

Town of Brookline

Eminent Domain Questions

Q1: Can you clarify Eminent Domain relocation. Are you saying you have to pay fair market value and also buy their replacement land? Or just the costs of relocating that business? Does the Town have an obligation to find the displaced business a replacement location?

A1: The Town is required to pay the owner the fair market value of the land taken. If a business was operating on the land taken, the Town must provide relocation assistance to the business owner regarding available locations for the owner that may be suitable places to relocate the business along with the personal property utilized in the operation of the business. The Town is only obligated to provide information to the displaced business regarding a possible replacement location for the displaced business. The Town is not obligated to find a comparable replacement for the displaced business. G.L. c. 79, § 8B, only requires 120 days notice to a business prior to vacating. However, in practice, parties acquiring property through eminent domain often provide relocation services prior to the official taking. Generally speaking, the friendlier a process can be prior to acting on the minimum timeframe required by law, the better off it will be for the party acquiring the property and the party whose property is being acquired. In all cases, the Town must pay to relocate the personal property to the new location chosen by the owner. The Town does not have to pay for the business owner's purchase of the replacement land.

Q2: Eminent domain requires paying the property owner "just compensation." What is the difference between that term and "fair market value"?

A2: There is no difference. Both "reasonable compensation" and "just compensation" have been interpreted by the Supreme Judicial Court of Massachusetts as meaning "fair market value." Fair market value is the price an owner, willing, but not under compulsion to sell, ought to receive from one willing to buy, but not under compulsion to buy. It means the highest price that a fully informed purchaser, not under compulsion to buy will pay to a fully informed seller, not under compulsion to sell. A valuation limited to what the property is worth to the purchaser is not market value. Nor is the value of the owner's property to him personally to be included. Fair market value is that value the property would have had in the hands of any owner, including the present owner. Any and all uses to which the property may profitably be applied, whether contemplated by the owner or not, may be taken into account by the jury in determining just compensation.

Q3: Can the Town acquire institutional property such as Parsons Field From Northeastern University?

A3: Yes, the Town can take private recreational areas by eminent domain. 4 Nichols on Eminent Domain, § 12C.01[4][d]. In the case of Parsons Field, the Town would need to pay Northeastern University for the value of the property (including the value of the newly built stadium structure). The Town would also need to provide relocation assistance to Northeastern regarding available locations to relocate the athletic field and stadium. The specifics of what would be considered adequate relocation assistance in any specific case would be governed by regulations promulgated by the State Office of Housing and Economic Development.

Q4: If Northeastern were to choose another available parcel of cleared land, would the Town be expected to prepare a field and build a stadium?

A4: No. The Town would be obligated to pay Northeastern the fair market value of Parsons Field as improved as an athletic field and relocate personal property utilized in the operation of Parsons Field to the new location. The Town would not be obligated to prepare the field or build a new stadium for Northeastern.

Q5: If Northeastern's relocation services were not able to find another available stadium, would the Town be legally obligated to pay for relocation benefits to Northeastern?

A5: Yes, if a replacement site could not be located, the Town would be responsible to pay Northeastern for the fair market value of the personal property in place at Parson's Field such as the fair market value of the astro turf surface, the bleachers/stadiums and other items of personal property utilized at Parsons Field less a reasonable deduction for depreciation.

Q6: If Northeastern were to argue that the proximity of the stadium to their campus is integral to their overall business, couldn't they argue that the Town must find them a similar sized parcel within similar proximity (including the high land value)?

A6: No. The Town is only obligated to provide relocation assistance regarding available locations that may be suitable to relocate Parson's Field. The Town is not obligated to find a nearby comparable replacement recreational property for the School. In such a case, Northeastern would receive the fair market value of the real estate at Parson's Field and the fair market value of the personal property, in place, at Parson's Field less reasonable depreciation.

Q7: Is Bournewood Psychiatric Hospital considered a residential or business use for relocation purposes?

A7: Bournewood Psychiatric Hospital would be considered as both a business and a residential facility for relocation purposes. It would be entitled to receive an award for the fair market value of the land and buildings and the fair cost to relocate personal property and resident patients to another location. Appraisals would have to be prepared for both the real estate and personal property. Many times hospital buildings contain special purpose improvements and sophisticated special purpose equipment that are extraordinary expensive to relocate and move. It is not unusual in such circumstances that the value of the relocation claim substantially exceeds the fair market value of the real estate. The Town's appraiser would have to prepare a separate report delineating the real property and the personal property for appraisal purposes. Any disagreements on the issue of what constitutes real or personal property would be decided by Mass. Dept. of Housing and Community Development in an administrative hearing.