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# Unjust Compensation

BY STEVEN GREENHUT

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When discussing eminent-domain horror stories with government officials and other defenders of the practice, one will often hear a refrain of this sort: “None of this is any big deal, really, because the victims of eminent domain must be made financially whole, under the law.” But, just as the Constitution’s clear requirement that government only take property for “public” use has been twisted so that a Costco is a public use, so too has its demand that governments pay “just compensation” been distorted so that woefully low offers are considered “just.”

Governments have found all sorts of ways to deny appropriate financial payments to home and business owners, and even when a fair-market value eventually is paid, it’s questionable whether anything can pay for the torment and tumult—often including months or years of court battles and business losses—an owner has been put through. Keep in mind that the courts define fair-market value as less than what would be paid in a voluntary transaction, so in any eminent-domain proceeding the victim, by law, will not be made whole.

The Constitution requires the payment of just compensation, and the states and federal government have laws designed to flesh out exactly what that means. But the process rarely works out fairly for sellers, given some flaws in the process. First, *there is no just compensation when an owner is forced to sell, no matter the price offered.* A truly “just” price is the price freely accepted by willing buyers and willing sellers. Anytime government negotiates for a property and threatens to take it by force if the seller doesn’t agree to the terms, the price is neither a true market transaction nor fair to the seller.

“You have to pay dearly to be treated fairly,” is how Steven Strooh, vice president of Des Moines Blue Print Co. in Des Moines, Iowa, puts it after having had the facility of the business he works for taken by the city in 2000 to make way for a new downtown office building.

The story of Des Moines Blue Print is worth reviewing in detail because it is, from the property owner’s standpoint, a relative success story. The business managed to find a decent new location, get a decent valuation, and keep most of its clientele. But as good as things went, the process was still a nightmare for the owner—a process that required intense time and financial commitments to assure he didn’t get abused. Even so, the owner still lost tens of thousands of dollars.

It was March 2000. Strooh and company owner Leonard Ainsworth were sitting in the office going over the day’s work. One of the company’s employees knocked on the door and asked, “Have you seen the newspaper today? There’s something about a new building, and it looks like it will go right where we are.”

“Lo and behold,” said Strooh, “the map in the *Des Moines Register* shows three city blocks right over our premises. This wasn’t a proposal, either. The city council had voted to give Nationwide Insurance our property and the property of our neighbors. No one had told us about it. The article said the city would

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acquire the land for the company. We shook our heads in disbelief. We kept looking at the map and checking it, and checking the street signs. It was a surreal feeling. There was no way, as property taxpayers, we could comprehend that they would do this without notifying owners. If we were tenants it might make sense, but we were the owners. . . . Len and I couldn't believe it. We were incredulous."

One of the problems with eminent domain is that city officials have no comprehension—or they don't care—about what is involved in building a business from scratch. They look at a business and figure it can easily be moved. No big deal. The appraiser comes in and makes an offer, and the company moves. From the outside, Des Moines Blue Print, like many of the small businesses around it on the western edge of downtown Des Moines, looked modest.

### A Life's Work

But Des Moines Blue Print wasn't just a business. It was also the life's work of its owner and employees. It was the result of years of dreams and investments, a successful business that had gone through good years and bad, a small manufacturing plant with specialized needs that could not be replaced with the snap of a bureaucrat's fingers.

The business had started at its location in the 1970s. Ainsworth bought it in the early 1980s, brought in new equipment, expanding the operation to the second floor, and began enlarging the company. It mainly provided blueprints, black-and-white photographic reproduction, and signs for commercial clients. In 1994 Strooh moved from his native South Africa to Des Moines to take a job at the company, with the goal of building a new color-printing operation. With computerization and digital equipment becoming the state of the art, the company's traditional black-and-white-photography work was declining, so Ainsworth and Strooh decided to take a chance on an emerging market.

With so much overlap between the black-and-

white business and the new color business, Ainsworth decided he needed to buy the building next door. To acquire it, he had to pay a premium—about \$200,000 more than it would fetch on an appraisal. Yet when eminent domain rears its ugly head, city appraisers refuse to compensate for these types of extra costs. In this case, Des Moines Blue Print bought a property that wasn't for sale. It needed the property for its expansion, so it was forced to bid more than what similar properties would have cost to persuade the owner to sell. The city appraised the building as if it had been for sale in an open market.

By 2000, when Ainsworth and Strooh read about the city's plan in the newspaper, the color operation was still not making money. It was improving, and nine employees were working on the color side. But it was not yet profitable. "Everything hinges on the success of this color operation," Strooh said. "We had great dreams for 2000, and that's when we opened the newspaper and saw this plan."

About an hour after opening the newspaper, Strooh and Ainsworth were still sitting in the office dumbstruck. "We were still debating what it means to us," Strooh said. "Reality is setting in. Then these two sheepish-looking city employees appear at the door. . . . I still have this picture in my mind of those guys framed in the doorway peering around the corner, knowing they are going to walk into a hornet's nest. They said, 'We're from the city!'"

Strooh told them to have a seat. The officials then said: "Have you seen the newspaper this morning?" They told Ainsworth and Strooh they had until July 30 to get out of their building—a mere four months to move an entire manufacturing facility to another, yet-to-be-found location. "We were still quite numb," Strooh said. "It was like hearing you have a fatal disease and have only six months to live."

Ainsworth and Strooh thought it would be the end

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of the business. They were talking about selling out, closing up shop, laying off the 31 employees. Through an associate, Strooh found an attorney who specialized in eminent domain. Rather than fight the condemnation, as some property owners do, they focused on getting up and running at a new site.

The location they had was perfect for them. It was downtown, near most of their clients, had plenty of parking, and even had a drive-through window facing an alley, so clients could pick up their blueprints without leaving their cars. Yet they realized that those factors weren't really considered in the valuation. Des Moines Blue Print also learned that city officials had been planning to redevelop this part of downtown for several years and had quietly been paving the way for the process. For instance, Strooh learned, the city had lowered the property valuations in the area in 1998. Officials said they did this because the buildings were getting older.

Cities typically don't offer to lower tax valuations. The real goal, Strooh believes, was to lower the values of the properties the city intended to condemn. It's another example of the way government rigs the game in its favor.

### No Help in Relocation

Cities often boast that they will help targeted businesses relocate. This, as Strooh found out, was a complete joke. "The department of economic development came up with a list of properties, each one significantly more stupid than the last one. They listed properties that had the same square footage, but they were clueless about what we did. They are bureaucrats, anyway, so what did they care?" They were following the letter of the law—providing new options—but had no interest in helping the company find a new location that would actually work for it.

Consider the ridiculously tight time frame. In about four months the company would be forced from its location. But it did not know what the city was going to offer for the property. So the company didn't know how much money it would have for a new facility.

Des Moines Blue Print was denied due process under the law. Under due process, the company could have made the case as to why its property should not be taken. It could have explained the extent of the manufacturing operation that went on below the view of the aerial photographers whose pictures the city used to determine the right site to clear for an insurance company. It could have challenged the blight findings. Instead, the company found out about the project in the newspaper, after it was too late to object.

The appraisal game is strange. Most people figure that what the appraiser says is a fair approximation of

what a property is worth. In fact, there are appraisers who specialize in working for cities and those who specialize in working for business owners. The city's appraisers can always be counted on to come in with a low figure. They know what to do if they want to continue to get lucrative work from the city.

Eventually the city offered \$1,082,500 for the business; plus, under state law, the city had to pay the relocation costs. Des Moines Blue Print asked for \$1.75 million. In Iowa, if the two sides can't come to terms, the matter goes before a board made up mostly of retired real-estate

agents. "Especially here in Iowa, where they mostly appraise farms, and there's no hope that these board members would understand what we do," Strooh said.

It was a dicey situation. The city's offer was far too low—Des Moines Blue Print would never be able to get up and running on that figure. Besides not being fully compensated for the next-door building, the company was also not reimbursed for business "good will," the legal term for the intangible value of the business and its clientele. Often, businesses lose some of their clientele when forced to move to a different location, and "good will" is designed to compensate them for such losses.

It's hard to challenge the city. If the board comes up with a low offer and the business owner decides to appeal, the city goes ahead and takes the business, then

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deposits the offer in an escrow account until the matter is resolved. That puts the owner out of business essentially for about two years, since he cannot touch any of the money. The system is designed to avoid appeals, and only a wealthy owner can afford to float the entire worth of the company while the matter is battled in court. “You better be a wealthy business to appeal,” Strooh said. “If you are a little guy and you hope to stay in business, you can’t do it.”

### Negotiations End

After tense negotiations, the city offered \$1.275 million, and Des Moines Blue Print decided to take it. Legal expenses generally are not reimbursed in such matters. Attorneys received about one-quarter of the difference between the city’s original offer and the final, accepted offer. So about \$48,000 went to the law firm, which comes right out of the business’s final payment. As Strooh said, it’s not cheap to get “just” compensation.

Through happenstance, the company found another building just outside the city’s downtown. “We came out okay,” said Strooh. “Len lost money initially, but the location has been good.” The move made it tough

for the company to weather the bad economic times following the September 11 terrorist attacks, but business eventually picked up at the new location.

“The frustrations and stress were incredible,” Strooh said. “We had to buy a building without knowing what we were going to get. Plus, we had to deal with all the meetings. There were meetings with the city, meetings with appraisers, meetings with attorneys on a regular basis, meetings with realtors. . . . We were in negotiations all the time, plus we were trying to keep the old business going. This is a small company. Len and I are the only executives. Eminent domain says you must be made whole. But you don’t have a leg to stand on. We did as well as we could, but it was the most difficult time in our lives.”

It would be bad enough to put individuals through such stress and financial loss to make way for a highway or other public use. But this was done to make it easier for an insurance company to build a new building. Welcome to the world of eminent domain as it is practiced today—a process that is a far cry from what the Founding Fathers envisioned in the Fifth Amendment.




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Upcoming events in Irvington-on-Hudson



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Dr. George Ayittey  
*Distinguished Economist in Residence  
 American University*

Saturday, May 14, 2005  
*Second Annual Adam Smith Award Dinner*

Keynote speaker:  
 Dr. James Buchanan  
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