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The Dedication Doctrine vs. The Project Influence Rule - Which Valuation Methodology Applies? - Nossaman

Property dedication requirements and eminent domain usually don't mix well:they make for an odd and confusing set of valuation rules. For example, if an agency seeks to condemn property to build a road through an undeveloped area, but that road would be required in order to develop the properties, how should it be valued? Under one set of eminent domain rules (the *Porterville* doctrine), the property subject to dedication has little value since it would have to be given up as part of any future development. Under another set of eminent domain rules (the "project influence rule"), the road project should be disregarded as part of the valuation. These rules create an inherent tension for valuation purposes that courts have struggled to resolve. A recent Court of Appeal decision, *City of Escondido v. Pacific Harmony Grove Dev.*, 2021 Cal. App. LEXIS 706 (Aug. 26, 2021), provides some guidance on what valuation methodology should apply.

Background

In *Pacific Harmony*, the city filed an eminent domain action to acquire a strip of land for a road extension. The road extension had long been on the city's circulation element of its general plan, and a city ordinance required any owner developing property to dedicate public improvements to conform to the general plan. The city had also previously entered into a development agreement with a nearby hospital pursuant to which the city agreed to extend the road with contributions from the hospital and surrounding developers. With the anticipated road extension coming to fruition, the surrounding properties were up-zoned for industrial use (as opposed to low-density residential).

In the condemnation action, the city argued that the strip of land had nominal value ($50,000) since it would have been required to be dedicated as part of any future development. The city provided extensive testimony as to why the road dedication was roughly proportional to the impacts of any development (including increased daily trips from a new industrial development, the costs for the owner to build its own access road, etc.). The owner claimed the road was not necessary, as it could utilize an existing road which had sufficient capacity, and therefore the strip of land should be valued based on its industrial highest and best use, resulting in compensation of nearly $1 million. The owner also argued that the city was liable for precondemnation damages since it waited more than 10 years to condemn after entering into the development agreement which committed to build the road.

The trial court concluded that the strip of land should be valued at its unimproved value since it would have been required to be dedicated as part of any future development, and such a dedication requirement was constitutional (it was roughly proportional and rationally related to any future development impacts). The court also concluded that the "project-effect rule" did not apply, since the dedication was not put in place to impact the value of the property, but instead to mitigate the traffic burdens created by a future development. Finally, the court held that the owner was not entitled to precondemnation damages as there was no unreasonable delay in pursuing the condemnation or the road extension project. The owners appealed.

Court of Appeal Decision

The Court of Appeal walked through the two competing arguments on valuation: how to take into account the dedication requirements while also disregarding project influence.

Dedication Doctrine

With respect to the dedication issue, the Court explained that pursuant to the *Porterville* decision, "when a city would lawfully have conditioned development of property upon the owner's dedication of a portion of the property" to mitigate the impacts of the development, "the fair market value of that portion in a subsequent condemnation action is its value in its undeveloped, agricultural state," rather than in its highest and best developed state." The rationale for this rule is that because the owner could not develop the portion of land subject to dedication, no willing buyer would purchase that portion for more than its undeveloped value, and therefore that is what the acquiring agency should pay. In order for this valuation approach to apply, the dedication requirement must be constitutional (roughly proportional and rationally related to the impacts from the proposed development), and it must be reasonably probable that the condemning agency would actually impose the dedication requirement as a condition of development.

Project Influence Rule

With respect to the project influence rule, the Court explained that the rule prohibits the fair market value of condemned property from being influenced by the project for which the property is being condemned. For example, if the government is condemning property to build a sewage plant, the government does not get a discount because its project renders surrounding properties less valuable. So if municipal zoning actions were enacted to suppress property values before an intended taking, the zoning law must be disregarded when valuing the condemned property.

These two concepts present an inherent conflict: the dedication approach allows a city's dedication requirements to depress the value of condemned property, while the project influence rule prohibits it. In order to address this conflict, courts look at a "date of probable inclusion" to determine which rule applies. If the dedication requirement arose before the date of probable inclusion, the dedication approach applies, but if it arose after, the project influence rule applies. The date of probable inclusion is determined when a public agency is engaging in a public project for which it intends to acquire property, and it must be probable that the property at issue would be included in that project. Where a general plan and circulation element require a strip of land be dedicated for a roadway if the larger parcel is ever developed, the designation itself does not make it probable that the agency would condemn the strip (and hence does not trigger the date of probable inclusion).

Here, the Court concluded that the dedication requirement was constitutional, as the city did "its constitutionally required homework" to ensure that its dedication requirement was proportional to the impacts caused by developing the property. The Court also agreed that the project influence rule did not apply because the dedication requirement arose as part of the general plan and circulation element, which were in place long before the "date of probable inclusion". The Court held it would result in a windfall to compensate the property owner for an industrial use of the strip of land when the owner would have been required to dedicate that land in order to achieve an industrial development.

With respect to the precondemnation damages claim, the Court explained that the owner is required to demonstrate that the public agency acted improperly by either unreasonably delaying an eminent domain action following an announcement of an intent to condemn or by other unreasonable conduct, and the actions must have resulted in a diminution in value. There must also be some

formal announcement or other official act or expression of intent to acquire the property in question (i.e., the agency's activities must go beyond the planning stage to reach the acquiring stage).

Here, the city's entering into a development agreement with the hospital committing to build the road 10 years before filing the condemnation was not unreasonable; the city still had to go through general planning and environmental approvals, and regardless, the owner did not suffer any damages as a result.

Take-Aways

Dedication requirements will continue to create complex, fact-specific inquiries to determine the appropriate valuation methodology. Government agencies will likely continue to require owners to dedicate property for public improvements as part of future developments, and may resort to condemnation when necessary to complete those improvements. Property owners should be informed regarding the conditions or exactions placed on their property, and understand the constitutional factors and valuation methodologies that come into play.

Nossaman LLP – Bradford B. Kuhn

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