

LAND USE AND EMINENT  
DOMAIN ATTORNEYS

Margaret Carmeli

Mark A. Moorstein

Mark E. Shaffer

Theodora A. Stringham

Offit Kurman's Virginia real estate litigation team provides experienced counsel on all aspects of land use and eminent domain law. With established connections and knowledge of Virginia's local and federal courts, the Offit Kurman team works to garner effective results for your business and personal real estate and property needs, including eminent domain representation for government and localities, Inverse condemnation, representation through all stages of development, zoning disputes, easements.

## Land Use

Land use focuses on the rights associated with the use of land. Offit Kurman's team navigates the many rules and restrictions surrounding the ability to develop, defend, and expand property including zoning, site plan/development representation, subdivisions, partition, lease issues, easement disputes, and litigation surrounding appeal of local government decisions.

### HOW CAN MY BUSINESS BEST MOVE FORWARD TO DEVELOP OR EXPAND A PROPERTY?

Development is the natural way to progress a business. However, each locality in Virginia has different requirements that dictate how a proposal must be pursued. Oftentimes, the initial phases of development require meeting with local officials and presenting a preliminary site plan or "blueprint" for the development envisioned. Subsequent phases vary however all involve a legislative approval process deeply rooted in local and state law.

### BY RIGHT USES IMPOSE ADDITIONAL REQUIREMENTS DEPENDING ON VIRGINIA JURISDICTION.

All land is zoned or regulated by the government. "By right" uses are those delineated uses that typically do not require extensive approvals by localities. In contrast, "conditional" or "special uses" require approval through the legislative (and sometimes legal) processes of the applicable jurisdiction.

A change in use – whether by right or special use – is not guarantee. Even uses specially provided for in the zoning code require communication and approval. If approval is not received, a government may be able to challenge the use and potentially require that the use is "changed back."

Offit Kurman's team can walk you through how to receive approval for your development – whether it is "by-right" or "special use." Contact us today to schedule a consultation.

## Eminent Domain

Offit Kurman's eminent domain team navigates the complex issues associated with the taking of private land for a public use. As Special Counsel for the Virginia Department of Transportation (VDOT) the Offit Kurman team assists Virginia and its localities with the legal counsel and all areas of litigation from pre-construction negotiations all the way through trial.

### WHAT IS EMINENT DOMAIN?

The United States Constitution guarantees that private property used by the government for a public use must be compensated. U.S. Const. Art. V. In Virginia, Article I, § 11 provides even more rights to landowners than the federal government and many states, stating:

*That the General Assembly shall pass no law whereby private property, the right to which is fundamental, shall be damaged or taken except for public use. No private property shall be damaged or taken for public use without just compensation to the owner thereof. No more private property may be taken than necessary to achieve the stated public use. Just compensation shall be no less than the value of the property taken, lost profits and lost access, and damages to the residue caused by the taking. The terms "lost profits" and "lost access" are to be defined by the General Assembly*

Va. Const. Art. I § 11.



## WHAT IS EMINENT DOMAIN? (CONTINUED)

The ultimate issue in eminent domain cases is how much “fair market value” should be paid to a landowner for the land needed for the government’s work. The government must satisfy several requirements in order to ensure that its obligations are met – including making a bona fide offer for the property, filing an accurate Certificate of Take (if necessary) and filing a petition in condemnation. These technical requirements necessitate in depth knowledge of the law surrounding condemnation.

Questions on how to navigate eminent domain law in Virginia with ease? Contact Offit Kurman and ask to speak to the eminent domain team at (703) 745-1800.

## WHAT IS INVERSE CONDEMNATION?

Inverse condemnation allows a landowner to assert a monetary claim when there is sufficient evidence that the government utilized private land for a public use. Virginia law specifically requires that the government action is one taken for public use – and not an “accident” or “wrongful” act made by the government.