

TESTIMONY

MICHAEL W. FREIMUTH  
CITY OF STAMFORD  
OFFICE OF ECONOMIC DEVELOPMENT

JUDICIARY COMMITTEE  
CONNECTICUT GENERAL ASSEMBLY

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Senators and Representatives, thank you for the opportunity to appear before your committee to discuss how Connecticut's municipalities carry out economic development and in particular utilize the power of eminent domain.

My name is Mike Freimuth and I presently serve as the Director of Economic Development for the City of Stamford. I have had a twenty five year career in economic development, both in the private sector and at the federal and municipal levels.

Last year I appeared before your committee representing the Connecticut Economic Development Association (CEDAS). At that time, I noted that CEDAS supported reform of the state's eminent domain laws and I would like to quickly highlight the comments made at that time and earlier in the year by other CEDAS representatives.

As noted then, due to the small size of Connecticut's cities and their overwhelming reliance on the property tax, older and densely populated municipalities must constantly be in pursuit of the next real estate deal. Meeting contemporary planning and development needs requires both land availability and utility that often falls back on the need to assemble multiple parcels in a variety of inconsistent shapes, sizes and uses. Failure to do so leads to a natural flow of development to suburban and open spaces, to the detriment of the state's overall plan of conservation and development and most critically, the economic health of older areas.

Utilizing eminent domain for such land assembly is undertaken as a last resort, a painful political process under the best of times, and not one pursued with any great love by municipal officials. Such use must flow from comprehensive planning, public benefit tests, reasonable expectation of success and a thorough assessment of alternatives.

CEDAS offered ways to improve this process as well as to strengthen relocation and compensation and Raised Bill 665 incorporates a succinct set of new requirements that meet most of the suggestions found in our testimony last year.

Raised Bill 665 also notes the need to ensure that tax generation is not the 'sole' purpose of eminent domain and emphasizes what Connecticut's Supreme Court and the U.S. Supreme Court have also stated in their rulings. It is well understood that you can not

take property from owner “A” and give it to owner “B”, nor in the words of Justice O’Connor, take from Motel 6 and give to the Ritz. A wider public purpose than just more taxes must be evident. Cities should be able to show improvements in the public place and with the public infrastructure, environmental remediation, the removal of public nuisance, aesthetic improvements, smart growth, increased values of surrounding areas, new jobs, a higher standard of wages, or increased competitiveness in the regional and state economy.

Other changes incorporated into Raised Bill 665 are acceptable although they may be problematical in implementation such as the proposed buy back provision and the governance on representation or mis-representation of eminent domain powers.

However, the establishment of 125% of fair market value as “just compensation” is somewhat arbitrary. But more critically, this can actually act to remove the potential to reach a negotiated settlement. Consider that most deals are reached via negotiation. Why settle if you can get 25% more by being condemned? Why not simply require at least two appraisals and give local authorities the ability to negotiate up to 25% more than fair market value without penalty by funding sources whether local or state based?

Compensation via relocation statutes is also a viable route to settle some of the economic consequences of eminent domain and Raised Bill 665 increases some of the amounts that can be awarded. However, the State hasn’t adjusted its relocation statutes since 1975 and the increases in this bill are modest in light of the increases in the cost of living and real estate since 1975.

Rather than increase the thresholds allowed for relocation, it is my suggestion that the state adopt the federal relocation standards. These offer two advantages. First for tenants, you can adjust the rent assistance payment to meet the 30% of income threshold for housing expenses. Secondly for businesses, since 1993 the federal statute has allowed \$10,000 for business re-establishment expenses. This is the payment for actual tenant fit out of new space, for the actual expenses of improving new real estate to fit your business needs. Presently, state law allows for just the movement of actual business equipment from one location to another and is not clear about the more costly exposure of re-establishing the enterprise.

Finally, with respect to Raised Bill 665, there should be a specific notice to property owners of the actual date of property taking. This is not done today unless it’s part of a particular agency’s policy and then, it’s not always believed or honored by the former owners of condemned real estate who go on occupying or even collecting rents after the fee has been passed. A formal notice from the court to property owners of the transfer of ownership should be required.

Raised Bill 5810 eliminates the ability to utilize eminent domain for economic development and therefore ‘throws the baby out with the bathwater’. The bill does not even allow for the use of eminent domain when attempting to redevelop brownfield properties.

The bill attempts to define blight within the state's Neighborhood Revitalization Zones (NRZs) but omits public nuisances such as a 'crack house' or recognizes that economic obsolescence is a form of blight as well, where a building may look good but no one can use it and it sits idle. By eliminating the use of eminent domain with NRZs, the bill essentially guts the NRZ statute, passed just a few years ago.

Perhaps the bill's introduction of a Property Ombudsman is its most interesting aspect. But it is my belief that the referee system within the court system, slightly amended by Raised Bill 665 is preferable. Increasing the judicial staff support dedicated to eminent domain and making the referee permanent would be as successful as an ombudsman. Massachusetts is considering the establishment of a land use court to tackle the regulatory issues such as zoning and wetland fights but such a court could also oversee eminent domain.

Should the General Assembly pursue the Office of Property Rights Ombudsman, it must ensure that there be a timely response to requests for assistance, information, arbitration and decision making. Its effective date should be further out than July 1, 2006 as it will take time to organize and shouldn't be used as a means to hold up pending eminent domain action, in effect, a de facto moratorium.

Before closing, I would also note that the Planning and Development Committee is considering a variety of bills on this subject. One bill attempts to prevent the use of eminent domain on 'dwelling units' but fails to make a distinction between owner occupied or investor, whether the property is a conforming or non-conforming use; whether its use is consistent or inconsistent with adopted master plans, even whether or not it is habitable.

Other suggestions are to pay the legal expenses of those objecting to eminent domain. In effect, the state may finance a project and finance opposition to it. Some more thought is needed here.

There are a multitude of issues surrounding the use of eminent domain; many have been covered by others at previous hearings. I will be happy to answer any questions you may have about these other aspects or my thoughts today. Again, thank you for the opportunity to comment on the legislation before you.