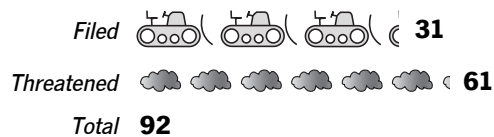


CONNECTICUT



Known Condemnations Benefiting Private Parties*



Known Development Projects w/Private Benefit Condemnations*



State Record of Condemnations Filed, Redevelopment Only: 543

State Record of Condemnations Filed, for All Purposes:[†] 1,819

Legend  =10  =10  =1

OVERVIEW

Connecticut is going through a period of upheaval in its use of eminent domain. On the one hand, Connecticut cities have been eager to use eminent domain for the benefit of private business interests, engaging in both large- and small-scale condemnation projects. On the other hand, the Connecticut Supreme Court has shown increasing concern about eminent domain abuse. Although it had not considered an eminent domain case in more than 20 years, the Connecticut Supreme Court rebuffed one proposed condemnation project in 2001 and two condemnations in 2002. No doubt to the surprise of many redevelopment agencies, the Court held that redevelopment areas are not an agency's "perpetual fiefdom" and that "just because the property may be desirable to the defendants does not justify its taking by eminent domain." It's not clear if cities are getting the message. For example, Bridgeport continues to move forward on a number of condemnations, even though it received a firm rebuke from the Supreme Court in 2002. Old habits apparently die hard.

*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.

[†]State of Connecticut Judicial Branch. The first number is redevelopment condemnations only, and the second number includes condemnations for traditional public uses.

PRIVATE USE CONDEMNATIONS

Bridgeport

In a unanimous decision, the Connecticut Supreme Court recently ruled that the City of Bridgeport acted unreasonably in using eminent domain to seize property owned by the Pequonnock Yacht Club for a major waterfront redevelopment project along Steel Point, a 50-acre peninsula in Bridgeport Harbor. The 100-year-old club can return to normalcy after years spent fighting the condemnation.¹¹⁹

The City's behavior was actually quite typical. It selected a private developer to build an \$800 million grandiose and unlikely waterfront project, to include housing, offices, a hotel, conference center and retail. The Yacht Club, which had a thriving working-class membership and no desire to move, asked the City to allow it to remain. The City rebuffed the repeated requests, because it wanted to raze the area and then transfer it to its chosen private developer. Then, the project fell through, but the City had dug in its heels and refused to drop the condemnation. It was left in the position of condemning a perfectly viable, unblighted property with absolutely no idea of what it would do with the property once it was taken. The

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Connecticut Supreme Court was less than impressed. Connecticut statutes allow cities to condemn property in blighted areas, but if a city wants to condemn an unblighted property, it can only do so if that property is essential to the project.¹²⁰ Connecticut municipalities had routinely ignored this requirement, but the Connecticut Supreme Court held that Bridgeport had made no attempt to show that the Yacht Club was essential to the project (indeed, it would have been impossible to make such a showing, since the project plan had fallen through).¹²¹ The Court agreed with the trial court that "just because the property may be desirable to the defendants does not justify its taking by eminent domain."¹²² The Institute for Justice filed an amicus brief at the Connecticut Supreme Court in support of the Yacht Club.

Bridgeport

In May 2002, the Bridgeport Economic Development Corp. (BEDC) condemned four homes and one investment property to make way for an industrial park on Seaview Avenue in Bridgeport. Under the BEDC plan, lots in the industrial park would be owned by private manufacturers and other businesses. The condemnations sought to displace Luis Del Rio, Ruth Joel, Natalie Skiba and Ollie Holmes, who each live with their

¹¹⁹ *Pequonnock Yacht Club, Inc. v. City of Bridgeport*, 790 A.2d 1178, 1187 (Conn. 2002).

¹²⁰ Conn. Gen. Stat. § 8-125 (b) (2001).

¹²¹ John Christoffersen, "State Supreme Court Rejects Bridgeport's Land Seizure for Development," *AP Wire*, Feb. 25, 2002.

¹²² *Pequonnock Yacht Club, Inc. v. City of Bridgeport*, 790 A.2d at 1187.



families in the targeted homes. Additionally, Eduvijes Del Rio would lose an investment property he owns within the targeted area.¹²³ Each of the homes is tidy, and none are vacant or deteriorating. However, the City wants to force these people out anyway and convert the land to more lucrative industrial uses. All of the owners are challenging the condemnations, alleging (among other things) that the City violated the law by failing to follow the City Charter's eminent domain notice requirements, and by condemning their properties without a valid public use, and without even a blight determination, for the sole benefit of private businesses. As of December 31, 2002, the case is pending before the Superior Court in Fairfield County.

Bristol

The Bugryns, four siblings in their 70's and 80's, owned two homes and a Christmas tree farm in Bristol, totaling 32 acres. They had lived on the property for most of their lives, in a home Frank Bugryn built with his own hands. This all changed when Bristol officials decided to condemn the Bugryns' land for an industrial park. The property was not blighted, but the City believed the property should be put to industrial use, where it would generate more taxes and jobs than the houses and trees did. The City originally planned the industrial park to allow a local metal business to expand. After that company relocated to another municipality, the City continued its condemnation efforts.¹²⁴ The Bugryns challenged the condemnation in court, but lost both in the trial court and before the Connecticut Appeals Court.¹²⁵ The Connecticut and U.S. Supreme Courts declined to review the case.¹²⁶ In September, 2002, the City began eviction proceedings to remove the family from their home of 60 years.¹²⁷ **Update:** In March 2003 the Bugryns lost their appeal of the eviction. They have been ordered to vacate their homes by July 2003.¹²⁸

East Hartford

In 2000, the redevelopment agency in East Hartford voted to take Nardi's Bakery and Deli by eminent domain as part of its plan to redevelop Main Street. Nardi's was a popular local eatery. The bakery had been in the family and in the same location for 93 years, but it stood in the way of the large redevelopment project, headed by Town Centre LLC.¹²⁹ Under the threat of impending eminent domain, Nardi's eventually agreed to sell its prime location for \$1.75 million. The building was razed.

The forced purchase and destruction of a viable business turned out to be a huge mistake for the City, financially as well as morally. Town Centre failed to produce an acceptable redevelopment plan to the redevelopment agency. And without any private developer in the picture, the Town was stuck with one very expensive bill. Two other businesses were condemned as part of the project, and the Town also underestimated the cost of those condemnations. Now, Nardi's is gone; the Town is in debt; and the land where Nardi's once stood lies empty.¹³⁰

Hartford

In 1990, the Hartford Redevelopment Agency (HRA) adopted a redevelopment plan that would allow the City to condemn privately owned land for redevelopment. The crux of the plan was that the HRA would consolidate

¹²³ See Plaintiffs' Complaint in *Del Rio v. Bridgeport Economic Development Corp.*, No. CV-02-0395692, at 1-6 (Fairfield County Super. Ct., filed Aug. 27, 2002).

¹²⁴ Jackie Majerus, "Bugryn Case Moot, City Argues," *The Bristol Press*, Oct. 17, 2001.

¹²⁵ *Bugryn v. City of Bristol*, 774 A.2d 1042, 1052 (Conn. App. 2001).

¹²⁶ *Bugryn v. City of Bristol*, 776 A.2d 1143 (Conn. 2001), *cert. denied*, 122 S. Ct. 544 (2001).

¹²⁷ Loretta Waldman, "City Moves to Evict Bugryn Siblings," *The Hartford Courant*, Sept. 16, 2002, at B3.

¹²⁸ Roberto Gonzalez, "Family Loses Fight to Stay; Court Rules Against Bugryns," *The Hartford Courant*, Mar. 12, 2002, at B3.

¹²⁹ Christopher Keating, "Nardis Seeks More Time for Move," *The Hartford Courant*, Apr. 9, 2001, at B1.

¹³⁰ Carrie Budoff, "Project Faces Cost Overrun; Agency Asking for \$75,000," *The Hartford Courant*, Nov. 19, 2001, at B3.

parcels of property and then sell them to developers willing to rehabilitate them. The redevelopment area included two parcels, which local resident Frank Citino had purchased in 1985 with the intention of renovating the apartment building located there. The HRA told Citino that he could retain his land if he rehabilitated it. However, Citino's plans to renovate one of the parcels were rejected, and the agency eventually condemned it. Over time, the HRA acquired all of the land in the redevelopment area except Citino's second parcel. Eventually, Citino fully rehabilitated the building on that parcel, but by that point the HRA had cleared out all the residents of the buildings in the surrounding area, which were then boarded up and allowed by the City to deteriorate. Citino was able to rent out only two of the six apartments in the renovated building.

Citino sued the redevelopment agency, and the trial court ruled in his favor. On appeal, the Connecticut Court of Appeals affirmed the lower court decision, holding that the HRA's actions resulted in the de facto condemnation of Citino's property. The appeals court applied a test to determine "whether the property no longer has any reasonable and proper use and whether the economic utilization of the land has been, for all practical purposes, destroyed." In doing so, the court found that the condemning authority's failure to implement its redevelopment plan in a reasonable amount of time, coupled with its permitting the overall deterioration of the surrounding area in the interim, amounted to a de facto condemnation. The HRA was ordered to pay Citino just compensation for the damage the agency caused to his property.¹³¹ Meanwhile, the City's "redevelopment" project remained a complete failure, resulting only in deterioration and empty buildings.

New London

The New London Development Corporation (NDLC), a private nonprofit organization, has been trying for more than three years to take the property of seven homeowners in the Fort Trumbull area of New London in order to construct privately owned office buildings and for other, unspecified uses, that will all serve to complement the new Pfizer global research facility nearby.¹³² The Fort Trumbull neighborhood was once a close-knit community of approximately 80 homes and a few small



Tom Picinich had his property taken to create an expanded Pfizer gateway road and for some future, unknown development. Picinich protested against eminent domain on opening day of the new Pfizer Global Research headquarters...on the water right in front of Pfizer. May 2001. Sign reads: Pfizer, NLDC, STOP EMINENT DOMAIN STEALING!!!

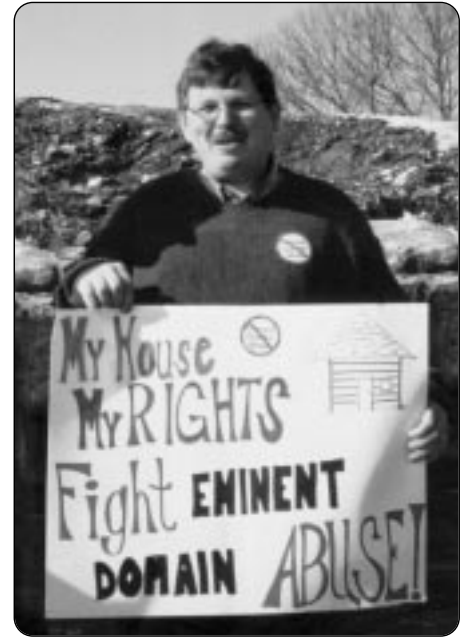
¹³¹ *Citino v. Hartford Redevelopment Agency*, 721 A.2d 1197, 1209-10 (Conn. App. 1998).

¹³² Laura Mansnerus, "Refusing to Let Go, Property Owners Test Eminent Domain's Limits," *The New York Times*, July 23, 2001, at B1.

businesses. Among the 21 properties slated for condemnation were the homes of the Derys and Cristofaros. Wilhelmina Dery is 84 years old and lives in the same house in which she was born. Her son, daughter-in-law and grandchildren live next door. By comparison, the Cristofaro family's mere 40-year tenure in their home seems short. This will be the second Cristofaro home condemned for a private redevelopment project. The first one was supposedly condemned for a seawall but in fact became part of an office complex.¹³³ When the family moved, they brought the trees they had planted next to their old home and have grown a beautiful garden around those trees at their Fort Trumbull home.¹³⁴ If they lose their home this time around, the Christofaros will once again have to uproot their beloved trees and move somewhere else.

Across from the Fort Trumbull residential community is an abandoned U.S. Naval research facility. Nobody objected to the replacement of the abandoned facility and nearby property with a luxury hotel (for visitors to Pfizer) and upscale housing (for Pfizer employees). They only objected when it became clear that the NLDC planned to replace their working-class, waterfront community with offices for businesses related to Pfizer. The NLDC added insult to injury by exempting the Italian Dramatic Club, a politically well-connected membership club, while razing every home around it.¹³⁵

Rather than doing the condemnations itself, the City of New London delegated its eminent domain power to the NLDC, a private corporation. As the former head of the NLDC, Claire Gaudiani, explained, "We all have to sacrifice." It seems she meant that the homeowners would sacrifice, while the private developer in the project would benefit. The homeowners filed suit, represented by the Institute for Justice, and the case went to trial in mid-2001.¹³⁶ Connecticut Superior Court Judge Thomas J. Corradino on March 13, 2002 held that seven of the plain-



Michael Cristofaro protests the abuse of eminent domain by New London's redevelopment corporation and the City. The NLDC has been trying to condemn his family home.



Left: IJ Vice President for Communications John Kramer kept watch through the night to ensure the government didn't destroy a New London resident's home. Right: Matthew Derry speaks to reporters about the condemnation of his home for private use. Center: A private agency that's been given the government's power of eminent domain is trying to take Susette Kelo's home for private economic development.

¹³³ Kathleen Edgecomb, "Fort Residents: 'You Can't Call a Home a Home Here,'" *The Day* (New London, Conn.), Dec. 21, 2000; David Herszenhorn, "Residents of New London Go to Court, Saying Project Puts Profit Before Homes," *New York Times*, Dec. 21, 2000, at B5.

¹³⁴ See Trial Testimony of Michael Cristofaro in *Kelo v. City of New London*, 2002 Conn. Super. LEXIS 789 (Mar. 13, 2002).

¹³⁵ Izaskun E. Larraneta, "New London, Conn., Development Group Accused of Pushing Too Hard For Pfizer," *The Day* (New London, Conn.), Aug. 14, 2001.

¹³⁶ David Herszenhorn, "Residents of New London Go to Court, Saying Project Puts Profit Before Homes," *New York Times*, Dec. 21, 2000, at B5; Izaskun E. Larraneta, "Eminent Domain Trial Resumes Today," *The Day* (New London, Conn.), Aug. 13, 2001.



Neild Oldham, co-chairman of the Coalition to Save Fort Trumbull, with Castle Coalition members and other opponents of eminent domain abuse, held a vigil in New London's Fort Trumbull neighborhood on the eve of oral argument before the Connecticut Supreme Court.

tiffs, who own 11 of the 15 homes, won their case outright and may keep their land. According to the court, the NLDC could not condemn land for unspecified uses. The other owners appealed and will retain possession of their homes during the appeal.¹³⁷ The Connecticut Supreme Court heard oral arguments on December 2, 2002,¹³⁸ and a decision is expected in 2003.

Orange

The Connecticut Supreme Court ruled in 2001 that the Town of Orange had improperly designated a redevelopment area in order to condemn land on which the owner, AvalonBay Communities, Inc., planned to develop affordable housing.¹³⁹ The court found that the supposed redevelopment plan for the area was merely a pretext for the town's true purpose of preventing the construction of affordable housing in the area. The Town was claiming it needed the property to develop an industrial park. AvalonBay had purchased the 9.6-acre parcel in 1997 and filed the requisite applications with the Town to develop the property for residential use. The Town's zoning commission denied AvalonBay's application and then three weeks later declared a moratorium on all planned residential developments. While AvalonBay's appeal from the commission's ruling was pending, the Town's economic development commission began drafting a redevelopment plan that would turn 18 parcels of property, including the AvalonBay parcel, into a high-tech industrial park. The Town then approved the condemnation of AvalonBay's land, and AvalonBay sued to prevent the condemnation and invalidate the redevelopment plan.¹⁴⁰

¹³⁷ *Kelo v. City of New London*, 2002 Conn. Super. LEXIS 789 (Mar. 13, 2002); see also Peter Downs, "Court Backs 7 Homeowners," *The Hartford Courant*, Mar. 14, 2002, at B11.

¹³⁸ Noreen Gillespie, "State Supreme Court Hears Arguments in Eminent Domain Case," *AP Wire*, December 3, 2002.

¹³⁹ *AvalonBay Communities, Inc. v. Town of Orange*, 775 A.2d 284 (Conn. 2001).

¹⁴⁰ "Court May Enjoin Project Plan Developed in 'Bad Faith,'" *Land Use Law Report*, Aug. 1, 2001, at 126.

After the Connecticut Supreme Court invalidated the plan, the condemnation was off the table.

Stamford

In 1999, the Stamford Urban Redevelopment Commission (SURC) condemned 58-year-old Curley's Diner to clear the way for an 11-story building that would house retail stores and high-rent apartments. Many local residents voiced their support for the popular diner. Curley's owners decided to put up a fight.

In December 1999, the owners of Curley's brought suit against the SURC challenging, in part, the fact that the SURC condemned the property without having first obtained a finding of blight. In addition, Curley's owners alleged that the City's proposal to turn the site into expensive housing would violate a 1988 Stamford Board of Representatives guideline that any further development by the SURC should contain affordable housing as a primary component.¹⁴¹

When the case came before the Connecticut Supreme Court, the justices agreed with Curley's that the SURC's findings of blight had been inadequate. The City relied on a determination of blight from 1963! And the 1963 declaration did not even include Curley's. The City amended the plan in 1988 to include Curley's because the City wanted to do a new project that would compete with a mall that had been constructed in another part of Stamford in the 1980s. The City did not do a new blight study, however. Without ruling on the affordable housing issue, the Court granted Curley's a permanent injunction against the SURC's condemnation.¹⁴² The Court held that a new finding of blight is required when new property is added to the project area or when the agency sought to conduct a new project, not originally contemplated. To hold otherwise, the Court found, "would confer on redevelopment agencies an unrestricted and unreviewable power to condemn properties for purposes not authorized by the enabling statute and to convert redevelopment areas into their perpetual fiefdoms."¹⁴³

¹⁴¹ Jack Cavanaugh, "Irate Customers Say Stamford Needs Their Old Diner, Not Another Tower," *The New York Times*, Dec. 16, 1999, at B15.

¹⁴² *Aposporos v. Urban Redevelopment Commission*, 790 A.2d 1167, 1176 (Conn. 2002).

¹⁴³ *Id.* at 1175.

Many Private Use Condemnations Go Unreported

Connecticut apparently is the only state that breaks the total condemnation numbers down in a meaningful way by separately reporting redevelopment condemnations. Redevelopment condemnations are almost always condemnations for private development, so it is a good proxy for private use condemnations.¹ For fiscal years 1998-2002, Connecticut reported that 543 out of a total of 1,819 condemnations were for redevelopment. Of those 543, only 31 appear in published reports or in court documents we received. In other words, at least in Connecticut, there were 17.5 private use condemnations that went unreported for every one that appeared in the newspaper.

Redevelopment designations make up 29 percent, or just over one-quarter of Connecticut's total condemnations. Only 23 states report any information on total condemnation case numbers. Taken together, those 23 states reported a total of 46,213 condemnations of all types between 1998 and 2002. One-quarter would be 11,553 just for those 23 states. Of course, some states may have no private use condemnations at all while others may have more than one-quarter. But Connecticut's numbers provide a small window showing that the numbers in this report really are just the tip of a very large iceberg.

Connecticut Condemnations

Redevelopment	543
State Highway	1,189
Other State and Municipal	27
Public Utilities	4
All Other	56
Total	1,819

¹ It is possible that some redevelopment condemnations could actually be for roads or public buildings, and it is also possible that a few private use condemnations are sprinkled in the "other" categories. Still, redevelopment condemnations are a likely approximation of Connecticut condemnations that benefit private parties.