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EMINENT DOMAIN - TEXAS

City of Crowley v. Ray

Court of Appeals of Texas, Fort Worth - August 23, 2018 - S.W.3d - 2018 WL 4025086

Real estate developer brought action against city for declaratory relief and against city's consultant, which had conducted flood study of developer's property, for negligence and other claims, alleging that developer had intended to develop property into multifamily residential subdivision, that based on consultant's advice city raised minimum finished floor elevations by ten feet, and that such increase made it economically infeasible to develop property.

City filed plea to the jurisdiction, arguing that it was immune. The District Court denied plea. City filed interlocutory appeal. The Court of Appeals affirmed. Developer then filed amended petition that added claim against city for inverse condemnation. City filed jurisdictional plea, arguing that developer's inverse-condemnation claim was unripe and that its governmental immunity had not been waived. The District Court denied city's plea. City filed interlocutory appeal.

The Court of Appeals held that:

- Developer's inverse-condemnation claim was not unripe for lacking final decision by city;
- City failed to meet its initial burden to prove that developer's failure to exhaust administrative remedies deprived trial court of subject-matter jurisdiction over inverse-condemnation claim;
- Developer alleged that city intentionally and directly acted to cause taking, as required to state inverse-condemnation claim; and
- Fact that developer was able to develop and sell adjoining tract was not relevant to determination of whether city completely deprived developer of all economically beneficial use of property, thereby effecting regulatory taking.

Real estate developer's inverse-condemnation claim against city, which alleged that city effected regulatory taking by requiring developer to raise minimum finished floor elevation by ten feet above floodplain instead of two feet, was not unripe for lacking final decision by city; nature of alleged taking was not one that left open possibility that property could be developed some other way, thereby precluding final decision on type and intensity of development, and although city argued that developer's claim was not ripe because developer had not sought variance or requested administrative appeal, city had taken definitive position that floor elevation had to be raised ten feet, and thus developer's pursuing variance or other administrative procedure was futile.

City failed to meet its initial burden to prove that real estate developer's failure to exhaust administrative remedies deprived trial court of subject-matter jurisdiction over his inverse-condemnation claim, which alleged that city effected regulatory taking by requiring developer to raise minimum finished floor elevation by ten feet above floodplain instead of two feet, where city did not disclose or otherwise direct appellate court to any remedial statutory scheme that developer should have utilized before suing city, and although city complained that developer never sought a variance or letter of map revision, neither procedure would have obviated need to file suit because developer sought to comply with, not vary from, floodplain elevation that city had allegedly adopted.

Real estate developer alleged that city intentionally and directly acted to cause taking, as required to state cause of action for inverse condemnation under Texas Constitution, where developer alleged that city prohibited him from developing property using “effective” floodplain criteria established by letters of map revision, and fact that developer sought to develop property using figures contained in letters did not mean that letters were responsible for city’s refusal to utilize them during development stage.

Fact that real estate developer was able to develop and sell first tract of land was not relevant to determination of whether city completely deprived developer of all economically beneficial use of second, adjoining tract by requiring developer to raise minimum finished floor elevation for second tract, thereby effecting regulatory taking under Texas Constitution, although developer purchased tracts at same time and initially submitted preliminary plat to develop both tracts at once, where timing of purchases alone could not effectively override separate legal identity of each tract, and developer ultimately decided to develop tracts in two separate phases, submitted final plat only for first tract, and developed and sold first tract before development of second tract ever commenced.