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Chisholm v. Idaho Dep't of Water Res., 125 P.3d 515 (Idaho 2005)

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just compensation. The court did not agree, finding that although an ALJ lacks the authority to hear the claim, parties must plead constitutional claims in the administrative court. Because the City failed to raise these issues, it waived its ability to raise them on appeal. Regarding the wrongful taking claim, the court noted that the City did not present any factual or legal arguments as to why the denial of its application constituted an unlawful taking without just compensation. The court affirmed the ALJ's grant of summary determination in favor of the EPD.

William S. Hoebel, III

IDAHO

Chisholm v. Idaho Dep't of Water Res., 125 P.3d 515 (Idaho 2005)

(holding that owners of property near a proposed dairy failed to prove that Department of Water Resources hearing officer improperly considered the "local public interest" in granting water rights transfer to dairy).

In order to expand its operations, K&W Dairy ("K&W") filed an application with the Idaho Department of Water Resources ("IDWR") for a transfer of water rights to meet the needs of a proposed new dairy, and to flush waste from its parlor and alleys. Over property owners Bill Chisholm and Lee Halper's ("property owners") protests, an IDWR hearing officer held a hearing taking evidence on a range of issues including odor control measures, and issued a preliminary order approving K&W's application. The property owners sought review of the IDWR decision, arguing that because of odors from the proposed dairy, the water rights transfer did not comport with the local public interest standard codified in the controlling Iowa statute. On appeal to the Supreme Court of Idaho, the property owners asserted that K&W's failure to present any evidence that the dairy would not add to the existing odor problem constituted a violation of the public interest standard. IDWR and K&W maintained that the findings of fact were supported by substantial and competent evidence and should be affirmed.

The controlling Idaho statute required the IDWR director to examine all the evidence and to approve the change in whole, in part, or conditionally, if the change was consistent with the conservation of water resources in the state and was in the local public interest. The Idaho Code defined the local public interest as "the affairs of the people in the area directly affected by the proposed use." The court determined that by adopting the general phrase "local public interest," the legislature intended to include any locally important factor impacted by the proposed appropriations.

The court found that the hearing officer took extensive evidence regarding K&W's proposed odor control measures and held two hearings exclusively on the odor issue before concluding that the proposed odor control measures met the local public interest standard when balanced with other factors. The hearing officer recognized that this determination was subjective and considered the effect of the dairy on the economy of the area, recreation, fish and wildlife resources, and compliance with applicable air, water and hazardous substance standards, and complied with planning and zoning ordinances of local and state jurisdictions in addition to odor. The court also stated that when parties present conflicting evidence, the agency's findings are binding on the court if they are supported by substantial and competent evidence, regardless of whether the court might have reached a different conclusion.

The court also found that the property owners misunderstood the "contours of the local public interest standard." The court found that Halper's interpretation of the narrow issue of odor and its related negative effects, as the local public interest was too narrow a definition, stating that, "the local public interest has many elements and the determination of which local public interests are impacted and balancing those impacts is left to the sound discretion of IDWR." Similarly, the court found Chisholm's argument that there was no evidence in the record that the dairy will not add to the existing problem, to be too strict a standard. The court stated that, "there must only be evidence that the odors emitted will be reasonable and at such a level as to satisfy the local public interest when balanced with other factors." The court found that the hearing officer did consider other factors, and rejected the property owners' request for the court to reweigh the evidence. The court concluded that its standard of review was limited to asking whether the hearing officer's findings and conclusions were supported by substantial and competent evidence. The court affirmed the IDWR's Final Order, finding that it was supported by substantial and competent evidence, and that the hearing officer properly considered the local public interest.

Keely Downs

LOUISIANA

Schoeffler v. Drake Hunting Club, 919 So.2d 822 (La. Ct. App. 2006) (holding that a plaintiff's petition must be specific enough to establish a cause of action and a right of action against riparian landowners or the state, before the plaintiff may bring suit requesting the fix of boundaries at the high water mark along privately owned lands).