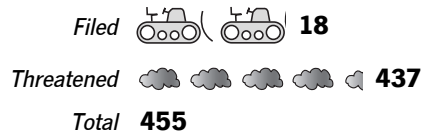




**Known Condemnations
Benefiting Private Parties***



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



State Record of Condemnations Filed, for All Purposes:[†] 1,841

Legend  =10  =100  =10

OVERVIEW

Missouri has one of the worst records on eminent domain abuse in the country. Cities and towns across the state regularly use eminent domain for the benefit of private parties. There have been at least 13 instances in the past five years. Missouri also allows private redevelopment corporations to condemn property.³⁸⁵ And Missouri courts, despite an express constitutional admonition that courts should exercise their own judgment on public use,³⁸⁶ nevertheless approve nearly every condemnation, no matter how private the purpose or how unnecessary the condemnation. Missouri law and practice desperately need reform to stem the tide of eminent domain abuse.

*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.

[†] Missouri Judiciary (includes condemnations for traditional public uses).

³⁸⁵ Rev. Stat. Mo. § 353.130.

³⁸⁶ Mo. Const. art. I, § 28.



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PRIVATE USE CONDEMNATIONS

Brentwood

The Town of Brentwood has been attempting for the last five years to redevelop the Rankin-Evans neighborhood. In October 2000, the local board of aldermen voted to label the neighborhood as “blighted,” and approved a tax abatement measure that would allow Winther Investment, Inc., a private developer, to demolish 27 existing homes and businesses that sit on 7.5 acres of land. Winther wants to build a 350-unit apartment complex on the site.³⁸⁷ The aldermen said they would use eminent domain to help the developer acquire the land needed for the project, but only after a substantial number of owners have agreed to sell.³⁸⁸ By March 2001, over 70 percent had reached agreements with Winther, leaving only 12 remaining homes and businesses. At that point, Winther could begin condemning properties and had filed at least one condemnation.³⁸⁹ Further developments were not reported.

Creve Coeur

A citizens’ advisory committee in 2001 created a redevelopment plan that called for replacing two car dealerships, the Creve Coeur Country Club and the American Legion with a mixture of commercial office and high-density residential space. The private developer involved says the plan is needed as a “road map” for the City’s future, and that it would help the City avoid spot zoning and create aesthetically pleasing areas in which similar types of businesses are clustered. One of the car dealerships lies in an area slated to become Creve Coeur’s future Town Center, which the plan contends will be “the place to be’ – a place that people gravitate toward and a place for public gatherings and celebration.” The owners of both car dealerships vow to oppose the use of eminent domain to take their property, which is earmarked under the plan.³⁹⁰ In March 2002, the City tried to appease the affected businesses by adding language to the plan that says “existing businesses should be included in the planning process.” Of course, this feeble assurance of inclusion in discussions is no guarantee against eminent domain.³⁹¹

Creve Coeur

Elsewhere in Creve Coeur, the City Council in June 2002 decided to consider a private developer’s plan to build a new Walgreens store on the site of a small shopping center. Though the developer vows that his pro-

³⁸⁷ Matt Sorrell, “Brentwood OKs Redevelopment, Sale of Unused Property; Rankin-Evans Area Will Be Blighted,” *St. Louis Post-Dispatch*, Oct. 23, 2000, at West Post 4; Phil Sutin, “Brentwood Residents Are Persuaded to Sell Homes to Developer,” *St. Louis Post-Dispatch*, June 15, 2000, at West Post 1.

³⁸⁸ Phil Sutin, “Brentwood Residents Are Persuaded to Sell Homes to Developer,” *St. Louis Post-Dispatch*, June 15, 2000, at West Post 1.

³⁸⁹ Michelle M. Meyer, “Brentwood Homeowners Angered by Plan to Condemn Their Houses,” *St. Louis Post-Dispatch*, Mar. 26, 2001, at West Post 3.

³⁹⁰ “Car Dealer Weber Fights Creve Coeur Master Plan,” *St. Louis Business Journal*, Nov. 30, 2001, at 5A.

³⁹¹ Phil Sutin, “Creve Coeur Adds Sentence to Plan to Ease Business Worry,” *St. Louis Post-Dispatch*, March 21, 2002, at West Post 1.

Vacate Your Premises Now; Your Government Might Want It Someday

In addition to taking land for planned private projects, local governments sometimes take land just because they think they might want the land sometime in the future. Unlike the court deciding the Kansas City, Missouri, case, most courts reject attempts by government to take property with no idea what to do with it. Connecticut courts rejected the condemnation of a yacht club in Bridgeport and homes in New London because the cities had no plans for the property. So did a Michigan court reviewing a condemnation supposedly for a stadium in Detroit.

It should come as no surprise that when the government takes property hoping to use the property sometime, the land often sits empty. That's what happened in Dallas, Texas, where the City condemned an apartment building, kicked out all the residents, and now has left the building standing empty. Phoenix, Arizona, condemned a grocery store and ended up with a vacant lot. One project in Maplewood, Missouri, is being built now on downtown property that has remained vacant since the City condemned it for "urban renewal" 30 years ago.

Projects also fail when developers opt out of a project or decide the deal isn't sweet enough for them. Cincinnati, Ohio, ended up with a parking lot when Nordstrom backed out of a planned development. Elgin, Illinois, has been condemning a local rare coin shop even though the development project fell through. Atlantic City, of course, has condemned many properties for casinos that were never built. East Hartford forced a local bakery to close under threat of condemnation but also ended up with no developer, no bakery and no project. And the New York Stock Exchange decided it didn't need a new headquarters after the agency condemned all the property. Now New York is returning some buildings and footing a huge bill. Even the threat of condemnation can destroy neighborhoods, like Sunset Hills, Missouri, where many homeowners in a once closely-knit neighborhood sold their homes under threat of condemnation to a developer for a project that never materialized.

Far too often, owners lose their homes and businesses for projects that don't get built or that never existed in the first place.

Sources: All of these situations are described in this report under their respective cities.

posal will not involve taking any houses, he admits that he might ask the City to use eminent domain to help him assemble properties for the project.³⁹²

Independence

Ken McClain, a local lawyer and real estate developer, wanted to build the Lakeside Shopping Center. The Independence City Council agreed, so the Council granted McClain the authority to condemn three properties, including a Checkers and a Pizza Hut, that stood in the way of the new shopping center. All three were forced to sell their property to McClain, and a privately owned shopping center now stands in their place.³⁹³

Kansas City

The idea for the Midtown Marketplace in Midtown Kansas City began in 1992. Eight years passed without any construction on the Marketplace. According to a report in 1997, the City had obtained title to all the property and cleared the site. Some property had been condemned for the project. Eventually, Home Depot agreed to open a store, and planners approached Costco. Costco was interested but almost dropped out of the project. City officials then promised to condemn two more businesses in the area, and Costco agreed to stay in the project. One business sold, and the City condemned the other, a temporary labor agency. Construction on the project began in 2000.³⁹⁴

Kansas City

Kansas City claimed it wanted to expand its airport, and the City Council passed an ordinance authorizing the City to acquire eight parcels of land and to use eminent domain "if necessary." The City's

³⁹² Phil Sutin, "Council Agrees to Consider Projects in Creve Coeur; Redevelopment Sought at Two Locations on Olive Street," *St. Louis Post-Dispatch*, June 10, 2002, at West Post 3.

³⁹³ Trisha L. Howard, "McClain Wins Power of Eminent Domain," *The Kansas City Star*, Apr. 5, 2000, at Independence Star 1.

³⁹⁴ Joe Gose, "Vigor, Delay Both Affect Glover Plan," *The Kansas City Star*, March 4, 1997, at D1; Mark Couch, et al., *The Kansas City Star*, June 28, 2000, at City 14.

...owners succeeded in forcing the referendum, but the project was approved by a large majority. As Mayor Mark Langston explained, “We decided not to raise property taxes, but unfortunately we had to get rid of 150 homes.”

attempts to purchase the land were unsuccessful. The owners did not want to sell. When the City then condemned the property, all eight landowners challenged the taking in court. At trial, the City revealed that it wanted the properties in question not for the expansion of actual airport facilities, but to accumulate land for future aviation-related commercial/industrial uses by private businesses. The City had already tried to attract McDonnell-Douglas to build a facility at the airport, but this effort ultimately failed. Now the City wanted the land in case another airport-type business came along looking for free land.

The trial court decided in favor of the landowners, holding that the City’s taking was not for a valid public purpose. On appeal, the City argued that airport-related commerce and industry are necessary for the operation of a major airport. The Missouri Court of Appeals bought the City’s argument and reversed the trial court’s decision, ruling that the City’s desire to compete in the future with other cities trying to attract industry constitutes a valid public necessity in the present. The appeals court cited no relevant authority in making this determination, but rather justified its holding under the proposition that Missouri law allows courts to use a “broad and flexible approach” in deciding what constitutes a public use.³⁹⁵ This ruling runs contrary to the legal standard used by most other states that property may be condemned only for a reasonably foreseeable future public use. In this case, with no plan on the horizon and no guarantee that the City would ever find a developer, there was no foreseeable use at all. Missouri courts, however, seem determined to go further than those in almost any other state in approving condemnations.

Maplewood

The Town of Maplewood wanted to lure developers as a means of increasing tax revenues and the City budget. In May 2001, the Maplewood City Council announced that it would offer up chunks of the City to any developer promising to deliver tax revenue.³⁹⁶ Maplewood officials approved a plan submitted by Pace Properties to build a Costco and Home Depot. THF Realty also submitted a proposal for a Sam’s Club and Wal-Mart at the same location, but Maplewood liked the Costco project better.³⁹⁷ Eventually, Maplewood officials switched to THF Realty’s plan, for which THF wanted to demolish more than 120 homes and apartments. In May, 2002, the Maplewood City Council declared the area blighted, even though it was made up of tidy homes with well-kept lawns.³⁹⁸

Many of the residents loved their neighborhood and did not want to move.³⁹⁹ The energetic but politically weak property owners who stood to lose their homes mounted a petition drive to put a referendum on the November 2002 ballot regarding the condemnation and tax incentive issues.⁴⁰⁰ The owners succeeded in

³⁹⁵ See *City of Kansas City v. Hon*, 972 S.W. 2d 407, 414 (Mo. App. 1998).

³⁹⁶ Safir Ahmed, “Selling Out: To Save Maplewood, Some Residents Have to Go,” *Riverfront Times* (St. Louis, MO), Nov. 28, 2001.

³⁹⁷ Kathie Sutin, “Homeowners Want Bigger Buyout,” *St. Louis Post-Dispatch*, Sept. 3, 2001, at West Post 1.

³⁹⁸ Greg Freeman, “Residents Fight City Plan to Raze Homes, Make Way for Wal-Mart,” *St. Louis Post-Dispatch*, June 30, 2002, at C3.

³⁹⁹ *Id.*; Safir Ahmed, “Selling Out: To Save Maplewood, Some Residents Have to Go,” *Riverfront Times* (St. Louis, MO), Nov. 28, 2001.

⁴⁰⁰ Greg Freeman, “Residents Fight City Plan to Raze Homes, Make Way for Wal-Mart,” *St. Louis Post-Dispatch*, June 30, 2002, at C3.

The Thomsons have lived on their 350-acre dairy farm for five generations. Currently, 76-year old Robert “Bud” Thomson and his five children and four grandchildren live and work on the farm. The City stood to make a projected \$1.7 million in additional tax revenue by turning the farm into an industrial park.

forcing the referendum, but the project was approved by a large majority.⁴⁰¹ As Mayor Mark Langston explained, “We decided not to raise property taxes, but unfortunately we had to get rid of 150 homes.”⁴⁰²

Since the November 2002 referendum victory, THF Realty has signed contracts with some of the owners and was preparing to initiate condemnation actions against the property owners who would not sign. However, Alan Bornstein of THF hinted after the election that the developer may be hedging on going forward with the project, saying that while he expects the shopping center to be completed by September 2004, “[t]here are so many things that happen every day that could have an impact on the development.”⁴⁰³

Maplewood

In 2001, the City of Maplewood approved a declaration of blight for a 35,000-square foot building formerly occupied by a Shop ‘n Save grocery store. This measure taken by the City Council allowed the City to condemn the supermarket property and hand it over to another private developer.⁴⁰⁴ In September 2001, the City Council approved the sale of the site to the St. Louis Brewery, which built a microbrewery and restaurant there.⁴⁰⁵

Springfield

In a closed meeting on October 11, 1999, the Springfield City Council unanimously voted to condemn the Thomson family farm in order to keep a proposed industrial park within the bounds of the Springfield school district. The Thomsons have lived on their 350-acre dairy farm for five generations. Currently, 76-year old Robert “Bud” Thomson and his five children and four grandchildren live and work on the farm. The City stood to make a projected \$1.7 million in additional tax revenue by turning the farm into an industrial park. The project also had the mayor’s unqualified support.⁴⁰⁶

However, the citizens of Springfield immediately came to the Thomsons’ rescue. In less than a week after its decision, the City received 1,750 phone calls protesting the condemnation. On October 15, 1999, the City Council held another meeting on the matter and this time voted unanimously against taking the Thomson farm. The mayor of Springfield declared that he had decided there were many other suitable sites within the school district that could be allocated for the industrial park,⁴⁰⁷ raising the question, “Why did the City ever decide to take the Thomsons’ farm?”

⁴⁰¹ Phil Sutin, “Bayless School District Voters Reject \$5 Million Bond Issue,” *St. Louis Post-Dispatch*, Nov. 7, 2002, at South Post 1.

⁴⁰² Kathie Sutin, “Loss of Neighbors Tempers Joy Over Referendum in Maplewood,” *St. Louis Post-Dispatch*, Nov. 11, 2002, at West Post 5.

⁴⁰³ Kathie Sutin, “Developer Hedges on Maplewood Buyouts; Events Could Block Project, He Tells Residents,” *St. Louis Post-Dispatch*, Nov. 21, 2002, at West Post 1.

⁴⁰⁴ Glen Sparks, “Brewery, State Vie for Site in Maplewood,” *St. Louis Post-Dispatch*, July 2, 2001, at West Post 1.

⁴⁰⁵ Kathie Sutin, “Maplewood OKs Microbrewery,” *St. Louis Post-Dispatch*, Sept. 6, 2001, at West Post 1.

⁴⁰⁶ Doug Johnson, “Farm Scene: Missouri City Wants to Boot Dairy Farm for New Industrial Park,” *AP Wire*, Oct. 15, 1999.

⁴⁰⁷ “Springfield Changes Mind, Admits Mistake, Won’t Take Dairy Farm,” *AP Wire*, Oct. 17, 1999.



St. John

In 1999, leaders of the Town of St. John began suggesting that the town should attract a large shopping center that would generate hefty tax revenues. In 2000, representatives of the Westin Group, a real estate developer, began approaching homeowners along Bristol Avenue with an offer to pay them \$500 to not sell their property for 18 months. This made many local residents nervous, as they began to suspect that the developer was trying to “buy” enough time to secure most of the properties in the area to build the rumored shopping center. Along with apprehension about the developer’s motives came fear that the town would use eminent domain in favor of any proposed development.⁴⁰⁸

In November 2000, Walpert Properties, a division of the Westin Group, presented to the Town its proposal for St. John Crossing, a \$17 million shopping center that would include a Shop ‘n Save grocery store, a restaurant and several smaller shops. The town liked Walpert’s plan, and approved the use of tax increment financing, as well as the use of eminent domain to acquire properties for the development. Walpert began offering homeowners in the area \$85,000 each to move off of their current property.⁴⁰⁹

While some residents say that the price offered is more than fair, others argue that \$85,000 does not begin to compensate for what they will have to go through in order to move. Demolition work for the project began in November 2001, despite the fact that the developer had yet to reach agreements with one homeowner and two commercial property owners. The Town sent letters to the remaining owners indicating that it was beginning eminent domain proceedings against them.⁴¹⁰ News reports do not indicate whether the remaining owners settled or were condemned.

By April 2002, residents near the future shopping center were complaining. Not only had they been forced to endure the early-morning construction noise from the behemoth next door, but residents whose houses face the back of the new shopping center noticed that vibrations from the construction have caused cracks to form on their walls and ceilings, and even caused some sewage pipes to rupture.⁴¹¹

St. Louis

In December 2001, the St. Louis Board of Aldermen approved a bill that gives the City the authority to condemn the St. Louis Centre, a downtown shopping mall, if current owners do not redevelop the mall in a way that satisfies City leaders.⁴¹² The mall, which opened in 1985, was once the nation’s largest downtown mall, but



⁴⁰⁸ Kathie Sutin, “St. John’s Bristol Avenue Residents Fear Eminent Domain; Developer Is Planning to Build Shopping Center,” *St. Louis Post-Dispatch*, May 22, 2000, at North Post 1.

⁴⁰⁹ Kathie Sutin, “Pace of Home Buyouts for St. John Crossing Project Is Picking Up; Slow Progress Irked Residents,” *St. Louis Post-Dispatch*, Oct. 22, 2001, at North Post 7.

⁴¹⁰ Kathie Sutin, “St. John Center Work to Begin; Project Has Overcome Several Delays, Needs Agreements on Some Land,” *St. Louis Post-Dispatch*, Nov. 5, 2001, at North Post 1.

⁴¹¹ Kathie Sutin, “St. John Residents Say Construction Work Is Damaging Homes,” *St. Louis Post-Dispatch*, Apr. 8, 2002, at North Post 3.

⁴¹² Charlene Prost, “Slay Touts Projects that Could Revive Downtown Tourism,” *St. Louis Post-Dispatch*, Dec. 11, 2001, at C6.



today only the lower two floors contain many retail tenants. If the City takes the mall through eminent domain, it plans to sell the property to other private developers for upscale retail use.⁴¹³ As of December 2002, the mall is for sale.⁴¹⁴ The City still retains the power of eminent domain.

St. Louis

In order to assist a developer planning to convert the eight-story Vanguard Building into loft apartments with a restaurant on the ground floor, the City condemned an adjacent privately-owned lot. The Vanguard renovation project had been stalled for two years because the building lacked enough parking to suit the developer's needs. It would have cost more money than the developer wanted to spend to build a parking area for tenants in the redeveloped building. However, thanks to St. Louis City officials, the developer was able to take the land it wanted for parking, allowing it to build a more profitable venture, without the hassle of having to purchase directly from the lot's owner.⁴¹⁵

Sunset Hills

The Sunset Manor subdivision in the Town of Sunset Hills has 254 homes, which are mostly tidy little brick-and-frame dwellings.⁴¹⁶ Town leaders decided the neighborhood would look better if those houses were bulldozed and replaced by commercial development. The Sansone Group, a private developer, presented the Town with a plan to build a \$115-million, 57-acre shopping center on the Sunset Manor site. The first phase would include 22 acres of retail stores, while the second would include 16 acres of offices and 19 acres of residential units (112 apartments, 44 "villas" and 56 condominiums). Mayor James Hobbs and other Town leaders heartily endorsed the planned development, and pledged to give the developer tax-increment-financing subsidies totaling \$46 million, as well as the use of eminent domain to force unwilling sellers out of their homes.⁴¹⁷ Some owners wanted to move, but many had lived in the neighborhood for years and were unhappy about being forced out. As a result, the once tight-knit neighborhood became bitterly divided.

The Sansone Group went on to purchase more than half of the homes in Sunset Manor. But in June 2002, the local Board of Aldermen abruptly changed its mind about bulldozing neighborhoods in favor of retail development. The Board voted unanimously to reject the Sunset Manor proposal, though it reached its decision not because of any aversion to the idea of seizing and destroying homes, but because the developer could not line up enough interested retailers.⁴¹⁸

⁴¹³ Mark Schlinkmann, "Slay Wants City to Have Power to Force St. Louis Centre Sale," *St. Louis Post-Dispatch*, Nov. 3, 2001, at News 13.

⁴¹⁴ Chern Yeh Kwok, "Gundaker Commercial Has Contract on Dillard's Landmark Downtown," *St. Louis Post-Dispatch*, Dec. 14, 2002, at Business 4.

⁴¹⁵ Jerry Berger, "City, County Put Final Touches on Study for Revitalization of Area Around Skinner-King," *St. Louis Post-Dispatch*, July 23, 2002, at A2.

⁴¹⁶ Bethany Halford, "Disappointed or Relieved, Sunset Manor Residents Resume Lives," *St. Louis Post-Dispatch*, June 20, 2002, at South Post 1.

⁴¹⁷ Theresa Tighe, "Despite Some Reluctance, the Buyout Goes On in Sunset Hills," *St. Louis Post-Dispatch*, Apr. 22, 2002, at South Post 1.

⁴¹⁸ Bethany Halford, "Disappointed or Relieved, Sunset Manor Residents Resume Lives," *St. Louis Post-Dispatch*, June 20, 2002, at South Post 1.

