

# WHY WE NEED EXCESS CONDEMNATION

A BOON TO THE PROPERTY OWNER—  
A BLESSING TO THE PUBLIC

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# WHY WE NEED EXCESS CONDEMNATION

A Boon to the Property Owner—A Blessing to the Public

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*Excess Condemnation is a poor word for a good thing. It simply means the power to apply eminent domain to land in excess of that physically needed for an improvement but incidental to it. The purpose is usually either to protect the improvement or to put the incidental land to its best use.* :: :: :: :: :: :: :: ::

No city is ever finished. City planning is never done. As cities grow they must be replanned from time to time. Old streets must be widened or new streets must be opened. Open spaces must be provided. Parks must be laid out. The opening of new streets through settled parts of cities is a costly undertaking and so is the widening of old streets; but the cost alone is not the worst obstacle. When streets are widened or new streets are opened the abutting land usually is left in parcels that cannot be improved to advantage. Sometimes well-shaped plots are never assembled and it always takes a long time to develop such a street.

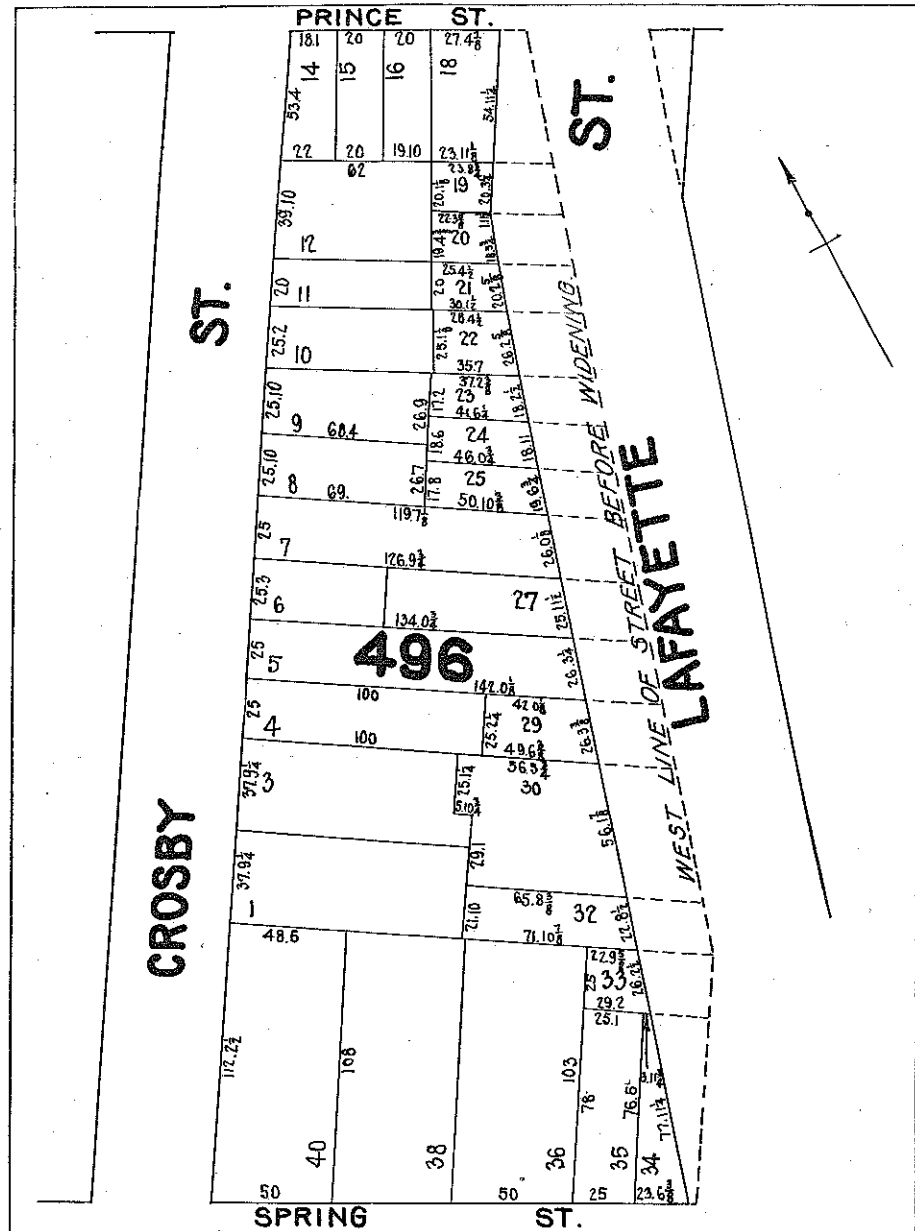
To overcome these obstacles it is necessary to condemn the land for the street and the land appurtenant to the street sufficient in area to form suitable building sites. This procedure has come to be called excess condemnation. Perhaps unfortunately so called because in reality it is not the condemnation of land in excess of what is needed for the improvement, but the condemnation of so much land as is necessary to make the improvement effective.

The state of New York was a pioneer in this country in its use of excess condemnation and unfortunately the first to condemn excess condemnation as unconstitutional. In 1812 the city of New York was granted the power to

condemn remnants of lots taken for a street or park opening. The power was used in the opening of a number of streets, but in 1834 in the *Matter of Albany Street* (11 Wend 149) it was held that the city could take and dispose of surplus land subject to the owner's consent; without his consent surplus land could not be taken. Later the same decision was rendered by the court of appeals in 1850 (3 N. Y. 511). In the state of New York, therefore, it became necessary to amend the constitution in order to obtain the right to take land appurtenant to the land taken for a street or public place. The constitution was so amended in 1913. Similar amendments have been adopted to the constitutions of Massachusetts, Ohio, and Wisconsin.

## EVILS OF TAKING LAND SUFFICIENT FOR STREET ONLY

During the last thirty years several streets in the lower part of Manhattan in the city of New York have been widened: West Broadway in 1894; Lafayette Street in 1903; Varick Street in 1913; Delancy Street somewhat earlier. Not one of these streets shows an orderly development. There are occasional good buildings and then mere shanties. One who is familiar with tax maps can see the reason when he looks at the map. One illustration is presented on page 5 showing the west



MAP SHOWING RESULTS OF STREET WIDENING IN NEW YORK CITY.  
(Note large number of little parcels incapable of suitable development.)



WEST SIDE OF LAFAYETTE STREET, NEW YORK, TWELVE YEARS AFTER  
BEING WIDENED.

(Note billboards and building development out of harmony with surroundings. Suitable buildings would have been warehouses eight or ten stories high, as shown one block distant.)

side of Lafayette Street as it looked in 1915, twelve years after it had been widened. On the opposite page is the tax map. Suitable buildings for that location would be warehouses eight or ten stories high, similar to those which show in the picture a block distant.

Such buildings cannot be erected on lots 23 feet deep and 20 feet wide, or on a sliver 23 feet wide at one end and three feet wide at the other and 77 feet long. The picture shows the rears of buildings erected on the parallel street to the west, Crosby Street. Even those lots are too narrow and too shallow in most cases for really good buildings. Had the city taken the whole block and replotted it and then sold it under appropriate restrictions, new buildings would have been erected at once that would have been profitable to the owners and would have enabled

the street to be put to the use for which it was designed when it was widened. As it is, the street is serving at many points as a convenient place for the posting of billboards. The owners of billboards contend vigorously that they are artistic and add to the attractiveness of the city. There they are in the picture; form your own opinion about them.

#### REMNANTS USELESS IF LEFT IN PRIVATE HANDS

In nearly all American cities all or part of the expense of opening streets or widening streets is assessed on property benefited. It is not uncommon for the owners of land that is assessed for widening a street like Lafayette Street or opening a new street like Seventh Avenue to complain bitterly of the burden imposed upon

them. These complaints act as a check upon the imposition of proper assessments and upon the widening of streets that ought to be widened and the opening of streets that ought to be opened. In great measure this is so because the complaints are well founded. The owner of one of those little parcels of land on Lafayette Street, shown on the map, cannot get the benefit of the street widening unless he acquire other land or sell his lot to the owner of some neighboring land. It sometimes happens that the title is bad to some of these lots; that they are held in trust and cannot be sold; sometimes the owner is a foolish pig who wants more than his share, fails to sell at the right time, and holds up the whole improvement. Nobody is the gainer.

In the case of the widening of Delancy Street the existing lots ran parallel to the widened street. On many of the blocks slivers of land, 100 feet long, were left varying in width from 15 inches at one end to 5 feet or 6 feet at the other. The lots lying back of these slivers were usually 25 feet wide. It is almost an invariable rule that the major part of an assessment for a street widening is imposed on the first 100 feet, and the first 25 feet pays a much larger percentage than the next 25 feet. Often the first 25 feet pays three quarters of the whole assessment imposed on an area 100 feet deep. What could the owner of the sliver do with it? He might sell it to his neighbor. What could the neighbor do with it, who had a tenement house on a lot 25 feet wide parallel to Delancy Street? What could he do with the sliver? Next to him was another tenement house 25 feet wide.

If the buildings had been torn down and the land united in one ownership its value would have been increased tremendously by the widening of the

street and the fact that the widened street formed the approach to a bridge used to capacity. The burden of these assessments at the time they were imposed was a cruel burden. So it has been in many cases; so it always will be, when land cannot be put to its appropriate use because of its shape or size.

In 1905 Livingston Street in Brooklyn was widened by 30 feet, making the street 80 feet wide instead of 50 feet wide. The lots on the southerly side of the street were reduced from the depth of 100 feet to 70 feet. The awards for the land taken and the buildings damaged and the consequential damage to the land that was not taken amounted to \$1,989,000, while the total assessed value of the land and buildings was \$1,268,000. There was such complaint by the owners of the assessments imposed upon them that finally the legislature passed an act to impose the entire expense upon the city. Six years later the value of the land that was left, being 70 feet deep instead of 100 feet, was \$2,073,000, a sum \$83,000 in excess of the awards for land and buildings and three times as much as the land alone was assessed for in 1905.

In this case if the city had taken the 70 feet remaining there would have been no question of assessment; the land could have been sold readily with appropriate restrictions with the requirement that it should be built on at once; the property would have been improved adequately and the city could have recovered two thirds of the cost, if not more.

In 1913, to form a thoroughfare from downtown Manhattan northward, an old street called Varick Street was widened and Seventh Avenue was extended south to meet Varick Street. This street is today a great thoroughfare. It is an admirable location for

certain kinds of business. Some good buildings have been erected. The improvement of the street, however, has been delayed because of the perfect mess in which land-ownership was placed by the widening. On one block, for example, where an appropriate unit for development would be not less than 100 feet by 100 feet, there are eight lots varying in depth from 12 feet to 33 feet and varying in width from 4 feet to 39 feet; but the 39 foot lot is a wedge.

These illustrations can be matched in any city where streets have been widened through an old section. The more irregular the old streets were and the greater the need for a new street the worse is the condition that is left when the new street is opened.

#### BENEFITS OF EXCESS CONDEMNATION

Let us consider what a judicious use of excess condemnation can do. Everyone who has been in London knows Northumberland Avenue running from Trafalgar Square to the River. That street was cut through land which had not been built upon; it was bought from one owner. The cost was \$3,557,000. The city sold what it did not need for \$4,156,000. This was an extraordinary opportunity not likely to happen anywhere else. There was great demand for sites on Northumberland Avenue for hotels and other large buildings fronting on this wide avenue. The profit to the city is only an incident. The great value was the development of Northumberland Avenue quickly and appropriately with adequate buildings.

Every recent visitor must know Kingsway. Kingsway runs from the Strand north to Holborn. This undertaking was commenced in 1899. A street 100 feet wide was put through what had been a very poor section. The operation consisted not alone in

opening the new street known as Kingsway, but in widening the other streets including Aldwych Street. Twenty-eight acres were condemned "of which 12 $\frac{1}{4}$  were dedicated to the public in the form of new streets, leaving 15 $\frac{3}{4}$  acres available for building sites. The length of the street is 1,100 yards, the width 100 feet."<sup>1</sup>

Mr. Swan says further:

The operation involved the demolition of 600 buildings and the displacement of 3,700 persons of the working class. The clearance of the insanitary areas in the neighborhood of Clare Market, which was included in the scheme, displaced an additional 3,172 working people. Provision for rehousing all these people had to be made. Furthermore, disturbed trade and other interests, numbering 1,500 in all, had to be compensated. No satisfactory figures as to the relative sums paid in compensation for injuriously affected business interests, cost of works, land, etc., have been obtained, but the total gross cost of the entire improvement, which was just recently completed, is about \$24,330,000. Through a recoupment of \$20,459,000 the net cost has been reduced to \$3,871,000. The recoupment is, therefore, 84 per cent of the total gross cost. The Council has not yet disposed of all its surplus land, but since the prices realized on the parcels sold are in excess of those at first expected, there is sanguine prospect that the net cost of the improvement will be less and the per cent of recoupment correspondingly greater, than that stated.

The notable thing about this Kingsway improvement is the use to which Kingsway has been put. The London County Council has sold or leased the land with restrictions such that every parcel is improved in an orderly, effective way. Only lately the land lying between Aldwych Street and the Strand has been let to American interests for the erection of the Bush Building. The London County Council has seen to it that the Bush Building is a superb ornament to London and it has one of the most commanding sites

<sup>1</sup> "Excess Condemnation," by Herbert Swan.

in London. It will pay a very good rent to London for ninety-nine years.

#### CONCLUSION

Every American city should have the power of excess condemnation though that power should be used discreetly. Every state constitution that does not permit excess condemnation should be amended and the amendments to the constitutions of New York, Ohio, and Massachusetts furnish models. Every city should be given the power. Suitable statutes covering the various details necessary may be found in the charter of the city of New York.

It should be borne in mind that in many cases of street openings it is not necessary to condemn adjacent land, and that when the power of excess condemnation is exercised it must not be exercised in an arbitrary fashion. The map showing the land to be taken should be based on existing property lines and the avoidance of destruction of existing valuable buildings. The

line separating the property to be taken from that to be left cannot be a straight line. It must follow the property lines so as to take land sufficient to form suitable building sites where necessary and never to leave unusable parcels. When the improvement has been made the land should be sold or leased with such restrictions as shall result in the prompt improvement of the property with buildings best adapted for service on the new or widened street.

The use of excess condemnation often may make possible and profitable the opening of streets through congested territory, the widening of old streets, and sometimes the destruction of insanitary buildings by opening small parks, and sometimes the improvement of the land next to such parks with modern and sanitary dwellings.

There are almost no possibilities for evil in this legitimate power which has been exercised profitably in foreign countries; there are enormous possibilities for good.

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