

*Murphy Auto Group, Inc. v. Florida Department of Transportation*, No. 2D19-1236, 2020 WL 6853731 (Fla. 2d DCA Nov. 20, 2020)

**Second DCA Holds That Florida Department of Transportation Placed a Land Use Exaction on Owner's Property and Was Not Exercising Proprietary Power by Conditioning a Drainage Collection Permit on Reconstruction of the Drainage Connection System**

Murphy Auto Group, Inc., ("Murphy") sought to develop a commercially zoned property with a car dealership as the anchor on the property. Access to the property was via U.S. 27, a highway owned by Florida's Department of Transportation ("FDOT"). In order to provide access to the car dealership, Murphy applied for a driveway connection permit that would allow it to construct an acceleration/deceleration turn lane connecting to the highway. As part of the construction, Murphy also "proposed to fill in an existing drainage ditch owned" by FDOT located on the property. In addition to the driveway connection permit, Murphy was also required to apply for a drainage connection permit to accommodate for the impervious asphalt that would result from the property's development. In order to obtain the drainage connection permit, FDOT required Murphy to meet numerous conditions, including: (1) dedicate a drainage easement, (2) expand a drainage pond, (3) construct the turn lanes, and (4) rebuild the drainage collection system. All of these improvements were completed at Murphy's own expense, costing the company over \$650,000.

In response to FDOT's requirements to obtain the permits, Murphy sued FDOT under an inverse condemnation claim. Murphy argued that the improvements required by FDOT constituted a taking because the improvements were grossly disproportionate compared to the project's drainage impacts. FDOT countered Murphy's claims by arguing that FDOT was "exercising its proprietary, as opposed to regulatory, power" and thus was protected by sovereign immunity. The trial court ruled in favor of FDOT, agreeing that FDOT was protected by sovereign immunity because it was exercising proprietary powers.

The Second DCA reversed, holding that this was "a land use exaction because it burdened Murphy's right to develop its commercial property by providing access to and from the dealership." Specifically, the court reasoned that FDOT's demand that Murphy use its own funds to improve FDOT's property as a condition of permit approval directly affected Murphy's ability to use its property. Thus, the Second DCA remanded to the lower court, rejecting the trial court's ruling that FDOT was protected by sovereign immunity and directing the court to determine if the conditions imposed by FDOT were unconstitutional.