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THE IMPORTANCE OF EMINENT DOMAIN IN COMMUNITY DEVELOPMENT PROJECTS*

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INTRODUCTION

Eminent domain is a vital economic-development tool for municipalities. The availability of eminent domain to the City of Hartford has facilitated great economic and community growth. Projects such as Adriaen's Landing, a mixed-use development on the Connecticut River waterfront, and The Learning Corridor, a complex of magnet schools, have created thousands of jobs, attracted new businesses, increased home values, and sparked millions of dollars in new private investment ranging from first-time homebuyers to large financial services companies.

Following the *Kelo* decision, advocacy groups using the case to bolster their public image have spawned a great amount of misinformation about eminent domain. This spin has created a high level of concern among citizens that current eminent-domain law allows public officials to give the private sector handouts at the expense of homeowners. In my experience as Mayor of the City of Hartford, I have never encountered any public official who has purposely undermined the integrity or confidence in homeownership in the community. It would be a virtual nail in the coffin for any official trying to get reelected to do this because a municipality's homeowners are

* These remarks were prepared for the Issues in Community Economic Development symposium held at Western New England College School of Law on March 24, 2006. Mayor Perez participated in a panel entitled "Eminent Domain and Public Use Takings After *Kelo v. New London*." This piece draws from, and expands upon, written testimony that Mayor Perez, as the representative of the National League of Cities, provided to the Senate Committee on the Judiciary on September 20, 2005. *The Kelo Decision: Investigating Takings of Homes and Other Private Property: Hearing Before the S. Comm. on the Judiciary*, 109th Cong. 106 (2005), microformed on CIS No. 2006-S521-12 (Cong. Info. Serv.) (testimony of The Honorable Eddie A. Perez, Mayor, Hartford, Conn., Representing the National League of Cities), available at http://judiciary.senate.gov/print_testimony.cfm?id=1612&wit_id=4659.

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among the most politically active and savvy part of the electorate. Local elected officials throughout the country are currently facing the challenge of providing a greater quality of life for their constituents while respecting the individual's right to homeownership. Having dealt in eminent domain proceedings before, I have compassion for those individuals who have lost their homes in eminent domain takings. I understand the history and emotion that many attach to their homes. It is the place where education begins, families are raised, and values are formed. My compassion for homeowners does not, however, naively supersede my compassion for the other side of the equation, which is the issue of combating poverty, unemployment, and crime. In fact, I believe that municipal governments can have great respect for homeownership while being dedicated to the economic development of their city or town.

I. MAINTAINING MUNICIPALITIES' RIGHT AND ABILITY TO GROW

The limited use of eminent domain is a necessary tool for municipalities to maintain their ability to provide a continuously improving quality of life for their residents. It eliminates the ability of individual property owners to hold their fellow citizens, and the governments that they have elected, hostage while seeking to maximize their own well-being. It provides a barrier against corporate greed by eliminating the ability of conglomerates and non-owner-occupied property owners to use their fiduciary responsibilities to their stockholders as an excuse in keeping the city and/or region from growing. Finally, it serves as reinforcement to the democratic process by maintaining the relationship between citizens and those who have been elected from the citizenry as guardians of the public good.

If eminent domain were not available to municipal leaders as an economic-development tool, individual property owners could effectively keep the municipality, and its residents, from realizing the vast benefits associated with economic development by refusing to sell their property or by demanding such a high sale price that the development project would no longer be financially feasible.

The concept of a "holdout" property owner is usually associated with non-owner-occupied property. Individuals who live in the community and are able to visualize and appreciate the benefits that a development project will bring to their neighbors and community as a whole will usually (with some notable exceptions) come

to some sort of amicable resolution without eminent domain ever being used. The reality is that the proposed development project will most likely affect their quality of life as well as the rest of their community, and while they are making a larger sacrifice than others for everyone's benefit, they will also reap the rewards of development. I do believe, however, that there should be a more fair and structured process for "just compensation" considerations in regard to owner-occupied property takings.

In Hartford, economic-development projects are planned with great transparency and public participation. In the course of planning an economic-development project for the benefit of the public, there are community meetings, speeches, press conferences, and hearings all structured to educate the public about the positive impact of the development project as well as to consider and incorporate the concerns of the public in the overall development plan. Local elected officials stake their political and community reputations on economic-development projects because of their belief that these projects will provide their residents with a greater quality of life.

In the majority of eminent-domain proceedings, the municipality is negotiating with property owners that reside outside of the city or town, and in many cases outside of the region or state. Under these circumstances, there are no family memories to be preserved or emotional sentimentalities to be considered, there is only the question of compensation. These particular property owners are very aware that the proposed private development project is for the public good. Non-owner-occupied property owners, corporations, and conglomerates have only a small stake in the community and thus their concerns lie with the amount of money that they are able to obtain from the municipality for their property. This is especially the case with corporations that have a fiduciary responsibility to their stockholders, which will insist on asking for extravagant and excessive payment for their property. Corporate fiduciary responsibility will not allow certain non-owner-occupied property owners to surrender real estate to the municipality without getting a significant return for their stockholders. They are asking for this level of compensation because they are aware of the municipality's commitment to the development project due to its vast benefits to the community and they are aware that this commitment will not be fulfilled without their property.

This problem is further exacerbated by the fact that, many times, there will be more than one party that decides to decline the

municipalities' purchase offer. In this case, not only is the potential for a "holdout" very high, but there is also the added potential for a snowball effect where each property owner asks for more money than the last property owner. This can effectively end development projects because it scares away investors and replaces the benefits of the project with long-term municipal debt.

Eminent domain allows for a structured establishment of title by providing a ceiling for the purchase price of private property. It protects the rights of communities to develop and grow without the threat of rogue property owners taking advantage of elected officials' dedication to their residents and making community-development projects financially untenable.

By providing a structured mechanism to gain title, eminent domain maintains the democratic relationship between the voting public and their elected officials. Municipal leaders are elected by their constituents to effectively act in the peoples' best interests. One of the greatest accomplishments of the democratic relationship is that citizens can hold municipal leaders accountable by voting. Eminent domain safeguards this relationship by making sure that individual or small groups of property owners do not hold the municipality, government, and residents alike hostage because of their personal interests. As elected officials, it remains the duty and responsibility of those in municipal, state, and federal government to develop and implement public policy that represents the ideas, passions, and sentiments of the general population. The existence of eminent domain safeguards this responsibility with democratically elected leaders and prevents it from being transferred to individual property owners. If eminent domain for economic development were not possible, individual property owners could unduly influence public policy formation without having been elected to do so.

Accountability is a cornerstone of local, state, and national government. Providing mechanisms, such as voting and transparent government, for holding elected officials responsible for their actions is the most important part of our governmental structure. In Hartford, residents are given ample time and opportunity to be active members of the planning process for development projects. There are extensive transparency efforts in place to instill as much legitimacy as possible into economic development projects, particularly those projects that call for the potential loss of individual property ownership.

If an individual citizen were able to administer forced public

policy decisions, there would be no means to hold such a decision maker responsible for his or her actions. Such an individual would be acting on authority that he or she was not democratically elected to have. There is no current framework for citizens to hold their neighbors, fellow private citizens, responsible for their actions if those neighbors are acting within the guidelines of local, state, and federal statutes. Eminent domain maintains the development of public policy with those elected officials that were democratically given the authority to act on behalf of society. It maintains the right of private citizens to hold their elected leaders responsible for their actions.

II. THE NECESSITY OF ECONOMIC DEVELOPMENT FOR BUILT-OUT MUNICIPALITIES

Hartford has pursued a model of public development based on transparency, community consensus building, and true public benefit. As a result, we have used eminent domain as a last resort on six projects in the past thirty years. Without the unambiguous authority to take land for a public purpose, the City would have had hundreds of millions of dollars in schools, housing, and development stalled, significantly over-budget, or not undertaken at all.

Municipalities in the state of Connecticut have very few ways to raise revenue. Property taxes are the main revenue stream for Connecticut's cities and towns. The City of Hartford has a vast social-service sector filled with hospitals, schools, and state government facilities, all of which represent nontaxable property. In addition, Hartford continues to be a hub of new and developing nonprofit organizations, which, while providing the City and State with much needed social services, are also tax-exempt properties. The remaining property represents the City's taxable grand list. Municipal programs designed to address social necessities and ills, whether education, after-school programs, HIV-AIDS prevention, or homeownership initiatives, are paid for with property-tax revenue. In order to continuously provide government leadership that is accountable to residents and provides them with services structured for their needs, there must be a consistently growing revenue source for the municipality to combat issues such as homelessness and poverty and to provide necessities such as education and crime prevention.

In some cities with extensive property opportunities, economic development can occur in different locations and does not necessa-

rily have to involve the taking of private property for development purposes. These types of cities can increase the value of their grand list and taxable infrastructure by simply expanding. This type of growth is currently seen in cities such as Phoenix, Arizona, and Austin, Texas. In fact, greater Austin is roughly the size of Rhode Island and continues to develop by expanding its infrastructure more than improving the existing infrastructure. This type of expansion is not an option for built-out cities such as Hartford, New Haven, and Bridgeport. The entire state of Connecticut has a lack of open space, and built-out cities do not have the option of expanding their boundaries to facilitate economic development. Instead, for cities like Hartford, property is a limited resource, and these cities must improve upon their existing infrastructure.

While there is no specific equation for what property is targeted for development projects, many times, blighted property will be examined first, particularly if it is in a highly active or downtown area of a city or town. Developing blighted property also carries direct and expedited benefits for the community. In Hartford, blighted property is often owned by individuals living outside of the City who have given up on the property and have left it as an undeveloped parcel of land. While temporary crime-prevention solutions solve the short-term problem that exists, the long-term and concrete solution to the problem is to develop that property so that it no longer exists as a location for illegal activity. In addition, developing such a location can have effects on the surrounding community that directly address some of the social and educational roots for the illegal activity.

The availability of eminent domain to the City of Hartford in the past has facilitated great economic and community growth. Projects such as Adriaen's Landing, a \$500 million mixed-use development including a convention center, hotel, condominiums and retail, and The Learning Corridor, a \$120 million, 16-acre complex of magnet schools developed by a nonprofit developer in one of Hartford's poorest neighborhoods, would not have been possible without having eminent domain available as an economic development tool. These projects are pillars of the efforts to revitalize the City of Hartford, and the effect that they have had on the Hartford economy, as well as the improved quality of life for our citizens, is significant. These projects have created thousands of temporary construction and permanent jobs; they have attracted new businesses, increased property values, and sparked millions of dollars in new private investment ranging from first-time homebuyers to large

financial-services companies. Neither of these developments pays property taxes to the City of Hartford, but instead both are part of the Payment-In-Lieu-Of-Taxes (PILOT) program system, which unfortunately has been underfunded in the past. The benefits of these projects have been incredibly far-reaching, both statewide and regionally. These effects have not coincided with a dramatic increase in tax revenue, but rather with a dramatic increase in economic externalities: increases in outside investment, property values, and employment opportunity.

In addition to the economic value that these two projects create, it is important to consider both the short- and long-term social implications of having these facilities and services available to Hartford citizens and the region as a whole. As Hartford continues to grow and become one of New England's most vibrant cities, the need for attracting new businesses is larger now than ever. Adriaen's Landing and The Learning Corridor will continue to help foster a growing desire of businesses throughout the region to locate their headquarters in Hartford. The social and educational benefits of these projects will also provide a more educated and more attractive work force for businesses looking to relocate in the region. It is also important to consider the increase in potential homeownership gained through projects such as these. These projects, along with the forthcoming public-safety complex, are proving to business investors, entrepreneurs, and corporations that the City of Hartford has the financial, technical, political, and workforce infrastructure to support state-of-the-art facilities. By creating economic growth, these development projects provide the City with the increased capital it needs to continue providing and advocating for affordable homeownership opportunities for Hartford residents. The benefits from economic-development projects are not limited to those experienced by the few, but instead are broad in scope and effect. Entire regions can shift negative trends in employment, poverty, and crime with the advent of economic development.

In addition, if municipalities were to lose eminent domain as an economic-development tool, city development would slow down significantly, and residents would not see the quality of their lives improve. Long-term municipal goals would go from ten to thirty years, potentially more, and elected officials would be more likely to shy away from long-term projects because there would be no way to say with certainty that they would succeed on any level. In addition to the obvious effects that this would have on business invest-

ment into the city, the budgetary implications of such a change would be drastic. City officials would have to allocate funding based on short-term planning. This would entail budget cuts, most likely to social programs structured to address social ills such as HIV-AIDS, homelessness, and unemployment. In many cities, these social programs have a critical effect on minorities. Some public-advocacy groups have stated that eminent domain for economic development is a program that has a significantly adverse effect on minorities. In fact, economic development directly addresses many of the social conditions that are most burdensome for minorities, including unemployment, crime, and homeownership opportunities. For urban America and communities of color, homeownership, in particular, is the ticket to the American Dream. If state and local governments were kept from using eminent domain for economic development, I believe that in some of our poorest communities we would have fewer residents becoming homeowners and fewer opportunities for residents to become one.

Without developing our infrastructure to create more revenue from property taxes, Hartford would be stuck paying for continuously increasing expenses with the same fixed income year in and year out. The City would become increasingly dependent on the state and federal governments for supplemental revenue. The state of Connecticut and the federal government continue to drastically underfund programs such as the PILOT program and the No Child Left Behind Act. This has placed a burden on local governments to find funds to make sure that children are being educated properly. In addition, there are fluctuating municipal expenses that cannot be tied to a fixed revenue source. Economic and social conditions that determine unemployment rates, homelessness, public health, and homeownership opportunity would have to remain at the current levels in order for the City to be able to maintain the status quo in services. The City would have no leeway in reacting to varying degrees of social and economic change, including fluctuations in crime, poverty, and unemployment. In addition, the City would no longer have the financial means to support discretionary spending—meaning that any natural disaster, increase in fires or social unrest, or public health catastrophe would not be met with additional funding.

III. LEGISLATIVE ACTION AND INCREASES IN “JUST COMPENSATION”

I support greater communication and understanding between elected officials and citizens concerning eminent-domain proceedings. I believe that if the government is fully transparent about economic development and eminent-domain proceedings, the public will understand the benefits of proposed economic development and the importance of that development for the municipality. In addition, transparency and communication within all of these processes will allow community members to more fully support their neighbors and help to smooth both the eminent domain proceedings and the subsequent transition to a new home.

While some may argue that there is a stark divide between advocates of homeownership and advocates of eminent domain as an economic-development tool, I would disagree, and cite Hartford as an example of a city that places enormous value on homeownership while maintaining that eminent domain is a necessary tool for economic-development efforts. I do not believe that a great respect for homeownership and an appreciation for the importance of economic development must be mutually exclusive. The City of Hartford is experiencing a renaissance fueled in great part by both.

A faulty distinction that places individual property rights in direct opposition to the use of eminent domain has formed since the *Kelo* decision. The City of Hartford is an example that refutes this false and dangerous distinction. Since 2001, Hartford has been at the forefront of the movement to increase homeownership in the state of Connecticut. The City has continued to take dramatic steps to provide millions of dollars in capital each year in order to support citizens in their efforts to own their own homes. In the last year alone, the City of Hartford has spent over \$10 million on various initiatives to increase the homeownership rate, providing numerous Hartford residents with their first-ever opportunity to own a home. In addition, the City is working continuously with state leaders to design innovative ways, including property tax reform, to advocate homeownership in the City of Hartford. Also, the Neighborhoods of Hartford Initiative was developed to focus on the needs of each neighborhood and provide continuous support in helping each individual community address the issue of homeownership, including working alongside various Neighborhood Revitalization Zones and other community groups. As a result of these initiatives and numerous others, there have been over one thousand

new homeowners in the City of Hartford since 2001. The City's homeownership initiatives have been coupled to and supported by Hartford's continuous economic development. Large development projects, such as Adriaen's Landing and The Learning Corridor, as well as relatively smaller development projects, such as Goodwin Estates and St. Monica's, are examples of the City's continued growth. In addition, the City is currently planning a new Public Safety Complex that will serve the entire Capital Region. All of these projects would not have been possible without eminent domain as an economic-development tool.

The reality of the issue is that advocates for homeownership can be, and should be, advocates for economic-development efforts. The two are, in most cases, inseparable. However, there remains the question of the individual owner-occupied property owner who is being asked to move out of his or her home for an economic-development project. I have compassion for this type of individual, and while I do not believe that it is in the best interests of municipalities to allow compassion to surpass the need for municipal growth, I am in support of developing ways to make eminent domain proceedings more amicable and amenable to individual property owners. The anxiety people feel about eminent domain is real. Historical examples of governmental abuse of eminent domain to construct the interstate highway system and for urban renewal make people suspicious about how governments intend to use eminent domain following the *Kelo* decision. This history imposes a duty on local officials to explain governmental use of eminent domain with greater sensitivity to its personal impact on individuals.

In particular, I believe that raising the amount of "just compensation" will benefit the negotiation process and will provide property owners a more appropriate price for their sacrifice. There are current efforts in the Connecticut legislature to change parts of the eminent domain law to increase the level of "just compensation." Included among these are proposals to change the rules regarding value assessments of property and changes in how to measure relocation expenses. I agree with an increase in maximum payments for relocation assistance and believe that this will enable municipalities and property owners to transition more smoothly into finding suitable new homes for the parties involved. Also, there should be an increase in compensation from 100 percent of the assessed value of the land to 125 percent of the assessed value of the land. As is currently practiced in Hartford, there should also be local legislative processes that require a completely transparent

exchange of ideas between municipal city councils and the general public regarding economic-development projects. Transparency and communication within all of these processes will allow community members to more fully support their neighbors and help to smooth both the eminent-domain proceedings and the subsequent transition to a new home.

Each state should have a state property-rights ombudsman to facilitate a greater understanding and connection between private citizens and government authority on issues of property rights. The property-rights ombudsman would be responsible for creating a continuously more informed link between the public and government officials by serving as a neutral, third-party mediator in disputes concerning property rights between property owners and municipal or state government entities. Though some have irresponsibly stoked the fears of the public for political gain, elected officials have an obligation to address the legitimate concerns of residents while articulating why eminent domain needs to be preserved. This obligation could be greatly served by providing the public with an intermediary who is an expert in eminent-domain procedures, history, and relevance.

I believe that it is in the best interest of government on all levels to educate the public further about the issues of eminent domain and economic development. Some interest groups have confused the general public with the assertion that private economic development is simply a process whereby government takes real property from A and gives it to B for B's private benefit. While there is a limited history of this type of corruption existing in eminent-domain takings, the assertion that all economic development is defined by this equation is simply wrong and misleading. I would wholeheartedly support legislation that would curb this type of equation from ever being involved in economic-development negotiations. Any proposed legislation should address the tactic or equation noted above, not the underlying principle of economic development being a public use.

CONCLUSION

Municipal leaders have a responsibility to engage in public conversation about eminent domain that can help dispel inaccuracies and stereotypes. Elected officials are given the task of providing growth and prosperity for their municipalities while defending the individual rights of their citizens. If eminent domain were elim-

inated for economic development purposes, there would be a drastic and negative effect on the ability of elected officials to maintain and live up to this obligation.

Eminent domain eliminates the possibility of “holdout” property owners, more concerned with their own well-being than that of their neighbors and their community. In particular, eminent domain keeps corporate greed and the excuse of fiduciary responsibility from affecting the well-being of municipal residents. Finally, the presence of eminent domain as an economic-development tool maintains the democratic structure of our government and allows those elected by the people to develop public policy without the interference of individuals not duly elected to do so.

Curbing the use of eminent domain for economic development would cause built-out municipalities, such as Hartford, to restructure their budgets and goals with the short term in mind leaving necessary social programs to die in the wake of stagnant or zero municipal growth. Public and private partnerships that are creating jobs and housing and attracting businesses would cease to exist if eminent domain was eliminated. The benefits of development projects such as Adriaen’s Landing and The Learning Corridor would not be realized, and the benefits of existing projects would be lost because there would be no funding for their continued upkeep.

While I fully support maintaining eminent domain as an economic development tool, I also believe that there should be discussion and eventual legislation to make the economic-development process more equitable in regard to compensating individual property owners. These individuals are making the ultimate sacrifice for the greater good and they should be compensated and supported in a manner befitting their dedication and commitment to their respective communities.

By subjecting development projects to public debate, and by planning these projects with the public welfare in mind, municipalities are able to use eminent domain prudently to allow elected officials and citizens to develop their communities in a way that is transparent and beneficial for all residents. The limited use of eminent domain for economic projects geared toward the well-being of the community only increases the potential for more residents in municipalities to realize their dream of owning a home. One of the most important responsibilities of any city government is to provide for the economic and cultural growth of the community, while safeguarding the rights of the individuals that make up that community.