

Viewpoint: A primer on Eminent Domain

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Throughout the last couple of years, the Florida Department of Transportation has announced a number of road plans in Northeast Florida, with none more ambitious than the First Coast Outer Beltway, a 46-mile roadway that will connect Interstate 95 in St. Johns County with Interstate 10 in Duval County. Even after the design and engineering of this mammoth project has been completed, construction cannot begin until the land for the roadway has been transferred to the FDOT by potentially hundreds of private landowners.

The FDOT typically tries to acquire such lands through amicable means, by offering the landowner what it believes to be a just and fair value for the land. If the landowner refuses to accept the FDOT's offer, then the FDOT may have no other alternative but to file a lawsuit to "take" the land.

The term, "eminent domain," is derived from a Latin phrase meaning "supreme lordship," and dates back to the Middle Ages when European monarchs condemned their citizens' properties for use by the monarchy. The Fifth Amendment to the United States Constitution, limits that power by requiring that "No person shall be ...deprived of life, liberty or property, without due process of law, nor shall private property be taken for public use, without just compensation."

For many landowners, having to deal with a government agency like the FDOT is a once-in-a-lifetime experience. Unless the landowner can show that the condemning authority has acted improperly or has plans to take private property without a "public purpose," the FDOT will ultimately be able to take the property. But the question remains, for how much?

If the court determines that the FDOT has a legitimate public purpose in taking the land, then the landowners has the right to have a jury resolve the issue of just compensation. Interestingly, as a testament to our Founding Fathers' concerns for protecting private property rights, eminent domain cases require 12 jurors. All other civil cases have a requirement of just 6 jurors.

Eminent domain lawyers who represent landowners are a rather small group of practitioners who spend most of their time with civil engineers, traffic specialists, contractors, economists, land use experts and appraisers. Their job is to make sure their clients get fair and just compensation for any property that is taken for a public purpose, including any potential business damages, as well as any damage caused to their "remaining property."

In most cases, eminent domain lawyers do not charge a landowner for their attorneys' fees and costs. To the contrary, most eminent domain lawyers take such cases on contingency, with the understanding that, if successful in their dealings with the FDOT, the condemning authority, rather than the landowner, will pay such fees as part of its duty to make the landowner whole.

The First Coast Outer Beltway is one of 34 separate road improvement projects that the FDOT lists on its website that are currently underway in Duval County alone. With legislators in Congress and in Tallahassee lining up to spend money on our roadway system, our airports, our bridges and our ports, it is likely that thousands of landowners in Northeast Florida will have to come face-to-face with the prospect of losing all or part of their property to eminent domain in the years to come.

Any landowner whose property lies in the way of "progress" should always talk with an eminent domain lawyer before deciding what course of action is best. Indeed, protecting one's property from condemnation, and ensuring that they receive "just compensation...with due process" for their property, may be their most fundamental and sacred constitutional right.

1) What is Eminent Domain?

2) Where does the power of Eminent Domain originate?

3) How are US citizens protected from arbitrary use of this power by government?

4) How is "just compensation" determined? Do people have the ability to challenge the "just compensation"?

5) How is eminent domain related to public goods?

6) Explain how eminent domain is related to the broad economic goals.

7) How do you feel about the power of eminent domain? Explain.