



Judge, not Jury, Must Consider the Constitutionality of a Dedication Requirement and Whether it Qualifies as a "Project Effect"

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One issue that can arise in eminent domain actions involving undeveloped (or under developed) property is whether the property being acquired is potentially subject to a dedication requirement. If the property's overall development would require the dedication of all or part of what is being condemned, just compensation can be affected. But deciding what impact, if any, a dedication requirement has on the amount of compensation awarded depends on a complex set of rules involving both federal constitutional principles and analysis of a hypothetical factual construct. If the dedication both passes constitutional muster and survives the hypothetical factual inquiry, the owner receives compensation for the property subject to the dedication at only its undeveloped value. This is because the owner could not realize any higher, or more valuable, use of the overall property without dedicating that property and, consequently, receiving no value for it, as described in *City of Porterville v. Young*.

A decision last week by the California Supreme Court clarified whether the judge or jury must wrangle with these issues and added a new potential legal issue to the mix: whether the purported dedication qualifies as a project influence.

In *City of Perris v. Stamper*, the Court held that the judge must determine whether a dedication requirement is constitutional. More specifically, the judge must consider, under *Nollan v. California Coastal Commission* and *Dolan v. City of Tigard*, whether (1) an essential nexus exists between the dedication requirement and the impact the owner's proposed development would have on public infrastructure, and (2) the dedication is roughly proportional to the impact of the proposed development at issue. If the judge concludes that the purported dedication satisfies *Nollan* and *Dolan*, the judge must decide whether the agency would have in fact imposed that dedication requirement if the owner had sought to develop the property.

Aside from these procedural issues, the Court also held that the *Porterville* doctrine is not applicable in situations where it was probable at the time the dedication requirement was put into place that the property designated for public use was to be included in the project to which the property is being condemned. The Court explained that this clarification of *Porterville* comports with the requirement of California law that project effects be disregarded in establishing value.

Background

The property owned by the Stampers was vacant land zoned to allow light industrial development. In 2005, the City of Perris amended its general plan and revised circulation elements in the plan to allow for certain truck routes. Then in 2009, City sought to acquire a strip bisecting the Stamper property for a street realignment project to accommodate one of those truck routes. The City valued the property as undevelopable agricultural land because it claimed it would not have approved any development of the overall property unless the Stampers dedicated the property needed for the street realignment to the City, applying the *Porterville* doctrine. The Stampers argued that the dedication requirement should not be considered in determining compensation because (1) the dedication requirement was a project effect that had to be disregarded, and (2) the dedication requirement was, in any event, unconstitutional under *Nollan* and *Dolan*.

The trial court held that it was reasonably likely that the dedication requirement would have been imposed, and that the dedication requirement would have been constitutional. The Court of Appeal reversed, holding that the jury – not the judge – should have considered the dedication requirement issues, and that in any event, the trial court had made errors in its *Nollan/Dolan* analysis. The Supreme Court granted a Petition for Review to analyze both the question of whether these issues are properly for the judge or jury to decide, and to determine whether the project effect rule applies to dedication requirements.

Determining the Legality of Dedication Requirement

Nollan and *Dolan* set forth the analysis required to determine whether a dedication requirement is constitutional. Under *Nollan*, the dedication requirement must have an essential nexus to the public purpose that would be served by denying an owner's development permit. In the *Nollan* case, the Court held that it was unconstitutional for the state to require that a property owner grant an easement across his property for public beach access as a condition of rebuilding his home because there was no nexus between the dedication requirement (a beach access trail) and the owner's plan (rebuilding a home). In *Dolan*, the Court held that any dedication requirement must be proportional to the impact of the property owner's planned project. For example, if an owner's proposed project would generate additional traffic burdens on public streets, the amount of the dedication must be roughly proportional to the amount of traffic the development will create.

Prior to *Stamper*, it was not clear whether the judge or the jury made the constitutional determinations under *Nollan* and *Dolan*. The *Stamper* Court first considered the jury's role and emphasized that its role is limited to factually intensive questions directly related to compensation and not to any other issues that arise in the course of condemnation proceedings. The judge is to determine all other issues, whether they are questions of fact or mixed law and fact, including legal questions that affect compensation. The Court was also convinced that judges, not juries, are best equipped to consider whether legislative bodies are wielding their lawmaking powers appropriately.

The Court thus held that the *Nollan* and *Dolan* analyses qualify as mixed questions of law and fact which are for the judge to decide. The Court further held that the related question – whether the agency would in fact have imposed the purported dedication requirement if the owner had sought to develop the property – was similarly a question for the court, not the jury.

Project Effect Rule

The Court then turned to the project effect or project influence rule. Code of Civil Procedure section 1263.330 provides that the determination of fair market value shall not include any increase or decrease in value attributable to the proposed project, the eminent domain action, or any preliminary actions of the public agency to acquire the property. In other words, if the project itself raises the value of the property being taken, the owner does not get compensated at that higher value. Conversely, if the project diminishes the property's value, the agency cannot take advantage of that to pay the lower amount.

The Supreme Court agreed with the Stampers that a dedication requirement can qualify as a project effect and, if it does, the Porterville doctrine does not apply. The Court explained that Porterville applies when the agency can show the dedication requirement reflects the agency's original expectation that an improvement would occur as a result of development of adjacent properties in order to mitigate the impact of such development and not when a dedication requirement is put in place after it becomes probable that the property subject to the dedication will be included in a project and the agency subsequently seeks to condemn the property. In other words, if the project itself gives rise to the purported dedication requirement, the dedication is a project effect and must be disregarded, negating Porterville's application.

Conclusion

This opinion seems a little like a bait-and-switch because the Court went through a detailed analysis of all of the relevant principles and law when considering the constitutionality of a dedication requirement, and a reader could be led to think it would render an opinion as to the constitutionality of the present dedication requirement. The Court, along with the dissent, even signals that there are serious questions about the constitutionality of the City's dedication requirement, but ultimately the Court simply remands the issue for further consideration by the trial court.

More specifically, the Court remanded the case to determine two issues: (1) whether it was reasonably probable that the Stamper property would have been included in the project at the time the city imposed the dedication requirement, and (2) whether the dedication requirement is constitutional given that it would comprise twenty percent of the property.

Last, while many of the articles on this case have focused on the role of the judge versus the jury, the ruling on the project effect doctrine may well turn out to be more significant. The Court's ruling on project effect is fairly straightforward and easy to understand, and is a huge win for property owners. But the practical effect of the ruling and how it will be implemented remains, for now, a mystery.