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Don’t Bank On It: Court of Appeal Takes Issue with City’s Development Prohibition

A city cannot prohibit development on more than one-third of an otherwise developable site in anticipation of future condemnation of that portion of the property. Such a restriction denies the landowner all economically beneficial use of the restricted land and constitutes a taking requiring just compensation. *Jefferson Street Ventures, LLC v. City of Indio*, No. G049899 (4th App. Dist., April 21, 2015). Jefferson Street Ventures owned a vacant 27-acre parcel that included the site of a long-proposed highway interchange project. In 2005, Jefferson submitted a proposal to the City to develop a retail shopping center on its entire parcel. At the time, the federal and state agencies involved in the interchange project were in the process of completing environmental reviews to satisfy NEPA and CEQA. The City could not acquire property for the interchange until the environmental reviews were completed. The City Council did not approve development of the entire 27-acre parcel, but rather conditioned approval of Jefferson's master plan on leaving nine acres for the future interchange undeveloped and reserving a two-acre temporary no-build area for a highway off-ramp during the interchange construction. The City Council included the conditions based on the advice of its staff that it would be much more expensive to acquire property for the interchange project if Jefferson developed the entire site because the City would then incur additional condemnation costs for demolition of buildings and relocation of tenants The court of appeal held that the City's conditional approval of Jefferson's development plan resulted in an uncompensated taking of the 11 acres. A regulation that deprives a landowner of all economically beneficial or productive use of its property is a per se taking that requires just compensation. Under all applicable land use regulations, Jefferson's entire 27-acre property was developable, and its master plan was in full compliance with governing regulations. The conditions imposed by the City, the court concluded, denied Jefferson all economically beneficial use of the 11 acres that the City intended to acquire in the future for the interchange project, and were a taking requiring just compensation. The City could not "bank" the undeveloped property for the purpose of making its future acquisition less expensive. When evaluating regulatory takings cases, courts generally consider the nature and extent of the land use restrictions on the property as a whole. In *Jefferson*, however, the court considered the effect of the City's restrictions solely on the 11-acre portion on which it prohibited development, explaining, "[i]t would exalt form over substance to conclude because some of the Property could be built upon, there was no taking of the remainder declared undevelopable." Additionally, while a public agency normally must be given the opportunity to rescind its action rather than pay compensation for a taking, in this case the court found that option was foreclosed because the interchange project had been transferred to the County of Riverside, which had commenced a direct condemnation action to acquire the land needed for the interchange. The direct condemnation action, the court reasoned, "will encompass many, if not all, of the damage claims Jefferson asserts against the City in this action." *Jefferson Street Ventures* serves as a cautionary tale for local governments that seek to restrict development on a property in order to reduce future condemnation costs.

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