

Bond Case Briefs

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EMINENT DOMAIN - NORTH CAROLINA

Epcon Homestead, LLC v. Town of Chapel Hill

United States Court of Appeals, Fourth Circuit - March 21, 2023 - F.4th - 2023 WL 2564355

Housing developer filed § 1983 action in state court alleging that town's special use permit condition requiring that it set aside portion of its development for low-income residents or pay fee in lieu of that condition effected unconstitutional taking and violated state law and due process.

After removal, the United States District Court dismissed complaint, and developer appealed.

The Court of Appeals held that:

- Developer's claims accrued when it began purchasing land subject to special use permit, rather than when it was compelled to pay challenged fees, and
- Continuing wrong doctrine did not toll statutory period for developer to commence § 1983 action.

Housing developer's claim that town's special use permit condition requiring that it set aside portion of its development for low-income residents or pay fee in lieu of that condition effected unconstitutional taking and violated its substantive due process rights accrued, and limitations period for filing § 1983 action commenced, when developer began purchasing land subject to special use permit, rather than when it was compelled to pay challenged fees as condition of town issuing certificates of occupancy for its development project, where developer learned of permit condition when it purchased land.

Under North Carolina law, continuing wrong doctrine did not toll statutory period for housing developer to commence § 1983 action alleging that town's special use permit condition requiring that it set aside portion of its development for low-income residents or pay fee in lieu of that condition effected unconstitutional taking; while essence of developer's state return-of-fees claim was arguably unlawful fee payments exacted, its § 1983 injury was inflicted by special use permit condition requiring it to set aside part of its property or pay fee-in-lieu.