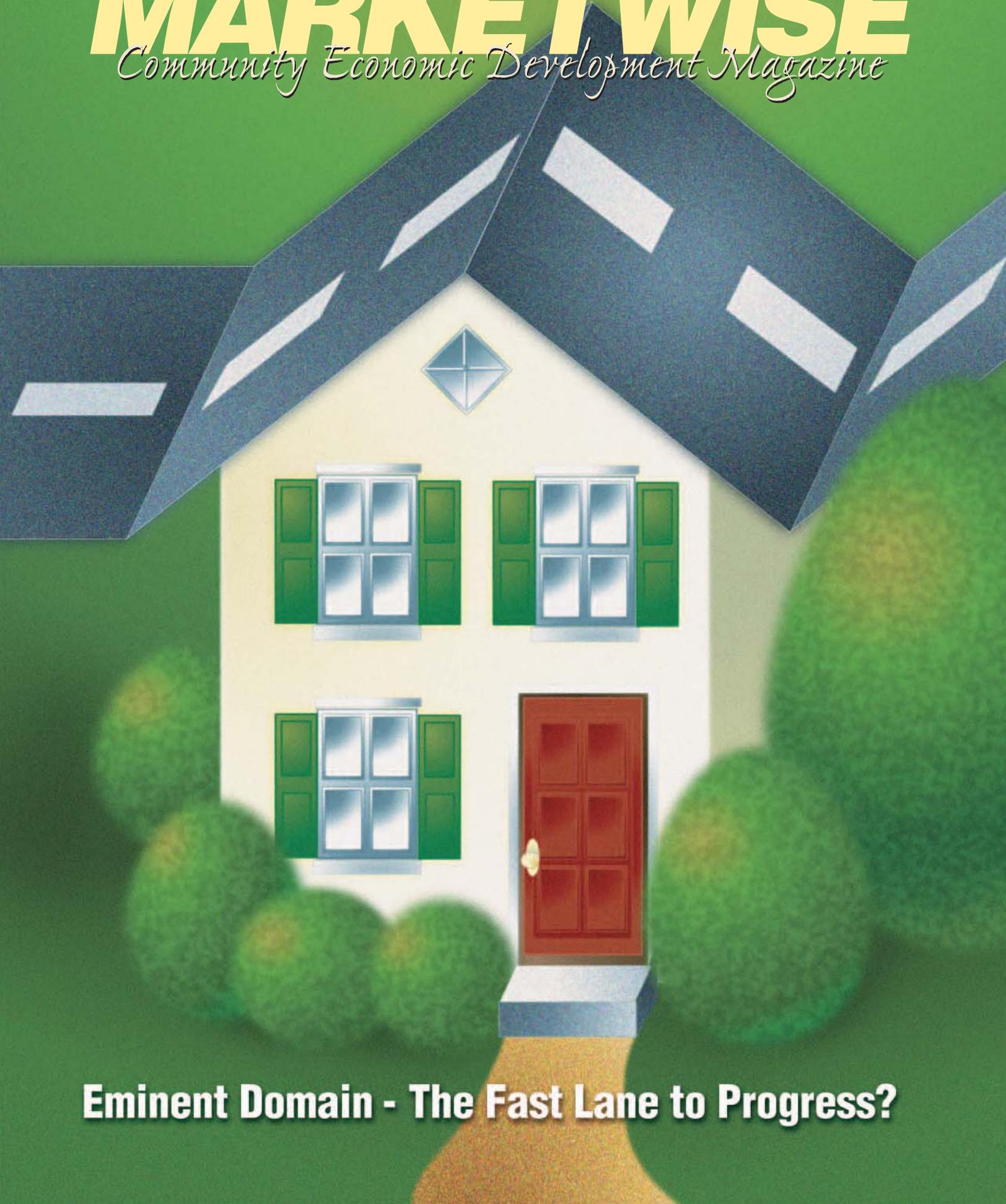


ISSUE III 2005

MARKETWISE

Community Economic Development Magazine



Eminent Domain - The Fast Lane to Progress?

Features...

EMINENT DOMAIN



An Age Old Debate with a New Twist

This series of articles examines the implications of a recent Supreme Court decision that extends the use of eminent domain for economic development purposes.

A COMMUNITY'S STORY..... 2

THE LEGAL PERSPECTIVE..... 8

AN ECONOMIST'S VIEW..... 14

The community development industry is rapidly transforming. Because of these changes, our office plans to reevaluate *MARKETWISE's* effectiveness. We will not publish Issue 1, 2006. Instead, we will conduct focus groups and readership studies.

HAPPY HOLIDAYS.

The Community Affairs Office continues to explore ways to better serve your information needs!

COMBATTING FORECLOSURES 18



A community development corporation in North Carolina balances developing affordable housing with implementing foreclosure prevention strategies.

COMMUNITY REINVESTMENT ACT REVISIONS 25



Recent changes to the act raise the small bank asset size threshold and reduce data collection and reporting burden for intermediate small banks.

Insights... PEOPLE..... 29

RESEARCHER'S CORNER..... 31

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EMINENT DOMAIN: *One Issue, Many Voices*

In this issue of *MARKETWISE*, three writers weigh-in on the issues surrounding eminent domain. The recent U.S. Supreme Court ruling on *Kelo v. the City of New London* may have important community development implications. These articles aim to not argue for or against the *Kelo* decision, but rather offer three different perspectives about the issue's potential impact on community development.

The articles explore eminent domain — a law that allows for the public taking of private property when there is seemingly a public use, ownership or benefit to be gained. At first glance, the concept appears simple because the purpose is to benefit society. Many may ask what is wrong with private parties losing their land for public gain if they are reasonably and fairly compensated. But what may seem simple and direct can quickly become an emotionally driven transaction ripe for exploitation on all fronts. I encourage people to carefully read through the following articles with an eye towards *Kelo's* effect on future redevelopment efforts.

Written by Cindy Elmore, the first article focuses on an example of the practical application of eminent domain in Baltimore, Maryland. Community real estate development professionals who make decisions to revitalize depressed areas understand that in some cases the current residents of the redevelopment sites may be relocated. These professionals reasonably assume that a greater good is being served, and more people will be helped, because of redevelopment efforts. However, the people being harmed often find it difficult to see the "greater good," especially if they are in a class of people historically shown to be treated in a disparate fashion. The harmful effects can be compounded when well-intended public officials, seeing the positive benefits of the redevelopment to the city and its residents, fail to share with people the city's vision.

The second article is written by Keith Goodwin, an attorney at the Federal Reserve Bank of Richmond who has a keen interest in legal and regulatory issues that affect low-income people. Keith provides a legal history of eminent domain and explains that eminent domain is not some recent legislation but is rooted in the U.S. Constitution. The question of what is public benefit is at the crux of the *Kelo* decision. Even the Supreme Court, which ruled with a five-to-four majority in the case, illustrates the difficulty of defining public benefit.



If the *Kelo* decision spurs a trend in development efforts, community development professionals must consider how limited government funding might be directed differently from its general use today. Will more cities use eminent domain to remove low-valued, quality 1950s-styled housing for office parks and retail space because the office park generates more property tax revenue than the older home? Using limited resources for that type of development could constrain growth in other areas with greater needs.

The third article is written by Kartik Athreya, an economist at the Federal Reserve Bank of Richmond. Kartik, whose expertise is in general equilibrium models of consumer finance, writes about the economic trade-offs associated with eminent domain. While newspaper headlines focus on the legal court room battles over the definition of public benefit in eminent domain cases, the economic arguments about the ruling's impact on markets is equally important. If public entities can confiscate private land under a more general *Kelo* interpretation, will land values become distorted for reasons other than market-determined factors? Will property owners, who own older but reasonably maintained properties being taken under eminent domain claim greater value to that property, and hence drain public dollars away from other community development projects?

The *Kelo* decision has both important legal and public welfare (policy) consequences directly affecting community development activities aimed at helping many low- and moderate-income individuals and the communities where they live. Economists and other professionals who study public welfare issues often discuss the "unintended consequences" of legal and regulatory issues — and this may be an example. While *Kelo* allowed a city to take private property because its marginal tax contribution from the redeveloped property would allow the city to maintain its vitality, many community development professionals would question the use of limited public funding to take private property — not clearly considered blight. The aftermath of *Kelo* will be discussed for some time to come. As these issues arise, only time will tell how this complex issue will play out in the community development field.

A handwritten signature in black ink that reads "Dan Tatar". The signature is fluid and cursive.

Dan Tatar

Assistant Vice President & Community Affairs Officer
The Federal Reserve Bank of Richmond



The Pain and Prosperity of Eminent Domain

by Cindy Elmore

The sun casts harsh shadows on late 19th century rowhouses located in Baltimore's east side at the foot of the world-renowned Johns Hopkins Medical Institute. Two-year-old Dontavia Warren quietly plays on the steps of an abandoned house as her grandmother gathers with neighbors to discuss their future. Standing on a littered sidewalk among boarded-up houses, Pat Tracey, a 22-year resident of East Baltimore, talks to her neighbors about the impending December 30th deadline to vacate their homes. Anxiety runs high, but there's still time to share recipes and dote on grandchildren.

Among the 30 families that remain in phase one of the relocation process, Lisa Williams wonders how it will unfold. Angered because she never planned to leave her home of over 20 years, she skeptically considers whether or not she will be able to afford a house in her old neighborhood after the redevelopment is complete. "We feel that we will be priced out of the market. Our government has allowed them to do it for the good of the community, but what community?" she asks.

Eminent Domain Put in Practice

The painful expressions of the residents of Middle East Baltimore reflect honest sentiments about the eminent domain process. Remarkably, the recent Supreme Court five-to-four ruling in *Kelo v. the City of New London* also strikes a familiar chord in Middle East Baltimore. Like the New London, Connecticut neighborhood, Baltimore residents have fought to keep their homes, but "public good" has prevailed. Private property rights have given way to economic prosperity. However, Baltimore success stories like the Inner Harbor show that eminent domain can result in economic revival. A passage from Baltimore City's amicus brief ("Friend of the Court") in the *Kelo* case makes a powerful statement:

The City of Baltimore has an intense interest in the outcome of the case because this Court's decision will have far-reaching ramifications for the City's much-needed economic development activities. Petitioners' arguments, if accepted, would threaten the ability of Baltimore and other cities to use the power of eminent domain to stimulate economic development in places where, for many decades, there has been little or no such development. If cities are prohibited from using the power of eminent domain to stimulate economic development, then cities will not develop; and if cities do not develop, if they do not adapt to changing times and changing economic circumstances, city residents will suffer."



Pat Tracey

In Baltimore, the city exercised eminent domain in an effort to develop the East Baltimore Biotech Park.

In the *Kelo* case, neighbors battled to keep their waterfront homes, but lost to the city of New London which wanted to develop the waterfront with townhomes and businesses in hopes of boosting the city's economic climate. In Baltimore, the city exercised eminent domain in an effort to develop the East Baltimore Biotech Park, a two million-square-foot, state-of-the-art, mixed-use development project that will serve as catalyst for economic and community development. By the 1990s, New London had suffered from economic stagnation after the federal government closed the Undersea Warfare Center in 1996, which had employed 1,500 people. At the same time, East Baltimore had experienced years of economic decline with the closing of manufacturing plants.

In response to its economic situation, the New London Development Corporation (NLDC) created a mixed-use development plan covering 90 acres. The plan consisted of a hotel, museum, housing, restaurants, retail shops, offices, a marina, riverfront walkway and parking facilities. All of the development plans were enhanced by a

new \$300 million research facility by Pfizer, Inc. In 2000, Baltimore announced its plan to redevelop 80 acres of blighted streets and boarded-up rowhouses, turning them into a vibrant, planned community. A joint effort between local businesses, government agencies, foundations and Johns Hopkins Medical Institute, the project is designed to rebuild East Baltimore and create better circumstances for resident families and children.

According to a University of Baltimore study, the biotech park will create 8,000 jobs and \$772 million in revenue just within the park. After factoring in indirect benefits to local businesses, an additional 4,000 jobs and a total revenue of \$1.66 billion will amass as a result of the biotech park. Dr. Edward D. Miller, CEO of Johns Hopkins Medicine and Dean of Johns Hopkins University School of Medicine, says:



Lisa Williams

"The life sciences campus being built in East Baltimore will play a major role in the revitalization of Baltimore City and help maintain Maryland's leadership position in biotechnology research and development. The new biotech park will serve as an anchor where bio-science companies can draw on the resources of Johns Hopkins and nearby state and government



Middle East Baltimore

research facilities. Recognizing the importance of this initiative, Johns Hopkins Medicine has committed to lease 49 percent of the first biotech building for its Institute of Basic Biomedical Sciences. This institute was formed in 2000 to unite the several hundred scientists who work within the Johns Hopkins School of Medicine's Biophysics and Biophysical Chemistry, Molecular Biology and Genetics, Molecular Cell Biology, Neuroscience, Pharmacology and Molecular Sciences, and Physiology."

Legally Sound or Shaky Ground

Often called "condemnation," eminent domain is the legal process by which a public body (and certain private bodies, such as utility companies, railroads, redevelopment corporations and others) is given the legal power to acquire private property for a use that has been declared to be public by constitution, a statute or ordinance. Numerous quasi-public agencies such as airport authorities, highway commissions and community development agencies are also authorized to use eminent domain.

The Fifth Amendment to the U.S. Constitution gives both New London and Baltimore the power to take private property through eminent domain as long as it is taken for a public purpose and just compensation is paid. Traditionally, eminent domain laws have granted local governments the power to seize property for public projects such as roads, parks and libraries. It has also been used to assist in the clean up of "blighted slums." In the *Kelo* case, Justice John Paul Stevens

reaffirmed a 1954 decision in *Berman v. Parker* that upheld the use of eminent domain by Congress for an urban renewal program in the District of Columbia. Stevens wrote that the seizure in New London served a "public purpose" since it generated new taxes.

In strong dissent, Justice Sandra Day O'Connor said that the majority had abandoned the long-held principle that government may not take property from one person and give it to another. "The specter of condemnation hangs over all property," O'Connor wrote. "Nothing is to prevent the state from replacing any Motel 6 with a Ritz-Carlton, any home with a shopping mall or any farm with a factory."

In a separate dissent, Justice Clarence Thomas stated that if people can be evicted to make way for others who pay more taxes, it is not hard to predict the most likely victims. He writes, "The consequences of today's decision are not difficult to predict, and promise to be harmful. So-called 'urban renewal' programs provide some compensation for the properties that they take, but no compensation is possible for the subjective value of these lands to the individuals displaced and the indignity inflicted by uprooting them from their homes. Allowing the government to take property solely for public purposes is bad enough, but extending the concept of public purpose to encompass any economically beneficial goal guarantees that these losses will fall disproportionately on poor communities." His dissent focused on the majority's holding that public use is synonymous with public purpose. He emphasized that the term public use limits the government's condemnation powers to takings that ultimately result in the government owning the land or in the general public having rights to use the land. Justice Thomas stated that by adopting the public-purpose test, which does not require public ownership or access, the majority effectively removed this constitutional restraint on the government's condemnation powers. Furthermore, he noted that the Court had

emphasized the sanctity of the home when reviewing whether the government may search the home, but that the Court was unwilling to engage in serious review when the government took the home. He wrote, "Though citizens are safe from the government in their homes, the homes themselves are not." Today, questions remain among

Many community development practitioners believe that eminent domain is a useful tool...

Supreme Court justices about the original intent of the Constitution and the Court's subsequent interpretations.

Reacting to the Court's ruling, the U.S. House of Representatives passed a motion disagreeing with the Court. In addition, several states including Alabama, Delaware, Utah and Texas have taken action to shore up eminent domain legislation protecting property owners. Since the June 23, 2005 ruling, lawmakers in 28 states have introduced more than 70 bills. Elizabeth Palen of the Division of Legislative Services for Virginia said, "The Supreme Court ruling says 'hello' to the states. It causes us to come to a consensus and develop a process for eminent domain. Progress is being made such as developing notice requirements and defining blight."

Forbes magazine states, "The original purpose of eminent domain was to make it easier for governments to set up their operations. If a local authority needed a courthouse, it could seize the land, at some price, and build one." Michigan attorney, Aaron Larson, points to abuses in eminent domain in recent decades. "Some governments appear inclined to exercise eminent domain for the benefit of developers or commercial interests, on the basis that anything that increases the value of the land is a sufficient public use. Critics respond that this is absurd, and that there are few properties, no matter how upscale, which could not be made more valuable if developed in a different manner." Larson gives the example of a town that attempted to exercise eminent domain over a residential neighborhood to build upscale condominiums on the land. They decided to define "blight" as any house that did not have three bedrooms, two bathrooms, an attached two-car garage and central air conditioning. Ultimately, the homeowners challenged the definition in court and were successful in fighting the municipality's efforts to take their home.

In 1981, eminent domain was exercised to seize thousands of homes and businesses in an area of Detroit called Poletown to allow General Motors to build a new Cadillac plant. The city argued that by replacing the large Polish community with a manufacturing facility, new jobs would be created, qualifying it as "public use." In 2004, the Michigan Supreme Court reversed the decision, which has no binding effect outside of Michigan. A



Greta Harris



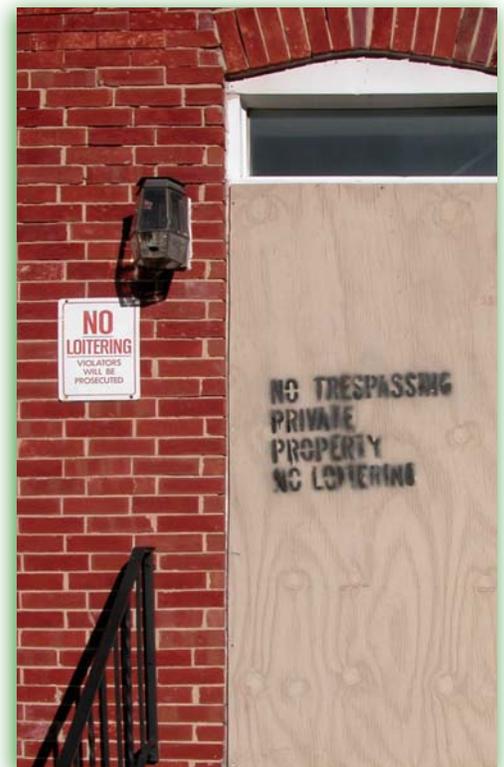
T.K. Somanath

unanimous court wrote: "We must overrule Poletown in order to vindicate our Constitution, protect the people's property rights and preserve the legitimacy of the judicial branch as the expositor — not creator — of fundamental law."

A Powerful or Crippling Community Development Tool

Many community development practitioners believe that eminent domain is a useful tool that can be implemented when speculators purchase and hold properties, when heirship properties do not have clear titles and when tax-delinquent properties hinder neighborhood redevelopment. According to Greta Harris at Virginia Local Initiatives Support Corporation (Virginia LISC), "If balanced with thoughtful, social good, eminent domain can be an extremely powerful and useful tool." T.K. Somanath of the Better Housing Coalition agrees, "If eminent domain is applied judiciously and fairly, it can be used to rebuild a city's urban core where a mismatch of land uses exists." He explains that often it is very difficult to assemble properties that have title issues. "In this context, eminent domain is a useful tool to rebuild neighborhoods, but it has to be used prudently following the necessary legal guidelines."

Retired senior vice president of community development at Wachovia Corporation, Jane Henderson states, "I think eminent domain could be very powerful in cases where land is abandoned, owned by absentee estates or being utilized to do something illegal or harmful to nearby citizens. However, we must develop good systems and balances that take into consideration the rights of the people who own the land





Jane Henderson

— especially if they live there as law-abiding, productive citizens. In this case, alternatives must be weighed and eminent domain should be used only sparingly — and only when no other alternatives exist.”

Furthermore, Harris believes that for eminent

domain to work, a community plan that everyone can agree upon must be in place. “A precursor process that is inclusive of both the private, public and community sectors is necessary. This allows everyone to reach consensus and keeps everyone above board,” she says.

In Middle East Baltimore, participation and inclusion of all parties, particularly community residents, is a priority for project partners. Unfortunately, the process did not begin this way. According to Tracey, the first president of Save Middle East Action Committee (SMEAC), “The city was not very diplomatic in the beginning. We read in the newspaper about the development plan and that our houses were being taken.” Current SMEAC President Williams agrees, “We worked together to assure that the residents’ voices were heard at the decision-making table.” Jack Shannon, CEO of East Baltimore Development Inc. (EBDI), says, “We now make every effort to engage residents, encourage participation and solicit feedback for all aspects of the project.” Today, EBDI holds monthly meetings with residents and strives to include all parties in decision-making processes, including the development of demolition protocols. Additionally, EBDI is seeking to add two community residents to its decision-making board.

Looking at past mistakes, Harris recognizes the dangers of eminent domain. “Unfortunately, there is a history in this country where highways were run through minority, low-income neighborhoods. People were not adequately compensated



Marisela Gomez

for their losses.” According to Somanath, examples of using eminent domain unfairly exist in many cities. “In Richmond, the Randolph and Oregon Hill neighborhoods were chosen for the Downtown Expressway because they were poverty census tracts.”

East Baltimore also understands these inequities. Dr. Marisela Gomez, executive director of SMEAC, says, “The East Baltimore community has been redeveloped several times over the last 50 years. Residents have a bad memory of projects that have failed. Since the first urban renewal in the 1970s, properties were placed on the eminent domain list. They have remained on the list for 30 years and have never been removed.”

In Middle East Baltimore, participation and inclusion of all parties... is a priority for project partners.

Somanath believes that necessary laws must be in place to define “public good” before eminent domain is implemented. “Without some sort of law to assemble properties, redeveloping blighted neighborhoods is a challenge. Clearly, using eminent domain is a double-edged sword.”

Creating a Better Understanding

When eminent domain is exercised on a large scale like in Baltimore, many players must come to the table for an open dialogue. In East Baltimore, the Annie E. Casey Foundation, a private foundation working to improve outcomes for disadvantaged kids and families, became a partner in this initiative to ensure that the families being relocated, and those otherwise affected by the process, are treated fairly, and more importantly, in the end have an improved quality of life. Scot Spencer, manager of Baltimore Relations for the foundation, said, “We helped create a better understanding for people impacted by urban renewal.” Contributing \$5 million to assist with the relocation process along with \$5 million from Johns Hopkins, the Casey Foundation is striving to work in areas that government rules for relocation leave off. “We are trying to create a stronger system of support for these families,” said Spencer. He understands the challenges of



Charles Scott, Sr., CES Construction



Scot Spencer

bringing the residents, city officials, developers and Johns Hopkins together to discuss everyone's concerns. "We had to create a process where the community was involved, listened to and responded to. We knew that not

every battle would be won, but the community is one voice that must be heard and responded to," said Spencer. As a result, families are moving into safer, more diverse communities where property values are increasing. Even though homes were appraised from \$7,618 to \$70,862 and the median price was \$30,635, the average resident moved into homes valued at an average of \$140,000 with prices topping out at \$325,000. "The relocation process has actually created individual wealth for families from neighborhoods where the median household income was \$14,900," explains Spencer.

Waving a magic wand

Eminent domain's power does not instantly create economic vitality for communities. With only two years on the job as the CEO of EBDI, Shannon quickly offers advice to other public entities that are considering redevelopment. "We recognize that with a large scale project that employs eminent domain, there will be skepticism and cynicism expressed by the community," he explains. "I don't dispute that this is a terribly disruptive process. We want to make each family as best off as we can." At the helm of the East Baltimore redevelopment, Shannon says, "First, the inclusion of all parties at the table is necessary. This is a contentious process and community leadership must be present along with elected officials." He also realizes that the federal mandates for relocation

are not enough and that an additional pool of resources must be available. "For example, we have worked with Annie E. Casey and Johns Hopkins to assist with non-relocation issues such as building demolition and workforce development," he says. He also realizes the importance of engaging the community from the start and providing support services for seniors. "I also think that we



Jack Shannon



Baltimore Inner Harbor

should have established a homeowners' academy and financial literacy classes sooner. Every day is a learning process and every day we find out things that we should be doing," he adds.

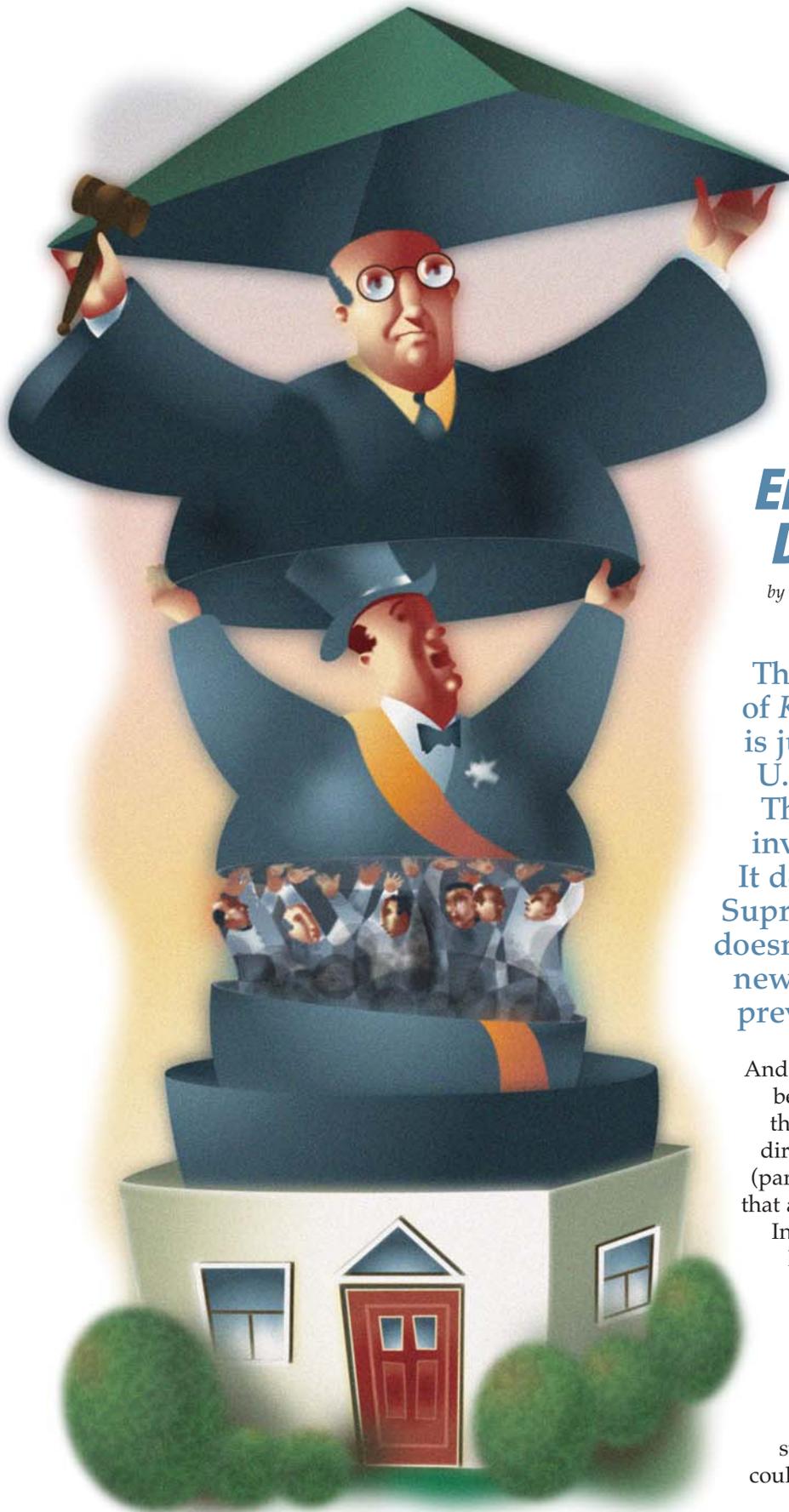
Whether in New London, Connecticut, or Baltimore, Maryland, the power of eminent domain is working to transform communities into more vibrant places to work and play. After the Court's split ruling, communities should carefully weigh the rights of property owners and the desires of the public. **MW**

For more information about lessons learned in the East Baltimore development, contact the Annie E. Casey Foundation: www.aecf.org.

For information about organizing a neighborhood after experiencing eminent domain, contact Save Middle East Action Committee: SMEACbaltimore@verizon.net.

Special thanks to Frank McNeil, community affairs representative in the Baltimore branch of the Federal Reserve Bank of Richmond, for his assistance with both research and interviews for this article.

**Every day is a learning process
and every day we find out
things that we should be doing.**



Eminently Debatable Domain

by Keith Goodwin, Attorney

The most remarkable feature of *Kelo v. the City of New London* is just how unremarkable the U.S. Supreme Court's ruling is. The majority opinion doesn't invalidate government action. It doesn't overrule previous Supreme Court decisions. It doesn't even offer striking new interpretations of those previous decisions.

And yet, from all the outcry — and the outcry has been loud — over *Kelo's* “horrible” outcome, the “activist” Court that permitted it, and the dire threat it poses to homes and neighborhoods (particularly poor ones), one might have thought that at least one of those things had happened.

In fact, *Kelo* is an example of a very deferential kind of jurisprudence. The *Kelo* Court defers to the judgments of a state legislature and city council and defers to its own previous decisions about eminent domain (sometimes referred to as “condemnation”), the government's power to take private property. In light of those previous decisions, *Kelo's* most surprising aspect might be that the majority could muster only five votes.

Still, *Kelo* has taken on a controversial sheen usually reserved for disputes about crime, religion and morality. This is in large part because *Kelo* affects one of this nation's revered legal and cultural concepts, private land ownership. But this probably doesn't tell the entire story. After all, in declining to interfere with a local city council's comprehensive economic development plan and the forced sales of private land it entailed, *Kelo's* majority opinion largely retraced eminent domain's existing contours, drawn by earlier Supreme Court rulings. If *Kelo* were merely a recapitulation of what the Court had said about eminent domain for the past 100 years, it shouldn't have provoked such a furor.

But in two respects *Kelo* doesn't quite slip hand-in-glove into those precedents' intellectual confines. First, the Justice who cast *Kelo's* deciding vote (and whose opinion will, consequently, be influential) breaks with the precedents by warning that the Supreme Court may have to get tougher on some uses of eminent domain. Second, the four dissenting Justices point to a way in which *Kelo* may actually have expanded eminent domain's scope, injecting considerable uncertainty into future disputes over public takings of private land.

The Takings Clause

The phrase "eminent domain" dates back nearly 400 years. Hugo Grotius, a 17th-century Dutch jurist, coined the term to describe a sovereign's power to seize subjects' land. Attempts to restrain that power date back centuries earlier, at least to Magna Carta, which declared that a free-man's land could be taken from him only by "the lawful judgment of his peers or by the law of the land." For three centuries before the United States' founding, English philosophers and jurists wrote extensively about two restraints on royal absolutism — the common law, fashioned by independent courts, and natural law or inherent rights, formulations of which often included some kind of private right to own land.

The Fifth Amendment to the United States Constitution, taking an apparent cue from these thinkers, asserts an important protection against a federal government that with a king's caprice and impunity might otherwise seize land from a few unlucky or disfavored individuals. The Takings Clause, the last of the Fifth Amend-

ment's protections against federal coercion, reads, "Nor shall private property be taken for public use, without just compensation." Under this clause, the federal government may take privately held land only for "public use" and only when the landowner receives "just compensation" in exchange.

Although it remains a subject of some academic controversy, the 14th Amendment, ratified in 1868, had the effect of extending the Takings Clause and other provisions of the Bill of Rights to the states. As a result, states must now obey the Takings Clause's two minimum requirements but are free to impose tighter restrictions in their laws or state constitutions on government's power to take land.¹

Three Rules

One of those two minimum constitutional requirements, that a taking must be for "public use," is *Kelo's* crux. Over the past 200 years, the Court set three basic ground rules about what is and isn't constitutional "public use." Rule One: Government can transfer private land to public ownership; this is how government obtains land for things like highways and military bases. Rule Two: Government cannot transfer private land to new private ownership just to benefit the new private owner; this is why government cannot take one person's house and give it to his neighbor to live in.

"Nor shall private property be taken for public use, without just compensation."

Rule Three, however, blurs these distinctions: Government can transfer private land to new private ownership to open the property to the public or confer a public benefit. Early historical examples of this kind of permissible transfer included ore mines and grist mills. Those enterprises can exist only in specific settings — mines on ore deposits and mills on rivers. If mine owners couldn't transport their extracted ore to market or mill owners couldn't flood upstream land to power their millwheels because an adjoining landowner wouldn't sell his land, the Court reasoned, those holdouts would prevent important social and economic gains. Consequently, the Court concluded that the government could constitutionally compel those transfers that were necessary for broad public benefits. During the late 19th century, as the Supreme Court developed its rationale for this public-benefit approach to takings, it began to interpret the words "public use"

¹ *Kelo* deals with only forced sales of land, not the thornier disputes about so-called "regulatory takings," government actions that do not confiscate property but restrict an owner's use of it or otherwise reduce its value. Unlike *Kelo*, which involves government-sponsored development, regulatory takings often involve government efforts to prevent development.

less literally. “Public use” became synonymous with the broader notion of “public purpose.” By the turn of the 20th century, “public purpose” had become the federal constitutional litmus test for takings.

Two Bedrock Cases

Two Supreme Court cases illustrate the Court’s deferential application of the public-purpose standard and form the foundation on which the *Kelo* decision rests. In the first case, *Berman v. Parker*, the Court in 1954 upheld a federal law that allowed the District of Columbia to use eminent domain for a comprehensive redevelopment of “blighted” areas. The Court also upheld a specific redevelopment plan under the law that called for the condemnation of entire neighborhoods, the lease or sale of some of the condemned areas to private interests, and the construction of streets, housing and schools, despite the objections of some landowners within the condemnation zone whose particular homes or businesses weren’t blighted in any sense of the word.

In arriving at this decision, the unanimous *Berman* Court did more than merely equate public use with public purpose; it also equated eminent domain, the government’s power to take property, the police power, which refers to the government’s power to regulate activities affecting public health, safety and welfare. The police power has its basis in the Constitution, but legislatures, not courts, largely determine the power’s extent. Courts are reluctant to second-guess legislative determinations that particular measures are needed for the public welfare.

By equating the police power and eminent domain, the *Berman* Court inferred that legislatures may likewise determine eminent domain’s extent. If a legislature, which in the District of Columbia’s case was Congress, authorizes a redevelopment plan that meets the very broad police-power conception of public welfare, the *Berman* Court reasoned, that plan by definition also satisfies the Takings Clause’s conception of public purpose.

***Kelo’s* majority agreed that economic development can be a legitimate and constitutional “public purpose.”**

If a legislature decides a comprehensive overhaul of land use in a given area will enhance overall public welfare, the Court concluded, the judiciary should be reluctant to second-guess that decision.²

Thirty years later, in *Hawaii Housing Authority v. Midkiff*, the Supreme Court reaffirmed *Berman’s* sweeping, deferential approach. This time, the Court upheld, again unanimously, a Hawaii land redistribution law intended to break up a land oligopoly in which a few dozen landowners held almost all of the state’s private land. Hawaii’s State Legislature, determining that this oligopoly had injured public welfare by skewing the state’s real estate market and inflating land prices, created a legal procedure that through eminent domain forced the landowners to sell their properties to their tenants.

Here, as in *Berman*, the Court said that if a lawmaking body decides a taking of private land will improve public welfare, that taking satisfies the Takings Clause’s “public use” requirement. In the *Midkiff* Court’s view, Hawaii’s land redistribution plan served a valid public purpose because it sought to improve public welfare. The transfer of condemned properties to private individuals didn’t change that fact. “In short,” summarized Justice Sandra Day O’Connor, writing on behalf of the *Midkiff* Court, “the Court has made clear that it will not substitute its judgment for a legislature’s judgment as to what constitutes a public use.”³

Fractured Opinions

With such apparently settled law and a century of deference to legislative determinations, how did *Kelo* emerge so fractured, with four separate opinions?⁴ The majority thought that economic development, which was New London’s justification for taking private property, was a public purpose by *Berman’s* and *Midkiff’s* standards. Justice Anthony Kennedy, the swing vote, agreed but wrote a separate concurrence to reassure observers that the Court wasn’t rolling over for lawmakers and playing dead. Meanwhile, Justice O’Connor, who 21 years earlier

² This was not a novel view. In 1896, the Court declared that “when the legislature has declared the use or purpose to be a public one, its judgment will be respected by the courts, unless the use be palpably without reasonable foundation.”

³ *Black’s Law Dictionary*, the *Webster’s* of legal definitions, took the Court at its word. *Black’s* Sixth Edition, published in 1990 and the first to follow *Midkiff*, quotes the Court’s substitute language rather than the Takings Clause’s literal language. The Sixth Edition’s entry for “Eminent domain” explains that “the *Constitution* limits the power to taking for a public purpose.”

⁴ Justice John Paul Stevens wrote the majority opinion, which Justices Anthony Kennedy, David Souter, Ruth Bader Ginsburg, and Stephen Breyer joined, and Justice Kennedy wrote a separate concurrence. Justice Sandra Day O’Connor wrote the dissent, which Chief Justice William Rehnquist and Justices Antonin Scalia and Clarence Thomas joined, and Justice Thomas wrote a separate dissent.

wrote the *Midkiff* opinion upholding Hawaii’s land redistribution, dissented, insisting that the economic benefits New London anticipated were too indirect to be “public.” And Justice Clarence Thomas argued that *Berman* and *Midkiff* were simply wrong. The Court should scrap those precedents, he urged, and start interpreting the Constitution’s words “public use” strictly.

The majority methodically followed its precedents. It interpreted “public use” as “public purpose,” as the Supreme Court has done for more than a century. It reaffirmed *Berman*’s and *Midkiff*’s assertion that the Constitution doesn’t prohibit legislatures from determining whether prospective takings meet the public-purpose standard. It adhered to *Berman*’s conclusion that a comprehensive community redevelopment plan relying on eminent domain was constitutional, even though that plan both condemned some property that wasn’t blighted and transferred property to private hands. It accepted *Midkiff*’s broadened definition of valid public use, which included efforts to eliminate general social and economic ills, even though those efforts entailed the transfer of property from one private entity to another. And it expressed a theme it found in several Supreme Court takings cases: that economic development — whether under the rubric of urban renewal or market intervention — can be a legitimate and constitutional “public purpose.”

The majority saw no evidence that the city of New London was operating outside these constitutional boundaries. Connecticut’s General Assembly had clearly authorized *Kelo*-style eminent domain. The state’s municipal development statute declared that takings for economic development projects are “public use” and “in the public interest.” Consistent with this statutory authority, the city and state had approved a comprehensive economic development plan with a reasonable belief that it would produce appreciable economic benefits, and had, in the majority’s view, thoroughly deliberated both the plan and its anticipated benefits at public meetings. That procedural foundation, the majority believed, met the constitutional standard of public purpose.

Consequently, arguments about naked transfers to private entities, like New London’s proposed transfer of condemned land to the pharmaceutical giant Pfizer, were beside the point. An economic development plan’s purpose is what mattered to the majority, not its

mechanics. The revitalization of New London’s local economy is a public purpose. The grant to the private entity, Pfizer, is merely a means to that end, an end private enterprise might be best equipped to achieve. On this point, the majority quoted *Berman*: “We cannot say that public ownership is the sole method of promoting the public purposes of community redevelopment projects.”

The problem with New London’s plan, according to Justice O’Connor, is the lack of direct public benefit.

But what if private benefit isn’t a plan’s by-product but its aim? That would violate Rule Two: government cannot transfer property from one private owner to another just to benefit the new owner. Justice Kennedy, clearly *Kelo*’s deciding vote, sought both to reassure and warn observers that the Court will be vigilant about Rule Two. New London’s plan serves a legitimate public purpose, Justice Kennedy wrote, but in the future the Court should strike down similar plans with only “incidental or pretextual public justifications.” Because his opinion carried the majority in this case, his insistence that some eminent domain takings may warrant “a more demanding standard” of judicial review may give pause to ambitious government agencies and eager developers alike.

Tough Dissents

Justice O’Connor found this a hollow threat, though. “Whatever the details of Justice Kennedy’s as-yet-undisclosed test” to “divine illicit purpose,” she chided, “it is difficult to envision anyone but the ‘stupid staff[er]’ failing it.” The problem with New London’s plan, as Justice O’Connor construed it, is the lack of *direct* public benefit. Any economic benefits that accrue to New London will be indirect because they rely on Pfizer to generate jobs and tax revenue. Eminent domain predicated on “some secondary benefit” puts everyone’s land at risk, she warned.

To make this point stick, Justice O’Connor had to distinguish the precedents, including her own opinion in *Midkiff*. She conceded that by equating eminent domain and the police power the *Berman* and *Midkiff* Courts had used “errant language.” More important than her backtracking, however, was her observation that the majority, despite its abiding deference to Court and council, may have subtly pushed eminent domain’s envelope. In Washington, D.C. and Hawaii, government had wielded eminent domain to eliminate private property holdings that were actively harming the public by breeding crime and disease or barring citizens from the dream of homeownership. In New London, though, the holdouts

weren't actively harming the public. Government there was wielding eminent domain in order to "upgrade" properties and put them to more profitable use. If the ordinary private use of property in the absence of an immediate public harm isn't enough to stave off eminent domain, Justice O'Connor cautioned, then "[t]he specter of condemnation hangs over all property."

Justice Thomas, while joining Justice O'Connor's dissent, wrote his own separate dissent to make a larger point about the Supreme Court's eminent domain jurisprudence. It is wrong now, he said, and it's been wrong for more than 100 years. By its "rote" reliance on *Berman* and *Midkiff*, and their "boundlessly broad and deferential conception of 'public use,'" he continued, the majority has produced a "fatally" flawed decision that "cannot be applied in principled manner." Instead of equating public use and public purpose, and worse, eminent domain and the police power, the Court, he urged, should go back both to the dictionary and the Constitution and start afresh.

Outcry and Upshot

From Congress to the statehouses, legislatures have been quick to respond to *Kelo*. In the U.S. Senate, nearly a third of that body's members have co-sponsored a bipartisan bill that would prohibit federally funded eminent domain for "economic development." Meanwhile, the U.S. House of Representatives has already passed legislation that denies federal economic development funds to any state or locality that uses eminent domain for "economic development."

Some states didn't even wait for the ruling, decided on June 23, 2005. Nevada set new requirements localities must meet before they can use eminent domain. Three months earlier, Utah stripped its redevelopment agencies of their eminent domain powers altogether. Delaware was first to respond to *Kelo*, quickly enacting new eminent domain procedural requirements before its legislative session ended. Texas and Alabama called special legislative sessions and by the beginning of September both states' legislatures had enacted laws curtailing the kind of private-enterprise-oriented land seizures that occurred in New London. All told so far, lawmakers in 28 states have proposed 70 bills intended to cure *Kelo*'s perceived abuses.



Keith Goodwin

Despite the full weight of a Supreme Court ruling behind it, not even Connecticut, *Kelo*'s epicenter, has been able to plow through the political bog. Governor Jodi Rell has called for a moratorium on eminent domain takings until the General Assembly reconvenes next year, and in September she convinced New London's development agency to rescind orders evicting tenants from the disputed properties. Property rights advocates have launched successful public relations campaigns that have cast

the New London project in an unfavorable light. And the project's developer, apparently tiring under all the negative publicity, is seeking ways to scale back the project or at least break ground far from the harsh spotlight that currently engulfs the holdout properties. For now, the project has ground to a halt, though city officials remain resolute and insist the project will proceed.

This political backlash, as swift and severe as it's been, is very much what *Kelo*'s majority envisioned. "[N]othing in our opinion precludes any State from placing further restrictions on its exercise of the takings power," the majority emphasized, adding that "the necessity and wisdom of using eminent domain to promote economic development are certainly matters of legitimate public debate." *Kelo* keeps legislatures squarely at that debate's center. To paraphrase the majority: "Appeal to them; don't appeal to us." Eminent domain then becomes as much a political question as a legal one, and the answers to political questions, as both Justices O'Connor and Thomas noted in their dissents, usually favor those with disproportionate money and influence. As a result, the most interesting place to watch *Kelo*'s legacy unfold could turn out not to be New London but New Orleans, where the unprecedented need for effective, large-scale redevelopment strategies may yet collide with a reinvigorated populist impulse to curb such strategies. **MW**

For the *Kelo* decision, visit www.supremecourtus.gov.

***Kelo* keeps lawmakers squarely at the center of the eminent domain debate.**

States Respond to Kelo

by Keith Goodwin

District of Columbia:

No eminent domain bills are currently on the City Council's agenda. Mayor Anthony Williams, who is also the president of the National League of Cities, has spoken favorably of *Kelo*.

Maryland:

Senators Andrew Harris (R-Dist. 7), James DeGrange (D-Dist. 32), and State Delegate Don Dwyer, Jr. (R-Dist. 31) have independently announced their intent to sponsor or support legislation restricting eminent domain. Harris has also suggested amending the state constitution and plans to introduce a bill that will require a referendum each time local governments seek to use eminent domain to eliminate "blight." DeGrange says his bill wouldn't affect any development projects already underway.

North Carolina:

The State's constitution lacks its own express takings or eminent domain clause law (it relies on inferences from elsewhere in its constitution to control eminent domain), but the General Statutes already contain a provision restricting some uses of eminent domain. The General Assembly took no action in response to *Kelo* during its 2005 session, which ended in September.

South Carolina:

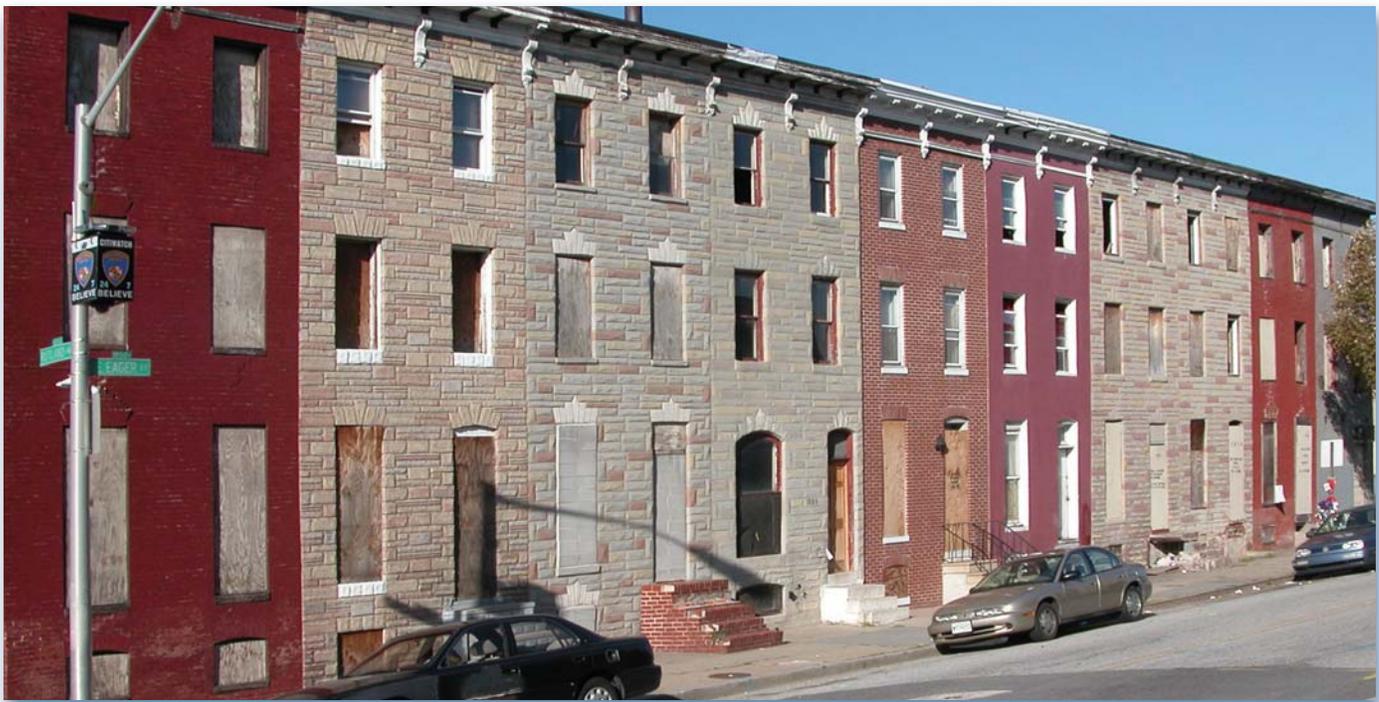
No eminent domain bills are yet on the House or Senate 2006 agendas, but in August Governor Mark Sanford (R) and the Legislature leadership publicly pledged to respond to *Kelo*. "The *Kelo* decision means that we have to take a new look at and shore up existing laws rather than be forced to react later on down the road," Sanford said.

Virginia:

Months before *Kelo* was handed down, Delegate Bob Marshall (R-Dist. 13) introduced a bill to bar the use of eminent domain for economic development. The House Committee on Counties, Cities, and Towns tabled the bill in anticipation of *Kelo*. Marshall plans to resubmit the bill during the 2006 session as well as seek an amendment to the Commonwealth's constitution.

West Virginia:

In September, Senator Clark Barnes (R-Dist. 15) introduced a bill expressing the Legislature's intent to prohibit, either through legislation or constitutional amendment, takings for economic development. Delegate Cindy Frich (R-Dist. 44) plans to introduce a bill that would outlaw takings for economic development that transfer land to private hands.





Eminent Domain Creates and Alleviates Incentive and Efficiency Problems

by Kartik Athreya, Senior Economist

Economists are typically quick to point out the virtues of secure property rights and the use of markets as the best tools available to promote not only individual, but collective, well-being. Eminent domain, by contrast, is a legal route to the forcible sale of property at prices that may, in principle, be far less than the value placed on it by an owner. Is eminent domain simply one more misguided roadblock to the efficient allocation of resources, or do exceptions to the economist's mantra of "markets plus secure property rights are best" exist?

I contend that the preceding is a false choice. On the one hand, eminent domain may be precisely what is required to ensure that resources are allocated efficiently at certain times, even if it means compromising on the perfect sanctity of property rights. On the other hand, any uncertainty as to the nature of property rights brings costs. The ultimate judgment of eminent domain rests on how the preceding costs and benefits add up. In this essay, I provide an economist's view of the incentive and efficiency problems alleviated, and created, by eminent domain.

An Example

Consider the following scenario. A developer wants to build a road through a neighborhood. To do this, the developer needs to buy two houses that remain in the way of the best route. However, buying one house is insufficient to allow for a suitable return. Unfortunately for the developer, each of the two owners is well aware

that without the sale of both homes, nothing is possible. Moreover, each realizes that by “holding-up” the process by waiting for the other to sell first, the owners will be able to potentially extract (nearly) all the value of the developer’s project. This is simply because the developer, assuming he/she has obtained one house, now needs the second one, to realize any gain.

Worst case: The developer has paid for one house, cannot purchase the other, and is no closer to completing the road. This example may compel the developer to abandon the whole project from the outset, leaving society to forgo a road, but retain two homes. Is this outcome good or bad?

Let’s consider a couple of alternatives to address the question above. First, assume that each homeowner places a value of \$100,000 on their home. The value represents the lowest price at which each owner would sell, if made a “take-it-or-leave-it” offer. Assume next that the developer values the land at \$201,000. Immediately, efficiency dictates that any sale by the homeowners for a total price between \$200,000 and \$201,000 would allow both the developer and owners to be better off. If each homeowner had no ability to hold-up the buyer, such a mutually beneficial transaction would take place.

Imagine now that no “eminent domain” provisions exist. A developer may, in this case, be unable to obtain both properties for less than \$200,999.99. As mentioned above, obtaining only one of the homes sets up the remaining homeowner to demand up to \$201,000. After all, the developer will ignore the cost of buying the first home, if he/she already has bought one. It is a sunk cost and so cannot be recovered. This leaves the developer willing to once again pay (to within a penny of) \$201,000, meaning that the developer might end up paying up to \$300,999.99 to enable him/her to pursue the project. To the extent that this is a real possibility at the outset, she may sensibly choose not to begin the project at all. Such an outcome is undesirable as all parties have missed an opportunity for collective gains!

Of course, if each homeowner instead valued their house at \$101,000, the efficient outcome would be for the homeowners to retain their property, and for the developer to cancel plans to build. If eminent domain were nonetheless invoked and the “fair price” chosen by the court was less than \$202,000 (the sum of their private valuations), society will have erred in transferring ownership. The preceding examples are

simply two cases that illustrate the benefits and difficulties created by legal allowances for forcible sales, even when compensation is provided.

Transactions Costs

For the sake of simplicity, only three parties were discussed in the above example. In the real world, eminent domain cases may concern dozens, or even hundreds, of parties. In such cases, “hold-up” is just one problem. Another is the potentially prohibitive transaction costs involved in bargaining with a large number of parties. Eminent domain, by ensuring a (relatively) smooth procedure for reassignment of property rights, can allow for a sharp reduction in transactions costs involved with property purchases. Therefore, the presence of additional transaction costs, such as hold-up problems, may itself warrant a procedure like eminent domain.

On the other hand, it is important to recognize that the incentives parties have to overcome transaction costs that grow with the economic efficiency from transferring ownership. In other words, if a buyer values the land at vastly more than the collective of current owners, there is lot of money being “left-on-the-table.” Thus, a natural check exists on inefficient patterns of ownership even in the absence of procedures such as eminent domain. A well-known example is when developers acquire large tracts of land by simply bargaining simultaneously with a variety of incumbent landowners.

Efficiency

The oblique suggestion of extortionate behavior in the examples given earlier does not by itself make the case for a legally sanctioned reassignment of ownership, even if a “fair market price” is used. First, economists define efficient allocations as those that do not allow for redistributions that can make everyone better off. However, without a clear knowledge of personal valuations, how can we be sure that someone is “holding up” proceedings, and is not simply attached to an ancestral home? Should society risk the potentially serious loss of well-being that comes with reshuffling the ownership of land or other property? Relatedly, why should we take a potentially well-heeled or politically-connected developer’s reported valuation of the land more seriously than those of incumbent property owners, especially those in blighted or depressed areas? The latter gains importance if we recognize that housing

Well-known examples exist, for example, of developers acquiring large tracts of land by simply bargaining simultaneously with a variety of incumbent landowners.

location decisions often bundle together a variety of services such as access to public transit, a collection of neighbors, etc., the value of which may be quite specific to individuals and therefore not easily measured. Thus, there is an inherent tension in eminent domain: the need to balance transactions costs with the risk of under-compensating the least empowered.

The Structure of Bargaining Matters

One important aspect of the “hold-up” problem eminent domain was designed to overcome is the absence of “credibility” in bargaining between parties. To see this, return to the previous example. Assume now that the developer is able to make a “take-it-or-leave-it” offer to homeowners. In this case, the developer can make an offer to each homeowner independently, and regardless of who sells first, the remaining homeowner must decide between selling at the offered price or not. Far less reason would exist for the remaining homeowner to forgo this economic opportunity by falsely inflating their personal valuation of the asset, or alternatively, far less reason for them to exploit any “monopoly” power that being the last-to-sell confers. Or is there?

The Importance of Credibility

The key problem often glossed over in take-it-or-leave-it offers is that of credibility. Namely, what happens if a homeowner rejects an offer? If this occurs, we have a dilemma. Namely, at this point in the negotiation, it serves the developer well to come back and sweeten the deal in a counteroffer. Therefore, unless the initial threat to “leave-it” was credible, the savvy homeowner will have less incentive to settle for a price that he may find “fair.” What might create credibility? Specifically, what might convincingly signal to the homeowner that the developer will simply walk away from her project if her initial offer gets rejected? One possibility is that the developer cares about her longer run reputation as a tough negotiator, and will be unhappy to compromise this in order to see any single project succeed. A second possibility is that the government creates commitment by literally disallowing higher rounds of bargaining. In other words, without either an internal willingness to pass up short-term gains in return for longer run gains, or an institutional setting imposing it, credibility will not exist, and the potential for inefficiency remains. Thus, one function of government can be to allow more efficient bargaining by using whatever powers of credible commitment it possesses. In this setting,

eminent domain, though indirect, is one route to overcoming the inability of parties to engage in efficient bargaining.

Can we Expect Truthful Valuations?

Perhaps the most damaging consequence of the lack of credibility is that it survives even when society is well aware of the true valuation placed by all parties to the negotiation. However, this case still offers hope for efficient bargaining, because the government could directly force the sale of assets at prices equal to private valuations. Of course, this simple remedy no longer remains viable when a definitive agreement on a private party’s evaluation cannot be reached. In effect, the situation draws a parallel between the developer of the prior example to a benevolent government simply wishing to supply a local public good, such as police protection or a bridge. To the extent that goods are “public,” meaning their use does not alter the value to others, each party will have incentives to understate their valuation if asked to contribute to its purchase. Conversely, households will have incentives to overstate their valuations of any assets

required to be surrendered in order for the good to be produced. A related issue is that for a prospective buyer, invoking eminent domain is a decision that is taken with due consideration for alternative procedures. To the extent that eminent domain is easy to initiate and the compensation is carefully chosen, buyers may have a credible threat to force truthful reporting of valuations by owners.

Private Use or Public Use? Does it Matter?

Throughout this essay, little distinction has been made between situations involving purely private parties and those involving the government. This should be striking to the reader, as a key source of disapproval for the *Kelo* ruling comes from those who argue that it will simply facilitate the use of government as an agent of the rich and powerful. However, the suppression thus far of any issues of “public” vs. “private” use has been deliberate, and follows closely from the nature of the “hold-up” problem described at the outset. In particular, regardless of the buyer, the problems identified above arise directly from the nature of hold-up, and not the nature of government or corporations.

The original constitutional amendment giving the government the right to confiscate land made clear that the reason must support “public use.” While this termi-

“Nor shall private property be taken for public use, without just compensation.”

nology is vague, the interpretation goes beyond a forced government sale of property in order to promote public well-being, but applies if the government itself administers the confiscated land. Examples of such purposes include the “right-of-way” decisions for public highways to exist, as well as court decisions that allowed dams to be built. However, the central example makes clear that collective, or public, well-being may be compromised even in situations not involving public goods. Therefore, eminent domain, precisely when defined to allow for forcible sales for private use, may actually allow markets to function better, by lowering the potential for opportunistic exercise of monopoly power.

The fact that eminent domain requires market-based compensation may serve as another check on the tendency to extort unreasonable gain. By contrast, local governments may exhibit less discipline by its willingness to pursue projects that might not have survived the competitive vetting processes imposed by markets. A possibility that remains open is that the private provision of public goods has in the past been the preserve of government precisely because private provision was stymied by hold-up and other coordination problems. Given this possibility, the *Kelo* ruling might actually lead to more, not less, market provision of public goods.

The Potential for Misapplication of Eminent Domain: Urban Renewal

Just as *Kelo* raised the issue of the rich co-opting the property rights of the poor, the general discussion above has also placed the government’s decisions to facilitate the supply of goods in a very benign light. Public decision making, however, typically results from a political process. The process in turn may be manipulable by more entrenched and moneyed interests, raising the specter of inefficient reallocations of property rights. If so, eminent domain may simply expedite takings that amount to expropriation.

An almost canonical intervention by local governments is the take-over and demolition of “blighted” properties in the name of urban renewal. Several cities have attempted to use eminent domain to raze neighborhoods, with the aim of replacing them with an upgraded housing stock. From an economic perspective, the argument for blight removal is far from obvious. Any intervention on the part of cities in the name of economic development may be quite unfair to a set of



Kartik Athreya

incumbent homeowners, especially renters. In short, using eminent domain to force residents to consume at higher quality levels without changing their incomes is simply misguided. In *Kelo*, the Supreme Court establishes that the extant private property need not be “blighted” to authorize condemnation. In this light, a potentially worrisome aspect of the ruling is that the future of urban renewal may be expedited even further.

Wither Property Rights?

There is a clear tension between the benefits created by well-defined property rights, and the inevitable fluidity created by the possibility of being forced to part with property in cases where eminent domain is invoked. It bears mention that the sanctity of property rights is compromised whether the takings are private or public. This is especially true because government is representative, and the bar for collective action rarely, if ever, requires unanimity among voters. In this sense, it is important to evaluate the extent of any “mandate” for public takings when comparing their desirability to a public taking on behalf of private parties. From a positive standpoint, eminent domain creates risk in the returns to the ownership of physical assets. In turn, this alters market allocations away from such risky assets. Concern with the adverse effects of poorly defined property must be confronted in any fair assessment of eminent domain. However, measuring these costs is likely to be very difficult in practice.

Concluding Remarks

Simple broad-brush indictments or laurels for eminent domain are difficult to justify. The value of eminent domain turns out to depend on the nature of bargaining, the number of parties involved, costs of court proceedings and relative efficiency of the process. These factors create a demand for projects that require multiple parties to agree to asset sales. The recent fervor surrounding the *Kelo* decision to permit eminent domain for perceived “private use” also appears misplaced. The threat to property rights is not obviously worsened by the ruling, and to the extent that private takings supplant public takings, one might even expect increases in efficiency. **MW**

From a positive standpoint, eminent domain creates risk in the returns to the ownership of physical assets. In turn, this alters market allocations away from such risky assets.



The board members and staff of Salisbury CDC work through routine and atypical obstacles to provide quality affordable housing for Salisbury residents. Pictured are (l to r) Karen Alexander, Nora Faucette, Lou Adkins. Standing: Angela Hedrick, Steven Fisher, Chanaka Yatawara, Burton Brinson and the Rev. Nilous Avery

North Carolina CDC Saves and Builds Homes Simultaneously

by Jennie Blizzard

Over the past two years, the gods watching over North Carolina's economy haven't been so kind. The state has long been considered a manufacturing mecca, producing some of the nation's largest volumes of textiles and apparel. In 2003, when the doors of Pillowtex, one of the nation's largest manufacturers of home textiles and the employer to more than 7,650 North Carolina workers closed, local economies such as Salisbury's were devastated. "I kept reading about foreclosures in the area and I couldn't stand it," said Lou Adkins, community development coordinator for the Salisbury Community Development Corporation (Salisbury CDC). "I told our executive director

that if we didn't do something all the hard work we had done to get people into homes would be in vain."

One Remedy for Tough Pain

According to the North Carolina Justice Center, a non-profit that works on the behalf of low- to moderate-income people, 217,000 manufacturing jobs have left North Carolina over the past six years, primarily

because of increased competition from cheaper foreign imports.

Moreover, foreclosure filings tripled from 15,282 to 44,211 over five years and North Carolina state officials wanted to lessen the downward economic spiral by helping residents

**"One of the reasons
we chose Salisbury CDC
was because of
the phenomenal work they
were already doing."**

save their most valuable assets: their homes. In July 2004, the North Carolina General Assembly appropriated \$1.68 million to create the North Carolina Home Protection Pilot Program and Loan Fund (the pilot program) to help dislocated workers avoid foreclosure. The state



Lou Adkins



Chanaka Yatawara

CDC met and discussed how Salisbury CDC could play a role in the efforts made by United Way to assist families laid off by the Pillowtex closing. The CDC quickly agreed to provide mortgage counseling to any family that was struggling to make their mortgage payment.

selected eight counties for the program based on the area's rate of foreclosures, unemployment rate, the existence of local agencies to provide the services and geographic diversity. Salisbury CDC was chosen to participate in the program, which is designed and operated by the North

Soon after this conversation, a local church contacted United Way and offered monetary donations to assist with stopping foreclosures. The United Way gladly referred the pastor of this church to Lou Adkins at the Salisbury CDC. Out of reluctance to select the recipients,

Carolina Housing Finance Agency (NCHFA). "One of the reasons we chose Salisbury CDC was because of the phenomenal work they were already doing to help families prevent foreclosures prior to us establishing the loan fund," said Keir Morton, a program development officer for the Strategic Investment Group at NCHFA. (For more program specifics see "How the Home Protection Pilot Program and Loan Fund Works" on page 23.)



the church approached Adkins and she enthusiastically agreed to work with families. "I would meet with each family and set up a bare bones budget," she said. "Unfortunately, many people were living from paycheck to paycheck. But I had to be frank with them and tell them: if you want to keep your home, you have to pay for only the basics." Many of the displaced workers not only had to contend with losing incomes, but with acquiring new work skills. Most of the former employees had worked at Pillowtex since high school and the skills they had



Mike Pressley (with his son Nathan) avoided foreclosure of his Goldhill, North Carolina home through aggressive budget counseling provided by Salisbury CDC and a loan from the state's housing and finance agency.

Salisbury CDC's foreclosure prevention crusade began in 2003, when the executive directors of both the United Way of Rowan County and Salisbury



Pillowtex's Swink Plant was once an important piece to the textile company's manufacturing puzzle. With about 572,000 square feet of manufacturing and warehouse space, the building sits on a 36-acre tract.

acquired were specific to the textile industry and not easily transferable. In addition to the intense budget counseling, Adkins made calls to mortgage companies to negotiate payments and to reduce or eliminate late fees. Meanwhile, more funds emerged to support Salisbury CDC's foreclosure prevention efforts. The local United Way donated \$20,000; another foundation donated \$13,000; and when the pilot program began, Rowan County received another \$210,000. Recently, a foundation donated \$115,000 to continue the foreclosure prevention program as it saw how effective and needed this program was in Rowan County. Thus far, the program has helped over 105 Rowan County residents, like Mike Pressley, keep their homes.

Pressley, who worked as a loom technician at Pillowtex for 22 years, describes having to choose between making mortgage payments and buying his wife's diabetes medication. "When you start losing \$1,200 a month income, instead of pinching pennies, you learn how to cut them in half." Meanwhile, Pressley started studying information networking systems at a local community college and at the end of October started working at Dell computers in a neighboring county. Although losing a job and significant income was not an ideal situation, Pressley appreciates that he's learned how to not only set a budget, but how to maintain one. "If it weren't for this program, we would have lost our house for sure."

Local residents have volunteered to join Salisbury CDC's efforts to help families through their life-altering circumstances.

Local residents have volunteered to join Salisbury CDC's efforts to help families through their life-altering circumstances. Jack and

Jackie Burke, retired finance professionals, help families through the counseling process. The Burkes discuss with individuals income constraints and ways to eliminate unnecessary costs. "We help them develop a budget and monitor what they spend and tell them that they may have to settle for ground chuck instead of filet mignon until they get jobs again and increase their incomes," said Jack. Jackie added that once Pillowtex closed, many unscrupulous mortgage brokers took advantage of the displaced workers. "We found that many of the people have borrowed money not knowing how much interest they're paying," she said. "Most of them could have gotten loans from banks at much lower interest rates."

A Diversified Group

Although Salisbury CDC has been intensely involved in foreclosure prevention, the organization has not sacrificed the quality of their other community development activities such as housing development, housing rehabilitation, homebuyer education and down payment assistance. As a catalyst to improve the quality of life in selected neighborhoods within the greater Salisbury area, the organization develops attractive, quality, affordable housing; encourages partnerships among other organizations with common goals and



Karen K. Alexander

interest; and empowers individuals and families to become self-sufficient. Salisbury CDC's Jersey City revitalization project involved working in a predominately black neighborhood that consisted of approximately 60 homes. The CDC purchased several dilapidated and boarded up homes and demolished most as they were not economically feasible for rehabilitation. "The CDC demolished and rehabbed some of the structures and added 14 homes to the neighborhood," said Chanaka Yatawara, executive director of Salisbury CDC. In 2004, the organization received NCHFA's Housing North Carolina Award for the Jersey City neighborhood. The award recognizes affordable housing developments that serve as models for other communities. Salisbury CDC also recognized the need to bridge the digital divide and added computers and Internet access to the homes. "Several members of our board who represented local banks said if they provided the financing for the mortgages they would add the computers and Internet access at no additional charge," said Yatawara. The Robertson Foundation, a local philanthropic organization that donated the initial seed money to start the CDC, has paid for computers in each home that Salisbury CDC has built since the Jersey City development.



Salisbury Mayor Susan Wear Klutz



Salisbury City Manager David Treme

CDC's first employee, Yatawara recalls when the city decided in 1998 to create a nonprofit that would address the area's community development needs. "When I first came to Salisbury, the city had a plan to revitalize the Park Avenue neighborhood," said Yatawara, who previously worked in community development in Virginia Beach. "The city manager agreed that I needed to look at the plan and initially address the lack of homeownership in Park Avenue. The city provided the initial funding to the



Jeffrey Brown and his wife Nickysha heard about Salisbury CDC's homeownership program and moved into their new home on March 14, 2005, with their children Nathan (left) and Nicholas (right).

A Strong Sustainable Model

Building quality and affordable housing continues to be a struggle for nonprofits, but Salisbury CDC has experienced much success by strategically aligning its activities with the city's community development goals. The city has contracted out their community development services to the CDC including providing affordable housing for low- and moderate-income families. As Salisbury



Salisbury CDC continues to capitalize on its strong partnership with the local government...

CDC to purchase three vacant lots. The CDC built three homes designed by Karen Alexander [a local architect] and sold them to first-time homebuyers. This was the beginning of a great partnership."

"We decided it would be in the best interest of our city to partner with a CDC," said David W. Treme, city manager of Salisbury. "We thought we could provide our citizens with better services through a CDC than trying to do it on our own. They're doing community development better and cheaper than we could do it ourselves. This partnership has produced some outstanding results."

Although Salisbury CDC is independent from the city, the mayor and city manager serve on Salisbury CDC's board. "It really helps to have such a diverse board because our partnership eliminates steps," said Salisbury Mayor Susan Wear Kluttz. "When you have the city manager or mayor on your board, if there's a project you want to undertake, you find out whether it's feasible pretty quickly." Another advantage of such a diverse board is the wealth of expertise each individual brings. Board member Karen K. Alexander of KKA Architects has designed the majority of Salisbury CDC's new housing, pro bono. The CDC strongly values preserving the architectural integrity of a community and designs homes similar to existing structures. Alexander overcomes this challenging task by using a design that implements little waste of construction materials. "Most homes have 25 percent waste; we have none," she said. "It's also important that homeowners are able to keep up with operating costs of homeownership, so we use a



Wendy Zech purchased her home in the West End section of the town, through Salisbury CDC.

contractor that has been trained to use a high-energy efficiency model."

Future Plans

Salisbury CDC continues to capitalize on its strong partnership with the local government and through creative strategies to address sharp decreases in the manufacturing industry. The CDC, in partnership with the City of Salisbury, is currently working with the University of North Carolina at Chapel Hill on a feasibility study to determine if a small business incubator would be viable in Salisbury. Local officials in the affected areas are confident that job displacements have spurred interest in entrepreneurship. Salisbury CDC has proven that its mission not only encompasses addressing affordable housing but responding adequately to unforeseen circumstances than can undermine community development progress. **MW**

For more information about Salisbury CDC, visit www.salisburycdc.org or call 704-638-4474.



How the North Carolina Home Protection Pilot Program and Loan Fund Works

The staff of the North Carolina Housing Finance Agency implements a creative and aggressive program to help dislocated workers in the state save their homes from foreclosure. Pictured are (seated, l to r) Keir Morton, Bill Bunting and (standing, l to r) Bob Kucab, Bob Dunham and Bill Dowse.

When the machinery and assembly lines at factories and plants in North Carolina stopped, so did many mortgage payments. As a response to the foreclosure pandemonium in North Carolina, the state established the North Carolina Home Protection Pilot Program and Loan Fund (the loan fund) to assist North Carolina workers who lost jobs and were at risk of losing their homes as a result of changing economic conditions in North Carolina. Salisbury CDC, one of eight agencies selected as a Partner Housing Counseling Organization (PHCO), is under contract with the North Carolina Housing Finance Agency (NCHFA) to market the program locally and help prepare applications for the program.



The PHCO counsels homeowners with their financial matters and spending habits. If appropriate, the PHCO attempts a workout agreement with the mortgage loan servicer/mortgagee and can also provide information about other financial assistance or employment training opportunities in their community.

The pilot program involves a stay of foreclosure that lasts while the homeowner is under consideration for the program. North Carolina law specifies that no mortgagee (defined as the owner of a beneficial interest in a mortgage loan, the servicer for the owner of a beneficial interest in a mortgage loan or the trustee for a securitized trust that holds title) can:

Assistance is available in designated counties on a first-come, first-serve basis, and until funds are expended.

- Accelerate the maturity of any mortgage obligation.
- Commence or continue any legal action, including mortgage foreclosure, to recover the mortgage obligation.
- Take possession of any security of the mortgagor for the mortgage obligation.
- Procure or receive a deed in lieu of foreclosure.
- Enter judgment by confession pursuant to a note accompanying a mortgage.
- Proceed to enforce the mortgage obligation pursuant to applicable rules of civil procedure for a period of 120 days following the date of the mortgagor's properly filed application.

Eligible homeowners can be approved for assistance:

- In the form of a loan (not grant), amortized at 0 percent interest, and repaid over a 15-year period.
- The loans proceeds can be used to bring current mortgage principal (P), mortgage interest (I), property taxes (T) and property insurance (I), and dues for homeowners associations.
- While there is no minimum loan amount, the maximum loan amount is equal to the lesser of \$20,000 or 18 months of monthly mortgage payment (PITI).
- Funds can be used in conjunction with loss mitigation, foreclosure-prevention workouts and other insurer/investor measures to bring homeowners current.

Qualifying homeowners can receive zero-interest loans that are either short-term to bring a mortgage current, or long-term to keep a mortgage current for up to 18 months while the homeowner is between jobs. The principal is repaid after the term of assistance ends. Assistance is available

in designated counties on a first-come, first-serve basis, and until funds are expended.

To be eligible for a loan, a homeowner must meet all the following criteria. They must:

- have lost their job due to changing economic conditions;
- have a mortgage that is secured by real property;
- demonstrate an ability to resume their mortgage payment after the assistance ends;
- have had a stable employment and credit history prior to losing their job; and
- meet other eligibility requirements.

The program has recently been expanded to include 19 additional counties for the second year. The North Carolina Housing Finance Agency is a self-supporting state agency and has financed nearly \$9 billion of affordable housing, including low-cost mortgages for 65,000 first-time home buyers. For more information about the program, call Keir Morton at (919) 877-5634. **MW**

Source: The North Carolina Housing Finance Agency





Travis Thomas

CRA Revisions May Present Challenges for Both Small and Large Banks

by Travis Thomas, Senior Examiner

Recently, the banking agencies released

new Community Reinvestment Act (CRA) rules that were effective September 1, 2005. These changes at first glance appear to focus on intermediate small institutions. Some small institutions or really large ones may believe that the new CRA changes will not have a significant impact. However, this may be faulty thinking. The following overview of the CRA revisions will clarify some of the new requirements, allowing both small and large institutions to re-evaluate the impact of the latest changes to CRA.

Determining Reporting Requirements

Although only two definitions, “small bank” and “community development,” have been revised, the impact of these changes is significant since these definitions are critical in determining what the reporting requirements are for institutions.

The regulation defines three types of banks: limited purpose banks, small banks and wholesale banks. As previously stated, only the definition of a small bank was revised, so how did the revision change this definition?

First, only the assets of the specific bank are considered in determining the overall size of the bank; that is,

any holding company affiliations are no longer used in considering the specific bank’s overall asset size.

Second, the revised definition of small bank has raised the asset threshold to \$1 billion, BUT also has created a new category called “intermediate small bank” (ISB). So, the definition of a small bank is now any bank that had assets of less than \$1 billion as of December 31 of either of the two prior calendar years. Any small bank that had assets of “at least \$250 million as of December 31 of both of the two prior calendar years and less than \$1 billion as of December 31 of either of the two prior calendar years” is an ISB.

Third, the asset basis for these definitions will be adjusted annually and will be published by the banking agencies. In summary, there is a significant revision to the definition of small bank but no changes to the definition of limited purpose bank or wholesale bank.

Changes in Data Collection and Reporting

There were no revisions or changes to the types of data to be collected and reported. If that is the case, then banks of any size don’t have to change anything they do currently, right? That thinking may be erroneous, so let’s see why.

Banks that were defined previously as small banks were not subject to data collection and reporting

requirements and most likely will not collect and report data under the revised regulation, provided they wish to be examined under the streamlined test. As a result, there is no data collection or reporting changes here.

Banks other than small banks do not have any changes regarding data collection and reporting requirements. As a result, there is no data collection or reporting changes here either.

The significant change in data collection and reporting is with banks that are now ISBs that previously collected and reported data. These banks are no longer required to collect and report data UNLESS they wish to be evaluated under the lending, investment and service tests. In other words, if an ISB wishes to be evaluated like it was previously, then it must continue to collect and report data just like banks that do not meet the definition of a small bank are required to do. Otherwise, an ISB has no obligation to collect and report data — but should they voluntarily collect it? The answer to this may be found later.

Why include a whole section devoted to this discussion — is it solely because of the ISBs and how those banks no longer have the data collection and reporting burden? No, the answer is because banks subject to data collection and report-

The significant change in data collection and reporting is with banks that are now Intermediate Small Banks that previously collected and reported data.

ing have responsibilities under the revised CRA that may not have been considered. To expand on that thought, consider what loan data are required to be reported: small business loans, small farm loans, home mortgage loans and community development loans.

While CRA did not change the four types of loan categories to be reported, it did change the definition of one of them — community development loans. This revised definition will, in all likelihood, substantially change what institutions report in aggregate number and aggregate amount of community development loans originated or purchased in the given calendar year.

Some banks will have less data collection and reporting responsibilities while others are not affected one way or the other. For those that have additional responsibilities, it probably is a result of community development lending.

The New “Community Development” Definition

Both the previous and the revised definitions of community development cover four categories of activities. The first three categories in both definitions address affordable housing, community services and economic development. Both versions of CRA are identical in language and therefore, no revisions were made to these portions of the definition of community development. However, the fourth category was revised and expanded to include activities that revitalize or stabilize designated disaster areas and distressed or underserved rural areas.

The revision of the fourth category greatly expands activities that may

qualify as community development. Previously, this category was limited to activities within low — or moderate-income census tracts. Now, certain activities in designated distressed or underserved rural middle-income census tracts will qualify as community development activities. The banking agencies will designate which rural census tracts will be considered as distressed or underserved and will publish this list on the website of the Federal Financial Institutions Examination Council on an annual basis (website: www.ffiec.gov).

Also included in this expanded, revised definition are activities to revitalize or stabilize disaster areas which are designated by the federal or state governments. Activities undertaken for CRA consideration in these areas should occur during the time the areas are designated as disaster areas, not after the expiration of the declaration.

The definition of community development has changed. As a result, banks that are required to collect and report data will have additional community development loans to include when they aggregate the number and amount of community development loans made during the calendar year. Even banks that do not report data about community development loans may need to know about community development activities.

Assessing the Bank’s Performance

With the exception of the small bank performance standards, no other bank evaluation standards were affected by any revisions to the previous performance requirements. If a bank is a small bank, the performance

standards will be based on whether it is an ISB or not. If it is not an ISB, the performance standards have not changed; that is, it will be evaluated under the streamlined small bank lending test. Without going into too much detail, this five-part test will consider:

1. the bank’s loan to deposit ratio;
2. the percentage of loans and other activities within the bank’s assessment area(s);
3. the bank’s record of lending to borrowers of different income levels and/or business and farms of different revenue sizes;
4. the geographic distribution of these loans; and
5. the bank’s record of action, as appropriate, in response to written complaints regarding its lending performance within its assessment area(s).

If a bank is an ISB, however, it will be evaluated under a two-part test; one is the streamlined small bank lending test (discussed above) and the other is the community development test. The community development test will review in four parts:

1. the number and amount of community development loans;
2. the number and amount of qualified investments;
3. the extent the bank provides community development services; and
4. the bank’s activities in response to community development lending, investment and service needs.

While CRA did not change the four types of loan categories to be reported, it did change the definition of one of them — community development loans.

Although an ISB does not have an obligation to collect data, it may have a reason to do it. Since examiners are required to evaluate an ISB's performance under the community development test, an ISB may wish to informally gather and retain data related to community development activities to assist in the evaluation of the community development test even though the ISB no longer is mandated to collect this data. If the ISB does not maintain documentation to support the bank's community development activities, it may be difficult for examiners to properly assess performance under this test.

Impact of Discrimination and Other Illegal Credit Practices

Regardless of the type of bank being evaluated, the revised CRA identifies several laws, rules or regulations, where if violations are noted, the CRA evaluation may be adversely affected. Specifically, the revised CRA references:

1. the Equal Credit Opportunity Act or the Fair Housing Act;
2. the Home Ownership and Equity Protection Act;
3. the Federal Trade Commission Act (section 5);
4. the Real Estate Settlement Procedures Act (section 8); and
5. the Truth in Lending Act as related to a consumer's right of rescission.

Not only are the types and severity of the violations important in making the determination of whether the

CRA evaluation should be negatively affected, but consideration will be given to policies/procedures in place to prevent violations, corrective action taken or committed to taking when violations are noted, and any other relevant information that may be noteworthy in making the determination.

The Ratings

Appendix A of the regulation, which discusses ratings, has been revised only to reflect changes associated with an ISB. A bank that meets the requirements for an ISB must be evaluated for both the lending test and the community development test. For an ISB to receive an overall rating of satisfactory, it must receive at least satisfactory on both the lending and the community development tests. To be considered "outstanding" overall, the ISB must receive outstanding on one of the tests and at least a satisfactory rating on the other test. A small bank that is not an ISB continues to be evaluated on the basis of the lending test, and there are no changes between the previous CRA ratings and the revised CRA for this component.

In summary, the basis for assigning ratings has not changed for any bank except those that are ISBs.

A Far-Reaching Impact

The revised CRA will be a challenge. A small bank that is not an ISB is about the only party not affected by the revisions. An ISB, while no longer required to collect and report data, will have to monitor lending and community development activities and undertake self-assessments to insure satisfactory performance

under the "two-part test" without benefit of mandatory data collection. Other banks which are subject to data collection and reporting will have to insure that all appropriate community development loans are captured for the reporting of aggregate number and aggregate dollar amount. Examiners, who previously had ready access to loan data that was collected and reported, may be forced to spend more time in banks to collect loan data to assess performance under the lending test as well as the community development test. And finally, all parties interested in the distribution of small business loans, small farm loans, and even certain home mortgage loans that were available publicly prior to the revisions, will be required to find alternative, substitute sources of information for their specific purposes and needs. **MW**

This article was written in early September 2005. It is anticipated that revised Interagency Questions and Answers Regarding CRA will be released in the near future and may impact some of the information contained in this article. As a result, please direct any questions regarding CRA revisions to the appropriate regulatory agency.

A bank that meets the requirements for an ISB must be evaluated for both the lending test and the community development test. For an ISB to receive an overall rating of satisfactory, it must receive at least satisfactory on both the lending and the community development tests.



T.K. Somanath

Executive Director, Better Housing Coalition

1. How did you become involved in community development?

I have been involved in the community development field for over three decades in the Richmond area. When I joined the local housing authority soon after my arrival in this country from India, I was appalled at seeing the housing conditions of some of the city's impoverished neighborhoods. I was really surprised to see that in a country of such wealth, there were huge pockets of poverty, and seriously deteriorated housing conditions. I decided to take up the challenge of rebuilding neighborhoods, and I am very fortunate that I have been associated with many good-hearted Richmonders who are committed to making Richmond a great city for all people. Since 1990, I have had the privilege of working at the Better Housing Coalition, as its first executive director. This is the best job I have ever had since it provides me an opportunity to give something back, while putting my faith into activities that serve people and create a just society. Housing is not just a roof over your head and a place to lie down at night — it is a foundation for a stable life. And, it is a true privilege to work in the community development field!

2. What do you see as some of the most pressing issues facing community development practitioners?

- Affordable housing is being lost at an alarming rate for a variety of reasons, and on many fronts, the picture will continue to worsen over the next several years.
- There is a polarization occurring in many of our city neighborhoods — families with school-aged children continue to move to the suburbs. And, while many neighborhoods are experiencing revitalization, gentrification is a threat. Long-term residents, especially working poor and seniors will not be able to afford to stay.
- Low-income homeownership is on the rise, but it is precarious — vulnerable to changing economic conditions and predatory lending.
- Special needs population and low-income seniors on fixed incomes are on the rise. The number of homeless and those at risk of homelessness are also poised to grow as the safety net weakens, and the gap between minimum wages and housing cost burden increases.

Understanding these trends and planning around them will be key to strengthening communities and meeting housing needs in the future.

3. What skills/strategies do you see as necessary for community development organizations to have in order to survive in the rapidly changing industry?

Managing a community development corporation (CDC) has never been easy. It is even harder today. Competition for resources has intensified and keeping talented staff and attracting young people with deep commitment and aspiration is especially tough in today's tight job market. The demands on CDCs are growing, too. As CDCs mature from fledgling organizations to enduring institutions in their communities, paying attention to management issues is critical. No management component is more critical than leadership development. Creating good leadership structures and nurturing appropriate kinds of leadership at staff and board levels are a must. If CDCs are going to prosper in the 21st century, they should put their resources in organizational development to grow and develop leadership. This growth of leadership, if carefully managed, leads to increased commitment, effectiveness and sustainability.

4. Where do you see the future of community development headed?

CDC's have been successful and have learned a great deal about rebuilding communities from neglect, decay and abandonment. But they have not been able to replicate the successful transformation projects on a large scale. The challenge is to marshal the national will to provide increased resources, commensurate with the need and with the human and organizational capacity in many of our low-income communities across the country. Achieving this goal is key to continuing growth and sustaining community-based development as an effective instrument for social and economic change.

5. Name one misconception that people outside the field may have about community economic development.

The challenge for cities is not the market; it is the negative perception. Inner-city shoppers, typically minorities with low incomes, consume goods and possess tremendous buying power, yet retailers ignore them. In recent years, however, the tide has quietly turned. Although the median incomes of urban households are lower than suburbs, there are more buyers per square mile. And, they drink coffee, buy groceries, buy clothes and shoes, and go to the movies. According to Harvard Business School's professor Michael Porter of Initiative for a Competitive Inner City (ICIC), inner city residents spend more than \$85 billion a year on retail goods alone!

6. BHC's developments have won numerous awards. What is your organization's philosophy regarding building quality, affordable housing?

By staying rooted in our community, today's vision becomes tomorrow's reality. The evolving economy and diminishing resources for affordable housing requires a shared vision in seeking solutions to building stronger neighborhoods that are sustainable. Better Housing Coalition aspires to be a nationally recognized community leader, building sustainable communities that promote a balance of economic prosperity, human dignity and environmental responsibility. Better Housing Coalition seeks to make a positive difference in the lives of Virginia residents through community development initiatives that provide citizens the opportunity to enjoy the highest quality of life. **MW**

The Distribution of Homeownership Gains During the 1990s Across Neighborhoods

by Christopher E. Herbert and Bulbul Kaul

While homeownership rates increased for almost all racial and ethnic groups, income groups, regions and rural and urban areas during the 1990s, little is known about how these homeownership gains were distributed across neighborhoods. This study examines changes in homeownership rates between 1990 and 2000 at the neighborhood level, which is defined as the census tract. This study explores the characteristics of tracts where homeownership increased the most as well as those where there was little change or absolute declines. The data also examines the characteristics of neighborhoods where minority homeownership increased. Detailed univariate analysis is used to explore the characteristics of areas that experienced different rates of change in homeownership rates, while a multivariate analysis is conducted to separate the relative importance of the different factors examined.

<http://www.huduser.org/Publications/pdf/DistributionOfHomeownershipGainsDuringThe1990sAcrossNeighborhoods.pdf#search=christopher%20e.%20herbert%20and%20the%20distribution%20of>

Homeownership Affordability in Urban America: Past and Future

by Zhong Yi Tong

This study gauges trends in housing affordability for median-income working Americans. The study examines past (1990-2003) and projected trends (2004-2008)



for the nation, 11 selected metropolitan areas, and people working as school teachers, nurses, firefighters and police officers. Some of the report findings include:

- At the national level, a median come, first-time homebuyer with a 10 percent down payment will no longer qualify for a mortgage on a median-priced home beginning in 2004. By 2007, even a repeat buyer with a 20 percent down payment will not qualify for a mortgage on a median-priced home.
- In the metropolitan areas in which the home affordability crisis is most severe (Boston, Los Angeles, New York and San Francisco), first-time homebuyers will need at least twice the area's median income to afford a median-priced home.
- At the national level and in most of the 11 selected metropolitan areas, an average-wage school teacher, nurse, police officer or firefighter lacks sufficient income to purchase a median-priced home with a 10 percent down payment.

<http://www.knowledgeplex.org/showdoc.html?id=22736>.

Building a Better Urban Future: New Directions for Housing Policies in Weak Market Cities

by Alan Mallach

As a joint paper of the Community Development Partnerships' Network, the Enterprise Foundation, the Local Initiatives Support Corporation and the National Housing Institute, this report helps community development corporations, government officials and agencies, lenders, community members and local foundations that provide resources for housing and community development in weak market cities assess

the effectiveness of current revitalization efforts; develop more potent goals and strategies; and allocate resources to best achieve these goals.

http://www.lisc.org/resources/assets/asset_upload_file437_8166.pdf#search='alan%20mallach%20and%20building%20a%20better'.

CDBG Formula Targeting to Community Development Need

by Todd Richardson

Last year marked the 30th Anniversary of the Community Development Block Grant (CDBG) program, which was created to develop viable urban communities by providing decent housing, suitable living environments and expanded economic opportunities, principally for low- and moderate-income people. This report assesses how well the CDBG formula, after its introduction of 2000 Census data into the formula, allocates funds toward the community development needs identified in the Housing and Community Development Act of 1974. The CDBG formula uses variables identified in the 1970s that proxy dimensions of community development needs. The core variables in the formula that allocates the CDBG funds to local jurisdictions have not changed since 1978. This report offers four alternative formulas that would substantially improve targeting to community development need. Each alternative provides trade-offs in terms of formula simplicity; amount of funds allocated; and the type of community development need provided highest priority.

<http://www.huduser.org/Publications/pdf/CDBGAssess.pdf#search='todd%20richardson%20and%20CDBG%20Formula%20Targeting%20to%20Community%20Development%20Need'>.

Preserving America's Affordable Housing: Retooling a 20th-Century Asset for 21st-Century Needs

by Tony Proscio

Between 1965 and 1990, Americans invested over \$60 billion in affordable rental housing. These low-cost apartments in cities, suburbs and rural communities were intended not only to shelter people with low-incomes but also improve distressed neighborhoods, provide for mixed-income communities and ensure opportunities for seniors to live close to community and family. The Local Initiatives Support Corporation's Affordable Housing Preservation Initiative helps build local partnerships among buyers, sellers, government entities and funders necessary for successful preservation, whether it's to transfer a single building to a capable CDC or to develop a region-wide preservation strategy. The Preservation Initiative also helps local

nonprofits assess and structure preservation transactions and identify resources to help them not only acquire these properties but also to sustain them. This report covers four recent cases and how they were addressed by the Preservation Initiative. **MW**

http://www.lisc.org/resources/assets/asset_upload_file755_8068.pdf.



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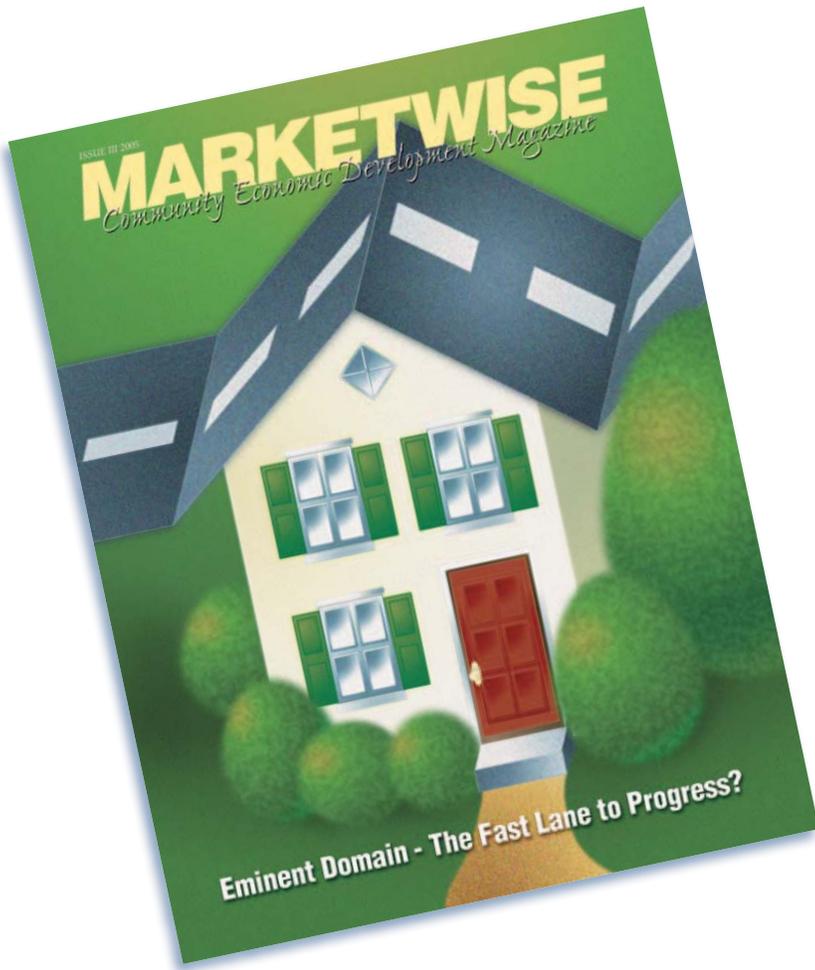
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MARKETWISE welcomes story ideas and suggestions from lenders, community organizations and economic development professionals.

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