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Calendar 449, File 560, Substitute for Senate Bill 167, An Act Revising the Process for the Taking of Real Property by Municipalities for Redevelopment and Economic Development, Favorable Report in the Committee on Judiciary, Planning and Development, and Appropriations.

THE CHAIR:

Senator McDonald.

SEN. MCDONALD:

Thank you, Mr. President. Mr. President, I move acceptance of the Joint Committee's Favorable Report and passage of the bill.

THE CHAIR:

Acting on approval of the bill, will you remark further, Sir.

SEN. MCDONALD:

Thank you, Mr. President. Mr. President, I believe the Clerk has in his possession LCO 8490. I

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ask that it be called and I be granted leave to summarize.

THE CHAIR:

Mr. Clerk.

THE CLERK:

LCO 8490, which will be designated as Senate Amendment Schedule "A". It is offered by Senator McDonald of the 27th District, et al.

THE CHAIR:

Senator McDonald.

SEN. MCDONALD:

Mr. President, I move adoption of the amendment.

THE CHAIR:

Please proceed, Sir.

SEN. MCDONALD:

Thank you, Mr. President. Mr. President, both you and Members of the Circle will certainly recall the events of 2005, when not only the State of Connecticut but, indeed, the United States was

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captivated by a United States Supreme Court case emanating out of New London and involving several plaintiffs, including Ms. Kelo.

And that case, Mr. President, shined a bright light on the eminent domain issue, not only in Connecticut but throughout the country. And it raised a heightened concern in this state and throughout the country about the use, and perhaps misuse, of eminent domain.

And so this state and others around the country began to scrutinize our statutes to make sure that a policy and prerogative of government that is essential to its operation is used judiciously, efficiently, and perhaps most importantly, fairly in our state.

Mr. President, the Judiciary Committee and the Planning and Development Committee had an opportunity last session to hold extensive public hearings and extensive meetings on this issue. It is, in fact, a very complicated issue.

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It doesn't unfortunately lend itself to easy or quick sound bites, because the use of eminent domain is a power that has existed not only throughout the duration of our country's history, but for centuries before that. It is, in fact, one of the core opportunities and tools of the sovereign.

But like all tools, it must be used wisely and fairly. And what we did in the Judiciary Committee last year, and the Planning and Development Committee under the able leadership of Senator Coleman was to try to craft a legislative solution to this very complicated area of the law.

We were fortunate to craft such a solution, but we were unfortunate that we did not have enough time at the end of the Legislative Session to get it passed. And so, Mr. President, we had another opportunity this year, of course, to begin anew our efforts to redefine the use of eminent domain.

And to make sure that our statutes are brought up to the present-day standards of what our constituents expect and demand of their state. Mr. President, the issue of eminent domain has multiple areas. It is not only the use of eminent domain to acquire roads or to acquire property for schools, but it also involves the use of eminent domain to alleviate the effects of blight in our communities.

And it has also been used in this state, for decades upon decades, in the area of economic development. And under statutes, Mr. President, we have three primary areas of legislation dealing with redevelopment in blighted areas, for economic development, and in manufacturing relocation and assistance.

Mr. President, this amendment makes significant changes in all of those areas, but perhaps most importantly it makes extraordinarily significant

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changes in the area of economic development eminent domain legislation.

First and foremost, Mr. President and Members of the Circle, we must be cognizant of the fact that under this amendment the municipal agencies involved in eminent domain use cannot acquire real estate for the primary purpose of increasing local tax revenue.

And I think, Mr. President, that when you distill the Kelo case and its aftermath, to its core, that's what people were worried about. In the words of Justice O'Connor in her dissent that people shouldn't have to fear that a Motel 6 is going to be taken so a Ritz Carlton can be put in its place.

Under this legislation that wouldn't happen. Mr. President, additionally in the area of economic development, we make a substantial change. Under current law, a taking for economic development would only take place, if a majority of a redevelopment agency would approve such a taking.

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Now, we know, of course, that those who work in the area of redevelopment have the best of intentions, but they are appointed officials. They are not elected officials. They do not report to a constituency.

They try to discharge their duties, but we felt that there was no greater way to ensure accountability than to have elected officials be directly responsible, for the use of eminent domain. So under this legislation, Mr. President, no property could be taken for economic development purposes unless two-thirds of the legislative body voted to do so, two-thirds.

Their fingerprints would have to be on it. It would have to clearly be the goal, be the objective, and be the desire of that community to use this awesome power, and each and every one of those elected officials, would be accountable to their constituents, if they chose poorly.

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Mr. President, in addition, under these economic development plans and redevelopment plans, there would be substantial new requirements of notice to property owners, not only within the plan area and not only where the redevelopment was going to take place, but actually to any property owner who lives or owns property within 100 feet of any property that is within a plan area.

Furthermore, Mr. President, the plan would have to clearly define, how an area is considered to be deteriorated or deteriorating. It will not be enough to just say it is. There must be an effort by the legislative body to make that determination.

Furthermore, Mr. President, the Planning Commission of that municipality, would have to find that the plan, as proposed, was in conformity with the conservation and development plan for that municipality. We would also make the plan more,

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readily available to the public by having it required to be posted on the website of the agency.

But perhaps in this area, the most important point is that the municipality would have to determine that the public benefits outweigh any private benefits that might be involved. The use of eminent domain is first and foremost for public use. And so under this proposal, Mr. President, the public benefits must outweigh any private benefits.

Additionally, there would have to be a determination made that the real estate involved can't feasibly be integrated into the redevelopment plans. They have to review whether or not, it is possible to achieve the goals of the plan, and yet, still incorporate the property located in that area.

Also, the acquisition of that property is reasonably necessary to successfully achieving the goals and objectives of the plan. And as I said, Mr.

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President, the primary purpose cannot be to increase property taxes.

Additionally, Mr. President, under the blighted property statutes, what we term Chapter 130, the plan acquisition of property, in accordance of the plan, I should say, must be done within five years of the first property being taken.

And additionally, Mr. President, this legislation would allow a property owner to bring an injunction action against the municipality, if it was acting in excess of its statutory authority.

Additionally, if the real estate was not ultimately used for the purposes as outlined in the plan, the property owner, who had been the previous owner of the property, would have a right of first refusal, or their heirs would have a right of first refusal, to re-purchase the property.

And to make sure that that is done in a very fair manner, under this legislation, that former property

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owner would have a right to purchase it at the lesser amount of either what was paid to them originally at the time of the taking, or the fair market value at the time they sought to reacquire the property, whichever is less.

Appraisals used in the conduct of an eminent domain taking, would have to be done by licensed appraisers and would have to be done in conformity with industry standards, the uniform standards, for appraisers. The appraisals would have to be two in number, and they would be averaged.

The statement of compensation filed with the court, would be the average of those two appraisals. Additionally, Mr. President, if a parcel was acquired and five years past, without another parcel nearby being acquired, then in the years 6-10, because there is an extension of five years available, the municipality would be required to pay an additional 5%

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on top of the fair market value for each year that they delayed in pursuing the eminent domain taking.

Next, Mr. President, this amendment triples the length of time, within which a property owner would have a right to file an appeal of the taking. It also allows a property owner and the municipality to voluntarily choose to allow a judge trial-referee to hear their appeal, if they do not want to have a judge of the Superior Court do so.

But in this state, we are also very fortunate to have an experienced group of judges, who are very, very expert in property evaluation issues in the tax session of the Superior Court in New Britain, and if the parties agree, they would be allowed to access that system in New Britain.

Under the economic development statutes, the municipality would have to also undertake a comprehensive analysis of the infrastructure and public access and improvements, all of the facilities,

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all of the environmental conditions, the goals for enhancing the standard of living for the residents, and frankly all aspects of the plan, as it would benefit the public.

And as I said, Mr. President, the two-thirds vote of that legislative body, would apply to each of the clearly identified properties. But because we were so concerned with the importance of one's property, especially in the residential context, Mr. President, under these economic development statutes, a municipality who wants to pursue this plan, after it has gone through all of that process, would be required to pay a property owner 125% of the fair market value of that property.

Additionally, under this proposal, we would substantially increase the relocation benefits to owners and renters of property, so that they would receive the greater of either what the state law provides, or what they would be eligible for under the

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Federal Uniform Relocation Assistance Real Property
Acquisitions Policies Act.

This also creates efficiency in the legal process by making sure that both the taking and the appeal of the taking are included in the same legal action, so that the property owner would be clearly identified as a counter-claim plaintiff in the appeal of the taking. And that's important, Mr. President, because under this legislation, that property owner would then have an opportunity to sit down and talk to the municipality and try to settle the case.

And if they made an offer of compromise, Mr. President, to settle the case at a certain value, and the municipality rejected that offer, and the appeal went to trial, and the property owner obtained a greater amount of compensation at trial, under this proposal, Mr. President, that property owner would be entitled to 8% interest on the amount of money awarded by the court in the compensation of the taking.

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Additionally, Mr. President, the amendment provides for relocation costs relating to outdoor advertising facilities, and would require that the income capitalization approach be used for valuing takings of such outdoor advertising.

And finally, Mr. President, we heard over and over, again, when somebody is faced with somebody at the door saying that they are a developer and they would like to acquire somebody's property, and if you don't talk to me or if you don't sell to me as a developer, the government is going to take your property by eminent domain.

We heard that over and over, again, in our public hearings, and frankly we found it to be an outrageous use of implied authority that did not exist in law.

So under this proposal, Mr. President, if someone misrepresents their authority in the private capacity to suggest, or, otherwise, intimate that they had the authority or could effectuate an eminent domain taking

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on behalf of their own private interests, that would constitute a violation of the Connecticut Unfair Trade Practices Act, which would allow for a separate lawsuit against that developer, and ultimately the award of attorneys' fees and damages.

Mr. President, this has not been an easy process. There are clearly very strong feelings on this subject, but there are also some clear uses of eminent domain that are worthy of our support. We have an opportunity and an obligation to tighten the process, to make sure it is not abused.

But in doing so, Mr. President, I would suggest that we have to also understand that many municipalities, many urban centers, need to know that, if they follow rules, if they pay attention to the rights of the people, they can, indeed, still try to redevelop and reinvigorate their communities, and can do so using a traditional power that is extraordinarily important.

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But at its core, Mr. President, this legislation would provide incredibly enhanced rights for property owners that I think the people of the state of Connecticut not only expect but rightfully demand.

And if I may, Mr. President, I would like to yield to Senator Coleman, the Chairman of the Planning and Development Committee, without whose help, I would never have been able to stand here and present this amendment.

THE CHAIR:

Senator Coleman, do you accept the yield?

SEN. COLEMAN:

Yes, Mr. President, I'll accept the yield, and at the outset, I would like to acknowledge the participation and the input that was received on this issue from a number of people primarily the Co-Chairs of the Judiciary Committee, Senator McDonald, and Representative Lawlor.

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And as well, some of the Members of the Planning and Development Committee, including the Co-Chair, the House Chair, Representative Feltman, and the Ranking Members, Senator Fasano and Representative Bacchioci, and as well; there are many people around this Circle, who provided input and assistance regarding this issue and that includes Senator Stillman and Senator Meyer, Senator Prague, Senator Finch, Senator LeBeau, and so many others.

I don't mean to leave anybody out, but all of us, who were immersed in this issue for the last couple of years, are so grateful and appreciative for the input and the patience on the part of our colleagues. In the wake of the Kelo Decision, we could have made a very emotional response to that case and that situation.

I, for one, am extremely glad that we chose to take a more deliberative approach and the input of all of those people and others who I mentioned, results in

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the product being before us this evening. And, I believe, that this product is worthy of the support of all of the Senators, primarily for two reasons.

First of all, as Senator McDonald eloquently laid out, it provides a number of important protections for private-property owners. Secondly, it also preserves the vehicle to be used by urban centers and other communities, who have a scarce amount of developable land available, in order to assist in their efforts to revitalize their communities and to reinvigorate their communities.

As result of the deliberative approach that we engaged in, we were able to reach a compromise, which, I believe, satisfies some very, extreme viewpoints on this subject. In terms of protecting property owners, I think it's very fair to say that in this bill, there is an increased amount of scrutiny and transparency and accountability that becomes attached to the eminent domain process.

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And that includes the requirement of a two-thirds vote for the approval of the exercise of eminent domain powers by the legislative body, increased requirements of notice, and opportunities for public hearings, as well as, appeal rights to aggrieved persons and owners of property.

I think the compensation approach that is laid out is fair and just in this bill, and that includes the right of first refusal that attaches to a property owner, who loses property, as result of the exercise of eminent domain.

That property owner will have the right of first refusal to reacquire the property that was taken, in the event that the municipality does not proceed on the plan that was development that evoked the exercise of eminent domain in the first place.

Relocation assistance benefits and unfair trade practice protections are also important protections for property owners in this bill. I also, Mr.

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President, like the findings that are required to be made under this bill before the exercise of eminent domain is pursued.

And those findings that must be made by the legislative body and other entities wishing to pursue eminent domain include an analysis that indicates that the public benefits of the use of eminent domain outweigh any private benefits that may accrue. There also must be a finding that it's not feasible to integrate the subject property into the plan.

And there also must be a finding that eminent domain is reasonably necessary in order to achieve the objectives of the project plan. And as Senator McDonald indicated in his remarks probably the primary finding that must be made prior to the exercise of eminent domain is the finding that no taking is for the primary purpose of increasing local property taxes.

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So, Mr. President, I wanted to conclude and just again thank all of those Members of this Circle and in the other Chamber, as well as, all of the members of the public that came to all of the public hearings and offered their testimony and their experiences regarding this particular issue and this subject matter.

It was a challenge, as Senator McDonald has indicated. I was happy I had the opportunity to participate and hope that this product serves to help all of the stakeholders who are involved. Thank you, Mr. President.

THE CHAIR:

Thank you, Senator Coleman. Will you remark further? Senator Meyer.

SEN. MEYER:

Thank you, Mr. President. I suppose it's only lawyers who read the entire decision of the United States Supreme Court in Kelo. It was a long decision.

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But it had a remarkable footnote on the last page of the decision.

The essence of the footnote, by the United States Supreme Court was that the taking of all that private property in the City of New London was consistent with the law of Connecticut. In fact, Senator McDonald and I were having a discussion at supper tonight about that.

This has been a law on the books of Connecticut for years and years, permitting the taking of private property for virtually any purpose. Indeed, Connecticut has had the most expansive eminent domain law in the United States, and it has been one, in the opinion of many of us, has been abused.

Now what this bill has done is set up some real protections, and I really compliment, Eric Coleman, I compliment you and Andrew McDonald. I think, I know, how hard you worked. And Senator Coleman, thank you, for chatting with me about this.

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And you have built in here substantial protections for the private-property owners of Connecticut. Unfortunately, you didn't go the last step, because this bill, unfortunately and sadly, still permits the taking of a private home.

As long as that taking is within the standards, outlined by Senator Coleman and Senator McDonald, the government, a local government of Connecticut, could still take your home or my home or the home of anybody who is listening to this program tonight. And that is very, very sad.

And I think we have had a terrific foundation here, but the Lord willing, I will be back on this and offering an amendment at an appropriate time, to build on the good work that you've done here, and try to stop the taking of private homes for what, in effect, become arguably private purposes.

This bill in many ways is a lawyer's dream. As Senator McDonald said, the taking of private property

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has got to be for a public purpose but that public purpose could mean the creation of jobs in a town. It could mean a whole variety of things that would be viewed as public.

The substitution of one type of property for another is viewed as a gain to the public in some fashion or another, but taking a person's home. You know, many of us around this Circle believe that a home is a castle.

And hopefully together we'll work to do that final step in making the eminent domain law in the State of Connecticut a fair and appropriate law for our state. Thank you, Mr. President.

THE CHAIR:

Thank you, Senator Meyers. Senator Stillman.

SEN. STILLMAN:

Thank you, Mr. President. I, too, want to rise in support of this amendment that's before us and thank Senator McDonald and Senator Coleman for their

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hard work on crafting something that has some balance to it, but most importantly has protections for peoples' homes or businesses.

And I think that's a very difficult line to walk, to try and do that, and I thank them very much for keeping in mind all the input that they receive from people, not just from my area and New London area but from people from throughout the state, as well.

As we all know, this is a very emotional issue, and when it comes to crafting legislation around emotional issues, it makes it even more difficult. I'm also pleased because some of the language in this bill and protections are things that I have suggested, as well, as many other people.

The public hearing process, which is so very important so people have a chance to speak out and express their support or not. And also one of the key issues with the whole, very sad process that we've gone through in New London is the fact that people

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couldn't understand that this project is for public improvement.

And we all know that economic development has to be part of public improvement, they sort of go together, and the fact that the bill states that public improvement has to outweigh any private benefit will go a long way towards creating some feeling of security in this bill.

We all know though that there are people who feel as though a home should never be taken. And I would venture to say I agree. We don't want to see that happen. I certainly don't want to see that happen.

I'm sorry that we didn't have a chance to apply some of the language in the bill, some of the process, to what weaved through the project that we went through in New London.

But it's time that we improve upon our existing eminent domain laws here in Connecticut, and this bill will go along way towards doing that. I would venture

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to say that this is something that we should look at every once in a while. I mean, we shouldn't just create this law and just leave it somewhere,

Because we have an opportunity in this legislature to continue to look at laws that we pass, see if they're working, see if we need to improve upon them, and so I hope that the renewed interest in our eminent domain laws will give us that opportunity to keep it on the front burner and not the back burner.

The legislative body of a community should play the key role in making the decisions. They are elected to make these decisions, and you have certainly, in this bill, made that very clear that the legislative body has to actually vote to move a project forward.

I think that's very important. And also the issue of that if the project hasn't moved forward in five years that someone can be given the opportunity to reacquire their property or have the opportunity

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for first refusal on their property, and I think that right of first refusal is very important.

We heard about eminent domain projects throughout the state, it may have been for a highway or a school in other parts of the state, and those projects never came to fruition and now those people did never have an opportunity to reacquire their homes or the land on which those homes were. So I thank you for that.

Also, the issue of the appraisals, and the fact that there has to be two, and you average them out to come up with a fair price. Although, I venture to say, anyone whose home is caught up in eminent domain never thinks of it as being fair, unless they truly understand the project, or are willing to do this, because they understand the need for the community, the public need.

Also, the fact that people have more time to make those decisions is very important. And the relocation costs, I heard about that frequently in the district,

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about the fact that relocating is so very expensive, and why isn't that taken into consideration. So for those reasons and many more, again, I want to rise to support this bill.

I think that, granted, we've waited awhile for it. It's similar to what we almost passed last year, but over time, I know, it has improved. Again, I want to thank all the people who worked on this bill, for putting it in front of us today, so we have the opportunity to vote on this and act on legislation that will be truly meaningful to people. Thank you.

THE CHAIR:

Thank you, Senator Stillman. Will you remark?
Senator Cappiello.

SEN. CAPPIELLO:

Thank you, Mr. President. I'm not really sure, if I'm going to be supporting this bill or not. I'm going to listen to the rest of the debate. I do believe that there are a lot of people, a lot of

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Committees that worked very hard on this legislation and similar legislation that has made it through various Committees this year and in prior years.

But for me, this is not a very, difficult issue. For me it's not as complicated as others believe it to be. In my opinion, private property of an individual, particularly someone's home, but not limited to someone's home, is their private property, whether you own a small family business, whether you are a tenant in a commercial or small business, you own a small business.

I'll give you an example, and I said this on the Judiciary Committee this year, my father has had a small family business for 43 years in the City of Danbury, a retail establishment. For most of those years, he owned the building that he was in. Now he is leasing the property that he is in right now.

If the government decides to take that property away, and he, as the tenant, would have no rights

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under this legislation. He would have to find someplace else. He would not be compensated.

But above and beyond all of that is the idea that the government is going to allow to take someone's private property to give to someone else for commercial use, to make a profit. And I don't think that this bill fully deals with that issue.

I think we need a very, very bright line that says, the government cannot take any of your property, unless they are taking it for government or public use, a public purpose, a school, a highway, or something of that nature, and even then it should be a last case scenario.

There is no other land to be used for a school. There is no other place for that highway and even in that case, we should use it very, very sparingly. And I admit that this bill does a little bit to protect peoples' private property, a little bit.

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It moves the ball forward, but it doesn't come close to doing enough. Senator Meyers and I don't always agree in this Chamber, or Senator Gomes and I. And we've been talking about this issue, and I think we all agree, we would like to do more. For me again it's just not that complicated.

Why should the government be able to take my house or my small family business, to allow someone else to use it and make a profit at all? It should be specific to a government or public use or purpose. So, Mr. President, again I don't know how I'm going to vote on this bill.

I'll listen to the rest of the debate. I appreciate that, again, this does something. I just don't think it does enough. Thank you, Mr. President.

THE CHAIR:

Senator Kissel.

SEN. KISSEL:

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Thank you very much, Mr. President. I would like to associate myself with the remarks of Senator Meyer and Senator Cappiello, and we have several amendments that have been filed that will be brought forward by my good friend and colleague, Senator Fasano, later on.

On the underlying bill, I would agree that I think it's pretty simple to create a bright line test. At the same time though, I would acknowledge that there are many development projects in particular, where the characterization of the project could have gray areas.

What I've come to believe in this debate, since the last couple of years, since the Kelo decision came down was that not really along partisan lines and not even necessarily along geographic lines, but there is a split of philosophical difference in the building, regarding municipalities' ability to move forward with development and redevelopment projects.

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And I think the folks in my neck of the woods see the issue the way Senator Capiello characterized it, as fairly simple, straight forward, a person's home is their castle, by all means government should not have the authority to take a person's home and then flip it to another private entity.

I would acknowledge that in previous debates, Senator McDonald created fact patterns, where it was difficult to determine a mixed-use. And indeed in the Kelo case, itself, as I recall from the numerous public hearings that we had, that the funding stream from the State of Connecticut I think sent it along its certain course.

And that had we earmarked the funds from the State of Connecticut and targeted them towards a redevelopment goal regarding blight that the New London project probably would have easily withstood Judicial scrutiny and would not have ended up in the United States Supreme Court.

And, yet, because the way the state said, we're going to send you this additional funding, caused it to sort of take its course, and indeed, my recollection of the decision of the Connecticut State Supreme Court was that there was a question, as to why was it characterized in a certain way.

It wasn't their job to tell developers and the city how to characterize what they were doing. So I strongly support a bright line test, a real easy one, and I think that most folks in my district, when we talk about this issue, see it as a simple issue.

And to be very honest, so many states responded to that Supreme Court decision way ahead of us, it was all about Connecticut and New London, but we've taken years. But other states saw it fairly straightforward and simple and passed their laws in quick response to the concerns raised by Justice Sandra Day O'Connor in particular.

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Nonetheless, time and time again, I've stated half a loaf is better than none, and I don't want to let the perfect be the enemy of the good. I have concerns regarding some of the issues in the underlying bill.

And I've learned so much, specifically from Senator Fasano in discussing this, and to be very honest, I think there were a lot of provisions in the Planning and Development version of the bill that I see a little bit more closely lying to my view of the issue than the one that Senator McDonald crafted, that's okay.

There's still a notion that perhaps should this get out of the Senate Chamber, this evening that perhaps some of these modifications can be taken care of via amendment in the House. And that's a good-faith representation and I'm hopeful for that, in particular regarding burden of proof.

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I think that if you put the burden on the party that has their property rights in danger that that's a tremendous burden. I think that in issues such as this, as we go forward with reforms, the burden should be on the entity that has the greatest amount of resources already built into it, and that's the governmental entity.

We are, whether it's the state, whether it's a local municipality, whether it's the federal government, batteries of attorneys, lots of resources, you know, almost unlimited amounts that can be directed towards these things, whereas if you're trying to fight City Hall, it's an uphill battle all the time.

That's not to say that the goal of the development or the redevelopment project, and we have three sort of paths that one can take depending on the characterization here, that these goals aren't

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laudable. And that's not to say that there aren't areas that are completely benefited by this.

And I think that if one looks at the history in the State of Connecticut, for every project that has sort of foundered on the shoals, and there's just land laying there fallow and people drive by upset, because something wasn't built, as promised.

There are also significant development and redevelopment projects that everyone in the Circle would say glorious, wonderful change, beneficial to all, worthwhile, even if someone's private property had to be taken along the path.

And it's going to hurt, if you're a private landowner, whether someone's trying to redevelop blighted property or build a school or build a highway or whatever the project may be. So that being said, I too will listen to the debate, but at this point in time on this particular amendment, I will be supporting it.

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But I also look forward to the other amendments being brought out and being supportive of those, as well. And for what its worth, and this may be raised later on, there was the bright line bill offered in the Judiciary Committee.

It did garner widespread bipartisan support and only failed in that particular Committee by one vote, and so I think there's plenty of legs on that still. And I would hope that this body would see fit to adopting some of the amendments that will be offered further on to try to make this good proposal, even better.

And to not overly complicate the issue, but also at the end of the day, adopt a provision that says, one cannot take real property that is owned as a resident, owner occupied, four units or less, and then turn it to a private entity for developmental purposes. I haven't found any constituent that thinks that is a good idea.

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So we should be able to get that through this building. But we haven't been able to do it in two years, but hope remains eternal, and if we can't do it this year, I think we may have to come back and revisit that issue, as the years go by. Thank you very much, Mr. President.

THE CHAIR:

Senator Freedman.

SEN. FREEDMAN:

I do have a few questions, but before I ask them, I would just like to make one comment, it's been two years since Kelo occurred, and it's nice to be able to have a bill before us this evening, or tonight, addressing some of the issues that came out of that court case.

Obviously, I'm not an attorney, but some of the questions I have do pertain to what happened with the United States Supreme Court. So through you, Mr. President, to Senator McDonald, my first question

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really pertains to the Town Meeting and the legislative body that would make this decision.

In many communities, you have a Board of Selectmen, sometimes its three people, sometimes its five people, sometimes its seven people. Through you, would the two-thirds of that Board of Selectmen being able to make a decision on behalf of their community that would be binding?

THE CHAIR:

Senator McDonald.

SEN. MCDONALD:

Thank you, Mr. President, through you, to Senator Freedman, the answer is yes, we considered the situation of communities, where there is a representative Town Meeting and unfortunately, there is almost uniformity across the state, about how frequently RTMs meet.

Some meet regularly, some meet every couple of months, I don't come from one of these towns, but I

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hear that some only meet once a year. And so we, in trying to craft a compromise, we did allow for the communities, where there are legislative bodies through RTMs to allow the Board of Selectmen to act in the place of the RTM.

THE CHAIR:

Senator Freedman.

SEN. FREEDMAN:

Yes, and for clarification, there are some communities that don't even have Representative Town Meetings. All they have is the Board of Selectmen. So those three, five, or seven people would be empowered to make this decision, through you, by two-thirds vote?

THE CHAIR:

Senator McDonald.

SEN. MCDONALD:

That's correct, Mr. President, through you, in that situation, the Board of Selectmen would in essence be the legislative body of the community.

THE CHAIR:

Senator Freedman.

SEN. FREEDMAN:

Yes, thank you, Mr. President, and again, through you, in those communities, where they go to a vote by Town Meeting, would the Town Meeting be required to pass this by a two-thirds vote, of the people coming out to vote, or two-thirds vote of the people in the community, through you, Mr. President.

THE CHAIR:

Senator McDonald.

SEN. MCDONALD:

Through you, Mr. President, if Senator Freedman's question involves a community where there is still a Board of Selectmen, the Board of Selectmen would still

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be empowered to exercise this authority by two-thirds vote.

THE CHAIR:

Senator Freedman.

SEN. FREEDMAN:

Thank you, Mr. President, but there are some communities that do go to a Town Meeting when it comes to doing things, and again, through you, Mr.

President, would that Town Meeting have to vote with a two-thirds majority?

THE CHAIR:

Senator McDonald.

SEN. MCDONALD:

The answer would be no, Mr. President.

THE CHAIR:

Senator Freedman.

SEN. FREEDMAN:

Thank you. The next question I had was if Kelo were to take place under this statute, assuming we had

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passed it, would Kelo be allowed to have occurred the way had the Supreme Court rule? And, I know, it's a judgmental question, but, through you, Mr. President, it would be nice to be able to compare. Thank you.

THE CHAIR:

Senator McDonald.

SEN. MCDONALD:

Thank you, Mr. President, through you, I have always wanted to be a judge, and at least to second-guess judges. Clearly, I don't know how it would have developed, had this statute been in place.

I can most definitely assure you, Senator Freedman and all of the Members of the Circle, that had this legislation been in place, there is no way that the developments in New London have unfolded as they did.

THE CHAIR:

Senator Freedman.

SEN. FREEDMAN:

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Yes, thank you, Mr. President, I appreciate Senator McDonald's comments. Again, I am clearly happy that we have something before us. I think the people of the state do expect us to take some action and move forward with protecting them, and this is a first step.

And I think we have to move on it, and let the public know that we are at least moving in the right direction. No bill is perfect, we all know that, but it is at least something that is being put on the table and we'll go forward and see what happens. Thank you.

THE CHAIR:

Thank you, Senator Freedman. Will you remark further? Senator Fasano.

SEN. FASANO:

Thank you, Mr. President. Mr. President, as Ranking Member of P&D, I would like to thank Senator Coleman, and would also like to thank Senator

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McDonald, as well as, Representative Feltman, Representative Bacchioci, Representative Miner, and Representative Candelora for all the input on the various bills, with respect to eminent domain.

And may I say that there are two competing main bills out there, which is the Planning and Development Bill, which may or may not be called, and the Judiciary Bill, which is the underlying bill that is being amended by virtue of a strike-all amendment.

And I want to indicate that the strike-all amendment now before us is a lot better bill than the underlying Judiciary bill, although I have a personal preference to the P&D bill, certainly this brings us a long, long way from where we were.

And this has come out with a bunch of public hearings at the Judiciary level, and I saw Mike Lawlor up there in the stands. I want to thank Mike Lawlor for his help in the eminent domain, as well, as Chairman of Judiciary. But I want to say that there's

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been an awful lot of public hearings to bring us here.

I'm going to support this amendment, because I believe I would like this to go further and become the bill, and after we have some other amendments to this amendment, once it becomes a bill, that will strengthen the bill, at least inspire some debate over the topic.

So I'm going to be supporting this amendment. As they say, we need to get a bill out, we running some time in session, and if we don't move, we may not get it out.

So I'm going to be supportive of this, and hopefully once it becomes a bill, we can do some amendments and make it a better bill. Thank you, Mr. President.

THE CHAIR:

Thank you, Senator Fasano. Senator Gomes.

SEN. GOMES:

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Thank you, Mr. President. I rise to support this amendment, not reluctantly but with an eye towards, in the future. I want to commend Senator McDonald and Senator Coleman in their efforts to bring out something we can vote on.

Also I want to associate my remarks with just about everybody that spoke here tonight, because I see a lot of positivity. Back at the time Kelo came up, I was not here, I was in the City of Bridgeport, just before I came up here.

I was the Chairman of the School Building Committee there, and we had to exercise some of eminent domain in order to take a couple of pieces of property, in order to get on the way to what, in the final results, will be seven schools.

I was very reluctant to do it at that time, and I associate my remarks with Senator Meyer and Senator Cappiello, when I say I do not approve and will never approve of anybody taking anybody's private property

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for private profit. There are sometimes when in the public good you have to take some property through eminent domain.

Some of the things that have come out in this bill, I think have some improvement. One of the things I thought that people were not properly compensated for their property when we took it. And this other piece where they put 125% of the market rate for housing to compensate people is a move in the right direction.

I feel like other people have said, a man's house is his castle, no matter how big or how small it is, I don't think anybody should be moving to take somebody's house for private profit. Publicly we can move in order to improve things that will further our cities, our schools, and so on and so forth.

But other than that, I don't think any other moves should be made in the act of public domain. I rise to support this amendment, and I hope in the

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future that we will move towards something bigger and better. Thank you.

THE CHAIR:

Thank you, Senator Gomes. Will you remark? Will you remark further on Senate Amendment "A"? Will you remark further? If not, I will try your minds. All those in favor signify by saying "aye".

SENATE ASSEMBLY:

Aye.

THE CHAIR:

No "nays". Senate Amendment "A" passes. Senator Fasano.

SEN. FASANO:

Thank you, Mr. President. Mr. President, as I mentioned that this bill is a good bill. It's a good first step, however, I'm hoping that maybe we can move this a little bit further along and strengthen some of the provisions in the bill. With that, Mr. President, I would ask the Clerk to call LCO 8531.

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THE CHAIR:

Mr. Clerk.

THE CLERK:

LCO 8531, which will be designated as Senate Amendment Schedule "B". It is offered by Senator Fasano of the 34th District, et al.

THE CHAIR:

Senator Fasano.

SEN. FASANO:

Mr. President, I would move the amendment and request permission to summarize.

THE CHAIR:

Please proceed, Sir.

SEN. FASANO:

Thank you, Mr. President. Mr. President, basically what this amendment does is to help define the term deteriorating or deteriorated. Mr. President, when you do redevelopment there is a revision that's in the underlying bill that talks

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about detrimental to safety, health, morals, or welfare of the community.

Mr. President, what this bill intends to do is help those who may have their property taken to be able to understand what it is that they may have to do to keep their property from being taken.

And number two that there is a discernable standard for which a property would be considered unsafe or unhealthy or not within the best morals or welfare of the community.

Mr. President, I'm not going to read provisions that are there in front of this Circle, but I would move this amendment along, because I believe this will bring more certainty to the action. It will give a discernable standard for the court and allow people to better understand whether or not, they are within the property which should be taken.

Mr. President, I ask this Circle to endorse this amendment. I'm not sure it would be a friendly

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amendment, at this time, but I certainly would ask for the endorsement. Thank you, Mr. President.

THE CHAIR:

Will you remark further on Senate Amendment "B"?
Senator McDonald.

SEN. MCDONALD:

Thank you, Mr. President. Well, if not friendly, at least collegial. And I do want to, however, rise in opposition to the amendment. I fully understand and appreciate what Senator Fasano is trying to achieve. You know, the definition of deteriorating or deteriorated is certainly not easy.

I had occasion earlier this evening, Mr. President, to look back, and we actually amended our statutes back in 1959 to add the word deteriorating. And there have been several Supreme Court decisions, since 1959, interpreting exactly those two words.

So I am hesitant at this point in time to amend what has already been interpreted by our Supreme

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Court. And to do so without reconciling the language included in the amendment, with the substantial body of case law that has already addressed this issue.

I certainly share Senator Fasano's concerns that we have to get a firm grasp of what we are contemplating here, but I do know that the courts have already substantially done that.

I have represented to Senator Fasano that I will continue to work with him on that issue, but at this time, Mr. President, I must oppose the amendment and ask that when there is a vote that it be done by roll call.

THE CHAIR:

A roll call vote will be ordered. Will you remark? Will you remark further on Senate Amendment "B"? Senator Roraback.

SEN. RORABACK:

Thank you, Mr. President, and through you, if I may briefly a question to Senator Fasano.

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THE CHAIR:

Senator Fasano.

SEN. FASANO:

Thank you, Mr. President.

SEN. RORABACK:

Mr. President, oftentimes in this discussion about eminent domain we hear about the necessity of condemning blighted property and, through you, to Senator Fasano, do you know is the word blight used in the underlying amendment which passed a couple of minutes ago, or is this language which is kind of used lieu of the term blighted property, through you, Mr. President.

THE CHAIR:

Senator Fasano.

SEN. FASANO:

It is my understanding, it is the deteriorating the deteriorated language that is being used for the issue of blighted.

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THE CHAIR:

Senator Roraback.

SEN. RORABACK:

Thank you, Mr. President, and to me, blight is something, we all know it when we see it, but it also can lie in the eye of the beholder.

Through you to Senator Fasano, I'm guessing that this amendment is intended to circumscribe to some degree the parameters under which property would be determined to be deteriorating or deteriorated. Is that the intent of the amendment, through you, Mr. President?

THE CHAIR:

Senator Fasano.

SEN. FASANO:

Thank you, Mr. President, yes, the purpose of this is to lay out some objective standards for which the property owner, as well as, the court, as well as, the municipality can determine whether or not

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redevelopment is appropriate for the eminent domain,
through you, Mr. President.

THE CHAIR:

Senator Roraback.

SEN. RORABACK:

Thank you, Mr. President. And because I for one
am a pretty firm believer that government ought to be
contained by objective standards wherever possible,
and because I'm fearful of empowering government to
act on the strength of subjective standards, I think
Senator Fasano's amendment is a good one, which we
should support. Thank you, Mr. President.

THE CHAIR:

Thank you, Senator Roraback. Will you remark?
Will you remark further on Senate Amendment "B"? Will
you remark? If not, Mr. Clerk, would you please call
the roll. The machine will be open.

THE CLERK:

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An immediate roll call has been ordered in the
Senate. Will all Senators please return to the
Chamber.

An immediate roll call has been ordered in the
Senate. Will all Senators please return to the
Chamber.

THE CHAIR:

Have all Senator voted? If all Senator have
voted, the machine will be locked. The Clerk will
call the tally.

THE CLERK:

Motion is on adoption of Senate Amendment "B".

Total number voting 36; necessary for adoption,
19. Those voting "yea", 13; those voting "nay", 23.
Those absent and not voting, 0.

THE CHAIR:

Senate Amendment "B" fails. Will you remark
further as amended by Senate "A"? Will you remark
further? Senator Fasano.

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SEN. FASANO:

Thank you, Mr. President. Mr. President, if I could have the Clerk call LCO 8538, Mr. President.

THE CHAIR:

Mr. Clerk.

THE CLERK:

LCO 8538, which will be designated as Senate Amendment Schedule "C". It is offered by Senator Fasano of the 31st District, et al.

THE CHAIR:

Senator Fasano.

SEN. FASANO:

Mr. President, I move the amendment and request permission to summarize.

THE CHAIR:

Please proceed, Sir.

SEN. FASANO:

Thank you, Mr. President. Mr. President, in the redevelopment, which is the blighted area that we just

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talked about, for trying to get standards in there, there is a plan that gets developed by a municipality to take a blighted area and it's due to plan for development, Mr. President, what this amendment does is two things.

First it allows that once a plan is established, stated in the underlying bill, a person so effected by the development would have standing to bring an appeal to determine and challenge whether or not the plan, in fact is required, if it has met all of the conditions, and if, in fact, it is a prudent thing to do and challenge the findings of the legislative body, who approved the plan.

Mr. President, it also, when a plan comes to the end of its lifetime, and someone requests to either amend the plan or continue the plan for a period of time, once again, it gives the same applicants the right to walk in and take an appeal of that decision

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and have a court determine whether or not the actions of the underlying municipality were, in fact, proper.

Mr. President, I think this is important a time and day that we're talking about transparency of government, when we talk about open and effective government.

There are public hearings on this issue, for which someone can participate, but without the leave to run to Superior Court to get the judicial judication of the underlying disagreement, I believe it doesn't go quite far enough.

And, therefore, Mr. President, I would like this amendment to be considered, another friendly amendment, other than just a collegiate amendment and move it along. Thank you, Mr. President.

THE CHAIR:

Thank you, Senator Fasano. Senator McDonald.

SEN. MCDONALD:

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Thank you, Mr. President. I hate to disappoint, but I rise in opposition to the amendment. You know, and perhaps there is some misunderstanding about what a redevelopment plan can be. Oftentimes, a redevelopment plan is a planning document.

So, Mr. President, it doesn't necessarily follow that anybody who might have an interest in the plan has been adversely impacted by the plan. And to allow for an appeal of that plan at its earliest stages, would deny the municipality the opportunity to fully consider the ramifications of a plan.

For instance, when a redevelopment plan is adopted, it, oftentimes, calls for the feasibility study for how a plan might be staged and rolled-out, if you will. And that, under this amendment, would be potentially precluded. A redevelopment plan is a process. It is a lengthy process.

It is one that is the result of extensive public hearings and community input. And in fact, it is a

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collaboration of stakeholders and government officials. Mr. President, at its core, it is a political decision, and it is a political document. Not to say that as a partisan document.

It is a political document adopted by a legislative body, so to suggest that if you don't like a political decision, you would have standing to bring a lawsuit in Superior Court, that type of precedent could bode ill for all of us in public office for what we do here and what communities across the state do.

So I understand Senator Fasano's concerns, but I think that the political process is not a ripe area for judicial resolution at the early stage, such as a planning document.

Finally, Mr. President, even if we were going to contemplate a legal avenue, as a decision of a political entity or a municipal planning entity, any appeal, even if we were going to allow one, would more

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properly be before an administrative appeal proceeding, rather than a lawsuit in Superior Court.

So I object to the amendment, and I ask that when the vote be taken, it be taken by roll call.

THE CHAIR:

A roll call will be ordered, Sir. Senator Roraback.

SEN. RORABACK:

Thank you, Mr. President, through you, if I may, a couple of questions for Senator Fasano, trying to track what's a relatively complicated underlying amendment, and then Senator Fasano's amendment being, or attempting to be pasted on top of the underlying bill.

And if I understand what happened with the last amendment was Senator Fasano's attempts to define what deteriorated or deteriorating might mean, failed. And if I'm reading this amendment properly, Senator Fasano is trying to empower a homeowner, whose property might

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have been determined to be deteriorated or deteriorating, if someone wanted to contest that judgment which was made, they could go to court.

And the burden wouldn't lie on the resource-poor homeowner to make the case that their property was not deteriorated or deteriorating, but rather Senator Fasano's amendment says, if you're going to make that call, the burden is going to be on government to demonstrate that burden.

And through you to Senator Fasano, am I reading that correctly? Is that the effect of your amendment, or am I missing something again?

THE CHAIR:

Senator Fasano.

SEN. FASANO:

Mr. President, I'm glad Senator Roraback actually did mention that. The burden is on the town or municipality in the event of a lawsuit, to demonstrate to the court that their actions are compliant with the

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redevelopment plan criteria, so the answer would be yes, the burden does shift to the municipality, through you, Mr. President.

THE CHAIR:

Senator Roraback.

SEN. RORABACK:

And through you, Mr. President, to Senator Fasano, it does so under the terms of your amendment or it does so under the terms of the underlying bill which passed previously, through you, Mr. President.

THE CHAIR:

Senator Fasano.

SEN. FASANO:

Thank you, Mr. President, through my amendment, through you, Mr. President.

THE CHAIR:

Senator Roraback.

SEN. RORABACK:

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Again this is a bit complicated, through you, Mr. President, for me anyway. So does that mean that under the underlying amendment, Senator McDonald was characterizing a decision as to whether property was deteriorating or deteriorated, as essentially a political decision and that it's more appropriate for the burden to be on the homeowner to prove the government wrong, than to make the government show that it was right, through you, Mr. President, to Senator Fasano.

THE CHAIR:

Senator Fasano.

SEN. FASANO:

Mr. President, if I understood the question, yes, under the underlying amendment there actually is no appeal-able right, whatsoever, for the plan on the underlying amendment. There is later on, which we will discuss in another amendment, an appealable right as to that property.

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But the plan under what is now the bill, there is no appeal able right to appeal the plan as a scope plan. What the amendment that I present to you tonight says that you will be able to attack the plan, if you believe the plan as an overlying policy scope is not compliant with the law of eminent domain, as it relates to redevelopment, through you, Mr. President.

THE CHAIR:

Senator Roraback.

SEN. RORABACK:

Thank you. So last question, through you, Mr. President, could such a plan have designated in it areas deemed to be deteriorated or deteriorating such that the use of eminent domain is contemplated in those areas?

And would it be possible that a single-family homeowner would find themselves in the crosshairs of such a designation in such a plan, with no immediate

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opportunity to contest that designation, through you,
Mr. President.

THE CHAIR:

Senator Fasano.

SEN. FASANO:

Yes and Senator Roraback that would be accurate
and, in fact, I'll take that one step further and say
if the neighborhood was deteriorating and your
property was not deteriorating, how that ever is
defined, because the surrounding neighborhood for
which you are a part of is deteriorating.

And they make that representation. They can take
your property as part and parcel of that development
plan. So that's the reason I feel that the importance
of this is maybe you have someone who has a property
that is in very descent shape, they've kept it up, the
neighborhood may be a little on the downside, there
would be not right to come in and say, as a
development, hey, this whole plan doesn't make sense,

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because there are good aspects to this neighborhood. You don't have that ability but for this amendment, through you, Mr. President.

SEN. RORABACK:

Thank you, Mr. President, you know, it's been said you can't fight city hall, but when government contemplates use of eminent domain, I think, Senator Fasano's amendment recognizes that the little guy should be given half a chance, and if we have some sympathy for the little guy, I think we ought to support the amendment. Thank you, Mr. President.

THE CHAIR:

Thank you, Senator Roraback. Will you remark on Senate Amendment "C"? Senator McDonald, for the second time.

SEN. MCDONALD:

Thank you, Mr. President. Just briefly, Mr. President, the colloquy between Senator Fasano and Senator Roraback was very helpful in demonstrating why

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this is so problematic, in fact. The nature of a finding of whether a plan area is deteriorated or deteriorating is at its core, an evaluative process.

It takes into consideration a whole host of issues that could include the substandard condition of property, it could include the environmental problems, but at its core, Mr. President, it is both a qualitative and a quantitative analysis by public policy makers.

Under this amendment, a municipality would have to prove by clear and convincing evidence that something that is inherently analytic and qualitative is correct, which, of course, would mean a judge would be second-guessing the policy decision of a municipality.

So, Mr. President, by its very nature the judge isn't second-guessing the factual findings of the administrative agency. A judge applies law, doesn't substitute his or her opinion of what should be the

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case, but applies laws to the facts that are presented to the court.

And under this proposal, Mr. President, it would turn it upside down and require that the judge in fact, be the one who determines whether a property or a plan area is deteriorated or deteriorating. The core of the awesome power of eminent domain comes, at least from our forbearers in the British Empire through the sovereign.

But in this country it comes through the legislative process, through the power of the people, not the through courts. And so, Mr. President, I understand the concern, but there has never been an appeal of a document that creates the plan, and I would resist doing so now.

THE CHAIR:

Thank you, Senator McDonald. Will you remark?
Will you remark further on Senate Amendment "C"? Will

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you remark further? If not, Mr. Clerk, please call the roll. The machine will be open.

THE CLERK:

An immediate roll call has been ordered in the Senate. Will all Senators please return to the Chamber.

An immediate roll call has been ordered in the Senate. Will all Senators please return to the Chamber.

THE CHAIR:

Have all Senators have voted. If all Senators have voted, the machine will be locked. The Clerk will call the tally.

THE CLERK:

Motion is on adoption of Senate Amendment Schedule "C".

Total number voting, 36; necessary for adoption, 19. Those voting "yea", 12; those voting "nay", 24. Those absent and not voting, 0.

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THE CHAIR:

Senate Amendment "C" fails. Senator Fasano.

SEN. FASANO:

Thank you, Mr. President. Mr. President, can I ask the Clerk to call LCO 8544.

THE CHAIR:

Mr. Clerk.

THE CLERK:

LCO 8544, which will be designated Senate Amendment Schedule "D", it is offered by Senator Fasano of the 34th District, et al.

THE CHAIR:

Senator Fasano.

SEN. FASANO:

Mr. President, I move the amendment and request permission to summarize.

THE CHAIR:

Please proceed, Sir.

SEN. FASANO:

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Thank you, Mr. President. Mr. President, actually I think the law does exist now that if eminent domain does take place and someone feels as if they have been wronged by the procedure, that you can run to court for an injunction to prohibit the eminent domain from going forward.

And upon a showing to the court facially that the municipality failed to apply the necessary procedures, a court can grant a temporary injunction until such time as a final hearing on the merits.

Mr. President, what this does is go one step further, which is put the homeowner in a position that the town has the burden of proof to demonstrate that what they did is correct.

Now I've got to tell you, out of all the times you ever want to put the burden of proof in the right location, this is it. Homeowners cannot afford the resources to battle a municipality with unlimited

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resources. Therefore, the burden should be on the municipality to prove a positive.

That is to prove that they've complied with all of the procedure of the statute, to prove that they've complied with the notice, to prove that they've complied with those elements necessary for eminent domain. That just seems logical. Otherwise, the homeowner is at the inequitable position of proving a negative, proving that something did not take place.

So, Mr. President, what my amendment does is it shifts the burden to the municipality to go forward, with their burden of proof, allowing the homeowner to then, if you would, show where the town erred. Mr. President, we have to remember what we're talking about.

We're talking about a big municipality against a little guy, or a little person, I suppose I should say. And the only way to sort of even up the box score is by placing the burden where it should be,

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which is on the municipality. So, Mr. President, I urge adoption of this amendment. Thank you.

THE CHAIR:

Thank you, Senator Fasano. Senator McDonald.

SEN. MCDONALD:

Thank you, Mr. President. Mr. President, I rise in opposition to the amendment. You know, it should be first said that in the underlying Senate Amendment "A", which has already been adopted, we already provide for an opportunity for a property owner to bring an injunction action, if the municipality has failed to fulfill its obligations.

That protection is already in place. And I understand Senator Fasano's concerns, but I think that they are overstated. The fact of the matter is that these are all public agencies. They do their business in public. There are going to be notices of these hearings. You can come and videotape them, if you wish.

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They take votes in public. They publish minutes of those meetings, and all of their documents are subject to public disclosure, not with high-priced lawyers, but with a single page letter under the Freedom of Information Act.

So all of those source documents that would be necessary for pursuing this type of action are readily available to members of the public. And, Mr. President, under existing law that property owner would have a right to prove just by a preponderance of the evidence. It's not a heavy, heavy burden.

You would just have to show, by the documents, that something wasn't right. That the I wasn't dotted, that the T wasn't crossed, that somebody didn't get notice about a hearing to prove ones case, to find out whether or not the municipality mis-stepped.

And had the municipality mis-stepped in a way that was going to be detrimental to the property

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owner, then the court would have, of course, the discretion and opportunity to issue an injunction, to join the pursuit of the plan until the municipality went back and did it right.

So I don't think, Mr. President, under the circumstances, that it is either going to be costly or time consuming for a property owner to avail himself or herself of that opportunity.

Again, Mr. President, inverting the burden, the highest burden under our law, to be a clear and convincing evidence standard is an extraordinary proposal, and I suggest that it is misplaced at this time.

Once again, Mr. President, when the vote is taken, I ask that it be taken by roll call.

THE CHAIR:

A roll call will be ordered. Will you remark?
Will you remark further on Senate Amendment "D"? Will
you remark? Senator Kissel.

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SEN. KISSEL:

Thank you very much, Mr. President. I think this is one of the most important amendments that we have out here. Again, you know, Senator McDonald said it himself, he said, the origins in this go back to Great Britain with the awesome power of the sovereign.

Even to this day, over across the Atlantic Ocean, in many ways, they still have their royalty. They still have their House of Lords. Here in America, the awesome power that the legislative branch has, whether it's municipal, state level, or in the federal level.

And as Senator Roraback was aptly stating in his colloquy with Senator Fasano earlier this evening, you know, the notion that you can't fight City Hall, just the notion that you're going to try to challenge, and we're concerned, the folks who are supporting this amendment, about the little guy.

And I think the little guy can be used for men and women. It's like you come into the Chamber, hey,

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guys, thought I would throw that in there. But the individual, lets say you're an individual homeowner or a group of homeowners, the folks in New London could never have gone up to the United States Supreme Court, unless they had advocacy groups that stepped in and helped them with their legal case.

There's no way those folks were affording to go all the way up the ladder. That was never going to happen, and let's say you're not just a small homeowner. Let's say you're running a business, you're a business person, and you're just caught in the crossfire of a development project.

And they determine that your business on that beautiful block that you've had in your family for three generations, prime location. Well, we're just going to get the real estate appraiser out there and we're going to do an evaluation of what that building is and that parcel is and that's what you're going to get.

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And you're saying I've got all this stuff, this is not fair, and I want to challenge this, costs a lot of money. So how do we even all of this out? When there are disproportionate entities battling one another, we make determinations as to where the burden of proof lies.

When we're talking about criminal statutes, we believe an individual's property rights to their money, as well as, to their liberty are so important that to be convicted of a crime, the state, not the individual, the state has to prove its case beyond a reasonable doubt.

Well, we don't have that high of a standard here, but what we're looking to do here is to put the burden on the state, because the state is the one in the driver's seat. The state is the one that's doing all of this.

And, yeah, it's great that it's all affiliable and that the records are available to the public, and

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that's well and good and as it should be. But in the battle between David and Goliath, I would pose it that David is the individual, who might feel that their property is at risk of being gobbled up, steamrolled, trampled, and that they are being scuttled and pushed aside.

And so, if they are willing to commit the resources to make the challenge, which is a huge commitment, at least put the burden on the government to make its case.

And as Senator McDonald indicated, when the first amendment was offered, after the amendment that became the bill, Senator Fasano's first amendment, there's a lot of well-settled law out there, common law out there, regarding these issues.

So I don't think it is asking too much. Maybe people just have an inherent trust in the government. Folks in my neck of the woods, sort of have an inherent kind of distrust of the government. Hi,

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we're the government, we're here to help. I'm not so sure. Prove it to me, show me.

And so when the government is wielding such huge powers such that we're talking about gaining peoples real property by utilization of eminent domain, the burden should be on the government. I strongly urge support of this very reasonable amendment. Thank you, Mr. President.

THE CHAIR:

Will you remark further on Senate Amendment "D"?
Will you remark further on Senate Amendment "D".
Senator Fasano.

SEN. FASANO:

Mr. President, just for the second time, I would just like to say that Senator Gomes and Senator Meyer had indicated that taking peoples property is not the right thing to do, and I agree with that. And one way we can insure that if we are going to let them do it, the burden should be on the municipality, to ensure

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they are doing it for the right reasons, under the right procedures.

So if we're going to give them that power, and those of you in this Circle believe that that power is too great, one way you mitigate that power is by shifting the burden to the municipality to prove that what they are doing, by clear and convincing pass the test of the court.

At the very, very least, individuals deserve the test that puts the burden on the town or the city, to say it is worth it, at a clear and convincing level, to take your home, your property, something you live in, something you work for, something you purchase, at the very least, clear and convincing.

That is not enough to say, yes, we could afford that much protection? I don't think that's a great burden. If it's good and a city needs it, or the municipality needs it, they show clear and convincing, and if someone has a grief about it, the court can

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say, yes, it's clear and convincing, let's move on.

Thank you, Mr. President.

THE CHAIR:

Thank you, Senator Fasano. Will you remark?
Will you remark further on Senate Amendment "D"? If
not, Mr. Clerk, please call for a roll call vote. The
machine will be open.

THE CLERK:

An immediate roll call has been ordered in the
Senate. Will all Senators please return to the
Chamber.

An immediate roll call has been ordered in the
Senate. Will all Senators please return to the
Chamber.

THE CHAIR:

If all Senators have voted, the machine will be
locked. The Clerk will call the tally.

THE CLERK:

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Motion is on adoption of Senate Amendment
Schedule "D".

Total number voting, 36; necessary for adoption,
19. Those voting "yea", 13; those voting "nay", 23.
Those absent and not voting, 0.

THE CHAIR:

Senate Amendment "D" fails. Senator Fasano.

SEN. FASANO:

Mr. President, I apologize. I don't mean to try
the patience of the Circle or of the dais. If I can,
could I get LCO 8501, please, Mr. President.

THE CHAIR:

Senator Fasano, give that number again, will you.

SEN. FASANO:

Oh, I'm sorry, Mr. President. Mr. President, LCO
8501.

THE CHAIR:

8501.

THE CLERK:

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LCO 8501, which will be designated as Senate
Amendment Schedule "E". It is offered by Senator
Fasano of the 34th District, et al.

THE CHAIR:

Senator Fasano.

SEN. FASANO:

Thank you, Mr. President. Mr. President, my
amendment--

THE CHAIR:

Do you move adoption, Sir.

SEN. FASANO:

I'm sorry. Move for adoption and after,
summarize.

THE CHAIR:

Please proceed.

SEN. FASANO:

Mr. President, my amendments apparently have not
made its way into the underlying bill, and perhaps
it's because I did a piecemeal effect. And perhaps if

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I were to take all of my amendments and put them together in sort of a cake batter and go forward, perhaps it may meet with some success.

Mr. President, what this bill does is, frankly this is the Planning and Development Bill, Mr. President. This is the bill that came out of our Committee, Mr. President, and what it does briefly is how it's different than the underlying bill, is it provides a number of protections for eminent domain for taking property.

It has the shifts of burden that we talked about. It has the clear and convincing standards that we talked about. It allows the appeal of a redevelopment plan, Mr. President. It allows an Ombudsman to be an arbiter, if you would, of the underlying disagreement and then allows somebody to go to court from there, Mr. President.

Mr. President, it also allows that a property is not, we'll strike that, so does the new judicial bill

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due. But, Mr. President, it also allows for a more of an input from the public to ensure that their rights are not trampled by municipalities.

Mr. President, by combining all the amendments that met with a bad fate, we would have a very strong Eminent Domain Bill. One that assuredly protects the people of the State of Connecticut, one that is assuredly protect peoples rights to own their home and own their property without the interference with government.

May I also add what this bill does that is very important, Mr. President, is as the law stands now, Mr. President, if you're a renter of a building and you have your business in that building and eminent domain takes that building, Mr. President, your business goes as well.

This bill can give you goodwill for your business, and that means a lot. When you buy, as a lawyer, and, I know, and many lawyers around this

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Circle know, when you buy a business you look at the books, but you also buy the goodwill. There is a value for that. In the underlying bill, there is no value for goodwill.

Mr. President, this gives equality to those businesses that may suffer the fate of eminent domain. As I said, this bill is more encompassing. I think Planning and Development did a great job in getting this bill out through the two chairs, Representative Feltman, Senator Coleman, as well as, the Ranking Members. And, Mr. President, I support this as a strike-all amendment. Thank you.

THE CHAIR:

Thank you, Senator Fasano. Will you remark? Will you remark further on Senate Amendment "E"? Senator Coleman.

SEN. COLEMAN:

Thank you, Mr. President. First of all, Mr. President, I want to thank Senator Fasano for all the

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compliments he has heaped my way this evening. And I also want to reiterate my gratitude to him for all of the input he has had during the process and the work that was put into the response of the whole issue of eminent domain.

I would like the Planning and Development Bill as well, however, I do believe that most of the people who were involved in the discussions and the negotiations concerning this particular issue have committed to support, and as we indicated in our preliminary remarks, the initial amendment that was brought forward this evening is a compromise.

I'm committed to support that compromise, not to say that there are not some issues in the Planning and Development Bill, which, obviously, I believe are meritorious. I indicated in my earlier remarks, one of the things I enjoy about this process is the give and take that occurred.

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And Senator Fasano made some reference to the concept of goodwill that's included in his amendment. Through the process of discussing that concept, I do believe that goodwill is a factor that should be taken into consideration.

When one party, a business owner sells a business to another party and leaves that business, walks away, retires, or whatever, it doesn't neatly fit, as I found, the whole concept of eminent domain. When a business might be taken by the process of eminent domain, there was no good way, as we considered that whole issue of determining the value of goodwill.

Inasmuch as the owner of the business was not necessarily leaving the business, but was merely relocating the business to another location, and where the patrons of that original business, may still do business with the original, business owner.

So one of the reasons why, I suppose, I would oppose the amendment that is currently before us is,

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because I do think the concept of goodwill probably needs exploration further, if it is to be included in any legislation that has to do with eminent domain.

For that reason and some others, I would urge the members of the Senate to reject this amendment. Thank you, Mr. President.

THE CHAIR:

Will you remark? Will you remark further?

Senator McDonald.

SEN. MCDONALD:

Thank you, Mr. President. Mr. President, I just want to concur with Senator Coleman and just briefly add that we did look long and hard at the issue of goodwill and from our review of other states that have tried to wrestle with this issue.

I think we've only found that one has actually incorporated goodwill in eminent domain-related statutes, and it apparently has met with mixed reviews about the feasibility and advisability in including

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goodwill in eminent domain statutes, because of the complexity of trying to even define what goodwill is in the context of eminent domain. And so that is why it is not included in this.

I should also just briefly remark that we looked at that, because that was one of the issues that Governor Rell commented about back in March, when she issued a press release on the issue of eminent domain. By my recollection, in that press release, she said that there were five issues that she wanted to see addressed in an Eminent Domain Bill.

Ironically, of course, those issues were ones that were part of the compromise legislation that was crafted between the Judiciary Committee and the Planning and Development Committee last year, but which we did not have an opportunity to vote on.

But I am happy to report to Members of the Circle that of the five issues she outlined in her press release, the underlying amendment that has already

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been adopted includes four of them. The only one that is not included is the issue of goodwill.

And that, as I indicated, is because of the very complicated and meddlesome issues relating to goodwill and how it could possibly ever be incorporated in a statement of compensation by a municipality, because at its core, goodwill is extraordinarily subjective.

And the goal of all eminent domain actions is to make sure that just compensation, fair compensation based upon value that is clearly identifiable, can be provided to a property owner. I'm not adverse to continuing to think about the issue of goodwill and whether or not, we or any state could actually nail it down to be included in statutes, but neither we, nor the amendment being offered by Senator Fasano, has achieved that goal at this time.

And so I oppose the amendment and I ask that when the vote is taken, it be taken by roll call.

THE CHAIR:

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A roll call vote will be ordered, Sir. Will you remark? Will you remark further on Senate Amendment "E"? Will you remark? If not, Mr. Clerk, please call for a roll call vote. The machine will be open.

THE CLERK:

An immediate roll call has been ordered in the Senate. Will all Senators please return to the Chamber.

An immediate roll call has been ordered in the Senate. Will all Senators please return to the Chamber.

THE CHAIR:

Have all Senators voted. If all Senators have voted, the machine will be locked. The Clerk will call the tally.

THE CLERK:

Motion is on adoption of Senate Amendment Schedule "E".

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Total number voting, 36; necessary for adoption, 19. Those voting "yea", 12; those voting "nay", 24. Those absent and not voting, 0.

THE CHAIR:

Senate Amendment "E" fails. Senator Fasano.

SEN. FASANO:

Thank you, Mr. President. Mr. President, first of all, I would like to thank you and the Members of the Circle for your patience here tonight, with respect to these amendments. Mr. President, I think they are very important amendments.

And I also want to thank Senator McDonald and Senator Coleman for the dialogue and Senator McDonald extending his hand to say, we will work on this, even though it's going down to the House, should it get approved, that we will work on this and come up with some language, maybe, for the House to take up, when they vote on that.

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That being said, Mr. President, I have one last amendment to call, LCO 8379, Mr. Clerk.

THE CHAIR:

Mr. Clerk.

THE CLERK:

LCO 8379, which will be designated as Senate Amendment Schedule "F". It is offered by Senator Fasano of the 34th District, et al.

THE CHAIR:

Senator Fasano.

SEN. FASANO:

Mr. President, may I yield to Senator Kissel.

THE CHAIR:

Senator Kissel, do you accept the yield?

SEN. KISSEL:

Yes, I do accept the yield, Mr. President.

THE CHAIR:

Please proceed.

SEN. KISSEL:

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Thank you, Sir. What this amendment does is--

THE CHAIR:

Would you like to move adoption, Sir?

SEN. KISSEL:

Yes, I'm sorry.

THE CHAIR:

That's okay.

SEN. KISSEL:

Mr. President, I would move adoption of the amendment.

THE CHAIR:

Please proceed.

SEN. KISSEL:

Thank you. What this amendment is called by many folks is the bright line. What this does is it sets out a very simple statement that residential property, owner occupied, four units or less cannot be taken for development projects, economic development projects.

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And it's extraordinarily narrowly drafted to make a clear statement regarding the concerns raised by Justice Sandra Day O'Connor in her Kelo decision. It's not a mixed use, no gray area. It avoids all of that issue, so that if there's a question, we're not even going to go down that road.

But we feel, by this amendment, that's the exact same amendment that some of my colleagues here in the Circle voted on in the Judiciary Committee, that the government cannot take a person's home and then flip it and send it out, and it ends up in the hands of a private enterprise for economic development.

Could be good for the community, the concern that municipalities might look to this to try to raise their property taxes. But at some point, we have to draw that bright line and say, you can't do that with a person's home.

If it's a school, if it's a road, if it's some kind of mixed use, where there's a hockey rink or

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something, okay, this doesn't touch that. But in those instances that the court was concerned about enough to put in its decision, our United States Supreme Court, to those sets of circumstances, that other states throughout our country said, unacceptable.

Here in New England, cradle of liberty, where we felt so upset with the British taking away our rights, quartering of troops, fighting for our liberties, life, liberty and the pursuit of happiness, a person's property, the notion that a person's home is their castle, you know what, that is a fundamental core belief held by the vast majority of my constituents.

And they said, if you can do at least one thing, protect my house. If it's for something for the betterment of the community, I'm not going to be happy, but at least I understand. But if it's just to turn it over to a private development? It's going to

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be owned by some other, why are you putting them above me?

Who are you to put them above me? And this says, you can't do it. Is it perfect? It's not perfect. Does it get into renters and things like that and giant apartment complexes? No, but does it make a very clear statement, yes, it does. It says, owner occupied, four units or less, not allowed in the State of Connecticut.

It's not a novel idea. It's not a complicated idea, but it's the idea that my constituents want us to pass in Connecticut, and that's why we've brought it out here, as our last amendment to this particular bill. I urge its adoption. Thank you, Mr. President.

THE CHAIR:

Thank you. Senator DeBicella.

SEN. DEBICELLA:

I too rise in strong support of this amendment. If you look at the fundamental rights that the United

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States was founded on, there are things that we hold sacrosanct, things like majority rule, limited government, unalienable rights, and private property.

To quote an old saying or to paraphrase an old saying, a family's home is their castle. A residential home that a family owns and lives in is very often the result of a lifetimes worth of work. The blood, sweat, and tears of years of going into paying down a mortgage, building up and furnishing a house.

And this amendment simply says that the government can't take it for economic development. Eminent domain has a place in our society, but it should be exceedingly rare. It should be used only for those instances where there is a clear need for public infrastructure, whether that be a school or a highway, and not for taking an individual's home.

I actually believe, Mr. President, it is immoral for the government to take a person's home for

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economic development reasons. And I use those strong words that might be surprising coming from me, who is always talking about economic growth, because I believe that property rights are that important and that fundamental to our civilization.

And I think the people of Connecticut would agree with that. Polls have shown over 90% of people are against taking single family residences for economic development. So, Mr. President, I ask tonight that we join with the vast majority of people in Connecticut in respecting property rights of individual homeowners and approving this bright line amendment. Thank you.

THE CHAIR:

Thank you, Senator DeBicella. Will you remark?
Senator McDonald.

SEN. MCDONALD:

Thank you, Mr. President. Mr. President, I rise for the primary purpose of saying that many of the safeguards that were placed into the underlying bill

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were designed specifically help one to four-unit property owners.

But you know, Mr. President, we went through this in another year, and I won't rehash that argument at this time, but this is an area that is hard to distinguish between one's loyalties to their individual residential property versus a commercial property that has been held in a family for generations.

I have talked in the past about the bias that goes into these types of amendments, when there are not owner-occupied units but rental units. This is a very difficult area, we understand. And I think that is why we last year created the Office of Ombudsmen, to help work with these property owners, to avoid the difficult circumstances that Senator Kissel and Senator DeBicella have mentioned.

And I should also say that we are hopeful that, because of the protections that are in the underlying

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bill, the difficult circumstances that have been outlined by my two colleagues will never come to pass in the State of Connecticut.

And, therefore, I think that this amendment, while clearly well motivated, is unnecessary at this time, and I will be opposing it and ask that when the vote is taken, it be taken by roll call.

THE CHAIR:

A roll call vote will be ordered. Will you remark further on Senate Amendment "F"? Senator McKinney.

SEN. MCKINNEY:

Thank you, Mr. President. Mr. President, I rise in support of this amendment and did not speak on the other amendments or on the underlying bill, because from what I have learned, and what I have talked to my constituents about, since the Kelo case, no issue is more important than the one addressed in this amendment.

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And perhaps this amendment will suffer the same fate as the last four or five. But what this amendment says very simply is that to the people of the State of Connecticut, your homes will never be taken for the purpose of economic development.

Your homes will never be taken from you and given to a developer or a private business concern. We understand that eminent domain, and I think we all agree is an awesome power of government used as a last resort. And that there may be times, when building a new school or putting in a new power line or building a new highway, that some homes may have to be sacrificed, but only in a last resort.

But the idea that we would ask someone to lose their home for a development project, doesn't sit well with me. I don't believe it sits well with the overwhelming majority of the people of the State of Connecticut. And quite frankly, I don't think it

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would have sat well with the founders of our Constitution.

I can't imagine there was a single person, whether it was the people in Connecticut, who were doing the fundamental orders, which was the first written Constitution in the civilized world, or the people who did the U.S. Constitution, whoever imagined that you could come take someone's home and property and give it to a businessman or a business person or a private entity.

I don't think anybody ever would have believed that would be possible, because of the importance on property ownership. That's why I think we need to continue to talk about this idea of protecting homeownership.

And I understand and I have heard Senator McDonald, as Co-Chairman of the Judiciary Committee, correctly pose a multitude of questions to try to get

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at, you know, perhaps a thousand different scenarios, as to what this could mean.

And we could do that, and we could do that about businesses, and we could do that about many other facets of this bill, but the one thing that has always stuck me about all of the Eminent Domain Bills and our eminent domain laws is that when we talk about protections, and there are more protections in this bill than there are in current law.

When we talk about hurdles that need to be, you know, jumped over, there are more hurdles in this bill than there are in current law. But we always talk about having public hearings and public notices in the towns, where a project is being proposed, and that have to pass by a two-thirds vote of the people.

But let's think about that for a second. In the overwhelming number of development projects that are going to happen in the State of Connecticut, very few people are going to be impacted. Very few homes or

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businesses are going to be taken by eminent domain, maybe, it's a handful.

It's probably less than 1% of the people in that town or city. So 99% of the people in that town or city are being told that we can do this, and we're going to lower your property taxes. We can do this, and we're going to create more jobs. We can do this, and we're going to make for a better life for you.

We can do this, and we'll be able to build more schools and make your kid's education better and build more ball fields, and everything that we all want to do. And we only have to do it by taking a couple of homes. And maybe one of those homes is someone who has lived there for 40 years.

Paid off their mortgage, got married, had their kids, you know, this is so important to all of us, all of us as individuals. I remember right after my wife and I got married, what did we do? We went and looked for a home. We looked for a house to buy, because

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that's where we wanted to start our life, and that's where we raise our kids.

And the idea that government would take it, so we could increase the tax base, and increase jobs and, I know, we talk about primary purposes, increasing tax bases, but developments have multiple purposes. But we all know what they are about, and so the idea that government could take that, doesn't sit well with me.

And I think if you go home and ask your constituents, it wouldn't sit well with them, either. And yes, there are a lot of complicated questions we could ask, and we could answer. But I think the bottom line is we should say to all people in the State of Connecticut that your home will ever be protected from this awesome power of government, simply to help the economics in the town in which you live.

I would urge my colleagues to vote for this amendment, and if it doesn't pass here, to continue to

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talk about this idea and further restrictions on the use of eminent domain. Thank you, Mr. President.

THE CHAIR:

Thank you, Senator McKinney. Will you remark? Will you remark further? Senator McDonald, for a second time.

SEN. MCDONALD:

Just briefly, Mr. President, you know, I do just want to correct one thing that Senator McKinney commented on. The amendment as drafted is not just for economic development. It would actually also apply to our blight statutes.

And I resist the notion that even owner-occupied property, if it's blighted, if it's collapsing, if it's deteriorated or deteriorating to the point that it's unsanitary or unhealthy, that the government would be precluded under this, for any circumstances, of acquiring that property.

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So I do want to be clear that it's not just under the economic development statutes. But, you know, Mr. President, it is complicated. And when we debated this last time, I talked about farms. I talked about tenants who rent property.

You know people have emotional attachments, whether it's a family-owned property, because it was a gas station, maybe a relative who owned a bakery in the old section of town, where they were raised. Maybe they own an office building, where they grew up as a child and remember it fondly.

That doesn't mean that they have any less emotional connection to the property. And I understand that we could also have people who buy a home one year ago, and they would have protections under this.

But somebody who has owned an old, beautiful building as an office building for years and years, decades even, they wouldn't have any of the

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protections under this proposal. So I understand the motivation, but I think it misses the mark in so many ways, and I urge rejection of it.

THE CHAIR:

Thank you, Senator McDonald. Senator Coleman.

SEN. COLEMAN:

Thank you, again, Mr. President. Mr. President, I understand and respect the various positions that people staked out, regarding the whole issue of eminent domain, and I sincerely wish that it was possible to satisfy all of the individuals and their various positions on this subject matter.

The amendment that was initially passed this evening is an effort to take into consideration the needs of people on both extremes. Those who absolutely wanted to prohibit the taking of private-property owner's property for a private entity.

And those on the other extreme, who wanted to preserve some semblance of a vehicle to redevelop in a

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municipality, where there is really no room left to redevelop, but where the only choice is to actually take property and do redevelopment or development economically.

So as uncomfortable as it may be for those people who are this vehemently opposed to the idea that some person's property may be taken for some economic development purpose, again the initial amendment that was considered this evening is a compromise and tries to take into consideration those feelings, and also tries to accommodate the other extreme on this issue.

Hopefully, with that initial amendment, there will be few, if any, instances when the property of a private-property owner is taken for a purely economic development purpose.

And for that reason, I'm going to ask that the Members of this Circle support the initial amendment, and reject this particular amendment that is currently before us. Thank you, Mr. President.

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THE CHAIR:

Thank you, Senator Coleman. Will you remark further on Senate Amendment "F", as in final? Will you remark further on Senate Amendment "F"? If not, Mr. Clerk, please call us a roll call. We'll open the machine.

THE CLERK:

An immediate roll call has been ordered in the Senate. Will all Senators please come back to the Chamber.

An immediate roll call has been ordered in the Senate. Will all Senators please return to the Chamber.

THE CHAIR:

If all Senators have voted, the machine will be closed. The Clerk will call the tally.

THE CLERK:

Motion is on adoption of Senate Amendment Schedule "F".

slr

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Total number voting, 36; necessary for adoption,
19. Those voting "yea", 12; those voting "nay", 24.
Those absent and not voting, 0.

THE CHAIR:

Senate Amendment "F" fails. Will you remark
further on the bill? Will you remark further on the
bill? If not, Mr. Clerk, please call for a roll call.
The machine will be open.

THE CLERK:

An immediate roll call has been ordered in the
Senate. Will all Senators please return to the
Chamber.

An immediate roll call has been ordered in the
Senate. Will all Senators please return to the
Chamber.

THE CHAIR:

Have all Senators voted? If all Senators have
voted, the machine will be closed. The Clerk will
call the tally.

slr

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THE CLERK:

Motion is on passage of Senate Bill 167 as amended.

Total number voting, 36; necessary for passage, 19. Those voting "yea", 33; those voting "nay", 3. Those absent and not voting, 0.

THE CHAIR:

The bill, as amended, passes. Mr. Clerk.

THE CLERK:

Calendar Page 14, Calendar 521, File 665, Substitute for Senate Bill 703, An Act Concerning Fire Safe Cigarettes and Appeals of Decisions by Local Tree Wardens, as amended by Senate Amendment Schedule "A", Favorable Report in the Committees of Public Safety, Judiciary, and Finance, Revenue and Bonding, the bill was last before us, Senate Amendment Schedule "B" had been withdrawn.

THE CHAIR:

Senator Stillman.

H-1004

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GEN. ASSEMBLY
HOUSE

PROCEEDINGS
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SPEAKER AMANN:

Is there objection on recess? Seeing none,
recessed, subject to the Call of the Chair.

(On motion of Representative Donovan of the 84th
District, the House of Representatives recessed at
5:11 o'clock p.m., to reconvene at the Call of the
Chair.)

(The House of Representatives reconvened at 6:06
o'clock p.m., Speaker Amann in the Chair.)

SPEAKER AMANN:

The House will come back to order. Will the
Clerk please call Calendar Number 704.

CLERK:

On Page 21, Calendar Number 704, Substitute for
Senate Bill Number 167, AN ACT REVISING THE PROCESS
FOR THE TAKING OF REAL PROPERTY BY MUNICIPALITIES FOR
REDEVELOPMENT AND ECONOMIC DEVELOPMENT, as amended by
Senate Amendment Schedule "A", Favorable Report of the
Committee on Appropriations.

SPEAKER AMANN:

Representative Donovan.

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REP. DONOVAN: (84th)

Actually Mr. Speaker, I would like to move for
suspension of the rules for immediate consideration of
Senate Bill Number 167.

SPEAKER AMANN:

Chamber stand at ease, just for one moment.

(CHAMBER AT EASE)

SPEAKER AMANN:

Representative Donovan.

REP. DONOVAN: (84th)

Yes, Mr. Speaker. Mr. Speaker, I move for
suspension of the rules for immediate consideration of
Senate Bill Number 167, Calendar Number 704.

SPEAKER AMANN:

Question was on suspension, I'm sorry, Larry.
You can't hear me when I have the mic on, the mic off,
I mean. Can't hear me when the mic is on either.
Okay. Will the Clerk please call Calendar Number 704.

CLERK:

On Page 21, Calendar Number 704, Substitute for
Senate Bill Number 167, AN ACT REVISING THE PROCESS

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FOR THE TAKING OF REAL PROPERTY B MUNICIPALITIES FOR
REDEVELOPMENT AND ECONOMIC DEVELOPMENT, Favorable
Report of the Committee on Appropriations.

SPEAKER AMANN:

Representative Lawlor.

REP. LAWLOR: (99th)

Good evening, Mr. Speaker.

SPEAKER AMANN:

Good evening, Sir.

REP. LAWLOR: (99th)

I move acceptance of the Joint Committee's
Favorable Report and passage of the bill.

SPEAKER AMANN:

The question is to accept the Joint Committee's
Favorable Report and passage of the bill. Remarks,
Sir?

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. This bill, in a very
substantial way, changes the rules related to taking
some property, otherwise referred to as eminent
domain, by governments in situations involving

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economic development or in situations involving
blight.

As it turns out, Mr. Speaker, in our state, there are more than 90 separate statutes which give state and local governments and, in some cases, agencies established by those governments, in some cases, quasi-public agencies eminent domain powers.

And I think everyone in this state, and as it turns out, everyone in every state, it seems in our nation, is very concerned about the potential of local and state governments, and the federal government for that matter, to abuse this ultimate power that government has historically retained.

Mr. Speaker, it's almost two years ago, two years ago this month, that the United States Supreme Court decided a case involving our own state. I think we all know the name of the case, Kelo v. New London.

That decision prompted extraordinary discussions about the circumstances under which governments should be allowed to use this extraordinarily powerful

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ability that government has to seize property for public purposes.

Last year, Mr. Speaker, as you well know, this Legislator came within a hair's breadth of concluding this discussion. Now, with four days left in the Legislative Session, we'll try to do the same thing again.

Interestingly, the substance of last year's proposal, has survived again to be considered this year, with some modifications based on additional discussion, additional research that's taken place and I think the proposal contained in it, an amendment adopted by the Senate, is in fact, a comprehensive solution to this problem.

It's balanced, it takes into consideration a wide variety of suggestions made from every conceivable point of view and I think at the end of the day, it will ensure that property owners, especially homeowners, will not be unnecessarily threatened by this extraordinary power.

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And if it ever comes to be, the procedures that will be followed in order to seize that property, will ensure that the kinds of agony we've been through in this state in the past, will not be repeated in the future. Mr. Speaker.

SPEAKER AMANN:

Yes, Representative Lawlor?

REP. LAWLOR: (99th)

[Inaudible] I apologize, Mr. Speaker. Mr. Speaker, the Clerk has LCO Number 8490, previously designated as Senate Amendment "A". I ask the Clerk to call and I be allowed to summarize.

SPEAKER AMANN:

Will the Clerk please call LCO Number 8490, previously designated House, excuse me, Senate Schedule Amendment "A".

CLERK:

LCO Number 8490, Senate "A", offered by Senators McDonald and Coleman.

SPEAKER AMANN:

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The Representative seeks leave of the Chamber to summarize the amendment. Is there objection on summarization? Hearing none, Sir, you may summarize.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker.

SPEAKER AMANN:

Thank you, Sir.

REP. LAWLOR: (99th)

First of all, I'd like to point out that this amendment, as is the case with the file copy, is a result of the joint efforts of both the Judiciary Committee, which I'm honored to Chair and the Planning and Development Committee.

I think it's important to keep in mind that doing this right, requires a combination of considerations involving courts and court procedures and the ability to challenge eminent domain in court in order to protect the rights of property owners and understanding what the development needs of our cities and towns actually are and the criteria which they currently follow in order to undertake economic

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development, urban revitalization plans and dealing with blighted neighborhoods and blighted areas.

It's the combination of those two expertise that gives rise to this amendment and I'm sure that when I'm completed with my brief explanation of this amendment, the Chair of the Planning and Development Committee will be able to discuss some of the policy considerations that went into this.

Mr. Speaker, first and foremost, the major objectives of this amendment, it turns out that this amendment is substantially in concurrence with the priorities set forth by our Governor earlier this year. She asked for the Legislature to consider her bill which had certain priorities.

First of all, to require that the eminent domain takings we're talking about be approved by a two-thirds vote of a municipality's legislative body which this amendment requires.

She also recommended that the Legislature compensate property owners at a rate of 125% of the fair-market value and, in cases involving urban

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development, economic development, that is required under this amendment.

She also insisted, and rightfully so, that the Legislature pass a bill which would require eminent domain projects to conform to responsible growth criteria. This amendment does that, Mr. Speaker.

And she requested that in all such eminent domain takings, the public benefits out-weigh the private benefits and not allow eminent domain to be used if the sole public benefit is an increase in property tax revenues.

And Mr. Speaker, that is the very first section of this bill. The Governor made another suggestion and that is to find a way to attempt to compensate business owners for the goodwill they might be losing if they relocate.

And I know that in both the Judiciary Committee and the Planning and Development Committee, substantial efforts were made to attempt to develop a procedure where goodwill could be measured and taken

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into consideration in the event eminent domain has to be used to take a business property.

Unfortunately, Mr. Speaker, it appears more complicated to accomplish that than time allows and this bill does not add in consideration of goodwill.

However, I know that I speak for the Members of the Senate and both parties and I know I speak for many Members of the House that it's our intent to attempt to figure out a way to incorporate goodwill in the evaluation of property that would be taken through eminent domain if in fact, one could overcome the substantial obstacles that would be placed in the way should this bill become law.

In general, Mr. Speaker, as I indicated earlier, there are many ways, there are many statues that allow government to use eminent domain. This amendment focuses on those, several statues which have been the focus of discussion for the past two years.

The statues providing eminent domain powers in economic development projects, statues allowing for eminent domain in efforts to fight urban blight and

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finally, and apparently this is a very rare occurrence, using the Manufacturers Assistance Act provided in our statutes.

The focus, Mr. Speaker, of everyone's discussion has been economic development and that's where the hurdles are very high. This also effects situations involving blight but I think the focus rightfully should be on economic development.

As I indicated, the Governor's objectives have been met when it comes to economic development in this bill. The first section of the amendment says clearly that property cannot be required using economic domain for the primary purpose of increasing local tax revenues.

Among other things, this is intended to respond to Justice O'Connor's rightful concern that a Motel 6 not be seized in order to build a Ritz Carlton simply to ensure higher tax revenues for a municipality.

That is not an appropriate use of eminent domain and would not be permitted should this become law. It requires, in economic development situations, a

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legislative body to approve the takings by a two-thirds vote, not of the development agency but of the City Council or the Board of Selectmen, whatever the case might be in the event of a, depending on how the local government is organized.

In Section 3, significant findings need to be made in order for an economic development plan to be approved and eminent domain to be utilized. Notice to all property owners within 100 feet of the area affected, the area has to be, how the area is deteriorated or deteriorating has to be stated in the findings.

The Planning Commission has to find [inaudible] to conform with the conservation and development plan. All of this has to be posted on the internet in advance. The public benefits must clearly outweigh any private benefits to the project.

The real estate or the property to be seized, there must be a finding that it could not be feasibly integrated into the project, in other words, could a private home or a business remain and still allow the

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project to go forward. A finding would have to be made that that is not possible or not feasible in the project.

The acquisition must be reasonably necessary to successfully achieve the objectives of the plan. The finding has to be that the primary purpose is not to increase property taxes and that has to be explained and there has to be a public hearing on the plan.

These particular requirements are not part of the current law and they would be part of the law in the future.

In essence, Mr. Speaker, I think those are the principle parts, the principle protections in terms of the process for acquiring land. I just want to point out a few other highlights, especially from my point of view before I yield to Representative Feltman.

One thing I'd like to emphasize, Mr. Speaker and in the public hearings before the Judiciary Committee, this became very clear of the potential for abuse and the potential to take advantage of citizens who might

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not be as sophisticated as they ought to be in order to deal with the prospect of eminent domain.

In Section 18 of the amendment, the final section, it makes it clear that if someone claimed to be acting on behalf of a local government and knocked on somebody's door and said, I'm a developer, you need to sell your house to me at this price because if you don't do that right now, very soon the local municipality is going to take your home through eminent domain.

It turns out that that kind of thing does happen in advance of any determination that eminent domain will be used, even in advance of an actual economic development plan.

We had testimony that people holding themselves out to be sort of agents of the municipality or even private developers would knock on people's doors and basically demand a sale on the threat of eminent domain.

Of course, people might believe that that is the case and might actually sell their property at a

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less-than-fair market value when they're not even interested in selling simply because someone has threatened eminent domain.

This would make it clear that anyone who does such a thing without there already being an authorization for eminent domain and without being an actual individual authorized to negotiate with homeowners, that by itself would be an unfair trade practice and that carries with it severe penalties to any business persons who engage in this activity.

And to me, that is one of many examples of how eminent domain power can be abused and it is just one of many examples of how this bill will protect property owners in the future should it become law.

And the final thing I'd like to point out, Mr. Speaker, that is, I think that a decision that was made by the Governor just a few weeks ago, confirmed by us just a few days ago and provided at the end of last year's session, is that the selection of Bob Poliner to be the Property Owners Advocate to the state.

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If you add the fact that that office is now established and you have an individual with the extraordinary experience as a lawyer and someone who has dealt with citizens and property owners on a local level for many, many years, in effect, that office means that property owners who are affected by these types of decisions by government will in effect have a free attorney, have the power of the state on their side as they take advantage of the protections built into this amendment winding its way through the court process.

It's our hope, Mr. Speaker, that should this become law, that private property owners will be safe unless it is absolutely necessary to effectuate an important public use to take their home.

I think this will be a very rare occurrence in the future and I think anyone who would attempt to abuse this power in the future would be stopped in their tracks by the protections in this bill.

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Mr. Speaker, I urge adoption of the amendment, and I'm happy and honored at this point to yield to Representative Feltman.

SPEAKER AMANN:

Representative Feltman, do you accept the yield, Sir?

REP. FELTMAN: (6th)

I do, Mr. Speaker. Thank you, Mr. Speaker, and I want to thank Representative Lawlor, Senator McDonald, whom I see here, Senator Coleman, the Co-Chair of Planning and Development, and MaryAnn O'Neill, the Governor's counsel, all of whom worked very hard and contributed their ideas to the bill that's before you this evening.

This bill is, as Representative Lawlor observed, three years in coming. At the beginning of this Session, Governor Rell issued a press statement saying that after the 2005 U.S. Supreme Court ruling back in New London v. Kelo, we've been asking for the Legislature to take up a bill on eminent domain and yet, no bills have passed.

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It is time to get something done for tax payers and property tax owners. She set forth her proposal which is largely 90% incorporated in the bill. And it would have been 100% if we would have been able to figure out the last 10% that she asked us to do.

This bill that's before you as approved in the Senate Thursday night by a 33 to 3 vote, there were some amendments, they were defeated, some of those same ones I suspect we'll be hearing here tonight.

But I have to tell you something spontaneously occurred. They say in law that spontaneous utterances are to be trusted over some things that are more practiced or planned.

Our clerk of Planning and Development, Eric Stroker, was present with me watching the Senate debate Thursday night and when it concluded about 10:00 o'clock or 11:00 o'clock at night and the vote came down to pass on the domain bill he said, thank God, it's only taken three years but we finally got it done.

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And I think Eric was right, and I hope I didn't embarrass him by recounting that anecdote. But it did take three years. And the reason it's taken awhile for us to get to where we are here today is because it is a difficult issue.

It's not simple and as one of my professors one said, to every problem that we're presented with, there's an answer that seems easy, simple, that's wrong. And that's what we have in this situation.

Every answer to the difficult problems that are presented that's glib and quick and rolls of your tongue and sounds good, it doesn't fit in all circumstances. One size does not fit all.

And so what this bill tries to do is case by case and point by point appoint a path towards what makes sense. How do we balance the rights of property owners to their own homes and their own businesses against the interest that towns have, legitimate interests, in improving themselves, their tax base, their economies, their jobs, their people?

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And how, when those rights conflict, how do we come down? There are no absolute rights in the world, in this country. We speak of a right to life, we speak of sacrosanct, sacrosanctities, or whatever, sanctity, there you go, of human life, how we believe one should never take another human beings life and yet, we send our young men and women off to war knowing that they may well die, that they are intended to kill other people.

Nothing is sacrosanct. The right of a person to own property is cherished and is valued. But we can't say that under all circumstances, under all circumstances, because there can never be a legitimate economic development reason for having to, if a person is, their home and their home alone is the only one that is preventing a huge public good, that that one person has a right to override the wishes of thousands of people.

To take an example, let us say that there was a fine, owner-occupied home in Hartford, next to Hartford hospital. It's not blighted, the area isn't

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blighted, it's just somebody's house they've lived in all their lives.

But the Harry Jack Gray cancer center needs to expand. They've gone beyond what they can serve their patients within their building and they need to expand out and there's no place else to do it but this owner-occupied, well-maintained, privately-owned home.

What's the public interest here? Do you let that one person prevent cancer patients from being treated in the best manner possible? We know what the answer is. The answer is that that private interest has to yield in that case to the public interest.

Every situation is different. We have to make the answer fit the question. We have to set the right criteria, set the right boundaries and have the decision made by the right people.

Governor Rell set forth the scheme which says that we need to make these decisions go up to the top ranks of the town, to the highest elected officials who face the retribution of the voters if they don't accurately represent what's good for the town and she

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says it has to be the highest Legislative body which did not happen in New London.

It's got to be the most visible, the most prominent, a public process where people are held accountable and if they extremely difficult decisions are to be made, just at the voters have entrusted us with difficult decisions at the state level, we have to give these most difficult decisions in the exercise of home rule, home rule to the municipalities.

And home rule is going to have to answer some of these most difficult questions with guidance from us. But we here at the state, cannot answer every municipal question in advance.

I want to speak to one more point and then yield the floor to answer questions that I'm sure you might have for Representative Lawlor and me and that is the issue of for-profit development. Whether or not it's bad for government to be turning property over, taking property and turning it over to for-profit developers.

That sounds initially like it's a bad idea, a nasty idea, a kind of smarmy idea. But let me tell

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you, as someone who's served on a redevelopment agency for my town for three years, it is exactly what you want a redevelopment agency to do.

You want the agency to take the land because, government is good at that, and turn it over to a for-profit or a corporation that brings its capital, its resources, its skills, its experience to bear on a piece of property to develop it to its highest use.

You absolutely do need to turn it over and it works best when you turn it over to a for-profit entity or a very well endowed non-profit but it's got to be done by the private sector because government is not a good developer of private property.

So I think that's a [inaudible], I think that's a myth to say that government should not turn property over to for-profit development. Indeed we should, and for the best results, we must. Thank you, Mr. Speaker for your indulgence.

DEPUTY SPEAKER ALTOBELLO:

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Thank you, Representative Feltman.

Representative Bacchiochi of the 52nd, you have the floor, Madam.

REP. BACCHIOCHI: (52nd)

Thank you, Mr. Speaker. I also want to thank the Chairman of the Judiciary Committee and the Chairs of the Planning and Development Committee. I know they've been working on this for many years before I became involved.

And I also want to say it's been a rewarding experience for me to serve on the Planning and Development Committee and I think this may be one of the most important bills that our Committee has worked on this year and that is going to come before us.

Because it's so important and fairly complex, I would like to ask a few questions to, perhaps, the esteemed Chairman of the Planning and Development Committee. Through you, Mr. Speaker?

DEPUTY SPEAKER ALTOBELLO:

Please proceed, Madam.

REP. BACCHIOCHI: (52nd)

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Thank you. I heard the Chair of Judiciary state that there are approximately 90 chapters in our state statutes that could currently be used for the taking by eminent domain. How many chapters out of that 90 will we address today with this bill?

DEPUTY SPEAKER ALTOBELLO:

Representative Lawlor. Representative Feltman

REP. FELTMAN: (6th)

I'm sorry, okay. I count three, Mr. Speaker, I count four statutes that are, the four statutes that are being changed.

We also have in the existing statute, a general power of the municipality to exercise eminent domain with no definitions and we have, for commercial development, we've removed that power. So there originally were five statutes, we're now done to four that we're amending with this bill.

DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

Thank you, Mr. Speaker. I've read the bill and

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I'm familiar with three of those chapters which would be chapter 132, taking for economic development, 580AL, which is the Manufacturers Assistance Act section and Chapter 130, the redevelopment section which covers blight.

So if you could, through you, Mr. Chair, tell me what the other two chapters are that we are addressing today with this bill.

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

REP. FELTMAN: (6th)

There's an economic development, a general economic development statute that we're amending, there's a redevelopment statute that we're amending, there's a Manufacturing Assistance Act that we're amending and there's a second form of economic development statute that we're amending as well.

DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

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Through you, Mr. Chair, I do not mean to be difficult, I just want to be sure that I'm addressing the chapters that are in the bill.

I did understand the first three and I believe the fourth one which I didn't have on my list is the general powers, the general statutory powers given to a municipality but I do not know the fifth one and I think the Chair of Planning and Development said it is another redevelopment chapter. If he could define the chapter number for me through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

REP. FELTMAN: (52nd)

Through you, Mr. Speaker, we're also amending several other statutes with respect to relocation assistance and other statutes regarding eminent domain.

The only ones we are not amending, there are municipal powers, there's Redevelopment Statute Chapter 130, there's Municipal Powers 7-148, there's Redevelopment Statute Chapter 120--

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REP. CAFERO: (142nd)

Mr. Speaker. Mr. Speaker.

REP. FELTMAN: (6th)

--and there's municipal development pages 132.

DEPUTY SPEAKER ALTOBELLO:

Representative Cafero, for what reason do you
rise?

REP. CAFERO: (142nd)

Actually a request, Mr. Speaker. We over on this
side are having difficulty, and I don't know if it's
Representative Feltman's mic, but we're having
difficulty hearing him. I don't know if it's the mic
itself or whatever.

DEPUTY SPEAKER ALTOBELLO:

Thank you, Representative. Representative
Feltman, if you could speak up just a touch, the other
side of the aisle would certainly appreciate it.

Thank you, Sir.

REP. FELTMAN: (6th)

Okay, thank you. I may have miscounted before
and I apologize for that. There originally were four

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statutes. There was Municipal Power 7-148. There was Redevelopment 130. There is economic development or Municipal Development 132, and then there is a Manufacturing Assistance Chapter 588L.

And the fifth one was the relocation benefits and I miscounted that as being a redevelopment statute. It is related but it is not exactly a redevelopment statute. Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

Thank you, Mr. Speaker and I am now in agreement that we're discussing the same chapters. If there are 90 chapters that could be, we could use for the taking under eminent domain and we're discussing four of the today, how did we come to eliminate all of them except these four? Why are we addressing these specific four out of the 90? Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

REP. FELTMAN: (6th)

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Through you, Mr. Speaker, because these were the ones that were implicated in the Kelo decision.

DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

Thank you, Mr. Speaker. I'd like to go into the bill a little bit and I'd like to direct attention to Line 20 where we start to talk about the primary purpose of an eminent domain taking cannot be simply to increase tax revenue, and I was wondering if we could discuss primary purpose a little bit to make sure that we are on the same understanding of those two words, through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Please proceed, Madam.

REP. BACCHIOCHI: (52nd)

Mr. Speaker, I was going to ask the Chairman of Planning and Development how he defines primary purpose, through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Please proceed.

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REP. FELTMAN: (6th)

Through you, Mr. Speaker, I would define primary as more important than other purposes.

DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

Thank you, Mr. Speaker. As we go down into the next section of the bill, we begin to talk about the public notice that needs to be given, in this chapter 132, economic development and I noticed that notice needs to be given to the homeowners and property owners within 100 feet by first-class mail.

I'm in the property management business and when I want to make sure my tenants get something, I send it certified mail because they come back and tell me they never received it.

Concerned that perhaps a homeowner will not receive something that's sent by first-class mail and I'd like to ask the Chairman of Planning and Development if he shares my concern, through you, Mr. Speaker.

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DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

REP. FELTMAN: (6th)

Through you, Mr. Speaker, I do not.

DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

Mr. Speaker, this is the first point of many that I hope I can make clearly, that, while I do support this bill and I will be voting on the amendment that's before us, and I do believe that this does offer additional protections to our homeowners.

There are many, many places in the bill, they're small, but they're important, little places that the homeowners' interests take second place to the powers of the government or the municipalities that are trying to take those homes, the first here being that we send out notification by first-class mail.

Moving on to Line 33, we're not going before the legislative body to make a decision on whether or not someone's home should be taken by eminent domain. It

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states here that the decision needs to be taken by two-thirds of the Members of the legislative body.

Now in this case and under this chapter, it has to be two-thirds. Through you, Mr. Speaker, to the Chairman of Planning and Development, as we move through this bill, will it always be two-thirds of a legislative body required to take by eminent domain?

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

REP. FELTMAN: (6th)

Mr. Speaker, no.

DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

Through you, Mr. Speaker, why if it's two-thirds here, for Chapter 132, economic development taking, why later in the bill will it not be two-thirds?

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

REP. FELTMAN: (6th)

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Through you, Mr. Speaker, all this is designed to address the issues that were raised in Kelo where people said the town was trying to develop an area of the town purely for economic development purposes.

There were no findings, although it is conceivable that findings might have been made. There were no findings of blight or deterioration or substandard living conditions in the area to be taken and that it was an area that was being taken for the purpose of raising it from a one density of use to a higher, presumably, density of use.

And so for that reason, because it was a more of a difficult decision for the town, or a weighing or a balancing decision of the town that was less clear-cut than it is if you have a blighted area where it's clearly something needs to be done for the community to fix up that area, that it can't tolerate the existing conditions.

If it's less clear-cut than that, then a two-thirds vote is necessarily in order for the town to decide to proceed. Through you, Mr. Speaker.

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DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

Thank you, Mr. Speaker. I do understand what the Chairman of Planning and Development, the point he's trying to make.

I think further along in this bill, we'll see that homeowners may have protection under this chapter, with two-thirds vote but further on will not have similar protections. Again, showing a somewhat weakness or a bias against the homeowner.

In this section we also talk about how the legislative body, should it be in the form of a Board of Selectman is negated, oh, I'm sorry, I'm saying that backwards. If the legislative body is a town meeting, that town meeting is negated and the decision is turned over to the Board of Selectmen.

Is that your, through you, Mr. Speaker, would that be the Chair's, Planning and Development's understanding?

DEPUTY SPEAKER ALTOBELLO:

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Representative Feltman.

REP. FELTMAN: (6th)

Through you, Mr. Speaker. Would it help, assist the chair to point out the line numbers about which you're discussing?

DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

Absolutely, one minute, please. Line 35, 34 and 35, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

REP. FELTMAN: (6th)

Through you, Mr. Speaker, this is a policy decision that was made in the Senate bill and it says that a Board of Selectmen are the highest body in those towns in which Boards of Selectmen occur, govern and that highest body is similar to the legislative body of a town that has a [inaudible] Council or a Council Managers form of government.

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And so in an attempt to equate all three forms of government and have a similar function being preformed at the highest level, that's why this bill is written the way it is, through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

Thank you. It occurs to me that we just defeated an amendment that did this exact same thing, that took the powers of a town meeting and gave those powers to the Board of Selectmen.

That amendment that we defeated had to do with tax abatements for nonprofits which, while very important, is obviously not nearly important as the taking of someone's home.

So I do point out to my colleagues here in the chamber that in this bill, we are giving the power from the town meeting, to the Board of Selectmen, which I feel does not help the property owner.

Through you, Mr. Speaker, if we could go down a little more here to Line 36, we're talking about if

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you have three, four or five parcels that have been identified to be taken by eminent domain, the legislative body has to hold a public hearing.

The Legislative body can choose to either hold a public hearing on each property individually or they can bundle those properties and hold one public hearing on all of the properties.

Through you, Mr. Speaker, am I understanding this correctly that the legislative body makes that decision, whether or not to bundle the properties? Through you, Mr. Speaker, to the Chair of Planning and Development.

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

REP. FELTMAN: (6th)

Through you, Mr. Speaker, yes.

DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

It seems to me that if I owned a property that was being taken by eminent domain and I cared very

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deeply about it and four or five houses down were blighted and no one really cared about those properties, I would not want my home lumped in with those properties.

Therefore, I'm wondering if the homeowner in this situation has an option to request to the legislative body, that my home be heard separately. Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

REP. FELTMAN: (6th)

Through you, Mr. Speaker, similar to a public hearing in this body where we have a number of the bills on the agenda, people are free to sign up and speak on one or all of the bills that are of concern to them.

There is a requirement that, with regard to each parcel, that the legislative body consider the benefits of the public, determine that the current use of the property cannot be feasibly integrated into the overall development plan, and determine that the

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acquisition is reasonably necessary to achieve the objectives of the development plan.

No one will be caught unawares. There will be reference made on the agenda of the agency, both the public hearing as well as at the vote of each parcel of property that is going to be acted upon or heard that particular evening so that people will know exactly when they should speak and they will know with whom they should discuss it.

I have to say though, in terms of having [inaudible] the lady's point about whether or not there should be a separate agenda item for every single separate vote on every single parcel, personally as a member of redevelopment agency that has taken acres and acres on one redevelopment parcel, to have every parcel vote in individually would have taken longer than we're meeting here today. Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

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Thank you. On Line 37, however, not only are the properties coupled for the public hearing, it says a separate vote on each parcel of real property to be acquired or a vote on one or more groups of such parcels.

So I'm concerned that the Legislative body can vote on my property in a group. I repeat, it says a vote on one or more groups of such parcels.

Through you, Mr. Speaker, am I understanding this correctly, that I, as a homeowner, would have no choice as to whether my property would be taken by eminent domain in a group vote or an individual vote?

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

REP. FELTMAN: (6th)

Through you, Mr. Speaker, no. It's a Legislative body's decision about how to organize their votes. But it's very clear on Line 38, provide each parcel to be acquired is identified for the purpose of a vote.

So there will be no mistake on the part of the Legislative body about what they are voting on. There

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will not be a general description of all the properties on such and such street.

It will be each individual address, each individual parcel will be identified on the agenda and members will have to know by written information in front of them exactly on what they're voting. Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

Thank you. I do not agree with that. I believe that the homeowner has no choice. Their properties can be bundled up together and the legislative body would make a decision to vote on the bundled properties which I do not think benefits the homeowner.

Going down to Line 43, this is one of the areas that I have the most concern with about this bill. When the legislative body decides to take a private property by eminent domain, they have a few things that they have to look at.

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They have to consider that the benefits to the public and any private entity that will result from the development project and determine that the public benefits outweigh any private benefits. Through you, Mr. Speaker, who exactly does this research to make this determination?

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

REP. FELTMAN: (6th)

Through you, Mr. Speaker, whoever normally advises the legislative body, through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

But would, thank you, Mr. Speaker, and through you would the legislative body, let's say the Board of Selectmen, therefore, appoint a committee to do this research, through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

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REP. FELTMAN: (6th)

Through you, Mr. Speaker, this is a matter of policy. This is not a matter of scientific equation that one could go to a reference book and write down.

People have to, people who are elected and given this responsibility by the tax payers of the town, by the voters of the town, will use their experience, their knowledge of the town, their knowledge of the properties involved to make a judgment call based on whatever advice they seek but probably based on their own knowledge and their own, you know, their own sense of public mission to make a determination in this matter just as every Member of this Assembly does every day. Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

Thank you, Mr. Speaker, I do believe that this body we're discussing is not just making an important decision, they're making a life-changing decision

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because they're changing, they're taking someone's home.

So when we talk about words such as, the public benefits outweigh any private benefits, for lack of a scientific term, I'm going to say those words are a little squishy.

It goes on to say that the property cannot be feasibly integrated into the overall development plan and it must be reasonably necessary to successfully achieve the objectives, words like feasibly integrated and reasonably necessary and successful are all fairly relative.

Through you, Mr. Speaker, could the Chair of the Planning and Development give me his definition of reasonably necessary?

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

REP. FELTMAN: (6th)

Through you, Mr. Speaker, the words reasonably necessary are found often in the statutes and, in fact, in the Constitution and other important

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documents, it means that reason must be applied to the decision that's made and there be able to be an established justification, a rational explanation for the decision made, it's not whimsical or arbitrary or capricious. Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

Thank you. In Lines 50 and 53, we talk about putting notice of the Legislative body's decision in the newspaper. It says the municipality shall cause notice of acquisition but it nowhere states that the homeowner has to be noticed by either U.S. Mail, direct mail or certified mail.

I'm concerned that there's no specific notification to the homeowner and I would like to know if Representative Feltman could point that out to me in the bill, through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

REP. FELTMAN: (6th)

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Through you, Mr. Speaker, at that point, the way after the vote is taken to acquire, the town would then certainly engage in negotiations with the property owner and would no doubt attempt to seek a voluntary disposition of the property.

So there would be a newspaper notice as a practical matter. There would be no doubt that the municipality would try to work with the property owner to effectuate their voluntary relocation. Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

Thank you, Mr. Speaker. Although no doubt sounds like a very clear cut and definite answer, I do have doubts.

When we say we're going to notify people in the newspaper but we're not going to send them, by statutory law, a written notice of what's going on, I have concerns that this does not fairly represent the property owner.

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I'm also confused a little bit about, starting in Line 54, we state that a development agency shall acquire a property by eminent domain, that they have five years, if my understanding is correct, to, I'm not sure if it's to complete the project. Through you, Mr. Speaker, is that correct?

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

REP. FELTMAN: (6th)

Well, through you, Mr. Speaker, there are two different sections but the section you're referencing, Lines 54 through 61 is that the plan, that the eminent domain that's authorized by the development agency much be effectuated within ten years after the first property in that, in the planned area is acquired.

Within that ten-year timeframe, after the first five years if the property is not acquired, we followed the excellent suggestion of the ranking Member of the Planning and Development Committee to award additional compensation to the property owner if

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the acquisition takes place later in the timeframe.

Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

So if I understand this, the development agency has five years and then the development agency can apply to some other body for an additional five-year extension which would give the project ten years but to whom does the development agency apply for the five year extension, through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

REP. FELTMAN: (6th)

Thank you. It would be a vote by the development agency to effectuate the taking for the first five years and then it would be a vote by the same body, either the development agency or the legislative body, depending on which statute we're talking about, and then a vote by the same body to renew it for another five years if need be, through you, Mr. Speaker.

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DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

Thank you, Mr. Speaker, I do have concerns when the development agency starts the project and they have five years and then the development agency has to seek their own approval for another five years.

It doesn't seem like the homeowner has a lot of input there when the agency that starts the job has to ask themselves if they can have more time to complete the job.

Through you, Mr. Speaker, what will happen to homes that are not used as part of the development plan after the ten years expires? Through you, Mr. Speaker.

REP. FELTMAN: (6th)

Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman. One moment please.

REP. FELTMAN: (6th)

Sure.

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DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

REP. FELTMAN: (6th)

Through you, Mr. Speaker, if at any time the municipality either abandons the plan or the time expires, either after the time of five years or after the time of ten years, there would be a right of first refusal, that's in the statute, that's new, that the Governor recommended, to the original property owner to repurchase the property. Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

After the ten year period, how will the homeowner know that their property is being released from the eminent domain taking, how will they be notified of this decision? Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

REP. FELTMAN: (6th)

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Through you, Mr. Speaker, it's incorporated within the original declaration of the intent to acquire either voluntarily or by eminent domain, the language will be contained therein.

DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

Thank you. Original documents, I'm not sure exactly what the previous speaker said but if a ten-year period goes by, there's a good chance that that homeowner has not necessarily looked back at a document that's ten years old.

I'm concerned that there's no way, no notification clause in here, for the homeowner to be told that his property is no longer being taken by eminent domain.

Line 66 is confusing to me. At what point is a property actually considered to be acquired? When the development agency makes a decision that they're going to take something by eminent domain, notice is properly given.

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Does acquired mean the day that the title transfers from the hands of the current property owner to the development agency? Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

REP. FELTMAN: (6th)

Through you, Mr. Speaker, this refers to the process of acquisition. An injunction is in order if an action has been initiated by one party which the affected party wishes to cease before the action is completed. Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

Mr. Speaker, I am sorry, I think I strayed a little bit. Could I please ask the Chairman of Planning and Development to repeat his answer?

DEPUTY SPEAKER ALTOBELLO:

Perhaps you could repeat your question.

REP. FELTMAN: (6th)

No, I remember the question.

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DEPUTY SPEAKER ALTOBELLO:

Madam, perhaps you could repeat your question.

REP. BACCHIOCHI: (52nd)

Absolutely. I was asking what the exact time, when a property is acquired because we frequently refer in this bill to when the property is acquired and that word triggers different things.

So when the property is acquired, am I correct that acquired means the day that the deed and ownership of that property transfer from the homeowner to the redevelopment authority? Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

REP. FELTMAN: (6th)

I apologize for earlier jumping the gun so, my apologies, Sir. No, that would not be a correct interpretation. Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

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Thank you. Through you, Mr. Speaker, could you tell me what the correct definition of this word acquire?

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

REP. FELTMAN: (6th)

Through you, Mr. Speaker, yes, it's the initiation of acquisition but because of the injunction clause in Line 68, that acquisition, that initiation of acquisition might be interrupted prior to its completion. Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

Thank you. I'm still not sure what acquired means but I'm going to move on. We're talking about the injunction here where the property owner, now under this bill, which I think is a very good thing, can file an application in the superior court.

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Who would pay the legal costs of the homeowner should they choose to file an injunction? Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

REP. FELTMAN: (6th)

Through you, Mr. Speaker, that would be up to the court. Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

Thank you, Mr. Speaker. I'm not an attorney and I do not understand this. If I have to go out and hire an attorney to represent me in court and I have to pay, I'm assuming, some retainer up front, to this attorney.

Am I correct that you're saying, through you, Mr. Speaker to the Chair of Planning and Development, that the court will decide who pays those attorney fees?

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

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REP. FELTMAN: (6th)

Through you, yes.

DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

What happens to the time limit, through you, Mr. Speaker, if the trigger starts at acquisition, which I think is a little fuzzy for me still anyway, at this point.

The trigger starts, the clock is running. Now what happens if I were the homeowner and I decide to go to court and I have to pay my attorney, does the clock keep ticking? Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Through you, Mr. Speaker, no and I don't have the exact line number but my, according to the LOR crib sheet that I have, the injunction tolls the clock until the injunction is resolved. Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

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REP. BACCHIOCHI: (52nd)

Thank you. I think this is another negative point for the homeowner that while they're in court, if it's a year or two, the clock stops and now that gives another year or two to the development agency, not another year or two to the homeowner.

Moving on to Line 96, this is an area where in this bill we talk about giving compensation, I mean, excuse me, we allow the homeowner to buy their property back if it's not used in the development plan.

There's an interesting point in here, I'm not sure, it's around Line 96, where it says, a form must be completed by the homeowner that provides that homeowners address and a list of heirs.

Through you, Mr. Speaker, does this form get filled out, when does this form get filled out?
Through you, Mr. Speaker.

REP. FELTMAN: (6th)

Through you, Mr. Speaker.

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Representative Feltman.

REP. FELTMAN: (6th)

At the time the title is conveyed.

DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

Thank you, Mr. Speaker. So if a municipality approaches me in 2007, they're going to take my home by eminent domain, they're going to give me a form, they're going to want my forwarding address so that perhaps I can buy my own home back at some point in the future.

What if seven years later I move next door, does the redevelopment authority have an obligation to try and find me? Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

REP. FELTMAN: (6th)

Through you, Mr. Speaker, no, but the post office does.

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Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

Thank you. So the redevelopment agency, even though it does need offer the property back to me if it does not use it, does not have to make very much effort to find me.

It also, this form also asks, what heirs do you, meaning me, as the homeowner, want to have the right to buy my property back. I'm going to give you an example. If my farm is taken by eminent domain for \$100,000, over the course of the development project, property values go up, the farm is worth \$1,000,000.

When it gets offered, and now it's not going to be used as part of development plan, this bill, which is a very good bill, states that we have to offer that farm back to me, the original owner, for \$100,000. So that's a very important point, there's \$900,000 of equity at stack.

I've passed away, I have three children but I only listed one heir because at the time, I only liked one of my children. All three are legal heirs. Can

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only the one child I listed get the family farm back or will all three legal heirs be entitled to get the family farm back? Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

REP. FELTMAN: (6th)

Through you, Mr. Speaker, my interpretation of the bill is that the person who's being acquired, the property's being acquired, would be able to volunteer the names of people they wish to have notified and again, this is a little change in the version that was passed out at Committee.

But my recollection of the intent is that the heirs would be the heirs, whoever they are, not necessarily the ones that were designated by, it wouldn't necessarily be bound by what the person wrote down. Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

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Thank you. And I am also in agreement. I think the family farm should be offered back to the heirs of the property, not only the people listed on a form that the original property owner put forth but under the underlying bill, that will be come an issue.

Which, all of this, Mr. Speaker, all of the points I'm making could be resolved by taking this bill a little bit farther but I don't want to get there yet, I still have a couple more questions.

This is a little bit complicated to me and probably is for some of the other Members in the Chamber. There are two chapters by which we can take personal property by eminent domain for economic development. Those are chapters 132 and 588L.

I do not understand the difference between those two chapters and I don't know if this is a question best suited for the Chairman of the Judiciary Committee or the Chairman of the Planning and Development Committee so I will direct it to the Chairman of the Planning and Development Committee, having noted that, through you, Mr. Speaker.

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DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

REP. FELTMAN: (6th)

Through you, Mr. Speaker, it was interesting for us to research how the eminent domain laws kind of evolved in the state. For example, our attorney caught the general power that was given in the first statute I sited which doesn't have any guidelines at all. That was in 7-148C3.

And what's happened over the years is that the Legislature has added different sections to the original eminent domain act.

Every time there was a different funding source available so when there's state funding it goes under one program and one act and when it's federal funding it goes under a different act.

So that's where we have these different sections and one of the things this bill accomplishes, although this is not our intent or purpose, was to rationalize the scheme, to make it consistent through all these different statutes.

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We chose not to combine the statutes however because it would make it more difficult to administer. We wanted to make it clear to the DECD, which statutes applied to them for which funding source and for OPM, which funding source apply to them, and so forth. Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

Thank you. So I am correct that in the two chapters you just discussed, 132 and 588L, in this bill both of those chapters are addressed but in this bill, private homes can be taken by economic development under both chapters? Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

REP. FELTMAN: (6th)

Through you, Mr. Speaker, yes, and as the bill was introduced, it was so recognized and explained and justified. Through you, Mr. Speaker.

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DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

Thank you, Mr. Speaker. Around Line 282, we start talking about how the plan of development needs to match up with the local plan of development, the regional plan of development, and on some occasions, with the state's plan of conservation and development.

At one point it says that the bill, the plan has to be in accordance with state and regional. What does in accordance mean? Does that mean an exact match for match or a little bit the same? Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

REP. FELTMAN: (6th)

Through you, Mr. Speaker, I would define that as consistent with but not necessarily identical to. In other words, it would not necessarily be circumscribed by the overall plan but it wouldn't contradict the plan either. Through you, Mr. Speaker.

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DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

Thank you, Mr. Speaker, and when we're looking at the state's plan of conservation and development, it states that we have to give due consideration to the state plan.

As a development authority or a redevelopment authority, and they have to give due consideration, what is due consideration? Does that mean we looked at it, we talked about it, does it have to be documented? How in depth does due consideration go? Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

REP. FELTMAN: (6th)

Thank you, Mr. Speaker. I would suggest a similar use of an analogy to our commitment to be at public hearings and to listen to what various persons who come to submit testimony have to say. We have to

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give them due consideration. Through you, Mr.
Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

Thank you, Mr. Speaker. I think due
consideration in some senses is a little bit like
successful or feasible or reasonable, words that
sometimes are not completely clear to all parties
involved.

On Line 339, Mr. Speaker, we start to talk again
about the plan, the plan for redevelopment, and it
states here that the plan shall be effective for a
period of ten years.

I'm wondering, since we talked a few minutes ago
about how ten years was the limit, is it the limit all
the time, everywhere, in all the statutes? Through
you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

REP. FELTMAN: (6th)

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Through you, Mr. Speaker, no, I believe there is a difference between the anti-blight section and the economic development section. Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

On Line, thank you, Mr. Speaker, on Line 343, it says the plans shall be reviewed at least once every ten years. Does that mean that a plan can stay open beyond ten years? Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

REP. FELTMAN: (6th)

Through you, Mr. Speaker, yes they can but the eminent domain cannot.

DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

Thank you, Mr. Speaker. That is exactly what I am trying to understand. If an agency takes my

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property by eminent domain and the project isn't completed in a ten-year period, would I have the right to buy my property back after that ten year period or is there a way for the municipality to keep that project going beyond the ten year period? Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

REP. FELTMAN: (6th)

Through you, Mr. Speaker, they can keep the project going. Usually these redevelopment spreads are quite extensive and they can keep the project going in other areas but in terms of that particular parcel, once they start developing that area they've got ten years to finish the eminent domain otherwise they're out of luck and you get your property back and if they abandon it before that, you get your property back also. Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

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Thank you, Mr. Speaker, I think there are, I don't exactly read the bill the way the Chairman of Planning and Development is stating that and I do think there's some open-ended ideas here and that the homeowner could, in fact, wait beyond the ten year period to find out if he's ever going to be able to get his home back.

I'd also like to look at Line 569, we're now moving into the blight section where it talks about being able to take a person's home in a blighted area and the word used is deteriorating.

Mr. Speaker, I don't know about you, but sometimes I look at my house, especially at the end of Session, and I think my house is deteriorating. Though you, Mr. Speaker, how do you define deteriorating?

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

REP. FELTMAN: (6th)

Through you, Mr. Speaker, I haven't seen your house, Penny.

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DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi. Representative
Feltman, you may proceed, Sir.

REP. FELTMAN: (6th)

Okay. Thank you. I would define deteriorating
as in the, in mid-course towards coming deteriorated.

DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. FELTMAN: (6th)

May I add something, Representative Bacchiochi,
to the answer?

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman, you have further on the
question, please proceed.

REP. FELTMAN: (6th)

I do. I don't have the information in front of
me but I probably could get it but from what I
understand, there's been extensive court decisions on
the definition of these terms and that is the reason
they're not further defined in the statute and I could

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dig out the cases that define them. Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

Thank you, Mr. Speaker. I won't ask anyone to dig out the statutes to refer back to court cases that define deteriorating, however, a court, a court is not necessarily going to be involved in the taking of a person's home by eminent domain unless that person appeals and pays their attorney out of their own pocket and goes to court.

Under this word deteriorating, it's the legislative body or the redevelopment agency that makes a decision on whether or not one's property is deteriorating. In the bill, it actually lists two words, it says deteriorated or deteriorating.

Through you, Mr. Speaker, can I ask the Chair of Planning and Development how he differentiates between deteriorated and deteriorating?

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Representative Fleischmann.

REP. FELTMAN: (6th)

Feltman.

DEPUTY SPEAKER ALTOBELLO:

Feltman.

REP. FELTMAN: (6th)

That's all right. [Inaudible] Through you, I would say the difference between present tense and past tense would aid the speaker in understanding this.

And the court cases are bound, binding upon the redevelopment agency because there is a right, elsewhere in this bill, for court action if the agency is acting in an ultra-virus manner which means that they are acting outside the scope of their statutory and legal authority which they would be doing if they overrode or disregarded binding court decisions on what the definitions of these terms is. Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

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REP. BACCHIOCHI: (52nd)

Thank you, Mr. Speaker. If one's home had peeling paint, high grass, broken windows, a junk car in yard, a stack of wood and crumbling steps, is that a deteriorating home? Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

REP. FELTMAN: (6th)

Through you, Mr. Speaker, I'm not prepared to stand on the floor and define these terms in response to particular fact patterns.

Courts have considered these facts and similar facts and have made findings that presumably one can sift through and as you do with any kind of situation and apply the closest possible case to this one and therefore, infer what the case law is.

And so, I would refer the lady to the case law, without meaning any disrespect, rather than me trying to spontaneously describe what the case laws and the particular fact pattern. Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

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Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

Thank you, Mr. Speaker. I do only ask these questions because when we vote on this bill, it's important that we know what we're voting on.

And if we're voting on a bill that allows personal homes to be taken that are deteriorating, that's a very important word and to know the differentiation between deteriorated, which is a property that has already fell in disrepair and remains there permanently compared to one that's going downhill for a period time.

Perhaps the owner is going through hard times, perhaps the owner has lost his job, perhaps the owner just can't keep up at that point in time. That's a deteriorating property, and I think we need to look at the differences between the two and keep this in mind as we go forward.

Mr. Speaker, I have an important question, through you, if this bill that we're discussing right now should pass today, if this bill had passed in

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2005, would this have protected Mrs. Kelo's home?

Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

REP. FELTMAN: (6th)

Through you, Mr. Speaker, that's an excellent question and the answer is, emphatically, yes.

DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

Thank you, Mr. Speaker. Is the Chairman of Planning and Development saying that this bill would have prevented the City of New London from taking the Kelo property? Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

REP. FELTMAN: (6th)

Through you, Mr. Speaker, that's not what I said, what I said was that, would this have, I think the first question was, would this have acted or made it more difficult for them to acquire the Kelo property.

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I may not be exactly phrasing that exactly as you said in the first question and second question was, would this prevent it?

Herein lies the difference. What this bill does is it creates a much higher barrier. It makes it much more difficult for a town to take property for economic development purposes.

First of all, in Kelo, there was no finding of blight. There was no finding of substandard deterioration so it gets kicked up to a higher hurdle of proof the town has if they wish to acquire property.

Secondly, in that case, and with all due deference to former Mayor [inaudible] who's a part of this body, that decision in Kelo was not made by the highest level of the government which would be, in that case, the Mayor and Court of Common Council, rather it was referred down the line to an appointed body that was not directly accountable to the voters and the tax payers of that town.

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There was an invisible process or less transparent, I shouldn't say invisible but less transparent process.

What the Governor suggested and what we've done is to make this more transparent and more accountable that the highest legislative body must act on each individual parcel, must act on each parcel or group the parcels and must do so by a two-thirds vote and must do so in public after public input and public testimony.

They must also make findings that certain standards, that certain hurdles have been overcome which was not required of the New London government in the previous case. They have to determine that the public benefits outweigh the private benefits, a very, that might have been a very difficult task for the developer of that property to meet.

They must say that, and this also, the property's current use cannot be feasibly integrated into the plan, that there's no way to include those homes in

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the plan. That might have been a very difficult threshold for them to overcome.

That the takings reasonably necessary and they have a right of first refusal and if it turns out there was a decision, a collective will in the exercise of home rule that it's in the best interest of the town for this plan to proceed, after all the I's have been dotted and T's have been crossed in public by public officials, publicly accountable, after the public's been heard.

Then there would be a compensation to the owner of not only the fair market value of the property, not only the relocation cost that might be borne, but also an extra 25% on top of the value of the property to compensate them for whatever other emotional loss may be engendered.

That may not be, there may be no price that can be put on emotional losses but it certainly 125% of fair market value is certainly a significant sum.

Through you, Mr. Speaker.

DEPUTY SPEAKER ALTABELLO:

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Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

Mr. Speaker, could Representative Feltman tell me under which chapter the Kelo home was taken by eminent domain? Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

REP. FELTMAN: (6th)

Through you, Mr. Speaker, chapter 132.

DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

Could I please have an explanation of what Chapter 132 is? Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman, a summary of Chapter 132, if you would, Sir.

REP. FELTMAN: (6th)

Yes. It's titled the Municipal Development Act.

DEPUTY SPEAKER ALTOBELLO:

It could be summarized a bit more, perhaps.

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REP. FELTMAN: (6th)

It's the same statute that we're initially re-mending in the initial part of the bill. It's pretty much all there.

DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

Thank you, Mr. Speaker. I believe that chapter 132 is clearly the chapter on economic development. The Kelo property was taken as an economic development project. Mrs. Kelo lost her home for economic development reasons, not for blight, not for public use.

Under the bill that we are talking about passing tonight, would Mrs. Kelo be protected and not lose her home for economic development? Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

REP. FELTMAN: (6th)

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Through you, Mr. Speaker, I said in my opening remarks and Representative Lawlor said as well, there are no absolutes and in my view, there should not be any absolutes.

I made the analogy about the right to life and that we hold that, we exalt and sanctify the right to human life and to not take human life and yet we, under state sanction, we sometimes find it necessary and find it justified to take human life.

And so it is with property rights which we also are protected by the Constitution and certainly we hold dear. But there are circumstances under which some property rights must be yielded to other property rights. And so, there is no absolute right of anyone under the laws of a society.

And so, this bill makes clear that the burden on anyone trying to redevelop for economic development purposes of any public body must be a very, very high burden, much higher than that which has ever been exercised in the history of the state.

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But we have learned the lesson of Kelo. We have reflected on it and we know that we need to make it much less likely that this would happen again. On the other hand, we must also know that there may be cases, hard cases, situation where we must have, where rights of some must yield to the needs of the many.

And so, the short answer to your question, there is no absolute right to a property owner under this law but there is many more or many more property rights extended to owners than we've ever had before. Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

Thank you, Mr. Speaker. With due respect, I do disagree that some people, some ideas deserve to have absolute rights. Owning one's property is a right, it is an absolute right that should only be breached in very, very limited circumstances.

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Under this bill, will we still be able to take a person's private property for public use? Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

REP. FELTMAN: (6th)

Through you, Mr. Speaker, that phrase you just used is the very essence of eminent domain, exactly, yes.

DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

Thank you. So we will be able to take a person's private property for public use such as schools and hospitals. Will we be able to take a person's private property, personal home, under the blight chapter? Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

REP. FELTMAN: (6th)

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Through you, Mr. Speaker, I guess where you and I disagree, Representative Bacchiochi, is the definition of the words public use or public purpose. Public purpose does not just mean streets or roads.

Public purpose also means to redevelop blighted areas. Public purpose also means, for example, the expansion of hospitals, which, under the existing plan, under this bill, would have to be done under the municipal development statute.

There are a number of public purposes and the key question that is asked of us and is answered by the bill is, is this primarily for public purpose, public use or is it primarily for private benefit? And only if it's a public use and for public benefit can eminent domain be used.

So to summarize your questions, if it's public use, a public purpose then yes, eminent domain can be applied under this bill.

If it's private benefit, it's a purpose only to enrich a developer or only to enrich a particular town by means of their tax base but not serving a larger

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public purpose, then no, it can't be taken under this bill. It's a public benefits test. Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

Thank you, Mr. Speaker. While Representative, the Chairman of Planning and Development and I seem to have a disagreement, I'd like to point out that a [inaudible] poll done, shortly after the Kelo case in July of 2005, asks the following question, as you may know, the court ruled that the government can use eminent domain to buy a person's property and transfer it to private developers who's commercial projects could benefit the local economy. Do you agree or disagree with this ruling?

And 88% of the Connecticut residents polled disagreed. They disagreed that we should allow a person's private property, where they raised their children, where they cooked their meals, where they

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have a garden, where they built their son's tree house to be taken by eminent domain.

Mr. Speaker, on June 23rd in 2005, the Connecticut Supreme Court made a decision in Kelo v. the City of New London that a private home could be taken for economic development. After that, the newspapers covered this extensively. The TV covered this extensively. People talked about it extensively.

But in 2005, this Connecticut Legislature, we did not address the issue. Thirty-four other states since 2005 have adopted reformed legislation to their eminent domain laws.

Again, 2006, I know we tried hard and I have great respect for the people who worked on the eminent domain bill but we did not do anything and now it's 2007 and we have a good bill before us.

And it does help protect homeowners and it does raise the threshold by which municipalities and redevelopment agencies have to jump through but the bottom line, even after the passage of this bill, my

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home, your home, your grandparents home, can very well be taken for economic development by eminent domain.

Mr. Speaker, I do plan to support the amendment that's before us but I will have another amendment that I think takes a good bill that's before and makes it the right bill.

The bill that the Connecticut residents have asked us since 2005 to put forth. Thank you, Mr. Speaker, and I do support the underlying bill.

DEPUTY SPEAKER ALTOBELLO:

Thank you, Representative Bacchiochi. House will stand at ease.

(CHAMBER AT EASE)

DEPUTY SPEAKER ALTOBELLO:

House will come back to order. Further on Senate "A"? Representative McCluskey, you have the floor, Sir.

REP. MCCLUSKEY: (20th)

Thank you, Mr. Speaker, through you, a couple questions to the distinguished Chairman of the Planning and Development Committee.

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DEPUTY SPEAKER ALTOBELLO:

Please proceed, Sir.

REP. MCCLUSKEY: (20th)

Thank you, Mr. Speaker, through you. My questions are specifically related to Section 18 of the bill, concerning a new process by which the DOT will have to compensate taking for outdoor advertising platforms.

Through you, Mr. Speaker, I guess my first question is, since this doesn't really have any direct connection to the Kelo case, since this is an accepted taking of public lands for transportation, what's the purpose of this particular section being in the underlying bill? Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

REP. FELTMAN: (6th)

Through you, Mr. Speaker, as I indicated, we took the opportunity in the course of responding to Kelo to look at all the eminent domain statutes across the board and to make them more consistent with each other

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and to make the process more similar, one to the other.

And in the course of that, we decided to look at one of the eminent domain areas, the acquisition for highway purposes of some private commercial properties, one of which is billboards.

And although it was not on our radar screen, we did have the public hearing, which we did have the benefit of both public hearings in both Planning and Development and Judiciary Committee, this anomaly came to our attention which is that, while all the other commercial properties under eminent domain are, the value is determined based on the income capitalization method, in this one area, the personal property is valued based on replacement costs which is the least desirable and says in the statute, is inferior to the other two methods for property evaluation.

And so, while we were doing a general integration of the statutes and rationalization of the statutes, we took the opportunity to make sure that all

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commercial property is assessed by the income capitalization method. Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative McCluskey.

REP. MCCLUSKEY: (20th)

Thank you, Mr. Speaker, through you I thank the gentleman for that, for that answer. One of the follow-ups I was going to ask is whether or not this particular proposal had a public hearing because as a Member of the Transportation Committee and a Member of the Transportation Bonding Subcommittee I was not aware of this issue but I thank the gentleman for telling me as part of his overall review that this matter was considered.

Through you, Mr. Speaker, is the gentleman aware that the courts in Connecticut have ruled that outdoor advertising structures are personal property under state law and not real property? Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

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REP. FELTMAN: (6th)

Through you, Mr. Speaker, yes.

DEPUTY SPEAKER ALTOBELLO:

Representative McCluskey.

REP. MCCLUSKEY: (20th)

Thank you, Mr. Speaker. Through you, is the gentleman aware that under federal law, personal property is not subject to reimbursement when the state acquires property through, you know, right of way expansion, Mr. Speaker, through you.

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

REP. FELTMAN: (6th)

Through you, Mr. Speaker, I'm not aware of what federal law requires. I am, however, much more attuned to what state law requires in terms of evaluations of property.

And having spent more time than I care to remember on property evaluation issues, I know that property, that replacement cost is considered to be extremely inferior to the other two methods of

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evaluation and is never used unless one of the other of the top, the better two are unable to be applied to evaluation. Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative McCluskey.

REP. MCCLUSKEY: (20th)

Thank you, Mr. Speaker. Through you, I'd be happy to edify the Chairman of the Planning and Development Committee. Under federal law, personal property is not subject to reimbursement when the state acquires property on the right of way.

And as the gentleman knows, when the state does do a right of way acquisition, 80% of the costs, 80% are paid for by the federal government but because our courts have determined that this is personal property, if this particular section is enacted, we will not be able to get that 80% reimbursement through the federal government so the State of Connecticut will be on the full freight.

I guess a couple more questions and comments, through you, Mr. Speaker, why is this particular type

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of personal property being proposed to be compensated under a new proposal as opposed to any other personal property that the DOT might acquire through a right of way acquisition? Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

REP. FELTMAN: (6th)

Through you, Mr. Speaker, I think because this is the only type of personal property that have independent value on the land. It would be the only improvement on the land for economic generation purposes whereas other personal property is for insular use. Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative McCluskey.

REP. MCCLUSKEY: (20th)

Thank you, Mr. Speaker, through you. I'm not aware that this is a particularly unique piece of property and I guess, through you, Mr. Speaker, I'm very concerned of the slippery slope argument. You

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know, if outdoor billboards are subject to a much,
[inaudible] reimbursement then why not anything else?

I guess I could make a legitimate argument that personal property that might be jeopardized when the state wants to acquire a right of way would be subject.

Mr. Speaker, as the Chairman of the Transportation Subcommittee that's been working on transportation legislation, I'm very concerned about the stability and the viability of the special transportation fund, Mr. Speaker.

And Mr. Speaker, it's my understanding from the DOT that if this section of this bill, and I support the underlying bill, but if this section was approved as is, just for the New Britain to Harford busway project, Mr. Speaker, the added cost of this section would be \$10 million.

That would not be subject to a federal reimbursement so this adds an additional \$10 million to the cost of that project.

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And Mr. Speaker, I believe that if this section of the bill is ultimately enacted into law, this will significantly undermine the transportation initiative we first started on last year and continue to move forward with this year.

So Mr. Speaker, while I expect this amendment and the underlying bill to be signed into law, Mr. Speaker, I believe this particular issue is very fundamental to the continuing success of the transportation initiative that this Chamber and this Governor have proposed and I intend, in the remainder of this session and beyond if necessary, to address this issue because, Mr. Speaker, it's too much costs, it's not associated with the Kelo case in any way, shape, or form.

It's an accepted acquisition, under federal law this is not reimbursable and no other personal property is reimbursable by the DOT when they require the right of way and so, although I will support the bill when it goes on the board, I oppose this section

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of the bill and see no public interest in this particular section, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Thank you, Representative McCluskey. Further on Senate "A"? Representative Harkins of the 120th, you have the floor, Sir.

REP. HARKINS: (120th)

Thank you, Mr. Speaker, just a few questions to the Chairman of the P & D Committee, through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Please proceed, Sir.

REP. HARKINS: (120th)

Representative Feltman, I'm going through the bill now and I just have a few questions regarding the actual taking of the property, of the residential house and I wanted to lay out a few scenarios.

If, for example, the house was older, the person had lived there for years, they had an oil tank in her basement but there was one underground and perhaps it was leaking and the pipes leading from the boilers had

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asbestos insulation on it which is outdated and it was flaking and could be a potential environmental problem, when the estimated value of the house is determined, and they use the factor as proposed in this amendment, would the cost of any environmental remediation be deducted from that estimated value? Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

REP. FELTMAN: (6th)

Through you, Mr. Speaker, there might be some effect but I would expect that it would not be a huge effect. When you value residential property, you do it by comparable sales and so you would look for a match of another house that's sold recently that's approximately the same.

In order to find, you might have to be able to find a house that's sold with some environmental problems but it probably wouldn't be an exact fit to this one so my sense is that generally, those individual characteristics kind of get lost in the

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sauce and it's basically, you know, 90% of the value is based on what a similar home in possibly better condition might go for, in the same neighborhood.

DEPUTY SPEAKER ALTOBELLO:

Representative Harkins.

REP. HARKINS: (120th)

Thank you, Representative Feltman. In a case where a property appraisal was completed, it generally consists of a general inspection and there isn't any phase one, phase two or even phase three environmental studies which you're aware of.

If something had come up in that property later on, they determined that there were some environmentally hazardous materials on site. I laid out two examples but perhaps it could be something else, old car batteries in the back that contaminated into the soil, what have you.

If they found something out later on that wouldn't normally show up in an appraisal, would the cost to cure the property be deducted from the estimated value? Through you, Mr. Speaker.

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DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

REP. FELTMAN: (6th)

Through you, Mr. Speaker, no.

DEPUTY SPEAKER ALTOBELLO:

Representative Harkins.

REP. HARKINS: (120th)

Thank you, Mr. Speaker. One other scenario I was concerned about, and I don't think is addressed in the bill but is actually dealing with the actual relocation of individuals who have their homes taken through eminent domain.

One of the concerns I have, and we're seeing this in a lot of older neighborhoods that are being proposed for economic development.

If you had an individual that lived in a house, say for 50 years, perhaps it's the only house they've ever owned and it was in an area that would probably need some development but it's not quite blighted and the house was taken, and I'm going to use an example, for say \$100,000.

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Under this proposed amendment, they would receive \$125,000. The concern I have is, what if that person was unable to find a comparable dwelling within the community, or even within the city or surrounding towns. Is there any compensation that is given in addition to the value of that property? Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

REP. FELTMAN: (6th)

Through you, Mr. Speaker, yes. There's a relocation assistance as well that is designed to provide them with temporary housing, shelter, closing costs and transportation costs and so forth. So yes, there is additional compensation built into the Bill.

DEPUTY SPEAKER ALTOBELLO:

Representative Harkins.

REP. HARKINS: (120th)

Thank you, Mr. Speaker. Through you to Representative Feltman. What if that person was unable to purchase a dwelling within the city for the

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price that they received in compensation for the taking? Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

REP. FELTMAN: (6th)

Through you, Mr. Speaker. I can't speculate as to that. All I know is that they would receive 125% of the value of their home. They would receive relocation costs and they would have to make do with amount. Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Harkins.

REP. HARKINS: (120th)

Thank you, Mr. Speaker. I have one more question and this actually deals the proposed projects that are happening throughout the state and many communities are supporting.

Even they are somewhat controversial in nature, some believe that they are actually beneficial to the communities. And we have one going on right now in Bridgeport on Steelpoint. One of the things that the

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promise and even in this Bill they talk about the benefits of economic development.

The concern I have is what if the jobs are not created. In other words, when the projects are presented you see drawings and studies and all of these great promises of what is going to occur and the jobs it is going to bring in and the tax revenues they are going to be anticipating and even sometimes the housing that is going to come with that development.

Through you, Mr. Speaker. What happens if that doesn't happen? What happens if that development fails? The jobs don't come. The taxes aren't derived. What happens then to the residents that lost their homes through a failed development? Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

REP. FELTMAN: (6th).

Through you, Mr. Speaker. They would have the right to reacquire their properties and be able to do so, even if the value has appreciated since they were

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sold, they were able to get them back at the price that they were originally compensated or if the price has declined and under your fact pattern it sounds like the price might have declined, since the they were able to get it for the lower price.

There are bad public policy decisions that are made in towns and other places and the recourse that people have, the primary recourse, is the ballot box.

And the people of the town, selectmen or councilmen or mayors who proposed and carried out a failed project would have to be held accountable for their failure. Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Harkins.

REP. HARKINS: (120th)

Thank you, Mr. Speaker. I know we all have concerns about eminent domain. But there are a few scenarios that I brought up that I'm very concerned with.

Are the promises of the jobs, of the tax revenues, yet we don't quite know for sure if that is

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going to happen. We hope it will happen. It brings some promise to the community and I can see why some would get behind it. But there are no guarantees.

And if in fact a development failed, you actually took property that lived there, possibly did not compensate them enough, you gave them market value. But you didn't give them another place that they could purchase a home because they didn't quite have the resources and then they are looking at a development where ten years down the road it failed.

There are already buildings on it. They can't quite buy back their 50 by 100 lot or whatever the size of the lot is because there might be a parking garage or some other structure on it.

So I guess there are no guarantees. It is almost a leap of faith. We are hoping that the economic development project does succeed, does bring all of those promises, but we've displaced people in the process and there is not that guarantee that it will be successful.

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If it is unsuccessful we've got to do an exercise that has taken people out of their homes, gave the some money and we gave them a little bonus.

I saw that and I guess that bonus could be debatable too. Is it actually enough? Which goes back to my point of is it just compensation and it orders them to purchase a home in their community.

So you have a person that lost their home. They may not be able to find a comparable dwelling. They may have to move 20 miles away and then they look at a project that may or may not succeed.

I think this Bill is a beginning. I think it does take some steps to improve what we have, what I believe is a defective eminent domain law. My concern is that it doesn't quite go far enough. And I guess it is the economic development aspect that concerns me and many others in this Chamber.

We've become very aggressive in the taking of people's homes. The whole issue of economic development giving it to a private developer that knows better than you.

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That homeowner, we hear it all of the time, a person's home is their castle yet all of the sudden we deem that it is no longer valuable to the community, it is no longer value to you.

We are going to give you some money. We will throw you a little bone on top of it, we'll give you an extra 25% of the value and you can go your merry way.

I think somewhere along the line we've lost our way. If a developer wants to come in and do an economic development project then let them pay the price. He should pay a premium for that property.

If that development is going to do all of the things that they think it is going to do, bring the jobs, bring the taxes, then let them pay a premium for that dwelling as opposed to depending on an as is value with a bonus.

Again, I'd just like to say that I think this is a good beginning. I know there will be some Amendments that will be coming forward. I hope this Chamber will listen to those arguments made in support

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of those Amendments and we can actually make what I believe is a beginning Amendment a lot better. Thank you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Thank you, Representative Harkins.

Representative Hewett of the 39th, you have the floor, Sir.

REP. HEWETT: (39th)

Thank you, Mr. Speaker. I'd like to pose a couple of question to the Chairman of the Planning and Development Committee, please.

DEPUTY SPEAKER ALTOBELLO:

Please proceed, Sir.

REP. HEWETT: (39th)

I just have three questions. There is something I just want to clear up. In this legislation, is there anything in this Bill that will resort back to what happened in the City of New London? Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

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REP. FELTMAN: (6th)

Through you, Mr. Speaker. I couldn't hear the verb?

DEPUTY SPEAKER ALTOBELLO:

Representative Hewett.

REP. HEWETT: (39th)

You didn't hear what I said?

REP. FELTMAN: (6th)

The verb. It was something back to the City of New London?

REP. HEWETT: (39th)

That revert back to the City of New London.

REP. FELTMAN: (6th)

In other words, that would ex-post-facto, that it would be retroactive in effect, no.

DEPUTY SPEAKER ALTOBELLO:

Representative Hewett.

REP. HEWETT: (39th)

Thank you. Through you, Mr. Speaker. Does anything in the Bill, any provisions to compensate

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people that rent property in properties that were taken eminent domain? Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

REP. FELTMAN: (6th)

Through you, Mr. Speaker. I believe there is a reference in here to the Uniform Relocation Act. I don't recall how that applies to people who are renting. I don't recall.

DEPUTY SPEAKER ALTOBELLO:

Representative Hewett.

REP. HEWETT: (39th)

Through you, Mr. Speaker. In regards to a municipal development plan which we call MDP, who in the state has to approve of such a plan?

DEPUTY SPEAKER ALTOBELLO:

Representative Feltman.

REP. FELTMAN: (6th)

Through you, Mr. Speaker. As I understand it, it is the local legislative body, the Court of Common

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Council that would have to approve setting aside an area as a municipal development area.

They would then seek funding from an outside funder, in this case, as I understand it, from the State Department of Economic and Community Development. So you can designate an area but if you don't have any money you can't do much with it.

So as a practical matter you need to seek support from the state, but the designation itself takes place at the local level. Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Hewett.

REP. HEWETT: (39th)

I thank the gentleman for his answers. Mr. Speaker, obviously, I'm under the opinion that the current law that we have in place works.

And this plan and this MDP that we did in the City of New London there was a legislative check, there was an Executive Branch check and the local legislative check.

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If all of these checks and balances don't add up then the property owner has the right to go to court and have a judge determine whether the action of the legislative body was unreasonable.

What did we do in New London? New London acquired 90 acres of property, commercial industrial land that had been zoned since 1929 commercial.

What did New London not do? New London did not take property for the sole purpose of giving it to another who would pay taxes. No developer was in place at the time.

Why did New London acquire the property? The 90 acres had an 80% commercial vacancy rate and a 20% residential vacancy rate. There are nonperforming well as had been essentially abandoned and we in need of \$18 million in environmental clean up.

New London is the host of many non-profit organizations. We have clinics, programs for the poor, disadvantaged and also demand municipal services. These do not provide tax dollars. New London needs a strong economic base so that it can

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continue the urban agenda that the suburbs in this state do not want to carry out.

New London had a carefully considered development plan and was stated by Justice Stevens in the write in for the Majority in the decision for the United States Supreme Court.

The connection between economic development and the public use clause of the Constitution is a bridge that must be filled with public uses and public benefits along with economic development.

If the only vehicle that the bridge has is economic development then Justice O'Connor, Motel 6 versus Ritz Carlton, the plan would be in big trouble. The Majority of the U.S. Supreme Court clearly stated the law. You cannot take from A and simply give it to B.

This is not what happened in the City of New London. Taken under the pretext to benefit one identifiable party. The economic development will come at the end of the development phase and more than \$70 million of state taxpayers' money had been spent

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to clean, reshape and design 90 acres all public benefit.

Every court from the trial court to the Connecticut Supreme Court and the U.S. Supreme Court found that the City did it right and that Connecticut's law was Constitutional.

So Mr. Speaker, for these reasons I will voting against the Bill. This Legislative Body that we sit in today approved more than \$85 million to the City of New London of which \$10 million was to be used to acquire property by any means necessary.

It was not a popular decision. Probably one of the worst decisions I've ever made in my life. I stood by it then and I still stand by it now. We did it right.

We did it within the realms of the law that we had on the books at the time. So when you criticize the City of New London also criticize the vote that you took here in this Chamber and then you will know why we did what we did in New London.

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We have Section 8 housing. We have low income housing. We have senior housing. We have hospitals. We have the U.S. Coast Guard Academy.

Not 56% of the taxable properties in New London are off the tax roll. And we have no ability to grow. And I think when you take this ability from a municipality to take properties by eminent domain, I think you are stifling that city.

Now the City of New London is a very unique place. It is seven square miles and we have all those things in the City of New London. I think that the law works.

It went through every court in the land and we were so quick to criticize the U.S. Supreme Court instead of criticizing our own State Supreme Court who gave us a five to four decision also. For those reasons, Mr. Speaker, I will be voting against this Legislation. Thank you.

DEPUTY SPEAKER ALTOBELLO:

Thank you, Representative Hewett. Representative Lewis of the 8th, please proceed, Madam.

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REP. LEWIS: (8th)

Thank you, Mr. Speaker. I rise to support the Bill. I live in a community where 20 years ago over 20 homes were taken to build a highway that, of course, was never built. It was devastating to those families.

Property that had been in families for years was taken. New homes were taken. Some of these families were not able to relocate in Coventry and had to move to another town while their students, or their children who were seniors in their high school year had to remain in town with other families during the week.

It was just an extremely, extremely emotional experience for the whole community. Many of the homes that were taken were allowed to just sit there and fall into disrepair.

Now, 20 years later, DOT is in the process of disposing of these properties. Strong emotions still exist in our community. I am pleased tonight that we are acting on a Bill that will a taking more difficult

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for these certain purposes for economic development and redevelopment.

And I'm really pleased that we will provide our homeowners with 125% of the average of the two appraisals and also with the property should be sold at a later date that these homeowners will have the right and their heirs will have the right to first refusal.

These types of provisions were not in place or available to the people in my town 20 years ago and I feel these are very important components of this Bill.

Although not perfect, it does offer additional protection to our citizens and I want to thank all of those who worked on the Bill.

I was on Planning and Development two years ago when we started this process. It was not an easy one. And I know how much time was involved and I do intend to support this Bill tonight. Thank you.

DEPUTY SPEAKER ALTOBELLO:

Thank you, Representative Lewis. Further on Senate "A". Further on Senate "A". If not, I'll try

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your minds. All those in favor please signify by saying Aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER ALTOBELLO:

Opposed? The Ayes have it. The Amendment is adopted. Further on the Bill as amended? Further on the Bill as amended? Representative Feltman of the 6th, you have the floor, Sir.

REP. FELTMAN: (6th)

Thank you, Mr. Speaker. I just wanted to respond to two comments that were made earlier. One is by Representative Harkins. A question about whether or not people would be adversely affected by failed developments as also alluded to by Representative Lewis.

I just want to share some real world experience that I have and that my city's had. We've been doing redevelopment now for about 65 or 70 years. I served as a commissioner for three years. My observation is

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that economic development don't often fail, they just slow down, sometimes they a while to work out.

But I can't point to anything that has happened in the last 65 years in Hartford where the redevelopment did not succeed eventually. I think these things sometimes take longer than they expect but eventually they do arrive, if not exactly on course, then close to it.

And I think these projects are worth pursuing. They do help communities. They do uplift neighborhoods and they do make life better for our citizens. And I urge support for the Bill. Thank you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Thank you, Representative Feltman.

Representative Bacchiochi of the 52nd, further on the Bill as amended?

REP. BACCHIOCHI: (52nd)

Thank you, Mr. Speaker. Mr. Speaker, in my previous questioning of the Chairman of the Economic Development Committee, I think I may have done

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something that I didn't intend to do, which was to convince some of the Members on my side of the aisle that I didn't like the underlying Bill. So I do want to just make a couple of comments that this is a good Bill that we have before us.

It makes some changes that greatly protect homeowners. It prevents the takings for primarily for increasing local tax revenues. It provides a two-thirds legislative body approval for taking. It gives a ten-year deadline. And, most importantly, it allows owner occupants to appeal to Superior Court.

So at no point in time did I want any of the Members to think that I want to defeat this Bill. The point that I was trying to make is that there are many, many places in this Bill, loopholes if you will, Mr. Speaker, that will continue to allow residential, owner occupied property to be taken for economic development.

Mr. Speaker, while I do support the underlying Bill, I believe that we need to go a little bit further, or maybe I should say a lot further. We need

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to draw a line in the sand that tells our residents that we will not take your home under eminent domain for economic development.

Mr. Speaker, the Clerk has an Amendment LCO Number 8714. May the Clerk please call and may I be allowed to summarize.

DEPUTY SPEAKER ALTOBELLO:

May the Clerk please call LCO Number 8714. It shall be designated House Schedule Amendment "A".

CLERK:

LCO Number 8714, House "A", offered by Representative Bacchiochi and Senator Fasano.

DEPUTY SPEAKER ALTOBELLO:

The Representative seeks leave of the Chamber to summarize it. Objections to summarization? If not, Representative Bacchiochi, please proceed, Madam.

REP. BACCHIOCHI: (52nd)

Thank you, Mr. Speaker. Mr. Speaker as I'm sure most of the Members have surmised at this point, this is an Amendment that would prevent the taking by eminent domain of an owner occupied home. Owner

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occupied home is defined as a one to four family property.

This Amendment would still allow that property to be taken under the Blight Chapter. So let me be clear. Especially in our more urban areas where blight is a serious issue, it is a public health issue. This Amendment does not change our ability to take a property under the Blight Statute.

Mr. Speaker, this Amendment does not change the ability to take a private home for public use. This Amendment draws a line in the sand and simply protects all of us and all the residents in Connecticut from the taking of their home for economic development.

The other point that this Amendment addresses is that it addresses my concern with the word deteriorating, Mr. Speaker. I do not want my home judged or anyone's home judged based on a sliding scale using the word deteriorated.

Therefore, the Amendment removes that word from the Statute and replaces it with four items to describe deteriorated. It says that a dwelling must

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be dilapidated, unsanitary, unsafe, vermin infested, or lacking in the facilities and equipment by the housing code of the municipality and is unfit for human habitation.

And any structure that is a fire hazard or is otherwise dangerous to the safety to persons or property. And any structure from which the utilities, plumbing, heating, sewer or other facilities have been disconnected, destroyed, removed or rendered ineffective so that the property is unfit for its intended use.

And any vacant or unimproved lot or parcel of land in a predominately developed neighborhood that by reason of neglect or lack of maintenance has become a place for accumulation of trash and debris or a haven for rodents or other vermin.

This would become the definition of deteriorated. Our current Statutes do not define deteriorated so I think it is very important that we do so.

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Mr. Speaker, I believe that this is what the Connecticut residents have asked us to do and I move adoption.

DEPUTY SPEAKER ALTOBELLO:

Question is on adoption of House "A". Remark? Representative Bacchiochi? Please proceed, Ma'am. Representative Bacchiochi, would you care to comment further on House "A"?

REP. BACCHIOCHI: (52nd)

No, Mr. Speaker, I believe I have made all my comments. But I would like to ask for a Roll Call Vote when the vote is taken.

DEPUTY SPEAKER ALTOBELLO:

Request for a Roll Call Vote. All those in favor of a Roll Call Vote please indicate by saying Aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER ALTOBELLO:

The threshold has been met. When the vote is taken, it shall be taken by Roll Call. Representative Mikutel of the 45th, you have the floor, Sir.

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REP. MIKUTEL: (45th)

Yes, thank you, Mr. Speaker. Mr. Speaker, I rise to support the Amendment. It makes the underlying Bill a better Bill.

I think we need to know briefly a little history here of how we got to the situation we're in. Fifty years ago eminent domain was used strictly for traditional uses, public uses, building schools and roads and infrastructure type projects.

In the 1950s, the courts intervened and with a decision that municipalities could take blighted property and clear it, clear cut it and redevelop it. And then with Kelo in 2005 the courts again changed the standards.

Now they said eminent domain can be used for economic development purposes so long as there is some connection to public benefits however nebulous that may be.

So in effect, the Kelo decision gives local politicians and bureaucrats the green light to

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confiscate, and that is the word confiscate, a family homestead.

I want to remind you of what Justice Sandra Day O'Connor said in her dissenting opinion in Kelo. She said economic development per se is an unreasonable exercise of eminent domain power, an unreasonable exercise of eminent domain power.

Most Americans do not agree with the Supreme Court Kelo decision. Most Americans feel abandoned by the courts and by their elected officials. Most Americans thought up until Kelo that the Constitution of the United States and their government would protect their property rights.

How wrong they were. They woke up and found out according to Kelo property rights are basically what your local politician says they are.

The proponent of the Amendment has just explained that this Amendment prevents the taking of an owner-occupied, non-blighted family residence. You have heard in the discussion here that the underlying Bill does not do that.

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The underlying Bill would not have prevented Mrs. Kelo's house from being taken. I think that's what I heard. The underlying Bill would not have prevented Mrs. Kelo's house from being taken. It will not prevent somebody's house from being taken. Maybe someone related to you, maybe your house.

So the underlying Bill and I will support the underlying Bill, because it makes some improvements, places greater restrictions and I will support that. But the underlying Bill still disappoints me because it does not protect the American dream of homeownership. It does not protect the American dream of homeownership.

Government confiscation of the family home goes against everything that American stands for. It strikes are the core of our liberty and undermines the people's belief in democracy, undermines our belief in democracy.

It certainly did me when read of people's homesteads being taken so that government can increase its tax base while also doing some public benefits.

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We as a Legislature are the last line of defense for our constituents. The courts have abandoned them. The local politicians and bureaucrats, not all, I don't want to say all, because I'll hear it but that's okay. They have abandoned them.

So here, today, we have an opportunity right now, under this Amendment we have an opportunity to assure that our constituents can remove the specter of condemnation that hangs over their heads. We can assure them that their property will not be taken by eminent domain for economic development purposes. We can do that today.

I've been in this Chamber for 15 years and when I leave, I tell you, there will probably be no more than ten votes that I will really remember or care about, that I will feel proud about. I can tell you that 20 years from now this will be the one vote that I will remember and feel proud about.

And I know that if you vote for this Amendment you will also feel proud about it twenty years from today. Thirty years from today, you will remember

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this vote because you will have defended the basic American core value of private property rights that underlies our freedom.

I guess I want my legacy to be that I did not defend the developers and the powerful who have their way and will have their way in this process.

Who needed to be defended? I want that I remember that I defended the working people who played by the rules. That's what I have to say for now, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Thank you, Representative. Representative Lawlor of the 99th, you have the floor, Sir.

REP. LAWLOR: (99th)

I think I started out tonight by mentioning that a year ago we were essentially in the same position and although it was never called to be debated, the fact that the Bill was never taken up had a lot to do with arguments over relatively discrete parts of the Bill such as the Amendment here.

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The end result was no Bill became law last year. And I think as has been acknowledged by most of the speakers here this evening that the Bill itself without Amendment is a major step in the right direction.

And although we can have differences of opinion about whether or not this or that specific addition is important or a good idea, I think we can all agree on the importance of here in the final days of the Legislative Session getting the substantially good thing enacted and perhaps leaving to another day discussions about isolated, specific issues, all of which have been addressed.

And in particular, Mr. Speaker, I'd like to point out that this particular Amendment was actually voted down in the Senate by a rather substantial margin.

And I think we should consider that as we decide how to evaluate the need to add this to the Bill here tonight regardless of the merits of the Proposal, that the likelihood would be that it would not be adopted in the Senate a second time. And then we might end up

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where we found ourselves last year without a substantial reform of our eminent domain laws.

So that is just a practical consideration I think is worth keeping in mind as we evaluate this Proposal. Now on the merits of the proposal itself and if I might, through you, Mr. Speaker, a couple of question to the proponent of the Amendment.

DEPUTY SPEAKER ALTOBELLO:

Please proceed, Sir.

REP. LAWLOR: (99th)

Through you, Mr. Speaker. Could the proponent explain what the definition of residential property is, and in particular in the context of this Amendment, is there a definition of residential property? Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

Thank you, Mr. Speaker. It is not defined in this Amendment and I am not sure if it is defined in other State Statutes. I'm sure you have more

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familiarity with that than I do. But I would define residential as a property in which someone calls their home. An owner occupied home up to a four family residence.

DEPUTY SPEAKER ALTOBELLO:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. I just want to explain to the Chamber why I asked the question. Because you know as is often the case here, we have to think through the possible consequences of this language being inserted into the Statute because some court down the road would have figure out is a particular property residential or not.

Is it owner occupied or not. And I think we are all familiar with the mom and pop stores or their might be a pizza parlor in the front and an apartment or two upstairs which are rented out.

So I guess the question would be, in that type of situation, does the owner have to sleep there at night or is it enough that the owner let's say owns the

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pizza parlor and rents out the upstairs bedrooms to tenants? Through you, Mr. Speaker. Would that be residential or would it not be residential fitting this description?

DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

Thank you, Mr. Speaker. I believe that the intent here is that it is owner occupied, therefore the owner or the owners would have to have that as their residence.

It would have to be their mailing address, the Assessors Office would list that as their home. And I would also note if we are concerned about what the court needs to decide, I would rather the court decide whether or not this is an owner occupied property first, before they decide if the property should be taken under economic development. Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Lawlor.

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REP. LAWLOR: (99th)

Thank you, Mr. Speaker. And this Amendment just to be clear would not in any way afford its protection to a small business for example. That would not be covered by this protection at all. It simply would be excluded. Is that the intent of the proponent of the Amendment? Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

Yes, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Lawlor.

REP. LAWLOR: (99th)

There is a distinction in the Statutes apparently between farmland that is governed by a whole separate set of Statutes. And there was some reference made earlier tonight about farms, farmhouses and farmland that has been the family for many, many years.

It is my understanding, this has been expressed to me, that the way the land use Statutes distinguish

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among different types of property would in effect fall under a whole separate area of condemnation law. And I'm just wondering if the proponent has given any consideration of that particular dilemma? Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

Thank you, Mr. Speaker. It is the intention of this Amendment to include farms if they are owner occupied and considered one's home. Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Lawlor.

REP. LAWLOR: (99th)

Through you, Mr. Speaker. Does that mean the entirety of the acres and acres of farmland or simply the land upon which the house sits?

And I ask this question because I do believe a reasonable interpretation of the Statutes would be contrary to that and I'm not sure, unless the language

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of this Amendment is explicit, that the legislative intent can contravene that. So I'm wondering how the proponent is attempting to distinguish between the two. Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

It is the intention of this Amendment to cover all of the property of the farm, the whole farm as the saying goes.

DEPUTY SPEAKER ALTOBELLO:

Representative Lawlor.

REP. LAWLOR: (99th)

I guess when you think about the application of this and you think about the different effect in different situations, I think it's important to keep in mind that, one, a type of long-term tenant might have all of the same sort of emotional attachment to a place as an actual homeowner would be.

So is the intention of the proponent to completely exclude tenants from the protection of the

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Amendment, tenants who might have lived in an apartment for 30 or more years, if in fact the apartment building is not occupied by the person who is the owner?

So those cases would not be afforded the protection of this Amendment, is that the intent of the proponent, Mr. Speaker?

DEPUTY SPEAKER ALTOBELLO:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

The answer is yes. The intent is to exclude tenants. This Amendment strictly refers to owner occupied homes up to four families. Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. And the final thing that I would like to say is that I think one of the problems with this type of language is that unlike the

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Bill itself, it might be giving false hope to property owners.

There may be many people watching our deliberations here tonight and I'm sure there are even more who will read about them tomorrow and watch the coverage of these deliberations.

And if this Amendment were to become law, it is my interpretation that it would only protect people from eminent domain under this one Chapter of the Statutes.

And in the most famous case, obviously, the Kelo case, based on my understanding of the project and the configuration of the land, etc. that each and every one of those homes could have been taken by eminent domain using other Statutes given where they sit on the land and the types of uses to which that land was going to be put.

As it turns out, economic development was the Statute under which they were proceeding, but most of the experts who have evaluated that situation have concluded that other Statutes would have allowed for

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takings using eminent domain and would not have been excluded by this proposed Amendment had it been law at the time.

So I think the problem is that many people would think that if this discrete language became law that because they're in a single family home that eminent domain would not be an issue for them.

And I think that the exact opposite is the case. That in most of the development projects, virtually all of them that I'm aware of, there would be alternative mechanisms that could be used.

And so I think that's the beauty of the underlying Bill in that it has expansive protection both for the three Chapters that have been specifically referenced, but in other respects to all of the eminent domain proceedings.

That the number of hurdles that you would have to climb over and hoops that you would have to jump through in order to successfully accomplish a taking by eminent domain would be considerable. And that, I think, is the true protection.

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So for those reasons, the practical reasons of the potential for having this entire legislative initiative fail short of the goal line next Wednesday night at midnight, and for the apparent unfairness in protecting some but not protecting other types of homeowners and tenants and finally the false hope it might give.

I think in fairness we should vote down this Amendment and continue these discussions and I'm sure that we will in the Sessions of the Legislature to come to ensure that we fine tune it.

But for now, let's pass the good Bill and let's not allow the perfect to be the enemy of the good. So I urge rejection, Mr. Speaker.

DEPUTY SPEAKER FRITZ:

Thank you, Representative Lawlor. Will you remark further on the Amendment before us?
Representative Boucher.

REP. BOUCHER: (143rd)

Thank you, Madam Speaker. Madam Speaker, I rise to support this Amendment and also to align my remarks

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with my distinguished colleague from the District 45 that so eloquently and so strongly spoke on the many reasons that we should be supporting this Amendment.

In fact, if this Amendment does not pass, the underlying Bill is really no more than window dressing on the problems that we currently have which would be a great disappointment given that this is the state that started this whole issue rolling on a national level and already 36 other states have found it within their power to rectify the situation. But here in Connecticut we're still debating this.

The underlying Bill is just window dressing. It puts a few more hoops, but the towns and municipalities still can take someone's personal property for a commercial or private use. But that does not change.

It is one of the biggest issues, whether it is protecting your family or personal property. Nations have gone to war over this issue. And certainly by the surveys that show nearly 90% of the public wants us to fix this, but they don't want merely a few

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window dressings around the current situation leaving it the way it is.

They want a substantial change. They want protection that this Amendment that we are looking right now would give the public, and that is to prevent your personal property to be taken for a private purpose.

Not for a road or school or something necessary for the general public. So I urge support of this Amendment for us to pass this and then we would truly have the kind of reform that we need to put us on an equal playing field with the vast majority of this country. Thank you, Madam Speaker.

DEPUTY SPEAKER FRITZ:

Thank you, Representative Boucher.

Representative Bill Hamzy.

REP. HAMZY: (78th)

Thank you, Madam Speaker. I also rise in strong support of this Amendment. I happen to believe that the underlying Bill is a very good start to address a

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problem that, as everyone knows, was started here in the State of Connecticut.

And I support the Amendment and I don't mean to disparage or demean or questions anyone's motives with regard to previous eminent domain proceedings that were undertaken for the purpose of economic development.

Obviously, those purposes and those reasons were proven to be valid by the United States Supreme Court and this is fact. But what I also believe to be fact is that when the founders of this country created this process that they could not have imagined that someone's home could be taken to be used for economic development.

And I think that there should be a bright line, as bright a line as we can possibly create, knowing full well that it can never be a completely line. And send the message that in the State of Connecticut private property that is used by the owner as their principal residence should not be taken for the purpose of economic development.

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And I would urge this Chamber to send that message by adopting this Amendment and making the underlying Bill one that is worthy of becoming law. Thank you.

DEPUTY SPEAKER FRITZ:

Thank you, Representative Hamzy. Representative Hetherington.

REP. HETHERINGTON: (125th)

Thank you, Madam Speaker. If I may I would like to direct a question to the proponent of the Amendment.

DEPUTY SPEAKER FRITZ:

Representative Bacchiochi, please prepare yourself.

REP. HETHERINGTON: (125th)

Thank you. Through you, Madam Speaker. With reference to Lines 110 through 123 of the Amendment, I was a little uncertain during the initial explanation. These four conditions are in disjunctive I believe.

For legislative intent, I would like to ask the proponent just to clarify that these are alternatives

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that all four conditions don't have to be met. Thank you. Through you, Madam Speaker.

DEPUTY SPEAKER FRITZ:

Representative Bacchiochi.

REP. BACCHIOCHI: (52nd)

Actually, it is the intention that all four do have to be met. We're trying to make a high threshold before the taking of property based on blight. But it wouldn't have to be everything in Line 1.

It would be part 1 or part 2 and then you come down to item 2 and it would be either a structure that is a fire hazard or is otherwise dangerous to the safety of persons or property. So while you do have to meet criteria 1, 2, 3 and 4, it is only a portion of each criteria set out.

DEPUTY SPEAKER FRITZ:

Representative Hetherington.

REP. HETHERINGTON: (125th)

I see. Thank you, Madam Speaker. And I thank the proponent. I would conclude by urging adoption of this Amendment. I think this is a good underlying

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Bill. I appreciate very much the work that Representatives Lawlor and Feltman and others have done on this. I think it is a real step forward.

But I think we can make it even better by this Amendment. We sometimes, I think, perhaps overlook how important a right, the right to be secure in our homes is.

The right to be protected against unreasonable seizure, taking by the government, is really akin to the protection we have against search and seizure.

All of these recognize that privacy is the companion of liberty. And that historically, religious liberty, political liberty, all of the great liberties that we recognize and appreciate as Americans, fall within the category of those protections that keep us where we are secure in our property.

And I would respectfully urge that the Amendment be adopted. It will make it a better Bill and I would be please to support it. Thank you, Madam Speaker.

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Thank you, Representative Hetherington.

Representative Shawn Johnston.

REP. JOHNSTON: (51st)

Thank you, Madam Speaker. Madam Speaker, standing in very strong support of the Amendment before us, I think Representative Mikutel hit upon something earlier.

There are those rare occasions in this building where you make a vote that goes to the very core of who are as a person, who we are as a society and what we truly believe in.

And quite frankly, I think that this issue is one of these votes. And if you think about it I don't think there can be any chance that you will forget how you vote on this issue.

This goes to the very core of what is good and right about our nation. If you work hard, you save, you are able to buy a home, you are able to improve that home, raise your family.

And that ownership strikes at the very core of what is good about us. And government has no right in

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any manner to take from you for that which isn't a public purpose.

And economic development is not a public purpose. It is basically saying that the end justifies the means. And the ends do not justify the means in this case as it very rarely ever does.

To say that we should not adopt this Amendment because the Senate rejected it isn't a reason for us not to adopt this Amendment. We are co-equal Houses here, the House and the Senate.

We have a responsibility to try to do what we think is best for the people that we represent. To say that there are very few days left and we won't be able to get final passage if we adopt this Amendment, my God, we did Campaign Finance Reform in 15 minutes last session. At three minutes of midnight Campaign Finance Reform. This is one slight change that each of us understands.

It is not a complicated change. It protects each and every citizen of this state who has worked darn

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hard and has something. We have no right to their property.

Madam Speaker, there's been a couple of stories related tonight, and the latest story of a woman in the Town of Thompson, about a mile and a quarter down the road from where I live, actually.

And her name was Alice Ramsdell. And in 1955, the Great Flood of 1955, wiped out an entire section of our town. The village of West Thompson was wiped out.

And at that time the Army Corps of Engineers came in and they took land by eminent domain to protect the area and to build the West Thompson Dam. And they bought every property except for Alice Ramsdell.

Because the day they came to take her property after she had fought them, they arrived with the U.S. Federal Marshals on her property. And at that time Alice Ramsdell was living alone in the family homestead in her 80's and she came to the door with her shotgun.

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Madam Speaker, she was willing to either die or go to jail for what she knew was the right thing to do. The Army Corps of Engineers wisely cut a deal with her and Alice lived out her life on that farm.

Madam Speaker, to be perfectly honest with you, if I voted against this Amendment, there is no possible way I could go home and ever run for reelection and look any one of my constituents in the eye and told them that I did the right thing. Each of us knows what the right thing to do is. We need to dig deep inside of ourselves and really think about this.

And this isn't about don't support any Amendments. This isn't about this is just a compromise. This is about the very core of who we are as a people, who we are as citizens of the Constitution State. Make the people of Connecticut proud. Support this Amendment. Thank you, Madam Speaker.

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Thank you, Representative Johnston.

Representative O'Neill.

REP. O'NEILL: (69th)

Yes, thank you, Madam Speaker. I listened to the distinguished Chairman of the Judiciary Committee's argument and certainly the time is short in the Session. And chances are that Bills that get amended and get sent back have a hard time getting passed.

But I would speak in favor of the Amendment. The fundamental reason is also practical. Over and over again during this process and here again tonight the question has been asked, will the Bill, whichever Bill it is because there have been several Bills during the course of this Session that have been potential vehicles for dealing with the issue of eminent domain. Will the Bill, would the Bill if it had the law have protected Ms. Kelo's home?

And that means in my mind, would it have stopped the eminent domain process from occurring. Now the distinguished Representative from the 39th District, New London, indicated in the Appropriations Committee

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that he thought for perhaps certain practical reasons it might have.

And he was intimately involved, but he couldn't say with certainty. And earlier the distinguished Chairman of the Planning and Development Committee said various things but he couldn't say with certainty that it would.

And I think the reason why we are here tonight, the reason why I and the former Representative from West Hartford and the former Representative from Simsbury in 2005 a somewhat similar Amendment at that time, in the summer of 2005.

The reason why we did that was to respond to the Kelo case. All of the other things that we do in this Bill, many of which are very good, are ultimately not what we were all about when we started on this journey. If we do not actually get to a point where we can say Mrs. Kelo's home would have been protected from eminent domain.

If all we say is it might have been a little more difficult, there might have been an extra hoop or two

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that the city of its development agency might have had to go through, then we really haven't done the job. And so, Madam Speaker, I would urge adoption of the Amendment. Thank you.

DEPUTY SPEAKER FRITZ:

Thank you, Representative O'Neill.

Representative Candelora.

REP. CANDELORA: (86th)

Thank you, Madam Speaker. I also rise in support of this Amendment. As I sat through the public hearings in Planning and Development it became very evident from those that spoke, eminent domain is a serious procedure and it radically affects people's lives.

And I think that we need to offer some sort of protection to our residents. What was clear in the public hearings is that not only did people want eminent domain to be prohibited for economic development purposes in the taking of people's homes, they also wanted that protection extended to businesses.

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And I think what this Amendment does is, it is a compromise, we recognize that there are circumstances where our cities and some of our towns would want to exercise the eminent domain right for economic development purposes. But I think that right should be restricted and be prohibited for owner occupied dwellings.

And I think this Amendment is narrowly crafted to afford that right. In my town of North Branford the last time we exercised eminent domain was roughly about 50 years ago for the taking of a farm for a school. So that was actually for a public purpose that the town needed.

That scare still remains in our community today. And having served on the Council for the past six years, members who were around when that occurred have made the comments to me that we would never ever exercise eminent domain again.

And what this points to is I think that what this Bill does is actually protect the area's individual homes that are vulnerable to development for economic

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reasons. On the campaign trail I met an individual who emigrated here from Puerto Rico.

He worked in a manufacturing firm for his entire life. Saved up and purchased a home in New Haven. He loved that home. He took care of that home. And sadly, two years ago, his home is now being taken by eminent domain.

He is now spending the money on a lawyer to try to defend his case, because he came to America to be able to exercise the rights that we all have. And those are the individuals that this Amendment seeks to protect.

I don't think in my District that we will be seeing eminent domain anytime soon. But I am concerned for the people who are economically disadvantaged who may be living in areas that are prime for economic development because they can be purchased by a municipality at a cheap rate.

So what this Amendment does is it affords those people the proper protections and I would urge everyone to support the Amendment. Thank you.

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DEPUTY SPEAKER FRITZ:

Thank you, Representative Candelora. Will you remark further on the Amendment before us? Will you remark further on the Amendment before us? If not, will staff and guests please come to the Well of the House and the machine will open.

CLERK:

The House of Representatives is voting by Roll Call. Members to the Chamber. The House is voting House Amendment Schedule "A" by Roll Call. Members to the Chamber.

SPEAKER AMANN:

Have all the Members voted? Have all the Members voted? If all the Members have voted, please check the board to see if your vote has been properly cast.

All the Members have voted. The machine will be locked. The Clerk will take a tally. The Amendment fails.

DEPUTY SPEAKER ALTOBELLO:

Will the Clerk please announce the tally.

CLERK:

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House Amendment Schedule "A" for Senate Bill
Number 167.

Total Number Voting	139
Necessary for Adoption	70
Those Voting Yea	67
Those Voting Nay	72
Absent not voting	12

DEPUTY SPEAKER ALTOBELLO:

House "A" has failed. Further on the Bill as amended. Further on the Bill as amended.
Representative Miner of the 66th, you have the floor,
Sir.

REP. MINER: (66th)

Thank you, Mr. Speaker. If I might, just a couple of questions to the proponent to the Bill as Amended. Through you, please.

DEPUTY SPEAKER ALTOBELLO:

Representative Lawlor, please prepare yourself.
Representative Miner, please proceed.

REP. MINER: (66th)

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Thank you, Mr. Speaker. Mr. Speaker, in Section 1, Subsection 3A, Lines 33, 34, and 35, seem to change the process by which towns that operate under the town meeting form of government would go through this approval process. Through you, Mr. Speaker. Is that a correct interpretation of that Section?

DEPUTY SPEAKER ALTOBELLO:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. Through you. Yes, I think that the process is being changed dramatically, adding in new thresholds in terms of votes and adding in findings which must be made prior to the authorization of any such taking. So the answer is yes.

DEPUTY SPEAKER ALTOBELLO:

Representative Miner.

REP. MINER: (66th)

Thank you, Mr. Speaker. And then again, I guess it is on page 15, the same issue, 462, 463 and 464, where the legislative body under current Statute that

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is the town meeting would be a decision made by the town meeting.

It appears in this that it would vest then with the smaller groups such as the Board of Selectmen. Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. Through you, yes, that's correct.

DEPUTY SPEAKER ALTOBELLO:

Representative Miner.

REP. MINER: (66th)

Thank you, Mr. Speaker. Mr. Speaker, the Clerk has an Amendment, LCO Number 8876. If he would please call it and I be allowed to summarize, please.

DEPUTY SPEAKER ALTOBELLO:

Will the Clerk please call LCO Number 8876.

CLERK:

LCO Number 8876, House "B", presented by
Representatives Miner and Johnston.

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DEPUTY SPEAKER ALTOBELLO:

Representative Miner asked to summarize. Is there an objection to summarization? Seeing none, Representative Miner, please proceed with House "B".

REP. MINER: (66th)

Thank you, Mr. Speaker. I will be very brief. This underlying Bill as amended if nothing else is certainly all about the process.

And for municipalities, better than 100 of them and 20 of them in this state that has chosen to continue to operate themselves by the town meeting form of government, I continuously ask myself, why we as a Legislature would want to take the voice away from the people.

Mr. Speaker, this Amendment in those two instances conveys that authority back to the people. It seems to me that in a community where we are taking about taking someone's real estate for whatever purpose, if we make the decision in those communities to buy dump trucks by town meeting and do many other

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things by town meeting, shouldn't we allow that authority to vest with the public?

I certainly would want to cast my vote when making a decision about taking any one of my neighbors' pieces of property for a school, a roadway, anything. And I would think that they would want to have an opportunity to talk about taking mine. So, Mr. Speaker, I move adoption.

DEPUTY SPEAKER ALTOBELLO:

Will you remark further on House "B"? Remark further on House "B"? Representative Miner.

REP. MINER: (66th)

Thank you, Mr. Speaker. It is a very simple Amendment. We've talked about here a number of times in the past relative to whether legislative processes. I don't see any harm and I would hope that this would be considered a friendly Amendment, Mr. Speaker.

Thank you.

DEPUTY SPEAKER ALTOBELLO:

Representative Lawlor, do you care to remark on House "B"?

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REP. LAWLOR: (99th)

Thank you, Mr. Speaker. Earlier I outlined some concerns about Amendments at this stage for a variety of reasons.

This particular Amendment as far as I know was not contemplated in the Senate, but it is in fact that case that the elaborate process that has been established for takings under these Chapters will require a great deal of very specific findings by people who participate at each and every step of the way.

Although I don't pretend to be an expert on the town meeting form of government, it is in fact the case that the persons voting on these explicit findings would have to spend an awful lot of time undertaking careful study, making very, very specific findings over an extended period of time in order to justify such a taking.

And I just don't think that would be possible and I think that is the reason that the law requires that the Board of Selectmen make those specific findings.

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And for those reasons, Mr. Speaker, I would urge rejection of the Amendment.

DEPUTY SPEAKER ALTOBELLO:

Thank you, Representative Lawlor. Further on House "B". Representative Wilbur of the 63rd, you have the floor, Sir.

REP. WILBUR: (63rd)

Yes, Mr. Speaker, I have a question for the proponent of the Amendment, please.

DEPUTY SPEAKER ALTOBELLO:

Representative Wilbur, was that a question for the proponent or opponent?

REP. WILBUR: (63rd)

Proponent.

DEPUTY SPEAKER ALTOBELLO:

Thank you. Please proceed, Sir.

REP. WILBUR: (63rd)

Representative Miner, is there a methodology in which members of small communities can petition the Board of Selectmen to call for a town meeting? Through you, Mr. Speaker.

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DEPUTY SPEAKER ALTOBELLO:

Representative Miner.

REP. MINER: (66th)

Thank you, Mr. Speaker. I believe there is a process by which the members of the public can petition for a town meeting.

I don't believe that this is drafted that there is an opportunity for members of the public to petition this issue to a town meeting if it is specifically stated that that decision would be made by the Board of Selectmen acting as the legislative body. Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Wilbur.

REP. WILBUR: (63rd)

I would believe that we're not changing the Statute of 7-327A in which 10% of the voters can petition a town meeting to override or even to reduce any of the actions within a Selectmen's meeting and therefore I think that maybe your Amendment may not be called for. Thank you, Mr. Speaker.

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DEPUTY SPEAKER ALTOBELLO:

Thank you, Representative Wilbur. Further on House "B". Further on House "B". Representative Miner, further on House "B"?

REP. MINER: (66th)

Thank you, Mr. Speaker. I have a great amount of respect for the good Representative from Colebrook. I wouldn't want to take a chance in this instance in thinking that the legislation that we are about to vote on, drafted the way it is drafted, would provide an opportunity for the residents in the community that I live in to have an opportunity to speak on this issue and make that decision.

Some of our communities are run and run very well by very small numbers of people. But we are talking about taking someone's real estate. And because we are talking about taking someone's real estate, Mr. Speaker, I don't think that we should leave anything to chance here. And that is part of what has gotten us where we are today.

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So, Mr. Speaker, I would ask that when we take the vote on this Amendment that gives the voice of the people, that when it is taken it be taken by Roll Call, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

When the vote is taken it shall be taken by Roll Call. Further on House "B"? Representative Boucher, House "B", please proceed, Madam.

REP. BOUCHER: (143rd)

Thank you, Mr. Speaker. Mr. Speaker, I didn't intend to rise on this Amendment, but I have an interesting experience with my town on exactly this particular Amendment that did happen with regards to an eminent domain case.

I rise to support this Amendment to say that in fact that it did happen in our town. We have a town meeting form of government. The town was expanding its town center.

We had a wonderful, beloved third grade teacher who had been teaching in our District for nearly 40 years and the town wanted to take her property.

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Interestingly enough, the First Selectman at that time later did become a State Representative here in the Hall of our House. If you will recall if you are here long enough, Peggy Gill, and when she was First Selectman, she decided that the town needed expanding.

And when they went to take her house, the teacher was very unhappy about the proposal that she was given in order to take her house. Well, so much controversy surrounded this decision that when we did take it to the town meeting, once a year, we have it in May, 750 people showed up for this meeting when we normally have barely 50 or 100.

At that town meeting the town decided that was not a fair deal. They overturned that decision and later came to a better agreement to compensate more fairly our third grade teacher. And as a result the town was able to expand where they wanted and also protect this teacher's property.

So for that reason and having that personal experience with that issue it is very important to keep the controls where we do have a town meeting form

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of government in the hands of the public because, in fact, they usually come to the right decision, to a more fair decision. Thank you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Thank you, Representative Boucher. Further on House "B". Further on House "B". If not, staff and guests please retire to the Well of the House. House Members please take their seats. The machine will be opened.

CLERK:

The House of Representatives is voting by Roll Call. Members to the Chamber. The House is voting House Amendment Schedule "B" by Roll Call. Members to the Chamber.

DEPUTY SPEAKER ALTOBELLO:

Have all Members voted? Members, please check the board to make sure that your vote is properly cast. If all Members have voted, the machine will be locked. Will the Clerk please take a tally? Will the Clerk please announce the tally?

CLERK:

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On House Amendment Schedule "B" for Senate Bill
Number 167.

Total Number Voting	139
Necessary for Adoption	70
Those voting Yea	58
Those voting Nay	81
Absent, not voting	12

SPEAKER AMANN:

I meant to vote red on that particular Amendment.
My apologies. So the transcript will so note.

DEPUTY SPEAKER ALTOBELLO:

Without objection, Mr. Speaker, so ordered.
House "B" fails. Further on the Bill as amended.
Further on the Bill as amended. If not, staff and
guests please retire to the Well of the House.
Members take their seats. The machine will be open.

CLERK:

The House of Representatives is voting by Roll
Call. Members to the Chamber. The House is voting by
Roll Call. Members to the Chamber, please.

DEPUTY SPEAKER ALTOBELLO:

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Have all Members voted? Have all Members voted?
Members please check the board to make sure your vote
is properly cast. If all Members have voted, the
machine will be locked. Will the Clerk please take a
tally? Will the Clerk please announce the tally?

CLERK

Senate Bill Number 167, as amended by Senate
Amendment Schedule "A", in concurrence with the
Senate.

Total Number Voting	139
Necessary for Passage	70
Those voting Yea	132
Those voting Nay	7
Absent not voting	12

DEPUTY SPEAKER ALTOBELLO:

Senate Bill Number 167, as amended by Senate "A"
in concurrence with the Senate, is passed. Will the
Clerk please call Calendar Number 547.

CLERK:

On Page 36, Calendar Number 547, Substitute for
House Bill Number 7182, AN ACT CONCERNING CERTIFIED

JOINT
STANDING
COMMITTEE
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REP. LAWLOR: Other questions? If not, thanks very much, Senator. Senator Prague.

SEN. PRAGUE: Representative Lawlor and Members of the Judiciary Committee. It's very nice to see all of you. For the record, I'm Edith Prague, the Senator from the 19th District. And I'm here today to just go on record as supporting Senate Bill 167 and Senate Bill 1446.

Senate Bill 167 is very similar to a bill that came out of Transportation except this bill also includes heirs as well as original owners of property that was taken for a project, and the project was never completed within 15 years of having taken the property.

The reason why the bill that came out of Transportation didn't make reference to heirs is because the department stated during a meeting that we held on this issue that it would be very difficult to determine who the heirs are who would be entitled to buy the property back.

So if you want to do something with that language, if you want to define the heirs, I think that would be important. I think allowing heirs to buy the property back if the original owners are not around to do so would be something that we really should do.

If you could somehow or other make that definition of heirs such that it would be easier for the department to interpret, I think that would be good.

And on Senate Bill 1446, I am very strongly in support of this bill. I don't think private developers should have the right to take people's personal property by eminent domain.

I think eminent domain should be used for the public good. If the state needs to take some property to build a hospital or a road or something that's for the general good of the people of the state, but to take it for private development I think is outrageous.

And I hope that the Committee will support this bill and Senate Bill 167. So thank you very much for your time. I'd be happy to try and answer any questions.

REP. LAWLOR: Thank you, Senator. Senator Kissel.

SEN. KISSEL: Thank you very much, Mr. Chairman. Senator Prague, as I indicated to Senator Harp, as always a pleasure seeing you.

SEN. PRAGUE: Thank you.

SEN. KISSEL: I appreciate your sentiments regarding eminent domain. Certainly, there is no lack of individuals on our side of the aisle that are strenuously trying to do something regarding eminent domain, especially since the key United States Supreme Court case emanated from our state.

I can't tell you the number of constituents I bump into very frustrated, saying here we are, the state that started the ball rolling, and

all these other states have responded to it, and we're sort of not there yet.

But my question actually pertains to Senate Bill 167. And could you just tell me, quite often if property is taken and the state has a hold of it and it has been ten years, there are negotiations that could take place.

I don't know if it was acquired by the Department of Transportation and if other avenues have been explored to try to reacquire this property that seems to have been taken by eminent domain for a project that just isn't going anywhere, and also, as part of that question, if this is in response to a specific constituent or two or if you feel this problem is even more widespread than that?

SEN. PRAGUE: Well, Senator Kissel, to try and answer your question, we had a lot of properties taken out in Eastern Connecticut to build an expressway, the Route 6 Expressway.

We spent millions and millions of dollars drawing up I don't know how many different plans, none of which satisfied the EPA.

It has been now like 30 years since this was initiated. People lost their homes. They were relocated.

There is one man in particular in Andover who wants to build a retirement community, which the town strongly supports. But he needs to be able to buy the property back that the state took.

He has to buy it back at a much higher price than what he was paid for it, but that's the way it is, and the department will have to get two appraisals and then have the appraisals come together somewhere in the middle, and that's the price he's going to have to pay.

But in all fairness, these folks should be allowed to buy the property back. There is a family called the Hool family, whose grandfather owned this big farm out in Andover.

They built their homes on property that the grandfather gave them, and along comes the state and takes their houses by eminent domain for this project for which they did not have the permits, by the way.

Now the department has to get permits before they take anybody's property. But these folks also want to buy those homes back. And that is how the bill that came before transportation originated.

And I'm sure that this is the same issue. And I'm really glad that there are two bills dealing with this because we'll be sure to get one or the other.

SEN. KISSEL: And just as a follow-up through you Mr. Chairman. Is it just that the Department of Transportation, once it has acquired this property, because this whole road projects seems to have been up in the air for a number of times.

And I'm not as familiar with the project as I'm sure you are since it's in your neck of the woods, but are they willing to sit down and maybe negotiate a sale?

Or is there a position, we don't know where this road project is eventually going to go so we don't want to give up any property?

SEN. PRAGUE: No. The department is very willing. They actually sat down with us and helped draft the legislation.

They recognize the fact that they're not going to build that Route 6 Expressway, not in that line that they originally thought they were going to anyway. So they're not fighting this issue.

SEN. KISSEL: Okay. From what you're telling me, I can't imagine where any opposition would come from if the Department of Transportation has worked with you on this proposal.

There are folks out there that want to reacquire the property for better use for the municipality and also there are some folks out there just for sentimental or homestead reasons they feel an emotional and personal attachment to the land, it strikes me that that's a really good proposal. And I can't imagine why we can't get that through the Legislature.

SEN. PRAGUE: I do have to tell you, Senator Kissel, that the language about the heirs is language that the department does not support because they said that they would have problems, they

thought, in recognizing which heir, which one should they give it to?

Should five or six or seven or eight people who say they're heirs come forward? I mean, how do you decide which one is going to get it?

SEN. KISSEL: Would you be willing to maybe turn it over to a probate court? For example, quite often with land actions, it's impossible to find out who actually are the legal heirs or that many of them have died long, long ago, and so that there's a posting of a notice to allow for a quiet title action or something like that, allowing transfer.

Or even if property needs to be acquired by an entity through eminent domain proceedings, sometimes it is difficult to ascertain who has an interest in that property, so everybody is notified.

It strikes me that they are just concerned about deeding over the property to Mrs. Smith and then, you know, great grandchild Mrs. Smith, and then Mr. Jones who is also a great grandchild but nobody knew about, comes along six months later and sues them.

So I'm thinking if maybe we can work on trying to fashion some sort of procedure through a probate court system or some other neutral body that can do an assessment and then put there imprimatur on the whole process so that if somebody was missed at least that there was proper notification as best as could be done,

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that that would maybe address the concerns of the DOT.

In other words, are they open to suggestions? They just don't want to be on the hook to get sued down the road.

SEN. PRAGUE: I don't know if they're open to suggestions, but that is something that we ought to pursue.

I think that the legal minds on this Committee can come up with some kind of solution to the heir problem. And maybe if you come up with a solution that they could live with that they'll agree.

SEN. KISSEL: Thank you very much, Senator.

SEN. PRAGUE: Thank you, Senator Kissel.

REP. LAWLOR: Other questions? Representative O'Neill.

REP. O'NEILL: I guess I'm a little puzzled. I think that this Committee certainly could come up with a solution to it, although trying to figure out who the heirs are to a piece of property is something that we've been doing in the court system in Connecticut for 350 years.

So that word heirs and trying to ascertain who the rightful heirs are and figure out what property they're supposed to get a hold of is something that our court system has been doing for a very long time.

I'm not really sure I understand why the department would have such a problem with the word heirs or trying to ascertain who they are, and if I'm not mistaken, are they signed up to testify here today?

I didn't see their name on the list, so I'm not sure what their concern is because they're not telling us that they have a problem with this bill with respect to testimony or I can't find any testimony in the stack of materials given to us here today. Hopefully, we'll work it out if, in fact, they really do have a problem with it.

SEN. PRAGUE: I hope so because that definitely was an issue for them when we sat down to talk with them and the people who came in who lived along Route 6 to work out some language.

So I'm hoping that you will be able to work it out with them because I think that's an issue of fairness.

REP. O'NEILL: I'm sure that from a legal standpoint, we can resolve any issues they have about uncertainty. I'm not sure what their problem is. It may go beyond something that's truly legal in nature, beyond something else. But thank you, Mr. Chairman.

SEN. PRAGUE: Thank you.

REP. LAWLOR: Are there other questions? If not, thanks again, Senator. Next is Representative Mikutel.

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REP. MIKUTEL: Good afternoon, Senator McDonald, Representative Lawlor, Members of the Judiciary Committee. Every five years, I like to come before this Committee and testify. This my probably third time in 15 years.

I'm here to testify on Senate Bill 167 and Senate Bill 1446. On Senate Bill 167, I think allowing 15 years to elapse before the owner can repurchase the property is an unreasonable amount of time.

I don't know where 15 years came from. I don't know how you picked 15 years. In the statute, a development agency can abandon a project after three years, can abandon it after three years.

Fifteen years, to me, rewards incompetent bureaucrats and people who are involved in putting together a local municipal development plan.

If they can't get the plan right, we shouldn't be rewarding them because the municipal development plan is the vehicle by which you drive eminent domain for economic development purposes.

And if you allow them 15 years, then any good developer is ready to go on a development plan. He's working with those officials to get that plan going. So to award 15 years is, to me, really excessive, and we should not allow it.

And I think you should distinguish between economic development, the traditional uses and

for economic development eminent domain for economic development. The timeframe should be different for repurchase.

It would take a little longer to implement a plan of development for economic development, but again, at the outermost limits, three to five years. Fifteen years, any responsible developer will be ready to go in a much shorter period than fifteen years.

And if you're going to use a timeframe for traditional eminent domain, you don't need 15 years. If they're going to take a property to build a school or they're going to build a road, why do you need 15 years to do that? Why do you need 15 years to build that school?

So I think you should set different timeframes for the type of eminent domain, whether it's for a municipal project or whether it's for economic development.

I don't know if you have a reset plan in your bill here where that if it is a change in the plan that resets everything for another 15 years.

I hope you don't have a reset provision in here because anytime they make a change in the plan, then it extends it another 15 years or whatever.

There should be no reset plans. You know, I think we should hold the municipality or the development agency, hold their feet to the fire on developing a proper municipal development

plan because that's the basis on which they embarked on eminent domain.

The other bill, Senate Bill 1446, I certainly believe that a non-blighted owner-occupied home should not be taken by eminent domain for economic development purposes. To me, in a capitalist society like ours, the foundation of your liberty is your property rights.

And most middle class people, their wealth is in their home. So I believe we must do everything we can to protect that.

I think that bill is rather narrow. It seems to assume that there are no other reforms that need to be made in the eminent domain laws of our state. It is certainly a lot narrower than previous eminent domain reform bills that were put forth last session.

So I would recommend that any bill that comes through this Committee, that it be more broad in nature because there are many other types of reforms that we could undertake that would help making this a better process. So that's about it.

REP. LAWLOR: Thank you. Senator Kissel.

SEN. KISSEL: Representative Mikutel, nice to see you. In your viewing the Senate Bill 167, my reading of the bill seems to indicate that the 15 years pegged at beginning to run from the date of the taking.

So if something happened with the plan subsequent to the date of the taking, I don't think it would affect things one way or another.

The fact that Senator Prague had indicated that the Department of Transportation was in large part negotiating this with her and others that are interested, I don't know where the magic 15-year time period came from.

It strikes me that you make an awful lot of sense that 15 years is an awful long time, especially, let's say, if it is your family homestead, your great grandparents built their farm on this land.

They bequeathed the property to some of their children, and now it has sort of traveled down through the generations.

The state came in, or some entity came in, took it, and now that project is going nowhere fast. Fifteen years is a long time to tread water to try to reacquire the family homestead.

So what I would suggest rather than us trying to come up with a magic number and then have it beaten up as it goes through the process, maybe if you and Senator Prague could just chat with someone with the Department of Transportation.

Because my guess is that they're the ones that really have a keen interest in all of this. Maybe it can be cut down substantially to seven years or eight years or something that you feel is much more reasonable. But that might be an

easy way just to get to where you want to go on that bill.

REP. MIKUTEL: Well, I agree with you. I mean, 15 ^{SB167,1446} years is very excessive, especially in terms of eminent domain for economic development purposes. Again, that is driven by the municipal development plan. It's supposed to be very specific.

And when the Supreme Court ruled in favor and made their decision on the Kelo decision, it says that the development plan must be carefully considered. So if they do their job right, there's no need to have 15 years to implement that plan.

SEN. KISSEL: Well, maybe I'm misunderstanding. It just strikes me that if it's in relation to a property acquired to reconfigure Route 6, I'm not so sure that's necessarily economic redevelopment.

REP. MIKUTEL: You're talking traditional eminent domain taking for a road. And there are two types. I look at eminent domain two different ways. Eminent domain on the traditional eminent domain and nontraditional, and I think we need to make that distinction.

SEN. KISSEL: Well, under the traditional eminent domain such as acquiring property by the DOT for a road, such as the proposed Route 6, do you feel that 15 years is too long in that sense?

REP. MIKUTEL: Oh yes. Absolutely. In both cases.

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SEN. KISSEL: Right. And so what I'm saying is that since the DOT is very much concerned with their rights or their ability to deed property back to landowners under traditional formats, if some folks chatted with them, we might be able to come up with a timeframe.

REP. MIKUTEL: I'm agreeing with you, Senator.

SEN. KISSEL: Okay, and I'm agreeing with you. You're saying, we have so many things on our plate that if you just came up to us and said yes, Senator Prague and I chatted with the DOT and five years is acceptable, boom, there we go. That's all. Thank you, Mr. Chairman.

REP. LAWLOR: Are there other questions? If not, thanks very much, Steve.

SEN. KISSEL: Thank you.

REP. LAWLOR: Representative Cafero.

REP. CAFERO: Good afternoon, Senator McDonald, Representative Lawlor, Senator Kissel, Representative O'Neill, Members of the Judiciary Committee.

I'm here this morning to speak on Senate Bill 1446, AN ACT CONCERNING EMINENT DOMAIN FOR ECONOMIC DEVELOPMENT PURPOSES. I submitted written testimony, and obviously, I would hope that you take a look at it at your leisure.

And what I would like to do, if you'd indulge me, is to sort of supplement that written

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And so I guess what I'm urging you to do, and you and I don't always see the same on every issue, but I'm asking you to think as you go forward, in your leadership position at the General Assembly, to consider restrictions on the taking of private property for any private purpose unless it's blighted.

REP. CAFERO: Thank you, Senator. I certainly will.

REP. LAWLOR: Representative Tong.

REP. TONG: Thank you, Mr. Chairman, and thank you, Mr. Minority Leader, for being here today. I very much appreciate what you're trying to do and what Senator Meyer said.

We still, my family still owns my childhood home at the corner of Boulevard and Arnerdale Road in West Hartford, and it has tremendous sentimental value to use, and it means quite a bit, and I recognize how difficult it is to put a price on that kind of attachment to property, where my family and I and my sisters and I grew up.

I have a question, though, about the specific language that appears in both Senate Bill 1446 and in Senate Bill 167. And it is this concept, I think, if we were to characterize it, it would be a right of first refusal.

That over a 15-year period if a property is not used for its intended purpose, that the original homeowner have an opportunity or the homeowner's heirs have an opportunity to

repurchase the property at the very price they were forced to sell it at.

So if they had to sell it ten years ago at \$100,000, they can buy it back at \$100,000. In some way, the value of that house was diminished because they took away fixtures or somehow diminished the value, they would pay even less.

My question, though, is an economic one. Over time certainly, property can appreciate in value, whether by operation of the market or by improvements to the property.

And so I wonder, I understand that the taking of a residential home can be a harm, but the flip side, do you think there is a possibility for an unreasonable windfall to a property owner who after ten years could reclaim property at a substantial discount of its current market value?

REP. CAFERO: Well, first of all, Representative Tong, the language you referred to is already in the bills as you indicated that is before us. And though my testimony today is not with regard to those, I would be glad to comment.

I think that, I'm not so sure that is as unfair as one could put it when you talk about the flip side.

And the reason for that is, if you were to presume you were forced, obviously, by virtue of your example, to sell your property at that price that had you not been required to sell it

because it was not taken by eminent domain, you yourself would have recognized that appreciation in the real estate.

So at the time that you indicate, they would be in a position to sell it for that large profit. They were deprived that opportunity because they were forced to sell it.

I'm not saying they were compensated incorrect at the time, but they were forced to sell it at a time they might not wanted to have sold it at.

So I guess you have to ask yourself, is it unfair to allow them to benefit from the appreciation they would have had they lived there the entire time?

I'm sure there are various scenarios where you could find that windfall situation, but I think it will give even further pause to government and government officials when they take the property to say, you know what, you better use it.

I live in Norwalk, and of course, you're in nearby Stamford, and Representative Tong, you're well aware, as has been written up, about the Route 7 situation.

And here we have some people who reluctantly, kicking and screaming, had to give up their property some 40 years ago to the State of Connecticut.

And I don't know if any of them, and I've heard from some of them who are still in the area, but they drive by those areas and they look at what was their home and still could've been their home because it has never been built.

And especially in the Fairfield County area, the Wilton area, have seen the appreciation that would've been theirs and is not theirs. So it really gives pause, I think, properly so, to government to say, yeah, take this property.

You better, first of all, compensate for it fairly and also make darn sure you use it, because if not, there is a price to be paid, so to speak, at the back end.

REP. TONG: So if I understand you correctly, to borrow a concept from the tax law, it says if you're permitting the homeowner to reclaim their basis in the home before they had to sell it.

So if their basis was originally \$100,000, they haven't been able to capture that gain over that 10-year horizon, so you're giving them back their basis.

My next question then is what about the money that was paid to the homeowner? Let's say you receive that \$100,000 and ten years ago, that \$100,000 was worth \$100,000 but over time, the time value of money, that money in and of itself is appreciating.

And if you were take that \$100,000, put it in a savings account or gaining some other

reasonable return, is that not gain to you as the homeowner?

REP. CAFERO: You know, in your scenario, Representative Tong, it is. And my, I guess, retort would be tu salud, God bless.

There are not a lot of people that lose their home by eminent domain, but those that do, again, and I think the burden has to be on the government to make sure that they pay fairly for what they get and they use it in a timely and proper manner. And if they don't, if a handful comparatively of citizens reap a benefit from that, que sera.

REP. TONG: Thank you very much. Thank you, Mr. Chairman.

REP. LAWLOR: Is there anything further for Representative Cafero? If not, thank you for taking the time and spending so much time with us today.

REP. CAFERO: Thank you.

REP. LAWLOR: I believe that's the end of the state officials who are signed up to testify, and we'll move on into the public portion of the hearing. The first speaker is Pamela Hershinson.

PAMELA HERSHINSON: Good afternoon, Senator McDonald and Members of the Judiciary Committee. My name is Pamela Hershinson. I am an attorney in West Hartford, and I'm here today representing

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the child advocate that maybe they should look into this or any other agency outside of DCF?

PAMELA HERSHINSON: The only time I would know that was when I contacted her, and that was in 2003 probably. So it was years after when I was involved.

SEN. MCDONALD: Anything further? If not, thank you very much.

PAMELA HERSHINSON: Thank you.

SEN. MCDONALD: Next is Ron Thomas.

RON THOMAS: Good afternoon, Senator McDonald, SB167, 1446
Members of the Committee. I am Ronald Thomas, manager of state and federal relations for the Connecticut Conference of Municipalities, and I'm here to talk about an issue of concern to towns and cities before you today.

The issue, of course, is eminent domain. First would like to thank the Committee for its reasoned and thoughtful approach to a very controversial and complicated issue.

You have before you a couple of bills that would make revisions to the eminent domain laws.

However, I would suggest that you take advantage to an opportunity that was presented to you in July with the establishment of the Office of Property Rights Ombudsman.

As you can see, I have attached an article that CCM has published in our town and city publication, letting municipal officials know about this office. We think it's an important piece of legislation that needs to be allowed to work.

I also have provided a summary of the legislation which goes into detail about the responsibilities of the office.

And again, as you can see, there are about 13 different responsibilities, including informing property owners of their rights, advising public agencies of potential eminent domain implications, providing analysis of eminent domain laws, forcing nonbinding mediation of dispute, that sort of thing.

But importantly, this office has been charged by you to report to the General Assembly on procedures to changes, possible changes, to eminent domain laws and procedures. And we suggest that you allow that office to come to you with recommendations.

It is our understanding that the staff has not been appointed yet. Let that staff be appointed, survey the land, so to speak, and then make recommendations to you before you act on any further eminent domain proposals. Thank you.

SEN. MCDONALD: Thank you. If I recall correctly, the Office of Ombudsman was included actually in the budget--

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RON THOMAS: Right.

SEN. MCDONALD: --implementer bill, I believe.

RON THOMAS: Yes.

SEN. MCDONALD: And it had a couple hundred thousand dollars associated with it.

RON THOMAS: Exactly, \$200,000.

SEN. MCDONALD: \$200,000. That obviously went into effect on July 1, right?

RON THOMAS: Yes.

SEN. MCDONALD: Perhaps an incarnate question, Ron, but you're the only one sitting in front of me. Because nobody from the administration signed up to testify today, but do you know what the status of that office is?

I mean, you say there's no staff been appointed. To your knowledge, has any of the \$200,000 been expended?

RON THOMAS: I don't know. What I've done is checked, you know, every now and then to see if there has been a person hired, and that's kind of what we've done so far.

SEN. MCDONALD: And with whom have you been checking?

RON THOMAS: The Governor's office.

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SEN. MCDONALD: And were you told that there is some process being pursued, or are they interviewing people? Have they advertised it? What's the status of it?

RON THOMAS: Frankly, I have just called and asked where were they, have they hired anyone? I've been basically told that no they haven't. They didn't really go into detail about, you know, where they were in the process or anything like that.

SEN. MCDONALD: Okay. Thank you very much. Any questions? If not, thank you for your testimony.

RON THOMAS: Thank you for your testimony.

SEN. MCDONALD: Next is, actually I am to understand that Tim Cowman is not here anymore? All right. Then next is Joseph Wactowski followed by Carl Yacobacci.

JOSEPH WACTOWSKI: Joseph Wactowski, Bloomfield, Connecticut. I'm here regarding Senate Bill 167 and raised Senate Bill 1446. I've been here before. I've been to most of the hearings on the eminent domain problem in Connecticut.

And before I begin my remarks, my central remarks, I would just like to say I usually begin by saying thank you, but as I was driving in today I said, you know, I'm not going to say thank you anymore.

I shouldn't have to thank you for the privilege of begging for the people's rights that they

should have already. In fact, you should be thanking us for putting you in the positions that you're in.

So there will be no thank you from me. And I want to remind you that those people are the people who put you in your positions, not private interests or even municipalities or your voting districts. It is the people who voted so it is the people you should be indebted to.

Now having said that, I will begin my remarks. I was in Florida a few weeks ago. I got up in the morning, went down for a cup of coffee, and I was passing a newsstand, and I saw a copy of the *Wall Street Journal*, picked it up and proceeded onto where I was going to have coffee, and I never made it.

I opened the page, and I almost fell on the floor. And what it showed me, it shocked me, and it should shame you, every one of you.

Because staring back at me on the pages of the *Wall Street Journal* is the glaring headline that the People's Republic of China Extends Full Eminent Domain Protection to Its People and Its Property.

And I thought, isn't that ironic. Here's Connecticut, the Constitution State where we have, supposedly we are called the Constitution State because we have the first written Constitution protecting people and their property in the entire world, almost three and

a half centuries, and we have no extensive protection of our people and our property.

And the People's Republic of China, and lest I remind you, they are still a communist state, is about to extend such protection to their people.

The article went on to point out it was a very extensive protection. They're going to protect residences. They're going to protect small businesses, which I don't find in raised Senate Bill 1446. And they're going to extend it to farms, too.

And it will pass in China because it has been favorably reported out by the Communist Party Central Committee, and whatever is favorably reported out by the Communist Party Central Committee passes.

I find that extremely ironic that in this state we don't have the protection that the largest communist state in the world is about to extend to its people.

I find that shameful, in fact. Not only that we don't have the protection, it's even a more extensive protection than we're proposing.

You know, we can sit in debate all the time, which we do. We usually debate about silly things like whether we're going to be arrested for the type of light bulbs that we use or not in the State of Connecticut.

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But don't you think it's time to really get serious and at least come up to the standards of the last great communist power in the world and protect our people's property. I think it is. Thank you.

SEN. MCDONALD: Are there any questions? If not, Representative O'Neill.

REP. O'NEILL: I vaguely remember seeing the same article and having somewhat the same sense of irony hit me as far as what was going on in China versus the way we've been wrestling with this issue unsuccessfully so far in terms of protecting people's homes at least and other property rights.

So that there is a deep irony, although you did at the very end of your testimony say thank you. So you broke the rule.

RON THOMAS: I take it back.

SEN. MCDONALD: If not, you have yourself a good day.

RON THOMAS: Thank you. There I go again.

SEN. MCDONALD: Carl Yacobacci.

CARL YACOBACCI: Senator McDonald and all the Committee Members, I thank you for the opportunity to speak here today.

SB1446

SEN. MCDONALD: We thank you for being here.

**TESTIMONY**

of the

CONNECTICUT CONFERENCE OF MUNICIPALITIES

to the

JUDICIARY COMMITTEE

March 23, 2007

SB167

The Connecticut Conference of Municipalities appreciates the opportunity to testify on the important issue of eminent domain.

As you are keenly aware, eminent domain has long been a fundamental and necessary tool to promote the public interest. CCM applauds the deliberative and reasoned approach the committee is taking in reviewing Connecticut's eminent domain laws, after the U.S. Supreme Court decision, *Kelo v. New London*.

It's worth remembering that the vast majority of cases involving the use of eminent domain are resolved leaving property owners feeling that they have been fairly compensated. Further, eminent domain is an authority exercised with great care, deliberation and public scrutiny. Indeed, no municipality wants to remove their own residents from their homes. When eminent domain is used, it is used grudgingly, as a last resort.

CCM supports eminent domain reform that calls for:

- *Modifying the State Uniform Relocation Assistance Act* to ensure that it reflects the varying needs of displaced property owners and fully compensates them for relocation costs.
- *Reexamining the definition of "just compensation"* to ensure that the definition is not always limited to fair market value for property. In some instances, a market value plus approach (e.g., 125%) may be appropriate to recognize the social and sentimental value of the property, as well as the future worth of the property post-development.
- *Ensuring greater transparency and accountability* of local government by requiring local legislative bodies to (1) approve of project areas to be acquired by eminent domain and (2) articulating clear expectations and goals for development and redevelopment plans.

- *Reviewing and reassessing development and redevelopment plans* after a period of time if no activity has occurred.

A number of these concepts are included in the proposals before you. CCM has completed an initial review of the proposed language to be added and removed from existing statutes. Any modification to existing statutes must be done with great care, with a full understanding of all consequences.

R.B. 167, "An Act Concerning A Property Owner's Right to Repurchase Property Acquired by Eminent Domain"

CCM has concerns with certain provisions of this bill.

This bill would require the development, redevelopment or implementing agency to offer the property to the person from whom it was acquired if the property is not used as planned or if the agency ever "sells" it. CCM urges the Committee to consider the following situations: What happens if the plan is to sell the property? Does that then require giving the person from whom it was acquired the right of first refusal? The way it reads, someone could easily make the argument that it does thus throwing a monkey wrench into any plan. Also, what happens if the plan fails and the agency wants to "sell" or convey the property to another public entity (e.g., the local housing authority, the WPCA, etc.)? Someone could argue that such a conveyance is a sale that triggers the bill's right of first refusal provisions.

The 6month/6 month waiting period (6 months from date of notice, and another 6 months if the person intends to repurchase the property) before the agency can sell the property to another is lengthy. CCM recommends a shorter period, 60 days/60 days, and allowing the agency to sell to another if the person at any time notifies the agency that he or she will not repurchase the property.

The bill should also contain express language allowing the property owner to waive the repurchase option. That way, the municipality or agency could obtain (i.e., pay for) such a waiver and avoid problems down the line. For example, maybe the original owner had no problem with the project, but one of the heirs wants to make an issue of a settled acquisition.

Office of Property Rights Ombudsman

Last year, the General Assembly established the Office of Property Rights Ombudsman (see attached article CCM wrote for its *Connecticut Town & City* publication, as well as a summary of the bill we provided to members). In addition to (a) informing citizens of their rights regarding eminent domain and (b) forcing non-binding mediation of disputes among parties, the Ombudsman is charged with recommending "to the General Assembly changes that, in the opinion of the Ombudsman for Property Rights, should be made to the general statutes related to eminent domain powers and procedures." The Ombudsman, to our knowledge, has yet to be appointed. **CCM strongly recommends allowing the Office to get on its feet, "survey the land", then make policy recommendations to the General Assembly for consideration, before you take any further action.**

CCM urges you to consider the following issues while deliberating further on eminent domain reform:

- *Eminent domain facilitates highly valued and needed public services and facilities* – schools, the highway and rail transportation system (including local and state roads and bridges), universities, railroads, airports, and other mechanisms through which we learn, travel, communicate, function and compete globally are a result of governments and others using their eminent domain authority.

- *Eminent domain is centuries-old, a constitutionally recognized bedrock authority of government. Any changes to this system should be undertaken with great care.*
- *The Kelo decision reasonably pertained only to a narrow category of eminent domain takings, namely, instances where occupied private residential property is being taken for transfer (99-year lease) to a private owner for economic development purposes without a formal finding of blight prior to the taking.*
- *Reform of the state-local tax system and land-use practices should be a part of any eminent domain reform discussion. The U.S. Supreme Court recognized the fiscal distress and decline of New London and the appropriate use of eminent domain to help reverse this decline. The present property tax system exacerbates the problems of communities like New London by promoting (1) disinvestment in our urban towns and cities where the infrastructure to support development already exists, (2) competition between communities for tax base growth, and (3) costly sprawl development that consumes open space, farmland and environmentally-precious resources. Further, if eminent domain reform legislation curbs municipalities' ability to grow their tax base, towns and cities must be provided with other options to raise revenue to pay for needed public services.*

CCM looks forward to continuing to work with you to ensure that property owners are treated fairly and that the fundamental authority of municipalities to acquire property via eminent domain for public purposes remains viable. This is vital to helping ensure healthy municipalities, Connecticut's quality of life, and a robust and economically competitive state.

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If you have any questions, please call Ron Thomas or Gian-Carl Casa at (203) 498-3000.

Attachments

Office of Ombudsman for Property Rights

H.B. 5846 (sections 3-11) establishes an Office of Ombudsman for Property Rights to assist the public and public agencies regarding eminent domain law and procedures. For administrative purposes, the Office will be within the Office of Policy and Management (OPM). Effective date: July 1, 2006. The ombudsman would, among other things:

- Inform property owners of their rights re eminent domain, and provide assistance concerning eminent domain procedures, including relocation assistance.
- Advise public agencies of "potential eminent domain implications", if appropriate.
- At the request of public agencies, provide assistance and analysis re state law concerning eminent domain.
- Force nonbinding mediation of disputes over the exercise of eminent domain, and allow the ombudsman to hire an independent real estate appraisal to assist in such mediation.
- **Recommend "to the General Assembly changes that, in the opinion of the Ombudsman for Property Rights, should be made to the general statutes related to eminent domain powers and procedures."**
- Adopt regulations to establish a procedure for requests to mediate eminent domain or relocation assistance disputes filed with the Office, as well as criteria to determine the process under which requests for mediation should be accepted or rejected.
- Allow any party to a dispute to file a motion to stay on eminent domain proceedings. However, any party may order that such stay be terminated.
- Require public agencies to respond to "reasonable requests" for information and assistance.
- Prohibit Office employees from holding positions with other public agencies, receiving remuneration for eminent domain-related assistance, and working for a public agency within 3 years after terminating employment with the office.
- Allow the ombudsman to accept gifts and grants from public and private entities.
- Require public agencies proposing to acquire property via eminent domain to (a) make "reasonable" efforts to negotiate with property owners for the purchase of such property, (b) within 14 days of initiating an eminent domain action, notify property owners of the services of the Office of Ombudsman for Property Rights – and the name, address and phone number of the ombudsman, and (c) provide property owners with a written statement "explaining that oral representations or promises made during the negotiation process are not binding on the public agency seeking to acquire the property by eminent domain". The information must be provided in a form prescribed by the ombudsman.
- \$200,000 has been allocated to fund the Office in FY 07.

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If you have any questions, please call Ron Thomas or Jim Finley of CCM at (203) 498-3000.

Action to further protect property rights

General Assembly establishes property rights ombudsman

Connecticut lawmakers took an important step in further protecting property rights by creating a new property rights ombudsman. The ombudsman will help mediate disputes and educate homeowners and municipalities about their rights and obligations during eminent domain procedures. The office of the ombudsman will be run out of the Office of Policy and Management. It is budgeted at \$200,000.

Efforts in Connecticut and other states to clarify the use of eminent domain authority resulted from a U.S. Supreme Court ruling last year in *Kelo vs New London*. The court ruled that the city's

development agency appropriately exercised eminent domain authority to take some homes for fair market value as part of a comprehensive economic development project to revitalize the city.

Some states do not have the same procedural and other protections afforded property owners by Connecticut law. As a result, 18 other state legislatures passed bills concerning eminent domain, and proposals were pending in several others.

Connecticut's new property rights ombudsman can help ensure the appropriate balance between individual property rights and the public good. ■