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City of Las Vegas v. 180 Land Co., LLC, 140 Nev. Adv. Op. 29 (Apr. 18, 2024)

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City of Las Vegas v. 180 Land Co., LLC, 140 Nev. Adv. Op. 29 (Apr. 18, 2024)[1]

WHEN A GOVERNMENTAL AGENCY ACTS IN A WAY THAT REMOVES ALL ECONOMIC VALUE FROM PRIVATE PROPERTY, JUST COMPENSATION MUST BE PAID; THE CITY REFUSED TO ALLOW ANY DEVELOPMENT ON A 35-ACRE PARCEL, SUCH THAT THE PARCEL HAD NO ECONOMIC VALUE

Summary

The Nevada Supreme Court reviewed the appeals by both parties in the instant matter. The City of Las Vegas ("the City") challenged the district court's finding that a taking occurred, the just compensation award, and the other monetary awards made to 180 Land Co., LLC ("180 Land"). 180 Land challenged the district court's determination of prejudgment interest awarded to them. In its opinion, the Nevada Supreme Court reviewed whether the land R-PD7 residential zoning or its PR-OS land designation governed 180 Land's ability to develop the property. The court reviewed the district court's adoption of 180 Land's expert witness' determination valuation of the land's highest and best use. Finally, the court reviewed the district court's award of property taxes and attorney's fees to 180 Land. The court affirmed the district court's ruling that: (1) a taking occurred; (2) the district court was correct in its determination of the just compensation award; and (3) no error existed in the district court's other awards.

Background

In 1981, the City adopted a generalized land use plan to reclassify 2,200 acres of land, called Peccole Ranch, to allow for residential densities. In 1990, the City approved a request to zone the proposed golf course within Peccole Ranch for residential planned-unit development, or R-PD, where the golf course was zoned as R-PD7. The golf course was developed during the years 1992 to 1996. In 1992, the City adopted a new general plan that classified the golf course acreage as "Parks/Schools/Recreation/Open Space," or PR-OS. The land was not rezoned as the 1992 ordinance stated that it "shall not be deemed to modify or invalidate any . . . zoning designation." In 2001, the City adopted another ordinance that formerly recognized the golf course acreage as R-PD7 in the Official Zoning Map Atlas and repealed any previous conflicting ordinances.

In 2015, the operator of the golf course informed the then-landlords, Fore Stars, Ltd., that the course was no longer profitable and terminated its lease in 2016. Also in 2016, 180 Land acquired Fore Stars, Ltd., and with it, its ownership interest in the golf course acreage. 180 Land segmented the 180 acres the golf course comprised of into four areas for development purposes: (1) the 35-acre site at issue in this case, (2) a 17-acre site; (3) a 65-acre site; and (4) a 133-acre site. In November 2015, 180 Land applied with the City to develop the 17-acre site by building 435 multifamily housing units. The City approved the plan in February 2017. In December 2016, 180 Land sought to develop the 35-acre and filed plans with the City, which the City planning staff recommended approving. The City ultimately denied 180 Land's application for the 35-acre development, citing public opposition to the proposed development and concerns over a piecemeal development of 180 Land's master development plan. The City then denied every application of 180 Land pertaining to the 35-acre site. After the denial of its applications, 180 Land sued the City for inverse condemnation.

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The district court entered numerous orders to resolve 180 Land's claims after taking evidence and holding multiple hearings. It first found that the hard zooming for the site was R-PD7 and that such zoning permitted, as a right, single-family and multiresidential development. It also granted summary judgment on all four theories of takings claims raised by 180 Land. In the just compensation portion of the proceedings, the district court adopted 180 Land's expert valuation of the land, $34,135,000. In doing so, the court noted the City presented no contrary valuations or any rebuttal evidence to refute that figure. The district court also granted 180 Land's requests for reimbursement of its property taxes, prejudgment interest, and attorney's fees. In doing so, the district court rejected 180 Land's request for a 23-percent prejudgment interest rate, and instead calculated the interest using the prime plus 2-percent rate.

Discussion

Land designation and zoning

The court answered the question of whether the 35-acre site's R-PD7 residential zoning or its PR-OS land designation governed 180 Land's ability to develop the property and if it conferred certain rights on 180 Land. The court found that ample authority supported their conclusion that the zoning ordinance trumped the PR-OS designation on the master plan.[2] NRS 278.349(3)(e) provides that when deciding whether to approve a tentative map to subdivide property, the governing body must consider whether the subdivision conforms with "zoning ordinances and [the] master plan, except . . . if any existing zoning ordinance is inconsistent with the master plan, the zoning ordinance takes precedence." The City's attorney even admitted he could not determine how the PR-OS designation was placed on the property and that zoning would trump any inconsistent land use designation in the master plan. Thus, the court rejected the assertion that the PR-OS land designation overrides the R-PD7 zoning.

The takings claim

The court then determined whether the City's actions destroyed the economic value of the land to the extent it amounted to a taking, which could still occur under the City's discretionary authority. "Whether the government has inversely condemned private property is a question of law that we review de novo."[3] 180 Land asserted four theories to support its taking claim, including that a per se regulatory taking occurred, thus destroying all of the sites' economic value. Because the court ultimately concluded that a per se regulatory taking occurred, they did not address the three other legal theories.

"The Takings Clause of the Fifth Amendment of the United States Constitution, applicable to the states through the Fourteenth Amendment, prohibits the government from taking private property for public use without just compensation."[4] The Nevada Constitution similarly provides that"[p]rivate property shall not be taken for public use without just compensation having been first made, or secured."[5] Courts now recognize "that state regulation of property may also require just compensation."[6] This occurs when a government regulation is "so onerous that its effect is tantamount to a direct appropriation or ouster."[7]

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[2] NRS 278.349(3)(e).
[3] McCarran Int'l Airport v. Sisolak, 122 Nev. 645, 661, 137 P.3d 1110, 1121 (2006).
[4] Id. at 661-62, 137 P.3d at 1121 (footnote omitted).
[5] Nev. Const. art. 1, § 8(3).
[6] Sisolak, 122 Nev. at 662, 137 P.3d at 1121 (citing Penn. Coal Co. v. Mahon, 260 U.S. 393, 415 (1922)).
[7] Id. at 662, 137 P.3d at 1121-22.

Initial considerations

Property interest

"An individual party must have a property interest in order to support a takings claim."[8] The test for a per se regulatory taking requires "compar[ing] the value that has been taken from the property with the value that remains in the property, one of the critical questions is determining how to define the unit of property whose value is to furnish the denominator of the fraction."[9]

The property at issue

The court also addressed the issue of regarding whether to treat a parcel of land as one parcel or separate tracts. Factors to consider include "the treatment of the land under state and local law; the physical characteristics of the land; and the prospective value of the regulated land."[10] In applying those factors, the court determined the 35-acre parcel should be treated as an individual parcel, particularly due to its treatment as a single parcel throughout the entirety of 180 Land's attempts to obtain the City's approval to develop it, even after 180 Land submitted applications regarding the entire property. Further, the City's approval of the 17-acre parcel, but not the 35-acre parcel, further demonstrates the 35 acres' separate nature. The court determined that the 35-acre parcel was treated as an individual parcel number by the City throughout the entirety of 180 Land's attempts to obtain the City's approval to develop it, even when 180 Land submitted applications regarding the entire golf course parcel.

Ripeness

The court next addressed the City's assertion that 180 Land's takings claim was not ripe, thereby exceeding the district court's jurisdiction by allowing the claim to proceed. Finality is normally achieved by exhausting administrative remedies,[11] but [w]hen exhausting administrative remedies . . . is futile, a matter is deemed ripe for review."[12] The Ninth Circuit has identified that further applications would be futile if they required the landowner to apply "through piecemeal litigation or unfair procedures."[13] "While the City is correct that 180 Land submitted only one application specifically regarding residential development to the 35 acres, the City's denial of that application failed to provide 180 Land with any basis for the denial that would allow it to 'seek variance' or 'satisfy the [City]'s objections to the development as initially proposed."[14]

Per se regulatory taking

A per se regulatory taking occurs when government regulation "completely deprives an owner of all economical benefit use of [the] property."[15] "The Fifth Amendment is violated when land-use regulation 'does not substantially advance legitimate states interests or denies an owner economically viable use of his land.'"[16] "[T]he Fifth Amendment is violated when land-use regulation 'does not substantially

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[8] Id. (quoting Karuk Tribe of Cal. V. Ammon, 209 F.3d 1366, 1374 (Fed. Cir. 2000)).
[9] Murr v. Wisconsin, 582 U.S. 383, 395 (2017).
[10] Concrete Pipe & Prods. Of Cal., Inc. v. Constr. Laborers Pension Tr. For S. Cal., 508 U.S. 602, 644 (1993)).
[11] Sisolak, 122 Nev. at 664, 137 P.3d at 1123.
[12] State ex rel. Dep't of Transp. v. Eighth Jud. Dist. Ct. (ad Am), 131 Nev. 411, 418, 351 P.3d 736, 742 (2015).
[13] Del Monte Dunes at Monterey, Ltd. v. City of Monterey, 920 F.2d 1496 (9th Cir. 1990).
[14] Id. at 1501.
[15] Sisolak, 122 Nev. at 662, 137 P.3d at 1122.
[16] See also Boulder City v. Cinnamon Hills Assocs., 110 Nev. 238, 245-46, 871 P.2d 320, 324-35 (1994)).

advance legitimate state interest or denies an owner economically viable use of his land.'"[17]

"The City's denial of 180 Land's applications and the discussion of those applications at various city council meetings show no meaningful indication that the City would allow any development on the 35 acres."[18] "The City did not provide 180 Land with any viable alternatives for it to reap economic benefit from the 35 acres when denying its applications. In short, the City's actions demonstrate that it would not approve any development on the 35 acres." The court agreed with the district court that a taking occurred because the City's actions deprived 180 Land of all the economic value of the 35 acres at issue in this case.

Amount awarded for just compensation

"The appropriate values for just compensation 'is determined by the property's market value 'by reference to the highest and best use for which the land is available and for which it is plainly adaptable'"[19] The court found that the 180 Land met its burden of proof by providing an expert witness to determine the value of the land's best value at its highest and best use. 180 Land's expert witness conducted a thorough study, concluding that the highest and best use for the land was residential development. The City presented no contrary evidence, did not depose the expert, and made no attempt to rebut the expert report.

Additional awards of damages

The City's final argument challenged the district court's award of property taxes and attorney's fees to 180 Land. The court also considered 180 Land's challenge to the district court's prejudgment interest award.

Property taxes

The district court ordered the City to reimburse 180 Land for its property taxes on the 35 acres from the date the court found the City had dispossessed 180 Land of the property. The court cited caselaw stating that "[a]n owner who is dispossessed from [their] land when it is taken for public use is no longer obligated to pay taxes."[20] Accordingly, the court held that the district court did not err in ordering reimbursement to 180 Land for the taxes it paid.

Attorney fees

The court then addressed the City's challenge of the district court's award of $2,468,751.50 in attorney's fees to 180 Land. The district court concluded an award was proper under (1) the federal Uniform Relocation Assistance and Real Property Acquisition Act, per NRS 342.105; (2) Article 1, Section 22(4) of the Nevada Constitution, and (3) NRS 18.010(2)(b). The court concluded the district court was correct in awarding attorney's fees per NRS 342.105.

Prejudgment interest

180 Land requested a prejudgment interest rate of 23-percent per year for the period between the taking and the entry of the prejudgment interest award, which spanned approximately 4.5 years. 180 Land based this figure on two experts who calculated the rate of return on vacant residential properties in Las Vegas during that time period. The district court rejected 180 Land's request and set the interest rate at prime plus 2 percent.

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[17] Lucas v. S.C. Coastal Council, 505 U.S. 1003, 1016 (1992).
[18] City of Las Vegas v. 180 Land Co., LLC, at *25.
[19] City of Las Vegas v. Bustos, 119 Nev. 360, 362, 75 P.3d 351 352 (2003).
[20] County of Clark v. Alper, 100 Nev. 382, 395, 685 P.2d 943, 949 (1984).

The court reviewed the district court's ruling for an abuse of discretion and found that it did not abuse its discretion in setting the prejudgment interest rate at prime plus 2 percent.

Conclusion

The court held that just compensation is required for an injured party when a governmental agency acts in a way that removes all economic value from privately owned land. Here, the City, by refusing 180 Land any development on their 35-acre parcel, deprived them of all economic value of the land. The district court did not err in finding that a taking occurred. Further, the district court did not err in its just compensation award, nor did it err in the district court's other awards. The court affirmed the orders appealed in their entirety.