
EMINENT DOMAIN - WASHINNGTON

City of Sammamish v. Titcomb

Court of Appeals of Washington, Division 1 - March 13, 2023 - P.3d - 2023 WL 2473120

City filed a petition in eminent domain after enacting an ordinance condemning property rights in water flowing through homeowners' property.

The Superior Court denied city's motion for an order adjudicating public use and necessity, denied city's motion for reconsideration, and granted homeowners' motion for attorney fees and costs. City appealed.

The Court of Appeals held that:

- City had statutory authority to condemn homeowners' property to divert stream for stormwater facilities improvement project;
- Homeowners' argument that city's receipt of funding pursuant to the Salmon Recovery Act precluded condemnation was not properly before the Court of Appeals;
- Homeowners were not entitled to remand for an evidentiary hearing regarding public use and necessity;
- City's condemnation of homeowners' property for a stormwater facilities improvement project constituted a public use;
- City's condemnation of homeowners' property was necessary to accomplish the public use of a stormwater facilities improvement project; and
- Homeowners were not entitled to an award of attorney fees and costs.

City had statutory authority to condemn homeowners' property to divert stream for stormwater facilities improvement project, although the project additionally provided fish passage benefits; the condemnation ordinance stated that the current infrastructure was not adequate to convey the two-year storm event and that the purpose of the project was to reduce or eliminate storm drainage conveyance system capacity issues, improve traffic safety of adjacent roadways by reducing hazardous flooding conditions, and provide greater flood protection, and the project was required by state law to provide for fish passage.

City's condemnation of homeowners' property was necessary to accomplish the public use of a stormwater facilities improvement project; the city considered the merits of four project alternatives and concluded that acquisition of homeowners' property was the only alternative that met critical project requirements, including state fish passage rules, the capacity to convey a 100-year flow event, and the requisite federal permitting, and there was no evidence of actual fraud or arbitrary and capricious conduct.

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