

LAND USE CASE LAW UPDATE

James L. Dougherty, Jr.

Attorney at Law, Houston, Texas

Presented

Land Use Conference

University of Texas School of Law CLE

April 25, 2019

Austin, Texas

1

I. PERMITS & APPROVALS (Ripeness and Exhaustion)



2

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**

3

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**

4

I. PERMITS & APPROVALS (Ripeness and Exhaustion)



5

I. PERMITS & APPROVALS (Ripeness and Exhaustion)

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.

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Land Use Case Law Update

Also available as part of the eCourse

[2019 Land Use eConference](#)

First appeared as part of the conference materials for the
23rd Annual Land Use Conference session

"Land Use Case Law Update"