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2 [] **Billboard Issues In Eminent Domain**

1. Usually Relate to two issues:

- A. Valuation of a legal nonconforming sign.
- B. Relocation in lieu of compensation.

3 [] **Billboard Issues In Eminent Domain**

2. FDOT asserts sign has no value as it became illegal after expiration of the local amortization period.

- A. Not valid position if sign has state tags.
- B. If FDOT won't pay then local government must pay pursuant to Section 479.15 F.S.

3. FDOT asserts sign has no value as it lost legal nonconforming status or should have been removed per local amortization schedule.

4. Local government asserts expiration of amortization renders sign illegal, and not compensable.

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1. 22,500 permitted signs on 16,000 structures on the state highway system.

2. 7,000 are lawful nonconforming.

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1. August, 2004 hurricanes – 299 destroyed (more than 50% damage).

2. Destroyed = 50% of supports per wood sign and 25% of supports for metal sign.

3. 164 nonconforming signs rebuilt per settlement agreement with FDOT violating the Federal Highway Beautification Act.

6 [] **Failed Attempts To Amend H.B.A. In Washington**

May 2006 – War/Hurricane Katrina Emergency Supplemental Appropriations Bill: died due to public opposition.

June 2006 – Senate's Energy and Water Appropriations Bill: all earmarks and special provisions were removed before passing bill.

March 2007 – Iraq War Appropriations Bill: stricken from bill after challenge under Rule 16 of the Senate; "*prohibits legislating through appropriations bills*".

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1. Would have allowed for rebuilding of signs destroyed by major disasters.

2. Bill died for fear of losing up to 10% of highway funds per 1965 Highway Beautification Act.

3. 1965 Act prohibits rebuilding nonconforming signs destroyed by natural disasters.

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10  **Highway Beautification Act Of 1965**

1. States forced to enact legislation by 1968 or lose transportation funding - \$100 million for Florida (2005 estimate).

2. Control zone – 660 feet.

3. Originally 5 year amortization.

4. Amended in 1978 to require “just compensation” in lieu of amortization

5. Nonconforming billboards cannot be rebuilt if destroyed.

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12  **Causes For Reductions Of Billboards**

1. Federal Highway Beautification Act – requires removal if a nonconforming sign is destroyed.

2. Local ordinances prohibit rebuilding if abandoned or destroyed.

3. Acts of god destroying nonconforming signs.

4. Governmental takings.

5. Chapter 479 F.S. – No material alterations to nonconforming signs.

6. Local governments enforcement of amortization prior to enactment of F.S. 70.20 in 2002.

7. Litigation – Cap and Replace Ordinances create oligopolies.

8. Britney Spears!!!!!!!

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15  **Results Of Governmental Regulations**

1. Sign structure values and leased fee values have significantly increased. (Supply and Demand)

2. Settlements create oligopolies for sign companies.

3. FDOT relocation provisions are ineffective as they *relate only to nonconforming signs.*

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17  **Chapter 479 F.S./ Section 70.20 F.S.**

1. Chapter 479 provides jurisdiction over interstate, state roads and federal-aid primary highway system.

2. Any sign located within controlled area which is visible from any portion of the main-traveled way of such system (660 ft. if off-site advertising is visible from main traveled way).

3. 2002 Balancing of Interests Legislation – outlawing amortization to “fill the gap” for local and county roads.

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19 [] **Lamar Advertising**

v.

City of Daytona Beach

(5th D.C.A. 1984)

1. Court held 10 year amortization period was valid alternative to just compensation.
2. Signs were not on federal or state highway but local.
3. Section 70.20 F.S. (1994) voids amortization on county and municipal roads.

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1. Interstates – 1500 foot separation.
2. Federal-aid Primary – 1000 foot separation.
3. 65 ft. height – in unincorporated area.
4. 50 ft. height – incorporated area.
5. Commercial or industrial zoning – causes debates with local governments, i.e., site plan zoning, office, research, residential comprehensive plan that allows commercial, etc.

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Chapter 479.24 Eminent Domain Provision

1. State must pay just compensation pursuant to Chapters 73 and 74.
2. State “shall” make every reasonable effort to negotiate purchase of sign to avoid litigation and congestion of courts.
3. State must pay compensation for legal nonconforming signs. Signs permitted by state *can’t become illegal* because of local ordinance.

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What If Comprehensive Plan Says YES, But Zoning Says NO?

1994 Amendment to Chapter 479

- A. If 3 or more separate conforming commercial or industrial activities are located within 1600 feet, then sign qualifies as industrial or commercial.
- B. Intent – recognize comprehensive plan categories that allow mixed use as being “zoned” properly.

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Analysis To Determine If Properly Zoned

1. Look at comprehensive plan map category.
2. Look at what zoning categories are considered “consistent” with the comprehensive plan map.
3. Do any of these zoning categories allow “off-site advertising?” If yes, then the location qualifies.

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FDOT Refusal To Issue Permit

Argues Not Commercial Or Industrial Zoning

- a. Won’t permit local nonconforming use.

b. Research corporate park zoning – is this industrial?

c. Not FDOT's jurisdiction to determine – up to local government to determine industrial/commercial.

d. 14-10.004 F.A.C. – even if local government won't sign FDOT application indicating compliance, all you need is building permit from local government.

25 **FDOT Sign Inventory**

1. Prior to July 1, 1998 FDOT inventoried all signs.

2. Must update inventory every 2 years.

3. Check FDOT website for sign.

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28 **Rule 14-10 Florida Administrative Code**

1. Implements Chapter 479 F.S.

2. Contains detailed permitting and licensing requirements.

29 **Permitted Legal Nonconforming Sign**

Legally permitted, but the use or characteristics of use later becomes inconsistent with state or local requirements.

Sign becomes nonconforming as a result of:

1. Prohibition of billboards by local government.

2. Spacing, height, location, lighting, violate state or local laws.

30 **Chapter 479**

Unpermitted Legal Nonconforming Sign

1. Sign has been unpermitted, structurally unchanged, and continuously maintained at same location for 7 years (same period to establish adverse possession).

2. The sign would have met the criteria for a permit at any time the sign was erected.

3. FDOT has not issued notice of violation during initial 7 years sign was established.

4. The FDOT determines sign is not safety hazard.

5. FDOT must then issue permit.

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32 **14-10.007 F.A.C. – Maintenance Of Legal Nonconforming Signs**

1. Repair cannot exceed 50% of signs structural materials within any 24 month period.

2. Adding automatic changeable facing causes loss of legal status.

33 **14-10 F.A.C. – Removal of Legal Nonconforming Signs**

Sign must be removed if:

- Destroyed – if wood 50% of upright supports; if metal replacement of 25% of the length of each support.
- Abandoned/Discontinued – fail to operate for 12 months or available for lease, blank, or service/product not available. (Exception is public interest message).

34 **14-10 F.A.C. – Legal Nonconforming Signs, cont.**

But...

Public interest message is considered “on-site” as an idea may be viewed as being located wherever the idea is expressed.

Southlake Property Association, Ltd.

v.

City of Morrow

(11th Cir. 1997)

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36 **Refusal to Transfer Permit?**

1. What happens when sign is registered, becomes non-conforming and permit holder refuses to transfer permit?
2. Sign must come down.
3. Cannot obtain new permit if “new” permit does not meet current permitting requirements (typically spacing).
4. Point! Make sure all leases/agreements require assignment of permit.

37 **Compensation Under Chapter 479**

Removal By FDOT

1. Section 479.24 – FDOT must pay compensation for removal of *lawful* nonconforming sign.
2. FDOT is not required to remove sign if compensation is not available from federal government.

38 **Compensation Under Chapter 479**

Removal By Local Government

1. Section 479.15 – cities, counties and local zoning authorities, or other local governments may not remove any lawfully erected sign permitted under Chapter 479.
2. Must pay just compensation for removal – amortization periods do not qualify as just compensation under Chapter 479 or 70.20 F.S.

39 **Chapter 479 Relocation - 1999**

1. Intended to reduce acquisition costs; i.e. eminent domain proceedings.
2. Applies *only* to legal nonconforming signs.
3. Cannot relocate to residential property.
4. Can slide back 100 ft. if agreed to by FDOT and owner – local government has no say, or if it refuses then must pay owner.

5. Owner must pay costs of relocation.

6. Sign still remains legal nonconforming.

40 **Chapter 479 Relocation, cont.**

1. Fact – most signs cannot be relocated but reconstructed so FDOT is actually permitting new signs.

2. Same sign owners receive both compensation and relocation under local agreements (City of Tampa) – defeats purpose of law.

41 **What If Local Government Refuses Relocation On State Or Federal Road?**

1. Takes position that sign is inconsistent with local ordinance prohibiting billboards.

2. Section 479.15(5) F.S. – local government must then pay just compensation.

42 **Relocation Example**

I-4 and I-275

1. Signs on I-4 and I-275 subject to City of Tampa billboard agreement – allowed replacement if taken by eminent domain and relocated within 125 ft.

2. Owners received compensation from FDOT and then also relocated under 479 and local agreement – “double dipping.”

43 **Relocation Questions**

1. If a billboard is relocated on the *same* property should the fee owner be compensated for the loss? (Or Gloria Byrd theory?)

2. If a billboard is relocated to a *different* property, should the fee owner be compensated?

44 **New Law!!!**

Relief From Burdens On Property

1. Enacted in 2002 – Section 70.20 F.S.

2. Intended to reduce local government acquisition costs.

3. Provides dispute resolution process to negotiate relocation and reconstruction.

4. Applies to lawfully erected off-site signs as of July 1, 2002.

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70.20 (10) F.S.

1. 70.20 does not apply to FDOT in connection with operation, maintenance, or expansion of transportation facilities.

2. 70.20 does not affect existing law governing of eminent domain.

3. Does 70.20 apply to enforcement actions by FDOT?

46 **What About Signs That Became Illegal Under A Local Ordinance?**

1. Example – sign beyond amortization period established in local ordinance.

2. Government cannot argue failure to enforce laws or amortization prior to new law as excusable neglect.
3. Compensation must be paid.
4. Exception – if sign is post-amortization and ordinance was challenged before Jan. 2001 then sign must come down without compensation.

47  **Negotiation Is Required Under 70.20**

1. Notice owner and meet within 30 days.
2. Enter into relocation and reconstruction agreement within 120 days.
3. Non-binding arbitration – panel of three.

48  **Government Can't Force Sign Removal For New Development**

1. Sign may not be leveraged as condition of development approval.
2. Includes all development orders – rezoning, variances, permits, DRIs.
3. Only exception - redesignating property single family under comprehensive plan.

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50  **Section 70.20**

Exceptions To Compensation

1. Pre-existing settlement agreements.
2. Signs where amortization period expired and the ordinance was challenged prior to January 1, 2001.
3. If no legal challenge – then compensation is required for signs existing beyond amortization period.

51  **Section 70.20 Ends Eight Years Of Litigation
In Hillsborough County!**

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54  **70.20 F.S.**

Hillsborough County Example

1. 1996 FDOT issues violation – no permit, Agricultural zoning, Res-4 Land Use Plan, but meets spacing.
2. 1996 Hillsborough County issues violation – illegal billboard must comply or be removed.
3. FDOT files suit – case settled, comply or be removed.
4. County Hearing Officer determines sign is legal nonconforming since 1963, and grants 3 year amortization extension to 2001.

55  **70.20 F.S.**

Hillsborough County Example, cont.

5. 1998 FDOT files 2nd suit.
6. 1998 county issues permit (Res-4 allows commercial) and signs FDOT application with condition sign must come down after 3 years.
7. FDOT then issues tag and suit is dropped.
8. 2002 amortization expires and county issues violation.

56 **70.20 F.S.**

Hillsborough County Example, cont.

9. June 2002 – 70.20 F.S. enacted
10. 2004 – owner argues to Hillsborough County new law applies and county agrees.
11. BOCC however rejects settlement proposal and sign owner demands compensation.
12. 2004 - county settles and allows sign in perpetuity – 14 x 48 double sided billboard, 30 ft high.

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58 **2006 Legislature Grants Free**

View Easements

1. June 2006 – Chapter 479 is amended to provide view easements for billboards.
2. Intent – to prevent vegetation and expressway walls that block signs (either intentionally or not).

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61 **2006 Law Grants Air Easement Rights**

1. No beautification projects or plantings allowed in view zone.
2. Once view easement established, becomes a compensable property interest.
3. Scope of easement based on speed limit.

62 **Scope Of View Easement**

1. View zone is 350 feet if less than 35mph.
2. View zone is 500 feet if greater than 35 mph.
3. View zone must be within first 1,000 feet of sign.
4. Applies to interstates, federal-aid primary, expressways, and state highway system, *but not county or local roads.*

63 **What If View Easement Is Blocked?**

1. Must provide a 90 day notice to government or third party to remove obstructions.

2. Can file claim in circuit court.

3. Damages – the lesser of sign’s lost revenue or fair market value of sign.

64 **Second Part Of 2006 Sign Visibility Law**

1. 479.25 F.S. – allows increase in height of sign if noise attenuation wall is permitted that blocks a sign’s visibility.

2. Applies exclusively to noise attenuation walls and no other barriers.

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66 **The 2006 Law’s Stipulations**

1. Can only achieve same degree of visibility from right of way that previously existed.

2. Decision to allow increase in height is up to local government and not FDOT.

67 **Procedures To Obtain Height Increase**

1. FDOT advises local government.

2. Public hearing held and noise wall beneficiaries noticed.

3. Vote of impacted property owners taken on whether to allow wall, but not sign .

4. If there is a favorable decision by majority vote on wall then...

68 **Procedures To Obtain Height Increase, cont.**

1. Allow increase in sign height through variance process; or

2. Allow sign to be reconstructed at another location with owner’s consent; or

3. Refuse to issue permit and pay “fair market value” of sign, and all other property interests.

69 **The Law Is Controversial!**

1. Grants free view easements on public property.

2. League of Cities and Counties opposed.

3. Sierra Club.

4. Citizens For A Scenic Florida.

70 **Pendulum Swinging For Property Rights**

1. 1994 – Chapter 479 recognizes land use plan map as sufficient.

2. 2002 - 70.20 Balancing of Interests – amortization is no longer compensation for local roads.

3. 2006 - Chapter 479 creates View Easements and prohibits Noise Barriers.

4. 2006 - Overhaul of Florida eminent domain statutes as a result of *Kelo*.

5. 2006 - State constitutional amendment passes requiring 3/5 vote of Legislature to allow amendment of statutes authorizing transfer of condemned land to private interests.

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