

Property: Private and Public

The Law and Economics of Eminent Domain

Kelo v. New London: A Lawyer's Take on Takings

Which States Use Eminent Domain...and Why?

Who's Willing to Pay What for Open Space?

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TAKING STOCK

A Break in the Action

Judging by the job numbers, one might have guessed that this fall's hurricanes passed within a whisker of the Nutmeg State. Job growth, up by a seasonally-adjusted 6,000 posts just the quarter before, ground to a virtual standstill in Q3.

The quarter's poor job harvest was accompanied by a rich offering of Malthusian prophecies about the state's economic future. A Connecticut Economic Resource Center (CERC) study, extrapolating currently anemic trends in technology, business vitality, financial and human capital, and global linkages, warned that, without a course correction, the Connecticut of 2020 may be just a "highway between Boston and New York."

It's always dangerous to rest on one's laurels, but we shouldn't lose sight of Connecticut's current strengths. As the CERC study notes, Connecticut was the only state to earn straight "A's" in CFED's 2004 *Development Report Card of the States*, based on 68 measures of economic development. And we were one of only ten states to get an "A" in CFED's 2005 companion study of *Assets and Opportunities*, rating states on 69 variables that gauge families' attainment of "the American Dream."

Despite the economy's Q3 inertia and the dire predictions, payrolls still stood some 19,000, or 1.2%, higher

than the year before. Manufacturing jobs dipped below year-ago levels for the first time in four quarters, but jobs in construction were up by 4,500, accounting for nearly 25 percent of the year-over-year gain in total employment. Increases in service-related jobs supplied the balance of the increase.

Some key indicators also suggest that the state's pause won't be permanent. Initial unemployment claims are up slightly, but still at levels consistent with quarterly job growth of 3,500, which is about what CCEA forecasts for 2006 (see p. 22). And the nearly 10 percent jump in the number jobless may actually be a harbinger of labor market health. Willing workers, a persistently scarce resource in Connecticut, surged into the labor force in Q3, attracted by a generally brighter employment picture. But until they find jobs, they're unemployed.

Other good news: personal income is growing at a healthy clip—6.6 percent over four quarters—and the Connecticut Labor Department forecasts continued, albeit more modest, growth. And fatter wallets are bankrolling some big-ticket purchases—new auto registrations, for instance, are up 25 percent over last year.

The state clearly didn't grab headlines with job growth, but it did make news with the Supreme Court's decision in *Kelo v. City of New London*. So this issue devotes three feature articles and two back-page commentaries to the eminent domain controversy. Connecticut has an abiding interest in land use questions, in part because our state ranks first of fifty in sprawl, measured as the ratio of non-urban to urban population density (see graph). Our centerfold looks at land development across Connecticut towns, and another feature article examines Nutmeggers' attitudes toward open space.

CONNECTICUT ECONOMIC INDICATORS

(Percent change: 2004-Q3 to 2005-Q3)

Indicators of

Current Economic Activity

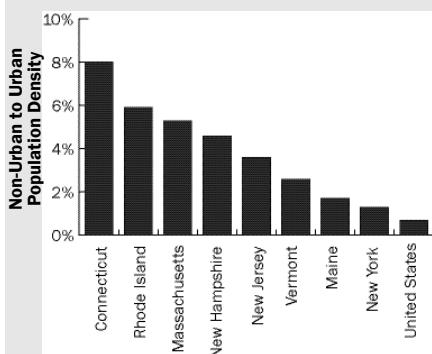
Total Nonfarm Jobs	+1.2%
Number Unemployed	+9.8%
Labor Force	+1.1%
Manufacturing	
Jobs	-0.2%
Avg. Weekly Hours	+1.4%
CT Mfg. Prod. Index	-1.4%
Avg. Hourly Earnings	+2.8%
New Auto Registrations	+25.1%
Travel and Tourism Index	+0.7%
Bradley Airport	
Passengers	+11.1%
Freight	+3.7%
State Tax Receipts	
Income	+12.3%
Sales	+4.4%
Real Estate Conveyance	+9.9%
Normalized Electricity Use	+0.1%
State Exports	+19.8%
Personal Income (est.)	+6.6%
Coincident GDI	+0.0%

Indicators of

Future Economic Activity

Help-Wanted Ads	-3.6%
Avg. Initial Unemp. Claims	+1.9%
Housing Permits	-6.7%
Net New Business Starts	+3.0%
Leading GDI	+0.8%

CONNECTICUT LEADS IN SPRAWL



Source: The U.S. Census Bureau from demographia.com.



GOOD NEWS

+1.1%

Labor Force



BAD NEWS

-6.7%

Housing Permits

The Paradox of Public Use: The Law and Economics of *Kelo v. New London*

BY THOMAS J. MICELI AND
KATHLEEN SEGERSON

By now the facts of *Kelo v. New London* are well-known, but neither the law nor the economics of the case is clear. *Kelo* raises two important issues about “public use” and “just compensation” that the law has treated as distinct. Economic analysis suggests the two should not be separated.

The essence of the public use debate is whether the power of eminent domain should be extended to private projects.

In 2000, the city of New London adopted a development plan that promised to revitalize the distressed downtown and waterfront areas of the city. The plan included taking the needed land from unwilling sellers by eminent domain. Several of these sellers filed suit to block the takings of their properties. The Connecticut Supreme Court found for the city, arguing that the planned development satisfied the public use requirements of both the State and U.S. Constitutions, and in a decision issued in June 2005, the U.S. Supreme Court agreed.

THE LAW

The “eminent domain” clause in the Fifth amendment to the U.S. Constitution allows a government to take private property without the owner’s consent, but with two limitations: the property must be put to some “public use,” and the owners must be paid “just compensation.”

The law has viewed the two limitations as separate. It is settled law that just compensation equals the fair market value of the property, but the legal meaning of public use is far from clear. This is why the Supreme Court had to

address what constitutes a legitimate public use in *Kelo*.

In plainest terms, the public use requirement suggests that eminent domain should be used only for projects undertaken by the government for the purpose of providing a public good like a highway or park. Historically, though, private parties have frequently sought, and courts have often granted, takings power for projects with largely private gains but that arguably promise some spillover benefits to the community. In the nineteenth century, railroads were granted the power of eminent domain to secure land rights for their westward expansion. A more contemporary example (as evidenced by *Kelo*) is urban renewal. While courts have sometimes struggled to square such “private takings” with the public use limitation, the usual conclusion, echoed by both the Connecticut and U.S. Supreme Courts in *Kelo*, has been that benefits from such projects to the overall economic well-being of a community satisfy the constitutional public use requirement.

An especially noteworthy example of that conclusion was the Michigan Supreme Court’s famous 1981 decision in *Poletown Neighborhood Council v. City of Detroit*, which allowed that city to condemn an entire ethnic neighborhood in order to clear the way for a new General Motors assembly plant. The Court argued that, although the intended use of the acquired land was private, the public use requirement was satisfied by the new jobs and tax revenue that the plant would provide.

Thomas Miceli and Kathleen Segerson are Professors of Economics at the University of Connecticut and the authors of *Compensation for Regulatory Takings: An Economic Analysis with Applications*, Volume 1 in *The Economics of Legal Relationships* (Nicholas Mercuro, series editor), JAI Press, 1996.

Ironically, in 2004—just a year before *Kelo*—the Michigan Supreme Court reversed its holding in *Poletown*. In *Wayne v. Haycock* the Court emphatically rejected its earlier argument that a private taking can satisfy the public use requirement merely by demonstrating a general economic benefit of the project to the community. Its ruling in *Poletown*, the Court now said, was contrary to the fundamental protection of property rights afforded by the Constitution.

Those two conflicting opinions from the same court reveal the lack of consensus among judges regarding the exact meaning of public use. Legal scholars are just as divided. Economic analysis can, however, shed some light on the issue posed by *Kelo* and similar cases.

THE ECONOMICS

Why do we need eminent domain in the first place?

Normally, when anyone—the government or a private entity—wants to produce a good or service, it goes into the market and buys what it needs to produce it. For example, to produce chairs, a company will buy land to build a factory, purchase or lease the requisite machines and equipment, hire workers, and purchase the materials needed for the chairs. Likewise, to provide police protection for its citizens, a city will buy or lease some land, hire a building contractor, buy furnishings, and hire police officers to staff the station. In either case, the needed land is purchased in the market, the same as the other inputs, with the buyer and the seller both willingly entering into the transaction.

Voluntary or consensual deals like these are advantageous to both buyers and sellers in the sense that both sides

expect to benefit. In economic parlance, these consensual transactions are “efficient.”

In contrast, takings of property by eminent domain are non-consensual because sellers do not enter into the transactions willingly. The obvious question is, why are landowners sometimes unwilling to sell their land voluntarily, so that the land must be acquired through eminent domain if the project is to go forward?

A person may refuse to sell her property (or any other good she owns) for two reasons.

First, her “reservation price,” the minimum amount she would accept, may exceed the going market price for comparable land or goods. The difference between these two prices is the owner’s “subjective value,” reflecting, for example, sentimental attachment or an idiosyncratic preference for that particular item. For such a person to consent to sell, the buyer must offer enough above the fair market price to cover the current owner’s subjective value.

Thus, one reason a landowner may refuse to sell to a government to make way for a project of some sort is that the compensation the government must pay under the Constitution is less than what the owner would have insisted on in an ordinary consensual sale. The fair market value of the land in question is the going price for comparable land—but the owner places an extra subjective value on her particular parcel. If a buyer in a private transaction was willing to pay the seller’s full reservation price, her subjective value would be reflected in the deal, and it would be an efficient transaction.

So why don’t courts just require the government to pay above-market prices for the land so the project can go

forward without opposition? The problem is that if the court tried to incorporate an owner’s subjective value into the price of a piece of land, it is not likely that a jury of the owner’s peers would be able to determine her true reservation price. Thus courts exclude subjective value in the computation of just compensation, not because it is not a valid component of the land’s value to the owner, but because it is not observable. The result, however, is that the use of eminent domain may transfer property inefficiently in the sense that the gain to the buyer is less than the loss to the current owner, given that the owner is forced to sell at less than what the property is worth to her.

The second reason that someone may refuse to sell at the going market price—the “holdout problem”—does not result in inefficient transactions, and therefore provides a valid reason for transferring property to governments by eminent domain.

Suppose that construction of a police station in a specific location requires assembly of several contiguous parcels of land, or there is a single site that is most suitable (for example, a central location). In that case, efforts by the city to acquire the land by market transactions may run into difficulties because any one owner can hold up the project, or greatly increase its costs, by refusing to sell. Once the site is identified, individual owners acquire a kind of monopoly power that allows them to demand prices well in excess of their true valuations. (In ordinary markets the existence of other, comparable sites undercuts any monopoly power.)

Allowing forced sales of land (that is, takings) at fair market values prevents owners from exercising this

monopoly power, thus permitting the project to go forward while avoiding any holdout costs. As is well known, the exercise of monopoly power usually restricts total economic activity in a way that is profitable for the seller but detrimental overall. Thus, assuming that the social benefits of the project exceed the social costs, using eminent domain to overcome the monopoly or holdout problem makes society as a whole better off.

The holdout problem therefore represents the real economic justification for the use of eminent domain. Holdouts, however, are not limited to public projects; private ventures involving land assembly, like railroads and real estate developments, are also susceptible to them. The obvious question then is whether the power of eminent domain should be extended to these private projects as well. This is the essence of the public use debate.

THE PUBLIC USE DEBATE

The Constitution gives the power of eminent domain only to governments, and then only when the property will be put to some public use. The *Kelo* case, however, illustrates how the Supreme Court's interpretation of public use may effectively extend this power to private developers, at least when the proposed project is part of a government's larger plan for economic development. Courts have generally been willing to permit this by allowing the government to act as an agent of the entrepreneur (as in *Kelo*). However, such cases inevitably raise the public use issue, because unwilling sellers, wishing to avoid under-compensation, argue that the action violates the plain meaning of the public use requirement.

As a result, when courts allow private uses of eminent domain, they generally attempt to support their decisions by enumerating the various public benefits that flow from the project, like enhanced tax revenues and jobs. But similar benefits are normally associated with most large business enter-

prises, and yet these enterprises are usually required (as they should be) to purchase their land and other inputs in the market. Why then do the resulting taxes and jobs justify the use of eminent domain in some cases of private development and not in others?

The answer is that they do not. As we argued above, the real justification for takings is the need to solve the

Requiring policymakers to conduct a cost-benefit analysis would at least focus their attention on the real economic issues, rather than on the elusive attempt to justify eminent domain by some vague notion of public use.

holdout problem when land must be assembled in order for the project to go forward. Thus, the attempt by courts to justify takings in terms of the public benefits, rather than the existence of a holdout problem, is misplaced. This is what we mean by the "paradox of public use."

A TWO-PRONGED TEST FOR THE USE OF EMINENT DOMAIN FOR PRIVATE DEVELOPMENT

The preceding economic reasoning suggests a two-pronged test for invoking eminent domain for private development projects. First, is the project expected to be socially valuable—that is, would society be better off with the project than without it? And, second, is there a holdout problem that would prevent the project from being undertaken otherwise? If

the answer to both of these questions is yes, then the use of eminent domain is justified. But if the answer to either question is no, eminent domain is not justified.

Note that the first question requires more than simply that the project be profitable for the developer; it also requires that the benefits of the project to all individuals or groups who are affected exceed the collective costs that all incur. Practically speaking, such a calculation would be difficult, but requiring policymakers at least to consider it would focus their attention on the real economic issues underlying the takings debate, rather than on the elusive attempt to justify eminent domain by some vague notion of public use.

Of course, our two-pronged test does not solve the problem of under-compensating landowners who legitimately value their property at more than its fair market value. This problem is particularly troubling when the involuntary transfer of property is seen as primarily benefiting a small number of private developers rather than the public at large. Indeed, it is precisely the under-compensation that induces owners to seek to block the forced sale by invoking the public use limit on the government's takings power. In this sense, the issue of just compensation cannot be separated from that of public use in establishing the proper limit of eminent domain. However, assuming that the conditions of the two-pronged test are met, the fairness issue stemming from under-compensation is more appropriately addressed by an adjustment in the amount of compensation paid (for example, by paying some fixed premium above market value to account for subjective values) rather than through an inquiry into the conditions under which eminent domain should be invoked.

Kelo v. New London: A Legal Perspective

BY DEREK M. JOHNSON

Does a city's exercise of eminent domain powers for economic development purposes meet the "public use" requirement of the Fifth Amendment's "takings clause"? And does it matter that the condemned property is a single-family home?

In *Kelo v. New London* the U.S. Supreme Court answered yes to the first question and no to the second. In doing so, the Court touched a raw nerve about governments' eminent domain powers. The Connecticut General Assembly and other state legislatures are considering bills that would alter the use of eminent domain for economic development purposes. And the U.S. House of Representatives is weighing a measure that would sharply restrict such use.

Eminent domain in general, and *Kelo* in particular, have both economic and legal implications. Miceli and Segerson explore the economics of *Kelo* on page 4 of this issue; I focus here on whether the case was "correctly" decided in light of prior U.S. Supreme Court decisions.

The Fifth Amendment to the Constitution provides that "private property [shall not] be taken for public use, without just compensation". In *Kelo*, the Supreme Court held that an urban economic redevelopment plan adopted by the city of New London constituted a "public use," even though the plan contemplated the lease or sale of private property to private parties. Following precedents, the Court interpreted "public use" in the broader sense of "public purpose," and deferred to the city of New London in defining that "public purpose."

Using eminent domain to implement government economic development programs is nothing new. In the 19th century, the power of eminent domain was delegated to railroads (common carriers, with obligations to the public). The Mill Dam Acts gave millers and manufacturers special rights to create reservoirs for water power. Private parties were also encouraged to develop natural resources through the use of eminent domain powers for irrigation, mining and land reclamation projects. More recently, in 1981, the city of Detroit condemned much of its Poletown neighborhood to permit construction of a General Motors assembly plant; the Michigan Supreme Court upheld the taking.

The modern "public use" landscape prior to *Kelo* was principally shaped by three Supreme Court opinions: *Berman v. Parker* (1954), *Ruckelhaus v. Monsanto* (1984), and *Hawaii Housing Authority v. Midkiff* (1984). In all three cases, the Court upheld the use of eminent domain for economic development purposes, and they all involved takings of private property that would benefit other private parties.

In *Berman*, the Court upheld a D.C. redevelopment plan that targeted blight and redesigned entire neighborhoods. A store owner whose property was not blighted challenged the plan, arguing that it constituted a private taking. The Court disagreed: The legislature had defined the "public interest," and the D.C. plan fell within it. Moreover, that the property was not blighted was not germane. Congress and its designated agencies had designed the plan on their (rational)

Using eminent domain to implement government economic development programs is nothing new.

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The heart of the constitutional issue in Kelo was not whether it expanded the meaning of public use, but rather whether residential property rights should have greater protection than commercial property rights.

belief that only an “area approach” would work. That belief was sufficient for the Court.

Monsanto involved the taking by the Environmental Protection Agency (EPA) of intellectual property rights, to be shared with subsequent EPA applicants to eliminate “duplication of research” and remove a “barrier to entry into the pesticide market.” That private parties would benefit, or that Congress may have been incorrect in its economic determination, did not matter: “The proper inquiry before the Court is not whether the provisions in fact will accomplish their stated objectives ... Our review is limited to determining that the purpose is legitimate and Congress rationally could have believed that the provision would promote that objective.”

In *Midkiff*, the Supreme Court upheld a Hawaii land reform/condemnation statute that allowed lessees to invoke eminent domain procedures to buy (with just compensation) leased land from its owners. According to the state legislature, an extraordinarily high concentration of land ownership in Hawaii prevented the “normal functioning of the State’s residential land market.” The Court ruled that Hawaii’s delegation of eminent domain powers in an attempt to ameliorate a “skewed land market” constituted a legitimate public purpose. Hawaii’s land reform act advanced its “public purpose” even though the State never took actual possession of the property. As Justice O’Connor wrote for a unanimous court, “government does not itself have to use property to legitimate a taking; it is the taking’s purpose, and not its mechanics, that must pass muster under the Public Use Clause.”

Against that background, why has *Kelo* garnered so much attention? Because New London proposed to use eminent domain to condemn single-family residential properties—people’s homes!—for a project that will most assuredly benefit private parties. This

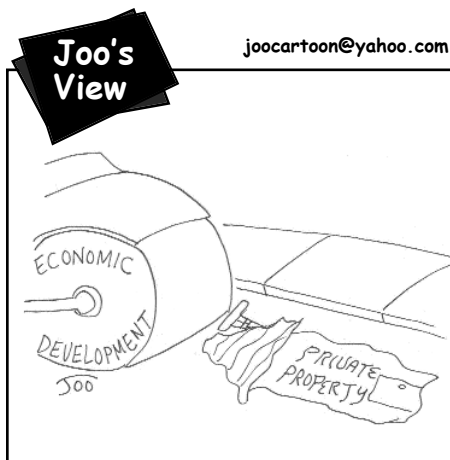
cuts too close to the bone for many people and calls in question whether our legislatures have appropriately balanced public, economic and social needs.

The heart of the constitutional issue in *Kelo* was not whether it significantly expanded the meaning of public use. Rather, it was whether residential property rights should be entitled to greater constitutional protection than commercial ones for purposes of the takings clause.

An answer in the affirmative would lead to a quagmire of complexities. For instance: Should it matter how long you have lived in your home? Would such a distinction violate the equal-protection clause of the 14th amendment? And what of the small grocery store where the owners live upstairs? For the time being, the Supreme Court has said that the takings clause does not distinguish between different types of private property.

The residential-commercial distinction implicit in *Kelo* highlights yet another constitutional problem: What is “just compensation” in takings cases? The concept, meant to socialize the cost of takings, has been interpreted by courts as fair market value. But fair market value need not fully compensate every property owner whose property is being condemned. (Had it done so, the owner would have already sold it—apart from the “holdout problem,” which Miceli and Segerson analyze on page 5.) Owners often place “subjective values” on their property that exceed the fair market value. And subjective values are arguably higher for residential than for commercial properties.

Seen from this perspective, it is the just compensation provision and not the public use requirement that should give us pause. *Kelo* has thrown this conclusion into sharp relief.



An Offer You Can't Refuse

WHY DO CONNECTICUT AND OTHER STATES USE EMINENT DOMAIN?

BY STEVEN P. LANZA

The U.S. Supreme Court's decision in *Kelo v. City of New London* did more than vault Connecticut onto the front pages of newspapers nationwide. It also affirmed earlier decisions recognizing governments' power to take property for economic development purposes. By the Court's own admission, however, nothing in the decision keeps states from restricting the use of eminent domain. And in the controversy surrounding the Court's decision, many have done or are doing so. As Connecticut now wrestles with its own legislative proposals to limit this power, it is worth examining the factors that influence governments' use of eminent domain and asking whether legal restrictions make any sense. My analysis suggests that efforts to curb governments' power to condemn property may well not produce their intended effect.

Under the power of eminent domain, governments at all levels can take or authorize the taking of private property for public use without consent, provided owners are compensated fairly. As Miceli and Sergerson argue (p. 4), the ability to condemn property helps governments solve the so-called "holdout" problem, where owners who know their properties are crucial to a project strategically refuse to sell in hopes of eventually pocketing prices far above fair market value. The crux of the *Kelo* case, however, was whether taking property from one private party and turning it over to another, on the promise of certain public benefits, constitutes valid "public use."

WHO TAKES WHAT?

Nine states formally permit property to be taken for development purposes either by constitutional precept or judicial precedent; Connecticut and several neighbors (New York, New Jersey, and Massachusetts) are among them. At the time of *Kelo*, six states expressly prohibited the exercise of eminent domain for development purposes, including Maine and New Hampshire, but in reaction to the decision Alabama and Texas have since joined this group.

Hard data on the prevalence of takings aren't easy to come by. But a recent report by the Castle Coalition, a group that supported the homeowners in the *Kelo* case, provides figures on the number of condemnations by state between 1998 and 2002 for the 23 states for which records are available. Florida topped the list with 14,319 condemnations; California was next with 5,583, followed by Illinois with 4,525. Connecticut, which placed ninth with 1,819, is the only state to distinguish takings for public purposes (70% of the total) from takings for private, redevelopment purposes (30% of the total).

A better measure of the incidence of eminent domain use would control for population, since larger states like California with more residents are bound to have more takings. Adjusting for population, states like California and Illinois move down the list, while smaller states like Connecticut and Arkansas move up. Florida remains number one with 9 takings per 10,000 people (1998-2002), while Arkansas climbs from tenth to second (6.3 takings per 10,000 people). Connecticut moves

My analysis suggests that efforts to curb governments' power to condemn property may well not produce their intended effect.

up to fifth, with 5.3 takings per 10,000—about twice the 23-state average of 2.6.

THE LIKELY SUSPECTS

What accounts for the variation in eminent domain use across states? The *status of the law* is one likely candidate. It is possible, for example, that at least some of Connecticut’s 543 “redevelopment” condemnations during 1998-2002 would not have gone ahead if the state’s constitution had not expressly permitted takings for economic development purposes.

And if a significant share of government takings is devoted to economic development, the number of condemnations might depend on the *health of the economy*. The direction of the likely effect is, however, ambiguous, since eminent domain could just as easily fuel an already-expanding economy as jumpstart one that is moribund.

The *financial fitness of government* and the *prices of area properties* are also possibilities. Invoking eminent domain could be a substitute for the free-market purchase of private property. And the market demand for property, like most other goods, will tend to vary positively with wealth or income and negatively with price. Thus, a government is apt to rely more on the market and less on takings if its fiscal health is better and property prices are lower.

Takings, of course, are formal legal processes and consequently may depend on the *litigiousness of society*.

On the one hand, litigation raises the expected cost of a condemnation and hence should discourage the use of eminent domain. On the other hand, a state with a predisposition for litigation may be more inclined to use legal rather than market processes to resolve disputes.

Finally, to the extent eminent domain helps solve the “holdout” problem, the incidence of takings should depend on *population density*. As an area becomes more densely settled and ownership patterns more fractured, bargaining is likely to grow more complex. If takings reduce transaction costs, they ought to vary positively with population density.

WHAT MATTERS MOST?

Using least-squares, multivariate regression techniques, I tested the relationship between measures of each of the above factors and the number of government takings per capita by state for the 1998-2002 period. The results appear in the table on the next page; asterisks denote statistically significant coefficients.

As expected, the incidence of takings depends on wealth and income factors. Wealthier states are likely to have higher levels of state and local spending per capita. And according to my model, a one-percent increase in per capita spending leads to a 4.3 percent decrease in government takings, as the greater fiscal resources allow governments to pursue market purchases of property more easily.

Federal grants, some of which are earmarked for housing and urban development, are another source of public funding. In my model, the incidence of takings varies inversely with the level of such funding. A one-percent increase in federal urban development grants per housing unit is associated with a 5.3 percent decrease in the incidence of takings.

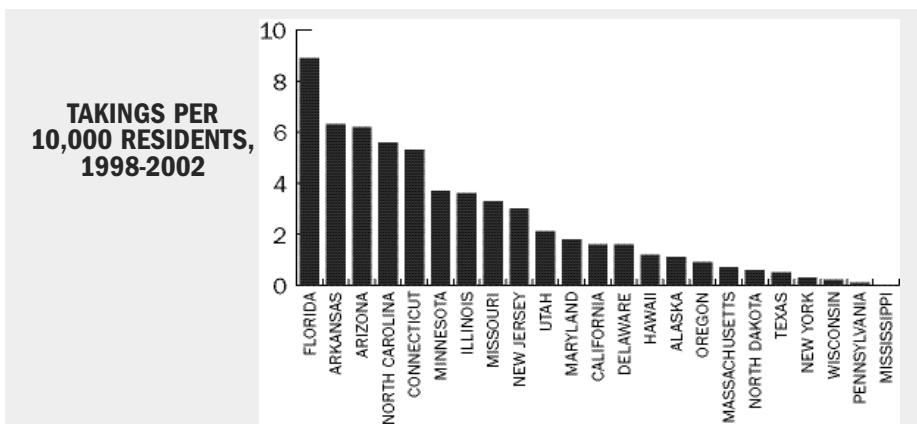
Takings depend on property values as well. A one-percent rise in home prices is accompanied by a 2.2 percent increase in takings, as higher prices encourage governments to turn to the non-market acquisition of property.

As expected, litigiousness seems to matter too. A one-percent increase in the number of legal workers per capita—somebody has to bring all those suits—is associated with a 3.4 percent rise in the incidence of takings. Presumably, a larger share of employment in the law reflects a local predisposition toward legal, rather than market, resolution of conflict.

Several factors that were expected to influence governments’ use of eminent domain appear to have no effect. The coefficients on the variables for the status of takings law, economic performance, and population density are all statistically insignificant (denoted by the absence of an asterisk).

Particularly noteworthy is the lack of a significant relationship between the incidence of takings and the status of takings law. The frequency of eminent domain use doesn’t seem to depend on whether the law expressly permits the condemnation of property for development purposes. Why might that be?

One possibility is that governments can use other grounds to take property. It is common, for example, for governments to justify condemning property to eliminate “blight,” and then allow new private development to take its place. As is often the case, constraining behavior along one margin of



activity simply shifts it to another, less regulated margin.

WHAT IT MEANS

Combined, the seven variables in my model account for about 44% of the total variation in the data. (Dropping the insignificant variables boosts the explanatory power to about 48%.) That means that this simple model explains nearly half the variation in the number of takings per capita across the 23 states for which we have data.

Applying the model's coefficients predicts that Connecticut would have about 3.0 takings per 10,000 residents, compared with the actual value of 5.3. For most states in the sample, the predicted value is within 1.0 taking of the actual value. Despite the relatively large error for Connecticut, the model still predicts that the Nutmeg State would place near the top of the list in takings per capita—8th of 23, compared with our actual 5th place position.

Why does Connecticut rank so high? Connecticut is about average in its level of housing and urban development grant money, about \$270 per housing unit, so that does not play much of a role. And Connecticut's state and local public spending per capita is actually 10% above the average, \$6,289 versus \$5,730, which by itself would imply that condemnations should be *below* average by about one-half a taking per 10,000 residents.

But the Nutmeg State has property values and a concentration of legal personnel that exceed the averages of the other states in the sample by 25 percent. Connecticut's higher property values—median home prices here were \$166,900 versus \$133,200 in the other states, according to the 2000 Census—translate into more than 1 additional taking per 10,000 residents. And our relatively large number of legal workers—4.4 per 1,000 residents versus 3.5 in the other states, according to Bureau of Labor Statistics data for

2000—adds another 2 takings to our predicted number.

That my model underpredicts the incidence of government takings in Connecticut likely traces to unique characteristics of the state that can't be captured easily in a one-size-fits-all model. Consider just one possibility. Two colleagues at the University of Connecticut, Thomas Miceli and C.F. Sirmans, have suggested that eminent domain may be an effective weapon of "last resort" against sprawl, because it encourages redevelopment of existing urban space rather than new development at the metropolitan fringe. (<http://ideas.repec.org/p/uct/uconnp/2004-38.html>.) And Connecticut holds the dubious distinction of ranking first in sprawl among the 50 states (see page 3) as measured by the ratio of non-urban to urban population density. (For related data on the degree of development, see our centerfold.)

There is no evidence of a systematic use of eminent domain by states to combat sprawl: in one formulation of my model not discussed above, the sprawl variable was statistically insignificant in explaining takings. But that doesn't mean it's not used

aggressively in Connecticut for that purpose, which could account for the higher incidence of takings here.

The *Kelo* decision has generated a storm of controversy, and created some strange bedfellows along the way. Neither side in the debate argues in favor of eminent domain abuse, but the decision does raise legitimate questions over the proper limits on government's power to condemn property.

My analysis suggests, however, that the current effort to rein in the exercise of eminent domain will likely disappoint its proponents. States that expressly permit the use of eminent domain for development purposes have no higher incidence of takings than those that do not. And those factors that seem to influence the use of eminent domain are not amenable to simple policy responses.

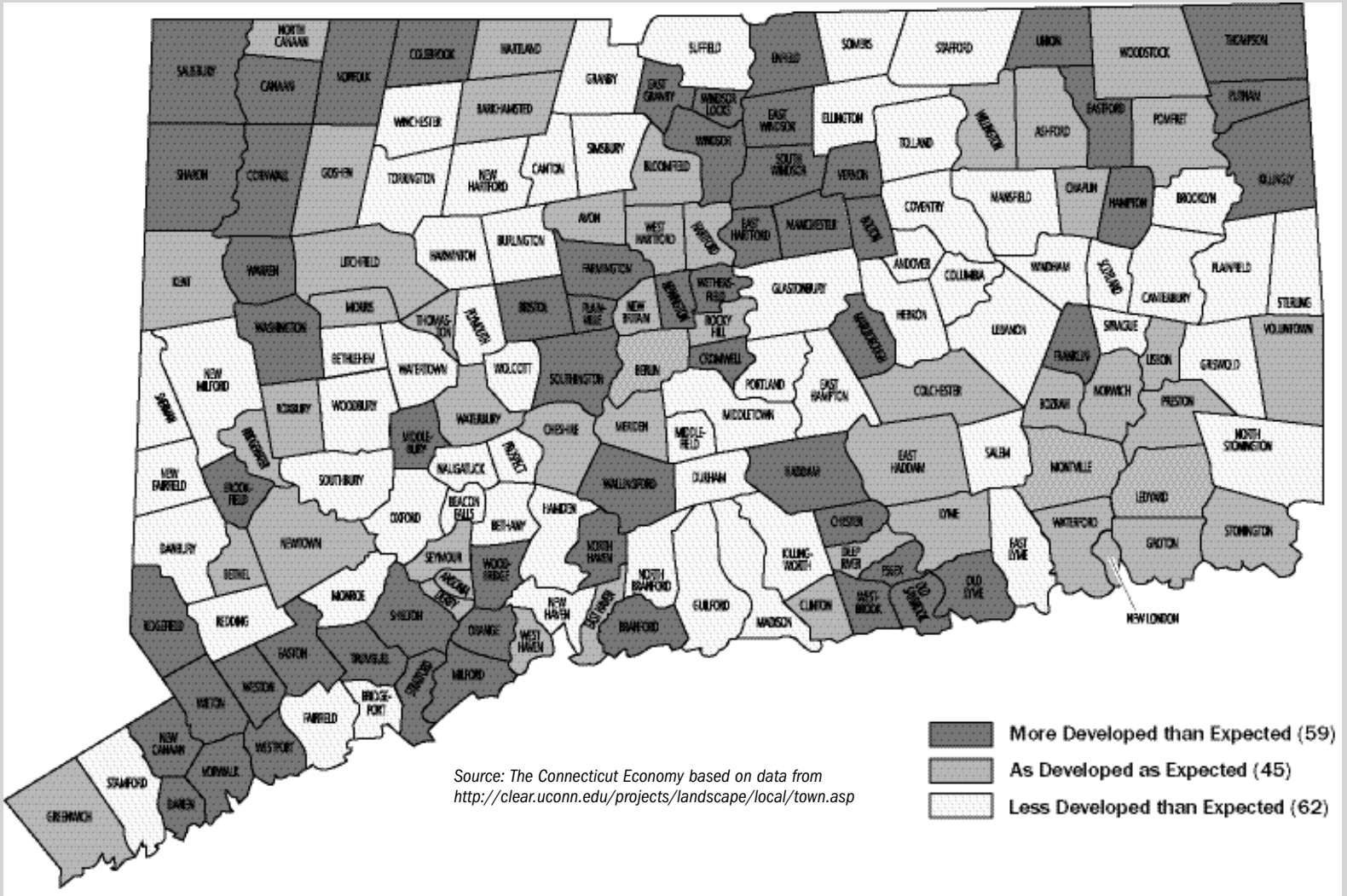
Perhaps the most effective constraints will be found not in legislative initiatives, but in a careful, case-by-case application of the principles of "public use" and "just compensation" that underlie government's power to invoke eminent domain.

FACTORS THAT MAY INFLUENCE GOVERNMENTS' USE OF EMINENT DOMAIN

Variable	Elasticity	Description
State and Local Spending Capita	-4.3*	A one-percent increase in state and local spending per capita reduces government takings by 4.3 percent
Federal Urban Development Grants per Housing Unit	-5.3*	A one-percent increase in federal urban development grants per housing unit reduces government takings by 5.3 percent
Median Home Price	2.2*	A one-percent increase in median home prices increases government takings by 2.2 percent
Legal Workers per Capita	3.4*	A one-percent increase in legal personnel per capita increases government takings by 3.4 percent
Eminent Domain Law	0.5	Not statistically significant at the 10% level or better
Economic Performance	-4.0	Not statistically significant at the 10% level or better
Population Density	-0.3	Not statistically significant at the 10% level or better

THE CENTERFOLD

Percent Difference from Predicted Development by Town, 2002



- More Developed than Expected (59)
- As Developed as Expected (45)
- Less Developed than Expected (62)

	ACTUAL % DEVELOPED	PREDICTED % DEVELOPED	DIFFERENCE FROM PREDICTED
Bridgeport - Stamford LMA			
Ansonia	48.4	47.7	1.6
Bridgeport	82.9	97.1	-14.6
Darien	46.2	37.8	22.3
Derby	42.2	40.9	3.1
Easton	13.7	12.3	11.6
Fairfield	42.4	46.8	-9.5
Greenwich	31.9	33.2	-3.8
Milford	51.8	46.7	11.0
Monroe	14.9	16.1	-7.2
New Canaan	31.8	23.9	33.4
Newtown	16.6	16.3	1.8
Norwalk	64.8	60.9	6.4

	ACTUAL % DEVELOPED	PREDICTED % DEVELOPED	DIFFERENCE FROM PREDICTED
Oxford	12.6	13.5	-6.1
Redding	11.5	12.6	-8.8
Ridgefield	22.6	21.1	6.9
Seymour	27.5	26.8	2.6
Shelton	32.0	29.8	7.3
Southbury	15.0	18.0	-16.6
Stamford	46.2	56.7	-18.5
Stratford	56.5	53.0	6.7
Trumbull	44.7	32.7	36.7
Weston	18.9	17.5	8.0
Westport	45.2	35.0	29.3
Wilton	24.2	21.2	14.0
Woodbridge	19.4	17.5	10.8

	ACTUAL % DEVELOPED	PREDICTED % DEVELOPED	DIFFERENCE FROM PREDICTED
Danbury LMA			
Bethel	26.2	27.3	-4.1
Bridgewater	7.6	7.5	1.5
Brookfield	25.0	23.2	7.9
Danbury	32.7	36.4	-10.2
New Fairfield	14.2	18.9	-24.9
New Milford	13.5	16.9	-20.1
Sherman	8.9	9.5	-6.7
Enfield LMA			
East Windsor	17.2	15.1	13.6
Enfield	33.1	31.5	5.2
Somers	12.3	15.1	-18.4
Suffield	9.7	14.0	-31.2
Windsor Locks	52.5	32.8	60.2

	ACTUAL % DEVELOPED	PREDICTED % DEVELOPED	DIFFERENCE FROM PREDICTED
Hartford LMA			
Andover	8.5	10.5	-18.7
Ashford	7.2	7.5	-4.1
Avon	22.4	21.9	2.4
Barkhamstead	7.1	6.9	2.3
Berlin	25.0	n/a	n/a
Bloomfield	24.3	23.8	2.1
Bolton	18.0	14.4	25.1
Bristol	44.0	41.3	6.7
Burlington	10.6	12.6	-16.0
Canton	12.6	14.9	-15.8
Colchester	14.0	13.4	4.4
Columbia	9.6	11.6	-17.0
Coventry	10.8	13.4	-19.3
Cromwell	29.5	26.6	11.0
East Granby	13.9	12.8	9.3
East Haddam	9.1	9.1	0.4
East Hampton	11.1	15.6	-29.0
East Hartford	58.5	44.5	31.4
Ellington	11.4	15.5	-26.3
Farmington	25.6	23.7	8.4
Glastonbury	18.8	19.9	-5.5
Granby	9.3	12.7	-26.8
Haddam	10.0	9.5	5.2
Hartford	73.0	73.6	-0.9
Hartland	5.7	5.5	3.7
Harwinton	8.8	9.9	-10.7
Hebron	10.8	11.8	-8.8
Lebanon	13.6	15.0	-9.4
Manchester	46.5	39.2	18.5
Mansfield	13.9	16.9	-17.6
Marlborough	13.5	12.3	10.0
Middlefield	12.8	14.5	-11.8
Middletown	24.7	27.3	-9.7
New Britain	68.4	66.1	3.5
New Hartford	9.0	10.0	-9.9
Newington	51.9	41.0	26.7
Plainville	44.7	35.4	26.2
Plymouth	16.0	18.6	-13.6

	ACTUAL % DEVELOPED	PREDICTED % DEVELOPED	DIFFERENCE FROM PREDICTED
Portland	13.2	14.7	-10.2
Rocky Hill	32.6	31.6	3.2
Simsbury	19.3	21.7	-10.8
South Windsor	25.7	24.4	5.3
Southington	30.2	27.9	8.5
Stafford	9.2	10.7	-14.1
Thomaston	21.0	20.4	2.7
Tolland	13.0	14.1	-8.4
Union	5.9	3.3	80.3
Vernon	37.0	33.5	10.5
West Hartford	49.5	47.5	4.2
Wethersfield	41.5	39.0	6.4
Willington	9.9	10.0	-1.1
Windsor	28.0	25.9	8.0

New Haven LMA

Bethany	11.2	11.9	-5.2
Branford	37.6	34.4	9.4
Cheshire	24.7	24.8	-0.6
Chester	12.3	11.7	5.4
Clinton	29.2	26.2	11.3
Deep River	15.0	14.4	4.1
Durham	11.8	13.7	-14.0
East Haven	44.3	46.4	-4.4
Essex	21.9	19.3	13.6
Guilford	17.0	19.1	-10.9
Hamden	32.5	35.1	-7.4
Killingworth	8.8	9.7	-9.6
Madison	19.1	20.6	-6.9
Meriden	45.0	43.9	2.5
New Haven	70.7	84.9	-16.7
North Branford	17.1	19.3	-11.6
North Haven	44.6	28.0	59.0
Old Saybrook	29.9	24.5	22.1
Orange	33.3	22.5	48.1
Wallingford	29.5	28.0	5.5
West Haven	67.0	70.1	-4.4
Westbrook	19.7	18.1	8.5

Norwich - New London LMA

Bozrah	8.4	8.1	3.3
Canterbury	6.5	7.9	-18.5
East Lyme	16.9	21.5	-21.6
Franklin	7.8	7.3	7.0
Griswold	12.2	14.0	-13.2
Groton	32.6	33.2	-2.0

	ACTUAL % DEVELOPED	PREDICTED % DEVELOPED	DIFFERENCE FROM PREDICTED
Ledyard	13.6	n/a	n/a
Lisbon	11.9	12.3	-3.3
Lyme	5.4	5.5	-2.7
Montville	14.9	n/a	n/a
New London	65.6	64.3	2.1
North Stonington	6.7	7.1	-5.0
Norwich	31.0	29.6	4.9
Old Lyme	17.6	15.8	11.3
Preston	9.3	9.2	1.1
Salem	8.1	8.5	-5.4
Sprague	9.7	11.3	-14.0
Stonington	18.6	19.4	-4.2
Voluntown	5.8	5.7	2.4
Waterford	21.6	22.1	-2.6

Torrington LMA

Bethlehem	8.6	10.0	-13.2
Canaan	4.7	4.2	10.4
Colebrook	5.1	4.7	8.2
Cornwall	5.5	3.9	42.0
Goshen	5.8	5.5	4.1
Kent	5.5	5.6	-1.5
Litchfield	9.4	9.0	5.0
Morris	8.3	8.3	0.2
Norfolk	5.2	4.3	21.9
North Canaan	9.7	10.0	-2.4
Roxbury	6.2	6.5	-4.8
Salisbury	7.3	6.0	20.2
Sharon	6.0	5.1	17.8
Torrington	22.6	24.8	-8.7
Warren	5.7	4.7	20.8
Washington	8.5	7.2	18.2
Winchester	11.9	14.0	-15.1
Woodbury	10.2	12.3	-17.0

Waterbury LMA

Beacon Falls	16.1	18.3	-12.1
Middlebury	17.8	14.9	19.6
Naugatuck	33.8	37.6	-10.2
Prospect	17.6	20.6	-14.4
Waterbury	55.1	54.7	0.7
Watertown	20.4	22.5	-9.1
Wolcott	19.8	21.7	-8.6

Willimantic - Danielson LMA

Brooklyn	4.8	23.7	51.2
Chaplin	7.6	7.9	-3.3
Eastford	6.6	5.3	23.9
Hampton	7.0	6.6	5.6
Killingly	15.2	14.1	8.0
Plainfield	14.0	14.9	-6.1
Pomfret	6.9	7.2	-3.7
Putnam	18.4	16.5	10.9
Scotland	5.7	6.6	-12.8
Sterling	7.1	7.9	-9.5
Thompson	10.9	10.2	6.5
Windham	20.7	24.3	-14.6
Woodstock	7.8	8.1	-3.7

166-town Average **22.0** **21.7** **1.2**

ABOUT THE CENTERFOLD

As business and residential activity spreads, land becomes developed. Satellite imaging permits measurement of development by the amount of concrete, asphalt, and other "impermeable surfaces" that cover the landscape. In Connecticut, the fraction of each town's land that is developed varies positively with population density. Also, towns located along the shore or that serve as employment centers for surrounding communities tend to be more developed. After controlling for those three factors, 45 towns are developed at levels to within 5% of their predicted values, but

121 towns prove either "more developed than expected" (> 5% above predicted) or "less developed than expected" (> 5% below predicted). Three towns lacked sufficient data on which to base a prediction. The map shows that heavily urban areas along the I-91 and I-95 corridors and heavily rural areas in the northwest and northeast corners of the state are more developed than this simple model would predict. Many of Connecticut's suburbs, despite the rapid pace of recent development, are less developed than predicted.

Land with a View:

HOW NUTMEGGERS LOOK AT OPEN SPACE

BY EKATERINA GNEDENKO AND
DENNIS HEFFLEY

What's your definition of "open space"— public parks, privately held farmland, or just a big backyard? Support for different types of open space depends on how much people are asked to pay for it, knowledge of and attitudes toward open space preservation, age, and housing lot size. Controlling for these and other factors, people with larger lots demand more, not less, publicly provided open space.

Each type of open space is shaped by public policies. Federal, state, and local governments acquire land that is used for public parks, conservation areas, and the like. Generally, the public uses this type of space at little or no charge. But not all open space is really open to the public. Connecticut, for example, also uses taxes to finance the purchase of development rights (PDR) to farmland. The farmer receives a sum of money to give up future rights to develop the land. The land can still be sold, but it must remain in agricultural use as long as the State holds the development rights. This type of open space might offer visual amenities, environmental protection, and local "food security," but PDR programs do not ensure public access to the land. Finally, local zoning ordinances affect the size of building lots ("private open space") and the overall density of residential and commercial development.

So how do people value these different types of open space? Is there any link between their support for public parks or PDR programs and the size of the lot they occupy? At first blush, these three types of open space might seem to be substitutes—items that can

be used in place of one another. If my backyard is big enough, I may not care much about public parks or farmland preservation, but if I live in a high-rise apartment with little yard space of my own, I might see public forms of open space as essential—a way to compensate for my crowded living conditions.

But suppose that people who value "private open space" and live on large lots also value other types of open space, revealing this preference in their willingness to pay for more public parks or more farmland preservation. For these folks, the various types of open space are complements—items that are used together, rather than in place of one another.

Both stories are plausible, so which is it, substitutes or complements? One way to approach this question is simply to ask people how they feel about various types of open space. Fortunately, that's been done. In 2002, the University of Connecticut's Department of Agricultural and Resource Economics teamed up with the Center for Survey Research and Analysis (CSRA) to survey 700 Connecticut residents on their attitudes toward open space preservation. The survey included two key questions about the degree of support for the state's PDR program and its purchase of open space for parks and other public uses. About half the respondents were asked the following questions.

Question 1: "Over the past ten years, the state bought development rights to an average of 1,000 acres of farmland each year throughout Connecticut. Next year, if the program bought development rights on 1,000 acres, and cost your household an additional \$X in Connecticut state

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taxes, would you favor or oppose this program?”

Five different values of X (1, 3, 5, 7, 9) were randomly used in Question 1, and respondents were asked if they: strongly favored, mildly favored, mildly opposed, strongly opposed, or did not know. Other factors constant, we would expect a *higher* value of X to draw *less* support for the PDR program.

Question 2: “Over the past ten years, the state bought an average of 3,000 acres of open space land for parks and conservation areas throughout Connecticut. Next year, if the program bought 3,000 acres of open space, and cost your household an additional \$Y in Connecticut state taxes, would you favor or oppose this program?”

Five different values of Y (4, 12, 20, 28, 36) were randomly used in Question 2, and respondents were again asked how strongly they supported or opposed the program. (Values of Y used in Question 2 exceeded the values of X used in Question 1, because more acreage is involved and it costs more to purchase land outright than to simply purchase development rights.) As before, a *higher* value of Y should elicit *less* support for state purchases of land, other things constant.

The percentage distribution of responses to each question is shown in the double bar graph. The raw responses suggest that open space preservation, via PDRs or direct land purchase, enjoys considerable public support. But these responses alone tell us little about whether the tax-price of such programs (X or Y) affect this support, and whether other factors might also play a role. Fortunately, the same survey also gathered data on respondents’ knowledge of the PDR program; whether they felt it was appropriate to use tax money for PDRs and land purchases; whether they had visited a farm or public park; and their age, race, gender, education, household

income, number of children, and housing lot size. The last variable is particularly useful in determining whether the various types of publicly provided open space are substitutes or complements for that backyard. If they are substitutes, a larger lot should *reduce* the individual’s support for open space; if complements, a larger lot should *increase* support.

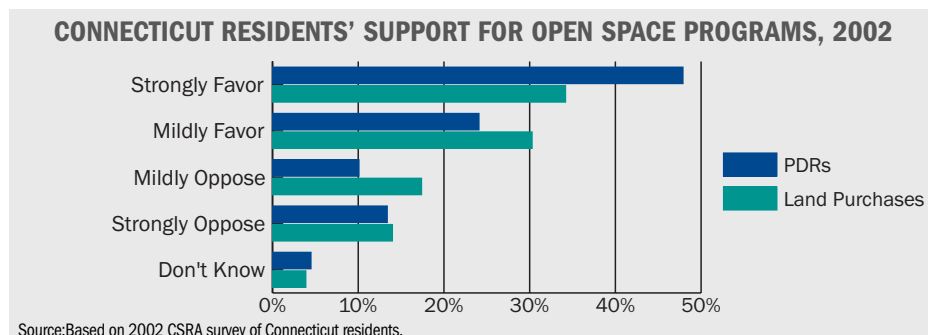
We used a logistic regression model to analyze the factors that contribute to a “favor” (versus “oppose”) response to the two survey questions noted earlier. This type of model has the desirable property of ensuring that the predicted probability that any respondent in the sample will favor the proposal, based on the estimated relationship, will range from zero to one. Standard linear regression models lack this feature.

For the first question, we find that X, the proposed tax-price to the individual, reduces the probability that the person will favor the government’s purchase of development rights, but this effect is small and not very significant. This result may reflect the limited range of proposed values (X = 1, 3, 5, 7, 9); a larger range might have elicited more price-sensitivity. Other, statistically more significant, variables included: whether the person interviewed believed that PDR programs represent a good use of tax dollars (positive effect); whether the person was under 35 years of age (positive effect); and whether the person’s housing lot size exceeded one acre (positive effect). The latter result suggests that (inaccessible) open space provided via

a PDR program is a complement to housing lot size. People who have plenty of private open space still want to see that farmland.

But it’s not just the demand for PDRs that increases with the respondent’s lot size. A similar analysis of answers to the second question, regarding the state’s outright purchase of open space, again indicates mild sensitivity to the tax-price (a higher Y reduces support), and positive effects on support for state land purchases if the person interviewed: had heard about this program; believed such purchases were a good use of tax dollars; and was under 35 years old. Support for land purchases, like the support for PDRs, was positively related to lot size, but this effect was statistically less reliable than in the PDR case.

What can we conclude from such results? First, as households “sprawl” into less urban settings and consume more private land per person (bigger housing lots), they may also increase their demand for publicly-funded open space, adding even more to the pressure on suburban and rural land markets. But this may ultimately provide a brake on the process. As land prices rise due to this pressure, it becomes increasingly expensive to purchase large lots and to provide open space through direct land purchases by the state or its PDR program. How soon this will happen is a question that requires a more dynamic study of housing markets, open space programs, and how they interact to shape Connecticut’s pattern of land use.



BRASS TACKS

P's (if not Q's): Poverty, Patents, Publicity and Price-Gouging

BY STEVEN P. LANZA AND
ARTHUR W. WRIGHT

POVERTY AMID PROSPERITY

Recently released Census figures put the state's poverty rate at 10% in 2004. The good news is that this estimate is 2.7 points below the U.S. average and ranks Connecticut 15th from the bottom among the fifty states and the District of Columbia. What's more, a 10% poverty rate is about what you'd predict, given the recent time trend in Connecticut poverty and the state's sluggish recovery from the last recession.

The bad news is that the Census estimate represents a nearly two-point rise in poverty compared with 2003. And considering the factors that explain differences in poverty across states, we would expect Connecticut to be doing much better than it actually is.

Casual empiricism suggests that poverty varies inversely with income, education, the share of married couple families, and job growth. And the poverty rate tends to be higher for children than for adults. In 2004, Connecticut ranked 2nd in median household income, 12th in the share of residents with a high school diploma or better, 21st in the percentage of married households, 30th in the share of households with one or more children, and 47th in job growth. Taking all these factors into account, Connecticut's poverty rate should be closer to 7% than to 10% and one of the lowest in the nation, even with the state's slow job growth. - *S.P.L.*

PATENTLY INGENIOUS

For the U.S. Patent Office to award a patent, it must be convinced that the invention is new, useful, and not obvious to a professional in the field. So the number of patents per capita is often used as an index of innovation. By this measure Nutmeggers, with their venerable reputations for Yankee ingenuity, remain a creative lot.

In 2004, Connecticut ranked 9th among the states in the number of patents issued per resident, with 4.5 patents per 10,000 people. Idaho topped the list at 12.8, and Vermont, Massachusetts, California and Minnesota filled out the top five with 6.4, 5.7, and 5.4 and 5.4 patents per 10,000 people, respectively.

In Idaho, 1,337 of the state's 1,785 patents, or 75% of the total, were awarded to Micron Technology, Inc., a large manufacturer of computer memory chips. More than half of Vermont's patents went to computer behemoth IBM. No single organization so dominated the field in Massachusetts, but MIT, one of the top engineering schools in the country, and EMC, a leading software and information storage company, tied for the largest individual share with 3% each. Thus, in the states that outrank Connecticut, information technology figures prominently in their leads.

In contrast, the Nutmeg State's ranking reflects continuing innovation by more traditional manufacturing firms. In Connecticut the largest share of patents, 8%, went to UTC and its subsidiaries. The next-biggest share, 7%, went to mailing equipment maker Pitney Bowes, followed by pharmaceutical giant Pfizer with 6%. - *S.P.L.*

THE NEWS FROM HERE

For a small state, Connecticut has made some big waves in the news lately. The nation's front pages told of the BRAC Commission's decision to spare the Groton Sub Base; the Supreme Court's *Kelo* decision on New London's use of eminent domain (see Miceli and Segerson's article on page 4); and the state's suit against the federal government over unfunded mandates in No Child Left Behind.

But appearances may be deceiving. A recent Internet search (9/30/05) of states in the news, using the Google News search engine, found Connecticut ranking only 40th among states in the number of news stories per resident, with 5.7 stories per 1000 people. Since the search came only a month after hurricane Katrina, it is not surprising that Mississippi and Louisiana topped the list with 50.3 and 43.2 stories, respectively. Still, 37 other states had "denser" news coverage than Connecticut.

News, like politics, is mostly local. News stories per capita are negatively related to a state's population and positively related to its land area. So rural states like Kansas, Wyoming and New Mexico dominate the rankings, while urban states like California, New Jersey, Illinois and Pennsylvania bring up the rear. Given Connecticut's middling population and small land area, we make about our share of breaking news.

Still, pound for pound or (better) acre for acre, the Nutmeg State was a heavy hitter, in terms of *significant* national news, in 2005. - *S.P.L.*

AND SPEAKING OF BEING IN THE NEWS...

"The area in and around Storrs, Conn., home to the University of Connecticut" was Slate e-magazine's winner as "America's Best Place to Avoid Death Due to Natural Disaster" (Brendan Koerner, September 15, 2005, 3:20 A.M. PT). The dubious honor made the evening news, at least on National Public Radio, complete with the alleged clincher that Storrs was near a major teaching hospital (a boo-boo corrected later the same day). Koerner did not mention the odd propensity of 10-15,000 locals to seek refuge in large sports arenas 2 or 3 times per week in winter. Nor did it count the University's annual Spring Weekend as a natural disaster.

Slate admitted its conclusion was "by no means scientific". Still, the study did involve number crunching plus some educated guesswork, which passes for science even in Kansas. Starting with data on Federally-declared disasters since 1965, Koerner eliminated the highest 30 states, plus Hawaii (too much water, too many volcanoes) and Alaska (brrrr). (Populous California's per-capita disaster fatality rate is low, but its roster of threats to life, limb and property is straight out of the Book of Revelation.) Ranking the remaining 18 states by disaster deaths per thousand people since 1995, he discovered that the southern New England states—Rhode Island, Massachusetts, and Connecticut—ranked lowest (0.00286, 0.00299, and 0.00587, respectively), or should we say highest? Koerner's aversion to exposed ocean coastline and severe winter weather vaulted Connecticut from third to first place, and the winner—the greater Storrs area—was 40 miles inland, with its own teaching hospital (well, not really).

Before you start planning to relocate to Storrs, be advised that Koerner does not guarantee anyone's personal safety there. Also, be aware that when this writer returned to Connecticut

from the midwest and Tornado Alley in August 1979, the very next month a tornado ripped through the outskirts of Bradley International Airport, and a hurricane knocked out local power for three days. Oh, yes, don't schedule your move on a day when the Huskies are playing at Gampel. - A.W.W.

AS THE WORLD TURNS: GASOLINE "PRICE GOUGING" I

Cries of "price gouging" follow sudden spikes in oil prices as night follows day. True to form, the spike spawned by Hurricane Katrina has prompted a State investigation under Connecticut's anti-price gouging statute, and calls by more than one elected official to strengthen that law.

Price gouging is a bit like an elephant: hard to describe, though you're pretty sure you'll know one when you see it. Anyone who's bought a hot dog and a beer at a sporting event in recent years may well have felt price-gouged.

The Nutmeg State prohibits charging "an unconscionably excessive price" when there's an "abnormal market disruption". (Never mind what a "normal" market disruption or a "conscionably" excessive price is.) Evidence of a violation is a "gross disparity" between cost and price.

Connecticut residents may feel safer having a law against such an evil-sounding practice on the books. But prosecutions for price gouging are rare; in the latest round of oil-price ups and downs, the State has not yet brought any charges. As for the proposed strengthening of the law, a high State official told a *Hartford Courant* reporter, "I can't tell you prices at the pump would have been any lower had we had this [new] law. But it would have strengthened our hand."

To do what is not clear. After the shortages and long, frustrating lines at the pump spawned by gasoline price ceilings back in the early 1970s, most officials are understandably wary of trying to jawbone gasoline prices down by threatening prosecution. - A.W.W.

GASOLINE "PRICE GOUGING" II

So is it pointless to have a law against price-gouging, let alone to try to strengthen it? Perhaps not. It may offer a way for elected officials to be seen to "do something", or at least to speak out, about a gasoline price spike without actually making things worse.

Gasoline is a special good. (In New England, so is home heating oil.) Even at today's prices, fuel remains a small percentage of the total cost of owning and operating a car. But gasoline price jumps are visible and tangible, and (given the way most of us live today) we're frequently reminded of them. There's a reason that TV news reporters hang out at gas stations to tape interviews with people who are incensed, or face financial ruin, as they fill up their SUVs.

Incensed motorists facing financial ruin because of price gouging make for more compelling evening newscasts than the mundane realities of how petroleum markets actually work. (*Warning: the rest of this paragraph may cause drowsiness.*) A simple fact: There are actually two markets for gasoline that move in tandem but in opposite directions: one for use (retail), and one to store the product for eventual delivery (wholesale). When there's a sudden supply disruption—or the plausible threat of one—the demand to store products increases, because the disruption will reduce total product moving through the supply chain. (And because jobbers can fetch better prices for existing stocks if they wait to sell them; this is "speculation" to economists but "peculation" to politicians.) A sudden increase in the demand-to-store suddenly raises wholesale prices; the consequent reduction in supply-for-use suddenly raises retail prices. How high? Enough to "clear the market"—that is, no would-be storer is willing to offer a higher price for another thousand gallons, and no SUV owner wants to buy any more fuel at the going price. (*Yawn.*) - A.W.W.

LABOR MARKET ACTIVITY INDEX

Connecticut's Regions Are Still Off Stride

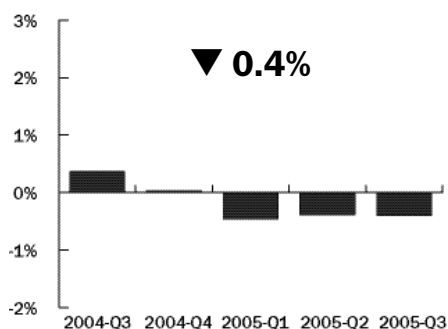
BY STEVEN P. LANZA

With the jobless count rising, and the manufacturing sector no longer posting gains in hours and earnings at a hurried clip, Connecticut's indexes of area labor market activity (LMIs) are still off stride. Activity has slowed across all regions: Bridgeport-Stamford and Norwich-New London are giving ground, while Hartford, New Haven and Waterbury, though gaining, are advancing more slowly.

The silver lining in the darkening clouds: the rising number jobless could actually be good news. Slow job growth is pulling residents back into the state's labor pools, but until all of them land jobs, total unemployment is bound to go up.

Finding jobs won't exactly be a breeze, however. All of the larger labor markets, except Waterbury, added jobs in quarter three, but the pace of new hiring promises to slow in coming quarters.

The LMI measures the four-quarter change in a composite index of labor activity for every labor market in the state. For the five major areas the index includes five variables: the labor force, jobs, the number unemployed, weekly manufacturing hours, and real hourly earnings in manufacturing. For the four other areas, the index excludes the last two variables for lack of data. The bar graphs show the recent percentage changes in the LMI. All figures discussed in the text are four-quarter changes unless otherwise indicated.



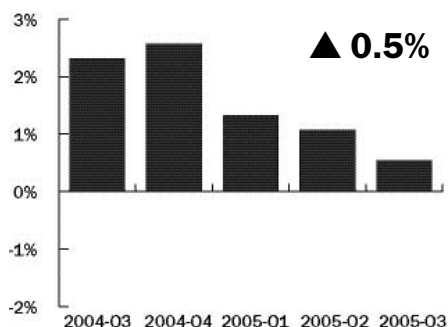
BRIDGEPORT-STAMFORD

Despite a surge in job growth, the area's poor performance in manufacturing weighed the LMI down yet again.

A jump in the number of jobless added to the drag that shrinking real earnings and shorter hours in manufacturing placed on this labor market.

Climbing job totals in government more than offset the cuts in manufacturing, and gains in finance, leisure and education added to the net increase.

Seasonally-adjusted payrolls shot up by 4,000 in Q3, and gains of a thousand jobs per quarter could be in the offing for the coming year.



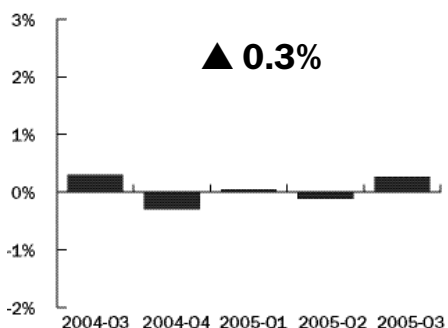
HARTFORD

Registering longer hours worked, for higher real earnings, Hartford's LMI is still rising, though momentum continues to slow.

Expanding payrolls drew more residents into the labor force, so the ranks of the unemployed grew apace.

With employment in the goods sectors flat, Hartford's job growth hinged on services, particularly professional-and-business services, and education-and-health-care.

Hartford's seasonally-adjusted payrolls rose by 1,900 in Q3, following a Q2 gain of 3,000; look for job growth of more than 1,000 per quarter to continue.



NEW HAVEN

New Haven received a Q3 boost to its LMI from a 7.0% surge in real hourly earnings and a 1.1% deepening of the labor pool.

A small cut in manufacturing hours had little effect on the index, but a 12.7% increase in the jobless number did shave 0.4 points off the LMI growth rate.

New Haven posted a 0.2% four-quarter increase in jobs, but the area ended up trading gains in leisure-and-hospitality for losses in finance-and-insurance.

New Haven added 2,700 seasonally-adjusted jobs to payrolls in Q3, recovering its Q2 losses, and the area is poised to tack on another 3,000 posts over the coming year.

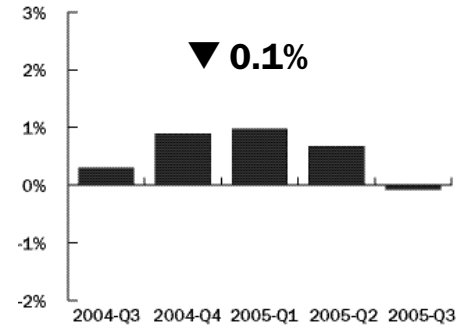
NORWICH-NEW LONDON

A significant jump in the number of unemployed and a drop in real hourly earnings nudged Norwich-New London's LMI downward.

Continued job gains and an expanding labor force nearly offset the resistance offered by more joblessness and lower pay.

Every sector except Information posted four-quarter payroll increases, with health services leading the way.

On a seasonally-adjusted basis, the area's payrolls grew by 1,200 in Q3, and the LMA should add 500 to 1,000 jobs each quarter over the next year.



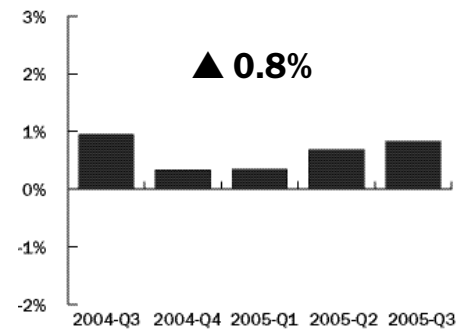
WATERBURY

Waterbury continued to build LMI momentum, despite a slowdown in job growth and a jump in the number unemployed.

Real hourly earnings in manufacturing held steady, as average hours worked climbed 8.0% and the labor pool grew by 1.3%.

Manufacturing jobs are up, but, save for gains in education and health, jobs in most other service sectors were at best unchanged.

Flat in Q3 but still above its trough, Waterbury's seasonally-adjusted payrolls should grow by one or two hundred per quarter this coming year.



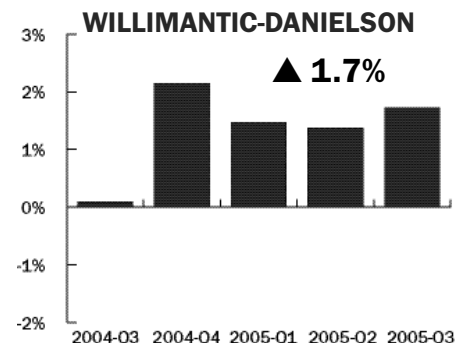
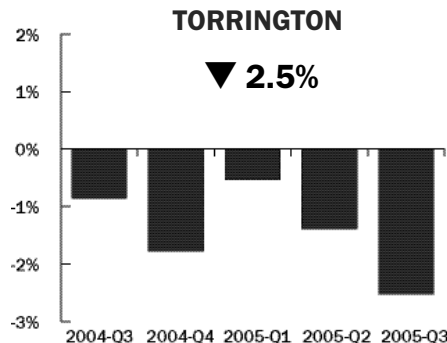
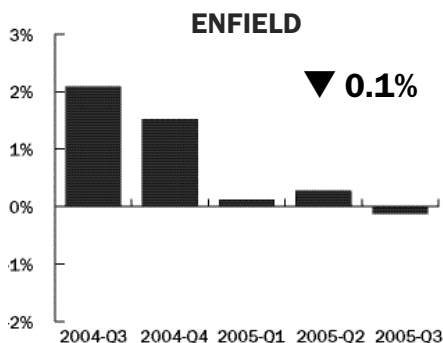
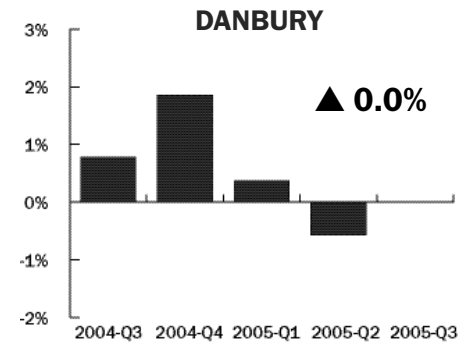
OTHER AREAS

Danbury: Danbury's LMI failed to advance, as a big jump in the number of unemployed offset modest gains in nonfarm payrolls and the labor force.

Enfield: More willing workers entered Enfield's labor market, but with fewer jobs to go around, the number unemployed moved up as well.

Torrington: Torrington's lengthening unemployment rolls only aggravated an LMI decline triggered by the area's shrinking payrolls and tumbling labor force.

Willimantic-Danielson: Healthy job growth attracted new entrants to the labor force, fueling a hike in the LMI, but the number jobless climbed, too.



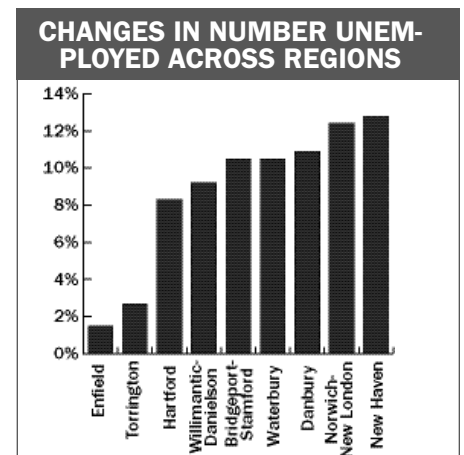
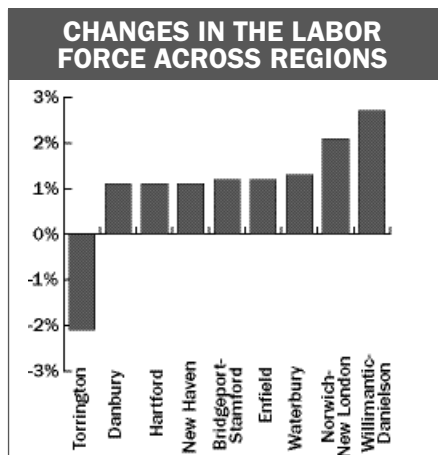
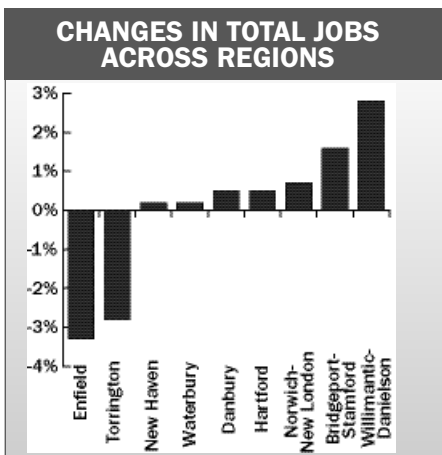
LABOR MARKET DATA

*Connecticut's
"Quiet Corner"
retained its hold on
labor-indicator
first place in
2005-Q3.*

Labor Market Area	LABOR FORCE		NONFARM JOBS		UNEMPLOYMENT RATE (%)	
	2005-Q3 (000)	% Change Year Ago	2005-Q3 (000)	% Change Year Ago	2005-Q3	2004-Q3
Bridgeport-Stamford	468.0	1.2	412.1	0.7	4.9	4.5
Danbury	90.4	1.1	68.0	0.5	4.1	3.8
Enfield	48.1	1.2	44.1	-3.3	4.8	4.8
Hartford	571.1	1.1	537.6	0.5	5.5	5.1
New Haven	304.7	1.1	269.9	0.2	5.4	4.9
Norwich-New London	153.4	2.1	138.1	1.6	4.7	4.3
Torrington	53.2	-2.1	35.7	-2.8	4.8	4.5
Waterbury	101.1	1.3	68.8	0.2	6.6	6.0
Willimantic-Danielson	55.9	2.7	36.0	2.8	5.7	5.3
Statewide	1,831.9	1.1	1,666.6	1.2	5.2	4.8

*Our state's "rust belt"
is still suffering,
though New Haven
played catch-up on
hourly earnings in
manufacturing.*

Labor Market Area	MANUFACTURING JOBS		MANUFACTURING WEEKLY HOURS		MANUFACTURING HOURLY EARNINGS	
	2005-Q3 (000)	% Change Year Ago	2005-Q3	% Change Year Ago	2005-Q3	% Change Year Ago
Bridgeport-Stamford	40.5	-2.7	40.8	-2.4	19.42	-7.5
Danbury	-	-	-	-	-	-
Enfield	-	-	-	-	-	-
Hartford	64.0	-0.1	43.6	0.7	21.10	5.2
New Haven	34.1	0.3	41.5	-0.1	16.69	11.1
Norwich-New London	17.9	2.3	41.7	0.1	18.86	2.0
Torrington	-	-	-	-	-	-
Waterbury	11.0	2.5	41.3	8.0	19.35	4.0
Willimantic-Danielson	-	-	-	-	-	-
Statewide	196.5	-0.2	42.0	1.4	18.96	2.8



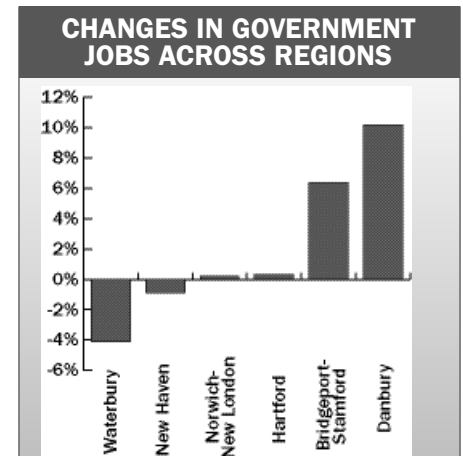
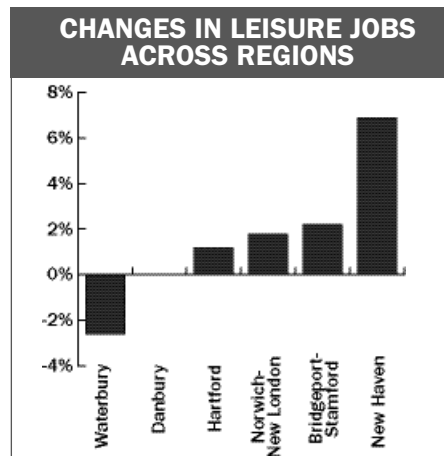
Labor Market Area	HOUSING PERMITS		HOUSING PRICES		CONSTRUCTION JOBS	
	2005-Q3	% Change Year Ago	2005-Q3 (000)	% Change Year Ago	2005-Q3 (000)	% Change Year Ago
Bridgeport-Stamford	677	12.6	681.8	13.5	15.3	-0.4
Danbury	170	-17.1	389.6	9.9	-	-
Enfield	72	26.3	202.6	10.9	-	-
Hartford	909	-11.3	303.4	6.3	22.3	-1.0
New Haven	283	-33.3	273.3	15.8	12.5	1.1
Norwich-New London	271	-2.2	262.3	12.4	5.1	6.3
Torrington	94	-10.5	218.6	16.3	-	-
Waterbury	93	-5.1	183.6	13.2	3.2	2.2
Willimantic-Danielson	152	21.6	181.3	11.5	-	-
Statewide	2,721	-6.7	413.8	11.0	75.6	6.9

Housing permits deflated some, but price increases continued to bubble away.

Labor Market Area	TTU* JOBS		LEISURE JOBS		GOVERNMENT JOBS	
	2005-Q3 (000)	% Change Year Ago	2005-Q3 (000)	% Change Year Ago	2005-Q3 (000)	% Change Year Ago
Bridgeport-Stamford	74.1	-0.2	35.4	2.2	45.4	6.4
Danbury	15.7	0.4	5.4	0.0	7.2	10.2
Enfield	-	-	-	-	-	-
Hartford	88.5	0.5	39.6	1.2	79.9	0.3
New Haven	50.2	0.4	23.1	6.9	31.4	-0.9
Norwich-New London	22.5	2.1	15.5	1.8	39.4	0.2
Torrington	-	-	-	-	-	-
Waterbury	13.1	-0.8	5.0	-2.6	9.4	-4.1
Willimantic-Danielson	-	-	-	-	-	-
Statewide	312.1	2.3	137.3	1.5	231.2	0.2

Jobs grew in TTU and Leisure, but Government offered little to write home about.

*Trade, Transportation and Utilities



CCEA FORECAST

Above Average Growth Persists, But Will It Last?

BY PETER E. GUNTHER

Revised estimates of Connecticut income data resulted in a better performance than previously reported for Real Gross State Product (RGSP) and personal income in 2004. RGSP, which we now expect to approach \$180 billion this year, is forecasted to reach \$191 billion in 2007, implying growth of some 3.0% per year. That is marginally better growth than the 2.8% average rate of the last ten years, though off markedly from the robust 5.1% in 2004 and 4.1% this year.

The bar chart shows expected sectoral growth rates in real and nominal GSP for 2004-2005. The differences between real and nominal growth rates pinpoint where pricing pressures have appeared. The mild overheating in construction, transportation-and-public-utilities, and other services including trade suggests that those sectors have been affected by increased energy costs. And the rate of price increase in government services is high relative to that of the private sector.

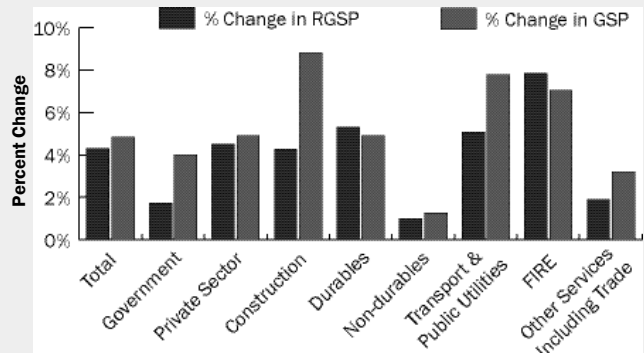
This year, employment is expected to reach 1,670,000, an increase over last year of about 20,000, consistent with earlier forecasts. By 2007, employment is forecasted to reach 1,692,900, approaching its previous peak of 1,693,200 in 2000.

Seasonally adjusted employment data, along with projections for 2005-Q4, indicate employment growth in Connecticut of 1.1-1.2%, which passes for a good year these days: That rate is more than double the average rate of 0.5% per year in 1995-2005. Reflecting the slowing growth in national RGDP, forecasted state employment growth will move back in the direction of the longer-term average over the next two years.

Given the virtually flat performance over the last eight quarters, manufacturing jobs may hold steady, but that won't reverse the sector's long-term slide, of course. Similarly, construction employment has remained flat over that same period; a slight decline in building permits held job growth back, though the average value of permits rose. Eight-quarter average annual growth in employment in finance-insurance-and-real-estate (1.3%), government (1.1%), and transportation-and-public-utilities (0.8%) exceeded overall average employment growth. Forecasted average employment growth rates in all services other than FIRE (0.5%) were near average trends.

Differences between real and nominal growth rates show that Construction, TTU and Other Services have been hit by increased energy costs.

GROWTH RATES IN RGSP AND GSP BY SECTOR, 2004-2005



ESSENTIAL (continued from page 24)

The remedy is investment—public and private, and preferably in partnership—to enhance municipalities' property tax rolls. Eminent domain, properly used, can help recycle urban land, taking development pressure off suburban and rural property.

Cities and towns badly need property tax reform. Even with it, though, our land-poor cities will need to wring out of each parcel the highest yield of taxes, jobs and public benefit.

How can our localities attract investment if they cannot provide ready land for new buildings? Where would Hartford's Adriaen's Landing or Stamford's burgeoning downtown be

without eminent domain? People's Bank stayed in Bridgeport because that hard-pressed municipality used eminent domain to assemble a site. Altogether, Bridgeport created nearly 1 million square feet of commercial space that pays \$1.5 million per year in new taxes; another 4.5 million square feet in progress will yield, by conservative estimates, \$15-\$25 million more in taxes.

Municipalities can do much to avoid displacing residents. The Bridgeport Economic Development Corp. has gone to great lengths to accommodate those affected. We have moved homes to new lots and made

new porches, driveways and utility connections at the government's cost, all part of a fair-compensation package negotiated with the owners without recourse to the courts. And we have relocated families from substandard housing; some even bought homes with their relocation funds.

If we want our cities to develop, create jobs, achieve economic self-sufficiency, and stabilize their tax bases, while also serving their regions as cultural and transportation hubs, we must preserve the judicious use of eminent domain authority for urban redevelopment.

UNNECESSARY (continued from page 24)

legislation to restrict eminent domain to its original use—the taking of property only for "public use" projects, not for some ill-defined "public benefit."

Municipalities need eminent domain. Without it, governments would not be able to build schools, roads and other essential infrastructure.

Governments should promote economic development, in cooperation with private developers, but without eminent domain. The largest single urban redevelopment project now underway in Connecticut, Hartford's \$1-billion Adriaen's Landing, will be completed without a single property seizure. (The only use of eminent

domain was a technical proceeding involving a local utility; all sides agreed to the taking and the compensation.)

Municipal governments have many other redevelopment tools. They can build infrastructure. They can offer tax incentives, creative financing, and flexible land use policy—along with a user-friendly local government—to reduce costs and encourage developers to negotiate with property owners.

Big city mayors and "urban renewal planners" who argue that they must have eminent domain exhibit a lack of both creativity and respect for the marketplace. This nation built great cities with a market economy.

Government can encourage and facilitate, but it need not confiscate.

No one knows what will become of the Fort Trumbull project. The grand plans for a convention center, marinas, and upscale shoreline housing have likely been scaled back. The corporate guarantee of hotel room occupancy has long since vanished. Ultimately, the market, driven by the private sector and stimulated by creative public policy, will again determine what will be built.

It was never about the money for the holdout owners who challenged the takings. It was always about their homes.

THE CONNECTICUT TRAVEL AND TOURISM INDEX

The overall index increased 0.7% in 2005-Q3 compared with the same quarter the year before. The index consists of hotel-motel revenues, slot machine revenues, attendance at six major tourist attractions, and traffic on five tourist roads.

Hotel/Motel Rev.	▲	5.6%
Slot Machine Rev.	▲	1.5%
Attendance	▼	7.2%
Traffic	▲	3.0%
Overall	▲	0.7%

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A FORWARD LOOK

Eminent Domain for Urban Redevelopment:

ESSENTIAL

BY BILL FINCH

Fully half of Connecticut's municipalities receive at least 20% of their budgets from the State. So why hinder efforts to reduce their dependency on Hartford? Yet opponents of using eminent domain for urban redevelopment would do just that.

Naysayers rail against transferring cozy family homes to big, bad developers. They support removing property from a city's tax base for schools but oppose private-sector efforts to generate jobs and new tax revenue. If these critics get their way, a powerful, yet rarely used arrow will have been removed from governments' quiver.

Connecticut's 169 cities and towns include some of the smallest political subdivisions in the nation. These tiny jurisdictions are adrift in the rough waters of property taxes. Connecticut tells them to sink or swim; and sink they do!

continued on page 23

UNNECESSARY

BY ROBERT M. WARD

New London's planned renaissance was not threatened by a few property owners intent on squeezing every last nickel out of the public. Instead, overreaching public officials, in concert with urban planners, hijacked the legitimate tool of eminent domain to benefit private developers, spawning the Battle of Fort Trumbull.

More than five years later—and despite the landmark *Kelo* decision—the project remains stalled and New London's future is as uncertain as ever. The only positive aspect of this regrettable tale is the unprecedented nationwide attention that eminent domain is now receiving.

Critics of the homeowners insist that eminent domain is a proper, necessary tool of economic redevelopment. They could not be more wrong. To warp eminent domain into such misshapen and wrongheaded public policy is distressing. I have proposed

continued on page 23



SEN. BILL FINCH
(D-BRIDGEPORT)
CONNECTICUT
GENERAL ASSEMBLY



REP. ROBERT M. WARD
(R-NORTHFORD)
HOUSE MINORITY
LEADER

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