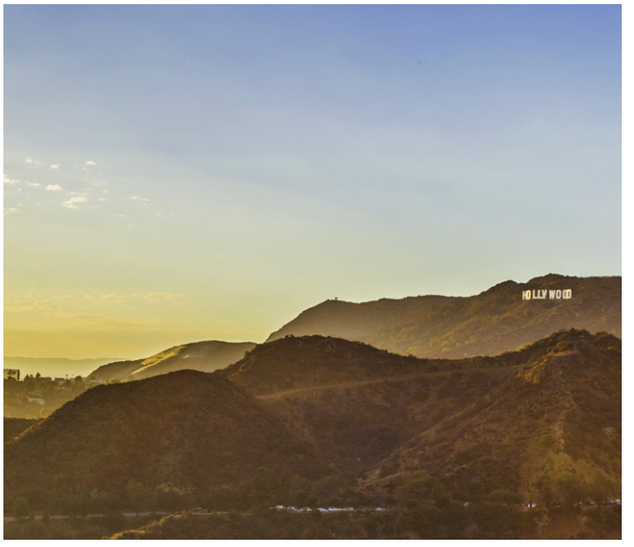
Daily Journal

www.dailyjournal.com — SINCE 1888 — NOVEMBER 1, 2018

# No fundamental right to a view

## In most cases, a property owner's view is not protected and, accordingly, buyers unwittingly pay a hefty surcharge for something that can be taken away without recourse.

**Georgia Z. Schneider**
PONIST LAW GROUP




"Panoramic view," "expansive view," "scenic view" -- these are all common descriptions used to market highly coveted view property. A great view can substantially increase the desirability and value of a property, with view properties often selling for hundreds of thousands of dollars more than neighboring properties of comparable square footage without views. Developers also routinely charge substantially more for premium lots with views in new developments. In most cases, however, the property owner's view is not protected and, accordingly, buyers unwittingly pay a hefty surcharge for something that can be taken away without recourse.

Obstruction of View Without Physical Invasion Is Not a Compensable Taking

In a recent case involving the city of Beverly Hills, a homeowner brought an inverse condemnation action against the city after the city planted redwood trees in a nearby park impairing their view from their backyard, which had previously looked out, unobstructed, to the Hollywood Hills and Los Angeles Basin. *Boxer v. City of Beverly Hills*, 246 Cal. App. 4th 1212, 1215-16 (2016). The homeowners alleged that the impaired view negatively affected the value of their property resulting in a taking without just compensation. Id. at 1216-17.

The city demurred, and the trial court sustained the demurrer without leave to amend, holding that the loss of a view was not an injury that establishes a taking under inverse condemnation law. Id. at 1216. The Court of Appeal affirmed, noting that where there has been no physical invasion or physical damage to the property, the property has been "taken" within the meaning of article I, Section 19 of the California Constitution only if the intangible intrusion "places a burden on the property that is direct, substantial, and peculiar to the property itself." Id. at 1218, citing *Oliver v. AT&T Wireless Services*, 76 Cal. App. 4th 521, 530 (1999) (emphasis in original). A diminution in the value of a property, without more, does not establish such a burden and thus does not constitute a compensable taking. Ibid.

Obstruction of View Resulting from Physical Invasion is a Compensable Taking

This is distinguishable from a situation where there has been a physical invasion of the property and a loss of view. The California Supreme Court has recognized that there is a "compensable visibility interest when government action that includes a partial physical taking of a landowner's property impairs the visibility of its remainder." *Regency Outdoor Advertising, Inc. v. City of Los Angeles*, 39 Cal.

**GEORGIA Z. SCHNEIDER**
Ponist Law Group

*Georgia practices real estate and business litigation.*

4th 507, 519-20 (2006).

In Pierpont Inn, Inc. v. State of California, the owner of an inn brought an inverse condemnation action against the state after it built a freeway on a portion of the inn's land, resulting in, among other things, a loss of view. 70 Cal. 2d 282, 284-86 (1969) (overruled on other grounds in *Los Angeles County Metropolitan Transportation Authority v. Continental Development Corp.*, 16 Cal. 4th 694 (1997)). The Supreme Court held that it was proper for the trial court to allow the jury to consider the property's loss of view in determining severance damages because, "[w]here 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." Id. at 295. Thus, if a property owner's view is obstructed by the government's partial physical invasion of the property, the property owner is entitled to be compensated for their loss of view.

Obstruction of View Does Not Constitute a Nuisance

The general rule that a property owner has no right to a view applies equally to private obstructions from neighboring properties. In Posey v. Leavitt, an owner of a condominium in Lake Arrowhead filed a nuisance action against his neighbors alleging that they had built a deck on the side of their unit that obstructed his view. 229 Cal. App. 3d 1236, 1240 (1991). The Court of Appeal affirmed the jury verdict in favor of the neighbors, holding that "a landowner has no natural right to air, light or an unobstructed view and the law is reluctant to imply such a right." Id. at 1250 (citations omitted).

Further, a diminution in value alone does not interfere with the use and enjoyment of a property and thus cannot constitute a nuisance. Oliver, 76 Cal. App. at 534 (mere presence of 130-foot cell tower on adjoining property did not constitute a private nuisance). Accordingly, with few exceptions, a property owner has no remedy if their neighbors neglect to trim their trees or erect an unsightly structure that blocks their view.

Limited View Protections

There are, nonetheless, certain limited view protections provided by statute. For instance, the California Civil Code prohibits "spite fences," which include "[a]ny fence or other structure in the nature of a fence unnecessarily exceeding 10 feet in height maliciously erected or maintained for the purpose of annoying the owner or occupant of adjoining property." Civ. Code Section 841.4. In addition, certain cities have established "view ordinances" which protect property owners' views. The Del Mar Municipal Code, for example, provides protections for "trees, scenic views and sunlight." Municipal Code, title 23, chapter 23.51. The city provides a process by which residents may petition the planning commission to restore views or sunlight that have been unreasonably impaired by the growth or installation of trees and other vegetation. Id. at Sections 23.51.050 and 23.51.070. Other cities, too, have similar ordinances, including Orinda, Municipal Code, title 17, chapter 17.22; Rancho Palos Verdes, Municipal Code, title 17, chapter 17.02; and Laguna Beach, Municipal Code, title 12, chapter 12.16.

Further, some common interest developments have conditions, covenants and restrictions ("CC&Rs) that provide for view protection. Such protections vary greatly from development to development and can often be difficult to enforce, depending on what enforcement procedures the association has in effect. Also, view protections provided by CC&Rs only protect a property owner from view obstructions within their community. Thus, if one owns property on the border of a development, the owner may still be at risk for view obstruction from neighboring developments or the city, neither of which are bound by the CC&Rs.

How Can Property Owners Protect Their Views?

Before paying a premium for a "million-dollar view," it is important to understand the city and local view ordinances and how they apply. If purchasing property in a common interest development, it is also important to review the CC&Rs and understand what, if any, view protections are provided.

Additionally, a property owner may attempt to procure a negative easement from adjoining landowners, i.e., an easement which restricts the adjoining landowner's ability to make improvements which would impact the property owner's view. While this may be achievable where two adjoining landowners have a mutual interest in protecting their respective view rights, it will otherwise be difficult to achieve in other circumstances.

Thus, in the absence of the foregoing limited protections, a property owner is without recourse should owners of neighboring properties or the city decide to plant tall trees or erect a structure that blocks their view.