



STATE OF CONNECTICUT
OFFICE OF OMBUDSMAN FOR PROPERTY RIGHTS

Testimony Re: Senate Bill No. 840

To: Senator Slossberg, Representative Spallone, ranking members, senators, representatives, ladies and gentlemen:

The governor has proposed in her budget elimination of several agencies and commissions including the Office of Ombudsman for Property Rights ("Office"); notwithstanding, that eminent domain is a fact of life in Connecticut and will be used more often in the next few years as federal stimulus dollars fuel new highway, transportation and other projects.

Eminent domain is an adversarial process. It pits the government against its citizens. It takes away from people property or locations that have been their homes and businesses for years. It has been used aggressively and at times without much care or consideration for the concerns of the people affected. Connecticut's definition of public use is so broad there is hardly any taking that can not in some way be rationalized. Connecticut is associated with one of the most despised U. S. Supreme Court decisions of the last 100 years, Kelo v. City of New London.

As Connecticut's first Ombudsman for Property Rights, I am here today to defend the decision made by the General Assembly in 2006 to establish the Office and to say "you were right then" and urge you to stay the course and allow the Ombudsman to continue to perform his work on behalf of real property owners, small business owners and the public agencies that utilize eminent domain.

I am requesting this committee to determine that Connecticut's homeowners, small businesses and other owners of real property should not be deprived of the services of the **only Connecticut public agency dedicated to protecting property rights and assisting**

property owners facing eminent domain and displacement. Nor should public agencies be without an independent source of information or an impartial arbiter of disputes with owners. I have provided services to many municipalities including, by way of diverse examples, review of three proposed downtown redevelopment plans for the City of Hartford and assistance interpreting statutory provisions for the North Canaan fire and sewer district.

I can report to you today that what was intended in 2006 by establishing the Office of Ombudsman for Property Rights is occurring - **Connecticut property owners are receiving fairer treatment by government.** I believe it is, in part, the result of the amendments to the redevelopment and economic development statutes enacted in 2007, and I'm proud to say, in great part, the result of the efforts of the Office of Ombudsman for Property Rights to implement the General Assembly's intent.

The response I receive after speaking with homeowners and municipal representatives alike is all positive. The image of Connecticut created by the Kelo decision as a state that does not care about the average homeowner or small business person is being replaced with an image of a state that respects the rights of all property owners. All of this has happened in less than two years.

The Budget

The budgetary issues are:

1. Can the State of Connecticut afford to keep the Office operating?
2. Even if the Office is affordable, is there sufficient use of the Office by owners, businesses and agencies to warrant continuation of the Office?
3. Can the Ombudsman's duties and responsibilities be assimilated into the Office of Responsible Growth within OPM, as suggested, or any other agency without requiring the hiring of additional personnel who are expert in the field of eminent domain?

Can the State of Connecticut afford to keep the Office?

The principal duties of the Ombudsman for Property Rights are: assisting private owners and agencies in matters dealing with eminent domain and relocation assistance; maintaining expertise and understanding of state and federal statutes and constitutions concerning eminent domain; assisting public agencies in applying constitutional and statutory provisions with respect to eminent domain; identifying state or local governmental actions that have potential eminent domain implications; mediating disputes and deciding compensation disputes in Superior Court; providing information to private citizen groups and to the legal community; and recommending changes to the general statutes to the General Assembly.

In FY 2008-2009 the legislature appropriated \$214,667 to pay the costs of the Office including salaries of the Ombudsman and his assistant. The Ombudsman will return to the general fund on June 30, 2009 approximately \$50,000. On June 30, 2008 the Ombudsman returned to the general fund the unused portion of the 2006-2007 budgeted appropriation in the amount of \$197,960 which was by law (Sec. 48-56) non-lapsing and \$60,311 which represented the unused portion of the budgeted appropriation for the FY 2007-2008.

Why has the Ombudsman been able to return to the general fund nearly 50% of all appropriated sums over the last three fiscal years? First, when the legislature required a study to be performed to determine the feasibility of calculating the loss or gain of good will as a result of displacement by eminent domain, the Ombudsman organized a study committee composed of experts all of whom volunteered their time and services. The Ombudsman wrote the report based on the committee's findings and did not hire a consultant thereby saving taxpayers thousands of dollars. Second, the Ombudsman with the able assistance of his executive secretary created the website and maintains the site without use of any outside vendor. The Ombudsman and his assistant watch their

pennies, nickels and dimes very closely and as a result have minimized expenditures without reducing or eliminating any services.

Based on the results of the last two fiscal years, the Office has expended annually approximately \$170,000 which when apportioned among Connecticut's 3.4 million citizens, costs taxpayers five cents per citizen, per year.

The State of Connecticut can afford and should fund the Office even under these extreme financial conditions as the cost is quite small especially when compared to the benefits and savings owners of real property and small businesses and state and municipal agencies receive and realize.

Even if the Office is affordable, is there sufficient use of the Office by owners, businesses and agencies to warrant continuation of the Office?

Since the Office of Ombudsman for Property Rights commenced operations on June 22, 2007, hundreds of property owners and many of Connecticut's municipalities have sought the assistance of the Ombudsman. Increasing numbers of property owners are requesting mediation. Settlements are being reached in many cases and as a result, money that otherwise would have been spent on protracted litigation, payment of damages, interest, costs and attorney's fees, is being saved.

Assistance means answering hundreds of different questions, often allaying the fears of owners, explaining the process and helping people to determine what information and legal principles are relevant to their situation. Assistance means discussing the relative merits of hiring an independent appraiser or attorney or other professionals, discussing the relevant case law, contacting representatives of DOT or of municipalities and requesting information or urging more personal attention be paid to the owner or business person who is facing eminent domain and/or displacement. Assistance means mediation. Assistance is provided promptly, usually within 24 hours of request.

Other duties such as writing monthly newsletters, updating information on the Office's website, speaking at educational seminars, conferences and meetings and corresponding and meeting with elected officials, agency officials and others are part of the Ombudsman's regular work schedule.

The recently passed federal stimulus bill has appropriated billions of dollars for new highway and other transit projects. DOT will be using eminent domain considerably more than it already does. The owners affected by these new projects will be looking for help. Who will be there to help them next year or the year after if the Office does not exist? Our state government has an obligation to distressed homeowners and small business people to take their calls and answer their letters and mediate their disputes with government agencies.

DOT intends to begin a land acquisition program in 2010 in Middlebury next to the Waterbury-Oxford Airport, the result of a noise study that will affect as many as 100 homeowners. The plan is to purchase and demolish these homes. Because the DOT program is "voluntary," homeowners will have no recourse to court or any impartial third party if the amount DOT offers is low and unacceptable. **If the Ombudsman is not the one alerting the public and the public agency of the potential for unfairness in procedures adopted to acquire private homes, who will?** The legislature should consider granting each homeowner the right to a review of DOT's last offer in Superior Court and a hearing there before the Ombudsman for Property Rights. If the Office is eliminated, then to provide these homeowners with their day in court or binding arbitration, it will require using court personnel or hiring new employees.

The new federal stimulus bill has also appropriated considerable sums for use by cities for new housing and other projects. Urban homeowners, tenants and businesses will also face a new round of takings by municipalities.

At different times members of the General Assembly have suggested an ombudsman to mediate disputes between unit owners and their condominium associations. The Ombudsman for Property Rights has years of experience dealing with issues involving unit owners and associations. If the General Assembly so desires, the Office of Ombudsman for Property Rights could accept responsibility for mediating these disputes and be able to do so without adding personnel.

Unquestionably, there is sufficient and growing demand for the services of the Ombudsman for Property Rights.

Can the Ombudsman's duties and responsibilities be assimilated into the Office of Responsible Growth within OPM, as proposed, or any other agency without requiring the hiring of additional personnel who are expert in the field of eminent domain?

The Office of Ombudsman for Property Rights is an independent agency. Its independence gives the Ombudsman credibility in the eyes of the property owner or business dealing with DOT or another state agency or municipality. Connecticut General Statutes Sec.48-54 provides that the Ombudsman can not hold a position on, or be employed by any public agency except the Office of Ombudsman for Property Rights. The rationale is the importance of independence which would be compromised by transferring the duties and responsibilities into another existing department especially one that has influence over other departments' budgets and bonding requests.

The Ombudsman must be a Connecticut licensed attorney having knowledge and experience with eminent domain, relocation assistance and planning and zoning law (Sec. 48-51). Who in the Office of Responsible Growth has the expertise and, very importantly, the time to give to the job? The Ombudsman has provided services to property owners and public agencies representing more than 40% of all municipalities

plus several state and federal agencies since its inception 20 months ago. The job of the Ombudsman is full time.

The traits of a good ombudsman are independence and impartiality, knowledge of the law, a willingness to examine the implications of state and municipal agencies' actions and when needed, report to the governor or to the legislature or to a department head or other responsible official and not have to seek permission to do so or be afraid of repercussions that someone in your department or another might be offended.

The Office of Responsible Growth does not ordinarily concern itself with issues of eminent domain. People in that office have asked questions concerning real estate law of the Ombudsman. As the name implies they are involved in the planning of the orderly patterns of growth for living and traveling and consuming the State's resources. These are their essential interests and responsibilities. Much of what is studied and proposed by the Office of Responsible Growth conflicts with use of privately owned property.

The proposed bill seeks the repeal of Sections 48-50 through 48-57. If that is what occurs, then no person or department will have the authority to act as the Ombudsman for Property Rights or perform the responsibilities enumerated in Section 48-50(b). No agency engaged in eminent domain will be required to make a reasonable effort to negotiate with the property owner (Sec. 48-57 (1)) before filing a statement of compensation or be able to notify the property owner at least 14 days ahead of a taking of the existence of the Ombudsman's office (Sec. 48-57 (2) (A)). The essential point of creation of the Office, assistance for private property owners and public agencies and mediation, will be gone.

Transfer of the responsibilities of the Ombudsman is not feasible or practical or cost effective.

Conclusion

- The Office costs approximately \$170,000 - \$175,000 to operate which equates to five cents per Connecticut citizen, per year.
- It is not a burden on the taxpayers of our state even in this difficult period of time.
- There is sufficient demand for the Ombudsman's services and will be considerably more in the near future.
- Connecticut's citizens receive value for the money expended.
- An independent Ombudsman serves the interests of both private property owners and government agencies involved with eminent domain.
- Transferring the responsibilities to another agency will not safeguard independence and impartiality to those facing eminent domain.
- Transferring the responsibilities to another agency is not likely to save money.

I respectfully request that the committee examine the issues carefully and do what is in the best interest of Connecticut's homeowners, small business persons and other owners and occupants of real property facing eminent domain and displacement.



Robert S. Poliner
Ombudsman for Property Rights

Attachment: Connecticut Law Tribune article, "An Honorable Ombudsman"
Published May 19, 2008

An Honorable Ombudsman

More than nine months ago, concerns were raised in this column as to Gov. M. Jodi Rell's choice of Robert Poliner as the state's first Ombudsman for Property Rights. The office, created by Public Act 06-187, has many responsibilities, including advising the General Assembly on property rights issues, undertaking research, and assisting public agencies and private parties in eminent domain proceedings.

Among the concerns were that Mr. Poliner had

no special experience for the position, no known substantial practice in eminent domain, and no publications on the subject. Noteworthy, however, was that he had served as Republican state chairman. Seen in the most favorable light, the significance of this background was that perhaps the governor had a level of trust in him.

As it turns out, Mr. Poliner has done a great job as a truly independent ombudsman. He works hard with limited resources and reaches out whenever and wherever he can to help.

The ombudsman's first task was to create a committee to study and report to the General Assembly on the possibility of compensating property owners for loss of goodwill. He handpicked a stellar group, assigned tasks, followed up, ran highly productive meetings, and produced a scholarly, comprehensive report available at www.ct.gov/pro.

Mr. Poliner did all that with a "staff" of two — himself and his former private practice secretary, Maryann Boord. She is as indispensable to Attorney Poliner as Della Street was to Perry Mason.

The ombudsman has made it his mission to get out and publicize his office and its responsibilities. He has appeared before sections of the Connecticut Bar Association and participated in workshops. He wrote to the chairman of the CBA Planning and Zoning Section, reminding him that the ombudsman was available to mediate eminent domain disputes.

By all accounts, Mr. Poliner has enthusiastically mastered the subject of eminent domain. Many lawyers in their 60s would just as soon lighten up the load and take the easy path. The ombudsman has done just the opposite, taking on new challenges and infusing the mission of his office with remarkable energy and devotion to duty.

His web site is a useful resource and he invites input from all corners. As he said in one of his

newsletters: "The site is intended to be a resource where property owners, public agency officials, legislators, attorneys and others can get answers to their questions, easy access to statutes and regulations, information about mediation and a means to communicate with the ombudsman and his office."

On his site, for example, you can read the eight monthly property rights newsletters he has prepared for the General Assembly. They cover such diverse subjects as recent Connecticut case law, legislative amendments in Connecticut and other states, and how George Washington assembled the land for the U.S. Capitol without the use of eminent domain.

The ombudsman has taken on hard issues. In a newsletter he asks the question: "Are ethnic and racial minorities more injured by eminent domain than others?" He then answers it in the affirmative, citing the literature. He offers clear guidance for policy makers: "Requiring more units of affordable housing and allowing more small business owners to redevelop their own properties or to relocate within the development area or close by is the fair thing to do when eminent domain is used to assemble properties for economic development."

Good job, Gov. Rell, in picking the right person for the job. Thank you, Ombudsman Poliner, for creating just the right culture for your office and setting a high standard for the future.

Commentaries appearing above are produced by the Advisory Board of the Connecticut Law Tribune. The opinions are voted on and passed by at least one third of the members of the board. They do not necessarily reflect the opinions of every member of the board, nor of the newspaper.

Send Us Your Letters!

Mail or Fax to:

Editor

201 Ann Street, 4th Floor
Hartford, CT 06103

Fax: (860) 527-7896

Email: lawtribune@alm.com

