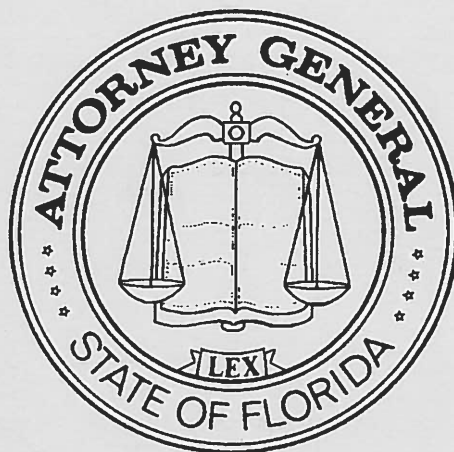


EMINENT DOMAIN CASE SUMMARY



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(Updated through 772 So.2d)**

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ABANDONMENT/DISMISSAL

JACKSONVILLE TERMINAL CO. v. BLANSHARD, 82 So. 300 (Fla. 1919): Proceedings may be dismissed by party seeking condemnation at any time; and when dismissed, court's jurisdiction except in matter of taxing costs, is terminated.

SRD v. ZETROUER, 142 So. 217 (Fla. 1932): County may abandon and withdraw from eminent domain proceeding at any time before payment of award.

O'SULLIVAN v. CITY OF DEERFIELD BEACH, 232 So.2d 33 (Fla. 4th DCA 1970): Where property has been seized, condemnor can not voluntarily dismiss leaving open question as to status of land, damages, and disposition of deposit.

CITY OF MIAMI BEACH v. CUMMINGS, 266 So.2d 122 (Fla. 3rd DCA 1972): Abandonment of eminent domain action because authority lacked funds to pay for property was alone insufficient to establish lack of good faith where city brought forth action against same owners for same land for same public purpose, and suit was prosecuted to final judgment. Comment: lack of good faith difficult to prove; disavows anything to the contrary in Peavy-Wilson, 288 So. 2d 109.

DADE COUNTY v. GENERAL WATERWORKS CORP., 267 So.2d 633 (Fla. 1972): Necessity and good faith shown, even though County reserved right to abandon in event it was financially unable to complete. Comment: 73.111, Fla. Stat., expressly permits abandonment by allowing condemnor to refrain from paying amount of judgment into court registry.

DNR v. HUDSON PULP AND PAPER CORP., 363 So.2d 822 (Fla. 1st DCA 1978): The condemnor may abandon or dismiss eminent domain proceedings at any time before compensation is made or possession of the property is taken by the condemnor but landowner would be entitled to reasonable attorney's fees and costs incurred prior to dismissal.

DOT v. GROSSMAN, 536 So.2d 1181 (Fla. 3rd DCA 1989): Condemnor may not abandon eminent domain proceeding once funds are deposited into the court. Dismissal for failure to prosecute not applicable to "quick take" proceedings.

MANHATTAN PROPERTIES LTD. v. DOT, 541 So.2d 655 (Fla. 2nd DCA 1989): Dismissal for failure to prosecute not applicable to quick take eminent domain proceedings.

ACCESS

JACKSONVILLE T. & K. W. RY. CO. v. THOMPSON, 16 So. 2d 282 (Fla. 1894): Where street is obstructed, landowner must show damages different in kind from general public; property must abut highway where obstructed or obstruction physically contacts property.

FLEMING v. SRD, 25 So.2d 373 (Fla. 1946): In constructing roads, SRD may not destroy or materially abridge facilities of abutting owner to exercise right of ingress and egress where reasonable necessity for such facilities is shown.

WEIR v. PALM BEACH COUNTY, 85 So.2d 865 (Fla. 1956): Right to lateral support applies only to land in its natural state; no damages for loss of access where retaining wall built across street within road right of way and alternative access existed.

JAHODA v. SRD, 106 So.2d 870 (Fla. 2nd DCA 1958): Evidence of reduction in value of remaining property as a result of diversion of traffic inadmissible.

CITY OF TAMPA v. TEXAS COMPANY, 107 So.2d 216 (Fla. 2nd DCA 1958): Not entitled to damages for loss of access where taking did not cause any loss of access and landowner situated in same position as those whose property was not taken.

JACKSONVILLE EXPRESSWAY AUTH. v. MILFORD, 115 So.2d 778 (Fla. 1st DCA 1959): No damages for change in grade or other alterations in streets in which public holds existing easement for street purposes.

ANHOCO CORP. v. DADE COUNTY, 144 So.2d 793 (Fla. 1962): Condemnee entitled to damages for destruction of access where condemnor took portion of land for period of time prior to establishment of new frontage road; measure of damage for taking access is difference in value with right and value without right. See 107 So.2d 51; 116 So.2d 8; 127 So.2d 464.

MELTZER v. HILLSBOROUGH COUNTY, 167 So.2d 54 (Fla. 2nd DCA 1964): State owes no one a duty to send traffic past one's door; inconvenience due to change in street patterns normally not compensable.

SRD v. LEWIS, 170 So.2d 817 (Fla. 1964): No consequential damage because of change of grade in existing right of way affecting access, light or view.

GLESSNER v. DUVAL COUNTY, 203 So.2d 330 (Fla. 1st DCA 1967): Landowner entitled to compensation for damages to fee where condemnor took a perpetual easement of lands of another thereby cutting off access to landowner's fee; alternative access was available via secondary road.

BENEROFE v. SRD, 210 So.2d 28 (Fla. 1st DCA 1968): No severance damage for loss of access where no limited access facility or physical barrier which would impede ingress and egress.

SRD v. MCCAFFREY, 229 So.2d 668 (Fla. 2nd DCA 1969): If established service road converted to limited access, facility owner entitled to compensation for previous existing right of access.

LANGSTON v. CITY OF MIAMI BEACH, 242 So.2d 481 (Fla. 3rd DCA 1971): If property owners would have retained no rights in private street abutting their lots if conveyed to third person in bona fide sale, they are not entitled to claim any rights in abutting street in condemnation proceeding.

BONEY v. DOT, 250 So.2d 650 (Fla. 1st DCA 1971): Condemnation deprived owners of the use of one direction of an unopened, undedicated street bordering their property; some right of access, albeit previously unused, was destroyed and they were entitled to compensation, for practical destruction of access.

AWBREY v. CITY OF PANAMA CITY BEACH, 283 So.2d 114 (Fla. 1st DCA 1973): No compensation for loss of access where city constructed sewer lift station in road abutting property cutting off 24' of 167' of direct access; no physical taking.

HAMMOND v. PANAMA CITY BEACH, 283 So.2d 118 (Fla. 1st DCA 1973): Companion to AWBREY, affirmed on that basis.

DOT v. STUBBS, 285 So.2d 1 (Fla. 1973): Landowner entitled to severance damage caused by impairment of access to remainder created by relocation of road on which property fronted; ease and facility of access constitute valuable property rights for which owner entitled to compensation; where some right of access still available, it is for the jury to determine if nominal or substantial; seriously disturbed access. See 265 So.2d 425; 332 So.2d 155:

DOT v. BAREDIAN, 287 So.2d 398 (Fla. 2nd DCA 1973): Where no property taken but access impaired by terminating street east of property, recovery under statute relating to severance damages unavailable.

BLOCK v. ORLANDO-ORANGE EXPRESSWAY AUTH., 313 So.2d 75 (Fla. 4th DCA 1975): Where issue of damage for loss of access was properly raised in prior condemnation proceeding and all issues properly adjudicated by final judgment, judgment of pleadings for condemnor was proper.

PINELLAS COUNTY v. AUSTIN, 323 So.2d 6 (Fla. 2nd DCA 1975): Inverse condemnation; vacation of street resulting in substantial diminution of access is a taking; must show special damages.

STUBBS v. DOT, 332 So.2d 155 (Fla. 1st DCA 1976): In view of law of the case, condemnor's appraisal testimony that condemnee's access had not been affected, that it was "identically the same" and condemnees sustained no severance damages, should have been stricken.

TRAVIS v. DOT, 333 So.2d 86 (Fla. 1st DCA 1976): No inverse taking of motel by owner's claim that construction of acceleration lane impaired rights of ingress and egress, noise and vibration resulting in two rooms continually unoccupied, because acceleration lane constructed entirely upon land already owned by the Department.

DOT v. ABS, INC., 336 So.2d 1278 (Fla. 2nd DCA 1976): If some but not all access taken, compensation depends upon whether substantial diminution in access not whether right of access taken was a direct route; compensation is not mandated for loss of direct access to a highway.

DOT v. CAPITAL PLAZA, INC., 397 So.2d 682 (Fla. 1981): Severance damages are not available for change in traffic flow caused by median constructed within previously owned right of way. Landowners have no property right in the continuation or maintenance of traffic flow past their property.

CITY OF ORLANDO v. CULLOM, 400 So.2d 513 (Fla. 5th DCA 1981): City closed a street and made a pedestrian mall. Court found access had not been seriously diminished. Restriction on parking in a particular street is not a deprivation of a property right, but a valid exercise of the police power.

DOT v. PALM BEACH WEST, INC., 409 So.2d 1130 (Fla. 4th DCA 1982): Error to instruct jury to consider evidence of damages due to construction of median strip.

DOT v. CONSOLIDATED-TOMOKA LAND CO., INC., 448 So.2d 12 (Fla. 4th DCA 1984): While it appears that the evidence was undisputed that the appellee landowner lost all access to its land from east, west and north, issue of loss of access presented a jury question since evidence was not totally undisputed as to access available to land from the south.

CITY OF PORT ST. LUCIE v. PARKS, 452 So.2d 1089 (Fla. 4th DCA 1984): Termination of access to one road which may result in mere inconvenience is not a compensable taking where there is no actual impairment.

DOT v. NESS TRAILER PARK, 489 So.2d 1172 (Fla. 4th DCA 1986): Off-site interruption of street not directly related to use for which property taken; therefore no compensation for access. Circuity of travel not compensable.

DOT v. JIRIK, 498 So.2d 1253 (Fla. 1986): Condemnor built wall within own right-of-way in front of one of three lots. Court held that three tracts were separate as presumption that separate platted lots not in use are intended to be separate. Taking of access as to lot 1.

LEE COUNTY v. TESTAMENT BAPTIST CHURCH, 507 So.2d 626 (Fla 2nd DCA 1987): County ordinance providing direct access to main road to be limited to every 300 to 600 feet and replacement of direct access with access to frontage roads is not a taking but a regulation of access.

PARADYNE CORP. v. DOT, 528 So.2d 921 (Fla. 1st DCA 1988): Right of access is incident of ownership of land abutting public highway, subject to regulations necessary for safety of traveling public. Department can deny particular access so long as denial has reasonable relationship to health, safety, and welfare and alternate access is available.

PALM BEACH COUNTY v. TESSLER, 538 So.2d 846 (Fla. 1989): Under facts of case, trial court was within its discretion in finding that access had been taken. Destruction of portion or all of access to abutting highway does not constitute a taking unless right of access was substantially diminished. Loss of most convenient access is not compensable where other suitable access continues to exist. Judge, as trier of fact, determines whether access has been taken. Jury may consider alternate access in determining compensation.

DOT v. EDWARDS, 545 So.2d 479 (Fla. 2nd DCA 1989): No loss of access to I75 (Alligator Alley) because landowner did not have any such right of access. Earlier deed to state granted state all rights of ingress and egress reserving to the landowner the right of access from remaining property to any service road which may be built on outer 50' of right-of-way. Designated access points referred to by expert, did not exist under the relevant documents and thus created no rights of access.

DOT v. LAKEWOOD TRAVEL PARK, 580 So.2d 230 (Fla. 4th DCA 1991): Inverse condemnation judgment affirmed based on substantial diminution of access because of loss of most direct roadway access route, circuitous nature of route, heavy industrial character of neighborhood through which street passes, as well as poor lighting and road paving. Disapproved in Gefen, 636 So.2d 1345 (Fla. 1994).

DOT v. RUBANO, 636 So.2d 749 (Fla. 4th DCA 1994): Inverse case involving restrictions of access during construction resulting from temporary rerouting of traffic and placement of concrete barriers. No taking because loss of access was neither total nor permanent. Court found that loss of access during construction could be a taking. To constitute a taking loss of access has to be different than that suffered by all of the other abutting businesses and the duration of the loss is one fact to be considered.

DOT v. GEFEN, 636 So.2d 1345 (Fla. 1994): Court held there was no taking of access resulting from loss of I-95 entrance ramp from a road which abuts property, when access to all roads abutting property is undiminished.

PORT ST. LUCIE SHOPPING CENTER ASSOCIATES v. BD. OF CO. COMMISSIONERS OF ST. LUCIE COUNTY, 638 So.2d 202 (Fla. 4th DCA 1994): No compensable loss of access from closure of median cut in front of shopping center.

WEAVER OIL CO. v. CITY OF TALLAHASSEE, 647 So.2d 819 (Fla. 1994): Held that the reduction in width of one driveway as a result of construction of traffic control island in public right of way is a proper exercise of police power and there was no taking of access.

RUBANO v. DOT, 656 So.2d 1264 (Fla. 1995): Held no taking occurred by severance of connections between SR 84 and I-95. Held no taking when government limits access from one side of a two-way roadway adjacent to the property. Held no taking for temporary conversion of highway lanes to a service road providing continuing access to SR 84. Court restated principle of no damages during construction.

DIXIE OIL COMPANY OF FLORIDA, INC. v. DOT, 657 So.2d 1258 (Fla. 1st DCA 1995): Gas station/convenience store sought administrative hearing on reduction of width of driveway connections as part of DOT construction project. Court held that presentation of damage testimony at valuation trial was election of remedy, thereby precluding administrative hearing.

DOT v. KREIDER, 658 So.2d 548 (Fla. 4th DCA 1995): Held access was substantially diminished by removal of direct access to eastbound land of SR 84, replaced with one-way service road access, requiring 1.4 mile circuitous route to reach from eastbound SR 84, lost visibility to SR 84, and loss of retail use for the property.

DOT v. LANDMAN, 664 So.2d 1141 (Fla. 5th DCA 1995): Construction of curb and driveway on property previously curbside was not a taking.

DOT v. ANSBACHER, 672 So.2d 660 (Fla. 1st DCA 1996): Court erred in allowing evidence of damages caused by closure of intersecting non-abutting roads. When state takes action that diminishes traffic flow or access to a non-abutting road, then later appropriates the parcel, state must pay value prior to change in traffic flow.

GRANDPA'S PARK, INC. v. DOT, 726 So.2d 789 (Fla. 1st DCA 1998): The only one of two routes into property with sufficient right of way to allow development as industrial or residential subdivision was eliminated. Court properly excluded evidence of severance damages because alleged loss of access did not involve an abutting road.

DOT v. S.W. ANDERSON, INC., 744 So.2d 1098 (Fla. 1st DCA 1999): Construction of new bridge affected traffic flow on abutting road, creating a less convenient route to newly constructed road, but did not take access to the old abutting road. Loss of major flow of traffic past owner's door is not a taking of access.

BENAIM v. PCL CIVIL CONSTRUCTORS, INC., 764 So.2d 920 (Fla. 4th DCA 2000): Affirmed finding of no taking from non-compensable redirection of traffic flow.

SAYFIE v. DOT, 770 So.2d 193 (Fla. 2d DCA 2000): Court improperly entered summary judgment for DOT; since owners were cut off from access to outer 50 feet of right of way which had been reserved for a service road in donated deeds for right of way for SR 84.

DOT v. KIRKLAND, 772 So.2d 566 (Fla. 1st DCA 2000): Inverse taking order is reversed since there is no access taking by realigning SR 77, but leaving property with direct access to old SR 77, which reconnects to new SR 77 about 1000 feet north of property.

DOT v. SUIT CITY OF AVENTURA, 774 So.2d 9 (Fla. 3d DCA 2000): The loss of one of five entrances and construction of elevated lanes to correct dangerous conditions at intersection with u-turns, left turns, and synchronized lights do not cause substantial loss of access. Reducing traffic distress with elevated lanes is reasonable exercise of discretion and not a taking of light, air, and view.

APPEALS/PRESERVATION OF ISSUE

SHELL v. SRD, 135 So.2d 857 (Fla. 1961): Appeals from interlocutory orders are limited to orders relating to venue or jurisdiction over the person; other interlocutory orders may be reviewed only on appeal prosecuted from final judgment except where there has been a departure from an essential requirement of law and petitioner does not have a full and adequate remedy by appeal after final judgment.

CAMP PHOSPHATE CO. v MARION COUNTY, 194 So.2d 302 (Fla. 1st DCA 1967): An Order of Taking in eminent domain pursuant to statutory authority is an action at law, and an interlocutory appeal therefrom is not available other than for questions of venue or jurisdiction over the person; however, where justiciable issue meriting immediate review, District Court should exercise discretion and treat it as petition for writ of certiorari.

SRD v. HARTSFIELD, 216 So.2d 61 (Fla. 1st DCA 1968): Party knowingly accepting benefits of verdict may not thereafter seek reversal. However, if verdict/judgment is made up of distinct and unrelated parts, party may accept benefit of some and appeal others.

DOT v. MYERS, 237 So.2d 257 (Fla. 1st DCA 1970): Trial court's Order of Taking not one from which interlocutory appeal would lie; however court may exercise its constitutional discretion and consent to hear and determine issue.

VALLEYBROOK DEVELOPERS, INC. v. GULF POWER CO., 272 So.2d 167 (Fla. 1st DCA 1973): Common law certiorari is proper procedure to review an Order of Taking in an eminent domain proceeding.

CEMENT PRODUCTS CORPORATION OF SARASOTA, INC. v. DOT, 363 So.2d 866 (Fla. 2nd DCA 1978): Review of Order of Taking must be by petition for certiorari. There is no motion for rehearing from Order of Taking.

NILES v. VOLUSIA COUNTY, 405 So.2d 1046 (Fla. 5th DCA 1981): An order of taking is a non-final order. Withdrawal of the deposit from an order of taking by landowner is no grounds for dismissal of appeal from order of taking, since acceptance of benefits rule does not apply to non-final orders.

DADE COUNTY v. DAVIDSON, 418 So.2d 1231 (Fla. 3rd DCA 1982): Appeal of amount of compensation award automatically operates as stay of the proceedings, but trial court may retain jurisdiction to decide matters collateral to the appeal such as taxing of costs.

KEY HAVEN ASSOC. ENT. v. BOARD OF TRUSTEES OF INTERNAL IMPROVEMENT, 427 So.2d 153 (Fla. 1982): If aggrieved party is willing to accept all actions of agency as correct both as to constitutionality of statute implemented and as to propriety of agency proceedings, direct review in district court of agency action may be eliminated and inverse proceedings properly commenced in circuit court.

BROWARD COUNTY v. GREYHOUND RENT-A-CAR INC., 435 So.2d 309 (Fla. 4th DCA 1983): Failure of condemnor to object would be waived, where trial court lacked basis in pleadings to order deposit of funds in registry to secure owner of parcel not alleged to be taken.

DOT v. MOBILE GAS CO., 427 So. 2d 1024 (Fla. 1st DCA 1983): Order in inverse condemnation proceeding that plaintiff had met threshold requirements establishing liability for condemnor's failure to comply with plans and specifications and construct project in accordance with representations of its agents given at initial eminent domain proceeding constituted an appealable non-final order.

COUNTY OF VOLUSIA v. NILES, 445 So.2d 1043 (Fla. 5th DCA 1984): Litigant may not urge error with respect to instruction given at his own request.

FOUNTAIN v. CITY OF JACKSONVILLE, 447 So.2d 353 (Fla. 1st DCA 1984): party may appeal judgment in his favor if he is aggrieved by it. Favorable judgment did not remove burden of ordinance regulating land use and could be appealed.

CRIGGER v. FLORIDA POWER CORP., 469 So.2d 941 (Fla. 5th DCA 1985): Order of Taking in an inverse condemnation action is an appealable order as it determines the legal right to immediate possession of property.

CITY OF ST. PETERSBURG v. WALL, 475 So.2d 662 (Fla. 1985): Condemnor was liable for damages incurred by landowner's in connection with a stay pending condemnor's appeal from judgment entered against it for failure to establish a necessity even though condemnor not required to post bond, where condemnor was on notice from prior order of the appellate court of its potential liability even though excused from expense of posting bond.

DEPARTMENT OF AGRICULTURE v. MID-FLORIDA GROWERS, INC., 532 So.2d 1294 (Fla. 2d DCA 1988): State required to pay portion of valuation judgment not in dispute despite State's appeal from jury verdict in inverse condemnation case.

ROADWAY EXPRESS, INC. v. DADE COUNTY, 537 So.2d 594 (Fla. 3rd DCA 1988): Absent a timely and proper objection, reversal of verdict for counsel's improper remarks may be had only if the comments are so prejudicial as to amount to fundamental error.

PALM BEACH COUNTY v. AWADALLAH, 538 So.2d 142 (Fla. 4th DCA 1989): Jury verdict and judgment which are contrary to the law in that one element of business damage was not satisfied, is contrary to the law, constitutes fundamental error, and is reviewable on appeal notwithstanding absence of objection at trial.

HILLSBOROUGH COUNTY v. LUTZ REALTY & INVESTMENT CO., 553 So.2d 1320 (Fla. 2d DCA 1989): County appealed from order of taking which only approved a one-half acre taking out of a requested five acres. Court held the "acceptance of benefits" rule did not preclude County's appeal despite payment of deposit on one-half acre.

BUCKLEY v. CITY OF MIAMI BEACH, 559 So.2d 310 (Fla. 3d DCA 1990): City appealed from judgments after depositing the funds. Court held that funds were "available to the owner" because attorney could have filed a motion for relief from the automatic stay to obtain release of funds. Therefore, Chapter 73 is constitutional since adequate procedural devices are available for owner to obtain funds.

DOT v. WEGGIES BANANA BOAT, 576 So.2d 722 (Fla. 2d DCA 1990): After mandate was issued ordering judgment be issued consistent with jury verdict, trial court had no authority to grant motion for new trial.

BROWARD COUNTY v. CARNEY, 586 So.2d 425 (Fla. 4th DCA 1991): The amount of money to be deposited with the court is an integral part of order of taking and right to possession. An appeal must be taken from Order of Taking to contest amount of deposit.

RED OAK FARM v. CITY OF OCALA, 636 So.2d 97 (Fla. 5th DCA 1994): Writ of certiorari is proper remedy to review order denying abatement of second action involving same parties and same cause of action pending simultaneously. Second action which was filed to correct deficiencies of first eminent domain petition was abated during appeal of first case.

BROWARD COUNTY v. WAKEFIELD, 636 So.2d 123 (Fla. 4th DCA 1994): Inverse taking order is an appealable non-final order determining liability in favor of party seeking affirmative relief.

BASIC ENERGY CORP. v. HAMILTON COUNTY, 667 So.2d 249 (Fla. 1st DCA 1995): Court denied motion to enforce mandate from reversal of the order of taking, but agreed that mandate required vacation of the invalid order of taking and the filing of an amended petition to proceed on an alternate theory.

NIGHT FLIGHT INC. v. TAMPA-HILLSBOROUGH EXPRESSWAY AUTHORITY, 668 So.2d 1001 (Fla. 2d DCA 1996): Order of court on apportionment motion that tenant was not entitled to apportionment of either good faith deposit or any additional compensation was a final order, which commenced the 30 day period to appeal.

APPORTIONMENT

PEELER v. DUVAL COUNTY, 66 So.2d 247 (Fla. 1953): No right to have jury try title where ownership in dispute in eminent domain proceeding; Court determines at apportionment. See 70 So. 2d 34.

CRAVERO v. FLORIDA STATE TURNPIKE AUTH., 91 So.2d 312 (Fla. 1956): An option to purchase is not such an interest in condemned property as to entitle optionee to share in award.

ORANGE STATE OIL CO. v. JACKSONVILLE EXPRESSWAY AUTH., 110 So.2d 687 (Fla. 1st DCA 1959): Entry of order disbursing that portion of compensation awarded fee owner upon denial of lessee's motion for new trial but before time for filing Notice of Appeal had expired was improper. See 143 So. 2d 892).

RICH v. HARPER NEON CO., 124 So.2d 750 (Fla. 2nd DCA 1960): Lessee not entitled to have jury determine its damages, proper for jury to determine value taken and judge apportion jury award.

BALDWIN v. MIAMI MERCANTILE CENTER, INC., 145 So.2d 881 (Fla. 3rd DCA 1962): Apportionment properly made before trial court without jury.

COMMERCIAL ACCEPTANCE CORP. v. BARNES, 179 So.2d 251 (Fla. 1st DCA 1965): Assignee of mortgage, who was not bona fide holder in due course, not entitled to any part of eminent domain award where mortgage procured by fraud and not executed in presence of two subscribing witnesses.

OWENBY AUTO PARTS v. JENNINGS, 259 So.2d 537 (Fla. 2nd DCA 1972): Lessee entitled to attorney fees for apportionment: in apportionment hearing not error for Court to refuse testimony on capitalization method and amount of rent lessee would have to pay at new location.

CITY OF ST. PETERSBURG v. DOT, 293 So.2d 781 (Fla. 2nd DCA 1974): In Chapter 74, Fla. Stat. the money deposited by the condemnor takes the place of the land, so that after taking, no land remains against which a lien may operate; so, all parties' claims must be adjudicated on basis of equity, and apportioned accordingly.

HATCH v. MINOT, 369 So.2d 974 (Fla. 2nd DCA 1979): Mortgagor who withdrew funds on deposit in registry would be required to account for and pay apportioned share to mortgagee who was found entitled under mortgage clause to share proceeds. Mortgagor may also be required to pay interest to mortgagee.

AAA MILLION AUTO PARTS, INC. v. AFFRON, 379 So.2d 707 (Fla. 3rd DCA 1980): Landlord who settled her claim for damages after tenant had obtained judgment as to his, was not obligated to apportion her award with tenant.

SANDS v. WOOTEN, 439 So.2d 1037 (Fla. 3rd DCA 1983): Court had jurisdiction to order distribution where all parties before the court agreed no dispute existed. Order of distribution was final, and allegedly defective waivers disclaiming right to proceeds were ineffective to vest authority in court to reopen matter after 30 days.

DOT v. ALLEN, 447 So.2d 1383 (Fla. 5th DCA 1984): Valuation of property subject to leasehold interest is to ascertain entire compensation as though estate belongs to one person and is unencumbered. Advertising company was not entitled to separate award in condemnation for its interest.

TERRY v. CONWAY LAND, 508 So.2d 401 (Fla. 5th DCA 1987); affirmed 542 So.2d 362 (Fla.1989). Royalty interest reserved by predecessors in title is an interest in real property and should be considered in apportionment proceeding. Note, however, attorney fees from condemnor not awardable as conflicting claims were not result of condemnation proceeding.

DAMA v. RECORD BAR, INC., 512 So.2d 206 (Fla. 1st DCA 1987): Leaseholder is entitled to share in condemnation award equitably to reflect respective values of encumbered fee and leasehold interest. Lessee entitled to prejudgment interest for fee holder's excess withdrawal of funds. No appellate attorney fees in apportionment proceedings. Contrary to Terry above.

ELMORE v. BROWARD COUNTY, 507 So.2d 1220 (Fla. 4th DCA 1987): If landowner desired that lessee not participate in condemnation award, lease must so provide. Provision of lease stating that upon condemnation, lease is terminated, does not divest lessee of entitlement to share of condemnation award.

JACK BAKERY SERVICES, INC. v. WESTERN TREATS MEAT MARKET, 530 So.2d 447 (Fla. 4th DCA 1988): Party who fails to appear at disbursement hearing waives objections to disbursement of deposit. Failure of lessee to attend hearing on disbursement of good faith offer does not preclude lessee's entitlement to fair share of final compensation at apportionment hearing.

CAULK v. ORANGE COUNTY, 661 So.2d 932 (Fla. 5th DCA 1995): Language in deed of conveyance retaining right to condemnation proceeds for future takings was a personal covenant and not a real covenant running with the land. Prior owner was not entitled to proceeds of condemnation.

STUDIALE v. TOWNE, 664 So.2d 1157 (Fla. 4th DCA 1995): Disbursement order of order of taking deposit was reversed, since the trial court had no agreement of the parties nor security to protect party's rights.

NIGHT FLIGHT INC. v. TAMPA-HILLSBOROUGH EXPRESSWAY AUTHORITY, 668 So.2d 1001 (Fla. 2d DCA 1996): Order of court on apportionment motion that tenant was not entitled to apportionment of either good faith deposit or any additional compensation was a final order, which commenced the 30 day period to appeal.

TRUMP ENTERPRISES INC. v. PUBLIX SUPERMARKETS, INC., 682 So.2d 168 (Fla. 4th DCA 1996): Where lease agreement contains no provision regarding apportionment, lessee is entitled to resultant decrease in value of leasehold. Court approved apportionment of land taken award based on percentage of leasehold land taken to total area of taking, plus the difference between the value of the reversion before the taking and the value of the reversion after the taking.

APPRAISAL THEORIES/APPROACHES

CAMPBELL v. UNITED STATES, 226 U.S. 368, 69 L. Ed. 329 (1924): Not entitled to damages due to uses to be made of lands acquired from others for same project.

YODER v. SARASOTA COUNTY, 81 So.2d 219 (Fla. 1955): Improper to speculate as to what could be done to the land to make it more valuable and then solicit evidence as to what land is worth.

JACKSONVILLE EXPRESSWAY AUTH. v. MILFORD, 115 So.2d 778 (Fla. 1st DCA 1959): "Depth rule" is reliable method to determine value of part of business lot.

GOOD SHEPARD LUTHERAN CHURCH OF MIAMI, NORTH MIAMI v. SRD, 138 So. 2d 358 (Fla. 3rd DCA 1962): Appraiser using cost approach testified included architect fees, discovered later it did not, verdict above condemnor's testimony, motion for new trial properly denied.

CARLTON v. BIELLING, 146 So.2d 915 (Fla. 1st DCA 1962): Appraiser not permitted to testify to his opinion of the opinions, inferences and conclusions of others.

GARVIN v. SRD, 149 So.2d 869 (Fla. 1st DCA 1963): Where lowest value shown by evidence was that which condemnor's appraiser testified constituted total value, excluded gas tanks and pumps belonging to condemnee, verdict in amount of condemning authority's testimony did not award just compensation.

BUILDERS FINANCE CO., INC. v. RIDGEWOOD HOMESITES, INC., 157 So.2d 551 (Fla. 2nd DCA 1963): Judicial notice may be taken of general market conditions with respect to realty at time significant to proceedings.

SRD v. FALCON, 157 So.2d 563 (Fla. 2nd DCA 1963): Failure of otherwise competent witness to consider one of numerous factors involved in assessing compensation goes to weight not competency; failure to consider particular land transaction with origin in option prior to date of valuation and exercised after date of value did not make testimony inadmissible.

CULBERTSON v. SRD, 165 So.2d 255 (Fla. 1st DCA 1964): Testimony of appraisal made four months prior to taking is too remote and should have been stricken.

ROCHELLE v. SRD, 196 So.2d 477 (Fla. 2nd DCA 1967): Appraiser's use of capitalization of lease on allegedly comparable property should not be stricken; goes to weight not competency; where property taken for interchange, method of valuation used by appraiser not a matter relating to competency of his testimony to be ruled upon by trial judge unless method used by witness is so totally inadequate or improper that adoption of method would require a departure from all common sense or would require adoption of an entirely new and unauthenticated formula in field of appraising.

CASPERSON v. WEST COAST INLAND NAV. DIST., 198 So.2d 65 (Fla. 2nd DCA 1967): Any error committed by admitting appraiser's testimony on ground he had not personally inspected property until more than a year after date of taking was harmless where verdict came within evidence adduced by condemnor and condemnee.

SRD v. LEVATO, 199 So.2d 714 (Fla. 1967): Admission at trial of transcript of testimony of an appraiser given at preliminary hearing was improper even though appraiser had died and could not testify, in view of 74 081, Fla. Stat., prohibiting use of appraiser's testimony from Order of Taking.

HUNGERFORD v. SRD, 212 So.2d 782 (Fla. 2nd DCA 1968): Testimony of appraiser who had valued property 1 year 9 months before take and checked on it to determine value as of date of taking was proper.

BRAY v. DADE COUNTY, 222 So.2d 778 (Fla. 3rd DCA 1969): Evidence that value of surrounding property was depressed by announcement that incinerator going to be built on condemnee's property inadmissible.

SRD v. STACK, 231 So.2d 859 (Fla. 1st DCA 1969): Court allowed testimony on value of property for borrow dirt basis where property being taken for dirt borrow pit, even though property had highest and best use of rural homesites.

HILL v. MARION COUNTY, 238 So.2d 163 (Fla. 1st DCA 1970): Accepts cost to cure approach; where evidence that a decrease in market value after the take is greater than a loss under the cost to cure approach, whether damage to remainder under cost to restore it to same relative position as before is a question for the jury.

WALTERS v. SRD, 239 So.2d 878 (Fla. 1st DCA 1970): Testimony of appraiser who admitted could not tell jury how he worked out mental adjustments, essentially speculative and conjectural and inadmissible.

DOT v. COOPER, 241 So.2d 419 (Fla. 1st DCA 1970): Under some circumstances the value created by a taking may be considered in determining the value of the tract in question.

LANGSTON v. CITY OF MIAMI BEACH, 242 So.2d 481 (Fla. 3rd DCA 1971): Condemning authority entitled to use proper testimony as to value for impeachment purposes.

DOT v. MORGAN, 265 So.2d 708 (Fla. 1st DCA 1972): Amount of mortgage had no place in determining market value, but held admission was harmless error.

BOYNTON v. CANAL AUTH., 265 So.2d 722 (Fla. 1st DCA 1972): Accepts development approach; appraiser should consider profit ratio, time to sell lots, price, and present value.

DADE COUNTY v. GENERAL WATERWORKS CORP., 267 So.2d 633 (Fla. 1972): Proper valuation methods are inextricably bound up with particular circumstances of the case: even fair market value may be rejected where it does not lead to accurate determination of full compensation.

DIVISION OF BOND FINANCES OF THE DEPARTMENT OF GENERAL SERVICES v. RAINEY, 275 So. 2d 551 (Fla. 1st DCA 1973): Investments made and expenses incurred in bona fide plan to develop land to highest and best use were proper elements for jury consideration in determining to what extent it enhances fair market value of raw land.

UNITED STATES v. 564.54 ACRES, 441 U.S. 506 (1979): Substitution of facilities measure of fair compensation available to private owners of non profit community facilities as well as to public owners.

BOYNTON v. CANAL AUTH., 311 So.2d 412 (Fla. 1st DCA 1975): Refusal to strike testimony of appraiser was error where appraiser made statements construing remaining rights of landowners after initial condemnation of perpetual easement where nothing in prior record to indicate court had so construed rights. See 265 So. 2d 722.

HOMEOWNERS OF WINTER HAVEN INC. v. POLK COUNTY, 320 So.2d 480 (Fla. 2nd DCA 1975): Majority of eminent domain actions involving partial takings apply the method of valuing part taken in relation to economic or market value standing alone.

STUBBS v. DOT, 332 So.2d 155 (Fla. 1st DCA 1976): In eminent domain proceedings, owners damages must be related to time of taking and testimony of appraiser must be related to that time. See 265 So. 2d 425; 285 So. 2d 1.

DOT v. WEST PALM BEACH GARDEN CLUB, 352 So.2d 1177 (Fla. 4th DCA 1977): "Value in use" rather than "market valuation predicated on use for residential purposes" was proper standard of valuation to be used for public park property (no evidence showing use could change from park).

DOT v. SAMTER, 393 So.2d 1142 (Fla. 3rd DCA 1981): Sales of similar comparable properties must be used to establish severance damages. No weight may be accorded an expert opinion which is totally conclusory in nature and is unsupported by any discernible, factually-based chain of underlying reasoning.

SUN CHARM RANCH, INC. v. CITY OF ORLANDO, 407 So.2d 938 (Fla. 5th DCA 1981): Condemnee may call condemnor's expert witness at trial to present value testimony. Court did not err in requiring witness to update his appraisal. Condemnee may not bring out fact that appraiser did work for condemnor.

DADE COUNTY v. SOUTH EASTERN RECYCLING CORP., 422 So.2d 1036 (Fla. 3rd DCA 1982): Court properly excluded evidence of appraisals used by owner to purchase property, which occurred six months prior to date of taking.

ACKERLY COMMUNICATIONS, INC., v. CITY OF WEST PALM BEACH, 427 So.2d 245 (Fla. 4th DCA 1983): Trial judge erred in using depreciation figures included in expert's testimony when such testimony was stricken.

MALONE v. DOT, 438 So.2d 857 (Fla. 3rd DCA 1983): Cost of appraiser to assist in finding new location not compensable.

DOT v. NALVEN, 455 So.2d 301 (Fla. 1984): Landowner in condemnation proceeding is entitled to fair market value of property at time of taking even if it reflects anticipation of proposed project for which land is being condemned.

CANNEY v. CITY OF ST. PETERSBURG, 466 So.2d 1193 (Fla. 2nd DCA 1985): General rule for calculation of severance damages is before and after, exception for cases where damage can be cured at a cost less than before and after.

CARVEL CORP. v. DOT, 473 So.2d 48 (Fla. 4th DCA 1985): Appraisal based upon conclusion that highest and best use was commercial/residential was proper even though such property was currently zoned agricultural.

DOT v. FRENCHMAN, INC., 476 So.2d 224 (Fla. 4th DCA 1985) cert. discharged 495 So.2d 750 (Fla. 1986): Cost approach is appropriate for valuing golf course absent evidence of market for similarly developed property. Where no comparable sales and income impact uncertain, owner's appraiser should have used cost approach. Cost approach permitted when fair market value difficult to ascertain due to special use.

SARASOTA COUNTY v. BURDETTE, 479 So.2d 763 (Fla. 2nd DCA 1985): Pizza Hut case - Expert testified loss of parking does not cause additional damages. Testimony that customers could park across the street was not misconception of law, but response to claimant's cross examination. Restaurant did not need anymore spaces than those left after taking.

FLORIDA POWER & LIGHT v. ROBERTS, 490 So.2d 969 (Fla. 5th DCA 1986): Market value may be based upon comparable studies from different county to establish market value relationship in reference to proximity of power lines.

CITY OF ST. PETERSBURG v. CLARKE, 492 So.2d 685 (Fla. 2nd DCA 1986): Special use: Valuation method used by city for purchase of property from churches could not be used to value Masonic Lodge.

FLORIDA POWER AND LIGHT CO. v. JENNINGS, 518 So.2d 895 (Fla. 1987): Any factor, including public fear, which impacts on the market value of land taken may be considered to explain basis for expert's valuation opinion. Independent expert's scientific testimony is irrelevant and unnecessary. Thus, appraiser may explain appraisal as resulting from decreasing in market value due to public's fear of high voltage transmission lines. However, scientist may not testify as to scientific basis for such fear.

HARRISON v. SAVERS FEDERAL SAVINGS & LOAN ASSOCIATION, 549 So.2d 712 (Fla. 1st DCA 1989): Appraiser was not competent to testify as to expert opinion given to him by architect.

ROBBINS v. ADLEE DEVELOPERS, 556 So.2d 503 (Fla. 3d DCA 1990): Held building should be appraised with highest and best use based on legal nonconforming use rather than zoned use when land will continue nonconforming use into foreseeable future.

JACKSONVILLE TRANSPORTATION AUTHORITY v. ASC ASSOCIATES, 559 So.2d 330 (Fla. 1st DCA 1990): Court held JTA's right to fair trial was denied due to admission of testimony and argument made by landowner's attorney from which jury could infer appraiser called by landowner had been retained by JTA. Exhibits and testimony not permitted to show speculative future use of property.

DEPARTMENT OF AGRICULTURE v. MID-FLORIDA GROWERS, INC., 570 So.2d 892 (Fla. 1990): In condemnation action the subjective plans or intentions of the person whose property is taken are irrelevant; it is in effect a forced sale.

WILLIAMS v. DOT, 579 So.2d 226 (Fla. 1st DCA 1991): Held DOT's appraisal testimony was based on misconception of law because appraiser failed to consider any aspect of required changes in use of remaining property under cure proposed by DOT and Gloria Byrd case.

DOT v. BENNETT, 592 So.2d 1150 (Fla. 4th DCA 1992): Property owner is not entitled to compensation for enhanced value attributable to a nonconforming use, calculated as cost to bring property into compliance with local building and environmental regulations.

PARTYKA v. DOT, 606 So.2d 495 (Fla. 4th DCA 1992): Severance damages are compensable to extent increased grade on property taken necessitates additional fill to remainder over and above that necessary prior to taking.

HUBSCHMAN v. BOARD OF COUNTY COMMISSIONERS, COLLIER COUNTY, 610 So.2d 691 (Fla. 2d DCA 1992): Severance damages includes diminution in value caused by aesthetic loss caused by use or activity by government upon the land which has been taken. (Affluent tanks built on part taken).

GENERAL DEVELOPMENT UTILITIES, INC., v. CHARLOTTE COUNTY, 620 So.2d 1035 (Fla. 2d DCA 1993): Utility system is entitled to have all property acquired as Contributions In Aid of Construction to be included in amount of compensation.

DOT v. GEFEN, 636 So.2d 1345 (Fla. 1994): Held no taking from closing of I-95 ramp which resulted in loss of ingress and egress from abutting road, but held compensation would have to be based on value as if ramps were not closed should DOT later condemn all or part of property.

BROWARD COUNTY v. PATEL, 641 So.2d 40 (Fla. 1994): Appraiser is to consider the probability that lost value can be restored by a future cure or other contingent future only to the extent it may have an impact on fair market value.

WHITE v. DOT, 645 So.2d 114 (Fla. 5th DCA 1994): Held it was error to publish to jury portions of appraisal report on cross examination of owners, since owner elected not to call expert to testify at trial.

FINKELSTEIN v. DOT, 656 So.2d 921 (Fla. 1995): Evidence of contamination is relevant and admissible on issue of market value if sufficient factual predicate to conclude impact on market value through sales of comparable contaminated property.

DOT v ROGERS, 705 So.2d 584 (Fla. 5th DCA 1997): In whole take case it was improper to allow valuation testimony of business valuation expert, who gave "leasehold interest" value based on projected revenues, income, and profit from sandwich sales at the location.

AYERS ESTATE v. HERNANDO COUNTY, 706 So.2d 349 (Fla. 5th DCA 1998): Appraiser could not produce proper documentation and support for opinion on cross-examination, rendering testimony inherently incredible.

CITY NATIONAL BANK OF FLORIDA v. DADE COUNTY, 715 So.2d 350 (Fla. 3d DCA 1998): Held it was proper to exclude conceptual site plan and appraisal testimony based on conceptual site plan, since site plan was too speculative to support award of severance damages. Owner had never sought approval of site plan, so county's possible actions and owner's intentions were too speculative.

ATTORNEY AS EXPERT WITNESSES

LEE ENGINEERING & CONSTRUCTION CO. v. FELLOWS, 209 So.2d 454 (Fla. 1968): Affirmed Florida Industrial Commission's striking of expert witness fees to attorneys who testified in regard to attorneys fees.

TIEDTKE v. FIDELITY & CASUALTY CO. OF NEW YORK, 222 So.2d 206 (Fla. 1969): Expert witness fees for attorneys who testify at trial on matters of professional expertise is properly taxed as costs.

ALLSTATE INSURANCE CO. v. CHASTAIN, 251 So.2d 354 (Fla. 3rd DCA 1971): A fee will not be allowed for an expert witness who testifies as an expert relating to the value of attorney's fees in a given cause.

PLEVER v. BRAY, 266 So.2d 54 (Fla. 3rd DCA 1972): Error to award expert witness fees to attorneys who testified at attorney's fee hearing in bastardy proceeding.

IN RE ESTATE OF MELCHER, 319 So.2d 192 (Fla. 4th DCA 1975): In probate action, court properly denied expert witness fees to attorneys.

MILLS v. ARONOVITZ, 404 So.2d 138 (Fla. 3rd DCA 1981): 90.231, Fla. Stat. authorizes expert witness fees to be taxed as costs where the expert witness is called upon to prove any matter at issue in trial. Attorney is entitled to expert witness fee who testified as expert on value of attorney's services at trial. Where attorney called upon to prove attorney's fee in proceeding collateral to the trial itself, no expert witness fee recoverable as cost. See 200 So. 2d 804.

TRAVIESO v. TRAVIESO, 474 So.2d 1184 (Fla. 1985): Attorney testifying as to amount of reasonable fee should expect compensation only in the exceptional case where time required for preparation and testifying is burdensome.

B & H CONSTRUCTION v. TALLAHASSEE COMMUNITY COLLEGE, 542 So.2d 382 (Fla. 1st DCA 1989): Award of fees to attorney who testifies as an expert on the subject of attorney's fees is within court's discretion.

UNITED STATES FIDELITY AND GUARANTY v. ROSADO, 606 So.2d 628 (Fla. 3d DCA 1992): Error to award attorney expert witness fee in simple case, settled six days after case filed.

DOT v ROBBINS & ROBBINS, INC., 700 So.2d 782 (Fla. 5th DCA 1997): Since owner has no interest in award of attorney's fees, improper to award fee to expert testifying to fees at hearing.

LEE COUNTY v. BARNETT BANKS, INC., 711 So.2d 34 (Fla. 2d DCA 1997): Reversed expert witness fee for attorney testifying on legal interpretation of \$73.092. Expert testimony is not admissible concerning a question of law.

SEMINOLE COUNTY v. BOYLE INVESTMENT COMPANY, 719 So.2d 1004 (Fla. 5th DCA 1998): Reversal of award of expert witness fees to witnesses to amount of fees.

ATTORNEY FEES

- SHAVERS v. DUVAL CO., 73 So.2d 684 (Fla. 1954): Mortgagee not entitled to attorney fees.
- WINN v. CITY OF COCOA, 75 So.2d 909 (Fla. 1954): Trial court properly impressed attorney lien on proceeds in court registry to protect discharged attorney.
- FOLMAR v. DAVIS, 108 So.2d 772 (Fla. 3rd DCA 1959): In estimating attorney's service consider skill, experience, reputation, and even amount of business. Expert testimony is neither conclusive, nor binding on the court.
- BREITBART v. SRD, 116 So.2d 458 (Fla. 3rd DCA 1959): Full compensation includes payment of reasonable attorney's fee; testimony of experts on fees not binding on court though strongly persuasive.
- SRD v. COX, 118 So.2d 668 (Fla. 3rd DCA 1960): Award of \$600.00 fees (4.3% of award) not such as to shock conscience of court.
- SRD v. LEVATO, 199 So.2d 714 (Fla. 1967): Condemnees entitled to attorney's fee for services of their attorney on appeal notwithstanding fact that condemnor were successful on the appeal.
- CITY OF MIAMI BEACH v. CUMMINGS, 228 So.2d 109 (Fla. 3rd DCA 1969): Verdict was \$213,444.00 above first offer, exceptionally difficult case, minimum 750 hours, testimony of experts \$44,000 - \$99,576. award of \$65,000 not clearly erroneous. See 233 So. 2d 842; 266 So. 2d 122.
- CITY OF HALLANDALE v. CHATLOS, 236 So.2d 761 (Fla. 1970): Court has jurisdiction to award attorney's fees after condemnor dismisses the petition prior to entry of order of taking.
- CANAL AUTHORITY v. OCALA MFG. ICE & PACKING CO., 253 So.2d 495 (Fla. 1st DCA 1971): Factors to consider in fees: services performed, responsibility incurred, nature of the services, skill and time, customary charges, amount involved, value of services to client and results.
- CITY OF MIAMI BEACH v. MANILOW, 253 So.2d 910 (Fla. 3rd DCA 1971): Can consider alleged value of property as element in computing attorney fees (appraiser for landowner only testimony): appraiser entitled to fee for testimony.
- CITY OF MIAMI BEACH v. LIFLANS CORP., 259 So.2d 515 (Fla. 3rd DCA 1972): Allowance of costs and attorney fees proper though jury awarded zero compensation.
- DOT v. MORGAN, 281 So.2d 905 (Fla. 1st DCA 1973): When appellees failed to file motion for attorney's fees on appeal by Department from final judgment, trial court had no jurisdiction to entertain motion, but by appealing from order awarding attorney fees Department reinvested jurisdiction of subject matter in DCA which had authority to award such fees to appellees for work performed on first appeal, but not entitled to fees on second appeal.
- GULF POWER v. STACK, 300 So.2d 41 (Fla. 1st DCA 1974): Condemnee entitled to attorney's fees when court dismisses eminent domain proceeding at the Order of Taking hearing.
- MANATEE COUNTY v. HARBOR VENTURES, 305 So.2d 299 (Fla. 2nd DCA 1974): Fact fee paid from public fund does not warrant higher fee; time factor important as well as DR2-106. \$517/hr is excessive, where no risk, estimate of value was \$1,119,000 and settled at \$1,400,000

CITY OF MIAMI BEACH v. WEBSTER, 308 So.2d 572 (Fla. 3rd DCA 1975): Attorney fees to lessee and sublessee proper but where fees awarded to owner at time compensation was determined and court reserved no jurisdiction to award further fees, it was error to award additional fees at conclusion of apportionment proceedings.

CITY OF SUNRISE v. WEST BROWARD UTILITIES, 311 So.2d 175 (Fla. 4th DCA 1975): Attorney's fees and costs may be awarded to condemnee even though condemnor files voluntary dismissal of condemnation action.

DADE COUNTY v. OOLITE ROCK CO., 311 So.2d 699 (Fla. 3rd DCA 1975): Consider DR2-106(B); not required to pay for time attorney spent in attempting zoning change; percentage not proper.

NIVENS v. NIVENS, 312 So.2d 201 (Fla. 2nd DCA 1975): Court was without authority to award attorney's fees in the absence of evidence detailing services performed and expert testimony as to reasonableness of such fees.

DOT v. CONDOMINIUM INTERNATIONAL, INC., 317 So.2d 809 (Fla. 3rd DCA 1975): Farrell awarded \$225,000 fee upheld, no testimony by Department, Farrell testified 2,000 - 3,000 hours estimate; court feels fee is high.

HODGES v. DOT, 323 So.2d 275 (Fla. 2nd DCA 1975): Though not entitled to business damages issue was close and not resolved until trial, proper to award attorney's fees and costs relative to business damages.

CHANDLER v. CHANDLER, 330 So.2d 190 (Fla. 2nd DCA 1976): Travel time is not properly included in an award of attorney's fees assessable against the opposing party. Fee must be determined based on the fees customarily charged in the community where the proceeding was tried.

DOT v. GRANT MOTOR COMPANY, 345 So.2d 843 (Fla. 2nd DCA 1977): No attorney's fees or appraiser's fees in federal administrative hearing for relocation expense under federal statutes; 73.091 pertains to costs in Florida circuit courts.

STACK v. OKALOOSA CO., 347 So.2d 145 (Fla. 1st DCA 1977): On appeal from judgment denying condemnor's right to take fee, motion for attorney's fee for prosecution of appeal granted.

DADE COUNTY v. OOLITE ROCK CO., 348 So.2d 902 (Fla. 3rd DCA 1977): Fee of \$439 per hour excessive. Award should not be for more than the rate or amount customarily charged and paid between attorney and client in the community for services of the kind that are involved.

CITY OF ST. PETERSBURG v. VINOY PARK HOTEL, CO., 354 So.2d 136 (Fla. 2nd DCA 1978): Suggests that an award of attorney's fees and costs prior to conclusion of all proceedings is improper and that an award substantially based upon the results obtained must be reassessed after a reversal.

DOT v. DENMARK, 354 So.2d 100 (Fla. 4th DCA 1978): Attorney's fee of \$340 per hour not excessive in light of benefit to client and complexity of case. To challenge fee testified to by landowner, State must adduce evidence of its own.

DOT v. GRICE ELECTRONICS, INC. 356 So.2d 7 (Fla. 1st DCA 1977): An award of attorney's fees is proper for work done before suit was filed but after condemnation was imminent.

DOT v. DENMARK, 356 So.2d 15 (Fla. 4th DCA 1978): Attorney's fee of \$565 per hour reversed. Court began with reasonable per hour rate and then considered other statutory factors.

WILSON v. WILSON, 362 So.2d 1030 (Fla. 3rd DCA 1978): General rule that the self-serving statement nature of testimony given by an attorney who performs services for which attorney's fee is sought precludes a trial court from making an award based solely on that attorney's testimony.

GRIESER v. DOT, 371 So.2d 164 (Fla. 2nd DCA 1979): A vendor under a contract for deed is not entitled to recover costs and attorney's fees.

MARCHION TERRAZO, INC. v. ALTMAN, 372 So.2d 512 (Fla. 3rd DCA 1979): Setting of attorney's fees upon affidavits presented is allowed where neither party object, but it is not the proper method for determining this issue of fact.

DNR v. GABLES-BY-THE-SEA, INC., 374 So.2d 582 (Fla. 3rd DCA 1979): In an inverse condemnation proceeding, attorney's fees are contingent until a "taking" is judicially determined. Fee cannot exceed valuation placed upon services by the attorney who performs the services. \$800,000 awarded.

DENMARK v. DOT, 389 So.2d 201 (Fla. 1980): Condemnee entitled to attorney's fees for appeal though condemnor prevailed on appeal, where condemnor is appellant.

FENCE WHOLESALER OF AMERICA, INC., v. BENEFICIAL COMMERCIAL CORP., 465 So.2d 570 (Fla. 4th DCA 1985): Without showing a competent local attorney could not be obtained, attorney's fees cannot be awarded for travel time.

GWEN FEARING REAL ESTATE, INC., v. WILSON, 430 So.2d 589 (Fla. 4th DCA 1983): In the absence of a showing of non-availability of local expertise on issues involved, travel time may not be included in attorney fee cost award against losing party.

COUNTY OF VOLUSIA v. PICKENS, 435 So.2d 247 (Fla. 5th DCA 1983): If a governmental authority takes property, it must pay all consequential, legally recognized damages, costs and fees, regardless of whether the taking was by direct or inverse condemnation.

DOT v. DECKER, 450 So.2d 1220 (Fla. 2nd DCA 1984): Landowners were not entitled to an award of attorney's fees for first trial in eminent domain proceedings prior to conclusion of the entire proceedings, despite fact that the Department had terminated its temporary construction easement on landowner's property.

FLORIDA POWER & LIGHT v. FLICHTBEIL, 475 So.2d 1250 (Fla. 5th DCA 1985): Test for attorney's fees award is not whether it appears excessive, but whether the trial court abused its discretion in making the award it did. Attorney had 151 hours - \$40,250 reasonable where owner received \$289,000 more than original offer.

DOT v. IDEAL HOLDING CO., 480 So.2d 243 (Fla. 4th DCA 1985): When state initiated eminent domain proceedings, state would have to pay owner's attorney's fee for unsuccessful counterclaim in inverse condemnation. Owners did not need to prove taking or succeed in inverse claim.

DOT v. FORTUNE FEDERAL, 489 So.2d 1216 (Fla. 2nd DCA 1986): Award of partial attorney's fee prior to conclusion of case was not proper.

DOT v. RUSLAN, 497 So.2d 1348 (Fla. 4th DCA 1986): Fee of \$50,000 not excessive where calculated to be at rate of \$125 - \$143/hr. Owner is entitled to award of reasonable fee, for attorney's time spent on claims ultimately rejected by the court. Rowe does not apply - must use criteria in 73.092, Fla. Stat.

TERRY v. CONWAY LAND, INC., 508 So.2d 401 (Fla. 5th DCA 1987): Where landowner conflicting claims raises questions of title which would have required independent litigation for its determination even if the condemnation proceeding had never occurred, condemnor is not required to pay attorney's fees.

DAMA v. RECORD BAR, INC., 512 So. 2d 206 (Fla. 1st DCA 1987): Appellate attorney fees not awardable as against the City where proceeding involved only the private apportionment of condemnation proceeding. Statute 73.131 does not authorize fees.

McDERMOTT v. CITY OF CLEARWATER, 526 So.2d 121 (Fla. 2nd DCA 1988): No attorney's fees where inverse claim dismissed prior to offer of judgment and acceptance thereof.

CRIGLER v. DOT, 535 So.2d 329 (Fla. 1st DCA 1988): Upheld 73.092(7-9). Offer of judgment does not pose ethical dilemma for counsel. Attorney should always evaluate settlement offer on basis of client's interest, without considering his own interest in obtaining his fee.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES v. SCHICK, 553 So.2d 361 (Fla. 1st DCA 1989): Judgment awarding attorney's fees must set forth specific findings to support any enhancement factor. Court approved application of contingency risk factor in inverse condemnation.

DOT v. BETA DEVELOPERS, INC., 554 So.2d 555 (Fla. 1st DCA 1989): Court held it was not an abuse of discretion for trial judge to consider hours spent by attorney in map of reservation administrative hearing in awarding attorney's fee for condemnation action.

STANDARD GUARANTY INSURANCE CO. v. QUANSTROM, 555 So.2d 828 (Fla. 1990): Supreme Court recognized three categories of attorney fee cases (1) public policy enforcement cases; (2) tort and contract claims; and (3) family law, eminent domain, and estate and trust matters. Court changed Rowe multipliers to 1 to 2.5. Court said under ordinary circumstances a contingency fee multiplier is not justified for eminent domain cases, but the basic lodestar method is appropriate starting point.

BUCKLEY v. CITY OF MIAMI BEACH, 559 So.2d 310 (Fla. 3rd DCA 1990): Court found no error in award of attorneys fees less than amounts testified to by condemnor and condemnee's experts.

SUN BANK OF OCALA v. FORD, 564 So.2d 1078 (Fla. 1990): Court held that trial court appropriately rejected a contingent multiplier in contract case because no showing of difficulty of obtaining attorney to represent bank.

LANE v. HEAD, 566 So.2d 508 (Fla. 1990): Attorney fee agreement called for \$100/hour or 25% of amount recovered, whichever was greater. This constituted a partial contingency fee agreement because attorney would recover 2/3 of normal \$150/hour fee if he lost. Applying Quanstrom, the Court held that multiplier over and above customary reasonable fee should be reduced by amount of percentage of attorney's customary reasonable fee guaranteed by fee arrangement.

CITY OF ORLANDO v. KENSINGTON, LTD., 580 So.2d 830 (Fla. 5th DCA 1991): Attorney and client entered into fee arrangement of 5% of offer plus 25% of recovery. Court awarded fee equal to fee calculated on this percentage, resulting in a fee in excess of \$700/hour. Held no authority for proposition that owner by contract can establish fee to be awarded by court (except to limit). Court must follow Rowe by first determining the number of hours reasonably expended and reasonable hourly rate. The actual hours spent and contractual hourly rate may limit the award, but if exceed reasonable time and reasonable rate, they can't be used to increase fee to be paid by third party.

LEE COUNTY v. TOHARI, 582 So.2d 104 (Fla. 2d DCA 1991): Attorney fee order must set forth specific findings of the number of hours reasonably expended and reasonable hourly rate; court awarded fee in eminent domain case cannot exceed fee agreement; and trial court is authorized to increase or decrease the lodestar fee by a specific dollar amount to reflect attorney's unusual success or failure in the case.

IN RE ESTATE OF PLATT, 586 So.2d 328 (Fla. 1991): Determining a reasonable hourly rate and number of hours that should be expended is appropriate starting point for computation of reasonable fee in estate proceedings, eminent domain proceedings, Purpose of multiplier is to compensate the lawyer for the risk of nonpayment of a fee.

SCHICK v. DEPARTMENT OF AGRICULTURE, 586 So.2d 452 (Fla. 1st DCA 1991): Full compensation includes payment of attorney's fees necessary to enforce the condemnee's rights. Condemnee was entitled to attorney's fees for mandamus action brought to enforce inverse condemnation judgment.

SCHICK v. DEPARTMENT OF AGRICULTURE, 599 So.2d 641 (Fla. 1992): Where specific criteria are set forth in statute for determining attorney's fees, the trial judge is bound to use only the enumerated criteria. In determining the reasonable fee made pursuant to s.73.091 in an inverse condemnation action, a Rowe contingency risk multiplier should not be utilized.

DOT v. BROUWER'S FLOWERS, INC., 600 So.2d 1260 (Fla. 2d DCA 1992): There is no entitlement to prejudgment interest on award of attorney's fees.

FLORIDA INLAND NAVIGATION DIST. v. HUMPHRYS, 616 So.2d 494 (Fla. 5th DCA 1993) Landowner attorney cannot claim nonmonetary benefit for ruling obtained by condemning authority precluding evidence of certain damages. Court approved award of 20% of benefit in multimillion dollar benefit case.

SOLID WASTE AUTH. OF PALM BEACH COUNTY v. PARKER, 622 So.2d 1010 (Fla. 4th DCA 1993): Fee reversed because included consideration of contingency risk factor. If percentage of benefit is allowed it must not include any contingency risk factor.

STATE FARM FIRE & CASUALTY CO. v. PALMA, 629 So.2d 830 (Fla. 1993): Held attorney could recover fees for litigating the issue of entitlement to fees under S.627.428, but may not recover fees for litigating the amount of attorney's fees.

STOKUS v. PHILLIPS, 651 So.2d 1244 (Fla. 2d DCA 1995): Competent proof of an attorney's time and services is not restricted to the original time records. Substantial, competent evidence may include reconstructed records disclosing services performed, time expended, and rate services were billed. Pursuant to §92.231, expert fees may be taxed as costs for lawyer who testifies as expert. The award of fees to expert is not discretionary if expert expects to be compensated for services. See Travieso v. Travieso, 474 So.2d 1184 (Fla. 1985).

DOT v. BEN HILL GRIFFIN, INC., 636 So.2d 825 (Fla. 2d DCA 1994): Court reversed award of attorney fees and held that ownership interest in the property is required for fee under §73.091, even when party is named as party and dismissed from suit.

DOT v. GEFEN, 636 So.2d 1345 (Fla. 1994): A landowner claiming inverse condemnation is only entitled to appellate attorney's fees if the claim is ultimately successful.

DOT v. D.J.P. ASSOCIATES, 640 So.2d 1201 (Fla. 2d DCA 154): Attorney fee order reversed and remanded for clarification on enhancement of attorney's fee.

DOWNTOWN SQUARE ASSOCIATES v. DOT, 648 So.2d 1265 (Fla. 4th DCA 1995): Attorney fee award reversed because trial judge considered factors other than those enumerated in §73.092.

WHITLOW v. SOUTH GEORGIA NATURAL GAS CO., 650 So.2d 637 (Fla. 1st DCA 1995): Attorney fee award reversed and remanded for consideration of legal assistant's time under §57.104.

SEMINOLE COUNTY v. CLAYTON, 665 So.2d 363 (Fla. 5th DCA 1995): Assessment of attorney's fees is determined pursuant to specific factors in 73.092, but cannot exceed a reasonable fee. Reversed fee that calculated lodestar and then added 20% of benefit.

SEMINOLE COUNTY v. DELCO OIL, INC., 669 So.2d 1162 (Fla. 5th DCA 1996): Fee awards under 73.092 (1990) are subject to overarching requirement that the fee be reasonable. A fee is unreasonable when the effective hourly rate is excessive. Fee should first be calculated as lodestar and then adjusted up or down based on the amount involved and benefits achieved.

SEMINOLE COUNTY v. BUTLER, 676 So.2d 451 (Fla. 5th DCA 1996): Court rejects use of Parker formula. Fees cannot be paid for rent dispute, a private dispute when the compensation (rent) is paid by a third party. Time spent litigating the correct amount of fees is not compensable.

SEMINOLE COUNTY v. ROLLINGWOOD APARTMENTS LTD., 678 So.2d 370 (Fla. 5th DCA 1996): Fee reversed which was based on Parker formula, because award of top hourly rate plus percentage award does not comply with statute.

BROWARD COUNTY v. LAPOINTE, 685 So.2d 889 (Fla. 4th DCA 1996): Court approved fee based on lodestar plus 10% of benefit. Court reversed fees awarded for representation in regulatory and administrative process to resolve contamination issue for not being covered in settlement agreement.

DOT v. WINTER PARK GOLF CLUB, INC., 687 So.2d 970 (Fla. 5th DCA 1997): Court reversed portion of attorney's fee based on hours spent in litigating the correct amount of the fee.

SEMINOLE COUNTY v. CUMBERLAND FARMS, INC., 688 So.2d 373 (Fla. 5th DCA 1997): Attorney fee reversed because court used combination of lodestar and percentage of benefit. Court should have used the lodestar and adjusted up or down by a specific dollar amount as opposed to a multiplier.

BREVARD COUNTY v. CANAVERAL PROPERTIES, INC., 689 So.2d 1309 (Fla. 5th DCA 1997): Court reversed attorney fee awarded on remand after reversal of judgment since judge failed to do a complete reconsideration of the fee. Judge had simply struck his 20% benefit add-on to lodestar.

SEMINOLE COUNTY v. CORAL GABLES FEDERAL SAVINGS & LOAN, 691 So.2d 614 (Fla. 5th DCA 1997): Section 73.092 (Supp. 1994) is upheld as constitutional and held it does not infringe on powers of judiciary.

CITY OF JACKSONVILLE v. TRESKA, 692 So.2d 991 (Fla. 1st DCA 1997): Held that an offer of an option to purchase property is not an "offer" under §73.092. An offer under the statute must be one whereby if it is accepted will constitute a legal obligation by authority to purchase. Court reversed and required use of good faith deposit amount in calculating the fee.

DOT v. ABS PROPERTIES, 693 So.2d 703 (Fla. 2d DCA 1997): In dismissal of eminent domain petition, s. 73.096(2) is to be used in assessing attorney's fee, not percentage of benefit.

DOT v. LABELLE PHOENIX CORP., 696 So.2d 947 (Fla. 2d DCA 1997): Attorneys fees for Chapter 74 quick take proceeding are determined under s. 73.091(1), not s. 73.092(2). §73.092(2) is applicable for required proceedings that do not result in monetary benefit; e.g. defeating order of taking or apportionment proceeding.

BREVARD COUNTY v. CANAVERAL PROPERTIES, INC., 696 So.2d 1244 (Fla. 5th DCA 1997): Appellate attorney's fee must be reasonable. One that is bloated because of excessive time spent, unnecessary services rendered or duplicate tasks performed by multiple attorneys does not meet reasonableness test. Hours should be reduced to reflect duplicative services from multiple attorneys.

DOT v. ROBBINS AND ROBBINS, INC., 700 So.2d 782 (Fla. 5th DCA 1997): Improper to award hourly rate higher than firm billed. Improper to use multiplier to lodestar. Improper to blend paralegal time with attorney time. Paralegal time, if appropriate, should be compensated separately. Improper to award fees for time litigating amount of fees and fee for expert testifying at the hearing.

DOT v HALL, 707 So.2d 1163 (Fla. 1st DCA 1998): Offer of judgment can constitute written offer for calculating attorney's fees.

DOT v INTERSTATE HOTELS CORP., 709 So.2d 1387 (Fla. 3d DCA 1998): No prejudgment interest on award of attorney's fees.

PIERPOINT v. LEE COUNTY, 710 So.2d 958 (Fla. 1998): Held that a good-faith estimate of value does not constitute a written offer as set forth in §73.092.

HARTLEB v. DOT, 711 So.2d 228 (Fla. 4th DCA 1998): Court upheld lodestar fee award in which court made specific findings to support award regarding hours and reasonable hourly rate. Held it was not error in trial court's refusal to apportion fee among pretrial, trial, and appeals. No prejudgment interest on attorney's fees.

LEE COUNTY v. BARNETT BANKS, INC., 711 So.2d 34 (Fla. 2d DCA 1997): Reversed expert witness fee for attorney testifying on legal interpretation of §73.092. Expert testimony is not admissible concerning a question of law.

TEETER v. DOT, 713 So.2d 1090 (Fla. 5th DCA 1998): Attorneys cannot recover fees for hours spent litigating amount of fees to be awarded.

SEMINOLE COUNTY v. M. G. INVESTMENTS OF ORLANDO, INC., 714 So.2d 1066 (Fla. 5th DCA 1998): Affirms award of attorney's fees to attorney for the owner on the date of valuation and affirms denial of fees to counsel for the prior owner, even though the prior owner received the condemnation proceeds, because prior owner was mortgagee on date of taking.

DOT v. SMITHBUILT INDUSTRIES, INC., 715 So.2d 963 (Fla. 2d DCA 1998): Court held that the trial on business damages was a supplemental proceeding in absence of a written offer, so §73.092(2) should be used to assess attorney's fees.

SEMINOLE COUNTY v. BOYLE INVESTMENT COMPANY, 719 So.2d 1004 (Fla. 5th DCA 1998): Reversal of award of expert witness fees to witnesses to amount of fees. Award of prejudgment interest on fees between date of settlement and date of determination of fees was error. Delay time was not attributable to county.

DOT v. SKIDMORE, 720 So.2d 1125 (Fla. 4th DCA 1998): Proper to determine appropriate lodestar and then adjust figure based on benefits obtained. Reversed fee award because nonmonetary benefit was obtained through the efforts of DOT's attorney, not owner's attorney, who opposed plan change. Also error to include hours spent litigating illegal fill issue, since this issue was merely incidental to eminent domain proceeding and did not arise as direct result of condemnation suit. Found fee to be unreasonable based on benefits received, since testimony that fee awards are 25% to 35% of benefit and owner had to return \$73,000 of deposit.

SEMINOLE COUNTY v. BOYLE INVESTMENT COMPANY, 724 So.2d 645 (Fla. 5th DCA 1999): §73.191 mandated owner is entitled to appellate fees in all eminent domain cases appealed by the condemning authority.

DOT v. SKINNERS WHOLESALE NURSERY, INC., 736 So.2d 3 (Fla. 1st DCA 1998): Held that lodestar is appropriate approach to assess appellate attorney's fees. Pursuant to §73.121(2) the use of a contingency or risk factor multiplier is not authorized. On remand, the trial court could consider a results obtained factor by an increase or decrease by a specific dollar amount to reflect the attorney's unusual success or failure in a case.

DOT v. KNAUS, 737 So.2d 1130 (Fla. 2d DCA 1999): Court erred in awarding a lodestar fee, since §73.092(1) requires calculation of fees based on percentage of benefit. Since fee is awarded on benefit percentage calculation, court also erred in granting expert witness fees.

REESE v. DOT, 743 So.2d 1227 (Fla. 4th DCA 1999): Attorney was not entitled to attorney fee calculated on business' profits during period of extended possession. Profits were achieved by business operation, not efforts of the attorney.

DOT v. LAKEPOINTE ASSOCIATES, 745 So.2d 364 (Fla. 1st DCA 1999): Letter sent by DOT to owner, despite absence of signature of R/W Administrator, was an offer to purchase within meaning of §73.092 in order to calculate benefits for assessing the attorney's fee.

GATLIN v. DOT, 763 So.2d 1232 (Fla. 1st DCA 2000): Attorney's fees could not be recovered under §73.092(2) for administrative hearing seeking to revoke environmental permits issued to state.

AMOCO OIL COMPANY v. DOT, 765 So.2d 111 (Fla. 1st DCA 2000): Trial court properly denied attorney's fees for cost hearing because judgment included attorney's fees "which shall represent all fees." Court did conclude that a cost hearing is a "supplemental proceeding" as contemplated in §73.092(2).

DOT v. PATEL, 768 So.2d 1173 (Fla. 2d DCA 2000): Attorney fee for defeating motion to change partial take to whole take does not constitute non-monetary benefit under §73.092(1); fee is to be considered under §73.092(2).

AMERADA HESS CORP. v. DOT, 25 FLW D2581 (Fla. 4th DCA 2000): Held there was evidence to support denial of non-monetary fee for changes in construction plans, since the plans were not changed as a result of attorney's efforts. Court also upheld original DOT offer in setting benefits, despite changes in plans.

DOT v. O'DONNELL, 25 FLW D2765 (Fla. 5th DCA 2000): Court held attorney, who was also owner of property, would have fee assessed under §73.092(2) lodestar basis, based on unique facts of case.

BURDEN OF PROOF

CITY OF LAKELAND v. BUNCH, 293 So.2d 66 (Fla. 1974): Condemnee does not have burden of proof; condemnor must initially come forward with proof of public purpose and reasonable necessity.

CITY OF FT. LAUDERDALE v. CASINO REALTY, 313 So.2d 649 (Fla. 1975): Condemnee has right to open and close final argument where substantial issue is one on which condemnor has burden of proof. See 281 So. 2d 36.

WILKERSON v. DOT, 319 So.2d 585 (Fla. 2nd DCA 1975): Burden of proof of land value on condemnor; landowner has absolute right to place whatever value he chooses on his property, and upon competent evidence tending to establish such value, a presumption arises that the property is in fact worth that much; burden on condemnor to rebut that presumption and to establish by a preponderance of the evidence that the property is worth something less.

DOT v. SAEMANN, 399 So.2d 359 (Fla. 4th DCA 1981): Error for trial court to strike Department's evidence of value of land and improvements taken because the Department did not also adduce evidence of severance damages. Absent court ruling to contrary, the condemnor is not required to adduce evidence of severance damages in case in chief.

CITY OF ORLANDO v. CONE, 615 So.2d 793 (Fla. 5th DCA 1993): No presumption of correctness attends a landowner's evaluation of his property in face of contrary expert testimony as to value and it was error to give instruction setting forth presumption.

BUSINESS DAMAGES

FLORIDA DAIRIES CO. v. ROGERS, 161 So. 85 (Fla. 1935): Damages recovered for future injuries should be reduced to their present value.

NEW AMSTERDAM CASUALTY CO. v. UTILITY BATTERY MFG. CO., 166 So. 856 (Fla. 1935): Proof of income and expenses for reasonable time prior to interruption, or facts of equivalent impact, usually required for damages for loss of anticipated profits.

MEYERS v. CITY OF DAYTONA BEACH, 30 So.2d 354 (Fla. 1947): Condemnee testified to loss of profit of \$600/month; condemnor's land value \$7,634 plus could rebuild business in six weeks; jury verdict of \$7,925 was short of full compensation since minimum value based on evidence was \$8,534; award can't be less than lowest figure testified by any witness.

NATURAL GAS & APPLIANCE CO. v. MARION COUNTY, 58 So.2d 701 (Fla. 1952): Tenant could not claim as business damages, higher insurance costs as a result of increased traffic on improved road.

HOOPER v. SRD, 105 So.2d 515 (Fla. 2nd DCA 1958): Five year requirement in business damage statute means in existence for five years, not continuous ownership.

CITY OF TAMPA v. TEXAS COMPANY, 107 So.2d 216 (Fla. 2nd DCA 1958): Owner wholesaler not entitled to recover lost profits during time business not operating due to widening of street where leased business to retailer.

GUARRIA v. SRD, 117 So.2d 5 (Fla. 3rd DCA 1960): No business damage for whole take.

SRD v. WHITE, 148 So.2d 32 (Fla. 2nd DCA 1962): Lessee entitled to business damage when land appropriated during term of written lease; a lessee for years under written lease is owner of property in constitutional sense. See 161 So. 2d 828.

SRD v. PETER, 165 So.2d 771 (Fla. 2nd DCA 1964): Must lay predicate for jury to consider business damage.

SRD v. ABEL INVESTMENT, 165 So.2d 832 (Fla. 2nd DCA 1964): Right to business damage derived solely from statute; no business damage included in Declaration of Taking.

SOCLOF v. SRD, 169 So.2d 510 (Fla. 1st DCA 1964): Property leased to tenant at will, majority stockholders who were landowners not entitled claim business damage for corporation; corporate tenant not allowed to intervene and it did not appeal that ruling.

- SRD v. LEWIS, 170 So.2d 817 (Fla 1964): Business damage statue does not change rule against allowing damages for access, light or view due to change in grade.

SRD v. BRAMLETT, 189 So.2d 481 (Fla 1966): No business damage claim under constitution for business located on lands taken.

- GLESSNER v. DUVAL COUNTY, 203 So.2d 330 (Fla. 1st DCA 1967): Cannot recover business and severance damages where identical.

INTERCOASTAL DRYDOCK, INC. v. SRD, 203 So.2d 19 (Fla. 3rd DCA 1967): Lessee not entitled to business damage where all property on which business located was taken.

DOUGLASS v. HILLSBOROUGH COUNTY, 206 So.2d 402 (Fla. 2nd DCA 1968): No business damage where business located upon property being taken; here took 5/8ths of structure, leaving 3/8ths on remainder.

YOUNG v. HILLSBOROUGH COUNTY, 215 So.2d 300 (Fla. 1968): Owner entitled to business damage in addition to value of land taken even where buildings destroyed if it's a partial take.

SALLAS v. SRD, 220 So.2d 378 (Fla. 1st DCA 1969): Sublease on year to year basis entitled to business damage. Damages are limited to period of the lease.

- LeSUER v. SRD, 231 So.2d 265 (Fla. 1st DCA 1970): Cost of physical changes or modifications in premises necessitated by taking is severance not business damage.

DOT v. PINK PUSSYCAT, 314 So.2d 192 (Fla. 1st DCA 1975): No interest paid on business damage award; business damage is consequential and need not be included in Declaration of Taking.

BEHM v. DOT, 336 So.2d 579 (Fla. 1976): No directed verdict on business damages where condemnor offers no evidence. See 292 So. 2d 437.

WHITEHEAD v. FLORIDA POWER AND LIGHT, 318 So.2d 154 (Fla. 2nd DCA 1975): Expense of operating a bisected rock quarry as a single quarry instead of two quarries constituted business damage not severance.

STEWART v. ALACHUA COUNTY, 320 So.2d 33 (Fla. 1st DCA 1975): Business damage must be within range of testimony.

JAMESSON, ETC. v. DOWNTOWN DEVELOPMENT AUTH. OF CITY OF FT. LAUDERDALE, 322 So.2d 510 (Fla. 1975): No right to business damages for whole take under full compensation provision of 1968 Constitution.

HODGES v. DOT, 323 So.2d 275 (Fla. 2nd DCA 1975): Defines "continuous" in business damage statute; must be ongoing business for five years; Hodges acquired only business place, not an established business; no accounts receivable purchased and no liabilities assumed; paid nothing for goodwill - so not continuous.

MATTHEWS v. DOT, 324 So.2d 664 (Fla. 4th DCA 1975): Business damage not limited to lost profits; may recover lost goodwill if business not making profit; good will need not be valued with reference to profit and loss but can be valued in relation to business volume.

TUTTLE v. DOT, 336 So.2d 583 (Fla. 1976): Condemnor does not need to put on any testimony of business damage; jury can award less than testimony; jury verdict on business damage sustained if any ascertainable relationship to evidence.

DOT v. ELY, 351 So.2d 66 (Fla. 3rd DCA 1977): To qualify for business damages, the business must be owned by the party whose land is being taken and the business must have been on the adjoining property for five years.

- BRYANT v. DOT AND CITY OF JACKSONVILLE, 355 So.2d 841 (Fla. 1st DCA 1978): Severance damage and business damage predicated on difficulty of getting onto and off remaining land, no error to instruct jury that they had to first find severance before they could award business damage. Directed verdict on business damages improper even though Department offers no rebuttal testimony.

- CITY OF MIAMI v. COCONUT GROVE MARINE PROPERTIES, INC., 358 So.2d 1151 (Fla. 3rd DCA 1978): Business damages are a matter of legislative grace and not part of the constitutionally protected concept of full compensation.

LEE COUNTY v. T & H ASSOC., 395 So.2d 557 (Fla. 2nd DCA 1981): Growing crops revenue comes from the property itself rather than from a business. Rationale for business damages not being a part of full compensation: would permit consideration of too many intangibles such as the extent to which owner could have profitably transferred his business to a new location and the relative degree of his commercial skills.

DOT v. LAKE OF WOODS, INC., 404 So.2d 186 (Fla. 4th DCA 1981): Business not an established business of five years standing to qualify for business damages since business had been closed for 2 and ½ months when purchased by owner, the name was changed, the restaurant was remodeled, owner had to acquire new liquor license, and owner did not assume obligations or purchase accounts receivable from the previous owner.

COLEMAN v. ESCAMBIA COUNTY, 405 So.2d 227 (Fla. 1st DCA 1981): Where business was damaged or destroyed by threat of condemnation, it was immaterial that business closed year before condemnation proceedings actually began.

MALONE v. DOT, 438 So.2d 857 (Fla. 3rd DCA 1983): Compensation for cost of disassembly, trucking and reassembly cannot exceed valuation of equipment in place less salvage.

- VOLUSIA COUNTY v. PICKENS, 439 So.2d 276 (Fla. 5th DCA 1983): Business damages are special damages and not property for which compensation is due absent statutory authority.

- TAMPA-HILLSBOROUGH COUNTY v. K.E. MORRIS ALIGNMENT, 444 So.2d 926 (Fla. 1983): Business damages fall in category where compensation is not constitutionally required but depends on legislative authorization. Allowance of business damages may be compared to waiver of sovereign immunity and when construction is necessary must be strictly construed in favor of state. Requirement of more than 5 years standing refers to length of time business has operated at the location where business damages are claimed to have occurred due to condemnation of adjoining land.

- MULKEY v. DOT, 448 So.2d 1062 (Fla. 2nd DCA 1984): Where business damages are identical to severance damages, the condemnee may not receive double recovery. In cases where an established business is totally destroyed by a taking of adjacent property, business damages may include lost profits, costs attached to moving and selling equipment, and loss of good will. Cost of effectuating physical changes or modifications in the premises necessitated by a taking are in the nature of severance damages, not business damages.

FLORIDA POWER AND LIGHT v. FIRST NATIONAL BANK AND TRUST OF RIVERIA, 448 So.2d 1141 (Fla. 4th DCA 1984); Utility not liable for business damages under 73.071(3), Fla. Stat., since not a public body. Lost profits are intangibles and are not "property" in constitutional sense in eminent domain proceedings.

SLACTER v. CITY OF ST. PETERSBURG, 449 So.2d 1006 (Fla. 2nd DCA 1984): While jury may award business damages in amount less than that suggested by landowner's expert, once landowner establishes that there was business damages the jury should award business damages even though nominal.

HOWARD JOHNSON CO. v. DOT, 450 So.2d 328 (Fla. 4th DCA 1984): Owner sustained no compensable claim for business damages resulting from temporary loss of business occasioned by noise, vibration, dust, and related nuisance resulting from construction of highway.

DOT v. NESS TRAILER PARK, 489 So.2d 1172 (Fla. 4th DCA 1986): Business damages includes costs of moving, selling equipment, lost good will and profits. Lost rent from mobile homes is not rental income generated from real estate.

DOT v. STANDARD OIL, INC., 510 So.2d 324 (Fla. 2nd DCA 1987): Gas supplier was not an owner of the business on the remainder nor did it have a physical existence for more than five years at the location of the part taken. Although both the station operator and the supplier engaged in operating separate business, only the operator, as the retailer was entitled to business damages; gas supplier was a wholesale business which did not have the necessary physical existence at that location. ✓

DOT v. SUN ISLAND BOATS, INC., 510 So.2d 603 (Fla. 3rd DCA 1987): Court properly denied business damages for whole take where second parcel, relied on by condemnee for "partial take", was located approximately a mile away, no active rental business was conducted there and zoning laws prohibited operation of boat rental business at such location.

METROPOLITAN DADE COUNTY v. CURELLI, DOUGLAS, ETC., 511 So.2d 602 (Fla. 3rd DCA 1987): Business damages are not awardable in whole take as opposed to partial taking.

SASNETT v. TAMPA ELECTRIC CO., 513 So.2d 157 (Fla. 2nd DCA 1987): Mobile homeowner had no claim to business damages when partial taking was by electric company. Right to business damages is legislative and mobile homes owner lacked standing to challenge constitutionality of statute.

• DOT v. FORTUNE FEDERAL, 532 So.2d 1267 (Fla. 1988): Legislature created right to business damages and legislature can limit right to business damages. 337.27(3) Fla. Stat. is constitutional. Limiting acquisition costs is valid public purpose and does not deprive condemnee of constitutional right to full compensation. Role of judiciary in determining validity of public purpose is narrow.

AMERKAN v. CITY OF HIALEAH, 534 So.2d 796 (Fla. 3rd DCA 1988): Landowner sought two years of lost rental income - time between City's notice to tenant and actual condemnation. Court held that not entitled to lost rent and other profits where entire property is taken. Also notice to tenant is not tortious interference with contractual relations as City was required by federal law to give notice, thus there is no unjustified interference.

FOREST'S MENS SHOP v. SCHMIDT, 536 So.2d 334 (Fla. 4th DCA 1988): A party seeking lost future profits must prove the lost profits were a direct result of the other party's actions and the amount of lost profits can be established with reasonable certainty. A condition precedent to the recovery of future lost profits is proof, by competent evidence, that the business had earned profits for a reasonable time before the occurrence of the wrong.

TEXACO v. DOT, 537 So.2d 92 (Fla. 1989): No business damages to wholesale gasoline distributor when taking occurs at retail site. No violation of equal protection. Right to business damages is strictly statutory. Approved decision below [DOT v. Schatt, 519 So.2d 708 (Fla. 2nd DCA 1988)] and Standard Oil.

PALM BEACH COUNTY v. AWADALLAH, 538 So.2d 142 (Fla. 4th DCA 1989): Predicate that business be located on adjoining land owned by the party whose property is being taken was not satisfied where business was located on the 2.7 acres of property being taken and business was never solicited, accepted, or conducted from storage sheds located on remaining 67.3 adjoining acres. No business damages as business located entirely on land taken.

HICKS v. DOT, 541 So.2d 1309 (Fla. 4th DCA 1989): Under facts of instant case, trial court erred in holding that Hicks did not purchase a business and thus failed to meet five year requirement. Business damages should have been allowed. The "essential inquiry" is to focus on the continuous operation of the business.

ROBERT H. HART & SONS, INC. v. DOT, 559 So.2d 302 (Fla. 2d DCA 1990): The essential inquiry under the business damage statute is that of continuous operation of the business at that location. Details of transfer of business ownership do not govern that essential inquiry.

• POLK COUNTY v. GROOMS, 625 So.2d 1249 (Fla. 2d DCA 1993): Improper to award business damages for prospective loss of profits from crops which might be planted in future years on property condemned.

AMERICAN DIVE CENTER INC. v. DOT, 632 So.2d 277 (Fla. 4th DCA 1994): DOT not entitled to summary judgment, since scuba shop was purchased by new owner and never closed and issue was whether continuous operation of business.

DOT v. MANOLI, 645 So.2d 1093 (Fla. 4th DCA 1994): Where business damages are calculated on the basis of lost profits, the reasonable value of the self-employed owner's services must be deducted just as any other wages are deducted.

• WEAVER OIL CO. v. CITY OF TALLAHASSEE, 647 So.2d 819 (Fla. 1994): Business damage statute requires taking of land, so there was no claim for taking of access alone.

BREVARD COUNTY v. RAMSEY, 658 So.2d 1190 (Fla. 5th DCA 1995): For award of business damages, the owner or holder of adjacent land must simultaneously own the business at time of order of taking. Held that trustee is owner or holder of land, not beneficiary of trust, so the beneficiary should not be made a party. So beneficiary did not own or hold land and did not qualify for business damages.

TAMPA-HILLSBOROUGH EXPRESSWAY AUTHORITY v. CASIANO-TORRES, 659 So.2d 1125 (Fla. 2d DCA 1995): No error to submit to jury disputed factual issue of business being in existence for five years.

MORR v. DOT, 667 So.2d 888 (Fla. 2d DCA 1996): Court held nonconforming salvage yard could present evidence there exists a reasonable probability that through rezoning or variance a business nonconforming on date of taking would be allowed to continue. Order terminating business claim was reversed.

WEESE v. PINELLAS COUNTY, 668 So.2d 221 (Fla. 2d DCA 1996): Business damages must be based on business as it existed on date of taking, but trial court erred in striking testimony of expert who stated damages would not begin until after construction. Court also erred in disallowing prior owner from testifying, since he was familiar with the used car business and with the particular business affected.

TRINITY TEMPLE CHURCH v. ORANGE COUNTY, 681 So.2d 765 (Fla. 5th DCA 1996): A church is not a business under business damage statute.

MURRAY v. DOT, 687 So.2d 825 (Fla. 1997): Business damages are more in nature of lost profits attributable to reduced profit-making capacity of business caused by the taking. Both the business owner and government should be permitted to present expert opinions based upon generally accepted accounting principles of the business damages.

JOYNT v. ORANGE COUNTY, 701 So.2d 1249 (Fla. 5th DCA 1997): The term "right-of-way" in the business damage statute is all inclusive, meaning road, canal, levee or water control facility right-of-way.

NIGHT FLIGHT INC. v. TAMPA HILLSBOROUGH EXPRESSWAY AUTH., 702 So.2d 538 (Fla. 2d DCA 1997): Bottle Club was taken, leaving parking lot. Court held business damages could only be recovered for an established business located on the unappropriated adjoining land. Business damages limited to lost profits from activities on the remaining adjoining lands (the parking lot).

BLOCKBUSTER VIDEO, INC. v. DOT, 714 So.2d 1222 (Fla. 2d DCA 1998): Court held that business operates at same location to meet 5 year requirement whenever a business replaces its commercial building with a newer building on some portion of the same parcel of commercial real property.

DAVIS v. DOT, 717 So.2d 61 (Fla. 2d DCA 1998): Held it was reversible error to admit evidence of family squabbling in eminent domain trial, since it was irrelevant to issue of damages. Also error to allow testimony on state of mind of the owner in attacking accountant's deletion of income records because owner said two years were not representative of business operations.

M.J. STAVOLA FARMS, INC. v. DOT, 742 So.2d 391 (Fla. 5th DCA 1999): Court properly struck testimony of business damage expert for failing to consider current operations history of limerock business.

SEMINOLE COUNTY v. SANFORD COURT INVESTORS, LTD., 743 So.2d 1165 (Fla. 5th DCA 1999): Held that tenant's business damages are limited by the duration of the leasehold at the time of entry of the order of taking.

DOT v. JACK'S QUICK CASH, INC., 748 So.2d 1049 (Fla. 5th DCA 1999): Business damage expert fees are only recoverable if business damages are compensable.

ONE STOP 76, INC. v. DOT, 762 So.2d 962 (Fla. 4th DCA 2000): Held there was sufficient evidence for jury to decide whether business activities were conducted on remainder.

CLOSING ARGUMENT

ROLLINS v. DOT, 373 So.2d 386 (Fla. 4th DCA 1979): Comments of counsel during closing argument suggesting that new roads would be built when needed, warranted a new trial when there was no evidence of any plans to build such roads to alleviate the landowner's access problems.

DAVIS v. SOUTH FLORIDA WATER MANAGEMENT DISTRICT, 715 So.2d 996 (Fla. 4th DCA 1998): Improper for government counsel to suggest to jury that verdict comes out of juror's pockets. Improper for attorney to express his own opinion of evidence and to attempt to bolster his own credibility by reference to extraneous matters.

COMPARABLE SALES

HOMER v. DADELAND SHOPPING CENTER, 229 So.2d 834 (Fla. 1969): To render evidence of voluntary sales competent they must be for money and not, in whole or in part, by way of exchange.

WILLIAMS v. JACKSONVILLE ELECTRIC AUTHORITY, 250 So.2d 652 (Fla. 1st DCA 1971): Utility lines built on easements leaving fee land on each side, not so unique as to allow testimony of damage based on sales of land adjacent to transmission lines in counties 100 - 200 miles from subject.

CLAIBORNE v. CITY OF JACKSONVILLE, 260 So.2d 257 (Fla. 1st DCA 1972): Distance between subject and comparable of 8.6 miles not so remote as to render sales inadmissible; fact comparable in another county did not lessen admissibility of sale.

DOT v. SAMTER, 393 So.2d 1142 (Fla. 3rd DCA 1981): Sales of comparable property may be employed as evidence only when the land so sold was similar in locality and character to the land in question. The question of comparability should be liberally viewed and is usually a matter for the discretion of the court.

DOT v. NALVEN, 455 So.2d 301 (Fla. 1984): Comparable sale reflecting increased market value because of public knowledge of probable alignment of highway construction project was not to be disregarded or discounted in determining market value at time of taking.

FINKELSTEIN v. DOT, 656 So.2d 921 (Fla. 1995): Held that evidence of contamination is relevant and admissible on the issue of market value in a valuation trial if there is sufficient factual basis through evidence of sales of comparable contaminated property on which to base an opinion of decrease in market value. Because in this case, the property's cleanup was being reimbursed, the property should be valued as clean, but any sales used as basis that contamination decreases value, must be of contaminated property successfully cleaned up.

COMPENSABLE ITEMS/COMPENSATION

JACKSONVILLE, T. & K. W. RY. CO. v. ADAMS, 10 So. 465 (Fla. 1891): When body with eminent domain authority illegally occupies land and then proceeds to file action to pay compensation, the owner is not entitled to be paid for improvements made to the land by the condemning authority.

CASEY v. FLORIDA POWER LIGHT, 157 So.2d 168 (Fla. 2nd DCA 1963): Value in condemnation ordinarily means amount which would be paid to willing seller, not compelled to sell by willing purchaser not compelled to purchase, considering all uses to which property adaptable.

MOORE v. SRD, 171 So.2d 25 (Fla. 1st DCA 1965): Riparian property rights may not be taken without compensation.

ELOWSKY v. GULF POWER CO., 172 So.2d 643 (Fla. 1st DCA 1965): Loss of shade tree that shaded bedroom during daytime sleeping hours was compensable even though it did not enhance market value of property. Awarded \$500.00.

STANINGER v. JACKSONVILLE EXPRESSWAY AUTHORITY, 182 So.2d 483 (Fla. 1st DCA 1966): Condemnor should pay no more or no less than any other purchaser on open market.

VALLS v. ARNOLD INDUSTRIES INC., 328 So.2d 471 (Fla. 2nd DCA 1976): Water, oil, minerals and other substances of value which lie beneath the surface are valuable property rights requiring just compensation.

DOT v. ELY, 351 So.2d 66 (Fla. 3rd DCA 1977): Service and easement agreement held by a private company to provide water and sewer service to owners of land creates no compensable interest in property. Company only entitled to value of lost trade fixtures located on part taken and cost of removing salvageable fixtures.

LEE COUNTY v. EXCHANGE NATIONAL BANK OF TAMPA 417 So.2d 268 (Fla. 2nd DCA 1982): In partial taking, landowner generally only entitled to such damages to the remainder as are attributable to the use or activity on the land which is taken and is not entitled to such consequential damages from activity occurring on land which is taken from others; unless the use of part taken constitutes an integral and inseparable part of a single use to which the land taken and other adjoining land is put; i.e., construction of highway. Held: No severance to remainder when part taken was used for buffer zone for new airport and no actual construction was done on part taken.

CITY OF ST. PETERSBURG v. WALL, 475 So.2d 662 (Fla. 1985); 419 So.2d 1167 (Fla. 2nd DCA 1982): Landowners may not recover damages which accrued during condemnation proceedings in trial court, which ended in judgment against condemnor for failure to establish a necessity, in absence of showing of bad faith on part of condemnor.

MALONE v. DOT, 438 So.2d 857 (Fla. 3rd DCA 1983): Moving fees incurred in order to comply with pollution, health and safety regulations of state, local and federal governments were not compensable. Also, real estate fee for assisting owner in finding suitable new location for plant is not compensable.

PINELLAS COUNTY v. BROWN, 450 So.2d 240 (Fla. 2nd DCA 1984): Definition of property in condemnation cases is sufficiently broad to extend to intangibles and incorporeal rights, such as contractual obligations and leasehold interests. (prospective assignee of leasehold interest).

HOWARD JOHNSON CO. v. DOT, 450 So.2d 328 (Fla. 4th DCA 1984): Consequential damages for temporary loss of business during construction occasioned by use of parcel taken as easement, and noise, vibration, dust and related nuisances resulting from the construction were not compensable in condemnation proceedings.

SAND KEY ASSOCIATES LTD., v. BOARD OF TRUSTEES OF INTERNAL IMPROVEMENT FUND, STATE OF FLORIDA, 458 So.2d 369 (Fla. 2nd DCA 1984): Littoral and riparian rights, including right of ingress and egress from water to land and right to land growing from accretion cannot be taken without just compensation.

CONWAY LAND, INC., v. TERRY, 542 So.2d 362 (Fla. 1989): Deed reservation of royalty interest in oil, gas and minerals to grantor was a real property interest.

DOT v. HEATHROW LAND DEVELOPMENT CORP., 579 So.2d 183 (Fla. 5th DCA 1991): Court upheld trial court ruling that billboard was structure for which compensation must be paid under Federal Uniform Relocation Act (42 U.S.C. 4652). Trial court held value of billboard must be determined by considering its contributive value as an improvement to the condemned real property.

PALM BEACH COUNTY v. COVE CLUB INVESTORS, INC., 734 So.2d 379 (Fla. 1999): Country Club's right to receive monthly recreation fee, assessed against lot owner pursuant to restrictive covenant, was compensable property right.

CONDEMNATION BLIGHT

SRD v. CHICONE, 158 So.2d 753 (Fla. 1963): Value of property as depreciated by prospect of condemnation not proper basis for measuring compensation.

GLEASON v. SRD, 178 So.2d 199 (Fla. 2nd DCA 1965): Upheld action of trial court in striking portions of owner's answer claiming damages for amount expended on taxes, insurance, and upkeep after announcement property would be taken until date of taking and amount equivalent to reasonable return on investment.

PITZ v. SRD, 32 Fla. Supp. 55 (1966): Held owners entitled to compensation for loss of rental income from date of vacancy until formal condemnation where as direct and proximate cause of the activities of SRD resulted in said loss.

DOT v. DONAHOO, 412 So.2d 400 (Fla. 1st DCA 1982): A taking cannot result unless there is a permanent invasion of the land amounting to appropriation different in degree of character from damaged property and substantially depriving owner of land's beneficial use. Representation that property is within proposed right-of-way and counseling by Department representatives against needed renovations is not sufficient to constitute a taking. Destruction of wall during construction sounds in tort-not in inverse condemnation.

FLORIO v. CITY OF MIAMI BEACH, 425 So.2d 1161 (Fla. 3rd DCA 1983): Inclusion of property within redevelopment area did not allow for claim due to "condemnation blight" when the reason for preventing owners from utilizing the building on the property was that it was an unsafe structure.

DOT v. GEFEN, 636 So.2d 1345 (Fla. 1994): Held no taking from closing of I-95 ramp which resulted in loss of ingress and egress from abutting road, but held compensation would have to be set on value as if ramp were not closed should DOT later condemn all or part of property.

GRANDPA'S PARK, INC. v. DOT, 726 So.2d 789 (Fla. 1st DCA 1998): Court properly excluded evidence of value of property before change in comprehensive plan designation because owner did not prove city had been influenced by DOT to change the plan or that the taking caused redesignation of land use.

CONSTRUCTION DAMAGES

DOT v. HILLSBORO ASSOC., 286 So.2d 578 (Fla. 4th DCA 1973): Damages resulting from performance of construction is consequential and not compensable, if construction is lawful and performed without negligence or misconduct.

HOWARD JOHNSON CO. v. DOT, 450 So.2d 328 (Fla. 4th DCA 1984): Consequential damages for temporary loss of business during construction of highway occasioned by taking of easement is not compensable.

DOT v. FRENCHMAN, INC., 476 So.2d 224, (Fla. 4th DCA 1985), cert. discharged 495 So.2d 750 (Fla. 1986): Severance damages result from taking, not manner of construction, which if lawful and not negligent equals no injury.

M & C ASSOCIATES, INC. v. DOT, 682 So.2d 640 (Fla. 2d DCA 1996): Held parties were bound by stipulated final judgment provision which allowed damages to a pool caused by construction, even though construction damages are not generally recoverable. Once settlement agreement is reached all rights and duties merged into that agreement and all provisions are binding on the parties.

CONSTRUCTION PLANS/ENGINEERING TESTIMONY

CARLOR CO. INC., v. CITY OF MIAMI, 62 So.2d 897 (Fla. 1953): It is not necessary to have funds, plans and specifications prepared, and preparation for immediate construction to meet public purpose; duty to plan and look to future.

SRD v. SOUTHLAND, 117 So.2d 512 (Fla. 1st DCA 1960): SRD is not precluded from acquiring property because does not have engineering plans, construction drawings and specifications detailing and depicting the manner and method by which section or highway traversing defendants property will be constructed.

WRIGHT v. DADE COUNTY, 216 So.2d 494 (Fla. 3rd DCA 1968): County entitled to acquire fee, even though immediate use to which parcel put would not continue for substantial period and there was absence of definite plans for later use and construction; not required to have all preparation necessary for immediate construction; necessity and amount of land needed should not be upset without strong and convincing evidence of the most conclusive character.

CENTRAL & SOUTH FLORIDA FLOOD CONTROL DIST. v. WYE RIVER FARM, 297 So.2d 323 (Fla. 4th DCA 1974): Complete plans and specifications not necessary to establish necessity. Condemning authority can through resolution authorize its engineer to speak regarding restoration of severed access.

HODGES v. JACKSONVILLE TRANSPORTATION AUTHORITY, 353 So.2d 1211 (Fla. 1st DCA 1977): There must be some evidence that an engineer who testifies that access will be provided has authority to bind the condemnor on plans and specifications showing such access before an appraisal which assumes such access is valid.

BRYANT v. DOT AND CITY OF JACKSONVILLE, 355 So.2d 841 (Fla. 1st DCA 1978): No error committed in implementing construction plans at trial by permitting evidence to be adduced as to turnout and drop curb policy of condemnor. (Condemnor was to specify width and owner was to specify location prior to trial and both failed to do so).

DOT v. ST. REGIS PAPER CO., 402 So.2d 1207 (Fla. 1st DCA 1981): Absent a binding engineering witness to make commitments for DOT or specific plans, court did not err in denying admission of DOT plans and specifications and engineering testimony regarding the manner of construction and did not err in granting directed verdict on subject of access.

DOT v. DECKER, 408 So.2d 1056 (Fla. 2nd DCA 1981): Plans and specifications are admissible for purpose of providing a positive declaration from DOT of the manner in which the property will be utilized. Once admitted, DOT is bound by it, subject to condemnor's expert witness testimony of how project would be constructed.

BELVEDERE DEVELOPMENT CORP. v. DOT, 413 So.2d 847 (Fla. 4th DCA 1982): When evidence in the form of plans and specifications is properly admitted for the purpose of providing a declaration of the manner in which the property will be utilized, the DOT should be bound by their evidence.

DOT v. MOBILE GAS CO. 427 So.2d 1024 (Fla. 1st DCA 1983): Condemnation judgment does not preclude subsequent claim for injuries caused by construction of work in question in manner different from that originally contemplated.

POST v. DADE COUNTY, 467 So.2d 758 (Fla. 3rd DCA 1985): Once property is deeded, properly subject to exercise of eminent domain, it is for the reasonable discretion of the condemning authority and not the landowner, to determine whether the property should be condemned, and, even more obviously, to control, within the bounds of its statutory authority, the manner in which the land should be developed after it is.

KEMPFFER v. ST. JOHNS RIVER WATER MANAGEMENT DISTRICT, 475 So.2d 920 (Fla. 5th DCA 1985): Collapse of condemnor's ability or plans to use property obtained by deed for a particular purpose intended at the time the conveyance was executed is not a sufficient basis for rescission of a deed.

FLORIDA POWER AND LIGHT CO. v. BERMAN, 429 So.2d 79 (Fla. 4th DCA 1983): Utility abused discretion in selecting route, since project manager lacked environmental training and opposition provided both detailed evidence of environmental impact and owner was willing to donate alternative route.

TRAILER RANCH, INC. v. CITY OF POMPANO BEACH, 500 So.2d 503 (Fla. 1986): Condemnor is entitled to put in evidence its detailed project plans, for consideration by the jury in setting damages. Once plans are offered, condemnor is bound by them.

PARTYKA v. DOT, 606 So.2d 495 (Fla. 4th DCA 1992): No error in allowing DOT engineer to testify about significance of DOT's standard index on access which was admitted in evidence and conflicted with other plans in evidence, since DOT is bound by engineer's testimony.

COSTS

INLAND WATERWAY DEVELOPMENT CO. v. CITY OF JACKSONVILLE, 38 So.2d 676 (Fla. 1948): Refusal to include costs of photos and certified copies of public records used by landowner as evidence in eminent domain proceeding was not an abuse of discretion. See 37 So.2d 333.

DADE COUNTY v. BRIGHAM, 47 So. 2d 602 (Fla. 1950): Allowance of fees for expert witness is in discretion of trial judge. Construed "all costs of proceedings" in statute to include expert witness fees.

ORANGE STATE OIL v. JACKSONVILLE EXPRESSWAY AUTHORITY, 143 So.2d 892 (Fla. 1st DCA 1962): Condemnor must pay costs of supplemental proceedings. See 110 So.2d 687.

CHESHIRE v. SRD, 186 So.2d 790 (Fla. 4th DCA 1966): Allowance of reasonable fee for appraiser should not be denied solely because he did not testify.

PLANTE v. CANAL AUTHORITY, 218 So.2d 243 (Fla. 1st DCA 1969): Costs for discovery depositions procured by condemnees and not introduced in evidence, within discretion of trial judge in allowing costs.

CITY OF MIAMI BEACH v. LIFLANS CORP., 259 So.2d 515 (Fla. 3rd DCA 1972): Allowance of costs and attorney fees proper though jury awarded zero compensation.

ROBERTS v. ASKEW, 260 So.2d 492 (Fla. 1972): Court has jurisdiction to tax costs even though costs not made part of Final Judgment and even though motion to tax costs made four months after adversary's appeal dismissed.

MILLER YACHT SALES, INC. v. SCOTT, 311 So.2d 762 (Fla. 4th DCA 1975): Test for awarding cost of deposition not whether used in evidence or for impeachment, but whether served useful purpose.

GRINAKE v. PINELLAS COUNTY, 328 So.2d 880 (Fla. 2nd DCA 1976): No objection by condemnor to use of two appraisers; duty of trial Court to inquire into items of cost to ascertain experts not too numerous nor charges improper yet not full compensation if owner is required to pay these costs.

DOT v. GRANT MOTOR COMPANY, 345 So.2d 843 (Fla. 2nd DCA 1977): No attorney's fees or appraiser's fees in federal administrative hearing for relocation expense under federal statutes; 73.091 pertains to costs in Florida circuit court.

MOORE v. CAUGHEY, 368 So.2d 109 (Fla. 4th DCA 1979): Copies of depositions may be taxed as costs if copies serve a useful purpose.

MILLS v. ARONOVITZ, 404 So.2d 138 (Fla. 3rd DCA 1981): Section 90.231, Fla. Stat., authorizes expert witness fees to be taxed as costs where the expert witness is called upon to prove any matter at issue in trial. Attorney is entitled to expert witness fee who testified as expert on value of attorney's services at trial. Where attorney called upon to prove attorney's fee in a proceeding collateral to the trial itself, no expert witness fee recoverable as cost. See 200 So.2d 804.

LEEDS v. CITY OF HOMESTEAD, 407 So.2d 920 (Fla. 3rd DCA 1981): Court did not abuse discretion in refusing to tax engineer's expert witness fee when testimony related to damages predictably not recoverable in eminent domain proceedings. Expenditures of fees must be reasonably and necessarily incurred in relation to a proper issue in the case.

LONG v. MARTIN, 410 So.2d 607 (Fla. 5th DCA 1982): Airfare or other personal or travel expenses of counsel to attend depositions are not taxable costs.

BOLTON v. BOLTON, 412 So.2d 72 (Fla. 2nd DCA 1982): Office expenses of counsel are not recoverable as costs.

INTERNATIONAL PATROL & DETECTIVE AGENCY, INC., v. AETNA CASUALTY & SURETY CO., 419 So.2d 323 (Fla. 1982): Costs of copies of depositions are taxable if the copies served a useful purpose, which is a question within the discretion of the trial court.

COUNTY OF VOLUSIA v. PICKENS, 435 So.2d 247 (Fla. 5th DCA 1983): If a governmental authority takes property, it must pay all consequent legally recognized damages, costs and fees, regardless of whether the taking was by direct or inverse condemnation.

FLORIDA POWER AND LIGHT v. FLICHTBEIL, 475 So.2d 1250 (Fla. 5th DCA 1985): Appraiser fees reversed as excessive where claimed 423 hours, had no written appraisal and gave no testimony.

FLORIDA POWER & LIGHT v. JENNINGS, 485 So.2d 1374 (Fla. 1st DCA 1986): Full compensation includes fees of experts necessary to prove owner's loss.

C.B.T. REALTY CORP., v. ST. ANDREWS COVE I CONDOMINIUM, 508 So.2d 409 (Fla. 2d DCA 1987): Not proper to tax cost for time expert witness spent at courthouse for convenience of attorney to afford opportunity for conferences. Error to award cost for attorney travel time for out-of-state deposition and document production.

METROPOLITAN DADE COUNTY v. CURELLI, DOUGLAS, ETC., 511 So.2d 602 (Fla. 3rd DCA 1987): Amount of condemnee's expert's fees was not reversible merely because award was less than that paid to condemnor's experts, where fee awards were otherwise supported by expert testimony as to reasonableness of fees.

FLORIDA POWER AND LIGHT v. FLICHTBEIL, 513 So.2d 1078 (Fla. 5th DCA 1987): When appellate court reversed award of appraiser fees and issues mandate, trial court may not reconsider question of appraiser fees by again awarding appraiser fees.

JAMES P. DRISCOLL, INC., v. GOULD, 521 So.2d 301 (Fla. 3d DCA 1988): Charges by expert witness for reports submitted to an attorney, for conferences with an attorney prior to trial, and for waiting at courthouse to advise attorney during progress of trial are not taxable costs.

SARASOTA COUNTY v. BURDETTE, 524 So.2d 1064 (Fla. 2nd DCA 1988): Fees for appraiser who did preliminary opinion but did not testify at trial were awardable. Costs of depositions not used at trial upheld where initial offer was 96% less than final judgment. Reversed award of fee to accountant where business damages claim dropped on second day of trial.

MARTIN v. MARLIN, 528 So.2d 943 (Fla. 3d DCA 1988): Trial court abused discretion in taxing as costs photocopying expenses and transcripts of pretrial hearings, because neither served useful purpose in securing the summary judgment. Trial court abused discretion in taxing as costs the cost of deposition transcripts because they served no useful purpose in securing summary judgment.

B & H CONSTRUCTION v. TALLAHASSEE COMMUNITY COLLEGE, 542 So.2d 382 (Fla. 1st DCA 1989): Award of fees to attorney who testifies as an expert on the subject of attorney's fees is within court's discretion.

AMERICAN CYANAMID CO. v. ROY, 546 So.2d 1148 (Fla. 4th DCA 1989): Once opposing party objections to fee, party seeking expert witness fees is required to adduce evidence to support value of services prior to award of costs.

DADE COUNTY v. MIDIC REALTY, INC., 549 So.2d 1207 (Fla. 3d DCA 1989): Allowance of appraiser's fee is a matter for the trial judge to decide in the exercise of sound judicial discretion. It is duty of the court to be satisfied appraisers are not too numerous and their charges are proper. Fee of \$30,000 on an appraiser's bill of \$48,012.50 was reasonable.

THELLMAN v. TROPICAL ACRES STEAKHOUSE, INC., 557 So.2d 683 (Fla. 4th DCA 1990): Not appropriate to tax as costs fees of witnesses who are neither qualified as experts by the court nor testify at trial. Inappropriate to tax as costs fees of expert witnesses for telephone conferences with counsel.

MITCHELL v. OSCEOLA FARMS CO., 574 So.2d 1162 (Fla. 4th DCA 1991): Photocopy, postage, long distance calls, travel expenses and courier service appear to be office expenses and should have not been taxed as costs.

ST. LUCIE COUNTY v. FEDERAL CONSTRUCTION CO., 584 So.2d 122 (Fla. 4th DCA 1991): Trial court erred in assessing costs for an expert witness who never appeared at trial.

CARTER v. CITY OF ST. CLOUD, 598 So.2d 179 (Fla. 5th DCA 1992): Even though appellate court questioned the need for two appraisers, court sustained fees as supported by substantial competent evidence.

DOT v. WOODS, 633 So.2d 94 (Fla. 4th DCA 1994): Landowner is not entitled to recover cost of consultant, who was not hired as expert witness, but hired to assist counsel in selecting expert witnesses, preparing them for trial, and informing counsel of the nuances of eminent domain trial.

KENDALL RACQUETBALL INVESTMENTS, LTD. v. GREEN COMPANIES, INC., 657 So.2d 1187 (Fla. 3d DCA 1995): Testimony of services performed and reasonable value of expert's services must come from witness qualified in area concerned. "Omnibus witness" who was knowledgeable consumer was not competent to testify on reasonableness of fees.

SOUTHEAST FLORIDA CABLE, INC. v. ESCANDIA I CONDOMINIUM ASSOC., 661 So.2d 91 (Fla. 4th DCA 1995): Test for recovering cost of taking depositions is whether the taking of the deposition served a useful purpose.

STARITA v. WEST PUTNAM POST NO. 10164, 666 So.2d 278 (Fla. 5th DCA 1996): The party seeking cost reimbursement has the burden and duty to present testimony concerning the necessity and reasonableness of fees charged.

BARNES v. CITY OF DUNEDIN, 666 So.2d 574 (Fla. 2d DCA 1996): Attorney travel costs to attend deposition were improperly awarded. Court only allow travel expense of attorney provided by contract or statute.

BROWARD COUNTY v. LAPOINTE, 685 So.2d 889 (Fla. 4th DCA 1996): Court reversed award of fee to environmental researcher and held portion of fee attributable to services as a litigation consultant is not recoverable.

GARBER v. DOT, 687 So.2d 2 (Fla. 1st DCA 1996): Court rejects argument that only accountant's fee is payable in business damage case and approves fee for marketing expert. Court had to determine if services were reasonable and necessary.

MIKES v. CITY OF HOLLYWOOD, 687 So.2d 1381 (Fla. 4th DCA 1997): Reversed expert fee award because trial judge excluded all time expert spent in preparation for trial that was not reached on docket. Court should award expert fee based on preparation in light of all facts and circumstances and scrutinize request to ensure no unnecessary duplication of time or effort.

DOT v. SPRINGS LAND INVESTMENTS, LTD., 695 So.2d 414 (Fla. 5th DCA 1997): Court reversed award of expert surveying, engineering, and planning fees because services to prevent potential downzoning of property and to vest development site plan were unrelated to condemnation case. All landowners in the area faced the same risk of downzoning from commercial status because of prior comprehensive plan amendment.

DOT v SKIDMORE, 720 So.2d 1125 (Fla. 4th DCA 1998): Error to award portion of appraiser's fee attributable to litigation strategy and not attributable to valuation of property. Held Statewide Uniform Guidelines for Taxation of Costs govern eminent domain case. Postage, long distance calls, fax transmissions, delivery service, and computer research costs are overhead and should not be taxed as costs. Travel expenses for experts and witnesses should not have been awarded for trial and depositions, since no proof of out-of-state travel.

BOULIS v. DOT, 733 So.2d 959 (Fla. 1999): Prejudgment interest is to be awarded on reasonable costs in eminent domain proceedings, but only from the date those costs were actually paid and only after the trial court makes a determination of entitlement to the costs.

DOT v. KNAUS, 737 So.2d 1130 (Fla. 2d DCA 1999): Landowner not entitled to expert witness fee when attorney's fees based on benefit percentage calculation.

OWENS v. ORANGE COUNTY, 747 So.2d 467 (Fla. 5th DCA 1999): Court awarded expert witness fees for business damage expert because business damages were compromised at mediation, even though not specifically mentioned in judgment, and there was no specific proof claim was abandoned prior to settlement.

DOT v. JACK'S QUICK CASH, INC., 748 So.2d 1049 (Fla. 5th DCA 1999): Business damage expert fees can only be recovered when business damages are compensable.

MIAMI-DADE COUNTY v. CITY NATIONAL BANK OF FLORIDA, 761 So.2d 368 (Fla. 3d DCA 2000): Trial court reversed attorney's fees and expert costs related to severance damage claim that was excluded by trial court and affirmed on appeal.

YOUTH FOR CHRIST OF SARASOTA, INC. v. SARASOTA COUNTY, 765 So.2d 794 (Fla. 2d DCA 2000): Trial court lacked jurisdiction to amend judgment four months later to set off costs against deficiency judgment, entered when verdict was less than O.T. deposit.

DOT v. PATEL, 768 So.2d 1173 (Fla. 2d DCA 2000): Reversed fee award for expert witness called to quantify value of non-monetary benefits, since time spent litigating amount of fee is not compensable.

COST TO CURE

HILL v. MARION COUNTY, 238 So. 2d 163 (Fla. 1st DCA 1970): Accepts cost to cure approach in eminent domain proceedings.

MULKEY v. DOT, 448 So.2d 1062 (Fla. 2nd DCA 1984): Reaffirms Hill v. Marion County, cost to cure approach may be used where such cost is less than the decreased value of remainder.

DOT v. FRENCHMAN, INC., 476 So. 2d 224 (Fla. 4th DCA 1985) cert. discharged 495 So.2d 750 (Fla. 1986): Condemnee must first present evidence that it sustained severance damages and establish amount of such damages before testimony on the cost to cure may be admitted.

CANNEY v. CITY OF ST. PETERSBURG, 466 So.2d 1193 (Fla. 2nd DCA 1985): Cost to cure damages are owed to owner of land as of time title vested in condemnor and right to receive such damages does not pass to grantee unless provided in deed or by assignment.

WILLIAMS v. DOT, 579 So.2d 226 (Fla. 1st DCA 1991): Appraiser's testimony concerning cost to cure should have been stricken because appraiser failed to consider impact of cure on remaining property, disapproved in Patel, 641 So.2d 40 (Fla. 1994).

BROWARD COUNTY v. PATEL, 641 So.2d 40 (Fla. 1994): The probability that a property's value may be diminished by changes to land use regulations is a factor for jury to consider based on expert testimony on way probability affects value of property and severance damages. Party asserting availability of future rezoning or variance must demonstrate a reasonable probability that rezoning will be granted within reasonable time. The availability of cure is relevant only to extent it may have impact upon fair market value as of moment of taking.

DOT v. MURRAY, 670 So.2d 977 (Fla. 1st DCA 1996): Court held it was proper to exclude cost to cure testimony which proposed to stripe area already used for overflow parking to provide replacement parking, since opinion ignores reduction in value resulting from smaller parking area and loss of parking expansion potential.

CROPS

LEE COUNTY v. T & H ASSOC., 395 So.2d 557 (Fla. 2nd DCA 1981): Unmatured crops valued by determining what would have been produced if not disturbed by condemnor, value in market of that production, less estimated cost of that production, harvesting and marketing. Assumes crops have no market value at the time of taking. Crops not a business damage.

DEPARTMENT OF AGRICULTURE v. MID-FLORIDA GROWERS, 521 So.2d 101 (Fla. 1988): Destruction of citrus plants, although a valid exercise of police power, may constitute a taking requiring payment of just compensation.

DEPARTMENT OF AGRICULTURE v. POLK, 568 So.2d 35 (Fla. 1990): In determining market value of citrus plants, a willing buyer would consider fear of buying plants from a nursery at which bacterial disease had been discovered and testimony of decreased value should have been admitted. In determining value of growing crop which has no market on date of taking because of partial stage of development, the prospective net revenue which could have been derived from crop at maturity is proper measure of valuation. Since there was no judgment that temporary taking of land occurred, owners were not entitled to lost profits due to loss of production during quarantine.

DEPARTMENT OF AGRICULTURE v. MID-FLORIDA GROWERS, INC., 570 So.2d 892 (Fla. 1990): In determining value of destroyed citrus nursery stock, if there was no market on date of taking due to immaturity, evidence of prospective net revenue to be derived from the market at point closest in time to the taking when the stock would have reached a state of maturity. As to nursery stock which was marketable on date of destruction but for quarantine, values as of date of reopened market are admissible to value stock at its particular stage of growth at time of destruction. It was irrelevant that owners did not market stock at stage of growth on date of taking; stock should be valued at stage of growth on date of valuation. Claim for lost production is business damage and not compensable.

POLK COUNTY v. GROOMS, 625 So.2d 1249 (Fla. 2d DCA 1993): Business damages cannot be recovered for prospective losses from crops which could have been planted on land taken.

DAMAGES DUE TO PROJECT

BLOCK v. ORLANDO-ORANGE EXPRESSWAY AUTH., 313 So.2d 75 (Fla. 4th DCA 1975): If an owner in eminent domain proceeding seeks damages by the taking as alleged in condemnor's petition and by a taking not so alleged, but arising out of the same project, then owner should allege special damages by way of counterclaim for inverse.

LEEDS v. CITY OF HOMESTEAD, 407 So.2d 920 (Fla. 3rd DCA 1981): Emission of noise, noxious odors and effluent which allegedly decreased value of remainder were not damages caused by the taking but damages resulting from manner in which the lift station was constructed. Such consequential damages must be sought by separate claim in tort and are not severance damages recoverable in eminent domain proceedings.

LEE COUNTY v. EXCHANGE NATIONAL BANK OF TAMPA, 417 So.2d 268 (Fla. 2nd DCA 1982): In partial taking, landowner generally only entitled to such damages to the remainder as are attributable to the use or activity on the land which is taken and is not entitled to such consequential damages from activity occurring on land which is taken from others; unless the use of part taken constitutes an integral and inseparable part of a single use to which the land taken and other adjoining land is put; i.e., construction of highway. HELD: No severance to remainder when part taken was used for buffer zone for new airport and no actual construction was done on part taken.

DOT v. NESS TRAILER PARK, 489 So.2d 1172 (Fla. 4th DCA 1986): Severance damages must be based on the property taken and not on road closings or traffic rerouting that is part of an overall project.

DOT v. WEGGIES BANANA BOAT, 576 So.2d 722 (Fla. 2d DCA 1990): Any decrease in visibility or increased circuitry of access suffered as a result of the overall design of the project is not compensable.

PARTYKA v. DOT, 606 So.2d 495 (Fla. 4th DCA 1992): Landowner is entitled to damages for increased fill required on remaining property as a result of raising of grade in new roadway.

HUBSCHMAN v. BOARD OF COUNTY COMMISSIONERS, COLLIER COUNTY, 610 So.2d 691 (Fla. 2d DCA 1992): Diminution in value caused by aesthetics as a result of use or activity by government upon the land which has been taken is recoverable as severance damages.

DEDICATION/PRESCRIPTION/EASEMENTS OF NECESSITY

HILLSBOROUGH COUNTY v. KENSETT, 144 So. 393 (Fla. 1932): Party who agrees county might have right-of-way through their property, estopped to assert right to compensation for that which voluntarily dedicated.

POCOCK v. TOWN OF MEDLEY, 89 So.2d 162 (Fla. 1956): Landowners signing of petition for establishment of road across land may be considered with other facts on question whether he intended to dedicate land; does not amount to waiver of right to compensation.

ANHOCO v. DADE COUNTY, 107 So.2d 51 (Fla. 3rd DCA 1958): Conversion of existing state land service highway on land dedicated for right-of-way purposes to limited access facility was not so inconsistent with former use as to amount to abandonment of public easement. See 116 So. 2d 8; 127 So. 2d 464; 144 So. 2d 793.

TIDEWATER v. SRD, 118 So.2d 595 (Fla. 3rd DCA 1960): Held no compensation due for taking a strip used as part of public street, adverse to fee owner, with clearly defined limits, and used continuously for 15 years.

DOT v. FLORIDA EAST COAST RAILWAY CO., 262 So.2d 480 (Fla. 3rd DCA 1972): Where road maintained, worked continuously, and uninterrupted for four years deemed dedicated and statute providing so applies to railroad property not necessary for its use, without payment of compensation.

TOWN OF PALM BEACH v. PALM BEACH COUNTY, 313 So.2d 770 (Fla. 4th DCA 1975): Acceptance of portion of right-of-way in plat constitutes an acceptance of entire network of right-of-way in such plat so as to make them available for public use. (implied acceptance)

GULF PROPERTIES OF ALABAMA, INC. v. SOUTHERN BELL TELEGRAPH & TELEPHONE CO., 346 So.2d 1085 (Fla. 1st DCA 1977): In dedication of streets, avenues or alleys, the dedication may not reserve exclusive right to construct, maintain and operate telephone lines or utilities within dedicated way.

MADDEN v. FLOROLA TELEPHONE CO., 362 So.2d 475 (Fla. 1st DCA 1978): Maintenance of right-of-way vests fee simple title to the extent actually maintained by the public entity for the requisite period pursuant to 95.361, Fla. Stat.

ST. JOE PAPER CO. v. ST. JOHNS COUNTY, 383 So.2d 915 (Fla. 5th DCA 1980): In order for presumption of dedication to be created under 95.361, Fla. Stat., the roadway must be constructed, in the sense of built or made, by the public entry. The road must be continuously and uninterruptedly maintained or repaired for four years.

GENET v. CITY OF HOLLYWOOD, 400 So.2d 787 (Fla. 4th DCA 1981): Proof of construction of the road is vital to proof of dedication under 95.361, Fla. Stat. Also see Balbier v. City of Deerfield Beach, 408 So. 2d 764 (Fla. 4th DCA 1982).

GAY BROTHERS CONST. CO., v. FLORIDA POWER & LIGHT, 427 So.2d 318 (Fla. 5th DCA 1983): Prescriptive easement or adverse possession is established only by actual, continuous, uninterrupted use by claimant, either adverse under claim of right or so open, notorious and visible that notice must be imputed. Utility which intended to put lines where it did, even if by mistake, to continuously maintained lines in location, acquired prescriptive easement for lines.

DOT v. IDEAL HOLDING CO., 427 So.2d 392 (Fla. 4th DCA 1983): In determining whether state acquired property by maintenance, 95.361, Fla. Stat., thereby defeating a claim by property owner for inverse condemnation, court held test is not "whether maintenance is proper, or frequent, or thorough or open and obvious" but whether "maintenance was appropriate to circumstances and, if so, the statutory test is met". Minimal maintenance required for drainage ditch.

DOT v. IDEAL HOLDING CO., 480 So.2d 243 (Fla. 4th DCA 1985): Condemnation excepted certain existing right-of-way. Counterclaim by owner alleging ownership of exempted properties seeking compensation for inverse condemnation. Prior appeal found dedication and dedication by maintenance. See 417 So.2d 392.

CITY OF CORAL GABLES v. OLD CUTLER BAY HOMEOWNERS CORP., 529 So.2d 1188 (Fla. 3rd DCA 1988): Court held that City could not build fire station on property acquired by common law dedication because fire station use was inconsistent with terms of dedication. Acceptance of common law dedication does not pass fee in land.

DUE PROCESS

SPAFFORD v. BREVARD CO., 110 So. 451 (Fla. 1926): Landowner entitled to reasonable notice; owner entitled to be heard on question of just compensation to be deposited or secured; appropriation for public highway is public use; necessity is judicial question; order appropriating land is final and reviewable by writ of certiorari.

SIBLEY v. VOLUSIA COUNTY, 2 So.2d 578 (Fla. 1941): Due process requires petitioner show right to take, purpose of take and necessity.

SRD v. FOREHAND, 56 So.2d 901 (Fla. 1952): Upheld constitutionality of Chapter 74, Fla. Stat.

PEELER v. DUVAL COUNTY, 66 So.2d 247 (Fla. 1953): Section 73.031, Fla. Stat., is to provide due process. See 70 So. 2d 354.

CLARK v. GULF POWER, 198 So.2d 368 (Fla. 1st DCA 1967): Constitutional guarantee of due process requires that use for which property taken be fixed and definite, in which public has an interest and terms and matter of its enjoyment must be within state's control.

COUSE v. CANAL AUTHORITY, 209 So.2d 865 (Fla. 1968): Provisions of condemnation law for hearing and presentation of defenses (74.051) complies with due process and is constitutional.

CITY OF MIAMI BEACH v. CUMMINGS, 266 So.2d 122 (Fla. 3rd DCA 1972): Due process clause applied liberally in favor of landowner because Eminent Domain proceeding is harsh and equivalent in effect to a forced sale. See 288 So. 2d 109; 233 So. 2d 842.

CITY OF LAKE LAND v. BUNCH, 293 So.2d 66 (Fla. 1974): Sections 74.051 and 74.061, Fla. Stat., gives property owner notice and hearing prior to Order of Taking and prior to time when either title or possession will vest in condemning authority; due process does not require notice and opportunity to be heard prior to condemnor's initial decision to acquire property.

CUSMANO v. TAMPA HILLSBOROUGH CO. EXPRESSWAY AUTH., 301 So.2d 117 (Fla. 2nd DCA 1974): Notified by summons show cause and notice of order of taking hearing, counsel present during hearing complies with due process.

BAYCOL, INC. v. DOWNTOWN DEVELOPMENT AUTHORITY, 315 So.2d 451 (Fla. 1975): Burden on condemning authority to establish public purpose and necessity; landowner not estopped from attacking purpose of acquisition because final judgment validating bonds was inclusive of funds; key is notice afforded by bond resolution in related proceedings; having never received expressed nor de facto notice that its property was threatened with acquisition, condemnee was not required to attack propriety of the acquisition at the bond validation proceeding; evidence showed primary purpose in acquisition was to permit private development of shopping center; without private development no public need for parking facilities; good discussion of cases with incidental private benefit; drawn away from Adams v. Housing Authority, 60 So.2d 663 (Fla. 1952)

ODOMS v. DELTONA CORP. 341 So.2d 977 (Fla. 1976): If state has conveyed property rights subsequently needed by state such rights can be reacquired by eminent domain otherwise estoppel bars claim except for rights specifically reserved.

JOINT VENTURES, INC. v. DOT, 563 So.2d 622 (Fla. 1990): Landowner's remedy of inverse condemnation is not equivalent to an owner's remedy under eminent domain, so Section 337.241(3) is not a procedural cure for shortcomings of map of reservation statute.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES v. BONANNO, 568 So.2d 24 (Fla. 1990): No right to a jury trial in condemnation proceedings existed at common law. The right to have jury determine compensation is statutory and is not required by Florida Constitution.

EASEMENTS

BROWARD COUNTY v. BOULDIN, 114 So.2d 737 (Fla. 2d DCA 1959): A public road easement by prescription is not limited to pavement, but includes land used for support and maintenance.

HOUSTON TEXAS GAS & OIL CORP. v. HOEFNER, 132 So.2d 38 (Fla. 2nd DCA 1961): Condemnor cannot amend petition which described unrestricted easement by inserting limitations at trial where had numerous opportunities to amend long before trial.

SMITH v. CITY OF TALLAHASSEE, 191 So.2d 446 (Fla. 1st DCA 1966): Held evidence that condemnee might bridge drainage ditch to obtain access to remainder inadmissible in proceeding to condemn easement for drainage system, over, under, and across lands, since condemnee would not have absolute right to bridge ditch.

CASPERSEN v. WEST COAST INLAND NAVIGATION DISTRICT, 198 So.2d 65 (Fla. 2nd DCA 1967): Easement here was a restricted easement; only restriction upon use by owner was that such use not interfere with use for navigation; correct to allow testimony remaining fee had a value and correct to allow owner to show remaining fee had no value.

GLESSNER v. DUVAL COUNTY, 203 So.2d 330 (Fla. 1st DCA 1967): Landowners entitled recover to severance damages to fee where condemnor took portion of perpetual easement held by landowners over land of another thereby cutting off landowners right of access to their fee ownership.

HOMER v. DADELAND SHOPPING CENTER, 229 So.2d 834 (Fla. 1969): Landlord's contractual duty to maintain parking area for benefit of lessee's customers and employees created easement.

JONES v. CITY OF TALLAHASSEE, 304 So.2d 528 (Fla. 1st DCA 1974): Easement for constructing and maintaining transmission lines not tantamount to fee taking as owners still have some rights in land See 266 So. 2d 382.

LAIRD v. DOT, 439 So.2d 918 (Fla. 1983): Reservation in favor of state of easement for road contained in deed from remote grantor to owner is valid, and road was state road as contemplated by statute.

CANAL AUTH. v. MAINER, 440 So.2d 1304 (Fla. 5th DCA 1983): Where condemnor only has an easement and its right to use the property has been lost or the public use has ended, the easement is extinguished, and all of its rights revert to the owner of the fee.

SAPP v. GENERAL DEVELOPMENT CORP., 472 So.2d 544 (Fla. 2nd DCA 1985): Portion of statute in statutory way of necessity governing compensation to servient owner refers to use created by court ordered easement rather than pre-existing common law way of necessity.

CRIGGER v. FLORIDA POWER CORP., 509 So.2d 1322 (Fla. 5th DCA 1987): Date of taking for easement which was used with consent of prior landowner who had only 1/8 interest, was date when landowners ordered power company off land and to cease trespassing, not date landowners refused to execute easement.

HILLSBOROUGH COUNTY v. KORTUM, 585 So.2d 1029 (Fla. 2d 1991): Murphy Act road reservation was created for future widening of public road and easement was not extinguished by functional reclassification of road and transfer of title to county.

AKERS v. CANAS, 601 So.2d 305 (Fla. 3d DCA 1992): Where grant of easement specifically states the uses or purposes for which easement was created, the use of the easement must be confined strictly to the purposes for which it was granted or reserved.

NERBONNE, N.V. v. FLORIDA POWER CORPORATION, 692 So.2d 928 (Fla. 5th DCA 1997): Grant of easement for right of way for public road included the right to install a power line.

FLORIDA POWER CORPORATION v. SILVER LAKE HOMEOWNERS ASSOC., 727 So.2d 1149 (Fla. 5th DCA 1999): Holder of electric transmission line easement may avail itself of modern inventions and improvements so long as such action is within scope of the easement.

ENHANCEMENT

SUNDAY v. LOUISVILLE & N. R. CO., 57 So. 351 (Fla. 1912): If property naturally or in common with other property increases in value due to proposed improvement, landowner entitled to that increase in market value.

SRD v. CHICONE, 158 So.2d 753 (Fla. 1963): Value of property at time of take as depreciated by prospect of condemnation not proper basis for measure of compensation. Compensation should be based on value of property as it would have been had it not been subjected to debilitating threat of condemnation and was not being taken.

DANIELS v. SRD, 170 So.2d 846 (Fla. 1964): Question of whether enhancement should be offset against damages is judicial question.

CASPERSEN v. WEST COAST INLAND NAVIGATION DIST., 198 So.2d 65 (Fla. 2nd DCA 1967): Whether there are special benefits is a jury question.

ANDERSON v. SRD, 204 So.2d 899 (Fla. 1st DCA 1967): Appraiser must consider enhancement due to proposed improvement.

FINKEL v. SRD, 216 So.2d 463 (Fla. 1st DCA 1968): Error not to strike appraiser's testimony where based on erroneous concept of law; where no competent testimony as to benefits accruing to remainder, it was error to instruct jury that damages could be offset against enhancement.

BRAY v. DADE COUNTY, 222 So.2d 778 (Fla. 3rd DCA 1969): Evidence that value of surrounding property depressed by announcement incinerator to be built on condemnee's property inadmissible.

LEVITT v. DOT, 248 So.2d 542 (Fla. 1st DCA 1971): All land enhanced does not have to be in same ownership; fact other lands around interchange are enhanced is irrelevant.

LIMMIATIS v. CANAL AUTHORITY, 253 So.2d 912 (Fla. 1st DCA 1971): Court erred by not striking enhancement testimony which was not based upon any specific benefit to property as contrasted to other property in neighborhood.

POZIN v. DOT, 281 So.2d 73 (Fla. 1st DCA 1973): Not entitled to compensation for increase in value prior to taking due to proposed improvement after the market is aware of exact location of property to be taken. Court recognized resolution as cutoff date for enhancement.

CITY OF JACKSONVILLE v. YERKES, 282 So.2d 645 (Fla. 2nd DCA 1973): To introduce evidence of enhancement must prove increase resulted directly and peculiarly to landowners remaining land and not neighborhood as a whole. See 336 So. 2d 579.

DOT v. NALVEN, 455 So.2d 301 (Fla. 1984): Landowner is entitled to fair market value of the property at the time of the taking even if it reflects the anticipation of the proposed project.

MAINER v. CANAL AUTHORITY OF STATE, 467 So.2d 989 (Fla. 1985): If condemnor claimed enhancement to off-set severance damages and then failed to complete improvement, property owner would have cause of action for additional compensation, but not for reconveyance, absent showing of bad faith at time of taking.

EXPERT QUALIFICATIONS

FOULK v. FLORIDA REAL ESTATE COMM., 113 So.2d 714 (Fla. 2nd DCA 1959): Individual who held himself out to be in business of appraising and entered agreement with county to reappraise all real property precluded from doing so until qualified under real estate license law. See Chapter 475, Fla. Stat.

SRD v. OUTLAW, 148 So.2d 741 (Fla. 1st DCA 1963): Appraiser allowed to testify though not licensed.

UPCHURCH v. BARNES, 197 So.2d 26 (Fla. 4th DCA 1967): To qualify as expert need special knowledge by study or experience; decision of trial court given great weight on appeal.

BEHM v. DOT, 336 So.2d 579 (Fla. 1976): If facts upon which expert bases his hypothesis or theory are not proven, opinion answer of expert necessarily fails with the hypothesis.

ALLEN MORRIS CO. v. MCNALLY, 305 So.2d 79 (Fla. 3rd DCA 1974): Trial court has responsibility of allowing or disallowing testimony of expert and range of subject regarding which expert can testify.

VITALE FIREWORKS MFG. v. MARINI, 314 So.2d 176 (Fla. 1st DCA 1975): Duty of trial court to determine qualifications of an expert on subject matter on which he testifies.

SUN CHARM RANCH, INC. v. CITY OF ORLANDO, 407 So.2d 938 (Fla. 5th DCA 1981): Condemnee may call condemnor's expert witness at trial to present value testimony. Court did not err in requiring witness to update his appraisal. Condemnee may not bring out fact that appraiser did work for condemnor.

ESTATE OF HOROWITZ v. CITY OF MIAMI BEACH, 420 So.2d 936 (Fla. 3rd DCA 1982): Trial courts have broad discretion in determining whether one proffered as expert witness should be accepted as such; such discretion is not, however, unbridled and it was abuse of discretion to exclude testimony of expert who was well qualified but had not previously testified in particular county as appraisal expert.

JACKSONVILLE TRANSPORTATION AUTHORITY v. ASC ASSOCIATES, 559 So.2d 330 (Fla. 1st DCA 1990): Counsel for landowner is not allowed to use inference or argument to bring out fact appraiser called as witness was retained by condemnor.

MARKS v. MARKS, 576 So.2d 859 (Fla. 3d DCA 1991): Expert's opinion may be based on data collected by subordinates. However, experts opinion should have been excluded when underlying data was not produced under cross examination. Section 90.705(1) allows expert to present opinion without giving underlying data; however, on cross examination the expert shall be required to specify the facts or data. Since expert did not have underlying data with him, he was not able to specify the underlying facts.

WILLIAMS v. DOT, 579 So.2d 226 (Fla. 1st DCA 1991): An expert cannot testify concerning questions of law. Engineer could not testify that proposed cures complied with minimum requirement of law. Trial judge should have reviewed applicable ordinances, interpreted the legal requirements thereof, and determined whether proposed cures met the minimum requirement of these laws.

FIXTURES

COMMERCIAL FINANCE CO. v. BROOKSVILLE HOTEL CO., 123 So.814 (Fla. 1929): Three rules to ascertain whether an item is a fixture: 1) Actual annexation to realty or something appurtenant thereto. 2) Appropriateness to the use or purpose of that part of the realty with which it is connected. 3) Intention of the party making the annexation that it shall be a permanent accession to freehold. Intention is inferred from the following facts: a) Nature of article annexed. b) Relation of party making the annexation. c) Structure and mode of annexation. d) Purpose or use for which the annexation has been made.

MEENA v. DROUSIOTIS, 200 So. 362 (Fla. 1941): Trade fixture was installed so it could be removed without damage to other machinery or to the building. The mere fact that to remove the machinery would prevent the successful operation of business does not result in damage to realty. So trade fixture was not part of realty.

WETJEN v. WILLIAMSON, 196 So.2d 461 (Fla. 1st DCA 1967): Trade fixtures - property placed upon land by a tenant for purposes of and may be removed by the tenant at the end of his term. A tenant has the right of removal of these fixtures, even in the absence of express stipulation, provided removal does not substantially injure freehold.

DOT v. ELY, 351 So.2d 66 (Fla. 3d DCA 1977): A service and easement agreement held by a private company to provide water and sewer services to the owners of land creates no compensable property right. Only entitled to value of its lost trade fixtures located on the condemned land as well as the cost of removing other trade fixtures which are salvageable from the land.

DEPENDABLE AIR CONDITIONING v. OFFICE OF TREASURER, 400 So.2d 117 (Fla. 4th DCA 1981): Four factors in determining whether chattel has become fixture: 1) Annexation to realty, either actual or constructive. 2) Adaption or application to use or purpose to which that part of the realty to which it is connected is appropriated. 3) Intention to make article a permanent accession to the freehold. 4) Whether item can be removed without material or substantial injury to the freehold.

MALONE v. DOT, 438 So.2d 857 (Fla. 3d DCA 1983): Where condemnation of properties containing trade fixtures or functional units worth much in place, but worth little when disassembled, condemnee must be compensated for the machinery involved in the taking. When machinery is removed, the amount allowed is the difference between the value of machinery in place and its salvage value, but in the alternative, the cost of disassembling, trucking and reassembling the machinery may be calculated. When moving costs are used, the amount actually awarded should not exceed the difference between value in place and salvage. Moving expense award should be based on the allowable costs incurred or that will be incurred as long as the move is undertaken seasonably.

DOT v. SUN ISLAND BOATS, INC., 510 So.2d 603 (Fla. 3d DCA 1987): Damages for personalty in a total taking case only where property fits in category of trade fixtures or functional units. Personal items were not taken, damaged, or destroyed which do not fit in category of trade fixtures or functional units are not compensable.

SWEETING v. HAMMONS, 521 So.2d 226 (Fla. 3d DCA 1988): Dispute between landlord and tenant over who received compensation for business fixtures. These items were considered "immovable fixtures": two bars, icemaker, coolers, water heater, air conditioner, cabinets and shelving. These items were not permanently affixed to the premises and could, with little injury to realty be moved. Trade fixtures placed upon land by a tenant for purposes of his trade were to be regarded as personalty rather than realty and might be removed by the tenant at end of term, provided removal did not substantially injure the freehold. In landlord-tenant relationship, presumption is in favor of right of tenant to remove structures or articles he has placed on leased property for his own purpose, even in absence of an express stipulation. Presumption that tenant, by annexing the fixtures, did so for his own benefit and not to enrich freehold.

RALLY'S HAMBURGERS v. DOT, 697 So.2d 535 (Fla. 1st DCA 1997): In determining whether equipment constitutes "trade fixtures" for which severance damages may be awarded, the factors are 1) whether equipment is actually annexed to realty, 2) appropriateness to the use or purpose of that part of realty to which it is connected, and 3) whether intent to permanently attach equipment to realty.

GOOD FAITH ESTIMATE OF VALUE

SRD v. WINGFIELD, 101 So.2d 184 (Fla. 1st DCA 1958): Estimate not presentable to jury for any purpose if Chapter 74 is to have efficient method to acquire title and possession on short notice; estimate made by condemning authority limits the amount payable to the parties in interest.

ANDERSON v. TOWN OF GROVELAND, 113 So.2d 569 (Fla. 2nd DCA 1959): While public corporation may acquire private property for public purpose it is required to make a sufficient deposit to insure payment therefor or make actual payment before it takes possession.

BAINBRIDGE v. SRD, 139 So.2d 714 (Fla. 1st DCA 1962): Neither estimate of value nor amount court requires condemnor to deposit in registry has effect of establishing minimum compensation to be paid for property; just compensation may be fixed only by jury; amount of deposit is determined by trial judge, and it does not necessarily bear an exact relationship either to estimated values stated in Declaration of Taking or to value of land as fixed by Court appointed appraisers.

JACKSONVILLE EXPRESSWAY AUTHORITY v. BENNETT, 158 So.2d 821 (Fla. 1st DCA 1963): Estimate of value in Declaration does not fix full compensation as a matter of law.

SRD v. LEVATO, 199 So.2d 714 (Fla. 1967): Appraisals, estimates, and statements of value, garnered under the order of taking procedure under Chapter 74 are inadmissible in evidence in the main case.

DOT v. COOPER, 241 So.2d 419 (Fla. 1st DCA 1970): Question about good faith estimate was improper, but not found to amount to reversible error under the facts of the case.

FLORIDA EAST COAST RAILWAY CO. v. BROWARD COUNTY, 421 So.2d 681 (Fla. 4th DCA 1982): In determining sufficiency of appraisal evidence at a taking hearing, issue is whether estimate of value was made in good faith and was based upon a valid appraisal. The estimate is not a finding of just compensation and trial court did not err in ordering taking based upon appraisal evidence presented since condemnee did not challenge the good faith of the estimate nor contend that appraisal on which the estimate was based was invalid.

BROWARD COUNTY v. GREYHOUND RENT-A-CAR, INC., 435 So.2d 309 (Fla. 4th DCA 1983): Court order for deposit of money for parcel of land not alleged by condemnor to be taken, was error.

CAPO INVESTMENT GROUP CORP. v. DOT, 578 So.2d 513 (Fla. 3d DCA 1991): No error to allow appraiser to testify at order of taking hearing to cost to cure damages without giving severance damages first, since DOT entitled to lesser of severance or cost to cure and owner in no position to complain if severance less than cost to cure.

DOT v. HEATHROW LAND & DEVELOPMENT CORP., 579 So.2d 183 (Fla. 5th DCA 1991): Court held DOT had to prepare good faith estimate of value based on criteria in 42 U.S.C 4652 and make deposit before billboard could be removed from property.

BROWARD COUNTY v. CARNEY, 586 So.2d 425 (Fla. 4th DCA 1991): Trial court may order deposit of an amount in excess of the good faith estimate of value as reflected in the declaration of taking.

SHANNON PROPERTIES, INC. v. TAMPA-HILLSBOROUGH COUNTY EXPRESSWAY AUTH., 605 So.2d 594 (Fla. 2d DCA 1992): Trial court's determination that authority had made good faith estimate was affirmed.

BREVARD COUNTY v. A. DUDA & SONS, INC., 742 So.2d 476 (Fla. 5th DCA 1999): Trial court erred in Order of Taking by placing future obligations on county beyond plans, specifications, and expert testimony. Requirement of future steps to reduce pollution, based on unascertained standards goes beyond good faith deposit.

HIGHEST AND BEST USE

BOARD COM'RS OF STATE INST. v. TALLAHASSEE B. & T. CO., 108 So.2d 74 (Fla. 1st DCA 1958): Proper to permit evidence on value for uses other than those permitted under existing zoning where evidence shows zoning arbitrary and unreasonable, and reasonable probability zoning will change in the foreseeable future.

SRD v. STACK, 231 So.2d 859 (Fla. 1st DCA 1969): Testimony that land was good for fill dirt and value on a cubic yard basis was admissible on market value, even though site had highest and best use of rural homesites at time of taking for a borrow pit.

STACK v. SRD, 237 So.2d 240 (Fla. 1st DCA 1970): Where state's appraiser testified highest and best use timber although condemnee had converted land to farming, cross-exam should have been permitted as to immediately foreseeable future uses of property.

DOT v. COOPER, 241 So.2d 419 (Fla. 1st DCA 1970): No error in permitting landowners to introduce evidence as to per unit value for fill located on land taken and not as time used for borrow pit, without introducing evidence as to reasonable probable future use as borrow pit aside from need by condemnor.

BOYNTON v. CANAL AUTHORITY, 265 So.2d 722 (Fla. 1st DCA 1972): Appraiser allowed to testify that taking destroyed highest and best use and diminished value of property under developmental approach to appraising.

DIVISION OF BOND FINANCE OF THE DEPARTMENT OF GENERAL SERVICES v. RAINEY, 275 So. 2d 551 (Fla. 1st DCA 1973): Investments made and expenses incurred by condemnees in development of bona fide plan to utilize land in manner consistent with highest and best use proper elements for jury to consider.

WHITEHEAD v FLORIDA POWER AND LIGHT CO., 318 So.2d 154 (Fla. 2nd DCA 1975): Can claim surprise if testimony of a change in highest and best use after the taking where not raised prior to trial.

TOWN OF LANTANA v. HOWARD, 449 So.2d 936 (Fla. 4th DCA 1984): Limitation on use of owner's property must constitute more than a prohibition against the highest and best use to be considered confiscatory.

CARVEL CORPORATION v DOT, 473 So.2d 49 (Fla. 4th DCA 1985): Appraisal based upon conclusion that highest and best use was commercial/residential was proper even though such property was currently zoned agricultural.

ROBBINS v. ADLEE DEVELOPERS, 556 So.2d 503 (Fla. 3d DCA 1990): Tax assessment case involving nonconforming use. A thirteen story building was granted legal, nonconforming use status when maximum building height changed to four stories. Held that highest and best use is not the zoned use, but the current legal, nonconforming use when land will continue to be used for thirteen story building in future.

JACKSONVILLE TRANSPORTATION AUTHORITY v. ASC ASSOCIATES, 559 So.2d 330 (Fla. 1st DCA 1990): Error to admit exhibits and testimony showing conceptual plans of future speculative uses of property.

PARTYKA v. DOT, 606 So.2d 495 (Fla. 4th DCA): Error to exclude site plan exhibits showing remaining land at highest and best use under current zoning.

INTEREST

PEELER v. DUVAL COUNTY, 70 So.2d 354 (Fla. 1954): No interest allowed once payment made into Court registry.

DEAN v. SRD, 184 So.2d 517 (Fla. 3rd DCA 1966): Question of interest is controlled entirely by statute; when funds are on deposit, condemnee entitled to difference between amount of award and amount of deposit; when funds are not on deposit, condemnee entitled to interest on the full amount of the award.

DOT v. TSALICKIS, 372 So. 2d 500 (Fla. 4th DCA 1979): No interest payable on consent final judgment from date of surrender of possession to date of payment. Interest pursuant to 55.03, Fla. Stat., is payable from date of final judgment.

DOT v. SHEPARD, 382 So.2d 45 (Fla. 2nd DCA 1979): Condemnee who by settlement receives sum greater than the good faith estimate of value is not entitled to interest on the difference between the settlement and the good faith estimate of value.

BEHM v. DOT, 383 So.2d 216 (Fla. 1980): Legislature has made interest part of full compensation by enactment of 74.061, Fla. Stat. After jury verdict, when an agency deposits the amount with the court, the sum is available to the condemnee. The "date of payment" referred to in 74.061 is the time that funds are made available to the landowner at the completion of the appellate process.

ACKERLY COMMUNICATIONS, INC. v. CITY OF WEST PALM BEACH, 427 So.2d 245 (Fla. 4th DCA 1983): Interest allowable in eminent domain proceedings. However, where no request was made for interest, nor even mentioned, in pleadings, proof, argument or motions, issue was not proper on appeal.

CITY OF MIAMI v. FLORIDA EAST COAST RAILWAY CO., 428 So.2d 674 (Fla. 3rd DCA 1983): Date of final judgment in "quick take" condemnation proceeding was appropriate date for accrual of interest on jury award to condemnee. Interest at rate of ten percent allowed by court in "quick take" was correct under condemnation statute. Interest on condemnation awards is controlled by statute.

STEWART v. CITY OF KEY WEST, 429 So.2d 784 (Fla. 3rd DCA 1983): Landowner, whose land was taken in inverse condemnation action, was entitled to prejudgment interest from date of taking.

PALLADINO HOLDING CORP. v. BROWARD COUNTY, 504 So.2d 465 (Fla. 4th DCA 1987): County, as condemnor, is entitled to statutory interest on monies paid to condemnee under quick-take statute from date monies received to date possession was surrendered to county.

DAMA v. RECORD BAR, INC., 512 So.2d 206 (Fla. 1st DCA 1987): Lessee entitled in apportionment proceedings, to prejudgment interest for fee holder's excess withdrawal of funds.

WEST v. SUNBELT ENTERPRISES, 530 So.2d 433 (Fla. 1st DCA 1988): Interest not allowed on sum that is itself interest. Full Compensation includes interest on value of property taken until date compensation becomes available. (Subsequent appeal of Damas v. Record Bar Inc.)

DOT v. BROUWER'S FLOWERS, INC., 600 So.2d 1260 (Fla. 2d DCA 1992): There is no statutory entitlement to prejudgment interest on award of attorney's fees.

DOT v. INTERSTATE HOTELS CORP., 709 So.2d 1387 (Fla. 3d DCA 1998): No prejudgment interest on award of attorney's fees.

HARTLEB v. DOT, 711 So.2d 228 (Fla. 4th DCA 1998): No prejudgment interest on award of attorney's fees.

SEMINOLE COUNTY v. BOYLE INVESTMENT COMPANY, 719 So.2d 1004 (Fla. 5th DCA 1998): No prejudgment interest on fee award between date of settlement and date of determination of fee award. Delay time between events was not attributable to county.

BOULIS v. DOT, 733 So.2d 959 (Fla. 1999): Prejudgment interest is to be awarded on reasonable costs in eminent domain proceedings, but only from the date those costs were actually paid by owner and only after the trial court makes a determination of entitlement to the costs.

INVERSE CONDEMNATION/
WHAT CONSTITUTES A TAKING

JACKSONVILLE, T. & K. W. RY. CO. v. ADAMS, 10 So. 465 (Fla. 1891): Where body possessing eminent domain power illegally enters land and possesses land, it may condemn the land and secure right to legal possession. Owner of land is not entitled to be paid for improvements made by condemning authority.

HILLSBOROUGH COUNTY v. KENSETT, 144 So. 393 (Fla. 1932): The right to full compensation springs directly from the Constitution itself, and is enforceable in a judicial forum immediately upon unlawful appropriation having been made. Recovery rests on implied contract liability.

DANFORTH v. UNITED STATES, 308 U.S. 271, 84 L.Ed. 240 (1939): Until taking, condemnor may discontinue or abandon proceedings: changes in value resulting from legislation are incident of ownership and not a "taking".

SRD v. THARP, 1 So.2d, 868 (Fla. 1941): Flooding and capacity reduction of millrace by action of SRD in building bridge and filling channel constituted a continuing trespass.

SRD v. BENDER, 2 So.2d 298 (Fla. 1941): Right to recover for inverse taking can be assigned to a subsequent owner.

CITY OF MIAMI v. ROMER, 58 So.2d 849 (Fla. 1952): Municipality may establish building setback lines through police power without compensation to owners.

CITY OF MIAMI v. ROMER, 73 So.2d 285 (Fla. 1954): Mere plotting of street on city plan does not constitute a taking.

POE v. SRD, 127 So.2d 898 (Fla. 1st DCA 1961): Construction and maintenance of public improvement, in absence of unjustified entry upon land, in such a manner as to inflict injury upon adjacent land does not constitute a taking unless owner is substantially ousted and deprived of all beneficial use of land.

ZABEL v. PINELLAS COUNTY WATER & NAV. CON. AUTH., 171 So.2d 376 (Fla. 1965): Denial of permission to fill amounted to a taking where it was not established that granting of permit would materially and adversely affect public interest.

CITY OF JACKSONVILLE v. SCHUMANN, 199 So.2d 727 (Fla. 1st DCA 1967), cert. denied, 390 U.S. 981: If noise and/or intense vibration from low flying aircraft deprives owner of an essential element in relationship with land, compensation for easement must be made.

HILLSBOROUGH COUNTY AVIATION AUTH. v. BENITEZ, 200 So.2d 194 (Fla. 2d DCA 1967): Inverse judgment upheld finding avigational easement for flights 250-500 feet above property. Factors considered are frequency and level of flights, type of planes, effects of noise or falling objects, use of the property, the effect on values, the reasonable reactions of humans below, and impact on animals and vegetable life.

CAMP PHOSPHATE COMPANY v. MARION COUNTY, 201 So.2d 793 (Fla. 1st DCA 1967): Petition condemning drainage easement to transmit water to old drainage pit would not be dismissed for omitting pit in description of taking, since draining of water into the pit does not constitute a taking.

KENDRY v. SRD, 213 So.2d 23 (Fla. 4th DCA 1968): SRD's increase of highway elevation in violation of a previously granted easement causing great amounts of water to flow on property was sufficient to state cause of action for a taking.

SARASOTA-MANATEE AIRPORT AUTH. v. ALDERMAN, 238 So.2d 678 (Fla. 2d DCA 1970): Owner is not entitled to jury trial on issue of taking in inverse condemnation case.

FAISON v. DOT, 299 So.2d 629 (Fla. 1st DCA 1974): No error shown in trial court's holding no taking from reconstruction and paving of former road which allegedly resulted in flooding.

KIRKPATRICK v. CITY OF JACKSONVILLE, 312 So.2d 487 (Fla. 1st DCA 1975): "Taking" of private property may consist of entirely negative act, such as destruction; defines "taking" and "damage" (distinction).

ADAMS v. DADE COUNTY, 335 So.2d 594 (Fla. 3rd DCA 1976): Inverse taking of air navigational easements dismissed because increase in home value rather than loss.

THOMPSON v. NASSAU CO., 343 So.2d 965 (Fla. 1st DCA 1977): Increased elevation street rendered portion useless for residential purpose and would cause great amount water flow on property constitutes permanent invasion and taking.

VILLAGE OF TEQUESTA v. JUPITER INLET CORP., 371 So.2d 663 (Fla. 1979): Landowner does not have constitutionally protected property right in the water beneath property, requiring compensation when used for a public purpose. Diversion of water from shallow-water aquifer is not taking unless resulting damage is to land itself.

EDWARDS DAIRY, INC. v. PASCO WATER AUTH., INC., 378 So.2d 866 (Fla. 2nd DCA 1979): Consent to the entry upon land does not necessarily imply or include consent to the appropriation of land so as to bar a suit in inverse condemnation.

DOT v. BURNETTE, 384 So.2d 916 (Fla. 1st DCA 1980): No person has the right to gather surface waters that would naturally flow in one direction by drainage, ditches, dams or otherwise, and divert them from their natural course and cast them upon the lands of the lower owner to his injury. Court held diversion of drainage by the Department to be a continuing tort which could be enjoined and damages could be sought under 768.28, Fla. Stat.

LEON COUNTY v. SMITH, 397 So.2d 362 (Fla. 1st DCA 1981): Taking resulted from flooding from county drainage system which rendered the land useless and permanently deprived plaintiffs of all beneficial enjoyment.

FLAKE v. DEPARTMENT OF AGRICULTURE, 383 So.2d 285 (Fla. 5th DCA 1980): Quarantine of citrus nursery stock pending study, was not a taking when state did not destroy healthy trees or trees suspected to be infected. Valid exercise of the police power.

GRAHAM v. ESTUARY PROPERTIES, 399 So.2d 1374 (Fla. 1981): Whether regulation is a valid exercise of the police power or a taking depends on the circumstances of each case. Factors to be considered are:

1. Whether there is a physical invasion of the property;
2. Degree of diminution in value of the property;
3. Whether regulation confers a public benefit or prevents a public harm;
4. Whether regulation promotes health, safety, welfare, or morals of the public;
5. Whether regulation is arbitrarily and capriciously applied; and
6. Extent which regulation curtails investment-backed expectations.

DOT v. DONAHOO, 412 So.2d 400 (Fla. 1st DCA 1982): A taking cannot result unless there is a permanent invasion of the land amounting to appropriation different in degree of character from damaged property and substantially depriving owner of land's beneficial use. Representations that property is within proposed right-of-way and counseling by Department representatives against needed renovations is not sufficient to constitute a taking. Destruction of wall during construction sounds in tort - not in inverse condemnation.

CITY OF CLEARWATER v. EARLE, 418 So.2d 344 (2nd DCA 1982): No entry or appropriation of owner's property occurred when city annexed street abutting owner's property which contained drainage pipe outside easement area. Record failed to establish when and by whom pipe installed.

HRS v SCOTT, 418 So.2d 1032 (Fla. 2nd DCA 1982): A dispute over rent to be paid between a landlord and a government tenant arising after termination of a lease agreement, where the government retains use of the premises while the parties attempt to negotiate a new agreement, cannot be characterized as a taking since the tenant was not permanently deprived of the use and enjoyment of his property.

PINELLAS COUNTY v. BROWN, 420 So.2d 308 (Fla 2nd DCA 1982): Denial of building permit by county while it resolved conflict between the comprehensive plan and zoning ordinance did not constitute a taking because owner not deprived of all beneficial use of the property and only deprived of particular use temporarily as county stipulated to issuance of permit deriving proceedings.

FLORIO v. CITY OF MIAMI BEACH, 425 So.2d 1161 (Fla. 3rd DCA 1983): Inclusion of property within a redevelopment area was not a "taking" so as to permit owners to maintain inverse condemnation proceeding in view of fact that renovation was not prevented.

KEY HAVEN v. BOARD OF TRUSTEES OF INTERNAL IMPROVEMENT, 427 So.2d 153 (Fla. 1982): Landowners can not pursue inverse condemnation action in circuit court alleging that denial of permit constituted unconstitutional taking of landowner's property without just compensation without first having taken appeal of permit denials.

CITY OF HOLLYWOOD v. HOLLYWOOD INC., 432 So.2d 1332 (Fla. 4th DCA 1983): Limitation of beach front density and transfer of development rights is not a taking. Required dedication of beach by deed not a taking.

HILLSBOROUGH COUNTY v. GUTIERREZ, 433 So.2d 1337 (Fla. 2nd DCA 1983); Property owners whose land was flooded after county drainage plan which when constructed impeded natural flow of rainfall were entitled to recover in inverse condemnation action for land which had previously been used for farming but was rendered useless for farming purposes. Also, flooding of house is temporary and does not support claim for damages in inverse condemnation if such is remedied.

CITY OF MIAMI SPRINGS v. J.J.T., INC., 437 So.2d 200 (Fla. 3rd DCA 1983): Even complete prohibition of previously lawful and existing business (selling liquor) does not constitute taking where owner is not deprived of all reasonable use of his property, as long as prohibition promotes health, safety and welfare of community, and thus is valid exercise of police power.

LAIRD v. DOT, 439 So 2d 918 (4th DCA 1983): Trial court found a reservation for roadway in Murphy Act Deed was sufficient to defeat inverse condemnation claim.

FOX v. TREASURE COAST REGIONAL PLANNING COUNCIL, 442 So.2d 221 (Fla. 1st DCA 1983): Prohibition of development on certain parts of tract does not in and of itself effect unconstitutional taking; focus is on nature and extent of interference with landowner's rights in parcel as a whole in determining whether taking of private property has occurred. State can, through regulation require landowner to preserve wetlands and can deny landowner any developmental use of a portion of his property without compensation, so long as the tract as a whole retains a viable economic use.

YOUNG v. PALM BEACH COUNTY, 443 So.2d 450 (Fla. 4th DCA 1984): Claimant in inverse must allege facts showing that acts complained of are reasonably expected to continue. Noise from low flying aircraft stated cause of action.

BOWEN v. DER, 448 So.2d 566 (Fla. 2nd DCA 1984): Inverse condemnation cannot be adjudicated by administrative board or agency, but only by court. Administrative appeal keeps administrative proceedings alive and prevents final agency action, and taking issue in inverse condemnation may not be heard until administrative appeal is concluded.

TOWN OF LANTANA v. HOWARD, 449 So.2d 936 (Fla. 4th DCA 1984): Limitation on use of owner's property must constitute more than a prohibition against the highest and best use to be considered confiscatory.

PINELLAS COUNTY v. BROWN, 450 So.2d 240 (Fla. 2nd DCA 1984): Definition of "property" in condemnation cases is sufficiently broad to extend to intangibles and incorporeal rights, such as contractual obligations and leasehold interests.

CITY OF PORT ST. LUCIE v. PARKS, 452 So.2d 1089 (Fla. 4th DCA 1984): Denial of access, while causing inconvenience had not deprived the owner of service, but rather deprived owner of most convenient access and was not a taking - not inverse condemnation.

LEWIS v. CITY OF ATLANTIC BEACH, 467 So.2d 751 (Fla. 1st DCA 1985): Termination of grandfathered nonconforming uses may result in a taking for constitutional purposes unless the basis of such termination accords with applicable legal principles.

CRIGGER v. FLORIDA POWER CORP., 469 So.2d 941 (Fla. 5th DCA 1985): Date found by trial court for Order of Taking would be date when condemnor first wrongfully appropriated property described in the complaint.

DOT v. FRENCHMAN, 476 So. 2d 224 (Fla. 4th DCA 1985), cert. discharged 495 So.2d 750 (Fla. 1986): Heavy traffic, noise, dust, fumes, etc., may constitute a taking as to church or school located on remainder. Court distinguishes other recreational facilities such as a golf course.

SCHICK v. FLORIDA DEPARTMENT OF AGRICULTURE, 504 So.2d 1318 (Fla. 1st DCA 1987): Deprivation of existing use of water by pollution caused by state's alleged negligence in nematode eradication program stated cause of action for inverse condemnation. Sovereign immunity not applicable as program was more operational than governmental function.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES v. MID FLORIDA GROWERS, INC., 505 So.2d 592 (Fla. 2nd DCA 1987): Whether regulatory action amounts to "taking" must be determined from facts of each case. Police power does not give state authority to destroy "suspect" trees purchased from nursery subsequently declared to be infected with canker. State must pay just compensation.

STATE v. POWELL, 497 So.2d 1188 (Fla. 1986): Statute allowing medical examiners to remove corneal tissue during statutorily required autopsy does not constitute taking of private property when tissue is needed for transplantation. No property right in remains of decedent.

FIELDS v. SARASOTA-MANATEE AIRPORT AUTH., 512 So.2d 961 (Fla. 2nd DCA 1987): To demonstrate a taking due to overflights of aircraft, landowners must show a continuing physical invasion or a substantial ouster and deprivation of all beneficial use. "Decrease increase" in value of property is not sufficient to establishing an inverse taking.

DEPARTMENT OF AGRICULTURE v. MID-FLORIDA GROWERS, 521 So.2d 101 (Fla. 1988): In inverse action, trial judge is trier of all issues, legal and factual except for amount of compensation. Trial judge's determinations may be overturned on appeal only if not supported by competent substantial evidence.

O'CONNOR DEVELOPMENT CORP. v. DOT, 533 So.2d 800 (Fla. 1st DCA 1988): Complaint which alleged taking resulting from Department's barring of development permit stated cause of action in inverse condemnation.

BENSCH v. METRO. DADE COUNTY, 541 So.2d 1329 (Fla. 3rd DCA 1989): Complaint in inverse condemnation dismissed where landowners failed to allege that the zoning regulations denied them of all beneficial uses, including agricultural ones, of their property and where landowners made no showing of attempt to get variance or that variance procedures were inadequate.

CONNER v. MID-FLORIDA GROWERS, INC., 541 So.2d 1252 (Fla. 2d DCA 1989): Mandamus is an appropriate remedy to require department to pay inverse condemnation judgment.

AUERBACH v. DOT, 545 So.2d 514 (Fla. 3rd DCA 1989): Administrative planning, including public hearings, preparatory to a decision to institute eminent domain proceedings do not constitute an inverse taking.

DER v. MACKAY, 544 So.2d 1065 (Fla. 3rd DCA 1989): Denial of permission to fill submerged portion of property does not constitute a taking so long as some economically viable use of the property remains. Also landowners never applied for variance, so trial court's decision was premature.

FIRST ENGLISH EVANGELICAL, LUTHERAN CHURCH OF GLENDALE v. COUNTY OF LOS ANGELES, 258 Cal. Rptr. 893 (Cal. App. 2 Dist. 1989): On remand from the U.S. Supreme Court, the California appellate court held that landowner failed to state a cause of action for two reasons: 1) the interim ordinance advanced preeminent state interest in public safety and did not deny all use of landowner's property. 2) The interim ordinance imposed a reasonable moratorium for a reasonable amount of time. Good discussion on inverse condemnation and regulatory actions.

HALL v. CITY OF ORLANDO, 555 So.2d 903 (Fla. 5th DCA 1990): A temporary injunction is an appropriate remedy to enjoin road construction which would cause drainage to overflow drainage easement.

HERNANDO COUNTY v. BUDGET INNS OF FLORIDA, INC., 555 So.2d 1319 (Fla. 5th DCA 1990): Court found a temporary taking occurred when county refused to issue building permit to motel, absent creation of frontage road parallel to highway at motel's expense. Court found there was no rational nexus for the precondition since there was no present need for the road and no showing road would be needed in reasonable foreseeable future.

LEE COUNTY v. MORALES, 557 So.2d 652 (Fla. 2nd DCA 1990): A zoning ordinance cannot be held confiscatory unless it effectively deprives a property owner of all beneficial and reasonable uses of the property. A zoning change cannot give rise to a cause of action for inverse condemnation where a zoning ordinance is held confiscatory, the only remedy available is to obtain a judicial determination that the ordinance is unenforceable and must be stricken.

NAMON v. DER, 558 So.2d 504 (Fla. 3d DCA 1990), review denied, 564 So.2d 1086 (Fla.1990): Landowner bought six acres of unimproved wetlands which required DER dredge and fill permit to construct home. Summary judgment denying inverse condemnation claim was affirmed. Held that owner was deemed to purchase property with constructive knowledge of land use regulations. Court held that subjective expectation that land could be developed does not translate into vested right to develop. Therefore, owner could not justify any legitimate investment-backed expectations of development rights which rise to level of constitutionally protected property rights.

J.T. GLISSON v. ALACHUA COUNTY, 558 So.2d 1030 (Fla. 1st DCA 1990): In regulatory taking case, the court held to succeed the landowner must demonstrate a regulation is unreasonable or arbitrary or that it denies a substantial portion of the beneficial use of the property. A police power regulation is not invalid simply because it denies the highest and best use of the property or because it dramatically diminishes the value of the property. Before pursuing regulatory taking claim, landowner must obtain final determination from government in form of rejected development plan or denial of variance. On facial challenge to regulation, landowner must show no available beneficial use of property under ordinance.

SOUTH FLORIDA WATER MANAGEMENT DISTRICT v. STAHL, 558 So.2d 1087 (Fla. 4th DCA 1990): Judgment for tort of trespass was reversed, since tort was not separate from flooding which constituted a taking.

JOINT VENTURES, INC. v. DOT, 563 So.2d 622 (Fla. 1990): When compensation is claimed due to governmental regulation of property, the appropriate inquiry is directed to the extent of the interference or deprivation of economic use.

CONNER v. REED BROS., INC., 567 So.2d 515 (Fla. 2d DCA 1990): A valid exercise of police power may still result in a taking when applied in specific circumstances.

SARASOTA-MANATEE AIRPORT AUTHORITY v. ICARD, 567 So.2d 937 (Fla. 2d DCA 1990): Summary judgment was reversed because of factual dispute concerning substantial market value impact on property caused by aircraft flyovers. Substantial market value damage must be proved to constitute taking.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES v. POLK, 568 So.2d 35 (Fla. 1990): The propriety of an agency's action may not be challenged in an inverse condemnation proceeding.

FLORIDA CITRUS NURSERY, INC. v. DEPARTMENT OF AGRICULTURE, 570 So.2d 1355 (Fla. 2d DCA 1990): Chose in action for damages for injury to land belongs to the person who owns the land at time the injury occurs and only passes to subsequent purchaser through proper provision in deed or by assignment.

MARTINEZ v. BOLDING, 570 So.2d 1369 (Fla. 1st DCA 1990): No right to bring inverse condemnation action until owners denied full use of their property by virtue of a denial of dredge and fill application by Corps of Engineers.

IN RE FORFEITURE OF 1976 KENWORTH TRUCK, 576 So.2d 261 (Fla. 1990): State refused to return truck after court ordered return in forfeiture action. Loss of use of truck for two years constitutes a claim of inverse condemnation.

FOSTER v. CITY OF GAINESVILLE, 579 So.2d 774 (Fla. 1st DCA 1991): Owner's testimony of value of property creates a presumption property is worth that amount. Testimony of owners that runway construction caused decrease in market value from noise and vibration was sufficient to establish prima facie case of inverse taking. Testimony of appraiser that property substantially decreased in value, even though he had not determined actual market value of the property, provided competent, substantial evidence that substantial diminution in value had occurred.

HILL v. MONROE COUNTY, 581 So.2d 225 (Fla. 3d DCA 1991): Inverse condemnation suit brought against Monroe County and Department of Community Affairs. Held it was error to dismiss complaint for failure to exhaust administrative remedies, since there is no chapter 120 review process against County. Appellants were not required to seek remedies in piecemeal fashion. Appellants were entitled to pursue whole case in circuit court.

SCHICK v. DEPARTMENT OF AGRICULTURE, 586 So.2d 452 (Fla. 1st DCA 1991): Petition for writ of mandamus which was brought to compel DOA to comply with inverse condemnation judgment was considered integral part of the condemnation proceedings, so attorney's fees incurred in mandamus action are payable pursuant to s.73.091 and 73.131.

3M NATIONAL ADVERTISING COMPANY v. CITY OF TAMPA, 587 So.2d 640 (Fla. 2d DCA 1991): Termination of a "grandfathered" nonconforming use can constitute a compensable taking.

MONROE COUNTY v. GONZALEZ, 593 So.2d 1143 (Fla. 3d DCA 1992): Landowner does not have to exhaust administrative relief prior to filing an inverse condemnation action alleging ordinances are confiscatory and invalid, if it would be futile to pursue administrative remedy which could not grant relief sought.

KRIETER v. CHILES, 595 So.2d 111 (Fla. 3d DCA 1992): Denial of permit to construct dock on state-owned submerged land does not constitute a taking when owner has ingress and egress available from the property by land-based routes.

VATALARO v. DER, 601 So.2d 1223 (Fla. 5th DCA 1992): Denial of dredge and fill permit which limited use of residentially zoned land to a limited passive recreational use constituted a taking of 11 acre tract.

ORANGE COUNTY v. LUST, 602 So.2d 568 (Fla. 5th DCA 1992): Denial of rezoning of small remainder from agricultural to commercial zoning to accommodate a billboard was not confiscatory since dearth of practical uses was due to size, not zoning.

DER v. SCHINDLER, 604 So.2d 565 (Fla. 2d DCA 1992): Summary judgment finding a taking was reversed because trial court should have considered 1.85 acres of submerged land as part of 3.5 acre tract, not as separate parcel. The entire 3.5 acres should have been considered in determining whether taking has occurred.

DAVIS v. MCI TELECOMMUNICATIONS CORP., 606 So.2d 734 (Fla. 1st DCA 1992) State granting telephone company eminent domain power to construct telephone lines on railroad right of way did not require payment of compensation to underlying fee owners.

DOT v. WEISENFELD, 617 So.2d 1071 (Fla. 5th DCA 1993): Filing of map of reservation itself is not enough to constitute taking. Only if interference of economic use deprived owner of all or substantial economic use of property, is owner entitled to compensation. The owner's affected property interest must be viewed as a whole.

DOT v. LAKE BEULAH GROVES, LTD., 617 So.2d 1089 (Fla. 5th DCA 1993): Reverses summary judgment fining temporary taking upon filing of map of reservation, based on Weisenfeld. See also, DOT v. MICCOSUKEE VILLAGE SHOPPING CENTER, 621 So.2d 516 (Fla. 1st DCA 1993); DOT v. FOWLER, 621 So.2d 689 (Fla. 5th DCA 1993); DOT v. DAVIDDUKE, 621 So.2d 691 (Fla. 5th DCA 1993).

BROWARD COUNTY v. RHODES, 624 So.2d 319 (Fla. 4th DCA 1993): Inverse condemnation can apply to personal property. No inverse condemnation claim from accidental killing of bees in mosquito control spray program. Must be some showing of willful seizure or "taking".

MARTIN v. CITY OF MONTICELLO, 632 So.2d 236 (Fla. 1st DCA 1994): City's discharge of one inch of treated affluent onto property on a continuing basis constitutes a taking of fee simple interest.

BAKUS v. BROWARD COUNTY, 634 So.2d 641 (Fla. 4th DCA 1993): This is an airport noise inverse condemnation action where no taking was found because there was no proof of continuing physical invasion nor substantial ouster and deprivation of all beneficial use. Factual findings in inverse case are entitled to weight of jury verdict and cannot be disturbed unless complete lack of evidence to support judge.

ASPEN-TARPON SPRINGS LIMITED PARTNERSHIP v. STUART, 635 So.2d 61 (Fla. 1st DCA 1994): Statute held to be taking of property which requires mobile home owner who wishes to change land use to either pay tenants to move or purchase mobile homes.

FLORIDA GAME & FRESH WATER FISH COMM. v. FLOTILLA, INC., 636 So.2d 761 (Fla. 2d DCA 1994): Court reversed inverse taking resulting from land being set aside to protect nesting eagles. Court held that protecting endangered species is valid police power concern; proof of taking not met by showing inability to fully exploit property interest in manner desired; and analysis must be on property as a whole, not just affected parts.

BROWARD COUNTY v. WAKEFIELD, 636 So.2d 123 (Fla. 4th DCA 1994): Court erred in excluding testimony from expert witness to show more current noise levels in airport noise case. Ordinances notifying present and future occupiers of land that aviation noise was thought to be at certain level did not create presumption or established fact.

DOT v. GEFEN, 636 So.2d 1345 (Fla. 1994): Court held there was no taking of access resulting from loss of I-95 ingress and egress from a road which abutts property, when access to all roads abutting property is undiminished.

TAMPA-HILLSBOROUGH COUNTY EXPRESSWAY AUTH. v. A.G.W.S. CORP., 640 So.2d 54 (Fla. 1994): Held filing of map of reservation did not constitute per se taking. A taking occurs where regulation denies substantially all economically beneficial or productive use of land. A temporary deprivation may however constitute a taking.

ALEXANDER v. TOWN OF JUPITER, 640 So.2d 79 (Fla. 4th DCA 1994): Court held inverse condemnation claim was ripe for determination since a temporary taking was alleged, and there was no dispute that no development would be allowed during adoption of zoning code to implement comprehensive plan, thereby denying all use of property.

PALM BEACH COUNTY v. WRIGHT, 641 So.2d 50 (Fla. 1994): Adoption of county thoroughfare map is subject of county's police power and advances a legitimate state interest. Court recognized that as applied to certain property, the thoroughfare may result in taking. The taking issue may only be determined upon an individualized basis.

TINNERMAN v. PALM BEACH COUNTY, 641 So.2d 523 (Fla. 4th DCA 1994): Ripeness requirement requires more than procedural finality because it includes an opportunity for government to change its mind. Owner must seek modification on variance. Futility is not established until at least one meaningful application has been filed. There is no taking if other uses of land was available.

CITY OF POMPANO BEACH v. YARDARM RESTAURANT, INC., 641 So.2d 1377 (Fla. 4th DCA 1994): If an invalid exercise of police power causes damage not amounting to deprivation of substantially all economic, beneficial, or productive use of property. The claim is for a violation of substantive due process and the remedy in monetary damages. The inability to obtain financing may be caused by taking or be some evidence of a taking, but it is not a taking. Court recognizes a four year statute of limitation on inverse condemnation claim.

INTRACOASTAL NORTH CONDOMINIUM ASSOC., INC. v. PALM BEACH COUNTY, 698 So.2d 384 (Fla. 4th DCA 1997): Court held there was no taking from construction of bridge which increased current flow past the owner's docks and prevented docking of boats except at slack tide. Court found riparian rights were inferior to superior right of public of safe navigation.

VLX PROPERTIES, INC. V. SOUTHERN STATES UTILITIES, INC., 701 So.2d 391 (Fla. 5th DCA 1997): Mortgagee has no standing to bring inverse condemnation claim.

COASTAL PETROLEUM v. CHILES, 701 So.2d 619 (Fla. 1st DCA 1997): Held state statute preventing oil exploration in area of Gulf of Mexico did not constitute a taking of royalty interests. Held royalty interest was too speculative to be protected through the means of inverse condemnation, where interest was obtained subject to public trust doctrine.

LEE COUNTY v. KIESEL, 705 So.2d 1013 (Fla. 2d DCA 1998): Inverse taking of riparian rights upheld for construction of bridge that substantially and materially interfered with riparian right of view over river to the channel.

ASSOCIATES OF MEADOW LAKE, INC. v. CITY OF EDGEWATER, 706 So.2d 50 (Fla. 5th DCA 1998): Held dismissal of inverse condemnation complaint was improper. Temporary taking can result for two year period of flooding prior to correction of faulty drainage system.

PAEDAE v. ESCAMBIA COUNTY, 709 So.2d 575 (Fla. 1st DCA 1998): Held county's wrongful denial of a particular land use did not support damage claim under §1983.

GARDENS COUNTRY CLUB, INC. v. PALM BEACH COUNTY, 712 So.2d 398 (Fla. 4th DCA 1998): No temporary taking for use restrictions based on invalid ordinance, struck down under due process clause, unless it amounts to a deprivation of substantially all economically beneficial use of the property. Inquiry requires analysis of economic impact of regulation on the claimant and extent to which regulation has interfered with reasonable investment-backed expectations.

GOLF CLUB OF PLANTATION, INC. v. CITY OF PLANTATION, 717 So.2d 166 (Fla. App. 4 Dist. 1998): Summary judgment for city reversed and remanded for trial on as-applied takings claim. Adopts Lucas criteria for determining whether taking occurred.

CITY OF MIAMI v. KESHBRO, INC., 717 So.2d 601 (Fla. 3d DCA 1998): Held no temporary taking for city's six-month closure of motel for public nuisance of prostitution and drug use, which have no tradition of protection at common law.

KOONTZ v. ST. JOHNS RIVER WATER MGMT. DIST., 720 So.2d 560 (Fla. 5th DCA 1998): Held inverse condemnation claim was ripe when water management district denied permit. No requirement that an owner denied permit to develop property must continue to make concessions in order to possibly obtain an approval.

C. E. HUFFMAN TRUCKING, INC. v. RED CEDAR CORPORATION, 723 So.2d 296 (Fla. 2d DCA 1998): Summary judgment finding county liable under inverse condemnation theory for wrongful demolition of building was reversed because inverse had not been pled in the complaint.

SOUTH FLORIDA WATER MGMT. DIST. v. BASORE OF FLORIDA, INC., 723 So.2d 287 (Fla. 4th DCA 1998): Reversed inverse taking of lettuce crop. Held that damage to growing crops is generally not considered separate from taking of land. Since temporary taking theory was not asserted by owner, the court did not extend temporary taking to accidental crop damage caused by negligence.

FLORIDA POWER CORPORATION v. SILVER LAKE HOMEOWNERS ASSOC., 727 So.2d 1149 (Fla. 5th DCA 1999): Reconstruction of modern steel monopole structures in place of wooden H-frame structures within transmission line easement was not a taking. Holder of electric transmission line easement may avail itself of modern inventions and improvements so long as such action is within scope of the easement.

CITY OF ST. PETERSBURG v. KABLINGER, 730 So.2d 409 (Fla. 2d DCA 1999): Held that prohibition of rental or business activities on property determined to be public nuisance for cocaine sales activities is temporary taking of property.

PALM BEACH COUNTY v. COVE CLUB INVESTORS, INC. LTD., 734 So.2d 379 (Fla. 1999): Held that by purchase of residential mobile home lot, county took compensable property right created by covenant running with the land which required lot owners to pay monthly recreation fees for use of country club.

HANNA v. ENVIRONMENTAL PROTECTION COMM., 735 So.2d 544 (Fla. 2d DCA 1999): No inverse taking from letter advising landowner of delineated wetlands and possible violation and EPC's failure to invoke dispute resolution procedure under §70.51.

HERNANDO COUNTY v. ANDERSON, 737 So.2d 569 (Fla. 5th DCA 1999): County took billboards when it destroyed billboards on property after county acquired real property.

BURNHAM v. MONROE COUNTY, 738 So.2d 471 (Fla. 3d DCA 1999): No inverse taking since owner could obtain building permit by making minor changes in plans.

POPPELL v. BOARD OF TRUSTEES, 742 So.2d 488 (Fla. 1st DCA 1999): Recognizes §95.11(4) F.S. is statute of limitations for inverse condemnation.

TOWN OF JUPITER v. ALEXANDER, 747 So.2d 395 (Fla. 4th DCA 1998): Inverse taking order was reversed because trial court considered wrong parent tract. Island of 12 acres and mainland tract of .4 acres should have been treated as one tract. Factors on parent tract determination: 1) physical contiguity; 2) unity of ownership; 3) unity of use. Unity of use factors: 1) intent of the owner; 2) adaptability of the property; 3) dependence between the parcels; 4) highest and best use of the property; 5) zoning; 6) appearance of the land; 7) the actual use of the land, and 8) the possibility of tracts being combined in use in reasonably near future.

126th AVE. LANDFILL, INC. v. PINELLAS COUNTY, 758 So.2d 721 (Fla. 2d DCA 2000): Inverse condemnation complaint should be stayed until owner exhausts administrative remedies under local takings claim ordinance.

DEP v. BURGESS, 772 So.2d 540 (Fla. 1st DCA 2000): Court reversed finding that denial of a dredge and fill permit resulted in total taking. To establish compensable regulatory taking required to demonstrate that permit denial interfered with reasonable, distinct investment-backed expectations held at time of purchase. Landowner has no right to gain a profit from investment in land and frustration of speculative gain is not protected by Takings Clause.

LEWIS v. COUNTY OF ORANGE, 772 So.2d 558 (Fla. 5th DCA 2000): No taking of personal property when destroyed in course of demolition of a structure condemned as unsafe or a nuisance. Issue had not been properly raised during course of legal proceedings.

VLX PROPERTIES, INC. v. SOUTHERN STATES UTILITIES, INC., 25 FLW D1745 (Fla. 5th DCA 2000): Discharge of reclaimed water into golf course ponds constitutes a physical taking by physical occupation and is a "per se" taking.

MILLENDER v. DOT, 774 So.2d 767 (Fla. 1st DCA 2000): Court reversed dismissal of inverse case on statute of limitations grounds; holding continuing tort theory applied. DOT rerouted river channel to build new bridge in 1975, causing erosion to property. In 1993, after eight years of litigation against DEP, the seawall had to be removed. Court held the cause of action did not accrue until situation became stabilized and final account could be struck at time DEP required seawall removed.

JURY INSTRUCTIONS

CITY OF MIAMI BEACH v. BUCKLEY, 363 So.2d 360 (Fla. 3rd DCA 1978): Failure to object to jury instructions waives error.

COUNTY OF VOLUSIA v. NILES, 445 So.2d 1043 (Fla. 5th DCA 1984): Litigant may not urge error with respect to instruction given at his own request.

CITY OF ORLANDO v. CONE, 615 So.2d 793 (Fla. 5th DCA 1993): Improper to instruct jury that owner's testimony of value creates a presumption and shifts burden to condemnor to rebut presumption.

JURY VIEW

DOTY v. CITY OF JACKSONVILLE, 142 So. 599 (Fla. 1932): Purpose of view is to enable jury to better understand and apply testimony of witnesses.

MEYERS v. CITY OF DAYTONA BEACH, 30 So.2d 354 (Fla. 1947): Purpose of view is to evaluate the evidence.

DADE COUNTY, v. RENEDO, 147 So.2d 313 (Fla. 1962): View to enable jurors to assess evidence, not for independent determination.

BROWARD COUNTY v. PIZIO, 579 So.2d 762 (Fla. 4th DCA 1991): It was not an abuse of discretion for court to grant motion to preserve property in its present state for jury view.

LESSEE

WINEGART v. PRINCE, 123 So.2d 277 (Fla. 2nd DCA 1960): Tenants holding over, paying rent on monthly basis, were properly awarded portion of compensation for realty taken equal to value of building and improvements erected by tenants with right under lease to remove at any time.

PARKER v. ARMSTRONG, 125 So.2d 138 (Fla. 2nd DCA 1960): Condemnation should not be trial by jury to determine damages of tenant based on loss of unexpired leasehold.

GROSS v RUSKIN, 133 So.2d 759 (Fla. 3rd DCA 1961): Damages for relocation, depreciation, and loss of business are not recoverable by a lessee of condemned property.

ORANGE STATE OIL v. JACKSONVILLE EXPRESSWAY AUTH., 143 So.2d 892 (Fla. 1st DCA 1962): Lessee who abandons with notice and removes personal property and paid no further rent can't share in condemnation award.

SRD v. WHITE, 161 So.2d 828 (Fla. 1964): Lessee for term of years is for purpose of eminent domain statute an "owner" and as such entitled to recover business damages.

SOCLOF v. SRD, 169 So.2d 510 (Fla. 1st DCA 1964): Whether corporate tenant at will paying monthly rent could claim damages which denial of use of condemned land would cause, was not properly before the Court where corporation did not appeal from ruling of trial Court denying intervention.

CARTER v. SRD, 189 So.2d 793 (Fla. 1966): Lessee for term of years is an owner; statute prescribing a single award and subsequent apportionment is not a deprivation of right to jury trial.

SRD v. TAMPA BAY THEATERS, INC., 208 So.2d 485 (Fla. 2nd DCA 1968): Failure of lessee to exercise renewal option did not preclude recovery of damages for destruction of access where lessee would have exercised option had condemnation not been pending; a valid option to renew a lease is in itself an interest in land such as will support a condemnation award.

SALLAS v SRD, 220 So.2d 378 (Fla. 1st DCA 1969): Sublessee entitled to loss of future business for period of lease.

DOT v. CREWS, 227 So.2d 505 (Fla. 1st DCA 1969): Motion to intervene treated as complaint for inverse to adjudicate amount of business damage lessee sustained; trial court not without jurisdiction more than 10 days following rendition of final judgment, to allow trial of lessee's claim.

CANAVERAL MARINE, INC. v. CANAVERAL PORT AUTH., 244 So.2d 764 (Fla. 4th DCA 1971): Where appellant's leasehold interest does not cover and is not coextensive with easement in favor of DOT, he has no justifiable interest in whether or not State should be required to condemn fee.

OWENBY AUTO PARTS, INC. v. JENNINGS, 259 So.2d 537 (Fla. 2nd DCA 1972): Not error for Court to refuse testimony on capitalization method and amount of rent lessee would have to pay at new location.

CITY OF FT. LAUDERDALE v. CASINO REALTY, 313 So.2d 649 (Fla. 1975): Lessees not entitled to separate jury awards.

AAA MILLION AUTO PARTS, INC. v. AFFRON, 379 So.2d 707 (Fla. 3rd DCA 1980): A lessee who elects to present his claim for his remainder interest in the leasehold and business damage at trial is not entitled to a portion of the settlement agreement obtained by the fee owner; to allow such recovery would permit double recovery on lessee's part.

MULLIS v. DOT, 390 So.2d 473 (Fla. 5th DCA 1980): A lease may contain a condemnation clause which terminates the lease in the event of an eminent domain taking, in which event the lessee has no interest remaining after the taking which would sustain a claim for compensation.

LEE COUNTY v. T & H ASSOCIATES, LTD., 395 So.2d 557 (Fla. 2nd DCA 1981): Court held it was proper to consider anticipated revenues from unmaturing crops to value the leasehold actually taken. Also proper to permit evidence of the economic and weather conditions which actually prevailed subsequent to the taking.

DOT v. ALLEN, 447 So.2d 1383 (Fla. 5th DCA 1984): Valuation of property subject to leasehold interest is to ascertain entire compensation as though estate belongs to one person and is unencumbered. Advertising company was not entitled to separate award in condemnation for its interest.

ELMORE v. BROWARD COUNTY, 507 So.2d 1220 (Fla. 4th DCA 1987): Lessee entitled to equitable portion of condemnation award even though condemnation cancels lease.

JACK BAKERY SERVICES, INC. v. WESTERN TREATS MEAT MARKET, 530 So.2d 447 (Fla. 4th DCA 1988): Failure of lessee to attend hearing on disbursement of good faith offer does not preclude lessee's entitlement to fair share of final compensation at apportionment hearing.

SIMPSON v. FILLICHIO, 560 So.2d 331 (Fla. 4th DCA 1990): Dispute over clause in lease which entitled owner to receive portion of condemnation award for land taken. Lease controls, so owner entitled to portion of award for land taken as if unencumbered by lease.

BOLDAC v. GLENDALE FEDERAL BANK, 631 So.2d 1127 (Fla. 4th DCA 1994): Tenants were not entitled to apportionment of owner's judgment, since one tenant had previously entered stipulated judgment and other tenant had already received jury verdict.

K-MART CORPORATION v. DOT, 636 So.2d 131 (Fla. 2d DCA 1994): Diminution of leasehold interest by taking is compensable, but terms of lease may limit or eliminate right of compensation. Appellate court reversed dismissal of tenant from action because lease provision allowed tenant to share in award for taking of land.

TRUMP ENTERPRISES INC. v. PUBLIX SUPERMARKETS, INC., 682 So.2d 168 (Fla. 4th DCA 1996): Where lease agreement contains no provision regarding apportionment, lessee is entitled to resultant decrease in value of leasehold. Court approved apportionment of land taken award based on percentage of leasehold land taken to total area of taking, plus the difference between the value of the reversion before the taking and the value of the reversion after the taking.

DOT v. POWELL, 721 So.2d 795 (Fla. 1st DCA 1998): The Uniform Relocation Act (URA) does not require separate trial for billboard leasehold interest, but trial court did not abuse discretion in granting separate trials. URA requires jury to separately consider the value of the billboard.

LOCATION

WILTON v. ST. JOHNS COUNTY, 123 So. 527 (Fla. 1929): Use may be local or limited and still public; all reasonable presumptions in favor of validity of legislative determination of public use; reasonable necessity; discretionary power of agency to determine location.

BOLEY v. ESCAMBIA COUNTY, 129 So. 784 (Fla. 1930): That there was a more direct and convenient route which could be obtained without cost will not disturb discretion of condemning authority as to location, absent fraud, bad faith or abuse of discretion.

ENZIAN v. SRD, 165 So. 695 (Fla. 1936): State action in taking over county road and designating as state road, did not preclude later relocation of state road and commencement of eminent domain. Description, if sufficient and complete will stand, even though additional language which is surplusage raises questions.

SIBLEY v. VOLUSIA COUNTY, 2 So.2d 578 (Fla. 1941): In determining location of state highway, private interest in one route or another is not a matter to be considered controlling.

CATHOLIC BURSE ENDOWMENT v. SRD, 180 So.2d 513 (Fla. 2nd DCA 1965): Selection of site for source of fill did not constitute abuse of discretion where from cost and convenience standpoint, property well suited.

STAPLIN v. CANAL AUTH., 208 So.2d 853 (Fla. 1st DCA 1968): Public authority has broad discretion in selection of property as well as amount and estate or interest; consider present demand and future; can have an incidental use though no power to acquire primarily for that purpose.

JONES v. CITY OF TALLAHASSEE, 266 So.2d 382 (Fla. 1st DCA 1972): Determination of condemnor as to location, quantity, and estate of land required is a legislative function and not disturbed in absence of clear and convincing showing of bad faith or oppression and gross abuse of power. Challenged on grounds of engineering and from an economical standpoint. See 281 So. 2d 333.

HILLSBOROUGH COUNTY v. SAPP, 280 So.2d 443 (Fla. 1973): Highway route selection decisions made by an administrative agency are subject to review by the judiciary; error for trial court to focus solely on single issue as to whether there was alternate route over unoccupied wooded area; once condemning authority acted in good faith, did not exceed authority or abuse discretion.

CHIPOLA NURSERY, INC. v DOT, 294 So.2d 357 (Fla. 1st DCA 1974): Unless act in bad faith or guilty of oppression, condemning authority's discretion will not be interfered with in selection of land.

FLORIDA POWER AND LIGHT v. GULF RIDGE COUNCIL, 385 So.2d 1155 (Fla. 2nd DCA 1980): Court held FPL abused its discretion in considering only the most direct and economical route and in failing to weigh other important factors such as safety and the impact of the proposed project on the environment.

FLORIDA POWER AND LIGHT v. BERMAN, 429 So.2d 79 (Fla. 4th DCA 1983): Route selection by condemnor was an abuse of its discretion where property along selected route was of unique ecology and alternate route existed. Project manager not qualified to make environmental judgments.

SCHOOL BOARD OF BROWARD COUNTY v. VIELE, 459 So.2d 354 (Fla. 4th DCA 1984): Condemnor has broad discretion in determining which and how much property to condemn. Court will disturb only if it fails reasonableness test. Should look at and weigh availability of alternate site, costs, environmental factors, long range area planning, safety considerations.

POST v. DADE COUNTY, 467 So.2d 758 (Fla. 3rd DCA 1985): Once property is deemed properly subject to exercise of eminent domain, it is for the reasonable discretion of the condemning authority and not the landowner to determine whether the property should be condemned, and even more obviously, to control, within the bounds of its statutory authority, the manner in which the land should be developed after it is.

LOSS OF RENTAL INCOME

PITZ v. SRD, 32 Fla. Supp. 55 (Cir. 1966): Entitled to loss of rental income where premises caused to be vacated by the direct and proximate cause of activities and procedures by SRD; judicial function to is determine whether or not there was a taking; owner entitled to compensation from date of interference to date of taking.

ORANGE STATE OIL CO. v. JACKSONVILLE EXPRESSWAY AUTH., 143 So.2d 892 (Fla. 1st DCA 1962): Court recognized the general rule "that a partial taking of a leasehold estate under the power of eminent domain does not constitute an eviction of the lessee, and he remains bound to perform the obligations assumed by him under the terms and provisions of the lease." This case by dicta held that an owner's recourse for rent loss in condemnation would be against the lessee for anticipating breach, not the condemning authority.

GLEASON v. SRD, 178 So. 2d 199 (Fla. 2nd DCA 1965): Lower court struck paragraphs in the answer seeking recovery of amounts expended by the owner for taxes, insurance and upkeep in excess of rental income from the property after announcement of condemnation until the date of taking. The owners had claimed they were not able to rent the property except for short periods of time and, therefore, were in essence claiming rent loss equivalent to their expenses. The 2nd DCA affirmed the lower court, thus holding that loss of rent was not compensable.

AMERKAN v. CITY OF HIALEAH, 534 So.2d 796 (Fla. 3rd DCA 1988): Landowner sought two years of lost rental income - time between City's notice to tenant and actual condemnation. Court held that not entitled to lost rent and other profits where entire property is taken. Also notice to tenant is not tortious interference with contractual relations as City was required by federal law to give notice, thus there is no unjustified interference.

MORTGAGEE

SEABOARD ALL FLORIDA RY. v. LEAVITT, 141 So. 886 (Fla. 1932): Generally mortgagee of property taken under condemnation proceedings has right to award superior to mortgagor; mortgagee not given notice and who did not appear was not confined to usual remedy of subjecting award to lien, but could proceed against condemnor; entitled only to compensation for impairment of security.

FEDERAL LAND BANK OF COLUMBIA v. SRD, 184 So. 125 (Fla. 1938): Where owner-mortgagor conveyed part of mortgaged property to state for road right-of-way, public acquired easement for highway and public could not be deprived of that use because of alleged rights of mortgagee.

SHAVERS v. DUVAL COUNTY, 73 So.2d 684 (Fla. 1954): Mortgagee not considered an owner and therefore not entitled to attorney fees paid by condemnor.

INVESTORS SYNDICATE OF AMERICA, INC. v. DADE COUNTY, 98 So.2d 889 (Fla. 3rd DCA 1957): In partial take, mortgagee entitled only to portion of award necessary to protect security of his lien.

ASSOCIATED SCHOOLS INC. v. DADE COUNTY, 209 So.2d 489 (Fla. 3rd DCA 1968): Holder of note and mortgage which provided a penalty for prepayment was not entitled to prepayment penalty when property taken by eminent domain.

WASHINGTON FEDERAL SAVINGS & LOAN ASS'N OF MIAMI BEACH v. DADE COUNTY, 221 So. 2d 790 (Fla. 3rd DCA 1969): Mortgagee has no estate or title to land taken by eminent domain, but rather has specific lien for debt secured by mortgaged property.

NCNB NATIONAL BANK OF FLORIDA v. SETZER, 596 So.2d 508 (Fla. 1st DCA): Trial court erred in awarding proceeds to landowner in contravention of mortgage contract between parties which specifically assigned condemnation proceeds to bank.

VLX PROPERTIES, INC. v. SOUTHERN STATES UTILITIES, INC., 701 So.2d 391 (Fla. 5th DCA 1997): Mortgagee has no standing to bring inverse condemnation claim.

Seminole County v. M. G. Investments of Orlando, 714 So.2d 1066
(Fla. 5th DCA 1998)

MOVING EXPENSES

JACKSONVILLE EXPRESSWAY AUTHORITY v. DUPREE, 108 So.2d 289 (Fla. 1958): Owner is entitled to be compensated for reasonable cost of moving personal property. Burden of proof on condemnee. Burden cannot be met by mere speculative testimony.

ORANGE STATE OIL CO. v. JACKSONVILLE EXPRESSWAY AUTH., 110 So.2d 687 (Fla. 1st DCA 1959): Lessee not entitled to moving costs when required to vacate the leased premises by reason of condemnation proceedings, particularly where lease requires lessee to leave the property behind or to remove at his own expense upon termination of the lease.

ROMY v. DADE COUNTY, 114 So.2d 8 (Fla. 3rd DCA 1959): Month to month tenants on property taken are not entitled to moving costs.

PENSACOLA SCRAP PROCESSORS v. SRD, 188 So.2d 38 (Fla. 1st DCA 1966): Tenant at will entitled to compensation for taking of part of leasehold, including cost of moving personal property from the lands condemned.

SRD v. THIBAUT, 190 So.2d 53 (Fla. 4th DCA 1966): Lessee under written lease for term of years is entitled to moving costs when partial taking of leasehold.

SRD v. MYERS, 211 So.2d 33 (Fla. 1st DCA 1968): Tenants at will on month to month basis could not recover costs of moving personal property from leased premises of commercial building, no part of which was taken.

MALONE v. DOT, 438 So.2d 857 (Fla. 3rd DCA 1983): Moving expenses incurred in order to comply with pollution, health and safety regulations of state, local and federal governments were not compensable. Compensation to owners of processing plant for machinery involved in taking for public purposes was to be calculated by cost of disassembling, trucking and reassembling machinery at new location, but amount could not exceed difference between value of machinery in place and its salvage value. Moving expenses should be based on allowable costs incurred or that will be incurred as long as the move is undertaken seasonably.

DOT v. FIRSTMERIT BANK, 711 So.2d 1217 (Fla. 2d DCA 1998): Held bank could not recover moving expenses based on equitable estoppel theory of recovery. Bank moved in anticipation of future condemnation.

SEMINOLE COUNTY v. SANFORD COURT INVESTORS, LTD., 743 So.2d 1165 (Fla. 5th DCA 1999): Tenant could not recover moving expenses, because there was no proof that they were required to move their business property as a result of county's taking.

NECESSITY

SPAFFORD v. BREVARD CO., 110 So. 451 (Fla. 1926): Necessity is ultimately a judicial question; landowner entitled to be heard on issue.

WILTON v. ST. JOHNS COUNTY, 123 So. 527 (Fla. 1929): Necessity is reasonable, not an absolute necessity; determination of necessity not disturbed in absence of fraud, bad faith or abuse of discretion.

CENTRAL HANOVER BANK & TRUST v. PAN AM, 188 So. 820 (Fla. 1939): Necessity not absolute but what is reasonable and would give greatest public benefit with least inconvenience and expense to condemnor.

CARLOR CO., INC. v. CITY OF MIAMI, 62 So.2d 897 (Fla. 1953): Fact federal aid not granted does not show fraud or bad faith in determining necessity.

ST. JOE PAPER CO. v. CHOCTAWATCHEE ELECTRIC COOP., 79 So.2d 761 (Fla. 1955): Answer challenging necessity must allege fraud, bad faith or gross abuse of discretion.

ROTT v. CITY OF MIAMI BEACH, 94 So.2d 168 (Fla. 1957): Need strong and convincing evidence of most conclusive character to upset condemnor's determination of necessity.

SRD v. SOUTHLAND, INC., 117 So.2d 512 (Fla. 1st DCA 1960): Determination of necessity will not be set aside in absence bad faith, fraud or gross abuse of discretion; not necessary for condemnor to have detailed engineering plans, construction drawings and specifications completed and adopted nor state with certainty when construction would commence under Chapter 74.

CITY OF MIAMI v. WOLFE, 150 So.2d 489 (Fla. 3rd DCA 1963): Action of city shown to be in bad faith where alleged public purpose for road but challenged that true motive was to acquire bay bottom lands; landowner offered permanent easement for road purposes without cost if city would refrain from attempts to acquire bay bottom lands, which offer city rejected.

ZABEL v. PINELLAS COUNTY WATER & NAVIGATIONAL CONTROL AUTH., 171 So.2d 376 (Fla. 1965): Because of passage of time and changed conditions, public interest will be impaired (additional ground for disturbing condemning authorities determination of necessity).

SILVER SPRINGS, INC. v. CANAL AUTH., 226 So.2d 893 (Fla. 1st DCA 1969): Reliance placed by canal authority on corps of engineers as to location, quantity and quality of estate did not amount to abuse of discretion or abdication of authority and responsibility since corps had dominant function in construction.

DOT v. MYERS, 237 So.2d 257 (Fla. 1st DCA 1970): No fixed rule to determine necessity; depends on facts of each case; court can't put its judgment on highly technical engineer problems against expert engineers.

CANAL AUTH. v. MILLER, 243 So.2d 131 (Fla. 1970): Proof of necessity is condition precedent to valid exercise of power of eminent domain; not affirmative defense to allege lack of necessity; necessity means reasonable necessity not absolute necessity; good discussion of necessity; must first show some evidence of necessity.

CANAL AUTHORITY v. LITZEL, 243 So.2d 135 (Fla. 1970): Once proof of reasonable necessity is shown by condemning authority, landowner must either concede the existence of necessity or be prepared to show bad faith or gross abuse of discretion. Initial burden is to show reasonable necessity, not absolute necessity.

SEADADE INDUSTRIES, INC. v. FLORIDA POWER & LIGHT CO., 245 So.2d 209 (Fla. 1971): Where government agencies charged with safeguarding natural resources must ultimately approve a project, the condemnor must demonstrate a reasonable probability of obtaining approval and demonstrate condemnation will not result in irreparable harm should approvals be denied.

CHALMERS v. FLORIDA POWER AND LIGHT, 245 So.2d 285 (Fla. 1st DCA 1971): Determination of necessity by quasi public utility must be made by corporation itself by resolution.

DADE COUNTY v. GENERAL WATERWORKS CORP., 267 So.2d 633 (Fla. 1972): Fact county reserved right to abandon proceeding if outside its financial bounds did not discredit county's affirmation of necessity and good faith.

DADE COUNTY v. PAXSON, 270 So.2d 455 (Fla. 3rd DCA 1972): Need not show immediate need; reasonable, not absolute necessity.

PALM BEACH COUNTY v. INLAND BAY CLUB, 280 So.2d 692 (Fla. 4th DCA 1973): Presumption of correctness of circuit court's decision on issue of necessity.

BALL v. CITY OF TALLAHASSEE, 281 So.2d 333 (Fla. 1973): Condemning authority has burden of proving necessity; landowner required to prove only abuse of power, not bad faith or oppression; in absence of proof of need for particular property sought, condemnation could not be upheld; finds Jones v. City of Tallahassee, 266 So.2d 382 (Fla. 1st DCA 1972) to be erroneous statement of law. See 346 So. 2d 998.

WATSON v. DOT, 287 So.2d 142 (Fla. 1st DCA 1973): In view of conflicting evidence on issue of necessity, no legal basis for District Court to do anything except affirm lower court's finding in favor of necessity; when conflicting evidence on necessity of taking strip (beautification/drainage) finding of necessity must be affirmed.

GRIFFIN v. CITY OF JACKSONVILLE, 299 So.2d 90 (Fla. 1st DCA 1974): Petition for condemnation fails when condemnor does not present any evidence of necessity; resolution reciting condemnor's finding for need does not constitute proof of necessity. See 314 So. 2d 605; 345 So. 2d 988.

CITY OF MIAMI v. COX, 313 So.2d 443 (Fla. 3rd DCA 1975): Trial court ruling on necessity clothed with presumption of correctness; resolution reciting need is not proof of necessity.

CITY OF JACKSONVILLE v. GRIFFIN, 346 So.2d 988 (Fla. 1977): Condemning authority meets burden of proof to show reasonable necessity by introducing some evidence of reasonable necessity, need not present evidence pinpointing need for particular property; fact adjoining land within urban renewal had not yet been condemned did not show that action of city arbitrary; receded from Ball v. City of Tallahassee, 281 So. 2d 333 (Fla. 1973) where court required evidence pinpointing need for particular property. See 299 So.2d 904; 314 So.2d 605.

KNAPPEN v. DOT, 352 So.2d 885 (Fla. 2nd DCA 1977): Highway design called for 65' right-of-way, DOT sought 80' right-of-way in order to increase chances for federal funds; held taking of 80' not necessary.

CITY OF ST. PETERSBURG v. VINOY PARK HOTEL CO., 352 So.2d 149 (Fla. 2nd DCA 1977): Not necessary that condemning authority show an intended present use; fact that condemnation of subject property would exhaust bond issue passed to develop parks is irrelevant; not necessary to show precisely when proposed use would be developed.

CITY OF MIAMI BEACH v. BROIDA, 362 So.2d 19 (Fla. 3rd DCA 1978): Condemning authority need only present some evidence showing a reasonable necessity for the taking; it need not intend to make immediate use of the property or have all plans and specifications prepared.

WEST GATE SHOPPING CENTER, INC. v. DOT, 363 So.2d 407 (Fla. 1st DCA 1978): Department empowered to acquire public ways for pedestrian and bicycle traffic as well as automobiles.

KATZ v. DADE COUNTY, 367 So 2d 277 (Fla. 3rd DCA 1979): Reasonable necessity must be shown by competent evidence and bare and conclusory opinion that property is necessary has no evidentiary value whatsoever.

KLATT v. FLORIDA POWER & LIGHT, 414 So.2d 213 (Fla. 4th DCA 1982): FPL admitted ten foot strip was all that was needed to construct transmission lines, but acquired thirty feet to accommodate future widening of road. Court held there was insufficient evidence to establish necessity of taking extra twenty foot corridor, since FPL produced no competent evidence of county's intention to widen the road.

FLORIDA EAST COAST RAILWAY CO., v. BROWARD COUNTY, 421 So.2d 681 (Fla. 4th DCA 1982): Condemning authority is required to present evidence of the necessity of the condemnation at the declaration of taking hearing.

SCHOOL BOARD OF BROWARD COUNTY v. VIELE, 459 So.2d 354 (Fla. 4th DCA 1984): A condemning authority need only show a reasonable necessity to take a particular parcel, not an absolute or "real" necessity. The instant trial court substituted its judgment for the condemning authority - standard for review is whether condemning authority abused its discretion.

POST v. DADE COUNTY, 467 So.2d 758 (Fla. 3rd DCA 1985): Necessity for slum clearance a matter of governmental discretion since statute does not have provision for private participation in redevelopment plan.

CITY OF ST. PETERSBURG v. WALL, 475 So.2d 662 (Fla. 1985); 419 So.2d 1169 (Fla. 2nd DCA 1982): Landowners may not recover damages which accrued during condemnation proceedings in trial court, which ended in judgment against condemnor for failure to establish a necessity, in absence of showing of bad faith on part of condemnor.

BROWARD COUNTY v. STEEL, 537 So.2d 650 (Fla. 4th DCA 1989): Discretion of county in condemning fee simple should not be disturbed if county shows reasonable necessity and landowner fails to show fraud, bad faith, or gross abuse of discretion. Uncertainties in the project do not justify conditional grant of Order of Taking.

DOT v. YOUNG, 539 So.2d 596 (Fla. 2nd DCA 1989): condemnor need only show reasonable necessity for taking. Once reasonable necessity shown, landowner, to prevail, must show illegality, bad faith, or gross abuse of discretion. Department's statement that one-lane bridge without additional taking was adequate for traffic but that one-lane bridge was not considered functionally adequate for federal standards was a showing of reasonable necessity.

HILLSBOROUGH COUNTY v. LUTZ REALTY & INVESTMENT CO., 553 So.2d 1320 (Fla. 2d DCA 1989): In county eminent domain action for recreation land, county must prove reasonable necessity in de novo hearing before judge without presumption in favor of prior county commission determination.

PASCO COUNTY v. FRANZEL, 569 So.2d 877 (Fla. 2d DCA 1990): Appellate court upheld denial of order of taking because County had given insufficient consideration to long-range planning and given insufficient consideration to environmental factors associated with possible future extension of road. County had made premature decision based on an insufficient study of the relevant factors.

CITY OF OCALA v. NYE, 608 So.2d 15 (Fla. 1992): Taking of entire tract is a municipal purpose which has not been expressly prohibited by law, so municipality had power to take entire tract.

GREGORY v. INDIAN RIVER COUNTY, 610 So.2d 547 (Fla. 1st DCA 1992): An administrative body does not have power to review discretionary decision of government body concerning the reasonable necessity for lands to be condemned. These issues are properly determined in circuit court.

TEST v. BROWARD COUNTY, 616 So.2d 111 (Fla. 4th DCA 1993): Condemnor need not present evidence pinpointing need for specific property, it is sufficient to show taking necessary for accomplishment of overall plan of development. Funds need not be on hand, nor do plans and specifications need to be prepared.

BROWARD COUNTY v. ELLINGTON, 622 So.2d 1029 (Fla. 4th DCA 1993): Proof of necessity is condition precedent to the valid exercise of eminent domain. Only a reasonable necessity need be shown. A condemning authority satisfies initial burden of proof concerning reasonable necessity by showing it considered relevant factors, such as alternative sites, costs, long-range planning and environmental and safety considerations in making decision.

CITY OF COCOA v. HOLLAND PROPERTIES, 625 So.2d 17 (Fla. 5th DCA 1993): Condemnor has initial burden of showing reasonable necessity for property and then landowner has burden to show bad faith or abuse of discretion as an affirmative defense. Necessity for condemnation of well sites based on consumptive use permit issued by water management district. Trial court could consider events subsequent to issuance of consumptive use permit to determine if reasonable necessity still existed.

LEESBERG v. DOT, 714 So.2d 1159 (Fla. 5th DCA 1998): Order of taking was affirmed because DOT produced extensive studies of drainage issue and showed drainage sites were best based on economics, as well as drainage pattern. DOT's failure to consider local government's concerns and objections not enough to preclude taking.

SECURITY MANAGEMENT CORP. v. DOT, 718 So.2d 339 (Fla. 4th DCA 1998): Court's review of order of taking is limited to whether there was competent substantial evidence to support the trial court's decision. Speculative nature of testimony on access was only one factor the court may have considered in assessing DOT's alleged abuse of discretion.

DOT v. BARBARA'S CREATIVE JEWELRY, INC., 728 So.2d 240 (Fla. 4th DCA 1998): Trial court improperly denied order of taking because it found factual dispute as to whether costs of acquisition of partial take exceeded cost of whole take must be submitted to jury. Held that necessity issue was a judicial question for trial judge, not jury.

NOISE

JACKSONVILLE v. SCHUMANN, 199 So.2d 727 (Fla. 1st DCA 1967) cert. denied 390 U.S. 981: Landowner has right to be free from unreasonable interference from noise and if such noise and/or intense vibration, produced by low flying aircraft deprives owner of an essential element in his relationship to his land, he is entitled to compensation.

DOT v. WEST PALM BEACH GARDEN CLUB, 352 So.2d 1177 (Fla. 4th DCA 1977): Where no substantial deprivation of current use, award of severance damage for purpose of curing highway noise to park and other facilities was error.

HOWARD JOHNSON CO. v. DOT, 450 So.2d 328 (Fla. 4th DCA 1984): Consequential damages for temporary loss of business during construction occasioned by use of parcel taken as easement and noise, vibration, dust and related nuisances resulting from the construction were not compensable in condemnation proceedings.

DOT v. FRENCHMAN, INC., 476 So.2d 224 (Fla. 4th DCA 1985) cert. discharged 495 So.2d 750 (Fla. 1986): Heavy traffic, noise, dust, fumes, etc., may constitute a taking as to church or school located on remainder. Court distinguishes other recreational facilities such as a golf course. No compensation for proximity damages.

NON-COMPENSABLE ITEMS

SELDEN v. CITY OF JACKSONVILLE, 10 So. 457 (Fla. 1891): Damages arising from change of grade not compensable where no taking, no illegal act, and no diversion of street from street purposes.

PATY v. TOWN OF PALM BEACH, 29 So.2d 363 (Fla. 1947): Groin built by public authority, which changed current of the ocean, so as to cause currents to beat upon and wash away beach of private owner, was built with lawful authority. Owner's damage was not compensable.

WIER v. PALM BEACH COUNTY, 85 So.2d 865 (Fla. 1956): Though widening of street in front of building caused it to lose lateral support, settle and crack, that is not a taking.

NORTH DADE WATER CO. v. FLORIDA STATE TURNPIKE AUTH., 114 So.2d 458 (Fla. 3rd DCA 1959): Incidental frustration of a contract by taking of other property is not compensable.

BLINKMAN v. DADE COUNTY, 115 So.2d 23 (Fla. 3rd DCA 1959): County not required to pay landowners for any part of land upon which state already had a highway easement.

CORAL GLADE CO. v. B.P.I. OF DADE COUNTY, 122 So.2d 587 (Fla. 3rd DCA 1960): Where property not fully developed subdivision, evidence of added increment in value obtained by F.H.A. approval and alleged damage occasioned by greater cost per remaining acre for final development and loss by way of forfeiture under utility agreement depended on development of subdivision and as such speculative and inadmissible.

SRD v. LEWIS, 170 So.2d 817 (Fla. 1964): Judicial rule against allowing damages because of change of grade affecting access, light, or view. See 95 So.2d 248.

MOORE v. SRD, 171 So.2d 25 (Fla. 1st DCA 1965): Where construction of new bridge resulted in impairment of public right of navigation rather than property owners' riparian rights, their loss, if any, was *damnum absque injuria*.

NORTHCUTT v. SRD, 209 So.2d 710 (Fla. 3rd DCA 1968): Alleged damage to property from noise, dust and vibration not compensable where no physical taking of property.

DOT v. ELY, 351 So.2d 66 (Fla. 3rd DCA 1977): Incidental frustration in performance of service and easement agreement to provide LP gas due to taking is not compensable. Only compensable item is value of lost trade fixtures located on condemned land and cost of removing other trade fixtures.

DOT v. WEST PALM BEACH GARDEN CLUB, 352 So.2d 1177 (Fla. 4th DCA 1977): Award of severance damage for purpose of curing highway noise by constructing wall to preserve tranquility of park and other facilities on property was error.

DOT v. CAPITAL PLAZA, INC., 397 So.2d 682 (Fla. 1981): Severance damages are not available for change in traffic flow caused by median constructed within previously owned right-of-way. Landowners have no property right in the continuation or maintenance of traffic flow past their property.

LEE COUNTY v. EXCHANGE NATIONAL BANK OF TAMPA, 417 So.2d 268 (Fla. 2nd DCA 1982): In partial taking, landowner generally only entitled to such damages to the remainder as are attributable to the use or activity on the land which is taken and is not entitled to such consequential damages from activity occurring on land which is taken from others; unless the use of part taken constitutes an integral and inseparable part of a single use to which the land taken and other adjoining land is put; i.e., construction of highway. HELD: No severance to remainder when part taken was used for buffer zone for new airport and no actual construction was done on part taken.

DOT v. FRENCHMAN, INC., 476 So.2d 224 (Fla. 4th DCA 1985) cert. discharge 495 So. 2d 750 (Fla. 1986): Condemnee not entitled to compensation for damages caused by proximity, i.e., dust, noise, fumes, etc.

DOT v. BENNETT, 592 So.2d 1150 (Fla. 4th DCA 1992): Landowner cannot recover compensation for enhanced value of property attributable to a nonconforming use.

DOT v. ANSBACHER, 672 So.2d 660 (Fla. 1st DCA 1996): Held it was improper to assess damages which resulted from closure of non-abutting intersecting roads near the property. Compensation is to be calculated based on the parcel's value prior to the loss of traffic flow or access loss to non-abutting roads.

DOT v MICHELIN, 702 So.2d 1326 (Fla. 4th DCA 1997): Compliance with police power regulations is not compensable under Florida eminent domain law. No severance damages for loss of parking spaces because must put in handicapped spaces.

ADVANTAGE WEST PALM BEACH, INC. v. WEST PALM BEACH COMMUNITY REDEVELOPMENT AGENCY, INC., 728 So.2d 755 (Fla. 4th DCA 1998): City's development ordinance did not create transferrable development rights separate and apart from underlying realty for which compensation is required.

ALTERNATIVE NETWORKING, INC. v. SOLID WASTE AUTH. OF PALM BEACH COUNTY, 758 So.2d 1209 (Fla. 4th DCA 2000): Agreement with tower owner to procure tenants for tower for a percentage of rents was not a compensable interest entitling contract holder to apportionment of compensation.

OFFERS OF JUDGMENT

CRIGLER v. DOT, 535 So.2d 329 (Fla. 1st DCA 1988): Upheld 73.092(7-9). Offer of judgment does not pose ethical dilemma for counsel. Attorney should always evaluate settlement offer on basis of client's interest, without considering his own interest in obtaining his fee.

LEE COUNTY v. SAGER, 595 So.2d 177 (Fla. 2d DCA 1992): Prejudgment interest is a part of judgment in determining whether the award is below level which activates entitlement to fees and costs pursuant to Section 73.092(7).

DOT v. DAYSTAR, INC., 674 So.2d 754 (Fla. 4th DCA 1996): Court erroneously struck offer of judgment made in December 1992, because Timmons and s. 768.79 provide procedural rules.

HARTLEB v DOT, 677 So.2d 336 (Fla. 4th DCA 1996): Offer of judgment was invalidated because offer did not indicate whether included apportionment claim to tenant and DOT made substantial changes in construction plans subsequent to offer.

DOT v HALL, 707 So.2d 1163 (Fla. 1st DCA 1998): Offer of judgment was not invalid because it failed to specify amount of offer attributable to business damages.

CSR PARTNERSHIP v. DOT, 741 So.2d 623 (Fla. 2d DCA 1999): Timing of offer of judgment is procedural in nature, so settlement proposal rule of civil procedure controls number of days prior to trial within which an offer of judgment can be made in eminent domain case.

OFFERS

ORLANDO ORANGE COUNTY EXPRESSWAY AUTH. v. DIVERSIFIED SERVICE, 283 So.2d 876 (Fla. 4th DCA 1973): Error to allow landowner to testify as to asking prices for comparable property.

RICE v. CITY OF FT. LAUDERDALE, 281 So.2d 36 (Fla. 4th DCA 1973): Mere offers are inadmissible. Only evidence of the amount actually paid in a completed transaction is admissible.

HILL v. CITY OF DAYTONA BEACH, 288 So.2d 306 (Fla. 1st DCA 1974): Condemnor's offer not admissible on impeachment.

OUTDOOR ADVERTISING SIGNS

DOT v. ALLEN, 447 So.2d 1383 (Fla. 5th DCA 1984): Advertising signs of company which held leasehold were trade fixtures, to be regarded as personal property rather than realty. Proper method of valuation was the cost of removing the signs, and if not removable, it was replacement value less depreciation.

DOT v. HEATHROW LAND & DEVELOPMENT CORP., 579 So.2d 183 (Fla. 5th DCA 1991): DOT required to deposit good faith estimate of value of billboard by considering its contributive value to condemned land or the value of billboard itself, whichever is greater.

NATIONAL ADVERTISING COMPANY v. DOT, 611 So.2d 566 (Fla. 1st DCA 1992): In case in which DOT settled with fee owner excluding sign company's leasehold interest, court reversed and ordered trial court to enter judgment on basis of tenant's value of leasehold interest, since DOT failed to present competent evidence.

DOT v POWELL, 721 So.2d 795 (Fla. 1st DCA 1998): The unity rule is abrogated by application of the Uniform Relocation Act (URA) which requires a jury to separately consider the value of the billboard. Proper to allow appraiser to use gross rent multiplier. URA does not require separate trial of leasehold, but court did not abuse discretion in granting separate trial to billboard owner.

HERNANDO COUNTY v. ANDERSON, 737 So.2d 569 (Fla. 5th DCA 1999): Billboards are personal property rather than realty. Billboard owners entitled to replacement value less depreciation for billboards destroyed by county after acquiring real property.

PARENT TRACT

DiVIRGILIO v. SRD, 205 So.2d 317 (Fla. 4th DCA 1967): Evidence justified conclusion of proximity of tracts separated only by highway over which there was unlimited access, together with unity of highest and best use, so tracts treated as single parcel; unity of ownership, unity of use, and physical continuity are factors to determine if property should be treated as adjoining.

COLUMBIA SUSSEX CORP. v. DOT, 425 So.2d 90 (Fla. 1st DCA 1982): Final judgment of apportionment that owner of property adjoining condemnee's property did not suffer any damages resulting from taking a fee simple title to portion of condemnee's property was supported by the evidence, even though adjoining landowner and condemnee had reciprocal ingress, egress and parking easements on their adjacent properties.

COUNTY OF VOLUSIA v. NILES, 445 So.2d 1043 (Fla. 5th DCA 1984): Tracts are prima facie distinct if physically separate but may be treated as one parcel for purposes of condemnation for severance damages upon proof of proximity and of an integration of use so substantial that they are in effect one.

MULKEY v. DOT, 448 So.2d 1062 (Fla. 2nd DCA 1984): Factors which must be established to treat adjoining properties as a single tract for purposes of computing severance damages include physical contiguity, unity of ownership, and unity of use. Affirmed DiVIRGILIO. Must submit jury instructions to resolve factual dispute.

DOT v. JIRIK, 498 So.2d 1253 (Fla. 1986): Presumption that when land is platted into blocks and lots, it is intended to be disposed of and ultimately used as separate lots.

DOT v. SUN ISLAND BOATS, INC., 510 So.2d 603 (Fla. 3rd DCA 1987): Court properly denied business damages for whole take where second parcel, relied on by condemnee for "partial take", was located approximately a mile away, no active rental business was conducted there and zoning laws prohibited operation of boat rental business at such location.

DADE COUNTY v. MIDIC REALTY, INC., 551 So.2d 499 (Fla. 3rd DCA 1989): Once presumption of separate lots is rebutted, the question of how many platted lots constitute the parent tract is a matter of proof to be decided by trier of fact.

DER v. SCHINDLER, 604 So.2d 565 (Fla. 2d DCA 1992): 1.85 acres of submerged land should have been considered as portion of 3.5 acres, since submerged land is not platted as a separate piece, it is physically contiguous, predecessors in title had treated as one property, deeds convey title to entire 3.5 acres, and it was always considered as integral part of whole property.

BREVARD COUNTY v. CANAVERAL PROPERTIES, INC., 658 So.2d 590 (Fla. 5th DCA 1995): Held 660 acre tract, subdivided into 499 lots in checkerboard configuration, with lots held by four separate corporations, and lots held for sale as separate units was not one parcel tract for severance damage purposes.

BLOCKBUSTER VIDEO, INC. v. DOT, 714 So.2d 1222 (Fla. 2d DCA 1998): Court stated there was no statutory requirement that a business's parent tract remain unchanged for five years to allow for business damages. Statute does not support theory that five year clock must restart whenever an existing business replaces building on some portion of the same parcel of commercial real property.

TOWN OF JUPITER v. ALEXANDER, 747 So.2d 395 (Fla. 4th DCA 1998): Inverse taking order was reversed because trial court considered wrong parent tract. Island of 12 acres and mainland tract of .4 acres should have been treated as one tract. Factors on parent tract determination: 1) physical contiguity; 2) unity of ownership; 3) unity of use. Unity of use factors: 1) intent of the owner; 2) adaptability of the property; 3) dependence between the parcels; 4) highest and best use of the property; 5) zoning; 6) appearance of the land; 7) the actual use of the land, and 8) the possibility of tracts being combined in use in reasonably near future.

PARTIES/INTERVENTION

CRAVERO v. FLORIDA STATE TURNPIKE AUTH., 91 So.2d 312 (Fla. 1956): Option to purchase which has not ripened into a mutually binding contract by having been exercised prior to entry of condemnation award is not such an interest in property as to entitle optionee to share in award.

LEE COUNTY v. CHARLOTTE COUNTY, 174 So.2d 108 (Fla. 2nd DCA 1965): Proper to refuse intervention by county where any consequential taking due to drainage canal in one county which might in the future flood lands in another county.

TAMPA SUBURBAN UTILITIES v. HILLSBOROUGH COUNTY AVIATION AUTH., 195 So.2d 568 (Fla. 2nd DCA 1967): Utility company not allowed to intervene where no property taken although taking may cause loss of customers. In order to intervene, interest of intervenor in property must be of such direct and immediate character that intervenor will either gain or lose by direct legal operation and effect of judgment.

DOT v. J.D. RICE, 276 So. 2d 544 (Fla. 4th DCA 1973): No right to intervene where no property or rights taken and intervenor can neither gain nor lose by direct legal operation and effect of eminent domain judgment; even if part of landowners property is necessary for road project for which condemnation proceedings brought, condemnor is not required to include in single suit all property required for project. (Note included property on either side of appellee/intervenor's property).

CHIPOLA NURSERIES, INC. v. DOT, 294 So.2d 357 (Fla. 1st DCA 1974): Party permitted to intervene by stipulation because once the other properties were taken the route of the highway as it approaches this party's property will have become "locked in".

CONTINENTAL EQUITIES, INC. v. GALARDI, 330 So.2d 863 (Fla. 1st DCA 1976): Writ of certiorari; party acquired title by foreclosure action to land previously acquired by Order of Taking, and should be substituted as real party in interest.

GRIESER v DOT, 371 So.2d 164 (Fla. 2nd DCA 1979): A vendor under a contract for deed has a lienhold interest and is not entitled to attorneys fees under 73.091, Fla. Stat.

DOT v. BURNETTE, 384 So.2d 916 (Fla. 1st DCA 1980): Where purchaser acquired property after inverse taking has occurred, the subsequent purchaser and grantee has no claim in inverse condemnation without assignment of his predecessors' claim.

JACKSONVILLE TRANSPORTATION AUTH. v. CONTINENTAL EQUITIES, INC., 462 So.2d 74 (Fla. 1st DCA 1985): Intervenor's claim for compensation and fees were based on reverter clause in quit claim deed, apparently wild to the chain of title, and therefor should be denied.

CANNEY v. CITY OF ST. PETERSBURG, 466 So.2d 1193 (Fla. 2nd DCA 1985): Upon payment of deposit condemnor took title and condemnee has right to proceeds. Purchasers from condemnee not entitled to proceeds for cost to cure.

FLORIDA CITRUS NURSERY, INC. v. STATE DEPARTMENT OF AGRICULTURE, 570 So.2d 1355 (Fla. 2d DCA 1990): An award for damages as compensation for injury to land belongs to the person who owns the land at the time the injury occurs; award only passes to a subsequent grantee of the land through proper provision in the deed or by assignment. Since bidders at judicial sale were not put on notice of existence of chose in action, chose did not pass to highest bidder.

CITY OF DANIA v. BROWARD COUNTY, 658 So.2d 164 (Fla. 4th DCA 1995): City has no standing to intervene in county eminent domain action based on loss of tax base and infrastructure expenditures.

BREVARD COUNTY v. RAMSEY, 658 So.2d 1190 (Fla. 5th DCA 1995): When property held in trust is taken, the trustee, not the beneficiary, is the proper party.

PERSONAL PROPERTY

FLATT v. CITY OF BROOKSVILLE, 368 So.2d 631 (Fla. 2nd DCA 1979): Damage to personal property is recoverable under the eminent domain provision of the constitution.

HILLSBOROUGH COUNTY v. GUTIERREZ, 433 So.2d 1337 (Fla. 2nd DCA 1983): Property owners may recover for personal property which has been inversely condemned.

DOT v. ALLEN, 447 So.2d 1383 (Fla. 5th DCA 1984): Advertising signs of company which held leasehold were trade fixtures, to be regarded as personal property rather than realty.

DOT v. SUN ISLAND BOATS, INC., 510 So.2d 603 (Fla. 3d DCA 1987): Severance damages are awarded for personalty, in a total take, only where personal property is trade fixture or functional unit.

BROWARD COUNTY v. RHODES, 624 So.2d 319 (Fla. 4th DCA 1993): Inverse condemnation applies to personal property, but must be some showing of a willful seizure or taking. No taking of bees accidentally killed in mosquito control spray program.

SEMINOLE COUNTY v. SANFORD COURT INVESTORS, LTD., 743 So.2d 1165 (Fla. 5th DCA 1999): Tenant could not recover money lost on sale of personal property because there was no showing the eminent domain action forced them to vacate the leased premises.

PETITION

PEAVY-WILSON LUMBER v. BREVARD CO., 31 So.2d 483 (Fla. 1947): Petition fatally defective for failure to set forth any plan, reason or purpose from which question of public necessity for taking could be determined by the Court.

CLARK v. GULF POWER CO., 198 So.2d 368 (Fla. 1st DCA 1967): Petition defective for failure to state actual use to be made of property; or that use will benefit citizens of Florida, or that public purpose will be served.

CITY OF MIAMI BEACH v. MANILOW, 232 So.2d 759 (Fla. 3rd DCA 1970): City must act in accordance with statute requiring that petition set forth statements that petitioner has surveyed and located line of area of construction and intends in good faith to construct subject on or over described property. See 253 So. 2d 910.

TOSOHATCHEE GAME PRESERVE INC. v. CENTRAL AND SOUTHERN FLORIDA FLOOD CONTROL DIST., 265 So.2d 681 (Fla. 1972): Petition must be accompanied by authorizing resolution (where one is required) adopted prior to the initiation of eminent domain proceedings and attached to the petition.

MAZEROLLE v. DOT, 266 So.2d 364 (Fla. 1st DCA 1972): Ambiguity going to sufficiency of legal description should be raised at Order of Taking, but owner not precluded from correcting it at trial.

CITY OF ST. PETERSBURG v. VINOY PARK HOTEL COMPANY, 352 So.2d 149 (Fla. 2nd DCA 1977): In view of undisputed testimony of surveyor that he could locate property, fact that legal description in petition inaccurate did not preclude the condemnation.

FLORIDA POWER AND LIGHT v. CANAL AUTH., 423 So.2d 421 (Fla. 5th DCA 1982): Failure to attach original resolutions to petitions to condemn resulting in final judgments in 1967, was not fatal to attack mounted in 1981. Void judgment may be attacked at any time, but voidable judgment based on trial court's error becomes final and binding if not timely corrected.

FLORIDA POWER AND LIGHT v. BERMAN, 429 So.2d 79 (Fla. 4th DCA 1983): Role of trial court in proceeding on petition to condemn is to assure that condemnor acted in good faith, did not exceed its authority and did not abuse its discretion. Route selection by condemnor was an abuse of its discretion where property along route was of unique ecology and alternate route existed.

WALKER v. FLORIDA GAS TRANSMISSION CO., 491 So.2d 1286 (Fla. 1st DCA 1986): Petition in eminent domain must contain: 1) resolution adopted by governing body; 2) resolution must state public purpose for which acquisition of property is sought; 3) description of property to be acquired; and 4) nature of title or easement sought.

CITY OF OCALA v. RED OAK FARM, 636 So.2d 81 (Fla. 5th DCA 1994): Eminent domain petition was dismissed because city failed to attach proper resolution to acquire property outside city limits for utility expansion. Statutory provisions of an eminent domain petition must be strictly complied with.

RED OAK FARM v. CITY OF OCALA, 636 So.2d 97 (Fla. 5th DCA 1994): Writ of certiorari is proper remedy to review order denying abatement of second action involving same parties and same cause of action pending simultaneously. Second action which was filed to correct deficiencies of first eminent domain petition was abated during appeal of first case.

PLEADINGS/ PROCEDURE

WILTON v. ST. JOHN'S COUNTY, 123 So. 527 (Fla. 1929): Where court strikes answer, counsel not authorized to file pleading practically identical with one stricken; allegations in answer consisting of categorical denials without alleging facts supporting conclusion are insufficient; answer showing pertinent allegations and presenting material issues should not be stricken as a whole.

CITY MORTGAGE AND BOND CO. v. NASSAU COUNTY, 160 So. 677 (Fla. 1935): Entry of judgment error where motion for compulsory amendment of petition is pending.

MIAMI v. OSBORNE, 55 So.2d 120 (Fla. 1951): The burden is on the party collaterally attacking a final judgment in eminent domain to demonstrate the matter was not concluded in the previous action.

CARLOR CO., INC. v. CITY OF MIAMI, 62 So.2d 897 (Fla. 1953): Condemnation judgment cannot be collaterally attacked except in cases of fraud or where void for want of jurisdiction; doctrine of res judicata applicable to condemnation; fact seven years elapsed without utilization of land did not establish fraud.

PORTER v. COLUMBIA COUNTY, 75 So.2d 699 (Fla. 1954): Answer which denied necessity and contained no allegation of fraud, bad faith or facts showing abuse of discretion did not properly raise question of necessity.

BAKER v. SRD, 79 So.2d 511 (Fla. 1955): Failure of Clerk to file certificate referred to in 73.13 (now 73.111) does not defeat title of SRD where judgment duly rendered and sum awarded paid into registry.

ST. JOE PAPER CO. v. CHOCTAWHATCHEE ELECTRIC COOP., 79 So.2d 761 (Fla. 1955): Answer contesting necessity which failed to allege fraud, bad faith or gross abuse of discretion insufficient to raise issue of necessity.

HOWARD JOHNSONS, INC. v. SRD, 90 So.2d 306 (Fla. 1956): Conclusions in an answer that there is no necessity fail to create an issue upon necessity.

ROTT v. CITY OF MIAMI BEACH, 94 So.2d 168 (Fla. 1957): Landowner not entitled to continuance pending determination of landowner's suit against city to enjoin enforcement of zoning ordinance.

WILSON v. JACKSONVILLE EXPRESSWAY AUTH., 110 So.2d 707 (Fla. 1st DCA 1959): Proceedings under Chapter 73 and 74 are actions in rem.

ALHEIT v. SRD, 114 So.2d 623 (Fla. 1st DCA 1959): Even if described property is necessary to road project, condemnor under such circumstances is not required to include in single proceeding all the property required for the project.

BLINKMAN v. DADE COUNTY, 115 So.2d 23 (Fla. 3rd DCA 1959): Trial judge has right under Rules of Civil Procedure to amend judgment to conform to the evidence when the evidence is clear, sufficient and without conflict.

POE v. SRD, 127 So.2d 898 (Fla. 1st DCA 1961): Conditions precedent to doctrine of res judicata are identity in thing sued for, identity of cause of action, identity of quality in person for or against whom claim is made; test for determining of identity of cause of action is identity of facts essential to maintenance of action.

CHOCTAWHATCHEE ELECTRIC CORP., INC. v. MAJOR REALTY CO., INC., 161 So.2d 837 (Fla. 1st DCA 1964): Statute placing eminent domain venue in county where land is located does not prevent judge from changing venue to another county, where such is needed to assure fair and impartial trial.

SRD v ABEL INVESTMENT, 165 So. 2d 832 (Fla. 2nd DCA 1964): Business damage not element to be secured on taking and condemnor not required to include business damage in declaration.

SRD v. BANKER'S LIFE AND CASUALTY COMPANY, 166 So.2d 234 (Fla. 3d DCA 1964): Court affirmed trial court order requiring SRD to apply to State Treasurer to pay inverse condemnation judgment.

TAMPA SUBURBAN UTILITY CORP. v. HILLSBOROUGH CO. AVIATION AUTH., 195 So.2d 568 (Fla. 2nd DCA 1967): Proper procedure to eliminate intervenor from condemnation suit is to seek denial of petition for intervention, or after answer is filed, to attack answer through motion to strike or motion for judgment on the pleadings.

CITY OF MIAMI BEACH v. MANILOW, 232 So. 2d 759 (Fla. 3rd DCA 1970): City not entitled to bring eminent domain action for taking of road where it had failed to secure permission of SRD in advance; never surveyed or located its line of area of construction over described property. See 253 So. 2d 810.

SARASOTA-MANATEE AIRPORT AUTH. v. ALDERMAN, 238 So.2d 678 (Fla. 2d DCA 1970): Owner is not entitled to jury trial on issue of taking in inverse condemnation case.

CHALMERS v. FLORIDA POWER AND LIGHT, 245 So.2d 285 (Fla. 1st DCA 1971): Where resolution silent as to estate or interest, court has no jurisdiction even though petition allegedly sought an easement; can't delegate determination of estate or interest or necessity to an attorney or an employee.

DOT v. J.D. RICE, 276 So. 2d 544 (Fla. 4th DCA 1973): Condemnor is not required to include in a single proceeding all the property required for the project.

KIRKPATRICK v. CITY OF JACKSONVILLE, 312 So.2d 487 (Fla. 1st DCA 1975): In action in inverse condemnation, any claim that city destroyed property in exercise of valid police power is an affirmative defense.

CITY OF HOLLYWOOD v. JARKESY, 343 So.2d 886 (Fla. 4th DCA 1977): Trial judge given very broad discretion in granting new trial except where acting under an erroneous legal assumption; basic test to determine adequacy of verdict is whether jury of reasonable men could have returned that verdict; gives grounds for new trial.

STACK v. OKALOOSA COUNTY, 347 So.2d 145 (Fla. 1st DCA 1977): Order entered after Notice of Appeal filed is entered after trial court has lost jurisdiction and is a nullity.

CITY OF MIAMI v. COCONUT GROVE MARINE PROPERTIES, INC., 358 So.2d 1151 (Fla. 3rd DCA 1978): Condemnation judgment cannot be collaterally attacked except where there is extrinsic fraud or where judgment is void for want of jurisdiction.

FLORIDA EAST COAST RAILWAY CO. v. BROWARD COUNTY, 421 So.2d 681 (Fla. 4th DCA 1982): Condemning authority is required to present evidence of the necessity of the condemnation at the declaration of taking hearing.

KEY HAVEN v. BOARD OF TRUSTEES OF INTERNAL IMPROVEMENT, 427 So.2d 153 (Fla. 1982): If aggrieved party is willing to accept all actions of agency as correct both as to constitutionality of statute implemented and as to propriety of agency proceedings, direct review in district court of agency action may be eliminated and proceedings properly commenced in circuit court.

DIST. BOARD OF TRUSTEES, DAYTONA BEACH COMMUNITY COLLEGE v. ALLEN, 428 So.2d 704 (Fla. 5th DCA 1983): Statute setting out requirements for petition in eminent domain must be strictly construed in favor of the landowner.

KEMPER v. ST. JOHNS RIVER WATER MANAGEMENT DISTRICT, 475 So.2d 920 (Fla. 5th DCA 1985): A former owner seeking to set aside a deed to real property obtained through condemnation proceedings must establish "extrinsic" fraud, because the suit is essentially a collateral attack on a final judgment.

DOT v. DAVIS, 511 So.2d 686 (Fla. 4th DCA 1987): Once DOT demands jury trial, improper for court to fail to conduct jury trial absent valid waiver. Once DOT files petition, DOT has right to expect trial court and opposing counsel to send all notices to both parties listed in pleadings.

DOT v. GROSSMAN, 536 So.2d 1181 (Fla. 3d DCA 1989): Once either party in an eminent domain proceeding demands a jury trial, demand cannot be withdrawn without consent of all parties.

RUDY'S SIRLOIN STEAKBURGERS, INC. v. DOT, 562 So.2d 850 (Fla. 3d DCA 1990): Order of taking vacated for failure to comply with time requirements of Section 74.041(3), Fla. Stat.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES v. BONANO, 568 So.2d 24 (Fla. 1990): No right to jury trial in eminent domain exists under Florida Constitution. Legislature may establish an administrative hearing process to determine amount of compensation.

MAPLES v. DOT, 588 So.2d 25 (Fla. 1st DCA 1991): In order to raise environmental issues properly before court in order of taking hearing, issues should be raised in pleadings.

CITY OF OCALA v. RED OAK FARM, 636 So.2d 81 (Fla. 5th DCA 1994): Eminent domain petition was dismissed because city failed to attach proper resolution to acquire property outside city limits for utility expansion. Statutory provisions of an eminent domain petition must be strictly complied with.

DIXIE OIL COMPANY OF FLORIDA, INC. v. DOT, 657 So.2d 1258 (Fla. 1st DCA 1995): Upheld final order dismissing request for administrative hearing concerning modification of driveways in DOT construction project. Dixie's election of remedies included pursuit of administrative remedies to contest propriety of modifications, sue for specific enforcement of alleged agreement concerning driveway configuration, or proceed to valuation trial to determine damages. By presenting evidence of damages in condemnation trial, Dixie is precluded from challenging propriety of DOT's action in administrative hearing.

TAMPA-HILLSBOROUGH EXPRESSWAY AUTH. v. CASIANO-TORRES, 659 So.2d 1125 (Fla. 2d DCA 1995): No error in submitting to jury disputed factual issue of whether business in existence five years to qualify for business damages.

DEPARTMENT OF AGRICULTURE v. GO BUNGEE, INC., 678 So.2d 920 (Fla. 5th DCA 1996): Inverse taking judgment reversed because court failed to address affirmative defenses prior to granting partial summary judgment.

AYERS ESTATE v. HERNANDO COUNTY, 706 So.2d 349 (Fla. 5th DCA 1998): Court erred in allowing notice of taking to be amended during trial when witness testified county not going to use all the land.

BASIC ENERGY CORPORATION v. DOC, 709 So.2d 124 (Fla. 1st DCA 1998): Trial court properly construed §73.041 to apply to situation when condemnor must acquire title to land after it has already begun using it. Date of valuation is date of possession not time of legal condemnation.

DOT v BARBARA'S CREATIVE JEWELRY, INC., 728 So.2d 240 (Fla. 4th DCA 1998): Trial court improperly denied order of taking because it found factual dispute as to whether costs of acquisition of partial take exceeded cost of whole take must be submitted to jury. Held that necessity issue was a judicial question for trial judge, not jury.

POPPELL v. BOARD OF TRUSTEES, 742 So.2d 488 (Fla. 1st DCA 1999): Recognizes §95.11(4) F.S. is statute of limitations for inverse condemnation.

DOT v. DUPLISSEY, 751 So.2d 117 (Fla. 5th DCA 2000): Trial court erred in granting new trial, because jury was allowed to render verdict less than DOT's good faith estimate after trial judge struck DOT's severance damage testimony. Jury is not required to accept the uncontroverted opinion of owner's expert.

KAREN'S TACK v. DOT, 754 So.2d 722 (Fla. 4th DCA 1999): Order of taking was properly entered after owner's testimony was inadmissible because only competent testimony was presented by DOT.

YOUTH FOR CHRIST OF SARASOTA, INC. v. SARASOTA COUNTY, 765 So.2d 794 (Fla. 2d DCA 2000): Trial court lacked jurisdiction to amend judgment four months later to set off costs against deficiency judgment entered when verdict was less than O.T. deposit.

POWER OF EMINENT DOMAIN

SIBLEY v. VOLUSIA COUNTY, 2 So. 2d 578 (Fla. 1941): Federal statutes respecting federal aid in construction and maintenance of state roads have no effect upon power of state agencies to establish roads.

WILTON v. ST. JOHNS CO., 123 So. 527 (Fla. 1929): Legislature delegating power of eminent domain in administrative agency of public corporation for public purpose may also delegate power to determine necessity for improvement.

WHITE v. PINELLAS COUNTY, 174 So.2d 88 (Fla. 2nd DCA 1965): Trespass done in performance of maintenance duty is not an exercise of power of eminent domain. See 185 So. 2d 486.

TOWN OF PALM BEACH v. CITY OF WEST PALM BEACH, 239 So.2d 835 (Fla. 4th DCA 1970): Municipality may use its power of eminent domain to acquire property within another municipality for purposes of building mains and lines for sewage disposal system for first municipality.

CITY OF MIAMI BEACH v. CUMMINGS, 266 So.2d 122 (Fla. 3rd DCA 1972): Power of eminent domain is attribute of sovereignty and is absolute except as restrained by constitution.

CITY OF ST. PETERSBURG v. WALL, 419 So.2d 1167 (Fla. 2nd DCA 1982): All property is held subject to exercise of power of eminent domain and no liability attaches to condemnor for exercise of such power, even if unsuccessful as long as in good faith.

DIST. BOARD OF TRUSTEES OF DAYTONA BEACH COMMUNITY COLLEGE v. ALLEN, 428 So.2d 704 (Fla. 5th DCA 1983): Substantial compliance with requirements set forth in authorizing legislation is required by condemnor.

POST v. DADE COUNTY, 467 So.2d 758 (Fla. 3rd DCA 1985): Condemnor had authority to condemn land for slum clearance, and allow private interests to redevelop such land, under condemnor's auspices and control, and to refuse former owners to redevelop such property under condemnor's plan.

DEPARTMENT OF AGRICULTURE v. MID-FLORIDA GROWERS, 521 So.2d 101 (Fla. 1988): Exercise of police power, although for a public purpose, may result in taking requiring payment of just compensation. Destruction of healthy trees which state destroyed to prevent spread of citrus canker, entitled nursery owners to just compensation.

PROSSER v. POLK COUNTY, 545 So.2d 934 (Fla. 2d DCA 1989): There is no statutory prohibition to prevent Polk County from exercising its power of eminent domain outside of Polk County to acquire property for road purposes.

SOUTH ORLANDO BUSINESS GROUP v. CITY OF EDGEWOOD, 585 So.2d 985 (Fla. 5th DCA 1991): Expressway authority has no more authority than given by the legislature. Authority had to comply with statutory requirement that municipality approve project before proceeding through the city.

BASIC ENERGY CORPORATION v. HAMILTON COUNTY, 652 So.2d 1237 (Fla. 1st DCA 1995): Municipality had no power to condemn property for purpose of constructing state prison.

PRIOR PUBLIC USE/CONDEMNATION OF
OTHER PROPERTY PUT TO A PUBLIC USE

CITY OF DANIA v. CENTRAL AND SOUTH FLORIDA FLOOD CONTROL DIST., 134 So.2d 848 (Fla. 2nd DCA 1961): Fact land owned by city did not of itself exempt it from condemnation by flood control district; since flood control district creature of legislature and derives all its power from statutes and no statutory power to acquire property which is being put to public use, the city's land could not be condemned.

GEORGIA SOUTHERN & FLORIDA RAILWAY CO. v. SRD, 176 So.2d 111 (Fla. 1st DCA 1965): Compatible use theory applicable to railroad property and general powers of eminent domain adequate to condemn two strips of railroad right-of-way; general rule property devoted to public use cannot be appropriated to different use unless legislative intent to take has been manifested; two general exceptions, first, when proposed use is of superior rank, or second, when taking would not materially impair use already existing.

CITY OF PALM BAY v. GENERAL DEVELOPMENT UTILITIES, INC., 201 So.2d 912 (Fla. 4th DCA 1967): A municipality may under general statutory authority, take property of a private corporation already devoted to a public use and devote it to a like purpose.

FLORIDA EAST COAST RAILROAD CO. v. MIAMI, 321 So.2d 545 (Fla. 1975): Prior public use; necessary (means utilitarian, not indispensable) for successful operation (means correlative with railroads public use, as opposed to financially successful). See 286 So.2d 545; 346 So.2d 621.

FLORIDA EAST COAST RAILWAY CO. v. CITY OF MIAMI, 372 So.2d 152 (Fla. 3rd DCA 1979): Prior public use doctrine not applied where specific statutory authority allowed the City of Miami to acquire railroad property.

HOUSING AUTH. v. DOT, 385 So.2d 690 (Fla. 4th DCA 1980): The prior public use doctrine is not applicable when DOT's eminent domain power is superior to that of the public condemnee and taking will not impair or interfere with the prior public use.

DOT v. DADE COUNTY, 388 So.2d 326 (Fla. 3rd DCA 1980): DOT required to make good faith deposit for taking of property of Dade County.

FLORIDA EAST COAST RAILWAY CO. v. BROWARD COUNTY, 421 So.2d 681 (Fla. 4th DCA 1982): When a taking will not materially impair or interfere with or is not inconsistent with the existing public use, and the proposed use is not detrimental to the public, a court possesses authority to order a taking of the property; this exception to the prior public use doctrine is known as the "compatible use" theory. Case involves condemnation of air rights over railroad tracks and yard.

PUBLIC PURPOSE

SPAFFORD v. BREVARD CO., 110 So. 451 (Fla. 1926): Appropriation of private property for establishment of public highway is an appropriation for a public use.

WILTON v. ST. JOHN'S COUNTY, 123 So. 527 (Fla. 1929): Use may be local and limited and still public; all reasonable presumptions in favor of validity of legislative determination of public use.

DEMETER LAND CO. v. FLORIDA PUBLIC SERVICE CO., 128 So. 402 (Fla. 1930): "Public use" must be use in which public has interest, manner of enjoyment within state's control, and public interest must dominate private gain.

ROBERTSON v. BROOKSVILLE & I. RY., 129 So. 582 (Fla. 1930): Railway company which properly leased its property to another company can exercise right of eminent domain to acquire property necessary to lessee's operation.

CITY MORTGAGE & BOND CO., v. NASSAU COUNTY, 160 So. 677 (Fla. 1935): County has power to acquire by eminent domain lands necessary for construction of ditches to drain right-of-way of public roads.

SIBLEY v. VOLUSIA COUNTY, 2 So.2d 578 (Fla. 1941): Public road is a public use for which lands may be condemned.

PATY v. TOWN OF PALM BEACH, 29 So. 2d 363 (Fla. 1947): Construction of seawalls, bulkheads and groins to protect lands from damages of destruction by action of the sea was within lawful authority of town.

PEAVY-WILSON LUMBER CO. v. BREVARD COUNTY, 31 So.2d 483 (Fla. 1947): Public necessity does not mean public benefit.

BROWER v. PUTNAM COUNTY, 33 So.2d 220 (Fla. 1948): SRD has power in condemnation proceeding to relocate public road and reconstruct it in the interest of public welfare in order to eliminate dangerous right-angle turns and inconvenient curves.

STATE v. TOWN OF NORTH MIAMI, 59 So.2d 779 (Fla. 1952): City cannot purchase land and erect industrial plant thereon and lease it to private corporation for private profit and gain.

ADAMS v. HOUSING AUTH., 60 So.2d 663 (Fla. 1952): Can condemn unsafe, unsanitary housing (blight area) but can't sale or lease to private individuals for private commercial and industrial purposes.

GATE CITY GARAGE v. CITY OF JACKSONVILLE, 66 So.2d 653 (Fla. 1953): Not valid objection to power to take because city will compete with business where specific legislative authority and it is found to serve public purpose; acquisition of off street parking is public purpose in view of traffic congestion and insufficient parking.

SUNNY ISLE FISHING PIER v. DADE COUNTY, 79 So.2d 667 (Fla. 1955): County has authority to lease portion of park for fishing when portion leased not required or being used for park purposes.

BOARD OF PUBLIC INSTRUCTION OF DADE COUNTY v. TOWN OF BAY HARBOR ISLANDS, 81 So.2d 637 (Fla. 1955): Public agency may purchase land for public use, and make such use of property in disregard of deed restrictions or covenants which prohibit such use.

OSCEOLA COUNTY v. TRIPLE E DEVELOPMENT CO., 90 So.2d 600 (Fla. 1956): Where owner of lands owned non-navigable lake lying entirely within his boundaries, county could not condemn right of way from highway to shore for purpose of enabling public to boat and fish; not a public purpose, but merely an act to encourage a trespass. See 339.24, Fla. Stat.

HANNA v. SUNRISE RECREATION, 94 So.2d 597 (Fla. 1957): Board of Parks and Historical Memorials had authority to enter into lease with private corporation giving corporation right to construct in State park a golf course and other facilities opened to public with fees to be charged by corporation.

GRUBSTEIN v. URBAN RENEWAL AGENCY OF TAMPA, 115 So.2d 745 (Fla. 1959): Fact condemnor leases property to private concerns, after clearance of slums does not make it private rather than public purpose; public benefit is not synonymous with public purpose.

STEIN v. DARBY, 126 So.2d 313 (Fla. 1st DCA 1961): Makes distinction between public purpose and public benefit; attributes of public purpose are not dissolved simply because benefits or burdens fall unequally upon members of society.

STATE v. JACKSONVILLE EXPRESSWAY AUTHORITY, 139 So.2d 135 (Fla. 1962): Authority may acquire easements through the air in perpetuity, although statute said all right to be acquired in fee simple absolute; Court said legislature intended to require fee simple title in those situations where land itself as distinguished from appurtenance is needed.

BREST v. JACKSONVILLE EXPRESSWAY AUTH., 194 So.2d 658 (Fla. 1st DCA 1967): Condemnee's property not subject to condemnation by J.E.A. which had agreed to exchange it for land of private corporation which was needed for project.

CLARK v. GULF POWER CO., 198 So.2d 368 (Fla. 1st DCA 1967): A state's power of eminent domain exists only within its territorial limits.

CITY OF PALM BAY v. GENERAL DEVELOPMENT UTILITIES, INC., 201 So.2d 912 (Fla. 4th DCA 1967): Municipality may under general statutory authority, take by eminent domain the property of a private corporation already devoted to a public use and devote it to a like purpose.

STAPLIN v. CANAL AUTH., 208 So.2d 853 (Fla. 1st DCA 1968): Although canal authority could not acquire for primary purpose of recreation, it can have an incidental use of water recreation.

DADE COUNTY v. GENERAL WATERWORKS CORP., 267 So.2d 633 (Fla. 1972): Constitution only requires that property be acquired for public purpose; not an absolute public necessity.

WEST PALM BEACH v. WILLIAMS, 291 So.2d 572 (Fla. 1974): Municipality may lease land acquired by purchase or power of eminent domain for public use but not private.

JACKSONVILLE v. MOMAN, 290 So.2d 105 (Fla. 1st DCA 1974): City failed to carry burden of proof by competent and substantial evidence that land needed for development; offered proof of wiped out area; area as a whole not a slum though it would be better to change land from residential to medical; motive of city was to acquire and sell to privately owned and operated hospital; city by-passed slum property to acquire this property which was in an area not a slum; characteristic of area must control and not condition of individual property.

KIRKPATRICK v. CITY OF JACKSONVILLE, 312 So.2d 487 (Fla. 1st DCA 1975): In inverse condemnation after property taken, landowner could not be required to prove taking was for public purpose.

SALFI v. DOT, 312 So.2d 781 (Fla. 4th DCA 1975): Department has authority to condemn property for use as a rest area incident to a limited access highway.

BAYCOL v. DOWNTOWN DEVELOPMENT AUTH., 315 So.2d 451 (Fla. 1975): Primary purpose of acquisition was to permit private development of shopping center, without private development there would be no public need for parking; good discussion of cases with incidental private benefit; public benefit is not synonymous with public purpose.

CITY OF MIAMI v. COCONUT GROVE MARINE PROPERTIES, INC., 358 So.2d 1151 (Fla. 3rd DCA 1978): Incidental private use of property acquired by eminent domain and incidental profit to private cooperation or individual do not, in themselves, defeat public purpose.

WEST GATE SHOPPING CENTER, INC. v. DOT, 363 So.2d 407 (Fla. 1st DCA 1978): DOT is authorized to provide public ways to pedestrians and bicycles; therefore taking for that purpose is neither excessive nor unreasonable.

STATE v. MIAMI BEACH REDEVELOPMENT AGENCY, 392 So.2d 875 (Fla. 1980): Use of eminent domain for redevelopment projects is constitutional even though the predominant land use of the area will ultimately be private.

SCHOOL BOARD OF BROWARD COUNTY v. VIELE, 459 So.2d 354 (Fla. 4th DCA 1984): A condemning authority properly exercises its discretion in taking property for a public purpose if it considers and weights the availability of an alternative site, costs, environmental factor, long-range area planning, and the safety considerations.

DEVON-AIRE VILLAS HOMEOWNERS ASSOC., NO. 4, INC. v. AMERICABLE ASSOC. LTD., 490 So.2d 60 (Fla. 3rd DCA 1985): Public use is use which is fixed and definite, in which the public has an interest, and the terms and manners of enjoyment of which must be within control of the state and available to all people equally. However, this does not require that public use be received by whole public, or even a large part of it.

DOT v. FORTUNE FEDERAL, 532 So.2d 1267 (Fla. 1988): Legislature created right to business damages and legislature can limit right to business damages. 337.27(3) Fla. Stat. is constitutional. Limiting acquisition costs is valid public purpose and does not deprive condemnee of constitutional right to full compensation. Role of judiciary in determining validity of public purpose is narrow.

BATMASIAN v. BOCA RATON COMMUNITY REDEVELOPMENT AGENCY, 580 So.2d 199 (Fla. 4th DCA 1991): City had adopted resolution in 1980 determining blight existed in Boca Raton. Court held that CRA did not have to show existence of same level of blight in 1989 that was present with redevelopment plan was adopted in 1982.

CITY OF OCALA v. NYE, 608 So.2d 15 (Fla. 1992): If public purpose for state and county to save money in road acquisition costs by taking an entire parcel rather than part, then also public purpose for municipality.

TEST v. BROWARD COUNTY, 616 So.2d 111 (Fla. 4th DCA 1993): Where legislature declares removal of a particular use of property as serving a public purpose, a presumption arises as to its public use and courts should not interfere with such determination unless the use is clearly and manifestly of a private character.

BASIC ENERGY CORP. v. HAMILTON COUNTY, 652 So.2d 1237 (Fla. 1st DCA 1995): No valid municipal purpose could exist for construction of state prison.

JFR INVESTMENT v. DELRAY BEACH COMMUNITY REDEVELOPMENT AGENCY, 652 So.2d 1261 (Fla. 4th DCA 1995): Incidental use of land for private parking is permissible in taking for urban redevelopment when overall purpose of the taking is clearly and predominantly a public one.

DOT v. BARBARA'S CREATIVE JEWELRY, INC., 728 So.2d 240 (Fla. 4th DCA 1998): Once DOT put on evidence that cost of partial acquisition exceeded whole take under §337.27(2), the burden shifted to owner to show bad faith or an abuse of discretion. It was for trial judge to decide, not left to jury.

PURCHASE PRICE

STANINGER v. JACKSONVILLE EXPRESSWAY AUTH., 182 So.2d 483 (Fla. 1st DCA 1966): Where time of sale of property sought to be condemned not so remote as to destroy evidentiary value concerning price, admission or exclusion largely within discretion of trial court.

NOUR v. DOT, 267 So.2d 365 (Fla. 1st DCA 1972): No evidence of purchase price where remote, substantial improvements, highest and best use in transition and substantial evidence of comparable sales.

WHIDDEN v. DOT, 281 So.2d 419 (Fla. 1st DCA 1973): Purchase price not admissible where extensive improvements and inflationary trends; consider time, transition in use, improvements and economic trends.

QUANTITY/QUALITY OF ESTATE

DADE COUNTY v. CITY OF NORTH MIAMI BEACH, 69 So.2d 780 (Fla. 1953): Land granted to county for park, with clause for reversion; not a discontinuance to constitute abandonment where county exercised dominion, planned for improvement and no time limit in deed; equity abhors a forfeiture, especially against the public.

FLORIDA POWER CORP. v. WENZEL, 113 So.2d 747 (Fla. 2nd DCA 1959): Condemnor can't be required to take more than is needed; here took trees without taking land on which they stood.

ROBB v. ATLANTIC COAST LINE RAILROAD, 117 So.2d 534 (Fla. 2nd DCA 1960): Deed conveying land in form of general warranty deed purpose of conveyance "for right of way purposes" did not create less than a fee simple title; consideration \$1; words of forfeiture must be present; language is only a covenant, not condition subsequent or forfeiture.

MILLER v. FLORIDA INLAND NAVIGATION DIST., 130 So.2d 615 (Fla. 1st DCA 1961): Court may not invade discretion of condemnor with respect to extent of use or time during which it may be enjoyed, in absence of clear showing of oppression, actual fraud or bad faith; illegal to take greater quantity than needed or greater interest than is required; the anticipated result, however beneficial to the taxpayers is irrelevant to question of the power of eminent domain and the extent to which it may be exercised.

STATE v. JACKSONVILLE EXPRESSWAY AUTH., 139 So.2d 135 (Fla. 1962): Legislation requiring property rights to be acquired in fee simple, was intended to apply only where land itself is needed as distinguished from an appurtenance. Authority has statutory power to acquire by condemnation easements through the air in perpetuity. In absence of expressed statutory requirement condemnor may exercise discretion as to quality and quantum of estate needed.

CLARK v. GULF POWER CO., 198 So.2d 368 (Fla. 1st DCA 1967): Order of Taking improper where granted utility rights of ingress and egress over existing private roads and at such points as might reasonably and conveniently provide access to right of way required, in that rights of ingress and egress should have been limited to described areas.

STAPLIN v. CANAL AUTH., 208 So.2d 853 (Fla. 1st DCA 1968): Broad discretion of public authority as to amount, and estate or interest sought; should consider present and future demands in making determination.

CLOUSE v. MARION CO., 214 So.2d 364 (Fla. 1st DCA 1968): County attempting to take fee, resolution says to take easement; landowner contesting right to take fee should be allowed to introduce evidence that agent of SRD tried to get easement, against objection saying constituted an inadmissible compromise negotiation.

WRIGHT v. DADE COUNTY, 216 So.2d 494 (Fla. 3rd DCA 1968): County entitled to acquire fee and not limited to temporary interest even though immediate use to which parcel would be put would not continue for substantial period of time and absence of definite plans for intended later use.

LITZEL v. CANAL AUTH., 230 So.2d 164 (Fla. 1st DCA 1969): Evidence that it would be convenient to have fee simple title does not establish necessity; desired fee simple so hold United States harmless from lawsuits and for recreational purposes.

DOT v. MYERS, 237 So.2d 257 (Fla. 1st DCA 1970): Insufficient evidence established that amount of land sought for interchange exceeded amount needed; only expert which testified for Department said land necessary for highway safety; quantity and quality of land needed will vary with each project.

CANAL AUTH. v. MILLER, 243 So.2d 131 (Fla. 1970): Condemnor's original determination of easement sufficient, then sought supplemental Order of Taking to obtain fee based on letter Corps of Engineers requesting fee simple; condemnor did not establish necessity.

JONES v. CITY OF TALLAHASSEE, 266 So.2d 382 (Fla. 1st DCA 1972): Determination of condemnor as to quantity and estate required is legislative function and may not be disturbed in absence of clear and convincing showing of bad faith, oppression or gross abuse of discretion; city took easement, substantial rights in land left to landowner so he was not entitled to recover entire market value of fee. See 281 So.2d 333.

LESLIE ENTERPRISES, INC. v. METROPOLITAN DADE COUNTY, 293 So.2d 73 (Fla. 3rd DCA 1974): No time limit for reversion means reasonable time; no reversion where county delays in developing for several years until demand for such occurs.

CENTRAL & SOUTHERN FLORIDA FLOOD CONTROL DIST. v. SURRENCY, 302 So.2d 488 (Fla. 2nd DCA 1974): No reverter where land granted in four section; construction not required in all four section; where legal description not separate reverter mentioned a single right of way.

CITY OF MIAMI v. COX, 313 So.2d 443 (Fla. 3rd DCA 1975): Trial court's determination of necessity presumed correct; strong public demand or desire is not sufficient to prove necessity.

STACK v. OKALOOSA COUNTY, 347 So.2d 145 (Fla. 1st DCA 1977): Court granted county an easement by prescription; reversed, no notice or opportunity to defend against a prescriptive easement (which was gratuitously granted by trial judge).

KNAPPEN v. DOT, 352 So.2d 885 (Fla. 2nd DCA 1977): Design called for 65 foot right of way; Department sought 80 foot right of way over owner's land since the Department thought such would improve chances of attracting federal funds; property not necessary and Order of Taking vacated; taking of each additional foot caused severe hardship; parking tight; Department admitted using design for 65 foot right of way just north and should not be questioned solely on basis of opinion of one expert against that of another (like choice of routes, condemning authority entitled to liberal choice).

KLATT v. FLORIDA POWER AND LIGHT, 414 So.2d 213 (Fla. 4th DCA 1982): Florida Power and Light admitted ten foot strip was all that was needed to construct transmission lines, but acquired thirty feet to accommodate future widening of road. Court held there was insufficient evidence to establish necessity of taking extra twenty foot corridor, since Florida Power and Light produced no competent evidence of county's intention to widen the road.

CANAL AUTH. v. HARBOND, INC., 433 So. 2d 1345 (Fla. 5th DCA 1983): There is no reversion of condemned property where fee simple is taken and there is either failure to use or discontinuance of use which impelled the taking.

CANAL AUTH. v. MAINER, 440 So. 2d 1304 (Fla. 5th DCA 1983): Where condemnor only has an easement, and its right to use the property has been lost or the public use has ended, the easement is extinguished, and all of its rights revert to the owner of the fee.

MAINER v. CANAL AUTH., 467 So.2d 989 (Fla. 1985): When condemnor acquires property in fee simple in good faith for public purposes, condemnor may subsequently convert it to other uses without any impairment of its title or its obligation to original owners. Once condemnation is complete, condemnor occupies same status as bona fide purchaser for value. Reverses Canal Authority v. Ocala Mfg. Co., 365 So.2d 1060 (Fla. 1st DCA).

BELVEDERE DEVELOPMENT v. DOT, 476 So.2d 649 (Fla. 1985): Taking of riparian rights which condemnees attempted to sever demanded compensation.

TRAILER RANCH, INC. v. CITY OF POMPANO BEACH, 500 So.2d 503 (Fla. 1986): Easement "across, over and under" owner's land did not grant equivalent of fee title. Evidence shows that title was as much as necessary to build, maintain and repair the underground pipe. Interest acquired was a perpetual utility easement, not fee simple estate and owners could continue to use their land in any manner not inconsistent with easement use.

BROWARD COUNTY v. STEEL, 537 So.2d 650 (Fla. 4th DCA 1989): Discretion of county in condemning fee simple should not be disturbed if county shows reasonable necessity and landowner fails to show fraud, bad faith, or gross abuse of discretion. uncertainties in the project do not justify conditional grant of Order of Taking.

DOT v. EDWARDS, 545 So.2d 479 (Fla. 2nd DCA 1989): No loss of access to I75 (Alligator Alley) because landowner did not have any such right of access. Earlier deed to state granted state all rights of ingress and egress reserving to the landowner the right of access from remaining property to any service road which may be built on outer 50' of right-of-way. Designated access points referred to by expert, did not exist under the relevant documents and thus created no rights of access.

ALACHUA COUNTY v. WAGNER, 581 So.2d 948 (Fla. 1st DCA 1991): Trial court is required to give deference to condemning authority's exercise of discretion in deciding to seek fee-simple title rather than an easement. Landowner must prove by competent, substantial evidence that county's conclusion was an abuse of discretion or was reached in bad faith.

RANGE OF TESTIMONY/VERDICT

MEYERS v. CITY OF DAYTONA BEACH, 30 So.2d 354 (Fla. 1947): Award cannot be less than lowest value testified to; condemnor said \$7,734, condemnee said loss of income \$600/month, condemnor said rebuild in six weeks, verdict of \$7,925 short of full compensation, since minimum value based on evidence was \$8,534.

DADE COUNTY v. RENEDO, 147 So.2d 313 (Fla. 1962): Where experts produced and their testimony not susceptible of different interpretations, verdict must not be less than lowest or higher than highest.

FLEISSNER v. DOT, 298 So.2d 547 (Fla. 2nd DCA 1974): Award must be within range of testimony of each separate item of damage.

6 DOT v. SHAW, 303 So.2d 75 (Fla. 1st DCA 1974): Only evidence adduced as to value of home was that by condemnor, jury was without authority to award any more or any less.

STEWART v. ALACHUA COUNTY, 320 So.2d 33 (Fla. 1st DCA 1975): Business damages must be within range of testimony.

BEHM v. DOT, 336 So.2d 579 (Fla. 1976): Fact no money valuation given by condemnor did not oblige judge and jury to adopt condemnee's testimony as to value; evidence on severance was in dispute; condemnee's testimony represents maximum amount requested and awardable.

GARCIA v. DOT, 342 So.2d 522 (Fla. 3rd DCA 1977): DOT's appraiser found no severance, established range of \$0 to \$36,750 and thus award of \$12,735 was within range of testimony; jury not bound by landowner's testimony; although condemnor said no severance damage when owner says severance damage, condemnor can show special enhancement.

DOT v. DENMARK, 366 So. 2d 476 (Fla. 4th DCA 1979): The failure to object to an inconsistent verdict before discharge of the jury waives the error.

DOT v. DECKER, 408 So.2d 1056 (Fla. 2nd DCA 1981): Error to grant directed verdict on fair market of easement merely because DOT's appraisals were stricken.

COUNTY OF VOLUSIA v. NILES, 445 So.2d 1043 (Fla. 5th DCA 1984): Where jury rejected severance damages appraisals by landowner's expert witnesses, jury was authorized to bring in verdict of less than the valuations offered by those appraisers, even without rebutting testimony. (Jury award =0).

DOT v. ALLEN, 447 So. 2d 1383 (Fla. 5th DCA 1984): Jury trial verdict should be single figure for unencumbered fee value. Apportionment is issue for court alone.

MULKEY v. DOT, 448 So.2d 1062 (Fla. 2nd DCA 1984): Jury, as trier of fact, is not bound by expert testimony and may return verdict lower than that offered by landowner's expert even without rebutting testimony.

SLACTER v. CITY OF ST. PETERSBURG, 449 So.2d 1006 (Fla. 2nd DCA 1984): While jury may award business damages in amount less than that suggested by landowner's expert, once landowner establishes that there was business damages the jury should award business damages, even if nominal.

SARASOTA COUNTY v. BURDETTE, 479 So.2d 763 (Fla. 2nd DCA 1985): Trial court may not direct a verdict for the amount submitted by the landowner as to value of the land taken even though the condemnor's expert testimony was stricken. Behm does not distinguish between who has the burden of proof, but rather each element of compensation must be determined by the jury not an expert.

DOT v. FORTUNE FEDERAL, 496 So. 2d 960 (Fla. 2nd DCA 1986): Where juror initiated conversation with condemnor's attorney after jury was discharged, record did not show owner was entitled to interview jury, where juror testified verdict was based on law and evidence, rather than extrinsic matters.

PALLADINO HOLDING CORP. v. BROWARD COUNTY, 504 So. 2d 465 (Fla. 4th DCA 1987): When evidence is clear, sufficient and free of conflict, trial judge has authority to amend the verdict.

ROADWAY EXPRESS, INC. v. DADE COUNTY, 537 So.2d 594 (Fla. 3rd DCA 1988): Jury verdict not reversible where supported by substantial competent evidence and fall within range of experts' testimony.

DOT v. WEGGIES BANANA BOAT, 545 So.2d 474 (Fla. 2nd DCA 1989): Reversed order of new trial where following reading of verdict, poll of jurors, and discharge of jury, two jurors informed judge that the verdict was not unanimous and that their responses during polling were not truthful. New trials can not be based upon juror's "turn around" position.

DOT v. WEGGIES BANANA BOAT, 576 So.2d 722 (Fla. 2d DCA 1990): Court could not grant new trial after mandate issued ordering judgment entered consistent with verdict.

INDIAN RIVER COUNTY v. INDIAN RIVER WEST, INC., 609 So.2d 713 (Fla. 4th DCA 1992): Jury verdict of \$365,000 was reinstated, even though lowest testimony was \$365,200. The \$200 discrepancy is so slight as to fall within principle of de minimus non curat lex.

- DOT v. DUPLISSEY, 751 So.2d 117 (Fla. 5th DCA 2000): Trial court erred in granting new trial, because jury was allowed to render verdict less than DOT's good faith estimate after trial judge struck DOT's severance damage testimony. Jury is not required to accept the uncontroverted opinion of owner's expert.

RELOCATION

DOT v. SHAW, 303 So.2d 75 (Fla. 1st DCA 1974): Replacement housing issue, can apportion land value and home value for such purpose and apply percentage to verdict to determine amount of replacement housing allowance.

DOT v. GRANT MOTOR COMPANY, 345 So.2d 843 (Fla. 2nd DCA 1977): No payment of fees and costs for relocation under federal act.

MALONE v. DOT, 438 So.2d 857 (Fla. 3rd DCA 1983): Cost of architect to make as-built drawings for relocation is compensable.

ACKERLEY COMMUNICATIONS OF FLA. v. HENDERSON, 881 F.2d 990 (11th Cir. 1989): Uniform Relocation Assistance and Real Property Acquisition Policies Act does not create enforceable rights, privileges or immunities such that billboard owners may bring a private right of action under §1983. Administrative Procedures Act is exclusive remedy.

SKIFF'S WORKINGMAN'S NURSERY v. DOT, 557 So.2d 233 (Fla. 4th DCA 1990): Held that impact fees which relocated business had to pay to obtain a building permit were proper reimbursable expenses.

FORMAN'S DAIRY PALM NURSERY v. DOT, 608 So.2d 79 (Fla. 4th DCA 1992): Under Federal Uniform Relocation Assistance Act the definition of "displaced person" includes farms or businesses dislocated indirectly from federally financed acquisition, even when dislocation caused by conduct of third party.

RES JUDICATA

WILTON v. ST. JOHNS COUNTY, 123 So. 527 (Fla. 1929): Adjudications upon preliminary questions of exercise of power of eminent domain are binding between parties and cannot be again litigated between same parties.

CARLOR CO., INC. v. CITY OF MIAMI, 62 So.2d 897 (Fla. 1953): Rules governing res judicata are applicable to condemnation proceedings.

COLUMBIA SUSSEX CORP., INC. v. DOT, 425 So.2d 90 (Fla. 1st DCA 1982): When issue of damages suffered by owner of property adjoining condemnee's property was raised and determined below and in which adjoining landowner was a party, adjoining landowner was precluded from further litigating such question against the condemnor.

CANAL AUTH. v. HARBOND, INC., 433 So.2d 1345 (Fla. 5th DCA 1983): Landowner may not later attack judgment in eminent domain on ground that condemnor had abandoned original project, where necessity for taking had been put in issue in original condemnation proceeding.

ALBRECHT v. STATE, 444 So.2d 8 (Fla. 1984): Landowner's claim for uncompensated taking resulting from agency's denial of permit was not barred by res judicata or estoppel by judgment that determined challenged agency action was proper. Taking claim required proof of facts not relevant to agency's denial of permit claim. However, propriety of agency action must be finally determined before claim for inverse condemnation exists.

JACKSONVILLE TRANSPORTATION AUTH. v. CONTINENTAL EQUITIES, INC., 462 So.2d 74 (Fla. 1st DCA 1985): Plaintiff's claim for compensation in eminent domain proceeding for taking of equitable interest was barred by res judicata where question of Plaintiff's ownership interest was previously litigated and adjudicated adversely to Plaintiff, with Plaintiff participating in proceedings.

MAINER v. CANAL AUTH., 467 So.2d 989 (Fla. 1985): Absent fraudulent intent or bad faith at time of taking, fee simple title taken by condemnor through condemnation, settlement or donation could not be collaterally attacked on basis of failure or discontinuance of use originally intended for land taken. Overrules Canal Auth. V. Ocala Mfg., 365 So.2d 1060.

KEMPFER v. ST. JOHNS RIVER MANAGEMENT DIST., 475 So.2d 920 (Fla. 5th DCA 1985): Extrinsic fraud necessary to secure cancellation or rescission of prior conveyance proceedings relates to: 1) gross defects in jurisdiction of the court or 2) fraud on the court.

CONTINENTAL EQUITIES INC., v. JACKSONVILLE TRANSPORTATION AUTH., 496 So.2d 171 (Fla. 1st DCA 1986): Res judicata not applicable when breach of contract claim based on equitable reverter interest in property was not raised in earlier appeals.

CRIGGER v. FLORIDA POWER CO., 509 So.2d 1322 (Fla. 5th DCA 1987): Prior appellate decision as to size of easement and taking becomes law of the case and res judicata. If more land is needed, must file new eminent domain proceedings.

RESOLUTION

SRD v. SOUTHLAND, INC., 117 So.2d 512 (Fla. 1st DCA 1960): Resolutions constitute an administrative determination as to necessity, which though presumptively valid is proper subject of judicial inquiry when timely raised.

CITY OF MIAMI BEACH v. CUMMINGS, 233 So.2d 842 (Fla. 3rd DCA 1970): Where proceedings null and void because of city's failure to deposit amount fixed as compensation, resolution authorizing city to acquire property also became null and void and was not proper or legal to authorize city in subsequent proceeding. See 266 So. 2d 122.

CHALMERS v. FLORIDA POWER AND LIGHT, 245 So.2d 285 (Fla. 1st DCA 1971): Court has no jurisdiction over eminent domain proceeding where resolution is silent as to estate or interest sought, even though petition signed by attorney alleged that it sought an easement.

TOSOHATCHEE GAME PRESERVE v. CENTRAL AND SOUTHERN FLA. FLOOD CONTROL DIST., 265 So.2d 681 (Fla. 1972): Petition must be accompanied by an authorizing resolution adopted prior to the initiation of eminent domain proceeding; statute stating requirements for petition must be strictly construed and substantially complied with.

GULF POWER v. STACK, 296 So.2d 572 (Fla. 1st DCA 1974): Failure to attach resolution, which was passed two weeks prior to commencement of action authorizing acquisition, to Complaint violated statutes even though filed 1 ½ months after commencement of action.

CENTRAL AND SOUTHERN FLA. FLOOD CONTROL DIST. v. WYE RIVER FARMS, INC., 297 So. 2d 323 (Fla. 4th DCA 1974): Resolution constitutes an administrative determination as to the necessity and such determination is presumptively valid; presumption should not be overcome unless it can be shown that determination motivated by bad faith, fraud, or constituted a gross abuse of discretion.

SALFI v. DOT, 312 So.2d 781 (Fla. 4th DCA 1975): The cause could not be revived and jurisdiction created by amendment to the complaint to which was attached a resolution adopted subsequent to the date of the original institution of the proceedings.

CITY OF MIAMI v. COX, 313 So.2d 443 (Fla. 3rd DCA 1975): Resolution reciting finding for need of land does not raise the presumption of necessity.

CITY OF CLEARWATER v. JANET LAND CORP., 343 So.2d 853 (Fla. 2nd DCA 1976): Where copies of resolution and ordinance authorizing condemnation were attached to complaint and an allegation was made that a prepared survey had been filed, failure of city to prove these matters didn't deprive court of jurisdiction; however, these prerequisites should be proved at Order of Taking and must be proved prior to final judgment; although not void for any lack of jurisdiction, however, if appeal sought it would likely have reversed order.

FLORIDA EAST COAST RY. CO. v. CITY OF MIAMI, 346 So.2d 621 (Fla. 3rd DCA 1977): Resolution grossly inadequate where failed to set forth necessity, public purpose, estate or interest, and legal description; jurisdiction could not be cured by subsequently adopted resolution. See 286 So. 2d 247; 321 So. 2d 545.

HODGES v. JACKSONVILLE TRANSPORTATION AUTH., 353 So.2d 1211 (Fla. 1st DCA 1977): General counsel or his assistant has authority to sign Declaration of Taking pursuant to Chapter 74, Fla. Stat., although resolution simply directs office of general counsel to institute proceedings to acquire fee simple title to land; no need for a specific resolution to proceed under Chapter 74, Fla. Stat.

SALES TO CONDEMNING AUTHORITIES

CITY OF TAMPA v. TEXAS CO., 107 So.2d 216 (Fla. 2nd DCA 1958): Sales to one with power to condemn not admissible to show value by sale of like property.

CENTRAL & SOUTHERN FLOOD CONTROL DIST. v. DINKINES, 165 So.2d 189 (Fla. 3rd DCA 1964): Sales to one with power to condemn not admissible to prove value if factual condition shows sale not free and voluntary; jury question whether sale free and voluntary.

DOT v. ESPEY, 413 So.2d 71 (Fla. 3rd DCA 1982): Court properly allowed jury to consider sale to condemning authority subsequent to date of taking.

FLORIDA DEPT. OF REVENUE v. ORANGE COUNTY, 620 So.2d 991 (Fla. 1993): A property transfer is immune from taxation if it occurs as a result of out-of-court settlement of condemnation proceeding.

SETTLEMENT

CITY OF MIAMI v. COCONUT GROVE MARINE PROPERTIES, INC., 358 So.2d 1151 (Fla. 3rd DCA 1978): A settlement agreement which results in a final judgment conclusively determines necessity; the amount of compensation; public purpose and the condemnor's right to condemn. A settlement agreement and final judgment in condemnation may not be attacked so as to allow additional damages without allegation and proof of extrinsic fraud.

DOT v. PLUNSKY, 267 So.2d 337 (Fla. 4th DCA 1972): Law encourages good faith settlements fairly made by competent parties. Settlements forced or not agreed to deprive litigant of due process and of his day in court, and cannot be sanctioned.

DOT v. SHEPARD, 382 So.2d 45 (Fla. 2nd DCA 1979): Condemnee, who by settlement receives sum greater than the good faith estimate of value, is not entitled to interest on the difference between the settlement and the good faith estimate of value.

BROWARD COUNTY v. CONNER, 660 So.2d 288 (Fla. 4th DCA 1995): In eminent domain action with county, a settlement agreement must be signed by party paying judgment and part performance does not remove oral agreement from the Statute of Frauds unless there is payment of part or all of consideration. Since statute required commission approval, county attorney could not bind county by his actions.

CLAYTON v. SCHOOL BOARD OF VOLUSIA COUNTY, 667 So.2d 942 (Fla. 5th DCA 1996): Settlement of eminent domain case prior to trial becomes a negotiated purchase, so county must comply with statutory purchase requirements. Quashed, 691 So.2d 1066 (Fla. 1997) for lack of standing.

M & C ASSOCIATES, INC. v. DOT, 682 So.2d 640 (Fla. 2d DCA 1996): Terms in settlement agreement that are merged into the stipulated final judgment are enforceable even though items in settlement are not cognizable issues in the eminent domain case. When parties enter into settlement agreement, the rights and duties of the parties are merged into that agreement and are binding on the parties.

SEVERANCE DAMAGES

JAHODA v. SRD, 106 So.2d 870 (Fla. 2nd DCA 1958): "Before and after" rule is proper for evaluation of property.

DEAN v. SRD, 165 So.2d 257 (Fla. 3rd DCA 1964): Location of road on land close to church which impairs usefulness for church purposes constitutes element of damage; condemnor did not object. See 184 So. 2d 517.

STACK v. SRD, 237 So.2d 240 (Fla. 1st DCA 1970): Testimony to show land part of larger tract for purposes of showing severance damage is admissible.

DOT v. BYRD, 254 So.2d 836 (Fla. 1st DCA 1971): Testimony of condemnor's appraiser, no severance because taking of motel parking could be relocated on remaining property (shuffle board) was based on misconception of law and properly excluded. Disapproved in Patel, 641 So.2d 40 (Fla. 1994).

PEBBLES v. CANAL AUTH., 254 So.2d 232 (Fla. 1st DCA 1971): Where condemnor's appraiser testified no severance in taking portion of parcel fronting on navigable river was based on erroneous concept of law in that access from remainder to pool permissive across strip owned in fee by condemnor, it was error not to strike testimony.

NICHOLS v. DOT, 294 So.2d 675 (Fla. 1st DCA 1974): Great reduction in number of parking spaces to serve grocery store and room rentals showed severance damages; evidence undisputed.

WHITEHEAD v. FLORIDA POWER AND LIGHT, 318 So.2d 154 (Fla. 2nd DCA 1975): Evidence properly excluded where tended to show the cost of operating two quarries instead of one.

GARCIA v. DOT, 342 So.2d 522 (Fla. 3rd DCA 1977): DOT's witness can testify to enhancement although he found no severance damage where landowner's witness testified to severance.

CITY OF HOLLYWOOD v. JARKESY, 343 So.2d 886 (Fla. 4th DCA 1977): Jury not required to accept evidence presented only by witnesses with regard to severance damages; jury could properly return verdict of severance damages lower than amount testified to by any witness.

DOT v. WEST PALM BEACH GARDEN CLUB, 352 So.2d 1177 (Fla. 4th DCA 1977): Award of severance damages for purpose of curing highway noise by constructing wall to preserve tranquility of park was error.

KENDRY v. DOT, 366 So.2d 391 (Fla. 1978): Where violation of a restriction in a permanent easement amounts to a taking, the landowner is entitled to damages to the remainder caused by the taking.

DOT v. SAMTER, 393 So.2d 1142 (Fla. 3rd DCA 1981): To justify severance damages comparable sales of similar properties must be used.

DOT v. CAPITAL PLAZA, INC., 397 So.2d 682 (Fla. 1981): Severance damages are not available for change in traffic flow caused by median constructed within previously owned right-of-way. Landowners have no property right in the continuation or maintenance of traffic flow past his property.

LEEDS v. CITY OF HOMESTEAD, 407 So.2d 920 (Fla. 3rd DCA 1981): Emission of noise, noxious odors and effluent which allegedly decreased value of remainder were not damages caused by the taking but damages resulting from manner in which the lift station was constructed. These consequential damages must be sought by separate claim in tort and are not severance damages recoverable in eminent domain proceedings.

LEE COUNTY v. EXCHANGE NATIONAL BANK OF TAMPA, 417 So.2d 268 (Fla. 2nd DCA 1982): In partial taking, landowner generally only entitled to such damages to the remainder as are attributable to the use of activity on the land which is taken and is not entitled to such consequential damages from activity occurring on land which is taken from others; unless the use of the part taken constitutes an integral and inseparable part of a single use to which the land taken and other adjoining land is put; i.e. construction of highway. Held: No severance to remainder when part taken was used for buffer zone for new airport and no actual construction was done on part taken.

COUNTY OF VOLUSIA v. NILES, 445 So.2d 1043 (Fla. 5th DCA 1984): Where jury rejected severance damage appraisals by landowner's expert witnesses, jury was authorized to bring in verdict of less than the valuations offered by those appraisers, even without rebutting testimony. (Jury award = 0). Also, tracts are prima facie distinct if physically separate but may be treated as one parcel for purposes of condemnation for severance damages upon proof of proximity and of an integration of use so substantial that they are in effect one.

MULKEY v. DOT, 448 So.2d 1062 (Fla. 2nd DCA 1984): The general measure of severance damages may be replaced by a cost to cure approach in instances where such cost is less than the decreased value of the remainder. Cost of restoration to original condition is not appropriate as a mitigating factor of severance damages where restoration necessitates going outside the remaining portion of the tract. Factors which must be established to treat adjoining properties as a single tract for purposes of computing severance damages include physical contiguity, unity of ownership, and unity of use.

CANNEY v. CITY OF ST. PETERSBURG, 466 So.2d 1193 (Fla. 2nd DCA 1985): General rule for calculating severance damages is the "before and after" rule, however, exception exists where injury to remainder can be "cured" at cost which is less than severance damages calculated on before-and-after basis; such cost to cure basis is simply method for reducing severance damages condemnor would otherwise have to pay on before and after basis.

DOT v. FRENCHMAN, INC., 476 So.2d 224 (Fla. 4th DCA 1985), cert. discharged 495 So. 2d 750 (Fla. 1986): Condemnee must first present evidence that it sustained severance damages before testimony on the cost to cure may be admitted.

DOT v. NESS TRAILER PARK, 489 So.2d 1172 (Fla. 4th DCA 1986): No severance damages without direct impairment. Severance damages not proper where use of property taken did not directly impair access to remaining property. No severance damages due to overall design of project, but only for losses resulting from taking.

FLORIDA POWER AND LIGHT v. ROBERTS, 490 So.2d 969 (Fla. 5th DCA 1986): Severance damages may be based on comparable sales of property near power lines to establish relationship between apprehension and market values. See 518 So.2d 899 (Fla. 1987)

DOT v. SUN ISLAND BOATS, INC., 510 So.2d 603 (Fla. 3rd DCA 1987): Severance damages are awarded generally only where the property fits into a category of trade fixtures. Boats, fishing poles, shovels, ski ropes, etc., are not trade fixtures but personal property which the Department did not take, damage or destroy and therefore need not pay just compensation.

PARTYKA v. DOT, 606 So.2d 495 (Fla. 4th DCA 1992): Not entitled to severance damages simply because of the increased level of the crown of "improved" road. Severance damages are compensable to extent increased grade on property taken necessitates additional fill to her remaining property over and above that necessary prior to the taking. Court erred by refusing to admit site plans of remaining land at its highest and best use under existing zoning to demonstrate the remainder's utility before and after taking.

HUBSCHMAN v. BOARD OF COUNTY COMMISSIONERS, COLLIER COUNTY, 610 So.2d 691 (Fla. 2d DCA 1992): Severance damages includes diminution in value caused by aesthetic loss caused by use or activity upon the land which has been taken. (Affluent tanks to be built of part taken).

BROWARD COUNTY v. PATEL, 641 So.2d 40 (Fla. 1994): The probability that a property's value may be enhanced or diminished by changes to land use regulations is a factor for jury to consider based on expert testimony on way probability affects value of property and severance damages. Party asserting availability of future rezoning or variance must demonstrate a reasonable probability that rezoning or variance will be granted within reasonable time. The availability of cure is relevant only to extent it may have impact upon fair market value as of moment of taking.

ORLANDO/ORANGE COUNTY EXPRESSWAY AUTH. v. LATHAM, 643 So.2d 10 (Fla. 5th DCA 1994): Verdict reversed because court erred in prohibiting petitioner from presenting expert testimony on issue of vested right to interchange to contradict severance damages.

DOT v. ZYDERVELD, 647 So.2d 308 (Fla. 5th DCA 1994): Trial court erred in allowing testimony on severance damages after ruling map of reservation caused temporary taking of entire property.

CITY OF OCALA v RED OAK FARM, INC., 673 So.2d 86 (Fla. 5th DCA 1996): City was condemning a power easement and at issue in the case, both on the question of the valuation of the easement and severance damages, was whether landowner would be allowed any use of the property over which the easement and whether severance damages were suffered as a result of the new easement or the previously existing FPC easement. The appellate court held the trial court improperly refused to admit the City's evidence concerning the existing FPC easements.

RALLY'S HAMBURGERS v. DOT, 697 So.2d 535 (Fla. 1st DCA 1997): Severance damages include loss of value to portion of leasehold not taken, including fixtures attached to leasehold.

TAYLOR v. DOT, 701 So.2d 610 (Fla. 2d DCA 1997): Court held owner could seek severance damages for consequences of taking owner's land and adjacent properties for environmental mitigation. Court adopted exception in Exchange National Bank, 417 So.2d 268 (Fla. 2d DCA 1983), which allows severance damages to remainder where use of land taken constitutes an integral and inseparable part of a single use to which the land taken and adjoining land is put.

DOT v. MICHELIN, 702 So.2d 1326 (Fla. 4th DCA 1997): Court held it was improper for owner's appraiser to find severance damages for loss of parking spaces due to compliance with police power regulation requiring handicap parking requirement.

CITY OF NATIONAL BANK OF FLORIDA v. DADE COUNTY, 715 So.2d 350 (Fla. 3d DCA 1998): Held it was proper to exclude conceptual site plan and appraisal testimony based on conceptual site plan, since site plan was too speculative to support award of severance damages. Not proper to base severance damages on change of use from conceptual site plan.

DOT v. DUPLISSEY, 751 So.2d 117 (Fla. 5th DCA 2000): Trial court erred in granting new trial, because jury was allowed to render verdict less than DOT's good faith estimate after trial judge struck DOT's severance damage testimony. Jury is not required to accept the uncontroverted opinion of owner's expert.

NUTT v. ORANGE COUNTY, 769 So.2d 453 (Fla. 5th DCA 2000): Severance damages were properly denied for damages that might occur from some uncertain future project.

SURVEY

MAZEROLLE v. DOT, 266 So.2d 364 (Fla. 1st DCA 1972): Error not to allow condemnee's surveyor to testify when ambiguity as to location and amount of property.

DADE COUNTY v. PAXSON, 270 So.2d 455 (Fla. 3rd DCA 1972): City not required to survey and locate its area or line of construction in petition filed to acquire park purposes.

MUSLEH v. DOT, 299 So.2d 101 (Fla. 1st DCA 1974): Survey prepared by experienced surveyor should be admitted even though description different than that set forth in Complaint.

CITY OF ST. PETERSBURG v. VINOY PARK HOTEL, 352 So.2d 149 (Fla. 2nd DCA 1977): Fact survey didn't close in view of city's expert's statement that he could locate property from description didn't preclude condemnation.

TAX ASSESSMENT

WILLIAMS v. SIMPSON, 209 So.2d 262 (Fla. 1st DCA 1968): Appraisal based on ultimate potential use for commercial usage which witness estimated would not come into being for five years and further based on assumption property could be rezoned was speculative and conjectural and not competent in determining value for tax assessment.

DIST. SCHOOL BOARD OF LEE COUNTY v. ASKEW, 278 So.2d 272 (Fla. 1973): Just valuation of taxable property required by constitution is synonymous with fair market value.

TRAD v. CITY OF JACKSONVILLE, 279 So.2d 384 (Fla. 1st DCA 1973): Where condemnor is same legal entity which assessed for purpose of taxation and condemnor's expert testified to $\frac{1}{2}$ of assessed value, assessment should be admitted as an admission against interest.

KIRKPATRICK v. CITY OF JACKSONVILLE, 352 So.2d 545 (Fla. 1st DCA 1977): Inverse; error to introduce tax assessment, not broken down into value of land and value of improvements, where jury had before it only improvement value.

CITY OF SUNRISE v. STEINBERG, 563 So.2d 704 (Fla. 4th DCA 1990): Court held that City's argument was anomalous that a 1985 assessment lien applied to property determined to be "taken" in 1982 by inverse condemnation.

TRIAL

H. I. HOLDING COMPANY v. DADE COUNTY, 129 So.2d 693 (Fla. 3d DCA 1961): Trial court did not abuse its discretion in preventing landowner's attorney from asking expert how much being paid.

BENNETT v. JACKSONVILLE EXPRESSWAY AUTHORITY, 131 So.2d 740 (Fla. 1961): Trial judge had no authority to effect increase in jury verdict in eminent domain case by additur.

LANGSTON v. CITY OF MIAMI BEACH, 242 So.2d 481 (Fla. 3rd DCA 1971): Entitled to use prior testimony as to value of property by expert for impeachment purposes.

BOCA TEECA CORP. v. PALM BEACH COUNTY, 291 So.2d 110 (Fla. 4th DCA 1974): Court erred in not striking potential juror that was janitor for Palm Beach County. Once shown he was employee of county, defendant entitled to strike for cause.

JONES v. DOT, 351 So.2d 365 (Fla. 4th DCA 1977): No abuse of discretion to invoke the rule of sequestration after expert has begun testifying.

COUNTY OF VOLUSIA v. NILES, 445 So.2d 1043 (Fla. 5th DCA 1984): Litigant may not urge error with respect to instruction given at his own request.

CITY OF LIVE OAK v. TOWNSEND, 567 So.2d 926 (Fla. 1st DCA 1990): Trial court erred by refusing to excuse for cause prospective jurors who stated they would give landowners extra money for owner's resistance to taking, landowner's inconvenience, or land being taken against owner's will.

GOODMAN v. WEST COAST BRACE & LIMB, INC., 580 So.2d 193 (Fla. 2d DCA 1991): Exclusion of witness from courtroom during trial is a matter peculiarly within discretion of the trial court. When it is shown that the presence of a witness will not harm the party requesting exclusion and it is shown that it will be beneficial to the opposing party to have the witness immediately available to give advice and information, it is within the trial court's discretion to allow the witness to remain.

CITY OF ORLANDO v. CONE, 615 So.2d 793 (Fla. 5th DCA 1993): No presumption of correctness attends a landowner's testimony of value of property.

WHITE v. DOT, 645 So.2d 114 (Fla. 5th DCA 1994): Held it was error to publish to jury portions of appraisal report on cross examination of owner since owner elected not to call expert to testify at trial.

WATER AND WATERCOURSES

PATY v. TOWN OF PALM BEACH, 29 So.2d 363 (Fla. 1947): Construction of seawalls, bulkheads and groins to protect lands from damages of destruction by action of the sea was within lawful authority of town.

DUDLEY v. ORANGE COUNTY, 137 So.2d 859 (Fla. 2nd DCA 1962): County's dam, to create right to compensation for flooding must 1) be direct result of construction of county dam, and 2) be an actual, permanent invasion of owner's land, rather than mere injury.

ELLIOTT v. HERNANDO COUNTY, 281 So.2d 395 (Fla. 2nd DCA 1973): Complaint alleging artificial construction and elevation of road, causing diversion of natural flow of rainwater, resulting in flooding of owner's property, which allegedly rendered land unsuitable and unsanitary, stated cause of action on theory that substantial property rights had been taken, and compensation would be required.

DOT v. BURNETTE, 384 So.2d 916 (Fla. 1st DCA 1980): No person has the right to gather surface waters that would naturally flow in one direction by drainage, ditches, dams or otherwise, and divert them from their natural course and cast them upon the lands of the lower owner to his injury. Court held diversion of drainage by Department to be a continuing tort which could be enjoined and damages could be sought under 768.28, Fla. Stat.

BELVEDERE DEVELOPMENT CORP. v. DOT, 476 So.2d 649 (Fla. 1985): Condemnor may not reserve riparian rights to the condemnee in the absence of an express bilateral agreement to do so with the condemnee. For condemnation purposes, "reservation" of riparian rights without compensation is an unconstitutional taking.

HILLSBOROUGH COUNTY v. GUTIERREZ, 433 So.2d 1337 (Fla. 2nd DCA 1983): Property owners whose land was flooded after county drainage plan which when constructed impeded natural flow of rainfall were entitled to recover in inverse condemnation action for land which had previously been used for farming but was rendered useless for farming purposes.

SAND KEY ASSOC. v. BOARD OF TRUSTEES, ETC., 458 So.2d 369 (Fla. 2nd DCA 1984): At common law, littoral or riparian rights included the right of ingress and egress from the water to the land and the right in the land growing out of accretion or reliction. Such rights are vested and cannot be taken away without compensation.

DIAMOND K CORP. v. LEON COUNTY, 677 So.2d 90 (Fla. 1st DCA 1996): Held court properly denied inverse claim which alleged property does not properly drain to nearby creek which had been widened. Ruling was without prejudice to file damage complaint seeking damages for flooding injury caused by interference with or increase of the surface water flow onto the land.

WITNESS NOT ON PRETRIAL

ROSE v. YUILLE, 88 So.2d 318 (Fla. 1956): Witness not permitted to testify when not disclosed at pretrial even though sent notice four days prior to trial naming witness, where notice did not advise what witness would testify to, whether it was material, and whether admissible if proffered.

ALVAREZ v. MAUNEY, 175 So.2d 57 (Fla. 2nd DCA 1965): Moving party has burden demonstrating modification of pretrial order.

HARSTONE CONCRETE v. IVANCEVICH, 200 So.2d 234 (Fla. 2nd DCA 1967): Witness not required to be listed on pretrial for impeachment where no indication other party would contend certain facts.

COUNTY OF BREVARD v. INTERSTATE EGR. CO., 224 So.2d 786 (Fla. 4th DCA 1969): Not error to refuse witness to testify when not listed 10 days prior to trial even though stated engineer would testify and named within 5 days.

GREEN v. SHOOP, 240 So.2d 85 (Fla. 3rd DCA 1970): Discretion of trial judge in permitting witness to testify guided largely on whether opposing party prejudiced, when not listed on pretrial statement.

MCDONALD AIR v. BROWN, 285 So.2d 697 (Fla. 4th DCA 1973): No error refuse witness to testify where no pretrial filed and no proffer of witness's testimony.

ZONING & RESTRICTIVE COVENANTS

ROTT v. CITY OF MIAMI, FLA., 94 So.2d 168 (Fla. 1957): Not entitled to have condemnation proceedings continued while litigating zoning.

SWIFT & COMPANY v. HOUSING AUTH. OF CITY OF PLANT CITY, 106 So.2d 616 (Fla. 2nd DCA 1958): Held court erred in denying defendant's right to present proof of value resulting from phosphate contents on grounds that city ordinance prohibited mining of phosphate; landowner must show (1) property is adaptable to other use, (2) reasonable probability will be put to other use in immediate future or within reasonable time, (3) market value enhanced by other use for which it is adaptable.

BOARD COM'RS STATE INST. v. TALLAHASSEE BANK & TRUST CO., 108 So.2d 74 (Fla. 1st DCA 1958): Where zoning ordinance imposed to prevent extensive improvements to property which would be condemned, testimony permitted on value without restrictive zoning.

STANINGER v. JACKSONVILLE EXPRESSWAY AUTH., 182 So.2d 483 (Fla. 1st DCA 1966): Jury permitted to consider effect of restrictive covenant; expert's opinion as to costs and reasonable probability or removal of covenant through a legal proceeding inadmissible.

CITY OF MIAMI v. SILVER, 257 So.2d 563 (Fla. 3rd DCA 1972): City refused change zoning and publicly announced intention to acquire for uses beyond present zoning, city's motive was to acquire property for less and city estopped to resist higher classification of property.

SOUTH MIAMI HOSPITAL FOUNDATION, INC., v. DADE COUNTY, 371 So.2d 1067 (Fla. 3rd DCA 1979): Jury may not consider effect of zoned right-of-way on value of property taken, citing Dade County v. Still, 377 So.2d 689 (Fla. 1979).

DADE COUNTY v. STILL, 377 So.2d 689 (Fla. 1979): Effects of right-of-way zoning ordinances must be disregarded in valuing property.

PINELLAS COUNTY v. BROWN, 420 So.2d 308 (Fla. 2nd DCA 1982): Basic rights arising from ownership of property must always be balanced against the government's powers to protect and regulate in interest of public health, safety, morals and general welfare. Zoning of land and attendant administration of zoning ordinarily gives no rise to claim for compensation by owners from zoning authority.

FLORIO v. CITY OF MIAMI BEACH, 425 So.2d 1161 (Fla. 3rd DCA 1983): Confiscatory zoning ordinance or building regulation, which is applied to real property and does not completely deprive owner of use of his land is not normally the subject of inverse condemnation.

CITY OF HOLLYWOOD v. HOLLYWOOD, 432 So.2d 1332 (Fla. 4th DCA 1983): Zoning ordinance will be deemed confiscatory if it effectively deprives property owner of beneficial use of his property by precluding any reasonable use of it.

CITY OF MIAMI SPRINGS v. J.J.T., INC., 437 So.2d 200 (Fla. 3rd DCA 1983): Even complete prohibition of previously lawful and existing business (selling liquor) does not constitute taking where owner is not deprived of all reasonable use of his property, as long as prohibition promotes health, safety, and welfare of community, and thus is valid exercise of police power.

TOWN OF LANTANA v. HOWARD, 449 So.2d 936 (Fla. 4th DCA 1984): Limitation on use of owner's property must constitute more than a prohibition against the highest and best use to be considered confiscatory.

DADE COUNTY v. NATIONAL BULK CARRIERS, 450 So.2d 213 (Fla. 1984): Appeal of denial of zoning and land use application contending a taking - remanded for consideration of inverse condemnation where action could not be both reasonable and confiscatory.

LAMAR ADVERTISING v. CITY OF DAYTONA BEACH, 450 So.2d 1145 (Fla. 5th DCA 1984): Amortization of non-conforming billboards, if period is reasonably long enough to allow sign owner to recoup his investment, is a valid alternative to compensation absent statute requiring compensation.

GRADY v. LEE COUNTY, 458 So.2d 1211 (Fla. 2nd DCA 1984): Zoning change cannot give rise to cause of action for inverse condemnation.

PINELLAS COUNTY v. ASHLEY, 464 So.2d 176 (Fla. 2nd DCA 1985): During period in which zoning ordinance was in conflict with land use plan, landowner suffered a temporary impairment of use rather than a temporary taking.

LEWIS v. CITY OF ATLANTIC BEACH, 467 So.2d 751 (Fla. 1st DCA 1985): Termination of grandfathered nonconforming uses may result in a taking for constitutional purposes unless the basis of such termination accords with applicable legal principles. Involuntary loss of liquor license terminated preexisting nonconforming zoning - not a taking or inverse condemnation.

ATLANTIC INTERNATIONAL INVESTMENT CORP. v. STATE, 478 So.2d 805 (Fla. 1985): Inverse proceedings are proper even though owner is also pursuing administrative remedies by litigating in district court. See 438 So. 2d 868 (Fla. 1st DCA 1983).

BENSCH v. METRO. DADE COUNTY, 541 So.2d 1329 (Fla. 3rd DCA 1989): Complaint in inverse condemnation dismissed where landowners failed to allege that the zoning regulations denied them of all beneficial uses, including agricultural ones, of their property and where landowners made no showing of attempt to get variance or that variance procedures were inadequate.

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EMINENT DOMAIN CASE SUMMARY SUPPLEMENT

Leon County Attorney's Office

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Updated through June 2021

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ABANDONMENT/DISMISSAL

[GOLF COURSE RESORTS, INC. v. DOT.](#), 816 So.2d 236 (Fla. 2nd DCA, 2002).

- Department's voluntary dismissal of the petition did not divest the trial court of jurisdiction to consider the motions for fees and costs.
- Department was obligated to pay attorney fees and all reasonable costs incurred by corporation and certain individuals in the defense of the eminent domain proceedings in the circuit court even though the Department voluntarily dismissed its petition to exercise right of eminent domain to condemn the property, provided allegations of interested person status, and amount of recoverable fees and costs, were proven.

[CARTER v. LAKE CNTY.](#), 840 So.2d 1153 (Fla. 5th DCA, 2003).

- County's notice to property owner in eminent domain action was a notice of voluntary dismissal, rather than a notice of dropping a party, and thus time limits for filing attorney fees motion were triggered by notice; notice effectively concluded litigation, as litigation consisted solely of owner's property at time of notice, other party had already settled with county, and owner's counsel said notice was treated as if it were a voluntary dismissal.

[VERIZON WIRELESS PERSONAL COMMUNICATIONS, L.P. v. SANCTUARY AT WULFERT POINT COMMUNITY ASS'N, INC.](#), 916 So.2d 850 (Fla. 2nd DCA, 2005).

- Once land has been acquired in fee simple for public use, either by the exercise of the power of eminent domain or by purchase or donation, the former property owner retains no interest in the land. The public use may thereafter be abandoned or the land may be devoted to a different use without any impairment of the title acquired, absent fraud or bad faith at the time of the conveyance.

[CALHOUN, DREGGORS & ASSOCIATES v. VOLUSIA CNTY.](#), 26 So.3d 624 (Fla. 5th DCA, 2009).

- County abandoned project and never filed condemnation action, precluding award of attorneys' fees and costs to landowners.
- Law firm, appraisal firm, and land planning company were not entitled to attorneys' fees and other costs incurred in defending two landowners against proposed county road widening project; even if landowners acted in good faith in retaining counsel, county abandoned project and never filed condemnation action.

[TEITELBAUM, v. SOUTH FLORIDA WATER MANAGEMENT DIST.](#), 176 So.3d 998 (Fla. 3rd DCA, 2015).

- Water management district planned to acquire landowners' property to create buffer zone to prevent flooding, but abandoned the plan after determining it was no longer feasible; rather than providing basis for independent takings claim, condemnation blight was only relevant to valuation and was addressed in takings cases by requiring the condemning authority to pay full compensation as of date of condemnation announcement, rather than a later date after the property had depreciated due to impending condemnation.

ACCESS

[DOT v. GAYETY THEATRES, INC.](#), 781 So.2d 1125 (Fla. 3rd DCA, 2001).

- By limiting direct access to commercial property from one side of a two-way roadway adjacent to the property, the Department did not substantially diminish the property owner's right of access, and thus, its road construction project did not amount to a taking under theory of inverse condemnation, even though owner's customers travelling north had to drive past the property and wind their way back, adding one-half mile to their trip.
- A taking does not occur when government merely regulates access to property under its police power, such as specifying the location of driveways in and out of abutting property, prohibiting U-turns or left turns, or establishing one-way traffic.

[JOHNSON'S SERVICES, INC. v. PINELLAS CNTY.](#), 863 So.2d 470 (Fla. 2nd DCA, 2004).

- Access rights to public roadways are “property interests,” for due process purposes.

[STATEN v. GONZALEZ-FALLA](#), 904 So.2d 498 (Fla. 1st DCA, 2005).

- While circuit court has discretion to determine type, extent, duration and location of easement, court does not have discretion to grant easement provided by statutory way of necessity except to provide access to landlocked property for uses expressly provided in statute.

[DOT v. RFT PARTNERSHIP](#), 906 So.2d 1161 (Fla. 2nd DCA, 2005).

- Proposed grade change at intersection adjacent to landowner's property that would have limited access to property would not have entitled landowner to severance damages in eminent domain proceeding involving acquisition of part of landowner's property. Thus, DOT's adoption of design modification that reduced the grade change did not entitle landowners' attorneys to attorney fees for obtaining a nonmonetary benefit for landowners; land containing intersection already belonged to DOT, and any decrease in value of landowner's remaining property due to grade change would not have been related to portion of property taken by DOT.
- A landowner's entitlement to seek damages for a limitation of access to property when the DOT takes no property from the landowner requires proof of a substantial loss of access at the time of the alteration in the road.

[USA INDEPENDENCE MOBILEHOME SALES, INC. v. CITY OF LAKE CITY](#), 908 So.2d 1151 (Fla. 1st DCA, 2005).

- The loss of the most convenient access is not a compensable taking where other suitable access continues to exist.

[CITY OF JACKSONVILLE v. WESTLAND PARK ASSOCIATES, II](#), 46 So.3d 583 (Fla. 1st DCA, 2007).

- Property owner was not entitled to award of severance damages for anticipated changes in traffic flow from construction of new median on property which city already owned, although westbound traffic onto or out of property would have to travel more circuitous route.

[CITY OF JACKSONVILLE v. TWIN RESTAURANTS, INC.](#), 953 So.2d 720 (Fla. 1st DCA, 2007).

- Westbound traffic's need to travel more circuitous route to drive onto or out of landowner's commercial property after installation of median was not “substantially diminished access” of a kind that would constitute compensable taking, and thus landowner was not entitled to severance damages regarding property that remained after taking of strip of property for widening of road; all driveways would still be open after improvements were completed.

[DOT v. FISHER](#), 958 So.2d 586 (Fla. 2nd DCA, 2007).

- There is right to be compensated through inverse condemnation when governmental action causes substantial loss of access to one's property, even though there is no physical appropriation of property itself.
- Loss of most convenient access to one's property is not compensable through inverse condemnation where other suitable access continues to exist.
- When the government physically appropriates some portion of a property owner's land, any diminished access to the property may be considered as part of the severance damages owed for the reduced value of the remainder of the land through inverse condemnation.

[WALTON CNTY. v. STOP BEACH RENOURISHMENT, INC.](#), 998 So.2d 1102 (Fla. 2008).

- Provisions of the Beach and Shore Preservation Act that fix shoreline boundary and that suspend operation of common-law rule of accretion but preserve littoral rights of access, view, and use after erosion control line (ECL) is recorded do not, on their face, unconstitutionally deprive upland owners of littoral rights without just compensation.
- State is not free to unreasonably distance upland property from the water by creating as much dry land between them as it pleases under Beach and Shore Preservation Act; there is a point where such a separation would materially and substantially impair the upland owner's access, thereby resulting in an unconstitutional taking of littoral rights.

[KIRKLAND v. CITY OF LAKE LAND](#), 3 So.3d 398 (Fla. 2nd DCA, 2009).

- City had authority, under its eminent domain power, to take land that was entirely outside, and not contiguous with, the city's boundaries, where land was taken in order to improve road access to airport located within the city, and county did not object to the taking, but rather the project was the subject of an interlocal agreement between the city and the county.

[PEMBROKE CENTER, LLC v. DOT](#), 64 So.3d 737 (Fla. 4th DCA, 2011).

- Property owner did not state claim for inverse condemnation but merely alleged that a loss of access would occur at some time in the future based upon DOT's planning activities, and mere planning activities did not cause a current loss of access so as to constitute a taking.

[JORDAN v. ST. JOHNS CNTY.](#), 63 So.3d 835 (Fla. 5th DCA, 2011).

- A County must provide a reasonable level of road maintenance that affords meaningful access to land, unless or until the county formally abandons the road.

[DOT v. BUTLER CARPET CO.](#), 231 So.3d 499 (Fla. 2nd DCA, 2017).

- Landowners' losing their most convenient means of access to their properties was not a compensable taking.
- DOT's takings were for the specific purpose of reconstructing landowners' driveways to connect the properties to the public frontage road and to construct a drainage area, landowners' claims for loss of access did not relate to this construction and instead were grounded upon the reconfiguration of highway and construction of a frontage road system, which occurred on the Department's own existing right of way, not on the land taken from the landowners.

[TLC PROPERTIES, INC. v. DOT](#), 292 So.3d 10 (Fla. 1st DCA, 2020).

- Flyover highway project would not deny billboard owner access from highway to property on which its billboard was located, such that no compensation was warranted for loss of access.

[CLARK v. CITY OF PEMBROKE PINES](#), 292 So.3d 773 (Fla. 4th DCA, 2020).

- City's destruction of landowner's access to road exceeded an exercise of police power to regulate the flow of traffic, and thus supported landowner's inverse condemnation claim against city, even though city ultimately restored landowner's deeded right-of-way, over which inaccessible road traveled for a time; barriers impeded access to road only from landowner's property, causing special damages to landowner, which were not commonplace to the general public, including elimination of his only direct means of southbound travel.

APPEALS/PRESERVATION OF ISSUE

[CAUSEWAY VISTA, INC. v. DOT](#), 918 So.2d 352 (Fla. 2nd DCA, 2005).

- The proper method to preserve an issue for appellate review regarding an inconsistent verdict is to object to the verdict before the jury is discharged.
- Property owner was required to file posttrial motion to preserve its claim for appellate review that award was inadequate.

APPORTIONMENT

[WINN-DIXIE STORES, INC. v. DOT](#), 839 So.2d 727 (Fla. 2nd DCA, 2003).

- Lessees having a leasehold interest in a parking lot are entitled to apportionment of condemnation proceeds.

[HERNDON OIL CORP. v. VIK, LTD.](#), 884 So.2d 958 (Fla. 1st DCA, 2004).

- Court should apportion compensation award according to the respective interests (of both landlord and tenant) prematurely terminated by the taking.

[SUNSHINE PROPERTIES, LLC v. DOT](#), 900 So.2d 714 (Fla. 4th DCA, 2005).

- Condemnation settlement between DOT and property owner did not include any amounts attributable to trade fixtures owned by lessees, and thus DOT, rather than owner, remained liable to lessees for any damage to trade fixtures, even though settlement agreement stated that condemnation award was “subject to claims for apportionment, if any”; leases did not give lessees the right to collect damages from owner in case of condemnation, settlement award was allocated only to land and severance damages, and lessees were represented in condemnation proceeding but did not participate in mediation that resulted in DOT's settlement with owner.

[HOULIHAN'S RESTAURANTS, INC. v. APAC-FLORIDA, INC.](#), 911 So.2d 816 (Fla. 1st DCA, 2005).

- Trial court's consideration of the value of commercial lessee's sublease right was not contrary to the plain meaning of the condemnation clause of the lease, for purposes of apportioning condemnation award between lessor and lessee, where the lease did not provide any guidance as to how the value of a sublease right was to be considered in making such apportionments.

[DAMES v. 926 CO., INC.](#), 925 So.2d 1078 (Fla. 4th DCA, 2006).

- Tenants operating a laundry business held a leasehold interest in the premises and therefore had a compensable interest in the property, allowing them apportionment of the proceeds.

[ORLANDO/ORANGE CNTY. EXPRESSWAY AUTH. v. TUSCAN RIDGE, LLC](#), 84 So.3d 410 (Fla. 5th DCA, 2012).

- Expressway authority's offer to landowners to purchase property was not so indefinite that it could not be used to determine attorney fee award where apportionment is not an issue.

APPRAISAL THEORIES/APPROACHES

[CORDONES v. BREVARD CNTY.](#), 781 So.2d 519 (Fla. 5th DCA, 2001).

- On condemnation proceeding to establish temporary easements for anti-erosion project, County appraiser's valuation of beach-front property was based on valid appraisal, using sales comparison and income approach, which considered diminishment of value to servient tenement estate due to loss of density development potential.
- In valuing easements which are not readily bought and sold in the market place, appraisers are not limited to a market approach in arriving at their valuations.

[FDOT v. ARMADILLO PARTNERS, INC.](#), 849 So.2d 279 (Fla. 2003).

- Proposed appropriation of arbor area on remainder property, as part of DOT appraiser's plan to cure partial taking of shopping center property, was not a second taking that appraiser was obligated to separately value, and thus, appraiser's opinion was admissible in condemnation proceeding on issue of value of the remainder property, where appraiser included the loss of the arbor area in determining the effect on market value of the remainder property as of the moment of the taking.

[CITY OF TAMPA v. REDNER](#), 852 So.2d 270 (Fla. 2nd DCA, 2003).

- Proper measure of damages in action that property owner brought against city on ground that rezoning of property from wet, which allowed sale of alcoholic beverages, to dry, was improper and amounted to taking of his interest in property, was reduction in income producing potential, not amount of all income lost while property sat vacant for a period of time; reduction in income producing potential was measured by subtracting annual income potential of property as zoned dry from annual income potential of property as zoned wet, multiplied by number of years property was improperly zoned.

[SYSTEM COMPONENTS CORP. v. FDOT](#), 14 So.3d 967 (Fla. 2009).

- A business-damages award based on the total cost and damages associated with relocation may not exceed the total value of the business as measured by the appropriate valuation method—whether an income-based approach (i.e., value based on current and future revenue stream discounted to a total present value), market-based approach (i.e., value based on comparison to comparable businesses existing in the particular market adjusted for the individual characteristics and risks associated with the specific business), or asset-based approach (i.e., value based on total assets net liabilities; typically used when the business is not profitable).
- The cost-to-cure approach is not an independent measure of damages for taking; it is simply a means through which the condemnee's damages may be reduced by pleading and proving reasonably implemented, hypothetical ameliorative efforts that are limited to the parent tract.
- When a qualified partial taking destroys a business at its prior location and owner chooses to relocate, business damages must be measured by probable financial impact reasonably suffered as result of the taking.

[FLORIDA DEPT. OF AGR. & CONSUMER SERVICES v. MENDEZ](#), 98 So.3d 604 (Fla. 4th DCA, 2012).

- Scientific evidence about citrus canker was relevant to evaluation of appraisers' value determinations of homeowners' destroyed trees.

[HOMESTEAD LAND GROUP, LLC v. CITY OF HOMESTEAD](#), 157 So.3d 417 (Fla. 3rd DCA, 2015).

- Purchaser of land had no legal interest in the land at time city acquired a portion of it through eminent domain, and thus purchaser, after acquiring the land, could not contest valuation of the portion taken by city, even though vendor had assigned to purchaser its rights in the taken portion and its interest in the proceedings.

[CITY OF SUNNY ISLES BEACH v. CAVALRY CORP.](#), 208 So.3d 1247 (Fla. 3rd DCA, 2017).

- Under the development approach to determine property market value in eminent domain, (1) the property is valued as of the date of taking, (2) the question for the appraiser is what a willing buyer would pay for the property in its then-existing condition on that date, for development into its highest and best use, and (3) the highest and best use may be a prospective use.
- Landowner's conceptual plans to establish the highest and best use of her man-made finger canal as a private docking facility were admissible to illustrate and support her expert appraiser's testimony as part of the development approach to determine just compensation for city's taking of part of canal to build a bridge for use as an emergency evacuation route to the mainland; the testimony was based upon the actual value of the property at the time of the taking if sold for development as a private docking facility, its highest and best use, and landowner did not seek compensation based upon what could or might be done to make the property more valuable.

ATTORNEY FEES

[HARTLEB v. DOT](#), 778 So.2d 1063 (Fla. 4th DCA, 2001).

- Landowner, who was awarded attorney fees in eminent domain proceeding and appealed but did not withdraw the funds that the DOT had deposited into the court registry to cover the judgment, was entitled to interest on those funds for the period of the appeal proceedings.

[DOT v. CNL INCOME FUND VIII, LTD.](#), 823 So.2d 147 (Fla. 5th DCA, 2002).

- Fact that variance obtained by condemnee's attorney for frontage area of property that was location of national restaurant chain reduced condemnee's claim for severance damages did not preclude variance from being a nonmonetary benefit on which to base an award of attorney fees to condemnee's attorney, where variance preserved value of property to condemnee.

[SARASOTA CNTY. v. CURRY](#), 861 So.2d 1239 (Fla. 2nd DCA, 2003).

- County's written offer of judgment to landowners after they obtained counsel was written offer for purposes of calculating attorney fee award, but attorney fee award of \$9900 to single landowner based on total stipulated judgment was abuse of discretion.

[WARD v. COLLIER CNTY.](#), 852 So.2d 892 (Fla. 2nd DCA, 2003).

- Landowner did not establish with reasonable certainty the value of performance clause in agreement settling eminent domain dispute, which obligated County to pay landowner \$10,000 per month that improvement project on condemned land was delayed, and, thus, was not entitled to attorney fee award based on clause; trial court was permitted to disregard landowner and appraiser's unexplained testimony that clause was worth \$100,000.

[CITY OF NORTH MIAMI BEACH v. REED](#), 863 So.2d 351 (Fla. 3rd DCA, 2003).

- A written settlement offer is mandatory to limit the award of attorney fees to the percentage of the benefits achieved for the client, and thus, a limitation on the fee award in an inverse condemnation case was inappropriate, where the condemning authority made no written offer.
- Risk multiplier did not apply to attorney fee award in inverse condemnation proceeding.

[ENTERPRISING PROFESSIONAL INVESTMENT CORP. v. DOT](#), 882 So.2d 1014 (Fla. 2nd DCA, 2004).

- Posttrial proceedings in eminent domain action, in which landowner sought to recover fees incurred for its experts, and DOT disputed the amount of those fees, were "supplemental proceedings" within meaning of statute governing recovery of attorney fees in eminent domain proceedings, and thus landowner was entitled to recover its attorney fees incurred in the posttrial proceedings.

[SCHOOL BD. OF PALM BEACH CNTY. v. 427 HOPE, INC.](#), 886 So.2d 241 (Fla. 4th DCA, 2004).

- Organization whose building was the subject of eminent domain proceeding was not entitled to award of attorney fees attributable to benefits received by tenants of the building; judgment settling tenants' claims specifically precluded tenants from seeking attorney fees, statute governing attorney fee awards required such awards to be based solely on benefits achieved for the client, and organization alone was the client for purposes of the attorney fee award.

[DOT v. LOCKHART](#), 909 So.2d 590 (Fla. 5th DCA, 2005).

- Landowners were entitled to recover attorney fees which were incurred in post-judgment hearing to recover expert fees owed by the State in eminent domain proceeding; post-judgment cost proceedings constituted “supplemental proceedings” under statute authorizing court, in eminent domain proceedings, to award attorney fees incurred in “supplemental proceedings.”

[BARCO v. SCHOOL BD. OF PINELLAS CNTY.](#), 975 So.2d 1116 (Fla. 2008).

- Motion for attorney fees and costs served prior to the filing of the judgment was timely under rule requiring that such a motion be served “within” 30 days after the filing of the judgment; rule required only that the motion be served no later than 30 days following the filing of the judgment. Rule requiring that a party seeking costs and/or attorney fees serve a motion “within” 30 days after the filing of the judgment did not mandate service of motion within a 30-day window following the filing of the judgment, but rather, established only an outside deadline for service of motion.

[JEAN v. WILLIAMS](#), 978 So.2d 842 (Fla. 1st DCA, 2008).

- Public utility's letter offering to purchase utility easement in landowners' property, which prompted landowners to hire condemnation counsel, was written offer in pre-suit eminent domain negotiations rather than offer to engage in arms length transaction, and thus landowners' entitlement to attorney fees in eventual eminent domain proceeding was properly based on difference between the \$62,000 offered in letter and the \$2 million ultimately awarded for a fee interest in part of property.

[BD. OF SUPERVISORS OF ST. JOHN'S WATER CONTROL DIST. v. FDOT](#), 103 So.3d 218 (Fla. 4th DCA, 2012).

- Under Florida law, a property owner awarded fees under the lodestar method is entitled to its reasonable attorneys' fees for all work relating to a condemnation suit, including work performed before the date suit is actually filed.

[FLORIDA DEPT. OF AGR. & CONSUMER SERVICES v. BOGORFF](#), 35 So.3d 84 (Fla. 4th DCA, 2013).

- Letters sent to homeowners by Department, which offered replacement trees and cash payments for citrus trees that were destroyed as part of citrus canker eradication program, did not constitute “written offers” under statute regarding attorney fee calculations in condemnation actions, and thus, attorney fee award to homeowners in inverse condemnation action had to be based on multi-factor analysis rather than benefits received.

[RYAN v. CITY OF BOYNTON BEACH](#), 157 So.3d 417 (Fla. 4th DCA, 2015).

- Property owner condemnee was entitled to appellate attorney fees in condemnation proceeding, even though he was not the prevailing party in the city contemnor's appeal, pursuant to statute that governed appeals in an eminent domain action.

[CARIBBEAN CONDOMINIUM v. CITY OF FLAGLER BEACH](#), 178 So.3d 426 (Fla. 5th DCA, 2015).

- Civil procedure statute governing recovery of costs from losing party, rather than statute governing costs of eminent domain proceedings, applied in inverse eminent domain action against city in which city prevailed, and thus city was entitled to award of its costs in defending the action.

[GENERAL COMMERCIAL PROPERTIES, INC. v. FDOT](#), 178 So.3d 439 (Fla. 4th DCA, 2015).

- DOT's offer to purchase landowner's property seven years before initiation of eminent domain proceedings was not the "first written offer" under eminent domain statute, which provides for an award of attorney's fees to a landowner based on a percentage of the difference between amount of final judgment and first written offer; the offer was made in an arms-length negotiation during department's early acquisition program before project was funded or plans were finalized and before department was certain landowner's property would be needed, and offer was extended on condition that it not be used to determine attorney's fees in a subsequent condemnation proceeding.

[JOSEPH B. DOERR TRUST v. CENTRAL FLORIDA EXPRESSWAY AUTH.](#), 177 So.3d 1209 (Fla. 2015).

- When a condemning authority causes excessive litigation, to calculate attorney fees, trial court shall utilize provision setting forth considerations in assessing fees incurred of statute governing fees for eminent domain matters, but only for those hours incurred in defending against the excessive litigation or that portion that is considered to be in response to or caused by the excessive tactics; remainder of the fee shall be calculated pursuant to benefits achieved formula in statute and the two amounts added together shall be the total fee.

[EMERALD COAST UTILITIES AUTH. v. BEAR MARCUS POINTE, LLC](#), 227 So.3d 752 (Fla. 1st DCA, 2017).

- Law firm's use of e-mail configuration and spam filter that received and allegedly deleted, without notification, a court order assessing attorney fees against firm's eminent domain client was not "excusable neglect" under rule governing relief from judgment.

[JOYCE v. FEDERATED NATIONAL INSURANCE CO.](#), 228 So.3d 1122 (Fla. 2017).

- In family law, eminent domain, and estate and trust matters, which are generally calculated using the lodestar amount, a contingency fee multiplier is generally "not justified."
- After determining the lodestar amount, as required to award attorney's fees, the trial court may then adjust the lodestar amount based upon a contingency risk factor and the results obtained. If a trial court adjusts the lodestar amount in awarding attorney's fees, it must state the grounds on which it justifies the enhancement or reduction.

[FLORIDA GAS TRANSMISSION CO., LLC v. JOHNSON](#), 264 So.3d 336 (Fla. 1st DCA, 2019).

- The benefits achieved method, not the lodestar method, was the applicable standard in calculating attorney's fees for landowner in an eminent domain action brought by natural gas transmission pipeline company, despite a change in scope of pipeline easement, where company submitted a written offer of compensation to landowner for the easement, which landowner rejected to obtain legal representation, resulting in a final judgment substantially more beneficial to landowner.

[BERLIN v. FDOT](#), 287 So.3d 631 (Fla. 4th DCA, 2020).

- Property owners' motion was legally sufficient to allege claim for attorneys' fees, and thus claim should not have been decided in non-evidentiary hearing on motion to strike, following stipulated judgment in state DOT's condemnation action, in which DOT agreed to remove turnaround from project; based upon DOT's challenge to claim for attorneys' fees for non-monetary benefits, owners' identified evidence of their successful efforts to defend against turnaround, and DOT contended that removal of turnaround from project was not result of efforts of owners' counsel, which was an evidentiary issue.

BURDEN OF PROOF

[BREVARD CNTY. v. BLASKY](#), 875 So.2d 6 (Fla. 5th DCA, 2004).

- The quality of proof required of the intention to dedicate is “clear and unequivocal,” and the burden of proof is on the party asserting the existence of the dedication.

BUSINESS DAMAGES

[HOWLAND v. STATE](#), 826 So.2d 1080 (Fla. 1st DCA, 2002).

- Trial court was entitled to strike claim for business damages in condemnation proceeding, where claim was not interrelated with the pending claim for compensation for the fair market value of the property taken.

[9863 WEST ATLANTIC AVENUE, INC. v. FDOT](#), 851 So.2d 191 (Fla. 4th DCA, 2003).

- Property owner whose convenience store was seized by DOT was not entitled to business damages, where entire store was taken and owner presented no evidence of any business activity on the remainder not taken, which included well used to provide store's water supply.

[FDOT v. TIRE CENTERS, LLC](#), 895 So.2d 1110 (Fla. 4th DCA, 2005).

- Evidence of tire company's ability to mitigate the business damages caused by partial taking of the property on which it operated its business by relocating to a nearby site was inadmissible in eminent domain proceeding to calculate tire company's business damages; duty of mitigation was limited to the parcel taken.
- Under the "parent tract rule," in order to show that two parcels are a single tract for the purpose of severance and business damages, three factors must be established: physical contiguity, unity of ownership, and unity of use.

[GATEWAY GROWERS, INC. v. SCHOOL BD. OF PALM BEACH CNTY.](#), 924 So.2d 875 (Fla. 4th DCA, 2006).

- The four-mile distance between the two parcels from which nursery owner operated his business rendered business damages statute inapplicable in eminent domain proceeding since the government took only one parcel, the remaining parcel did not adjoin the land taken, and statute required that the business of one seeking damages be located upon lands "adjoining" the property taken, and consequently, the issue of whether nursery owner was entitled to business damages would not be submitted to jury.

[DOT v. TARGET CORP.](#), 937 So.2d 703 (Fla. 4th DCA, 2006).

- Retailer could not introduce evidence of expansion and future building plans that were not included in its submitted site plans, and for which no affirmative steps had been taken, for purposes of establishing business damages, in eminent domain proceedings.

[SYSTEM COMPONENTS CORP. v. FDOT](#), 14 So.3d 967 (Fla. 2009).

- When a qualified partial taking destroys a business at its prior location and owner chooses to relocate, business damages must be measured by probable financial impact reasonably suffered as result of the taking.
- A business-damages award based on the total cost and damages associated with relocation may not exceed the total value of the business as measured by the appropriate valuation method.
- Fees charged by real-estate agents to determine a suitable relocation site for a business after partial taking for road expansion and damages caused by business down time can be compensable business damages.
- Business damages of landowner that relocated after partial taking for road expansion should have been determined in light of continued existence at new location, even though statute required determination of business damages on earlier of trial or taking; doctrine of avoidable

consequences or cost to cure limited to parent tract did not require court to ignore actual business damages, and ignoring planned, executed relocation would lead to absurd result of overcompensating business as though it had ceased to exist on date of taking.

[PINNACLE FLOOR COVERING, INC. v. DOT](#), 16 So.3d 919 (Fla. 2nd DCA, 2009).

- Statute authorizing award of experts' fees when business damages are “compensable” requires, as condition precedent to such an award, a jury determination that a defendant incurred business damages.

[MH NEW INVESTMENTS, LLC v. DOT](#), 76 So.3d 1071 (Fla. 5th DCA, 2011).

- A tenant’s claim for business damages was sufficiently supported by its express and enforceable right to use the areas at issue for the term of the lease. Because long term commercial tenant had an express and enforceable right to use the areas at issue for the term of the lease, this was sufficient to support tenant's claim for business damages in eminent domain proceeding brought by the DOT to take landlord's land for a drainage easement.

COMPENSABLE ITEMS/COMPENSATION

[DICHRISTOPHER v. BOARD OF CNTY. COM'RS.](#), 908 So.2d 492 (Fla. 5th DCA, 2005).

- Property owner who opposed county's plan to flood his property as part of mosquito control program had adequate remedy at law and, thus, was not entitled to temporary or permanent injunction barring County from flooding property. Owner's complaint sought damages for inverse condemnation as an alternative to injunction, and owner had a possibility of succeeding on the inverse condemnation claim.
- Public interest did not support issuance of temporary injunction preventing County from flooding property owner's property as part of mosquito control program; owner's private interest in his property was outweighed by need to prevent spread of disease by eliminating mosquito breeding grounds.

[DAMES v. 926 CO., INC.](#), 925 So.2d 1078 (Fla. 4th DCA, 2006).

- Absent express language to the contrary in the lease, a lessee is entitled to compensation if his interest in the property is taken through the exercise of eminent domain.
- Tenants who operated a laundry business in building that was the subject of eminent domain proceedings brought by redevelopment agency had a compensable interest in the property, even if tenants abandoned the property before date they were required to vacate under an agreed order of taking, and even though former owners of business retook possession of lease after foreclosing on a chattel mortgage executed in connection with tenants' purchase of the business.

[DRAKE v. WALTON CNTY.](#), 6 So.3d 717 (Fla. 1st DCA, 2009).

- County's diversion of water across the upper portion of property owner's land in effort to keep neighboring private homes safe from flooding resulted in a "taking" for which property owner was entitled to compensation, even though a longstanding drainage pattern had existed across the land in the past.
- Government cannot choose to act and protect one property owner by diverting floodwater onto the property of another without compensating that property owner.

[FL. DEPT. OF AGR. & CONSUMER SERVICES v. MENDEZ](#), 98 So.3d 604 (Fla. 4th DCA, 2012).

- Statute permitting issuance of writ of execution against State for judgment in eminent domain actions did not permit issuance of writ of execution against state Department of Agriculture and Consumer Services on judgments against Department in inverse condemnation class actions concerning Department's destruction of citrus trees, as scope of statute extended only to traditional, state-initiated eminent domain actions.

CONDEMNATION BLIGHT

[RUKAB v. CITY OF JACKSONVILLE BEACH](#), 811 So.2d 727 (Fla. 1st DCA, 2002).

- The question of placing time limits on challenges to “blight” designations is one that should be addressed by the legislature rather than by the courts. Landowners were entitled to an opportunity to a full hearing in the eminent domain action, even if there had been other opportunities for challenging the “blight” designation pursuant to which the agency sought to take the properties in question.

[BROWN v. DOT](#), 884 So.2d 116 (Fla. 2nd DCA, 2004).

- Evidence that decrease in rental value of property was result of “condemnation blight,” or speculation that property would be subject to taking by DOT for road project, was admissible; exclusion of evidence would allow DOT to benefit from depression in value of property caused by DOT's intention to condemn property.

[SAVAGE v. PALM BEACH CNTY.](#), 912 So.2d 48 (Fla. 4th DCA, 2005).

- Exclusion in inverse condemnation proceedings of testimony of landowners' expert engineers and, consequently, expert appraisers, as to effect of condemnation blight, deprived owners of opportunity to prove fair value of their property; any inappropriately speculative opinions about government collusion in minimizing value could have been restricted without striking the testimony completely.

[FLORIDA DEPT. OF ENV. PROTECTION v. WEST](#), 21 So.3d 96 (Fla. 3rd DCA, 2009).

- In proceeding involving two parcels of property that Department began expressing interest in acquiring many years earlier, trial court properly applied “condemnation blight” principles to instruct jury to consider the value of the parcels based on their highest and best use before Department displayed an intent to acquire them.

[TEITELBAUM, v. SOUTH FLORIDA WATER MANAGEMENT DIST.](#), 176 So.3d 998 (Fla. 3rd DCA, 2015).

- Condemnation blight was not a form of per se taking and, thus, did not provide independent basis for inverse condemnation action.
- Rather than providing basis for independent takings claim, condemnation blight was only relevant to valuation and was addressed in takings cases by requiring the condemning authority to pay full compensation as of date of condemnation announcement, rather than a later date after the property had depreciated due to impending condemnation.

CONSTRUCTION PLANS/ENGINEERING TESTIMONY

[LETO v. FLORIDA DEPT. OF ENV. PROTECTION](#), 824 So.2d 283 (Fla. 4th DCA, 2002).

- Decision of Department denying permission for landowners to build two “attached dwelling units” seaward of seasonal high water line did not constitute a taking of property; future development proposals of more appropriate structures had not been foreclosed.

[FDOT v. ARMADILLO PARTNERS, INC.](#), 849 So.2d 279 (Fla. 2003).

- Testimony of DOT engineer stating DOT would permit driveways as depicted in proposed cure should property owner choose to implement that cure, was sufficient to bind DOT and permit introduction of the proposed cure, even though the driveways as proposed were inconsistent with current construction plans for the roadway project that resulted in the partial taking.

[RORABECK'S PLANTS & PRODUCE, INC. v. SCHOOL DIST. OF PALM BEACH CNTY.](#), 853 So.2d 473 (Fla. 4th DCA, 2003).

- District was not estopped from claiming that 2.5-acre portion of 24.88-acre parcel, which was designated on preliminary site plan as police sub-station outparcel, would be used for purposes other than as police sub-station.

[CAMPBELL v. DOT](#), 267 So.3d 541 (Fla. 1st DCA, 2019).

- DOT's initial statements conceding that it had mistakenly encroached on landowners' property by widening publicly owned right-of-way and suggesting that issue could be resolved either by removal of infrastructure or purchase of subject property did not lull landowners into disadvantageous legal position, and thus DOT was not equitably estopped from obtaining title to subject property, even though DOT later changed its position by not removing infrastructure or purchasing subject property, since subject property vested to Department before statements were made.

COSTS

[SEMINOLE CNTY. v. CHANDRINOS](#), 816 So.2d 1241 (Fla. 5th DCA, 2002).

- Taxation of general office expenses such as postage, long distance telephone calls, fax transmissions, and delivery services as costs in eminent domain proceeding is improper. Condemnee's expert witness was not entitled to award of costs for general overhead items such as photocopying.
- Fee for legal or expert witness services in litigation is “certain” if it is payable without regard to outcome of suit; it is “contingent” if obligation to pay depends on particular result being obtained.

[LEE CNTY. ELEC. CO-OP., INC. v. CITY OF CAPE CORAL](#), 159 So.3d 126 (Fla. 2nd DCA, 2014).

- Utility company that had franchise agreement with city to operate electric utility in city was responsible for bearing cost of moving electric lines that utility had placed in one public utility easement to another public utility easement as part of city's road construction project; although franchise agreement did not indicate which party was to bear cost of moving electric lines, city had right to displace utility lines in easement for public benefit, and statute governing relocation of utilities required utility to bear cost under such circumstances.

COST TO CURE

[SYSTEM COMPONENTS CORP. v. FDOT](#), 14 So.3d 967 (Fla. 2009).

- Severance damages from condemnation are subject to the doctrine of avoidable consequences through a valuation concept known as the “cost to cure” which is the cost of an attempt to ameliorate the damage to value sustained by the remaining property as a result of the partial taking by the government.
- The cost-to-cure approach is not an independent measure of damages for taking; it is simply a means through which the condemnee's damages may be reduced by pleading and proving reasonably implemented, hypothetical ameliorative efforts that are limited to the parent tract.

CROPS

[FLORIDA DEPT. OF AGR. & CONSUMER SERVICES v. CITY OF POMPANO BEACH](#), 829 So.2d 928 (Fla. 4th DCA, 2002).

- Proper measure of damages in inverse condemnation action by citrus growers seeking compensation for trees that were destroyed in effort to eradicate citrus canker was replacement cost, not diminution in value.

[FLORIDA DEPT. OF AGR. & CONSUMER SERVICES v. LOPEZ-BRIGNONI](#), 114 So.3d 1138 (Fla. 3rd DCA, 2012).

- Since Florida's state constitution provides that no private property shall be taken for a public purpose without full compensation, it is immaterial whether a statute specifically authorizes recovery for loss (diminution in value) of citrus trees instead of replacement cost. The latter will be self-executing, as per the state Constitution.
- Damages claims by putative class members in inverse condemnation action for residential citrus trees that were destroyed in effort to eradicate citrus canker, based on replacement cost, rather than diminution in value, met commonality requirement for class certification; although the amount of compensation for the replacement cost of the destroyed trees could differ among class members, the methodology for establishing compensation would result in a uniform result, thus avoiding the necessity of holding individual damage hearings.

[FLORIDA DEPT. OF AGR. & CONSUMER SERVICES v. MENDEZ](#), 98 So.3d 604 (Fla. 4th DCA, 2012).

- Presumption that a state agency (when exercising its police power) acted to prevent a public harm does not apply to preclude compensation for destroyed trees.
- Statute permitting issuance of writ of execution against State for judgment in eminent domain actions did not permit issuance of writ of execution against the Department on judgments against it in inverse condemnation class actions concerning Department's destruction of citrus trees, as scope of statute extended only to traditional, state-initiated eminent domain actions.

[STATE v. BASFORD](#), 119 So.3d 478 (Fla. 1st DCA, 2013).

- Fact that pig producer continued to grow crops on his property after he shut down his pig producing operation due to state constitutional amendment banning the confinement of pregnant pigs did not preclude finding of an as-applied taking arising out of the amendment; producer did not allege a taking of his real property, but of his business and certain improvements used in that business.

[WALKER v. FLORIDA GAS TRANSMISSION CO., LLC](#), 134 So.3d 571 (Fla. 1st DCA, 2014).

- Trial court's order denying property owners' motion to enforce a provision of an order of taking that required gas utility to replace, among other things, trees, landscaping, grasses, shrubbery, and crops that utility had clear cut was not an order determining the right to immediate possession of property and, thus, was not an appealable interlocutory order; owners were not seeking immediate possession of identifiable property, as no trees, shrubs, or grasses existed, but were instead seeking enforcement of a contractual right to the replacement of such property, and order deferred ruling on the replacement issue, such that it did not satisfy the immediacy requirement.

DAMAGES DUE TO PROJECT

[DICHRISTOPHER v. BOARD OF CNTY. COM'RS.](#), 908 So.2d 492 (Fla. 5th DCA, 2005).

- Property owner who opposed county's plan to flood his property as part of mosquito control program had adequate remedy at law and, thus, was not entitled to temporary or permanent injunction barring County from flooding property. Owner's complaint sought damages for inverse condemnation as an alternative to injunction, and owner had a possibility of succeeding on the inverse condemnation claim.
- Public interest did not support issuance of temporary injunction preventing County from flooding property owner's property as part of mosquito control program; owner's private interest in his property was outweighed by need to prevent spread of disease by eliminating mosquito breeding grounds.

DEDICATION/PRESCRIPTION/EASEMENTS OF NECESSITY

[BREVARD CNTY. v. BLASKY](#), 875 So.2d 6 (Fla. 5th DCA, 2004).

- The quality of proof required of the intention to dedicate is “clear and unequivocal,” and the burden of proof is on the party asserting the existence of the dedication.
- County and county mosquito control district failed to establish affirmative defense of dedication in landowners' inverse condemnation action against county and district; landowner testified he never intended to dedicate land for public use, fact that landowners' predecessors entered into 10-year easement to permit land to be used to control mosquitoes confirmed that permanent easement was not intended, district's attempt to obtain more durable right to occupy property from landowners raised implication that district did not think it had permanent right to use land by reason of dedication, and letter from landowners to district giving district revocable permission to continue to use land suggested that landowners never intended to make permanent dedication of land.

[CIRELLI v. ENT](#), 885 So.2d 423 (Fla. 5th DCA, 2004).

- Marketable Record Titles to Real Property Act (MRTA) does not apply to extinguish statutory ways of necessity; statutory ways of necessity serve salutary public purposes, Legislature never intended that the MRTA, whose foundational underpinning is the extinguishment of old and stale claims that adversely affect the marketability of title to the subject property, apply to extinguish the right to seek a statutory way of necessity, and because a statutory way of necessity is a present right, it is not a right, claim or interest that would predate the root of title to the servient parcel of property and thereby be extinguishable by MRTA.

[VERIZON WIRELESS PERSONAL COMMUNICATIONS, L.P. v. SANCTUARY AT WULFERT POINT COMMUNITY ASS'N, INC.](#), 916 So.2d 850 (Fla. 2nd DCA, 2005).

- Generally, a dedication of land to public use transfers only an easement, and the owner retains legal title to the land.
- Dedication of property for wastewater treatment plan in developers' plat did not preclude city from allowing telecommunications company to install telecommunications tower on property; city acquired property itself, not simply right to use property, and city did not engage in fraud or bad faith at time of conveyance.

[NEW TESTAMENT BAPTIST CHURCH INC. OF MIAMI v. STATE, DOT](#), 993 So.2d 112 (Fla. 4th DCA, 2008).

- Dedication of plat of church's land for public road was not void ab initio, but merely voidable if no reasonable connection existed between the required dedication and the amount of traffic to be generated by the proposed church and school, where dedication affected only the church and did not harm general public or rights of any third party.

[ST. JOHNS RIVER WATER MANAGEMENT DIST. v. KOONTZ](#), 77 So.3d 1220 (Fla. 2011).

- Under takings clauses of US and State Constitutions, the Nollan/Dolan rule that the government can impose a condition on the issuance of a permit without effecting a taking requiring just compensation if the condition serves the same governmental purpose as the developmental ban and there is a rough proportionality between the condition and the impact of the proposed development, is applicable only where the condition/exaction sought by the government involves a dedication of or over the owner's interest in real property in exchange for permit

approval; and only when the regulatory agency actually issues the permit sought, thereby rendering the owner's interest in the real property subject to the dedication imposed.

[LEE CNTY. ELEC. CO-OP., INC. v. CITY OF CAPE CORAL](#), 159 So.3d 126 (Fla. 2nd DCA, 2014).

- Utility company that had franchise agreement with city to operate electric utility in city was responsible for bearing cost of moving electric lines that utility had placed in one public utility easement to another public utility easement as part of city's road construction project; although franchise agreement did not indicate which party was to bear cost of moving electric lines, city had right to displace utility lines in easement for public benefit, and statute governing relocation of utilities required utility to bear cost under such circumstances.

[DOT v. MID-PENINSULA REALTY INV. GROUP, LLC](#), 171 So.3d 771 (Fla. 2nd DCA, 2015).

- Evidence was insufficient to prove that Department of Transportation (DOT) was in possession of land parcel, as required for application of section of the Marketable Record Title to Real Property Act (MRTA) prohibiting extinguishment of rights under MRTA of person in possession of land, and thus section was inapplicable in title holder's action under MRTA to quiet title in the parcel, over which DOT held a right-of-way in fee simple, where a DOT employee who testified regarding the need to cross over the parcel to access a canal maintained by DOT lacked personal knowledge that anyone had actually accessed the parcel during the relevant 30-year period, and another employee testified that it was "difficult to tell" whether the parcel could be reached via another parcel.

[HIGHLANDS-IN-THE-WOODS, L.L.C. v. POLK CNTY.](#), 217 So.3d 1175 (Fla. 2nd DCA, 2017).

- Permit conditions requiring developer to install and dedicate water reuse lines even when reclaimed water was unavailable were not a taking.

[OKEFENOKE RURAL ELECTRIC MEMBERSHIP CORP. v. DAYSPRING HEALTH, LLC](#), 300 So.3d 371 (Fla. 1st DCA, 2020).

- No owner of private property consented to electric corporation's inadvertent placement of power poles and transmission lines on the private property rather than the right-of-way belonging to DOT, and thus corporation's use of private property was adverse for purposes of establishing prescriptive easement; no owner of the private property discovered that the poles were on the private land until approximately 50 years after their placement, so owners were unable to provide consent.

DUE PROCESS

[CITY OF PANAMA CITY v. HEAD](#), 797 So.2d 1265 (Fla. 1st DCA, 2001).

- City ordinance that did not provide for notice to a mortgagee prior to abatement of nuisance on property when it did not involve an unfit or unsafe structure did not violate due process on its face, since assessments arising from such an abatement would not inherently impair or deprive the mortgagee of his interest in the mortgaged land.

[KIRCHHOFF v. SOUTH FLORIDA WATER MANAGEMENT DIST.](#), 805 So.2d 848 (Fla. 2nd DCA, 2001).

- Procedural due process required that trustee for land trust be allowed to be heard at proceeding on petition for taking filed by Water Management District, where trustee was named as defendant in petition.

[CITY OF POMPANO BEACH v. YARDARM RESTAURANT, INC.](#), 834 So.2d 861 (Fla. 4th DCA, 2002).

- Developer failed to show that city's actions in delaying and obstructing its attempts to obtain building permits violated procedural due process, where developer was afforded, and actually utilized, full judicial procedures to challenge city's administrative decisions, and city ordinance to repeal developer's special use exception was never actually enacted.

[CITY OF WEST PALM BEACH v. ROBERTS](#), 72 So.3d 294 (Fla. 4th DCA, 2011).

- Property owners did not receive proper notice of city's intent to demolish structure on the property as a nuisance, so as to support award of compensation to owners on their inverse condemnation claim; no evidence showed that city sent notice by regular mail after certified letters were returned unclaimed, as required by unsafe building abatement code, and one owner testified that he did not receive any notice and no notice was posted on the structure.

[HOMESTEAD LAND GROUP, LLC v. CITY OF HOMESTEAD](#), 165 So.3d 62 (Fla. 3rd DCA, 2015).

- Due process of law requires, at a minimum, that a party in interest to a governmental proceeding be given reasonable notice and a meaningful opportunity to be heard.
- Purchaser of land had no legal interest in the land at time city acquired a portion of it through eminent domain, and thus purchaser, after acquiring the land, could not contest valuation of the portion taken by city, even though vendor had assigned to purchaser its rights in the taken portion and its interest in the eminent domain proceedings; at time of the taking, vendor only had rights to the property via a reversionary clause, pursuant to which title reverted to vendor if owner could not obtain zoning for new church, but neither purchaser nor vendor were able to show that owner had not secured zoning or that it could not have done so in the future, and vendor never attempted to exercise its right to the property, so that the reversionary interest never matured.

[TOWN OF PONCE INLET v. PACETTA, LLC](#), 226 So.3d 303 (Fla. 5th DCA, 2017).

- Landowner did not show that it sustained monetary damages as a result of town's violation of its rights to substantive due process, procedural due process, and equal protection under Florida constitution, as well as procedural due process under the Fourteenth Amendment and § 1983, arising out of alleged regulatory taking of its property; while trial court concluded that town was liable for federal and state constitutional violations regarding certain parcels that made up landowner's 16 acre property, there was no evidence of damages sustained by landowner arising out of constitutional violations.

EASEMENTS

[ROGERS v. U.S.](#), 184 So.3d 1087 (Fla. 2015).

- Railroads may hold fee simple title to land acquired for the purpose of building railroad tracks, notwithstanding that railroads in Florida have also conducted their operations using rights of way which they held by virtue of easements; the determinative factor is the language of the deed when the language is clear.

[SIMON v. DEER MEADOWS HOMEOWNERS' ASSOCIATION, INC.](#), 277 So.3d 197 (Fla. 1st DCA, 2019).

- Any alleged taking by city related to pond created to collect storm water occurred prior to property owners' acquisition of parcel, and thus property owners were not entitled to compensation on inverse condemnation claim; although city accepted plat and maintenance responsibility for roads and easements which were designed and intended to direct storm water into retention pond on property, owners bought property knowing pond existed, that pond received storm water from neighborhood, and that prior owners had maintained pond themselves.

[ALTMAN v. BREVARD CNTY](#), 300 So.3d 347 (Fla. 5th DCA, 2020).

- County which petitioned to condemn easements over private beach front properties for a shore protection project failed to provide a description identifying the property to be acquired, as required by eminent domain statute, and thus county's petition was defective, even though county included legal descriptions of the easements; county's original resolution authorized an easement on each property but stated that two possible boundary lines applied, depending upon "whichever is further seaward," and, after trial court ruled in county's favor, county acknowledged that it would have to craft new descriptions in order for them to be enforceable and understandable.

EXPERT QUALIFICATIONS

[9863 WEST ATLANTIC AVENUE, INC. v. FDOT](#), 851 So.2d 191 (Fla. 4th DCA, 2003).

- Trial court did not abuse its discretion in refusing to award fees to property owner for appraiser who did not testify in eminent domain case in which convenience store was seized by DOT; court ruled that only one of owner's two appraisers could testify to avoid duplicative testimony.

FIXTURES

[SUNSHINE PROPERTIES, L.L.C. v. DOT](#), 900 So.2d 714 (Fla. 4th DCA, 2005).

- Condemnation settlement between DOT and property owner did not include any amounts attributable to trade fixtures owned by lessees, and thus DOT, rather than owner, remained liable to lessees for any damage to trade fixtures, even though settlement agreement stated that condemnation award was “subject to claims for apportionment, if any”; leases did not give lessees the right to collect damages from owner in case of condemnation, settlement award was allocated only to land and severance damages, and lessees were represented in condemnation proceeding but did not participate in mediation that resulted in DOT's settlement with owner.

GOOD FAITH ESTIMATE OF VALUE

[FLORIDA WATER SERVICES CORP. V. UTILITIES COM'N.](#), 790 So.2d 501 (Fla. 5th DCA, 2001).

- Municipality utility commission was not required to formally amend its declaration of taking to reflect recent changes in appraiser's valuation of subdivision's water and waste water system, in quick-take condemnation proceeding, as condemnee had right to contest commission's estimate of value prior to transfer of title and trial judge was not bound by taking authority's estimate in deciding amount to be deposited with court.

[RORABECK'S PLANTS & PRODUCE, INC. v. SCHOOL DIST. OF PALM BEACH CNTY.](#), 853 So.2d 473 (Fla. 4th DCA, 2003).

- County school district's estimate of value for parcel, for purposes of setting deposit amount in quick-take condemnation proceeding, was made in good faith, though district's appraisal did not make separate allowance for site improvements; district's appraiser considered property's highest and best use to be vacant land for residential development and considered incremental value of improvements to the property to be nominal.

[MCMURRER v. MARION CNTY.](#), 936 So.2d 19 (Fla. 5th DCA, 2006).

- Because county failed to deposit good-faith estimate of value of property into registry of court within 20 days as required by statute, quick-take order entered in county's eminent domain action was rendered void, and trial court was without authority to reinstate quick-take order.

[HOMESTEAD LAND GROUP, LLC v. CITY OF HOMESTEAD](#), 157 So.3d 417 (Fla. 3rd DCA, 2015).

- Purchaser of land had no legal interest in the land at time city acquired a portion of it through eminent domain, and thus purchaser, after acquiring the land, could not contest valuation of the portion taken by city, even though vendor had assigned to purchaser its rights in the taken portion and its interest in the proceedings.

HIGHEST AND BEST USE

[RORABECK'S PLANTS & PRODUCE, INC. v. SCHOOL DIST. OF PALM BEACH CNTY.](#), 853 So.2d 473 (Fla. 4th DCA, 2003).

- County school district's estimate of value for parcel, for purposes of setting deposit amount in quick-take condemnation proceeding, was made in good faith, though district's appraisal did not make separate allowance for site improvements; district's appraiser considered property's highest and best use to be vacant land for residential development and considered incremental value of improvements to the property to be nominal.

[CITY OF SUNNY ISLES BEACH v. CAVALRY CORP.](#), 208 So.3d 1247 (Fla. 3rd DCA, 2017).

- Under the development approach to determine the market value of property in an eminent domain case, (1) the property is valued as of the date of the taking, (2) the question for the appraiser is what a willing buyer would pay for the property in its then-existing condition on that date, for development into its highest and best use, and (3) the highest and best use may be a prospective use.
- Landowner's conceptual plans to establish the highest and best use of her man-made finger canal as a private docking facility were admissible to illustrate and support her expert appraiser's testimony as part of the development approach to determine just compensation for city's taking of part of canal to build a bridge for use as an emergency evacuation route to the mainland; the testimony was based upon the actual value of the property at the time of the taking if sold for development as a private docking facility, its highest and best use, and landowner did not seek compensation based upon what could or might be done to make the property more valuable.

INTEREST

[HARTLEB v. DOT](#), 778 So.2d 1063 (Fla. 4th DCA, 2001).

- Landowner, who was awarded attorney fees in eminent domain proceeding and appealed but did not withdraw the funds that the DOT had deposited into the court registry to cover the judgment, was entitled to interest on those funds for the period of the appeal proceedings.

[WOOD v. ESTATE OF BURNETTE](#), 56 So.3d 74 (Fla. 2nd DCA, 2011).

- Real estate appraiser who brought action against property owners seeking unpaid fees for services provided in connection with an eminent domain proceeding was entitled to prejudgment interest on the trial court's award of \$28,000 in appraisal fees from the date such fees were due.

[LIVINGSTON v. FRANK](#), 150 So.3d 239 (Fla. 2nd DCA, 2014).

- No second taking resulted from city clerk's investment of quick-take deposit funds and the payment of 90% of that investment interest to the city as the condemning authority, and thus, property owner was not entitled to payment of the interest under the state and federal Takings Clause; the statutory provision directing payment of interest to the condemning authority could be a taking or a matter of inverse condemnation only if the deposit belonged to property owner at the time the interest accrued, and the making of the deposit only vested in the property owner an entitlement to be paid full compensation by the condemning authority, not an entitlement to the specific funds placed on deposit.

[FDOT v. MALLARDS COVE, LLP](#), 159 So.3d 927 (Fla. 2nd DCA, 2015).

- Property owner who entered into a stipulated final judgment with DOT and stipulated to the amount due as “full payment” including statutory interest in quick-take eminent domain proceedings was precluded by the finality of those proceedings from seeking investment interest generated by quick-take funds deposited with court registry during those proceedings, which owner alleged was unlawfully transferred to DOT under the quick-take statutory provision directing clerk to disburse 90% of the interest earned on the quick-take deposit funds to condemning authority.

[HOMESTEAD LAND GROUP, LLC v. CITY OF HOMESTEAD](#), 157 So.3d 417 (Fla. 3rd DCA, 2015).

- Purchaser of land had no legal interest in the land at time city acquired a portion of it through eminent domain, and thus purchaser, after acquiring the land, could not contest valuation of the portion taken by city, even though vendor had assigned to purchaser its rights in the taken portion and its interest in the proceedings; at time of the taking, vendor only had rights to the property via a reversionary clause, pursuant to which title reverted to vendor if owner could not obtain zoning for new church, but neither purchaser nor vendor were able to show that owner had not secured zoning or that it could not have done so in the future, and vendor never attempted to exercise its right to the property, so that the reversionary interest never matured.

INVERSE CONDEMNATION/WHAT CONSTITUTES A TAKING

[KESHBRO, INC. v. CITY OF MIAMI](#), 801 So.2d 864 (Fla. 2001).

- Action of city's nuisance abatement board (NAB) in closing landowner's apartment complex for one year pursuant to nuisance abatement order was not specifically tailored to abate the drug nuisance found to exist at property, and thus, closure of complex pursuant to nuisance abatement order was a compensable taking, where no record of persistent drug activity precipitated the closure of complex, but rather, board closed complex solely on a finding that complex had been site of cocaine sales on more than two occasions.

[FDOT v. ARMADILLO PARTNERS, INC.](#), 849 So.2d 279 (Fla. 2003).

- Proposed appropriation of arbor area on remainder property, as part of DOT appraiser's plan to cure partial taking of shopping center property, was not a second taking that appraiser was obligated to separately value, and thus, appraiser's opinion was admissible in condemnation proceeding on issue of value of the remainder property, where appraiser included the loss of the arbor area in determining the effect on market value of the remainder property as of the moment of the taking.

[UNDERWRITERS AT LLOYD'S LONDON v. CITY OF ST. PETERSBURG](#), 864 So.2d 1145 (Fla. 2nd DCA, 2003).

- Destruction of innocent landlord's private property while police executed valid search warrant against tenant was not a compensable taking; city did not require landlord to submit to physical occupation of her property, deprive landlord of her right to use or dispose of her property, or deprive landlord of her right to prevent the government from using the occupied area.

[PONDELLA HALL FOR HIRE, INC. v. LAMAR](#), 866 So.2d 719 (Fla. 5th DCA, 2004).

- Loss of forfeiture claimant's leases to real property was incidental to lawful government action based on probable cause, and thus state seizure of personal property and injunction against property owners from operating illegal bingo games that caused claimant to lose its lease was not a "taking" for which claimant could seek compensation.

[OSCEOLA CNTY. v. BEST DIVERSIFIED, INC.](#), 936 So.2d 55 (Fla. 5th DCA, 2006).

- Evidence in inverse condemnation action was insufficient to establish that Department of Environmental Protection (DEP) and county effected a compensable taking by refusing to allow landfill operator to close the landfill in accordance with DEP requirements in order to put property to other non-landfill uses after it was determined that odors from the landfill were a public nuisance; operator never attempted simply to close the landfill by following closure procedure in DEP regulations, and instead sought to operate landfill and generate revenue over its remaining expected five-year life.

[CITY OF JACKSONVILLE v. TWIN RESTAURANTS, INC.](#), 953 So.2d 720 (Fla. 1st DCA, 2007).

- Westbound traffic's need to travel more circuitous route to drive onto or out of landowner's commercial property after installation of median was not "substantially diminished access" of a kind that would constitute compensable taking, and thus landowner was not entitled to severance damages regarding property that remained after taking of strip of property for widening of road; all driveways would still be open after improvements were completed.

[BAUKNIGHT v. MONROE CNTY.](#), 994 So.2d 362 (Fla. 3rd DCA, 2008).

- Property owners whose building permits were initially held in abeyance due to an insufficient level of highway service, but were later granted under county's beneficial use ordinance on the ground that withholding the permits deprived owners of any beneficial use of their property, were not entitled to damages under federal law for a temporary taking arising from the delay; owners had an available remedy under the beneficial use ordinance all along, such that the delay in granting the permits was attributable to their own delay in applying for relief.

[FL DEPT. OF ENV. PROTECTION v. WEST](#), 21 So.3d 96 (Fla. 3rd DCA, 2009).

- Property owners' claim for compensation arising out of the taking of two parcels of property was not an inverse condemnation claim, for purposes of the four-year statute of limitations on such claims, even though owners sought compensation for the effect on the property's value of Department of Environmental Protection's interest in acquiring the parcels by condemnation; Department did eventually file eminent domain proceedings.

[SCOTT v. GALAXY FIREWORKS, INC.](#), 111 So.3d 898 (Fla. 2nd DCA, 2012).

- State's entry of executive order forbidding sale, use, or discharge of fireworks for particular two-week period was not a compensable taking of fireworks retailer's property; retailer maintained ownership of fireworks inventories and had right to transfer inventories to out-of-state location where sales were permitted, executive order was valid exercise of state's police power, and retailer had been on notice of possibility that such regulations would be enacted from time to time.

[PINELLAS CNTY. v. BALDWIN](#), 80 So.3d 366 (Fla. 2nd DCA, 2012).

- Construction undertaken by a county which results in the flooding of a landowner's property with a degree of permanency may result in a taking that gives rise to an action for inverse condemnation.

[OCEAN PALM GOLF CLUB PARTNERSHIP v. CITY OF FLAGLER BEACH](#), 139 So.3d 463 (Fla. 5th DCA, 2014).

- City's refusal to change its comprehensive plan to allow for residential development of golf course property that closed due to alleged unprofitability was not a total or partial taking.

[TEITELBAUM v. SOUTH FLORIDA WATER MANAGEMENT DIST.](#), 176 So.3d 998 (Fla. 3rd DCA, 2015).

- Condemnation blight was not a form of per se taking and, thus, did provide independent basis for inverse condemnation action.

[DEPT. OF ENVIRONMENTAL PROTECTION v. BEACH GROUP INVESTMENTS, LLC](#), 201 So.3d 679 (Fla. 4th DCA, 2016).

- Beachfront property owner was required to propose an alternative development plan, after Department's denial of their coastal construction control lines permit, prior to initiating as-applied regulatory taking claim, and since owner failed to do so, its taking claim was not ripe; permit was denied because owner's major planned structures would be seaward of thirty-year erosion project line, but owner's planner testified that it still would have been possible to develop a project on the property on a smaller scale than the original plan.

[FLORIDA FISH & WILDLIFE CONSERVATION COMMISSION v. DAWS](#), 256 So.3d 907 (Fla. 1st DCA, 2018).

- Landowners failed to plead required elements to state legally sufficient takings claims against the Commission for its decision to allow deer hunters and their dogs on state-owned land

directly leading to trespasses on their privately-owned land by hunters and their dogs; sporadic trespasses by deer hunters and their dogs during the 44 days of the year when deer hunting with dogs was authorized was transitory, owners were free to exclude deer hunters and dogs from their property by pursuing criminal or civil remedies against trespassing hunters, and owners were not deprived of all economic beneficial use of their property when hunting season was limited to 44 days and the trespasses were fleeting and sporadic.

[FL. DEPT. OF AGR. & CONSUMER SERVICES v. MAHON](#), 293 So.3d 1091 (Fla. 5th DCA, 2020).

- Trial court's order, which determined that Department of Agriculture and Consumer Services would have to present its evidence and argument first at jury trial on amount of damages to be awarded to citrus nursery owner in inverse condemnation action that alleged Department unnecessarily forced him to destroy majority of his trees in effort to prevent disease, would not cause Department to sustain irreparable harm; Department would have had the burden of going forward at trial regarding valuation to be placed on destroyed trees if it had brought eminent domain proceeding prior to taking trees, and Department, if dissatisfied with jury's verdict, would still have right to plenary appeal to seek relief from any reversible error committed.

[ABU-KHADIER v. CITY OF FORT MYERS](#), 312 So.3d 975 (Fla. 2nd DCA, 2020).

- Illegal drug activity occurring on property was inextricably intertwined with the business operations of grocery store located on that same property, and, thus, one-year closure of store ordered by city's nuisance abatement board (NAB) for such illegal activity was not a compensable taking under the nuisance exception, in store owner's inverse condemnation action against city.

JURY INSTRUCTIONS

[325 WEST ADAMS STREET, LTD. v. CITY OF JACKSONVILLE](#), 863 So.2d 380 (Fla. 1st DCA, 2003).

- Jury instructions administered in eminent domain action allowing property value determination to be made based on subject property's anticipated public use, the construction of a courthouse, was reversible error as contrary to applicable eminent domain statute, stating, "Any increase or decrease in the value of any property to be acquired which occurs after the scope of the project for which the property is being acquired...shall not be considered in arriving at the value of the property acquired."

[FL DEPT. OF ENV. PROTECTION v. WEST](#), 21 So.3d 96 (Fla. 3rd DCA, 2009).

- In proceeding involving two parcels of property that Department began expressing interest in acquiring many years earlier, trial court properly applied "condemnation blight" principles to instruct jury to consider the value of the parcels based on their highest and best use before Department displayed an intent to acquire them.

[ORANGE CNTY. v. BUCHMAN](#), 81 So.3d 520 (Fla. 5th DCA, 2012).

- Improper jury instruction in eminent domain proceeding, which stated that county was bound by construction plans it had introduced regarding a road and that jury should not consider testimony about possible future access, entitled county to new trial on the issue of severance damages; instruction violated statutory prohibition against judicial comment on the weight of the evidence, as it instructed jury to give part of county's evidence no weight and had the effect of striking an expert's testimony, and instruction directly conflicted with standard instruction on expert witnesses, which allowed jury to give expert testimony the weight it thought the testimony deserved.

LESSEE

[TILDEN GROVES HOLDING CORP. v. ORLANDO/ORANGE CNTY. EXPRESSWAY](#), 816 So.2d 658 (Fla. 5th DCA, 2002).

- County expressway authority's mistake in failing to reference rights of lessee in assessed value of land it sought to take in eminent domain through mediated settlement agreement with landowner did not warrant relief from final judgment entered upon settlement agreement, although expressway authority alleged that it believed it was negotiating entire value of property, including rights of lessee, pursuant to undivided fee rule practiced by local bar, where handwritten changes to agreement made it clear that parties knew lessee and its recovery were not an issue.

[WINN-DIXIE STORES, INC. v. DOT](#), 839 So.2d 727 (Fla. 2nd DCA, 2003).

- Lessee of space in shopping center had leasehold interest in center's parking area, and was thus entitled to share in proceeds of DOT's condemnation of portion of parking area, where the lease referred to the leased premises as the "store building and related improvements," the "related improvements" included specifications for minimum ratio of parking spaces to building area, and lessee paid separate consideration to lessor for maintenance and repair of the parking area.
- Absence of apportionment language in clause in shopping center lease dealing with parking lot condemnation did not bar apportionment of condemnation proceeds sought by lessee after DOT took a portion of center's parking lot; lease did not express, in clear terms, the intent to bar lessee's right to be compensated for a taking.

[HERNDON OIL CORP. v. VIK, LTD.](#), 884 So.2d 958 (Fla. 1st DCA, 2004).

- Commercial tenant of property taken by Department of Transportation (DOT) was entitled to recover the difference between the total amount awarded in eminent domain proceedings and the fee value of the underlying land, less tenant's share of unpaid property taxes; tenant owned leasehold improvements at the time of the taking.

[DAMES v. 926 CO., INC.](#), 925 So.2d 1078 (Fla. 4th DCA, 2006).

- Tenants who operated a laundry business in building that was the subject of eminent domain proceedings brought by redevelopment agency had a compensable interest in the property, even if tenants abandoned the property before date they were required to vacate under an agreed order of taking, and even though former owners of business retook possession of lease after foreclosing on a chattel mortgage executed in connection with tenants' purchase of the business.

[MH NEW INVESTMENTS, LLC v. DOT](#), 76 So.3d 1071 (Fla. 5th DCA, 2011).

- Because long term commercial tenant had an express and enforceable right to use the areas at issue for the term of the lease, this was sufficient to support tenant's claim for business damages in eminent domain proceeding brought by the DOT to take landlord's land for a drainage easement.

LOCATION

[CITY OF HOLLYWOOD COMMUNITY REDEVELOPMENT AGENCY v. 1843, LLC](#), 980 So.2d 1138 (Fla. 4th DCA, 2008).

- City community redevelopment agency that condemned parcel for use in redevelopment project could consider historic preservation in evaluating site plans, and thus agency's disqualification of an alternative site plan, which would not have required condemnation of the parcel, on the ground that it would have required the partial destruction of a historically significant hotel did not demonstrate that the condemnation was not reasonably necessary; Community Redevelopment Act recognized that redevelopment projects could include "rehabilitation and conservation in a community redevelopment area," which encompassed the concept of historic preservation.

[CHRISTIAN ROMANY CHURCH MINISTRIES, INC. v. BROWARD CNTY.](#), 980 So.2d 1164 (Fla. 4th DCA, 2008).

- Condemnation of church property, for expansion of county's existing substance-abuse facility, was reasonably necessary; county considered the church property a desirable location for expanded facility because the property was accessible by public transportation, was centrally-located, and was close to other social service agencies and a medical center.

[KIRKLAND v. CITY OF LAKE LAND](#), 3 So.3d 398 (Fla. 2nd DCA, 2009).

- City had authority to take land that was entirely outside, and not contiguous with, the city's boundaries, where land was taken in order to improve road access to airport located within the city, and county did not object to the taking, but rather the project was the subject of an interlocal agreement between the city and the county.

MORTGAGEE

[CITY OF PANAMA CITY v. HEAD](#), 797 So.2d 1265 (Fla. 1st DCA, 2001).

- City ordinance that did not provide for notice to a mortgagee prior to abatement of nuisance on property when it did not involve an unfit or unsafe structure did not violate due process on its face, since assessments arising from such an abatement would not inherently impair or deprive the mortgagee of his interest in the mortgaged land.

MOVING EXPENSES

[SYSTEM COMPONENTS CORP. v. FDOT](#), 14 So.3d 967 (Fla. 2009).

- Landowner's moving expenses from partial taking for road expansion are not a component of the full compensation required by state Constitution; rather, business damages are a creature of statute.

NECESSITY

[CORDONES v. BREVARD CNTY.](#), 781 So.2d 519 (Fla. 5th DCA, 2001).

- County demonstrated reasonable necessity in condemnation proceeding to establish temporary easement over beachfront property, where project was designed to preserve shore line, public and private property, and address environmental concerns, and county sought to condemn only sufficient property interest to accomplish anti-erosion project.

[RUKAB v. CITY OF JACKSONVILLE BEACH](#), 811 So.2d 727 (Fla. 1st DCA, 2002).

- Even if there were other opportunities for challenging the “blight” designation by which an agency intends to exercise the power of eminent domain to take properties for redevelopment in the public interest under the Community Redevelopment Act, the landowner whose property is situated within the blighted area must still be afforded an opportunity for a full hearing in an eminent domain action, and the agency or political subunit empowered to exercise eminent domain must therein meet the burden of showing public purpose and necessity.

[CIRELLI v. ENT](#), 855 So.2d 423 (Fla. 5th DCA, 2004).

- The Marketable Record Titles to Real Property Act (MRTA) does not apply to extinguish statutory ways of necessity.

[DICHRISTOPHER v. BOARD OF CNTY. COM'RS](#), 908 So.2d 492 (Fla. 5th DCA, 2005).

- Public interest did not support issuance of temporary injunction preventing County from flooding property owner's property as part of mosquito control program; owner's private interest in his property was outweighed by need to prevent spread of disease by eliminating mosquito breeding grounds.

[RAWLS v. LEON CNTY.](#), 974 So.2d 543 (Fla. 1st DCA, 2008).

- County seeking the immediate acquisition of landowner's property in order to extend a road and connect it to another road demonstrated a reasonable necessity for the taking with the introduction of the authorizing resolution of the county's board of commissioners and the testimony of the project manager that the proposed alignment of the extension met the long range transportation plan, satisfied certain environmental and safety concerns, and was cost effective.

[CHRISTIAN ROMANY CHURCH MINISTRIES, INC. v. BROWARD CNTY.](#), 980 So.2d 1164 (Fla. 4th DCA, 2008).

- Generally, once there is a finding of reasonable necessity, based on competent, substantial evidence, the landowner must then either concede the existence of a necessity or be prepared to show bad faith or abuse of discretion as an affirmative defense.

[CITY OF HOLLYWOOD COMMUNITY REDEVELOPMENT AGENCY v. 1843, LLC](#), 980 So.2d 1138 (Fla. 4th DCA, 2008).

- Agency's disqualification of an alternative site plan that would have required the partial destruction of a historically significant hotel did not demonstrate that the condemnation was not reasonably necessary.

[ALTMAN v. BREVARD CNTY.](#), 300 So.3d 347 (Fla. 5th DCA, 2020).

- County which petitioned to condemn easements across private beach front properties for a shore protection project failed to establish that there was reasonable necessity for utilizing project to ensure continued public use of the entire area at issue, and thus dismissal of county's petition for condemnation was warranted.

NON-COMPENSABLE ITEMS

[CITY OF JACKSONVILLE v. WESTLAND PARK ASSOCIATES, II](#), 46 So.3d 583 (Fla. 1st DCA, 2007).

- Property owner was not entitled to award of severance damages for anticipated changes in traffic flow from construction of new median on property which city already owned, although westbound traffic onto or out of property would have to travel more circuitous route; property owner had no compensable interest in traffic flow.

[DOT v. BUTLER CARPET CO.](#), 231 So.3d 499 (Fla. 2nd DCA, 2017).

- Landowners' losing their most convenient means of access to their properties was not a compensable taking.
- Landowners were not entitled to severance damages based on their claims of loss of visibility due to elevated highway.

[TLC PROPERTIES, INC. v. DOT](#), 292 So.3d 10 (Fla. 1st DCA, 2020).

- Flyover highway project would not deny billboard owner access from highway to property on which its billboard was located, such that no compensation was warranted for loss of access.
- Unobstructed view of a billboard on private property was not a compensable property interest in inverse condemnation action.

OFFERS

[SIMMONS v. DEPT. OF ENVIRONMENTAL PROTECTION](#), 849 So.2d 415 (Fla. 2nd DCA, 2003).

- Duty of the Department to negotiate in good faith with property owners prior to bringing eminent domain proceeding did not extend beyond its duty to send written offers and await a response; property owners received two written offers from Department that complied with section of statute requiring that Department attempt to negotiate in good faith with fee owner of parcel to be acquired and attempt to reach agreement regarding amount of compensation, and property owners neglected to respond to offers, and thus, owners' failure to respond to offers ended negotiations.

[POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY v. HOLLAND](#), 82 So.3d 1034 (Fla. 4th DCA, 2011).

- Pre-suit notification letter sent by city redevelopment agency via certified mail to property owner, offering to purchase the property for \$62,500, was the “first written offer” to purchase the property after owner hired an attorney, and thus calculation of the benefit achieved by attorney, for purposes of attorney fee award, would be based on such offer; unlike previous offers made by agency, certified letter made reference to eminent domain statute, expressed the offer in certain, definite terms, was immediately binding upon acceptance by owner, and contained no contingencies.

[ORLANDO/ORANGE CNTY. EXPRESSWAY AUTH. v. TUSCAN RIDGE, LLC](#), 84 So.3d 410 (Fla. 5th DCA, 2012).

- County expressway authority's pre-suit offer to landowners to purchase property was not so indefinite that it could not be used to determine the benefits achieved by the landowners in condemnation action for purposes of determining attorney fee award, even though the offer was made subject to apportionment, where there were no apportionment issues in the case and all the benefits achieved by the litigation were attributable to the landowners, who were the only parties that went to trial and who were both represented by the same attorneys.

[FLORIDA DEPT. OF AGR. & CONSUMER SERVICES v. BOGORFF](#), 35 So.3d 84 (Fla. 4th DCA, 2013).

- Department's written offer was not offering to compensate the homeowners in exchange for their transfer of property to the state since the trees were already destroyed, and nothing in the letters indicated that the Department was offering compensation in exchange for the relinquishment of right to claim additional compensation through inverse condemnation action.

OUTDOOR ADVERTISING SIGNS

[TLC PROPERTIES, INC. v. DOT](#), (Fla. 1st DCA, 2020).

- Unobstructed view of an advertising billboard on private property from public highway was not a compensable property interest, and thus loss of visibility of billboard to passers-by on highway due to highway flyover project was not compensable in inverse condemnation action, although restrictive covenant in easement deed that was provided to billboard owner prohibited property owner from restricting view of billboard from public highway; landowners could not contract to control or limit the government's ability to acquire lands for public purposes, and billboard owner had an appropriate remedy in breach of contract claim against landowner for highway construction's effect on easement.

PARENT TRACT

[FDOT v. TIRE CENTERS, LLC](#), 895 So.2d 1110 (Fla. 4th DCA, 2005).

- Under the “parent tract rule,” in order to show that two parcels are a single tract for the purpose of severance and business damages, three factors must be established: physical contiguity, unity of ownership, and unity of use.

[SYSTEM COMPONENTS CORP. v. FDOT](#), 14 So.3d 967 (Fla. 2009).

- Business damages of landowner that relocated after partial taking for road expansion should have been determined in light of continued existence at new location, even though statute required determination of business damages on earlier of trial or taking; doctrine of avoidable consequences or cost to cure limited to parent tract did not require court to ignore actual business damages, and ignoring planned, executed relocation would lead to absurd result of overcompensating business as though it had ceased to exist on date of taking.

PARTIES/INTERVENTION

[FLORIDA DEPT. OF AGR. & CONSUMER SERVICES v. LOPEZ-BRIGNONI](#), 114 So.3d 1138 (Fla. 3rd DCA, 2012).

- Damages claims by putative class members in inverse condemnation action for residential citrus trees that were destroyed in effort to eradicate citrus canker, based on replacement cost, rather than diminution in value, met commonality requirement for class certification; although the amount of compensation for the replacement cost of the destroyed trees could differ among class members, the methodology for establishing compensation would result in a uniform result, thus avoiding the necessity of holding individual damage hearings.

PERSONAL PROPERTY

[PONDELLA HALL FOR HIRE, INC. v. LAMAR](#), 866 So.2d 719 (Fla. 5th DCA, 2004).

- Loss of forfeiture claimant's leases to real property was incidental to lawful government action based on probable cause, and thus state seizure of personal property and injunction against property owners from operating illegal bingo games that caused claimant to lose its lease was not a “taking” for which claimant could seek compensation.
- Once forfeiture claims were dismissed, state was obligated to return seized personal property to claimant, and thus, claimant was entitled to damages for loss of use after dismissal upon proof that state's failure to return property was unreasonable.

[CITY OF HOLLYWOOD v. MULLIGAN](#), 934 So.2d 1238 (Fla. 2006).

- An “impoundment” is the temporary taking of tangible, personal property; a “forfeiture” is the permanent taking of real or personal property (tangible or intangible). City’s seizure and impoundment of vehicle under ordinance authorizing seizure and impoundment for probable cause was not a taking under the power of eminent domain.

[HUNT v. STATE](#), 310 So.3d 1123 (Fla. 1st DCA, 2021).

- Petitioners did not have a constitutionally cognizable theory for relief, in action asserting a taking-claim regarding personal property in response to enactment of statute which banned “bump-fire stocks;” the only recognized constitutionally cognizable taking-claim regarding personal property involved actual appropriation of property for the government for its own use.

PETITION

[CITY OF BOYNTON BEACH v. JANOTS](#), 929 So.2d 1099 (Fla. 4th DCA, 2006).

- City's motion to withdraw proceeds for condemned property, to satisfy code enforcement liens on property, was a "petition" within meaning of statute providing for enforcement of liens, and thus city was not required to file separate action to enforce liens, where motion contained written request to court, and trial court had jurisdiction to adjudicate liens.

[ALACHUA LAND INVESTORS, LLC v. CITY OF GAINESVILLE](#), 107 So.3d 1154 (Fla. 1st DCA, 2013).

- Developer's petition for plat approval for the final development phase of a residential subdivision, which proposed construction of a sanitary sewer line across a conservation area, was not a meaningful application, as necessary for developer's as-applied regulatory taking claim arising out of the denial of the petition to be ripe for adjudication; request to construct the sewer pipe was bound to fail, given existing zoning regulations barring any disturbance of the conservation area, petition did not seek relief from the zoning requirements, and developer did not propose any revisions to its plan after petition was denied, despite evidence that alternatives existed.

[VIVERETTE v. DOT](#), 227 So.3d 1274 (Fla. 1st DCA, 2017).

- Project resolution authorizing road-widening project attached to Department of Transportation's eminent domain petition caused the petition to be defective, and could not allow landowners' property to be taken, where resolution showed outdated right-of-way maps from earlier petition and did not reflect portion of land sought to be condemned.

[LEON CNTY. v. LAKESHORE GARDENS HOMEOWNERS' ASSOCIATION, INC.](#), 265 So.3d 706 (Fla. 1st DCA, 2019).

- Circuit court's dismissal of county's petition for eminent domain filed against homeowner's association, which did not name individual homeowners, departed from essential requirements of law and caused material injury to county from which there would be no adequate remedy on appeal as required for certiorari relief, although general directives governing civil practice and procedure suggested naming individual homeowners who were affected as indispensable parties, where all homeowners had interest in common area affected by action, statute provided that homeowner's association may defend actions in eminent domain, and rule of civil procedure permitted homeowner's association to institute, maintain, settle, or appeal actions in its name concerning matters of common interest to all members.

[FLORIDA DEPT. OF AGR. & CONSUMER SERVICES v. MAHON](#), 293 So.3d 1091 (Fla. 5th DCA, 2020).

- Absent a showing of irreparable harm, a petition for writ of certiorari for review of a nonfinal order must be dismissed. 5th DCA held the trial court's order would not cause Department to sustain irreparable harm.

[ALTMAN v. BREVARD CNTY.](#), 300 So.3d 347 (Fla. 5th DCA, 2020).

- County which petitioned to condemn easements over private beach front properties for a shore protection project failed to provide a description identifying the property to be acquired, as required by eminent domain statute, and thus county's petition was defective, even though county included legal descriptions of the easements; county's original resolution authorized an easement on each property but stated that two possible boundary lines applied, depending

upon “whichever is further seaward,” and, after trial court ruled in county's favor, county acknowledged that it would have to craft new descriptions in order for them to be enforceable and understandable.

PLEADINGS/PROCEDURE

[SOUTHWEST FLORIDA WATER MANAGEMENT DIST. v. SHEA](#), 86 So.3d 582 (Fla. 2nd DCA, 2012).

- Contesting an order of taking was not a supplemental proceeding meriting an additional award.

[VIVERETTE v. DOT](#), 227 So.3d 1274 (Fla. 1st DCA, 2017).

- Any inconsistency between an eminent domain pleading and its attached exhibit has the effect of “neutralizing” the allegations of the petition, rendering the pleading deficient.
- Pleading requirements of statute governing eminent domain are not jurisdictional insofar as a pleading defect does not deprive the trial court of subject matter jurisdiction to entertain a motion to amend to cure the deficiency.

[FLORIDA FISH & WILDLIFE CONSERVATION COMMISSION v. DAWS](#), 256 So.3d 907 (Fla. 1st DCA, 2018).

- Landowners failed to plead required elements to state legally sufficient takings claims against the Commission for its decision to allow deer hunters and their dogs on state-owned land directly leading to trespasses on their privately-owned land by hunters and their dogs.

POWER OF EMINENT DOMAIN

[RUKAB v. CITY OF JACKSONVILLE BEACH](#), 811 So.2d 727 (Fla. 1st DCA, 2002).

- Even if there were other opportunities for challenging the “blight” designation by which an agency intends to exercise the power of eminent domain to take properties for redevelopment in the public interest under the Community Redevelopment Act, the landowner whose property is situated within the blighted area must still be afforded an opportunity for a full hearing in an eminent domain action, and the agency or political subunit empowered to exercise eminent domain must therein meet the burden of showing public purpose and necessity.

[KIRKLAND v. CITY OF LAKE LAND](#), 3 So.3d 398 (Fla. 2nd DCA, 2009).

- City had authority, under its eminent domain power, to take land that was entirely outside, and not contiguous with, the city's boundaries, where land was taken in order to improve road access to airport located within the city, and county did not object to the taking, but rather the project was the subject of an interlocal agreement between the city and the county.

PRIOR PUBLIC USE/CONDEMNATION OF OTHER PROPERTY PUT TO A PUBLIC USE

[FLORIDA WATER SERVICES CORP. v. UTILITIES COM'N.](#), 790 So.2d 501 (Fla. 5th DCA, 2001).

- Utilities commission was not prevented from taking water system as system would still be used as before.
- Prior public use doctrine did not prohibit municipal utilities commission's taking of subdivision's water and waste water system, as property would still be used by commission as water and waste water system after taking, and commission's authority to condemn property was sufficient authority for taking.

PUBLIC PURPOSE

[RORABECK'S PLANTS & PRODUCE, INC. v. SCHOOL DIST. OF PALM BEACH CNTY.](#), 853 So.2d 473 (Fla. 4th DCA, 2003).

- County school district was not estopped, in quick-take eminent domain proceeding, from claiming that 2.5-acre portion of 24.88-acre parcel, which was designated on preliminary site plan as police sub-station outparcel, would be used for purposes other than as police sub-station, so that entire parcel was reasonably needed for public school purposes.

[VERIZON WIRELESS PERSONAL COMMUNICATIONS, L.P. v. SANCTUARY AT WULFERT POINT COMMUNITY ASS'N, INC.](#), 916 So.2d 850 (Fla. 2nd DCA, 2005).

- Once land has been acquired in fee simple for public use, either by the exercise of the power of eminent domain or by purchase or donation, the former property owner retains no interest in the land. The public use may thereafter be abandoned or the land may be devoted to a different use without any impairment of the title acquired, absent fraud or bad faith at the time of the conveyance.

[DICHRISTOPHER v. BOARD OF CNTY. COM'RS.](#), 908 So.2d 492 (Fla. 5th DCA, 2005).

- Public interest did not support issuance of temporary injunction preventing County from flooding property owner's property as part of mosquito control program; owner's private interest in his property was outweighed by need to prevent spread of disease by eliminating mosquito breeding grounds.

[CITY OF HOLLYWOOD COMMUNITY REDEVELOPMENT AGENCY v. 1843, LLC](#), 980 So.2d 1138 (Fla. 4th DCA, 2008).

- A condemning authority is not permitted to acquire a greater quantity of property than is necessary to serve the particular public use for which the property is sought.

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- City had authority, under its eminent domain power, to take land that was entirely outside, and not contiguous with, the city's boundaries, where land was taken in order to improve road access to airport located within the city, and county did not object to the taking, but rather the project was the subject of an interlocal agreement between the city and the county.

[JORDAN v. ST. JOHNS CNTY.](#), 63 So.3d 835 (Fla. 5th DCA, 2011).

- County had duty to maintain public road abutting beachfront homes in subdivision located on a barrier island, as long as the road was dedicated to public use.

QUANTITY/QUALITY OF ESTATE

[CITY OF HOLLYWOOD COMMUNITY REDEVELOPMENT AGENCY v. 1843, LLC](#), 980 So.2d 1138 (Fla. 4th DCA, 2008).

- A condemning authority is not permitted to acquire a greater quantity of property than is necessary to serve the particular public use for which the property is sought.

[ROGERS v. U.S.](#), 184 So.3d 1087 (Fla. 2015).

- A railroad's occupying property prior to execution of deed would not affect quality of property interest conveyed under deeds executed later.

[HOMESTEAD LAND GROUP, LLC v. CITY OF HOMESTEAD](#), 157 So.3d 417 (Fla. 3rd DCA, 2015).

- Purchaser of land had no legal interest in the land at time city acquired a portion of it through eminent domain, and thus purchaser, after acquiring the land, could not contest valuation of the portion taken by city, even though vendor had assigned to purchaser its rights in the taken portion and its interest in the proceedings; at time of the taking, vendor only had rights to the property via a reversionary clause, pursuant to which title reverted to vendor if owner could not obtain zoning for new church, but neither purchaser nor vendor were able to show that owner had not secured zoning or that it could not have done so in the future, and vendor never attempted to exercise its right to the property, so that the reversionary interest never matured.

RANGE OF TESTIMONY/VERDICT

[FDOT v. ARMADILLO PARTNERS, INC.](#), 849 So.2d 279 (Fla. 2003).

- Testimony of engineer for DOT in eminent domain proceeding, stating that the DOT would permit the driveways as depicted in DOT's proposed cure should the property owner choose to implement that cure, was sufficient to bind the DOT and permit the introduction of the DOT's proposed cure, even though the driveways as proposed were inconsistent with the department's current construction plans for the roadway project that resulted in the partial taking.

[CAUSEWAY VISTA, INC. v. DOT](#), 918 So.2d 352 (Fla. 2nd DCA, 2005).

- Jury could not determine that there was no reduction in value of the submerged lands, nor could they wholly reject the testimony of the expert witnesses, if they were required to return a verdict between the minimum and maximum amounts testified to by those same experts.
- In an eminent domain action, a jury may not return a verdict on severance damages in an amount less than the minimum amount testified to as the value of the severance damages.
- The proper method to challenge an inadequate verdict is to file a posttrial motion.

[BURGAN v. CITY OF JACKSONVILLE](#), 920 So.2d 70 (Fla. 1st DCA, 2006).

- Jury failed to discharge its duty in eminent domain case when it awarded property amounts less than the lowest value testified to by any witness in the proceeding, contrary to court's instructions that verdict could not be less than the lowest value nor more than the highest value testified to by any witness, and therefore, a new trial was required.

[DAMES v. 926 CO., INC.](#), 925 So.2d 1078 (Fla. 4th DCA, 2006).

- Real estate appraiser's exclusion of comparable properties located within the redevelopment area did not support striking appraiser's testimony.

[WOOD v. ESTATE OF BURNETTE](#), 56 So.3d 74 (Fla. 2nd DCA, 2011).

- When a verdict liquidates damages on a plaintiff's out-of-pocket, pecuniary losses, plaintiff is entitled, as a matter of law, to prejudgment interest from the date of that loss.

[FLORIDA DEPT. OF AGR. & CONSUMER SERVICES v. BOGORFF](#), 35 So.3d 84 (Fla. 4th DCA, 2013).

- The finder of fact is free to determine the reliability and credibility of expert opinions and, if conflicting, to weigh them as the finder sees fit; even when expert testimony is unchallenged, the finder of fact is free to weigh the opinion, just as it does with any other witness, and reject such testimony.

[ORANGE CNTY. v. BUCHMAN](#), 183 So.3d 457 (Fla. 5th DCA, 2016).

- Because jury's verdict in eminent domain case was contrary to the evidence, property owner's challenge to the verdict was properly presented in a timely post-trial motion.
- Trial court did not abuse its discretion by ordering additur when jury returned a verdict that was not supported by evidence in eminent domain case; additur was permitted in proceedings, did not infringe upon County's constitutional right to a jury determination of damages, and offer of a new trial in lieu of additur sufficiently preserved the right to trial by jury.

[GALLEON BAY CORP. v. BOARD OF CNTY. COMMISSIONERS OF MONROE CNTY.](#), 105 So.3d 555 (Fla. 3rd DCA, 2020).

- Statute requiring petitioner in eminent domain proceedings to deposit judgment amount within 20 days after rendition of judgment did not apply to void judgment in inverse condemnation proceedings in which jury awarded corporate landowner \$480,000 in damages that the State and county did not deposit within 20 days; statutory scheme demonstrated that term “petitioner” referred to a condemning authority initiating an eminent domain lawsuit by filing a petition, and statute made sense only in eminent domain context, in which it allowed a condemning authority to walk away from an unaffordable valuation.

RELOCATION

[SYSTEM COMPONENTS CORP. v. FDOT](#), 14 So.3d 967 (Fla. 2009).

- Business damages of landowner that relocated after partial taking for road expansion should have been determined in light of continued existence at new location, even though statute required determination of business damages on earlier of trial or taking; doctrine of avoidable consequences or cost to cure limited to parent tract did not require court to ignore actual business damages, and ignoring planned, executed relocation would lead to absurd result of overcompensating business as though it had ceased to exist on date of taking.

[LEE CNTY. ELEC. CO-OP., INC. v. CITY OF CAPE CORAL](#), 159 So.3d 126 (Fla. 2nd DCA, 2014).

- Utility company which holds a franchise agreement with the city and is required to bear the cost of moving electric lines from one public utility easement to another does not have a claim for taking of property without just compensation.

RES JUDICATA

[BLANKENSHIP v. DOT](#), 890 So.2d 1130 (Fla. 5th DCA, 2004).

- Language of final judgment would have precluded landowner from maintaining a subsequent action for damages caused by flooding.

[BROWARD CNTY. v. ELLER DRIVE LTD. PARTNERSHIP](#), 939 So.2d 130 (Fla. 4th DCA, 2006).

- Prior judgment finding that county-owned property on which lessee had erected a building was immune from ad valorem taxation did not bar county, under doctrine of res judicata, from challenging trial court decision that building was immune from taxation, as issue of whether county or lessee owned building was not an issue in prior judgment.

[LIVINGSTON v. FRANK](#), 150 So.3d 239 (Fla. 2nd DCA, 2014).

- Property owner who entered into a settlement agreement with city, and stipulated to the amount due in eminent domain proceedings as “full compensation,” including statutory interest, was precluded by the finality of those proceedings under the doctrine of res judicata from making a claim that he was also entitled to interest generated by the quick-take deposit funds deposited with the court pursuant to the takings

RESOLUTION

[CITY OF HALLANDALE BEACH v. SMITH](#), 853 So.2d 495 (Fla. 4th DCA, 2003).

- City was not required to comply with municipal public works statutes requiring resolutions and opportunities for public to be heard on certain issues concerning a utility's construction when it sought to condemn property by eminent domain for construction of water treatment facility, where property city sought to condemn was within its corporate limits.

[RAWLS v. LEON CNTY.](#), 974 So.2d 543 (Fla. 1st DCA, 2008).

- County seeking the immediate acquisition of landowner's property in order to extend a road and connect it to another road demonstrated a reasonable necessity for the taking with the introduction of the authorizing resolution of the county's board of commissioners and the testimony of the project manager that the proposed alignment of the extension met the long range transportation plan, satisfied certain environmental and safety concerns, and was cost effective.

[JEA v. WILLIAMS](#), 978 So.2d 842 (Fla. 1st DCA, 2008).

- Fla. Stat. (2004) Sec. 73.015 requires the JEA to make a good faith attempt to negotiate with the appellees prior to the commencement of a condemnation action, but does not require that a resolution be passed in order for the condemning authority to begin that negotiation or extend a binding offer.

[GIL ERIKSEN PROPERTIES, LLC v. POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY](#), 997 So.2d 522 (Fla. 4th DCA, 2009).

- Condemning authority filed condemnation case with a defective resolution of necessity, which was insufficient to confer jurisdiction on the court and could not be cured during the lawsuit by a new resolution. Trial court still had power to adjudicate subject matter of action when condemning authority filed a new action based on a proper resolution of necessity.

[VIVERETTE v. DOT](#), 227 So.3d 1274 (Fla. 1st DCA, 2017).

- Project resolution authorizing road-widening project attached to Department of Transportation's eminent domain petition caused the petition to be defective, and could not allow landowners' property to be taken, where resolution showed outdated right-of-way maps from earlier petition and did not reflect portion of land sought to be condemned.

[ALTMAN v. BREVARD CNTY](#), 300 So.3d 347 (Fla. 5th DCA, 2020).

- County did not violate the eminent domain statute by combining five beach front properties within one resolution for condemnation, for purposes of a shore protection project, where the statute required board of county commissioners to adopt a resolution authorizing acquisition of property but did not require a separate resolution for each individual parcel in the project.

SALES TO CONDEMNING AUTHORITIES

[CITY OF BOYNTON BEACH v. JANOTS](#), 929 So.2d 1099 (Fla. 4th DCA, 2006).

- Where the condemning authority is not bound by an owner's acceptance, an offer is irrelevant for the purpose of calculating attorney's fees under Fla. Stat. Sec. 73.092.

[GENERAL COMMERCIAL PROPERTIES, INC. v. FDOT](#), 178 So.3d 439 (Fla. 4th DCA, 2015).

- When a condemning authority engages in an ordinary arm's length transaction to purchase property, the property owner has no entitlement to attorney's fees, and the eminent domain attorney's fees statute does not apply.

SETTLEMENT

[CITY OF NORTH MIAMI BEACH v. REED](#), 863 So.2d 351 (Fla. 3rd DCA, 2003).

- A written settlement offer is mandatory to limit the award of attorney fees to the percentage of the benefits achieved for the client, and thus, a limitation on the fee award in an inverse condemnation case was inappropriate, where the condemning authority made no written offer.

SEVERANCE DAMAGES

[DOT v. RFT PARTNERSHIP](#), 906 So.2d 1161 (Fla. 2nd DCA, 2005).

- Proposed grade change at intersection adjacent to property would not have entitled landowner to severance damages.
- If land taken from a property owner is used as right-of-way for a highway that is also constructed on other adjoining land, severance damages can be based upon the overall impact of the highway and not merely the construction on the land taken; however, a taking will not fall within this exception, and severance damages are not proper, if it is practicable to separate the use of the land taken from that of the adjoining land.

[CAUSEWAY VISTA, INC. v. DOT](#), 918 So.2d 352 (Fla. 2nd DCA, 2005).

- Jury's award of no damages to property owner on claim for severance damages was inadequate in eminent domain proceeding; minimum amount testified to as to value of severance damages was \$100.
- Inadequate award of severance damages in eminent domain action warranted new trial on issue of severance damages only, not on all damages.

[CITY OF JACKSONVILLE v. WESTLAND PARK ASSOCIATES, II](#), 46 So.3d 583 (Fla. 1st DCA, 2007).

- Property owner was not entitled to award of severance damages for anticipated changes in traffic flow, although westbound traffic onto or out of property would have to travel more circuitous route.

[DOT v. FISHER](#), 958 So.2d 586 (Fla. 2nd DCA, 2007).

- When the government physically appropriates some portion of a property owner's land, any diminished access to the property may be considered as part of the severance damages owed for the reduced value of the remainder of the land through inverse condemnation.

[SYSTEM COMPONENTS CORP. v. FDOT](#), 14 So.3d 967 (Fla. 2009).

- Severance damages from condemnation are subject to the doctrine of avoidable consequences through a valuation concept known as the "cost to cure" which is the cost of an attempt to ameliorate the damage to value sustained by the remaining property as a result of the partial taking by the government.

[DOT v. BUTLER CARPET CO.](#), 231 So.3d 499 (Fla. 2nd DCA, 2017).

- Landowners were not entitled to severance damages based on their claims of loss of visibility due to elevated highway.

[NEIGHBORHOOD PLANNING CO., LLC v. DOT](#), 306 So.3d 1002 (Fla. 3rd DCA, 2020).

- Jury's failure to specifically determine severance damages related to cell tower setback in eminent domain proceeding, constituted reversible error, even though jury awarded additional damages for lot on which tower was located, where jury was required to return verdict that included separate severance damages award in an amount not less than minimum amount testified to as to value of severance damages, and court was unable to determine how jury reached its calculation for additional damages.

SURVEY

[ROGERS v. U.S.](#), 184 So.3d 1087 (Fla. 2015).

- The fact that railroad company surveyed property that it did not own and located a route for its railroad before acquiring title to it did not affect the nature or quality of the property interest the railroad received under the deeds that were executed later.

WATER AND WATERCOURSES

[FLORIDA WATER SERVICES CORP. V. UTILITIES COM'N.](#), 790 So.2d 501 (Fla. 5th DCA, 2001).

- Utilities commission was not prevented from taking water system as system would still be used as before.

[BLANKENSHIP v. DOT](#), 890 So.2d 1130 (Fla. 5th DCA, 2004).

- Eminent domain judgment would have precluded landowner from maintaining subsequent flooding claim.

[DICHRISTOPHER v. BOARD OF CNTY. COM'RS.](#), 908 So.2d 492 (Fla. 5th DCA, 2005).

- Public interest did not support issuance of temporary injunction preventing County from flooding property owner's property as part of mosquito control program; owner's private interest in his property was outweighed by need to prevent spread of disease by eliminating mosquito breeding grounds.

[WALTON CNTY. v. STOP BEACH RENOURISHMENT, INC.](#), 998 So.2d 1102 (Fla. 2008).

- Upland owners' rights to access, use, and view navigable waters are rights relating to the present use of the foreshore and water.
- Provisions of the Beach and Shore Preservation Act that fix shoreline boundary and that suspend operation of common-law rule of accretion but preserve littoral rights of access, view, and use after erosion control line (ECL) is recorded do not, on their face, unconstitutionally deprive upland owners of littoral rights without just compensation.

[DRAKE v. WALTON CNTY.](#), 6 So.3d 717 (Fla. 1st DCA, 2009).

- County's diversion of water across the upper portion of property owner's land in effort to keep neighboring private homes safe from flooding resulted in a "taking" for which property owner was entitled to compensation, even though a longstanding drainage pattern had existed across the land in the past; the past drainage pattern had been reconfigured by county prior to purchase of the land for development, such that there was no drainage across the land until county dug new ditches for diversion, and the ditches continued to permit drainage after emergency had passed, conferring a benefit on other property owners rather than preventing public harm.
- Government cannot choose to act and protect one property owner by diverting floodwater onto the property of another without compensating that property owner.

[HIGHLANDS-IN-THE-WOODS, L.L.C. v. POLK CNTY.](#), 217 So.3d 1175 (Fla. 2nd DCA, 2017).

- Permit conditions requiring developer to install and dedicate water reuse lines even when reclaimed water was unavailable were not a taking.

[CITY OF SUNNY ISLES BEACH v. CAVALRY CORP.](#), 208 So.3d 1247 (Fla. 3rd DCA, 2017).

- Conceptual plans for a partially taken undeveloped finger canal were admissible to show highest and best use of canal as a private docking facility.

[SIMON v. DEER MEADOWS HOMEOWNERS' ASSOCIATION, INC.](#), 277 So.3d 197 (Fla. 1st DCA, 2019).

- Any alleged taking by city related to pond created to collect storm water occurred prior to property owners' acquisition of parcel, and thus property owners were not entitled to

compensation on inverse condemnation claim; although city accepted plat and maintenance responsibility for roads and easements which were designed and intended to direct storm water into retention pond on property, owners bought property knowing pond existed, that pond received storm water from neighborhood, and that prior owners had maintained pond themselves.

ZONING & RESTRICTIVE COVENANTS

[LOST TREE VILLAGE CORP. v. CITY OF VERO BEACH](#), 838 So.2d 561 (Fla. 4th DCA, 2002).

- Regulatory takings claim existed for developer against both city and town when the combined effect of ordinances precluded development.

[CITY OF TAMPA v. REDNER](#), 852 So.2d 270 (Fla. 2nd DCA, 2003).

- Proper measure of damages in action that property owner brought against city on ground that rezoning of property from wet, which allowed sale of alcoholic beverages, to dry, was improper and amounted to taking of his interest in property, was reduction in income producing potential, not amount of all income lost while property sat vacant for a period of time; reduction in income producing potential was measured by subtracting annual income potential of property as zoned dry from annual income potential of property as zoned wet, multiplied by number of years property was improperly zoned.

[VERIZON WIRELESS PERSONAL COMMUNICATIONS, L.P. v. SANCTUARY AT WULFERT POINT COMMUNITY ASS'N, INC.](#), 916 So.2d 850 (Fla. 2nd DCA, 2005).

- Equitable estoppel may apply to a local government's exercise of zoning power when a property owner (1) relying in good faith (2) upon some act or omission of the government (3) has made such a substantial change in position or incurred such extensive obligations and expenses that it would be highly inequitable and unjust to destroy the rights he has acquired.

[BEYER v. CITY OF MARATHON](#), 37 So.3d 932 (Fla. 3rd DCA, 2010).

- County's enactment of zoning plan that changed designation of property from general use to "offshore island" and classified property as bird rookery did not, on its face, deprive landowners of all reasonable economic use of property and thus did not preclude landowners from later claiming an as-applied taking; city and state conceded that property could be used for camping and other recreational uses, and had additional beneficial economic value because it had transferable development rights.

[CITY OF VENICE v. GWYNN](#), 76 So.3d 401 (Fla. 2nd DCA, 2011).

- When engaging in an analysis of whether a zoning ordinance/regulation unconstitutionally interferes with a property owner's rights, a court must consider: (1) the economic impact of the regulation on the property owner; (2) the extent to which the regulation has interfered with distinct investment-backed expectations; and (3) the character of the government invasion.

[BEYER v. CITY OF MARATHON](#), 197 So.3d 563 (Fla. 3rd DCA, 2013).

- Comprehensive plan that barred development of property did not deprive property owners of all economically beneficial use.

[OCEAN PALM GOLF CLUB PARTNERSHIP v. CITY OF FLAGLER BEACH](#), 139 So.3d 463 (Fla. 5th DCA, 2014).

- City's denial of landowner's rezoning request and refusal to change its comprehensive plan for former golf course property was not a total or partial taking.

[DEPT. OF ENVIRONMENTAL PROTECTION v. BEACH GROUP INVESTMENTS, LLC](#), 201 So.3d 679 (Fla. 4th DCA, 2016).

- Mere fact that the denial of a permit deprives a property owner of a particular use the owner deems most profitable or preferable does not demonstrate a taking.

[HIGHLANDS-IN-THE-WOODS, L.L.C. v. POLK CNTY.](#), 217 So.3d 1175 (Fla. 2nd DCA, 2017).

- [Link](#)
- The government may choose whether and how a permit applicant is required to mitigate the impacts of a proposed development, but it may not leverage its legitimate state interest in mitigation to pursue governmental ends that lack an essential nexus and rough proportionality to those impacts.

[HAYSLIP v. U.S. HOME CORP.](#), 276 So.3d 109 (Fla. 2nd DCA, 2019).

- Arbitration provision in original special warranty deed, mandating mediation and/or arbitration, was a covenant running with the land, and thus, it was binding upon subsequent purchasers, who alleged that home builder had inadequately and improperly installed stucco system on home; intent that covenant run with land was evident in language of original special warranty deed

[GALLEON BAY CORP. v. BOARD OF CNTY. COMMISSIONERS OF MONROE CNTY.](#), 105 So.3d 555 (Fla. 3rd DCA, 2020).

- Landowner was deprived of all or substantially all of the economically viable use of its property, as required for inverse condemnation claim, by county's zoning restriction.

[TLC PROPERTIES, INC. v. DOT](#), 292 So.3d 10 (Fla. 1st DCA, 2020).

- Restrictive covenants convey no interest in the land, are not true easements, and at best may be relied upon and enforced between the parties thereto and their successors with notice.

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