

## OREGON REAL ESTATE AND LAND USE DIGEST

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## Appellate Cases – Real Estate

### ■ OREGON SUPREME COURT RULES ON STANDARD FOR "CONDEMNATION BLIGHT"

In late May, the Oregon Supreme Court addressed the standard for assessing whether "condemnation blight" constitutes a taking under the Oregon Constitution. As most commonly used, the term refers to the impact that project planning and related threatened acquisition has on the value of property. In doing so, the court reviewed and attempted to clarify its prior decisions in this area.

*Hall v. State ex rel. Oregon Department of Transportation*, 355 Or. 503, \_\_\_ P.3d \_\_\_ (2014), involved a 25-acre parcel abutting I-5 in Linn County. The property's only access was over an easement that led to the "Viewcrest" interchange. The property owners had attempted to develop the property for a number of years without success except for three small areas with billboards. At the same time, the Oregon Department of Transportation ("ODOT") began evaluating the possibility of removing the interchange due to safety concerns. The effect would be to landlock the property and trigger its acquisition. As a part of the evaluation, ODOT issued a variety of public statements and held a series of public meetings over several years. While the public planning process was underway, the property owners sued ODOT on an inverse condemnation claim. The gist of their claim was that ODOT's public planning process that publicized the possibility of closing the interchange and land locking the property had effectively devalued it through condemnation blight.

At trial ODOT moved for a directed verdict that its planning activities did not constitute a taking as a matter of law because some economically viable use of the property—the billboards—remained. The trial court denied the motion, ruling that the property owners simply needed to show that ODOT's activities had substantially interfered with their use of the property. The jury then awarded the property owners nearly \$3.4 million for the reduction in value. The Court of Appeals reversed (*see* the December 2012 edition of the *Digest*). The Supreme Court, in turn, affirmed the Court of Appeals.

The Supreme Court reviewed prior case law dealing broadly with both condemnation blight and related project planning activities, notably *Lincoln Loan Company v. State ex rel. State Highway Commission*, 274 Or. 49, 545 P.2d 105 (1976), and *Fifth Avenue Corporation v. Washington County*, 282 Or. 591, 581 P.2d 50 (1978). The court determined that the substantial-interference standard applies only when a government entity physically occupies or otherwise invades the property interest concerned. The court noted that in *Lincoln Loan*, for example, the property owner alleged that a project demolition on nearby parcels had created noise and dust that had substantially interfered with use of the property at issue. Absent that physical aspect, however, the court found that public planning activities only support a claim for inverse condemnation by condemnation blight when they have deprived an owner of all economically viable use of the property involved.

The court concluded that in *Hall* there was no physical occupation or other invasion of the property interests and the owner continued to derive income from the billboards. Therefore, the court found no taking by condemnation blight under the Oregon Constitution. On an additional note, the corresponding federal standard was not before the court.

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*Hall v. ODOT State ex rel. Or. Dep't of Transp.*, 355 Or. 503, \_\_\_ P.3d \_\_\_ (2014)