

Bond Case Briefs

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ZONING & PLANNING - KENTUCKY

Seiller Waterman, LLC v. Bardstown Capital Corporation

Supreme Court of Kentucky - March 24, 2022 - S.W.3d - 2022 WL 883677

Property developer filed complaint against neighboring property owners who opposed one if its development and rezoning proposals and their law firm, seeking damages for wrongful use of civil proceedings in continued opposition to approved zoning changes, stating it had lost profits of \$12 million and incurred legal fees totaling \$73,752.33.

The Circuit Court granted law firm's motion for summary judgment and dismissed developer's claims for wrongful use of civil proceedings and abuse of process. Developer appealed. The Court of Appeals affirmed in part, reversed in part, and remanded. Property owners' and law firm's petition for discretionary review was granted.

The Supreme Court held that:

- On issue of first impression, *Noerr-Pennington* doctrine protected First Amendment petitioning of government in zoning litigation;
- Statutory appeals from zoning decisions were not limited to neighboring property owners, but could be utilized by rezoning applicants or anyone otherwise injured or aggrieved by zoning decision;
- Neighboring property owners, represented by law firm, used lawful and legislatively-prescribed means to challenge development and zoning activities on substantive grounds;
- Developer, as applicant that initiated zoning proceedings, was necessary party to appeal by neighboring homeowners protesting zoning change;
- Property owner's action was not objectively baseless, and therefore sham exception to *Noerr-Pennington* doctrine did not apply; and
- Adjoining neighboring property owners had statutory standing to bring action.