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EMINENT DOMAIN - TEXAS

DM Arbor Court, Limited v. City of Houston, Texas

United States Court of Appeals, Fifth Circuit - August 12, 2025 - 150 F.4th 418

Operator of affordable housing apartment complex for low-income residents brought action against city, alleging that city's refusal to grant permits to operator to repair units damaged in hurricane and subsequent flooding was a regulatory taking under the Fifth Amendment.

Following a bench trial, the United States District Court for the Southern District of Texas ruled against owners, concluding property still had economic life despite permit denial. Operator appealed.

The Court of Appeals held that permit denial effected a categorical taking.

City's denial of a repair permit under city's flood control ordinance for property that was located in flood zone left no viable way for operator of affordable housing apartment complex for low-income residents to redevelop property after property was flooded by hurricane, and thus permit denial effected a categorical taking of property, although operator was technically free to redevelop property so long as it complied with elevation requirement, and notwithstanding any speculation as to a sale of the property, or fact that operator's Housing Assistance Payment Contract (HAP Contract) from Department of Housing and Urban Development (HUD) had value, which was a separate and distinct property interest; evidence indicated that permit denial ended property's economic life given that there was currently no identifiable economically feasible redevelopment for property without permit, redevelopment was prohibitively expensive and economically unfeasible because it would have required elevation of property, holding property for investment purposes was not an economically beneficial use.

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