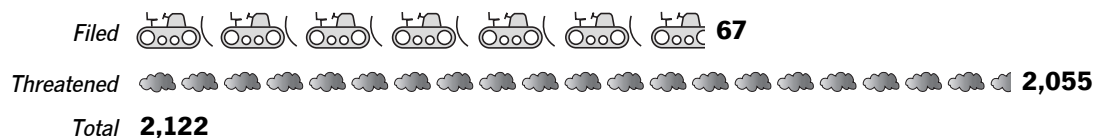




Known Condemnations Benefiting Private Parties*



Known Development Projects w/Private Benefit Condemnations*



State Record of Condemnations Filed, for All Purposes:[†] 14,319

Legend  = 10  = 100  = 1

OVERVIEW

Florida cities are eager to use eminent domain as a redevelopment and even political tool. At the same time, many cities at least try to provide a fig leaf of public use justification even in large projects for private beneficiaries. At the same time, Florida's projects are some of the largest in the country. For example, the City of Riviera Beach has plans to displace more than 5,000 people as part of a massive project. Much of the project area will be transferred to private parties, but one part of the project will move a road, giving at least that portion of it a seemingly public use. The Riviera Beach project also highlights a national trend of cities taking waterfront and other prime real estate away from the rightful owners in order to give the property to more favored developers, so that those developers can reap the benefits of good location. American Beach also looks poised to destroy a flourishing African-American community to make way for higher-priced development.

*These numbers were compiled from news sources. Many cases go unreported, and news reports often do not specify the number of properties against which condemnations were filed or threatened.

[†]Florida Supreme Court (includes condemnations for traditional public uses).

LEGISLATIVE ACTIONS

Governor Jeb Bush recently signed into law a bill passed by the state legislature that significantly weakens the “blight” standards under the state’s Community Redevelopment Act (CRA).¹⁴⁵ Since its initial passage in 1969, the CRA’s definition of blight required not only the presence of one or more statutory factors, such as small lots, diverse ownership (many different owners in area) or narrow streets,¹⁴⁶ but also that the presence of those factors both “substantially impairs or arrests sound growth”¹⁴⁷ and constitutes “a menace to the public health, safety, morals, and welfare.”¹⁴⁸ However, the legislature amended the CRA in 2002, removing those two protections and allowing municipalities to declare areas blighted solely on the basis that two or more of the statutory factors are present.¹⁴⁹

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PRIVATE USE CONDEMNATIONS

American Beach

American Beach is Florida’s most famous predominantly African-American beach. It was founded in 1935, and was a haven for blacks until integration began. Over the last few decades, however, upscale condominium developments, resorts and mansions have been encroaching on American Beach’s picturesque sand dunes and small beach cottages, to the extent that the beach area has shrunk from 200 to 100 acres.¹⁵⁰ In December 2001, the Board of Commissioners in Nassau County voted to declare American Beach blighted, taking the first step in creating a community redevelopment agency that would have the power to condemn properties and sell them off to private developers.¹⁵¹ Fearing that a blight designation will cost them their land, a group of American Beach property owners sued to have the designation overturned.¹⁵² **Update:** The case is still pending as of April 1, 2003.

Boynton Beach

As part of a plan to revitalize Boynton Beach’s central neighborhoods, the City wants to take five properties and transfer them to private retail developers. The targeted properties consist of four businesses (Roberts Restaurant & Take Out, Ruby’s Beauty Center, the Seacrest Farm Dairy Store and an E-Z Market conven-

¹⁴⁵ Community Redevelopment Act of 1969, Fla. Stat. § 163.330 (2001).

¹⁴⁶ *Id.* at § 163.360(2)(a).

¹⁴⁷ *Id.* at § 163.340(8)(a).

¹⁴⁸ *Id.* at § 163.360(8)(b)(3).

¹⁴⁹ H.B. 1341, 104th Sess. (Fla. 2002).

¹⁵⁰ Kelly Brewington, “Eyes on Seaside Prize; Historically Black American Beach Is Being Gobbled Up By White Developers,” *Orlando Sentinel*, Aug. 2, 2002, at A1.

¹⁵¹ Allison Schaefer, “American Beach ‘Blighted,’” *The Florida Times-Union*, Dec. 22, 2001, at P1.

¹⁵² Allison Schaefer, “American Beach Group Seeks to Overturn Blighted Status,” *The Florida Times-Union*, Feb. 13, 2002, at P4.

ience store) and a church (the Jesus House of Worship). In a December 2002 memo to the local redevelopment agency, Development Director Quintus Greene asked the board to begin appraisals of the five properties and make purchase offers to the owners. If the owners are unwilling to sell, the memo recommends taking the properties by eminent domain. It is likely that the agency will assent to the condemnations.¹⁵³

Daytona Beach

The Daytona Beach City Commission declared about 50 homes in the Seabreeze area blighted so that their property could be marketed for development. Even in the City's study, only about 10 percent of the homes appeared to be run-down. Declaring the area blighted of course brings with it the power of eminent domain and the ability to transfer the land to private developers. At least one property was condemned for a hotel under the original blight designation. Many of the homeowners were less than pleased at the prospect of being condemned. Georgiana Wirgman, in her 90s, has lived in her home for more than 50 years and does not want to move. Neither do two college professors, Mary and Richard Snow. Along with some of their neighbors, they brought a lawsuit challenging the blight designation.¹⁵⁴ The trial court will be hearing the evidence on blight.¹⁵⁵ As of December 31, 2002, the case is still ongoing in the trial court.

Fort Lauderdale

Coolidge-South Markets Equities owns a 1.4-acre parcel of land adjacent to the City-owned RiverWalk park development. Coolidge-South and a developer are trying to build a 38-story residential building on the site, with a public access open promenade. The proposed use meets all local zoning requirements, and the City's own comprehensive plan even confirms the site's high-density use designation. However, local preservationists launched a petition drive claiming that a high-rise building might harm the historic Stranahan Building, which is located next door. The preservationists convinced the City that it should condemn the land to prevent the development. In June 2000, the City Commission passed a resolution condemning the land and stating that a park is necessary to "health, safety and morals" of the community, even though Fort Lauderdale already has more park space than called for in its general plan.

¹⁵³ Gariot Louima, "Boynton Officials Ready to Buy, Raze Businesses," *The Palm Beach Post*, Dec. 11, 2002, at 1B.

¹⁵⁴ Rich Mckay, "Residents Fight 'Blight' Label," *Orlando Sentinel*, Aug. 5, 2001, at K1.

¹⁵⁵ Rich Mckay, "Neighbors to Have Say on 'Blight' Decision," *Orlando Sentinel*, Jan. 4, 2002, at G1.

Florida Town Votes Against Expanded Power to Condemn for Private Business

In 2002, the Hallandale City Commission voted down an ordinance that would have greatly expanded the City's power to condemn land for private business. Some years ago, Hallandale created a business redevelopment district to attract developers. Developers complained that they were sometimes able to purchase only a portion of the land needed to carry out a project. Under the proposed ordinance, the City would have automatically been allowed to use eminent domain whenever a developer owned 60 percent of the desired property. City officials voted against this measure because they decided that "creating a blanket ordinance for redevelopment purposes throughout the city might be too costly and risky."¹ As it stands, the City commission will have to determine whether to condemn property on a case-by-case basis.²

¹ Kai T. Hill, "Hallandale Votes Against Taking Land for Renewal," *Sun-Sentinel* (Fort Lauderdale, Fla.), Jan. 16, 2002, at 5B.

² *Id.*

Coolidge-South sued to prevent the taking, whereupon a state circuit court judge ruled that the City's condemnation petition contained only conclusory statements of public purpose, but "no implicit finding of reasonable necessity," or any analysis of reasonable necessity.¹⁵⁶ At the summary judgment phase, the court denied the City's petition, stating that the City has an obligation to state a reason for negligibly increasing park space, when the City is already 30 percent above its preferred level.¹⁵⁷ While this case does not involve condemnation for ownership by a private party, it does involve condemnation at the behest of a private party and with a pretextual justification.

Jacksonville Beach

The City of Jacksonville Beach wants an upscale, privately owned shopping and residential complex in South Jacksonville Beach. In 2000, the City's planning commission acquired 59 residential lots through eminent domain after a circuit judge ruled that the City had a "public purpose and reasonable necessity" for taking the property, namely the economic growth that the complex would bring to the city. Tony Rukab, who owns three lots within the targeted area, is fighting the plan. Rukab objects to the fact that his land is being taken to benefit a private developer, while he had been making his own plans to build a 7,500-square foot retail store on the property.¹⁵⁸ On February 26, 2002, the First District Court of Appeals in Tallahassee reversed the circuit judge's ruling, saying that before the City could condemn the 59 lots, it first had to prove that the public would benefit from the condemnations.¹⁵⁹ Upon rehearing the case, the lower court ruled that such a public benefit exists in this case, allowing the condemnations to go forward.¹⁶⁰ The case is currently on appeal.

Jacksonville

In April 2002, the Jacksonville Economic Development Commission awarded a \$210,000 grant over five years to the Marks Gray law firm, as an incentive for the firm to build a new headquarters building in the Riverside-Brooklyn area of Jacksonville. The redevelopment agreement provided that the City will use its eminent domain authority to acquire property located on the planned site for the law firm's headquarters.¹⁶¹ The site was occupied by three single-family homes and one lot, which were condemned by the City.¹⁶² One representative of the law firm commented, "I'm surprised the City lets people even live there," and suggested the whole area should be condemned. At least some of the residents of this historically black residential area disagree.¹⁶³

Riviera Beach

In December 2001, the Riviera Beach City Council voted unanimously to approve a \$1.25-billion redevelopment plan with the authority to use eminent domain to condemn about 1,700 homes and apartments and displace 5,100 people.¹⁶⁴ About 300 businesses would also be forced to relocate. The City plans to take the properties and sell the land to commercial yachting, shipping and tourism interests. The plan would

¹⁵⁶ *City of Fort Lauderdale v. Coolidge-South Markets Equities, L.P.*, No. 00-10449(09), slip op. at 7 (Fla. 17th Dist. Ct. Mar. 21, 2002).

¹⁵⁷ *Id.* at 13.

¹⁵⁸ Caren Burmeister, "Land Battle Goes On," *The Florida Times-Union*, Dec. 5, 2001, at L1.

¹⁵⁹ *Rukab v. City of Jacksonville Beach*, 811 So. 2d 727, 733 (Fla. App. 2002).

¹⁶⁰ Caren Burmeister, "Judge: City Can Take Land for Development; Center Gains Lots by Eminent Domain," *The Florida Times-Union*, Dec. 21, 2002, at L1.

¹⁶¹ Earl Daniels, "JEDC OKs \$2.4 Million in Financial Incentives," *The Florida Times-Union*, Apr. 12, 2002, at D1.

¹⁶² Earl Daniels, "Trapped in Path of Development," *The Florida Times-Union*, April 29, 2002, at FB12.

¹⁶³ Tiffany Lankes, "Redefining Brooklyn," *The Florida Times-Union*, August 19, 2002, at FB14.

¹⁶⁴ Scott McCabe, "Residents Vow to Fight Riviera Plan," *The Palm Beach Post*, Dec. 17, 2001, at 1B.





Mr. Bell of Riviera Beach, FL learns that a slum and blight study has labeled his home “dilapidated.” Photo by Kym O’Grady.

also move Route 1 and replace a city park with an enlarged harbor. If the development does occur, it will stand as one of the largest exercises of eminent domain in U.S. history.¹⁶⁵

Many of the residents who stand to lose their homes if Riviera Beach goes through with its redevelopment plan are descendants of Bahamian conch fishing families and do not want to give up their homes.¹⁶⁶ For them, Riviera Beach is not only one of the last remaining pockets of affordable waterfront housing in Florida, but is also known as “Conchtown,” the center of their unique culture. As many as 150 of the businesses that could be forced out are boat-related. One of these is Cracker Boy Boat Works, a boating service owned by Martin Murphy. His business has been thriving in Conchtown for decades, but probably would fail if he had to relocate anywhere else.¹⁶⁷

David Lenhart is another Riviera Beach business owner whose fate is uncertain as a result of the City’s redevelopment plans. Lenhart owns Max & Eddie’s Cucina, a gourmet restaurant that he built from nothing into a successful Italian restaurant. He has pleaded with City officials to let him stay at his current location, but so far there is nothing in writing despite the City’s pledge to make sure developers include current businesses in their plans. Lenhart, who spent three rough years establishing his restaurant, has a dim outlook on the future. “If I have to go somewhere else, that’s like going to jail for three years. I’ve already done that.”

¹⁶⁵ Thomas R. Collins, “Many Businesses Feeling Put Out By Riviera Plans,” *The Palm Beach Post*, Jan. 6, 2003, at 1A.

¹⁶⁶ *Id.*; Scott McCabe, “Riviera Approves Waterfront Project,” *The Palm Beach Post*, Dec. 20, 2001, at 1B.

¹⁶⁷ Jim Di Paola, “The Path to Progress,” *CityLink Online (Broward County, Fla.)*, Jan. 30, 2002.



This Riviera Beach home's close proximity to the intracoastal waterway makes it a coveted piece of property. It has now been designated as blighted, and the City plans to take it for private redevelopment. Photo by Martha Babson.

Florida

The Riviera Beach redevelopment also threatens to disrupt the lives of many elderly people who live in the City's path. Dolly Cawley, a 94-year old widow, has lived in her house for 40 years. She has seen plenty of redevelopment schemes come and go, but this time her home may be among the first targeted by the City for condemnation. Cawley has no plans to leave, however, and intends to leave the house to her great-grandson. "It's in my living will," she said. "I go out of here dead."¹⁶⁸

The City's redevelopment agenda is still unclear, although in December 2002, it claimed it would begin condemning homes and businesses in early 2003. It has already done appraisals and sent letters to some homeowners saying that they will be among the first to go. Renee and David Corie were in the process of renovating their house when they received the letter. They stopped. Many residents do not want to move and plan to fight. They have been organizing, speaking at City council meetings, and putting up signs.¹⁶⁹ The Castle Coalition has been working with the homeowners to help them organize their opposition to the condemnation of their homes.

West Palm Beach

During the 1990s, Palm Beach County spent around \$30 million buying up houses in the Hillcrest neighborhood, because the area was in the direct flight path of Palm Beach International Airport. The County soon found itself saddled with 100 acres of vacant land that produced no tax revenue. So it decided to develop the area. Apparently believing there just weren't enough golf courses, the County decided to convert the area into a municipal golf course. However, the City of West Palm Beach objected to the County's planned

¹⁶⁸ Thomas R. Collins, "Many Businesses Feeling Put Out By Riviera Plans," *The Palm Beach Post*, Jan. 6, 2003, at 1A.

¹⁶⁹ Thomas R. Collins, "Homeowners Foresee Pain in Riviera Rebirth," *The Palm Beach Post*, Dec. 7, 2002, at 1A.

use of the land, because the City owned a nearby golf course and did not want the competition. Since the City controlled the zoning of the area, it began an alternate effort to turn Hillcrest into an industrial park.¹⁷⁰

Still, the County pushed forward with its golf course plans. In order to clear the land, the County would need to condemn the three remaining homes in Hillcrest. So it began eminent domain proceedings against the owners of the homes. John and Wendy Zamecnik, who owned one of them, were not happy that their dream house would be razed to make way for a golf course. They became even less pleased, however, to learn that the County had plans for their house other than demolition: it would be converted into living quarters for the golf course manager. "How can they take my home and give it to someone else to live in?" Wendy Zamecnik asked. "Isn't there something wrong with this?" So the Zamecniks decided to fight the County.

At trial, the County was able to convince a judge that there was a public necessity for the Zamecniks' home, even though Palm Beach County already has more golf courses per capita than any county east of the Mississippi River. On December 6, 1999, a judge ordered the Zamecniks out of their house by May 5, 2000.¹⁷¹ The Zamecniks appealed the decision, but the appeals court agreed with the lower court ruling.¹⁷² The case finally ended in January 2002 when a judge ordered the County to pay the Zamecniks \$132,420 for their home.¹⁷³

¹⁷⁰ Marc Caputo, "West Palm Beach, County at Odds over Hillcrest Land," *The Palm Beach Post*, July 20, 2000, at 1B.

¹⁷¹ Marc Caputo, "County to Seize Couple's Home So Golf Manager Can Have It," *The Palm Beach Post*, May 6, 2000, at 1A.

¹⁷² See *Zamecnik v. Palm Beach County*, 768 So. 2d 1217, 1218 (Fla. App. 2000).

¹⁷³ "Verdicts," *Broward Daily Business Review*, Feb. 7, 2002, at A11.

There Goes the Neighborhood: Entire Neighborhoods Lost to Eminent Domain Abuse

Riviera Beach, Florida, plans to displace more than 5,000 residents for mostly private development. That is the largest private condemnation project in the country, but it is by no means the only one that targets an entire neighborhood. Daytona Beach, Florida, is planning to market an area of about 50 homes for private development, just as soon as it gets rid of all the residents. Hurst, Texas, forced out 127 homes for a shopping mall owned by the City's largest taxpayer. Wyandotte County, Kansas, removed 150 families for a racetrack. Garden Grove, California, removed hundreds of apartments and a senior citizens' mobile home park for an upscale hotel. The New London Development Corporation in Connecticut has been trying to wipe out the Fort Trumbull neighborhood in favor of office buildings and something else that no one's sure about. Although many of the 80 families agreed to move under threat of condemnation, seven families are continuing to fight the condemnations in court. Ohio seems especially fond of neighborhood-destroying projects. Toledo removed 83 homes for a car manufacturing facility. Norwood plans to raze 77 homes for a shopping mall; and Lakewood wants to take out 66 houses and five apartment buildings for the ever-present combination of retail, commercial, and upscale condominiums.

Sometimes residents are saved by sheer luck. Sunset Hills, Missouri, hoped to demolish 254 homes for an upscale retail and residential project. The developer had already bought half the homes, and the City was threatening to condemn the rest when it realized the developer did not have enough retailers to make the project worthwhile. Lakewood, Washington, hoped to expunge more than 200 families for an amusement park, but the developer backed out when it didn't get enough tax breaks in its incentive package. And sometimes resident outrage actually gets through to City bureaucrats. Garden Grove, California (which is fond of large projects) scuttled its plan to remove more than 700 homes for a theme park after more than 700 people showed up at a city council meeting to object.

Usually, however, City officials are more than willing to sacrifice their own citizens, particularly those of moderate income, for the promise of richer residents and larger retail.

Sources: All of these situations are described in this report under their respective cities.