

FEDERAL COURT

Eminent domain suit vs. Ramona schools revived

Landowner wins appeals ruling

By **Greg Moran**
STAFF WRITER

A federal appeals court has revived a lawsuit by a woman who alleged that if key evidence had not been hidden from her in an eminent domain case, the Ramona school district would have had to pay more for her 52-acre property.

The unanimous opinion by a three-judge panel of the 9th U.S. Circuit Court of Appeals was a victory for Joan Kearney,

who has been battling the school district in state and federal courts over the land since 2002.

Her lawsuit was against a business manager for the Ramona Unified School District, the law firm the district hired to handle the land purchase and two of its lawyers. Kearney said a test showed the land could support more development — and therefore was more valuable — but the results were never disclosed when the dispute went to trial in San Diego Superior Court in 2002.

When she later took the case to federal court, U.S. District Judge M. James Lorenz in San

Diego dismissed it. However, the three-judge appellate panel concluded Tuesday that Lorenz used the wrong legal standard in throwing out the case. It sent the case back to the district court.

The appeals court did not pass judgment on whether Kearney's claims of misconduct are true. Kearney's lawsuit alleges civil racketeering conspiracy claims and civil rights violations.

Jill Sullivan, a lawyer for Kearney, said the lawsuit is a "David and Goliath" case pitting a landowner against a large law firm and the government.

"This woman owned family

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property that was her major asset, and in an eminent domain proceeding, they hid evidence to undervalue the property," Sullivan said.

Mark Zebrowski, a lawyer for the law firm that was sued, Foley & Lardner, said the opinion focused largely on procedural issues and did not weigh the facts. "This decision was based solely on the allegations of the complaint, which the court at this stage had to assume were all true," he said.

Daniel Shinoff, the lawyer for the school district official, said it was a procedural setback and more fact-finding on the veracity of the claims will have to take place.

The district wanted the land to build a school. When the case went to trial, school experts said it six to eight homes could be built there. A jury pegged the value of the land at \$953,000.

But after the trial, Kearney got an anonymous tip that the school district had not told her about the test, which measured how well effluent flowing from septic tanks will sink into the soil.

Such tests are crucial because they can determine how intensely land can be developed where there is no sewer system. Kearney contended the tests showed the land could support more homes and a fair price would be \$1.4 million.

She sought new trials in state court but lost, and headed to federal court. School district lawyers have said it is not clear what difference, if any, the test results would have made. The district insists it did nothing wrong.

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