

Constitutional law – ‘inverse’ condemnation

Trial court erred in dismissing dragstrip owner's claim that county ordinance reducing days and hours that dragstrip could operate resulted in unconstitutional taking of its property without compensation.

The Illinois Appellate Court, 2d District, has reversed a ruling by Ogle County Circuit Judge Richard E. DeMoss.

Since 1964, plaintiff Byron Dragway Inc., and its predecessors in interest, have operated the only commercial racing dragstrip in Ogle County. The plaintiff obtained annual licenses and permits to conduct its business from defendant Ogle County. The dragstrip operations were governed by section 4-1D-4(B) of the Ogle County Code.

Before Nov. 18, 1997, the ordinance provided that vehicle racing businesses could open at 3 p.m. Friday and close at 12:15 a.m. Saturday; open at 8 a.m. Saturday and close at 12:15 a.m. Sunday; open from 8 a.m. to 6 p.m. on Sunday; and open from 8 a.m. to 9 p.m. on Memorial Day and Labor Day.

The plaintiff alleged that it spent hundreds of thousands of dollars to construct and improve the raceway to attract competitors and spectators to annual events between April and October.

On Nov. 18, 1997, the county amended the ordinance to reduce the permitted operating hours for the dragstrip. The amendment eliminated racing on Fridays and established hours of 8:30 a.m. to 6 p.m. on Saturdays, Sundays, Memorial Day and Labor Day.

The plaintiff alleged that its economic viability depended on conducting racing on Fridays and during the evenings on Saturdays, Sundays, Memorial Day and Labor Day.

If the new hours were enforced, the plaintiff argued, its national reputation as a viable dragstrip would be permanently damaged. The plaintiff sought a declaration that enforcing the amendment would result in a taking of its property without just compensation, in violation of federal and state constitutional law.

The trial judge agreed with the defendant that the amendment was part of a legitimate licensing scheme and was rationally related to the defendant's legitimate interest in regulating the hours of a business that creates substantial noise and traffic. The trial judge granted the defendant's motion to dismiss.

The appeals court reversed. The court said the plaintiff asserted an "inverse" condemnation claim, which describes the manner in which a landowner recovers compensation for a taking of

its property when condemnation proceedings have not been instituted. However, the court said, a land-use regulation does not result in a taking if it substantially advances legitimate governmental interests and does not deny an owner an economically viable use of its land. On the other hand, the court said, while property can be regulated to a certain extent, if the regulation goes to far, it will be recognized as a taking.

In this case, the court said, the defendant contended that its regulation was based on nuisance law. The inquiry in such cases ordinarily will entail reliance on the factors typically associated with nuisance law, including the degree of harm to public lands or adjacent private property, the social value of the activity and the ease with which the harm can be avoided, the court said.

The defendant's motion to dismiss did not address any of these nuisance-related factors, the appeals court said. Instead, the court said, it relied solely on the general proposition that the ordinance "is aimed at preventing a nuisance ... the noise and traffic which accompanies a vehicle racing business."

The appeals court said the defendant introduced nothing to address the factual elements of this issue.

For example, the court said, the trial judge had nothing before him regarding the nature of the plaintiff's property and the surrounding properties. "If there is nothing within miles of plaintiff's property, then the nuisance abatement justification may not exist," the appeals court said.

The court said the trial judge should not have granted the motion to dismiss because of the unresolved factual issues. The case was remanded for further proceedings.

Byron Dragway Inc. v. County of Ogle, No. 2-00-0934. Justice Thomas E. Callum wrote the court's opinion with Justices Robert D. McLaren and Fred A. Geiger concurring. Released Nov. 14, 2001.