

No Vested Right to Develop Where Permits Are Illegally Issued

09.01.2017

A property owner who is issued permits that violate the law when issued does not obtain a vested right to develop under those permits. In *Attard v. Board of Supervisors of Contra Costa County, et al.*, the Attards owned two properties in the unincorporated portion of Contra Costa County, far from urban development. The chief barrier to development of the Attards' properties was the lack of an acceptable means of sewage treatment. After finding a creative solution to the sewage treatment problem, the Attards applied to the County for permits to develop their properties, the County issued the permits, and the Attards started work to develop one of the properties. Subsequently, the County discovered that the permits had been issued in error because the Attards failed to obtain all necessary regulatory agency approvals for the sewage treatment project. The County issued a stop work notice.

After the County Board of Supervisors affirmed the staff actions, the Attards filed an action on the ground that they had obtained vested rights to develop under the permits, which could not be revoked or changed. Ultimately, the court of appeal found that even though the doctrine of vested rights may protect a party against subsequent changes in the law after a permit is issued, there can be no vested right to construct or use property in violation of laws in effect *at the time a permit is issued*. Because the Attards never obtained the required regulatory approvals for a means of sewage disposal that was affirmatively prohibited by state law without those regulatory approvals, the Attards did not have a vested right to develop the property under an illegally issued permit. Additionally, with respect to the undeveloped property, the court found that because the Attards had not yet commenced work in reliance on the permit prior to revocation, they failed to satisfy one of the requirements of the vested rights doctrine: substantial expenditures in reliance on the permit.

The Attards also invoked the doctrine of equitable estoppel to argue that the County was precluded from prohibiting development under the permits because the County led the Attards to believe that the projects were permitted. The doctrine of equitable estoppel provides that a person may not deny the existence of a state of facts if he or she intentionally led another to believe them and rely upon them to his or her detriment. The court found that in general, equitable estoppel does not apply to a governmental body. The exception is in unusual instances when necessary to avoid grave injustice and when the result will not defeat a strong public policy. The court concluded that the Attards failed to demonstrate a "grave injustice" because there was nothing unique or unusual about their circumstances. Moreover, the permit requirements were in furtherance of strong public health and safety policies.

If you have any questions about the validity of permits or property owners' rights in cases of invalid permits, please contact **Youstina N. Aziz**.