
INVERSE CONDEMNATION - TEXAS

City of Lorena v. BMTP Holdings, L.P.

Supreme Court of Texas - August 30, 2013 - S.W.3d - 2013 WL 4730647

Residential subdivision developer brought claims against city for declaratory judgment and inverse condemnation, relating to city's moratorium on permits for sewer connections.

The Supreme Court of Texas held that:

- Developer was not required to submit sewer connection application before filing lawsuit;
- Property approved for subdivision is exempt from any development moratorium based on shortages of public facilities; and
- Fact issue precluded summary judgment on inverse condemnation claim.

City ordinance providing that applications for new sewer connections are not to be accepted for filing and are to be returned to the applicant as unfiled does not impose a requirement that a landowner aggrieved by the ordinance file an application to administratively exhaust the landowner's claim. Rather, it is a process by which the City will return any applications to the owner as unfiled.

Under city ordinance providing that applications for new sewer connections were not to be accepted for filing and were to be returned to the applicant as unfiled, developer was not required to submit a sewer connection application before filing its inverse condemnation and declaratory judgment action based on state law prohibiting municipalities from enforcing moratoria against approved development, since such attempted filing would be futile.

Because state law prohibiting municipalities from enforcing development moratoria resulting from shortages of essential public facilities against approved development defines "development" as subdivision or construction, such a moratorium may not affect property approved for subdivision or construction. A property need not be approved for both the subdivision and construction aspects of development to be insulated from such moratoria.

Genuine issue of material fact existed as to the extent of city's intrusion on subdivision developer's use and enjoyment of its property with a sewer connection moratorium which violated state law prohibiting municipalities from enforcing moratoria against approved development, thus precluding summary judgment for city on developer's inverse condemnation claim.

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