

## **Federal Funds Currently Support Eminent Domain for Private Use**

The U.S. Supreme Court's *Kelo v. City of New London* decision declaring the use of eminent domain for private economic development constitutional put a national spotlight on—and opened the floodgates to—the growing abuse of eminent domain for private profit. Most often, state and local governments are the abusers—using or threatening to use eminent domain to take and demolish homes and small businesses in order to turn the land over to private developers for their private profit.

But federal funds currently support the use of eminent domain for private commercial development—including the project at issue in *Kelo*. Among other known abuses, federal funds have supported taking a church for retail development, modest homes for more upscale homes, an entire neighborhood for a factory, and small businesses for a mall.

Many urban development, housing and community development authorities—which often engage in eminent domain for private development—receive federal funding.

In addition to state and local governments, federal agencies also have the power of eminent domain and take property for public uses, like military installations, federal parks and federal buildings—truly public uses that have long been recognized as constitutional. The agencies themselves generally do not take property and transfer it to private parties. However, many projects using eminent domain for economic development receive some federal funding, from such agencies as the Department of Housing and Urban Development and the Department of Commerce's Economic Development Administration.

In fact, declaring an area “blighted”—the most common way state and local governments set the stage for using eminent domain—often qualifies a redevelopment project for federal funding. In other words, if a local government declares an area blighted for a project—no matter how bogus the declaration—federal tax dollars often can follow.

The U.S. Congress can and should curb eminent domain abuse by withdrawing federal support for projects that involve condemning homes, small businesses, churches and other property for private economic development.

In November 2005, the House of Representatives overwhelmingly passed HR 4128, the Property Rights Protection Act, which denies for two fiscal years federal economic development funds to state and local governments that use eminent domain for private commercial development. It also directly prohibits the federal government from using eminent domain for private development. HR 4128 is a sensible federal response to the problems created by *Kelo*, but seven months after it passed the House and one year after the Supreme Court ruling, it remains stalled in the Senate Judiciary Committee.

This paper lists recent examples of projects involving eminent domain abuse that received support from the federal government. This list is likely the tip of the iceberg. No one—not states and not the federal government—keeps records tracking the use of federal money in redevelopment projects involving eminent domain, and the funding schemes for such projects are often complex and opaque. To prepare this report, the Institute for Justice relied on media accounts to learn when and where federal tax dollars support eminent domain abuse.

### **Brea, Calif.**

The Brea Redevelopment Agency demolished the city's entire downtown residential area, using eminent domain to force out hundreds of lower-income residents. The Department of Housing and Urban Development (HUD) launched an investigation into the potential misappropriation of federal development grants totaling at least \$400,000, which made their way to the City in the late 1980s and early 1990s. FBI agents investigated the Redevelopment Agency based on evidence that the Agency used coercive tactics to acquire property.<sup>1</sup>

### **Garden Grove, Calif.**

Garden Grove has used \$17.7 million in federal housing funds to support its hotel development efforts—efforts that include, at least in part, the use of eminent domain. In 1998, the City Council declared 20 percent of the city “blighted,” a move that allowed the city to use eminent domain for private development. Using that power—and federal money—the City acquired a number of properties, including a mobile-home park full of senior citizens, apartment renters and small businesses, in order to provide room for hotel development.<sup>2</sup>

### **New London, Conn.**

This was the case that was the subject of the Supreme Court's *Kelo* decision. Fifteen homes are being taken for a private development project that is planned to include a hotel, upscale condominiums and office space. The project received \$2 million in funds from the federal Economic Development Administration.<sup>3</sup>

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<sup>1</sup> Kevin Johnson and Davan Maharaj, “Brea's Rocky Redevelopment; Government: The FBI Is Asking Whether Landowners Were Coerced and HUD Says it Is Investigating Possible Misappropriation of \$400,000,” *Los Angeles Times*, Feb. 20, 1994, at A1; Municipal Officials for Redevelopment Reform, *Redevelopment: The Unknown Government* 26 (2006).

<sup>2</sup> Nick Schou, “Freebies for the Rich,” *OC Weekly*, November 23, 2000; Nick Schou, “More Freebies for the Rich,” *OC Weekly*, June 28, 2001; Nick Schou, “The King of Garden Grove,” *OC Weekly*, May 17, 2002, at News 16.

<sup>3</sup> <http://www.nldc.org/business/fttrmbll.htm> (retrieved June 20, 2006).

## **Baltimore, Md.**

In December 2002, the Baltimore City Council passed legislation that gives the City the power to condemn about 3,000 properties for a redevelopment project anchored by a biotechnology research park. The development will contain space for biotech companies, retail, restaurants and a variety of housing options. HUD has provided a \$21.2 million loan to the city.<sup>4</sup> Many projects in Baltimore involving the use of eminent domain for private development are overseen by the Baltimore Development Corporation, which receives federal funding.<sup>5</sup>

## **Lowell, Mass.**

City officials are planning to acquire all private property within the 15.2-acre Hamilton Canal District redevelopment area in order to replace it with new commercial, retail, office and residential space along the Hamilton, Merrimack and Pawtucket canals. The City will issue a request for proposals for the project and select a master developer later this year. In April 2006, City councilors voted unanimously to seize four properties—seven acres of the defunct Appleton Mills and properties owned by McLaughlin Storage Inc. and attorney Louis Saab. The owner of Appleton Mills has been given until the end of May to come to terms with the City or face eminent domain, and the other three properties are being condemned immediately. The City will use state and federal funds to pay for the acquisitions.<sup>6</sup>

## **Kansas City, Mo.**

The local government announced that loans from Fannie Mae and grants from HUD would be used to build a housing development in Beacon Hill, one of the oldest black enclaves in Kansas City. Unfortunately, 258 properties, including the Downtown Church of Christ, stood in the way; the government was prepared to acquire the properties by eminent domain if the owners did not sell. A non-profit group, the Housing and Economic Development Financial Corporation (HEDFC), was in charge of the development. After a number of troublesome revelations about the organization, both the FBI and HUD investigated HEDFC last year. In addition, the City sued the local housing agency, to which it had provided \$60 million in federal funds—over just four years—for the project.<sup>7</sup>

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<sup>4</sup> Charles Cohen, "A Bitter Pill; A New Biotech Park Promises to Cure What Ails Middle East But Not Without Side Effects," *Baltimore CityPaper*, November 12, 2003.

<sup>5</sup> [http://www.baltimoredevelopment.com/files/print\\_materials/annual-reports/bdc04\\_annual-report.pdf](http://www.baltimoredevelopment.com/files/print_materials/annual-reports/bdc04_annual-report.pdf) (retrieved June 21, 2006).

<sup>6</sup> Michael Lafleur, "Council Votes to Take Appleton Mills, Other Properties by Eminent Domain," *Lowell Sun*, April 26, 2006, at LOCAL.

<sup>7</sup> Michael Mansur and Mike McGraw, "Tracy Houses Need More Work; A Star Watchdog Report; Up to \$100,000 May Be Necessary for Troubled Project," *Kansas City Star*, July 6, 2005.

## **St. Louis, Mo.**

In 2003 and 2004, the Garden District Commission and the McRee Town Redevelopment Corp. demolished six square blocks of buildings, including approximately 200 units of housing, some of which were run by local non-profits. The older housing will be replaced by luxury housing. The project received at least \$3 million in HUD funds, and may have received another \$3 million in block grant funds as well.<sup>8</sup>

## **Elmira, N.Y.**

Eight properties—including apartments, a garage, carriage house and the former Hygeia Refrigerating Co.—were condemned and six were purchased under the threat of eminent domain for Elmira’s South Main Street Street Urban Development project. HUD funds were used to create a 6.38-acre lot for development, including \$30,000 in Community Development Block Grants for relocation.<sup>9</sup>

## **Jamestown, N.Y.**

The Jamestown Urban Renewal Agency condemned two small businesses as part of the City’s “West Side redevelopment effort,” a program financed in part by Community Development Block Grants from HUD. The purpose of the project was to create economic development.<sup>10</sup>

## **North Hempstead, N.Y.**

St. Luke’s Pentecostal Church had been saving for more than a decade to purchase property and move out of the rented basement where it holds services. It bought a piece of property to build a permanent home for the congregation. The property was condemned by the North Hempstead Community Development Agency, which administers funding from the federal government, for the purpose of private retail development.<sup>11</sup> As of June 2006, the land remains vacant.<sup>12</sup>

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<sup>8</sup> “From McRee Town to Botanical Heights; A New and Rejuvenated St. Louis Neighborhood for Potential Homebuyers,” U.S. Department of Housing and Urban Development Newsroom, <http://www.hud.gov/local/mo/news/botanicalheights2004.cfm> (retrieved June 21, 2006).

<sup>9</sup> Brooke J. Sherman, “City Set to Claim Southside Land,” *Star-Gazette*, June 22, 2004.

<sup>10</sup> *Hearing on Tax Incentives for Renewal Communities: Testimony Before the Subcomm. on Oversight of the House Comm. on Ways and Means*, 2002 Leg. (N.Y. 2002) (statement of Steven Centi, Director of Development, City of Jamestown, New York).

<sup>11</sup> Jessica DeStefano, “CDA Seeks to Acquire Church Property; New Cassel Minister: ‘We Won’t Sell,’” *The Westbury Times*, January 14, 2000.

<sup>12</sup> Lesley Jenkins (brother of Pastor Fred Jenkins), *Telephone interview conducted by Justin Gelfand*, June 13, 2006.

## **New York, N.Y.**

Developer Douglas Durst and the Bank of America enlisted the Empire State Development Corporation to clear a block of midtown Manhattan for his 57-story tower, Bank of America Tower at One Bryant Park. The ESDC put at least 32 properties under threat of condemnation and initiated eminent domain proceedings on five of them. All of the owners eventually sold. Durst had abandoned the project prior to 9/11 but an infusion of public subsidies—including \$650 million in the form of Liberty Bonds—and a \$1 billion deal with Bank of America put plans back on track.<sup>13</sup>

## **Akron, Ohio**

In March 2005, Mayor Don Plusquellic announced a housing and retail project that threatens home and business owners with eminent domain. Spicer Village, which developers ASW Properties and the Bord family are slated to build, includes funding from federal Community Development Block Grants.<sup>14</sup> The next month, planning commissioners unanimously approved the plan, though the City Council would still need to designate the existing properties on 11 blocks as “blighted” to condemn any remaining properties. A lawsuit to stop the development was unsuccessful.

## **Cleveland, Ohio**

Property owners on the East Bank of the Flats in Cleveland face losing their property so it can be given to the Wolstein Group, which wants to build a new mixed-use development project and a public promenade along the river. Scott Wolstein unveiled his \$230 million revitalization plan in May 2005. The project depends on serious public subsidies, including \$18 million from federal, state and local grants for the 10 to 15 restaurants, residential space, retail space, cinema, boardwalk and public marina Wolstein envisions. In April 2006, the Port Authority voted to use eminent domain on any of the 21 owners in the area who do not sell Wolstein.<sup>15</sup> In late May 2006, the Authority filed condemnations against four owners, and a week later, filed against three more.

## **Toledo, Ohio**

In 1999, Toledo condemned 83 homes and 16 businesses to make room for expansion of a DaimlerChrysler Jeep manufacturing plant. Even though the homes were well maintained, Toledo declared the area to be blighted. A \$28.8 million loan from HUD was secured to pay for part of the project.<sup>16</sup>

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<sup>13</sup> Russ Buettner, Heidi Evans, Robert Gearty, Brian Kates, Greg B. Smith, Richard T. Piencak and Ellen Locker, “His Midtown Plan Got A Federal Boost,” *Daily News*, December 8, 2005.

<sup>14</sup> Steve Luttner, “\$40 million in retail, housing planned near University of Akron,” *Plain Dealer*, March 12, 2005, at B3.

<sup>15</sup> Tom Breckenridge, “East Bank Ripe for Change, Planners Say,” *Plain Dealer*, October 8, 2005.

<sup>16</sup> Gideon Kanner, “The New Robber Barons,” *The National Law Journal*, May 21, 2001, at A19.

## **Ardmore, Pa.**

The Ardmore Transit Center Project has some actual transportation purposes. However, Lower Merion Township officials were also planning to remove several historic local businesses, many with apartments on the upper floors, so that they can be replaced with mall stores and upscale apartments. The project received \$6 million in federal funding, which went to the Southeastern Pennsylvania Transit Authority.<sup>17</sup> After a major local political shakeup and the passage of new state legislation, these plans may be off the table, but that's not yet certain.

## **Pittsburgh, Pa.**

The Pittsburgh Urban Redevelopment Authority (PURA) condemned homes in the Middle Hill district for transfer to private developers. In 2002, HUD launched an investigation into possible wrongdoing by officials within PURA, who allegedly have unfairly targeted minority residents and business owners in the Middle Hill area, offered less than market value for their properties, and used the threat of protracted legal battles to force owners to sell. The Middle Hill condemnations, which were carried out by PURA, utilized federal as well as state and local funds.<sup>18</sup> PURA has acquired more than 100 plots in the Middle District. More recent developments in this situation are unknown.

## **Memphis, Tenn.**

Starting in 2002 or 2003, the Memphis Housing Authority has been using eminent domain for the "Uptown Memphis" project. The current portion of the project will use \$35 million in HUD funding. The project will replace lower income housing with single-family homes that will supposedly blend race and income levels. However, a maximum of 22 percent of the former residents will be able to return, and even those will probably not be able to afford to live in the new housing. Also, the developers of the project have been questioned about the large size of their developer fee.<sup>19</sup>

## **Fort Worth, Texas**

Massive plans to redirect the Trinity River to form a lake to the north of the city—and build a private project with new retail, office and residential developments on its banks—threaten at least 80 business owners who stand to lose their property to make way for the venture. Of the 800 acres that will have to be sacrificed for the scheme, 58 percent is privately owned. At least fifty of those acres will be transferred directly into private hands at some point. The plan calls for the federal government to chip in \$180 million,

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<sup>17</sup> Richard Ilgenfritz, "Coalition Sues to Block Redevelopment," *Main Line Times (Ardmore, PA)*, April 21, 2005.

<sup>18</sup> Christian Morrow, "Woman Wants Home Replaced: Neighbor Calls for HUD Probe in Demolished Home," *New Pittsburgh Courier*, May 15, 2002.

<sup>19</sup> Amos Maki, "Moving on Uptown; So Far, So Good for Well-Received Redevelopment," *The Commercial Appeal (Memphis, TN)*, October 19, 2005, at C1.

of which at least \$110 million has been authorized. Officials will fund the rest with \$90 million from the creation of a special tax district and \$90 million from Fort Worth, Tarrant County and the Tarrant Regional Water District.<sup>20</sup>

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<sup>20</sup> Mike Lee, "Project May Usher in A 'New Era' for Forth Worth," *Fort Worth Star-Telegram*, November 21, 2004, at 24A; Anna M. Tinsley, "Model of Trinity River Vision Plan on Display," *Fort Worth Star-Telegram*, December 8, 2004, at 14B.