NEW YORK STATE SENATOR

Bill Perkins

Letter to Governor Paterson: Eminent Domain

BILL PERKINS December 7, 2009

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| COMMITTEE: CORPORATIONS, AUTHORITIES AND COMMISSIONS

December 8, 2009

Hon. David A. Paterson
Governor, State of New York
State Capitol
Albany, New York 12224

Dear Governor Paterson:
I write with a great sense of urgency in respectfully calling upon you to forego an appeal of last week's decision in Kaur v. New York State Urban Development Corporation, and to order a statewide moratorium on the use of eminent domain within the State of New York pending legislative action.

As you are aware, last week's court decision struck down as unconstitutional the taking of property by the Urban Development Corporation d/b/a"ESDC" for the benefit of Columbia University. The court found ESDC violated both state and federal due process clauses in an effort to prevent affected property owners from obtaining information, and that ESDC's finding of blight was "bereft of facts which established the neighborhood in question was blighted." Furthermore, ESDC's determination that the project even has a public use, benefit or civic purpose is wholly unsupported by the record. The court also noted the glaring conflict of interest, which reeks of bad faith, that existed as a result of ESDC and Columbia using the exact same consultant to review the project and determine blight.

You may recall that back in 2005 you and I stood on the steps of City Hall together with several members of the City Council to protest the United States Supreme Court decision in Kelo v. City of New London which affirmed the use of eminent domain for private development that entails a so-called "public use." That decision contained language encouraging states to review their own eminent domain statutes. Some states have done just that. It is now New York's turn.

At the time of the Kelo decision, as a State Senator and Minority Leader you understood that the current process is flawed and called for a blanket moratorium on the use of eminent domain. The same reasons for instituting a moratorium back then still exist. In fact they are even more urgent given the Kaur decision, and the recent decision by the Court of Appeals affirming the taking in the case involving Atlantic Yards. It is my understanding you recently and publicly committed to a full objective review of that project and its financing.

As Chair of the Senate's Corporations, Authorities and Commissions Committee, I held hearings involving the topic of eminent domain. I have gone on record on numerous occasions against what I perceive to be the abuse of eminent domain in this state, particularly as it relates to private development projects. I have often described that abuse as a "mugging", and one equal to "placing a gun to the community's head".

The Columbia decision has intolerably heightened the confusion and uncertainty over what, if anything, constrains the ESDC from taking anyone's property whenever it suits its fancy. For one, no one knows what "blight" is—the crucial and fundamental issue in both the Columbia and Atlantic Yards cases. What is clear, however, are the signals that the ESDC was not acting in good faith. This I would suggest, is evidenced by the court's statement that "the record before ESDC contains no evidence whatsoever that Manhattanville was blighted prior to Columbia gaining control over the vast majority of property therein." The opinion also makes a strong case that the blight determination in that case was severely flawed, and in large part the product of the ESDC's desire to transfer property to a "private elite education institution". As a result, I am left with my own opinion, and that of others in my community, that these type of actions on the part of the ESDC are part of an insidious form of discrimination and civil rights violations that must not stand. As the Kaur decision reads, "'few policies have done more to destroy community and opportunity for minorities than eminent domain.'" In fact, the Court found that the ESDC's actions in the Columbia expansion is, "clear evidence of that reality. The unbridled use of eminent domain not only disproportionately affects minority communities, but threatens basic principles of property

contained in the Fifth Amendment."

For these and other reasons I request that you urge the ESDC not to appeal the Kaur decision. Please impose a statewide moratorium on further eminent domain actions and then let us work together on a legislative solution. I am currently working on a bill to reform how eminent domain is exercised in the State of New York. The purpose is not to hamper development, but to make the process more transparent and provide stakeholders with substantive due process. This will result in development that reflects community input and serves community needs. Your participation will be critical. An enlightened eminent domain procedure will be a significant victory for all involved.

I respectfully request your support on these issues and am ready to stand with you publicly again, this time for the purpose of announcing actions that will lead to genuine reform. Please feel free to contact me for any further discussion at 212-222-7315, or in my Albany office at 518-455-2441. I look forward to hearing from you at the earliest convenience, and I thank you in advance for your attention to this very important matter.

Very truly yours,

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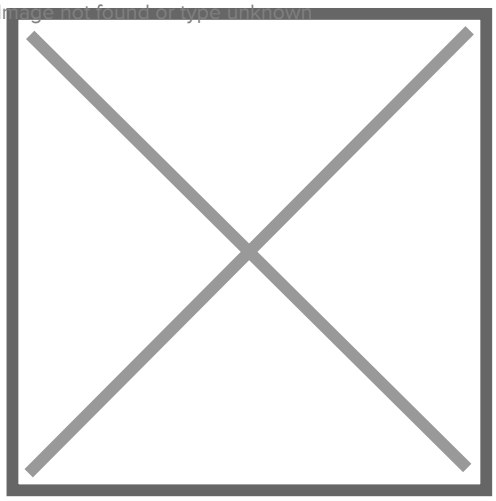

Senator Bill Perkins
30th District

cc: Dennis M. Mullen, President & CEO, Empire State Development Corp.
Sent via mail, fax, email