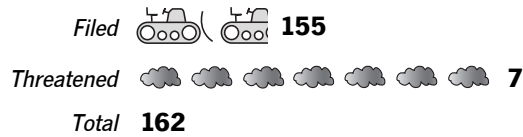




**Known Condemnations  
Benefiting Private Parties\***



**Known Development  
Projects w/Private  
Benefit Condemnations\***



Legend  =100  =1  =1

## OVERVIEW

Unfortunately for the citizens of Kansas, their state is one of the worst abusers of eminent domain, especially in comparison to other states with similar population size. The Kansas Supreme Court in 1998 held that taking the homes of 150 families to make way for a private racetrack was a “public” purpose. Other cities, including Independence and Topeka, have followed suit, and the City of Merriam condemned a used car dealership for a higher-priced BMW dealership. It looks like Kansas home and business owners just better hope that their property doesn’t draw the attention of any covetous developers, because Kansas cities are more than willing to use eminent domain on developers’ behalf.

\*These numbers were compiled from news sources. Many cases go unreported, and news reports often do not specify the number of properties against which condemnations were filed or threatened.

## PRIVATE USE CONDEMNATIONS

### *Kansas City*

In order to make way for construction of the NASCAR-owned Kansas International Speedway, Wyandotte County in 1998 condemned property belonging to 150 families within the 1,200-acre tract. Owners of 30 of the parcels challenged the takings in court. During the litigation, the owners managed to delay the project for several years, because Kansas law bars bond issuance for a project when litigation is pending. In the end, the Kansas Supreme Court upheld the condemnations, ruling that building a racetrack is a valid public purpose.<sup>244</sup> The homeowners received 125 percent of the fair market value of their homes, but many were nonetheless angry that they lost their homes for a privately owned racetrack.<sup>245</sup>

### *Merriam*

In 1998, the City of Merriam condemned William Gross's property, which he leased to a used car dealership, so that Gross's neighbor, a BMW dealership, could expand.<sup>246</sup> The City sold Gross's property to Baron's BMW for the same price it paid Gross and gave Baron's \$1.2 million in tax-increment financing to build a new BMW dealership and add a Volkswagen dealership. The Merriam City Council said the project served the public interest because the City would make \$500,000 per year in sales tax revenues from the BMW and Volkswagen dealerships.<sup>247</sup>

**In order to make way for construction of the NASCAR-owned Kansas International Speedway, Wyandotte County in 1998 condemned property belonging to 150 families within the 1,200-acre tract. Owners of 30 of the parcels challenged the takings in court.**

As if it weren't bad enough to replace a used car dealership with a new car dealership, Gross had proposed using the site for a new Mitsubishi dealership, which would have raised the site's yearly tax revenue from \$40,000 to \$150,000. The City refused. It wanted the BMWs. Or, as the mayor explained, "The Baron BMW development will generate an awful lot of taxes. The property in Mr. Gross' hands has not produced ...." Gross depended on the income from his dealership for his retirement.<sup>248</sup> At the next election, voters responded by ousting half of the City Council.<sup>249</sup>

### *Topeka*

When Target wanted to build a new distribution center, a number of Kansas towns and cities happily vied for the chance to host the giant corporation. The courtship process was veiled in secrecy, and Target's developer would not even inform the various competing cities the name of the company seeking the new

<sup>244</sup> See *State ex rel. Tomasic v. Unified Government*, 962 P.2d 543 (Kan. 1998).

<sup>245</sup> John T. Dauner & Steve Nicely, "Speedway Wins High-Court Test; Ruling Approves Condemnation Powers, 125 Percent Valuation," *The Kansas City Star*, July 11, 1998, at A1.

<sup>246</sup> Dean Starkman, "Condemnation Is Used to Hand One Business Property of Another," *Wall Street Journal*, Dec. 2, 1998, at A1.

<sup>247</sup> Tim Baxter, "Court Sets Pace on Baron Case," *The Kansas City Star*, Sept. 5, 1998, at Zone 1.

<sup>248</sup> Brad Cooper, "Clash Over Condemnation; Merriam Decision Raises a Ruckus," *The Kansas City Star*, Aug. 14, 1998, at C1.

<sup>249</sup> Martin Wooster, "Government as Land-Grabber," *The American Enterprise*, June 1, 2001, at 57.

facility.<sup>250</sup> Eventually Target chose Topeka, in part because of that City's commitment to spend over \$2 million helping the company acquire 11 parcels within a 207-acre tract that would later be tied in to a proposed 400-acre commercial/industrial park.<sup>251</sup> Although most landowners willingly sold their land to the County, Robert Tolbert and General Building Contractors refused to part with their four properties. So in April 2002, a Shawnee County district judge ruled that the County could use its eminent domain powers to acquire a 4,000-square-foot office building owned by General Building Contractors, as well as three lots owned by Robert Tolbert.<sup>252</sup> Both aggrieved owners filed appeals from the court's decision.<sup>253</sup>

<sup>250</sup> Alicia Henrikson & Michael Hooper, "Mystery, Intrigue at Core of Deal," *Topeka Capital-Journal*, June 15, 2002.

<sup>251</sup> Steve Fry, Michael Hooper & Alicia Henrikson, "Sliver of Land Focus of Fight," *Topeka Capital-Journal*, Apr. 20, 2002.

<sup>252</sup> "Judge Rules for County in Land Deal," *Topeka Capital-Journal*, Apr. 27, 2002.

<sup>253</sup> Alicia Henrikson, "Dispute: County Used Eminent Domain Process to Take Land for Target Site," *Topeka Capital-Journal*, June 21, 2002.