

HOUSE No. 4583

By Mr. Costello of Newburyport, petition of Michael A. Costello (by vote of the town) relative to limiting the use of eminent domain in the town of Amesbury. Municipalities and Regional Government. [Local Approval Received.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Eight.

AN ACT TO LIMIT USE OF EMINENT DOMAIN IN THE CITY OF AMESBURY.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 SECTION 1. General limitations on use of eminent domain.
2 (a) Only the Amesbury Municipal Council may use the power of
3 eminent domain to take property from private owner(s). Eminent
4 domain power shall not be used by any other agency of the Town of
5 Amesbury nor by any political subdivision thereof nor by any other
6 local entity. The Municipal Council shall not transfer eminent
7 domain power to any other entity.
8 (b) Any measure to take property by eminent domain may only be
9 approved if two-thirds of the entire Amesbury Municipal Council
10 vote to approve such measure and if such measure is also approved
11 by the Mayor. If less than two-thirds of the full Council membership
12 votes to approve an eminent domain taking, such taking shall be
13 deemed to be denied.
14 (c) Any vote on a measure to take property by eminent domain
15 must be made by roll call vote.

- 1 SECTION 2. Eminent domain powers limited to public use;
2 “public use” defined.
3 Notwithstanding any other provision of law, the Municipal
4 Council shall not use eminent domain authority unless the property
5 to be taken is necessary for a public use.
6 Definition of “public use”:—
7 The term “public use” shall only mean:—

- 8 (i) the possession, occupation, and enjoyment of the land by the
9 general public, or by public agencies;
- 10 (ii) the use of land for the creation or functioning of public utili-
11 ties;
- 12 (iii) the acquisition of abandoned property, where the Town has
13 made diligent efforts to locate the owner of the property; or
- 14 (iv) the acquisition of property to cure a concrete harmful effect
15 of the current use of the land, including the removal of public nui-
16 sances and the removal of structures that are beyond repair or that
17 are unfit for human habitation or use.
- 18 The public benefits of economic development, including an
19 increase in tax base, tax revenues, employment, or general economic
20 health, shall not constitute a “public use”.

1 SECTION 3. Prohibiting Eminent Domain for Private Business.

2 Notwithstanding any other provision of law, the Municipal
3 Council shall not use eminent domain authority to take private prop-
4 erty for private commercial enterprise, except that:—

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

1 SECTION 4. Prohibiting use of eminent domain for economic
2 development; “economic development” defined.

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

7 Definition of “economic development”:— the term “economic
8 development” means any activity to increase tax revenue, tax base,
9 employment, housing or general economic health; provided, how-
10 ever, that any of the following activities shall not constitute eco-
11 nomic development:—

12 (i) the transfer of land to public ownership or to the ownership of
13 a public utility; or

14 (ii) the transfer of property to a private entity when eminent
15 domain will remove a threat to public health or safety, such as the
16 removal of public nuisances or the removal of structures that are
17 beyond repair or the removal of structures that are unfit for human
18 habitation or use; or

19 (iii) the acquisition of abandoned property, where the Town has
20 made diligent efforts to locate the owner of the property; or

21 (iv) the lease to a private entity of portions of a property which
22 has been taken by eminent domain, provided that the private use is
23 incidental to the primary public use and further provided that any
24 such lease may be entered into only if approved by a 2/3 vote of the
25 entire Amesbury Municipal Council and if such measure is also
26 approved by the Mayor.