Growth Management Meets Eminent Domain

(This article was written by Mark Bentley of Mark Bentley, P.A.)

An affirmative defense sometimes asserted by property owners seeking to prevent the taking of their lands is that the project associated with the taking has failed or will fail to comply with applicable governmental permitting requirements. Recently, two district courts have rendered decisions involving challenges to takings by quasi-governmental entities for their alleged failure to comply with Florida's growth management laws. These cases have great significance in the eminent domain arena as they illustrate the convergence of Florida's strong growth management laws with the established power of eminent domain.

In the case of *Leon County v. State Department of Community Affairs,* 666 So.2d 1003 (Fla. 1st DCA 1996), Leon County appealed the Department of Community Affairs' ("DCAs'") decision that the developers of a petroleum pipeline and a related storage facility were not required to obtain a binding letter of interpretation ("BLI") pursuant to Section 380.06(4)(c) Florida Statutes, relating to developments of regional impact ("DRIs") because the pipeline and storage facility, both separately and combined, were not subject to DRI review. The DRI process provides for both a property owner or concerned local government to request the DCA to issue a BLI to advise a developer who is in doubt whether their development must undergo DRI review.

In this case, Colonial Pipeline Company planned to build a petroleum pipeline in Leon County, Florida. In an attempt to halt the pipeline, Leon County filed a Section 120.57(1) petition seeking to require Colonial to obtain a BLI from the DCA. At the conclusion of the administrative hearing, the DCA issued a final order concluding that because the pipeline was not specifically identified as a land use that would be subject to DRI review under Chapter 380, that consistent with the DCA's longstanding interpretation, it was not considered a DRI. Furthermore, because the storage facility constituted less than the 80% DRI threshold, it too was not required to undergo DRI review. On appeal, the district court ultimately upheld the DCA's order.

In the case of *Dines C. Das v. Osceola County,* 22 FLW D 182 (Fla. 5th DCA); Case No. 96-581, Central Florida Pipeline Corporation filed a petition in eminent domain seeking to acquire a perpetual easement. The property owners objected and filed a crossclaim against Osceola County contending that in authorizing the pipeline, the County failed to properly adhere to its comprehensive plan's consistency requirement. The trial court entered an order of taking and the County sought to dismiss the owners' crossclaim alleging that the claim was time barred for failure of the owners to file a complaint within 30 days of the alleged inconsistent action, which is required by Section 163.3215. Because the owners were not provided specific notice of the County's consistency determination as mandated by the statute, the district court held that the owners were not barred from pursuing their consistency argument, and remanded the case.

These cases represent excellent examples of the increasing influence of land use and growth management laws on the domain of eminent domain. They further emphasize that the eminent domain practitioner should now be familiar with land use laws to effectively represent their clients.