

February 15, 2006

To: Senator Eric Coleman, Co-Chairman
Representative Lewis J. Wallace, Co-Chairman
Members of the Planning and Development Committee

From: Bill Ethier, Executive Vice President & General Counsel

Re: **Raised Bill 34, An Act Revising the Process for the Taking of Real Property by Municipalities for Redevelopment and Economic Development**

The HBA of Connecticut is a professional trade association with almost one thousand three hundred (1,300) member firms statewide with tens of thousands of employees. Our members are residential and commercial builders, land developers, remodelers, general contractors, subcontractors, suppliers and those businesses and professionals that provide services to this diverse industry. We also created and administer the Connecticut Developers Council, a professional forum for the land development industry in the state.

Regardless of how much benefit some, even a majority, may derive from the exercise of eminent domain, it is right that the eminent domain power be limited. The rights of private property owners deserve better protection in our society. We understand the need to redevelop many of our communities and government's desire to facilitate that redevelopment by putting together sufficient land holdings. **But Constitutional rights should never be diminished because it would be convenient for government to accomplish some publicly desired end.**

RB 34 is a beginning but does not go far enough to control the destructive power of the exercise of eminent domain. We also have serious concerns with certain provisions of this bill. **For background and for a more complete statement of our policy on this most important of issues, please see our September 28, 2005, policy statement attached.**

RB 34's requirement that two-thirds of the legislative body approve a condemnation for economic development misses the point and serves as a weak limitation on the use of the condemnation power. Relying on a super majority rather than just a simple majority to protect an individual's rights provides little extra comfort to property owners.

The Bill of Rights, including the Takings Clause, exists to protect the individual from the majority's will (i.e., acting through elected legislatures and administrations). **Relying on the majority, whether it's 51% or 67% to protect individual rights is antithetical to the existence of such rights.** We should not and cannot let our guard down in defending our individual rights just because a majority of people happen to be with the individual at

the moment. Relying on a super majority to protect individual rights is a dangerous precedent to set to fulfill the promise of our Constitution. In fact, it is when individual rights are threatened by super majorities that the defense of our rights becomes most critical. Therefore, we urge you to restrict the use of condemnations for economic development purposes with specific criteria rather than leave it to any majority's whim or will of the day.

RB 34's measure of compensation in economic development condemnations is arbitrary and does not guarantee that displaced property owners are made whole.

Rather than an arbitrary 150% of fair market value, we urge you to require the payment of 100% of the fair market value of the property taken plus the private property owner's attorney fees, other legal costs and reasonable relocation costs. For businesses that are taken, the bill appropriately adds the value of "good will" that may be lost. Only when all these costs and values are paid are property owners made financially whole.

RB 34 makes a reasonable distinction between taking property for a public use and taking property for economic development. However, the limitations on condemnations for economic development are insufficient to protect private property owners. **Rather than define what economic development is not, we urge you to adopt clear and specific criteria when such condemnations cannot be done.**

Also, by defining these terms separately, they could be construed to be mutually exclusive. If so, the language may inadvertently prevent exercise of the power to condemn property for any economic development because the Constitution authorizes the taking of private property only for public use. The Takings Clause in the Constitution is a limit on government's power and serves as the minimum level of protection for property owners below which no legislature may go. The legislature does not have the authority to provide additional grounds for condemning private property. While we strongly believe that condemnations for economic development purposes should be strictly limited as outlined here and in our September 28 policy statement, you may want to consider making economic development a subset of the public use definition to avoid this interpretation.

In conclusion, while RB 34 is better than making no limitations to our eminent domain statutes, it falls far behind what should be done. We strongly urge you to consider our September 28 policy statement to craft clear and specific limitations on the government's use of this destructive power for economic development purposes and to require the full payment of an owner's real costs and lost values as the just measure of compensation.

Thank you for considering our views in this most important matter.

Attachment (September 28, 2005, eminent domain policy statement)