

## Keys to Using Eminent Domain for Urban Revitalization

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by Anne Barton and George Proakis

Eminent-domain authority is one of the strongest powers given to government, and it is government's utmost responsibility to use it with extreme care and caution. While there are many viable uses for eminent domain beyond the building of roads and schools, bulldozing an entire neighborhood in the name of "economic development" will inevitably backfire. Cities and counties need to redevelop as cities and counties, and to use the urban fabric that has made them successful places for generations.

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Lowell, Massachusetts, has used eminent domain to purchase select vacant parcels and burnt-out buildings and to develop new affordable housing for first-time homebuyers. Lowell also has eminent domain authority on the site of a mill building that has been vacant for 50 years. Work on the site is being done to assemble it with other city-owned land to create a new mixed-use development that will be an extension of its historic downtown, as well as a link to the nearby commuter-rail station.

The city has also used eminent domain to purchase parking lots and a one-story retail building to assemble land for a new public parking garage that will have retail stores on the first floor. It has used leases in these parking places to help developers meet the parking demand when redeveloping mills into live-work lofts, condominiums and office space, thus spurring the renaissance of Lowell's downtown. These are just a few examples of the reasons that city and county governments need the power of eminent domain. But they must use it in only limited circumstances.

As city staff has learned in Lowell, any successful eminent-domain taking for blight removal and/or economic development should, at a minimum, involve these considerations:

**1. Design that respects neighborhood character.** A successful project will use eminent domain as a part of a greater revitalization plan, along with design review, innovative zoning, and code enforcement.

To stabilize an urban neighborhood and tax base, a more effective eminent-domain policy will pick and choose smaller-scale interventions that will bring an excellent return. The policy will be part of a plan that includes a design review process to approve proposed demolitions in the planning phase and new construction in the implementation phase.

While the easiest solution for a local government may be to clear a troubled area, turn it over to a new developer, and start over, there are many examples nationwide in which the new development on such sites has failed. Communities that have succeeded in revitalizing and stabilizing their tax bases are ones that stick to the basics. Integrated small improvements, based upon a well-thought-out plan, can improve neighboring properties and inspire new pride in a tired old neighborhood.

Success comes from within a place, and while it is helpful to remove difficult buildings, to acquire and rehabilitate others, and to assemble some small parcels into larger redevelopments, neither a superblock office building, an auto-oriented segment of new high-rise condos, nor a new big-box store in place of a working-class neighborhood is going to revitalize a city.

**2. The community advisory committee.** The community must fully assess the area that is being considered for such an aggressive planning tool. A critical component of a comprehensive neighborhood plan that includes eminent domain is the formation of a community advisory committee (CAC) that is representative of the area under study. If this committee is properly formed and truly a representation of the residents, business owners, churches, agencies, and other entities that make up the district in question, then it is highly likely that consensus can be reached on goals for the plan.

All redevelopment plans that include eminent-domain takings should include a CAC process. The most difficult portion of this process comprises the time and effort involved in making the CAC a productive working group. Meetings must be convenient in time and location. Food, child care, and interpretation services also help. Frequency of meetings must provide for ease in reporting progress and must allow taking CAC input and incorporating it into the plan before the next meeting.

Competent planners are critical if such an aggressive plan and process are going to succeed. There must be true concern for the issues and problems that CAC members bring forward. Not everyone is going to be happy with every aspect of the plan, and this fact must be understood up-front.

CAC meetings will be followed by public meetings, public meetings, and more public meetings. Meetings are best organized around topics; for example, one meeting could be held just for businesses, another for residents, and others on subjects like hazardous-waste cleanup, construction inconveniences, traffic, and the like.

**3. Fairness to property owners and tenants.** Word may leak out that properties are going to be “taken,” so owners and tenants should not have to wait too long to find out how they are going to be affected. Public meetings will accomplish this notification, but nothing is better than a one-on-one meeting with owners and tenants. This option is staff- and time-intensive but worth every second.

Most inhabitants of a neighborhood in distress will at least start to understand the process and the reasoning as to why their properties may need to be taken to accomplish the goals of the plan. No one should suffer a significant loss for the public good. There must be a means of determining how to make an individual property owner or tenant “whole.”

Commitment to the retention of businesses that want to remain in the neighborhood should be a part of the planning process. In many states, using an urban-renewal planning process will allow the locality great leeway in making real estate transactions that would be impossible under traditional public procurement laws. Use this leeway to negotiate fair offers before instituting takings.

Where possible, offer the opportunity to current owners to redevelop their own sites consistent with the goals of the plan. Once an affected person knows a change is in effect, move quickly. No one deserves to be in limbo for long. Make the taking, relocate the parties, and make them whole, if not better, more productive members of the community. Businesses can opt to expand, purchase new equipment, or hire more employees. Residents can often be relocated with enough funds to find better housing.

**4. Financial and political commitment to carry out the plan.** A plan that is half-implemented and then forgotten may only realize a small percentage of its full potential. Plans require returning to city and state leaders to ask for annual appropriations for implementation. Each step of the plan must produce small success stories that will lend additional political support to executing further steps.

**5. Political accountability.** A plan that involves a government power as serious as eminent domain should be coordinated by a political body that is accountable directly to the voters. A council will only support such a plan if it has the public support. Eminent-domain power is much less likely to be abused if the council does not delegate the power to an independent authority.

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