

Counties, disposal of eminent domain property

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Date: January 26, 2012

Subject:
Counties, disposal of eminent domain property

Mr. Andrew W. Mai
Osceola County Attorney
1 Courthouse Square
Suite 4700
Kissimmee, Florida 34741-5488

RE: COUNTIES – EMINENT DOMAIN – SURPLUS PROPERTY – county must follow requirements of s. 73.013, Fla. Stat., in disposal of property acquired through eminent domain. s. 73.013, Fla. Stat.

Dear Mr. Mai:

On behalf of Osceola County, you ask the following question:

May a county government which acquired a piece of property through eminent domain proceedings less than 10 years ago offer to sell the property back to the prior owner at a value less than what the county spent to acquire the property due to a significant decline in the market value of the property?

In sum:

Section 73.013(1)(f), Florida Statutes, directs that when less than 10 years have elapsed since property has been obtained through eminent domain proceedings, a county may sell such property prior to conducting a competitive bid sale to the previous owner from whom it was taken only for the amount which the owner received as a result of the condemnation.

You state that in 2006, as a result of a proposed road-widening project, the county acquired by eminent domain a 12,000 square foot parcel with a single family residence thereon. The appraised value of the property at the time of the taking was \$357,500.00. The property owner entered into a settlement agreement and received \$399,000.00 as full compensation for the taking. Subsequently, the county completed the project, but only a portion of the parcel was used by the county. The remaining portion of the parcel was recently assessed at \$102,300.00, due to declining market value. The county would prefer to offer the property to the former owner at the current market value, rather than the price for which it was acquired. You have advised the county that section 73.013, Florida Statutes, does not provide authority for the county to sell the parcel to the prior owner at a price other than that which the owner received and that the only method whereby the previous owner could acquire the property under these circumstances would be through a public competitive bidding process as prescribed in section 73.013(1)(f),

Florida Statutes.

Section 73.013(1), Florida Statutes, provides:

"Notwithstanding any other provision of law, including any charter provision, ordinance, statute, or special law, if the state, any political subdivision as defined in s. 1.01(8), or any other entity to which the power of eminent domain is delegated files a petition of condemnation on or after the effective date of this section regarding a parcel of real property in this state, ownership or control of property acquired pursuant to such petition may not be conveyed by the condemning authority or any other entity to a natural person or private entity, by lease or otherwise, except that ownership or control of property acquired pursuant to such petition may be conveyed, by lease or otherwise, to a natural person or private entity:

* * *

(f) Without restriction, after public notice and competitive bidding unless otherwise provided by general law, if less than 10 years have elapsed since the condemning authority acquired title to the property and the following conditions are met:

1. The condemning authority or governmental entity holding title to the property documents that the property is no longer needed for the use or purpose for which it was acquired by the condemning authority or for which it was transferred to the current titleholder; and
2. The owner from whom the property was taken by eminent domain is given the opportunity to repurchase the property at the price that he or she received from the condemning authority[.]"

The plain language of the act prohibits the conveyance of property taken by eminent domain to a natural person or private entity, except within the limited conditions set forth therein. The section authorizes an authority to convey such property by competitive bid within 10 years of its being obtained through eminent domain to a natural person or private entity, only if two conditions are met. The authority must document that the property is no longer needed for the use or purpose for which it was acquired and the owner from whom the property was taken is given the opportunity to repurchase the property at the price received from the condemning authority. Legislative direction as to how a thing is to be done prohibits its being done in any other way.[1]

Thus, in order to comply with section 73.013(1)(f), Florida Statutes, the county must initially make the proper determination that the condemned property is no longer needed for the use for which it was acquired by eminent domain and the former owner from whom the property was taken must be given the opportunity to repurchase the property "at the price he or she received from the condemning authority[.]" After these two conditions have been met, the county may offer the property for sale to a natural person or private entity through competitive bidding. I have not found, nor have you directed my attention to, any statutory authorization to sell the subject property to the former owner at a price other than that which the former owner received as a result of the eminent domain proceedings, prior to the condemned property being offered for sale by competitive bid.[2] I cannot say, however, that an authority would be precluded from selling the remaining portion of previously condemned property (when a portion of the property was not used for the public purpose) to the former owner at a pro-rated price, based upon the amount that the owner received as a result of the eminent domain proceeding, since to do so would not appear to be contrary to the intended purpose of the law.

Accordingly, it is my opinion that pursuant to section 73.013(1)(f), Florida Statutes, the county may not sell property it has obtained through eminent domain proceedings less than 10 years ago to the previous owner for an amount other than that which the previous owner received as a result of the taking. However, I cannot conclude that where only a portion of the property has been used for the intended public purpose, the county would be precluded from selling the remaining portion to the former owner at a pro-rated price based on the amount the previous owner received as a result of the eminent domain proceeding.

Sincerely,

Pam Bondi
Attorney General

PB/tals

[1] See *Alsop v. Pierce*, 19 So. 2d 799, 805-806 (Fla. 1944); *Dobbs v. Sea Isle Hotel*, 56 So. 2d 341, 342 (Fla. 1952); *Thayer v. State*, 335 So. 2d 815, 817 (Fla. 1976).

[2] Cf. s. 73.013(2)(b), Fla. Stat., stating that property obtained by eminent domain less than 10 years ago which was transferred to a natural person or private entity under the specific provisions in the statute may be sold, after public notice and competitive bidding, to another natural person or private entity, if: the current titleholder documents that the property is no longer needed for the use or purpose for which the property was transferred to the current titleholder; and the owner from which the property was taken by eminent domain "is given the opportunity to repurchase the property at the price that he or she received from the condemning authority."