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Eminent domain exacts high price

Editorials

As The Enquirer's "Special Report: Eminent Domain" today shows, Norwood's Rookwood Exchange may be a financial "win-win" for former residents and developers if the proposed shopping/office/condo project is built.

Actually, make that a "win-win-win" if the city of Norwood gets its predicted \$1.7 million-a-year tax boost from the project.

Everybody involved may get richer - but that's not really the point. There's much more at stake in this debate over how eminent domain - or even a government's threat to exercise the power of eminent domain to take your property - is used to help make these projects a reality here and across the nation.

Yes, we do need economic development. In particular, older urban centers should be able to reinvent and reinvigorate themselves. But at each step, citizens should be able to demand - and receive - solid answers to this question: Is it really worth the price?

Part of that price is intangible, but it's real nonetheless. Eminent domain, if unchecked and used indiscriminately to force residents to move, can destroy neighborhoods that bring stability to families' lives, help make a city livable and ultimately allow it to thrive. It weakens our sense of connection to a place and to one another. It chips away at the charm, character and historic value that make a city such as Cincinnati unique. And, as homeowners feel vulnerable to being displaced, it erodes a sense of trust in government that's supposed to be "of the people."

The key phrase is "private project." Historically, eminent domain is a tool of last resort, invoked for projects that fit a traditional standard of "public use" - such as a highway, bridge, school or post office. Those are things all the public can use and benefit from. But where is the public use in a luxury condo project that few of us could afford?

The answer, of course, is that "public use" has been broadened and stretched over the years into a malleable "public benefit." Now, if you can simply show that a new development will generate more tax revenues than the homes or small businesses it replaces, eminent domain can be justified. And with the U.S. Supreme Court's Kelo decision last year leaving the standard-setting to the states, some fear it's open season on private property.

Eminent domain is one of the most awesome and irrevocable powers of government - they don't call them "takings" for nothing. Its use should not be business as usual. Even if it provides an economic boost, there's something unseemly about a government, in effect, acting as an agent for a private developer trying to acquire land for a project.

Two of the so-called "holdouts" in Norwood, Sanae Ichikawa-Burton and Matthew Burton, voice that principle. "(The developer) wants to take it. They are a business. They should do the business, not the government," Ichikawa-Burton told The Enquirer.



There may be times when an older neighborhood, because of shifting populations and waning fortunes, should give way to commercial development. But the process is best done by the free market. When government steps in, it invariably distorts market forces. It makes possible developments that may fill a political or social agenda but ultimately don't make economic sense. Ten years down the road, you may wind up with another empty strip

mall.

Using eminent domain for private development does not foster good government, either. It can be an easy way out for a cash-strapped local government that doesn't have the expertise or discipline to use existing tax revenues wisely - or the creativity to find neighborhood-friendly alternatives.

Or it can be a political payoff for well-connected campaign contributors. Former Supreme Court Justice Sandra Day O'Connor, in her stern dissent to the Kelo decision, wrote: "The beneficiaries are likely to be those citizens with disproportionate influence and power."

O'Connor warned that "all private property is now vulnerable," and we echo her concern. We cannot settle for a system in which everything is up for grabs if the price is right.

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