

1977

Salt Lake County v. Teresa Jean Ramoselli : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

SALT LAKE COUNTY, a body :
corporate and politic of :
the State of Utah :

Plaintiff and Appellant, :

vs. :

Appeal No. 14726

TERESA JEAN RAMOSELLI, :

Defendant and Respondent.:

BRIEF OF RESPONDENT

NATURE OF THE CASE

This Appeal by Salt Lake County arises out of a suit commenced by it to condemn the property of the Respondent, Teresa J. Ramoselli (hereinafter called "Ramoselli" or "Landowner") for a claimed public use. The purported aegis of the Complaint was the eminent domain laws of this State.

The issue of public necessity of the proposed expropriation was contested by Ramoselli and framed, by the pleadings, for trial before the District Court. Said matter came on for hearing and determination on July 26, 1976.

DISPOSITION OF CASE IN LOWER COURT

After two days of trial, the District Court found from a fair preponderance of the evidence; that the County had not made a showing of public necessity requisite to acquire the

subject property by condemnation, that the testimony at trial did not manifest that said property was needed as of March, 1974, or as of July, 1976, or in the foreseeable future, that the County had no defined and adopted plans at all for the use of said property, that the Board of Commissioners of Salt Lake County had not approved or adopted any plans for the utilization of the condemned premises, that only the most preliminary drawings as to possible and future uses had been recently made, that no funds had been budgeted for the use of the Ramoselli property and there was no showing that funds could be obtained, at all, from any source for a possible future use, that the evidence manifested a lack of any plans of the County to place the Ramoselli property to any general or specific use at any defined point in the future; and that under the evidence, the proposed use by Salt Lake County of the subject property was "uncertain, indefinite and speculative". (R.34-38)

The trial Court found and concluded that the attempt to condemn the Ramoselli property by the County was plainly and palpably unreasonable and constituted a clear abuse of legislative discretion. (R.37) Findings of Fact, Conclusions of Law and an Order dismissing the case were entered by the District Court on July 29, 1976. From that Order of Dismissal, the County prosecutes this Appeal.

RELIEF SOUGHT BY COUNTY ON APPEAL

The County requests of this Court that it not only reverse the District court on the question of public necessity, but

that this Court find, as a matter of fact and law, that public necessity for condemnation of the Ramoselli land existed in March of 1974.

The County seeks remand of the Case for trial on the issue of Just Compensation, assuming arguendo, that the question of public necessity has been resolved in its favor.

STATEMENT OF FACTS

The Statement of Facts in the Brief of the County is not inaccurate; it is simply incomplete. Such Statement is a general recital of the proceedings of trial without any account of the evidentiary facts presented to and admitted by the trial Court. Accordingly, pursuant to Rule 75(p)(2) of the Appellate Rules of the Court, the following statement of the facts underlying the decision of the lower Court is made:

1. General Description.

The property of the Landowner herein consisted of some 11 acres, having its situs at 6600 South and 9th East in Salt Lake County. On March 8, 1974, the County filed suit to condemn said property, the alleged public use being a park and recreation area. (R.5) Ramoselli answered the County Complaint denying that there existed the essential necessity for the condemnation acquisition and alleging:

- (a) that there was no defined use to which the property was to be placed that had been approved or adopted by the governing Board of County Commissioners;

- (b) that there was no need for the condemned property by the County in the immediately foreseeable future;
- (c) that the proposed use of the land by the County was speculative and conjectural;
- (d) that there was no reasonable funding for any contemplated use of the Ramoselli property, now or in the future;
- (e) that the possible use of the land by the County did not square with the requirements that the proposed use, if any, be so designed as to comport with the greatest public good and the least private injury.

2. Evidence on Planned Use of Property.

As of March 1974, no plans of any defined character relating to the possible use of the subject property as a public park had been submitted to and approved by Salt Lake County.

(R.111) For that matter, even as of the date of trial in July 1976, no defined plans had been adopted or approved by the County. (R.112)

Moreover, the Parks Department, itself, had not approved or adopted any plans for the particular use of the Ramoselli property as of March 1974, or as of the date of trial. Barely 18 days before the Case was tried, a preliminary sketch (Exhibit P-16) was placed in the hands of the staff of the Parks Department, showing a tentative use of the condemned land.^{1/} (R.153) Such sketch had only been reviewed by staff and non-policy

^{1/} The sketch shows the prospect of a tennis court or two, a parking area, walking paths, retention of the present house of Ramoselli in which Mrs. Ramoselli and her family presently live and other similar possible uses. The trial court found such tentative drawing to be ill-defined, unadopted, and conjectural.

personnel of the Parks Department and had not even been seen or reviewed by the County Parks and Recreation Commission, much less the County Commission. (R.155)

3. Evidence on Time Frame of Possible Use

There was no testimony that the County had established a time in which the condemned property was to be put to some park use. Indeed, the County did not know when, if ever in the future, the property of Ramoselli would be put to a park use. (R.162,163) The Wheeler property to the north and east had been acquired through voluntary acquisition by the Parks Department in 1970 for an intended public, historical use, but as of six years later, in July of 1976, said property had yet to be placed to its intended purpose. (R.85-88) The Court was without any testimony that the County had any intention to put the subject property to any use at any time, immediately or in the future, foreseeable or unforeseeable. (R.163)

4. Funding for the Possible Use.

As of March 1974 as well as of the date of trial, there were no funds budgeted, appropriated, existent or otherwise available from whatever source (public or private) to place the condemned property to any present or future use by the County. (R.161) While the budget of the County Parks Department had been substantially cut in recent years and there was no reason to believe that a change would take place in Park financing in the future (R. 165-166), the Parks Commission was hopeful that a use of the condemned property could be financed through possible grants from such sources as federal agencies, conservation

funds, community development, Housing & Urban Development (HUD), and historic funds. (R.150) No applications had ever been made for such grants and no commitments had been received from any source at any time for the funding of any use of the subject land. (R.162)

The Board of County Commissioners had never given approval for the expenditure of any sum for a park or recreational use of the Ramoselli property by the County (R.163) and whether it would or would not do so in the future was completely unknown. Thus it was under the testimony of C. C. Baugh, Administrator of County Parks:

Q And that in turn depends upon the availability of funds?

A Yes.

Q Is that correct? And that in turn depends upon the action of the Salt Lake County Board of Commissioners which at this time is unknown to you?

A That is right.

Q Isn't that true?

A Yes.

The County had hoped to obtain capital funds for park purposes through the issuance of recreational bonds in 1974. However, the bond issue was placed before the electorate and rejected in that year. (R.160)

5. The Wheeler Historical Farm.

It was claimed by the County that the subject property was eventually to be made a part of what is referred to as the

Wheeler Historical Farm. Such is not considered a park or recreational use, but rather one of historical significance. (R.63,86) Seventy-five acres of property with frontage on both 6600 South and 900 East had already been acquired through voluntary measures by the County in 1970. (R.85,86) No use had been made of any consequence for historical or recreational purposes on the 75 acres. In fact, it was not until 1976 that even marginal use was made of the Wheeler Farm. (R.160) It had been leased by the County for several years to private interests.

That the Ramoselli property might be, in part, some day used in connection with the Wheeler Historical Farm was not even considered by County staff and non-policy personnel until 1974 after the filing of the condemnation suit herein. (R.111) No plans for the subject property to be used in connection with the so-called Wheeler Historical Farm had ever been presented to or approved by the County Commission. (R.111) The staff of County Parks Commission had never developed any design criteria to determine whether the Ramoselli property was necessary to the use and operation of the Wheeler Farm theory. (R.103,104)

6. General Maps of Salt Lake Valley.

At trial, the County offered several maps suggesting a guide for land use patterns and development throughout the greater Salt Lake Valley. They were:

- (i) The County Big Cottonwood District Development Plan (Exhibit 6-P) was approved in form by the County Commission in August of 1973. It, like the

other master plans, did not delineate the Ramoselli property to be placed to a specific use nor was the subject property described in any way by metes and bounds. In addition, there was no time frame suggested in such planning guide for any development of the Ramoselli property at any time.

Commissioner Dunn stated the position of the Commission as to the purpose of the Cottonwood Development at the time of its adoption by the County Commission:

"Commissioner Dunn stated that as he has gone through this plan, he thinks it is important that the public, as well as the Commissioners, have an understanding here that the adoption of this plan isn't necessarily the implementation of this plan. It sets forth a goal by which certain things can be accomplished if the plan is followed, and the metes and bounds that are shown in some of these areas as relating to green areas, or golf courses or parks or schools, etc. may or may not eventually come about; it merely points out a point if they were to have their choice of going out and doing everything, this is the way they essentially would be done, but not necessarily the way it might be ultimately done. It is important that the adoption of this plan, the basic concept the County Commission would be taken would be to approve the concept here, but with neither the means or ability to necessarily implement all of the programs that are there." (Emphasis added.) (Exhibit 7-P, p.2)

(ii) The 1985 Master Plan of Salt Lake County (Exhibit 2-P). The plan was designed in 1965 and under a color code, reflected general land use concepts. (R.79) The Exhibit had nothing to do with the metes and bounds of the subject property for particular County use, but rather was to serve as a guide for the County Planning and Zoning

Commission. (R.79) There had been substantial departures from the guideline of Exhibit 2-P in the actual use of land throughout the County since its adoption in 1965. (R.80)

(iii) The County Recreation and Parks Master Plan of 1972 (Exhibit 4-P) was a general study containing recommendations regarding property use. It did not define and it was not intended to portray the subject property of Ramoselli by metes and bounds (R.82), and did not delineate any use of said property or at any particular time in the future. It was of the same lineage as the 1985 Master Plan for Salt Lake Valley--a guidepost for future and more detailed, intensified study. (R.52)

7. County Park Procedure.

It was the position of the County that in the acquisition of property for parks, it did not normally develop defined and particularized plans for the use of such property nor did it establish a time of usage until the property was actually acquired. (R.149) It was claimed that it would be wasted time and effort to lay-out plans for particular use of property until that property had been actually purchased. Such was the accustomed procedure, at least, when the County Parks Commission was involved in a voluntary acquisition of property. (R.85,86)

FINDINGS OF THE COURT

The District Court, found, upon the close of the evidence and argument that a specific use of the Ramoselli property was

not and still had not been defined by the Board of County Commissioners, that there was no showing of any intended use of the property for any intended purpose in the immediately foreseeable future, that the County had not shown that it was financially capable of placing the property to any park or recreational use, that its drawings were of a preliminary nature only and related to possible and future uses which were unapproved by the Parks and Recreation Department and the Board of County Commissioners, and that the use by Salt Lake County of the Ramoselli premises was uncertain, indefinite, and speculative. (R.37) It found that there was no showing of public need of the condemned property in the reasonably foreseeable future and that under the evidence, the attempted condemnation was plainly and palpably unreasonable and constituted a "clear abuse of legislative discretion". (R.37)

An Order of Dismissal of the Case was thereupon entered by the trial Court on July 29, 1976.

A R G U M E N T

POINT I.

THE ISSUE OF PUBLIC NECESSITY IS PLAINLY
JUSTICIABLE IN THIS CASE AND THE COUNTY MUST
AND DID FAIL IN ITS ATTEMPT TO CONDEMN THE
RAMOSELLI PROPERTY WHERE THE EVIDENCE
DEMONSTRATES THAT THE ELEMENTS OF PUBLIC
NECESSITY HAVE NOT BEEN MET.

1. The Issue of Public Need is Properly Before this Court.

The law of this jurisdiction has long stood for the proposition that whether an attempted expropriation of private land by a political subdivision of government is accompanied by a showing of public necessity, is a justiciable question properly before the Court. Great Salt Lake Authority v. Island Ranching Co., 18 U.2d 276, 421 P.2d 504 (1966); Bertagnole, et al v. Baker, 117 Utah 348, 215 P.2d 626 (1950); Tanner v. Provo Bench Canal Irr. Co., 40 Utah 105, 121 Pac. 584 (1911); Utah Copper Co. v. Montana Bingham Consolidated Mining Co., 64 Utah 423, 255 Pac. 672 (1927). All of the factors that go into the make-up of public need of the condemnation acquisition may be raised by the Landowner before the Court in defense against the acquisition.

The position of the County, in Point II of its Brief, augers against such legal precept. Therein, it contends that a resolution of the Board of Commissioners of Salt Lake County

to condemn the property of this Landowner is all but dispositive of every issue, except the amount of compensation to be paid for the expropriation , and that the presumption of the regularity and appropriateness of the taking, once determined by the condemnor, places the issue of necessity beyond the factual reach of the condemnee. The County relies upon a U. S. Supreme Court decision and the Treatise, Nichols on Eminent Domain, for such claim (see page 8 of its Brief).

The County is misled in its contention. To begin with, a decision of the U. S. Supreme Court on the federal substantive law of eminent domain has no sphere of influence before this Court in this Case; federal eminent domain proceedings have a setting that are legally and factually distinct and inapposite to the statutory process of condemnation extant in the State of Utah. Moreover, while we have no quarrel with the observation quoted from Nichols that judicial review on the question of public need is directed to particular aspects of the administrative decision by the public agency to condemn, the quotation in the County's Brief ignores the more definitive statement in Nichols under the same paragraph that:

"In every case, therefore, there is a judicial question whether the taking is of such a nature that it is or may be founded on a public necessity." 1 Nichols on Eminent Domain, §4.11 [2] p. 4-157.

The fact is that the County, in the case at hand, is confronted with a statute that confers upon District Court jurisdiction to ultimately resolve the question of public necessity

when that matter is placed in issue. 78-34-4 U.C.A. of the Eminent Domain Code declares, in part:

"Conditions precedent to taking - before property can be taken it must appear:

* * *

(2) That the taking is necessary to such use;

* * *." (Emphasis added)

Furthermore, 78-34-5, U.C.A. 1953 charges that when property is taken for public use, the project "must be located in a manner which will be most compatible with the greatest public good and the least private injury". Such statutory provisos, although not cited by the County in its Brief, are not a mere penmanship exercise or an abstract vacuum without meaning. Rather, such legislation bestows upon the judiciary the full throat to determine whether an attempted condemnation expropriation is buttressed by public need. Such issue, accordingly, had proper standing before the District Court in this Case.

2. The Elementary Factors of Public Necessity.

The lower Court proceeded in this Case on the premise that the Resolution (Exhibit 1-P) of the County to condemn the Ramoselli property was presumptively valid and that such determination would not be set aside unless the evidence manifested fraud, bad faith, or a clear abuse of discretion on the part of the condemning agency. (R.49) That axiom is in accord with the controlling case precedent in this jurisdiction, Ogden City v. Stephens, 21 U.2d 336, 445 P.2d 703 (1968), and was unremarkable. The principle was never the

subject of contest on the part of Ramoselli herein; indeed, the Landowner supported the concept.

Ramoselli made no claim in this Cause that the condemnation suit was spawned on the winds of fraud or bad faith. Rather, the position of this Landowner was fastened to the precept that the attempted condemnation of the subject property by the County in this Proceeding was so fraught with conjecture and speculation as to planning and time of use and so afflicted by the lack of any rational basis that park use of the Ramoselli land would ever be realized, that fair minded men could only conclude that the County had manifestly abused its discretion in instituting this action.

There are several criteria which, at a minimum, must be met by the condemning body to satisfy the test of public need. To begin with, the principle for the use of the property must be spelled out by the condemnor with specificity. City of Helena v. DeWolf, 508 P.2d 122 (Mont. 1973). That is not to say that every square foot of the proposed project must be designed and described with infinite precision.^{2/} But it does mean that the condemning body cannot, as it did in this Case, walk into the courtroom with a cavalier sketch, (Exhibit P-16) of a possible use of a citizen's property which had been

^{2/} However, as generally noticed through hundreds of condemnation suits brought in this State, many of which have been before this Honorable Court, in practically every suit (whether for highway, school, or reservoir purposes) the project use has been designed and redesigned over several years with great care and detail, encompassing right-of-way drawings, engineering plans, and working drawings, as well as specifications.

prepared barely 18 days before the time of trial, which had not been reviewed much less approved by the County Parks Commission, and which had not been seen, approved, or adopted, even in concept, by the governing Board of Commissioners of Salt Lake County. How, we would query, is the County to determine whether the property of Ramoselli is needed for the public use until reasonably defined plans are developed, reviewed, approved, and adopted, which dictate that need? The question provides its own answer.

Secondly, there must be a showing that the property of the Landowner is required for the public use at the time of condemnation or at the latest, in the reasonably immediate future. Necessity, by inherent definition, implies a known and defined date of usage. The overwhelming body of case law, uncontroverted by the County in its Brief, is to the effect that the governmental body is bound to show a need of the condemned property of either present or near future proportions, as a condition precedent to the expropriation. State Highway Board v. Pratt, 250 A.2d 726 (Vt. 1969). As stated by the Supreme Court of Michigan in Board of Education v. Baczewski, 340 Mich. 265, 65 N.W.2d 810:

"In condemnation proceedings in this State petitioner should prove that the property will either be immediately used for the purpose for which it is sought to be condemned or within a period of time that the jury determines to be the near future or a reasonably immediate use." (Emphasis added).

Nichols, in his work on Eminent Domain, describes an attempt to condemn property for a use, the time of which is open and undefined, as naked "speculation and conjecture" and cannot be sustained. 1 Nichols on Eminent Domain, §4.11, p. 4-211 (3rd Ed.). Necessity in eminent domain, is that which exists "now or in the near future". Nichols on Eminent Domain, Ibid.

Thirdly, a showing is required that the proposed use is reasonably capable of being realized and if the evidence reveals that there is no economic basis for funding of the proposed use, the condemnation complaint must fail. Winegar, School Board, et al v. Aires, 371 Pa. 242, 89 A.2d 521 (1952). In finding that public necessity did not exist under a Montana statute similar to that of 78-34-4(2) U.C.A., the Montana Supreme Court stated in City of Helena v. DeWolf, supra:

"The burden of demonstrating necessity rests upon the condemnor who must establish a prima facie case to justify the taking. * * *

"We conclude that 'necessity' must be shown as a reasonable need with foreseeable ability to complete. Under the facts of this case we do not find a showing of reasonably foreseeable ability to complete. Defendants' going business would be destroyed, the property acquired, and simply held for that indefinite future when it just might be needed. * * *." (Emphasis ours)

We do not argue that the County is under a mandate to show that its pockets are laden with coin of the realm so as to instantaneously bankroll all facets of the proposed use herein. But it was submitted to the trial Court and we do

maintain that there must be some plausible manifestation that the proposed use is susceptible of capital funding from a known source at the time of condemnation or in the reasonably immediate future. Elsewise, the whole system of property rights in this country, so fundamental to the entire social order, would be open game for the ambitious and future schemes of a government empire building. The Government is proscribed from engaging in land "speculation" by the narrow and strictly construed power to condemn a citizen's property. Moyle, et al v. Salt Lake City, 111 Utah 201, 176 P.2d 882 (1947); Bertagnole, et al v. Baker, supra.

POINT II.

THE BURDEN OF PROOF OF EVIDENCING PUBLIC NECESSITY TO WARRANT THE POWER OF EMINENT DOMAIN RESTS WITH THE CONDEMNOR, SALT LAKE COUNTY.

This Court is committed to the proposition that the burden of proving public necessity in condemnation rests with that party who seeks to exercise the power. In Tanner v. Provo Bench Canal & Irr. Co., supra, this Court, writing through Frick, C. J., stated the rule to be:

"The burden of showing necessity and public use is upon petitioner. The burden showing the damages which the owner will suffer rests on him."

See also Monetaire Mining Co. v. Columbus Rexall Consol. Mines Co., 53 Utah 413, 174 Pac. 172 (1918)

We would not debate the concept that the resolution of condemnation adopted by the public agency creates, in most circumstances, an evidentiary presumption in favor of the power to condemn. But that presumption is rebuttable, and when rebutted by competent evidence to the contrary on the issue of public necessity (as was the occasion in the Case at hand), the power to condemn is jeopardized if the condemning body does not fulfill its burden of proof on the issue of public necessity as defined by law.

The failing of the County herein to demonstrate, under the requisite principles of public necessity as set out in Point I of this Brief, public necessity for the Ramoselli property presently or in the immediate foreseeable future, required that the District Court dismiss the Complaint herein. Such dismissal was entered and is to be affirmed on review.

POINT III.

THE COUNTY FAILED TO MANIFEST AT TRIAL
ANY DEFINED USE OF THE RAMOSELLI PROPERTY
PRESENTLY OR IN THE REASONABLY IMMEDIATE FUTURE.

It does not take a divining rod to ascertain the basis of the Findings of the lower Court that the Complaint of the County be dismissed for failure to show public need of the Ramoselli property. The insipid and ephemeral evidence submitted on the question by the Plaintiff made the

conclusion inescapable that the statutory mandate and decisional precedent of this Jurisdiction on public necessity had not been proven. It was not even a close call.

First, as to any plans for a proposed use of the condemned property, the short and simple answer is that there were no plans. The best shot of the County in that regard was in the form of Exhibit 16-P. While the property was being tested as of the date of condemnation in March of 1974, 16-P was prepared barely two weeks before the date of trial in late July of 1976. The Exhibit had only been seen by staff and non-policy personnel of the Parks Commission. No one in a policy position even at Parks Commission level had given approval to it. The governing Board of County Commissioners knew nothing of it, whatsoever, and a fortiori, 16-P had never been approved or adopted. It was admitted in evidence as a "preliminary sketch" of a possible use of the Ramoselli property for park purposes. A casual survey of 16-P prompts the conclusion that the drawing could have been constructed by an ordinary layman inside of an hour. The Exhibit does not begin to rise to the quantum and quality of proof so essential to an ascertainment of public need.

But the disease in the County's case did not stop there. It is uncontested that even were it assumed, for the sheer sake of argument, the existence of a defined and reasonably articulated plans for park use of the Ramoselli property, the County had no notion, at all, as to the time when any possible use would be realized. It was not a question of

the use being in the future of 2 years or of the remote future of 5, 10, or 25 years, it was, rather, the evidence before the trial Court that there was no time established at all. It is not surprising that under that set of facts, the District Court found that any use of the subject property by the County was idle speculation and conjecture.

The lack of a funding source to achieve any possible use of the condemned property, whether that use be speculative or real, was the final flaw in the County's position before the trial Court. This was not a case that the capital funding, while not available eo instanti, would be forthcoming from the County Commission in due course. It was not even a case that the capital funding would be available from the County Commission in the distant or remote future. Rather, the testimony before the trial Court was that there were no monies available at all, that the budgets of the County Parks Commission had been cut in recent years and the Parks Department would have to embark upon a search for possible federal grant funds or private, philanthropic donations to underwrite any park use of the Ramoselli property. The issue of adequate capital funding, standing alone, might not be sufficient to deny in every instance, the entitlement to condemn herein. But taken with the plethora of testimony herein on the lack of any defined use along with the absence of any time of usage, the evidence on the total void of funding merely confirmed the fact that the attempt to acquire

the Ramoselli property by condemnation was nothing more than fanciful speculation by the County and was destined to failure.

1. Other Maps and Master Plans Introduced by the County.

In an attempt to avert the shortfall of the County's position on public need in this case, it introduced three general master plans of Salt Lake County, or parts thereof. Such drawings provided no panacea whatsoever to avoid the result reached by the lower Court. The 1985 plan of Salt Lake Valley (Exhibit 2-P) and the County Parks Master Plan of 1972 (Exhibit 4-P) were admitted as nothing more than a general guide-on to further, future, and more particularized, specific planning. Those generalized drawings are theoretical in character only and are without weight in the decisional process of public necessity in this Case. The County cannot, in this Proceeding, brace itself on the element of public need by using a 1985 and 1972 conceptual plans for Salt Lake Valley as a crutch. The County cites no case precedent in which such general, theoretical concepts have ever formed the basis to condemn specific property.

The same fate is in store for Exhibit 6-P, offered by the County as the Big Cottonwood District Development Plan. It, too, was a guide for future consideration of more particularized planning and in no way cures the defect in the showing of public need herein. County Commissioner, Dunn, in Exhibit 7-P, stated on the record, when the concept of 6-P was adopted, that such adoption was not "the

implementation" of the Plan, but merely "set forth a goal * * * if the plan is followed", and that the areas relating to "golf courses, or parks or schools, etc., may or may not eventually come about". Commissioner Dunn concluded with a statement that such a plan as 6-P was conceptual only and that the County had "neither the means nor the availability to necessarily implement all of the programs" therein.

The theoretical Master Plan concepts were unentitled to any weight in the decisional process on the question of public necessity to condemn the particular property of Ramoselli herein.

2. Claimed Procedure for Land Acquisition by the County Parks Commission.

The County attempted to justify the absence of any reasonably defined plans for the possible use of the Ramoselli property presently or in the immediate foreseeable future, on the lament that the normal operating procedure of the Parks Commission is to first acquire property and then prepare plans for its ensuing utilization. It claims that adequately defined plans, target date for use, and funding sources would be futile until the Parks Commission was assured that the property was secure. With regard to the wisdom (or lack thereof) of Park Commission procedure in acquiring, by voluntary purchase, private property and only then laying plans for the use of such voluntarily acquired property, we make no comment. But as to that property which

the County seeks to acquire involuntarily by force of the eminent domain power, the answer is swift. The County is unentitled to condemn the property of a citizen and thereafter to sit in the councils of government and decide how, when, and if that property is to be used. Such conduct, as evidenced in this Cause, is nothing short of rank land speculation, is the antithesis of the fundamental system of property rights in this Country, and constitutes a clear abuse of discretion on the part of the Plaintiff herein. No other public agency of Government has been heard or forced to make such an argument before this Court.

POINT IV

THE COUNTY PARKS COMMISSION IS UNENTITLED TO CONDEMN PROPERTY FOR A USE IN THE UNDEFINED FUTURE.

The County is heard to contend in Point IV of its Brief, p. 17, that the Parks Commission of Salt Lake County is entitled to condemn property for future use. Cases are cited from other jurisdictions suggesting that the property may be acquired for future use up to 15 or 20 years from the date of taking. However, no decisions of this Court are cited for such a sweeping proposition; indeed, that is not the law of the case in this State, either by decision or statute.

78-34-4(2) U.C.A. is the litmus test for public need and that, as shown by the overwhelming weight of authority, requires a showing of use at the present or in the immediate foreseeable future. (See authorities and discussion set out in Point I, page 11 of this Brief).

The County has no inherent power to condemn a citizen's property. The genesis of its authority to so do is one of plenary delegation from the Sovereign, and that delegation is strictly and narrowly construed against the political subdivision. Bertagnole, et al v. Baker, supra; Moyle v. Salt Lake City, supra.

The acquisition of private property for a future use being one of legislative delegation, the only agency which has been granted the authority by the Utah Legislature to condemn for a future purpose is the State Road Commission (now the Utah Department of Transportation). Under 27-11-9 U.C.A. 1963, the State Road Commission is authorized:

"to acquire any real property or interest therein deemed necessary for temporary, present, or reasonable future state highway purpose by * * * condemnation * * *."
(Emphasis added).

There has been and is no parallel or companion legislation authorizing Salt Lake County to condemn for park usage in the "reasonable future" much the less the undefined future (under the evidence of this case) and the County has not referred this Court to any such Statute in its Brief. The argument of Salt Lake County on this score thus falls of its own weight.

POINT V.

THE FINDINGS OF FACT OF THE DISTRICT COURT
ARE SUPPORTED BY SUBSTANTIAL AND COMPETENT
EVIDENCE AND WILL NOT BE OVERTURNED BY THIS
COURT ON APPELLATE REVIEW.

The Findings, Conclusions, and Order of the District Court in this matter are presumptively correct and so long as there is competent evidence to sustain the same, those Findings and Order will not be overturned on appeal. Schluter v. Summit County and Town of Kamas, 25 U.2d 257, 480 P.2d 140 (1971); Petty v. Gindy Mfg., Corp., 17 U.2d 32, 404 P.2d 30 (1965); Burton v. Z.C.M.I., 122 Utah 360, 249 P.2d 514 (1952). Such rule of appellate review is so well accepted in the decisions of this Court that citations of authority become unnecessary.

Yet it is the position of the County that the Court, in this appeal, should reverse the District Court on the facts, enter Findings of its own on the question of public necessity, and then remand the case to the lower Court for a determination of Just Compensation. Not only does such argument ignore the heavy weight of the decisional precedent of this Court as to its function in the appellate process, it also ignores the constitutional and statutory mandate that this Court will not sit as the trier of fact and overturn the Findings of the Court of original jurisdiction where they are based upon competent evidence. Article VIII, Section 9,

Utah State Constitution; 78-2-1 U.C.A. 1953 as amended. The Findings, Conclusion, and Order of Dismissal of the District Court, are supported by competent and substantial evidence, and should be affirmed herein.

C O N C L U S I O N

The appeal of the County must fail. The District Court, upon receipt of all of the evidence, expressly entered **Findings of Fact** and Conclusions of Law that the County, in its attempt to condemn the property of Ramoselli, had clearly abused its discretion. That determination was bottomed upon the further findings that the County had failed to approve and adopt reasonably defined plans for the use of the subject property, that only a preliminary sketch for a possible use had been submitted to the staff of the County Parks Commission, that the time for use was plainly undefined, speculative, and conjectural and that the County had not manifested that it was capable of obtaining capital funding for any use of the Ramoselli property at any time in the future. Under the attendant facts of this Case, a result other than that of the trial Court would have invited open and unharnessed land speculation by the County Parks Commission.

The Findings, Conclusions, and Order of Dismissal, are supported by competent and substantial evidence and should be affirmed in this review.

Respectfully submitted,

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