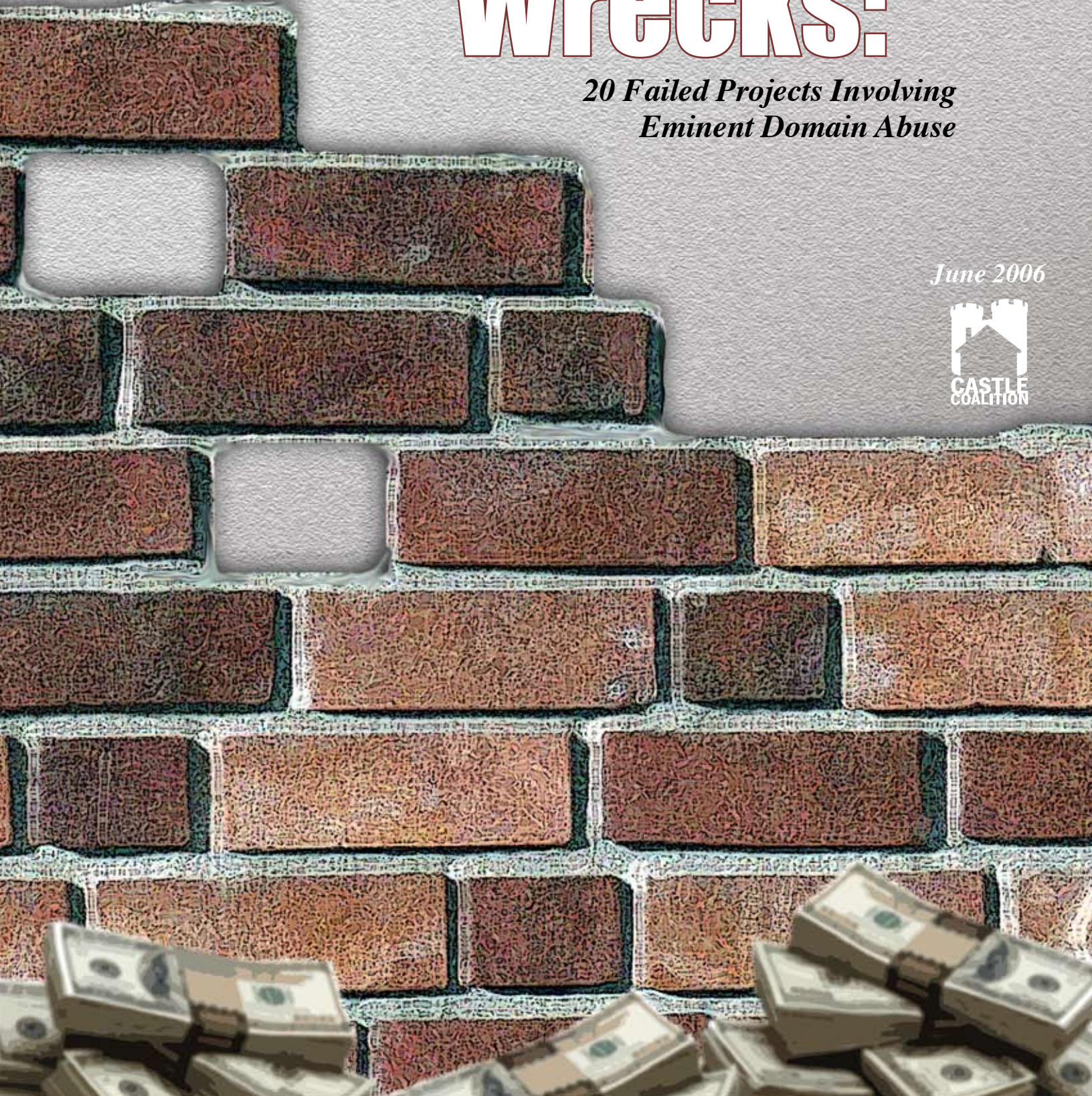


Redevelopment Wrecks:

*20 Failed Projects Involving
Eminent Domain Abuse*

June 2006



Redevelopment

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Eminent Domain Abuse*



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Redevelopment

Wrecks: *20 Failed Projects Involving Eminent Domain Abuse*

The argument is always the same:

Tax-hungry bureaucrats and land-hungry developers claim that the use of eminent domain is necessary for economic development. They promise everything from high-rise condominiums to trendy shopping malls, all in the name of more taxes and jobs. There is a strong incentive for cities and developers to over-hype the benefits of individual private development projects involving eminent domain in order to garner political and public support. But it turns out that many of these projects are failures.

This report details 20 prominent examples of those failures. The examples chronicled here are of two kinds. The first kind occurs when, after cities and developers condemn homes and businesses to make way for private development projects, the promised projects never materialize. Usually, this happens after bulldozers have transformed condemned neighborhoods into vacant lots. Obviously, these failures do not produce any tax revenues or jobs. In fact, they destroy existing revenues and jobs, along with the homes and businesses they eliminate. Also, public expenditures on the project are wasted. At best, cities hope to scramble to find replacement projects. At worst, they have created nothing more than a scar on the nation's landscape.

The second kind of failure involves projects that, although completed, simply do not live up to the grandiose promises and projections that were used to justify the abuse of eminent domain. For example, they produce fewer jobs and less tax revenue than expected—sometimes less than before the project was built. Quite often, the public's financial costs—in the form of new debt, subsidies, other spending and foregone revenues—go through the roof. Also, areas that were supposed to be revitalized either remain the same or get worse.

Failures occur for a range of reasons: financing fell through, developers backed out, tenants were not secured, market conditions changed, or incompetence prevailed. These reasons show why economic development is best done through the marketplace rather than by government force. Simply put, governments do not make very good real estate speculators.

During the past 50 years, cities have increasingly used eminent domain to seize land for the declared purpose of “economic development.” This report does not include the many historic horror stories of the urban renewal movement in

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which governments literally flattened entire neighborhoods and failed to achieve the hopes of replacing them with newer, and supposedly “nicer,” residential and commercial buildings. Indeed, this report is not meant to be an exhaustive list; instead it is a brief compilation of failures, put together using news reports, and publicly available documents. It is best thought of as the tip of a very large iceberg—one upon which many more cities have run aground.

The strong possibility of failure should give those concerned with revitalizing struggling areas good reason to be skeptical of developers and bureaucrats promising to solve a city’s problems through the use of eminent domain to achieve their grand central plans. This list also demonstrates that simply having a plan—the only requirement the government must meet to condemn private property for private use under the Supreme Court’s decision in *Kelo v. City of New London*—should not be enough justification for the government to take people’s homes and businesses for economic development. Governments and developers always have plans, but oftentimes, they not only fail to meet the promises they make, they lose revenue and jobs in the process.

There are better ways to achieve economic growth—all without giving home and small business owners the boot.



In 1973, Chicago politicians decided that revitalizing downtown was imperative, and they commenced kicking people out of their homes and businesses. Block 37, as it is still called, became the focus of efforts to eliminate poverty in the city. Decades later—after demolishing 16 buildings and displacing hundreds of hardworking families—this redevelopment project shows exactly what can happen when the government razes neighborhoods in the name of progress.

The historic old neighborhood, replete with late-19th and early-20th century buildings, may have needed sprucing up, but it provided the city with a vibrant and energetic atmosphere. Affordable clothing shops and caramel popcorn vendors filled the streets, amid theaters and other commercial buildings.¹ Most of the businesses were profitable, catering to black customers and providing substantial competition to a Marshall Field's department store across the street.² That is, until City officials destroyed the entire neighborhood with eminent domain in the name of higher tax-revenue.³

The plan failed catastrophically. It took five mayoral administrations for the City to finally sell the condemned property to private developers—and they did so for 33 cents on the dollar.⁴

Since then, a number of other schemes have been announced. In November 2005, Mills Corporation broke ground on a major urban-mixed-use project on the site.⁵ However, financial pressure has compelled Mills to put itself up for sale, prompting questions about its ability to complete the massive project. Construction was halted in March 2006 after subcontractors demanded they be paid in advance, but they returned back to work April 10.⁶ The next month, Mills signed confidentiality agreements with 30 prospective buyers and investors, and the future of Block 37 is—as it has been for decades—uncertain.⁷

¹ Ross Miller, "Progress Brings Us Back to the Prairie," *Chicago Tribune*, July 16, 1993.

² Hugo Lindgren, "The Secret Life of a City Block," *Newsday*, March 24, 1996.

³ Cheryl Kent, "What's the Deal? A Look at Chicago's Block 37 Misses the Chance to Explain How Big Cities Take Shape," *Chicago Tribune*, April 28, 1996.

⁴ Ross Miller, "Progress Brings Us Back to the Prairie," *Chicago Tribune*, July 16, 1993.

⁵ "The Mills Corporation Breaks Ground on 108 N. State Street Project," *Mills Corporation Press Release*, Nov. 15, 2005.

⁶ Alby Gallun, "Dispute Halts Construction at Block 37," *Crain's Chicago Business*, March 15, 2006; Alby Gallun, "This Week: They're Back to Work at Block 37 After Lull," *Crain's Chicago Business*, April 10, 2006, at 1.

⁷ "Mills Corp.: Developer of Block 37 Moves Closer to Sale of the Company," *Bloomberg News*, May 24, 2006.



Cincinnati, Ohio

Cincinnati City leaders dream of a glitzy new downtown area, but time and again they bungle planned redevelopment projects, leaving a string of relocations, condemnations and wasted funds in their wake. In 1998, retail giant Nordstrom wanted to open a new department store in downtown Cincinnati. However, there was a problem with the location Nordstrom wanted—Walgreens pharmacy already occupied the building space. To accommodate Nordstrom, the City worked together with developer Eagle Properties, and Walgreens agreed to move to another location one block away—the exact location where CVS (Walgreens’ primary regional competitor) already had a store and had no interest in moving. Not surprisingly, CVS sued to stop the condemnation for its competitor’s benefit and eventually prevailed in a settlement with the City. The terms of the settlement, however, required the City to condemn a number of other small businesses operating on four separate parcels across the street from CVS so that the City could in turn give that property to Walgreens.

Included among the displaced businesses was Kathman’s Shoe Repair, which was forced by the City to close its doors after being in business for 95 years. Cincinnati’s initial agreement with Eagle Properties (Nordstrom’s developer), in which the City had agreed to lend the developer \$12 million, included a provision that required the City to leave vacant the very parcel that it had just handed to Walgreens, so that Eagle Properties could attract additional “upscale” retail to the corner adjacent to the new Nordstrom. The City’s failure to honor this provision would scuttle the entire Nordstrom deal. Apparently nobody acting on behalf of the City had even bothered to read the agreement or bring up this fact to other City authorities.⁸ It looked like the City would again have to shuffle the various pieces around to accommodate Eagle Properties.

But then something peculiar happened. The Nordstrom did not get built as planned, and the vacant lot where Walgreens had originally stood began to languish and deteriorate. The site eventually took the form of an unsightly hole in the ground. After two years, millions of dollars paid to the developers and various property owners, as well as the destruction of small family businesses, Nordstrom announced in November 2000 that it was pulling out of the Cincinnati deal because of its declining profits.⁹ The City eventually paved over the erstwhile Nordstrom site, so that the tract could at the very least operate as a City-owned parking lot until a new retailer would come along with another deal for this “can do” city.¹⁰ Since 2001, the site has remained a surface parking lot. The City has not found a developer interested in the property.¹¹

⁸ Robert Anglen, “Walgreens May Snag Nordstrom Deal; Move the Drug Store or Lose Retailer, Loan Board Says,” *The Cincinnati Enquirer*, June 24, 2000.

⁹ Lisa Biank Fasig and Robert Anglen, “Nordstrom Won’t Build Downtown After All,” *The Cincinnati Enquirer*, Nov. 23, 2000.

¹⁰ Robert Anglen, “Nordstrom Site to Become Parking Lot,” *The Cincinnati Enquirer*, Nov. 24, 2000.

¹¹ Ken Alltucker, “Consultant’s Priority: Curing Downtown’s Heart,” *The Cincinnati Enquirer*, Jan. 15, 2003, at 1D; “Downtown Cincinnati,” *GotoTown.com*, available at http://www.gototown.com/cgi-bin/listestab.cgi?est_id=1478 (June 16, 2006); *Fifth & Race, L.P. v. W. & S. Life Ins. Co.*, 2006 Ohio App. Lexis 86 (Ct. App., Jan. 13, 2006).



Costa Mesa, California

Triangle Square mall in downtown Costa Mesa was built more than a decade ago with a loan from the City and the use of eminent domain to clear out several existing businesses. It was expected to pull in \$1 million in sales tax revenues annually, but in 2004, the City collected only \$200,000.¹² Since then, the situation has only become worse. The retail center now sits largely vacant, and many of the anchor tenants, including Niketown, have left.¹³ Former Mayor Sandra Genis, the sole dissenter when the City approved the \$62 million project in 1989, said, “If the market was there, it would have happened on its own.”¹⁴ The mall’s major tenants have gradually left, including a Virgin Megastore in September 2005 and a Barnes and Noble bookshop in January 2006.¹⁵ In December 2005, City officials blamed “poor marketing” on the mall’s failures, ignoring entirely the thriving businesses they condemned for the mall’s owner under the promise of “redevelopment.”¹⁶



Detroit, Michigan

In the 1981 *Poletown* decision, a seminal case credited with providing the rationale for the widespread use of eminent domain for private profit, the Michigan Supreme Court allowed the City of Detroit to seize and bulldoze an entire neighborhood so General Motors could build an auto plant. In total, more than 4,200 people were displaced from their homes, and the government’s wrecking ball claimed 140 businesses, 6 churches, several non-profits and one hospital.¹⁷ GM paid Detroit \$8 million for the property, while the City paid more than \$200 million to acquire and

¹² Steve Lowery, “A Triangle Square Peg in a Round Hole,” *Orange County Weekly*, Feb. 10, 2005.

¹³ “Triangle Square Needs Less Talk, More Action,” *Daily Pilot (Newport Beach and Costa Mesa, CA)*, Dec. 20, 2005; Brian Martinez and Tiffany Montgomery, “Landmark Lost; Nike Cites Low Occupancy Rates in its Decision to Leave Triangle Square Before Lease Expiration Date,” *Orange County Register*, January 7, 2005.

¹⁴ Daniel Yi, “A Black Eye for City’s Face Lift,” *Los Angeles Times*, January 30, 2005.

¹⁵ Barnes and Noble Online Store Locator, available at <http://www.barnesandnoble.com> (June 16, 2006).

¹⁶ Andrew Edwards, “Owners Blamed for Mall’s Woes,” *Daily Pilot (Newport Beach and Costa Mesa, CA)*, Dec. 16, 2005.

¹⁷ Ilya Somin, “Michigan Should Alter Property Grab Rules; Supreme Court’s Decision to Let Government Condemn Land for GM Plant Set Poisonous Precedent for Similar Abuses of Power,” *The Detroit News*, January 8, 2004; Jenny Nolan, “Auto Plant vs. Neighborhood: The Poletown Battle,” *The Detroit News*, available at: <http://info.detnews.com/history/story/index.cfm?id=18&category=business> (June 16, 2006).

prepare the land for the automobile giant. A total of \$150 million in federal loans and grants, combined with more than \$30 million in state government funds, enabled the City to make the purchase.¹⁸

Remarkably, in addition to destroying a historic, racially diverse community, the redevelopment project failed to meet its many promises and expectations. Detroit Mayor Coleman Young and General Motors promised that the redevelopment project would create more than 6,000 jobs—but when all was said and done, the plant employed less than half that many. By 1988, the plant employed merely 2,500 people.¹⁹ In fact, it is estimated that the destruction of the entire Poletown neighborhood probably resulted in a net loss of jobs. The City’s own estimates conclude that about one-third of the businesses displaced by the project closed immediately.²⁰ This underscores even further just how much of a failure the project was.

In July 2004, the Michigan Supreme Court finally reversed its now infamous *Poletown* decision in *County of Wayne v. Hathcock*. The Court called *Poletown* a “radical departure from fundamental constitutional principles.”²¹ Unfortunately, that radical departure also resulted in one of the worst ever failures involving the abuse of eminent domain.



In 2000, the redevelopment agency in East Hartford voted to take Nardi’s Bakery and Deli—a popular local eatery—by eminent domain as part of its plan to redevelop Main Street. Despite the fact that the bakery had been in the family and in the same location for 93 years, Town Centre LLC insisted that it stood in the way of its large redevelopment project.²² Under the threat of eminent domain, Nardi’s reluctantly sold its prime location, and the City bulldozed the historic building.

Forcing the sale and destruction of a viable business turned out to be a substantial mistake for the City. Town Centre failed to produce a redevelopment plan that was acceptable to the City’s redevelopment agency, and the City soon found itself without a private developer for the property—and with an expensive bill. The City had also condemned two other small businesses, underestimating the cost of those acquisitions. For several years, the land where Nardi’s once stood and thrived

¹⁸ Ilya Somin, “Overcoming *Poletown*: *County Of Wayne v. Hathcock*, Economic Development Takings, and the Future of Public Use,” *Michigan State Law Review*, Vol. 2004:1005, p. 1018.

¹⁹ *Ibid.* at p. 1017.

²⁰ Ilya Somin, “Michigan Should Alter Property Grab Rules; Supreme Court’s Decision to Let Government Condemn Land for GM Plant Set Poisonous Precedent For Similar Abuses of Power,” *The Detroit News*, January 8, 2004; Ilya Somin, “Overcoming *Poletown*: *County of Wayne v. Hathcock*, Economic Development Takings, and the Future of Public Use,” *Michigan State Law Review*, Vol. 2004:1005, p. 1017.

²¹ *County of Wayne v. Hathcock*, 684 N.W.2d 765 (Mich. 2004).

²² Christopher Keating, “Nardi’s Seeks More Time for Move,” *The Hartford Courant*, Apr. 9, 2001, at B1.

remained vacant, and the City remained deeply in debt.²³ Recently, First Merchants Group purchased the property and the site is currently still under construction and under review by the Planning and Zoning Commission. Six years after destroying a longstanding local business, the future of the development remains uncertain.²⁴ What is certain, however, is that the project is a failure, an example of local government buying a developer's promises only to see them completely fall apart.



In 1990, the Hartford Redevelopment Agency (HRA) adopted a redevelopment plan that would allow the City to condemn privately owned land for redevelopment. The crux of the plan was that the HRA would consolidate parcels of property and then sell them to developers willing to rehabilitate them. The redevelopment area included two parcels that local resident Frank Citino had purchased in 1985 with the intention of renovating an apartment building located there. The HRA even told Citino that he could retain his land if he rehabilitated it. However, Citino's plans to renovate one of the parcels were rejected, and the agency eventually responded by condemning it instead. Over time, the HRA acquired all of the land in the redevelopment area except Citino's second parcel. By the time Citino fully rehabilitated the building, the HRA had already cleared out all the residents of the buildings in the surrounding area. The City simply boarded them up and allowed them to deteriorate. Consequently, Citino was only able to rent out two of the six apartments in the renovated building.

Citino successfully sued the redevelopment agency, and the court found that the condemning authority's failure to implement its redevelopment plan in a reasonable amount of time, coupled with its permitting the overall deterioration of the surrounding area in the interim, was, for all intents and purposes, a condemnation.²⁵ Meanwhile, the City's "redevelopment" project remained a complete failure, which, for years, resulted only in deterioration and empty buildings.²⁶ Finally, in the fall of 2003—13 years after the City adopted its redevelopment plan—the Park Squire Wolcott commercial and residential development opened, giving the City something to show for a project that failed to produce any benefit for more than a decade.²⁷

“Meanwhile, the City’s ‘redevelopment’ project remained a complete failure, which, for years, resulted only in deterioration and empty buildings.”

²³ Carrie Budoff, “Project Faces Cost Overrun; Agency Asking for \$75,000,” *The Hartford Courant*, Nov. 19, 2001, at B3.

²⁴ Charles Karno (Development Director, East Hartford Municipal Development Office), *Telephone Interview with Institute for Justice*, Mar. 8, 2006.

²⁵ *Citino v. Hartford Redevelopment Agency*, 721 A.2d 1197, 1209-10 (Conn. App. 1998).

²⁶ Dana Berliner, *Public Power, Private Gain: A Five Year, State-By-State Report Examining the Abuse of Eminent Domain* (2003), available at <http://www.castlecoalition.org/report> (June 19, 2006).

²⁷ “Case Study #2: Trinity College – Hartford Connecticut,” *University and College Community Partnerships, University of Nevada, Reno, Comprehensive Master Plan*, March 11, 2004.



Indio, California

Indio Fashion Mall opened in the mid-1970s, and has since been losing traffic to the trendier Westfield Shoppingtown in Palm Desert. The mall sits on 16 acres, and the City owns 17 acres behind the shopping center that it acquired through eminent domain in 1988. Plans called for expansion to the rear of the mall, so the City razed approximately 80 homes, several stores and a low-income housing project that once made up the predominantly black and Hispanic neighborhood of Nobles Ranch. Those plans fell through, and the expansion of the mall failed.²⁸

That failure did not stop the City from trying again with a different developer making new promises—and asking for even more land. Developer Richard Weintraub purchased the mall in November 2003, planning to expand and transform the building into a “destination shopping center.” Immediately, City officials announced their intention to purchase seven lots that the government’s wrecking ball spared in 1988, including three churches.²⁹ According to City Manager Glenn Southard, as of May 2006, all of the land for the redevelopment plan had been acquired or was in escrow.³⁰ The City obtained the land by threatening eminent domain on the grounds that Weintraub promises “sales tax for the city.”³¹ The mall project has been a dismal failure, and the City may be setting itself up for more disappointment.



Las Vegas, Nevada

In 1997, the City Council approved the Sun Plaza Project, a high-rise office building proposed for the corner of Lewis Avenue and Fourth Street. With the threat of eminent domain at their disposal, government officials acquired the property for the project with public money, but developers Nevada State Bank and American Nevada Corp. could not attract tenants to the building. Two years into their redevelopment project, the developers approached City Hall and asked for more public funding. This time, the City declined, pulling the plug on the project in March 1999 after shelling out approximately \$8 million.³²

“This time, the City declined, pulling the plug on the project in March 1999 after shelling out approximately \$8 million.”

²⁸ Xochitl Pena, “Southard: More Retail on the Way,” *The Desert Sun* (Palm Springs, CA), May 12, 2006.

²⁹ Xochitl Pena, “Mall Makeover in Indio’s Future,” *The Desert Sun* (Palm Springs, CA), Nov. 15, 2004, at 4R.

³⁰ Xochitl Pena, “Southard: More Retail on the Way,” *The Desert Sun* (Palm Springs, CA), May 12, 2006.

³¹ Xochitl Pena, “City Piecing Together Fashion Mall,” *The Desert Sun* (Palm Springs, CA), April 15, 2005.

³² J.M. Kalil, “Before Goodman, Failed Projects Tainted View of Downtown,” *Las Vegas Review-Journal*, Dec. 19, 2004, at 40A.



Las Vegas, Nevada

In the 1980s, the City cleared out a six-acre tract of land on the corner of Las Vegas Boulevard and Bridger Avenue that was full of successful small businesses. Government officials threatened property owners with eminent domain, bulldozed the buildings and excavated the site—all for a proposed \$90 million Minami Tower, which would have been the state’s tallest office building. However, in the end, Minami’s Japanese investors backed out, leaving the City with a hole in the ground and nothing to show for it. Almost a decade later, in 1996, the City ended up donating the land to the federal government for a courthouse.³³



Mesa, Arizona

City officials are still debating what to do with 30 acres of land that sit vacant thanks to a failed redevelopment project that began in 1992.³⁴ Known to the City as “Redevelopment Site 17,” the tract once contained 63 homes that the City condemned and purchased at a cost of \$6 million. A group of Canadian developers planned to build Mesa Verde, an entertainment village featuring a time-share resort, water park and ice-skating rink. After the City had already seized the homes, financing for the project fell through.³⁵ Now, 14 years later, the City is still considering possible redevelopment plans for the area.³⁶

³³ J.M. Kalil, “Before Goodman, Failed Projects Tainted View of Downtown,” *Las Vegas Review-Journal*, Dec. 19, 2004, at 40A.

³⁴ Hunter Interests Reports, “Analysis and Recommendations for Development of Sites Pursuant to the Town Center Action Plan,” *Hunter Interests Inc.*, Sept. 12, 2002.

³⁵ Paul Green, “Eminent Domain: Mesa Flexes a Tyrannous Muscle,” *East Valley Tribune*, Sept. 2, 2001; Robert Robb, “Count on City-Driven Project to Fail,” *The Arizona Republic*, Sept. 21, 2001.

³⁶ Patrick Murphy (Town Center Development Specialist, City of Mesa, Town Center Development Office), *Telephone Interview with Justin Gelfand, Institute for Justice*, May 22, 2006.



New Haven, Connecticut

A dynamic industrial town with a large population of first-generation Americans well into the 1920s, New Haven was hard hit by changes in the economy and denied new residents under government-imposed immigration policies. Until Mayor Dick Lee took office in 1954, local politicians took a decidedly hands-off approach to private development. Changing course, Lee promised to procure and use as much federal funding as possible to promote economic development.

In his eight terms (16 years) in office, he delivered federal money, but not revitalization. He razed entire neighborhoods, kicking hundreds of residents out of their homes and businesses in the name of alleviating poverty, and 50 years later, there is little to show for what LBJ's Secretary of Labor dubbed "the greatest success story in the history of the world."³⁷

One case study epitomizes the theme. Convinced that in order to renew a neighborhood, it would be easier to destroy it and start from scratch, Lee had the 42-acre immigrant, working-class Oak Street Neighborhood demolished.³⁸ All told, 886 households were displaced and over 3,000 people were forcibly moved to make way for nicer homes, wealthier shops and a highway. Yale Professor Douglas W. Rae estimates that one-fifth of New Haven's population left for the suburbs or reluctantly relocated to public housing in other parts of the city. Today, only a small portion of the highway originally proposed has been completed and the residential and retail developments never actually came to fruition.³⁹ Thus, it's not surprising that at the end of his tenure in government, Lee changed course entirely and frequently said, "If New Haven is a model city, God help America's cities."⁴⁰

"If New Haven is a model city, God help America's cities."



New London, Connecticut

The situation that sparked the now infamous U.S. Supreme Court decision in *Kelo v. City of New London*, which permits local governments to use eminent domain for economic development, exemplifies just how redevelopment projects fail to meet their promises and expectations.

Nationwide attention has focused on a small patch of land overlooking the

³⁷ "Life in the Model City; Stories of Urban Renewal in New Haven," available at: <http://www.yale.edu/nhohp/modelcity/before.html> (June 16, 2006).

³⁸ Harry Siegel, "Urban Legends: The Decline and Fall of the American City," *Weekly Standard*, March 15, 2004.

³⁹ Avi Salzman and April Rabkin, "When the Bulldozers Never Arrive," *The New York Times*, August 14, 2005.

⁴⁰ "Life in the Model City; Stories of Urban Renewal in New Haven," available at: <http://www.yale.edu/nhohp/modelcity/before.html> (June 16, 2006).

Thames River, a parcel with a handful of homes and businesses on less than 2 acres of the City’s proposed 90-acre project. The City acquired and bulldozed approximately 30 acres for the project, some of which it obtained by threatening and actually filing eminent domain actions.⁴¹

The City’s redevelopment plan began in early 1998 when pharmaceutical giant Pfizer announced it would build a \$270 million research facility in a town facing financial decline. Unbeknownst to Susette Kelo or her neighbors, the City had already reached an agreement in which the New London Development Corporation (a private entity) would meet Pfizer Corporation’s requirements and find a developer to build, among other things, a luxury hotel for the company’s visitors, expensive condos for its employees and private office buildings. The Fort Trumbull neighborhood, where Susette and several of her neighbors lived, was to be condemned and replaced with an unidentified form of “park support.”⁴² The other parcel where people still had homes was slated for the building of private offices that the proposed developer itself admitted would not be built anytime in the foreseeable future because there was no market for them.⁴³

This is a classic example of City Hall justifying its use of eminent domain by promising taxes and jobs—and failing to deliver on its promises. In fact, while the City estimated the project would generate between \$680,544 and \$1,249,843 in property tax revenue,⁴⁴ not a single penny in additional taxes has been collected.

Under the terms of the agreement, the NLDC would own the land located in the development area but lease it to private developers for \$1 per year.⁴⁵

Now, eight years later, the City has nothing to show for a neighborhood it destroyed with threatened and filed condemnations. Today, vast empty dirt fields span acre after acre where New London’s grand plan was to be constructed. The City’s failure to implement its redevelopment cannot be attributed to some of the homeowners’ decisions to fight to save their properties; the City could have built everything it planned on the 30 acres of land it already owned.⁴⁶ Meanwhile, the City has wasted up to \$73 million in state money allocated for the redevelopment, not including years of foregone taxes.⁴⁷

“This is a classic example of City Hall justifying its use of eminent domain by promising taxes and jobs—and failing to deliver on its promises.”

⁴¹ “Eminent Domain Without Limits? U.S. Supreme Court Asked to Curb Nationwide Abuses,” *Institute for Justice Litigation Backgrounder*, available at <http://www.ij.org/kelo> (June 16, 2006).

⁴² Brief of Petitioners at 4, *Kelo v. City of New London*, 125 S. Ct. 2655 (2005).

⁴³ Reply Brief of Petitioners at 11, *Kelo v. City of New London*, 125 S. Ct. 2655 (2005).

⁴⁴ Brief of Petitioners at 5, *Kelo v. City of New London*, 125 S. Ct. 2655 (2005).

⁴⁵ Brief of Petitioners at 6, *Kelo v. City of New London*, 125 S. Ct. 2655 (2005).

⁴⁶ Richard A. Epstein, “Blind Justices; the Scandal of *Kelo v. New London*,” *Wall Street Journal*, July 3, 2005, at Opinion.

⁴⁷ Richard A. Epstein, “Blind Justices; the Scandal of *Kelo v. New London*,” *Wall Street Journal*, July 3, 2005, at Opinion.



New York City, New York

The New York Stock Exchange (NYSE), a private corporation, was looking for a location in lower Manhattan on which to build a new headquarters for its operations, obviously a large-scale proposition. NYSE envisioned a gleaming 900-foot skyscraper above its new stock-trading floor, and eventually decided on a site across the street from the company's current location. Inconveniently for NYSE, this set of residential and commercial properties was already owned and occupied by others. Among them, J.P. Morgan Chase owned two office buildings, Rockrose Development owned an apartment building, and the Wilf family owned two other properties.⁴⁸

In January 2001, the New York City Economic Development Corp. began the process of condemning the apartment building at 45 Wall Street. In support of its actions, the agency touted the "public benefit" the City would derive from enhancing Manhattan's position as a worldwide financial center, and the theory that NYSE's departure from the city's financial district would be detrimental to the city and state economies.⁴⁹

The tenants' association of 45 Wall Street challenged the development agency's public use determination, but in October 2001, a state appeals court agreed with the agency's findings, citing the public benefit of increased tax-revenue and economic development. Amazingly, the court found that the "proposed project will incidentally confer a private benefit," even though the agency's sole rationale for supporting the condemnation was to facilitate construction of NYSE's new facility (which is anything but incidental to the overall project).⁵⁰

In the wake of the September 11, 2001, terrorist attacks, the NYSE project stalled. Indicative of the fluctuations of the real estate development industry, the Giuliani administration was unable to find a developer willing to build a skyscraper in lower Manhattan. The City still possesses some of the properties originally requested by the NYSE, in the hopes that a new facility of some kind may eventually be built. Meanwhile, the NYSE has decided that it no longer wants the property, leaving the City and its taxpayers left holding the bag.⁵¹ The redevelopment agency finally gave 45 Wall Street and the two office buildings back to their owners, forfeiting a \$22 million deposit on its purchase agreement. The City also lost \$1 million a month in rent until 45 Wall Street was fully leased. At the end of the day, the City and its redevelopment agency estimated a loss of \$109 million—taxpayer money—on this ill-fated deal that in no way benefited the public.⁵² The City's misadventures underscore the highly risky nature of redevelopment and why it is best for taxpayers that governments do not play the role of real estate speculator.

"At the end of the day, the City and its redevelopment agency estimated a loss of \$109 million—taxpayer money—on this ill-fated deal that in no way benefited the public."

⁴⁸ Eric Herman, "NYSE Building Site May Cost City More," *Daily News (New York, NY)*, Dec. 22, 2000, at Business 93.

⁴⁹ See *In re Application of Fisher*, 730 N.Y.S. 2d 516, 516-17 (N.Y. App. 2001).

⁵⁰ *Ibid.*

⁵¹ Andrew Rice, "NYSE's Chairman Unplugs His Plans for a New Exchange," *The New York Observer*, Dec. 3, 2001, at 1; and see <http://www.timessquarenyc.org>, Dec. 2005.

⁵² Charles V. Bagli, "45 Wall St. Is Renting Again Where Tower Deal Failed," *The New York Times*, Feb. 8, 2003, at B3.



North Hempstead, New York

St. Luke's Pentecostal Church in North Hempstead, led by Pastor Fred Jenkins, bought a piece of property on Prospect Avenue in 1994 to build a permanent home for its congregation after saving money for more than a decade. Although the church was meticulous in doing everything required to get the appropriate building permits, the North Hempstead Community Development Agency condemned the property for private retail development under a 1994 redevelopment designation that St. Luke's had never even been made aware of. The church brought a lawsuit, but the court ruled against the house of worship, allowing for the condemnation of a church for private use. As of June 2006, the land remains vacant.⁵³



Phoenix, Arizona

In 1998, the City of Phoenix condemned a grocery store and several other small businesses on the corner of 24th Street and Broadway, intending to transfer the land to a private developer. Though none of the businesses were blighted, the City justified the takings under Arizona's vague redevelopment statute by declaring that the area was "overrun with crime."⁵⁴ Rather than taking steps to lower crime in the area, the City instead chose to redevelop at the expense of innocent businesses. However, the condemnations did nothing to improve the area. The City still has not been able to find a developer willing to buy the property, and it remains vacant eight years later.⁵⁵

"However, the condemnations did nothing to improve the area. The City still has not been able to find a developer willing to buy the property, and it remains vacant eight years later."

⁵³ Stewart Ain, "Of Spiritual vs. Urban Renewal," *The New York Times*, Apr. 16, 2000, at 14LI 3; *In the Matter of the Application of North Hempstead Community Redevelopment Agency*, 2002 N.Y. Misc. LEXIS 1488, at *1-*2 (Aug. 29, 2002); Marni Soupcoff, "North Hempstead Bulldozes Constitutional Rights," *The Westbury Times (Mineola, NY)*, Feb. 22, 2002; Victor Manuel Ramos, "In North Hempstead: A Spiritual Homecoming Deferred; Redevelopment Claims Dream of Church's Building," *Newsday*, Feb. 4, 2001, at G17; *The Kelo Decision: Investigating Taking Homes and Other Private Property: Hearing Before the Senate Comm. on the Judiciary*, 109th Cong. (2005) (testimony of Pastor Fred Jenkins, St. Luke's Pentecostal Church, North Hempstead, NY), available at: http://judiciary.senate.gov/testimony.cfm?id=1612&wit_id=4658 (June 16, 2006); Lesley Jenkins (brother of Pastor Jenkins), *Telephone interview conducted by Justin Gelfand*, June 13, 2006.

⁵⁴ *City of Phoenix v. Wong*, No. CV1998-021350 (Maricopa County Super. Ct., Aug. 14, 2000); see also Pat Kossan, "Phoenix Weighs Next Move on Crime-Plagued Corner: Condemning Site Remains an Option," *The Arizona Republic*, Nov. 28, 1997.

⁵⁵ Jordan Rose, "New Land Condemnation Laws Abuse Citizens," *Tucson Citizen*,



In 2001, Phoenix condemned the Hi Dreams pipe and tobacco accessories shop because the City wanted the property to be used by a business it found more desirable. However, the City failed to find a developer willing to purchase the property.⁵⁶

The land on which the thriving business stood is still vacant.



Several of the Urban Redevelopment Authority's high-profile buildings along Forbes Avenue—all purchased with taxpayer dollars for government-directed redevelopment plans that failed—now sit vacant. The annual cost to taxpayers in lost revenue on the URA's property tax-exempt downtown portfolio tops \$800,000 a year, including \$300,000 that would go to the cash-strapped city, according to Allegheny County's online assessment records.⁵⁷ Marketplace at Fifth and Forbes—a \$522 million project that hinged on retailer Nordstrom opening a store that would have been heavily subsidized by taxpayers—now consists of a handful of shops and empty buildings, precisely because the City's grandiose redevelopment plan collapsed. Now, all the City has to show for interfering in a bustling business district with threats of eminent domain and grand redevelopment plan is a run-down, largely vacant section of downtown.⁵⁸

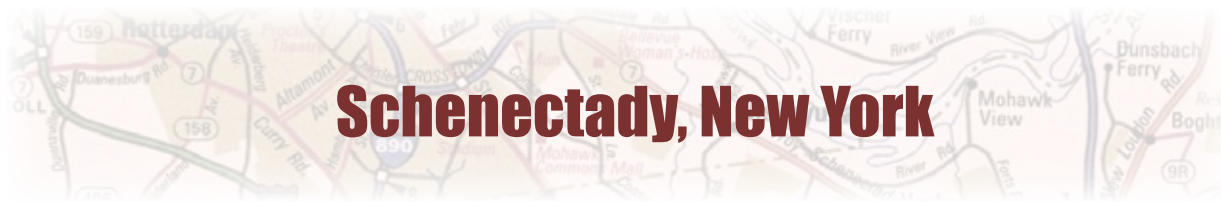
“Now, all the City has to show for interfering in a bustling business district with threats of eminent domain and grand redevelopment plan is a run-down, largely vacant section of downtown.”

Aug. 29, 2002, at 7B; Margaret Daniels (City of Phoenix Planning Department), *Telephone Interview with Institute for Justice*, Mar. 8, 2006.

⁵⁶ See *City of Phoenix v. Soza*, No. CV2001-000068 (Maricopa Super. Ct. May 14, 2002); see also “24th St. Broadway Development Touted,” *The Arizona Republic*, Oct. 18, 1995; Jordan Rose, “Eminent Domain Abuse in Arizona: The Growing Threat to Private Property,” *Goldwater Institute*, Aug. 16, 2002, available at <http://www.heartland.org/pdf/10340.pdf> (May 26, 2006).

⁵⁷ Andrew Conte, “Critics: URA Hinders Growth,” *Pittsburgh Tribune Review*, Nov. 8, 2004.

⁵⁸ *Ibid.*



Schenectady, New York

On March 12, 2004, the \$12.5 million, 14-screen Diamond Cinema project at State and Clinton streets died when the owner and developer of the proposed project, Joe Tesiero of Riverfront Cinema, backed out. Without having a signed contract with Riverfront Cinema, the Schenectady Metroplex Development Authority (SMDA) spent approximately \$3.7 million acquiring nine parcels of property for the theater and preparing the site. Tesiero claims he abandoned the project due to ongoing conflicts over parking and security. Meanwhile, the developer received a loan from M&T Bank for approximately \$1 million less than he expected. Tesiero asked SMDA to make up the difference, but the development authority balked at making up the shortfall in financing. It immediately became a textbook redevelopment disaster that left the City with a \$3.7 million hole in the ground.⁵⁹

Besides the vacant property that sat lifeless for months, the constant road construction on State Street hurt even more local businesses. In March 2005, John Camaj, the owner of Pizza King at 469 State Street, said that the construction aimed at giving State Street a makeover kept customers away from his small business, which was already struggling to survive on the City's main strip.⁶⁰

The City is reportedly struggling financially; in January 2004, Schenectady faced an immediate budget gap of more than \$550,000 and a structural deficit close to \$9 million. Moody's Investors Service downgraded the City's bond rating in November 2003, making it more expensive for the government to borrow money for capital projects, let alone throw around millions of dollars for unsecured development.⁶¹ City officials breathed a sigh of relief when Schahet Hotels Inc. agreed to buy the theater site from Metroplex for \$100,000 and build a five-story Hampton Inn.⁶² The hotel is still being built, and construction is expected to finish in 2007. It remains unclear whether the City will completely recover from the damage done by the project. What is clear is that tax-hungry bureaucrats have already destroyed functioning small businesses for a development that cost millions in taxpayer funds—and maybe even more in foregone tax revenue, while land sat vacant awaiting another developer to come along.⁶³

“Tax-hungry bureaucrats have already destroyed functioning small businesses for a development that cost millions in taxpayer funds—and maybe even more in foregone tax revenue, while land sat vacant awaiting another developer to come along.”

⁵⁹ “Diamond Cinema Project Dead; Happy Ending Eludes Developer,” *The Business Review (Albany, NY)*, March 19, 2004, at Vol. 30 No. 51 Pg. 4.

⁶⁰ Mike Goodwin, “Opportunity Ends, But Not Hopes; Schenectady Officials Weigh New Plans After Downtown Movie Theater Deal Falls Apart,” *The Times Union (Albany, NY)*, March 16, 2004, at MAIN A1.

⁶¹ “The New Face Of Economic Development at Metroplex,” *The Business Review (Albany, NY)*, Jan. 30, 2004, at Vol. 30 No. 44 Pg. 1.

⁶² Robin Wood, “Schenectady Lands Hampton Inn for Proctor’s Block,” *The Business Review (Albany, NY)*, Oct. 1, 2004, at Vol. 31 No. 26 Pg. 3.

⁶³ “Groundbreaking Planned for Schenectady Hotel,” *The Business Review (Albany, NY)*, December 13, 2005.



In the 1980s, county officials decided to turn the Hillcrest neighborhood in West Palm Beach into a golf course. Residents John and Wendy Zamecnik begged government officials to turn their neighborhood into a park instead, and let them and their neighbors keep their homes—but to no avail. In 1987, the County set out to acquire 385 parcels of land. But three families, including the Zamecniks, fought against the government's land grab by refusing to sell. In 1999, County Commissioners responded by authorizing the government to take the homes for a private golf course, even though Palm Beach County is home to more than 170 courses, including a city course just 2 miles down the road. The family's attorney argued that the golf course could be built around their home, and one plan by the developer even slated their home for the future residence of the golf course's manager.⁶⁴

Despite protest and objection, the County condemned their property, and the Zamecniks paid rent to live in their home before the government forced them out in 2002. Unable to find a comparable house in the County, they packed up and moved to Maryville, Tenn. In 2005, the deal for the golf course fell through.⁶⁵

Finally, in December 2005, the County approved the sale of 68.3 acres of land in the old Hillcrest neighborhood to Palm Beach Atlantic University for \$3.1 million. The school plans to build ball fields on the land.⁶⁶



In November 1999, the City filed suit to condemn the Monterey Hotel, an old three-story hotel in downtown Vancouver that housed mainly low-income people. A developer from just over the state line in Portland owned most of the block around the hotel, and City officials wanted to clear out the remaining property so the developer could build a planned six-story residential, office and retail development and adjacent parking structure. The hotel's owners, R.K. and Geetaben Patel, challenged the condemnation, arguing that the City lacked a public use.⁶⁷ However, the trial court ruled in favor of the City. Just as the Washington Court of Appeals was about to hear the case, the Patels reached a settlement with the City and agreed to sell. However, in the meantime, the planned development fell through.⁶⁸ The lot on which the hotel used to stand is still vacant.⁶⁹

⁶⁴ Thomas R. Collins, "Evicted Homeowners Feel Betrayed Over Failed Project," *Palm Beach Post*, March 15, 2005.

⁶⁵ *Ibid.*

⁶⁶ "County Commission," *Palm Beach Post*, April 19, 2006, at 2B (Final Edition).

⁶⁷ Foster Church and John Painter, Jr., "Vancouver Files Suit to Condemn Old Hotel," *The Oregonian (Portland, OR)*, Nov. 25, 1999, at B5.

⁶⁸ "Vancouver, Hotel Owners Agree on \$750,000 Price," *The Oregonian (Portland, OR)*, Nov. 12, 2001, at C2.

⁶⁹ Jeff Mize, (Reporter, *The Columbian*), Telephone Interview with John K. Ross, Institute for Justice, June 8, 2006.