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In Eminent Domain Proceedings, California Courts Do Not Consider The Potential Future Development Of A Property In Determining Its Fair And Actual Value

In *City and County of San Francisco v. Coyne*, (--- Cal.Rptr. 3d ---, Cal.App. 1 Dist., December 5, 2008), a California Court of Appeal considered a dispute over the value of a property acquired by a city in an eminent domain proceeding, in which the prior owners of the property contended they were entitled to be compensated for future "goodwill," for the value the property would have acquired had they been permitted to keep it, and develop it as they planned.

The court ruled that only the value of existing, ongoing businesses on a property need be considered in determining the value in an eminent domain proceeding, and that the prior owners were therefore not entitled to be compensated for goodwill stemming from hypothetical future uses.

Facts

Martin Coyne and Brian O'Flynn ("Owners") owned a parcel of property in San Francisco ("City"), which they leased for use as a parking lot. They had plans, however, to build a condominium development on the property, and to profit from selling the individual condominium units, and in 2003 received approval of their proposal from the City's planning commission. However, in 2004, the City began eminent domain proceedings to acquire the property for use as a neighborhood park.

In proceedings to establish the property's value and the amount the Owners would be paid for it, the Owners contended they were entitled to be compensated for the value the property would have obtained had they been permitted to keep it and develop and sell the condominiums as planned. They estimated that value to be between \$2.1 and \$2.9 million above its current value. The court ruled the Owners were only entitled to be compensated for the existing value of the property and

Note:

For a discussion of the referenced *Redevelopment Agency of San Diego* case, please see our Legal Alert entitled, "[California Court of Appeal Reverses Condemnation Award For Loss Of Business Goodwill Based On Expert's Speculative Testimony And Rejects Claim For Pre-Condemnation Damages Based On Service Of "Polanco Act" Notice](#)", September 25, 2007.

declined to instruct the jury to consider the Owners' development plans and the increased value that might result. The jury found the value of the property to be \$2,767,500. The Owners appealed, asserting that the court erred in failing to instruct the jury of the property's potential future value.

Decision

Quoting *Redevelopment Agency of San Diego v. Mesdaq*, (2007) 154 Cal App.4th 1129, the court stated that while the law provides no specific methodology for determining the value of a property's lost goodwill, the methodology must provide "a fair estimate of actual value and cannot be based on hypothetical or speculative uses of a condemned business."

Here, the only actual business on the property was the parking lot, and despite the Owners' future business plans, no such business existed at the time City commenced eminent domain proceedings.

In fact, a long line of California cases reject the Owners' claim, also called "the developer's approach," for valuing property taken by eminent domain. Stated another way, the court said that evidence of value, in terms of money the land could bring as a result of future developments, is not admissible.

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The court concluded the Owners' claim of goodwill was hypothetical and speculative, rather than actual, and the trial court properly rejected it. The ruling was affirmed.

Questions

If you have any questions concerning the content of this Legal Alert, please contact the following from our office, or the attorney with whom you normally consult.

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