The Top Ten Real Property Cases of 2003

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The *California Real Property Journal* annually reviews the top real property cases from the state, federal, and bankruptcy courts. With continued help from our friends' and hewing as always to Potter Stewart's classic selection criterion[2] and Ralph Waldo Emerson's advice to borrow from the pearls of others, we present the Top Ten Real Property Cases of 2003, plus the usual runners-up.

I. *CITY **OF** SAN **DIEGO*** v. *RANCHO PENASQUITOS **PARTNERSHIP'***

Rancho Penasquitos Partnership (Partnership) owns a parcel zoned for agricultural use. The City of San Diego (City) condemned approximately ten percent of that land for a state freeway project. Because this was a taking, the City needed to compensate the Partnership for the property. Predictably, the price tag was in dispute.

The City had enacted a temporary zoning restriction prohibiting higher density activity in the area in question, effective until the freeway project was completed. Therefore, the City argued, the property must be valued at its current ·zoning (essentially, only agricultural use), which was $120,000 per acre, or $1,285,200.

The Partnership argued that because the City was both the condemning agency and the entity responsible for the prohibition on development, the zoning restriction was merely an artifice designed to minimize the City's cost of acquiring the property through eminent domain. According to the Partnership, absent the offending restriction, the property could be rezoned for residential use, and it would then have a value of $350,000 per acre-for a total value of $3,830,000 (and with severance damage to plaintiffs property that was not condemned, the total would be even greater, at $4,620,000).

The trial court noted that in eminent domain actions, the property must be valued at its "before" condition. Here, that means the impact of the completed freeway project cannot be considered in valuing the property. Even excluding the impact of the freeway project, however, it is improper to deflate artificially a property's value based on land use regulations whose very purpose is to minimize the City's acquisition costs.

The jury found the fair market value of the subject condenmed property was $2,870,280 and the damage caused to the property from which it was severed was $1,035,930, for a total award of $3,906,210.

On appeal, the City asserted that the trial court committed prejudicial error by excluding the City's development restrictions prohibiting a zoning change absent approval of the freeway. The appellate court affirmed, however, reasoning that it was correct to exclude such evidence: When the zoning and condemning agencies are one and the same, it would be unfair to allow the agency to benefit itself by artificially depressing the value of the target property.

Comment: Code of Civil Procedure section 1263.310 provides that the measure of compensation for a taking is the property's "fair market value." This requires determining the property's "highest for this purpose is not limited to the current zoning and best use."[5] The court of appeal applied the rule that use regulations-the owner is entitled to show a reasonable probability of rezoning or some change in the near future.

This is entirely fair. It would be wrong for the government to be allowed to pass a regulation limiting the use of land and then pay for that land based on its artificially restricted lise. It already is an interesting fact of the eminent domain law that the project for which the land is being condemned is excluded from valuation. Private players in the real estate market must contend with the value of information--once an owner knows a potential buyer intends to use his land for a particular purpose, he can raise the price accordingly. The government already benefits by excluding "reality" from the price it pays. The court here prevented the government from beating the market even further.

II. *ALAMEDA BELT LINE* v. *THE CITY **OF** ALAMEDA*

In 1918, the City of Alameda (City) constructed a municipal belt line railroad to serve a new and developing industrial area. In 1924, the City sold the railroad to the Western Pacific Railroad for $30,000, on the condition that a new corporation was formed to own and operate the belt line railroad. That corporation was the Alameda Belt Line (ABL). The City retained an option to repurchase the railroad "including all extensions thereof, for a sum equal to the original cost, together with the cost of any and all additional investments and extensions made therein." The City had to give at least one year's notice of its intent to exercise the repurchase option.

In 1999, the City learned ABL was cutting back operations and selling parcels of its property, including a particular piece that ABL was about to sell for $18 million. The City passed an ordinance on November 2, 1999 notirying the world of its intent to repurchase the railroad and all extensions thereof on December 4, 2000, pursuant to the terms of the parties' 1924 agreement.

ABL filed for injunctive relief, declaratory relief, and inverse condemnation. The City filed an amended cross-complaint seeking a declaration that the 1924 agreement gave it a valid, present contractual right to repurchase the railroad and all of its extensions.

The trial court granted ABL's motion for summary judgment, holding that the repurchase option was unenforceable on the grounds it lacked sufficient specificity to comply with the Statute of Frauds. The City appealed.

On appeal, the court noted that the Statute of Frauds requires contracts for the sale of real property to be in writing.[7] To satisry the Statute of Frauds, the memorandum affecting the sale of real property must describe the land so that it can be identified with reasonable certainty. When one party is a municipality; *as* in this case, a statute or ordinance can serve as the required memorandum.

The 22-acre rail yard at the center of this dispute was not owned *by* either party in 1924 and was not specifically described

in the initial repurchase option. The court stated that the critical legal issue, then, was whether the Statute of Frauds bars admission of parol or extrinsic evidence showing a delineation of the property that occurred after the execution of the contract.

In resolving this issue, the court relied on a federal district court opinion from North Carolina that involved a similar contract option.

There, the railroad had the right to select the specific parcels of land for future operations, which therefore were not specifically described in the agreement itself. A century later, a dispute arose over whether the agreement violated the Statute of Frauds, but the district court concluded that the contract was made sufficiently definite by the railroad's subsequent selection of the property.

The California court in this case accepted that reasoning and held that the Statute of Frauds may be satisfied where the contract provides that a buyer will select and acquire certain lands after the original written contract is executed, so long as extrinsic evidence shows which lands were in fact acquired. This is the "means or key" used to define the relevant land, in accordance with that general preference of California law to avoid invalidity under the Statute of Frauds.

The court then agreed with the City that the contractual language "belt line railroad including all extensions thereof' was a sufficient "means or key" by which parol evidence can be used to define the property which is the subject of the option.

Comment A lot of money was at stake here-the property in question had been acquired by ABL decades before and was now worth significantly more. This holding gave the City something of a windfall-by exercising its option, it acquired at least $18 million in benefit. But this should not surprise us-the contract with ABL contemplated the City's repurchase (even almost 100 *years* later) at an appreciated value. ABL put up a good fight and convinced at least the trial court that the option was not definite enough to include the parcel of land in Question. but that probably is little consolation.