Santa Clara University
School of Law

Santa Clara Law Review

Volume 48 | Number 2 Article 5

1-1-2008

Campus Crusade for Christ v. Metropolitan Water District

Nathan Hall

CAMPUS CRUSADE FOR CHRIST V. METROPOLITIAN WATER DISTRICT

Nathan Hall*

I. INTRODUCTION

In *Metropolitan Water District of Southern California v. Campus Crusade for Christ* (*Campus Crusade*), the Supreme Court of California examined the burden of proof in eminent domain actions with respect to establishing a reasonable probability of a zoning change, and determining a landowner's entitlement to severance damages.[1] Just compensation is a constitutionally protected right both in California[2] and under the U.S. constitution.[3] Consistent and proper adjudication of eminent domain cases brought before the State is vital to protecting the right of just compensation.[4]

Although the California Supreme Court resolved several issues in *Campus Crusade*, this casenote will focus on the issues relating to the burden of proof and burden of production with respect to establishing the reasonable probability of a zoning change. First, this casenote will discuss California's legislative and judicial treatment of the issue of burden of proof in eminent domain actions.[5] Second, this casenote will present the background facts and holding of

---

* Articles Editor, Santa Clara University Law Review, Volume 48; J.D. Candidate 2008, Santa Clara University School of Law; B.S., Architecture, University of Wisconsin-Milwaukee.

1. Metro. Water Dist. of S. Cal. v. Campus Crusade for Christ, Inc., 161 P.3d 1175 (Cal. 2007).

2. CAL. CONST. art. I, § 19; 1 NORMAN E. MATTEONI & HENRY VEIT, CONDEMNATION PRACTICE IN CALIFORNIA § 4.1, at 80-81 (3d ed. 2005).

3. U.S. CONST. amend V.

4. 40 AM. JUR. 3D *Proof of Facts* § 2 (1997) ("The most important limitation on the government's power of eminent domain is contained in the Fifth Amendment to the United States Constitution . . . which requires payment of just compensation for the property taken.").

5. *See supra* Part I.A.

Campus Crusade.[6] Finally, this casenote will examine the court's decision and evaluate its potential effects on future condemnation litigation and legislation in California.[7]

A. Prior Judicial and Legislative Treatment

In 1976, the Legislature amended section 1260.210(b) of the California Code of Civil Procedure to state "neither the plaintiff nor the defendant has the burden of proof on the issue of compensation."[8] Much like severance damages,[9] the probability of a zone change will affect the amount of compensation required to be given in exchange for the condemned property and presumably falls within the scope of section 1260.210(b).[10] Imposing a burden on a condemnee to show a reasonable probability of a zoning change to receive the property's highest value is necessarily a burden on the issue of compensation. Section 1260.210 revised previous case law, holding that there *was* a burden of proof on the issue of compensation.[11] The comments to section 1260.210(b) state that "[a]ssignment of the burden of proof in the context of an eminent domain proceeding is not appropriate."[12] Despite the amendment, California courts continued to allocate the burden of proof on the issue of compensation to the condemnee.[13]

---

6. *See supra* Part I.B-D.

7. *See supra* Part II.

8. CAL. CIV. PROC. CODE § 1260.210(b) (West 2007).

9. Metro. Water Dist. of S. Cal. v. Campus Crusade for Christ, Inc., 161 P.3d 1175 (Cal. 2007) ("Severance damages . . . consist generally of the diminution in the fair market value of the remainder property caused by the project . . . [s]everance damages are not limited to special and direct damages, but can be based on *any factor*, resulting from the project, that causes a decline in the fair market value of the property.") (citing L.A. County Metro. Transp. Auth. v. Cont'l Dev. Corp., 941 P.2d 809 (1997)); *see generally* Memorandum 2000-40, Cal. L. Revis'n Comm'n, Offset of Benefits in Partial Taking in Eminent Domain (Apr. 21, 2000), *available at* http://www.clrc.ca.gov/pub/2000/MM00-40.pdf (noting that severance damages might include damages that result "from leaving an undersized, mis-shapen, or landlocked remnant.").

10. 1 MATTEONI & VEIT, *supra* note 2, § 9.45.

11. CAL. CIV. PROC. CODE § 1260.210(b), L. Revis'n Comm'n Comments, 1975 Addition (West 2007). ("The rule as to burden of proof provided by subsection (b) changes former law.").

12. *Id.*

13. *See, e.g.*, City of L.A. v. Decker, 558 P.2d 545, 549 (Cal. 1977); City of San Diego v. D.R. Horton San Diego Holding Co., 24 Cal. Rptr. 3d 338, 346 (Ct. App. 2005); Redev. Agency v. Contra Costa Theater, Inc. 185 Cal. Rptr. 159, 165

Case law prior to the 1976 amendment shows that a burden did exist. For example, in *People ex rel. Department of Public Works v. Arthofer*, the court imposed the burden of proof on the defendant landowner to show a reasonable probability of a zone change.[14] The unimproved parcel, taken for freeway purposes, was designated R-1 use[15] as of the date of valuation.[16] The court overruled the landowner who claimed that he purchased the land for R-3 use.[17] *Arthofer* states the traditional rule plainly: "The burden of proof as to reasonable probability of zone change is on the landowner."[18]

On the cusp of the Legislature's amendment to section 1260.210 of the California Code of Civil Procedure in 1977, the California Supreme Court decided *City of Los Angeles v. Decker*.[19] In *Decker*, the landowner's home was condemned for construction of a public airport.[20] The homeowner sought to show that although her home was zoned R-1,[21] zoning rules permitted a rezoning of the area if certain conditions could be shown.[22] Relying on *Arthofer*, the trial court had held that the burden rested on the landowner.[23] The California Supreme Court ordered a new trial after appeal and hearing[24] and advised the trial court of the amendment to section 1260.210.[25] Although the subsequent reversal came *after* the operative date of the amendment, *Decker* ultimately upheld previous case law that the burden to show a reasonable probability of a zoning change fell on the landowners.[26]

After 1977, other courts followed *Decker* and held that a

(Ct. App. 1982).

14. People *ex rel.* Dep't of Pub. Works v. Arthofer, 54 Cal. Rptr. 878, 884 (Ct. App. 1966).

15. *Id.* at 881 ("[U]nder the ordinance involved herein, R-1 permits construction of single-family residential dwellings.").

16. *Id.*

17. *Id.* ("An R-3 zone classification authorizes uses permitted by an R-1 zone together with the construction of apartments, day-care nurseries, private clubs, rest homes, and private schools.").

18. *Id.* at 884.

19. City of L.A. v. Decker, 558 P.2d 545 (Cal. 1977).

20. *Id.* at 546.

21. *Id.* at 549 (describing R-1 use as single family residential).

22. *Id.*

23. *Id.*

24. *Id.* at 552.

25. City of L.A. v. Decker, 558 P.2d 545, 552 (Cal. 1977); 1 MATTEONI & VEIT, *supra* note 2, § 9.45.

26. 1 MATTEONI & VEIT, *supra* note 2, § 9.45

landowner carries the burden of proof to show the probability of a zoning change.[27] In *Redevelopment Agency of Concord v. Contra Costa Theater, Inc.*,[28] the defendant sought to show that a use permit for a multi-screen theater was reasonably probable and therefore his property should be valued in accordance with that use.[29] In its opinion, the court did not refer to the statute, but instead cited the holding in *Decker*.[30] As recent as 2005, a California court held that the property owner bears the burden of showing a reasonable probability of a zone change.[31] In *City of San Diego v. D.R. Horton San Diego Holding Co.*, a landowner held the burden of showing that there was a reasonable probability of a zoning change in order to recover the "highest and best use" of the land.[32]

In contrast, some California courts imposed no burden, even prior to the 1976 amendment.[33] In *City of Pleasant Hill v. First Baptist Church*,[34] the court allowed the jury to hear and determine the weight of witness testimony relevant to the probability of a zone change.[35] Allowing a *jury* to determine the probability of a zoning change is more akin to the standard of proof contemplated by the current statute.[36] Rather than imposing a burden on either the plaintiff or the defendant, the court allows both parties to present their evidence independently.[37] A trier of fact must examine the conflicting evidence and fix a value based on the weight and

---

27. *See, e.g.*, City of San Diego v. D.R. Horton San Diego Holding Co., 24 Cal. Rptr. 3d 338 (Ct. App. 2005); Redev. Agency v. Contra Costa Theater, Inc. 185 Cal. Rptr. 159 (Ct. App. 1982).

28. *Contra Costa Theater*, 185 Cal. Rptr. 159.

29. *Id.* at 166-67.

30. *Id.* at 165 ("The burden of establishing a 'reasonable probability' of a change in allowed use is on the landowner.").

31. *D.R. Horton San Diego Holding Co.*, 24 Cal. Rptr. 3d at 346.

32. *Id.*

33. *E.g.*, City of Pleasant Hill v. First Baptist Church, 82 Cal. Rptr. 1 (Ct. App. 1969).

34. *Id.*

35. *See id.* at 21-22 (holding that it was not prejudicial error to introduce evidence that a nearby landowner had bought, rezoned and sold land for profit, despite the fact that the landowner had not checked with the planning commission or city council about rezoning).

36. *See* CAL. CIV. PROC. CODE § 1260.210(b), L. Revis'n Comm'n Comments (should these be small caps?), 1975 Addition (West 2007).

37. *See id.*; *see also* 1 MATTEONI & VEIT, *supra* note 2, § 9.14 ("The law assumes that all appraisal information, admitted from either side, is to be given the jury for its independent determination.").

credibility of the evidence.[38] Eliminating the burden of proof removes any deference the condemnee must overcome to the condemnor to prove the amount of compensation sought by the condemnee.[39]

Compounding the confusion of this rule is the imprecision with which the standard of evidence is measured. It is unclear whether the burden of proof required in these cases functions as a burden of *persuasion*[40] or a burden of *production*.[41] The actual standard of evidence set forth in *Decker* is substantively low: "[T]he evidence must at least be in accordance with the usual minimum evidentiary requirements, and that which is purely speculative, wholly guess work and conjectural, is inadmissible."[42] Cases like *Contra Costa Theater* echo this substantively low burden by referring to it as a "minimum evidentiary requirement[]."[43] Presumably, any evidence based on objective findings will pass this threshold. Nonetheless, courts that do not impose a burden of proof nevertheless impose a threshold standard of a *reasonable* probability of a zoning change.[44]

B. Factual Background of Campus Crusade

Metropolitan Water District (MWD) is a consortium of twenty-six cities and water districts that provides water to various parts of Southern California.[45] MWD condemned the land interest in question in order to construct a water pipeline that would carry water from MWD's facility in Devil Canyon in San Bernardino County to its East Side reservoir in Diamond Valley Lake in Riverside County.[46] The twelve-

38. CAL. CIV. PROC. CODE § 1260.210(b), L. Revis'n Comm'n Comments, 1975 Addition (West 2007).

39. 1 MATTEONI & VEIT, *supra* note 2, § 9.14.

40. The burden of persuasion is "the notion that if the evidence is evenly balanced, the party that bears the burden of persuasion must lose." Metro. Water Dist. of S. Cal. v. Campus Crusade for Christ, Inc., 161 P.3d 1175, 1183 (Cal. 2007).

41. The burden of production is "a party's obligation to come forward with evidence to support its claim." *Campus Crusade*, 161 P.3d at 1183.

42. City of L.A. v. Decker, 558 P.2d 545, 549 (Cal. 1977).

43. Redev. Agency v. Contra Costa Theater, Inc., 185 Cal. Rptr. 159, 165 (Ct. App. 1982).

44. *E.g.*, Martens v. State, 554 P.2d 407, 409 (Alaska 1976).

45. Metropolitan Water District of Southern California, http://www.mwdh2o .com/ mw dh2o/pages/about/about01.html (last visited Nov. 4, 2007).

46. Brief of Appellants at 1, Metro. Water Dist. of S. Cal. v. Campus

foot diameter, forty-three mile long pipeline is a significant project requiring equally significant construction.[47] The construction, which runs through property owned by Campus Crusade, includes a tunnel along the northwest portion of Campus Crusade's property, and transitions to a pipeline that runs to the southeast and then to the south through Campus Crusade's property.[48]

Although most of the actual pipeline is buried hundreds of feet below ground, portions of the pipe rise steeply and come close to the surface.[49] Thus, MWD required permanent easements not only below ground, but above ground as well, for the purpose of "constructing, reconstructing, maintaining, [and] operating . . . a line or lines of pipe at any time . . . ."[50]

Campus Crusade owned approximately 1,824 acres in the area in and around San Bernardino County, California.[51] The portion of the land relevant to this case is zoned RC.[52] Roughly 420 acres of the property is also located in San Bernardino's sphere of influence, which is potentially subject to rezoning by the city, however only after annexation.[53] Campus Crusade's existing buildings are currently located in the RC zone as legal non-conforming uses.[54] Campus Crusade asserts that it had decided, in 1996, to hire a developer for comprehensive development of the property[55] and gained political support for the development.[56] Because of the land's prospective development, Campus Crusade asserts that a reasonable probability of a zoning change existed at the time of valuation.[57] If such a probability existed, Campus Crusade

---

Crusade for Christ, Inc., 161 P.3d 1175 (Cal. 2007) (No. E034248).

47. *Id.*

48. Brief of Respondent at 1, Metro. Water Dist. of S. Cal. v. Campus Crusade for Christ, Inc., 161 P.3d 1175 (Cal. 2007) (No. E034248).

49. Brief of Appellants, *supra* note 46, at 1.

50. *Id.* at 9.

51. Brief of Appellants, *supra* note 46, at 5.

52. Brief of Respondent, *supra* note 48, at 1. RC (Resource Conservation) zoning allows for agricultural and residential use with a minimum lot size of forty acres per dwelling. *Id.*

53. *Id.* at 12. The "sphere of influence" is a planning tool that enables the city to pre-zone land, however zoning is ineffective until that land is annexed to the city. *Id.* at 13.

54. *Id.* at 10.

55. Brief of Appellants, *supra* note 46, at 6-7.

56. *Id.* at 5.

57. *Id.* at 8. *Campus Crusade's* expert appraiser opined that "prior to December, 1996, and to the present day there has been a probability that: (a)

would be entitled to just compensation based on the land's more valuable use.

C. *Procedural History*

In 1997, MWD condemned land owned by Campus Crusade for its Inland Feeder Project.[58] The Project's primary objective is to transfer water from Devil Canyon to Diamond Valley Lake in Southern California.[59] On December 10, 1996, MWD's Board of Directors adopted a resolution of necessity and thirteen days later, MWD deposited $320,000 in the State Treasury, thereby establishing the date of valuation.[60] MWD formally brought the eminent domain action to condemn the land required for the pipeline on January 23, 1997.[61] Soon thereafter, Campus Crusade had the condemned land appraised at an estimated value between $1,500,000 and $1,600,000, along with severance damages between $1,900,000 and $2,000,000[62] and other compensable or "temporary" damages between $10,700,000 and $12,100,000.[63] Campus Crusade's appraisers based these calculations on zone changes.[64] In total, Campus Crusade made an original demand of $15,000,000 against MWD's offer of $1,500,000.[65] Subsequently, Campus Crusade revised its offer, demanding $12,500,000.[66]

Before trial, MWD filed several in limine motions regarding evidence of temporary severance damages.[67] Judge Ludvigsen ruled in favor of Campus Crusade and allowed the introduction of evidence of severance damages.[68] After ruling

---

the *Campus Crusade* property would ultimately be annexed to the City; and (b) as part of that annexation it could be zoned or approved for uses compatible with the development concept which has been presented by the developer to the City . . . ." *Id.*

58. *See* Brief of Respondent, *supra* note 48, at 5.

59. *Id.* at 3.

60. *Id.* at 5; *see also* CAL. CODE CIV. PROC. § 1263.110 (West 2007); *see generally* 1 MATTEONI & VEIT, *supra* note 2, § 4.22 (explaining the importance of the valuation date in determining fair market value).

61. Brief of Respondent, *supra* note 48, at 5.

62. *Id.*

63. *Id.*; *see generally supra* note 5 and accompanying text.

64. Brief of Respondent, *supra* note 48, at 5.

65. *Id.* at 5-6.

66. *Id.* at 5.

67. *See id.* at 6.

68. *See id.*; Brief of Appellants, *supra* note 46, at 3.

on several pretrial motions, the court reassigned Judge Ludvigsen to another department and appointed Judge Wade as her replacement.[69] Asking Judge Wade to reconsider the admission of evidence concerning valuation, MWD made ten more in limine motions, several of which addressed issues previously decided by Judge Ludvigsen.[70] On August 21, 2002, Judge Wade reviewed rulings on several issues.[71] Among them was the introduction of evidence regarding a reasonable probability of a zoning change.[72] After an evidentiary hearing, Judge Wade found that there was insufficient evidence to show a reasonable probability of a zoning change.[73] As a result of these rulings, Campus Crusade waived its right to a jury trial and lowered its demand to $5,380,000.[74] MWD's final offer came on November 7, 2002, containing two alternatives: $3,500,000 with Campus Crusade retaining the right to seek damages resulting from construction, or $4,500,000 with a waiver for any severance damages against MWD resulting from construction.[75]

At trial, Judge Wade awarded Campus Crusade $478,278.45, an amount exclusive of severance damages.[76]

On appeal, Campus Crusade argued that Judge Wade's rulings erroneously overturned Judge Ludvigsen's rulings on evidentiary issues.[77] MWD insisted that Judge Wade's rulings were proper because they did not contradict Judge Ludvigsen's rulings and they were correct as a matter of law.[78]

First, the appellate court reviewed Judge Wade's rulings pertaining to evidentiary issues regarding severance damages.[79] The court found that Judge Wade's rulings on the motions in limine were generally inconsistent with those of

---

69. Brief of Respondent, *supra* note 48, at 7.
70. *See id.* at 9.
71. *Id.* at 7.
72. *Id.* at 9.
73. Brief of Appellants, *supra* note 46, at 11-12.
74. *Id.* at 12; Brief of Respondent, *supra* note 48, at 8.
75. Brief of Respondent, *supra* note 48, at 8.
76. Brief of Appellants, *supra* note 46, at 12.
77. *Id.* at 14-19.
78. Brief of Respondent, *supra* note 48, at 9-53.
79. Metro. Water Dist. of S. Cal. v. Campus Crusade for Christ, Inc., 37 Cal. Rptr. 3d 598, 610-11 (Ct. App. 2005) (including damages claimed for the danger of pipeline rupture, the loss of mature trees, and the delay in construction).

Judge Ludvigsen.[80]

Second, the appellate court addressed the burden of proof issue.[81] Here, the appellate court also reversed, finding that the trial court erred by imposing on Campus Crusade not only the burden of production, but also the burden of proof on certain evidentiary issues.[82] However, the court expressly noted that "based on [post-1976] cases, it remains unclear whether the property owner bears the 'burden of proof' as to the preliminary facts necessary to support his claim for compensation in light of the 1975 statute."[83]

Third, the appellate court examined the jury's role with respect to the evidentiary rulings.[84] The appellate court found that, although the trial court has discretion to determine the admissibility of evidence, it may not usurp the role of the jury as it did in the case.[85]

Fourth, the appellate court reviewed Campus Crusade's assertion that the trial court abused the "most injurious use" standard.[86] The appellate court found error in the trial court's decision to exclude evidence of certain potential damages such as those damages caused by the delay in construction, the interference with access rights, and the risk of rupture.[87]

Fifth, the appellate court reviewed Campus Crusade's contention that the trial court failed to consider the highest and best use of the property.[88] The highest and best use in this case was contingent on Campus Crusade's evidence of a zoning change which would have resulted in a more profitable use.[89] The appellate court again found error by Judge Wade.[90]

---

80. *See id.* (holding that Judge Wade's rulings were inconsistent with Judge Ludvigsen's rulings with the exception of rulings regarding the loss of mature trees).

81. *Id.* at 611-15.

82. *Id.* at 615.

83. *Id.* at 613.

84. *Id.* at 615-16.

85. Metro. Water Dist. of S. Cal. v. Campus Crusade for Christ, Inc., 37 Cal. Rptr. 3d 598, 616 (Ct. App. 2005),("[T]he court went beyond simply determining the admissibility of evidence.").

86. *Id.* at 616-18. Under the "most injurious use" standard, "in order to assess the value of the remaining property, the trier of fact must consider the most injurious use of the property that was taken." *Id.* at 616.

87. *Id.* at 618.

88. *Id.* at 618-22.

89. *Id.* at 618.

First, it held that Judge Ludvigsen had already found that the evidence concerning a zoning change was not speculative.[91] Second, it held that such a determination is normally a question of fact for the jury, not the judge.[92] Third, the court held that the role of the trial judge concerning evidence of possible rezoning is to ensure that the evidence is not purely speculative,[93] rather than to evaluate the decision based on whether or not there will ultimately be a favorable finding.[94] The appellate court then reexamined the evidence presented by Campus Crusade, which showed a reasonable probability of a zoning change, and found that it satisfied the threshold requirement of admissibility.[95]

Finally, the court examined the admissibility of evidence showing severance damages.[96] By granting MWD's in limine motions, the trial court excluded all evidence of certain severance damage items.[97] The appellate court reversed several evidentiary rulings,[98] and ultimately held that the trial court applied an incorrect standard in deciding whether to allow certain evidence to reach a jury.[99]

Following the appellate court's decision, MWD petitioned the California Supreme Court, which granted review on four of the issues.[100]

D. Holding of Campus Crusade

The California Supreme Court consolidated the four issues presented by the parties into two main holdings: the first regarding the reasonable probability of rezoning, and the second regarding severance damages.[101]

The court first examined the judge's role in determining

---

90. Metro. Water Dist. of S. Cal. v. Campus Crusade for Christ, Inc., 37 Cal. Rptr. 3d 598, 618-20 (Ct. App. 2005).
91. *Id.* at 609.
92. *Id.* at 619.
93. *Id.* at 620.
94. *Id.*
95. *Id.* at 621-22.
96. Metro. Water Dist. of S. Cal. v. Campus Crusade for Christ, Inc., 37 Cal. Rptr. 3d 598, 622-27 (Ct. App. 2005).
97. *Id.* at 622.
98. *Id.* at 622, 624.
99. *Id.* at 627.
100. Metro. Water Dist. of S. Cal. v. Campus Crusade for Christ, Inc., 161 P.3d 1175, 1180 (Cal. 2007).
101. *Id.*

the reasonable probability of a zoning change.[102] The court held that Judge Wade usurped the role of the jury by declaring that "it is not reasonably probable that the subject property would be rezoned in the reasonably near future," and by excluding Campus Crusade's evidence of rezoning.[103] Next, the court distinguished the various burdens.[104] The court held that section 1260.210 of the California Code of Civil Procedure requires the landowner to *produce* evidence to support an alleged rezoning.[105] Neither party, however, bears a particular *burden to persuade* a jury on the evidence, or of the effect any probability of rezoning might have on the property's value.[106] The California Supreme Court concluded that the trial court erred in "deciding, prior to trial, whether *it* was convinced there was a reasonable probability of rezoning," rather than allowing a jury to decide this question.[107]

Finally, the court addressed the issue of severance damages.[108] After disposing of most of the issues concerning severance damages, the court turned to Campus Crusade's attempt to recover severance damages for its alleged inability to "use, develop, and market its property during the seven-year period of construction."[109] Ultimately, the court held that to recover severance damages Campus Crusade must allege interference with Campus Crusade's *actual* intended use of the property, and identify a specific loss attributable to the interference.[110]

II. ANALYSIS OF THE CAMPUS CRUSADE DECISION

The following discussion focuses on the court's analysis regarding the burden of proof or production on a property owner claiming a reasonable probability of a zoning change, and discusses the implications that *Campus Crusade* will

102. *Id.* at 1181-84.
103. *Id.* at 1181.
104. *Id.* at 1183.
105. *Id. at* 1183.
106. Metro. Water Dist. of S. Cal. v. Campus Crusade for Christ, Inc., 161 P.3d 1175, 1183 (Cal. 2007).
107. *Id.*
108. *Id.* at 1184-87.
109. *Id.* at 1186.
110. *Id.* at 1187.

have on future eminent domain litigation in California.[111] Before trial, MWD's in limine motion was granted on the rezoning issue.[112] Judge Wade found that "it [was] not reasonably probable that the subject property would be rezoned in the reasonably near future."[113] Judge Wade excluded the evidence of possible rezoning because he found that Campus Crusade had failed to present substantial evidence, outside of the jury's presence, of a reasonable probability of rezoning for a higher and better use.[114] As a result, Campus Crusade's expert appraisers were required to value the remaining property based on the current RC use.[115]

In its analysis, the court first clarified the proper standard for admitting evidence of probable rezoning.[116] Although determining a reasonable probability of rezoning is normally a question for the jury, "the trial court must first determine whether there is sufficient evidence that would permit a jury to conclude there is a reasonable probability of rezoning in the near future."[117] Thus, in order to reach a jury for determination, the evidence of rezoning must meet certain minimum requirements.[118] If the court determines that the evidence is sufficient to warrant submitting the issue to the jury, the jury must make two determinations: (1) whether the proffered evidence demonstrates a reasonable probability of rezoning, and (2) if so, the effect of rezoning on the property's market value.[119]

After reviewing the proper standard, the court examined the conflicting standard articulated in recent case law. In *County of San Diego v. Rancho Vista Del Mar*,[120] the court held that "[t]he property owner has the burden of showing a

---

111. This casenote does not analyze the court's treatment on the issue of severance damages.

112. *Campus Crusade*, 161 P.3d at 1181.

113. *Id.*

114. *Id.*

115. *Id.* at 1181; *see supra* text accompanying note 51.

116. *Id.* at 1181-82.

117. *Id.* at 1182.

118. *Campus Crusade*, 161 P.3d at 1182. If the trial court determines that "no fact finder could find a reasonable probability of rezoning . . . it may exclude all evidence and opinions of value based on a use other than that authorized by existing zoning." *Id.*

119. *Id.* at 1182.

120. County of San Diego v. Rancho Vista Del Mar, Inc., 16 Cal. App. 4th 1046, 1058 (Ct. App. 1993).

reasonable probability of a change in the restrictions on the property."[121]

The court then addressed the applicability of conflicting case law in light of section 1260.210 of the California Code of Civil Procedure, which expressly states that neither party "has the burden of proof on the issue of compensation."[122] Thus, the standard expressed in *Rancho Vista* is at odds with section 1260.210.

Noting that the term "burden of proof" is often the subject of confusion,[123] the court examined the language of section 1260.210 to interpret its meaning. The court explained that, historically, other courts have used the term "burden of proof" to describe two distinct concepts: (1) the burden of persuasion[124] and (2) the burden of production.[125] After examining the conflicting interpretations, the court concluded that the burden articulated under section 1260.210 is a burden of production.[126] In particular, the court stated that subdivision (b) should be interpreted as a burden of production with respect to convincing the trier of fact that the reasonable probability of rezoning exists.[127] Without overturning recent case law, the court interpreted cases like *Rancho Vista* and its progeny, as articulating a burden of *production* rather than *persuasion*.[128]

Finally, the court described the correct procedure that the trial court should have used:

> [T]he trial court should [have] examine[d] whether the proffer supplies sufficient evidence to permit *the jury* to

---

121. *Id.*

122. *Campus Crusade*, 161 P.3d at 1183; CAL. CIV. PROC. CODE § 1260.210(b) (West 2007).

123. *Campus Crusade*, 161 P.3d at 1183 (explaining the confusion among attorneys, judges and commentators in defining "burden of proof").

124. *Id.* ("[T]he burden of persuasion [is] the notion that if the evidence is evenly balanced, the party that bears the burden of persuasion must lose.").

125. *Id.* ("[T]he burden of production [is] a party's obligation to come forward with evidence to support its claim.").

126. *Id.* at 1183. In support of its interpretation, the court cited the Law Revision Commission Comments to section 1260.210, which state that "[a]bsent the production of evidence by one party, the trier of fact will determine compensation solely from the other party's evidence, but neither party should be made to appear to bear some greater burden of persuasion than the other." CAL. CIV. PROC. CODE § 1260.210(b), L. Revis'n Comm'n Comments, 1975 Addition (West 2007).

127. *Campus Crusade*, 161 P.3d at 1183.

128. *Id.*

> find that there was a reasonable probability of rezoning to permit that use in the near future. The jury should then be instructed that it may consider the change in use, provided that it first finds a reasonable probability the property could be rezoned in the near future.[129]

On remand, the trial court will review Campus Crusade's evidence under a less rigorous standard to determine whether a jury could find a reasonable probability of zoning change.[130]

Ultimately, the disposition of this case will help ensure proper adjudication of eminent domain cases. The singular role of the jury in an eminent domain action is to determine the amount of compensation for a taking.[131] However small, the importance of this role cannot be overstated; the jury protects the landowner's constitutional right to receive just compensation.[132] To arrive at the most accurate measure of just compensation, the jury must be allowed to consider all relevant factors bearing on the property's fair market value.

With the rapid increase of contemporary development and the growing popularity of mixed use developments such as the one proposed by Campus Crusade, the court's decision will have growing significance on the method landowners' appraisers use to value condemned land. Due to the growing probability that any given plot of rural land will be rezoned in the near future to accommodate development, more landowners will be able to reasonably argue that condemned land should be valued as effectively rezoned for a higher use. At the very least, landowners could assert that increased development would affect negotiations between a "hypothetical buyer" for the acquisition of such rural land.[133]

---

129. *Id.* at 1183.

130. *Id.*

131. 1 MATTEONI & VEIT, *supra* note 2, § 9.47 ("The court decides all questions in eminent domain trials except determination of compensation.").

132. CAL. CONST. art. 1, §19.

133. A "hypothetical buyer" is relevant because the standard for highest and best use assumes the price of the land agreed upon by a hypothetical buyer and seller, both willing and both having full knowledge of all the uses and purposes for which the property is reasonably adapted. *See* People *ex rel.* State Public Works Bd. v. Talleur, 145 Cal. Rptr. 150, 152 (Ct. App. 1978). The reasonable adaptability of a property includes any reasonable probability of a zoning change in the near future. *Id.*

III. CONCLUSION

Despite the confusion resulting from the conflict between existing case law and the amendment to section 1260.210, the California Supreme Court ultimately held in accord with the plain language of the statute. A landowner asserting that there is a reasonable probability of rezoning for a higher and better use bears the burden to produce evidence sufficient that a reasonable jury could find that such a probability exists.[134] Neither party, however, bears a greater burden to prove that rezoning is reasonably probable or not.[135]

The court's articulated standard is similar to the directed verdict standard.[136] The judge must determine whether a jury could find that there is a reasonable probability of rezoning.[137] Thus, the directed verdict standard may serve as a useful indicator of treatment by future courts of this evidentiary standard. Courts do not often grant directed verdicts because of the low threshold required to defeat a directed verdict motion.[138] If courts take a similar approach to rezoning evidence and apply the low standard that currently applies to directed verdicts,[139] the amount of rezoning evidence that will reach a jury is likely to increase.

Campus Crusade clarified the proper standard that California courts should use in evaluating evidence used by a landowner to receive compensation for the property's most valuable potential use. This decision brings courts a step closer to ensuring that landowners receive just compensation. Its significance will continue to increase as public development reaches exceedingly rural areas that are subject to zoning changes to a more valuable use, in order to accommodate growth. In more cases, a court will be required to determine the probability of a zoning change and in only the most remote and undeveloped areas will this standard be

134. *Campus Crusade*, 161 P.3d at 1183.

135. *Id.*

136. Santa Clara Valley Distrib. Co. v. Pabst Brewing Co., 556 F.2d 942, 945 (9th Cir. 1977) ("[A] directed verdict is only granted when [the court determines that] no reasonable jury could find for the nonmoving party.").

137. *Campus Crusade*, 161 P.3d at 1183.

138. *See* J. Palmer Lockard, *Summary Judgment in Pennsylvania: Time for Another Look at Credibility Issues*, 35 DUQ. L. REV. 625, 652 (1997).

139. Robert P. Burns, *Notes on the Future of Evidence Law*, 74 TEMP. L. REV. 69, 79 (2001) (discussing the low standard applied to directed verdicts).

inapplicable.