

## News

### STOCKTON USED EMINENT DOMAIN TO BUILD BALLPARK

#### COURT: CITY DIDN'T HAVE RIGHT TO LAND

By **David Siders**

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STOCKTON - The city had no right to force the dilapidated Marina Tower property from its owners and to build a ballpark and parking lot in its place, the 3rd District Court of Appeal has ruled.

Finding the city's eminent domain action to be a "gross abuse of discretion," the court in Sacramento has ordered the city to pay the property owners' legal expenses while allowing Stockton to try the case again.

Norman Matteoni, an attorney for Marina Towers LLC, said the legal costs approach \$1 million; City Attorney Ren Nosky said Tuesday the sum is uncertain.

The court ruled Friday that Stockton's acquisition of Marina Tower, on the north bank of the Stockton Deep Water Channel, was based on vague resolutions of necessity that failed to specify for what use the city sought the land.

"This is a case of 'condemn first, decide what to do with the property later,' " the court ruled.

Marina Towers claimed in a 2005 hearing that the city initially sought to have developer A.G. Spanos build luxury apartments on the property, altering its plan only when Marina Towers argued the land was illegally being taken for a private use, not a public one. The city denied that, saying its conversations with Spanos were only speculative.

The ruling Friday reversed a San Joaquin County Superior Court judge's 2005 dismissal of Marina Towers' claim.

"The City Council just was not properly informed as to the law," Matteoni said Tuesday. "They simply did not use good judgment."

City Hall's response to the ruling largely was to criticize the previous administration's handling of the matter, the city manager, city attorney and council majority all taking office after the property was seized.

"This is one of those scary skeletons that emerged from that closet," Mayor Ann Johnston said. "It is indicative of the way things were run."

The council will consider the case in a closed session in March, Nosky said.

"We're going to be looking at a number of options to clean up this mess that was not of our making," he said.

The five-story Marina Tower building was demolished in May 2004. The building was considered central to the waterfront's redevelopment in 1974, when it was built, but eventually fell vacant and into disrepair.

In the compensation phase of the eminent domain trial, a jury fixed the value of the Marina Tower property at just less than \$2 million. Marina Towers LLC has said the appropriate value is nearer to \$6 million. The issue is to be retried, Matteoni said. Nosky said that is uncertain.

Though a defeat for City Hall, the ruling could have been worse: Marina Towers had requested that the court dismiss the city's eminent domain action unconditionally, effectively reverting ownership of the property - and of the parking lot and part of Stockton Ballpark - to Marina Tower. That result would be unfair to the city, the court ruled. Instead, it ruled, the "city will be responsible for Marina's litigation expenses, but it will have another opportunity to get it right."

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