

Senate Local Government Committee
Senate Transportation & Housing Committee
Assembly Housing & Community Development Committee
Assembly Local Government Committee

Redevelopment & Blight

The Summary Report From
The Joint Interim Hearing

Wednesday, October 26, 2005
Weingart City Heights Library
San Diego, California

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Redevelopment & Blight

On Wednesday afternoon, October 26, 2005, state legislators held a joint interim hearing that examined redevelopment law and practices, focusing particularly on the statutory definition of “blight.” The hearing began at 1:15 p.m. and continued until 5:20 p.m. Held in the community room of the Weingart City Heights Library in San Diego, the hearing attracted more than 80 people.

Five state legislators attended the joint interim hearing:

Senator Denise Moreno Ducheny
Senator Christine Kehoe
Senator Tom Torlakson
Assembly Member Gene Mullin
Assembly Member Simón Salinas

The sponsors of the joint interim hearing were the Senate Local Government Committee (chaired by Senator Kehoe), the Senate Transportation and Housing Committee (chaired by Senator Torlakson), the Assembly Housing and Community Development Committee (chaired by Assembly Member Mullin), and the Assembly Local Government Committee (chaired by Assembly Member Salinas). Senator Kehoe chaired the joint hearing.

This summary report contains the staff explanation of what happened at the joint hearing [see the *white* pages], reprints the briefing paper [see the *blue* pages], and reproduces the written materials provided by the witnesses and others [see the *yellow* pages]. The Senate Sergeants-at-Arms recorded the hearing and it is possible to borrow copies of those audio-recording from the Committee’s office by calling (916) 651-4115.

STAFF FINDINGS

Any attempt to distill four hours of complex presentations, legislators’ questions, and sometimes lively exchanges into a few findings must necessarily gloss over important details and intriguing but unexplored nuances. But after carefully considering the witnesses’ presentations and reviewing their written materials, the staffs of the four policy committees reached these findings:

- There is strong interest in amending the statutory “blight” definition. Redevelopment practitioners and critics alike called for tightening the language that describes “blight.”
- A better “blight” definition may reduce redevelopment controversies by focusing redevelopment officials’ attention on where to use their extraordinary powers.
- Property owners resent the use of eminent domain when they think redevelopment officials act unfairly. Nevertheless, some owners were satisfied with how redevelopment officials used their condemnation powers.
- Redevelopment officials see eminent domain as a powerful tool that accelerates property acquisition, even though formal condemnations are rare.
- Successful redevelopment projects involve property owners and residents early and frequently because strong grassroots support builds trust within communities.

LEGISLATORS’ OPENING REMARKS

Senator Kehoe began the joint hearing by welcoming her colleagues to the City Heights redevelopment project area. She recounted how this hearing developed out of her earlier review of the U.S. Supreme Court’s *Kelo* decision. The purpose of the San Diego hearing is to listen carefully to what people have to say about “blight.” A subsequent hearing in November would look at specific ideas for redevelopment reforms. While lots of neighborhoods and downtowns are better places because of redevelopment, legislators have a duty to see that local officials use those tools wisely.

Assembly Member Salinas acknowledged what he called the “awesome power” of redevelopment agencies. He agreed that legislators should consider statutory reforms, but “not at the expense of handicapping communities” and preventing them from cleaning up blight.

Assembly Member Mullin noted that redevelopment remains controversial in many communities. Voters in the City of Half Moon Bay would vote on a ballot

measure in November to end redevelopment in that San Mateo County coastal community.

Senator Ducheny said that legislators “took a little more cautious approach” after the *Kelo* decision. She noted that any eminent domain reforms are up to the states, as the Supreme Court noted in its ruling.

THE WITNESSES

The legislators invited 10 witnesses organized into two panels to talk to them about redevelopment topics and asked them to provide more detailed written materials to supplement their remarks. The witnesses whose names are marked with an asterisk (*) provided written materials. The appendix reprints those materials [see the *yellow* pages].

What Is “Blight”?

Legislative staff started the hearing by briefing the legislators about the policy issues confronting them. **Peter Detwiler**, staff consultant to the Senate Local Government Committee, explained that the briefing paper described reactions to the U.S. Supreme Court’s *Kelo* decision. The renewed interest in the statutory “blight” definition is not the first time that the Legislature has engaged in reform cycles, citing events in the mid-1970s, the early 1980s, the 1993 reform bill, and the 1995 oversight hearing on blight, also in San Diego.

Mark Stivers, staff consultant to the Senate Transportation and Housing Committee, reminded legislators that the statutory “blight” definition was at the core of the policy debates about redevelopment. After explaining the definition’s components, Stivers noted the exception for antiquated subdivisions and the current controversy in California City. Detwiler concluded the staff briefing by suggesting that the legislators should listen for five likely topics:

- The statutory “blight” definition, especially antiquated subdivisions.
- Local practices and how local officials use state redevelopment laws.
- State oversight and how to protect the state’s dual interests.
- Judicial proceedings and whether it should be easier to file court challenges.
- The use of eminent domain.

Understanding Redevelopment: City Heights Urban Village

The first panel's witnesses focused on the City Height Urban Village project area as a way of explaining the realities of redevelopment to the legislators. The witnesses were:

William Jones, Chief Executive Officer*
CityLink Investment Corporation

Karen Manley*
City Heights resident

Linda Pennington*
Azalea Park resident

Richard G. Opper*
Opper & Varco, LLP

Using a PowerPoint presentation, **William Jones**, the master developer of the City Heights Urban Village, explained how his firm had worked with other investors and redevelopment officials since 1994 to change the neighborhood. "Private investment is key in the turn-around of any community," Jones asserted, but private investors need a master plan to convince them that public officials will support their efforts. Using the neighborhood's basic strengths contributed to the redevelopment project's successes which included a 39% reduction in crime in the first five years.

An Azalea Park resident since 1981, **Linda Pennington** worked with her neighbors to combat graffiti and clean trash out of alleys. Although she worried about eminent domain, Pennington lobbied to get the City Heights redevelopment project started. Now the area is "something we're very proud of," she said, including the very careful use of eminent domain.

Karen Manley admitted that she was "kind of leery about redevelopment" because of eminent domain, but the 20-year City Heights resident said, "I remember when this was not a good place to live." When officials formed the redevelopment project area, neighbors petitioned against using eminent domain in the Cherokee Point and Azalea Park sections. We "held our local officials responsible," she explained and, as a result, eminent domain was not used on single-family dwellings. Eminent domain "has to be very fair," Manley told the legislators.

Although not directly involved in the City Heights redevelopment project area, attorney **Richard Opper** has worked on several other projects that involved the redevelopment of contaminated properties. The problems caused by brownfields are “never solved without eminent domain,” he explained. The issue isn’t how to define “blight,” Opper said, instead redevelopment officials must involve local residents. “It’s a people question, not a ‘blight’ question.” As for eminent domain, “it’s not the tool that’s the problem,” because when people get involved in redevelopment, “magic occurs.”

During their discussions with the panelists, the legislators raised concerns about how redevelopment officials use their eminent domain powers. “People get cowed by eminent domain,” declared **Assembly Member Mullin**. That concern was echoed by **Assembly Member Salinas** who complimented the City Heights project, but claimed that other communities get sloppy and end up losing lawsuits. **Senator Kehoe** worried that resisting eminent domain was hard for renters and “those not as skilled in English.” **Senator Ducheny** observed that redevelopment officials handled City Heights well, but that approach is “hard to legislate”

Redefining “Blight”

The witnesses on the second panel discussed the broader policy questions associated with redefining “blight.” The witnesses were:

John F. Shirey, Executive Director*
California Redevelopment Association

R. Bruce Tepper*
R. Bruce Tepper, ALC

Carol Evans, Vice President*
California Taxpayers Association

Honorable Chris Norby*
Orange County Board of Supervisors

Catherine A. Rodman, Director & Supervising Attorney*
Affordable Housing Advocates

Michael Stepner, Professor of Architecture & Urban Design*
NewSchool of Architecture & Design

Speaking as the Executive Director of the California Redevelopment Association, **John Shirey** explained that “we focus on infill development, rather than push” growth to the edge of communities. Regarding the *Kelo* ruling, Shirey said that “people are understandably upset at that decision.” But Shirey also cautioned legislators to define the problems carefully because there have been “recklessly inaccurate” claims. After describing how redevelopment officials have used their eminent domain powers, Shirey underscored the need to use condemnation for contaminated properties, slumlords, hold-out owners, and properties with clouded titles. Nevertheless, property owners must be treated fairly. He recommended that redevelopment agencies give property owners more help when using eminent domain, including paying for their own appraisals and increasing businesses’ relocation payments. Shifting to the “blight” definition, Shirey referred to the antiquated subdivision exception and said that, “we believe there is a flaw in the current definition of blight.” It is “a mistake” to exclude antiquated subdivisions from the requirements that properties be both urbanized and blighted.

As a litigator who has represented both property owners and redevelopment agencies, **Bruce Tepper** said that the current “blight” definition is “generally OK.” But to curb eminent domain abuses, legislators should require that a property be blighted before condemning it. This parcel-specific approach would avoid the problems that led to the *Kelo* decision, Tepper said. When **Senator Kehoe** asked Tepper about the “blight” definition, he replied that the “most amorphous” provisions are those relating to incompatible uses and factors that hinder economic use. “The definitions are real soft ... I worry about them,” Tepper said.

Carol Evans, Vice President of the California Taxpayers Association, showed her skepticism about redevelopment when she paraphrased Edwin Starr’s 1970 “War” lyrics: “Blight! What is it good for? Absolutely nothing.” She told legislators that it’s time to get redevelopment agencies back to their original purpose of eliminating blight. The “very vague definition of redevelopment” is the problem. Evans offered three recommendations: First, legislators should prohibit local officials from using redevelopment funds as “venture capital” to take over investor owned utilities. Second, legislators should ban rural and uninhabited properties from redevelopment project areas. Third, legislators should create a shorter expiration date for “blight” determinations; once that blight is gone, redevelopment officials should stop spending money or using eminent domain.

Orange County Supervisor **Chris Norby** fiercely criticized redevelopment, saying that “blight bleeds” taxpayers’ money and creates four problems:

- The “blight” definition is so broad as to be meaningless.
- A designation of blight is virtually permanent.
- Redevelopment diverts taxpayers’ money to private hands.
- A designation of blight justifies eminent domain for private gain.

“Abuses of eminent domain are as widespread as they are tragic,” said Norby who called on legislators to limit the use of eminent domain.

As the Affordable Housing Advocates’ Supervising Attorney, **Catherine Rodman** said that she “wasn’t at all shocked by the *Kelo* decision,” and she dismissed what she called the “so-called reforms” that the Legislature enacted in 1993. There is no meaningful state or local control of redevelopment activities, Rodman said, pointing to the short deadlines for referendum petitions and lawsuits that challenge redevelopment plans. The result is that redevelopment is exclusionary and elitist because it’s sponsored by outsiders and harms tenants. “Redevelopment certainly has a role to play” in eliminating blight, but “local control and accountability” are needed, along with “real oversight.”

Mike Stepner spoke to the legislators not only a professor, but also as a former San Diego city planner. Redevelopment was not always successful in San Diego, Stepner told legislators, because of several false starts in the 1950s and 1960s. In the 1970s, with the leadership of then-Mayor Pete Wilson, “I think we persevered” and attracted private investors and developers into the Horton Plaza project. Local officials must complement their redevelopment efforts with code enforcement, historic preservation designations, and clean-up grants. “Redevelopment is too important to be left to redevelopment agencies alone,” Stepner asserted, adding that effective economic development requires comprehensive efforts and intergovernmental cooperation. That requires responsible leadership and “you can’t legislate good decision-making.”

Public Comments

After the first two panels finished, 35 other people spoke to the legislators about their support for and concerns about redevelopment. Because of the number of people who wanted to talk, Senator Kehoe asked the speakers to limit their comments to two minutes each. The speakers whose names are marked with an asterisk (*) provided written materials. Those materials appear in the appendix [see the *yellow* pages].

Suzanne Leif* is a San Diego resident whose industrial property in National City was taken by redevelopment officials under eminent domain. She never knew that her property had been declared “blighted” and recommended that state law give property owners more notice. Ms. Leif told legislators that she had to settle her condemnation suit for less than the value set by her appraiser.

Although he didn’t speak, **Robert Leif*** gave legislators materials relating to eminent domain and redevelopment. He recommended that cities receive a share of state income tax revenues to reduce their dependence on redevelopment. Local officials should motivate property owners to improve their properties; seizing property is not the answer to blight.

Kathleen Blavatt, a San Diego resident and City Council candidate, told legislators that redevelopment officials find “blight” where none exists, citing both the Marine Corps training center and Ocean Beach. Referring to San Diego’s proposed Grantville redevelopment project area, she said, “Gravel pits are not blighted.”

Karen Refro* is a Riverside resident who believes that redevelopment cannot be reformed, only abolished. Redevelopment is not naturally occurring economic activity, she said, because it’s based on socialism. Her written materials offer five reasons to abolish redevelopment.

Having represented both agencies and property owners in redevelopment cases, Los Angeles attorney **June Ailin**, explained that “redevelopment can have a preventive aspect.” It allows communities to keep neighborhoods from deteriorating. She disagreed with Bruce Tepper’s recommendation for requiring site-specific blight.

“You need to listen to the people who are affected by redevelopment,” said **Jarvis Ross**, a member of San Diego’s Peninsula Community Planning Board. He objected to the use of paid consultants who find the “blight” that justifies the use of redevelopment powers.

Pat O’Keefe* is the Executive Director of the Emeryville Redevelopment Agency which used eminent domain to condemn contaminated property that was the site of a former pigment factory and barrel cleaning company. That restored property is now the successful Bay Street retail center. He showed before-and-after photos. Don’t forget that redevelopment does good things, he said.

Captain Rob Ahern* commands the San Diego County Sheriff's Department sub-station that serves the City of Vista. Invoking the "broken window theory," he declared that redevelopment is a "valuable crime-fighting tool." The Vista Village project "has become a jewel" because of redevelopment and it's now a safer place.

Redevelopment was essential to the renewal of Vista's historic downtown area, according to **Stephanie Jackel**, Executive Director of Vista Village. She told legislators that \$55 million in private investment came to her community because of \$36 million in new public works provided by redevelopment.

Sherm Harmer explained that his company, Urban Housing Partners, has been involved with 40 projects around California, including efforts in Pittsburg and San Diego's North Park. He invested in San Diego's downtown when no one else would. Noting only four uses of eminent domain in 40 projects, he said that "it works only when it has too."

Danny Serrano is a Project Manager for the Affirmed Housing Group showed legislators photos of a site at the corner of San Diego's 52nd Street and University Avenue where they will build affordable housing and a pocket park without using eminent domain. The City owns the site.

Mentioning specific projects in Poway and Vista, **Sue Reynolds** of Community Housing Works declared that when private landowners won't help by investing in neighborhoods, then government has a role in "seeding" an area to attract new investment. The result, she said, are like her organization's 24 affordable housing complexes throughout San Diego County.

Conrad Guzkowsky* of the City of Riverside Redevelopment Agency gave legislators before-and-after photographs of two successful projects that required the "judicious use of eminent domain." He encouraged legislators to work with the Community Redevelopment Association to write statutory reforms. After the hearing, he submitted more information about the Mission Village project.

There's nothing wrong with redevelopment "except for eminent domain," said San Diego resident **Jody Carey**. A statewide ballot measure is possible in 2006, if legislators don't come up with responsible reforms. Even the threat of eminent domain is powerful to make private owners sell their property for redevelopment. Once a redevelopment project succeeds, it should stop and let the private market take over.

Dan Johnson is a San Diego resident and member of the San Diego Regional Water Quality Control Board. Government regulations can go only so far in getting private property owners to clean up contaminated sites. Redevelopment is needed to get the job finished, he claimed. “I urge you to be very cautious” in rewriting redevelopment agencies’ eminent domain powers, he said.

San Diego’s Centre City Development Corporation (CCDC) condemned the “Candy Store” owned by **Linville Martin**, a La Mesa resident. “It was totally positive,” he explained, with clear procedures and plenty of notice. By going to litigation, he actually made more money than he expected. “Great cities are made with redevelopment,” he declared.

Larry Marshall* is the Vice-Chair of San Diego’s Centre City Advisory Committee. They gave the CCDC unanimous support for the use of eminent domain, even though there was “lively debate.” CCDC needed 187 separate parcels for land assembly, but only 15 properties have gone to trial in 33 years. The statute provides procedural safeguards, he claimed.

The Downtown San Diego Partnership supports eminent domain when needed, according to **Kevin Casey**. Redevelopment is an overwhelming success story.

José Lopez* is the President of the Fox Canyon Neighborhood Association, Inc. His neighborhood is completely covered by two redevelopment project areas. By surveying their own neighborhood and presenting the results, they convinced officials to exclude their area from the use of eminent domain. He asked legislators to redefine “blight” and to consider using eminent domain to acquire more parks.

A resident of the Swan Canyon part of City Heights, **Andrea Zinko** shared her concern that San Diego’s Model School Joint Powers Agency will use eminent domain. “Eminent domain causes families to break up ... it causes stress,” she said.

Connie Messina helped to found the South Poway Resident Association. Low-income residents have no money to hire lawyers to fight redevelopment, she explained. She also asked legislators to strengthen the state’s oversight of redevelopment. She mentioned the controversy over the Gran Havana cigar store in downtown San Diego.

John McNab, a San Diego resident, objected to condemning private property to benefit private investors. He said that half of the money from the redevelopment

of the Naval Training Center is going to Merced Partners LLC, a Delaware corporation. The availability of property tax increment funding drives the perverse use of redevelopment, he declared.

A South Gate resident and property owner in Long Beach and Riverside, **Jean Heintl** objected to the practices followed by appraisers in eminent domain proceedings. Riverside's redevelopment officials "cheated" in finding that an area was urbanized.

"I'm here with an SOS from Riverside," declared **Ray Higgins** with the Riverside Property Rights group, because eminent domain is out of control. Officials condemned property for a housing project which is now being sold into private hands. Elected officials have delegated their eminent domain powers to the city manager.

Bruce Whitaker, a Fullerton resident, declared that the U.S. Supreme Court's *Kelo* decision was "morally wrong." Once designated by redevelopment officials, he said, "blight" goes on too long. Instead of public redevelopment programs, communities should rely on market forces and private reinvestment.

Larry Gilbert* is an Orange County Co-Chairman of Californians United for Redevelopment Education (CURE). He showed legislators photos taken in 1996 of a Mission Viejo redevelopment project area. He met with a Deputy Attorney General to complain about the use of redevelopment to expand a shopping mall.

"Redevelopment creates blight," according to **Allan Pilger*** who is also an Orange County Co-Chairman of Californians United for Redevelopment Education (CURE). By creating favoritism for malls over traditional downtowns, redevelopment is corporate welfare. He cited Brea's mall as an example.

Craig Green* is a member of the group Citizens For A Better Placentia who criticized "bottom-dwelling developers" who benefit from the U.S. Supreme Court's *Kelo* ruling. The statutory definition of "blight" is too broad, he said. Legislators should protect citizens from eminent domain.

Cynthia Conger is a member of San Diego's Peninsula Community Planning Board and a critic of the Naval Training Center redevelopment project. It hasn't benefited her neighborhood and the promised affordable housing hasn't appeared. Public officials took away public land for private development, she claimed.

Put out of business in San Diego by eminent domain, **Fred Schnaubelt*** of the Citizens for Private Property Rights used “steal and theft” to describe condemnation proceedings. Noting that other states outlaw eminent domain for economic development purposes, he urged reform in California. Zoning decisions cause neighborhoods’ deterioration and disinvestment.

Matt Myers* is a professional appraiser who works for the Redevelopment Agency of the City of Fresno. State law protects property owners, he said, contending that California law requires compensation for a business property’s highest use, not it’s probable use as in other states. The result is that owners get 10-20% more than their properties’ market values. Redevelopment agencies use outside appraisers.

A City Heights resident in the El Cerrito neighborhood for 30 years, **Elizabeth Tate** said that “redevelopment works.” As a member of the Project Area Committee, she believes that “changing redevelopment law will not change individual behavior.” Nevertheless, she called for more oversight.

Also an El Cerrito resident, **Laura Riebau*** said that the problem with redevelopment was not the “blight” definition, but the use of pro-redevelopment consultants. Contending that the consultant for the Crossroads Project had a conflict, she filed a complaint against the San Diego City Council. She noted that the City’s Grantville redevelopment project relied on the same consultant.

Maria Cortez, a City Heights resident, thanked Senator Kehoe for keeping her commercial property out of the City Heights project area when Kehoe was a member of the San Diego City Council. Now she worries that the MTS may try to use eminent domain within ¼-mile of its transit stops. She supports redevelopment without the use of eminent domain.

Kathy Evans-Calderwood is an elected member of the City Heights Planning Committee and an advocate with the San Diego “welfare warriors.” She worries that no one is tracking what happens to those who receive relocation payments. There is “no provision for longitudinal follow-up,” she said. If redevelopment is “urban plastic surgery,” then local officials should commit themselves to the medical motto to “do no harm.”

Additional Advice

After the hearing, the legislators received four additional written comments.

San Diego resident, **Don Wood*** wrote that local officials have played “too fast and loose” with the statutory “blight” definition. He recommended that legislators adopt clear standards to prevent eminent domain in healthy neighborhoods.

Philip Teyssier* is the Vice President of Atomic Investments, Inc., which owns property in San Diego’s proposed Grantville redevelopment project area. He wrote about his continued fight against the use of eminent domain to condemn his property.

Calling the definition of blight “indefensible” and “too generous,” **Richard A. Lawrence*** wrote on behalf of the Affordable Housing Coalition of San Diego County which he co-chairs.

Benjamin Martinez* is the Executive Director of the Community Development Commission of National City. He wrote in response to the testimony of Dr. and Mrs. Leif who had criticized the National City’s use of eminent domain powers.