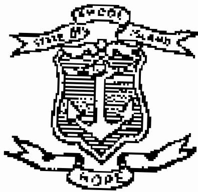

State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL
150 South Main Street, Providence, RI. 02903
(401) 274-4400
TDD (401) 453-0410

*Sheldon Whitehouse, Attorney General*

February 22, 2000

Representative Robert Weygand
300 Centerville Road
Summit East, Suite 200
Warwick, RI 02886

*RE: H.R. 2372 "THE PRIVATE PROPERTY RIGHTS IMPLEMENTATION ACT OF 1999"*

Dear Representative Weygand:

I urge you to oppose H.R. 2372, the "The Private Property Rights Implementation Act," a "takings" bill pending in the Congress that is designed to weaken local land use, zoning and environmental laws by encouraging costly and unwarranted federal "takings" litigation against counties, towns and cities. (The Senate Counterpart is S-1028). In doing so, I join 40 fellow Attorneys General, the U.S. Judicial conference, the National Association of State Governments, the National League of Cities and Towns, the American Planning Association, the National Conference of Mayors, the National Association of Towns and Townships, National Conference of State Legislatures, and many other responsible spokesmen for sound judicial administrative and orderly planning.

H.R. 2372 (as drafted as of February 15, 2000), seeks to radically alter the system for resolving claims that zoning, Smart Growth, and other local safeguards result in "takings" of property that require just compensation. (The bill also provides that takings claimants suing the United States can bypass federal administrative procedures.) H.R. 2372 will empower big developers to use the threat of premature, costly federal court litigation as a club to coerce small communities into approving projects that will harm neighboring homeowners and the environment. The bill would undermine smart growth planning, increase the rate and extent of sprawl, curtail democratic participation in important local land use decisions, and is a direct affront to state court systems.

The Bill attempts to attack the well-articulated settled body of case-law known as the "ripeness doctrine." While this doctrine affects all the areas of civil practice, it has justifiably assumed special significance in the area of inverse condemnation suits against zoning boards and the like. H.R. 2372 attempts two major changes in the law of ripeness. First, the Bill purports to eliminate the requirement that developers who claim that zoning and other local safeguards result in "takings" of property must pursue available state court remedies. Second, and more importantly, it attempts to allow takings claims against both localities and the United States to bypass existing administrative procedures and proceed before there is a final agency decision on what uses of the property are permissible.

Enactment of H.R. 2372 would certainly have the exact opposite result from what supporters claim; inevitably, it would result in expensive, lengthy procedural litigation that would delay decisions on land use matters. Courts would become prematurely enmeshed in disputes without the benefit of a final administrative decision; and claimants could bypass local zoning boards. Recently reaffirmed Supreme Court holdings are clear: the Constitution requires that premature claims filed against localities would ultimately have to be dismissed. Takings claims must await final decisions on permissible development.

Under the bill, small communities would be pressured by a wide variety of threatened and actual federal court lawsuits. For example, state courts have already rejected unjustifiable "takings" challenges to limits on landfills, corporate hog farms and "adult" businesses.

As with similar bills drafted by the National Association of Home Builders in the last Congress (H.R. 1534 and S-2271), there is no need for this drastic proposal. H.R. 2372's proponents have offered no evidence that there is any general problem with local communities' good faith efforts to fairly and efficiently resolve difficult local land use issues.

I strongly urge you to oppose H.R. 2372 and S-1028.

Sincerely,

Sheldon Whitehouse
Attorney General

SW/MR:cc