

Amethyst Land Co., Inc. v. Terhune, 304 P.3d 434 (N.M. App. 2013), 2013-NMCA-059, cert. granted, 302 P.3d 1162 (N.M. 2013)

BACKGROUND

Amethyst Land Co., Inc. (Amethyst) owns a 22-acre parcel of land in Santa Fe County, adjacent to a 5-acre parcel of land owned by the Terhunes. For several years, a 40-foot, non-exclusive roadway on the property now owned by the Terhunes provided access to the land now owned by Amethyst. When the Terhunes purchased their property in 2001 from Amethyst's predecessor in interest, the MacDuffees, each signed an Extinguishment Agreement (Agreement) to terminate the easement. When the MacDuffees sold the property to Desert Sunrise, however, the Agreement had not yet been recorded with the county clerk's office. Desert Sunrise, unaware of the Agreement, later sold the property to Amethyst.

In 2006, Amethyst filed suit against the Terhunes in district court, claiming the easement had not been terminated by the Agreement, and that a second easement on the Terhunes' land also benefitted its property.

HOLDING

The NM Court of Appeals held that the Agreement was ineffective against Amethyst because Amethyst's predecessor in interest (Desert Sunrise) was a bona fide purchaser without notice of the Agreement, which was recorded after Desert Sunrise had already purchased the property from the MacDuffees. Amethyst thus acquired title to the property free of the Agreement, and the property continued to be benefitted by the 40-foot easement.

The Court further held that a reference to the Agreement in "corrected deeds" drafted and recorded by Amethyst's attorney did not establish intent of the parties to revive the Agreement and terminate the 40-foot easement.

Finally, the Court held that the second easement on the Terhunes' land did not benefit Amethyst's property because it was not listed in the description of the easement or elsewhere in the written instrument.

Bd. of County Com'rs of County of Bernalillo v. Benavidez, 292 P.3d 482 (N.M. App. 2012), 2013-NMCA-015, cert. denied, 299 P.3d 422 (N.M. 2012)

BACKGROUND

Bernalillo County filed a criminal complaint in Metro Court against Defendant Benavidez for running cattle on John Dantis Road SW and Metropolitan Detention Center (MDC) property, contrary to a County ordinance making it crime for person to allow or permit any animal to run at large outside a municipality.

Benavidez, whose family had leased land surrounding MDC, argued the ordinance conflicted with state law reflecting a free range (or “fence out”) approach to livestock management. The County argued it had authority to enact the ordinance pursuant to its general police power. The County further argued the ordinance was not in conflict with state law, and if it was, the parts applicable to Benavidez were severable and enforceable.

HOLDING

The Court held that the County lacked the authority to enact the ordinance because it was directly in conflict with free-range statutes. The free-range statutes the Court examined provided that owners of livestock shall not be liable for injury or damages caused by livestock in unincorporated areas outside a municipality. The statutes further required owners of land or crops that could be injured by trespassing animals to fence in their land. The Court noted that while the County had the authority to prohibit the running at large of livestock within the limits of any conservancy or irrigation district, or military reservation within the County limits, the County stipulated that MDC and John Dantis Road were not within any conservancy district or military reservation.

BACKGROUND

Defendant purchased a lot in a gated residential subdivision in 2006 and constructed a home on the lot. All lots purchased in the subdivision were subject to the Declaration of Covenants, Conditions, and Restrictions recorded in 2004 (CCRs). In addition to the CCRs, supplemental rules and regulations were promulgated in 2007. The subdivision's Home Owner's Association (HOA) was then formed and charged with enforcing the CCRs and the subdivision's rules and regulations. Defendant began renting his home on a short-term basis in June 2010. The HOA subsequently brought actions against homeowner, seeking to enjoin him from renting his home on a short-term basis.

HOLDING

The Court of Appeals had several holdings in this case. First, the Court held that amendment of the HOA's complaint to include alleged violations of restrictive covenants that were not pleaded would have been prejudicial to Defendant, and thus was properly denied by the district court. The Court found that the HOA's complaint and motion for a temporary restraining order specified sections of the restrictive covenants that Defendant allegedly violated, but that HOA did not notify Defendant until immediately before the TRO motion hearing that it intended to assert additional claims outside of the sections specified.

Second, the Court held that the "residential purpose" restriction in the CCRs did not bar Defendant's short-term rentals. The Court found the CCRs did not explicitly prohibit short-term rentals or draw a distinction between long-term rentals. Further, the Court found that Defendants' receipt of economic benefit from the rentals did not by itself constitute impermissible commercial activity.

Third, the Court held that the "single family" limitation in the CCRs did not bar Defendant's short-term rentals because Defendant rented the entire house, rather than individual rooms, and Defendant maintained that he rented the house to families.

Fourth, as a matter of first impression, the Court held that the HOA had no authority—absent a specific authorization in the HOA's declaration—under a general grant of authority to promulgate rules restricting rental activity in the subdivision. The Court, citing the Restatement (Third) of Property, found that short-term rentals did not constitute a nuisance or unreasonable interference with the subdivision's common property or neighboring properties.

Finally, the Court held that a unanimous approval of HOA members was required to amend the restrictive covenants during the initial 25-year period. Thus, the supplemental declaration by the HOA, approved by a two-thirds vote, which amended the covenants to prohibit rentals of less than 90 days, was void and unenforceable.

BACKGROUND

In 1983, the PRC issued Moongate Water Company, as a public utility, a certificate of public convenience and necessity (CCN) authorizing Moongate to provide water services in an area just outside of the Las Cruces city limits. This area was labeled by the Court as the “certificated area.” Later, Las Cruces annexed three undeveloped tracts of land that were within the certificated area. Las Cruces, a home-rule municipality, subdivided the land and committed itself to providing municipal water service to the area.

Moongate sued Las Cruces, arguing that the CCN was a valuable property right that gave them the exclusive right to serve the certificated area, and that the city’s invasion into the certificated area damaged Moongate’s exclusive right, thereby effectuating a taking that required just compensation.

The two issues before the NMSC were (1) whether Moongate had an exclusive right to provide water to the certificated area; and (2) whether there was a taking when Las Cruces committed to providing water service to the certificated area.

HOLDING

On the first issue, the court held that Moongate’s CCN did not prevent Las Cruces from competing with Moongate in its certificated area. Because Las Cruces, as a home rule municipality, had not elected to become subject to the Public Utilities Act (PUA) and did not have a population of more than 200,000, the court found that the city was not subject to the PRC’s authority. Thus, the Court concluded that the PRC’s authority extended only as far as its ability to regulate, and because it had no ability to regulate Las Cruces, a CCN issued by the PRC had no limiting effect on the city.

On the second issue, the court held there was no taking by Las Cruces because Moongate had no tangible assets on the certificated area. The court stated that in the absence of proof of tangible loss, such as a physical taking or stranded costs, a public utility is not entitled to just compensation when a municipality lawfully exercises its right to serve in the public utility’s certificated area. The court noted, however, that although Moongate’s CCN did not prevent Las Cruces from providing service in the certificated area, it was still possible that Las Cruces had effectuated a taking in doing so. In order for a taking to have occurred in this instance, Moongate needed to prove that it had established infrastructure and was already serving customers in the area interfered with by the municipality. Moongate, however, merely argued that the property requiring just compensation was their exclusive right to serve under the CCN.

BACKGROUND

This case presented an issue of first impression as to whether conservation of property can constitute a charitable use, thereby exempting the land from property taxes under Article VIII, Section 3 of the New Mexico Constitution.

Plaintiff, Pecos River Open Spaces, Inc., is a New Mexico non-profit corporation with the sole purpose of acquiring and holding vacant, undeveloped, and unimproved land located near Pecos River Canyon in San Miguel County. Plaintiff's objective is to keep such land in its natural state to preserve the environment and ecology of the Pecos River Canyon for the benefit of the public. In 2008, Plaintiff purchased a vacant and undeveloped 60-acre parcel of land in Pecos River Canyon with the intention of preserving it in its natural state, enforcing and adhering to the terms of the conservation easement, and reducing erosion and repairing damage to the property.

After receiving a tax assessment on the property, Plaintiff filed a protest with the County Assessor, claiming the property was tax-exempt under Article VIII, Section 3 because it was being used solely for conservation, which Plaintiff argued was a charitable purpose. The Assessor denied the claim, and Plaintiff appealed to the County Valuation Protests Board. The Board also denied the claim, ruling that conservation was not a charitable purpose for property. The district court reversed the Board's denial, and the County appealed.

HOLDING

The Court of Appeals held that conservation of land is a charitable use under Article VIII, Section 3 if conservation of the land at issue provides a substantial benefit to the public. The Court noted that under the New Mexico Land Conservation Incentives Act, the property was determined to be "an important habitat area or containing significant natural, open space or historic resources." Thus, the Court concluded that conservation of the property "contributes to the environmental preservation and beautification of San Miguel County and the State of New Mexico," which substantially benefits the public.

BACKGROUND

Plaintiff owned property with a building located next to the Gallup airport. In 1998, a retention pond, addressing flooding and drainage concerns on airport property, was dug next to Plaintiff's property. The pond had neither an impermeable liner nor an automatic pumping system. Since its construction, the pond often filled with water and overflowed following rainstorms. No efforts had ever been made to pump or drain the pond. Thus, with water remaining in the pond for long periods of time, it began seeping into the ground.

In the following years, Plaintiff's building started showing signs of damage to the foundation, walls, roof, and floors. On May 12, 2008, Plaintiff filed a nuisance and negligence action against the City of Gallup (owner of the airport), the airport operator, the designer of the pond, and the unknown contractor who constructed the pond. In 2010, Defendants argued that because Plaintiffs had been aware the pond was damaging their property and had a potential claim against Defendants as early as 1998, but no later than 2003, the applicable statutes of limitation had expired.

In response, Plaintiff argued that evidence established the existence of disputed material facts regarding whether she had notice of the damage and the potential claim against Defendants before the statutes of limitations ran. Plaintiff also argued that summary judgment was inappropriate because her property suffered successive injuries from the pond's seepage, for which new statutes of limitations accrued. The district court granted Defendants motion for summary judgment, and Plaintiff appealed.

HOLDING

The Court of Appeals held that disputed material facts existed as to when Plaintiff was put on notice that seepage of water from the retention pond was damaging her building because of conflicting testimony regarding the presence or absence of visible signs of building damage. Thus, when the four-year statute of limitations applicable to claims for damages to property began to run under the discovery rule, it precluded Defendants' summary judgment on statute of limitations grounds.

The Court further held that Plaintiff was placed on notice that seepage from the pond was damaging her building, for purposes of determining when two-year statute of limitations under the Tort Claims Act for her nuisance and negligence claims against Gallup began to run. The Court found that a building tenant informed the building's co-owner that he had noticed a 20-foot crack in the foundation, and that Plaintiff's claim that she did not engage in communications regarding the crack did not absolve her of her duty to be reasonably diligent in discovering the damage and cause. However, the Court held that disputed material facts existed regarding whether the pond and its seepage were permanent. Accordingly, there were disputed material facts regarding whether successive injuries occurred to Plaintiff's building as a result of the seepage, such that Plaintiff had successive nuisance and negligence claims against Gallup, only some of which were time-barred by the two-year statute of limitations in the Tort Claims Act.

Zuni Indian Tribe v. McKinley County Bd. of County Com'rs, 300 P.3d 133 (N.M. App. 2013), 2013-NMCA-041.

BACKGROUND

McKinley County approved a preliminary plat application submitted by Tampico Springs Ranch 3000, LLC (Tampico) for a proposed 490-home phased subdivision development. The Zuni Tribe (the Tribe) appealed the County's approval of the preliminary plat application to the district court. After Tampico intervened, the Tribe filed a motion to stay enforcement of the County's decision approving the preliminary plat application to prevent Tampico from proceeding further in the subdivision development process during the pendency of the Tribe's appeal.

Tampico then filed a motion to dismiss the Tribe's appeal, arguing that: (1) the district court lacked jurisdiction because the County's decision on the preliminary plat application was not a final, appealable order; and (2) the Tribe's appeal from the preliminary plat approval was rendered moot by the County's approval of Tampico's final plat application during the pendency of the appeal. The district court granted Tampico's motion, which the Tribe appealed.

HOLDING

The Court of Appeals held that the County's preliminary plat approval was a final, appealable decision, because review of the application followed the comprehensive requirements prescribed in the New Mexico Subdivision Act (NMSA). Those requirements include review of water availability, waste disposal, and access documentation, consideration of written opinions from interested parties and state entities, and public hearings on the application's approval. The Court further found that prior amendments to the NMSA adding and removing the "preliminary" and "final" subdivision application language merely served to broaden the scope of the County's decisions subject to appeal, and did not eliminate right to appeal preliminary plat application decisions.

Finally, the Court held that the Tribe's appeal from the County's preliminary plat approval was not rendered moot by the County's approval of the subdivision developer's final plat. The Court reasoned that the County's approval of the preliminary plat application was a "final decision," and the Tribe would be entitled to actual relief if its claims were meritorious.

BACKGROUND

Plaintiff wanted to install manufactured homes on two properties he owned in La Barge, Wyoming. The town council initially granted him a building permit for one property but revoked it two weeks later. The town then enacted an ordinance banning the installation of any manufactured home older than 10 years at the time of the permit application (the 10-Year Rule). Both of Plaintiff's manufactured homes were over 10 years old. The town council denied Plaintiff's later applications for a building permit, a variance, and a conditional-use permit to allow him to install the homes despite the 10-Year Rule.

Plaintiff brought action against La Barge, arguing the revocation of his building permit effected a taking and violated his procedural due process. Plaintiff further argued the 10-Year Rule was preempted by the federal law, and that the town had intentionally interfered with his economic relations. The United States District Court for the District of Wyoming entered summary judgment in favor of La Barge, and Plaintiff appealed.

HOLDING

The 10th Circuit held that Plaintiff's taking claim was not ripe for review, even though the town had reached a final decision on revoking his building permit. The Court found that the state allowed aggrieved property owners to file inverse condemnation actions in state court, and Plaintiff had not filed such an action against La Barge.

The Court did find the procedural due process claim ripe for review. The due-process claim related to the denial of Plaintiff's opportunity to argue against revocation of his building permit. The Court found the claim did not depend on whether the revocation was a taking. Further, if the town denied Plaintiff his right to notice and a hearing, he would be entitled to relief even if it were certain that compliance with constitutionally required procedures would not have changed the town's decision. The Court, however, ultimately held that revocation of the building permit did not violate Plaintiff's procedural due process rights. The Court found Plaintiff made no expenditures on or improvements to the property, and entered into no contracts related to the property during the two-week interval between the approval and revocation of the building permit.

The Court further held the 10-year rule was not preempted by the National Manufactured Housing Construction and Safety Standards Act, and that La Barge had the authority to enact it under state law.

BACKGROUND

Koontz wanted to develop his wetlands property and sought a permit to do so from St. John's River Water Management (District). In order to build on wetlands under Florida law, a permit applicant must offset any resulting environmental damage caused by the development. Accordingly, Koontz offered to deed a conservation easement on three-quarters of his property to the District. However, the District rejected the offer and would only approve the permit under one of two conditions: (1) If Koontz reduced the size of his development and also deeded to the District a conservation easement on the larger remainder of his property; or (2) If Koontz hired contractors to make improvements to District-owned wetlands located several miles away.

Koontz brought action against the District in state court. Koontz argued the District's demands were excessive in light of the environmental impact his proposal would have caused, and thus constituted a taking without just compensation. Under state law, unreasonable agency action in exercising the state's police power constitutes a taking without just compensation.

HOLDING

In a 5-4 decision, the U.S. Supreme Court held the District could not evade the limitations of the unconstitutional conditions doctrine by conditioning the approval of a land use permit on Koontz's funding of offsite mitigation projects on public lands. The unconstitutional conditions doctrine forbids burdening the Constitution's enumerated rights by coercively withholding benefits from those who exercise them. The Court found a contrary rule it would enable the government to evade the limitations of *Nollan* and *Dolan* simply by phrasing its demands for property as conditions precedent to permit approval. The Court, however, found that unconstitutional conditions cases have long refused to attach significance to the distinction between conditions precedent and conditions subsequent.

The Court further held that "monetary exactions" as a condition of a land use permit must satisfy the requirements of *Nollan* and *Dolan*—specifically, that the government's mitigation demand have an essential nexus and rough proportionality to the impacts of a proposed development. The Court found that because the government only has to provide a permit applicant with one alternative that satisfies the nexus and rough proportionality standards, a permitting authority seeking to exact an easement could simply give the owner a choice of either surrendering an easement or making a payment equal to the easement's value. Such "in lieu of" fees are common and serve as the functional equivalent of other types of land use exactions.