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Cummins v. Travis County Water Control and Improvement Dist., 175 S.W.3d 34 (Tex. App. 2005)

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Thus, the court held that no taking had occurred and Palazollo was not entitled to compensation because (1) his proposed development would have constituted a nuisance, (2) the regulation was not directed at Palazollo in particular, (3) the economic impact of the regulations were actually beneficial to Palazollo, and (4) Palazollo failed to satisfy the third prong of the Penn Central test because his investment-backed expectations were not reasonable.

Michelle Young

TEXAS

Cummins v. Travis County Water Control and Improvement Dist., 175 S.W.3d 34 (Tex. App. 2005) (holding private ownership of land adjacent to a public reservoir did not include vested riparian rights, was subject to state regulation under the public trust, and such regulations did not constitute a compensable exercise of condemnation power).

The Cumminses own land adjacent to and overlooking Lake Travis. The Travis County Water Control and Improvement District (“District”) controls the water and shoreline of Lake Travis. After the District denied the Cumminses’ application to build a boat dock on the lake, the Cumminses brought this action for declaratory judgment to use and enjoy their land as waterfront property. They challenged the validity of District’s regulations protecting areas around a water intake used to supply public drinking water from Lake Travis. The district court dismissed the claims on summary judgment and found the Cumminses lacked riparian rights to the shoreline of Lake Travis. Consequently, they were not entitled to construct a boat dock on state-owned land held for the public trust under District regulations. The Cumminses appealed to the Texas State Court of Appeals.

On appeal, the court delineated the test establishing a landowner’s riparian rights to a body of water adjacent to his land. The court stated a waterfront property owner must: (1) trace his title to a sovereign grant prior to 1895 or obtain a certificate of adjudication from the state of Texas, and (2) establish that the land, as granted by deed, borders a natural lake with a normal flow of water. Because the Cumminses did not adjudicate their right, they did not have riparian rights enabling construction of a boat dock. Furthermore, they could not trace their title prior to 1895, nor was the land adjacent to a natural body of water because Lake Travis, a reservoir, constituted an artificial waterbody.

Furthermore, the court justified the District’s denial of the application because Texas state law entitled the District to regulate land submerged under water to protect public health and safety under the public trust doctrine. Therefore, the owners of land abutting a waterway do not have title to submerged land, only a right of access based on

prior use. Because the Cumminses' prior use of the land did not include docking structures, the court held construction of a private boat dock was not a reasonable use of public trust land as regulated by the District.

The court also denied the Cumminses' claim of an easement entitling use of their land as waterfront property. The court stated an easement holder is only entitled to do what is reasonably necessary to enjoy expressly granted rights. The Cumminses' deed did not expressly provide use of the land as a waterfront property and therefore, the deed did not establish an express easement. In the alternative, the Cumminses claimed an implied easement. The court dismissed this claim, stating apparent, continuous, and necessary use of the land for the desired purpose to predicate existence of an implied easement. Therefore, because the Cumminses had not used their land for boat mooring, no implied easement existed.

Regarding the Cumminses' challenge of the validity of the District's regulations restricting recreation and other activities near the drinking water intake, the court determined the legislature gave the District express authority to enact regulations to protect the health and safety of citizens and natural resources. Therefore, because the District did not enforce the restricted intake barge zones differently against the Cumminses than against any other Lake Travis users, the public interest trumped the private user's right.

Finally, the Cumminses claimed the District's regulation prohibiting all activity within a restricted area surrounding the drinking water intake was inverse condemnation and therefore a compensable taking. They contended that, because the regulation prohibited all activity, it prevented making any productive, economic use of the property and interfered with their investment-backed expectations. The court disagreed and determined a compensable taking had not occurred because the District's restriction of permissible uses did not decrease the property's value, nor substantially interfere with a particular activity nor use and enjoyment of the land. Furthermore, the District's requirement for shoreline warning signs was not a physical invasion and did not constitute a per se taking. The appellate court affirmed the district court's summary judgment on all claims.

Amy Mockenhaupt

Malcomson Rd. Util. Dist. v. Newsom, 171 S.W.3d 257 (Tex. App. 2005) (holding that (1) Malcomson Road Utility District conclusively proved that proposed retention pond and drainage ditch expansion on landowner's property were for public uses; and (2) genuine issue of material fact as to whether Malcomson Road Utility District acted arbitrarily and capriciously by abdicating its discretion to determine whether and how much property to condemn precluded summary