



The Town of Amesbury
IN THE YEAR TWO THOUSAND AND SIX

BILL No. 2006 - 013

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AN ACT TO LIMIT USE OF EMINENT DOMAIN

Be it enacted by the Municipal Council assembled, and by the authority of the same as follows:

Section 1. General limitations on use of eminent domain

(a) Only the Amesbury Municipal Council may use the power of eminent domain to take property from private owner(s). Eminent domain power shall not be used by any other agency of the Town of Amesbury nor by any political subdivision thereof nor by any other local entity. The Municipal Council shall not transfer eminent domain power to any other entity.

(b) Any measure to take property by eminent domain may only be approved if two-thirds of the entire Amesbury Municipal Council vote to approve such measure and if such measure is also approved by the Mayor. If less than two-thirds of the full Council membership votes to approve an eminent domain taking, such taking shall be deemed to be denied.

(c) Any vote on a measure to take property by eminent domain must be made by roll call vote.

Section 2. Eminent domain powers limited to public use; "public use" defined

Notwithstanding any other provision of law, the Municipal Council shall not use eminent domain authority unless the property to be taken is necessary for a public use.

Definition of “public use”: The term “public use” shall only mean:

- (i) the possession, occupation, and enjoyment of the land by the general public, or by public agencies;
- (ii) the use of land for the creation or functioning of public utilities;
- (iii) the acquisition of abandoned property, where the Town has made diligent efforts to locate the owner of the property; or
- (iv) the acquisition of property to cure a concrete harmful effect of the current use of the land, including the removal of public nuisances and the removal of structures that are beyond repair or that are unfit for human habitation or use.

The public benefits of economic development, including an increase in tax base, tax revenues, employment, or general economic health, shall not constitute a “public use”.

Section 3. Prohibiting Eminent Domain for Private Business

Notwithstanding any other provision of law, the Municipal Council shall not use eminent domain authority to take private property for private commercial enterprise, except that:

- (a) eminent domain may be used to take abandoned property, where the Town has made diligent efforts to locate the owner of the property;
- (b) eminent domain may be used to eliminate a substantial threat to public health or safety, including the removal of public nuisances and the removal of structures that are beyond repair or that are unfit for human habitation or use;
- (c) portions of a property which has been taken by eminent domain for public use may be leased to private entities, provided that the private use is incidental to the primary public use; and
- (d) property may be taken by eminent domain for the benefit of private commercial enterprise, with the willing and informed consent of the current owner(s) of the property.

Section 4. Prohibiting use of eminent domain for economic development; “economic development” defined

Notwithstanding any other provision of law, the Municipal Council shall not use eminent domain authority to take private property for economic development purposes without the willing and informed consent of the current owner(s) of the property.

Definition of “economic development”: the term “economic development” means any activity to increase tax revenue, tax base, employment, housing or general economic health; provided, however, that any of the following activities shall not constitute economic development:

- (i) the transfer of land to public ownership or to the ownership of a public utility; or
- (ii) the transfer of property to a private entity when eminent domain will remove a threat to public health or safety, such as the removal of public nuisances or the removal of structures that are beyond repair or the removal of structures that are unfit for human habitation or use; or
- (iii) the acquisition of abandoned property, where the Town has made diligent efforts to locate the owner of the property; or
- (iv) the lease to a private entity of portions of a property which has been taken by eminent domain, provided that the private use is incidental to the primary public use and further provided that any such lease may be entered into only if approved by a 2/3 vote of the entire Amesbury Municipal Council and if such measure is also approved by the Mayor.