

Bond Case Briefs

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EMINENT DOMAIN - WASHINGTON

Thun William and Louise Leslie Revocable Trust v. City of Bonney Lake

Court of Appeals of Washington, Division 2 - May 1, 2018 - P.3d - 2018 WL 2055686

Landowners brought action against city, alleging that city's adoption of ordinance rezoning the majority of landowners' property from commercial to residential and conservation was an unconstitutional regulatory taking.

The Superior Court granted summary judgment dismissal of landowners' claim. Landowners appealed.

The Court of Appeals held that:

- Court of Appeals would exercise its discretion to waive the final governmental decision requirement for prudential ripeness, and
- City ordinance did not go beyond preventing real public harm to producing affirmative public benefit, and thus, city's adoption of the ordinance did not constitute regulatory taking of landowners' property.

Court of Appeals would exercise its discretion to waive the prudential ripeness requirement that landowners received final governmental decision regarding permitted uses of their property in action alleging that city's adoption of ordinance rezoning landowners' property from commercial to residential and conservation was regulatory taking; although landowners did not file site development plan or permit application, they estimated that the economic use of their land diminished because of the ordinance, and Court of Appeals would be able to compare the present value of the regulated property and the value of the property before the regulation.

City ordinance, which rezoned the majority of landowners' property from commercial to residential and conservation, did not go beyond preventing real public harm to producing affirmative public benefit, and thus, city's adoption of the ordinance did not constitute regulatory taking of landowners' property; ordinance was adopted to protect tree cover, manage steep areas prone to landslides, and to protect entry to city, city was able to protect public from safety and environmental concern that landslides and erosion presented by restricting high density developments on steep slopes of landowners' property, and fact that public could benefit from preservation of city's entry did not reduce effect of ordinance of safeguarding the public from harm.