

Bond Case Briefs

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EMINENT DOMAIN - TEXAS

Commons of Lake Houston, Ltd. v. City of Houston

Supreme Court of Texas - March 21, 2025 - S.W.3d - 2025 WL 876710

Developer of master-planned community in floodplain brought inverse condemnation action against city, alleging that city's amendment of floodplain ordinance following historic hurricane, to require residences to be built at least two feet above the 500-year floodplain, was a regulatory taking under the State Constitution.

The County Civil Court at Law denied city's plea to the jurisdiction. City filed interlocutory appeal. The Houston Court of Appeals reversed. Developer petitioned for review.

The Supreme Court held that:

- Amendment of ordinance as exercise of police power did not preclude regulatory takings claim;
- Amendment of ordinance to ensure compliance with federal flood insurance program did not preclude regulatory takings claim;
- Regulatory takings claim was ripe for adjudication; and
- Developer had standing to assert a regulatory takings claim.

City's amendment of floodplain ordinance to require residences to be built at least two feet above the 500-year floodplain, as an exercise of police power following historic hurricane with catastrophic flooding, did not preclude developer of master-planned community within 100- and 500-year floodplains from having a regulatory takings claim against city under the State Constitution; a regulation could cause a compensable taking even if it resulted from a valid exercise of the government's police power.

City's amendment of floodplain ordinance to require residences to be built at least two feet above the 500-year floodplain, in order to ensure that city residents could obtain property insurance through federal flood insurance program following historic hurricane with catastrophic flooding, did not preclude developer of master-planned community within 100- and 500-year floodplains from having a regulatory takings claim against city under the State Constitution; a floodplain regulation could cause a compensable taking even when regulation was intended to promote compliance with the federal flood insurance program.

Finality requirement for ripeness was satisfied for residential developer's claim that city's amendment of floodplain ordinance, following historic hurricane, to require residences to be built at least two feet above the 500-year floodplain was a regulatory taking under the State Constitution, even though city had not formally denied developer a floodplain-development permit, where developer made series of attempts to obtain such a permit, city never responded to permit application, city rejected developer's applications for a site-wide permit, city did not respond for months to developer's repeated attempts to discuss the problem, and city asserted, for first time after two lawsuits spanning over six years, that developer had no right to obtain a floodplain-development permit and that its claim "cannot ever ripen."

Fact that residential developer did not build homes on its lots in master-planned community did not preclude developer from having standing for a regulatory takings claim against city under the State Constitution arising from city's amendment of floodplain ordinance, following historic hurricane, to require residences to be built at least two feet above the 500-year floodplain; developer sued city to recover compensation for the damages it contended that the amended ordinance caused to developer's property interest, not to challenge or invalidate the amended ordinance, and developer indisputably possessed a vested interest in the property at issue and in the property's value.

Redressability component of constitutional standing was satisfied, thus giving developer of master-planned community standing on its regulatory takings claim alleging that city's amendment of floodplain ordinance, following historic hurricane, to require residences to be built at least two feet above the 500-year floodplain was a regulatory taking under the State Constitution; if the amended ordinance caused a compensable taking, an award of damages for a compensable taking would remedy developer's alleged injury.