

YOU'RE GOING TO DO WHAT WITH MY PROPERTY?***City of Stockton v. Marina Towers, LLC (2009) 171 Cal.App.4th 93*****Steven S. Wall***Partner*

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May a public entity condemn property first, then decide what to do with that property later? The answer, according to the recent decision of the California Court of Appeal in *City of Stockton v. Marina Towers*, is a resounding “no!”

Factual Background

Marina Towers, LLC (“Marina”) owned two parcels of property along the North Shore of the Stockton Deep Water Channel. In early 2003, an agency of the City of Stockton (“City”) began planning to redevelop the North Shore area, including Marina’s property. Plans included construction of a multiuse event center containing a sports arena, hotel, baseball stadium and residential apartments.

In August of 2003, City offered to purchase Marina’s property. When Marina refused, City adopted resolutions of necessity for the taking of the property. Despite City’s general plan for an event center, the resolutions contained no specific description of the use to which the property would be put, stating only that “the Proposed Project consists of the acquisition of additional land in conjunction with potential development on the North Shore of the Stockton Deep [W]ater Channel.” The resolutions also made reference to a laundry list of statutes purportedly authorizing the taking.

In October of 2003, City filed its complaint in eminent domain. Marina answered, alleging that the resolutions were defective because they failed to sufficiently identify any public use for the property. While litigation was pending, City obtained possession of the property and constructed a public parking lot and baseball field. In April of 2005, trial commenced. Following Marina’s opening statement, City moved for nonsuit. The trial court granted the motion on the grounds that City had ultimately put Marina’s property to a public use. Marina appealed.

Applicable Legal Authority

California Code of Civil Procedure section 1240.030 provides that private property may only be condemned for a proposed project where (a) the public interest and necessity require the project; (b) the project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury; and (c) the property sought to be acquired is necessary for the project.

California Code of Civil Procedure section 1245.230, subd. (a), provides that a 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 authorizes the public entity to acquire the property by eminent domain.*” (Emphasis added.)

California Code of Civil Procedure section 1245.230, subd. (c), provides that a resolution of necessity must contain a declaration by the public entity that each of the elements of Code of Civil Procedure section 1240.030 is satisfied with respect to the proposed project.

YOU'RE GOING TO DO WHAT WITH MY PROPERTY?***City of Stockton v. Marina Towers, LLC (2009) 171 Cal.App.4th 93*****The Court's Decision**

The Court of Appeal reversed the trial court's grant of nonsuit. In so doing, it opined that City's resolutions of necessity were "woefully lacking" in their identification of the project proposed to be constructed on Marina's property. According to the court, the project description was so "vague, uncertain and sweeping in scope" that it failed to identify the public use for which City sought to acquire the property. The court held that an adequate project description is a prerequisite to condemnation, and that for a resolution of necessity to support a taking, it must identify the proposed project with such specificity that "persons of ordinary intelligence can discern what the 'project' is."¹

The court identified four reasons why an inadequate project description must be considered fatal to a taking. First, an inadequate description prevents a determination whether the elements of Code of Civil Procedure section 1240.030 are satisfied (e.g., that the public interest and necessity require the project, etc.). Second, if vague descriptions were permissible, a municipality could improperly evade the environmental protections provided by CEQA. Third, a private landowner's due process rights require a specific project description. Finally, an adequate description is essential to enable judicial resolution of defenses to condemnation.

In addition to finding an inadequate project description, the court also found fault with City's reference in the resolutions of necessity to multiple statutes purportedly authorizing the taking. The court observed that, rather than referring to a specific statute as required by Code of Civil Procedure section 1245.230, subd. (a), City's "resolution[s] simply trot[] out a laundry list of statutes setting forth a plethora of possible purposes for condemning property. This global, yet evasive enumeration *constitutes an implied admission that [City] does not yet know to what use it intends to put the property.*" (Emphasis added.)

Finally, the court held that the fact that City had ultimately put the property to a public use was irrelevant to its determination whether the resolutions of necessity were adequate. The court opined that "the entire objective of requiring a resolution of necessity is to ensure that the public entity makes a careful and conscientious decision about the need for the ... property *before* it condemns private property. This purpose would be eviscerated if the validity of a resolution of necessity could be validated by post hoc events." (Emphasis added.)

Despite the court's findings of inadequacy of City's resolutions, it ultimately gave City another chance to get the condemnation right. It remanded the case with directions that the trial court order a conditional dismissal, allowing City an opportunity to adopt new resolutions of necessity. This decision was based, in part, on the court's observations that City had improved the property, and that allowing the return of the property would result in a substantial windfall to Marina. However, the court did award Marina reasonable litigation expenses.

¹ As mentioned by the court, a notable exception to this rule exists where a redevelopment agency seeks to condemn property to combat urban blight pursuant to California's Community Redevelopment Law ("CRL"). In such a situation, it is not necessary for the agency to specifically identify the particular use to which the condemned property will be put, as the CRL specifically defines the redevelopment of blighted areas as a "public use" subject to condemnation.

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Lessons to Be Learned From the Decision

For Public Entities Seeking to Condemn

- A resolution of necessity must contain an adequate description of the proposed project! As mentioned by the court, the Law Revision Commission comments to Code of Civil Procedure section 1245.230 provide some guidance as to what constitutes an adequate description. Examples include statements that the public use is an “elementary school and grounds” or “right of way for a freeway” or “open space to be maintained in its natural condition.”
- A resolution of necessity must carefully and appropriately limit references to statutes authorizing the taking.
- It is important to consider whether the property in question may be condemned pursuant to the Community Redevelopment Law; this may obviate the need for a specific description of the project.
- You can't expect that deficiencies in a resolution of necessity will be excused simply because the subject property is ultimately put to a public purpose.
- You can expect that attorneys' fees may be awarded against you if a landowner successfully challenges a deficient resolution of necessity.

For Private Landowners being Condemned

- It is important to check the public entity's resolution of necessity for an adequate description of the proposed project and to determine whether it references inapplicable statutes purportedly authorizing the taking.
- You can't expect deficiencies in a resolution of necessity to necessarily result in your being able to keep the property. The public entity may be allowed a second “bite at the apple” for the condemnation, particularly if it has improved the property prior to trial.
- It is important to challenge a deficient resolution of necessity as early as possible. An early challenge may improve your chances of being able to keep the property.