

***Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. Adv. Op. 21 (Apr. 17, 2008)¹**

**PROPERTY LAW – ACTION FOR PRECONDEMNATION DAMAGES –
EMINENT DOMAIN**

Summary

A municipality’s announcement of intent to condemn a parcel of land may give rise to a cause of action by the landowner for damages based on an allegation that, under the circumstances, the municipality acted improperly in making the announcement before instituting an eminent domain action.²

Disposition/Outcome

The Nevada Supreme Court reversed the district court’s order to the extent that it dismissed the landowner’s claim for precondemnation damages, and remanded the matter to the district court for further proceedings with respect to that claim. The court also affirmed the district court’s dismissal of the landowner’s remaining causes of action.³

Factual and Procedural History

In 2003, Buzz Stew owned a 20-acre parcel of land in North Las Vegas from which the municipality desired one acre in order to construct a flood control channel. After Buzz Stew rejected the municipalities offer to purchase, the City adopted a resolution of “need and necessity,” announcing its intent to condemn the disputed one acre of property. Thereafter, in July 2004, Buzz Stew sold its entire 20-acre parcel to a third party for \$8,200,000. However, Buzz Stew then learned that because the City could not secure funding for the flood control project, it was not going to institute the eminent domain action against the property. Further, the City failed to publicly withdraw or retract its resolution of “need and necessity,” including its intent to condemn the one-acre parcel.

Consequently, Buzz Stew filed a complaint in the district court for precondemnation damages. The City countered with a motion to dismiss,⁴ asserting that Buzz Stew had failed to state a claim upon which relief could be granted, which the district court ultimately granted. This appeal followed.

Discussion

Buzz Stew’s cause of action for precondemnation damages alleges that a landowner is entitled to damages, independent of those resulting from a taking, when the municipality acts improperly with respect to announcing its intent to condemn the landowner’s property. In *Barsy*,

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² This case represents an expansion of the Court’s ruling in *State, Department of Transportation v. Barsy*, 113 Nev. 712, 941 P.2d 971 (1997), overruled on other grounds by *GES, Inc. v. Corbitt*, 117 Nev. 265, 268 n.6, 21 P.3d 11, 13 n.6 (2001).

³ After addressing the precondemnation damages claim, the Court briefly addressed Buzz Stew’s claims of inverse condemnation, estoppel, abuse of eminent domain laws, prejudgment interest, severance damages, and attorney fees, concluding rather summarily that either the district court properly dismissed the claims or the claims were moot.

⁴ NRCPC 12(b)(5).

the court addressed a substantially similar issue regarding “whether . . . precondemnation activities of the State entitle [a condemnee] to damages *in addition* to those resulting from the taking of [its] property.”⁵ Here, the court expands the conclusion in *Barsy* to allow a landowner to assert a cause of action for precondemnation damages, *independent* from those resulting from the taking of its property.

According to the court’s opinion, *Barsy* set forth three elements of a claim for precondemnation damages:

- (1) the landowner must first “allege facts showing an official action by the [would be] condemnor amounting to an announcement of intent to condemn.”⁶
- (2) the landowner must show that the public agency acted improperly following the agency’s announcement of its intent to condemn certain land. For example, either “unreasonable or extraordinary delay” or “oppressive conduct” following an announcement of intent to condemn, which results in a decrease in the market value of the property.
- (3) a taking must occur to recover damages related to a municipality’s announcement of intent to condemn and its improper action with respect to that announcement.

Therefore, the court addressed each of these elements with respect to Buzz Stew’s claim for precondemnation damages. The first element was satisfied when the City officially expressed its intent to condemn by adopting a resolution for the “need and necessity” of Buzz Stew’s property. Next, the court concludes that because the Nevada Legislature has not passed legislation expressly defining what qualifies as an extraordinary delay or oppressive conduct, the question was to be reserved for the fact-finder. Therefore, because the claim raises this question of fact, the court remanded that issue to the district court. As to the last element, the court eliminated the requirement with this opinion. Accordingly, Buzz Stew is not required to prove that a taking occurred and that damages resulted from such a taking.

Conclusion

A landowner may assert a cause of action for precondemnation damages, with or without an actual taking of the property.

⁵ State, Dep’t of Transp. V. *Barsy*, 113 Nev. 712, 719, 941 P.2d 971, 976 (1997) (emphasis added).

⁶ *Id.* at 720, 941 P.2d at 977.