

M E M O R A N D U M

Date: April 30, 2013

TO: Town Commission

FROM: Dave Bullock, Town Manager

SUBJECT: Discussion Regarding Process for Town Commission to Declare
Conditions Exist for Condemnation as Provided for in Section
150.22(H)(4)

At the April 24, 2013 Special Workshop Meeting the Town Commission requested Staff present the process for condemnation of buildings on Longboat Key. Attached you will find a presentation detailing Town Code procedures, qualifying reasons, and authority related to condemnation. Also attached is a letter from Ms. Maggie D. Mooney-Portale detailing condemnation regulations.

This information will be presented at the May 6, 2013 Regular Meeting. Should you have any questions or require additional information, please feel free to contact me or Anne Ross, Assistant Town Manager.

TOWN OF LONGBOAT KEY



CONDEMNATION DETERMINATION AND PROCESS

TOWN COMMISSION REGULAR MEETING
MAY 6, 2013



TWO TYPES CONDEMNATION

- **Building, Structure, or Portion Thereof**
- **Property**



TWO PROCEDURES FOR CONDEMNING A BUILDING IN TOWN CODE

- **Dangerous or Unsanitary Buildings, Section 150.21**
- **Public Nuisance Buildings, Section 150.22**



DANGEROUS OR UNSANITARY BUILDINGS AUTHORITY DIVISION (SECTION 150.21)

- **Building Official**
 - **Inspects Buildings**
 - **Determines Building or Structure**
 - **Dangerous to Health or Human Life**
 - **Fire Hazard**
 - **Unsanitary**
 - **Post Building – Occupancy/Use Prohibited**
- **Town Commission and Town Manager**
 - **No Action Necessary**



DANGEROUS OR UNSANITARY BUILDINGS STEP ONE (SECTION 150.21)

- **Building Official Determines a Building is Dangerous or Unsanitary By Way Of**
 - **It's Use**
 - **Abandonment**
 - **Dilapidation**
 - **Fire Hazard**
 - **Unsanitary Condition**
 - **Danger to Health or Life**



DANGEROUS OR UNSANITARY BUILDINGS STEP TWO (SECTION 150.21)

- **Building Official Notifies Owner, Agent, or Person in Control of Building**
 - **Provides Timeline to**
 - **Complete Specified Repairs or Improvements**
 - **Demolish and Remove**
 - **Requires Vacation if Necessary for Preservation of Life, Safety, or Health**



DANGEROUS OR UNSANITARY BUILDINGS STEP THREE (SECTION 150.21)

- **Building Official Posts Notifications on Building Entrances**
 - **Unsafe Building**
 - **Occupancy Prohibited or Limited**
 - **Require Repair or Demolition**



DANGEROUS OR UNSANITARY BUILDINGS RECENT BUILDING OFFICIAL DETERMINATIONS PER SECTION 150.21

- Colony Mid-Rise Building, Floor Joist Failure
 - May Be Unsafe
 - Enter at Own Risk
 - Repairs Required
- 733 Lands End, Fire Damage
 - Demolition Required
- 6430 Gulfside Drive, Fire Damage
 - Repairs Required to Reoccupy





PUBLIC NUISANCE BUILDINGS AUTHORITY DIVISION (SECTION 150.22)

- **Building Official**
 - Inspects Buildings
 - Deems Dangerous Structure / Public Nuisance
 - Reports Details and Opinion to Town Commission
- **Town Manager**
 - Coordinate Property Owner Notifications
 - Assist with Building Official Presentation at Public Hearing
- **Town Commission**
 - Adopt Resolution to set Public Hearing
 - Conduct Public Hearing to Review Evidence of Public Nuisance
 - Adopt Resolution Declaring Required Action



PUBLIC NUISANCE BUILDINGS STEP ONE (SECTION 150.22)

- **Building Official Determination of a Dangerous Structure**
 - Interior Walls List or Lean
 - Deterioration Thresholds
 - Improperly Distributed Loads
 - Fire, Water, Wind Damage
 - Unfit for Human Habitation
 - Inadequate Light, Air, or Sanitation Facilities
 - Inadequate Fire Egress
 - Threatening Public or Property
 - Threatening Abutting Property
 - Dangerous or Unsanitary
 - Violates Building or Fire Code



PUBLIC NUISANCE BUILDINGS STEP TWO (SECTION 150.22)

- **Dangerous Structure Action Standards for Town Commission and Town Manager to Follow**
 - **Repair – if Reasonably Feasible**
 - **Vacate – if Dangerous to Health, Safety, or Welfare**
 - **Demolish**
 - **50% Damaged, Deteriorated from Original Value or Structure**
 - **Can't Repair to Non-violation Status**
 - **Fire Hazard Existing or Erected in Violation of Code**



PUBLIC NUISANCE BUILDINGS STEP THREE (SECTION 150.22)

- **Building Official Reports to Town Commission
Determination of Dangerous Structure/Public
Nuisance**
- **Town Commission Reviews Report and Finds a
Public Nuisance May Exist**



PUBLIC NUISANCE BUILDINGS STEP FOUR (SECTION 150.22)

- **Town Commission Adopts Resolution to Set Public Hearing**
- **Property Owner Notified of Public Hearing**



PUBLIC NUISANCE BUILDINGS STEP FIVE (SECTION 150.22)

- **Town Commission Conducts Public Hearing**
- **Property Owner May Provide Evidence Showing Public Nuisance Doesn't Exist**



PUBLIC NUISANCE BUILDINGS STEP SIX (SECTION 150.22)

- **Town Commission Adopts Resolution Declaring One or More of the Following**
 1. **Conditions Alleged Do Not Exist**
 2. **Conditions Do Not Constitute Public Nuisance**
 3. **Conditions Alleged Have Been Remedied**
 4. **Building or Structure is a Public Nuisance and Condemned**
 5. **Provisions to Decide or Determine Issues**
 6. **Description of Public Nuisance Conditions**
 7. **Provide Timeline for Owner Abatement or Town will Abate or File Suit**

Hankin, Persson, McClenathen, Cohen & Darnell

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April 30, 2013

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Reply to: *Sarasota*

The Honorable James L. Brown, Mayor
and Members of Town Commission
Town of Longboat Key
501 Bay Isles Road
Longboat Key, Florida 34228

RE: Colony – Condemnation Options

Dear Mayor Brown and Town Commissioners:

At the workshop on April 24, 2013, a question was posed requesting that the Town Attorney and Town Manager advise the Town Commission regarding the Town's condemnation options relating to the Colony property. To the extent the Town would like to explore condemnation as an option for the Colony property, the Town's options are controlled by Florida Statutes.

The Town has been delegated the right from the Florida Legislature to exercise the power of eminent domain for municipal purposes or uses. Fla. Stat. §§166.401, 166.411. A listing of the authorized municipal uses or purposes provided for by statute are:

- (1) For drainage, ditching, grading, filling or other public improvements deemed necessary or expedient for the preservation of the public health, or for other good reason connected in anywise with the public welfare or the interests of the municipality ;
- (2) For municipal and private corporation public work projects over railroads, traction and streetcar lines, telephone and telegraph lines, streets, highways, drainage districts, bridge districts, school districts, or other public or private lands;
- (3) For streets, lanes, alleys, and ways;
- (4) For public parks, squares, and grounds;
- (5) For drainage, for raising or filling in land in order to promote sanitation and healthfulness;

Sarasota
1820 Ringling Blvd.
Sarasota, Florida 34236

Venice
217 Nassau Street S.
Venice, Florida 34285

- (6) For reclaiming and filling when lands are low and wet;
- (7) For the use of water pipes and for sewerage and drainage purposes;
- (8) For laying wires and conduits underground; and
- (9) For city buildings, waterworks, ponds, and other municipal purposes which shall be coextensive with the powers of the municipality exercising the right of eminent domain.

See, Fla. Stat. §§166.411, 180.22.

In 2006, following the U.S. Supreme Court's decision in *Keio v. City of New London Connecticut*, 545 U.S. 469 (2005), the Florida Legislature adopted several amendments to Florida's eminent domain laws that limited a local government's ability to use the power of condemnation. Specifically, in 2006, the Florida Legislature adopted Florida Statutes §73.014 that eliminated public nuisance abatement as a valid public purpose for the taking of property by eminent domain. See, Fla. Stat. §73.014(1). The same statute also eliminated the prevention of nuisance, slum and blight as valid public purposes. See, Fla. Stat. §73.014(2). The statute does not prevent the Town from adopting ordinances to control public nuisances as long as such ordinances do not permit the use of eminent domain to address such conditions.

The same Legislature in 2006 also adopted Florida Statutes §73.013 which prohibited condemned property from being conveyed to a private entity within ten (10) years of the government's condemnation. Fla. Stat. §73.013. The intent and purpose of that legislation was to prevent the taking of private property for other private use and to limit the property of eminent domain for only public use. Fla. Stat. §73.013(1).

Accordingly, it is our opinion that Florida's eminent domain laws permit the Town to condemn the Colony property for certain enumerated public purposes (i.e., to become a public park, for the construction of a town building/recreational facility, a golf course, etc.). Further, should the Town condemn the property for an enumerated public purpose and then choose to later convey the property to a private party, the Town will be required to hold the property for at least ten (10) years, after which time the property can then be publicly advertised and competitively bid. See, Fla. Stat. §73.013(1)(g). Under current Florida law, the Town is not permitted to condemn the Colony property for purposes of correcting a slum or blight condition, or to prevent a public nuisance. See, Fla. Stat. §73.014.

We would be happy to discuss this opinion and these options with you at the May 6, 2013, meeting.

Respectfully,


Maggie D. Mooney-Portale

MDMP/dgb

cc: Dave Bullock, Town Manager

Title VI
CIVIL PRACTICE AND PROCEDURE

Chapter 73
EMINENT DOMAIN

73.013 Conveyance of property taken by eminent domain; preservation of government entity communications services eminent domain limitation; exception to restrictions on power of eminent domain.—

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

(a) For use in providing common carrier services or systems;

(b)1. For use as a road or other right-of-way or means that is open to the public for transportation, whether at no charge or by toll;

2. For use in the provision of transportation-related services, business opportunities, and products pursuant to s. 338.234, on a toll road;

(c) That is a public or private utility for use in providing electricity services or systems, natural or manufactured gas services or systems, water and wastewater services or systems, stormwater or runoff services or systems, sewer services or systems, pipeline facilities, telephone services or systems, or similar services or systems;

(d) For use in providing public infrastructure;

(e) That occupies, pursuant to a lease, an incidental part of a public property or a public facility for the purpose of providing goods or services to the public;

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

1. The condemning authority or governmental entity holding title to the property documents that the property is no longer needed for the use or purpose for which it was acquired by the condemning authority or for which it was transferred to the current titleholder; and

2. The owner from whom the property was taken by eminent domain is given the opportunity to repurchase the property at the price that he or she received from the

condemning authority;

(g) After public notice and competitive bidding unless otherwise provided by general law, if the property was owned and controlled by the condemning authority or a governmental entity for at least 10 years after the condemning authority acquired title to the property; or

(h) In accordance with subsection (2).

(2)(a) If ownership of property is conveyed to a natural person or private entity pursuant to paragraph (1)(a), paragraph (1)(b), paragraph (1)(c), paragraph (1)(d), or paragraph (1)(e), and at least 10 years have elapsed since the condemning authority acquired title to the property, the property may subsequently be transferred, after public notice and competitive bidding unless otherwise provided by general law, to another natural person or private entity without restriction.

(b) If ownership of property is conveyed to a natural person or private entity pursuant to paragraph (1)(a), paragraph (1)(b), paragraph (1)(c), paragraph (1)(d), or paragraph (1)(e), and less than 10 years have elapsed since the condemning authority acquired title to the property, the property may be transferred, after public notice and competitive bidding unless otherwise provided by general law, to another natural person or private entity without restriction, if the following conditions are met:

1. The current titleholder documents that the property is no longer needed for the use or purpose for which the property was transferred to the current titleholder; and

2. The owner from whom the property was taken by eminent domain is given the opportunity to repurchase the property at the price that he or she received from the condemning authority.

(3) This section does not affect the limitation on a government entity's powers of eminent domain contained in s. 350.81(2)(j).

(4) The power of eminent domain shall be restricted as provided in this chapter and chapters 127, 163, and 166, except when the owner of a property relinquishes the property and concedes to the taking of the property in order to retain the ability to reinvest the proceeds of the sale of the property in replacement property under s. 1033 of the Internal Revenue Code.

History.—s. 1, ch. 2006-11.

Title VI
CIVIL PRACTICE AND PROCEDURE

Chapter 73
EMINENT DOMAIN

73.014 Taking property to eliminate nuisance, slum, or blight conditions prohibited.—

(1) Notwithstanding any other provision of law, including any charter provision, ordinance, statute, or special law, the state, any political subdivision as defined in s. 1.01(8), or any other entity to which the power of eminent domain is delegated may not exercise the power of eminent domain to take private property for the purpose of abating or eliminating a public nuisance. Notwithstanding any other provision of law, including any charter provision, ordinance, statute, or special law, abating or eliminating a public nuisance is not a valid public purpose or use for which private property may be taken by eminent domain and does not satisfy the public purpose requirement of s. 6(a), Art. X of the State Constitution. This subsection does not diminish the power of counties or municipalities to adopt or enforce county or municipal ordinances related to code enforcement or the elimination of public nuisances to the extent such ordinances do not authorize the taking of private property by eminent domain.

(2) Notwithstanding any other provision of law, including any charter provision, ordinance, statute, or special law, the state, any political subdivision as defined in s. 1.01(8), or any other entity to which the power of eminent domain is delegated may not exercise the power of eminent domain to take private property for the purpose of preventing or eliminating slum or blight conditions. Notwithstanding any other provision of law, including any charter provision, ordinance, statute, or special law, taking private property for the purpose of preventing or eliminating slum or blight conditions is not a valid public purpose or use for which private property may be taken by eminent domain and does not satisfy the public purpose requirement of s. 6(a), Art. X of the State Constitution.

History.—s. 2, ch. 2006-11.

Title XII
MUNICIPALITIES

Chapter 166
MUNICIPALITIES

166.401 Right of eminent domain; procedure; compliance with limitations.—

(1) All municipalities in the state may exercise the right and power of eminent domain; that is, the right to appropriate property within the state, except state or federal property, for the uses or purposes authorized pursuant to this part. The absolute fee simple title to all property so taken and acquired shall vest in such municipal corporation unless the municipality seeks to condemn a particular right or estate in such property.

(2) Each municipality is further authorized to exercise the eminent domain power granted to the Department of Transportation in s. 337.27(1) and the transportation corridor protection provisions of s. 337.273.

(3) The local governing body of a municipality may not exercise its power of eminent domain unless the governing body adopts a resolution authorizing the acquisition of a property, real or personal, by eminent domain for any municipal use or purpose designated in such resolution.

(4) Each municipality shall strictly comply with the limitations set forth in ss. 73.013 and 73.014.

History.—s. 1, ch. 73-129; s. 5, ch. 88-168; s. 18, ch. 90-227; s. 63, ch. 99-385; s. 13, ch. 2006-11.

Title XII
MUNICIPALITIES

Chapter 166
MUNICIPALITIES

166.411 Eminent domain; uses or purposes.—Subject to the limitations set forth in ss. 73.013 and 73.014, municipalities are authorized to exercise the power of eminent domain for the following uses or purposes:

(1) For the proper and efficient carrying into effect of any proposed scheme or plan of drainage, ditching, grading, filling, or other public improvement deemed necessary or expedient for the preservation of the public health, or for other good reason connected in anywise with the public welfare or the interests of the municipality and the people thereof;

(2) Over railroads, traction and streetcar lines, telephone and telegraph lines, all public and private streets and highways, drainage districts, bridge districts, school districts, or any other public or private lands whatsoever necessary to enable the accomplishment of purposes listed in s. 180.06;

(3) For streets, lanes, alleys, and ways;

- (4) For public parks, squares, and grounds;
- (5) For drainage, for raising or filling in land in order to promote sanitation and healthfulness, and for the taking of easements for the drainage of the land of one person over and through the land of another;
- (6) For reclaiming and filling when lands are low and wet, or overflowed altogether or at times, or entirely or partly;
- (7) For the use of water pipes and for sewerage and drainage purposes;
- (8) For laying wires and conduits underground; and
- (9) For city buildings, waterworks, ponds, and other municipal purposes which shall be coextensive with the powers of the municipality exercising the right of eminent domain.

History.—s. 1, ch. 73-129; ss. 1, 2, ch. 2001-77; s. 4, ch. 2005-3; s. 14, ch. 2006-11.

Title XII
MUNICIPALITIES

Chapter 180
MUNICIPAL PUBLIC WORKS

180.22 Power of eminent domain.—

(1) Any municipality or private company or corporation authorized to carry into effect any or all of the purposes defined in this chapter may exercise the power of eminent domain over railroads, traction and streetcar lines, telephone and telegraph lines, all public and private streets and highways, drainage districts, bridge districts, school districts, and any other public or private lands or property whatsoever necessary to enable the accomplishment of the purposes of this chapter.

(2) Any municipality which exercises its power under this section outside of its corporate boundaries for the accomplishment of the purposes of this chapter may finance such extraterritorial project in any manner in which it is presently authorized by law to finance a like project within its corporate boundaries.

History.—s. 16, ch. 17118, 1935; CGL 1936 Supp. 3100(21); s. 1, ch. 78-198.



End of Agenda Item