



Penn Station, transit oriented development and the looming threat of eminent domain - Part 1 - by Jennifer Polovetsky

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We keep hearing about the Penn Station expansion project in the news. Every day, we see a new article about approvals for the project, what will be built, who will finance it and whether or not it is a good idea. But what about the properties that are currently on that land? What happens if those owners don't want to sell to the MTA or Empire State Development or their tenants don't want to move? Eminent domain happens. And the powers that be in New York State have made it clear that they are not afraid to use it in order to expand Penn Station. The first article in this two-part series will explain the concept of eminent domain and potential recourse that property owners have.

What is Eminent Domain?

Eminent domain (also known as condemnation) can happen to almost any property owner or business tenant. Forced takings of property for public use are not uncommon and can leave property owners and businesses with uncertain futures. Condemnation is the formal act of the exercise of the power of eminent domain to transfer title to the property from its private owner to the government. The use of the word "condemnation" in eminent domain actions should not be confused with its alternate use (i.e., condemned), in the sense that a property is uninhabitable.

Private property can be condemned via eminent domain by the government so long as it is taken for a public use. In New York, a public use can be anything from building a bridge or expanding a road, to building a school or alleviating urban blight. Oftentimes, and especially lately with the passage of the Infrastructure Act, transit expansion and transit-oriented developments have fallen under the ambit of projects where eminent domain will be involved. Current examples of this are the Penn Station expansion project and the Ronkonkoma Hub project in Long Island.

Can I stop them from taking my property?

Technically, maybe – but it is not easy. An eminent domain process can only be stopped if it is found that the property does not meet the criteria for the proposed public use or that the condemning authority did not follow proper procedure. In New York, there is a small window of time (about 30 days from the conclusion of the public hearing process) within which an affected property owner may file what is called an EDPL 207 challenge in the Appellate Division. These challenges are costly and often unsuccessful, since New York has very broad eminent domain laws.

Condemnation is considered a “forced sale” to the government. Even if you do not wish to willingly sell your property to the government, they will seize it if they need to. Under the EDPL, however, you are entitled to receive just compensation for your loss once it has been taken by eminent domain. The “justness” of the compensation is usually the main issue in eminent domain, and the subject of every claim filed for additional compensation.

Part two of this series will appear in the October 11th edition of the New York Real Estate Journal.

Jennifer Polovetsky is the co-chair of the eminent domain practice at Herrick, Feinstein LLP, New York, N.Y.

New York Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540