Report of the House of Representatives Interim Committee on Eminent Domain

January, 2004

January 13, 2004

The Honorable Catherine Hanaway, Speaker
State Capitol Building
Jefferson City, MO 65101

Dear Madam Speaker:

The House of Representatives Interim Committee on Eminent Domain has met, taken testimony, deliberated, and concluded its study on the use of eminent domain by the state, political subdivisions and entities granted condemning authority by law, and the effects upon the rights of property owners. The committee members are pleased to submit the attached report:

Rep. Merrill Townley (Chair)
Rep. Walt Bivins
Rep. Mike Dethrow
Rep. Curt Dougherty
Rep. Steve Hobbs
Rep. John Quinn
Rep. Todd Smith
Rep. Jim Whorton
Rep. Terry Witte

Sincerely,

Rep. Merrill Townley
Committee Chair

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Report of the
House Interim Committee on Eminent Domain

Overview

The Speaker of the House of Representatives, Catherine Hanaway, appointed ten members to serve on the Interim Committee on Eminent Domain and instructed the Committee to examine the use of eminent domain power by the state and its political subdivisions, and whether the power is being abused to the detriment of individual property rights.[1] The Speaker appointed Rep. Merrill Townley to serve as Chair of the Committee. The Committee held public hearings (in Linn, Mount Vernon and St. Charles) in September, October and November of 2003. The Committee heard oral testimony from 54 witnesses, primarily landowners whose property had faced condemnation proceedings. Witnesses representing utilities, the Department of Transportation, economic development entities and local governments also testified, at the request of the Committee. Other individuals and organizations submitted written testimony.

Landowners' complaints to the Committee were numerous. Many felt that they had not received fair market value for their property. Others were more upset with the way the condemning entity acted, typically claiming that the entity failed to negotiate in good faith; some said the entity hardly communicated with them at all. Many expressed anger at the political subdivision that had delegated the authority to condemn to a private entity (e.g., a utility, a developer, etc.) which landowners perceived as a private use, not a public one. Others were dismayed by the reasons for which property was taken, such as for a walking trail or the construction of a strip mall. There was also testimony alleging that political subdivisions had knowingly condemned more property than needed for a project, with the intent of selling the excess property for a profit, after offering the landowner pennies on the dollar for the property. In addition, landowners complained that the process necessary to elicit a fair offer is cost prohibitive, when the landowner is forced to hire an attorney and other professionals (such as appraisers and surveyors) to prove what the property was worth. The condemning entity, on the other hand, typically has such professionals at their disposal.

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[1] The specific objectives of the Committee are: 1) To study the changes that have occurred over the years in the use of eminent domain for the public good as opposed to the individual property rights; 2) Define the public good as it relates to the use of eminent domain such as highway construction, utility right-of-way and economic development projects; 3) To study landowner rights as to alternative solutions, long-term limitations of land use and proper remuneration; 4) Propose legislation to strike a balance between all entities that have access to eminent domain and individual property rights.

Issues

The various concerns raised in the hearings can be summarized into two basic issues:

1) When is condemnation appropriate? (Defining "public use"); and

2) How do we ensure "just compensation" for landowners? (Finding a more fair and efficient valuing process.)

I. Public Use

The proposition of redefining "public use" may necessitate a constitutional amendment, in that the Missouri Constitution's Bill of Rights states that determining whether a use is "public" is a judicial determination:

> That private property shall not be taken for private use with or without compensation, unless by consent of the owner, except for private ways of necessity, and except for drains and ditches across the lands of others for agricultural and sanitary purposes, in the manner prescribed by law; and that when an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be public shall be judicially determined without regard to any legislative declaration that the use is public.[2]

However, one interpretation of this provision would still allow the Legislature to state what is *not* a public use. The wording of the constitutional provision implies that the drafters of the 1875 Constitution were concerned about the Legislature expressly declaring all sorts of projects as "public." If the Legislature actually does the opposite, declaring that certain criteria would make a project *not* for a public use, the courts might have to defer to the Legislature.

Further, Article I, Section 28 may conflict with federal law, as interpreted by the U.S. Supreme Court. In a U.S. Supreme Court decision regarding an eminent domain dispute in Hawaii in 1984, the court held that courts must defer to the legislature in its declarations of what is a public use. The court stated:

> Judicial deference is required because, in our system of government, legislatures are better able to assess what public purposes should be advanced by an exercise of the taking power. * * * Thus, if a legislature, state or federal, determines there are substantial reasons for an exercise of the taking power, courts must defer to its determination that the taking will serve a public use.[3]

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[2] Article I, Section 28, MO Constitution.

[3] Hawaii Housing Authority v. Midkiff, 467 U.S. 229, 244, 104 S.Ct. 2321, 2331 (1984). It is unclear whether this dictum would overrule a specific declaration in a state's constitution, considering the doctrine of federalism (i.e., state's rights, as guaranteed by the Tenth Amendment to the U.S. Constitution.) What is clear is that the definition

Missouri courts have struggled trying to define "public use" and judges have even admitted in their opinions that the definition of "public use" has been amorphous. An opinion by the Missouri Court of Appeals, Western District, summed up the difficulty of defining public use:

> Whether a particular use is a public use is a public policy inquiry and is highly dependent on the specific facts and circumstances of each particular case. The definition of public use is flexible in nature and there has been a historical tendency to expand the types of activities which the courts consider to be public uses. An examination of Missouri case law on this topic reveals a liberal attitude toward what constitutes a public use in condemnation actions. Although the definition of public use is flexible and imprecise, there are some basic principles governing this court's determination of whether a public use exists in this case. Under Missouri condemnation law, public use means public benefit. It should also be noted that 'in order to constitute public use, it is not necessary that the whole community or any large part of it should actually use or be benefited' by the proposed use. Furthermore, private entities' operations can be considered public uses if their operation constitutes a benefit to the public. (Citations omitted.)[4]

Hence, it appears that a definition of public use (which clearly sets forth some scenarios which are not public use) may, at least, clarify the term for the courts.

II. Just Compensation

The second issue, regarding the determination of "just compensation" is one that may be handled with changes to statutes, Supreme Court Rules and, in the case of state agencies, by executive order.

An examination of the law and the process of condemnation reveals that many of the issues raised by the witnesses can be addressed in a condemnation commissioners' finding and, if needed, a jury trial. The process for selecting commissioners, set forth in the Missouri Constitution, Chapter 523, RSMo and in Supreme Court Rule, requires the commissioners to be landowners in that county and "disinterested" in the property. Landowners are permitted to present evidence to the commissioners regarding the property's value. If the commissioners' decision is still unsatisfactory to the either party, either party can demand a jury trial on the issue of price. (Although the condemning entity may decide to abandon the condemnation if the price is too high. The landowner has no such option.) The cost of a jury trial, however, is an economic obstacle many landowners cannot overcome. Further, the costs of securing an independent survey and an appraisal must be borne by the landowner even before getting to the trial phase.

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of "public use" in Missouri has grown over time via case law, not legislation. Hence, a narrowing of the definition of "public use" by the legislature could very well withstand such a constitutional challenge.

[4] City of Smithville v. St. Luke's Northland Hospital, 972 S.W.2d 416, 420 (1998).

Examples of Condemnation Complaints

Of the 54 witnesses testifying before the Committee, most were landowners who were upset that a condemning entity had taken their property as part of a 1) Tax Increment Financing (TIF) deal; 2) Roadway creation or expansion; 3) Utilities easement; or 4) Municipal project. Following are some examples of such testimony.

Tax Increment Financing

The Real Property Tax Increment Allocation Redevelopment Act (TIF) was enacted in 1982 to allow cities to give a financial incentive to companies who could renovate dilapidated buildings in blighted areas, particularly in urban communities. Aside from disagreements over determining the fair market value of the property (which is a problem in all types of condemnation suits) the primary complaint among TIF victims is that the property being condemned is often not, in fact, blighted. The labeling of well-kept and valuable property as blighted draws complaints from landowners, but an even larger complaint stems from the fact that private developers are often the only people reaping huge benefits from such takings. The Institute for Justice, a citizens advocacy law firm in Washington, D.C., recently completed a five-year study of all 50 states' eminent domain policies regarding economic development-based takings. In its overview of Missouri's eminent domain laws and practice, the report states:

> Missouri has one of the worst records on eminent domain abuse in the country. Cities and towns across the state regularly use eminent domain for the benefit of private parties. There have been at least 13 instances in the past five years. Missouri also allows private redevelopment corporations to condemn property. And Missouri courts, despite an express constitutional admonition that courts should exercise their own judgment on public use, nevertheless approve nearly every condemnation, no matter how private the purpose or how unnecessary the condemnation. Missouri law and practice desperately need reform to stem the tide of eminent domain abuse.[5]

One witness testifying before the Committee described the TIF program as one that was created with good intentions, but has been abused by developers, with municipalities letting it happen.

> What state lawmakers have created is a developers' entitlement program. Any developer will tell you TIF is the most significant tool we have to encourage development. Unfortunately, the use of TIF results in an intense competition between suburbs fighting to lure projects with public dollars. A developer need only propose a project and they are automatically guaranteed a welfare check, even if they have deep pockets. Developers naturally will seek out a deal that

[5] Dana Berliner, Public Power, Private Gain, p. 117 (2003.) Published by the Institute for Justice, Washington, D.C. See the appendix for excerpts from the report. See also Julie A. Goshorn, Note, In a TIF: Why Missouri Needs Tax Increment Financing Reform, 77 Wash. U.L.Q. 919 (1999), and Joseph J. Lazzarotti, Public Use or Public Abuse, 68 U.M.K.C. L.Rev. 49 (1999).

> allows them to make the greatest profit possible. In the St. Louis region, a developer who is unable to get the requested subsidy from one city can find a new and perhaps better deal by looking no further than across a river or municipal boundary. The fragmentation of the metropolitan region causes the suburban communities to fight among themselves, causing "mall wars." Communities that need help the most seem to find the least number of developers to help them. And they won't find many, so long as developers have the option of getting similar tax breaks for real estate deals in wealthy suburbs. Developers and city officials argue that affluent neighbors and plush surroundings should not disqualify a project from getting subsidized under the law. Under current law, the municipality usually finds the TIF district to be either blighted or not yet blighted but nonetheless 'detrimental to public health, safety, morals or welfare.' The municipality must also determine that the area would not develop economically without the taxpayer dollars TIF provides. The problem is the municipality is the sole determinant in these decisions. 'Blighted' means whatever the city wants it to mean.[6]

The fact that landowners do not agree with the project that necessitates the condemnation makes the task of settling on a price for the land that much more difficult. Another witness testifying before the Committee described her disbelief when she received a letter informing her that a developer was invoking eminent domain, and she and her family had to leave.

> I'm not afraid of terrorists these days -- I'm afraid of developers and my own City's mayor and aldermen. Eminent domain, once a tool for acquiring right of ways for highways, railroads and utilities, has become a grossly misused tool in the hands of greedy developers statewide. Local governments wave it in the faces of stunned citizens as justification for their actions. Corporate developers revel in the power it gives them, as private property owners quickly sign, because they don't have the money to hire an attorney to fight what's happening, and they're afraid that if they do fight, they'll end up getting less for what they've worked so hard to call their own. Obviously something needs to be done at the state level to stop this abuse of power.[7]

Reforming the TIF law is, obviously, beyond the scope of the Committee's mission. However, it may be possible that the Committee could carefully draft a definition of "public use" that would incorporate such perceived abuses of TIF. Such a limitation on the power to condemn could curtail many of these abuses.

MO Department of Transportation

Terry Sampson, the Right of Way Director for the Department, testified before the Committee at its initial hearing in Linn, MO. Following is a brief synopsis of his comments.

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[6] Kelley John Isherwood, House Springs, MO, testimony submitted to the Committee, November 19, 2003.
[7] Kathryn Jepsen, Brentwood, MO, testimony submitted to the Committee, November 19, 2003.

The Department of Transportation uses the guidelines established by the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, which governs the condemning of property for projects using federal funds. The Department uses these same guidelines for all of its acquisitions, whether or not they involve federal money. In 2002, the Department obtained roughly 85% of its 1,100 acquisitions by negotiation, with the remainder going through condemnation proceedings. Approximately 1% of its cases go to a jury trial. The Department employed a mediator to settle 26 cases in 2002, up from ten cases in 2001 and seven cases in 2000. The Department plans to utilize mediation more in the future. The Department uses focus groups and peer review analysis to ensure it is using the "best practices" in its condemnation process.[8]

Mr. Sampson did not elaborate on how the negotiation process works with the typical landowner. Landowners who testified before the Committee, however, did elaborate on their experiences with the Department. One such witness was a farmer in Franklin County, whose land was condemned for the construction of a new portion of Highway O.

> In March, 2000, a man by the name of Green called and asked if he could appraise the land the Highway Department wanted for the road. He set up a meeting for the following day. He came to my house about 9 AM without maps or any other information. I did not have any either. I took him in the pick-up and we rode all over the farm. He said he would get a map and be back in a week. He never returned. In May, I received a notice that there was a registered letter at the post office for me. * * * There was a packet with the map and other material about the land that was being taken. They were taking 17.63 acres with 1.0364 acres of temporary easement, the largest amount of property taken from any of the landowners. That same day I sent a registered letter back to Steven Powell stating I would not accept the offer. The following morning Steven Powell called me and asked if he could come to my home to talk to me. We set the meeting for the following day. Mr. Powell asked me why I would not accept the offer and I stated the appraisal was not fair. The land he was using for the appraisal was 4 miles from my farm and was sold on June 16, 1998. The next property they were using was located about 10 miles from property on a gravel county road that was sold on August 29, 1997. The third property was another six miles from my property and very steep and was sold on April 15, 1999. He stated if I did not accept the offer he could condemn my land. And that was the last I heard from him. On July 3, 2000, the sheriff served me with papers to report to court on July 22, 2000. On July 22, 2000, the land was condemned.[9]

Another witness testified to similar treatment in the Highway O condemnations.

> My family and I live in Franklin County on a farm that was purchased by my grandparents in 1923. This farm was in the path of the relocated Highway O. * * * MODoT has taken over a dozen years to plan for this roadway. An initial offer

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[8] Terry Sampson, Right of Way Director, MO Department of Transportation, testimony submitted to the Committee, October 20, 2003. See appendix for a copy of Mr. Sampson's written testimony.

[9] William Murphy, Pacific, MO, testimony submitted to the Committee, November 19, 2003.

was made by the agency in October, 1999. At that time I rejected that offer and requested some concerns about water drainage, permanent drainage easements and fencing be addressed. I never heard from the agency again until February 2001, when they called on a Saturday to say they were condemning our property. I received the condemnation papers that day. I asked why they hadn't tried to negotiate with me, and the reply was they were too busy with negotiations with Highway 141 and 100 to have time and they really didn't have to negotiate. They made an initial offer, I rejected, so condemnation could be pursued. They had time to look for Indian relics, to check for the grave of Sam Whitworth the original homesteader and even made two trips out to study the crawfish in the creek bed; they didn't have time for me. MODoT offered me $4850 per acre. They paid my fence line neighbor $11,807 per acre for two acres of woods. When I asked why, their reply was I had 100 acres; I would not miss my 4 acres as much. * * * It has been almost two years since the commissioners viewed and valued our property for condemnation proceedings. The road is built and open. I have yet to receive any money for my property; it is in escrow at the Franklin County Court. I have received attorney bills and bills for appraisal services. I have also had to repair our creek bank where actual damages and significant future damages have and will occur. * * * Something needs to be done to force these guys to negotiate in good faith. They show up once, make an offer and that's it? And their offer was ridiculously low. This was made clear when they condemned it, and then the commissioners came up with a value that was double what MODoT offered. If you haven't gone through condemnation, then you just can't understand. You're the defendant, but it's up to you to prove what the land is worth.[10]

The Department of Transportation offered mediation on 143 parcels of land in 2002, of which 46 were actually mediated, with 26 reaching a settlement. The Department did not describe the mediation process, but it is safe to assume that the process does involve the parties actually communicating. This seems to be what is lacking in a significant portion of those acquisitions that must go to the condemnation hearing. Perhaps revisiting the guidelines for "negotiations" can address these concerns.

Utility Easements

The main complaint with utility company takings is the amount of compensation provided. In most cases, a utility is paying merely for an easement, not for the property itself. But in the case of transmission lines, for example, the property cannot be used for anything else, so the taking is more like a condemnation of land, not a mere right-of-way. The compensation, however, does not come close to the fair market value of the land "taken." One witness, a rancher in Osage County, testified about how the Central Electric Cooperative acquired an easement across his century farm.

[10] Bill McLaren, Pacific, MO, testimony submitted to the Committee, November 19, 2003.

> Central told my parents to get an appraisal, so Dad hired Jack Blaylock, a professional appraiser out of Columbia, an appraiser who has done work for AmerenUE and Central Electric. Obviously, Mr. Blaylock was someone the power companies thought highly of, as he had done work for them. Well, Dad got the appraisal and gave it to Central, and they just blew it off. They said you could get an appraiser to give you any kind of figure you wanted. * * * Let's go to the condemnation process. A local judge appoints three people from the county to determine damages. Now remember, these three people do not have to have any experience in land appraising. None! In our case, we had two farmers appointed and a banker. All three of these "appraisers" are members of the Three Rivers Co-op, and as such are owners of Central Electric. We were able to introduce Jack Blaylock's value into the case. But the process was not about value, as it should have been, but about the commissioners pleasing both sides. So they determined value by taking Central's offer and the appraisal and splitting the two to establish the value and damages. I was told how it worked by one of the appraisers. This process has no correlation to damages and fair market value.[11]

Several landowners who were subject to condemnation proceedings by utility companies complained that the Public Service Commission was powerless to help them. The General Counsel for the Public Service Commission, Dan Joyce, addressed the Committee regarding that agency's duties in regulating the granting of utility easements. The Commission's authority in this area is limited to the creation of a new utility company and instances where a public utility seeks an easement for any "electric plant"[12] (which includes transmission lines) outside of its certificated service territory. In such instances, the utility must obtain from the Commission a Certificate of Convenience and Necessity. The Missouri Supreme Court has held that "the term 'necessity' does not mean 'essential' or 'absolutely indispensable,' rather there must be a showing that there would be an improvement in service from the project, justifying the cost."[13]

Harold LePage owns a farm near Jefferson City. In his testimony before the Committee, LePage explained that AmerenUE visited his farm one day in August of 2002 and told him they would be taking 60 acres of his farm to construct an electrical distribution center. When he told AmerenUE that his farm was not for sale, he was told that "the company could condemn the property, and start setting poles in two weeks."[14] LePage consulted with an attorney, and found that there was little that could be done to stop such a condemnation. LePage told the Committee:

> Basically, they could seize our ground, and were not even required to pay present market value. Rather, they only had to pay for the loss of use of the ground after they took possession. * * * The state, unlike surrounding states, allows utility companies to seize properties with little or no protection to landowners, and does

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[11] Byron Baker, Linn, MO, testimony submitted to the Committee, October 20. 2003.

[12] Section 386.020(14) states: "Electric plant" includes all real estate, fixtures and personal property operated, controlled, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light, heat or power; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power.

[13] State ex rel. Beaufort Transfer Co. v. Public Service Commission, 504 S.W.2d 216, 219 (Mo.App. 1973).

[14] Harold LePage, Jefferson City, testimony submitted to the Committee, October 20, 2003.

> not require them to pay market value or damages to adjacent properties. The utility companies are privately owned, and one of their greatest assets is the land over which their electricity is transmitted, even to other states. The result is the state's landowners are being forced to subsidize energy companies. The easements they get are forever, removing any future financial security for the landowner. The company will be making profits transmitting electricity 200 years from now, with the landowner paying taxes, insurance, and upkeep to the property over which the transmission is taking place. No homes, barns, or businesses will ever be built where these lines are located, and it is impossible to know what future uses this land will have in 20, 50, or 100 years.[15]

Claire Kramer is a farmer in Pulaski County. The Public Service Commission granted a Certificate of Convenience and Necessity to AmerenUE, which will construct a 345kv transmission line across her farm. Kramer told the Committee that a clear definition of necessity is needed.

> The determination of necessity was left up to AmerenUE, a privately held corporation who has now been given the state's right to acquire 70 additional easements to construct this line. However, the PSC never defined what necessity means. In this case, necessity seems to mean corporate gain at the cost of the landowner. A firm, clear definition of public good or public necessity should be established, and all applications for use of eminent domain be measured by this standard.[16]

Given the lack of clear definition of necessity, Kramer told the Committee that the decision becomes a balancing test. The public needs farmers and their products too, and the construction of such transmission lines harms those farmers in several ways.

> Along this route this transmission line will cross approximately 200 farms. Some of these farms have been in families for a century. Farming is their livelihood. Farming and production of food is most certainly a public necessity just as electric generation is. The farmers affected by this new line will have to put up with the erosion, the physical presence of the electric towers and the indiscriminant effects of the herbicides used on the right of way.[17]

Finally, Kramer told the Committee that the process of condemnation is weighted too heavily in favor of the condemning entity.

> In this case and many like it, the landowner has no choice in selling. Fighting condemnation only uses up their financial resources, which leave them better off

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[15] Id.
[16] Claire Kramer, Pulaski County, testimony submitted to the Committee, October 20, 2003.
[17] Id.

> to have sold in the first place. Their hands are tied and are forced to take what is offered to them.[18]

Geoffrey Douglass, Director of the Real Estate Department at AmerenUE, testified before the Committee and explained AmerenUE's process of easement acquisition. Douglass stated that "the route selection process for a new transmission line is an interactive process with the community."[19] AmerenUE will typically propose more than one possible route for a transmission line when it conducts informational workshops for the public, where it solicits public comments to determine the best possible path.

> After evaluating the input received from property owners, public officials and other interested parties, a specific route is selected. The preferred route is the route that will have the least overall impact on the entire area. Effected property owners are then notified of the preferred route and given a timetable as to when they will be contacted to discuss project details, timing of the project and easement requirements. * * * Property owners are offered fair market value of the easement rights that we require from them. During these negotiations with the property owners, we will also consider any changes to the route or design that will benefit the property owner. If after many negotiation sessions we cannot agree with the property owner on the fair market value of the rights that will be required, then a condemnation suit is filed in court.[20]

Douglass stated that AmerenUE acquired only 1 easement through condemnation in 2001 and 2002, while during that time span it acquired 1,470 easements by negotiation.

Political Subdivision Condemnations

The City Council of Washington, MO, was awarded a ten million dollar grant from the Missouri Department of Transportation to expand the Washington Municipal Airport. Inn preparing for that expansion, the Council tried to acquire approximately 400 acres of land adjacent to the existing airport, owned by several farmers. The bulk of the land sought by the Council, approximately 300 acres, belongs to David Riegel, a dairy farmer. Riegel told the Committee that the amount of land actually needed for the airport expansion is less than 100 acres, and the Council wants to acquire an extra 300 acres so it can convey it to several airport-related industries. Riegel says he told the Council that all he wants is enough money to buy the same amount of farmland elsewhere. He feeds his dairy cattle with crops grown on his farmland. But similar land is not readily available, especially at the price that the Council has offered. Riegel was forced to hire an attorney and the case is going to trial. Riegel asked the Committee "Why do I need to hire an attorney if I have done nothing wrong?"[21]

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[18] Id.
[19] Geoffrey Douglass, AmerenUE Real Estate Director, testimony submitted to the Committee, November 19, 2003.
[20] Id.
[21] David Riegel, Dutzow, MO, testimony before the Committee, November 19, 2003.

The City Council of Billings, MO decided to build a walking/biking trail through several lots that were in the process of being developed. No homes were built yet on these lots. Just the possibility of a walking trail being put at the back of these properties made the lots much more difficult to sell, according to the developer. But the city would not pay for the full extent of damages to the developer.

> The City wanted to make this trail because they got a $100,000 grant from the State. The City offered me $10,000 for my land, but I said no. This was to be a 40-foot strip of paved trail along the back of seven lots. It was more than 32,000 square feet they were taking. The commissioners were appointed and they said it was worth $20,000. I had it appraised, and it was valued at $100,000! First of all, the City should not have the right to take this property by eminent domain. Eminent domain should be used only for something that is truly needed, not something that you just want. You need it for utilities, roads, things that benefit the whole community. This is that "public convenience" versus "public necessity" question. There are several walkways in the city, and they never have more than a handful of people on them. But the huge discrepancy between what it is appraised for and what is offered is the problem.[22]

Options to Consider

I. Defining "Public Use."

1. Define "public use" so that it is distinguished from "public benefit." (The public may benefit from many kinds of properties being constructed in an area, but this does not rise to the level of "public use.") A taking would be for "public use" when a governmental entity (or quasi governmental agency) owns or controls the property. When a private entity owns or controls the property, it can fall under the "public benefit" category. Public benefit projects could use a different condemnation process, where the valuation of the property is more fair, uniform and efficient.

2. Restrict the conveyance of condemned property (from a governmental entity to a private entity) for a certain amount of time (e.g., five or ten years) to prevent condemning entities from taking extra property for the sole purpose of selling it for a profit.

3. Create an independent entity, state-funded, that can examine all condemnations throughout the state and will make a determination whether the intended use is public.

4. Prohibit the transfer of any utility easement without the consent of the landowner. Such a prohibition would not include the purchase of, or merger with, a utility, but merely the transfer of an easement to a separate corporate entity.

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[22] Rex Pittman, Billings, MO, testimony before the Committee, October 23, 2003.

II. Creating more efficient and fair methods for determining the value of property.

1. At the first meeting with a landowner regarding the acquiring of property, the condemning entity must provide notice (a written copy) of the landowner's rights. (The text of the notice would be set forth in statute.)

2. Appraisals of all properties subject to condemnation would be done by an independent entity, which is state-funded, before the case goes to a court for a condemnation hearing. The entity would be paid for by an assessment on every property transaction by entities with condemning authority.

3. A state-funded entity would provide the third commissioner in all condemnation commission proceedings, paid for by an additional dollar tacked onto recording fees.

4. Attorneys would be provided to land owners (paid for by an additional dollar tacked onto recording fees) to handle condemnation litigation. Property owners would have to apply for such representation, and it would be provided on a priority basis, based upon an initial analysis of the merits of the case.

5. Require condemning entities to pay half of the attorney fees of all condemned property owners forced to litigate.

6. Limit all easements to a term of years, not in perpetuity.

7. Conveyances of easements that are not used for the purposes for which they were acquired for a period of ten years are considered abandoned and revert back to the seller.

8. Any property that was taken through condemnation and was not used for the purpose for which it was acquired for a period of ten years, the landowner has the option (for one year) of reacquiring the property at the original price paid at the condemnation, pro-rated on a per acre basis. This would also prevent the condemning entity from selling the property to a third party during that time.

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Appendix
To the Report of the
House Interim Committee on Eminent Domain

Following is a representative sampling of the written testimony submitted to the Committee, demonstrating the views of property owners as well those of governmental entities and private entities that have been granted condemning authority.

Condemning Entities and Related Organizations:

* Denny Coleman, President, St. Louis County Economic Council
* Terry Sampson, Right of Way Director, MO Dept. of Transportation
* Geoffrey D. Douglass, Director - Real Estate Department, Ameren Services
* Dan Joyce, General Counsel, Public Service Commission

Property Owners and Concerned Organizations:

* Kerry Messer, Missouri Family Network
* Steve Blechle, property owner, O'Fallon, MO
* Byron Baker, property owner, Lynn, MO
* Claire Kramer, Concerned Citizens for Family Farms and Heritage
* Doug McDaniel, property owner, Osage County (Easement Conveyance to AmerenUE)
* Janet Engelbach, Missouri Eagle Forum
* H. Thorvald Rygaard, concerned citizen, Lee's Summit, MO
* Kathryn Jepsen, property owner, St. Louis, MO
* Bill McLaren, property owner, Pacific, MO
* Karen Smith, property owner, St. Louis, MO
* William Murphy, property owner, Franklin County

* Excerpt from Public Power, Private Gain, by the Castle Coalition.
  (The Castle Coalition is a project of the Institute of Justice, a public interest law firm in Washington, D.C. The report is the result of a five-year study into the use of eminent domain in all 50 states. This excerpt consists of the section on the state of Missouri.)

St. Louis County
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Eminent Domain Testimony
Denny Coleman
9/13/03

Mr. Chairman and Members of the Committee:

I'm Denny Coleman, President and CEO of the St. Louis County Economic Council. I also own a farm in Franklin County. My organization is dedicated to growing businesses and creating jobs in St. Louis County and the surrounding region, and to rebuilding the economic vitality of less prosperous communities within our County. These efforts are important to the entire state, as St. Louis County provides over 20 percent of the state's jobs and businesses, and over 30 percent of the state's tax revenues. Therefore our economic performance has an effect on all Missouri.

The issue before you today, Eminent Domain, is critical to the work of the Economic Council. In urban and suburban settings, Eminent Domain is an essential tool for development and particularly redevelopment projects. We use Eminent Domain primarily to clear titles on blighted and abandoned properties in order to allow for assemblage of properties, and development of new commercial, industrial and residential sites. Such properties may have old sewer liens or other legal encumbrances that would prohibit development, as banks will not lend on properties with title problems. Eminent Domain is our only mechanism to clear these titles, and is therefore crucial to our ability to improve both economic performance and quality of life, across the County but particularly in the distressed communities that need it most.

Wellston, Missouri is a perfect example of how we use Eminent Domain. This municipality has suffered for years from the exodus of business and industry. Over time, it deteriorated from a center of retail and manufacturing, as well as a populated residential community, to an area of abandoned buildings, environmental problems, high crime rates and a very poor quality of life. Eminent Domain has been essential to a comprehensive redevelopment plan for Wellston which includes environmental remediation, development of light industrial parks, a jobs training center, a new business incubator, a childcare center, improved infrastructure, and in cooperation with Habitat for Humanity, Bank of America and other groups, new housing for Wellston residents. Today Wellston is undergoing a true renaissance, and Eminent Domain has been absolutely essential to our ability to gather and clear properties, create jobs, establish decent housing, and bring economic renewal to this community.

Wellston is just one example of how Eminent Domain acts as a critical tool for us to bring about real improvement. Across St. Louis County, Eminent Domain has been used to clear titles and assemble properties before redevelopment could begin. Without it, blighted areas would remain abandoned, unused and unsafe, and opportunities to build stronger economies and safer neighborhoods would be lost.

As critical as Eminent Domain is, we use it carefully and selectively. Safeguards are in place for adequate compensation, and often in cases of property disputes, Eminent Domain is the only means for owners to benefit from title clarification and sale of the property. One example is in Lemay in South St. Louis County, where two heirs to a property there could not agree on a price. They welcomed our help when we took the property through the Eminent Domain process and settled the conflict for them; that property is now a very productive and successful small business incubator, growing businesses and jobs for all South County. The proper controls <u>are</u> in place to assure that Eminent Domain is used responsibly and that parties are compensated fairly. Accountability is built into the process.

As you consider the future of Eminent Domain in our state, we respectfully request that you take into account the role it plays in urban and suburban areas like ours. It is an integral part of the redevelopment process, a vital tool for rebuilding and empowering communities, and essential to the economic health of our County and our State.

Thank you.

Dennis G. Coleman
President and CEO
St. Louis County Economic Council

House Interim Committee on Eminent Domain
October 20, 2003

MoDOT's Right of Way and Eminent Domain Overview

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Introduction

The Right of Way Functional Unit of the Missouri Department of Transportation is responsible for the acquisition of land and realty rights needed for highway projects. There are ten right of way district offices that carry out acquisition activities throughout the state. It is these district staffs that deal one on one with private landowners. These employees also are one of the most beneficial public relation tools we have. They are on the front lines conveying to the public the need for a project and how a project will impact them. They carry the concerns of the department to the affected owners and in turn carry the concerns of the affected owners back to the department. These employees have received and continue to receive specialized training in land acquisition and its many facets.

The Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) provides important protections and assistance for people affected by Federally funded projects. The Uniform Act was enacted to ensure that people whose real property is acquired, or who move as a result of projects receiving Federal funds, will be treated fairly and equitably and will receive advisory assistance and/or compensation in moving from the property they occupy. However, MoDOT follows the federal act on all projects regardless if there are federal funds or not.

The acquisition of private lands for public use is taken quite seriously as we are well aware of the disruption we cause in the lives of landowners. We attempt to make the process as painless as possible and to fully understand the concern of the public. The responsibility of balancing property rights (fairness to the property owners) and the prudent spending of taxpayer dollars is a delicate matter.

Acquisition Process

Public Meetings – Our right of way employees participate in public meetings that accompany many projects so we can meet the property owners we will be affecting. We feel it to be advantageous to both the property owner and the department if relationships can be established early in the project planning process. This also gives the property owner a chance for input in the project.

Description Writing – Legal descriptions are prepared by right of way staff for only the specific areas to be acquired in relation to the project plans.

Appraisal – Appraisals of fair market value are completed on each individual parcel. Our appraisers, whether staff or fee, contact the landowners and ask permission to inspect the property and they also extend an invitation for the landowner to accompany them during their inspection.

Appraisal Review – Each district right of way office has a Chief Appraiser that reviews the appraisals completed by staff and fee appraisers. These individuals must be certified by the Missouri Appraisal Commission and have four years of MoDOT appraisal experience or six years outside experience in comparable positions.

Negotiation – After the appraisals are complete on a project, an offer to purchase the property is extended to the landowner. This process is referred to as the negotiation phase and its duration varies depending upon the timelines for the project.

Mediation - In recent years the department has gone to great length to make the acquisition process as fair as possible and to avoid the last resort of eminent domain proceedings. Mediation is a process in which the department hires an outside mediator to sit down with the landowner and the department and try to reach an agreement. This process is non-binding; therefore, if an agreement cannot be reached during the mediation phase both parties would proceed to eminent domain acquisition. Mediation is an attempt by the department to provide both parties an additional avenue to reach an agreed settlement. The fees involved for mediation for the mediator's services are paid by the department.

Eminent Domain – The department's eminent domain proceeding is often referred to as "condemnation". This is the acquisition of private property for public use. Eminent domain is the final option available to the department and is approached very seriously. The power of eminent domain is a necessary tool. However, it is one that must be handled with the upmost care and a realization of the grave responsibility associated with it.

Condemnation Hearing – During this initial court process referred to as the condemnation hearing, the local Circuit Judge orders the property condemned and may or may not hear testimony confirming that an offer was made in good faith. Once the property has been ordered condemned, the Judge appoints three disinterested residents within the community who do not have an interest in the project, to view the property and establish a value. In most cases both parties have the right to state their case to the commissioners at the viewing. After the commissioners view the property, they file a report called the Report of Commissioners that states the Commissioner's Award for the property. Within this report, they state their finding of value and MoDOT must pay whatever amount they set as its value. If MoDOT or the landowner is not satisfied with the amount of the Commissioner's Award, both parties have the right to request a jury trial.

Jury Trial – Since possession of the property is obtained by the department after the Commissioner's Award is paid into court, most jury trials occur after construction has begun on a project. A jury trial is trial that is heard by a jury of twelve peers. Testimony at jury trials may consist of the department and landowners appraiser, department engineers, the landowner, etc. After hearing the testimony given, the jury of twelve decides the compensation to be paid to the landowner. If their verdict is an amount greater than the previous Commissioner's Award, the department must pay the difference between their verdict and the Commissioner's Award and if it is less than the Commissioner's Award, the landowner must pay back the difference between the verdict and the Commissioner's Award.

Property Management – Statutory and case law have mandated the way in which we need to dispose of certain property. We are currently working on revising this section of our Right of Way Manual. To begin the revision process, we are seeking legal opinions and working with legislators on possible statutory revisions to ensure fairness and consistency of disposals.

Statistics

As a department we have historically averaged the acquisition of 1,100 parcels per year. The following statistics provide a percentage as to how these parcels were acquired.

Negotiation – 85%

Condemnation – For fiscal year 2003 our condemnation rate was 13%. As a department we anticipate this number to drop as mediation continues to grow. Of the approximate 15% of parcels going to condemnation, approximately 1% go to a jury trial.

Mediation – In fiscal year 2000, the department made offers to mediate on 30 parcels. Ten parcels were actually mediated and seven were settled.

In fiscal year 2001, the department made offers to mediate on 50 parcels. Twenty parcels were mediated and ten were settled.

In fiscal year 2002, the department made offers to mediate on 143 parcels. Forty-six were actually mediated and twenty-six were settled.

As a department, we feel that participation in settlements will continue to increase.

Steps to Ensure Fairness

Surveys – The right of way district offices send out property owner surveys after completion of acquisition activities on each individual parcel. These surveys are brief and are meant to allow the landowner to be honest and forthright with their perception of the acquisition process and how they were treated.

Basis for Just Compensation – In recent years the department has also provided a basis for just compensation, which provides a breakdown of essential elements of the appraisal. Not only does it provide a breakdown of the numbers, but it also gives information regarding the comparable sales that were used to establish value.

Mediation – As mentioned earlier within this report, mediation was established to provide an additional avenue for settlement once negotiations have reached an impasse. It is at no cost to the property owner and is a non-binding process.

Peer Review – In September 2003, the Right of Way Division of MoDOT was the recipient of a peer review sponsored by the Federal Highway Administration. The peer review team was made up of a team of five that looked at a baseline assessment of several right of way processes. The team recognized best practices and areas for improvement. Their findings were presented to senior management and their ideas are currently being reviewed.

Uniform Act – Our standard operating procedures to work within the limits of the Federal Uniform Act on all projects is a method to ensure fairness to all landowners, including the following:

Appraisal – Every parcel acquired by the department is appraised and an offer of fair market value is extended. This practice causes the department to examine each parcel and determine the damages caused by the project.

Appraisal Review – Every appraisal is reviewed by the district's Chief Appraiser. The Chief Appraiser must be certified by the Missouri Appraisal Commission. The Chief Appraiser assures that consistency is maintained throughout the appraisal process on a project and appraisals are correct and of good quality.

Offer in Writing - All offers to purchase real estate are put in writing. In so doing the landowner and the department have an actual document to hold stating the amount of the offer.

Compensation Before Possession – The department does not take possession of any property without first compensating the landowner for the property and property rights we have acquired. This provides a safeguard for the landowner that the department will not acquire their property and then fail to pay them for it.

Offer to Purchase Uneconomic Remnants – As a department we make every effort not to leave landowners with useless remnants of their property. If our acquisition causes a piece of property to have no access or be left in an unusable state, we will offer to purchase this property. These pieces of property are referred to as uneconomic remnants.

Handing-out Appraisals – A task force charged with the responsibility of revising the department's policy and procedure in regards to the releasing of appraisals is presently being assembled. We hope to begin handing-out our appraisals to property owners early next year.

HOUSE INTERIM COMMITTEE ON EMINENT DOMAIN

NOVEMBER 19, 2003

Geoffrey D. Douglass
Director - Real Estate Department
Ameren Services

Eminent Domain Law

The existing laws on Eminent Domain are fair to both the utility and the property owner. It balances the needs of the utility to build a project that will serve a larger public and also the rights of the property owner to ensure they are fairly compensated for any property rights that they will lose.

In order for Ameren to condemn an easement or other property rights, it requires an order from the court. At the court hearing, Ameren must:

1. Prove that it has the right to condemn property as delegated to it by the legislature.
2. Prove that the taking is necessary.
3. Prove that the taking is for a public use.
4. Prove that they negotiated with the property owner in good faith.

At the hearing, the property owner is given an opportunity to dispute these issues. If the court finds that Ameren did prove all four items, then the property is condemned.

The property owner then gets two chances to justify the compensation they should receive for the property rights that have been taken.

During the Commissioners Hearing, they can present their opinion on the compensation they should receive to the three commissioners that were appointed by the local Judge. The Commissioners are local experts on real estate values in that county.

If the property owner is not satisfied with the commissioner's award, they can then request a jury trial where 12 residents of the county will hear evidence and render a verdict on the proper compensation.

Ameren Right of Way Acquisition Process

This action is rarely taken at Ameren. During the last 2 years (2001 and 2002):

1,470 Easement were acquired by negotiation.
1 easement was acquired through condemnation.

The route selection process for a new transmission line is an interactive process with the community.

The Planning Department defines the scope of a project.

Once the scope is defined, a team from Planning, Transmission Line Design, Real Estate, Environmental and the Local Division review possible routes that would meet the planning criteria and have the least overall impact on the entire area. The team will utilize aerial photography, topographic maps, local planning information and field visits to select several possible corridors that warrant further study.

Key information will be collected for each corridor such as:

Length of the line
Number of properties impacted
Amount of property required or width of easement
Houses within and near the right of way
Other structures within and near the right of way
Environmental impact
Other utilities within the corridor
Cost

After reviewing this information, one or more corridors are selected as possible routes. Meetings are held with public officials to gain additional input on the routes. The possible routes are then presented to the public at informational workshops. The purpose of the workshops is to gain comments and suggestions on the best possible corridor.

After evaluating the input received from property owners, public officials and other interested parties, a specific route is selected. The preferred route is the route that will have the least overall impact on the entire area.

Effected property owners are then notified of the preferred route and given a timetable as to when they will be contacted to discuss project details, timing of the project and easement requirements.

During easement negotiations we work hard to make sure the property owner fully understands the project, why it is needed and how it will impact their property.

Property owners are offered fair market value for the easement rights that we require from them. During these negotiations with the property owners, we will also consider any changes to the route or design that will benefit the property owner.

If after many negotiation sessions we cannot agree with the property owner on the fair market value of the rights that will be required, then a condemnation suit is filed in court.

TESTIMONY OF DAN JOYCE, PSC GENERAL COUNSEL AT PUBLIC HEARING OF THE HOUSE INTERIM COMMITTEE ON EMINENT DOMAIN

October 20, 2003

I appreciate the opportunity to speak to the Committee on behalf of the Commission. What I plan to do first in my testimony is to say I am not here to talk about. I am not going to address land use policy and condemnation law. That is not my expertise, and I want you to know that the Commission is not a party in civil actions that public utilities bring to obtain right-of-way or land ownership under state law. What I am prepared to discuss is the threshold matter of a public utility's legal authorization to proceed with construction of capital plant, physical facilities, inside or outside of its certificated service territory.

1. First, public utilities typically file applications for certificates of convenience and necessity—CCN's—with the Commission when they seek authority to construct physical plant, like a transmission line, or pipeline, **outside** of the particular utility's certificated service territory.

2. Case law has interpreted Section 393.170 of the Revised Missouri Statutes to require an electrical corporation to obtain a certificate of convenience and necessity from the Commission in order to construct "electric plant" (Section 386.020(14) RSMo 2000) outside of its certificated service territory. *State ex rel. Harline v. Public Serv. Comm'n*, 343 S.W.2d 177, 180-83 (Mo.App. 1960); *Public Serv. Comm'n v. Kansas City Power & Light Co.*, 31 S.W.2d 67, 71 (Mo.banc 1930); *State ex rel. Utility Consumers Council of Missouri v. Public Serv. Comm'n*, 562 S.W.2d 688, 690 (Mo.App.), *cert. denied*, 439 U.S. 866, 99 S.Ct. 192, 58 L.Ed.2d 177 (1978). Section 386.020(14) defines electric plant as follows:

> "Electric plant" includes all real estate, fixtures and personal property operated, controlled, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of

electricity for light, heat or power; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power.

3. Respecting the standard for granting a certificate of convenience and necessity, Missouri courts have utilized a rather broad interpretation of the word "necessity" and noted the discretion of the Commission. The term necessity does not mean "essential" or "absolutely indispensable," rather there must be a showing that there would be an improvement in service from the project, justifying the cost. *State ex rel. Beaufort Transfer Co. v. Public Serv. Comm'n*, 504 S.W.2d 216, 219 (Mo.App. 1973). "The safety and adequacy of facilities are proper criteria in evaluating necessity and convenience . . . . *State ex rel. Ozark Elec. Coop. v. Public Serv. Comm'n*, 527 S.W.2d 390, 394 (Mo.App.1975). Furthermore, it is within the discretion of the Public Service Commission to determine when the evidence indicates the public interest would be served in the award of the certificate. *Id.* at 392" *State ex rel. Intercon Gas v. Public Serv. Comm'n*, 848 S.W.2d 593, 597-98 (Mo.App. 1993).

4. Having looked at the CCN process for seeking authority to construct facilities **outside** of a service territory, I will now address the authority of a public utility to construct facilities **within** its service territory without additional Commission approval. Beginning in 1914, a year after its creation, the Commission has consistently maintained, and the courts have affirmed, its interpretation that Section 393.170 RSMo does not require a public utility to obtain a certificate of convenience and necessity for every extension of its line to render additional service once a public utility has a certificate to serve a particular service territory. *State ex rel. Harline v. Public Serv. Comm'n, supra*, at 182); *Public Serv. Comm'n v. Kansas City Power & Light Co., supra*, 31 S.W.2d at 71).

5. The Court of Appeals in the 1960 *Harline v. Public Service Commission* case said:

> A primary function of the Commission in its regulation of electric utilities is to allocate territory in which they may render service. The Commission is empowered by statute to pass upon the question of public necessity and convenience (1) for any new company or additional company to begin business anywhere in the state, or (2) for an established company to enter new territory. *Peoples Telephone Exchange v. Public Service Commission*, 239 Mo.App. 166, 186 S.W.2d 531.

6. The Court of Appeals further explained that the "dominating purpose in the creation of the Public Service Commission was to promote the public welfare. To that end the statutes provided regulation which seeks to correct the abuse of any property right of a public utility, *not to direct its use.*" The court went on to say that:

> The utility's ownership of its business and property includes the right of control and management, subject, necessarily, to state regulation through the Public Service Commission. The powers of regulation delegated to the Commission are comprehensive and extend to every conceivable source of corporate malfeasance. Those powers do not, however, clothe the Commission with the general power of management incident to ownership. The utility retains the lawful right to manage its own affairs and conduct its business as it may choose, as long as it performs its legal duty, complies with lawful regulation and does no harm to public welfare. See *State ex rel. City of St. Joseph v. Public Service Commission*, 325 Mo. 209, 30 S.W.2d 8. Also, see *State of Missouri ex rel. Southwestern Bell Telephone Co. v. Public Service Commission of Missouri*, 262 U.S. 276, 43 S.Ct. 544, 67 L.Ed. 981.

7. The Commission, in a 1980 case involving Union Electric's application to build additional combustion turbine generating units in St. Louis County and St. Charles County, stated that it was delegated the statutory authority to grant or deny an application for a certificate, after hearing, to protect the public interest. It said:

> The statutory power gives the Commission a tool regulate competition between utilities and to avoid the needless duplication of electric facilities. Thus, when a certificate is granted for a certain area, the Commission has determined through findings of fact and conclusions of law that the utility should operate within the certificated area. The certificate is the triggering mechanism that allows the utility to use the powers it already possesses under its incorporation. *In the Matter of the Application of Union Electric Company for Permission and authority to Construct, Operate and Maintain Two*

Combustion Turbine Generating Units in the State of Missouri, 24 Mo. PSC (N.S.) 72, 77. See Section 351.385 RSMo.

8. To close, I would just like to summarize that the Commission has consistently, throughout its existence, permitted public utilities to construct physical facilities inside of its service territory without any additional application for approval from the Commission. For construction of plant outside of that service territory, the Commission has required applications for certificates of convenience and necessity, which starts a process involving an evidentiary hearing, public hearings and a Commission determination, based on the evidentiary record, concerning whether or not the project is in the public interest.

That concludes my testimony, and I would be happy to try to answer any questions the committee may have.

Eminent Domain Abuse

Statutory suggestions to stop abusive intimidation and arrogant disregard of landowners.

Taken from testimony by:
Kerry K. Messer
President, Missouri Family Network

Presented to:
Missouri House of Representatives
Interim Committee on Eminent Domain

Monday, October 20, 2003
Community Center, Linn, Missouri

COMPENSATION - CONDITIONS - CONSTRAINTS

COMPENSATION

1. **Owners should be able to bill for documented labor and other cost associated with ongoing maintenance problems caused by the utility**. Common testimony from property owners adversely affected by utility easements points to the practice of taking entities making construction clean-up and/or ongoing maintenance agreements (verbal or otherwise) in order to secure contracts, only to forget those promises after profits start flowing through the easements. Property owners are often left to absorb the cost, in terms of time, finances and aesthetics despite assurances that were offered in securing contractual easement rights. Statutory guidelines could protect citizens from the arbitrary dismissal of significant grievances.

2. **All lost resources should be required to be reclaimed, restored, or recompensed**. Eminent domain of easements, or other partial property taking, rarely condemns small tracts of land without having a significant impact on adjoining properties. Often the use and/or maintenance destroys much larger tracts of land. The condemned portion is often stripped of valuable resources and left as an eyesore or impediment to the remaining portions of the landowner's home/investment. Wooded areas are almost always clear-cut with valuable timber destroyed. Merchantable lumber is drastically devalued by handling and marketing practices. Firewood and other potential resources owned by landowners are demolished and the ground is left unusable for conversion to agriculture or other purposes. Weeds and undesirable plants are actually fostered which invade and threaten adjoining fields.

3. **Profit sharing**. A minimum, pro-rated share, of annual net profits from either utility easements or other development projects should be distributed to adversely impacted or displaced landowners. In short, these property owners are investors in the project, willing or not. Their property is a significant part of the investment or the property would not have been targeted. Property owners drug through condemnation are deprived of any return on their portion of the investment as punishment for not 'cooperating'. This is despite the fact that they legally owned the original investment. Such 'royalties' should be paid just like those on anyone else's shares invested in the venture.

4. **ALL property or rights directly or indirectly taken through eminent domain must be compensated for – not just highlighted portions**. The common language of an easement contract specifies a clearly delineated portion of property which a proposed compensation package is offered for. However, the common practice of many taking authorities is to word such contracts to include various rights to extended properties also, yet without compensation. In normal situations landowners eventually receive minor compensation for what in effect turns out to be an easement without borders. Either all eminent domain uses should be prohibited for borderless easements, such easements be required to be specified as 'bordered or borderless', all rightful compensation required, or some combination of the three.

CONDITIONS

5. **Automatic reversion to owner(s) under clearly delineated abandonment guidelines**. All properties, whether taken in total or for easement, should be allowed to revert back to injured property owners if such property is abandoned, undeveloped, or if misused by the taking authority. Eminent domain should never grant "perpetual" rights to property not actively used for the stated purpose used to justify the taking.

6. **Taking entities should be required to pay for at least 50% of ALL legal fees of injured property owners**. Agencies, businesses, institutions, and other entities authorized to exercise civil rights of eminent domain are also predisposed to take unfair advantage of landowners due to their financial strength, legal expertise, experience, and other resources. The use of condemnation proceedings universally creates a "David & Goliath" battle in which the property owner(s) have neither slings nor stones. A 100% formula requiring all fees to be born by the taking entity would result in a lack of incentive for the owners to cooperate, but a 50% relief of this burden would help to level the playing field for property owners. (It would be akin to providing David with either a sling or stones while requiring him to acquire the other for himself.) This would also encourage taking entities to be a little more reasonable in negotiations short of condemnation.

7. **All owners of a connected project should be in court together**. A list of all owners on a continuous easement or other project should be provided to each individual owner. Once again the disproportionate resources of a taking entity create an unreasonable advantage over the various victims of eminent domain. These individual property owners usually don't even know who each other are and do not know how to identify one another. This seemingly minor issue allows politically connected and empowered entities to "divide and conquer" isolated individuals, families, or small businesses.

8. **Notification outlining all legal rights should be presented to all connected project property owners**. Any authority which seeks to obtain property or property rights, and which possesses the power of eminent domain, should be required to provide ALL legal options to landowners before any negotiations or condemnation proceeding occur. This helps to limit taking advantage of the average person's ignorance of their legal rights. Such a 'Miranda Rights' approach to property would work to ensure that every affected landowner gets the same opportunity for fail legal treatment.

CONSTRAINTS

9. **Private property seized through eminent domain should be statutorily limited to single use-of-purpose only**. Easements taken by utilities, highways, or other entities, should be restricted to being used only for the express purpose authorizing the condemnation. Further or duplicate uses should require a separate condemnation and/or negotiation of compensation for the property owner. Other 'whole property' takings in which the original land ownership is dissolved must be limited to the stated purpose of the condemnation in order to protect property owners from misrepresentations of potential property values. Second and/or third generation developments utilizing taken lands should compensate displaced owners equitably.

10. **Any forced 'takings' should be limited to lease arrangements which aid in providing fair market compensation to owner(s)**. At the least, any eminent domain use should be negotiated as either an outright purchase of easement, or, under a statutory guaranteed lease, with scheduled rates that can be renegotiated every ten or so years – based on market values. This is especially critical when utility easements devalue lands and destroy development opportunities otherwise available to the landowners, or, in cases such as commercial development, when condemned land is converted to income producing developments.

11. **Political contributions from beneficiaries of eminent domain should not be allowed to those who provide/maintain such authorization**. Contemporary political ethics and potential corruption schemes – especially among smaller political subdivisions – demand that the integrity of "public good" eminent domain be protected from the most offensive abuse of the procedure.

12. **Prohibit private profiteering**. Eminent domain by definition is supposed to be justified because of the "public good". If restricting or dissolving property rights for some people for the "public good" results in profits for identifiable individuals connected to the taking entity, the underpinnings of the law have arguably shifted away from civil societal benefit to unjustifiable tyranny. Such abuse of eminent domain creates a system whereby the politically stronger simply employs the power of the state to steal from whomever, in order to collect the profits. Eminent domain laws which allow for the condemnation of private property under the auspices of benefiting the "public good" but serve to provide profits to those utilizing such taking authority cannot be defended as just or equitable. These profits, by all justification, belong to the landowner!

- end -

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House Interim Committee on Eminent Domain October 20, 2003

TIF, Eminent Domain Abuse and O'Fallon MO

On March 27, 2003, the City Fathers of O'Fallon unveiled a Downtown redevelopment plan to condemn, demolish and rebuild 110 acres of viable businesses and residential housing. Downtown O'Fallon is a well-developed and established district. There are over 100 businesses not including a concentration of more than 60 doctors, lawyers and other professionals. There are many well kept albeit older homes, newly constructed businesses, low vacancy rates and businesses with annual growth rates of 20%. There are national chain stores in the district that are number one in their market. There are three banking facilities in Downtown, one of which represents the largest depository in the City of O'Fallon.

I am here today to tell the story of how city leaders can manipulate and falsify statistics about the fiscal condition of an area they determine has a better use. How can a city do this? A city can easily abuse the broad definition of blight contained within the Missouri State TIF statute. Once an area is declared blighted a city can invoke the use of Eminent Domain to remove property owners unwilling to sell.

The TIF definition of "blight." **"An area which, by reason of the predominance of defective or inadequate street layout, unsanitary or unsafe conditions, deterioration of site improvements, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, retards the provision of housing accommodations or constitutes an economic or social liability or a menace to the public health, safety, morals, or welfare in its present condition and use."**

This definition of blight could apply to every neighborhood in the State of Missouri and has opened the door for the abuse of Eminent Domain when used for economic development projects.

Who decides what's blighted and what's not blighted? A city board simply makes **"a finding that there exist conditions which cause the area to be classified as a blighted area, a conservation area, an economic development area, an enterprise zone pursuant to sections 135.200 to 135.256, RSMo, or a combination thereof, which area includes only those parcels of real property directly and substantially benefited by the proposed redevelopment project."** When a city declares an area to be "blighted" it is legally "blighted." In other words, the definition of "blight" is just a matter of using the city board's rubber stamp. The whole TIF district, the "redevelopment area" doesn't even have to fit that definition, just some part of it, the rest can be un-blighted properties that are **"directly and substantially benefited by the project."** What does that mean? It means anything the city says it means – no proof of "direct and substantial benefit" is required. In the meantime, what if you're caught in the fallout; you want to sell your home or property but it's sitting in the phony "blighted" area? There are no rules for "blight"; Blight is whatever local politicians say it is. It can mean one thing this year and something else five years from now. TIF is a "whatever-we-say-it-is" power that protects no one but the city and their chosen private developers while striping property owners of their Constitutional right to own property.

Missouri's TIF law has become a shell game used by developers to leverage public taxes for private development and by local governments who have allowed lax planning, zoning and poor code enforcement to contribute to the deterioration of housing stocks and commercial property. The effect of poor municipal management, planning and codes enforcement causes erosion of property values, tax revenues decline and TIF is seized upon as the "no tax increase" solution.
Once a city has declared an area blighted, the current Missouri TIF laws allows the city to use the power of Eminent Domain. What if property owners are unwilling to sell their properties to the City or private developers? Holding out for the price you want is a perfectly legitimate thing for a property owner to do in America even if city politicians, hungry for new tax money to spend, don't like waiting for them to get it. With TIF as their "good tool" the city can force the sale by condemning the land and then they can sell it themselves – even for a higher price if they can get it. When the government condemns property to force the owner to sell to them it is usually sold for the appraisal price, which may not necessarily be the price that open market competition might produce. A property might appraise for $200,000 but because of market forces or business competition factors not known or considered by an appraiser, the same property might change hands for a great deal more.

Missouri has one of the worst records on eminent domain abuse in the country. Municipalities across the state regularly use eminent domain for the benefit of private developers. Missouri even allows private redevelopment companies to condemn property. Missouri's court system approves nearly every condemnation, no matter how private the purpose or how unnecessary the condemnation. Missouri law desperately needs reform to stop the ongoing trend of Eminent Domain abuse.

Stephen L. Blechle
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My name is Byron Baker, I live on a farm in Osage County. The farm has been in our family since 1856. My brother and I farm the property and run a cow-calf operation with our own labor on nights, weekends, and vacation. I am a graduate of MU with a degree in Ag Econ. After college I worked 9 years in Illinois as a farm manager and rural appraiser. I relocated home to the farm in 1985 taking a job at the local bank.

Let me tell you about my father. Dad died in March 2002. He too was a MU graduate, he worked for several years after college as a dairy farmer until my brothers, the twins, were born. At that time he had to take off farm employment to make ends meet. He went to work for the Missouri State Highway department and spent 29 years with them. His job duties included negotiating access to farmer's properties to take soil samples for future roadway acquisitions. He carried out his job by giving the people the consideration and respect they deserve as stewards of the land. He got along with people and had no enemies. He respected property rights. In 1989 he retired from the highway department and went to full time farming.

Now let me tell you about his terrible ordeal with Central Electric Cooperative "His member owned Cooperative".

In 1998 we found out Central wanted to acquire an easement. My father informed Central Electric he was not interested in selling land for an easement but the adjoining property was for sale and the seller was willing to sell them an easement. Central acted like they would consider the alternative property. Later they came back and said they could not pay what the seller wanted that they were a Cooperative and could not pay the price he was asking. We live one mile south of Linn on a paved State highway. Over the years we have had many many request to sell lots to people wanting to build houses. In addition our property has been looked at for a site for a country club and also an airport. We had no intention of selling then and we had no intention of selling when Central wanted our property. We are not blind to the changes of urbanization of surrounding properties. We also protect our property for our families and our children, be it for farming or be it for homes. Our neighbor sold his property off for homes and now we have 9 new homes by us. Central could have purchased land that was for sale. The adjoining property owner told us he had offered to sell them land.

Have you ever had to negotiate with someone who holds a trump card, The eminent domain trump card? How can it be said that the power companies negotiate in good faith with landowners before they take the step of eminent domain? The power companies can't negotiate in good faith by the mere fact they hold condemnation powers! To negotiate in good faith both parties have to have equal rights. Both parties do not have equal rights when one holds the eminent domain trump card! Most people cannot stand the stress or the cost of having to go to court to fight for their rights. My father couldn't stand it either he just didn't know it at the time!

My father would of negotiated with Central if they had of been forthright and honest and acting in good faith with him. He was no fool he had dealt with these types of situations for the past 30 years. He knew these Central Electric people were not on the level with him. My parents wrote a letter to every member of the board and the manger of Central Electric. A coop we are member owners of. Their manager Don Shaw never contacted my parents or acknowledged that letter. The coop is always advertising their member owned and member controlled status, but they won't reply to their own member's request? Yes the engineer and ROW manager met with my parents and tried to convince them to sell but it was always on their terms. I'll give you and example: Central told my parents to get an appraisal, so Dad hired Jack Blaylock a professional appraiser out of Columbia, an appraiser who has done work for Amern UE and Central Electric. Obviously Mr. Blaylock was someone the power companies thought highly of as he had done work for them. Well Dad got the appraisal and gave it to Central and they just blew it off. They said you could get an appraiser to give you any kind of a figure you wanted. Remember this is a MAI certified appraiser who the power companies hire too.

Let's go to the condemnation process. A local judge appoints three people from the county to determine damages. Now remember these three people do not have to have any experience in land appraising. None! In our case we had two farmers appointed and a banker. All three of these "appraisers" are members of Three rivers Coop, and as such are owners of Central Electric. We were able to introduce Jack Blaylock's value into the case. But the process was not about value as it should have been but about the commissioners pleasing both sides. So they determined value by taking Central's offer and the appraisal and splitting the two to establish the value and damages. I was told how it worked by one of the appraisers. This process had no correlation to damages and fair market value. The independent appraisal we had made at Central's request had a direct correlation to value. Central's offer did not they had no outside appraisal to base their offer on just a budget for the project. Central knew they could get their 100 foot for less than appraised market value through condemnation . Why did they know this? Because they were holding the trump card, "Eminent Domain".

Some things you should now about condemnation. The utility companies have been able to get favorable case rulings on how the process works and what can be submitted into evidence. Comparable sale and lease information on what other utility company's are paying for their easements has been removed from being able to be submitted into evidence. You cannot introduce what a utility is paying or has paid to make your case. As a trained appraiser I know appraisers use three determinations to reach value. The first is the cost approach, the second is the income approach, and third is market approach. In effect the market and income approaches have been flawed by limiting evidence on what other utilities have paid. The process is skewed against the property owner.

After our land was taken from us here is some things we have to put up with:

My father cut and burned wood in an outside furnace. He ask the contractor if he could have the wood they cut off the corner the line came across. Ralph Schulte, Central's engineer told Dad the judge wouldn't let him have the wood, so they just piled it up and burnt it. I later confirmed with our attorney that the judge said no such thing.

When they started to construct the line, the contractor found out they could not get the line built because the easement they took went across a pond and they couldn't stay on the easement and get around. Dad was a gentleman and let them go off the 100-foot easement to get the line constructed. He was not like this arrogant bunch who burnt the wood he could of used.

There are ruts so bad in the field under where Central built the power line we have to slow down two gears to cross when cutting hay. This spring the chain on the fertilizer spreader jumped off when we went over the rut and the driver didn't catch it and 20 acres were spread in a line. I called Don Shaw (Central's manager) to see if they wouldn't fix the rut and he said they would have if we hadn't made them go through the condemnation process, he said our attorney should specifically ask for those damages when the condemnation papers were filed, papers Central's attorney prepared. This is how they treat you if you don't just bow down to them. That arrogance displayed again. This must be stopped!

Central's planned sub station was to be on land right across the road from us. It has never been built. It has been almost 5 years since they determined they really needed this line and substation. Recently the Central bunch, through their sister Coop Associated Electric, gave away a forty year old easement which had never been built on to Amern UE. As it turns out Amern plans to build a 29-acre substation by the 5-acre Central Substation and install a 345 KV line, a line twice the size of those already there . We now know why they would not move to the willing seller's site don't we. Were they acting in good faith knowing that and not disclosing it to us when they were taking our property? Maybe the ROW negotiator did not know but management above him knew. This new line is supposedly needed to enhance the grid so we can sell free market power "out of state". Free enterprise power going over taken land!

Times have changed, the way power companies are regulated and do business has changed. We now have retail wheeling and power marketing going on lines across our farm. Thus we have free enterprise on the lines but not below the lines! Free enterprise above the ground but not on the ground! The laws need strengthened to restore the property rights back to the owners. What do we have if we don't have private property rights?

Private enterprise should not have the power of condemnation! That is giving special interest privileges to private owners of a company over the rights of the private landowner. This is something I don't think our founding fathers would of approved of. Big companies shouldn't have the right to take our land, to take our scenic landscapes, to take our dignity for their private profit . This is wrong. The process is wrong. The cost of defending against this taking of one's property rights is wrong! The stress caused by dealing with this will kill you! Our Family knows first hand.

Than you for your time and consideration. Please put a stop of this abuse. Take away the power of eminent domain from the private power companies.

My name is Claire Kramer. I am a member of Concerned Citizens for Family Farms and Heritage and I own a farm in Pulaski County. Recently the Missouri Public Service Commission granted Certificate to Ameren UE to construct a 345kv transmission line across my farm. In 1978 my father signed an easement agreement with Associated Electric Cooperative who recently gifted it to Ameren UE. This high power transmission line will be constructed in short order and will affect my family and property forever.

My father worked his whole life to buy this property and now that he is gone it is my responsibility to maintain and protect it. This farm is my family's refuge from the city. It is my piece of paradise. This time next year my view of the beautiful fall colors will be obstructed by 80 foot tall utility poles.

I am here to say I am going to do everything within my power to keep Ameren UE or Associated Electric or anyone else from coming back to my farm to further their damage by using the eminent domain laws.

The use of eminent domain is a state right and not meant for private corporations to use for their gain.

The PSC decided for me and all the other land owners along this route (who are members of the "public") that this line was needed for the good of the public. In hearing rooms and agenda meetings "public" was never defined.

The determination of necessity was left up to Ameren UE, a privately held corporation who has now been given the state's right to acquire 70

additional easements to construct this line. However, the PSC never defined what necessity means.

In this case necessity seems to mean corporate gain at the cost of the landowner.

A firm, clear definition of public good or public necessity should be established and all application for use of eminent domain be measured by this standard.

Clearly this case was not investigated fully by the Public Service Commission. If it had been the commissioners and Judge Nancy Dippell would have discovered the goal of Ameren UE is to further dominate the electric grid, thereby selling power to other states to increase profits to the detriment of Missourians who are the "public" to be considered by the Public Service Commission.

Along this route this transmission line will cross approximately 200 farms. Some of these farms have been in families for a century. Farming is their livelihood. Farming and the production of food is most certainly a public necessity just as electric generation is. The farmers affected by this new line will have to put up with the erosion, the physical presence of the electric towers and the indiscriminant effects of the herbicides used on the right of way.

In this case and many like it, the landowner has no choice in selling. Fighting condemnation only uses up their financial resources, which leave them better off to have sold in the first place. Their hands are tied and are forced to take what is offered to them.

The value of a piece of property is determined by the demand for that property. The property owner should not be forced to sell to private entities using or misusing the eminent domain laws.

Many people purchase property with the intention of holding it until its value increases. Others purchase property they have always dreamed of owning. Landowners need to know that their right to hold private property will be protected by our government.

By eminent domain, a privately owned utility company can take a person's land, leave it sit idle for years while the taxpayer keeps paying taxes on the land and is kept from developing it due to the unpredictable nature of the utility company's alleged "public necessity". Specific time limits written into law could prevent this.

In the short run, eminent domain appears to benefit private corporations, who are able to use their political clout to push for condemnation of properties they wish to acquire and buy up at reduced prices.

If we do not adopt new pro-property legislation then private corporations will always have the upper hand in purchase negotiations.

Section 2 of the Bill of Rights of the Missouri Constitution states that all persons are entitled to equal rights and opportunity under the law. It is the principal office of government to secure these rights and opportunities. When government does not confer this security it fails in its chief design.

I believe it is in the best interest of the citizens of Missouri to have the eminent domain laws studied and re designed in order to protect property owners from private gain by privately held corporations.

Doug McDaniel

This area to be used for recording information only.

CF-90

TRANSMISSION EASEMENT

THIS INDENTURE, Made this _____ day of _____, 2003, by and between DOUG MCDANIEL, his heirs, successors, and assigns, hereinafter referred to as Grantor, whether one or more and whether an individual, individuals, or a corporation, and UNION ELECTRIC COMPANY d/b/a AmerenUE, a Missouri corporation, 1901 Chouteau, Mail Code 700, St. Louis, Missouri 63103, its successors, assigns, agents, lessees, tenants, contractors, sub-contractors, and licensees, hereinafter referred to as Grantee,

WITNESSETH:

That for and in consideration of the sum of Ten Dollars ($10.00), the receipt and sufficiency of which is hereby acknowledged, and the additional consideration of the sum of Five thousand six hundred and no/100th Dollars ($5,600.00) to be paid to Grantor by Grantee within sixty (60) days from the date hereof or the release of this easement from any liens or encumbrances of record, whichever date is later. Grantor does hereby grant, bargain, sell, convey, and confirm unto Grantee the perpetual right and easement of one hundred fifty (150) feet in width in, on, upon, along, over, through, across, and under the following described lands situated in Osage County, Missouri, more particularly described on Exhibit "A" attached hereto and made a part hereof.

Together with the perpetual right, permission, privilege, and authority in Grantee to survey, stake, construct, reconstruct, erect, place, keep, operate, maintain, inspect, patrol, add to the number of and relocate at will, at any time, and from time to time, in, on, upon, along, over, through, across, and under the herein described easement a line or lines of towers, poles, conduits and appurtenances, crossarms, wires, cables, transformers, anchors, guy wires, foundations, footings, and any other appurtenances, for the purpose of transmitting electric energy or other power, and for telecommunications; to trim, cut, clear or remove, at any time, and from time to time, by any means whatsoever, from said easement or the premises of the Grantor adjoining the same on either side trees, brush, and any and all obstructions of whatsoever kind or character which, in the judgment of Grantee, may endanger the safety of, or interfere with, the surveying, staking, construction, reconstruction, erection, placement, retention, operation, maintenance, inspecting, patrolling, addition to and relocation of, Grantee's facilities; and the right of ingress and egress to, from, and over the herein described easement and any of the adjoining lands of the Grantor at any and all times for doing anything necessary or convenient in the exercise of the rights herein granted; also the privilege of removing at Grantee's option at any time, any or all of Grantee's improvements erected in, on, upon, over, and under the herein described easement.

The Grantor agrees that it will not erect any building or structure or create or permit any hazard or obstruction of any kind or character which, in the judgment of Grantee, will interfere with the surveying staking, construction, reconstruction, erection, placement, retention, operation, maintenance, inspection, patrolling, addition to and relocation of, Grantee's facilities.

The Grantor warrants and covenants unto Grantee that, subject to liens and encumbrances of record at the date of this easement, it is the owner of the above described land and has full right and authority validly to grant this easement, and that Grantee may quietly enjoy the premises.

TO HAVE AND TO HOLD the easement aforesaid, with all and singular the rights, privileges, appurtenances and immunities thereto belonging or in anywise appertaining unto said Grantee, its successors, assigns, agents, lessees, tenants, contractors, subcontractors, and licensees, forever.

This easement conveyance shall run with the land and shall be binding upon the parties hereto, their heirs, successors, executors, administrators, and assigns.

IN WITNESS WHEREOF, the Grantor has hereunto set its hand and seal as of the day and year first above written.

DOUG MCDANIEL

By: _____
Doug McDaniel

STATE OF MISSOURI
} SS
COUNTY OF _____

On this _____ day of _____, 2003, before me personally appeared DOUG MCDANIEL, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed and further declared himself to be single and unmarried.

My Commission expires _____

_____
Notary Public

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10/10/03

Janet Engelbach

Why Eminent Domain and what is blight?

e answer depends on where you live and who wants to build there!
ıntil developers come up with plans to build offices, shops, condos, new sidewalks or move a drug store one block, no one is concerned or given "blight" much thought. That was the term for rundown, homes and buildings with shattered windows, peeling paint and kids too scared to play outside.

Little of that was reflected in our middle-class neighborhood, we thought. But today, "blight" has become the word to take private property.

City officials are designating neighborhoods "blighted" as a prelude to eminent domain - a government move that would force residents out, so work can start high dollar complex of offices, apartments, condos, shops and restaurants.

What exactly is blight? And, when can government use the term to justify displacing whole neighborhoods for development deemed in the public good?

Is it blighted to live in a 1920s-era home on 2nd Street, any city in Missouri?

Elderly couples should not have to hoard their retirement money in case they have to fight the blight designation in court.

Loose definitions
Governmental bodies can take land by eminent domain for public uses including new roads, municipal buildings, public garages or anything they decided that will put more tax dollars into the treasury.

Increasingly, however, cities, villages and state agencies have been trying to use their eminent domain powers to displace residents for commercial developments that include shopping centers, movie theaters and office towers.

How can these developments possibly be considered public uses?

: of the problem stems from confusion over what, exactly, constitutes blight. There is no precise, universally accepted standard. Definitions in Ohio and Kentucky law include words like slummed, deteriorated, dilapidated, unsafe, unsanitary, inaccessible and a menace to public health, safety, morals and welfare.

Loose interpretations are allowing municipalities to seize attractive properties and hand them over to builders promising developments that could generate millions in tax revenues. The trend nationwide is to designate blight on really flimsy rationale. Anybody's property is at risk.

There's a lot of pressure on the cities to be viewed as pro-business. Shorthand for doing whatever it takes to get investments. We're talking about throwing people out of their homes.

Blight as weapon
"Blight" has become a weapon, used unfairly by developers who covet their property and by city officials too eager to bring in new development.

A blighted neighborhood should be one with such deplorable conditions as to not be repairable. What's happening now is cities and counties say they'll just blight it (and) take it.

Tough decisions
Trying to revitalize cities and counties, elected officials are faced with some tough decisions. Sure they would prefer if the neighborhood would be a rundown industrial building oozing with some toxic material, But unfortunately that's not the case. It's an insult to the people who have lived there for a number of years, who continue to work on their homes.

We ask the legislature to tighten the definitions of blight and eminent domain, not loosen them.

souri Eagle Forum
ı Engelbach Legislative Director 636-475-6328
P.O. Box 166
Wildwood, Missouri 63040

H. Thorvald Rygaard
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Lee's Summit, MO 64081-1715
816 524 2963
Fax: 816 524 2963; Email: htrygaard@planetkc.com

October, 29, 2003

The Honorable Merrill Townley, Chairman
House Interim Committee on Eminent Domain
House Post Office
Jefferson City, MO 65101

Representative Townley:

With reference to the public hearings you are having on the right of eminent domain I, have the following comments to make on the matter.

Specifically, the use of condemnation to take land for private projects is contrary to the right of individual ownership of property that historically has been a sacred right in the United States. There are legitimate uses of condemnation where public government projects are put forward for the good of the public. The use of condemnation for private developments is terribly unfair.

Where private commercial projects make use of condemnation proceedings is misuse of the right of eminent domain. That right was, at its conception, never intended to enrich private individuals or companies.

The argument taking for the greater good of the public, as this has been used in shopping center developments, in no way overshadows the right that has been given throughout our history to the sustained right of ownership of the individual citizen!

This to respectfully request recommendations from your committee include whatever protection of the rights of individual ownership is needed to guard against this flagrant misuse of the right of eminent domain laws.

Representative Townley, I have never been impacted in this manner nor has anyone to whom I am close. I am writing simply as a citizen concerned with the erosion of individual rights we see going on around us in these times.

Thank you for your kind attention,

H. Thorvald Rygaard

H. Thorvald Rygaard, AIA, PE

Copy: The Honorable Karen Messerlli, Mayor, City of Lee's Summit
Craig Patterson, President, AIA Missouri

Kathryn Jepsen

2328 Annalee Avenue • St. Louis, Missouri 63144-1742
(314) 962-7436 Home (314) 691-1083 Cell

November 19, 2003

I live with my husband and two children in a small fifty year-old home in a prosperous suburb of St. Louis. We're careful with our money, and go to Six Flags instead of Disney Land. We don't own a fancy ski boat, but both our boys have the braces they need for their teeth. I put myself through college on good grades and by cleaning houses. I was raised believing that if you worked hard and lived a "good" life, you would succeed.

Now imagine the following scenario –

– I have to attend my son's Boy Scout Court of Honor and miss the Monday night Board of Alderman meeting.

– I miss reading the weekend paper, the hard to find section where my City has issued an RFP on my neighborhood, because I'm working overtime trying to save up enough money to put new storm windows in my house.

– Then one day I get a letter informing me that XYZ Development Company is buying me out. A 353 Corporation has invoked eminent domain and my family and I have to go.

I'm not afraid of terrorists these days – I'm afraid of developers and my own City's mayor and aldermen.

Eminent domain, once a tool for acquiring right of ways for highways, rail roads and utilities, has become a grossly misused tool in the hands of greedy developers statewide. Local governments wave it in the faces of stunned citizens as justification for their actions. Corporate developers revel in the power it gives them, as private property owners quickly sign because they don't have the money to hire an attorney to fight what's happening, *and* they're afraid that if they do fight, they'll end up getting less for what they've worked so hard to call their own.

Obviously something needs to be done at the state level to stop this abuse of power. The criteria for declaring something blighted, that all-important first step in the eminent domain process, is without a doubt economic discrimination. Over thirty five years old? I guess it's a good thing they can't do it to people because most of us would be headed to the glue factory. Out-dated design? What happened to a sense of history and appreciation for craftsmenship? Doesn't meet it's tax potential? Funny, it was good enough last year when the owner paid the taxes on it.

Unfortunately, eminent domain doesn't stand alone as the only evil in need of reform.Development corporations statewide abuse TIFs, 353 Corporations, TDDs, and tax abatements as a pipeline of corporate welfare. You and I can't go to the City and say "boy I'd like to buy that big expensive house but I just can't afford it. Why don't you forego go my increased property taxes for twenty three years and I promise I'll be a good?" Development corporations have become self-feeding machines. Without free money, their projects wouldn't be as numerous or as big. And very few people,when they look at these big new developments, see the bones of what was there before –buried under the shiny new facade.

Please listen closely to what the private citizens here today have to say. We're here because this issue is so big that we believe it MUST be changed at the state level. I'm going to submit, along with my personal feelings, an article from the Washington University Law Quarterly. It deals with the need for TIF reform, but since you very rarely have TIFs without blighting and the threat of eminent domain, I feel it is pertinent.

Eminent domain makes people feel worthless. It's like walking up to them and saying "you're not good enough." It shatters lives, kills pride, and leaves citizens questioning has all their struggle really been worth it? Help people hang on to what they've worked so hard to achieved. Don't let city governments who don't listen, who are dancing with developers who don't care, tell the citizens of this state that they're "not good enough."

Thank you,

Kathryn L. Jepsen

Bill McLaren

Good Afternoon, Nov 19, 2003

My name is Bill McLaren. I live on a farm in Franklin county that was purchased by my grandparents in 1923. My family's farm is one that was in the path of reconstructed Hwy O. I believe 12 parcels were condemned for this project which was about 25% of the property owners. Of these 12 parcels condemned, 7 were farms and 5 were Century Farms

Now I know what you are thinking; this is a repeat. I heard Bill at Linn, MO. You are correct, I was at Linn. I was able to speak before Terry Sampson, the Right of Way Director for MODot. His story contradicted what I had to say and I was unable to ask a question of him at that time. Doc Townley wanted to make sure these hearings did not turn into a debate.

In all fairness, Mr. Sampson came outside and visited with me and assured me that the system must have broken down, that MODot does not conduct business in that manor. He also assured me that he would investigate the matter immediately and implied he would be back in contact with me. I have checked with most of my neighbors and no one has heard anything from MODot. I guess his method of investigation was to call over to Old Joe and say "Joe, any problems with those landowners down on Hwy O"? Joe replied "No sir, the road is open." "Good job Joe, investigation complete." (No need to check with *those landowners*)

At the hearing at Linn, I explained Ed Phelan's situation that his land was valued only 1/3 that of his neighbors. I would this time like to try to explain Margie Fogherty's experience. Margie has an impacted farm that had a rental house on it. MODot offered her a little bit less than $53,000 for it and about 5 acres. It was a 1.5 story home built around 1940. She would not accept that, so her property was condemned. MODot was in my opinion, very generous with her tenant. They provided the tenants with relocation money in excess of $10,000. So the renter was compensated but the property owner was condemned, has had her land and rental house taken, has lost the rental income from that house and has yet, 2.5 years later to receive any compensation for her property. Finially, to ad injury to insult, when the contractor demolished her house, they capped and plugged the well that was NOT on the property condemned/purchased by the state.

It is up to the property owner to hire lawyers, hire appraisers and other professional witness to defend themselves in these condemnation proceedings. The property owner becomes the defendant.

The wheels are off the wagon of condemnation. The condemning authority needs some controls placed on it. The system is broken because of abuse. I hope the time you have taken to conduct these hearings has spread light on the problems and will help to form some laws to protect our farms.

Sincerely,

Bill McLaren
654 Phelan Road
Pacific, MO 63069
636-271-2158

MEMORANDUM

Date: November 18, 2003

To: Interim Chair on Eminent Domain – St. Charles Meeting

From: Karen Smith, resident
8930 Harrison
St. Louis MO, 63144
(314)963-9651 (h)
(314)747-3162 (w)

Re: Eminent Domain

Thank you for the opportunity to express my thoughts on eminent domain. I am a resident currently living in Brentwood MO (a suburb of St. Louis) and hope to be able to continue to live there.

Eminent domain is a very dangerous tool. Its original intent, to take property for public use (roads, public buildings, utilities) and later to clear slums, has been expanded to include taking private properties and giving them to commercial developers. Local governments are increasingly using this tool to give a home/business owner's property to private developers. They designate these "owned properties" as blighted in order to justify taking the property. Such a practice places all property owners at risk:

- In a community, eminent domain is initially used on commercial properties: city governments take commercial properties to give to developers for re-development (Target, Cosco, etc.). Many times, residential homes will also be included with the commercial development.
- Eventually, eminent domain is used in residential areas: homes are condemned (often on the basis that they don't have two car attached garages, etc) to make way for upscale, high-density residences.

Eminent domain is used with Tax Incremental Financing to redevelop. The methodology used to condemn many of these properties is based on a flawed methodology such as the age of the property being over 35 years or a better economic use can be acquired from the property. These later two reasons violate human rights of Americans. City officials and developers often justify the use of the later two reasons because they need the additional revenues to fund their burgeoning budgets. Research done by the Public Policy Institute of California has shown that often TIF financing/eminent domain does not produce the desired economic growth and has produced only minimal gains in communities in terms of actual economic growth.

Often times home/business owners are not aware that there property is being considered for development and by the time they do, they are powerless to stop it. Entire communities can be lost.

In Brentwood, TIF funding (with the tool of eminent domain available) has been used on several developments. Brentwood's Mayor and City officials have said that eminent domain is a tool to help them negotiate with property owners. Tell, me how having this tool makes a negotiation fair? A property owner is forced into negotiation because they have no choice. Brentwood is currently using this tool to try to obtain property.

I have not found one resident in Brentwood that supports the use of TIFs and eminent domain, yet our Mayor and City Officials continue to try to re-develop our community using these tools. There is no place in Brentwood that is in such a condition where blighting or condemning property is appropriate.

Older communities like Brentwood can always need improvement and we need governments that provide tools and funding to improve our current properties – "not pave us under". Where are people that have homes under $200,000 with two bedrooms and one car detached garages supposed to live? I bought my house and I own it. I am not renting my house from Brentwood.

And finally, research by Stephen Haber, Douglass North and Barry Weingast (Stanford University) has shown that despite decades of aid, Africa has not grown economically. Africa assumed that you could create efficient markets without simultaneous political reforms. But, because Africa has not been able to guarantee property rights and individual liberties efficient markets cannot exist. In America today, we are threatening our economy and our future by violating these two principles (property rights and individual liberties) with the use of eminent domain.

Thank you again for this opportunity.

William Murphy

First, I would like to thank you for letting me talk about imminent domain.

My name is William Murphy. I own Parcel #33 of the newly re-routed Highway O in Franklin County. There are over 50 parcels in the new highway. All of the other owners were contacted about the land that was to be taken. They never did contact me. In March, 2000, a man by the name of Green called and asked if he could appraise the land the Highway Department wanted for the road. He sat up a meeting for the following day. He came to my house about 9 AM without maps or any other information. I did not have any either. I took him in the pick up and we rode all over the farm. He said he would get a map and be back in a week. He never returned.

In May I received a notice that there was a registered letter at the post office for me. I received the notice at 3 PM on a Saturday. The post office had already closed at 12 noon. On Monday morning I went to the post office and there was a packet with the map and other material about the land that was being taken. They were taking 17.63 acres with 1.0364 acres of temporary easement, the largest amount of property taken from any of the landowners.

That same day I sent a registered letter back to Steven Powell stating I would not accept the offer. The following morning Steven Powell called me and asked if he could come to my home to talk to me. We set the meeting for the following day. Mr. Powell asked me

why I would not accept the offer and I stated the appraisal was not fair. The land he was using for the appraisal was 4 miles from my farm and was sold on June 16, 1998. The next property they were using was located about 10 miles from my property on a gravel county road that was sold on August 29, 1997. The third property was another six miles from my property and very steep and was sold on April 15, 1999. He stated if I did not accept the offer he could condemn my land and that was the last I heard from him. On July 3, 2000, the sheriff served me with papers to report to court on July 22, 2000. On July 22, 2000, the land was condemned. Three commissioners were appointed. On August 22, the commissioners met at my farm. I told the commissioner the land was not surveyed correctly. Paul Stewart said the survey was correct. In late October the Missouri DOT put the commissioner award in the County Court. On the same day they filed one exception to the award. At the same time they sent me a letter stating I had 30 days to remove all personal property. I had to build a 5100 feet of fence. In December, 2000, I received a 1099S from Missouri DOT. I went to my accountant and he stated I had to pay $91,000 in taxes. I stated I did not have that kind of money. My accountant called the IRS and they said the money was in the court so it was the same as if I had possession of it. After four hours at $125.00 per hour my accountant found I did not have to pay taxes on the money they had deposited.

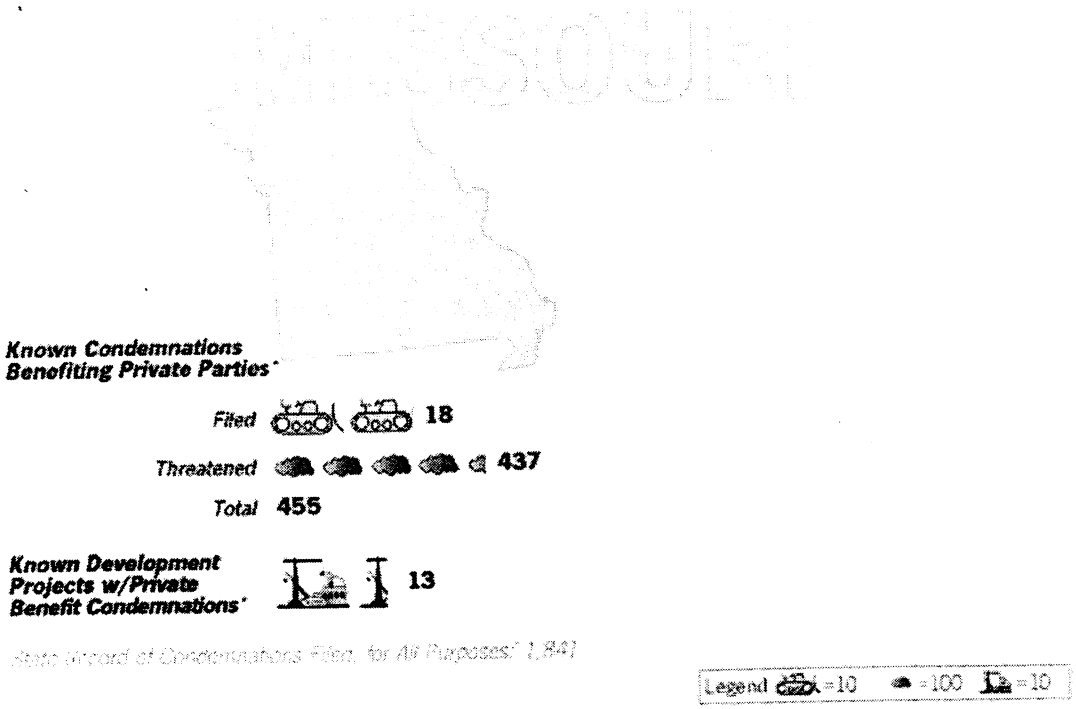
After I had my survey made I proved they did not have enough land to connect Highway NN with Highway O. They still have not condemned the 0.141 acre of land. The highway is almost 99% completed. MO DOT was more interested in Indian Arrowheads found on the land than sending someone to talk to me. MO DOT has a very unique way of acquiring property. It is easier to condemn than to negotiate.

MO DOT got the lowest appraisal as possible to offer the landowner. Then it is in the hands of the owner to get a fair price. MO DOT has tax payers' money to fight the landowners. This farm has been in our family since 1884. We are the third family to own this piece of land.

Who owned the 12 feet of highway on my land that has not been condemned?

Thank you,

William D. Murphy



Overview

Missouri has one of the worst records on eminent domain abuse in the country. Cities and towns across the state regularly use eminent domain for the benefit of pr parties. There have been at least 13 instances in the past five years. Missouri also allows private redevelopment corporations to condemn property.[385] And Missouri courts, despite an express constitutional admonition that courts should exercise their own judgment on public use,[386] nevertheless approve nearly every condemnation, no matter how private the purpose or how unnecessary the condemnation. Missouri law and practice desperately need reform to stem the tide of eminent domain abuse.

Private Use Condemnations

Brentwood

The Town of Brentwood has been attempting for the last five years to redevelop the Rankin-Evans neighborhood. In October 2000, the local board of aldermen voted to label the neighborhood as "blighted," and approved a tax abatement measure that would allow Winther Investment, Inc., a private developer, to demolish 27 existing homes and businesses that sit on 7.5 acres of land. Winther wants to build a 350-unit apartment complex on the site.[387] The aldermen said they would use eminent domain to help the developer acquire the land needed for the project, but only after a substantial number of owners have agreed to sell.[388] By March 2001, over 70 percent had reached agreements with Winther, leaving only 12 remaining homes and businesses. At that point, Winther could begin condemning properties and had filed at least one condemnation.[389] Further developments were not reported.

Cr Coeur

A ns' advisory committee in 2001 created a redevelopment plan that called for replacing two car dealerships, the Creve Coeur Country Club and the American Legion with a mixture of commercial office and high-density residential space. The private developer involved says the plan is needed as a "road map" for the City's future, and that it would help the City avoid spot zoning and create aesthetically

pleasing areas in which similar types of businesses are clustered. One of the car dealerships lies in an area slated to become Creve Coeur's future Town Center, which the plan contends will be "'the place to be' – a place that people gravitate toward and a place for public gatherings and celebration." The owners of both car dealerships vow to oppose the use of eminent domain to take their property, which is earmarked under the plan.[390] In March 2002, the City tried to appease the affected businesses by adding language to the plan that says "existing businesses should be included in the planning process." Of course, this feeble assurance of inclusion in discussions is no guarantee against eminent domain.[391]

Creve Coeur

Elsewhere in Creve Coeur, the City Council in June 2002 decided to consider a private developer's plan to build a new Walgreens store on the site of a small shopping center. Though the developer vows that his proposal will not involve taking any houses, he admits that he might ask the City to use eminent domain to help him assemble properties for the project.[392]

Independence

Ken McClain, a local lawyer and real estate developer, wanted to build the Lakeside Shopping Center. The Independence City Council agreed, so the Council granted McClain the authority to condemn three properties, including a Checkers and a Pizza Hut, that stood in the way of the new shopping center. All three were forced to sell their property to McClain, and a privately owned shopping center now stands in their place.[393]

Kansas City

The idea for the Midtown Marketplace in Midtown Kansas City began in 1992. Eight years passed without any construction on the Marketplace. According to a report in 1997, the City had obtained title to all the property and cleared the site. Some property had been condemned for the project. Eventually, Home Depot agreed to open a store, and planners approached Costco. Costco was interested but almost dropped out of the project. City officials then promised to condemn two more businesses in the area, and Costco agreed to stay in the project. One business sold, and the City condemned the other, a temporary labor agency. Construction on the project began in 2000.[394]

Kansas City

Kansas City claimed it wanted to expand its airport, and the City Council passed an ordinance authorizing the City to acquire eight parcels of land and to use eminent domain "if necessary." The City's attempts to purchase the land were unsuccessful. The owners did not want to sell. When the City then condemned the property, all eight landowners challenged the taking in court. At trial, the City revealed that it wanted the properties in question not for the expansion of actual airport facilities, but to accumulate land for future aviation-related commercial/industrial uses by private businesses. The City had already tried to attract McDonnell-Douglas to build a facility at the airport, but this effort ultimately failed. Now the City wanted the land in case another airport-type business came along looking for free land.

The trial court decided in favor of the landowners, holding that the City's taking was not for a valid public purpose. On appeal, the City argued that airport-related commerce and industry are necessary for the operation of a major airport. The Missouri Court of Appeals bought the City's argument and reversed the trial court's decision, ruling that the City's desire to compete in the future with other cities trying to attract industry constitutes a valid public necessity in the present. The appeals court cited no relevant authority in making this determination, but rather justified its holding under the proposition that Missouri law allows courts to use a "broad and flexible approach" in deciding what constitutes a public use.[395] This ruling runs contrary to the legal standard used by most other states that property may be condemned only for a reasonably foreseeable future public use. In this case, with no plan on the horizon and no guarantee that the City would ever find a developer, there was no foreseeable use at all. Missouri courts, however, seem determined to

go further than those in almost any other state in approving condemnations.

Maplewood

The Town of Maplewood wanted to lure developers as a means of increasing tax revenues and the City budget. In May 2001, the Maplewood City Council announced that it would offer up chunks of the City to any developer promising to deliver tax revenue.[396] Maplewood officials approved a plan submitted by Pace Properties to build a Costco and Home Depot. THF Realty also submitted a proposal for a Sam's Club and Wal-Mart at the same location, but Maplewood liked the Costco project better.[397] Eventually, Maplewood officials switched to THF Realty's plan, for which THF wanted to demolish more than 120 homes and apartments. In May, 2002, the Maplewood City Council declared the area blighted, even though it was made up of tidy homes with well-kept lawns.[398]

Many of the residents loved their neighborhood and did not want to move.[399] The energetic but politically weak property owners who stood to lose their homes mounted a petition drive to put a referendum on the November 2002 ballot regarding the condemnation and tax incentive issues.[400] The owners succeeded in forcing the referendum, but the project was approved by a large majority.[401] As Mayor Mark Langston explained, "We decided not to raise property taxes, but unfortunately we had to get rid of 150 homes."[402] Since the November 2002 referendum victory, THF Realty has signed contracts with some of the owners and was preparing to initiate condemnation actions against the property owners who would not sign. However, Alan Bornstein of THF hinted after the election that the developer may be hedging on going forward with the project, saying that while he expects the shopping center to be completed by September 2004, "[t]here are so many things that happen every day that could have an impact on the development."[403]

Maplewood

In 2001, the City of Maplewood approved a declaration of blight for a 35,000-square foot building formerly occupied by a Shop 'n Save grocery store. This measure taken by the City Council allowed the City to condemn the supermarket property and hand it over to another private developer.[404] In September 2001, the City Council approved the sale of the site to the St. Louis Brewery, which built a microbrewery and restaurant there.[405]

Springfield

In a closed meeting on October 11, 1999, the Springfield City Council unanimously voted to condemn the Thomson family farm in order to keep a proposed industrial park within the bounds of the Springfield school district. The Thomsons have lived on their 350-acre dairy farm for five generations. Currently, 76-year old Robert "Bud" Thomson and his five children and four grandchildren live and work on the farm. The City stood to make a projected $1.7 million in additional tax revenue by turning the farm into an industrial park. The project also had the mayor's unqualified support.[406]

However, the citizens of Springfield immediately came to the Thomsons' rescue. In less than a week after its decision, the City received 1,750 phone calls protesting the condemnation. On October 15, 1999, the City Council held another meeting on the matter and this time voted unanimously against taking the Thomson farm. The mayor of Springfield declared that he had decided there were many other suitable sites within the school district that could be allocated for the industrial park,[407] raising the question, "Why did the City ever decide to take the Thomsons' farm?"

St. John

In 1999, leaders of the Town of St. John began suggesting that the town should attract a large shopping center that would generate hefty tax revenues. In 2000, representatives of the Westin Group, a real estate developer, began approaching

homeowners along Bristol Avenue with an offer to pay them $500 to not sell their property for 18 months. This made many local residents nervous, as they began to suspect that the developer was trying to "buy" enough time to secure most of the properties in the area to build the rumored shopping center. Along with apprehension about the developer's motives came fear that the town would use eminent domain in favor of any proposed development.[408]
In November 2000, Walpert Properties, a division of the Westin Group, presented to the Town its proposal for St. John Crossing, a $17 million shopping center that would include a Shop 'n Save grocery store, a restaurant and several smaller shops. The town liked Walpert's plan, and approved the use of tax increment financing, as well as the use of eminent domain to acquire properties for the development. Walpert began offering homeowners in the area $85,000 each to move off of their current property.[409]

While some residents say that the price offered is more than fair, others argue that $85,000 does not begin to compensate for what they will have to go through in order to move. Demolition work for the project began in November 2001, despite the fact that the developer had yet to reach agreements with one homeowner and two commercial property owners. The Town sent letters to the remaining owners indicating that it was beginning eminent domain proceedings against them.[410] News reports do not indicate whether the remaining owners settled or were condemned.

By April 2002, residents near the future shopping center were complaining. Not only had they been forced to endure the early-morning construction noise from the behemoth next door, but residents whose houses face the back of the new shopping center noticed that vibrations from the construction have caused cracks to form on their walls and ceilings, and even caused some sewage pipes to rupture.[411]

St. Louis
In December 2001, the St. Louis Board of Aldermen approved a bill that gives the City the authority to condemn the St. Louis Centre, a downtown shopping mall, if current owners do not redevelop the mall in a way that satisfies City leaders.[412] The mall, which opened in 1985, was once the nation's largest downtown mall, but today only the lower two floors contain many retail tenants. If the City takes the mall through eminent domain, it plans to sell the property to other private developers for upscale retail use.[413] As of December 2002, the mall is for sale.[414] The City still retains the power of eminent domain.

St. Louis
In order to assist a developer planning to convert the eight-story Vanguard Building into loft apartments with a restaurant on the ground floor, the City condemned an adjacent privately-owned lot. The Vanguard renovation project had been stalled for two years because the building lacked enough parking to suit the developer's needs. It would have cost more money than the developer wanted to spend to build a parking area for tenants in the redeveloped building. However, thanks to St. Louis City officials, the developer was able to take the land it wanted for parking, allowing it to build a more profitable venture, without the hassle of having to purchase directly from the lot's owner.[415]

Sunset Hills
The Sunset Manor subdivision in the Town of Sunset Hills has 254 homes, which are mostly tidy little brick-and-frame dwellings.[416] Town leaders decided the neighborhood would look better if those houses were bulldozed and replaced by commercial development. The Sansone Group, a private developer, presented the Town with a plan to build a $115-million, 57-acre shopping center on the Sunset Manor site. The first phase would include 22 acres of retail stores, while the second would include 16 acres of offices and 19 acres of residential units (112 apartments, 44 "villas" and 56 condominiums). Mayor James Hobbs and other Town leaders heartily endorsed the planned development, and pledged to give the developer tax-increment-financing subsidies totaling $46 million, as well as the use of eminent domain to force unwilling sellers out of their homes.[417] Some owners wanted to

move, but many had lived in the neighborhood for years and were unhappy about being forced out. As a result, the once tight-knit neighborhood became bitterly divided.

The Hansone Group went on to purchase more than half of the homes in Sunset Manor. But in June 2002, the local Board of Aldermen abruptly changed its mind about bulldozing neighborhoods in favor of retail development. The Board voted unanimously to reject the Sunset Manor proposal, though it reached its decision not because of any aversion to the idea of seizing and destroying homes, but because the developer could not line up enough interested retailers.[418]

*These numbers were compiled from news sources. Many cases go unreported, and news reports often do not specify the number of properties against which condemnations were filed or threatened.
† Missouri Judiciary (includes condemnations for traditional public uses).
[385] Rev. Stat. Mo. § 353.130.
[386] Mo. Const. art. I, § 28.
[387] Matt Sorrell, "Brentwood OKs Redevelopment, Sale of Unused Property; Rankin-Evans Area Will Be Blighted," *St. Louis Post-Dispatch*, Oct. 23, 2000, at West Post 4; Phil Sutin, "Brentwood Residents Are Persuaded to Sell Homes to Developer," *St. Louis Post-Dispatch*, June 15, 2000, at West Post 1.
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[390] "Car Dealer Weber Fights Creve Coeur Master Plan," *St. Louis Business Journal*, Nov. 30, 2001, at 5A.
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[392] Phil Sutin, "Council Agrees to Consider Projects in Creve Coeur; Redevelopment Sought at Two Locations on Olive Street," *St. Louis Post-Dispatch*, June 10, 2002, at West Post 3.
[393] Ila L. Howard, "McClain Wins Power of Eminent Domain," *The Kansas City Star*, Apr. 5, 2000, at Independence Star 1.
[394] Joe Gose, "Vigor, Delay Both Affect Glover Plan," *The Kansas City Star*, March 4, 1997, at D1; Mark Couch, et al., *The Kansas City Star*, June 28, 2000, at City 14.
[395] See *City of Kansas City v. Hon*, 972 S.W. 2d 407, 414 (Mo. App. 1998).
[396] Safir Ahmed, "Selling Out: To Save Maplewood, Some Residents Have to Go," *Riverfront Times (St. Louis, MO)*, Nov. 28, 2001.
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[398] Greg Freeman, "Residents Fight City Plan to Raze Homes, Make Way for Wal-Mart," *St. Louis Post-Dispatch*, June 30, 2002, at C3.
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[400] Greg Freeman, "Residents Fight City Plan to Raze Homes, Make Way for Wal-Mart," *St. Louis Post-Dispatch*, June 30, 2002, at C3.
[401] Phil Sutin, "Bayless School District Voters Reject $5 Million Bond Issue," *St. Louis Post-Dispatch*, Nov. 7, 2002, at South Post 1.
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[411] Kathie Sutin, "St. John Residents Say Construction Work Is Damaging Homes," *St. Louis Post-Dispatch*, Apr. 8, 2002, at North Post 3.
[412] Charlene Prost, "Slay Touts Projects that Could Revive Downtown Tourism," *St. Louis Post-Dispatch*, Dec. 11, 2001, at C6.
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[417] Theresa Tighe, "Despite Some Reluctance, the Buyout Goes On in Sunset Hills," *St. Louis Post-Dispatch*, Apr. 22, 2002, at South Post 1.
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