

Private vs. public in Westchester



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Port Chester businessman Bart A. Didden saw his six-year legal battle over his condemned commercial property in the village end this month with a state judge's compensation award that favored him and his real estate partner. Yet Didden, president and CEO of U.S.A. Central Station Alarm Corp. in Port Chester and owner of a row of properties on a North Main Street block in the village's waterfront urban renewal area, said he and his partner "are not happy" with the decision.

State Supreme Court Judge John R. LaCava ordered the village of Port Chester to pay nearly \$3.1 million and about \$600,000 in accrued interest to compensate Didden and his business partner, Domenick D. Bologna, principal of Westmore Fuel Co. Inc. in Port Chester and Greenwich, Conn., for the taking of their property at 175 N. Main St. to build a Walgreens pharmacy. The developer, G&S Investors of Manhattan, also built The Waterfront at Port Chester, the nearby big-box retail and entertainment complex.

The village's initial condemnation payment of \$975,000 will be deducted from the balance owed the partners. Didden and his attorney, Michael Rikon, said G&S is contractually obliged to pay that remaining compensation and interest to the village.

Both Didden and Rikon questioned whether the developer is financially sound and can afford the payment. "I hope they have the funds to do it," said Didden, who noted construction has not been completed at the developer's most recent downtown retail project, the approximately 13,000-square-foot Firehouse at the Waterfront at Port Chester. G&S officials and Port Chester Mayor Dennis Pilla could not be reached for comment.

Didden and Bologna in their lawsuit sought \$4.1 million for their taken property, which was valued at \$1.6 million when the village condemned it in 2004. "We really felt that was a valid position," Didden said. "We didn't think that we were overly aggressive at all."

The partners in late 2003 negotiated a deal with CVS to put a pharmacy on the parcel and received village approvals for the project. But village administrators asked them to first meet with G&S as the village's preferred developer.

Didden said G&S principal Gregory Wasser told the partners the developer wanted either \$800,000 or a 50 percent interest in their CVS project. Otherwise, their property would be taken by eminent domain. The developer's demand "I characterize as extortion," said Didden, who promptly rejected the proposal.

The village began eminent domain proceedings against them one day later. Didden and Bologna unsuccessfully challenged the village's taking of their property for private use as unconstitutional in federal courts.

Didden said the CVS store would have paid full taxes, bringing the village twice as much in annual revenue as Walgreens, which has a 15-year tax abatement agreement.

With the recent court award, "What I got was vindication," Didden said. "Justice would have been if the federal courts gave us our property back like they should have."

Rikon, the partners' Manhattan attorney, represented 37 property owners and tenants in Port Chester whose properties were condemned to clear the way for redevelopment. The village's eminent domain proceeding was the most abusive in New York history because the private developer controlled it, Rikon recently told Westchester County legislators at their legislation committee meeting. "Nothing even came close in terms of the abuse," he said.

A specialist in eminent domain law, Rikon was in White Plains to speak in support of a proposed county law to prohibit the county's use of eminent domain to acquire private property for private use, defined to include retail shopping developments such as The Waterfront at Port Chester and mixed-use developments such as the River Park Center project planned by Struever Fidelco Cappelli L.L.C. in downtown Yonkers. The law also would require a two-thirds majority vote of the county Board of Legislators to use eminent domain for a public-use project.

The county's eminent domain law would not prevent municipalities such as Port Chester and Yonkers from condemning properties for private development. But the county would be prohibited from contributing funds to those projects. Didden said the county contributed \$8 million to the Port Chester redevelopment.

County attorneys advised the legislation committee that the state's eminent domain procedure law might prevent the county from adopting its own law. Rikon disagreed, noting that other municipalities in the state have adopted their own codes for the use of eminent domain.

Peekskill Mayor Mary Foster told legislators the city, while still encouraging local economic development by private developers, adopted its own eminent domain law so that "everyone understood the rules of the road or the rules of engagement." The Peekskill law makes clear the property rights of residents are "paramount" to the city's right to use eminent domain for economic development except on abandoned or severely neglected properties.

Legislators questioned whether the county Industrial Development Agency would be exempt from the proposed law's restrictions on using eminent domain. They delayed action on the proposal.

Didden called the proposed county law "a great first step...It's better than nothing. Better is if we have reform at the New York state level. The federal courts and the federal legislators would be the best of everything" to

change condemnation practices.

“It’s a screwed-up thing,” the Port Chester businessman said of eminent domain, “but let’s try to make it fair for a guy like me.”



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