

# Eminent Domain Requires a Balanced Approach

By Thomas J. Erman, SIOR, Vice President; NAI DESCO

**E**MINENT DOMAIN is in the headlines, on televised news shows, and on the lips of every property owner from coast to coast. But the aspect of the story that is rarely, if ever, reported is “balance.”

Who has the power of eminent domain? Locally elected city officials wield the decision-making power to determine which real estate parcels are worth preserving and which should be re-created from scratch. The Supreme Court decision *Kelo vs. New London, Conn.*, opened the door for cities to extend their power of eminent domain over property that developers want for privately funded ventures. This decision has everyone checking the “fairness” meter and shining the spotlight on local and state legislative action on this topic.

A couple of St. Louis-area examples illustrate the tough questions that invariably arise:

- A large health services provider (not a hospital) seeks eminent domain to build a 600,000-square-foot office-retail development that the company says will add 800 jobs and contribute \$9.7 million in new sales and property tax. Four building owners oppose the plan, saying it will force them to sell their property and relocate.

Should the municipality involved extend eminent domain over privately owned property to assist a private development project that promises to provide a greater economic engine than the businesses that currently own the property? Property owners say this amounts to one private party taking from another private party — an issue that goes to the very core of property ownership in the United States. These owners ask: Even with financial compensation, where can they duplicate their current building or business?

- A developer wants to build a 476,000-square-foot retail center that is estimated to produce \$170 million in sales per year within the first five years. The project would require a car dealer to relocate from that site.

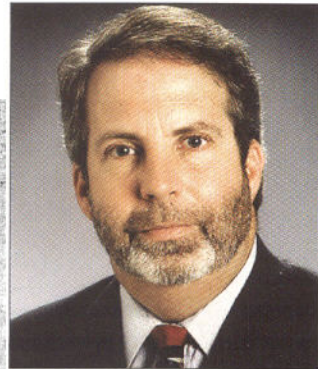
With eminent domain, a third party most likely will determine “fair market value,” rather than the developer negotiating with the owner. An auto

dealership is expensive to relocate; it requires considerable land and highway visibility. The car dealer asks: Who will reimburse the construction cost and business lost during the move? How will future business be impacted by relocation to a secondary, or lesser, site? Would things be different if the business paid sales tax to the city? (In Missouri, an auto dealership does not pay sales tax to the municipality in which it is located; the municipal portion of sales tax is credited to the purchaser’s home address.)

In the final analysis, everyone wants to know — is any private redevelopment effort truly for the public’s benefit, or is it simply a grab for sales tax revenue? Is it fair for a city to declare an area “blighted” when it will reap a substantial financial gain?

Our profession and our industry must educate local and state leaders about the positive impact eminent domain has had as a community building tool. At the same time, while municipalities seek new sources of revenue to maintain high levels of city services, they must consider the cost, especially to an existing property owner.

It’s a tough decision, made even tougher in many larger cities because numerous incorporated suburbs must provide expensive, labor-intensive services from limited revenue bases. Municipalities and the real estate industry must work together so that the use of eminent domain is balanced for all parties.



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*Thomas J. Erman, SIOR, is a vice president with NAI DESCO, a St. Louis-based commercial real estate firm. He has done extensive research and presentations on eminent domain, and has been a member of the Society of Industrial and Office Realtors (SIOR) since 2002. Visit NAI DESCO’s website at [www.descocommercial.com](http://www.descocommercial.com).*