

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Karl O. Hoehne and Phyllis Hoehne v. County of San Benito; Henry Solorio; Frank Sabbatini; Enos Silva; and Edward Lydon

870 F.2d 529 (9th Cir. 1989) · No. No. 87-2825 · Decided March 15, 1989

SUMMARY

The Ninth Circuit held that the Hoehnes' federal constitutional claims concerning the denial of their subdivision application were ripe because the County had reached a final decision. The court concluded that further applications for a variance, conditional use permit, rezoning, or General Plan amendment would have been futile, and it reversed the district court's dismissal for lack of ripeness.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
WRITING FOR THE COURT	Aldisert, Circuit Judge; Aldisert; Brunetti; Leavy
JURISDICTION	Federal
DECIDED	March 15, 1989
DOCKET	No. 87-2825
DISPOSITION	reversed
PROCEDURAL POSTURE	Landowners appealed a federal district court order granting summary judgment and dismissing their constitutional and inverse-condemnation claims for lack of ripeness.
STANDARD OF REVIEW	The court reviewed the district court's summary-judgment order de novo. Ripeness, as a question of law, was also reviewed de novo.
PRECEDENTIAL VALUE	Published precedential opinion of the United States Court of Appeals for the Ninth Circuit
PARTIES	Karl O. Hoehne, Phyllis Hoehne v. County of San Benito, Henry Solorio, Frank Sabbatini, Enos Silva, Edward Lydon

TOPICS

- takings clause
- zoning
- civil procedure
- due process
- equal protection

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Hoehnes' federal constitutional and inverse-condemnation claims were ripe despite the absence of a further variance, conditional-use, rezoning, or General Plan amendment application.
2. Whether the Hoehnes were required to pursue state inverse-condemnation compensation procedures before bringing their federal claims.
3. Whether the Hoehnes were required to present their constitutional challenges to the County Board of Supervisors during the subdivision proceedings.
4. Whether the County's actions constituted a final decision regarding the permissible development of the property.

HOLDINGS

1. A land-use constitutional or takings claim is ripe when the government has reached a final, definitive position regarding how the regulations will apply to the particular property; further applications are not required when pursuing them would be futile. Under the undisputed facts, the County had reached such a final decision.
2. The Hoehnes were not required to pursue state inverse-condemnation compensation procedures before filing their federal action because, at the time of the alleged taking, California did not provide a compensation remedy for regulatory takings.
3. The Hoehnes' constitutional claims were as-applied challenges arising from the County's decision-making process, not facial challenges that had to be presented to the Board during the subdivision hearings.

KEY QUOTATIONS

“A claim that the application of government regulations effects a taking of a property interest is not ripe until the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue.” (¶ 14)

“We conclude that the Hoehnes have “done everything possible to obtain acceptance of [their] development proposal.”” (¶ 33)

“The Hoehnes got the final message: You can't subdivide at all; you may only erect one single-family dwelling on your sixty-acre tract!” (¶ 37)

FACTUAL BACKGROUND

In 1984, the Hoehnes purchased a sixty-acre parcel in San Benito County zoned for single-family residences on lots of at least five acres. They submitted a proposal to subdivide the property into four lots, but the Planning Commission denied the application based on physical unsuitability, potential environmental damage, and related land-use concerns. The Board of Supervisors affirmed and added inadequate drought-condition water as a reason for denial. The County then rezoned the parcel as Agricultural Rangeland with a forty-acre minimum lot size,

effectively limiting the property to one single-family residence and making further applications for the proposed subdivision futile.

PROCEDURAL HISTORY

The Hoehnes applied to subdivide their sixty-acre parcel into four lots. The Planning Commission denied the application, and the Board of Supervisors affirmed the denial and added a water-inadequacy rationale. The County subsequently amended its General Plan and zoning maps to impose a forty-acre minimum lot size on the parcel. The district court granted the County's motion for summary judgment, concluding that the claims were not ripe because the Board had not issued a final decision and the Hoehnes had not pursued state compensation procedures; it later denied reconsideration and dismissed the claims without reaching the merits.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The judgment dismissing the complaint for lack of ripeness was reversed. The opinion does not state additional specific remand instructions.

CASES CITED

- *McMillan v. Goleta Water District*, 792 F.2d 1453 (9th Cir. 1986), cert. denied, 480 U.S. 906 (1987)
- *Herrington v. Sonoma County*, 857 F.2d 567 (9th Cir. 1988)
- *Williamson County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172 (1985)
- *Hodel v. Virginia Surface Mining & Reclamation Association, Inc.*, 452 U.S. 264 (1981)
- *Agins v. Tiburon*, 447 U.S. 255 (1980)
- *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978)
- *Floyd v. Lykes Bros. S.S. Co.*, 844 F.2d 1044 (3d Cir. 1988)
- *United States v. Criden*, 633 F.2d 346 (3d Cir. 1980), cert. denied, 449 U.S. 1113 (1981)
- *MacDonald, Sommer & Frates v. Yolo County*, 477 U.S. 340 (1986)
- *Kinzli v. City of Santa Cruz*, 818 F.2d 1449 (9th Cir. 1987), as amended, 830 F.2d 968 (9th Cir. 1987), cert. denied, 484 U.S. 1058 (1988)
- *Shelter Creek Development Corp. v. City of Oxnard*, 838 F.2d 375 (9th Cir. 1988), cert. denied, 488 U.S. 822 (1988)
- *Norco Construction, Inc. v. King County*, 801 F.2d 1143 (9th Cir. 1986)
- *Lake Nacimiento Ranch v. San Luis Obispo County*, 841 F.2d 872 (9th Cir. 1987), cert. denied, 488 U.S. 919 (1988)
- *Martino v. Santa Clara Valley Water District*, 703 F.2d 1141 (9th Cir. 1983), cert. denied, 464 U.S. 847 (1983)
- *Agins v. City of Tiburon*, 24 Cal. 3d 266, 598 P.2d 25, 157 Cal. Rptr. 372 (1979) (in banc), aff'd on other grounds, 447 U.S. 255 (1980)

- First English Evangelical Lutheran Church v. County of Los Angeles, 482 U.S. 304 (1987)

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