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## Gotta Fight for Right to Property

By HOWARD FINE - 4/7/2008

Los Angeles Business Journal Staff

Ken Woods never fancied himself more than a small business owner. But these days he's become the poster child for critics trying to scale back California's redevelopment law.

The owner of a small Baldwin Park sewing-machine repair shop, Woods' business property was taken by eminent domain in 1980 when the city redeveloped a downtown commercial strip. He was forced to relocate his Woods 'N Sons a few blocks away.

"After we moved, they told us that we'll never have to worry about redevelopment again," he said.

Now, Woods claims, the city has broken that promise.

Two years ago, the city and local development firm Bisno Development LLC unveiled a plan to redevelop 125 acres of the downtown area, dislocating up to 300 businesses and 100 homes. As plans for this mixed-use proposal move forward, Woods' business is once again facing condemnation.

"If my property were to be taken again under eminent domain, I would be wiped out. We would have to do something else," Woods said.

Hoping to head off another battle, Woods is supporting Proposition 98, a controversial initiative on the June 3 statewide ballot that would ban governments from taking private property and selling it to private-sector developers, who want to build, say, a condo tower or a shopping center. Governments could still take private property for public projects, such as a school or a freeway. Proposition 98 also would phase out rent control ordinances throughout the state.

Under current state redevelopment law, land can be taken from one private property owner at fair market value and handed to a developer to rectify so-called "blighted" conditions – a term that critics contend cities have loosely defined.

Proposition 98 is the latest attempt by property rights advocates to rein in the use of eminent domain since a 2005 U.S. Supreme Court decision that upheld government's broad powers to invoke eminent domain for private-sector redevelopment purposes.

A previous attempt on the November 2006 California ballot – Proposition 90 – ran into fierce opposition from major business groups, environmental organizations and local governments, and was defeated by a 52 percent to 48 percent margin. But the margin was close enough to persuade proponents to try again.

"We believe that one of the most fundamental rights is the opportunity to own and operate your own business and to own the property that the business sits on," said John Kabateck, executive director of the California chapter of the National Federation of Independent Business.

"Small business owners need protection against eminent domain abuse, where private property is transferred to another private interest."

### Business split

Woods said the measure would save hundreds of businesses like his that otherwise would not be able to survive a forced move to another location.

Baldwin Park city redevelopment officials did not return repeated calls seeking comment.

However, the city has its allies. Opponents of Proposition 98 have qualified their own eminent-domain reform counterinitiative for the June ballot – Proposition 99 – which would only forbid the taking of residences, not businesses, for private redevelopment projects.

They claim that Proposition 98 is so far-reaching that it would stymie needed redevelopment and affordable housing projects. Eminent domain supporters and tenants' rights groups also have latched on to the seemingly unrelated Proposition 98 provision that would phase out rent control, contending it would encourage landlords to force out longtime tenants.

But unlike most ballot measures where business groups are generally united, Proposition 98 has split the state's business community. Small business owners, like Woods, are often the target of eminent domain actions and have long pushed for eminent domain reform; they strongly support Proposition 98.

The NFIB has joined with apartment owners, the Howard Jarvis Taxpayers Association and the California Farm Bureau in pushing for Proposition 98. They also oppose Proposition 99 as being too weak to prevent abusive eminent domain actions.

But big business interests tend to support at least some use of eminent domain for redevelopment projects and are generally opposing Proposition 98. They are more likely to be allied with developers who benefit from consolidation of land in the redevelopment process and often back major revitalization efforts.

Last month, the California Chamber of Commerce came out in opposition to Proposition 98, joining several labor and environmental groups, the League of California Cities, redevelopment agencies and developers. Some of these groups have endorsed Proposition 99, which was drafted by the League of the California Redevelopment Association.

Most of the funding for the opposition to Proposition 98 and support of Proposition 99 comes from the League, which has raised a total of \$6.7 million for the effort, through March 31, according to figures compiled by the Web site ElectionTrack.com.

Other funding comes from the California Redevelopment Association, the State Association of Counties, economic development and redevelopment consultants, developers such as the Related Cos. (developing the Grand Avenue project in Downtown L.A.) and environmental groups such as League of Conservation Voters.

One local opponent of Proposition 98 – Los Angeles-based Century Housing Corp., a non-profit affordable housing finance company – said the measure would further draw out an already lengthy environmental review process for projects that it finances by allowing challenges any time a government action could potentially reduce a property's value.

Century Housing makes loans at the front end of projects while the developer gets the entitlements and the long-term financing, a process that typically takes two or three years. Then, when the loans are paid back, Century uses those dollars to make new loans.

"If Proposition 98 were to pass, it would throw so much uncertainty into the process and draw in so many more legal challenges that it could double the length of time for entitlements and completely upend our business model," said Tim O'Connell, senior director at Century Housing.

So far, opponents of Proposition 98 and supporters of Proposition 99 have the upper hand in both fundraising and polling. They have outraised opponents by a margin of \$8.7 million to \$2.7 million.

And in a Public Policy Institute of California poll taken in mid-March, Proposition 98 was failing, with only 37 percent of respondents favoring the measure and 41 percent opposed. Proposition 99 was faring much better, with 53 percent in favor and only 27 percent opposed. One in five respondents was undecided on each measure, which could prove crucial on Election Day. These are the only statewide measures on the

June primary ballot; with no other statewide or presidential candidates on the ballot, most election experts are predicting a very low turnout.

## **Redevelopment**

Eminent domain has historically been used by governments to take private land for public projects, such as new roads or utility lines, or reservoir or airport expansions.

But in 1945, the state passed a redevelopment law that was interpreted through court decisions over the years to allow governments to take private property for economic redevelopment. That interpretation was solidified in the early 1960s when the state Supreme Court upheld the right of the city of Los Angeles to tear down a neighborhood of aging Victorian homes on Bunker Hill and redevelop it with the high-rises that stand there today. The law has been used since for such high-profile projects such as Staples Center, and scores of shopping centers and other developments.

The law requires that governments pay a property owner the fair market value for a property, and if they own residences or businesses, to pay other costs, such as loss of business or moving expenses. But just the threat of condemnation – the legal action taken to carry out eminent domain proceedings – has often been enough to coax holdout property owners to settle.

This has prompted a strong backlash from property rights advocates, which only intensified after the U.S. Supreme Court's 2005 *Kelo v. City of New London* decision allowing a government agency to take property from a private owner and turn it over to another private owner.

In the aftermath of that decision, hundreds of measures were put forward across the nation to limit the use of eminent domain, such as the ill-fated Proposition 90 in California.

As with that measure, redevelopment agencies now say that passage of Proposition 98 could cripple their redevelopment plans, encouraging property holders to hold out and making it much more expensive – if not impossible – to consolidate property.

## **Rent Decontrol**

However, much of the rhetoric to date has centered on the rent decontrol provision of Proposition 98, which states that whenever rental units currently under rent control become vacant, they lose their rent-controlled status forever. In Los Angeles and several other cities, apartment units under rent control can reset to market rates when they become vacant, but once they are reoccupied, rent increases are once again capped.

Apartment owners, who have provided more than 80 percent of the \$2.7 million raised to date for the measure, claim that current rent control laws limit their ability to keep up their buildings and grounds.

"The rent is capped, but the expenses are not. Utilities, water, sewer charges, insurance – these all are skyrocketing. It's very difficult to maintain buildings when you can't get increases in income," said Earle Vaughan, a Hollywood-area apartment building owner who supports Proposition 98.

Vaughan said there is a tie-in with eminent domain reform: "both involve the taking of property without adequate compensation. In the case of rent control, government is taking away the right of the property owner to charge market rents."

But tenants' rights groups are mobilizing against the measure. They say landlords will use the phasing out of rent control laws to force longtime tenants out of their units.

While there are laws governing when and how tenants can be evicted, tenants' rights groups claim that many landlords currently try to make the living conditions so unbearable that renters feel forced to move. If rent control were to be phased out, these groups claim that the financial incentives to force tenants out

would only grow stronger.

Vaughan disputed this, saying such instances happen only rarely and usually involve slumlords who are eventually prosecuted. "As a practical matter, it's very, very difficult to evict a tenant for anything other than nonpayment of rent."

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