



Connecticut

Connecticut Chapter of the American Planning Association

Government Relations Chairman: Christopher S. Wood, AICP
Phone: 203 558-0654 woodplanning@charter.net www.ccapa.org

AUGUST 25, 2005

PLANNING AND DEVELOPMENT COMMITTEE

PUBLIC HEARING ON EMINENT DOMAIN

The Connecticut Chapter of the American Planning Association is pleased to provide the Planning and Development Committee its perspective on the important issue of eminent domain. Although recently elevated in the public awareness, particularly here in Connecticut with the Supreme Court ruling in *Kelo v. New London*, the exercise of government authority to acquire private property by eminent domain has long been an important tool for meeting public needs.

CCAPA welcomes a thorough and deliberate review of the Connecticut statutes that guide and control the exercise of eminent domain authority. There may be opportunities to further refine and clarify the use of this power, but without unduly constraining its use for public benefits such as utilities, transportation, blight removal, economic and community development, public facilities, and housing.

CCAPA joined the American Planning Association, the national non-profit public interest and research organization of which **CCAPA** is a member, in filing an amicus brief with the Supreme Court on this matter. Our comments today will briefly summarize the key points made in the amicus brief and suggest areas of Connecticut legislation that may be considered to address some of the concerns that have been raised over this decision. We will also offer preliminary comments on proposed legislation that has been circulated by the Committee.

APA AMICUS BRIEF SUMMARY:

The American Planning Association amicus brief in *Kelo v. New London* argues that it is critically important to preserve the ability of local governments to use redevelopment tools and techniques, including eminent domain when appropriate, to achieve well-defined public purposes.

APA's amicus brief recognizes eminent domain is an unsettling power, and is subject to misuse or overuse if not properly constrained. Eminent domain should remain a last resort by encouraging careful planning and public participation in decisions to invoke the power. The authority for its use should build on current legislative requirements that mandate additional compensation where appropriate. The brief concludes that this is where reform efforts should be focused, rather than excising or drastically curbing eminent domain as an effective and necessary public interest tool.

CCAPA TESTIMONY – PUBLIC HEARING ON EMINENT DOMAIN

CCAPA’S POSITION STATEMENT:

CCAPA believes the use of eminent domain authority is clearly necessary for many public interest actions in Connecticut, including at times development or redevelopment to support municipal and State plans. The well-documented problems faced by many of Connecticut’s cities demonstrate the need for development tools to support the implementation of good planning. Any application of eminent domain for development or redevelopment purposes must be part of a comprehensive, public, and politically accountable planning process.

As planners attuned to and practiced with promoting and protecting public interests, **CCAPA:**

- recognizes the obligation to protect the interests and rights of property owners and community residents in any governmental action, including development and redevelopment programs;
- believes that such programs, particularly when eminent domain may be involved, require a careful and rigorous planning process, with complete public participation; and
- understands that the application of eminent domain authority can only retain public confidence if it is accompanied by fair and just compensation to affected property owners.

CCAPA RECOMMENDATIONS:

CCAPA recommends consideration of statutory and policy refinements to help ensure that eminent domain is used as a last resort, not a first resort, and to further mitigate the impacts of eminent domain.

- Ensuring that eminent domain remains a second-best option requires that a politically accountable body determines the need to exercise such power, with rights of judicial review. The authority should require direct linkage between elected officials and development or other authorities using eminent domain.
- Integrating eminent domain into land use planning ensures that the exercise of the power is based on broad public participation and consideration of alternatives. The Supreme Court emphasized the importance of planning in its decision
- Adjusting awards to provide more complete compensation for subjective losses of property value would be an appropriate reform.

CCAPA emphasizes the importance of planning to development and redevelopment decisions, as recognized in the Supreme Court’s decision in the New London case. Refinements to the statutory requirements for Plans of Conservation and Development (P.A. 05-205), adopted this past session, provide appropriate growth management guidelines to help ensure that the exercise of eminent domain for development purposes is necessary, is supported by the community, and will provide the benefits desired. The goals of these planning guidelines include directing development to the very areas that may most need the tool of eminent domain to allow smart growth to occur.

CCAPA TESTIMONY – PUBLIC HEARING ON EMINENT DOMAIN

Some specific recommendations for ensuring proper and effective planning to guide any eminent domain use include the following.

- The plan that is developed for a particular project should clearly set forth the need for the development or redevelopment activity based on established criteria and conditions.
- The plan should clearly establish the goals and objectives for the development project, and the anticipated advantages and gains to be realized at the completion of the project.
- The plan should evaluate alternatives both for the development or redevelopment of the study area itself and of the various ways to achieve the development.
- Any development plan for a specific project area should support the goals and objectives for the entire community as reflected in that community’s Plan of Conservation and Development. A specific finding as to the consistency between the development plan and the general plan for the community should be required.
- Any development or redevelopment plan should be required to consider as one of the alternatives the feasibility of incorporating existing properties into a redevelopment plan in the interest of preservation of existing neighborhood fabric and resources.
- The planning process should require that representatives of all stakeholders be allowed to participate.
- For any development or redevelopment plan which is to receive funding from the State of Connecticut, the State should be responsible for reviewing the proposal against the municipal Plan of Conservation and Development and the State Conservation and Development Policies Plan, as well as for conformance with any statutory requirements.

Continued refinements to planning guidelines and the availability of sufficient resources for effective planning will be important components of growth management in Connecticut, including application of eminent domain authority.

CCAPA believes equitable compensation is absolutely necessary to retain public confidence in the eminent domain process. While compensation is not directly a planning matter, **CCAPA** recognizes that the success of a development or redevelopment plan, to the extent that it hinges on the use of eminent domain, also hinges on fair and just compensation.

Statutory reforms in this area should ensure that just compensation is not interpreted to mean fair market value. Compensation must recognize the need to return not only the fair market value of the property but also any premiums or adjustments necessary to ensure property owners can receive comparable accommodations in other areas of the market. This may involve adjusting the amounts of compensation for special damages as provided in existing statutes, or developing a formula approach to ensure that the property owners are fully compensated for the loss of their property and the costs of relocation.

PROPOSED EMINENT DOMAIN LEGISLATION

CCAPA believes the draft legislative proposals that would prohibit or unduly constrain the necessary and appropriate use of eminent domain are neither practical nor necessary. Any limitations on eminent domain must recognize tenure, condition, and proposed future use of the subject properties and define “clear and convincing evidence” of the need in the context of municipal and State plans. We believe that any legislation that does not recognize the need for prudent, thoughtful, and comprehensive planning to define development and redevelopment programs is inconsistent with the growth management principles recently adopted by this General Assembly.

CCAPA TESTIMONY – PUBLIC HEARING ON EMINENT DOMAIN

More reasoned approaches focusing on checks and balances may be appropriate and feasible. For example, requiring condemnation approval from a legislative body for a local action may be prudent and should be considered. Likewise, if an approved plan were not be implemented, it may be feasible to allow prior owners a right-of-first refusal of surplus property.

CCAPA supports reforms that are consistent with our core position that any application of eminent domain for development or redevelopment purposes must be part of a comprehensive, public, and politically accountable planning process.

CCAPA ACTION:

Because of the importance of the Supreme Court decision, **CCAPA** has committed to providing professional and technical support to any efforts to reform or improve the eminent domain process. As always, we are available to assist the Committee in its consideration of this and other issues that pertain to planning and municipal government.

CCAPA has organizing a working group with diverse expertise and knowledge on this issue to develop and support specific statutory and administrative reforms found by the General Assembly to be necessary. We believe these efforts should be based on sound planning and governance principles and we look forward to participating in the process.