

Bond Case Briefs

Municipal Finance Law Since 1971

ANNEXATION - TEXAS

JNC Land Company, Inc. v. City of El Paso

Court of Appeals of Texas, El Paso - June 26, 2015 - S.W.3d - 2015 WL 3952680

On December 9, 1999, the City of El Paso and JNC Land Company entered into an agreement to annex property to El Paso (the Annexation Agreement). Under the Annexation Agreement, JNC agreed to develop the property in accordance with the rules and regulations of the City of El Paso. The Annexation Agreement required JNC to apply for and secure approval of a subdivision in accordance with the procedures of the El Paso Municipal Code prior to issuing any building permits or certificates of occupancy. Further, JNC agreed to dedicate and improve as part of any subdivision applications covering the property the necessary right-of-way for extensions of any arterial streets shown within the City's official "Major Thoroughfare Plan."

JNC alleged that it subsequently improved the property and made street improvements on arterial streets. This included the construction of two streets designated on the City's official Major Thoroughfare Plan in excess of the width determined by the Traffic Impact Study. JNC incurred costs of more than \$300,000 to construct these two streets and it sought reimbursement for the excess-width paving, but the City refused to pay.

JNC filed suit against the City for breach of contract. The City filed a plea to the jurisdiction asserting its immunity had not been waived. The City argued that the Annexation Agreement is not a contract for which immunity is waived by Section 271.152 because it is not an agreement to provide goods or services to the City. The trial court granted the plea and dismissed the suit. JNC appealed.

The Court of Appeals reversed, finding that the services provided by JNC under the Annexation Agreement provided a direct and unattenuated benefit to the City and thus the City's immunity was waived.

"The City is correct that JNC's development of the property was voluntary and it could not demand that JNC develop the subdivision, but once JNC proceeded with that development, the City had a right under the Annexation Agreement and the pertinent municipal ordinances to compel JNC to develop the property in accordance with the rules and regulations of the City. Consequently, the instant case is distinguishable from Church & Akin. The Annexation Agreement and the pertinent municipal ordinances required JNC to (1) improve certain right-of-way extensions and dedicate them to the City; (2) dedicate and improve neighborhood and public community parkland; and (3) set aside real property for future acquisition by the City. These services provide a direct and unattenuated benefit to the City."