

## MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 A.M. on February 1, 2006, in Room 123-S of the Capitol.

All members were present.

## Committee staff present:

Mike Heim, Kansas Legislative Research Department  
Helen Pedigo, Office of Revisor of Statutes  
Karen Clowers, Committee Secretary

## Conferees appearing before the committee:

Ron Gaches, Coalition for Job Growth  
Cheryl Lyn Higgins, Kansas Chamber of Commerce Executives  
Doug Kensinger, Kansas Economic Development Alliance  
Bill Yanek, Director of Governmental Relations, Kansas Association of Realtors  
Don Moler, Executive Director, League of Kansas Municipalities  
Randall Allen, Executive Director, Kansas Association of Counties  
Don Denney, Media Relations Specialist, Unified Government  
Neil R. Shortlidge, City Attorney, City of Roeland Park, KS  
William L. Frost, City Attorney, City of Manhattan, KS

## Others attending:

See attached list.

Bill Introductions

Doug Smith, Kansas Credit Attorneys Association requested introduction of a bill to amend K.S.A. 61-3005 regarding civil procedures for limited actions. Senator Schmidt moved, Senator Goodwin seconded, to introduce as a committee bill. Motion carried.

## The hearing continued on:

**SB 323--Eminent domain; restricting government authority to take property**

**SB 446--Eminent domain; fairness in economic development act**

**SCR 1612--Eminent domain; proposed constitutional amendment restricting government authority to take property.**

**SCR 1616--Eminent domain; proposed constitutional amendment restricting government authority to take property**

Note: Due to hearing several eminent domain bills at one time some testimony will appear to be out of place, several conferees opposed one bill and supported other bills at the same time, others chose to simply address the issue of eminent domain.

Ron Gaches spoke as an opponent of **SB 323** because it has very narrow exceptions for use of eminent domain and **SCR 1616** because it will completely eliminate the use of eminent domain for economic development projects (Attachment 1). He expressed support of **SB 446** as an effective tool for local governments to use eminent domain for economic developments to benefit the community while providing protection for property owners.

Cheryl Lyn Higgins spoke in favor of the use of eminent domain as an economic tool for cities to rehabilitate blighted areas (Attachment 2). Eminent domain was a crucial tool for the City of Wichita when dealing with an out of state, absent landlord.

Doug Kinsinger spoke in opposition to any legislation that would ban or significantly limit eminent domain (Attachment 3). Mr. Kinsinger supported increased protections for property owners, increased level of scrutiny of local governments when utilizing eminent domain and balanced consideration for the needs of both communities and property owners.

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:30 A.M. on February 1, 2006, in Room 123-S of the Capitol.

Bill Yanek testified in opposition to legislation that would ban the use of eminent domain for economic development (Attachment 4). Any legislative action impacting the use of eminent domain in Kansas should balance private property rights with the need for economic development. The Kansas Association of Realtors support mandating a heightened level of scrutiny when eminent domain is used and show that the condemnation serves an important state interest.

Don Moler appeared in opposition to **SB 323**, **SCR 1612**, and **SCR 1616** and in support of **SB 446** (Attachment 5). Eminent domain is a tool that should be used sparingly, with adequate protection for private property owners. To date, the use of eminent domain has been used sparingly and successfully. It should not be taken away from local government. **SB 446** strengthens the rights of private property owners while at the same time preserving the power of eminent domain for economic development purposes for the benefit of the public in the hands of local governments.

Randall Allen spoke in opposition to **SB 323**, **SCR 1612** and **SCR 1616** which restricts the ability of county governments in Kansas to exercise eminent domain for economic development purposes (Attachment 6). Mr. Allen supports a proposal which would balance the competing interests of private property rights with economic development.

Don Denny spoke in opposition to **SB 323**, **SCR 1612** and **SCR 1616** (Attachment 7). Mr. Denny described the use of eminent domain in Wyandotte County, Kansas and the resulting economic benefits. He supports the use of eminent domain as a tool in economic development.

Neil Shortlege spoke in opposition to **SB 323**, **SCR 1612** and **SCR 1616** and in support of **SB 446** (Attachment 8). He provided his experience with the successful use of eminent domain in Roeland Park.

Bill Frost spoke in opposition to **SB 323**, **SCR 1612**, **SCR 1616** and in support of **SB 446** (Attachment 9). He has first hand knowledge on both sides of the eminent domain issue and regardless of the project, it is often an emotionally difficult experience for the property owner. It is crucial that local officials be held accountable for maintaining the delicate balance between public benefit and private ownership.

Written testimony in opposition of **SB 323** and **SCR 1616** was submitted by:  
Andrew Nave, President, Johnson County Partnership, (Attachment 10)  
Ashley Sherard, Vice President, Lenexa Chamber of Commerce, (Attachment 11)

Written testimony in opposition of **SCR 1612** and **SCR 1616** was submitted by:  
James Clark, Kansas Bar Association, (Attachment 12)

Written testimony in opposition of **SB 323**, **SCR 1612** and **SCR 1616** and in support of **SB 446** was submitted by:  
Robert J. Watson & Jane Neff-Brain, City of Overland Park, KS (Attachment 13)  
Christy Caldwell, Greater Topeka Chamber of Commerce (Attachment 14)  
Robert J. Vancrum, Greater Kansas City Chamber of Commerce (Attachment 15)  
Wes Ashton, Overland Park Chamber of Commerce (Attachment 16)

Written testimony in general terms was submitted by:  
William Davitt, Wichita, KS (Attachment 17)

The Chairman announced that testimony will continue at the meeting scheduled for February 3, 2006.

The meeting was adjourned at 10:30 a.m. The next scheduled meeting is February 2, 2006.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2/1/06

NAME	REPRESENTING
Don Moler	LKM
Sandy Jacquot	LKM
Randall Allen	Ks. Assn. of Counties
<del>Cheryl [unclear]</del>	Judicial [unclear]
Sally Howard	KOOT
Tom Daches	Coalition for KS Job Growth
<b>BRAD HARRELSON</b>	<b>KFB</b>
<b>TERRY HOLDREN</b>	<b>KFB</b>
<del>John [unclear]</del>	<del>State</del>
Ed [unclear]	LGK
Lana [unclear]	COJA
Beth Unner	Hutches Food Relations
Leslie Kaufman	Ks Coop Council
Ashley Sheard	Lenexa Chamber
Joey Kinsinger	Topeka Chamber
Christy Caldwell	Topeka Chamber
Wes Ashton	Overland Park Chamber
Marylou Stankevich	KGFA/KARA

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2/1/06

NAME	REPRESENTING
BILL YANEK	Kansas Assn. of REALTORS
LINDA LEEPER	SHAWNEE CHAMBER
DIANE Costello	Olathe Chamber
Whitney Daman	City of Topeka
DOW DENNEY	Unified Government of WyCo/KCC
Bill Thompson	KS Dept of Commerce
Brent Halen	KLA
ALAN COBB	Americans for Prosperity
RONALD RICHEY	ME
EVALINE E. McCLAIN	City of Overland Park, KS
Erik Sarbrus	City of Overland Park
Jane Neff-Brain	City of Overland Park
Eric Arner	WaterOne
Callie A. Marks	City of Lenexa
Beccy Gotham	City of Lenexa
PHIL WAGES	KEPCO
Mark Schreiber	Westar Energy
Eric Stafford	AGC of KS

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2/1/06

NAME	REPRESENTING
Brock SNEAD	CITY OF MANHATTAN
Dede Carter	Manhattan Chamber
JASON HIGERS	City of Manhattan
WL FROST	CITY OF MANHATTAN
Neil Shortlidge	City of Roeland Park
Lindsey Douglas	Hein Law Firm



**GACHES, BRADEN, BARBEE & ASSOCIATES**  
PUBLIC AFFAIRS & ASSOCIATION MANAGEMENT

825 S. Kansas Avenue, Suite 500 ♦ Topeka, Kansas 66612 ♦ Phone: (785) 233-4512 ♦ Fax: (785) 233-2206

**Senate Judiciary Committee**  
**Hearing on Eminent Domain**  
**Comments of Coalition for Kansas Job Growth**  
**Submitted by Ron Gaches**  
**Wednesday, February 1, 2006**

Thank you Senator Vratil for this opportunity to comment on behalf of the Coalition for Kansas Job Growth regarding the various eminent domain bills before your committee. 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), The Kansas Chamber and a number of local chambers of commerce. The Coalition is comprised of the organizations and individuals that are most involved in economic development activity across Kansas. A complete list of our members is attached at the end of my testimony.

**Coalition members believe that eminent domain authority is an essential tool for job development and capitol investment projects of critical importance to our communities.** They have joined together for the purpose of ensuring that Kansas communities retain the right to use eminent domain for economic development projects.

Recent economic studies by Janet Harrah of Wichita State University and Art Hall of the University of Kansas indicates that Kansas lags our region and the nation in job growth, worker productivity and worker wages. With just a few local exceptions, the analysis by Hall and Harrah reveals that our decline has actually continued for nearly two decades.

Senate Judiciary

2-1-06  
Attachment 1

At the Kansas Chamber Congressional Summit last Friday, Senator Brownback observed that rural Kansas is depopulating at an alarming rate. Our economy is becoming less and less reliant on 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.

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

**Job creation and community growth are legitimate public uses of eminent domain.** Some argue that economic development is not a legitimate public purpose of government that warrants acquiring land by eminent domain. This argument asks us to consider the role of local government to be unchanged since the drafting of the U.S. Constitution, and it 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.

**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, it is hard to imagine any need to use eminent domain to create an industrial or commercial project. But that's not always the case in more urban and suburban settings. 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.

Manhattan, Topeka, Wyandotte County, Merriam, Junction City and Pittsburg are among the few communities to have used eminent domain for development. Without exception, the projects that eminent domain opponents contend are abuses of authority are in fact great projects that produced significant jobs and investment. Attached to my testimony is a recap of each of the prominent uses of eminent domain for economic development projects in recent years.

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 was for the city 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.

Should these projects be blocked? Good bye Manhattan Town Center and the thousands of jobs you brought 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 developing around your track.

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 unjustly enriched because they choose to be the last holdout to development.

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 policy dilemma is not to restrict the uses of eminent domain but 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. We 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 developing a rational solution.

**Senate Bill 323.** The bill proposes to prohibit use of eminent domain for economic development purposes except for where the "entity demonstrates by clear and convincing evidence that no reasonable alternatives to such taking is available to satisfy the public purpose that the taking and transfer is intended to advance; and

- (1) such property has been unoccupied for more than five years
- (2) such property is unsafe for occupation by humans under the building codes of the jurisdiction where the structure is situated; or
- (3) such property is in a state of disuse sufficient to constitute waste;”

Unfortunately, these exceptions are so narrow as to offer virtually no useful tool at all. None of the recent major projects accomplished with eminent domain would be completed under these rules. Waiting for the exceptions to exist would cause the city to promote blight or delay in pursuing any urban renewal project. By restricting the use of eminent domain rather than adding landowner protections the bill effectively denies all communities the possible use of an important economic development tool while benefiting only those few property owners who might have rejected reasonable offers for their land.

**SCR 1616.** The proposed constitutional amendment eliminates completely the use of eminent domain for economic development projects. The Coalition is opposed.

**SB 446.** The proposal sets the compensation for acquiring property for economic development purposes at 125% of FMV, requires the condemning authority to prepare an economic development plan with stipulated findings, imposes a public hearing process, and requires a super majority vote of the governing body for use of eminent domain for economic development projects. The Coalition believes this proposal is a good faith step towards ensuring greater protections for property owners.

## **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  
Emporia Chamber of Commerce  
Great Bend Chamber of Commerce  
Greater Kansas City Chamber of Commerce  
Junction City Chamber of Commerce  
Lawrence Chamber of Commerce  
Leawood Chamber of Commerce  
Lenexa Chamber of Commerce  
Manhattan Chamber of Commerce  
Merriam Chamber of Commerce  
Olathe Chamber of Commerce  
Overland Park Chamber of Commerce  
Pittsburg Chamber of Commerce  
Topeka Chamber of Commerce

Statement on Eminent Domain

Prepared for: Kansas Senate Judiciary Committee

February 1, 2006

I am Cheryl Lyn Higgins, President & CEO of the Junction City Area Chamber of Commerce.

In 2005, the City of Junction City used eminent domain to redevelop a 45,000 square foot vacant building adjacent to our new \$15 million hotel/convention center. The building was owned by Nash Finch Companies, Edina, Minnesota and had been vacant for over 5 years. The building's façade had deteriorated significantly - peeling paint, crumbling parking lot, weeds and brush grew next to the building. The owners had allowed the sprinkler system to freeze and flood the inside of the building. Major renovations were needed to make the space usable.

City officials traveled to Edina to meet with Nash Finch about improving the building and the site. A number of options were discussed. The company authorized the City to facilitate painting and cleanup of the exterior of the building. In addition, company officials indicated the building was listed for sale at a price of \$950,000. A developer from Overland Park offered the asking price to the company. Nash Finch declined the offer and raised the selling price to \$1,500,000. The City was approached by the Overland Park developer to use eminent domain to acquire the building. The developer had 3 major retail clients that would open stores in the renovated building, and planned a 10,000 square foot addition. The City agreed to the request. Through the process, the building was appraised at \$1,050,000. Nash Finch appealed the appraised value and subsequently settled out of court for an additional \$35,000.

The use of eminent domain rehabilitated an unsightly abandoned building, brought a much needed department store to our community, produced 10,000 square feet of additional retail space, provided two other desired retail businesses, and created 32 1/2 new jobs in our community with more to come. Eminent domain proved to be a crucial tool for the City in dealing with an out-of-state corporation that was not motivated to maintain or develop its Kansas property.

One final note – I cannot help but reflect on a map U.S. Senator Sam Brownback exhibited at a Congressional Summit last Friday here in Topeka. A large portion of the map was red, noting those areas of our state that have experienced a significant loss in population, a loss that, if not stemmed, could cost us another congressional seat. The map also showed areas of white – areas where growth is occurring. To stem the outward migration of young Kansans, to generate, we need jobs and need every possible tool to assist in that process. Eminent domain is one such tool.

Cheryl Lyn Higgins  
Junction City Area Chamber of Commerce  
785-762-2632  
[jccocdirector@jcks.com](mailto:jccocdirector@jcks.com)

Senate Judiciary

2-1-06

Attachment 2

Testimony regarding the issue of eminent domain  
SB 323 SB 398 SB 446 SCR 1612 SCR 1616  
February 1, 2006  
Senate Judiciary Committee  
By: Doug Kinsinger, President  
Greater Topeka Chamber of Commerce  
Phone: 785-234-2644 Email: [dkinsinger@topekachamber.org](mailto:dkinsinger@topekachamber.org)  
120 SE 6<sup>th</sup>, Suite 110 Topeka, KS 66603-3515  
Representing: Kansas Economic Developers Association (KEDA)

Chairman Vratil and members of the committee:

My name is Doug Kinsinger; I am President of the Greater Topeka Chamber of Commerce. Today however, I am here representing the Kansas Economic Developers Association. The association consists of public and private economic development professionals working everyday to grow the economy of Kansas and our local communities.

Our association asks as you consider the numerous bills regarding eminent domain that you keep in mind the importance of growing our economy and creating jobs in our state. This shared goal has led to public and private partnerships through numerous incentives and financing mechanisms that assist my city and your cities and towns to expand existing business and bring new business and industry to Kansas. I can assure you that economic developers across the state are working everyday utilizing these tools to make this goal a reality. Our communities many times are faced with difficult decisions when it comes to assisting in business growth. On very rare occasions communities are faced with the need to utilize eminent domain to secure property needed to make economic growth a reality.

Eminent domain is used when all else fails; its use is difficult and painful for all involved. The decision to enter into the eminent domain process contrasts the community's circumstances with the desires of an individual landowner and weighs the public benefit. The individual should be given every opportunity to be fairly heard and treated, and the benefit to the public should be clearly defined and documented.

It is the position of KEDA that local decision making regarding the use of eminent domain should not be eliminated. Decisions regarding the use of eminent domain are best left with elected officials that deal day to day with issues unique to each city or town. Local officials are closest to the needs of a community and must justify to the public the use of eminent domain; they are held accountable.

Our association encourages the committee to consider protections for landowners that provide an increased level of scrutiny of local government as it decides whether to utilize eminent domain and in its treatment of owner(s) when agreement is not reached on purchase with the developer or local government. Balanced consideration for the needs of the communities should also be included.

KEDA opposes any legislation that bans the use of eminent domain, or significantly eliminates its use through tightened definitions or excessive regulations.

Thank you for the time to talk with you today.





TO: SENATE JUDICIARY COMMITTEE  
FROM: BILL YANEK, KAR DIRECTOR OF GOVERNMENTAL RELATIONS  
DATE: February 1, 2006  
SUBJECT: Kansas Association of REALTORS® Position on Eminent Domain

Thank you for the opportunity to testify. On behalf of the more than 10,000 members of the Kansas Association of REALTORS®, I appear today in opposition to attempts to ban the use of eminent domain for economic development. 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. Today's debate should mark the start, not the end of debate on the use of eminent domain in Kansas.



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.



League of Kansas Municipalities

300 SW 8th Avenue, Suite 100  
Topeka, Kansas 66603-3951  
Phone: (785) 354-9565  
Fax: (785) 354-4186

TO: Senate Judiciary Committee

FROM: Don Moler, Executive Director

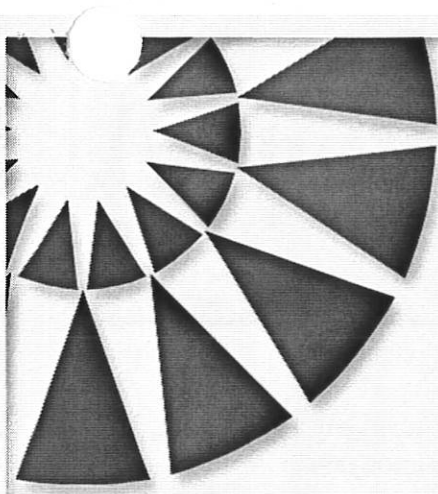
RE: Opposition to SB 323, SCR 1612, SCR 1616  
Proponent for SB 446

DATE: February 1, 2006

I want to thank the Committee for allowing the League of Kansas Municipalities to appear today as a proponent of SB 446, a bill that strengthens the rights of private property owners when eminent domain is used for economic development, and in opposition to SB 323, SCR 1612, SCR 1616, bills that seriously limit or abolish the use of such authority. I first wish to direct the Committee's attention to the Legislative Briefing attachment to this testimony, wherein the League has summarized the six major eminent domain projects in Kansas. Much has been said during these hearings as if it were fact, such as pointing to Kansas as one of the worst perpetrators of eminent domain in the country. In reality, eminent domain for economic development purposes has been used sparingly in Kansas, with a net effect of thousands and thousands of new jobs and hundreds of millions of dollars in new revenue to the State. These projects represent a state and local government partnership to promote economic development in Kansas, which has benefitted the state and its citizens.

There is no doubt that eminent domain is a powerful tool that should be used sparingly, with adequate protections for private property owners. To accomplish the balancing of the interests on both sides of the eminent domain debate, the League worked with cities from across the state to come up with an approach that provides greater protections for property owners, while still allowing for the use of the power. Those components are found in SB 446. First, the bill provide an enhanced process beyond that required in traditional public improvement projects, such as roads and bridges, utilities and public facilities. It would require heightened compensation for residential and farm properties, in addition to any relocation costs currently required under existing state law. There would have to be a redevelopment plan that makes findings of the public necessity for the project, and would require public hearings on the plan. Any approval of such a plan and of the use of eminent domain in conjunction with the plan would require a  $\frac{2}{3}$  vote of the governing body of the condemning authority. In addition, eminent domain could not be used unless the governing body made a finding that, despite good faith negotiations, the property was not able to be acquired through purchase. Finally, the bill adds another aspect of judicial review to allow the court to examine the government's decision to take the property by eminent domain. These are significant protections not in current law.

To conclude, SB 446 strengthens the rights of private property owners while at the same time preserving the power of eminent domain for economic development purposes for the benefit of the public at large. We believe this balance is essential to helping maintain economic development in Kansas. Therefore, the League urges the Committee to adopt the approach found in SB 446 and reject any narrowing or prohibition of the authority of eminent domain. I would once again like to thank the Committee for allowing the League to testify today and would be happy to answer any questions the Committee may have.



# Legislative Briefing

## Eminent Domain

This briefing sheet was designed to answer some of the many questions that have been posed recently regarding the use of eminent domain authority for economic development purposes.

### Legal Issues

- The *Kelo v. City of New London* case was NOT an expansion of government's authority to condemn property. In fact, the U.S. Supreme Court upheld a long line of precedent which says that economic development is a legitimate public use. In addition, the Court NARROWED the power to some degree by indicating that there must be a comprehensive plan for revitalization in place for the area where the use of eminent domain is proposed.

- It has always been, and it is still the case, that it is unconstitutional to take private property from one land owner and give it to another for a private use. There must always be a finding that there is a public use where there is a benefit to the public.

### LKM Position

"Support legislation which continues to allow for the use of eminent domain for economic development purposes, and strengthens the process which balances private property interests and the welfare of the community at large."

*2006 Statement of Municipal Policy*

### Components of Such Legislation Include:

- Increased level of compensation for landowners when the project is for economic development purposes;
- Judicial review of the project to determine whether there is a public use.

### Major Uses of Eminent Domain in Kansas

Cities and counties in Kansas have used eminent domain for economic development purposes only in a few cases. Each time, it has been for a major project of local and statewide importance. The expansion in each of these areas represents growth in the thousands of percent and a significant increase in jobs and taxes generated.

The following is some basic information about six major projects in Kansas:

- Kansas Speedway and Village West Development in KCK.

Appraised Value Before Project	\$ 10,316,408
Amount Paid to Landowners	Multiple owners were paid 125% of value plus relocation costs.
Present Appraised Value	\$240,015,200
Difference	\$229,698,792
Percent Growth	2226%

Other Benefits include 4,000 new jobs, \$7 million in new property taxes, \$2.8 million in new state income tax. Before the project, the area generated a total of \$208,409 in property taxes annually. In 2005, the same land generated \$6.4 million in property taxes.

# Eminent Domain (continued)

- Baron BMW in Merriam.

Appraised Value Before Project	\$1,425,960 (5 properties)
Amount Paid to Landowner	4 of the 5 properties were purchased outright by BMW. Only 1 had to be condemned and that landowner received \$1,000,000.
Present Appraised Value	\$7,640,160
Difference	\$6,214,200
Percent Growth	436%

The only property which had to be condemned had a long history of municipal code violations. It had a history of vacancy, interrupted by short-lived businesses. Still, that landowner received \$1,000,000 in the eminent domain proceeding.

- Merriam Town Center.

Appraised Value Before Project	\$ 3,804,180 (135 properties)
Amount Paid to Landowner	\$1.25 per square foot plus \$1,000 for every year the owner occupied the house. All but 8 landowners accepted the developer's offer.
Present Appraised Value	\$57,373,330
Difference	\$53,569,150
Percent Growth	1408%

Other benefits include an increase in jobs from 24 before the project to 862 after the project. Annual property taxes paid before the project were \$119,030. After the project, annual property taxes total \$1,405,374. Annual sales taxes generated in the area prior to the project were estimated at \$10,000. Currently, \$8,088,895 in sales taxes are generated annually in this area.

- Target Distribution Center, Shawnee County.

Appraised Value Before Project	\$ 243,970
Amount Paid to Landowner	\$ 329,000
Present Appraised Value	\$43,331,000
Difference	\$43,087,030
Percent Growth	17,661%

Other benefits include a increase from 0 to 620 jobs in year 1. Also, annual property taxes paid prior to project were \$7,779.66 and current property taxes collected in this area total \$1,402,103.95.

- Home Depot, Pittsburg

Appraised Value Before Project	\$ 361,890
Amount Paid to Landowner	\$1,032,000
Present Appraised Value	\$5,052,600
Difference	\$4,690,710
Percent Growth	1296%

Other benefits include an increase from 12 to 100 jobs. In addition, annual property taxes generated before the project were \$11,957 and are currently \$173,695.

- Manhattan Town Center

Appraised Value Before Project	\$10,754,592
Amount Paid to Landowner	80 parcels were needed, only 9 had to go to condemnation.
Appraised Value in 2003	\$46,805,832
Difference	\$36,051,240
Percent Growth	355%



**KANSAS**  
ASSOCIATION OF  
**COUNTIES**

**TESTIMONY**  
**concerning**  
**SB 323, SCR 1612, SCR 1616**  
**Presented by Randall Allen**  
**Senate Judiciary Committee**  
**February 1, 2006**

Chairman Vratil and members of the committee, my name is Randall Allen, Executive Director of the Kansas Association of Counties. I appreciate the opportunity to testify on behalf of the Kansas Association of Counties and our 96 member counties in opposition to several bills, including SB 323, SCR 1612, and SCR 1616, which would restrict the ability of county governments in Kansas to exercise eminent domain for economic development purposes.

You have already heard testimony from our Association President indicating that counties have exercised their eminent domain powers infrequently and cautiously. The only two examples of counties' use of eminent domain for economic development of which we are aware is for the Kansas Speedway project in Wyandotte County and for the Target Distribution Center in Shawnee County. Both are huge successes in terms of the creation of jobs for Kansans. We realize that the use of eminent domain for economic development can only be justified on the basis on a real public benefit, i.e. something of value that accrues to the citizens at large. Both projects meet that criteria.

We object to SCR 1616 and SCR 1612 because they would entirely remove this authority from elected county commissioners. Only in the case of SCR 1612 would there be provision to appeal to the Kansas Legislature for an exception. As economic development projects go, what would happen if the timing of site selection meant that a decision was needed between sessions of the Legislature? Would projects of major benefit to Kansans be at the mercy and vulnerability of the legislative calendar?

SB 323 does not retain the right for a county to acquire property as was done by the Board of Shawnee County Commissioners in the case of the Target Distribution Center in Topeka. The criteria in section c of the bill would likely not have allowed for such a development to occur in Shawnee County, as the site had not been unoccupied for five years, was not unsafe for humans, and was not in a state to be considered waste. Further, the property was not needed for a hospital corporation or a utility corporation. Further, SB 323 does nothing to afford property owners any further protections through an improved process. It merely shuts down the possibility of using eminent domain for economic development. While that may been its desired purpose, we object to that policy outcome. As long as Kansans expect government at some level to help grow the Kansas economy, we

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Senate Judiciary

2-1-06  
Attachment 6

must expect that such responsibility to be accompanied by the tools to get the job done. Eminent domain is not something to be exercised lightly or carelessly. The record of counties shows that it they have not been careless in their use of eminent domain. We urge the committee to turn its attention to other improvements in the Kansas eminent domain law, and instead consider proposals which balance the competing interests of private property rights with economic development for the public good.

Thank you for your attention and for this time to speak with you.

The Kansas Association of Counties, an instrumentality of member counties under K.S.A. 19-2690, provides legislative representation, educational and technical services and a wide range of informational services to its members. Inquiries concerning this testimony can be directed to Randall Allen or Judy Moler at the KAC by calling (785) 272-2585.





# Testimony

Unified Government Media Relations  
701 N. 7<sup>th</sup> Street, Room 620  
Kansas City, Kansas 66101

Don Denney, Media Relations Specialist 913.449.9061

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## Opposition to SB 323 and SCR 1612 and 1616: Eminent Domain Senate Judiciary Committee, February 1, 2006

The Unified Government of Wyandotte County/Kansas City, Kansas strongly opposes Senate Bill 323 and Senate Concurrent Resolutions No. 1612 and No. 1616.

Wyandotte County/Kansas City, Kansas today is recognized nationally as a family destination point – the home of world-class racing at Kansas Speedway and high quality entertainment and retail amenities at Village West. More than 10 million people are visiting Kansas Speedway and Village West each year.

The *Wall Street Journal*, in an August 2003 story stated: “The black sheep of greater Kansas City is becoming the region’s largest tourist magnet. So many visitors are flocking to Kansas City, Kansas that its population and job base are growing for the first time in decades. KCK officials are even preparing to cut taxes when local governments around the country are raising them.” Today, Wyandotte County/Kansas City, Kansas is growing at a record pace. For the second straight year total assessed value in Wyandotte County exceeded \$1 billion; 2004 was the first time in history the county exceeded that mark.

### Economic Indicators

- The 2006 Unified Government mill levy was reduced by 3%. **Since 1997, the Unified Government mill levy has been lowered by nearly 21 percent!**
- 494 new single-family housing permits were issued in KCK last year – **the most in 40 years**; home values average \$129,000 and range up to \$350,000.
- More than 500 new businesses were started in KCK in '05; Unemployment is down nearly 3% since 2000.

The reason for these successes is Kansas Speedway. In 1997 the Unified Government’s elected leaders unanimously voted to pursue this facility with a vision that such a move would ignite a stagnant local economy that was challenged by: the State’s highest property taxes, high unemployment, and a steady decline in population. In addition, the average income of a Wyandotte County resident at the time was under \$20,000. To offset its economic challenges, the Unified Government worked with the Kansas Legislature in a partnership that resulted in the development of Kansas Speedway and Village West.

### Kansas Speedway and Village West Economic Facts

- Prior to development, the 1,400 acres generated **\$208,409 in personal and real property taxes.**
- Village West businesses **pay full property taxes** – in 2005: \$6.4 million in property taxes; \$2.8 million in NEW State income tax; nearly \$29 million in sales tax.
- Appraised value of the 1,400 acres in 1997 – \$10.3 million; today’s appraised value – over \$240 million.

Senate Judiciary

2-1-06

Attachment 7

**Eminent Domain – Kansas Speedway**

- Kansas Speedway is comprised of 1,000 acres; 228 parcels of land involved in acquisition.
- Property owners were paid 125% of their property's appraised value, plus relocation expenses
- 48 parcels (26 homes and 4 businesses), were taken by eminent domain (13 for streets and right-of-way)

**Eminent Domain – Village West**

- Village West is comprised of 400 acres
- Two parcels (15 acres) of land were taken by eminent domain (one was vacant and had absentee owner).

**Orlando, Florida loses out to Kansas City, Kansas**

The success of Kansas Speedway and Village West enabled the Unified Government to recently sign a development agreement that will bring to our community Schlitterbahn Vacation Village – a \$412 million, 300-plus acre destination resort. **Economic benefit:** \$3 million in annual property taxes, over 3,000 new jobs with a combined annual estimated salary/benefits package over \$90 million, an estimated \$400 million impact during construction; and \$200 million in salaries during the development and construction of the project.

Why Kansas City, Kansas? Brothers Jeff and Gary Henry, whose family owns Schlitterbahn, recently told Kansas Senate and House Committees they originally planned to develop Schlitterbahn Vacation Village in Orlando, Fla. However, after being lobbied hard to consider Kansas City, Kansas, the Henrys agreed to pay a visit. They said they were immediately impressed with Village West and its location. After some research the Henry Family made a decision to develop their project in Kansas City, Kansas instead of Orlando, Florida.

Among other factors, their research found that 52 million people are within one day's drive of Village West (more than within a day's drive of Orlando), and on a summer weekday there were licensed vehicles from 32 different states in the parking lot of Village West's Great Wolf Lodge. According to a Jan. 31, 2006 front page story in *The Kansas City Star*, the Schlitterbahn developers, who are solely responsible for all the financing for Schlitterbahn Vacation Village, are already planning further phases for the project that could raise their investment to more than \$1 billion.

The Henrys recently testified to both Senate and House committees that they "are willing to take full financial risk on Schlitterbahn Vacation Village because of the success of Kansas Speedway and Village West. Wyandotte County and the State of Kansas have clearly established themselves as family destinations. The success of Village West and the great location of Kansas City, Kansas were major influences in our family's decision as to where we wanted to make the largest investment we have ever made. We are convinced that the best opportunity for our development to succeed is to build it in Kansas City, Kansas rather than in Orlando."

Without the Unified Government having the local authority to use eminent domain in 1997 there would be no Kansas Speedway... no Village West... no record economic growth in Kansas City, Kansas... no Schlitterbahn Vacation Village... and no economic boom for the State of Kansas.

Who would have thought that because of the bold action taken by the Unified Government leaders in 1997 that families from throughout the nation would be coming in droves to Wyandotte County/Kansas City, Kansas for their annual vacation? Kansas is now in a position to build on its newly earned reputation as a major tourist destination and capitalize on the growing economics it will bring in the future.

None of this would have happened if SB 323 and SCRs 1612 and 1616 were in effect in 1997. We urge you to vote no and allow local governments to maintain its current authority.



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TESTIMONY IN SUPPORT OF SENATE BILL NO. 446

February 1, 2006

To: Members of the Senate Judiciary Committee.

Re: Senate Bill No. 446 – Proposed legislation concerning eminent domain; relating to fairness in economic development.

Chairman Vratil and Honorable Members of the Committee:

This testimony is offered by the City of Roeland Park, Kansas, in support of Senate Bill No. 446 and in opposition to Senate Bill No. 323 and Senate Concurrent Resolutions 1612 and 1616. I do not intend to address the provisions of the bills specifically, as I know that will be done by the League of Kansas Municipalities and others. Rather, the purpose of my testimony is to advise the Committee of the City of Roeland Park's experience with the use of eminent domain for economic development.

I was appointed City Attorney for the City of Roeland Park in January, 1991, and in the 15 years since my appointment, I have been able to observe firsthand the transformation of the downtown area of Roeland Park. By 1991, what had once been a vibrant commercial center was substantially abandoned. Storefronts were boarded up. The owners of the stores that remained asked the City to do something. In 1990, a developer had approached the City about the possibility of a redevelopment project. The developer proposed redevelopment of the south half (south of 50<sup>th</sup> Terrace) of the commercial area on the west side of Roe Avenue. The developer requested financial assistance from the City in the form of tax increment financing (TIF). On April 17, 1991, the City Council adopted an ordinance establishing Redevelopment District No. 1. As this was the City's first experience with a redevelopment project, and the City was uncertain whether the proposed commercial project would perform financially as well as promised by the developer, on May 8, 1991, the City adopted an ordinance establishing the Self-Supported Municipal Improvement District No. 1 to provide a property tax "backstop" in the event the commercial center did not produce the sales tax revenues that were being projected. As it turned out, that precaution was unnecessary. On June 10, 1991, the City adopted an ordinance approving the redevelopment plan for Project Area 1.

The project proposed for Redevelopment Project Area 1 was a Pace Membership Warehouse (later converted to a Wal-Mart). The City was not asked to use eminent domain to assemble property for the project, as the developer had

KANSAS CITY  
OVERLAND PARK  
WICHITA  
WASHINGTON, D.C.  
PHOENIX  
ST. LOUIS  
OMAHA  
JEFFERSON CITY

negotiated all necessary acquisitions. However, two of the parcels that the developer had acquired were residential lots that had been acquired in order to provide a buffer area between the nearest residences and the loading dock for the store. Those two lots were subject to residential use restrictions. The only way to eliminate those use restrictions was to condemn them. Therefore, at the developer's request, the City successfully used the power of eminent domain to extinguish the use restrictions on the two residential lots. The project has been a success. The property tax increment generated by the project has been well in excess of the amount originally projected. In addition, sales tax revenues from the project have exceeded expectations. The revenues from the project have enabled the City to fund capital improvements throughout the city.

The success of Redevelopment Project Area 1 prompted redevelopment activity on the east side of Roe Avenue as well. Redevelopment District No. 2 was created on January 29, 1992. Redevelopment District No. 2 encompasses approximately sixteen acres of land on the east side of Roe from 48<sup>th</sup> Street on the north, to 52<sup>nd</sup> Terrace on the south. Redevelopment District No. 2 contains four project areas. Redevelopment has occurred in three of the four project areas to date. The redevelopment activities have included the following development, from north to south: a new shopping center with a Walgreens, an Aldi's food store, a Burger King and a Kick's 66 service station; a new Quik Trip convenience mart; a new City Hall; a new city park; a new McDonald's; a new bank; and a new office building.

The final piece of the downtown redevelopment puzzle is presently underway on the west side of Roe between 50<sup>th</sup> Terrace on the south and Skyline Drive on the north (north of the Wal-Mart development and west of the Walgreen shopping center development). That property was originally part of Redevelopment District No. 3, which had been established in 1997, but was subsequently transferred to Redevelopment District No. 1. The property, now known as Project Area 1-B contained a Venture store, a Price Chopper grocery store, a Firestone tire store, a branch bank for US Bank and a small in-line shopping strip. The Venture store had been vacant for some years. A complicated ownership pattern made redevelopment of the property problematic. The fee interests in the property were divided into four separate parcels, owned by three different family trusts based in Boca Raton, Florida. All of the parcels were subject to a long-term ground lease held by an out-of-state property management company. The City contacted both the fee owners and the holder of the ground lease in an effort to encourage redevelopment of the site, particularly the vacant Venture store, to no avail. Eventually, a local developer acquired the ground lease and proposed a \$31 million redevelopment project to the City that would be of a quality that exceeds anything presently within the City. The developer proposed to demolish all buildings on the site and to replace them with five structures: a 133,723 square foot Lowe's Home Improvement Warehouse; a 70,835 square foot Price Chopper; a 4,000 square foot US Bank building; and two 9,800 square foot multi-tenant buildings.

The developer advised the City that it had been unable to negotiate the acquisition of the fee owners' interests in the property, and therefore condemnation would be required. The City required the developer to have an appraisal of the property prepared by an MAI appraiser and to offer the fee owners the appraised value. The appraiser appraised the properties at \$8,870,000.00. When the fee owners declined to accept the offer, an eminent domain proceeding was instituted. During the condemnation proceedings, the fee owners presented several appraisals of the property, with values up to \$16,165,941.00. The court-appointed appraiser's award for all tracts was \$9,840,000.00. Ultimately, the parties agreed to a division of the court-appointed appraiser's award following mediation.

The project is underway. The portion of the large building housing the Price Chopper is open. The Lowe's portion of the building is currently under construction and the store is scheduled to open in April. The pad site for the bank facility is completed and the bank is open. One of the multi-tenant pad sites is open and occupied and the other is under construction. This project raises the bar in terms of the quality of development in Roeland Park. The shopping center should raise property values in the area and promises to be very successful financially for both the developer and the City. It would not have been possible without the use of eminent domain.

Thank you for your consideration.

Respectfully submitted,

Neil R. Shortlidge  
Roeland Park City Attorney

NRS:mdp



## TESTIMONY IN SUPPORT OF SENATE BILL NO. 446

TO: Members of the Senate Judiciary Committee

DATE: February 1, 2006

RE: Senate Bill No. 446—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 support of Senate Bill No. 446 and in opposition to Senate Bill No. 323 and Senate Concurrent Resolutions No. 1612 and 1616.

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.

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 supports the adoption of Senate Bill No. 446, submitted by the League of Kansas Municipalities. The Bill is the result of the cooperation of multiple cities throughout the state.

Thank you for your consideration.

WILLIAM L. FROST  
CITY ATTORNEY





TO: Sen. John Vratil, Chair  
Members, Senate Judiciary Committee

FROM: Andrew Nave, President  
Johnson County Partnership

DATE: February 1, 2006

RE: SB 323 and SCR 1616 -- Limiting the Use of Eminent Domain

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 eminent domain could inhibit Johnson County and its communities' ability to attract and 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 for northeast Johnson County.

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 the restrictions based primarily on the type of property involved would drastically limit communities' local control and their ability to foster economic development opportunities.

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.

1511 W. 67<sup>th</sup> Street, Suite 202 \* Shawnee, KS 66217 \* (913) 631-6545 \* [anave@shawnee-edc.com](mailto:anave@shawnee-edc.com)

Senate Judiciary

2-1-06  
Attachment 10



*The Historic Lackman-Thompson Estate*

11180 Lackman Road  
Lenexa, KS 66219-1236  
913.888.1414  
Fax 913.888.3770

TO: Senator John Vratil, Chairman  
Members, Senate Judiciary Committee

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

DATE: February 1, 2006

RE: **Opposition to SB 323 and SCR 1616 – Prohibitions on  
the Exercise of Eminent Domain for Economic  
Development Purposes**

---

The Lenexa Chamber of Commerce would like to express its opposition to the concepts embodied in SB 323 and SCR 1616, which impose broad prohibitions on the exercise of eminent domain for economic development purposes.

We strongly believe that in appropriate instances the use of eminent domain for economic development can clearly be for the greater good. While most land acquisition is successfully negotiated, in a few instances cities have used eminent domain as a last resort to acquire property for economic development projects significant to their communities – those projects have been highly successful and the facts of those cases do not support claims that eminent domain use has been either widespread or abused.

Nevertheless, eminent domain cannot and should not be taken lightly when used as a tool to acquire private property for economic development. As such, it is correct to consider whether new protections or limitations may be appropriate. We believe, however, that bills such as SB 323 and SCR 1616 are too narrowly written and create a poor “one size fits all communities” solution.

Specifically, we believe SB 323 is constructed so as to *de facto* eliminate the use of eminent domain for economic development purposes – a result we do not accept as being in the best interests of Kansas communities. The bill institutes a strict prohibition with only very limited exceptions – exceptions so narrow it is clear that none of the projects currently completed would have qualified for eminent domain use, costing their communities and the state thousands of jobs and millions of dollars of investment at a time when our economy most needs it.

Because they are excessively narrow, these exceptions also promote poor public policy by preventing communities from potentially addressing disrepair and vacancy in a timely manner, before it devolves into hazardous blight and crime. Public policy should not force a

Senate Judiciary

2-1-06

Attachment 11

community to allow a situation to deteriorate far beyond the statutory definition of blight – literally down to the point where it becomes physically dangerous – before it can potentially be addressed.

Further, the exceptions provided in SB 323 are not well defined. For example, what amount of activity is sufficient to demonstrate “occupation” of a property? What constitutes a “state of disuse” for different types of property? How does one define and by what standards does one measure “waste?” Because case law does not exist and would be slow to develop, this lack of clear definitions will promote costly and prolonged litigation for all of the parties involved in an eminent domain dispute.

Another significant concern with SB 323 is that it has serious potential for unintended consequences because it does not accommodate unanticipated or unforeseen circumstances. Sometimes property owners are willing sellers but the use of eminent domain becomes procedurally necessary (for example, banking regulations may prohibit a bank holding a foreclosed property from participating in a sales transaction if the property has become so devalued it would be sold at a loss – in such case, eminent domain may be the only option for acquiring the property.) Sometimes eminent domain is procedurally preferred by a property owner over a negotiated sales transaction. Property owners may choose to submit to eminent domain proceedings for reasons of compensation, time, tax implications, or other benefits. SB 323 does not accommodate these needs or preferences.

All of these concerns are heightened in the context of a state constitutional amendment, as in SCR 1616, where it would be difficult to make needed corrections or exceptions down the road.

Instead, we believe any efforts to tighten the use of eminent domain should focus on the process – as SB 446 does – rather than the type of property being impacted. Process-based proposals like SB 446 allow communities the flexibility to continue to judge potential opportunities on a case-by-case basis, leaving decisions as to the exercise of those powers primarily with locally-elected officials and their constituents 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 323 or SCR 1616 favorable for passage. We believe there is a better approach and we look forward to working with other interested parties to try to find an acceptable compromise on this important issue. Thank you for your time and attention.

## Merriam Town Center Project

Merriam, Kansas

- This project was pursued after 96 of 105 mostly residential property owners in an area northeast of I-35 and Johnson Drive in Merriam, Kansas, signed a petition requesting to be redeveloped – essentially asking the City of Merriam to buy their properties – because they literally couldn't sell their homes due to the neighborhood's blighted conditions. Potential buyers could not obtain home loans for 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 could not obtain home loans is now a vibrant retail and entertainment center, providing amenities to the surrounding community and generating significant new jobs (about 800 in the past 8 years), investment, and economic impact. It could not have been accomplished without the limited use of eminent domain.
- **Although by all accounts a major success, the use of eminent domain in this project would not have qualified under SB 323. None of the exceptions would apply.**



KANSAS BAR  
ASSOCIATION

**Testimony in Opposition to  
Constitutional Restrictions on Eminent Domain**

(SCR 1612 and 1616)

Senate Judiciary Committee

February 1, 2005

The Kansas Bar Association is a voluntary professional association with over 6,700 members, most of whom are licensed to practice law in Kansas. Its membership is as diverse as the spectrum of the practice of law, and also includes members of related professions, such as banking, insurance and real estate. Consequently, the KBA has taken no position on the exercise of the power of eminent domain as it relates to economic development. We recognize that the recent ruling by the United States Supreme Court on taking private property for economic development is consistent with established Kansas law.

However, the Kansas Bar is opposed to restricting or otherwise modifying the existing law of eminent domain by amending the Kansas Constitution. The position of the organized bar is that this is a matter which is properly left to the discretion and collective wisdom of the Legislature in the decades to come to serve the best interests of all the citizens of Kansas. Without constitutional restrictions, the Legislature will be better able to retain the flexibility required for economic development as Kansas continues its efforts to compete in a global economy.

The KBA urges the Committee to take no action on the proposed amendments.

\* \* \*

Senate Judiciary

2-1-06

Attachment 12

City Hall • 8500 Santa Fe Drive  
Overland Park, Kansas 66212-2899  
TEL 913.895.6080//6083/6086 • FAX 913.895.5095  
E-MAIL bob.watson@opkansas.org  
E-MAIL jane.neff-brain@opkansas.org

TESTIMONY IN SUPPORT OF SENATE BILL NO. 446

TO: Sen. John Vratil, Chair, and  
Members of the Senate Judiciary Committee

DATE: February 1, 2006

RE: Senate Bill No. 446--Proposed legislation concerning eminent domain; relating to fairness in economic development.

Ladies and Gentlemen:

This testimony is offered by the City of Overland Park in support of Senate Bill No. 446 and in opposition to Senate Bill No. 323 and Senate Concurrent Resolutions No. 1612 and 1616. Senate Bill No. 446, submitted by the League of Kansas Municipalities, meshes the ideas of multiple cities throughout the state and reflects an intense effort from the cities to address concerns about the use of eminent domain for economic development.

It is vital to the continued economic strength of the City of Overland Park that it retain numerous methods for securing solid development within the City. Although Overland Park has never utilized eminent domain for economic development, and would consider such use in the future only if all negotiations failed, loss of the ability to condemn for economic development purposes would put the City at the mercy of those who were looking to increase their gain far above the fair market value of their property (see attached article from *The Topeka Capital-Journal*).

A concrete example of this situation is the development of the Sprint headquarters in Overland Park. Sprint was able to obtain all of the property it needed for its development through negotiation. But if there had been a single holdout among the owners of the 191 acres, that campus and the 14,500 jobs and economic growth it has brought to the City, the County and the State of Kansas and their citizens might have been lost.

SB No. 446 protects owner-occupied residential property owners and owners of farm land outside of the City limit by allowing them 125% of the fair market value of their

property should it be subject to an eminent domain action for economic development purposes. This is in addition to the relocation benefits they may be entitled to under separate Kansas and federal statutes. To allow developers more than fair market value would be to unjustly enrich individuals or corporations who do not need the protection of the law, who hold property for speculation and who should not be permitted to benefit from a blanket provision of a statute.


We must also stress the possibility of unintended consequences as the use of eminent domain is reviewed and possibly altered. For instance, under the IRS Code, property owners can avoid paying taxes on their capital gains if they undertake a like-kind exchange. IRS Code Section 1031 requires that the like-kind exchange property must be identified within forty-five days and the purchase must be completed within six months.

However, IRS Code Section 1033 states that if such a transaction is realized under *threat of condemnation*, the seller has three years to reinvest the money in property for a similar and related use without paying tax on the gain. Without the City's ability to threaten condemnation, even if condemnation ultimately is not used, a property owner must quickly identify qualified property or must pay taxes on the gain that is realized from the sale of the property. Taking away the threat of condemnation could cause serious tax consequences to anyone who sells property to the City.

SB No. 446 provides in Sections 3(b)-(e), due process for individuals involved in economic development eminent domain and requires a 2/3 vote of the governing body in order for a City to move forward with condemnation. Review by the District Court is also included to protect those subject to eminent domain.

Although the City would prefer that the eminent domain law for economic development remain as it is today, it realizes that compromise is a critical component of democracy and therefore supports the passage of SB No. 446.

Thank you for your consideration.



Robert J. Watson  
City Attorney



Jane Neff-Brain  
Senior Assistant City Attorney

Enclosure

## CJOnline.com / Topeka Capital-Journal

Published Tuesday, January 17, 2006

**Developers seek city's help**

With two holdouts, College Hill's fate falls to eminent domain

**By Tim Hrenchir***The Capital-Journal*

Developers say the life or death of a proposed \$22 million project to rebuild central Topeka's College Hill district depends on whether the city will help them acquire properties they haven't been able to buy.

Partners with Washburn Lane Parkway Renovation LLC say negotiations have reached an impasse with bicycle shop owner Jerry Morgan and bar owner Jeanne Swanson. Morgan has rejected offers of more than \$300,000 for his properties and Swanson has turned down \$180,000, the partners said Monday.

Morgan's counteroffer was more than \$1.8 million, while Swanson asked for more than \$600,000, said William Newsome, one of the developers, who indicated a private appraiser valued Morgan's property at \$100,500 and Swanson's at \$64,000.

He said developers would ask the Topeka City Council to use its power of eminent domain to acquire the properties.

"The last thing we wanted was going before the council, but we have no choice," Newsome said.

Doug Compton, Steve Roth and Newsome are partners in Lawrence's Southwind Capital LLC, which is teaming with Topeka developer Henry McClure in a project to build 169 apartments, 26 townhomes and 24,000 square feet of retail space.

Developers say the project would bring the blighted area to life and encourage economic development in surrounding areas. Supporters include the Turnaround Team, a group of central Topeka residents and Washburn University president Jerry Farley. The development's stores and apartments in particular would target Washburn students.

The project would encompass all property bounded by S.W. 13th, 17th, Lane and Washburn Avenue, plus land at the northwest corner of S.W. 17th and Washburn and the southeast corner of S.W. 14th and Lane.

McClure said he owned two properties in the development area and had agreed to sell each to Washburn Lane Parkway Renovation LLC for the values determined by the Master Appraisal Institute. McClure said those amounts are \$55,000 for property at 1426 S.W. Washburn Ave. and \$98,000 for property at 1421 S.W. Lane. Shawnee County appraised the value of those for 2005 at \$43,000 for 1426 S.W. Washburn Ave. and \$75,400 for 1421 S.W. Lane.

Developers say they have purchased or reached agreements to purchase all properties in the development area with the exception of Oscar's bar, which Swanson owns at 1416 S.W. 15th; and property owned by Morgan that houses Jerry's Bike Shop, 1415 S.W. Lane; Ritchey T's, 1419 S.W. Lane; and the home of his son, David Morgan, at 1411 S.W. Lane.



Shawnee County appraisal records for 2005 indicate Morgan's properties are valued at \$76,500 and Swanson's at \$65,600.

Newsome said developers commissioned the Master Appraisal Institute to conduct private appraisals of both. Those appraisals placed values at \$100,500 for Morgan's properties and \$64,000 for Swanson's, he said.

McClure said developers offered Swanson and Morgan each about three times those amounts, including an option for Morgan to trade part of his payment for the deal in exchange for a building McClure owns at 1422 S.W. Lane, across the street from Jerry's Bike Shop. McClure said he offered Morgan that building in exchange for its value as it would be determined by a private appraiser. Developers also offered Morgan money to retrofit the showroom at that address to replicate his current showroom, McClure said.

Newsome said developers also offered to make Morgan a tenant in their development, receiving a year's free rent and money to pay his lease for the time he would need to be away as the development was being constructed.

In addition, developers offered to enter into binding arbitration with Morgan and Swanson, who both rejected that proposal, McClure said.

The Capital-Journal tried unsuccessfully Monday to contact Morgan, whose bike shop was closed. Morgan, who has run the shop since 1980, has been at his current site since the mid-1980s. He has repeatedly asserted that it is unfair for the College Hill development to dislodge established, successful businesses so investors can use the land to make money.

Swanson said Monday that she has owned Oscar's since 1993 and previously worked there for four years. She said she was willing to sell her bar but wasn't willing to give up her livelihood for \$180,000, which wouldn't be enough to start another bar at a different site. She stressed that she has spent a lot of money making improvements to her property, including a new roof, kitchen and privacy fence.

"I've told these guys I'm willing to sell," she said. "It's just that we're not seeing eye to eye on the price."

McClure and Newsome said that since negotiations stalled, they have been lobbying city council members to use eminent domain to acquire the properties.

If eminent domain were initiated, the city and the property owner each would hire an appraiser to value the property, and those two would select a third appraiser. A judge would use the three appraisals to set a fair price for the property.

Topeka city attorney Brenden Long said a majority vote of five council members would be necessary to initiate eminent domain in most situations, while a supermajority of six is necessary for projects that involve tax increment financing. Four council members -- Lana Kennedy, John Alcalá, Sylvia Ortiz and Bill Haynes -- have gone on record as opposing the use of eminent domain for the College Hill project.

Newsome said he was asking council members to balance the interests of the two holdout property owners against those of stakeholders who would benefit from the project, including Washburn University, central Topeka and the city in general.

Newsome said time is of the essence as most of the developers' purchase agreements must be completed

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within 60 days. Developers also are seeking to have the buildings in place by the time school starts in fall 2007.

City council members on Dec. 13 voted 8-0 to establish a TIF district for the College Hill project. The move would have unlocked \$4 million to \$5 million in TIF bonds to help with land acquisition and other expenses, with debt being paid off using the redevelopment's property and sales tax revenue.

But the Shawnee County Commission voted 2-1 on Jan. 5 to veto a TIF district designation for the area. County Commission Chairman Vic Miller, who voted in the majority with Commission Ted Ensley, said the move wasn't a death blow and he thought the plan could proceed anew once the city and developers addressed the county's concerns. Developers say they have been working to address those concerns, and council members plan next month to conduct a public hearing in an effort to again set up a TIF district.

**Tim Hrenchir can be reached at (785) 295-1184 or [tim.hrenchir@cjonline.com](mailto:tim.hrenchir@cjonline.com).**

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Written Testimony: SB's 323,446, SCR's 1612,1616  
Senate Judiciary Committee  
February 2, 2006  
By: Christy Caldwell, Vice President Government Relations  
Greater Topeka Chamber of Commerce (ccaldwell@topekachamber.org)



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The Greater Topeka Chamber of Commerce would like to express our opposition to SB 323, SCR 1612, SCR 1616 and our support for SB 446. The Topeka Chamber is very aware of concern with 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 throughout 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 the use of eminent domain was proper 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 has hired 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. If SB 323 would have been in effect; there would not have been a Target Distribution Center in Topeka, Kansas because the project was not in a (narrowly defined) blighted area. It also would likely not have been built if Shawnee County would have had to ask the legislature if eminent domain could have been used (SCR 1612); the company would have eliminated our site from consideration. SCR 1616 would not have allowed the use of eminent domain at all and negotiations for the Target Distribution would not moved forward; Topeka would not have been considered at all.

In a time when the legislature wants 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. 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. Eliminating or severely restricting the use of eminent domain by allowing its use only in the narrowest definitions of blight will squelch projects in areas of cities that are already challenged because of neglect. 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 condemnation is not an option of last resort, these depressed urban areas will remain, grow and drive more development and population to the fringes of our cities leaving the old and poor to contend with deteriorating neighborhoods. There are areas within communities all across our state that will lose out to reclaiming blighted neighborhoods and commercial areas if they cannot use every tool possible to build anew.

SB 446 does offer language to require heightened requirements for local governments' use of the power of eminent domain. The bill requires compensation above market value, the preparation of economic development plan that includes the benefits to the entire community and a limitation on the scope and size of the project reasonable to accomplish the purpose intended. Additionally public hearings are required and a 2/3s majority vote of the governing body is required for approval of eminent domain use and the adoption of the project plan. The bill also requires the courts to determine the validity of the taking.

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(s) fairly and eminent domain decisions with heightened scrutiny. We ask that you remain committed to Kansas economic growth and that legislation that is approved not do no harm to future economic growth efforts.

Thank you.

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

To Chairmen Vratil and Honorable Members of the Committee:

I am here today registering our opposition to Senate Bills 323 and 360 and SCR 1612 and SCR 1616, but in favor of Senate Bills 319, 398 and 446.

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. On the other hand, we agree with the intent of Senate Bill 319 and 446 which would require land not used for the project to go back to the City and have no problem with requiring a super majority of the governing body to approve the project.

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?

Thought I realize it is not in this committee, we have the same concerns with regard to SB 360, which would take 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.



## LEGISLATIVE TESTIMONY

February 1, 2006

TO: Senator John Vratil, Chairman  
Members, Senate Judiciary Committee

FROM: Wes Ashton, Overland Park Chamber of Commerce

RE: Proposed Legislation regarding eminent domain

Thank you for the opportunity to offer written testimony today on behalf of the Overland Park Chamber of Commerce and the approximately 1000 member businesses we represent. The Chamber is concerned about a number of the bills offered regarding eminent domain and encourages this committee and the Legislature to consider all the potential negative consequences that could result from some of the legislation being considered.

The Chamber would like to offer its support to SB 446, which is a collaborative effort to restrain the power of eminent domain on local units of government while continuing to promote economic expansion. The Chamber would also like to express its opposition to SB 323, as well as Senate Concurrent Resolutions 1612 and 1616.

The U.S. Supreme Court ruling in *Kelo v. New London* brought a great deal of 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. The Chamber 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.

The use of eminent domain across Kansas is infrequent, but the fact that it exists as an option remains important to the negotiation process. While there are few examples of eminent domain in Kansas history, the instances of eminent domain for economic development have proved to be significant to the local communities involved.

The Chamber believes that SB 323 and SCR 1612 and 1616 are too restrictive and will cause significant economic harm. The choice to use eminent domain, as a last resort, should remain with local governments who are elected to represent their communities. Legislation that would require state approval would leave the decision to 163 Legislators who are not elected to primarily represent that part of the state. Local governments are responsible to their communities, and are closest to the complexities of local issues. Implementation of these bills could cause the state to lose valuable projects and jobs.

SB 446 provides several restrictions that are greater than current law. The first provision would provide a property owner 125% of the appraised value of the property. It would also impose a higher standard upon the local government before they could use eminent domain. This will ensure that the elected representatives of local government are largely in agreement of the project's worth, avoiding any controversy surrounding a close vote. Additionally, there are also provisions included in SB 446 to obtain review by the District Court to ensure all necessary standards were followed.

The Chamber would prefer that the current laws regarding eminent domain remain in place; however we acknowledge the political need to implement new law on the subject. For this reason, the Chamber strongly favors implementation of SB 446. Thank you for your time and consideration of this issue.

Testimony of William Davitt AGAINST Eminent Domain  
before Kansas Legislative Committee on Wednesday,  
February 1, 2006

My name is William Davitt from Wichita. I have two  
short questions.

First: Why is there such a drive to remove the Ten  
Commandments from public places and keep them out of sight?

Eminent Domain violates the Commandments that Almighty  
God gave to Moses on Mount Sinai:

No. 7 "You shall not STEAL."

NO. 10 "You shall not COVET anything that belongs to  
your neighbor."

COVETOUSNESS is one of the seven Capital Sins.

Second Question: You know the Supreme Court of Kansas  
across the street. Why do those judges always rule in favot  
of BIG developers and Eminent Domain?

It is my OPINION that every judge on the Kansas Supreme  
Court owes his job to a handfull of BIG law firms who get paid  
BIG bucks to get the job done for BIG developers. You in the  
legislature and we in the general public do not have anything  
to say about selecting the judges.

We the people of Kansas desperately need an amendment  
to our state constitution that will protect our homes, protect  
our farms, protect our places of business from the BIG land  
grabbing developers.

Senate Judiciary

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Attachment 17

CONCLUSION: Please do not allow BIG developers to  
TAKE YOU IN  
USE YOU  
MAKE A FOOL OF YOU

They will go behind your back, laugh and snicker.

"We really put one over on the legislature. See how clever we are. Now we can scoop in millions and millions of dollars. We have the law on our side. We have the Supreme Court of Kansas in our pocket. We don't care about the family living in the home that we are going to destroy with a bulldozer. Our goal is the money. We don't care how we do it. Do whatever it takes. But, GET THE MONEY."

Ladies and gentlemen. The END never justifies the MEANS.

*William T. Davitt*

William T. Davitt  
1205 Bitting  
Wichita, Kansas 67203  
Phone 316 263-9850

## The Supreme Court Nominating Commission

Attached is a copy of The Supreme Court Nominating Commission membership list, Rev. 7/04.

Four of the Commissioners are laypersons that are appointed by the Governor from the four Congressional Districts. Four of the Commissioners are attorneys who are elected by attorneys in each of the four Congressional Districts. The Chairperson is an attorney elected by attorneys from all over the state.

Is the current selection process by the Nominating Commission free from politics or do mostly big law firms select the judicial nominees in secrecy? Please look in Martindale Hubbell legal directory and see how many of the Commission attorney members have been from large law firms. Over the past many years, how many attorneys have been living in these Congressional Districts and the entire State, and what percent of them have been voting? This information can be obtained from the Clerk of the Supreme Court.

When the Commission selects three names to be sent to the Governor, is their meeting open to news media and the general public or is it absolutely secret?

Are records of letters, e-mails, phone calls, and other communications to the Governor recommending which of the three should be appointed available to the news media and public? During Governor Graves' administration we were told that these communications were secret. The Governors office in Florida told us all such records in their state are open to the public. We asked Governor Sebelius' office about this several months ago, and have received no reply.

The attorney for the Sunshine Coalition For Open Government might provide helpful insight into these questions. Their telephone number is (316) 978-6080, attn: Randy Brown.

And perhaps the most important question to ask, do the people have a say in the selection process?

Complaints against a judge are considered and ruled on by JUDICIAL QUALIFICATIONS COMMISSION. How many attorneys from BIG law firms have been on this committee over the past many years?

How many cases have been won and how many cases have been lost by BIG law firms in Kansas Court of Appeals and Kansas Supreme Court over the past many years?

Over the past many years, how many times have district court judges sat on Kansas Court of Appeals and how is this arranged? How many complete opinions of this court have been kept SECRET and not published in law books for everyone to read?

Ask Kansas Legislative RESEARCH department to find out and tell you answers to these questions so legislature will be fully informed when they vote on whether to change the way these judges are selected or limit their term in office to only a few years.



**SUPREME COURT NOMINATING COMMISSION**

**Chairman** Richard C. Hite  
100 N. Broadway  
Suite 950  
Wichita, KS 67202  
Original Election 2001-2005

**ELECTED**

**APPOINTED BY GOVERNOR**

**FIRST CONGRESSIONAL DISTRICT**

David J. Rebein  
810 Frontview  
PO Box 1147  
Dodge City, KS 67801  
Original Election 2002-2006

Debbie L. Nordling  
HC 01 Box 2AA  
Hugoton, KS 67951  
Original Appt. 1998-2002  
Re-appointed 2002-2006

**SECOND CONGRESSIONAL DISTRICT**

Patricia E. Riley  
PO Box 67209  
Topeka, KS 66667  
Original Election 2003-2007

Dale E. Cushinberry  
2424 California Street  
Topeka, KS 66605  
Original Appt. 2003-2007

**THIRD CONGRESSIONAL DISTRICT**

Thomas J. Bath, Jr.  
7944 Santa Fe  
Overland Park, KS 66204  
Original Election 2000-2004  
Re-elected 2004-2008

Vivien B. Jennings  
5413 Norwood Road  
Fairway, KS 66205  
Original Appt. 2004-2008

**FOURTH CONGRESSIONAL DISTRICT**

Lee H. Woodard  
257 N. Broadway  
Suite 300  
Wichita, KS 67202  
Original Election 2001-2005

Dennis L. Greenhaw  
2625 N. Penn  
Independence, KS 67301  
Original Appt. 1997-2001  
Re-appointed 2001-2005