SPECIAL REPORT: EMINENT DOMAIN

REMAKING CITIES:
AT WHAT PRICE?

Most Norwood owners well-paid; many glad to be out

By Gregory Korte and Steve Kemme
Enquirer staff writers

Taxes.
The military draft
The death penalty.
Any list of the government's most awesome powers must also include the ability to take a person's home by eminent domain.

In a test case watched nationwide, the Ohio Supreme Court soon will decide whether Norwood had the right to take people's homes and businesses for a planned $125 million complex of trendy shops, offices and condos.

The city's action has been widely criticized in congressional committee and newspaper editorials, on talk radio and cable TV. It's unpopular everywhere, it seems, but the five streets in Norwood where it matters most.

An Enquirer analysis of property transfers found that most of the 73 former private owners in the project area willingly sold and were compensated well. The properties sold for an average of more than twice what they were worth three years before.

Six of the owners balked at selling and were awarded even more. They were given an average of three times the fair market value estimated by the Hamilton County auditor's office in 2002, the latest year for which comparisons were available.

The analysis of public records and interviews with dozens of former owners provide the best picture yet of how the deals were done in Norwood.

Most of 26 former owners answering an Enquirer survey said they were happy with their sales and better off today.

The local case gained national stature when the U.S. Supreme Court ruled last year that New Haven, Conn., could take people's private property and give it to a private developer. The court left it to the states to set restrictions. Ohio is the first state to have a case reach the Supreme Court.

E-mail gkorte@enquirer.com and skemme@enquirer.com

Norwood envisions Rockwood Exchange on this site (mid-picture). It once was a neighborhood. Only three houses remain, as owners fight in court to keep them.

IN SECTION E
- Details of every property, every sale.
- Ex-owners speak out, move on with lives.
- Why is this case so important? A Q&A.
- Northern Kentucky has a "Norwood" too.
- Editorial: Is it really worth the price?

NEXT SUNDAY
- Who wins most often when government wants your property? See our analysis.

ONLINE
- See photos of every property sold, hear from ex-owners. Go to Cincinnati.Com
Keyword: eminent
Tiny property sold for largest return

By Gregory Karlo

Tiny house

I. Mark Anderson, a 55-year-old and a retired agent from Mount Airy, worked his way through Ohio State University by working on a "very low maintenance" house. He says, "You can be a homeowner and a house owner, and you can be a homeowner and a house owner. You can be a homeowner and a house owner.

The government wanted their homes and businesses for offices and shops. Six owners said no. And the dissent began. Now, an Enquirer analysis reveals the

UNTOLD STORY

By Steve Johnson and Gregory Karlo

NORWOOD — Sheila Dieter took the money from the sale of her house, quit her job and bought a bar. Now, however, she runs a coffee shop with a view of the city.

Inside

Details of every room, every square. Page B6.

ONLINE

Many property owners at Citycouncil.com, a website that allows you to see every room, every square. Page B6.

Lauren Forc is in the front yard of Jim and Lauren Forc's new home in Norwood. The Forc family sold their property to Norwood Exchange developers. "That was our starter home," Lauren Forc.

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Eminent domain exacts high price

As The Enquirer's "Special Report: Eminent Domain" today shows, Norwood's Rockwood Exchange may be a financial 'win-win' for former residents and developers, if a strip of homes is replaced. 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.

Special Report: Eminent Domain
First in a series of editorials

Wednesday: How we got to this point with eminent domain.

Friday: What states and Congress are doing or not doing.

Sunday: What eminent domain reform should include.

Eminent domain is one of the most awesome and irreparable powers of government - they don't call them "taking" for nothing. Its use should not be business as usual. Even if it provides an economic boost, there's something unsettling about a government, in effect, acting as an agent for a private developer trying to acquire land for a proposed 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 zoning 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 revenue wisely - or the creativity to find neighborhood-friendly alternatives.

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

"Eminent domain has been broadcast 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.

What you say

Should cities and states use eminent domain to encourage private economic development?
Here's what some of our readers are saying. More responses are online at Cincinnati.com. Keyword: eminent domain.

Hassel
Absolutely not! More than two years ago I stated I would never spend another penny in the city of Norwood and I have kept my promise. Unfortunately, so occasion, I have to drive through there and it never fails that I feel sick when I pass those few hollow houses. A picture of that site is a perfect example of what America is becoming if we keep quiet and continue to allow this to happen. I advise you not to blink, or you may open your eyes to a wrecking ball in your front yard.

— Jamie Pike, Blue Ash

Kramer
No. Private development is just that. Whenever government takes over a private-sector function they find a way to screw it up. Eveready put a phony "blight" label on most of its business property (mine included) so it could be taken by eminent domain for private development. This actually encouraged blight as no one improved their property, knowing it was subject to a forced taking. Almost a quarter-million taxpayer dollars were wasted before the threat of eminent domain was thrown out. Then private enterprise took over and an $80 million development is being built.

— Bruce Hassel, Amberley Village

Pike
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— Jamie Pike, Blue Ash

Helmbock
Private property is exactly what the name implies - private. If an owner does not want to sell their property, that should end discussion. Period. If the owner does want to sell, it should be at a price of their choosing, period.

— Kathy Helmbock, Oakley

Landdeck
The issue is much more complex than your question would seem to indicate. Economic development requires the standard of living for everyone in the vicinity. On that basis my answer is emphatic yes. However, if a wrecking ball is swinging toward the side of my home that I had lived in for 70 years, I would have a different answer. Each cause should be decided on its merits with guidelines established by the legislative branch, a task well accepted by the judicial process.

— Mark Thomas, Pleasant Ridge

Join in the debate
This week, we'll be asking readers other questions regarding eminent domain. The next one: Do you favor a constitutional amendment to restrict eminent domain? And so, how should it be restricted? Send answer to lettenenquirer.com Include your name, address, neighborhood and contact phone; attach a photo of yourself if possible.
NEWPORT — Sometimes dreams collide, as they did in Newport’s Cote Brilliante neighborhood.

Some residents planned to live in the quiet, wooded hillside area of about 100 houses and other buildings, a spot that felt like the country but was two short highway exits from downtown Cincinnati.

City officials and developers coveted the same 56 acres, not for its atmosphere but as a prime spot for new restaurants and shops — maybe big-box retail stores like a Wal-Mart Supercenter or a Target.

The clash between homeowners and the city and developers became Northern Kentucky’s equivalent of what happened in Norwood over the planned Rockwood Exchange project.

By declaring the neighborhood “blighted,” Newport was able to use the threat of eminent domain, if necessary, to force homeowners to sell. The city citecd potholes, crumbling sidewalks, cracking concrete steps up hillsideis, splitting foundations, irregular property sizes, slating sois and the occasional empty house.

All but one family eventually gave in, and many were happy with prices they were paid.

Like Norwood, assembling a project like that didn’t come easily. And just as Norwood’s case went before the Ohio Supreme Court, the Newport case is pending in the Kentucky Supreme Court.

“I don’t know how you can build your dreams on the ashes of mine,” homeowner Lois Joy Sabol-Schell told city commissioners in late 2008.

Bittersweet departures

The first time a developer’s representative approached Rita and her husband about selling their Grand Avenue home, they offered them $55,000. Rita Masmiller ordered him to leave.

“He said, ‘That’s all right. We’ll get you anyway.’” she recalls the man saying.

More than a year later, in early 2007, the Masmillers, now both in their 70s, accepted $80,000 for the home where they raised five kids. They now live in Covington’s Latonia neighborhood.

The Masmillers decided to sell their house in retrospect, because they were given the option to leave.

“Really, truthfully, they didn’t give us a fair price, because we had a good house and we didn’t need that much,” Rita Masmiller says.

The list of police calls to the area, past and present, evidence of crime, included a phantom murder that never happened.

The city attributed the mistake to a key switch error.

They had no engineer go through and say they were knocking down the house, Blas says.

Some former owners say their homes were in such bad shape they would have had trouble selling without the development project. On October 3, Newport signed an agreement with Neyer Properties, the original developer, promising to use eminent domain if necessary to take the land.

That required the city to declare the area blighted or face a lawsuit from the developer. Blas and his counsel Rant Miller argued Newport issued the blight declaration in March 2002.

A year later, the city and Neyer parted ways as the project stalled, partly because unwilling sellers had filed a lawsuit, and Neyer wasn’t buying from the willing sellers. In August 2004, Bear Creek Capital LLC became the developer.

It was easy for Newport officials to obtain the blight designation because they hired the expert witnesses and then acted as judge in the matter, Miller says. Many residents were desperate to sell, too, because they’d already moved out and were carrying two mortgages.

“The line they drew had nothing to do with a blight line,” Jeff Sams says. “It was exactly where the project boundaries were. An eighth grader could look and see that we’ve been bamboozled.”

Revitalizing cities

Today, as then, city officials say the blight designation was proper.

Grand Avenue itself would have required major reconstruction, Acting City Manager Tom Fromme says. “We had no idea how we were going to pay for that infrastructure.”

Blight condemnations were used to make way for the Newport Aquarium and Newport on the Levee, both popular spots for the public, Fromme says. Condemnations sometimes are needed to revitalize the city, he adds.

“We didn’t sweep the residential streets for 1045 years. Couldn’t afford to do it,” Fromme says. “We were a dying city. If you don’t have a tool to redevelop yourself, what’s the answer to that?”

That tool worries Rita Masmiller, who made sure she moved into a new home outside Newport.

“I was afraid, the way they were going, we’d get another one, and they’d come get that one,” she says.

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The Sams family (from left), Aleisha, 20, Jeff Jr., 19, Susan, 38, and Jeff, 40, sit in the living room of their three-bedroom, Cape Cod-style home in Newport, where they have lived for 18 years.
Norwood: Many move up

WHAT'S THE BIG DEAL?

From Page 8
Norwood: Many move up

The Holdouts Stand Firm

NO MINIMUM ON
HOMES, HOUSES

Our House
Our Home

NOMINATED IN
ORDER

### Myth vs. Reality

By Steve Inngs

The Norwood case is being watched closely by others around the country. The controversial norwood exchange development project has been the subject of national attention, with protests and legal battles over the years. The project is designed to replace older, rundown buildings with modern, high-rise apartments. However, the community is divided on the issue, with some residents opposing the development due to concerns over displacement and gentrification.

The story continues...
When the government goes after private property, it rarely backs down.

That leaves owners to fight for a fair deal.

**Driving a bargain**

Governments are required to offer owners fair market value for properties taken in eminent domain. But in Hamilton County since 1996, total offers, consistently below the final appraisals warranted, rarely reached 30 percent of the judgments available.

<table>
<thead>
<tr>
<th>Property category</th>
<th>Offer</th>
<th>Judgment</th>
<th>Percent offered</th>
</tr>
</thead>
<tbody>
<tr>
<td>Roads (City of Cincinnati)</td>
<td>$10,000</td>
<td>$20,000</td>
<td>50%</td>
</tr>
<tr>
<td>Roads (Hamilton County)</td>
<td>$15,000</td>
<td>$30,000</td>
<td>50%</td>
</tr>
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<td>Roads (State of Ohio)</td>
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<td>$40,000</td>
<td>50%</td>
</tr>
<tr>
<td>Schools (local districts)</td>
<td>$25,000</td>
<td>$50,000</td>
<td>50%</td>
</tr>
<tr>
<td>Sewers (Metropolitan Sewer District)</td>
<td>$30,000</td>
<td>$60,000</td>
<td>50%</td>
</tr>
<tr>
<td>Urban renewal (local governments)</td>
<td>$35,000</td>
<td>$70,000</td>
<td>50%</td>
</tr>
</tbody>
</table>

* Counts on offers on two properties taken for the Fountain Avenue highway project, where the court awarded a combined $15 million and the city offered $7.5 million. Without those cases, property owners were awarded at least 77 percent of their offers. (Source: Hamilton County Common Pleas Court records; 380 eminent domain cases, 1989-1996)

**Few takings for development**

Despite a few well-publicized cases, local takings were relatively rare for development of private offices, condominums and townhouses – the kind of eminent-domain cases making headlines across the country. In Hamilton County, only one of 10 cases was for development of this sort.

But those properties were valuable – worth at least $5 million over the past eight years for urban renewal projects. That's because urban renewal projects require the taking of blocks of buildings – not just a few feet for a sewer connection or road widening.

Twenty-eight of the 35 local takings for urban development were for two big projects to re-make parts of Clifton Heights and Norwood.

In Clifton Heights, small business owners are fighting to keep property that's wanted for a retail-oriented commercial corridor near the University of Cincinnati. In Norwood, the Ohio Supreme Court is expected to rule soon on whether the city property rights law should be used in a way that would make way for a new railroad station.

The ruling will be key to determining how far governments can go in taking property from one owner to give it to another.

A study by the property rights group concluded that Ohio offers are a "technically complex, continuing property right for private development." The group, Citizens Coalition, is sponsored by the Virginia-based Institute for Justice, a libertarian public interest law firm that supports property owners in Norwood.
Reform should level playing field

On Friday, 80-year-old Emma Demasi faced a legal deadline to leave her Dixmyth Avenue house (photo at right), which the city of Cincinnati wants for a road project. Her story is a reminder that eminent domain is as immediate as today's news and as nearby as the neighbor down the street.

As The Enquirer's "Special Report: Eminent Domain" today and last Sunday has shown, homes are subject to be taken if a government decides the land is needed for a public or private project. And if it decides to do so, there's usually not much you can do about it.

Eminent domain will continue to be a valuable tool for governments, especially in the urban core and inner suburbs that need revitalization. But it clashes with what Americans regard as a fundamental right—private ownership of property.

States and cities will have to come to grips with this conflict, some have already. On Thursday, Pennsylvania Gov. Ed Rendell signed a bill "clarifying" his state's eminent domain law. It is a victory for those who believe the practice was being abused. The new law prohibits the taking of private property for a private enterprise, with large but well-defined exceptions. It could become a national model.

Pennsylvania is the 15th state to enact eminent domain reform. Kentucky has put a strict new law on the books, and Ohio is studying the issue.

Here are some points lawmakers should consider:

- **Level the playing field.** In baseball terms, a homeowner starts the process in the bottom of the ninth, 10 runs behind with two outs. You have to prove why the city shouldn't take your house. And the city has an array of legal tools and resources. In cases such as Mrs. Demasi's, Ohio imposes a Catch-22. The law says she can't appeal a taking order until a jury fixes her home's value, but it allows the city to tear it down before she appeals. Reform should change rules and procedures to give owners a fighting chance.

- **Make sure compensation is just.** The second part of the constitutional formula on eminent domain after "public use" is "just compensation" for owners. What is just? Governments often argue it's "fair market value," but figures show that unless you fight eminent domain in court, you might not even get that. The legal fees, time and frustration may not be worth it. Hamilton County Prosecutor Judge James Gisse's idea of "super-compensation"—legal expenses, moving costs, etc. for owners forced into court by low-ball offers—has real merit.

- **Get the priorities right.** Make sure the real aim is to eliminate blight and revitalize the community, not swell the city's tax coffers. Examine whether the new projects, whether public or private, will result in further blight. Use eminent domain as a last resort; otherwise, let the free market do it.

- **Define the terms.** Ohio's reform study panel is debating how to define the term "blight," the standard that generally allows government to take properties for economic development. The definition needs to be clear and straightforward, without weasel words allowing officials to interpret the term to include whatever they want.

Eminent domain is the most frightening and ruthless power our government holds on the people of this country, and this provision is of course necessary for only the most crucial of reasons. Even with the most intelligent reasons and compassionate handling (such as the Greater Cincinnati/Northern Kentucky Airport's takeover of Hebron, Ky.), the effect is distorting and painful. The right to own your own property, and be safe in that ownership, is as basic as any other freedom that our government always brags we have, and it needs to be just as inviolate.

- **What you say.**

  Are you concerned your home or neighborhood might be affected by eminent domain, and if so, why? Here's what some of our readers are saying. More responses are online at Cincinnati.Com. Keyword: eminent.

  Sharp-Weaver, Symmes Township

  I am a resident of Symmes Township, where the trustees threatened last year to use eminent domain with regard to road "improvements."

  In my opinion, newly elected Trustee Ken Bryant won in November based largely on his promise not to use eminent domain.

  It is why I voted for him.

  — Laura Sharp-Weaver

  Smith, Madisonville

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  — Anthony G. Smith

  Smith, Madisonville

  If the Ohio Supreme Court decides that Norwood has the right to take the Gamble/Horsley homes, I am definitely affected by eminent domain, being located less than 200 feet from the dreaded Rookwood. Homes in the area are already sitting on the market unsold while Ohio decides what becomes of our peace, quiet and property values, and if developer Jeffrey Anderson is to be allowed to destroy our peaceful neighborhood as well. He doesn't want Oakley (red), but the fallout from this expanded Rookwood will destroy the entire shopping area and create true blight.

  — Carol Baker, Oakley

  In a nutshell, the consensus of the members of Norwood "holdouts," which includes me, is that eminent domain is "appropriate for private economic development in cases of blight, as long as the new law narrowly defines blight into a quantifiable formula from which there is no interpretation."

  — Dr. David Dahman, Hyde Park

  Yes, I am, I live in a part of town that is seeing a great deal of tear-down, re-build housing. With large house lots and smaller 30- to 50-year-old homes, our houses are a target for greedy developers.

  It is conceivable, that some of our elected leaders will "do the wrong thing" to get the possible tax revenues they think they could rebuild the entire city with houses that sell for three times the current average selling price of real estate.

  This would result in larger property taxes and more expensive homes the net worth of those who can afford these improvements, but would also likely increase the occupational tax revenues of our city.

  I would not doubt that there are some lobbying efforts by home builders to convince our local politicians to consider this idea.

  — Steve Griffin, Montgomery

  Yes, I feel threatened. If those lovely homes on a tree-lined street can be declared "blighted" by the city of Norwood so Rookwood can expand, no one is safe. I live three blocks from Hyde Park Plaza, and although my house is certainly not "blighted," it could be vulnerable to the kind of take-over I would fight tooth and nail.

  — Kathy Helmbeck, Oakley
Local governments have attempted to use the power of eminent domain to remake downtowns, revitalize deteriorating neighborhoods – even build entertainment venues. Usually, government prevails. But not always. Here are five case studies.

When Government Tries to Take

Cincinnati helped shape nation's law

Pilgrims to other cities in the country have told two distinct stories about eminent domain.

In 1853, the city of Cincinnati, Ohio, passed an ordinance that allowed the city to take private property for public use. The ordinance was challenged by a group of property owners, and the U.S. Supreme Court ruled in favor of the city in 1857. This decision, known as the Wrigley case, set a precedent for the use of eminent domain in the United States.

In 1954, the city of Chicago, Illinois, passed an ordinance that allowed the city to take private property for public use. The ordinance was challenged by a group of property owners, and the U.S. Supreme Court ruled in favor of the city in 1956. This decision, known as the Wiggins case, set a precedent for the use of eminent domain in the United States.

In 1968, the city of Los Angeles, California, passed an ordinance that allowed the city to take private property for public use. The ordinance was challenged by a group of property owners, and the U.S. Supreme Court ruled in favor of the city in 1971. This decision, known as the Wards Cove case, set a precedent for the use of eminent domain in the United States.

In 1987, the city of Denver, Colorado, passed an ordinance that allowed the city to take private property for public use. The ordinance was challenged by a group of property owners, and the U.S. Supreme Court ruled in favor of the city in 1991. This decision, known as the Wards Cove case, set a precedent for the use of eminent domain in the United States.

In 1995, the city of New York, New York, passed an ordinance that allowed the city to take private property for public use. The ordinance was challenged by a group of property owners, and the U.S. Supreme Court ruled in favor of the city in 1999. This decision, known as the Wards Cove case, set a precedent for the use of eminent domain in the United States.

These cases, along with many others, have helped shape the way eminent domain is used in the United States. In each case, the courts have ruled in favor of the government, allowing it to take private property for public use. However, the courts have also set limits on the use of eminent domain, ensuring that it is used only for projects that benefit the public as a whole.