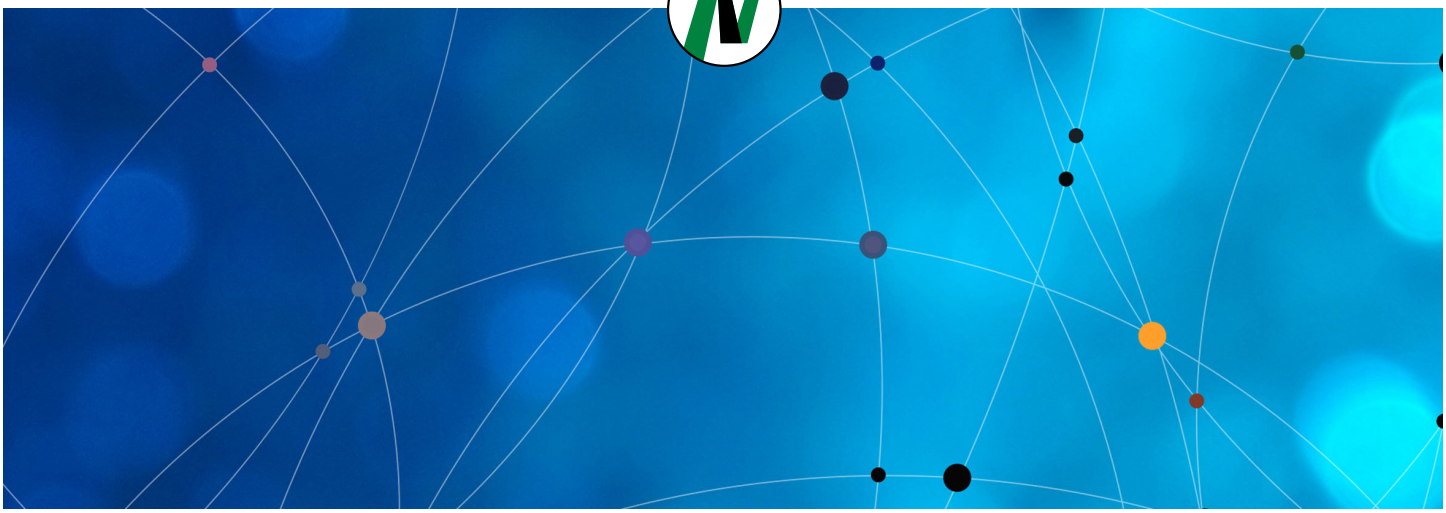

Homeowners Cannot Recover for Blocked Views of Hollywood Sign

04.28.2016 | By Bradford B. Kuhn, Rick E. Rayl

One of the most valuable assets many homeowners enjoy is their property's view. If the government undertakes an activity that eliminates or obstructs that view, is an owner entitled to relief? In *Boxer v. City of Beverly Hills (April 26, 2016, B258459),* the California Court of Appeal held that in an eminent domain action (where there is a direct taking of property), view impacts are compensable, but in the absence of a taking of property, a property owner is not entitled to compensation for loss of view.

Background

In ***Boxer v. City of Beverly Hills***, a group of property owners filed an inverse condemnation action against the City based on the City's planting of redwood trees on adjacent City-owned property, which trees obstructed the owners' views of Beverly Hills, the Hollywood Hills, the Hollywood sign, the Griffith Observatory, downtown Los Angeles, and – on a clear day – Mount Baldy 50 miles away. The trial court dismissed the action, concluding that the allegations of impairment of view did not establish a taking under inverse condemnation law. The owners appealed.

Court of Appeal Affirms No Liability Solely for Loss of View

On appeal, the Court explained that a property has been taken or damaged so as to give rise to a claim for inverse condemnation when the property has been physically taken or damaged, or experiences an intangible intrusion that is direct, substantial, and peculiar to the property itself. In the second instance, the owner must demonstrate that the consequences are not far removed from a direct physical intrusion. Neither the mere existence of a public use or a diminution in value to the property alone establishes a compensable taking or damaging of property.

The Court identifies several examples of the limited circumstances in which an intangible intrusion may be sufficient to trigger inverse condemnation liability, such as where:

- An adjacent sewage treatment facility rendered the owner's home uninhabitable and caused nausea and burning eyes;
- Noise, dust, and debris from a freeway expansion that included a 23-foot embankment directly in front of the owner's home caused physical damage and respiratory problems; and
- Noise from commercial jet aircraft landing and taking off substantially interfered with the use and enjoyment of neighboring residential property.

In the context of view impairment, the Court explained that as a general rule, a landowner has no natural right to air, light or an unobstructed view, and such rights are only created by private parties through the granting of an easement or CC&Rs, or through local government regulations. As a result, view impairment, standing alone, cannot constitute an intangible intrusion that triggers inverse condemnation liability.

The Court then walked through several cases in which view impairment was found compensable in direct eminent domain actions. The Court explained that once a taking is established, any diminution in value due to loss of view is taken into account in determining damages. Therefore, if there has been a direct taking or other compensable claim triggering inverse condemnation liability (such as a substantial impairment of access), view impacts are compensable. In other words: a compensable visibility interest has been recognized when the government has physically taken part of someone's property, but this is merely an aspect of the owner's damages, and is not itself a taking or damaging of the property.

Despite there likely being a significant diminution in property value due to the City's blocking previously unobstructed views enjoyed by the homeowners, because there was no physical taking of property, the Court of Appeal affirmed there was no liability.

Conclusion: Physical Takings Open the Door to Liability

While the *Boxer* case involved the narrow issue of liability for view impairment due to an agency's planting trees on government-owned property, it potentially has much broader impacts, and serves as a strong lesson for public agencies planning public projects. Many public projects involve some impact to views enjoyed by adjacent property owners; once there is a taking of property – no matter how small – the door has been opened to potential exposure for diminution in value. As a result, it is essential for agencies to engage in early pre-condemnation planning and undertake efforts to avoid small sliver acquisitions or temporary construction easements.

For property owners, it serves as a reminder that no matter how unique or special a view your property may have, it can be gone in an instant – possibly without any recourse absent a physical taking or other local regulations. If your local government agency does not have height restrictions in place, it is imperative to secure view rights privately, either through an easement on adjoining property, or through CC&Rs in the development community.

In most cases, *Boxer* may establish a bright-line rule that there must be a taking in order for a property owner to recover for view impairment caused by a public project. What that means is that two property owners, identically situated and identically impacted by a government agency's project, may be treated completely differently if the agency acquires one inch from one owner and nothing from the other.

While this may seem unfair, the California Supreme Court once addressed a similar quandary regarding the ability to offset general benefits from public projects in eminent domain actions, and explained that [t]he law has no mechanism by which to ensure an absolutely fair distribution of costs and benefits across the entire

community. We must instead search for the rule of greatest relative fairness, or least unfairness. (*Los Angeles County Metropolitan Transportation Authority v. Continental Development* (1997) 16 Cal.4th 694, 716.)

We're left questioning whether this bright-line approach is the least unfair, and if not, whether a better approach exists. And while *Boxer* appears to establish a clear delineation for recovery depending on whether a taking exists, we're also left questioning whether such a rule applies in all circumstances, especially when other published appellate decisions suggest a potentially different result in the case of substantial impacts to a property owner's abutter's rights.