Blogs
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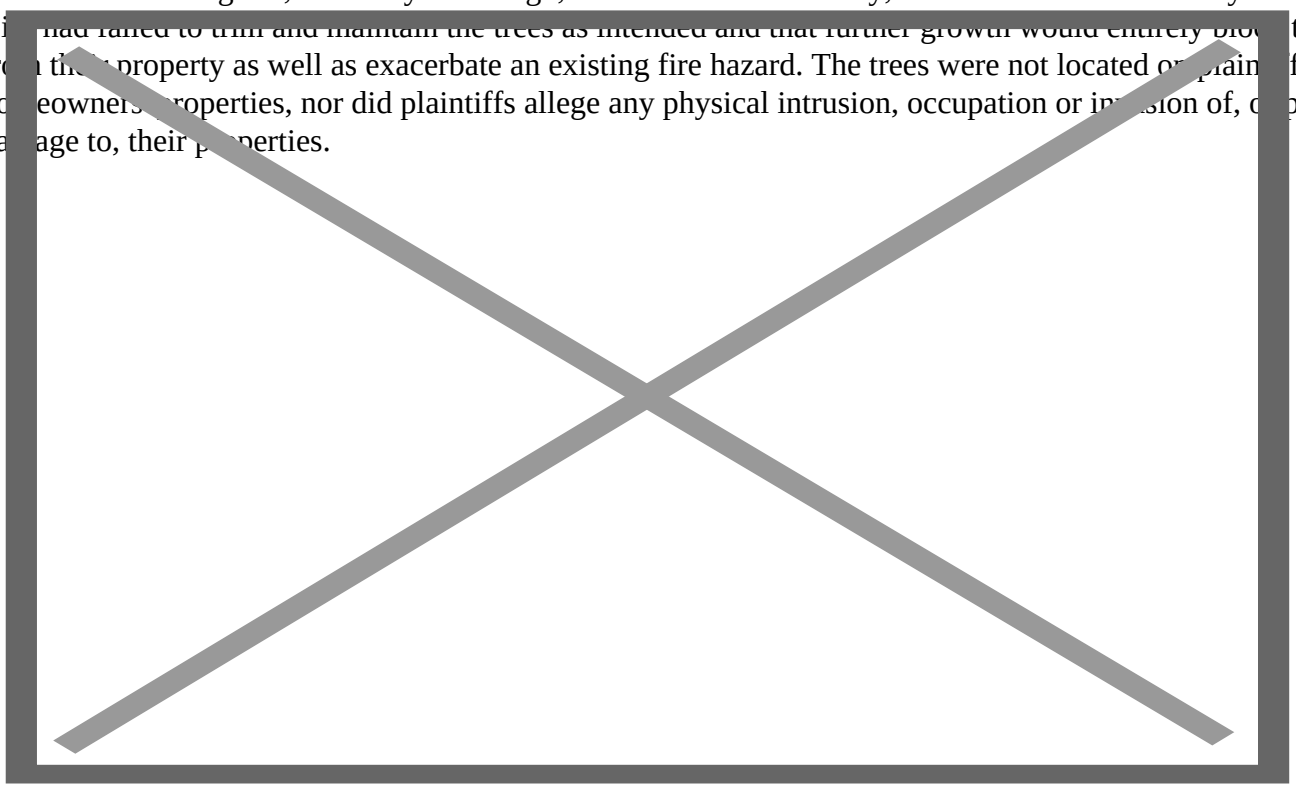
California Land Use & Development Law Report

Loss of View is Not a Taking, Even in Beverly Hills

The mere loss of a homeowners' unobstructed view, without any physical intrusion onto their properties, does not constitute a compensable taking. *Boxer v. City of Beverly Hills*, 246 Cal. App. 4th 1212 (2016). In 1989, the City planted 31 coastal redwood trees in a park adjacent to Spalding Drive in Beverly Hills. In 2005, nearby homeowners complained to the City that the growing trees had begun to block previously unobstructed views of downtown Los Angeles, the Hollywood Sign, the Griffith Observatory, and other landmarks. They claimed the City had failed to trim and maintain the trees as intended and that further growth would entirely block the views from their property as well as exacerbate an existing fire hazard. The trees were not located on plaintiffs' homeowners' properties, nor did plaintiffs allege any physical intrusion, occupation or invasion of, or physical damage to, their properties.



The homeowners brought an inverse condemnation suit against the City of Beverly Hills seeking damages and injunctive relief based on impairment of the views from their backyards. Without a physical intrusion onto their property, the homeowners relied on a theory of "intangible intrusion," arguing that "because a 'property owner's loss of view is an aspect of compensable damage' in eminent domain cases, the impairment of their views [was] a harm sufficient to support their inverse condemnation claims." The court rejected as "simply wrong" the argument that damage to the value of plaintiffs' properties, such as from an impaired viewshed, establishes a compensable taking. The mere existence of a diminution in the value of the plaintiff's property does not establish a compensable taking -- it is an element of the measure of just compensation when such taking or damaging is otherwise proved. The court also rejected plaintiffs' contention that impairment of a view alone can constitute a taking. The court was unpersuaded by several cases addressing compensation for a loss of view because those cases also involved a physical taking of the claimant's property. Several California cases discuss a "right" to visibility, but impairment of this right by government action was always "tethered to a compensable claim of

impaired physical access." Plaintiffs failed to identify authority for the proposition that a reduction in visibility, per se, required the payment of compensation. Intangible intrusions onto property such as a reduction in view may give rise to an inverse condemnation claim only where there is some *burden* on the property that is direct, substantial, and peculiar to the property itself. The court undertook a lengthy discussion of *Regency Outdoor Advertising, Inc. v. City of Los Angeles*, 39 Cal. 4th 507 (2006), in which an advertising company leasing property along a Los Angeles boulevard claimed that palm trees planted by the City along the median reduced the visibility of its billboards. The California Supreme Court rejected the company's inverse condemnation claim, holding that "impairment to visibility does not, in and of itself, constitute a taking of, or compensable damage to, the property in question." Impairment of a "visibility right" might warrant compensation, but the company had no such right. The court noted it would be especially difficult to establish a visibility right as against trees planted on City property, since planting trees could be viewed as an application of land-use regulations and police power, including "the government's well-established prerogative to plant trees on its own property." In *Boxer*, the homeowners attempted to distinguish *Regency* as concerning "a view *of* property, rather than a view *from* property" (emphasis in original). The court found this distinction to be of little consequence in light of the well-established principle of California law that a "landowner does not have a right to an unobstructed view over adjoining property." As in *Regency*, the court declined to find the homeowners had a "visibility right," stating that while private parties or a legislative body could create a right to an unobstructed view, the courts would not imply such a right.

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