



School Business Law Update

TEL: 661.636.4830
FAX: 661.636.4843
E-mail: sls@kern.org
www.schoolslegalservice.org

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COURT CONFIRMS THAT LOSS OF GOODWILL CLAIMS ARE NOT ALLOWED IN CONNECTION WITH VACANT PROPERTY BEING CONDEMNED

On December 5, 2008, the court in *City and County of San Francisco v. Coyne*, 2008 DJDAR 17947, issued a business goodwill decision rejecting a creative and highly expansive theory on what qualified as business goodwill. The *Coyne* decision settled two key issues. First, the court confirmed that only “ongoing” businesses operating on the property being condemned can recover business-goodwill losses. Second, the court confirmed that developers of raw land cannot recover anticipated future development profits by characterizing those profits as goodwill losses. In this second prong, the court equated the “business” owners’ theory to the traditionally disapproved “developer’s approach” to valuing real estate.

In *Coyne*, the city and county of San Francisco sought to condemn a parcel of raw land for open space. The owners planned to construct a mixed-use development on the property. In the condemnation action, the developers sought to recover not only the fair market value of the property, but also the future profits they projected upon completion of their proposed development. The developers claimed that their anticipated future profits fit within the definition of business goodwill. The Court of Appeal rejected this claim, finding that: the developers did not operate on “ongoing” business on the property, a threshold requirement for recovering business goodwill; the developers’ anticipated future profits were encompassed in their recovery of the fair market value of the real estate; and the developers’ appraiser’s attempt to re-coup these “losses” through the label of “goodwill” amounted to a back-door attempt to recover profits through the disallowed developer’s approach to valuation.

The court found important that the developers did not conduct their development business on the property: “they had no office, no telephone or fax machine, no mail delivery, and no business records located at that site at the time of the taking.” The court confirmed that even if a business depends on a certain location that is condemned, if it is not conducting business at that location, it cannot recover goodwill losses.

This case significantly reduces the amount of time and money condemning agencies will now need to devote to defeating spurious goodwill claims that developers were especially fond of

making after the real estate crash of 2006 in connection with their vacant land. If you have questions concerning any aspect of eminent domain, please call us at 661/636-4830.

— Christopher P. Burger

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