

# **Bond Case Briefs**

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## **ZONING & PLANNING - MONTANA**

### **Tai Tam, LLC v. Missoula County by and Through Board of County Commissioners**

**Supreme Court of Montana - November 15, 2022 - P.3d - 2022 WL 16946486 - 2022 MT 229**

Landowner brought claim for statutory damages against county board of county commissioners, as well as § 1983 claims, after board denied landowner's subdivision proposal.

The District Court granted board's motion to dismiss, and landowner appealed.

The Supreme Court held that:

- 30 day statute of limitations did not apply;
- Landowner's status as owner of property was sufficient to state a protected property interest for § 1983 claims;
- Complaint sufficiently set forth a § 1983 claim against the board;
- Allegations were sufficient to state a § 1983 due process claim;
- Allegations were sufficient to state a § 1983 claim based on an unconstitutional taking; and
- Allegations were sufficient to state a "class of one" equal protection claim.

Thirty day statute of limitations for persons aggrieved by a decision to approve, conditionally approve, or deny an application and preliminary plat for a proposed subdivision or a final subdivision plat did not apply to landowner's action under other subsection allowing a person who has filed a subdivision application to bring an action for damages.

Landowner's status as owner of property was sufficient to state a protected property interest and allow landowner to bring § 1983 claims against board of county commissioners following their denial of landowner's subdivision proposal, even if it lacked a protected property interest in its subdivision application.

Landowner's complaint, in which it alleged the board of county commissioners violated its rights to due process and equal protection, and constituted a taking of property without just compensation, when the board "implemented policies to protect viewsheds, protect generic ecologic values, and protect adjacent property owners, despite having no such adopted regulations," and "[h]aving adopted plans acknowledging much of the prime agricultural soils in the Target Range area have been developed, the Board now requires the few remaining landowners to unfairly shoulder the burden of preserving what remains via policies and actions carried out under color of state law," sufficiently set forth a § 1983 claim against the board, although it did not set forth in detail the relevant four-part test for imposing liability on a local governmental entity under § 1983.

Landowner's assertion that board of county commissioners had implemented policies to protect viewsheds, generic ecologic values, and adjacent property owners "despite having no such adopted regulations," and that the board was both failing to implement regulations it had adopted and implementing policies which were not based on any adopted regulations at all, were sufficient to state a § 1983 due process claim that landowner, regardless of the hearings held on its actual

subdivision application, had not been given an opportunity to be heard at a meaningful time and in a meaningful manner regarding the board's adoption and implementation of policies and regulations which could deprive landowner of its property interest as a landowner, and thus to survive motion to dismiss for failure to state a claim.

Landowner's allegations that board of county commissioners, which rejected landowner's subdivision application, was applying rules and regulations to the proposed development which had not been adopted with proper notice and opportunity to be heard, and that the board was unfairly requiring landowner to shoulder the burden of preserving agricultural lands and viewsheds which was not imposed on other landowners, were sufficient to state a § 1983 claim based on an unconstitutional taking.

Allegations in landowner's § 1983 complaint against board of county commissioners which denied landowner's subdivision application, including that surrounding property had been allowed to be developed in the same pattern as that desired by landowner, that landowner had been subjected to policies which county had not formally adopted and which were applied on an ad hoc basis, that landowner was being forced to preserve its property for agriculture when other landowners in the area were allowed to develop their properties, and that the board was not following the area land use element regarding the property, were sufficient to state a "class of one" equal protection claim.