

LAW OFFICES

Fixel, Maguire & Willis

Decades of Experience Serving Florida's Property Owners & Businesses

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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 eminent domain work is all we do. 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 us at either of our offices. 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



Tenants' Rights

What legal rights do tenants have to compensation if all or a portion of the leased property is acquired for a public project? Under Florida law a lease is an ownership in property, and a tenant may be entitled to compensation. However, many leases contain condemnation clauses, which can affect a tenant's right to share in condemnation proceeds. In addition to such clauses, the term of the lease, including any options to renew, can determine whether a tenant may claim a part of the compensation paid for the value of the real estate taken and damages to the remainder, as well as provide the foundation for a business damage claim.

When there is no condemnation provision in the lease addressing the respective rights of the parties to compensation, and where the tenant has a favorable below market lease, then the tenant is entitled to assert a right to compensation paid for real estate related claims. If the lease has expired or is nearing the end of its term when the tenant and the property owner are initially notified that all or a portion of the property may be needed for a public project, the tenant should seek advice of counsel in crafting a new lease or an addendum to the current lease in order to protect his or her business damage claim in the event the condemnation occurs. To encourage continued occupancy and rent, property owners are generally willing to extend the term of the lease. This may greatly enhance a business damage claim. However, most property owners will expect the tenant to waive any share of the compensation for the property acquired and damages to remaining real estate. In such negotiations the tenant and the property owner may also wish to address the responsibility for restoring the function and utility of the property after the

condemnation, and the consequences of a failure to do so. Options to renew should also be carefully reviewed at this time since the courts could rule that the option does not extend the length of the lease for business damage calculations when the terms and conditions for renewal are not sufficiently clear and certain.

Even without a lease a tenant may be entitled to compensation. Trade fixtures owned by the tenant may be within the area being acquired or otherwise damaged by the taking. If part of the trade fixtures cannot be relocated for one reason or another on the remainder property, then the tenant should be compensated for the loss.

If there is a taking of the entire property or a partial taking that renders the remainder property unusable, generally a tenant is not entitled to moving costs for relocation to a new business or residential location, unless such costs are available under a federal or local relocation program. However, moving expenses for moving fixtures and personalty from the part being taken to the remainder property may be recoverable.

Even if it is determined that the remainder property will be unusable for the purposes for which the property is being leased, caution should be exercised in the decision when to relocate. The courts have concluded that tenants who closed their businesses or relocated prior to the date the property was acquired by the condemning authority abandoned the property and renounced the lease, and accordingly, were not entitled to any compensation. Therefore, no action should be taken that could be construed as a renunciation or breach of the lease.

Tenants' Rights continued on page 2

Tenants' Rights continued from page 1

There may be a provision in the lease agreement that addresses the issue of rent reduction in the event a portion of the leased property is acquired by a condemning authority. Generally, in the absence of such a provision or other agreement of the parties, the courts are reluctant to reduce any portion of the rent.

As can be seen from the brief summary set forth in the foregoing, the issues relating to tenants and compensation for the taking of property subject to a lease require careful evaluation, and pre-suit planning is vital in situations where it is anticipated that the property will be acquired for a public purpose.

Firm's Team Approach Pays Off In Millions

When condemning authorities seek to acquire property needed for public projects, generally such properties are appraised as they are currently zoned. The mindset of the condemning authority usually is not one seeking to explore the development of the property to its highest potential. Generally, this results in an appraisal conclusion that is too conservative, and does not measure up to the goal of full compensation set forth in the Florida Constitution.

How does a property owner go about responding to a low market value conclusion and establishing the fair market value of his or her property in situations like those just described, as well as in other circumstances? The law firm of Fixel, Maguire & Willis takes a team approach to this valuation challenge, as well as to other issues confronting a property owner faced with the condemnation of valuable investment property.

In a recent case involving a vacant tract of land of 266 acres held in a trust, located in close proximity to Disney World, Fixel, Maguire & Willis put together a team of forensic experts, who with the legal guidance of the

firm, forced the Florida Department of Transportation to increase its initial offer from \$6.3 million for a partial taking of 46.5 acres of the trust property to \$10.8 million, and to make other valuable non-monetary concessions. Fixel, Maguire & Willis led the team of experts including surveyors, ecologists, engineers, land planners, appraisers, timeshare resort developers, and timeshare marketers over a lengthy period to coordinate their analyses, evaluations and work product to produce an entirely different picture of the development potential for the trust's property than the one outlined by the State. The result was a dramatic increase in compensation which was only possible because Fixel, Maguire & Willis had the experience and ability to select, secure and manage top shelf experts for this eminent domain case. The team presented a strong case for the vacant tract as having had the development potential as a premium timeshare resort before the condemnation. This potential was lost due to the taking, the proof of which resulted in the government paying an additional 4.5 million dollars in compensation.

Questions & Answers

Q: *When part of a property has been condemned should the new property line be surveyed and the new corners monumented?*

A: In many cases it is strongly recommended that the new property lines be accurately located and the corners permanently monumented. There are a variety of good reasons why this should be done depending on the particular circumstance of the property. If the survey can be completed prior to settlement, compensation for this cost sometimes will be included as part of the claim.

Q: *If there is a mortgage on the property will the bank be entitled to any of the proceeds from the condemnation?*

A: The answer to this question oftentimes depends upon language in the mortgage agreement. After

review of the mortgage a determination has to be made as to what elements of the compensation could be subject to disposition as directed by the mortgage, which may have to be negotiated with the mortgage holder, and what elements are not subject to the agreement.

Q: *If I need information about a future road project that may affect my clients' property, what should I do?*

A: The law firm of Fixel, Maguire & Willis monitors future road projects throughout its practice area and will be happy to provide you with the information.



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