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## **City's Resolution Adopted For The Condemnation Of Property Did Not Sufficiently Specify The Public Purpose Of The Condemnation As Required by Eminent Domain Law**

In *City of Stockton v. Marina Towers LLC*, (--- Cal. Rptr.3d ---, Cal.App. 3 Dist., Feb. 13, 2009), a California Court of Appeal rejected a city's attempt to "condemn first [and] decide what to do with the property later." The Court determined that the city's "nondescript, amorphous" resolutions authorizing condemnation of two parcels of property failed to sufficiently describe the project for which condemnation was required. Although the Court of Appeal concluded that the city should be given the opportunity to correct its mistake, the Court required the city to pay the owners' litigation expenses which include the owners' attorney fees, expert fees and court costs.

### **Facts**

In January 2000, Marina Towers LLC ("Marina") purchased two adjacent parcels of property located in Stockton, California. One of the parcels was unimproved land, and the other had a vacant office building on it.

Some years earlier, the City of Stockton ("City") had adopted the Central Stockton Final Plan/Revitalization Plan (the "Plan"). The Plan called for the development of the downtown area and the property purchased by Marina was included in one of the Plan's project areas.

Upon its consideration of various development plans for Marina's two parcels, the City notified Marina in 2003 that it wanted to acquire the property, and subsequently notified Marina that it was considering acquiring the property by eminent domain.

The parties were unable to agree to the acquisition, so in September of 2003, the City held a hearing where the City Council considered adopting a "resolution of necessity" authorizing condemnation of the Marina property. At the hearing, City staff testified that the Marina property was required for "development" and was a "catalyst site" under

the Plan. Despite Marina's objections, City staff did not identify any specific public project or use for the Marina property. At the conclusion of the hearings, the City Council unanimously adopted the resolutions of necessity authorizing condemnation of the Marina property. The resolutions identified a long list of government codes authorizing condemnation for specific purposes, but the City failed to indicate the specific purpose or use for which it was condemning the Marina property. Instead, the resolutions generally indicated that the "additional property" was required for "development purposes."

After adopting the resolutions, the City filed an eminent domain complaint to condemn the Marina property, and obtained an order granting it pre-judgment possession of the property. In response to the complaint, Marina argued that the City lacked authority to condemn its property since the City failed to specifically identify any particular public use for the Marina property. The trial court rejected Marina's defense and later concluded that Marina was not entitled to any damages for unreasonable precondemnation activities by the City. A jury awarded Marina \$1,970,022 as just compensation for the property. While this litigation was proceeding, the City decided to develop the Marina property into a parking structure and ballpark, and it was ultimately put to those uses.

### **Decision**

The Court of Appeal began its analysis by noting the fundamental legal principle that private property may only be taken for a public use. Under California law, the public entity must adopt a "resolution of necessity" authorizing the condemnation and finding that: 1) public interest and necessity require the project; 2) the project is compatible with the greatest public good and least private injury; and 3) the property is necessary for the project.

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In addition, the resolution of necessity must contain a "general statement of the public use for which the property is to be taken and a reference to the statute that authorized the public entity to acquire the property by eminent domain."

On appeal, Marina again argued that the City's resolution did not support the condemnation. Most importantly, Marina argued that the resolution failed to sufficiently identify the public use for which the Marina property was to be condemned, and the project description provided by the resolutions was "so vague and indefinite that the true purpose of the proposed taking could not be determined." As the Court noted, the City admitted it was not seeking to condemn the property under California redevelopment law which potentially allows for a broader range of public uses including blight removal.

In accepting Marina's argument, the Court of Appeal observed that the description of the proposed project in the resolution of necessity is the fundamental predicate to the entire condemnation process. The Court noted that the entity must sufficiently identify the proposed project for several reasons including: 1) legislators cannot possibly make the required findings as to the necessity of the proposed project if the resolution contains no description of the project; 2) an accurate project description is necessary to comply with CEQA environmental review requirements which the entity must satisfy prior to adopting a resolution of necessity; 3) the owner's due process rights require a defined project so that the parties can in good faith discuss the pros and cons of such project; and 4) courts require a defined project in order to determine whether the entity is authorized to condemn the property.

Upon review of the City's resolutions, the Court found they were "woefully lacking in [their] identification of the project" by describing the project as "acquisition of additional land [in] conjunction with potential development." Additionally, rather than cite a specific statute authorizing the condemnation for a particular purpose, "the resolution simply trots out a laundry list of statutes setting forth a plethora

of possible purposes for condemning property." Even the City admitted in its briefs that it did not have any specific purpose in mind when it initiated the condemnation. Thus, the Court found that the City lacked the ability to condemn the property since "a resolution of necessity that does not identify a project with sufficient specificity, such that persons of ordinary intelligence can discern what the 'project' is, cannot support the taking of private property." Finally, the Court rejected the argument that the City somehow cured this defect by ultimately putting the property to public use after it adopted the resolutions and filed the litigation.

Having determined that the City lacked authority to condemn the property, the Court next determined the appropriate remedy. One possibility would be to dismiss the action and require the City to return the now improved property to Marina. Under the circumstances, the Court decided to give the City the opportunity to correct the resolution. Upon adoption of a new resolution, the City would have to file an amended complaint and the case would be retried. However, the Court also ordered the City to pay the Marina's litigation expenses which include attorney fees, expert fees and court costs.

### **Why This Decision Is Important**

The failure to define and describe the proposed project for which condemnation is required could be a very costly mistake for a public entity and could give the owners a valuable defense. Such a description is required to determine whether the project is necessary, whether the subject property is required for the project and to guide the scope of required environmental review. Absent a well defined project, a Court may find the public entity cannot condemn the property. The Court may then require the entity to return the property to the owner even though the entity has potentially spent significant public funds on improvements and litigation. Even if the Court allows the entity to correct its mistake, the entity will likely have to pay the owners' litigation expenses, fund a new trial and potentially face additional defenses in opposition to the taking. Thus, proper planning

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at the start of the condemnation process is crucial.

### **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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