

TOWN ATTORNEY'S OFFICE
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Barry S. Webber
Town Attorney

Jon A. Hinden
Asst. Town Attorney

MEMORANDUM

DATE: March 30, 2000
TO: Robert Middaugh, Town Administrator
FROM: Barry S. Webber, Town Attorney
RE: Eminent Domain

You have requested information concerning initial procedures for the Town to consider acquiring assets of the City of Sunrise Utilities for purposes of providing a unified water and sewer utility system within the Town of Davie to be owned and operated by the Town.

Chapter 73 of the Florida Statutes, which is the chapter concerning "slow take" eminent domain proceedings, was amended by adding thereto Section 73.015 entitled "Presuit Negotiation". This new statutory provision became effective January 1, 2000. This section provides that before an eminent domain proceeding is brought, the condemning authority must attempt to negotiate in good faith with the fee owner of the parcel to be acquired, must provide the fee owner with a written offer and, if requested, a copy of the appraisal upon which the offer is based. The condemning authority must attempt to reach an agreement regarding the amount of compensation to be paid for the parcel.

There are very specific notifications which must be given by the Town at the inception of the negotiation for acquisition which includes a requirement that within fifteen (15) business days after receipt of a request by the fee owner, the condemning authority must provide a copy of the appraisal report upon which the offer to the fee owner is based, copies to the extent prepared of the rights of way maps or other documents that depict the proposed taking, as well as providing additional information. The condemning authority must provide a written offer of compensation to the fee owner as to the value of the property sought to be appropriated.

Accordingly, it would be my recommendation that if the Town wishes to proceed towards and ultimate negotiated acquisition of the utility systems located within the Town's boundaries or, alternatively, a taking by eminent domain if a negotiated acquisition cannot be accomplished, that the first step would be to authorize the Town Administrator to have a study performed to determine the specific assets recommended for acquisition, as well as a valuation of full compensation to the owner or owners of the assets. Once that information is obtained, it would be presented to the Council for consideration of further action.

BSW/er