



Decades of Experience Serving Florida's Property Owners & Businesses

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EMINENT DOMAIN NEWSLETTER

Fixel & Maguire, a law firm which exclusively practices eminent domain law, is pleased to offer our clients and fellow professionals this second newsletter. Future issues will continue to report on our experience and important events relating to Florida's eminent domain projects and condemnation laws.

Fixel & Maguire is currently monitoring road projects throughout North, Central, and Southwest Florida. Most of the firm's property owner and business clients who are presently being represented by Fixel & Maguire are located in Central Florida, Pensacola, Panama City, Destin/Ft. Walton Beach, Tallahassee, Gainesville, Lake City, Jacksonville, and Ft. Myers.

If you want information on a road project in your area, please contact us at either of our offices. The firm's regular telephone numbers are those set forth on this newsletter. In addition, in Orlando, our toll free number is 1-888-216-6870, and in Tallahassee, our toll free number is 1-800-848-7535.



Joe W. Fixel



Raymer F. Maguire, III



Craig B. Willis

Major Changes in Florida's Condemnation Laws

The year 2000 brought some substantial changes to Florida's condemnation laws. The most dramatic of these changes was a new waiver of rights provision in §73.015, *Florida Statutes*, which permits government to escape all responsibility for paying traditionally recognized business damage claims under certain circumstances. To make matters even worse, government can try to trigger this bad result even before condemnation proceedings begin.

Beginning in 2000, preserving legitimate business damage claims can only be assured by meeting some very important new statutory requirements which mandate that all business damage claims be submitted within a specific and relatively early timeline. Therefore, avoiding the severe consequences of waiving otherwise valid business damage claims demands significant pre-condemnation planning.

There has also been a substantial change in the law resulting in a significant reduction in condemning authorities' responsibility for property owners' and businesses' attorney fees.

These changes and the general trend towards specialization in the practice of law have contributed

to most law firms, which in the past handled some condemnation, choosing to no longer represent property owners and businesses on eminent domain matters.

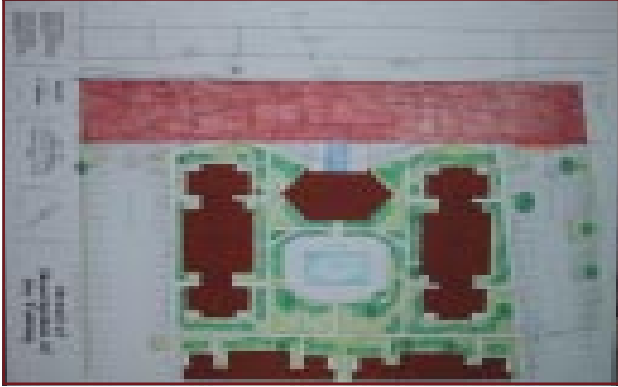
In this evolving legal environment, Fixel & Maguire's unique and highly efficient eminent domain case management system has allowed it to continue its commitment to limit its practice to condemnation law, and to represent *all* who need its services. The result has been a major increase in the number of law firms across Florida who refer their clients to Fixel & Maguire when those clients are confronted with the threat of condemnation.

Fixel & Maguire has expressed its appreciation of referrals by continuing its long-standing policy of paying a portion of all attorney fees secured to referring counsel in accordance with the Florida Bar's approved rule that encourages referrals to specialists who focus their practice in one area of law.

Fixel & Maguire looks to the future with great confidence knowing it can meet all its clients' eminent domain needs, and those of its referring attorneys' clients, regardless of the substantial changes in the laws which have recently occurred.

FDOT Pays Record \$3 Million For Road Widening Impacts to Motel

By 1995 a prominent couple in Florida's Panhandle had everything set up for their retirement. After the husband had retired from a 25-year practice as a northwest Florida surgeon, the couple purchased, significantly expanded, and operated what was to become one of the most highly rated Best Western Motels in Florida. This investment was to provide the primary financial security for their future.



In 1998 the Florida Department of Transportation (FDOT) knocked on the couple's door and informed them that FDOT planned to take nearly 75% of the area in front of the motel which had been serving as the attractive entrance and check in location for guests.

FDOT's threat of condemnation in 1998 caused much anxiety for over two years before FDOT ten-

dered its offer of a little less than \$1,100,000.00 in early 2000. This offer was based on FDOT's evaluation of what FDOT claimed it would take to fully restore the motel after FDOT's anticipated taking occurred and its road project was fully implemented. The couple disagreed and felt that much more would be needed to restore the site to its original attractive and fully functional condition.

Shortly before the couple was sued by FDOT, they retained Fixel & Maguire. Fifteen months later, and on the eve of trial, FDOT agreed to pay them \$3,000,000.00 to settle the case.

After the case was resolved, the couple stated: "Fixel & Maguire, and Joe Fixel in particular, brought together a great team of experts to protect our interests and ensure our future. We were especially impressed with his 'hands on' approach to solving our problems. Under Joe Fixel's direction, his law firm and these experts all worked unceasingly for more than one year on our case."

They added: "We understand what we ended up getting is a record for a road widening case in this part of Florida, and we are very pleased with the result that was achieved. When we were searching for a law firm which specialized in condemnation to help us, we were told by a number of people that Fixel & Maguire was one of the very best in our state, and it certainly more than proved its reputation to us."

Question & Answer

Q: *When a real estate broker is trying to sell property which is subject to a governmental road widening project encompassing a portion, or all of the property, what should be done to deal with the situation?*

A: First, the real estate broker should avoid having the threat of condemnation or its impact on the market place lead to listing the property for sale at a price less than its full value unaffected by the threat. To do otherwise will undermine the credibility of the owner's eminent domain appraiser who will need to be used if the property cannot be sold at full value.

Second, the threat of condemnation should be

carefully, but fully, disclosed in writing by the real estate broker to any potential buyer.

Third, the real estate broker should include adequate language in any sales agreement to reflect the intent of the buyer and seller regarding how to allocate subsequent condemnation proceeds.

In addition to the three mentioned in this newsletter, there are other important related considerations that should be taken into account by the real estate broker.

Fixel & Maguire has a long-standing policy of providing *free eminent domain assistance* to real estate brokers and their clients who are confronted with the threat of condemnation. To secure this assistance, contact the firm.

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