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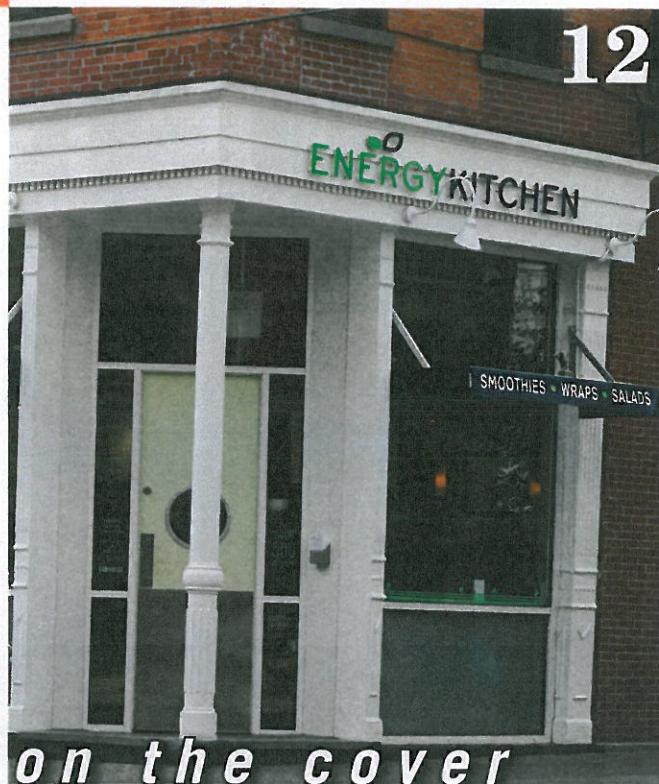
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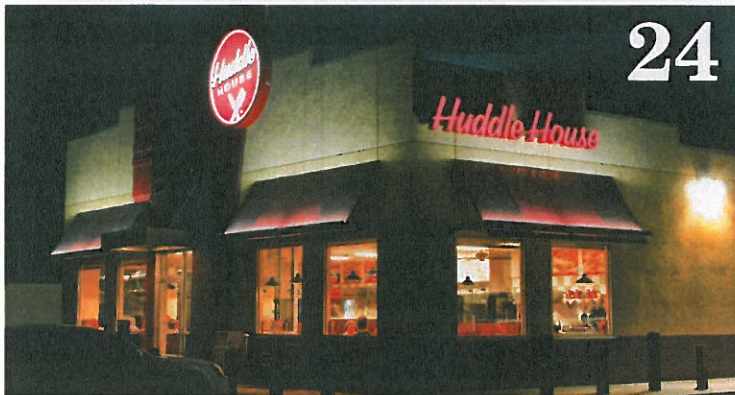
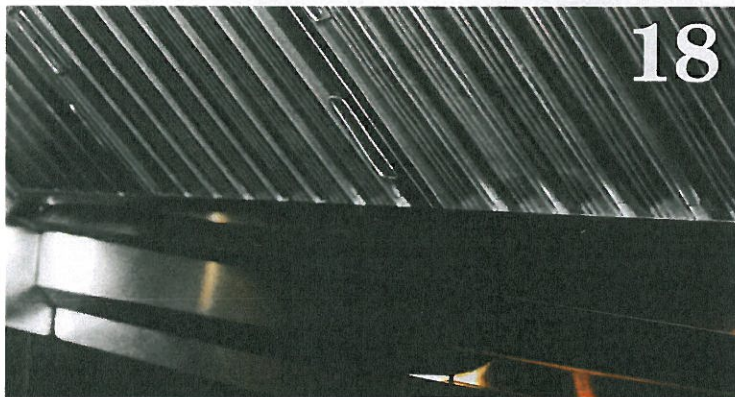
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BY ALAN ACKERMAN & DARIUS DYNKOWSKI

*Partners,
Ackerman Ackerman & Dynkowski*

Reservations REQUIRED

What restaurant owners and operators can do to anticipate and mitigate the costs and consequences of condemnation.

As infrastructure upgrades and improvements become an increasingly prominent feature of the public policy landscape, issues relating to eminent domain and condemnation will rise to the forefront of the public consciousness. Any time a private business is impacted by eminent domain or condemnation proceedings, business owners are forced to grapple with logistical complexities and financial penalties.

Most commonly, the eminent domain action involves a partial taking: the seizure of a portion of a property, typically to accommodate new road or utility construction or expansion. But the loss of even a small slice of land can have a significant impact on a business. Not only are normal day-to-day operations likely to be compromised or disrupted for the duration of the construction period, the business is likely to suffer lasting consequences as a result of the seizure. In large part because of the unique business model and range of industry-specific operational realities, restaurant owners and operators face a particularly challenging array of costs and consequences.

Understanding the short- and long-term ramifications of a partial taking is critical, both to mitigate the damages and to ensure just compensation for the allocated property. While eminent domain allows the government to acquire private property for public use, the precise terms of a fair compensation package are open to interpretation. As a result — and because the extent of the damages is not always immediately apparent — it is vital to have a comprehensive understanding of your rights as a restaurant owner and/or to enlist the services of a competent attorney who does.

WHAT IT MEANS TO YOU

The impact of an eminent domain proceeding can be significant, even in the case of a partial taking, where the value of the seized space can depend on the extent to which it impacts the larger value of the overall property. Depending on the circumstances, that impact can be disproportionately disruptive to the utility, functionality and aesthetics of the site. And in the restaurant industry, where access, visibility and customer experience are so important to the success of the enterprise, any diminution of those factors can compromise the value of the property in a way that is often difficult to quantify.

For restaurant owners and operators, business interruption due to construction or site disruption is a big concern, but there are a number of other important impacts to consider, including:

SIGNAGE

Signage is important for any business, and changes to the size and shape of a property can have a significant impact on existing signs. Additionally, because current zoning ordinances increasingly disfavor pole signs and limit signage height, moving a sign may result in the need to erect a newer, less visually dynamic sign.

VISIBILITY

Changes in grade or property

contour might impact access and visibility, a particularly important consideration in an industry where site selections and architectural choices are often made strategically — with ambience and sightlines in mind.

INVENTORY

Because of the perishable nature of most restaurant inventory, unpredictable business disruptions can be extremely costly. It's important that your attorney has a full understanding of the exact nature and timing of the work that will be done. While less food can be ordered in anticipation of a slowdown, that also poses potential ordering/inventory complications relating to contractual obligations and economies of scale.

PARKING

In most communities, zoning/licensing for restaurants is based partly on available parking. As a result, lost parking spaces not only impacts available parking for diners, but may actually reduce the number of permissible seats in the restaurant! Additionally, a smaller site with compromised zoning eligibility is likely to be less valuable for future resale.

EXPERIENCE

Dining out is all about the experience, making the noise, dust,

inconvenience and aesthetic interference of construction disruptions particularly detrimental for restaurants. In the fiercely competitive restaurant business, where fickle customer loyalty is a valuable commodity, changing dining habits can have far-reaching consequences that last beyond the short term interruption.

TIMING

For restaurants, the timing of any project is especially important. Construction during the busy holiday season can be exceptionally damaging, for example. Experienced attorneys can help influence scheduling or adjust compensation accordingly.

HOW IT WORKS

Individuals and businesses confronting eminent domain proceedings often find the process intimidating and confusing. The smartest thing you can do — and the best way to ensure that you receive full and fair compensation based on the highest and best possible use of your property — is to understand the procedures.

Once you receive written notification that a partial taking is being considered, an appraiser will visit the site to perform an evaluation and make an initial compensation offer. If that offer is not satisfactory to the owner, the government or the responsible party will file a complaint to seize. If the dispute continues unresolved, the matter will ultimately be decided in court. Restaurant owners and managers faced with a partial taking should work with a licensed appraiser to supply a competing appraisal, and should retain the services of a trusted eminent domain attorney. Working with these experienced

professionals will help clarify your rights and responsibilities and ensure that all factors are taken into account when calculating compensation.

Restaurant owners and operators who may be facing a land seizure should take the following steps:

- Consult legal counsel with demonstrated experience regarding eminent domain and condemnation proceedings in the restaurant industry.
- Work with an appraiser who is familiar with the restaurant business, not just the land values in the area.
- Continue to maintain normal property maintenance, including (and perhaps especially) areas subject to seizure.
- Educate yourself. Review the appropriate legal guidelines, paying special attention to any state and/or local statutes that apply to your particular circumstances.

At the same time, restaurant owners and operators should proceed with caution. Knowing what to do is only half the battle; knowing what not to do is just as important:

- Do not discuss property value or potential compensation with anyone other than an experienced attorney or knowledgeable real estate appraiser.
- Do not permit any testing or taking of samples without first acquiring a legally binding agreement to review copies of all test data and subsequent reports.
- Do not supply any private or proprietary documentation without your attorney's approval.
- Do not apply for new permits, variances, or any other zoning or ordinance changes.

Like anyone dealing with the disruption and damages related to a partial taking, restaurant owners and operators are entitled to full and fair compensation. It is incumbent upon individuals and

businesses to take the proactive steps necessary to safeguard their interests and protect their rights. ♦

Co-authored by Alan Ackerman and Darius Dynkowski, partners with Bloomfield Hills, Michigan-based Ackerman Ackerman & Dynkowski. Ackerman can be reached at alan@

nationaleminentdomain.com and Dynkowski can be reached at darius@nationaleminentdomain.com.

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