Collaborative and Market-Driven Approaches to Economic Development and Revitalization

BY MAUREEN MASTROIENI, CRE

RESPONSE TO THE 2005 U.S. SUPREME COURT DECISION IN *Kelo vs. New London* has been dramatic and polarizing. Overnight, eminent domain has become a topic for discussion in households, businesses and community forums. In the backlash from the decision, national and state legislators have proposed a number of bills aimed at limiting government's power to take private property for public use, and especially to take private property for economic development purposes.

Most of the discussion focuses on several issues:

1. Does the public-use clause of the Fifth Amendment permit condemnation of private property for transfer to other private parties solely for the purpose of promoting economic development?

2. Is the term "public use" synonymous with "public benefit," defined as the removal of blight, the reversal of economic decline, the creation of jobs and improvements to the tax base?

3. Assuming that eminent domain is here to stay—as the Kelo decision suggests—are there better ways to determine just compensation?

These are all good questions but they are shortsighted in that they fail to address the broader issues of how to define blight and best results, and how planners can undertake improvements in a manner that is sensitive to the needs of the people who are most directly affected. The question that remains unasked—and one that may be far more important than the technicalities of public use vs. public benefit—is benefit for whom?

EMINENT DOMAIN AND URBAN REVITALIZATION

One of the first eminent domain cases heard by the Supreme Court was the 1954 urban renewal case of *Berman v. Parker*,[1] in which the city of Washington, D.C., acquired large tracts of residential and commercial property in an attempt to eliminate slums. Following this decision—which upheld the government's authority to take property, regardless of condition, for the greater good and specifically for the elimination of blight—American cities undertook massive redevelopment projects that cleared large areas in and around central business districts.

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The urban renewal process included designating an area as blighted, preparing a development plan, using eminent domain for land assembly, demolition and marketing the cleared land for redevelopment. In a variation on a questionable sentiment, cities essentially believed "if we demolish it, they—the developers—will come."

Unfortunately, the laws of supply and demand, and economic feasibility, became apparent only when the cleared land did not attract market-rate development and remained vacant. Blighted neighborhoods, by definition, were not the most attractive locations for market-rate development. And other problems occurred that officials probably should have anticipated. Once neighborhoods were declared blighted and targeted for redevelopment, individual properties became unmarketable and property owners stopped maintaining them. Without investment, deterioration accelerated and neighborhoods became more depressed, even in areas that were previously stable. Ironically, a program that intended to remove blight actually contributed to neighborhood decline in many cases.

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Even proponents of eminent domain suggest that it should be used as a tool of last resort, because it is often more costly and time consuming than acquiring properties through voluntary exchange.[2] However, municipalities point out that it is often impossible to assemble large enough parcels to revitalize blighted communities without condemnation. Across the country, government officials and planning agencies point to any number of important projects that would not have been possible without eminent domain—projects like Times Square, the World Trade Center and Baltimore's Inner Harbor.

These types of successes usually come to fruition because of two reasons. First, revitalization in urban areas often involves infill development, and private developers do not have the ability to assemble the required parcels. Even if all property owners are willing to sell, the only way to obtain clear title typically is through the condemnation process. Second, many economic development projects are not, in fact, economic at all, at least not in the way that the private sector defines economic feasibility. Without the municipality's contribution of an assembled site, along with various tax incentives and below-market financing, the projects would not move forward.

ECONOMIC BENEFITS FOR WHOM?

Everyone wants safer neighborhoods without trash or abandoned buildings, better schools, successful businesses, an improved road network. In contrast, the current outcry against eminent domain is less concerned with long-term benefits than with the social impacts of demolition and relocation. Today, much of the discussion around eminent domain focuses on the best way to mitigate these impacts. What is the best way to relocate the existing residents, or how much can we pay them to truly compensate for their loss? But these still are not the pertinent questions. Rather, the questions should be: What is the best way to serve the existing residents, and must we completely move out the old before we can bring in the new?

Historically, officials have believed the only way to accomplish widespread improvement is to buy out existing property owners and relocate tenants—or not, depending on lease clauses and local policy. More often than not, the original residents are long gone by the time the new, improved neighborhood is ready for someone else to occupy. This is especially true of tenants, who generally have no legal claim on residence in the old or the new community.

The following case studies describe urban revitalization projects that are attempting to improve the situations of the residents, not just the real estate. All these projects have champions and detractors; many are works in progress. Readers who accept the premise that eminent domain may be a necessary evil can view these projects as a way to take a collaborative approach that builds neighborhoods without destroying lives.

DEMANDING A BETTER DEAL

In Baltimore, Md., the city has undertaken an ambitious revitalization effort to convert an 80-acre portion of East Baltimore into a new 22-acre biotechnology park for Johns Hopkins University, along with low-income, affordable and market-rate housing. As approved by the Baltimore City Council in December 2002, the 10-year project has the potential of acquiring, through eminent domain, as many as 3,000 properties, and the possibility of displacing as many as 800 households.

East Baltimore Development Inc., which is managing the $800 million project, has partnered with the Annie E. Casey Foundation to provide relocation assistance that is generous in terms of compensation but, more important, includes financial counseling, educational and employment training, and job placement. They connect families with resources including healthcare, social services, senior services, after school programs, credit counseling and substance abuse programs. "We want the families directly affected to end up better off as a result of this revitalization," says Douglas Nelson, president of the Casey Foundation. "Not just changed, not just moved, but really better off in all the common sense ways that we think about: better housing, more job opportunities, a healthier neighborhood, safer streets, better schools, more recreation opportunities."[3]

By early 2006, a total of 395 households had been moved, and Charles Cohen of the *Baltimore City Paper* reported that "Even some of the East Baltimore plan's most vigilant critics concede that the forces behind the project seem to be making a *bona fide* effort to improve the lives of the residents." [4] At the same time, Cohen quoted a number of residents, including long-time resident Lucille Gorham. "Whether it was a bad neighborhood and how it seemed to other people, it was my neighborhood and I lived there," Gorham told the newspaper. Lisa Williams, president of Save Middle East (Baltimore) Action Committee, pointed out that "...(some) residents were very happy living here. We were hoping for redevelopment, but renovating redevelopment, without displacement."

More than 60 percent of the East Baltimore redevelopment—the 50 acres of Phases II and III—is still on the drawing board in terms of what will be built and when. Though officials have given some indication that more renovations and less relocations in subsequent phases will take place, the development plan is not complete and Phase I is barely underway.

DEVELOPMENT WITHOUT DISPLACEMENT

The Dudley Street Neighborhood Initiative, or DSNI, is a resident-led community nonprofit dedicated to rebuilding the Dudley neighborhood of Roxbury/North Dorchester, Mass. Located less than two miles from downtown Boston, the DSNI neighborhood had been devastated by arson, disinvestment and dumping, with 1,300 vacant lots by the mid 1980s. At the heart of the neighborhood, the Dudley Triangle was a 64-acre tract that was home to about 2,000 people. The Triangle included approximately 15 acres of vacant land owned by the city of Boston and another 15 acres, or 181 lots, of privately owned vacant land.[5]

DSNI was formed in 1984 and has grown into a collaborative effort of more than 3,600 residents, businesses, nonprofits and religious institutions. In 1987, DSNI adopted a comprehensive revitalization plan focusing on development without displacement, and creating strategic partnerships with individuals and organizations in the private, government and nonprofit sectors. In 1988, they became the only community group in the nation to win eminent domain power, taking advantage of Chapter 121A of the Massachusetts State Statutes. To accomplish this, DSNI became an urban redevelopment corporation to acquire the properties, and a community land trust, Dudley Neighbors Inc., of DNI, to hold the properties. The community land trust will own the land in perpetuity and lease it under long-term ground leases. To preserve future affordability, the ground lease restricts the price at which owners can sell their units to a price increase that is set at 5 percent per year or the rate of inflation, whichever is lower.

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DNI determined that no one would be displaced from a home or business; thus, the organization used eminent domain only to acquire vacant land, not land with structures on it. Though most of the private holdings were tax delinquent, foreclosing on them one by one would be complicated and time consuming. Of the 131 individual owners identified for the 181 privately owned vacant parcels in the neighborhood, at least 81 lived outside the area and many could not be located. Thus, eminent domain was essential to consolidating ownership. A $2 million loan from the Ford Foundation supported the purchase of the privately owned, vacant land. DNI acquired an additional 15 acres of vacant land from the city of Boston for $1.

Today, more than half the 1,300 abandoned parcels have been transformed into more than 400 new affordable houses, community centers, new schools, a community greenhouse, parks, playgrounds, gardens and an orchard. An additional 500 housing units have been rehabbed. DSNI takes a holistic approach to community development. The Dudley PRIDE (people and resources investing in Dudley's environment) Campaign focuses on health, safety and environmental concerns. DSNI also sponsors programs for college mentoring, parenting, home ownership, job skills, daycare providers, youth leadership, entrepreneurship, voter registration and more. DSNI reclaimed land for food production, constructed a community greenhouse and began a Farmers Market. In 1997, DSNI received an American Planning Association Award for housing planning. The Orchard Gardens K–8 pilot school opened in 2003. The Dudley Street Neighborhood Initiative celebrated "20 years of transformation" in 2004 and continues to move forward.[6]

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SERVING EXISTING HOMEOWNERS

The developers of Jefferson Square in Philadelphia dedicated themselves to answering the question: "How can we revitalize a community and serve existing homeowners, the majority of whom earn very low incomes, with as much care and respect as we seek to serve new buyers who earn higher incomes?"[7] To acquire the 275 parcels of contiguous land needed to build 93 houses, Jefferson Square Community Development Corp, or JSCDC, also had to acquire 35 homes occupied by existing homeowners, many of whom were angered and disheartened by the lack of city support and services through the years that had caused their neighborhood to decline.

In six years, JSCDC acquired 57 properties through private purchase, 14 through conveyance of city-owned properties, 45 through institutional conveyance from a now-closed local hospital and 159 through urban renewal condemnation. The use of eminent domain was essential to the acquisition process because it was the only way that they could remove liens and acquire clear title. Jeremey Newberg of JSCDC and Capital Access Inc. calls it "condemnation with a conscience."[8] In fact, several homeowners attended a city council meeting and asked to have their homes condemned because eminent domain provided relocation benefits that they would not have received from a negotiated sale. These residents then reinvested the proceeds of the condemnation back into the project in the purchase of a new home in Jefferson Square. The development moved forward with 100 percent community support. In all, 22 residents chose to buy a new or rehabilitated Jefferson Square house under the relocation program.

Thirty of the 93 homes were targeted to buyers with low to moderate incomes. The remaining units were sold at market-rate sale prices ranging from $209,000 to $249,000—a price affordable to middle-income families earning $45,000 to $85,000, which is roughly 80 to 120 percent of median income. When the sales office opened May 3, 2004, some prospective buyers had camped out for two nights to buy a Jefferson Square home. All 93 units were sold out in four days.

Jefferson Square did not neglect the surrounding community. Organizers made funds available for the rehabilitation of 50 owner-occupied existing row homes, ranging from facade improvement grants to more substantial rehabilitation programs combining grants with loans based on the owner's income. Several existing row homes were purchased, rehabilitated and resold to first-time home buyers for between $110,000 and $145,000. A portion of the old Mt. Sinai Hospital was converted to 37 units of rental housing for seniors, using low-income housing tax credits.

The project managers, Capital Access Inc., served as consultants to the community and managed the construction process. The company attributes the success to its commitment to the community and the level of trust that evolved among community leaders and local residents, as well as to the strong support and sponsorship of state and local officials and municipal agencies. The total project cost was $25 million, and JSCDC raised $5.25 million from private lenders and $10.9 million in subsidies, including funding from the city's Community Development Block Grant program, state of Pennsylvania Housing Finance Agency, Federal Home Loan Bank and Wachovia Bank Regional Foundation.

Jefferson Square Homeowner Relocation Package

- No temporary relocations. No residents moved until their new house was ready.
- 100 percent of net proceeds from the condemnation of the existing house as well as any relocation benefits had to be reinvested in the new house.
- Relocated residents had to live in the new house. Rentals were not permitted.
- Monthly payments were maintained at the same level for the new house as the old house. Relocation buyers still had to pay real estate taxes and homeowners insurance; however, taxes on the new construction were abated for 10 years.
- Relocation buyers took a self-amortizing mortgage for the difference between the fair market value of the new house and the buyer's equity investment. In years one through five, the loan is deferred. In years six through 15, 10 percent of the loan is forgiven each year so that by year 15, 100 percent of the loan is forgiven. If the property is sold before 15 years, the balance of the mortgage must be paid out of the proceeds.

Source: Jefferson Square Neighborhood Revitalization Plan, August 2004

PIZZA WARS

Finding win-win solutions to commercial redevelopment is more difficult. Though most communities refer to the power of eminent domain as a tool of last resort, this situation often is not the case when it comes to commercial properties, but a local agency found an interesting solution for a redevelopment in Pittsburgh. In this instance, Home Depot acquired a closed Sears department store, vacant and owned by the city, to redevelop the property with a larger warehouse superstore. The company needed additional land—including properties occupied by a bar, dry cleaner, nail salon and the popular Vento's Pizzeria—to meet parking requirements. The Pittsburgh Urban Redevelopment Agency, or PURA, hoped to avoid using eminent domain, and apparently negotiated successfully with all of the businesses except Vento's.

This was the third time that Vento's would be forced to move to accommodate urban renewal, but the first time the company actually owned its building. The pizzeria's story was front-page news in the *Wall Street Journal.*[9] Pittsburgh Councilman Bob O'Connor intervened, setting up meetings between Al Vento Sr. and Home Depot officials. Eventually, they worked out an arrangement whereby Vento's property was transferred to Home Depot. Home Depot demolished the old building and built its superstore as well as a new corner restaurant for Vento's. The lease is 100 years and the rent, Vento says, is fairly minimal.

Everyone likes to hear a David and Goliath success story, and this is a good one. The owner of the pizza shop is happy, the neighborhood is happy, and, presumably, Home Depot is happy. Other small business owners—the bar, dry cleaner and nail salon—were displaced, but they were tenants, not owners. Reportedly, they were successfully relocated.

These projects show that a variety of private and public-private partnerships can accomplish redevelopment and revitalization either without eminent domain or with a kinder, gentler, more collaborative use of condemnation as a development tool. Cases also exist where the private sector made acquisitions for right-of-way improvements, and did so more quickly and efficiently than local municipalities, public utilities and transportation agencies could have accomplished. Perhaps they spent a little more money than it would have cost using eminent domain, but no one paid more than they could afford. And when timing is an important consideration, the private sector has the ability to move fast to resolve disputes and get the project underway.

PUBLIC SECTOR OR PRIVATE SECTOR

These successful developments involve a series of public-private partnerships that in most cases are fairly complex. These kinds of partnerships are essential to urban revitalization, despite the fact that many industry observers believe the private sector is more effective at driving real estate development than public agencies. A report by the Reason Foundation states: "Over the past two decades, economic development specialists have recognized that good projects almost always have a significant private sector component because entrepreneurs have a better grasp of market conditions and the long-term viability of certain kinds of projects. In short, the private sector does a better job of leading and managing projects and leveraging public dollars than does the public sector investing on its own."[10]

Private sector development bears with it the expectation of a reasonable return on investment. (In theory, public sector development is also done with the expectation of a return; how reasonable it is, and whether it can be measured, is a topic for another paper.) Even nonprofit developers operating with a variety of grants and subsidies have to cover costs and pay back loans. Development in the private sector has the advantage of flexibility that the public sector does not have or is reluctant to use. Examples include the ability to move a projected right-of-way to accommodate a property owner, give property in exchange for property to be taken, pay more than fair market value, provide more flexible relocation alternatives, provide a replacement property—the list is almost limitless. A private developer also can offset excess costs, or a lower rate of return, from one portion of a project with a better outcome from another portion of the project. A private-sector developer understands the time value of money and the impact of changing market conditions.

The power of eminent domain is part of the public sector's toolbox, though one hesitates to call it a skill because the term implies some proficiency and, more often than not, eminent domain has not been used well.

Nevertheless, there is a limit to how much the private sector can do. The American Planning Association has written: "Many communities have observed through experience that the private sector is most often more nimble, more capable of making appropriate risk/reward decisions and, in general, more effective at being developers or redevelopers than is the public sector."[11] However, the organization notes that private developers and public agencies have "traditionally distinguishable skill sets," and that successful public-private partnerships take advantage of the best that both have to offer.

The power of eminent domain is part of the public sector's toolbox, though one hesitates to call it a skill because the term implies some proficiency and, more often than not, eminent domain has not been used well. "Development happens all the time nationwide through voluntary negotiation rather than by government force," says Dana Berliner, an attorney with the Institute for Justice. "There are also many tools that even the poorest of cities can use to promote development without resorting to eminent domain. Any city can encourage homesteading programs, where individuals who promise to develop can purchase abandoned or tax-delinquent property at a nominal amount. Cities can reduce bureaucratic barriers to permitting, zoning and entrepreneurship. Tax increment financing, tax incentives, Main Street programs, small loans, infrastructure improvements, and infill projects all can spur development without forcing someone to give up what is rightfully theirs."[12]

These are all good ideas for incremental improvements, but they disregard the fact that it is difficult to generate significant private investment in areas that are perceived as blighted, unsafe or deteriorating. Though it may be naive to assume large scale revitalization can occur ithout ever resorting to eminent domain, it is clear that a more socially responsible approach to redevelopment is necessary for creating neighborhoods that serve the city residents rather than relocate problems to less visible locations.

Equally important is that the social and economic instability that caused blighted neighborhoods is not a problem that has a real estate solution. Safe, affordable housing does help, but to be successful, a revitalization program must provide an opportunity for residents to break the cycle of poverty that has placed them in the neighborhood in the first place. Public agencies and private developers can work together to create the kind of structural changes that yield lasting solutions. ■

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ENDNOTES

1 *Berman v. Parker,* 348 U.S. 26 (1954).

2 Brief of the American Planning Association et al, as Amici Curiae in Support of Respondents, *Kelo v. City of New London.*

3 *Baltimore's New Eastside Community,* 2003 – 2004 Annual Report, (East Baltimore Development Inc., 2004). Available at www.ebdi.org/Newsroom/Newsroom.asp.

4 Charles Cohen, "Moved and Shaken," *(Baltimore City Paper,* Feb. 22, 2006).

5 Peter Medoff and Holly Sklar, *Streets of Hope* (South End Press, 1994).

6 Dudley Street Neighborhood Initiative, *History and Organization / DSNI Historic Timeline,* www.DSNI.org.

7 Jeremey Newberg, *Jefferson Square Neighborhood Revitalization Plan* (Capital Access Inc., August 2004). Available through the author at 215/551-2000.

8 Jeremey Newberg, "Update 'Blight' and Revitalization" *(The Philadelphia Inquirer,* Nov. 18, 2005).

9 Paulette Thomas, "Pittsburgh's Fix: A Small-Business Man Survives Many Stabs at Urban Renewal" *(Wall Street Journal,* Aug. 4, 1998).

10 Samuel R. Staley, Ph.D., and John P. Blair, Ph.D., *Eminent Domain, Private Property, and Redevelopment: An Economic Development Analysis* (The Reason Foundation, February 2005). Available at www.reason.org/policystudiesbysubject.shtml.

11 *Policy Guide on Public Redevelopment,* ratified April 25, 2004 (American Planning Association, 2004).

12 Dana Berliner, "Imminent Demise or Eminent Domain? Changes Needed to Halt Abuses" *(The Philadelphia Inquirer,* Feb. 26, 2006).