

Bond Case Briefs

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INVERSE CONDEMNATION - TEXAS

City of Galveston v. Murphy

Court of Appeals of Texas, Houston (14th Dist.) - January 13, 2015 - S.W.3d - 2015 WL 167178

Two multi-family dwellings were flooded by Hurricane Ike. The City of Galveston required a series of repairs and renovations, during which time the City declared the property unfit for habitation and evacuated the tenants.

During the course of the repairs, City officials suddenly informed the property owners that, because the property had been unoccupied for over six months, it had lost its “grandfathered” non-conforming status and would require a Specific Use Permit (SUP) to be occupied as multi-family dwellings. The property owners duly submitted an application for a SUP to the City Council, which was denied.

The Property Owners filed suit against the City, alleging that the SUP denial, as well as the City’s “purported” invocation of the six-month vacancy used to then require the SUP, constituted a regulatory taking under both the Texas and federal constitutions.

The City filed a plea to the jurisdiction, which the trial court denied. The City appealed, asserting that the trial court lacked subject-matter jurisdiction because the property owners’ claims were not ripe for review because they never obtained a final decision regarding their use of the property as an apartment complex. According to the City, its denial of the SUP primarily was based on code safety and structural concerns with the property and that it had encouraged the owners to bring the property within compliance and reapply, which they had not done.

The property owners responded that their case is ripe. In particular, the property owners contend the record contradicts the City’s position that the SUP application was denied due to safety concerns. The property owners also argued that the City Council hearing was a “sham” designed to wear them down into acquiescing to demands for density reduction, and that any attempts to make further applications of any kind would be futile.

The Court of Appeals held that:

- City’s denial of the SUP did not constitute a final decision such that one could know to a reasonable degree of certainty the extent of permitted usage of the property; but
- Property owners had sufficiently alleged a regulatory taking with regard to the City’s earlier decision to revoke the property’s grandfathered non-conforming status.