

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Karin Brownlee at 8:30 A.M. on January 31, 2006 in Room 123-S of the Capitol.

All members were present except:

Laura Kelly- excused

Committee staff present:

Kathie Sparks, Kansas Legislative Research Department
Audrey Dunkel, Kansas Legislative Research Department
Helen Pedigo, Revisor of Statutes
Jackie Lunn, Committee Secretary

Conferees appearing before the committee:

Senator Dennis Pyle
Jerry Morgan-Jerry's Bike Shop
David Morgan-Jerry's Bike Shop
John Todd-Citizen in the Real Estate business
Steven Anderson-Institute of Justice
Alan Cobb-Americans for Prosperity
Brent Haden-Kansas Livestock Association
Terry Holdren-Kansas Farm Bureau
Ron Gaches-Coalition for Kansas Job Growth
Tim Danneberg-City of Olathe
Bill Yanek-Kansas Associations of Realtors

Others attending:

See attached list.

Chairperson Brownlee opened the hearing on **SB 360--Eminent domain; prohibition against tax incentive use**, by introducing Helen Pedigo, Revisors office, to review the KELO decision. Ms. Pedigo presented written testimony. (Attachment 1)

Upon the conclusion of Ms. Pedigo's review, Chairperson Brownlee introduced Senator Dennis Pyle to give his testimony. Senator Pyle offered written testimony. (Attachment 2) Senator Pyle stated **SB 360** is a sweet and sour bill. It leaves eminent domain in the governmental tool box while decoupling the use of eminent domain from use with economic incentive tools. As another way of putting this, **SB 360** builds a fence between the use of eminent domain and the use of tax based incentives; "Good fences make good neighbors". Many fences are being torn down today. In closing, Senator Pyle urged the Committee to pass the bill out favorably.

Chairperson Brownlee introduced Jerry Morgan, Jerry's Bike Shop to give his testimony. Mr. Morgan presented written testimony. (Attachment 3) Mr. Morgan is a Bike Shop owner in Topeka and is directly effected by eminent domain. He feels this bill is necessary to stop the pillage of American business and property owners.

Chairperson Brownlee then introduced Mr. Morgan's son, David Morgan. Mr. David Morgan did not present written testimony. He stated that he had been involved with Jerry's Bike Shop most of his life and knows that it is a thriving business. He stated the property on which Jerry's Bike Shop is located, is being taken by eminent domain for the College Hills project in Topeka. He is in favor of this bill to help prevent the pillage of American business and property owners.

Chairperson Brownlee then introduced John Todd, a private citizen in the real estate business, to give his testimony. Mr. Todd presented written testimony. (Attachment 4) Mr. Todd stated he is a real estate broker and land developer in Sedgwick County. He is also a volunteer coordinator for Americans For Prosperity, and a member of the Wichita Independent Business Association. He stated he is opposed to cities, counties and state agencies using their eminent domain power to force someone to unwillingly sell their property so it can be turned over to someone else for economic development. In the absence of the passage of eminent domain legislation that prohibits this practice, Mr. Todd supports passage of **SB 360**.

CONTINUATION SHEET

MINUTES OF THE Senate Commerce Committee at 8:30 A.M. on January 31, 2006 in Room 123-S of the Capitol.

Chairperson Brownlee introduced Steven Anderson, Castle Coalition Coordinator for the Institute for Justice, to give his testimony. Mr. Anderson presented written testimony. (Attachment 5) Mr. Anderson stated the Castle Coalition is a nationwide network of grassroots citizens committed to ending eminent domain abuse through outreach and activism. He also stated eminent domain abuse is not just associated with abstract notations of property rights—it affects real people, in cities and on farms, and much more. Kansas has a historic opportunity to reverse years of exploitation and misuse of the eminent domain power by joining states around the country and passing significant and substantial eminent domain reforms. At last count, over 40 states have either passed or are considering passing laws to stop the abuse of eminent domain.

Next, Chairperson Brownlee introduced Alan Cobb representing the Americans for Prosperity in Kansas. Mr. Cobb presented written testimony. (Attachment 6) Mr. Cobb stated they are in favor of **SB 360**. The taking of private property by government should be rare and for true public purposes such as roads, schools, parks and hospitals. **SB 360** would limit government-granted advantages to private real estate developers involved in eminent domain proceeds and thus would somewhat limit selected private developers from having too many unfair advantages. Even with **SB 360** these developers would still have the advantage of eminent domain helping them to accomplish what they can not in an open market place.

Upon the conclusion of Mr. Cobb's testimony, Chairperson Brownlee introduced Brent Haden representing the Kansas Livestock Association, to give his testimony. Mr. Haden presented written testimony. (Attachment 7) Mr. Haden stated KLA has a long-standing history of defending the private property rights of individuals, and the exercise of eminent domain powers is an issue of great importance to their members. They have become particularly concerned about the growing practice of governments, using eminent domain powers to take property from one private entity for transfer to another private entity. To conclude, he stated, private property rights are a top priority for KLA, and they will continue to ask for reform to end the practice of taking property from one person for transfer to another person.

Chairperson Brownlee then introduced Mr. Terry Holdren, Kansas Farm Bureau to give his testimony as a proponent for **SB 360**. Mr. Holdren presented written testimony. (Attachment 8) Mr. Holdren stated the members of KFB have long been outspoken about intrusion and interference with private property rights by governments, especially when the action results in land being taken from one owner and subsequently conveyed to another under the auspices of economic development. KFB policy, developed at the grassroots level, clearly states that eminent domain procedures should be used only for legitimate governmental purposes. It is our belief that these practices are not legitimate uses of the power and should be limited by both Constitutional and statutory protections. In closing Mr. Holdren stated the current statutes authorizing eminent domain are inadequate, favoring the condemning authority over the landowner. Your efforts to address this crisis are critical and appreciated.

Upon the completion of Mr. Holdren's testimony the Chair opened the floor for questions of the proponents of the bill. Being no questions, Chairperson Brownlee introduced Ron Gashes, Coalition for Kansas Job Growth, to give his testimony as a opponent on **SB 360**. Mr. Gashes presented written testimony. (Attachment 9) Mr. Gashes stated restrictions on the use of eminent domain are unnecessary. The use of eminent domain for economic development is rare. In rural Kansas, where land is plentiful and jobs are scarce, there is seldom any need to use eminent domain to create an industrial or commercial project. Mr. Gashes cited cases which eminent domain was the last resort for an economic growth project. Without the use of eminent domain economic growth in Kansas would be very slow. In closing, Mr. Gashes stated the Coalition members are experts in economic development and deeply committed to their communities. They support Kansas and Kansans and are opposed to **SB 360**.

Chairperson Brownlee introduced Tim Danneberg, City of Olathe, to give his testimony as an opponent to **SB 360**. Mr. Danneberg offered written testimony. (Attachment 10) Mr. Danneberg stated though the City of Olathe has never used eminent domain for economic development, it is viewed as an important tool for the types of major economic development projects that result in significant new investment, revenue and new jobs for Kansas. In closing, Mr. Danneberg stated the City of Olathe strongly opposes **SB 360** and supports continuing to allow local elected officials to responsibly use eminent domain for projects that create thousands of jobs and hundreds of millions of dollars in investment in our state.

CONTINUATION SHEET

MINUTES OF THE Senate Commerce Committee at 8:30 A.M. on January 31, 2006 in Room 123-S of the Capitol.

Chairperson Brownlee introduced Bill Yanek representing the Kansas Association of Realtors to testify as an opponent on **SB 360**. Mr. Yanek presented written testimony. (Attachment 11) Mr. Yanek stated the KAR adopted agenda to ensure that any legislative action impacting the use of eminent domain in Kansas balances private property rights with the need for economic development. KAR believes statutory limitations on the use of eminent domain would buttress private property rights and reinforce the reasonable expectation of impacted property owners. They ask that the Kansas Legislature consider mandating an increased level of scrutiny when eminent domain is used for economic development purposes, which would make a condemnation of projects for economic development purposes more difficult to do.

Chairperson Brownlee opened the floor for questions from the Committee for the opponents of the bill. Being no questions or discussion, Chairperson Brownlee announced she was leaving the hearing open and would have the testimony of Don Moler, League of Kansas Municipalities, on another day. She then turned the Committee's attention to the written only testimony of opponents of the bill which included; Ashley Sherard Lenexa Chamber; (Attachment 12) Christi Caldwell, Topeka Chamber; (Attachment 13) Bob Vancrum, Greater Kansas City Chamber; (Attachment 14) Bill Frost, City of Manhattan; (Attachment 15) Diane Costello, Johnson County Public Policy Council; (Attachment 16) and Andrew Nave, Johnson County Partnership, (Attachment 17) Wes Ashton, Overland Park chamber. (Attachment 18)

Chairperson Brownlee adjourned the meeting at 9:30 a.m. with the next scheduled meeting being on Wednesday, February 1, 2006 at 8:30 a.m. in room 123 S.

**Kansas Legislator
Briefing Book
2006**



Local Government

P-2

Eminent Domain

Other Local
Government reports
available:

P-1

Home Rule

Local Government

P-2 Eminent Domain

Eminent domain, in its simplest terms, is the inherent power of a governmental entity to take private property and convert it to public use. More specifically, it is the power of a public entity to take private property without the owner's consent, conditioned upon the payment of just compensation. Eminent domain is a right founded on the law of necessity which is inherent in sovereignty and essential to the existence of government.

The power of eminent domain belongs exclusively to the legislative branch and to those entities or individuals authorized by statute to exercise the power.

The government's exercise of the power of eminent domain is subject to several important constitutional limits, including the requirement for payment of just compensation and the requirement that the property owner be granted due process of law, including notice and an opportunity for a hearing.

U.S. Supreme Court *Kelo* Decision

The U.S. Supreme Court on June 23, 2005, ruled in *Kelo v. New London* that the "public use" provision of the "takings clause" of the 5th Amendment of the *U.S. Constitution* permits the use of eminent domain for economic development purposes.

The case involved an economic development plan for the City of New London, Connecticut. The city has been in economic decline for many decades. In 1996, the U.S. Navy closed its Undersea Warfare Center, causing the loss of over 1,500 jobs. In 1998, Pfizer, Inc., a large pharmaceutical company, announced plans to build a large research facility in New London on a site adjacent to the Fort Trumbull neighborhood. This neighborhood has been characterized as one with a high vacancy rate for nonresidential buildings, old buildings in poor shape, and with fewer than half of the residential properties in average or better condition. The homes of the petitioners in this case, however, did not fall into these categories.

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Senate Commerce Committee

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Attachment 1-1

The nonprofit New London Development Corporation (NLDC) was formed to help the city plan for economic development. After the Pfizer announcement, the city council authorized NLDC to formulate an economic development plan for 90 acres in Fort Trumbull. The plan's stated goals were to "create a development that would complement the facility that Pfizer was planning to build, create jobs, increase tax and other revenues, encourage public access to and use of the city's waterfront, and eventually to build momentum for the revitalization of the rest of the city, including its downtown area."

Most people in the Fort Trumbull area sold their property to NLDC, but seven did not. The voluntary sales comprised 100 of the 115 properties in the neighborhood. These landowners held 15 properties in two parcels of land being considered for development. They filed suit claiming that the use of eminent domain as contemplated by the plan violated the state and federal constitutions.

The Supreme Court, in a 5-4 decision, recognized that the *U.S. Constitution* prohibits a "taking" whose "sole purpose" is to transfer one person's private property to another private person, even if just compensation is paid. It emphasized, however, that this was not the issue before the court. Rather, "The disposition of this case therefore turns on the question whether the City's development plan serves a "public purpose." The decision went on to stipulate that "Without exception, our cases have defined that concept broadly, reflecting our longstanding policy of deference to legislative judgments in this field." In writing for the majority, Justice Stevens noted, in fact, that "To effectuate this plan, the City has invoked a state statute that specifically authorizes the use of eminent domain to promote economic development."

The court determined that New London's economic development plan served a "public purpose" under the "public use" provision of the *U.S. Constitution*. Justice Stevens noted that "Those who govern the City were not confronted with the need to remove blight in the Fort Trumbull area, but their determination that the area was sufficiently distressed to justify a program of economic rejuvenation is entitled to our deference. The City has carefully formulated an economic development plan that it believes will provide appreciable benefits to the community, including—but by no means limited to—new jobs and increased tax revenue."

The court did not preempt additional state action. "We emphasize that nothing in our opinion precludes any State from placing further restrictions on its exercise of the takings power. Indeed, many States already impose "public use" requirements that are stricter than the federal baseline. Some of these requirements have been established as a matter of state constitutional law, while others are expressed in state eminent domain statutes that carefully limit the grounds upon which takings may be exercised."

Kansas Court Upholds Right of Eminent Domain For Economic Development

The Kansas Supreme Court in two cases has upheld the use of eminent domain to take private property for economic development purposes.

In the first case, *State ex rel. Tomasic v. Unified Government of Wyandotte County/Kansas City* 265 Kan. 779, 790, (1998), the Court upheld provisions of the tax increment financing (TIF) law which authorized special obligation (STAR) bonds, and the use of eminent domain to build an auto race track in Wyandotte County. The court held that the development of the auto race track facility and related projects were valid public purposes for which TIF and STAR bonds could be issued and eminent domain authority could be exercised.

More recently, in *General Building Contractors, LLC v. Board of Shawnee County Commissioners* 275 Kan. 525 (2003), the Court held that:

- Counties have the power of eminent domain under home rule and related statutes and have the power to condemn real property for purposes of industrial or economic development;
- County power of eminent domain must be exercised by resolution rather than motion; and
- The taking of private property for industrial or economic development is a valid public purpose.

The case involved the condemnation of a private business owner's property for a Target Distribution Center facility.

Overview of Government Eminent Domain Power in Kansas

The State Legislature has granted the power of eminent domain to several state agencies. The following table lists state agencies and state officials that have statutory authorization to exercise the power of eminent domain.

Secretary of Administration	State Board of Regents
Secretary of Transportation	State Historical Society
Secretary of Health and Environment	State Biological Survey

Local units of government in Kansas may exercise the power of eminent domain where the legislature has delegated this authority to such unit or where the local government has home rule power. The rule often stated by Kansas courts prior to the *General Building Contractors* case was that "the power of eminent domain can only be exercised by virtue of a legislative enactment. The right to appropriate private property to public use lies dormant in the state until legislative action is had pointing out the occasions, modes, conditions and agencies for its appropriation." See *Strain v. Cities Service Gas Co.*, 148 Kan. 393, 83 P.2d 124 (1938).

Kansas statutes contain literally hundreds of specific sections (a computer search located 319 statutes) authorizing the use of eminent domain by a specific unit of government for a specific purpose. See, e.g., KSA 12-1736 (city may use eminent domain to acquire land for public buildings); KSA 19-1561 (county may use eminent domain to acquire land for county fair buildings); and KSA 73-411 (township may use eminent domain to acquire land for a veteran's monument). In some cases, the unit of government is given general authority to exercise the power of eminent domain.

Local Governments With Power of Eminent Domain That May Engage in Economic Development Projects

Cities
Counties
Airport Authorities
Port Authorities
Industrial Districts
Public Building Commissions

Recently Enacted Eminent Domain Legislation by States

Alabama

SB 68 (2005 Special Session). Prohibits the use of eminent domain for retail, commercial, residential or apartment development; for purposes of generating tax revenue; or for the transfer of private property to another private party. Contains a blight exception.

Colorado

HB 1203 (2004). Restricts the use of eminent domain by a redevelopment agency to transfer private property from one private use to another private use. Adds additional requirements that a property be determined to be "blighted" as a condition for use of eminent domain, or that its inclusion in a condemnation proceeding is essential for redevelopment of a larger parcel of properties.

Delaware

SB 217 (2005). Restricts the use of eminent domain by the state or a political subdivision to a recognized public use.

Nevada

AB 143, SB 326 (2005). Increases criteria for determination that an area is "blighted" as a condition for a redevelopment agency to use eminent domain for economic development purposes. Requires a redevelopment agency to negotiate with landowners before using eminent domain. Increases public notice requirements concerning use of eminent domain.

Texas

SB 7 (2005 Second Special Session). Prohibits the use of eminent domain to confer a private benefit on a private party or for economic development purposes, with certain exceptions.

Utah

SB 184 (2005). Removes the power of eminent domain from a redevelopment agency in most circumstances. Increases requirements for determination that an area is blighted before using redevelopment authority. Increases authority of legislative body of a local government over redevelopment agency actions. Prohibits use of tax increment financing for certain projects.

**States With Case Law
Prohibiting Eminent Domain
for Economic Development**

Arkansas
Kentucky
Maine
Michigan
New Hampshire
South Carolina
Washington

**States With Case Law
Upholding Eminent Domain
for Economic Development**

Kansas
Louisiana
Maryland
Minnesota
Missouri
New Jersey
New York
North Dakota
Ohio

Sources: Elizabeth F. Gallagher, "Note: Breaking New Ground: Using Eminent Domain for Economic Development," 73 Fordham L. Rev. 1837 (2005); and the National Conference of State Legislatures website.

For more information, please contact:

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COMMITTEE ASSIGNMENTS
MEMBER: LOCAL GOVERNMENT
NATURAL RESOURCES
UTILITIES
JOINT COMMITTEE ON SPECIAL CLAIMS
AGAINST THE STATE

Senator Dennis Pyle

January 31, 2006

First of all, thank you Madam Chair and committee members for conducting this hearing and for the opportunity to testify concerning SB360.

SB360 is a sweet and sour bill. It leaves eminent domain in the governmental tool box while decoupling the use of eminent domain from use with economic incentive tools. As another way of putting this, SB360 builds a fence between the use of eminent domain and the use of tax based incentives; "Good fences make good neighbors". Many fences are being torn down today. Government is using its power to get more revenue in order to get more power. This is not what our founders envisioned. Without proper fences or restraints on government "we the people" have no protection from abusive and corrupt power.

John Dickenson stated, "Let these truths be indelibly impressed on our minds-that we cannot be happy without being free-that we cannot be free without being secure in our property-that we cannot be secure in our property if, without our consent, others may as by right take it away."

Thomas Jefferson said, "The persons and property of our citizens are entitled to the protection of our government in all places where they may lawfully go." He also said, "To take from one because it is thought that his own industry and that of his fathers has acquired too much, in order to spare to others who, or whose fathers, have not exercised equal industry and skill, is to violate arbitrarily the first principle of association, 'the guarantee to everyone of a free exercise of his industry, and their fruits acquired by it'."

A wise man once said, "The LOVE of money is the root of all evil". This love of money or greed is very evident in the property rights debate and more specifically the current struggle over the use of eminent domain by local units of government. Many entities claim the need of keeping eminent domain for the purpose of taking private property for "economic development". They will even argue that the increase in property valuation and subsequent revenue increases justify their argument. If this is true, then government should change the classification on many pieces of property to a "business" classification as they are taxed at a higher rate. After all, is not "raising a family" a business of sorts? Couldn't those in power argue that making a simple definition change is for the public good? Of course we all agree that such an idea is preposterous, we don't want to change the definition of "business" and "residential" I simply use this example to make a point. Eminent domain usage must not be allowed to continue when profit is the motivating force. LEGAL PLUNDER must stop.

As you hear testimony opposing SB360 please look at the motivating forces in play. I propose

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that we will soon see the motives for eminent domain use by the position which opponents take on SB360. Please look for the “dollars” in their arguments.

Elisa Morgan, president of MOPS International (Mothers of Pre-Schoolers), shared this insight into a child’s view of the world.

TODDLER’S CREED

*If I want it, it’s mine.
If I give it to you and change my
mind later, it’s mine.
If I can take it away from you,
it’s mine.
If I had it a little while ago,
it’s mine.
If it’s mine, it will never belong to
anyone else, no matter what.
If we are building something together,
all the pieces are mine.
If it looks just like mine,
it is mine.*

Anyone who has ever known a toddler knows the truth of that creed. We expect to see this trait in toddlers, but we despise it when we see it in adults.

What do we value, “people” or “dollars”? Are we more secure by putting the private property rights in the hands of individual property owners or in the hands of governmental officials? Should government determine the “purpose” for property or should the property owner?

If you recall, I offered an amendment on the senate floor last February, while the “Kelo” case was being heard, to limit the use of eminent domain for public use takings only. My position is still the same. The courts have since spoken. The incriminating finger of injustice is pointing directly at them. The courts have expanded government’s authority to condemn property by expanding the definition of ‘public use’ to include economic development.

This session, we in the legislature have a choice. We can demonstrate our priorities for what is valuable. We can place the power of property rights with the people of Kansas or we can continue to empower government entities. America as a Christian nation has operated on the philosophy of “what’s mine is yours”. The tsunami in Indonesia and the flood in New Orleans demonstrated this. Americans GAVE. The American people respond to other’s needs, Kansans included. By allowing government to take private property for private use/economic

development we will be operating on a philosophy of "what's your's is mine". This is a bully's position!

Madam Chair and members of the committee, I will close with one last quote by Joseph Story. "There can be no freedom where there is no safety to property or personal rights. Whenever legislation...breaks in upon personal liberty or compels a surrender of personal privileges, it is in its essence tyranny."

Thank you.

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Re: Bill # 360

Issue: Use of TIF Bond Money and Eminent Domain by local government

Eminent Domain is the using the power of government to acquire private property for public use.

Today that power has been applied to benefit private developers in Kansas, and the nation. The Supreme Court has turned the limits of this control of power back to all of the states. Currently the State of Kansas has not addressed this control of power. Due to this fact developers are using the government's power of Eminent Domain to build their wealth.

Developers have entered this picture at the local government level thru the use of TIF Bond money. The developers state this is necessary, or the project will not be successful. This is far from the real truth. The TIF money introduces the government into the picture for property acquisition with the power of Eminent Domain. Now developers can use the government power to seize a small business, a farm, a church, or just any property they deem necessary for their project.

On a personal note my shop has been placed in this position of dealing with a developer and the threatened power of Eminent Domain to back up offers to acquire my property. Our business is located in the Washburn Parkway Redevelopment in Topeka, Kansas.

The Washburn Parkway Project funding is set up currently using TIF bond funds of 4 million dollars with their investment of 18.4 million dollars. The city is funding 1.5 million dollars for public infrastructure. The calculations I made from the developers feasibility study determined the net profit over the twenty-year project period to be 117.5 million dollars. The statement that it is necessary for the project to be successful the developer must have the TIF bond doesn't hold true. The TIF Bonds are used to allow developers to have the power of government behind the development plan for property acquisition.

TIF Bonds provide the tool for Eminent Domain usage against property owners.

This bill is necessary to stop the pillage of American Business and property owners.

Senate Commerce Committee
January 31, 2006

Attachment 37

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Senate Commerce Committee Hearing, 8: 30 a.m., January 31, 2006

Subject: Testimony in Support for the passage of Senate Bill No. 360

I am a real estate broker and land developer in Sedgwick County. I am also a volunteer coordinator for Americans For Prosperity, and a member of the Wichita Independent Business Association. I am not here to speak for those groups, but as a real estate practitioner and private citizen.

I am opposed to cities, counties, and state agencies using their eminent domain power to force someone to unwillingly sell their property so that it can be turned over to someone else for economic development, and would ask this committee to support the passage of Senate Concurrent Resolution No. 1616 that would prohibit this abuse and provide important and needed limitations on governments taking of private property for public use.

In the absence of the passage of eminent domain legislation that prohibits this practice, I support the passage of Senate Bill No. 360.

A Pacific Legal Foundation reports, "...Recent court decisions have held that 'public use' means anything at all that the legislature decides will 'benefit' the public. If city officials decide that greater tax revenue would benefit the public, therefore, they can seize (your) property and give it to (another) private owners for their own *private use*, and call this a 'public use'." If you own a small business, and have created a choice location that you have spent years of energy and money developing, a simple majority of a local city council can use their eminent domain power to condemn and give your property to a larger competing company using the "public use" and "public benefit" argument citing the anticipated "increased" tax revenue that will be generated from the new business. As the small business owner, I believe you would be outraged by this abuse at the hand of city government.

Now consider the ultimate irony in the above scenario, suppose the same city government that used the "public benefit" argument of increased taxes, issues a long term "tax abatement" to the new business and used various taxpayer subsidized financing programs. This action compounds this injustice, and you should not allow it to happen!

The practice of using "tax abatements", "tax incentives", and "99 year leases for \$1.00 per year" to the favored "inside" groups have become common as so called "economic development" tools in our city. This favored tax treatment creates an "uneven" playing field for other local businesses that have to compete for business without the taxpayer-supported subsidies.

I believe that the use of eminent domain along with tax incentive abuse severely damages people's faith in their own government. This and the "uneven" playing field created by tax incentives undermines real economic development by business people who "invest" their "own money" for their "own" profit or loss, and replaces them with publicly subsidized projects that ultimately places any potential loss by the "subsidized" business back on the back on the taxpaying public. This practice needs to end, and I would encourage you to support the passage of Senate Bill No. 360.

Sincerely,

John R. Todd

Senate Commerce Committee
January 31, 2006
Attachment 4-1

**TESTIMONY OF STEVEN ANDERSON
CASTLE COALITION COORDINATOR
INSTITUTE FOR JUSTICE**

KANSAS SENATE COMMERCE COMMITTEE

JANUARY 31, 2006

Senate Commerce Committee
January 31, 2006

Attachment 5-1

Testimony of Steven Anderson
Castle Coalition Coordinator, Institute for Justice
Kansas Senate Commerce Committee
January 31, 2006

I would like to thank Chairmen Brownlee and Jordan and the members of the Senate Commerce Committee for the opportunity to testify about Kansas' eminent domain law, particularly in the wake of the U.S. Supreme Court's now infamous decision in *Kelo v. City of New London*. Kansas is one of the worst states for protection of property rights, which makes the legislation you are considering today so very important.

My name is Steven Anderson and I am the Coordinator of the Castle Coalition, a project of the Institute for Justice. The Castle Coalition is a nationwide network of grassroots citizens committed to ending eminent domain abuse through outreach and activism. The Institute for Justice is a non-profit public interest law firm dedicated to defending the fundamental rights of individuals and protecting the basic notions of a free society. One of the Institute for Justice's principal issues is private property rights, and to this end, we represent the homeowners of the Fort Trumbull neighborhood in New London, who were the subject of the *Kelo* case. We are the nation's leading critic of and legal advocate against the abuse of eminent domain laws.

I personally work with property owners all over the country to combat eminent domain for private development. In the wake of the *Kelo* decision, we launched our Hands Off My Home campaign, an aggressive and focused initiative to effect real change at the state and local levels. It is that desire to help that prompts me to be here today.

The power of eminent domain is awesome, so awesome that in this country's early days, the U.S. Supreme Court described it as "the despotic power." Quite simply, it is the power to remove residents from their long-time homes and destroy small family businesses. It is a power that must be used sparingly and only for the right reasons. In order to protect property owners, the Fifth Amendment to the U.S. Constitution provides: "[N]or shall private property be taken for public use, without just compensation."

There are two independent and significant protections under the Federal Constitution: public use and just compensation. Most every state in the country has similar language; however, Kansas is one of the few states that have no constitutional limitation upon the taking of private property for public use—and that's the heart of the problem. Article 12, Section 4 of this state's constitution only addresses compensation: "No right of way shall be appropriated to the use of any corporation, until full compensation therefor be first made in money, or secured by a deposit of money, to the owner, irrespective of any benefit from any improvement proposed by such corporation." This provision does not serve as a substantive restriction on the power of eminent domain. Given this fact then, for the citizens of Kansas, the *Kelo* decision took away any hope of real protection from takings for private use.

Historically, public use meant things actually owned and used by the public—roads, courthouses and post offices. Increasingly, particularly over the last 50 years, the notion of public use has expanded to the point that the public use restriction is really no restriction at all. In fact, Kansas case law says "there is no precise definition of what constitutes a valid public use, and what may be considered a

valid public use or purpose changes over time.” Without an adequate definition, property is routinely transferred from one person to another in order to build luxury condominiums and big-box stores. And this abuse is happening all over Kansas.

Kansas has some nationally renowned examples of eminent domain abuse. As you know, the Kansas Supreme Court in 1998 held that taking the homes of 150 families to make way for a private racetrack for NASCAR 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. But there’s more:

- Pittsburg—City officials were eager to attract a Home Depot. The site chosen for the store already had seven properties—5 of which the city acquired by April 2004. Two owners, Dang Van Nha, of a group that owned a building that housed China Buffet, and Darrell Trent, a part-time developer, were not pleased with the city’s offers. Nha eventually sold under the threat of eminent domain, while city officials filed a condemnation suit against Trent, who was serving as an ambassador in Iraq at the time. His lawyer tried to get the trial postponed until Trent could return but officials pushed ahead and seized the land. He was eventually paid for his land, on which a plumbing business had operated.
- Topeka—Private developers have been unable to acquire four properties—a bike shop, a bar, a home, and a t-shirt store—owned by two people. So they’ve asked city council members to condemn the “blighted” land. Other property owners decided to sell rather than fight what they considered to be the inevitable, including Robert Asselin, who owned Lane Street Flea Market with his daughter. Developers want to build apartments, town homes and a shopping center in Topeka’s College Hill neighborhood near Washburn University. Thus, Jerry Morgan, owner of Jerry’s bike shops, has been meeting with state legislators interested in legislation restricting the use of eminent domain.

Other abuses have prompted legislation:

- Dexter and Cowley—Developers proposed a 8,000-acre lake in Dexter and Cowley Counties as part of a 30,000 to 40,000-acre lake and housing development. The plan would have flooded the area where about 40 homes sit and required the acquisition of another 60 properties, including that of Kelly Williamson and Rhea Sloan, whose grandfather was born in a covered wagon on the land she still owns. Senator Greta Goodwin, opposed the project and has introduced one of the bills you are hearing today. It has been reported that Goodwin’s office has been swamped with calls, letters and e-mails from residents and landowners who fear their land will be taken if the proposal gains support.
- Manhattan—In July 2003, city commissioners voted to accept a downtown redevelopment project. In December 2003, commissioners decided taxpayers would help shield Dial from financial risk and reimburse the company up to \$3 million. Property owners hoping for a straight answer as to the future of the homes and livelihoods in the plan were stonewalled at a January 2004 public meeting. In March 2004, a bill (SB 547) prohibiting the use of eminent domain for economic development that would have kept Manhattan officials from seizing land for the project got voted down in the state Senate. In the end, in January 2006, commissioners unanimously approved the northern piece of the three-phase project.

Between 1998 and 2002, we found more than 10,000 instances of eminent domain abuse across the country—and this is only the tip of the iceberg. We'll be publishing a new report this year with thousands more. Based on our research, Kansas is one of the worst abusers of eminent domain since it, along with New York, is one of the few states in the nation that specifically allows condemnation for economic development. When comparing state eminent domain laws, even California has better protections for homeowners, farmers, and small business owners.

In addition to protecting property from acquisition for economic development, it is important to consider the rampant abuse of "blight removal" as well, a concept is often used to transfer property from one private owner to another. The U.S. Supreme Court long ago gave governments the right to transform private uses into public ones for a variety of reasons other than pure economic development. The most common way cities, including those in Kansas, make this change is to call it "urban renewal," so I'll discuss it in a little more detail.

Historically speaking, this concept grew out of the progressive movement that blossomed after World War I. The prevailing belief among social scientists was that cities were organisms and once they began to fail, if enough planners, academics and consultants got together and determined that an offending cancerous neighborhood should be removed, then the city would ultimately survive and prosper. These notions of civic boosterism and reliance on experts are the same theories ridiculed in this part of the country by Sinclair Lewis in novels like *Babbitt* and *Arrowsmith*.

Urban renewal, as "blight removal" is called in Kansas, was given ultimate approval in 1954 by the Supreme Court in *Berman v. Parker*. The neighborhood at issue was in bad shape—houses were literally falling down, they were vermin infested and there were high rates of infant mortality and communicable diseases. It was what anyone would consider blighted.

However, over the last 50 years, "blight removal" has come to mean everything but the common sense meaning of the phrase. What started as a way to removed dilapidated, vermin-infested properties (what were historically considered public nuisances, the abatement of which was always allowed pursuant to the government's police powers) has been perverted into the ability to take away perfect fine middle- and working-class neighborhoods to give to private developers promising increased tax revenues and jobs. "Blight removal" has almost universally been conceded to be an abject failure. Despite this fact, the statutes of most every state, including Kansas', have such vague and amorphous definitions of blight that literally any property can be considered blighted—and, as a result, are subject to being taken away. Kansas uses criteria like faulty street and lot layout, diversity of ownership and economic or social liability, which give municipalities great leverage and leeway to take property from one owner and hand it over to another. This type of abuse must stop.

Unfortunately, in June, the Supreme Court in *Kelo* completed the erosion of rights guaranteed under the Fifth Amendment. As a result of this decision, every home, every church and every small business is now up for grabs to the highest bidder. According to a narrow majority of the Court, the mere *possibility* that private property may make more money as something else is reason enough for the government to take it away. I'm sure you'll hear from the well-paid lobbyists of developers and municipalities that the decision doesn't affect Kansas, since the state already recognizes economic development as a valid public use, and that there's really no problem that needs fixing. They're wrong. The *Kelo* decision signifies a fundamental shift in the sanctity of all our property rights—entire portions of the Federal Constitution have been erased. And since it was the Federal

Constitution that represented the only real protection for Kansans, there is nothing to prevent the abuse from increasing.

Overwhelming majorities in every major poll taken after the *Kelo* decision have decried the result. It's no wonder. Eminent domain, as it always has been, will continue to adversely affect those who have relatively little influence in politics, most typically the poor, minorities and the elderly. It remains a benefit for those with more money and connections.

But there is one important truth in the majority's opinion that's worth heeding. States and localities are free to enact greater protections than those provided at the federal level (which amount to none these days). And that is where this committee and the Kansas State Legislature come in. I am submitting the Institute for Justice's white paper on *Kelo* and legislative reforms along with my testimony, and this document presents general eminent domain solutions. But I'll also offer some specific suggestions.

Legislation strictly prohibiting eminent domain to pure, historically understood public uses would be an important step. Eminent domain should only be used in those situations where the general public, public agencies or public utilities will ultimately use or own the property. The provision could also allow eminent domain for the acquisition of property where there is a public nuisance and where property is truly unfit for habitation or completely abandoned.

This legislature can explicitly prohibit private-to-private transfers of property for economic development to increase tax revenue, tax base, employment, or general economic health, when that activity does not result in (1) the transfer of land to public ownership; (2) the transfer of land to a private entity that is a common carrier, such as a railroad or utility; (3) the transfer of property to a private entity when eminent domain will remove a threat to public health or safety, such as the removal of public nuisances, removal of structures that are beyond repair or that are unfit for human habitation or use, or acquisition of abandoned property; or (4) the lease of property to private entities that occupy an incidental area within a public project.

You can reform the way courts define public use by requiring that any determination of a public use be made by the courts. You can also demand that any claim of public use be shown by clear and convincing evidence.

To the extent blight removal remains a legitimate objective of eminent domain, Kansas should make sure "blighted area" means the presence of a concrete, objective harm, something akin to what it meant in *Berman*, not just what the government pays a consultant to say. It should be reserved for only those situations where properties significantly affect public health and safety, where there are substantial tax delinquencies or property is unfit for human habitation. This redefinition is especially important, given municipalities' fondness for using "blight removal" as a reason to redevelop. It's time to provide a definition of blight that actually means something specific—not everything to everyone. Blight should no longer remain in the eye of the beholder.

I'd like to turn to the specific legislation being considered today. Senator Pyle's SB 360 is an excellent example of distinguishing between a municipality's tool of tax incentives for economic development, and the heavy-handed power of eminent domain. Any time you can disaggregate the funding mechanism from a condemning power, it is a step in the right direction. When cities compete to attract business, they are already tempted to offer every incentive possible. If Kansas

wants a statutory option for tax credits or abatement to attract business, it is essential for legislation such as SB 360 to make sure eminent domain is not coupled with those financial incentives.

We are willing to work with legislators on both sides of the aisle to enact significant and substantial eminent domain reforms—while a narrow majority of the Supreme Court said eminent domain is okay, a vast majority of Americans in every major poll I’ve seen have said it’s not. It’s clear the people have spoken.

Eminent domain abuse is not just associated with abstract notions of property rights—it affects real people, in cities and on farms, and far more than I’ve been able to mention here. Kansas has a historic opportunity to reverse years of exploitation and misuse of the eminent domain power by joining states around the country by passing significant and substantial eminent domain reforms. At last count, over 40 states have either passed or are considering passing laws to stop the abuse of eminent domain. Even Congress is taking action. Kansas should not be left behind because as its reputation suffers, so does its citizens. It is essential to protect the rights of farmers and home and small business owners. In many ways this state was built by land, and Kansans’ creative ability to cultivate it. Respecting the right of citizens to keep what they’ve worked so hard to own is essential to stabilizing this foundation.

Today, this committee is playing an important role in the reform process and I offer the expertise of the Institute for Justice and Castle Coalition in helping in any way we can. I trust you, the Kansas legislature and Governor Sebelius all recognize the critical importance of private property rights. It’s time to make sure that means something.

Thank you again to the committee for allowing me to testify and I’m happy to answer any questions.

***Kelo v. City of New London:* What it Means and the Need for Real Eminent Domain Reform**

In *Kelo v. City of New London*, the U.S. Supreme Court held that the Constitution allows governments to take homes and businesses for potentially more profitable, higher-tax uses. In the aftermath of that decision, the defenders of eminent domain abuse have already begun desperate attempts to keep the power to take homes and businesses and turn them over to private developers. And they are struggling to convince outraged Americans that ordinary citizens shouldn't care. The beneficiaries of the virtually unrestricted use of eminent domain – local governments, developers, and planners – will frantically lobby to prevent any attempt to diminish their power.

Their main message is that nothing has changed and there's nothing to worry about, because local officials always have the best interests of their citizenry at heart. Nothing could be further from the truth. The *Kelo v. City of New London* decision represents a severe threat to the security of all home and business owners in the country. Not only does it give legal sanction to a whole category of condemnations that were previously in legal doubt, but it actually encourages the replacement of lower income residents and businesses with richer homeowners and fancier businesses. The vast majority of Americans understand what is at stake, even if many so-called experts do not.

What the Supreme Court Actually Said in *Kelo*

The Court ruled that 15 homes in the Fort Trumbull waterfront neighborhood of New London, Connecticut, could be condemned for "economic development." There was no claim that the area was blighted. The project called for a luxury hotel, upscale condominiums, and office buildings to replace the homes and small businesses that had been there. The new development project would supposedly bring more tax revenue, jobs, and general economic wealth to the city. Connecticut's statutes allow eminent domain for projects devoted to "any commercial, financial, or retail enterprise." Conn. Gen. Stat. § 8-187.

The Fifth Amendment to the U.S. Constitution states, "[N]or shall private property be taken for public use, without just compensation." Yet in the *Kelo* decision, Justice Stevens explains that the fact that property is taken from one person and immediately given to another does not "diminish[] the public character of the taking." The fact that the area where the homes sit will be leased to a private developer at \$1 per year for 99 years thus, according to the Court, has no relevance to whether the taking was for "public use." Instead, the *Kelo* decision imposes an essentially subjective test for whether a particular condemnation is for a public or private use: Courts are to examine whether the governing body was motivated by a desire to benefit a private party or concern for the public. Thus, because the New London city officials intended that the plan would benefit the city in the form of higher taxes and more jobs, the homes could be taken.

The Court's decision allows cities to take homes or businesses and transfer them to developers if they think the developers *might* generate more economic gains with the property. The Court also rejected any requirement that there be controls in place to ensure that the project live up to its promises. According to the majority, requiring any kind of controls would be "second-guess[ing]" the wisdom of the project.

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Worse yet, cities do not need to have any use for the property in the foreseeable future in order to take it. In fact, the opinion encourages cities to condemn first and find developers later; the Court claims that it is "difficult to accuse the government of having taken A's property to benefit the private interests of B when the identity of B was unknown." In the future, then, cities can negotiate a sweetheart deal but wait until after the condemnation to actually sign it. Or they can simply take property first and market it to developers later. Some of the homes in Connecticut were being taken for some unidentified use and others for an office building that the developer had stated it would not build in the foreseeable future.

So, according to the Supreme Court, cities can take property to give to a private developer with no idea what will go there and no guarantee of any public benefit.

If the majority thinks they offered any meaningful protection to home and business owners, they are completely disconnected from reality. The decision suggests some extremely minor limits to the use of eminent domain for private development. Those few condemnors in cities that don't bother to do a plan, fail to follow their own procedures, or actually engage in corruption may still find some hope in federal court. But there is almost always a plan; cities are quite adept at following their own procedures; and most cases of eminent domain abuse do not involve outright and blatant corruption, such as bribes. Consequently, the vast majority of individuals are left entirely without federal constitutional protection.

The Supreme Court's *Kelo* Decision Changes the Law and Threatens All Home and Business Owners.

Some commentators are claiming that *Kelo* didn't change anything and therefore no one needs to worry about it. This statement is wrong on two levels: *Kelo* did change the law, and to the extent that governments were already taking homes and businesses for private commercial development, that's cause for greater concern, not less. *Kelo* threw a spotlight on an already-existing practice that an overwhelming majority of people find outrageous and un-American. More importantly, by declaring that there are virtually no constitutional limitations on the ability of cities to take property from A and give it to B, the Court invited more abuse and thus made the problem of eminent domain abuse much worse.

The law before *Kelo* did sometimes allow condemnation of property that would result in private ownership, but each of these situations was extremely limited.¹ None

¹ *National Railroad Passenger Corp. v. Boston and Maine Corp.*, 503 U.S. 407 (1992) (railroad track transferred to another common carrier); *Hawaii Housing Auth. v. Midkiff*, 467 U.S. 229 (1984) (land ownership transferred to lessees as part of program to break up remnants of feudal land system dating from Hawaii's pre-state monarchy); *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986 (1984) (pesticide research results available to later pesticide producers; obviously related to public health); *Berman v. Parker*, 348 U.S. 26 (1954) (single unblighted building in severely blighted area taken as part of large project to clear slum and redevelop); *Strickley v. Highland Bay Mining Co.*, 200 U.S. 527 (1906) (aerial bucket line for mining ore, available to any user); *Fallbrook Irrigation Dist. v. Bradley*, 164 U.S. 112 (1905) (condemnation for construction of irrigation ditch as part of statewide irrigation infrastructure program); *Head v. Amoskeag*, 113 U.S.

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necessitated the decision of the majority in *Kelo*.

Indeed, four members of the Court agreed that its prior decisions did not dictate the result in *Kelo*. Justice Sandra Day O'Connor broke those previous cases into three categories: (1) transfers of property from private ownership to public ownership; (2) transfer of property to a privately owned common carrier or similar public infrastructure; (3) transfer of property to eliminate an identifiable public harm. But, as pointed out by Justice O'Connor, "economic development" fits into none of these categories. Now, government may condemn property as long as there is a plan to put something more expensive there.

The text of the Constitution does not change, so the question in any constitutional case is how the Court will apply that law to the facts. How far will it go in either enforcing or ignoring constitutional rights? For example, we know that the First Amendment protects free speech. But how far will the Court go in enforcing that right? The Court has applied free speech protections to everything from advertising and the internet to criticism of the government and Nazi marches. In one sense, of course, the "law" did not change; the Constitution reads the same, and the Court still says that free speech is important. But in fact, each of these decisions did change the law, because they applied it to a new situation. In the same way, in *Kelo*, the Court applied the Fifth Amendment to a different and far more extreme type of use of eminent domain and upheld it. In *Kelo*, the Court went to extraordinary lengths to ignore the constitutional mandate that property only be taken for "public use," and thus went much further than it ever had before.

So when some law professors say that nothing has changed, what they mean is that the Court's general statements about public use have not changed. The Court has said for a number of years that it applies great deference to government decisions that a condemnation served a public use. At the same time, the Court had always said that there was a limit, that government could not take property from A in order to give it to B for B's private use. But in constitutional law, it's the application of general statements to facts that tells how seriously the Court takes constitutional rights. The question in every case, therefore, was whether the particular use of eminent domain fell into the category of deference or whether it went too far and would be held unconstitutional. Before *Kelo*, we knew that government could take property in deeply troubled, almost uninhabitable areas and transfer it to private developers. Now we know that government can take **any** property and transfer it to private developers. Only a lawyer would be unable to tell the difference.

Commentators are right that local governments, as a matter of practice, have been using eminent domain to assist private developers on a regular basis for years. That fact should be a cause for deep concern, not comfort that nothing has changed. More than 10,000 properties were either taken or threatened with condemnation for private development in a five-year period.² Because this number was reached by counting properties listed in news articles and cases, it grossly underestimates the number of condemnations and threatened condemnations. In Connecticut, the only state that keeps separate track of redevelopment condemnations, we found 31, while the true

9 (1885) (riparian rights for private mill; Court explicitly refused to hold that economic benefits justified condemnation).

² Dana Berliner, *Public Power, Private Gain: A Five Year, State-By-State Report Examining the Abuse of Eminent Domain* (2003) (available at <http://www.castlecoalition.org/report/>).

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number was 543. Now that the Supreme Court has actually sanctioned this abuse in *Kelo* and refused to provide any meaningful limits, the floodgates to further abuse have been thrown open. Home and business owners have every reason to be very, very worried now. As Justice O'Connor noted in her dissent, "The specter of condemnation hangs over all property. Nothing is to prevent the State from replacing any Motel 6 with a Ritz-Carlton, any home with a shopping center, or any farm with a factory."

So while there may be no change to the general idea of deference to legislative determinations of public use, there has been a different, more far-reaching application of it. That new application will change property ownership as we know it. That is not an overstatement. There had been many condemnations for private use going on before this decision. But cities still knew that there was no case upholding eminent domain for economic development. That provided some restraint or caution. Now, there is no reason to show any restraint.

Eminent Domain Is Not Necessary for Economic Development.

City officials often claim that without the power of eminent domain, they will be unable to do worthwhile projects and their cities will fall into decline.

These claims are at best disingenuous, and at worst outright dishonest. There are many, many ways to encourage economic growth that do not involve taking someone else's property. These include, for example, economic development districts, tax incentives, bonding, tax increment financing, Main Street programs, infrastructure improvements, relaxed or expedited permitting, and small grants and loans for façade improvements.³ Will a developer be able to put condos and a superstore on whatever piece of prime real estate it selects without using eminent domain? Maybe, maybe not. Will the city be able to have economic development? Absolutely.

Development happens every day, all across the country, without the use of eminent domain. At the same time, projects that do use eminent domain often fail to live up to their promises, and they also impose tremendous costs – both economic and social – in the form of lost communities, uprooted families, and destroyed small businesses. Urban renewal is now widely recognized as one of the worst policy initiatives ever undertaken in our cities, destroying inner cities and displacing thousands of minorities and elderly citizens.⁴ But at the time, of course, it was touted as a brilliant tool of revitalization. The condemnation of the Poletown neighborhood in Detroit for a General Motors manufacturing plant in 1981, one of the most infamous economic development condemnations, failed to bring prosperity to the city. Indeed, it cost the city millions of

³ See Brief *Amicus Curiae* of John Norquist on behalf of Petitioners in *Kelo v. City of New London* (John Norquist is the former mayor of Milwaukee and President of the Center for New Urbanism); Brief *Amicus Curiae* of Goldwater Institute, *et al.* on behalf of Petitioners in *Kelo v. City of New London*. (All of the amicus briefs cited in this paper are available at <http://www.ij.org/kelo>.)

⁴ See Mindy Thompson Fullilove, *Root Shock: How Tearing Up City Neighborhoods Hurts America, And What We Can Do About It* (One World 2005); Wendell Pritchett, *The "Public Menace" of Blight: Urban Renewal and the Private Uses of Eminent Domain*, 21 YALE L. & POL'Y REV. 1 (2003); Brief *Amicus Curiae* of Jane Jacobs on behalf of Petitioners in *Kelo v. City of New London*; Brief *Amicus Curiae* of NAACP, AARP, *et al.* on behalf of Petitioners in *Kelo v. City of New London*; Brief *Amicus Curiae* of Better Government Assoc., *et al.* on behalf of Petitioners in *Kelo v. City of New London*.

dollars and may well have destroyed more jobs than it created.⁵ Defenders of eminent domain for private development present a false choice between protecting people's rights and economic development. In fact, we can have both.

Eminent Domain Is Not Used as a "Last Resort."

Many municipal officials claim that they use eminent domain responsibly and only as a "last resort." This is simply not true. In most cases, the threat of eminent domain plays an important role from the very beginning of negotiations. Cities know that most home and business owners will be unable to afford the tremendous legal costs associated with fighting eminent domain; this fact gives cities a strong incentive to threaten property owners with condemnation. People are told that if they do not sell, their home or business will be taken from them and they will get even less money. Cities plan projects on the assumption that there is no need to incorporate existing homes or businesses, because they can simply be taken. After cities design and pursue such projects, current owners are told to sell. If they do not, then eminent domain becomes a "last resort." In practice, the power of eminent domain often makes voluntary sales less likely, because owners who would have sold if treated with respect will refuse to once they have been threatened.

Changes to Planning and Hearing Procedures Will Not Stem the Tide of Eminent Domain Abuse.

Various commentators are suggesting that legislators can take a "moderate," "sensible" approach to the *Kelo* decision and just require a process with more public input and better planning. These measures will do nothing to protect the rights of home and business owners. The City of New London had a lengthy process, with studies, plans and public hearings. None of this lengthy process made any difference, however, because a deal had been cut before the process even began. Local legislators typically know the outcome they want and then follow the procedures necessary to get it. City councilors and planning officials don't even need to listen at public hearings, because they already know how they are going to vote.

Better planning is also no solution and will do nothing to protect home and business owners from losing their property to private developers. Planners call for even more of the kind of planning that, if implemented, necessitates forcing some people out of their homes and businesses to make way for other, supposedly better-planned uses. Thus, we hear calls for comprehensive plans that outline every future use of property in the city and integrated redevelopment plans that implement the comprehensive plans for replacing current owners with other ones. While all of this additional planning will no doubt bring lots of money to planners, it will not prevent the use of eminent domain for private commercial development and in practice will probably encourage more abuse.

The Floodgates Are Opening and the Situation Will Only Get Worse If No Legislative Action Is Taken.

In the wake of the U.S. Supreme Court's decision in *Kelo v. City of New London* upholding the use of eminent domain for private development, the floodgates are

⁵ See Brief *Amicus Curiae* of Jane Jacobs on behalf of Petitioners in *Kelo v. City of New London*.

opening to abuse. Already, the ruling has emboldened governments and developers seeking to take property from home and small business owners. Despite claims that eminent domain will be used sparingly, there have been a flood of new condemnations and new proposals of eminent domain for private commercial development after the *Kelo* ruling. In the first two months after the decision, more than 30 municipalities began condemnation proceedings for private development or took action to authorize them in the near future. Thousands of properties are now threatened with eminent domain for private commercial development, and those numbers will continue to swell unless state legislatures and Congress listen to their constituents and end the abuse of eminent domain.

Creating an Effective Statutory Protection Against Eminent Domain Abuse

Basic elements of a good law:

The outline below sets forth the basic elements of a law that will genuinely protect citizens from losing their land to other private parties for private development.

- Remove statutory authorizations for eminent domain for private commercial development.
- Explicitly forbid eminent domain for private commercial development and/or require that condemned property be owned and used by government or a common carrier.
- Prohibit "ownership or control" by private interests. In many cases, a government entity will technically own the property but lease it for \$1 per year to a private party.
- Ensure that the statute or constitutional amendment applies to all entities that engage in eminent domain, using a term like "all political subdivisions."
- Clearly state any exceptions, i.e., any circumstances where property can be taken for private commercial entities. The main exception that should be made is private entities that are "common carriers" – these include railroads and utilities.
- If blight is an exception, revise blight definitions to clearly define the type of blight required to justify the use of eminent domain and require that the property has serious, objective problems before it can be taken for private development.
- Disentangle the designation of a redevelopment area for funding purposes and an area where property may be taken for private development. This allows cities to still get funding and acquire property voluntarily but prevents the use of eminent domain for private development.
- Require government to bear the burden of showing public use or blight, or at least put the parties on equal footing, with no presumption either way. The current rule typically means that the government's finding of public use or blight is conclusive, unless the owner can prove fraud, arbitrariness, or abuse of discretion.
- If allowing condemnation of unblighted property in blighted areas, require that the property be essential for the project.

Additional useful provisions

- Have blight designations expire after a certain number of years.
- Give owners the opportunity to rehabilitate property before it can be condemned.
- Return property to former owners if it is not used for the purpose for which it was condemned.

Common pitfalls in proposed reform legislation:

- Giving a complete exemption for any property taken under urban development laws and failing to change the definition of blight.
- Forbidding eminent domain for economic development without defining economic development.
- Forbidding condemnation for "solely" or "primarily" for economic development or private benefit. Whether a particular condemnation is solely or primarily for a particular purpose requires a judge to look at the intent of the governmental decision-makers. The legality of eminent domain should not depend on the subjective motivations of city officials, and proving intent as a factual matter is extremely difficult.
- Creating specific exemptions for pet projects. This will set a bad precedent for the future.
- Forbidding only ownership by private parties but not control. This leaves open the common practice of sweetheart lease arrangements.
- Making loopholes or accidentally omitting some of the political entities that engage in condemnation for private development.

MODEL LEGISLATION

State Constitutional Amendment

Since Kansas has no explicit provision regarding public use, the following will provide protection against eminent domain abuse needed by farmers, churches, home and small business owners around the state:

With just compensation paid, private property may be taken only when necessary for the possession, occupation, and enjoyment of land by the public at large, or by public agencies. Except for privately owned common carriers, private property shall not be taken for use by private commercial enterprise, for economic development, or for any other private use, except with the consent of the owner. Property shall not be taken from one owner and transferred to another, on the grounds that the public will benefit from a more profitable private use. Whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such without regard to any legislative assertion that the use is public.

State Statute Limiting Eminent Domain Abuse

One simple way to remove the threat of eminent domain for economic development is simply to delete the statutory authorization for such uses of eminent domain. For example, in 2004, Utah simply removed the authorization for eminent domain from its act giving powers to redevelopment authorities. Authorizations for eminent domain for private business generally appear in statutes dealing with economic or industrial development, redevelopment, and municipal powers.

If an outright ban is not desired, a few possible approaches to a statute that would prevent the use of eminent domain for private development appear below. Variations on these themes were passed in Alabama and Texas in 2005 (though both states left large blight loopholes). These are a very effective way to curb abuse.

- **Requiring Eminent Domain for Public Use and Defining Public Use**

Notwithstanding any other provision of law, neither this State nor any political subdivision thereof nor any other condemning entity shall use eminent domain unless it is necessary for a public use.

Public use: The term "public use" shall only mean the possession, occupation, and enjoyment of the land by the general public, or by public agencies; or the use of land for the creation or functioning of public utilities; the acquisition of property to cure a concrete harmful effect of the current use of the land, including the removal of public nuisances, structures that are beyond repair or that are unfit for human habitation or use, and the acquisition of abandoned property. The public benefits of economic or private

commercial development, including an increase in tax base, tax revenues, employment, general economic health, shall not constitute a public use.

- **Prohibiting Eminent Domain for Private Business**

Notwithstanding any other provision of law, neither this State nor any political subdivision thereof or any other condemning entity shall use eminent domain to take private property without the consent of the owner to be used for private commercial enterprise, except that property may be transferred or leased (1) to private entities that are common carriers; (2) to private entities that occupy an incidental area within a public project, such as a retail establishment on the ground floor of a public building; (3) the use of eminent domain eliminates a threat to public health or safety, such as the removal of public nuisances, removal of structures that are beyond repair or that are unfit for human habitation or use, or acquisition of abandoned property. Whenever property is condemned and will be used by a private party, the condemnor must establish by clear and convincing evidence that the condemnation of the property is necessary.

- **Prohibiting Eminent Domain for Economic Development and Defining Economic Development**

Notwithstanding any other provision of law, neither this State nor any political subdivisions thereof nor any other condemnor shall use eminent domain to take private property without the consent of the owner to be used for economic development. Whenever property is condemned and will be used by a private party, the condemnor must establish by clear and convincing evidence that the condemnation of the property is necessary.

Economic Development—The term "economic development" means any activity to increase tax revenue, tax base, employment, or general economic health, when that activity does not result in (1) the transfer of land to public ownership; (2) the transfer of land to a private entity that is a common carrier, such as a railroad or utility; or (3) the transfer of property to a private entity when eminent domain will remove a threat to public health or safety, such as the removal of public nuisances, removal of structures that are beyond repair or that are unfit for human habitation or use, or acquisition of abandoned property; (4) the lease of property to private entities that occupy an incidental area within a public project.

In addition to the three examples provided above, three other types of provisions that also discourage the abuse of eminent domain are (1) allowing a former owner to regain ownership of condemned property if the government fails to use it within a given period of time; (2) time limits on blight or redevelopment designations; (3) attorneys fees for condemnees challenging the validity of takings.

State Statute Defining Blight

Blight statutes are written with such vague language that the criteria for designating areas as blighted, conservation areas, in need of redevelopment or other similar designations can literally apply to any property. To the extent the removal of blight is still desired, it is best to use objective and quantifiable factors. The following seeks to ensure that only truly harmful properties are subject to the power of eminent domain, not just those neighborhoods with chipped paint, cracked sidewalks or those that provide insufficient tax revenue in the eye of local government.

Notwithstanding any other provision of law, neither this State nor any political subdivision thereof or any other condemning entity shall use eminent domain to take private property without the consent of the owner to be used for private commercial enterprise, except that property may be transferred or leased:

- (1) to private entities that are public utilities or common carriers;
- (2) to private entities that occupy an incidental area within a publicly-owned project;
- (3) to private entities if the property poses a threat to public health and safety and meets the definition of "condemnation-eligible" property.

Condemnation-eligible property shall include:

- (1) Any premises which because of physical condition, use or occupancy constitutes a public nuisance or attractive nuisance.
- (2) Any dwelling which, because it is dilapidated, unsanitary, unsafe, vermin-infested or lacking in the facilities and equipment required by the housing code of the municipality, is unfit for human habitation.
- (3) Any structure which is a fire hazard, or is otherwise dangerous to the safety of persons or property.
- (4) Any structure from which the utilities, plumbing, heating, sewerage or other facilities have been disconnected, destroyed, removed, or rendered ineffective so that the property is unfit for its intended use.
- (5) Any vacant or unimproved lot or parcel of ground in a predominantly built-up-neighborhood, which by reason of neglect or lack of maintenance has become a place for accumulation of trash and debris, or a haven for rodents or other vermin.
- (6) Any property that has tax delinquencies exceeding the value of the property.

(7) Any property with code violations affecting health or safety that has not been substantially rehabilitated within one year of the receipt of notice to rehabilitate from the appropriate code enforcement agency.

(8) Any property which, by reason of environmental contamination, poses a threat to public health or safety in its present condition.

(9) Any abandoned property.

The finding by a public body that a property is a condemnation-eligible shall not create any presumption with regard to the validity of that finding.

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C A S T L E C O A L I T I O N

...nor shall private property be taken for public use without just compensation. —U.S. Constitution, Amendment V.



AMERICANS FOR PROSPERITY K A N S A S

January 31, 2006

Madam Chairman and members of the committee:

I am Alan Cobb, representing the over 5,000 Kansas members of Americans for Prosperity.

We are in favor of SB 360.

The taking of private property by government should be rare and for true public purposes such as roads, schools, parks and hospitals.

However, short of an absolute ban, any method to curtail even more government-granted advantages to private real estate developers should be considered. SB 360 does this.

While some may say that taking private property for private use his will help turn around Kansas' struggling economy, **there is little data** to support that notion.

In fact, many publications report that Kansas is one of the states that most frequently uses economic development as a reason for the exercise of eminent domain power. Yet, we continue to struggle economically, even when compared to states in our region.

If state and local government want to make Kansas a more attractive place to do business, they can begin with our high state and local tax burden, and our high local government job growth.

Kansas has the **15th highest state** and local tax burden; higher than Massachusetts, California and tied with New Jersey.

In addition, Kansas ranks in the top five in government employees per capita.

I suggest that ***reducing*** the growth of government would help our State's economy grow rather than ***increasing*** the government involvement by taking private property for private uses.

It would seem to be simple fairness not to give more tools to a private developer beyond the power of eminent domain.

SB 360 would limit government-granted advantages to private real estate developers involved in eminent domain proceeds and thus would somewhat limit selected private developers from having too many unfair advantages. Even with SB 360 these developers would still have the advantage of eminent domain helping them to accomplish what they can not in an open market place.

Just the specter of a developer's possible use of eminent domain can alter the marketplace significantly and shifts considerable bargaining power to the developer – power received from government, not the marketplace.



Since 1894

To: Senate Committee on Commerce
Senator Karin Brownlee, Co-Chair
Senator Nick Jordan, Co-Chair

From: Brent Haden, Assistant Counsel

Date: January 31, 2006

Re: Support for SB 360

The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing over 6,000 members on legislative and regulatory issues. KLA members are involved in many aspects of the livestock industry, including seed stock, cow-calf and stocker production, cattle feeding, grazing land management and diversified farming operations.

Good morning. My name is Brent Haden, and I serve as Assistant Counsel for the Kansas Livestock Association.

KLA has a long-standing history of defending the private property rights of individuals, and the exercise of eminent domain powers is an issue of great importance to our members. Over the past three years, KLA membership has become particularly concerned about the growing practice of governments using eminent domain powers to take property from one private entity for transfer to another private entity.

In 2003, several KLA members saw first-hand how insidious this practice can be when private developers in Wichita proposed using eminent domain to take thousands of acres in Cowley County to build a recreational lake. To stop that threat, KLA mobilized to pass Senate Bill 461 in the 2004 legislative session. SB 461 very specifically prohibited the use of eminent domain to build a lake in Cowley County.

Although the crisis in Cowley County was averted, the situation alerted KLA members across the state that eminent domain powers could be used by local governments to take property from one person to give it to another in the name of economic development. This realization was sharpened by several other recent instances of eminent domain use in Kansas, including the taking of a car lot in Merriam for transfer to another car lot, and the taking of several properties in Topeka for the construction of a Target distribution center. Our membership has made it clear in our policy statements that they oppose such practices, and enacting legislation that will put an end to such takings is a top priority for KLA.

To that end, KLA expressed its opposition to eminent domain use for private gain to the Joint Committee on the Judiciary in October of 2004, and asked for legislative reform to stop the practice in Kansas. At that time, the Joint Committee on the Judiciary voted to withhold any recommendations on this issue to allow the pending case of *Kelo v. New London, CT* to be resolved by the United States Supreme Court. The Court ruled in June that taking property from one private entity for transfer to another private entity is not unconstitutional.

However, while the Court did hold that such takings were constitutionally permissible, it also explicitly held that state governments were free to limit the scope of eminent domain usage, or as the majority opinion said “nothing in our opinion precludes any State from placing further restrictions on its exercise of the takings power.”

KLA members believe that such restrictions should be imposed by the Legislature, and as such we support the concept behind SB 360, which seeks to curtail eminent domain by forbidding bond funding or tax incentives for projects that use eminent domain to transfer property from one private party to another private party.

KLA is concerned, however, that the provisions of SB 360 do not go far enough in guaranteeing that eminent domain will not be used to transfer property from one private entity to another. While SB 360 is a welcome attempt to curb the use of eminent domain for economic development, it does not provide an outright prohibition on the practice. KLA is still concerned that in some areas of the state, cities or counties will take property from one private owner for transfer to another merely to capitalize on a promised increase in jobs or tax revenues.

To prevent this outcome, KLA supports the passage of a constitutional amendment or bill that will prohibit the taking of private property for transfer to another private property, regardless of whether SB 360 passes or not. The Senate Committee on the Judiciary is currently examining various constitutional amendment and bill proposals that would, to one degree or another, prohibit such takings, and KLA will be testifying before that Committee to express our support for the proposed prohibitions.

To conclude, private property rights are a top priority for KLA, and we will continue to ask for reform to end the practice of taking property from one person for transfer to another person. We look forward to working with everyone on the Committee to pass legislation that will protect the property rights of all Kansans. Thank you for your time and your consideration.

PUBLIC POLICY STATEMENT

SENATE COMMITTEE ON COMMERCE

RE: Eminent Domain

January 31, 2006
Topeka, Kansas

Testimony Provided by:
Terry D. Holdren
KFB Governmental Relations

Chairpersons Brownlee and Jordan, and members of the Senate Committee on Commerce, thank you for the opportunity to appear today to convey our reactions to the recent decision of the United States Supreme Court in *Kelo v. City of New London*, 545 U.S. ___, 2005 WL 2000781 (U.S.Conn.), 74 USLW 3113 (2005) and our thoughts about the state of eminent domain law in Kansas in light of our own state Supreme Court decision in *General Building Contractors, L.L.C. v. Board of Shawnee County Commissioners*, 275 Kan 525, 66 P3d 873 (2003).

I am Terry Holdren and I serve as Local Policy Director for Governmental Relations at Kansas Farm Bureau. As you know KFB is the state's largest general farm organization representing more than 40,000 farm and ranch families through our 105 county Farm Bureau Associations.

Our members have long been outspoken about intrusion and interference with private property rights by governments, especially when that action results in land being taken from one owner and subsequently conveyed to another under the auspices of economic development. KFB policy, developed at the grassroots level, clearly states that eminent domain procedures should be used only for legitimate governmental purposes. It is our belief that these practices are not legitimate uses of the power and should be limited by both Constitutional and statutory protections.

Across the nation, and right here in Kansas, citizens are outraged over the current practices of our governments. In a recent survey conducted by the American Farm Bureau Federation, 95% of respondents disagreed with the United States Supreme

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Court's interpretation of Connecticut law in the *Kelo* case. Additionally, 83% of those surveyed opposed the use of eminent domain for economic development.

Kansas Farm Bureau has been involved in discussions with numerous groups and individuals in an attempt to seek solutions to this issue. We have met at length both historically and recently with representatives of the opposition to reform and have not found acceptance for any kind of meaningful effort. We believe Kansas property owners deserve more protection than the current law provides them and support current efforts that will:

- Provide Constitutional protection for Kansas property owners against the taking of their property for transfer to another private owner for any reason.
- Prohibit by statute takings intended for transfer of ownership and control by a governmental unit when the clear intent is economic development.
- Provide reasonable mechanisms for governments to protect citizens from unoccupied and unsafe property.
- Provide exceptions for hospitals, utilities and railroads which provide necessary services that benefit our state and nation.

While the Constitution of the United States provides protection for landowners under the 5th Amendment, our own state constitution is silent on the issue, and our current state statutes authorizing eminent domain are inadequate, favoring the condemning authority over the landowner. Your efforts to address this crisis are critical and appreciated. We stand ready to assist as you seek to end the abuse of eminent domain in Kansas.

Thank You.

Kansas Farm Bureau represents grass roots agriculture. Established in 1919, this non-profit advocacy organization supports farm families who earn their living in a changing industry.



GACHES, BRADEN, BARBEE & ASSOCIATES

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**Senate Commerce Committee
Hearing on SB 360 Concerning Eminent Domain
Comments of Coalition for Kansas Job Growth
Submitted by Ron Gaches
Tuesday, January 31, 2006**

Thank you Senator Brownlee for this opportunity to comment on behalf of the Coalition for Kansas Job Growth regarding Senate Bill 360. The Coalition for Kansas Job Growth is comprised of four statewide organizations and a number of individual local chambers of commerce. Members include the Kansas Chamber of Commerce Executives (KCCE), the Kansas Economic Development Association (KEDA), the Kansas Association of Realtors (KAR), and The Kansas Chamber.

Coalition members have joined together for the purpose of ensuring that Kansas communities retain the right to use eminent domain for economic development projects. This morning I'll speak specifically to our concerns about SB 360 and also to the merits of eminent domain for economic development.

Why the use of eminent domain is important to Coalition members: The Coalition is comprised of the organizations and individuals that are most involved in economic development activity across Kansas. We believe it is important to retain eminent domain authority as an economic development tool because it is essential to job development and capitol investment projects that are critical to our communities.

Recent economic studies by Janet Harrah of Wichita State University and Art Hall of the University of Kansas reveal that Kansas lags our region and the nation in job growth, worker productivity and worker wages. With just a few local exceptions, Kansas has struggled to recover from the soft economy following 9/11. The economic analysis by Hall and Harrah reveals that our decline has actually continued for nearly two decades.

At the Congressional Summit conducted last Friday by the Kansas Chamber, Senator Brownback expressed his concern about the population declines that plague most of our state. Rural Kansas is depopulating at an alarming rate. By default, our economy is becoming less and less reliant on the foundation of agriculture. Communities across Kansas are scrambling to attract investment and jobs. Now is the worst possible time to deny our communities this important economic development tool.

Why restrictions on the use of eminent domain are unnecessary. The use of eminent domain for economic development is rare. Many communities have never used it. In rural Kansas, where land is plentiful and jobs are scarce, there is seldom any need to use

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eminent domain to create an industrial or commercial project. If a rural Kansas area has an opportunity for an ethanol plant or industrial facility there is seldom any question that the affected landowners will cooperate. But that's not always the case in more urban and suburban settings. The only case of acquiring agricultural land for economic development purposes that I know of is the Kansas Speedway in suburban Wyandotte County. In settings where lots are small and dozens of landowners are affected, it is sometimes essential to use eminent domain to provide the land essential for a large project.

Perhaps it is not ironic that the small number of communities that have used eminent domain for economic development projects are among the few that are showing job and investment growth. Junction City, Manhattan, Topeka, Wyandotte County, Merriam and Pittsburg are among the few communities to have used eminent domain for development. But where they have, its use has been essential. Two excellent examples are my hometown of Manhattan and the city of Merriam, two very different communities with a similar problem, how to clear title for an essential public project.

Without exception, the projects that eminent domain opponents contend are abuses of authority are in fact great projects that produced significant jobs and investment.

Some argue that economic development is not a legitimate public purpose of government that warrants acquiring land by eminent domain. This argument ignores the reality that economic growth does not take place in a vacuum. Every year the state of Kansas and local governments invest hundreds of millions of taxpayer dollars in promoting economic development.

The Comprehensive Transportation Plan, Centers of Excellence at our universities, tax credits for job creation, sales tax exemptions for custom computer software, and the proposed business machinery and equipment property tax exemption are all about creating the infrastructure and environment to stimulate jobs and investments. After investing billions of taxpayer dollars in these programs it would be shortsighted to prevent our communities from leveraging these investments by blocking them from assembling the tracts of land needed to accommodate development.

Passage of Senate Bill 360 would block projects essential to job development and growth. As I understand the bill, no tax advantages or tax based financing would be available for a development project if eminent domain was used to acquire the land. Good bye Manhattan Town Center and the hundreds of jobs you kept downtown. Good bye Target distribution center and the 550 new jobs in Topeka. Good bye Merriam Town Center and welcome back blocks and blocks of declining neighborhoods. Good bye Kansas Speedway and the thousands of jobs centered on your track.

In some instances, like the Merriam Town Center, eminent domain is a tool of absolute necessity. 91% of the property owners in the area petitioned the city to make them part of a redevelopment district. One tract of land had disputed ownership. No one would claim it. The only option for the city was to acquire the lot by eminent domain. Another

tract had been foreclosed on by the bank holding a \$75,000 note, but the bank was prohibited by bank regulations from selling the land for the appraised value that was much lower. Eminent domain was the only option for the city to acquire the land.

Should these projects be blocked? Why would we do this? Is the scourge of eminent domain racing across the four corners of our state and threatening the family farm or driving Kansans from their homes? No. It is not.

Eminent domain is a tool of last resort. It prevents a small number of landowners or even a single landowner from blocking a project with an essential public purpose, creating jobs.

Eminent domain isn't a tool to rip off a landowner. It's a tool to prevent a landowner from being enriched unjustly because they choose to be the last holdout to development. I respect the preservation of unique historical buildings and our pristine tall grass resources, but none of these are threatened by eminent domain.

Our constitution specifically recognizes the right of government to acquire land for public purpose provided just compensation is paid. Under our constitution, property rights are not absolute. The Coalition believes that there is no question but that job creation and community development are essential public purposes.

What then is "just compensation?" I'll leave that to local governments and the courts to decide on a case-by-case basis. But, I think we'd all agree that a landowner asking 18 times fair market value for their property in the middle of a proposed development is looking for more than "just compensation." He's looking to enrich himself at the expense of the rest of his community. That's a privilege that's not guaranteed by our constitution.

The Coalition believes that sound public policy can be found in a middle ground. We believe it is possible to strengthen landowner protections in eminent domain cases without completely shutting the door on the use of eminent domain for economic development. The answer to this dilemma is not to prohibit the use of eminent domain for economic development but, rather, to strengthen the process and standards of proof to ensure that landowner interests are fairly protected.

Finding a middle ground between the well established positions of the parties that have contested this debate for the past several years will require a real compromise. I believe the majority of Kansas Senators recognize the legitimate place of eminent domain as an economic development tool. I urge you to hold all parties accountable for finding a true compromise.

Coalition members are experts in economic development and deeply committed to their communities. They support Kansas and Kansans. We stand with you to assist in the effort to understand this issue and fashion public policy that works to the advantage of all Kansans.

SYNOPSIS OF PROJECTS STATEWIDE UTILIZING EMINENT DOMAIN FOR ECONOMIC DEVELOPMENT

Kansas Speedway (Unified Gov't of Wyandotte County/KCK)

In 1997 the Unified Government of Wyandotte County and KCK approved a preliminary development agreement to locate a NASCAR racetrack facility on a site in western Wyandotte County. In 1998 the Kansas Legislature considered legislation specifically targeted at assisting the project, including provisions addressing acquisition of the necessary property (HB 2631). Acknowledging that eminent domain may become a necessary tool in assembling enough land for the project, legislators included a provision requiring any property acquired through eminent domain to be compensated at a minimum of 125% of fair market value – 25% higher than current law required. Legislators approved the racetrack legislation (86-35) in the House and (28-12) in the Senate.

Starting in 1998, approximately 228 parcels were impacted by the project, which covered a total of about 1,200 acres of land. Prior to the Speedway project, the area was zoned agricultural, residential, and commercial. It contained approximately 140 homes, farmland, and a few small businesses. Some of the parcels were only partially impacted, such as for easements or limited right-of-way.

Of the 228 impacted parcels, at least 180 were acquired by negotiated sale. Between 36-48 parcels were acquired through the Unified Government's use of eminent domain, including approximately 26 homes and 4 businesses. (Later, the 400-acre Village West development also acquired two parcels by eminent domain, totaling about 15 acres. One parcel was a vacant lot held by an absentee owner; the other was an owner-occupied house.) During proceedings, the Unified Government followed all procedural steps required by the TIF process for notice, public hearings, and resolutions, plus it held special public meetings for affected property owners and other persons of interest.

The first race was held at the Kansas Speedway in 2000. Since that time, the project's substantial economic impact has become clear. In conjunction with Village West, the 2 million sq. ft. of development draws 10 million visitors annually; it created 4,000 new jobs; produces \$450 million in annual sales and a \$52 million annual payroll as of 2004; produced \$810 million in combined public/private investment; and created \$40 million a year in new sales taxes, \$2.8 million in new state income taxes, and \$7 million in new property taxes. The site is also home to two of the state's top five tourist attractions. The 1,600 acres where the Kansas Speedway and Village West are now located used to generate a total of \$208,409 in property taxes a year. In 2005, that same land generated \$6.4 million in property taxes.

The development has also inspired significant spin-off economic impact. With new amenities, lower taxes, and a growing reputation, the Unified Government has enjoyed \$200 million in new housing construction since 2003, with the number of new housing permits setting a 40-year record. The property necessary for this project could not have been assembled without the use of eminent domain.

Merriam Town Center (Merriam)

This project was pursued after 96 of 105 (or 91%) mostly residential property owners signed a petition requesting to be redeveloped – essentially asking the City of Merriam to buy their homes – because they couldn't sell their homes due to the neighborhood's blighted and unsafe conditions (banks would not provide home loans in the area.) Of the 105 properties assembled for the project, only five were obtained through eminent domain. No property acquired by eminent domain was owner-occupied.

Eminent domain was required to be used in one instance because no one would claim ownership of the property (the owner of record said he sold it, but the purported buyer said he never bought it); in another instance because the bank that owned the property through foreclosure was prevented by bank regulations from agreeing to sell it at a substantial loss (the bank was owed \$75,000 on the property, which due to blight was now worth only about \$25,000); and in another instance, a vacant house was being used for storage. Only one owner of property obtained through eminent domain – an absentee owner from California – appealed his eminent domain award (he ultimately was awarded less than he had been offered during negotiations.)

A formerly blighted and crime-ridden neighborhood for which potential buyers literally could not obtain home loans is now a vibrant retail and entertainment center, providing amenities to the surrounding community and generating jobs and state and local sales tax revenues; none of it could have been accomplished without the use of eminent domain.

Target Distribution Center (Topeka)

In spring of 2002, GO Topeka began optioning property for a potential project involving the location of a large regional distribution center. All of the property necessary for the project, totaling nearly 460 acres, was acquired through negotiated sale with the exception of one 3.8-acre parcel. Acquisition of the 3.8-acre parcel was critical to the success of the project because the small parcel was located right in the heart of the proposed building site. Without this smaller parcel, the distribution center would not locate its facility in Topeka/Shawnee County.

The 3.8-acre commercial property included a metal building added by the landowner for use by his construction company. The land had been purchased by the owner at an auction in December 2000 for \$12,000. The metal building was added in October 2001 and was valued at \$180,000. The parcel was zoned for industrial use.

The owner of the 3.8-acre parcel was initially offered \$250,000 to purchase the 100,000 sq. ft. property and 4,000 sq. ft. building, along with an additional \$50,000 for an adjoining 60,000 sq. ft. parcel of land. During negotiations developers offered to relocate the company to another site within the industrial park (with infrastructure costs paid by the buyer) in addition to the cash payment. In the course of subsequent legal proceedings, the property owner approached GO Topeka and requested a \$1.2 million settlement; the request was declined.

After all efforts to negotiate a fair price had been exhausted, eminent domain proceedings were initiated by Shawnee County in March 2002. The court-appointed panel of three appraisers declared the parcel to have a total fair market value of \$329,000, which the owner ultimately was awarded. The property owner appealed the legality of the taking, and the County's actions were upheld.

The 1.4 million sq. ft. Target Distribution Center -- the size of 25 football fields -- was built on the site. The project resulted in more than \$80 million in capital investment and the creation of 550 to 600 new jobs. These jobs were welcome news in Topeka/Shawnee County after a number of job losses and reductions during the early 2000s. The first year payroll was over \$17 million. The workforce is eventually expected to grow to 1,000 employees.

Approximately 500 inbound and outbound trucks utilize the 238 docks at the center daily.

The taxable value of the 142-acre site prior to Target's location was \$59,350 and taxes paid at that time were \$7,528. In 2004, after the Target facility was in place, the taxable value of the real property was \$9,772,597. Target was given a 10-year, 100% tax abatement for real and personal property, effective in tax year 2005, as an incentive to locate in Shawnee County. Prior to the tax abatement taking effect, Target was assessed \$1,424,104 for real property in 2004. The taxable value of the personal property in 2005 was \$7,294,600; the taxes paid on the personal property in 2005 were \$1,026,737 (not all the equipment was exempt at that time). When the abatement ends, Target will be one of the largest commercial taxpayers in Shawnee County.

Home Depot and Additional Retail Space (Pittsburg)

In 2003 the City of Pittsburg started work on a local redevelopment project. The site was chosen based on its location within the community, its existing commercial zoning, and its close proximity to existing retail development. The project required acquisition of 28 acres of commercial property from seven property owners.

Five of the properties were acquired by negotiated sale. The sixth property owner agreed to the price established by the court during eminent domain proceedings. Acquisition of the seventh property was critical to the success of the project because it was located right in the heart of the proposed redevelopment site and could not be avoided. Without this parcel, the redevelopment project would not happen.

The owner of the seventh parcel was offered \$750,000 for his property, which was appraised by Crawford County at \$361,890. Believing his property was worth in excess of \$2 million, the property owner continued to demand a sale price that was higher than redevelopers could afford to pay. When efforts to negotiate a fair price were exhausted, the City of Pittsburg initiated eminent domain proceedings in 2004. The court-appointed panel of three appraisers set the fair market value of the property at \$1,032,000, which the property owner was awarded. When the property owner appealed this award, the city paid the property owner another \$215,000 in cash, making the property owner's final compensation for his 7.5-acre parcel a total of \$1,247,000.

Home Depot, the anchor store in the Pittsburg Town Center redevelopment project, opened in March 2005 with a 102,000 sq. ft. retail center and a 35,000 sq. ft. garden center. Construction has also been completed on a number of other retail stores and restaurants within the redevelopment site. Annual property taxes on the land occupied by Home Depot have gone from \$11,957 to \$173,695 per year. State and local sales tax revenues are expected to increase at least 10 times over the previous sales tax revenues collected on the four commercial properties. In addition, a total of 100 new jobs were created at Home Depot versus 12 jobs at the previous businesses.

Manhattan Town Center Mall (Manhattan)

This project redeveloped a major portion of the Manhattan downtown area. City officials estimate approximately 80 parcels were needed to assemble the land for the mall. Approximately 71 parcels were acquired by negotiated sale; about nine were acquired by eminent domain. Several of these properties were located in the center of the project area and could not be avoided. Without the tool of eminent domain, Manhattan would have been unable to complete this project.

Manhattan Town Center Mall included total public/private investment of nearly \$69 million. At the time the TIF district was created in the 1980s, the valuation for both real estate and utilities in the area was \$2,688,648; in 2003 the valuation was \$11,701,458. Unfortunately, because the project occurred a number of years ago, there are not reliable figures on the incremental change in sales tax revenues or job creation but the positive economic impact has been significant.

Baron BMW Expansion (Merriam)

This project encompassed approximately 5-acres within a redevelopment district previously declared blighted by the City of Merriam with the concurrence of KDOCH. The site was comprised of three parcels of property; the Gross parcel was less than an acre in size and contained a vacant cinderblock building of about 4,000 sq. ft. This parcel once housed a Toyota dealership, but the owner had sold the dealership some years before and retired. The parcel had been vacant with no tenant for almost all of the previous decade, interrupted only by a few short-lived businesses occupying the property for 30-90 days. The parcel frequently received code violation citations due to lack of maintenance of the property, and at the time of the final eminent domain court award the property owner owed \$12,000 in back taxes.

In 1994, the Merriam City Council passed a resolution declaring the 5-acre site a "redevelopment district." In 1998, the Merriam City Council passed a resolution approving Baron BMW's specific redevelopment plan. When notices of public hearings on each of the proposed resolutions were mailed and published in 1994 and 1998, the Gross parcel was vacant and without a tenant.

Baron BMW acquired the other two parcels through negotiated sale. The Gross parcel was appraised by Johnson County at less than \$500,000. During negotiations, Baron BMW's appraiser valued the Gross parcel at approximately \$680,000. Baron BMW's final offer was over \$800,000. The property owner wanted \$1.2 million. When negotiations could not be resolved, the Merriam City Council investigated, made a formal finding that Baron BMW had negotiated with the landowner in good faith, and by a 2/3 majority vote of the Council filed eminent domain proceedings for the parcel. The Gross parcel was the only piece of property obtained by eminent domain in the approximately 5-acre redevelopment project; it was, however, essential to making the project logistically and economically viable. If the Gross parcel could not be obtained, the dealership was going to move to a site outside of Merriam.

During eminent domain proceedings, court-appointed appraisers declared the Gross parcel to have an \$850,000 fair market value and awarded \$30,000 in damages for total compensation of \$880,000. When the property owner appealed the award, Baron BMW paid Mr. Gross another \$120,000 in cash, making the property owner's compensation for the less-than-acre parcel an even \$1 million. Mr. Gross voluntarily dropped his appeal and released all claims to the property.

The expansion of Baron BMW was a critical "gateway" project for Merriam, redeveloping a code-violating vacant lot at the front door of the city and dramatically revitalizing the most prominent intersection in Merriam. Retaining this project in Kansas has also been very positive. Baron BMW operations have expanded from 34 employees in 1999 to 162 employees in 2004. Many of these jobs are high-paying. Baron BMW also generates hundreds of thousands of dollars a year in state and local sales taxes. Baron BMW made a \$13 million capital investment in the property. The appraised value of all of the parcels in 1999 totaled \$1,425,960; in 2004 Johnson County's appraised valuation of the 5-acre site (which includes the former Gross parcel) was \$7,640,160. The annual property taxes paid on all of the parcels in 1999 totaled \$34,782; the annual property taxes paid on the Baron BMW property in 2004 was \$187,148. Total property taxes now paid to date, 1999-2004, are \$834,614.

Coalition for Kansas Job Growth Membership

Kansas Association of Realtors
Kansas Chamber of Commerce Executives
Kansas Economic Development Association
The Kansas Chamber
Great Bend Chamber of Commerce
Greater Kansas City Chamber of Commerce
Junction City Chamber of Commerce
Lenexa Chamber of Commerce
Manhattan Chamber of Commerce
Merriam Chamber of Commerce
Olathe Chamber of Commerce
Overland Park Chamber of Commerce
Topeka Chamber of Commerce



January 31, 2006

TO: Senate Committee on Commerce

FROM: Tim Danneberg
City of Olathe

SUBJECT: Testimony in opposition to Senate Bill 360

Though the City of Olathe has never used eminent domain for economic development, it is viewed as an important tool for the types of major economic development projects that result in significant new investment, revenue and new jobs for Kansas.

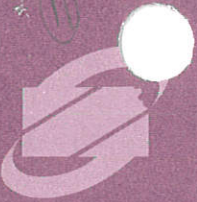
The Olathe City Council would only consider using this tool if it was the absolute last option to bring a major project to fruition. The benefits from such a project must have profound local if not regional impact, especially in terms of creating new revenue and new jobs for Olathe and the State of Kansas. The City Council continues to maintain that the vast majority of land for such a project must be under the developer's control prior to consideration.

If the City Council would ever consider using eminent domain, the magnitude of the project would, in all likelihood, require the use of other tools such as tax increment financing or STAR bonds. In reality, such major projects cannot occur without the use of these other tools. In today's economic climate, Kansas cities would find themselves significantly handicapped when recruiting these types of developments that are also being recruited by other states.

SB 360 is of particular concern due to the fact that it would disallow the use of eminent domain for most major projects since it would preclude using eminent domain where tax increment financing and/or STAR bonds are used.

The City of Olathe strongly opposes SB 360 and supports continuing to allow local elected officials to responsibly use eminent domain for projects that create thousands of jobs and hundreds of millions of dollars in investment in our state.

Senate Commerce Committee
January 31, 2006
Attachment 10-1



TO: SENATE COMMERCE COMMITTEE

FROM: BILL YANEK, KAR DIRECTOR OF GOVERNMENTAL RELATIONS

DATE: January 31, 2006

SUBJECT: Senate Bill 360

Thank you for the opportunity to testify. On behalf of the Kansas Association of REALTORS®, I appear today in opposition to Senate Bill 360. The Kansas Association of REALTORS® is a member of the Coalition for Kansas Job Growth.

The 2006 Kansas Association of REALTORS® Legislative Policy states:

“We believe home ownership deserves a preferred place in our system of values as it contributes to community responsibility, civic stability and family well-being.”

“We support community planning objectives, but we are opposed to unreasonable restrictions and radical changes in existing zoning where the effects of such actions significantly undermine the value of property or the reasonable expectation of property owners.”

With this in mind, KAR adopted its legislative agenda for the 2006 Legislative Session. Central to the KAR agenda is to ensure that any legislative action impacting the use of eminent domain in Kansas balances private property rights with the need for economic development. KAR believes that the legislature should consider a heightened level of scrutiny when analyzing whether the government action is reasonable, including but not limited to whether the project has a positive regional economic impact.

The Kansas Association of REALTORS® did not come to this position lightly and we understand the ramifications for property owners are severe when eminent domain is contemplated. However, KAR believes that SB 360 is merely a ‘Trojan horse’ for an outright ban on the use of eminent domain for economic development. KAR opposes such an outright ban.

Today’s debate, and the debate to take place later this week on various eminent domain proposals should mark the start, not the end of debate on the use of eminent domain in Kansas.

Senate Commerce Committee
January 31, 2006
 Attachment 11-1



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KAR believes that statutory limitations on the use of eminent domain would buttress private property rights and reinforce the reasonable expectation of impacted property owners. We ask that the Kansas Legislature consider mandating an increased level of scrutiny when eminent domain is used for economic development purposes, which would make a condemnation of property for economic development purposes more difficult to do.

Entities using eminent domain for economic development should be required to show that the condemnation serves an important state interest and that the condemnation is at least substantially related to serving that interest. This would be in contrast to Kelo, where the Court applies a mere “rational basis” test, which determines whether there was only a rational basis for the reason the power was used. Helpful in defining an “important state interest” would be whether the proposed economic development project has a positive regional economic impact.

The Kansas Association of REALTORS® looks forward to working with the Kansas Legislature and eminent domain stakeholders in crafting legislation that will balance Kansas’ need for economic development with protection of private property rights.



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TO: Senator Karin Brownlee, Co-Chair
Senator Nick Jordan, Co-Chair
Members, Senate Commerce Committee

FROM: Ashley Sherard, Vice-President
Lenexa Chamber of Commerce

DATE: January 31, 2006

RE: **Opposition to SB 360—Restricting the Use of Public
Financing Tools in Economic Development Projects
Utilizing Eminent Domain**

The Lenexa Chamber of Commerce would like to express its opposition to Senate Bill (SB) 360, which restricts the use of public financing tools in economic development projects utilizing eminent domain.

Redevelopment projects can be crucial to maintaining the economic viability of a community. Often times these projects face difficult challenges to redevelopment, particularly in areas that are aging, blighted, or unique (for example, an area that is undermined.) Because of these special challenges, public financing tools are often a necessary component of the project because “traditional” forms of financing are either inadequate or not available.

We believe that, because most such projects require some public financing component to make them economically viable, SB 360 would have the effect of *de facto* eliminating eminent domain as a tool. Having the ability to assemble the necessary land, however, is as key to many of these projects as having access to appropriate financing tools. While most land acquisition is successfully negotiated, in a few instances cities have used eminent domain as a last resort to acquire property for an economic development project significant to their community.

Eminent domain cannot and should not be taken lightly when used as a tool to acquire private property for private development. We strongly believe, however, that in appropriate instances its use for economic development can indeed be for the greater good. Communities should be able to continue to judge potential opportunities on a case-by-case basis, continuing to leave decisions as to the exercise of those powers primarily with locally-elected officials who can best weigh the values, needs, desires, and circumstances of their individual communities.

For these reasons, the Lenexa Chamber of Commerce urges the committee not to recommend SB 360 favorable for passage. Thank you for your time and attention to this issue.

Senate Commerce Committee

January 31, 2006

Attachment 12-1



Written Testimony: SB 360
Senate Commerce Committee
January 31, 2006
By: Christy Caldwell, Vice President Government Relations
Greater Topeka Chamber of Commerce

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The Greater Topeka Chamber of Commerce would like to express our opposition to SB 360, regarding the use of eminent domain and the elimination of tax incentives and local financing options.

The Topeka Chamber is well aware of the recent interest in the use of eminent domain by local governments, particularly since the U.S. Supreme Court ruling. However, we do not believe the power of eminent domain has been abused or misused in our community or in the State of Kansas. Eminent domain is a power that no one takes lightly; it is a tool of last resort in situations that are difficult at best and certainly not simple in reason.

In our community the power of eminent domain was exercised by Shawnee County in order to acquire acreage for the Target Distribution Center. Of the 460 acres needed, the owner of 3.8 acres and the developer could not agree on the purchase price of the land. Without these 3.8 acres, the distribution center would not have been located in Topeka; it most likely would have been in Missouri. The value established by the panel of appraisers during the eminent domain process was \$329,000. The owner, while awaiting the decision of the Kansas Supreme Court on the propriety of the taking, offered to settle for \$1.2 million. The Kansas Supreme Court deemed that it was use of eminent domain was properly used in this case. The 1.4 million sq. ft. Target Distribution Center (the size of 25 football fields), with 238 docks servicing 500 inbound and outbound trucks daily, has since been built in Topeka. Their capital investment was \$80+ million dollars and the company began to hire 550 employees, with plans to grow the employment to 1000. Over 9000 NE Kansas citizens applied for those initial jobs. The company's first year payroll was in excess of \$17 million paid to Kansas workers.

It is our belief that this economic development project was for the public benefit of our community and the state. In making this project a reality, the company received tax abatements and tax credits. If SB 360 would have been in effect; there would not have been a Target Distribution Center in Topeka, Kansas because abatements and tax credits could not have been given.

In a time when the legislature want to grow our Kansas economy to provide good, quality jobs for Kansans we must remain committed to not tying the hands of local government in partnering with business to create jobs and income for Kansas citizens. This bill, if approved, will provide a huge barrier to future economic grow when business and industry projects are most needed and in situations where they are most difficult to come by. Decisions regarding locating large companies are based upon many factors including the acquisition of an appropriate site that works for the company and financial incentives that make the investment work in our state vs. another. That is in addition to a willing and quality workforce, appropriate infrastructure, and a "can do spirit" that communities in our state are known for. This bill, if it becomes law, will squelch projects in areas of cities that are already challenged because of blight. If a community is able to assemble all but the one hold-out property in order to re-develop an area of the community that is strangled because of run down properties, crime, and lack of quality infrastructure and must condemn property to make the project work; most likely the project would not succeed because of the ban imposed on providing financing mechanisms like tax increment financing and incentives that are necessary to make the project work. There are areas within communities all across our state that would lose out to reclaiming blighted neighborhoods and commercial areas if they cannot use every tool possible to build anew.

We ask that you not approve SB 360. We realize that there is great pressure to address the issue of eminent domain and we believe there are ways to provide increased landowner protections and heightened requirements to assure that eminent domain remains a tool of last resort and one that treats the owner fairly and with heightened scrutiny. This will be accomplished this session with your assistance and support of reasonable limitations and protections. We ask that you remain committed to Kansas economic growth and that legislation will do harm to future growth by limiting local decisions, plans and projects that will benefit Kansas communities and provide good jobs for our citizens and young people.

Thank you.

Senate Commerce Committee
January 31, 2006

Attachment 13-1

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Testimony to Senate Commerce Committee
On behalf of Greater Kansas City Chamber of Commerce
Robert J. Vancrum, Government Affairs Specialist
February 1, 2006

To Co-Chairmen Brownlee and Jordan and Honorable Members of the Committee:

I am here today registering our opposition to Senate Bill 360.

Basically our Chamber's position is that the right of government to take property for a public purpose should be defined broadly enough to include taking some property for economic development purposes if the governing body of that unit of government deems this benefits the public as a whole. Certainly I believe nearly everyone I have talked to commends the Unified Government of Kansas City, Kansas for the remarkable economic resurgence going on in the area surrounding the Kansas Speedway. But without eminent domain even the Speedway may not have happened. We also believe the tax incentives were appropriate and were needed. Many of the bills that we are opposed to would have effectively prevented this renaissance, which has made Wyandotte County a destination point for tourists and the envy of much of the Midwest with regard to commercial redevelopment.

In the final analysis, we believe the Kansas legislature should recognize that officials in City and County government across the state struggle with the same dilemma of private property rights vs. the jobs and other benefits of economic development that could flow from major new commercial or entertainment facilities. Why do we feel that local government units cannot be trusted with making the decisions that are in the best interests of their constituents?

We have the same concerns about taking away useful economic tools such as tax abatements, Star Bonds, or TIF when projects are also utilizing eminent domain. This would simply put Kansas in a non-competitive situation with its surrounding states.

I will be happy to answer any questions to committee members at their convenience.



TESTIMONY IN OPPOSITION OF SENATE BILL NO. 360

TO: Members of the Senate Commerce Committee

DATE: January 31, 2006

RE: Senate Bill No. 360—Proposed legislation concerning eminent domain; relating to fairness in economic development.

Ladies and Gentlemen:

This testimony is offered by the City of Manhattan, Kansas, in opposition to Senate Bill No. 360.

I am the City Attorney for Manhattan and I have had the privilege of representing that City for over 28 years. During that time, I have represented the City in eminent domain cases for public uses such as streets, utilities, parks and "economic development". In my private practice, I have also represented land owners in eminent domain cases. I have seen both sides of this issue. It has been my experience that, no matter what the proposed public use might be, the taking of private property for that use is often an emotionally difficult experience for many land owners. It is particularly so when the private property is owner-occupied residential property, and/or when the private property has been in one ownership for an extended period of time. It has also been my experience that, in large part because of this hardship on private property owners, most local elected officials are extremely reluctant to exercise this public power. That is certainly the case in Manhattan. Manhattan has only exercised that power after all reasonable negotiations have failed; only after finding that there are no alternatives to the acquisition; and, only after the elected officials are convinced that the public benefits to be accomplished by the acquisition far out-weigh the continued private ownership of the property.

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Senate Commerce Committee
January 31, 2006
 Attachment 15-1

The crucial point to be made in the deliberations on these bills is that the local elected official is in a position to evaluate, and be held accountable for, this delicate balance between public benefit and private ownership. The legislature should not summarily tie the hands of local elected officials by eliminating one category of public use, which has been, somewhat erroneously, titled "economic development".

Manhattan, and its citizens, have benefited from the provisions of K.S.A. 12-1770, et.seq., which has been referred to as the Tax Increment Finance (TIF) law. That Law allows cities and counties to acquire private property, through the use of eminent domain if necessary, and to sell or lease that property to a private developer in order to accomplish a redevelopment project that has previously been approved following public hearings and feasibility studies required by the Law. Manhattan used the TIF Law in the early 1980s to redevelop a portion of its downtown business district. Prior to the redevelopment project, Manhattan's downtown area was declining, not unlike many similar downtown areas across the country. This decline was due to many reasons, but primarily it was caused by decaying private properties and incompatible land uses. Because the market was there to support Manhattan as a regional retail center, there was extreme pressure on the local elected officials to allow a shopping mall to be constructed on the fringes of the City. If that construction had occurred, the City's downtown would have continued to decline even further. In that event, the City's public investment in the public infrastructure of streets, utilities, fire protection and police protection would have been wasted, and, in addition, the City would have been faced with the cost of extending that infrastructure to accommodate the new construction on the fringes. Manhattan was fortunate to have elected officials who chose to redevelop the downtown area, rather than allow such fringe development. That project could not have occurred in the private market, without public assistance. It was not feasible financially, or practically, for a private developer to assemble a site adequate for a shopping mall. The project required the acquisition of approximately 80 separate tracts of property. After extensive negotiations, the City eventually had to acquire approximately a dozen tracts by the power of eminent domain. As a result of that project, Manhattan's downtown area is now home to Manhattan Town Center Mall, which has greatly assisted in preserving the public's investment in that area, and in avoiding the unnecessary public expense of expansion. That project would

not have been possible if the City had not had the power of eminent domain.

Manhattan is also currently involved in a second project to enhance its downtown area. This project is needed in order to continue to preserve the public investment in not only the public infrastructure, but also the prior project. This second project has evolved through more than two years of numerous public meetings, public input and the creation of a comprehensive plan for the development. It has also evolved through the guidance of an elected City Commission, comprised of 5 positions, which have been filled during this period with 7 different persons of varying political ideologies. This project is also being pursued under the current version of the TIF law. The project will not be possible for Manhattan to complete, if the City's power of eminent domain is eliminated.

Manhattan opposes Senate Bill No. 360.

Thank you for your consideration.

WILLIAM L. FROST
CITY ATTORNEY

JOHNSON COUNTY PUBLIC POLICY COUNCIL

TO: Sen. Karin Brownlee, Co-Chair
 Sen. Nick Jordan, Co-Chair
 Members, Senate Commerce Committee

FROM: Johnson County Public Policy Council

DATE: January 31, 2006

RE: Opposition to SB 360 – Restricting Public Funding Incentives for Economic Development Projects Utilizing Eminent Domain

The Johnson County Public Policy Council (JCPPC) was created to speak as one unified voice on behalf of the nine Johnson County Chambers of Commerce in partnership with the Greater Kansas City Chamber of Commerce and the more than 5,000 member businesses we collectively represent.

The JCPPC would like to express its opposition to SB 360, which would restrict public funding incentives for economic development projects that must utilize eminent domain. While recognizing its sensitive nature and the need for restraint in its use, the JCPPC’s legislative platform for 2006 includes support for preserving eminent domain authority as an economic development tool.

The JCPPC believes that, because many projects require some non-traditional financing components to make them economically feasible, SB 360 would have the effect of *de facto* eliminating eminent domain as a tool, thereby potentially inhibiting communities’ ability to develop quality economic development projects.

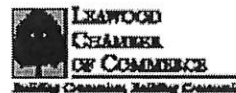
For this reason, the JCPPC would urge you not to recommend SB 360 favorable for passage and to instead consider alternate approaches addressing concerns about the use of eminent domain. Thank you.

DeSoto Chamber of Commerce
Gardner Area Chamber of Commerce
Greater Kansas City Chamber of Commerce
Leawood Chamber of Commerce
Lenexa Chamber of Commerce
Northeast Johnson County Chamber of Commerce
Olathe Chamber of Commerce
Overland Park Chamber of Commerce
Shawnee Chamber of Commerce
Spring Hill Chamber of Commerce

Senate Commerce Committee

January 31, 2006

Attachment 16-1





TO: Sen. Karin Brownlee, Co-Chair
Sen. Nick Jordan, Co-Chair
Members, Senate Commerce Committee

FROM: Andrew Nave, President
Johnson County Partnership

DATE: January 31, 2006

RE: SB 360 -- Limiting the Use of Tax Incentives in Eminent Domain Projects

The Johnson County Partnership is a collaboration of the ten economic development councils within Johnson County. Our mission is to market Johnson County as an attractive place to do business and promote the county's economic development projects. The proposed legislation regarding the use of public financing and eminent domain could inhibit Johnson County and its communities' ability to develop quality economic development projects.

In Johnson County, the use of eminent domain for economic development has produced positive economic impacts to communities, most notably in Merriam. In 1996, the Merriam Town Center project, a commercial redevelopment along Interstate 35, boosted retail sales tax for the community by more than 40%. In eight short years the development has created more than 800 jobs and increased the value of the property from \$3 million to \$57 million.

In addition to the substantial economic impact created, Town Center turned a distressed and deteriorating neighborhood into a vibrant retail destination. The use of public financing tools, like tax increment financing, was crucial in making this redevelopment project competitive in the commercial real estate market.

The Johnson County Partnership acknowledges the rights of individual property owners and is sensitive to the need for careful oversight. This may include the possibility for re-evaluation of the governing bodies' process when considering using eminent domain. Although, we feel that placing restrictions on public financing tools would drastically limit the economic impact of potential redevelopment projects and thus the economic development of many communities.

The Johnson County Partnership respectfully asks the Committee to consider the benefit that can come from the careful and responsible use of eminent domain to enhance the economic vitality of a community, county, or region.

Senate Commerce Committee

January 31, 2006

Attachment 19-1



LEGISLATIVE TESTIMONY

January 31, 2006

TO: Senators Karin Brownlee and Nick Jordan, Co-Chairs
Members, Senate Commerce Committee

FROM: Wes Ashton, Overland Park Chamber of Commerce

RE: SB 360 -- Limiting Tax Incentives in Eminent Domain Projects

Thank you for the opportunity to offer written testimony in opposition to SB 360, which would limit the use of tax incentives in eminent domain projects for economic development. The Overland Park Chamber of Commerce has approximately 1000 member businesses located across the Kansas City Metro area.

The U.S. Supreme Court ruling in *Kelo v. New London* brought a great deal of negative attention to the use of eminent domain across the country. The use of eminent domain in Kansas has been very limited throughout the state's history. Although there may be examples of abuse of the power, the Chamber still supports the concept and continued use of eminent domain with the imposition of certain restrictions. Eminent domain should be considered one of the last options, but it should remain available for use for a variety of reasons.

Eminent domain can be a tool to achieve economic development projects in blighted or distressed areas. Finding a way to redevelop a blighted area of a community poses certain difficulties, and the Chamber believes that public financing can be a necessary component of redevelopment projects because traditional forms of financing may either not be possible or available. Any legislation that prohibits public financing for economic development projects using eminent domain will substantially prohibit many of our development projects, which will be detrimental to Overland Park and Johnson County and other Kansas communities.

The Chamber supports the ability of local governments to retain eminent domain authority as a last option. The Chamber supports options to strengthen the regulations regarding its use, but SB 360 eliminates the possibility of many of our redevelopment projects. The Chamber feels there are ways to satisfy public concerns while still leaving local communities the appropriate tools for development. This solution does not accommodate different communities' strengths or weaknesses and is not the best "catch-all" solution.

Thank you for your consideration of this issue and the opportunity to offer written testimony.

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 Senate Commerce Committee

January 31, 2006

Attachment

18-1