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The Larger Parcel: From Theory to Application to Critique

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I. Introduction

The issue of whether the property to be appraised is part of a larger parcel should be at least briefly considered in every appraisal assignment involving the acquisition of property by a California public agency with the power of eminent domain. California Code of Civil Procedure section 1263.410 provides that in an eminent domain action, “[w]here the property acquired is part of a larger parcel, in addition to the compensation awarded ... for the part taken, compensation shall be awarded for the injury, if any, to the remainder.”

Compensation for injury to the remainder is referred to as severance damages. In addition, as a matter of good appraisal practice, it is necessary to know **all** the potential ways the property could be sold so that one can identify all the potential types of comparable sales for which one should search. In other words, consideration of the issue of whether a larger parcel exists is part of the highest and best use analysis.

This paper contains a brief summary of California law on the “larger parcel issue” that appraisers need to know when performing condemnation related assignments. Our presentation will address the application of these rules to the appraisal of property in the precondemnation and eminent domain litigation contexts.

II. The Legal Framework of the Larger Parcel Analysis

“The Legislature has framed the question of whether property should be viewed as an integrated whole in terms of whether the land remaining after the taking forms part of a ‘larger parcel.’” *City of San Diego v. Neumann* (1993) 6 Cal.4th 738, 745. The term “larger parcel” is not defined in the Code of Civil Procedure. Rather, the legal definition of “larger parcel” is in the process of judicial development. Traditionally, courts have held that three requirements must be met to establish that the land remaining to the owner after condemnation is part of a “larger parcel”: (1) unity of title or ownership; (2) contiguity of the parcels; and (3) unity of use. *Id.* However, as noted below, these requirements are not necessarily strictly applied.

1. Unity of Ownership

Unity of ownership clearly exists where separate legal parcels are owned by the same person or entity. However, “[t]he fact that several tracts are owned by different persons does not preclude them from being regarded as one where they are contiguous and are used in common by the owners under a contract or other arrangement and each tract is more valuable by reason of that use than if used separately.” *People ex rel. Dept. of Public Works v. Nyrin* (1967) 256 Cal.App.2d 288, 295.

For example, in *City of Stockton v. Ellingwood* (1929) 96 Cal.App. 708, the plaintiff sought to condemn 310 acres out of 480 acres of land owned by two defendants. The defendants asserted that the 480 acres was really a part of a larger parcel containing 1820 acres. The plaintiff argued that there was not a unity of ownership because the different governmental subdivisions of the 1820 acres appeared of record in the names of the different defendants, i.e., some of the tracts appeared in the name of one of the defendants and others appeared in the name of the other defendant. The Court of Appeal found that the entire 1820 acres of

land was owned by the two defendants as partners and that the partnership was making use of and occupying the 1820 acres. *Ellingwood*, 96 Cal.App. at 744-745. Accordingly, the court held that the trial court did not err in considering the whole tract as one parcel. *Id.*

It is noteworthy that a different result was reached in *People ex rel. Dep't of Pub. Wks. v. Dickinson* (1964) 230 Cal.App.2d 932, 934. In that case, the defendants argued that unity of ownership was created by a partnership agreement between the two individual property owners. The court disagreed, noting that property is not necessarily partnership property merely because it is used for partnership purposes. In *Dickinson*, the partners held title individually and leased their separate properties to the partnership for the partnership's use. *Id.* The court found that the existence of the lease showed that the partners retained the parcels in individual ownership. *Id.*

2. Contiguity of Parcels

The contiguity factor in the larger parcel analysis normally requires that the taken property and the remainder be physically contiguous. Land is not contiguous if, for instance, two parcels are separated by land owned in fee by another. *City of Oakland v. Pacific Coast Lumber & Mill Co.* (1915) 171 Cal. 392. However, courts have found contiguity to exist where road or railroad easements crossed properties so long as the fee owner had the right to unlimited access across the road or reasonably necessary private crossings of the tracks. See *People ex rel Department of Public Works v. Thompson* (1954) 43 Cal. 2d 13, 25, and *People v. Chastain* (1960) 180 Cal. App. 2d 805; see generally Matteoni & Veit, *Condemnation Practice in California*, Third Edition, Vol. 1, § 5.7, pp. 260-261 (CEB 2005, 2010).

In *City of Los Angeles v. Wolfe* (1971) 6 Cal. 3d 326, the California Supreme Court permitted recovery of severance damages despite the fact that the parcel taken was not physically contiguous with the remainder but had “constructive” or “legal” contiguity due to interdependence of use. Specifically, in the *Wolfe* case, the Court found contiguity on a compelling set of facts where an office building and its parking lot were physically separated by another parcel, but were connected by an alley in the rear. The court's listing of the facts supporting its ruling demonstrated that constructive contiguity will exist only in relatively rare circumstances. The court stated:

Here there was a unity of ownership, reasonably physical proximity of the parcels, strong unity of use with lawful means of access, special need for private parking facilities in a congested city area, non availability of physically contiguous land, zoning which required that the parking be provided but allowed 750 feet as being sufficiently contiguous to comply with such requirement, acquisition of noncontiguous land to provide parking and to obtain conforming use status, and the loss of such status and loss of needed private parking by the condemnation of [the land taken]. *Wolfe*, 6 Cal. 3d. at 338.

3. Unity of Use

Unity of use has traditionally been defined as “a connection or relation of adaptation, convenience, and actual and permanent use (such) as to make the enjoyment of the parcel taken reasonably and substantially necessary to the enjoyment of the parcels left, in the most advantageous and profitable manner in the business for which they are used.” *People ex rel. Dept. of Public Works v. Nyrin* (1967) 256 Cal.App. 2d 288, 294 (quoting *City of Stockton v. Marengo* (1934) 137 Cal.App. 760, 766).

For example, in *City of Stockton v. Marengo*, the plaintiff condemned a right of way through a tract of land. Although the tract was legally subdivided, the defendants farmed most of the tract as a whole without regard to the subdivision plan. The defendants also lived on the premises. *Marengo*, 137 Cal.App. at 765. With the exception of two lots, the Court of Appeal held that the defendants’ entire tract of land could be deemed to be a single parcel for purpose of estimating the severance damage. *Id.* at 767. However, the Court of Appeal held that it was clearly erroneous to include two lots that were leased and operated as a gas station in the jury instruction regarding severance damages. *Id.* at 767. In so holding, the Court noted that the gas station property was separated from the balance of the tract by a fence; it was set apart from the tract to be used exclusively for the operation of another business; it had actually been used for several years for operating a gas station business; and it was under an eight-year lease to a stranger to the litigation. *Id.*

The California Supreme Court more recently concluded that courts may also look beyond the present use of the property in determining unity of use. Specifically, the Court held that “if the landowner establishes that there is a reasonable probability his contiguous commonly owned lots are or will be available for development or use as an integrated economic unit in the reasonably foreseeable future, all of the separate lots may be considered as a larger parcel for purposes of awarding severance damages.” *City of San Diego v. Neumann* (1993) 6 Cal. 4th 738, 756.

However, the court went on to explain the rationale for this rule and the type of proof required as follows:

By anchoring a landowner's entitlement to severance damages based on a proposed unity of use to the reasonable probability of such use in the reasonably foreseeable future, we ensure that we compensate the landowner for the value the market places on the property, rather than its value to him alone. The property owner’s intended unified use of the separate parcels, standing alone, is insufficient to establish the “larger parcel” that is prerequisite to his proof of injury; rather, he must also demonstrate that his intended use is reasonably probable in the reasonably foreseeable future. The facts relevant to the proof of these conditions will undoubtedly vary with the circumstances of each case, but we anticipate that they will typically include, among other things, the time and expense necessary for their termination, the physical adaptability of the property for use as an integrated whole, the

existing and the proposed zoning applicable to the several parcels in question, local market conditions, the regulatory climate, and the property owner's plans for development. These are indeed factual issues, but whether, taken as a whole, they support a finding that a larger parcel exists remains an issue of law to be decided by the trial court. (Citation omitted.) *Neumann*, 6 Cal. 4th at 756-757.

III. Conclusion

We will present for discussion a series of examples to explore the practical application of these rules in the precondemnation and litigation contexts, including questions of litigation tactics and strategy and the question of who decides whether or not a larger parcel exists.

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Mike is one of the most experienced eminent domain and inverse condemnation attorneys in the Sacramento Valley. He has represented cities, redevelopment agencies, special districts, private individuals and businesses in property acquisition, land use, and a wide variety of litigation matters. Mike has spent over 16 years litigating cases ranging from allegations of civil rights violations to complex business disputes, but the major focus of his practice is eminent domain work, where he represents both governments seeking to acquire property for public projects and property and business owners who are threatened with eminent domain proceedings. A former Deputy City Attorney for the City of San Jose, the majority of Mike's work is on behalf of public agencies, which benefit from his experience on nearly 200 property acquisitions for public works and redevelopment projects. Mike regularly speaks on eminent domain topics at continuing legal education conferences and meetings of redevelopment, right-of-way, and appraisal industry groups.