




New York

Known Condemnations Benefiting Private Parties ³⁴⁹

Filed/Authorized Condemnations  3

Threatened Condemnations  731

Legend  = 1  = 100

Albany

At a December 2005 City Council meeting, the City announced that it would use eminent domain “as a last resort” against property owners who refused to sell to Winn Development, which plans to raze 89 homes and an additional 225 apartments, housing approximately 1,900 residents, and replace them with high-rise towers, houses and apartments.³⁵⁰ Just one month before, Kristina Rogers, project director for Winn Development, had said the project would not include eminent domain: “We are not interested in any forced sales.”³⁵¹

Haverstraw

On June 22, 2005, Ken Griffin and Patrick Lynch bought a commercial building to fix up. Eight days later they learned that Village officials had ongoing plans to condemn the property.³⁵² Over the past several years, various ideas had

³⁴⁹ These numbers were compiled from news sources. Many cases go unreported, and news reports often do not specify the number of properties against which condemnations were filed or threatened.

³⁵⁰ Brian Nearing, “Park South concern eases; Developer says rebuilding plan for neighborhood won’t include forced sales,” *Times Union*, November 11, 2005, at B1; Brian Nearing, “145 housing units proposed for Park South; Developer says plan to be brought before council in January for review, includes new homes, apartments, high-rise towers,” *Times Union*, December 15, 2005, at B1; Brian Nearing, “Stakes are high for Park South’s residents; Massive redevelopment plan welcomed, feared in Albany neighborhood,” *Times Union*, February 9, 2006, at B1.

³⁵¹ Brian Nearing, “Park South concern eases; Developer says rebuilding plan for neighborhood won’t include forced sales,” *Times Union*, November 11, 2005, at B1.

³⁵² Ron X. Gumucio, “Health complex, condos planned; Hogar wants to condemn Graziosi site in Haverstraw,” *Journal News*, July 19, 2005, at 1B.

been floated, including a supermarket or offices for the Village.³⁵³ The latest plan was to transfer the building to Housing Opportunities for Growth, Advancement and Revitalization (HOGAR), an affordable-housing agency, which rents space in the building, with the idea that HOGAR would construct affordable housing.³⁵⁴

The new owners made clear they were willing to work with officials to redevelop the building, but the Village wasn't interested.³⁵⁵ In December 2005, Village officials started the condemnation process despite the new owners' offer to build a remarkably similar project to HOGAR's, but using private instead of public funding. They proposed affordable housing, office space, and a medical facility in addition to a mix of retail shops. According to Mayor Wassmer, the Village didn't want retail in that space. Instead, the Village wants to spend approximately \$4.39 million, most of which will come from a federal Community Development Block Grant loan, for a slightly different project.³⁵⁶ Griffin and Lynch are opposing the project in court.³⁵⁷

New York (Brooklyn – Atlantic Yards/Prospect Heights)

In September 2005, the Metropolitan Transit Authority board voted 10 to 1 to accept \$100 million from Forest City Ratner to develop the Atlantic City Rail Yards. The offer was less than half of what the MTA's own appraisers value the property at (\$214 million).³⁵⁸ It was also less than the \$150 million offered several months earlier by Extell Development Company, which, unlike Ratner, proposed a smaller development that would not require the use of eminent domain.³⁵⁹

Ratner's project calls for a 19,000-seat, Frank Gehry-designed arena for the Nets, along with 16 office and residential towers to be paid for in part with \$200 million in City and State funds. Further, according to a memorandum of understanding, Ratner will be able to finance the stadium with tax-free bonds and won't be subject to property taxes for 30 years. The Empire State Development Corporation, a State agency with eminent domain power, has agreed to a 99-year lease for the 6.5 acres on which the arena will sit for \$1. According to a study by the Pratt Institute, the deal could wind up costing New York taxpayers \$1

353 Ron X. Gumucio, "Chain may end plan for grocery," *Journal News*, February 17, 2004, at 1B.

354 Ron X. Gumucio, "Housing deal eyed by village; Haverstraw agrees to help acquire site for affordable housing," *Journal News*, October 20, 2004, at 1B.

355 Ron X. Gumucio, "Health complex, condos planned; Hogar wants to condemn Graziosi site in Haverstraw," *Journal News*, July 19, 2005, at 1B.

356 Ron X. Gumucio, "Village moves to condemn building; Haverstraw housing plan may bring fight," *Journal News*, December 20, 2005, at 1A.

357 Ron X. Gumucio, "Owners of complex fight condemnation," *Journal News*, January 21, 2006, at 3A.

358 Jess Wisloski, "Ratner gets site; With MTA's blessing, Bruce leaves \$10 million deposit on rail yards," *Brooklyn Papers*, September 17, 2005.

359 Diane Cardwell, "Brooklyn plan draws a rival, and it's smaller," *New York Times*, July 7, 2005; Daniel Hemel, "Board wants Ratner to increase his bid," *New York Sun*, July 28, 2005; Pradnya Joshi and Joshua Robin, "Support for Nets arena; Bloomberg's 4 representatives on MTA board expected to get behind \$3.5 billion B'klyn development." *Newsday*, July 26, 2005, at A14.

The threat of condemnation hangs over people like Simon Liu, who emigrated from China to get away from communism.

billion.³⁶⁰

The area houses hundreds of people who live and work there.³⁶¹ Using the threat of eminent domain, Ratner has succeeded in acquiring some of the 53 properties, which opponents say housed 330 residents, 33 businesses with 235 employees, and a 400 person homeless shelter.³⁶² The threat of condemnation hangs over people like Simon Liu, who emigrated from China to get away from communism. After more than 20 years of running an arts supply factory, he is again facing coercive government power.³⁶³ Other properties remain under threat of eminent domain, and several citizen groups have formed to oppose the project, including Develop—Don't Destroy Brooklyn and the Prospect Heights Action Coalition.

New York (Queens – Iron Triangle/Willets Point)

In November 2004, officials issued a “request for expressions of interest” from developers for Willets Point—a 48-acre area east of Shea Stadium that officials say is home to 80 businesses—including junkyards, auto parts stores, garages, scrap dealers and a spice manufacturer.³⁶⁴ An independent investigation by a Hunter University urban planning professor, however, revealed in April 2006 that there are in fact 225 businesses employing 1,300 people in the area.³⁶⁵

The area is indeed rundown, but mainly because City officials have failed to provide such basic municipal services as garbage collection, plumbing or electricity. When it rains, the phones go dead; business owners pave the sidewalks and plow snow off the street themselves.³⁶⁶ Further, the threat of eminent domain “as a last resort” has made it nearly impossible for business owners to get loans to improve their properties.

Known as the “Iron Triangle,” the area has faced numerous threats over the years. In the 60s, Robert Moses tried to force all the property owners to sell to

360 Memorandum of Understanding between New York City, the Empire State Development Corporation and Forest City Ratner, at http://www.atlanticyards.com/downloads/mou_cityandstate.pdf (retrieved May 26, 2006); Mathew Schuerman, “The Jets vs. Nets: Brooklyn arena deal template for stadium,” *New York Observer*, March 14, 2005; Julie Satow, “Rif develops at City Council over Ratner’s arena project,” *New York Sun*, April 29, 2005, at 1.

361 Nicholas Confessore, “Forced to move, some find greener grass,” *New York Times*, April 10, 2006, at B1.

362 Mark Berkey-Gerard, “Eminent domain revisited,” *Gotham Gazette*, December 12, 2005.

363 Daniel Goldstein, “Life in the Atlantic Yards footprint,” *Gotham Gazette*, December 9, 2005, at <http://www.gothamgazette.com/community/35/views/351> (retrieved May 26, 2006).

364 David Lombino, “Mayor to redevelop Iron Triangle in bid to transform Flushing,” *New York Sun*, January 25, 2006, at 4.

365 Tom Angotti, “Willets Point: A defense,” *Gotham Gazette*, April 10, 2006.

366 Gus Garcia Roberts, “The battle over the Iron Triangle,” *Gotham Gazette*, December 9, 2005; Ron Brownlow, “Amid dents, diamonds?” *New York Times*, May 29, 2005.

make way for the World's Fair. Willets Point has also been a site named for a failed Mets stadium, a potential site for the Jets and most recently, the site of the press village for New York's failed 2012 Olympics bid.³⁶⁷

Officials emphasize that a relocation plan will be part of the project but this is little comfort.³⁶⁸ "This is M3-1 zoning, heavy industrial. There's none left. Go on a map. Look. They're saying you're going to move me. I tell you what; you tell me where you're going to move me. If I like the spot I'll move right now," says Danny Sambucci Jr.³⁶⁹ In March 2006, officials picked eight finalists to submit plans to redevelop the site.³⁷⁰

New York (Harlem – Uptown Project)

City officials are threatening to use eminent domain to clear a four-block area of Harlem for a residential and commercial development, called Uptown New York. At least nine businesses stand in the way, including Fancy Cleaners & Tailors at Third Avenue and 126th Street. The City seems to have cut a few corners in its approval process by moving to evict businesses without having completed either of the two studies underway to determine the feasibility of the project. Further, they scheduled a meeting to discuss the project when the local Community Board was in recess.³⁷¹

Peekskill (Downtown)

In May 2006, the Common Council hired Cleary Consulting to conduct a "blight study" of four downtown blocks, the ostensible goal of which is to determine if the vibrant business district is supposedly in need of redevelopment. So it may come as a surprise that the Council, without even bothering to receive the results of the so-called study, paid an architect \$75,000 to draft a redevelopment plan for the same 20-acre area.³⁷²

A Hispanic-owned produce market, two diners, a Laundromat, the Hudson River HealthCare clinic, one of the City's largest employers, and a hardware store that survived the City's redevelopment debacle in the 60s and 70s—entire blocks and hundreds of properties were razed, some of which are still vacant today—are included in the study. Although Mayor John Testa says business owners shouldn't worry about eminent domain, he refuses to take the option off the table.³⁷³

367 Gus Garcia Roberts, "The battle over the Iron Triangle," *Gotham Gazette*, December 9, 2005.

368 David Lombino, "Mayor to redevelop Iron Triangle in bid to transform Flushing," *New York Sun*, January 25, 2006, at 4.

369 Ron Brownlow, "Amid dents, diamonds?" *New York Times*, May 29, 2005, Section 14; Column 3, at 1.

370 David Lombino, "Finalists picked to bid for Willets Point makeover," *New York Sun*, March 3, 2006, at 3.

371 Dennis Duggan, "Big shots betting on Harlem," *Newsday*, January 10, 2006, at A15; Maria Vega, "Huge commercial project in El Barrio pushed without evaluating community's concerns," *La Prensa*, July 9, 2005.

372 Brian J. Howard, "Merchants in Peekskill fear eminent domain," *Journal News*, May 21, 2006, at 1A.

373 Brian J. Howard, "Merchants in Peekskill fear eminent domain," *Journal News*, May 21, 2006, at 1A;

Phil Reisman, "Peekskill may destroy merchants who help define it," *Journal News*, May 14, 2006, at 1B;

Brian J. Howard, "Peekskill BID fears eminent domain," *Journal News*, June 4, 2006.

Not Your Favorite Pharmacy? Use Eminent Domain

On April 5, 2006, the 2nd U.S. Circuit Court of Appeals cited the *Kelo* decision with approval as an alternative basis for ruling against Port Chester property owners opposing the taking of their property for a private developer.¹ Bart Didden, who owns USA Central Station Alarm Corp., and his partner, Dick Bologna, owner of Westmore Fuel Company, had plans to build a CVS Pharmacy on their property. They got preliminary approval from the planning commission, but then their property was condemned at the behest of G&S Investors, the Village's chosen developer in the project area. According to the owners, G&S had given them a choice between making G&S a partner, paying \$800,000, or getting condemned.² And what are Village taxpayers getting instead of CVS? Walgreens.³ The project has already involved the condemnation of numerous properties.⁴ Elsewhere in Port Chester, the Institute for Justice represents Bill Brody, whose commercial buildings were taken for the parking lot of a Stop & Shop. The Institute for Justice also filed a friend of the court brief in the *Didden* case.

1 *Didden v. Village of Port Chester*, No. 04-3485-cv, 2006 U.S. App. LEXIS 8653 (2d Cir. Apr. 5, 2006) (unpublished).

2 Jennifer Weil, "CVS project snagged," *Journal News*, December 12, 2003; Jennifer Weil, "Property owners file suit," *Journal News*, January 23, 2004.

3 Alex Philippidis, "Lawyers have eye on state eminent domain law," *Westchester County Business Journal*, January 2, 2006, at 4.

4 Hannen Adely, "Port Chester buyouts rile some merchants," *Journal News*, August 7, 2004, at 1A.

Peekskill (Waterfront)

Peekskill property owners are wary. In November 2005, the City teamed up with developer Martin Ginsburg and is using the threat of eminent domain to acquire properties from longtime Peekskill residents so Ginsburg can build a \$200 million condo and retail project with scenic views of the Hudson River.³⁷⁴ One property, a vacant lot, had been in the family of Helen Christian, 70, for 50 years and she'd had offers from contractors to develop the lot for much more than billionaire developer Ginsburg offered.³⁷⁵

Spring Valley (Jackson Street)

According to the Village attorney, the Village is considering the acquisition of six homes to make way for a condo project on Jackson Street.³⁷⁶

Spring Valley (North Main Street and Maple Avenue)

Also, Spring Valley condemned three commercial properties to improve the "gateway" into the village—in order to complement a residential development across the street. The City plans to demolish the

374 Brian J. Howard, "Landowner fears losing 'nest egg' to eminent domain," *Journal News*, October 19, 2005, at 12A; Brian J. Howard, "Residents weigh in on project," *Journal News*, February 10, 2006, at 10A.

375 Phil Reisman, "Eminent domain: Fairness is in the eye of the beholder," *Journal News*, October 20, 2005, at 1B.

376 Sulaimain Beg, "Condo plan may displace village homes," *Journal News*, January 9, 2006, at 3A.

buildings and turn the site over to a developer to build commercial, residential and retail space.³⁷⁷

Yonkers

In February 2006, Mayor Phillip Amicone approved a \$3.1 billion plan by developers Louis Cappelli, the Streuver Bros. and Fidelco Corp. to build a massive project stretching over two miles of waterfront and Yonkers' entire business district. The 450-acre, three-phase project calls for condos, apartments, retail, entertainment and office space as well as a baseball stadium.³⁷⁸ It also calls for Yonkers to use eminent domain after 180 days (starting February 2, 2006) if the developers can't convince property owners in the first phase to sell.³⁷⁹ Of course, eminent domain, according to City consultants G.L. Blackstone & Associates LLC, is only "an essential tool of last resort."³⁸⁰

As of February, Cappelli was poised to take control of nearly 75 percent of the affected properties, which include homes and businesses.³⁸¹ However, there are quite a few properties still to be acquired. A satellite image of the project areas shows at least 1,360 properties in the areas still subject to acquisition—meaning the developers must acquire at least 340 more.³⁸²

377 Sulaimain Beg, "Condo plan may displace village homes," *Journal News*, January 9, 2006, at 3A; County of Rockland, Legislative Minutes, May 2, 2006, at <http://www.co.rockland.ny.us/Legislature/LMinutes/06/05-02-06.htm> (retrieved May 31, 2006).

378 Debra West, "Adding more urban to suburbia," *New York Times*, May 14, 2006, Section 14, Column 2, Westchester Weekly Desk, at 1; and Press Release, "Amicone strikes \$3.1 billion development deal for downtown Yonkers," <http://www.yonkersecondev.com/index.php?story=149> (retrieved May 30, 2006).

379 Master Developer Designation Agreement, <http://www.patriciamcdow.com/mdda.html> (retrieved May 30, 2006).

380 Memo from Real Estate Council to Yonkers City Council, <http://www.patriciamcdow.com/MDDA%20&%20Consultant.html> (retrieved May 16, 2006).

381 Michael Gannon, "Redevelopment \$3.1 billion proposal unveiled," *Journal News*, February 3, 2006, at 1A.

382 <http://www.patriciamcdow.com/Steaver%20Photo.html> (retrieved May 16, 2006).