



# THE INS AND OUTS OF THE 'Project Cloud'

Eminent domain presents a host  
of challenges, but appraisers who have  
the expertise are in high demand

by Peter Haapaniemi

**Appraisers doing commercial eminent domain work** are often busy, and they are likely to get busier, thanks to a range of public infrastructure projects being pursued across the United States.

A number of trends — from population growth to rapid business expansion and an aging infrastructure — are leading to a wave of infrastructure improvements. So too is the 2021 U.S. Bipartisan Infrastructure Law, which authorized \$715 billion in infrastructure spending. Many of these projects have involved, or will involve, eminent domain — that is, the government taking private property for public use.

“Eminent domain work is definitely on the rise,” says Christian F. Torgrimson, an Atlanta partner at Parker Poe, a business law firm with more than 275 attorneys across the Southeast. “My practice has never been busier, and it just continues to grow.”

Appraisers play an important role in the eminent domain process. However, says Torgrimson, “there aren’t enough of them that

A plan to add flyover lanes to Atlanta’s I-285 freeway is one example of “design-build” contracting in which the government acquires land before all the details have been figured out, creating a “project cloud” of uncertainties for property owners.

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do this very specialized work.” That shortage spells opportunity for appraisers looking to expand their portfolios — but the work may not be for everyone.

“Oftentimes you’re dealing with very challenging concepts, and your work can be scrutinized and even attacked in court,” says Erin Bowen, MAI, a director at CohnReznick in Phoenix. “But at the end of the day, it’s very rewarding. It really gives you a chance to think outside the box and flex your skills as an appraiser.”

### A clouded picture

Eminent domain cases are based on the U.S. Constitution’s Fifth Amendment, which says that the government cannot take private property without providing “just compensation.” That’s where appraisers come in: The appraisal is the key to establishing just compensation in specific cases.

Determining that value is not always easy, however. Large public projects often have long timelines, and when a project is announced, it may be years before property is actually taken by the government. A number of factors tend to push those timelines out, starting with the sheer number of projects in the pipeline. “Government entities can’t keep up with it — they are biting off more than they can chew because there’s so much need for new infrastructure,” says Torgrimson.

Public projects can also be delayed by issues related to rising costs, problems getting materials, labor shortages, the actions of opposition groups and shifts in government budgets, among other things. These can add up, and “there are a lot of projects that have been announced but never materialize,” says Bowen. “It could be a year, five years, 10 years before a project is started or just scrapped altogether.”

Today, the situation is made even murkier by the growing use of “design-build” contracting. In the traditional approach to public projects, the government draws up plans and sets schedules and then begins the eminent domain process. With the design-build approach, on the other hand, the government tasks a contractor with coming up with plans and timelines. This means that the government may begin acquiring properties before the details are figured out.

For example, in a current effort that’s adding flyover lanes to Atlanta’s I-285 freeway, the government has started acquiring land, even though

a design-build contractor has not yet been hired. That means that the government can’t really answer detailed questions about what will happen and when. “It leaves property owners guessing, and without knowing all that information, it’s hard to assess what the just compensation would be,” Torgrimson says. “The cart is going way before the horse.”

All these uncertainties can create what Torgrimson calls a “project cloud” that complicates matters for commercial property owners. When a project for a given area is announced, the potential demolition may be far off, but owners can quickly run into trouble finding tenants, getting financing or selling the property. As a result, they may conclude that they will not get a return on any investment they put into the property.

“People often hesitate to do things like replacing the HVAC or getting the roof redone,” says Andrew Lines, MAI, principal at CohnReznick in Chicago. Over the long timelines of a large project, that takes its toll. “What was an amazing multi-tenant commercial building with really great tenants might start to show reduced occupancy due to putting off important capital expenditures,” he says. “What was a pretty effective, marketable Class B warehouse is now considered a Class C warehouse.”

### Looking backward and forward in time

These types of issues can complicate matters for appraisers trying to get a handle on values. With long project timelines, appraisers working for property owners may enter the picture long after a project has been announced. As a result, they may be looking at a building that has not been brought up to date or maintained, standing in a neighborhood where numerous other buildings have been demolished.

However, appraisers cannot simply appraise the property as is. That’s because in general, the appraisal cannot take “project influence” — the effect of the proposed project on the property, good or bad — into account. This means they may have to determine what the highest and best use of the property was just before the project announcement — which might have been five or 10 years ago. That can force them to disregard many of the facts on the ground and instead do extensive research to reconstruct a picture of the neighborhood and property at that time.



As this rendering shows, LA Metro's East San Fernando Valley Light Rail track and stations will be built down the median of Van Nuys Boulevard in the Pacoima neighborhood of Los Angeles. The 9.2-mile project is a complex undertaking involving accepted offers to buy eight properties and recent LA Metro board approval to move ahead with eminent domain on four more. Robert P. Caringella, MAI, SRA, AI-GRS, says this type of appraisal work "is often a multidisciplinary assignment because you need input from different subject matter experts," such as business appraisers, civil engineers, and acoustical engineers dealing with sound and vibration.

"When a property's taken, we generally need to ignore the project," says Robert P. Caringella, MAI, SRA, AI-GRS, principal at Jones, Roach & Caringella in San Diego. But that's not as straightforward as it might sound. For example, the appraiser still needs to understand the project influence "and potentially tease out the impact of the project," he says. In addition, there are exceptions to the project influence rule, based on the specific statutes and often complex bodies of case law in each state. Overall, determining the exceptions to the rule is "complicated and often based on case law," Caringella says, and typically requires a lawyer's expertise.

Calculating damages requires an assessment of the before and after state of the property. "There can be a big difference for that 'after' value, depending upon when and how the project is going to happen," says Torgrimson. And with the uncertainties of the project cloud, this can be difficult to ascertain.

Nevertheless, the appraiser needs to establish how the property is being harmed. "Maybe the road is being elevated to go up and over a rail corridor, and now the shopping center there has less visibility because the road is 12 feet up in the air," says Caringella. In one case, he evaluated how a new light rail line would affect a nearby luxury apartment complex. "We looked at shadows, view impairment, noise and privacy, and found that their lease rate was going to go down by 10%, so we could calculate the value loss," he says.

To determine damages, appraisers need to look at the marketplace to find comparable situations. But that is not always easy, because the details of a partial taking are often very specific to the property and business in question. "Sometimes we cannot find an exact replica and example to study how a property might have measurable damages, but we usually can find something similar," says Lines. "For

**In eminent domain, not all parking spots are created equal, says Andrew Lines, MAI. For dealerships, highly visible spots in front are often a manufacturer requirement and tend to be larger so people can open doors and walk around vehicles. “The value of spaces in the back is not the same as those in the front.”**

example, to determine damages from the visual impairment of an apartment complex from a newly constructed light rail project, we might study rents of apartment projects next to a big retaining wall or industrial building right next door.” Overall, he adds, “estimating the damage to a remainder property from a public project can be complex.”

### The data is in the details

From a lack of comparables to the project cloud of uncertainty, eminent domain appraisals can be complicated. To sort things out, appraisers can start by casting a wider net for information compared with the typical bank appraisal. That’s because of the unique situations that can come up, the nuances of business damages and the need to find the right data to bring an often-fuzzy picture into focus.

“A lot of appraisers will start and stop with [just one database],” says Bowen. “But there can be a lot of ways to substantiate a report.”

For example, when a project plan called for the demolition of numerous units at a storage facility, Bowen’s group used broker interviews to establish a minimum number of units that would make such a facility attractive to investors, and the planned remainder fell below that threshold. However, a revised project plan later left a few more units untouched, making the number of units in place slightly higher than the minimum threshold. Believing that the plan still left the facility with significantly reduced value, Bowen’s team dug deeper.

“We looked at quarterly reports of all the major national self-storage companies to see what the data said about the size of self-storage facilities,” she says. “It did indeed show that the property’s after condition wouldn’t be investment grade. So, in addition to interviews, we had the numbers and data to back it up — and it became a much stronger report.”

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from different subject matter experts,” says Caringella. For example, he says, one might need to interact with business appraisers, civil engineers, acoustical engineers dealing with sound and vibration, even electric and magnetic field experts. When a light rail project crossed a university campus, “we had to consider how it would affect MRI machines in medical offices and an electron microscope in a lab,” he notes. In essence, he says, the appraiser is the “quarterback” that brings all this information together to understand the project’s impact on real estate value.

Lines recalls a case in which a road project ended up eliminating the first row of parking spots in front of a car dealership. The government maintained that this parking could be replaced with slightly smaller standard spots on vacant land behind the dealership. However, Lines explains, auto manufacturers often require dealers to display a certain number of cars on their lots in higher-visibility locations. “People are drawn to the car dealership because of the cars that the dealer parks in the front of the building, not the back. And those spaces in the front tend to be wider, because people like to open the doors and walk around the car — they’re display spaces. So, the value of those spaces in the back is not the same as those in the front,” he says. A typical appraiser might not be aware of all these requirements — making it critical to find out the whole story.

### Tailoring the report

While most eminent domain cases are settled before trial, some aren’t, so reports need to be written with an eye toward potential litigation. “This is the closest thing that appraisers have to a contact sport, because in court you’re going to have differing opinions and you’re going to be subject to cross-examination,” says Caringella. “Ultimately, you’re giving guidance to the judge and jury.”

Because of such scrutiny, eminent domain reports need to be based on an especially solid foundation. “We have reports that are sometimes reviewed by the Department of Justice,” says Lines. “You really have to dot your i’s and cross your t’s and make sure that you’ve got support and backup for your inputs and assumptions.”

At the same time, appraisers need to distill all this information into a concise report that does

not overwhelm judges and juries that may not be steeped in the details of valuation. “I think the hardest part about doing appraisal for eminent domain is knowing how to boil down complex situations,” says Lines. “My mentor used to tell me that with appraisals for financing purposes, it’s usually a really big report and a very thin file. The reverse is true for a condemnation — it’s a very thick file and a very thin report.”

### An opportunity to branch out

Eminent domain work is complex, and it takes time to build the necessary competence — barriers that some might find daunting. But it is a growing field that needs appraisers, and it often offers the stability of long-term assignments as project plans are revised over time. What’s more, new areas of opportunity are emerging. “We’re now seeing more public agencies getting appraisers involved in the early design stages,” says Caringella. “If you’re going to have a public right-of-way project that affects a hundred properties, why not get an appraiser involved early to see where the negative impacts are going to be and minimize them? An appraiser might do a week’s worth of work and save the public agency millions of dollars.”

The work can also be a way for appraisers to diversify their business and ride out economic ups and downs. “Eminent domain work tends to be countercyclical. Even when the economy is doing poorly, the infrastructure projects are still going on,” says Caringella. “They’re still building that freeway and things are still proceeding through the court system.”

Ultimately, eminent domain work can be attractive on a personal level, as well, with interesting and varied assignments. Caringella has worked on cases involving everything from tunnels below downtown Los Angeles to properties impacted by the U.S.–Mexico border fence to a separation-of-church-and-state court battle involving San Diego’s 29-foot-tall Mount Soledad Cross. He and his business partner also had an assignment requiring them to pay a visit to Groom Lake, also known as Area 51.

“If you’re good at this, you’re going to get regular calls to work with some incredible clients,” says Lines. “It’s really an incredible opportunity to open up your field of vision.” ▲

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