

Statement on

**H.B. 665 (Raised): CONCERNING EMINENT DOMAIN PROCEEDINGS
and
H.B. 5810 (Raised): AN ACT LIMITING THE USE OF EMINENT DOMAIN BY
MUNICIPALITIES AND MUNICIPAL DEVELOPMENT AGENCIES AND
ESTABLISHING AN OFFICE OF PROPERTY RIGHTS OMBUDSMAN**

Submitted to the Judiciary Committee

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by

Tony Fappiano

Chairman, Legislative and Political Affairs Committee

Good day. On behalf of the approximately 18,000 members of the Connecticut Association of REALTORS®, I wish to comment on S.B. 665: An Act Concerning Eminent Domain Proceedings and H.B. 5810: An Act Limiting the Use of Eminent Domain by Municipalities and Municipal Development Agencies and Establishing an Office of Property Rights Ombudsman.

By way of background, in 2004 the National Association of REALTORS® filed an *amicus* brief in the Kelo case before the U.S. Supreme Court in support of the homeowners. In the wake of the Court's decision, the Connecticut Association of REALTORS® has urged legislators to place more limits on the use of eminent domain in our state. We gave testimony in this regard during the 2005 "special" sessions to both the Planning and Development Committee and to the Judiciary Committee. We do so again, seven months later, in this "regular" session.

Protecting the right of citizens to be secure in their ownership of property is a core value held by REALTORS®. No one disagrees that, at times, it's necessary for the government to exercise its eminent domain power to provide basic public goods or services, like transportation, schools, and courthouses. But that power should be exercised extremely carefully, in conformance with the 5th and 14th Amendments to the U.S. Constitution. *Government is obliged to demonstrate that the taking will materially advance a real and substantial public purpose or benefit.*

Realtors find merit in both bills, although our comments are chiefly directed at RB 665. That measure is especially helpful in that it creates three specific standards that a project must meet *before* a town's legislative body can approve an eminent domain taking by a development agency. First, the public benefits must outweigh any private benefits. Increasing local tax revenue in and of itself is NOT a sufficient public benefit. Second, there must be a showing that the current use of the existing property "cannot be feasibly integrated into the overall development plan." This requirement alone would probably have been enough to derail the seizure of a number of Fort Trumbull properties by the New London Development Corporation. And third, a determination must be made by the legislative body that the taking is "reasonably necessary to successfully achieve the objectives "of the project.

(continued)

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The Connecticut Association of Realtors recommends that this third standard be strengthened. Rather than simply deferring to the local legislative body's findings, there should be an independent review to show that a project truly can deliver long term economic benefit to the community. Having the proposal vetted by a disinterested citizens' panel, composed of builders, Realtors, planners, economists, and other interested professionals would be a good way to ensure that private properties are not seized to serve poorly thought-out, heavily subsidized, ventures.

Subsection (e) requires the development agency to record separate findings that itemize the value of real property and improvements that are acquired. We also recommend that each taking of an individual property be approved by separate vote of the legislative body. Eminent domain is such an enormous power that it only seems prudent to let this serve as an important check on that power.

This same subsection creates a new requirement that development agencies which end up not using the seized property for the intended purpose must allow the original owners, or heirs, the first opportunity to repurchase it. This would seem to be a response to a number of unfortunate cases in the past where eminent domain removed homes or other structures from the tax rolls -- only to have the land sit idle or not utilized as intended.

Section 3 of RB 665 deals with redevelopment agencies and how they determine just compensation. Requiring compensation to be based on appraisals by state certified real estate appraisers, following the Uniform Standards of Professional Appraisal Practice, makes sense. We question requiring that such compensation "be not less than 125% of the fair market value." Rather, we agree with Bill Ethier of the Home Builders Association of Connecticut, who recommends that instead of using an arbitrary percent, why not prescribe 100% of fair market value plus the private property owner's legal costs, relocation expenses, and, in the case of a business, the loss of "goodwill." ?

Sections 5, 6, and 7 of RB 665 attempt to ease the burden of displaced owners by increasing the amount of financial assistance paid. Realtors previously testified that the amounts paid to persons seeking replacement housing (under the Uniform Relocation Assistance Act) needs to be adjusted for inflation and increased housing costs. The limits have not been raised since 1971. We also stated that development agencies should give displaced owners the right to purchase any housing being built as part of the project, similar to the treatment afforded tenants in apartments converted to condominiums.

The other bill, RB 5810, appears to make an attempt to deal with the "scatter-shot" nature of Connecticut's eminent domain laws. There are numerous eminent domain statutes spread throughout the various titles and chapters of our State law. This has led to differences in procedures and standards. Consolidation could lead to more consistency and uniformity, but we are not certain RB 5810 accomplishes this. The provision establishing an Office of Property Rights Ombudsman may be another way to foster greater understanding and communication about these statutes, but our Association is not taking a position on that part of RB 5810 at this time.

Are there any questions? Thank you for considering our views on this important policy issue.