Eminent Domain Abuse

Is it an issue in Seattle – A definitive study

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ABSTRACT

"Government is instituted to protect property of every sort," wrote Madison, and for this reason, "that alone is a just government, which impartially secures to every man, whatever is his own." This precept of justice was embodied in the Fifth Amendment's protection of private property, where by constitutional understanding; property can be taken only for public use and upon the payment of just compensation. For reasons that are more regrettable than rational writes Kmiec "the courts have greatly relaxed the public use requirement. Inevitably, this invites the taking or eminent domain power to be misused – either by inefficient or corrupt application or both." (Kmiec 2005)

June 2005 the Federal Supreme Court ruled in favor of a private developer in the New London area to take private property from the Trumbull landowners to build a hotel, convention center, retail, marina, and a parking lot. The justification chanted by government authorities was money. Revenues generated through taxes from the redevelopment projects were expected (not guaranteed) to exceed what the residents were currently paying in taxes. Study determines the Kelo v New London ruling exposes businesses in Seattle to the same fate. Do business owners in the Denny Triangle, Lake Union and Bell Town areas feel threatened by any possibilities their businesses and properties could be taken away in the name of redevelopment? To what degree of confidence do business owners in Seattle have in their state constitution protecting their landowner's rights?

The intent of this research is to ascertain if citizens in the Seattle downtown area perceive their businesses are threatened by eminent domain and what impact, if any, the Kelo vs. New London decision might have on them or their place of business.

"…nor shall private property be taken for Public Use without just compensation."

U.S. Constitution, Amendment V.

Research Problem

On June 23rd, 2005 the Supreme Court of the United States decided the Kelo v. New London case in a 5 to 4 ruling in favor of the question "Is the seizure of non-blighted private property a "public use" permitted under the Fifth Amendment's Takings Clause where the government intends to transfer the land to private businesses in the hope that building private homes and offices will stimulate the local economy? (Kelo 2005)

If the Fifth Amendment's doesn't protect homeowners and businesses whose property is being taken, not because they are being condemned, or to eliminate blight but for the sole purpose of economic growth who will protect them? In her angry dissent O'Conner wrote "the specter of condemnation hangs over all property." (Dissenting Opinion Summary 2005).

The final passage in the Fifth Amendment is short and to the point: "Nor shall private property be taken for public use without just compensation. In his article 'Abusing Eminent Domain' Jacoby (2004) makes the statement "Like the rest of the Bill of Rights, that provision was intended by its authors to keep Americans free by shielding them from unbridled government force."

The power of eminent domain is an ancient attribute of sovereignty, but the Constitution restricts it in two vital ways: (1) The government can take private property only when it is necessary for a "public use," and (2) the owner must be paid "just compensation."

Governments and property owners argue all the time over how much compensation is "just." But the meaning of "public use" is clear, isn't it? The state can take private property to make way for roads, post offices, prisons -- assets that will be owned and used by the public. That is what the Constitution's author's meant by "public use," and it is doubtless what most

Americans think it should mean. Anything more, the Supreme Court warned more than 200 years ago, would be authoritarian.

To understand why the Supreme Court ruled as they did this researcher needed to understand some of the preceding cases in which the Justices based their decisions. In Berman v. Parker, a 1954 case, the court permitted eminent domain to be deployed for purposes of what was then called "urban renewal. The case allowed property to be seized from private owners in an inner-city slum in Washington D.C. and sold to new owners for redevelopment. "Public use," it held, encompassed "public purpose" -- and when the government's purpose was to revive a poverty-stricken, rat-infested neighborhood, property owners could be forced to yield.

However, Berman's narrow exception soon became an open floodgate of eminent-domain abuse. Cities and states, eager for new development, began pronouncing neighborhoods blighted when they were simply working-class. Some went further, stretching the meaning of "public use" beyond "public purpose" into mere "public benefit. Private property was condemned and seized on the grounds that another owner could use it to make more money, create more jobs, or generate more business -- all leading to more taxes, the supposed public benefit.

Since the Supreme Court's decision 50 years ago, the definition of "public use" has been expanded. In the last 20 years, some state courts have held that the establishment of jobs and higher tax revenues, rather than the elimination of blight, justifies the use of eminent domain for the transfer of property from one private party to another.

Advocates for individual property rights and Justice Thomas (2005) say that these recent interpretations of the "public use" clause are too broad. They argue that, because businesses generate more taxes than homes, and big businesses generate more taxes than small businesses,

local governments would be able to justify any condemnation and would likely abuse their eminent domain powers to favor private business interests.

"In this case, though, there is no "public use." The city is simply confiscating private property from one set of owners so it can give it to another set. The rationale is that the seizure is needed to "reverse decades of economic decline, create thousands of jobs and significantly increase property taxes and other sources of revenue for the city. Unlike a road or a military base, the anticipated economic and revenue growth are not a tangible certainty but a speculative hope" writes Chapman a National Real Estate Investor (2004).

Literature Review

Wilhelmina Dery was born in the house she shares with her husband of more than 50 years. Her grandmother bought the house over 100 years ago and her son Mathew Dery lives next door with his family. The Dery's live in the Fort Trumbull neighborhood overlooking the Thames River in New London, Connecticut and are one of many working-class families to call Fort Trumbull home. But in January of 2000, two years after pharmaceutical giant Pfizer decided to build a new large-scale research facility adjacent to the neighborhood the city of New London adopted a redevelopment plan that would transform Fort Trumbull and force the current residents to move out.

The redevelopment plan, tailored to accommodate the Pfizer facility, would transfer the land in the area to a private developer, which would in turn build a waterfront hotel, conference center, office spaces and expensive condos to replace the older homes and businesses. The project would unquestionably generate higher tax revenues for the city, and would likely create much-needed employment opportunities.

But the Derys and some of their neighbors didn't want to leave the neighborhood they called home. In October of 2000, the city decided to force the remaining Fort Trumbull homeowners out.

Historically, eminent domain has been used to vacate private properties to make way for bridges, utilities or highways. But in 1954, the U.S. Supreme Court expanded the definition of "public use" in a landmark case that gave local governments the right to condemn blighted areas in order to improve them. However, the Fort Trumbull neighborhood could hardly be called a slum, and the city of New London did not claim the area as blighted. (Kelo 2005)

In December of 2000, the Dery family and the rest of the remaining Fort Trumbull homeowners filed suit against the city of New London. After a seven-day bench trial, the New

London Superior Court upheld some of the condemnations and reversed others. Both parties appealed the decision to the Connecticut Appellate Court, and the appeal and cross-appeal were transferred to the Connecticut Supreme Court which, in a 4 - 3 decision, ruled that all of the challenged condemnations were constitutional.

The majority concluded that "an economic development plan that... will promote significant economic development constitutes a valid public use for the exercise of the eminent domain power under both the federal and Connecticut constitutions."

On Sept. 28, 2004, the U.S. Supreme Court accepted review in the case to decide whether there should be a test that better protects private property owners and limits the government's authority to take private property by eminent domain for the sole purpose of economic development.

During the Court's oral arguments on Feb. 22, 2005, the justices were largely concerned about the consequences of accepting economic development as a valid public use. "They also wondered if permitting economic development without limitations would give large corporations that bring in more money a green light to have less well-heeled properties condemned" records Borut (2005).

Though eminent domain power cannot be used for private or corporate purposes, Pfizer is a corporation that insists it will bring business and revenue to New London, which in turn will benefit the public argued city attorney Wesley Horton.

Scott Bullock, the homeowner's attorney, explained why he disagreed. "The public only benefits if the private party is successful," Bullock argued. That makes public use "completely dependent" on the subsequent outcome of private business, he said.

The dissenting justices (Justices Antonin Scalia, Sandra Day O'Connor, Clarence Thomas and Chief Justice William Rehnquist) agreed that economic development was a valid reason for the use of eminent domain, but did not agree with the majority's reasoning that "responsible judicial oversight" will "quell the opportunity for abuse of the eminent domain power." (Dissenting Opinions Summary 2005)

While acknowledging that a broader interpretation of the "public use" clause is necessary to meet the needs of a changing society, the dissenters stressed in their opinions summary (2005) the dangers of such an interpretation, which "blurs the distinction between public purpose and private benefit and cannot help but raise the specter that the power will be used to favor purely private interests."

A recent study by the Institute for Justice, a Washington-based property rights foundation found more than 10,000 instances of local governments using or threatening to use eminent domain to transfer private properties to private parties. The Institute of Justice surveyed newspapers and state court records between 1998 and 2002 to determine how active states were in using eminent domain to seize property for private development. According to Berliner (2003, attorney driving the research) states that while the study is incomplete, identified 10, 282 cases where eminent domain was used to seize private property, either by legally condemning the property or threatening to use eminent domain as a tactic for getting homeowners to "voluntarily" sell their homes. Only Connecticut, they note, actually records the number of condemnations for private parties. Between 1998 and 2002, the court recorded 543 redevelopment condemnations. This number they say is 17.5% higher than the number of cases the Institute of Justice researchers found reported in the local newspapers.

According to the Reason Foundation, a tax-exempt research and education organization (2005), found states vary significantly in their willingness to use eminent domain. North Carolina cities, for example, have the power to use eminent domain but generally refrain from using it. The same study pointed out the other extreme; Florida threatened 2,055 properties with condemnation for eight redevelopment projects.

While highly urbanized states such as Florida, Pennsylvania, Ohio, and New Jersey appear to use eminent domain extensively, other states with many large urban areas such as New York, North Carolina, and Texas are much less active. California, while one of the most active users of eminent domain, invokes the process less often than Florida and Pennsylvania.

The Institute of Justice data clearly illustrates that eminent domain is prevalent throughout most of the states. The logic is pretty straightforward, particularly in the context of urban redevelopment. Land assembly is a costly activity. Many builders and developers can buy large swaths of vacant land outside the city. The Reason Foundation (2005) finds cities fear the demolition costs, fragmented land ownership, and high regulatory costs may discourage reinvestment. To attract developers cities offer to assemble land to streamline the process. Edward Blakely, a regional planner, notes "Land is one of the most important factors in local economic development. Without control of land, local development is essentially impossible. A local or community development plan will be thwarted by its inability to furnish suitable sites and/or buildings for selected projects" (1989)

Borut & Hankins research (2004) reinforces the fact that eminent domain has become one of the most important tools and regarded as the critical ingredient of local wealth creation and why local economic development no longer means using tax breaks and other incentives to attract factories from one location to another. Economic development planning requires the

development of new institutions and tools to stimulate place-based activities to start new firms, nurture promising enterprises, create new public-private partnerships, and increase the human capital of the locality to be competitive in the global economy. "The ability of local leaders to reenergize communities through economic development demands local and regional self-sufficiency," wrote the executive directors of the national and North Carolina chapters of the National League of Cities, "not naïve reliance on a continuous and sufficient flow of state and federal dollars."

Costco, a popular Washington based members only shopping chain turns up repeatedly in development projects that involve condemning property. Bill Brody's commercial building, among other business in Port Chester, New York, has been condemned for a Costco and A Stop & Shop according to the Gumucio case (2001). Will and Bill Minnich have been forced to sell their family woodworking business in East Harlem after losing their ability to challenge the planned condemnation of their building for Costco and Home Depot (Minnich v. Gargano, 2001). In California, according to a federal court, Costco requested the condemnation of its Lancaster shopping center neighbor, a 99 Cents Only Store (99 Cents Stores Sues City over Eviction, 2000). Cypress, California, filed condemnation proceedings against a Christian center in order to obtain the land for Costco (Cottonwood Christian Center v. Cypress Redevelopment Agency, 2002). Planners in Kansas City, Missouri, had to condemn additional properties in an already-planned project area to get Costco to agree to remain in the project (Gose 2000). With 400 stores, millions of members, and hundreds of millions in profits each year, it makes this researcher wonder why Costco can't manage to build its stores without having government condemn land on its behalf.

According to Berliner's (2003) report Public Power, Private Gain found there were 11 condemnations filed in Washington State benefiting private parties. In 1996, The City of Bremerton condemned 22 homes to make way for a sewer plant expansion; all of the owners settled with the City and moved out except for Lovie Nichols, an elderly widow who refused to vacate her home of 55 years. In 1998, the City of Bremerton sent her an eviction notice. However, she was not informed at the time of the eviction that the City of Bremerton had already sold her property out from under her as part of an 11 acre land deal with a local car dealer. Ms. Nichols challenged the eviction on the grounds that the City of Bremerton never had a valid use for condemning her home. Complicating matters was the fact that a 1995 news article had quoted Bremerton Mayor Lynn Horton saying that the City intended to generate revenue by reselling surplus parcels condemned for the plant expansion to private developers. But despite considerable evidence that the taking was a sham and only for the purpose of transferring the property to private business interests, the Kitsap County Superior Court ruled in favor of the City (Holt 1999). In December 1999, the state Court of Appeals upheld the trail court's decision (City of Bremerton v. Estate of Anderson, 2000). Lovie Nichols finally was forced to move out of her home after the Washington Supreme Court declined to review her case.

In the town of Lakewood a Kentucky-based developer was working to get a $150 million, privately owned amusement park built on 80 acres of land currently occupied by hundreds of families. City Manager Scott Rohlfs indicated the town could buy the land and then lease it back to the park operators. Lakewood claimed the amusement park was a "public purpose" that would lure development and spark urban renewal in the depressed Lakewood community. In opposition, longtime residents of 59 trailers in the Sunrise Village mobile home park were not thrilled with the idea of an amusement park in their neighborhood. Neither were roughly 150

other families who rented low cost apartments or duplexes on the site serving the Army and Air Force bases located nearby. All lived on an 80 acre site and would be forced to move if the park was built. In an interview with Tacoma News Tribune writer S. Card (2000) most believed they would be forced to pay significantly higher rents elsewhere. In 2002 the Tacoma News Tribune reporter Turner follows up the original article by Card reporting 'the whole project fell through when the Washington legislature denied a sales tax exception the developer requested'.

In November 1999, the City filed suit to condemn the Monterey Hotel, an old three-story hotel in downtown Vancouver that housed mainly low income people. A developer from Portland OR owned most of the block around the hotel, and City officials wanted to clear out the last property before the developer would build a planned six story residential, office and retail development with adjacent parking structure. The hotel's owners, R.K. and Geetaben Patel, challenged the condemnation, arguing that the City lacked a public use (Vancouver Files Suite to Condemn Old Hotel, 1999). However, the trial court ruled in favor of the city. Just as the Washington Court of Appeals was about to hear the case, the Patels reached a settlement with the City and agreed to sell.

In Seattle the state legislature approved the use of eminent domain for the expansion of the Washington State Convention Center, conditioned on the center's abilities to raise $15 million in private funding for the project. The center selected a design that placed the new exhibition hall on the fourth floor, because the design would open up a large amount of street level space that the City could sell or lease to bring in the required outside funds. The plan also called for the center to condemn nine properties: a 127 unit apartment tower, a condominium/garage structure, six parking lots and a rental car outlet. In return for certain easements, private developer R.E. Hedreen Co. agreed to purchase the extra ground floor space,

which it planned to use for retail shops and parking for a new hotel to be built on adjacent land not subject to condemnation. After the center moved to condemn the nine properties, one owner accepted the center's purchase offer; the other eight challenged the takings. November 1998, in the Washington v. Evans case the Washington Supreme Court ruled in favor of the center, holding that because the private use is merely incidental to the overall public nature of the project, the "public purpose" is valid. However, in a stinging dissent, Justice Richard B. Sanders explained that Washington's strict eminent domain statute explicitly forbids the taking of land for a public use and then selling the excess for private use.

The Friday, October 21st edition of the Seattle Post Intelligencer posts "High Court sides with monorail on land. (2005)" The article reads "The Seattle Monorail Project can acquire land including the city's "Sinking Ship" garage in Pioneer Square by condemnation, the state Supreme Court said in a 7-2 ruling Thursday." Landowner HTK Management LLC, agreed the agency would pay $10.4 million for the entire triangle bounded by James Street, Second Avenue and Yesler Way to be *possibly* used for a station. Voters still have to decide if they want the project at all.

In this case should the Monorail project go through it is a case of "public use" however, the majority of the nine Supreme Court Justices said the agency had eminent domain power even though state law didn't spell it out in detail. Dissenting Justices James Johnson and Rickard Sanders, argued that Seattle Monorail Project didn't need the entire parcel for the station and that the part not to be developed for the station "is not for public use. (2005).

Survey Methodology

According to a study done by Re♦Solve (2005) for the Seattle Downtown Association there are 15 major projects slated for the downtown Seattle area between 2005 out past 2008. This means that there is a concentrated interest in the Seattle business core among developers to build properties and take advantage of the upcoming growth in the area.

Re◊Solve 2005 Seattle Central Business District Office Report

Project Number	Project	Source	Total sq. feet	Notes
1	WAMU Tower SAM Tower	Pine Street	845,000 255,000	Committed
2	2000 Third Ave.	Colliers	275,000	
3	2121 Sixth Ave.	Colliers	150,000	
4	Westlake Plaza	Touchstone	500,000	Anchor tenant under negotiation.
5	Colman Tower	Goodman R/E	177,000	In proposal stage, may move ahead with tenant commitment.
6	505 1st Ave. S.	Martin Smith	174,000	
7	Center of Pioneer Square	Gregory Broderick Smith	190,000	Waiting on zoning issues.
8	5th & Yesler	Martin Selig R/E	276,000	Construction should start end of the year.
9	3rd & Battery Building	Martin Selig R/E	50,000	Pending
10	Denny Way Plaza	Ariel Dev.	80,000	Project on hold until market improves.
11	Stewart Place	Touchstone	660,000	Waiting for tenant commitment.
12	5th & Columbia	Seneca R/E	535,000	Former First Methodist Church, waiting on permits.
13	Rainier Square	Unico	500,000	In negotiations for prelease.
14	7th & Westlake	Clise	245,000	Delivery expected 2007.
15	5th & Bell	Clise	600,000	Not actively marketing for tenants at this time.

In reviewing developments in the permitting process for downtown Seattle through the end of the decade this researcher wonders what impact the new construction would have on the

the existing businesses in the Bell Town, Denny Triangle and Lake Union areas.

The survey focused on smaller businesses in the customer service section, exporting companies, and a variety of small independent merchants. The surveys focused on such issues as how long they have been in business, where they familiar with the Kelo v. New London ruling, and did they feel the ruling would adversely affect them and their business? An example of the survey has been enclosed.

All surveys in the appendix were mailed to business managers located through the downtown business association directory, the Dex yellow pages and pounding the pavement. All surveys were mailed in linen envelopes with return address and postage accompanied by a cover letter asking for their participation in the research. During the course of waiting for responses to be returned an article came out in the Seattle Times (October 16, 2005) announcing Paul Allen's development company Vulcan along with other developers "jump starting South Lake Union and the Denny Triangle" with 3,000 condos and apartments in the works. The researcher has no idea if the timing of the article had any influence of the 7% response ratio to the surveys.

Analysis of Survey Results

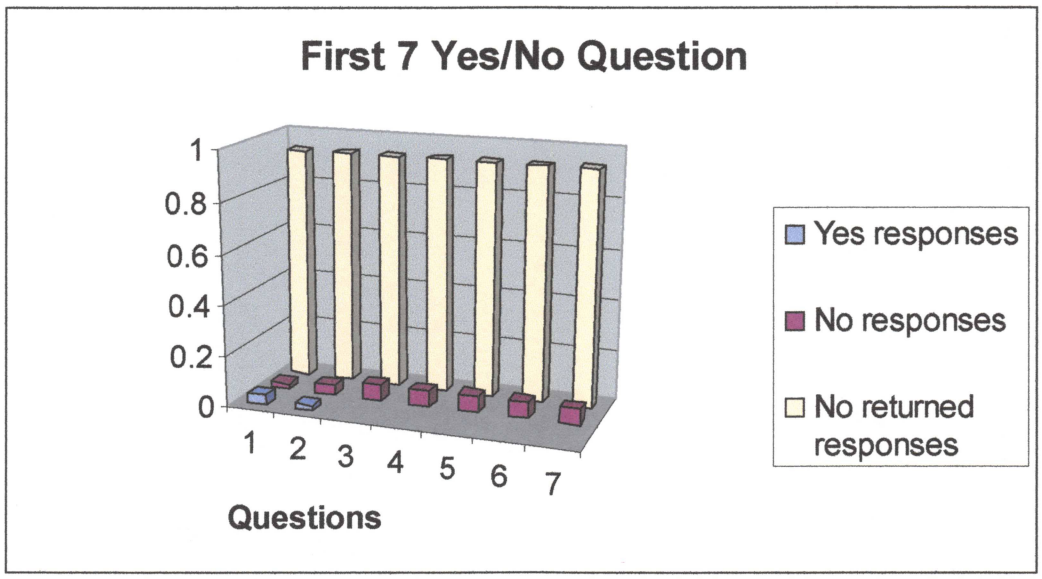
When this research began it was evident from the Institute of Justice study "Public Power, Private Gain" that through the use of eminent domain for private use the following results were observed nationwide:

- 10,282 + filed or threatened properties with condemnations filed for private parties,
- 3,722+ properties with condemnation filed for the benefit of private parties,
- 6,560+ properties threatened with condemnation for private parties,
- 4,032+ properties currently living under threat of private use condemnation,
- 41 states with reports of actual or threatened condemnations for private parties,
- 9 states with no reports of either actual or threatened private use condemnations.

This research was an attempt to find out if any of the preceding findings have happened to businesses and people within the Seattle area and if it has what has been their experience. Do people and businesses feel confident in their legislature and feel their rights are being protected? Where are the people of Seattle in their stance and tolerance on eminent domain?

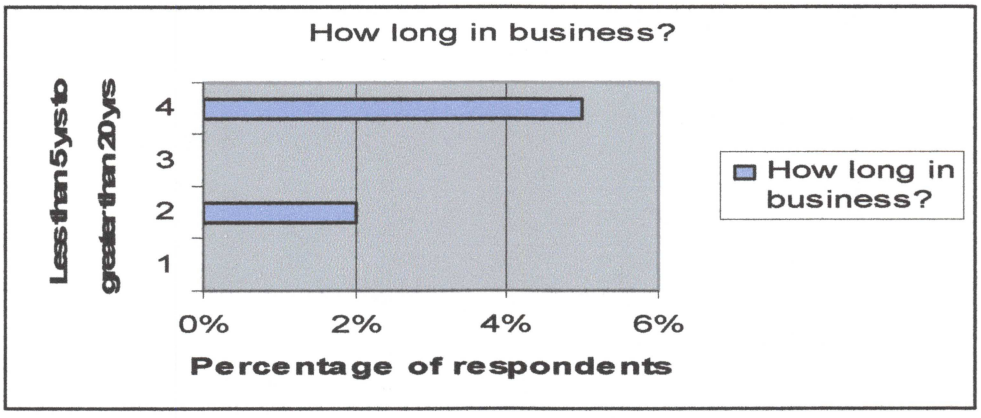
The results of the survey were disappointing and unfortunately not conclusive to determine much, if any, information. Of the 45 surveys mailed out only 5 were returned and of those 5 two closed their businesses. According to Stangor the results of this survey should produce a snapshot of the opinions, attitudes, and behaviors of a group of people at a given time. Survey response constituted a dismal 7% return which could be interpreted in many different ways by this researcher. The first seven questions were yes/no questions covering general questions on exposure and knowledge on eminent domain. Due to the low response graphical information is difficult to read. The following graph reflects 5% of the respondents were familiar with the Kelo v. New London ruling and they, or no one they knew, had ever been

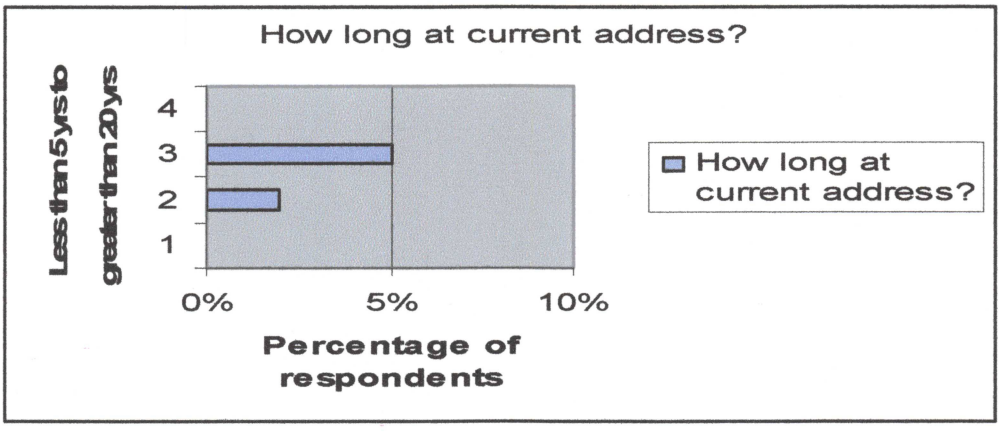
affected by eminent domain. One respondent was familiar with eminent domain and reported compensation for property was not equitable, a finding consistent with research done by the Castle Coalition, Reason Foundation, and Berliner. Questions three through seven all 7% of respondents did not think they would be fairly compensated if told to move their business, they did not think the Federal Supreme Court made the right decision, and they did not think it would be fair to them to be asked to move their business. Finally, they stated they were not familiar with the Washington State Supreme Court position on eminent domain.



The King County Journal confirms what this researcher has found to date and that is the Washington State Constitution gives property owners greater rights than the U.S. Constitution. Section I, Article 16 of the state Constitution reads in part, "Private property shall not be taken for private use, except for private ways of necessity, and for drains, flumes, or ditches on or across the lands of other for agricultural, domestic, or sanitary purposes. (June 2005)"

Questions eight and nine were asked to get a determination of longevity of business. 2% of the business owners were in business for over 5 years but less than 10years, 5% have been inbusiness for over 20 years and 5% have been at their current address for over 10 years but less than 20 years.





Questions ten through fourteen were based on a 1 to 10 response scale with 1 representing highly unlikely and 10 very likely. All questions focused on different aspects of eminent domain ranging from likelihood of it happening to them, what impact to their business would it have, and how would they feel 5% of the respondents felt it would be highly unlikely they would be forced to move, all respondents felt a very low likelihood eminent domain would ever happen to their business, and 7% of respondents felt eminent domain would destructive to

their business, would be highly expensive and they would be very upset. The researcher couldn't help to make certain assumptions about these findings and those assumptions are: people in general - until affected by something directly - don't think it would happen to them. All respondents said eminent domain would be destructive to their business, which substantiates what has been reported in Berliner's (2003) report. Businesses who have been asked to move usually are not able to continue operating in business for a variety of reasons. Permits become an issue, they either cost too much to obtain or are not available. Rental rates have increased significantly and many cannot afford the increased overhead costs. Many businesses who are family owned and operated have lost their livelihood as a result of redevelopment.

The last three questions tried to center on hidden costs businesses might anticipate should they be subject to eminent domain. The key results found were:

What hidden expenses might happen to you if you had to move?

- 5% said parking
- 2% said commuting issues needed to be considered
- 7% said lost revenue of closing the business to make the move
- 7% said finding a location equal to their present location was a hidden expense
- 7% said other hidden factors needed to be considered if they had to make a move.

What kinds of benefits could you anticipate if asked to move or close your business?

- 7% said they would be paid above market value for their business
- 2% said they would be able to find a better location for less overhead costs
- 2% said they would have no more headaches running a business because it would be closed

What kinds of losses could you anticipate if asked to move or close your business?

- All respondents felt they would incur big losses if they had to close their business

Interesting to the researcher was the last part of the survey; all respondents felt they

would be paid above market value for their business. This finding is probably the result of a poorly worded question. There isn't enough information to determine if the respondents truly feel a confidence in their state government.

Conclusion

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Recommendations

Staley (2005) recommended in his testimony before the Supreme Court that to avoid the abuse of eminent domain establishing central clear definitions of 'public use' and the 'takings clause' and how they are interpreted. Specifically he citied the following four methods:

1. Require use for public use. The "public benefit" criterion adopted by the U.S. Supreme Court is so vague it lacks any meaningful constraint on government seizures of private property. The General Assembly should consider criteria that, at a minimum, require eminent domain to be used when: a) the general public benefits from general access to the service or facility *and* b) the private sector cannot provide the public service or facility even though significant benefits will accrue to the community through its development.

2. Use as a tool of last resort. Eminent domain should be used only when all other reasonable and voluntary approaches have been exhausted *and* the failure to acquire the property will prevent the project from moving forward. Eminent domain should not be considered "just another tool" for economic development purposes with the same standing and legitimacy given to other strategies and approaches such as tax incentives.

3. Use when faced with imminent public endangerment. Eminent domain should properly be used if the public health and safety are endangered by the current use of the property, and its seizure will materially reduce the danger to public health and safety.

4. Ensure that private benefits are incidental to the projects. Eminent domain should not be considered as an alternative strategy for acquiring land and property for private development. All private property owners should shoulder similar burdens and costs to ensure a level playing field.

This was not an exhaustive research and further investigation could conclude much needed improvement within our state constitution. When the research began it was thought there

was the possibility of worse offenses to people and business but with further study it was discovered Washington State is one of the better states in our union to respect ownership and property rights.

According to the Re♦Solve study presented earlier along with statistics from the Seattle Downtown Association web site rental rates within the downtown core is in current rental decline. With the increase in building space availability landlords are competing with each other in hopes of keeping their tenants. However, Seattle is expected to see a boom in the market within the next couple of years and rental space will once again become premium. It is with the growth in the next couple of years true results of this research will be seen.

It was feared there would be people and businesses in Seattle like the neighborhood of Trumbull New London, change the names and location and what would make the Bell Town, Denny Triangle or, Lake Union area any different? What makes it different is we have voices in our legislature and people who represent the citizens of Washington to make sure it doesn't happen and won't happen. But it does happen, abuse of eminent domain does happen and it happens in our own backyard. The Federal Supreme Court made a decision putting the responsibility back in the hands of individual States forcing them to change their constitution. Apparently our own constitution needs to be modified so future abuse of eminent domain does not happen.

If citizens do find their rights have been violated the Institute for Justice Washington Chapter (IJ-WA) works to vindicate the constitutional rights of the Washington State residents. From its offices in Pioneer Square, IJ-WA litigates in the areas of economic liberty, educational choice, property rights and free speech. The Washington Chapter specifically concentrates on

cases involving those rights secured by the Washington State Constitution and is busy researching and preparing additional cases that will help protect and preserve the legacy of liberty guaranteed by the Washington State Constitution.

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Appendix

Northwest UNIVERSITY

September 26, 2005

Dear Business Owner/Manager:

Please let me take a moment of your time and introduce myself. My name is Jo Anne McClintock and I am a graduate student of Northwest University. I am writing to you today to ask you for your help and at most 2 minutes of your time. I have enclosed a survey I need you to fill out *today* and mail back to me. The purpose of this survey is to find out what you, the business owner/manager think about local governments ability to take private property under eminent domain for use in private commercial redevelopment.

The gathering of this data is essential and critical to my final project and grade. Please, I ask you to take a minute or two to fill out the enclosed survey and mail immediately back to me in the pre-paid envelope.

Gathering the information and assembling information is always the first step in any research. The results of this survey are unknown however with the input of other powerful voices it could potentially lead to changes in Washington State law if the results are conclusive change is necessary. If you would like a copy of the survey results please check the box at the bottom of the survey form and I will send it out to you once completed.

Thank you so much for your time and attention in this matter.

Sincerely,

Jo Anne McClintock

Northwest UNIVERSITY

MBA Program Research Survey

SURVEY QUESTIONS:

The US Supreme Court recently ruled in the Kelo vs New London trial that local governments may take private property under eminent domain for use in private commercial redevelopment.

The purpose of this survey is to find out what you, the business operator think and feel about local governments ability to take private property under eminent domain for use in private commercial redevelopment.

Please circle the appropriate response – Y for Yes and N for No.

1. Are you familiar with the Kelo vs New London Supreme Court decision? Y N

2. Have you or anyone you know been affected by eminent domain? Y N

If yes, how?

_____

_____

What was your experience?

_____

_____

3. Do you think you would be fairly compensated to move your business? Y N

Why?_____

_____

Why not? _____

_____

4. Do you think you could relocate your business to an area of equal or better opportunity?
Y N

5. Do you think the Supreme Court made the right decision? Y N

6. Do you think it fair to be asked to move your business in favor of a larger business?
Y N

7. Are you familiar with what the Washington State Supreme Court rules are regarding eminent domain?
Y N

Please circle the appropriate response:

8. How long have you been in business <5 <10 <20 over 20 years
(less than 5 yrs, 10 yrs, 20 yrs)

9. How long have you been at your current address? <5 <10 <20 over 20 years
(less than 5 yrs, 10 yrs, 20 yrs)

10. What is the likelihood government would force you to close your doors and move?
(On a scale 1 to 10 with 1 being highly unlikely and 10 being very likely)

1 2 3 4 5 6 7 8 9 10

11. On a scale of 1 to 10 do you think eminent domain could ever happen to your business?

1 2 3 4 5 6 7 8 9 10

12. What impact to your business do you think eminent domain would have?
(On a scale of 1 to 10 with 1 being no impact to your business and 10 being destructive to your business)

1 2 3 4 5 6 7 8 9 10

13. How would you feel if you were told to you had to close your doors to your business and move it elsewhere? (1 being it wouldn't bother you and 10 being you would be very upset)

1 2 3 4 5 6 7 8 9 10

14. How expensive do you think it would be for you to move your business?
(1 being it wouldn't be expensive and 10 it would be extremely expensive)

1 2 3 4 5 6 7 8 9 10

15. What hidden expenses might happen to you if you had to move?

Parking	Commuting issues	Other expenses
Lost revenues	Finding a great location	Nothing

16. What kinds of benefits could you anticipate if asked to move or close your business?

Paid above market value for business	Find a better location for less overhead	No more headaches running a business
Better employee pool	Other	Nothing

17. What kinds of losses could you anticipate if asked to move or close your business?

Low	Medium	High

If you would like a copy of this survey please check the box below. Please make sure you include your name and company address and I will send you a copy once the survey has been completed. Thank you for your time and support.

☐