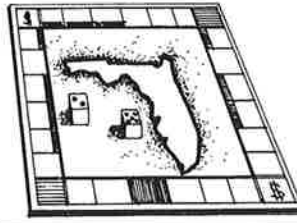


Florida's Money Game

W. Forrest Norton, SR/WA



What happens when a state pays for the property owners' legal fees and for a separate appraisal? How are private negotiating consultants representing property owners?

The state of Florida has one of the most liberal set of eminent domain laws in the free world. There is little more sacred in a democracy than an individual's right of ownership in real property. The Florida legislature has gone the extra mile to protect this right.

Florida law guarantees a citizen's right to a 12-man jury trial should the state find it necessary to condemn his or her property. Further, the state's first offer must be for the full approved appraised value and the state will pay all reasonable legal fees, win or lose, should court action be required.

A relatively new law guarantees good faith negotiations by giving the property owner an opportunity to have a separate appraisal/business damage report made just before the negotiations phase at the state's expense. These fees are paid by the state, even if a negotiated settlement cannot be reached. And, if the property owner is not satisfied with the appraisal/business damage report, he or she may obtain a new one for court (again at the state's expense).

Florida lawmakers are to be commended for their efforts to protect private citizens. Property owners—that's most of us—are entitled to fair and just compensation for land acquired under the threat of public condemnation. Property owners are also entitled to legal representation when there

is a legitimate disagreement over values. Florida's rather liberal approach to eminent domain acquisitions has, however, caused a significant problem. Florida's eminent domain laws *do not* encourage negotiated settlements.

A property owner once told this writer that it didn't matter how much the state offered him for his land, it wouldn't be enough. He knew that the state would offer the full approved appraised value and would cover all of his legal fees, win or lose, should his parcel be condemned. Another property owner told this writer that he was not interested in selling his land for current or fair market value. He bought the land for investment, so why not go to court? He had nothing to lose.

The nothing-to-lose attitude, coupled with current economic conditions, are causing an increasing number of landowners to think about going to court. And, after all, they reason, the state is a huge, unfeeling bureaucratic entity, trying to acquire private land for as little as possible. It is difficult to convince some property owners that the state is not in the real estate investment business. Agencies like the Florida Department of Transportation are simply trying to provide a much needed transportation facility. The Florida Department of Transportation is a creature of the statutes and must operate by statute. The statutes call for just compensation where property is acquired under threat of condemnation.

Condemnation attorneys will tell you that they are in business to protect the poor, unknowledgeable property owner from the

powerful, bureaucratic, governmental agency. The truth is that they, like everyone else, are trying to make a living and they know that a fee is guaranteed once suit is filed.

It is not uncommon in Florida for the attorney's court-awarded fee to be as much as or more than the benefit to the property owner. For example, in *D.O.T. vs. Dave and Ted Enterprises*, the property owner's benefit over the original offer of \$80,685 was \$164,315. The defense attorney's fees were \$182,000 (the defense's expert witness fees were an additional \$77,403). One law firm, with offices throughout the state, advises prospective clients that "Any discus-

Cost of Land Sold to the State seems Difficult to Fix Precisely

Weaknesses in Florida's eminent domain laws seems to be illustrated vividly by a few figures from the state Department of Transportation.

Last year, the state bought land in parcels its appraisers valued at \$8 million collectively.

But appraisers for the landowners valued the same property at \$24 million—three times as much.

Juries wound up giving the landowners \$12 million, which is 50 percent of what the owners thought it was worth and 50 percent more than the DOT thought it was worth.

Considering all the implications, the surprising thing is that the state had to go to court only 30 percent of the time it took land from the public.

That was often enough, however, to add \$4 million to the public costs, \$2 million for attorney's fees and \$2 million in court costs.

So it cost the DOT twice as much for the land it bought in 1986 as its appraisers said the land was worth.

If the landowners had paid their own legal fees and costs, as they would have in any other state, they would collectively have received what the state said their land was worth anyway.

Lawyers who attempt to justify the Florida law that requires the state to pay legal costs no matter who wins say the individual must be protected against a state that would rob him.

Since it costs twice as much to go to court, there seems little incentive for the state bureaucrats to further incite litigation by offering the landowner too little for his property at the outset.

The DOT numbers make it look like a case where the present eminent domain law serves individual lawyers, not the individual landowners or the individual taxpayer.

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