issued official offers to owners of 39 properties. The affected property owners included 83-year-old widow Inez Stroby, who has owned her one-story duplex for 30 years and lived in it for 16.<sup>114</sup> The offers were later rescinded, giving owners at least a brief reprieve, but City officials have vowed to challenge the new legislation.<sup>115</sup>

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108 Pat Beall and Paul Lomartire, "Remaking Riviera Beach; City chooses developer for its billion dollar project," *Palm Beach Post*, September 16, 2005, at 1C; "Eviction notice," *Investor's Business Daily*, October 4, 2005, at A14.

109 "Florida town plans to use eminent domain," *UPI*, October 4, 2005.

110 Pat Beall, "Riviera Beach eminent domain case draws national spotlight," *Palm Beach Post*, December 11, 2005, at A1.

111 Larry Keller, "Riviera downplays need to take houses," *Palm Beach Post*, December 18, 2005, at 1C.

112 William Cooper, Jr., "Riviera defies state on deal," *Palm Beach Post*, May 11, 2006, at 1B.

113 Alan Gomez, "Bush alleges Riviera violated law," *Palm Beach Post*, June 1, 2006, at 2B.

114 Stephen Deere, "Is the price of progress too low in Riviera?; Owner's dilemma: Take the offer or risk loss to city," *Sun-Sentinel*, May 18, 2006, at 1A; William Cooper Jr., "City wrangles with residents over property; Although Riviera Beach's redevelopment agency has come close to fulfilling its mission, the question raised is whether it's worth trampling on rights of citizens," *Miami Herald*, May 29, 2006, at B6.

115 William Cooper Jr. and Alan Gomez, "Developer pulls offer to buy private land in Riviera Beach," *Palm Beach Post*, June 2, 2006, at 1A.

## Tampa

Immediately after the *Kelo* decision, City Attorney David Smith said officials were prepared to use eminent domain to seize property to make way for a 60-acre project called the Heights of Tampa that will include townhouses, condos, cafes, restaurants, parks and offices along the Hillsborough River.<sup>116</sup> According to news reports, the neighborhood was rebounding already—people were moving in and restoring 19<sup>th</sup> and early 20<sup>th</sup> century homes.<sup>117</sup> In addition to vacant and City-owned land, the area also included at least 49 residential properties and 20 commercial properties.<sup>118</sup> By January 2006, many of the owners had sold under threat of eminent domain. The owners of 15 properties, however, refused and so the City Council voted unanimously to use eminent domain to seize them if they still refused to sell to the developer.<sup>119</sup> A consortium, including the Bank of America, which owns property in the site area, George Wallace, founder of Lazydays RV SuperCenter, and several local business leaders, will build the \$500 million project, which will depend heavily on public funding and tax increment financing.<sup>120</sup> From news reports, it does not appear that any condemnations were filed, so if any of the owners still remain, the new legislation should help them hold on to their homes and businesses.

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116 Carrie Johnson, "Official power to seize land expanded; The Supreme Court narrowly agrees that local governments may take property to foster private development," *St. Petersburg Times*, June 24, 2005, at [http://sptimes.com/2005/06/24/worldandnation/official\\_power\\_to\\_sei.shtml](http://sptimes.com/2005/06/24/worldandnation/official_power_to_sei.shtml) (retrieved May 31, 2006); Jose Patino Girona, "Hiring Heights consultant seen as right move," *Tampa Tribune*, December 24, 2005, at 1.

117 Jose Patino Girona, "What's missing is a positive step for Tampa Heights," *Tampa Tribune*, May 20, 2006, at 1.

118 Existing Land Use, at [http://www.tampagov.net/documents/CRA\\_old\\_TPD\\_site/images/figure\\_2.jpg](http://www.tampagov.net/documents/CRA_old_TPD_site/images/figure_2.jpg) (retrieved May 31, 2006).

119 Janet Zink, "City to invoke eminent domain; Nearly 2,000 homes are planned for Tampa Heights project, but some landowners don't want to sell," *St. Petersburg Times*, January 27, 2006; Jose Patino Girona, "Council to vote on eminent domain," *Tampa Tribune*, January 19, 2006, at 3.

120 Jose Patino Girona, "Hiring Heights consultant seen as right move," *Tampa Tribune*, December 24, 2005, at 1; Janet Zink, "City to invoke eminent domain; Nearly 2,000 homes are planned for Tampa Heights project, but some landowners don't want to sell," *St. Petersburg Times*, January 27, 2006.





# Georgia

## Known Condemnations Benefiting Private Parties <sup>121</sup>

**Filed/Authorized Condemnations**         8

**Threatened Condemnations**         8

Legend  = 1  = 1

## Stockbridge

In August 2005, the City Council and the Urban Redevelopment Agency voted to condemn eight homes and businesses to make way for multi-story buildings with retail, office and residential space.<sup>122</sup> Several of the businesses, including a small florist shop owned by Mark and Regina Meeks, desired to redevelop their properties. But why allow an area to develop on its own? Instead, the City announced that it would condemn and offered significantly less money than the other developer, who had planned to build an Eckerd's pharmacy, was offering the owners.<sup>123</sup> Initially, the 16 properties the City wants for the project were all scheduled to be turned over to a private developer, but after the Meeks' sued, officials decided to change the plans to place the proposed City Hall on the Meeks' land and surround it with homes, shops and offices.<sup>124</sup> In April 2006, a Superior Court judge ruled that officials had not proved they wanted the Meeks' shop for a public purpose.<sup>125</sup> The City is appealing, however.<sup>126</sup>

<sup>121</sup> These numbers were compiled from news sources. Many cases go unreported, and news reports often do not specify the number of properties against which condemnations were filed or threatened.

<sup>122</sup> Michael Davis, "Stockbridge votes to condemn for redevelopment," *Daily Herald*, August 26, 2005.

<sup>123</sup> Christopher Quinn, "Stockbridge couple says city blocked sale of land, now wants to condemn it," *Atlanta Journal-Constitution*, July 5, 2005.

<sup>124</sup> Christopher Quinn, "Little piece of land sparks great big fight; Stockbridge seizure may go to Legislature," *Atlanta Journal-Constitution*, December 1, 2005, at 1C; Christopher Quinn, "Lawmakers back Stockbridge landowners," *Atlanta Journal-Constitution*, September 19, 2005, at 1D.

<sup>125</sup> Eric Sturgus, "Eminent domain: Florist wins round in court; Stockbridge may fight the ruling," *Atlanta Journal-Constitution*, April 5, 2006, at 4B.

<sup>126</sup> Eric Sturgus, "Domain case to be appealed," *Atlanta Journal-Constitution*, April 11, 2006, at 5C.



Mark Weeks

Stockbridge officials condemned this shop so a private developer could build residential, retail and office space. Once this abuse of eminent domain came to light, however, officials began calling for a new City Hall - a public use - to go on the property.

As part of the same plan, the City also condemned widow Sarah Clary's downtown buildings, which house businesses like a Maytag retail store and a Huddle House.<sup>127</sup> Clary had also reached a deal to sell for the new Eckerd's before the City moved to condemn her buildings.<sup>128</sup> The City had already condemned the property of John Horvath, an orthodontist, who wanted to use the property to expand his practice. According to one set of plans shown at the condemnation hearing, City officials want to put residential and commercial buildings on his land.<sup>129</sup> As of May 2006, Horvath is still fighting the taking in court.<sup>130</sup> Although the plight of the Meeks' and other property owners in Stockbridge was part of the inspiration for the new Georgia law restricting takings for private use, that

127 Maria Saporta, "Horizon: Revitalization must respect history, residents," *Atlanta Journal-Constitution*, September 19, 2005, at 3D.

128 Final report of the Senate eminent domain and economic development study committee, [http://www.legis.state.ga.us/legis/2005\\_06/senate/publications/eminentdomain.pdf](http://www.legis.state.ga.us/legis/2005_06/senate/publications/eminentdomain.pdf) (retrieved May 31, 2006).

129 Eric Sturgis, "Land dispute puts eminent domain laws under fire," *Atlanta Journal-Constitution*, December 22, 2005, at 2J1.

130 Christopher Quinn, "Cities build on eminent domain; Legislature likely to toughen laws," *Atlanta Journal-Constitution*, February 20, 2006, at 1B; Christopher Quinn, "Conflict alleged in Stockbridge property sale; Board member benefiting unfairly, critics say," *Atlanta Journal-Constitution*, May 18, 2006, at <http://www.ajc.com/metro/content/metro/clayton/stories/0518metstockbridge.html>.

law probably does not protect the Meeks or other property owners in Stockbridge who were fighting condemnation proceedings that commenced before the Governor signed the bill into law in April.

Finally, although condemnation papers have not yet been filed, the plan also calls for razing at least one home. Hugh and Dale Collins live in the Walden-Turner House, an 1895 Victorian that is on the National Register of Historic Places. Officials want to replace it with a parking lot (and green space).<sup>131</sup>

Remarkably, in May 2006, Vernon Moss, a member of the Stockbridge Urban Redevelopment Agency, advertised property he owns near the condemned land by saying the project “will add significant value” to his parcel. Yet, somehow, he claims no conflict of interest in his own holdings and his simultaneous encouragement of the City to pursue the condemnations for redevelopment. James Butcher, chairman of the redevelopment agency, even said, “He is a fine standard for anyone to emulate.”<sup>132</sup>

131 Maria Saporta, “Horizon: Revitalization must respect history, residents,” *Atlanta Journal-Constitution*, September 19, 2005, at 3D.  
132 Christopher Quinn, “Property sale ads prompt criticism; Seller on Stockbridge redevelopment board,” *Atlanta Journal-Constitution*, May 18, 2006, at 1D.

## Public Use or No Use?

In 1994, the Housing Authority of Columbus, Ga., condemned Logie Talley’s property, among others,<sup>1</sup> under the authority of Georgia’s Urban Redevelopment Law (URL). After failing to create any public use of the property, the Housing Authority sold it to a private citizen at a profit in 1999. Since then, Talley has been trying to get his land back. In 2006, the Georgia Court of Appeals said Talley was not entitled to the return of his land. The court also discussed *Kelo* and found that it supported the Housing Authority. Although *Kelo* said that the states could enact more restrictive condemnation laws, Georgia had not done so. The Georgia Supreme Court had already upheld the Urban Redevelopment Law, and the Housing Authority followed the law. So the court granted summary judgment for the Housing Authority on this issue, too.<sup>2</sup> Georgia has now passed a law sharply restricting the future use of eminent domain for private development.<sup>2</sup>

1 *Talley v. Housing Auth. of Columbus*, No. A06A0393, 2006 Ga. App. LEXIS 392, at \*7 (2006). See also *Talley v. Housing Auth. of Columbus*, 131 Fed. Appx. 693 (11th Cir. 2005), cert. denied, 126 S.Ct. 1914 (2006).



2 2006 GA H.B. 1313 (signed into law April 4, 2006).

# Illinois

## Known Condemnations Benefiting Private Parties<sup>133</sup>

Filed/Authorized Condemnations  10

Threatened Condemnations   116

Legend  = 10  = 100

### Arlington Heights

In December 2005, Village trustees voted to approve a plan that would give developers Gershman, Brown and Associates and Strategic Real Estate Services three years to buy the International Plaza shopping center<sup>134</sup> and allow Village officials to pursue eminent domain if owner Su-Chuan Hsu refuses to sell.<sup>135</sup> The Village Board had declared the area “blighted” and created a tax-increment



Mark Draughn/www.windypundit.com

40 businesses may be forced out of International Plaza in Arlington Heights so a private developer can build a SuperTarget.

<sup>133</sup> These numbers were compiled from news sources. Many cases go unreported, and news reports often do not specify the number of properties against which condemnations were filed or threatened.

<sup>134</sup> “35-acre retail site Okd for upgrade,” *Chicago Tribune*, December 21, 2005, at 6.

<sup>135</sup> Abdon M. Pallasch, David Roeder, Eric Herman, “Court shows homeowners door; Development trumps property rights; Connecticut municipality wins in 5-4 decision,” *Chicago Sun-Times*, June 24, 2005, at FINANCIAL 65.



financing district in July 2002,<sup>136</sup> citing “chronic vacancies” in a shopping center with a 98 percent occupancy rate.<sup>137</sup> The 2005 vote accepted a plan that will replace one shopping option—more than 40 stores—with a different shopping option, SuperTarget.<sup>138</sup> The plan may also call for the replacement of three homes, the Kita Kata Japanese restaurant and an abandoned gas station.<sup>139</sup>

## Cary

Village officials, including Village President Steve Lamal, want to press forward with a redevelopment and tax increment finance district that would give the Village the power to use eminent domain to kick several businesses—including a pet-supply store, Cary Grove Automotive, Kojaks, Fairway Golf Cars, and the Cuckoo’s Nest bar and grill—off their prime real estate near Route 14.<sup>140</sup> The Village and developer hope to put 90 to 120 condos on the site instead. At the end of 2005, the developer began approaching the businesses with offers to purchase, and President Lamal had begun uttering the less-than-comforting assurances that eminent domain will only be used “as a last resort.”<sup>141</sup>

## Des Plaines (Mannheim)

In yet another example of replacing small businesses with spiffier versions of the same thing, Des Plaines aldermen condemned a liquor store and a gyro shop on Mannheim Road in order to replace them with a strip mall containing Starbucks, Potbelly Sandwich Works and another fast food restaurant.<sup>142</sup>

## Des Plaines (Five Corners)

Des Plaines officials also have proposed creating a 96-acre tax increment financing district around the Five Corners intersection that will put homeowners and about 100 businesses at risk of eminent domain “as a last resort.” The plan threatened 220 residents of a mobile home park until they received an exemption

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136 Redevelopment Commission, April 24, 2002. Proposed Village of Arlington Heights, Arlington Heights Road/Golf Road Redevelopment Plan and Project No. 4; Sheila Ahern, “Arlington Heights set to vote on SuperTarget plan,” *Chicago Daily Herald*, December 17, 2005.

137 Sheila Ahern, “A corner poor in progress, rich in question marks,” *Chicago Daily Herald*, January 9, 2006, at A1; Sheila Ahern, “Arlington Heights set to vote on SuperTarget plan,” *Chicago Daily Herald*, December 17, 2005, at 1.

138 Sheila Ahern, “A corner poor in progress, rich in question marks,” *Chicago Daily Herald*, January 9, 2006 at A1; “35-acre retail site Okd for upgrade,” *Chicago Tribune*, December 21, 2005, at 6.

139 Jon Davis, “Tax tool could improve site in Arlington Hts.” *Daily Herald*, March 5, 2002.

140 Megan Edwards, “Cary looks to tax districts for improving areas,” *Northwest Herald*, October 20, 2005, at <http://www.nwherald.com/communitysection/other/31750454885490.php>; Megan Edwards, “Cary merchants: offers too cheap,” *Northwest Herald*, November 3, 2005.

141 Megan Edwards, “Cary looks to tax districts for improving areas,” *Northwest Herald*, October 20, 2005; Megan Edwards, “Cary merchants: offers too cheap,” *Northwest Herald*, November 3, 2005; Kevin P. Craver, “Cary, FRG leaders dish out good news,” *Northwest Herald*, January 19, 2006, at <http://www.nwherald.com/communitysection/352519755942596.php>.

142 Ames Boykin, “Des Plaines OKs talks for new strip mall,” *Chicago Daily Herald*, October 18, 2005, at 4.

in March 2006.<sup>143</sup> More than 30 business owners and some residents have started the Triangle Business Owners Association to oppose the district because it brings with it the threat of condemnation.<sup>144</sup> In December 2005, the Planning Commission voted unanimously to recommend that the City Council re-zone the six-block area to make way for the business district.<sup>145</sup> The City may hope to replace the local, semi-industrial businesses like Maine Scrap Metal and Suburban Transmissions, with more upscale ones, but for now it is not saying.<sup>146</sup> Once there is a business district, City officials will accept proposals for developing the land that other businesses now own.<sup>147</sup>

In May 2006, a consultant hired by the school districts, a park district and Maine Township—the other taxing bodies that would be affected by the redevelopment area—said that City officials “misrepresented and possibly overstated” the case for declaring the area blighted and that property values have been increasing in the area. Based on this information the joint review board voted against the redevelopment proposal. According to current Illinois law, however, the City can still move forward.<sup>148</sup>

## Lake Zurich

Although Village officials filed eminent domain proceedings against the owners of five houses and an apartment building—which they wanted for upscale condominiums in February 2005—they held off pushing the actions until after the *Kelo* decision came down.<sup>149</sup> “[*Kelo*] pretty firmly establishes in Illinois that under the Illinois ... law you can take private property for economic revitalization,” said Lake Zurich’s attorney, Mark Burkland



Richard Sustich

Officials waited until the *Kelo* decision before moving forward with the condemnation of this home in Lake Zurich.

143 Ames Boykin, “Des Plaines plan sparks development concerns,” *Chicago Daily Herald*, February 2, 2006, at 1; Ames Boykin, “Proposed legislation would add hurdle,” *Chicago Daily Herald*, May 3, 2006, at 7; “Mobile home park is spared by the city,” *Chicago Tribune*, March 7, 2006, at METRO 3.

144 Ames Boykin, “Businesses give name to their cause,” *Chicago Daily Herald*, October 25, 2005, at 3.

145 Jayne Matthews, “Collinsville revisits plan for Illinois 157 re-zoning,” *Belleville News-Democrat*, December 16, 2005.

146 Lisa St. Martin, “Touching Off On TIF,” *Journal & Topics*, December 21, 2005.

147 Elizabeth Donald, “Controversial business proposal put back on the table; Despite resistance, council may review disputed plan,” *Belleville News-Democrat*, December 4, 2005, at 3.

148 Ames Boykin, “Five Corners not blighted, consultant says; School districts vote no after report says city ‘misrepresented’ factors in quest for TIF,” *Chicago Daily Herald*, May 19, 2006, at 1.

149 Liam Ford, “Ruling on property rights makes owners vulnerable,” *Chicago Tribune*, June 24, 2005, at C17; Susan Kuczka, “Eminent domain battle squashed; Last owners accept Lake Zurich’s offer,” *Chicago Tribune*, April 21, 2006, at 7; Trine Tsouderos, “Land grab unnerves residents; Lake Zurich wants growth, gets dispute,” *Chicago Tribune*, March 23, 2005, at 1.

of Holland & Knight, after the decision came down.<sup>150</sup>

In April 2006, the last of the remaining property owners, whose building had been in the family for generations, sold after dropping a counter-lawsuit contesting the ordinance giving the Village eminent domain authority, even though they did not believe the taking was for public use.<sup>151</sup> According to Village administrator John Dixon, that meant the Village had acquired 34 properties by “mutual agreement.”<sup>152</sup> Owners who feel forced into selling may disagree.

## Machesney Park

In late 2005, Village officials filed a condemnation action against Barry Paye, who didn't want to sell two parcels he owned, just so land could be consolidated for future private development. Officials envision attracting big-box stores to the area, which once held homes, to maximize sales tax revenue. Paye sold his properties, which had a

## Unnecessary Takings are the Norm

Shortly after the *Kelo* decision, in July 2005, a McLean County Circuit judge ruled that City officials could condemn five properties in Normal, Ill. that they wanted for John Q. Hammons, a private developer with plans to build a Marriott Hotel and conference center. Like so many cities seeking to condemn, there had been substantial private investment and recent building permits issued.<sup>1</sup> But that investment apparently didn't compare to an upscale hotel. The owners ultimately settled.<sup>2</sup> Construction is set to begin in June 2006.<sup>3</sup>

150 Abdon M. Pallasch, David Roeder, Eric Herman, “Court shows homeowners door; Development trumps property rights; Connecticut municipality wins in 5-4 decision,” *Chicago Sun-Times*, June 24, 2005, at FINANCIAL 65.

151 Susan Kuczka, “Eminent domain battle squashed; Last owners accept Lake Zurich's offer,” *Chicago Tribune*, April 21, 2006, at 7; Madhu Krishnamurthy, “Property owners end fight against eminent domain,” *Chicago Daily Herald*, April 22, 2006, at 1; Jon Davis, “Imminent development? Crowd rallies against Lake Zurich plans to use eminent domain,” *Chicago Daily Herald*, March 27, 2005, at 3.

152 Madhu Krishnamurthy, “Property owners end fight against eminent domain,” *Chicago Daily Herald*, April 22, 2006, at 1.

1 Mary Ann Ford, “Judge: Normal can take land; Jury to decide how much property owners will be paid,” *The Pantagraph*, July 30, 2005, at A1; Mary Ann Ford, “Hotel waiting on land suit; City, property owners await court's eminent domain ruling,” *The Pantagraph*, March 12, 2005, at 5.

2 Mary Ann Ford, “Town OKs price for properties; Normal agrees to pay about \$2 million,” *The Pantagraph*, August 10, 2005, at A1.

3 Mary Ann Ford, “Hotel set for 2008 opening,” *The Pantagraph*, March 15, 2006, at STATE AND REGIONAL NEWS.

three-bedroom house and a mobile home, in December 2005. “Basically, the village strong-armed me,” he said. “I settled because I didn’t want to go to court and spend more money dealing with them.” Paye was one of the last owners in the project area to sell.<sup>153</sup>

## Tinley Park

Officials are threatening the home of Peter and Frances Dennis, who have lived there since 1967, for a project that will include a massive condo development with a cinema and retail space. The City wants the Dennis home and several other residential properties nearby for the cinema’s parking lot. Asked if the City couldn’t build around them, Assistant Village Manager Mike Mertens said, “The [Village] Board needs to look at the bigger picture.” So far, the planning board has approved the \$65 million project and the Village Board is expected to vote on it by late spring or early summer.<sup>154</sup> According to Village Manager Scott Niehaus, it is not really taking property if the City pays better than fair market value, even though the owners “were very clear their preference would still be to be left alone.”<sup>155</sup>

## Troy

Two owners of 175 acres of farmland outside of St. Louis are facing eminent domain because they did not capitulate to the demands of Troy bureaucrats and their preferred developer, Jim Koman. The City Council approved an ordinance in October 2005 to begin the eminent domain process. Koman plans to build the Troy Town Center, with a Walgreens and Shop-N-Save on the farmland.<sup>156</sup> As of February 2006, the two owners were struggling in court to hold on to their property.<sup>157</sup>

153 Isaac Guerrero, “Machesney sues for land parcel,” *Rockford Register Star*, November 24, 2005, at 14; Isaac Guerrero, “Putting a price on growth,” *Rockford Register Star*, December 29, 2005, at 9.

154 Carmen Greco, Jr. “Critics questioning plans for downtown,” *Chicago Tribune*, April 6, 2006, at 7; Jo Napolitano, “Tinley house sits in the path of \$65 million development; A plan for condos, shops and a parking lot could take away a couple’s longtime home,” *Chicago Tribune*, April 14, 2006, at 1.

155 Jennifer Golz, “Village offers homeowners \$500,000 for property,” *The Star*, April 30, 2006, at <http://www.starnewspapers.com/star/spnews/tp/30-tp1.htm> (retrieved May 31, 2006).

156 Jennifer Kapiolani Saxton, “Troy may force sale of land for retail development,” *Belleville News-Democrat*, October 5, 2005.

157 Jayne Mathews, “Farmland owners fighting Troy eminent domain suit,” *Belleville News-Democrat*, February 17, 2006, at B6.



# Indiana

## Known Condemnations Benefiting Private Parties<sup>158</sup>

Threatened Condemnations           10

Legend  = 1

## Evansville

In January 2006, City officials voted unanimously to put 10 properties on their site acquisition list for future development.<sup>159</sup> Among the 10 properties are an 1860s home that is on the National Register of Historic Places, a commercial building on the National Historic Register, now used for parking,<sup>160</sup> and four properties owned by the Hadi Shriners, including the Temple on Walnut Street, where they have coordinated their charity efforts for decades. The Shriners have provided for the treatment of 700,000 children, supported 18 hospitals and three burn centers and all their properties are in regular use.<sup>161</sup> The Temple is also on the Indiana Register of Historic Sites and Structures.<sup>162</sup> These properties may all be occupied homes and working businesses, but, according to Jane Reel, of the City's Department of Metropolitan Development, they are falling short of the

<sup>158</sup> These numbers were compiled from news sources. Many cases go unreported, and news reports often do not specify the number of properties against which condemnations were filed or threatened.

<sup>159</sup> Byron Rohrig, "Hadi land stays on city's list despite appeals, property designated for future redevelopment acquisition," *Evansville Courier & Press*, January 19, 2006, at B1.

<sup>160</sup> Byron Rohrig, "Acquisition list steeped in history; Downtown Auto Hotel Garage built in 1930," *Evansville Courier & Press*, January 23, 2006, at B1.

<sup>161</sup> Byron Rohrig, "Hadi land stays on city's list despite appeals, property designated for future redevelopment acquisition," *Evansville Courier & Press*, January 19, 2006, at B1; Byron Rohrig, "City earmarking properties," *Evansville Courier & Press*, January 14, 2006.

<sup>162</sup> Byron Rohrig, "Acquisition list steeped in history; Downtown Auto Hotel Garage built in 1930," *Evansville Courier & Press*, January 23, 2006, at B1.

maximum development potential within the Downtown Redevelopment Area.<sup>163</sup> Although officials have no specific plans right now, putting properties on the acquisition list is a first step towards the use of eminent domain to seize them “for increasing assessed value and jobs, of course,” says Metropolitan Development director Gregg LaMar.<sup>164</sup> In May 2006, six properties, including the Shriners’ property and the Kemper building were removed from the list.<sup>165</sup>

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163 Byron Rohrig, “City earmarking properties,” *Evansville Courier & Press*, January 14, 2006; Byron Rohrig, “Hadi land stays on city’s list despite appeals, property designated for future redevelopment acquisition,” *Evansville Courier & Press*, January 19, 2006, at B1.

164 Byron Rohrig, “Hadi land stays on city’s list despite appeals, property designated for future redevelopment acquisition,” *Evansville Courier & Press*, January 19, 2006, at B1.



165 Byron Rohrig, “Hadi Temple to be taken off list of potential targets for eminent domain,” *Evansville Courier & Press*, May 3, 2006; “Property acquisition list cut despite appeals, property designated for future redevelopment acquisition,” *Evansville Courier & Press*, May 4, 2006, at B1. <http://www.builderonline.com/industry-news.asp?sectionID=718&articleID=298030> (retrieved May 30, 2006).

# Iowa

## Known Condemnations Benefiting Private Parties <sup>166</sup>

Filed/Authorized Condemnations    3

Threatened Condemnations  100

Legend  = 1  = 100

### Clinton

Archer Daniels Midland announced in early 2006 that it wants to further expand its facilities to construct a PHA plastics plant.<sup>167</sup> The expansion will require the destruction of 100 homes. Officials swear that no one is even thinking about eminent domain, yet both Mayor LaMetta Wynn and State Senator Roger Stewart, whose district includes Clinton, lobbied hard for an exemption to Iowa legislation that would have limited municipalities' authority to seize property for private



Rodger Holmes

A Clinton home that officials want to acquire through eminent domain or the threat of it so Archer Daniels Midland can expand its nearby PHA plastics plant.

<sup>166</sup> These numbers were compiled from news sources. Many cases go unreported, and news reports often do not specify the number of properties against which condemnations were filed or threatened.

<sup>167</sup> Rachel Fredericksen, "Eminent domain issues resurface," *Clinton Herald*, March 24, 2006, at 1A.

projects.<sup>168</sup>

Eighty-four-year-old Helen Walker owned 10 properties (one of which was her home) that she sold under the threat of eminent domain to make way for a previous ADM expansion in 2005. She moved to another house two blocks away and will now have to move again whether she wants to or not.<sup>169</sup>

### Council Bluffs (Chalet Motor Lodge)

The City Council voted in November 2005 to use eminent domain to seize two properties. Officials wanted part of the Chalet Motor Lodge on Avenue G to build a viaduct but decided to seize the whole property because they want a new commercial development at the spot.<sup>170</sup> A March 2006 news article said the lodge was slated for demolition, indicating that the City had gained title to the property.<sup>171</sup>

### Council Bluffs (Omaha Standard)

The owner of the other property affected by the November 2005 vote—a building on South 25<sup>th</sup> Street that housed a sign company and a storage facility—sold shortly after, leaving two very unhappy tenants. Ray White, owner of Harmon Glass, had a lease until October 2007 with a renewal option after that. Neither he nor Joe Strachan, who used the building as a warehouse for his business, Iowa Rigger's Loft, wants to move, but their new landlord, the Pottawattamie County Development Corporation, is determined to get them out.

In December 2005, City Council members voted to condemn an adjacent property on West Broadway where Kim Elder and his family ran Finish Line Car Wash, for which they won the Chamber of Commerce's award for beautification after they fixed it up in 2002. Elder sold before being taken to court. A private developer will build some sort of retail project on the two properties, which are near the former Omaha Standard building. The buildings were acquired so the redevelopment would have a larger footprint.<sup>172</sup>

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168 Dan Gearino, "Senator, mayor fight eminent domain bill; Measure passes Senate panel," *Quad-City Times*, March 23, 2006; Rachel Fredericksen, "Eminent domain issues resurface," *Clinton Herald*, March 24, 2006, at 1A.

169 Steven Martens, "South Clinton residents making way again for ADM expansion; An additional 100 homes to be bought under plan," *Quad-City Times*, March 24, 2006, at A4.

170 Tom Shaw, "Bluffs OKs eminent domain for 2 sites," *Omaha World-Herald*, November 15, 2005, at 1B; "City Council Meeting Minutes," *City Council of the City of Council Bluffs*, November 14, 2005, at <http://www.clerk.councilbluffs-ia.gov/documents/m11-14-05.doc> (retrieved May 12, 2006).

171 Tim Rowher, "Little remains in way of new viaduct," *Southwest Iowa News*, March 3, 2006, at [http://www.zwire.com/site/index.cfm?newsid=16235450&BRD=2703&PAG=461&dept\\_id=553867&crfi=8](http://www.zwire.com/site/index.cfm?newsid=16235450&BRD=2703&PAG=461&dept_id=553867&crfi=8) (retrieved May 18, 2006).

172 Tom Shaw, "Bluffs OKs eminent domain for 2 sites," *Omaha World-Herald*, November 15, 2005, at 1B; Phil Rooney, "Car wash closing part of development," *Southwest Iowa News*, April 29, 2006, at [http://www.zwire.com/site/index.cfm?newsid=16554856&BRD=2703&PAG=461&dept\\_id=553867&crfi=8](http://www.zwire.com/site/index.cfm?newsid=16554856&BRD=2703&PAG=461&dept_id=553867&crfi=8) (retrieved May 12, 2006); "City Council Meeting Minutes," *City Council of the City of Council Bluffs*, November 14, 2005, at <http://www.clerk.councilbluffs-ia.gov/documents/m11-14-05.doc> (retrieved May 12, 2006).





# Kansas

## Known Condemnations Benefiting Private Parties <sup>173</sup>

Filed/Authorized Condemnations   2

Threatened Condemnations  113

Legend  = 1  = 100

### Edwardsville

In May 2006, it came to light that City officials have been negotiating behind closed doors with Burbank Development Group, which wants to build a film and music studio and a luxury hotel, as well as residences and retail on 500 acres of farmland and homes. An agreement has not been signed, but according to a memo released by the City administrator, the plan calls for Edwardsville to use eminent domain to seize any property that the developers cannot buy outright. Kansas recently passed legislation banning this kind of abuse; it does not go into effect, however, until July of 2007. Roughly three-dozen property owners are facing the threat of condemnation. They worry that the City and the developer may try to seize their property before the law takes effect.<sup>174</sup>

### Manhattan

In September 2005, representatives from Dial Realty told City officials that they estimated the City would only have to condemn six properties—businesses and rental housing—out of the 75 in the redevelopment area for their downtown development project, which will also include retail businesses and housing. The City said it would try to negotiate with property owners who do not sell to Dial, but if they won't sell, the City would ultimately use eminent domain.<sup>175</sup>

In November 2005, City commissioners voted to create a tax increment financing

<sup>173</sup> These numbers were compiled from news sources. Many cases go unreported, and news reports often do not specify the number of properties against which condemnations were filed or threatened.

<sup>174</sup> Mark Wiebe, "Landowners worry about studio plan," *Kansas City Star*, May 20, 2006, at B1.

<sup>175</sup> Kathryn Mayes, "Dial expects a few holdouts," *Manhattan Mercury*, September 14, 2005, A1.

district.<sup>176</sup> In January 2006, commissioners unanimously approved the northern piece of the three-phase project, which calls for the use of eminent domain.<sup>177</sup>

On March 1, 2006, the developers requested that officials seize two properties whose owners had not wanted to sell.<sup>178</sup> Six days later, they unanimously passed a resolution of necessity authorizing seizure of two properties, one belonging to Penny Liang Ferlemann, who left China to get away from communism, and the other to her sister-in-law, Marlene Ferlemann. Penny's property had a small business operating there. Another 38 property owners in the area had already sold, under threat of condemnation, to Dial.<sup>179</sup>

## Topeka

Private developers Southwind Capital LLC needed 36 properties<sup>180</sup> for their project to build apartments, town homes and a shopping center in Topeka's College Hill neighborhood near Washburn University.<sup>181</sup> Most businesses decided to sell rather than fight what they considered to be inevitable.<sup>182</sup> However, the developers were unable to acquire four properties—a bike shop, a bar, a home and a T-shirt store—owned by two people. So they asked City Council members to condemn the property for their housing and retail development.<sup>183</sup> At that point, another owner reached an agreement before the City Council voted on whether to use eminent domain.<sup>184</sup> Jerry Morgan, owner of Jerry's bike shop, met with State legislators interested in restricting the use of eminent domain to benefit private parties.<sup>185</sup> But he, too, eventually agreed to sell rather than fight.<sup>186</sup>

176 "Downtown redevelopment," <http://www.ci.manhattan.ks.us/index.asp?NID=264>; "Tax increment finance district," <http://www.ci.manhattan.ks.us/documents/Downtown%20Redevelopment/TIF%20District%20Map.pdf> (retrieved March 30, 2006).

177 Kathryn Mayes, "Residents, downtown merchants still critical of plan," *Manhattan Mercury*, January 4, 2006; North Project Redevelopment Plan, <http://www.ci.manhattan.ks.us/documents/Downtown%20Redevelopment/January%203%2C%202006%20REDEVELOPMENT%20PLAN/Redevelopment%20Plan.pdf> (retrieved May 12, 2006).

178 City Commission Agenda Memorandum, from Assistant City Manager and City Attorney, May 7, 2006, [http://www.ci.manhattan.ks.us/documents/Agendas/City%20Commission/2006/030706%20City%20Commission%20Meeting%20Packet/General/B.%20%20Condemnation%20for%20North%20Project%20Area/06020\]CC\]ResoltoEminentDomain}Downtown.pdf](http://www.ci.manhattan.ks.us/documents/Agendas/City%20Commission/2006/030706%20City%20Commission%20Meeting%20Packet/General/B.%20%20Condemnation%20for%20North%20Project%20Area/06020]CC]ResoltoEminentDomain}Downtown.pdf), at 11 (retrieved May 30, 2006).

179 Kathryn Mayes, "City set to take property; Commissioners vote to proceed with eminent domain for downtown," *Manhattan Mercury*, March 8, 2006.

180 Michael Hooper, "Starting over; Some see bright future for area north of university," *Capital-Journal*, August 14, 2005.

181 Chris Moon, "Politicians take notice; Lawmakers voice their support for College Hill holdout," *Capital-Journal*, January 23, 2006.

182 Michael Hooper, "Starting over; Some see bright future for area north of university," *Capital-Journal*, August 14, 2005.

183 Tim Hrenchir, "Developers seek city's help; With two holdouts, College Hill's fate falls to eminent domain," *Capital-Journal*, January 17, 2006.

184 Tim Hrenchir, "Bar owner, developers reach agreement," *Capital-Journal*, February 10, 2006.

185 Chris Moon, "Politicians take notice; Lawmakers voice their support for College Hill holdout," *Capital-Journal*, January 23, 2006.



186 Liz Zamora, "City Council approves College Hill Redevelopment Project," *ABC News*, April 4, 2006; Tim Hrenchir, "Bar owner, developers reach agreement," *Capital-Journal*, February 10, 2006.

# Maine

## Known Condemnations Benefiting Private Parties <sup>187</sup>

Filed/Authorized Condemnations  1

Threatened Condemnations  1

Legend  = 1  = 1

### Portland (East End)

On July 6, 2005, less than two weeks after *Kelo*, City councilors decided to condemn the Portland Co.'s rail-access rights to turn over the land to a private developer planning to build condos and a parking garage. The Portland Co. sued the city the following day.<sup>188</sup> Later that month the developers reached an agreement with the company to buy the access rights.<sup>189</sup>

### Portland (Bayside)

In May 2006, City officials resumed talks with the owner of a scrap yard that they want to relocate outside the city so a yet-to-be-chosen developer or developers can build office space and a parking garage. The City is also in the process of hiring a site-planning firm to help create a redevelopment plan for the area. According to Jack Lufkin, the City's economic development director, the City will use eminent domain if the owner of E. Perry Iron & Metal Co. does not agree to move.<sup>190</sup> As one court found in a case unrelated to the eminent domain action, the City has spent years harassing Alan Lerman, the property owner—refusing permits and enacting new ordinances restricting his ability to do business.<sup>191</sup>

<sup>187</sup> These numbers were compiled from news sources. Many cases go unreported, and news reports often do not specify the number of properties against which condemnations were filed or threatened.

<sup>188</sup> Kelley Bouchard, "City sued over rail way right of way; The lawsuit, filed by the Portland Co., alleges the city broke eminent domain laws and seeks \$1.9 million," *Portland Press Herald*, at B1.


















<sup>189</sup> Kelley Bouchard, "Deal reached on land needed for East End project; Riverwalk LLC comes to terms with owner Phineas Sprague on a right of way critical to waterfront plans," *Portland Press Herald*, July 28, 2005, at B1.



<sup>190</sup> Kelley Bouchard, "City makes new push for scrap yard deal; Meanwhile, Portland will advertise for help with a development plan for six acres in Bayside," *Portland Press Herald*, May 31, 2006, at B1.

<sup>191</sup> *E. Perry Iron & Metal Co. v. Portland*, 2006 ME 52.

# Maryland

## Known Condemnations Benefiting Private Parties <sup>192</sup>

<b>Filed/Authorized Condemnations</b>	        	<b>9</b>
<b>Threatened Condemnations</b>	       	<b>73</b>

Legend  = 1  = 10

### Baltimore (Charles North)

Baltimore City is on an eminent domain spree. According to M.J. Brodie, the president of the Baltimore Development Corporation (“BDC”), the 75 properties the City plans to seize in 2006 for private developers “is more at one time than I can ever remember.”<sup>193</sup> Baltimore and the BDC want about 20 properties for the Charles North commercial development project. In March 2006, a Circuit Court judge ruled that City officials have the authority to seize seven properties for the project, including the former Chesapeake Restaurant, via eminent domain despite the fact the properties had been sold in October 2005 to investors who planned to redevelop the land—the supposed purpose of the taking.<sup>194</sup>

In April 2006, the City filed suit to seize another property for the project, a theater that was already actively being restored. Charlie Dodson wanted to contribute to the revival of Baltimore’s art scene, so he bought the vacant Parkway Theater, which dates back to 1915, and began renovating it. After holding several performances, he found out the property was on the City’s site acquisition list.<sup>195</sup>

Then, in May 2006, a different Circuit Court judge rejected the City’s attempt to seize The Magnet Bar, yet another property the City and BDC wanted for the Charles North project. Citing *Kelo*, the judge noted that a municipality should

192 These numbers were compiled from news sources. Many cases go unreported, and news reports often do not specify the number of properties against which condemnations were filed or threatened.

193 Jen Degregorio, “Baltimore City adds appraisal staff,” *Daily Record*, January 19, 2006, at NEWS.

194 Jen Degregorio, “Baltimore circuit court’s ruling paves way for Chesapeake restaurant condemnation,” *Daily Record*, March 23, 2006, at NEWS.

195 *Mayor of Baltimore v. 1820 N. Charles Street LLC*, No. 24-c-06-003628, (Md. Cir. Ct. filed April 24, 2006); Ezra Fieser, “Some fear Baltimore’s arts and entertainment district will suffer from further gentrification,” *Daily Record*, September 17, 2004, at NEWS.



The City began soliciting bids to redevelop the properties, which it still does not own and were going to be redeveloped anyway.

have “a carefully considered development plan” in place. The City and the BDC do not even pass that minimal test, but according to Brodie, the development corporation typically seizes land and turns it over to developers who will decide what to build. “This is not unique in any way. This is the way the City’s done things for the last 40 years,” he said. “It’s called urban renewal.” According to officials, this might be the very first time a court has blocked a “quick-take” condemnation action.<sup>196</sup>

The BDC’s policy against information disclosure also is currently under attack. For years, the BDC has held its meetings in secret and maintained that it is a private corporation, even though it has the public power of eminent domain. Finally, a Maryland Court of Special Appeals held that the BDC, which coincidentally was represented by a City attorney, must hold meetings publicly like any other public body. The BDC is appealing and in the meantime it is not responding to requests for public records from reporters.<sup>197</sup>

### **Baltimore (Pigtown)**

In July 2005, the BDC said it would acquire 929 to 937 Washington Boulevard in Pigtown and began negotiating with the property owner—937 Washington Blvd. LLC—“so as to keep the properties from being taken by eminent domain,” according to court documents. But the BDC did not pursue the acquisition, so the company reached a deal with a developer to sell its properties. The BDC squashed the deal, however. Then in December 2005, the BDC offered less than half what the developer was willing to pay (and later upped its bid to a little under two-thirds of the developer’s offer). In February 2006, the City began soliciting bids to redevelop the properties, which it still does not own and were going to be redeveloped anyway. In May 2006, the property owner sued the BDC in federal court.<sup>198</sup> In late 2005, the City Council passed legislation calling for the condemnation of 12 properties—including the five above—in the neighborhood, which has been rebounding on its own.<sup>199</sup>

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196 Jill Rosen, “City bid to seize bar is blocked; Judge rejects Baltimore’s plan to condemn the Magnet and redevelop Charles North area,” *Baltimore Sun*, May 24, 2006; *Mayor of Baltimore v. Valsamaki*, No. 24-cv-06-002522, (Md. Cir. Ct. filed March 9, 2006).

197 Stephanie Desmon, “Shining light on private use of city power,” *Baltimore Sun*, March 12, 2006.

198 Heather Harlan, “Property owner sues city over Pigtown condemnation,” *Baltimore Business Journal*, May 26, 2006.



199 Jen Degregorio, “Southwest Baltimore’s Washington Village scheduled for a makeover,” *Daily Record*, February 7, 2006, at NEWS; Nicole Fuller, “Old and new of Pigtown; While boosters argue for change, others hope they aren’t left out,” *Baltimore Sun*, April 5, 2006, at 1B.

# Massachusetts

**Known Condemnations Benefiting Private Parties**<sup>200</sup>

**Filed/Authorized Condemnations**      5

**Threatened Condemnations**  1

Legend  = 1  = 1

## Fall River

On September 27, 2005, Fall River’s City Council voted unanimously to give the City’s Redevelopment Authority permission to take Samuel Shapiro’s 4.62-acre plot of land, on which he runs United Textile Machinery, by eminent domain if he won’t sell it.<sup>201</sup> The City Council wants to give Shapiro’s land to Meditech, a computer software company that promises to bring 600 jobs to the town.<sup>202</sup> In December 2005, the City’s redevelopment authority voted to seize Shapiro’s land by no later than January 5, 2006.<sup>203</sup> In January, the City took the property and gave Shapiro and his employees 120 days to vacate.<sup>204</sup>

## Lowell

City officials are planning to acquire all private property within the 15.2-acre Hamilton Canal District redevelopment area to replace it with new commercial, retail, office and residential space along the Hamilton, Merrimack and Pawtucket canals. The City will issue a request for proposals for the project and select a master developer later this year.<sup>205</sup> In April 2006, City councilors voted

200 These numbers were compiled from news sources. Many cases go unreported, and news reports often do not specify the number of properties against which condemnations were filed or threatened.  
201 Daniel Fowler, “Council gives OK for eminent domain,” *Herald News*, September 28, 2005.  
202 Paul Grimaldi, “High-tech company to bring 600 jobs,” *The Providence Journal*, August 24, 2005.  
203 Gregg M. Miliote “Group votes to take land,” *Herald News*, December 17, 2005.  
204 Gregg M. Miliote, “City seizes land for Meditech,” *Herald News*, January 6, 2006.  
205 Michael Lafleur, “Eminent domain talks to take front and center at City Council meeting,” *Lowell Sun*, February 6, 2006, at NEWS; <http://www.lowellma.gov/depts/dpd/services/econdev/hamilton-canal-district> (retrieved May 31, 2006).

## Lunenburg plans to sell the land to a different developer who will presumably build something else.

unanimously to seize four properties—seven acres of the defunct Appleton Mills and properties owned by McLaughlin Storage Inc. and attorney Louis Saab. The owner of Appleton Mills was given until the end of May to come to terms with the city or face eminent domain, whereas the other three properties were being condemned immediately. The City will use State and federal funds to pay for the acquisitions.<sup>206</sup>

### Lunenburg

In June 2006, City selectmen will ask town residents to approve the use of eminent domain to seize the former Whalom Park, the site of a former amusement park that developer Global Property Development Corp. wants to turn into condos.<sup>207</sup> Lunenburg plans to sell the land to a different developer who will presumably build something else.<sup>208</sup>

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206 Michael Lafleur, "Council votes to take Appleton Mills, other properties by eminent domain," *Lowell Sun*, April 26, 2006, at LOCAL.

207 Jordana Timerman, "Residents weigh Whalom land plan," *Sentinel & Enterprise*, May 30, 2006, at LOCAL.

208 Jordana Timerman, "Selectman: Take Whalom land by eminent domain," *Sentinel & Enterprise*, May 24, 2006, at LOCAL.

# Michigan

## *Known Condemnations Benefiting Private Parties* <sup>209</sup>

*Threatened Condemnations* ☁ ☁ ☁ ☁ 40

*Legend* ☁ = 10

### East Lansing

In February 2006, East Lansing officials voted to approve the East Village Master Plan, which calls for redeveloping 35 acres that house thousands of Michigan State University students, into a mix of housing, retail and commercial developments. Or, actually, into a mix of housing, retail and commercial developments that is different from the mix that's there now. They had previously declared the area, which has at least 40 properties—including



If this is blighted—every fast food store in America is blighted. An official plan for this area of East Lansing shows new shops and housing where four fraternity houses, well-maintained apartments, a florist, an auto shop and this McDonald's now sit.

<sup>209</sup> These numbers were compiled from news sources. Many cases go unreported, and news reports often do not specify the number of properties against which condemnations were filed or threatened.



well-maintained apartment buildings, fraternity houses, a florist, retail stores, an auto shop, a McDonald's and rental homes, to be "blighted."<sup>210</sup> Officials say the blight designation gives them the option of applying for State redevelopment money and that they never had any plans to seize property. Yet under Michigan law, municipalities have authority to seize land that is "blighted" and officials have drafted a master plan showing new and different development.<sup>211</sup> The community—property owners and students—have come out solidly against the plan.<sup>212</sup>

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210 Chris Andrews, "Blighted? Property owners ask lawmakers for help," *Lansing State Journal*, October 14, 2005, at 1A; East Village Master Plan, <http://www.cityofeastlansing.com/COEL.asp?action=http://www.cityofeastlansing.com/CITYGOV/PCD/EastVillage.asp> (retrieved May 31, 2006).

211 Sikha Dalmia, "Blight loophole could allow cities to grab homes, land," *Detroit News*, November 3, 2005, at 19A.



212 Leach Hugh, "E.L. delays vote in redevelopment," *Lansing State Journal*, December 15, 2005, at 1B; "Try again: Lacking neighborhood support, East Lansing plan needs retooling," *Lansing State Journal*, November 11, 2005, at 8A.

# Minnesota

## Known Condemnations Benefiting Private Parties<sup>213</sup>

**Filed/Authorized Condemnations**   2

**Threatened Condemnations**    23

**Legend**  = 1  = 10

### Minnetonka

In January 2006, the City Council voted to use eminent domain to put pressure on two property owners to sell to a developer for the Glen Lake project, which will include new retail space and condos.<sup>214</sup> In February 2006, the City condemned the properties—the headquarters of West Suburban Alano Society, which aids people with substance abuse problems, and a rental home whose owner, Arnie Zachman, wanted to develop it himself. The City had already reached a tentative agreement to relocate West Suburban Alano, but decided to condemn the property anyway in case the agreement fell through.<sup>215</sup> In May, the Alano Society reached a deal with the City.<sup>216</sup>

### Ramsey

City officials sent notices in April 2006 to 13 property owners on 67 acres where the City plans to build Ramsey Crossings, to which they hope to attract a big-box store. The City wants to begin “negotiating” to purchase their land. Some of the property is in a tax-increment financing district, meaning eminent

213 These numbers were compiled from news sources. Many cases go unreported, and news reports often do not specify the number of properties against which condemnations were filed or threatened.

214 Bill Clements, “Dispute underscores eminent domain debate,” *Finance and Commerce*, February 9, 2006, at NEWS.

215 Ben Steverman, “Despite protests, city invokes eminent domain; Minnetonka voted to begin process of forcing two property owners to sell, making way for a redevelopment in the Glen Lake area,” *Star Tribune*, March 1, 2006, at 1W.

216 Ben Steverman, “Recent Actions,” *Star Tribune*, May 17, 2006, at 4W.

domain can be used to seize property from people who want to stay. "I find it very hard to swallow that they can come in here and basically they're going to take my land so a developer can make money," says Jeff Wise, who owns Wiser Choice Liquor.<sup>217</sup>

## Rosemount

A few days after the *Kelo* decision, a private developer released drawings of a remodeled downtown that City officials want the developer to build. Just as in New London, the goal of the redevelopment is increasing the tax base.<sup>218</sup> In October 2005, the developer made offers to landowners to purchase their property. But if they don't agree to sell, Mayor Bill Droste says the City is willing to use eminent domain to seize property. He wants to replace current citizens with Core Block East, the first phase in a 52-acre redevelopment plan that will replace homes and six thriving businesses with retail and office space and perhaps townhouses. Many owners and renters, including Quilter's Haven, Haupt Antiek Market and Fluegel's Farm Garden and Pet,

217 Sarah McCann, "More growth in store for Ramsey; The huge Town Center housing and shopping area isn't done, and the city is planning another big development," *Star Tribune*, April 12, 2006, at 1N.

218 Shira Kantor, "Destination unknown; Rosemount wants to redevelop its downtown to boost its tax base and economy; But business owners are afraid they'll be forced to close or move," *Star Tribune*, June 29, 2005, at 1S.

## Private Environmental Clean-up Thwarted By Taking

After the *Kelo* decision, ExxonMobil Pipe Co. lost its fight against the City's condemnation of 29 acres along the Mississippi River that ExxonMobil owned and housed an oil-tank farm for five decades. City officials and Brighton Development want to turn the site, to be called Victoria Park, into a 64-acre residential development with 850 townhomes, apartments, houses and condos.<sup>1</sup> The property was condemned in 2003, but ExxonMobil fought the condemnation in court.<sup>2</sup> The company contended that the site is contaminated and not suitable for residences and even offered to *give* the land to the City in exchange for a promise not to build homes there.<sup>3</sup> In January 2005 a Ramsey County judge decided the site was safe and that the eminent domain action could go forward. ExxonMobil appealed the ruling, and the court, citing *Kelo*, ruled against the company.<sup>4</sup> ExxonMobil had wanted to continue its own cleanup efforts on the site and then put in a commercial or industrial development.<sup>5</sup>

1 Robert Ingrassia, "'Turning dirt and selling units'; Big housing development on way to realization," *St. Paul Pioneer Press*, June 24, 2005, at B1; Bill Clements, "Legal battle continues over Victoria Park project in St. Paul," *Legal Ledger*, April 21, 2005, at NEWS.

2 Jackie Crosby, "St. Paul near deal to acquire old tank farm; The effort could bring 1,000 housing units to a site along the Mississippi River," *Star Tribune*, October 23, 2003, at 5B.

3 Robert Ingrassia, "'Turning dirt and selling units'; Big housing development on way to realization," *St. Paul Pioneer Press*, June 24, 2005, at B1.

4 *Housing and Redevelopment Auth. of Saint Paul v. ExxonMobil Oil Corp.*, No. A05-511, 2006 Minn. App. Unpub. LEXIS 393 (Minn. Ct. App. 2006).

5 Bill Clements, "Legal battle continues over Victoria Park project in St. Paul," *The Legal Ledger*, April 21, 2005, at NEWS; *Housing and Redevelopment Auth. of Saint Paul v. ExxonMobil Oil Corp.*, No. A05-511, 2006 Minn. App. Unpub. LEXIS 393 (Minn. Ct. App. 2006).

do not want to move.<sup>219</sup> Kurt Hansen, who leases space to several businesses, wants to redevelop his properties himself, but since the City has signed an exclusive developer agreement with its preferred developer for the area, he cannot. In February 2006, City administrator Jamie Verbrugge said that if Minnesota legislators tighten the State's eminent domain laws, the developer would build around any unwilling sellers.<sup>220</sup> The State did in fact pass new legislation, but it is possible that Rosemount's project is exempt from the new restrictions on using eminent domain for private parties.<sup>221</sup>

## West St. Paul

West St. Paul officials want new development and retailers along South Robert Street. In October 2005, the City Council declared their intention to use eminent domain to seize two parcels if owners refused to sell to Sherman Associates, the City's chosen developer. Sherman wants to build 39 townhouses and 13,000 square feet of commercial space where a liquor store and auto service center stand now. The owners sold, but were unhappy with the compensation, which under Minnesota law does not cover relocation costs.<sup>222</sup>

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219 Maricella Miranda, "Downtown development raises ire; Despite offers; business owners aren't happy about their future displacement," *St. Paul Pioneer Press*, November 6, 2005, at 1B; Shira Kantor, "Destination unknown; Rosemount wants to redevelop its downtown to boost its tax base and economy; But business owners are afraid they'll be forced to close or move," *Star Tribune*, June 29, 2005, at 1S.











220 Shira Kantor, "Eminent domain reform could hinder cities' plans; Rosemount and other communities south of the river could find their plans for redevelopment stymied by proposed legislation that would curb cities' ability to seize private property for economic purposes," *Star Tribune*, February 8, 2006, at 1S.






221 2005 Minn. SF 2750 (signed into law May 19, 2006).



222 Brian Bonner, "Robert St. progress pains some; City could use eminent domain to seize two businesses," *St Paul Pioneer Press*, October 2, 2005, at 3B; Grant Boelter, "Robert Street redevelopment continues in West St. Paul," *Sun Newspapers*, December 1, 2005; Brian Bonner, "Robert Street revival plans frustrate city; Housing projects are humming, but area hasn't attracted key businesses," *Pioneer Press*, February 27, 2006, at STATE AND REGIONAL NEWS.

# Missouri

## Known Condemnations Benefiting Private Parties<sup>223</sup>

**Filed/Authorized Condemnations**              92

**Threatened Condemnations**        609

Legend  = 10  = 100

### Arnold

According to the *St. Louis Post-Dispatch*, Arnold Mayor Mark Powell “applauded the high court’s decision” in *Kelo*.<sup>224</sup> In September 2005, City Council members granted a private developer the authority to condemn 30 homes and 15 businesses to build a shopping center that will be anchored by a Lowe’s.<sup>225</sup> In February 2006, the City Council gave the developer until May to continue “negotiations” before eminent domain is used for the project, which has expanded to include seven more properties.<sup>226</sup>

### Bel-Ridge

In May 2006, the Board of Trustees adopted a \$90 million redevelopment plan that calls for private developer Clayco Realty Group Inc. to replace at least five properties—a large apartment complex, a shopping center and several houses—with commercial and retail space.<sup>227</sup> According to the Board chairman, Patricia Snider, “we are hoping [eminent domain] will not be used.”<sup>228</sup> The threat

223 These numbers were compiled from news sources. Many cases go unreported, and news reports often do not specify the number of properties against which condemnations were filed or threatened.

224 Jake Wagman, “High court rebuffs homeowners,” *St. Louis Post-Dispatch*, June 24, 2005, at A1.

225 Mathew Hathaway, “Arnold will allow use of eminent domain in ‘triangle,’” *St. Louis Post-Dispatch*, September 16, 2005, at C5; Cathy Lenny, “Hearing on redevelopment gets heated,” *St. Louis Post-Dispatch*, February 21, 2005, at JEFFERSON COUNTY POST 1.

226 Cathy Lenny, “Schools seek parity in Arnold Triangle revenue,” *St. Louis Post-Dispatch*, February 24, 2006, at C8.

227 Norm Parish, “Bel-Ridge board will take up redevelopment plan tonight,” *St. Louis Post-Dispatch*, May 4, 2006, at D14; “Metro digest,” *St. Louis Post-Dispatch*, May 5, 2006, at D3.

228 Daniel Kelley, “Bel-Ridge approves \$90 million development,” *St. Louis Post-Dispatch*, May 10, 2006.



of it is certainly already being used, however, and if property owners refuse to sell and Missouri legislators do not provide real protection, officials may indeed condemn property for Clayco.

## Blue Springs

In December 2005, the City Council approved an ordinance that allows redevelopment officials to use eminent domain to seize private property in the Missouri 7 corridor. The government intends to take the land and hand it over to a private developer, who plans to build the Copperleaf Village Shopping Center.<sup>229</sup> The vote puts retailer Rent-A-Center at risk of seizure via eminent domain.<sup>230</sup>

## Clayton

In December 2005, the Board of Aldermen authorized the use of eminent domain for the Centene Plaza redevelopment project. Centene, which provides health services to Medicaid recipients, wants to build a new headquarters, which no one objects to. Five property owners do object, however, to Centene's plans to construct a new retail strip on their land, on which they house profitable businesses, including two realty companies, a spa, the Kohner Building and other businesses.<sup>231</sup> The business owners formed the Clayton Committee to Stop Abuse of Eminent Domain and collected four times as many signatures as is required to force a citywide referendum according to the St. Louis County Election Board.<sup>232</sup> But the referendum was not possible due to a loophole in the City Charter that insulates bills introduced and passed unanimously in the same meeting.<sup>233</sup> In April 2006, Centene filed condemnation petitions against the first two of the five property owners.<sup>234</sup>

## Eureka

In February 2006, Eureka's Board of Aldermen approved a 934-acre redevelopment project that calls for razing most of Allenton, an old farming and railroad community Eureka annexed several years ago.<sup>235</sup> The plan calls for the use of eminent domain against property owners who refuse to sell to private developer JBA Eureka LLC, a partnership between The Jones Company, JH Berra Construction,

229 Donald Bradley, "Eminent domain action is new territory for Blue Springs," *Kansas City Star*, December 24, 2005, at TAB, p.10.

230 Stephanie Boothe, "One building remains issue in Blue Springs development," *The Examiner*, November 19, 2005, at [http://examiner.net/stories/111905/new\\_111905019.shtml](http://examiner.net/stories/111905/new_111905019.shtml) (retrieved May 25, 2006).

231 Margaret Gillerman, "Petitions target eminent domain in Clayton," *St. Louis Post-Dispatch*, December 29, 2005, Metro, at C1.

232 Margaret Gillerman, "Clayton official rejects petition for a vote on Centene project; Group is fighting the use of eminent domain for redevelopment," *St. Louis-Post Dispatch*, January 10, 2006, Metro, at C2.

233 Margaret Gillerman, "Despite petitions, Clayton referendum still in doubt," *St. Louis Post-Dispatch*, January 6, 2006, Metro, at B1.

234 Margaret Gillerman, "Centene Corp. starts to use eminent domain authority in Clayton project," *St. Louis Post-Dispatch*, May 3, 2006, at D4.

235 Margaret Gillerman, "Days appear numbered for Allenton," *St. Louis Post-Dispatch*, February 21, 2006, at B1; "Metro digest," *St. Louis Post-Dispatch*, February 22, 2006, at B3.

American Heritage Homes and THF Realty, who will build a shopping center anchored by a Lowe's and 1,200 houses.<sup>236</sup> About 40 properties, including houses, trailers, an antique store, a pawnshop and churches will be razed. Many property owners, knowing eminent domain would eventually be used "as a last resort," sold to the developers before the project's approval. "Better, I decided, to go peacefully, than with eminent domain and lawyers," says Janet Delmain, 66, who ran Janet's Barber Shop out of her home on Main Street. "My nerves couldn't handle that."<sup>237</sup>

### **Florissant (New Florissant and Dunn)**

City Council members granted the power of eminent domain to private developers Spirit Energy Inc. so they can seize a BP gas station and a vacant building. The developers plan to build...a Shell gas station with a car wash and convenience store.<sup>238</sup>

### **Florissant (New Halls Ferry and Parker)**

In May 2006, Mayor Robert Lowery said the city would use eminent domain to seize property at New Halls Ferry and Parker roads that has at least one operating business—a restaurant—for private development.<sup>239</sup>

### **Liberty**

In November 2005, the Liberty City Council approved a plan that threatens homeowners, business owners and churches. The City contends that the plan does not include taking anyone's property; but the plan—which shows at least 90 properties in the affected area—reveals language that allows for the use of eminent domain.<sup>240</sup>

### **Manchester**

In September 2005, Manchester officials voted 4-2 against 1<sup>st</sup> Ward Alderman Bob Tullock's proposal to cease the use of eminent domain for commercial projects.<sup>241</sup> In November, after listening to numerous speakers opposed to granting a private developer, Pace Properties, the power to use eminent domain,

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236 Margaret Gillerman, "Vote on Eureka project is delayed," *St. Louis Post-Dispatch*, February 8, 2006, at B1.

237 Margaret Gillerman, "Days appear numbered for Allenton," *St. Louis Post-Dispatch*, February 21, 2006, at B1; Margaret Gillerman, "Vote on Eureka project is delayed," *St. Louis Post-Dispatch*, February 8, 2006, at B1.

238 "Developer gets power of eminent domain," *St. Louis Post-Dispatch*, June 13, 2006; Joe Scott, "Council considers eminent domain for project," *Northwest County Journal*, May 17, 2006.

239 Joe Scott, "Council considers eminent domain for project," *Northwest County Journal*, May 17, 2006.

240 Tanya Fogg Young, "Council approves revitalization plan," *Kansas City Star*, November 30, 2005, at TAB 4; Liberty Downtown Master Plan, November 2005, Appendix C, <http://www.ci.liberty.mo.us/documents/Planning%20and%20Zoning/Downtown%20Master%20Plan.pdf> (retrieved May 25, 2006).

241 Cathy Lenny, "Panel will debate Manchester mall plan," *St. Louis Post-Dispatch*, September 21, 2005, at B5.

## Residents who had wanted to get rid of poorer homes soon found themselves targeted.

aldermen voted to adopt the redevelopment plan, which calls for a 65-acre shopping center anchored by a Costco on land that had been a neighborhood with 50 homes and a few businesses. The homes were all gone by that point, but a few businesses were still refusing to sell. Doug Huff, Pace's vice-president, promised to use eminent domain as a last resort.<sup>242</sup> In March 2006, Jim Butler, who operated a Saturn dealership with 40 employees on five-and-a-half acres he owned, decided to sell rather than continue the stress of resisting condemnation.<sup>243</sup>

### Ozark

The experience of Ozark serves as a cautionary tale for anyone who thinks the mere creation of a redevelopment authority poses no threat to existing homes and businesses, especially after *Kelo*. In February 2004, Ozark voters approved the creation of the Land Clearance for Redevelopment Authority ("LCRA"), an agency with condemnation powers. "It's a relatively non-confrontational and non-threatening piece of legislation," said Collin Quigley, Ozark's city administrator.<sup>244</sup> Residents voted to create the LCRA because they believed it would bring improved municipal services, help clean up trash, and also facilitate the removal of the Riverview Mobile Home Park, which has 22 trailers, from their neighborhood.<sup>245</sup>

Residents who had wanted to get rid of poorer homes soon found themselves targeted. First, the City approved the designation of 47 acres along the Finley River as "blighted," due to "inadequate infrastructure."<sup>246</sup> Then, the LCRA adopted a proposal for a massive redevelopment—a riverside neighborhood with shops, townhouses and community centers.<sup>247</sup> Bobbi Wixson, the LCRA's chairwoman, explained to the residents who were concerned about eminent

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242 Cathy Lenny, "Manchester aldermen approve disputed shopping center," *St. Louis Post-Dispatch*, November 23, 2005, at B4; Margaret Gillerman, "Saturn dealer drops eminent domain fight, will relocate," *St. Louis Post-Dispatch*, March 31, 2006, at C11.

243 Margaret Gillerman, "Saturn dealer drops eminent domain fight, will relocate," *St. Louis Post-Dispatch*, March 31, 2006, at C11; Phil Sutin, "Public speaks out on Manchester Highlands," *St. Louis Post-Dispatch*, September 23, 2005, at C6.

244 Jenny Fillmer, "Ozark to create board for blighted properties; Land Clearance for Redevelopment Authority Law was approved by voters on Tuesday," *Springfield News-Leader*, February 4, 2004, Local, at 6B.

245 Didi Tang, "Design firm gets job of redeveloping blighted Ozark area," *Springfield News-Leader*, August 26, 2005, at 1B; Didi Tang, "Residents wait to see if homes deemed blighted," *Springfield News-Leader*, May 27, 2004.

246 Didi Tang, "Design firm gets job of redeveloping blighted Ozark area," *Springfield News-Leader*, August 26, 2005, at 1B; Didi Tang, "Ozark board tours 'blighted' property," *Springfield News-Leader*, June 25, 2004, at 1B.

247 Didi Tang, "Ozark renewal plan moves forward; Proposal adopted as a starting point; some in neighborhood fear they'll be pushed out," *Springfield News-Leader*, October 8, 2004, at 2B.

domain, “I can guarantee you that it would be used only as a last resort.”<sup>248</sup> The area has the mobile homes, 37 houses and at least one business.<sup>249</sup>

In November 2005, the Board of Aldermen unanimously approved a contract with Hagerman New Urbanism, a planning firm, to draw up a plan for the area.<sup>250</sup> Based on a review of Hagerman’s conceptual drawing, “[i]t looked like they wanted to bulldoze down all 47 acres except for the graveyard,” said Carl Hefner, who owns Hixson Drug.<sup>251</sup>

Asked in March 2006 if eminent domain would be used to kick anyone out of their homes for the waterfront project, a planner with Hagerman said, “at this point there’s no definite answer to that.”<sup>252</sup>

## Richmond Heights (Hadley Township)

In July 2005, officials issued a request for proposals for Hadley Township, a predominantly African-American neighborhood of 200 homes, asking developers to submit plans to demolish the homes and replace them with a residential and commercial development. Officials have been trying to redevelop the area for years and homeowners, according to officials, have stopped maintaining their properties because of the uncertainty. Still, the City won’t remove the blight designation and encourage more voluntary development, like the new Wal-Mart nearby.<sup>253</sup>

In February 2006, City officials approved a preliminary agreement with Michelson Commercial Realty Group, which is asking for \$46 million in tax-increment financing, for the project. Residents, who are worried about whether the project will rely on eminent domain, have been told they will have to wait until a final agreement between the City and developer has been reached.<sup>254</sup>

## Rolla

In December 2005, Rolla’s Tax Increment Financing Commission recommended to City Council members that they approve a 14-acre plan by private developer Jim Sansone of the Sansone Group.<sup>255</sup> The plan calls for an as-

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248 Didi Tang, “Residents of ‘blighted’ property get answers; Reassurances that condemnation will happen only as a last resort,” *Springfield News-Leader*, June 11, 2004, at 1B.

249 Didi Tang, “Uncertainty weighs on residents of blighted area,” *Springfield News-Leader*, May 7, 2006, at 1A; Ryan Bowling, “Uncertainty over blighted area forces business changes,” *Ozarks Newsstand*, January 6, 2006.

250 Didi Tang, “Ozark OKs contract with city developer,” *Springfield News-Leader*, November 22, 2005, at 1B; Didi Tang, “Design firm gets job of redeveloping blighted Ozark area,” *Springfield News-Leader*, August 26, 2005, at 1B.

251 Ryan Bowling, “Uncertainty over blighted area forces business changes,” *Ozarks Newsstand*, January 6, 2006.

252 “Our view: Threat of lost homes looms in Ozark,” *Springfield News-Leader*, March 24, 2006, at 8A.

253 Eric Heisler, “Richmond Heights, Mo., tries again to develop area near Wal-Mart,” *St. Louis Post-Dispatch*, July 15, 2005, at 1.

254 City Council, City of Richmond Heights, Missouri, Regular Meeting, February 6, 2006, at <http://www.richmondheights.org/Minutes/2-6-06%20council%20minutes.pdf>. (retrieved May 25, 2006); Ryan Heinz, “Town hall meeting focuses on Hadley development,” *St. Louis Post-Dispatch*, April 26, 2006, at A01; Mitch Schneider, “Richmond Heights edges forward with Hadley Township plan,” *West End Word*, February 1, 2006.

255 Janese Heavin, “TIF Commission approves Sansone plan, 6-4,” *Rolla Daily News*, December 14, 2005.

“I don’t like this eminent domain.  
I want them to negotiate like I had to.”

yet unnamed big-box store.<sup>256</sup>

In March 2006, the City Council approved the Highway 63/72 Tax Increment Financing Redevelopment Plan and Project, which was drawn up by PGAV Urban Consulting in September 2005. The plan calls for the use of eminent domain, something Sansone has said he’d be unwilling to proceed without.<sup>257</sup>

At least seven properties—homes and a business—are affected. “Our home is not blighted,” said Ralph Koboldt, who has lived in his Williams Road home for almost 50 years. He says his wife’s health is failing and she needs to be in familiar surroundings.<sup>258</sup>

Councilwoman Charlotte Wiggins, who is also a member of the TIF Commission, said she was moved at a hearing by Koboldt’s statements but “he has a right price. It’s a heartbreaking reality but at some point they’re going to have to have care in another facility of professional assistance. He knows that. How much longer can he stay there?”<sup>259</sup>

Warren Dean, 81, who owns nearly eight of the 14 acres, wants to redevelop his property himself.<sup>260</sup> Dean says he does not want to sell his land. “I don’t like this eminent domain. I want them to negotiate like I had to,” he said.<sup>261</sup>

## St. Louis

In July 2005, a St. Louis Circuit judge cited the *Kelo* decision in his finding against Howard Thompson and his mother, 79-year-old Reba June Thompson, whose home sat in the path of a shopping center to include Lowe’s Home Improvement Warehouse and Schnuck’s Market. The judge wrote “Perhaps the people will clip the wings of eminent domain in Missouri, but today in Missouri it soars and devours.”<sup>262</sup> The Thompsons, the last of 19 homeowners in their

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256 “Sansone group chosen as preferred developer,” *Rolla Daily News*, March 17, 2005.

257 Martin W. Schwatz, “TIF passes,” *Rolla Daily News*, March 21, 2006; Highway 63/72 Tax Increment Financing Redevelopment Plan & Project, at <http://www.rollacity.org/comdev/tif/Rolla%20TIF%20Plan%20Amendment.pdf> (retrieved May 31, 2006).

258 Janese Heavin, “TIF Commission approves Sansone plan, 6-4,” *Rolla Daily News*, December 14, 2005.

259 Janese Heavin, “For some councilmen, eminent domain is a TIF killer,” *Rolla Daily News*, December 16, 2005.

260 Bill E. Morrison, “Dean sues City of Rolla,” *Rolla Daily News*, March 2, 2005; Warren Dean, “Letter to the Editor,” *Rolla Daily News*, March 8, 2006.

261 Janese Heavin, “Dean cautiously optimistic he will be treated fairly,” *Rolla Daily News*, October 30, 2005.

262 Tim O’Neil, “Perhaps the people will clip the wings of eminent domain in Missouri, but today in Missouri it soars and devours,” *St. Louis Dispatch*, September 2, 2005, at C10; *City of St. Louis v. Legge*, No. 052-01130 (Mo. Cir. Ct. July 18, 2005).





Jennifer Zeigler

Citing *Kelo*, a judge ruled that St. Louis officials could seize 79-year-old Reba June Thompson's house—the last in what was once a bucolic neighborhood—so a private developer could build a Lowe's and Schnuck's Market.

neighborhood, appealed to the Missouri Supreme Court but later gave up and sold their home to Desco Development Group in November 2005.<sup>263</sup> Loughborough Commons, the \$40 million, 30-acre project, will receive \$11 million in tax increment financing subsidies.<sup>264</sup>

## Sunset Hills

Less than three weeks after the *Kelo* ruling, aldermen in Sunset Hills voted to approve the use of eminent domain to allow a private developer to begin condemnation proceedings on 85 homes in Sunset Manor in the way of a proposed office and shopping complex.<sup>265</sup> The plan failed horrendously when the developer could not secure financing—leaving some homeowners who had agreed to sell and bought other homes with two mortgages and also leaving the neighborhood a shadow of its former self because many residents had left. In April 2006, residents voted all five incumbents out of office.<sup>266</sup>

263 "Metro Digest," *St. Louis Post-Dispatch*, November 18, 2005, at C3; Tim O'Neil, "\$40 million center is planned for city," *St. Louis Post-Dispatch*, September 29, 2004, at C1.

264 Patricia Rice, "Demolition begins for shopping center along I-55; Loughborough Commons will rise on site," *St. Louis Post-Dispatch*, May 2, 2005, at SOUTH POST 1.

265 Cathy Lenny, "Sunset Hills will use eminent domain for development; Affected residents continue to fight action in court," *St. Louis Post-Dispatch*, July 18, 2005, at WEST POST 2.

266 Clay Barbour, "Sunset Hills ousts five over eminent domain," *St. Louis Post-Dispatch*, April 5, 2006, at D1.



Less than three weeks after *Kelo*, Sunset Hills officials granted a private developer the authority to use eminent domain to seize “blighted” homes such as this one to make room for an office and shopping complex.

## Valley Park

In early July 2005, just after the *Kelo* decision came down, homeowners started receiving offers for their properties from the Sansone Group. At a public meeting later that month, worried residents were told that no development would be happening in the foreseeable future.<sup>267</sup>

Apparently the foreseeable future extends about two months in Valley Park. In September, the *St. Louis Post-Dispatch* reported that officials put out a request for proposals that said they were willing to use eminent domain in the project area, which covers a total of 504 acres along the Meramec River.<sup>268</sup>

In November, officials released a redevelopment plan calling for razing existing homes and businesses to make way for Sansone’s 200-acre industrial, residential and commercial development proposal that also would include a big-box store. According to Glenn Koenen, the executive director of the Circle of Concern, a charity that provides a variety of badly needed services to hundreds of low-income families in the area, the plan calls for putting a road where the organization’s building sits and for the removal of at least 150 affordable homes.<sup>269</sup>

In December 2005, the Board of Aldermen voted unanimously to name a partnership between the Sansone Group and McBride & Son Homes as the

267 Mitch Schneider, “Valley Park: No development yet; Company’s letters to residents cause worry,” *St. Louis Post*, August 4, 2005, at SOUTH POST 1.

268 Margaret Gillerman, “Valley Park plan could doom food pantry,” *St. Louis Post-Dispatch*, September 20, 2005, at B2.

269 Mary Shapiro, “Consulting firm reviewing Sansone’s proposal,” *Press Journal*, November 16, 2005; Glenn Koenen, “Developments are pushing out the poor; In many areas affordable housing is becoming an impossible dream,” *St. Louis Post-Dispatch*, October 17, 2005, at D9.

“They will use eminent domain,  
and I will fight it to the end.”

developer for the Valley Park New Town redevelopment project area.<sup>270</sup>

Officials are using PGAV Urban Consulting to grease the skids.<sup>271</sup> PGAV executive vice president John Brancaglione often consults for cities and developers seeking to take advantage of vague blight laws and condemnation or the threat of it to get property for private projects.<sup>272</sup> Sansone is also behind a plan to use eminent domain to seize homes and businesses in Rolla, Missouri.<sup>273</sup> McBride & Son was estimated to make a \$26-million profit on a St. Louis project that relied on eminent domain to seize and then raze an entire neighborhood.<sup>274</sup>

Officials naturally say eminent domain is not being considered “in the immediate future” and insist that they are just interested in the project to increase tax revenues for the City. Some property owners are selling because they think the project is inevitable.<sup>275</sup> Others want to hold on to their homes and businesses. “I don’t want to sell,” said John Beard. “They will use eminent domain, and I will fight it to the end.”<sup>276</sup>

In May 2006, the Board of Aldermen passed a resolution saying that eminent domain authority will not be granted directly to private developers.<sup>277</sup> In Missouri, municipalities can give private parties the power to use eminent domain for their own direct gain. The Board’s resolution, however, does not preclude the City from using eminent domain on behalf of Sansone and McBride—meaning property owners still have no protection.

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270 Greg Jonsson, “Some in Valley Park fear redevelopment; Happy to sell,” *St. Louis Post-Dispatch*, December 7, 2005, at C4; Brian Jarvis, “Some in Valley Park fear property loss,” *St. Louis Post-Dispatch*, December 23, 2005, at C5.

271 Mitch Schneider, “Valley Park: No development yet; Company’s letters to residents cause worry,” *St. Louis Post-Dispatch*, August 4, 2005, at SOUTH POST 1.

272 Cathy Lenny, “Arnold moves closer to approving project; TIF proposed for Triangle,” *St. Louis Post-Dispatch*, April 11, 2005, at JEFFERSON COUNTY POST 1; Elizabeth Donald, “Collinsville city council poised to approve shopping center; city to decide on \$19 million in bonds,” *Belleville News-Democrat*, December 26, 2004, at 1B; Arlene Franks, “Crestwood acts to pave way for redevelopment tax breaks; But property owners go to public to fight proposal,” *St. Louis Post-Dispatch*, April 14, 2003, at WEST POST 4; Martin Van Der Werf, “If at first you can’t blight Sunset Manor, try, and try again,” *St. Louis Post-Dispatch*, September 29, 2005, at C1; Benjamin Israel, “Normandy will talk to second developer about Natural Bridge; Consultant says he will keep in contact with Gundaker on proposal,” *St. Louis Post-Dispatch*, February 10, 2003, at NORTH POST 1.

273 Janese Heavin, “TIF Commission approves Sansone plan, 6-4,” *Rolla Daily News*, December 14, 2005.

274 Shelley Smithson, “The Greening of McRee Town; There was nothing wrong with the Missouri Botanical Garden’s downtrodden neighbor to the north that a bulldozer couldn’t fix,” *Riverfront Times*, October 8, 2003, at News/Featured Stories.

275 Margaret Gillerman, “Valley Park is entering another transition,” *St. Louis Post-Dispatch*, January 8, 2006, at E1.

276 Greg Jonsson, “Some in Valley Park fear redevelopment; Happy to sell,” *St. Louis Post-Dispatch*, December 7, 2005, at C4.

277 “Metro Digest,” *St. Louis Post-Dispatch*, May 2, 2006, at B3.

# Montana

## Known Condemnations Benefiting Private Parties <sup>278</sup>

Threatened Condemnations    300

Legend  = 100

### Bozeman

In August 2005, City Commissioners voted to declare an entire northeast section of town “blighted” based on a study finding conditions like an empty field with weeds, lack of streetlights and poor storm water drainage.<sup>279</sup> The neighborhood, a unique mix of homes and small businesses, has already been undergoing something of a renaissance transitioning out of its industrial roots. The same firm that did the blight study just happens to have a plan that will turn the area into an “urban village” of new offices and apartments.<sup>280</sup> According to the map in the blight study, there are well over 300 parcels affected.<sup>281</sup>

<sup>278</sup> These numbers were compiled from news sources. Many cases go unreported, and news reports often do not specify the number of properties against which condemnations were filed or threatened.

<sup>279</sup> Brook Griffin, “Commission declares blight in northeast area,” *Bozeman Daily Chronicle*, August 2, 2005; Walt Williams, “Northeast neighbors worry about proposed blight designation,” *Bozeman Daily Chronicle*, July 24, 2005.

<sup>280</sup> Walt Williams, “Northeast neighbors worry about proposed blight designation,” *Bozeman Daily Chronicle*, July 24, 2005.

<sup>281</sup> Northeast Urban Renewal District, Blight Study, <http://www.bozemanmilldistrict.com/urban-renewal-district/NEURD.PDF> (retrieved May 25, 2006).

# Nebraska

## ***Known Condemnations Benefiting Private Parties*** <sup>282</sup>

**Threatened Condemnations**   **137**

*Legend*  = 100

### **Lincoln (West O)**

In September 2005, the City Council voted to declare 1,361 acres—the west entrance into town along O Street—blighted based on such factors as “improper subdivision and obsolete platting.”<sup>283</sup> The area has at least 40 commercial properties, 10 single-family residences, as well as 20 industrial properties.<sup>284</sup> A declaration of blight also gives authority for eminent domain.

### **Lincoln (North 56th Street)**

In October 2005, City Council members declared blighted 1,873 acres between Interstate 80 and North 56<sup>th</sup> Street.<sup>285</sup> Much of that property is farmland and hardly anything that could reasonably be called a danger to the community.<sup>286</sup> Fortunately for farmers, in April 2006, the Nebraska legislature passed a bill disallowing condemnation of agricultural land—but the bill gives no protection against the abuse of eminent domain to other property owners in the two massive areas.<sup>287</sup> Of the 67 parcels located in the affected area, there are at least five homes and 13 businesses, which unlike the farmland and publicly held property, are still threatened with eminent domain.<sup>288</sup>

<sup>282</sup> These numbers were compiled from news sources. Many cases go unreported, and news reports often do not specify the number of properties against which condemnations were filed or threatened.

<sup>283</sup> Deena Winter, “When ‘blight’ can make right,” *Lincoln Journal Star*, September 25, 2005, at B1; “City Council agrees West O is blighted,” *Lincoln Journal Star*, September 27, 2005, at A2.

<sup>284</sup> West O Street Redevelopment Plan, <http://www.ci.lincoln.ne.us/CITY/urban/Reports/WORedev.pdf> (retrieved May 25, 2006).

<sup>285</sup> <http://www.ci.lincoln.ne.us/city/council/agenda/2005/101705/05r253f.pdf> (retrieved May 25, 2006); <http://www.ci.lincoln.ne.us/city/plan/pcagenda/reports/092805/blightstudy.pdf> (retrieved May 25, 2006).

<sup>286</sup> Matt Olberding, “Blight tag can be economic ‘shot in the arm,’” *Lincoln Journal Star*, February 26, 2006, at N4.

<sup>287</sup> LB 924, sec. 2 (April 13, 2006).

<sup>288</sup> North 56<sup>th</sup> Street and Arbor Road Substandard and Blight Determination Study, <http://www.ci.lincoln.ne.us/city/plan/pcagenda/reports/092805/blightstudy.pdf> (retrieved May 25, 2006).





# New Jersey

**Known Condemnations Benefiting Private Parties** <sup>289</sup>

**Filed/Authorized Condemnations**  26

**Threatened Condemnations**  585

Legend  = 10  = 100

**Asbury Park**

In September 2005, the City Council voted to use eminent domain on six more properties, including Anybody’s Bar, a two-family house and four lots. The house sits on a block with 17 other properties that Asbury Partners, a private developer, has already managed to buy.

Asbury Partners offered Leonard Soriano, owner of Anybody’s Bar, less than a tenth of his asking price, prompting Soriano to write to Acting Governor Richard Codey in August 2005: “While the purpose and intent of redevelopment may originally have been noble and legitimate, it is being abused by municipalities and their connected carpetbagger redevelopers to confiscate the properties, businesses, and livelihoods of long-time, loyal, taxpaying citizens.”<sup>290</sup>

“While the purpose and intent of redevelopment may originally have been noble and legitimate, it is being abused by municipalities and their connected carpetbagger redevelopers to confiscate the properties, businesses, and livelihoods of long-time, loyal, taxpaying citizens.”

<sup>289</sup> These numbers were compiled from news sources. Many cases go unreported, and news reports often do not specify the number of properties against which condemnations were filed or threatened.

<sup>290</sup> Nancy Shields, “Asbury OK forced sale of house; Developer to buy bar, 2-family house,” *Asbury Park Press*, September 8, 2005, at B1.

“I don’t have much time left. But I had intended to live out the rest of my life in that little house I got, tend to my garden and be living in peace.”

## Carteret

City officials and preferred developer Kaplan Cos. have begun to demolish 76 buildings on 8.5-acres to make room for condos, townhouses, lofts and commercial space. Nearby business owners and residents are holding their breath while they wait to find out if they will be forced to leave. The waterfront redevelopment is called Gateway at Carteret.<sup>291</sup>

Seventy property owners must make way for the project, including the Brown family whose store, Mark Brown Hardware, has been in the family for 105 years and employs 23 people. It isn’t clear from news reports how many properties have been condemned but according to Jason Kaplan, president of Kaplan Cos., “Once we started dealing with the homeowners, they weren’t against the project, they were against me taking their property. We were forced to use condemnation and eminent domain.” In August 2005, 37 buildings still remained to be acquired.<sup>292</sup>

One homeowner, Johnnie Stevens, who fought in the Battle of the Bulge, has been fighting city hall at the same time he’s fighting cancer.<sup>293</sup> “I don’t have much time left. But I had intended to live out the rest of my life in that little house I got, tend to my garden and be living in peace.”<sup>294</sup>

## Cinnaminson

Three developers have submitted proposals for a 15-acre swath of Route 130 between Cinnaminson and Highland avenues. City officials want to raze four motels that cater to low-income, minority residents, a home, a restaurant and two other businesses and replace them with a \$20-million mixed-use development. The motels make up some of the scarce affordable housing in the area. Some owners sold because they didn’t believe they had the resources to fight; others are holding on. Ninety-two-year-old Bill Kieme, who bought his modest home in

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291 “Land grab feared in area towns; Eminent domain case eyed closely,” *Home News Tribune*, February 24, 2005, at A1.

292 Arielle Levin Becker, “Chrome residents enthused by project,” *Home News Tribune*, August 15, 2005; Victoria Hurley-Schubert, “Mixed-use comes on strong,” *Business Dateline*, March 27, 2006, at 20; “Land grab feared in area towns; Eminent domain case eyed closely,” *Home News Tribune*, February 24, 2005, at A1.

293 George Mytrowitz, “When government takes what it doesn’t own,” *The Record*, March 24, 2005 (opinion); Fox Hannity & Colmes, “World War II Vet to Lose Home to Eminent Domain,” *Fox News*, November 17, 2005.

294 Fox Hannity & Colmes, “World War II Vet to Lose Home to Eminent Domain,” *Fox News*, November 17, 2005.

1957, does not want to leave—"I don't know where the heck I'll go. I'd just like to stay here another three years. I don't think I'll live longer than that."<sup>295</sup>

## Highland Park

In September 2005, the Borough Council adopted the Downtown Redevelopment Plan, which calls for retail, residential and office space along Raritan Avenue as well the use of eminent domain.<sup>296</sup> Standing in the way are 60 properties, including Dunkin' Donuts, Unity Bank, La Fonda Restaurant, a Sunoco station, AA Discount Rentals and an automobile repair business.<sup>297</sup> Several owners have formed a group called Highland Park Citizens for Property Rights Protection, in order to fight the abuse of eminent domain.<sup>298</sup> Three business owners in the redevelopment area have sued the Town to halt their possible condemnation.<sup>299</sup>

## Lawnside

On July 6, 2005, the Borough Council voted to create a 120-acre redevelopment district, which gives officials the power to use eminent domain "as a last resort." The district envelops 15 homes and 65 acres owned by developer Vineland Construction, which had been in talks with the Borough to redevelop its property on its own.<sup>300</sup>

"This is a land grab, pure and simple," said Willa Coletrane, a 65-year-old widow and sister-in-law to jazz great John Coltrane, who has poured \$50,000 into renovating her home in Lawnside. According to Mayor Mark Bryant, however, "the needs of the many outweigh the needs of the few."<sup>301</sup> If the Borough gets its way, Wesley Reid, 73, and his wife Gloria, will lose their home of 40 years.

There is some room for speculating just whose "needs" Bryant is looking

295 Jim Walsh, "Elderly man to lose home; Redevelopment plan for Cinnaminson's Motel Row also ousts low-income families," *Courier-Post*, November 27, 2005, sec. B, at 1a.

296 Letters to the Editor, "A gentle pat on the back for town's new plan," *Home News Tribune*, October 14, 2005, at B8 (written by Micky Landis, chairman of Highland Park Redevelopment Agency); [http://www.hpboro.com/documents/102005HP\\_DRP\\_09\\_30\\_05\\_screen.pdf](http://www.hpboro.com/documents/102005HP_DRP_09_30_05_screen.pdf) (retrieved May 25, 2006); Rick Harrison, "Vote on downtown delayed; Highland Park seeking further input," *Home News Tribune*, September 8, 2005, at B1.

297 Kathleen G. Sutcliffe, "A rendering shows proposed redevelopment in East Brunswick, N.J.," *Home News Tribune*, January 21, 2005.

298 "Land grab feared in area towns; eminent domain case eyed closely," *Home News Tribune*, February 24, 2005, at A1.

299 "Land-rights fight spreads in N.J.," *Home News Tribune*, January 8, 2006, at A1.

300 Jason Laughlin, "Despite objections, Lawnside OKs plan," *Courier-Post*, July 8, 2005, at B2G; Jason Laughlin, "In Lawnside, some fear redevelopment," *Courier-Post*, August 29, 2005, at B1G; Elisa Ung, "Relationships entangle Lawnside redevelopment," *Philadelphia Inquirer*, March 20, 2006, at B6; Jason Laughlin, "Lawnside board advances plan for redevelopment," *Courier-Post*, May 11, 2005, at B1G.

301 Elizabeth Mehren, "The Nation; States acting to protect private property; Preserving homeowners rights has become a bipartisan goal since the Supreme Court ruled that governments can take land for developers," *Los Angeles Times*, April 16, 2006, at A1; Dan Keashen, "Local group mobilizes on eminent domain issue," *Haddon Herald*, June 27, 2005, at [http://www.zwire.com/site/index.cfm?newsid=14764516&BRD=1695&PAG=461&dept\\_id=44219&rfi=8](http://www.zwire.com/site/index.cfm?newsid=14764516&BRD=1695&PAG=461&dept_id=44219&rfi=8).

There's no way the current residents will be able to afford the estimated \$365,000 the new townhouses will go for.

after. According to a lawsuit filed by the homeowners to stop the project, Mayor Bryant owns 19 properties in the redevelopment zone. His brother, Senator Wayne Bryant, whose law firm is the Borough's solicitor, owns 17 properties. Councilmember Walter Lacey owns 53.<sup>302</sup> In January 2006, the only member of the planning board to vote against the plan was replaced on the board by Senator Bryant's son. Another new appointee to the planning board, Malcolm Stills, is the brother of a current council member.<sup>303</sup>

In addition to the proposed use of eminent domain, the plan has come under fire because the Council meetings pertaining to it are conducted in closed session and minutes have not been kept, a violation of state law.<sup>304</sup>

In March 2006, Township officials began considering the first of several different proposals from developers. The proposals are being kept secret so that no firm gets a competitive advantage, according to the Mayor.<sup>305</sup>

## Lodi

In February of 2005 Borough officials voted to approve Lodi 46 Renewal LLC to demolish two trailer parks, inhabited by elderly and low-income residents, and put in a more upscale gated senior community with 242 age-restricted townhouses, and 120,000 square feet of retail space. The plan did not receive much public review. According to Councilman Marc N. Shrieks, "[T]he ordinance was faxed to Borough Hall at 2:30 p.m. I was asked to vote on something four hours later. Two residents attended the entire meeting."<sup>306</sup> The proposed development supposedly would bring in roughly \$2 million more in property taxes than the trailer parks.<sup>307</sup> There's no way the current residents will be able to afford the estimated \$365,000 the new townhouses will go for.<sup>308</sup>

According to Mayor Gary Paparozzi, the trailers in which the two parks' 233

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302 Renee Winkler, "Seizure delay is promised in Lawnside," *Courier-Post*, September 10, 2005, at B2G; Elisa Ung, "Relationships entangle Lawnside redevelopment," *Philadelphia Inquirer*, March 20, 2006, at B6.

303 Alan Guenther, "Lawnside official charges nepotism," *Courier-Post*, February 3, 2006, at B1G.

304 Jason Laughlin, "Records error threatens plan," *Courier-Post*, April 8, 2006, at B1G.

305 Jim Walsh, "Lawnside reviews proposal for site; Borough wants to redevelop part of Oak Avenue," *Courier-Post*, March 8, 2006, at 2B.

306 Heather Kays, "Builder's proposal riles trailer park residents; Plan calls for retail space, senior housing," *Herald News*, April 29, 2005, at B01; Heather Kays, "Residents hope court will save their trailer homes," *The Record*, May 6, 2005, at O1.

307 Heather Kays, "Home, bitter, home; For trailer park residents, imminent gain of eminent domain strikes fear," *Herald News*, July 24, 2005, at A1.

308 Heather Kays, "Builder's proposal riles trailer park residents; Plan calls for retail space, senior housing," *Herald News*, April 29, 2005, at B01.

families reside “aren’t really homes.”<sup>309</sup> The owners of Brown and Costa trailer parks sued the Borough; a group of mobile home owners and residents called Save Our Homes joined the suit shortly after.<sup>310</sup>

To justify taking the homes, Borough officials declared the trailer parks, to which they have never issued any citations, blighted.<sup>311</sup> However, it became apparent at trial that the trailer homes needed only minor repairs, and the person conducting the blight study never even went inside any of the homes.<sup>312</sup> In October a Superior Court judge ruled that the redevelopment designation was improper, and the Borough could not condemn the trailers.<sup>313</sup>

Papparozi sounded chastened: “I’ll go so far as to say I don’t agree with eminent domain. I don’t think we should take down a row of houses to put up another one. But it should be taken on a case by case basis.” Actions speak louder than words, however. In December 2005, the officials filed an appeal in hopes that the Borough may still be able to condemn the properties and replace lower-income homes with higher-income ones.<sup>314</sup>

## Long Branch

Officials in “The Friendly City” are condemning and razing charming beachfront homes for expensive condominiums and townhomes. The City has divided its 12-acre redevelopment efforts into three projects: Beachfront North Phase I and II, and Beachfront South. The City hired three law firms, one of which City Attorney James Aaron is a partner in, to push the project. The developers are paying for the attorney fees.<sup>315</sup>

Residents across Long Branch, Neptune and Asbury Park rallied en masse against the abuse of eminent domain on the eve of the oral argument in *Kelo v. New London*.<sup>316</sup> After the *Kelo* decision, however, Long Branch moved forward on

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309 “Lodi’s land grab; Condemnation could leave hundreds homeless,” *The Record*, September 28, 2005, Opinion, at L6.

310 Heather Kays, “Trailer tenants get day in court; Fight Lodi proposal to take properties,” *Herald News*, September 23, 2005, at A1.

311 “Lodi’s land grab; Condemnation could leave hundreds homeless,” *The Record*, September 28, 2005, Opinion, at L6; Heather Kays, “Trailer tenants get day in court; Fight Lodi proposal to take properties,” *Herald News*, September 23, 2005, at A1.

312 Heather Kays, “Trailer tenants get day in court; Fight Lodi proposal to take properties,” *Herald News*, September 23, 2005, at A1.

313 Ashley Kindergan and Jaci Smith, “Masters of their domain; Trailer court residents win battle against borough,” *Herald News*, October 8, 2005, at A1.

314 Heather Kays, “City appeals trailer ruling; Eminent domain irks residents of 2 parks,” *Herald News*, December 21, 2005, at E1.

315 Jonathan V. Last, “Razing New Jersey; In which developers in league with city hall have come up with a curious definition of ‘blight,’” *Weekly Standard*, February 13, 2006, at FEATURES Vol. 11 No. 21.

316 A. Scott Ferguson, “Eminent domain hits home,” *Asbury Park Press*, February 21, 2005, at A1.





A “blighted” home that Long Branch wants to replace with upscale condominiums.

at least 20 condemnations.<sup>317</sup> In November 2005, 20 homeowners received letters telling them to vacate their homes in 90 days.<sup>318</sup> To date, the owners have refused to move.

These homes are being seized for the so-called Beachfront North Phase II portion of the project, for which the City will raze 38 homes along Marine Terrace, Ocean Terrace and Seaview Avenue (“MTOTSA”) so that Applied Partners and Matzel and Mumford (a subsidiary of K. Hovnanian) can build more condo towers along the water. While some portions of the waterfront did have blight, the MTOTSA area does not.<sup>319</sup>

In December 2005, four days before Christmas and Hanukkah, the City Council voted unanimously to approve the redevelopment deal for Beachfront South, which will require the acquisition of another 30 residences on 12 acres

317 Verified Complaint in *City of Long Branch v. Brower*, No. L-4987-05 (filed in N.J. Super. Ct. Nov. 18, 2005); Verified Complaint in *City of Long Branch v. DeLuca*, No. L-5552-05 (filed in N.J. Super. Ct. Dec. 23, 2005); Verified Complaint in *City of Long Branch v. Anzalone* (filed in N.J. Super. Ct. Jan. 10, 2006); see Brief of Long Branch in Response to Defendant’s Objection to the Conferring of Jurisdiction and the Appointment of Commissioners and to Dismiss, No. L-4987-05 (filed in N.J. Super. Ct. March 17, 2006).

318 Carol Gorga Williams, “City’s letter ‘scare tactic’; Long Branch’s notice to vacate irks residents,” *Asbury Park Press*, November 14, 2005, at A1.

319 Jonathan V. Last, “Razing New Jersey; In which developers in league with city hall have come up with a curious definition of ‘blight,’” *Weekly Standard*, February 13, 2006, at FEATURES Vol. 11 No. 21; Christine Varno, “Council expected to act on Beachfront South plan; 30 homes to be bulldozed, replaced,” *Atlanticville*, December 22, 2005.

The properties there are “big, beautiful houses facing the ocean with nothing in between them and the beach except wide, rolling lawns. They would not look out of place in a [Winslow] Homer painting.”

to build five new condo towers.<sup>320</sup> According to one reporter, the properties there are “big, beautiful houses facing the ocean with nothing in between them and the beach except wide, rolling lawns. They would not look out of place in a [Winslow] Homer painting.”<sup>321</sup> In fact, according to the City’s own study, the document meant to provide justification for seizing property, only *four* percent of the properties were in “poor” condition in 1995, when officials began laying the groundwork for the project.<sup>322</sup>

The project continues despite national outrage, overwhelming opposition from the community and public disclosure of blatant corruption. For instance, Arthur Greenbaum, an attorney hired by the City, sits on the board of Hovnanian Enterprises. “The interest of the city and K. Hovnanian are the same,” according to City Attorney James Aaron. Greenbaum eventually pulled his firm out of the project. Joe Barry, the president of Applied Development, is doing 25 months in prison for making payoffs to elected officials in neighboring Hudson County—a separate but not particularly comforting state of affairs. And while officials claim they are condemning to remedy a “blighted” area, there are no plans to address the abandoned buildings across from City Hall. Well-kept Victorians and beach bungalows near the ocean seem to be more desirable “blighted” property.<sup>323</sup>

## Neptune City

In July 2005, shortly after the Supreme Court’s decision in *Kelo*, the Borough Council voted to declare a 21-acre industrial and residential area of town “in need of redevelopment,” which gave the Borough the authority to use eminent domain.<sup>324</sup> The plan for the area includes new high-density housing and

320 Tom Feeney, “Over loud protest, Long Branch approves waterfront plan; Shore town’s residents decry use of eminent domain to seize their property, but officials cite the greater good,” *Star-Ledger*, December 22, 2005; Christine Varno, “Council expected to act on Beachfront South plan; 30 homes to be bulldozed, replaced,” *Atlanticville*, December 22, 2005.

321 Jonathan V. Last, “Razing New Jersey; In which developers in league with city hall have come up with a curious definition of ‘blight,’” *Weekly Standard*, February 13, 2006, at FEATURES Vol. 11 No. 21.

322 Long Branch City Planning Department and the Atlantic Group, Report of Findings, Area in Need of Redevelopment, Long Branch, N.J. (January 1996).

323 Jonathan V. Last, “Razing New Jersey; In which developers in league with city hall have come up with a curious definition of ‘blight,’” *Weekly Standard*, February 13, 2006.

324 Bill Bowman, “Neptune City Oks recommendation on redevelopment plan,” *Asbury Park Press*, July 26, 2005, at B1.

commercial space. The plan calls for removing at least 28 homes and businesses.<sup>325</sup> Condemnation continues to loom over the properties, as officials try to reassure residents that eminent domain will only be used “as a last resort.”<sup>326</sup>

## Netcong

In October 2005, Borough officials chose developers Woodmont Properties and Roseland Properties, who will work under the name Rosewood Netcong LLC, to build condos, townhouses, retail and office space as well as a community center. According to Borough business administrator Marvin Joss, properties in the 13-acre area will be subject to eminent domain if they do not sell to Rosewood Netcong. Netcong’s designation as a transit village along NJ Transit even qualifies officials to make use of State funds for the redevelopment.<sup>327</sup> The properties affected include a tavern, an auto repair shop and a road construction company’s garage.<sup>328</sup>

## North Arlington

In October 2005, the City Council voted to approve a memorandum of understanding between the City and a subsidiary of Cherokee Investment Partners, which is benefiting from the abuse of eminent domain all over the state. In March 2006, it emerged that the developer wants the removal of a row of businesses on Porete Avenue because, according to Bill Gauger, president of Cherokee Northeast, “I can’t create a sense of place with the businesses right next door” to the \$500,000 condos envisioned. In April 2006, Council members received a 334-page final agreement and voted to accept it, without any discussion, the very next day. Over 20 businesses with 500 employees will be forced out if the Borough has its way. In May 2006, the North Arlington Property Rights Coalition filed a suit to stop the borough from using eminent domain for the project.<sup>329</sup>

## Passaic

In January 2006, the Passaic Redevelopment Agency voted to name James Demetrakis, a principal in Arilex Realty, the exclusive developer of a 32-acre

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325 Michelle Sahn, “Borough unveils redevelopment plan,” *Asbury Park Press*, September 21, 2005.

326 Karen Sudol, “‘Oldest taxpayer’ could lose home,” *Asbury Park Press*, April 30, 2006, at 6A.

327 Zenaída Mendez, “Netcong’s downtown drawing interest; Committee will choose from redevelopment proposals by four prospective builders,” *Daily Record*, July 27, 2005, at 9A; Zenaída Mendez, “Netcong officials have chosen the building companies working,” *Daily Record*, October 11, 2005, at 1A.

328 Abbott Koloff, “Some in Morris fearing for their property rights; Business owners afraid eminent domain could close up shops,” *Daily Record*, November 14, 2005, at <http://www.dailyrecord.com/apps/pbcs.dll/article?AID=/20051114/NEWS01/511140311/1005> (retrieved May 25, 2006); Abbott Koloff, “When a home trumps a house; Targeting a residence would be an improper use of eminent domain,” *Daily Record*, December 19, 2005, at <http://www.dailyrecord.com/apps/pbcs.dll/article?AID=/20051219/COLUMNISTS03/512190329/1102/COLUMNISTS> (retrieved May 25, 2006).

329 Laura Mansnerus, “Eminent domain’s pre-eminence,” *New York Times*, May 28, 2006, at Section 14, New Jersey Weekly Desk, 1; Steve Gugliocciello, “Porete Avenue owners plan lawsuit,” *The Leader*, May 17, 2006, at <http://www.leadernewspapers.net/modules.php?name=News&file=article&sid=1548> (retrieved May 30, 2006).

## A New Jersey Superior Court judge ruled that municipalities may seize property from one developer to transfer it to another developer with similar plans.

former industrial site. The area has eight separate owners, from whom the City may seize property if they do not sell so Demetrakis can build a retail and residential development along the Passaic River.<sup>330</sup>

### Pennsauken

Private developer Vineland spent a considerable amount of time and money on its 137-acre development proposal, which officials in Pennsauken had tentatively approved. After that a politically connected competitor, Cherokee, entered the scene and officials did an about-face. The local government has spent several years and a lot of money trying to acquire the property so “Cherokee can basically do the same things we will do,” said Vineland’s lawyer, Lloyd Levenson.<sup>331</sup>

In December 2005, a New Jersey Superior Court judge ruled that municipalities may seize property from one developer (with plans to remediate and build) to transfer it to another developer with similar plans. The judge found that “politically connected developers may, under current New Jersey law, utilize their contacts with those in government to gain the inside track on redevelopment projects.” Further, “There is no doubt that the developer’s political connections got it a prompt meeting with key decision makers in Pennsauken.” Citing *Kelo*, the judge ruled that courts owe city governments an enormous amount of deference in decisions about development projects.<sup>332</sup>

### South River

In August 2005, the South River Borough Council hired planning consultant THP Inc. to “study” three areas in town, totalling five acres, to see if they might be “in need of redevelopment.” Affected property owners, including Jay Patel and Joe Manzo Sr., have spoken out loudly against the idea that their homes and businesses are blighted. Patel owns Krauszer’s food store on Main Street and leases adjoining space to several other businesses and a church, and Manzo’s family owns a two-family home. Prior to any study or City vote, Mayor Robert Szegeti already said

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330 Alexander MacInnes, “Riverfront set for a face-lift; Developer chosen by city for project,” *Herald News*, January 25, 2006, at B1.

331 Porus P. Cooper, “Trial under way in dispute over waterfront land; A company contends the township is unfairly using its power to take over nearly 140 acres,” *Philadelphia Inquirer*, September 28, 2005, at B3; *Vineland Construction Co. v. Township of Pennsauken*, No. L-2223-04 (N.J. Super. Ct. Law Div. Dec. 12, 2005).

332 *Vineland Construction Co. v. Township of Pennsauken*, No. L-2223-04 (N.J. Super. Ct. Law Div. Dec. 12, 2005).

that eminent domain would be used as “a last resort.”<sup>333</sup>

At a May 2006 public hearing, the City’s consultant said that 20 of 27 properties that he studied met the criteria for redevelopment. By the end of a three-hour discussion not one of the many members of the public who spoke praised the redevelopment project.<sup>334</sup>

## Stanhope

In June 2005, Stanhope officials asked private developer K. Hovnanian to draw up plans for redeveloping the site of the former Compac factory.<sup>335</sup> The plan calls for new residences along the Musconetcong River. According to Mayor Diana Kuncken, the developer then asked the Borough to include three additional properties—a home and two businesses—in the redevelopment area. The plan did not come to light until November 2005 after the daughter of the long-time homeowner, Norma Fluke Peterson, demanded access to public records.<sup>336</sup> After public outcry, Peterson’s home was then exempted, but the majority of the plan proceeded.<sup>337</sup> In April 2006, Stanhope’s Land Use Board recommended designating an 18-acre area “in need of redevelopment,” putting two businesses, Isolatak International, a manufacturer of fire resistive material for steel construction that has 75 employees who work at the site, and Salmon Brothers Inc., a road construction company, at risk of condemnation “as a last resort.”<sup>338</sup>

## Westville

On August 9, 2005, Rhoads Inc. realty firm, hired by developer Fieldstone Associates, sent letters to Westville residents telling them they had two weeks to get in touch with the company or the Borough would begin condemnation proceedings.<sup>339</sup> City officials reprimanded Rhoads for the letter, which was not appropriate for beginning negotiations.<sup>340</sup> But, although it wants a kinder and gentler presentation, the City does in fact plan to give Fieldstone 100 properties,

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333 John Majeski, “Redevelopment talk shakes South River,” *Home News Tribune*, April 24, 2006; John Majeski, “S. River eyeing sites to redevelop,” *Home News Tribune*, December 9, 2005, at B1.

334 Michael Acker, “Redevelopment idea panned in So. River; Tensions run high as Planning Board hears from public,” *The Sentinel*, May 18, 2006 at [http://cbs.gmnews.com/news/2006/0518/Front\\_page/005.html](http://cbs.gmnews.com/news/2006/0518/Front_page/005.html) (retrieved May 31, 2006).

335 Andrea Levene, “Stanhope board recommends redevelopment,” *New Jersey Herald*, April 26, 2006, at <http://www.njherald.com/354192497350450.php> (retrieved May 26, 2006).

336 Steve Chambers, “Eminent-domain issue roils Stanhope,” *Star-Ledger*, November 30, 2005.

337 “Woman threatened with eminent domain gets to keep home,” Fox Hannity & Colmes, January 27, 2006, transcript; Abbott Koloff, “When a home trumps a house; Targeting a residence would be an improper use of eminent domain,” *Daily Record*, December 19, 2005, at <http://www.dailyrecord.com/apps/pbcs.dll/article?AID=/20051219/COLUMNISTS03/512190329/1102/COLUMNISTS> (retrieved May 26, 2006).

338 Andrea Levene, “Stanhope board recommends redevelopment,” *New Jersey Herald*, April 26, 2006, at <http://www.njherald.com/354192497350450.php> (retrieved May 26, 2006).

339 Wilford S. Shamlin, “Firm criticized for threatening eminent domain,” *Courier-Post*, September 10, 2005, at B2G.

340 “Westville ‘threat’ still a factual one,” *Gloucester County News*, August 30, 2005.



many of which are single-family homes and rental units along the waterfront.<sup>341</sup>

Fieldstone has proposed building townhouses, condos, a marina, commercial space and a restaurant on the 11-acre site.<sup>342</sup> Homes, a restaurant and a marina already sit in the redevelopment area and residents and business owners are adamantly against the plans.<sup>343</sup>

As of April 2006, Borough officials are still talking up the development and Fieldstone's principal reminds property owners that eminent domain is "a last resort." Residents and businesses remain opposed.<sup>344</sup>

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341 "Other large projects in the region," *Philadelphia Inquirer*, February 22, 2005, at [http://www.philly.com/mld/inquirer/news/local/states/new\\_jersey/10935208.htm](http://www.philly.com/mld/inquirer/news/local/states/new_jersey/10935208.htm) (retrieved May 26, 2006).

342 Wilford S. Shamlin, "Developer plans flooding studies," *Courier-Post*, October 27, 2005, at B5G.

343 Wilford S. Shamlin, "Firm criticized for threatening eminent domain," *Courier-Post*, September 10, 2005, at B2G; Richard Pearsall, "N.J. bill targets eminent domain," *Courier-Post*, August 4, 2005.

344 Wilford S. Shamlin, "Redevelopment plans detailed," *Courier-Post*, April 16, 2006, at B1G.

# New Mexico

## Known Condemnations Benefiting Private Parties<sup>345</sup>

Threatened Condemnations          827

Legend  = 100

### Rio Rancho

City officials considered declaring Unit 10, a 1,373-acre undeveloped portion of the City, blighted and forcing 827 property owners to sell their investments to a single developer that had yet to be chosen.<sup>346</sup> Of 100 property owners attending a December 2005 City Council meeting, most of those who spoke were adamantly opposed to the plan: “I thought I was protected as long as I paid my taxes, worked hard, and obeyed the laws,” said Michelle Nelson. New Mexico Supreme Court Chief Justice Richard Bosson also attended—on behalf of his mother who owns property in Unit 10 that she inherited from her mother.<sup>347</sup> Faced with mounting opposition, however, Rio Rancho officials backed off the plan, which called for using eminent domain to seize property from anyone unwilling to sell. In March 2006, Rio Rancho citizens voted the incumbent, Mayor Jim Owens, who championed the plan, out of office in favor of candidate Kevin Jackson, who opposed the use of eminent domain.<sup>348</sup>

“I thought I was protected as long as I paid my taxes, worked hard, and obeyed the laws.”

<sup>345</sup> These numbers were compiled from news sources. Many cases go unreported, and news reports often do not specify the number of properties against which condemnations were filed or threatened.

<sup>346</sup> Jakob Schiller, “Rio Rancho delays decision on forcing property sales,” *Albuquerque Tribune*, December 22, 2005; Joshua Akers, “Blighting plan has landowners upset; Unit 10 would be sold to a developer,” *Albuquerque Journal*, December 20, 2005, at 1; Jakob Schiller, “Rio Rancho may condemn land,” *Albuquerque Tribune*, December 20, 2005, at A2.

<sup>347</sup> Tom Treweek, “City council tables Unit 10 decision,” *Rio Rancho Observer*, December 27, 2005.



<sup>348</sup> Joshua Akers, “18% Turnout for RR vote ‘abysmal’; Incumbent Owen loses race by 290,” *Albuquerque Journal*, March 9, 2006, at 1; Joshua Akers, “Candidate challenges foe to eminent-domain debate,” *Albuquerque Journal*, January 7, 2006, at 1.

# New York

## Known Condemnations Benefiting Private Parties <sup>349</sup>

*Filed/Authorized Condemnations*  3

*Threatened Condemnations*  731

Legend  = 1  = 100

### Albany

At a December 2005 City Council meeting, the City announced that it would use eminent domain “as a last resort” against property owners who refused to sell to Winn Development, which plans to raze 89 homes and an additional 225 apartments, housing approximately 1,900 residents, and replace them with high-rise towers, houses and apartments.<sup>350</sup> Just one month before, Kristina Rogers, project director for Winn Development, had said the project would not include eminent domain: “We are not interested in any forced sales.”<sup>351</sup>

### Haverstraw

On June 22, 2005, Ken Griffin and Patrick Lynch bought a commercial building to fix up. Eight days later they learned that Village officials had ongoing plans to condemn the property.<sup>352</sup> Over the past several years, various ideas had

<sup>349</sup> These numbers were compiled from news sources. Many cases go unreported, and news reports often do not specify the number of properties against which condemnations were filed or threatened.

<sup>350</sup> Brian Nearing, “Park South concern eases; Developer says rebuilding plan for neighborhood won’t include forced sales,” *Times Union*, November 11, 2005, at B1; Brian Nearing, “145 housing units proposed for Park South; Developer says plan to be brought before council in January for review, includes new homes, apartments, high-rise towers,” *Times Union*, December 15, 2005, at B1; Brian Nearing, “Stakes are high for Park South’s residents; Massive redevelopment plan welcomed, feared in Albany neighborhood,” *Times Union*, February 9, 2006, at B1.

<sup>351</sup> Brian Nearing, “Park South concern eases; Developer says rebuilding plan for neighborhood won’t include forced sales,” *Times Union*, November 11, 2005, at B1.

<sup>352</sup> Ron X. Gumucio, “Health complex, condos planned; Hogar wants to condemn Graziosi site in Haverstraw,” *Journal News*, July 19, 2005, at 1B.

been floated, including a supermarket or offices for the Village.<sup>353</sup> The latest plan was to transfer the building to Housing Opportunities for Growth, Advancement and Revitalization (HOGAR), an affordable-housing agency, which rents space in the building, with the idea that HOGAR would construct affordable housing.<sup>354</sup>

The new owners made clear they were willing to work with officials to redevelop the building, but the Village wasn't interested.<sup>355</sup> In December 2005, Village officials started the condemnation process despite the new owners' offer to build a remarkably similar project to HOGAR's, but using private instead of public funding. They proposed affordable housing, office space, and a medical facility in addition to a mix of retail shops. According to Mayor Wassmer, the Village didn't want retail in that space. Instead, the Village wants to spend approximately \$4.39 million, most of which will come from a federal Community Development Block Grant loan, for a slightly different project.<sup>356</sup> Griffin and Lynch are opposing the project in court.<sup>357</sup>

## New York (Brooklyn – Atlantic Yards/Prospect Heights)

In September 2005, the Metropolitan Transit Authority board voted 10 to 1 to accept \$100 million from Forest City Ratner to develop the Atlantic City Rail Yards. The offer was less than half of what the MTA's own appraisers value the property at (\$214 million).<sup>358</sup> It was also less than the \$150 million offered several months earlier by Extell Development Company, which, unlike Ratner, proposed a smaller development that would not require the use of eminent domain.<sup>359</sup>

Ratner's project calls for a 19,000-seat, Frank Gehry-designed arena for the Nets, along with 16 office and residential towers to be paid for in part with \$200 million in City and State funds. Further, according to a memorandum of understanding, Ratner will be able to finance the stadium with tax-free bonds and won't be subject to property taxes for 30 years. The Empire State Development Corporation, a State agency with eminent domain power, has agreed to a 99-year lease for the 6.5 acres on which the arena will sit for \$1. According to a study by the Pratt Institute, the deal could wind up costing New York taxpayers \$1

353 Ron X. Gumucio, "Chain may end plan for grocery," *Journal News*, February 17, 2004, at 1B.

354 Ron X. Gumucio, "Housing deal eyed by village; Haverstraw agrees to help acquire site for affordable housing," *Journal News*, October 20, 2004, at 1B.

355 Ron X. Gumucio, "Health complex, condos planned; Hogar wants to condemn Graziosi site in Haverstraw," *Journal News*, July 19, 2005, at 1B.

356 Ron X. Gumucio, "Village moves to condemn building; Haverstraw housing plan may bring fight," *Journal News*, December 20, 2005, at 1A.

357 Ron X. Gumucio, "Owners of complex fight condemnation," *Journal News*, January 21, 2006, at 3A.

358 Jess Wisloski, "Ratner gets site; With MTA's blessing, Bruce leaves \$10 million deposit on rail yards," *Brooklyn Papers*, September 17, 2005.

359 Diane Cardwell, "Brooklyn plan draws a rival, and it's smaller," *New York Times*, July 7, 2005; Daniel Hemel, "Board wants Ratner to increase his bid," *New York Sun*, July 28, 2005; Pradnya Joshi and Joshua Robin, "Support for Nets arena; Bloomberg's 4 representatives on MTA board expected to get behind \$3.5 billion B'klyn development," *Newsday*, July 26, 2005, at A14.

## The threat of condemnation hangs over people like Simon Liu, who emigrated from China to get away from communism.

billion.<sup>360</sup>

The area houses hundreds of people who live and work there.<sup>361</sup> Using the threat of eminent domain, Ratner has succeeded in acquiring some of the 53 properties, which opponents say housed 330 residents, 33 businesses with 235 employees, and a 400 person homeless shelter.<sup>362</sup> The threat of condemnation hangs over people like Simon Liu, who emigrated from China to get away from communism. After more than 20 years of running an arts supply factory, he is again facing coercive government power.<sup>363</sup> Other properties remain under threat of eminent domain, and several citizen groups have formed to oppose the project, including Develop—Don't Destroy Brooklyn and the Prospect Heights Action Coalition.

### New York (Queens – Iron Triangle/Willets Point)

In November 2004, officials issued a “request for expressions of interest” from developers for Willets Point—a 48-acre area east of Shea Stadium that officials say is home to 80 businesses—including junkyards, auto parts stores, garages, scrap dealers and a spice manufacturer.<sup>364</sup> An independent investigation by a Hunter University urban planning professor, however, revealed in April 2006 that there are in fact 225 businesses employing 1,300 people in the area.<sup>365</sup>

The area is indeed rundown, but mainly because City officials have failed to provide such basic municipal services as garbage collection, plumbing or electricity. When it rains, the phones go dead; business owners pave the sidewalks and plow snow off the street themselves.<sup>366</sup> Further, the threat of eminent domain “as a last resort” has made it nearly impossible for business owners to get loans to improve their properties.

Known as the “Iron Triangle,” the area has faced numerous threats over the years. In the 60s, Robert Moses tried to force all the property owners to sell to

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360 Memorandum of Understanding between New York City, the Empire State Development Corporation and Forest City Ratner, at [http://www.atlanticyards.com/downloads/mou\\_cityandstate.pdf](http://www.atlanticyards.com/downloads/mou_cityandstate.pdf) (retrieved May 26, 2006); Mathew Schuerman, “The Jets vs. Nets: Brooklyn arena deal template for stadium,” *New York Observer*, March 14, 2005; Julie Satow, “Rift develops at City Council over Ratner’s arena project,” *New York Sun*, April 29, 2005, at 1.

361 Nicholas Confessore, “Forced to move, some find greener grass,” *New York Times*, April 10, 2006, at B1.

362 Mark Berkey-Gerard, “Eminent domain revisited,” *Gotham Gazette*, December 12, 2005.

363 Daniel Goldstein, “Life in the Atlantic Yards footprint,” *Gotham Gazette*, December 9, 2005, at <http://www.gothamgazette.com/community/35/views/351> (retrieved May 26, 2006).

364 David Lombino, “Mayor to redevelop Iron Triangle in bid to transform Flushing,” *New York Sun*, January 25, 2006, at 4.

365 Tom Angotti, “Willets Point: A defense,” *Gotham Gazette*, April 10, 2006.

366 Gus Garcia Roberts, “The battle over the Iron Triangle,” *Gotham Gazette*, December 9, 2005; Ron Brownlow, “Amid dents, diamonds?” *New York Times*, May 29, 2005.



make way for the World's Fair. Willets Point has also been a site named for a failed Mets stadium, a potential site for the Jets and most recently, the site of the press village for New York's failed 2012 Olympics bid.<sup>367</sup>

Officials emphasize that a relocation plan will be part of the project but this is little comfort.<sup>368</sup> "This is M3-1 zoning, heavy industrial. There's none left. Go on a map. Look. They're saying you're going to move me. I tell you what; you tell me where you're going to move me. If I like the spot I'll move right now," says Danny Sambucci Jr.<sup>369</sup> In March 2006, officials picked eight finalists to submit plans to redevelop the site.<sup>370</sup>

## New York (Harlem – Uptown Project)

City officials are threatening to use eminent domain to clear a four-block area of Harlem for a residential and commercial development, called Uptown New York. At least nine businesses stand in the way, including Fancy Cleaners & Tailors at Third Avenue and 126<sup>th</sup> Street. The City seems to have cut a few corners in its approval process by moving to evict businesses without having completed either of the two studies underway to determine the feasibility of the project. Further, they scheduled a meeting to discuss the project when the local Community Board was in recess.<sup>371</sup>

## Peekskill (Downtown)

In May 2006, the Common Council hired Cleary Consulting to conduct a "blight study" of four downtown blocks, the ostensible goal of which is to determine if the vibrant business district is supposedly in need of redevelopment. So it may come as a surprise that the Council, without even bothering to receive the results of the so-called study, paid an architect \$75,000 to draft a redevelopment plan for the same 20-acre area.<sup>372</sup>

A Hispanic-owned produce market, two diners, a Laundromat, the Hudson River HealthCare clinic, one of the City's largest employers, and a hardware store that survived the City's redevelopment debacle in the 60s and 70s—entire blocks and hundreds of properties were razed, some of which are still vacant today—are included in the study. Although Mayor John Testa says business owners shouldn't worry about eminent domain, he refuses to take the option off the table.<sup>373</sup>

367 Gus Garcia Roberts, "The battle over the Iron Triangle," *Gotham Gazette*, December 9, 2005.

368 David Lombino, "Mayor to redevelop Iron Triangle in bid to transform Flushing," *New York Sun*, January 25, 2006, at 4.

369 Ron Brownlow, "Amid dents, diamonds?" *New York Times*, May 29, 2005, Section 14; Column 3, at 1.

370 David Lombino, "Finalists picked to bid for Willets Point makeover," *New York Sun*, March 3, 2006, at 3.

371 Dennis Duggan, "Big shots betting on Harlem," *Newsday*, January 10, 2006, at A15; Maria Vega, "Huge commercial project in El Barrio pushed without evaluating community's concerns," *La Prensa*, July 9, 2005.

372 Brian J. Howard, "Merchants in Peekskill fear eminent domain," *Journal News*, May 21, 2006, at 1A.

373 Brian J. Howard, "Merchants in Peekskill fear eminent domain," *Journal News*, May 21, 2006, at 1A;

Phil Reisman, "Peekskill may destroy merchants who help define it," *Journal News*, May 14, 2006, at 1B;

Brian J. Howard, "Peekskill BID fears eminent domain," *Journal News*, June 4, 2006.

## Not Your Favorite Pharmacy? Use Eminent Domain

On April 5, 2006, the 2nd U.S. Circuit Court of Appeals cited the *Kelo* decision with approval as an alternative basis for ruling against Port Chester property owners opposing the taking of their property for a private developer.<sup>1</sup> Bart Didden, who owns USA Central Station Alarm Corp., and his partner, Dick Bologna, owner of Westmore Fuel Company, had plans to build a CVS Pharmacy on their property. They got preliminary approval from the planning commission, but then their property was condemned at the behest of G&S Investors, the Village's chosen developer in the project area. According to the owners, G&S had given them a choice between making G&S a partner, paying \$800,000, or getting condemned.<sup>2</sup> And what are Village taxpayers getting instead of CVS? Walgreens.<sup>3</sup> The project has already involved the condemnation of numerous properties.<sup>4</sup> Elsewhere in Port Chester, the Institute for Justice represents Bill Brody, whose commercial buildings were taken for the parking lot of a Stop & Shop. The Institute for Justice also filed a friend of the court brief in the *Didden* case.

1 *Didden v. Village of Port Chester*, No. 04-3485-cv, 2006 U.S. App. LEXIS 8653 (2d Cir. Apr. 5, 2006) (unpublished).

2 Jennifer Weil, "CVS project snagged," *Journal News*, December 12, 2003; Jennifer Weil, "Property owners file suit," *Journal News*, January 23, 2004.

3 Alex Philippidis, "Lawyers have eye on state eminent domain law," *Westchester County Business Journal*, January 2, 2006, at 4.

4 Hannen Adely, "Port Chester buyouts rile some merchants," *Journal News*, August 7, 2004, at 1A.

## Peekskill (Waterfront)

Peekskill property owners are wary. In November 2005, the City teamed up with developer Martin Ginsburg and is using the threat of eminent domain to acquire properties from longtime Peekskill residents so Ginsburg can build a \$200 million condo and retail project with scenic views of the Hudson River.<sup>374</sup> One property, a vacant lot, had been in the family of Helen Christian, 70, for 50 years and she'd had offers from contractors to develop the lot for much more than billionaire developer Ginsburg offered.<sup>375</sup>

## Spring Valley (Jackson Street)

According to the Village attorney, the Village is considering the acquisition of six homes to make way for a condo project on Jackson Street.<sup>376</sup>

## Spring Valley (North Main Street and Maple Avenue)

Also, Spring Valley condemned three commercial properties to improve the "gateway" into the village—in order to complement a residential development across the street. The City plans to demolish the

374 Brian J. Howard, "Landowner fears losing 'nest egg' to eminent domain," *Journal News*, October 19, 2005, at 12A; Brian J. Howard, "Residents weigh in on project," *Journal News*, February 10, 2006, at 10A.

375 Phil Reisman, "Eminent domain: Fairness is in the eye of the beholder," *Journal News*, October 20, 2005, at 1B.

376 Sulaimain Beg, "Condo plan may displace village homes," *Journal News*, January 9, 2006, at 3A.

buildings and turn the site over to a developer to build commercial, residential and retail space.<sup>377</sup>

## Yonkers

In February 2006, Mayor Phillip Amicone approved a \$3.1 billion plan by developers Louis Cappelli, the Streuver Bros. and Fidelco Corp. to build a massive project stretching over two miles of waterfront and Yonkers' entire business district. The 450-acre, three-phase project calls for condos, apartments, retail, entertainment and office space as well as a baseball stadium.<sup>378</sup> It also calls for Yonkers to use eminent domain after 180 days (starting February 2, 2006) if the developers can't convince property owners in the first phase to sell.<sup>379</sup> Of course, eminent domain, according to City consultants G.L. Blackstone & Associates LLC, is only "an essential tool of last resort."<sup>380</sup>

As of February, Cappelli was poised to take control of nearly 75 percent of the affected properties, which include homes and businesses.<sup>381</sup> However, there are quite a few properties still to be acquired. A satellite image of the project areas shows at least 1,360 properties in the areas still subject to acquisition—meaning the developers must acquire at least 340 more.<sup>382</sup>

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377 Sulaimain Beg, "Condo plan may displace village homes," *Journal News*, January 9, 2006, at 3A; County of Rockland, Legislative Minutes, May 2, 2006, at <http://www.co.rockland.ny.us/Legislature/LMinutes/06/05-02-06.htm> (retrieved May 31, 2006).

378 Debra West, "Adding more urban to suburbia," *New York Times*, May 14, 2006, Section 14, Column 2, Westchester Weekly Desk, at 1; and Press Release, "Amicone strikes \$3.1 billion development deal for downtown Yonkers," <http://www.yonkersecondev.com/index.php?story=149> (retrieved May 30, 2006).

379 Master Developer Designation Agreement, <http://www.patriciamcdow.com/mdda.html> (retrieved May 30, 2006).

380 Memo from Real Estate Council to Yonkers City Council, <http://www.patriciamcdow.com/MDDA%20&%20Consultant.html> (retrieved May 16, 2006).

381 Michael Gannon, "Redevelopment \$3.1 billion proposal unveiled," *Journal News*, February 3, 2006, at 1A.



382 <http://www.patriciamcdow.com/Steaver%20Photo.html> (retrieved May 16, 2006).

# Ohio

## Known Condemnations Benefiting Private Parties<sup>383</sup>

Filed/Authorized Condemnations      43

Threatened Condemnations         78

Legend  = 10  = 10

### Bedford

In November 2005, City officials gave preliminary approval to using eminent domain to seize two small plazas and an empty building, part of an area known as Meadowbrook. City Manager Robert Reid Jr. admitted the properties are not blighted but the City wanted to see development happen more quickly than it has been on the private market.<sup>384</sup> Before the City got around to condemning any property, however, the private owner made plans to build a Wal-Mart on the site.<sup>385</sup> News reports do not reveal if the City still intends to proceed with condemnation.

### Cleveland

In October 2005, Cleveland City Council members declared the East Bank of the Flats, which sits along Lake Erie, blighted.<sup>386</sup> Many local owners think the blight designation is a sham. “You want to see where the Flats is blighted?” asks Jay Cvetovac, manager of the Beach Club, a popular nightspot. “Come here.

383 These numbers were compiled from news sources. Many cases go unreported, and news reports often do not specify the number of properties against which condemnations were filed or threatened.

384 Thoms Ott, “Bedford seizes its chance to seize land,” *Plain Dealer*, November 9, 2005.

385 Janet H. Cho, “Wal-Mart proposing Bedford superstore; Meadowbrook location planned as anchor for the site,” *Plain Dealer*, April 15, 2006, at C1.

386 “City Council declares Flats blighted: Members want to create a thriving community,” *News Channel 5*, October 18, 2005, at <http://www.newsnet5.com/money/5115723/detail.html> (retrieved May 10, 2006); “Eminent domain may be used if Flats owners don’t sell: Developer hopes to begin construction by early 2006,” *News Channel 5*, November 2, 2005.

Look at this. It's all the buildings that Wolstein owns."<sup>387</sup>

He refers to "mega-rich" developer Scott Wolstein who wants to replace the neighborhood with a residential and retail complex. After buying several properties, Wolstein boarded them up and let them deteriorate so City officials could declare the whole area blighted. Armed with the blight designation, in April 2006, the Port Authority voted to use eminent domain on any of the 21 owners who were maintaining their properties and refused to sell to Wolstein.<sup>388</sup>

Despite the fact that the Flats' small business owners want to redevelop on their own, without subsidies, officials prefer to start the neighborhood over from scratch with a single developer who is relying on \$87 million from federal, State and local grants.<sup>389</sup> Several property owners have proposed partnering with the project, but Wolstein insists on controlling all the property, including a parking lot that, under his plan, will remain a parking lot.<sup>390</sup>

In late May 2006, the Port Authority filed condemnations against four property owners.<sup>391</sup> A week later, the Authority filed against three more.<sup>392</sup>



"Blighted" property that will be razed for a residential and retail complex in Cleveland.

387 Michael Gill, "Moving heaven and earth; Flats business and property owners line up to oppose the \$230 million Wolstein plan," *Cleveland Free Times*, April 26, 2006.

388 Janet Dery, "Developer Scott Wolstein crafts his own 'art of the deal'," *Cleveland Jewish News*, November 19, 2004, at 24; Jay Miller, "Domain debate looms; As Scott Wolstein's plan for the Flats' East Bank picks up steam, task force debates nonelected officials' rights to eminent domain," *Crain's Cleveland Business*, May 1, 2006, at 1; Michael Gill, "Moving heaven and earth; Flats business and property owners line up to oppose the \$230 million Wolstein plan," *Cleveland Free Times*, April 26, 2006.

389 Tom Breckenridge, "East Bank ripe for change, planners say," *Plain Dealer*, October 8, 2005, at B4; Brian Albrecht, "The Flats' east bank again looks to revival; Nightspots were where Cleveland loved to have fun," *Plain Dealer*, February 26, 2006, at A1; Sarah Hollander, "Give us more money or we'll revive the Flats ourselves, owners say," *Plain Dealer*, March 31, 2006, at B1.

390 Jay Miller, "Domain debate looms; As Scott Wolstein's plan for the Flats' East Bank picks up steam, task force debates nonelected officials' rights to eminent domain," *Crain's Cleveland Business*, May 1, 2006, at 1; Tom Breckenridge, "Condo plan brings criticism; Planners suspect Flats landowner trying to drive up the asking price," *Plain Dealer*, May 6, 2006, at C1.

391 Sarah Hollander and Christopher Montgomery, "Port seeks Flats lots by eminent domain," *Plain Dealer*, May 24, 2006, at C1; Sarah Hollander, "Port files 2 more eminent domain suits," *Plain Dealer*, May 27, 2006, at B6.

392 Christopher Montgomery and Sarah Hollander, "3 more sued over land for Flats project," *Plain Dealer*, June 7, 2006, at C1.



## Lorain

The City Council voted to spend \$125,000 of taxpayers' money for a consulting firm to conduct a "blight" study of 100 lakefront acres, which include 57 homes and six commercial buildings.<sup>393</sup> Should Gould & Associates "find" blight, the City Council can designate the area blighted and qualify for federal and State funds to redevelop it. The blight designation also empowers the City to use eminent domain to take the historic and newly restored homes currently located there.<sup>394</sup>

More than half of the area belongs to the Port Authority and in October 2005, Port Authority board members voted to chip in \$25,000 to pay for the blight study on its own land despite pleas from residents to withhold support. Residents are particularly concerned because there have been discussions about putting a casino in the neighborhood.<sup>395</sup> "Maybe you don't understand it because you don't live there," said Renee Dore, whose home City officials want to raze and turn into a parking lot for a proposed casino. "You can't understand the feeling when the Supreme Court says [the City] can come in and take your homes for private development. I don't want to leave."<sup>396</sup>

Residents think the blight designation is a foregone conclusion—the redevelopment area encompasses not only the residential neighborhood but also a



Rich Robbin

Lorain officials have taken a first step towards the use of eminent domain in this neighborhood—commissioning a blight study—despite protests from homeowners.

393 Shawn Foucher, "Resident fears losing home to blight plan; Port board approves redevelopment study," *Chronicle-Telegram*, October 12, 2005; Lakefront Area Blight Eligibility Study and Neighborhood Urban Renewal Plan, February 3, 2005.

394 Mike Sakal, "Blight study to include historic property," *Morning Journal*, October 19, 2005, at [http://www.morningjournal.com/site/index.cfm?newsid=15411643&BRD=1699&PAG=461&dept\\_id=566374&crfi=8](http://www.morningjournal.com/site/index.cfm?newsid=15411643&BRD=1699&PAG=461&dept_id=566374&crfi=8) (retrieved May 30, 2006); Shawn Foucher, "Resident fears losing home to blight plan; Port board approves redevelopment study," *Chronicle-Telegram*, October 12, 2005.

395 Mike Sakal, "Molnar wants approval of casino deal repealed," *Morning Journal*, September 13, 2005, at [http://www.morningjournal.com/site/index.cfm?newsid=15200992&BRD=1699&PAG=461&dept\\_id=566374&crfi=8](http://www.morningjournal.com/site/index.cfm?newsid=15200992&BRD=1699&PAG=461&dept_id=566374&crfi=8) (retrieved May 30, 2006).

396 Shawn Foucher, "Resident fears losing home to blight plan; Port board approves redevelopment study," *Chronicle-Telegram*, October 12, 2005; Jim Konkoly, "Ohioans grapple with eminent domain," *Mansfield News Journal*, March 28, 2006, at 1A.

nearby industrial brownfield (owned by the Port Authority). Thus, it won't matter if the residences are not blighted.<sup>397</sup>

## South Euclid

On October 17, 2005, City Council members voted to use eminent domain to take three-dozen parcels in the Cedar Center shopping mall, which has a dozen different owners. The City wants to replace the 50-year-old mall with a new five-story building with shops, apartments and condos built by Caitlin Properties and Contrende Co. As of October 2005, the center had a Judaic bookstore and a gym among its tenants.<sup>398</sup> According to South Euclid's Economic Development Manager Cal Caminati, the Cedar Center is a menace to health, safety and welfare. Also, the parking lot doesn't provide for smooth traffic flow. Although one property—an abandoned theater—is in very bad shape, the City knew the condition of that property as early as February 2004. Twenty months later, the City took steps to condemn the abandoned theater and more than 30 of its neighbors, including fully functioning businesses.<sup>399</sup> News reports do not indicate whether the City proceeded with the condemnations.

397 Jim Konkoly, "Ohioans grapple with eminent domain," *Mansfield News Journal*, March 28, 2006, at 1A.

398 Thomas Ott, "S. Euclid ready to take Cedar land," *Plain Dealer*, October 17, 2005, at B3; Thomas Ott, "S. Euclid may use eminent domain; City's future riding on updating Cedar Center, officials says," *Plain Dealer*, September 20, 2005, at B3.

399 Jeff Piorkowski, "Cedar Center will get total makeover," *Sun Newspapers*, October 13, 2005; Thomas Ott, "S. Euclid ready to take Cedar land," *Plain Dealer*, October 17, 2005, at B3.

## Ohio Court Points to *Kelo* to Rule Against Property Owners

Four restaurant owners in Clifton Heights sued in federal court in March 2003 to stop the condemnation of their properties for a massive private development project to include condos, townhouses and retail space.<sup>1</sup> Joe Kennedy, who runs Acropolis Chili with his wife Kathy, Bob Wood, who runs Inn the Wood with his wife and son, and the Clif-Cor Corporation, which owns the lots on which a Hardee's and Arby's sat, called the City's blight study "a sham." The federal court declined to hear the case while a state court evaluated the constitutionality of the takings.<sup>2</sup> Then, in January 2005, the Hamilton County Common Pleas judge ruled against the owners.<sup>3</sup> The owners then asked the federal court to finally hear their case, alleging that the state court did not adequately address the constitutional issues. On August 19, 2005, the federal court cited *Kelo* and told the owners that they should appeal through the state court system and that their case would not be heard in federal court.<sup>4</sup> Given that *Kelo* virtually removed any federal constitutional protection for owners against takings for private use, it is hard to imagine that litigating in state court could be any worse for property owners.

1 Dan Horn, "Businesses sue to stop land seizure," *Cincinnati Enquirer*, March 20, 2003; Lori Kurtzman, "Holding out," *Cincinnati Enquirer*, March 2, 2005, at 1A.

2 *Calhoun Realty Inc. v. City of Cincinnati*, 311 F. Supp. 2d 640 (S.D. Ohio 2005); Dan Horn, "Businesses sue to stop land seizure," *Cincinnati Enquirer*, March 20, 2003; Lori Kurtzman, "Holding out," *Cincinnati Enquirer*, March 2, 2005, at 1A.

3 "Another eminent domain fight gets ugly," *Business Courier*, Vol. 21, No. 4, May 21, 2004, at 1; Lori Kurtzman, "Holding out," *Cincinnati Enquirer*, March 2, 2005.



4 *Calhoun Realty Inc. v. City of Cincinnati*, 311 F. Supp. 2d 640 (S.D. Ohio 2005).

# Oklahoma

## Known Condemnations Benefiting Private Parties<sup>400</sup>

Filed/Authorized Condemnations  14

Threatened Condemnations  154

Legend  = 10  = 100

## Sand Springs

On June 23, 2005, the day of the *Kelo* decision, Sand Springs posted its agenda for the June 27, 2005, meeting. The major topic was economic development: “The Development Authority will consider and take any action deemed appropriate by the Authority as a result of the Executive Session relating to economic development, including the transfer of property and/or the creation of a proposal to entice a business to locate in the Keystone Corridor.”<sup>401</sup>

The City wants to turn the historically black professional area, comprised of 168 commercial and residential properties, into a retail center.<sup>402</sup> “The Lord didn’t send me here to build a minimall,” says Reverend Roosevelt Gildon, whose Centennial Baptist Church sits in the redevelopment area. The area also includes two other churches.<sup>403</sup> Both Mayor Bob Walker and City Manager Loy Calhoun have stated that they will use eminent domain for the project “as a last resort.”<sup>404</sup>

As of April 2006, 90 percent of the affected property owners had reached

<sup>400</sup> These numbers were compiled from news sources. Many cases go unreported, and news reports often do not specify the number of properties against which condemnations were filed or threatened.

<sup>401</sup> City of Sand Springs Development Authority Agenda, July 27, 2005, [http://www.ci.sand-springs.ok.us/shell\\_blog.asp?pg=59&recordID=104](http://www.ci.sand-springs.ok.us/shell_blog.asp?pg=59&recordID=104) (retrieved May 30, 2006).

<sup>402</sup> Ralph Blumenthal, “Humble church is at center of debate on eminent domain,” *New York Times*, January 25, 2006, at A1; Mike Averill, “Sand Springs; Keystone Corridor buyout project buyout begins,” *Tulsa World*, November 9, 2005, at 2W1.

<sup>403</sup> Michael Smith, “The powers that be; A multi-million dollar Sand Springs development squares off against a church that refuses to leave its sanctuary,” *Tulsa World*, April 4, 2006, at A9.

<sup>404</sup> Ralph Blumenthal, “Humble church is at center of debate on eminent domain,” *New York Times*, January 25, 2006, at A1.

“The Lord didn’t send me here to build a minimall.”

agreements with the City. None of the churches have sold despite City officials repeating their threat to use eminent domain. The Centennial Baptist Church “essentially said, ‘We don’t want to move, and it’s not for sale,’” said the City Manager, who added that he believes an agreement with the other two churches is “close.”<sup>405</sup>

In May 2006, the Sand Springs Development Authority voted to condemn 14 properties, one of which is an occupied single-family home. According to officials, a decision about whether to seize Centennial church will be made at a later date.<sup>406</sup> A week later, City Council members seconded the Development Authority vote.<sup>407</sup>

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<sup>405</sup> Michael Smith, “The powers that be; A multi-million dollar Sand Springs development squares off against a church that refuses to leave its sanctuary,” *Tulsa World*, April 4, 2006, at A9.

<sup>406</sup> Manny Gamallo, “Church not included in a condemnation effort,” *Tulsa World*, May 16, 2006, at STATE AND REGIONAL NEWS.



<sup>407</sup> Manny Gamallo, “Sand Springs council OKs condemning 14 properties,” *Tulsa World*, May 23, 2006, at STATE AND REGIONAL NEWS.

# Pennsylvania

## Known Condemnations Benefiting Private Parties <sup>408</sup>

Filed/Authorized Condemnations  1

Threatened Condemnations  106

Legend  = 1  = 100

### Lebanon

Mayor Bob Anspach wanted to declare a ten-block area with 136 buildings blighted, although Mullin and Loneragan, a consulting firm, conducted a study in the summer of 2005 and found that two-thirds of the structures are perfectly fine. There was reason, however, to question the conclusion that even one-third are bad. For example, they listed a property as vacant, when it is in fact used as a storage warehouse for PDK Associates' property renovation and rental business. In January 2006, the City approved the study and "blighted" the whole area even as Mayor Anspach acknowledged that the area is in fact nothing of the kind. The Pennsylvania Department of Transportation has plans to acquire 50 properties for a railroad overpass but the other 86 buildings in the newly created Cumberland Street Redevelopment Area were slated for private development.<sup>409</sup> The "blight" designation would have opened the area to the possibility of eminent domain, but Pennsylvania has since passed legislation restricting the use of eminent domain for private development.<sup>410</sup> The new law will hopefully protect Lebanon owners.

### West Reading

In November 2005, officials decided to use eminent domain to seize the Penn View Motel as part of a five-block redevelopment plan. Though the

<sup>408</sup> These numbers were compiled from news sources. Many cases go unreported, and news reports often do not specify the number of properties against which condemnations were filed or threatened.

<sup>409</sup> John Latimer, "City panel OKs blight designation," *Lebanon Daily News*, January 12, 2006, at LO-CAL.

<sup>410</sup> 2005 Pa. SB 881 (signed into law May 4, 2006).



redevelopment authority filed the declaration for the taking in court, the government was waiting to receive State and federal funding before proceeding.<sup>411</sup> In April 2006, the project received its State funding, clearing the way to acquire the motel.<sup>412</sup> According to motel owner Barry Alan, his business brings 20,000 people to West Reading each year and also provides housing for dozens of long-term tenants.<sup>413</sup> Once the Borough Council actually acquires the land, it will transfer the property to a private developer, Advanced Building Systems Inc., to put a bank, restaurant and commercial and office space on the site.<sup>414</sup>

## York

Commissioners approved plans in January 2005 for the Northwest Triangle project, which will include building housing, stores, offices and space for light industry.<sup>415</sup> The project called for the acquisition of 20 properties, three of which are homes.<sup>416</sup> In April 2006, the City purchased much of the property under threat of eminent domain.<sup>417</sup>

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411 Darrin Youker, "County agency takes first step toward seizing motel property," *Reading Eagle*, November 29, 2005.

412 "Funds bring promise of a brighter future," *Reading Eagle*, April 27, 2006.

413 Shaun Lockhart, "West Reading, Pa., officials set sights on downtown redevelopment," *Reading Eagle* July 10, 2004.

414 Darrin Youker, "County agency takes first step toward seizing motel property," *Reading Eagle*, November 29, 2005.

415 Daina Klimanis, "Project moves forward," *York Dispatch*, January 18, 2006, at Local.

416 Daina Klimanis, "City projects get green light from planners," *York Dispatch*, December 13, 2005.



417 Mike Hoover, "Northwest Triangle begins to take shape," *York Daily Record*, April 13, 2006.

# Texas

## Known Condemnations Benefiting Private Parties <sup>418</sup>

Filed/Authorized Condemnations    3

Threatened Condemnations      434

Legend  = 1  = 100

## El Paso

In March 2006, the Paso Del Norte Group (“PDNG”) introduced its vision for a new downtown area that calls for redeveloping 127.5 acres consisting of 33 homes and 496 apartments.<sup>419</sup> According to an activist, around 400 businesses operate in the affected area.<sup>420</sup> According to the *El Paso Times*, the Sacred Heart Church also lies in the threatened area.<sup>421</sup> The working class area will be replaced, if PDNG’s vision is realized, with “affordable” residential housing.<sup>422</sup> In the face of mounting criticism over the project, Mayor John Cook announced in May 2006 that the City would start the plan over again and that eminent domain would only be used as a last resort.<sup>423</sup> This is hardly comforting news to local property owners.

## Freeport

Freeport was the first city in the country to take the *Kelo* decision as a green light for eminent domain abuse. Within a few hours of the Supreme Court’s decision in *Kelo*, City officials condemned three properties owned by two shrimp

<sup>418</sup> These numbers were compiled from news sources. Many cases go unreported, and news reports often do not specify the number of properties against which condemnations were filed or threatened.

<sup>419</sup> Vic Kolenc, “Store owners want to stay,” *El Paso Times*, April 9, 2006, at 1E.

<sup>420</sup> E-mail from Edie Zuvanch, Director of Sales and Marketing, Starr Western Wear, to Justin Gelfand, Institute for Justice (May 23, 2006) (on file with the author).

<sup>421</sup> *El Paso Times*, May 18, 2006, at 1A (photo and caption).

<sup>422</sup> David Dorado Romo, “Not for distribution: Behind the demolition plan,” *Newspaper Tree*, May 1, 2006, at [http://www.newspapertree.com/view\\_article.ssg?c=6f8049c244c746a2&mc=356aef8318be40a8](http://www.newspapertree.com/view_article.ssg?c=6f8049c244c746a2&mc=356aef8318be40a8) (retrieved May 30, 2006).

<sup>423</sup> David Crowder, “Mayor to start over on redevelopment plan,” *El Paso Times*, May 18, 2006, at 1A.

The purpose of the condemnation is economic development; although the current businesses are active and profitable, the new project is supposed to bring in more tax revenue.

companies—Trico Seafood and Western Seafood Company—to turn them over to Walker Royall, a private developer, so he can build an \$8 million private marina. The City is offering Royall a \$6 million loan to help the project along.

Of *Kelo*, Freeport Mayor Jim Phillips said, “This is the last little piece of the puzzle to put the project together.” The purpose of the condemnation is economic development; although the current businesses are active and profitable, the new project is supposed to bring in more tax revenue. While Western Seafood rakes in approximately \$40 million annually, the City expects the proposed Marina to attract \$60 million worth of hotels, restaurants and retail establishments.<sup>424</sup> As City Manager Ron Bottoms explained, they used eminent domain as a “last resort.”<sup>425</sup> It was a last resort made possible by *Kelo*.

An oral argument—the first in federal court since *Kelo* came down—was heard by the 5th U.S. Circuit Court of Appeals in June 2006.<sup>426</sup>

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424 Thayer Evans, “Freeport moves to seize 3 properties; Court’s decision empowers the city to acquire the site for a new marina,” *Houston Chronicle*, June 24, 2005, at A6.

425 Dick Hogan, “Shrimp group battles for turf,” *News-Press*, July 5, 2004, at 13A; Thayer Evans, “Freeport moves to seize 3 properties; Court’s decision empowers the city to acquire the site for a new marina,” *Houston Chronicle*, June 24, 2005, at A6.

426 “Western Seafood first to challenge eminent domain for private use,” *Business Wire*, May 24, 2006.

# Washington

## **Known Condemnations Benefiting Private Parties** <sup>427</sup>

Threatened Condemnations    272

Legend  = 100

### **Renton**

City officials are scaring residents of Renton Highlands, a post-World War II neighborhood of 270 single- and multi-family homes, as well as thriving businesses, stretching over 360 acres. At some point the City commissioned a consultant to conduct a “market analysis.” The consultant found that home values in the area tend to be lower than in other parts of the city, which can be used to justify a blight designation, which in turn gives the City authority to use eminent domain.<sup>428</sup> Some homes are a little rundown, while other owners have devoted considerable effort into maintaining their homes. Eighty-eight-year-old widow Masaye Sado raised a family in her house, into which she has poured thousands for new plumbing, siding, storm doors, a roof and driveways on either side of her home.<sup>429</sup>

Although officials are adamant that they have not decided to declare the area blighted “yet,” the City’s web site talks about using eminent domain “as a last resort” and says the free market cannot bring revitalization to the Highlands—a curious accusation given that City officials are actively thwarting residents from

<sup>427</sup> These numbers were compiled from news sources. Many cases go unreported, and news reports often do not specify the number of properties against which condemnations were filed or threatened.

<sup>428</sup> Dean A. Radford, “Life on the Highlands: Residents wonder what revitalization will mean for them,” *King County Journal*, May 8, 2006, at <http://www.kingcountyjournal.com/sited/story/html/256925> (retrieved May 31, 2006); Dean A. Radford, “Highlands face a blight future,” *King County Journal*, May 2, 2006, at <http://www.kingcountyjournal.com/sited/story/html/253400> (retrieved May 31, 2006).

<sup>429</sup> Dean A. Radford, “Life on the Highlands: Revitalizing without razing,” *King County Journal*, May 8, 2006, at <http://www.kingcountyjournal.com/sited/story/html/256929> (retrieved May 31, 2006).

improving their properties on their own.<sup>430</sup> In April 2006, the City Planning Commission proposed to re-zone much of the area, which would make many of the homes “non-conforming” properties. In May 2006, the City Council voted to extend a building moratorium on new developments.<sup>431</sup>

Additionally, officials are talking of creating an “urban village”—a massive residential development—and speak of the hundreds of current owners as an obstacle to be overcome.<sup>432</sup>



Inez Petersen

Renton officials have commissioned a study to determine if houses like this are “blighted” and are already talking about creating a new “urban village”—where 270 modest homes already exist.

430 Frequently Asked Questions About Highlands Redevelopment, <http://www.ci.renton.wa.us/ednsp/faq.htm> (retrieved May 31, 2006).

431 Highlands Subarea Proposed Rezones, April 20, 2006, at <http://rentonnet.org/internetapps/files/ednsp/hilands/rezone2.pdf> (retrieved May 31, 2006); Renton City Council Meeting Minutes, May 8, 2006, at <http://www.ci.renton.wa.us/ftp/mi060508.pdf> (retrieved May 31, 2006).

432 Dean A. Radford, “Life on the Highlands: Residents wonder what revitalization will mean for them,” *King County Journal*, May 8, 2006, at <http://www.kingcountyjournal.com/sited/story/html/256925> (retrieved May 31, 2006).



# West Virginia

## ***Known Condemnations Benefiting Private Parties*** <sup>433</sup>

***Threatened Condemnations***    3

*Legend*  = 1

### **Charleston**

Only months after dropping plans to condemn three properties for a supermarket in the East End in May 2005, the City Council's Urban Renewal Committee voted in December 2005 to hire a consultant to recommend if redevelopment—and, of course, eminent domain for private gain—is worth pursuing in the area.<sup>434</sup> As of May 2006, the study has apparently not been publicly released.

Property owners are right to be wary, however, as the City has a history of abusing eminent domain. According to Pat Brown, executive director of the Charleston Urban Renewal Authority (“CURA”), the CURA has seized 523 parcels since the 1960s for 47 projects—28 of them private projects.<sup>435</sup> That number does not include properties acquired merely by the threat of eminent domain. The state legislature did pass a new law providing new protections against seizure for economic development—but that won't affect this project as the CURA can still seize property that is “blighted.” And the definition of blight is so broad nearly any property fits the bill. Further, CURA can still seize non-blighted property in a redevelopment area that has been declared blighted.<sup>436</sup>

<sup>433</sup> These numbers were compiled from news sources. Many cases go unreported, and news reports often do not specify the number of properties against which condemnations were filed or threatened.

<sup>434</sup> Jim Balow, “Plaza East block back in urban renewal plan,” *Charleston Gazette*, December 13, 2005, at 1C.

<sup>435</sup> Justin Anderson, “Forced property sales led to many city projects,” *Daily Mail*, May 15, 2006, at <http://www.dailymail.com/news/Business/200605152/> (retrieved May 19, 2006).



<sup>436</sup> 2006 HB 4048 (signed into law April 5, 2006).

# Wisconsin

## Known Condemnations Benefiting Private Parties<sup>437</sup>

*Filed/Authorized Condemnations*         8

*Threatened Condemnations*         80

*Legend*  = 1  = 10

### Beloit

Beloit City Council members approved a deal to buy land occupied by Ace Hardware in order to extend a park. As part of the deal, however, they offered to relocate Ace to a central downtown location on Broad Street—upon which multiple businesses already operate. The City Council then gave the Community Development Authority (“CDA”) permission to take the land via eminent domain, and the CDA found the Broad Street properties to be “blighted” and voted in September 2005 to take the properties via eminent domain proceedings. The eight commercial properties house mostly small businesses like La Belle Boutique and Bumper to Bumper, an auto parts store. The property owners are less than pleased that they will be forced to abandon their own business plans in favor of a much larger business.<sup>438</sup> Although Wisconsin has passed improved eminent domain legislation, the new law mostly protects residences and might not prevent takings to transfer property from one business to another.<sup>439</sup>

### Menomonee Falls

Residents packed a July 2005 public hearing about the Main Street redevelopment proposal, which affects 80 properties, after receiving a letter from

<sup>437</sup> These numbers were compiled from news sources. Many cases go unreported, and news reports often do not specify the number of properties against which condemnations were filed or threatened.

<sup>438</sup> Rebekah Danaher, “Eminent domain to secure land for Ace,” *Beloit Daily News*, September 30, 2005, at <http://www.beloitdailynews.com/articles/2005/09/30/news/093005news04.txt> (retrieved May 31, 2006).

<sup>439</sup> 2005 Wisc. AB 657 (signed into law March 30, 2006).

the Village threatening the use of eminent domain. “Implementing the proposed Redevelopment Plan may involve the condemnation of private property within the Redevelopment Area for urban renewal purposes,” the letter said. “Accordingly, you are hereby notified that your property might be taken for urban renewal.” Village officials assured everyone that the letter was just a little bit of required legalese—nothing to worry about, although they would not rule out the possibility of eminent domain in the future.<sup>440</sup>

In fact, Village officials had commissioned a 320-page “study” of the area—at a cost of \$208,000 to taxpayers—from the urban planning firm RTKL, which recommended adding commercial and residential development to the Main Street corridor.<sup>441</sup> The Village approved the plan in October 2005 and is considering setting up a tax increment financing district to pay for it.<sup>442</sup> Officials refuse to give any details as to which and how many of the 80 properties in the redevelopment area may be seized. “There aren’t any particular parcels targeted and there aren’t any parcels that are excluded,” said Village planner John Fellows.<sup>443</sup>

In March 2006, Bill Friesleben, the Village’s community development director, said that though there is no proposal to condemn any property, eminent domain could be used as “a last resort.”<sup>444</sup>

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440 Reid J. Epstein, “Confusion reigns at land-use meeting; Falls residents skeptical of Main St. development plan,” *Milwaukee Journal-Sentinel*, July 27, 2005, at B3; Reid J. Epstein, “Main development; Plan for corridor offers hope to some in Falls, worries others,” *Milwaukee Journal Sentinel*, August 7, 2005, at 1.

441 Reid J. Epstein, “Main development; Plan for corridor offers hope to some in Falls, worries others,” *Milwaukee Journal Sentinel*, August 7, 2005, at 1; Dave Sheeley, “Falls looks at funding options for Main St. plan; Village officials like the idea of TIF district,” *Milwaukee Journal Sentinel*, October 13, 2005, at B4.

442 Dave Sheeley, “Falls looks at funding options for Main St. plan; Village officials like the idea of TIF district,” *Milwaukee Journal Sentinel*, October 13, 2005, at B4.

443 Reid J. Epstein, “Eminent domain ruling fuels imminent concern; Falls redevelopment brings worries to Main St.,” *Milwaukee Journal Sentinel*, July 15, 2005, at B1.

444 Dave Sheeley, “Falls Main St. development plan goes to Village Board,” *Milwaukee Journal Sentinel*, March 29, 2006, at B5.