



# POLICY BRIEF



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## **When the Government Takes Your Home** *Eminent Domain Abuse and Washington's Community Renewal Law*

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## When the Government Takes Your Home

### *Eminent Domain Abuse and Washington's Community Renewal Law*

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#### Introduction

In its controversial five-to-four decision in the 2005 *Kelo v. City of New London* case, the U.S. Supreme Court gave government officials the power to take property from local homeowners and sell it to private corporations as part of a mandatory economic development plan.

The ruling is deeply unpopular. One respected university poll showed that 89% of Americans opposed the decision making it easier for government officials to take people's homes.<sup>1</sup> In an unusual move, the U.S. House of Representatives passed a special resolution, H. Res. 340, condemning the Supreme Court's action.<sup>2</sup>

In response to the outcry, officials in Washington state rushed to assure the public that the kind of property takings forced on Suzette Kelo and her Connecticut neighbors could not happen here, because Washington's constitution supposedly provides stronger protection for basic property rights than Supreme Court justices found in the U.S. Constitution.

The actual experiences of Washington citizens, however, shows these public assurances are hollow. Under a Washington statute called the Community Renewal Law (CRL), local officials routinely take people's property against their will and sell it to private developers as part of a mandatory economic development plan.

This study explains how the Community Renewal Law works, shows how officials use certain provisions of that law to force the sale of private land, and gives documented examples of where this has happened around the state. It also gives examples of where officials have worked voluntarily with land owners, without using the eminent domain power in the Community Renewal Law, to implement local economic improvements. Finally, the study presents specific recommendations showing how lawmakers can improve the Community Renewal Law to protect the property rights of all people in Washington.

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<sup>1</sup> Cited in "Americans, Left and Right, Work to Counter Kelo Decision," by Paul Jacobs, *Budget and Tax News*, The Heartland Institute, September 2005, at [www.heartland.org/policybot/results/17682/Americans\\_Left\\_and\\_Right\\_Work\\_to\\_Counter\\_Kelo\\_Decision.html](http://www.heartland.org/policybot/results/17682/Americans_Left_and_Right_Work_to_Counter_Kelo_Decision.html).

<sup>2</sup> "Expressing the grave disapproval of the House of Representatives regarding the majority opinion of the Supreme Court in the case of *Kelo et al. v. City of New London et al.* that nullifies the protections afforded private property owners in the Takings Clause of the Fifth Amendment," House Resolution 340, passed 365-33, Roll Call No. 361, June 30, 2005, at [thomas.loc.gov/cgi-bin/bdquery/z?d109:h.res.00340](http://thomas.loc.gov/cgi-bin/bdquery/z?d109:h.res.00340).

## The Community Renewal Law

Washington's Community Renewal Law, formerly known as the Urban Renewal Law, was enacted in 1957 to clean up slums and derelict buildings that threatened public safety and harmed the property values of surrounding owners. Over time, though, this law has become a powerful force in the hands of local elected officials, who often use it to take well-kept homes and thriving businesses from responsible citizens and turn them over to for-profit developers. In return, local officials expect to receive increased tax revenues paid by the developers and the owners of new, higher-value homes and businesses.

Since 2000, officials have tried to use the Community Renewal Law to impact the private property rights of more than 71,000 Washington citizens. Of these, the homes, businesses and properties of more than 48,000 Washington residents have been subject to official action that involved the threat or use of eminent domain power to transfer land to private developers. In almost all cases, the result of using the Community Renewal Law was to generate profits for developers, while increasing tax revenues for local officials.

Specifically, officials in the cities of Auburn, Bremerton, Renton, Seattle, Tukwila, and Walla Walla took significant steps to use the Community Renewal Law for projects involving economic development. As a result of aggressive plans to redevelop large areas and eradicate so-called "blight," ordinary citizens in Renton and Seattle mobilized to thwart the municipalities' plans.

The definitions used in the Community Renewal Law are so broad that any home, business or neighborhood within the borders of Washington is subject to an official designation of blight. The only requirement is that local officials show they have a community renewal plan in place to justify the blight designation. Officials do not need to consider the actual condition of the properties, the number of property owners who would lose their land, or the location of the neighborhood within the larger community before attaching the "blight" label. Even Bill Gates' home could be designated as blight, were local officials to impose a redevelopment plan on his Medina neighborhood.

In practice, use of eminent domain and the Community Renewal Law disproportionately impacts poor, minority and other historically disenfranchised and comparably powerless communities. The residents threatened tend to be ethnic or racial minorities, have lower levels of education, lower incomes and are more likely to live at or below the poverty level than people living in surrounding communities. When exercising provisions of the Community Renewal Law, local officials most often target vulnerable communities that are least able to defend themselves, and are less likely to seek legal action or start a public campaign to fight an eminent domain action.

Some local officials have used the Community Renewal Law responsibly, for instance to repair property with substantial physical dilapidation and hazardous soils or substances, and for redevelopment through voluntary purchase and sale agreements without legal condemnation. Specifically, the City of Everett successfully used the CRL to remove and contain contaminated soil from the site of a former smelter plant. Following the cleanup, the site was fully redeveloped with 90 new homes. The City of Vancouver revitalized a large area of its city by using certain parts of the Community Renewal Law, without resorting to mandatory condemnation or eminent domain.

## Case Study: Auburn

In September 2006, elected officials in Auburn decided to label most of the city's downtown business district as "blighted" under the Community Renewal Law. They declared block after block as open to government take-over because of "inappropriate use of land or buildings," "excessive land coverage," and "obsolete platting or ownership patterns."<sup>3</sup> None of the buildings in the area posed a threat to human health or public safety.

The city's planning director told the city council that the official blight designation was needed to "legitimize" the city's taking of citizens' property before it could be transferred to a private developer. The director further explained the designation would "...provide a funding mechanism that would allow the City access to revitalization funds in excess of...annual general fund budgeted amounts." That is, the city would get more money.<sup>4</sup>

Protests from the existing property owners were ignored. Popular downtown businesses such as The Mecca, the Jade House, The Rail and the Main Street Pub were forced to close.<sup>5</sup> Having forcibly acquired these properties, the city's redevelopment plans stalled and were never carried out. The failed plans of Auburn council members means the rat-infested, boarded-up premises of once-thriving local businesses now really are blighted.<sup>6</sup>

## Case Study: Bellingham

In May 2001, Bellingham Mayor Mark Asmundson approached a property owner in the city's Old Town district about selling his land to the city. The property owner refused. Asmundson then asked the city council to declare the property "a neighborhood blight...in accordance with RCW 35.81.080 [the Community Renewal Law]."<sup>7</sup> City of Bellingham officials successfully took the property over the objections of the owner by using their eminent domain power. To justify their action, Mayor Asmundson and city officials said the property was "necessary" to carry out their Old Town Redevelopment Project.

## Case Study: Bremerton

In 2002, Bremerton Mayor Cary Bozeman declared property belonging to citizens living in the attractive and lucrative shoreline areas of Maritime Park, Westpark and Anderson Cove as "blighted."<sup>8</sup> He said taking their homes represented the "maximum opportunity" to have the area rebuilt by a private developer.

The homes taken were older, but livable and safe. The mayor and the city council, however, determined these people's homes were "obsolete for today's market" and should be replaced with something better. They expected the city would receive increased tax revenue once the new, higher-value homes were built and sold. Mayor Bozeman's plan called for orienting the new homes to take advantage of water views and thus maximize the developer's profits. In late 2007, city officials added a new sub-area plan and designated homes in eight specific

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<sup>3</sup> City of Auburn Community Renewal Plan, Ordinance No. 6049 adopted September 18, 2006.

<sup>4</sup> Interdepartmental memorandum from Paul Krauss, Auburn Planning Director, to Al Hicks regarding Urban Renewal, October 12, 2006.

<sup>5</sup> "Belly up to the bar? Not any more," by Mike Archbold, *The News Tribune*, April 19, 2007, at [www.thenewstribune.com/news/local/v-printerfriendly/story/42768.html](http://www.thenewstribune.com/news/local/v-printerfriendly/story/42768.html).

<sup>6</sup> Ibid.

<sup>7</sup> Resolution No. 2004-01, City of Bellingham, adopted January 12, 2004.

<sup>8</sup> Ordinance No. 4830, City of Bremerton, adopted November 2002.

areas of the city as blighted and subject to forced sale under the state's Community Renewal Law.<sup>9</sup>

### **Case Study: Renton**

In the spring of 2006, Renton Mayor Kathy Koelker announced her Highlands Redevelopment Initiative, which called for using the Community Renewal Law to designate the homes and businesses in the city's Highlands neighborhood as "blighted." Most people in the area represented low-income, minority families living close to the area's Boeing and Paccar plants. Although most were happy in their homes, Mayor Koelker said they must move to make way for the "next generation's new single-family housing."<sup>10</sup>

After meeting with a group of private developers, city officials moved ahead with the Koelker plan by claiming Highlands homes were deteriorating and preparing an official Declaration of Blight. The proposal called for designating one or more for-profit homebuilders to create a master redevelopment plan. Reluctant homeowners would be forced to sell after city officials had exhausted all efforts to get owners to sell voluntarily.<sup>11</sup> Once a mandatory sale price was determined, all previous offers from the city would be cancelled.

Highlands residents, aided by dissident members of the city council, fought back hard against the mayor's plan. After a long and painful process, Mayor Koelker was forced to cancel her eminent domain initiative. She said, "the City will not pursue the use of eminent domain or a Designation of Blight under the state Community Renewal Act at this time," effectively killing the idea.<sup>12</sup> But Mayor Koelker put Renton citizens on notice that their property may be taken in the future, telling the city council, "In time, we may find that some of our original ideas will become necessary to bring about widespread improvements."<sup>13</sup>

### **Case Study: Seattle**

In October 2006, Seattle Mayor Greg Nickels announced his intention to use the Community Renewal Law to designate a 2.1 square mile area in Seattle's Rainier Valley neighborhood, home to 24,000 people, as "blighted" and subject to takeover by the city. He justified the move by saying that, although most homes were healthy and sound, certain "conditions" existed which impaired sound growth. The conditions he referred to were above-average rates of poverty, unemployment and crime. In other words, Nickels' plan targeted the homes of poor people. In fact, he listed the city's failure to reduce crime in the neighborhood as one reason for taking people's homes.<sup>14</sup>

Nickels further noted that small lots and individual ownership made it hard for private developers to assemble land on a large enough scale to make a

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<sup>9</sup> Ordinance No. 5034, City of Bremerton, adopted December 19, 2007. The blighted areas now include the Westpark Sub-Area, the East Park Sub-Area, the Wheaton-Riddell Sub-Area, the Downtown Regional Center Sub-Area, the Austin Drive Sub-Area, the Harrison Employment Center, the Northwest Corporate Campus Employment Center, and the Port Blakely Employment Center.

<sup>10</sup> Quoted in "Highlands Face a Blight Future," by Dean A. Radford, *King County Journal*, February 7, 2006, at [www.kingcountyjournal.com/apps/pbcs.dll/article?AID=/2006227/ARC/60227030&Se archID=732609657446629](http://www.kingcountyjournal.com/apps/pbcs.dll/article?AID=/2006227/ARC/60227030&Se archID=732609657446629).

<sup>11</sup> Highlands Redevelopment Initiative, Office of Economic Development Neighborhoods and Strategic Planning, City of Renton, April 13, 2006.

<sup>12</sup> Council Minutes, City of Renton, June 26, 2006, pages 224-25.

<sup>13</sup> *Ibid.*

<sup>14</sup> "Southeast Seattle Determination of Blight Study," Office of Policy and Management, City of Seattle, October 2006, page 6, (on file with the Institute for Justice Washington Chapter).

profit, so the power of the city was needed to force people to sell.<sup>15</sup> As he put it, “Significant barriers to private development remain, particularly for commercial and mixed-use projects.”<sup>16</sup> Families living in the low-income McClellan and Othello neighborhoods were particularly targeted.

When questions arose about violating people’s property rights, city staff explained to Nickels that the Community Renewal Law’s provision on officially “inappropriate” uses of land and buildings gave him a loophole “broad enough to drive a truck thru [sic].”<sup>17</sup>

Once residents learned of Nickels’ plan to “renew” their neighborhood, they mobilized to prevent him from using eminent domain power to take their homes and businesses. Their efforts paid off. In early 2007, Nickels announced he was backing away from the plan, although he declined to cite public opposition as the primary reason for his change of heart.<sup>18</sup>

### **Case Study: Tukwila**

In 2000, the mayor and city council of Tukwila passed the Tukwila International Boulevard Plan which included a provision to use the Community Renewal Law to force private property owners to sell their land to the city. City officials cited “poor appearance, crime statistics and small and irregular parcel sizes” as reasons for designating the property of some citizens as officially “blighted.”<sup>19</sup> None of the properties involved were the subject of health or safety violations or posed a danger to the general public.

Tukwila officials said one purpose of the project was to “maximize opportunity for private enterprise” (but not for the current owners) and to “further assist private redevelopment by assembling nine smaller lots into one larger more visible site...to create a more functional arrangement.”<sup>20</sup> They neglected to ask the nine owners, however, whether they thought their properties were functional enough just the way they were.

Specifically, city officials used the threat of eminent domain and their powers under the Community Renewal Law to force the owners of a Tukwila carwash and the Xtra Car Park and Fly Lot to sell their properties to the city.<sup>21</sup> These former owners were not permitted to benefit from the proposed development of the land.

### **Case Study: Walla Walla**

In December 2004, Walla Walla Mayor Jerry Cummins and city council members used the Community Renewal Law to adopt a Downtown Master Plan which included designating some downtown businesses as “blighted.”<sup>22</sup> These business properties were not rotting, run down or dangerous. Instead, city officials said they met the Community Renewal Law’s definition of “blight” because they

<sup>15</sup> “Southeast Seattle Determination of Blight Study – Draft,” Office of Policy and Management, City of Seattle, September 4, 2006, (on file with the Institute for Justice Washington Chapter).

<sup>16</sup> Ibid.

<sup>17</sup> Document on file with the Institute for Justice Washington Chapter.

<sup>18</sup> Ibid., notes that opposition from property owners who say the city has no business taking land for private developers deserves credit for overwhelming rejection of any renewal plan involving condemnation.

<sup>19</sup> “International Boulevard Plan,” City of Tukwila, January 2000, page A-3.

<sup>20</sup> Ibid.

<sup>21</sup> “Real Estate Purchase and Sale Agreement between the City of Tukwila and the Ben Carol Land Development, Inc.,” June 11, 2003, (document on file with the Institute for Justice Washington Chapter).

<sup>22</sup> “Downtown Master Plan,” City of Walla Walla, December 15, 2004.

were irregularly configured or improperly utilized, and thus stood in the way of the City Council's building plan.

As an example, they cited a property along Mill Creek that had fragmented ownership and was irregularly shaped, which they said prevented the most economically efficient use of the land.<sup>23</sup> The property owners disagreed, feeling they, not the city council, were best able to judge whether their own land was being properly or efficiently used.

Walla Walla officials used their renewal plan to determine that certain property was improperly utilized and therefore "blighted" under the Community Renewal Law. Not cooperating with the city's plan was enough to designate a property as "blight," regardless of the property's actual condition.

Walla Walla officials called people who wanted to stay on their property "hold-outs," and expressed disapproval if the owners wanted to benefit from improvements made in the surrounding neighborhood. They made it clear they would use the power of eminent domain to force these owners out, so the city could "remain competitive in attracting potential developers" and entice "out-of-state investors" who would profit from "development in Downtown Walla Walla."<sup>24</sup>

In June 2007 Walla Walla introduced a Futures Concept to show how its newly-adopted Future Land Use Plan would be carried out. The Plan called for acquiring and reconstructing properties to "...create a museum campus and center for historic community interpretation."<sup>25</sup> The consistent message from Walla Walla officials to property owners has been clear: sell, or face eminent domain action from the city.

## **Examples of Successful Economic Development without Use of Eminent Domain**

As shown, the eminent domain power in Washington's Community Renewal Law often tempts local officials into taking property from their citizens and turning it over to private developers. There is a way, however, to use voluntary means to promote economic development. Following are two examples in which local officials worked cooperatively with property owners to solve land use problems in their communities.

### **Case Study: Everett**

Between 1894 and 1912 the Everett Smelter Site was heavily contaminated with lead, arsenic, cadmium and other poisonous metals. The smelter was demolished in 1915. In the 1990s, the site's former owner, Asarco, began environmental cleanup to meet residential standards.<sup>26</sup> City officials adopted a community renewal plan that provided for the voluntary purchase of the site and explicitly rejected the use of eminent domain power.<sup>27</sup>

In July 2004, the Everett Housing Authority purchased fifteen homes that were owned by Asarco and were located outside of a fenced remediation area. Six of these homes abutted the fenced area and were demolished and added to the

<sup>23</sup> Ibid.

<sup>24</sup> Ibid., pages 128-29.

<sup>25</sup> "Designing the Future, The Walla Walla Urban Area Comprehensive Plan," City of Walla Walla, Appendix 17-3, June 2007.

<sup>26</sup> "Background to the Everett Smelter Site Community Renewal Plan," page 1 (document on file at the Institute for Justice Washington Chapter).

<sup>27</sup> Community Renewal Plan for Everett Smelter Redevelopment Area, Section 6.

fenced property for purposes of cleanup and later redevelopment.<sup>28</sup> The remaining nine homes were cleaned up to Department of Ecology standards, partially renovated, and sold to private buyers between July and September 2005.

In August 2005, Asarco filed for bankruptcy and was unable to finish the cleanup. In response, the Housing Authority and the City of Everett proceeded with the cleanup using a new contractor. The cleanup was completed in March 2006.<sup>29</sup> In May, the Housing Authority sold the remaining property to a private developer. The former smelter site has since been fully redeveloped with ninety private homes.<sup>30</sup>

Throughout the project, Everett officials never used eminent domain power. Voluntary provisions of the Community Renewal Law allowed them to remediate a truly hazardous area, one that posed a real danger to public health, and provide a benefit to the community in the form of safe, clean, habitable homes.

### **Case Study: Vancouver**

About five years ago, officials in the City of Vancouver recognized a need to revitalize certain areas outside of its urban core. In November 2005, city officials adopted a Community Renewal Plan for an area known as Kestrel Crossing.<sup>31</sup> The neighborhood is one of the most ethnically diverse in the city, with a large number of low-income Eastern European, Latin American and Asian immigrant families, speaking 36 different languages, living in the area.<sup>32</sup>

Included in the plan was the surrounding area of Fourth Plain and Stapleton Roads. The Vancouver Housing Authority was designated a Community Renewal Agency.<sup>33</sup> City officials specified the plan was to be carried out through the voluntary purchase of properties, without resorting to the use of eminent domain powers:

“...The [Housing] Authority has committed not to employ the use of condemnation or eminent domain in the furtherance of the community renewal plan for the area. All sales of property shall be voluntary. If unsanitary or unsafe building conditions are found which require public action to protect health, safety and welfare then, and only after consultation with the City of Vancouver and after a public hearing on the matter, would condemnation or eminent domain be considered.”<sup>34</sup>

Vancouver city and Housing Authority officials worked to develop the Kestrel Crossing project to fit the demographics of the area. As a result, Vancouver’s revitalization plans were designed to provide businesses, services, and housing to fit the needs of the people living there and to boost economic activity in a way that would not displace the existing population.

Unlike economic development projects planned by officials in Seattle, Bremerton, Renton and other Washington cities, land owners in Vancouver were not forced off their land so the benefits of growth could go to others. Instead, the revitalization plan was implemented in a way that helped the people who already lived there. Vancouver officials operated on a simple principle that respected the civil rights of their citizens: “All sales shall be voluntary.”

<sup>28</sup> Ibid.

<sup>29</sup> “Background to the Everett Smelter Site Community Renewal Plan,” pages 5-6.

<sup>30</sup> Ibid., page 6.

<sup>31</sup> Ordinance M-3721, City of Vancouver, dated November 7, 2005. This ordinance adopted the community renewal plan for the Fourth Plain/Stapleton Community in the Fourth Plain Subarea and appointed the Vancouver Housing Authority to implement and administer the plan.

<sup>32</sup> “Summary of Community Renewal Activities,” Vancouver Housing Authority, City of Vancouver, page 3. (document on file at the Institute for Justice Washington Chapter).

<sup>33</sup> Ordinance M-3704, City of Vancouver, May 23, 2005.

<sup>34</sup> “Central Fourth Plain/Stapleton Community Renewal Plan,” City of Vancouver, page 5, 2005.

## Conclusion

Owning property is a basic civil right. In many ways it is one of the people's most important rights, because private ownership gives citizens the means to protect all their other rights, to maintain their economic independence, and to withstand pressure from the government.

Like all rights, citizens should exercise it responsibly. When property owners neglect their property and allow it to become run-down, disease-infested and dangerous to other people, public officials should have the power to act in defense of public health and safety. In addition, eminent domain power is sometimes needed to secure private property for a direct public use, such as building a road, a library or a school. In these limited cases, guarding public health and safety or creating a direct public use outweigh an individual's civil rights, and the individual is forced to give way, after receiving fair compensation for the confiscated land.

Within these narrow limits, use of eminent domain power is sometimes necessary to take property by force from its owner. In all other cases, however, a person's right to own property should outweigh the desire of local officials to advance their own economic development plans, benefit private developers, or seek to increase their city's tax revenue.

As currently written, the Community Renewal Law represents a threat to the property rights of Washington citizens. It directly contradicts the principle in the state constitution that all Washingtonians should be treated with dignity by their government, and that local officials should respect citizens' fundamental right to own property. Like the Supreme Court's ruling in *Kelo*, the Community Renewal Law authorizes government officials to move citizens around like pieces on a game board, especially low-income families who have fewer resources with which to fight back, simply to carry out their economic development plans.

## Recommendation

Lawmakers should amend the Community Renewal Law so that local officials can only use eminent domain power to take property that presents a real and immediate threat to public health and safety. The legal meaning of the term "blight" should be narrowed so that officials may only use it to identify individual properties that are truly run down and hazardous, and whose owners have steadfastly refused to remove a danger to the community.

The provisions in the Community Renewal Law that tempt local officials to abuse the power of eminent domain should be repealed, thereby ensuring that homeowners and business owners are protected to the full extent provided in the Washington constitution; specifically, that "[p]rivate property shall not be taken for private use..."<sup>35</sup>

The Community Renewal Law should be used, as it was by officials in Everett and Vancouver, as a voluntary tool that serves the public interest and allows citizens to plan their lives and manage their property for their own benefit.

While the Community Renewal Law remains in force as currently written, however, Washington will remain a state where citizens do not have a fully-recognized right to own property. As it stands today, the law permits government officials to take people's homes and businesses at any time, in effect for any reason, and transfer them for the benefit of private interests.

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<sup>35</sup> Article 1, Section 16, Washington state constitution.

## About the Author

**Jeanette M. Peterson** is an Adjunct Scholar with Washington Policy Center. She has been a staff attorney with the Institute for Justice Washington Chapter (IJ-WA) since January 2003. IJ-WA engages in constitutional litigation to secure economic liberty, school choice, private property rights, freedom of speech and other vital individual liberties in Washington State. Prior to joining IJ, Jeanette clerked for Judge David Armstrong of the Washington State Court of Appeals, Division II, Justice Richard Sanders of the Washington State Supreme Court, and Judge Ronald Gould of the United States Court of Appeals for the Ninth Circuit. Following her clerkships, Jeanette practiced with Wilson Sonsini Goodrich & Rosati, P.C. in Kirkland, Washington. Jeanette received her law degree from the University of Washington School of Law in 1998, graduating with honors and Order of the Coif. She received her bachelor's degree in Political Science from the University of Washington in 1994, graduating cum laude and Phi Beta Kappa. Jeanette is a member of the Washington State Bar Association and the Puget Sound Lawyers Chapter of the Federalist Society.



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