

Texas Can't Reverse \$28.8M Jury Verdict Over Highway Project

By **Michelle Casady**

Law360 (June 1, 2020, 4:05 PM EDT) -- The state of Texas lost a bid to undo a \$28.8 million jury award in a lawsuit brought against it by a developer who said the Grand Parkway toll road project and the related condemnation of 40 acres tanked the value of the site for a proposed residential development.

On Thursday, a three-judge panel of the First Court of Appeals in Houston upheld the win in favor of CC Telge Road LP, rejecting arguments from the state that the developer's damages model was "speculative" and was only entitled to about \$1.3 million.

Texas had argued that CC Telge "willfully chose" to change its plan for the development from a high-density residential area to a less-profitable, high-acreage plan with fewer homes. But the appellate court explained in its 39-page opinion there was plenty of evidence in the record showing CC Telge switched gears because the state made clear it wouldn't move the toll road route and wouldn't approve its high-density plan.

Until the executive director of the Grand Parkway Association, David Gornet, interfered with the development plan approval process — on behalf of the state, the appellate court wrote — the high-density plan was "physically possible, legally permissible, economically feasible, and reasonably probable." The state's condemnation of 40 acres on the 700-acre development for the toll road project affected the property's value by "mandating a shift away from a high-density residential development," the court held.

"It would be manifestly unjust to allow the state to depreciate land by threat of condemnation and then take advantage of the depreciation in the price it would be required to pay for the property once eventually condemned," the court held.

Texas had asked the panel for a new trial during oral arguments in November, arguing CC Telge's expert appraiser, Matt Deal, came to his damages estimate by focusing on what was done with the property after litigation began, not when the state condemned a portion of the plot for the highway project, Texas argued.

CC Telge purchased the property in 2010, and in 2014 the state condemned 40 acres of the roughly 700-acre plot. CC Telge then chose to build fewer homes on large-acreage plots instead of the high-density residential area it originally planned.

A jury agreed with CC Telge that the value of a planned residential community was drastically reduced by the state's decision to route the toll road — a massive, on-again, off-again project that has faced environmental, financial and political challenges since it was first conceived in the 1960s — through a wooded area of Willow Creek Watershed that would have served as a recreation area for community residents.

CC Telge argued the condemnation forced changes to the planned development, including cutting the number of homes from more than 1,000 to 250 high-acreage plots, and placing fewer recreational amenities on Willow Creek.

The state objected to a proposed \$19.8 million award for CC Telge from a special commission, pushing the dispute into trial court in June 2014. After a two-week trial, a jury determined that CC Telge was entitled to the \$28.8 million it had requested.

Don C. Griffin of Vinson & Elkins LLP, representing CC Telge, told Law360 on Monday he was pleased with the ruling, but anticipates an appeal from the state.

He also recalled during oral arguments that Justice Sarah Beth Landau pushed back on the state's characterization of CC Telge's change of plans, saying the choice wasn't made "in a vacuum," but as a result of the Grand Parkway.

"We didn't know at the time who would be authoring the opinion," he said. "Now that we know, that comment is very insightful.

"This case has been contentious from the beginning, and on a professional basis, but there was always a great disparity as to how the state viewed the law and how it should be applied to the facts of this case as compared to the property owner," he said.

The attorney general's office did not immediately respond to a message seeking comment Monday.

Justices Evelyn Keyes, Sarah Beth Landau and Richard Hightower sat on the panel for the First Court of Appeals.

Texas is represented by Glorieni Azeredo and Susan Desmarais Bonnen of the state's attorney general's office.

CC Telge is represented by Don C. Griffin, Billy Coe Dyer and Catherine B Smith of Vinson & Elkins LLP.

The case is Texas v. CC Telge Road LP, case number 01-18-00416-cv, in the Texas Court of Appeals for the First District.

--Editing by Adam LoBelia.