

Commercial Property - USA

Vested Rights in Zoning Classifications

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Introduction

Cribbin v The City of Chicago (1) illustrates one of the risks associated with land development arising out of changes in zoning classification. Generally, the use to which US real estate may be devoted is subject to the application of zoning laws that, among other things, regulate the use of property and the density of such use. Local governments establish zoning classifications and the areas affected by those classifications. Developers may purchase vacant land with the intent of developing that land. Because governments may, from time to time, change zoning classifications, such developers are at risk that the use and density intended at the time of the acquisition may not be permitted by virtue of a zoning change made at a later date. Generally, property owners do not have a vested right in the continuation of the zoning classification of their property and governments have the right to amend their zoning ordinances.

However, there are exceptions to this proposition. In Illinois, one exception allows an owner that has "made substantial expenditures" in good faith under a building permit or in reliance upon the probability of its issuance to have the right to proceed with the construction and use the premises for the purposes originally authorized by the zoning, despite a subsequent change in zoning classification. In *Cribbin*, an Illinois appellate court applied this exception.

Facts

The landowners purchased the relevant property with the intent of developing residential condominium apartments consistent with the density permitted by the then-applicable zoning classification of the property. After the purchase, the zoning classification was changed to reduce the permitted density of the permitted uses. There was testimony that the change was a setback, but provided enough latitude to permit profitable development of the site. The landowners proceeded with plans to develop the site in accordance with the recently changed zoning classification of the property, spending money on architectural and engineering fees and expenses in connection with the permit process.

An ordinance was introduced in the city council in September 2003 proposing a further change in zoning that would have increased the minimum dwelling area for each unit in the project. In October 2003 after the proposed ordinance was introduced, but before it was enacted into law, the landowners applied for a building permit that considered improvements consistent with the then-applicable zoning classification, but not consistent with the proposed zoning changes. The local government refused to issue a building permit that would have permitted construction to proceed. In May 2004 the proposed change in the zoning classification became law. The landowners sued the local government, arguing that they had acquired vested rights in the previous zoning classification as a result of their past expenditures and should be issued building permits based on the previous zoning classification. The local government asserted that once the proposed ordinance was introduced, it was not obligated to issue a building permit.

The trial court backed the landowners' position by finding that the landowners took

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action and made substantial expenditures within a reasonable time of acquiring the property, and that the purchase price should be considered part of those expenditures.

Decision

An Illinois appellate court upheld the trial court decision. The court stated that the general rule in Illinois is that property owners do not have a vested right in the continuation of zoning classifications on their land and a legislative body has the right to amend its zoning ordinances. However, the court acknowledged an exception where there has been a substantial change of position, expenditure or incurrence of obligations made in good faith by an innocent party under a building permit or in reliance upon the probability of its issuance. The purpose of the exception, according to the court, is to mitigate the unfairness caused to property owners that have made a substantial change in position in good-faith reliance on the probability of obtaining a building permit, only to have their efforts thwarted by a change in the zoning classification.

According to the court, while subjective intent and desire to develop a property are indicative of an owner's good-faith reliance, substantial and objectively measurable expenditures are necessary for an owner's rights to become vested. In determining whether expenditures are substantial, courts consider the totality of the circumstances surrounding the planned development, including:

- the objective amount of expenditure;
- the balance between the amount of expenditure and the total projected cost of development; and
- the nature of the person or entity seeking to develop the property.

In *Cribbin*, the court found that the landowners had owned the property for several years, exhibited a consistent desire to develop the property and made various substantial expenditures, including the purchase of the land, in pursuit of their plans. Therefore, the court concluded that the landowners had a vested right to proceed with their original development plans despite the change in zoning.

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Endnotes

(1) 893 NE 2d 1016, 323 Ill Dec 542 (Ill App Ct 2008).

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