

The Use/Abuse of Eminent Domain

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Summary

Eminent Domain by its very nature, is an important part of city planning but also an unfunded mandate by the governmental body filing the Eminent Domain Suit. When used properly Eminent Domain has an intricate place in our society, however, there is more abuse of it than most people are aware. It is an issue that does not garner much public interest, it is not important unless it happens to be to your personal detriment. Only in rare cases will an Eminent Domain case attract much attention from the press. However, without it our society would not function well. Originally, Eminent Domain was brought about with the intent of city planning and development, not redevelopment. When Eminent Domain is used in redevelopment a different set of problems arise. In redevelopment, Eminent Domain benefits **private investors** as well as municipalities. This is where the new set of problems arise. At this point an Eminent Domain suit becomes entangled with the rights of individual citizens of our great nation. With Eminent Domain, on one hand we are granted the right to own property, on the other hand we can be in a position of having our government involved in the taking of our property. This inconsistency in our laws exists largely due to our government giving citizens the right to own property and then taking that property away in cases whereby doing so is not so much for the public good, but for the good of another. This issue conceivably will come to the forefront of civil rights if flagrant abuse of Eminent continues.

The use/abuse of Eminent Domain

As a starting place, let me say that Eminent Domain is a vital law every governmental jurisdiction needs in order to plan communities. It is an integral part of municipalities keeping up with land use changes caused by new development and redevelopment. In its purest form, as when originally written into law, Eminent Domain was used for development, at all levels of government, in the placement of public use projects such as, roads, government buildings, libraries, parks, etc. As time evolved city planners found Eminent Domain a useful tool for redevelopment, particularly so in deteriorating downtown areas where blight was on the rise due to, age, land use changes, and declining occupancy rates. Jurisdictions found Eminent Domain to be both, a cure for blight, and a shortcut to redevelopment. This was done in an effort to get blighted properties in the hands of developers with the promise to raze and/or rehab properties, therefore bringing revitalization to bygone areas of yesteryear. Why not, considering significant increases in property tax revenues and the elimination of blighted areas where crime is on the rise and property tax valuations are declining. Eminent Domain seems like a logical approach to these problems until one considers the **property owner whom lost property**, often against their will. Eminent Domain can be a dangerous redevelopment tool if not balanced with the rights afforded United States citizens by our Constitution, and our Bill of Rights. Both of these founding documents allow U.S. citizens the right to own property. The governmental taking of private property cannot be enacted in a cavalier and careless manner without compromising a fundamental right which United States citizens are guaranteed. Are we a nation of laws, or not? Laws that permit the use of Eminent Domain are subservient to the constitution but are often aimed at individuals lacking the resources to defend the law suit brought against them. A local municipality using Eminent Domain to rid areas of blight does so under a Federal statute which greatly adds to the weight of suits brought against individuals. It is an undue burden when, in effect, the federal government comes against its citizen with the intent of taking an individual's property when the taking is not for the public good. This is particularly so when an individual has no desire to sell. This burden is even heavier when the individual has inherited, from generations past, the subject property and may be uneducated, or at the least, unsophisticated with respect to business decorum. This is a serious issue that needs to be addressed because there are too many cases where governmental authorities are coming against its citizens with the heavy hand of Eminent Domain.

When property owners are victims of Eminent Domain abuse it is most typically in an area where a city has defined, by a red line on a map, a city Redevelopment District. These districts are managed by a Redevelopment Agency that has been granted Eminent Domain powers by its state legislature. These agencies are usually managed by a city employee that has been placed as head of the Redevelopment Agency due to his/her pro position on redevelopment. For sure, this manager is one who is willing to operate with a freewheeling use of Eminent Domain. At this point elected officials hide behind unelected officials while they do their dirty work. Don't be confused though, to be concerned about the abuse of Eminent Domain is not to say one is anti, business or redevelopment. Quite the contrary, as property owners, they are pro-development but want a level playing field. Usually agency managers are pro redevelopment to the detriment of land owners as their future status with the city, their employer, depends on their results in ridding the district of blight. All too often the how becomes unimportant. I, personally, have been the target of a Redevelopment Agency leveling its sights on our family business, a small casino in Reno, Nevada. Our family business endured many threats of Eminent Domain abuse. Although we prevailed in the end, numerous threats of Eminent Domain leveled against us triggered

considerable costs in time and resources over a number of years. Not all small businesses in Nevada redevelopment districts fared so well. Consequently, having property in Reno's Redevelopment District and being a small business owner I have seen this abuse first-hand. The Reno Redevelopment Agency's standard procedure for incoming developers was to, in effect, grant developers Eminent Domain powers by notifying them of the city's willingness to use Eminent Domain, as a last resort. The protocol for developers became one where they would determine what they considered to be a fair price for a piece of property, **then due to no oversight**, last resort quickly became first resort. Thence most developers would visit with a land/business owner, tell them what they were willing to pay for the property/business, with no negotiation. This practice was prevalent and one where developers would offer a low-ball price and then inform the owner that Eminent Domain would be used, for the taking of their property, if they did not accept the low-ball price the developer had offered. Then the developer would go back and report to the city the land/business owner was difficult and unreasonable, and would therefore request the use of Eminent Domain. The developer, picking one of several appraisals they had contracted for, could ultimately support a submarket value. Situations such as this are not uncommon. Eminent domain abuse has become a growing concern in many communities where a developer convinces a city to take private property for the purpose of redevelopment, for profit. The law has gone as far as defining "public use" as "for the public good", which are entirely different things.

In an age when so many of our constitutional rights are eroding it should not be a surprise, a right, as fundamental to our founding principles as the right to own property should also be threatened. As stated on the website "Foundation for Economic Education"¹, as a subtitle, stated "**Modern Intellectuals Do Not Take Private Property Seriously.**" Further, in the body of that same article it stated "In *The Federalist Papers*, James Madison and others argued that the proposed U.S. Constitution would protect the liberty and property of the citizens from usurpations of power from the federal government." The taking of private property was not intended by our forefathers to be taken lightly. This is the basis concerning my belief that Eminent Domain could become a prominent future civil rights issue.

I stand by the premise that Eminent Domain is a valid and useful tool for municipalities but protection against zealous governmental authorities is lacking and must be added. The lack of current oversight is an injustice and must be corrected. A mechanism needs to be put in place on behalf of Eminent Domain victim/defendants. This could be achieved by placement of an advocate for Eminent Domain defendants, possibly a person in, or appointed by, the state's Ways and Means Committee. One who is truly balanced in their views concerning, growth verses constitutional rights. This advocate must have appropriate powers to curb the abuse Eminent Domain and must not be a city or county employee, or a property owner in a redevelopment district.

1.) web address: <https://fee.org/articles/private-property-and-government-under-the-constitution/>

Conclusion

In conclusion, the above document was written by one whom has been acutely involved in passing anti-Eminent Domain legislation in the State of Nevada. As co-founder of a statewide organization, Nevada Association of Business Owner's Rights, NABOR, I was very involved in fighting, on the state and local level in Reno, the abuse of Eminent Domain. This was in an era when the threat of Eminent Domain was rampant. NABOR was effective in passing an anti-Eminent Domain bill that afforded many rights to defendants of Eminent Domain suits that were not previously available to them. In the passing of this legislation we were opposed by lobbyist for Steve Winn, the Nevada Resort Association, and numerous other giants in the Nevada Gaming industry. Nevada is a single-industry state which made our fight against the single- industry a sweet victory beyond the financial benefits we gained, it was truly a David and Goliath story. On the state level, due to the federal legislation used by Nevada legislators when enacting their Eminent Domain statutes, it was impossible for NABOR to limit the use of Eminent Domain, thus our strategy was to significantly increase the benefits afforded Eminent Domain defendants. The local level is where we fought the limited use of Eminent Domain. We did so by a constant presence at city council meetings and a steady feed of information to the Reno and Las Vegas newspapers. Every time there was anything on the council agenda even closely related to Eminent Domain we had a flood of NABOR members, plus the NABOR leadership and attorney, attend the city council meeting. We not only attended but a number of our members and leadership would speak. Ultimately, the mayor became so frustrated with us keeping this issue on the forefront by hijacking his council meetings he pulled, myself, the other NABOR co-founder, and our attorney, aside during the break of a council meeting and promised to never use Eminent Domain against us. **Consequently**, as previously stated, an Eminent Domain advocate would always be a helpful assistance to Eminent Domain defendants but it is also going to require an active and organized group of smaller property owners from the redevelopment district. These efforts are required to mount a strong defense against Eminent Domain when it is not for public good because property rights are not an interesting topic to most people. This is so, unless and until, Eminent Domain is aimed at them, this is probably why the problem exists. Allowing this abuse, by ignoring it, is a rip in the fabric of our society as our forefathers intended it to be. I believe our fore fathers would be appalled by it.