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Grimes v. Texas, No. 03-04-00154, 2005 Tex. App. LEXIS 6963 (Tex. App. Aug. 26, 2005)

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HCFCFCD's approval of the Lakewood Grove subdivision. The court found that the important factor in the public-use determination was the character of the right inuring to the public, not the extent to which the public exercised its right. Thus, it was immaterial if the use was limited to citizens of a local neighborhood, so long as it was open to all who choose to avail themselves of it. The court found that the District's evidence that both the ditch expansion and the pond construction would serve the public purpose of draining excess water from the area sufficed for a showing of public use.

Courts do not review a condemnor's exercise of its discretion to determine public necessity without a showing that the condemnor acted fraudulently, in bad faith, or arbitrarily and capriciously. Therefore, the second issue of disputed fact reviewed by the court was whether the District acted fraudulently or arbitrarily in concluding that public necessity justified condemning the property. Newsom argued that the District did not use a reasonable basis for their determination of necessity, but rather abdicated its responsibilities to the developers. The court found that the condemnation agreements signed by the District and the private developers, requiring the developers to front all costs of the condemnation and providing that the District would not have to reimburse the developers if the condemnation proceedings were unsuccessful for any reason, raised an inference that the District had abdicated its discretion to determine whether the condemnation was backed by public necessity. Thus, the court found that a genuine issue of material fact as to whether the utility district acted arbitrarily and capriciously precluded summary judgment.

Keely Downs

Grimes v. Texas, No. 03-04-00154, 2005 Tex. App. LEXIS 6963 (Tex. App. Aug. 26, 2005) (holding that the order from the Texas Railroad Commission granting a permit to Endeavor Energy Resources to operate a saltwater disposal well was supported by substantial evidence, in the public interest, and not arbitrary or capricious).

The Texas Railroad Commission ("Commission") granted a permit to Endeavor Energy Resources ("Endeavor") to operate a saltwater disposal well located on one-third of a surface estate, which Endeavor leased from Howard Hill Grimes ("Grimes"). Grimes, the owner of two-thirds of the surface estate and an undivided interest in the mineral estate of the tract that he leased to Endeavor, opposed Endeavor's permit application because he feared the saltwater operations on the adjacent land would damage his groundwater and surface estate.

After the Commission granted a permit to Endeavor to operate a saltwater disposal well, Grimes brought suit appealing the Commission's order issuing the permit. The District Court of Travis County, 53rd Judicial District, affirmed the Commission's order granting the

permit to Endeavor to operate a saltwater disposal well. Grimes appealed the district court's decision to the Texas Court of Appeals.

Grimes asserted that the Commission's decision to grant the permit to operate the saltwater disposal well was arbitrary and capricious and, therefore, the court must overturn it. He claimed that there was not substantial evidence to support the Commission's decision because it failed to take into account the public interest requirement of the permitting process under the water code.

The crux of the substantial evidence analysis is whether the agency's factual findings are reasonable in light of the evidence from which they were purportedly inferred. In this case, the court had to consider whether the Commission's factual findings supported its decision in light of the public interest requirement process under the water code.

The court determined there is no controlling precedent interpreting what considerations the Commission may weigh when deciding whether granting a disposal well operating permit is in the public interest. However, the Commission's purpose includes preventing waste, conserving natural resources, and preventing pollution. The Commission considered these issues in reaching its decision and determined that the disposal operations, if conducted under certain conditions specified in the permit, would not endanger certain natural resource or cause pollution of the fresh water stratum.

The court found the Commission's determination that the well would help conserve some natural resources and prevent pollution of the stratum satisfied the Commission's public interest requirement under the water code. Therefore, the court affirmed the trial court's holding that the Commission's decision was reasonable in light of the evidence and not arbitrary or capricious.

Robert Stevens

City of Shoreacres v. Tex. Comm'n on Env'tl. Quality, 166 S.W.3d 825 (Tex. App. 2005) (holding city of Shoreacres' claims were moot because the Port of Houston Authority was not required to obtain state authorization from the Texas Commission on Environmental Quality independent of the federal dredge-and-fill permit it received from the Army Corps of Engineers).

The Port of Houston Authority ("Port") sought to obtain a federal Clean Water Act dredge-and-fill permit ("404 permit") from the Army Corps of Engineers ("Corps") and a section 401 certification from the Texas Commission on Environmental Quality ("Commission") in relation to the construction of a cargo and cruise ship terminal complex called the Bayport Project. 401 certification requires a project to meet state water quality standards and be consistent with state coastal management. On December 16, 2005, the Commission issued the 401 cer-