

*Is the state still paying too much for attorneys in eminent domain cases?*

## This Land is My Land

By John D. McKinnon

A record-setting \$12 million attorney's fee in an eminent domain case in the Panhandle has prompted a new round of complaints about the money that taxpayers are being forced to pay in condemnation cases. For years, some state officials have griped that Florida is among the most profligate states in compensating private landowners and their lawyers when government takes property for roads and other purposes. Analysts in the early 1990s estimated the system was costing the state up to \$100 million annually in inflated land prices and unnecessary fees.

The Legislature has taken two shots at reforming the law. In the late 1980s and again in 1994, it passed reforms aimed at making the attorneys' compensation based on how much they won for their clients. Previously, the state paid the attorneys mostly on an hourly basis - win or lose. Scandals had erupted because some lawyers were churning hours needlessly,

causing the fees in some smaller condemnation cases to far exceed the cost of the land itself.

Critics maintain that despite the reforms, problems still remain, as evidenced by the fee awarded in the Panhandle case.

The case dates from the 1980s, when the state decided to acquire a nearly pristine Panhandle beachfront property known as Topsail Hill. The property was owned by St. Joe Paper Co., Florida's largest landowner.

In 1990, St. Joe offered to sell a large portion of it to the state for about \$45 million, but the Cabinet rejected that offer. Later, at the insistence of state regulators, Walton County officials reduced the property's zoning density in order to protect its environmental quality. After the downzoning, which lowered the property's value, the state offered St. Joe about \$25 million. But St. Joe turned down the offer and the case went to court.

Legendary land-use lawyer Toby Prince Brigham and a team of 10 lawyers from his Miami firm, Brigham Moore LLP, argued that the state's desire for the property had led to the pressure for downzoning. Brigham Moore lawyers also argued that the state hadn't proved it needed to condemn the land in order to protect it.

A sympathetic local judge sided with St. Joe and rejected the state's condemnation suit. Just days later, the state settled with St. Joe for \$84 million, in an agreement that also allows development of other St. Joe property, boosting the county's tax rolls.

The judge awarded the \$12 million fee to Brigham's firm in August. Lawyers for Attorney General Bob Butterworth,

**Toby Prince Brigham's law firm got \$12 million fee for one case.**

outraged, complain that the fee works out to almost \$4,000 per hour. They're appealing the case to the Florida Supreme Court, hoping for a ruling that reduces the taxpayer-paid fees for private landowner's lawyers, especially in big cases. "It's the hogs slopping at the trough" fumes Deputy Attorney General Pete Antonacci.

In defense of the fee, Brigham points out that it's in keeping with the spirit of the reforms in eminent domain aimed at rewarding lawyers only when they produce benefit for their clients. The most recent revisions in 1994 limited landowner lawyers to specified percentages of the benefit they obtain for their clients - for example, 20% of the benefit exceeding \$1 million.

Noting that his firm gained about \$59 million for St. Joe over the state's original offer for the land, plus the value of the nearby development rights, Brigham contends that his lawyers produced about \$33,000 per hour worth of benefit to the client. "Now when you say \$4,000 an hour, it's in context."

Brigham also defends the fee - and the rules requiring the state to pay it - as a way of keeping the government honest when it takes private land.

The real problem, Brigham and the other eminent domain specialists suggest, is that state agencies and local governments often make inadequate offers for private land that's being condemned. They even use their regulatory powers to drive down prices. That's what causes landowners to bring in the lawyers, he says.

"All they have to do is be fair to begin with," the soft-spoken Brigham says of government agencies. Instead, he says, "they get rather ruthless."

Butterworth's attorneys, however, think the Supreme Court ought to modify the rules, if only to prevent the kind of windfall they say Brigham's firm is receiving. "Some sobering up needs to happen on cases like this," says Antonacci. "We all have to come off our drunk here."

