

**EMINENT DOMAIN ABUSE: A LOOK AT HOW TO ADDRESS EMINENT
DOMAIN REFORM THROUGH URBAN PLANNING PROCESSES**

Laura Jay

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Eminent Domain Abuse: A Look at How to Address Eminent Domain Reform through Urban Planning Processes

LAURA JAY
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GRADUATE SCHOOL OF ARCHITECTURE, PLANNING AND PRESERVATION
COLUMBIA UNIVERSITY
ADVISOR: PROFESSOR STACEY SUTTON

ABSTRACT

Eminent domain has been a tool for planners and city government to assemble land since the founding fathers. The use of eminent domain has recently been given new light as the result of a Supreme Court case that determined eminent domain could be used for economic development. As a result, legal reform of eminent domain laws has occurred in almost every state within the US since 2005. This thesis will examine how the planning process influences the use of eminent domain as well as look into how the process by which eminent domain is used can be reformed. This thesis has collected data on the mandated planning process, eminent domain laws, and cases of eminent domain in 10 major cities in the US since 2005. The research found 29 cases of eminent domain in 10 cities over the past 6 years. The conclusions of the analysis show that the use of eminent domain is no longer dominated by more traditional uses such as the building of roads. In addition, the local political climate influenced the use of eminent domain while the planning process had very little effect on the cases. A process by which the city, developers, community members and property owners can negotiate developments needs to be a focus of cities moving forward to ensure both growth and equity within the process to mitigate the impact of politics in the long term development decisions of cities.

TABLE OF CONTENTS

- I: Introduction
- II: Background
- III: Literature Review
- IV: Research Design
- V: Findings and Results
- VI: Conclusions and Recommendations
- VII: Bibliography
- VIII: Appendix

I: INTRODUCTION

In 2000 the Town of New London, Connecticut approved a plan for a new pharmaceutical research and testing facility for Pfizer Pharmaceuticals as well as additional office and commercial space around the Pfizer facility. The project promised to increase the tax revenue in the area and create much-needed jobs for the city of New London. As part of this plan, the city approved the use of eminent domain to obtain 15 private residential properties currently on the site. The property owners, including Susette Kelo, the best known plaintiff in the case, brought a claim to the court saying that the city could not use eminent domain because the taking did not constitute a “public purpose”. Following an extended state court battle, in 2005 the Supreme Court of the United States ruled that intended economic development use constituted a public purpose, thus the city had the right to use eminent domain. Kelo and the other plaintiffs were forced to give up their homes to the city. Subsequently, the development project was stalled for five years while in court. As of 2011, the property remained vacant, and the intended economic development aims had not been realized in New London, arguable, at least partially due to the fight against eminent domain use.

This case solidified that the court considers economic development a “public purpose”, and that the court endorses local planning process as a valid determinate of a public purpose. Citing the courts majority opinion:

Given the plan’s comprehensive character... and the limited scope of this Court’s review in such cases, it is appropriate here, as it was in *Berman*, to resolve the challenges of the individual owners, not on a piecemeal basis, but rather in light of the entire plan. Because that plan unquestionably serves a public purpose...(*Kelo v. New London*)

Since the court’s ruling, the scrutiny and opinions around the case’s decision have not focused on the planning process or questioning the comprehensiveness of the process as a determination of eminent domain use, but rather on the allowance of eminent domain within the law. As a result, 43 states have changed their eminent domain laws since 2005, mainly addressing takings for the purpose of economic development (planning.org). Many organizations and community groups have worked to reform eminent domain laws, advocating for elimination of its use almost completely, while the American Planning Association endorsed the Supreme Court’s decision because of its importance as a tool for cities and planners in the growth and economic development of cities.

As *Kelo* represents only one example of many eminent domain cases that get held up in court, both creating hardship for the homeowners and also postponing any development, the backlash from people around the country who have pushed to change state laws represents a motivated consciousness from the general public that the use of eminent domain is inequitable and overused. But is the problem in the state's interpretation of eminent domain or does the problem lie in the planning process, or both? All states and municipalities have mandated planning processes, but is it enough? In *The Just City*, Fainstein (2010, pp.17) asks, "To what extent does the character of the decisional process influence the justice of its outcomes and do certain kinds of procedures favor particular groups?" The question is relevant in this case as well. Fainstein suggests that planning processes do not necessarily engender equitable outcomes. In other words, is the fact that all states and municipalities have mandated planning processes enough to determine an equitable use of eminent domain?

This thesis examines a hypothesis that more extensive public participation requirements within a planning process leads to fewer eminent domain cases brought to court, and as a result, eminent domain reform must address the planning process and not only the reworking of the eminent domain laws. Looking more specifically at the question: Are the number of court cases on the use of eminent domain reduced by the recent changes to the state laws, or would a more inclusive planning process cause a change in resistance to the use of eminent domain and not a tightening of the laws? And if so, how can states and municipalities reform the planning approval process to ensure the use of eminent domain is not being abused?

In order to address these questions this thesis will first look at the current arguments regarding eminent domain reform and the different beliefs behind those arguments. A literature review will look at the other main component of this thesis, public participation within planning processes. The literature will provide a basis for establishing an ideal planning process to use within the analysis. In order to address the questions posed, three sets of data have been collected and analyzed. Looking at ten large cities within the United States, the eminent domain laws within each date, planning processes within each municipality and eminent domain cases in the city since 2005 have been collected and categorized. In order to compare planning processes and eminent domain laws city to city and state to state, a rating system has been developed for analysis. This information will then be used to identify trends and how cities can better address the need for eminent domain reform within the planning process. While I acknowledge the use of eminent domain is more complex than the role of the planning process and the state laws, by isolating these important components this thesis will look to understand the issues in more detail and be able to highlight where cities need to focus reform efforts.

II: BACKGROUND

Historically, the use of eminent domain has been both a major tool in the growth the United States through such takings as those to build rail lines as well as contentious in many of the takings of private property in urban renewal projects of the 1960's and 70's (Dalton, Fall', 2006). Planners and city leaders have used eminent domain as a way to actualize projects that are a priority for the city without being constrained by available property. Generally seen as a controversial issue throughout the development of this country, the court's decision on *Kelo v. The Town of New London* further defined and expanded the definition of a taking to include that for economic development (2005).

Justice O'Connor said in her dissenting opinion on the case:

The specter of condemnation hangs over all property. Nothing is to prevent the State from replacing any Motel 6 with a Ritz-Carlton, any home with a shopping mall, or any farm with a factory (*Kelo v. The Town of New London*).

This quote has become a symbol for the advocacy efforts around eminent domain reform. As mentioned previously, 43 states have changed their eminent domain laws since *Kelo*. Additionally, following the *Kelo* court ruling, 117 projects originally stalled because of their use of eminent domain was being contested based on the interpretation of a “public purpose”, went forward. In the year following *Kelo* the use of eminent domain was threatened over 5,400 times, putting pressure on homeowners to sell, compared to 6,560 within all 5 years before *Kelo* (Berliner, 2006). The surge of eminent domain use since *Kelo* has shown both the legal and planning professions that this is an important issue that needs to be addressed.

The current arguments and advocacy efforts around eminent domain fall within three broader categories of thinking: legal, planning, and economic. The legal advocacy efforts address the rights individuals have to private property within the Constitution. Currently planning arguments look less to legal constraints, but more to practicality and the need for flexibility within the legal system to allow planners the tools necessary to ensure development can occur within the country. Finally, the economic argument addresses the requirements of a city to help create jobs and the role that eminent domain plays in that.

As this thesis will address further, and this background highlights, there is currently no debate around the need for reform of the planning process to influence eminent domain, but instead the arguments and advocacy efforts are all taking place at the legal level around the need for or against eminent domain use, and not how to limit its use. To provide further insight into the ways reform is being dealt with today, this background will address these three arguments in more detail, looking to provide a broader context to how eminent domain reform is being advocated within state laws and policies.

Leading the legal advocacy effort for eminent domain reform is The Institute for Justice and their associated organization, The Castel Coalition. Both organizations with a Libertarian focused mission, center their work on interpretations of the law, help push policy reform, produce reports on the use of eminent domain, as well as represent homeowners, such as Susette Kelo, in eminent domain cases.

The anti-eminent domain arguments rest on the premise that people have the right to private property and eminent domain, especially for private development, is an unjust use of a taking and not what the Founding Fathers intended when writing the Constitution. While they very strongly believe in private property, their writings site the problem within the city government and planners, yet their reform is at the legal level. Quoting a report put out by The Castel Coalition:

Given the significant reform on most issues takes years to accomplish, the horrible state of most eminent domain laws, and that the defenders of eminent domain abuse – cities, developers and planners – have flexed their considerable political muscle to preserve the status quo, this is a remarkable and historic response to the most reviled Supreme Court decision of our time” (The Castel Coalition, August 2007).

This quote emphasizes that the argument from the main advocacy group is that planners and developers are the problem, yet the efforts of the organizations have been to change the laws working to limit the power of planners and developers and not work with them to create a better process. Their reports and articles push for the elimination of any use of eminent domain for economic development completely (www.ij.org). Their position is that no property is safe if eminent domain can be used for economic development. No national discussion currently exists around the need for eminent domain in certain circumstances regarding economic development and how to create flexibility within the law to accommodate within The Institute for Justice and The Castel Coalition.

These organizations are currently the most outspoken and active within eminent domain reform around the country. As part of their outreach efforts, The Institute for Justice has developed language for what they believe state eminent domain laws should entail. The language completely eliminates the use of eminent domain for economic development, and limits it only to situations where an area has been deemed blight (The Castel Coalition). Many states have used this language when reforming their laws.

The planning and economic argument are both against eminent domain reform in similar ways but with a different purpose. The American Planning Association (APA) wrote an amicus brief to the court while the Supreme Court decision was deliberating, which urged them to not change the current standard for public use and not take away the ability to use eminent domain for economic development. Since *Kelo*, the APA's level of involvement in reform measures, or stopping legal reform work by The Institute for Justice or The Castel Coalition, has been minimal. They have published a number of articles which address the need for eminent domain for economic development within planning and argue that eliminating this planning tool will prevent cities from being able to grow and adapt as needed within this century. Citing the public participation process as adequate, the APA, as well the Supreme Court, feel a planning process does a sufficient job in ensuring that a project is important enough to the city and neighborhood that eminent domain must be used (www.planning.org).

The economic view, similar to the view of the APA, is that without the use of eminent domain for economic development cities cannot create the jobs and economy needed in the 21st century. An article written in the *New York Daily News* by Kathryn Wilde, the head of the Partnership for New York City, a network of business leaders dedicated to enhancing the economy of the city, speaks directly to this point. She says that in the current economic climate a city should be in no position of halting or turning private developers away who will create jobs and help grow the economy. State and city governments need to use every tool available to them to create jobs and attract private investment (Wilde, September, 2008). Not addressing the realities found in neighborhoods where eminent domain is used, this argument looks purely to the need of a city to create jobs. Little, if any, attention is paid to the process or those affected by the need for development.

As this background shows, the current arguments within eminent domain use and reform have different priorities and beliefs. Similar to the controversial use of eminent domain throughout history, there is no desire to come to consensus on when eminent domain should be used and when it should not. This thesis will look to highlight issues important in eminent domain use today and provide information to inform the creation of a middle ground between these arguments, helping ensure that even if each view is not completely satisfied, that the process by which eminent domain use is determined is equitable and prioritizes to the best ability possible the factors that are most important to the city, neighborhood and property owners, and developers.

III: LITERATURE REVIEW

Eminent domain reform is being addressed strongly from an advocacy angle with an organized and united movement to change the law. As the background provided an overview of where eminent domain reform is today, this literature review will focus on the theories around public participation in planning. This will provide a framework for a broader understanding of why levels of public participation and neighborhood representation with local government are essential within a planning process and how the use of eminent domain can be understood through the planning process itself.

Throughout history, planning theorists have addressed the role of the public within a planning process through a number of different lenses. From the rational model and a focus on means-end planning, to a more recent discussion on how to create a “just city”, literature has looked to address the question: what is the best way to plan? Within the use of eminent domain, this question is still the same; what is the best way to plan when eminent domain is used?

Looking first at the rational model of planning, this process was established on the principles that cities must focus on end result through a predetermined set of procedures, with no room or flexibility for taking into account the political climate or specific community circumstances. The main critiques of the rational model is that in theory it makes sense to focus on the end result and create a set process on how to achieve the end result, but in practice it glosses over a number of concerns such as equity. The rational model focuses too much on standardizing a means-end model. In reality, the model only works when the end is given and stable, the means are “unique and justifying” and the problems are “routine and stable” (Forrester, 1993). The rational model assumes planning occurs in a vacuum where everything is stable. In reality, the public interest is not found through reason, but through debate. Planning goals are not concrete, but fuzzy, and must be able to adapt to the climate, resources and needs more than rationality. (Davidoff, 1965) Planners realized that it is part of their role to be engaged in the political process with the interests of the government, neighborhood and citizens and private interests.

The height of the use of the rational model connects to a time in history when eminent domain use was very heavily used for urban renewal. Using this model, the process focused on an end result of slum clearance and road expansion, and the way to get there was through eminent domain. Very little consideration was made for the people being affected by the projects, and as a result not only is urban renewal seen today as having torn up cities, but it also began a new discussion on the role of the public in planning.

As a reaction to the failure of the rational model, municipalities began to require levels of public participation within the planning process. Part of this movement included an important piece of literature written by Sherry Arnstein in 1969. Arnstein developed a categorization of various levels of public participation to illustrate how participation does not equate citizen power. Her goal was to provide a broader framework and understanding for planners and policy makers on the importance of a process that incorporated both citizen involvement and efficiency. As she articulates, “...participation without redistribution of power is just an empty and frustrating process for the powerless.” (Arnstein, 217). Arnstein began addressing these issues in 1969, but as this thesis discusses, it is still prevalent today and is at the core of the issues against eminent domain use. The advocacy efforts for eminent domain reform focus on ensuring power for the powerless when it comes to their rights to private property.

Arnstein organized participation into three categories; nonparticipation, tokenism, and citizen power. The first levels under nonparticipation, manipulation and therapy, look at what she refers to as the “distortion of participation.” When cities have forums or create advisory committees, the purpose is to educate those on the committee, not actually give them power to influence decisions. The other end of the spectrum, citizen power, is when there is negotiation between citizens and power holders. Citizens are informed as well as consulted at every level of the process, with the power to influence decisions. Arnstein understands that in reality the categories she presents are not as clear-cut, but her article provided planners with a broader understanding of what it means to work with a community instead of just informing a community. Even though participation in planning has come a long way since 1969, many theorist believe we are again at a point where participation is seen as procedurally required by law and not necessary for successful projects. The data collection and analysis portion of this thesis will look to

understand how states today fall within their levels of public participation, from nonparticipation to citizen power and influence.

More recent discussions within planning theory still address the same issues Arnstein identified, but in the context of today's environment. Two of the main literature pieces come from Innes and Booher in their article *Reframing Public Participation: Strategies for the 21st Century* and Susan Fainstein's book *The Just City*. Unlike today, when Arnstein was writing her piece states did not have a required level of participation. Despite the change, does the requirement actually make a difference in a citizen's power? In the framework of this thesis, does having a process whereby eminent domain use is determined make its use a last resort and the best solution for the community and city?

Innes and Booher firmly believe "Legally required methods of public participation in government decision making in the US do not work." (Innes and Booher, 2004, p.419). Just because the law now requires participation, does not mean it is successful. The legal requirements should be seen as only the minimum level of participation within a proposal, and not the barrier to implementation. Innes and Booher discuss the need for collaboration and dialogue in a planning process. Participation should not be completely bottom-up as individuals will generally express their personal preference, which may not be the best solution for the entire community. At the same time, when government and developers view the legal requirements as intrusive and not a collaborative process with the community, then any insight and local knowledge the project might benefit from is lost.

While in the 1960's nonparticipation was viewed as advisory committees being informed and not given a chance to engage in the project decisions, this still exists today in the form of public forums. Innes and Booher believe that "effective participatory methods involve collaboration, dialogue and interaction" (Innes and Booher, 422). Collaboration does not mean informing the public after a project has been planned, but instead involving those impacted from the beginning of the planning stages. Even though eminent domain is just a small portion of the tools used to plan cities, its use today falls squarely within this theory and at the core of what this thesis is addressing. There is a broader call from the planning community to look further at the effectiveness of current public participation laws.

Similar to Innes and Booher, Fainstein believes the current system does not adequately create a just society. Her discussion of the "just city" focuses on the need to look beyond the idea that a democratic process equates equitable outcomes. (Fainstein, 2010) In addressing how to create a just city, Fainstein asks the important question, "To what extent does the character of the decisional process influence the justice of its outcomes and do certain kinds of procedures favor particular groups? Does enhancing citizen participation produce more just results?" (Fainstein, 2010, p.17)

Today as participation is written into our laws we have furthered democratic ideals within our planning process, but this does not ensure citizen power and influence within the process. Public good is quantified monetarily, which in any circumstance will favor replacement of existing use by a more valuable one. (Fainstein, 2010) The public good cannot be measured by only economic gain, but through a broader look at the needs of the city, the effected community, and the social and economic benefits outweighed against the social and economic losses. The need for eminent domain cannot only be measure by the economic benefit it provides, as that will ultimately lead to inequitable results. In order to get to a just city there must be a just planning process and that process must aim to empower those without a voice instead of oppress. (Harvey, 1978) The data collection will look to understand the level of power provided to citizens within planning decisions and identify situations where the parameters of what constitutes a "public good" are questioned.

IV: RESEARCH DESIGN

The central questions this study examines are threefold: first, would a more inclusive planning process lead to greater restraint in eminent domain use? Second, how do the laws on eminent domain, both reformed since *Kelo* and not, affect the use of eminent domain? And third, what other issues does isolating data on planning processes and eminent domain laws highlight?

To answer these questions, this thesis will collect data on eminent domain use after *Kelo*, in 10 cities in the United States. This study will analyze changes in the state's laws since *Kelo*, and the planning process required in that municipality. The goal of the ten-city analysis is to determine possible correlations between the planning process, the use of eminent domain, and the legal changes between cities. Additionally, this data collection will provide an understanding on potential areas where the planning process can be changed to create a more equitable use of eminent domain. Based on this data and further understanding of how cities address the use of eminent domain, recommendations will be made on how cities can better address the desire for reform and a more equitable determination of eminent domain from the public while balancing the city and state's need to grow both economically and physically.

CITIES

The 10 case study cities include:

1. New York, NY
2. Los Angeles, CA
3. Chicago, IL
4. Houston, TX
5. Philadelphia, PA
6. Phoenix, AZ
7. Jacksonville, FL
8. Indianapolis, IN
9. Columbus, OH
10. Charlotte, NC

The methodology for choosing the study cities focuses on the goal of encompassing the largest populations while not duplicating states. A list of the largest cities in the US was identified using U.S. Census data, and the top ten cities within that list from different states were selected. This will ensure that there is a broad range of state eminent domain laws being analyzed and not create skewed information by duplicating states. The list of the cities and general data on each can be found in Appendix: Section 4. As many states give municipalities the autonomy to determine their own planning process, focusing on cities will provide a more robust comparison of planning processes. These cities are defined by the legal city boundaries instead of the entire metropolitan statistical area.

DATA COLLECTION

Data collection for each state is broken up into three categories:

1. Data collection on the eminent domain laws and reform in each State
2. City-level analysis of planning processes
3. Data collection on current eminent domain cases within each city

A detailed description of the process for data collection within each of these sections can be found below.

1. Data collection on the eminent domain laws and reform in each State

The first set of data will be the collection of language and reform measures from each of the 10 states through categorization of each state's eminent domain laws including reform, specifics of the law on how the state addresses blight, economic development and the process by which reform was passed if reform occurred. These components represent the main issues addressed with the *Kelo* decision, as well as the larger issues addressed by both the advocates for and against eminent domain reform as addressed in the Background section of this thesis. Using primary sources, this information has been collected from State legal documents and legislative policies. A rating system has been developed in order to quantify the level of reform state to state. Though this thesis is not taking a direct position either way on what state eminent domain laws should allow, but instead trying to understand how the law and planning processes can better address the issues that arise around eminent domain use, for the purpose of analysis the rating system has been created through the lens of the reform advocates. By setting a bar on one extreme level of the opinions on eminent domain reform, analysis can better determine if reform measures as being advocated by many citizens and organizations is impacting the use of eminent domain. The specific methodology on analysis of this data can be found in the *Findings and Results* section.

2. City-level analysis of planning processes

The second analytic category focuses on the requirements around public participation within the planning approval process in each city. The goal of this data collection and categorization is to understand the mandated process of public and neighborhood level involvement in each city. Similar to the rating categorization of eminent domain laws, a rating system based on the literature review has been developed. These will serve as the ideal scenario for cities by which the data collected will be analyzed against. The characteristics are as follows:

- City governance structure that give authority to community level review bodies
- Mandated public review steps within planning approval
- Clarity and transparency of the process to the public and neighborhood groups

As the governance of cities varies, the research has focus on collecting information on how the cities deal with these identified components even if they are in different forms. For example, the governance structure and authority granted to different groups varies across cities, so the data collection will identify the most localized form of citizen power. Cities will be compared and analyzed not only against the ideal characteristics, but also against each other.

The information for public participation requirements will be pulled from primary sources found in each municipal planning review processes. Each city has this information listed within their planning department and site plan review process documents found on government websites.

3. Data collection on current eminent domain cases within each city

The last section of data collection is the categorization of eminent domain cases found within each city. With no database that tracks eminent domain use, this data collection relies on primary sources of news articles, court cases, city planning and economic development websites, and eminent domain lawyers who track cases within the city. As this does not ensure that all cases are being collected, it does ensure that any case that deals with contentious issues around eminent domain are categorized. Additionally, the

categorization will include identifying the purpose behind the use of eminent domain, the agency responsible for doing the taking, and any delay in the project as a result of a legal battle.

Based on the data collection and analysis, this thesis will be able to determine how much the law is a barrier to eminent domain use. Additionally, by understanding the processes within each city and how they deal with eminent domain, this will provide an important set of information to identify broader issues that relate to eminent domain use and present recommendations on how cities can better address the issue.

V: FINDINGS AND ANALYSIS

OVERVIEW

The analysis sections of this thesis will focus on two components, first will be the review and comparison of the data on each of the areas of data collection: city planning processes, state eminent domain laws, and an overview of all the eminent domain cases. The second will be an analysis of each case study city and the impact of the planning process and state eminent domain laws on the specific court cases. In order to compare data city to city, a rating system has been developed and will inform both sections of the analysis. A detailed description of the rating system and criteria is provided below. Finally, based on this analysis, a number of overall patterns have been identified and will be discussed in more detail in the form of conclusions and recommendations.

RATING CRITERIA FOR ANALYSIS

For the planning process and eminent domain laws section of data collection and analysis a rating scale was developed based on the literature review and background sections. The purpose of this rating system is to systematically analyze each state and municipality on their planning process and allowable eminent domain uses under the law. Each city or state depending on the level of analysis has been given a rating as designated below based on data collected.

Planning Process

Each municipality presents both a governance structure within the city government and a different structure for neighborhood representation within the city. Additionally, as part of the planning approval process all projects must go through for each municipality, the neighborhood groups play a variety of different roles. The following ratings have been determined based on information collected and discussed previously in the literature review along with an analysis of the variety of government structures present in the 10 cities addressed within this thesis. A detailed description of the relevant research for determining the ideal components is included below.

Criteria

The data collection included the following criteria, identifying information for different levels of governance structure and process, with an ideal component identified for each. These ideal components were then used to determine the rating for each city.

General Criteria	Ideal Component
Identify neighborhood representation within the city government	Neighborhood organizations made up of neighborhood residents or elected directly by residents as part of the city governance structure that have some structural connection to the planning and development departments
Public review process for new development projects	At least one mandated public review step for new developments
Clarity and transparency of process as provided by the city government	Information provided for the general public outlines a clear indication of the process and information easily accessible information on current projects and developments
Neighborhood level of power	Neighborhood authority to create localized, bottom-up planning proposals

As mentioned, the ideal components and basis for the general criteria are based on literature and theories on planning processes discussed in the literature review chapter. A brief description of the theory and literature relevant to each provides further evidence for the importance of using these characteristics as a basis for comparison and analysis in answering the questions posed in this thesis.

Neighborhood representation within city government and level of power

While the rational model highlights the importance of a structured process, Arnstein's theories on the ladder of participation within citizen power highlights the need for communities to not only have a place within the process of government decisions, but to ensure that the structure does not create a system of tokenism (Arnstein, July, 1960). The information collected under these two sections will highlight the structure but also identify what role the neighborhood groups have within the city government to further understand if the role is purely a matter of tokenism or truly integrated within the city governance structure.

Public review process and steps

While the theories on citizen participation within city decisions recently addresses a view that cities do not do enough. As Innes and Booher discuss, the mandated planning procedures should be a minimum of the involvement and collaboration between the city, developers and neighborhood residents. By identifying the number of public review steps, this will further highlight what those mandated review steps are (Booher, December, 2004). The cases will then be able to address if the amount of legal steps required by the city sufficiently addressed the issue or if additional collaboration, as Innes, Booher and Fainstein address, would have created a more equitable outcome.

Clarity of information and transparency of processes

Fainstein clearly expresses within her discussion of the "just city" the idea that just because there is a democratic process does not mean it is equitable (Fainstein, 2010). This categorization looks to quantify this specifically through the lens of availability of information, making the connection that through availability of information citizens are more likely to be involved in the decisions of their government. Part of the checks and balances of a democratic system is the ability of citizens and communities to be a part of the process. Understanding the process and points of engagement is the first step, as well as recognition from the city that clarity and transparency are important components to the growth of cities.

Rating

Each of the ideal components have been weighted the same in this analysis and based on the ideal components identified above, each city is given a rating as indicated below.

Strong – A strong rating indicates the city has **three** or more of the ideal components identified

Moderate – A moderate rating indicates the city has **two** of the ideal components identified

Weak – A weak rating indicates the city has **one** of the ideal components identified

Eminent Domain Laws

Beyond the 5th amendment of the U.S. Constitution, each state identifies the parameters by which eminent domain can be used in their state. As mentioned previously, this thesis is looking to understand the relationship between the allowable uses of eminent domain under the law and how the planning process influences decisions made when the law is applied, for the purpose of the rating of the eminent domain laws incorporates the ideal components as determined by the advocates of eminent domain reform. The purpose of this method is to understand if the tightening of the law on eminent domain to restrict its use has had an impact on the specific cases within each city as discussed later in the analysis.

Criteria

The data collection for each state’s eminent domain laws included the following criteria, identifying information on what the law includes and the type of reform, with an ideal component identified under each set of general criteria. These ideal components were then used to determine the rating for each city.

The general criteria for this section of analysis has been determined based on information presented in the Background chapter and Research Design. The ideal components, as mentioned, are based on the reform efforts by The Castel Coalition and other reform efforts advocating for restricted eminent domain use. (Coalition, August, 2007).

General Criteria	Ideal Component
States allowable uses of eminent domain for economic development	Does not allow eminent domain for economic development
States definition of “blight”	Has redefined the definition of “blight” to only be applied to individual parcels and not entire areas
States process for reforming the laws	State establishment of a task force or study to review the state’s use of eminent domain prior to legislative changes

Rating

All of the components have been weighted the same for all states that have reformed their eminent domain laws. Within the states represented in this data collection, New York is the only that has not reformed their laws and as a result they are given a *no reform* rating. The analysis both between all the states and only in New York will include the specific components of the law though the overall rating does not take into account the specific components. This is to ensure that all states that have had reform are given a rating based off of the same starting point of reform having taken place.

Strong – A strong rating indicates the city has **three** or more of the components identified

Moderate – A moderate rating indicates the city has **two** of the components identified

Weak – A weak rating indicates the city has **one** of the components identified

No reform – the state is still analyzed within the analysis based on the eminent domain law with the added component that no recent reform has taken place

PLANNING PROCESS: FINDINGS AND ANALYSIS

While cities across the US are all under the same federal system, their individual processes are autonomous from a centralized system. Each of the case study cities was researched collecting data on the type of governance structure that formed the city council, type of neighborhood representation within the city government and the involvement of neighborhood members and groups in the planning process. As has been identified in both the literature review and the rating system criteria, the importance of neighborhood representation within city government and mandated review by the public of the changes and decision made to the built environment they live and/or work is incredibly important to the equity of the development of cities.

Based on the data collected the following ratings for each city is:

City	Rating	City	Rating
1. New York, NY	Strong	6. Phoenix, AZ	Strong
2. Los Angeles, CA	Strong	7. Jacksonville, FL	Moderate
3. Houston, TX	Weak	8. Indianapolis, IN	Weak
4. Chicago, IL	Moderate	9. Columbus, OH	Moderate
5. Philadelphia, PA	Weak	10. Charlotte, NC	Strong

*A detailed chart of each city’s information collected to determine a rating and sources can be found in the Appendix: Section 1

One of the main observations evident from the ratings is the inconsistency city to city on their planning processes. While both of the largest cities, New York and LA, have planning processes and neighborhood representation that is inclusive of the community and includes both bottom up and top down structures, there is no pattern on size of city in relation to the rating of planning process (ULURP, 1989) (New York City Charter, Last Amended`, December 18`, 2008) (<http://cityplanning.lacity.org>).

Looking more specifically at the individual components that were used to rate each city, 8 out of 10 of the cities have a structure that incorporates neighborhood representation within the governance structure of the city. While this indicates the importance most of the cities put on neighborhood representation, only 4 out of 10 provide a clear indication that neighborhood groups have an advisory role during the approval of a site or larger development plan and 6 out of 10 provide no information that neighborhood or community groups have any role in the process. Additionally, the way in which neighborhood representation is incorporated within the cities also varies widely showing again how much each city varies in the way they have set up a city governance structure. While some cities have their city council members elected directly from the community of each designated district, New York and Chicago (New York City Charter, Last Amended`, December 18`, 2008) (www.cityofchicago.org), others disregard the importance of neighborhood representation altogether in an important voting body like the city council or planning commission, such as Indianapolis (Rules of Procedure, January`, 2011).

All of the cities indicate that the public is informed of a plan only once it has been approved by the city. The only exception for this is in certain cases, such as Charlotte, where if the city is creating a larger area plan instead of a single development plan, then the neighborhood is involved from the very beginning (charmec.org). Additionally, 6 out of the 10 cities have at least 1 public review stage in planning approval while the other 4 do not indicate a mandated public meeting to review the plan.

In addition to the inconsistencies city to city in how they approach the governance structure of neighborhood representation, the access and clarity of the process also varied. While collecting that data, a major component to the ease of finding the information varied widely. Some cities, such as New York and LA, provide clear and transparent information on the process, exactly when the public or community is involved and how to follow developments going on in each neighborhood. This availability of information compared to other cities, such as Chicago and Indianapolis where information is not made clearly available and easy to understand, shows the disparities between the how city government interacts with the public. This is an important factor to the involvement of community members in the developments that occur within their neighborhood as a clear and transparent process allows residents a better understanding of their role and stage of involvement in the process.

Planning Process Analysis Conclusion

With no federal agency that centralizes planning procedures within the US, cities have developed their governance structures in a way that creates very little consistency between the major cities reviewed in this thesis. The varieties of ways cities incorporate neighborhood representation and review into the city government and planning process has very few common threads throughout each of the 10 cities. Additionally, the ease and transparency of the process provided to citizens is inconsistent and only in specific cases was information user friendly and written in a way accessible to a common resident.

STATE EMINENT DOMAIN LAWS: FINDINGS AND ANALYSIS

As mentioned previously, 43 states have changed their eminent domain laws since the passing of *Kelo* in 2005. This analysis looks at how each state law has been changed, if it was changed, looking specifically at the states allowance of the use of eminent domain for economic development, the state’s definition of the term “blight” and finally if the state allows the transferring of private property acquired through eminent domain to a non-public entity.

Based on the data collected, the following rating for each state is:

City	Rating	City	Rating
1. New York	No Reform	6. Arizona	Strong
2. California	Weak	7. Florida	Strong
3. Texas	Moderate	8. Indiana	Strong
4. Illinois	Moderate	9. Ohio	Strong
5. Pennsylvania	Moderate	10. North Carolina	Strong

* A detailed chart of each city’s information collected to determine a rating and sources can be found in the Appendix: Section 2

Looking first at an analysis of the rating themselves, the ordering of the states is consistent with the population of the case study city being researched. For example, New York State and California both have two of the largest cities in the country, and North Carolina has the smallest out of the cities studied. While the ratings show a potential correlation between the size of the cities within each state and the type of legal eminent domain reform that was passed at the state level, this conclusion does not have enough evidence to be a basis for analysis. Instead, individual components of the eminent domain law provide better information into how the state laws impact developments at the city level.

The only state that has not reformed their eminent domain laws since the *Kelo* decision is New York State. Currently known as the worst abuser of eminent domain, New York does not seem motivated to tighten their eminent domain laws anytime soon. The other nine states all changed their laws within a year of the *Kelo* decision in the Supreme Court (2005). This indicates the trend addressed earlier in this

thesis of a backlash to the *Kelo* decision had in both motivating states to take action right away and public opinion on the issue of eminent domain. A poll taken in Florida right after the *Kelo* decision showed that 89% of Florida voters supported having the state legislature adopt “increase protection for property owners” and 88% disagreed with the Supreme Court’s decision on the case (Jacksonville Business Journal, November 8th, 2005).

Most of the legislative changes within each state focused on redefining the definition of blight and compensation procedures. As compensation is not a focus of this thesis, I will not include that in part of this analysis. Over half the states, 6 out of 10, changed the definition of blight to restrict its use. The definitions address the similar issues of ensuring that blight is used on individual parcels, or if an entire area is deemed “blight” then a certain percentage of the homes have to meet a certain definition. Arizona has gone as far to require that whenever a property or area has been determined “blight” and there is a planning use of eminent domain, the state requires a judicial review before the authority can go forward with the taking (Act 12-1136, Novemberth, 2006) (Article 2, October 31st, 2002). While all the states which adjusted their definition of “blight” addressed making the definition more specific with less room for ambiguity, Illinois included in their reform under the definition of “blight” an area that has a “lack of community planning” as a legal determination (Radogno, 2011). This example is an indication of how state’s attempt at reforming eminent domain does not address the core issues in the revitalization of neighborhoods. A neighborhoods “lack of community planning” many be an indication of many factors including lack of local government support, and not a fair determination of blight.

One of the main criticism of the *Kelo* decision is the way in which it redefined “public purpose” to include economic develop. As a result of this as the focal point of the backlash, 8/10 states changed their laws to either clearly state that economic development is not a public use or to specify the specific circumstances, such as the development of a port, where economic development could be used as a determination of a “public use”

In additional to the issue of economic development, the *Kelo* decision addressed the issue of transferring condemned private property to a private developer. Currently, 5 out of the 10 states still allow the transferring of private property to a private company, but some provide specific situations under which the use is appropriate. One example is in North Carolina where the private company must be an operator of transportation for the municipality (Chapter 40A, 2005) (House Bill 1965, Augustth, 2006).

While all but New York changed their laws, only three of the states addressed in this thesis reviewed the eminent domain use within their state prior to making legislative changes. North Carolina (Chapter 40A, 2005), Indiana (House Bill No. 1010, January 9th, 2006) and Ohio (Senate Bill 167, 2006) (Senate Bill 7, 2006) all established a state focused task force, or commissioned a study, to review the current issues around eminent domain abuse within the state. Recommendations on legislative changes were than based on the findings of these studies. This is an important step in addressing how eminent domain should be reformed because it forced the states to address more specific the issues that were apparent within their state, and not just those that were seen as a backlash to *Kelo*.

State Eminent Domain Laws Analysis Conclusion

All the states, with the exception of New York, have responded to the reform advocates desire to address restricting eminent domain use legally. In general, there has been consensus state to state that restricting the use of eminent domain for economic development is an important first step in increasing the protecting of private property while for planners and the city this means a restriction in the possible planning tools for increasing the economic and physical growth of cities. Additionally, the definition of

“blight” has been a focus of reform measurements to provide additional protection to property owners. While the reform has addressed two major components of the *Kelo* decision, the lack of state review on the type of eminent domain abuse and reasons for eminent domain cases within each state show that the reform paid little attention to issues specifically present state to state. The cases highlighted within the next section and the state-by-state analysis will address this issue further as eminent domain use within each state addresses separate issues that need to be addressed at a state level.

EMINENT DOMAIN CASE: FINDINGS AND ANALYSIS

Consistent with the methodology laid out in the *Research Methods* section of this thesis, 29 eminent domain uses have been identified from the 10 case study cities. While this number indicates the number of instances of eminent domain found either used, brought to court and settled or brought to court with a decision, it does not indicate the number of property owners who were effected by eminent domain within these cases as some deal with larger developments impacting a number of property owners and others deal with specific parcels. All of the cases were determined after the *Kelo* decision in 2005 though some of them started before the case decision. Additionally, cases that involved an inverse condemnation were not included in this analysis.

From the 29 cases in major cities across the US, 20% involved the taking of residential property, 62% private businesses, and 17% both residential and private business. This indicates that most of the eminent domain use is taking place in parts of the cities dominated by businesses and may indicate the indirect use of eminent domain for economic development. (See Appendix: Section 3) While the previous analysis on eminent domain laws shows that most states have adjusted their laws to stop or restrict the use of eminent domain for economic development, this trend in the cases shows that the reform is not accomplishing the goal of stopping eminent domain use for economic development. This potential correlation between business condemnations and economic development will be further analyzed in the city-by-city analysis to understand the specific circumstances further.

The traditional uses of eminent domain include transportation, parks, utilities and schools. All falling under what have historically been associated with the use of eminent domain, only 38% of the cases identified were for one of the purposes listed above. Within those 38%, 73% of the cases were brought to court over compensation disputes and not an argument over the determination of blight or public use. This indicates that there is little opposition from property owners against the use of eminent domain for things that are generally considered a public use and when property owners do fight the use of eminent domain, it is based off of the determination of compensation and not over the use of eminent domain itself.

The remaining reasons for the use of eminent domain are 21% for the development from private companies and 41% that included both public and private development. Within the cases that dealt with the transferring of property to private developers, or both private and public, almost all were large developments that impacted a number of property owners where the main agency responsible for the taking was a city or state redevelopment agency. While the agencies responsible for having the authority to condemn property varies state to state and case to case, there is a common trend among all the cases that deal with private developers; neighborhood and individual property owner opposition and redevelopment authorities. This will be discussed further by each state and within the conclusions recommendations.

One of the other aspects of eminent domain use identified within this thesis is the delay it causes projects. Within the 29 cases studied, only 24% resulted in project delays as a result of the opposition to the use of eminent domain. While this is a low number, the city-by-city analysis will explain further the

types of cases that cause delay and reasons indicating that it is less about the frequency of project delay and more about the circumstances and reasons that lead to project delay.

In addition to the general facts of the case researched, opposition and media around the case were identified as part of the data collection. The purpose of this is to understand if there were community groups formed to advocate for or against a project. The creation of community groups not only increases the public knowledge and media attention to an eminent domain case, but it also makes it a neighborhood level issue and not just a dispute between a property owner and the city or state. Only in the cases found in New York City ("Neighborhood Planning - Overview.") and Chicago (Yednak, January 26, 2006) were there strong community unity and opposition against the use of eminent domain. Further, only one case in LA was the community outspoken supporting the project, a school expansion, indicating the property owner's opinions were not in line with the community (Larrubia, November 20, 2007).

Eminent Domain Case Analysis Conclusion

With 29 cases occurring since 2005 in 10 cities, these cases further highlight common uses of eminent domain and how the legal reform measures have either successfully addressed the goals of the change in the laws or not. With the majority of these cases involving economic development disputes, and even though most cities reformed their eminent domain laws to take away this as a legal use of the tool, it has not addressed the issue fully. As economic development is an important role of cities, this analysis shows that limiting it as a public purpose within the laws on eminent domain use does not eliminate it as a secondary or clearly identified purpose.

CASE STUDY ANALYSIS BY CITY

This section will provide an analysis for each of the 10 case study cities on how the eminent domain cases were impacted by the planning process within the state and the eminent domain law, highlighting how the specifics components of each impact not only the use of eminent domain but also the public opposition. Asking the questions posed at the beginning of this thesis on the impact of the planning process and eminent domain legal reform on cases, analysis on what important components played a factor in eminent domain cases for each city will be highlighted in this portion of the analysis.

NEW YORK CITY, NEW YORK

New York City	Planning Process	Eminent Domain Law	Eminent Domain Cases
Overview	Strong	No Reform	2 (one still under negotiations)
Specifics	<ul style="list-style-type: none"> • ULUPR and public review process • Governance structure includes neighborhood representation • Clarity and transparency of the process 	<ul style="list-style-type: none"> • No reform • Allows eminent domain use for economic development and the transferring to a private company 	<ul style="list-style-type: none"> • All two involve private development • ULURP bypassed through the state redevelopment agency • Two out of the three went to the highest court in New York State and caused project delays

Sources: (ULURP, 1989) (New York City Charter, Last Amended, December 18, 2008) (The Constitution of the State of New York, Last amended, January 1, 2010) (Wilde, September 17, 2008) (Jacobs, 2009) (Berliner, August

23', 2009) (Bagli, November 24', 2009) (March 17', 2011) ("Neighborhood Planning - Overview.") (Bagli, June 24', 2010) (Eviatar, May 21', 2006) ("Manhattanville in West Harlem - Columbia University.") (Pristin, May 2', 2007)

As the summary of New York City processes and eminent domain information shows above, the city itself has a very comprehensive planning approval process and eminent domain laws that provide little private property protection and flexibility for the city and state to use eminent domain for economic growth. The two cases, Columbia University expansion and Atlantic Yards development, are both cases that went to the highest court in New York State, caused both delays in the projects and created major community opposition, and ended in the state redevelopment agency responsible for the taking winning the case. Willets Point, a development just starting construction and the eminent domain process in Queens, New York has not yet had any legal opposition to the use of eminent domain, only public and community opposition. A recent article in the *New York Daily News* indicated that based on interviews with Willets Point property owners there is little faith in their ability to fight against the city based on the decisions on Atlantic Yards and Columbia University decisions. (Pristin, May 2', 2007)

With New York having a thorough public review process, ULURP, both of these cases went through the ULURP process but still resulted in resistance to the use of eminent domain by both the property owners and the neighborhood at large. (Eviatar, May 21', 2006) ("Manhattanville in West Harlem - Columbia University.") In the case of Columbia University's expansion into West Harlem, as a measure to their respect and goals of coordination with the neighborhood, created a Community Benefits Agreement with Harlem, the neighborhood of the new development. As this is a prime example of a project making efforts to work with the community while the end result still led to strong opposition, project delay and a court case, what went wrong? How might have Columbia worked with the community differently to avoid the use of eminent domain or allow the use but with less opposition?

Looking into more detail of the CBA, it was created between Columbia University and the West Harlem Local Development Corporation, a non-profit set up specifically for the purpose of implementing the Community Benefits Agreement. With a total of \$150,000,000 being given to community through a benefit fund, affordable housing fund, legal assistance, in-kind benefits and finally the creation of a public school for the neighborhood, the CBA was a recognition between Columbia and the community that there would be long term impacts from the development on the community (West Harlem Community Benefits Agreement, May 18', 2009). The CBA includes specific language on stipulations for hiring local workers, not using eminent domain on residential properties or churches, and giving priority of retail space to businesses displaced by the development. By financing and addressing a broad range of impacts the development would have on the neighborhood, the community and the Community Board 9, representing West Harlem, still felt marginalized by the development (stopcolumbia.org).

The community became dramatically opposed to the development for two main reasons; the use of eminent domain and the university's lack of acknowledgement of a proposal developed by the community on the needs of the area. Looking first at the issue of eminent domain use, as it is most relevant to this thesis, neighborhood organizations and even groups affiliated with Columbia University opposed to the project said "...eminent domain and the threat of its deployment preclude good faith negotiations, period. If Columbia truly cares about its neighbors, it must negotiate with them, not threaten them with force" (Gentrification, S. C. o. E. a). While Community Benefit Agreements are meant to bridge the gap between developers and the neighborhood, for the developer to then turn around and use a planning tool that takes away all negotiating power and rights of the property owners, to the community the spirit and intention behind the CBA is negated.

The second main issue found within community opposition was Columbia’s disregard of a neighborhood developed plan for the site which identified major needs of the community and possible uses for the site based on those needs. Some of these included preserving existing affordable housing and businesses, developing contextually with current building heights and not using eminent domain under any circumstances. In addition to the community being opposed to the development, both the West Harlem Local Development Corporation and Community Board 9 voted on resolutions calling for Columbia not to use eminent domain (Gentrification, S. C. o. E. a.). With the university’s unwillingness to adapt any of the project plans based on the opposition from the community, the university expansion is going forward in a community that is unhappy and feeling disrespected by the process (neighbors.columbia.edu). Though the process ensures the community has a chance to speak up against the development, the approval by the City Planning Commission on Columbia’s proposed plan, knowing that it had opposition, shows how other political and economic forces impact land use decisions that go against the will of the neighborhood.

These two issues highlight how the structure within the planning process of New York City allows for community oriented development and power, but the willingness and politics at both the state and city level see eminent domain as a necessary tool for development creates a culture of politics between the city and developer being more important than community interests. In this case, had the university worked more closely in the initial stage of development of the proposal to ensure the communities needs and the university’s would both be met, or met with certain compromises, the need for eminent domain might have been unnecessary. This case also highlights how disenfranchised communities feel by the use of eminent domain, showing that its use no matter the circumstances is seen as polarizing. The latter issue would indicate that reform addressing the circumstances under which eminent domain can be used is the most important component to address, the former would indicate that the process must be reformed to ensure earlier communication between the two parties.

LOS ANGELES, CA

LA	Planning Process	Eminent Domain Law Rating	Eminent Domain Cases
Overview	Strong	Weak	6
Specifics	<ul style="list-style-type: none"> • Role of Area Planning Commissions • Clarity and transparency of process • Public review mandated as part of the process 	<ul style="list-style-type: none"> • Eminent domain allowed for economic development • Reform narrowed the definition of blight 	<ul style="list-style-type: none"> • 5/6 cases were for traditional eminent domain use • One case involved a redevelopment authority working on a larger planned development

Sources: (<http://cityplanning.lacity.org>) (California Constitution, 2005) (City of Southgate v. Jauregui, January 12`, 2012) (Avenida San Juan Partnership v. City of San Clemente et al., December 14`, 2011) (Los Angeles County Metropolitan Transportation Authority v. Alameda Produce Market, LLC, November 14`, 2011) (County of Los Angeles v. Glendora Redevelopment Project, June 15`, 2010) (Los Angeles Unified School District v. Casasola , August 5`, 2010) (Larrubia, November 20`, 2007)

Similar to New York City, LA has a strong planning process but eminent domain reform that has not addressed many of the issues opened up from the *Kelo* decision. While the city has the most eminent domain cases out of any included in this study, most of the cases were for traditional uses such as parks, roads, and school expansions. These cases were generally contested due to disputes on compensation amounts. The one case that stands out is *County of Los Angeles v. Glendora Redevelopment Project* (2010). This case involved a redevelopment agency, Glendale Redevelopment Authority, using eminent domain to clear a blighted area for a mixed use development that would include put private and publically

owned buildings. The city sued the redevelopment authority on the grounds that their determination of blight was not sufficient. The role of redevelopment agencies has previously been highlighted in the analysis but is reinforced here again as common government involvement in eminent domain opposition (*County of Los Angeles v. Glendora Redevelopment Project*, June 15, 2010). In a State Supreme Court decision in February of 2012, the courts ruled that a law passed by the Governor and State Legislature, which abolished all municipal redevelopment agencies, was in fact legal, effectively closing all redevelopment agencies in the state of California (Dolan, December 29, 2011). In an effort to cut the state's budget, the Governor and legislature felt that reducing spending through urban renewal projects was a successful tactic, but many feel that it is also a huge victory for stopping eminent domain abuse within the state. Redevelopment agencies are responsible for more than 200 uses of eminent domain within the past 10 years in California (Castle Coalition, 2012).

In order to further understand the role of redevelopment agencies, and specifically in California, a closer look at the process by which developments are decided with give addition information for this analysis. Within LA, the California Redevelopment Agency/LA (CRA/LA) issues an RFP for specific sites they have identified as places for development. Once proposals are reviewed by staff they choose a referred proposal as a recommendation to the CRA/LA Board of Commissioners to approve, who are appointed by the Mayor. The website indicates that there is "significant community input" involved within this process but no further information into the specific mechanisms by which the community is allowed to give input (crala.org). Additionally, there is no indication of how the process of determining the need for the site or what is included within the RFP fits within the work of the Area Planning Commissions or public review process outside of the scope of work of the redevelopment agencies.

Since the law abolishing redevelopment agencies was not focused on eminent domain, but the public saw it as a secondary benefit to the law, the state still needs to reassess how eminent domain is used. As redevelopment agencies represented the largest users of eminent domain in the state, just because they are gone does not mean other agencies will not use similar processes. The state should still review and address the process. As redevelopment agencies have played a major role in the data for both LA and New York, the largest cities studied within this thesis, the power and role of redevelopment agencies needs to be reexamined in cities where their responsibilities encompass the frequent use of eminent domain. As the agencies are responsible for large scale project, cities need to ensure that they are not allowed to bypass the process, or use political support to disregard the needs of the community and the desires of the neighborhood and property owners.

HOUSTON, TX

Houston	Planning Process	Eminent Domain Law	Eminent Domain Cases
Overview	Weak	Moderate	4
Specifics	<ul style="list-style-type: none"> A department that is responsible for neighborhoods but no clear connection to the planning department No requirements for public review Lack of clarity and transparency in the planning process 	<ul style="list-style-type: none"> Eminent domain use not allowed for economic development Definition of public use specifies that it does not include private developments Blight not addressed in the reform 	<ul style="list-style-type: none"> all cases dealt with traditional uses of eminent domain one case was brought to court over dispute of the use of eminent domain

Sources: (Houston Code of Ordinances) (Senate Bill 7, 2005) (Right of Eminent Domain, August 11, 2007) (Bill of Rights, Last Amended, November 3, 2009) (Feibel, December 28, 2008) (Stat of Texas v. Clear Channel Outdoor, July 31, 2008) (Colley, January 30, 2005) (Harris County Hospital District v. Textac Partners, May 1, 2008)

While Houston has a very clear neighborhood structure and a department within the city government responsible for neighborhoods, there is no direct connection between the planning department and both the department responsible for neighborhoods or public involvement in the planning process (Houston Code of Ordinances). The eminent domain law in Texas reacted to the *Kelo* decision, changing their laws immediately after the Supreme Court decision in 2005. While all of the eminent domain cases in Houston since 2005 deal with the taking of property for parks and transportation, one case highlights the weakness of the planning process and highlights the potential for corruption within the use of eminent domain.

In 2007 the city took .09 acres from James and Jock Collins to build a park claiming the park was a “public necessity” even though there was a 4.7 acre park located 2 blocks away. The park was set to be across the street from a new private, mixed use development. Both the private developer and the Uptown Development Authority of Houston had previously tried to purchase the Collins’ land and they refused based on the proposed amount. According to an online journal, the city wanted the space for park land as a landscaping buffer and continuation of the new development. The Parks Department of Houston had not even identified the neighborhood as needing additional park space and did not support the taking of the Collins property (Feibel, December 28`, 2008). While the eminent domain laws in Texas do not allow the city to transfer the property to the developer (Right of Eminent Domain, August 11`, 2007), the weakness of the involvement of the neighborhood in this decision shows how an unfair deal such as this went through. Had there been neighborhood planning prior to the city’s decision to take the land the neighborhood might have become outspoken against the need for another park. Additionally, this case highlights the impact politics has on the use of eminent domain. While the department responsible for the establishment of parks did not play a role in the identification of this piece of land, it was political pressures around a new development that pushed the use of eminent domain. The land was eventually taken from the Collins and they have been compensated, but feel the process was unfair to them as property owners (Feibel, December 28`, 2008).

CHICAGO, IL

Chicago	Planning Process	Eminent Domain Law	Eminent Domain Cases
Overview	Moderate	Moderate	4
Specifics	<ul style="list-style-type: none"> • Planning commission all appointed by the Mayor and approved by the City Council, no direct neighborhood representation • Lack of clarity and transparency in the planning process 	<ul style="list-style-type: none"> • Economic development cannot be the primary purpose for using eminent domain • Redefined “blight” through reform to include more specific language 	<ul style="list-style-type: none"> • two cases involved areas that have been designated a Tax Increment Finance (TIF) district

Sources: (www.cityofchicago.org) (Chicago Zoning Ordinance and Land Use, September`, 2011) (Radogno, 2011) (Yednak, January 31`, 2006) (Schock, January 24`, 2006) (Little, June 29`, 2006) (Yednak, January 26`, 2006) (Little, July 12`, 2006) (Schroedter, December 20`, 2006) (Bowean, May 07`, 2009)

The City of Chicago has a history of using eminent domain for economic development specifically. According to a recent study by the *Chicago Tribune*, the counties that encompass Chicago and a number of surrounding counties used eminent domain 250 time over 5 years prior to the *Kelo* decision to seize property for economic development. (*Chicago Tribune*, 2006) While only 4 cases were found from 2005-2012 in the two counties that include Chicago, Cook County and DuPage County, a number of other cases were found in small towns in Illinois in addition to the ones in Chicago which all had a common

theme: the takings involved land in areas designated a tax increment finance (TIF) district. As part of the process of creating a TIF, the area must be deemed “blight” and thus the use of eminent domain can be used to help grow the area (Little, July 12`, 2006). While the process includes community outreach, the lack of a clear bottom up even advisory structure within the city provides residents in the areas little voice to stop the designation. In one of the cases in Chicago, an area along the Fox River which was just undergoing TIF designation, the residents expressed concern not over the all the components of their neighborhood being taxed more, but their fear of the cities potential use of eminent domain as part of being a TIF district (Yednak, January 26`, 2006).

The use of planning tools outside of the traditional system is necessary for cities to increase economic development and revitalize areas, but as the cases in Chicago show, there needs to be a way to separate the redevelopment of old areas and the use of eminent domain on property owners within the area.

PHILADELPHIA, PA

Philadelphia	Planning Process	Eminent Domain Law	Eminent Domain Cases
Overview	Weak	Moderate	2
Specifics	<ul style="list-style-type: none"> City department which includes a planner for each of the 18 planning districts No bottom-up engagement, planning only occurs top-down no mandated public review process 	<ul style="list-style-type: none"> Redefined the definition of blight to make the designation tougher no clear definition of “public purpose” including language on the use of eminent domain for economic development 	<ul style="list-style-type: none"> one case involved a redevelopment authority and argued the use of eminent domain from a designation of blight from 1968

Sources: (Overview of City Planning Commission) (Philadelphia City Planning Commission, 2010) (Hsueh, May`, 2010) (Senate Bill 881, 2006) (House Bill 2054, 2006) (Snyder, January 15`, 2012) (“Pennsylvania Commonwealth Court Invalidates Use of Eminent Domain for Redevelopment Due to Establishment Clause Concerns”, March`, 2006)

The weak planning process in Philadelphia in conjunction with a moderate level of reform shows little impact on the two cases that have occurred in the city since 2005. With few cases, there is no clear indication of how the planning process and eminent domain reform have impacted the use of eminent domain in the city. The only case involving a contested use of eminent domain was *In re 1839 North 8th St*, decided in 2006, which started long before *Kelo* and the cities eminent domain reform. The property was originally determined blight in 1968 and based on that determination, the Philadelphia Redevelopment Authority condemned the land to give to a private religious school. The Pennsylvania Commonwealth Court invalidated the use of eminent domain by the Redevelopment Authority not based on their basis for determining blight, but because the decision violated the separation of church and state as the property would be given to a religious school (“Pennsylvania Commonwealth Court Invalidates Use of Eminent Domain for Redevelopment Due to Establishment Clause Concerns”, March`, 2006). This case adds to the trend of redevelopment agencies abusing their power to use eminent domain. The lack of accountability from the redevelopment agencies to the public shows their ability to use eminent domain without being directly responsible to voting citizens. While none of the cases involved are based on an unclear definition of “public purpose”, further research on this topic should track eminent domain use in Philadelphia to see if the determination of public purpose is impacting the frequency.

Phoenix	Planning Process	Eminent Domain Law	Eminent Domain Cases
Overview	Strong	Strong	2
Specifics	<ul style="list-style-type: none"> city divided into 15 “urban villages” with a planning committee for each made up of neighborhood residents planning committee’s make recommendations to the Planning Commission 1 mandated public review 	<ul style="list-style-type: none"> Redefined the definition of “public use” to take away economic development Judicial review required for any designation of blight Law does not allow the transferring of condemned property to a private developer 	<ul style="list-style-type: none"> One case involved the development of the city’s light rail One case was fought in court against the city as an illegal use of eminent domain but was circumstantial to the issue and not impacted by the development or neighborhood

Sources: (Development Guide) (Zoning Ordinance, 2011) (Act 12-1136, November, 2006) (Article 2, October 31, 2002) (Berg, February 14, 2007) (Bui, August 19, 2010)

Phoenix has both a strong planning process that incorporates clearly defined neighborhood districts into the government structure and planning approval process (Development Guide) (Zoning Ordinance, 2011). Additionally, their eminent domain reform addressed clarifying the state’s definition of “public use” to exclude economic development and protect property owners from having their land being given to a private company. The two cases of eminent domain in Phoenix since 2005, *Great Western Historical LLC*(2010) and *Johnson v. City of Phoenix*(2007), are both related to issues of park land and public transportation development respectively. While there is no information on potential situations where eminent domain was not used because of public involvement in the process, this is the one city within this study that has both a strong rating for the planning process and eminent domain reform and no cases that dealt with the city inequitably using the power of eminent domain. The combination of the city allowing a neighborhood structure that empowers residents to be involved in the development of the built environment of their neighborhood and the State’s recognition of private property rights shows that the city has forced itself to think of eminent domain as a last resort for public infrastructure that has overall public support, such as the development of public transportation, and not something that is used when the government feels the need to support private development.

JACKSONVILLE, FL

Jacksonville	Planning Process	Eminent Domain Law	Eminent Domain Cases
Overview	Moderate	Strong	3
Specifics	<ul style="list-style-type: none"> • Citizen's Planning Advisory Committee is made up of members from 6 planning districts and advises the Planning Commission • Site plan approvals do not go through the Citizen's Planning Advisory or any other neighborhood review • No public review required 	<ul style="list-style-type: none"> • Reform eliminated the use of eminent domain for economic development and designations of blight (only if the property poses health and safety concerns) • Legislation created a task force to review eminent domain use prior to reform • Cannot transfer to a private company until 10 years after condemnation 	<ul style="list-style-type: none"> • Two cases deal with transportation and were contested because of compensation disputes • Final case involved the taking of property on a port for economic development prior to the new law taking into effect

Sources: (Land Development Procedures) (Florida House Joint Resolution, March`, 2006) (HR 1567, May`, 2006) (March 27`, 2009) (June 23`, 2009) (Light, February 17`, 2007) (Light, November 28`, 2006) (LLP, B.M., May 7`, 2010) (Firm, F. P. R. L.)

While the city has created an outlet for citizens to be involved in the planning process, the involvement only goes as far as large city or area wide developments and not smaller developments that occur on a more frequent basis (Land Development Procedures). The legal reform in Florida included the important first step of a task force review of eminent domain use within the state and a number of recommendations based off of their review. As a result, the new law does not allow private property to be taken for the purpose of economic development (Florida House Joint Resolution, March`, 2006).

The only case that speaks to the impact of the reform is the case *Jacksonville Port Authority v. Keystone Coal co.* (2007) In this case, Jacksonville Port Authority attempted to take land from Keystone Coal because their land was on the last available property for a port company and the city needed the economic development. As the case started before the new law came into effect, the judge deciding the case even indicated that the new law would not permit this type of taking. While the courts found for the Port Authority, the final compensation amount was so high the Port Authority had to back out of the deal due to budget (March 27`, 2009) (June 23`, 2009) (Light, February 17`, 2007) (Light, November 28`, 2006). This case speaks to the place cities find themselves in where they need to support economic development using the assets they have, such as a port, while still protecting private property. The decision on this case does not help this analysis determine the best way for cities to approach this difficult scenario, but it does shed light on the issue.

Indianapolis	Planning Process	Eminent Domain Law	Eminent Domain Cases
Overview	Weak	Strong	2
Specifics	<ul style="list-style-type: none"> • City Council does include neighborhood representation • There are not formal neighborhood groups or classifications within the planning structure • Lack of clarity and transparency in the planning process 	<ul style="list-style-type: none"> • Reform eliminated the use of eminent domain for economic development • General Assembly created a commission to review the state's uses of eminent domain prior to legislative reform 	<ul style="list-style-type: none"> • Both cases involve the purpose of the taking for a private companies benefit • One case involved a redevelopment authority from the state level

Sources: (Rules of Procedure, January`, 2011) (House Bill No. 1010, January 9`, 2006) (Hoskins, April 14`, 2009) (McCarthy, November`, 2006) (ABC, January 9`, 2006)

The Indianapolis Planning Department provided very little information on the process by which decisions are made on development approvals and the type of involvement the community can expect to have. Additionally, the only indication of neighborhood outreach was a list of neighborhood organizations that are no affiliated with the city government. This lack of clarity for Indianapolis citizens on their involvement in development projects is shown in one of the two cases on eminent domain, *N.K. Hurst Co. v. Indianapolis Colts*. (2006) The Indianapolis Colts football team promised the NFL they would build a new stadium before any land had been acquired or approvals had gone through the city. As a result, the city and state were pressured to ensure the new stadium was built no matter the circumstances. Additionally, a new redevelopment authority was created at the state level, Indiana Stadium and Convention Building Authority, which has the power to use eminent domain. The stadium was to sit next to the Hurst's company land and their land would be for the needed parking spaces. The Hurst company refused to sell their property indicating that they would not move their business for a parking lot that would be used a few times a year (McCarthy, November`, 2006). This case happened to be occurring at the same time the State legislature was review new language on reforming eminent domain to take away the use for economic development, as was the argument in *N.K. Hurst Co. v. Indianapolis Colts* (ABC, January 9`, 2006).

While the Hurst Company and libertarian activist groups, such as thefreemanonline.org, a blog dedicated to the individual rights of citizens, argue the unfair use of eminent domain against their individual rights. I think this case highlights the lack of respect for local business from city and state government to achieve a goal like appealing to the NFL. While cities need certain revenue streams, the inability for the state to review the current conditions of the site and work with the Hurst Company to find a solution beyond taking their property for a parking lot again show the impact political forces have on the use of eminent domain. Additionally. the planning process in Indianapolis does not provide enough accountability mechanisms to curtail political forces that impact land use decisions.

Columbus	Planning Process	Eminent Domain Law	Eminent Domain Cases
Overview	Moderate	Strong	2
Specifics	<ul style="list-style-type: none"> City have 53 designated planning neighborhoods Site plans for individual development do not go through the planning department No public review required Lack of clarity and transparency in the planning process 	<ul style="list-style-type: none"> Reform included a redefining of "blight" to designate that 70% of homes in a proposed area must be blight Eliminated the use of eminent domain for economic development but still allows the transferring to private companies in specific circumstances State legislature created a task force to review states use of eminent domain prior to legislative changes 	<ul style="list-style-type: none"> Both cases were takings for transportation use and brought to court on disputes of compensation

Sources: (Neighborhood Planning Overview) (Commercial Site Plan Approval Process) (Checklist: Requirements for Submittal of Site Compliance Plans, 2010) (Senate Bill 167, 2006) (Senate Bill 7, 2006) (Ohio State Constitution, Last amended, 2011) (Kemper, March 29, 2010) (Narciso, October 10, 2007)

The planning process in Columbus is divided up into 53 neighborhoods as indicated in the chart above (Neighborhood Planning Overview). As one of the smallest cities in this study, with a population of 787,033, the neighborhood structure is disseminated very much compared to larger cities. (U.S. Census) While this potentially empowers smaller groups of neighborhoods to be involved in developments in their area, the lack of clarity and a mandated public review stage in the planning process does not take advantage of that potential. The legal reform at the state level includes a number of provisions to protect private property owners further while still allowing cities to use blight as a determination for eminent domain. Additionally, along with two other states in this study, Ohio created a task force to better understand eminent domain use in the state prior to making any legislative reform changes (Senate Bill 167, 2006) (Senate Bill 7, 2006).

The cases within Columbus provide little information on how the planning process impacted the use of eminent domain and provide no insight into the analysis of this thesis. Both cases involved the taking of land for transportation purposes and the reasons for opposition from the property owner were based on compensation and not a dispute over the use of eminent domain.

Charlotte	Planning Process	Eminent Domain Law	Eminent Domain Cases
Overview	Strong	Strong	1
Specifics	<ul style="list-style-type: none"> • City Council includes representation from each district but Planning Commission does not • Each district goes through an area planning process which includes very inclusive neighborhood engagement • No clear process provided on individual site plan approvals 	<ul style="list-style-type: none"> • Reform eliminated the use of eminent domain for economic development • Blight is assessed on a parcel by parcel basis • General Assembly created a commission to review the state's uses of eminent domain prior to legislative reform 	<ul style="list-style-type: none"> • Only case involved the creation of a park and was contested due to dispute over compensation

Sources: (charmeck.org) (North Carolina State Constitution) (Chapter 40A, 2005) (House Bill 1965, August¹, 2006) (Welsh, May 4¹, 2010)

The final city studied within this analysis is Charlotte where not only does the planning process have a strong public engagement process for the development of area wide plans, but the city is clear and transparent on the neighborhood's role in helping determine their needs (charmeck.org). Additionally, the state level reform of the eminent domain law addresses the major issues both present in *Kelo* but also identified as state level issues through a review by a commission (House Bill 1965, August¹, 2006). With two strong ratings in this analysis, the lack of eminent domain cases shows the strength of both the protection of private property and the active engagement of the neighborhoods. The only case brought to the court involved the taking of land for a park due to the projected growth of the city. The dispute was over compensation and not use of eminent domain itself. This case furthers the point that as Charlotte has been a growing city, they have managed to expand through a process that is inclusive and avoids the use of eminent domain.

VI: CONCLUSION AND RECOMMENDATIONS

CONCLUSION

The issues around the use of eminent domain has always been contentious, but as this thesis shows, the backlash to recent eminent domain use has put the issue in the spotlight, highlighting the ways in which cities use the tool for various types of needs and uses. This thesis has looked to address how the planning process influences eminent domain use in cities. A number of important issues have been raised and some specific conclusions can be made, but based on the amount of data available on eminent domain cases, there are limitations on the overall conclusions that can be made. The specific conclusions that can be made based on the available data collected include:

- Based on the cases found, eminent domain is no longer used mainly for traditional uses such as parks and utilities.
- Most reform was reactionary to *Kelo* and did not include an assessment state by state on local eminent domain use.
- Though many times economic development is not the main reason for the use of eminent domain, the prevalence of cases that involve eminent domain use under a larger umbrella of economic growth shows a discontent from neighborhood residents on the priorities and tools local governments use.
- The lack of consistency of planning process structures city to city means that reform and further analysis on the ways in which the process can change needs to happen at the local level, taking into account specific contextual circumstances.
- The type of communication and outreach between the city and effected property owners and community members makes a difference in the level of opposition in some of the instances.
- While many cities have a structure of neighborhood representation within the governance system of the city, it does not always include involvement in development decisions.

These conclusions begin to show some important issues that arise within the use of eminent domain and how the planning processes and eminent domain laws impact the use of eminent domain. Additionally, as mentioned in the beginning of this thesis, by isolating these two components of eminent domain use, the prevalence of the role of political influence in eminent domain cases is highlighted. In most of the cases identified within the data collection, the main factor in both the use of eminent domain itself as well as the source of opposition was not about a failure in the process specifically, but about the role of political pressures to push a project through. Again, as the amount of data collected does not support this as an overall conclusion on the use of eminent domain, it highlights this as an issue within these cases and one that is worth further exploration. With additional time and available information, the role of politics would have been explored further in the form of detailed case studies.

The findings and analysis show the complexity of this problem, but also highlight the broader themes within eminent domain use as well as what cities should take to provide a more equitable planning process. The recommendations presented below provide important steps cities should consider in order to address the issues highlighted in the findings above.

RECOMMENDATIONS

The findings and conclusions lead to a number of broad recommendations that further support the goal of cities working to create a more equitable determination of eminent domain use. Similar to the conclusions, these recommendations serve a basis for further research and represent specific recommendations based on the circumstances identified within the data collected, but do not represent broader recommendations across cities and states. The specific recommendations are as follows:

- Reform has happened under the assumption that there is eminent domain abuse, state's need to first assess the use, common issues that arise throughout the state and how policy can work to address the issues.

- Attention should be given not only to the planning process and how neighborhood representation is involved in the planning process, but also how information is provided to the general public. This will provide additional transparency to the process, increasing the accountability of the process.
- Reform to the weak city planning process within this study must incorporate further the role of community organizations in planning approvals. While most cities incorporated a review by impacted group, the review came late in the planning process, not when the need for the space or first stage of the plan is being developed. Community organizations and neighborhood groups need to be involved earlier within the planning process, especially when eminent domain is used.
- Redevelopment agencies are important in states and cities for large projects, but accountability mechanisms on authority given to the agencies needs to be reassessed.
- Further research on this topic should look into how significant the role of political pressures are in eminent domain cases and what additional procedures might help ensure the use of eminent domain is not abused.

In addition to the specific recommendations presented above, the importance of communication between the city, property owners and effected community is one of the most important conclusions. Based on this, the role of mediation as a possible tool for the development of agreements between community members and developers or the city should be examined further. Requiring a step in the process where the primary purpose is creating a equal space for the community and the city to discuss the concerns could provide a possible solution to the problem of communication as well as others addressed in this thesis. Research should be conducted looking at mediation techniques used in land use disputes and how the process could be used to help mitigate eminent domain use, reform planning processes within cities and provide community members with an equal place at the table with the city or developers.

This thesis has presented a range of information that highlights a number of important issue areas and topics for further research. The recommendations presented above highlight the complexity of eminent domain use and identify areas by which the cities within this study can work to understand and address the issues further.

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APPENDIX I: PLANNING PROCESS DATA COLLECTION

CITY	RATING	CITY GOVERNANCE STRUCTURE	# OF PUBLIC REVIEW STEPS	TYPE OF NEIGHBORHOOD ORGANIZATION	LEVEL OF AUTHORITY GIVEN TO NEIGHBORHOOD GROUPS	TRANSPARENCY OF INFORMATION	SOURCES
New York	NY strong	community board/borough president/planning commission	2 mandatory, one additional if the borough president thinks it necessary	community boards	advisory	information easy to find and clear process chart provided	{ULURP, 1989} {New York City Charter, Last Amended', December 18', 2008}
Los Angeles	CA strong	City Planning Commission//Area Planning Commissions - neighborhood boards elected by the community	1 mandatory	Certified Neighborhood Councils/Area Planning Commissions, defined neighborhood boundaries within the entire city	advisory (a recent assessment of the neighborhood councils reaffirmed that they should be advisory)	information easy to find and clear process chart provided	{http://cityplanning.lacity.org/}
Houston	TX weak	Planning commission reviews development plans and is made up of individuals appointed by the Mayor and confirmed by the city council	none	a Department of Neighborhoods that works to improve neighborhoods but they have not direct role in planning efforts	none related to planning decisions	information only provided within the city ordiances and not clearly presented for the general public	{Houston Code of Ordinances}
Chicago	IL moderate	The city is divided into 50 Wards and each ward elects an Alderman that is the neighborhoods representation on the City Council.	no specific indication of how many, only that there is more than one. Additionally this is just for the "part 1" in a designation of a planned area	50 wards with a direct elected member to the City Council. The office of Land Use Planning and Policy review planning proposals. They are within the Department of Housing and Economic Development. The Chicago Plan Commission that is 22 people appointed by the mayor, with City Council consent, make decision on planned developments, TIFs, acquisition of public lands, and long range community plans.	none	Lack of clarity and transparency in the planning process	{www.cityofchicago.org} {Chicago Zoning Ordinance and Land Use, September', 2011}
Philadelphia	PA weak	the City Planning Commission which is made up of 8 people, 6 selected by the mayor and two members of the community. Additionally, there is a Community Planning Division where there is one planner designated to each of the 18 planning districts and is responsible for informing and outreach to that area	none	18 planning districts with one planner assigned to each within the city planning office	none, all organization is top down from the city with a single liaison with all the power and none from specific community organized groups	Information easy to find but not clearly shown	{Overview of City Planning Commission} {Philadelphia City Planning Commission, 2010} {Hsueh, May', 2010}
Phoenix	AZ strong	Village Planning Committee that is made of up members of the community appointed by both the Mayor and the City Council.	1 required but unclear what "neighbors" mean and the type of notification provided	The City of Phoenix is divided into 15 Urban Villages (see map below). Each Village has a Village Planning Committee that is appointed by the City Council. The Village Planning Committees assist the Planning Commission in the performance of its duties. Village Planning Committee activities include: identifying areas or provisions of the General Plan text that need refinement and updating; identifying problems and needs related to implementation of the General Plan; defining in greater detail the intended future function, density and character of subareas of the village; and commenting on proposals for the new zoning districts or land use districts.	provides input to the Planning Commission on what should be done in the neighborhoods.	information easy to find and clear process chart provided	{Development Guide} {Zoning Ordinance, 2011}

APPENDIX I: PLANNING PROCESS DATA COLLECTION CONT.

CITY	RATING	CITY GOVERNANCE STRUCTURE	# OF PUBLIC REVIEW STEPS	TYPE OF NEIGHBORHOOD ORGANIZATION	LEVEL OF AUTHORITY GIVEN TO NEIGHBORHOOD GROUPS	TRANSPARENCY OF INFORMATION	SOURCES
Jacksonville FL	moderate	City is divided into 14 districts of equal population and each district elects a city council member. Within the Planning Department, there is the Citizen Planning Advisory Committee.	none	Citizen's Planning Advisory Committee are members from each of the 6 districts appointed by the Mayor. Members are nominated through a variety of community, civic, or government organizations located in their district.	purely advisory	Planning structure clearly defined but website provides little information about the role of each department.	{Land Development Procedures}
Indianapolis IN	weak	Metropolitan Development Commission is made up of members appointed by the Mayor, City Council and Commissioners. The members from each appointed group cannot be part of the same political party. No indication on neighborhood membership representation within the Commission. They are given the right to exercise planning powers (I.C. 36-7-4-506), approve site plan proposals, etc.	1 mandatory	Neighborhood organizations must meet minimum requirements of an organization to be on the Neighborhood Organization map which then puts them on the list of required notification for public hearings. The Mayor has one representative from each neighborhood the "neighborhood liaison" who is citizen's and business owners connection to the Mayor's office. No direct link to planning.	none	Lack of clarity and transparency in the planning process	{Rules of Procedure, January', 2011}
Columbus OH	moderate	City Council establishes land use policy through zoning. Representation not based on neighborhood location. City Council or Dept of B and Z approves site plans.	none	There are 53 planning neighborhoods within the city, each with their own neighborhood plan. Located with the Planning Department which is within the Department of Development. The site plan review process goes through the Department of Building and Zoning where there is no neighborhood representation.	none	Information is clearly shown but does not include information on all types of developments, only very specific types such as private residential.	{Neighborhood Planning Overview} {Commercial Site Plan Approval Process} {Checklist: Requirements for Submittal of Site Compliance Plans, 2010}
Charlotte NC	strong	City Council is a representative from each district and 4 member at large. Each district elects one person to the city council from their district. The planning commission is made up of appointed members from the city council and the mayor's office, not direct neighborhood representation.	3 for area plan development	Each district goes through an area planning process that requires 2 stages of public participation but no indication of a formal neighborhood representative structure within the districts. The planning department "keeps a record of neighborhood groups" to reach out to but no formal structure.	none	information easy to find and clear process chart provided	{charmeck.org}

APPENDIX 2: STATE LAWS ON EMINENT DOMAIN

CITY		RATING	REFORM	REFORM DATE	ALLOWS EMINENT DOMING FOR ECONOMIC DEVELOPMENT	REFORM ON DETERMINATION OF BLIGHT AREAS	ALLOWS EMINENT DOMAIN TO TRANSFER TO A PRIVATE DEVELOPER	STATE CREATION OF A TASK FORCE TO ASSESS EMINENT DOMAIN USE	SOURCES
New York	NY	weak	NO	n/a	yes	no reform on the definition of blight	yes	no	{Last amended', January 1', 2010}
Los Angeles	CA	weak	YES	2006	yes	reform added in additional findings of blight to the definition	yes	no	{California Constitution, 2005}
Houston	TX	moderate	YES	2005	no	no reform on the definition of blight	no	no	{Senate Bill 7, 2005} {Right of Eminent Domain, August 11', 2007} {Bill of Rights, Last Amended', November 3', 2009}
Chicago	IL	moderate	YES	2006	bill limits the taking of private property for private dev	yes - def includes allowance of terms like "obsolescence", "excessive vacancies", "excessive land coverage", "deleterious layout" and "lack of community planning"	yes - economic development has to be secondary purpose to a primary purpose of urban renewal	no	{Radogno, 2011}
Philadelphia	PA	moderate	YES	2006	only within Port areas or designated municipalities with already established "urban renewal" districts	definition tightened but still allowed, places time limits on blight designations	no (does allow for the transferring to a non-profit)	no	{Senate Bill 881, 2006} {House Bill 2054, 2006}
Phoenix	AZ	strong	YES	2006	no - through the new def of public use	yes but recent reforms require that all eminent domain uses require a judicial determination that the use is in fact "public"	no	no	{Act 12-1136, November', 2006} {Article 2, October 31', 2002}
Jacksonville	FL	strong	YES	2006	no	does not allow eminent domain for findings of blight - requires municipalities to use their police powers to address individual properties that actually pose a danger to public health of safety	no - requires 10 years before transferring land taken by eminent domain from one owner to another	no	{Florida House Joint Resolution, March', 2006} {HR 1567, May', 2006}
Indianapolis	IN	strong	YES	2006	no	no reform on the definition of blight	yes	Following Kelo the Indiana General Assembly created a state commission to study the use of eminent domain and way of eliminating abuse	{House Bill No. 1010, January 9', 2006}
Columbus	OH	strong	YES	2005 and 2007	no	70% of homes must qualify under the definition of blight for the entire neighborhood to be condemned-no statewide definition of blight(check)	yes through a number of subjective factors	Ohio commissioned a Leg Task Force to study the use of ED and put a moratorium on taking properties in non-blighted areas when the primary purpose is economic development	{Senate Bill 167, 2006} {Senate Bill 7, 2006} {Ohio State Constitution, Last amended', 2011}
Charlotte	NC	strong	YES	2006	no - state revoked ED for economic development and a municipality must go through the General Assembly if they want to use ED for economic development	reformed determined blight must be decided on a parcel by parcel basis	yes but clearly defined what the use of the private company can be (transportation)	The General Assembly commissioned a Select Committee on Eminent Domain Powers to assess the use of ED, the committee recommended tweaking the state's condemnation laws	{North Carolina State Constitution} {Chapter 40A, 2005} {House Bill 1965, August', 2006}

APPENDIX 3: CITY PROJECTS AND CASES INVOLVING EMINENT DOMAIN

CITY		NUMBER OF CASES	PROJECT/CASE	AGENCY RESPONSIBLE FOR THE TAKING	REASON FOR EMINENT DOMAIN	PUBLIC OR PRIVATE DEVELOPMENT	LARGER NEIGHBORHOOD PLAN	REASON FOR COURT CASE	SOURCES
New York	NY	3							(Wilde, September 17', 2008) (Jacobs, 2009)
			Atlantic Yards	Empire State Dev Corp (no URLUP required)	blight/economic development	private	yes	community/owner opposition	{Berliner, August 23', 2009} {Bagli, November 24', 2009} {March 17', 2011} ("Neighborhood Planning - Overview.")
			Columbia University Manhattanville expansion	Empire State Dev Corp (no URLUP required)	blight	private (non-profit)	yes	community/owner opposition	{Bagli, June 24', 2010} {Eviatar, May 21', 2006} ("Manhattanville in West Harlem - Columbia University.")
			Willets Point	not decided yet	blight/economic development	private	yes	community/owner opposition	{Pristin, May 2', 2007}
Los Angeles	CA	6							
			City of Southgate v. Jauregui	city council	street improvements	for public works	no	clarification on who the payment for the land goes to because the owner had foreclosed on the house.	{January 12', 2012}
			Avenida San Juan Partnership v. City of San Clemente	city council	downzoning of property	taking through rezoning	no	owner opposition	{December 14', 2011}
			Los Angeles County Metropolitan Transportation Authority v. Alameda Produce Market	DOT	transportation expansion	transportation	yes (transportation plan)	unfair compensation	{November 14', 2011}
			County of Los Angeles v. Glendora Redevelopment Project	redevelopment agency	blight	both	yes (Glendora Redevelopment Project)	the city sued the redevelopment agency saying Glendora's findings of blight were not supported by substantial evidence	{June 15', 2010}
			Los Angeles Unified School District v. Casasola	school district	public purpose	public (school expansion)	no	compensation	{August 5', 2010}
			LA Unified School District v. Meruelo	school district	public purpose	public (school expansion)	no	unfair use of eminent domain	{Larrubia, November 20', 2007}
Houston	TX	4							
			James and Jock Collins v. City of Houston	redevelopment authority/city council	public purpose	public (park creation)	no	unfair use of eminent domain (property owner felt the taking was influenced by the private development going in across the street and the park was not necessary for the neighborhood)	{Feibel, December 28', 2008}
			Stat of Texas v. Clear Channel Outdoor	texas department of transportation	transportation	public (transportation)	no	compensation	{July 31', 2008}
			Metro expansion	Metro (Houston trans authority)	public purpose	transportation	yes (part of a larger transportation network development)	property owners felt the city was taking more land than they needed to and it would be used for economic development around the train stations	{Colley, January 30', 2005}
			Harris County Hospital District v. Textac Partners	city council	public purpose	public (hospital expansion)	no	due process of compensation (Textec took out the compensation amount and then attempted to fight the amount given after they had already taken it)	{May 1', 2008}

APPENDIX 3: CITY PROJECTS AND CASES INVOLVING EMINENT DOMAIN CONT.

CITY		NUMBER OF CASES	PROJECT/CASE	AGENCY RESPONSIBLE FOR THE TAKING	REASON FOR EMINENT DOMAIN	PUBLIC OR PRIVATE DEVELOPMENT	LARGER NEIGHBORHOOD PLAN	REASON FOR COURT CASE	SOURCES
Chicago	IL	4							{Yednak, January 31', 2006} {Schock, January 24', 2006}
			Irene Angell	City of Des Plaines	economic development	private development (walgreens)	yes	not brought to court	{Little, June 29', 2006}
			Fox River development	city of Des Plaines	economic development	private and public development	yes (TIF)	main concern of the residents isn't the TIF designation but the potential use of eminent domain	{Yednak, January 26', 2006}
			Morton Grove	village board	economic development	both	yes (TIF)	unfair declaration of blight (TIF was created in 2000 and village tried to take the land in 2003)	{Little, July 12', 2006}
			CTA expansion	transportation	transportation	public	yes	needed land for a kiss and ride parking lot	{Schroedter, December 20', 2006}
			Evergreen Country Club v. Evergreen Park	not stated	economic development	not stated	no	argument over compensation	{Boweian, May 07', 2009}
Philadelphia	PA	2							{September 26', 2005}
			Philadelphia Airport Expansion	city council	public purpose (transportation)	public	no	information not found	{Snyder, January 15', 2012}
			In re 1839 North 8 th St	Redevelopment Authority of the City of Philadelphia	blight (had been declared blight in 1968)	private	no	the court was focusing on the fact that the land was being given to a religious institution and it violated the separate of church and state, not the fact that blight was determined in 1968	{March', 2006}
Phoenix	AZ	2							
			Johnson v. City of Phoenix	city council	public (transportation)	public purpose	no	compensation	{Berg, February 14', 2007}
			Great Western Historical LLC	city council	public	public purpose	no	the property owners outbid the city for the land and now the city is coming back and saying they want to take the land using eminent domain	{Bui, August 19', 2010}
Jacksonville	FL	3							{November 8', 2005}
			Jacksonville Port Authority v. Keystone Coal co.	port authority	economic development (new law not yet in effect)	private	no	man purchased some of the last land usable for a port but he is not planning on using the property as a port, does not think the use of eminent domain is legal	{March 27', 2009} { June 23', 2009} {Light, February 17', 2007} {Light, November 28', 2006}
			Portwood v. Jacksonville Transportation Authority	Jacksonville Transit Authority	public purpose (road widening)	public	no		{LLP, May 7', 2010}
			I-95 Bridge Overpass Expansion	Jacksonville Transit Authority	public purpose (transportation)	public	yes (1-95 expansion)	no information on cases being brought to court but more than 100 property owners were set to have their land taken through eminent domain	{Firm}

APPENDIX 3: CITY PROJECTS AND CASES INVOLVING EMINENT DOMAIN CONT.

CITY	NUMBER OF CASES	PROJECT/CASE	AGENCY RESPONSIBLE FOR THE TAKING	REASON FOR EMINENT DOMAIN	PUBLIC OR PRIVATE DEVELOPMENT	LARGER NEIGHBORHOOD PLAN	REASON FOR COURT CASE	SOURCES
Indianapolis	IN	2						
		Wymberley Sanitary Works v. Earl L. Batliner, Jr., et al.	public utility company	public purpose	public (that it what was under debate, public utility line going to a private development)	no	owner felt that since the utility line would be going to a private development it was an unfair taking. Siting Kelo, the appeals court found that it was a public purpose and allowed the use of eminent domain.	{Hoskins, April 14', 2009}
		N.K. Hurst Co. v. Indiana Colts	Indiana Stadium and Convention Building Authority	public purpose	public	no	arguing the use of eminent domain saying parking was not a public use	{McCarthy, November', 2006} {ABC, January 9', 2006}
Columbus	OH	2						
		Reywal Co. LP		public purpose (transportation)	public (transportation)	no	compensation amount	{Kemper, March 29', 2010}
		Stebelton v. Canal Winchester		public purpose	public (bike bath)	no	compensation amount, project now put on hold due to courts determination of compensation amount	{Narciso, October 10', 2007}
Charlotte	NC	1						
		Matthews vs. WWII Veteran's Farm	city council	public purpose	public (park land)	no	illegal use of eminent domain	{Welsh, May 4', 2010}

APPENDIX 4: CASE STUDY CITIES GENERAL INFORMATION

CITY	STATE	CITY POPULATION	STATE POPULATION	COUNTY(S)	SIZE (SQ MILES)	DENSITY (PERSON PER SQ MILE)	HOMEOWNERSHIP RATE (2005-2009)
New York	NY	8,175,133	19,378,102	Bronx County, Kings County, New York County, Queens County, Richmond County	302.64	27,012.50	33.90%
Los Angeles	CA	3,792,621	37,253,956	Los Angeles County	468.67	8,092.30	39.40%
Houston	TX	2,099,451	25,145,561	Fort Bend County, Harris County, Montgomery County	599.59	3,501.50	47.30%
Chicago	IL	2,695,598	12,830,632	Cook County, DuPage County	227.63	11,841.80	48.60%
Philadelphia	PA	1,517,550	12,702,379	Philadelphia County	134.1	11,379.50	56.80%
Phoenix	AZ	1,445,632	6,392,017	Maricopa County	516.7	2,797.80	60.80%
Jacksonville	FL	821,784	18,801,310	Duval County	747	1,100.10	62.90%
Indianapolis	IN	820,445	6,483,802	Marion County	361.43	2,270.00	58.40%
Columbus	OH	787,033	11,536,504	Delaware County, Fairfield County, Franklin County	217.17	3,624.10	50.70%