

FRIDAY, FEBRUARY 24, 2017

COVERSTORY

Dairy farm owners win \$48 million

Arbitrator rules against county for encroachment

By Renee Flannery
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San Bernardino County has been ordered in arbitration to pay nearly \$48 million to the owners of a Chino dairy farm whose land and business were encroached upon by a neighboring airport for nearly three decades without compensation.

Jim and Annie Nyenhuis, owners of the approximately 60-acre plot, claimed that the county zoned more than 20 acres of their land for the benefit of Chino Airport without properly acquiring it through eminent domain.

The plaintiffs said that the development and expansion of the airport has negatively impacted their property since the late 1980s and has prevented them from selling the farm for its fair value. *Nyenhuis Family Investments, LLC v. The County of San Bernardino et al.*, CIVDS1511794 (San Bernardino Super. Ct., filed Aug. 13, 2015).

Tired of increasing noise pollution, as well as performing services such as clearing trees for approaching jets without compensation, the couple filed suit in August 2015.

Plaintiffs' attorney John C. Murphy of Murphy & Evertz LLP said neighboring properties were acquired for fair value from private developers.

"Those landowners were able to reap the benefit. ... They were able to sell to major developers. The Nyenhuises weren't," Murphy said. "The county told them by power of

public agency, 'You aren't allowed to sell for use of development,'" because of the zones they had taped off for airport use.

The county denied any liability and filed for summary judgment in San Bernardino County Superior Court before Judge David Cohn, who denied the motion in November 2015.

Neither County Counsel Jean-Rene Basle nor the lead attorney, Deputy County Counsel Laura Crane, responded to requests for comment Thursday.

After losing the summary judgment motion, the county agreed to resolve the matter in arbitration with John W. Kennedy, Jr. of JAMS, former presiding judge of the San Bernardino County Superior Court.

Murphy said they also agreed to utilize the expertise of appraiser Stephen D. Roach to calculate the amount the county should pay for the value of the Nyenhuis property.

Both professionals, Murphy said, are well respected in their fields. Kennedy in particular has expertise with eminent domain issues.

In Roach's appraisal report, he valued the property at \$47,300,000.

Attorneys for the county objected to the amount.

"There was a lot of push back," Murphy said. "They filed a motion saying Roach was biased, the guy we all agreed on."

In addition, Kennedy ordered in his arbitration ruling on Tuesday that the county should pay the Nyenhuis family \$480,780 in litigation expenses plus relocation expenses of up to \$200,000.

Annie Nyenhuis said in a phone interview that the county has taken advantage of her

and her family but they are glad to be moving forward.

"John is helping us get the best conclusion that we can get," she said of Murphy. "If you were at my house today, you do not see green pastures ... you see big buildings. It's going to be surrounded by big buildings and one of them is the Chino Airport."

She added that she thinks the county should have tried to buy their land a long time ago but instead built around the farm, which has kept them from ever being able to grow their business.

In December 1999, the Nyenhuises filed their first inverse condemnation complaint when the county imposed a runway protection zone on 20 acres of their property without compensation, keeping them from building or developing.

According to Murphy, shortly after the Nyenhuises' first attorney was diagnosed with an illness, they decided to settle their case, allowing the county to utilize that land.

"I lived here 54 years and have been very happy," Nyenhuis said. "The environment is making me move."

Murphy said his clients will be required to leave after 120 days once they receive their awarded compensation.

"We have to find our way ... a new way. It doesn't go that easy," Nyenhuis said. "We haven't decided, it's hard for me to say but we'll probably quit our business. Because down here there's no room for a dairy no more. You need to be bigger than what we are to make the money. There's no room in Chino no more. It's all bought up."