

On property rights, VDOT should take a lesson from BP

By John Taylor

Summary

It seems a little odd that BP voluntarily compensates Gulf State residents for tens of billions of dollars in business losses from an accidental oil spill, while Virginians, who suffer irreparable financial harm at the hands of VDOT, are barred from seeking compensation for the destruction of their livelihoods.

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Incredible as it may seem, BP has done at least one thing right in the Gulf of Mexico. By establishing a \$20+ billion spill victims' fund, BP has acknowledged that its actions as a company, whether negligent or not, caused a tragic accident and significant financial losses to Gulf Coast residents and business owners. Without even waiting for due process of law to run its course, BP has taken full financial responsibility for making thousands of damaged property owners whole again.

Darryl Willis, vice president of resources for BP America, even went so far as to promise that BP will make payments "for as long as it takes" to anyone that has been "hurt, harmed or damaged by this spill." That seems only fair.

What a shame that Virginia's Department of Transportation seems not to feel a similar sense of responsibility to the property owners whose homes and businesses it destroys through eminent domain.

Property owners like the Stull family of Alleghany County. Like so many Gulf fishermen and business owners, the Stulls' livelihood depended on the operation of their family business, a dairy farm. Unfortunately for them, VDOT coveted the property on which their dairy farm was located, and used what is known as "quick-take" power to seize their business and raze it completely, destroying its value.

Though the Constitution of Virginia promises "just compensation" when the government takes property, just compensation is never actually paid. This is because under Virginia law, business losses and other losses are not compensable. Private citizens who stand up to the government are forced to spend their own money, and years in court, before collecting even a fraction of their property's former worth. Just compensation cannot be just when it does not make an owner whole.

That is exactly what happened to the Stulls. Thanks to VDOT's action, they had no money to rebuild or relocate their demolished dairy business, and so watched helplessly as former clients were forced to seek new suppliers, and even the cows themselves had to be auctioned off.

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In other words, while BP is voluntarily compensating Gulf residents for tens of billions of dollars in losses from an accidental oil spill, the Virginia citizens, who suffer irreparable financial harm at the hands of their very own Transportation Department, are not even entitled to just compensation, despite the voluntary and pre-meditated nature of eminent domain seizures. And President Obama wonders why Americans have lost faith in government.

The good news is that things could be even worse. In fact, until very recently, they were. Before H.B. 2954 passed the General Assembly in 2007, private property in Virginia could be seized by a host of public and private entities for no other reason than the dubious potential of increased tax revenues or promised economic development. Today that is no longer the case. However, a simple statute is not enough to keep “public servants” like VDOT at bay for long.

Every year, lobbyists hired by the Virginia Municipal League, the Virginia Association of Counties, and the Metropolitan Planning Organizations flock to Richmond to chip away at Virginians' dwindling private property rights. These groups, along with VDOT, are vehemently opposed to leveling the legal playing field in favor of property owners. Infuriatingly, these lobbyists are paid to restrict Virginians' property rights with tax dollars taken directly from the pockets of the very citizens whose homes and businesses they seek to confiscate.

This predatory behavior on the part of the state must end. The only way to effectively stop eminent domain abuse is to enshrine the protection of private property in Virginia's Constitution, where it belongs.

A rare chance to do just that will come during the next legislative session, which begins in January 2011. If the men and women elected to represent the interests of Virginia's citizens are serious about the job they have been trusted to perform, they will take the opportunity of an election year to pass a much-needed constitutional amendment protecting private property ownership, before more lives and jobs are destroyed.

If not, obstructionist politicians in both parties should prepare to find themselves at the receiving end of a voter backlash in November 2011—a backlash that will make even Tony Hayward and BP look popular.

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