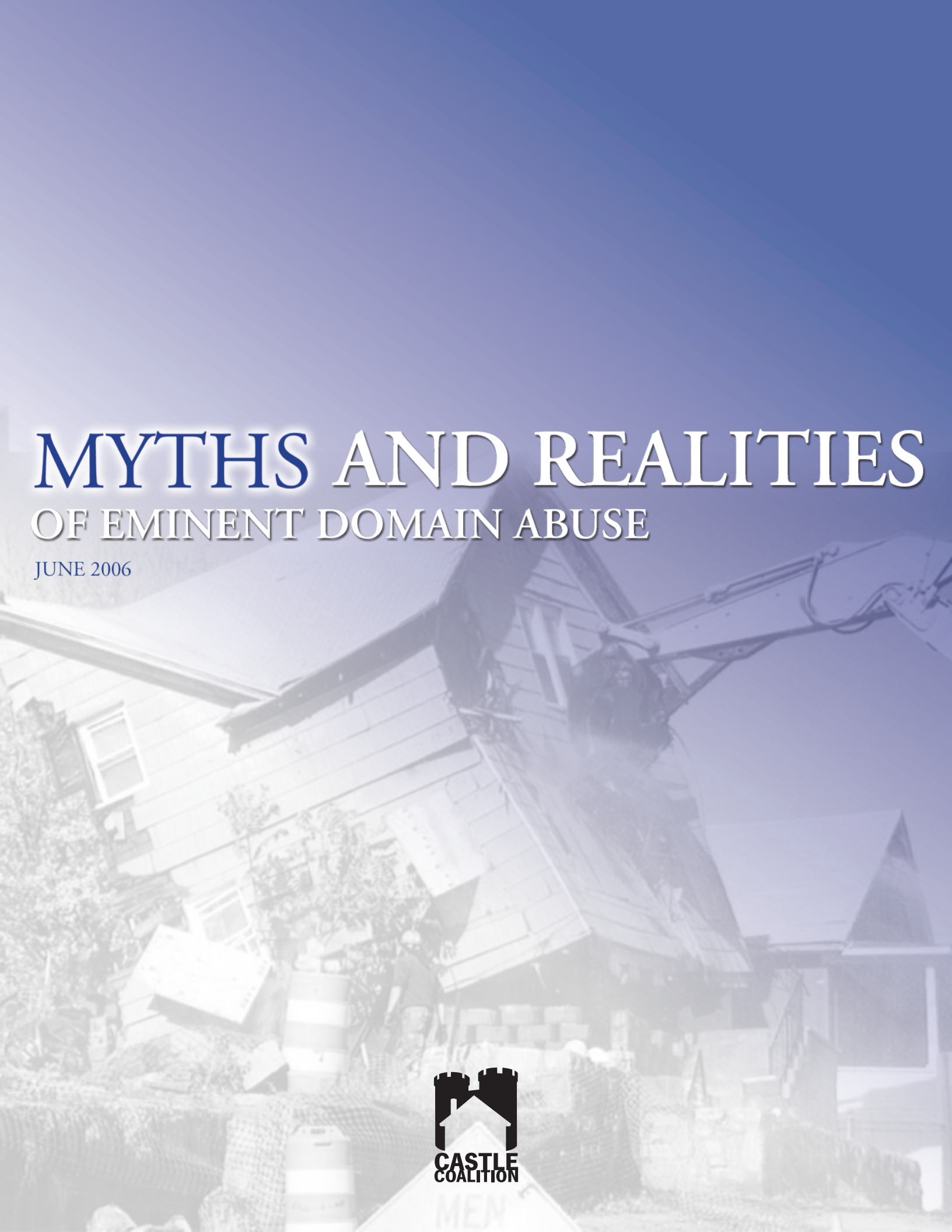
Eminent Domain Background Information

Documents about Eminent Domain

1. Myths and Realities about Eminent Domain Abuse
2. Development without Eminent Domain

MYTHS AND REALITIES
OF EMINENT DOMAIN ABUSE

JUNE 2006



CASTLE COALITION

MYTHS AND REALITIES
OF EMINENT DOMAIN ABUSE

In the debate over eminent domain abuse, municipalities and developers often advance myths in defense of the government's use of this power for private commercial development. In response to those myths, the Castle Coalition offers something far more compelling—the truth.

The Castle Coalition is a project of the Institute for Justice

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MYTH:

Kelo v. City of New London did not expand the power of eminent domain.

"In Kelo, *for the first time in U.S. history, the ordinary private use of property was declared a 'public use' for which a government could use its power of eminent domain.* Kelo *leaves practically no federal constitutional limitation on eminent domain for private development. It is now up to states and localities to do just that."*

REALITY:

Kelo did change the law—and the U.S. Supreme Court's decision threw open the floodgates to eminent domain abuse throughout the nation. As a matter of practice, local governments have been using eminent domain to assist private developers on a regular basis for years.[1] But governments still recognized that the nation's highest court had never actually upheld eminent domain for economic development. That provided some limited restraint or caution; in the aftermath of *Kelo*, however, that restraint was removed.

As Justice Sandra Day O'Connor explained in her dissenting opinion, while the Court had described the eminent domain power as broad, it had previously recognized just three discrete categories of eminent domain condemnations prior to *Kelo*: (1) condemning land and transferring it to public ownership (such as a road or park); (2) condemning land and transferring it to a privately owned common carrier (such as a cable or utility carrier); and (3) condemning land to eliminate an identifiable public harm caused by the property.[2]

Kelo created a fourth and much broader category of condemnations allowed under the Fifth Amendment—transferring any land from one person to another for his or her private use, as long as the new owner plans to make more money with the property. Justice O'Connor wrote, "To reason, as the Court does, that the incidental public benefits resulting from the subsequent ordinary use of private property render economic development takings 'for public use' is to wash out any distinction between private and public use of property—and thereby effectively to delete the words 'for public use' from the Takings Clause of the Fifth Amendment."[3]

In *Kelo*, for the first time in U.S. history, the ordinary private use of property was declared a "public use" for which a government could use its power of eminent domain. *Kelo* leaves practically no federal constitutional limitation on eminent domain for private development. It is now up to states and localities to do just that.

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1 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 2, 2006).

2 *Kelo v. City of New London*, 125 S. Ct. 2655, 2673 (2005) (O'Connor, J., dissenting).

3 *Ibid*. at 2671.

MYTH:

Eminent domain is only used as a last resort.

REALITY:

This claim—made by nearly every official and planner considering eminent domain for private development—simply makes no sense. Actually filing for condemnation may be the last thing the government does, but its ability to do so is so ominous that the threat of eminent domain influences all "negotiations." When present, the threat of eminent domain plays the most important role from the beginning of "negotiations."[4] Truly voluntary negotiation is impossible when one party has the power to get what it wants no matter what; if the government can take any property it wants, owners have no real power in negotiation.

When the government has all the power, cities can plan projects on the assumption that there is no need to incorporate existing homes or businesses because they can simply be taken. Cities often target poor and middle-class communities for condemnations, and government officials are well aware that people in these communities rarely have the financial means to fight eminent domain through the courts.[5] With the threat of eminent domain always looming in the background, developers know that local officials can acquire almost any piece of land they choose—and many are all too willing to do so.[6]

For example, in St. Louis, Mo., developer Jim Koman, in an attempt to acquire land to expand the shopping center he owns, said to the *Wall Street Journal*, "The question is, 'Is it faster for me to buy this guy off, or quicker to go to court and condemn it.'"[7]

Koman employs "hardball tactics" including the threat of eminent domain to acquire property from hesitant owners. The *Journal* reports, "He tells people who don't want to settle that he will take them to court, where they will get much less than what he is offering. As he drives through a trailer park he is currently trying to buy out, he mocks the people who fight his efforts."[8]

When city officials say they will use eminent domain only if

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4 *See, e.g.*, Transcript at 40, *Kelo v. City of New London*, 125 S. Ct. 2655 (2005); Martin Stolz, "Little Italy Laundry Threatened with Eminent Domain," The *San Diego Union-Tribune*, July 19, 2005; Sarah Hollander, "Eminent-domain Threat Solidifies in Flats Project," *The Plain Dealer (Cleveland, OH)*, Apr. 11, 2006; Margaret Gillerman, "Days Appear Numbered for Allenton," *St. Louis Post–Dispatch*, Feb. 21, 2006, at B1.

5 Brief of *Amici Curiae* National Association for the Advancement of Colored People, AARP, Hispanic Alliance of Atlantic County, Inc., Citizens in Action, Cramer Hill Resident Association, Inc., and the Southern Christian Leadership Conference in Support of Petitioners, *Kelo v. City of New London*, 125 S. Ct. 2655 (2005), available at www.ij.org/kelo (June 2, 2006).

6 Brief of Jane Jacobs as *Amica Curiae* in Support of Petitioners, *Kelo v. City of New London*, 125 S. Ct. 2655 (2005), available at www.ij.org/kelo (June 2, 2006).

7 Ryan Chittum, "Is Eminent Domain Only Hope for Inner Cities?," *Wall Street Journal*, Oct. 5, 2005, at B1.

8 *Ibid*.

"To say that eminent domain has not been 'used'—and was simply held back as a 'last resort'—is to elevate semantics over both common sense and reality."

negotiations fail, it simply means they will use force to take people's property against their will if they do not agree on a price. Eminent domain is not just abused when a person loses his home in court. It is also abused when a home or business owner sells under the threat of condemnation. In the latter case, to say that eminent domain has not been "used"—and was simply held back as a "last resort"—is to elevate semantics over both common sense and reality.

MYTH:

The political process is enough of a check against eminent domain abuse.

REALITY:

In its report, *Public Power, Private Gain*, the Institute for Justice documented more than 10,000 filed or threatened condemnations for private use from 1998 to 2002.[9] The democratic process at the local level did not stop these illegitimate condemnations or the others that have occurred since then.

There have been more than 5,000 instances of abuse (threatened or filed condemnations for private use) since the *Kelo* decision came out in June 2005.[10] These abuses happened even though almost every poll taken since *Kelo* indicates that Americans oppose eminent domain for private development.[11] Apparently, developers' promises of increased tax revenues and jobs are just too tempting for many cities to pass up—even it if means forcing citizens from their homes and businesses. Most people—especially residents of poor and minority neighborhoods—who are targeted for abuse simply do not have the political or financial clout to win the political battle to save their homes and businesses.[12]

When developers' promises are accompanied by their funding of the entire eminent domain process, there is even more temptation. For example, in Norwood, Ohio, the developer who wanted the City to seize Carl and Joy Gamble's home so that he could expand his real estate empire paid for the report that the City used to classify the Gambles' ordinary neighborhood as "blighted and deteriorating," paid for the costs of acquiring all the properties in the neighborhood, and paid for all of the City's legal costs.[13] Essentially, the developer leased the government's power for his own gain.

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9 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 2, 2006).

10 Dana Berliner, *Opening the Floodgates: Eminent Domain Abuse in the Post*-Kelo *World*, (2006), available at http://www.castlecoalition.org/floodgates (June 20, 2006).

11 *The Polls Are In*, available at http://www.castlecoalition.org/resources/kelo_polls.html (June 2, 2006).

12 Brief *Amica Curiae* of Jane Jacobs in Support of Petitioners, *Kelo v. City of New London*, 125 S. Ct. 2655 (2005), available at http://www.ij.org/kelo (June 2, 2006).

13 *City of Norwood v. Burton*, Nos. A0308646–A0308650, slip op. at 7-9, 35 (Hamilton County Ct. Common Pleas, June 14, 2004).

"Eminent domain abusers have increasingly gone to extreme measures to keep voters out of these decisions entirely."

Moreover, eminent domain abusers have increasingly gone to extreme measures to keep voters out of these decisions entirely. Concerned citizens in Clayton, Mo., submitted four times the minimum number of signatures required to bring the City's contentious proposed use of eminent domain to the ballot. But Clayton officials stopped voters from becoming the ultimate democratic check by operating under a technical provision in the City Charter that prohibits a referendum in situations where a bill is introduced and passed unanimously at the same meeting.[14]

The same thing occurred in Pembroke Pines, Fla., where the Charter Review Board—a municipal body charged with assessing the City Charter—unanimously voted to ask city commissioners to put the question of eminent domain for private development on the ballot; City officials voted 3-2 against the request.[15]

Similarly, City officials in Lorain, Ohio, voted 9-2 in November 2005 to designate 65 acres as an urban renewal area, while simultaneously enacting an emergency clause in the ordinance prohibiting residents from petitioning for a referendum on the decision.[16] In each of these situations, the government preemptively prohibited citizens from using traditional public and political processes to stop the abuse of eminent domain.

Sometimes, government officials forge deals with wealthy developers well before public hearings even occur. The City of Hollywood, Fla., for example, entered into an agreement with developer Chip Abele in July 2004 for his condo and retail development. The agreement was formed nearly a year before the City even held a public hearing.[17]

The City of Sunset Hills, Mo., teamed up with private developer Jonathan Browne of Novus Development Company to bulldoze Sunset Manor—destroying large parts of a neighborhood that was the most ethnically diverse and most affordable part of town. In 2002, Novus quietly approached the City with plans to build a $165-million shopping center, offices and a hotel. City officials responded by pledging $62-million in Tax Increment Financing and handing the private developer its governmental power of eminent domain to condemn and demolish more than 250 homes. Novus representatives visited residents who had no interest in selling their homes and no plans to move, threatening them with eminent domain and giving them five days to accept offers.[18] (Eminent domain was, after all, a "last resort.")

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14 Margaret Gillerman, "Despite Petitions, Clayton Referendum Still in Doubt," *St. Louis-Post Dispatch*, Jan. 6, 2006, at B1.

15 Joe Kollin, "Eminent Domain Vote Falters; 3 on Commission Oppose Taking Issue to Public," *Sun-Sentinel (Fort Lauderdale, FL)*, Jan. 8, 2006, at 1.

16 Shawn Foucher, "Lorain Votes on Urban Renewal," *The Chronicle-Telegram (Elyria, OH)*, Nov. 2005 (online edition).

17 John Holland, "Hollywood Mayor Felt 'Obligation' to Approve Eminent Domain Seizure," *Sun-Sentinel (Fort Lauderdale, FL)*, Apr. 22, 2006, at B1; Shannon O' Boye, "Hollywood Moves to Seize Woman's Storefronts So Developer Can Build Condos," *Sun-Sentinel (Fort Lauderdale, FL)*, June 22, 2005.

18 Clay Barbour, "From Sunset Hills, A Story of Hollow Homes and Lives Left in Limbo Residents Are Stuck - Along with Novus' Development Project," *St. Louis Post-Dispatch*, Feb. 12, 2006, at A1; *News Channel Five Newscast: Sunset Hills Aldermen Officially Halt Retail Development*, (KSDK radio broadcast, Feb. 14, 2006), available at http://www.ksdk.com (June 2, 2006).

"As the enormous number of condemnations for private development reveals, the political process surrounding individual development projects favors the abusers of eminent domain, not its victims. The bottom line is that individual rights should not be subject to the whim of the majority."

Despite overwhelming citizen opposition to the project through the public and political process, the City decided to move forward with its abuse of eminent domain. In February 2006, financing for the project fell through, and the City scrapped its plans, leaving the neighborhood in shambles.[19] In this instance, and the vast majority nationwide, the democratic process was simply not enough of a check on abuse.

In some cases, City officials have even gone to extreme measures to silence opponents of eminent domain abuse—including kicking them out of public meetings, criticizing them and simply ignoring them.[20] Even when projects fail, these officials do not take the blame for their actions.[21] This makes it all the more difficult to take action at the ballot box, and elected officials understand that this is the case.

As the enormous number of condemnations for private development reveals, the political process surrounding individual development projects favors the abusers of eminent domain, not its victims. The bottom line is that individual rights should not be subject to the whim of the majority. Citizens should not be required to vindicate their property rights—before courts or city councils—when government does not have the constitutional or moral authority to take land in the first place.

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19 Clay Barbour, "Sunset Hills Board Kills Troubled Project, Shopping Center Developer Novus Misled the City, Mayor Says," *St. Louis Post-Dispatch*, Feb. 15, 2006, at B1.

20 Kathy Tripp (Sunset Hills, Mo. homeowner), *Telephone interview conducted by Justin Gelfand,* Dec. 2005; Lori Vendetti (Long Branch, N.J. homeowner), *Telephone interview conducted by Justin Gelfand,* Oct. 17, 2005.

21 Clay Barbour, "Sunset Hills Board Kills Troubled Project, Shopping Center Developer Novus Misled the City, Mayor Says," *St. Louis Post-Dispatch*, Feb. 15, 2006, at B1.

MYTH:

Economic development requires eminent domain.

REALITY:

Throughout the United States, economic development happens every day without eminent domain. Walt Disney constructed Disney World without condemning or threatening to condemn a single piece of property.[22] The Rouse Company created an entirely new city from scratch in Howard County, Md., purchasing more than 15,000 acres from 140 different owners in 1963.[23] The Commonwealth Development Group assembled 21 separate parcels of land in Providence, R.I., and built an enormous shopping center that is now a vibrant commercial hotspot that created jobs and tax revenue.[24] In Las Vegas, Nev., Focus Property Group created a 3,000-acre community called Mountain's Edge without eminent domain that is often touted by development professionals.[25] Seattle redeveloped part of its downtown in 1996 through private negotiation, not public force. City officials and developers worked together to create more than one million square feet of new retail space, generating a 15.8 percent increase in taxable sales and a 4.4 percent increase in retail jobs, without threatening or using eminent domain.[26] Also, construction in Utah—where redevelopment agencies have been forbidden from using eminent domain since March of 2005—is booming. The value of construction there last year was $6.5 billion, exceeding 2004's mark of $5.1 billion by 28.7 percent.[27] And the list goes on and on.

John Norquist, the former mayor of Milwaukee and president of the Congress for the New Urbanism, notes, "The economy of this country was built by the private sector. Though government has at times played an important role in facilitating development, it has been the actions of the private sector that have assembled and cleared the land, and built

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22 Roger Pilon, Kelo v. City of New London *U.S. Supreme Court Decision and Strengthening the Ownership of Private Property Act of 2005: Hearing on H.R. 3405 Before the House Comm. on Agric*., 109th Cong. 59 (2005) (statement of Roger Pilon, Vice President for Legal Affairs, Cato Institute).

23 Howard Gillette Jr., "Assessing James Rouse's Role in American City Planning; Real Estate Developer," *Journal of the American Planning Association*, Mar. 22, 1999.

24 *See* Brief *Amicus Curiae* of John Norquist, President, Congress for the New Urbanism in Support of Petitioners, *Kelo v. City of New London*, 125 S. Ct. 2655 (2005) (No. 04-108), available at http://www.ij.org/kelo (June 2, 2006).

25 "Mountain's Edge Outpaces Sales of All Other Master Planned Communities in Southern Nevada; Mountain's Edge Reports 1,230 New Home Sales," *PR Newswire US*, June 30, 2005. *See also* Brief *Amicus Curiae* of John Norquist, President, Congress for the New Urbanism in Support of Petitioners at 21, *Kelo v. City of New London*, 125 S. Ct. 2655 (2005), available at http://www.ij.org/kelo (June 2, 2006).

26 Mark Brnovich, "Condemning Condemnation: Alternatives to Eminent Domain," *Goldwater Institute Policy Report*, June 14, 2004, at 6–8.

27 Diane S. Gillam and Francis X. Lilly, "Construction in Utah Shatters Records in 2005," in *Bureau of Economic and Business Research Utah Construction Report*, Oct.-Nov.-Dec. 2005, vol. 48(4):1.

"The private sector is very effective at assembling properties for economic development without the use of eminent domain."

the factories, businesses and homes which have created the economic foundation of local economies."[28]

There are many ways in which cities and developers can improve the aesthetics of a given area, attract private enterprise and even facilitate infrastructure improvements to generate taxes and jobs—none of which require forcibly transferring property from one person to another. These include economic development districts, tax incentives, bonding, tax increment financing, Main Street programs, infrastructure improvements, relaxed or expedited permitting, and small grants and loans for façade improvements.[29]

At the same time, projects that use eminent domain often fail to live up to their promises, and they impose tremendous costs (both social and economic) in the form of lost communities, uprooted families and destroyed small businesses.[30] For example, city officials in Mesa, Ariz., are still debating what to do with 30 acres of land that sit vacant thanks to a failed redevelopment project that began in 1992; now known as "Redevelopment Site 17," the tract once contained 63 homes that the city condemned and bulldozed.[31]

The private sector is very effective at assembling properties for economic development without the use of eminent domain.[32] The remaining defenders of eminent domain abuse argue that Americans must choose between private property rights and economic growth. Fortunately, the evidence is clear and compelling—Americans can have both.

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28 Brief *Amicus Curiae* of John Norquist, President, Congress for the New Urbanism in Support of Petitioners at 4, *Kelo v. City of New London*, 125 S. Ct. 2655 (2005), available at http://www.ij.org/kelo (June 2, 2006).

29 *See* Brief *Amicus Curiae* of John Norquist, President, Congress for the New Urbanism in Support of Petitioners, *Kelo v. City of New London*, 125 S. Ct. 2655 (2005) (No. 04-108); Brief of the Goldwater Institute, Bluegrass Institute for Public Policy Solutions, Center of the American Experiment, Commonwealth Foundation for Public Policy Alternatives, Ethan Allen Institute, Evergreen Freedom Foundation, Mackinac Center for Public Policy, and National Taxpayers Union as *Amici Curiae* in Support of Petitioners, *Kelo v. City of New London*, 125 S. Ct. 2655 (2005) (No. 04-108), both available at http://www.ij.org/kelo (June 2, 2006).

30 Brief *Amica Curiae* of Jane Jacobs in Support of Petitioners at 13, *Kelo v. City of New London*, 125 S. Ct. 2655 (2005), available at www.ij.org/kelo (June 2, 2006).

31 Paul Green, "Eminent Domain: Mesa Flexes a Tyrannous Muscle," *East Valley Tribune*, Sept. 2, 2001; Robert Robb, "Count on City-Driven Project to Fail," *Arizona Republic*, Sept. 21, 2001, at 9B.

32 *See* Brief *Amicus Curiae* of John Norquist, President, Congress for the New Urbanism in Support of Petitioners, *Kelo v. City of New London*, 125 S. Ct. 2655 (2005), available at www.ij.org/kelo (June 2, 2006).

MYTH:

Eminent domain for private development fosters economic growth and cures "blight."

REALITY:

Proponents of eminent domain for private development who make this claim ignore two important facts. First, eminent domain for private development often thwarts, rather than helps, economic growth. Second, the "blight" that proponents are talking about is actually a broad term that could describe practically any neighborhood in the country.

Scottsdale, Ariz., is an example of how eminent domain abuse harms economic development. It stonewalled $2 billion of successful redevelopment for years by threatening eminent domain. In 1993, the City designated four redevelopment areas, setting the groundwork for eminent domain abuse. When the City removed two of these designations, it reported an influx of billions of dollars. Areas that at one time were thought to need governmental interference have seen unprecedented prosperity and revitalization once the specter of eminent domain was lifted. Money poured in only after Scottsdale removed the threat of eminent domain.[33]

Furthermore, there are a number of instances across the nation where cities condemned private property for economic development, bulldozed them, and then the private developer backed off from the project. These include projects in cities such as Mesa, Ariz.,[34] Indio, Calif.,[35] and West Palm Beach, Fla.,[36] all of which are still trying to figure out what to do with plots of land that remain vacant because they seized and bulldozed homes and businesses with a promise of redevelopment that never materialized.

Additionally, redevelopment laws are often written with broad and sweeping definitions of "blight," thereby allowing cities to condemn perfectly fine homes and thriving small businesses. In many states, property can be designated as "blighted" because of "obsolescence"—a term that can mean that a home does not have a two-car garage, two full bathrooms, or three bedrooms. Indeed, in Lakewood, Ohio, the City government claimed that all of these things were conditions of "blight."[37]

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33 Ryan Gabrielson, "Council Ends 'Bad Idea' Unanimously," *East Valley Tribune*, Oct. 5, 2005, at 23; Casey Newton, "Scottsdale Plans to End Redevelopment Designation," *The Arizona Republic*, Oct. 4, 2005, at 4B.

34 Paul Green, "Eminent Domain: Mesa Flexes a Tyrannous Muscle," *East Valley Tribune*, Sept. 2, 2001; Robert Robb, "Count on City-Driven Project to Fail," *Arizona Republic*, Sept. 21, 2001, at 9B.

35 Xochitl Pena, "Mall Makeover in Indio's Future," *Desert Sun (Palm Springs, CA)*, Nov. 15, 2004, at 4R; Xochitl Pena, "City Piecing Together Fashion Mall," *Desert Sun (Palm Springs, CA)*, Apr. 15, 2005, at 1B.

36 Thomas R. Collins, "Evicted Homeowners Feel Betrayed over Failed Project," *Palm Beach Post*, Mar. 15, 2005, at 1A.

37 The vague term "obsolescence" appears in redevelopment laws across the country. *See, e.g.*, Idaho Code § 50-2903 (8)(a) (2006) (definition of "deteriorated area"); W. Va. Code § 16-18-3(j)

"Areas that at one time were thought to need governmental interference have seen unprecedented prosperity and revitalization once the specter of eminent domain is lifted."

Properties can also be designated as blighted because a neighborhood has "diversity of ownership" (i.e., many different people own their own homes)[38] or because a bureaucrat thinks that a home's yard is too small.[39]

Some laws even give redevelopment authorities the power to take private property that is not blighted, but may at some unknown point in the distant future, become "blighted" (under an expansive and vague definition of that term).[40]

(2006) (definition of "slum area"); Ky. Rev. Stat. Ann. § 99.340(1) (2006) (definition of "slum area"); Tenn. Code Ann. § 13-20-201(a) (2005). For more information on the abuse of eminent domain in Lakewood, Ohio, see *Institute for Justice Backgrounder: Lakewood, OH, Eminent Domain;* Saleet v. City of Lakewood, available at www.ij.org/private_property/lakewood/index.html (June 2, 2006); *see also 60 Minutes: Eminent Domain; Government Forcing People from Their Private Property to Make Way for Redevelopment*, (CBS television broadcast, Sept. 28, 2003).

38 The term "diversity of ownership" frequently shows up in redevelopment laws. *See, e.g.*, A.R.S. § 36-1471.2(e) (2006); W. Va. Code § 16-18-3(k) (2006); Ky. Rev. Stat. Ann. § 99.340(2) (2006); Idaho Code § 50-2903 (8)(b) (2006) (definition of "deteriorated area").

39 *See, e.g.*, Wash. Rev. Code § 35.81.015(2) (2006) ("excessive lot coverage"); A.R.S. § 36-1471.2(b) (2006) (faulty lot layout in relation to size, adequacy, etc.); Ky. Rev. Stat. Ann. § 99.340(2) (2006) (faulty lot layout due to size, use, etc.).

40 *See, e.g.*, R.S.Mo. § 99.805(3) (2005) (definition of "conservation area"); Va. Code Ann. § 36-49(2) (2005) (describing power of an authority to acquire property in a "redevelopment project").

MYTH:

Without the tool of eminent domain, developers will not be able to assemble large tracts of land.

"If property ownership means anything at all, people should not have their property taken by the government and handed over to somebody else for their private use."

REALITY:

It is certainly possible to assemble large tracts of land in urban and rural areas without taking them by eminent domain. Indeed, as John Norquist, former Mayor of Milwaukee and now President of the Congress for the New Urbanism, notes, "In metropolitan areas, significant land assembly efforts are often necessary for major real estate development, but the private sector does this well."[41]

Often, treating homeowners with respect and offering them the right price is enough to purchase their property—even without the ability to threaten or use eminent domain. People are more willing to negotiate when they do not feel like they are under siege. Also, there is nothing to stop developers from including existing homes and businesses in the blueprints of their plans. A major downtown urban development in the heart of Washington, D.C., is doing just that: incorporating an existing home in the project by simply building around it.[42] Furthermore, as noted above, developers in urban areas such as downtown Seattle, Wash., and Providence, R.I., successfully acquired large tracts of land for their respective private commercial development projects without eminent domain. In the mid-1980s, two developers in West Palm Beach, Fla., discreetly assembled 26 contiguous blocks of a run-down inner city area by buying over 300 separate parcels of land from 240 different owners. Only nine months later, they broke ground on a major shopping center now known as CityPlace. It is still a vibrant urban district, bustling with retail, dining and entertainment establishments.[43]

On the other hand, there is absolutely nothing wrong with piecemeal or infill development. That is how the vast majority of America was developed, and it is a much better way to keep the character and uniqueness of a given neighborhood.[44] Developers should not complain that without the government's power of eminent domain, they might not always be able to do exactly what they want (in fact, some developers lose their land to other developers precisely because of that argument[45]). If property ownership means anything at all, people should not have their property taken by the government and handed over to others for their private uses.

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41 *See* Brief *Amicus Curiae* of John Norquist, President, Congress for New Urbanism in Support of Petitioners at 5, *Kelo v. City of New London*, 125 S. Ct. 2655 (2005), available at www.ij.org/kelo (June 2, 2006).

42 Lindsay Layton, "A Solitary Stand at the Precipice; D.C. Architect Refused to Sell to Developers, Who Simply Press on Around Him," *Washington Post*, May 3, 2006, at A1.

43 Johanna Marmon, "Urban Renewal-West Palm Beach," *South Florida CEO*, May 2002, available at http://www.findarticles.com/p/articles/mi_m0OQD/is_ 4_5/ai_100500854; *See* Brief *Amicus Curiae* of John Norquist, President, Congress for the New Urbanism in Support of Petitioners at 6, *Kelo v. City of New London*, 125 S. Ct. 2655 (2005), available at www.ij.org/kelo (June 2, 2006).

44 Jane Jacobs, *The Death and Life of Great American Cities* (Random House 1961).

45 *Hannity and Colmes: New Jersey Town Threatens to Take Land from Owner for Townhouses*, (Fox News Network television broadcast, Nov. 4, 2005).

MYTH:

Eminent domain abuse is not a big problem.

"The U.S. Supreme Court's decision in Kelo v. City of New London *leaves every home, business and place of worship across the nation vulnerable to condemnation; any home can generate more taxes as a nicer home or business, and any small business can produce more tax-revenue and create greater job-growth as a big-box store."*

REALITY:

In just a five-year period (1998-2002), the Institute for Justice documented more than 10,000 instances of eminent domain for private gain—and that is just the tip of the iceberg.[46] Since then, the floodgates to eminent domain abuse have been thrown open, and the Institute for Justice is currently working to document even more threatened and filed condemnations for private profit. In just the eleven months since the U.S. Supreme Court decided *Kelo v. City of New London*, more than 5,000 properties have either been condemned or threatened with condemnation for private use.[47]

The U.S. Supreme Court's decision in *Kelo v. City of New London* leaves every home, business and place of worship across the nation vulnerable to condemnation; any home can generate more taxes as a nicer home or business, and any small business can produce more tax-revenue and create greater job-growth as a big-box store. As Justice O'Connor explained in her dissenting opinion in *Kelo*, no home, no small business, no farm and no house of worship is safe if "jobs" and "taxes" are justification enough for their taking.[48]

Legislative reform, at both the state and federal level, is necessary to protect American home and business owners from the abuse of eminent domain.

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46 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 2, 2006).

47 Dana Berliner, *Opening the Floodgates: Eminent Domain Abuse in the Post*-Kelo *World* (2006), available at http://www.castlecoalition.org/floodgates (June 20, 2006).

48 *Kelo v. City of New London*, 125 S. Ct. 2655, 2676 (2005) (O'Connor, J., dissenting).

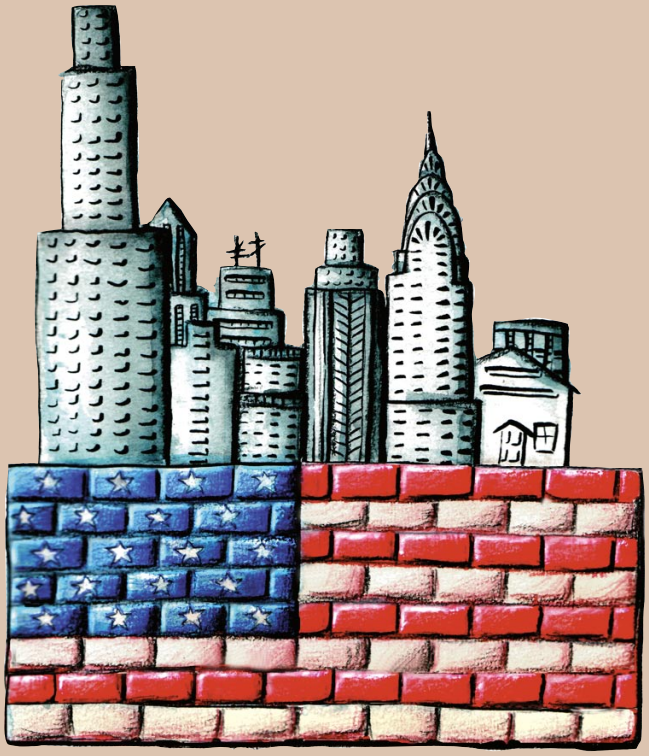
PERSPECTIVES
on Eminent Domain Abuse

Volume 2

Development Without Eminent Domain

Foundation of Freedom Inspires Urban Growth

by Curt Pringle
Mayor of the City of Anaheim



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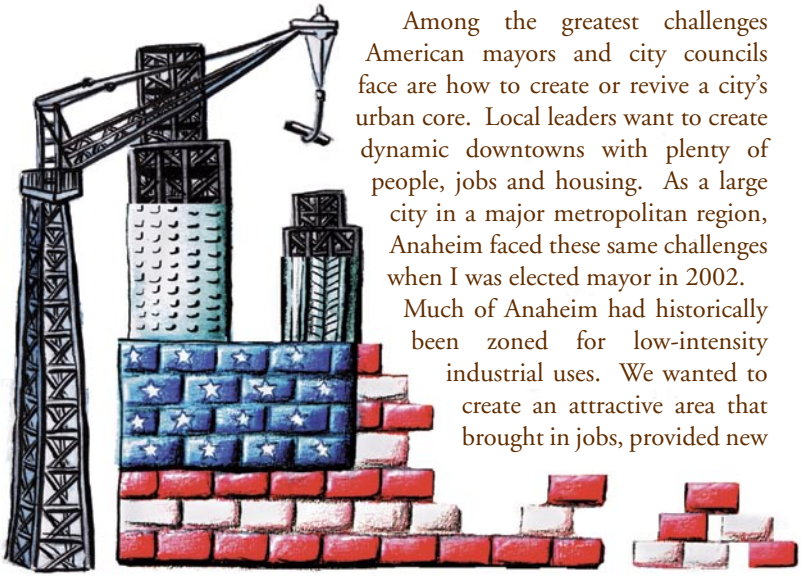
by Curt Pringle
Mayor of the City of Anaheim



Among the greatest challenges American mayors and city councils face are how to create or revive a city's urban core. Local leaders want to create dynamic downtowns with plenty of people, jobs and housing. As a large city in a major metropolitan region, Anaheim faced these same challenges when I was elected mayor in 2002.

Much of Anaheim had historically been zoned for low-intensity industrial uses. We wanted to create an attractive area that brought in jobs, provided new housing for residents of different economic levels, and gave our tourists yet another reason to spend more time in our city. As we looked around the city, we saw an area around Anaheim's Angel Stadium that could be turned into a new, vibrant neighborhood with housing, retail shops and restaurants that would both benefit from and support the stadium and the Arrowhead Pond of Anaheim, where the National Hockey League's Anaheim Ducks play. We wanted to turn this area into a new destination: the "Platinum Triangle."

When faced with a major redevelopment project, many local governments use eminent domain—government's legal power to seize private property for a purportedly public purpose, even over the objections of the property owner. The Anaheim City Council made an early decision not to use eminent domain in

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This paper describes how Anaheim's leadership brought economic vibrancy to this area without resorting to any takings of private property. It also explores the successes and failures of other cities around the nation in economic redevelopment.

Economic Development in Today's American City

Very often, as city leaders think about ways to develop or revive their urban core, the debate quickly turns to questions about the government's authority to take property, zone land or otherwise define land use. Some urban infill advocates question if development can really occur without the government taking property through its eminent domain powers. Without eminent domain, they ask, can first-ring suburbs compete with outlying suburbs?

In Anaheim, my City Council colleagues and I decided that we would not agree to any development plan that proposed the use of eminent domain. We believed strongly that any economic development needed to happen without the government violating the private property rights of our residents and business owners.

However, for some city leaders and urban planners, urban renewal seems inseparable from the use of eminent domain.

For example, when the *Kelo v. City of New London* decision came down from the U.S. Supreme Court in June 2005, Bart Peterson, the mayor of Indianapolis (who serves as president of the National League of Cities) said:

> "I think the rebirth of American cities over the last several decades is due to these kinds of urban revitalization efforts that really would be brought to a halt if eminent domain couldn't go forward."[1]

The big question many planners ask is: How can a major city achieve the goals I describe without taking private property?

The answer is two-fold. First, local officials need to make a commitment to honor private property rights and acknowledge the destructive power of eminent domain. It is amazing how acceptable, almost honorable, government takings can be made to sound.

For instance, David A. Smith, founder of the non-profit Affordable Housing Institute, describes eminent domain on his web log in this way:

> "[T]he benefits we secure through collective action *benefit largely the same individuals whose property rights we may have trimmed.* In other words, this isn't so much about redistribution—rob from the poor to give to the rich—but rather about maximizing aggregate value. It's not altruism, it's synergy: the positive-sum-game arising from a well-diversified community."[2]

"Synergy" might be a nice, new age way to describe the violation of another party's private property rights, but it doesn't make the decision to forcibly acquire private property the right thing to do. Many local governments are abusing their eminent domain powers, but property shouldn't be seized for any reason, including for good or honorable ones like affordable housing.

John Revelli, owner of Revelli Tires in Oakland, no doubt thought that his 56-year-old auto business

contributed to the city's economy, but local leaders thought otherwise. A week after the *Kelo* case was decided, a team of contractors hired by Oakland packed up Revelli's shop and evicted him from his property. Oakland seized the tire store and another neighboring auto business to make way for a city-subsidized development that will include apartments, condominiums and an expansion of the nearby Sears department store—which will include a tire shop. City officials defended their action by saying that they had offered "fair compensation" for the property and that the development was "good for all of Oakland."[3]

The fact is, however, that eminent domain is the easy path to redevelopment. If local officials put more effort and thought into how to accomplish their planning goals without relying on this "tool," they'd find that urban development could occur *without* eminent domain.

Some may ask: If eminent domain isn't the answer, what tool should cities use to stimulate economic development? The answer is simple: market forces. If local officials regularly made zoning requirements more flexible and acknowledged market principles, new projects could move forward without taking away rights from existing landowners.

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Anaheim's Platinum Triangle: Urban Infill Without Eminent Domain

The Platinum Triangle, the new urban district around Angel Stadium, was developed to respond to market demand for higher density housing. Given this area's proximity to Anaheim's sports and entertainment, and the region's Metrolink commuter rail line, we thought that this area could become a downtown for all of Orange County.

Although this section of the city was considered underutilized in terms of density and function, it was not a neighborhood that our City Council would declare to be blighted. However, because of its haphazard layout and less-than-chic industrial use, other local governments might have attempted to have this area labeled as blighted under California law and condemned the land within the area's boundaries. Our city's commitment to creating new economic development without using eminent domain kept the area from being designated as blighted.

A-Town, a 40.6-acre mixed-use development of urban towers, flats and townhouses.

Early on in the process, city leaders determined that the city and the property owners could benefit if the area was considered for mixed-use development due to its proximity to Angel Stadium of Anaheim, Arrowhead Pond of Anaheim, the Anaheim Convention Center, the nearby Disneyland Resort, and area jobs, freeways and mass transit. So we conceived a plan that would allow the city to change the character of the district without infringing on the property rights of the existing landowners.

To begin, we wanted to address issues that affected everyone in Anaheim, such as providing more housing and employment opportunities in the city, responding to market demand for higher density housing and, capitalizing on the assets, we had to create an exceptional urban neighborhood within the city limits.

The City Council identified a few criteria for the plan:

- First, private property owners should drive development within the Platinum Triangle. There would be no subsidies or other public incentives to achieve development goals.
- Second, new mixed-use developments could not turn existing properties into non-conforming uses or buildings. Property owners would still retain the rights to develop and use property pursuant to existing zoning.
- Third, recognizing that the area was composed of dozens of individually owned parcels, the private sector would have to assemble parcels if larger sites were to be developed. The city would not use eminent domain to acquire property.

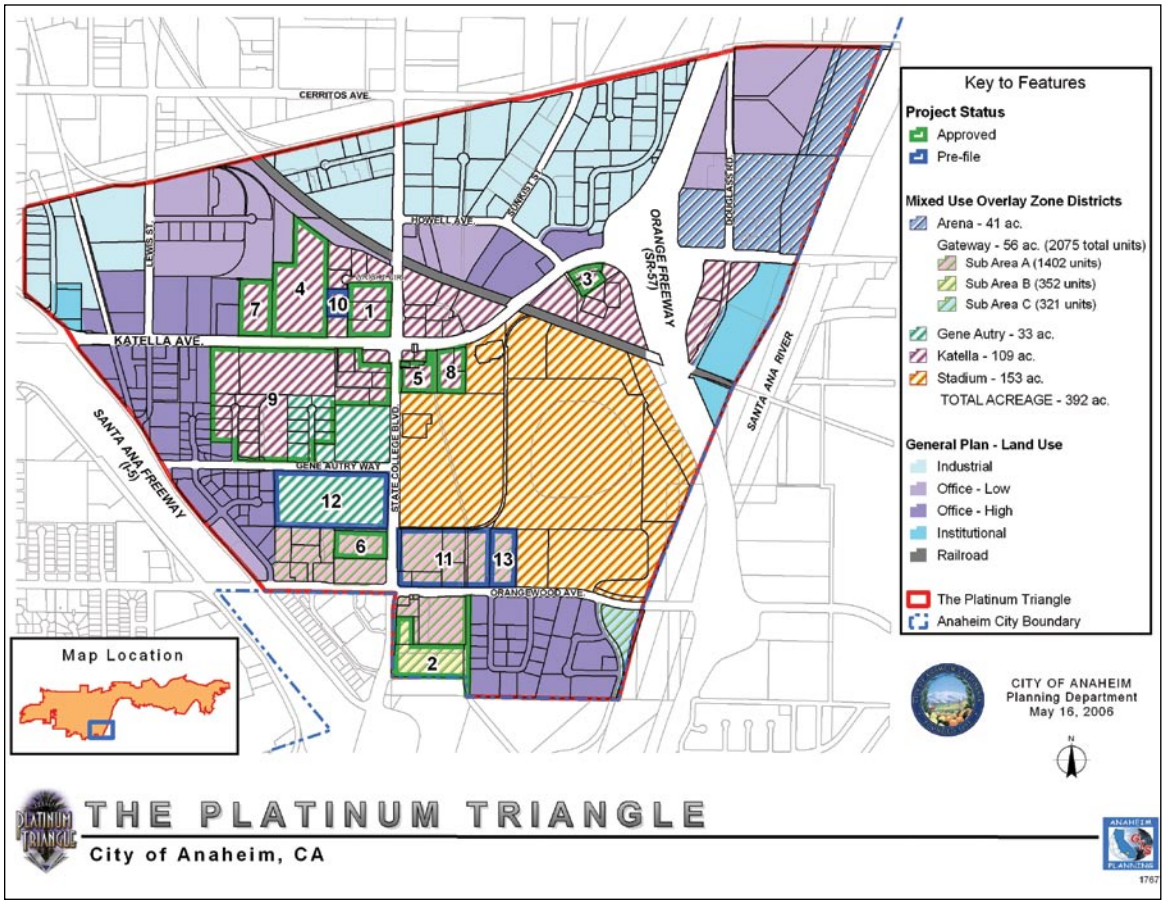
Many cities are building sports venues within an urban area. But in the Platinum Triangle, we wanted to encourage development of an urban center around existing sports and entertainment venues. City officials "set the table" for development by creating an overlay zone when amending the state-required General Plan, as well as adopting a standard development agreement and providing environmental clearance for development.

The 2100 at Platinum Triangle development contains a combination of residential, restaurant and retail features.

Overlay Zone

We knew what we wanted to accomplish in the area we were targeting, but we did not want to force any existing property owners out. As a result, when the city's General Plan was updated, we decided to create an overlay zone in this specific area of our community. Previously, this area was zoned light industrial, which meant that only industrial uses were permitted. The city decided to add a second layer of allowable land use, called an "overlay zone," so that the existing property owners could pursue residential and commercial uses on their parcels while protecting their underlying land use designation.

With the new plan, we created a situation that allowed existing light industrial property owners to exist as before. But if any developer wanted to take advantage of the new development opportunities, they would need to adhere to the new standards set by the overlay zone. So, in Anaheim's case, our light industrial property owners were free to continue their business activities, even if they chose to expand their business or its operation. But if they or future owners wanted to develop retail or high density housing on the site, then they were bound to new zoning requirements, which we called an "opportunity zone."



Overview of Platinum Triangle development area.

Easier Permitting

We streamlined the permitting process for the entire area—including environmental impact requirements—while protecting property rights for the existing landowners. For example, the city created a development agreement that detailed particular points of agreement between the city and each developer regarding land use infrastructure: who pays for what in terms of street improvements, fees, traffic signals, etc. This agreement greatly assisted the applicant in streamlining an often-cumbersome process with the planning department.

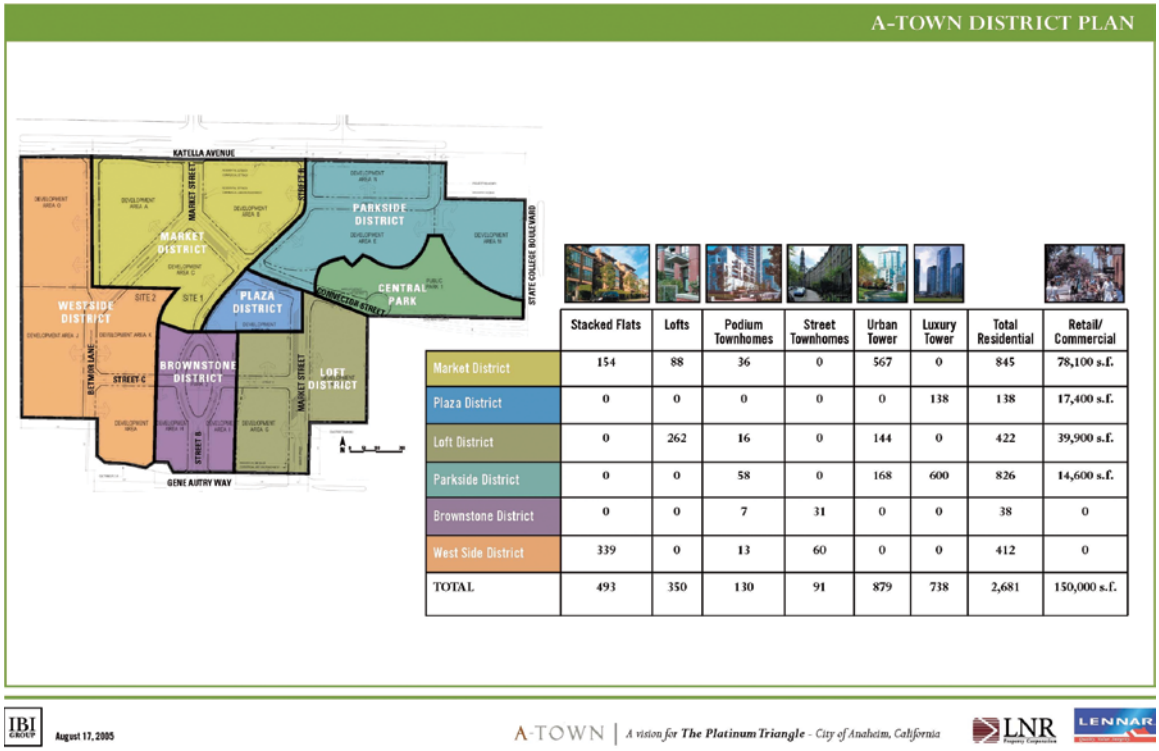
The goal was to create incentives for development without using the heavy hand of government to dictate what the result would be.

First-Come, First-Served Permits

In creating the overlay zone, the city established the maximum density that the Platinum Triangle could support. Limited by existing infrastructure, like sewer and road capacity, the city determined the area could support 9,500 housing units, 2.2 million square feet of new commercial uses, and 5 million square feet of new office development.

We wanted to create as much housing as we could, so through zoning, we created five mixed-use development districts where housing could be built, abandoning the traditional zoning model where each parcel has a defined maximum density. Within each of these districts, housing permits were provided en masse, not parcel-by-parcel.

So for example, the Gene Autry district, an area of approximately 33 acres, was allotted 1,000 housing



	Stacked Flats	Lofts	Podium Townhomes	Street Townhomes	Urban Tower	Luxury Tower	Total Residential	Retail/ Commercial
Market District	154	88	36	0	567	0	845	78,100 s.f.
Plaza District	0	0	0	0	0	138	138	17,400 s.f.
Loft District	0	262	16	0	144	0	422	39,900 s.f.
Parkside District	0	0	58	0	168	600	826	14,600 s.f.
Brownstone District	0	0	7	31	0	0	38	0
West Side District	339	0	13	60	0	0	412	0
TOTAL	493	350	130	91	879	738	2,681	150,000 s.f.

Lennar's A-Town Metro will contain two parks, nearly 2700 residential units and more than 200,000 square feet of commercial and retail space on more than 40 acres.

units. These units were then available to a developer on a first-come, first-served basis. As these units were used, no additional housing units could be built in the area.

Broad-based EIR

In creating this overlay zone as part of our General Plan update, the city then took the responsibility of processing the environmental impact report on the revised plan. Under state law in California, an Environmental Impact Report (EIR) is required to be prepared for each individual development, outlining the impacts a particular project would have on its existing surroundings. Often, EIRs can both tremendously slow the pace of a development, as well as increase the costs. Under Anaheim's approach, a broad-based EIR was reviewed and approved, saving future developments from having to prepare parcel-by-parcel EIRs.

Reduced Building Requirements

We looked for ways to reduce regulations and government requirements throughout the development process. The goal was to create incentives for development without using the heavy hand of government to dictate what the result would be.

For example, the city lowered the minimum number of parking spaces for residential development in this area, compared to other developments within the city. In addition, developers of mixed-use projects are permitted to submit a parking study to justify further reductions in parking and/or request the use of on-street parking, shared parking, valet parking or tandem parking.

Furthermore, the city did not dictate the balance between commercial and housing development within the project. Instead, the plan targeted a few areas where ground floor commercial uses are required; however, commercial uses are permitted anywhere

The 2100 at Platinum Triangle development includes 251 residential units.

within the mixed-use overlay area. For instance, an important place-making element of the Platinum Triangle is "Market Street," a pedestrian-friendly mixed-use shopping district where ground floor uses are required along a tree-lined street scaled to provide a comfortable environment for strolling, shopping and outdoor dining.

Also, there are no inclusionary zoning or other low-income housing requirements included in the development plans.

Resulting Economic Development

As a result of this streamlined process and these market-driven incentives, the area became even more attractive to developers. In some cases, property values more than quadrupled within 18 months after the new zoning was in place (in other words, the city rezoned in order to meet market demands).

Within the overlay zone, which was passed by the Anaheim City Council in August 2004, development plans by private firms were in place for nearly three-fourths of the 9,500 available units within 15 months. Eleven separate developers sought and received city approval, purchased land from private property owners, and commenced their planning and development of

The Mayor and GM promised the new plant would create more than 6,000 jobs, but by 1988, the plant employed only 2,500 people. Analyst Ilya Somin estimates that the destruction of the neighborhood probably resulted in a net job *loss*.

The 2100 at Platinum Triangle development is built on a 3.5-acre footprint.

the area within the first year after the approval of the Platinum Triangle overlay zone.

The developer with the largest presence in the Platinum Triangle is Lennar Communities. They are moving forward with two separate projects in this area. One project, known as A-Town, has more than 2,600 residential units and 229,000 square feet of commercial/retail space. All this activitiy will take place in a variety of building types, but this project alone may include more than ten 20-story residential towers.

While many owners decided to redevelop or sell their properties, other small businesses have decided to stay where they are, which is exactly what our plan allows them to do—keep their businesses without the threat of eminent domain.

Prior to the creation of the overlay zone, Lennar owned no property in the area. Upon the establishment of the zone, they purchased approximately 30 properties (over 50 acres), all from private property owners, at market price, without government involvement.

With the flexibility the city provided, the area is blossoming with more economic activity than ever imagined. And today, as housing and commercial uses move forward, there has been an increased demand for more intense high-end office space.

While many owners decided to redevelop or sell their properties, other small businesses have decided to stay where they are, which is exactly what our plan allows them to do—keep their businesses without the threat of eminent domain. For example, adjacent to the Lennar A-Town development, one low-rise industrial building remains. This business owner, who chose not to sell to Lennar and will remain in the area, will soon have towering 20-story residential buildings nearby. The business owner is in charge of the destiny of his business—keep its doors open and operate as it has in the past, existing peacefully with the new development in the area, or perhaps choose to sell his property down the road. But it is the business owner's decision—not the city's—whether the business stays in the Platinum Triangle area over the long term or not.

All of this development occurred without the city putting any pressure on any landowners to sell their property. The development of private properties has been completely at the discretion of the individual property owners. Not only did the city not use the formal power of eminent domain to take property, there was no subtle use of the power local governments possess to make business and property ownership difficult. Anaheim put the policies and regulations in place that we thought would help bring new activity to the area, streamlined permitting processes and requirements, and have then excitedly watched as the private sector responded. To date, the private sector has invested billions of dollars in the Platinum Triangle, which includes more than 7,000 homes and a wide variety of restaurants and retail space.

Eminent domain isn't the key to economic development

The U.S. Supreme Court's decision in *Kelo v. City of New London* has emboldened local governments to use eminent domain on behalf of the private sector simply to increase tax revenues and speed up the pace of developments.

Government has a role to play in easing restrictions and streamlining development. But helping a private company obtain property through the use of eminent domain is an inappropriate use of government power.

Any elected official in a city that has any amount of economic activity has likely been approached by a

private sector company that wanted the city to invoke eminent domain just to speed things up or simplify the project's development. How ironic it is then that many of the officials that will agree to use eminent domain for tax revenue purposes are the same ones who clutter up the development process with layers of rules and regulations, fees and approval hurdles.

The common mistake city officials make when they try to create new jobs and revive failing areas of their cities is to try to act as both government and the private sector. While planning has a place in local government today, too many government officials want to dictate how and where development takes place. Sadly many of these grand plans fail.

In the 1980s, the leaders of Anaheim attempted to revitalize the downtown area by assembling parcels and trying to act in place of the private sector. Millions of dollars were spent and eminent domain was used to assemble large super blocks of property. However, the area never blossomed into the economic powerhouse city officials envisioned.

Anaheim isn't the only city to fail at using the power of government to try to dictate development. Mesa, Ariz., condemned 30 acres of land as part of a redevelopment project that began in 1992 and cleared 63 homes (costing the taxpayers $6 million) only to have the land sit vacant when the developer couldn't line up financing.[4]

Like any private development, projects that rely on the government's use of eminent domain for economic development are not guaranteed to succeed—but if they fail, far more is lost than if the city had not pursued the project through government force. As John Norquist, president of the Congress for the New Urbanism, observed on NewsHour with Jim Lehrer on June 24, 2005:

> "…[T]here's empty lots all over urban sites in America where cities have condemned land and then it just sits there idle. Assembling parcels, tearing out the fabric of the city and creating super blocks has been a strategy for economic failure."

For example, in 1973, Chicago city officials determined that the vibrant "Block 37" needed to be redeveloped, so it condemned and cleared the largely profitable block of neighborhood businesses. It took five mayoral administrations for the city to sell the land to private developers, for only 33 cents on the dollar.[5] In California, Costa Mesa's Triangle Square Mall was built over a decade ago with a loan from the city and the use of eminent domain to clear out existing businesses. The mall brought in $200,000 for the city in 2004—far less than the $1 million they anticipated.[6] The retail center now sits largely vacant, and many of the anchor tenants have left. Former Mayor Sandra Genis said, "If the market was there, it would have happened on its own."[7]

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Most famously, in 1981 the Michigan Supreme Court authorized the city of Detroit to seize and bulldoze Poletown, a historic and racially diverse neighborhood, so General Motors could build an auto plant. GM paid $8 million for the property, while the city paid more than $200 million for acquisitions and preparation. The mayor and GM promised the new plant would create more than 6,000 jobs, but by 1988, the plant employed only 2,500 people. Analyst Ilya Somin estimates that the destruction of the neighborhood probably resulted in a net job *loss*.[8]

One of the most common abuses of eminent domain at the hands of local officials is designating areas as "blighted" when they do not meet the criteria necessary for such a designation. Not only does the "blight" label reduce property values, but many times the area is not blighted at all—officials simply want to use some of the many tools given to them by state and federal laws and regulations when a neighborhood is designated as blighted.

Ahmad Mesdaq's "blighted" business is now destroyed.

By 2003, Mesdaq had invested millions and established a thriving neighborhood business that supported his entire family. But the city claimed it was in a blighted area, so in April 2004, it voted to condemn Mesdaq's building for a Marriott hotel .... The land is now being used as nothing more than a parking lot.

Just south of Anaheim, in San Diego, the City Council voted to condemn Ahmad Mesdaq's popular and successful Gran Havana Cigar Factory for a hotel chain. Mesdaq opened the elegant cigar and coffee lounge in 1994, and in 2002 purchased and renovated an 8,000-square-foot building on the corner of Fifth Avenue and J Street. By 2003, Mesdaq had invested millions and established a thriving neighborhood business that supported his entire family. But the city claimed it was in a blighted area, so in April 2004, it voted to condemn Mesdaq's building for a Marriott hotel. The courts upheld the condemnation and ordered him to vacate in June 2005. The building was demolished, but the land is now being used as nothing more than a parking lot.[9]

In northern California, the city of Hercules invoked the power of eminent domain to stop Wal-Mart from developing a store there. While the giant retailer had complied with city design requests (cutting a proposed 142,000 square foot store to a 99,000 square foot and making aesthetic changes) the city nevertheless commissioned a study to fight the development. The study showed that the store would attract lower-income people than those living in Hercules. As the city's vice mayor told the *San Francisco Chronicle*, "The city of Hercules is very unique. People from the outside have to understand that."[10]

The area Wal-Mart wants to develop could not reasonably be described as blighted. The action by the city council clearly abused the city's eminent domain

powers and will be challenged in court by Wal-Mart. As the *Contra Costa Times* pointed out in an editorial criticizing the city's move, "If Hercules does not want a huge retail outlet such as Wal-Mart at the future Bayside Marketplace, it need not have one. City officials can easily deny a permit for a store larger than 64,000 square feet."[11]

Although Wal-Mart was the victim in Hercules, there are times when Wal-Mart and other large retailers do ask local governments to use their eminent domain powers to benefit their company's expansion plans.

Gateway Centre Condominiums (top) and Archstone Gateway Apartments (bottom) cover nearly 25 acres in the cities of Anaheim and Orange.

Cities that Did It Right

Amidst all of the horror stories about cities abusing their takings power, a few cities join Anaheim as examples of how economic development can be accomplished without eminent domain.

One well-known example is the revitalization of a portion of downtown Seattle in the early 1990s. The public and private sectors joined forces to rehabilitate the area, creating a one million-square-foot retail center, Pacific Place, that has generated a 15.8 percent increase in taxable sales and a 4.4 percent increase in retail jobs.[12] According to the amicus brief filed by the Goldwater Institute in the *Kelo* case, the developers involved in the Seattle redevelopment project acknowledged that the deal was more complicated because they did not rely on the government's use of eminent domain:

> "One of the private developers acknowledged that acquiring the property for the three-block redevelopment effort was difficult without being able to call on the power of eminent domain. However, developers instead used techniques such as land swaps, individual and corporate investments, and commitments from current property owners to make the economic redevelopment occur."[13]

In Gilbert, Ariz., the city adopted a policy of purchasing land from voluntary sellers instead of using eminent domain. In one instance, the city spent $1.4 million to purchase and demolish a downtown apartment complex.[14] (This example is not made to support government entities using taxpayer dollars to purchase private property as a way to bring about economic redevelopment; rather it is simply to point out that such redevelopment was accomplished without eminent domain.)

In 2005, the Mormon Church and a Mormon developer quietly purchased 23 homes in the area around the original town square in Mesa, Ariz. City leaders had been discussing redeveloping the area, but developer Dennis T. Barney beat them to it. He purchased 21 of the homes and refurbished them. The city's Mormon Temple is located nearby and there are plans to create a "gateway to the temple" with some of the land purchased, according to the *Arizona Republic*.[15] According to a local resident, prostitutes, drug houses and homeless people had plagued the area. Mesa Mayor Keno Hawker told the newspaper, "It's a model of how development can and is taking place in Mesa."

There is no doubt that the absence or removal of a threat of condemnation encourages economic development, chiefly because property owners and developers feel secure in their investment. Since lifting its blight designation over the city's West End in 2003,

Lakewood, Ohio, has seen more than $224 million in economic development projects and improvements.[16] After Scottsdale, Ariz., lifted its second redevelopment designation, the city reported $2 billion in private investment.[17] According to the *Arizona Republic*, "The Downtown Redevelopment Area … was intended to provide incentives for investment. But downtown business interests say property owners held off on improvements, fearing the city would condemn and take their property."[18]

Instead of condemning blighted homes and businesses, many cities work with owners to improve the appearance of their properties. In Bonita Springs, Fla., the city's building inspector has worked with qualifying property owners to restore the exteriors of their homes through a project called "Beautify Bonita." Homes that benefit from simple improvements whose owners are elderly, disabled or impoverished qualify for the program. Once a building is named for aid under this project, the city recruits volunteers to do the repairs. Community members and organizations are encouraged to make tax-deductible donations to Beautify Bonita.[19] Cities nationwide, including Bonita Springs, participate in a related program called "Paint Your Heart Out."

Helping a private company obtain property through the use of eminent domain is an inappropriate use of government power.

Stadium Towers retail center (top) and Stadium Lofts (bottom) mixed-use development.

In the Wake of *Kelo*, State and Local Governments Need to Protect Property Rights

While the high court ruled in favor of aggressive land takings for the benefit of tax revenues in the *Kelo* decision, the majority opinion left the door wide open for states to step in and grant the property rights protections the court had just abandoned.

> "We emphasize that nothing in our opinion precludes any State from placing further restrictions on its exercise of the takings power. Indeed, many States already impose 'public use' requirements that are stricter than the federal baseline."[20]

According to a new report issued by the Institute for Justice, 40 states approved measures to curb abuse of eminent domain in the wake of *Kelo*.[21] This is a significant measure of the public outrage over *Kelo* because, as Carla Main observed in *Policy Review*, "The lobbies against such bills are many and highly organized: state and local governments, real estate developers, sports franchises in search of arenas, the hotel industry, big-box retailers, and many others with an interest in seeing urban and even rural development in convenient locations through the use of economic development takings."[22] Nicole Gelinas noted in "They're Taking Away Your Property for *What*?" (*City Journal,* Summer 2005):

> "Americans are serious about the sanctity of private property because they understand that it is not only inseparable from liberty but also the foundation of prosperity."

"The threat of eminent domain puts everyone in a holding pattern. We can't get long-term funding. We don't know what will happen."

Here in California, voters narrowly rejected a statewide initiative in November 2006 aimed at stopping eminent domain abuse, largely because of the controversial regulatory takings component that was also included.[23]

Local jurisdictions can also take action. The Anaheim City Council voted to restrict the use of eminent domain powers in 2003, well before *Kelo* came before the U.S. Supreme Court. As a result, the city government cannot seize private property and give it to another property owner or entity simply to increase the city's sales or property tax revenue. Just this November, residents passed a city charter amendment to make this policy permanent. Further, in June 2006, Orange County voters approved a measure similar to the Anaheim city charter amendment.

Stadium Park Apartments and Stadium Club Condominiums (top and center) offer 771 units; Platinum Centre (bottom) offers 265.

One area that needs to be examined is how cities are applying the term "blighted." In many of the examples of cities overreaching with regards to eminent domain, it is fairly obvious that the areas that are being condemned are not what most people would think of as blighted. According to the Goldwater Institute, Arizona was one of the states that needed to narrow its definition of blight in order to protect property rights:

> "Arizona grants its municipalities a breathtakingly vague set of power under its slum clearance and redevelopment statutes. Included among these is eminent domain, which can be used to declare someone's home a slum if there is an "inadequate" street layout or lots are deemed 'faulty.' Narrowing the scope of these definitions assures homeowners that their land will be protected against creative land-grabbing schemes."[24]

Voters in that state heeded this advice and overwhelmingly passed a ballot measure changing the statutory definition of "blight" under Arizona law.

California has many examples of redevelopment agencies going "blight-happy" in order to create new economic activity in their communities. In 2002, for example, San Jose declared a third of its area as "blighted" in order to create a huge redevelopment zone. One neighborhood of Victorian and Craftsman single-family homes was deemed blighted because of wet leaves on a tennis court and visible garbage cans sitting on the curb. City residents protested loudly and city officials responded that they weren't interested in seizing private homes. They said they simply wanted to find a way to "invest in the neighborhoods." Residents objected, pointing out that they were required to disclose that their home was potentially subject to eminent domain, harming their property values.[25]

Bob Blue agrees with the concerns raised by the San Jose residents. "The threat of eminent domain puts everyone in a holding pattern. We can't get long-term funding. We don't know what will happen."[26]

Blue owns Bernard Luggage in Hollywood, California, a business his parents started in 1955. But in March 2006, Blue was notified that his business had been officially classified as blighted by the local

redevelopment agency and the area, which included about 30 other businesses, was condemned. Blue, who owns his business's building at the corner of Hollywood and Vine, was told that he had 90 days to vacate. Not surprisingly, it was discovered that this "blighted" neighborhood would soon be home to a brand-new luxury hotel and a high-end retail and housing development.[27] Thankfully, the city recently relented and Blue and his business get to remain where they are. But his story is often repeated—usually with the opposite outcome, like in the cases of Ahmad Mesdaq and John Revelli—across California.

The desire to create new jobs and more economic activity should not come at the expense of private property rights of city residents and business owners. Instead of using government powers to grab people's land, local and state government officials across the United States should find creative ways to encourage new enterprises by working with the homeowners and businesses already located in their community.

The Stadium Lofts project contains condominiums, retail and restaurant space, along with an 850-space garage on 6.3 acres.

Cities Need to Choose Freedom

When I was elected Mayor of Anaheim, I wanted to take a different approach to governing a big city. I wanted to reduce government's reach into people's lives, while at the same time improving municipal services and making it easier for people to interact with their government.

I am very proud of my city's "freedom friendly" approach to governance, but I am most proud that we took steps—well before the *Kelo* case was decided—to avoid using eminent domain in development around the city.

"Freedom" quickly became the motto of my administration. In fact, our local paper, the *Orange County Register*, dubbed Anaheim a "freedom friendly" city. In my first term as mayor, we have given homeowners a "home improvement" fee holiday, businesses a tax holiday and streamlined or eliminated a variety of city codes and regulations. We are also investing in new infrastructure—including welcoming in a private firm to provide a citywide wireless Internet system—to ensure that Anaheim remains one of America's most exciting and modern cities. I am very proud of my city's "freedom friendly" approach to governance, but I am most proud that we took steps—well before the *Kelo* case was decided—to avoid using eminent domain in development around the city.

By putting these principles in place, today Anaheim is flourishing and becoming a place where freedom is not just a phrase, but also a *practice*.

Endnotes

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About the Author

Curt Pringle has been the mayor of Anaheim, Calif., since 2002. Having previously served four terms in the California State Assembly, including serving as Speaker in 1996, Pringle is regularly sought out at the national, state and local level to speak on policy issues such as affordable housing, transportation, planning and development. He heads Curt Pringle & Associates, a public relations, governmental affairs and consulting firm and also serves as an adjunct faculty member at the University of California, Irvine. He lives in Anaheim.

About the Institute for Justice

The Institute for Justice is a non-profit, public interest law firm that litigates to secure economic liberty, school choice, private property rights, freedom of speech and other vital individual liberties and to restore constitutional limits on the power of government. Founded in 1991, IJ is the nation's only libertarian public interest law firm, pursuing cutting-edge litigation in the courts of law and in the court of public opinion on behalf of individuals whose most basic rights are denied by the government.

About the Castle Coalition

The Castle Coalition, a project of the Institute for Justice, is a nationwide network of citizen activists determined to stop the abuse of eminent domain. The Coalition helps property owners defeat private-to-private transfers of land through the use of eminent domain by providing activists around the country with grassroots tools, strategies and resources. Through its membership network and training workshops, the Castle Coalition provides support to communities endangered by eminent domain for private profit.

Institute for Justice
901 N. Glebe Road
Suite 900
Arlington, VA 22203

www.ij.org

p 703.682.9320
f 703.682.9321

Case Study: Greg Knowles

(SW Downtown Property Owner)

Eminent Domain History Knowles Property

September 2007	Received a call from Rich Laden Gazette Business reporter asking me to comment on statements made by Chuck Murphy at a CSURA meeting claiming that I would not cooperate with his attempts to purchase my warehouse property located within the SW Urban renwal Plan Boundaries. My response was that I did not know, never talked, or corresponded with anyone by the name of Chuck Murphy, and I did not have any knowledge about what Laden was talking about.
October 2007	Received a call from Chuck Murphy asking if I would sell my warehouse property. I told Murphy that the property was not for sale but he was welcomed to make a offer if he wanted to.
December 5, 2007	Received and offer to purchase warehouse property from Chuck Murphy.
January 13, 2008	Responded to Chuck Murphy's offer. I declined offer to purchase warehouse property.
January 21, 2008	Jim Rees writes and sends a certified letter informing me that CSURA intends to acquire my warehouse property and threaten the use of condemnation.
February 2008	Forced to hire attorney to fight condemnation process. During the rest of the year CSURA prepared appraisals and made an offer which was declined through my attorney.
September 2012	Receive a call from Rich Laden Gazette Business reporter again asking me if I was aware that Chuck Murphy had requested help from CSURA in acquiring my warehouse property. I informed Laden that I had not had any contact with Chuck Murphy since 2008 and was unaware that he was seeking CSURA assistance again to acquire my warehouse property.
September 24, 2012	Receive threatening letter from Chuck Murphy's attorney, Lindsay Fischer dated September 21, 2012, with an offer to purchase warehouse property which was considerably lower than his original offer
October 4, 2012	Responded to Chuck Murphy and Lindsay Fischer, declining the offer to purchase warehouse property.

December 2012	Received a call from Mayor Steve Bach informing me he had had a conversation with the CSURA Chairman Susan Woods-Ellis regarding my unwillingness to sell my property to Chuck Murphy. I informed the Mayor about the strong arm tact tics and back channel maneuvers Murphy had been using to force the sale of my property. I also explained that I was not interested in selling the warehouse property.
January 11, 2013	Letter with this date is received from CSURA Chairman Susan Woods-Ellis informing me that my refusal to sell the warehouse property to Chuck Murphy is holding up the Southwest URA plan. She informed me that the CSURA thinks Murphy's offer is fair. She wanted me to suggest a counter price if I do not agree. She finished the letter informing me that there are other means available to acquire the property.
February 18, 2013	My response letter with this date to Susan Woods-Ellis informing her that the warehouse property has never been listed for sale and was not currently listed for sale. I explained that the revenue received from the property annually made it unwise for me to sell for the amount Chuck Murphy was offering.
February 26, 2014	Received certified letter stating that there was to be a survey performed on property in the SW URA. Note: URA/Ricker/Cummingham performed survey over 2 month prior to me being notified.
March 21, 2014	Jim Rees letter with copy of Railway Loft proposed plan change to CSURA SW Plan
March-April 2014	Numerous correspondence and conversations with CSURA regarding there plans to change the existing SW Plan.

COLORADO SPRINGS
URBAN RENEWAL AUTHORITY

January 21, 2008

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Greg Knowles
[redacted]

RE: Southwest Downtown Urban Renewal Area

NOTICE OF INTENT TO ACQUIRE

Dear Mr. Knowles:

The Colorado Springs Urban Renewal Authority (CSURA) is seeking to acquire property to implement the Southwest Downtown Urban Renewal Plan that was adopted by the Colorado Springs City Council on August 14, 2001. According to our research, you are the owner of property north of Colorado Avenue and your property, as described on Exhibit "A" attached hereto, is required for the project. CSURA is required to offer you the fair market value of your property, which is determined pursuant State law.

CSURA has obtained an appraisal as part of the acquisition process in order to determine the value of the property. The property is valued at [redacted] according to the appraisal prepared by Joseph L. Hastings; Real Estate Appraiser dated September 26, 2007. Therefore, CSURA is offering to purchase your property for the appraised value. You are entitled to obtain your own appraisal prepared by a certified appraiser. The Colorado Urban Renewal Authority will pay the cost of the second appraisal. If you should decide to order the appraisal, please have the consultant prepare a contract and scope of services and forward it to me so that CSURA can review the scope and fee prior to entering into the contract. Please respond to this offer in writing within one month from receipt of this letter as to your acceptance or other course of action.

For your information, I have enclosed a copy of section 4.0 of the Southwest Downtown Urban Renewal Plan, describing the acquisition process including the possible use of condemnation, Southwest Downtown Relocation Policy, The Southwest Downtown Urban Renewal Area Boundary Map, addresses, parcel numbers and a map that identifies your property that is to be acquired.

Thank you for your assistance, and should you have any questions or comments, please do not hesitate to contact me. I can be reached at 719-651-3136.

Sincerely,

Jim Rees,
Urban Renewal Project Manager

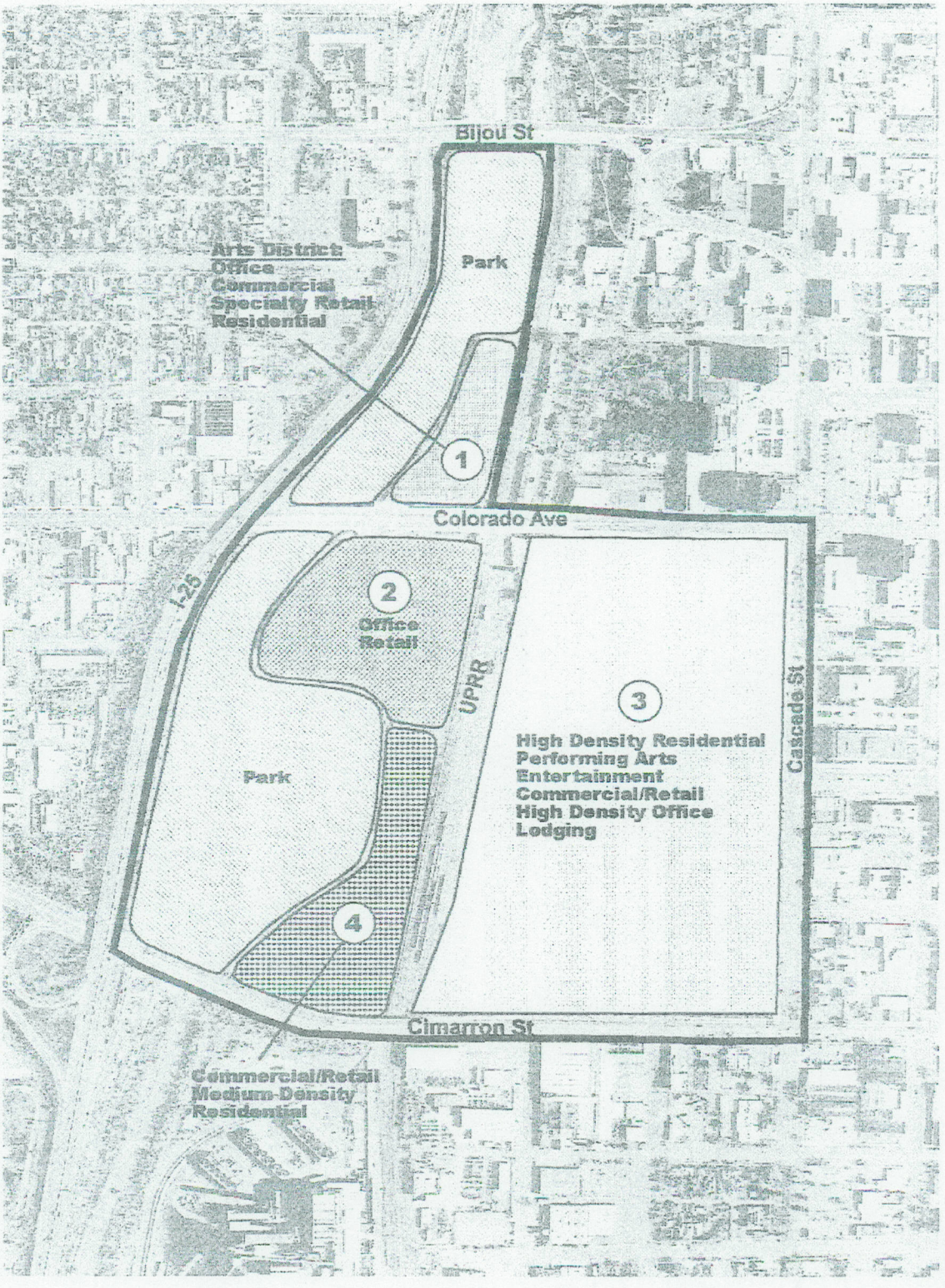
Enclosures

C: Dan Hughes, Attorney

Office address: 104 S. Cascade Avenue • Suite 208 • Colorado Springs, CO 80903
Billing address: PO Box 1575 • MC 1605 • Colorado Springs, CO 80901-1575
719/633-6138 or 719/385-5560 • csura@earthlink.net

EXHIBIT2

Southwest Downtown Urban Renewal Plan



Telephone (719) 473-4657
Telecopier (719) 471-7981

Lindsay E. Fischer, Esq.
Attorney and Counselor at Law

6 South Tejon Street, Suite 519
Colorado Springs, Colorado 80903

September 21, 2012

Gregory M. Knowles
[redacted]

[redacted]
Offer to Purchase

Dear Mr. Knowles:

I write to you for Charles J. Murphy first as his lawyer but also as his authorized agent to sign and present a contract for purchase of [redacted]

There are two significant drivers behind the Murphy purchase offer. The first is that Murphy owns all the other property behind the railroad tracks and north of the Colorado Avenue viaduct and needs to own all of it to plan and then accomplish the renewal of that area. He has made offers to you in the past which you have turned down. And this has aborted the birth of the desired renewal. And, of course, if Murphy obtains your property he will move forward with the long desired renewal.

The second driver is the fact that the area is in the Urban Renewal Area and subject to the jurisdiction of the board of the Urban Renewal Authority. This authority wants renewal in that area very urgently. Realize that the blighted area north of the viaduct is very much impacting in a very negative way the very significant renewal accomplished to the south and especially the large and beautiful park now known as America the Beautiful Park.

The result now is that the Authority is ready to do whatever is necessary to get renewal going in Murphy's area. And the Authority has condemnation power and is now free to use it on your parcel. That condemnation power is swift. We have what is known as the IP process. IP stands for immediate possession. They condemn, they resell to Murphy, and you are in court to determine what the price is.

I enclose an appraisal of your parcel. The value stated in that appraisal is the most likely amount that you would receive at some who knows when future time. Murphy is offering the same money in cash and very quickly. Please think this matter over without being too governed by your past relationship with Murphy.

Of course I also enclose the Murphy contract on your property which offers to buy for [redacted] immediate cash and I have signed for Murphy at his direction. He is out of the city. He wants it to go out to you today so that he will have something concrete in his hand when he reports the situation to the members of the Authority at their meeting in this coming week.

If you are willing to sell to Murphy on the terms of this contract, please sign it and send a copy to Murphy by fax or by E mail. The fax number and the E mail address are in the contract. Then mail the signed original to Charles J. Murphy, [redacted] Colorado Springs, Colorado 80904.

As Exhibit A on the contract I have put the page from the appraisal which bears the legal description. I am using that full page because it saves retyping and on the deed we will use a proper legal, anyway. The one in the appraisal is accurate, but much too abbreviated. By the way, a special warranty deed only warrants against title impairments which have occurred during your ownership. It does not cover (for instance) a forgery three or four owners back and 25 years back. The custom now is special warranty in commercial deals as distinguished from a general warranty, still always used in residential deals.

Thank you for your time and effort in considering this offer. I believe it puts in a common sense package what is fair and reasonable to both you and Murphy and also at the same time and perhaps most importantly serves the best interest of all the citizens in Colorado Springs.

Very truly yours,

Lindsay E. Fischer

Copy to

Charles J. Murphy
Murphy and Company
[redacted]

Grergory Knowles
83-5706 Napoopoo Road
Captain Cook, HI 96704

October 4, 2012

Charles Murphy
2245 Broadway
Colorado Springs, CO 80904

Dear Mr. Murphy,

I received, on September 24, 2012, your Attorney Lindsay Fischer's letter and offer to buy the property at 210 West Colorado Avenue. That would be two days prior to your closed door meeting with the Urban Renewal Committee. It appears as if you requested a meeting seeking assistance from the Committee prior to making me any kind of offer. It does not appear to me as if you are trying to negotiate in a fair and reasonable manner.

Your offer at this point in time is not acceptable. You are welcome to submit another more reasonable offer in the future which I will give full consideration to.

Sincerely,

Greg Knowles

Copy to:
Lindsay Fischer
6 S. Tejon St. #519
Colorado Springs, CO 80903

COLORADO SPRINGS

URBAN RENEWAL AUTHORITY

January 11, 2013

certified mail return receipt requested

Mr. Greg Knowles
83-5706 Napoopoo Road
Capt. Cook, Hawaii 96704

RE: **Southwest Downtown Urban Renewal Area, 210 W. Colorado Avenue**
Colorado Springs, Colorado

Dear Mr. Knowles:

The Colorado Springs Urban Renewal Authority ("CSURA") is anxious to proceed with the implementation of the Southwest Downtown Urban Renewal Plan which was adopted by the Colorado Springs City Council on August 14, 2001. The goal of the Plan is to stimulate the revitalization of the southwest section of downtown Colorado Springs through the creation of an urban neighborhood designed to enhance the City's investment in America the Beautiful Park as well as attract new business and residents to the downtown core of the City. The most-pressing phase of this project is the implementation of the Downtown Arts District which is based upon planned redevelopment of properties located north of Colorado Avenue.

In order to accomplish the Plan's vision for this area, CSURA has selected Mr. Charles Murphy as the project developer. Mr. Murphy has successfully acquired the majority of the parcels necessary to begin construction with the exception of property located at 210 W. Colorado Avenue (parcel # 6418226003). We understand that property is owned by you (or a legal entity controlled by you). CSURA has reviewed the appraisal of the property prepared by Joseph Hastings, Real Estate Appraiser, dated September 6, 2012, and we have no reason to doubt that it represents a fair and accurate valuation of your property based upon current market conditions.

CSURA was provided with both a copy of a written offer by Mr. Murphy (in the form of written correspondence and documentation from Mr. Murphy's legal counsel Mr. Lindsay E. Fisher dated September 21, 2012), as well as a copy of your response to that offer. You indicated your rejection of the Murphy offer, but did not offer your own counter-offer, appraised valuation, or otherwise outline what if any terms you would find acceptable.

In order to move this important project forward, CSURA is currently considering and investigating various options. For CSURA to be able to help provide funding for acquisition of your parcel, should CSURA choose to pursue that option, it would be necessary to determine the parcel's fair market value. The sale price would need to be substantiated by an appraisal prepared by a certified real estate appraiser. We therefore ask that you please provide a counter-offer to Mr. Murphy's offer as well as a copy of an appraisal supporting your asking price.

110 S. Weber Street • Suite 104 • Colorado Springs, CO 80903
Phone: 719/661-5992 • Fax: 719/633-6138 • csura@earthlink.net
website: www.csurbanrenewal.org

Although CSURA has other options, CSURA would prefer that the two parties negotiate in good faith and reach an equitable agreement on purchase price. However, time is of the essence. There is much to be accomplished with regard to this important project for the betterment of our community, and we sincerely hope we can look forward to your cooperation for the good of our community.

If you have any questions or comments, please do not hesitate to contact Mr. Jim Rees, CSURA Director, at 719-651-3136. Thank you.

Sincerely,

Susan K. Wood-Ellis, Chair
Colorado Springs Urban Renewal Authority

cc: Mr. Dan Hughes, Attorney at Law
Mr. Jim Rees, Director
Mr. Charles Murphy

Greg Knowles
83-5706 Napoopoo Road
Captain Cook, HI 96704

February 18, 2013

Susan K. Wood-Ellis
Chair Colorado Springs Urban Renewal Authority
110 South Weber Street, Suite 104
Colorado Springs, CO 80903

Subject: 210 W. Colorado Avenue

Dear Ms. Ellis,

The first thing I want to make clear in my response to your your letter from January 12, 2013, pertaining to the property located at 210 W. Colorado Avenue, is that that property has not ever been listed for sale.

In your letter you state that CSURA would prefer that Mr. Murphy and I negotiate in good faith to reach an equitable agreement on a purchase price for subject property.. The subject property has provided a reasonable rental income to our family over the years. Since I am not actively marketing the property for sale there would be no real negotiations to speak of. Mr Murphy has submitted unsolicited offers that I have not found acceptable.

It is rather interesting how Mr. Murphy has gone about trying to acquire the subject property.

A little over five years ago I was contacted by Rich Laden, Business Reporter, for The Gazette, asking me if I wanted to comment on statements Mr. Murphy made in a CSURA meeting where he was requesting city assistance to force the sell of subject property because I would not negotiate with him. The fact of the matter, as I explained it to Mr. Laden, was I had never met, talked, or corresponded with Mr. Murphy. Soon after Mr. Laden's article was printed I received a letter from Mr. Murphy with a low value offer, which I declined.

About a month later CSURA sent a letter indicating there intent to proceed with acquiring the property through condemnation. I was forced to seek legal counsel to protect the families property.

Late July 2012, I receive a call from Mr. Murphy asking me to sell the subject property. I informed him that the warehouse was not on the market, and that I just signed a five year lease with a new tenant. Even after telling him that the property was not for sale, Mr Murphy said he wanted to submit an offer.

Mid August 2012 I receive a call from Rich Laden asking if I was aware that Mr. Murphy has again asked the CSURA for a meeting to request assistance in acquiring the subject property.

Two evenings before the September 26, 2012 CSURA meeting I receive a FedEx package from Mr. Murphy's attorney, Lindsay Fischer, with a purchase offer, and letter with comments implying that now CSURA was now free to condemn the subject property and in turn sell it to Mr. Murphy should I not accept the offer. Does Mr. Fischer speak for the CSURA as well ?

Twice now Mr. Murphy has approached the CSURA seeking assistance, before he has ever supplied me with written offers.

I have a property that supplies my family with a reasonable annual income. There would be no logical reason to sell the property unless we were to receive a principle amount that if securely invested would replace that annual income stream.

Sincerely,

Greg Knowles

Email c: M.Collins
S.Hente
D.Neville
R. Laden
W. Pelermo
J. Raughton
J. Rees
R. Shonkwiler
R. Venezia

Colorado Springs Urban Renewal Authority Notice

Property Owner Notice

The Colorado Springs Urban Renewal Authority is completing a survey necessary for making a determination as to whether properties currently located within the Southwest Downtown Urban Renewal Area continue to maintain conditions that would qualify them to be part of an urban renewal area (according to the Colorado Urban Renewal Statute). If you are receiving this notice, you may assume that you own property in this area. If you have any questions, please contact Jim Rees, Executive Director, Colorado Springs Urban Renewal Authority at 719.651.3136 or Anne Ricker of Ricker|Cunningham at 303.458.5800 with any questions.

Mr. Jim Rees
Colorado Springs Urban Renewal Authority
110 S. Weber Street, Ste. 104
Colorado Springs, Colorado 80903

From: greg knowles <gmk707@sbcglobal.net>
To: Jim Rees <csura.rees@earthlink.com>
Cc: Merv Bemmett <mbennett@springsgov.com>; Tiffany Colvert <colvert@highlandcommercial.com>; Susan Ellis <susan@woodellis.com>; David Isabell <david.isabell@hoganlovells.com>; David Neville <dneville@k2blaw.com>; waynne Palermo <wynne@wynnerealty.com>; Jim Raughton <jraughton@msn.com>; Robert Schonkwiler <rtscsprings@gmail.com>; Rosemarie Venezia <revenezia@aol.com>
Sent: Wednesday, March 12, 2014 9:40 AM
Subject: Urban Renewal Notice

Jim Rees,

I received a certified letter at the end of February from a company called Ricker/Cunningham, as indicated by the envelops return address. Inside I found a 3"x5" slip of paper with the most vague statement referring to a survey that is to be performed on properties located within the Southwest Downtown Urban Renewal Area. Apparently the survey is to be performed to determine if the properties in the SWURA still qualify to be part of the urban renewal area.
On the back of the 3"x5" slip was your name and the address of the Colorado Springs Urban Renewal Authority. I have attached to this email a photo copy of the front and back of the notice slip of paper.

I have several questions regarding this notice:

1) Who drafted the notice
2) When is this survey going to be performed
3) Who will be performing the survey
4) What objective criteria is being used for this survey
5) What qualifies them to perform the survey
6) Who is to receive a copy of the survey once performed
7) What does the Ricker/Cumminghan company have to do with the notice
8) Why is there a need for a new survey of the Southwest Downtown Urban Renewal Area
9) What are my option should I disagree with the survey findings

10) How much time do I have after the survey is completed to respond to findings
11) Who is the final arbitrator of the survey findings if there is any disagreements

I would appreciate getting some clear answers to this vague notice.

Greg Knowles

COLORADO SPRINGS
URBAN RENEWAL AUTHORITY

March 21, 2014

Mr. Greg Knowles

83-5706 Napoopoo Road

Capt. Cook, Hawaii 96704

Re: Property Owner Notice

Hi Greg,

I received your questions regarding the notice that was sent to you about the urban renewal planning effort that has been initiated for a new urban renewal area (URA) to be established to the north of Colorado Avenue (see map). The intent of creating a new URA is to facilitate the development of the designated area through the use of tax increment financing revenue which will be utilized to fund qualified infrastructure expenses. As you are aware, this same area is now included in the larger Southwest Downtown URA that was established by City Council in 2001. Since urban renewal plans expire after 25 years the ability to utilize the tax increment approved in 2001 will end in 2026. There has been no significant development within the area to date and therefore no tax increment revenue has been available. By "restarting the clock," any property tax revenue above the existing tax revenue created by the new development can be used by CSURA for a full 25 years to cover the costs of qualified improvements.

The survey work has been completed by Ricker/Cunningham and the conditions of blight required by the Urban Renewal laws of the State of Colorado, Part 1, Article 25 of Title 31 of the Colorado Revised Statutes identified. A copy is attached for your review. Any comments or concerns can be sent in writing to the Board either through email or letter addressed to my attention.

The *Railway Lofts Urban Renewal Plan* is currently being prepared by Ricker/Cunningham and will be presented the Colorado Springs Urban Renewal Authority at a future Board meeting. A copy of this draft plan will also be provided to all the property owners within the boundary prior to the meeting. The Board will consider all comments received when the plan is presented prior to making a decision. Once the proposed plan has been adopted by the Authority, it is presented to the Planning Commission in order to establish that the plan conforms to the City of Colorado Springs' Comprehensive Plan. Finally, the Colorado Springs City Council is responsible for the adoption of the urban renewal plan during a public hearing.

Office: 30 South Nevada Avenue • Suite 604 • Colorado Springs, CO 80903
Mailing Address: P.O. Box 1575 • Mail Code 640 • Colorado Springs, CO 80901-1575
Phone: 719/661-5992 • Fax: 719/633-6138 • csurbanrenewal@gmail.com
website: www.csurbanrenewal.org

There will be several opportunities to ask questions and express your concerns throughout the plan review and adoption process. Once the draft plan has been completed, a date for CSURA Board consideration will be set. I will provide you with a schedule of the Board, Planning Commission and Council review meetings as well as a copy of the plan well in advance of the first presentation to the Board.

Sincerely,

James W. Rees, Director

Colorado Springs Urban Renewal Authority

From: greg knowles <gmk707@sbcglobal.net>
Sent: Monday, April 21, 2014 8:58 PM
To: Jim Rees
Cc: Merv Bemmett; Tiffany Colvert; David Neville; waynne Palermo; Jim Raughton; Robert Schonkwiler; Lisa Valverde
Subject: Property Owner Notice

Jim,
I received your response, dated March 21, 2014, to my email dated March 12, 2014, regarding the Property Owner Notification you sent out pertaining to a property condition study.
You only answered some of my questions, and now I have more questions I would like answered.
Again I ask who prepared the notice I received?
What date was the study commissioned?
What qualified Ricker/Cumminghan to perform the study?
What objective criteria was used to perform the survey?

Please supply the requested answers to these questions so I can better understand the logic behind the actions being taken by the CSURA.

Greg Knowles

On Tuesday, April 22, 2014 11:45 AM, Jim Rees <reescsura@gmail.com> wrote:
Greg,

I am providing another copy of the Draft Conditions Study that was performed by Ricker Cunningham in addition to the hard copy you received in the March 21st letter (also included). The notice was prepared by Ricker Cunningham and is similar to notices used on urban renewal projects throughout the state of Colorado. I am attaching the copy of the notice for your reference (in addition to the hard copy previously sent). The Notice to Proceed to perform the study is provided as an attachment as well. Also, please refer to the attachment that illustrates the list of other urban renewal plans and studies completed by Ricker Cunningham throughout the United States which demonstrates their qualifications to perform the conditions study. The criteria to perform the study is based on the 11 conditions of blight outlined in the Colorado Revised Statutes (see Conditions Study) and outlined in detail in section 3.0 of the Conditions Study as well as the table at the very end of the report. CSURA will provide a copy of the proposed urban renewal plan to you when it has been completed and will invite your comments on the plan prior to the Board adopting the plan. City Council will ultimately decide on the approval of the plan. A public notice will be mailed to all of the property owners 30 days prior to the Council meeting.

Please let me know if you have other questions about the plan or the process.

Thanks,
Jim Rees

From: greg knowles <gmk707@sbcglobal.net>
Sent: Tuesday, April 29, 2014 12:39 PM
To: Jim Rees
Cc: Merv Bemmett; Tiffany Colvert; David Neville; waynne Palermo; Jim Raughton; Robert Schonkwiler; Valerie Hunter; Nolan Schriner
Subject: Re: Property Owner Notice

Jim Rees,
There are a couple of reasons why I asked for answers to my questions. I am concerned with the notice and the failure to notify me of the so called study. According the Colorado Revised Statue 31-25-107 (1) (b), the notice is supposed to state, "The notice shall state that the authority is commencing a study necessary for the making a determination as to whether the area in which the owner owns property is a slum or a blighted area." The notice you sent out did not state that the study had to do with a blight study.
The 31-25-107 (1) (b) also states that a properly worded notice is to be sent out to property owners in the study area within (30) thirty days of the commissioning a study. That did not happen.
It appears that CSURA has violated state statues and restricted my ability to respond with any future legal action. It also brings up the question as to whether the findings in the study are valid.

Greg Knowles

Excerpts from Conditions Survey

Conducted by Ricker/Cunninham

Paid for By Developer Chuck Murphy

State "Blight" factor with Ricker/Cunningham "sub factors":

(d) Unsanitary or unsafe conditions
This factor is said to be present when safety hazards and conditions are likely to have adverse effects on the health or welfare of persons in the area due to problems with either a lack of infrastructure or infrastructure that is in inadequate. Sub-categories include the presence of:

- On-site and / or street lighting
- Fire protection equipment
- Cracked or uneven sidewalks
- Hazardous contaminants
- Poor drainage
- Flood hazards
- Steep slopes
- Unscreened mechanical equipment
- Trash, debris and weeds
- Vagrants, vandalism and graffiti
- Pedestrian safety issues
- High incidence of crime and / or traffic accidents
- Many of the conditions listed under (a), (e), (h), (i) and (j)

Case Study: Doug Tomlinson
(Summit County Property Owner)

My name is Doug Tomlinson and I am the owner of the Country Boy Mine. For people who do not know, the Country Boy Mine is located in Summit County, 2 miles from downtown Breckenridge in the French Gulch area. We have restored the historical Country Boy Mine and have been giving mine tours at the Country Boy Mine for over 20 years.

The Country Boy Mine is a family run business. We have made incredible sacrifices and overcome extreme hardships to achieve a vision that most people told us could not be achieved. The purpose of the Country Boy Mine and Exhibit is to preserve the rich history of Colorado mining. We have been written up in the New York Times, Denver Post, Rocky Mountain News and countless other publications throughout the United States and the world. We have been featured on Channel 9 News, Channel 4 News, Fox Channel 8 and Colorado Get Aways. We have been voted "Business of the Year". Through the years we have hosted the Western State Governor's conference, Lucent Technology, Ford Motor Company. We have educated school classes and groups from all over Colorado, including Keystone Science School.

We believe the Country Boy Mine is a great asset to the community, turning a previous eye sore into a historical attraction. The Country Boy Mine has been designated by the County as a historical significant site, one of only two properties in Summit County to receive this designation.

I have a great deal of sympathy and empathy for Andy and Ceil (Seal) Barrie and their fight to keep their private property.

The County Boy Mine property is now surrounded by Open Space.

I have been and continue to be a target of Summit Country Open Space and Breckenridge Open Space and I can tell you first hand it is nothing short of a nightmare. This conflict with Open Space has been going on for 20 years and by no means is it over. This is just the beginning.

These government entities are demanding and forcing me to put 5 to 6 trails easements across my property and they will stop at nothing until they achieve this.
In a letter from Brian Lorch, Director of Summit County Open Space, he states, "It is always our goal to work with adjacent landowners to address any private property issues."

I want to make it clear, Breckenridge and Summit County Open Space along with local government have not worked with us and have forced the trail easements upon us in very unethical ways with a complete lack of respect for the private landowner. I have been bullied and steamrolled over the trail easements, the Town and County feel they are entitled too! They say they want to be a good neighbor but their actions demonstrate ones of a very bad neighbor.

There is an attitude in both the Breckenridge and Summit County Open space that we want these trails, we will get these trails, and how dare you not give us a trail easement

Instead of working with us, the following actions demonstrates how open space operates.

First we received a letter from Summit County Threatening imprisonment (March 28, 2006,)
Then an attempt to require us to grant a trail easement under the Conditional Use Permit. After we retained an attorney Jeff Huntley the Summit County's attorney backed off of this issue and agreed that the County can't require us to grant an easement under a conditional use permit.

Second an attempt to close our business down by taking away our Conditional Use Permit. (September 28, 2006)
Summit County Planning tried to revoke our permit. 7 members of The Upper Blue Planning Commission had to intervene because they could see that this was a strong armed attempt and basically said we were being blackmailed and extorted, so that we would be forced to grant trail easements. Although our attorney and Jeff Huntley had agreed that the County can't require us under the conditional use permit to grant a trail easement the planning department tried to use this as a reason not to renew our conditional use permit.
Next comes a threat that tries to deny us access to the Country Boy Mine property. We have an email that was sent by Scott Reid, of Breckenridge Open Space, threatening our access to the Country Boy Mine. It is important to point out that we have a deeded and recorded easement that allows us access to the Country Boy Mine Property.

A last minute warning and notification the V3 trail is being built only inches from our property. Scott Reid was not honest in the site visit. During the site visit with Betsy Tomlinson, co owner of the Country Boy Mine, Scott Reid never mentioned the V3 trail would be on the Country Boy Mine Road nor did he mention that a large berm would be built across the road, Nor did he supply an accurate map, Nor did he mention that they would build fences across the Country Boy Mine Road. He was deceitful.

Although we made all parties involved aware of the potential dangers of a mine site, trespassing, vandalism, liability issues, safety issues, disruption and negative impact to our business. These issues were not addressed. The Director of Active and Inactive mines, of the Colorado Division of Reclamation Mining and Safety, Bruce Stover is not in support of having trails this close to the mine, due to the inherent dangers. Our mine inspectors is very concerned about the proximity of the trail to the Country Boy mine and has suggested we fence off the entire property to protect ourselves against liability issues.

Without any notification, Breckenridge Open Space builds a huge berm restricting access to our property and the only road to the Upper Portal of the Country Boy Mine. This road has been existence for over 100 years. In the B&B land acquisition the Town and County acquired almost 2,000 acres and they put a bike trail berm across the only road to the Country Boy Mine upper portal with absolutely no notification. Knowing the trail easements were a very sensitive issue, no precautions were taken to mitigate concerns of private land owners and other affected by the trails.

There was never any negotiation, there never was any compensation nor was there any give and take or compromise with Breckenridge and Summit County Open Space. It was just take. It was just take. Scott Reid couldn't comprehend that 5 or 6 trail easement would disrupt our business, potentially decrease the value of the property nor could he see that trail easements could limit our future plans.

When trail easements were not granted, several government officials and several citizens came to us to tell us about the negative statements being made against us by employees of the town and county because we didn't grant trail easements.

Do these actions demonstrate a willingness of working with private landowners? Or, do they represent a government bulling, steamrolling, threatening and forcing the private landowners to grant the government what they want.

We, the Country Boy Mine, have a Master Plan too! - and it doesn't include five or six trail easement across the Country Boy Mine property. Our goal is to preserve Breckenridge and Colorado mining history. Unfortunately mountain bike trails are in direct conflict to preserving the Country Boy Mine.

Brian Lorch has admitted,
"I have witnessed the historical structures on the Breckenridge and Summit County Open Space properties, being destroyed by people using the trails."

We have attended Town Council Meetings. We have written letters to Scott Reid at the Breckenridge Open Space. We have talked and written letters to Brian Lorch and we have approached the BOSAC Board to address our concerns in regards to trail easement and the new V3 trail and how it is negatively effecting our business.

These organizations won't acknowledge there is a problem. They won't address the issues. They wont respond to our letters of concern and won't address our concerns at the meetings we attend.

An example, we attended a BOSAC meeting, which is the advisor board of Breckenridge Open Space. We voiced our concerns and issues about the V3 trail and how it has negatively affected our business. We hoped to discuss solutions! At the end of our presentation, the first question by a board member was, "Have we done anything illegal?" There was no discussion on how these issues could be resolved, there was a total lack of concern and an unwillingness to work with us to resolve these issues. We received no response from our presentation.

I question, is this how local government is working with private landowners?

We have suggested resolutions. We have even offered to sell the property to the Town of Breckenridge and Summit County at fair market value. We also have been approached by the Rick Hague of the Breckenridge

Heritage Alliance and open to his idea to have the Heritage Alliance lease the property.

When have bike trails across private property taken precedence over private property rights and historical preservation?

I wasn't given this property nor did I take this property against someones will, I got it the old fashioned way, I bought it. (read again)

This is not a dispute we initiated with the Town and County but rather a burden that has been imposed on us.

The Open Space entities have missed their goal to work with adjacent landowners. They want a trail, so they just put in a trail. Be damn to any one in their way.

It is a sad day when instead of investing, expanding my business and preserving mining history, I am hiring lawyers to fight the Town of Breckenridge and Summit County. I am in the process of preparing my business to be closed down by local government.

I question, is this the purpose of a local government, to squeeze businesses to the point of closing? Is it not local government's job to help and support local businesses to prosper?

If my emotions seem high, please understand that local government is trying to take my private land that I have owned for 20 years and also my family's livelihood.
I ask myself, what type of person/government entity squeezes a local family run business that has been preserving Breckenridge mining history for over 20 years, to the point of closing their doors? Lets be real we aren't being squeezed, we are being strangled.

I would like to read a quote from President Gerald Ford.

"A government big enough to give you everything you want, is powerful enough to take everything you have"

The end doesn't justify the means.

These actions are outrageous!

Our community should be appalled by the actions of our local government.

Thanks for listening and I am open to questions.

Letters of Support for Ordinance

BUSINESS CHAMBER
OF SOUTHERN COLORADO

BCoSC.COM Elevate Small Business, LIFT local Economy!

April 30, 2014

Dear Council Members:

The BCoSC would like to announce its enthusiastic support for Councilman Joel Miller's proposed ordinance to limit the ability of Colorado Springs to use eminent domain to threaten the property of area residents. We feel that this is a clear opportunity to stand up for what's in the best interests of our community businesses and want to applaud Councilman Miller for taking such bold action on behalf of the institution of property rights.

The bottom line for business owners is that strong property rights are good for their bottom line. By sending the signal that a community is serious about the property rights of its people, it attracts even more people to want to come and enjoy the blessings of such protection. Property rights create a rising tide of community economic confidence, and a rising tide lifts all boats.

It is for the sake of these reasons and more that the BCoSC is committed to championing the cause of strong property rights. Property rights benefit everyone, whereas weakening them tends to serve only the interests of a select few at the expense of everyone's liberties. As we at the BCoSC seek to serve the business community as a whole, whenever there is an opportunity to strengthen our community's respect for property rights, we will be on the front lines of advocacy for it.

Councilman Miller's Eminent Domain Restriction Ordinance is just such an opportunity. Whereas exercising power is easy, restricting its use requires real leadership. By making explicit its promise to exercise the power of eminent domain purely for "public use" purposes, Colorado Springs can make a bold statement which will serve to raise our community's economic confidence and attract the attention and investment of businesses and property owners from around the country. At the same time, it can do so without actually compromising its ability to exercise what can clearly be a valuable and necessary tool.

This measure simply makes clear what we who live here already know: this is a community that cares deeply about property rights. It in no way restricts the appropriate use of eminent domain for the sake of necessary public projects, ones which the BCoSC recognizes are sometimes essential to support the continued growth and flourishing of our region. Rather, this ordinance serves as a clear call to all who seek to secure their piece of the American dream: "Colorado Springs is Open for Business."

BCoSC remains committed to just such a vision, and is therefore thrilled to be able to support Councilman Miller's proposed ordinance. Our hope is that along with the overwhelming voice of the good people of our community, our representatives on City Council will feel empowered to make Colorado Springs a recognized leader worldwide for the fight for the preservation of property rights. Together we can help secure the continued prosperity of our community not just through the next election cycle, but for generations to come.

Sincerely,

The Business Chamber of Southern Colorado

Colorado Springs City Councilmembers,

As a student at UCCS it is clear to me that young adults and college students have great infringements on their liberty- the Affordable Healthcare Act, increasing taxation, and exploding higher education costs, among many other intrusions. As we step into the future, how can we not fear the power of the government? They continue to take what we've earned. They continue to force us into programs we don't desire. They continue to grant themselves the capability to take whatever they deem necessary under the guise of "the greater good." An example of this issue would be the near unlimited scope of blighting. I'm a concerned citizen, and let me explain why this is a pertinent issue that should be fixed as soon as possible.

In *Kelo vs. New London* (2005), the Supreme Court stated property can be seized for purpose of economic development, even though the land in New London remains barren, nine years later. Colorado State Law defines blight as, "an area that, in its present condition and use and, by reason of the presence of at least four of the following factors, substantially impairs or arrests the sound growth of the municipality, retards the provision of housing accommodations, or constitutes an economic or social liability, and is a menace to the public health, safety, morals, or welfare." (C.R.S. 31-25-103) In simpler terms, any property can be blighted that retards development or is an economic or social liability.

The blighting power the state holds has a history of seizing good property through Eminent Domain. In 2008, Fort Collins blighted a few city blocks although most store fronts were still full and active. In September 2012, Denver City Council voted to blight 29 city blocks—85 acres. In October 2012, Thornton blighted 664 acres of land; that's over a square mile. These are just the massive cases. Imagine being a homeowner in one of these areas. While your home may not be taken and destroyed, you will live under constant fear of such. Your property just needs to be an "economic or social liability." We would be smart to remember that what the government labels as "blight" is often "home" to another.

Thomas Jefferson penned, "When governments fear the people, there is liberty. When the people fear the government, there is tyranny." Citizens should not live under constant fear of their property being blighted one day and demolished the next. Luckily, here in Colorado Springs we have the opportunity to strengthen our property rights against the state government and limit the extended power of blighting land.

Restricting blight is something Republicans, Democrats and Independents can get behind. Eminent Domain is an issue both parties often agree on—they don't want the state to take their land. In 2012, Virginia voters voted with an overwhelming 76% to limit the state from seizing local properties for redevelopment. Virginia is a swing state; 76% in a swing state is massive on any issue and shows how both sides of the aisle agree on this matter.

There are ways to deal with the blight issue in Colorado Springs without leaving untamed power within the hands of the city. As a college student, I implore City Council to seriously reconsider the definition of blighting and ease the future concerns of our young adults in Colorado Springs. This is a city I would love to remain in upon completion of my education. However, near unlimited blighting power is a major concern to a future homeowner. I wouldn't take the risk if I could rather be somewhere safe. While this is not a major issue to most citizens, remember that small changes will bring about great things.

David Stoffey

Colorado Federation of College Republicans Chairman

Councilman Miller's Ordinance

Thomas E. Wambolt [twambolt@viawestd.net]

Sent: Friday, April 18, 2014 6:24 PM
To: Council Members

Greetings Mayor and City Council Members:

The Colorado Property Rights Coalition strongly urge you to support Councilman Miller's proposed ordinance to narrow the definition of blight as defined by the Colorado State Revised Statutes. Having dealt with urban renewal authorities and their use of the term "blight", the blight designation has become widely abused. In the City of Erie, their definitions of 11 instances of blight covers 13 pages of instances. Many of these pages are single-spaced and deal with any thing from torn screens and peeling paint to over head power lines, incomplete street maintenance to farm land. The urban renewal boundaries can be drawn so that you can find blight in any area of a city. Recently, I drove through the posh neighborhood of million dollar homes and found instances of blight there.

When a lake (Columbine Lake), farmland (Gaylord) can be blighted, it is time to take a good look at the use of blight. Again, we urge you to support Councilman Miller's attempt to right this abuse. Thank you.

Tom Wambolt, President
Colorado Property Rights Coalition
P.O. Box 526
Arvada, CO 80001-0526

Tomlinson Brothers, Inc
DBA Country Boy Mine
Doug & Betsy Tomlinson
PO Box 1832
Breckenridge, CO 80424

May 1, 2014

Joel Miller
Colorado Springs City Council

Dear Mr. Miller,

Thank you for taking the time to talk with me. I appreciate you listening to our situation.

We are in support of your eminent domain ordinance.

As an American and a land owner, I am shocked and appalled that local government has the authority to take private land against someones will, for open space. The government currently has too much power with eminent domain.

As someone who has owned a piece of property and operated a business for 20 years, I go to bed wondering when local government is going to take my land and my livelihood. Because of this situation we are no longer investing and expanding our business. We can't justify spending money for capital improvements with the uncertainly and unknown that the government can take our property at any time!

We have included a brief timeline and summery of our experiences with local government.

Joel, we wish you good luck with this ordinance. Please contact us if you need anything further or if you have additional questions. Please keep in touch.

Thank you,

B.S. Tomlinson
Betsy Tomlinson

Doug Tomlinson

Resolutions of the Republican Party

El Paso County

State of Colorado

2014 El Paso County Republican Party Resolutions Results

Votes were cast by delegates and voting alternates at the 2014 El Paso County Republican Assembly on March 29.

1. Keystone Pipeline: We support responsible development of North American resources, including the construction of the Keystone Pipeline. **856 votes in favor. 16 votes opposed. Resolution passes.**

2. Civil Discourse: The Republican Party encourages candidates of all parties to practice civil discourse in the public square. **799 votes in favor. 48 votes opposed. Resolution passes.**

3. Repeal of Health Benefit Exchange Act: It is resolved that Colorado Republicans support repeal of the "Colorado Health Benefit Exchange Act" (SB11-200) in the form currently enacted. **812 votes in favor. 37 votes opposed. Resolution passes.**

4. Nullify Obamacare: It is resolved by Colorado Republicans that citizens should be free to choose their own health care and health insurance and not be required or compelled to participate in any particular health care program or to purchase any health care product or service; and that State and local officials and candidates should support efforts to nullify the Patient Protection and Affordable Care Act, known as "ObamaCare." **851 votes in favor. 18 votes opposed. Resolution passes.**

5. Repeal Obamacare: Colorado Republicans understand that the free market, not government, has the primarily role in making health care more accessible and affordable for Colorado residents; therefore, it is resolved that Colorado Republicans demand the repeal of "ObamaCare" and replace it with positive approaches including but not limited to interstate health insurance and health savings accounts. **860 votes in favor. 13 votes opposed. Resolution passes.**

6. Challenge the IRS: Colorado Republicans oppose the IRS imposition of taxes which are not mandated by "ObamaCare" on States that have banned the creation of State run exchanges. The overreach of the IRS is literally trying to tax, borrow, and spend more than $700 billion without Congressional authorization. **850 votes in favor. 16 votes opposed. Resolution passes.**

7. Repeal Civil Union Resolution: Whereas, the Colorado Legislature and governor redefined marriage in Colorado by passing civil unions legislation which is in direct conflict with the definition of marriage in the Colorado Constitution, we, the members of the El Paso County Republican Party hereby resolve that the Colorado Republican Party work to overturn the civil unions law in the State of Colorado on the basis that the civil unions law is unconstitutional. **656 votes in favor. 181 votes opposed. Resolution passes.**

8. Parental Responsibility: We believe men and women with same sex attraction must be accepted with respect, compassion, and sensitivity, however the optimum and balanced human development of children is best served by a loving mother and father which is best honored by a traditional definition of marriage. **728 votes in favor. 114 votes opposed. Resolution passes.**

9. Definition of Marriage: It is resolved that Colorado Republicans support and defend marriage as the union of one man and one woman. **783 votes in favor. 81 votes opposed. Resolution passes.**

10. Implement School Vouchers: Education is a parental right and we support a free market approach to educational funding; therefore, vouchers should be used for home schooling, charter schools, and choice in private and public schools. **826 votes in favor. 35 votes opposed. Resolution passes.**

11. Repeal Common Core: Education shall be a matter of local and parental control and school districts should retain broad latitude in establishing customized, rigorous and high standards and guidelines for the maximum educational attainment of all students in their local communities. **850 votes in favor. 14 votes opposed. Resolution passes.**

12. Right to Keep and Bear Arms: It is resolved that Colorado Republicans support the fundamental individual right of law-abiding citizens to keep and bear arms, and urge all candidates and elected officials to support that right by repealing the 2013 magazine ban and repealing the expansion of mass gun registration.

The Republican Party supports and affirms the rights of all citizens to bear open, concealed carry and arms of choice. That right to keep and bear arms is reflected in the Colorado State Constitution the 2nd Amendment to the United States Constitution. **865 votes in favor. 8 votes opposed. Resolution passes.**

13. Sanctity of Life: We acknowledge that this nation was founded on the principle that all human beings are created equal with respect to their natural and unalienable right to life and are therefore entitled to equal protection under the law from conception until natural death. We endorse this founding principle and will work to return equal protection of the right to life to all human beings, born or unborn. **765 votes in favor. 87 votes opposed. Resolution passes.**

14. Embryonic Stem Cell Research: Be it resolved that Congress pass a complete ban on destructive embryonic stem cell research. **616 votes in favor. 198 votes opposed. Resolution passes.**

15. Ending Taxpayer Funding of Abortion Clinics: It is resolved that Colorado Republicans oppose the use of public funds to organizations that provide or advocate for abortions. **821 votes in favor. 44 votes opposed. Resolution passes.**

16. Balanced Budget: We support balanced budgets at all levels of government achieved through economic growth and reductions in spending and call upon Congress and the States to pass a balanced budget amendment to the U. S. Constitution. **851 votes in favor. 17 votes opposed. Resolution passes.**

17. Constitutional Convention: Should Colorado Republicans support the convening of a Constitutional Convention by the states, in accordance with Article V? **628 votes in favor. 167 votes opposed. Resolution passes.**

18. Rejecting Recent National Party Rules Changes: We call on our representatives to the Republican National Committee to publicly concur with the following: We affirm the non-binding nature of any straw poll conducted at precinct caucus; that it is not a "preference vote" under RNC Rules, Colorado state law or Colorado GOP rules thus RNC Rule 16 shall not apply to Colorado, and; We affirm that it is the proper role of duly elected delegates at Congressional District assemblies and our State Convention to elect their representatives to the National Convention without mandates from the national party organization. **771 votes in favor. 25 votes opposed. Resolution passes.**

19. Immigration Reform: We support and welcome legal immigration and believe that the legal immigration system should be reformed and that our borders should be defended and secured. We oppose government benefits for illegal aliens, including in-state tuition rates for public higher education. **831 votes in favor. 29 votes opposed. Resolution passes.**

20. Election Law Changes: We support abolition of the 2013 Colorado Election law changes and support a requirement of photo identification for polling place voting and proof of citizenship at registration. **857 votes in favor. 9 votes opposed. Resolution passes.**

21. Religious Liberty: We affirm the First Amendment's protection for religious liberty including the open practice of religion and condemn the Obama Administrations agenda to dictate practices and expressions of religious organizations. **848 votes in favor. 9 votes opposed. Resolution passes.**

22. Term Limits: We support term limits for all elected officials. **764 votes in favor. 86 votes opposed. Resolution passes.**

23. National Defense: We support a strong national defense and as a community we support the men and women and their families who serve our nation in the armed forces. The federal government must fulfill its responsibilities to veterans. **858 votes in favor. 5 votes opposed. Resolution passes.**

24. Marijuana: We support the repeal of laws making marijuana legal for recreational purposes. **664 votes in favor. 184 votes opposed. Resolution passes.**

25. Economic Growth: Republicans understand that private enterprise and respect for property is the foundation of economic growth. Government must reduce taxes and regulation to avoid stifling entrepreneurship and job growth. **854 votes in favor. 6 votes opposed. Resolution passes.**

26. Right to Work: We support the right of Coloradans to work in both public and private sectors without mandatory union membership or dues. **859 votes in favor. 8 votes opposed. Resolution passes.**

27. Colorado Lands Agreement of Statehood: We proclaim the Federal Government has not conferred title to Colorado of the land promised under the Enabling Act at the time of statehood. We demand this contract be fulfilled. **792 votes in favor. 17 votes opposed. Resolution passes.**

28. Eminent Domain: Colorado Republicans oppose governmental taking of private property for the benefit of private individuals, private entities, or for government revenue enhancement. **839 votes in favor. 19 votes opposed. Resolution passes.**

2014 COLORADO REPUBLICAN STATE ASSEMBLY
Platform Resolution Results

RESOLUTION 1. It is resolved that Colorado Republicans support our republican form of government and the principles of individual freedom, personal responsibility, free and competitive economic markets, strong national defense, and opportunity for all.

Passed
YES: 3411 NO: 49

RESOLUTION 2. It is resolved by Colorado Republicans to support legislation and policies that encourage honesty, transparency, accountability, and fiscal discipline at all levels of government.

Passed
YES: 3391 NO: 81

RESOLUTION 3. It is resolved by Colorado Republicans that constitutional restrictions, political checks and balances, the fair and impartial enforcement of the laws, the even-handed administration of justice, and individual virtue, constitute the instruments of freedom and order in society.

Passed
YES: 3302 NO: 81

RESOLUTION 4. It is resolved by Colorado Republicans that involuntary collectivism, forced redistribution of resources, and increased dependence on centralized government authority undermines personal responsibility, weakens the family and traditional community institutions, and threatens the moral autonomy and dignity of the individual.

Passed
YES: 3283 NO: 86

RESOLUTION 5. It is resolved by Colorado Republicans to support the principles embodied in the Declaration of Independence, and to adhere to, defend, and enforce the Constitution of the United States and the Constitution of the State of Colorado as written.

Passed
YES: 3356 NO: 40

RESOLUTION 6. It is resolved by Colorado Republicans that no person, church, business, or private organization be compelled by government to act or suffer consequences for refusing to act in a manner that would unduly burden or infringe upon their rights of conscience and their exercise of religious liberty.

Passed
YES: 3270 NO: 111

RESOLUTION 7. It is resolved by Colorado Republicans that the federal government be limited to its enumerated powers and be restrained by the 10th Amendment to the United States Constitution so that it does not interfere with the proper role of state and local governments, infringe on the rights of individuals, or usurp the roles of the family, the church, or voluntary associations and civic institutions.

Passed
YES: 3322 NO: 90

RESOLUTION 8. It is resolved that Colorado Republicans support the fundamental right of law-abiding individuals to keep and bear arms, demand all candidates and elected officials support that right as reflected in the 2nd Amendment to the United States Constitution, and will work for the repeal of all laws that infringe upon that right.

Passed
YES: 3340 NO: 59

RESOLUTION 9. It is resolved by Colorado Republicans that the thanks of the American people are due to the men and women of the United States armed forces; that the nation ought to keep faith with all commitments made to them, to provide for their well-being, and to provide ongoing care for those wounded in the service of the country; and that the memory of those who have fallen in her defense shall be held in grateful and everlasting remembrance.

Passed
YES: 3286 NO: 71

RESOLUTION 10. It is resolved that Colorado Republicans support maintaining and developing our military strength and capability for the purpose of defending America's national security and interests.

Passed
YES: 3222 NO: 133

RESOLUTION 11. It is resolved by Colorado Republicans to urge the U.S. Congress to provide political, financial, diplomatic, and military cooperation and support to our long-time ally Israel.

Passed
YES: 3030 NO: 280

RESOLUTION 12. It is resolved that Colorado Republicans oppose continued attempts to circumvent the Colorado Constitution by raising taxes, imposing new taxes, or taxes in the guise of fees, without the affirmative vote of the people.

Passed
YES: 3276 NO: 96

RESOLUTION 13. It is resolved that Colorado Republicans support simplifying the tax code, reducing the number of federal income tax brackets, permanently lowering individual and corporate tax rates, allowing companies to repatriate profits earned abroad without additional penalties, and enacting additional tax reforms that promote and encourage work, saving, private investment, private sector job creation, and economic growth.
Passed
YES: 3222 NO: 120

RESOLUTION 14. It is resolved that Colorado Republicans support reducing federal spending, reducing annual deficits, and paying down the national debt.

Passed
YES: 3340 NO: 37

RESOLUTION 15. It is resolved that Colorado Republicans support an amendment to the U.S. Constitution to require a balanced federal budget.

Passed
YES: 3045 NO: 300

RESOLUTION 16.
It is resolved that Colorado Republicans oppose governmental "taking" of private property for the benefit of private individuals, private entities, or for governmental revenue enhancement.

Passed
YES: 3280 NO: 67

RESOLUTION 17. It is resolved that Colorado Republicans support enacting necessary reforms to ensure the long-term solvency of Medicare, Medicaid, and Social Security.

Passed
YES: 2947 NO: 340

RESOLUTION 18. It is resolved that Colorado Republicans support reforms that promote individual responsibility, impose reasonable time limits on the distribution of unemployment benefits, and encourage education, entrepreneurship and work as essential pathways to personal happiness and prosperity.

Passed
YES: 3193 NO: 136

RESOLUTION 19. It is resolved that Colorado Republicans support the rights and authority of parents to direct the education of their children, including giving parents the ability and increased options to send their children to the school of their own choosing, including public neighborhood schools, public charter schools, online learning, home-schooling, private schools, vouchers, and tuition tax credits.

Passed
YES: 3281 NO: 87

RESOLUTION 20. It is resolved that Colorado Republicans oppose Common Core and centralized control over education policy, testing, collection of personal data, and curriculum development.

Passed
YES: 3248 NO: 100

RESOLUTION 21. It is resolved by Colorado Republicans that the federal Department of Education be abolished and that education policy and curriculum decisions be made by locally-elected school boards with oversight by the Colorado State Board of Education.

Passed
YES: 3192 NO: 150

RESOLUTION 22. It is resolved that Colorado Republicans respect property rights and strongly oppose statewide or local bans or moratoriums on hydraulic fracturing and support the regulation of oil and gas development in a safe, comprehensive, consistent and statewide manner, rather than through a patchwork of inconsistent local regulations.

Passed
YES: 3161 NO: 171

RESOLUTION 23. It is resolved that Colorado Republicans support removing regulations and obstacles that unnecessarily impede the expansion of domestic energy exploration, development and production, including coal, oil, natural gas, solar, wind, geothermal, hydropower, biofuel, and nuclear power, in an environmentally responsible manner that reduces dependence on foreign sources of energy.

Passed
YES: 3276 NO: 89

RESOLUTION 24. It is resolved that Colorado Republicans oppose arbitrary mandates on the use of renewable energy sources, oppose cap-and-trade or similar legislation that would distort energy markets or raise utility prices, and oppose the imposition of special or punitive taxes or higher utility rates on families or businesses in an effort to coerce a reduction in energy consumption.

Passed
YES: 3245 NO: 87

RESOLUTION 25. It is resolved that Colorado Republicans support retaining the Appropriation Doctrine of first in time, first in right with respect to water rights, and support conserving Colorado water through the development and expansion of water storage projects to supply the needs of agriculture, industry and municipalities.

Passed
YES: 3081 NO: 140

RESOLUTION 26. It is resolved that Colorado Republicans support eliminating the federal Environmental Protection Agency, and support allowing each state to establish their own regulations and enforcement provisions to ensure responsible stewardship of the environment.

Passed
YES: 3023 NO: 279

RESOLUTION 27. It is resolved that Colorado Republicans support replacing the federal "Patient Protection and Affordable Care Act," commonly known as ObamaCare, with health care consumer choice reforms, including but not limited to health savings accounts, portability for individual plans, tax credits, the right to purchase and obtain health insurance from any insurer in any state, and other reforms to make health care more accessible and affordable for Colorado residents.

Passed
YES: 3229 NO: 98

RESOLUTION 28. It is resolved by Colorado Republicans that citizens should be free to make their own health care decisions and choose their own health insurance and not be required or compelled to participate in any particular health care program, state or federal health insurance exchange, or to purchase any health care product or service.

Passed
YES: 3278 NO: 58

RESOLUTION 29. It is resolved that Colorado Republicans support tort reform including limiting non-economic and punitive damages, construction defect liability, and product and professional liability.

Passed
YES: 2961 NO: 244

RESOLUTION 30. It is resolved by Colorado Republicans that labor union membership be strictly voluntary, that secret ballots be required for any vote by employees to organize into a labor union, and that no person be required, as a condition of employment, to be a member of a labor union, or to pay any dues, fees, or assessments to a labor union, and that state and local governments be prohibited from deducting political contributions from government employee paychecks.

Passed
YES: 3263 NO: 73

RESOLUTION 31. It is resolved by Colorado Republicans to support and defend the definition of marriage as the union of one man and one woman.

Passed
YES: 2719 NO: 558

RESOLUTION 32. It is resolved that Colorado Republicans acknowledge our Judeo-Christian heritage and support retaining the phrase “under God” in the Pledge of Allegiance, retaining “In God We Trust” as our national motto, and protecting the public display of the Ten Commandments.

Passed
YES: 3143 NO: 171

RESOLUTION 33. It is resolved by Colorado Republicans that life deserves respect and legal protections from conception until natural death.

Passed
YES: 2662 NO: 618

RESOLUTION 34. It is resolved that Colorado Republicans support the passage of a Constitutional amendment to provide that the right to life begins at the moment of conception.

Passed
YES: 2283 NO: 938

RESOLUTION 35. It is resolved by Colorado Republicans that pregnancy, abortion and birth control are personal and private matters, and should not be subject to government regulation or interference.

Passed
YES: 2508 NO: 729

RESOLUTION 36. It is resolved that Colorado Republicans oppose the use of taxpayer funds to organizations that provide or advocate for abortions.

Passed
YES: 3105 NO: 220

RESOLUTION 37. It is resolved by Colorado Republicans that our national borders be secured.

Passed
YES: 3218 NO: 74

RESOLUTION 38. It is resolved that Colorado Republicans strongly support legal immigration and federal immigration reforms that would require otherwise law-abiding immigrants who are already in the country illegally to submit themselves to federal authorities, pay appropriate fines and civil or criminal penalties, pass background checks, demonstrate proficiency in English, and be permitted the opportunity to seek lawful permanent residence or citizenship.

Passed
YES: 2690 NO: 553

RESOLUTION 39. It is resolved by Colorado Republicans that a well-regulated immigrant guest worker program is beneficial to Colorado agriculture, business and industry.

Passed
YES: 2945 NO: 309

RESOLUTION 40. It is resolved that Colorado Republicans support legislation to improve the integrity of elections, to require proof of citizenship and proof of actual residence within a county and precinct for a period of time as a condition of voter registration, and that photo identification be presented before a citizen is allowed to vote.

Passed
YES: 3300 NO: 46
RESOLUTION 41. It is resolved that Colorado Republicans support the imposition of the death penalty for capital crimes in appropriate cases as permitted under Colorado law, and believe it is an abrogation of the duty of state officials to refuse to carry out a just sentence imposed by a jury after the exhaustion of all reasonable appeals.

Passed
YES: 3029 NO: 233

RESOLUTION 42. It is resolved that Colorado Republicans support the repeal of the legalization of medical and recreational marijuana.

Passed
YES: 2252 NO: 1023 3275

RESOLUTION 43. It is resolved by Colorado Republicans that if the provisions of the state constitution governing the possession and sale of medical and recreational marijuana are retained, then the sale of marijuana be subject to sufficient taxation and strict regulation so that public safety is protected, and that the sale of marijuana to minors, the interstate transportation of marijuana, and the involvement of criminal organizations are prevented.

Passed
YES: 2778 NO: 451

RESOLUTION 44. It is resolved that Colorado Republicans encourage the Colorado General Assembly to adopt a resolution calling for a constitutional convention of the states to consider amendments to the U.S. Constitution as provided for under Article V of the U.S. Constitution.

Passed
YES: 2241 NO: 924

RESOLUTION 45. It is resolved that Colorado Republicans encourage lawmakers to take action to halt unconstitutional surveillance programs and provide a full public accounting of the National Security Agency's data collection programs to ensure that the protections of the 4th Amendment to the U.S. Constitution are followed.

Passed
YES: 3088 NO: 178

RESOLUTION 46. It is resolved by Colorado Republicans that the U.S. Constitution be amended to impose term limits for all members of Congress.

Passed
YES: 2623 NO: 678

RESOLUTION 47. It is resolved that Colorado Republicans support the repeal of campaign finance laws and contribution limitations that restrict individuals, political party committees, and other organizations from exercising fundamental rights of political speech and association in support of candidates for public office, and support the full and transparent disclosure of contributions and expenditures made to influence elections.

Passed
YES: 2986 NO: 259

RESOLUTION 48. It is resolved by Colorado Republicans to pledge to lay aside all minor differences within the broad coalition of our conservative party and, motivated by a common sentiment and aiming at a common goal, commit to work together and support the election of our Republican candidates and thus be empowered to influence public policy and govern to the benefit of our citizens in accordance with our shared Republican principles as reflected in these platform resolutions.

Passed
YES: 2636 NO: 334