

DEVON ENERGY OPERATING
COMPANY, L.P.

Plaintiff,

v.

CITY OF RENO, TEXAS

Defendant.

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IN THE DISTRICT COURT

PARKER COUNTY, TEXAS

43RD JUDICIAL DISTRICT

DEFENDANT'S ORIGINAL ANSWER

COMES NOW CITY OF RENO, TEXAS, Defendant in the above entitled and numbered cause, and files this its Original Answer to Plaintiff's Original Petition ("Plaintiff's Petition") and for same would respectfully show unto the Court as follows:

1.

PLEA TO THE JURISDICTION

1.01. Defendant asserts that this Court does not have subject matter jurisdiction over Plaintiff's cause of action because it is not ripe for judicial review. In order for regulatory takings claims under Article I, Section 17 of the Texas Constitution to be ripe, there must be a final and authoritative determination of the type of use legally permitted on the subject property. A property owner must pursue other alternatives or seek variances in order to test and discover the outer limits of the challenged regulation. In the words of the Texas Supreme Court, "[a] court cannot determine whether a regulation has gone 'too far' unless it knows how far the regulation goes." *Mayhew v. Town of Sunnyvale*, 964 S.W.2d 922, 929 (Tex. 1998) citing *MacDonald, Sommer & Frates v. Yolo County*, 477 U.S. 340, 348, 106 S. Ct. 2561, 2565-66 (1986)).

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ELVERA M. JOHNSON, District Clerk
PARKER COUNTY, TEXAS
By [Signature] Deputy

1.02. Plaintiff alleges it owns the mineral interest in 454.518 acres located in the city limits of Defendant (hereinafter “entire leased premises”). Plaintiffs have also alleged that a 174.635-acre portion of the leased premises, know as “Tract 1,” is the “best location for drilling.” All but 300 feet from the centerline of Farm to Market Road 1542 in Tract 1 is zoned residential under Defendant’s zoning ordinance. Under the terms of the ordinance, natural gas production and distribution is allowed only in commercially zoned areas subject to the City granting a special use permit (“SUP”).

1.03. As alleged by Plaintiff it originally requested that certain portions of Tract 1 be re-zoned to commercial and that an SUP be granted to allow gas drilling on those locations. Plaintiff also requested an SUP be granted to allow drilling on the existing commercially zoned portion of Tract 1. During the required public hearing before the Reno City Council to consider these applications, Plaintiff changed its re-zoning request to apply only to a 5.01-acre platted lot located within Tract 1 and withdrew all other requests. After denial of this single request, Plaintiff filed this lawsuit.

1.04. Plaintiff has only sought one request for zoning change accompanied by an application for a special use permit for gas drilling. This request, and thus the City Council’s subsequent denial, concerned only a 5.01-acre lot located within the 174.635 acres of Tract 1 and the entire 454.518-acre leased premises. Under these circumstances, it is uncertain whether the City Council would grant or deny a zoning change and SUP to permit drilling on some other part of the entire leased premises or some other part of Tract 1. Further, Plaintiff has made no factual allegation why these further requests would be futile. Accordingly, Plaintiff’s claim is not ripe for judicial review.

2.

GENERAL DENIAL

2.01. In accordance with Rule 92 of the Texas Rules of Civil Procedure, Defendant exercises its legal right to require Plaintiff to prove all of the allegations contained in Plaintiff's pleading. Accordingly, Defendant denies generally the allegations of Plaintiff's pleading and demands strict proof of the allegations by a preponderance of the evidence.


3.

SPECIAL EXCEPTIONS

3.01. Defendant specially excepts to Plaintiff's petition on the ground that it fails to allege the maximum amount of damages claimed and requests that, pursuant to rule 47 of the Texas Rules of Civil Procedure, Plaintiff be required to plead that amount.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that their special exception be granted, that the plea to the jurisdiction granted and this suit be dismissed, and that Plaintiffs take nothing by their suit, and that Defendants recover all costs, and attorneys fees, together with such other and further relief, both general and special, at law and in equity, to which they may be justly entitled.

Respectfully submitted,


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State Bar No. 19691475

BRYN MEREDITH
State Bar. No. 24013158

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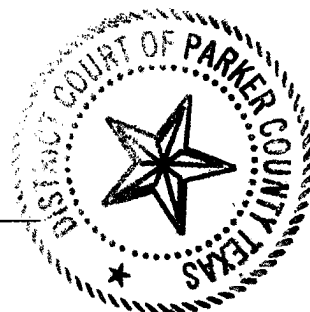
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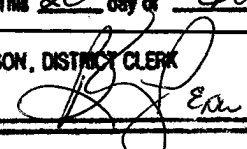
CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing instrument was forwarded on the 30th day of January, 2004, by certified mail, return receipt requested, to the following:

Jeffrey C. King
Dwight A. Shupe
Jamie Lavergne Bryan
HUGHES & LUCE, LLP
1717 Main Street, Suite 2800
Dallas, Texas 75201


BRYN MEREDITH



State of Texas)
County of Parker)
I certify that the foregoing, consisting of 4 pages, is a true, correct and complete copy of the instrument of record in my possession. This 20 day of January
20 04
ELVERA M. JOHNSON, DISTRICT CLERK
By:  Deputy