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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

JAPANESE VILLAGE, LLC, Defendant and Appellant, v. LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY, Plaintiff and Respondent.	B283415 (Los Angeles County Super. Ct. No. BC550348)

APPEAL from a judgment of the Superior Court of Los Angeles County, J. Stephen Czuleger, Judge. Affirmed.

Crockett & Associates, Robert D. Crockett, Courtney Vaudreuil and Chase T. Tajima, for Defendant and Appellant.

Bergman Dacey Goldsmith, Gregory M. Bergman, Brian J. Bergman, Richard A. Fond and Jason J. Barbato, for Plaintiff and Respondent.

I. INTRODUCTION

Defendant Japanese Village, LLC appeals from a judgment following a jury trial. Plaintiff the Los Angeles County Metropolitan Transportation Authority filed an eminent domain action against defendant under Code of Civil Procedure[1] section 1230.010 et seq. for the taking of easements on defendant's property. The parties proceeded to trial and the jury awarded defendant a fair market value of $622,000 for the easements taken plus severance damages[2] in the amount of $5,013,500, for a total of $5,635,500.

Defendant contends that plaintiff's expert should not have been permitted to testify that the highest and best use of the property (after the taking) was the construction of a mixed-use seven-story structure because no one had obtained a discretionary permit for such a development. Defendant further contends that because permits that would be required for the

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[1] Further statutory references are to the Code of Civil Procedure unless otherwise indicated.

[2] In a partial taking, severance damage is the difference between the fair market value of the remaining property (the remainder) on the date of valuation and the fair market value of the remainder after the project's completion. (*Metropolitan Water Dist. of So. California v. Campus Crusade for Christ, Inc.* (2007) 41 Cal.4th 954, 971 (*Campus Crusade*); CACI No. 3511A.)

hypothetical development were not included in the resolution of necessity (§§ 1245.230, 1245.250), testimony about the development should have been excluded by the rule in *Coachella Valley Water Dist. v. Western Allied Properties, Inc.* (1987) 190 Cal.App.3d 969 (*Coachella Valley*). Defendant also asserts that plaintiff's appraiser miscalculated the project benefits pursuant to *Merced Irrigation Dist. v. Woolstenhulme* (1971) 4 Cal.3d 478 (*Woolstenhulme*). (See § 1263.410, subd. (b) [project benefits to the remainder are deducted from severance damages].) Finally, defendant contends testimony regarding the grant back of certain easements from plaintiff was unduly prejudicial. We affirm.

II. BACKGROUND

A. *Legal Framework for Eminent Domain*

Article I, section 19 of the California Constitution provides in relevant part: "Private property may be taken or damaged for a public use and only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner." (Cal. Const., art. I, § 19, subd. (a).) Just compensation is "the fair market value of the property taken." (§ 1263.310.)

"The fair market value of the property taken is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available." (§ 1263.320, subd. (a).) "'A jury should consider all

those factors, including lawful legislative and administrative restrictions on property, which a buyer would take into consideration in arriving at the fair market value.'" (*City of Perris v. Stamper* (2016) 1 Cal.5th 576, 599.)

"The jury determines the fair market value of the property based on the highest and best use for which the property is geographically and economically adaptable." (*San Diego Gas & Electric Co. v. Schmidt* (2014) 228 Cal.App.4th 1280, 1288.) "The highest and best use is defined as 'that use, among the possible alternative uses, that is physically practical, legally permissible, market supportable, and most economically feasible . . . .'" (*Id.* at p. 1289.) "The highest and best use for which the property is adaptable might not be its current use. [Citations.] 'The highest and most profitable use for which the property is adaptable and needed or likely to be needed in the reasonably near future is to be considered, not necessarily as the measure of value, but to the full extent that the prospect of demand for such use affects the market value while the property is privately held.'" (*Ibid.*)

Defendant, in addition to recovering the fair market value of the property taken (§ 1263.310), may also recover severance damages (§§ 1263.410, 1263.420). """Where the property taken constitutes only a part of a larger parcel, the owner is entitled to recover, *inter alia*, the difference in the fair market value of his property in its 'before' condition and the fair market value of the remaining portion thereof after the construction of the improvement on the portion taken."'" (*Campus Crusade, supra*, 41 Cal.4th at pp. 970-971.) "The value of the remainder after the condemnation has occurred is referred to as the 'after' value of the property. The diminution in fair market value is determined by comparing the before and after values. This is the amount of

the severance damage." (*San Diego Gas & Electric Co. v. Daley* (1988) 205 Cal.App.3d 1334, 1345, disapproved on other grounds by *Los Angeles County Metropolitan Transportation Authority v. Continental Development Corp.* (1997) 16 Cal.4th 694, 720.)

If the remainder has received a benefit from the project, that increase to the fair market value of the remainder offsets the severance damages. (§1263.410, subd. (b) ["Compensation for injury to the remainder is the amount of the damage to the remainder reduced by the amount of the benefit to the remainder"].) "Benefit to the remainder is the benefit, if any, caused by the construction and use of the project for which the property is taken in the manner proposed by the plaintiff whether or not the benefit is caused by a portion of the project located on the part taken." (§ 1263.430.) The amount of the benefit is determined by "any reasonably certain increase in the fair market value of the remaining property caused by the project." (CACI No. 3512.)

B. *Factual Background*

Plaintiff was a public agency that sought to acquire temporary and permanent easements for construction of the Regional Connector Transit Corridor Project (the Project). (See Pub. Util. Code, §§ 130050.2, 130051 & 130051.12.) The Project was a 1.9-mile underground light rail system "that [would] extend the Metro Gold Line Little Tokyo/Arts District Station to the 7th Street/Metro Center Station in downtown Los Angles, allowing passengers to transfer to the Blue, Expo, Red and Purple Lines, bypassing Union Station." The project included

construction of a new Metro station across the street from the affected property.

The affected property, Japanese Village Plaza (the property), was owned by defendant and located at the corner of 1st Street and Central Avenue in downtown Los Angeles. The property, which was built in 1978, included a two-story retail complex with office space and a multi-level parking garage. The property included an open pedestrian promenade. Plaintiff sought two permanent subsurface tunnel easements to build tracks for trains to pass through, temporary construction easements for subsurface grouting, and temporary construction easements for above ground installation and maintenance of various ground movement monitoring devices.

On July 3, 2014, plaintiff filed a complaint in eminent domain against defendant. Plaintiff filed its first amended complaint on May 11, 2016. Jury trial commenced on April 4, 2017. The parties agreed that plaintiff did not target defendant's property for a taking until April 26, 2012. The parties also agreed that July 31, 2014 would serve as the date of valuation. On appeal, defendant does not contest the jury's verdict on the fair market value of the easements taken, or the fair market value of the property as of July 31, 2014.

Because plaintiff took easements on the property rather than condemning it entirely, the jury was charged with calculating severance damages. At trial, the parties agreed that the two-story retail complex that existed on the property on July 31, 2014, was not the highest and best use of the property. The parties also agreed that the property's highest and best use would be future development on the land. The parties disagreed, however, about whether such future development was feasible in

light of the easements. The parties also disagreed about the value of the benefits to the property created by the Project. We summarize certain relevant testimony as follows.

1. Matthew Crow

Matthew Crow was plaintiff's director of project engineering for tunnels. Crow's department was responsible for approving plans for development projects located within 100 feet of a Metro tunnel. Crow testified that 17 development projects had been performed, were being performed, or were planned to be performed above or below already existing Metro tunnels. Plaintiff had approved 13 of the projects. Crow testified that during the five years in which he worked for plaintiff, there was no instance in which plaintiff refused to allow a proposed development over its tunnels. Rather, the approval of any development depended upon its engineering.

Crow further testified that defendant would not be required to purchase rights or property from any other property owner, such as Hikari Lofts, in order to build over the tunnels.

2. Craig Lawson

Craig Lawson was the head of a zoning research and land use analysis firm. Lawson testified that the property was located in a commercial zone that could be used for mixed use purposes, such as a residential apartment complex with retail stores on the ground floor. The property was also part of the Little Tokyo Community Design Overlay (CDO). Any new construction therefore would have to comply with the Little Tokyo CDO

guidelines. Lawson also testified that any building would be subject to site plan review and the California Environmental Quality Act.[3]

Lawson had met with Blake Lamb, a member of the City Planning Department that oversaw the Little Tokyo area. Lawson discussed two possible development proposals with Lamb. One scenario included approximately 300 residential units, while another included approximately 600 units. Given the location of the property, and in light of his conversations with Lamb, Lawson opined the 300 residential unit development would be more feasible.

3. Martin Hudson

Martin Hudson was a geotechnical engineer, a type of civil engineer who specializes in structures related to the earth. Hudson had previously worked on various other rail lines for plaintiff. Plaintiff hired Hudson to analyze ground conditions and provide advice on how to accomplish construction. Hudson testified about several possible methods for spreading the load pressure of structures over the subsurface easements. One such method was the use of mat foundations.[4] Hudson testified that

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[3] This case was previously on appeal in relation to the California Environmental Quality Act. (*Japanese Village LLC v. Los Angeles County Metropolitan Transportation Authority* (Jul. 9, 2015, B259725) [unpub. opn.].)

[4] A mat foundation is a five-foot thick slab of concrete and steel that can be constructed over the entire subsurface easement area. The purpose of the mat foundation is to more evenly

the Wilshire Grand Hotel, the tallest building in Los Angeles, was built over a mat foundation. The Wilshire Grand was built right next to the Metro Red Line. Hudson testified that a nine-to-ten story building could be built over a mat foundation on the property.

4. Patrick Spillane

Patrick Spillane testified as plaintiff's real estate development expert. Spillane opined that the highest and best use of the remainder would be development on the property of a seven-story mixed-use building. Spillane testified that such a project could "absolutely" be developed on the property, even after plaintiff's taking. Spillane explained, however, that there were additional costs associated with constructing a structure over tunnels. First, construction would require the use of at least two mat foundations. Spillane testified that the cost for constructing the mat foundations was $5,098,557. Second, the presence of the subsurface easements placed limitations on the construction of subterranean parking. He opined that rather than build one large subterranean lot, a developer could split parking into two different structures connected by a subterranean level. The additional costs associated with building such a structure was $5,500,000. Spillane also testified that any developer would need to obtain approval and permits for construction from plaintiff and the Los Angeles Department of Building and Safety. During this process, a developer would have to demonstrate to plaintiff's engineers and consultants that

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distribute the pressure of any buildings above the subsurface easement areas and tunnels.

its proposed structure did not present a risk to the tunnels. Spillane testified that the costs associated with completing the approval and permit process would be approximately $295,000. Finally, Spillane estimated there was approximately $189,200 in additional costs associated with removing grouting above the tunnels. In sum, Spillane determined that the additional costs associated with constructing a seven-story structure over the subsurface easements would be $11 million. In reaching this conclusion, Spillane relied upon information from Hudson, Lawson, and other experts.

Spillane stated that the construction of a seven-story mixed-use structure would not require the sinking of any piers. Spillane also testified that such construction would not invade the adjacent landowner's property.[5] He testified that mat

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[5] Defendant complains that it was error "not to strike Ellis's testimony," because the mat foundation would necessarily invade Hikari Lofts property. First, we find defendant has waived this argument. An objection or motion to strike must inform the trial court of the specific ground in question. (Evid. Code, § 353, subd. (a).) Failure to raise a timely objection results in waiver. (*Leonardini v. Shell Oil Co.* (1989) 216 Cal.App.3d 547, 584.) We have found no evidence in the record that defendant objected to Ellis's opinion testimony on the grounds that it purportedly relied upon evidence that the mat foundation required property belonging to Hikari Lofts.

Further, defendant's argument is unsupported by the evidence. As indicated, Spillane specifically testified to the contrary. Crow also testified that defendant would not need to purchase rights from another property owner, such as the owner of Hikari Lofts, to build over the tunnels. No witness testified that additional property rights were needed to develop the property.

foundations over rail tunnels had been used in Seattle and a development called the Mosaic Lofts over the Red Line tunnels in Los Angeles.

5. John Ellis

John Ellis testified as plaintiff's appraiser. Ellis testified that the before value of the larger parcel of the property was $54,000,000, based on Spillane's analysis that the property could be used as the site for future development of a seven-story mixed-use structure. Next, Ellis valued the easements acquired by plaintiff to be $550,000. Then, he subtracted this amount ($550,000) from $54,000,000. Using Spillane's figures, Ellis determined the additional costs associated with building over the subsurface easements would be $10,813,000, which he rounded down to $10,800,000. He also subtracted this figure from the before value of the property.

Next, Ellis credited the value of the project benefits. In his opinion, the property would benefit from being located directly across the street from a new station that had access to both the Gold and Blue Lines of the Metro system. With stops from Santa Monica to east Los Angeles, and from Pasadena to Long Beach, more people would use the new station than were currently using the Gold Line. He valued the increase to the property created by the Project to be $6,290,000. Crediting the benefits against the severance damages resulted in an after value of $48,990,000.[6]

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[6] There appears to have been a mathematical error in Ellis's testimony. Our calculations, based on Ellis's testimony, suggest that the after value should have been $48,940,000. Ellis may have subtracted $10,750,00, rather than $10,800,000, for the

6. Stephen Roach

Stephen Roach testified as defendant's appraiser. Roach also opined that the highest and best use of the property before the taking was its use for future development. Roach noted that under current zoning, owners could build a complex that was six times the size of the current two-story retail structure. While Roach agreed that a multi-story mixed-use structure could be built on the property, in his opinion, the highest and best use of the property (prior to the taking) was not the construction of an entirely new structure, but the maintenance of certain elements of the current two-story structure, including the open promenade. He testified that the highest and best use of the property would be a development that would remove and replace certain "non-sensitive" elements of the current structure and include new underground parking. Based on this highest and best use, Roach testified that the value of the larger parcel was $48,000,000 on July 30, 2014. Roach calculated the value of the easements taken by plaintiff to be $12,105,000. Roach further opined that plaintiff's taking of the easements reduced the market value of the remaining property by $20 million because the presence of the subsurface easements prevented future development on the property. Roach opined that plaintiff would not permit construction over the easements. Although he had spoken to plaintiff's structural engineer and understood the construction of a multi-story structure above the easements was possible, the high costs associated with such construction made future development, in his opinion, infeasible. Roach admitted that he

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value of additional costs associated with construction. The figure $10,750,000 appears in Trial Exhibit 2233.

had not discussed his opinion or the feasibility of Spillane's hypothetical development with any developers.

Next, Roach testified there was only an incremental benefit to the property from being located nearby a new station and a regional connector. Roach calculated the benefits to be $500,000, but testified that the entirety of this increase in value occurred prior to April 26, 2012. He nonetheless conducted a calculation that included a credit for the benefit and concluded the after value of the property was $28,825,000.[7]

C. Verdict

On April 21, 2017, the jury returned the special verdict. The jury was asked to answer three questions. As to Question 1, "What was the fair market value of the property taken on July 31, 2014," the jury answered $622,000. As to Question 2, "What was the fair market value of the remaining property on

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[7] Appellant requests we exercise our discretion and judicially notice the City of Los Angeles's manual's requirement to defer to plaintiff in ZI-1117 pursuant to Evidence Code section 452, subdivision (b) as a regulation issued by a public entity. This request is denied.

Appellant also requests judicial notice of a Google and rail map relating to the location of a rail line near a residential complex in London. Appellant asserts mandatory judicial notice under Evidence Code section 451, subdivision (f) as facts of generalized knowledge that are universally known and not subject to dispute. We disagree that Evidence Code section 451, subdivision (f) applies. Appellant also requests we exercise our discretion and judicially notice these maps under section 452, subdivision (h) as facts that are not reasonably subject to dispute and capable of verification. We decline to exercise our discretion.

July 31, 2014," the jury answered $53,450,000. As to Question 3, "What will the fair market value of the remaining property be after [plaintiff's] proposed project is completed," the jury answered $48,436,500. On May 3, 2017, the trial court entered judgment for defendant in the amount of $5,635,500. The judgment was amended nunc pro tunc on May 23, 2017 to correct certain portions, though the amount of damages awarded remained the same. Defendant moved for a new trial and a judgment notwithstanding the verdict. The trial court denied the motion. On appeal, defendant requests that we change the jury's special verdict to conclude that the after value of the property was $28,325,000, which would result in the entry of a new judgment in the amount of $25,747,000.

III. DISCUSSION

A. *Standard of Review*

Defendant cites *Emeryville Redevelopment Agency v. Harcros Pigments, Inc.* (2002) 101 Cal.App.4th 1083, 1095-1096 (*Emeryville Redevelopment Agency*), in support of its argument that this court reviews an appraiser's calculations de novo. The court in *Emeryville Redevelopment Agency* concluded that the trial court erred in admitting testimony regarding sales that were excluded by Evidence Code section 822, subdivision (a)(1), and therefore is inapposite. Defendant argues Ellis's opinion relied upon assumptions that are unsupported by the record. (Evid. Code, §§ 801, 803.) Because defendant challenges the admission of Ellis's expert opinion, we review for an abuse of discretion. (*Sargon Enterprises, Inc. v. University of Southern California*

(2012) 55 Cal.4th 747, 773; *Red Mountain, LLC v. Fallbrook Public Utility Dist.* (2006) 143 Cal.App.4th 333, 358; *City of San Diego v. Rancho Penasquitos Partnership* (2003) 105 Cal.App.4th 1013, 1027.) The abuse of discretion standard also applies to defendant's argument that the admission of evidence regarding the grant back of certain easements was prejudicial. (*Sacramento Area Flood Control Agency v. Dhaliwal* (2015) 236 Cal.App.4th 1315, 1331; *City of Ripon v. Sweetin* (2002) 100 Cal.App.4th 887, 900.) Defendant's arguments concerning the interpretation and application of sections 1245.250 (resolution of necessity) and 1263.410 (benefits to reduce severance damages) and the rules articulated in *Coachella Valley* and *Woolstenhulme*, are reviewed de novo. (*Community Youth Athletic Center v. City of National City* (2013) 220 Cal.App.4th 1385, 1408-1409; *Emeryville Redevelopment Agency, supra*, 101 Cal.App.4th at p. 1095.)

B. *No Error in Permitting Ellis to Testify About Highest and Best Use*

Defendant contends that the trial court erred in permitting Ellis to testify about his conclusion regarding the highest and best use of the property because plaintiff must, but did not, show legal permissibility and reasonable probability. In an eminent domain proceeding, "[t]he value of land is essentially a question of opinion to be established by expert testimony." (*County Sanitation Dist. v. Watson Land Co.* (1993) 17 Cal.App.4th 1268, 1277; *Aetna Life and Casualty Co. v. City of Los Angeles* (1985) 170 Cal.App.3d 865, 877 [property owners may also testify as to value of property].) "The value of opinion evidence rests not in the conclusion reached but in the factors considered and the

reasoning employed. [Citations.] Where an expert bases his conclusion upon assumptions which are not supported by the record, upon matters which are not reasonably relied upon by other experts, or upon factors which are speculative, remote or conjectural, then his conclusion has no evidentiary value. [Citations.] In those circumstances the expert's opinion cannot rise to the dignity of substantial evidence." (*Pacific Gas & Electric Co. v. Zuckerman* (1987) 189 Cal.App.3d 1113, 1135; Evid. Code, § 814.)

Defendant cites *Exxon Mobil Corp. v. County of Santa Barbara* (2001) 92 Cal.App.4th 1347, 1354, for the proposition that a party suggesting a highest and best use requiring a discretionary permit must overcome a rebuttable presumption that a current legally permissible use will remain unchanged. *Exxon Mobil Corp. v. County of Santa Barbara* is inapposite, as it concerned property tax evaluations. (*Ibid.*) In an eminent domain proceeding, neither party has the burden of proving the amount of just compensation. (§ 1260.210, subd. (b).)

We conclude the trial court did not err in admitting Ellis's expert testimony about the highest and best use of the property. Section 501 of the State Board of Equalization Assessors' Handbook, at page 48, cited by *San Diego Gas & Electric Co. v. Schmidt, supra*, 228 Cal.App.4th at pages 1288-1289, provides: "*The highest and best use must be a legal use*. Government significantly limits land use. The highest and best use must be a use that is—or will be—allowed by government. A property should not be appraised on the basis of a use that is illegal." (See also Black's Law Dict. (10th ed. 2014) p. 1032, col. 2 ["legally" defined as "[i]n a lawful way; in a manner that accords with the

law"], and p. 1321, col. 2 ["permissible" defined as "[a]llowed by the law or by applicable rules; allowable; admissible"].)

The record supports Ellis's opinion that his valuation of the highest and best use of the remainder was legally permissible. There is no evidence in the record that Ellis's highest and best use would violate any building codes or zoning ordinances. To the contrary, plaintiff's witness Lawson testified that he considered the Little Tokyo CDO, the California Environmental Quality Act, and the cultural and historic nature of the site and concluded a 300 unit structure was feasible. He explained that existing zoning allowed for a variety of uses, including commercial, retail, office, hotel, and multi-family residential. Defendant's expert, Roach, also agreed that under existing zoning, defendant could develop the property to six times its current size.

Defendant's argument that plaintiff must demonstrate a different future development is reasonably probable is also unavailing. "Reasonable probability" in the context of eminent domain concerns a change in the near future to the zoning or land use restrictions at the time of the valuation. (*Campus Crusade, supra*, 41 Cal.4th at p. 968; CACI No. 3503.) Generally, evidence of "reasonable probability" is used by a property owner to establish that a change in zoning or land use restrictions is reasonably probable and will permit the landowner's proffered highest and best use of the property. (See *Campus Crusade, supra*, 41 Cal.4th at pp. 967-968; *City of Los Angeles v. Decker* (1977) 18 Cal.3d 860, 867-868; *City of San Diego v. D.R. Horton San Diego Holding Co., Inc.* (2005) 126 Cal.App.4th 668, 680.) Here, plaintiff presented evidence that its hypothetical future development was legally permissible under *current* zoning and

land use restrictions. Defendant has not cited to any case that holds a party must affirmatively demonstrate it is reasonably probable zoning and land use restrictions will *not* change.

It is undisputed that neither defendant nor anyone else had obtained a permit for Ellis's highest and best use development. However, "legally permissible" does not mean that the proposed development *has* already been permitted, only that it *can* be permitted. Here, plaintiff demonstrated that it was highly probable a permit would issue. Crow testified he was unaware of any instance in which plaintiff had denied a request to develop property located over or under an existing tunnel. He identified 13 previous projects in which plaintiff had issued such a permit. Hudson testified, however, that a public agency does not approve a development by a private owner without seeing plans. Spillane testified to the same effect. We find no error on this ground.

C. *Resolution of Necessity Not at Issue*

Defendant contends *Coachella Valley* prohibits plaintiff's highest and best use scenario. *Coachella Valley* cited *County of San Diego v. Bressi* (1986) 184 Cal.App.3d 112, 116 (*Bressi*), for the proposition that "a jury is entitled to consider all evidence relevant to valuation as long as such evidence does not contradict the scope of the taking as defined by the resolution of necessity." (*Coachella Valley, supra*, 190 Cal.App.3d at p. 978.) Before the public entity may commence an eminent domain proceeding, its governing body must adopt a resolution of necessity that includes a description of the general location and extent of the property taken. (§§ 1245.220, 1245.230, subd. (b).) The resolution of necessity conclusively establishes the extent of the taking.

(§ 1245.250, subd. (a); *Bressi, supra*, 184 Cal.App.3d at p. 122.) Defendant asserts that because plaintiff's 2016 resolution of necessity did not mention plaintiff's hypothetical development scenario, the jury's finding was erroneous.

Bressi involved the County of San Diego's attempt to acquire avigation easements over defendant's property. (*Bressi, supra*, 184 Cal.App.3d at p. 116.) The county adopted a resolution of necessity allowing the easements to be used by "'every type of aircraft which is now in existence or which may be developed in the future for both commercial and noncommercial flights . . . .'" (*Ibid.*) The Court of Appeal ruled that on retrial, "the County may not offer evidence that an airport accommodating jumbo jets will not be built" because such evidence contradicts the resolution of necessity. (*Id.* at p. 123.)

Coachella Valley involved a water district that condemned 30 acres of the defendant's 680-acre parcel for construction of a flood control channel bisecting the defendant's property. (*Coachella Valley, supra*, 190 Cal.App.3d at p. 978.) The taking left a portion of defendant's remaining property, a 530-acre parcel, landlocked. (*Ibid.*) The resolution of necessity did not provide for access across the channel, and it was undisputed the defendant's access to its remaining parcel was contingent upon the plaintiff's discretionary approval. (*Ibid.*) The defendant sought severance damages for the alleged loss of use of the property. (*Ibid.*) The defendant argued that the trial court had erred in admitting "evidence of the reasonable probability the Water District will grant access" because such evidence "improperly limit[ed] the scope of the taking as defined in the resolution of necessity." (*Ibid.*) The Court of Appeal seemed to agree and noted that this issue could "easily [be] eliminated by

formal amendment to the resolution of necessity before retrial of the valuation phase." (*Ibid.*) The court then offered guidance for the trial court on retrial: "Absent action by the Water District to amend the complaint, on remand the court should follow the principles set forth in *Bressi* in determining the evidence to be presented to the jury." (*Id.* at p. 979.)

Bressi and *Coachella Valley* are distinguishable. *Bressi* involved the taking of condemned property, not the measurement of the fair market value of the remainder. (*Bressi, supra*, 184 Cal.App.3d at p. 116.) Unlike the evidence in *Coachella Valley*, Ellis's testimony about the highest and best use development did not require any grant backs to defendant.[8] Nor did it limit the nature of the taking. Rather, it described a hypothetical future development, which like all developments would require the obtaining of permits. To require plaintiff to include in its resolution of necessity discretionary permits for all highest and best use scenarios, in our view, would be unworkable and an overbroad reading of *Bressi* and *Coachella Valley*.

D. *Woolstenhulme Does Not Apply to Jury's Calculation of Benefits*

Defendant, citing *Woolstenhulme*, contends the jury erred by implicitly adopting Ellis's benefits calculation. In *Woolstenhulme*, a public entity condemned part of a ranch for use in a multipurpose water project in 1967. (4 Cal.3d at pp. 484-485.) The project was announced in 1963. (*Id.* at p. 485.) As a

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[8] Plaintiff did introduce evidence of a grant back, discussed further below, but that grant back was specifically included in plaintiff's resolution of necessity.

result, property values in the area began to increase. (*Ibid.*) By 1965, it had become reasonably probable that part of defendant's land would be taken for the project. (*Ibid.*) The parties disputed the highest and best use of the taken property. (*Id.* at pp. 486-487.) The Supreme Court ruled that enhancement of value due to speculation that the property would be part of the project could not be considered for just compensation to the owner. (*Id.* at p. 491.) Enhancement of value because of "speculation over the amount of an imminent condemnation award" also was excluded from just compensation to the owner. (*Id.* at p. 492.) However, enhancement of the value of property adjacent to or near a proposed project, before it becomes probable that the particular land will be condemned was a proper consideration in calculating fair market value. (*Id.* at p. 494.) The Supreme Court held: "[I]ncreases in value, attributable to a project but reflecting a reasonable expectation that property will not be taken for the improvement, should properly be considered in determining 'just compensation.'" (*Id.* at p. 495.) The *Woolstenhulme* rule is an exception to the project effect rule under section 1263.330, subdivision (a).[9]

Defendant argues that under the *Woolstenhulme* rule, when calculating severance damages, no benefits should be

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[9] Section 1263.330, subdivision (a) provides: "The fair market value of the property taken shall not include any increase or decrease in the value of the property that is attributable to any of the following: [¶] (a) The project for which the property is taken." The California Law Revision Commission comment on section 1263.330, subdivision (a) indicates that the section was intended to incorporate the rule in *Woolstenhulme*. (Cal. Law Revision Com. com., 19A West's Ann. Code Civ. Proc. (2007 ed.) foll. § 1263.330, pp. 80-81.)

deemed to have accrued to the property after April 26, 2012, the date the parties agreed plaintiff had targeted the property for taking. *Woolstenhulme* is inapplicable here. As our Supreme Court explained, "We reaffirmed in *Woolstenhulme* that a property owner *whose property is condemned* will not be compensated for any increase in value due to speculation that *the property will be taken* in order to facilitate development of a proposed project. [Citation.] On the other hand, a property owner can be compensated for increases in valuation that result from a property's proximity to a proposed project, up to the point that it becomes probable the property will be included in the project. [Citation.] On that basis, the court concluded that the defendant should not be compensated for the increases in value that occurred after 1965." (*City of Perris v. Stamper, supra*, 1 Cal.5th at p. 601, italics added.)

Woolstenhulme applies to the fair market value of the *property taken*. (4 Cal.3d at p. 496; § 1263.330, subd. (a).) The fair market value of the remainder in the "before" condition is the fair market value of the property as a whole on the date of valuation minus the fair market value of the property taken. (CACI No. 3511A.) Defendant concedes the jury's finding of the fair market values of the remainder in the "before" condition and the property taken was correct. Defendant has cited no authority for its position that *Woolstenhulme* would preclude consideration of the benefits to offset the severance damages here. Defendant's argument that *Woolstenhulme* applies to limit the calculation of benefits to the remainder is unavailing and illogical, since the very nature of benefits is to account for an increase in property values caused by the taking. (See *City of San Diego v. Rancho Penasquitos Partnership, supra*, 105 Cal.App.4th at p. 1029

["where the value of the remaining property is *enhanced* by the project, the added value to the property [the benefit] can set off any severance damages"].)

Defendant also argues that Ellis's testimony should be rejected as a matter of law because he did not testify that the benefits to the property accrued after April 26, 2012, while Roach testified that all benefits accrued before that date. We disagree. Although Ellis did not testify about a precise date for valuation of the benefits, in context, it was clear that Ellis's opinion (that the property would benefit from its proximity to a new Metro station and the presence of the regional connector) was that benefits would accrue after the completion of the Project, which would be well after April 26, 2012.

E. *Defendant Fails To Demonstrate Outgrant Evidence was Unduly Prejudicial*

Defendant also contends evidence that certain easements would be granted back by plaintiff, referred to as an "outgrant" at trial, should not have been admitted. Plaintiff presented evidence that the resolution of necessity included a grant back to defendant of subsurface easements located between the two subsurface tunnels, which could be utilized to support a high-rise development once the Project was completed. Hudson testified that one possible method for future land development over the tunnels was the use of pile foundations. Pile foundations are long, thin steel or concrete elements driven deep into the ground to support a building. Hudson testified that a developer could use the area between the tunnels that had been granted back to defendant, as a location for placement of the pile foundations. None of Spillane's description of various development scenarios

relied on the use of this method of construction. Defendant contends evidence about the outgrant therefore was irrelevant and unduly prejudicial.

In its brief, defendant presented only conclusory assertions without articulating how the admission of such evidence was an abuse of discretion. "'Appellate briefs must provide argument and legal authority for the positions taken. "When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived."'" (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956; *Shaw v. County of Santa Cruz* (2008) 170 Cal.App.4th 229, 281 ["The biggest flaw in [appellants'] argument is their failure to offer any analysis that articulates their evidentiary claims within the context of the applicable standard of review"].) "[I]t is the burden of appellants to show that it is reasonably probable that they would have received a more favorable result at trial had the error not occurred." (*Christ v. Schwartz* (2016) 2 Cal.App.5th 440, 447.) Because defendant failed to offer any analysis that the trial court abused its discretion, or even assuming error, that such abuse of discretion was prejudicial, defendant's argument is unavailing.

IV. DISPOSITION

The judgment is affirmed. Defendant Japanese Village, LLC may recover its costs on appeal. (§ 1268.720.)

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KIM, J.

We concur:

BAKER, Acting P.J.

MOOR, J.