



STATE OF CONNECTICUT
OFFICE OF OMBUDSMAN FOR PROPERTY RIGHTS

Public Hearing - March 14, 2008
Judiciary Committee

Testimony Submitted by Ombudsman for Property Rights, Robert S. Poliner

H.B. No. 5857 An Act Concerning Negotiations With Respect to Real Property Acquisition and Use

The Ombudsman for Property Rights favours passage of H.B. No. 5857.

The Ombudsman offers as constructive comments to strengthen the legislation the following:

Raised Bill No. 5857 Section 1 (a) (2) should be amended. I suggest for your review and consideration: **“No person acting on behalf of himself/herself or on behalf of any public agency, as defined in section 1-200, with the power to acquire real property by eminent domain and including an entity authorized to acquire property through eminent domain on behalf of the public agency, may demand or require the payment of money or any other valuable consideration from an owner of real property as a condition for allowing such owner to develop or rehabilitate such property, when the purpose of such development or rehabilitation is consistent with the public agency’s approved development or redevelopment plan or other approved use.”**

Raised Bill No. 5857 Section 1 (b) should be amended as follows: **“Any violation of subsection (a) of this section shall be deemed an unfair or deceptive trade practice under subsection (a) of section 42-110b and any violation of subsection (a) (2) of this section shall be deemed a violation of subsection (5) of section 53a-119.”**

(Added language bolded)

The general statutes should be amended to make it illegal for anyone to demand money or participation in a business enterprise or other valuable consideration as the “price” for allowing a property owner to rehabilitate or develop his/her own property and pursue economic opportunities that would not be deemed inconsistent with the implementation of a public agency’s approved plan of development or redevelopment or other approved use. Such demands by a preferred developer, its employees or agents or by agency officials, employees and agents, whenever occurring, should be deemed an unfair trade practice under CUTPA and a crime punishable by fine and imprisonment.

Reason 1: There must be boundaries that preferred developers and their agents and government employees and officials can not cross without serious penalties. Demanding money or

participation as the price to exempt a property from condemnation or stealing the idea and the contacts that the property owner has developed, should not be tolerated. Such acts constitute unfair trade practices and extortion and should carry both civil and criminal penalties.

Reason 2: Eminent domain is a power that government should use only as a last resort after fair and above board negotiations have occurred. Government and government agents including developers, their agents and agents of any entity authorized to acquire real property on behalf of a public agency should be held to the highest legal and ethical standards when engaging a property owner in discussions that could lead to condemnation of the subject private property. Although government is thought to be exercising a legitimate police power when engaging in redevelopment, it is not an exercise of police power when the taking of private property is for a development project intended to enhance general economic conditions in a municipality and the State, for example, under Chapters 132 and 588/.

I draw no distinction between residential and other types of property or the amount of the value of property subject to potential government taking because the intent of the bill is to regulate and restrain government officials and others from engaging in unlawful and potentially corrupt practices.

I believe other recommendations I have made with respect to shifting the burden of proof and better defining the terms "public use" and "public purpose" would also enhance prospects that government officials and others would act more carefully and thoughtfully when dealing with property owners. I believe a more balanced approach between government and private property owners serves the public interest in that owners will be assured of greater protection against arbitrary decisions of government officials. I am providing those recommendations again for your consideration and inclusion into Raised Bill No. 5857.

Recommendation #1: With respect to takings pursuant to Connecticut General Statutes Chapters 130, 132 and 588/, government should be required to carry the burden of proving the proposed development will, in fact, result in a public benefit and is not a pretext for taking the property of one owner to give to another primarily for that owner's use, enjoyment and profit. Currently this burden is carried by the property owner. The level of proof should be by clear and convincing evidence.

Reason: Government has greater access to the information involving the development plan, to developer interest in the properties, to the progress of negotiations relating to disposition of the properties, to the reasons for taking particular properties by eminent domain and to the likelihood of the project actually occurring. Government is in a much better position to provide all of this information and should bear the burden of proof. Right now there is no statutory assurance that the public will benefit from any particular development or that the development as proposed will actually occur. A heightened standard of judicial review ensures constitutional rights of private property owners will be protected.

Recommendation #2: With respect to takings pursuant to Connecticut General Statutes Chapters 130, 132 and 588/, government should be required to carry the burden of proving the

specific condemnation of property is reasonably necessary to implement the development plan. The level of proof should be by clear and convincing evidence.

Reason: As I have stated, the principal reason for shifting the burden of proving the proposed development will, in fact, result in a public benefit is government and the developer have much greater knowledge and access to all of the information related to the development. Requiring the property owner to prove a negative, that the taking of private property is not necessary to the implementation of the development plan places an almost insurmountable burden upon the owner. It should not be the property owner's burden to disprove the need for the taking. Again, a heightened standard of judicial review ensures constitutional rights of private property owners will be protected.

Recommendation #3: There should be greater clarity with respect to the definition of the terms "public use" and "public purpose." In most states "public use" is defined by statute. Without restricting the ability of municipalities to engage in needed redevelopment or economic development projects but believing there should be a better balance between property owners and government than now exists, I propose enactment of a new law defining "Public Use" or "Public Purpose" to mean:

"the possession, occupation and enjoyment of real property by the public, public agencies (as defined in section 1-200) or a public utility; or, the redevelopment of slum or blighted areas as described in section 8-124; or, municipal and business development projects as described in sections 8-186 and 32-221. Public benefits of economic development such as increasing the tax base, increasing tax revenues, employment or improving the general economic health and welfare of the municipality or the State of Connecticut do not by themselves constitute a public use or public purpose. The taking of any property by eminent domain for the purpose of transferring the property from one private party to another under the pretext of public benefit is prohibited."

(New language bolded)

Reason: Most states define by statute the terms public use and public purpose. Connecticut's courts look to the legislature for guidance in determining what constitutes public use or purpose. Right now just about any reason for condemnation no matter how general meets the public use test under our Supreme Court's interpretation of the current statutory scheme. The definition offered above is consistent with our current practices and statutory enactments.

The Ombudsman for Property Rights respectfully requests the Judiciary Committee to strengthen Raised Bill No. 5857 as suggested above. If you have any questions, please call the Office of the Ombudsman for Property Rights at 418-6356.