



TOWN OF BRANFORD

OFFICE OF THE FIRST SELECTWOMAN

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I am writing in response to the joint press release issued by Mr. Opie and Mr. DaRos regarding the Tabor Drive Court Case.

To begin with, I have approached Tabor as an issue to be dealt with on behalf of the Town and I have not and will not use this issue for political purposes.

My interest is and will always be solely on behalf of the Town. The fact is, instead of campaigning or being involved in political activities, I have spent all of my time the last six to eight weeks attending the trials and being involved in trial preparation as well as taking care of my normal workload. You could find me at Town Hall on most nights until 9 or 10 p.m. Running for office is not as important to me as doing the right thing for Branford.

Let's get to the facts. There were actually two cases and two trials regarding the so called Tabor property. The first trial involved the value of the property; that is what the town owed the owners (Mr. Santa Barbara and Mr. Perrotti) as a result of the seizure by Eminent Domain. This case was decided by Judge Cremins in July of this year. He determined that the property was worth \$4.6 million dollars, not the \$1.1 million value that Mr. Opie determined the land was worth. So right here we owe \$3.5 million more, plus interest at 4%.

The second case involved whether or not the town abused its power to seize the property without the owner's permission. The federal and state constitutions give towns such an extraordinary right, but there are severe restrictions that go with this right. The case also involved damages to be paid by the town if it abused its privilege. A jury heard this case, and they unanimously decided on September 12, 2007 that the town had violated the defendant's constitutional rights. They awarded the proposed developer, New England Estates, and the former land owner \$12.8 million dollars in damages.

The total amount the town now owes is \$17.4 million, \$4.6 million for the land plus \$12.8 million in damages. In their press release, Mr. DaRos and Mr. Opie are quick to blame me for the decisions that they both made while in office. I am not surprised that they would find a reason to point the finger at someone else given the impact that this case will have on taxpayers.

I'd like to recite some history: Unk DaRos was in office from 1997 to 2003, during which time he and then Town Attorney Penny Bellamy argued for the seizure by Eminent Domain because of environmental problems; John Opie was in office from 2003 to 2005, during which time the property was actually acquired; I have held office since 2005. Attorney David Reif was hired by Mr. Opie to defend the town in the original suit involving Tabor. He never intended to raise any issues regarding environmental problems on the seized property, as made clear in a notice sent on November 18, 2005 to Attorney Sandler, who was the Town Attorney at the time. The town's appraisal report showed no contamination. No expert witnesses were ever disclosed by Attorney Reif before the scheduled trial date of February, 2006. That trial never was heard because the plaintiff's appraisal was not prepared. The case then came back to my administration and was referred to the then town counsel, the Marcus Law Firm.

Prior to a new trial scheduled for early 2007, the case was reviewed by Judge Silbert, a mediation judge, for the purpose of arbitrating a settlement between the parties. Judge Silbert strongly indicated that the Town's case was not strong and he structured a settlement proposal. Weaknesses in our case centered around the fact that no contamination was ever found on the seized property, and no critical need for the property had been demonstrated. This proposal was heard by the Board of Selectmen early this year and was referred to the RTM for action. The RTM rejected the proposal and the cases were set for trial. Attorney Reif was hired back to defend the town in the first case, the so called valuation trial, because of his familiarity with the case. The Hartford law firm of Updike, Kelley and Spellacy was hired in April of this year to defend the town in the second, or damages, case.

Much has been made by my opponents regarding the alleged failure on the part of the Marcus Law Firm, during the interim period when they had the case, to produce witnesses. In fact, they did have a witness list and were prepared to disclose them to the plaintiff's attorneys, but when the defense was transferred to Updike, Kelley, and Spellacy, that firm made a reasoned decision to bring in their own witnesses. The judge had imposed an arbitrary deadline of May 30, 2007 by which to disclose witnesses; it was reasoned that the Plaintiffs would not be prejudiced by a minor delay in disclosing new witnesses, which is a customary practice when there is a change in counsel, but the judge refused to extend the time period for additional witnesses.

There were two important rulings by the judge which determined the outcome of the trials. In the valuation case, he determined that the highest and best use of the property was for residential use, not the current zoning as Industrial. Therefore the high value for the property, which we feel is unrealistic. In the second case, he instructed the jury that, had it not been for the taking, a town approval for some 354 residential units would have occurred. This was an astounding finding, given the denial by the Planning & Zoning Commission for a lesser number of units shortly before the suit.

Given this latter ruling by the judge, when the jury determined that the town had abused its power and violated the rights of the defendants under the Takings Clause of the Fifth Amendment of the Constitution, the damages were calculated with the assumption that 354 residential units would have been built and sold.

I was there when the Town's original expert Fuss and O'Neil testified that Unk and Ms. Penny Bellamy were told the property was clean before the taking occurred. That information was never provided to the RTM. In fact, Ms. Penny Bellamy testified that she never provided the entire Fuss and O'Neil report to the RTM members. She asked Fuss and O'Neil to prepare a summary report which she admitted to editing. The RTM was also told prior to the taking that the Town could not go on the property to test the soil. I learned at the trial that this was completely untrue. Ms. Bellamy testified that she never asked New England Estates if the Town could enter the property for testing. In addition, there is a State Statute that allows a town to test property prior to condemnation, which Ms. Bellamy should have known as an Attorney. The RTM acted on the information they were given by Selectman DaRos and his Town Attorney, Ms. Bellamy. Based on the evidence presented, I believe that the RTM was deceived by the DaRos Administration. As of today, the cost of this deception could cost taxpayers approximately \$18 million and this amount will continue to grow as interest accrues.

I am hopeful that both verdicts will be reversed on appeal –the lawyers tell me that there were multiple errors made by the Judge in his rulings.

I am not playing the blame game but to try to lay the verdicts on anyone other than the people who made the decision to proceed with eminent domain is out of line. It certainly didn't help for Mr. Schwanfelder to be quoted as saying the Judge was on crack which resulted in his testimony not going before the jury.

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