

August 18, 2005

Testimony by Licking County Commissioner Tim Bubb.

Offered before a Field Hearing of the U. S. House of Representatives Sub Committee on Housing and Community Opportunity in Hebron Ohio.

Good morning Congressman Ney, staff and others. Thank you for the opportunity to speak briefly on some past uses by state and local governments of eminent-domain for public projects here in Licking County Ohio. And thanks for bringing the consideration of the House of Representatives, of this important issue, to the grass roots level on the western side of your House District here in Licking County.

Congressman, I share your concern resulting from the Supreme Court's June Decision titled "Kelo versus New London". I believe most Americans, who have read of the split decision, are concerned that the private property protections afforded in the 'Takings Clause' of the Fifth Amendment are placed at risk. Specifically that their homes, land or even small businesses could be at risk for a 'taking' for something other than a clearly public purpose.

I think it is safe to say here in Ohio, and across the nation, that states are responding by considering amended laws or even constitution amendments to prevent or restrict eminent-domain powers for private development.

While my term as County Commissioner began just this past January, my recollection is that the authority of eminent-domain locally has been used only for public purposes. Specifically I think of a number of major highway projects in my lifetime including the development of Interstate 70 through the County in the late 1950's, and the development of the Newark Expressway beginning in the late 50's and continuing through the 1990's for both Ohio

Routes 16 and 79, that involved takings of land, with the resulting compensation, and in some cases litigation over appraisal considerations and the amounts of compensation.

Currently the redevelopment of State Route 161, an 11-mile stretch from New Albany to Granville, includes a number of 'takings' to accommodate the widening and realignment of this roadway, with construction on Phase One set for 2006.

While there have been and will continue to be disagreement over some of the specifics and amounts of compensation in the 'takings' of some of the parcels involved, there is no question these highway projects represented and represent needed public improvements.

At the County Government level the two instances in my mind that involved eminent-domain were the construction of the new Licking County Justice Center on Newark's near eastside in the 1980's, and also in that era the development of the Buckeye Lake Sewer Project. Again, I believe these were clearly public projects with no private involvement. It should be noted, in the case of the Justice Center, that this public project also served to redevelop a blighted area near to downtown Newark. Again, I am not aware of any use of eminent-domain used to assist a private development projects here – however this county office/jail project was in many ways similar to the urban-renewal projects seen in other parts of the country.

Congressman, while I have heard of both federal and state legislation to address this concern, I would simply say I would agree with the prevailing thought not to move too quickly. I would certainly endorse the idea of a one to two year moratorium on private-project eminent-domain which would ease fears and prevent any additional private project 'takings'. While I believe this has the potential to be a 'slippery slope' - I would suggest that legislation could be

crafted to allow a process for certain exceptions. In other words 'never say never'!

An outright ban on any 'takings' for other than public purpose could make it difficult if not impossible to ever redevelop the inner-city urban areas of Ohio and in many of the states. I could see a situation where redevelopment of a major industrial site and job creation, possibly in a 'brownfield' in an urban area, could be unattainable without some tools of 'eminent-domain'; possibly for access, a railroad spur, or even port access.

Again, such power in support of a public-private or private development certainly would have to have thorough public review to ensure it is used sparingly and in an appropriate way. One way to evaluate such use of 'takings' could be regional review by a broad based panel using as its guide local and regional land use plans and zoning districts.

Congressman Ney, the preservation of green space and maintaining a healthy blend of land uses is a front burner issue here in Licking County. We are seeing a substantial relocation of residents from Franklin County into counties such as Licking, and our neighboring counties such as Delaware and Fairfield. While we welcome growth, we are also concerned about the rapid loss of easily developed farm land and woodlands to those looking to site new subdivisions for residential housing and commercial projects as well.

I believe for our Central Ohio region to remain healthy that some tools, such as eminent-domain, may need to be available to allow for limited specific public-private redevelopment projects in the older cities. Such redevelopment has the potential to take some of the pressure off of the rural unincorporated areas in terms of growth. Without some relief in this area I believe it will be impossible for county and township governments to keep up

with the unfettered growth, and resulting demand for infrastructure and public services in these large unincorporated areas.

So, maybe it is possible to view "Kelo versus New London" as the Court's way of spurring this discussion as to when eminent-domain possibly could be a consideration for other than strictly public applications. It is possible this is a discussion the "framers" could have never conceived. Thank you for the opportunity to speak today and offer my thoughts.