

LAW OFFICES

# Fixel, Maguire & Willis

*Decades of Experience Serving Florida's Property Owners & Businesses*

[www.fla- eminentdomain.com](http://www.fla- eminentdomain.com)

211 South Gadsden Street • Tallahassee, FL 32301 • 850-681-1800 • FAX 850-681-9017  
1010 Executive Center Drive, Suite 121 • Orlando, FL 32803 • 407-228-9522 • FAX 407-228-9665

## EMINENT DOMAIN NEWSLETTER

The law firm of Fixel, Maguire & Willis provides eminent domain services to property owners and businesses throughout North and Central Florida, as well as along portions of the West Coast of the state. The three attorneys in the firm each have over 25 years of legal experience, and their practice is solely eminent domain. All of the firm's attorneys have received the highest possible rating from Martindale-Hubbell, the largest and most comprehensive lawyer rating service in the world.

If you would like information on a road project in your area, please contact Fixel, Maguire & Willis at either of its offices. In Orlando, the toll free number is 1-888-216-6870, and in Tallahassee, the toll free number is 1-800-848-7535.

**Joe W. Fixel**



**Raymer F. Maguire, III**



**Craig B. Willis**



## LOCAL GOVERNMENT STOPPED FROM TRAMPLING ON CONSTITUTIONAL RIGHTS

Most citizens, and unfortunately, some government officials, do not know that a person who rents real property is an owner of that property for purposes of Florida's constitutional guarantee of full compensation when the property is taken for a public purpose. In addition to the constitutional guarantee, there are statutory provisions, which can provide compensation for business tenants when their leased parcel is acquired for a public purpose.

In 1999, the City of Lake City decided that there was a need to extend Douglas Road, to create a new arterial roadway on the west side of the city in order to alleviate increasing traffic congestion. The City authorized city employees, armed with the power of eminent domain, to obtain the property it needed to build the new road. A segment of the extended Douglas Road was designed to cross an already improved property site.

The tenant located on the property was a mobile home sales center. This business leased the property and had an additional three years left on its lease with the property owner. The lease was silent as to the respective rights of the real property owner versus the business operator in the event the property was acquired by government for a public project.

The City's representatives approached the real property owner and negotiated the sale, under threat of condemnation, of the portion of the property needed for the road project. This acquisition

included the part of the site that provided essential access to the business parking lot, a large area of the parking lot, and an entire row of mobile homes in the sales center. The business operator was not contacted by the City's representatives and no effort was made by the City to acquire the business owner's leasehold rights or to pay for business damages caused by the taking of the property.

Later in 1999, construction personnel showed up at the sales center and ordered the business operator to remove his mobile homes from the area of the property where the new road was to be built or the Sheriff would be brought in to oversee city employees doing so. Confronted with this alternative the business operator moved the homes in order to avoid having them damaged by city construction crews. Again, no effort was made by the City to negotiate with the tenant; nor was there any offer to provide the business operator with any compensation for the cost associated with the move, or the anticipated business losses caused by the taking. The City Manager, when confronted, replied to the business operator, "How did you figure the City owes you anything?"

Due to the devastating loss of sales during the construction of the road project and afterwards, the tenant was forced out of business. When the City continued to ignore its legal responsibilities, the business operator contacted Fixel, Maguire & Willis to bring legal action against the City. The

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law firm instituted an inverse condemnation suit against the City. After five years of vigorously contested litigation, and an adverse ruling by a local circuit judge, Fixel, Maguire & Willis was able to secure a reversal of the trial court order by the district court of appeal. The district court directed the trial court to rule that there was an improper taking of private property without payment of full

compensation by the City of Lake City; and further directed that the matter be set by the trial court for a jury trial on the matter of compensation. Now finally, the business operator will be able to receive compensation for the illegal action taken by the City.

## ORANGE COUNTY UNSUCCESSFUL IN MIDNIGHT UNFAIR “FORTUNE FEDERAL” TAKING

In 1999, Orange County anticipated there would a future need to extend All-American Boulevard in order to create a new east-west throughway in the county north of U.S. Highway 50 (Colonial Avenue). The construction project itself was not scheduled to take place for another several years. However, the County perceived there was an opportunity to avoid a large potential business damage claim if it initiated an eminent domain legal action against Smyth Lumber Company prior to the effective date of the repeal of an unfair eminent domain statute.

The statute in question, known as the “Fortune Federal” law, allowed a condemning authority to acquire an entire property even though only part of it was needed, if the value of the whole property was less than the compensation to be paid for acquiring only the portion needed for the project, once business damages were taken into account. Since government is liable for business damages only if less than the whole business site is taken, this unfair statute had been used by government for a number of years to avoid paying significant business damage claims.

Disregarding the unfair nature of the statute and the legislative intent expressed in its repeal, Orange County instituted a suit to take all 16-plus acres owned by the

Smyth family, even though only two acres were actually needed for the road project. The effective date for the repeal of the unfair “Fortune Federal” law was December 31, 1999. Orange County filed its lawsuit on December 22, 1999.

On the 16 acre tract the family-owned lumber business was a multi-million dollar operation. Thanks to the efforts of Fixel, Maguire & Willis, Orange County was forced to abandon its midnight “Fortune Federal” effort, and only took the two acres it actually needed for the road project.

In addition to limiting the taking to only two acres, Fixel, Maguire & Willis secured the right for the Smyths to be paid for the two acres as though Orange County was buying the entire 16 acres. So, the County ended up paying the market value of the 16 acres as improved, although it only acquired two acres. The Smyths were entitled to retain ownership of the remaining 14 acres and all the buildings and fixtures on that property. And further, Fixel, Maguire & Willis negotiated the right of extended possession of the two acres taken for an additional three years, which enabled the successful lumber business to find another site and relocate its business without experiencing business losses.

### Questions & Answers

*Q: Are there matters that should be accomplished by property owners and tenants operating businesses on property that is slated to be condemned to avoid potential conflicts between them when some or all of the property is taken by condemnation?*

**A: Yes. There are a number of pre-condemnation planning steps, including possibly amending the lease, which can be taken to avoid potential disagreements between real property owners and business tenants before the government seeks to acquire the property.**

*Q: If a business owner would like to receive information about whether the business is entitled to claim business damages, is this a matter about which Fixel, Maguire & Willis can provide assistance?*

**A: Yes. If a business would like to receive an analysis of whether the business can claim business damages, Fixel, Maguire & Willis would be happy to assist the business owner in that regard.**



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