S T A T E O F N E W Y O R K

S. 239 A. 339

2009-2010 Regular Sessions

S E N A T E - A S S E M B L Y

(PREFILED)

January 7, 2009

IN SENATE -- Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

IN ASSEMBLY -- Introduced by M. of A. THIELE -- read once and referred to the Committee on Local Governments

AN ACT to amend the general municipal law, in relation to the acquisition of property by eminent domain

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The general municipal law is amended by adding a new section 360-a to read as follows:

S 360-A. ACQUISITION OF PROPERTY BY EMINENT DOMAIN. 1. NOTWITHSTANDING THE PROVISIONS OF THE EMINENT DOMAIN PROCEDURE LAW, THE PROVISIONS OF THIS SECTION SHALL APPLY TO THE ACQUISITION OF PROPERTY FOR THE PURPOSES ENUMERATED IN SECTION THREE HUNDRED SIXTY OF THIS ARTICLE BY THE POWER OF EMINENT DOMAIN, PROVIDED, HOWEVER, TO THE EXTENT THAT PROVISIONS HEREIN DO NOT SUPERSEDE OR CONFLICT WITH THE PROVISIONS OF THE EMINENT DOMAIN PROCEDURE LAW, THE PROVISIONS OF SUCH LAW SHALL APPLY.

2. WHEN ANY REAL PROPERTY IS SOUGHT TO BE ACQUIRED BY THE EXERCISE OF THE POWER OF EMINENT DOMAIN, AND AFTER THE MUNICIPAL CORPORATION SHALL HAVE ENTERED INTO NEGOTIATIONS FOR THE PURCHASE OF SUCH PROPERTY, THE MUNICIPAL CORPORATION SHALL CAUSE A SURVEY AND MAP TO BE MADE THEREOF AND SHALL CAUSE SUCH SURVEY AND MAP TO BE FILED IN ITS OFFICE AND IN THE OFFICE OF THE COUNTY CLERK IN THE COUNTY IN WHICH SUCH PROPERTY IS LOCATED. THERE SHALL BE ANNEXED TO SUCH SURVEY AND MAP A CERTIFICATE EXECUTED BY THE CHIEF EXECUTIVE OFFICER OF THE MUNICIPAL CORPORATION OR BY SUCH OTHER OFFICER OR EMPLOYEE AS MAY BE DESIGNATED BY THE GOVERNING

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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BOARD, STATING THAT THE PROPERTY OR INTEREST THEREIN DESCRIBED IN SUCH SURVEY AND MAP IS NECESSARY FOR ITS PURPOSE.

3. UPON FILING SUCH SURVEY AND MAP, THE MUNICIPAL CORPORATION SHALL PETITION A SPECIAL TERM OF THE SUPREME COURT IN THE JUDICIAL DISTRICT IN WHICH THE PROPERTY IS LOCATED FOR THE ACQUISITION OF SUCH PROPERTY OR INTEREST THEREIN. SUCH PETITION SHALL DESCRIBE THE PROPERTY BEING ACQUIRED, THE VALUATION DATE, AS DETERMINED BY THE MUNICIPAL CORPORATION, AND SUCH ADDITIONAL INFORMATION AS THE MUNICIPAL CORPORATION MAY REASONABLY DEEM NECESSARY TO FACILITATE THE PROCESS OF CONDEMNATION AND PAYMENT. THE PETITION SHALL STATE THAT THE MUNICIPAL CORPORATION WILL ELECT WHETHER OR NOT TO PAY THE AMOUNT OF SUCH AWARD WHEN IT HAS BEEN FINALLY DETERMINED. IN ALL OTHER RESPECTS, SUCH PETITION SHALL BE GENERALLY IN THE FORM PRESCRIBED BY THE EMINENT DOMAIN PROCEDURE LAW, SO FAR AS CONSISTENT HEREWITH. SUCH PETITION, TOGETHER WITH A NOTICE OF PENDENCY OF THE PROCEEDING, SHALL BE FILED IN THE OFFICE OF THE COUNTY CLERK OF THE COUNTY IN WHICH THE PROPERTY IS LOCATED AND SHALL BE INDEXED AND RECORDED AS PROVIDED BY LAW. A COPY OF SUCH PETITION, TOGETHER WITH A NOTICE OF THE PRESENTATION THEREOF TO SUCH SPECIAL TERM OF THE SUPREME COURT, SHALL BE SERVED UPON THE OWNERS OF SUCH PROPERTY AS PROVIDED IN THE EMINENT DOMAIN PROCEDURE LAW. THE MUNICIPAL CORPORATION MAY CAUSE A DUPLICATE ORIGINAL AFFIDAVIT OF THE SERVICE THEREOF TO BE RECORDED IN THE BOOKS USED FOR THE RECORDING OF DEEDS IN THE OFFICE OF THE COUNTY CLERK OF THE COUNTY IN WHICH THE PROPERTY DESCRIBED IN SUCH NOTICE IS LOCATED, AND THE RECORDING OF SUCH AFFIDAVIT SHALL BE PRIMA FACIE EVIDENCE OF DUE SERVICE THEREOF.

4. SUBSEQUENT PROCEEDINGS SHALL BE CONDUCTED GENERALLY IN THE MANNER PRESCRIBED IN THE EMINENT DOMAIN PROCEDURE LAW EXCEPT TO THE EXTENT THE PROVISIONS THEREOF ARE INCONSISTENT WITH THE PROVISIONS OF THIS ARTICLE, IN WHICH CASE THE PROVISIONS OF THIS ARTICLE SHALL CONTROL.

5. IN ANY PROCEEDING INVOLVING THE VALUATION OF PROPERTY TAKEN BY THE MUNICIPAL CORPORATION THE SUPREME COURT SHALL ASCERTAIN AND DETERMINE JUST COMPENSATION FOR THE PROPERTY TAKEN AS OF THE VALUATION DATE, GIVING DUE CONSIDERATION TO ANY APPLICABLE FINDINGS AND DETERMINATIONS OF THE LEGISLATURE.

6. SHOULD PROPERTY BE TAKEN BY THE EXERCISE OF THE POWER OF EMINENT DOMAIN AND IF THE OWNER SHALL HAVE AGREED UPON THE COMPENSATION TO BE PAID THEREFOR IN SETTLEMENT OF THE PROCEEDING, THEN THE OWNER SHALL BE ENTITLED TO PAYMENT OF THE AGREED UPON OR AWARDED COMPENSATION WITHIN ONE HUNDRED EIGHTY DAYS AFTER THE DATE OF THE AGREEMENT UPON THE AMOUNT OF THE COMPENSATION OR OF THE ENTRY OF THE AWARD, TOGETHER WITH INTEREST UPON THE AMOUNT OF SUCH COMPENSATION FROM THE TIME OF ACQUISITION THEREOF BY THE MUNICIPAL CORPORATION TO THE DATE OF PAYMENT OF SUCH COMPENSATION; BUT SUCH INTEREST SHALL CEASE UPON THE SERVICE BY THE MUNICIPAL CORPORATION, UPON THE PERSON OR CORPORATION ENTITLED THERETO, OF A FIFTEEN DAYS' NOTICE THAT THE MUNICIPAL CORPORATION IS READY AND WILLING TO PAY THE AMOUNT OF SUCH COMPENSATION UPON THE PRESENTATION OF PROPER PROOFS AND VOUCHERS. SUCH NOTICE SHALL BE SERVED PERSONALLY OR BY REGISTERED MAIL AND PUBLICATION THEREOF SHALL BE MADE AT LEAST ONCE A WEEK FOR THREE CONSECUTIVE WEEKS IN A DAILY NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY IN WHICH SUCH PROPERTY OR ANY PART THEREOF IS LOCATED.

7. UPON THE ENTRY OF AN AWARD FINALLY DETERMINING JUST COMPENSATION FOR THE PROPERTY, THE MUNICIPAL CORPORATION SHALL HAVE SIXTY DAYS AFTER RECEIPT OF NOTICE OF ENTRY OF SUCH AWARD WITHIN WHICH TO ELECT TO PROCEED WITH THE TAKING OR TO ABANDON SUCH ACQUISITION AS PROVIDED IN SUBDIVISION NINE OF THIS SECTION. NOTICE OF SUCH ELECTION SHALL BE SERVED BY THE MUNICIPAL CORPORATION ON THE OWNERS OF SUCH PROPERTY IN

THE MANNER PRESCRIBED IN SUBDIVISION THREE OF THIS SECTION. IF THE MUNICIPAL CORPORATION ELECTS TO PROCEED WITH THE ACQUISITION, IT SHALL DEPOSIT WITH THE SUPREME COURT IN WHICH THE CONDEMNATION PROCEEDING WAS HELD AN AMOUNT EQUAL TO THE AWARD WITHIN ONE HUNDRED EIGHTY DAYS AFTER RECEIPT BY THE MUNICIPAL CORPORATION OF NOTICE OF ENTRY OF SUCH AWARD. UPON THE MAKING OF SUCH DEPOSIT, THE MUNICIPAL CORPORATION SHALL NOTIFY THE OWNER IN WRITING OF SUCH DEPOSIT. THE SUM SO DEPOSITED SHALL BE APPLIED AS PROVIDED IN THE EMINENT DOMAIN PROCEDURE LAW. UPON MAKING SUCH DEPOSIT AND GIVING SUCH NOTICE TO THE OWNER, TITLE TO ALL PROPERTY DESCRIBED IN THE NOTICE OF TAKING SHALL IMMEDIATELY VEST IN THE MUNICIPAL CORPORATION AND THE MUNICIPAL CORPORATION SHALL HAVE IMMEDIATE RIGHT THERETO. THE ORDER SETTING FORTH THE AWARD, TOGETHER WITH THE EVIDENCE FROM THE CLERK OF THE COURT OF RECEIPT OF THE AMOUNT OF THE AWARD, SHALL BE FILED IN THE OFFICE OF THE COUNTY CLERK OF THE COUNTY IN WHICH THE PROPERTY IS LOCATED AND SHALL BE INDEXED AND RECORDED IN THE SAME MANNER AS A NOTICE OF PENDENCY UNDER THE EMINENT DOMAIN PROCEDURE LAW. THE OWNER OR PERSON IN POSSESSION OF SUCH PROPERTY SHALL DELIVER POSSESSION THEREOF TO THE MUNICIPAL CORPORATION UPON DEMAND, AND IN CASE POSSESSION IS NOT DELIVERED WHEN DEMANDED OR DEMAND IS NOT CONVENIENT BECAUSE OF ABSENCE OF THE OWNER OR INABILITY TO LOCATE OR DETERMINE THE OWNER, THE MUNICIPAL CORPORATION MAY APPLY TO THE COURT WITHOUT NOTICE FOR AN ORDER REQUIRING THE SHERIFF TO PUT IT INTO POSSESSION OF SUCH REAL PROPERTY. SUCH AN ORDER SHALL BE EXECUTED AS IF IT WERE AN EXECUTION FOR THE DELIVERY OF THE POSSESSION OF THE PROPERTY. IN THE EVENT THE MUNICIPAL CORPORATION ELECTS TO ABANDON THE ACQUISITION, THE PROVISIONS OF SUBDIVISION NINE OF THIS SECTION SHALL APPLY.

8. AT ANY TIME THE MUNICIPAL CORPORATION AND ITS DULY AUTHORIZED AGENTS AND EMPLOYEES MAY, ON REASONABLE NOTICE AND DURING BUSINESS HOURS, ENTER UPON ANY REAL PROPERTY PROPOSED TO BE ACQUIRED FOR THE PURPOSE OF MAKING THE SURVEYS OR MAPS MENTIONED IN THIS SECTION, OR OF MAKING SUCH OTHER SURVEYS, INSPECTIONS OR EXAMINATIONS OF REAL OR PERSONAL PROPERTY AS THE MUNICIPAL CORPORATION MAY DEEM NECESSARY OR CONVENIENT FOR THE PURPOSES OF THIS ARTICLE.

9. IF THE MUNICIPAL CORPORATION DETERMINES, IN ITS SOLE DISCRETION, THAT THE TOTAL COST OF ACQUISITION WILL EXCEED THE MAXIMUM COST PROVIDED FOR IN THE RESOLUTION ADOPTED PURSUANT TO SUBDIVISION THREE OF SECTION THREE HUNDRED SIXTY OF THIS ARTICLE, THE MUNICIPAL CORPORATION MAY ABANDON THE ACQUISITION. IN SUCH EVENT, THE MUNICIPAL CORPORATION SHALL SERVE NOTICE OF SUCH ABANDONMENT IN THE SAME MANNER AS PROVIDED FOR THE SERVICE OF A PETITION FOR ACQUISITION PURSUANT TO SUBDIVISION THREE OF THIS SECTION. IN ADDITION, THE MUNICIPAL CORPORATION SHALL FILE A COPY OF THE NOTICE OF ABANDONMENT WITH THE COUNTY CLERK OF THE COUNTY IN WHICH IS LOCATED ANY REAL PROPERTY THAT WAS TAKEN AND WITH THE CLERK OF THE SUPREME COURT IN WHICH THE PROCEEDING WAS INSTITUTED.

S 2. This act shall take effect on the sixtieth day after it shall have become a law.