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EMINENT DOMAIN - FLORIDA

Hillcrest Property, LLP v. Pasco County

United States District Court, M.D. Florida, Tampa Division - April 12, 2013 - F.Supp.2d - 2013 WL 1502627

Court strikes down novel eminent domain work-around in which the county would deny development permits to landowners that did not "voluntarily" convey – in fee simple and without compensation – that portion of their land that encroached into the development corridor.

Before 2025 Pasco County must build more and larger roads to accommodate the inevitable increase in automobile traffic. Preferring to avoid the payment of "just compensation" after acquiring the necessary land by eminent domain, Pasco County hatched a novel and effective, but constitutionally problematic idea, a very novel regulatory regime that is created by Pasco County's "Right of Way Preservation Ordinance."

The remarkable part of the regime, and the constitutional mischief, appear in the instance of a landowner whose land is encroached by the new transportation corridor but who plans to develop the remaining land, which adjoins the encroachment. The Ordinance requires Pasco County to deny the landowner's development permit and to forbid development of the land adjoining the new transportation corridor unless the landowner "dedicates" (conveys in fee simple) to Pasco County – for free – the land within the new transportation corridor.

If constitutional, the Ordinance undoubtedly would become quickly fashionable, as counties seize a singular opportunity to procure land for public use by the thrifty expedient of coerced conveyance rather than by the historically and constitutionally prescribed mechanism of eminent domain.

Alas, the court found the Ordinance "both coercive and confiscatory in nature and constitutionally offensive in both content and operation" and enjoined implementation.

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