

ZONING PRACTICE

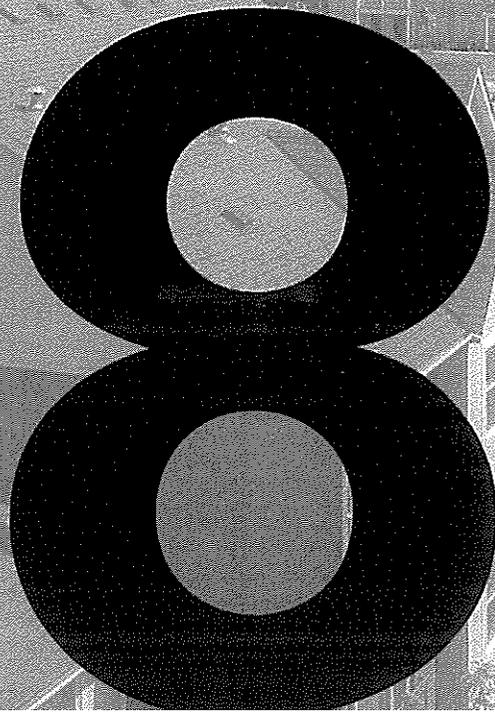
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PRACTICE INFILL FOR BUILD OUT



Development Codes for Built Out Communities

By S. Mark White, AICP

Since the advent of zoning, development codes have largely been used to harness the impacts of new growth.

However, there remains little discussion about the role of development codes in communities where the supply of developable land is exhausted. Accordingly, many planners working in mature, developed neighborhoods administer codes that were written primarily for new growth. As build out occurs, regulatory emphasis shifts from public improvements to urban design, from infrastructure capacity to maintenance, and from controlling the pace of development to finding lost space. This affects both the content of the code and the public process.

According to the U.S. Census Bureau, only 5.5 percent of the land area in the United States is developed. Even so, many individual communities (or areas of the community) are approaching build out, including the central cities of older communities and both the inner-ring and rapidly growing suburbs of major metropolitan areas.

Built out areas range from infill neighborhoods to downtown, mixed use environments to suburban corridors and low-density residential neighborhoods. Each requires a different regulatory approach and has different stakeholders.

Growing communities tend to be more concerned about fiscal impacts and pace of growth while urban neighborhoods focus more on design and scale. These concerns bring different constituents to the table with different agendas.

Growth-oriented codes paint development regulations on a fresh canvas while codes for built-out communities work within the existing urban context. This requires creative approaches to squeezing buildings and ancillary facilities onto small sites, finding new opportunities in the development of vacant buildings and empty parking lots, recognizing design pitfalls, and mediating housing and economic development needs with the demands of residential neighborhoods. Planners and code drafters must rethink conventional solutions to use compatibility, such as landscaping and buffers, and new tools such

as form-based zoning, transitional massing, and green infrastructure.

This issue of *Zoning Practice* addresses the unique concerns of applying development codes to built out communities, including ensuring appropriate context and managing the public process. The article also describes the development code issues facing communities as they approach build out, including techniques for prioritizing code issues, identifying tools and techniques to address those issues, and shepherding the code through the development approval process. Specific issues include conventional and form-based zoning, urban design, infrastructure, and parking.

CHARACTERISTICS OF BUILT OUT COMMUNITIES

“Build out” typically refers to a situation where a development is approaching a jurisdiction’s borders and the supply of large greenfield sites has diminished. “Greenfields” are new developments on a parcel that are not surrounded by

existing development, or relatively large parcels surrounded by partially developed sites. The section that follows describes the characteristics of built out communities.

High percentage of developed land.

Most of the land in a built out community has been improved, cleared, or has gained access to infrastructure and utilities that will permit development in the immediate future. Most of the platted lots have been improved with buildings and parking areas. While there is no generally accepted threshold for build out, a community is generally considered built out when at least 80 percent of its land is developed. Depending on the size of the community, opportunities for further greenfield development can be lost at smaller thresholds.

Few large-scale greenfield sites.

Greenfield sites typically require subdivision plat approval, the extension of utilities or urban infrastructure, and discretionary zoning approval such as a rezoning. As these sites begin to disappear the character of a commu-



Existing development capacity in built up urban context, Kansas City, Missouri.

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About the Authors

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nity matures and its land-use issues and priorities begin to change.

Context. As Lang's research demonstrates, built out communities are not limited to traditional downtowns or historic, infill neighborhoods. Many American suburban communities are approaching built out. These communities can have different design issues and priorities than their more urban counterparts. For example, while traditional neighborhoods are often divided into relatively short blocks with narrow lots, a suburban community may be divided into relatively large lots with commercial uses standing alone on large sites.

Development potential. Built out does not mean there is no development potential. It does, however, mean a shift in the type of development potential a community faces along with a corresponding shift in regulatory priorities. Development patterns typically evolve from multiple uses or buildings on relatively large sites that were previously undeveloped to the development of individual lots or reuse of older buildings. In addition, existing lots and blocks can be reassembled and existing developed areas converted to other uses.

Rehabilitation and adaptive reuse. The reuse and recycling of older buildings occurs frequently on developed lots. In some instances this involves pressure to expand the building area or parking area into existing setbacks, over existing lot lines, or beyond current height limits. A typical example is the expansion of parking areas for churches and institutional and commercial buildings onto lots in existing residential neighborhoods.

Redevelopment. Building demolition, lot assembly, and the vacation of existing lots and streets are often requested to accommodate uses or structures with larger footprints than more intimately scaled urban structures. This often creates conflicts between the functional requirements (real or perceived) for new

uses and planning policies that call for compact, pedestrian-friendly, transit-friendly, or context-sensitive development patterns.

Infill. The march of development often passes over individual lots, leaving blocks or neighborhoods in built up areas pockmarked with vacant land. Infill development restores economic vitality to existing neighborhoods.

written for undeveloped tracts must be tailored to the context of developed lots and blocks.

While large greenfield tracts can require significant off-site infrastructure capacity the street and utility network where redevelopment occurs in built out areas is already established. While neighborhoods in newly developing areas often react to traffic and

school congestion created by the pace of development, developed communities face infrastructure maintenance issues.

The procedural context can change significantly as a community builds out. Fewer parcels require major subdivision approval, but zoning and design controls remain

TABLE 1. DEVELOPMENT ISSUES IN BUILT OUT AREAS VS. GREENFIELD SITES

Issue	Built Out Areas	Greenfield Sites
Land Use	Infill	Developing
Design	Contextual	Trendsetting
Infrastructure	Maintenance	Capacity
NIMBY Issues	Scale	Pace
Permitting	Zoning	Platting
Procedural	Neighborhood-driven	Development-driven
Environment	Green Building	Preservation
Nonconformities	Nonconforming Uses	Vested Rights

Unlike many greenfield projects, infill projects do not require infrastructure expansion costs, thereby avoiding new capital costs by using existing infrastructure capacity. However, infill projects can create issues with existing neighborhoods about scale, massing, and coordination with existing street and utility networks.

Lost space. Built up areas can provide significant development capacity by creatively reusing existing space. This "lost space" is often found in existing parking lots, abandoned rights of way or rail lines, obsolete pedestrian malls, or oversized or outmoded urban civic spaces such as sunken plazas.

GREENFIELDS VS. BUILT UP AREAS

Table 1 summarizes how land development issues change as a community approaches build out. Land-use and zoning classifications

important to resolve use issues (and what lay adjacent) for existing lots. In newly developing areas, procedures tend to respond to the complexities of large-scale, master planned developments or major subdivision approvals.

In built up areas, the concerns of established neighborhoods can influence the procedures needed to change existing uses or to expand existing structures. Built up areas are often characterized by infill sites, downtown locations, or distressed communities where local governments would like to encourage development. Procedures that create delay and uncertainty, such as design review, can scare developers away from these locations. Providing predictable standards and streamlined approval processes are an important way to balance contextual design with the needs of builders and developers.

Natural resource protection becomes less of a priority as a community approaches build out, but environmental and sustainability issues remain viable. Greenfield sites can have significant environmental features while built up sites have replaced natural features with pavement. Many cities have established requirements or incentives for green buildings and features such as roof gardens to soften the environmental impacts of new structures.

The doctrines of vested rights and nonconforming situations vary from state to state. Vested rights affect the ability of a local government to apply new land-use regulations to proposed but undeveloped sites with some form of development approval. In most states, the doctrine of nonconforming use law restricts the applicability of new land-use regulations to existing uses, structures, or lots. Greenfield developers are concerned with protecting vested rights as they move through the development process. Vested rights issues tend to be important for developments with long-term, multiphased development proposals. Conversely, built up sites might have existing buildings and uses that are protected as legal nonconforming uses.

CALIBRATION

New buildings, lots, and parking areas in built up areas must fit into the fabric of an existing neighborhood or corridor. In some communities, these neighborhoods reflect a compact pattern of development that a community would like to continue and whose design principles produce a coherent, compatible style of development. Calibration is particularly important for neighborhood conservation districts. In other communities, an existing built corridor must be retrofitted to conform to current land-use policy.

Calibration can be performed for a block, district, or corridor. The calibration process can yield important information for the code update process. This includes desirable or undesirable building forms, lot orientation patterns, and block patterns. If a community pursues a calibration study it is important that it either commit substantial staff time to this effort or establish an adequate budget for outside consultants.

SITE AND BUILDING DESIGN

Site design issues for built up communities can vary based on the context. On the smaller lots and blocks that characterize many traditional neighborhoods the massing and scale of individual buildings can have a profound

impact on the overall appearance of the block. Along a built out suburban corridor the larger scale of suburbia can provide greater flexibility in redesigning a site to meet updated land-use policies.

The presence of neighbors in a more densely settled environment can influence building design and permitted uses. While form-based zoning is an interesting and important trend in regulating uses, residents of densely settled areas are often concerned about the noise, traffic, and property value impacts relating to the use of existing buildings. The conversion of residential structures to offices and service establishments along a busy corridor provides an economic return for property owners but at the same time alters the residential character of neighborhoods.

INFRASTRUCTURE AND DRAINAGE

The street and utility network in built up areas is typically established when an application for development approval is filed. However, applications for street vacations or the resubdivision of existing lots can impair the connectivity of existing street and alley systems. In addition, the development of stand-alone stores along established street corridors can increase traffic levels. Communities can require connections to the existing street and alley system and interparcel access to maintain or improve connectivity. If new easements or access routes across existing property are required the regulations should be written in a way that complies with constitutional nexus standards for exactions.

Stormwater management provides a unique challenge for existing developed sites. The land area available for conventional stormwater treatment, such as detention or retention basins, is often limited. The ability to diffuse stormwater flows over natural areas using low-impact design or other features can be constrained by available land and the lack of vegetative cover. In addition, existing drainage ditches along built out suburban corridors can inhibit land-use policies that encourage pedestrian or transit-friendly development patterns.

LANDSCAPING AND BUFFERS

As with stormwater management systems, the landscaping used to buffer or to soften the impact of new suburban development can be restricted by available land in a built up context. In addition, suburban-oriented development regulations that require land to be set aside for stormwater management or landscaping can

hamper the development of small sites in urban locations. Street tree requirements, compatible massing of buildings, and site orientation standards are a preferable way to address use-to-use relationships in built up urban places.

PARKING

Parking regulations have a significant impact on travel behavior and the appearance of suburban corridors. In built up areas, regulations that require excessive amounts of land for on-site parking can inhibit development, result in site and building design that is out of context with the neighborhood, and establish barriers to pedestrian movements. At the same time, many residents of urban neighborhoods want to avoid spillover parking, and existing businesses fear their spaces will be taken by residents or visitors to the neighborhood, and not by customers.

Planning and Urban Design Standards (John Wiley & Sons, Inc., 2006) provides a number of regulatory solutions to avoid an oversupply of surface parking in built up areas, which include:

- **Shared parking.** Shared parking allows adjacent land uses to share parking lots as long as the parking demands occur at different times.
- **Parking caps.** Communities may want to establish maximum parking requirements, at least in designated locations where transit is available or special community character issues apply. Maximum parking requirements place a cap on the amount of parking a land use can provide. An incentive to use other means of transport in lieu of automobiles may result if maximum parking requirements reduces the number of available spaces. As an alternative, jurisdictions can require parking above a threshold limit to be made of a pervious pavement, turf, or other surface. Structured parking is often exempt from maximum parking requirements because it consumes less land area.
- **Rear parking requirements.** Rear parking minimizes the view of parking lots by placing the lot behind the principal buildings. Many jurisdictions require commercial and office uses to place parking in the rear to create a pedestrian streetscape, encourage transit usage, and to create a “town center” feel to shopping and employment areas.
- **Reduce parking to accommodate alternatives.** Reduce or cap parking requirements where transit is available. Where an application includes the mixing of uses or build-

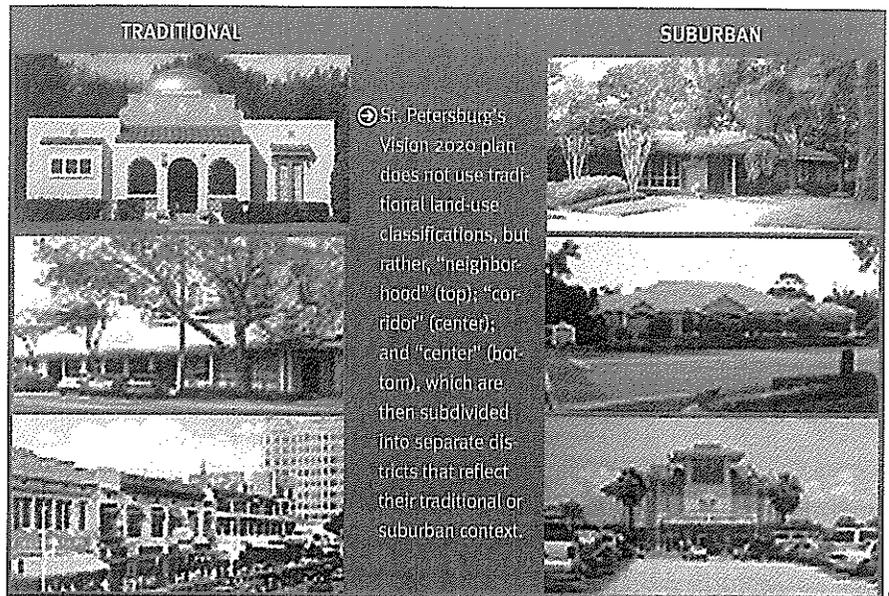
ing types, parking can be reduced to account for the capture of trips on-site or along the existing block structure.

- **Structured parking.** Structured parking has a smaller footprint than surface parking and is less disruptive to the continuity of a street. But structured parking is also more expensive to build and can deaden a street. Communities can consider density or intensity incentives to encourage parking structures or fees in lieu of parking to encourage their use.

PRINCIPLES IN PRACTICE

The recent code reform efforts of several built out communities provide examples of how the contextual and procedural issues of build out were resolved. The approaches vary widely, from conventional, use-based zoning to design-based solutions such as form-based zoning. Their approaches also provide insight into how infrastructure and compatibility issues can be resolved.

St. Petersburg. St. Petersburg, Florida (population 248,232), is a diverse community that operates under statewide growth management statutes. St. Petersburg also has very distinct traditional and suburban neighborhoods. The city is the heart of Pinellas County,



the most densely populated county in Florida. However, the county's average density of 6.4 persons per acre is not high by urban standards. Its history is characterized by distinct planning and architectural movements and period styles, including a plan developed by John Nolen in the 1920s.

In 2002, the city adopted St. Pete Vision 2020, a citizen-based plan that calls for more compact, pedestrian-friendly development. The plan divides the city into neighborhoods, corridors, and centers. The city has three major centers, including its traditional downtown, a suburban shopping mall, and a suburban office park. In addition, its residential neighborhoods are facing the development of new homes that are out of scale with existing homes.

In 2002, the city began the process of revising its code to implement Vision 2020 and to provide contextual, compatible, predictable infill. Extensive public comment sessions were held with multiple stakeholders, including both urban and suburban neighborhoods. These sessions included model-building exercises that allowed citizens to experiment with ways to resolve scale and mass and to find space for parking, green space, and stormwater management. One interesting result was a strong push by suburban neighborhood participants to retain their existing built form while improving the function and appearance of the plan's subareas for pedestrians.

The updated land development regulations established distinct standards for traditional and suburban built up neighborhoods, which are summarized in Table 2. A new set of zoning districts design standards were adopted. These districts do not use the traditional categories of residential, commercial/business, and industrial, but rather, "neighborhood," "corridor," and "center," which are then subdivided into separate districts that reflect their traditional or suburban context. Supplemental districts and standards apply to artist

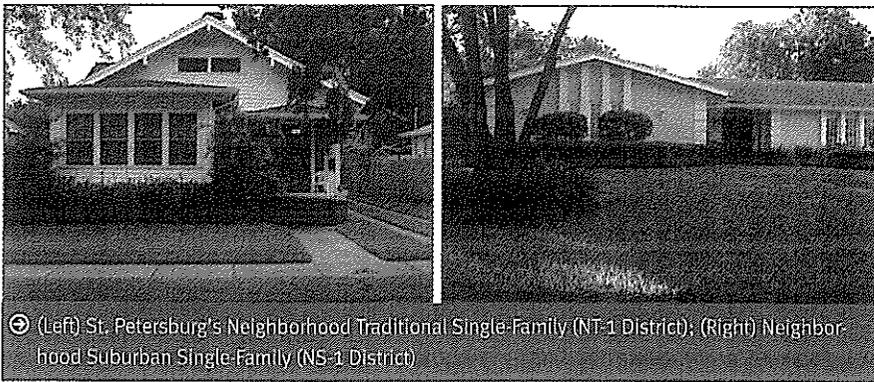
TABLE 2. SUMMARY OF TRADITIONAL AND SUBURBAN STANDARDS FOR ST. PETERSBURG'S BUILT UP NEIGHBORHOODS

Traditional	Suburban
Neighborhoods	
Appropriate lot widths and setbacks to address traditional platting	Maintain wide lots and spacious setbacks.
Allow garage apartments/home occupations.	Design standards will address better contextual design so that garages do not dominate the facade.
Use the alleyways.	Prohibit traditional character developments with narrow lots.
Corridors	
Prohibit traditional character developments with narrow lots.	
Zero lot-line buildings	Create a street edge with building and landscaping.
Mixing and increasing uses	
Parking is secondary.	Reduce dominance of parking.
Regain pedestrian scale.	Improve architectural design.
Centers	
Massing and scale	Architectural design
Building base at sidewalk	Introduce the pedestrian.
Architectural design	Tame parking lots.

Source: Bob Jeffrey, City of St. Petersburg

enclaves, adaptive reuse, and stormwater management. The result is a zoning typology that provides form-based standards for both traditional and suburban contexts.

The zoning districts allow sufficient densities to implement the city's plan policies and accommodate future housing needs, subject to design criteria. These include garage apartment criteria and multifamily design standards that replicate the appearance and lot pattern of existing single-family blocks. The design standards prescribe the minimum standards needed to produce the desired building pattern without prescribed specific architectural styles.



(Left) St. Petersburg's Neighborhood Traditional Single-Family (NT-1 District); (Right) Neighborhood Suburban Single-Family (NS-1 District)

Bob Jeffrey, City of St. Petersburg

Height and massing requirements are included to avoid the "mansionization" of existing residential blocks.

The corridor districts accommodate moderate to high densities. They also address an oversupply of commercial square footage and the dominance of big box retail structures. Underperforming corridors with existing gray-fields are permitted to add housing.

Boulder. Boulder, Colorado (population 103,213), is a home rule city with a vibrant downtown and a history of innovative growth management systems, including an urban growth boundary and slow-growth policies. It is a college town in the rapidly growing region north of Denver. Because it also serves as a regional retail and entertainment destination, traffic in the city has increased.

Prior to build out, the city's land-use policies focused on the retention of a defined edge and open space along the perimeter. Land-use criteria focused on controlling the environmental impacts of edge development, reducing the coverage of new development along the edge, and controlling the pace of growth. The city used its codes to stabilize the core areas and provide compatible infill development.

In 1971, the Boulder instituted a system of "established," "developing," and "redeveloping" districts (the "EDX" system). The established (E) districts used conventional minimum lot sizes while the developing (D) and redeveloping (X) districts replaced lot sizes with a provision requiring open space set-asides for dwelling units to preserve environmental features and to blend the urban edge into the surrounding open space through clustering. The city's zoning code expanded along with new growth. New "microzones" expanded the number of zoning district classifications from 21 zones in 1993 to 42 in 2004. The result was a reliance on planned unit development in lieu of definite standards, with most

property subject to discretionary review. The zoning code became complex, redundant, and inconsistent. It was difficult and time-consuming to administer and confusing to the public.

By 2004, the city had approached build out, and land-use policy was refocused on redevelopment. However, the zoning system did not keep pace with built up areas, which were treated as though they were newly developing. The city initiated its Land Use Code Simplification Project (LUCS) in 2004 to consolidate zoning districts, eliminate redundancies, and to more effectively address the character of established development.

Boulder's build out created new challenges, including regional competition and commercial vacancies, a declining retail market, and high housing costs. Declining retail development led to municipal budget and service delivery challenges. In addition, new development spread to nearby communities with relatively lower housing costs.

City land-use policy adjusted accordingly. Objectives included the retention of existing business, encouraging mixed use and TOD, instituting efficient permitting systems that enable a quick response to opportunities, and an increase in by-right development options.

LUCS addressed these standards through building form and design standards for edges and corridors, parking location standards, and mixed use zoning.

The revised codes established a modular approach to its zoning regulations that reduces the need for future amendments. The system organizes the zones based on three elements: uses, physical form, and land-use intensity (such as lot area per dwelling unit or floor area ratio). The system also organizes regulations by separate use districts, form or bulk districts, and land-use intensity districts. Combining the modules yields regulations that match current and desired future conditions, ranging from low density, single-use, semirural conditions to those that are mixed use, high density, and urban.

Chapel Hill. Chapel Hill, North Carolina (population 48,715), is also a university town with a history of innovative planning and land-use controls. The town began a code update in 2001 to implement a recently adopted comprehensive plan. The town's land-use management ordinance, adopted in 2003, includes a number of tools that specifically address its built out condition, including revised zoning districts, a flexible TOD district, and updated parking standards.

A successful feature of the new code is the use of neighborhood conservation districts (NCD). The NCD permits the establishment of special design standards to preserve and protect unique and distinctive in-town residential neighborhoods or commercial districts that contribute significantly to the character and identity of the town. There is no maximum size but the districts can be as small as a single blockface. An NCD designation can be initiated by the town council or property owners.

The town approved an NCD for its Northside district and has four additional districts on the drawing board. The Northside district contains approximately 190 acres. The district plan and the CD-1 overlay zoning regulations establish a maximum primary height of 20 feet and secondary height of 29 feet. A maximum building size of 2,000 square feet is established with an additional 500 square feet permitted by variance. Duplexes are prohibited because the neighborhood is predominantly single-family. The regulations establish standards for building orientation, parking, fencing, porches, and design details such as building materials.

LESSONS

As communities near build out, planning and regulatory priorities change significantly. While the nature of these priorities is as varied as the communities and regions themselves, they often face a common set of issues, including the need to accommodate development on smaller spaces, ensuring that new development fits neighborhood context, and addressing nonconforming developments. These regulations should begin with a careful calibration of existing development with the new regulations or a diagnosis of the existing regulations that ties new development to updated planning policies.



NEWS BRIEFS

FAULT LINES FORM OVER CALIFORNIA EMINENT DOMAIN INITIATIVE

By David Morley

An initiative to amend California's constitution to severely restrict eminent domain will appear on the November ballot. Proponents of the "Anderson Initiative," named for California homeowner Anita S. Anderson, gathered approximately one million signatures for the proposed amendment, eclipsing similar proposals backed by Republican California state senator Tom McClintock.

According to the California Redevelopment Association, a single individual from New York provided \$1.5 million to hire a signature-collecting firm and retain a campaign consultant for the proposed measure. On July 13, *Capitol Weekly* identified this individual as multimillionaire developer Howard Rich. *Weekly* reporter Shane Goldmacher claims Rich is currently offering financial support to eminent domain initiatives in seven other states using nonprofit intermediaries, such as the Fund for Democracy, to obscure his influence.

The Anderson Initiative is one of many state and local initiatives attempting to replicate the success of Oregon's Measure 37, a 2004 amendment to that state's constitution allowing individual landowners to claim compensation for regulatory takings. So far, results have been mixed. In June, a coalition of groups representing industry, local government, and environmental issues successfully defeated a Measure 37 clone in Napa County.

The current wave of proposed measures is gaining support following the U.S. Supreme Court's 2005 decision in *Kelo v. City of New*

London [125 S. Ct. 2655 (June 23, 2005)]. The landmark ruling, which upheld eminent domain for economic development, has energized radical property rights organizations. Subsequent media coverage of the case has gathered the attention of a broad constituency of private property owners who support eminent domain reform.

In response to *Kelo*, California's pending measure is even more restrictive than Measure 37. The Anderson Initiative bars eminent domain unless the property taken will be owned by a governmental entity. Consequently, redevelopment agencies could not use eminent domain to transfer property to private developers.

Like Measure 37, the proposed amendment considers property to be damaged when regulatory actions not taken to protect public health and safety result in economic loss. Examples of economic loss offered by the measure include downzoning, property access elimination, and air space usage.

Perhaps most significantly, the Anderson Initiative would void unpublished eminent domain court decisions, leaving resolved cases open to challenge. Taxpayers would then be forced to foot the bill for legal fees and the increased costs of property acquisition and public works projects. If passed, the amendment could only be changed by another initiative.

Proponents view the measure as a populist rebellion against eminent domain abuse. "It is time to end the faction between local governments and special interests that sacrifice the property rights of the average citizen in order to line the coffers of government and the pockets of the powerful," says Republican legislator Mimi Walters. Walters, who identifies herself as honorary chair of the Protect Our Homes Coalition, is the measure's chief sponsor in the California Assembly.

Meanwhile, a coalition of planners, business groups, environmentalists, and local governments has formed to block the initiative. League of California Cities executive director Chris McKenzie warns that the amendment would "significantly erode environmental protections, limit the ability to restrict sprawl and open space, and significantly increase the cost of building all sorts of public works projects like schools and roads."

Representatives of the law firm Nossaman Guthner Knox & Elliott LLP claim the Anderson Initiative represents post-*Kelo* hostility toward governmental interference with property rights but go on to caution that in California only three sin-

gle-family homes were acquired for redevelopment through eminent domain in 2005. This statistic may undercut political strategist Kevin Spillane's assertion that most "victims of eminent domain abuse are minorities, immigrants, working-class people, and mom-and-pop businesses."

After learning the measure had qualified for the November ballot, a prominent member of the business community disagreed openly with Spillane's comments. "On behalf of California's 20 million minorities, we oppose the Anderson Initiative as anti-poor, anti-growth, anti-small business, and as crushing the future dreams of our state's aspirations to once again be a golden state," stated Latin Business Association director Jorge Corralejo in a release issued by the Greenlining Institute, a Berkeley public policy research and advocacy center.

As Californians look forward to registering their opinions in the November election, eminent domain rumblings continue nationwide. To access up-to-date information on eminent domain reform in your state and around the country, visit the American Planning Association's eminent domain legislation and policy page at www.planning.org/legislation/eminentdomain/index.htm. David Morley is a researcher with the American Planning Association.

Cover photo: Design concept by Lisa Barton.

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