OPEN LETTER TO GOVERNOR NED LAMONT

Dear Governor Lamont,

I am writing to implore you to take immediate action to prevent the transfer for one dollar of forty seven acres of prime Connecticut real estate to an entity owned and/or controlled by an individual convicted of the felony of bribing a public official and without any track record of successful development, said transfer without any state restrictions as to what he may do with the property.

When I learned last evening that the Commissioner of Economic and Community Development intends to convey the property despite the fact that the host municipality has declined to enact the zoning changes that would enable the ridiculous overdevelopment requested I was astounded. I immediately began to think of what could be done to stop this madness and could only envision a costly and protracted lawsuit in the vein of Horton v Meskill seeking a declaratory judgement and prospective equitable relief. Although the local abutters have hired an excellent attorney, the costs of such a suit would be prohibitive and it would be grossly unfair to ask these fine people to bear the burden of preventing the irreparable harm to the entire State of Connecticut that would result from the hypocrisy of the intended transfer.

Many years ago I played a small role in preventing the state giveaway of the Branford House at Avery Point. At the time I called the proposed transfer the biggest giveaway since Manhattan. The transfer of this property under these circumstances may actually be worse. My first thought was that I had not seen any compliance with the statutes governing transfer of title of state property that had saved the Branford House. Those statutes, contained in Chapter 59 of the CGS, require that state properties must first be offered to state agencies for possible public use and if no agency has such use offered to the host municipality This is a good process, even when it ends with such an unlikely result as Preston controlling development of the former Norwich Hospital property. Unfortunately the brownfields remediation statute enacted in Public Act 15-193 contained ‘notwithstanding” language that exempted brownfield properties marketed for cleanup and return to the tax rolls from this process. I believe this was the first of many errors that led to the current unacceptable dilemma. I also have no personal knowledge of the extent of contamination at the site but suspect that it is not so significant in relation to the value of the property itself.

I won’t document further here the chronology of mistakes by both the state and the town of Groton that led to the present quagmire. Lessons should be learned, but the paramount task is to prevent the irreparable harm that would result from the state giving up title to this property. As I considered the possibly impossible hurdles of a a lawsuit that would require you, Governor Lamont, to do the right thing here, I had an epiphany. Why not just ask him!

So, Governor Lamont, I ask you please don't let this happen on your watch and under your leadership. A recent Day column looked forward to where legislative candidates stand on this proposed transfer The horse will have bolted before anyone elected to the legislature in November can close that barn door. I ask, however that all Eastern Connecticut candidates join me in this request. This is not a partisan issue.

Your DECD commissioner reportedly believes that he has no choice but to make this transfer I believe he is wrong for several reasons.

Let me begin by acknowledging I understand the commissioner's concerns. Attorneys for the proposed developer clearly did the better job in negotiating the language of the contract. That said, it is also true that any ambiguity in regard to the state's right to terminate the contract should be resolved with the long standing case law in mind that courts generally try to interpret contracts in a way that would avoid absurd results. The absurd result is exactly what is contemplated by the sale to Respler despite the failure to obtain necessary approvals for the project. This would create an absurd scenario in which a developer could propose a project unlikely to obtain approval (say for example proposing an invasion of high density 900 unit developement into a rural setting) make minimal efforts in the application and approval process and then be "entitled' to be given the property for one dollar to do with whatever he wants. (Subject to zoning approval), including choosing a new developer himself and flipping the property for profit. This interpretation of the contract would make a sham of the entire process.

The ambiguity in section 8 of the contract is this: while both seller and purchaser are given right to terminate the contract prior to intended closing date (now November 13), there is language that makes these respective rights subject to the purchasers right to waive all of his conditions as to all required approvals - in other words, the purchaser can get out of the contract if any approvals are not given but the seller would not have a complimentary right if the project clearly is not going to happen. Again an absurd result. While Respler's lawyers might argue that absurd though it may be, that's the deal, there is an ambiguity in section 8 that suggests it is open to interpretation to avoid such absurd result. Section 8 also indicates that if any of the "purchaser rights' regarding required approvals in which an approval is obtained and that approval is appealed, the seller would still have the right to terminate although delayed by 2 years. The existence of this retained right to terminate in such circumstances suggests that no party to this contract anticipated or intended that Respler could simply waive ALL the required approvals that would be necessary and still get the property for a dollar. Again, contracts must be interpreted to not have an absurd result such as making a mockery of the RFP process and the intended brownfield remediation and return to tax rolls.

A second and more obvious reason that the state does not have to convey is that Respler announced several months ago that he plans to sell his membership interest in Respler Homes LLC to a limited liability company called Blue Lotus Group, which would allegedly attempt to develop senior housing on the vacant, state-owned

property. In a shocking display of arrogance, Blue Lotus Group has issued a press release dated September 15 indicating that they are “eager to move forward” as the developer that Respler intends to flip the property to. Section 23 of the purchase and sales contract states that the purchaser may not assign its interest except to a single purpose entity in which the seller has voting control without prior consent of the seller. To convey the property now, when the state has not consented would render this language in the contract meaningless. Further, Commissioner Lehman makes the critical observation that Respler’s intended transfer to Blue Lotus constitutes a significant departure in the planned project from that which was reviewed its the RFP The agreement between Respler and the state required the state to obtain approvals for the sale of the property, including from the State Properties Review Board, the Office of Policy and Management, and the Department of Administrative Services. The DECD is "concerned those entities may not accept a new set of principals and a project" that hasn't been vetted through the RFP process. There is now no compliance with these mandatory reviews required by Public Act 15-193 in this intended bait and switch. There has been NO state review of this new project nor its principals and therefore no requirement that the state convey to Respler so that he can flip the property for his enormous profit and at the expense of the people of Connecticut. It is another absurd result that after a statutory RFP process, the decision as to who will develop the project will be made by Respler alone.

There are numerous other arguments I would make in defense of termination of the contract if Respler subsequently seeks damages. I would argue that he did not comply with language in contract that he make reasonable diligent efforts to obtain approvals in not even preparing a preliminary development plan as required in his agreement with the town. I would indeed argue that he misrepresented himself in regard to the language of the contract in which he represents that he has full power and authority to carry out responsibilities under contract in that he is a convicted felon having bribed a public official and arguably lacks standing to contract with the state. I am aware that the contracting standards board may believe that felons are merely disqualified in regard to ‘procurements’, but that stance is really limited to interpretation of CGS 4e-134 and that board’s statutory jurisdiction. There is a contractual representation here that should not be viewed as mere boilerplate language. If cleaning up a brownfield is your goal , are you going to pick someone who has a track record of bribing public officials?

What is the exposure if the state terminates? Respler can file for damages with the claims commission and given above, good luck with that. Blue Lotus cannot make a claim as the contract in section 27 clearly prohibits any third party benefit.

The alternative if the state does not terminate is the irreparable loss of 47 acres of prime Mystic real estate for a dollar to a convicted felon so he can flip it and make enormous profit at the expense of the people of Connecticut

Please, Governor Lamont, don’t let this happen on your watch and under your leadership.

Steven Spellman