



Eminent Domain From the Petitioner's Perspective

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Outline of Presentation

- Eminent Domain 101 - Chapter 73 and 74, Laws of Florida
- Terminology Matters
- Motions in Limine
- Jury Selection
- Strategies on presenting the case
- Questions

A dark grey silhouette of the state of Florida is positioned in the upper right corner of the slide, extending from the top edge down towards the middle of the page.

Eminent Domain 101

Evolution of Property Ownership

In various legal systems of antiquity, individuals owning property was conditional, in other systems all land is held at the indulgency of the king who could give and take away.

1215 Magna Carta was one of the first limitations on a kings power to obtain property.

Could not force a man to be imprisoned or have his property taken without the lawful judgment of his peers (due process).

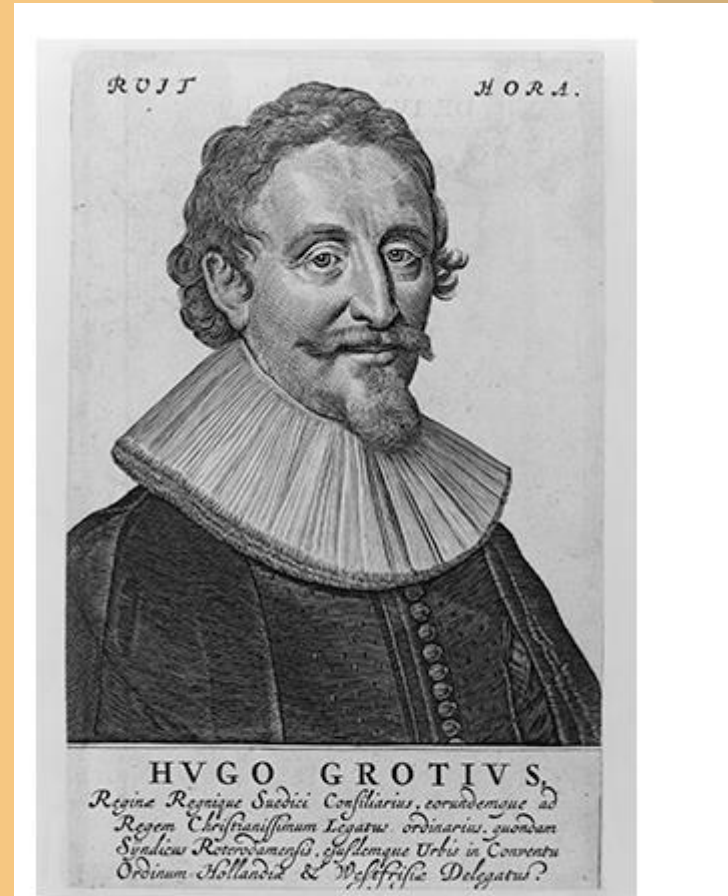


Ancient History and Origins

De jure belli ac pacis (On the Law of War and Peace) legal treatises originally published in 1625 by Hugo Grotius a Dutch Scholar.

Dominium Eminens: supreme lordship.

"... The property of subjects is under the eminent domain of the state, so that the state or he who acts for it may use and even alienate and destroy such property, not only in the case of extreme necessity, in which even private persons have a right over the property of others, but for ends of public utility, to which ends those who founded civil society must be supposed to have intended that private ends should give way. But it is to be added that when this is done the state is bound to make good the loss to those who lose their property."



Hugo Grotius

Library of Congress, Prints and Photographs Division

Use of Eminent Domain in the American Colonies

- The right of eminent domain was imported to America as a road building tool. Compensation was only granted to owners of improved land and denied to those of unimproved land because of the benefit received from the construction of the roadway.
- Evolved and incorporated into individual state constitutions: To take private land would only be justified by public use.
- Vermont's Constitution of 1777 and Massachusetts Constitution of 1780 were the first governments in the U.S. to require compensation for eminent domain.

"That private property ought to be subservient to public uses, when necessity requires it; nevertheless, whenever any particular man's property is taken for the use of the public, the owner ought to receive an equivalent in money." Ch. 1, Sec. II, Vermont Constitution (1777).

"Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty and property, according to standing laws. He is obliged, consequently, to contribute his share to the expense of this protection; to give his personal service, or an equivalent, when necessary: But no part of the property of any individual, can, with justice, be taken from him, or applied to public uses without his own consent, or that of the representative body of the people: In fine, the people of this Commonwealth are not controllable by any other laws, than those to which their constitutional representative body have given their consent. And whenever the public exigencies require, that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor." Section X, Part the First, Massachusetts Constitution (1780), written by John Adams and still in use today as the oldest functioning written constitution.



United States Constitution

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; not shall any person be subject to the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation.

Fifth Amendment, United States Constitution.

Fun Fact: James Madison wrote the Fifth Amendment.



The Beginning of Case Law on Eminent Domain

The U.S. Supreme Court first examined federal eminent domain power in 1876 in Kohl v. United States. This case presented a landowner's challenge to the power of the United States to condemn land in Cincinnati, Ohio for use as a custom house and post office building. Justice William Strong called the authority of the federal government to appropriate property for public uses "essential to its independent existence and perpetuity." Kohl v. United States, 91 U.S. 367, 371 (1875).



Florida Constitution



Article I, Declaration of Rights, Section 9, Due Process:

Section 9. Due process – **No person shall be deprived of life, liberty or property without due process of law**, or be twice put in jeopardy for the same offense, or be compelled in any criminal matter to be a witness against oneself.

Florida Constitution cont.



- Article X, Miscellaneous, Section 6, Eminent Domain

SECTION 6. Eminent domain.—

- (a) No private property shall be taken except for a public purpose and with full compensation therefor paid to each owner or secured by deposit in the registry of the court and available to the owner.
- (b) Provision may be made by law for the taking of easements, by like proceedings, for the drainage of the land of one person over or through the land of another.
- (c) Private property taken by eminent domain pursuant to a petition to initiate condemnation proceedings filed on or after January 2, 2007, may not be conveyed to a natural person or private entity except as provided by general law passed by a three-fifths vote of the membership of each house of the Legislature.

* Adopted in 2006 as a result of Kelo v. New London, 545 U.S. 469 (2005).

Chapters 73 and 74, Florida Statutes



- The Roadmap to Eminent Domain in Florida.
 - Fla. Rules of Civil Procedure still apply. See 73.012, Fla. Stat.
- Chapter 74 is supplemental to Chapter 73 and addresses quick take proceedings.

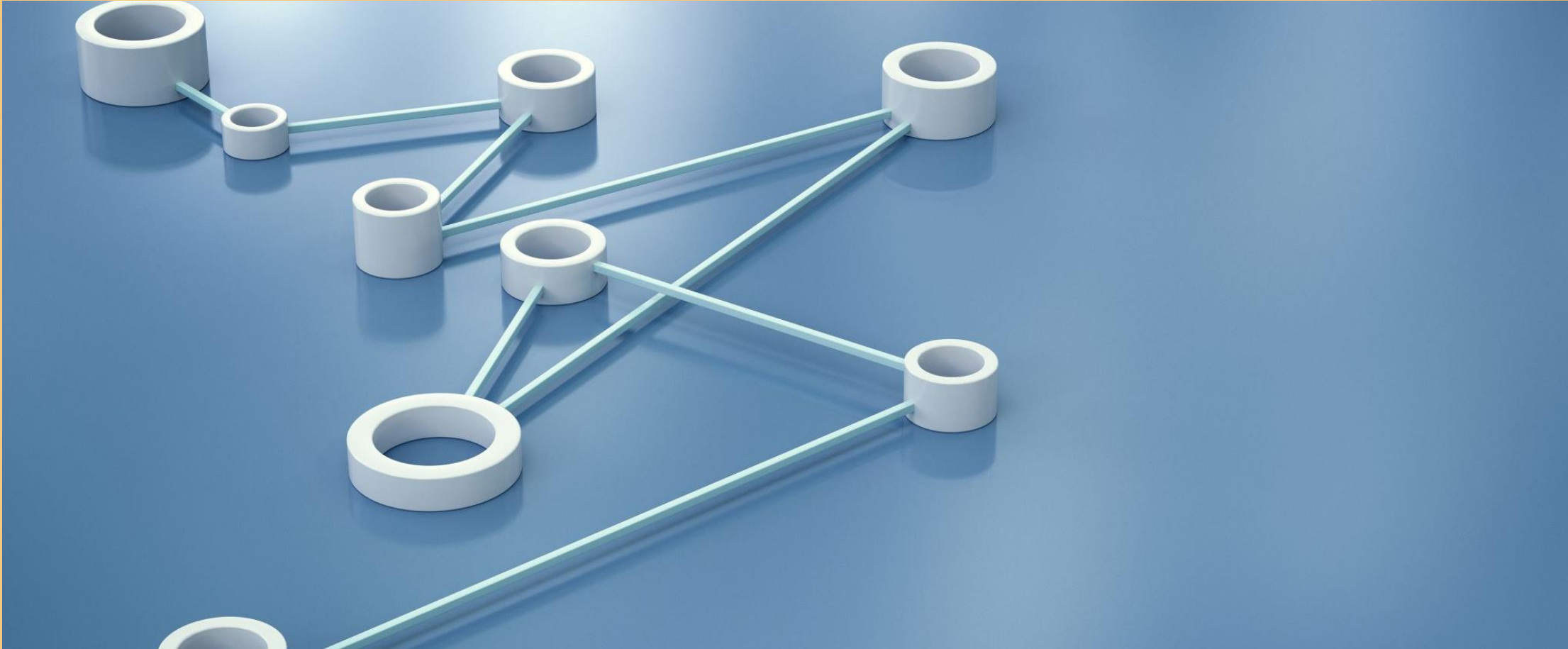
Types of Takes in Florida



Standard Eminent
Domain

Quick Take, where
possession and title of
the property is given in
advance of the entry
for final judgment.

The Eminent Domain Timeline and Process



The Differences in Procedure



Traditional Procedures

- Presuit
 - Negotiations
 - Prelitigation Notices
- The Petition
- Mediation
- Pre-Trial Hearing
- Jury Trial
- Post Trial
- Vesting of Title

Quick Take Procedures

- Resolution of Necessity
- Presuit
 - Negotiations
 - Prelitigation Notices
- Declaration of Taking/Petition
- Order of Taking Hearing
- Deposit of Good Faith Estimate into Court Registry
- Vesting of Title
- Mediation
- Pre-Trial Hearing
- Jury Trial
- Post Trial

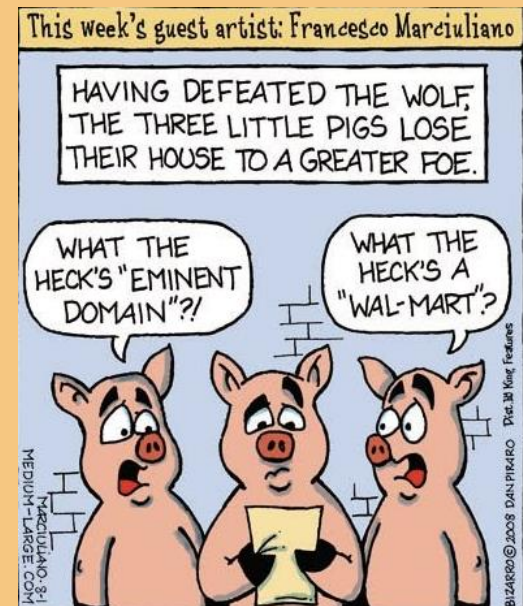
Reasons to Take Property

Over the years uses that have been deemed a public purpose include:

- Roads;
- Pedestrian and bicycle ways;
- Rest areas;
- Power lines;
- Cable television;
- Drainage systems;
- Sewers;
- Water sources;
- State office buildings;
- Concession facilities and private shops in conjunction with a Marina (note this was pre-2006, would now need to meet the incidental part test).
- Public parking facilities;
- International trade marker (note this was pre-2006)
- Public racetrack;
- Football stadium – note this is pre-2006;
- Statutory way of necessity;
- Hospitals;
- Recreational facilities in urban areas;

Here is a list of instances where a public purposes have not been found to exist:

- To establish a cohesive neighborhood;
- To development more efficient use of land;
- To construct shopping center and parking lot;
- For hunting and fishing in remote areas;
- Right-of-way for a non-navigable private lake;
- To condemn hunting rights;
- To block purchase of bay bottom lands by riparian owners;
- To construct phosphate loading facilities;
- For relocation of private railroad track;
- To purchase real estate for construction of a private building;
- To lease shipyard to private corporation;
- To lease civic center;
- For city to condemn property for the state to use a state prison.



Use of Terms from the Statute

“Petitioner” and “Defendant”

“Taking” and “Condemned”

Terms Impact your presentation to the
Jury and your Jury Instructions.

IT IS WHAT IT IS



AND IT IS NOT GREAT



Considering the Property Owner



Motions in Limine



Equation The Property Owner Used

Offers to Purchase Property Inadmissible

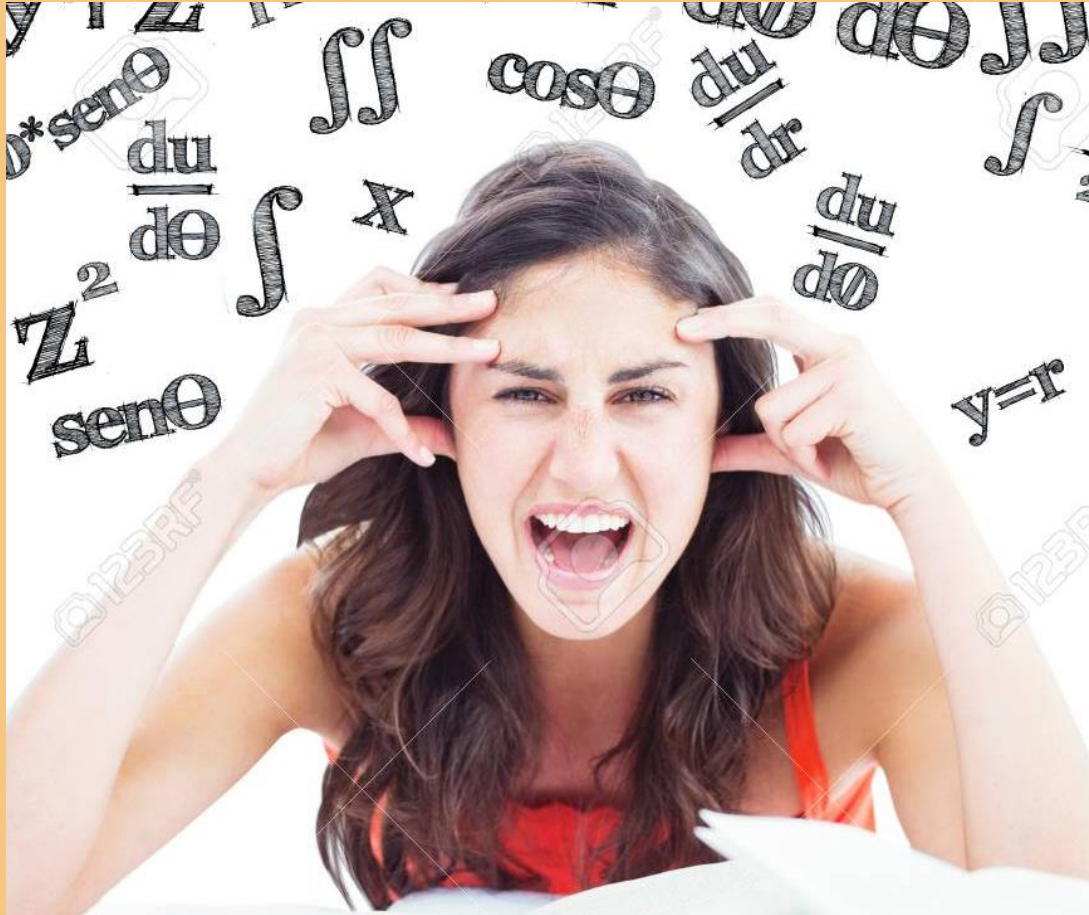
Opinions regarding Value of Property Relying Upon Inadmissible Hearsay

Stale Comparable Sales Inadmissible

Exclusion of Comparable Sales Based upon the Scope of the Project Rule

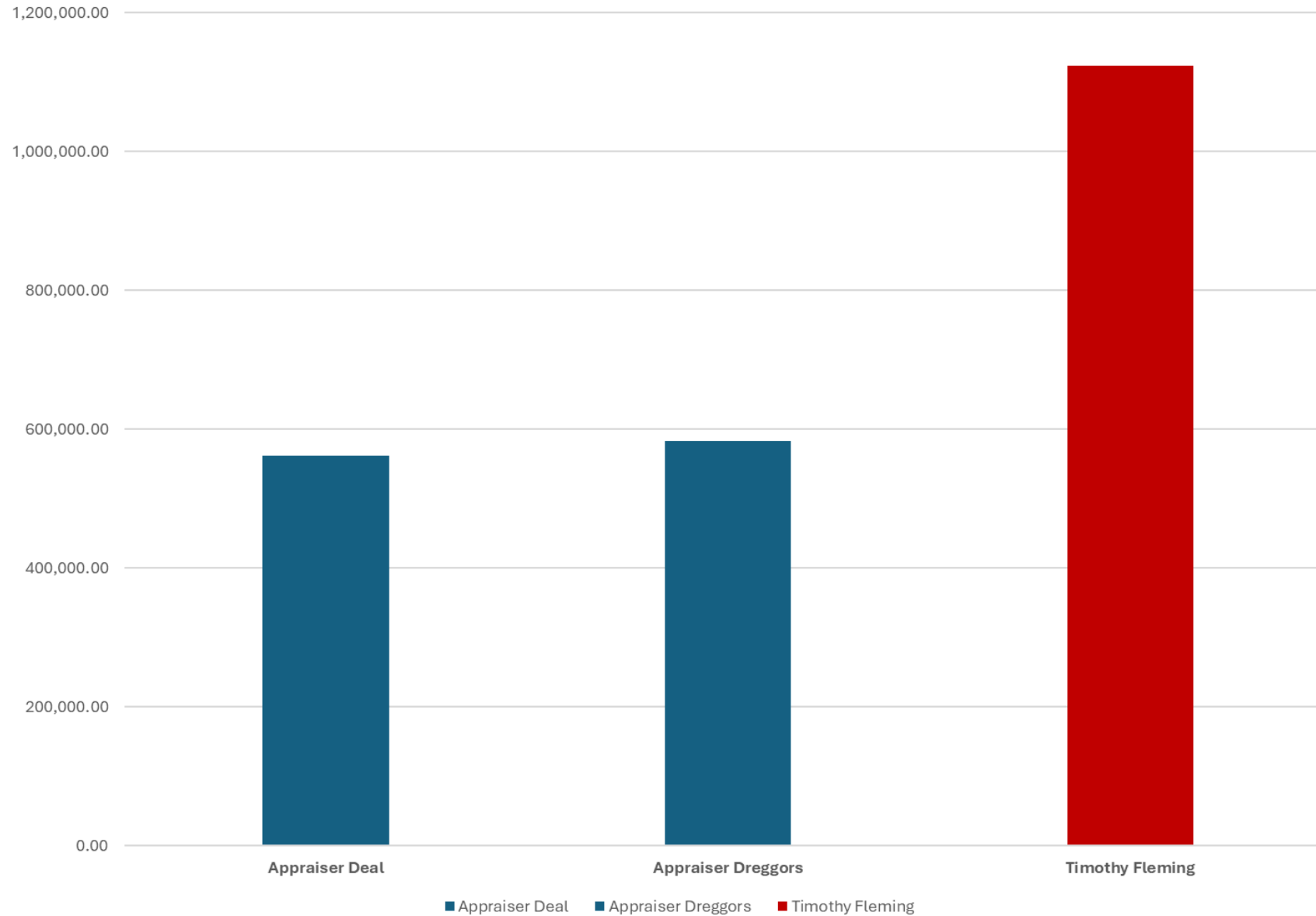
Negative aspects of construction activities excluded

Lay Witness Testimony regarding Calculations of Value



Sales Price $\times 1.03^{14.85} = 2020$
Value

Chart Showing Opinion of Fair Market Value of Parcel 100



Jury Selection

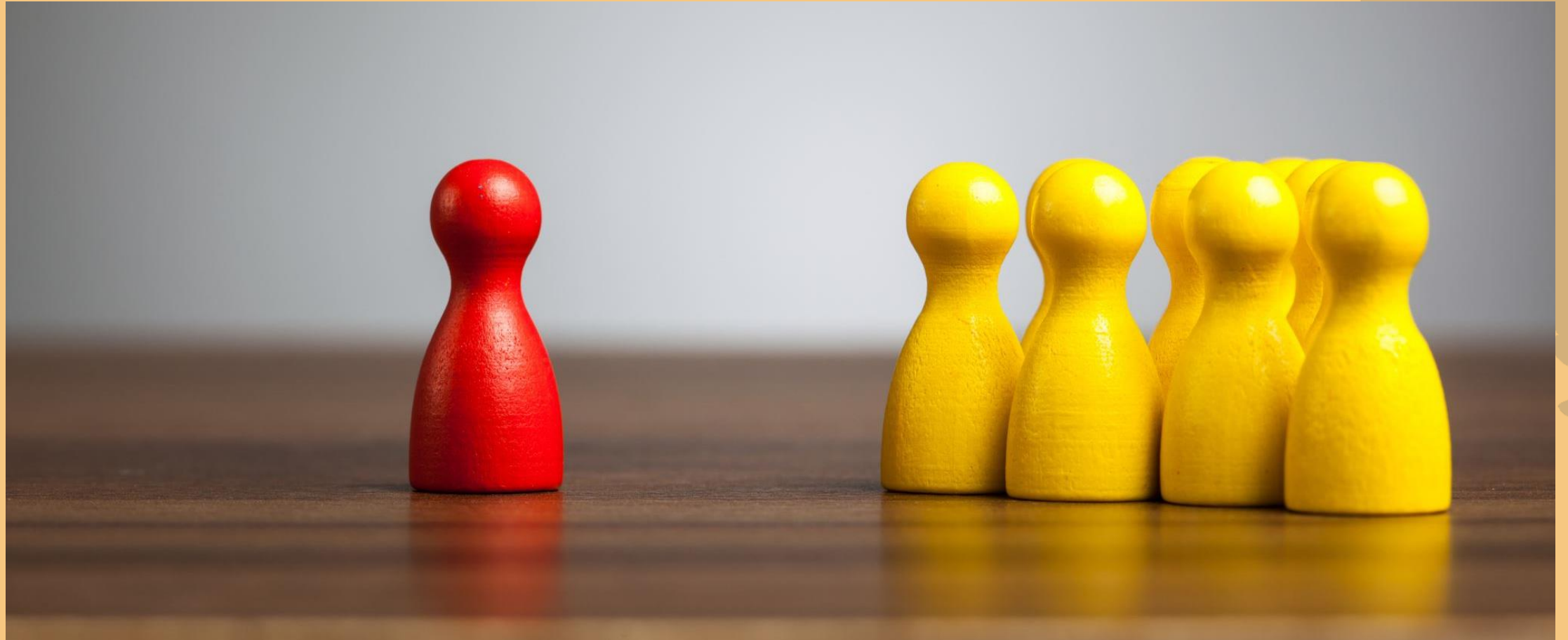


THERE ARE 12 MEMBERS ON AN
EMINENT DOMAIN CASE JURY.



ASKING THE RIGHT QUESTIONS
IS KEY IN *VOIR DIRE*

How to Introduce the Case and Conclude the Case with the Jury



Field Trip with the Jury – Site Visits

- Coordination is key with the bailiffs, judge's office, and your public works department;
- The Jury Site Visit should not be your first trip to the site;



Preparing your witnesses

My preparation for the witness



What the witness says



Misc. Matters



Questions

