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Plaintiff Not Required to Submit Multiple Development Applications Before Bringing Takings Claim



Multiple applications for a development project are not required where the first permit denial makes clear that no development of the property would be allowed under any circumstance. [Felkay v. City of Santa Barbara](#), No. B304964 (2nd Dist., March 18, 2021). Felkay purchased an ocean-front lot with the intention of building a residence. The planning commission rejected the application for the residence finding that it violated City Policy 8.2 which prohibits any development on the bluff face regardless of size. On appeal to the City Council, the City found that Felkay's takings claim was not ripe because Felkay had not investigated other potential uses of the land, including development of the area above the bluff face, agricultural or educational uses, or merging the property with the adjoining lot he owned. Felkay filed a consolidated petition for writ of administrative mandamus and complaint for inverse condemnation.



The court

of appeal explained that, in general, before an inverse condemnation action is ripe, a landowner must have made at least one development proposal that has been rejected and pursued at least one meaningful application for a zoning variance or similar exception, which has also been finally denied. Once the permissible uses of the property are known to a reasonable degree of certainty, a takings claim is likely to have ripened. However, in this case, the court found that Felkay was not required to submit a second development proposal because the City "made plain" that it would not allow *any* development below the 127-foot elevation, and had determined that the area above that elevation was "not buildable." Therefore, submission of a second application would have been futile because the agency's decision was certain to be adverse. For these reasons, the court found that Felkay's claim was ripe and that all administrative remedies had been exhausted. Additionally, the court rejected the City's argument that Felkay's failure, as part of his mandamus claim, to challenge the City's decision declining to waive the requirements of Policy 8.2 estopped him from seeking damages for inverse condemnation. The City had stipulated that limited issues would be heard under the mandamus claim and that the inverse condemnation claims would be reserved for trial — the Policy 8.2 waiver was not among the claims to be heard as part of the mandamus proceeding. The City forfeited the issue by failing to object to the apportionment of issues between the writ proceedings and inverse condemnation trial. Therefore, Felkay had also effectively exhausted his judicial remedies.

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