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Parker Ave., L.P. v. City of Philadelphia

United States District Court, E.D. Pennsylvania - April 23, 2013 - Slip Copy - 2013 WL 1742498

City council's failure to pass ordinance to pave portion of street needed for property development does not constitute due process, nor equal protection, violation.

Plaintiff had, over the past seven years, been seeking to develop his property with numerous residential units. While zoning was not an impediment and various necessary approvals from the city and the commonwealth had been obtained, the city council, despite the repeated requests of plaintiff, has never passed an ordinance to pave that part of the city street needed to access the property

Plaintiff sued the City of Philadelphia and the Philadelphia City Council under 42 U.S.C. § 1983 for violation of the Equal Protection Clause and the Due Process Clause of the Constitution.

As a result of the allegedly unconstitutional conduct of defendants, plaintiff asserts it has been prohibited "from reasonably using, developing and enjoying a tract of land it owns in the City" and has lost a substantial amount of money as a result. In addition to damages, it sought a writ of mandamus compelling the city and city council to authorize the paving of the street.

The defendants moved to dismiss on the ground that plaintiff has not stated a claim upon which relief can be granted under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

The district court found no due process or equal protection violations and ruled in favor of the city.