

GOODWILL STUDY
REPORT TO THE
JUDICIARY COMMITTEE
PLANNING & DEVELOPMENT COMMITTEE

In response to Public Act No. 07-207, Section 3

January 1, 2008



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Methodology

- A diverse group of business and real estate valuation experts, public agency officials and experienced real estate lawyers were recruited by the Ombudsman to advise him in researching and preparing this report.
- Regular public monthly meetings occurred to discuss and analyze information obtained through research of committee members and other interested parties. The public was invited to speak at these meetings.
- The Ombudsman condensed the materials into a report containing 11 specific recommendations.
- The draft report was circulated among committee members for comment.
- The report as submitted is the result of the research, analysis and writing of the Ombudsman and advisory committee members.
- The report was submitted to the joint standing committees of the General Assembly relating to the Judiciary and Planning and Development.

GOODWILL STUDY

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EXECUTIVE SUMMARY

Introduction

“Small business” is defined in the federal uniform relocation assistance regulations [CFR, Title 49, Part 24, Sec. 24-2(24)] as “a business having not more than 500 employees working at the site being acquired or displaced by a program or project, which site is the location of economic activity.” Many small businesses with considerably less than 500 employees have substantial value tied up in intangible assets, such as goodwill. Fully 99.7% of Connecticut’s businesses have fewer than 500 employees and would qualify for the designation of small business. (U.S. Census Bureau, Connecticut, Major Industry, 2005) (See charts appended as Appendix A)

Goodwill may take years to build. When real property is taken by eminent domain and the business occupant, whether a related or unrelated party of the owner of the real estate, is forced to move, the change of location and the costs associated with the move and start up at the new location, both structural and financial, can materially and adversely affect the value of the business and in particular the value of intangible assets such as goodwill.

By requesting a study to determine the feasibility of calculating relocation assistance for businesses displaced by eminent domain on the basis of gain or loss of goodwill, the legislature has indicated a willingness to consider changing Connecticut’s long standing policy of not compensating or reimbursing businesses for their losses of goodwill when required to move.

Few states, if any, provide relocation assistance to business owners for loss of goodwill. The most likely reasons appear to be: (i) there is no constitutional right to just compensation or any other payment for displacement or disruption of a business that occupies real estate which is the subject of a taking except that which is statutorily provided for by federal and/or state law; (ii) federal and state relocation assistance regulations have prohibited payments for loss of goodwill, loss of profits, and expenses and losses associated with other intangible assets; and (iii) the value of goodwill has been considered by some too difficult and too costly to determine and compensate. Thus, most businesses unfortunate enough to be located in properties taken by eminent domain suffer uncompensated losses and diminishment to the value of the business as a result of displacement. This would be true regardless of the stated public purpose on which the taking is predicated.

This report will attempt to present the main issues facing business owners and government agencies in situations where eminent domain is used. Although P.A. No. 07-207 references Chapters 132 and 588l of Connecticut General Statutes (“CGS”), the principles discussed within apply to businesses forced to move. The stated public purpose of the taking does not affect appraising techniques or change the nature of the activity of a business required to move. The decision whether to apply these principles to some or all businesses and under what circumstances or to make other changes to existing law is the prerogative of the legislature.

Recommendations of the Ombudsman

- 1. Businesses displaced by eminent domain that suffer a loss of goodwill associated with the displacement of the business should be compensated for the loss.** Compensating business owners for loss of goodwill adds an important element of fairness to the condemnation process and furthers the State of Connecticut's policy that "the economic welfare of the state depends upon the continued growth of industry and business within the state." Connecticut General Statutes §8-186. Many businesses that move suffer economic hardship because of loss of location, employees, customers and profits. Other businesses close down rather than move because the expenses associated with moving and restarting the business at a new location are more than the business can afford. Payment for loss of goodwill will create an incentive for more businesses to move and for businesses that do move to recoup losses associated with displacement.
- 2. Loss of goodwill should become an eligible category of payment under the Connecticut Uniform Relocation Act for established businesses with at least three years standing prior to the taking of the real property.** Providing for loss of goodwill as an eligible moving expense would change Connecticut's longstanding policy of not compensating or reimbursing displaced businesses for such loss. As a moving expense loss of goodwill would be eligible for payment to the extent of the loss. The procedure would be administrative and as a result less likely to result in litigation. Because goodwill is accumulated over time there should be a reasonable period of time for a business to be in operation at a location for it to qualify for payment of loss of goodwill. This is consistent with determining "business damages" in both Florida's and Idaho's statutes. A business locating in a property designated for acquisition and demolition in an approved development area should not be disqualified from seeking loss of goodwill if the government agency or developer has no immediate use for the property and waits three or more years from the time occupancy begins before acquiring the property. In that instance the business would qualify for loss of goodwill payment as well as relocation assistance as otherwise provided under applicable law and regulations.
- 3. The definition of goodwill should be consistent with definitions in the Uniform Eminent Domain Code and statutes of other states including California. *"Goodwill" consists of the benefits that accrue to a business as a result of its location, positive reputation for dependability, skill, or quality, and any other circumstances resulting in probable retention of old or acquisition of new patronage.*** The definition focuses on the important components that comprise enterprise goodwill - location, positive reputation of the business, a trained employee force, and the ability to retain and gain new customers. In most cases these components working together render a business more valuable than if some or all of these components were not present and more valuable than another similar business which lacks some or all of these attributes. This definition of

goodwill has been interpreted by courts, written about by authors of legal treatises and testified to by accredited appraisers and other business valuation experts.

- 4. All recognized methods of determining the value of a business and calculating therefrom the loss or gain of goodwill should be allowed in accordance with the highest professional standards of business valuation appraising.** Connecticut's courts have determined that no one method of valuation is controlling when determining the market value of real and personal property. It is well accepted that valuation methods will differ with the nature of the business and the purpose of the valuation. In determining the value of goodwill the standard of value to be used is Fair Market Value defined as the price at which property would change hands between a willing buyer and a willing seller, when the former is under no compulsion to buy and the latter is not under any compulsion to sell, both parties having reasonable knowledge of relevant facts. There are three recognized methods of valuing a business: the asset-based approach, the earnings-based approach and the market-based approach. There are two generally prescribed methods for valuing the goodwill of the business, the capitalized excess earnings method and the residual method which is used by the Internal Revenue Service when calculating the goodwill of a business. There are accreditations for business valuation appraisers as there are for real estate valuation appraisers. Any law should allow for accredited valuation appraisal experts to perform appraisals and render opinions as to value of loss or gain of goodwill in accordance the Uniform Standards of Professional Appraisal Practice and Code of Ethics of the American Society of Appraisers or other recognized associations of appraisers holding to the highest professional standards of appraisal practices and ethics.
- 5. Goodwill should be measured for businesses which do not move at the time of initiation of negotiations by the public agency or adoption of the resolution authorizing the plan of development showing the location of proposed development areas, whichever is earlier.** Businesses that do not move and possess goodwill value have suffered a total loss of goodwill. These businesses currently qualify under existing relocation statutes and regulations for what is called "fixed payments for moving expenses-nonresidential moves." The maximum amount allowable using the fixed payment formula under Connecticut's law is \$10,000 and under federal law is \$20,000. No business should be compensated more than once for loss of goodwill. Any appraisal presented for payment of loss of goodwill should determine to what extent, if any, amounts paid as fixed payments for moving expenses could be considered duplicative of payments sought for loss of goodwill and such amounts would be deducted from amounts paid or payable as loss of goodwill. In this way municipalities and other condemning agencies will be protected from overpaying. The official designation of a development zone or area can begin a process of swift decline of the very area intended to be developed (sometimes called "condemnation blight") thus affecting public attitudes about shopping or engaging in commerce with businesses located within the designated area. Because

development can take years, takings of properties and associated relocations of businesses can be delayed. Thus the determination of loss of goodwill should be made at the earliest possible time. A goal of every development project should be to encourage as many businesses as possible to remain in business. Helping businesses to preserve value reduces the likelihood of having to pay for loss of goodwill.

- 6. Goodwill should be measured for businesses that move no earlier than one and no later than two years from the date of the move and commencement of operations in the replacement location.** Businesses that relocate are in need of money to make the move as smoothly as possible. They are considered eligible for relocation benefits at the time a written offer to purchase the property is made or earlier, if a notice of intent is made upon the property owner. Under existing relocation assistance regulations businesses are entitled to reimbursement of moving expenses, search expenses and reestablishment expenses. Some of these expenses are capped. Payments are also made for actual and direct losses of tangible personal property as a result of moving or discontinuing a business. Yet determining whether a business has lost or gained goodwill based on a move can best be determined by a before and after test. There is no desire to make the move more problematic than it has to be, therefore, recommendations for changes to the amounts of search and reestablishment expenses and establishing greater flexibility within the existing classifications under which expenses of a move are categorized is consistent with helping a business to sustain its goodwill value through a move. When these payment amounts are increased and paid at the time of the move, there is an obvious benefit to the business and substantial benefit to the State of Connecticut as the public policy stated above is carried out.
- 7. The cap on allowable search and reestablishment expenses and fixed payments in lieu of moving expenses should be increased. Categories of expenses should be enlarged to make the system fairer and reduce losses including loss of goodwill sustained by businesses displaced as a result of eminent domain or condemnation.** The USDOT Federal Highway Administration (“FHWA”) engaged in a study to determine the effectiveness of the essential categories of reimbursement of relocation expense and found the federal scheme wanting. The study concluded that all three categories-search, reestablishment and fixed payment-should be modified to increase amounts of reimbursable payments. For purposes of the study certain expenses, particularly those related to improving the replacement site to make it suitable for the operations of the displaced business and paying some of the costs associated with operations of the business at the new site for a period of two years, were reclassified from reestablishment expense to moving expense. This made the cost of improving the replacement property and certain costs of operations eligible for a payment under relocation assistance as a moving expense. Currently increased costs of certain operating expenses in the replacement site during the first two years and modifications to the replacement site to accommodate the business operations are eligible for reimbursement under CFR, Title 49, Part 24, Subpart D

Section 24.304 reestablishment expenses-nonresidential moves, and therefore, subject to a cap of \$10,000.

- 8. Payment levels based on square footage, number of employees, manufacturing, gross volume of business or net earnings averaged over a period of years should become standards used to determine amounts of actual and reasonable search, reestablishment and in lieu fixed payments made to eligible businesses.** Businesses operating in larger areas, employing more people, manufacturing or doing a larger volume of business require and deserve more assistance when forced to move. Currently, both the state and federal relocation payment systems cap search, reestablishment and fixed payments well below where they should be reasonably set. No distinction is made for any of the standards listed above. Connecticut law provides for search expenses to be capped at \$500 and fixed payments in lieu of moving expenses at \$10,000. Federal law provides for search expenses to be capped at \$2,500, fixed payments in lieu of moving expenses at \$20,000 and reestablishment expenses at \$10,000.
- 9. A business operating in 10,000 square feet or more or moving to a site that exceeds its current location by a factor of 1.25 but not less than 10,000 square feet and employs 10 or more full and part time employees or is engaged in manufacturing or has a gross volume of business which exceeds \$1,000,000 or an average net earnings over the last two years of at least \$100,000 should be eligible to receive up to \$25,000 in search expenses, \$250,000 in reestablishment expenses and \$250,000 fixed payments in lieu of moving expenses. All other businesses should be eligible to receive up to \$10,000 in search expenses, \$100,000 in reestablishment expenses and \$100,000 fixed payments. The capped amounts should be indexed to the U.S. Department of Labor, Consumer Price Index and adjusted annually.** Payment of reestablishment expenses should be instituted under Connecticut law. Repairs and improvements to the replacement site needed to make the replacement site suitable for the displaced business to operate and many of the operating costs at the replacement site during a period of two years from date of the move should be reimbursed to the greatest extent possible. Some of the operating expenses are: higher rent and mortgage payments, personal and real property taxes, insurance premiums covering real and personal property against fire and other perils, utility expenses and interest on loans needed to make the move or improve the replacement site or purchase of new capital fixtures, machinery and equipment. Increasing the caps in each of these categories will increase the amounts of eligible relocation expenses payable to displaced businesses and reduce or eliminate amounts needed to pay many displaced businesses for loss of goodwill. If an expense for repairs or modifications at a replacement location or operating expenses incurred by a displaced business could be classified as an actual moving expense or a reestablishment expense, such expense should be covered as an actual moving expense.

10. Municipalities should rethink the process through which development projects are conceived and carried out minimizing the need for use of eminent domain whenever possible. Costs associated with eminent domain such as relocation of a business would be considerably less if there was less frequent use of eminent domain in planning and carrying out municipal development projects. Municipalities should seek to relocate businesses within the development area or close by or permit property/business owners to participate as mini-developers of their own sites. Municipalities using eminent domain to acquire and assemble properties should budget for any additional expenses including loss of goodwill and seek project financing from federal and state agencies responsible for funding municipal projects and from private and non-profit funding sources such as developers and other private financiers of such projects. The portions of the additional cost not obtained through other sources or recouped from new revenues or savings in other areas would be borne by the municipalities. Most municipal development projects are financed through grants and loans made by the State of Connecticut, Department of Economic and Community Development (“DECD”), various federal agencies and by developers utilizing private sources of capital. Municipalities prepare budgets for development projects which include estimates for property acquisition and relocation assistance. Amounts payable to businesses for loss of goodwill and for search, reestablishment and fixed payment expenses can be anticipated and reimbursed by appropriate funding agencies. The percentage of the overall cost of a municipal project can be small in relation to federal, state and private contributions and could be made smaller if fewer properties and businesses were acquired through eminent domain and more emphasis is placed on negotiated acquisitions and relocations between the municipalities, designated developers and property owners.

11. Without regard to the stated public purpose or the chapter of Connecticut General Statutes under which property is acquired or condemned, state and local governments should be required to pay for loss of goodwill to a displaced business whenever a property is taken by eminent domain or acquired under a threat of eminent domain. Public Act No. 07-207 asks the Ombudsman to study the feasibility of calculating loss of goodwill “pursuant to Chapters 132 and 588l.” The stated public purpose of the taking does not affect appraising techniques or change the nature of the activity of a business required to move. In the opinion of the Ombudsman it would be an unfair result if only businesses within geographically designated areas created pursuant to two chapters of CGS were compensated for loss of goodwill and no others, and to mandate that only municipalities but not the agencies of the State of Connecticut would be required to compensate businesses for loss of goodwill.

DEFINITION OF GOODWILL

The definition of goodwill. “Goodwill” and “good will” are interchangeably used in case law, statutes, legal treatises and encyclopedias. Usually only one form of the term goodwill or good will is used in the body of a judicial decision. However, the same decision may cite for support decisions of other courts or cases in which the other form of the term goodwill or good will is used.

For purposes of this report the term goodwill will be used rather than good will because Connecticut case law uses the term goodwill when discussing valuation of a business and laws of other states specifically providing for the loss of goodwill as a result of displacement of a business by eminent domain, including California and Wyoming, use the term “goodwill.” Both the Government Accounting Standards Board (GASB) and the Financial Accounting Standards Board (FASB) use the term “goodwill” in their published statements concerning intangible assets such as goodwill.

Definition of goodwill: **"Goodwill" consists of the benefits that accrue to a business as a result of its location, positive reputation for dependability, skill, or quality, and any other circumstances resulting in probable retention of old or acquisition of new patronage.**

The above definition of goodwill is the same as set forth in the Uniform Eminent Domain Code, Section 1016, and General Statutes of California and Wyoming with the addition of the word “positive.” (See Appendix B for other examples of definitions of goodwill.)

Scenarios in Which Businesses May Qualify For Payment of Loss of Goodwill

There are four basic scenarios in which businesses may qualify for payment of loss of goodwill: (i) the business is located in real estate that is the subject of a taking, partial or whole, and as a result of the taking the business is forced to move and moves, (ii) the business is located in real estate that is the subject of a partial taking, the business does not move but the business is negatively affected by the partial taking, (iii) the business is located in real estate that is the subject of a taking and does not plan on moving, i.e., the business intends to shut down, (iv) same as (iii) above except the business would move if a suitable replacement location could be found otherwise the business shuts down.

Whether a business moves depends on a number of factors including:

- a. whether a suitable replacement location can be found;
- b. the cost of moving;
- c. the costs associated with reestablishing the business in the new location including rent and/or mortgage payments, capital improvements to the property, purchases of new fixtures, equipment and machinery and new operating expenses;
- d. whether the customer base will follow the business to the new location;
- e. the chances of replacing lost customers and gaining new customers;
- f. whether trained employees will remain loyal and move to the new location;
- g. the financial condition of the business; and
- h. personal considerations of the business owner, i.e., age, health, personal finances.

(i) A business is forced to move and moves.

- aa. A business or the principal owner of the business is the owner of the real estate which is the subject of the taking. The owner of the real estate is entitled under federal and state constitutional provisions and applicable statutory provisions to just compensation. The owner of the displaced business will be eligible to seek additional compensation or relocation assistance payments for loss of goodwill. The business is entitled to receive the greater of the reimbursement payments provided in Connecticut's or the federal relocation assistance act.
- bb. A business is a tenant under a lease that in accordance with its terms will not terminate on commencement of eminent domain proceedings. The tenant is entitled to the benefit of its bargain negotiated with the owner of the real estate and represented by the terms of the lease agreement. The tenant is considered the owner of a leasehold interest in the real estate and under the terms of the lease entitled to receive compensation for its leasehold interest for the value of the unused portion of the lease. The business may be eligible to obtain additional compensation or relocation assistance payments for loss of goodwill. The business is entitled to receive the greater of the reimbursement payments provided in Connecticut's or the federal relocation assistance act.

- cc. A business is a tenant under a lease that terminates upon commencement of eminent domain proceedings. The tenant does not own a leasehold interest in the real estate. The business would be eligible to obtain compensation or relocation assistance payments for loss of goodwill. The business is entitled to receive the greater of the reimbursement payments provided in Connecticut's or the federal relocation assistance act and any benefit bargained for and contained in its lease agreement that is not nullified by commencement of eminent domain proceedings.

As a result of enactment of P.A. No. 07-141, Section 15, a displaced person (definition of person includes any for profit business entity), because of an acquisition under Connecticut General Statutes §8-128, §8-193 and §32-224, is entitled to relocation payments as provided under the federal Uniform Relocation Assistance and Real Property Acquisitions Policies Act ("URAA") if payments would be greater than payments under §8-268, §8-269 and §8-270. (Code of Federal Regulations (CFR), Title 49, Part 24, Subpart D Payments for Moving and Related Expenses, Secs. 24.301-306 are attached and shown as Appendix C.)

(ii) A business does not move but has suffered losses as a result of a partial taking. The business should be eligible to seek payment for loss of goodwill. Such payment may be the only payment the business is eligible to receive as applicable regulations require personal property of the property/business owner to be located on or in the real property that was acquired for any payment to be made. See CFR, Title 49, Part 24, Sec.24.301(e) "personal property only." A tenant/business owner would be able to avail itself of any benefit bargained for and contained in its lease agreement. This scenario would usually result in no relocation assistance. The business owner would have to look to the terms of its lease for relief from negative consequences of the partial taking.

(iii) and (iv) A business does not move.

The business does not move and discontinues its operations under scenarios (iii) or (iv). No profit or cash flow analysis and comparison before and after can be made. To the extent the business has goodwill, the loss is total goodwill and the business would be eligible to obtain compensation or relocation payments for the loss of goodwill. In scenarios (iii) and (iv) the business owner will be entitled to the greater of the reimbursement payments provided in Connecticut's or the federal relocation assistance act. There are two categories of payments under which a business not moving and discontinuing its operations can claim the right to payment. First, a fixed payment in lieu of actual moving and reestablishment expenses to a maximum of \$20,000, and second, actual direct losses of tangible personal property as a result of discontinuing a business or farm operation.

Types of Businesses

P.A. No. 07-207 contemplates compensation being paid to businesses displaced by eminent domain with respect to Connecticut General Statutes Chapters 132 and 588I on the basis of any gain or loss of goodwill. In neighborhoods or designated development areas almost any kind of business can exist. If the area includes waterfront the possibilities are increased. **As stated previously, the public purpose for the taking does not bear on calculation of a payment under relocation assistance law or whether just compensation is paid, and therefore, should not, as a matter of fairness, be the basis of determining which businesses are compensated for loss of goodwill and which are not.** The facts and circumstances pertaining to the individual business dictate the level of public support needed to pay the costs of moving and reestablishing a business at a new location. Calculating and paying a business owner for loss of goodwill should not be determined or dealt with differently.

In calculating goodwill one is faced with determining to what extent location has contributed to the value of goodwill. Many businesses do not directly sell products or services to the public. Nonetheless, location may be a critical factor in the success of the business. Proximity to major highways, rail, air transport or water not to mention the business's main market area all contribute to the continued well being of the business.

Examples: a. A marina must be built along the banks of a river or along the shores of Long Island Sound. It can't move to any other kind of location. Its users may be from a radius of 20 miles but the only available location to build a new marina is outside of the 20 mile radius. b. A distributor may have a local market area and a regional one in which it sells. It operates out of warehouse(s) in an older section of a city. The critical factors are twofold for this business. It needs to be close to where it currently operates because of the local market area but it also needs a low cost replacement location as low rent has provided it an advantage in the market place. All available sites will cost considerably more notwithstanding there are many to choose from. c. A manufacturer is forced to move. A significant amount of its business is producing products for five or six other manufacturers all within five miles. It also is located on a property that gives it direct access and use of a rail spur which has allowed it to have an advantage when loading and shipping products to customers in other states. This manufacturer has been in business for a long time and its equipment is not likely to do well being moved. Finding a location that is comparable within a radius of 10-15 miles of its existing plant may be very difficult and result in reductions of shipments to those businesses which were close to the old location. Obtaining financing to purchase new equipment to replace the trusty old machines adds costs not required to be paid in the current location.

Then there is the business which is part of a major fast food restaurant chain. The franchisor owns the building and an unrelated third party owns the land and leases it to the franchisor who in turn sublets the premises to the franchisee. The franchise agreement does not permit the franchisee to have rights in any condemnation awards pertaining to franchisor's leasehold interest. Franchisee has a prime location and does 2 million of sales annually. If it moves to available locations in the general area it will not

be able to duplicate the existing sales. Its sales will reduce by 20%. If it relocates out of the area sales will grow 20%. The franchisor restricts movement into certain locations including the one into which the franchisee would like to move. Because the chain advertises nationally and everyone knows its name regardless of its location, its reputation for economical quality food and service is not affected by the move and training of its employees is not an issue since the turnover of employees is great.

Then there are businesses that operate over the internet or through mail order. Should these businesses be able to seek payments for loss of goodwill if location is not a contributing factor to the success of their business operations?

California's and Wyoming's statutes help to clarify the situation. **They require the business owner to prove the loss of goodwill is caused by the taking of the property or the injury to the remainder of the property and the loss of goodwill cannot reasonably be prevented by moving or adopting procedures that a reasonably prudent business would take to preserve its goodwill. If the business owner can surmount those hurdles and prove a loss of goodwill, it is entitled to payment for its loss.**

When and Over What Period of Time Should Loss of Good Will Be Measured and Paid

Businesses required to move will have expenses and new investments that must be made at the time of the move. The ability to access money when the money is needed to pay the costs of searching for a new location, planning the move, reestablishing the business and starting afresh in the new location is critically important. Thus being able to receive relocation payments in a timely manner and, from the business owner's perspective, without going through a lot of red tape, is extremely important not only to make the process of moving more tolerable but to encourage the business owner to continue in business.

Some items not currently eligible for reimbursement under Connecticut's Uniform Relocation Assistance Act could be made eligible and capped amounts could be raised or the caps eliminated. Because the valuation process of goodwill takes into consideration the positive aspects of location, employees, old and new customers and more, increasing the amounts a business owner can receive as relocation assistance for searching and reestablishing a business could in many instances result in a decrease in the amount of the damage to goodwill thus lowering the amount that would be needed to compensate a displaced business for loss of goodwill.

Besides loss of goodwill and loss of profits, examples of items not currently eligible are: loss of trained employees and training of new employees, legal fees, additional operating expenses at the replacement location including higher rent, improvements to the new location, purchase of new fixtures, machinery and equipment, interest on amounts borrowed or soft costs associated with a move such as architect's and engineer's fees or environmental remediation. If more items were made eligible by a change in the basic state or federal statutes, then a displaced business would incur fewer expenses associated with moving and start-up at a new location. There is evidence that financial assistance up front not only helps to promote a smoother transition to a new location but also helps a business to generate more business activity at the new location sooner.

The public policy stated in Connecticut General Statutes is "the economic welfare of the state depends upon the continued growth of industry and business within the state" (CGS Sec. 8-186) and "the maintenance and continued development of the state's manufacturing sector is important to the economic welfare of the state and creation of job opportunities within the state" (CGS Sec. 32-222). Whether a business survives a move caused by government action and what the condition of a business is after a forced move should be of highest priority to all state and municipal elected and appointed officials.

The timing of the payment for loss of goodwill could be affected based on whether the business relocates and continues in business or discontinues its operations. In the latter case a determination of loss of goodwill can and should be made soon after the business closes its doors for good. Whether a business continues to operate or closes also depends upon the circumstances surrounding the creation of the development area, the speed of the process the public agency utilizes with respect to the taking of the property and/or

implementing the development. Businesses are affected when areas are disturbed by demolition and construction of other properties or roads. What might have been a reasonably easy place for customers to visit and do business can become a difficult place for both thus causing a loss of business and a decline in value before the real estate in which the business is located is taken and relocation assistance is available. Relocation assistance and other forms of compensation payable to businesses within the affected areas should be available as and when such assistance and compensation is needed.

In the case of a business that moves, it is possible to make a determination of goodwill at the time of the move however it would not be unreasonable, particularly if the payment is considered one made under Connecticut's relocation statutes and regulations, to allow the business to operate in the new location for a period of time perhaps as much as one to two years before a request for loss of goodwill is made to the public agency and the business owner's right to claim payment for such loss of goodwill is barred by law. This would allow all interested parties a look back and use of more accurate information before a determination concerning any loss or gain of goodwill is made. In the event of gain, no payment or reimbursement for loss of goodwill should be made to the business owner. Nor should government be entitled to a return of money previously paid under other classifications of URAA or be allowed to accrue rights to an offset or claim against any relocation assistance payments yet to be made to the owner or against assets of the business and/or business owner.

Again it is important to repeat that if dollar caps are lifted or eliminated or more expenses are classified or reclassified as moving expenses or new categories of eligible expenses are created, that relocated businesses would be less likely to seek payment for loss of goodwill. Enabling a business to receive a greater percentage of its moving, searching, planning, reestablishing and operating expenses will make it more likely that businesses that might otherwise discontinue their operations will move and continue in business thus fulfilling the stated public policy of economic growth for Connecticut.

If the legislature's will is to set a low, fixed amount to compensate for loss of goodwill, then the better approach would be for the business owner to be able to prove its loss of goodwill closer in time to the move because in many, if not most cases, the low, fixed amount would not compensate for the full market value of the loss of goodwill. There would be no point delaying payment of money that might be owed to the business owner and needed to move and reestablish the business.

Relocation Assistance or Just Compensation

Relocation Assistance. P.A. No. 07-207 asks the Ombudsman to study the feasibility of calculating relocation assistance for businesses displaced by eminent domain or condemnation on the basis of gain or loss of good will.

CONNECTICUT

Connecticut's Uniform Relocation Assistance Act and regulations currently provide for payment of moving expenses and search expenses (capped at \$500) to a displaced business. In addition actual losses to tangible personal property as a result of moving or discontinuing a business are paid but not in excess of what the reasonable expense of actually moving those items to a new location would cost. A business that chooses not to move or accept actual moving expense payments can receive a fixed payment equal to the average annual net earnings of the business for the past two years not less than \$2,500 nor more than \$10,000. Connecticut law does not authorize any reestablishment expense reimbursement payments. Until the passage of Public Act No. 07-141 no change in the description or amount payable of a moving expense, search expense or any other item compensable under Connecticut's Act occurred since 1975. (For a listing of reimbursable moving expenses see CFR, Title 49, Part 24 Subpart D Payments for Moving and Related Expenses, Sections 24.301(d)-(g) Appendix C.)

The federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as Amended (URAA) and regulations provide for payment of moving expenses, search expenses (capped at \$2,500) and reestablishment expenses (capped at \$10,000). Under federal law a business owner can receive payment for actual losses to tangible personal property and also receive in lieu of moving expense payments a fixed payment equal to the average annual net earnings of the business for the past two years not less than \$1,000 and not more than \$20,000. (See CFR, Title 49, Part 24 Subpart D Payments for Moving and Related Expenses, Sections 24.301-24.306 Appendix C.)

P.A. No. 07-141 Sec.15(b) provides that an agency taking property under CGS Sections 8-128, 8-193 and 32-224 shall make relocation payments as provided under the federal URAA if payments under said act and regulations promulgated thereunder would be greater than payments under CGS Sections 8-268, 8-269 and 8-270 (effective date October 1, 2007). The federal regulations are more detailed, enumerate more allowable payments and categories of payment and provide for more flexibility in administering relocation assistance. This last statement is corroborated by officials of several municipal Redevelopment and Economic Development agencies. The City of Stamford Urban Redevelopment Commission uses only the federal regulations regardless of the source of funds. Pursuant to CGS Section 8-267a all state agencies are authorized to comply with applicable provisions and any subsequent amendments of the federal URAA for the purpose of participating in a federal or federally assisted project or program.

Under both state and federal law and regulation no payment is made or provided for loss of goodwill or loss of profits, location, customers, trained employees and the like. Nor is

payment made to businesses to reimburse for capital costs incurred in relocating such as new fixtures, equipment and machinery or new leasehold improvements, or to pay for environmental remediation, site plan, architect, engineering or legal fees and the like. (See CFR, Title 49, Part 24 Subpart D Payments for Moving and Related Expenses, Section 24.301(h) Ineligible Moving and Related Expenses, Appendix C.)

FEDERAL HIGHWAY ADMINISTRATION

An important recent development is the Federal Highway Administration's (FHWA) position with respect to items which are compensable under state law but not under federal law or regulation. In instances when state law permits payments such as loss of goodwill which is not permitted under FHWA's regulations, FHWA may participate and federal funds may be used by CTDOT or other public agencies in a federally funded project or program to pay for the new item under state law. If payment for loss of goodwill, either as compensation or as a permissible relocation expense, is authorized by state law and/or regulation, all public agencies affected by the law will be obliged to make provision for and pay any amounts determined to be owed to the business owner. Not all projects of USDOT or other federal agencies permit payment of loss of goodwill such as projects of the Federal Transit Administration.

STATES OTHER THAN CONNECTICUT

Maine recently considered and rejected paying for loss of goodwill. Maine increased allowable reestablishment expense payments from \$10,000 to \$20,000. Maine increased the fixed payment in lieu of actual moving expense payments from \$20,000 to \$100,000.

New Hampshire recently increased allowable reestablishment expense payments from \$10,000 to \$100,000.

Maryland recently considered and rejected paying for loss of goodwill. Maryland increased allowable reestablishment expense payments and fixed payment in lieu of actual moving expense payments to \$60,000 or the authorized amount under the federal Uniform Relocation Assistance Act, whichever is greater.

Just Compensation. There is another approach the legislature can take to compensate businesses for losses including loss of goodwill as a result of eminent domain. That is through the payment of just compensation, no differently calculated and determined than compensation paid to the owner of the real estate acquired by eminent domain. Presently Connecticut does not authorize compensation to be paid to owners of personal property such as business assets except for losses of tangible personal property as a result of moving or discontinuing a business or farm under CGS Section 8-268(a) of the Uniform Relocation Act. The actual payment is limited to the amount it would cost to move the tangible personal property. Losses to the value of intangible assets like goodwill are specifically made ineligible for compensation of any kind.

STATES OTHER THAN CONNECTICUT

California compensates business owners for the loss of goodwill if the owner proves (i) the loss is caused by the taking of the property; (ii) the loss can not reasonably be prevented by a relocation of the business or by taking steps that a reasonably prudent person would take in preserving goodwill; (iii) compensation for the loss will not be included in payments under California's Uniform Relocation Act; (iv) compensation for the loss will not be duplicated in the compensation otherwise awarded to the owner.

The California law was enacted in 1975. A jury decides the compensation as it does in all eminent domain cases. "The section {Cal. Civ. Proc. Code §1263.510} was enacted in response to widespread criticism of the injustice wrought by the Legislature's historic refusal to compensate condemnees whose ongoing businesses were diminished in value by a forced relocation. The purpose of the statute was unequivocally to provide monetary compensation for the kind of losses which typically occur when an ongoing small business is forced to move and give up the benefits of its former location." (People ex rel. Dept. of Transportation v. Muller (1984) 36 Cal. 3d 263, 203 Cal. Rptr. 772, 681 P.2d 1340). A tenant may possess goodwill as owner of a business. A lessee is entitled to compensation for the value of its leasehold interest, if any, and any of its property taken therewith, including goodwill.

Section 1263.510 remains silent on the question of how to properly value the loss of business goodwill. California's courts do not discern any hard and fast rule that there is an exclusive method in determining the value of the loss of goodwill in eminent domain proceedings. There is no single acceptable method of valuing goodwill. Valuation methods differ with the nature of the business or practice and with the purpose for which the valuation is performed. Each case is decided on its own facts and circumstances.

No state has more experience with the issue of compensating business owners for loss of goodwill than California.

Florida, Idaho and Vermont compensate business owners for "business damages." Both Florida and Idaho require that the business be established in a location for a minimum period of years before a right to compensation accrues. **Georgia** permits the condemnee to recover business losses as just and adequate compensation for the loss of its property. **Minnesota** requires the business owner to show the "going-concern value" will in fact be destroyed as a direct result of the condemnation and the business either cannot be relocated as a practical matter or that relocation would result in irreparable harm. **Louisiana** compensates an owner to "the full extent of the loss" which includes but is not limited to the appraised value of the property and "all costs of relocation, inconvenience and any other damages actually incurred by the owner as a result of eminent domain." The loss of business and replacement costs are compensable items of damages in such cases. The phrase, "full extent of the loss," is in Louisiana's constitution, statutes and court holdings. Other states that compensate business owners for loss of goodwill are **Wyoming, Ohio and South Dakota**.

Methods of Calculating Business Value and Goodwill

In proposing methods to calculate goodwill it is useful to know how Connecticut's courts approach the issue of valuation with respect to real estate and closely held businesses. As recently as September 25, 2007 our Supreme Court restated the principles in *City of Bristol v. Tilcon Minerals, Inc.* (SC 17305 and 17306).

“In actions requiring...a valuation of property, the trial court is charged with the duty of making an independent valuation of the property involved. No one method of valuation is controlling.” *Sheridan v Killingly*, 278 Conn. 252, 259 (2006). In determining the value of the property taken, the trier arrives at its own conclusions by weighing opinions of the appraisers, the claims of the parties, and its own general knowledge of the elements going to establish value, and then employs the most appropriate method to determine the damages that result from the taking....The trial court has the right to accept so much of the testimony of the experts and the recognized appraisal methods which they employed as he finds applicable;...” *Pandolphe's Auto Parts, Inc v Manchester*, 181 Conn. 217, 220-22 (1980).

“It is generally recognized that closely held corporate stock cannot be valued reasonably by the application of any inflexible formula. *Snyder's Estate v. United States*, 285 F.2d 857, 861 (4th Cir.1961); *O'Malley v. Ames*, 197 F.2d 256, 258 (8th Cir.1952); annot., 22 A.L.R.Fed. 31, 44 et seq.” *Turgeon v Turgeon*, 190 Conn. 269, 276 (1983).

California courts employ the same reasoning when deciding loss of goodwill cases. “..there is no single acceptable method of valuing goodwill. Valuation methods will differ with the nature of the business or practice and with the purpose for which the evaluation is conducted.” *People ex rel. Dept. of Transportation v. Muller*, 36 Cal. 3d, 263, 271.

Business valuation experts sometimes refer to goodwill of the business as “enterprise goodwill.” Its existence is based on the fact that customers return to a business based on its location, staff, facilities and reputation. It adheres to the business not considering the presence of any specific individual. It is a transferable and thus a saleable asset. Before determining the goodwill of a business, the value of the business must be determined.

In valuing a business, there is no single, standard, or specific mathematical formula. The particular approach, and the factors to consider, will vary in each case. Historically, in valuing a business, the three generally accepted approaches are: (a) the asset-based approach, (b) the earnings-based approach, and (c) the market-based approach. Fundamental to the adoption of a particular methodology is the assumption, whether the entity is to be viewed on a going-concern basis or a liquidation basis. Under liquidation an asset-based approach would be used.

Typically a business is valued under the appraisal premise that the business will continue as a going-concern business operation. Going-concern is an assumption that a business enterprise will have a continuing existence for the foreseeable future, and is not expected to be liquidated.

Outline of the Asset-Based Approach

The asset-based approach is used either (a) where asset values constitute the prime determinant of business worth depending on the nature of the operations (i.e., the hypothetical purchaser in the marketplace is looking strictly to the business' underlying tangible assets, such as vacant land, a portfolio of marketable securities, plant capacity, etc.) and not the business per se, (b) where liquidation is contemplated because the business is not viable as an ongoing operation, or (c) where the business being valued is a going-concern but there are no earnings or cash flows to capitalize.

Where it is concluded that the asset-based approach is applicable, each asset and liability appearing on the balance sheet is written up or down, as the case may be, to its current or fair market value as of the valuation date.

Outline of the Earnings-Based Approach

The earnings-based approach is appropriate where the business being valued is earning a fair return on its capital employed and the hypothetical purchaser wishes to acquire the future indicated earnings generated by the enterprise. That is, the earnings value of a going-concern is based upon the yield to a potential purchaser.

It is widely recognized that the earning power of a going-concern business is usually greater than the value of the individual assets owned by it. This is because the value of the assets can be realized only if the business is liquidated, which process often reduces asset values substantially. The earnings approach, therefore, suggests the continuation of business operations, and is based upon the purchaser's desire to acquire, or to share in, the earning power of the enterprise.

In applying the earnings method, the reported profits, usually for the last three to five years (which should generally serve as a guide to the future), are adjusted with respect to (as appropriate):

- Extraordinary and non-recurring items that would otherwise distort the estimate of future profits;
- Non-arm's length expenses which are of an uneconomic nature;
- Consistency with the operating conditions that are expected to prevail; and
- Additions to, or reductions in, capital employed.

Where there is a definite trend in the revenue pattern and adjusted operating results, the normalized (maintainable) earnings are generally weighted (in order to place more emphasis on the most recent years) to arrive at a likely trend of annual, future (maintainable) earnings. In situations of significantly rising trends or recently changed circumstances, it may be appropriate to consider only the latest financial data available immediately prior to the valuation date. These adjusted results are then capitalized by an appropriate rate of return that would be required by a purchaser.

Outline of the Market-Based Approach

Market transactions in businesses, business ownership interests, or securities can provide objective, empirical data for developing value measures to apply in business valuation. The development of value measures from guideline companies is generally considered for use in the valuation of businesses, business ownership interests, or securities to the extent that adequate information is available. Guideline companies are usually public companies that are actively traded and provide a reasonable basis for comparison to the relative investment characteristics of the company being valued.

Closely held businesses, on the other hand, have limited markets where businesses are bought and sold. Transaction data for closely held businesses is also used in determining the value of a subject company by applying the appropriate multiples derived from these transactions to the appropriate benefit stream. The market approach identifies guideline sale transactions of businesses that are comparable to the subject business. Goodwill is sometimes expressed as a percentage of the transaction price or annual revenues. These pricing multiples are applied to the subject company to calculate a value for the subject goodwill.

Calculating Goodwill Value

There are two generally prescribed methodologies for calculating the goodwill value of a business:

Capitalized Excess Earnings Method estimates the required amount of income an investor would expect to receive given the risks involved with the business. It calculates the difference between actual economic earnings of the subject business and the required return of the business's net identified assets. It capitalizes the excess income as an annuity in perpetuity at an appropriate capitalization rate. The value in excess of the business's tangible assets and identifiable intangible assets is generally considered to be goodwill.

Residual Method values goodwill as the total business enterprise value (as determined by one of the approaches described above) less the value of tangible assets and identifiable intangible assets. The residual method is used by the Internal Revenue Service when determining the goodwill value of a business.

Taxation

No relocation payment received by a displaced person under Part 24 of CFR, Title 49, Sec. 24.209 of the URAA regulations shall be considered as income under the Internal Revenue Code except for any federal law providing for low-income housing assistance. Goodwill is considered a capital asset. Payments made for the loss of goodwill might be considered taxable and subject to federal and state income tax laws and regulations. The State of Connecticut should exempt the payment from state income taxes.

Conclusion

In determining the loss of goodwill, one must consider that the business can suffer a temporary loss of economic earnings and profits or a permanent loss of business value. A temporary loss of goodwill can be restored over time at the new location thus a calculation of such a loss is sensitive to the time at which such loss is computed. In both instances, temporary and permanent, utilization of the market approach or the income approach or a variation of these two methods would in most situations provide adequate means to calculate the loss of goodwill.

Summary of the process of valuing and calculating gain or loss of goodwill: To determine whether there is a gain or loss of goodwill

1. An independent valuation of the loss or gain of goodwill is performed by a qualified appraiser.
2. No one method of valuation is controlling in determining the value of the business.
3. The three generally accepted methods of valuation of a business are: a. the asset-based approach, b. the earnings-based approach, and c. the market-based approach.
4. Calculating the goodwill value of the business utilizes one of two commonly recognized methods: a. capitalized excess earnings method, b. residual method, or c. a variation of a. or b.
5. The person charged with making an impartial decision as to the value arrives at his/her opinions by employing the most appropriate method for determining gain or loss of goodwill.

Using Relocation Payments to Mitigate Adverse Consequences of Forced Moves

Goodwill of a business is established over time. Location, trained employees, loyal customers, involvement in neighborhood or local activities, reputation for good products and services all contribute to the goodwill of a business. Much of it can be lost or damaged by a move forced by eminent domain. The goal of any new legislation should be to treat businesses forced to move by eminent domain fairly through compensation paid for loss of goodwill and/or relocation assistance payments that are designed to alleviate the difficulties businesses experience in making such moves and preserving goodwill.

Under CGS 8-266 et seq. the Uniform Relocation Assistance Act (the “Act”) businesses are able to recoup some of their moving and set up expenses in a new location. Some of the out of pocket expenses and new capital costs displaced businesses face could be reduced by more generous relocation payments and enlargement of categories under the Act and regulations. Particularly businesses that elect to choose a fixed payment in lieu of moving, or pay large search and reestablishment expenses will be compensated more fairly if limits now existing under the law are raised or eliminated.

Approximately 52% of Connecticut’s businesses have fewer than five employees. Fully 99.7% have fewer than 500 employees. Virtually all of Connecticut’s businesses are susceptible to market conditions locally, regionally, nationally and in today’s global economy internationally. Most of these businesses are never too far away from financial difficulty or even ruin and they require day to day nurturing by ownership to sustain their existences. When business operations are interrupted or worse disrupted by state and local government policies concerning a fundamental issue such as location, the consequences can be negative to the communities and state as well as the affected businesses, their owners and employees.

Most of the smallest businesses forced out of their present locations would be more likely to avail themselves of more generous moving expense and fixed payment provisions under the law than loss of goodwill payments which would require the hiring of valuation experts to determine. Businesses that can not justify the cost of a business valuation appraisal or additional legal fees and with little or no accumulated goodwill will benefit more from increases in fixed payment and other payment categories such as greater search and reestablishment expense reimbursements.

Suggestions made in the report with regard to increasing moving expense allowances or lifting or eliminating caps or adding more items to the list of eligible relocation expenses are not intended as a substitute for paying a business for loss of goodwill but in certain cases would likely result in reduction of some of the adverse consequences of a forced move thus reducing the potential for loss of goodwill claims.

As stated earlier in this report many states have recently increased the amounts of fixed payments in lieu of actual and direct moving expense reimbursements, search and reestablishment expenses. **Maine** has increased allowable reestablishment expense payments from \$10,000 to \$20,000 and the fixed payment in lieu of actual moving expense payments from \$20,000 to \$100,000. **New Hampshire** recently increased allowable reestablishment expense payments from \$10,000 to \$100,000 and **Maryland** increased allowable reestablishment expense payments and fixed payment in lieu of actual moving expense payments to \$60,000 or the authorized amount under the federal URAA, whichever is greater.

In **Wisconsin** owner occupied businesses are eligible to receive \$50,000 in addition to allowable reestablishment expenses to relocate to a comparable replacement site and tenant owned businesses \$30,000 over allowable reestablishment expenses. Wisconsin has a requirement that before a business can be forced to move a comparable replacement business property must be available and it is the responsibility of the condemning authority to assist in locating the new location. **Ohio** has added a category of payment to their general laws as a form of compensation (not relocation assistance) for loss of goodwill and capped it at \$10,000. A small amount of added compensation such as what Ohio has provided is not nearly as helpful as the larger increases provided for by Maine, New Hampshire, Maryland and Wisconsin under their respective relocation acts. The costs of establishing the value of goodwill and calculating the loss or gain thereof make paying \$10,000 as compensation an unacceptably low amount and of no practical significance.

Summary:

1. Loss of goodwill should be an allowable moving expense deemed eligible for reimbursement under Connecticut's Uniform Relocation Act. No cap should be placed on the amount of payment. However, no duplication of payment should be allowed or made under state and federal relocation acts and regulations or based on compensation from other government sources paid to the displaced business owner. The business owner should take all reasonable steps to avoid loss of goodwill.
2. Methods of calculating loss of goodwill consistent with recognized standards of business valuation appraising should be used by businesses and agencies to determine gain or loss of goodwill.
3. Existing eligible categories of payments such as search, reestablishment and fixed payment in lieu of moving expenses should be enlarged or payment caps removed to enable businesses to pay the reasonable costs of moving, sustain profitability through the move and to keep Connecticut competitive with other states, including several of our neighboring states that have raised caps from \$10,000 to \$100,000.
4. Assistance with the purchase of new capital equipment and carrying costs such as higher rent and interest costs should be considered eligible categories for payments to lessen the negative affect on profits resulting from relocation.

U.S. Department of Transportation, Federal Highway Administration National Business Relocation Study and Interstate Route I-195 Business Relocation Pilot Project, Providence, Rhode Island

The USDOT, FHWA produced a report in 2002 based on pilot programs designed to provide additional relocation assistance especially reestablishment expenses in at least nine locations. One such program was in Providence, Rhode Island. The pilot plan was approved in March 2000. In planning the project both Rhode Island's Department of Transportation (RIDOT) and the City of Providence were concerned that the relocation amounts payable under the federal Uniform Relocation Assistance Act (the "URAA") were inadequate to successfully relocate businesses and that business failures or relocations out of Providence or possibly Rhode Island would occur.

The program provided for:

- a. Waiver of limits on search expenses.
- b. Reclassification of many reestablishment expenses as ordinary and necessary expenses of moving.
- c. Waiver of monetary limits with respect to reestablishment expenses.
- d. With respect to: (i) repairs or improvements to the replacement real estate required by federal, state or local law, code or ordinance, (ii) modifications to the replacement real estate to accommodate the business operations or to make it suitable for conducting the displaced business, and (iii) estimated increased costs of operations in the first two years at the replacement site, total amounts payable were limited to \$75,000.
- e. One time assessments for anticipated heavy utility usage levied against the replacement property, a payment not to exceed \$25,000.
- f. Remaining reestablishment expenses not reclassified as moving expenses for purposes of this pilot program only, a payment not to exceed \$10,000.
- g. Costs incidental to the purchase of the replacement property may be paid from the \$75,000 allowed for reclassified expenses set forth in d. above.

The program did not provide for any payments for loss of goodwill or profits or loss of trained employees. Also excluded were physical changes to the replacement property not specifically permitted as indicated above, interest on money borrowed to make the move or purchase the replacement property, rent at the replacement location and purchase of capital assets and manufacturing materials and production supplies.

Similar projects were tried in California, Florida, Louisiana, North Carolina, New Jersey, Ohio, Pennsylvania (Pittsburgh) and Wisconsin. Interviews with business owners participating in the pilot program and responses to written questionnaires were quantified and reported. All 50 state Departments of Transportation were surveyed. (A copy of the USDOT, FHWA, National Relocation Study is attached to this report as Appendix D.) A large majority of business owners felt they were not treated fairly by the taking agency. By even larger numbers the businesses reported decreases in business. State agencies also reported the need to provide businesses with increased amounts. Unfortunately, no questionnaire result for Rhode Island is available.

Surveys conducted were focused on three areas, 1) the usefulness of advisory assistance, 2) the adequacy of search expense reimbursements, and 3) the adequacy of reestablishment expenses. Generally the responses indicated: advisory services were considered fair to poor, search expenses were generally considered adequate although many respondents said they were not adequate, and reestablishment payments were almost universally considered inadequate.

Some of the suggested recommendations are: the search expense cap should be raised, the reestablishment cap should be raised, increase the flexibility of the reestablishment payment to meet particular real costs now excluded from the list of eligible expenses, increase the amount of the fixed payment in lieu of actual moving expense payment and add flexibility to the guidelines.

Results gathered from questionnaires showed that respondents felt payments were inadequate and, in particular, there was not enough assistance provided with (in no particular order):

- a. higher rent costs
- b. floor coverings and lighting at the new location
- c. loss of goodwill
- d. advertising costs
- e. code related modifications to the replacement site
- f. loss of revenue
- g. contractor and engineering expenses
- h. pay for time and expenses incurred with searching for a new business location

Other results of note reveal more than half of the respondents felt the public agency failed to provide adequate references, contacts and counseling to minimize hardships. **78% experienced a decrease in business activity and profits because of location.** 60% felt overall the payments were inadequate.

A sampling of repetitive comments (in no particular order):

- a. provide more assistance with rent increases for at least two years,
- b. allow businesses more time to vacate the displacement site up to six months,
- c. increase the cap on the remaining reestablishment expenses,
- d. treat businesses that were tenants as well as those that were real estate owners,
- e. provide at the agency's expense independent third party real estate experts to assist in locating replacement sites, and
- f. make payments in a more timely manner.

Since no payment or exception for loss of goodwill was made, the pilot program's purpose and results corroborate the fact that insufficient sums of money are paid to businesses required to move as a result of eminent domain including but by no means limited to loss of goodwill.

Strategies

Connecticut has not revisited its own version of the Uniform Relocation Act or relocation regulations in more than 30 years and as a result bringing the payment process current requires more of an adjustment than would have been the case if the payment process had been reviewed periodically over the last 30 years. There is a public interest in seeing that businesses forced to move as a result of eminent domain are treated fairly which means paid adequate sums to assist with the move and compensation for losses to tangible and intangible personal property. From the perspective of the business owner the biggest issue in relocating after finding a suitable place is the cost of the move and setup at the new site. From the perspective of the public agency engaged in acquiring properties and paying to relocate businesses and other occupants cost is a major issue.

Municipalities have to consider how they will finance new development projects if there are more costs involved. The State of Connecticut will have to do its part by making grants and loans available to pay some or all costs not covered by federal funding or private capital. However, more money does not constitute a different strategy. More money simply allows for the way things are currently done to continue.

Municipalities must decide whether and to what degree to use eminent domain to redevelop distressed properties and areas. Municipalities are not mandated to take private property, especially not for the purpose of engaging in economic development. Using eminent domain to assemble hundreds of properties into one or taking one to complete what a private developer can not accomplish only when the public interest outweighs the private interest is an issue that needs thorough and new discussion.

Municipalities should rethink the process through which development projects are conceived and carried out minimizing the need for use of eminent domain whenever possible. Costs associated with eminent domain such as relocation assistance including payment for loss of goodwill would be considerably less if there was less frequent use of eminent domain in planning and carrying out municipal development projects. More municipalities should seek to relocate businesses within the development area or close by or permit property/business owners to participate as mini-developers of their own sites. Municipal land use regulations should be less restrictive and permit more and varied uses in areas in need of redevelopment.

Municipalities engaged in development projects using eminent domain powers to acquire and assemble properties should seek reimbursement to pay additional costs of relocation assistance including loss of goodwill from federal and state agencies responsible for funding municipal programs and projects and from private and non-profit funding sources such as developers or other private financiers of such projects. The portions of the cost not raised from other sources would of necessity be borne by the municipalities.

Public Act No. 07-141 prohibits municipalities from engaging in redevelopment or economic development projects under Chapters 130, 132 or 588l where the primary reason is increasing local tax revenue. Yet virtually every project under construction or

consideration has as an underlying purpose increasing revenues of the municipality. To the extent the municipality benefits from the increase in tax revenue, there is a means to recoup costs borne by the municipality.

Financing Preservation of Goodwill of Location-Dependent Businesses by Means Other Than Payment of Compensation for a Taking or Relocation Assistance

The General Assembly could consider creation of a tax increment financing program for goodwill development for businesses dislocated by eminent domain considered location-dependent businesses. Location-dependent businesses, i.e., those businesses, typically among the smallest, that have strong neighborhood and community ties and depend on the neighborhood for their customer base, and have been forced to move out of the neighborhood and area should be eligible to receive grants from a self-sustaining fund established solely for the purpose of goodwill development in the replacement location. The ability to retain the existing customer base while building a new customer base is critical to the survival of a location-dependent business. Grants from such a fund would not be considered compensation for the taking or relocation assistance. They would be in the nature of business development grants and could be administered or reviewed by a state agency such as Department of Economic and Community Development or Connecticut Development Authority.

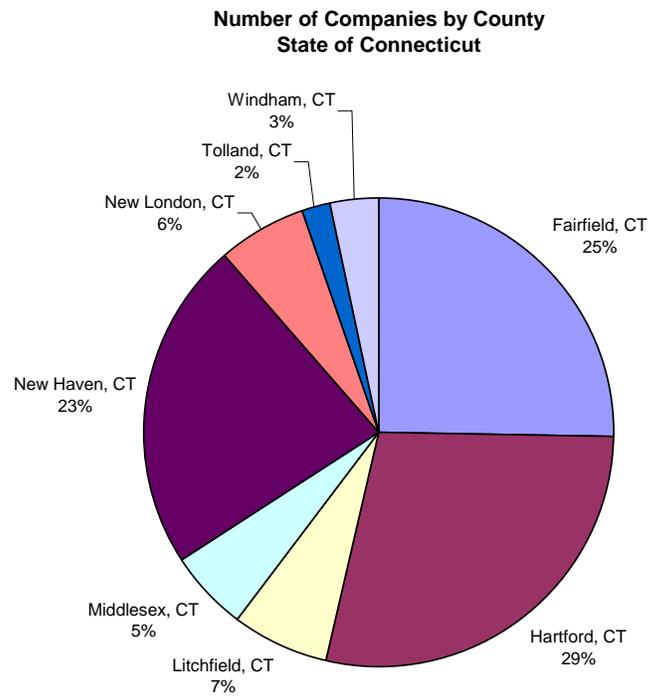
The fund from which the "goodwill development" grants are made would be reimbursed over a term of years from future sales tax and other business and corporate tax revenues paid to the State of Connecticut. These tax revenues from successfully relocated businesses are truly incremental because in most instances the site from which these businesses have been relocated will be reoccupied by businesses capable of generating significant economic activity and tax revenues in their own right. If the business shuts down because of the inability to preserve its old customer base and develop a new customer base at the replacement location, i.e., goodwill, that revenue base will be lost. The only alternative to a successful relocation of business where location-dependent goodwill is essential is the termination of the business and the concomitant loss of employment, economic multipliers and various types of tax and fee revenue. Thus the former location continues to contribute economically to the municipality and the state and the successfully relocated business provides incremental additional revenue that would otherwise be lost if its business operations ceased.

The tax increment financing program discussed above is not meant as a substitute for payment of compensation or relocation assistance for loss of goodwill. Fairness to business owners affected by municipal and other government projects involving eminent domain is the principal reason for addressing the long standing failure to compensate businesses for their losses. A tax increment financing program is another way for Connecticut to carry out the oft stated public policy of enlarging the private economic sector and creating more jobs and a higher standard of living for a larger segment of the population.

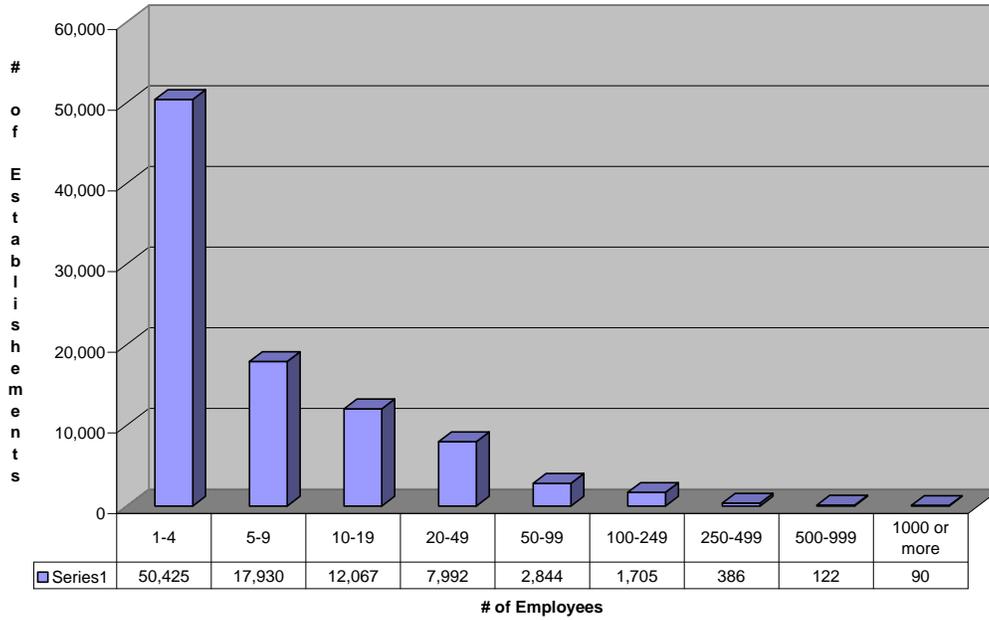
For other tax increment financing programs see www.ctbrownfields.com and <http://www.ctcda.com/images/customer-files/Incremental-financingv2.pdf>.

Appendix A

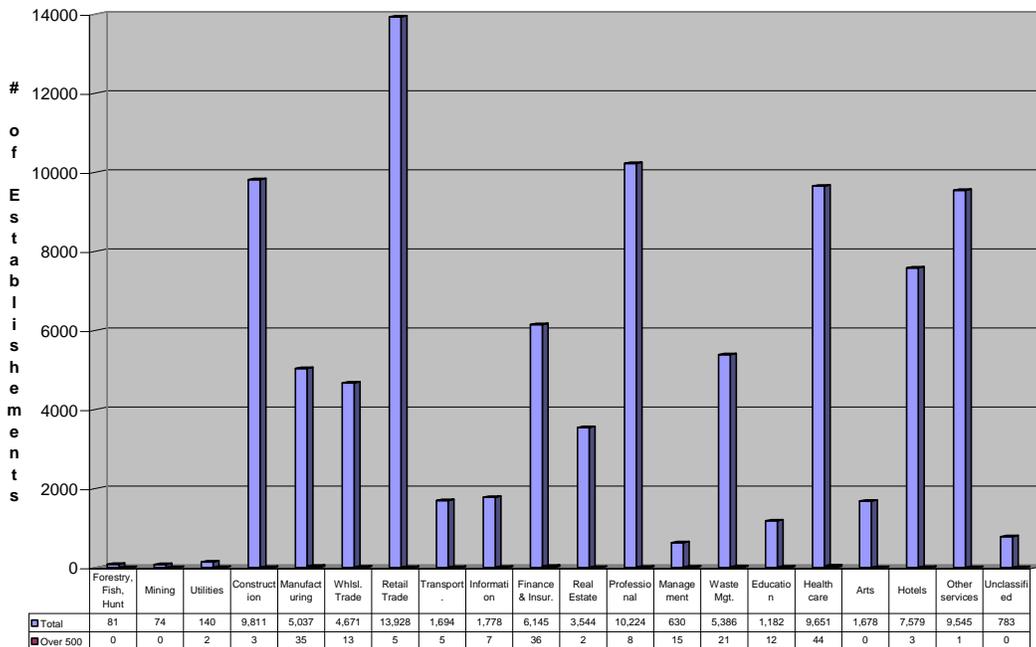
U.S. Census Bureau, CT, Major Industry, 2005 County Business Patterns and Charts



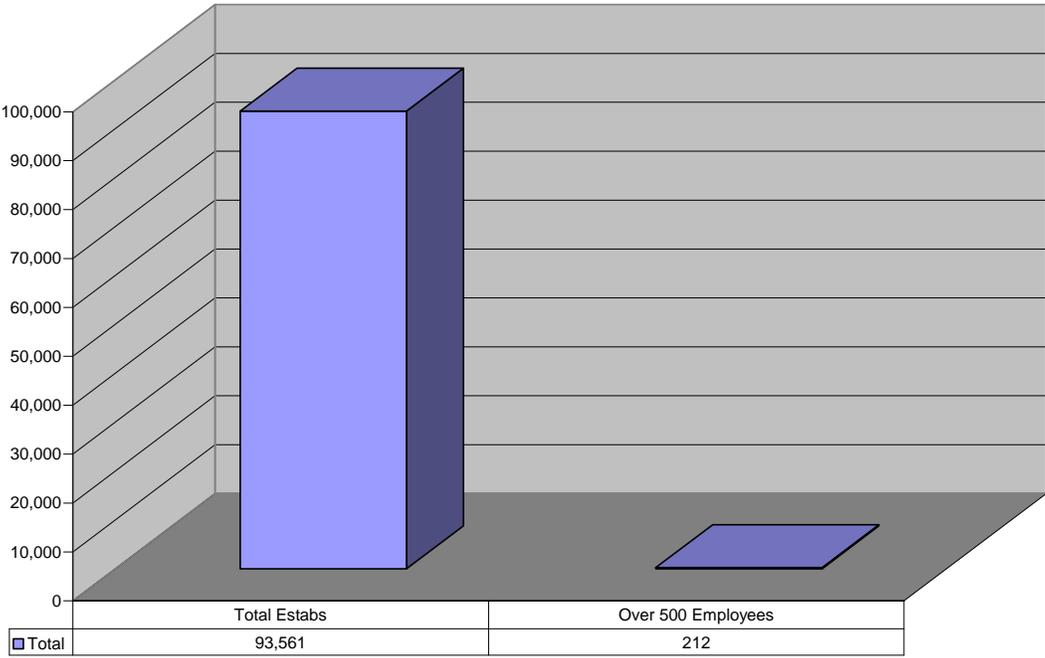
**Companies by Employee Size
State of Connecticut
2005**



**Establishments by Industry and Size
State of Connecticut
2005**



State of Connecticut Total Employers & Those With Over 500 Employees



Appendix B

Examples of Definitions of Goodwill – Treatises, Statutes and Case Law

(Examples of Definitions may be found by clicking on the Goodwill Study Committee tab on the Home Page of the website and then click on Definitions.)

Appendix C

**Code of Federal Regulations,
Title 49, Part 24, Subpart D,
Payment for Moving and
Related Expenses, Secs. 24.301-
306**

(The link to the Code of Federal Regulations is on the Home Page of the Property Rights Ombudsman's website.)

Appendix D

**U.S. Department of
Transportation, Federal
Highway Administration,
National Business Relocation
Study, 2002**

(You may access the U.S. Department of Transportation Study at
<http://www.fhwa.dot.gov/realestate/nbrs2002toc.htm>)

Appendix E

**California Highway Manual
Business Goodwill
Appraisals, Sec. 7.17.00.00**

**Loss of Goodwill, Sec.
8.15.00.00**

**Loss of Goodwill
Procedures, Sec.
10.05.22.00**

Forms - Applications

(You may access the California Highway Manual at
<http://www.dot.ca.gov/hq/row/rowman/manual/>)