

The Eminent Domain Process

Eminent domain is the power to acquire private property for public purposes, which is expressly authorized under the United States and New Jersey Constitutions. The term is sometimes used interchangeably with 'condemnation', which is the process created by the state legislature by which a municipality exercises its eminent domain power to acquire private property for fair-market value. Redevelopment is recognized under both the State Constitution and Statutes as a public purpose for which the power of eminent domain may be used. Since the topic is being debated in conjunction with the Courthouse Square redevelopment project, this article provides an overview of how the process works, and specifically how it applies in the downtown Flemington redevelopment area.

The eminent domain process has procedural steps that serve as checks and balances to ensure that appropriate analyses are done to fairly compensate property owners, as well as to encourage the parties to reach mutually-agreeable terms of sale, so that the parties may avoid extended court proceedings to determine value. Eminent domain is never a popular option or a first option. It is applied only after good faith negotiations have failed.

Why are we considering eminent domain?

As of this writing (June, 2018), Mr. Cust owns 82 Main St. The redeveloper agreement (RDA) provides that the Borough will sell him our properties. The Flemington Furs properties are under contract. That leaves the properties owned by Steve Romanowski, which are the hotel and the "Potting Shed" and its parking lot. The Borough has worked with the buyer (Mr. Cust) and seller (Mr. Romanowski) to try to facilitate the sale without having to go through eminent domain. Mr. Romanowski is being offered far more by the developer than either the assessed value of the properties or their fair market value (the amount he would be entitled to in an eminent domain proceeding). The buyer and seller have been close to terms on several occasions, but the seller has been observed to constantly add more to the cost of the deal. Mr. Cust has satisfied the Council's redevelopment committee that he has exhausted all reasonable steps to buy the properties, and the seller remains committed to selling the property. We are not dealing with a reluctant seller, just one who always seems to need a little bit more and will not close the deal.

The project cannot proceed to the planning board without the developer either owning the properties or having the owner's permission to go ahead with the application, so it is important that the property acquisitions be completed for the project to move ahead.

We are not asking the seller to do anything he has not already agreed to do. If he will not wrap this up, then we can, using eminent domain as a last resort. We remain hopeful that eminent domain will not be necessary.

How does the eminent domain process work?

The process includes the following steps:

- Council directs the Planning Board to study the subject properties to determine if they qualify for eminent domain. This is determined by the Board after the Board's planner completes a study with recommendations and a public hearing has been held.

- If Council agrees to establish eminent domain after hearing the Planning Board's recommendation, it adopts an ordinance to that effect. Any such ordinance also includes a public hearing by the Council.
- If eminent domain is established for the properties, Council then votes to proceed through various steps that include an appraisal and serious, documented attempts to negotiate a price with the seller. If all this fails, and the developer and seller have still not reached an agreement, Council could then proceed to institute a condemnation proceeding to acquire the property without the seller's consent, after which the parties can proceed in a hearing to determine the fair-market price to be paid for the properties. Again, the process is intended to encourage a mutually agreeable sale.

How is the hotel different from The Potting Shed?

When the hotel property was designated as an area-in-need-of-redevelopment in 2010, eminent domain, or condemnation, automatically went along with the designation. Thus, the hotel property is already subject to consideration for eminent domain.

By the time the redevelopment area was expanded in 2014, State law had changed so that the municipality could specify whether or not eminent domain would apply. Flemington chose not to attach eminent domain to the expanded area. Therefore, now that we need to consider it for two of those properties, we must follow the above process to authorize eminent domain for those properties.