

State Record of Condemnations Filed, for All Purposes:† 3,202

Legend  = 10  = 10  = 1

OVERVIEW

Arizona has an unfortunate record of grandiose development plans that devastate neighborhoods and then fail miserably. This fondness for eminent domain is reflected in the high number of condemnation cases filed—more than 3,200 in only five years. Even politicians have begun to suggest limits on eminent domain, and disgusted voters have been making their voices heard. The Arizona House of Representatives passed a bill seeking to cut back on the authority of local redevelopment agencies to seize property in order to transfer it to private business, but the bill died in the Senate. The voters of Scottsdale were more successful: they recently rejected another proposed boondoggle and convinced the City Council to remove a blight designation that had held the sword of eminent domain over downtown Scottsdale for years. The Arizona Supreme Court has never ruled on whether condemnations for the benefit of private parties can withstand constitutional scrutiny, but at least one such case is currently working its way up through the Arizona courts.

*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.

†Research & Statistics Unit of the Arizona Administrative Office of the Courts (includes condemnations for traditional public uses).

LEGISLATIVE ACTIONS

The Arizona House of Representatives passed a bill that sought to limit the practice of government condemnations for private development after a change in 1997 made such condemnations easier. Arizona cities were once required to declare an area “slum and blighted” before they could condemn land for private development. But the state’s eminent domain law was changed in 1997 so that communities could pursue wider redevelopment objectives than merely slum clearance. Also, residents in areas with blight designations wanted a less pejorative label for their communities. Under the new, less rigid standard, properties in an area could be condemned if the area had an “inadequate street layout,” or lack of diversity of ownership, or even if the area “arrest[ed] the sound growth of a municipality.”⁷

Some Arizona politicians, however, are pushing for a return to the stricter “slum and blighted” standard. In January 2002 Representative Eddie Farnsworth introduced HB 2487 in the Arizona House, which in addition to restoring the original standard, would also force cities to remedy any such blight within five years, and prohibit them from disposing of the property for a ten-year period after the designation.⁸ On April 1, 2002, HB 2487 passed the House, but became mired in the Senate, where opponents killed the measure. Senator Harry Mitchell, former mayor of Tempe, headed the Government Committee and saw to it that the bill died before leaving the Senate.⁹ **Update:** Rep. Farnsworth introduced the same bill in the 2003 legislative session.

SCOTTSDALE BUSINESS OWNERS SUCCEED IN GETTING REDEVELOPMENT DESIGNATION LIFTED

Scottsdale business owners who were fed up with trying to run successful businesses under the City’s downtown redevelopment designation recently convinced the Scottsdale City Council to lift the onerous designation that has plagued the business community there since 1997. The owners have argued since its inception that the Downtown Redevelopment Area, a 330-acre zone encompassing 906 parcels of downtown land, failed to achieve its stated goal of bringing in outside development. Moreover, it discouraged current owners from improving their properties. A redevelopment designation makes it much easier to condemn property in that area and is widely, and correctly, perceived as a sign that owners may be forced out. Nearly 100 downtown business owners submitted a petition to the City Council asking that the City remove the redevelopment designation. Through their coordinated grass-roots campaign, the owners were able to convince the City Council that the designation was hurting otherwise successful businesses by forcing them to operate under the constant looming threat of eminent domain. At its meeting on September 9, 2002, the City Council responded to their concerns by voting unanimously to lift the redevelopment designation from the entire downtown area.¹⁰ The Institute for Justice Arizona Chapter testified at the council meeting in favor of removing the blight designation.

These activists now hope to convince the City Council to remove the redevelopment designation from Scottsdale’s 90-acre Waterfront Redevelopment Area. The designation has been in effect since 1994, but like its downtown counterpart has failed to spark major investment. The City has an agreement with Starwood Western Capital that makes Starwood the exclusive developer of the waterfront area until October 2003, at which time the City can remove the designation.¹¹

⁷ See Ariz. Rev. Stat. § 36-1471 (14) (2001).

⁸ See H.B. 2487, 45th Sess. (Ariz. 2002).

⁹ Robert Robb, “It’s Time to Condemn Abuse of Authority,” *The Arizona Republic*, Apr. 10, 2002.

¹⁰ Peter Corbett, “Redevelopment Designation Lifted,” *The Arizona Republic*, Sept. 10, 2002, at 4B.

¹¹ Peter Corbett, “Stores Fight Scottsdale Redevelopment Label,” *The Arizona Republic*, Aug. 20, 2002, at 5B.

PRIVATE USE CONDEMNATIONS

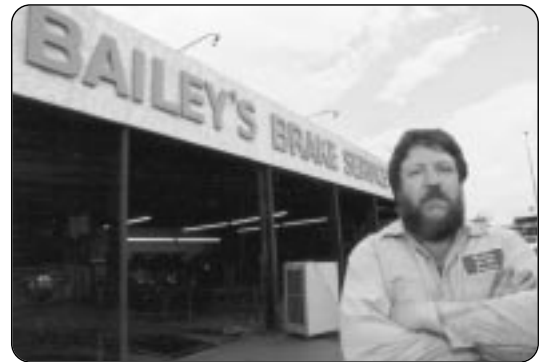
Chandler

Jack In The Box operates a restaurant on a prime corner in downtown Chandler. The City wants to get rid of the fast-food joint because it doesn't fit the City's "new image," and because its land is the missing piece for a planned privately owned residential/retail development at the gateway to downtown Chandler. The City Council passed a new zoning law that outlawed Jack's drive-thru window. The City says it can now condemn the restaurant for violating zoning laws. Jack In The Box is willing to remove the drive-thru, but Chandler isn't interested. The restaurant has vowed to fight any future condemnation.¹²

In 1998, Mesa unveiled a downtown redevelopment project that called for gutting Bailey's Brake Service to make way for an Ace Hardware Store franchise owned by one of Mesa's most powerful families.

Mesa

Randy Bailey owns Bailey's Brake Service in Mesa, a successful small business opened by his father in 1970. The shop is located on the corner of a busy downtown intersection. In 1998, Mesa unveiled a downtown redevelopment project that called for gutting Bailey's Brake Service to make way for an Ace Hardware Store franchise owned by one of Mesa's most powerful families. The City decided the area was "in need of redevelopment" because it lacked sufficient housing. The hardware store project, however, removed nine homes while creating none. The City then filed condemnations against Bailey, one home, a Mexican restaurant, MAACO, Tom Buck's Auto, the Lunch Box Cafe and Eskimo Air. Meanwhile, the hardware store owner testified at trial that the new store would double his profits. Represented by the Institute for Justice, Bailey challenged the condemnation of his business, but the Maricopa Superior Court ruled in favor of the City.¹³ Bailey appealed, and the Arizona Court of Appeals heard the case on May 29, 2000. The Superior Court stayed the effect of its decision so that Bailey's Brake Service can remain open while the parties wait for a decision from the Appellate Court.



Randy Bailey stands in front of his brake shop in Mesa, AZ. The City of Mesa has condemned Bailey's Brake Service with the intention of transferring the property to Ace Hardware.

Mesa

City officials are trying to figure out what to do with 30 acres of land that sit vacant thanks to a failed redevelopment project that began in 1992. Known to the City as "Redevelopment Site 17," the tract once contained 63 homes, which the City condemned and purchased at a cost of \$6 million. A group of Canadian developers planned to build Mesa Verde, an entertainment village featuring a time-share resort, water park and ice-skating rink. Once the homes were taken by the City, however, financing for the project fell through.¹⁴

¹² Jonathan Sidener, "'Loyal' Fast-Food Eatery Ready to Battle Chandler," *Arizona Republic*, Sept. 30, 2002, at 1B.

¹³ *City of Mesa v. Bailey*, No. CV 2001-090422 (Maricopa Sup. Ct. April 29, 2002); see also CV2001-090421 (Feb. 26, 2001); CV2001-092917 (Dec. 17, 2001); CV2001-092666 (Dec. 17, 2001); CV2001-092904 (Dec. 14, 2001); CV2001-092825 (Dec. 6, 2001); CV2001-092664 (Nov. 16, 2001).

¹⁴ Paul Green, "Eminent Domain: Mesa Flexes a Tyrannous Muscle," *East Valley Tribune*, Sept. 2, 2001; Robert Robb, "Count on City-Driven Project to Fail," *The Arizona Republic*, Sept. 21, 2001.

Phoenix

In 1998, the City of Phoenix condemned a grocery store and several other small businesses on the corner of 24th Street and Broadway, intending to transfer the land to a private developer. Though none of the businesses were blighted, the City justified the takings under Arizona's liberal redevelopment statute by declaring that the area was "overrun with crime."¹⁵ Rather than taking steps to lower crime in the area, the City chose instead to punish innocent businesses. However, the condemnations did nothing to improve the area. As of 2002, the City still has not been able to find a developer willing to buy the property, so it sits vacant.¹⁶

Phoenix

In 2001, Phoenix condemned the Hi Dreams pipe and tobacco accessories shop because the City wanted the property to be used by a business it found more desirable. However, the City has not been able to find a developer to buy the property, so it sits vacant.¹⁷

Scottsdale

In a September 1999 special election, Scottsdale voters rejected the \$654 million "Canals of Scottsdale" plan, which would have used state and local tax dollars to turn 27 acres of the downtown business district into a public-private "cultural" district. The sprawling development would have included such private uses as restaurants, a ritzy hotel, luxury condominiums, a multiplex cinema and high-end shopping. Had the voters not intervened, the City would have used eminent domain to acquire the property needed to complete the project.¹⁸

Scottsdale

The Coach House is Scottsdale's oldest tavern, and has been in operation since 1928. When the City decided that it wanted to lure a private developer to construct a new "gateway" strip mall, it created a redevelopment zone that included the Coach House. Jim Brower, whose family had owned the land and operated the tavern for three generations, decided to fight back. Brower and his attorneys organized a grass-roots campaign to demand that the Scottsdale City Council re-vote the issue and remove the Coach House from the redevelopment zone. After being inundated with thousands of angry letters from the community, the City Council agreed to hold a hearing, which was attended by 700 supporters of the Coach House. Brower succeeded in convincing the City Council to grant the Coach House an exception, forcing the developer to build around the tavern.¹⁹

Tempe

Kenneth and Mary Ann Pillow have lived in their lovely white home on a cul-de-sac in Tempe for 45 years. When asked about his home, Kenneth Pillow says, "I love my place and I'd like to stay there." However, the Pillows' home is located within the Apache Boulevard Redevelopment Area, which the City established in 1996 with the power of eminent domain. Tempe officials want to remake the Pillows' neighborhood with new privately owned homes, even though existing homes like the Pillows' are not run-down. In October 2002, the City condemned the Pillows' home, and a local judge scheduled a hearing on the matter for April 2003.²⁰

¹⁵ *City of Phoenix v. Wong*, No. CV1998-021350 (Maricopa County Super. Ct. Aug. 14, 2000); see also Pat Kossan, "Phoenix Weighs Next Move on Crime-Plagued Corner: Condemning Site Remains an Option," *The Arizona Republic*, Nov. 28, 1997.

¹⁶ Jordan Rose, "New Land Condemnation Laws Abuse Citizens," *Tucson Citizen*, Aug. 29, 2002, at 7B.

¹⁷ See *City of Phoenix v. Soza*, No. CV2001-000068 (Maricopa Super. Ct. May 14, 2002); see also "24th St. Broadway Development Touted," *The Arizona Republic*, Oct. 18, 1995.

¹⁸ "Land Takings Must End," *The Arizona Republic*, Aug. 2, 2000.

¹⁹ See Jordan R. Rose, *Eminent Domain Abuse in Arizona: The Growing Threat to Private Property*, Goldwater Institute Arizona Issue Analysis 174 (Aug. 16, 2002), available at the Goldwater Institute website, <http://www.goldwaterinstitute.org/pdf/materials/134.pdf>.

²⁰ Alia Beard Rau, "Tempe Land Plan Leaves Pair in Limbo," *The Arizona Republic*, Jan. 16, 2003, at 1B.

