

**CITY OF OLIVETTE
EMINENT DOMAIN TASK FORCE
FINAL REPORT
AUGUST 7, 2006**

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City of Olivette Eminent Domain Task Force
Final Report

Executive Summary

The Eminent Domain Task Force (EDTF) was charged by the City Council with the responsibilities of:

- 1) reviewing state policies and local practices regarding the use of eminent domain for economic development purposes; and
- 2) recommending to the City of Olivette policies for adoption by the City Council regarding the proper and just use of eminent domain.

The EDTF reviewed various materials pertaining to national, state and local eminent domain issues. The EDTF invited two speakers with varied experience in the use of eminent domain. The EDTF also held a public forum for citizens and business owners to express their views on the use of eminent domain in Olivette.

The recommendations provided in this report reflect a fair and just approach to reasonable eminent domain policy for the City of Olivette. It is important to note that these recommendations are merely a tool for the City Council to consider as they craft the policies for the City.

The EDTF believes that the adoption of universal standards or formulae regarding the potential use of eminent domain are not workable, as each proposed development will have unique characteristics for land accumulation. Instead we are recommending a set of universal principles to guide the City Council as it considers any specific use of eminent domain.

Policies and decisions regarding the use of eminent domain should be consistent with the following principles:

1. The use of eminent domain should be a last resort.
2. The process of condemnation must be fair, and must be perceived by the community to be fair, in eminent domain proceedings.
3. The community as a whole, not an individual, should bear the cost of advancing the community good to be received from the proposed development.
4. City officials must be accountable to the public for their decisions.

The EDTF urges the City Council to carefully consider these recommendations as future policies regarding the use of eminent domain are prepared and adopted.

Table of Contents

Executive Summary	i
Table of Contents	ii
I. Introduction	1
II. The Eminent Domain Task Force	1
III. Resources and Research	1
IV. Guest Presenters	2
V. The EDTF Public Forum	2
VI. EDTF Analysis	2
VII. Principles Recommended for the Purpose of Policy On the Use of Eminent Domain	2
VIII. Appendix and supporting documents	4

City of Olivette Eminent Domain Task Force **Final Report**

I. Introduction

Following a recent Supreme Court decision, the Olivette City Council felt it important to create an Eminent Domain Task Force (“EDTF”). The EDTF was charged with the following responsibilities:

- 1) review state policies and local practices regarding the use of eminent domain for economic development purposes; and
- 2) recommend to the City of Olivette policies for adoption by the City Council regarding the proper and just use of eminent domain.

II. The EDTF

The EDTF was originally composed of seven members, a member from the Planning and Community Design Commission, a member from the Economic Development Commission, a member from the Board of Adjustment, and four citizen members. The EDTF eventually was eventually reduced to six members upon the resignation of one of the members.

The EDTF members, while all Olivette residents, were diverse in professional background. Beginning February 23 and ending on August 7, the EDTF met every other Monday in an open session. The EDTF members were Richmond “Skip” Coburn, David Levy, Craig Cohen, Jeff Eisen, Mary Ellen “Mem” Movshin and Irl Scissors.

III. Resources and Research

At our disposal were a number of key resources including the City Attorney, Paul Martin, City Manager, Mike McDowell, and the Planning and Zoning Administrator Carlos Trejo. We also were given a variety of reference materials, including the final report created by the Governor-appointed Missouri Eminent Domain Task Force, and a copy of the recent Supreme Court decision, *Kelo v. the City of New London*. Staff also provided the EDTF copies of reports and resolutions regarding the use of eminent domain as prepared by other municipalities, including Ellisville, Maplewood, St. Charles and Creve Coeur.

One of our members conducted a survey of the surrounding communities asking various questions relating to their eminent domain policies and city structure. The results provided compelling statistical data that displayed how our neighbors compare and contrast with Olivette. The findings were posted on the City’s website and provided great value as we formulated our recommendations to the City Council.

We were also able to follow the Missouri General Assembly debate in Jefferson City concluding with the passage of HB1944, which contains a number of new provisions regarding the use of eminent domain. Governor Blunt signed HB1944 into law on July 12th. The new law will take affect on August 28th of this year. Enclosed in this report is a memorandum provided by City Attorney, Paul Martin, outlining its impact.

Also, on July 24th, a Missouri judge denied an initiative petition effort that attempted to amend the Missouri Constitution prohibiting the use of eminent domain for economic development purposes. The judge ruled the initiative petition was illegally disorganized and thus could not go forward.

IV. Guest Presenters

We heard from guest speakers to help us in our search for information. Ann Auer of the Missouri Growth Association and Jay Levitch, an attorney with expertise in the area of condemnation proceedings, both presented to the EDTF their views on the subject and the potential impacts of HB1944.

V. The EDTF Public Forum

Most importantly, we heard from the citizens. Each meeting was open to the public and afforded an opportunity for public comment. On May 22, the EDTF held an Eminent Domain Public Forum at the Olivette Community Center. There, we discussed our findings to that point, but were most anxious to hear the public's view on the subject. We heard from many citizens with a wide variety of views. We greatly valued the opinions and concerns of Olivette's citizens. We also took into account those individuals from other areas who witnessed the use of eminent domain firsthand.

VI. EDTF Analysis

The EDTF attempted to understand and apply all of the above-mentioned resources and find a balance between Constitutional, judicial, statutory, legislative and local authorities as they pertain to the use of eminent domain. The EDTF spent the last month crafting guiding principles resulting from the many concerns Olivette residents expressed at the open forum. Throughout these proceedings, the concerns of the home and business owners in Olivette were of utmost importance to the EDTF. The principles and recommendations provided in this report reflect a fair and just approach to reasonable use of eminent domain policy for the City of Olivette.

VII. Principles Recommended for the Purpose of Policy on the Use of Eminent Domain

The City Council's policies and decisions on the use of eminent domain should be consistent with the following principles:

The use of eminent domain should be a last resort.

- The City should require a reasonable good faith effort from the developer to acquire property on the open market.
- The burden of proof of good faith efforts with respect to notifications, property negotiations, and compensation offers rests on the developer.
- The City should require the developer to demonstrate a meaningful financial commitment to the project, such as posting a letter of credit or evidence of property acquisition.

The process of condemnation must be fair, and must be perceived by the community to be fair, in eminent domain proceedings.

- The City should proactively make every reasonable effort to ensure that every property owner and rental occupant is informed of his/her rights in an eminent domain proceeding and to ensure that those rights are being upheld.
- The City Council's deliberations and decision to use eminent domain for a development project should occur in public meetings as open as possible, in conformance with Missouri's sunshine laws.
- When considering a grant of eminent domain, the City Council should strive to ensure that the public is fully informed about, and has ample opportunity to comment on, the pending application.

- Appraisers involved in eminent domain proceedings should be disinterested parties without ties to the developer, to the home owner, or to any official concerned in the matter. Any appraiser used must disclose any conflicts of interest.

The community as a whole, not an individual, should bear the cost of advancing the community good to be received from the proposed development.

- The compensation should be sufficient to allow the property owner to buy a comparable structure/facility.
- Factors affecting comparability could include, but are not limited to, school district, location, and physical characteristics of the property.
- The City recognizes that "comparability" can vary from property to property.
- The City's position is that the burden of proving "just compensation" is on the developer.
- Cognizant of issues relating to residential and business renters, the City will make reasonable efforts to ensure that the rights of renters are adequately addressed in eminent domain condemnation proceedings.

City officials must be accountable to the public for their decisions.

- The City Council should retain the power of eminent domain, not delegate that power to a lesser city body or private entity.
- Any use of eminent domain must have a clear justification, such as consistency with the Strategic Plan, as it may be amended from time to time.
- The City should establish procedures to ensure that condemnations proceed expeditiously. "Holdout" property owners and other causes of delay will be considered on a case-by-case basis.
- The definition of economic development found in HB 1944 shall be used in determining whether eminent domain is granted by the City Council.

VIII. Appendix and supporting documents

The following documents were integral to the EDTF recommendations and have been attached hereto for reference:

- City Council Task Force Policy
- Comments from the Public Forum held on May 22, 2006
- Survey of Local Municipalities regarding the Use of Eminent Domain
- House Bill 1944
 - House Bill No. 1944, 93rd General Assembly, truly agreed to and finally passed
<http://www.house.mo.gov/bills061/biltxt/truly/HB1944T.HTM>
 - City Attorney Outline Regrading HB 1944
- Governor's Task Force
 - Executive Order 05-15
<http://www.mo.gov/mo/eminentdomain/execorder.htm>
 - Final Report and Recommendations of The Missouri Eminent Domain Task Force
<http://www.mo.gov/mo/eminentdomain/finalrpt.pdf>
- Pre House Bill 1944 Documents
 - Missouri Revised Statutes, Chapter 523 Condemnation Proceedings
<http://www.moga.mo.gov/statutes/chapters/chap523.htm>
 - Memo dated March 15, 2006, prepared by City Attorney regarding Condemnation Procedure/Time-line
- Supreme Court of the United States, No. 04-108: Susette Kelo, Et. Al., Petitioners v. City of New London, Connecticut, Et. Al.
<http://a257.g.akamaitech.net/7/257/2422/23jun20051201/www.supremecourtus.gov/opinions/04pdf/04-108.pdf>
- Correspondence
 - Daniel M. Haybron, dated June 9, 2006
 - Jon Cunningham, dated May 18, 2006
- Meeting Minutes