

Bond Case Briefs

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ZONING - NEBRASKA

Dowd Grain Company, Inc. v. County of Sarpy

Supreme Court of Nebraska - August 14, 2015 - N.W.2d - 291 Neb. 620 - 2015 WL 4856284

Property owner filed suit against county seeking declaratory judgment that amended overlay district zoning ordinance, which exempted certain class of property owners from ordinance that imposed design requirements for new development, was unconstitutional special law. The District Court entered judgment for county, and owner appealed.

The Supreme Court of Nebraska held that:

- Amended ordinance which created exemptions from enforcement of design ordinance for certain class of property owners did not create permanently closed class, and
- Amended ordinance did not arbitrarily benefit class of property owners that were eligible for exemption.

Amendment to overlay district zoning ordinance which had provided design guidelines for new development proposals, which amendment exempted land platted prior to adoption of ordinance and land within boundary of highway corridor overlay that was zoned anything other than agricultural prior to adoption of ordinance, did not create permanently closed class, for purposes of non-exempt property owner's claim that exemption was unconstitutional special law. Real property was alienable, and thus, number of parcels area that qualified for exemptions was subject to change.

Amendment to overlay district zoning ordinance which had provided design guidelines for new development proposals, which amendment exempted land platted prior to adoption of ordinance and land within boundary of highway corridor overlay that was zoned anything other than agricultural prior to adoption of ordinance, did not arbitrarily benefit class of property owners that were eligible for exemption, for purposes of non-exempt property owner's claim that exemption was unconstitutional special law. Rather, there was reasonable basis for exemption, namely, that class of property owners who filed plat prior to enactment of overlay ordinance had expended substantial sums of money in developing property, including employment of engineers, surveyors, and other professionals, paving of streets, documentation of easements, and other costs of development, enforcement of overlay ordinance after these owners had already submitted plat based on absence of those design requirements would be harsh and unfair, and limiting exemption to those property owners who had completed process of submitting plat was reasonable.