

Newsletter from the Ombudsman for Property Rights

May 19, 2008

2008 Session. The 2008 session ended disappointingly with no changes made to eminent domain or associated relocation assistance statutes. The Planning and Development Committee raised a bill that would have provided payment for loss of goodwill for retail businesses forced to move as a result of eminent domain. The committee voted a joint and favorable resolution and forwarded it to the Judiciary Committee where it and another bill raised by the Judiciary Committee concerning threatening to use eminent domain during negotiations died. Other recommendations made by the Ombudsman including shifting the burden of proof to municipalities and raising the level of proof to a standard of clear and convincing evidence with respect to takings made pursuant to Chapters 130, 132 and 588l were not acted upon. All of these recommendations will be presented again for consideration in the 2009 session. Communications with the Judiciary Committee co-chairs and members as well as other legislators will continue over the summer and fall.

Testimony of the Ombudsman to the Planning and Development Committee in support of the payment of relocation assistance for loss of goodwill and for increased moving expenses can be read by clicking on [testimony](#) (PDF).

Recent Connecticut Case. *Housing Authority of West Haven (WH) v Alexander et al* (AC 28528) was recently decided by our Appellate Court in favor of the property owners. WH exercised its power of eminent domain under Sec. 8-50 and took title to 63 units of the Glen Oaks Condominium complex. WH Housing Authority filed with the court statements of compensation totaling \$341,002. The owners appealed. The trial judge agreed with the property owners' appraiser who valued the units at \$1,986,600. WH argued that the trial judge erred in computing damages. The Appellate Court disagreed and sustained the trial judge's decision. A difference of \$1,645,598 is a big difference and puts into question the process WH used to determine fair market value and the feasibility of the project. It also raises the question whether WH would have pursued acquisition of the condominium complex if it knew it would have to pay almost five times the amount offered to the owners.

Branford. Last fall Branford was hit with a judgment of \$4,600,000 which was \$3,432,200 more than what the town offered the owner for the land. In a second suit brought by a developer who had entered into an option agreement with the owner of the same property before the property was taken, Branford sustained a second hit, this time a jury verdict of \$12,400,000. Both judgments bear interest to the day of payment. Branford has appealed. Again a discrepancy large enough to drive two Mack trucks through exists between the town's best estimate of fair market value and what the court

has decided. In both instances (Branford and West Haven) the court is not persuaded, literally, at all, by the testimony or written reports of the municipalities' appraisers.

Determining the rewards any municipality or other government agency can achieve from taking property for development or for other purposes requires a complete understanding of the financial and legal risks that may result from error. If outside consultants were used to determine the feasibility of the takings in these cases, then they did a poor job of explaining the risks and determining values. If the risks were determined by employees and/or officials of the agency or municipality then a better system should be devised to identify and quantify risks. As Branford's situation suggests, there should have been more emphasis on the potential for legal liability resulting from taking a property already under contract to a developer.

In Another Part of the World

China is in the news because of the earthquake that has claimed thousands of lives and destroyed tens of thousands of homes and other properties. **China has also engaged in the construction of one of the largest dam projects in the world and upon completion will have displaced from their homes and land more than 2.3 million people.** The dam known as **Three Gorges Dam** is located in central China not too far from Sichuan province, the site of the earthquake. The Chinese government has already forced more than one million people to move. Most of these people are being separated from the land that has fed them and their families for generations. The government promised parcels of land to replace the lost farm sites. The reality is only a small percentage of displaced persons have been provided land so young people and adult men have moved away to try to make a living in coastal cities which are great distances from the interior of China. Others were forced to change their status to "non agricultural population" and were resettled in other parts of China.

Since being moved uphill from the river bank, many people face grave danger from geological disasters like the earthquake that has just happened. Landslides and mud-rock-flows are occurring frequently in the resettlement sites. In addition pollution of the newly constructed reservoir threatens to spread disease and become a spawning ground for parasites and insects. In China the government owns the land so there are no payments to displaced people unless the government chooses to provide payments. The people are expected to move their belongings and themselves to new sites provided by the government. The unchecked power of China's government is frightening. If China is to have more than an economic and military presence in the world, it must accord the Chinese people rights to the ownership of property and respect for their individual liberties. They are inseparable elements of political and economic freedom.

(Information for this item was obtained from Probe International, "Three Gorges Probe," November 22, 2007.)