

When Partial Takings Become Complete

The New Jersey Turnpike will be widened between Interchanges 6 and 9, including widening the existing roadway from three to six lanes in each direction between 8A in Monroe Twp. and 6 in Mansfield Twp. The Authority also intends to widen the Garden State Parkway between mileposts 30 and 80. Other road projects are occurring on local, county and state roads. Many road-widening projects

require that some private property be purchased or condemned under the power of eminent domain.

As a general rule, a property owner is entitled to just compensation for the value of property taken through eminent domain. If the entire property is acquired, the general measure of compensation is fair market value. However, the matter becomes complicated when only a portion is taken in what is referred to as a "partial taking."

In a partial-taking, the owner is entitled to be paid for the value of the property taken and any damage to the property they retain, referred to as the "remainder." Partial takings are generally more complicated than full taking since they require more thorough analysis of the impact on the remainder which may have lost parking, access, highway views and certain future land use rights.

However, what happens when the road widening causes the highway to be so close to the buildings that the owner is

forced to close its business and move, or is being so disrupted that operating the business is problematic? Can the property owner force the state to acquire the balance of the property to have a complete taking? The answer depends on whether the value of the remaining property is essentially zero.

The legislature passed a law in 1971 stating, "if as a result of a partial taking of property, the property remaining consists of a parcel or parcels of land having little or no economic value, the condemnor, in its own discretion or at the request of the condemnee, shall acquire the entire partial." N.J.S.A. 20:3-37. The property left with little or no economic value is commonly referred to as a "uneconomic remnant." Although at first read the statute seems straightforward, the words "little or no economic value" have caused litigation and heartaches.

Case law interpreting the statute in New Jersey and other states focuses on the economic value of the remainder, not the present use of the property. If the owner can no longer use the property for its present use, they must still prove that the property cannot be put to some other use that has value to force the State to take the entire property.

For example, a New Jersey Court failed to require the State to condemn an entire parcel being utilized as a church when a highway was expanded. After the widening, the highway was 41 feet from the front door of the church and the right of way extended to the lower steps of the entrance. At trial, the pastor testified that the church was unable to conduct services as a result. Although the court did not dispute that the church was deprived of the use of its building, the church failed to show that the property was "unfit for all uses." As a result, the church was only entitled to the value of any damage it could prove to the property it retained.

In another case, the court did require the State to acquire an entire parcel when it sought to expand a road. In that case, part of the building was taken and what was left could not be put to any economic use. In addition, the remainder lands saddled the property owner with a building that had to be demolished and potentially could cause safety hazards.

It is very difficult to prove that a remainder has little or no economic value. When an owner's existing use is no longer viable, the property may still have some economic value, thereby precluding a complete taking. This is particularly disturbing when an owner is required to move his business as a result of the taking, but is saddled with a property that no longer meets his needs. Although the condemning authority may be required to pay relocation expenses, the condemning authority is not required to pay for loss of business.

Uneconomic remnants cases are very difficult to win. As a result, it is important for property owners to perform a thorough investigation of every possible way the remainder may have been damaged by the taking in order to be made whole. If an owner does argue the remainder has little or no value, the property must have strong testimony from a qualified appraiser. —RENU

The views expressed here are those of the author and not of Real Estate Media or its publications.

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Eminent domain becomes more complicated when only a portion of a property is taken.