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Phillips v. Montgomery County

Court of Appeals of Tennessee - June 28, 2013 - Slip Copy - 2013 WL 3378952

Landowners wanted to build a subdivision on their property and submitted a preliminary subdivision plat to the Planning Commission in accordance with the applicable zoning resolution and subdivision regulations. The Planning Commission denied the proposed plan because the property lies in the path of a planned future extension of State Highway 374.1 Landowners filed a complaint against Montgomery County and Clarksville Montgomery County Regional Planning Commission in the circuit court, asserting claims for a regulatory taking under the Tennessee Constitution and for inverse condemnation pursuant to Tenn.Code Ann. § 29-16-123.2

The Court of Appeals stated that it had not yet held that a regulatory takings claim can be asserted under Article I, Section 21 of the Tennessee Constitution (as opposed to the U.S. Constitution). Currently, it recognized only two types of takings claims—physical occupation takings claims and nuisance-type takings claims. Since the Supreme Court of Tennessee had declined to hold that a regulatory takings claim can be asserted based upon the Taking Clause of the Tennessee Constitution, The Court of Appeals also declined to do so.

The court denied the County's motion to dismiss Landowners' inverse condemnation claim, remanding for further proceedings.