




MEMORANDUM

Item No.: 3a
Meeting Date: 1/23/07

TO: Mayor John H. Pryor and Town Councilpersons
FROM: Kevin J. Geiger, Telluride Town Attorney 
DATE: January 18, 2007
RE: Overview of Condemnation Law and Update on Anticipated Process and Schedule for February, 2007 Valley Floor Final Valuation Trial

The purpose of this memorandum is to provide an overview to Town Council, as well as to members of the public, of some of the basic points of condemnation law in Colorado along with a discussion of the anticipated process and schedule for the upcoming February, 2007 Valley Floor Final Valuation Trial.

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Overview of Condemnation:

Condemnation, also referred to as the power of eminent domain, is a statutory and constitutional process by which a governmental entity may legally take title to real property owned by a private party provided that just compensation is paid.

Three Required Elements of Condemnation

Before a condemnation matter may reach either a jury or commission for ascertainment of the value of the taking in a final valuation trial, the Trial Court must resolve three (3) elements:

- 1) Authority: Home-rule municipalities, such as the Town of Telluride, exercise their condemnation authority pursuant to Article XX of the Colorado Constitution and, generally speaking, without regard to the statutory limitations imposed by the Colorado General Assembly.
- 2) Legitimate Public Purpose: A condemnation must advance a legitimate public purpose, either by having the property used by the public or by serving or generating a public benefit. The use proposed by the Town of Telluride for the Valley Floor as a park and/or open space is a clearly recognized public use under Colorado law.
- 3) Failure to Agree/Good Faith Negotiations: The condemning authority must engage in what are termed "good faith negotiations" with the landowner, which has been interpreted as a reasonable good faith offer by the condemning authority to purchase the property and the ability of the landowner to have sufficient time to evaluate and respond to the offer.

Based on previous rulings by San Miguel County District Court Judge Charles Greenacre, the Town of Telluride has resolved and satisfied all three (3) jurisdictional elements to proceed with the condemnation of the Valley Floor. As such, the Town is entering the final valuation trial phase of this legal action, which will commence on February 5, 2007 in the Delta County Courthouse located at 501 Palmer Street, Delta, Colorado. Currently, the District Court has reserved three (3) weeks for consideration of this matter, although it is possible that the testimony and verdict might be completed in advance of this outside time range.

Final Valuation Trial

The Landowner in the Valley Floor matter has elected to proceed with their right to have the final value of the Valley Floor determined by a civil jury of six (6) freeholders who must own real property. The issue for the jury during the Final Valuation Trial is limited exclusively to the amount of compensation the Town must pay to the Landowner to take the Valley Floor.

At the valuation trial, the Landowner will have the burden of proof. The Landowner will present its case first, subject to Town cross-examination, and then the Town will be afforded an opportunity to present its evidence of value. Following the Town's presentation of evidence, the Landowner will be afforded an opportunity to present rebuttal testimony.

Without getting into details of the evidence that will be presented in this case, both sides will present testimony as to what they believe is the highest and best use of the Valley Floor. The just compensation that is due the Landowner is determined by considering the reasonable market value of the Valley Floor under an analysis of what is the most advantageous use or development scenario for the Valley Floor, without engaging in speculation. Market value is traditionally defined as the price at which an owner would be willing to sell and the price at which the buyer would be willing to buy property on the open market, but where neither party is obligated to either buy or sell the property.

After all evidence is presented in the case, the matter will be turned over to the jury who will retire to deliberations to determine the amount of compensation that the Town is required to pay the Landowner for the Valley Floor. The jury will report its determination of value on a one-page jury verdict form that will include a legal description of the property. Although Colorado law does not provide for a set time for the satisfaction of the jury award, the Town is anticipating that funds for the jury award will be needed within ninety (90) days or by approximately late May, 2007. Upon satisfactory deposit of the jury award the Court will enter a "Rule and Order", which effectively serves as the instrument of conveyance, or deed, to the Property from the Landowner to the Town.

Appeals

Either party may appeal a jury award to the Colorado Court of Appeals. However, upon payment of the jury award and issuance of a Rule and Order, the Town may take possession of the Valley Floor pending an appeal. If the Landowner seeks an appeal, they may not take receipt of the jury award. If the Landowner withdraws the jury award from the court registry during the appeal period any appeal is dismissed.

Conservation Easement:

The Town's Valley Floor Advisory Board, in collaboration with the Town's Open Space Commission, worked extensively on a draft conservation easement that is designed to be a template for any conservation easement that the Town would negotiate and execute with a qualified conservation organization. A conservation easement is a perpetually binding legal document that, in this case, will contain the formal language restricting future use and development of the Valley Floor.

On June 6, 2006, the Telluride Town Council reviewed this draft conservation easement and expressed its consensus that the overall agreement was appropriate. (Copies of the version reviewed by Town Council on June 6, 2006 are available at the Town Attorney's Office.) Upon the successful acquisition of the Valley Floor, it is the Town's stated intent to execute and place of record a conservation easement on the Valley Floor that will perpetually restrict the development of any permanent structures on the Valley Floor so as to maintain its status as undisturbed open space.

However, Town Council and the public should recognize that there might be a timing issue on the execution of the conservation easement. The Town cannot execute a conservation easement until the Town receives the Court's Rule and Order conveying the property to the Town of Telluride. In addition, there will be Town Council discussion as to the appropriate conservation entity that will hold the conservation easement on the Valley Floor.

As currently drafted, the conservation easement envisions that a more detailed Management Plan shall be completed and executed between the Town and the conservation entity within six (6) months from the execution of the conservation easement. The management plan that would be developed contemporaneously with the final conservation easement is an adaptive, detailed document that will contain guidelines and regulations about how the allowed activities will be developed and conducted on the Valley Floor.

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I hope this memorandum has assisted Town Council and the public in better understanding condemnation law and the upcoming final valuation trial for the Valley Floor. Additional questions from the public can be directed either to the Town Attorney's Office or to Town of Telluride Mayor John Pryor. I look forward to discussing this matter with Town Council on January 23, 2007.

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