

Texas Can't Undo \$29M Highway Verdict At State High Court

By **Michelle Casady**

Law360 (March 5, 2021, 3:06 PM EST) -- The Texas Supreme Court on Friday rejected a bid from the state of Texas to reverse a \$29 million verdict in favor of a developer who claimed a highway project and related land condemnation tanked the value of a residential project site.

In a list of orders issued Friday, the state's high court declined to hear Texas' argument that the First Court of Appeals wrongly sided with developer CC Telge Road LP. CC Telge alleged, and a jury agreed, that the state's Grand Parkway toll road project and the related condemnation of about 40 acres decreased the value of a site for a proposed residential development.

Texas had argued CC Telge was only entitled to about \$1.3 million and attacked the "valuation methodology" used to reach the damages figure as "speculative."

In a November petition for review from the high court, Texas cautioned that leaving the First Court of Appeals' June ruling in place would "allow landowners to claim harm from future potential governmental projects based on their own decisions and before the government manifests a definite purpose to acquire their property."

Telge's valuation expert, Matt Deal, made "assumptions" and ignored facts when he determined the state's actions had cost the developer \$28.88 million, Texas argued, noting that was exactly what the jury awarded. The state said Deal hadn't adjusted "for the buyer's risk that the subdivision might fail."

CC Telge in December told the court there was nothing for it to review. The developer said the evidence was clear that the value of its property took a hit "when the state bisected it with an elevated toll road, destroying the Willow Creek watershed and changing the highest and best use of the property."

The developer also defended Deal's damages model, saying all of his "analytical steps were based on record facts."

According to court records, CC Telge purchased the property in 2010, and in 2014, the state condemned about 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, cutting the number of houses from more than 1,000 to 250.

After the state objected to a proposed \$19.8 million award for CC Telge from a special commission, the

dispute was pushed into court in June 2014. After a two-week trial, jurors determined CC Telge was entitled to the \$28.8 million it had requested.

Texas had argued CC Telge "willfully chose" to change its plan for the development from a high-density residential area to a less profitable plan with fewer homes on higher acreages. But the appeals court said there was ample evidence that CC Telge changed the plan because of moves the state made.

A jury found the value of the planned residential community was drastically reduced by the state's decision to route the toll road through a wooded area of Willow Creek Watershed that would have served as a recreation area for community residents.

The parties did not immediately return messages seeking comment Friday.

Texas is represented by Glorieni Azeredo and Susan Desmarais Bonnen of the Texas 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 20-0851, in the Texas Supreme Court.

--Additional reporting by Cara Salvatore. Editing by Philip Shea.