

LAND USE CASE LAW UPDATE

James L. Dougherty, Jr.

Attorney at Law, Houston, Texas

Presented

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I. PERMITS & APPROVALS (Ripeness and Exhaustion)



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City of Crowley v. Ray

- 1999: FEMA issues LOMR, revises FIRM
 - Ray buys 4 acres
- 2001: Ray submits preliminary plat for all 4 acres; City approves
 - Ray submits final plat for 1.3 ac.; City approves; Ray builds and sells
- 2006: Ray submits prelim. plat for 2.7 ac.; City approves
- 2007: Ray submits final plat for 2.7 ac.
 - City requests new flood study; Ray's engineer does it
 - City then requires 8' increase in min. floor elevation
 - Ray: 270,000 yds. of dirt, footings, etc. needed for to raise land
 - . . . project "no longer economically feasible"
- 2009: Ray sues City and downstream engineers

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City of Crowley v. Ray

- Ray claims inverse condemnation
- City: Ray must exhaust admin. remedies by seeking variances, appeals, CLOMR's, etc.
 - Ray must ripen by considering fewer units, changes, etc. like garages on ground floors
- Court: --City took "definitive position," and variances would be futile
 - City identified no "remedial statutory scheme"
 - . . . and Court won't "rummage" through City's ordinances
 - Therefore, case was ripe . . . no admin. remedies to exhaust

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Orr v. City of Red Oak

- Orr buys existing building for A/C business
--submits plans for parking lot expansion
- City PWD reviews plans . . . sends Orr 29 comments re:
development ordinance, storm drainage manual, general engineering
--says 5-ft-wide sidewalk, ADA ramps, screening wall needed
- Orr objects, then sues: claims requirements unauthorized, etc.
- City: Orr did not appeal to the ZBA, failed to exhaust admin. remedies
- Orr: Director acted *ultra vires* (but Orr did not sue him)
- Court: PWD comments were “order, requirement, decision, . . .”
“made by an administrative official” . . . so appealable to ZBA
HELD: No jurisdiction . . . suit dismissed.

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