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S.B. 665 -- EMINENT DOMAIN

Judiciary Committee public hearing -- March 17, 2006
Testimony of Raphael L. Podolsky

Recommended Committee action: SUPPORT WITH AMENDMENTS

We support proposals which tighten eminent domain law and assure that it is used only for a genuine public purpose, but we oppose proposals which preclude or overly limit the use of eminent domain for urban revitalization. We also support legislation which provides an adequate level of relocation assistance for persons displaced by urban renewal. In particular, we urge the Committee to make sure that any inflation-based increases in the amount of relocation assistance are applied equally to displaced renters and not only to displaced property owners. We specifically urge the Committee to increase the flat-rate moving/dislocation allowance in I. 258-259 of the bill, which the bill does not increase, and to increase the rent replacement allowance in I. 353-354 by a percentage comparable to the equivalent increase provided for homeowners.

It is true that the power of eminent domain can be misused to promote private development that has no real public purpose, to gentrify at the expense of the poor, or to substitute "slum clearance" for thoughtful rehabilitation. Eminent domain, however, can also be an important tool for urban revitalization; and an excessively narrow interpretation of what constitutes a "public use" can stymie towns from redeveloping in a way that is greatly beneficial to the community as a whole. The first important United States Supreme Court case concerning "urban renewal" was Berman v. Parker, 348 U.S. 26 (1954), which held unanimously that land can be taken by eminent domain as part of a plan to revitalize a blighted area, even though each individual piece of property may not be blighted. It is reasonable for the General Assembly to limit, as Connecticut already does, the circumstances under which eminent domain can be used. However, the adoption of a statute which would allow one person to block a publicly-sponsored project, without regard to the nature of the public benefit and the fairness of the compensation, could have serious adverse impact for communities as a whole.

We therefore believe that the best way to approach eminent domain issues is to maximize procedures which (a) increase the likelihood that any use of eminent domain will in fact be a public use and (b) assure fair compensation to any person, and especially to resident homeowners and renters, whose property or interest is taken by eminent domain.

- Public use: We support provisions, such as those included in Section 1 of this bill, which require that the local legislative body determine that public benefits outweigh private benefits, require examination of whether the property can be integrated into the overall development, and determine that acquisition of the property is reasonably necessary to achieve the objectives of the plan.

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- Fair compensation: Provisions such as those which increase the amount paid to property owners and renters for the value of the taking (e.g., a so-called "market plus" formula to recognize the impact on social and sentimental value and the loss of future value growth) and which increase the amount of relocation assistance allowed for owners and renters will help promote fairness in those cases in which the standards for a taking by eminent domain are met.

The Uniform Relocation Assistance Act, which is amended by Sections 5 through 7 of the bill, offers a good example of how outdated our relocation assistance standards have become. Incredibly, payment levels have not been updated since 1971. The flat-rate moving/dislocation allowance under C.G.S. 8-268(b) (the amount paid for relocation costs in the absence of itemization) remains only \$500 (\$300 + \$200). This unrealistically low amount is what the lowest-income affected households often receive. The rent replacement payment under C.G.S. 8-270 for renters forced to move to higher-cost housing is limited to a maximum of \$4,000 for a four-year period, an amount that translates to \$83.33 per month. That amount, which was set when rents were \$200 per month rather than \$1,000 per month and more, is now likely to represent less than 10% of a new rent for the renter. These are the identical amounts first placed into the statute more than one-third of a century ago.

S.B. 665 doubles the maximum business relocation payment from \$10,000 to \$20,000 (l. 267). It increases the "additional payment" for homeowners by 50%, from \$15,000 to \$22,500 (l. 288). It increases the rent replacement allowance, however, by only 31%, from \$4,000 to \$5,250 (l. 353-354). It does not increase the \$500 flat-rate moving/dislocation allowance at all (l. 258-259). These increases are all desirable, and we support them. Since 1971, however, the Consumer Price Index (CPI) has increased by over 400%.

We therefore urge the Committee to make further adjustments to the rent replacement allowance and the flat-rate moving/dislocation allowance. In particular, the rent replacement allowance should be increased to at least \$6,000 (a 50% increase equivalent to the comparable payment increase for homeowners); and the flat-rate moving/dislocation allowance, which is so very small to start with, should be at least doubled to \$1,000.