

The Power of Eminent Domain: A Tool for Creating Housing and Community Revitalization

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Municipalities across New York face mounting pressure to address housing shortages, revitalize aging neighborhoods, and encourage responsible economic development. One tool that government has historically used to advance these objectives is the power of eminent domain—the authority to acquire private property for public purposes upon payment of just compensation.

Although the use of eminent domain in redevelopment projects can be controversial, both federal and New York courts have long recognized that projects aimed at eliminating substandard conditions, creating housing that will serve community interests, and promoting economic vitality serve legitimate public purposes and justify the use of the eminent domain power.

Understanding the legal framework governing these acquisitions is essential for municipal officials and practitioners involved in redevelopment planning. Federal constitutional doctrine, New York's statutory procedures, and a substantial body of case law together establish the standards under which government may acquire property to facilitate affordable housing and urban revitalization initiatives.



The Constitutional Foundation of Eminent Domain

The power of eminent domain is an incident of sovereignty. The provisions of the federal and New York Constitutions requiring payment of just compensation are limitations upon the use of that power. Thus, the Takings Clause of the Fifth Amendment to the U.S. Constitution provides that private property shall not “be taken for public use, without just compensation.” Through the Fourteenth Amendment, this limitation also applies to state and local governments.

The two basic requirements governing the exercise of eminent domain are that the taking

must be for a “public use,” and the property owner must receive just compensation. Courts interpret the “public use” requirement broadly, and do not require that the public directly use or access the property.

Federal Case Law Applying the “Public Use” Limitation

Modern public-use doctrine is largely shaped by three U.S. Supreme Court decisions that collectively affirm the authority of government to employ eminent domain in connection with redevelopment and housing policy.

In *Berman v. Parker*, 348 U.S. 26 (1954), the court upheld the District of Columbia’s use of eminent domain to redevelop a blighted area. The redevelopment plan authorized the taking of properties that were not themselves blighted to facilitate a comprehensive redevelopment strategy. Writing for a unanimous court, Justice Douglas emphasized that once the legislature determines that an area requires redevelopment, the judiciary should defer to the legislative judgment regarding the means to achieve that objective.

The court explained that eliminating blight and improving urban conditions constituted valid public purposes. The fact that private enterprise was a means chosen by Congress to effectuate the development plan did not render it improper. The fact that not every property to be acquired was blighted did not prevent its acquisition.

Several decades later, the court extended this reasoning in *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229 (1984). There, the court upheld a Hawaii statute designed to reduce concentrated land ownership by allowing the government to condemn property from large landholders and transfer it to residential tenants. The court reiterated that the public-use requirement is satisfied when the taking is “rationally related to a conceivable public purpose.”

Perhaps the most widely debated decision in this area is *Kelo v. City of New London*, 545 U.S. 469 (2005). In that case, the Court upheld a municipality’s use of eminent domain to acquire property for an area development plan that included commercial, residential, and research facilities. The court described the project area as having experienced decades of economic decline, partly due to the closure of a naval base that employed over 1,500 people, and having an unemployment rate nearly double that of the State and a population at its lowest since 1920.

The redevelopment plan involved transferring land to private developers for development of residences, a hotel, retail uses, and other uses. The court concluded that the comprehensive redevelopment program served a public purpose by promoting economic development and job creation. (The authors’ firm represented an amicus curiae in that case).

While *Kelo* generated significant public controversy and prompted some states to adopt additional restrictions, the decision reaffirmed that redevelopment and economic revitalization initiatives qualify as valid public uses under the federal Constitution even without a blight finding.

New York’s Statutory Framework for Eminent Domain

In New York, the procedures governing the exercise of eminent domain are set forth in the New York Eminent Domain Procedure Law (EDPL). The statute establishes a process to provide affected property owners with an opportunity to be heard prior to authorizing the use of the eminent domain power.

Before acquiring property through eminent domain, a condemnor generally must conduct a public hearing to explain the project, its public purpose, and its potential environmental and economic impacts. Following the hearing, the

condemnor must make formal findings and determinations that describe the public use or benefit of the project, and its general effect on the surrounding community.

The EDPL also provides a mechanism for judicial review. Property owners may challenge a condemning authority's determination through a proceeding under EDPL §207, which is typically brought in the Appellate Division. The court's review is narrow, focusing on whether the agency complied with statutory procedures and environmental laws, and whether the project serves a public use, benefit or purpose. So long as the acquisition is not palpably without reasonable foundation, courts defer to the decision to condemn.

New York Case Law on Public Use

New York courts have repeatedly addressed the application of the public-use standard in redevelopment projects.

A prominent example is *Goldstein v. New York State Urban Development Corp.*, 13 N.Y.3d 511 (2009), which involved the use of eminent domain in connection with the Atlantic Yards project in Brooklyn. Property owners challenged the takings, arguing that the project primarily benefited a private developer.

The New York Court of Appeals rejected the challenge, holding that the redevelopment plan—which included affordable housing, infrastructure improvements, and economic development—served a legitimate public purpose. The court emphasized that the elimination of blight and promotion of economic development have long been recognized as valid public uses.

Similarly, in *Kaur v. New York State Urban Development Corp* (UDC), 15 N.Y.3d 235 (2010) (where the authors' firm represented the condemnor), the Court of Appeals upheld the use of eminent domain to redevelop a deteriorated area surrounding Columbia University's Manhattanville

campus. Although the project involved transferring land to a private institution, the court found that the redevelopment plan was supported by extensive findings of blight and economic stagnation.

Together, these cases underscore that New York courts will generally uphold redevelopment takings where the condemning authority demonstrates a rational basis for concluding that the project will eliminate blight, stimulate economic activity, or otherwise advance public goals.

Urban Renewal Under Article 15 of the General Municipal Law

In some municipalities, broad redevelopment initiatives are undertaken pursuant to the Urban Renewal Law, codified in New York General Municipal Law Article 15. This statute provides a comprehensive framework allowing municipalities to address deteriorated or underutilized areas through coordinated planning and redevelopment.

Under Article 15, a municipality may designate an area as "substandard or insanitary" after conducting studies and making formal findings regarding physical deterioration, economic distress, or other conditions indicative of blight. Once such an area is identified, the municipality may prepare an urban renewal plan setting forth proposed land uses, redevelopment objectives, and implementation strategies.

The statute authorizes municipalities to acquire property within the designated area, including by eminent domain. After acquiring properties, the municipality may convey or lease parcels to private developers pursuant to redevelopment agreements that are consistent with the plan.

Examples of Use of Eminent Domain in Support of Affordable Housing

In the 1990s an early initiative in support of affordable housing was conducted by the HELP USA organization (originally "Housing Enterprise for the Less Privileged"). HELP undertook

development of housing in smaller scope projects coordinated with the UDC and New York City at a time when a housing emergency had been declared in the City.

One such project was the HELP 13th Street Permanent Housing for Homeless Families Project that created urgently needed apartments and community facility space for families residing in shelters and families at risk of becoming homeless. Eminent domain was used to acquire the land needed for the project, which avoided time-consuming land use review procedures. (The authors' firm represented the condemnor, UDC).

Another initiative where eminent domain was used to create housing involved UDC acquiring properties for the development of the Long Island City waterfront. The area was largely industrial and contaminated when the project began but was transformed into a thriving community with eleven residential buildings providing over 4,600 units of housing, public schools and parkland. (The authors' firm represented the condemnor in a valuation trial related to the project).

Eminent domain has been used in large-scale and smaller-scale projects that have created housing, and it is not necessary that properties be abandoned or deteriorated for eminent domain to be used to facilitate redevelopment projects.

Additionally, redevelopment projects often combine affordable housing with commercial or

community facilities, creating mixed-use districts to stimulate economic activity while addressing housing needs. When these initiatives are implemented pursuant to comprehensive plans and supported by detailed findings of public benefit, they are generally consistent with both federal and state public-use standards.

Legal and Policy Considerations

Municipalities seeking to rely on eminent domain should adopt careful planning processes and maintain robust public engagement. Detailed studies documenting blight, economic distress, or housing shortages can strengthen the factual foundation for redevelopment initiatives.

From a legal perspective, municipalities should ensure strict compliance with the procedural requirements of the EDPL and other applicable statutes. Thorough findings describing the public purposes served by a project can be critical in defending the project against judicial challenges.

Conclusion

Eminent domain remains a powerful instrument of municipal redevelopment policy. Legal precedents recognize that acquisitions designed to eliminate blight, promote economic development, or advance housing policy may satisfy the public-use requirement of the Constitution.

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