

# **Bond Case Briefs**

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## **ZONING & LAND USE - TEXAS**

### **Schmitz v. Denton County Cowboy Church**

**Court of Appeals of Texas, Fort Worth - August 31, 2017 - S.W.3d - 2017 WL 3821886**

“When a municipality allegedly refuses to enforce its zoning regulations against a property owner subject to those regulations and takes void actions attempting to change the zoning designation of that owner’s property, what recourse, if any, does a neighboring property owner have against either the municipality or the purportedly nonconforming property owner?”

Owners of property near church brought action against church and town, seeking temporary restraining order and temporary and permanent injunctions prohibiting church from continuing construction of arena on church property and requiring town to suspend issued building permit and any future building permits.

The District Court denied request for temporary injunction and granted pleas to the jurisdiction. Owners appealed.

The Court of Appeals held that:

- Town’s actions in granting zoning change and issuing specific use permit were not an “ordinance” for which town’s immunity was waived;
- Property owners failed to allege viable takings claim;
- One owner sufficiently alleged at least a reasonable likelihood that his claim against town would soon ripen;
- Nuisance claims were ripe; and
- Declaratory judgment action against church was ripe.

Pleadings of owner of property adjacent to church sufficiently alleged at least a reasonable likelihood that his claim against town would soon ripen, as required for owner to have standing in action for declaratory and injunctive relief against town and church for alleged zoning violations based on church’s construction of arena in which church planned to conduct rodeos and other events, even though construction was not yet complete; owner alleged that new arena would be operated in same manner as old arena, which had substantially interfered with owner’s use and enjoyment of his property due to excessive noise, light, and odor.

Property owner’s claims for nuisance against town and church that owned adjacent property were ripe; owner’s testimony established effects of church’s existing arena on his use and enjoyment of property, testimony established that church was building new arena for same purpose and with same frequency, and no evidence supported finding that construction and use of new arena was anything other than imminent.

Property owner’s action for declaratory judgment against church that was constructing arena on adjacent property was ripe; owner’s suit included underlying argument that arena never would have been allowed to be constructed in such close proximity to his home if church had property complied with town’s zoning ordinance.

